Abstract

This study investigates aspects of the history and doctrine of the Zāhirī madhab. Due to the lack of primary sources from any Zāhirī scholar other than Ibn Ḥazm al-Andalusī, it seeks to identify what is knowable about the madhab and Dāwūd ibn ‘Alī ibn Khalaf al-Iṣbahānī (known as Dāwūd al-Zāhirī), the scholar credited with establishing it, and how this can contribute to our understanding of its history and doctrine.

The study begins with a survey of Zāhirī scholars from the time of Dāwūd. Biographical evidence suggests that, contrary to what has generally been assumed, Dāwūd’s profile was closer to that of the Ahl al-Ra’y rather than to that of the Ahl al-Ḥadīth scholars of his age. The survey of Zāhirī scholars indicates that in no time in its history did the Zāhirī madhab develop into an institutionalized legal school similar to the surviving ones. It is also argued that Ibn Ḥazm’s role in the history of the madhab goes far beyond the fact that he is the only Zāhirī scholar whose writings have survived. The picture of the Zāhirī madhab changes after him, and his character and scholarly accomplishments would have had the effect of transforming Zāhirism into a real legal school. Nonetheless, Ibn Ḥazm’s accomplishments and the dependence of later Zāhirī scholars on his writings and their lack of creativity may have contributed, among other things, to the ultimate demise of Zāhirism.

The theme of Dāwūd’s relationship with the legal trends of his age is explored in chapters two and three, where the juridical thinking of the Ahl al-R’ay and the Ahl al-Ḥadīth is discussed for the purpose of identifying what may have been characteristic of each of them. Evidence suggests that Dāwūd was doctrinally closer to the Ahl al-Ra’y, with whom he shared fundamental legal and linguistic views. Dāwūd appears to have
drawn on their legal methodology, which differs in its assumptions, methodology, and objectives from that of the *Ahl al-Ḥadīth*. It is also argued that while the term *Zāhir* may have had more than one linguistic application, its most important one was on the issue of *ʿumūm*, the unrestricted indication and scope of applicability of words and sentences. Together with the assumption of the legality of whatever the law does not forbid and the presumption of continuity, this belief in *ʿumūm* constitutes the core of Ṣāḥīrism and explains linguistic and legal views that it endorsed or rejected.

Finally, this study challenges the view that Ṣāḥīrism is literalist. It is demonstrated that the definition of literal meaning and the possibility of identifying it are disputed issues in modern philosophy of language. Ṣāḥīrism is not literalist according to what is commonly regarded as the defining feature of literalism, namely, its disregard of the context. Unlike literalism, Ṣāḥīrism takes the historical and contextual contexts into account when interpreting a (legal) text. In this and in other fundamental assumptions and views on the nature and role of the law, the distinction between the lawmaker and legal interpreter, and the appropriate methodology for interpreting the law, Ṣāḥīrism resembles legal textualism, which represents its modern Western counterpart.
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Introduction

It is reported that when the Prophet Muhammad decided to fight the Jewish tribe of the Banū Qurayṣa, he said to his Companions: “Do not pray the afternoon (‘āṣr) prayer except in the abode of the Banū Qurayṣa.”¹ The Prophet’s Companions understood this command variously. One group of them took it to mean that they should pray the afternoon prayer only when they reached the Banū Qurayṣa, even if this meant praying it after its prescribed time. Another group inferred that what the Prophet actually meant was that they should not waste any time in preparing for and setting off to the battlefield. According to this latter understanding, the Companions were being requested to hurry, but they were nonetheless supposed to pray the afternoon prayer at its due time. The Prophet, it is reported, was silent on the matter. He did not reprimand either group, nor did he endorse one understanding over the other. Surprisingly, or perhaps unsurprisingly, the report does not tell us when the Prophet himself prayed!²

This report is in fact a classical example to which medieval Muslim scholars have always referred to demonstrate two points. The first is that differing conclusions could ensue from sound ijtihād. Since the Prophet did not tell either group that they were wrong, it must have been the case that neither was. Secondly, this report illustrates the difference between the “literalists,” or those who adhere to the letter of written or verbal commands, and those who pay more attention to the objectives which commands, or laws in general, seek to realize. Arguably, the latter understanding fared much better in Islamic legal history than the former; however, the former has not been categorically dismissed,

¹ Lā yūsalliyanna aḥadun al-‘aṣrā illā fī banī Qurayṣa.
for a report like the one mentioned above lends credence to this mode of thinking. Just as some Companions were more interested in the objectives of the Prophet’s command, others were more interested in obeying the letter of his command. Both groups were sincere, even if they proceeded along differing lines.³

For a Zāhirī scholar like Ibn Ḥazm, however, this report does not support either of the two views that other scholars sought to prove. In his view, all other scholars erred when they thought that the difference between the two groups was due to the way in which they construed the Prophet’s command. They also erred when they thought that the Prophet’s reported silence meant that both groups were right. How is that so? Ibn Ḥazm argues that what the Prophet’s Companions were dealing with here was a case of *taʿāruḍ al-adilla*, when conflicting evidence exists as to a specific issue.⁴ The Companions knew that there was a general command that prayers must be said at their prescribed times. That day, the Prophet gave them a command that could not be reconciled with the general command. A group of them decided to adhere to the original general command, preferring to pray the afternoon prayers at their prescribed time. The other group, however, followed the new command of the Prophet and prayed after sunset when they had reached the Banū Qurayṣa. Both, Ibn Ḥazm stresses, were following religious commands. Furthermore, the fact that the Prophet did not reprimand either group only indicates that whereas one of them was right and the other wrong, both were sincerely seeking to obey the Prophet and did not intend to disobey him, for which reason he did not need to reprimand either of them. Those Companions who understood his command

⁴ For Ibn Ḥazm’s discussion of this report, see his *Iḥkām fī Uṣūl al-Aḥkām*, vol. 3, pp. 190-93.
rightly, therefore, were rewarded twice, once for practicing *ijtihād* and again for reaching the right conclusion; those who got it wrong were rewarded once for practicing *ijtihād*.

Ibn Ḥazm points out that had he been among the Prophet’s Companions that day, he would have prayed in the abode of the Banū Qurayẓa, for the Prophet’s command on that specific day indicates that it was a special case. In other words, had the Prophet wanted his Companions to pray at the prescribed time of the afternoon prayers, he would not have needed to say anything to them and they would have prayed at the appointed time as they normally did. The fact that he said something must indicate that he intended to say something new and unique for that day, which telling them to pray at the normal time would not be. When making this argument, Ibn Ḥazm had three objectives. He was obviously seeking to resist understanding this disagreement between the Companions in terms of their hermeneutics, a view that would legitimize multiple readings of a single text. He was also seeking to demonstrate his view that religious commands, in the absence of strong and valid evidence, must be taken to indicate absolute obligation. Thirdly, he was dismissing the validity of using this report to demonstrate that legal diversity was tolerated by no less an authority than the Prophet Muḥammad himself. The beliefs that only one legal view on any issue is correct, that only one reading of any text is valid, and that commands are to be taken to indicate absolute obligation are all pillars of Ibn Ḥazm’s Ḥāhirism.⁵

⁵ On the question of why the Prophet did not order those who prayed ’āṣr in the afternoon to repeat it upon reaching the Banū Qurayẓa in the evening, Ibn Ḥazm argues that we simply do not know when news about this disagreement reached the Prophet. It is possible, he surmises, that the Prophet knew about it the following day, when it was too late to do anything about it, for those who do not pray on time according to their *ijtihād* and understanding (*ta’awwul*) without intending to miss the prayers are not required to repeat their prayers (Ibn Hazm, *Iḥkām*, vol. 3, p. 292). This appeal to the historical setting and to our inability to know all of its minutiae are a recurrent theme in Ibn Ḥazm’s legal reasoning as discussed in chapter three of this dissertation.
This controversy over the Banū Qurayṣa report also illustrates medieval Muslim scholars’ understanding of Zāhirism. For them, it only meant blindly following of the letter of the law without attempting to grasp what it seeks to accomplish. In this respect, it not only indicates narrow-mindedness, but a true mental deficiency in identifying what it intended by the law. Yet these scholars may concede the sincerity of the advocates of this philosophy and perhaps admire their keenness to rid jurisprudence of subjectivity and the personal preferences that usually result from appealing to the spirit rather than the letter of the law. It was particularly this belief in and admiration of their sincerity that generated my interest in the Zāhirī madhhab. Yet it was the many unanswered questions about its history and doctrine (hence the title of this study) that convinced me that working on this topic for my doctoral dissertation would be worthwhile and could fill important gaps in our knowledge and understanding of this particular madhhab and of Islamic legal history and philosophy in general.

Arguably, the Zāhirī madhhab was the most important of the “defunct” medieval madhhab, for despite the fact that it ended up disappearing from the legal scene, the ongoing interest that it has attracted in medieval and modern Muslim scholarship testifies to its distinctiveness. This is quite understandable in light of the fact that it produced far more literature than any other defunct madhhab. One of the madhhab’s representatives – Ibn Ḥazm al-Andalusī (d. 456/1164) – was among the most prolific thinkers in the history of Islam. But it was not only that. Ibn Ḥazm was arguably among the most ingenious of medieval Muslim scholars, and it may have been precisely because of this – and perhaps because of a hidden admiration similar to the one I speak of above – that medieval Muslim scholars felt that the Zāhirī challenge was too serious to be disregarded.
Some modern scholars have showed great interest in the Žāhirī madhhab. As early as the end of the 19th century, Ignaz Goldziher examined the place of Žāhirism among the legal trends of the 3rd/9th century and vis-à-vis other legal schools that developed later.6 Goldziher’s study, it must be acknowledged, was an excellent achievement given the sources that were available to him at that time. Yet while Goldziher showed an obvious interest in the history of the Žāhirīs, most later Western scholars only maintained his interest in Ibn Ḥazm and did not build on his effort to place him within the larger framework of the historical development of the Žāhirī madhhab.7 The result was that Ibn Ḥazm became the focus in almost all studies on the Žāhirīs. Nonetheless, this limitation can be justified only if sustained effort is made to study Žāhirism without reference to Ibn Ḥazm and if what we can learn about other Žāhirī scholars is explored. Focusing on Ibn Ḥazm, however, has perpetuated the belief that we can hardly know anything about other scholars of the school, including Dāwūd ibn ‘Alī ibn Khalaf al-Īṣbahānī (d. 270/883) – widely known as Dāwūd al-Žāhirī, the scholar credited with single-handedly establishing the Žāhirī madhhab.8 Thus, apart from Ibn

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6 Goldziher’s Die Žāhiriten, ihr Lehrsystem und ihre Geschichte; Beitrag zur Geschichte der muhammedanischen Theologie was published in 1884.
7 For example, Abdel Majid Turki’s article “Žāhirīyya” in EI2 is less than five pages long, and he makes it clear that he drew mainly on Muḥammad Abū Zahra’s work on Ibn Ḥazm (Muḥammad Abū Zahra, Ibn Ḥazm: Ḥayātuh wa ‘Aṣruh – Ārā’uh wa-Fiqhuh). Abū Zahra himself, who wrote books on the founders of the four surviving Sunnī schools of law, did not endeavor to write on Dāwūd and wrote instead on Ibn Ḥazm. In his study on the origin and development of the Sunnī schools of law, Christopher Melchert, who was by no means studying the school for its own sake, discusses the history of the school over more than six centuries in less than ten pages (Christopher Melchert, The Formation of the Sunnī Schools of Law: 9th-10th Centuries C.E.).
8 The fact that we know of no extant work of Dāwūd is no excuse. Devin Stewart has attempted to reconstruct the lost al-Wuṣūl ilā Ma‘rifat al-Uṣūl of Muḥammad ibn Dāwūd al-Žāhirī (Devin Stewart, “Muḥammad b. Dāwūd al-Žāhirī’s Manual of Jurisprudence: Al-Wuṣūl ilā Ma‘rifat al-Uṣūl,” in Bernard G. Weiss, Studies in Islamic Legal Theory). While we may have some issues with the methodology and conclusions of this study, the fact that a scholar has ventured to break the complete reliance on Ibn Ḥazm as our only source on the legal doctrine of the Žāhirī madhhab is commendable in itself. Mention should be made here of Muḥammad ‘Ārif Abū ‘Īd’s monograph on Dāwūd (al-Imām Dāwūd al-Žāhirī wa-Aṭharuh fī al-Fiqh al-Islāmī, the only such work to my knowledge). Unfortunately, although Abū ‘Īd made an
Ḥazm, the larger history of the Zāhirī madhhab remains unexplored. A recent short study on the history of the madhhab in Andalus itself shows how scholars rush to judgments about the madhhab without conducting enough research or considering all relevant evidence.⁹

This fixation on Ibn Ḥazm is at odds with the fact that he belonged to a madhhab that he did not himself establish. In fact, it contradicts the very notion that he belonged to a madhhab at all, no matter how we define it. Accordingly, two questions present themselves at the beginning of this study. If we assume for the sake of argument that Ibn Ḥazm had not existed, how much could we know about the Zāhirī school? In other words, is Ibn Ḥazm the best documented representative of the school, or is he our only source of any meaningful knowledge about the school? What do we know about the life and doctrine of Dāwūd al-Zāhirī himself? Accordingly, starting with Dāwūd, the first chapter of this study explores the scope of the spread of the Zāhirī madhhab in various centers and corners of the medieval Muslim world and collects information on the political and intellectual careers of scholars reported to have belonged to it. It deals with Ibn Ḥazm as one among these scholars, paying particular attention to the following points: what is the place of Ibn Ḥazm in the history of the Zāhirī madhhab? To what extent was the legal heritage of preceding Zāhirī scholars available to Ibn Ḥazm, and how did he deal with it? Answering all these questions determines the direction and subjects of subsequent chapters.

⁹ In her “The Beginnings of the Zāhirī Madhhab in al-Andalus” (in Peri Bearman et. al. (eds.), The Islamic School of Law: Evolution, Devolution, and Progress), Camilla Adang refutes Christopher Melchert’s claim that the Zāhirī school of law did not have representatives in Andalus before Ibn Ḥazm, who, according to Melchert, founded the school on the sole basis of books that were available to him.
Arguably, the ultimate question about the history of the Ẓāhirī madhhab is the question of its failure. What was it about the madhhab that made it perish while some other schools that were perhaps less successful than Ẓāhirism at certain historical moments (such as the Ḥanbalī school) survived? In recent years, Islamicist legal historians have sought to account for the success of the four existing Sunni schools of law and the failure of others. Some of them have focused on the popularity of legal madhhab among jurists, whereas others have emphasized state patronage as the main cause of success for legal schools. A third theory stresses the ability of legal schools to offer the necessary concessions to come to terms with other schools and adapt to social realities as the main factor that determined which schools survived and which perished. These concessions included, for instance, abandoning either excessive rationalism or excessive traditionalism. Scholars of every madhhab had to find a formula by which they could combine elements of both. The ability of schools to develop curricula or courses of study for their students is also among the factors advanced to account for the success of some schools and the failure of others. Although these views are taken into consideration when studying the Ẓāhirī madhhab, it is what we can learn about the madhhab that will determine how we think about the question of its failure. In fact, given the spatial and temporal scope of the Ẓāhirī madhhab, it is not unlikely that it may have failed for different reasons in different regions, a possibility that we will also entertain.

In addition to these questions about the history of the madhhab, there are questions related to its doctrine. What exactly is Ẓāhirism, and what was Ẓāhirī about Dāwūd al-Ẓāhirī? Many medieval and modern scholars writing on this subject have

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10 For this, see, for instance, George Makdisi, “The Significance of the Sunnī Schools of Law in Islamic Religious History”; Christopher Melchert, The Formation, pp. 187ff.; and Wael Hallaq, The Origins and Evolution of Islamic Law, pp. 167-172.
generally regarded Dāwūd as one of the *Ahl al-Hadīth* scholars of his age. Judging on the basis of Dāwūd’s reported rejection of some of the notions of the *Ahl al-Ra’y* (such as *istiḥsān*, *maṣlaḥa*, etc.), they conclude that Dāwūd, at times implicitly and at other times explicitly, cannot have had any relation to them or to their juridical thinking. However, this conclusion can only be sustained when we have collected biographical and doctrinal evidence about Dāwūd’s life and jurisprudence. This evidence we furnish in chapter one, where we examine possible influences on Dāwūd and what we know about his life and doctrine. We build on this in chapters two and three, where we seek to identify the characteristic features of the *Ahl al-Ra’y* and the *Ahl al-Hadīth* to determine the group in which Dāwūd fits better and to which side he may have been closer in terms of legal doctrine.

But what was it that distinguished Dāwūd’s jurisprudence if he was already affiliated with one of these two groups of scholars? Zāhirism is commonly regarded by modern, and possibly some medieval Muslim scholars, as a literalist approach to reading religious and legal texts. In other words, what distinguished Dāwūd and subsequent Zāhirī scholars was their “literal” reading of legal texts. These scholars, however, never explain what they mean by literalism, nor do they demonstrate that Zāhirī scholars were literalists. Therefore, I seek to determine what Zāhirism meant in chapter three, and deal with the issue of literalism in chapter four, where I argue that if we are to seek a modern counterpart to Zāhirism, textualism is the best candidate. This is not to say that textualism is a better candidate than literalism. Literalism, in fact, is not a candidate at all, even if it shares with Zāhirism some basic views on human language.
In chapter five, five case studies are presented, two of which are examined thoroughly, and three discussed briefly, for further demonstration of some of the arguments made in this study on Dāwūd, the nature of Žāhirī juridical thinking and its relationship with the legal thought of the Ahl al-Ra’y and the Ahl al-Hadīth. My hope is that this study will contribute not only to our understanding of the history and doctrine of the Žāhirī madhhab, but also to our understanding of Islamic legal history more broadly by revisiting the traditional typology of Islamic legal trends and reflecting on the significance of the inability of the Žāhirī madhhab to thrive in Islamic culture.

Finally, unless otherwise noted, I rely on al-Dhahabī’s *Siyar A’lām al-Nubalā*’ for the dates of death of scholars mentioned in this study. When there is a dispute over the exact date of death, I use the commonly accepted one. For conversion from the *Hijrī qamarī* to the Christian calendar, I use Freeman-Grenville, G. S. P. *The Muslim and Christian Calendars*. The transliteration used here is mostly that of *Encyclopedia of Islam*, second edition, the exceptions being j for dj and q for ḳ. In transcribing titles of Arabic works, I always use the definite article al-, even though I do not do so in other contexts. I do not omit the first a in Allāh when preceded by a vowel. For Qur’ān translation, I draw freely on the translations of M. Pickthall, Yusuf ʿAli, and M. H. Shakir.
Chapter One

Dāwūd al-Iṣbahānī and Subsequent Ẓāhirī Scholars

This chapter investigates the life and doctrine of Dāwūd ibn ‘Alī ibn Khalaf al-Iṣbahānī and subsequent scholars reported to have belonged to the Ẓāhirī madhhab. The first part of the chapter deals with Dāwūd, his teachers and immediate students and seeks to determine how much we can actually know about Dāwūd’s life and doctrine. The second part explores the history of the madhhab after Dāwūd’s students. Ibn Ḥazm al-Andalusi’s place and role in the history of the madhhab is discussed in part three.

I. Dāwūd al-Iṣbahānī and What We Know about Him:

A. Dāwūd’s Life:

Dāwūd’s biographies pose a special historiographical difficulty: statements made about his knowledge and prominence are generally inconsistent with the few information that his biographers report about his life. Al-Khaṭīb al-Baghdādī (d. 463/1070) mentions that Dāwūd lived most of his life in Baghdad, but he does not mention where Dāwūd was born. Abū Ishāq al-Shīrāzī (d. 476/1083) mentions that Dāwūd was born in Kufa and grew up in Baghdad. Al-Sam‘ānī (d. 562/1166) says that Dāwūd was from Qāshān (a village near Iṣbahān), but resided in Baghdad. Below we will see that the majority of Dāwūd’s teachers were either Basran by birth or residents of Basra. With no evidence that any of them lived in Baghdad, there is a possibility that Dāwūd was born in Kufa.

11 Not translating madhhab as a school of law here is a point that I will discuss later.
traveled to Basra at an early age, and then possibly to the East where he may have met with Ishāq ibn Rāhawayh and other traditionists of the time, to finally settle in Baghdad until the end of his life. Since Basra was a vibrant center of knowledge in the 3rd/9th century, Dāwūd’s must have been influenced by its intellectual currents before settling in Baghdad. We will come back to this point in a later context.

In addition to this uncertainty about Dāwūd’s place of birth and where he grew up, some of his biographers mention that he was born in the year 200/815, while others give the year as 202/817. Disagreement over dates of birth of medieval scholars is not uncommon in biographical dictionaries, but information about Dāwūd’s death is also uncertain. Dāwūd’s biographers were uncertain whether he died in Ramaḍān or Dhū al-Qa‘da in the year 270/883, and whether he was buried in a public graveyard in Baghdad, or in his home. Nothing seems to have been remembered about Dāwūd’s funeral.

Dāwūd’s biographers do not report any significant information about his life. The only reference to Dāwūd’s family is that his father was a follower of the Ḥanafī school of

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15 For a useful overview of the intellectual milieu and notable scholars of early Basra, see ‘Abd al-Jabbār Najjī, Min Mashāhīr al’lām al-Basra: Dirāsa fi ‘Aṭā’ al-Basra al-Fikrī.
16 Al-Khaṭīb al-Baghdādī, Tārīkh, vol. 8, p. 375.
18 Abū Ishāq al-Shārīzī (Ṭabaqāt, p. 92) and Ibn Khallikān (Wašayūṭ, vol. 2, p. 257) report that Dāwūd died in a graveyard in the western part of Baghdād called al-Shīnūziyya (from al-Shīnūzī, a person’s name) or maqābir Quraysh, where many of Baghdād’s scholars and notables were buried (al-Khaṭīb al-Baghdādī, Tārīkh, vol. 1, p. 122).
19 Al-Khaṭīb al-Baghdādī, Tārīkh, vol. 8, p. 375.
20 Each of these elements is not of much significance by itself, but they become significant when put together. Biographical dictionaries usually provide far more information about the deaths and funerals of prominent scholars. In Tārīkh Baghdād, for example, we are informed of the exact day on which Ibn Ḥanbal died, told who led the funeral prayers over him, and where he was buried, and given an estimation of the number of people who attended his funeral (some 800,000 men and 60,000 women) (al-Khaṭīb al-Baghdādī, Tārīkh, vol. 4, p. 422). Likewise, al-Khaṭīb al-Baghdādī reports when Ibn Ḥanbal’s student Abū Bakr al-Marrūdhī (d. 275/888) died, who led the funeral prayers over him, and where he was buried (ibid., vol. 4, p. 424). Likewise, the funeral of the Šūfi al-Junayd (d. 298/910) is reported to have been attended by some 60,000 people, and al-Khaṭīb al-Baghdādī mentions the exact place of his burial (ibid., vol. 7, 248).
law, and was a scribe of a certain ‘Abd Allāh ibn Khālid al-Kūfī. We do not know what Dāwūd did for a living. Only an isolated and ambiguous account suggests that he may have worked as judge for some time. As for Dāwūd’s relationship with the rulers of his time, we have one report that Dāwūd was a mawlā (client) of the Caliph al-Mahdī (r. 158/774-169/785). What is remarkable here is that Dāwūd grew up during the last years of the Miḥna, and does not seem to have subscribed to the official state position on the question of the createdness of the Qur’ān. This silence on Dāwūd’s relationship with the rulers of his time may indicate that he was not a particularly notable scholar during his life.

Despite this lack of biographical data, Dāwūd’s biographers portray him as a scholar who possessed vast knowledge, excelled in reasoning and argumentation, and had

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22 This is cited by Goldziher (The Zāhirīs, p. 27) from a manuscript copy of Sirāj al-Dīn ibn al-Mulaqqin’s (d. 804/1401) al-‘Aqd al-Mudhahhab fi Ṭabaqāt Hamalat al-Mudhhab. I did not find this piece of information in the available edition of al-‘Aqd al-Mudhahhab, nor did I find it in al-Sam’ānī’s Ansāb al-Ashrāf (al-Sam’ānī, the Ansāb, s.v. “al-Dāwūdiyya” (vol. 2, p. 448-49) and “al-Zāhirī” (vol. 4, pp. 99-100) where the same piece of information is reportedly mentioned (for this, see Abū ‘l-Īd, al-Imām Dāwūd al-Zāhirī, p. 50). Abū ‘l-Īd was also using a manuscript of al-Ansāb, but I could not find reference to Dāwūd’s father in the edition of al-Ansāb available to me. Abū ‘l-Īd mentions that ‘Abd Allāh ibn Khālid was a judge of Iṣbahān in the days of the ‘Abbāsid Caliph al-Ma’mūn (ruled 198/813-218/833). Be this as it may, what we know about Dāwūd remains marginal.
23 In the entry of the famous Mālikī judge of Baghdād Ismā’īl ibn Iṣhāq in al-Dībāj al-Mudhahhab (pp. 151-55), Ibn Farḥūn – who seeks to show how Ismā’īl was intolerant of the ahl al-bida’ (innovators) that they avoided Baghdād out of fear of him – mentions that Ismā’īl banished Dāwūd to Basra because of his innovation of rejecting qiyyās (li-ihdāthīhi man’i ‘l-qiyyās). According to this, Ismā’īl used to say: “He who does not have insight (fīrāṣa) should not work as judge” (ibid., p. 154). It is not clear whether Ibn Farḥūn knew that rejection of qiyyās was the reason for Dāwūd’s alleged banishment or was only a conjecture (we will see below that rejection of qiyyās was made the defining characteristic of Zāhirism by medieval Muslim scholars). It is also not clear whether Ismā’īl’s comment on insight as a requirement for judgeship is connected to Dāwūd’s banishment. This account would only suggest that Dāwūd worked as a judge in Baghdād if there is a connection between these two reports about Ismā’īl. Ibn Ḥazīm probably alludes to this incident in his Risāla al-Bāhīra, pp. 38-39, where he mentions that the ‘Abbāsid prince al-Muwaffaq (d. 278/891) protected Dāwūd from Ismā’īl ibn Iṣhāq “after what took place between them.” These vague accounts and the fact that no other source mentions anything about Dāwūd working as a judge in Baghdad make them useless for our purposes here.
24 Al-Dhahābī, Siyar, vol. 13, p. 97. Since al-Mahdī ruled and died long before Dāwūd’s birth, either it was Dāwūd’s father who was a mawlā of al-Mahdī, or a scribe inadvertently changed al-Muṭahādī (r. 255/869-256/870) to al-Mahdī. In either case, it is not clear what this exactly means in terms of Dāwūd’s relationship with the ‘Abbāsid Caliphate. Dāwūd and his father were non-Arabs, which means that walā’ does not necessarily indicate much about their relationship with the ‘Abbāsids in normal circumstances.
many followers. Al-Shīrāzī states that “mastership of knowledge in Baghdad culminated in Dāwūd.” Ibn Khallikān (d. 681/1282) mentions that Dāwūd was a scholar with an “independent madhhab,” and that he was followed by a large group of people called al-Zāhibīyya. Al-Khaṭīb al-Baghdādī reports that Dāwūd was “imām ahl al-Zāhir.” Nevertheless, only a few accounts of Dāwūd can substantiate this image. For example, it is reported that Dāwūd’s majlis in Baghdad was attended by some 400 people wearing green ṭaylasāns. Among the important people reported to have frequented Dāwūd’s circle is the celebrated Muḥammad ibn Jaʿrīr al-Ṭabarī (d. 310/922). In his Fihrist, Ibn al-Nadīm attributes to Dāwūd a large number of works (see below), among which are Kitāb al-Masāʾil al-Īsfahāniyyāt, Kitāb al-Masāʾil al-Baṣriyyat, and Kitāb al-Masāʾil al-Khuwārizmiyyat. This title may indicate (in the absence of evidence that Dāwūd traveled to these places himself) that Muslims from different cities used to send questions to Dāwūd, pointing to reputation of a notable jurist.

25 Wa-intahat ilayhi riʾāsatu l-ʾilmī fī Baghdād (al-Shīrāzī, Ṭabaqāt, p. 92).
28 Kāma yahdūtu majlisahu arbaʿāmiʿ ātū sāḥihi ṭaylasānīn akhdar (al-Shīrāzī, Ṭabaqāt, p. 92). According to the Kitāb al-Alfāz al-Fārisiyya al-Muʿarrabā, a ṭaylasān is a round green garment that has no bottom and is worn on the shoulders. Its core (luhma) was made of wool and it was worn by distinguished scholars and notables (p. 113). In the Tafsīr al-Aḥlām of Ibn Sīrīn, dreaming that one is wearing a ṭaylasān is a felicitous dream, for it indicates that one is going to reach a great status among his people or family. The opposite happens if one’s ṭaylasān is torn in a dream, as this bodes the death of a brother or son (Muḥammad ibn Sīrīn, Tafsīr al-Aḥlām, p. 197). In Nishwār al-Muhādara (vol. 7, p. 67), al-Ṭanūkhī mentions a poem about a ṭaylasān that his father gave to a grandson of Yahyā ibn Khalīl al-Barmakī as a gift. Al-Suyūṭī has a work on ṭaylasān: al-Aḥādīth al-Ḥisān fī Faḍl al-Ṭaylasān (I owe this reference to Prof. Hosseinzadeh Modarressi).
29 Al-Khaṭīb al-Baghdādī, Tārīkh, vol. 13, p. 273, where al-Khaṭīb adds that al-Ṭabarī later parted company with Dāwūd and started his own circle. It must be noted that a circle of 400 students is not impressive. The circle of one of Dāwūd’s own teachers in Basra – Sulaymān ibn Ḥarb – is reported to have been attended by some 40,000 students and that of Amr ibn Marzūq, also a Basran teacher of Dāwūd, by 10,000 students. In Baghdād, the circles of Abū Yūṣuf and later Ḥamīd ibn Ḥanbal are said to have gathered thousands of students. While these figures do not have to be true or accurate, they certainly give an indication of how large or small a circle of knowledge was.
This image of Dāwūd, however, cannot be easily reconciled with other facts reported about him. We know that Dāwūd did not distinguish himself as a Ḥadīth scholar. Arguably, in the 3rd/9th-century Baghdad, Ḥadīth was becoming more and more the “knowledge” (al-‘ilm) that any jurist who sought to establish and distinguish himself needed to acquire, and the more he was able to acquire, the greater was his reputation as a knowledgeable scholar. Dāwūd does not seem to have made any effort to distinguish himself in the transmission of Ḥadīth, and he figures in only three isnāds, two of which are regarded as munkar. Ibn al-Jawzī (d. 597/1200) reports that Dāwūd contradicted many traditions. Ibn Abī Ḥātim al-Rāzī (d. 277/891) mentions – in what could be the earliest biography we have of Dāwūd – that he used to ridicule and offend the Ahl al-Hadīth on account of their obsessive interest in searching for traditions far and wide. In addition to this, if references to Dāwūd’s engagement in argumentation (see below) are read against the backdrop of what we know about his knowledge, they could also indicate that Dāwūd was less interested in acquiring knowledge (al-mudhākara) and more interested in engaging in debates (al-munāẓara). That attendees of Dāwūd’s circle – some of whom may not have been his students – were few, therefore, is not surprising; in fact, it is not clear what the subject of Dāwūd’s lectures was.

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31 According to Al-Khaṭīb al-Baghdādi, transmission of Ḥadīth from Dāwūd was rare (wa-lākinna ‘l-riwāyata ‘anhu nādiratum jiddan). The person who reported this about Dāwūd also mentioned that Dāwūd’s works “contained much Ḥadīth” (Al-Khaṭīb al-Baghdādi, Tārīkh, vol. 8, p. 370).

32 Al-Khaṭīb al-Baghdādi, Tārīkh, vol. 8, p. 370. According to Al-Khaṭīb al-Baghdādi, a tradition is munkar or shādīdha when it contradicts another tradition transmitted by a number of reliable transmitters (for this, see Al-Khaṭīb al-Baghdādi, al-Kifāya fi ‘Ilm al-Riwa‘a, p. 171). Al-Khaṭīb mentions that two of the traditions in the chain of transmissions of which Dāwūd figures were munkar because of their sanads; they contained unreliable transmitters.


35 For how these two activities were characteristic of scholars in Dāwūd’s time, see Christopher Melchert, *Formation of the Sunni Schools of Law*, pp. 183-84.
In light of all this, we have to regard al-Shīrāzī’s statement about Dāwūd’s mastership of knowledge in Baghdad as an innocent hyperbolic statement that only indicates that Dāwūd’s knowledge (probably of legal matters) was more than that of the average scholar of his time. Al-Shīrāzī – who, notably, does not describe Dāwūd as Zāhirī and mentions nothing about his Zāhirism or his rejection of qiyās – seems to have been interested mainly in Dāwūd’s admiration for al-Shāfi‘ī, a point that allowed later Shāfi‘ī tabaqāt authors to include Dāwūd among the early followers of Shāfi‘ism.

Dāwūd is also described as having been gifted in disputation and argumentation. The famous Ḥadīth scholar Abū Zur‘a al-Rāzī (d. 264/877) is reported to have said that had Dāwūd limited himself to what people of knowledge do, he would have suppressed people of innovation with his argumentative skills.36 A famous contemporary of Dāwūd – the grammarian Abū al-‘Abbās Tha‘lab (d. 291/903) – described him as having had “greater reason than knowledge.”37 In his Tabaqāt al-Shāfi‘iyya al-Kubrā, al-Subkī mentions that he had a lengthy treatise which Dāwūd had sent to al-Shāfi‘ī’s student Mūsā ibn Abī al-Jārūd that indicates his mastery of argumentation and debate.38

Unfortunately, although some sources refer to some of these debates in which Dāwūd reportedly took part, they do not preserve details of any of them. Some sources mention that a disagreement that Dāwūd had with Ishāq ibn Rāhawayh (d. 238/852), a celebrated Ḥadīth scholar of his time, concerning Dāwūd’s position on the subject of the createdness of the Qur’ān (*khalq al-Qur’ān*).39 It is also reported that Dāwūd had a debate with the

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37 *Kāna ‘aqlulu akbara min ‘ilmih* (ibid., p. 371).
famous Shāfi‘ī scholar Ibn Suraj (d. 306/918), who wrote a refutation of both the Ahl al-Ra‘y and the Ahl al-Zāhirī. Dāwūd probably had a debate with a scholar of the Ahl al-Ra‘y, Ibn al-Ḥusayn al-Bardha‘ī (d. c. 317/929), who reportedly decided to remain in Baghdad specifically because of the predominance (ghalaba) of Zāhirī scholars there. According to al-Khaṭīb al-Baghdādī’s account, al-Bardha‘ī once saw Dāwūd debating with a Ḥanafī scholar and overcoming him. Al-Bardha‘ī asked Dāwūd about a legal issue and then refuted his view. Al-Dhahabi mentions that Dāwūd had a debate with the Muʿtazili theologian Abū Mukhālid Āḥmad ibn al-Ḥusayn in the presence of the ‘Abbāsid amīr al-Muwaffaq (d. 278/891) on the subject of khabar al-wāḥid, but al-Dhahabi’s account suggests that the debate was probably on the subject of free will. Finally, Muḥyī al-Dīn al-Qurashi reports a debate between Dāwūd and a certain Muḥammad ibn ‘Alī ibn Ṭāhir al-Kurrī, which Dāwūd regarded as a basis for ‘amal

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40 Ibid., vol. 4, p. 290.
41 Ibn al-Nadīm attributes to Ibn Suraj a work in which he responded to Muḥammad ibn al-Ḥasan al-Shaybānī (al-Radd ‘alā Muḥammad ibn al-Ḥasan) and ‘Īsā ibn Abīn (al-Radd ‘alā ‘Īsā ibn Abīn). Ibn al-Nadīm does not mention any work in which Ibn Suraj refutes the Zāhirīs, but he mentions that Ibn Surajy had debates (munāzarat) with Muḥammad ibn Dāwūd (Ibn al-Nadīm, Fīhirīst, p. 213).
42 Ibn Ḥajar, Lisān al-Mīzān, vol. 1, p. 259. For al-Bardha‘ī’s biography, see al-Khaṭīb al-Baghdādī, Tārīkh, vol. 4, pp. 99-100, where al-Khaṭīb al-Baghdādī mentions that al-Bardha‘ī was killed in a Qarmāt massacre of pilgrims, which was probably in 317/929. See also al-Qurashi, Jawāhir, vol. 1, pp. 163-66.
44 Al-Dhahabi, Siyar, vol. 10, p. 553. According to this report, Dāwūd and was debating the subject of the khabar al-wāḥid with Abū Mukhālid in front of al-Muwaffaq when Dāwūd looked at al-Muwaffaq and said: “May God put the amīr on the straight path, Abū Mukhālid has let the people astray (aṣlahā Allāhu ‘l-amīr, qadd ahlaka Abū Mukhālidun ‘l-nās).” Al-Muwaffaq replied: “He has only defeated you by what you have just said, for God, in your view, is the one who has led people astray, so how can Abū al-Mukhālid lead them astray (qadd qatā‘aka bi-nafsi gawlika ģādha, li-anna Allāha ‘indaka huwa ‘lādhi ahlaka ‘l-nās, faka fiya yuhlikahum Abū Mukhālid)? Al-Muwaffaq’s reply, so the anecdote goes, rendered Dāwūd speechless (ibid., p. 553).
45 Al-Kurrīnī is a nisba to Kurrīnī in Tabas (al-Sam‘ānī, Ansāb, vol. 5, p. 63), which is between Nayṣābūr and Iṣbahān (ibid., vol. 4, p. 48). I could not find tarjamas for Muḥammad ibn ‘Alī ibn Ṭāhir al-Kurrīnī, nor Ayyūb ibn Ghassān who transmitted this reported to Ibn Dānkā al-Ṭabarī.
(action) and argued for that in an apparently offensive and disrespectful way.\textsuperscript{46} Al-Qurashî does not report al-Kurrînî’s view here, but he must have had the opposite view on the issue.\textsuperscript{47}

This lack of information about the subjects of the controversies that Dāwūd reportedly engaged in does not necessarily indicate that he was not interested in argumentation. It may suggest, however, that he was not especially talented in argumentation – as al-Bardha‘î’s encounter with Dāwūd may indicate – or that his views were not significant enough for later generations to memorize. In one report, one of Dāwūd’s contemporaries used to argue that his view on the question of khalq al-Qur‘ān – that the Qur‘ān of al-lawḥ al-maḥfūẓ is primordial whereas that which is in the hands of people is created – was the view of a novice theologian.\textsuperscript{48}

Another reported characteristic of Dāwūd was his piety and asceticism. Although Dāwūd’s integrity was generally not questioned by the Ḥadîth critics of the age,\textsuperscript{49} some reports suggest otherwise. Ibn Abī Ḥātim al-Rāzî describes Dāwūd as “deviant and heretical,”\textsuperscript{50} and his father is reported to have described Dāwūd in similar terms,\textsuperscript{51} and

\textsuperscript{46} Kāna Dāwūd yahtajju li-l-‘amal bi-hi wa-yushanni‘u wa-yubālîgh fi thubātih (al-Qurashî, Jawāhir, vol. 1, p. 292).
\textsuperscript{47} Al-Qurashî, Jawāhir, vol. 1, pp. 292-93. The rest of the story is unclear. Al-Qurashî mentions that people gathered around Dāwūd and al-Kurrînî and started throwing one of them with stones until he fled the mosque. When he was asked about the khabar al-wāḥid later, that scholar said that if stones were involved in the question, then the khabar al-wāḥid is a basis for both or a source of knowledge and a basis for action (amma bi-l-ḥijāratī wa-l-‘ajurr, fa-‘innahu yūjibu ‘l-‘ilm wa-l-‘amala jamī‘an) (ibid., pp. 292-93). While we would imagine that it was Dāwūd who was stoned (since Baghdad was the stronghold of Ḥanafism), the answer indicates that it was al-Kurrînî’s rather than Dāwūd, which would suggest that Dāwūd’s view on the issue was the more popular. Given the vagueness of this report, however, we cannot use it to make any such conclusions.
\textsuperscript{48} Al-Khaṭīb al-Baghdādī, Tārīkh, vol. 8, p. 374.
\textsuperscript{49} For this, see, for instance, Ibn al-Jawzî, al-Muntazam, vol. 12, p. 236.
\textsuperscript{50} Ibn Abī Ḥātim al-Rāzî, Jarḥ, vol. 1, p. 410. A contemporary biographer of Dāwūd – ‘Ārif Abū ‘Īd – believes that al-Rāzî’s Dāwūd ibn Khalaf is not our Dāwūd ibn ‘Alī ibn Khalaf (Abū ‘Īd, al-Imām Dāwūd al-Zāhīrî, p. 48). Abū ‘Īd, however, does not argue for this, and does not seem to have felt the need to do so. For him, the person about whom Ibn Abī Ḥātim speaks cannot be our Dāwūd. Abū ‘Īd apparently did not notice Abī Ḥātim al-Rāzî’s view on Dāwūd. Admittedly, there is some confusion in Ibn Hajar’s account, for he also reports that Ibn Abī Ḥātim had a biography of Dāwūd in which he did well (ajā‘îd). It
warned people against listening to his foolish and absurd talk (khaṭārātihi wa-
wasāwisih). But even if Ibn Abī Ḥātim or his father spoke ill of Dāwūd, their view
seems to be isolated and was probably motivated by rejection of specific views held by
Dāwūd. After describing Dāwūd as deviant in the first account that we have, Ibn Abī
Ḥātim mentions that he had seen Dāwūd and listened to his views, of which his father
and Abū Zurʿa al-Rāzī did not approve. To this Ibn Abī Ḥātim adds Dāwūd’s attack on
the activities of the Ahl al-Hadīth (see above).

Generally speaking, the picture of Dāwūd ibn Khalaf al-Īṣbahānī in medieval
sources is that of a distinguished scholar and head of a madhhab who had followers in
Baghdad. It is striking, however, that what we actually know about Dāwūd is very little.
Thus, we must question this picture of Dāwūd, not necessarily because it cannot be
historically accurate, but because it cannot be corroborated by the sources that make
them. What these sources do tell us about Dāwūd is insufficient to allow us to make
definite conclusions about his life and career. While there is evidence that Dāwūd was
not an insignificant scholar, whether he was regarded in his age as a distinguished scholar
is a point that we cannot be certain of on the basis of the available sources.

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52 Ibn Ḥajar, Lisān, vol. 2, p. 491. Ibn Ḥajar attributes this to Dāwūd’s scribe (warrāq), who is probably al-
Ḥusayn ibn ʿAbd Allāh ibn Shākir al-Samarqandī (for this, see al-Dhahabī, Mizān al-lʿīdāl, vol. 1, p. 539).
Al-Ḥusayn is reported to have died in 282/895 (Ibn Ḥajar, Lisān, vol. 2, p. 290).
53 Fa-lam yardayā maqālatahu (ibid., p. 411).
But we can observe similarity between Dāwūd’s career and Abū Ḥanīfa’s and al-Shāfi‘ī’s rather than to a scholar like Aḥmad ibn Ḥanbal. Abū Ḥanīfa and al-Shāfi‘ī were similarly not distinguished as Ḥadīth transmitters and were known for their engagement in argumentation. Dāwūd’s father was a Ḥanafī, and Dāwūd himself is reported to have been a staunch admirer of al-Shāfi‘ī and the first to have compiled works on his virtues (*manāqib*), a report that later Shāfi‘ī scholars would make use of to claim that Dāwūd followed al-Shāfi‘ī’s madhhab, notwithstanding his rejection of *qiyyās*. Aḥmad ibn Ḥanbal, in contrast, distinguished himself as a leading Ḥadīth transmitter and critic and was known for his extreme abhorrence of argumentation and those who engaged in it. In fact, Dāwūd’s biographers consistently report that Aḥmad ibn Ḥanbal refused to meet him. Abū Zur‘a al-Rāzī admired Dāwūd’s argumentative skills, but lamented the fact that he did not do what “people of knowledge” used to do, which probably refers to transmitting traditions and abstaining from engaging in debates about issues like the createdness of the Qur’ān.

**B. Dāwūd’s Doctrine:**

It is not uncommon for medieval legal works to report Dāwūd’s views, either as a source of further support for a particular legal view or as a target of refutation and even ridicule. More often than not, these sources do not mention the bases on which Dāwūd held those views. This problem is compounded by the fact that we do not possess any of Dāwūd’s legal works or even any legal works from his immediate students. This continued until Ibn Ḥazm al-Andalusī – writing almost two centuries after Dāwūd’s death and thousands

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54 For this, see, for instance, al-Shīrāzī, *Ṭabaqāt*, p. 93.
of miles away from the birthplace of Żāhirism – compiled extensive works of Żāhirī uṣūl and furū’. How representative Ibn Ḥazm is of Dāwūd’s legal heritage is a question we will attend to later.

As noted, al-Khaṭīb al-Baghdādī states that Dāwūd was imām Ahl al-Żāhir and reports that he was the first to hold to the ẓāhir and reject qiyās. The meaning of ẓāhir is not explained here, nor is it explained in an explicit way in most medieval sources. Ibn al-Jawzī, probably seeking to explain what this term means, describes Dāwūd’s madhhab as “rigid” because it stops at the texts (al-naql), disregards what could be understood from them (al-mafhum), and focuses only on their wording (ṣūrat lafẓih).56 In a later chapter we will investigate what the term ẓāhir probably meant in the 3rd/9th century.

Ṭāj al-Dīn al-Subkī (d. 771/1370) – who seems keen to bolster the image of Dāwūd and defend him57 – mentions that he received a copy of one of Dāwūd’s treatises which shows that, contrary to Ṭāj al-Dīn al-Subkī’s father’s belief that Dāwūd rejected only al-qiyās al-khaft but not al-qiyās al-jalī58 – Dāwūd in fact rejected all kinds of qiyās, even though he did not say so in an explicit and unambiguous way. Al-Subkī adds that he had at his disposal some papers of Dāwūd, titled al-Uṣūl, in which he declares – as al-

57 Ṭāj al-Dīn al-Subkī, it should be mentioned, is not the only Shāfi‘ī scholar whose discussion of Dāwūd’s views betrays this desire to boost Dāwūd’s image. We get the same impression from al-Dhahabī, who rejects the view of the famous Shāfi‘ī scholar Abū al-Ma‘ālī al-Juwaynī that Dāwūd’s views were worthless. Al-Dhahabī argues instead that Dāwūd was knowledgeable in jurisprudence, Qur’ān, Tradition and legal disagreements, and was also very smart and pious (Siyār, vol. 13, pp. 107-08). In the Tahdhib al-Āsmā’ wa-l-Lughāt, the author – the celebrated Shāfi‘ī al-Nawawī (d. 676/1277) – also argues against the view that Dāwūd’s opinions need not be considered in legal disagreements (vol. 1, p. 445). Al-Nawawī points out that Dāwūd’s merits, piety, and submission to the Sunna are all well-known (vol. 1, p. 443). See also Ibn al-Mulaqqin, al-‘Aqd al-Mudhahhab, p. 27, where the author argues that Dāwūd’s rejection of qiyās does not exclude him from al-Shāfi‘ī’s students. Al-Subkī also begins his biography of Dāwūd by stating that the latter was one of the imāms and guides of the Muslims (kāna ahada a’immati ‘l-muslimīna wa-hudātihim) (p. 248).
58 In a nutshell, what distinguishes these two kinds of qiyās is the clarity of the ‘illa that is identified to compare the two cases in an analogy. If the ‘illa is explicitly stated or “obvious,” the qiyās is regarded as qiyās jalī. If the ‘illa is deduced from a text, the qiyās is considered khaft (for this, see, for instance, al-Āmidī, al-Ihkām, vol. 3, pp. 95-96).
Subkī evidently quotes him – that “judging on the basis of *qiyās* is not sound, and adhering to the notion of *istiḥsān* is not permitted.” Dāwūd goes on to argue that we cannot declare licit what the Prophet had declared illicit and vice versa unless the Prophet points out the ‘illa. Other than that, however, the undeclared ‘illa of a ruling falls into the category of things that is permitted, or not prohibited (*ʿufiyya ʿanhā*).\(^5^9\)

Exceptionally, this account gives us first hand access to Dāwūd’s writings. Al-Subkī argues for the authenticity of the treatise of Dāwūd and speculates that it was written in or before 300/912. If we take al-Subkī’s account at face value, it proves that some of Dāwūd’s writings were still available, at least in Egypt, until the second half of the 8\(^{th}\)/14\(^{th}\) century. What this tells us about Dāwūd’s legal thought is that he rejected both *qiyās* and *istiḥsān* and believed in the notion of *al-ibāha al-aṣliyya*, or the original permissibility of everything that the law does not explicitly forbid. However, this account is indecisive, at best, as regards Dāwūd’s view of *al-qiyās al-jalī*.

Another important account for our purposes is Ibn al-Nadīm’s (d. 438/1046) list of Dāwūd’s works. Ibn al-Nadīm also reiterates that Dāwūd was the first to hold to the *ẓāhir* and that he relied on the Book and the Sunna and rejected *raʾy* and *qiyās*.\(^6^0\) Ibn al-Nadīm attributes a long list of *kutub* to Dāwūd, but it is not clear whether *kutub* here refers to books, epistles, or chapters of books, rendering the number of these works indicative only of the scope of Dāwūd’s knowledge and the issues in which he was interested rather than the scale of his written legal heritage. Most of these works are obviously ones that tackled specific legal issues of *furūʿ* (which are likely to have been chapters in a single work), but some are also evidently works that dealt with specific

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\(^6^0\) Ibn al-Nadīm, *Fihrīst*, p. 216.
subjects of *uṣūl al-fiqh*. One of these is *al-Uṣūl*, which – if read in view of al-Subkī’s statement – must have been a work of *uṣūl al-fiqh* in which Dāwūd spoke about issues like *qiyaṣ* and *istiḥsān*. Ibn al-Nadīm’s account may indicate that this book was available in his time, a century and half after Dāwūd’s death. After mentioning a few works of Dāwūd, Ibn al-Nadīm adds that the rest of Dāwūd’s works that he lists were apparently noted on a piece of paper that had an old handwriting that could – in Ibn al-Nadīm’s assessment – go back to Dāwūd’s own time. Later, Ibn al-Nadīm mentions that the handwriting was that of a certain Maḥmūd al-Marwazī, who may have been a follower of Dāwūd, as Ibn al-Nadīm suspects. Other than *al-Uṣūl*, Ibn al-Nadīm attributes the following works to Dāwūd that probably also dealt with *uṣūl al-fiqh* subjects: *Kitāb al-Dhabb ‘an al-Sunan wa-l-Aḥkām wa-l-Akhbār* (which is said to have comprised 1000 folio), *Kitāb al-Ijmāʿ*, *Kitāb Ibṭāl al-Taqlīd*, *Kitāb Ibṭāl al-Qiyaṣ*, *Kitāb Khabar al-Wāḥid*, *Kitāb al-Khabar al-Mūjib lil-ʿIlm*, *Kitāb al-Khuṣūṣ wa-l-ʿUmūm*, and *Kitāb al-Mufassar wa-l-Mujmal*. To these, he adds one work (whose title is not mentioned) that dealt with two issues on which Dāwūd disagreed with al-Shāfiʿī, and another in which Dāwūd apparently presented some of al-Shāfiʿī’s views (*Kitāb al-Kāfī fī Maqālat al-Muṭṭalibīn*).

So far Dāwūd is reported to have held what the sources call *al-zāhir*, rejected *qiyaṣ*, *raʿy*, *istiḥsān*, and *taqlīd*, and held the principle of *al-ibāḥa al-aṣliyya*. Dāwūd is also reported to have written on a variety of *uṣūl al-fiqh* issues – such as the *sunan*, the *khabar al-wāḥid* and *ijmāʿ* – and two linguistic issues, also dealt with in the *uṣūl al-fiqh*

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genre – that is, the issues of the general and restricted terms (al-‘umūm wa-l-khuṣūṣ) and the clarified and ambiguous terms (al-mufassar wa-l-mujmal). Later we will add more to what we know about Dāwūd from other sources, but now we address the question of whether Dāwūd was known as al-Ẓāhirī by his contemporaries, which could help us identify what was most characteristic of Dāwūd’s views when we investigate what al-ẓāhir may have meant in his time. While we do not have solid evidence that Dāwūd was called al-Ẓāhirī in his own lifetime, some evidence suggests that he was classified as such a few generations after his death. As noted, Ibn Surayj had written against the Ahl al-Ra’y and the Ahl al-ẓāhir. In addition, ‘Alī ibn Aḥmad ibn ‘Abd Allāh ibn-Kūfī (d. 352/963) is said to have written a “Refutation of the Madhhab of Dāwūd al-Ẓāhirī,” a work that is now probably lost but which explicitly refers to Dāwūd as al-Ẓāhirī.65 While it is possible that al-ẓāhir and al-Ẓāhirī were added to the titles of these works by later scholars who reported them, it is probably unlikely that the second title would mention Dāwūd without a nisba, either to his father or place of origin. There is a good chance, then, that al-Ẓāhirī existed in the original title of ‘Alī ibn Aḥmad’s work.

C. Dāwūd’s Teachers:

Whether views of a student’s teachers must have an influence on him is an open question. However, in the charged and vibrant environment of Baghdad in the 3rd/9th century, one can assume that teachers must have had some influence on their students. Baghdad was a place where competing theological, legal, and political views were introduced and debated. This must have made scholars conscious, not only of the views they held, but also the teachers they followed. Once a student studies with a particular teacher, it can be

assumed that his teachings have some influence on how he thinks. This influence could manifest itself in various ways, including the student’s rejection of his teacher’s doctrine. In all circumstances, whether a specific student was influenced by one or more of his teachers is something that we cannot know before we actually compare his thought with theirs. As for Dāwūd, biographical dictionaries provide us with many names of scholars with whom he studied, and in what follows we will investigate how relevant or irrelevant their lives and doctrines may have been to Dāwūd’s.

1. ‘Abd Allāh ibn Maslama al-Qa‘nabī (d. c. 220/834):

‘Abd Allāh ibn Maslama ibn Qa‘nabī al-Ḥārithī was a resident of Basra who was considered a reliable transmitter of traditions by the Ḥadīth critics of the time.66 He transmitted from numerous scholars, some of whom were prominent jurists and traditionists, such as Ḥammād ibn Salama (d. 167/783), Ḥammād ibn Zayd (d. 179/795), Mālik ibn Anas (d. 179/795),67 – whose Muwaṭṭa’ was transmitted by al-Qa‘nabī – al-Layth ibn Sa‘d (d. 175/791), Fuḍayl ibn ‘Iyāḍ (187/803), and Wakī‘ ibn al-Jarrāḥ (d. 197/812). Numerous traditionists transmitted Prophetic traditions from al-Qa‘nabī, among them al-Bukhārī (d. 256/870), Muslim (d. 261/874), Abū Dāwūd (d. 275/888), Abū Zur‘a al-Rāzī (d. 264/877), and Abū Ḥātim al-Rāzī (d. 277/890). Al-Bukhārī is reported to have said that al-Qa‘nabī died in either 220/834 or 221/835. Abū Dāwūd, however, mentioned that he died in 211, perhaps in Mecca.68 Since some of al-Qa‘nabī’s

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67 Al-Qa‘nabī appears in one of the various chains of transmission of Mālik’s Muwaṭṭa’ (for this see Thabat al-Balawī, pp. 119, 151).
68 Ibid., p. 141.
students died as late as the last quarter of the 3rd/9th century, it is unlikely that he died as early as the date that Abū Dāwūd mentions.

2. Muḥammad ibn Kathīr al-ʿAbdī (d. 223/837):

Muḥammad ibn Kathīr al-ʿAbdī was a Basran scholar who transmitted from, among others, Sufyān al-Thawrī (d. 161/777), Shuʿba ibn al-Ḥajjāj (d. 160/776), and Abū Ṭawdāḥ ibn ʿAbd Allāh (d. 176/792). Transmitters from al-ʿAbdī included al-Bukhārī, Abū Dāwūd, al-Dārimī (d. 255/869), ʿAlī ibn al-Madīnī (d. 234/848), Muḥammad ibn Yaḥyā al-Duḥlī (d. 258/871), Abū Zur'a al-Rāzī, and Abū Ḥātim al-Rāzī. 69 Although al-ʿAbdī’s reliability was questioned by Yaḥyā ibn Maʿīn (d. 233/847), his integrity was vouched for by Abū Ḥātim al-Rāzī and Ibn Ḥībān (354/965), 70 who reported that Muḥammad died in 223/837 at the age of ninety. 71

3. ‘Amr ibn Marzūq (d. 224/838):

‘Amr ibn Marzūq al-Bāhilī was a Basran scholar who transmitted from Ḥammād ibn Zayd, Ḥammād ibn Salama, Shuʿba ibn al-Ḥajjāj, and Mālik ibn Anas among many others. From him al-Bukhārī, Abū Dāwūd, Abū Zur'a al-Rāzī, Abū Ḥātim al-Rāzī and many other scholars transmitted Prophetic traditions. 72 ‘Amr was considered reliable by many Ḥadīth critics, including Yaḥyā ibn Maʿīn and Aḥmad ibn Ḥanbal (d. 241/855), who used to defend him against the allegations of ʿAlī ibn al-Madīnī. 73 Some of ‘Amr’s contemporaries mention that some 10,000 people or more used to attend ‘Amr’s colloquium in Basra. 74 ‘Amr is reported to have died in 224/838.

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70 Ibid., vol. 26, p. 336.
73 Ibid., vol. 22, p. 226.
74 Ibid., vol. 22, p. 228.
4. Sulaymān ibn Ḫarb (d. c. 224/838):

Sulaymān ibn Ḫarb ibn Bajil al-Azdī al-Wāshiḥī was a Basran scholar who transmitted from Ḫammād ibn Zayd, Shu’ba ibn al-Ḥajjāj, and Yazīd ibn Ibrāhīm al-Tustarī (d. after 160/776) among many others. From him al-Bukhārī, Abū Dāwūd, Aḥmad ibn Ḫanbal, Isḥāq ibn Rāhawayh, al-Dārimī, Ibn Abī Shayba (d. 235/849), Abū Zur‘a al-Rāzī, Abū Ḫātim al-Rāzī, and Yaḥyā ibn Sa‘īd al-Qaṭṭān (d. 198/813), to mention but a few, transmitted Prophetic traditions.75 Sulaymān – himself a Ḫadīth critic who was known for his stringency – was trusted by the Ḫadīth critics of his time. Abū Ḫātim al-Rāzī mentions that some 40,000 students attended his colloquium.76 In the year 214/829, Sulaymān was appointed judge of Mecca by the ‘Abbāsid Caliph al-Ma’mūn, an appointment that lasted five years.77 Sulaymān died between 223/837 and 227/841, probably in 224/838 in Basra.78

5. Musaddad ibn Musarhad (d. 228/842):

Musaddad ibn Musarhad ibn Musarbal (and possibly, ibn Mustawrad, and ibn Mura‘bal) al-Asadī was a Basran scholar who transmitted from many traditionists, including Ḫammād ibn Zayd, Sufyān ibn ‘Uyayna (d. 198/813), Fuḍayl ibn ‘Iyāḍ, Wakī ibn al-Jarrāḥ, and Yaḥyā ibn Sa‘īd al-Qaṭṭān. From Musaddad transmitted al-Bukhārī, Abū Dāwūd, al-Tirmidhī, al-Nasā‘ī, Abū Zur‘a al-Rāzī, and Abū Ḫātim al-Rāzī.79 Musaddad, who was considered reliable by the Ḫadīth critics of his age,80 died in 228/842.81

6. Aḥmad ibn Yaḥyā ibn ‘Abd al-‘Azīz (d. after 230/844):

75 Ibid., vol. 11, pp. 385-86.
76 Ibid., vol. 11, pp. 387ff.
77 Ibid., vol. 11, p. 389.
78 Ibid., vol. 11, p. 392.
79 Ibid., vol. 27, p. 445.
80 Ibid., vol. 27, pp. 446-47.
81 Ibid., vol. 27, p. 447.
Known as Abū ‘Abd al-Rahmān al-Shāfi‘ī, Aḥmad ibn Yaḥyā was, according to al-Khaṭīb al-Baghdādī, an associate of al-Shāfi‘ī who is reported to have become a follower of the Mu‘tazilī scholar and judge Ibn Abī Du‘ād (d. 240/854). Al-Khaṭīb al-Baghdādī does not mention Dāwūd among those who transmitted from or studied with Aḥmad, al-Dhahabī, interestingly, only mention Dāwūd as Aḥmad’s student.

7. Isḥāq ibn Rāhawayh (d. 238/852):

Isḥāq ibn Ibrāhīm ibn Makhład al-Tamīmī al-Marwāzī – known as Isḥāq ibn Rāhawayh – was a renowned scholar of Prophetic traditions and law in Naysābūr. Isḥāq is probably the only teacher whose encounters with Dāwūd are mentioned in the sources, although we do not know where they may have met. As noted, Dāwūd and Isḥāq had a debate on the issue of the createdness of the Qur’ān. In one account of this debate, Isḥāq is said to have assaulted Dāwūd for his view on this issue. Other accounts indicate that Dāwūd and Isḥāq were on good terms. Isḥāq died in 238/852.

8. ‘Abd Allāh ibn Kullāb (d. after 240/854):

Ibn Kullāb was a controversial theologian from Basra whose views brought on him the wrath of theologians belonging to various Islamic sects. According to al-Dhahabī, Ibn Kullāb was Dāwūd’s teacher of theology.

9. Abū Thawr al-Kalbī (d. 240/854):

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83 Al-Dhahabī, Siyar, vol. 10, p. 555. It is worth mentioning here that al-Dhahabī regards Aḥmad ibn Yaḥyā as having been among the smartest scholars (min kibār al-adhkiyā’) and the notable students of al-Shāfi‘ī (ibid., p. 555). It is remarkable that al-Dhahabī does not mention any other Shāfi‘ī student of Aḥmad, but his mention of Dāwūd as his student is in line with Dāwūd’s image in medieval Shāfi‘ī works (see below).
84 Isḥāq, who was from Marw and a resident of Naysābūr, visited Iraq, the Hijāz, Yemen, and Syria (for this, see al-Dhahabī, Siyar, vol. 11, p. 359).
85 In one of these accounts Dāwūd visits Isḥāq at his house, browses his books, and makes jokes with him.
86 Al-Dhahabī, Siyar, vol. 11, pp. 174-76.
Ibrāhīm ibn Khālid ibn Abī al-Yamān, known as Abū Thawr al-Kalbī, was a Baghdādī jurist who studied with Sufyān ibn ‘Uyayna, ‘Abd al-Raḥmān ibn Mahdī (d. 198/813), Muḥammad ibn Idrīs al-Shāfī‘ī, Wakī‘ ibn al-Jarrāḥ and many others. Among those who transmitted from him are Abū Dāwūd, Ibn Māja (d. 273/886), Abū Ḥātim al-Rāzī, and Muslim.  

Abū Thawr wrote a number of legal works that contained both Ḥadīth and fiqh. Al-Khaṭīb al-Baghdādī reports that he at first followed the way of the Ahl al-Ra‘y, preferring the madhhab of the Iraqis (the Ḥanafī scholar Muḥammad ibn al-Ḥasan al-Shaybānī in particular, as Abū Thawr himself states until al-Shāfī‘ī arrived in Baghdad. According to this account, he abandoned ra‘y and adhered to Ḥadīth at the hands of al-Shāfī‘ī. He is reported to have mentioned that he, along with Isḥāq ibn Rāhawayh, al-Ḥusayn ibn ‘Alī al-Karābīsī (d. before 248/863) and a number of Iraqi scholars, did not abandon bid‘a (innovation, most likely used pejoratively here) until he met al-Shāfī‘ī. When al-Shāfī‘ī arrived in Baghdad, al-Ḥusayn al-Karābīsī, who also used to frequent the Aṣḥāb al-Ra‘y, went to Abū Thawr and said: “One of the Aṣḥāb al-Ḥadīth has arrived and is teaching jurisprudence (yatafaqqah). Rise up and let us ridicule him.” The rest of the anecdote has al-Shāfī‘ī respond to each of al-Karābīsī’s questions with a Prophetic report. As a result, both men had no choice but to give up and follow him.

Abū Thawr’s relationship with the Ḥadīth scholars of his time does not seem to have been good. Aḥmad ibn Ḥanbal is reported to have disliked Abū Thawr’s views.

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88 Al-Khaṭīb al-Baghdādī, Tārīkh, vol. 6, p. 65.
89 Ibid., vol. 6, p. 68.
90 Ibid., vol. 6, p. 67.
91 Ibid., vol. 6, pp. 67-68.
92 Ibid., vol. 6, p. 68. Abū Thawr met al-Shāfī‘ī when he went to Baghdad in 195/810 (for this, see al-Shāfī‘ī’s biography in Ibn Kathīr, al-Bidāya wa-l-Nihāya, vol. 10, p. 211). Abū Thawr is here reported to have been one of many ‘ulamā‘ who attended al-Shāfī‘ī’s circle, including Ibn Ḥanbal and al-Karābīsī.
although he did not question his reliability. Ibn Ḥanbal apparently regarded him as belonging to a group of scholars different from his. When a man asked Ibn Ḥanbal about a legal matter, he repeatedly refused to answer, saying to the man: “Ask the jurists, ask Abū Thawr.” In another anecdote, a woman asked a group of Ḥadīth scholars about a certain issue, but they kept looking at each other and did not answer her. When they saw Abū Thawr coming from afar, they instructed the woman to ask him. Abū Thawr replied to her immediately, invoking a Prophetic tradition to support his view. The scholars of Ḥadīth confirmed the authenticity of the tradition and were reportedly happy with Abū Thawr’s answer. The woman then looked angrily at them and said: “Where were you until now?”

10. **Al-Ḥusayn ibn al-Ḥasan ibn Ḥarb** (d. 246/860):

Al-Ḥusayn ibn Ḥarb was a competent Ḥadīth scholar and a reliable transmitter who transmitted from, among others, ‘Abd Allāh ibn al-Mubārak (d. 181/797) and Sufyān ibn ‘Uyayna, in addition to transmitting from Aḥmad ibn Ḥanbal his *Kitāb al-Zuhd*. Many traditionists transmitted from al-Ḥusayn, including al-Tirmidhī, Ibn Māja, and Dāwūd ibn ‘Alī. From al-Ḥusayn’s teachers and student we can conclude that he lived in Baghdad for some time. Al-Dhahabī only mentions that he resided in Mecca.

11. **Al-Junayd ibn Muḥammad al-Qawārīrī** (d. 298/910):

Mentioned among Dāwūd’s teachers by al-Khaṭīb al-Baghdādī and Abū Ishāq al-Shīrāzī, al-Junayd ibn Muḥammad ibn al-Junayd al-Qawārīrī was a famous Sūfī in 3rd/9th century

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93 *Ibid.*, vol. 6, p. 66.
94 *Ibid.*, vol. 6, p. 66.
Baghdad. Al-Junayd was born in Baghdad, although his family came from Nihâwand.\textsuperscript{97} He studied Ḥadīth with many scholars of the time and studied jurisprudence with Abū Thawr al-Kalbī, in whose colloquium al-Junayd is said to have started giving \textit{fatwās} when he was only 20 years old.\textsuperscript{98} Other than that, all that is mentioned about al-Junayd are anecdotes showing his standing as an ascetic and pious Ṣūfī. Al-Junayd died in 298/910.

A remarkable observation about Dāwūd’s teachers\textsuperscript{99} is that many of them were either Basrans or residents of Basra. As noted, Dāwūd must have met these Basran teachers of his in Basra, for their biographies do not indicate that they traveled to Baghdad. Nonetheless, most of these teachers died while Dāwūd was still young. Almost all of these Basran teachers died when Dāwūd was still in his twenties. The only exception is ‘Abd Allāh ibn Kullāb, whom Dāwūd probably met when he visited Basra in his youth. Furthermore, whether Ishāq should be regarded as a teacher of Dāwūd in the strict sense is not certain, for we do not know how long Dāwūd stayed with him and we do know that he used to argue with him (which is more typical of two scholars regarding each other as peers). Al-Junayd was also probably one of Dāwūd’s peers in legal matters, for – given the fact that he died in 298 – he cannot have been much older than him. In addition, al-Junayd was himself a student of Abū Thawr. Finally, the fact that Dāwūd was

\textsuperscript{97} Al-Khaṭīb al-Baghdādī, \textit{Tārīkh}, vol. 6, p. 345.
\textsuperscript{98} Ibid., vol. 6, p. 242.
\textsuperscript{99} Although our sources do not explicitly indicate that Dāwūd studied particular subjects with these scholars in addition to transmitting from them, we can assume that he studied with them whatever they were teaching to their students. Be this as it may, if we cannot prove that Dāwūd actually learned something from them, this further confirms the conclusion made below on their influence on him.
not interested in Ḥadīth transmission indicates that al-Ḥusayn ibn Ḥarb did not have much influence on him.

Furthermore, unlike his Baghdādī’s teachers whose interests were mainly in fiqh, a common feature among Dāwūd’s Basran teachers, with the exception of ‘Abd Allāh ibn Kullāb, is their interest in Ḥadīth transmission, just like the typical scholar of their age. All of them seem to have been active in learning traditions from the famous scholars of their age, and all of them transmitted to one or more of the famous compilers of Ḥadīth works of the 3rd/9th century. While this fact makes Dāwūd’s apparent lack of interest in transmitting traditions even more striking, it supports the view that his Basran teachers cannot have had much influence on him.

This leaves us with Abū Thawr al-Kalbī, who was probably Dāwūd’s most important teacher, and one who had the longest and strongest influence on him. In fact, Dāwūd is described by some of his contemporaries as one of Abū Thawr’s disciples.100

Although Abū Thawr seems to have had some interest in Prophetic traditions and reportedly abandoned ra’y for Ḥadīth when he met al-Shāfi‘ī in Baghdad (when he was probably in his twenties or thirties), anecdotes about his later life indicate that he was never regarded as part of the Ahl al-Ḥadīth of his time. References to Abū Thawr’s works that included both Ḥadīth and fiqh suggest that his orientation was not like that of the typical traditionist, whose works would include only traditions.101 In fact, Ibn Ḥanbal’s

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100 *Min ghilmāni Abī Thawr* (al-Dhahabī, *Siyar*, vol. 13, p. 103). It should be mentioned here that the word ghulām (singular of ghilmān) could indicate that the person who so described Dāwūd meant that he was a blind follower of Abū Thawr, who was probably more than just one of his teachers.

101 This does not mean, of course, that they were not interested in jurisprudence. Medieval Muslim and modern Western scholars have shown how the very organization of some Ḥadīth compilations indicates support of particular legal views (for this, see, for instance, Mohammād Fadel, “Ibn Hajar’s Ḥady al-Sari: A Medieval Interpretation of the Structure of al-Bukhari’s al-Jami al-Sahih: Introduction and Translation”). This, however, does not change the fact that those compilations remain Ḥadīth collections in the first place,
reference to him as a *faqīh* suggests that he belonged to a different group of scholars, a

group that answered all questions put to them, unlike the traditionists who would refrain

from answering some questions. Furthermore, Ibn al-Nadīm mentions that Abū Thawr

studied with and transmitted from al-Shāfī‘ī, but disagreed with him on some issues and
developed his own *madḥhab* on the basis of al-Shāfī‘ī’s views. He is also described as

an independent scholar who differed with the majority of the scholars (*al-jumhūr*) on

many issues. No wonder, then, that the Ḥadīth scholars felt uneasy about Abū Thawr; Ibn Ḥanbal is reported to have expressed his dislike of his views, and Abū Ḥātim al-Rāzī
describes him as a scholar who relied on *ra’y*, and thus arrived at right as well as wrong

conclusions, but who had no status in Ḥadīth knowledge.

Recall that when Abū Thawr and al-Karābīsī went to al-Shāfī‘ī to ridicule him, it

was al-Karābīsī rather than Abū Thawr who asked al-Shāfī‘ī questions. Sources do not

mention any relationship between Dāwūd and al-Karābīsī, who died between 245/859

and 248/863. It is unlikely, however, that the two scholars did not meet, not only because

al-Karābīsī was a close friend of Abū Thawr, but also because his life indicates that he

was well-known in Baghdad. Fortunately, there is evidence that Dāwūd did meet al-

Karābīsī; in one of al-Karābīsī’s biographies, I found a transmission of a report by

Dāwūd from him.

unlike a work like Mālik’s *Muwaṭṭa’*, for instance, which is clearly a work of *fiqh* that uses Prophetic and

non-Prophetic traditions.


104 Ibid., vol. 2, p. 118.
Like Abū Thawr, al-Karābīṣī followed the methodology of the Ahl al-Ra’y until he met al-Shāfī’ī, but he too does not seem to have entirely abandoned ra’y when he met al-Shāfī’ī and ‘converted’ to Ḥadīth. Al-Karābīṣī was a knowledgeable faqīh, and one who wrote many works on usūl and furū’ that reveal his “good comprehension and vast knowledge.” Tāj al-Dīn al-Subkī – who also includes al-Karābīṣī among al-Shāfī’ī’s followers – describes him as an imām who combined fiqh and Ḥadīth (just as he describes Abū Thawr). Al-Karābīṣī also resembled Abū Thawr in that he did not distinguish himself as a Ḥadīth transmitter, and his transmissions are very rare. The reason for this is that he was openly hostile to the Ahl al-Ḥadīth. He and Ḥamīd ibn Ḥanbal did not like each other. Ibn Ḥanbal described him as an “innovator” and warned people against talking to him and to those who talked to him, and considered him the successor of the Murji’ī scholar Bishr al-Marīṣī (d. 218/833) and one of those who abandoned the Ḥadīth of the Prophet for their books. The reason for this harsh view is that al-Karābīṣī was of the opinion that while God’s speech is not created (i.e. the Qur’ān is not created), our enunciation of the Qur’ān is. When this view reached Ibn Ḥanbal, he spoke ill of al-Karābīṣī, who reciprocated by speaking ill of him. In one report, when al-Karābīṣī was told that Ibn Ḥanbal said that his views on the issue of khalq al-Qur’ān were bad or heretical innovations (bida’), he said: “What should we do with this boy?” When this happened, al-Khaṭīb al-Baghdādī reports, people (i.e., the Ḥadīth transmitters of the time) abstained from transmitting from al-Karābīṣī and Ibn Ḥanbal’s associates

106 Al-Khaṭīb al-Baghdādī, Tārīkh, vol. 8, p. 64.
108 Al-Khaṭīb al-Baghdādī, Tārīkh, vol. 8, p. 64.
started to malign al-Karābīsī. One of them – Yaḥyā ibn Ma‘īn (d. 233/848) – angrily said: “Who is Ḥusayn al-Karābīsī? May God curse him. Only the equals of people can speak about them.” A Shāfi‘ī scholar – Muḥammad ibn ‘Abd Allāh al-Ṣayrafi – used to tell his students to take lesson from Ḥusayn al-Karābīsī and Abū Thawr – the former possessed vast knowledge but fell out of favor when Ibn Ḥanbal spoke unfavorably of him; the latter, possessing only a fraction of al-Karābīsī’s knowledge, rose in status because Ibn Ḥanbal spoke favorably of him.

It is remarkable that this view of khalq al-Qur‘ān is almost identical to Dāwūd’s view, which is also the case with other views that both scholars held. In usūl al-fiqh, for instance, al-Karābīsī, held that a report that is transmitted by a single transmitter (khabar al-wāḥid) establishes apodictic knowledge, just like reports transmitted through tawātur. Ibn Ḥazm attributes this view to al-Karābīsī and Dāwūd, and adds that it differs from the view of Ḥanafī, Shāfi‘ī, most Mālikī, Muʿtazilī, and Khārijī scholars.

In sum, Dāwūd’s Basran teachers probably had a small influence on him. If Dāwūd was influenced by any of his teachers, he must have been influenced by Abū Thawr al-Kalbī and probably also by al-Ḥusayn ibn ‘Alī al-Karābīsī. Both men started their careers as scholars of the Ahl al-Ra‘y and neither was ever part of the Ahl al-Ḥadīth even after they were said to have abandoned ra‘y. Although it is not clear how long Dāwūd may have studied with these two scholars, it can be surmised that this period was long enough to make their influence on him possible.

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111 Ibid., vol. 8, p. 64.
112 Al-Khaṭīb al-Baghdādi, Tārīkh, vol. 8, pp. 64-65.
113 Ibid., vol. 8, pp. 66-67.
116 Later, Ibn Ḥazm would include these two scholars among the early mujtahids who followed in the footsteps of earlier generations and did not follow others (Ibn Ḥazm, Iḥkām, vol. 2, p. 674).
D. Dāwūd’s Students:

The following scholars are reported to have studied with Dāwūd. Unless otherwise noted, these scholars are the scholars that Abū Ishāq al-Shīrāzī mentions in the first ṭabaqa of Zāhirī scholars in his Ṭabaqāt al-Fuqahā’.

1. Muḥammad ibn Ishāq al-Qāsānī (fl. c. second half of 3rd/9th century):

Muḥammad ibn Ishāq al-Qāsānī (or al-Qashānī) does not figure in the major biographical dictionaries, but references to his views alongside those of Dāwūd in later sources (see below) indicate that he was a scholar of considerable weight. Al-Shīrāzī mentions that al-Qāsānī studied with Dāwūd and transmitted his knowledge, but also disagreed with him on many points in usūl and furūʿ. A later Zāhirī scholar – Abū al-Ḥasan ibn al-Mughallis – responded to him in a book that he called al-Qāmiʿ li-l-Mutahāmil al-Ṭāmiʿ.117 Ibn al-Nadīm mentions that while al-Qāsānī started his career as a Dāwūdī scholar, he later became a follower of al-Shāfiʿī. Ibn al-Nadīm attributes to him two works on qiyās, in the first of which he refutes Dāwūd’s rejection of qiyās (Kitāb al-Radd ‘alā Dāwūd fī Ibṭāl al-Qiyās), and in the second he argued for the validity of qiyās (Kitāb Ithbāt al-Qiyās).118

2. Al-Ḥasan ibn ‘Ubayd al-Nahrābānī (fl. c. second half of 3rd/9th century):

Ibn al-Nadīm attributes to al-Nahrabānī (or al-Nahrawānī) a work entitled Ibṭāl al-Qiyās (Refutation of Qiyās).”119 Later sources make reference to some of al-Nahrabānī’s views as a Dāwūdī scholar (see below).

3. Muḥammad ibn ‘Ubayd Allāh ibn Khalaf (fl. c. second half of 3rd/9th century):

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117 Al-Shīrāzī, Ṭabaqāt, p. 176.
118 Ibn al-Nadīm, Fihrist, p. 213. What is intriguing, however, is that among the works that Ibn al-Nadīm attributes to Ibn al-Surayj is a response to al-Qāsānī (Kitāb Jawāb al-Qāshānī) (ibid., p. 213). This title does not indicate whether Ibn Surayj was refuting al-Qāsānī or just replying to him. In either case, if Ibn al-Nadīm is correct about al-Qāsānī’s conversion to Shāfi‘ism, Ibn Surayj must have written this work before that conversion.
Muḥammad ibn ‘Ubayd Allāh was a student of Dāwūd who disagreed with him on some points.120

4. Al-Ḥusayn ibn ‘Abd Allāh al-Samarqandī (fl. c. second half of 3rd/9th century):
According to al-Shīrāzī, al-Ḥusayn ibn ‘Abd Allāh transmitted Dāwūd’s books.121

5. ‘Abbās ibn Aḥmad al-Mudhdhakkīr (fl. c. second half of 3rd/9th century):
‘Abbās ibn Aḥmad is mentioned by al-Khaṭīb al-Baghdādī in Dāwūd’s biography as an unreliable transmitter who transmitted from him.122 Only one person transmitted from al-‘Abbās.123

6. Zakariyya ibn Yaḥyā al-Sājī (d. 307/919):
Zakariyya al-Sājī was a famous Basran scholar of Ḥadīth and fiqh124 who is mentioned by al-Khaṭīb al-Baghdādī as one of Dāwūd’s students.125 Ibn al-Nadīm mentions al-Sājī among al-Shāfiʿī’s followers. According to Ibn al-Nadīm, al-Sājī studied with the Shāfiʿī scholars Ismāʿīl ibn Ibrāhīm al-Musanī (d. 264/877) and al-Rabīʿ ibn Sulaymān al-Murādī (d. 270/883). A work on legal disagreement (Kitāb al-Ikhtilāf fī al-Fiqh)126 and another on Ḥadīth defects (‘Īlal al-Ḥadīth) are attributed to al-Sājī.127

7. Yūsuf ibn Yaʿqūb ibn Mihrān al-Dāwūdī (d. c. 310/922):
Yūsuf ibn Yaʿqūb is described by al-Khaṭīb al-Baghdādī as a faqīh128 and by al-Dhahabī as a “Baghdādī mastūr,” or an unknown person from Baghdad.129 Al-Khaṭīb al-Baghdādī

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120 Abū Ishāq al-Shīrāzī, Ṭabaqātī, p. 176.
121 Ibid., p. 177.
125 Al-Khaṭīb al-Baghdādī, Tārīkh, vol. 8, p. 370.
126 Ibn al-Nadīm, Fihrist, p. 213.
mentions only two scholars – one of whom is Dāwūd – from whom Yūsuf transmitted, and attributed to Yūsuf only one report that goes back to ‘Alī ibn Abī Ṭālib.\(^{130}\)

8. Ibrāhīm ibn Muḥammad ibn ‘Arafa (d. 323/935):

Known as Nifṭawayh,\(^{131}\) Ibrāhīm ibn Muḥammad was better known as a grammarian rather than a legal expert.\(^{132}\) Nifṭawayh is not listed among Dāwūd’s students by al-Khaṭīb al-Baghdādī,\(^{133}\) but al-Dhahabī reports that he was a leader (ra’s) in the madḥhab of the Ahl al-zāhir.\(^{134}\)

The only other student of Dāwūd that we know of is his own son – Muḥammad, whom we will discuss in more detail below. But to these students we can add some other possible students of Dāwūd who are not listed as such in his available biographies.

9. ‘Abd Allāh ibn al-Qāsim ibn Hilāl al-‘Absī (d. 272/885):

Al-Dhahabī mentions that Ibn Hilāl al-‘Absī was active in seeking and transmitting traditions.\(^{135}\) Ibn Hilāl was admired by Ibn Ḥazm, who mentions that he was an associate of Dāwūd.\(^{136}\) Ibn al-Faraḍī mentions that Ibn Hilāl started his career as a Mālikī student, but after studying with Dāwūd and learning his books, he adopted his madḥhab and traveled to Andalus where he actively spread it.\(^{137}\)

\(^{130}\) Al-Khaṭīb al-Baghdādī, Ṭārikh, vol. 8, p. 370.

\(^{131}\) Al-Thaʿalībī explains that this nickname comprises two parts: nifṭ, or oil, and awayh, a Persian suffix. He mentions that Muḥammad ibn Ibrāhīm was given this nickname for his dark color and ugly face (for this, see Abū ʿĪd, al-Imām Dāwūd, p. 105).

\(^{132}\) Al-Dhahabī, Siyār, vol. 15, pp. 75-76.

\(^{133}\) Abū Ishāq al-Shirāzī, Ṭabaqāt, p. 176.

\(^{134}\) Al-Dhahabī, Siyār, vol. 15, p. 76.


\(^{137}\) Ibn al-Faraḍī, Ṭārikh ‘Ulamāʾ al-Andalus, vol. 1, p. 297. Relying on this account, Makki believes that it was indeed al-Qāsim ibn Hilāl who introduced Zāhirism to Andalus (Makki, Ensayo, p. 205).
10. **Kunayz ibn ‘Abd Allāh** *(fl. c. 250/864)*:

In Kunayz’s biography in the *Tārīkh Madīnat Dimashq*, Ibn ‘Asākir mentions that he transmitted from Dāwūd. Kunayz was born in Baghdad, lived most of his life in Egypt as a *mawla* of Aḥmad ibn Ṭūlūn (r. 254/868 to 270/884), and followed the Shāfi‘ī school of law.\(^{138}\)

11. **Aḥmad ibn Muḥammad ibn al-‘Ajannas al-‘Ajannāsī** *(d. 290/903)*:

According to al-Sam‘ānī, Aḥmad was a scholar from Bukhāra who traveled to Iraq and the Ḥijāz and studied with many scholars. Al-Sam‘ānī also reports that Aḥmad met with Dāwūd, studied his books with him, and followed his *madhhab*.\(^{139}\)

12. **Ruwaym ibn Aḥmad** *(d. c. late 3rd/9th century)*:

A story mentioned in most biographies of Muḥammad ibn Dāwūd evidently indicates that Ruwaym used to frequent Dāwūd.\(^{140}\) Ruwaym was also known for being a Ṣūfī *imām* who abandoned Ṣūfīsm to work in the judiciary and politics.\(^{141}\) Ibn Ḥazm also mentions Ruwaym among Dāwūd’s Żāhirī associates.\(^{142}\)


Al-Dhahabī also mentions Mūsā al-Jurjānī as one of those who sat with Dāwūd.\(^{143}\)

14. **Makḥūl ibn al-Faḍl** *(d. 308/920)*:

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\(^{138}\) Ibn ‘Asākir, *Tārīkh Madīnat Dimashq*, vol. 50, pp. 261-62. Ibn ‘Asākir mentions here that Kunayz stayed in Egypt for seven years after the death of Aḥmad ibn Ṭūlūn, and then moved to Damascus where he died a few years later.

\(^{139}\) Al-Sam‘ānī, *Ansāb*, vol. 4, p. 162. According to al-Sam‘ānī, al-‘Ajannasī is a *nisba* to ‘Ajannas, which is a person’s name.

\(^{140}\) The story, reported by Ruwaym who was sitting with Dāwūd, mentions that one day Muḥammad ibn Dāwūd went to his father crying because his friends used to call him by a sarcastic nickname (al-Khaṭīb al-Baghdādī, *Tārīkh*, vol. 5, p. 256).

\(^{141}\) Ibn Ḥazm, *Iḥkām*, vol. 11, pp. 303-04.


Known as Abū Muṭīʿ al-Nasafī, al-Dahābī mentions that Makhūl\footnote{144} transmitted from Dāwūd.\footnote{145}

Mention also should be made here of al-Muʿāfā ibn Zakariyya al-Nahrawānī, whom al-Shīrāzī includes among Dāwūd’s students.\footnote{146} However, Ibn al-Nadīm mentions that al-Muʿāfā was the authority of his time in the madhhab of al-Ṭabarī, and attributes to him a work in which he evidently argued against Dāwūd (Kitāb al-Radd ‘alā Dāwūd).\footnote{147} Apparently, al-Muʿāfā was a student of Dāwūd for some time but later joined al-Ṭabarī’s colloquium and became one of his students.

Many of Dāwūd’s immediate students do not figure in biographical dictionaries and only one of them – Zakariyya al-Sājī, whose relationship with Dāwūd al-Dahabī does not mention – seems to have had some significance as a scholar of Ḥadīth and fiqh. Arguably, this confirms Dāwūd’s lack of interest in Ḥadīth – which he passed on to his immediate associates. In addition, none of these students were known as Zāhirīs, and only one of them – Yusuf ibn Ya’qūb – was known as al-Dāwūdī, a reference that is not very useful to us for identifying any of Dāwūd’s teachings. Disagreements between Dāwūd and some of his students and among these students do not indicate that they shared one heritage or had a sense of belonging to one madhhab. Thus, what we know about Dāwūd’s immediate students is hardly useful either in identifying the main tenets of his legal thought or in indicating that he left behind a coherent group of students.

\footnote{144} For more information about Makhūl, see al-Qurahī, Jawāhir, vol. 3, p. 498.\footnote{145} Al-Dahābī, Siyar, vol. 15, p. 33.\footnote{146} Al-Shīrāzī, Tabaqāt, p. 93.\footnote{147} Ibn al-Nadīm, Fihrist, p. 236.
This leaves us with Dāwūd’s son – Muḥammad ibn Dāwūd ibn ‘Alī ibn Khalaf al-Iṣbahānī.

E. Muḥammad ibn Dāwūd (d. 297/909):

Born in 255/869, Muḥammad ibn Dāwūd was best known as a litterateur; al-Khaṭīb al-Baghdādī introduces him as the author of the Kitāb al-Zuhra, a work most of which he finished while he was still in the kuttāb and his father was still alive. Muḥammad was a gifted poet, mainly writing about love, which was not always heterosexual. He is reported to have been in love with a certain Muḥammad ibn Jāmiʿ al-Ṣaydalānī, who is also mentioned as having been his benefactor. Muḥammad died in 297/909 at the age of 42, leaving behind a son – Sulaymān ibn Muḥammad ibn Dāwūd – who is reported to have followed in the footsteps of his father and grandfather as a Zāhirī scholar.

As a legal scholar, Muḥammad ibn Dāwūd’s biographers report that he succeeded his father in the latter’s colloquium while he was still of young age. An oft-cited anecdote indicates that he proved that he was up to the task and managed to fill his father’s

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148 Al-Khaṭīb al-Baghdādī, Tārīkh, vol. 5, p. 262
149 Ibid., vol. 5, p. 256.
150 Ibid., vol. 5, p. 259.
151 Ibid., vol. 5, pp. 257-58.
152 Al-Khaṭīb al-Baghdādī, Tārīkh, vol. 5, p. 260. Al-Dhahabi gives his name as Wahb ibn Jāmiʿ ibn Wahb al-ʿAṭṭār al-Ṣaydalānī (al-Dhahabi, Siyar, vol. 15, p. 115). A tradition that Muḥammad transmits has the Prophet saying: “The one who loves [probably another man or a married woman], remains silent and patient, and abstains from sin, God forgives his sin and lets him enter paradise” (man ʾāshiq wa-ʿaffa wa-katama wa-ṣabara, ghafara Allāhu laḥu wa-adhkalahu ʾl-janna, al-Khaṭīb al-Baghdādī, Tārīkh, vol. 5, pp. 262). Yahyā ibn Maʿīn is reported to have said that he would kill the transmitter who related this tradition to Muḥammad ibn Dāwūd (al-Dhahabi, Siyar, vol. 15, p. 113). Muḥammad’s informant of this tradition was Suwayd ibn Saʿīd (for his biography, see al-Khaṭīb al-Baghdādī, Tārīkh, vol. 5, pp. 228-32, where Ibn Abī Ḥātim is reported to have said that Suwayd was an ‘honest mudallis’ (p. 229). Reports from and about Muḥammad, however, convey that he abstained from engaging in an illicit relationship with his beloved (al-Khaṭīb al-Baghdādī, Tārīkh, vol. 5, p. 262), which is probably why his legal views have survived.
position.154 People used to go to Muḥammad with legal questions, and he used to give answers in a way that not everyone could understand.155 According to al-Dhahabī, Ibn Ḥazm greatly admired Muḥammad and spoke about his knowledge, piety, and beauty. In this report, Ibn Ḥazm, pointing out that 400 students used to attend Muḥammad’s colloquium,156 gives a list of titles of some of Muḥammad’s works. Some titles of these works are not indicative of the content, but others evidently had to do with specific legal issues like pilgrimage rituals (manāsik) and laws of inheritance (farā’id). One work is apparently devoted to refuting al-Ṭabarī (al-Intiṣār min Muḥammad ibn Jarīr al-Ṭabarī), and another deals with differences between the muṣḥaf s of the Companions (Ikhtilāf Maṣāḥif al-Ṣaḥāba). Ibn Ḥazm also attributes to Muḥammad al-Wuṣūl ilā Ma’rifat al-Uṣūl, a work to be discussed below.157 As a Ḥadīth transmitter, al-Dhahabī describes Muḥammad as reliable and knowledgeable, despite the fact that he did not transmit much. He is also described as having been an expert on the views of the Companions and as an independent scholar who did not follow anyone.158

There is evidence that Muḥammad was a public figure who engaged in the political and intellectual milieu of his time. He is said to have been one of those who condemned al-Ḥallāj.159 He also used to engage in debates in public and in writing with

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154 The anecdote mentions that a man wanted to test Muḥammad ibn Dāwūd’s knowledge so he asked him about the signs that indicate that a person is drunken. Muḥammad gave a very satisfactory rhymed answer and people realized how knowledgeable he was (al-Khaṭīb al-Baghdādī, Ṭārīkh, vol. 5, p. 256).
155 Muḥammad was known for giving his answers in saj’, something that made some of his answers incomprehensible for lay people (for this, see al-Dhahabī, Siyār, vol. 13, pp. 114-15).
156 Al-Dhahabī does not cite any source for this report. We can notice here that just as Dāwūd’s colloquium was attended by 400 students, so also was his son’s.
159 Ibn Kathīr, Bidāya, vol. 11, p. 118.
the Shāfi‘ī scholar and judge Ibn Surayj (d. 306/918). Al-Ṭabarī is reported to have been a bitter enemy of Muḥammad, who was responsible for the suffering of al-Ṭabarī’s family and associates when they could not bury him on his death. Ibn Kathīr mentions that this tragedy took place because the ‘awāmm al-Ḥanābiya (lay Ḥanbalīs) of Baghdad had been told by Muḥammad ibn Dāwūd that al-Ṭabarī was a Rāfidi, among other heinous things (‘ażā‘im).161

According to Devin Stewart, parts of one of Muḥammad ibn Dāwūd’s lost work – al-Wuṣūl ilā Ma‘rifat al-Uṣūl – can be reconstructed from al-Qāḍī al-Nu‘mān’s (d. 363/974) Ikhtilāf Uṣūl al-Madhāhib. Stewart’s attempt – like all similar attempts to recover lost works – should be praised, but treated with caution. We are interested in Muḥammad ibn Dāwūd mainly as a scholar who is credited with having transmitted Dāwūd’s knowledge to subsequent generations. What the sources do say about him suggests that it is worth proceeding on the assumption that Stewart’s theory can be useful in recovering part of Dāwūd’s legal heritage, especially that al-Qāḍī al-Nu‘mān explicitly refers to Muḥammad and mentions that he followed the doctrines of his father.163

Having proven that Muḥammad ibn Dāwūd’s Wuṣūl was a work of uṣūl al-fiqh rather than uṣūl al-dīn (or theology), Stewart identifies some passages in the Ikhtilāf

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160 Al-Khaṭīb al-Baghdādī, Ṭārīkh, vol. 5, p. 259. An example of these debates is preserved in al-Tanūkhī’s Nishwār (vol. 8, pp. 186-7).
164 This Stewart does by referring to Irshād al-Arīb of Yāqūt al-Ḥamawī (d. 622/1225), who mentions a passage in al-Wuṣūl in which Muḥammad ibn Dāwūd refutes a view held by al-Ṭabarī on ijmā‘, which suggests that al-Wuṣūl was a manual of uṣūl al-fiqh (Stewart, “Muḥammad ibn Dāwūd,” p. 116). Next, he relies on internal evidence in al-Nu‘mān’s Ikhtilāf – especially al-Nu‘mān’s explicit references to Muḥammad ibn Dāwūd – to identify ten passages of the Ikhtilāf in which he is probably citing Muḥammad ibn Dāwūd’s al-Wuṣūl (ibid., p. 118). Also relying on internal evidence from al-Qāḍī al-Nu‘mān’s remarks, Stewart is confident that al-Qāḍī al-Nu‘mān was in fact citing from a copy of al-Wuṣūl (ibid., p. 118). In one of these references, al-Nu‘mān says: “This speaker, whose opinion we have quoted, is one of the critics
that he believes report Muḥammad ibn Dāwūd’s views several issues of usūl al-fiqh.\textsuperscript{165} According to one passage (attributed by al-Nu’mān explicitly to Muḥammad, his father and those who followed him), \textit{ijmā’} (consensus) must be based on an explicit “scriptural proof text” from the Qur’ān or Sunna. \textit{Ijmā’} is valid only when there is no disagreement whatsoever among scholars on a certain issue. A means by which we know that there is a valid \textit{ijmā’} is when God makes something incumbent upon us. “What He is properly shown to have made incumbent is obligatory, and what He is not properly shown to have established as His religion is not valid,” al-Qāḍī al-Nu’mān explains.\textsuperscript{166} In other words, there is \textit{ijmā’} on what God has made incumbent on us and disagreement indicates lack of obligation.

In another passage, in which al-Qāḍī al-Nu’mān presents view of “one who rejected legal analogy and professed inference (\textit{istidlāl})” for things for which he did not find scriptural proof,\textsuperscript{167} it is pointed out that those who believe in and practice qiyās often disagree on what they take to be the ‘illa or rationale of the ruling in the first case, and

\textsuperscript{165} In this long article, Stewart makes a number of arguments, the most general of which is that the \textit{usūl al-fiqh} genre – contrary to what a scholar like Wael Hallaq believes – was on the rise during the 3rd/9th century, as witnessed by the many references in later works to many works of \textit{usūl} that were compiled at that time. The content of these works, moreover, suggests that they were quite sophisticated and comprehensive works that dealt with various issues that later sources of \textit{usūl al-fiqh} include. In addition, the quality of a work like al-Qāḍī al-Nu’mān’s \textit{Ikhtilāf} suggests to Stewart that al-Qāḍī al-Nu’mān was arguing against “a sophisticated system of jurisprudence presented in a highly developed tradition of Sunnī manuals” (p. 117). In other words, the gap that Hallaq speaks about between the time when \textit{al-Risāla} of al-Shāfi‘ī was written and subsequent works of \textit{usūl al-fiqh} can be bridged. More specific arguments include the view that even if al-Shāfi‘ī’s \textit{Risāla} did not resemble later \textit{usūl al-fiqh} works in structure, it was, again against Hallaq’s view, regarded and dealt with by 3rd/9th scholars as a work of \textit{usūl al-fiqh}. Stewart also argues against Hallaq’s view that it was probably the Shāfi‘ī scholar Ibn Surayj who first developed the genre of \textit{usūl al-fiqh} that we know today. The \textit{usūl al-fiqh} genre in Stewart’s view did not develop in Ibn Surayj’s circle, but actually before him, and probably Hanafī authors who wrote consistently on some \textit{usūl al-fiqh} subjects, and against whom 3rd/9th scholars like Dāwūd, his son, and al-Ṭabarī wrote (\textit{ibid.}, p. 135).

\textsuperscript{166} \textit{Ibid.}, pp. 138-39.

\textsuperscript{167} \textit{Ibid.}, p. 141.
which they then use to judge in a second, new case. Each group of scholars that use *qiyās* only produce evidence that could easily be contradicted by others, and none of them has a better claim to make.  

In addition, those who held *qiyās* justify it on the grounds that God himself uses it, for one can notice that God has assigned similar rulings to things that are similar. This argument is here dismissed as being based on the faulty assumption that God gives similar rulings in similar cases and differing rulings in differing cases. The fact of the matter, however, is that God can and does give different rulings in similar cases, and similar rulings in differing cases. Therefore, since God has given different rulings in similar cases, one can use the same logic as the proponents of *qiyās* to assign different rulings in similar cases that have no textual basis.  

Furthermore, *qiyās*, in this view, is practiced only by someone who cannot find an answer for a specific case. How, then, can it be attributed to God? *Qiyās* is based on another, scandalous assumption: God must rule in a certain way. A true believer, however, would hold that God – exalted as He is – can rule in whatever way He wishes. And this God does, for God has changed things that had been prescribed in the early stages of the Prophet’s mission and also things that had been prescribed for earlier nations and prophets, an argument attributed explicitly to Muḥammad ibn Dāwūd and his father, who are described by al-Nu‘mān as “Sunnī.”  

Finally, al-Nu‘mān attributes to Muḥammad a statement indicating that he did not question the very notion of *qiyās*, but only the possibility of using it in legal matters. This is so because “the rulings of faith are not to be referred ultimately to the intellects of

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humans. Instead, they must be carried out as they were imposed.” For things that God has not commanded us, therefore, we remain silent.173

In a section on *istihsān* (juridical preference), al-Qāḍī al-Nu‘mān attributes a refutation of it to a Sunnī scholar (who Stewart takes to be Muḥammad ibn Dāwūd) who, like himself, rejected *istihsān* but held notions that resembled it.174 Like *qiyās*, *istihsān* is here rejected because it is based on a proposition that cannot be supported by any incontrovertible evidence, for people differ on what is good.175 The essence of the argument goes against the very belief that we can know that things are good or evil in themselves, while the proponents of *istihsān* assume that they can forbid and permit things on the basis of their view of what is good and what is evil. The result of this assumption is that different people would follow different rulings, “with the result that one thing in one set of conditions is both licit and forbidden.”176 Analogy is made here between these people and the *aṣḥāb al-ra’y*, who, similarly, use whim and personal opinions to permit and forbid without textual authority.177

A section on *istidlāl* attributes to “those who profess *istidlāl*” (who Stewart takes to be Muḥammad ibn Dāwūd) the view that while the Qur’ān is the ultimate evidence and the source of every authoritative proof, some of its verses indicate rulings in an implicit way, which requires us to use *istidlāl* to discern them. The same applies to the Prophetic Sunna, which derives its authority from the Qur’ān where God enjoins the believers to obey the Prophet.178 After giving an example of *istidlāl*,179 al-Nu‘mān says: “This

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[example] and the like of it are inference (istidlāl). This is the fundamental principle on which [Ẓāhirīs] built their doctrine.”

A subsequent section deals with the refutation of ijtihād, which al-Qāḍī al-Nu‘mān defines as a methodology of ruling in matters that are not found in the Book of God, or about which the Prophet did not speak. A piece of evidence adduced by those who use ijtihād is the oft-cited Prophetic tradition in which the Prophet asks his Companion Mu‘ādh ibn Jabal, who was to serve as a judge in Yemen, how he would judge in each case, to which Mu‘ādh replies that he would begin with the Qur‘ān, then the Sunna of the Prophet, then his own ijtihād, an answer with which the Prophet evidently was pleased. In the refutation attributed by al-Nu‘mān to a Sunnī jurist who rejected ijtihād (also taken by Stewart to be Muḥammad ibn Dāwūd),181 the jurist rejects this tradition on account of its disconnected (munqati‘) chain of transmitters and the fact that some of its transmitters are unknown. It is also possible, the jurist continues, that by ijtihād here Mu‘ādh meant exerting effort in finding the answer in the Qur‘ān or Sunna.182 In addition, if this was a valid methodology, “the truth would lie in two contradictory answers at the same time,” since people differ in their ijtihād.183

While Stewart successfully draws attention to a certain historical possibility,184 some of his evidence can easily be rejected, weakening, as a result, many of his

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179 According to this, we know that it is not permitted not to pray during the time of specific prayers because God has commanded us in the Qur‘ān to pray and the Prophet has explained how and when we need to do so. This, however, does not explicitly say that it is not permitted not to pray during the time of prayer, but this we can infer from these pieces of evidence.
180 Ibid., p. 154 (emphasis mine).
181 At the end of this section, al-Qāḍī mentions that what he had reported was the words of Muḥammad ibn Dāwūd (ibid., p. 158). It is not clear, however, whether this refers to the entire section or only part of it.
182 Ibid., p. 157.
183 Ibid., p. 157.
184 Stewart himself admits that al-Qāḍī al-Nu‘mān’s implicit and explicit references to Muḥammad ibn Dāwūd could be accounted for in many different ways other than regarding them as evidence that he was
arguments. For our purposes, Stewart’s theory is important insofar as it relates to what we already know about Dāwūd. If what is attributed to Muḥammad ibn Dāwūd here conforms to what we know about Dāwūd from other sources, we should be able both to accept Stewart’s theory and, at the same time, to flesh out our limited knowledge about some of Dāwūd’s views.

Muḥammad ibn Dāwūd is presented here as a staunch critic of qiyās, seeking to show that it is contradictory and based on faulty assumptions related to God (the view that God behaves or must behave in a certain way) and reason (the notion that reason can distinguish good from evil independently of religion). He also rejected istiḥsān and ijtihād (the meaning of which is not clear here), for like qiyās, they rely on faulty notions and leads to disagreement. What is common in this attitude towards qiyās, istiḥsān and ijtihād is an obvious desire for systematization and consistency that lead to agreement in legal views. Disagreement is here regarded as evil, and a Prophetic tradition is used to demonstrate that when people disagree, only one view is sound. Finally, in the context of quoting from Ibn Dāwūd’s Wūsūl. Stewart, however, believes that “It is simpler and more reasonable to conclude that al-Qāḍī al-Nu’mān was quoting from a single major work in his possession, and that this work was probably al-Wūsūl ilā Ma’rifat al-Uṣūl” (ibid., p. 121).

In endeavors like these, authors always have to stretch their imagination to prove their points, which may not always convince all readers. For instance, Stewart would make use of a comment that al-Qāḍī al-Nu’mān makes – in which he says that if he had gone on at length in refuting Sunnī views on some uṣūl al-fiqh issues, then dealing with each issue would require many volumes – to indicate “the immense material on jurisprudence available to him [al-Qāḍī al-Nu’mān]” (Stewart, p. 118). It is very unlikely that al-Qāḍī al-Nu’mān was speaking literally when he mentioned several volumes, and his purpose was clearly to convey to the reader how skillful and knowledgeable he was, rather than to convey that Sunnī views were too complicated to be dealt with in less than several volumes. This, in my view, cannot be marshaled as evidence for the point that Stewart seeks to make. Another example is Stewart’s argument on the basis of a minor reference that Muḥammad ibn Dāwūd apparently makes and al-Qāḍī al-Nu’mān quotes. According to this, al-Wūsūl contained an introduction in which Muḥammad provided a theoretical frame for his work. The reference that Ibn Dāwūd makes is in the context of refuting the proponents of istiḥsān, at the end of which Ibn Dāwūd remarks, “as we have stated and explained” (ibid., p 123). Needless to say, this could be a reference for anything, such as an earlier chapter in his work where he refuted another view on the same basis, or to an entirely different work. In my view, relying on this to infer that the work had an introduction that “must have put forward an argument that served as a frame for the remainder of the book” seems unwarranted.
In this discussion, Muḥammad refers implicitly to the issue of al-ibāha al-aṣliyya, when he argues that we should not compare what God has not mentioned to what He has.

The view on ijmā’ that al-Nu‘mān attributes to Muḥammad here conveys a circular understanding of this concept that renders it virtually useless. What is agreed upon in this understanding is incumbent upon us, and what is incumbent upon us is what we agree upon. In addition, the insistence that valid ijmā’ must be based on a text with an indisputable meaning puts into question the very necessity of ijmā’ in the first place, for the source of the law here becomes the text, not ijmā’. This argument was made by Ibn Ḥazm, who charged scholars of other schools of inconsistency in their argument that a certain ijmā’ is based on the meaning of texts. For Ibn Ḥazm, ijmā’, in this case, does not serve any purpose since the text itself provides the answer. In his view, ijmā’ establishes only that a certain text is authentic rather than on what it means.186

Finally, what is described by al-Qāḍī al-Nu‘mān as the fundamental principles on which the doctrine of the Ţāhirīs is based has to do with istidlāl, which relates to hermeneutics and the identification of meaning from texts. This way of describing istidlāl and its place in the Ţāhirī madhab gives more credence to the theory we advance later regarding the meaning of Ţāhirism.

This is what we can know about Muḥammad ibn Dāwūd from al-Qāḍī al-Nu‘mān’s Ikhtilāf Uṣūl al-Madhāhib. Other sources attributed to Dāwūd and his students views on similar and other issues.187 For example, views of Dāwūd and the Ahl al-Ẓāhir

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186 For this, see Ibn Ḥazm, Iḥkām, vol. 1, pp. 494ff.
187 We will rely here on sources compiled before the time of or were unknown to Ibn Ḥazm to see how they correspond to what we have said so far about Dāwūd and his son. These are Abū Žayd al-Dabūṣī’s (d. 430/1038) Taqwīm al-Adilla fi Uṣūl al-Fiqh, Abū al-Ḥusayn al-บาشري’s (d. 436/1044) Mu’tamad fi Uṣūl al-Fiqh, al-Sarakhsī’s (d. 450/1058) Muḥarrar fi Uṣūl al-Fiqh, and Abū Ishāq al-Shirāzī’s (476/1083) Tabaṣira fi Uṣūl al-Fiqh. While these scholars were contemporaries of Ibn Ḥazm, it can be safely assumed – on the ground that they were operating mostly in Iraq – that they had Dāwūd and his students in mind when they
are referred to when *qiyās* is discussed. Al-Shīrāzī mentions that Dāwūd and the *Ahl al-Zāhir* held that *qiyās* is not allowed in religion, which is also the view of the Mu’tazilī scholar al-Nazzām and the Imāmīs. However, disagreement is reported among Zāhirī scholars concerning the question of whether *qiyās* is valid when the rationale of a ruling (*‘illa*) is explicitly mentioned. Whereas some Zāhirī scholars were said to have permitted *qiyās* in these instances, others were reported to have rejected *qiyās* completely even if the *‘illa* is explicitly mentioned. Speaking of Dāwūd himself, al-Sarakhsī – who regards Dāwūd as ignorant – mentions that he, followed by the *ašāb al-zawāhir*, rejected *qiyās* by relying on bits and pieces of what earlier scholars had said about it without much reflection. These scholars, he adds, made reference to Qatāda ibn Di‘āma, Masrūq, and Ibn Sirīn for evidence that earlier scholars rejected the validity of *qiyās* in religious matters. The same view is attributed to Dāwūd and the *ašāb al-zawāhir* in the *Taqwīm al-Adilla*, where those who rejected *qiyās* are reported to have relied on reports from the Prophet, his Companions, and some Successors, in addition to arguing that it is based on doubt and therefore does not qualify as evidence. Furthermore, *qiyās* relies on what we understand of the worldly benefits of God’s law whereas this law is meant to serve after-worldly purposes that we cannot identify by way of reason.

Attributed views to Zāhirī scholars. It should also be noted that more often than not, al-Dabūsī, and to a lesser extent al-Sarakhsī, will merely mention different views on a subject – mostly at the beginning of every chapter – without necessarily attributing them to specific scholars (with the exception of Abū Ḥanīfah and other prominent Ḥanafī scholars and, at times, al-Shāfi‘ī). Dāwūd and Zāhirī scholars are, to the best of my knowledge, mentioned only once in both works. In contrast, Abū al-Ḥusayn al-Ḥāşibī and especially Abū Iṣḥāq al-Shīrāzī make frequent references to Dāwūd and some Zāhirī scholars in their works.

Sources attribute to the *Ahl al-Zāhir* the view that only the *ijmāʿ* of the Companions is valid, a view that al-Shīrāzī attributes to Dāwūd himself. The reason for this is the special status of the Companions – which the Qurʾān and Ḥadīth establish – and the presumption that later generations of Muslims cannot become aware of a matter that the Companions did not know of. Furthermore, some Zāhirī scholars held that if scholars of a certain period held two views with regards to a specific question, this does not mean that later scholars are not allowed to introduce a third view. References are made here to instances in which some earlier scholars – such as Sufyān al-Thawrī and Muḥammad ibn Sīrīn – introduced views that differed from two views that earlier authorities had held in specific questions. Also related to *ijmāʿ* is the question of whether it can be valid on the basis of less certain evidence (*amāra*, which is here contrasted with the more certain *dālīl*). According to Abū al-Ḥusayn al-Baṣrī, a group of Zāhirī scholars did not approve this kind of *ijmāʿ*. Al-Shīrāzī also attributes to Dāwūd the view that *qiyyās* cannot be the object of *ijmāʿ* since *qiyyās* is not valid evidence in the first place, and the view that if a Companion gave a certain opinion that other Companions became aware of and did not disagree with, this does not necessarily indicates that they had *ijmāʿ* on the issue (which came to be known as *ijmāʿ* *sukūtī* (consensus by implied consent or silent endorsement) in works of *uṣūl al-fiqh*). *Ijmāʿ*, in Dāwūd’s view, necessitates an explicit verbal statement or approval by all Companions.

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194 Ibid., vol. 2, p. 44.
195 Ibid., vol. 2, p. 46.
198 Ibid., pp. 391-92.
As regards Ḥadīth, some Ẓāhirī scholars are said to have held, against the view of most scholars, that the khabar al-wāḥid (a tradition or report transmitted by one or a few transmitters in one or more generations) establishes apodictic knowledge. The basis of this view is that since God has commanded us to act on the basis of this kind of tradition and has, at the same time, instructed us to not attribute to him things that we do not know, it follows that the khabar al-wāḥid does establish confident knowledge that does not admit of doubt. Interestingly, al-Shirāzī attributes to Muḥammad ibn Dāwūd and al-Qāsānī the view that the khabar al-wāḥid is not a valid source of ūmal (action). The Ahl al-Ẓāhir are also reported to have held that mursal traditions do not establish knowledge and consequently do not qualify to be a basis of action.

According to Abū al-Ḥusayn al-Baṣrī, some of the Ahl al-Ẓāhir – against the view of the majority (jumhūr) of non-Ẓāhirī scholars – held that there is no majāz in the Qur’ān, a view that is attributed to Muḥammad ibn Dāwūd. Majāz, in this view, is taken to be a degraded form of language that God does not use, and use of majāz is thought to lead to ambiguity, which, we can infer, is not expected in the Qur’ān. Use of majāz also indicates inability to use non-metaphorical language, which cannot be entertained with regard to God. himself appears to have rejected the view that the Qur’ān includes metaphorical terms and expressions. On the issue of naskh

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201 Al-Shirāzī, Tābšīra, p. 303.
203 For this view of some Ẓāhirīs, see also Al-Shirāzī, Tābšīra, p. 177. Al-Shirāzī mentions that Ibn Surayj, in a debate with Muḥammad ibn Dāwūd, showed the latter that majāz is in fact used in the Qur’ān.
205 Abū Ḥishāq al-Shirāzī, for instance, mentions that Ibn Surayj, in a debate with Muḥammad ibn Dāwūd, showed the latter that majāz is in fact used in the Qur’ān (al-Shirāzī, Tābšīra, pp. 178-79). In another context, al-Shirāzī mentions another debate that Ibn Surayj had with Muḥammad ibn Dāwūd, which introduces with hukiya (it was narrated). This indicates that while al-Shirāzī did not have a copy of any
(abrogation, replacement), some Zāhirī scholars argued that the Qur’ān can be abrogated by both mutawātir and āḥād Ḥadīth.206 Zāhirīs are also reported to have held that it is not against both reason and religion that a Qur’ānic ruling or a ruling based on a mutawātir tradition be abrogated by a tradition transmitted by a few people (khabar al-āḥād). This group of Zāhirī scholars mentions instances of abrogation of Qur’ānic rulings by āḥād traditions and argue that since these traditions are known by definite evidence (dalīl qaṭ’ī), the rulings that they establish are equal in authority to Qur’ānic rulings and can thus abrogate them.207 Additionally, God, according to some Zāhirī scholars, can or does replace (naskh) a duty with a heavier one, a view that other Zāhirīs rejected.208

Some Zāhirī scholars are also reported to have held that transmitted texts cover all possible eventualities (al-ḥawādith).209 Some of them regarded istiṣḥāb al-ḥāl as legal evidence,210 and Dāwūd held that ījmāʿ provides a ground for istiṣḥāb.211 To Ibn Dāwūd and Nifṭawayh is attributed the view that women are included in legal statements that use the masculine form (ṣīghat al-mudhakkar).212 Ibn Dāwūd is also reported to have argued that the plural form (ṣīghat al-jamʿ) can only be used with reference to two or more persons.213

work in which Ibn Surayj refuted the Zāhirīs, reports about some of the debates that Muḥammad ibn Dāwūd was said to have had with Ibn Surayj were still current in Baghdad a century and a half after their deaths.

206 Al-Shīrāzī, Ṭabsira, p. 265.
208 Ibid., vol. 1, p. 385.
209 Ibid., vol. 2, p. 228.
210 Ibid., vol. 2, p. 325.
211 Al-Shīrāzī, Ṭabsira, p. 526. Istiṣḥāb al-ḥāl requires two conditions, one old (which is to be assumed or argued for) and another new (such as assuming innocence for a person accused of committing a crime). Ījmāʿ that is attributed to Dāwūd here is taken as evidence of the old condition.
212 Al-Shīrāzī, Ṭabsira, pp. 77–78.
213 Ibid., p. 127. Another view holds that the plural form refers to three or more persons.
F. Conclusion:

In the previous sections, we have presented what extant sources mention about the history and doctrine of Dāwūd ibn Khalaf al-Iṣbahānī, his teachers, and his immediate students. We have relied mostly on sources dating from before the time of Ibn Ḥazm and on some later sources that attribute specific views to Dāwūd ibn Khalaf and his immediate students, including his son Muḥammad. The objective was to determine what we can attribute to Dāwūd and later (pre-Ibn Ḥazm) Zāhirī scholars and what the madhhab looked like before the advent of Ibn Ḥazm. We have shown that Dāwūd’s immediate students and later followers in the 4th/10th century disagreed on many issues. Regarding qiyyās, for instance, although we know that Dāwūd himself rejected it, some later Zāhirī scholars, and possibly Dāwūd and his son themselves, are reported to have rejected only qiyyās khafī and to have accepted qiyyās in cases in which the ‘illa is explicitly stated. In addition, while many scholars attribute to some Zāhirī scholars the view that only the ījmāʿ of the Companions is valid, the view that al-Qāḍī al-Nuʿmān attributes to Muḥammad ibn Dāwūd suggests that the latter was willing to acknowledge any ījmāʿ on which all scholars agree.214 Some sources also attribute to Dāwūd the rejection of the notion of ījmāʿ sukūṭī. He is also reported to have accepted the validity of ījmāʿ that is based on amāra, a view with which his son, given his insistence on a solid textual basis for ījmāʿ (see above), may have disagreed. Zāhirī scholars also disagreed on the khabar al-wāḥid; while some accepted it as a source of apodictic knowledge, others, including Muḥammad ibn Dāwūd, rejected it as a source of knowledge and a basis for ‘amal. Nothing is attributed to Dāwūd himself with regards to this issue, and although we know

214 This, of course, does not have to contradict the other view of the ījmāʿ al-ṣaḥāba, for Muḥammad may have argued that complete ījmāʿ only existed in the age of the Companions.
that he had two relevant works (one on the *khabar al-wāḥid*, the other on the *khabar* that establishes apodictic knowledge, *al-khabar al-mūjib li-l-‘ilm*), we cannot establish from these titles what the nature of the relationship (if any) between these two kinds of reports may have been in Dāwūd’s view. Žāhirī scholars also apparently disagreed on the use of *majāz* in the Qur’ān, on some points related to the issue of *naskh*, and even on the notion of *istiḥāb*.

We do not encounter views of Žāhirī scholars with regard to some subjects on which Dāwūd reportedly had written. We know that Dāwūd had a work in which he evidently refuted *taqlīd*, and others in which he tackled linguistic issues, such as the general and restricted terms (*al-lafẓ al-‘āmm wa-l-lafẓ al-khāṣṣ*) and the ambiguous and clarified statements (*al-mujmal wa-l-mubayyan*). No Žāhirī scholar before Ibn Ḥazm is reported to have had an opinion on these issues. The same also may be said about Muḥammad ibn Dāwūd’s rejection of reason as a valid basis for recognizing and distinguishing good from evil. More importantly is the issue of *istikāl*, which al-Qāḍī al-Nu‘mān identifies as the fundamental principle of Žāhirism. We have also seen that on some issues – notably *majāz* and *naskh* – only views of later Žāhirī scholars (though still earlier than Ibn Ḥazm) are reported.

All this indicates that the *madhhab* of Dāwūd was still in flux in the century and half after his death, as is probably the case with other *madhhab* to varying degrees. Immediate students of Dāwūd and later generations of Žāhirī scholars seem to have felt at liberty to disagree with Dāwūd. The most important unresolved issue now is why Dāwūd or his later followers were known as Žāhirī. In other words, what was Žāhirī about
Dāwūd’s *madhhab*? This is a question we will seek to answer later; for now, we continue our journey with subsequent generations of Ŭhīrī scholars.

II. Subsequent Generations of Ŭhīrī Scholars

In his *Ṭabaqāt al-Fuqahā*, al-Shīrāzī mentions six *ṭabaqas* of Ŭhīrī scholars, the second of which we presented in the previous section. Al-Shīrāzī’s classification is not only the earliest, but also the only available account of the legal history of the Ŭhīrīs and the only attempt to classify them into *ṭabaqas*. It is not clear whether this classification was the work of al-Shīrāzī himself, or if it was a classification that already existed in his time that he only reports to us, and, if so, who was responsible for it. Mention should be made here of a now lost work by a judge named Muḥammad ibn ‘Umar ibn al-Akhḍar (more about him below) entitled *Tārikh Ahl al-Ẓāhirī*. While the title does not necessarily indicate that this work classified scholars into *ṭabaqas*, it is very possible that al-Shīrāzī’s classification was copied from this work, which al-Shīrāzī apparently had at his

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215 For the following sections, Tawfīq al-Ghalbazūrī’s *Madrasa al-Ẓāhirīyya* (although I did not include all the names of Ŭhīrī scholars that he mentions for what I see as lack of enough evidence that they were in fact Ŭhīrīs), *al-Maktaba al-Shāmila* (CD-ROM) and *Maktabat Āl al-Bayt* (DVD-ROM) were very useful tools to trace Ŭhīrī scholars. All information obtained from these sources, however, was checked in the primary sources cited in this dissertation. In addition to the biographical dictionaries that these tools contain, I have used a few of the Moroccan *faḥrasas* (I am indebted to Prof Michael Cook for bringing these *faḥrasa* works to my attention). Although these works could be very useful in giving us an idea about the possible circulation of Ŭhīrī works, investigating all of them requires much time and effort which probably go beyond the time limits and purpose of this chapter (for a thorough study of those *faḥrasas*, see ‘Abd Allāh al-Murābīt al-Targhī, *Faḥāris ‘Ulamā’ al-Maghrib*. I therefore checked a few of them which I thought should give us a good idea about the works that were circulated in Morocco and al-Andalus in medieval centuries and who transmitted them (these works are the *Fihris* of Ibn ‘Atīyya al-Andalusī (d. 541/1146), the *FAHRASA* of Ibn Khayr al-Ishbīlī (d. 575/1179), the *Fihris Shuyūkh al-Qāḍī ‘Iyād* (d. 544/1149), the *Barnāmaj Shuyūkh al-Ru’ayn* of Abū al-Ḥasan al-Ru’aynī al-Ishbīlī (d. 666/1267), the *FAHRASA* of Ahmad ibn Yusuf al-ʿLablī (d. 691/1291), and the *Thabat* of Abū Jaʿfar al-Balawī al-Wādī ʿAshī (d. 938/1532)).
disposal.²¹⁶ Later scholars, and, interestingly, Ibn Ḥazm himself, do not attempt a similar classification for later Zāhirī scholars. We will comment on this in due course.

In what follows, we will see what medieval sources have to tell us about those scholars who were believed to have belonged to or had leanings towards the Zāhirī madhhab. The goal is to examine how the madhhab fared after Dāwūd, where it was spread and by whom, and how this could help explain why it did not succeed in continuing as a functioning madhhab in Sunnī Islām.²¹⁷ Ideally, what we need to find out in order to be able to do this is, inter alia, the geographical and numerical distribution of the scholars of the madhhab and their power, prestige, and popularity (and whether this had anything at all to do with their ‘knowledge,’ and if so, what kind of knowledge). We need to find out what these scholars took Zāhirism to mean and how they legitimized their legal methodology and views. At the same time it would be instructive for our knowledge of the influence of the social and religious milieus on individual scholars to ascertain how much difference, if any, existed between individual Zāhirī scholars, especially those who lived in different regions. We further need to know something about which books they studied and taught and what institutions, if any, they may have established to transmit their knowledge or recruit new followers. As members of the same madhhab, we want to see whether or not they had a sense of belonging to one madhhab and what this meant for them. In addition, it is important to see how these scholars perceived other madhhab, and how they interacted with scholars who held notions that contradicted theirs. Equally important is the relationship of these scholars with the state

²¹⁶ Al-Shirāzī, Ṭabaqāt, p. 179.
²¹⁷ While there is reference to Shī‘ī or Mu‘tazilī leanings of some Zāhirī scholars, most were Sunnīs and were regarded as such by other people.
and the government positions that they may have held – especially in the judiciary – and how this may have affected their Zāhirism.

The following list of Zāhirī scholars is not intended to be exhaustive. The epithet Zāhirī was not used exclusively to refer to scholars following the Zāhirī madhhab (and it is at times unclear whether the application of the epithet Zāhirī to a certain scholar referred to his legal madhhab). Furthermore, it is at times difficult to determine whether a given scholar was known to be Zāhirī by his contemporaries or only so described by his biographers. We will see below that some scholars were thought to be Zāhirī only on the basis of a specific view they held, notably their attitude towards qiyās and taqlīd. What follows, therefore, is a list of scholars whose legal affiliation with Zāhirism seems certain, even if only for a limited time during their lives.

1. ʿAbd ibn ʿAmr ibn Muḥammad ibn al-Ḍāḥq (d. 287/900): Aḥmad ibn ʿAmr – known as Abū Bakr ibn Abī ʿĀṣim – was a well known scholar of Ḥadīth and fiqh who was probably born in Basra and lived in Iṣbahān. Abū Bakr was

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218 For many examples of this, see Ghalbazūrī, al-Madrasa al-Zāhirīyya, pp. 52, 223ff, where many scholars are considered Zāhirīs by medieval scholars mainly on account of their rejection of taqlīd.

219 In “The Beginnings of the Zahiri Madhab in al-Andalus,” Camilla Adang refers to a scholar named Abū ʿUmar Aḥmad ibn Duhaym (d. 338/949) and argues that although the sources do not mention that he was Zāhirī, “this does not necessarily exclude the possibility of his having divulged Dāwūd’s writings after his return to his native land [in Andalus]” (p. 119). In this article, Adang seeks to show that “Zāhirism in Andalus had a living tradition in the period before Ibn Ḥazm” (p. 125). This speculation about the affiliation of scholars, however, cannot demonstrate an argument like Adang’s. The same applies to some scholars whom Ghalbazūrī mentions in his Madrasa al-Zāhirīyya. For example, he argues that Aḥmad ibn ‘Abd al-Raḥmān ibn Maḍāʿ (d. 592/1195) was Zāhirī, primarily on the basis of his appointment as chief judge by Abū Yaʿqūb Yūsuf al-Muwaḥḥidī (d. 580/1184) and his son Yaʿqūb al-Manṣūr who favored the Zāhirī madhhab (Ghalbazūrī, al-Madrasa al-Zāhirīyya, p. 286; more about Almohads and Zāhirism later). Considering other evidence, Adang came to the conclusion that Ibn Maḍāʿ can, at best, be considered “semi-Zāhirī” (Adang, “Zāhirīs,” pp. 429-32). Therefore, only scholars who are explicitly described as Zāhirī or Dāwūdī will be mentioned here and our conclusions will only reflect that.

220 Most of the time I give the exact name without the kunya or nisba, but I give the nickname or kunya if a scholar was mostly known by one or both of them.
known for his rejection of *qiyyās*, talent in memorizing traditions, and affiliation with Şūfism. He is reported to have traveled a lot, written on many subjects, and worked as a judge in Iṣbahān for sixteen years after the death of Ṣāliḥ ibn Aḥmad ibn Ḥanbal.

Abū Bakr does not appear in al-Shārāzi’s *tabaqas* of Zāhirī scholars and al-Dhahabī questions his affiliation with Zāhirism because Abū Bakr was reported to have compiled a work in which he argued against Dāwūd for the authenticity and soundness of 40 reports (*khabar*). There is no evidence that Abū Bakr and Dāwūd met each other, but Abū Bakr was a student of one of Dāwūd’s Basran teachers – ‘Amr ibn Marzūq and also a teacher of the Zāhirī scholar Aḥmad ibn Bundār (more about whom below). Abū Bakr’s funeral in 287/900 is said to have been attended by some 200,000 people.

2. *Ibrāhīm ibn Jābir* (d. 310/922):

Ibn al-Nadīm mentions that Ibrāhīm was a notable Dāwūdī scholar of Ḥadīth and *fiqh*. He authored a large work on (legal?) disagreements which other Dāwūdī scholars admired. Ibrāhīm probably died in 310/922.


Muḥammad ibn Mūsā was a Zāhirī scholar who became judge of Ramla. Muḥammad is reported to have been an expert in *fiqh* and *tafsīr*.

4. ‘*Abd Allāh ibn Aḥmad ibn al-Mughallis* (d. 324/935):

A student of Muḥammad ibn Dāwūd and a transmitter from a number of well known traditionists of the time – including ‘*Abd Allāh ibn Aḥmad ibn Ḥanbal – ‘*Abd Allāh ibn

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227 For this, see Ghalbazūrī, *al-Madrasa al-Zāhiryya*, p. 83.
al-Mughallis (al-Dāwūdi, according to some scholars) is reported to have compiled several works on the madhhab of Dāwūd and is credited with spreading it in various places. Many works (now lost) are attributed to Ibn al-Mughallis; for example, *Aḥkām al-Qur’ān*, *al-Mūdīh fi al-Fiqh*, *al-Mubhij*, *al-Dāmīgh* (in response to those who disagreed with him). *Al-Mūdīh* was apparently available to the Mālikī scholar Ibn ‘Abd al-Barr in Andalus in the 5th/11th century. Ibn ‘Abd al-Barr refers to this work in which Ibn al-Mughallis apparently reported views of Zāhirī scholars. Apparantly, Ibn al-Mughallis and al-Ṭabarī were opponents, for Ibn al-Nadīm attributes to the latter a work in which he evidently refutes Ibn al-Mughallis. When Ibn al-Mughallis died in 324/935, he was succeeded in his colloquium by his student Ḥaydara ibn ‘Umar al-Zanūdī (more about him below). Among his other important students was ‘Abd Allāh ibn Muḥammad, nephew of the Egyptian judge al-Walīd (more about him below), and Aḥmad ibn ‘Abd Allāh al-Bukhtarī al-Dāwūdī.

229 For this, see al-Dhahabī, *Siyar*, vol. 13, p. 110, where he mentions a chain of transmission in which al-Tanūkhī describes Ibn al-Mughallis as al-Dāwūdi. Al-Dhahabī himself presents Ibn al-Mughallis as al-Dāwūdi al-Zāhirī (*ibid.*, vol. 15, p. 77). It is possible, of course, that referring to Ibn al-Mughallis as al-Zāhirī was a retrospective characterization. As noted below, early followers of Dāwūd were probably referred to as al-Dāwūdi rather than al-Zāhirī.

230 *Wa ’an ibn al-Mughallis intashara ’ilmu Dāwūd fi-l-bilād*, al-Khaṭīb al-Baghdādī, *Tārīkh*, vol. 9, p. 385. It is not clear what al-Khaṭīb al-Baghdādī means by *bilād* here; this could indicate various regions of the Muslim world at that time, or simply various cities in Iraq.

231 Al-Dhahabī, *Tārīkh*, vol. 33, p. 150. Ibn al-Nadīm also attributes to Ibn al-Mughallis a *Kitāb al-Muzanī* (Ibn al-Nadīm, *Fihrīst*, p. 218). This title, of course, is not indicative of the content of the work. Among the works that Ibn al-Nadīm attributes to Ibn Surayj, however, is a work in which he apparently seeks to reconcile differences between al-Muzani and al-Shāfi’ī (*Kitāb al-Taqrīb bayna al-Muzanī wa-l-Shāfi’ī*) (p. 213). It is worth investigating a possible relationship between these two works if it is evident that there is no corruption in the title of Ibn al-Mughallis’ work.

232 Ibn ‘Abd al-Barr, *Istidḥkār*, vol. 1, p. 106. Ibn ‘Abd al-Barr also makes reference here to a work by a certain Aḥmad ibn Muḥammad al-Dāwūdi al-Baghdādī (whose name, to the best of my knowledge, does not appear in any biographical dictionary) the title of which is *Jāmi’ Madhhab Abī Sulaymān Dāwūd ibn ʿAlī ibn Khalaf al-Īṣbāhānī*, and which evidently had chapters on *furūʿ* al-fiqh issues (*ibid.*, vol. 1, p. 213). We will make reference to this later.


234 Al-Dhahabī, *Tārīkh*, vol. 33, p. 149.

235 For this, see al-Dhahabī, *Siyar*, vol. 13, p. 110.
‘Abd Allāh ibn al-Mughallis is mentioned by al-Shīrāzī as the first in the third tābaqa of Zāhirī scholars.236

5. Muḥammad ibn Sulaymān ibn Maḥmūd al-Ḥarrānī (d. after 323/934):

Muḥammad ibn Sulaymān was a merchant from Ḥarrān, Iraq, whence he traveled to Andalus on business in 323 or 324.237 Muḥammad was an accomplished Qur‘ān reciter and smart scholar who believed in the madhhab of Dāwūd and engaged in disputation in its defense.238

6. Muḥammad ibn Yūsuf ibn Ya‘qūb (d. c. 325/936):

Muḥammad ibn Yūsuf – who could be son of Yūsuf ibn Ya‘qūb (see above) – was an associate of Muḥammad ibn Dāwūd. Muḥammad worked as judge, probably in Baghdad.239

7. ‘Alī ibn Bundār ibn Ismā‘īl al-Barmakī (fl. 337/948):

According to al-Maqqarī, ‘Alī ibn Bundār was a student of ‘Abd Allāh ibn al-Mughallis who entered Andalus on business in 337/948. Al-Maqqarī mentions that Ibn Bundār had heard two of Ibn al-Mughallis’ legal works and part of his Ahkām al-Qur‘ān.240


Al-Dhahabī mentions that ‘Abd al-Mu‘min al-Nasafī was a Zāhirī scholar who studied with, among others, Muḥammad ibn Dāwūd. ‘Abd al-Mu‘min, who was known for his

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236 Al-Shīrāzī, Tabaqāt, p. 177.
238 Al-Dhahabī, Tārīkh, vol. 43, p. 114.
piety and integrity, was a staunch critic of people of *qiyaṣ* and the Mu‘tazilīs, and an admirer of Ibn Ḥanbal and Isḥāq ibn Rāhawayh.

9. Aḥmad ibn Muḥammad ibn Ziyād (d. 340/951 or 341/952): Known as Abū Sa‘īd ibn al-A‘rābī, Aḥmad ibn Muḥammad was highly regarded by the Ḥadīth critics of his age. He transmitted from a certain ‘Alī ibn ‘Abd al-‘Azīz from al-Qa‘nabī. Ibn al-A‘rābī, who was a friend of al-Junayd, was known for his leaning towards the Zāhirī *madhhab* and the *madhhab* of the *Aṣḥāb al-Ḥadīth*.


11. Muḥammad ibn al-Ḥasan ibn al-Ṣabbāḥ al-Dāwūdī (d. c. 350/960): Muḥammad ibn al-Ḥasan, who probably lived in Baghdad, is reported to have transmitted from Yūsuf ibn Ya‘qūb al-Dāwūdī, a student of Dāwūd’s (see above).

12. Muḥammad ibn Ma‘mar ibn Rāshid (d. 350/965): Muḥammad ibn Ma‘mar was said to have been a Zāhirī scholar who transmitted from many people including the Zāhirī judge Yūsuf ibn Ya‘qūb. People of Iṣbahān, including Abū Nu‘aym al-Iṣbahānī (d. 430/1038), transmitted from him.


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246 Al-Shīrāzī, *Ṭabaqāt*, p. 177.
‘Aḍud al-Dawla,\textsuperscript{249} and master (\textit{imām}) in the \textit{madhhab} of Dāwūd who traveled to Fars. Bishr’s students are credited with spreading the \textit{madhhab} to Shīrāz and Fīrūzābād. Among his students was Abū Sa’d Bishr ibn al-Ḥusayn (who may be his brother),\textsuperscript{250} who was a Dāwūdī judge in Shīrāz.\textsuperscript{251}

14. \textbf{Mundhir ibn Sa‘īd al-Ballūṭī} (d. 355/965):

Mundhir ibn Sa‘īd al-Ballūṭī was a famous judge in Cordoba who was known for having been smart, gifted in argumentation, and prolific.\textsuperscript{252} Mundhir leaned towards Dāwūd’s \textit{madhhab} and used to defend it, although we do not know from whom he learned it.\textsuperscript{253} He was also a teacher of one of Ibn Ḥazm’s teachers – Aḥmad ibn Muḥammad ibn al-Jasūr.\textsuperscript{254} Many works in different genres of religious studies are attributed to Mundhir, including three works on the Qur’ān: \textit{al-Inbāh ‘alā Istinbāṭ al-Ḥakām min Kitāb Allāh}, apparently on hermeneutics, and another on \textit{Aḥkām al-Qur’ān}.\textsuperscript{255} A third work is on the subject of abrogation (\textit{al-Nāsikh wa-l-Mansūkh}).\textsuperscript{256}

15. \textbf{Yūsuf ibn ‘Umar ibn Muḥammad ibn Yūsuf ibn Ya’qūb} (d. 356/966):

\textsuperscript{249} For this, see Miskawayh, \textit{Tajārib al-Umam}, vol. 6, pp. 399-400. I owe this reference to Prof Hossein Modarressi.

\textsuperscript{250} Al-Shīrāzī, \textit{Tabaqāt}, pp. 177-8.


\textsuperscript{252} Al-Dhahabī, \textit{al-Ibar fī Khabar man Ghabar}, vol. 2, pp. 302-03.


\textsuperscript{254} For this, see Ghalbazūrī, \textit{al-Madrasa al-Ẓāhirīyya}, p. 206. Ibn Ḥazm also knew al-Mundhir’s son Ḥakam, who may have been Zāhirī like his father (for this, see al-Dhahabī, \textit{Sīvar}, vol. 16, p. 175).

\textsuperscript{255} Ḥājī Khalīfā, \textit{Kashf al-Zunūn}, vol. 1, p. 56. \textit{Aḥkām al-Qur’ān} is mentioned by Khayr al-Dīn al-Ishbīlī among the books he studied in Andalus. The title of this books does not indicate what exactly the subject of the books is (other than being related to the Qur’ān), and it could very well be the same book as \textit{al-Ibānā}. Al-Ballūṭī studied \textit{Aḥkām al-Qur’ān} with Yūnūs ibn Muḥammad ibn Mughīth (d. 532/1138), from Aḥmad ibn Muḥammad ibn al-Ḥadhdhā’ (d. 467/1074), from ‘Abd al-Wārīth ibn Sufyān (d. 395/1005). This is the same chain of transmission that links Ibn Khayr to the early great Andalusian traditionist Muḥammad ibn Waḍḍāh (d. 287/900) (for this, see, for example, Ibn Khayr, \textit{Fahrasa}, p. 191). For the contribution of Ibn Waḍḍāh to the introduction of Ḥadīth into Andalus, see Isabel Fierro, “Introduction of Ḥadīth,” pp. 79-81). Ibn al-Ḥadhdhā’ also appears in a chain of transmission of the Zāhirī school Abū Sa‘īd al-A’rābī (see above) (Ibn Khayr, \textit{Fahrasa}, p. 390). However, none of the scholars in this chain is reported to have had any Zāhirī leanings (for Ibn al-Ḥadhdhā’, see al-Dhahabī, \textit{Sīvar}, vol. 18, pp. 344-45; ‘Abd al-Wārīth, see \textit{ibid.}, vol. 17, pp. 84-85; and for Yūnūs ibn Muḥammad ibn Mughīth, see \textit{ibid.}, vol. 20, pp. 123-24).

\textsuperscript{256} Adang, “The Beginnings,” p. 121.
Son of Yūsuf ibn Ya‘qūb – Zāhirī judge of Baghdad and associate of Muḥammad ibn Dāwūd – Yūsuf became a judge in Baghdad himself while his father was still alive.\textsuperscript{257} According to al-Dhahabī, Ibn Ḥazm had mentioned that Yūsuf converted from Mālikism to Zāhirism and compiled many works that defended the Zāhirī school. Al-Shīrāzī reports that he learned it from Ibn al-Akhḍar’s Akhbār Ahl al-Zāhirī and that he finished a work by Muḥammad ibn Dāwūd called al-Ījāz (now probably lost).\textsuperscript{258} Al-Dhahabī quotes a passage from an epistle reportedly attributed to Yūsuf, in which he declares his conversion to Zāhirism.\textsuperscript{259} In a statement supposedly quoted from this work, Yūsuf states: “We do not hold equal he who begins his writings and epistles with the saying of Sa‘īd ibn al-Musayyab, al-Zuhrī, and Zam’a, and he who begins his writings and cases with the word of God, his Prophet, and the ijmā‘ of the imāms.”\textsuperscript{260}

16. Ḥaydara ibn ‘Umar al-Zanūdī (d. 358/968):

Ḥaydara ibn ‘Umar al-Zanūdī, who is mentioned in the third tabaqā of Zāhirī scholars by al-Shīrāzī, was a student of ‘Abd Allāh ibn al-Mughallis. Ḥaydara is credited with transmitting Dāwūd’s knowledge from ibn al-Mughallis to his Baghdādī fellows.\textsuperscript{261} Ibn al-Nadīm praises Ḥaydara who was his friend, and mentions that he had written some works, the titles of which were apparently difficult to read in Fihrist manuscripts.\textsuperscript{262} Al-Qurashī mentions that Ḥaydara wrote a mukhtaṣar, probably a small work that contains legal views on Dāwūd’s madhhab.\textsuperscript{263}

\textsuperscript{258} Al-Shīrāzī, Tabaqāt, p. 179.
\textsuperscript{259} In fact, it is not clear here whether al-Dhahabī was quoting this himself from a work of Yūsuf that he had or was just reporting it from Ibn Ḥazm.
\textsuperscript{260} Al-Dhahabī, Tārikh, vol. 36, p. 154.
\textsuperscript{261} Al-Khaṭīb al-Baghdādī, Tārikh, vol. 8, p. 273.
\textsuperscript{262} Ibn al-Nadīm, Fihrist, p. 219.
\textsuperscript{263} Al-Qurashī, Jawāhir, vol. 2, p. 159. Al-Qurashī adds that Ḥaydara then became fascinated with the ḥanafī scholar Muḥammad ibn al-Ḥasan al-Shaybānī (ibid., p. 159).
17. **Aḥmad ibn Bundār Ishāq** (d. 359/969):

Known as al-Sha‘ār, Aḥmad ibn Bundār was a competent traditionist and faqīḥ in Iṣbahān. Ibn Bundār transmitted from a number of scholars, one of whom is Abū Bakr ibn Abī ‘Āṣim (see above) and was affiliated with the Zāhirī madhhab.264

18. **‘Ubayd Allāh ibn Aḥmad ibn al-Ḥusayn** (d. 361/971):

‘Ubayd Allāh was a student of Muḥammad ibn Dāwūd, and reportedly even of Dāwūd himself, although al-Dhahabī seems to have doubts about this.265 Al-Dhahabī describes ‘Ubayd Allāh as having been a Dāwūdī Zāhirī.

19. **‘Alī ibn Waṣīf al-Nāshi’** (d. 366/976):

According to Muḥammad ibn al-Ḥasan al-Ṭūsī, ‘Alī, who was a theologian and poet, followed the Zāhirī madhhab in legal matters.266

20. **‘Abd Allāh ibn Aḥmad ibn Rāshid** (d. 369/979):

Known as Ibn Ukht al-Walīd, ‘Abd Allāh ibn Rāshid, who was a student of Ibn al-Mughallis, was a wealthy merchant who became judge of Egypt several times between 329/940 and 334/945 and of Damascus in 348/959, and is reported to have compiled many works.267 ‘Abd Allāh, who had a rather bad reputation and was accused of accepting bribes, was considered to be among the great Zāhirī scholars.268 ‘Abd Allāh seems to have been a shrewd politician, and it is reported that he once bribed Muḥammad ibn Taghj al-Ikhshīd – Turkish ruler of Egypt from 321/933 to 334/946 – to appoint him

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264 Al-Dhahabī, *‘Ibar*, vol. 2, p. 31, and *Sīyar*, vol.16, p. 61.
265 Al-Dhahabī, *Ṭārīkh*, vol. 36, pp. 281-82.
266 Al-Ṭūsī, *Fihrīst*, p. 268. I own this reference to Prof Hossein Modarressi.
267 Al-Dhahabī, *Ṭārīkh*, vol. 36, p. 416. To the best of my knowledge, none of ‘Abd Allāh’s works has survived.
as judge. He traveled frequently between Egypt and Syria until he settled in Egypt where he died.\textsuperscript{269}

21. \textit{Ṭāhir ibn Muḥammad} (d. 369/979):

Ṭāhir ibn Muḥammad was a member of the \textit{Ahl al-Ra’y} who was made judge of Jurjān.\textsuperscript{270} Al-Sahmī mentions that he was Ẓāhirī.

22. \textit{Muḥammad ibn al-Ḥusayn al-Ẓāhirī} (d. c. 375/985):

Muḥammad ibn al-Ḥusayn al-Baṣrī al-Ẓāhirī is mentioned in Muḥammad ibn Dāwūd’s \textit{tarjama} in \textit{Tārikh Baghdaḍ} as a transmitter of an anecdote from Muḥammad ibn al-Ḥasan ibn al-Ṣabbāḥ al-Dāwūdī al-Baghdādī, from the judge Muḥammad ibn Yūsuf ibn Ya’qūb about an incident that took place while the latter was walking with Muḥammad ibn Dāwūd.\textsuperscript{271} According to Ibn Mākulā, Muḥammad was known as al-Ẓāhirī for following Dāwūd’s \textit{madhab}.\textsuperscript{272}

23. \textit{Aḥmad ibn ‘Abd Allāh ibn Aḥmad al-Bukhtarī} (d. before 384/994):

According to al-Tanūkhī, Aḥmad was the master (\textit{shaykh}) of the Ẓāhirī scholars of his age. He also worked as judge in Baghdad. Aḥmad appears in al-Tanūkhī’s \textit{Nishwār al-Muḥāḍara} as his informant for a debate that took place between Ibn Dāwūd and Ibn Surayj. Aḥmad was a Dāwūdī judge.\textsuperscript{273}

24. \textit{Muḥammad ibn Mūsā ibn al-Muthannā} (d. 385/995):

\textsuperscript{270} Ḥamza ibn Yūsuf al-Sahmī, \textit{Tārikh Jurjān}, p. 102.
\textsuperscript{271} Al-Khaṭīb al-Baghdādī, \textit{Tārikh}, vol. 5, p. 258.
\textsuperscript{273} Al-Tanūkhī, \textit{Nishwār}, vol. 8, p. 186.
Muḥammad was a noble Dāwūdī scholar who studied with many scholars and taught many students.274 Al-Ṣafadī mentions that Muḥammad was a Baghdādī Zāhirī Dāwūdī scholar of fiqh and probably of Ḥadīth (atharī).275

25. ‘Abd al-‘Azīz ibn ʿAḥmad al-Jazarī (d. 391/1000):

Mentioned by al-Shīrāzī in the fifth tabaqā of Zāhirī scholars, ‘Abd al-‘Azīz al-Jazarī (or al-Kharazī) was a judge in Baghdad in 377/987.276 Al-Jazarī followed the madhhab of Dāwūd ibn ‘Alī al-Zāhirī and was known for his argumentative skills.277 Al-Dhahabī mentions him as a faqīh al-Zāhirīyya who taught Baghdādī students, and quotes the Ḥanafī scholar al-Ṣaymarī (d. 436/1044) who said that he never saw a jurist who matched al-Jazarī’s sharp intellect.278 Ibn al-Nadīm attributes to ‘Abd al-‘Azīz a work on (legal) disagreements.279

‘Abd al-‘Azīz al-Jazarī was a student of Bishr ibn al-Ḥusayn and a teacher of many Baghdādī scholars such as Muḥammad ibn ʿUmar al-Dāwūdī, Abū ʿAlī al-Dāwūdī, judge of Fīrūzābād, and his son.280

26. Muḥammad ibn Banān (d. after 400/1009):

Muḥammad ibn Banān is mentioned by al-Shīrāzī as one of the scholars in the fifth tabaqā of Zāhirī scholars.281 I could not find a tarjama for Muḥammad in any biographical dictionary.

275 Al-Ṣafadī, Wāfi, vol. 5, p. 86.
280 Al-Shīrāzī, Ṭabaqāt, p. 178.
281 Ibid., p. 179.
Almost half of these twenty-six Zāhirī scholars of the 4th/10th century lived in Baghdad. The madhhab was started in Baghdad by Dāwūd and was transmitted to Ibn al-Mughallis by Dāwūd’s son Muḥammad. Ibn al-Mughallis’ knowledge passed to Ḥaydara al-Zanūdī, who was the teacher of future generations of Baghdādī Zāhirīs. Bishr ibn al-Ḥusayn also transmitted Ibn al-Mughallis’ teachings to ‘Abd al-‘Azīz al-Jazarī (after whose students the madhhab is said to have disappeared from Baghdad, around mid 5th/11th century). In addition to this, Iraq is the only region where we can find chains of Zāhirī scholars. One such chains is Muḥammad ibn al-Ḥusayn al-Baṣrī al-Zāhirī from Muḥammad ibn al-Ḥasan ibn al-Ṣabbāḥ al-Dāwūdī al-Baghdādī from Muḥammad ibn Yūsuf ibn Ya’qūb. After Muḥammad ibn Yūsuf, the chain can reach Dāwūd through Muḥammad’s father Yūsuf ibn Ya’qūb from Dāwūd or through Muḥammad ibn Dāwūd from Dāwūd. A second chain is Muḥammad ibn ʿUmar al-Dāwūdī and Abū ʿAlī al-Dāwūdī from ‘Abd al-ʿAzīz al-Jazarī from Bishr ibn al-Ḥusayn from ʿAlī ibn Muḥammad al-Baghdādī from Ibn al-Mughallis from Muḥammad ibn Dāwūd from Dāwūd. In other words, although another student of Dāwūd – Yūsuf ibn Ya’qūb – may have transmitted the knowledge of Dāwūd to his son who transmitted it to future generations of Iraqi scholars, the fact that we do not know much about either Yūsuf ibn Ya’qūb or his son indicates that Muḥammad ibn Dāwūd was indeed the most important student of Dāwūd whose knowledge may have been lost had it not been for his son. The same can be said about Ibn al-Mughallis, for even though Muḥammad ibn Dāwūd’s knowledge was also transmitted by other students of his, it was Ibn al-Mughallis’ chain from Dāwūd that established the madhhab in Iraq (through Ḥaydara al-Zanūdī), and it was also Ibn al-Mughallis’ students who spread the madhhab outside Iraq.

282 Ibid., p. 179.
Outside Iraq, six of these scholars lived in the eastern part of the Muslim world. Dāwūd’s madhhab is reported to have reached Fars through Bishr ibn al-Ḥusayn, probably in the first half of the 4th/10th century. Bishr studied with ʿAlī ibn Muḥammad al-Baghdādī, who was an associate of Ibn al-Mughallis. We will see later that it was also one of Bishr ibn al-Ḥusayn’s students – called Abū al-Faraj al-Fāmī (see below) – who took the madhhab to Shīrāz in the 5th/11th century (if it had already not reached it by Abū Saʿd ibn al-Ḥusayn). In fact, al-Muqaddasī mentions that there were many colloquia and lessons for the Dāwūdī madhhab in Fars at that time, and that the Dāwūdī scholars worked as judges and in other professions as well.283 The madhhab also reached Iṣbahān at the hands of Muḥammad ibn Maʿmar ibn Rāshid, and as far east as Jurjān at the hands of Ṭāhir ibn Muḥammad.

One Ṭāhirī scholar is reported to have lived in Egypt, another in Palestine, and a third in Damascus. The madhhab probably reached Egypt through a slave manumitted by a certain Muḥammad ibn Şāliḥ al-Manṣūrī, probably in the mid-4th/10th century; he went to Baghdad, studied with Ibn al-Mughallis, went back to Egypt, and transmitted his knowledge to Muḥammad’s son who continued the tradition there. As for Syria, al-Muqaddasī mentions that there were no Dāwūd scholars there in the 4th/10th century.284 This is consistent with our findings here. Only the Syrian Aḥmad ibn Muḥammad ibn Ziyād, in the first half of the 4th/10th century, was known for his Ṭāhirī leanings, but we do not know with whom Aḥmad studied. Be this as it may, if Dāwūd’s madhhab ever existed in Syria, it must have reached it at the hands of Aḥmad ibn Muḥammad ibn Ziyād and probably in the first half of the 4th/10th century.

283 Al-Muqaddasī, Ṭāṣan al-Taqāṣīm, p. 334.
284 Ibid., p. 152.
Three of these twenty-six scholars lived in or travelled to Andalus. We have seen earlier that a direct student of Dāwūd – Ibn Hilāl – was credited with taking Dāwūd’s writings to Andalus and spreading his *madhhab* there. Later, in the second quarter of the 4\(^{th}/10\(^{th}\) century, two other Żāhirī scholars – Muḥammad ibn Sulaymān and ‘Alī ibn Bundār – are reported to have brought Dāwūd’s teachings to Andalus. Although we do not know with whom the former scholar studied, we know that ‘Alī ibn Bundār was a student of Ibn al-Mughallis. Furthermore, Mundhir ibn Saʿīd al-Ballūṭī with his knowledge, social status, and argumentative skills must have boosted the status of the *madhhab* in Andalus around the mid-4\(^{th}/10\(^{th}\) century. In other words, although Iraq was the stronghold of Żāhirism in the 4\(^{th}/10\(^{th}\) century, Andalus was one of the few places to which direct students of Dāwūd and Ibn al-Mughallis traveled.

As for the profession and knowledge of these scholars, we have also seen that more than half of them – and all scholars whose profession is reported – worked as judges, sometimes rising to the rank of *qāḍī al-quḍāh*. Most of these judges lived and worked in Baghdad. Since Ḥanafism was the official *madhhab* of the ‘Abbāsid state at that time, it is safe to assume that these judges were trained as Ḥanafī scholars (but also possibly as Mālikī or Shāfiʿī).\(^{285}\) These Żāhirī scholars probably kept their affiliation with Dāwūd’s *madhhab* a private matter, assuming affiliation with other *madhhabs* in public. Less than a quarter of these scholars were known for their contribution to Ḥadīth transmission. Remarkably, none of them seem to have authored works on Ḥadīth studies. So while approximately six of them are reported to have compiled books, most of these

\(^{285}\) This does not exclude the possibility that they may have belonged to other *madhhabs*. For the distribution and percentage of scholars belonging to different *madhhabs* in the first centuries of Islam, see Monique Bernards and John Nawas, “The Geographic Distribution of Muslim Jurists during the First Four Centuries AH.”
books apparently dealt with specific legal issues, such as refuting *qiyās*, or with *tafsīr* or Qur’ān-related subjects (as we have seen with the Andalusian Zāhirī scholar Mundhir ibn Sa‘īd al-Ballūṭī, for instance). A significant number of these scholars were known for defending Dāwūd’s madhhab, which suggests that early generations of Dāwūdī scholars needed to legitimize their legal thought. How this was done, and against whom these scholars were defending their madhhab is not at all clear. Some Zāhirī scholars were considered reliable transmitters by Ḥadīth critics, which indicates that some of them were involved in Ḥadīth transmission. Nevertheless, it can be argued that, generally speaking, these Zāhirī scholars seem to have inherited a lack of interest in Ḥadīth transmission from earlier generations of Zāhirī scholars, for which reason Ḥadīth scholars may have been critical of them. Zāhirī rejection of *qiyās* and *ra’y*, additionally, must have caused harm to their relationship with scholars of other madhhabs.

Finally, of these scholars, those who were referred to as “Dāwūdī” outnumber those who were known as “Zāhirī.” In fact, al-Muqaddasī mentions that the legal madhhabs that were followed in his days (in the 4th/10th century) were the Ḥanafī, Mālikī Shāfi‘ī and Dāwūdī.286 In one chain of transmission, a father is known as Dāwūdī while his son is known as Zāhirī. This does not necessarily mean that these scholars were known as Zāhirī in their lifetime, for it is possible that this *nisba* was given to them by the authors of later biographical dictionaries. For example, al-Ṣafadī described Muḥammad ibn Mūsā as Dāwūdī Zāhirī even though an earlier biographical dictionary – al-Sam‘ānī’s *Ansāb* – had described him only as Dāwūdī. But if these scholars were known as such during their lifetime, this could be taken to suggest that scholars began to be called Zāhirī, rather than Dāwūdī, around the middle of the 4th/10th century. In all

286 Al-Muqaddasī, *Aḥsan al-Taqāsīm*, p. 44.
circumstances, sharing a *nisba* referring to one person must have given these scholars a sense of a common legal heritage. What that legal heritage was in their view is something that we cannot ascertain from their biographies since the available sources are silent about what books they may have studied and how they transmitted their knowledge to students.

To summarize, at the end of the 4th/10th century, Iraq remained the stronghold of Dāwūd’s *madhab* and the majority of its scholars and the most important of them lived there. Andalus, however, had the potential to compete with Iraq on the strength of having immediate students of Dāwūd and Ibn al-Mughallis. A few generations after Dāwūd’s death, his *madhab* had already spread as far as Iṣbahān in the East. The *madhab* had very few representatives in Egypt and possibly Syria. Most Zāhirī scholars in Iraq, and some in the East and in Egypt, worked as judges, which indicates that they were Ḥanafīs and on good terms with their rulers. A few of them were known for being active in Ḥadīth transmission and a small number of them are reported to have compiled books.

Now we move on to the 5th/11th century.

1. **Dāwūd ibn Aḥmad ibn Yaḥyā ibn al-Khidr** (d. 418/1027):

We do not know much about Dāwūd ibn Aḥmad except that he was a Zāhirī who died in Baghdad in 418/1027.287

2. **Abū al-Faraj al-Fāmī al-Shirāzī** (*fl.* c. 425/1034):

Abū al-Faraj al-Fāmī is mentioned by al-Shirāzī in the fifth *tabaqa* of Zāhirī scholars. Abū al-Faraj studied with Bishr ibn al-Ḥusayn and was an *imām* in the *madhab* of Dāwūd and a Muʿtazilī theologian. He is credited with spreading the *madhab* in Shirāz.

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Al-Shīrāzī, who does not mention Abū al-Faraj’s date of death, says that he used to engage in arguments with Abū al-Faraj in Shīrāz when he was young, which indicates that Abū al-Faraj probably died in the first quarter of the 5th/11th century. At this point, al-Shīrāzī reports that Dāwūd’s madhhab died out in Baghdad and that only a handful of Abū al-Faraj’s associates in Shīrāz remained.

3. Dāwūd ibn Ibrāhīm ibn Yūsuf al-Iṣbahānī (d. after 425/1033):
Dāwūd ibn Ibrāhīm was a knowledgeable scholar and prolific transmitter of Ḥadīth who followed the madhhab of Dāwūd. Dāwūd apparently lived in Seville.

4. Muḥammad ibn ‘Abd Allāh ibn Ṭālib (d. after 420/931):
Originally from Basra, Muḥammad ibn ‘Abd Allāh traveled frequently to the eastern part of the Muslim world where he studied with many notable scholars. Ibn Bashkuwāl reports that Muḥammad followed Dāwūd’s madhhab and traveled to Andalus on business in 420/931.

5. Masʿūd ibn Sulaymān ibn Muflit (d. 426/1035):
Masʿūd ibn Sulaymān ibn Muflit – a teacher of Ibn Ḥazm, who included him among the mujtahid scholars of his time – was known to be a Dāwūdī scholar who rejected taqlīd. Ibn Muflit was known for selecting from different views (al-ikhtiyār) and adherence to the zāhir (al-akhdh bi-l-zāhir).

6. Ibrāhīm ibn Āḥmad ibn al-Ḥasan al-Rubāʿī (fl. around 438/1046):

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288 Al-Shīrāzī, Ṭabaqāt, p. 179.
289 Ibid., p. 179.
291 Ibid., vol. 2, pp. 598-99. In fact, Ibn Bashkuwāl, who describes Muḥammad as Zāhirī, says that he [Muḥammad] was following madhhab Dāwūd al-qiyāsī. It is not clear here, as we have said earlier, whether this means that Muḥammad was considered a Zāhirī just on the ground of his rejection of qiyās as Dāwūd, or because he also accepted other legal doctrines of Dāwūd.
Ibrāhīm ibn Aḥmad apparently died not long before Ibn al-Nadīm was writing his *Fihrist*. Ibn al-Nadīm describes al-Rubā‘ī as a Dāwūdī scholar who migrated from Baghdad to Egypt where he died. Ibn al-Nadīm also reports that al-Rubā‘ī wrote a work in which he refuted *qiyās* (*Kitāb al-I’tibār fī Ibṭāl al-Qiyās*).  

7. **Ibn al-Khallāl** (*fl.* around 438/1046):  

Ibn al-Nadīm mentions Ibn al-Khallāl among the Zāhirī scholars and attributes to him a number of works, one of which is on *Ibtāl al-Qiyās*, and another, probably a book, on *uṣūl al-Fiqh* (called *Na’t al-Ḥikma fī Uṣūl al-Fiqh*).  

8. **Abū Sa‘īd al-Raqqī** (*fl.* around 438/1046):  

According to Ibn al-Nadīm, Abū Sa‘īd followed the *madhhab* of Dāwūd and compiled many works, one of which is on *uṣūl al-fiqh*, and contained chapters similar to those of Dāwūd’s own work on *uṣūl*.  

9. **Hishām ibn Ghālib ibn Hishām** (d. 438/1046):  

Known for his knowledge and intelligence, Hishām ibn Ghālib was a scholar from Granada who secretly followed Dāwūd’s *madhhab*.  

10. **Muḥammad ibn ‘Umar al-Dāwūdī** (*fl.* before 450/1058):  

Muḥammad ibn ‘Umar al-Dāwūdī is probably the Abū Bakr ibn al-Akhḍar, author of the *Tārīkh Ahl al-Zāhir* whom al-Shīrāzī mentions in the fifth *ṭabaqa* of Zāhirī scholars. Abū Bakr, who was a judge, was among the notable witnesses of the chief judge in Baghdad. He appears in the *Tārīkh Baghdaḏ* as al-Khaṭīb’s al-Baghdādī’s source for the dates of death of some Zāhirī scholars (such as Ibn al-Mughallīs and Ḥaydra al-

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295 Ibid., p. 218.  
296 Ibid., p. 218.  
Zanūdī).\(^{299}\) Al-Shīrāzī does not report Abū Bakr’s date of death, but since he was a student of ‘Abd al-‘Azīz al-Jazarī, who died in the late 4\(^{th}/10\)th century and was an informant of al-Khaṭīb al-Baghdādī, he likely died before or during the first half of the 5\(^{th}/11\)th century.

11. **Jābir ibn Ghālib ibn Sālim** (d. before 456/1064):

A contemporary of Ibn Ḥazm who apparently admired him, Jābir ibn Ghālib is reported to have been a Zāhirī scholar and traditionist from Seville.\(^{300}\)

12. **Ibn Ḥazm al-Andalusī** (d. 456/1064):

We will discuss Ibn Ḥazm in detail in a later section.

13. **Sālim ibn Aḥmad ibn Fāṭḥ** (d. 461/1068):

According to al-Marrākūshī, Sālim ibn Aḥmad, who was from Cordoba, was a friend of Ibn Ḥazm who followed Ibn Ḥazm’s madhhab and transcribed many of his works.\(^{301}\)

14. **Yūsuf ibn ‘Abd Allāh ibn Muḥammad** (d. 463/1070):

Yūsuf ibn ‘Abd Allāh, or the famous scholar Ibn ‘Abd al-Barr, was a prolific Andalusian scholar who moved from one school of law to another until he ended up as a Mālikī. He is reported to have started his career as a Zāhirī. Ibn Ḥazm used to admire him as a mujtahid scholar.\(^{302}\)

15. **Muḥammad ibn Ibrāhīm ibn Fāris** (d. 474/1081):


\(^{301}\) Al-Marrākūshī, *Dhayl*, vol. 4, p. 1.

Muḥammad ibn Ibrāhīm was a bookseller in Baghdad who traveled to Egypt, Shīrāz, and Damascus to learn traditions. Muḥammad, who is identified as having been Dāwūdī Żāhirī, was not highly regarded by the Ḥadīth critics of the time.303

16. Abū ‘Alī al-Dāwūdī (d. before 476/1083):
Abū ‘Alī al-Dāwūdī – whom al-Shīrāzī mentions as his contemporary – was a judge in Fīrūzābād who had studied with ‘Abd al-‘Azīz al-Jazārī.304

17. Al-Faḍl ibn ‘Alī ibn Ḥazm (d. 479/1086):
Son of the celebrated Żāhirī scholar Ibn Ḥazm who completed his father’s *magnum opus* in jurisprudence – *al-Muḥallā bi-l-Āthār*, al-Faḍl, who resided in Cordoba, followed in the footsteps of his father as a Żāhirī scholar.305

18. Farḥ ibn Ḥadīda (d. 480/1087):
A contemporary of Ibn Ḥazm, Farḥ ibn Ḥadīda is reported to have been a Żāhirī scholar and expert on Qur’ān recitation whom al-Muʿtaḍid bi-Allāh (ruler of Seville from 433/1041 to 461/1068) appointed as Qur’ān reciter in a mosque he built for his mother.306

19. Muḥammad ibn Futūḥ ibn Ḥumayd (d. 488/1095):
A pious, reliable, and studious scholar of Ḥadīth, Muḥammad ibn Futūḥ, known as al-Ḥumaydī, studied and taught Ḥadīth in many regions in the Muslim world, including Andalus, Egypt, the Ḥijāz, Syria, and Iraq. Muḥammad ibn Futūḥ was usually regarded as Ibn Ḥazm’s most important student (and also a student of Ibn ‘Abd al-Barr),307 but he apparently never openly admitted his Dāwūdī orientation. Al-Ḥumaydī is reported to have

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303 Ibn Ḥajar, *Lisān*, vol. 5, p. 36.
304 Al-Shīrāzī, *Ṭabaqāt*, p. 179.
authored works in various genres, including Ḥadīth, uṣūl al-fiqh, history, and mirrors for princes.

Al-Ḥumaydī died in Baghdad in 488/1095 and was buried, in accordance with his will, next to the grave of the Ṣūfī Bishr al-Ḥāfī. 308

20. ‘Alī ibn Sa‘īd al-‘Abdarī (d. after 491/1097):

A notable student of Ibn Ḥazm who came from Majorca and later traveled eastwards, ‘Alī is said to have abandoned Zāhirism for Shāfi‘ism at the hands of the Shāfi‘ī scholar Abū Bakr al-Shāshī (d. 507/1113). He was also a teacher of the Mālikī scholar Abū Bakr ibn al-‘Arabī. 309

21. Aḥmad ibn Muḥammad ibn Šāliḥ al-Manṣūrī (d. late 5th/11th century):

We noted earlier that Aḥmad ibn Muḥammad was a student of a slave that his father had manumitted and who had studied with Ibn al-Mughallis. Aḥmad also seems to have studied with another follower of Dāwūd – al-Qāsim ibn Wahb al-Dāwūdī. 310 According to Ibn Ḥajar, Aḥmad went to Bukhāra in the year 460/1067 when al-Ḥākim al-Naysābūrī was there and was appointed judge of Arjān. 311 Apparantly, al-Manṣūrī also resided in Sind for some time. 312 Ibn Ḥajar reports that al-Manṣūrī was an imām following Dāwūd’s

310 For this, see al-Dahabī, Siyār, vol. 13, p. 115, where al-Dahabī, in Muḥammad ibn Dāwūd’s biography, mentions a chain of transmission of a Prophetic tradition that is apparently predominantly Zāhirī starting from Ibn Dāwūd. I could not find al-Qāsim – who could be in any biographical dictionary, nor did I find the intermediary between him and Muḥammad ibn Dāwūd – Wahb ibn Jāmi‘ al-‘Aṭṭār, who could be al-Qāsim’s father or, as al-Dahabī says, the same Muḥammad ibn Jāmi‘ al-Ṣaydalānī with whom Muḥammad ibn Dāwūd was in love. Al-Manṣūrī transmitted this tradition to a certain Muḥammad ibn Ja‘far al-Zāḥīrī, another possible Zāhirī scholar. Muḥammad ibn Ja‘far himself was probably from Shīrāz, as the nisba of his grandson (and al-Dahabī’s informant of the Prophetic tradition) – ‘Abd al-Karīm ibn Muḥammad ibn Aḥmad al-Shīrāzī – suggests.
312 Ibn al-Hayy al-Ḥasanī refers to Ahmad as al-Manṣūrī al-Sindī (al-Ḥasanī, Nuzhat al-Khawāṣīr, p. 65). Al-Ḥasan also mentions that al-Muqaddasī (d. 380/990), in his Aḥsan al-Taqāsīm, reported that he had met with Aḥmad in al-Manṣūra (Aḥsan al-Taqāsīm, p. 65). I could not find this reference in the edition of Aḥsan al-Taqāsīm that is available to me.
madhhab. Al-Manṣūrī was held responsible for fabricating a false tradition on account of his affiliation with the Žāhīrī madhhab. Ibn al-Nadīm attributes to him some works the titles of which are not indicative of their contents.

It is remarkable that what we know about many of these twenty-one scholars of the 5th/11th century (whose affiliation with the madhhab of Dāwūd is reported) is very scanty; sometimes even their dates of death are not reported. Additionally, despite what al-Shīrāzī says about the extinction of the madhhab in Baghdad after the students of ‘Abd al-‘Azīz al-Jazarī, more than one quarter of these Žāhīrī scholars still lived in or originated from Iraq (mostly Baghdad, but also Basra). More Žāhīrī scholars appear in the eastern part of the Muslim world than in the previous century. In Egypt and Syria only two scholars are reported to have followed the madhhab of Dāwūd. Working as judges remains the profession of those scholars whose occupations are reported to us, and almost a quarter of them were known as having been active in Ḥadīth transmission. Two scholars are reported to have been secretly affiliated with the madhhab of Dāwūd. And although the nisba Dāwūdī remains in this century, Žāhīrī now begins to appear more often. Finally, some of these scholars are reported to have authored some legal works, most of which are about uṣūl al-fiqh and the refutation of qiyās.

The increasing number of Žāhīrī scholars associated with Ḥadīth transmission and the displacement of the nisba “Dāwūdī” by “Žāhīrī” in reference to these scholars could be associated with the most significant fact about the Žāhīrī madhhab in the 5th/11th century: the proliferation of Žāhīrī scholars in Andalus and the advent of Ibn Ḥazm al-

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313 Burhān al-Dīn al-Ḥalabī, al-Kashf al-Ḥathīḥ, pp. 79-80. In this tradition the Prophet is reported to have said: “Iblīs was the first one who practiced qiyās, so do not practice it.”
Andalusī. Most of the Andalusian Zāhirī scholars were associated with Ibn Ḥazm, either as friends or contemporaries, or as his students. Even more interesting is the contact and possibly mutual influence between Andalusian Zāhirīs and Iraqi Zāhirīs was occurring simultaneously. Zāhirī scholars from Iraq went to Andalus, while a student of Ibn Ḥazm – al-Ḥumaydī – moved eastwards and resided in Baghdad.

In this century, moreover, we find references for the first time to books that Zāhirī scholars copied and transmitted and that have survived. These are works of Ibn Ḥazm al-Andalusī who left behind substantial writings on different genres. Unfortunately, given the lack of any reference to attempt by Zāhirī scholars to present and transmit their knowledge in a systematic and institutionalized way, we are left in the dark regarding how they were transmitted to later generations. This notwithstanding, the distribution of Zāhirī scholars in the Muslim world at that time, and Ibn Ḥazm’s stature and accomplishments warrant considering the 5th/11th century the golden age of the Zāhirī madhhab.

Now we move on to the 6th/12th and the 7th/13th centuries.

1. **Sulaymān ibn Sahl ibn Ishāq** *(fl. before mid-6th/12th century)*:

Nothing is reported about Sulaymān ibn Sahl other than that he was a Zāhirī scholar.315

2. **Bakr ibn Khalaf ibn Sa‘īd** *(d. after 505/1111)*:

Bakr ibn Khalaf was a Zāhirī scholar from Seville who is reported to have rejected *taqlīd* and *ra’y* and adhered to Ḥadīth.316

3. **Muḥammad ibn Ṭāhir ibn ‘Alī ibn Aḥmad** *(d. 507/1113)*:

Known as Ibn al-Qaysarānī, Muḥammad ibn Ṭāhir was a scholar from Jerusalem who traveled to many centers of knowledge in the Muslim world in his time. Muḥammad was also active in memorizing and transmitting traditions. Muḥammad is reported to have been Dāwūdī (kaṇa Dāwūdī al-madhhab).\textsuperscript{317}

4. ‘Abd Allāh ibn Ṭāhir ibn Saʿīd ibn Yarbū (d. 522/1128):

Al-Ḍabbī, our source on ‘Abd Allāh ibn Ṭāhir, only mentions that he was a Zāhirī faqīh and traditionist.\textsuperscript{318}

5. Muḥammad ibn Saʿdūn ibn Murajjā al-ʿAbdarī (d. 524/1129):

Muḥammad ibn Saʿdūn ibn Murajjā was a great Andalusian scholar of Ḥadīth and jurist who followed the madhhab of Dāwūd al-Iṣbahānī. Ibn al-Murajjā – who was a student of Ibn Ḥazm’s student al-Ḥumaydī\textsuperscript{319} – was known for his vast knowledge of Ḥadīth and biting comments on earlier jurists and scholars. He traveled eastwards, resided in Syria for a few years, and died in Baghdad. According to Ibn ‘Asākir, Ibn al-Murajjā used to give ḥażāfūs following the madhhab of Dāwūd.\textsuperscript{320}

6. ‘Abd Allāh ibn Mūsā (d. 526/1131):

‘Abd Allāh ibn Mūsā was a Cordoban scholar of Ḥadīth who was believed to be Zāhirī.\textsuperscript{321}

7. Muḥammad ibn al-Ḥusayn al-Anṣārī (d. 532/1137):

Muḥammad ibn al-Ḥusayn, also known as Ibn Ilḥād ‘Ashra,\textsuperscript{322} was a Zāhirī scholar from Almería who was known for his interest in and knowledge of Ḥadīth.\textsuperscript{323}

8. Muḥammad ibn al-Ḥasan [or ibn al-Ḥusayn] ibn Ṭāhir (d. 537/1142):

\textsuperscript{317} Al-Dhahabī, \textit{Tadhkirat}, vol. 4, p. 29. Al-Dhahabī attributes this information to al-Samʿānī, who learned it from the Shāfiʿī scholar Abū al-Ḥasan al-Karajī (d. 532/1137).

\textsuperscript{318} Al-Ḍabbī, \textit{Bughyat al-Multamis}, p. 294.

\textsuperscript{319} Al-Dhahabī, \textit{Iḥar}, vol. 4, p. 57.


\textsuperscript{321} Ibn Bashkuwāl, \textit{Ṣila}, vol. 1, p. 294.

\textsuperscript{322} \textit{Biblioteca de al-Andalus}, vol. 3, p. 486.

\textsuperscript{323} Ibn Bashkuwāl, \textit{Ṣila}, vol. 2, pp. 581-82.
Originally from Majorca, Muḥammad ibn al-Ḥasan went to Egypt where he studied with many scholars, then back to Andalus where he resided in Granada until his death. Al-Maqqarī mentions that Muḥammad, out of fear of ʿAlī ibn Yūsuf ibn Tashfin (d. 499/1106) who was Mālikī, did not declare his affiliation with the Zāhirī madhhab and worked in teaching Ḥadīth. Ibn al-Khaṭīb mentions that Muḥammad was Zāhirī al-madhhab Dāwūdiyyih.

9. Aḥmad ibn Saʿīd ibn Ḥazm (d. 540/1145):

Grandson of Ibn Ḥazm, Aḥmad ibn Saʿīd was a staunch Zāhirī like his own father and grandfather. Al-Dhahabī describes Aḥmad as an accomplished scholar who knew the uṣūl of Zāhirism and defended them. Aḥmad was active in politics, which brought upon him much hardship when he was accused of coordinating a revolt against the ruler of Cordoba of the time.

10. Aḥmad ibn ʿAbd al-Malik ibn Muḥammad (d. 549/1154):

Aḥmad ibn ʿAbd al-Malik – known as Ibn Abī Marwān – was a Zāhirī scholar who resided in Niebla (Labla), followed the teachings of Ibn Ḥazm, and distinguished himself as a scholar of Ḥadīth. He was killed in a revolt of the people of Niebla in 549/1154.

11. Khiḍr ibn Muḥammad ibn Namir (d. 571/1175):

Khiḍr ibn Muḥammad was a Zāhirī scholar from Seville who used to defend Zāhirism. Among his students was Muḥammad ibn ʿAlī ibn ʿUṣfūr, a staunch Zāhirī scholar from Seville.

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326 Al-Dhahabī, Tārīkh, vol. 54, p. 554.
327 Al-Ṣafadī, Wafayāt, vol. 6, p. 391.
328 For this, see Adang, “Zāhirīs,” p. 418.
12. ‘Abd Allāh ibn Muḥammad ibn Marzūq al-Yaḥṣubī (d. before 576/1180):

‘Abd Allāh ibn Muḥammad was known as a Ţāhirī scholar who studied with one of Ibn Ḥazm’s students – Ibn Biryāl – and took great interest in Ibn Ḥazm’s works. ‘Abd Allāh was from Saragossa, migrated to Egypt, and died in Damascus. Al-Ghalbazūrī believes that it was ‘Abd Allāh who spread Ibn Ḥazm’s Ţāhirism in the Muslim East.333

13. ‘Abd al-Raḥmān ibn Yaḥyā ibn al-Ḥasan (d. 580/1184):

‘Abd al-Raḥmān was a traditionist from Seville who is reported to have followed Ibn Ḥazm’s madhhab.335


A traditionist from Seville, ‘Abd Allāh was a Ţāhirī scholar and teacher of Sa’d al-Suʿūd ibn Aḥmad (see below).336

15. Saʿd al-Suʿūd ibn Aḥmad ibn Hishām (d. 588/1192):

Saʿd al-Suʿūd was known to be a staunch Ţāhirī scholar who used to defend his madhhab. He was also known for his interest in and adherence to Ḥadīth.337

16. ‘Abd Allāh ibn Bakr ibn Khalaf (d. c. 588/1192):

Son of Bakr ibn Khalaf (see above), ‘Abd Allāh followed in the footsteps of his father as a Ţāhirī scholar. He was also known for his transmission of Ḥadīth.338

17. Aḥmad ibn Ṭāhir (d. before 595/1198):

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331 Ibid., vol. 1, p. 60.
332 Al-Marrakushi, Dhayl, vol. 6, p. 456.
336 Al-Marrākushi, Dhayl, vol. 4, pp. 185-86.
337 Ibid., vol. 4, pp. 18-21.
338 Ibid., vol. 4, pp. 185-87. Al-Marrākushi does not mention a date of death for ‘Abd Allāh, but he states that he studied with Saʿd al-Suʿūd ibn ‘Ufayr, who died in 588/1192 (ibid., vol. 4, pp. 18-21).
Known as Ibn Shubrīn, Aḥmad ibn Ṭāhir was a teacher of the famous Mālikī scholar and judge ʿIyāḍ ibn Mūsā al-Yahṣubī. Al-Qāḍī ʿIyāḍ, who evidently held Aḥmad in high esteem, praised his for his competence in Ḥadīth transmission and study. He also mentions that Aḥmad refused to serve as judge. As a jurist, Aḥmad was given to Zāhirism, although al-Qāḍī ʿIyāḍ does not attribute any legal work to him.339

18. Sulṭān Abū Muḥammad Yaʿqūb ibn Yūsuf (d. 595/1198):
According to Ibn Kathīr, Yaʿqūb ibn Yūsuf was a Mālikī scholar who became “Zāhirī Ḥazmī” and ended up as a Shāfīʿī.340

19. Sufyān ibn Aḥmad ibn ʿAbd Allāh (d. before 599/1202):
According to al-Ḍabbī, Sufyān ibn Aḥmad, also known as Ibn al-Imām,341 was a traditionist who was given to Zāhirism and resided in Murcia.342 Among his teachers was Abū al-Qāsim ibn Ḥubaysh, a student of Muḥammad ibn al-Ḥusayn al-Anṣārī (see above) who may have been Zāhirī himself.343

20. ʿAbd al-Ṣamad ibn Aḥmad al-Maqbarī (d. late 6th/12th century):
ʿAbd al-Ṣamad al-Maqbarī was a Zāhirī scholar who resided in Granada. He was known for his interest in theology and knowledge of Ḥadīth and fiqh.344

21. Ibrāhīm ibn Khalaf ibn Manṣūr (fl. 605/1208):
A scholar of Egyptian origin (from Sanhūr, in the Egyptian Delta) who traveled to various corners of the Muslim world, Ibrāhīm ibn Khalaf had a very bad reputation as a

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339 Al-Qāḍī ʿIyāḍ, Fihrist, pp.84-85.
341 For this, see Adang, “Zāhirīs,” p. 422.
342 Al-Ḍabbī, Bughyat, p. 263.
343 For this, see Adang, “Zāhirīs,” p. 423.
liar, charlatan, and user of drugs, although some scholars of Ḥadīth defended him.

According to Ibn Ḥajar, Ibrāhīm was Zāhirī and followed the teachings of Ibn Ḥazm. 345

22. ‘Abd Allāh ibn Sulaymān ibn Dāwūd (d. 612/1215):

‘Abd Allāh ibn Sulaymān was a judge in many cities in Andalus – including Cordoba, Seville, and Mersile – who was given to Zāhirism. He studied with many prominent scholars of the age and was known for his knowledge of various disciplines of Islam. 346

Many works are attributed to ‘Abd Allāh, most of which are about Ḥadīth.

23. Dāwūd ibn Abī al-Ghanā’im (d. 615/1218):

Dāwūd ibn Abī al-Ghanā’im was a Baghdādī scholar who was known for following Dāwūd al-Zāhirī in jurisprudence. 347

24. ‘Abd al-‘Azīz ibn ‘Alī (d. 621/1224):

Known as Ibn Ṣāḥib al-Radd, 348 ‘Abd al-‘Azīz ibn ‘Alī was a competent Zāhirī scholar from Seville. Al-Dhahabi mentions that he transmitted from him. 349

25. Aḥmad ibn Yazīd ibn ‘Abd al-Raḥmān (d. 625/1228):

A descendant of the famous traditionist Baqī ibn Makhład (d. 276/889), 350 Aḥmad was a very influential scholar and judge. He is reported to have inclined to Zāhirism. 351

26. ‘Alī ibn ‘Abd Allāh ibn Yūsuf (d. 629/1231):

345 Ibn Ḥajar, Lisān, vol. 1, p. 151. Ibn Ḥajar obviously disliked Ibn Dihya and regarded him as a liar, whereas he defends Ibrāhīm whom he thought was unjustly humiliated by al-Malik al-Kāmil (more about him below). Ibn Ḥajar explains that the opinion of people of the Maghrib on Ibn Dihya is different from the opinion of the Egyptians.


348 For this, see Adang, “Zāhirīs,” p. 443.


350 On Baqī ibn Makhład’s role in introducing Ḥadīth in al-Andalus, see Fierro, “Introduction,” pp. 78-79.

‘Alī ibn ‘Abd Allāh – known as Ibn Khaṭṭāb al-Mu‘āfīrī – was a scholar who excelled in Ḥadīth and resided in Seville. He is reported to have been inclined to Zāhirism.352

27. Aḥmad ibn Muḥammad ibn ‘Umar (d. c. 630/1232):

Al-Marrākūshī reports that Aḥmad ibn Muḥammad was an Andalusian Zāhirī scholar who traveled eastwards, studied with several notable scholars, and returned to Andalus.353

28. ‘Umar ibn al-Ḥasan (d. 633/1235):

‘Umar ibn al-Ḥasan, known as Abū al-Khaṭṭāb Ibn Dihya, was a scholar of Ḥadīth who was active mainly in the Maghrib and Andalus. He is reported to have been born in Sabta, Andalus, and perhaps worked as a judge there.354 Ibn Dihya, whose genealogy Ibn Ḥajar found suspicious,355 was known to be Zāhirī, and one of his contemporaries also mentions that he (Ibn Dihya) used to speak ill of the (early) imāms.356

While in Egypt, Ibn Dihya was a mentor to al-Malik al-Kāmil (who later became ruler of Egypt from 615/1218 to 635/1238). According to this report, another Zāhirī scholar, Ibrāhīm ibn Khalaf (more about him below) told Andalusian scholars that Ibn Dihya was an amateur transmitter of Ḥadīth and that his genealogy was uncertain. Ibn Dihya complained to al-Kāmil who then humiliated Ibrāhīm and expelled him from Egypt. Later on, Ibn Dihya’s relationship with al-Kāmil deteriorated when it was brought to the latter’s attention that he used to confuse traditions.357

29. Ibrāhīm ibn Muḥammad ibn Yūsuf al-Anṣārī (d. after 637/1239):

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355 Dihya al-Kalbī was a Companion of the Prophet whom the Prophet is reported to have sent to the Byzantine Emperor, and whose form Jibrīl reportedly used to assume when he appeared before the Companions. Dihya died in the Caliphate of the Umayyad Mu‘awiya ibn Abī Sufyān (r. 41-60).
Ibrāhīm ibn Muḥammad was a Zāhirī scholar and an imām of prayers in Seville.358

30. ‘Umar ibn Aḥmad ibn ‘Umar ibn Mūsā (d. 637/1239):
Also from Seville, al-Marrākushī reports that ‘Umar was a Zāhirī scholar who evidently had interests in the Qur’ān and Ḥadīth.359

31. Aḥmad ibn Muḥammad ibn al-Rūmiyya (d. 637/1239):
According to al-Dhahabī, Aḥmad ibn Muḥammad, known as Ibn al-Rūmiyya, started his career as a Mālikī scholar and then became a staunch Ḥazmī Zāhirī.360 Ibn al-Rūmiyya, who was a student of Ibrāhīm ibn Muḥammad (see above) studied with scholars of Ḥadīth in Spain, al-Ḥijāz, Iraq, and Egypt. In addition to piety and uprightness, he was known for his religious knowledge (especially in Ḥadīth), and his vast knowledge of herbs (a’shāb; hence his laqab, al-Nabāṭī).361 Many works are attributed to Ibn al-Rūmiyya in various genres of religious and scientific knowledge.362

32. ‘Umar ibn Aḥmad ibn ‘Umar (d. 637/1239):
A-Marrākushī reports that ‘Amr ibn Aḥmad was a Zāhirī scholar from Seville. ‘Umar was a student of Ibn Buryāl – Ibn Ḥazm’s student – and a teacher of Ibn Sayyid al-Nāṣ (see below). He was also known for his knowledge of Ḥadīth.363

33. Muḥammad ibn Aḥmad ibn ‘Abd Allāh (d. 659/1260):
Known as Ibn Sayyid al-Nāṣ, Muḥammad ibn Aḥmad was an Andalusian Zāhirī scholar who received ijāzas to transmit Ḥadīth compilations from scholars in various regions of the Muslim world. Ibn Sayyid al-Nāṣ was known for his vast knowledge of Ḥadīth and

361 Al-Dhahabi, Tadhkirat, vol. 4, p. 146.
362 For this, see Ghalbazūrī, al-Madrasa al-Zāhiriyya, pp. 351-53.
before his death he became the khaṭīb of Tūnis. Al-Dhabābī – who received an ijāza from Ibn Sayyid al-Nāṣ – mentions that the latter was a Zāhirī, following the method of Abū al-ʿAbbās al-Nabātī (or Ibn al-Rūmiyya, see above).364 Al-Suyūṭī reports that Ibn Sayyid al-Nāṣ was the last great scholar of Ḥadīth in the Maghrib.365

34. ʿAḥmad ibn Muḥammad ibn Ṣābir (d. 666/1267):

Known as Ibn Ṣābir al-Qaysī, ʿAḥmad started his career as a Zāhirī scholar but later abandoned the madhhab. He was also an accomplished scholar of Ḥadīth who traveled to the East and studied there with many scholars. ʿAḥmad died in Egypt in 666/1267.366

35. ʿAḥmad ibn Muḥammad ibn Mufarrij (d. c. 666/1267):

Mentioned by Abū al-Ḥasan al-Ruʿaynī in his Barnāmaj al-Shuyūkh among his teachers, Ibn Mufarrij was Sunnī scholar who adhered to the zāhir and had interest in Ḥadīth.367

36. ʿAbd al-Muhaymin ibn Muḥammad al-Ashjaʿī (d. 697/1297):

ʿAbd al-Muhaymin was a Zāhirī scholar and poet who used to defend Ibn Ḥazm and Zāhirism. He died in Fās in 697/1297.368

In the 6th/12th and 7th/13th century we have thirty-six Zāhirī scholars, the majority of whom lived in various cities of Andalus (notably Seville), while the rest were operating mainly in the Maghrib and Egypt, with a few scholars in Syria and Iraq. Although the professions of most of these scholars are not reported (with the exception of two judges and a seller of herbs), some of them were active participants in politics and in direct contact with their rulers.

365 Al-Suyūṭī, Taḥqīqāt, p. 534.
367 Al-Ruʿaynī, Barnāmaj, p. 142.
Remarkably, the vast majority of them were known for their activity in Ḥadīth transmission. Additionally, in these two centuries, only two scholars are referred to as Dāwūdī, and one as Dāwūdī Zāhirī. Many are described either as Ḥazmī Zāhirī, or were students of Ibn Ḥazm or of one of his students. Notably, the nisba Dāwūdī Ḥazmī does not appear at all. Furthermore, chains of Zāhirī scholars start to emerge again in these two centuries. Ibn Ḥazm’s knowledge was passed on to al-Ḥumaydī who passed it on to Ibn al-Murajjā. Also, Ibn Sayyid al-Nās studied the madhhab with Ibn al-Rūmiyya and with a student of one of Ibn Ḥazm’s students, and he in turn taught it to Ibn Sa’d al-Anṣārī (more about him below), who then taught it to a certain Aḥmad al-Qaṣīr. These Zāhirī scholars were not confined to Andalus. Al-Ḥumaydī, a student of Ibn Ḥazm, moved to Baghdad, probably after the latter’s death, and his student Ibn al-Murajjā traveled to Syria and Baghdad. Also, ‘Amr ibn Marzūq, who studied with Ibn Ḥazm’s student Ibn Buryāl, traveled to Egypt and Syria. Ibn al-Rūmiyya traveled to Egypt, the Ḥijāz and Iraq. This indicates that Ibn Ḥazm’s teachings reached centers in the central and eastern parts of the Muslim world almost immediately after his death, and influence of his students continued to infiltrate these centers for some time after his death. Furthermore, it is only at this point that we can speak of a homogeneous group of Zāhirī scholars who had a similar profile as transmitters and scholars of Ḥadīth and shared a connection with a common teacher whose books they copied and spread. Remarkably, these scholars do not seem to have been interested in creating institutions that would have ensured the continuity of the madhhab. Finally, although there are cases of Zāhirī scholars hiding their true legal affiliation, we have seen, for the first time, a Zāhirī scholar giving fatwās according to Dāwūd’s madhhab.

369 For other possible chains of transmission of Zāhirī knowledge, see Adang, “Zāhirīs.”
Now we move on to all remaining scholars who are reported to have had an affiliation with Zāhirism.

1. Āḥmad ibn Muḥammad ibn Ḥazm (d. before 703/1303):

Āḥmad ibn Muḥammad was a skillful scholar of language from Seville who is reported to have authored a book to defend Ibn Ḥazm against the allegations of Ibn al-‘Arabī.370

2. Mufarrīj ibn Sa‘āda (d. before 703/1303):

According to al-Marrākushī, Mufarrīj ibn Sa‘āda was a Zāhirī scholar of Ḥadīth.371

3. Muḥammad ibn ‘Alī al-Bayāsī (d. 703/1303):

Known as Abū ‘Abd Allāh al-Gharnāṭī, Muḥammad was a scholar of Ḥadīth who adhered to the Zāhirī madhhab, traveled eastwards to study Ḥadīth, and died in Egypt.372

4. Muḥammad ibn Muḥammad ibn Sahl (d. 730/1329):

Known as al-Wazīr ibn Sahl, Muḥammad came from a famous family in Granada and traveled eastwards where he met with notable scholars in many places, including Damascus and Cairo. Muḥammad was active in the politics of the day and was known for his vast knowledge and prestige.373

5. ‘Abd al-Raḥīm ibn al-Ḥasan al-Tinmālī (d. 741/1340):

According to al-Ghalbazūrī, Ibrāhīm ibn al-Ḥasan was a Zāhirī scholar who used to defend Ibn Ḥazm. He died in Malaga in 741/1340.374

6. Muḥammad ibn Yūsuf ibn ‘Alī Abū Ḥayyān (d. 745/1344):

371 Ibid., vol. 7, p. 265.
374 For this, see Ghalbazūrī, al-Madrasha al-Zāhiriyya, p. 373, where al-Ghalbazūrī cites a book, edited by ‘Abd al-Salām Ṣhaqqūr, with new entries from Ibn al-Khaṭīb’s Ḥāja (reference is to pp. 233-34 in this book). I could not get a copy of this work.
Known as Abū Ḥayyān al-Naḥwī, Muḥammad was a famous scholar from Granada and studied with many scholars in Andalus, the Maghrib, and Egypt. In Egypt, he was close to Egyptian rulers who appointed him as a teacher in several schools and mosques. He taught many students and authored many books on tafsīr, Ḥadīth, language, history, and literature. Al-Maqqarī mentions that he abandoned Zāhirism for Shāfi‘ism.

7. ‘Alī ibn Ibrāhīm ibn Sa‘d al-Anṣārī (d. 774/1372):
‘Alī ibn Ibrāhīm was a staunch Zāhirī scholar who used to vigorously defend the Zāhirī madhhab and is reported to have copied most of Ibn Ḥazm’s works. ‘Alī was a student of Ibn Sayyid al-Nās, and teacher of a scholar named Aḥmad al-Qaṣīr, who studied the madhhab of the Ahl al-Zāhid with him.

8. Mūsā ibn Alfāfā (d. 788/1386):
Mūsā ibn Alfāfā is reported to have been a partisan of the Zāhirīs (kāna yata‘ṣṣabū lahum).

9. Muḥammad ibn Muqbil al-Turkī (d. 796/1393):
According to Ibn Ḥajar, Muḥammad ibn Muqbil showed interest in legal matters from an early age, admired the Zāhirī madhhab and supported it.

10. Aḥmad ibn Ṭūghān ibn ‘Abd Allāh al-Shaykhūnī (d. 808/1405):
Ibn Ḥajar reports that Aḥmad ibn Ṭūghān used to frequent the Ahl al-Zāhid.

11. Aḥmad ibn Muḥammad ibn Ismā‘īl (d. 808/1405):

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375 For Ibn Ḥayyān’s life and career, see al-Maqqarī, Naḥḥ, vol. 2, pp. 535-84.
377 Ibn Ḥajar, Inbā‘, vol. 1, p. 45.
379 Ibid., vol. 1, p. 484.
Ahmad ibn Muḥammad ibn Ismā‘īl – known as Ibn al-Burhān al-Ẓāhirī – is reported to have been a Shāfi‘ī scholar until he met a Ẓāhirī scholar who introduced him to the views of Ibn Ḥazm. Ibn al-Burhān is said to have liked those views so much that he became a Ẓāhirī himself. Later, he admired Ibn Taymiyya, so much so that he came to believe that nobody knew more than Ibn Taymiyya. While Ibn Ḥajar – our source on Ibn al-Burhān – does not indicate his final affiliation, he does categorize him as Ẓāhirī and mentions that he was an authority on the issues about which the Ahl al-Ẓāhir disagreed with the jumhūr, or the majority of scholars of the other Sunnī schools of law.

Ibn al-Burhān actively participated in politics and called for an imām from the tribe of Quraysh to rule the Muslim world with justice. He believed that appointing an imām from Quraysh was “what the religion says, and nothing else could be valid.” As a result, Ibn al-Burhān and his followers, most of whom were religiously-minded people who abhorred the corruption of the time, were flogged and put in jail for three years. Ibn Ḥajar reports that Ibn al-Burhān was far-sighted, for he once warned Ibn Ḥajar against saving cash, predicting that money was going to lose its value. Shortly after his death, Ibn Ḥajar mentions, inflation struck Egypt.

12. Muḥammad ibn Muḥammad ibn Yaʿqūb al-Jaʿbarī (d. 810/1407):
A scholar with good reputation who leaned towards the Ẓāhirī madhhab, Muḥammad was appointed to several government posts in Syria, including working as a judge.

13. Muḥammad ibn Ibrāhīm ibn Aḥmad (d. 832/1428):

381 Ibid., vol. 2, p. 332.
382 Ibid., vol. 2, p. 332.
383 Ibid., vol. 2, p. 333.
384 Ibn Ḥajar, Inbā‘, vol. 2, pp. 332-33. For a detailed study of Ibn al-Burhān’s revolt, see Lutz Wiederhold, “Legal-Religious Elite, Temporal Authority, and the Caliphate in Mamluk Society: Conclusions Drawn from the Examination of a ‘Ẓāhirī Revolt’ in Damascus in 1386.”
385 Ibid., vol. 2, pp. 333-34.
386 Ibid., vol. 2, p. 393.
Muḥammad ibn Ibrāhīm was a Ṣūfī who worked as a hospital manager (nāẓir al-māristān), probably in Egypt. Muhammad reportedly admired the Zāhirī madhhab.387


Aḥmad ibn Ṣābir was a Zāhirī scholar who chose to leave Andalus to Egypt when the Andalusian ruler tried to force him to pray according to the Mālikī madhhab. He remained in Egypt until his death.388

15. Burhān al-Dīn ibn Abī Sharīf al-Maqdīsī (d. 923/1517):

Burhān al-Dīn was a Damascene scholar and Ṣūfī who had Zāhirī leanings.389

From the 8th/14th to the 9th/15th century we find fewer scholars belonging to the Zāhirī madhhab. Andalus remained the stronghold of Zāhirism, although Zāhirī scholars, including Andalusians, were also active in Maghrib and Egypt (and to a lesser extent, Syria). All these scholars were referred to as Zāhirī, and the nisba Dāwūdī does not appear here at all. Some of them are also described as Zāhirī Ḥazmī, and many of those who were not so described were connected to Ibn Ḥazm through some chain of teachers or took great interest in his works. Some of these scholars are also reported to have taken it upon themselves to defend Ibn Ḥazm.

Furthermore, the little we know about these scholars indicates that they were public figures who had relationships with their respective governments. While some of them worked with these governments, others were not on good terms with their rulers. These scholars also continued the interest of previous generations of Zāhirī scholars in Ḥadīth transmission. Many of these scholars are reported – mostly by Ibn Ḥajar – to have

389 Cited in Michael Cook, Commanding Right, p. 355, n. 138. I owe this reference to Prof Michael Cook.
admired the Zāhīrī madhhāb or supported and frequented Zāhīrī scholars. This rather ambiguous way of reporting the affiliation of these scholars does not enable us to be certain about their real legal affiliation; they may well have belonged to other schools of law – especially the Shāfi‘ī school, whose scholars seemed interested in promoting the image of Dāwūd and claimed him among their early scholars (as noted earlier).

Mention should be made here of the celebrated Şūfī master Ibn ‘Arabī (d. 638/1240), who is believed to have been a Zāhīrī in legal matters. While it would be both interesting and instructive to see how Ibn ‘Arabī regarded Zāhīrism – especially since, as we have seen, Zāhīrī scholars from various times and places were given to Şūfism – and how he saw its compatibility with his Şūfī and philosophical views, there is no indication that Ibn ‘Arabī had a significant impact on the legal doctrine of the Zāhīrī madhhāb.390 The same could be said about the Almohads, who are believed to have adopted Zāhīrism as the official madhhāb of their dynasty (which lasted from 514/1120 to 667/1268).391 Therefore, we will not discuss them here.

390 For Ibn ‘Arabī’s Zāhīrism, see Ghalbazūrī, al-Madrasa al-Zāhiriyya, pp. 377ff, and Adang, “Zāhīrīs,” pp. 461-64. This, of course, is not to downplay the importance of studying how Ibn ‘Arabī’s Zāhīrism could have affected his worldview.

391 For the Zāhīrism of Almohads, see ibid., pp. 429ff, and Camilla Adang, “Zāhīris,” pp. 413-17, and 468. For the Zāhīrism of Ya’qūb ibn Yūsuf (d. 595/1199) – the third Muwāhid ruler – see Ibn al-Athīr, al-Kāmil, vol. 10, pp. 161-62, where Ibn Athīr says that the many Zāhīrīs who were in Maghrīb rose in prominence under Ya’qūb and were known as al-Jarmiyya (or al-Kharmiyya, according to another manuscript), a nisba to their head Mūhammad ibn Jarm. This is most likely a corruption: these people were probably known as al-Ḥazmiyya, a nisba to Ibn Ḥazm. There is also some evidence that ‘Aḍūd al-Dawla al-Buwayhī (d. 372/983) was Dāwūd (for this, see al-Muqaddasi, Ahsan al-Taqāṣīm, p. 334), and we have noted that he appointed the Dāwūd Bishr ibn al-Ḥusayn as his chief judge. It is also reported that Zāhīrism was the official madhhāb of al-dawla al-Bihāriyya, which ruled in Sind from 247/861 to 417/1026 (For this, see Şuḥrī al-Maḥmūsānī, Falsafat al-Tashrī’ fi al-Islām, p. 72. I owe this reference to Prof Hossein Modarressi). Generally speaking, the available evidence about the status of the Zāhīrī madhhāb in these dynasties is so meager that we cannot use them to make solid conclusions. Adang’s study of Zāhīrī scholars under Almohad rule, for instance, led her to conclude that “[w]e do not find a significantly greater number of Zāhīrīs in the Almohad period than in the preceding, Almoravid period, when tolerance towards non-Mālikī systems was supposedly limited” (Adang, “Zāhīris,” p. 469).
This leaves us with Ibn Ḥazm, who is regarded as the doyen of the Zāhirī madhhab and who is the only Zāhirī scholar (other than Dāwūd, his son, and some of their students) to whose views later works on furūʿ and usūl al-fiqh make reference. In what follows, we will discuss only those aspects of Ibn Ḥazm’s career and doctrine that relate to Zāhirism before him and how his teachings may have affected it.

III. Ibn Ḥazm al-Andalusī (d. 456/1064):

So much has been written about Ibn Ḥazm al-Andalusī that we need only to mention a few brief facts about him. Ibn Ḥazm was born in 384/994 to a father of Persian origin in Liebla (Arabic Labla, a town not far from Seville) and lived all his life in Andalus (with the exception of a few months in Qayrawān in North Africa). Ibn Ḥazm witnessed the fall of the Umayyad Caliphate in Spain – of which he was a staunch supporter – in 422/1031 and the subsequent establishment of local Muslim dynasties in various parts of Andalus. His father was a wazīr of some Umayyad Caliphs, and he himself served the Umayyads as a wazīr until their fall from power. While this involvement in politics was a source of power and wealth for Ibn Ḥazm’s family in the first part of his life, it later became a source of trouble and suffering for him. Accordingly, he decided to stay away from politics and focus entirely on learning and teaching. As a scholar, his status and fame were known all over Andalus in his lifetime and he used to engage in debates with notable scholars of the day. He was seen by many scholars as a threat, not only to the Mālikī madhhab – which was dominant in Andalus – but also to the entire known legal heritage. This fear was motivated by the fact that Ibn Ḥazm was both prolific – writing
about nearly every genre of religious and some non-religious topics— and skillful in argumentation and disputation, such that his tongue was compared to the sword of al-Ḥājjāj ibn Yūsuf (d. 95/714), the famous general and governor who, by brutality and force, restored the Umayyad rule over Iraq and the Hijāz in 72/691 and 73/692. Andalusians were thus divided on Ibn Ḥazm: the majority regarded him as a deviant scholar with pernicious teachings, while others admired him so much that they believed that he tipped the balance to Andalus (rather than Iraq) as the most prominent center of knowledge in the Muslim world.

Ibn Ḥazm began his life as a Shāfi‘i scholar before converting to Ṭāhirism, which he spent the rest of his life defending and spreading. While Ibn Ḥazm’s biographies do not indicate when this conversion took place, it must have been early enough in his life to allow him to write those extensive works in which he presented his Ṭāhirī views. As for his legal affiliation, Ibn Ḥazm was explicit about his admiration for and affiliation with Ṭāhirism. He speaks about the ašḥāb al-ẓāhir as “ašḥābunā,” or our fellow Ṭāhirīs. He also praises the Ṭāhirīs for being the ones who followed God’s words, who refrained

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392 For a list of Ibn Ḥazm’s works, see al-Dhahabī, Siyar, vol. 18, pp. 193-96. For a chronology of some of these works, see Ljami, Ibn Ḥazm et la Polémique Islamo-Chrétienne dans L’Histoire de L’Islam, pp. 43-79.

393 For an 11th/17th century biography of Ibn Ḥazm, see al-Maqqarī, Nafḥ, vol. 2, pp. 77-85. For an overview of Ibn Ḥazm’s time, life and works, see Sa’īd al-Afghānī, Ibn Ḥazm al-Andalusī, pp. 4-150. Interestingly, the only book of Ibn Ḥazm that Ibn Khayr al-Ishbīlī learned was Risāla fi Faḍl al-Andalus, a work that does not tackle any religious issue (Ibn Khayr, Fahrasa, p. 194). Al-Ishbīlī also studied works by Ibn Ḥazm’s student al-Ḥumaydī: Jadhwa’ al-Muqtabis and al-Jam’ bayna al-ṣaḥīḥayn, works on history and Ḥadīth (ibid., pp. 101 and 195 respectively). Also, the books of some other Ṭāhirīs that Ibn Khayr mentions are not legal works. For example, he studied works on the Prophetic traditions and traditionists (Kitāb al-Du‘af’ wa-l-Mansūbīn ilā al-Bid’a min al-Muhaddithīn and Kitāb al-‘Iīd) written by the Ṭāhirī scholar Zakariyya ibn Yahyā al-Sājī (ibid., p. 178). He also mentions a number of works by Niflawayh (see above), none of which apparently deals with law (ibid., pp. 331, 335, 366). Similarly, he mentions a number of works by the Ṭāhirī scholar about Sa’īd ibn al-A’rābī (Aḥmad ibn Muḥammad ibn Ziyād, see above), all of which apparently deal with asceticism and divine love (ibid., p. 251). Finally, Ibn Khayr studied one of al-Ḥumaydī’s works on Ḥadīth (ibid., p. 101). The chains of transmission of these works do not seem to contain any Ṭāhirī names.

394 For this, see, al-Maqqarī, Naḥf, vol. 2, p. 78.

395 See, for instance, Ibn Ḥazm, Iḥkām, vol. 8, p. 40, and vol. 12, p. 250, where he refers to the Ṭāhirīs as ašḥābunā al-ẓāhirīyyūn.
from asking Him about what did not concern them, and who declared licit or illicit only what God had so declared.\textsuperscript{396}

As for Dāwūd al-Iṣbahānī, Ibn Ḥazm seems to have held him in particularly high esteem. He argues that Dāwūd could not have been more knowledgeable in the Qurʾān, Ḥadīth, \textit{ijmāʿ}, and legal disagreements among the jurists, and could not have been more prolific in his transmission (of Ḥadīth) or sharper in his reason.\textsuperscript{397} He also lists Dāwūd among the early masters of Islamic law who were \textit{mujtahidūn} and did not follow other scholars.\textsuperscript{398} In his \textit{Risāla al-Ṭabīḥa}, he seeks to demonstrate that due to his adherence to the Sunna and \textit{ijmāʿ}, refraining from using his \textit{raʾy}, and avoiding following other scholars, Dāwūd was more worthy of the title of \textit{faqīh} than the eponymous founders of the four Sunnī legal schools.\textsuperscript{399} To the best of my knowledge, Ibn Ḥazm, who does not refrain from criticizing other Ṣāḥibī scholars, aggressively at times, does not disagree with Dāwūd’s views on \textit{uṣūl al-fiqh}. When disagreeing with him on \textit{furūʿ}, however, he either keeps silent or appears keen to not allow this to be a ground for questioning his knowledge as he would readily do with other scholars.\textsuperscript{400} This is remarkable in view of

\textsuperscript{396} Ibn Ḥazm, \textit{Iḥkām}, vol. 2, pp. 1146-47.
\textsuperscript{397} \textit{Ibid.}, vol. 2, p. 840.
\textsuperscript{398} \textit{Ibid.}, vol. 2, p. 850.
\textsuperscript{399} Ibn Ḥazm, \textit{Risāla al-Ṭabīḥa}, p. 47.
\textsuperscript{400} To demonstrate that Ibn Ḥazm was a \textit{mujtahid muṭlaq} who regarded Ṣāḥibīsm a methodology rather than a school of law, the contemporary Egyptian scholar Ibrāhīm Muḥammad ‘Abd al-Raḥīm mentions a long list of legal theoretical and substantive views in which Ibn Ḥazm contradicted Dāwūd and other Ṣāḥibī scholars earlier to him. In most of the theoretical issues that he mentions, Ibn Ḥazm rejects views held by earlier Ṣāḥibī scholars other than Dāwūd. In only one issue related to \textit{ijmāʿ}, Ibn Ḥazm rejects a view attributed to Dāwūd and wonders how he could have held it (\textit{wa-mā nadrī kasyfā walaqū li-abī Sūlaymān hādāh ‘l-wahmu ‘l-ṣāhirī}) (Ibrāhīm Muḥammad ‘Abd al-Raḥīm, \textit{al-Fīr al-Fiqhī li-Ibn Ḥazm al-Ẓāhirī}, pp. 538-48). Ibn Ḥazm does not make similar comments when he disagrees with other Ṣāḥibī scholars, and it is obvious that he is seeking here to implicitly question the attribution of this view to Dāwūd (for Ibn Ḥazm’s discussion of this issue, see \textit{al-Muhallā}, vol. 1, p. 577). When disagreeing with Dāwūd on minor substantial issues, however, Ibn Ḥazm may refrain from commenting on Dāwūd’s view or mention a textual basis on which he could have relied on in a certain issue (for an example of the former case, see Ibn Ḥazm, \textit{al-Muhallā}, vol. 1, p. 170, and of the latter, see \textit{ibid.}, vol. 1, pp. 190 and 213). It must be mentioned here that Ibn Ḥazm’s criticism of other scholar is notably less harsh when he discusses substantive rather than theoretical legal issues.
the fact that he acknowledges that Dāwūd erred in many of his fatwās.\footnote{Ibn Ḥazm, Risāla al-Bāhira, p. 49-50.} He also seems to have had an interest in connecting Andalusian Zāhirī scholars to Dāwūd himself. In his epistle on the merits of Andalus and its scholars,\footnote{Risāla fi Faḍāʿīl al-Andalus wa-Dhikr Rijālīhā.} Ibn Ḥazm – who here seeks to show how Andalusian scholars in different fields of knowledge matched or even excelled their counterparts in the East – compares ‘Abd Allāh ibn Qāsim ibn Hilāl and Mundhir ibn Saʿīd al-Ballūṭī to ‘Abd Allāh ibn al-Mughallis, al-Khallāl, al-Dībājī,\footnote{I could not find a tarjama for al-Dībājī in any biographical dictionary.} and Ruwayn ibn Aḥmad. He adds that Ibn Hilāl, unlike these Zāhirī scholars from Iraq, studied with Dāwūd himself.\footnote{Ibn Ḥazm, Rasāʾīl, vol. 2, p. 187.} Additionally, when it happens that Ibn Ḥazm mentions a view about which earlier Zāhirī scholars had disagreed while his own view agrees with that of Dāwūd, he mentions that the other view was not the one held by Abū Sulaymān, Dāwūd’s kunya.\footnote{See, for example, Ibn Ḥazm, Ḥikām, vol. 8, p. 546. Ibn Ḥazm at times refers to Dāwūd by his name, but more often by his kunya, especially where he refers to Dāwūd’s views that support his. Reference to someone by his kunya usually indicates respect and closeness.} He would also attribute a view to earlier Zāhirīs but mentions Dāwūd in particular.\footnote{Ibn Ḥazm, Ḥikām, vol. 8, p. 546, and vol. 12, p. 391.} This demonstrates not only that Ibn Ḥazm regarded Dāwūd as the master of the madhhab, but also that he believed himself to be connected to Dāwūd through Andalusian scholars who had studied with Dāwūd himself.

It has been noted earlier that Dāwūd’s views found their way to Andalus soon after his death, and that a number of Dāwūdī scholars continued to travel between Andalus and the Muslim East until Ibn Ḥazm’s time. Ibn ‘Abd al-Barr apparently had at his disposal works of furūʿ by Zāhirī scholars in which not only views of Dāwūd, but also agreements and disagreements among Zāhirī scholars are reported. This indicates that there is a good chance that Ibn Ḥazm had first-hand access to Dāwūd’s teachings, either
through teachers or through legal works of Dāwūd and his students. In fact, Ibn Ḥazm seems to have been very familiar with matters of consensus and disagreement among earlier Zāhirī scholars, and he does point out when only some earlier Zāhirī scholars held a particular view.  

What, then, are the views that Ibn Ḥazm believed all Zāhirīs shared? In other words, what, in Ibn Ḥazm’s view, did it mean to be Zāhirī? While a thorough answer to this question is beyond the scope of this project, in what follows I will present what Ibn Ḥazm thought all Zāhirī scholars agreed upon, relying on his seminal work on *uṣūl al-fiqh – al-Iḥkām fī Uṣūl al-Aḥkām*.  

According to Ibn Ḥazm, all Zāhirī scholars agreed that every term is to be interpreted in its widest extent unless it is restricted by a valid indicator (*dalīl*). In other words, a term is always assumed to be general unless valid evidence indicates otherwise. They take commands and interdictions (*al-awāmir wa-l-nawāhī*) to indicate absolute obligation (*wjūb*) unless a valid indicator indicates otherwise. Ibn Ḥazm also asserts that all Zāhirīs agreed that the actions of the Prophet (*al-sunna al-‘amaliyya*) do not in themselves establish obligation; only a Prophetic statement could establish obligation.

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407 Among Ibn Ḥazm’s works that al-Dhahabī lists in his *Sīyar* (vol. 18, p. 194), for instance, is *Mukhtasar al-Mūḍīh*, an abridgment of Ibn al-Mughallīs’ *Mūḍīh*, as al-Dhahabī points out. Ibn Ḥazm also attributes a view to Muḥammad ibn Dāwūd from the latter’s *Uṣūl*, and he may well be quoting it from this work (for this, see Ibn Ḥazm, *al-Muḥallā*, vol. 1, p. 167).

408 See, for example, Ibn Ḥazm, *Iḥkām*, vol. 8, p. 130.


or qualify a Qur’ānic injunction. All Zāhirīs agreed on the supremacy of legal texts as the only sound basis of legal rulings.\footnote{\textit{Ibid.}, vol. 2, p. 931.}

Additionally, Ibn Ḥazm declares that all the Zāhirī scholars held that every statement tells us only what it says and does not indicate anything beyond that.\footnote{Ibn Ḥazm, \textit{Iḥkām}, vol. 2, p. 887.} It may be for this reason that all Zāhirīs agreed on the rejection of \textit{dalīl al-khiṭāb}, which Ibn Ḥazm takes to be the opposite of \textit{qiyās}.\footnote{In \textit{dalīl al-khiṭāb}, instead of ruling on a new case on the basis of a resemblance to an existing one (which \textit{qiyās} does), the opposite ruling or reverse indication for a new case is given on the basis of a difference noted between it and a pre-existing one.} For Ibn Ḥazm, if we take this principle to its logical conclusion, “Zayd has died” would mean that everybody other than Zayd has not died.\footnote{\textit{Ibid.}, vol. 2, p. 921.} It may also be for the same reason that all Zāhirīs rejected \textit{qiyās} and rejected the notion of ‘\textit{illa}, or the rationale of rulings.\footnote{\textit{Ibid.}, vol. 2, p. 1110. In fact, Ibn Ḥazm rejects ‘\textit{illa also as a basis of etymology (ishtiqāq) in language, as in the view that horses are called \textit{khayl} because of their \textit{khuyālā’}, or pride, or that al-Raḥmān is a divine name derived from \textit{rahma}, compassion and mercy (\textit{ibid.}, vol. 2, pp. 1123, 1148).} Ibn Ḥazm adds that some Zāhirī scholars did think that when God or the Prophet informs us of the rationale of a certain ruling, we can use it as a basis for \textit{qiyās}. This, however, was not the view of Dāwūd or of any other Zāhirī scholar, but was the position of people who do not belong to the Zāhirīs, such as al-Qāsānī and his likes, Ibn Ḥazm categorically asserts.\footnote{\textit{Ibid.}, vol. 2, p. 1110.}

Furthermore, Ibn Ḥazm argues that the \textit{Aṣḥāb al-Ẓāhir} are the people farthest from \textit{taqlīd}, and that those among them who practice it do not belong to them and are even more blameworthy than scholars of other schools.\footnote{\textit{Ibid.}, vol. 1, pp. 233-34.} In fact, he seems to have stressed the centrality of rejecting \textit{taqlīd} to the extent that he excuses the eponyms of other \textit{madhḥabs} and many early scholars with whom he disagreed on the basis that they
were independent scholars who exercised *ijtihād*. Devoting a chapter in his *Ihkām* to refuting the notion of *taqlīd*, he argues that it was introduced after the age of these eponyms by lazy scholars who could not exercise *ijtihād* themselves.\(^{420}\)

Ibn Ḥazm discusses some other doctrines of earlier Ṣāḥīḥī scholars, but without attributing them to all Ṣāḥīḥīs. For example, Dāwūd and many Ṣāḥīḥī scholars held that valid *ijmāʾ* was that of the Companions only, for it was the Companions who witnessed what the Prophet said and did, and *ijmāʾ* is only valid when it reflects this.\(^{421}\) Some Ṣāḥīḥī scholars held that if *ijmāʾ* contradicts a sound tradition transmitted by one or a few transmitters (*khabar al-wāḥid*), this indicates that the tradition has been abrogated, a view that Ibn Ḥazm rejects.\(^{422}\) He also alleges that some Ṣāḥīḥī scholars held that a rule cannot be abrogated by a stricter one.\(^{423}\) Finally, Ibn Ḥazm reports that the majority of Ṣāḥīḥī scholars held that if two traditions irreconcilably contradict each other (as when one of them explicitly commands something and the other explicitly prohibits it), then both traditions fall together and we proceed on the basis that no traditions deal with the question at hand – a view that Ibn Ḥazm also rejects.\(^{424}\)

These are the doctrines that Ibn Ḥazm attributed to Ṣāḥīḥī scholars. He notes disagreements and indicates the views he supports, at times refusing to acknowledge that scholars who held views differing from his own were Ṣāḥīḥīs in the first place. This is the case with the issues of *taqlīd* and *qiyās*, both of which are to be unconditionally and categorically rejected by any scholar who is to qualify as Ṣāḥīḥī. Ibn Ḥazm also mentions that there are areas of agreement among Ṣāḥīḥī scholars. What is interesting about this is

\(^{420}\) *Ibid.*, vol. 1, p. 539.  
that almost all these views have to do with hermeneutics. Adhering to what a text says seems to be the pillar of the madhab here, and this adherence requires that we do not draw conclusions about anything a legal statement does not explicitly refer to (which leads to the rejection of both qiyās and dalīl al-khītāb), and that we take terms, commands, and prohibitions to indicate unrestrictedness and obligation.

IV. Conclusion:

Based on this information about the lives and doctrines of Zāhirī scholars from Dāwūd to the end of the 9th/15th century, the following conclusions can be drawn about the Zāhirī madhab.

1. The Founder:

It has been noted that while there is much evidence that Dāwūd was not insignificant as a scholar, statements about his scholarly status cannot be substantiated on the basis of the information given in the sources that make them. This is hardly surprising: Dāwūd was not doing what would have secured him a place among the prominent legal scholars of his time. This was predominantly an age of Ḥadīth transmission and criticism, and only those who distinguished themselves in these activities were able to rise to the rank of notable and influential scholars. In Dāwūd’s case, he does not seem to have been on good terms with Ḥadīth scholars, who were not fond of his teachers nor of Dāwūd himself. This must have alienated people from him and may also explain why his colloquium was relatively small and why his funeral was probably so small that no one remembered much about it.
Dāwūd’s teachers were mostly the same kind of scholars as he was. Of all his teachers, Abū Thawr must have been the most influential one, not only because he died when Dāwūd was in his forties, but also because there are unmistakable similarities between the two scholars. Abū Thawr probably continued to be regarded as a scholar of raʿy even after his meeting with al-Shāfiʿī and purported conversion to Ḥadīth.\footnote{Ibn Hazm himself seems to have also held Abū Thawr in high esteem, for he regards him as an independent scholar who excelled in religious knowledge (Ibn Ḥazm, Iḥkām, vol. 2, p. 674).}

Another scholar whose career resembles that of Dāwūd is Abū ʿAlī al-Karābīsī, with whom Dāwūd likely studied. Dāwūd was similar to these scholars in many respects; the three of them were independent scholars who held views differing from those of the majority of scholars around them, they were not interested in Ḥadīth for its own sake, but were more interested in legal matters, and they were legal scholars who were regarded with suspicion by the Ḥadīth scholars of the time. I will argue in a later chapter that Dāwūd, just like Abū Thawr and al-Karābīsī, was probably regarded as a member of the Ahl al-Raʿy who had nothing to do with the Ahl al-Ḥadīth, either in his activities or in his doctrine.

This does not mean that Dāwūd was simply following Abū Thawr and al-Karābīsī. The very fact that Dāwūd was regarded as the imām of the Zāhirīs indicates that he had something more to say than these two scholars or that he was more vocal and unequivocal in saying something that they also believed. Unfortunately, what was Zāhirī about Dāwūd is a question that our sources do not answer. Most medieval works emphasize Dāwūd’s rejection of qiyās as the doctrine that distinguished him.\footnote{Some modern scholars also seem to believe that rejection of qiyās was the defining feature of Dāwūd’s legal thought (see, for instance, Camilla Adang, “The Beginning,” p. 118).} However, this does not explain why others who rejected qiyās were not regarded as Zāhirīs. Thus,
Ẓāhirism must have meant more than or other than rejecting *qiyyās*. This absence of basic biographical information about Dāwūd may suggest that he, in fact, was not perceived as putting forward a new theory that was unknown to the people of his time. Al-Khaṭīb al-Baghdādī’s reference to Dāwūd as *imām Ahl al-Zāhir* may indicate that there was already a group of people who regarded themselves as *Ahl al-Zāhir* or adhered to a doctrine called *al-zāhir*. We have noted that Ibn Surayj is reported to have written works against both the *Ahl al-Ra’y* and the *Ahl al-Zāhir*. While it is possible, but unlikely, that Ibn Surayj was using the term *Ahl al-Zāhir* to refer just to Dāwūd and his son, it may also indicate that adherents to *zāhir* were widespread in the 3rd/9th century.

2. Development:

Just as Dāwūd’s students seem to have followed in the footsteps of their teacher in being uninterested in Ḥadīth, their students in turn seem to have done just the same. The second generation of Ẓāhirī scholars – who began to spread to various corners of the Muslim world – was not active participants in Ḥadīth transmission and criticism. Nevertheless, while these scholars – who were few in comparison to the scholars of other *madhhab* – continued to have disagreements, the fact that in the generations of Ẓāhirī scholars of the 4th/10th century we find chains of scholars who studied with and transmitted from each other suggests that these generations had begun to develop a sense of belonging together and of connection with common past masters. Unfortunately, the number of these students does not seem to have been sufficient to ensure continuity. In the 6th/12th century, Iraq ceased being a center of Ẓāhirism.

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427 I take this to be unlikely because I would expect Ibn Surayj to be more specific about the targets of his refutation. While he cannot do this with the *Ahl al-Ra’y*, he can easily do it with two scholars.
It probably was not just the number of scholars that adversely affected Dāwūd’s madhhab very early and continued to undermine it, but also the schizophrenic nature of the careers of Zāhirī scholars. Of those Zāhirī scholars of the 4th/10th century whose profession is reported to us, the majority were judges. Since judges were always appointed on the basis of their legal affiliation, this means that the Zāhirism of these scholars was a personal matter that they did not profess in public. In other words, it seems that these scholars were trained according to a certain school of law (Ḥanafism in Iraq and Mālikism in Andalus, for example) and adjudicated according to its rules, but practiced religious rituals and perhaps gave private fatwās according to the Zāhirī madhhab.428 As for those who do not seem to have concealed their true affiliation – those who published Zāhirī books, for instance – they seem to have enraged the scholars of other schools by attacking their imāms and ridiculing their views and methodologies. This must have played a role in alienating Zāhirīs from the mainstream scholars and in making affiliation with them risky and unrewarding.

The post-Ibn Ḥāzm picture of the madhhab is quite a different story. After Ibn Ḥāzm, Zāhirī scholars – unlike earlier eastern and Andalusian Zāhirī scholars who seem to have been interested in the Qur’ān, its exegesis and rulings, rather than in Ḥadīth – became interested in Ḥadīth study like scholars of other madhhabs. This was a major shift in the attitude of Zāhirī scholars, but how much Ibn Ḥāzm himself was responsible for it is not a question we seek to answer here. In fact, it may be because of this that Zāhirism came to be regarded as a radical offshoot of the Ahl al-Ḥadīth movement (as discussed later). Even if Ibn Ḥāzm was not responsible for this shift, he provided Zāhirī

428 In her study of Zāhirī scholars under Almohad rule, Adang found out that the majority of the teachers of Zāhirī scholars were Mālikīs (Adang, “Zāhirīs,” p. 469).
scholars, for the first time, with an extensive literature on *uṣūl* and *furūʿ*, one which they took great interest in preserving.\(^429\) It is also probably thanks to Ibn Ḥazm that Dāwūd was confirmed as the founder of the *madhhab*, for Ibn Ḥazm showed interest in connecting himself to Dāwūd. This notwithstanding, we have also seen that after Ibn Ḥazm scholars were known for their affiliation with a certain doctrine – Zāhirīsm – rather than with a certain scholar – Dāwūdisms or Ḥazmism. After Ibn Ḥazm – whose teachings reached the central parts of the Islamic world very quickly – we do not find any reference to disagreement among Zāhirī scholars, although, ironically, rejection of *taqlīd* seems to have been the hallmark of Zāhirīsm after Ibn Ḥazm, just as rejection of *qiyyās* was before him. Finally, Zāhirīsm appears to have remained a private choice, with no trace of any attempt to institutionalize transmission of Zāhirī knowledge. It is remarkable that there are no families of Zāhirī scholars, and only a few Zāhirī fathers and sons or two brothers.

### 3. Doctrine:

Why Dāwūd was described as Zāhirī is a question that remains unanswered. Rejection of *qiyyās* was presented by many medieval and modern scholars as the main doctrine of Zāhirīsm, a conception that the writings of some Zāhirī scholars may have confirmed. However, among the works that are attributed to Dāwūd are two that apparently dealt with linguistic issues – that of general and restricted terms (*al-khuṣūṣ wa-l-ʿumūm*) and that of clarified and ambiguous statements (*al-mufassar wa-l-mujmal*). The only Zāhirī scholar who took an interest in these issues is apparently Ibn Ḥazm, who also presented them as mostly the views upon which all Zāhirī scholars agreed. This relationship with

\(^{429}\) I assume here that if any earlier Zāhirī scholar, including Dāwūd, had left behind an extensive legal literature, at least part of it would have survived. In all circumstances, even the titles of the works of some Zāhirī scholars do not indicate that any of them was as prolific as Ibn Ḥazm.
language seems to concur with al-Qāḍī al-Nu‘mān’s identification of *istidlāl* as the defining feature of Zāhirism, as noted earlier. We pursue this issue in a later context when we seek to determine what the term *zāhir* probably meant in the 3rd/9th century. We will also study doctrinal similarities and dissimilarities between Zāhirism and the legal philosophies of the *Ahl al-Ra’y* and the *Ahl al-Ḥadīth* to examine the extent to which the biographical evidence that has emerged here is consistent with the doctrinal evidence. Now, we examine the main legal trends of the 3rd/9th century and identify the main defining features of those trends, which we do in the next chapter.
Chapter Two

Jurisprudence in the Third/Ninth Century

In chapter one, we have noted that some of what we know about Dāwūd ibn ‘Alī ibn Khalaf al-Ẓāhirī suggests that his profile was more similar to that of Abū Ḥanīfa and al-Shāfi‘ī than that of Aḥmad ibn Ḥanbal’s. This chapter deals with the place of Dāwūdism – i.e., Dāwūd’s legal methodology and doctrine – in the legal scene of 3rd/9th-century Iraq, particularly its position vis-à-vis the two dominant legal trends at that time – those of the Ahl al-Ra’y and the Ahl al-Ḥadīth. It starts with a review of modern views on this issue, followed by a discussion of some accounts from medieval Muslim sources on who were the Ahl al-Ra’y and the Ahl al-Ḥadīth. Next, it presents views of two modern scholars who have contributed critically and usefully to this subject. It finally seeks to identify the characteristic features of these two legal trends.

I. Dāwūdism between the Ahl al-Ra’y and the Ahl al-Ḥadīth:

Dāwūd al-Ẓāhirī lived in and was witness to the first three quarters of the 3rd/9th century, a time of great importance in Islamic legal history. In the view of some modern scholars, this time witnessed the crystallization of the main doctrines and methodologies of the existing schools of law, for others, it witnessed the beginning of that process. In all

430 This is generally the view of most modern Muslim scholars. For this, see, for instance, ‘Alī al-Khaṭīfī, Muhādarāt fī Asbāb Ikhtilāf al-Fuqahā’, pp. 269-84, where the author argues that the basics of the four Sunnī schools of law go back to their eponymous founders and their immediate students, with the exception of the Mālikī school, where Mālik was not succeeded by scholars who were mujāhid muṭlaq, similar to Abū Ḥanīfa’s three famous students. This makes the Ḥanafī and Mālikī schools of law a product of the late second/eighth century, and the Shāfi‘ī and Ḥanbalī schools of the third/ninth century (although al-Khaṭīfī states that Abū Bakr al-Khallāl (d. 311/923) “has been to Aḥmad what Muḥammad [ibn al-Ḥasan al-
accounts, that time not only witnessed the peak of the tension between those who were
commonly referred to as the Ahl al-Ra’y, and those who were called the Ahl al-Ḥadīth,
but was also a period during which some scholars sought to build bridges between the
different legal approaches, while others remained, or so they thought, relatively aloof
from the controversies of the age, either out of uncertainty or out of the desire to remain
independent in their legal thinking. There existed a fair number of all kinds of these
scholars in the 3rd/9th century.432

As for the place of Dāwūd vis-à-vis these competing legal trends, most scholars
tend to believe that Dāwūdism was a radical form of the thesis of the Ahl al-Ḥadīth who
flourished in the 3rd/9th century. Ignaz Goldziher argues that “in the rigorous
interpretation of the judic[i]al sources, Aḥmad ibn Ḥanbal’s school approaches most
closely the method of the Ẓāhirite school.”433 Goldziher, who evidently regards Abū
Ḥanīfa as one of the Ahl al-Ra’y scholars and Ibn Ḥanbal as one of the Ahl al-Ḥadīth,
made this contention on the relationship of the Ẓāhirī and Ḥanbalī schools on the basis of
some cases which he discusses in an earlier chapter in his work on the Ẓāhirīs. In his
view, these cases demonstrate that “the founder of the Ḥanbalite school decides
according to the same principles which guide the Ẓāhirite school.”434 He compares the

431 This is generally the view of many modern Western and some Muslim scholars depending on how the
define a school of law. For an overview of the debate on this issue of definition, see Wael Hallaq, “From
Regional to Personal Schools of Law: A Reevaluation,” and Christopher Melchert, “The Formation of the
Sunni Schools of Law.”
432 For an idea about each group of scholars (those who were affiliated with certain schools of law, and
those who changed affiliation or remained independent) and their percentages, see Monique Bernard and
John Nawas, “The Geographical Distribution of Muslim Jurists during the First Four Centuries AH.”
433 Ignaz Goldziher, The Ẓāhirīs: Their Doctrine and their History, p. 81.
434 Ibid., p. 81.
Hanbalīs to the Zāhirīs not only because the latter are the subject of his book, but also because he believed that the Zāhirīs and the Ḥanafīs, the original rivals of Ibn Ḥanbal, stood at two opposite extremes in Islamic law, and that the Ḥanbalīs were the school closest to the Zāhirī extreme. In Goldziher’s view, thus, the Zāhirīs and the Ḥanbalīs had similar legal methodologies.

Joseph Schacht follows suit, describing Dāwūd as “an extreme representative of the tendency hostile to human reasoning and relying exclusively on Kur’ān and Ḥadīth.”435 In light of Schacht’s understanding of the approach of the Ahl al-Ḥadīth (discussed below), this suggests that he believed that Dāwūd was a “traditionalist,” although he also argues that “his doctrine represents a one-sided elaboration and development of that of al-Shāfi’ī and his school.” Schacht draws this conclusion on the basis of Dāwūd’s admiration for al-Shāfi’ī and his agreement with many of al-Shāfi’ī’s doctrines, although he also takes note of his total rejection of qiyās (legal analogy) which al-Shāfi’ī approved of but sought only to “regularize.”436 Since he thinks that al-Shāfi’ī himself was a traditionalist,437 it is safe to argue a fortiori that Schacht similarly regards Dāwūd, although his discussion of this subject reveals some ambiguity about his understanding of Dāwūd’s real affiliation. However, his student, Noel Coulson, is unequivocal in regarding Ḥanbalism and Zāhirism as two schools of law that originated as extremist advocates of the traditions.438

436 Ibid., vol. 2, p.182.
437 Ibid., vol. 2, p. 182. Schacht subscribed to the view that al-Shāfi’ī was a traditionalist whose main concern was to assert the overriding authority of the Prophetic traditions against the living traditions and the “opinions of men” that most scholars of his time followed. For this, see Joseph Schacht, *The Origins of Muhammadan Jurisprudence*, pp. 6-20.
Likewise, Abdel Magid Turki places Żāhirism “at the furthest limit of orthodoxy,”\textsuperscript{439} and describes Dāwūd as a “disciple of al-Shāfi‘ī, albeit an indirect one.”\textsuperscript{440} He accepts the thesis that Dāwūd was closest to al-Shāfi‘ī’s legal thought, without explaining what he thought that legal thought was. But while Turki does not associate Dāwūd’s legal thought with the Ahl al-Ḥadīth in an explicit way, he argues that the Żāhirī scholars “opposing the free use of opinion (ra’y) and hence the imitation of those who practised it, . . . called for an effort of search (ijtiḥād) which, far from being identified with Ḥanafī ra’y or with Shāfi‘ī reasoning by analogy (kiyās), could only be involved with the search for a text.”\textsuperscript{441} Dāwūd also rejected the consensus of the ancient schools of law, but he accepted the general consensus of the Muslim community, which “could only be realized on the basis of a body of Tradition which could not be overlooked by everybody.”\textsuperscript{442} This statement implies that Dāwūd was far from being identified with the Ahl al-Ra’y (the Ḥanafīs), but what it may be saying about his

\textsuperscript{439} EI\textsuperscript{2}, vol. 11, p. 394, s.v. “al-Ẓāhiriyya.” This in itself only means that Dāwūdism was traditionalist if “orthodoxy” means traditionalism, which is probably what Turki has in mind. Orthodoxy here, of course, is not limited to theological beliefs alone. Orthodoxy also refers to legal convictions, even if we do not have to go as far as George Makdisi when he argues that “It is now time to rethink our idea of Muslim Orthodoxy. For the only orthodoxy which is certified in Islam by the consensus of the community (ijmā‘) is certified is Sunnī orthodoxy, represented since the third/ninth century by the four schools of Sunnī law . . .” “In the realm of [the] religion [of Islam],” writes Makdisi, “everything must be legitimized through the schools of law. For Islam is nomocratic and nomocentric” (George Makdisi, “Ḥanbalite Islam,” p. 264). On the relationship between Ahmad ibn Hanbal in particular and the different aspects of “orthodox” (Sunni) Islam, see Nimrod Hurvitz, The Formation of Ḥanbalism: Piety into Power. It is worth mentioning that Hurvitz believes that “traditionalism” was introduced to jurisprudence by al-Shāfi‘ī, and was continued by Ahmad ibn Hanbal and Dāwūd, who only differed from al-Shāfi‘ī by either relegating qiyās to last position among the sources of the law in the case of Ibn Ḥanbal, or rejecting it altogether, which is what Dāwūd did (Hurvitz, Formation, pp.103, 186). Hurvitz’s attempt to identify the distinctive characteristics of Ibn Hanbal’s legal thought leads him to say only that it was his acceptance, out of the desire to avoid qiyās as much as possible, of views of Companions and Successors (which Dāwūd did not do) and giving them precedence over qiyās that characterized his thought (ibid., pp. 156).

\textsuperscript{440} EI, vol. 11, p. 395 (emphasis mine). Remarkably, Turki relies here entirely on Ibn Ḥazm, holding that this is “inevitable” for lack of other sources on Ẓāhirī legal and theological views. He also relies on some modern studies on the Ẓāhirīs, especially those of Abū Zahra, Goldziher, Brunschvig, and Schacht, without seeking to draw his own conclusions about them.

\textsuperscript{441} Ibid., vol. 11, p. 395.

\textsuperscript{442} Ibid., vol. 11, p. 395 (emphasis mine). The assumption here is that this “Tradition” was the one whose cause the Ahl al-Ḥadīth were supporting, since this was the Tradition that differed from those of the ancient schools of law.
relationship to the Ahl al-Ḥadīth (whose main feature in the views of the modern scholars on whom Turki relied was their “search for a text,” as discussed below) is uncertain.443 What Turki says here and could be useful for our purpose in a later context is that “[t]he Zāhirīyya above all adopted a methodology which sought to rid fikh, as far as is possible, of any trace of subjectivity, confining it within the narrow limits of the evident meaning of the sacred text.”444 This raises the following question: Did other “traditionalists” of the time have the same goal of ridding jurisprudence of subjectivity?

Wael Hallaq is much more unequivocal in his analysis of Dāwūd’s affiliations. In his view, Aḥmad ibn Ḥanbal and Dāwūd ibn Khalaf belonged to the same camp and held the same doctrine, which he describes as “restrictive and rigid.”445 The only difference between these two scholars is that while the former detested qiyās and only used it in exceptional circumstances, the latter rejected it categorically as arbitrary and flawed.446 It was this attitude towards analogy, among other things, that accounts for the failure of the Zāhirīs and the subsequent success of the Ḥanbalīs. The Zāhirīs’ failure was due to their unwillingness to join what Hallaq calls the “Great Synthesis” (which basically means talking a middle stance between extreme rationalism and extreme traditionalism, which original Ḥanbalism represented), while Ibn Ḥanbal’s followers managed to “meet

443 The same point applies to Mahmud Makki’s view on the origin of Zāhirism. In Makki’s view, “El šāfī’ismo – ya lo hemos señalado – era un término medio entre el Razonamiento y la Tradición. Pero los ‘iraqíes partidarios de la Tradición, no se sintieron satisfechos de la forma en que al-Šafi’ī intentaba conciliar los dos principios. Hubo algunos extremistas que exigieron basarse más en la Tradición. Claro que el gran florecimiento de lose estudios tradicionistas en ‘Irāq, a fines del siglo III, favorecía mucho a este partido, que acabó por formar una nueva escuela: la zāhirī, que reclamó una reforma jurídica a base de limitarse a la utilización del Corán y la Tradición y restringir la Unanimidad, al-ŷmā’, concelando por completo el Razonamiento y la Analogía” (Makki, Ensayo, p. 205).
444 EF, vol. 11, p. 395.
446 Ibid., p. 124.
Ibn Ḥanbal’s own doctrine and methodology was, thus, similar to that of the Zāhirīs in this understanding; both were originally strictly “traditionalist.”

Christopher Melchert, for his part, seems hesitant about Dawūd’s place in 3rd/9th century jurisprudence. Following the useful distinction between being a “traditionist,” which mainly means being a Ḥadīth transmitter, and “traditionalist,” which refers to a certain approach and beliefs, mostly those represented by Aḥmad ibn Ḥanbal, towards the use of personal opinion and reports from earlier authorities, he seems to have some discomfort with classifying Dawūd as a traditionalist. He is able to entertain the possibility that Dawūd was, as least in some aspects of his career, closer to the Ahl al-Ra’y. However, he makes this argument primarily on the basis of what biographical dictionaries say about Dawūd without referring to specific methodological or doctrinal views that Dawūd may have shared with the Ahl al-Ra’y.

Asserting that Dawūd has many things in common with the traditionalists, such as rejecting ra’y, qiyās, and taqlīd, accepting the khabar al-wāḥid, and holding similar views on ijmā’, Melchert observes that Dawūd does not figure as a prominent traditionist, which probably explains why he does not appear in the major Ḥadīth rijāl works have a bad reputation in some of them. He notes Ibn Abī Ḥātim al-Rāzī’s tarjama of Dawūd which we mentioned in chapter one, where Ibn Abī Ḥātim condemns Dawūd as “deviant and heretic,” and accuses him of open enmity and hatred towards the Ahl al-Ḥadīth. He concludes that “Dawūd’s position concerning Ḥadīth was in some respects . . . very far from Aḥmad’s, much closer [to] the position of the rationalistic adherents of

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447 Ibid., p. 127.
448 Christopher Melchert, Formation of the Sunnī Schools of Law: 9th-10th Centuries C.E., pp. 179-80. In their view, valid ijmā’ was only the consensus of the Prophet’s Companions.
Furthermore, Dāwūd was close to al-Shāfi‘ī’s legal thought, which sets him apart from “the main body of Iraqi traditionalists.” Melchert also notes that Dāwūd was never associated with *mudhākara*, an activity that characterized the *Ahl al-Ḥadīth*, and was even associated with *munāẓara*, a common practice of the *Ahl al-Ra’y*. In theology, Dāwūd seems to have disagreed with some of the fundamental doctrines of the *Ahl al-Ḥadīth*, as in the case of his opinions on the issue of the nature of the Qur’ān. Melchert concludes that “this is not to say that Dāwūd was as insignificant a jurisprudent as he was a traditionist, but only that his jurisprudence was not traditionalist.”

The 14th/20th century Ḥanbalī scholar Muḥammad al-Shaṭṭī counts Ibn Ḥanbal among the *imāms* of the Žāhirī scholars, alongside Dāwūd ibn Ṭālī and Ibn Ḥazm. In his view, this explains the commitment of some early Ḥanbalī scholars to report Dāwūd’s views in their legal works. Al-Shaṭṭī himself collects Dāwūd’s legal views on *furūʿ* and points out when Dāwūd agrees with Ibn Ḥanbal and other prominent Ḥanbalī scholars like Ibn Taymiyya. For his part, Muḥammad Abū Zahra stresses the fact that Dāwūd started his career as an admirer of al-Shāfi‘ī (known in the Muslim literature as “*nāṣir al-sunna*,” or the champion of the cause of the Prophetic Sunna) and student of some other scholars.

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450 Ibid., p. 181.
451 Ibid., pp. 183-84. The issue of *khalq al-Qur’ān* dealt with the question of whether or not the Qur’ān was “created.” This issue was raised in the later second/eighth century and continued to be controversial for most of the first half of the third/ninth century. During that time, Ahmad ibn Ḥanbal and some other scholars resisted the pressures put on them by the government, believed to have been under the influence of Muʿtazilī scholars, to subscribe to the view on the created nature of the Qur’ān. Ahmad ibn Ḥanbal is supposed to have emerged from this *Miḥna* (test) as the champion of what became orthodox Sunnī Islam (for Ibn Ḥanbal’s life and status in the aftermath of the *Miḥna*, see, Hurvitz, *Formation*, pp. 145ff. For the view that the *Miḥna* did not play such a significant role in the intellectual history of Islam, see Scott Lucas, *Constructive Critics: Ḥadīth Literature and the Articulation of Sunnī Islam*, pp. 192-202).
452 Melchert, *Formation*, p. 182.
453 Muḥammad al-Shaṭṭī, “*Risāla fī Masāʾil al-Imām Dāwūd al-Ẓāhirī*,” in Majmūʿ *yashtamīl ʿalā Risālatayn*, p. 3.
scholars of the *Ahl al-Hadīth*. Dāwūd’s jurisprudence is “transmitted jurisprudence” (*fiqh marwī*), meaning that it was based primarily on the transmitted traditions. This explains al-Khaṭīb al-Baghdādī’s remark that while Dāwūd’s books were filled with traditions, transmitting traditions from him was rare. Dāwūd did not use *ra’y* in his jurisprudence, and in the instances that he did, he did not use it on the same basis of the “jurisprudence of *ra’y*” (*fiqh al-ra’y*), by which Abū Zahra means identifying the underlying rationales of the texts (*ta’līl al-nuṣūṣ*) and employing them in the process of forming a legal ruling. Dāwūd’s jurisprudence, Abū Zahra concludes, is the jurisprudence of texts in general, and of Ḥadīth (*fiqh al-Ḥadīth*) in particular.

‘Ārif Khalīl Abū ‘Īd – who wrote his doctoral dissertation on Dāwūd and his influence on Islamic jurisprudence – has fully and uncritically subscribed to the common view of the origin of Dāwūdism. Like Abū Zahra, he stresses the point that Dāwūd was an admirer of al-Shāfi‘ī and was taught by his students. He admired al-Shāfi‘ī because he adhered to Ḥadīth and kept away from *ra’y*. Having started as a Shāfi‘ī jurist, being a student of some famous traditionists (like Ishāq ibn Rāhawayh), and later becoming a student of Ḥadīth himself were all factors that made Dāwūd think in the same fashion as the *Aṣḥāb al-Ḥadīth*. The most important doctrine that Dāwūd was struggling against in this view was the use of *ra’y* in religion. Dāwūd rejected *ra’y* on three bases: his absolute belief in the sufficiency of the authoritative texts – namely, the Qurʾān and

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458 ‘Ārif Khalīl Abū ‘Īd, *al-Imām Dāwūd al-Zāhirī wa-Aṭharuh fī al-Fiqh al-Islāmī*, p. 131. Again, the assumption here is that al-Shāfi‘ī was himself a traditionalist.
Sunna – his total rejection of the notion of *ta‘lil al-nuşūş*, and his abhorrence of attributing to God an opinion that is reached by way of *raʿy*.

With the exception of Melchert’s skepticism (and another view presented below), there is a common belief among modern scholars that Dāwūd and Zāhirism originated within the camp of the *Ahl al-Ḥadīth*. Some scholars (such as Goldziher, Schacht, and Turki) appear to have had some doubt about this, but they never spelled it out. These scholars probably noted some differences between Dāwūdism and traditionalism, but failed to note any similarities between Dāwūdism and legal “rationalism,” the methodology and doctrine of the *Ahl al-Raʿy*. That Dāwūd may have been more influenced by the *Ahl al-Raʿy* of his age does not seem to have been entertained by any of them, and even Melchert is able to say only that Dāwūdism was not traditionalist, but seems to have shied away from saying what else it could be. Below we will present a different view on this issue. Now we attend to the question of who were the *Ahl al-Ḥadīth* and the *Ahl al-Raʿy* and what was distinct about their jurisprudence.

II. The *Ahl al-Raʿy* and the *Ahl al-Ḥadīth*:

Medieval and modern scholars have advanced various views on the identity and scholarly activities of the *Ahl al-Raʿy* and the *Ahl al-Ḥadīth*. The following is a review of some of these views.

A. Medieval Muslim Views:

Generally speaking, medieval sources do not tend to address the issue of the difference between the *Ahl al-Ḥadīth* and the *Ahl al-Raʿy* in a direct way, or they do this in a very

succinct and hardly useful way. 463 In his Ta’wil Mukhtalif al-Ḥadīth, 464 for example, Ibn Qutayba al-Dīnawārī (d. 276/889) begins his book by pointing out that Ḥadīth was used by all theological and legal schools in early Islam to support their different and contradictory views. 465 In this work, he seeks to both defend the Ahl al-Ḥadīth and their legal thought against their detractors, and reveal the contradictions and deviations of these detractors from the true path of Islam. The Ahl al-Kalām accused the Ahl al-Ḥadīth of accepting traditions that contradicted reason, revelation, and the consensus of the community, 466 of arbitrariness in the acceptance and rejection of transmitters, 467 and of ignorance of the meaning of what they were transmitting. 468 Ibn Qutayba seeks to demonstrate that the tools of reason (ālāt al-nazar) that the Ahl al-Kalām use (qiyyās in particular) did not also save them from disagreement and contradiction, not just on legal issues (furū’), but also on the pillars and fundamentals of religion, which contrasts with the consensus of the Ahl al-Ḥadīth on fundamentals. 469 Among the Ahl al-Ḥadīth that Ibn Qutayba mentions, and who were closer in time to him than earlier scholars of Ḥadīth,

463 This presentation avoids some early works – such as al-Shāfi‘ī’s Risāla, al-Shaybānī’s al-Radd ‘alā Siyar al-Awzā‘ī, al-Hujja ‘alā Ahl al-Madīna, Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Layla, and some early biographical works such as Ibn Sa’d’s al-Ṭabaqāt al-Kabīr – that could be useful in other studies that seek a more comprehensive and deeper analysis of this issue. While there is no assumption here that later scholars did not have their own biases, I assume that the generally polemical nature of earlier sources would unnecessarily complicate the picture for us. Later sources are generally less tendentious (especially after different legal schools had begun to move towards mutual tolerance and recognition, roughly in the 5th/11th century) and deal with the Ahl al-Ḥadīth as legal scholars as well as traditionists.

464 Remarkably, Ibn Qutayba, who considered himself a member of the Ahl al-Ḥadīth, was well aware of how a work like his Ta’wil could be easily seen as polemical, and he promises the reader at the beginning that his exposition of the views of the Ahl al-Ḥadīth and the Ahl al-Kalām would not involve deliberate conceit or misrepresentation (Ibn Qutayba al-Dīnawārī, Ta’wil Mukhtalif al-Ḥadīth, p. 120).

465 Ibid., pp. 91-106.

466 Responding to this charge was Ibn Qutayba’s basic concern in this work. For some examples of these traditions, see ibid. pp. 107-114.

467 Ibid., pp. 114-18.

468 Ibid., pp. 118-20.

are ‘Abd al-Rahmān al-Awzā‘ī (d. c. 157/773), Sufyān al-Thawrī (d. 161/777), al-Layth ibn Sa‘d (d. 175/791), Mālik ibn Anas (179/795), and Aḥmad ibn Ḥanbal (d. 241/855).470

The first target of Ibn Qutayba’s polemics is the Mu‘tazilī scholars Ibrāhīm al-Nazzām (d. 231/845), who rejected the consensus of the Muslims and vilified the Companions of the Prophet,471 and Abū Hudhayl al-‘Allāf (d. c. 228/842), another “deviant” theologian.472 He moves on to the Ahl al-Ra‘y, who also disagreed among themselves, were contradictory and inconsistent in their use of qiyās, and used to give opinions on the basis of istiḥsān, use it in their legal judgments, and then change it later, leading at times to catastrophic results.473 The representative of this group of scholars was Abū Ḥanīfa al-Nu‘mān (d. 150/767).

A number of anecdotes are given that show how Abū Ḥanīfa used to change his mind about legal opinions he had given to people.474 He is also accused of ignoring Prophetic traditions and holding views that contradicted them even when they were brought to his attention. After mentioning several such incidents,475 Ibn Qutayba quotes al-Awzā‘ī’s statement that “We do not hold it against Abū Ḥanīfa that he uses his opinion, as we all do so. What we hold against him, however, is that when a tradition from the Prophet reaches him, he abandons it for something else.”476 Ishāq ibn Rāhawayh (d. 238/852), who is portrayed by Ibn Qutayba as the harshest critic of the Ahl al-Ra‘y, is also quoted to have said that the Ahl al-Ra‘y “abandoned the book of God and the Sunna

471 Ibid., pp. 128ff. Ibn Qutayba responds to al-Nazzām at length here (ibid., pp. 142-165).
472 Ibid., pp. 165-174.
473 Ibid., p. 174.
474 Ibid., p. 175.
475 Ibid., pp. 176-180. For a fuller account of this, see Ibn Abī Shayba’s chapter on “The cases in which Abū Ḥanīfa contradicted some Prophetic traditions” in his Muṣannaf (vol. 13, pp. 80-195).
476 Ibid., p. 176.
of his Messenger, and adhered to qiyās. 477 A number of examples follow that seek to show how analogy led the Ahl al-Ra’y to contradictions and absurdities. 478 In a later context, Ibn Qutayba accuses the theologians of inconsistency in accepting and rejecting traditions, 479 and holding absurd interpretations of some of the passages of the Qur’ān. 480

In one useful report, Ibn Qutayba mentions a discussion that took place between Saʿīd ibn al-Musayyab (d. 105/723) and Rabīʿa ibn Abī `Abd al-Raḥmān (known as Rabīʿat al-Ra’y, d. 136/753) about the compensation that a woman gets if someone causes her to lose her fingers. When Rabīʿa asked Ibn al-Musayyab how much she would get for a finger, he said ten camels; for two, twenty camels; and for three, thirty. When Rabīʿa asked if she loses four fingers, Ibn al-Musayyab replied that the compensation would be twenty camels. Rabīʿa then wondered: “When her injury is greater, and her calamity worse, her compensation decreases?” (idhā ‘azuma jarḥuhā wa-ḥaddad muṣībatuhā naqṣa ‘aqluḥā), to which Ibn al-Musayyab said: “It is the Sunna, my brother.” 481 In another report, ‘Āmir ibn Sharāḥīl al-Sha’bī (d. 104/722), referring to the Ahl al-Ra’y, advises his audience to take from them only what they transmit from the Companions of the Prophet, but to discard their personal opinions. 482 Ibn Qutayba ends this section by pointing out that analogy cannot explain many things in religion. 483

Ibn Qutayba moves on to the Ahl al-Ḥadīth, whom he defines as those who followed the Sunna of the Messenger of God, strove for the sake of finding and gathering

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478 Ibid., pp. 180-85.
479 Ibid., pp. 196-97.
480 Ibid., pp. 197-205.
482 Ibid., p. 186.
483 Ibid., p. 187. Interestingly, Ibn Qutayba’s argument here is very close to al-Nazzām’s attack on analogy, which was also used later by Ibn Ḥazm (and possibly by Dāwūd ibn Khalaf). For an overview of al-Nazzām’s and some other scholars’ critique of analogy, see Aaron Zysow, The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory, pp. 294ff.
his traditions, were able to distinguish between the sound and unsound among those traditions, and were aware of and made known those jurists who contradicted and abandoned it (the Sunna) for their own opinions. The result of this effort and knowledge was that the truth became obvious, and those who were negligent and indifferent to the Sunna came back to it and judged on its basis after having been accustomed to judge on the basis of the opinions of so and so (fulān wa-fulān).\textsuperscript{484} In the rest of his discussion of the \textit{Ahl al-Ḥadīth}, Ibn Qutayba responds to charges that were leveled against them.\textsuperscript{485}

Ibn Qutayba’s presentation has the merit of distinguishing (not always carefully) between two enemies of the \textit{Ahl al-Ḥadīth}: the theologians (mostly Mu‘tazilīs), to whom he probably refers as the \textit{Ahl al-Kalām}, and those jurists whom he refers to as the \textit{Ahl al-Ra`y}, the most notorious representative of whom is Abū Ḥanīfa. This distinction suggests that the \textit{Ahl al-Ḥadīth} were more than just transmitters of Ḥadīth and that they probably had theological and legal views based on the traditions they gathered. Remarkably, when defining the \textit{Ahl al-Ḥadīth}, Ibn Qutayba chose to focus on only one aspect of their career which concerns their relationship with the Prophetic Sunna. This relationship was evident in their gathering, spreading, verifying, and following Prophetic reports, in addition to polemicizing against those who contradicted them. While this does not necessarily contradict the contention that the \textit{Ahl al-Ḥadīth} held legal views, it echoes the charge of the \textit{Ahl al-Ra`y}, to which some modern scholars have subscribed, that the scholars of the \textit{Ahl al-Ḥadīth} were primarily transmitters of traditions and only occasionally had legal interests.

\textsuperscript{484} \textit{Ibid.}, p. 206.  
\textsuperscript{485} \textit{Ibid.}, pp. 206-224.
While the *Ahl al-Raʿy* are censured for a number of reasons, their belief in the soundness of *qiyyās* and what is presented as excessive use of it seem to have been the main problem the traditionists had with them. This is evident from the fact that Ibn Qutayba’s account has more references to, and anecdotes about, their use, or abuse, of *qiyyās*. Of course, *qiyyās* here does not have to indicate analogy in the strict sense. But be that as it may, it does point to their desire to produce consistent and coherent jurisprudence, which is indicated by the anecdote of Saʿīd ibn al-Musayyab and Rabīʿat al-Raʿy. Ibn al-Musayyab did not argue that what Rabīʿa said about the correlation between the extent of the injury and the compensation did not make sense, but rather ended the discussion by just asserting that that was how the Sunna was. As for the accusation that the *Ahl al-Raʿy* contradicted Prophetic traditions, the fact that they were also accused of contradicting the Qurʾān arguably indicates that they did not reject Prophetic traditions *per se*, but rather had their own way of understanding those traditions and Qurʾānic verses that they were said to have contradicted.

If Ibn Qutayba leaves us with some uncertainty as to the nature of the *Ahl al-Raʿy* and the *Ahl al-Ḥadīth*, so too does Ibn ʿAbd al-Barr, whose *Jāmiʿ Bayān al-ʿIlm wa-Fadlih*, provides us with a large number of early anecdotes and reports about disagreement among yet earlier authorities, including the Companions of the Prophet, regarding the use of *raʿy* and Ḥadīth, the interpretation of some Qurʾānic verses and Prophetic traditions, and the acceptance and rejection of traditions.⁴⁸⁶ Some of these anecdotes reveal more about the nature of the legal thought of the two groups.

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⁴⁸⁶ A very similar presentation of these reports was given by Ibn al-Qayyim in his *Aʿlām al-Muwaqqīʿīn*, for which reason we will not discuss Ibn al-Qayyim’s exposition.
Reports about the *Ahl al-Ra’y* here generally refer to their use of *ra’y*, but there is a clear emphasis on their reliance on *qiyās* in particular. In one anecdote, al-Sha‘bī is reported to have once said, referring to some people in the mosque in Baghdad, “By God, these people have made the mosque abhorrent to me, such that it has become more repulsive to me than the rubbish of my house (*abghāḍ ilayya min kunāsāt dārī=*).” When he was asked about whom he was talking, he said: *al-ara’ayūn* (i.e., those who are used to saying *ara’ayta* (what if, consider) in their discussions). He mentions here al-Ḥakam [ibn ‘Utayba] (d. 115/733) and Ḥammād ibn Abī Sulaymān (d. 120/737), who was one of Abū Ḥanīfa’s teachers. In another report, al-Sha‘bī warns people against using *qiyās*, insisting that it leads to legalizing what is illegal, and outlawing what is permissible. Shurayḥ (d. c. 178/794), a famous judge of Kufa, is reported to have advised people (probably scholars of *ra’y*) that because the Sunna had preceded their *qiyās*, they should follow it rather than engage in innovation, for no one would be led astray when he follows the Sunna. Finally, Mālik is reported to have said that Islam was on the straight path until Abū Ḥanīfa appeared and spread the use of *qiyās*. A similar statement is attributed to the famous traditionist Sufyān ibn ‘Uyayna (d. 197/812).

Ibn ‘Abd al-Barr, who was Mālikī by affiliation, comments on these anecdotes by arguing that the *Aṣḥāb al-Ḥadīth* had exaggerated in censuring Abū Ḥanīfa, who used to mix *ra’y* and *qiyās* with traditions (*idkhālihi ‘l-ra’ya wa-l-qiyāsa ‘alā ‘l-āthār*), while the majority of the scholars held that if a tradition was deemed sound on the basis of its

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490 Ibid., vol. 2, p. 1079.
491 Ibid., vol. 2, p. 1079.
Isnād, qiyās and reason are void (baṭala 'l-qiyās).

Ibn ‘Abd al-Barr, however, thinks that Abū Ḥanīfa rejected traditions on the ground of plausible interpretations (bi-ta’wilin muḥtamal), following the example of the Successor Ibrāhīm al-Nakha’ī (d. 96/714) and the Companion ‘Abd Allāh ibn Maṣ‘ūd (d. 32/652), although he may have exaggerated envisioning theoretical cases and trying to find legal solutions for them (a process known as tanzīl al-nawāzil). Abū Ḥanīfa and his ilk were also excessive in giving opinions on the basis of ra’y and istiḥsān, disagreeing in many of these with the forebears (al-salaf).

Ibn ‘Abd al-Barr states that there was hardly any scholar who did not abandon a tradition for another one or by a plausible interpretation, even though he believes that Abū Ḥanīfa did that much more than other scholars. Similar charges of abandoning Prophetic traditions were made against no less an authority than Mālik ibn Anas; al-Layth ibn Sa’d is reported to have said that he counted 70 cases in which Mālik acted in contradiction to the Sunna of the Prophet. The Ahl al-Ḥadīth were also suspicious of Abū Ḥanīfa because of his alleged Murjī’ī creed, a charge that Ibn ‘Abd al-Barr thinks was motivated by nothing but envy.

In one significant report, Yahyā ibn Ma‘īn (d. 233/847), the famous Ḥadīth critic and associate of Aḥmad ibn Ḥanbal, defends none other than Abū Ḥanīfa. “Our companions,” he says, “have exaggerated in what they say about Abū Ḥanīfa and his companions.” When asked if Abū Ḥanīfa was a liar, he replied emphatically that he was more honorable than that (kāna anbal min dhālik).

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492 Ibid., vol. 2, p. 1080.
494 Ibid., vol. 2, p. 1080.
495 Ibid., vol. 2, p. 1080.
496 Ibid., vol. 2, p. 1081.
497 Ibid., vol. 2, p. 1082.
mentions that he did not like al-Shāfi‘ī’s traditions, and would not transmit from Abū Yusuf (d. 182/798) – Abū Ḥanīfa’s famous disciple – although he was not a liar. When asked about Abū Ḥanīfa, he said: “Good people have transmitted from him.”498 Shu’ba ibn al-Ḥajjāj (d. 160/776), another famous Ḥadīth critic, is also reported to have had a good opinion of Abū Ḥanīfa.499 Ibn ‘Abd al-Barr takes these disagreements about Abū Ḥanīfa as an indication of his intelligence,500 comparing him to ‘Alī ibn Abī Ṭālib (d. 40/660), “with regard to whom two [kinds of] people went astray: an excessive lover, and an excessive detractor.”501

For his part, Aḥmad ibn Ḥanbal is reported to have said that for him, it did not matter whether the ra’y was that of al-Awzā‘ī, Mālik, or Sufyān (al-Thawrī), as all this was merely ra’y.502 What matters, he says, are the traditions (al-āthār).503 This is one of the few positive statements that Ibn ‘Abd al-Barr attributes to a scholar of the Ahl al-Ḥadīth, for it says something about what the Ahl al-Ḥadīth were rather than what they were not. Additionally, the anecdotes that he mentions about the Ahl al-Ra’y indicate that Ibn ‘Abd al-Barr, like Ibn Qutayba, identifies the excessive use of qiyyās in particular (and not istihsān or other forms of ra’y) as the main feature of the jurisprudence of Abū Ḥanīfa, but added to it the habit of hypothesizing theoretical cases and seeking to solve them by comparing them to existing ones.

498 Ibid., vol. 2, p. 1083. Later on, in a chapter on “The judgment on what the scholars say about each other,” Ibn ‘Abd al-Barr mentions that when Aḥmad ibn Ḥanbal learned that Yahyā ibn Ma’in was speaking ill of al-Shāfi‘ī, he accused Ibn Ma’in of having been ignorant of what al-Shāfi‘ī said, adding that “One is antagonistic towards that of which one is ignorant” (wa-man jahila shay’an ‘ādāh) (ibid., p. 1114).
499 Ibid., vol. 2, p. 1083.
502 Note here that these are the scholars of Ḥadīth that Ibn Qutayba identifies.
503 Ibid., vol. 2, p. 1082.
In his *Milal wa-l-Nīḥal*, Muḥammad ibn ‘Abd al-Karīm al-Shahrastānī (d. 548/1153) provides us with a straightforward identification and definition of the *Ahl al-Raʿy* and the *Ahl al-Ḥadīth*. He argues that the *aʿīmma* (leaders) of the *umma* (the Muslim community) are of two kinds: the *Aṣḥāb al-Ḥadīth* and the *Aṣḥāb al-Raʿy*. The former are the people of the Ḥijāz, the companions of Mālik, al-Shāfīʿī, Sufyān al-Thawrī, Aḥmad ibn Ḥanbal, and Dāwūd ibn Khalaf. They were called the *Ahl al-Ḥadīth* because of the great care they gave to learning and transmitting the traditions, making their judgments on the basis of the texts (*al-nuṣūṣ*), and refraining from using *qiyās* when there is a tradition or a report. ⁵⁰⁴ On the other hand, the *Aṣḥāb al-Raʿy* are the people of Iraq, the companions of Abū Ḥanīfa who relied on *qiyās*, at times giving one of its forms – *al-qiyās al-jalī* – precedence over Prophetic traditions, and on the “meaning that can be deduced from the legal rulings” (*al-maʿnā ʿl-mustanbaṭ mina ʿl-aḥkām*). ⁵⁰⁵

This account identifies Abū Ḥanīfa as the leader of the *Ahl al-Rʿay* and *qiyās* as the main defining feature of their jurisprudence. However, it provides a very general identification of the *Ahl al-Ḥadīth* as a label that refers to various and perhaps disparate groups of scholars who probably had more differences and disagreements than similarities and agreements among themselves. Nonetheless, this, arguably, has become the standard distinction between the *Ahl al-Raʿy* and the *Ahl al-Ḥadīth* to which many later scholars uncritically subscribed.

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⁵⁰⁵ *Ibid.*, vol. 1., p. 245. The scholars of Islamic law distinguish between two kinds of *qiyās*. The first, *al-qiyās al-jalī*, is probably what most scholars refer to as *qiyās*. In this kind of *qiyās*, an “obvious” *ʿilla* (cause or rationale) is identified to make a connection between two legal cases. In “*al-qiyās al-khaṭīf*” (also called *qiyās al-shabah*), however, the connection between the two legal cases is made mostly on the basis of a certain resemblance (hence *shabah*) between the two cases. (For the different kinds of *qiyās*, see Muhammad Abū Zahra, *Uṣūl al-Fiqh*, pp. 237-39.) Ḥanafī scholars have argued that *istiḥsān* is primarily abandoning a more obvious analogy for a more nuanced one for a “good reason” that the jurist sees for doing so (for this, see, for example, al-Jaṣṣāṣ, *al-Fuṣūl*, vol. 2, pp. 344ff., and Abū Zahra, *Abū Ḥanīfa*, pp. 342-44).
For ‘Abd al-Raḥmān ibn Khaldūn (d. 852/1448), the “Ahl al-Ra’y wa-l-Qiyās” were the Iraqis, and particularly Abū Ḥanīfa and his followers, and the Ahl al-Ḥadīth were the Ḥijāzīs, and particularly Mālik ibn Anas and al-Shāfī’ī.506 He points out that the earliest authorities in Islam disagreed on their interpretations and rulings, which he explains on the basis of the nature of the language of the Arabs – whose terms (ʿalfāẓ) can be construed in multiple ways – and the differences in the criteria used to test the authenticity of the Prophet’s and Companions’ reports. The fact that authoritative texts do not cover all new cases, he argues, renders qiyās indispensable. And this inevitably produces disagreement.507 Later, the Arabs mastered literacy and deduction, jurisprudence became a craft (ṣinā‘a) and a matter of knowledge (ʿilm), and the jurists came to be divided into two groups according to their methodologies: the Ahl al-Ra’y wa-l-Qiyās, and the Ahl al-Ḥadīth. Possessing few traditions, the former mastered qiyās and used it excessively, which is why they were called the Ahl al-Ra’y. Ibn Khaldūn is almost silent about the Ahl al-Ḥadīth, but he mentions that Mālik was distinguished by his consideration of another source of rulings: the practice of the Medinese (ʿamal ahl al-Madīna), which he believed originated in the practice of the Prophet himself.508 Mālik was then followed by al-Shāfī’ī, who went to Iraq after his death and met with the followers of Abū Ḥanīfa and learned from them. He then mixed the methodologies of the two regions and developed his own school.509 Then came Aḥmad ibn Ḥanbal, who was among the most notable traditionists (wa-kāna min ʿilyati ’l-muḥaddithīn), and whose

507 Ibid., p. 416.
508 Ibid., p. 418.
509 Ibid., p. 418.
followers, despite their large stock of traditions, learned from Abū Ḥanīfa’s students and developed their own school.\(^{510}\)

These were the legal schools that people followed everywhere according to Ibn Khaldūn. Ibn Ḥanbal’s school, he points out, had few followers because it was far from the use of \textit{ijtihād}, and because of his originality in considering the reports and narrations in light of each other.\(^{511}\) His followers thus memorized and transmitted traditions more than anybody else, and were the least inclined to using \textit{qiyyās}.\(^{512}\)

The \textit{Ahl al-Ḥadīth} in this account is a designation that refers to various scholars and legal schools, each with its own history and sources. What they seem to have had in common was their use of the Prophetic traditions, but we are not told how similarly or differently they dealt with those traditions. Ibn Khaldūn – who seems to have thought that there was something distinct about the legal thought of Ibn Ḥanbal – does not seem to acknowledge him as a jurist, attributing the formation of his school instead to his students, who learned from Abū Ḥanīfa’s students. But Ibn Khaldūn is unequivocal about his belief that \textit{qiyyās} was the defining feature of the \textit{Ahl al-Ra’y}, whose head was Abū Ḥanīfa, a jurist, he argues, whose unmatched status in jurisprudence was acknowledged by Mālik, al-Shāfi‘ī and others.\(^{513}\)

Ibn Khaldūn had mentioned early in this discussion a group of scholars who rejected \textit{qiyyās}, considered all understandings (\textit{madārik}) to be “restricted to the texts and consensus,” and related the \textit{qiyyās jalī} and the \textit{’illa} that has a textual basis (\textit{al-’illa al-mansūṣa}) to the text (\textit{al-naṣṣ}) from which it is derived on the ground that stating it is a

\(^{510}\) \textit{Ibid.}, p. 418.
\(^{511}\) Fa-ammā Ahmād ibn Ḥanbal fa-muqallidāhu qalīlāna li-bu’di madhhabihi ‘ani ’l-ijtihādi wa-aṣālatihī fi mu’ādadāti ’l-riwāyāti wa-’l-akhbāri ba’dihā bi-ba’da.
\(^{512}\) \textit{Ibid.}, p. 419.
\(^{513}\) \textit{Ibid.}, p. 418.
statement of the ruling itself. The head of this *madhhab* was Dāwūd ibn ʿAlī, who was followed by his son and their disciples. The Ẓāhirī *madhhab*, Ibn Khaldūn reports, perished, except for some books in which some students from time to time develop an interest, bringing on themselves the animosity of the rest of the Muslim community. One of these was Ibn Ḥazm in Andalus; in spite of his status as a Ḥadīth expert, he excelled in the *madhhab* of the *Ahl al-Ẓāhir*, disagreed with Dāwūd, and ridiculed many of the *imāms*. This brought upon him widespread resentment and caused his books to be neglected and banned.

In brief, while medieval Muslim scholars do not present coherent views on the identity and distinctive features of the *Ahl al-Raʿy* and the *Ahl al-Ḥadīth*, their discussions generally indicate that whereas the latter acquired their designation on account of their interest in the study of Prophetic reports, the former rejected many such reports but also relied heavily on *qiyās*. There is a clear focus in these sources on the activities and interests of the *Ahl al-Ḥadīth* as scholars of Ḥadīth. Not discussing their legal thought may indicate that they had none. However, the fact that Mālik ibn Anas, who was known for his jurisprudence as well as his interest in Prophetic and non-Prophetic reports, appears in almost all these accounts as one of the *Ahl al-Ḥadīth* scholars suggests that these medieval accounts were especially interested in highlighting a particular aspect of the career of the *Ahl al-Ḥadīth* when contrasting them with the *Ahl al-Raʿy*. It is probably in this context that attitude of the *Ahl al-Raʿy* towards Prophetic Ḥadīth is emphasized. The *Ahl al-Raʿy* were at times accused of outright rejection of Prophetic reports, at times of ignoring many of them, and at other times of rejecting them

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514 Ibid., p. 417.  
515 Ibid., p. 418.
on various grounds. Besides this, however, what was characteristic of them was their use of *qiyās*, which was excessive and often unwarranted from the viewpoint of the *Ahl al-Hadīth*. This particular feature of the juridical thinking of the *Ahl al-Ra’y* is generally given more emphasis in medieval accounts. Regardless of what *qiyās* meant at that time, some anecdotes indicate that its purpose was to produce a consistent and coherent juridical methodology that relies on resemblance or logical correlation between cases. Finally, whereas a number of scholars are presented as members of the *Ahl al-Hadīth*, Abū Ḥanīfa is usually identified as the *Ahl al-Ra’y* scholar par excellence. How it is possible to include Mālik ibn Anas, Muḥammad ibn Idrīs al-Shāfī‘ī, Aḥmad ibn Ḥanbal and Dāwūd ibn ʿAlī in one group of scholars despite their different profiles, activities, relationships, and views (which al-Shahrastānī does explicitly) is a question that these discussions trigger rather than answer.

**B. Modern Muslim Scholarship:**

Muslim scholars who have dealt with this subject have generally tended to accept one of the theories of the medieval sources about the origins of and differences between the *Ahl al-Ra’y* and the *Ahl al-Hadīth*. Aḥmad Amīn accepts the dichotomy that some medieval sources made on a regional basis (the Ḥijāz vs. Iraq), although he does not seem to believe that this was due only to the different life and culture of the two regions. He argues that the scholars of both regions were influenced by the legal heritage of the Companions who dominated the scholarly scenes in each region. The *Ahl al-Ra’y*, for instance, flourished in Iraq because they inherited the legal thought of ʿAbd Allāh ibn Mas‘ūd, who was ready and willing to use his own discretionary opinion (*ra’y*) whenever
there was no relevant text, and who also used to abstain from narrating much from the Prophet “out of piety” (which was evident in his being overwhelmed whenever he narrated from the Prophet). Additionally, life in Iraq, which was different in various aspects from life in Medina, required solutions that the limited stock of traditions the Iraqis had could not provide.\textsuperscript{516} The features of this school were its excessive recourse to hypothetical legal scenarios that were, at times, unrealistic (in the sense of being highly unlikely to take place), and their little participation in transmitting traditions. Their fear of fabrication, Amīn argues, led them to lay down very stringent conditions for the acceptance of Prophetic traditions, with the result that only very few traditions met their criteria and were accepted and used by them.\textsuperscript{517}

On the other hand, the school of Ḥadīth, or the \textit{Ahl al-Ḥadīth}, flourished mainly in the Ḥijāz (although it also had some representatives in Iraq) because there was a larger stock of traditions there, and because their simple life did not require more than what they already had.\textsuperscript{518} The features of this school were its abhorrence of posing hypothetical questions and its great reliance on Prophetic traditions, including ones that were deemed “weak.”\textsuperscript{519} Some scholars of the \textit{Ahl al-Ḥadīth} went to such an extreme as to give the Sunna precedence over the Qur’ān itself.\textsuperscript{520}

Muhammad al-Ḥijwī, a Moroccan scholar, also argues that legal thought in the Ḥijāz and Iraq was very much colored by the opinions of the Companions who happened to live there, especially after the death of ‘Umar ibn al-Khaṭṭāb (d. 23/643), when ‘Uthmān ibn ‘Affān (d. 35/655) allowed the Companions to “disperse” to various

\textsuperscript{516} Ahmad Amīn, \textit{Fajr al-Islām}, pp. 240-41.
\textsuperscript{517} Ibid., pp. 241-42.
\textsuperscript{518} Ibid., p. 243.
\textsuperscript{519} Ibid., p. 243.
\textsuperscript{520} Ibid., p. 244.
The later scholars of Iraq and the Ḥijāz, however, insisted that what they had inherited represented the true (Prophetic?) Sunna, and as early as the second half of the first century, scholars of both regions were already split between the Ahl al-Ḥadīth, who were headed by Saʿīd ibn al-Musayyab in the Ḥijāz, and the Ahl al-Raʿy, whose head was Ibrāhīm al-Nakraʿī in Iraq. From the former group originated the Mālikīs, Shāfiʿīs, Ḥanbalīs, Zāhirīs, and others; the latter were mainly represented by the school of Abū Ḥanīfa.

Comparing Ibrāhīm al-Nakraʿī and Saʿīd ibn al-Musayyab, al-Ḥijwī argues that the former thought that the rulings of the law were based on firm grounds and rationales (qawāʿid wa-ʿilal thābita) that were meant to serve the interests (maṣāliḥ) of the people. Those rationales were discernible from the Qurʾān and the Sunna, in addition to reason, which can distinguish between good and evil. In contrast, Saʿīd ibn al-Musayyab was searching for the texts (al-nuṣūṣ) rather than their underlying rationales, which he would only do when he did not find a relevant text.

Sālim al-Thaqafī, a contemporary Saudi scholar, makes one interesting point in connection with this discussion. He argues that while it is true that the Ahl al-Raʿy and particularly Abū Ḥanīfa contradicted some Prophetic traditions that reached them, they were not the only group of scholars who did this; even among the Companions there were

522 Ibid., pp. 379-80.
523 Ibid., p. 383.
524 Ibid., p. 383. Al-Ḥijwī argues that although some of the Iraqi scholars, such as al-Shaʿbī, rejected raʿy, some Medinese scholars accepted and used it, such as Rabīʿat al-Raʿy. But to reconcile this with the strict dichotomy he is making between the two regions, al-Ḥijwī suggests that Rabīʿat al-Raʿy was probably influenced by the Iraqis when he served as wazīr of Abū al-ʿAbbās al-Saffāh (the first ʿAbbāsid Caliph, d. 136/754).
525 Ibid., p. 385.
526 Ibid., p. 386.
those who contradicted Prophetic traditions, and there is hardly any legal school of law
which, in one instance or another, did not act in disagreement with one or more Prophetic
traditions.\textsuperscript{528} Apart from making such a sweeping generalization about the Companions
and early Muslim scholars, al-Thaqafi does not appear to think that the rejection of
Prophetic traditions is a valid criterion on the basis of which we can distinguish between
the early schools of law. We will come back to this point in a later context.

C. Modern Western Scholarship:

Modern Western treatment of this subject is not without its problems.\textsuperscript{529} Goldziher, for
example, seems to have been hesitant about the definition of the \textit{Ahl al-Ra’y} and the \textit{Ahl
al-Ḥadīth}. He argues that whereas the \textit{Ahl al-Ḥadīth} were “concerned with the study of
transmitted sources,” the \textit{Ahl al-Ra’y} were concerned with “the practical aspects of the
law.”\textsuperscript{530} Presenting the interests of these two groups in this way indicates that Goldziher
did not regard the \textit{Ahl al-Ḥadīth} as primarily legal scholars, but mainly as traditionists
who gathered legal traditions but were nonetheless less interested in employing them in
actual legal issues. In the same breath, however, he seems to agree that both designations
“referred to branches of legists occupied with the investigation of Islamic law.”\textsuperscript{531} He
defines the \textit{Ahl al-Ra’y} as those scholars whose “method of dealing with Islamic
jurisprudence [was based on the belief that] . . . not only the written and orally
transmitted sources are authoritative – namely, the Koran and the traditions of

\textsuperscript{528} Ibid., pp. 80-81.
\textsuperscript{529} For a review of Western scholarship on early Islamic legal history earlier than scholars discussed here,
see Harald Motzki, \textit{The Origins Islamic Jurisprudence}, pp. 2-10.
\textsuperscript{530} Goldziher, \textit{The Zāhirīs}, p. 3.
\textsuperscript{531} Ibid., p. 3. I rely here on Goldziher’s Zāhirīs for two reasons. Firstly, this work is one of the latest of
Goldziher’s contributions to the field of Islamic legal history. Secondly, given the subject of this work (the
Zāhirīs) and Goldziher’s attempt to examine their thought in light of that of the \textit{Ahl al-Ra’y} and the \textit{Ahl al-
Ḥadīth}, it can be assumed that he would discuss this subject in the clearest way in this work.
Muḥammad and his companions – but also . . . what is valid according to the principles of Islam, what the individual insight of a legist or judge, in real or apparent dependence on those indisputable sources, recognizes as the truth emanating from their spirit.”

In Goldziher’s view, then, the Ahl al-Ra’y paid some attention to the “orally transmitted sources,” but much subjectivity was involved in their legal thinking in general and their treatment of the transmitted materials in particular. “The exponents of ra’y derived the legal basis for the introduction of subjective motives in the deduction of law from the spirit of the transmitted divine law,” he states.

This understanding is based on Goldziher’s view that the early scholars of Islamic law differed from one another “in the extent to which they permit ra’y to be a determining factor in establishing Islamic law in a given case.”

This indicates that while there may not have been sharp dichotomy between ra’y and tradition in early Islam, each scholar was more given towards one of them. In other words, there was a continuum, at one end of which was ra’y, and at the other the traditions. On this continuum, Goldziher places Abū Ḥanīfa and Dāwūd al-Zāhirī at two opposite ends as we as we noted earlier; the former was a scholar who made “considerable concessions” to the use of ra’y, whereas the latter completely shunned it.

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532 Ibid., p. 3 (emphasis mine).
533 Ibid., p. 7 (emphasis mine).
534 Ibid., p. 3.
535 Ibid., pp. 3-4. Motzki argues that the sharp distinction that Goldziher made between the Ahl al-Ra’y and the Ahl al-Ḥadīth was of central importance for his overall theory about the development of Islamic law, and especially the idea that Prophetic traditions only came into existence and wide and authoritative use only in the late second/eighth century. Therefore, Goldziher failed to realize that we cannot categorize some early works, such as Mālik’s Muwatta’, as belonging solely to either camp. Those works were, Motzki argues, works of “Tradition,” in the broader sense of not being limited only to the Prophetic traditions like later compilations of Ḥadīth (Harald Motzki, The Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools, p. 16).
While this seems to be a balanced view of the relation between *raʿy* and tradition in early Islam, the contrast that Goldziher draws between the concern of the *Ahl al-Ḥadīth* for the study of transmitted materials, and the concern of the *Ahl al-Raʿy* for the “practical aspects” of the law suggests that despite his reference to them as jurists, he may not have regarded the *Ahl al-Ḥadīth* scholars as full-fledged legal scholars like the *Ahl al-Raʿy*. Additionally, he associates the “spirit of the law” and the “principles of Islam” with the *Ahl al-Raʿy*, which, by inference, suggests that these were not among the tools of the *Ahl al-Ḥadīth* (otherwise, he would not mention this as a defining feature of the *Ahl al-Raʿy*). Like modern Muslim scholars, Goldziher seems to have accepted what many medieval Muslim scholars said about these two groups of scholars without paying much attention to the fact that this dichotomy was itself part of the polemics between the two sides. This understanding of the subject, therefore, does not seem to be successful in identifying what was distinct about each legal approach. It only suggests that Goldziher thought that the admission of “subjective methods” to rule according to the “spirit” and “principles” of Islam was the criterion on the basis of which we can distinguish between the two groups.

Schacht’s discussion of this subject indicates his awareness of the problem of the sources and the need to identify what was really distinct about the *Ahl al-Ḥadīth* in particular. His understanding of the career of the *Ahl al-Ḥadīth* scholars also reveals his hesitancy in accepting them as full-fledged legal scholars. On the one hand, he argues that that “[t]heir activity is an integral part of the development of legal theory and

536 Goldziher must have been aware that some medieval scholars – such as al-Ṭabarī – did not recognize a scholar like Ibn Ḥanbal as a jurist. Treatment of this issue of whether the *Ahl al-Ḥadīth* were legal scholars or only scholars of Ḥadīth, therefore, should be rather nuanced, and scholars must spell out in an unequivocal way their understanding of who the *Ahl al-Ḥadīth* were and what was distinctive and characteristic of their juridical thought, just as they often do when discussing the *Ahl al-Raʿy*. 
positive legal doctrine during the first half of the second century A.H.” On the other hand, he points out that the traditionists, who existed in various regions, were distinguished from and in opposition to the jurists and legal scholars, even if they remained in contact with them. They were “naturally specialists in the transmission and study of traditions and in the criticism of their isnāds,” and only “occasionally interested in purely legal issues.” Their “most important activity” in Schacht’s view was the “creation and putting into circulation of traditions from the Prophet.”

Schacht argues that the distinction between the Ahl al-Ra’y and the Ahl al-Ḥadīth was “to a great extent artificial” since the Ahl al-Ra’y was a term coined and used pejoratively by the Ahl al-Ḥadīth to defame their opponents. This does not mean that there were no differences between both groups, for the Ahl al-Ḥadīth, who appeared after the Ahl al-Ra’y, “claimed that formal traditions from the Prophet . . . superseded the ‘living tradition,’ on which the ancient schools of law relied.” Schacht also made a distinction between the two groups on the basis of their use of “reason” and “personal opinion.” Unlike the ancient schools and their “extensive use of human reasoning and personal opinion,” the Ahl al-Ḥadīth, who were generally strict and rigid, sought to establish the Prophetic Sunna as the only valid source of law and detested all forms of human reasoning and personal opinion. This view was later to be accepted by the other

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538 Ibid., p. 253.
539 Ibid., p. 254.
540 Schacht, *An Introduction to Islamic Law*, p. 35 (emphasis mine).
schools of law, although they also continued to maintain their inherited legal doctrine. Subjectivity is attributed to the *Ahl al-Ra’y* in this understanding and not emphasized as a feature of the *Ahl al-Ḥadīth*.

Schacht, however, introduced another element into his discussion of this subject; the element of religiosity and morality, which may actually undermine his understanding of the subjectivity involved in the legal thought of both groups. While he thought that this element was characteristic of the early schools of law in general when he says that “[t]he main material aim of the traditionists was the same as that of the ancient schools, that is, to subordinate the legal subject-matter to religious and ethical considerations,” he seems to have thought that it was more characteristic of the *Ahl al-Ḥadīth* and even one that provided a *raison d’être* for their existence. “The movement of the traditionists,” he argues, “was the natural outcome and continuation of a movement of *religiously and ethically inspired* opposition to the ancient schools of law,” the schools which, in their turn, “represented, in one aspect, an Islamic opposition to popular and administrative practice under the later Umayyads.” He states that “[t]he opposition group which developed into the Traditionist movement emphasized this tendency [of morality and religiosity].” Additionally, he argues that “the standards of reasoning of the

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543 Ibid., vol. 1, p. 691. While subordinating legal issues to moral and religious considerations can be regarded as a subjective interference in the law, it is not considered as such in this context because they appeal to considerations that are not, at least in theory, the product of the individual jurists themselves. These considerations rely on supposedly objective points of reference, such as moral conventions and religious requirements.

544 In commenting on their acceptance and rejection of traditions, Schacht states that the traditionists rejected some traditions “for reasons of their own.” It is not clear whether this means subjective reasons or reasons that had to do with their career as Ḥadīth critics, who, at least in theory, only accept and reject traditions according to their *ismāds*. While others may not accept this method of assessing the authenticity of traditions, the fact that the traditionists do so according to certain notions mean that their assessment was intended to be objective, unlike those who rejected traditions on the basis of their contents and on subjective grounds in the view of the traditionists.


traditionists in general were inferior to those of the ancient schools of law,” mentioning al-Shāfi‘ī’s reference to their “lack of systematic reasoning.”

Believing that the only doctrine that was “purely traditionist” remained that of Aḥmad ibn Ḥanbal, Schacht had some doubts about the role of the Ahl al-Ḥadīth as jurists. He mentions that “[the traditionists] were mainly concerned with subordinating the legal subject-matter to religious and moral principles, expressed in traditions from the Prophet.” The Ahl al-Ḥadīth, thus, were not concerned with law for its own sake, but mainly used it as a means to realize their moral agenda. Unfortunately, Schacht does not explain how the Ahl al-Ḥadīth dealt with the traditions in a way that served their moral agenda, nor what he means by this agenda.

G. H. A. Juynboll, for his part, builds his discussion of this subject on a sharp distinction that he thinks has afflicted Islam from the very beginning between ra‘y (individual judgment or “common sense,” in his understanding), and ‘ilm, which is knowledge of the Tradition (in a wide sense that includes views of people other than the Prophet). To show the difference, he argues that when a Companion was asked about an issue and gave a fatwā on it, he was acting like a faqīh (jurist) or one who exercised ra‘y. However, if he mentions a view of another Companion or a precedent of the Prophet, he was acting as a ‘ālim (learned man), one who knows the precedents and refrains from privileging his own view. “[D]uring the earliest years, say the first century of the Hijra,”

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547 Schacht, Origins, p. 254.
548 Schacht, Introduction, p. 35 (emphasis mine).
549 G. H. A. Juynboll, Muslim Tradition: Studies in Chronology, Provenance, and Authorship of Early Hadith, p. 33. I am following Juynboll’s order here. If made consciously, this would suggest that what would come to a Companion’s mind first would be an opinion from another Companion, and then a precedent from the Prophet. I find this an unlikely contention that needs demonstration.
he points out, “fiqh and ‘ilm were only occasionally combined in one and the same person.”

Despite Juynboll’s concession that occasionally some scholars were able to combine fiqh and ‘ilm, his ray/‘ilm dichotomy seems exaggerated and unwarranted, and even goes against some of his other views. Elsewhere, he argues that “[i]t is a generally accepted fact that the first four caliphs set their own standards.”

“They ruled the community in the spirit of the prophet, thinking of their own solutions to problems rather than meticulously copying his actions,” he adds, arguing that “[t]he same can be said of the first few great legal minds which Islam has produced.”

One of these is Sa‘īd ibn al-Musayyab, the great Medinese scholar who died almost at the end of the first/seventh century. But Juynboll does not explain here how one can possibly rule in a spirit of someone without having enough precedents to rely on to understand his spirit.

Juynboll carries the same dichotomy to the second century. Speaking of Abū Ḥanīfa, he suggests that most of the traditions in whose isnād he figures, and all the accounts that mention a relationship between him and Ḥadīth, must have been later fabrications by his followers who sought to improve his image that was tainted by contemporary and later Ḥadīth scholars.

A faqīh, then, cannot be a possessor of ‘ilm,

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550 Ibid., p. 33. When talking about Abū Ḥanīfa’s circle elsewhere, Juynboll states that “if on some occasions it so happened that a tradition was readily at hand to be adduced, it was not disregarded altogether but it never seemed to play a crucial part in the decision making” (ibid., p. 120, italics mine). Nothing is mentioned here to support this contention.

551 Ibid., p. 15 (emphasis mine). Juynboll makes a reference here to a later part of the book where he shows that most of the rulings of the first four Caliphs were not based on Prophetic traditions, and were mostly their own ra’y and discretion.

552 Ibid., p. 15 (emphasis mine).

553 Juynboll seems to endorse the view of the Ahl al-Ḥadīth regarding Abū Ḥanīfa. In another context, he argues that “[t]here are several reports in which Abū Ḥanīfa appears to ridicule prophetic sayings, especially those which have taken the form of legal maxims or slogans” (ibid., p. 121). However, if Abū Ḥanīfa “ridiculed” these sayings, this may indicate that he did not consider them Prophetic in the first place, for he would not gain anything from ridiculing them without rejecting their authenticity. According to Juynboll, by the time of Abū Ḥanīfa, one could reject a saying attributed to the Prophet only on the basis
and a ʿālim was seldom concerned with fiqh, although later on, much of the raʿy of the early jurists would assume the shape of ʿilm, which, in its turn, would echo what used to be merely raʿy, or personal views of early scholars. If this is so, then there is no way we can compare the Ahl al-Ḥadīth and the Ahl al-Raʿy, for these were two completely distinct categories of people who did not have anything in common.

Christopher Melchert argues that starting from the later 8th and throughout the 9th centuries CE, there was a heated controversy between “those who would found their jurisprudence exclusively on Ḥadīth, Aṣḥāb al-Ḥadīth or traditionalists, and those who reserved a leading place for common sense [emphasis mine], Aṣḥāb al-Raʿy.” This echoes Goldziher’s “subjective motives,” which he thought was defining of the Ahl al-Raʿy, and Juynboll’s “common sense.” Holding that the Ahl al-Ḥadīth “defined itself by its loyalty to the sunnah; that is, to normative precedent,” Melchert explains everything the Ahl al-Ḥadīth did in light of this understanding. In discussing the “reasons for the split” between the two groups, for instance, he argues that the Ahl al-Ḥadīth condemned qiyās because it “could evidently be used to evade the strict requirements indicated by Ḥadīth.” They also refrained from choosing from among the traditions they collected. Aḥmad ibn Ḥanbal, for instance, evidently relied on reports from the Prophet as well as from the Companions and Successors. When he did not give his personal opinion, he “adduced a great many different sorts of evidence in support of his opinions, including of its isnād, or by dismissing its authenticity on account of its contradiction of the Qurʾān or another Sunna of the Prophet that is considered authentic.

554 Ibid., p. 67.
555 Incidentally, when defining the Ahl al-Ḥadīth, Juynboll defines them as an “early Islamic faction propagating the transmission and promotion of traditions” (ibid., p. 257; emphasis mine). No mention of fiqh is alluded to here, even if with some reservation.
556 Melchert, Formation, p. 1.
557 Melchert, Ahmad ibn Ḥanbal, p. 62.
558 Melchert, Formation, pp. 9-10.
559 Ibid., p. 16.
examples and dicta from Followers, Companions, the Right-Guided Caliphs and the Prophet.” 560

It is noteworthy that Melchert believes that the “conscious enmity” between the two groups dates to the 2nd/8th century, which he demonstrates by comparing Abū Ḥanīfa, as representative of the Ahl al-Ra’y, with Sufyān al-Thawrī (d. 161/777) as representative of the Ahl al-Ḥadīth. Remarkably, he notes that the distinction between the two groups was not as sharp as one might think, for there were occasions when they agreed with each other, and even had followers in common. 561 Melchert’s view that the Ahl al-Ḥadīth tended to avoid choosing one report over another will be useful for us in a latter context.

For his part, Wael Hallaq seeks to distinguish between the rationalists (the Ahl al-Ra’y) and the traditionalists (the Ahl al-Ḥadīth) on the basis of how they would come to a legal conclusion. He, however, seems to have limited this to the Ahl al-Ra’y only. “Rationalism,” he points out, “signifies a perception of an attitude toward legal issues that is dictated by rational, pragmatic, and practical considerations,” and “is a substantial legal reasoning that, for the most part, does not directly ground itself in what came later to be recognized as the valid textual sources.” In contrast, the traditionalists “were those who held that law must rest squarely on Prophetic Ḥadīth, the Qur’ān being taken for granted by both rationalists . . . and traditionists.” But does this mean that the Ahl al-Ḥadīth had no other considerations when they dealt with the sources? What about “the methodology” of the Ahl al-Ḥadīth which Hallaq believes crystallized only in the second half of 2nd/8th century? 562

560 Melchert, Ahmad ibn Ḥanbal, p. 77.
561 Melcher1, Formation, pp. 3-4.
562 Hallaq, Origins, pp. 74-75.
D. Critique of these Views:

Problems with these understandings stem from the fact that no precise definitions are given to the *Ahl al-Raʿy* and the *Ahl al-Ḥadīth*. These general definitions at times reflect a hesitation to accept the *Ahl al-Ḥadīth* as legal scholars. Despite the general agreement that the *Ahl al-Raʿy* preceded *Ahl al-Ḥadīth* in time, the former were judged against the backdrop of Ḥadīth as those who, more often than not, rejected it. There is also a latent assumption that there was a great deal of consistency among the scholars of the *Ahl al-Raʿy* and those of the *Ahl al-Ḥadīth*. The possibility that these designations may have referred to various scholars who had distinct views on the meaning of *raʿy* and the binding body of the tradition is not entertained.

Historically, the situation seems to have been more complicated than these understandings. The *Ahl al-Raʿy* never made a formal statement about their rejection of any textual evidence (when, of course, it is accepted by them as such), and there is evidence that they took any relevant textual evidence that was available to them into consideration. Abū Ḥanīfā was accused of arguing on the basis of what the traditionists saw as “weak” traditions to support some of his legal opinions, something that was taken by his Ḥadīth detractors to prove his inconsistency, rather than his animosity towards or rejection of the Prophetic traditions.⁵⁶³ Thus, “it is not reference to traditions of the Prophet which is the innovation [of the *Ahl al-Ḥadīth*], but their demand for recognition,” Motzki argues, explaining that “[t]he enmity toward newly appearing Ḥadīths which were not compatible with the existing doctrines says nothing about the role which

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⁵⁶³ See, for instance, Abū Zahra, *Abū Ḥanīfā*, pp. 299-303. The traditions mentioned here are *mursal* (traditions in the chain of transmitters of which a transmitter is missing, mostly the Companion), which were accepted by the Ḥanafīs, but, ironically, rejected by most traditionists (for this, see, for instance, al-Khaṭīb al-Baghdādi, *al-Kīfāya fī ʿIlm al-Riwaʿya*, p. 423).
Hadīths per se played in the schools of law.” It can also be argued that the very notion of ṣiyyās, which evidently was a characteristic of the Ahl al-Ra’y, indicates that the Ahl al-Ra’y were also seeking to relate their legal views to textual evidence, even if in an indirect way.

Furthermore, writings about the Ahl al-Ra’y indicate that it is not the outright rejection of any textual evidence that they were mostly accused of (although this accusation was made by a few scholars, such as al-Awzā’ī); it was primarily their inconsistencies in accepting some textual evidence and rejecting other such evidence for no obvious or good reasons (from the point of view of their detractors, of course). Arguably, there is no reason to believe that Abū Ḥanīfah, for instance, used a tradition that he did not think was authentic, or rejected another that he thought was authentic. The fact that he used traditions at all indicates that he regarded them as the most authentic textual evidence that existed on certain issues. Majid Khadduri asserts that “[t]he Ḥanafī scholars . . . paid more attention to traditions than their contemporary critics claimed despite their reputation that they were unacquainted with these traditions.”⁵⁶⁴ As noted earlier, Ibn ‘Abd al-Barr argued that the rejection of Ḥadīth was not specific to the Ahl al-Ra’y. Al-Thaqafi, therefore, has good reasons to hold that the acceptance and rejection of Ḥadīth should not be taken as the criterion by which we characterize any of the early legal schools, even if they differed on the degree to which they did that. Therefore, it seems safe to say that the common understanding of the attitude of the Ahl al-Ra’y to Ḥadīth is mistaken, and was probably the product of the polemics of the Ahl al-Ḥadīth against them.

Seeking to understand the difference between these two groups of scholars on a regional basis has also lead to some faulty conclusions, one of which is the view that the Ḥijāzīs were generally the Ahl al-Ḥadīth. Some scholars have argued against this view, noting that the Companions who are thought to have laid the foundations of the Ḥijāzī legal thought, and the Successors who developed and spread it, were also jurists not merely carriers of knowledge. Mālik in particular used ra’y no less than Abū Ḥanīfa and his predecessors, although the underlying principles that governed their use of ra’y were probably different, as some scholars have noted. The opposite could be said about the Iraqis, many of whom were known for their hatred of ra’y and qiyās. What existed in the first two or three centuries were thus “personal” circles of knowledge, whose scholars differed on their willingness to use their own discretionary views and the traditions available to them.

565 It wouldn’t probably be disputed that ‘Umar ibn al-Khaṭṭāb did not abstain from using his discretionary opinion, although some scholars account for this on the basis of his responsibilities as Caliph (see, for instance, Abū Zahra, Tārīkh al-Madhāhib al-Islāmīyya, vol. 2, pp. 16-17). But his son, ‘Abd Allāh ibn ‘Umar, is said to have been very conservative, and would not, most of the time, give his opinion if he did not find a relevant Prophetic tradition. Ironically, many scholars argue that ‘Umar’s approach was carried to Iraq by ‘Abd Allāh ibn Mas‘ūd (who is said to have been a staunch admirer of ‘Umar), while Ibn ‘Umar’s attitude was inherited and maintained by the Ḥijāzīs, whose head among the Successors was Sa’īd ibn al-Musayyab. Yet being conservative does not mean that Ibn ‘Umar never used ra’y. This is even more so for Ibn al-Musayyab, who did not hesitate to give his own opinion when no text existed, and felt at liberty to choose between various pieces of evidence (for this, see, for example, Abd al-Majīd Maḥmūd, al-Ittiḥāt al-Fiqhiyya li-Ahl al-Ḥādīth fī al-Qarn al-Thālith al-Hijrī, discussed below).

566 See, for instance, Muḥammad Yousuf Gouraya, Origins of Islamic Jurisprudence (with Special Reference to Muwatta’ Imam Malik), making a strong case that Mālik never bound himself either by the consensus of the scholars of Medina or even the practice of the Medinese (’amal al-Madīna), and that his fatwās reflected only his own personal views. See also Bāḥasan, al-Ra’y fī Madrasat al-Ḥijāz al-Fiqhiyya, pp. 46ff; and passim. This may actually explain why the confrontation between the Zāhirīs and the Mālikīs in Andalus (where the Mālikīs dominated in Ibn Ḥāmid’s time) was much bitter than that between them and the Ḥanafīs in Iraq (where Ḥanafīsm dominated when the Zāhirīs first appeared). The Mālikīs were always willing to employ and expand the notion of the high goals of the law (maqāsid al-sharī‘a) and use it in their jurisprudence.

567 Abū Zahra, for example, argues that ra’ī in Iraq, which was influenced by ‘Abd Allāh ibn Mas‘ūd and ‘Abd Allāh ibn ‘Abbās, was mostly inclined towards qiyās, while ra’ī in the Hijāz, which relied on ‘Umar’s juridical legacy, was based on considerations pertaining mostly to personal and social interests (maṣālah) (Tārīkh al-Madhāhib al-Islāmīyya, pp. 31-34).

568 For this, and for the different views on this issue, see, Wael Hallaq, “From Personal to Doctrinal Schools of Law: A Reevaluation.”
Finally, all these accounts make the underlying assumption that the *Ahl al-Ḥadīth* and the *Ahl al-Ra’y* were two unified and homogenous groups, each with a large degree of coherence and consistency. This assumption has led to generalizations that cannot be supported on the basis of the complicated picture that our sources give. It also leaves many questions unanswered. For instance, what does *ra’y* mean? If it means simply personal opinion, what were the underlying principles of the scholars who used it? Were there differences among them? Were the *Ahl al-Ḥadīth* just scholars of Ḥadīth, or did they have their own legal thinking? If they had their own legal thinking, what was characteristic of it? What was different in the way the *Ahl al-Ra’y* dealt with that part of the tradition which they shared with the *Ahl al-Ḥadīth*? Part of the problem may be that the emphasis of these discussions is always on *what* legal evidence each side considered and used, and not on *how* they used it. I argue below that while it is difficult to make generalizations on the *what*, we can make better generalizations if we focus on the *how*.

III. Two Views on the Origin and Doctrine of the *Ahl al-Ra’y* and the *Ahl al-Ḥadīth*:

Two contemporary scholars have made noteworthy critical contributions to the issue of the origin and rise of the *Ahl al-Ra’y* and the *Ahl al-Ḥadīth* and their differences. The first is the Sudanese Khalīfa Bābakr al-Ḥasan. Al-Ḥasan accepts the theory that each legal trend originated in a different region (the *Ahl al-Ḥadīth* in the Ḥijāz and the *Ahl al-Ra’y* in Iraq), but he rejects the argument that this was “natural” for both environments. Jurisprudence in each region depended on the Companions that resided there and on their personal attitudes and doctrines, doctrines that their Successors adopted, expanded and
handed over to the next generation. At this stage, the difference did not have to do with two distinct trends, or with disagreement over the use of ra’y and Ḥadīth as such; it only had to do with different teachers who were active as jurists and transmitters (such as ‘Abd Allāh ibn ‘Umar in Medina and ‘Abd Allāh ibn Mas‘ūd in Iraq), and had different doctrines and traditions. The Companions who went to Iraq were more willing to issue fatwās than those who remained in Medina. But the fact that the two regions had different Companions led, from very early, to competition between the two regions, not only because each region took much pride in its Companions and adhered to their legal doctrines, but also because those were competing with each other.

At the time of Abū Ḥanīfa, the Ahl al-Ra’y emerged as a distinct group with a distinct methodology, al-Ḥasan argues. Almost concomitant with that was the emergence of the “movement” of the Ahl al-Ḥadīth in several regions of the Muslim state at the hands of people like Mālik ibn Anas, al-Awzā‘ī, ‘Abd Allāh ibn al-Mubārak, and Sufyān al-Thawrī. It so happened, however, that the leadership of that movement passed into the hands of scholars who were taught by Ḥijāzī teachers (such as al-Shāfī‘ī, Ibn Ḥanbal, Ishāq ibn Rāhawayh, and [Ibrāhīm ibn Khālid] Abū Thawr (d. 240/854)), while the movement of the Ahl al-Ra’y passed from Abū Ḥanīfa to his students and thus remained in Iraqi hands. In Iraq, the Ahl al-Ḥadīth were basically those scholars who rejected the

570 Ibid., p. 268.
571 Ibid., p. 270.
572 Ibid., p. 320.
573 Ibid., pp. 261-63. For a good presentation of this, see Ibn ‘Abd al-Barr, Jāmi‘ Bayān al-‘Ilm, vol. 2, pp. 1100ff., where the author mentions many anecdotes and reports of what the Companions used to say about, or against, each other.
574 Al-Ḥasan draws here on Ibn Taymiyya’s Şihhāt Uṣūl Madhhab Ahl al-Madīna.
575 Ibid., pp. 268-69.
juridical thought and practice of Abū Ḥanīfa and his likes. Additionally, while the *Ahl al-Ḥadīth* in their first stage (in the Ḥijāz) were suspicious of the traditions of the Iraqis, in the second stage they developed criteria by which they assessed the reliability of transmitters and the authenticity of Prophetic traditions regardless of their provenance.

At this point, the basis of the competition ceased to be regional, and instead we see two distinct trends that existed side by side in the same region – Iraq. Only then, in the second half of the 2nd/8th and throughout the 3rd/9th centuries did the two camps begin to attack each other with accusations regarding the use of *raʾy* and Ḥadīth. The *Ahl al-Ḥadīth* accused the *Ahl al-Raʾy* of being ignorant of Ḥadīth and giving their own opinions precedence over it; the *Ahl al-Raʾy* reciprocated by accusing them of rigidity and stupidity. During the *Miḥna* in the first decades of the 3rd/9th century, however, the struggle between the two groups reached its peak, and the *Ahl al-Ḥadīth*, who relied only on reports from the Prophet and his Companions, were fighting on two fronts: the first against the theologians (*al-mutakallīn*) who used *raʾy* in theology, and the second against the Iraqi jurists (*al-fuqahāʾ*) who used it in jurisprudence.

The *Ahl al-Raʾy*, then, were the Iraqis, notably Abū Ḥanīfa and his followers, who adhered to the doctrines of the Companions who had moved to Iraq in the early decades of Islam and made a practice of issuing *fatwās*. The distinguishing feature of these scholars was their largescale and frequent use of *qiyyās* and their giving it precedence over traditions transmitted by single transmitters (the *akhbār al-āḥād*). The term *Ahl al-Raʾy*

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576 Ibid., pp. 263-64.
577 Ibid., p. 269.
578 Ibid., pp. 266-67.
579 Ibid., p. 265.
580 Ibid., pp. 269, 272.
581 Ibid., pp. 272-73.
was invented by the *Ahl al-Ḥadīth* to refer to scholars who had these particular features, al-Ḥasan argues, referring, among other things, to al-Awzā’ī’s statement (quoted previously) where he said that the problem with Abū Ḥanīfa was not his use of *ra’y*, but rather his abandoning Prophetic traditions brought to his attention for something else. Ibn Abī Shayba, another member of the *Ahl al-Ḥadīth*, devoted a long chapter in his *Musnad* to listing more than a hundred cases in which Abū Ḥanīfa allegedly gave opinions that contradicted what the *Ahl al-Ḥadīth* considered sound traditions.582

Al-Ḥasan rejects the accusation of the *Ahl al-Ḥadīth* that Abū Ḥanīfa was ignorant of traditions583 and gave precedence to analogy over Ḥadīth; in his view, the problem was that Abū Ḥanīfa’s criteria for accepting traditions were more stringent that those of the *Ahl al-Ḥadīth*.584 The Ḥanafīs were the target of the *Ahl al-Ḥadīth* because they exaggerated the use of hypothetical thinking and analogy, used legal stratagems, held some theological views that the *Ahl al-Ḥadīth* did not approve of, and had connections with the rulers and the state.585 By contrast, the *Ahl al-Ḥadīth*, both in the Hijāz and in Iraq, were more reluctant to give *fatwās* and preferred to remain silent when they did not have a relevant text to rely on. In the second stage of the movement, however, they developed technical skills that mostly dealt with Prophetic traditions – how to verify and accept them, and what their relationship with the Qur’ān was.586

Arguing almost in the same vein, the Egyptian scholar ‘Abd al-Majīd Maḥmūd ‘Abd al-Majīd has observed that the confusion about the identity of the *Ahl al-Ra’y* and the *Ahl al-Ḥadīth* is old. He relies on a good number of early and medieval sources to

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582 Ibid., p. 273.
583 Ibid., pp. 289-90.
584 Ibid., pp. 279-80.
585 Ibid., pp. 290-95.
586 Ibid., p. 300.
trace the origin of the split between the two groups of scholars and support his conclusions in this regard, making a conscious effort to situate the subject in its historical context.587

Examining a large number of reports from and about the Companions, their Successors, and the followers of their Successors,588 ‘Abd al-Majīd argues that we can only speak meaningfully about a distinction between the Ahl al-Ra’y and the Ahl al-Hadīth as two distinct legal trends only in the 3rd/9th century. He refutes what he takes to be misunderstanding about legal and juridical activities in both Medina (as representative of the Hijāz), and Kufa (as representative of Iraq) in the early decades of Islām, which led some scholars to trace the origin of the difference between the Ahl al-Ra’y and the Ahl al-Hadīth to the split between these two cities. These two cities figured more than any others in early Islam because Medina was the city of the Prophet, the capital of Islam until ‘Uthmān, and the place where most of the Companions of the Prophet spent the rest of their lives, whereas Kufa was the Islamic establishment par excellence (al-munsha’atu ‘l-islāmiyyatu ‘l-khāliṣa) which many Companions planned, built, and settled in.589

Regarding Medina and Kufa as representatives of the two larger schools of the Hijāz and Iraq is then understandable in ‘Abd al-Majīd’s view, but taking them as prototypes of the later Ahl al-Hadīth and Ahl al-Ra’y is wrong. Making a sharp

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587 It is unfortunate that al-Ḥasan’s and ‘Abd al-Majīd’s writings have not received attention in modern Western studies, which probably results from the misconception that modern Arabic studies only copy uncritically from medieval sources. While there is some truth in this, it is also true that some contributions are critical and creative. Al-Ḥasan’s and ‘Abd al-Majīd’s works discussed here are examples. I owe the reference to ‘Abd al-Majīd’s works to Professor Hossein Modarressi.

588 ‘Abd al-Majīd is not skeptical about what medieval sources attribute to early authorities, but, unlike many modern Muslim scholars, he does not struggle to reconcile the seemingly contradictory statements that are attributed to the same early authority but rather tends, in line with his theory, to take them to indicate that most early authorities were still in the process of working through different views, which suggests we should not expect them to hold a coherent and definite theory or a precise legal trend.

distinction between the two regions at time of the Companions and the Successors – which extends roughly to the first half of the 2nd/8th century – is to assume that there was no communication between the two regions. He contests this view, pointing out that people used to go back and forth between the two regions, if only to make the pilgrimage and visit the city of the Prophet. Scholars of the two regions were in direct and close contact with each other, and both groups had in common many teachers from among the Companions. Furthermore, scholars in both regions used both Ḥadīth and raʾy almost equally. In Medina, there were scholars who were more given to the use of raʾy, such as the Successor Saʿīd ibn al-Musayyab, the leading figure of the Ḥijāzī school. Ibn al-Musayyab was much influenced by the legal thought of ʿUmar ibn al-Khaṭṭāb and Zayd ibn Thābit, in whose juridical thought raʾy played an important role, and also by Rabīʿat al-Raʾy, a teacher of Mālik ibn Anas. In Iraq, there were scholars who were less inclined to use raʾy, such as al-Shaʿbī, who is reported to have been very critical of some fellow Iraqi scholars, such as Ḥammād ibn Abī Sulaymān, on account of their extensive use of reason. Yet even those scholars of Medina who were known for their detestation and rejection of raʾy did not fully abstain from resorting to it; similarly, Iraqi scholars who were known for their disposition to use raʾy also detested the unrestrained use of reason in religion and did use traditions in their legal thinking. Finally, there were controversies within each school between those who were more and those who were less disposed to using raʾy and issuing fatwās.

590 Ibid., pp. 21-22.
592 Ibid., pp. 49-50
593 Ibid., pp. 29-30, and pp. 33-36.
This is not to say that there were no differences between the two regions. ‘Abd al-Majīd argues that the main difference had mostly to do with the cultural contrast between the two regions and the different requirements of their lives. What turned those differences into open rivalry was their excessive zeal in defending the teachings of the Companions they got their knowledge from, and rejecting the opinions of the other regions even if they were also based on views of Companions. The Companions differed on the weight that each of them gave to ra’y and on their approach towards tradition. Personal, psychological, and intellectual reasons can account for this, for some Companions were more confident and more capable in using their knowledge than some others. ‘Abd al-Majīd compares four Companions who were among the most prolific in the transmission of Ḥadīth – Ā’isha bint Abī Bakr (d. 57/676), the Prophet’s widow; ‘Abd Allāh ibn ‘Abbās (d. 68/687), his cousin; and ‘Abd Allāh ibn ‘Umar and Abū Hurayra (d. 95/678), two of his famous Companions. ‘Abd al-Majīd contrasts the first two of these Companions with the other two. Ā’isha and Ibn ‘Abbās were critical and did not accept all the traditions that reached them, and they did not take many of the traditions they accepted at face value; Ibn ‘Umar and Abū Hurayra accepted all the traditions they heard, and were hesitant to use reason to change their apparent meaning. Ibn ‘Umar, for instance, was so scrupulous that he would still act on the basis of a tradition even if he had doubts about its authenticity.

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595 Ibid., pp. 31-32.
596 Ibid., pp. 32-33.
597 Ibid., p. 110. Reference to these personal features and how they might have affected the willingness of the Companions to give fatwās is interesting and, to the best of my knowledge, novel.
Additionally, there was a “normal” competition between the scholars of the two regions, and between the Arabs and non-Arabs in each region, especially in Iraq. The pride and loyalty of the scholars of each region to their forebears and teachers intensified with the passage of time and continued until the late 2nd/8th century, when some schools of law began to crystallize and distinguish themselves from other legal trends.

Regional competition and rivalry, then, and not difference in methodologies or attitude towards ra’y and tradition were the reason for the split between the scholars of the two regions at this stage. This also holds true to the second half of the 2nd/8th century, when the Ḥanafī and Mālikī schools of law – which inherited the old regional rivalry between the Ḥijāz and Iraq and were influenced by their different cultures – were taking shape.

While both schools used ra’y equally, the Ḥanafī school tended to use analogy as a basis for ra’y (which led them to increasingly pose hypothetical questions to test what they identified as the ‘illa in every case), whereas the Mālikīs were more inclined to searching for the “interest” (maṣlaḥa) in each case and establish their opinion on its basis.

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599 For example, in ‘Abd al-Majīd’s view, the dire statements attributed to Sha’bī against ra’y and the scholars who used it probably resulted from his competition with Ḥammād, who was a non-Arab, rather than with Ḥammād’s teacher ʿIrāḥīm al-Nakha’ī, who was, like al-Sha’bī, an Arab (ibid., pp. 37-39).

600 Ibid., pp. 43-44.

601 Ibid., p. 45.

602 Ibid., p. 48. Connection between analogy and the need to pose hypothetical questions to test the ‘illa was mentioned by some medieval and modern scholars (see, for instance, Abū Zahra, Abū Ḥanīfa, pp. 229-34). However, it does not seem to have caught the attention of many modern scholars, especially those who wrote about the early Ḥanafī school of law and its casuistry (although some of them realized that casuistry was not merely an “exercise in ingenuity and systematic speculation,” a view that Baber Johansen attributes to Schacht. For Johansen, however, casuistry was a useful tool in “reconciling the requirements of practical life with those of legal doctrine” (Baber Johansen, “Casuistry: Between Legal Concept and Social Praxis,” p. 149).

603 Ibid., p. 47. For a similar view on the differences between the use of ra’y in the Ḥijāz and Iraq, and for the difference between the Ḥanafī and Mālikī notions of istiḥsān, see Abū Zahra, Tārīkh al-Madhāhib al-Islāmiyya, pp. 31-34, and p. 342.
To account for the fact that the Ḥanafīs were particularly the target of the attack against *raʾy*, ‘Abd al-Majīd points out that when the process of collecting Prophetic traditions from various regions in the early 2nd/8th century began, a group of traditionists emerged whose ability to argue with the Ḥanafīs was limited. This led the traditionists to accuse the Ḥanafīs of ignorance and rejection of traditions. The situation was exacerbated by the emergence and popularity of the Muʿtazilīs in Iraq, some of whom happened to be Ḥanafī scholars at the same time. Additionally, Abū Ḥanīfa himself had some theological views that the traditionists regarded as deviant. This intensified the suspicion of the *Ahl al-Ḥadīth*, who began to be conscious of themselves as a distinct group, although not yet as legal experts. Thus, it is only in the second half of the 2nd/8th century that we can speak of the *Ahl al-Ḥadīth* vis-à-vis the *Ahl al-Raʾy*, although the former had not yet developed legal thought and some of them followed the legal schools of the Hijāzīs (like Ibn Jurayj) and the Kufīs (like Sufyān al-Thawrī, Yahyā ibn Saʿīd al-Qaṭṭān (d. 198/813), and others).

In the 3rd/9th century two developments took place. The first is the attack on the use of analogy in jurisprudence, not only by the traditionists, but also by the theologians who agreed with the traditionists that rituals (*al-ʿibādāt*) were not the domain of reason even if they disagreed with them in accepting the Sunna as a basic source of law. The second development was the power that the Muʿtazilīs acquired and their attempts to impose their views on the scholars and populace either by argumentation or by force.

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This brought the hostility between the *Ahl al-Ḥadīth* and the Muʿtazilīs into the open, and the popularity that some traditionists – notably Ahmad ibn Ḥanbal – gained for their refusal to submit to the government that backed the Muʿtazilīs increased their consciousness of their distinct identity and their confidence in their orientation. The Ḥadīth collections and works of Ḥadīth criticism were all due to these events, and so was the total rejection of *raʿy* by the traditionists, who failed to distinguish between the use of *raʿy* in jurisprudence and its use in theology, or between sound *raʿy* and bad *raʿy*, ‘Abd al-Majīd argues.611 While Ibn Ḥanbal was willing to accept some of the opinions of some scholars like Mālik and al-Shāfīʿī before the *Miḥna*, he totally rejected all *raʿy* after it and adhered only to the Prophetic traditions.612 Ibn Ḥanbal was thus the traditionist who paved the way for his fellow traditionists to develop their own legal school. Another significant consequence of the hostility between the *Ahl al-Raʿy* and the *Ahl al-Ḥadīth* was that the former began to pay more attention to the Prophetic traditions.613

Pointing out that scholars of Islamic legal history have not paid much attention to the legal thinking of the authors of the main Ḥadīth compilations, ‘Abd al-Majīd decides to study their works with the aim of uncovering the underlying principles and general directions of their jurisprudence.614 He shows how even the way that these compilations were arranged can tell us many things about their legal thoughts.615 He then identifies

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612 *Ibid.*, p. 120. In ‘Abd al-Majīd’s view, this explains the fact the more often than not, more than one view are attributed to Ahmad ibn Ḥanbal (*ibid.*, pp. 125-26).
615 ‘Abd al-Majīd analyses the opening chapters of these compilations, the kind of reports that they include (Prophetic only or also opinions of the Companions and Successors), the titles of their chapters (*tarājīm*, pl. of *tarjama*), the comments made on some traditions and their authenticity, and the Qurʾānic verses they mention and how they put them in order (‘Abd al-Majīd, *Ittijāḥāt*, pp. 291-331). This part of ‘Abd al-Majīd’s work could have been useful for Muhammad Fadel in his article on Ibn Ḥajar’s *Hady al-Sārī*, where Ibn Ḥajar engages in a similar exercise to identify the legal thought and methodology of al-Bukhārī.
some features of the legal methodology and jurisprudence of the Ahl al-Ḥadīth,\(^616\) some of which indicate that they were seeking to be comprehensive, in the sense of taking all available textual evidence into account, even if they had some doubt about its authenticity.\(^617\) This methodology manifested itself, among other things, in the abstention of the Ahl al-Ḥadīth from giving an opinion when they did not find a tradition in a certain case,\(^618\) their rejection of hypothetical jurisprudence (al-fiqh al-taqdīrī)\(^619\) and qiyās,\(^620\) and also in their rejection to recording their legal opinions.\(^621\)

‘Abd al-Majīd, however, devotes one complete chapter to what he regards as the “moral-psychological orientation” (al-ittijāḥ al-khuluqī al-nafsī) of the scholars of the Ahl al-Ḥadīth, and seeks to show how this could be the key to understanding their

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\(^{616}\) The first of these features is attitude of the Ahl al-Ḥadīth towards the Qur’ān and Ḥadīth. For most of them, ‘Abd al-Majīd points out, the Sunna was just as much revelation as the Qur’ān, and should therefore be used in conjunction with the Qur’ān in any legal issue even if they differed on the hierarchy of the Qur’ān and Sunna as two textual sources (whereas some of them put them on equal footing – like Ibn Ḥanbal and al-Bukhārī, others gave the Sunna precedence over the Qur’ān on the ground that it can restrict some of its general statements, explain some of its equivocal statements, or introduce a reading that differs from what the Qur’ānic text apparently conveys) (‘Abd al-Majīd, Ittijāḥāt, p. 191). Secondly, the Ahl al-Ḥadīth rejected the idea of judging the Ḥadīth on the basis of the Qur’ān, which could open the door to rejecting many traditions (ibid., pp. 205-07). The Ahl al-Ḥadīth also held that the Sunna could and did add rulings that did not exist in the Qur’ān (ibid., p. 213). In other words, they regarded the Sunna an independent source of law. Fourthly, they believed that both the Qur’ān and Sunna could abrogate each other (ibid., p. 227). Fifthly, while they differed on the question of whether or not the khabar al-wāḥid was a source of absolute knowledge (the majority of them did not think it was, but some did), they were agreed that it provided a basis for action (‘amal) (ibid., p. 242). Sixthly, they did not accept mursal traditions (with the exception of marāṣīl al-ṣahāba, where the transmitter who does not mention his source is a Companion) on the ground that they fail to meet one of their conditions for acceptance: the continuity and connectedness of the chain of transmission (ittiṣāl al-sanad) (ibid., pp. 260-62). They also gave much weight to the opinions of the Companions when they agreed, and selected from their views when they disagreed (ibid., p. 269).

\(^{617}\) While the rejection of mursal traditions by the scholars of Ḥadīth to accept does not seem to support this contention, it could only be taken to refer to a tension they had between being scholars of Ḥadīth and scholars of law. But we should add to this, however, that the traditionists managed to find ways by which they could incorporate as many mursal traditions as possible. For this, see al-Khaṭīb al-Baghdādī, al-Kifāya fi ’Ilm al-Riwa‘āya, pp. 423ff.

\(^{618}\) ‘Abd al-Majīd, Ittijāḥāt, pp. 284ff.

\(^{619}\) Ibid., pp. 287-88.

\(^{620}\) Ibid., pp. 289-90.

\(^{621}\) Ibid., p. 288.
thought and activities, not only as scholars of Ḥadīth, but also as scholars of law. In this understanding, the *Ahl al-Ḥadīth* proceeded on the basis of a moral and religious worldview regarding the nature of human beings, the rules that govern their behavior, and the final judgment of their deeds.\(^{622}\) This worldview has had a great impact on their legal thought, as they gave much weight to the intentions of the doers of the acts (*mukallafūn*)\(^ {623}\) and were interested less in knowledge itself than in the practice that that knowledge seeks to establish.\(^ {624}\) They gave special care to traditions that epitomized the spirit of Islam and were moral rather than legal in nature, with an eye on the intention of the Muslim, and the reward in the hereafter.\(^ {625}\) This moral worldview of the *Ahl al-Ḥadīth* explains their total abhorrence and rejection of notions such as legal stratagems (*ḥiyal*),\(^ {626}\) and their adherence to ones like *sadd al-dharā’i‘* (which is prohibiting something on the ground that it may lead to something that is wrong and forbidden).\(^ {627}\)

‘Abd al-Majīd also contributes to the issue of the relationship between the *Ahl al-Ḥadīth* and the *Ahl al-Zāhir*. He argues that all the Zāhirūs belonged to the *Ahl al-Ḥadīth*, but that the opposite was not necessarily true. Pointing out that, generally speaking, the *Ahl al-Ḥadīth* were inclined to adhere to the apparent meaning of the words and texts, which does not mean that they never went beyond the limits of the terms and worked

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\(^{625}\) *Ibid.*, p. 422. When they discuss the issue of charity (*zakāh*), for example, the *Ahl al-Ḥadīth* do not limit themselves to mentioning how much is to be given, or to whom it should be given, or what should happen to a person who does not give it. Instead they go on to place greater emphasis on questions such as what would make people love the poor, want to give charity, and hate to be misers, selfish, and careless about others. They would even seek to motivate people to give charity voluntarily, so that giving to the poor becomes a habit dear to them, and try to connect it to social and moral dimensions that motivate people to think of their communities and the value of cooperation and solidarity, rather than thinking only of their own self-interest, ‘Abd al-Majīd argues (*ibid.*, pp. 224-25).


within the framework of the goals of the law,\textsuperscript{628} he asserts that it was from the \textit{Ahl al-Hadīth} that Zāhirism emerged and distinguished itself, for the Zāhirīs were traditionists who admired and were taught be the traditionists.\textsuperscript{629} The \textit{Ahl al-Hadīth} provided the Zāhirīs with their raw materials,\textsuperscript{630} and the Zāhirīs learned from them how to respect the texts and not neglect any of them without clear and solid evidence.\textsuperscript{631} They also built on their offense against \textit{qiṣāṣ} to exclude it completely from their legal thought.\textsuperscript{632}

Notwithstanding these common features, the Zāhirīs had their own distinct identity and legal thought. They made a coherent and consistent \textit{madhhab} out of the general approach of the \textit{Ahl al-Hadīth}, and they followed it to the letter, even when this leads them into some absurdities (\textit{ighrāb wa-shudhūd}). Unlike the \textit{Ahl al-Hadīth}, they rejected the opinions of the Companions (unless they all agreed on one thing) and the Successors as authoritative and binding sources of law.\textsuperscript{633} They also rejected \textit{qiṣāṣ} categorically, while the \textit{Ahl al-Hadīth} merely detested it. Whereas the \textit{Ahl al-Hadīth} accepted ‘good’ opinion and at times the notions of \textit{maslaha} and \textit{istiḥsān}, the Zāhirīs rejected them completely.\textsuperscript{634} Additionally, there are some technical differences between the two groups. For instance, when a Companion says “we were commanded” or “we were prohibited” to do something, the Zāhirīs – unlike the Ahl al-Ḥadīth who treat this as a kind of \textit{marfu‘} tradition\textsuperscript{635} – would not take this as an acceptable textual and legal evidence. The imperative mood (\textit{al-amr}) denotes obligation for both sides, but while the

\begin{itemize}
\item \textsuperscript{628} Ibid., p. 350.
\item \textsuperscript{629} Ibid., pp. 351-52.
\item \textsuperscript{630} Ibid., pp. 352-53.
\item \textsuperscript{631} Ibid., p. 353.
\item \textsuperscript{632} Ibid., p. 355.
\item \textsuperscript{633} Ibid., p. 359.
\item \textsuperscript{634} Ibid., pp. 361-62.
\item \textsuperscript{635} A \textit{marfu‘} tradition is a tradition that goes back to the Prophet himself, even if he is not mentioned in it in an explicit way. For this see al-Khaṭṭāb al-Baghdādī, \textit{al-Kifāya}, p. 10.
\end{itemize}
Ẓāhirīs would understand it as recommendation or permission only when there is solid textual evidence, the *Ahl al-Ḥadīth* would do this for other reasons that are not strictly textual in nature. In other words, the Ẓāhirīs limit and narrow the evidence that could change the obligatory nature of imperatives and interdictions. 636

Remarkably, other differences that ‘Abd al-Majīd notes between Dāwūd and the *Ahl al-Ḥadīth* also constitute similarities between him and the *Ahl al-Ra’y*. While the *Ahl al-Ḥadīth* were generally reluctant to give legal views in some cases (which, in ‘Abd al-Majīd’s view, resulted from their scrupulous and moral attitude), the Ẓāhirīs and the *Ahl al-Ra’y* never abstained from giving opinions when asked. While the *Ahl al-Ḥadīth* usually avoided stating that something was categorically legal or illegal, 637 the Ẓāhirīs and the *Ahl al-Ra’y* used to do that. Unlike the *Ahl al-Ḥadīth*, both groups also agreed that “intention” had no legal use or relevance. 638 Both agreed that nothing should be prohibited only because it could lead to something unlawful. Thus, the notion of *sadd al-dharā’ī*, a main feature of the jurisprudence of the *Ahl al-Ḥadīth*, had no place in jurisprudence for the Ẓāhirīs or the *Ahl al-Ra’y*. Finally, both groups sought to be consistent in their legal thinking, even if, ‘Abd al-Majīd argues, they were at opposite ends of the spectrum. 639

Unlike other scholars, al-Ḥasan and ‘Abd al-Majīd study the issue of the origin of the *Ahl al-Ra’y* and the *Ahl al-Ḥadīth* historically, meaning that they do not assume that these two terms referred to the same group of the scholars, or that they did not change in

637 *Ibid.*, p. 417. It would therefore be inaccurate to say that Aḥmad ibn Ḥanbal was “careless” in not always distinguishing between what is “required” and what is “recommended,” as Melchert argues (*Melchert, Aḥmad ibn Ḥanbal*, p. 76), for, according to ‘Abd al-Majīd, this was done on purpose and not without good reasons in Ibn Ḥanbal’s view.
meaning over time. Nor do they assume that any of these terms referred to any one group in one particular time. Additionally, both scholars evidently seek to avoid selectivity by taking into consideration what medieval sources have to say about this issue, for which reasons their discussions better reflect the complicated picture presented in these sources. In al-Ḥasan’s view, the *Ahl al-Ḥadīth* were various groups of scholars in more than one region who may not have in common except their adherence to the Prophetic Sunna. They were not necessarily reacting to the negligence of Ḥadīth by the *Ahl al-Ra’y* as it may be thought. He also makes a fresh contribution by seeking to figure out when, by whom, and for what reason the designation the *Ahl al-Ra’y* was coined, shifting the whole discussion to the domain of history (in the sense that the question now becomes whether or not what he says can be supported or needs to be rejected on the basis of the available sources). Along the same lines, he adds that the Ḥanafīs, including Abū Ḥanīfa himself, did not dislike being referred to as the *Ahl al-Ra’y*, although they understood it differently; for them, it referred to the ability to deduce rulings from the texts and connect cases to each other.  

In addition to limiting the designation *Ahl al-Ra’y* to Abū Ḥanīfa and his followers, this view suggests that it was used by two different groups to mean two different things.

It is noteworthy that the misgivings that the *Ahl al-Ḥadīth* had against the *Ahl al-Ra’y* can be seen as moral and religious in nature, such as their relationship with the government, their holding “sectarian” views, using legal stratagems, taking excessive pride in reason by posing hypothetical questions, etc. Likewise, the main feature that distinguished them could also be seen as moral in nature, namely their excessive scruples and fear that they might add to religion what did not belong to it, which is evident in their

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640 Ibid., p. 275.
abstention from giving opinions when they did not find relevant textual evidence. In the view of ‘Abd al-Majīd, it was this moral orientation of the Ahl al-Ḥadīth that dominated their thought and distinguished them from others. The following section will build on this view.

IV. Identifying the Characteristic Features of the Ahl al-Ra’y and the Ahl al-Ḥadīth:

‘Abd al-Majīd’s discussion of the origin of the Zāhirī madhab and its place vis-à-vis the two groups of the Ahl al-Ra’y and the Ahl al-Ḥadīth is probably the only real attempt to investigate this issue. He consciously seeks to define the real distinguishing feature of the each group. For the Ahl al-Ḥadīth, it was their moral bent. Other scholars came to similar conclusions by studying views of some Ḥadīth scholars. Commenting on Ibn Ḥanbal’s views concerning issues like marriage and divorce, Spectorsky writes: “It . . . becomes clear, despite inconsistencies, that there is a moral dimension to Ibn Ḥanbal’s responses: he gives preference to doctrines that protect women from exploitation, condemns the use of ḥiyal (legal stratagems), and requires actions and words to have consequences for which the doers and speakers are responsible.” For example, Spectorsky discusses the question of whether illicit sexual relationships establish prohibitive relations between the man and the woman involved. According to the Qur’ān, a man cannot marry a woman that his father has once married,642 but does this prohibition extend to the cases where the father has only had illicit sexual relationship with the woman? Strictly speaking, there is

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641 Susan Spectorsky, Chapters on Marriage and Divorce: Responses of Ibn Hanbal and Ibn Rahwayh, p. 7.
642 Q. 4:22 reads: “And marry not (wa-lā tankihū) women whom you father married.” Most jurists take the word nikāḥ to refer to marriage. Some jurists, however, held that the word nikāḥ is a homonym that refers to marriage as well as sexual intercourse. In this sense, this verse prohibits marrying a woman who had a sexual relationship with the father. Apparently, Ahmad ibn Ḥanbal did not hold this view regarding the meaning of nikāḥ. For a discussion of the various views on this issue, see Ibn Ḥazm, al-Muhallā, vol. 9, pp. 147-51, where Ibn Ḥazm discusses the issue of whether involving in illicit sexual relationships in general can invalidate some marriages.
no textual evidence that says so, and most scholars argued that the son can legally marry a woman with whom his father had fornicated (regardless of whether they thought that he should or not). Aḥmad ibn Ḥanbal, however, argued that for that purpose, “illicit sexual relations equal marriage.” He even regarded “extramarital lustful behavior . . . [to be] enough to produce an affinity between a man and a woman that acts as an impediment to future sexual relations between either of them and the other’s lateral descendants.” A obvious way to explain this view is to relate it to the moral aspect of Ibn Ḥanbal’s jurisprudence, which always, but not without exceptions as Spectorsky rightly observes, governed his legal thought. Melchert agrees with this; “For the most part,” he argues, “the pious concern to do right and not impose his own reasoning shines through Aḥmad’s doctrine more than almost any comparable body of quotations from any other early Muslim jurisprudent.”

This view is consistent with what medieval sources consistently report about the piety and morality of the Ahl al-Ḥadīth. This aspect was especially emphasized in the case of Aḥmad ibn Ḥanbal. That the Ahl al-Ḥadīth were also Ḥadīth transmitters and critics must have left a mark on their characters and jurisprudence. Assessing the reliability of transmitters is, more often than not, a highly subjective endeavor, and works of rijāl indicate that it was uncommon for a transmitter to be disqualified for what people may regard as trivial reasons. For the Ḥadīth critics, those reasons were sufficient to

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643 Spectorsky, *Chapters*, p. 23.
644 Ibid., p. 24.
645 Melchert, *Ahmad ibn Ḥanbal*, p. 78.
646 For this, see Eerik Dickinson, *The Development of Early Sunnite Hadith Criticism: The Taqdim of Ibn Abī Hātim al-Rāzī*, pp. 68-78.
647 For this, see, for instance, Abū Zahra, *Ahmad ibn Ḥanbal*, pp. 64ff; Melchert, *Ahmad ibn Ḥanbal*, pp. 103-20; and Hurvitz, *Formation*, pp. 147-49.
648 A transmitter was disqualified, for example, for urinating while standing, or for being seen riding a ('arjūn).
cast doubt on a transmitter’s morality and integrity. Some medieval Ḥadīth scholars reprimand these Ḥadīth critics for going beyond the “reasonable” limits of observing the behavior of the transmitters and disqualifying them on insufficient grounds. It was probably for this reason, and for fear of casting doubt on most traditions, that they insisted that the reason for tajrīḥ (disqualifying a transmitter) had to be stated.649

Spectorisky notes that there were differences between Aḥmad ibn Ḥanbal and Ishāq ibn Rāhawayh, another famous traditionist and an associate of Ibn Ḥanbal. While the moral dimension in Ibn Ḥanbal’s thought is very evident, Ibn Rāhawayh’s jurisprudence shows a “concern for consistency and systematic thinking and exhibits little interest in the human or moral dimensions of a particular problem.”650 On the question discussed above, for instance, Ibn Rāhawayh did not share Ibn Ḥanbal’s view that illicit sexual relationships had the same effect on the issue of whom a man or woman can or cannot marry, and he argued that a man can perfectly well marry a woman with whom his father had had illicit sexual relation.651 Remarkably, Ibn Rāhawayh’s jurisprudence manifested many of the features of the Ahl al-Ẓāhir, and some of his views could only come from a staunch Zāhirī, as ‘Abd al-Majīd notes.652 This does not necessarily mean that he was a Zāhirī (although the possibility that he was should not be dismissed out of

649 For an overview of the different notions and practices of the Ḥadīth critics, see al-Khaṭīb al-Baghdādī, al-Kifāya fī ‘Ilm al-Riwaʿya, pp. 138-42, and passim.
650 Specorisky, Chapters, p. 7 (emphasis mine).
651 Ibid., p. 23.
652 Ibn Rāhawayh, for instance, would argue that not using siwāk (a piece of wood that the Prophet used to brush his teeth with before the prayers) and washing in between the hair of the beard (takhliīl al-liḥyā) void the ritual prayers, on the basis that the Prophet said that a Muslim should?/must? do that before the prayers (‘Abd al-Majīd, Ittiḥādāt, p. 349). It is, of course, clear that what is at stake here is whether the Prophet, when he issued that command, meant that that was an obligation or a recommendation. Ibn Rāhawayh’s views here are based on the notion that the imperative denotes absolute obligation, a notion that is considered one of the pillars of the legal thought of both the Zāhirīs and the Ahl al-Ra’y, as we are going to see in the next chapter.
hand), but it could indicate that he was closer to the *Ahl al-Ra’y* than to the *Ahl al-Hadith*. There is no good reason why we have to classify each scholar under either the *Ahl al-Ra’y* or the *Ahl al-Hadith*. Why not entertain the possibility that some scholars were either uncertain, or sought to combine the merits of the two legal approaches?

It is noteworthy that when Spector sky discusses Ibn Rāhawayh’s juridical thought, she judged it in terms of two elements: consistency and systematization, and morality, on the other hand. There is no attempt here to suggest that a jurist has to choose between morality and consistency, for a jurist can be “consistently moral” in his legal thinking, for example. While this does not necessarily mean that a scholar’s juridical thinking cannot be systematic and moral at the same time, a jurist may frequently be compelled to choose one element to prioritize. It is here assumed that there are a number of concerns that jurist would have, such as morality, individual and social interests, etc. At times, it is difficult to discern any concern for a certain legal view other than its attempt to enforce a moral principle. In this kind of jurisprudence, we notice an emphasis on the actual outcome of the legal thinking (the legal ruling) rather than on how this outcome was achieved. This is the case with Ibn Ḥanbal’s rejection of a marriage between a man and a woman with whom his father had had an affair. While it is possible to think of how this could relate to the interests of these particular individuals and the society at large, the immediate concern that appears to have triggered this view is probably Ibn Ḥanbal’s moral bent. On the other hand, when it is observed that a certain

653 ‘Abd al-Majīd gives instances where al-Bukhārī himself thought in a way very similar to the Zāhirīs. When I say similar to the Zāhirīs, I do not, of course, necessarily mean that he came to their legal conclusions, but I mean that he, and they, came to whatever conclusions following a similar methodology and on the basis of similar premises and assumptions. Does this have to mean that al-Bukhārī was not a member of the *Ahl al-Hadith*, or does it only indicate that he may not have shared with the *Ahl al-Hadith* more than their extreme enthusiasm to find in every case evidence from the Tradition, preferably of Prophetic origin?
jurist evidently seeks to apply the same principles and methodology throughout his jurisprudence and does not care much about what the final outcome might be, it can be assumed that he had more interest in presenting a coherent and consistent legal thinking.

There is evidence that Abū Ḥanīfa prioritized consistency and systematization, and that Ahmad ibn Ḥanbal would abandon consistency for the sake of morality. Ibn Ḥanbal’s strict adherence to the letter of the evidence at times, and his reluctance to accept notions or practices that no evidence seems to prohibit in others are strong indication of this, and one which may indicate that he was in fact less faithful to the letter of the law than the Ḥanafīs, who had specific conventions on how to define the “letter” of the law and, at least in theory, sought to follow these consistently and objectively.

V. Conclusion

This chapter demonstrates how understandings of the nature of the legal thought of the Ahl al-Ra’y and the Ahl al-Ḥadīth have some problems and could, and did, lead to many misconceptions, one of which is the wrong assumption about the relationship of Dāwūdism to the two groups. I have also sought to show that the principle of using the Prophetic traditions should not be taken to distinguish the two groups, and that what we should look at is how each group used whatever they had inherited from earlier generations, and try to identify the underlying principles that governed their selections and their legal thought. The uncritical acceptance of the charges of the Ahl al-Ḥadīth against the Ahl al-Ra’y and confusing the methodology and the final products of the legal process (i.e., the legal conclusions) are, I believe, responsible for this hasty classification of Dāwūd as having been a member of the Ahl al-Ḥadīth.
To identify the underlying principles in the legal thought of the two trends requires identifying them in a precise way. Dealing with only the opinions of these two scholars will allow us to reach solid conclusions that do not necessarily have to apply to other scholars who are believed to have belonged to either camp. Contrasting Abū Ḥanīfa’s and Ibn Ḥanbal’s thought will allow us to have a continuum, on the basis of which we can classify other scholars, not necessarily as belonging to either camp, but as being closer to either end. In the case of the Ṣāḥīḥīs, it will be argued that even if many of their positive legal conclusions happened to be similar to those of the Ahl al-Hadīth (or Aḥmad ibn Ḥanbal), similarities between their legal methodology and principles and those of the Ahl al-Raʿy (or Abū Ḥanīfa) should place them closer to the Ahl al-Raʿy on our continuum. This will be discussed in more details in the following chapter after dealing with the question of what it meant to label Dāwūd “al-Ṣāḥīḥī.”
Chapter Three

Ẓāhirism between the Ahl al-Ra’y and the Ahl al-Ḥadīth

It has been noted earlier that medieval sources are not clear on why Dāwūd ibn ʿAlī was referred to as al-Ẓāhirī, focusing primarily on his rejection of qiṣṣās and taqlīd. Modern scholars do not attempt to determine what the term ẓāhir means, assuming that it is the literal, apparent, or evident meaning, as discussed in chapter four.654 This chapter seeks to answer this question by investigating how the term ẓāhir was used in the 3rd/9th century when Dāwūd lived. Next, we will revisit the question of the relationship between Dāwūd and the two legal trends of his age, the Ahl al-Ra’y and the Ahl al-Ḥadīth, in view of our discussion of what was characteristic of these legal trends and what we know about Dāwūd’s life and doctrine, as well as how the term ẓāhir was used in his time. It will be argued that both the biographical and doctrinal evidence about Dāwūd’s life and juridical thinking converge on one conclusion: if he belonged to or was closer to any of the two legal trends of his age, Dāwūd must have been closer to the Ahl al-Ra’y than to the Ahl al-Ḥadīth.

I. The Term Ẓāhir in the Muslim Tradition:

As it appears in the Arabic lexica, the Arabic root z-h-r is quite rich and productive. The first and basic meaning of this root, as Lane puts it, is “[i]t was, or became, outward, exterior, external, extrinsic, or exoteric; and hence, it appeared; became apparent, overt, 

654 The only modern scholar who sought to explain what ẓāhir means is Tawfīq al-Ghalbazūrī. He argues that ẓāhir for the scholars of ʿusūl al-ḥiṣb is any term or word the meaning of which does not require an indicator other than itself (an yakāna ‘l-lafzu bi-haythu yadullu ma’nāhu bi-ṣīghathīnī min ghayr tawaqquf ʿalā qarinatīn khārījīyya). Al-Ghalbazūrī, however, does not demonstrate that this is how the Ẓāhirīs themselves understood it, nor does he argue that this is how the term was understood from the 3rd/9th century onward. In fact, he admits that it is one of the most ambiguous terms (akhhū al-muṣṭalaḥū) in Ibn Ḥazm’s writings (al-Ghalbazūrī, al-Madrasa al-Ẓāhirīyya, p. 549).
open, perceptible or perceived, manifest, plain or evident.”\textsuperscript{655} Zahir al-jabal, thus, refers to the peak of a mountain,\textsuperscript{656} and zuhūr, the verbal noun of zahara, means for something hidden to become apparent. This basic meaning of z-h-r is always contrasted with b-t-n, which refers to what is hidden. Ibn Manzūr mentions a tradition in which the Prophet is reported to have said that every verse in the Qur’an has a zahr and a baṭn. According to Ibn Manzūr, some scholars argued that zahr here means the verbal expression of the Qur’an (lafẓ) and baṭn its interpretation. Other scholars held that zahr refers to what is apparent of the meaning of the Qur’an, and baṭn to what is hidden of its interpretation. According to this view, the zāhir of the Qur’ānic stories, for example, are the records of their events, but their baṭin is the lessons that they are meant to convey.\textsuperscript{657}

Another meaning of this root denotes dominance, as in zahara ‘alā, meaning for a person to have dominated or subdued another, or for something to prevail.\textsuperscript{658} Tazāharatu ‘l-akhbāru, thus, means that numerous accounts have reported that . . . Zahara ‘alā can also mean just the opposite: to support someone, such as zahartu ‘alayhi, meaning I assisted or supported him (a’antahu).\textsuperscript{659} Additionally, zahara ‘alā can mean to become cognizant or knowledgeable of something.\textsuperscript{660} Thus, zahara ‘alā al-shay’ means for

\textsuperscript{655} Lane, \textit{An Arabic-English Lexicon}, vol. 5, p. 1926. I use Lane here mainly for his comprehensiveness and use of lexica that I have not used myself.

\textsuperscript{656} For this, see al-Khalīl ibn ʿAbd, \textit{Kitāb al-ʿAyn}, pp 505-06, and Ibn Manzūr, \textit{Lisān al-ʿArab}, vol. 8, p. 277. I will primarily refer to Ibn Manzūr for the other derivatives of z-h-r. Other lexica, such as \textit{Kitāb al-ʿAyn} of al-Khalīl ibn ʿAbd al-Farāhīdī (d. 175/774), \textit{Jamharat al-Lughā} of Ibn Durayd, or Abū Bakr Muḥammad ibn al-Ḥasan al-Azdi (d. 321/933), \textit{al-Šīḥā} of Ismāʿīl ibn Ḥammād al-Jawhari (d. 400/1010), \textit{al-Qāmūs al-Muḥīṭ} of Majd al-Dīn Muḥammad al-Fīrūzābādī (d. 816/1414), and \textit{Tāj al-ʿArūs} of Muḥammad Muḥāṭā al-Zābīdī (d. 1205/1791) do not add much to Ibn Manzūr.

\textsuperscript{657} Ibn Manzūr, \textit{Lisān}, vol. 8, p. 274.

\textsuperscript{658} \textit{Ibid.}, vol. 8, pp. 277, 279.

\textsuperscript{659} \textit{Ibid.}, vol. 8, p. 277.

\textsuperscript{660} \textit{Ibid.}, vol. 8, p. 279.
someone to become aware or knowledgeable of something, and *azharahu ‘alā ‘l-shay* means for a person to have informed another or made him aware of something.⁶⁶¹

Paradoxically, *ẓahara*, when used in certain contexts and expressions, can also suggest the opposite of what its first and basic meaning indicates. *Al-ẓahr*, according to Ibn Manẓūr, refers to what is hidden from one or of something.⁶⁶² *Takallama bi-l-shay ‘an zahri `l-ghayb*, means that someone speaks about something that he has not witnessed. Other derivatives also suggest concealment, in the sense of pretending something that is not real.⁶⁶³ Here the meanings of *ẓahr* and *baṭn* conflate. For example, to refer to what appears of the sky, the Arabs used to say *ẓahr al-samā’* or *baṭn al-samā’*.⁶⁶⁴ Lane mentions *ẓahara lahu*, meaning it seemed to him, and *azhara lahu*, which means for a person to have pretended something to another.⁶⁶⁵ What is common among these derivatives is an element of hiddenness or uncertainty about what appears to the eyes.

*Ẓ-h-r* is thus a very productive root that can be potentially misleading. The basic meaning of the root indicates something that is obvious and evident. Other meanings, however, indicate just the opposite, such that *ẓāhir* and *bāṭin* (supposedly its opposite) could indicate just the same thing. For our purposes, nothing in the various meanings of the root *ẓ-h-r* that Arabic lexica mention indicates why people would refer to any scholar as *al-Ẓāhirī*. The only exception may be that Dāwūd was labeled *al-Ẓāhirī* because he

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⁶⁶¹ *Ibid.*, vol. 8, pp. 278-79. Other meanings of *ẓāhir* have to do with *ẓahr*, meaning back. Ironically, the Arabs used *ẓahr* for back, not face, which suggests that it was coined in reference to animals, whose *ẓahr* is probably more apparent than their bellies (*baṭn*) especially for those mounting them. For human beings, however, *baṭn* rather than *ẓahr* is what people usually see of each other when they interact.


⁶⁶³ *Lane*, *An Arabic-English Lexicon*, vol. 5, p. 1930.


⁶⁶⁵ *Lane*, *An Arabic-English Lexicon*, vol. 5, p. 1927.
adhered to the most “apparent” meaning of words and sentences, as the basic meaning of the root ẓ-h-r may suggest.666 But if this is so, what is the definition of the most apparent meaning and how was it identified?

Some medieval legal scholars seem to have been inspired by some lexical meanings of ẓāhir. In his Ḩkām fī Uṣūl al-Ḥkām, for instance, Sayf al-Dīn al-Āmidī has a section on “the ẓāhir and its interpretation” (fī ‘l-ẓāhir wa-ta‘wilih). Al-Āmidī presents two views on the meaning of ẓāhir, according to the first of which, al-ẓāhir is the obvious or apparent, or the meaning that the reader takes to be the most likely meaning intended by a certain sentence.667 The other view, which al-Āmidī supports, is that al-ẓāhir is the conventional meaning. A meaning can be conventional when it is assigned to a certain word ab initio in a certain language (al-waḍ‘ al-aṣli), or when a certain group of people agree to use a certain word in a certain meaning (al-waḍ‘ al-‘urfi). Referring to a lion by al-asad is an example of the former, but using al-ghā’īt (a word that refers to a low part in the ground in which people relieve themselves) to refer to human defecation is an example of the second.668 The first view on the meaning of al-ẓāhir here raises the same question about how the obvious meaning was determined, or why a reader would take a certain meaning to be the most likely one intended by a certain word or sentence. The

666 Some modern scholars do define the ẓāhir meaning as the apparent or the evident meaning. For this, see, for example, Y. Linant de Bellefonds, “Ibn Ḥazm et le Zāhirism Juridique,” p. 5, where de Bellefonds argues that identifying “le sens général” only requires understanding but not interpretation. Abdel Magid Turki, s.v. “al-Zāhiriyyya,” (EF, vol. 11, p. 395), argues that the Zāhirīs sought to confine jurisprudence “within the narrow limits of the evident meaning of the sacred text.” See also, Roger Arnaldez, Grammaire et Théologie chez Ibn Ḥazm de Cordoue, p. 26. To identify “le sens apparent,” Arnaldez argues, one does not need to search “en dehors de la definition nominale, lexicographique.” To the best of my knowledge, Ibn Ḥazm never identifies the ẓāhir meaning in reference to the lexicographic meaning. These scholars, however, do not answer the question of what the “apparent” or “evident” meaning are and how were they defined. They also do not demonstrate that this is how the Zāhirīs themselves understood their methodology. Our discussion in chapter four will shed more light on this issue.

667 This view is attributed to the Shāfi‘ī scholar al-Ghazālī (for this, see Abū Ḥāmid al-Ghazālī, al-Mustasfā min ‘Ilm al-Uṣūl, vol. 2, pp. 713-14).

second view, however, can be helpful. What is ẓāhir is conventional rather than self-evident. Yet in addition to the fact that al-Āmidī does not claim that this is how previous scholars understood the term ẓāhir, a ẓāhir text here is by definition ambiguous, one that requires interpretation and is therefore less able to convey meaning than other modes of bayān (such as al-naṣṣ), the indication of which are more certain. Al-Āmidī gives a number of examples of these kinds of texts to demonstrate how the ẓāhir meaning can, and probably does, differ from the meaning that ta’wil can produce.669 This understanding, however, is inconsistent with the epistemological premises of the Zāhirī school as discussed below, and it is unlikely that a scholar would refer to himself as al-Zāhirī or accept this label if he regards the ẓāhir meaning as one that is only based on probability. Finally, it has not yet been established that Dāwūd was labeled al-Zāhirī on account of linguistic views that he held. In all circumstances, without evidence from Dāwūd’s own time, we cannot possibly answer the question of why he was labeled al-Zāhirī, which is why we now turn to the question of how ẓāhir was used in select works written in the first three centuries AH (from the 7th to the 10th centuries CE). We will investigate how the Qurʾān uses this word, and then examine how it is used in two works written in the 3rd/9th century – al-Ṭabarī’s Jāmiʿ al-Bayān and al-Shāfiʿī’s Risāla.

A. Ẓāhir in the Qurʾān:

Various derivatives of the root z-h-r – the root of ẓāhir – appear 59 times in the Qurʾān.670 Nearly one third of these are related to ẓahr (meaning the back of

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669 Ibid., vol. 2, pp. 199-207.
670 For a complete list of the root and its derivatives in the Qurʾān, see Muḥammad Fuʿād ʿAbd al-Bāqī, al-Muʿjam al-Mufāhras li-alfāẓ al-Qurʾān al-Karīm, pp. 559-60.
and one quarter indicates prevailing over someone or something (zahara ‘alā),\textsuperscript{671} or siding with someone against another (zahara ‘alā).\textsuperscript{673} Other derivatives that appear frequently in the Qur’ān are zahara, meaning “to appear,” aẓhara, “to cause to appear,” and aẓhara ‘alā, “to reveal to.”\textsuperscript{674} All these derivatives do not seem to have posed special difficulty for the Qur’ānic exegetes, indicating that their meanings are quite clear. However, these exegetes had disagreements over the Qur’ānic use of the word zāhir, used as a noun and adjective in some Qur’ānic verses. We will discuss four instances of these usages in order to see whether any of these Qur’ānic uses of this word can contribute to our understanding of what labeling someone as al-Zāhirī may have meant. We will rely on two early tafsīrs – those of Mujāhid ibn Jabr (d. c. 102/720) and Muqātil ibn Sulaymān (d. 150/767), and some other tafsīrs written between the late 3rd/9th and the 8th/14th century that are generally regarded to be among the most authoritative Sunnī tafsīrs.\textsuperscript{675}

The first verse is Q. 6:120: “Forsake the outwardness of sin (ẓāhirah ‘l-ithm) and the inwardness thereof (wa-bāṭinahu).”\textsuperscript{676} Zāhir here is distinguished from, or contrasted

\textsuperscript{671} See, for instance, Q. 6:94, Q. 6:138, Q. 35:45, and Q. 42:33. Some of these instances have to do with zihār, the declaration by a husband that his wife is to him like the back (zahr, hence zihār) of his mother (for this, see Q. 33:4, Q. 58:2, and Q. 58:3) (for zihār, see Ibn Qudāma al-Maqdisī, al-Mughnī, pp. 54ff.).

\textsuperscript{672} See, for instance, Q. 9:8: “How (can there be any treaty for the others) when, if they have the upper hand of you (kayfa wa-inn yaẓhārū ‘alaykum) . . .” See also Q. 18:20, Q. 40:20, and Q. 48:28.

\textsuperscript{673} See, for instance, Q. 9:4: “Excepting those of the idolaters with whom you [Muslims] have a treaty, and who have since abated nothing of your right nor have supported anyone against you (wa-lam yuẓhārū ‘alaykum aḥadan) . . .” See also Q. 33:26 and Q. 60:9.

\textsuperscript{674} For example, all exegetes take zahara in Q. 30:41 (Corruption has appeared (zahara) on land and sea . . .) to mean “to appear,” and in Q. 40:26 ( . . . he will make mischief to appear (yuẓhir) in the land) to mean “to cause to appear.” Furthermore, all exegetes take aẓhara ‘alā in Q. 66:3 ( . . . and God made it known to him (azharaḥu ‘alā) [i.e., the Prophet Muḥammad]” and Q. 72:26 ([He is] the Knower of the Unseen and he does not reveal (yuẓhīr ‘alā) His secret to any”) to mean “to reveal to” or “to inform someone” or “to make someone aware of.”

\textsuperscript{675} These are Jāmi’ al-Bayān fi Ta’wil Ay al-Qur’ān of Muḥammad ibn Jaʾrī al-Ṭabarī (d. 310/922), al-Tafsīr al-Kabīr of Fakhr al-Dīn al-Rāzī (d. 606/1209), al-Jāmiʿ li-Akkām al-Qur’ān of Abū ʿAbd Allāh al-Qurtubī (d. 671/1272), and Tafsīr al-Qurʾān al-Asīm of Ismāʿīl ibn ʿUmar ibn Kathīr (d. 774/1372).

\textsuperscript{676} Some other Qur’ānic verses are very similar to this; for example, Q. 7:33 reads: “Say: My Lord forbids only indecencies (al-fawāḥish), mā zahara mīnḥā wa-mā baṭana.” See also Q. 6:151 and Q. 7:33.
Medieval Muslim scholars had various views as to what ẓāhir al-ithm and bāṭīn al-ithm mean here. Muqātil ibn Sulaymān argues that ʿithm in this verse refers to fornication in particular, and whereas ẓāhir refers to committing it openly, bāṭīn refers to doing it secretly. Al-Ṭabarī, who attributes Muqātil’s view to many earlier authorities, does not accept this restriction of the meaning of ʿithm in this verse to only one sin (for reasons that a later discussion will reveal). He, nevertheless, accepts the view that ẓāhir refers to open sins while bāṭīn refers to sins that one refrains from doing in public, supporting his view by reports from earlier authorities. Later scholars generally accept this last view of the difference between ẓāhir al-ithm and bāṭīn al-ithm, but they also provide more theories about the kind of sins the verse speaks about. Fakhr al-Dīn al-Rāzī, for instance, mentions a view that ẓāhir al-ithm refers to physical sins, whereas bāṭīn al-ithm refers to “sins of the heart,” such as holding wrong beliefs, hatred, envy, haughtiness, wishing harm for others, etc. Whereas al-Qurtubī accepts this view, Ibn Kathīr is more inclined to al-Ṭabarī’s views on the generality of the term ʿithm and the view that for a sin to be ẓāhir or bāṭīn depends on whether one does it in public or in private.

Another verse is Q. 13:33: “Is He Who is aware of the deserts of every soul as He who is aware of nothing? Yet they ascribe unto Allāh partners. Say: Name them. Is it that you would inform Him of something which He knows not in the earth? Or is it but a way of speaking (am bi-ẓāhirin mina ’l-qawl)?” The meaning of ẓāhir here appears to be
problematic. According to Mujāhid ibn Jabr, zāhir in this verse means zann, which probably indicates something that one has no definite knowledge of. For Muqātil, zāhir mina 'l-qawl means a false matter (amrun bāṭilun kadhib). Al-Ṭabarī accepts this view and mentions several reports according to which zāhir here means bāṭil (falsehood). Holding a similar view, al-Rāzī explains that this means that they [those who ascribe partners to Allāh, supposedly the polytheists of Mecca] propagate falsehood to deceive others. For his part, al-Qurṭubī connects this part of the verse to the previous part, where God is asking the polytheists if they would inform him of something that he did not know (other deities in this context). In al-Qurṭubī’s view, am bi-zāhirin mina 'l-qawl means that they would inform him of known deities like those they used to worship in the Hijāz, while bāṭin would be referring to deities of whom they would not inform Him. Ibn Kathīr adopts Mujāhid’s view and explains that this part of the verse means that they worshiped their false deities on the basis of zann, or the false belief that these deities could do them good or harm.

The third verse, Q. 30:7, reads: “They know only some appearance of the life of the world (ya’lamūna zāhiran mina ’l-hayāti ’l-duniā) and are heedless of the Hereafter.” According to Muqātil ibn Sulaymān, this means that they – supposedly the Persians living in the time of the Prophet – were masters of worldly activities and how to gain worldly benefits, but were otherwise heedless of the Hereafter. Al-Ṭabarī agrees with this understanding, supporting it with reports from earlier authorities. In one such report,

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687 Al-Qurṭubī, al-Jāmi‘, vol. 9, p. 323.
what these people knew were the worldly and material matters, but they were ignorant in matters of religion, a view that al-Qurṭubī and Ibn Kathīr supported. In al-Rāzī’s view, this means that the knowledge of these people was superficial, focusing only on certain aspects of the worldly life – enjoyment and satisfaction – and ignoring the bāṭin part of it, i.e., its troubles and harms. He also reports the view that zāhir in this verse refers to the existence of life, which the Persians were aware of, whereas bāṭin refers to its end, of which they were negligent.

The last verse is Q. 57:13: “On the day when the hypocritical men and the hypocritical women will say unto those who believe: Look on us that we may borrow from your light! It will be said: Go back and seek for light! Then there will separate them a wall wherein is a gate, the inner side whereof (bāṭinuhu) contains mercy, while the outer side thereof (zāhiruhu) is toward the doom.” Zāhir is again explicitly distinguished from bāṭin here. Muqātil explains that the wall in this verse refers to a wall between Paradise and Hellfire, and zāhir and bāṭin refer to the two sides of this wall – whereas bāṭin refers to the side of Paradise, zāhir refers to that of Hellfire. Al-Ṭabarī reports this view and another one according to which the wall mentioned in the verse is a wall in al-Aqṣā mosque in Jerusalem, known as the Eastern Wall, which separates the mosque and a place called wādī jahannam (or the Valley of Hellfire). Bāṭin here refers to the side facing the mosque (or the interior of the mosque) and zāhir to the side facing the valley. Al-Rāzī prefers Muqātil’s view, but al-Qurṭubī, following al-Ṭabarī, reports

690 Al-Ṭabarī, Jāmi’ al-Bayān, vol. 21, pp. 22-23.
all the various views. Ibn Kathīr believes that since Paradise and Hellfire are in two different places, the wall here is only used figuratively (by those who argue that it refers to a specific wall that separates Paradise from Hellfire) to make the meaning clearer. This wall, he argues, is a wall that leads to Paradise. When all believers have passed through it on the Day of Judgment, it will be closed and the hypocrites will be left behind in bewilderment, darkness and torment.

To recapitulate, when used as verbs, derivatives of the root ṣ-h-r that appear in the Qur’ān mean to prevail over, to support someone, to appear or to cause to appear, and to spread. Nouns and adjectives derived from this root, however, are problematic. At times, ẓāhir refers to something that is uncertain, false, misleading, superficial and materialistic. Is it possible that Dāwūd was labeled al-Ẓāhirī because his understanding of the Qur’ān was seen as superficial and misleading? We have noted earlier that although we do not have definite evidence that Dāwūd called himself al-Ẓāhirī or was referred to as such by his contemporaries, the fact that Ibn Ḥazm for example used al-Ẓāhirī himself and referred to Dāwūd and earlier Ẓāhirī scholars as such evidently indicates that this label cannot have been used in a negative sense. The Qur’ān, therefore, does not seem very helpful in answering our question.

B. Ẓāhir in 3rd/9th-Century Scholarship:

Al-Shāfi’ī’s Risāla and al-Ṭabarī’s tafsīr appear to be potentially useful for our purposes of identifying what the term ẓāhir meant in Dāwūd’s time. The former is a legal work that discusses various theoretical legal issues. The latter is the earliest comprehensive

Qur’ān commentary that has reached us. In addition, both works do use the term ẓāhir.

These two works also have the advantage of having been written just before and just after Dāwūd’s time. Al-Risāla was written in the late 2nd/8th or probably the early 3rd/9th century, whereas al-Ṭabarī wrote his tafsīr in the later 3rd/9th century. Furthermore, we have noted earlier the relationship of Dāwūd with these two scholars. Dāwūd began his career as a follower of al-Shāfi’ī’s legal thought and met with al-Shāfi’ī’s immediate disciples, and al-Ṭabarī is reported to have attended Dāwūd’s colloquium in Baghdad. In other words, we can assume that if we find some consistency in the way these two scholars use the term ẓāhir in their writings, we should be able to determine how it was probably understood in Dāwūd’s time.

Ẓāhir appears frequently in al-Shāfi’ī’s Risāla. The first extensive use of this term in al-Risāla is in a chapter that discusses different methods of bayān (expression) that the Qur’ān uses. It is useful to quote this passage in full here:

God addressed the Arabs in His Book in a way consistent with what they know about their language’s features. Among those features of their language with which they are familiar is their language’s broad scope, and [the Arab] knows by

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698 Earlier Qur’ān commentaries are very succinct, and they only give the meaning of Qur’ānic verses without much discussion. Indeed, the term ẓāhir does not appear in other early tafsīrs such as those of Mujāhid ibn Jabr and Muqātil ibn Sulaymān.

699 Not all instances in which ẓāhir appears in al-Risāla will be discussed. Some of these do not seem to have a particular relevance or significance for this discussion. In his discussion of qiyās, for instance, al-Shāfi’ī speaks about our knowledge of ẓāhir and bāṭin. Khadduri – mistakenly, in my view – translates this as the literal and implicit meaning respectively (al-Risāla (1961), pp. 288ff). Al-Shāfi’ī’s discussion, however, strongly indicates that ẓāhir here means what we know with certitude (through a mutawātīr text or ijmā’), while bāṭin refers to what is real even if we do not know it for certain – i.e., what is hidden from us (for this, see al-Risāla (1938), pp. 476ff, §§1321ff). For example, when a jurist makes a certain analogy between a new case that resembles more than one existing case, and one whose rationale (‘illa) is disputed among scholars, each scholar’s qiyās in this case, al-Shāfi’ī argues, is apparently correct (fit ‘l-ẓāhir) for that scholar. Whether it is truly correct or not (i.e. fit ‘l-bāṭin), however, is something we cannot be certain of (al-Risāla (1938), p. 479, §1332). The same point applies to testimonies. We rely on testimonies on the basis of what appears to us of the reliability of the witnesses (al-ẓāhir min ḥāli ‘l-shuhūd), but bāṭin is something that we have no means of ascertaining (ibid., pp. 478-79, §1330). A third example is when a man unknowingly marries his sister. In the unknown (fit ‘l-mughayyab), she is his sister. But in what appears to us and what we know (fit ‘l-ẓāhir), she can legally be his wife (ibid., pp. 499-500, §§1430-39). See also ibid., pp. 481-82, §§1350-54 for a similar discussion and use of ẓāhir in reference to a Muslim’s probity (‘adāla) and religious sincerity.
nature that he could be addressed with a sample of language which is ‘āmm zāhir which is in fact intended as ‘āmm zāhir, such that one can dispense with bringing something else to bear on it; or which is ‘āmm zāhir and is intended as ‘āmm, but also contains something which is khaṣṣ, which is indicated by some of what is mentioned in it [al-‘āmm al-zāhir]; or which is ‘āmm zāhir but is intended as khaṣṣ; or which is zāhir that the context indicates that what is intended by it is not, in fact, the zāhir. Knowledge of all this could be at the beginning of the speech, the middle, or the end thereof.\(^700\)

In this passage, the meaning of which is not easy to construe,\(^701\) al-Shāfī‘ī emphasizes the fact that the Qur’ān was revealed in a specific language to a specific people who spoke it. He thus believed that understanding this revelation requires knowledge of how these people used their language. This requirement of being knowledgeable of how the Arabs used the Arabic language further suggests that there were rules of their understanding, and that these rules are knowable. What al-Shāfī‘ī then sets out to do is to list these rules, and it is within this framework that he discusses what understanding of a statement the Arabs considered zāhir and what understanding they considered otherwise. In other words, al-Shāfī‘ī held that the zāhir meaning is not self-evident or inherent in the language itself; rather, it needs to be defined particularly from the perspective of the people who speak the language.

On the face of it, this passage may suggest that in al-Shāfī‘ī’s view, many forms of bayān can equally be zāhir. Other instances of his use of the term zāhir, however, do

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\(^{700}\) *Al-Risāla* (1938), §173, pp. 51-52. For translation of the passages of *al-Risāla* quoted here, I rely, with at times radical modifications, on the translations of Khadduri (*al-Risāla*, 1961) and Joseph Lowry (*Early Islamic Legal Theory*). For example, in this passage, Lowry translates zāhir as “appears to be” (Lowry, *Early Islamic Legal Theory*, p. 73). Lowry, obviously, does not believe that zāhir here is used technically. I also take fiṭra in this passage to be a reference to an Arab, and not to God. The evidence is a reference later in the passage to a mukāṭab (in bi-ba‘ḍi mā khaṭība bi-hi), which cannot be God if He is the mukhāṭib. Therefore, I do not follow Shākir’s vocalization of the verb in the third line of this paragraph as yukhāṭiba, which is translated accordingly by both Khadduri and Lowry.

not support this understanding. In numerous other passages, he seems to use the term ẓāhir to refer to the general, unrestricted meaning (‘āmm) of Qur’ānic terms and verses. In other words, ẓāhir in these instances refers to the general and fullest possible extension of a verse or term. The term bāṭin, in contrast, is used to refer to just the opposite: the restricted meaning of some Qur’ānic references. For example, according to al-Shāfi‘ī, “[T]raditions from the Messenger should be accepted as explicitly general (‘alā ẓ-ẓāhirī mina ʾl-āmm) unless an indication specifies otherwise . . . or unless there is an agreement of the Muslim [scholars] specifying that their meaning is bāṭin but not ẓāhir, and that it is khāṣṣ and not ‘āmm.” Al-Shāfi‘ī evidently uses ẓāhir here to refer to the full scope of indication of terms, and bāṭin to refer to the khāṣṣ, or what is limited in its scope of indication.

Al-Shāfi‘ī applies this understanding of ẓāhir and bāṭin meanings to some legal issues. For instance, discussing the issue of the number of times one is required to wash his head while performing ablution, he argues that “the ẓāhir meaning of God’s saying: ‘Wash your faces’ is that the minimum requirement for washing is once, but it may [also] mean more [than once.]” The ẓāhir meaning of washing here is its meaning that is inclusive of a single performance of what can be described as washing. “[T]he apostle

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702 For the various translations of the terms ‘āmm and khāṣṣ, see Lowry, Early Islamic Legal Theory, p. 69. Lowry, arguing that other translations could be clumsy at times, suggests translating ‘āmm as unrestricted, and khāṣṣ as restricted. Arguably, however, the use of a negated adjective (unrestricted) to refer to ‘āmm does not seem to mesh with Lowry’s view that “all texts appear at first to be, or in fact are at one level, ʾāmm, but some are then shown to have an import that should be described as khāṣṣ” (ibid., p. 70). In other words, if the khāṣṣ is the exception, it should not be referred to with a muthbat (affirmative) adjective while the rule, the ʾāmm, is referred to with the negation of that adjective. Be this as it may, Lowry’s preference to leave the terms untranslated at times seems to be sound.

703 Al-Risāla (1938), p. 322, §882. Lowry translates bāṭin here as the “objectively correct meaning,” and ẓāhir as the “apparent meaning,” a translation he seems to regard as standard for this word (Lowry, Early Islamic Legal Theory, p. 328).

704 Lowry argues, rightly, in my view, that the ‘āmm/khāṣṣ dichotomy deals with the scope of application of rules. In this view, a rule is ʾāmm when it “applies to the entirety of a class,” and is said to be khāṣṣ when it “applies only to a subset of the class” (Lowry, Early Islamic Legal Theory, p. 69).
decreed that ablution must be performed by washing once, in conformity with the zāhir [meaning] of the Qurʾān,” al-Shāfiʿī points out. In another instance, he discusses the issue of zakāh (charity) and its amount or value for various assets and commodities. Quoting the Qurʾānic verse, “Take of their goods a freewill offering to cleanse and purify them,” he notes different values of zakāh for different goods. In his conclusion, al-Shāfiʿī argues that “[i]f it were not for the evidence of the sunna, all goods would have been treated on an equal footing on [the basis of] the zāhir meaning of the Qurʾān, and the alms would have been imposed on all, not on some only.” What al-Shāfiʿī says here is that the zāhir meaning of the verse is its meaning that is inclusive of everybody and everything without distinction. It is only the Sunna that restricts this general, zāhir meaning of the verse and limits its scope of application.

Al-Shāfiʿī also uses the term zāhir in another context. On the subject of the “forbidden women,” or women whom a man cannot marry, he begins his discussion of this issue by quoting Q. 4:23, which lists categories of women that a man cannot marry. Commenting on this verse, al-Shāfiʿī says: “This communication may have two meanings: [it may mean] that the women whom God has [specifically] forbidden shall be

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705 Al-Risāla (1938), p. 29, §87.
706 Ibid., p. 196, §534.
707 It befits here to mention an additional example of al-Shāfiʿī’s use of zāhir that shows what appears to be a corruption in both the wording of al-Risāla and the translation of Khadduri. “Had it not been for the evidence of the Sunna and our decision on the [basis of the] zāhir [meaning of the Qurʾān],” al-Shāfiʿī says, “we should have been in favor of punishing everyone to whom the term stealing applies by the cutting off [of the hand]” (al-Risāla (1961), p. 107; (1938), pp. 72-73, §235.) Shākir and Khadduri apparently did not notice that this passage, as it stands, contradicts the points that al-Shāfiʿī seeks to make here. What al-Shāfiʿī must be saying here is: “Had it not been for the evidence of the Sunna, and if we decide on the basis of the zāhir meaning of the Qurʾān, we should have been in favor of punishing everyone to whom the term stealing applies by the cutting off [of the hand].” This passage as it is in Shākir’s edition of al-Risāla would make sense only if al-Shāfiʿī believes that al-khāṣṣ rather than al-ʿāmm is the zāhir meaning, which nothing else that he mentions indicates. In fact, in another context, al-Shāfiʿī argues that “the term ‘theft’ is binding upon whoever steals, regardless of the value of the stolen article or of its security” (al-Risāla (1938), pp. 112-13, §333). This means that without the Sunna evidence – which identifies the minimum value of the stolen article and the circumstances of the theft that warrants cutting off the hand – any person who steals anything in any circumstance would be treated as a thief whose hand must be mutilated.
regarded as] forbidden, and that those whom He has not specifically forbidden shall be lawful on the ground that He is [both] silent about them and [also, AO] by His saying (Q. 4:24): ‘And [it is] lawful for you to seek what is beyond that.’” This, he states, “may be regarded as the ṭāhir meaning of the communication.”

Two things can be noted about this argument. Firstly, in reading this verse, al-Shāfi‘ī made conclusions not only about those women whom one cannot marry, but also about women whom one can marry. The verse, as it is, does not say anything about the women whom one can marry, but this is something that he believes we can reasonably understand from the verse. What is notable, however, is that al-Shāfi‘ī did not stop his argument here; he goes on to mention the next verse in which the Qur’ān declares a general rule, and that is that it is permitted to marry any category of women beyond those listed in Q. 4:23. The significance of this will be discussed later.

In the same vein, al-Shāfi‘ī discusses the different kinds of food that Muslims are not allowed to eat. Quoting Q. 6:146 (“Say, I do not find, in what is revealed to me, anything forbidden to one who eats of it, unless it be a dead animal, or blood outpoured, or the flesh of swine, for it is an abomination, or an impious thing over which the name of a god other than God has been invoked”), he notes that it could be understood in two ways. The first meaning, which concerns us here, is that “nothing is forbidden at all except what God has [specifically] excluded. This is the ṭāhir and the broadest of all meanings (a‘ammah wa-aglabah ā) and anyone presented with it will understand at once that nothing is forbidden except what God has specifically forbidden.” This argument shows the strong relationship between the ṭāhir meaning and the assumption

708 Al-Risāla (1938), pp. 201-02, §547.
709 Ibid., pp. 206-07, §557.
that what is explicitly mentioned with regards to a particular case represents the only exception to the general rule, which is always assumed to be the zāhir meaning. The use of zāhir in other contexts in al-Risāla also relates to the issue of ʿumūm/khuṣūs. Speaking of the relationship of the Prophetic Sunna to the Qurʾān, al-Shāfiʿī answers an interlocutor who asks: “If we find in the Qurʾān a zāhir meaning which a certain Sunna may either make specific or to which it may give a bāṭin meaning that is contradictory, do you [not] agree that the Sunna [in such a case] is abrogated by the Qurʾān?”

Ẓāhir also appears in al-Shāfiʿī’s Risāla in a way that is reminiscent of a usage of ẓāhir that we have noted earlier to indicate something that is different from the real, even if it is the obvious, self-evident, or prevalent meaning. For example, in a section on the “category [of declaration] the wording of which indicates the bāṭin, not the zāhir,” the ẓāhir meaning is rejected because it cannot be possibly the intention of the speaker. The example that he mentions here is that of Jacob’s sons when they tell their father in Q. 12:82: “Ask the town in which we have been, and the caravan with which we have come.” Al-Shāfiʿī argues that what Jacob’s sons obviously mean here are not the ẓāhir meanings of the word town and caravan, but rather an implicit meaning, which is the

711 This is consistent with Joseph Lowry’s argument that, more often than not, al-Shāfiʿī uses the ‘āmm/khāṣṣ dichotomy to harmonize the Qurʾān and the Sunna. The Qurʾānic text is usually ʿāmm, and evidence from the Sunna restricts this generality (Lowry, “The Legal Hermeneutics,” p. 10). For a detailed discussion of the issue of the ʿāmm/khāṣṣ dichotomy, see Lowry, Early Islamic Legal Theory, pp. 69-87. Lowry’s discussion of this issue is important, but what renders it less relevant for our discussion here is his interest in the ʿāmm/khāṣṣ dichotomy itself, while we are interested in this insofar as it relates to what al-Shāfiʿī regards as the zāhir meaning. Otherwise, Lowry does not say anything about this issue that seems to contradict what we are saying here.
people of the town and those who were in the caravans. The bāṭın meaning here, therefore, is the correct meaning, which is indicated by the wording (al-lafẓ) of the verse.

A last context in which al-Shāfī‘ī uses zāhir is the context of the imperative. One instance of this is his discussion of a Prophetic tradition in which the Prophet is reported to have said that washing (ghusl) on Fridays is obligatory (wājib). This tradition does not use the imperative as such, but Muslim scholars take similar kinds of expressions (in which the Prophet says that a certain act is wājib) to indicate that we are commanded to do so. The question here, however, is whether this command is meant to indicate that washing is a must, without which one’s participation in the Friday prayers is invalid, or whether it is only recommended by the Prophet. Addressing this question, al-Shāfī‘ī says that the zāhir of this tradition is that the ghusl is obligatory. Elsewhere, he addresses a question that arises from another Prophetic tradition in which the Prophet is reported to have prohibited a Muslim from seeking to marry a woman who is engaged to another Muslim. He mentions here various views on what this tradition means, but argues that if we do not have an indication from the Prophet that this tradition meant one thing and not another (‘alā ma’nā dūna ma’nā), its zāhir indicates that a Muslim cannot, in all circumstances, asks for the hand of a woman who is already engaged to another Muslim until this man leaves her. What is interesting about these two instances in which zāhir appears in al-Shāfi‘ī’s Risāla is that they provide cases of a command (amr) and a prohibition (nahy), and the zāhir in both cases is identified by al-Shāfi‘ī to be the

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713 Ibid., p. 64, §§212-13.
715 For this, see chapter four below.
716 Al-Risāla (1938), p. 303, §841.
718 Al-Risāla (1938), pp. 307-08, §849.
absolute, unconditional obligation of either carrying out the command or avoiding what is being prohibited.

This presentation of al-Shāfi‘ī’s use of ẓāhir shows that while ẓāhir appears in various meanings in *al-Risāla*, it appears frequently, and probably technically, in a specific context, that is, the context of the general, unrestricted meaning (*al-ma’nā al-‘āmm*) of terms and statements. The ẓāhir meaning is presented here as the widest possible meaning or the fullest scope of a certain term or statement. This use of ẓāhir, furthermore, was implicitly connected by al-Shāfi‘ī to another notion, and that is the notion of *al-ibāha al-aṣliyya*, or the presumption of continuity that everything is legal unless proven otherwise. We have seen that in the example of the categories of women whom one cannot marry, al-Shāfi‘ī argues that the ẓāhir meaning is that all categories of women that are not listed in the Qur‘ān as illegal are legal. This understanding is obviously based on the assumption that what is forbidden is only what God explicitly forbids, and what God is silent on is not forbidden. Yet we have noted that this reading attributes to this verse something that it, in fact, does not say. It seems, therefore, that al-Shāfi‘ī needed to refer to another verse in which God explicitly says that all unmentioned categories of women are legal in order to justify his conclusion about the legality of marrying any woman who is not in the categories mentioned in Q. 4:23. How much this tells us about al-Shāfi‘ī’s attitude towards the notion of *al-ibāha al-aṣliyya* is difficult to say, but what interests us here is that if a scholar believes in this notion, only things that the Qur‘ān and Sunna prohibit are excluded from the general rule of permissibility. In other words, the notion of *al-ibāha al-aṣliyya* provides scholars with a general rule, and that is that everything is permissible unless indicated otherwise. Therefore, when God or
the Prophet prohibit something, this thing is regarded as an exception to the general rule, but what is not prohibited remains covered by the general rule, i.e., legal.

In a section that speaks about drawing analogies with reference to the Sunna of the Prophet, al-Shāfi‘ī argues that this can be done in two different ways or situations. The first is when the Prophet mentions the rationale (ma‘nā) of a divine ordinance. What scholars need to do if they find the same rationale in another case that is not mentioned by the Prophet, he explains, is to apply to the new case the same ruling as in the Sunna case. This way of making analogies to the Sunna is the most productive, he argues.719 A second way of making an analogy to a Prophetic Sunna is when the Prophet declares something lawful by a general term, but then prohibits a specific part of it. What scholars [should] do in this case, al-Shāfi‘ī points out, is to declare lawful the thing in general and unlawful the specific part of it that the Prophet had so declared. No analogy to this specific part is permissible, he stresses, for drawing an analogy to the general rather than the specific is more reasonable.720 The same logic holds for the opposite – i.e., when the Prophet declares something unlawful in general, but makes exception of a specific part of it.

This discussion is probably dealing with what later scholars call al-qiyās al-jalī and al-qiyās al-khaṭī. The first kind of qiyās is one in which the rationale (‘illa) is known or evident, whereas in the second kind, the rationale is deduced rather than stated.721 It is this second kind of qiyās that interests us here, for it was reported that Dāwūd rejected

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719 Al-Risāla (1938), pp. 217-18, §594. This passage in al-Risāla is difficult to construe, but Khadduri’s translation is obviously inaccurate here.
721 For this, see al-Āmidī, al-ʾIḥkām, vol. 3, pp. 95-96.
this particular kind of *qiyās*. The problem with this kind of *qiyās* is not only that it proceeds on a shaky assumption that a certain case is governed by a particular rationale (a view that al-Qāḍī al-Nu‘mān attributes to Muḥammad ibn Dāwūd⁷²³), but also because it restricts the generality (‘*umūm*), or unrestrictedness, of permissions or prohibitions. In other words, al-Shāfi‘ī’s discussion of *qiyās* here indicates that for him *qiyās* qualifies the unrestricted nature and scope of a certain general rule by making analogy to its exception, a view that he explicitly rejects. He states that if *qiyās* was valid in a situation like this, it should be made to the general rather than the specific or restricted statement. Arguably, if a scholar does not seek to include something under a *khāṣṣ* statement – i.e., include it under the exception, it necessarily remains under the general, unrestricted rule with no need of *qiyās*. It is in fact unclear how one can draw an analogy to a general rule, and it seems that al-Shāfi‘ī only mentions this to show the absurdity of drawing analogy to an exception. He, however, only accepts it if the rationale or the basis of the ruling is explicitly indicated by the Prophet. This, in his view, mandates drawing analogies to other cases with the result that more things, other than those specified in the textual sources, will be rendered either legal or illegal.

Similar to al-Shāfi‘ī, al-Ṭabarī – in a prolegomenon with which he begins his *tafsīr* – stresses the fact that the Qur‘ān is written in the language of a specific people, the Arabs, and that full mastery of this language and how the Arabs used it is essential for understanding the Qur‘ān and its literary styles. God’s wisdom, he states, requires that he address people by what they understand and send messengers to people in the language

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⁷²² For this, see chapter one above.
⁷²³ For this, see chapter one above.
that they use and understand.\textsuperscript{724} Therefore, “the Prophet Muḥammad’s message had to conform to the rules of the Arabic language and its ẓāhir should match the ẓāhir of their language even if the Qur’ānic language is superior to the language that the Arabs used.”\textsuperscript{725} Al-Ṭabarī notes, however, that the way the Arabs used their language was multiple and diverse, for they expressed the same thing in ways that differ in length or brevity. Furthermore, the Arabs may also have referred to a specific idea or thing by what appears as a general statement, or to a general idea or thing by what appears to be a statement with a specific or restricted reference.\textsuperscript{726}

In another passage, al-Ṭabarī argues that the ẓāhir terms or statements of the Qur’ān can indicate either general or restricted reference (\textit{muḥtamil khusūṣan wa-ʿumūman}) and our only way to figure out what each term or statement indicates is through the person whom God trusted with explaining the Qur’ān – the Prophet Muḥammad.\textsuperscript{727} He mentions numerous versions of a Prophetic tradition in which the Prophet is reported to have said that the Qur’ān was revealed in seven aḥruf. What aḥruf means here is debatable,\textsuperscript{728} but what interests us in this is that in one of the versions of this tradition the Prophet is reported to have said that each of these aḥruf has a zahr and a baṭn.\textsuperscript{729} He explains that the zahr in this tradition refers to what people recite, while the baṭn refers to the bāṭin part of the interpretation (\textit{taʾwīl}) of the Qur’ān.\textsuperscript{730} Next, he explains that the statements of the Qur’ān are of two kinds: statements the interpretation of which only comes from the Prophet, and statements whose taʾwīl (here, meaning or

\textsuperscript{724} Al-Ṭabarī, \textit{Jāmiʿ al-Bayān}, vol. 1, p. 7.
\textsuperscript{725} Ibid., vol. 1, p. 7.
\textsuperscript{727} Ibid., vol. 1, p. 11.
\textsuperscript{728} For a presentation of different views on this issue, see ibid., pp. 11ff.
\textsuperscript{729} Ibid., vol. 1, p. 12.
\textsuperscript{730} Fa-Ẓahrhu al-ẓāhiru fī ‘l-tilāwa, wa-baṭnuhu mā baṭana mīn taʾwīlih (ibid., vol. 1, p. 32).
indication) can be discerned by anyone who has knowledge of the tongue in which the Qur’ān is written. Ibn ‘Abbās once said, al-Ṭabarī reports approvingly, that the explanation (tafsīr) of the Qur’ān is of four kinds: one that the Arabs know according to their tongue (wajh ta’rifuhu ‘l-‘Arabu min kalāmihā), another that a Muslim is not excused for being ignorant of, a third that only scholars know, and a fourth type that is only known to God.”

This prolegomenon indicates that al-Ṭabarī believed that while the indication and meaning of some Qur’ānic statements are quite clear for those who know the rules of the Arabic language, some others are ambiguous and open to various interpretations. Without Prophetic guidance in the case of ambiguous statements (which probably Ibn ‘Abbās’ second and possibly third kinds of tafsīr refer to), we cannot figure out the intent of the author of the Qur’ān. He, however, uses zāhir with reference to recitation of the Qur’ān, and bāṭin to what we understand of the Qur’ān by way of ta’wil. In other words, the bāṭin is what is hidden from us, but which we can uncover through ta’wil. On the other hand, if we assume that al-Ṭabarī does not mean the mere recitation of the Qur’ān when he speaks of it, we can infer that for him zāhir means what we can understand from the Qur’ān without having to resort to interpretation. In other words, zāhir is what is not hidden of the Qur’ān, which means that statements that only require knowledge of the Arabic language to understand (which probably belong to the first kind of tafsīr that Ibn ‘Abbās mentioned) do not have zāhir and bāṭin. All these statements only have zāhir. In contrast, other statements potentially have more than one possible meaning and it is only through Prophetic guidance that we can figure out the intended meaning. It is not clear, however,

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731 Ibid., vol. 1, p. 33.
732 Ibid., vol. 1, p. 34.
whether this means that this second kind of statement does not have \( \text{zähir} \) in the first place, or has more than one potential \( \text{zähir} \).

The \( \text{zähir} \) of the Qur’ān, thus, corresponds to the \( \text{zähir} \) of the language of the Arabs, but al-Ṭabarī does not explain what \( \text{zähir} \) means here. In what follows, how he uses \( \text{zähir} \) in the first half (approximately 100 verses) of Q. 2 (\( \text{sūrat al-Baqara} \)) is discussed.\(^{733}\)

The first time the word \( \text{zähir} \) appears in al-Ṭabarī’s commentary on Q. 2 is in his discussion of verse one, which consists of three letters – \( \text{alif}, \text{lām}, \text{mīm} \), commonly referred to as the “disjointed letter” (\( \text{al-ḥurūf al-muqattā’ā} \), with which some Qur’ānic \( \text{sūras} \) begin). Al-Ṭabarī presents several explanations of what these letters mean. In one view, these letters are abbreviations of \( \text{anā}, \text{Allāh}, \text{a’lam} \) respectively. In other words, the verse intends to say: I – God – know, or \( \text{anā Allāhu a’lam} \). The basis of this explanation is that it is prevalent (\( \text{zähir mustafīd} \)) in the usage of the Arabs to use only a few letters of a word as long as the remaining letters indicate what the shortened word is, a practice that al-Ṭabarī illustrates by a number of poetry verses.\(^{734}\) \( \text{Zähir} \) here, then, refers to a certain common linguistic usage.

A similar use of \( \text{zähir} \) appears in Al-Ṭabarī’s commentary on verse 31.\(^{735}\) Al-Ṭabarī mentions various theories about what “names” in this verse refers to. Whereas some early authorities held that this refers to the names of a specific category of things, others held that it refers to those of everything. While he does not rule out the plausibility

\(^{733}\) The term \( \text{zähir} \) and its variants appear in al-Ṭabarī’s entire \( \text{tafṣīr} \) about 500 times. I will focus on the first half of \( \text{sūrat al-Baqara} \), avoiding some instances of the use of \( \text{zähir} \) which would require lengthy and hair-splitting discussions that are not relevant to our purpose.

\(^{734}\) Al-Ṭabarī, \( \text{Jāmi’ al-Bayān} \), vol. 1, p. 91.

\(^{735}\) The verse reads: “And He [God] taught Adam all the names (\( \text{al-asmā’} \)), then showed them to the angels, saying: Inform Me of the names of these, if you are truthful.”
of this last explanation, al-Ṭabarī believes that the use of -hum in ‘araḍahum (showed them) suggests that this term refers to the names of the angels and Adam’s entire progeny, for the Arabs only use the pronoun -hum with reference to the angels and human beings, and -ha or -hunna when referring to other things. This is what the ẓāhir al-tilāwa suggests, he argues, and it is the more common (al-ghālib al-mustafīḍ) in the use of the Arabs. In fact, he finds an excuse for those who held that “names” referred to everything – including no less than Ibn ‘Abbās – in a report that mentions that Ubayy ibn Ka‘b did read the verse with ‘araḍahā, which is more inclusive than ‘araḍahum, for it can be used to refer to everything, the angels and human beings included.\(^\text{736}\)

It is noteworthy that al-Ṭabarī needed to argue against the view that sought to extend the scope of the term “names” to its fullest possible reference. This indicates that the generality or unrestrictedness rather than the limitedness or restrictedness of terms and statements was the assumption. He himself appears reluctant to categorically dismiss the view of the term’s generality and seems to have felt the need to support his restricting construal of the verse on the basis of the prevalent use of pronouns by the Arabs. This prevalent use, according to him, is the ẓāhir al-tilāwa. In the same vein, al-Ṭabarī argues against those who held that what God describes as hard in verse 45 is accepting the message of the Prophet Muḥammad.\(^\text{737}\) In his view, what is being referred to here are prayers. This is al-ẓāhir al-mafhūm of the verse, which we cannot abandon for a bāṭin the

\(^{736}\) Al-Ṭabarī, Jāmi‘ al-Bayān, vol. 1, pp. 261-67. Ubayy ibn Ka‘b was an early Madinan Companion of the Prophet who was known for his mastery of reading the Qur’ān and for his codex. Ubayy’s date of death is disputed, but he died before the year 35/655, and possibly in the year 19/640 (for his biography, see al-Jamāl al-Dīn al-Mizzā, Tahdīḥ al-Kamāl fi ‘Asmā‘ al-Riḍāl, vol. 2, p. 262-73).

\(^{737}\) The verse reads: “Seek help in patience and prayers; and truly it is hard (kabīratan) save for the humble-minded.”
soundness of which we cannot verify.\(^{738}\) Again, the \(\text{ẓāhir}\) meaning here is taking the pronoun to refer to something that is explicitly mentioned in the same verse.

A similar discussion appears in al-Ṭabarī’s discussion of verse 38.\(^{739}\) The disagreement that he mentions here concerns the reference of “and whoso follows my guidance . . .” In one view, God is here addressing all humanity. In al-Ṭabarī’s view, however, God is only addressing those whom the first part of the verse addresses: Adam, his wife, and Iblīs. This is closer to the \(\text{ẓāhir al-tilāwa}\) (\(\text{ashbah bi-ẓāhir al-tilāwa}\)) and is the \(\text{ẓāhir al-khiṭāb}\). Once again, al-Ṭabarī does not categorically dismiss the view that this part of the verse could refer to all the progeny of Adam and Eve. In fact, he says that this is a possible interpretation of the verse.\(^{740}\) He, therefore, feels that he needs to provide evidence for limiting what appears to be the general, unrestricted reference of the verse, and the evidence in this instance is the reference in the first part of the verse. In other words, al-Ṭabarī seems to argue that the \(\text{ẓāhir}\) of each verse can only be understood on the basis of the entirety of the verse and not a fragment of it. \(\text{Ẓāhir}\) here is linked to the common usage of the language by those who speak it, and is also contingent on the entire verse as an organic unity.

These instances of using \(\text{ẓāhir}\) lead to the use of this term in another context – the ‘\(\text{umūm}/\text{khuṣūṣ\) dichotomy.

In his commentary on verse 27,\(^{741}\) al-Ṭabarī mentions several explanations of what “and sever that which God has ordered to be joined” in the verse means. Some early

\(^{738}\) Al-Ṭabarī, \(\text{Jāmi’ al-Bayān}\), vol. 1, p. 261.
\(^{739}\) The verse reads: “We said: Go down, all of you, from hence; but verily there comes unto you from Me a guidance; and whoso follows My guidance, there shall no fear come upon them neither shall they grieve.”
\(^{740}\) Al-Ṭabarī, \(\text{Jāmi’ al-Bayān}\), vol. 1, p. 247.
\(^{741}\) The verse reads: “Those who break the covenant of Allāh after ratifying it, and sever that which Allāh ordered to be joined, and (who) make mischief in the earth: Those are they who are the losers.”
authorities understood that what is being referred to here is only ṣilat al-rahim, or maintaining close and good ties with one’s kindred. In another view, however, what is severed here are the ties with the Prophet and those who believe in him, in addition to the blood ties. The ground of those who held this view, he reports, is the generality of the verse (istadallū bi-ẓāhirī ‘umūmi ʾl-āya) and the lack of indication that it meant to refer to only one part of what God has ordered to be joined and not another. Al-Ṭabarī himself does not hold this view, but he comments on it by saying that it is not far from the sound understanding of the verse, although the fact that there are Qur’ānic verses that speak about the hypocrites and their severing of their blood ties specifically indicates, in his view, that the verse can be speaking about this particular form of severing things that God has commanded to be joined.

In his discussion of verse 81, al-Ṭabarī argues against the view that sin in this verse refers to any sin, notably the grave sins (al-kabāʾīr). He states that this understanding of the generality of sin here is the ẓāhir of the verse, but argues at the same time that the bāṭin of the verse is a restricted reference to the sin of polytheism (shirk) only. Since nobody holds that even minor sins could lead to eternal damnation, he points out, everybody accepts that this verse is not to be understood according to its fullest possible scope of application. Additionally, grave sins are also excluded on account of Prophetic reports that believers will not abide in Hellfire for eternity (abadan). Ẓāhir here clearly refers to the generality and unrestrictedness of a term in the verse, and it is against this generality that al-Ṭabarī finds himself compelled to argue.

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742 Al-Ṭabarī, Jāmi’ al-Bayān, vol. 1, p. 185.
743 Ibid., vol. 1, p. 185.
744 The verse says: “Nay, but whosoever has done evil and his sin (khāṭī’atuhu) surrounds him; such are rightful owners of the Fire; they will abide therein [for ever].”
There are numerous other instances in which al-Ṭabarī mentions that ṣāhir indicates the understanding of a given term or verse in a way that does not restrict or limit its scope, but he mentions this quite explicitly in his commentary on verse 70.⁷⁴⁶ Listing numerous reports from Companions and Successors according to which the Jews who were ordered to slaughter a cow would have obeyed God’s command had they slaughtered any cow, he points out that their repeated questioning about the cow led to more demands from God to slaughter a particular cow, which rendered the command even harder for them to carry out. He comments on these reports by saying that they strongly indicate that the Companions and Successors believed that whatever God commands or prohibits in his book should be understood according to the generality of the ṣāhir (‘alā ‘l-‘umūmi ‘l-ṣāhir) of his speech, and not the limited or restricted sense (‘alā ‘l-khuṣūṣi ‘l-bāṭin). This limitation and restriction of the scope of the terms or verses, he adds, could only be made by another statement from God or from the Prophet, in which case what is mentioned by them is excluded from the scope of the terms or verses.⁷⁴⁷ These reports, according to him, show that his view conforms to the view of the Companions and Successors, and that his madhhab is identical with theirs. They also prove the erroneous belief in the restricted meanings of terms (al-khuṣūṣ), or the view that when a specific aspect of a general term or statement is restricted, all its other aspects lose their general and unrestricted nature too.⁷⁴⁸

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⁷⁴⁶ The verse reads: “They [Moses’ people] said: Pray for us unto your Lord that He make clear to us what (cow) it is. Lo! Cows are much alike to us; and Lo! If Allāh wills, we may be led aright.”

⁷⁴⁷ Al-Ṭabarī mentions that he discussed this at length in a work of his entitled al-Risāla. This work, to the best of my knowledge, has not reached us.

⁷⁴⁸ Al-Ṭabarī, Jāmi’ al-Bayān, vol. 1, pp. 348-49. Al-Ṭabarī believes that when a āmm statement is restricted, this restriction applies only to that aspect of the general statement that is being restricted. For example, when the Jews asked God about the cow, he gave them some description. According to al-Ṭabarī, they would have obeyed the order if they had slaughtered any cow with the new description only (ibid., p. 349). In other words, the first order lost only one part of its generality, and that is the part that is being
Ẓāhir is also used by al-Ṭabarī to argue against figurative explanations of some Qur’ānic verses. For example, in his commentary on verse 65, he rejects Mujāhid’s argument that this verse does not mean that God did transform those Jews who violated the Sabbath into real apes, but rather intends this figuratively to refer to how God has transformed their hearts because of their transgression. This understanding, he argues, contradicts what the ẓāhir of the Qur’ān indicates, and that is that God did transform them into real apes. Ẓāhir here clearly refers to the un-figurative and non-metaphorical understanding of a given statement.

In some other instances, the use of ẓāhir is difficult to discern. For example, in a lengthy commentary on verse 30, al-Ṭabarī mentions a view that has no support from the ẓāhir al-tanzīl in his view, and that is that the angels wondered about God’s intention to create human beings because He Himself had given them permission to do so. The meaning of ẓāhir al-tanzīl here is not clear, but it is reminiscent of al-Ṭabarī’s distinction of ẓāhir and bāṭin in his prolegomenon. The ẓāhir is what people actually read, while the bāṭin is the meanings that people can only uncover through ta’wil. Another example is al-Ṭabarī’s argument for ẓāhir in his commentary on verse 41. What is disputed here is the reference of “therein” in the verse. Whereas some scholars held that the reference is to the Prophet Muḥammad, others argued that it was to the Scripture of the Jews (whom

specifically identified as restricting the generality of the statement. If the description has to do with the color of the cow, for instance, any cow with the specified color would do. If it has to do with the age of the cow, however, any cow of any color that meets the age criterion would do. The verse says: “And you know of those of you who broke the Sabbath, how We said unto them: Be you apes, despised and hated!”


The verse reads: “And when your Lord said to the angels, I am going to place in the earth a khalīfa, they said: Will you place therein one who will do harm therein and will shed blood, while we, we hymn Your praise and sanctify You? He said: Surely I know that which you know not.”


The verse reads: “And believe in that which I have revealed, confirming that which you possess already (of the Scripture), and be not first to disbelieve therein, and part not with My revelations for a trifling price, and keep your duty unto Me.”
God addresses in this verse). Al-Ṭabarī rejects these two explanations, arguing that they are far from ẓāhir mā tadullu ‘alayhi ’l-tilāwa, or what the ẓāhir al-tilāwa indicates. He argues that the verse begins by referring to what God revealed, and what God has revealed is not the Prophet Muḥammad, but the Qur’ān. Ending this verse by enjoining people not to disbelieve in something other than what the verse begins by calling them to believe in, he explains, is not the customary practice in language or speech (ghayru ’l-ashhari ʿl-azhari fī ’l-kalām). This is al-ẓāhir al-mafḥūm, even if it were not impossible to refer to something that was not mentioned explicitly in a verse by way of kināya. In other words, while he does not categorically reject the possibility that “therein” in the verse could be referring to the Prophet Muḥammad or the Jewish Scripture and implies that ẓāhir al-kalām allows for this kind of inference, al-Ṭabarī still believes that a safer explanation is to take it to be referring to what the verse itself begins by mentioning. If we rule out the possibility that al-Ṭabarī is using ẓāhir here haphazardly, what he means by using it in this verse is very difficult to figure out. For while he says that reference to the Jewish Scripture here is possible according to ẓāhir al-kalām, he also argues that it is far from what ẓāhir al-tilāwa wa-l-tanzīl indicates. But the use of the superlative form of ẓāhir (al-azhar) can suggest that there can be more than one, but not necessarily equal, ẓāhir meanings of a given statement.

Al-Ṭabarī, then, uses ẓāhir in a variety of contexts, one of which is the common use of the Arabic language by the Arabs. Using a certain pronoun to refer to certain objects is one such instance. Another use of ẓāhir is to refer to the non-figurative meaning of a term or a statement, and a third is to refer to what is understood for certain of a given verse, in which case bāṭin refers to a hidden meaning that needs to be

uncovered through one or more indicator. In some instances, what he means by *zāhir* is not clear, such as when he speaks about *zāhir al-tanzīl* or *zāhir al-tilāwa*, which, on its face, would suggest that he held that people can recite the Qur’ān without some sort of interpretation. Finally, some instances of al-Ṭabarī’s use of *zāhir* suggest that there are different layers of *zāhir*. Even if there is a *zāhir* meaning of a term or a statement, another meaning can be more *zāhir* and a third *al-aẓhar*, or the most *zāhir* meaning. These points will be relevant to our discussion of literalism in chapter four.

These instances notwithstanding, *zāhir* seems to appear in al-Ṭabarī’s *tafsīr* more often in the context of the ‘*umūm/khuṣūṣ*’ dichotomy. According to this, the widest meaning or the fullest scope of a term or a statement is also its *zāhir* meaning. *Bāṭin*, which is contrasted with *zāhir* by al-Ṭabarī, refers to the restricted meaning of a term or a statement. Furthermore, his discussion of this subject indicates that there was an assumption that the *zāhir* meaning should be taken to reflect the intention of the speaker (God, in the case of the Qur’ān), and any deflection from this meaning requires a certain warrant or an indicator. It is also evident that al-Ṭabarī had a real concern about not jeopardizing the ‘*umūm* of any term or statement without a good reason, and a good reason would be a textual or a non-textual indicator. Textual indicators can be obtained from the verse in which a term is mentioned, or from another verse in the same text or document. Non-textual or external indicators can include theological views that scholars held. We have seen a case of this when he restricts a meaning of a verse on the basis of what people held with regard to minor sins. The verses we discussed suggest that al-Ṭabarī preferred textual indicators when possible to restrict the scope of application of

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terms or verses. As for non-textual or external indicators, it is remarkable that although he does use them, he nevertheless rejects similar recourse to theological views in other instances. For example, relying on what he regarded as the "žāhir" meaning of Q. 2:30, he rejected the view that the angels only expressed their inability to apprehend God’s decision because God himself had permitted them to do so, a view that is probably based on certain theological views concerning the nature of the angels and their relationship with God.

**C. Conclusion:**

That "žāhir" is used by al-Shāfi‘ī and al-Ṭabarī in the context of hermeneutics is evident, and this is in perfect agreement with al-Qāḍī al-Nu‘mān’s identification of linguistic *istidlāl* as a hermeneutic methodology to be the defining feature of the Zāhirīs. But what aspect of hermeneutics or semantics does Zāhirism relate to? Arguably, nothing in what al-Shāfi‘ī says in his *Risāla* and al-Ṭabarī in his *tafsīr* proves the view that the "žāhir" was taken to mean the “obvious” or “apparent” meaning. Their understanding of how to interpret a text proceeds on the assumption that the Arabic language has rules that we can identify by investigating how the Arabs used it. The "žāhir" meaning is one such linguistic aspect that needs reference to the common use of the Arabic language by its speakers when the Qur’ān was revealed. Both scholars seem to use the "žāhir" meaning consistently in two contexts. The first is the context of the figurative vs. non-figurative use of language. The "žāhir" meaning is the un-figurative meaning of a certain term or a statement, although al-Shāfi‘ī (possibly inspired by a Qur’ānic use of "žāhir") adds to this that the figurative meaning can in some instances be the intended meaning. Accordingly,
the zāhir meaning here is what is understood (or what is recited, as al-Ṭabarī puts it), but it is not what is communicated, so to speak.

The other context in which both scholars use zāhir is the context of ‘umūm, the extension or the scope of terms and statements. The zāhir meaning of a term or a statement is one which allows for the fullest extension or the widest scope of application of what they could refer to. In other words, it is the ‘āmm, or general, unrestricted meaning. This view, however, does not seem to have been the only view about how to interpret a term or statement. We have seen that in one instance of using zāhir in this context, al-Ṭabarī attributes this view (that the zāhir meaning is the most extended, or general, unrestricted meaning of a term or verse) to earlier generations of Muslims, and his discussion here strongly indicates that this was a disputed issue in or before his time, for which reason he may have written his own Risāla to discuss this issue and defend his viewpoint which he attributes to the Arabs and early Muslim authorities. Evidently, some people in or before al-Ṭabarī argued against the presumption of ‘umūm, which may explain why he was keen to argue for any restriction he makes with respect to the scope of application of a term or statement. In all circumstances, the ‘umūm/khuṣūs dichotomy seems to be the context in which the term zāhir was used in the 3rd/9th century.

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756 A modern scholar who almost came to a similar conclusion about the meaning of zāhir is Roger Arnaldez. In his Grammaire et Theologie, Arnaldez argues that “pour le penseur zāhirite [i.e., Ibn Ḥazm], un terme doit d’abord être pris dans toute l’étendue de ses significations, c’est-à-dire dans son zāhir” (p. 128). Arnaldez’s keenness to demonstrate Ibn Ḥazm’s consistency and how his Zāhirism is “universal” in that it permeates his legal and non-legal thinking (such as his linguistic, psychological, logical and metaphysical (ibid., p. 226), however, has distracted him from identifying the meaning of zāhir. This notwithstanding, he points out that “ce qui sépare Ibn Ḥazm des autres zāhirites, c’est qu’il a systématisé la doctrine, et qu’il en a étendu le principe à tous les domaines de la spéculation. Or la question logico-grammaticale de la nature du sens général, est chez lui à la base de son interprétation des texts et de sa théologie.” In all circumstances, Arnaldez does not seek to figure out in this work how Dāwūd himself may have understood the zāhir meaning, although he does examine al-Shāfī’ī’s use of the term zāhir in his Risāla and discusses the relationship between “le sens général” and “le sens immédiatement manifesté (zāhir)” (ibid., p. 225).
and we know that this is a subject which Dāwūd and his son Muḥammad devoted chapters to in their works on usūl al-fiqh.757

Is it likely, then, that Dāwūd was labeled al-Ẓāhirī because of his vehement defense of the ‘umūm presumption? There is no reason why this cannot be the case, but if we can establish links between this notion of ‘umūm and other views of Dāwūd’s, we can be more confident that this notion was central to his legal thought. It is remarkable that some of al-Shāfīʿī’s discussions in al-Risāla suggest possible relationship between the notion of ‘umūm and some tenets of Dāwūd’s legal thought. These include the assumption of original permissibility and the rejection of qiyyās. Qiyyās, in al-Shāfīʿī’s view, meant additional qualification or restriction of a general rule, which therefore can only be valid if the ‘illa is explicitly indicated in a Prophetic tradition. If the ‘illa is not mentioned, however, no analogy to the exception can be drawn. In addition, since the zāhir meaning for al-Shāfīʿī meant that what is listed in the Qur’ān as forbidden indicates that other things (that are not mentioned) are not forbidden, this can only work out if a particular general rule is assumed, and this rule is here that everything is permissible unless proven otherwise.

Dāwūd started his career as an admirer of al-Shāfīʿī, and it is not unlikely that he drew on many of his views to develop a distinct legal thinking. But apparently, Dāwūd did not draw only on al-Shāfīʿī. Much of what we know about Dāwūd’s life suggests that he had a strong relationship with the Ahl al-Raʿy of his time. Additionally, much of his legal views on usūl are almost identical with legal views that the Ahl al-Raʿy held. In what follows, therefore, we will pursue the questions of the relationship of Dāwūd’s juridical thought with the two legal trends of his age.

757 For this, see Stewart, “Muḥammad ibn Dāwūd,” pp. 111 and 126-27.
It has been noted earlier that the complicated picture of the legal scene in early Islam and the differences among scholars regarded as members of either the *Ahl al-Ra’y* or the *Ahl al-Ḥadīth* requires that we choose a representative of both legal trends if we are to compare them. Abū Ḥanīfa was evidently a master of the *Ahl al-Ra’y* and is the best candidate to represent them. Ibn Ḥanbal represents the *Ahl al-Ḥadīth*, for this designation ended up referring particularly to him and his followers. However, there is no assumption here that all scholars belonging to either group were thinking similarly, or that each of these two scholars was invariably consistent in his legal thinking.

**II. Dāwūdism and the *Ahl al-Ra’y***

Dāwūdism and Ḥanafīsm share some fundamental views regarding the nature and philosophy of the law, as well as legal and linguistic assumptions. In what follows, some of these views will be discussed, contrasting them with Ḥanbalī views on the same issues. It must be pointed out at the outset that investigating the authenticity and historicity of views attributed to Abū Ḥanīfa, Aḥmad ibn Ḥanbal, and Dāwūd al-Ẓāhirī in medieval sources is beyond the scope of this study. While we do not have specific statements on *uṣūl* attributed to them, it is here assumed that if medieval sources are consistent in attributing a certain view to one of these scholars, there is a reasonable chance that he had held it. This may perhaps be the only possible way we can speak meaningfully about the legal thought of any of these scholars. Without denying the possibility that medieval scholars may have retrospectively read some of their own views on *uṣūl* into the *masā’il* that reached them from the founders of their schools, only views that they attribute unanimously to these founders or present as being a matter of consensus among earlier
scholars will be referred to. Even if these *uṣūl* rules were deduced from the *masāʾil* of earlier scholars, we should be able to proceed on the reasonable assumption that if later scholars who belonged to a certain legal school deduced similar principles from views on *furūʿ* attributed to the purported founder of the school, they probably deduced sound principles. After all, if these scholars agree on any principle, it becomes the principle of their school, regardless of what the founder himself may have thought. In brief, what this part seeks to demonstrate is that if we assume that there existed jurists named Abū Ḥanīfa and Aḥmad ibn Ḥanbal who held particular legal views, it is erroneous to perceive Dāwūd as having been closer to the latter than to the former.

A. The Nature and Philosophy of the Law:

Holding a common understanding of the nature and philosophy of the law is perhaps the most compelling indication that Dāwūdism owed more to Ḥanafism than to the legal thought of the traditionists of his time. We have two issues that suggest that Dāwūdism was very close in its understanding of the law to Ḥanafism. The first is the issue of certainty: how much of it is attainable in the legal process, and how it contributes to the selection and weighing of relevant evidence in a given case. The second issue is the notion that the law has goals that it seeks to realize and how this affects dealing with the relevant evidence to produce specific outcomes that are deemed consistent with the spirit and goals of the law.

In his *Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory*, Aaron Zysow argues that “[t]he great dividing line in Islamic law is between those legal systems that require certainty in every detail of the law and those that will
admit probability.” “The latter,” he adds, “were historically dominant and include the leading legal schools that have survived to our own day. Zahirism and, for much of its history, Twelver Shi‘ism are examples of the former.”

Later on, Zysow distinguishes between two groups of scholars in Islamic law. The formalists, like the Ḥanafīs, believed in and practiced *ijtiḥād*, whose results were deemed valid “by the fact that the framework within which he [the Muslim jurist] practices is known with certainty,” even if there was some probability in the actual outcome. The second group is the materialists, like the Zahirīs, for whom “probability has no place in the formulation of the rules of law.”

Apparently, this makes exactly the opposite argument of what we seek to show, but this is only so if we were seeking to show that Dāwūdism (or Zahirism) was identical to Ḥanafism. What we seek to demonstrate, however, is that Ḥanafism distinguished between two kinds of knowledge on the basis of their certainty, and that Dāwūdism drew only on one part of Ḥanafism, the part that, arguably, was more significant in the Ḥanafī legal system. It must be pointed out first that this received wisdom about the place and role of certainty in the Zahirī legal thought is not accurate. Ibn Ḥazm does admit a degree of uncertainty in his jurisprudence and acknowledge the possibility of changing some of his conclusions in cases that have contradictory pieces of evidence or traditions whose authenticity is not certain but may become so. In this kind of cases, we only know to the best of our knowledge that our conclusions are sound, but we cannot pretend to say that we know them for certain. He is even willing to give the benefit of the doubt to

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760 Ibn Ḥazm, *Iḥkām*, vol. 1, p. 21. For why I am referring to Ibn Ḥazm’s writings in this discussion, see section III in chapter one above.
those scholars who abandoned the *zāhir* of a text by an interpretation that he thought was sound.\(^{762}\) Whether Ibn Ḫazm’s uncertainty had any influence on his juridical thinking is of course debatable; however, this does not change the fact that he does not pretend that probability has no place in his jurisprudence.

In a chapter on “The meaning of *dalīl*, ‘illa, *qiyyās*, and *ijtihād*” in his *Fuṣūl fī al-Uṣūl*, the famous Ḥanafī scholar, and one of the earliest scholars to write about the Ḥanafī *uṣūl al-fiqh* following the method of the jurists,\(^{763}\) Abū Bakr al-Jaṣṣāṣ (d. 370/980) distinguishes carefully between two forms of deduction (*istidlāl*),\(^{764}\) the first of which leads to [certain] knowledge (*al-‘ilm bi-l-madālīl*), while the other only establishes high probability (*yūjibu ghalabata l-ra’yi wa-akbara l-ẓann*). The former includes the “rational” proofs (*dalā’i il al-‘aqliyyāt*), and many of the rulings or cases (*aḥkām al-ḥawādith*) for which there is only one indicator, and in which we are required to find the desired (and correct) ruling.\(^{765}\) The second category of knowledge is that of the rulings that are deduced through *ijtihād* (*aḥkām al-ḥawādithi ‘llati ṭarīqah l-ijtihād*), and in


\(^{763}\) Some medieval Muslim scholars, like Ibn Khaldūn, distinguished between two methods of writing on *uṣūl al-fiqh*. The first is the *ṭarīqat al-fuqahāʾ* (the method of the jurists), which was mostly the method of the Ḥanafī scholars. In this method, the rules of *uṣūl al-fiqh* are deduced from the *furūʿ* (or the legal rulings on individual cases) that were inherited from the early founders of the school (such as Abū Ḥanīfa and his two famous disciples, Abū Yūsuf and Muhammad ibn al-Ḥasan al-Shaybānī, in the Ḥanafī school). In the *ṭarīqat al-mutakallimīn*, mostly developed and followed by the Shāfīʿī scholars, the rules of *uṣūl* are thought of in a more theoretical and dialectical manner, with relative independence from the *furūʿ* (for this, see, ‘Abd al-Raḥmān ibn Khaldūn, *al-Muqaddima*, pp. 426-27). Al-Jaṣṣāṣ’ work is a very good example of the first method, as the author tries to show how his theoretical discussions are built on or relate to specific rulings that were attributed to the early masters.

\(^{764}\) Al-Jaṣṣāṣ defines *istidlāl* as the search for the evidence (*ṭalabah l-dalāla*) and thinking about it (*wa-l-nazaru fi-hā*), to reach the knowledge of what is indicated or referred to (*li-l-wusūli ilā l-ilmi bi-l-madālīl*). The term *istidlāl* here, then, is used in a general way to refer to the process of identifying the legal rulings (*aḥkām*). This confirms what we said in chapter one, that there is no such thing as the “obvious” or “literal” meaning of a term or a text apart from the linguistic convictions of the reader. Nothing in the law, we can understand from al-Jaṣṣāṣ, does not require evidence, although the pieces of evidence differ in how clear they are, and, consequently, how much certainty we can attain on their basis (Abū Bakr al-Jaṣṣāṣ, *al-Fuṣūl fī al-Uṣūl*, vol. 2, p. 200).

\(^{765}\) This category of *istidlāl* deals with, in al-Jaṣṣāṣ’ words, *kathārun min dalā’i aḥkāmi l-ḥawādithi ‘llati laysa ‘alayhā illā dalālun wāḥidun qad kullifnā fi-hā iṣābata l-maṭlūb.*
which we are not required to identify the desired ruling with certainty, for God himself does not provide us with a conclusive indicator (\textit{dalîl qaṭî}) that leads to knowing it with certainty (for which reason, al-Jaṣṣāṣ adds, we only call it [the indicator] \textit{dalîl} figuratively (‘\textit{ālā wajhi} \textit{l-majāz})\textsuperscript{766}.

This distinction between these two categories of knowledge seems central to the Ḥanafī jurisprudence as presented by al-Jaṣṣāṣ. Although he does not attribute this distinction to Abū Ḥanīfa or his earlier disciples, there is nothing surprising about this distinction. Any scholar would probably agree that if there is one valid indicator in a certain case, we can be confident that a ruling reached on its basis is certain. So regardless of whether this distinction goes back to Abū Ḥanīfa’s time or is exclusively Ḥanafī, the argument that is made here is that Dāwūd probably drew on the first of these two categories of knowledge. Dāwūd sought to demonstrate that we always have one indicator in each case, which practically eliminates the need for the second category of knowledge in the first place. But to do this, he needed to borrow and build upon Ḥanafī tools that guided the process of identifying the valid indicator in a way that, more often than not, proves that in every case there was only one valid indicator.

A tool that was most useful for the Ḥanafīs in achieving certainty was their belief in the notion of \textit{istiṣḥāb al-ḥāl}, or the presumption of continuity. Al-Jaṣṣāṣ mentions the case of touching the male sexual organ and whether or not this affects the ritual purity of the Muslim. Explaining the Ḥanafī view, he attributes to Abū Ḥanīfa the view that it does not, on the basis that we know that everybody around the Prophet did not originally think it did. If this was changed, however, the Prophet would have had to make this known to everybody so that they did not pray while they were ritually impure, just as he did with

\textsuperscript{766} Ibid., p. 200.
other things that invalidate ritual purity that were transmitted to us through tawātur, or the concurrence of reports. In other words, the presumption is that what counts here is only what the Prophet explicitly specified as invalidating ritual purity. If there is dispute over one thing, this presumption, which we know for certain, overrides any doubtful consideration. Part of this notion of istiṣḥāb is the notion of al-ibāha al-aṣliyya, or the presumption that everything is permissible unless there is a valid indictor that suggests otherwise. Dāwūd subscribed wholeheartedly to this notion, which is central to Zāhirī jurisprudence.

The relationship between the Qurʾān and the Prophetic Sunna was another subject that the Ḥanafīs treated from the perspective of the issue of certainty. We have noted that one of the notions that the Ahl al-Ḥadīth sought to establish was that the Sunna was independent of the Qurʾān, in the sense that it can establish rules that do not exist in the Qurʾān, or modify some of those that do exist in the Qurʾān. And even while the dominant view among the Ahl al-Ḥadīth was that the akhbār al-āḥād (Prophetic traditions transmitted by individual transmitters) were not sources of apodictic knowledge but were certain enough to establish obligation to work on their basis, they did not allow this issue to interfere with the way they perceived the relationship between the Qurʾān and the Sunna. The Ahl al-Raʾy, on the other hand, did not give such weight to akhbār al-āḥād, whose authenticity was lacking the level of certainty that would make them immune from investigation, unlike the Qurʾān, whose authenticity does not need any investigation because it was transmitted through tawātur. When it comes to the relationship between the Qurʾān and Sunna, therefore, al-Jaṣṣāṣ mentions that the Ḥanafīs do not allow the abrogation of the Qurʾān except by traditions that were transmitted by

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767 For this and some examples on it, see al-Jaṣṣāṣ, al-Fuṣūl, vol. 1, pp. 14-15.
way of *tawātur*. A *khabar al-wāḥid*, he points out, cannot abrogate either the Qurʾān or another *Sunna* that was transmitted by *tawātur*. The logic behind this is that what is proven in a way that establishes certain or apodictic knowledge (bi-*ṭarīqin yūjibu ’l-ʿilm*) can be abrogated only by evidence that also establishes certain knowledge, and not by one whose very authenticity is uncertain and thus cannot be a source of certain knowledge.\(^\text{768}\) This thinking had a big influence on how the Ḥanafīs identified the indicator that could be used to achieve certainty in each case. Whereas the other legal systems had to take the *akhbār al-āḥād* into consideration, resulting in establishing their whole juridical system on probability, the Ḥanafīs simply rejected them, especially when they contradicted the Qurʾān in their view. Dāwūd, however, had another way in dealing with this issue. Seeking to avoid abandoning the *āḥād* traditions or his interest in certainty, he argued that these traditions, in fact, do establish apodictic knowledge.\(^\text{769}\)

Both Ḥanafism and Dāwūdism, then, believe that certainty is attainable, even if they differ on how this happens. Ideally, if we seek to achieve certainty, we would probably like to have as much textual evidence as possible. But if we are dealing with a legal system whose textual evidence is, more often than not, diverse at best and contradictory at worst, certainty would require as little textual evidence as possible, as well as a clear categorization of the evidences or indicators on the basis of how much certainty they establish. The Ḥanafīs were able to reject many pieces of evidence on the basis of their notion of certainty, and were thus able to have many of their rulings fall in the first category of knowledge that al-Jaṣṣāṣ mentions. For his part, Dāwūd managed to

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\(^\text{769}\) For this, see Ibn Ḥazm, *Iḥkām*, vol. 2, pp. 132ff. On the possibility of the Qurʾān being abrogated by the *Sunna* and the *Sunna* by the Qurʾān, see *ibid.*, vol. 1, pp. 617ff.
find a way to incorporate some categories of evidence that Ḥanafism had rejected without causing damage to the principle of certainty itself (at least from his point of view).

Finally, Goldziher noticed that while most schools of Islamic law have accepted the tradition in which the Prophet is reported to have said: *ikhtilāfu ummatī rahma*, neither the Žāhirīs nor the Muʿtazilīs accepted it. The Ḥanafī scholars, he adds, also rejected this tradition on the basis of its content. Ibn ‘Abd al-Barr attributes to Abū Ḥanīfa himself the view that when jurists disagree on an issue, only one of their views could be the correct one. He also mentions that two opinions were attributed to Abū Ḥanīfa regarding the differing opinions of the Companions on an issue. According to the first opinion, Abū Ḥanīfa would choose (randomly?) any opinion attributed to a Companion when they disagreed, and in the second he argues that when two Companions disagree, one of them must be right and the other wrong. Al-Jaṣṣāṣ’ categorization of knowledge could be the key to solving this apparent contradiction, as it could be argued that Abū Ḥanīfa’s first opinion was related to the second category of knowledge (which is probable), while the second opinion refers to the first category of knowledge, which is certain. The Žāhirīs believed that the “truth is one,” and all other

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772 Ibn ‘Abd al-Barr argues that Abū Ḥanīfa probably held that opinion on the basis of the źāhir of the tradition in which the Prophet says: *aḍḥābī ka-l-nujūm* (My Companions are like the stars, *ibid.*, p. 909). The rest of the tradition reads: *bī iyyihiya ihtadaytum ihtadaytum* (whomever of them you follow you will be rightly guided).
773 It is worth noting here that in his letter to the Basran scholar ‘Uthmān al-Battī, Abū Ḥanīfa, regarding the question of the civil wars between the Companions, argued that only one side must have been right and the other wrong, even if we cannot know for certain who was right and who was wrong (for this, see Muhammad Zāḥid al-Kawthārī (ed.), *al-ʿālim wa-l-Mutaʿallim, al-Fiqh al-Abṣat, al-Fiqh al-Akbar, Risālat Abī Ḥanīfa ilā ʿUthmān al-Battī, al-Wasūya*, pp. 73-75). While this does not necessarily have to reflect his view on the juridical opinions of the Companions, it could be an indication that Abū Ḥanīfa thought that there is always one right view, even if it is unattainable. The *Ahl al-Hadīth*, needless to say, held the view that all the Companions on both sides in each schism were *mujtahidūn* and all of them would be rewarded for their *ījīthād*. 
views are categorically wrong. In contrast, the two traditions *ikhtilāf ummati raḥma* and *ašhābī ka-l-nujūm* were embraced by the *Ahl al-Hadīth*. Unlike the Ḥanafīs and Ẓāhirīs, they had to deal with, more often than not, conflicting legal evidence based on views attributed to Companions, which may have made it impossible for them to argue that their own rulings, which were more often than not in apparent contradiction with one or two items of the relevant legal evidence, were certain.

As for the issue of the higher wisdom of the law, or the *maqāsid al-sharī‘a*, Muslim scholars generally agree that God’s law must be based on some wisdom (*ḥikma*) and is meant to serve some higher goals. However, they differ on whether this wisdom is identifiable and therefore relevant to jurisprudence. A large number of scholars believe that some immediate purposes (*‘ilal*) of a certain law can be identified and employed to judge other cases that are not covered by the law. They distinguish between the *ḥikma*, which is a set of higher principles, and the *‘illa*, which is supposed to be a determinate and exact factor. The *‘illa* of forbidding alcoholic beverages, for example, is their intoxicating effect. But why the law seeks to avoid intoxication in the first place is a question that Muslim scholars answer according to their understanding of the *ḥikma* or higher wisdom of the law. Historically, the Mālikīs and the Ḥanbalīs were more inclined to accept some *‘ilal* that were less exact and objective, while the Ḥanafīs and Shāfi‘īs insisted that a valid *‘illa* be exact and objective.

The Ḥanafī *qiyyās* only acknowledges *‘ilal* that have specific features, a point that betrays their concern for consistency and objectivity. In this respect, al-Jaṣṣāṣ is making a fine distinction between two kinds of *‘illa*. The first is *‘ilal al-aḥkām*, which could be

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774 For this, see Ibn Ḥazm, *Iḥkām*, vol. 2, pp. 845ff.
identified and used in qiyās, and the second is ‘ilal al-maṣāliḥ, which are known only through revelation. The former are awṣāf (features) of the primary ruling (or principal case, al-aṣl al-ma‘lūl), while the latter pertain to the people themselves (al-muta‘abbadūn) and their interests. In ‘ilal al-maṣāliḥ we do not necessarily know what God’s wisdom is, although we do know that He has one.776 To mention a concrete illustration, al-Jaṣṣāṣ refutes elsewhere the notion that God always abrogates a ruling with one that is lighter or less demanding (akhaff) than it. The majority of Muslim scholars hold that God – even if he can theoretically abrogate any ruling by any ruling He wills – usually abrogates a ruling with a similar or lighter one, on the ground that God, in His mercy, take the interests of people into consideration and would not therefore inflict more hardship on them.777 Al-Jaṣṣāṣ, however, argues that the Ḥanafīs hold that God can abrogate any ruling with another without being bound with the issue of hardship, for God’s law is meant to serve our interests, which are only known to God.778

The Ṭāhirīs were notorious for their rejection that the higher wisdom of the law is knowable and therefore relevant to the actual application of the law, a view that they categorically rejected as arbitrary and baseless.779 Additionally, their uncompromising rejection of the notion of ‘illa, as attributed to Muḥammad ibn Dāwūd by al-Qāḍī al-Nu‘mān, is a recurrent theme in the writings of a Ṭāhirī scholar like Ibn Ḥazm, to the

777 For this, see, for instance, al-ʿĀmidī, Iḥkām, vol. 2, pp. 261-63; Ibn Ḥazm, Iḥkām, vol. 1, pp. 602ff. Interestingly, Ibn Ḥazm mentions that even some Ṭāhirīs had subscribed to the view that God would not abrogate a ruling by imposing a heavier one (ibid., vol. 1, pp. 602ff).
778 Al-Jaṣṣāṣ, al-Fuṣūl, vol. 1, p. 368. For the similar argument by the Ṭāhirīs, see Ibn Ḥazm, Iḥkām, vol. 1, p. 602.
779 For this, see Ibn Ḥazm, Iḥkām, vol. 2, pp. 1426ff.
extent that this particular notion has been identified by many scholars as the defining feature of Ţāhirism.⁷⁸⁰

Admittedly, this understanding of Ḥanafism is inconsistent with how it is commonly regarded by many medieval and modern scholars. It is held that the consideration of maṣlaḥa, which is related to the ḥikma of the law, was fundamental to Ḥanafi jurisprudence, and that the Ḥanafi notions of istiḥsān and hiyal, among other things, are indicative of this aspect of the Ḥanafi juridical thought. This view, however, suffers from three main weaknesses. Firstly, some modern scholars mention that Abū Ḥanīfa adopted this notion of maṣlaḥa from Ibrāhīm al-Nakha‘ī through Ḥammād.⁷⁸¹ It is argued that Ibrāhīm held that the edicts of the law were both reasonable, in terms of being identifiable by reason, and purposeful, in the sense of seeking to realize individual and public interests.⁷⁸² Proceeding on the assumption that there was a degree of homogeneity in each legal approach, these scholars do not distinguish between Abū Ḥanīfa and his teachers, on the one hand, and between him and his students, on the other hand. That Abū Ḥanīfa was a mugallid of Ibrāhīm al-Nakha‘ī is a debatable issue,⁷⁸³ and so is the contention that Abū Ḥanīfa himself was an exponent of al-maṣāliḥ al-mursala.⁷⁸⁴

Secondly, the actual role of istiḥsān in Abū Ḥanīfa’s jurisprudence may have been over-emphasized, at times perceived as one of the defining features of Ḥanafism that

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⁷⁸¹ See, for instance, Abū Zahra, *Abū Ḥanīfa*, pp. 226-27, where Abū Zahra mentions this view to refute it, although he agrees that Abū Ḥanīfa inherited Ibrāhīm al-Nakha‘ī’s legal thought through Ḥammād.
⁷⁸³ Muḥammad Abū Zahra is one scholar of Islamic legal history who rejects this view (for this, see abū Zahra, *Abū Ḥanīfa*, pp. 224-25).
⁷⁸⁴ Muḥammad Mukhtar al-Qāḍī, *al-Ra’y fi al-Fiqh al-Islāmī*, p. 131. Al-Qāḍī argues that all the Ḥanbalī scholars, including Ahmad ibn Hanbal himself, not only recognized the notion of al-maṣāliḥ al-mursala, but also used it extensively (*ibid.*, pp. 154-55).
helped Ḥanafī scholars serve the purposes of the law as they understood them. The same point applies to a lesser extent to the notion of the legal stratagems, on which subject Abū Ḥanīfa’s name appears frequently in his student’s work on ḥiyal. It is also understood that legal stratagems were tools that helped Ḥanafī scholars deal with cases in a way that took individual and social interests into consideration. Yet the question is not whether Abū Ḥanīfa made use of them or not; it is a question of how much he did that and how fundamental was the role the notion of istiḥsān and ḥiyal played in his jurisprudence.

Finally, if we lend some credence to views that medieval Ḥanafī scholars discuss, such as al-Jaṣṣāṣ’ views presented above, we would be able to consider the possibility that Abū Ḥanīfa himself may have distinguished between two categories of knowledge, each with its own rules and assumptions. The assumption here is that even if he had believed that the law had some higher goals which we can recognize and employ, Abū Ḥanīfa did not use this notion when there existed textual evidence that he accepted. If Abū Ḥanīfa had a genuine interest in consistency, objectivity, and certainty, he must have been seeking to apply his linguistic assumptions without trying to read into the authoritative texts considerations of any nature. In fact, systematization and consistency do not serve flexibility, a basic requirement of a legal system that seeks to always respond to the surrounding reality and take the changing interests of people into

785 Abū Zahra, for instance, argues that Abū Ḥanīfa used istiḥsān “a lot” (Abū Zahra, Abū Ḥanīfa, p. 342). To the best of my knowledge, there has not been any attempt to investigate how much this notion actually contributed to Abū Ḥanīfa’s juridical thinking.
786 On the relation of the ḥiyal to maslaḥa, see al-Fāsī, al-Fikr al-Sāmī, pp. 433-35.
787 Muḥammad ibn al-Ḥasan al-Shaybānī, Kitāb al-Makhārij fī al-Ḥiyal.
788 This distinction, of course, does not have to be sophisticated, but the notion that Abū Ḥanīfa may have regarded cases differently on the basis of the available evidence is not unlikely.
consideration. In the second category of knowledge, however, he may take the benefit and interests of the parties involved into account.

**B. Hermeneutics:**

A basic view on language that Dīwūdīsm and Ḥanafīsm shared was their understanding of the nature and working of language. 789 “The classical Ḥanafī usūl doctrine,” Aaron Zysow argues, “stands out from that of other legal schools in the consistency with which it defends a view of language that permits confident, secure interpretation.” “In this respect,” he adds, “it stands close to the doctrine of Zāhirīs such as Ibn Ḥazm and that of certain Ḥanbalīs such as Ibn Taymiyya.” Zysow goes on to explain that “[w]hat all these systems of interpretation have in common is that they seek to explain the workings of language, or at least the language of the sacred texts, in such a way as to exclude uncertainty from the process of interpretation.” 790 Later on, he mentions that for the Ḥanafīs, “A valid interpretation of discourse cannot be expected to go beyond the evidence. In this respect, the Ḥanafī position on interpretation may be seen to represent a clinging to the zāhir of the text, its apparent meaning, and historically the Ḥanafīs were partisans of the natural reading of the texts against those who claimed to be pursuing a more sophisticated analysis of language.” 791

It is worth noting that textual evidence falls within the first category of knowledge that al-Jaṣṣāṣ speaks of, which is how this statement of Zysow could be reconciled with what he said earlier about the difference between the formalist and materialist scholars of

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789 For the importance of the Arabic language for Islamic law, see, for instance, Bernard Weiss, “Language and Law: the Linguistic Premises of Islamic Legal Science,” p. 15.


791 Ibid., p. 100.
Islamic law and their different notions of how much certainty could be attainable in law. But to give concrete examples of this perception of the language, it suffices to mention two issues that show how the Ḥanafīs and Ẓāhirīs shared linguistic postulates of central importance in dealing with the textual evidence. The first is the issue of the imperative or the command (al-amr) and what it entails. This issue is of paramount importance in Islamic law, such that the Shāfī‘ī scholar Abū Ishāq al-Shīrāzī, the  Ḥanafī scholar Abū Bakr al-Sarakhsī, and the Ḥanbalī scholars of the Āl Taymiyya start their works on ṭul al-fiqh with a chapter on the imperative. Al-Sarakhsī explains this by arguing that knowledge of this subject allows us to distinguish between what is lawful and what is not, for which reason knowledge of it completes knowledge of religion.

The issue of the imperative has numerous ramifications, and was a subject of much controversy among the Muslim scholars. We will focus only on three points that are related to this issue, all of which have to do with the question of whether the ʿifʿal form (the Arabic form for the imperative) signifies in and of itself, or as its sole literal sense, as Bernard Weiss puts it, more than the mere calling for an act. The first issue is the degree of obligation that the imperative establishes: absolute obligation (wujūb), recommendation (nadh), or permissibility (ibāḥa). The second is the time framework that the imperative allows: whether it requires the immediate performance of what is commanded (ʿalā ʾl-fawr), or allows more time for the performance of the act (ʿalā ʾl-tarākhī). The third is whether the imperative, in and of itself, requires the repetition of what is commanded (tikrār), or only one single performance of the act.

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792 Abū Ishāq al-Shīrāzī, al-Tabṣira; Al-Sarakhsī, al-Muḥarrar; and al-Musawwada fi Uṣūl al-Fiqh of Majd al-Dīn, Shihāb al-Dīn, and Taqī al-Dīn ibn Taymiyya.


Muslim legal scholars have differed on each of these issues. Many scholars hold that the imperative has an “original” sense that could be changed only when a strong indicator (*dalīl*) exists. Other scholars are hesitant, denying that the imperative, in and of itself, carries any meaning beyond the calling for the action to be performed, which means that in all circumstances we need to find the indicator to know what the imperative signifies and entails. The imperative, they argue, does not tell us, in and of itself, whether the act it calls for must, should, or can be performed, whether or not the performance must be immediate or could be delayed, and whether the person commanded need only perform it once or has to keep repeating it. If we discuss this issue from the angle of certainty, we can say that the scholars who are hesitant about what the imperative conveys did not aspire to achieve absolute certainty in their jurisprudence (if, of course, they do not make the argument that in each case they can, with complete certainty, identify clear-cut evidence that indicates what the imperative signifies). On the other hand, scholars who hold that the imperative has an original or ontological sense are in a much better position to claim certainty for the legal views that they derive from textual sources.

Both the Ḥanafīs and the Ẓāhirīs belong to this last group of scholars. Both groups believe that the imperative in and of itself carries more meaning than the mere calling for an act. And both believe that this original or ontological meaning of the imperative can only be changed when an indicator can be identified with complete certainty; otherwise, the imperative retains its original sense. They, admittedly, differ on the evidence they take as certain and definite, although this is also done on principles that both share. The Ḥanafīs do not acknowledge the *khabar al-wāḥid* as a definite indicator, whereas the
Ẓāhirīs accept it as a valid indicator that can change what a Qur’ānic command, for instance, signifies.

Remarkably, Ḥanafism and Zāhirism make similar arguments as for why they hold this view on the signification of the imperative. They argue that the imperative that signifies obligation must have an original meaning out of necessity (darūratan); otherwise we, as the ones who are commanded and required to obey (mukallafūn), would be left in complete chaos and confusion, since there would be no way a person could indicate to another that he must do what he commands him to do. The Ḥanafī scholar al-Sarakhsī argues that the centrality of the issue of the imperative (that requires obligation) makes it indispensable that it have a specific form peculiar to it, the signification of which could change only on the basis of a certain indicator. Ibn Ḥazm also argues that if there were no form for the imperative that establishes apodictic obligation, communication would be impossible and God’s message to us would be meaningless. Language, he adds, is meant to clarify, not to confuse, a view that Ḥanafism and Zāhirism share.

What is more pertinent to our purpose here, however, is that the Zāhirīs and Ḥanafīs shared the same views on the different significations that the imperative originally carries. Both believe that the imperative, in and of itself, and when no indicator exists that suggests otherwise, establishes obligation. Moreover, they believe that the imperative requires the immediate performance of the act it commands. Finally, both

796 Al-Sarakhsī, al-Muharrar, pp. 8-13.
798 For the Ḥanafī view, see al-Jaṣṣāṣ, al-Fuṣūl, vol. 1, p. 283. For the Zāhirī view, see Ibn Ḥazm, Ḥkām, vol. 1, p. 329.
799 For the Ḥanafī view, see al-Jaṣṣāṣ, al-Fuṣūl, vol. 1, p. 295. For the Zāhirī view, see Ibn Ḥazm, Ḥkām, vol. 1, p. 375.
schools believe that the person commanded counts as obedient and is spared further obligation in respect of the imperative the very first time he performs the act, unless there is a certain indicator that he needs to repeat it.  

The second linguistic issue is the general term (ṣīghat al-‘umūm or lafẓ al-‘umūm) and its scope of application, the issue that may have given the Zāhirīs their name as discussed above. Some scholars argue that the general term (such as al-nās (people), al-muslimūn (the Muslims), kull (every or all), etc.) includes everything that it can potentially include. Other scholars, however, hold that the general term in and of itself does not indicate what is included under it, and that we constantly have to search for an indicator to know what each general term includes since there is always the possibility that it includes only some of its possible referents. The first group of scholars knows, or so they think, what general terms include; the second is hesitant.

The importance of this issue stems from the fact that, more often than not, the textual sources, especially the Qur’ān, use alfāẓ al-‘umūm, which can lead to catastrophic results if they are always taken to indicate their fullest extension. For example, the Qur’ān prescribes the amputation of the thief’s hand (al-sāriq) as a hadd punishment. Al-sāriq is a general term that refers to any person who steals something. If the reference of this term is not restricted, a person who steals a penny or anything of an insignificant value is considered a sāriq whose hand must be cut off. This general term, however, was restricted by the Prophet, who determined a minimum amount of money or value that a person must steal to be considered a thief who deserves the hadd punishment. A problem could arise if a scholar dismisses this tradition as valid evidence on the subject of theft.

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800 For the Ḥanafī view, see al-Jaṣṣāṣ, al-Fuṣūl, vol. 1, p. 314. For the Zāhirī view, see Ibn Ḥazm, Ḥikām, vol. 1, p. 401.
Since this tradition is transmitted by individual transmitters rather than by way of *tawātūr*, and is thus short of absolute certainty, it cannot restrict a general term whose scope of application we know with certainty.\(^{801}\)

Zysow writes: “the problem of the general term stands, as we have indicated, at the heart of the Ḥanafī exegetical tradition, for the mainstream Ḥanafīs were almost alone in regarding the general term as a source of absolute certainty.”\(^{802}\) He goes on to say that even if the possibility of specialization (*takhṣīṣ*) was readily admitted, “the majority of Ḥanafīs” were of the opinion that “each general term was to be taken in its fullest extension unless there was an accompanying indication.”\(^{803}\) Abū Bakr al-Jaṣṣāṣ, who confirms that this was the opinion of all the Ḥanafī scholars,\(^{804}\) adds that we know the scope of application of general terms with absolute certainty, which is why it is treated as a source of certain knowledge.\(^{805}\) He refutes the view that since the Ḥanafīs allow some traditions to limit the applicability of some general Qur’ānic terms, they should do the same on the basis of the *akhbār al-āḥād*. He explains that they accept only those traditions that, while being narrated by one person, have become well-known enough so that they could be treated like *mutawātīr* traditions.\(^{806}\)

This is also the opinion of *jamī‘ aṣḥāb al-zāhir*, Ibn Ḥazm points out. All terms, should be taken to indicate generality (in terms of its application) unless a valid or true indicator (*dalīl ʿhaqq*) changes that.\(^{807}\) He also argues that restricting the generality of a general term, and moving from the absolute obligation of the imperative to a lesser

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801 Luckily, this tradition, while falling in the category of the *akhbār al-āḥād*, was accepted almost unanimously by the scholars of Islam.
803 Ibid., pp. 129-30.
805 Ibid., vol. 1, p. 79.
806 Ibid., vol. 1, p. 84.
degree of obligation, and from its requirement of immediate act to delayed act, are all cases of changing the original meanings of the linguistic terms (naql al-asmā’ ‘an musammayātiḥā).  

III. Comparison with the Legal Thought of ʿAḥmad ibn Ḥanbal:

In his ‘Udda fi ʿUsūl al-Fiqh, the famous Ḥanbalī scholar Ibn Abī Yaʿlā al-Farrā’ (d. 458/1066) mentions that the zāhir (most probable or likely) of ʿAḥmad’s views on the degree of obligation that the command establishes, without any indicator that suggests otherwise, is that it establishes absolute obligation (wujūb). This was deduced from a statement attributed to Ibn Ḥanbal in which he says: “If a report from the Prophet is proven, it must be acted upon” (idhā thabataʾl-khabaruʿaniʾ-′amalawajabaʾl-ʾamalu bihi). However, al-Farrā’ also mentions, in a rather enigmatic way, that Ibn Ḥanbal “suspended his view” (ʿallaqaʾl-amr) in the narration or report (riwāya [of Ibn Ḥanbal’s opinion]) of a certain al-Maymūnī and a certain ʿAlī ibn Saʿīd. The basis of this “suspension” is a Prophetic tradition that says: “When I command you to do something, do of it as much as you can; and when I prohibit you to do something, avoid it.” Commenting on this tradition, ʿAḥmad ibn Ḥanbal is reported to have said that “the

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808 Ibid., vol. 1, p. 471. Remarkably, in al-Iʾrāb ʿan al-Ḥayra wa-l-ʾItibās al-Mawjūdayn fī Madhāhib Ahl al-Raʾy wa-l-Qiyās, Ibn Ḥazm, who targets here the Ḥanafīs with his bitter polemics, censures the Ḥanafīs mainly for their inconsistencies and arbitrariness in applying their rules rather than targeting the rules themselves.

809 Unlike Abū Ḥanīfa and Dāwūd al-Ẓāhirī, we do not have specific statements from ʿAḥmad ibn Ḥanbal regarding ʿusūl issues. Later Ḥanbalī scholars, who must have been influenced by views of other schools, sought to deduce what Ibn Ḥanbal may have thought about these issues. Additionally, more often than not, more than one view on ʿusūl was deduced from his cases. We will discuss what this tells us about his juridical thinking, but it must be pointed out that if we regard Ibn Ḥanbal as a legal scholar, it is unlikely that he did not have at least some rudimentary ʿusūl views.

command for me is easier than the prohibition” (al-amr ashalu ‘indī mina ‘l-nahy). 811 Al-Farrā’ argues against the view that this statement could be taken to mean that commands, in Ibn Ḥanbal’s view, only establish recommendation. In their Musawwada fī Uṣūl al-Fiqh, 812 the Āl Taymiyya also reject this understanding which contradicts other statements (manṣūṣāt) attributed to Ibn Ḥanbal, and seek to reinterpret this statement in a way that reconciles it with their view that the imperative establishes absolute obligation. This, they contend, was Ibn Ḥanbal’s own view. 813

What is noteworthy here is that later Ḥanbalī scholars were uncomfortable with the possibility, or perhaps the reality, that Ibn Ḥanbal may have had a different view on what they took as the original sense of the imperative. Abū Ya’lā is the only scholar who actually sought to produce evidence, in the form of a statement attributed to Ibn Ḥanbal, for his contention that Ibn Ḥanbal did not differ from the view of most [later] scholars on this issue. He, however, produces a statement that does not serve his purposes here. Ibn Ḥanbal’s statement about the reports of the Prophet does not, even indirectly, tackle the question of the imperative and the level of obligation that it establishes. It may be for this reason that no other Ḥanbalī scholar of uṣūl used it, and, in fact, the Āl Taymiyya considered it a “weak indication” of Ibn Ḥanbal’s opinion. 814 Furthermore, Ibn Ḥanbal’s other comment on the Prophet’s tradition of the commands and prohibitions suggests that he was hesitant between two possibilities of the denotation of the imperative – either absolute obligation or mere recommendation. In this comment, he seems to be making a

811 Ibid., 228.
812 This work is attributed three scholars of the Taymiyya family: Majd al-Dīn (‘Abd al-Salām ibn ‘Abd Allāh, d. 652/1254), Shihāb al-Dīn (‘Abd al-Ḥāfīm ibn ‘Abd al-Salām, d. 682/1283), and Taqī al-Dīn (Ahmad ibn ‘Abd al-Ḥāfīm, or the celebrated scholar Ibn Taymiyya, d. 728/1328).
813 Ibid., p. 5.
814 Ibid., p. 15.
contrast between a prohibition, which establishes absolute obligation to abstain from a
certain act, and a command, which could have a similar degree of obligation (to do
something), or a lesser degree (which is the case with recommendations).

Scholars who held that the imperative had a certain original or ontological
meaning argued that when it is used to indicate something else (recommendation or
permissibility, for instance), it does so figuratively. For example, al-Jaṣṣāṣ mentions that
the imperative in and of itself suggests absolute obligation. It could, however, be used in
a figurative way (majāzan) to indicate any other level of obligation.815 Ḥanбалī scholars
of usūl al-fiqh, however, attributed to Ibn Ḥanbal the view that when the imperative is
used to indicate recommendation, it does so “literally” or factually (‘alā ʾl-ḥaqīqa), not
figuratively (which is the case when it is used to indicate permissibility).816 This confirms
the view that Ibn Ḥanbal was probably hesitant about this issue. If the same form (which
is śighat ifʿal here) can be used to indicate, ‘alā ʾl-ḥaqīqa, two degrees of obligation, this
renders our understanding of which degree of obligation any imperative establishes less
certain than if we hold the view that it only means one thing ʿalā ʾl-ḥaqīqa but could
indicate another only ʿalā ʾl-majāz.

Ibn Ḥanbal was most likely hesitant about other issues too. On the question of
whether the imperative indicates that the act requested must be done immediately or
could be delayed, the Ḥanbalī scholar ‘Alī ibn ‘Aqīl (d. 513/1119) attributes to Ibn Ḥanbal the view that the imperative, in and of itself, and if no indicator suggests
otherwise, carries the requirement of the immediate performance of the commanded

815 Al-Jaṣṣāṣ, al-Fuṣūl, vol. 1, p. 281. For a complete list of the uses of the imperative form, see ibid., vol. 1, pp. 280-81.
816 For this, see al-Farrāʾ, al-ʿUdda, vol. 1, p. 248, and Āl Taymiyya, al-Musawwada, pp. 6-7.
Reporting other views that indicate that Ibn Ḥanbal did not think that the imperative carries the requirement of the immediate performance of the act, al-Farrā’ agrees that what Ibn ‘Aqīl says is the żāhir of Ibn Ḥanbal’s views. Ibn ‘Aqīl, however, criticizes al-Farrā’ for concluding this on the basis of some of Ibn Ḥanbal’s masā’il, arguing that the masters of uṣūl do not deduce the uṣūl principles from the furū’, but rather establish the furū’ on the uṣūl. In Ibn ‘Aqīl’s view, Ibn Ḥanbal must have held the view that the imperative requires the immediate performance of the commanded because this is more “precautionary,” and precaution (iḥtiyāṭ) in the uṣūl and furū’ “is the heart of Ibn Ḥanbal’s madhhab,” he contends. This statement is a strong indication of the moral dimension of Ibn Ḥanbal’s jurisprudence as the Ḥanbalī scholars themselves understood it, and it contrasts sharply with the beliefs of both the Ḥanafīs and Zāhirīs who do not hold that a certain act can be declared unlawful on any basis other than a certain text (or analogy thereto for the Ḥanafīs). Precaution, which is the same logic that governs the sadd al-dharā’i’ principle, is not a basis they would consider for declaring an act unlawful. Remarkably, while works of Ḥanbalī uṣūl affirm that for Ibn Ḥanbal the imperative denotes the requirement to carry out the commanded act repeatedly (‘alā ‘l-tikrār), the Mu’tazilī scholar Abū al-Ḥusayn al-Baṣrī (d. 463/1044) mentions that those who held the view that the imperative indicated the necessity to repeat the act did so on the basis of iḥtiyāṭ.

819 Most works on Ḥanbalī uṣūl al-fiqh follow the taḥqīqat al-fuqahā’ and rely on Ibn Ḥanbal’s masā’il to deduce his legal principles.
821 Ibid., vol. 3, p. 17.
On the issue of the general term, however, Ḥanbalī üşūl works attribute to Ibn Ḥanbal the opinion that a general term is to be interpreted as broadly as possible unless an indicator suggests otherwise. Yet the authors of al-Musawwada mention that many of Ibn Ḥanbal’s companions held other views regarding this issue. This contention (that Ibn Ḥanbal’s view on the issue of ʿumūm was similar to that of Abū Ḥanīfa and Dāwūd) is inconsistent with Ibn Ḥanbal’s moral agenda and his hesitation, and the case studies discussed in chapter five will demonstrate that he was more concerned with synthesizing the various pieces of evidence that he had on a certain issue rather than following the ʿumūm of a particular textual evidence.

It is worth noting that Abū al-Ḥasan al-Ashʿarī (d. 333/944) figures as the most important scholar of waqf (suspension of opinion), not only on the issue of the imperative, but also on the issue of the general term. Al-Ashʿarī is reported to have argued that the imperative that requires absolute obligation has no specific form, and that the ifʿal form, in and of itself, does not have any ontological value. In every single case, therefore, we have to search for clues that indicate what the imperative suggests. What is remarkable here is that this is not the view of the Muʿtazilīs, who held that the imperative denotes recommendation unless proven otherwise. He also denied that al-lafẓ al-ʿāmm had a specific form in the language in the first place. Therefore, every term

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825 Āl Taymiyya, al-Musawwada, p. 89.
827 The same opinion was attributed to al-Shāfiʿī by the Shāfiʿī scholar Ibn Surayj, but is rejected by all other Shāfiʿī scholars (for this, see, for instance, al-Sarakhsi, al-Muḥarrar, p. 11).
828 Ibn ʿAqīl, al-Wāḍih, vol. 2, p. 495. This is the opinion that most scholars of ʿusūl attribute to the Muʿtazilīs. In al-Muʿtamad, however, Abū al-Ḥusayn al-Baṣrī argues that the imperative establishes absolute obligation, but he also mentions that Abū ʿAlī (al-Jubbāʾī, d. 303/915) held the view that it only established recommendation. In both circumstances, however, we can notice that every Muʿtazilī scholar held one view or another about the degree of obligation that the imperative establishes. None of them adopted a hesitant attitude about this issue.
could be of broad or limited scope of application depending on the clues available, which we need to seek in every single case.\textsuperscript{829} On the other hand, the Mu‘tazilīs had the same view of the Ḥanafīs and Zāhirīs regarding the general term.\textsuperscript{830} This suggests that al-Ashʿarī, who converted from Mu‘tazilism to Ḥanbalism, may have thought that his views on these two issues were those of Aḥmad ibn Ḥanbal himself, which is more consistent with what we know about Ibn Ḥanbal. If Ibn Ḥanbal thought that all the Companions were correct, the fact that they disagreed on many issues, many of which are related to the imperatives and general terms, must have made it difficult for him to take a definite position on any of these issues.

IV. Conclusion:

The goal of this chapter was to determine why Dāwūd was labeled \textit{al-Zāhirī} and how this relates to the question of his relationship with the two legal trends of his time. Examining some Qur’anic uses of the word \textit{ẓāhir} indicates that the Qur’an is not useful in answering the question of what \textit{ẓāhir} may have meant when used as a label for someone. Some ambiguities and inconsistencies notwithstanding, however, discussion of the uses of this word in al-Shāfi‘ī’s \textit{Risāla} and part of al-Ṭabarī’s \textit{tafsīr} suggests that it was employed in the context of hermeneutics and used extensively and frequently, and probably technically, in a specific context: the context of the ‘\textit{umūmi/khuṣūs} dichotomy. The \textit{ẓāhir} meaning, the identification of which requires reference to how the Arabs used their language when the Qur’ān was revealed, is the widest possible meaning or the fullest possible scope of a certain term or statement. Al-Ṭabarī’s discussion indicates that there

\textsuperscript{829} See, for instance, \textit{al-Tabṣira}, vol. 1, p. 105.
\textsuperscript{830} Al-Baṣrī, \textit{al-Mu’tamad}, vol. 1, p. 189.
was an assumption that the ẓāhir meaning should be taken to reflect the intention of the speaker (God, in the case of the Qur’ān), and any deflection from this meaning requires a valid indicator. Al-Ṭabarī himself had an evident concern about not jeopardizing the ʿumūm of any Qur’ānic term or statement without valid evidence.

This use of ẓāhir was implicitly connected by al-Shāfi‘ī to the notion of al-ibāha al-aṣliyya, or the presumption of continuity that everything is legal unless proven otherwise, and also to the assumption that what is forbidden is only what God explicitly forbids, and that on which He is silent is not forbidden. The notion of al-ibāha al-aṣliyya provides scholars with the general rule that everything is lawful unless indicated otherwise. Therefore, when God or the Prophet prohibit something, this particular thing is regarded as an exception to the general rule, but what is not prohibited remains covered by the general rule, i.e., lawful.

There is an evident relationship between the issue of ʿumūm and Dāwūd’s rejection of qiyās. Qiyās, as al-Shāfi‘ī explains, qualifies or restricts general rules by drawing analogy between what it textually prohibited and other things that are similar to it but not explicitly prohibited. For example, if we assume, for the sake of the argument, that Muslim jurists agree that the Qur’ānic word khamr refers only to grape wine, a Zāhirī scholar would consider grape wine to be the only exception to the general rule of the legality of all drinks. A scholar who draws analogy between grape wine and some other beverages, whereby he declares these other beverages to be illegal, violates al-ibāha al-aṣliyya rule by expanding or increasing the exceptions.831 This, of course, does not apply

831 The only author who tried to find a connection between the notion of istiṣḥāb al-ḥāl and the rejection of qiyās is Y. Linand de Bellefonds. He argues that from the Zāhirī point of view, since permissibility is the rule and prohibition is the exception, only a clear text can establish prohibition. This view is thus inconsistent with qiyās which is not direct textual evidence (de Bellefonds, “Ibn Ḥazm,” p. 18).
to scholars who do not believe in the notion of *al-ibāha al-aṣliyya*, and for whom *qiyyās* could be used to demonstrate that something is legal (by drawing a similarity between it and something else that we know is legal). Scholars who hold the notion of *al-ibāha al-aṣliyya*, however, do not need to argue for the legality of anything, since everything is presumed to be legal unless proven otherwise. Therefore, *qiyyās*, in this case, always shows that what is not explicitly mentioned by the law is not legal because of a similarity between it and another thing that is known to be illegal. This is a further expansion of the exception to the general rule of *al-ibāha al-aṣliyya*, or, in other words, a further restriction of its scope.

There is evidence that in Ibn Ḥazm’s view the *ẓāhir* meaning referred to the ‘āmm meaning. Commenting on various views on the meaning of *ūlī ‘l-amr minkum* in Q. 4:59 (O you who believe, obey God and obey the Messenger and those in authority (*ūlī ‘l-amr*) among you), he rejects the view that *ūlī ‘l-amr* refers exclusively to Muslim scholars rather than other Muslims. Since there is no evidence from the Qur’ān or the Sunna that it refers to one part of the Muslim community rather than another, it must be interpreted according to its *ẓāhir*, the restriction (*takhṣīš*) of which requires evidence (*burhān*). The *ẓāhir* of the *ūlī ‘l-amr* here is evidently its general, unrestricted meaning.

The relationship between the issue of ‘*umūm* and *qiyyās* is also evident in some of Ibn Ḥazm’s legal discussions. On the question of the punishment of a male slave who engages in illicit sexual relationship while he is *muḥṣan* (married or previously married), Ibn Ḥazm argues against the view, attributed to Abū Ḥanīfa, Mālik, al-Shāfī’ī, and Ibn Ḥanbal, that he is not to be stoned to death like free men, but rather receives fifty lashes like slave girls who engage in similar relationship. Ibn Ḥazm relies on a Prophetic

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tradition to argue that stoning to death is the rule in the case of adultery.\textsuperscript{833} The only exception to this rule is female slaves, according to Q. 4:25.\textsuperscript{834} It is not to anyone, He asserts, to challenge the ‘\textit{umūm} of this tradition without evidence. \textit{Qiyās}, which is used to include male slaves in the exception, is therefore invalid. Accordingly, a male slave is to be stoned to death just like free men according to the general rule on this matter.\textsuperscript{835}

\textit{Ẓāhir} also appears in the context of \textit{amr}, religious commands. The \textit{zāhir} meaning of a command, according to al-Shāfi‘ī and Ibn Ḥazm,\textsuperscript{836} is that it is meant to establish absolute obligation to do something. There is also a possible relationship between the issue of ‘\textit{umūm} and \textit{amr}. Just as any \textit{lafẓ ‘āmm} is taken to refer to everything that it can cover, commands establish an unconditional religious obligation on \textit{everyone} in \textit{all} circumstances to do something, or, in the case of prohibition, to avoid doing something. There is then an element of ‘\textit{umūm} or unrestrictedness in this understanding of commands and prohibitions. There is also an element of unconditionality and absoluteness. In both cases, challenging the unrestrictedness or unconditionality of a statement requires an acceptable indicator.

Muslim scholars, at times out of the desire to defame the Ẓāhirīs, have typically focused on cases that show that the Ẓāhirīs took all commands to establish absolute obligation, which led them to many “absurdities.” For example, in Q. 2:282, Muslims are commanded to write down a note when they borrow money.\textsuperscript{837} The Ẓāhirīs insist that the imperative in this verse (\textit{fa-iktubūh}) establishes absolute obligation. If rather than focusing

\textsuperscript{833} \textit{Al-thayyibu bi-l-thayyibi jaldū mi‘a wa-l-rajm.}
\textsuperscript{834} \textit{Fa-idhā uḥṣinna fa-in atayna bi-fāḥishatin fa-‘alayhimna nisfū mā ‘alā ‘l-muḥṣanātī mina ‘l-adhāb} (and if when they [slave girls] are married they commit lewdness, their punishment is half that of free women).
\textsuperscript{835} Ibn Ḥazm, \textit{al-Muḥallā}, vol. 12, pp. 181-82.
\textsuperscript{836} Ibn Ḥazm, \textit{Iḥkām}, vol. 1, pp. 85-86.
\textsuperscript{837} \textit{Yā ayyuhā ‘ladhīna āmanū idhā tadāyantum bi-diyinīn ilā qajalin musammān fa-iktubūh} (O you who believe, when you contract a debt to a fixed term, record it in writing).
on the command itself and how the Žāhirīs construe it we focus on the object of the command, the relationship between the imperative and the issue of ‘umūm can be discerned. In this case, what really distinguished the Žāhirīs was their contention that writing was obligatory for any debt regardless of its object or value. In the lā yakḥṭub tradition, the general rule that this Prophetic tradition establishes is that no Muslim is allowed under any circumstance to ask for the hand of a woman who is already engaged to another Muslim. The views that al-Shāfi‘ī mentions in this context do not seek to mitigate the degree of obligation for this prohibition, but rather to qualify the apparently general, unconditional, and unrestricted rule that this traditions establishes. Thus, taking the imperative to establish less than absolute obligation that applies across the board threatens its ‘umūm or Žāhir.

Remarkably, it is not uncommon for non-Žāhirī scholars to make conclusions about the purpose of the law on the basis of exceptions to general rules. For example, al-Ṭabarī mentions a number of scholars who held that the command in the verse of the debt is for absolute obligation and not just recommendation. Other scholars held that this command was in fact abrogated by Q. 2:283: “And if you are in a journey and cannot find a scribe, then a pledge in hand [shall suffice]. And if one of you trusts another, he who is trusted should deliver his trust.” In their view, this textual evidence mitigates the command, for it spares people of the requirement of writing their debts or have witnesses

838 The views that al-Ṭabarī attributes to earlier authorities on the meaning of this verse suggest that some people wanted to restrict it to certain items (hīnṭa, or wheat), or to certain values (hence, the view that all debts, be they significant or otherwise (ṣaghiran aw kabiran), should be written down).

839 In al-Shāfi‘ī’s view, the prohibition applies only when the woman accepts a marriage offer from a man. In this case, no other Muslim should seek to marry her. If, however, a man offers to marry a woman and she does not give him a word, other men can ask her for marriage (al-Shāfi‘ī, al-Risāla (1938), pp. 308-09, §§ 851-59).

840 The verse reads: wa-inn kuntum ‘alā safar wa-lam tajidū kātiban fa-riḥānum maqḥūdatun, fa-in amina ba’dum ba’dan fa-1-yu’addi ‘lladhī i’tumina amānatah.
when they are traveling and do not find a scribe. When this is done, however, the gate is open, not only for mitigating the obligatoriness of the first verse, but also for making new exceptions to the general rule that it establishes on the basis of each scholar’s understanding of the spirit of the law and the purposes that it is meant to serve. It is not therefore surprising that the majority of scholars, including those who held that the command in and of itself establishes absolute obligation, believed that this command to write debts cannot be taken to establish absolute obligation.\footnote{For this, see al-Ṭabarī, \textit{Jāmi` al-Bayān}, vol. 3, pp. 117-19.} For Dāwūd, the unrestrictedness of terms and rules can only be qualified by the lawgiver. The logic behind a certain exception or qualification of a rule is something that we do not know and are not required to seek. Therefore, we cannot use an exception to make conclusions about the purpose of the law.

Dāwūd shared the belief in ‘umum with the \textit{Ahl al-Ra’y}, as well as their understanding of the nature of divine law. Both believed that certainty in not only required in Islamic law, but is also attainable, for which reason there must be a correct reading of legal texts that we can achieve with complete confidence. To achieve certainty, the \textit{Ahl al-Ra’y} and Dāwūd emphasized the centrality of legal texts and the importance of interpreting them on the basis of well-defined assumptions and rules, such as the notion of \textit{istiḥāb al-ḥāl}, the assumption that restricting the indication of a text requires a valid evidence, and the assumption that the imperative in and of itself indicates the absolute obligatoriness of doing something. It is important to note that Dāwūd evidently had more textual evidence to deal with than the \textit{Ahl al-Ra’y}, for which reason he was able to argue that in most cases, there existed one, and only one, valid evidence, unlike the \textit{Ahl al-Ra’y} who felt more a liberty to use their own judgment where there was
no valid textual evidence in their view, or when conflicting evidence existed on one issue. What is significant is that Dāwūd and the Aḥl al-Ra’y dealt similarly with the textual evidence that they accepted without emphasizing notions such as the higher goals of the law.

On the other hand, Aḥmad ibn Ḥanbal does not seem to have been interested in abiding by specific assumptions and rules in his jurisprudence, and later Ḥanbalī scholars were unable to deduce one view on the issues of ‘umūm and amr, for instance, from his legal cases or attribute one view to him on these issues. Hesitancy appears as a hallmark of Ibn Ḥanbal, and this is consistent with the view that he was more concerned for the morality rather than the legality of acts. To serve his moral agenda, and also to be able to synthesize various pieces of evidence from the Qur’an, the Prophetic Sunna, and Companions’ views, he needed to be at liberty to deal with the evidence freely and without rigid and restrictive rules. The case studies discussed in chapter five seek to demonstrate these views on Dāwūd, the Aḥl al-Ra’y as represented by Abū Ḫanīfa, and the Aḥl al-Hadīth, as represented by Aḥmad ibn Ḥanbal. Now we turn to the question of the nature of Zāhirism as a hermeneutic and legal philosophy.
Chapter Four

Ẓāhirism, Literalism and Textualism

Modern scholars of Islamic studies, and perhaps some medieval Muslim scholars, view Ẓāhirism as a literalist approach, assuming that the ẓāhir meaning is the literal meaning. They, however, do not investigate how the term ẓāhir was employed in medieval Muslim scholarship, nor do they take into account the fact that there is disagreement on the validity of the very concept of literalism, or the possibility of identifying a “literal” meaning for a given word or sentence. The previous chapter dealt with what ẓāhir meant in Dāwūd’s time. This chapter addresses the issue of literalism and offers an alternative understanding of Ẓāhirism. It begins with comparing Ẓāhirism as elaborated by Ibn Ḥazm al-Andalusī and the version of textualism put forward by a contemporary American jurist and legal scholar, Justice Antonin Scalia, who joined the

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842 For modern scholars, see, for instance, Ignaz Goldziher, *The Ẓāhirīs*, p. 117; ‘Abdel Magid Turki, *s.v. “Ẓāhirīs” in EI*, vol. 11, p. 394, and *Polémiques*, p. 72; Coulson, *History*, p. 71; Christopher Melchert, *Sunni Schools of Law*, p. 179, where Melchert quotes Ibn al-Nadīm and ẓāhir as the literal meaning; Camilla Adang, “The Beginning of the Ẓāhirī Madhhab in al-Andalus,” p. 116, and “Ibn Ḥazm on Homosexuality,” p. 13, where Adang says that “[a]s their name indicates, the Ẓāhirīs advocate the literal interpretation of the revealed sources.” More recently, Adam Sabra writes about how Ibn Ḥazm was misunderstood because of his “insistence that the Qur’ān and Sunna be interpreted literally” (Sabra, “Ibn Ḥazm’s Literalism,” p. 7). Sa‘īd al-Afghanī, a modern Muslim scholar, speaks of Ibn Ḥazm’s focus on the “letters” of texts (wuqūfi ʿalā ḥarfiyyat al-nuṣūṣ) (Sa‘īd al-Afghanī, *Ibn Ḥazm al-Andalusī*, p. 66). As for medieval Muslim scholars, their understanding of Ẓāhirism is not easy to determine. We cannot, of course, hold that they regard it as literalist on account of their reference to the Ẓāhirīs as Ẓāhirīs. It was demonstrated in an earlier chapter that these scholars do not explain what ẓāhir is. However, some of what some of them say about Ẓāhirism may indicate that they saw it as literalist if literalism means fixation on the wording of a text (assuming that focus on the text is sufficient to make a certain reading literalist, an issue that is dealt with below) without considering any factors that can contribute to the formation of legal views. Ibn al-Jawzī, for instance, argues that Dāwūd neglected what could be understood of a tradition for its letters or the form of its words (yaltafit ʿalā maḏhūm ʿl-ḥadīthī ilā siṣrāt lafzīh) (Ibn al-Jawzī, al-Ḥuntaqam, vol. 12, p. 236). Speaking of the aṣḥāb al-alfāẓ wa-l-zawāhir and citing some Ẓāhirī legal views, Ibn Qayyim al-Jawziyya argues that their focus on the meaning made their understanding fall short of the intended objectives (qasārū bi-maʿānī [ʿl-nuṣūṣ] ʿan murādī [ʿl-shārī]) (Ibn al-Qayyim, *Aʿlām al-Muwäqqiqāt*, vol. 1, p. 222). Elsewhere, he says that they adhered to the wording of texts (alfāẓ al-nuṣūṣ) (vol. 3, p. 94). Ibn al-Qayyim distinguishes between “al-zawāhir wa-l-alfāẓ” and the objectives and meanings of texts (al-maqāṣid wa-l-ṭaʿānī) (ibid., vol. 3, p. 115). Those who focus on the former, thus, miss the latter.
American Supreme Court in 1986. Since textualism is also regarded as literalist by some scholars, the second part of the chapter deals with literalism and what it means from the linguistic point of view. Other than demonstrating that Zähirism is textualist rather than literalist, this chapter contributes to our understanding of the nature of Zähirism as a legal philosophy as well as to the question of whether the Zähiri doctrine itself was responsible for the ultimate demise of the Zähiri madhhab.

I. Textualism:

Justice Antonin Scalia is known to be the most outspoken advocate of textualism in the United States in recent decades. Here, I investigate the extent to which Scalia’s version of textualism corresponds to Zähirism with respect to its premises, goals, and mechanics.843

843 This section deals with legal interpretation in the United States. I have been unable to find a better comparable interpretative methodology in other legal systems (which does not mean that it does not exist in other legal systems). I find American textualism, as articulated by Justice Antonin Scalia in particular, a useful counterpart to Zähirism. There was a previous attempt to compare interpretative methods of Islamic and American legal systems by Asifa Quraishi, who drew some analogies between textualism and Zähirism (“Interpreting the Qur’ān and the Constitution: Similarities in the Use of Text, Tradition, and Reason in Islamic and American Jurisprudence,” pp. 76-80). Quraishi’s complete reliance on secondary sources for Islamic law, however, has limited to a great extent her ability to comprehend many aspects of this legal system. For example, Quraishi believes that Mālik can be compared to the American originalists who focused on the practice of the time when the American Constitution was written to identify the intent of those who wrote it. She then compares Mālik and al-Shāfi‘ī, who, for his part, focused on the verbal traditions that were transmitted from the Prophet. Arguably, this is a wrong comparison, for Mālik did not use Medinan ‘ʿamal to determine the meaning of verbal traditions, nor did al-Shāfi‘ī neglect the historical context in determining the meaning of the Prophet’s utterances. We have seen earlier that al-Shāfi‘ī stressed the fact that the Qur’ān was revealed in the language of its direct audience (the Arabs), and that full mastery of this language as it was used by the Arabs during the time of the Prophet is needed to understand legal texts. In addition, unlike the American originalists who use history to determine the intended meaning of texts by figuring out how the Americans who lived in the late 18th century would have understood the American Constitution (i.e., they used history to identify meaning rather than practice), Mālik usually used history to identify the law, not the interpretation thereof. Mālik simply rejected any textual evidence that contradicted Medinan ‘ʿamal. Arguably, Shāfi‘ī would have given weight to Medinan ‘ʿamal that would support one understanding of a certain reading of a textual evidence rather than the other. In addition, Quraishi compares reliance on Prophetic traditions to using other textual evidence from the period when the American Constitution was written to know the intent of its authors. This, however, does not take into account the fact that the Prophetic Sunna did not just explain rather general or ambiguous Qur’ānic statements. The Prophetic Sunna was also regarded as an independent source of the law. Moreover, if we use Prophetic traditions to determine the intent of God in the Qur’ān, by what methodology can we make sure that our understanding of the intent of the Prophet is correct if he is using...
A. Textualism and Ẓāhirism:

1. Premises:

A theory of language (by which I mean a set of assumptions about language) is central to all interpretative methodologies. Scalia’s textualism and Ẓāhirism share some fundamental views about language and how it should be interpreted. In describing textualism, Scalia argues that a textualist is neither a literalist nor a nihilist. “Words,” he explains, “. . . have a limited range of meanings, and no interpretation that goes beyond that range is permissible.” This indicates two significant aspects of Scalia’s perception of language; first, he believes that although we may need to exert some effort to figure out the intended meaning of a given term, we are dealing primarily with a finite number of possibilities, which we can learn from many sources, as explained below. The second and probably the more important aspect is that it is assumed here that we can understand the language of the law. Scalia is confident that the “correct meaning” of the law is identifiable.

For his part, Ibn Ḥazm believes that the first language that man used was not man-made, but was rather taught to man by God himself. According to him, Q. 2:31, “And He taught Adam all the Names . . .,” clearly indicates that God taught Adam all the words that He assigned for everything. This first language must have been the most perfect of all languages, in Ibn Ḥazm’s view, because it was the clearest, the most straightforward

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844 Crapanzano, *Serving the Word*, p. 10.
846 Ibn Ḥazm also held that the first language could not have been developed by people, for developing a language, he argues, requires a high degree of reason and knowledge, which can only be obtained through the use of language (*ibid.*, p. 28).
and the least ambiguous.\textsuperscript{848} As for other languages, they may too have been taught to
Adam by God, or may have been derived from this first language.\textsuperscript{849} Yet even in the latter
case, Ibn Ḥazm’s view on how language functions remains the same; he holds that when
people invented new languages, they had already learned how language works.\textsuperscript{850} In
every language there is a word that corresponds to a certain thing, and this is what makes
communication among people who speak the same language possible. This is a
conclusion that is dictated by both reason and Revelation, he argues,\textsuperscript{851} asserting that
language is meant to explain rather than confuse matters.\textsuperscript{852} It is probably for this reason
that he insists that a Muslim jurist must be accomplished in the language of the Arabs,
which is the language of Revelation. This requires full knowledge of the words that are
assigned to things and the grammatical rules of the Arabic language.\textsuperscript{853}

The important analogy we can draw between Ibn Ḥazm’s and Scalia’s attitude
towards language here is their conviction that words refer to specific things and that
correct understanding is attainable. While Ibn Ḥazm does not – to the best of my
knowledge – make an explicit statement with regard to having more than one word
referring to one thing (i.e., synonyms), this does not seem to have been a problem he
worried much about. As for assigning one word to many things, he refers to this question
in his discussion of \textit{majāz}, or the metaphorical use of language, which he defines as
assigning to a word a meaning that is different from the meaning that was first assigned
to it. In religion, only another text or consensus can establish that a word is used

\textsuperscript{848} Ibid., vol. 1, p. 30. Ibn Ḥazm argues that we do not know now what that language was, and he also
argues against Muslim scholars who – arbitrarily in his view – held that it was Arabic (a view that he
regards as highly unlikely) (\textit{ibid.}, vol. 1, pp. 30-31).
\textsuperscript{849} Ibid., vol. 1, p. 31.
\textsuperscript{850} Ibid., vol. 1, p. 30.
\textsuperscript{851} Ibid., vol. 1, p. 260.
\textsuperscript{852} Ibid., vol. 1, p. 260.
\textsuperscript{853} Ibid., vol. 2, p. 693.
figuratively in a certain text. If this is done by God, however, the metaphorical meaning ceases to be metaphorical and becomes a true meaning for the word, for it is God who assigns meanings to words, Ibn Ḥazm states.\footnote{Ibn Ḥazm, \textit{Iḥkām}, vol. 1, p. 44. Apparently, Ibn Ḥazm did not notice that this view would lead to a conclusion that he would have wanted to avoid, for if God uses a certain word to refer to something other than the meaning that people know, how do we know the meaning that God intends when he uses the same word elsewhere? In this case, it could be argued, a willful jurist would be able to pick up the meaning that serves his preference for a certain legal ruling, something that is in sharp contradiction with Ibn Ḥazm’s perception of the law as explained below.}

Another assumption that Scalia has concerns the purpose of the law. Criticizing the “Living Constitution” philosophy – according to which the American Constitution must always be reinterpreted to remain in tune with changing circumstances – Scalia argues that the Constitution’s “whole purpose is to prevent change.”\footnote{Scalia, \textit{Matter of Interpretation}, p. 40.} Scalia was not against legal change in principle, but he does believe that this should be done in a particular way as explained below. As long as a certain law stands, however, it should be followed as it is without seeking to render it compatible with a particular social reality or the subjective views of the legal interpreter. As for Ibn Ḥazm, it can be safely argued that maintaining God’s law that was revealed to the Prophet Muḥammad was the pillar of his legal thought. His main accusation and criticism of other schools was their – in his view – allowing their whimsical and arbitrary understanding of the purpose and spirit of the law to change God’s law. For him, God’s message to the Prophet Muḥammad was God’s last communication to mankind, and its legal aspect is intended to last until the end of time.\footnote{Fort his, see Ibn Ḥazm, \textit{al-Nubdha al-Kāfiya fi Uṣūl Aḥkām al-Dīn}, p. 17.}

A third assumption that Scalia holds concerns the role of the legislator or lawmaker and that of the legal interpreter, be he a jurist or a judge. In his view, the legislative power is the “power to make laws, not the power to make legislators,” pointing out that “Congress can no[t] . . . authorize one committee to ‘fill in the details’
of a particular law in a binding fashion.” 857 On the other hand, “judges have no authority to pursue th[e] broader purposes [of the law] or write [. . .] new laws.” 858 This distinction between the lawgiver and the legal interpreter is also at the core of Ibn Ḥazm’s legal philosophy. He insists that there is only one lawmaker in Islām – God (the Sunna of the Prophet Muḥammad being mandated by God himself), and that this lawmaker has not authorized us to assume the role of legislation. The role of the muftī is thus not to legislate by declaring things legal or illegal, but only to figure out and report God’s rule in cases presented to him. 859 What follows, therefore, is primarily concerned with the way legal interpreters approach the law, and does not deal with the actual making of the law. In other words, we are here dealing with how textualists and Żāhirīs (and later literalists) deal with language, primarily as interpreters rather than speakers thereof.

2. Goals:

Rejection of the notion of legislative intent is generally seen as the main characteristic of textualism, for which reason it is always contrasted with intentionalism. In fact, textualism is regarded as emanating from originalism, which refers to the search for original meaning rather than original intent. 860 This view is both an assumption that the textualists hold, and a pragmatic or realistic way of thinking of what judges and jurists can and cannot do. “Textualists,” Caleb Nelson points out, “emphasize that the legislative process is set up to achieve agreement over words, not motives or purposes.” 861 Unlike intentionalism, textualism “treat[s] the legislative process as a black box that spits out the

857 Scalia, Matter of Interpretation, p. 35.
858 Ibid., p. 23.
860 Ring, Scalia Dissents, pp. 8, 25.
law to be interpreted but whose internal workings in any particular case are not part of the context that should be ascribed to an ‘appropriately informed’ reader.” What is meant by “appropriately informed reader” will be discussed shortly.

What textualists seek to find out when interpreting a certain law, therefore, is what the lawmakers intended to say rather than what they intended to achieve or bring about by issuing that law. It is not surprising, then, to learn that in this view, “[u]nfairness is irrelevant when the rule applies as a matter of plain textual meaning,” as William Eskridge comments on one of Justice Scalia’s legal arguments. Scalia is reported to have argued that “judges should allow even stupid laws to stand . . . I do not think . . . [that] the avoidance of unhappy consequences is adequate basis for interpreting a text.” Another scholar explains that “[a]lthough textualists find it appropriate in cases of ambiguity to consult a statute’s apparent purpose or policy . . ., they resist altering a statute’s clear semantic import in order to make the text more congruent with its apparent background purpose.”

John Manning argues that textualism “rests upon the notion that enforcing the clear semantic meaning of a statute represents the best, if not the only, way to preserve the unknowable legislative bargains that produced the final text.” Scalia, it is believed, does not lend credence to the notion of legislative intent because it is not, most of the time, ascertainable. Scalia himself argues that determining the original intent is almost impossible for a number of reasons (most of which relate to issues of American legal

863 Eskridge, “Textualism,” p. 1510.
864 Quoted in Ring, Scalia Dissents, p. 25.
867 Ring, Scalia Dissents, p. 25.
history, which is beyond the scope of this study). Textualism, therefore, “might be understood as a judgment about the most reliable (or perhaps the least unreliable) way of discerning legislative instructions.”

Textualism, however, does not entirely disregard legislative intent, for the intent that matters in their view concerns “the rule that legislators meant to adopt rather than the real-world consequences that legislators expected the rule to have.” Textualism looks for what is called the “objectified intent,” which is “a concept predicated on the notion that a judge should read a statutory text just as any reasonable person conversant with applicable social conventions would read it.” The intention of the lawmakers, in other words, is to “enact a law that will be decoded according to prevailing interpretative conventions.” In Scalia’s own words, “[w]e [should] look for a sort of ‘objectified’ intent – the intent that a reasonable person would gather from the text of the law, placed alongside the remainder of the corpus juris . . . [for] it is incompatible with democratic government, or indeed, even with fair government, to have the meaning of a law determined by what the lawgiver meant, rather than by what the lawgiver promulgated.” Thinking of what lawmakers meant would lead one to think in terms of his understanding of how an intelligent person “should have meant” and thus what the law “ought to mean.”

Ibn Ḥazm’s concern about the usurpation of God’s absolute prerogative as lawmaker cannot be better articulated than Scalia’s argument here (with the Congress

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872 Ibid., pp. 432-33.
873 Scalia, Matter of Interpretation, p. 17.
874 Ibid., p. 18.
replacing God, of course). In both views, legal interpreters should not be allowed to assume the role of lawmaking. Textualists, therefore, address various issues that could potentially allow legal interpreters to assume this role. Scalia is critical of “certain presumptions and rules of construction that load the dice for or against a particular result.” Criticizing their vagueness and uncertainty, he argues that these rules are not textual, and can facilitate the job of a willful judge and increase judicial unpredictability. Accordingly, textualists reject the notion of “imaginative reconstruction,” a process by which a legal interpreter seeks to imagine how lawmakers would have decided on a given case. Rather than doing this, they focus on “the implications of what the enacting legislature actually did decide.”

In contrast, intentionalism focuses more on the spirit rather than the letter of the law, seeking to figure out the intentions – meaning the goals – of lawmakers by resorting to imaginative reconstruction and other tools. For example, “[w]hen a sufficiently dramatic mismatch between means and ends occurs (or, more accurately, appears to occur), classical intentionalists ascribe that divergence to legislative inadvertence.” In other words, an intentionalist legal interpreter can go as far as assuming that the law as it stands cannot be the law that the lawgivers had intended to promulgate. In Scalia’s view,

\[875\] In Ibn Ḥazm’s view, disagreement among people is natural given their differing natures and inclinations. Since they can never agree on a view, following them is impossible. Therefore, only God and his Messenger should be followed, and the Muslim community has agreed on this principle even if they disagreed on how to carry it out (for this, see Ibn Ḥazm, Iḥkām, vol. 1, pp. 502-03).

\[876\] Scalia, Matter of Interpretation, p. 27.

\[877\] Ibid., pp. 27-28.


\[880\] Ibid., p. 440.
this type of judge intentionally manipulates the law to impose what he regards as an appropriate rule in a particular case.\textsuperscript{881}

Intentionalists, thus, can be seen as meddling with the law at times to reflect more faithfully what they regard as the real goals of the lawmaker. In so doing, they can assume that the lawmakers may not have been cognizant of the implication of everything they say. Textualists do not proceed on a similar assumption, believing that lawmakers are deliberate in choosing the language of the law. That language, they hold, reflects the outcome of a lengthy process which the law had to go through in order to be agreed upon by the majority of lawmakers.\textsuperscript{882} Therefore, they focus on what an informed reader (by which they mean a learned but unspecialized person) would understand of a legal text. Focusing on what is thought to be the intent of the legislator rather than what the law could reasonably be understood to be saying, they argue, puts people outside the legislature in a situation where they have to abide by laws that they cannot be fully aware of since they may be interpreted by judges in a way that they would not understand or predict.\textsuperscript{883}

It was noted in a previous chapter that Zahirism is notorious for rejecting the notion of ‘illa (rationale), which is primarily used to determine the intent of the lawgiver and the wisdom underlying the religious law.\textsuperscript{884} Ibn Ḥazm distinguishes very carefully and categorically between the lawgiver’s intent that we obey his law, and his objective in creating a certain law. Just as Scalia argues that “the text is the law, and it is the text that

\textsuperscript{881} Weithman, “Precise Word,” p. 181.
\textsuperscript{882} Manning, “Textualism,” p. 424ff.
\textsuperscript{884} For example, if intoxication is the ‘illa of prohibiting wine, the rationale of prohibiting it would be avoiding intoxication, for which reason any intoxicating beverage would be similarly prohibited. Why intoxication should be avoided, however, is a question that the Muslim jurists referred to as the ḥikma, or the wisdom of the law.
must be observed,"  

he argues that ẓāhir is what we recite, and we are not required to go beyond that.  

We are required to follow only what we understand, and do not need to consider the rationale or anything else beyond what we understand from the text.  

At the outset of his Iḥkām, he points out that what we would be better off doing in this life is to seek to figure out what God has ordered us to do and abide by that.  

Ẓāhirīs, then, do not concern themselves with original intent. However, they look for original meaning. The way Ibn Ḥazm deals with legal texts clearly indicates his conviction that God uses language in the clearest and most efficient way, for which reason the first language that He created must have been the most perfect, as it was the clearest, the most straightforward and the least ambiguous.  

This, for Ibn Ḥazm, is the use of language that befits God. Some Ẓāhirī scholars, therefore, rejected the view that the Qurʾān contained metaphoric expressions because this was regarded as a degraded form of language that creates ambiguity and uncertainty.  

On this ground, the possibility that the language of the law is insufficient or not clear enough is completely ruled out.  

But God speaks in the clearest way in the Ẓāhirī understanding for a specific reason. Muslim scholars have disagreed on whether the bayān (clarification) of a certain rule can follow its being made incumbent upon people. In other words, can God impose a duty on people by an ambiguous statement and only clarify exactly what he means in a

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885 Scalia, A Matter of Interpretation, p. 22.
888 Ibid., vol. 1, p. 8.
890 For this, see chapter one of this study, p. 39.
891 This is not to say that Ibn Ḥazm thought that everyone can under the legal texts. He did not. He argues that bayan has several degrees, some of which are only comprehended by a few (Ibn Ḥazm, Iḥkām, vol. 1, p. 79).
later statement. In Ibn Ḥazm view, the actual obligation of a command cannot in principle precede its bayān (which may qualify it) because this would be tantamount to burdening people with what they cannot carry (tahmīlunā mā lā yuṭaq), which God does not do according to his own words in the Qurʾān.892 Similar to the textualists’ belief that people should not be held accountable for a law that they do not understand, the Zāhirīs argue that God’s promise that he would not inflict on us a burden that we cannot carry certainly indicates that he would not speak to us in an unclear or ambiguous way.893

It is worth noting here that while originalists in general assume that lawmakers are aware of the full import of the language they use,894 textualists, according to Nelson, do not categorically rule out the possibility of what is called “scrivener error,” which roughly refers to any error in drafting a law. However, “[b]efore they will reinterpret a statutory text on the ground that it reflects a drafting error, textualist judges insist on a very high degree of certainty that Congress as an institution did indeed make a mistake.”895 For instance, if an error is “obvious,” textualists are willing to act on the basis of what they thought lawmakers really intended to say.896 This notion of scrivener error is only comparable to Ḥadīth transmission in the context of Islamic law, when a transmitter inadvertently changes one or more words in a Prophetic tradition.897 It may be for the purpose of avoiding this kind of error (which would undermine the certainty of the

892 Ibn Ḥazm, Iḥkām, vol. 1, p. 75. For an example of Ibn Ḥazm’s rejection of the view that God may impose on people something without explaining it, see ibid., vol. 9, p. 56.
893 Ibn Ḥazm’s argument here is not purely theological. His argument relies on textual evidence to proceed through reason to specific conclusions. The belief of American textualists that law-makers choose their language carefully and their ruling out the possibility of Scrivener’s errors, however, seem to be pure assumptions based on their understanding of how laws are made.
896 Ibid., p. 356.
897 This possibility was, of course, ruled out by most Muslim scholars with respect to the Qurʾān.
law) that Ibn Ḥazm insisted that a transmitter has to transmit traditions verbatim without making any changes in wording or structure.898

3. Mechanics:

According to some contemporary legal scholars, what really distinguishes the textualists is not what they think about the content of the rules that Congress intends but rather how they set about determining these rules.899 As noted, identifying the underlying purposes of the law-maker is not an objective for either the textualists or the Zāhirīs. Identifying the meaning of the text of the law, however, is what they seek to accomplish. Therefore, the first thing a judge or a jurist needs to do when investigating a certain case is to find a relevant textual basis upon which he can proceed. Scalia argues that “judges should focus on the text. If someone claims he or she is being denied the exercise of a right or if the government asserts it has authority to take a given action, courts must make certain there is specific textual support for each assertion.”900 Accordingly, if a judge is confronted by a case that the law does not directly address, what should be done is that “instead of simply assuming the authority to engage in . . . [a] reconstructive project, courts should find the statute inapplicable unless it ‘plainly hands [them] the power to create and revise a form of common law’ with respect to the issue.”901 That is, if the judge is not given the authority to decide on certain cases, he should abstain from making judgments that do not rely on specific legal texts.

898 Ibn Ḥazm, Iḥkām, vol. 1, pp. 205-06. Many Ḥadīth scholars held that a transmitter can change the wording of a tradition if he knows that the words he uses mean exactly the same thing as the words they replace (for this, see al-Khaṭīb al-Baghdādī, al-Kīfīya, pp. 232ff.).
900 Ring, Scalia Dissents, p. 1.
Likewise, Ibn Ḥazm argues that the authoritative legal texts (the Qurʾān and Prophetic Ḥadīth) are our bases for knowing God’s ordinances.⁹⁰² The texts for Ibn Ḥazm are not more important than other sources of the law; they are the only sources of Islamic law. In fact, a view that distinguishes the Zāhirīs and shows their insistence on the supremacy of texts was their dismissal of the Prophetic practical Sunna (al-sunna al-ʿamaliyya) as a source of law.⁹⁰³ Ibn Ḥazm argues that only verbal Ḥadīth is mandatory, and the practical sunna of the Prophet is only recommended for us to follow.⁹⁰⁴

Having identified a relevant text or texts, textualists begin a process of interpretation. The most distinguishing feature of textualism here is their “rule-like” attitude, which is contrasted with the “standard-like” attitude of the intentionalists. The difference between these two approaches is that whereas a rule is a directive “which requires for its application nothing more than a determination of the happening or non-happening of physical or mental events,” a standard-like directive is one “which can be applied only by making, in addition to a finding of what happened or is happening in the particular situation, a qualitative appraisal of those happenings in terms of their probable consequences, moral justification, or other aspect of general human experience.”⁹⁰⁵ In general, rules provide jurists with exact and fixed regulations on how they should interpret the law. For example, “a rule might tell implementing officials to ignore some factors that they otherwise would have thought relevant to the goal behind the rule and to focus exclusively on a narrower set of issues identified by the rule. Or it might permit implementing officials to consider all the circumstances they like, but still make some

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⁹⁰² Ibn Ḥazm, Iḥkām, vol. 1, p. 64.
⁹⁰³ By practical sunna I mean the deeds of the Prophet Muḥammad, in contrast to his sayings, or Ḥadīth.
binding generalizations about how those circumstances usually play out or about the proper weight of various factors.906

Without going into the details of the difference between these two approaches, suffices it to say here that the standard-like approach gives legal interpreters more flexibility in deciding each case by allowing a degree of value-judgment. The rule-like attitude, on the other hand, seeks to regulate the legal process by carefully informing the legal interpreter of what he can and cannot do. In fact, Nelson, who argues that the development and use of hermeneutical tools is central to textualism,907 points out that “[a] formalist theory has got to have rules about rules.”908 The rule-like attitude of textualism, which is a formalist theory, according to Scalia (see below), is even more evident in cases where textualists use some of the techniques of other legal attitudes without giving up their view that rules must rule. For example, “textualists try to keep their attempts at imaginative reconstruction within the rule-based framework that they understand the enacting legislatures to have chosen, and they are more likely than intentionalists to presume that this framework applies notwithstanding changed circumstances.”909 In commenting upon how textualist interpreters deal with legal texts, Scalia argues that:

. . . textualists are willing to deviate in certain ways from the baseline that conventional meaning provides. Still, textualists prefer such deviations to be guided by relatively rule-like principles. While textualists are willing to invoke some regularized canons that bear on the intended meaning of statutory language even though they are not part of normal communication, textualists are more reluctant than other interpreters to make ad hoc judgments that the enacting legislature must have intended something other than what conventional understandings of its words would suggest.910

910 Quoted in ibid., p. 376.
This insistence on the necessity of abiding by rules is, in fact, consistent with the textualists’ view regarding the importance of consistency, determinacy, and predictability in the law – notions that they regard as indispensable for a just legal system.\footnote{Eskridge, “Textualism,” p. 1512.} Achieving this, however, requires that the process of legal interpretation be governed by specific, pre-defined rules. Therefore, Scalia believes that “general rules are beneficial because they provide notice and certainty to the public that is expected to obey the law. They also ensure that Americans will receive equal and consistent treatment and not be subjected to the predilections of the current justices on the Court or to shifting popular opinion.”\footnote{Ring, \textit{Scalia Dissents}, p. 2.} On the other hand, “by using unclear standards, consistency suffers,” he points out. Rules are thus required and are applied “to all situations.”\footnote{Weiser, \textit{Opinions of Antonin Scalia}, p. 16.}

Textualism, therefore, makes use of numerous interpretative rules. One of the basic rules of textualism is that “it [is] imperative, given the complexities of the legislative process, to respect the level of generality at which Congress speaks; for them, legislative compromise is reflected in the detail of the text produced. So they subscribe to the general principle that texts should be taken at face value – with no implied extensions of specific texts or exceptions to general ones – even if the legislation will then have an awkward relationship to the apparent background intention or purpose that produced it.”\footnote{Manning, “Textualism,” pp. 424-25.} When the Constitution speaks of “any person,” Scalia takes this to mean any person regardless of anything, while the same article could be read by other, non-
textualist interpreters in view of the fact that it was promulgated in a certain context to ensure specific rights for specific groups of American citizens (mostly minorities). 915

Furthermore, if a law could be read in two different ways, but one of them would make another law, or part of the same law, superfluous, a textualist would prefer the other reading which allows the two laws to stand. 916 In other words, a textualist assumes that the lawmaker intended to say something new or different in the new law even if this is not clear. In a chapter on the contradiction among (authentic) legal texts (taʿārud al-nuṣūṣ), Ibn Ḥāzm argues against scholars who held that in cases like these (when authentic pieces of textual evidence contradict each other), all texts fall and we proceed as if no text was available as evidence in the case at hand. If two authentic texts contradict each other (a possibility that Ibn Ḥāzm does not acknowledge but only mentions to make a certain point), 917 both of them are to be used, for there is no good reason to follow one of them rather than the other. 918 This view does not seem to have been influential in Ibn Ḥāzm’s jurisprudence, not only because he did not abstain from dismissing a large amount of textual evidence on account of authenticity, 919 but also because he was always willing to question and dismiss the relevance of particular textual evidence to a particular case on the basis that we do not know enough about its circumstances.

What is noteworthy about the rule-like and standard-like approaches is the implied inverse relationship between rules and the degree of subjectivity involved in the

917 On the different ways two seemingly contradictory pieces of textual evidence could be reconciled, see Ibn Ḥāzm, Ḥukm, vol. 1, pp. 152ff.
918 Ibid., vol. 1, p. 151.
919 In his discussion of the prohibited drinks, for instance, Ibn Ḥāzm dismisses more than 20 traditions that deal with this issue alone (for this, see Ibn Ḥāzm, al-Muhallā, vol. 6, pp. 177-86).
process of legal interpretation. Textualists and Zāhirīs sought to minimize subjectivity in legal interpretation by introducing hermeneutic rules. We have noted earlier that the insistence of the Zāhirīs on the use of interpretive rules makes them closer to the Ahl al-Ra’y scholars and far from the methodology of the Ahl al-Ḥadīth, who apparently loathed having to abide by rigid rules. Ibn Ḥazm judges earlier scholars by the extent to which they use rules in their jurisprudence. He admires al-Shāfi‘ī because he was, in his view, an imām in language and religion who introduced many rules, the sound among which outnumber the faulty.⁹²⁰

Another major issue concerning the way textualists seek to identify what they call the objectified intent of the law is their attitude towards the context of the legal text. According to Nelson, “when a statement has multiple and equally valid interpretations, textualists use internal and external evidence to ascertain the meaning intended by the lawmakers.”⁹²¹ These kinds of internal and external evidence that textualists consider in order to identify the meaning intended by the lawmaker include linguistic, social, and historical contexts.⁹²²

As for the historical context, we must distinguish between two points: the historical context of a certain legal text, and what is called legislative history. The historical context refers to the place and time in which a legal document was produced. Legislative history refers to all the interpretations of that legal doctrine since it was produced. In the American legal system, for example, the late 18ᵗʰ-century United States is the historical context of the American Constitution. Subsequent interpretations of and writing on the Constitution are known as its legislative history. This similarly applies to

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⁹²² Ibid., p. 348.
statutory laws. In the Islamic context, the late 6th- and early 7th-century Arabia represents the historical context of the Qur’ān, for instance. All subsequent scholarship on the legal aspects of the Qur’ān, however, belongs to the legislative history of Qur’ānic law.

It has been argued that “[d]octrinally, the new textualism’s most distinctive feature is its insistence that judges should almost never consult, and never rely on, the legislative history of a statute.”923 Several reasons are provided for this attitude. The first is that Congress itself (i.e., the lawmaker) does not authorize this kind of search for intended meaning in the legislative history. What it authorizes is only the use of the laws enacted and which they submit to the President.924 Textualists also assume that the lawmakers choose their language carefully because they are aware that their laws would be used by the courts.925 Furthermore, textualists are generally skeptical of the judge’s ability to distinguish between reliable and unreliable or misleading materials in the legislative history.926 Finally, they assume that the final law was a product of many compromises, and thus relying on the wording of a law is the best way to “identify the compromises that members of the enacting legislature collectively intended to strike.”927

Nevertheless, textualists do use history. What is important is that they do not use it to figure out the intent of the law, which is not a goal for textualist legal interpreters in the first place. They, however, use history “only as a guide to meaning.”928 In Scalia’s view, it is not contrary to sound interpretation to “give the totality of context precedence over a single word.”929 He argues that “when confronting a statute, all mainstream

925 Ibid., p. 391.
926 Ibid., p. 377.
927 Ibid., p. 371.
928 Weiser, Opinions of Antonin Scalia, p. 9.
interpreters start with the linguistic conventions (as to syntax, vocabulary, and other aspects of usage) that were prevalent at the time of enactment. Those conventions help determine the ‘ring’ that the statutory language would have had to ‘a skilled user of words . . . thinking about the . . . problem [the legislature was addressing].’’930

This attitude of American textualists towards historical context is reminiscent of both al-Shâfi‘î’s and al-Ṭabarî’s attitudes towards the same question, and differs from the attitude of the Mālikī madhhab, for which history is a source of knowledge for the practice rather than the meaning of the law. Ibn Ḥazm is not less than the textualists in considering the historical context for identifying the intended meaning. This will be discussed in more detail below, but it must be pointed out here that the issue of the historical or physical context is at the heart of the difference between literalism and textualism, for whereas the former focuses only on the semantics of sentences, the latter approaches the texts in light of the textual and historical contexts.

Having said this, it must be noted that some scholars have some uncertainty about the real attitude of the textualists towards the historical context. A legal scholar argues that Scalia’s interests are only linguistic rather than historicist, for he “often devotes little or no effort to figuring out how contemporaries actually would have understood the terms used in statutes.”931 In other words, he only cares about how a legal statement would be understood by a reasonable speaker of the English language.932 Others argue, however, that Scalia and his ilk seek to determine the meaning of words as they were understood when the legal document was produced. Manning, for example, argues that the textualists “are not literalists; they do not look exclusively for the ‘ordinary meaning’ of words and

932 Ibid., p. 1516.
phrases. Rather, they emphasize the relevant linguistic community’s . . . shared understanding and practices.”

We have seen a similar statement made by Scalia himself. Eskridge’s understanding of Scalia’s attitude towards the historical context, therefore, is inconsistent with how others view his legal philosophy.

Interestingly, a similar uncertainty about the role of the historical context can be detected in Ibn Ḥazm’s Zāhirism. A staggering fact about Ibn Ḥazm’s legal writings is his rare references to Arabic poetry and disagreements among scholars of the Arabic language. Ibn Ḥazm mentions linguistic rules without providing historical evidence for their authenticity and soundness. For example, at the very beginning of *al-Iḥkām*, he mentions the function, role, and indication of many conjunctive particles (like *wāw*, *fa*, *thumma*, etc.) without providing any examples from Arabic poetry to prove his views. Ibn Ḥazm probably assumed that these rules were known to everyone, for which reason he may have felt that he did not need to prove them. In fact, he does make numerous references to linguistic usages of the Arabs, even though he does not always produce evidence for that. For example, he asserts that when the Arabs spoke about a group of men and women, they used the masculine pronouns. No evidence is given here except the argument that since the Prophet was sent to men and women alike, and the Qurʾān uses the masculine pronouns more often than not, this must indicate that these pronouns

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934 I am aware of only one citation of Arabic poetry in *al-Iḥkām* to prove a linguistic point (Ibn Ḥazm, *Iḥkām*, vol. 1, p. 392).
935 A modern Tunisian scholar, Aḥmad Bakīr Maḥmūd, mentions that the Zāhirīs do not condone the use of Jāhilī Arabic, pre-Islamic poetry, or poetry of non-Muslims to make conclusions about the use of the Arabic language (*al-Madrasa al-Zāhiriyya*, p. 27). Unfortunately, Maḥmūd does not mention his source for this piece of information.
936 Ibn Ḥazm, *Iḥkām*, vol. 1, pp. 46-47, and p. 319, where Ibn Ḥazm argues that his understanding of the function of *aw* cannot be ignored even by those with minimal knowledge of the Arabic language. No evidence is given here for this understanding.
referred to both men and women. He also asserts that there is no disagreement among the Arabs that the dual has a form that differs from the plural. Therefore, the plural only indicates three or more (in contrast to the view he mentions according to which it can also refer to two). Ibn Ḥazm is probably talking here about what, in his view, ought to be, but he does not demonstrate that this rule was actually invariably respected by the Arabs.

History for Ibn Ḥazm was important not only as a means for the identification of the intended meaning by informing us of how the language was used when the legal texts were produced. The historical context also provided Ibn Ḥazm with what we can call the circumstantial evidence for the intended meaning. In one Prophetic tradition, a woman asks the Prophet about the permissibility of kissing while fasting, to which the Prophet replies by saying that he used to do that. She then said to the Prophet that since God had forgiven all his sins, he was not similar to other men in this regard. This answer angered the Prophet, a context on which Ibn Ḥazm relies to prove that the permissibility of kissing during fasting was not limited to the Prophet, but was rather for all Muslims, even if the Prophet did not say this explicitly. It is important to note that the fact that we do not find comparable use of the historical context in American textualism can simply be accounted for on the basis of the nature of the two legal systems. In the American legal system, laws must be promulgated in a formal way. The Congress, for example, cannot outlaw a practice by showing its anger or disapproval of it.

Textualists also take into consideration the textual context of words. In textualism, the language of the statute as a whole is considered to determine the meaning

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938 Ibid., vol. 1, p. 395.
939 Ibid., vol. 1, p. 141.
of terms. Scalia believes that “. . . the Court should ensure the meaning makes sense within the context of the law or code of which it is part,” arguing that it is not contrary to sound interpretation to “give the totality of context precedence over a single word.” Because of the centrality of this point, it will be discussed in more detail below.

B. Case Studies:

The following case studies illustrate some of the theoretical points made above about the legal philosophy of Justice Antonin Scalia.

According to Scalia, the debate in the first case is over the meaning of a single word: “use.” In American criminal law, the sentence of a person who “uses” a machine gun in drug trafficking is thirty years in jail. In what is known as the Smith case, J. A. Smith and a friend of his took part in a drug trafficking operation. During this operation, Smith sought to sell or barter his machine gun with a drug dealer. Through an undercover agent, the police was informed about the operation, whereupon Smith fled the hotel in which the operation took place and was arrested later after a car chase. The police found the machine gun with Smith when he was arrested. Smith was indicted and sentenced to 30 years for knowingly using the machine gun “during and in relation to a drug trafficking crime.” When the case reached the Supreme Court, the judge who was in charge of the case decided that what Smith did constituted use of his machine gun and

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941 Ring, Scalia Dissents, p. 24.
943 “SMITH vs. UNITED STATES,” p. 241.
944 A PDF file for the syllabus and concurring and dissenting opinions in SMITH vs. UNITED STATES, 508 U.S. 223 (1993) is obtained from http://docs.justia.com/cases/supreme/508/223.pdf. References are made to the pagination in this file.
945 For a more detailed description of the events of this case, see Crapanzano, Serving the Word, pp. 262-63.
the statute was thus relevant to the case. The judge referred to the meanings of “use” in *Webster’s New International Dictionary* and other dictionaries to demonstrate that Smith did use his machine gun in the operation.946

Scalia dissented, arguing that the Court’s logic that the dictionary definition of the word “use” is very broad is fallacious. In Scalia’s view, “[i]t is a ‘fundamental principle of statutory construction (and indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.” 947 “That is particularly true,” he adds, “of a word as elastic as ‘use,’ whose meanings range all the way from ‘to partake of’ (as in ‘he uses tobacco’) to ‘to be wont or accustomed’ (as in ‘he used to smoke tobacco’).” 948 Citing other cases of the Supreme Court, Scalia adds that “[i]n the search for statutory meaning, we give nontechnical words and phrases their ordinary meaning,” on the basis of which we can conclude that “[t]o use an instrumentality ordinarily means to use it for its intended purpose.” 949 On this ground, regarding what Smith did to constitute use of the machine gun is like saying that Smith would have been indicted for scratching his head with the machine gun during the crime. This is an extraordinary understanding of the word “use,” which is a nontechnical word whose meaning is “inordinately sensitive to the context,” 950 and whose ordinary meaning in this kind of cases is the use of the machine gun as a weapon, which Smith did not do. 951 The statute relied on, therefore, intended to refer to the use of a machine gun as a weapon during drug trafficking, and not to using it as a medium for exchange or

946 “SMITH vs. UNITED STATES,” pp. 228-29.
947 Ibid., p. 241.
948 Ibid., pp. 241-42.
949 Ibid., p. 242.
950 Ibid., pp. 244-45.
951 Ibid., p. 242.
barter,\textsuperscript{952} and the Court has failed to distinguish between how a word can be used, and how it is ordinarily used.\textsuperscript{953} The petitioner, Scalia points out, was not “seeking to introduce an ‘additional requirement’ into the text . . ., but is simply construing the text according to its normal import.”\textsuperscript{954}

The judge of the Supreme Court – Sandra Day O’Connor – responded to Scalia’s dissent by pointing out that even though Scalia’s understanding of “use” is the ordinary meaning of the word, this does not warrant excluding other meanings of the word, according to some of which Smith did use his machine gun during the crime.\textsuperscript{955} This was probably a response to Scalia’s view that the addition of a direct object (firearms here) to the verb (“use” in this case) narrows the meaning of the verb.\textsuperscript{956}

The second case – Maryland vs. Craig (or the Craig case), deals with the meaning of another word, “confrontation,” as used in the Sixth Amendment of the American Constitution.\textsuperscript{957} A Maryland statute permits an abused child to testify through a one-way closed-circuit television if the court feels that the physical presence of the child in the court could cause him or her emotional suffering that would affect his ability to testify. In our case, a child testified via closed-circuit television against S. A. Craig, who was subsequently indicted by the court for child abuse. Craig, however, argued that the Constitution requires a face-to-face courtroom encounter between the two litigants, which

\textsuperscript{952} Ibid., p. 243.
\textsuperscript{953} Ibid., p. 242.
\textsuperscript{954} Ibid., p. 244.
\textsuperscript{955} Crapanzano, \textit{Serving the Word}, pp. 263-64.
\textsuperscript{956} “SMITH vs. UNITED STATES,” p. 245. Scalia adds that “[t]he word ‘use’ in the ‘crimes of violence’ context has the unmistakable import of use as a weapon, and that import carries over . . . to the subsequently added phrase ‘or drug trafficking crime.’ Surely the word ‘use’ means the same thing as to both, and surely the 1986 addition of ‘drugging trafficking crime’ would have been a peculiar way to \textit{expand} its meaning (beyond ‘use as a weapon’) for crimes of violence,” \textit{ibid}., p. 246 (italics in original).
\textsuperscript{957} According to this, “In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . .” (see Crapanzano, \textit{Serving the Word}, p. 264).
was not done in her case. The case reached the Supreme Court, and it was ruled that the “Confrontation Clause” of the Constitution does not disallow use of procedures that secure reliable evidence while preserving “the essence of effective communication.”

Scalia, again, dismissed the validity of this argument, regarding it as “antitextual,” and insisting that “[t]he Sixth Amendment provides, with unmistakable clarity, that ‘[i]n all criminal prosecutions, the accused shall enjoy the right…to be confronted with the witnesses against him.’” In his view, this Confrontation Clause “means, always and everywhere, at least what it explicitly says: the ‘right to meet face to face all those who appear and give evidence at trial,’ and this is what it means regardless of “whatever else it may mean in addition.” He severely criticized the Court’s view that “a State’s interest in the physical and psychological well-being of a child abuse victims may be sufficiently important to outweigh, at least in some cases, a defendant’s right to face his or her accusers in court,” regarding this as a “subordination of explicit constitutional text to currently favored public policy.” Adding that he did not think that things were significantly different when this constitutional amendment was adopted, he stresses that “the Constitution is meant to protect us against, rather than conform to, current ‘widespread belief’,” the widespread belief here being not exposing children to emotional suffering. Furthermore, Scalia criticizes the court’s

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958 For a more detailed description of the events of this case, see Crapanzano, *Serving the Word*, pp. 264-65.
960 Ibid., p. 211.
961 Ibid., p. 212 (italics mine).
962 Ibid., p. 214.
963 Ibid., p. 211.
964 Scalia argues that “...no extrinsic factors have changed since that provision was adopted in 1791.” “Sexual abuse,” he points out, “existed then, as it does now; little children were more easily upset than adults then as now; a means of placing the defendant out of sight of the witness existed then as now” (Quoted in Crapanzano, *Serving the Word*, p. 266).
agreement with some states’ laws in this kind of cases for the purpose of “protect[ing] child witnesses from the trauma of giving testimony in child abuse cases,”\textsuperscript{966} which could make him unable to “reasonably communicate.”\textsuperscript{967} He wonders why a prosecutor would want “to call a witness who cannot reasonably communicate [in the first place],”\textsuperscript{968} arguing that that this Constitution clause intended to “induce precisely that pressure [which the Maryland statutes intended to spare the abused children] upon the witness which the little girl found it difficult to endure.” It is difficult, he points out, “to accuse someone to his face, particularly when you are lying.”\textsuperscript{969} In addition, since children are generally unable to separate fantasy from reality, this is a stronger reason to insist on bringing them to the courtroom and confronting them with whom they accuse.\textsuperscript{970} Finally, the Supreme Court has no right to decide that this requirement of direct confrontation is dispensable, which, for him, reduces the Confrontation Clause to “only one of many ‘elements of confrontation’,” and could also justify regarding trial before a jury

\textsuperscript{966} Ibid., p. 211.
\textsuperscript{967} Ibid., p. 216. Scalia adds here that if we do not apply the Confrontation Clause on the ground that the pressure on the allegedly abused child could cause the witness to testify, why not deprive the defendant of his right to counsel if this would save him? For Scalia, this logic only reflects what he believes to be the typical State’s interest: to convict as many guilty defendants as possible (ibid., p. 216).
\textsuperscript{968} Ibid., p. 216.
\textsuperscript{969} Quoted in Crapanzano, \textit{Serving the Word}, p. 266 (italics in original). Scalia points out that the object of the Confrontation Clause “is to place the witness under the sometimes hostile glare of the defendant,” which could “confound or undo the false accuser,” as one Court’s decision that Scalia quotes says (Weizer, \textit{The Opinions of Justice Antonin Scalia}, p. 216). Scalia’s analysis of the court’s decision is as follows: “The confrontation Clause guarantees not only what it explicitly provides for—‘face-to-face confrontation—but also implied and collateral rights such as cross-examination, oath, and observation of demeanor (TRUE); the purpose of this entire cluster of rights is to ensure the reliability of evidence (TRUE); the Maryland procedure preserves the implied and collateral rights (TRUE), which adequately ensure the reliability of evidence (perhaps TRUE); therefore the Confrontation Clause is not violated by what it explicitly provides for—‘face-to-face’ confrontation (unquestionably FALSE).” In Scalia’s view “[t]his reasoning abstracts from the right to its purposes, and then eliminates the right.” “It is wrong,” he goes on to explain, “because the Confrontation Clause does not guarantee reliable evidence; it guarantees specific trial procedures that were thought to ensure reliable evidence, undeniably among which was ‘face-to-face’ confrontation” (ibid., p. 212).
\textsuperscript{970} Weizer, \textit{The Opinions of Justice Antonin Scalia}, p. 216.
indispensable. The “interest-balancing analysis” that Scalia believes motivated the Court’s decision is simply not permitted by the Constitution.

Scalia has many detractors, one of whom is Vincent Crapanzano, whose critique of Scalia can help us shed more light on his philosophy and reinforces some of our conclusions. Commenting on these two cases, Crapanzano speaks of “Scalia’s epistemological naiveté,” that is, “his unquestioned assumptions that words are spiritless . . ., that meaning can be divorced from intention, and that texts can have a context-independent meaning that is at least potentially immune from the interlocutory effects of reading and interpretation.” Furthermore, he believes that these two cases reveal Scalia’s inconsistency, for while he relies in the Smith case on the ordinary meaning of words, in Craig he opts for the “literal” meaning. Arguably, this does not do justice to Scalia’s argument that the word “use” is a general word that must be interpreted in light of the textual context, unlike the word confrontation which Scalia seems to regard as a more technical word that has a specific meaning in law.

Crapanzano also notes Scalia’s belief that he “can bypass the human, humane, and social dimension of the cases before him,” arguing that, contrary to his proclaimed faith in “literalist hermeneutics,” Scalia, like other judges, does not separate interpretation of the law from his personal values and interests. Scalia’s view about children’s inability to separate fantasy from reality and how this makes necessary their physical presence in the court) reveals his concern for the adults who may be wrongly accused,

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971 Ibid., p. 218.
972 Ibid., p. 218.
973 The distinction that Crapanzano makes between the ordinary and literal meanings here is not clear to me.
974 Crapanzano, Serving the Word, p. 260.
975 Ibid., p. 261.
and lack of sympathy towards the terrorized children in child abuse cases. What Crapanzano seeks to demonstrate here is that Scalia, similar to the Supreme Court, also made an “interest-balancing analysis.” Arguably, this is another unfair critique of Scalia, and one that does not take into account that Scalia’s logic could be that when a case of alleged child abuse is being investigated, whether or not the child or children involved were actually abused is not certain. Therefore, he is not willing to jeopardize justice on the basis of uncertainty, especially considering that he actually referred to other cases in which adults were falsely accused on the basis of children’s testimonies, as Crapanzano himself mentions. Yet since there is a possibility that a child involved in a case like these was in fact abused, this indicates that Scalia is not willing to give up his belief that the proper procedures of the law should be followed regardless of the case and without exceptions, which he states quite explicitly.

For our purposes, these cases reveal much about Scalia’s legal philosophy. In both cases, Scalia appears to be completely certain that a correct meaning of the words used does exist and is identifiable. As the Smith case shows, he regards the textual context as central to sound interpretation, for it can restrict or narrow the meaning of a word with a rather broad meaning (like “use”). These cases also show Scalia’s understanding of the role of the judge, and what the court can, or, rather, cannot, do. A court cannot decide without textual evidence, and it also cannot decide on the basis of its understanding of the interests of the litigants because there is no textual evidence for this. This point is consistent with Scalia’s formalism (discussed below), and it also illustrates his understanding of the overall purpose of the law, which is to ensure that our changing

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values do not influence the judicial process. Finally, this case shows that Scalia does
believe that the rationale of the law (which, in the Craig case, is exposing the witness or
plaintiff to the pressure of direct confrontation with the defendant) could be reasoned.
However, whether he would proceed and judge on the basis of his understanding of the
logic of the law is a question that is beyond the scope of this study.\textsuperscript{978}

Two interesting observations are worth noting here. Crapanzano observes, quite
rightly, that in these two cases, Scalia “resists expanding meaning.”\textsuperscript{979} That is, in the
Smith case, he argued against considering all meanings of the word “use” and insisted
that only one of its meanings is relevant to this case, a view that Crapanzano believes was
motivated by his “pleasure of textual play and argument.”\textsuperscript{980} In the Craig case, Scalia
rejected the expansion of the word confrontation to mean anything other than direct, face-
to-face confrontation. Crapanzano seems to regard this attitude against expanding
meaning as a feature of literalism, for he says that Scalia “takes . . . laws as literally as
possible . . ., resisting any expansion of meaning, any metaphorization, and translation,
and thereby freezes meaning – the meaning he claims, often on scant evidence, was the
original (and therefore only valid) meaning.”

The second point shows how Scalia’s legal philosophy resembles to a great
extent that of Ibn Hazm. In the Smith case, Scalia notes:

\begin{quote}
Even if the reader does not consider the issue to be as clear as I do, he must at
least acknowledge, I think, that it is eminently debatable—and that is enough,
under the rule of lenity, to require finding for the petitioner here. ‘At the very
\end{quote}

\textsuperscript{978} I am assuming here that a judge may seek to show how his understanding of the law could be justified
on the basis of what he takes to be the purpose or logic of the law. This, however, does not necessarily
mean that this understanding plays a role in the actual process of interpreting the law. In other words, this
could only be a process of post-facto ratiocination.

\textsuperscript{979} Crapanzano, \textit{Serving the Word}, p. 262.

\textsuperscript{980} \textit{Ibid.}, p. 264.
least, it may be said that the issue is subject to some doubt. Under these circumstances, we adhere to the familiar rule that, ‘where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant.’

This view obviously relies on the notion of the presumption of continuity. We have to assume that the defendant is innocent, and if there is any doubt in the evidence provided to prove the opposite, we adhere to that of which we are certain. We have discussed earlier the centrality of the rule of *istiṣḥāb* in the Zāhirī jurisprudence and how the issue of certainty is its underlying factor.

C. Conclusion:

Some issues concerning the validity of comparing Zāhirism and textualism must be addressed. The first concerns authorship of the legal texts. Whereas the lawgiver in Islam is one and is regarded by Muslims as Divine, the lawgiver in the American legal system is one institution (the Congress) that is made up of hundreds of persons. So whereas in the latter system we can, if only in theory, debate whether original meaning meant the subjective view of the lawmakers or not and whether it is at all possible to figure this out, we cannot do the same in Islamic law, which may mean that we cannot compare the two legal systems. Fortunately, Scalia’s textualism has ruled out the possibility of identifying the intention of the lawmakers, simply because it cannot be assumed that there is only one such intention in any given case to begin with. This means that the two systems are similar in this respect even if for two different reasons. Whereas Zāhirī

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981 “SMITH vs. UNITED STATES,” p. 246.
jurists proceed on the basis that we cannot read God’s mind and can only know what he
tells us, American textualists do not acknowledge that the Congress has a readable mind
in the first place.

The second question concerns the nature of the law. Whereas the core of Islamic
law is regarded by Muslim jurists as divine or God-made, Western law (including those
documents that are considered sacred, such as the American Constitution for Americans)
is at the end of the day man-made, and alienating reason from interpreting it is, by
definition, self-destructive. It is not surprising, then, to learn that even staunch American
originalists would agree that there are some “sensible” principles that should be respected
when interpreting a legal document.\textsuperscript{984} “Many canons of construction reflect the sensible
principles that interpreters would not be to quick to read a law to do something strange;
other things being equal, they should prefer readings that comport with prevailing
attitudes or established practices,” Nelson points out regarding textualists’ view on this
issue.\textsuperscript{985} It is probably for this reason that some scholars hold that “it appears that norms
are not absent from Scalia’s interpretation of statutes; he is merely influenced by different
norms.”\textsuperscript{986}

Scalia himself speaks about a number of what he regards as “commonsensical
rules” of interpretation that textualists employ; for example, \textit{expression unius est
exclusion alterius} (expression of the one is exclusion of the other),\textsuperscript{987} and \textit{noscitur a
sociis} (it is known by its companions) which simply refers to the understanding of words

\begin{footnotes}
\footnote{Ibid., p. 520.}
\footnote{Ibid., p. 520.}
\footnote{Eskridge, “Textualism,” p. 1553.}
\footnote{Scalia, \textit{Matter of Interpretation}, p. 25.}
\end{footnotes}
in their textual context. Similar rules are used by Ibn Ḥazm, who begins his work on *ūsūl al-fiqh* by defending reason (al-ʿaql) as one of several means to the truth. According to him, God has provided us with ideas and concepts that do not even require reflection on our part (like the belief that the whole is larger than the part, that a person is not another person, or that a person cannot be standing up and sitting down at the same time). In these and similar things, he explains, no inference (istidlāl) is even required.

Commenting on Q. 49:6 (“O you who believe, if an evil-doer (fāsiq) comes to you with any news, verify it . . .”), he argues that since the verse requires the verification of the testimony of an impious person in particular, we are not required to do so regarding pious people (according to the notion of *dalīl al-khiṭāb*, which is the same thing as expression *unius est exclusion alterius*). Another example that is based on the same principle is Ibn Ḥazm’s rejection of the tradition in which the Prophet says: “Disagreement among my community is mercy.” In refuting this tradition, he argues that if disagreement was mercy, agreement would be the opposite, which cannot be the view of a true Muslim.

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991 *Ikhtilaṭu ummati rahma*.
992 *Ibid.*, vol. 2, p. 642. Ironically, Ibn Ḥazm makes these points notwithstanding his unconditional rejection of the notion of *dalīl al-khiṭāb*, according to which what is not stated in the textual sources has the opposite ruling of what is (for this, see, *ibid.*, vol. 2, pp. 887ff.). In this example, since it is stated that disagreement is mercy, then it follows that agreement is the opposite. In explaining his point concerning this tradition, Ibn Ḥazm says that there is either agreement or disagreement, on the one hand, and mercy and anger, on the other hand. If disagreement is mercy, agreement must be a source of God’s anger. In explaining the issue of testimony, however, he seems to be suggesting that testimonies of all persons are to be accepted except for those excluded by textual evidence, such as impious people according to the verse he quotes here. As such, he seems to be avoiding using *dalīl al-khiṭāb*. This logic of assuming a general rule and excluding exceptions that are based on textual evidence, to my mind, is difficult to apply to the example of legal disagreements among Muslims, and we probably have to take this as an inconsistency on the part of Ibn Ḥazm who is unequivocal about his belief that any proposition gives a ruling only for that that it refers to and nothing about what is similar to or different from its referent (for which reason *qiyyās*, which depends on similarity between two things, and *dalīl al-khiṭāb*, which depends on difference, are both invalid). It is also possible that he is using *dalīl al-khiṭāb* that his adversaries accept to demonstrate their inconsistency. However, Ibn Ḥazm always states it when he uses a certain notion or view for the sake of the argument.
Similar to American textualists who reject the use (or abuse) of reason by legal interpreters to reach legal conclusions that cannot be supported by legal texts, reason, in Ibn Ḥazm’s view, has a specific function and role, and that is to understand God’s ordinances without interference with their actual content. And while Ibn Ḥazm held that reason and revelation can agree on the *husn* (goodness) and *qubh* (evilness) of beliefs and practices, he insists that the former cannot play a role in making something licit or otherwise.

A third issue concerns legal change. “To be a textualist in good standing,” Scalia writes, “one need not be too dull to perceive the broader social purposes that a statute is designed, or could be designed, to serve; or too hidebound to realize that new times required new laws. One need only hold the belief that judges have no authority to pursue those broader purposes or write those new laws.” Elsewhere, criticizing some other legal philosophies, he points out that amendments were added to the Constitution when earlier generations of Americans wanted to assert new rights. These Americans, however, did not try to read those rights into the Constitution. This indicates that Scalia is not against the principle of legal change *per se*, including changing articles in the Constitution itself, but he insists that it can only be done by the lawmaker and not by the jurist or judge. However, as far as Islamic law, or at least that part of it that is based on explicit textual ground in the Qurʾān which Muslim scholars have generally regarded as outside the realm of *ijtihād*, is concerned, legal change is not an option for Muslim

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994 Ibid., vol. 1, p. 52.
996 Ring, *Scalia Dissents*, p. 5. Legal activism has gained a derogatory connotation in legal studies because it suggests the manipulation of law by judges to produce law that does not solidly rely on the Constitution (*ibid.*, p. 15).
scholars, for the lawmaker in Islam has stopped communicating new laws. Arguably, this
is the major difference between Ḥāhirism and textualism, for whereas any sort of legal
change can occur in the latter system if proper procedures are follows, a significant part
of the former is beyond any change.

One essential point that must be addressed in this comparison is how the Ḥāhirīs
and the textualists justify their methodologies. Speaking of originalism, Scalia believes
that any interpretative methodology must be based on textual or historical evidence.997
Arguing for some of his views concerning interpretation, he states that “. . . the
Constitution tells us not to expect nit-picking details, and to give words and phrases an
expansive rather than narrow interpretation – though not an interpretation that the
language will not bear.”998 Scalia is here seeking to prove that the Constitution itself is
the source of some of his hermeneutic assumptions.

Ibn Ḥazm also felt the need to legitimize his methodology. He argues that good
scholars should be certain of their tools before they are certain of their conclusions.999
While investigating this question in detail is beyond the scope of this research, it can be
briefly mentioned here that he argues for the authenticity of his methodology. Ibn Ḥazm
believes that his methodology was the one followed by all early Muslim scholars, which
was inherited from the Prophet and followed by his Companions and their followers. He

998 Scalia, Matter of Interpretation, p. 37.
999 Ibn Ḥazm, Iḥkām, vol. 1, p. 20. It was imperative for the Ḥāhirīs, had they wanted to be true to their
methodology, to legitimize it, and that, arguably, can be done in two ways. The first is to refer to an
authoritative text. This, however, would lead to a circular argument, for the Ḥāhirīs would read and
interpret that text by the same methodology whose soundness they seek to prove. The other way of
legitimizing the methodology is to refer to extra-textual factors (such as reason, for instance) or to a general
theory of the nature of divine command and human capacity to comprehend it. This, however, would be
self-defeating for the Ḥāhirīs who dismissed the methodologies of other schools precisely on the basis of
their reliance on these kinds of factors. Employing such factors to legitimize the very methodology that
dismisses them as arbitrary and illegitimate would, of course, be contradictory and self-destructive.
distinguishes between whom he describes as the notable scholars of early generations of Muslim scholars and their blind followers, clearly trying to exclude the former from his criticism of their followers.

To legitimize particular aspects of his methodology, however, Ibn Ḥazm relies on textual and non-textual bases. For example, to prove the validity of his view that commands should be taken to indicate absolute obligation if no indication suggests otherwise, he refers to Q. 5:67 (“O Messenger! Make known that which has been revealed unto you from your Lord, for if you do it not, then you have not delivered His message”). He argues that since the Prophet would be disobeying God if he does not carry out the command, then he was required to take the command to mean absolute obligation. Additionally, the Prophet is reported to have said that “God had made pilgrimage an obligation unto you.” When one of the attendees then asked the Prophet: “Do we need to do this every year?,” the Prophet did not reply until the man repeated his question two more times. The Prophet then said: “If I were to say yes it would be obligatory on you every year.” This, in Ibn Ḥazm’s views, evidently indicates that we should presume that any command should be taken to indicate absolute obligation.

As for non-textual evidence, Ibn Ḥazm uses his overall understanding of Islamic law to legitimize specific legal or linguistic views. For example, he believes that when a pronoun occurs in a sentence, we must take it to be referring to the nearest referent; otherwise, there would be sheer confusion. This, arguably, is a view that is based on a certain assumptions about the nature of the lawgiver, which is that God does not want to

1003 Ibid., vol. 1, p. 272. For other cases, see pp. 273-74.
1004 Ibid., vol. 1, p. 412.
confuse us. This confusion could well be avoided by taking the pronoun to be referring to the farthest possible referent. Ibn Ḥazm would probably not disagree with this in principle. What is important, however, is that we have to have rules about such cases.

To sum up, for Zāhirism and textualism, the only intention of the lawgiver that concerns the legal interpreters is following the actual laws that he communicates through language. Both philosophies assume that we can understand language through mastery of its conventions and rules, and by examining textual and historical contexts. What is behind the communicated law is not something that legal interpreters need to worry about simply because it is not something that they can verify. Both philosophies are formalistic theories of law that emphasize the soundness of the methodology and the necessity of following the rules and the procedures that the law specifies. Scalia openly describes his legal philosophy as formalist, arguing that formalism “is what makes a government a government of laws and not of men.”

Similarity, Zāhirism for Ibn Ḥazm is what makes Islamic law the law of God rather than the law of men.

II. Literalism:

Just like Zāhirism, textualism has been uncritically regarded as a literalist legal philosophy. This section presents some Western views on literalism as used in religious

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1005 According to Frederick Schauer, “at the heart of the word ‘formalism,’ in many of its various uses, lies the concept of decisionmaking according to rule. Formalism is the way in which rules achieve their ‘ruleness’ precisely by doing what is supposed to be the failing of formalism: screening off from a decisionmaker factors that a sensitive decisionmaker would otherwise take into account” (Frederick Schauer, “Formalism,” p. 510; italics in original).
1006 Scalia, Matter of Interpretation, p. 25.
1007 It is interesting to note that both Ibn Ḥazm (and some other Zāhirī scholars as noted in chapter one) and Justice Scalia share a common feature for which they were notorious, that is, their sharp and uncompromising criticism of other scholars and legal methodologies. Just as many scholars believe that Ibn Ḥazm’s attitude towards earlier and contemporary scholars was responsible to a large degree for the failure of Zāhirism, Scalia’s “sharp pen and biting comments” (Ring, Scalia Dissents, p. 18) and his “brutal public attacks on some of his colleagues” (Weizer, The Opinions of Justice Antonin Scalia, p. 21) are blamed for alienating many of his colleagues and for leaving only few people in his side.
discourse (Christianity in particular), law, and the field of linguistics, with the aim of investigating to what extent, if any, can Zāhirism be viewed as literalist.

A. Literalism in Religion and Law:

Speaking of literalism, Vincent Crapanzano writes:

“... literalism does not result from dull wit, though it is often taken to, even by those of us who are sometimes, despite ourselves, caught in it. It demands discipline ... [meaning] a strict commitment to what is taken to be ‘literal’ or ‘true’ meaning. It is associated with a set of assumptions about the nature of language, language’s relationship to reality, its figurative potential, its textualization, and its interpretation and application. It is the object of considerable philosophical reflection among Fundamentalist Christians, for example, and certainly among those legal scholars who interpret the Constitution in terms of what they claim to be its ‘plain meaning.’ It encourages a closed, usually (though not necessarily) politically conservative view of the world: one with a stop-time notion of history and a we-and-they approach to people, in which we are possessed of truth, virtue, and goodness and they of falsehood, depravity, and evil. It looks askance at figurative language, which so long as its symbols and metaphors are vital, can open—promiscuously in the eyes of the strict literalist—the world and its imaginative possibility.”

Crapanzano believes that literalism is dominant in many aspects of American life, especially in Evangelical Christianity and legal Originalism. According to his words here, literalism is, generally speaking, not regarded (by non-literalists, of course) positively, being associated often with “dull wit.” Related to this point is Crapanzano’s observation that literalists are usually fundamentalist and conservative (both terms evidently bear a negative connotation here), and they proceed on the conviction that they,

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1008 Crapanzano, Serving the Word, p. xvi.
1009 Ibid., p. xvii. Another scholar agrees with Crapanzano, arguing that “[a]lthough its days of glory are past, the philosophical onslaughts of the past thirty years have not entirely unseated the notion of literal meaning” (Spolsky, “The Limits,” p. 419). Spolsky goes on to show how works that assume that “linguistic forms have literal meaning” or that depend on the “existence of literal meaning” are welcomed and celebrated (ibid., p. 419).
and they only, hold the absolute truth. Secondly, literalism is basically a theory about language, and similar to all theories, it has assumptions about various issues.

Central to literalism is the belief in the possibility of sound interpretation. Literalists do not, in principle, acknowledge the possibility of having multiple and equally valid interpretations of a single text. This conviction is related to their concern for meaning, that is, only when the possibility that one text could be read in different, and equally valid, ways is excluded can we hold the notion that a text has a true meaning and a sound interpretation. This conviction also relies on the belief that words have “plain meaning,” which is the same thing as the “original meaning” and the “original intent.” This plain meaning is defined as the single, unambiguous meaning of a word, or the one understood by the people who use the language when a text is produced. Complete knowledge of the original language in which a text is written is, therefore, fundamental for sound interpretation. Reference to the specific time when a text is written, however, only serves to identify the original meaning. It is not meant to provide a social and cultural context for the text. Crapanzano argues that while Christian literalists freeze the meaning by not acknowledging later changes in the use of language, they resist interpreting the Bible “historically” as having been a product of a specific time. They seek to avoid the notion that the Bible was written in a specific cultural context. Other than challenging the relevance of the Bible to modern times, this could “undermine the

1010 Ibid., p. 67.
1011 Ibid., p. 24.
1012 Ibid., p. xviii.
1013 Crapanzano, Serving the Word, p. xx.
1014 Ibid., p. 66.
1015 Monaghan, “Doing Originalism,” p. 34, and Crapanzano, Serving the Word, p. 267. Crapanzano contrasts this with the liberals or pragmatists who regard the text as a living document and “try, within limits, to incorporate charge into their understanding of it” (ibid., p. 209).
Finally, Christian literalists insist that the authority of the Bible is based on the Bible itself, and that it is the Bible that must be the source of authority and legitimacy for anything else. The Bible is not authoritative because people see it as such. However, it is the Bible that legitimizes or delegitimizes the views of those who write or talk about it. For this reason, Christian literalists are suspicious of many aspects of medieval Christian scholarship, similar to the suspicion of precedents by legal literalists.

Crapanzano points out that literalism seeks to promote social order and continuity by stabilizing the law, which is achieved by controlling meaning. To do this, it seeks to “bracket off human and social considerations” by regarding extra-textual factors as irrelevant and treating law as a closed “autonomous system.” Literalists oppose attributing to a text unstated principles or underlying goals. Here Crapanzano draws a comparison between what some scholars call legal conservatives, formalists, originalists, interpretivists, strict-constructionists, intentionalists, and textualists. Whereas formalists and textualists are literalists, intentionalists are pragmatists. Legal formalists hold that the role of the judiciary is to enforce “norms that are stated or clearly implicit in the Constitution as it was understood by those who ratified it,” and insists that judges “must rely on value judgments ‘within’ the Constitution.” On the other hand, non-originalists or intentionalists, hold that “judges should, or at least can, look ‘outside’ the Constitution and the decisions based on it.” These pragmatists speak in terms of the Constitution’s

1016 Crapanzano, Serving the Word, pp. 69-70.
1017 Ibid., pp. 75ff.
1018 For this, see ibid., pp. 75ff., and p. 258.
1019 Ibid., p. 16.
1020 Ibid., pp. 210, 252-53.
1021 Ibid., p. 209.
“spirit, its aspiration, its unwritten presuppositions, the thrust of the whole, its need to be in tune with the times.”

Rejecting the notion of analogy, literalism insists on a textual basis for everything. It also rejects metaphorical and allegorical interpretations of religious and legal texts, stressing that “[an interpreter] should assume a literal interpretation unless there is some indication in the text to do otherwise.” It separates the exegesis of a text and its application. A text is usually independently interpreted and then applied to a particular situation, rather than being interpreted in light of the particular circumstances of that specific situation. Furthermore, literalism values the written word and prefers it over oral communication. This preference, according to Crapanzano, is due to the perception of the written word as stable and autonomous, unlike the oral word, which is always flexible, context-dependent, and ephemeral. Literalists, he adds, usually identify as foundational specific passages of authoritative texts and make frequent references to them. Not only do they refer to these authoritative texts at all times, literalist can even go as far as physically carrying them at all times.

It is probably unsurprising now to envisage why Žahirism could be regarded as a literalist approach. Žahirism and literalism share some fundamental assumptions, foremost among which is the belief in the attainability of true meaning and the necessity of belief in the possibility of achieving sound interpretation and distinguishing it from wrong interpretations. Both believe that one and only one interpretation can be sound, a

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1022 Ibid., pp. 209-10.
1024 Ibid., p. 65.
1025 Ibid., p. 65.
1026 Ibid., pp. 2-3.
1027 Ibid., p. 4.
1028 Ibid., p. 62.
view that Ibn Ḥazm holds, not only with regard to interpretation, but also with regard to all aspects of the law. Both believe in the ability of sound hermeneutics to identify the original and true meaning without permitting personal biases to interfere in and corrupt the hermeneutic process. Both reject allegorical interpretation and analogy, which either change or add new elements to what a text explicitly says. Both share the same concern for social stability, and seek to have the society governed by the law (be it religious or positive), rather than subjecting the law to the norms of the society. Both value the written word, and both identify specific passages on which they build their entire methodology and understanding of the law. Ibn Ḥazm, for example, argues that Q. 4:59 (“O you who believe! Obey God, and obey the Messenger and those of you who are in authority. And if you differ on anything, refer it to God and the Messenger if you [truly] believe in God and the Last Day”) encapsulates the core of Islamic law, such that he does not consider his Ḥkām save an explanation of how this verse means in terms of what we need to do and how we should deal with the legal tradition. Other verses are Q. 2:29 (He it is Who created for you all that is in the earth), and Q. 6:119 (He [God] has explained to you in detail that which is forbidden unto you), which demonstrate in his view that if something is not prohibited, it is legal according to the text of the Qurʾān, a

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1030 Ibid., pp. 10-11. According to Crapanzano, Christian literalism as a hermeneutic methodology assumes the inerrancy of the texts they interpret literally – such as the Bible (Crapanzano, Serving the Word, p. xix), and argue for the exactness of the wording of these texts (ibid., p. 67). In other words, reading those texts literally is related to the belief in the unquestionable truthfulness of the texts (ibid., pp. 56ff). Arguably, this perception of the nature of the Bible and their keenness to prove its authenticity, inerrancy, and the exactness of its wording must have influenced the way they thought the Bible should be read. In Islam, however, a similar belief in the inerrancy of the Qurʾān did not necessarily lead Muslim scholars to read the Qurʾān literally; only a minority of them approached the Qurʾān as such.
belief that is central in Zahirī jurisprudence.\textsuperscript{1031} He often identifies specific verses that he regards as key in specific issues that he discusses in \textit{al-Iḥkām}.

What this discussion of literalism leaves unanswered, however, is the very meaning of literalism and the possibility of identifying literal meaning. Literal meaning is defined as the plain, single, and unambiguous meaning. This evidently refers to meanings of words only, and the cases that Crapanzano has chosen to discuss Scalia’s legal philosophy shows that his discussion primarily deals with words, although Scalia himself evidently appeals to the context. When we deal with legal texts, however, we do not deal with words \textit{per se}; rather, we deal with words as part of larger statements or sentences. Even if all the words of a given sentence have plain, single, and unambiguous meaning, this does not necessarily mean that the sentence as a whole yields a plain, single and unambiguous meaning. What is important, then, is to see how literalism deals with sentences and how this corresponds to the way Zahirism does the same thing. As for the possibility of identifying literal meaning, we have seen that literalism seeks to “bracket off” all sorts of extra-textual considerations. In other words, interpreting a text is, so to speak, a mechanical process, the result of which should be the same regardless of who performs it. What we need to investigate is whether Ibn Ḥazm’s interpretation is truly free from extra-textual considerations. The following discussing seeks to examine to which extent similarities between literalism and Zahirism can justify regarding them as essentially similar.

\textsuperscript{1031} Ibn Ḥazm, \textit{Iḥkām}, vol. 12, p. 407.
B. Literalism in Semantics:  

There are two main theories in the study of human natural languages (i.e., languages that evolve through actual usage). The first is formal semantics, which assumes that language has an independent existence that allows it to carry and convey meaning regardless of the intention of the speaker and the context of speech. This approach focuses on the semantic meanings of words and rules of syntax when interpreting a text. In formal semantics, François Recanati explains, “[t]he meaning of a sentence . . . is determined by the meanings of its parts and the way they are put together.” Therefore, knowing a language for a formal semanticist is “like knowing a ‘theory’ by means of which one can deductively establish the truth-conditions of any sentence of that language.”

The other theory is pragmatics, which focuses on ‘speech acts’ and insists that language makes sense only when in use. Pragmatics does not deal with sentences; it deals with utterances, the meanings of which depend primarily on the context of use. For a pragmatist like Keith Allan, “the source of linguistic data is the speech act: where a speaker S makes an utterance U in language L to hearer H in context C.” This context consists of the “physical setting” of the utterance (i.e., the time and place in which S utters and H hears or reads U), the “textual environment” in which a certain utterance

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1032 According to Hipkiss, “[s]emantics is derived from the Greek *semaino*, meaning, to signify or mean. Semantics is part of the larger study of signs, semiotics. It is the part that deals with words as signs (symbols) and language as a system of signs (words as symbols)” (Hipkiss, *Semantics*, p. ix).


1034 A speech acts is simply any utterance that we make. According to Keith Allan, John Austin was the first philosopher to point out that “in every utterance, [the speaker] performs an act such as stating a fact or opinion, confirming or denying something, making a prediction or a request, asking a question, issuing an order, giving advice or permission, making an offer or a promise, greeting, thanking, condoling, effecting a baptism, or declaring an umpire’s decision – and so forth” (Allan, *Linguistic Meaning*, vol. 2, p. 164). “[T]he list of speech acts is enormously long, and possibly boundless,” he adds (ibid., vol. 2, p. 164).

1035 *Stanford Encyclopedia of Philosophy*, c.v. “Pragmatics.” According to Hurford et. al., sentence meaning is “what a sentence means, regardless of the context and situation in which it may be used.” In contrast, utterance meaning is “what a speaker means when he makes an utterance in a particular situation” (Hurford et. al., *Semantics*, p. 304).
appears, and what Allan calls “the world spoken of,” which provides an infinite number
of assumptions about the larger context or background information needed for an
utterance to make sense.\footnote{Allan, \textit{Linguistic Meaning}, pp. 36-37.} For example, an utterance like “Almond Eyes ate her
Kornies and listened to the radio” invokes a world in which a female (we know that
Almond Eyes is a female from the pronoun “her”) ate something and listened to the radio,
which must have been broadcasting something. While this could have taken place in any
moment in the past, we know that it must have taken place after the invention of the
radio. If we do not have evidence to the contrary, we assume that an utterance like this is
meant to be understood according to these specific assumptions which the sentence itself
invokes.\footnote{\textit{Ibid.}, p. 41.}

Because of the centrality of context in pragmatic theory, it is regarded as a
contextualist theory, one that takes the context of speech to be “an essential feature of
natural languages,”\footnote{Recanati, \textit{Literal Meaning}, p. 96.} and assumes that “speech acts are the primary bearers of
content.”\footnote{\textit{Ibid.}, p. 3 (emphasis omitted).} On the other hand, semantic theory corresponds to a notion that some
scholars call literalism. Literalism, however, is a very elusive concept, and scholars of
natural languages have put forward various definitions of it. Recanati, for instance,
defines literalism as “ascrib[ing] truth-conditional content to natural language
sentences,”\footnote{The truth conditional content is what makes a sentence propositional. This notion of propositionality is
central to semantics. A proposition can generally be defined as “that part of the meaning of the utterance of
a declarative sentence which describes some state of affairs” (Hurford \textit{et. al.}, \textit{Semantics}, p. 20). According
to Hipkiss, “[f]ormal Semantics, also called ‘set theoretic semantics’... is a logic expressed as symbolic
propositions that include and exclude each other entirely or in part. Propositions are, by definition, true
statements, so truth and falsity are a major concern in this form of semantics” (Hipkiss, \textit{Semantics}, p. xiii).
Hipkiss explains this by referring to the founding fathers of modern linguistic philosophy – such as}
A literal meaning of a linguistic expression here is “its conventional meaning: the meaning it has in virtue of the conventions of the language endow with a particular meaning.” Donald Davidson rejects identifying literal meaning with conventional meaning, arguing that literal meaning is what he calls the “first meaning,” which is the meaning that “comes first in the order of interpretation.” Delving into the details of this controversy over literalism is beyond the scope of this section, but we can note here that various theories on literal meaning define it in terms of its relationship to the context of speech. Unlike contextualism, literalism seeks to minimize or disregard context sensitivity by focusing on the semantic interpretation of words and sentences and insists that we appeal to the ‘speaker’s meaning’ only when the sentence requires it.

This notion of literal meaning, however, has been questioned by many scholars, who insist that any understanding relies, to varying degrees, on the context of speech. This requires pragmatically rather than linguistically mandated processes (discussed below). For example, John Searle seeks to challenge:

“the view that for every sentence the literal meaning of the sentence can be constructed as the meaning it has independently of any context whatever. I shall argue that in general the notion of the literal meaning of a sentence only has application relative to a set of contextual or background assumptions and finally I shall examine some of the implications of their alternative view. The view I shall be attacking is sometimes expressed by

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Bertrand Russel, Ludwig Wittgenstein and Rudolf Carnap, who regarded metaphysical propositions as false and unworthy of investigation, and focused not on words per se, but as they are part of a larger proposition. “The propositions themselves,” he adds, “were restricted to matters of fact; attitudes, desires, motivations, and value judgments were all excluded. Feelings and beliefs could not be scientifically versified, so they were dismissed as not true” (Hipkiss, *Semantics*, pp. xi-xii). In this view, according, “truth and meaning [are] the same” (*ibid.*, p. 26).

1041 Recanati, *Literal Meaning*, p. 3 (emphasis in original).
1042 Davidson, “A Nice Derangement,” p. 435. Davidson is critical of the term literal meaning, regarding it as “too incrusted with philosophical and other extras to do much work.” He therefore suggests first meaning as a good alternative that can “appl[y] to words and sentences as uttered by a particular speaker on a particular occasion.” “[I]f the occasion, the speaker, and the audience are ‘normal’ or standard,” he points out, “then the first meaning of an utterance will be what should be found by consulting a dictionary based on actual usage” (*ibid.*, pp. 343-45).
saying that the literal meaning of a sentence is the meaning that it has in the ‘zero context’ or the ‘null context.’ I shall argue that for a large class of sentences there is no such thing as the zero or null context for the interpretations of sentences, and that as far as our semantic competence is concerned we understand the meaning of such sentences only against a set of background assumptions about the contexts in which the sentence could be appropriately uttered.\(^\text{1044}\)

Searle gives examples of sentences that were traditionally regarded to yield meaning solely on the strength of their semantic value and without consideration of the context in which they are uttered. He then demonstrates that interpretation of these sentences rely on presumed contextual setting and background assumptions. In the same vein, Recanati gives other examples, arguing that even such primary processes which literalists take to be “linguistically required” in order for a sentence to be propositional also appeal to the speaker’s meaning according to the context of speech.\(^\text{1045}\)

Recanati begins his discussion of the subject of literalism by pointing out that while “in ideal cases of linguistic communication, the speaker means exactly what she says . . ., in real life, . . . what the speaker means typically goes beyond, or otherwise diverges from, what the uttered sentence literally says. In such cases the hearer must rely on background knowledge to determine what the speaker means.”\(^\text{1046}\) In this view, what is said (the sentence) does not have to correspond to what is meant or communicated (the utterance). One sentence can be used in various contexts (where each use of the sentence is a distinct utterance) to communicate different things, even if the words and syntax of the sentence are the same. For instance, “Muḥammad is a prophet” is a sentence, but not a propositional one. Before we know who Muḥammad is (we know that he is a human

\(^{1045}\) Recanati, Literal Meaning, p. 65.
\(^{1046}\) Ibid., p. 3.
being and not a thing from the word prophet) it does not mean much (for it only means that somebody named Muḥammad is a prophet). However, when a person like Abū Bakr, the Prophet Muḥammad’s Companion, goes to one of his Qurashī tribesmen and says to him “Muḥammad is a prophet” (assuming that the person knows the Muḥammad whom Abū Bakr has in mind), the sentence becomes propositional, and here it communicates just what it says. But if a person goes to Abū Bakr and asks him: “does Muḥammad communicate with God?” and Abū Bakr answers, “Muḥammad is a Prophet,” the sentence (still propositional) communicates something other than what it apparently says (that is, “yes, Muḥammad does communicate with God because he is a Prophet”). In this example, what is communicated or implicated (implied), is different from what is said.

This distinction between what is said and what is meant or implicated assumes that we can distinguish between the linguistic meaning of a sentence and what it intends to convey in different contexts when it is uttered. In Recanati’s view, however, “there is no such thing as ‘what the sentence says’ in the literalist sense, that is, no such thing as a complete proposition autonomously determined by the rules of the language.” “In order to reach a complete proposition,” he contends, “we must appeal to the speaker’s meaning.” In this view, literalism is illusory, and “the notion of what the sentence says is incoherent,” for “what is said . . . is nothing but an aspect of speaker’s meaning.”

1047 For a similar example, see Hipkiss, Semantics, p. 28, where Hipkiss mentions that a sentence like “John is late” means “very little to a person who does not know who John is.”

1048 This, of course, assumes that it is understood in a world in which prophets communicate with God.

1049 In semantics, an implicature is “a form of reasonable inference . . . [that] exists by reason of general social conventions” (Hurford et. al., Semantics, p. 20).

1050 Recanati, Literal Meaning, p. 59 (emphasis in original). For a good example on this, see ibid., p. 73.
Debates over the issue of literal meaning have apparently softened the views of scholars belonging to the two camps of formal semantics and pragmatics. Now a relationship between the semantic value of a sentence and the context in which it is uttered is more or less acknowledged by all scholars. This has essentially reduced the difference between semantics and pragmatics to the kinds of contextual clues that are admissible in the process of interpretation rather than to whether contextual clues are ever admissible. On this basis, Recanati identifies two camps of modern scholars of language: the minimalists and the non-minimalists. According to Recanati, minimalism – which is the dominant literalist position according to him\textsuperscript{1051} – holds that what is said must relate to the conventional meanings of the words of a sentence, and departing from this conventional meaning is acknowledged as a possibility “only when this is necessary to ‘complete’ the meaning of the sentence and make it propositional.”\textsuperscript{1052} In other words, for minimalists what is said must correspond to the potentials of the semantics of the sentence.\textsuperscript{1053} They also admit only of linguistically mandated constituents that are necessary to make a sentence propositional, rejecting any “pragmatically determined element in utterance content that is not triggered by grammar.”\textsuperscript{1054} For non-minimalists, on the other hand, what is said is just as pragmatically determined as what is implied.\textsuperscript{1055} In other words, they hold that it is often the case that pragmatically rather than linguistically required constituents are needed for a sentence to be propositional.\textsuperscript{1056}

\textsuperscript{1051} Ibid., p. 160.
\textsuperscript{1052} Ibid., p. 7.
\textsuperscript{1053} Ibid., p. 6.
\textsuperscript{1054} Stanford Encyclopedia of Philosophy, c.v. “Pragmatics.”
\textsuperscript{1055} Recanati, Literal Meaning, p. 6.
\textsuperscript{1056} When we discussed al-Shāfi’ī’s and al-Ṭabarī’s use of the word ẓāhir, we have seen that some of what they say suggest that they thought that there could be more than one ẓāhir meaning, and al-Ṭabarī’s use of the superlative form of ẓāhir (al-ażhar) also suggests that two readings could be ẓāhir, yet one of them is
A process is linguistically required when the sentence is not propositional without it. In other words, if a sentence cannot be a proposition (i.e., a statement that conveys meaning and could be described as being true or false) unless we make a certain hermeneutic process, this process is regarded as linguistically mandated. For example, the only contextual process that minimalists acknowledge, according to Recanati, is called ‘saturation,’ which refers to the process by which ‘slots’ in sentences are filled out by a linguistically required constituent.\textsuperscript{1057} “He is tall” can only be a proposition when we know to whom the pronoun “he” refers, and this can differ from one context to another. Before we know the referent of “he” from the context, “he is tall” is almost meaningless. This requirement to assign a referent (which is not stated in the sentence) to the pronoun ‘he’ only follows a rule of use in the language which does not assign this demonstrative (and other demonstratives for that matter) to a specific referent. The interpretation of these demonstrative and similar indexical expressions,\textsuperscript{1058} Recanati points out, takes us “beyond what the conventions of the language give us, but that step beyond is still governed by the conventions of the language.” In other words, this interpretation of the utterance is predetermined by the very use of the demonstrative or similar expressions. Extra meanings that are not necessary to make a sentence propositional, therefore, are considered “external to what is said.” The minimalists, thus, hold that with the exception

\begin{footnotesize}
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\item more zāhir. There might be a relationship between these views and Recanati’s discussion of a continuum between minimalism and non-minimalism. Investigating this, however, is beyond the scope of this study. \textsuperscript{1057} Recanati, \textit{Literal Meaning}, pp. 7, 10.
\item \textit{Ibid.}, p. 69. Indexicality refers to “the pervasive context-dependency of natural language utterances, including such varied phenomena as regional accent (indexing speaker’s identity), indicators of verbal etiquette (marking deference and demeanor), the referential use of pronouns (I, you, we, he, etc.), demonstratives (this, that), deictic adverbs (here, there, now, then), and tense. In all of these cases, the interpretation of the indexical form depends strictly on the context in which it is uttered” (William Hanks, “Indexicality,” p. 124).
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of saturation, all pragmatic processes are secondary and presuppose the existence of a literal interpretation of what is said.1059

Scholars who reject literalism do not do so only by ruling out the possibility of identifying a literal meaning of a sentence without considering the context of speech, but also because this literal meaning “has no compositional privilege over derived meanings [that pragmatic processes other than saturation mandate].”1060 In Recanati’s view, literal (to the extent that this is possible) and non-literal meanings compete,1061 and it is possible for some derived meaning to be retained while the literal interpretation is suppressed.1062 It happens regularly that one moves immediately, through pragmatic processes, to what an utterance communicates (i.e., what the speaker intends to convey) without even considering what the sentence explicitly says (which is considered the literal meaning). In order to do this, Recanati distinguishes between two kinds of pragmatic processes, one primary and the other secondary. Primary pragmatic processes – which concern us here – are neither conscious nor inferential, he points out.1063 They take place unconsciously at the same time the literal meaning of a sentence is construed and do not even require reflection on the part of the interpreter.1064 “Only when the unreflective normal process of interpretation yields weird results,” Recanati points out, “does a genuine inference process take place whereby we use evidence concerning the speaker’s beliefs and intentions to work out what he means.” In other words, Recanati argues that some

1060 Ibid., p. 28.
1061 Ibid., pp. 28-29.
1062 Ibid., pp. 28-29.
1063 Ibid., p. 38.
1064 Ibid., p. 23.
pragmatic processes (which are not linguistically required to make a sentence propositional and thus meaningful) have to be made and are usually made unconsciously.

C. Ẓahirism between Literalism and Contextualism:

Although the notion of literalism is disputable, it is generally assumed that literalist interpretation depends solely on the meaning of words and the grammar of the language. A real literalist does not consider the context of speech and only allows linguistically required processes to play a role in interpretation. But some scholars have pointed out that it is not uncommon that what people intend to communicate or express by their utterances does not correspond to the semantic value of the sentences they use. Furthermore, it is not uncommon for interpreters to move directly to a pragmatically determined meaning without even entertaining the literal meaning of a given statement. To be sure, Recanati’s views on the inherently pragmatic nature of natural languages (which other scholars, notably Relevance theorists, also hold\textsuperscript{1065}) have been severely criticized by some scholars who regard them as a return to “the pessimistic conclusions of the past,” when it was thought that “the context-dependence and vagueness of natural language undermined the possibility of providing a systematic account of the meaning of natural language sentences.”\textsuperscript{1066} Addressing this controversy is beyond the scope of this study, but it is essential to see how views like Recanati’s can help us better understand the way the Ẓāhirīs perceived and dealt with religious texts.

It is important, however, to distinguish between how a speaker uses the language and how a hearer or interpreter construes what is said and understands it. As noted

\textsuperscript{1065} For this, see \textit{Stanford Encyclopedia of Philosophy}, s.v. “Pragmatics.”

\textsuperscript{1066} Stanley, “Literal Meaning.”
earlier, the Ẓāhirīs, including Ibn Ḥazm, held that the Qurʾān does not use *majāz*. Whatever God says should not be taken to be metaphorical. This ensues from the notion that metaphorical language is a degraded, deceitful, and harmful form of speech. But do the Ẓāhirīs also assume that God’s speech does not require distinction between what is said or expressed and what is implicated or intended to be said? In other words, are we to regard the Qurʾānic text as made up of sentences, or utterances whose understanding requires reliance on the context? Furthermore, when interpreting the Qurʾān, do we need to focus only on its semantic content, or do we have to use pragmatic processes to make it meaningful? In what follows, some cases of interpretation by Ibn Ḥazm will be discussed to demonstrate that Ibn Ḥazm did acknowledge the possibility that what the Qurʾān says or expresses is not necessarily what it intends to communicate, and that the semantics of some Qurʾānic verses admits more than one reading. Ibn Ḥazm did not focus only on the semantic structure of sentences, but rather engaged in pragmatic processes and appealed to contextual, historical, and even doctrinal evidence to identify the meaning that the Qurʾānic text intends to convey. Unlike literalists, he did not deal with sentences as independent entities that could provide meaning without context, but dealt with them as utterances and speech acts that require examination of the context of use to achieve sound interpretation. Where Ibn Ḥazm stands on the continuum of minimalism/non-minimalism, however, is a subject I hope to examine in a separate study.\(^\text{1067}\)

An example that Recanati gives to illustrate his view of the indispensability of pragmatic processes is when one says “the city is asleep.” He argues that when we hear

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\(^{1067}\) This study seeks to show that Ibn Ḥazm was not a literalist. However, it is both instructive and interesting to see where Ẓāhirism stands on the continuum of minimalism/non-minimalism and how this differs from the position of other schools of law. If this shows that Ibn Ḥazm was not even a minimalist (which should not be surprising in light of our discussion here), regarding Ẓāhirism as literalism should be laid to rest once and for all.
this, we understand immediately that either the word city is used non-literally to refer to the inhabitants of the city, or that asleep is used metaphorically to denote that the city is quiet. The literal meaning (again, to the extent that this is possible) is not considered here. Taking “asleep” in this example to mean quiet is a pragmatic process called “loosening,” whereby “a condition of application packed in to [a] concept literally expressed by a predicate is contextually dropped so that the application of the predicate is widened.” This is the case when we say: “the ATM machine has swallowed my credit card.” We make sense of an utterance like this by widening the scope of application of the word swallow. However, if we take the city to refer to the city inhabitants, we do this on the basis of a pragmatic process called “semantic transfer,” by which what we understand only has a systematic relation to what is literally expressed. Thus, although the city and the city dwellers are two different concepts, they are related to each other. In a sentence like the “The ham sandwich has left without paying,” the “ham sandwich” would probably be processed by the interpreter immediately as the ham-sandwich-orderer, without the “absurd” literal meaning “being ever computed,” Recanati states.

The third primary pragmatic process is “free enriching,” which is the “paradigm case” of such pragmatic processes, according to Recanati. Free enriching is simply the opposite of loosening, for it “consists in making the interpretation of some expression in the sentence contextually more specific.” For this reason, this process is described by some scholars as “specification.” For example, we take “he eats rabbits” to mean rabbit meat, while “she wears rabbit” to mean rabbit fur. Recanati argues that what

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1068 Recanati, *Literal Meaning*, p. 34.
1070 *Ibid.*, pp. 29, 33. For more discussion of this and for more examples, see *ibid.*, pp. 61-64,
distinguishes these three pragmatic processes from what he regards as secondary pragmatic processes is that whereas the latter are “post-propositional” (i.e., can only take place when a proposition is assumed to have been expressed), the primary pragmatic processes are “pre-propositional” (i.e., they do not require a preposition to serve as input to the process of interpretation). Therefore, this kind of processes is not conscious: “[n]ormal interpreters need not be aware of the context-independent means of the expressions used.” To what extent does Ibn Ḥazm’s interpretation of the Qur’ān conform to Recanati’s views? In Q. 12, the prophet Jacob asks his sons about their brother Benjamin and they tell him that he arrested for stealing the cup of the king when they were in Egypt. Because Jacob was suspicious of them, they said: “Ask the town where we were (is‘al al-qaryata) and the caravan (al-‘īr) in which we have returned” (Q. 12:82). In dealing with this verse, Ibn Ḥazm refers to two interpretations, according to the first of which, what is meant here are the people of the village and the travelers in the caravan, an obvious case of semantic transfer. The second interpretation is that given that Jacob was a prophet, had he asked the village and the caravan themselves, they would have answered him. These two interpretations, Ibn Ḥazm argues, are valid and possible, but it is evident that he is more inclined to the first one.

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1072 Ibid., p. 23.
1073 Ibid., p. 23.
1075 Ibid., vol. 1, p. 415. Ibn Ḥazm mentions the first interpretation first and only attributes the second one to some scholars whom he does not name.
be asked. Jacob is only miraculously capable of doing so on the strength of his being a prophet. The first interpretation shows that he admits that some constituents or components are missing in the verse, and these are “the people” of the village and “the travelers” in the caravans. The same applies to Q. 2:93, “And the calf was made to sink into their hearts (wa-ushribū fī qulūbihimu ‘l-‘ijla bi-kufrihim).” Ibn Ḥazm points out that the verse does not mean the calf itself, but rather the love of the calf which God made to sink into the hearts of the disobedient Jews. In these two cases, there is a relation between what is literally expressed and what is implicated and understood, although they are two different concepts.

“He went to the cliff and jumped” is an example of free enrichment. Recanati argues that everybody would understand from this sentence that the referent of the pronoun “he” went to the cliff and jumped off it, rather than jumped in his place. Similarly, if a child cuts his finger and his mother says to him: “You are not going to die,” we understand that she means that he would not die from that cut, rather than not dying at all. In both cases, the proposition is made more specific: the referent of “he” in the first example jumped in a specific manner, while the death in the second example was connected to a specific condition. This is particularly what Justice Scalia did in the Smith Case: he appealed to the context to restrict the meaning of “use” to a specific kind of use.

Two Qur’ānic verses are useful for comparison here: Q. 2:60, “We said: Strike the rock with your staff. And there gushed out from it twelve springs (fa-qulnā idrib bi-‘aṣāka ‘l-ḥajara fa-infajarat minhu ithnata ‘ashrata ‘aynā), and Q. 26:63: “Then We

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1076 In other words, this sentence can only be read “literally” if we assume a different world in which it is uttered. Ibn Hazm’s preference for the other interpretation, however, shows that he was in favor of interpreting the Qur’ānic text according to the precepts of our world.

revealed to Moses: Strike the sea with your staff. So it divided (wa-awḥaynā ilā Mūsā an idrib bi-‘aṣāka ’l-hajar fa-infalaq) . . .” In commenting on these verses, Ibn Ḥazm argues that every reasonable person (dhū ‘aql) understands that there is something missing in them and that what they mean to say is that upon God’s command, Moses struck the rock with his staff before the water gushed, and that he struck the sea with his staff before it divided. What Ibn Ḥazm does here is making the propositions in these verses more specific by filling in gaps in them with the aim of specifying how and when the springs gushed and the sea divided.

“Everybody went to Paris” is another example of free enrichment. Here, “everybody” is construed to mean everyone from specifically such and such group (rather than everyone on earth) went to Paris. In commenting on Q. 46:25, “Destroying [i.e., the wind] everything (kulla shay’in) by the command of its Lord,” Ibn Ḥazm argues that we conclude from the fact that the wind did not destroy everything on earth that this verse only means everything the wind passed over or everything of the things that God had ordered it to destroy. Just as the literal meaning of everybody went to Paris is not even considered because we know that in no certain point in time all living people went to Paris, so is the meaning of kulla shay’in in this verse. In both cases, however, we do not need to engage in this pragmatic process for the sentence to be propositional; in theory, both could mean just what they say. However, we, unconsciously in Recanati’s view, sense absurdity in what the sentences say here, and we appeal to external knowledge to identify the implicated or intended meaning.

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Ibn Ḥazm’s interpretation of Q. 18:77 (“They [Moses and the righteous man that the Muslim tradition usually identifies as al-Khiḍr] found there [in a village they visited] a wall that yurīdu an yanqaḍḍa . . .”) represents another example of pragmatic processes. *Yurīdu an yanqaḍḍa* literally means wants to fall. Ibn Ḥazm argues that we know by reason and through the customary use of language that the wall does not have a will, which only living things possess. Therefore, *yurīdu* here *cannot* mean that the wall wanted to fall, and we can be certain that God uses this word to refer to something other than to that which it is usually used to refer. In his view, *yurīdu* here means that the wall was inclined (*māʾil*), pointing out that were it not for this necessity (of reason), we would not have allowed ourselves to take a word to mean something different from what it normally means. In fact, he argues against the view that *yurīdu* could mean that the wall really wanted to collapse since God is able to create a will in it. In Ibn Ḥazm’s view, we must have a textual basis for regarding this as having been a miracle. Without this textual evidence, we have to interpret the verse in terms of its semantic meaning, and the semantic meaning of this verse indicates that one of its words is not used to refer to what it usually refers to. While this example is very close to Recanati’s example of the ATM machine, Ibn Ḥazm, arguably, does not use loosening to interpret the verse (i.e., he does not relax the conditions of *yurīdu* to expand its application). Instead, he treats it as a case of semantic transfer, although the relation between what is expressed (*yurīdu*) and what he takes to be implicated here (that the wall was inclined) is not clear. This, in Recanati’s understanding, is done without even considering the absurd literal meaning, which Ibn Ḥazm explicitly and categorically dismisses.

1080 Ibn Ḥazm, *Iḥkām*, vol. 1, pp. 415-16. Again, this shows that Ibn Ḥazm was not in favor of interpreting the Qur’ānic text with reference to a world other than ours. For him, the world spoken of is always assumed to be ours, unless a valid indicator suggests otherwise.
Ibn Ḥazm, thus, engaged in some of what Recanati calls primary pragmatic processes when interpreting the Qur’ān, yet it must be emphasized that these processes were not performed unconsciously as Recanati contends. Ibn Ḥazm was evidently aware of what he was doing when interpreting these Qur’ānic verses, and he seems to have felt the need to justify his pragmatic reading. This is due to the fact that his hermeneutic methodology also relies on non-textual materials in light of which the text is interpreted. In other words, Ibn Ḥazm does not read, and does not pretend to be reading, the authoritative texts solely on the basis of their linguistic or semantic meaning. He believes that these texts are to be read pragmatically within a wider context of, inter alia, history, theology, and reason.

In addition to engaging in these pragmatic processes that are not linguistically mandated, Ibn Ḥazm’s treatment of some other verses also reveals that he viewed them as speech acts or utterances the understanding of which requires appeal to the context, rather than viewing them as mere sentences, the understanding of which only requires knowledge of the semantic meaning of the words and how they are put together in the verses. For example, to demonstrate that a woman’s hands (kaffaḍ) are not part of her private parts (‘awra) and do not therefore have to be covered, he refers to an incident where the Prophet asked women to give charity and they began to throw their rings on a garment. Ibn Ḥazm argues that these women would not be able to take off their rings unless their hands were not covered.1081 He obviously appeal to the context here to make

1081 Ibn Ḥazm, Ḥkām, vol. 9, p. 162.
conclusions on this report, although there is nothing in it that explicitly says that these women were wearing their rings when the Prophet asked them to give charity.  

Furthermore, Ibn Ḥazm points out that the imperative can take the form of a declarative sentence (jumla khabariyya). For example, Q. 2:183, “kutiba ‘alaykum al-ṣiyām” means that fasting is made obligatory upon Muslims, even if the sentence does not use the imperative form. Similarly, Q. 4:23, “ḥurrimat ‘alaykum ummahātukum” means mothers are forbidden. But how are we to figure out the intended meaning in Q. 3:97, “wa-man dakhalahu kāna āmina”? The pronoun in dakhalahu refers to the sacred mosque in Mecca. Is this verse a declarative statement that informs us that whoever enters the sacred mosque in Mecca is safe, or is it an imperative statement (similar to the two examples above) that commands securing whoever enters the sacred mosque? Ibn Ḥazm argues that since God does not tell but the truth, the fact that people were not safe in the sacred mosque indicates that this verse is not declarative. It must therefore be a command to secure people in the sacred mosque. He appeals to history here to identify the intended meaning, which is only one possible meaning that the sentence can convey.

Q. 4:92, “wa-man qatala mu’minan khaṭa’an fa-taḥrīru raqabatīn mu’mīna” and Q. 4:93, “wa-man yaqtul mu’minan muta’ammidan fa-jazā’ūhu jahannam” use almost the same words and are structurally similar, but do they convey the same thing? Ibn Ḥazm acknowledge the difficulty of this, but decides that whereas the first verse indicates

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1082 Compare this example with “Mary took out her key and opened the door.” Recanati mentions this as an example of optional pragmatic processes. He explains that “[i]n virtue of a ‘bridging inference’, we naturally understand the second conjunct as meaning that Mary opened the door with the key mentioned in the first conjunct; yet this is not explicitly articulated in the sentence.” This is an example of what some scholars describes as “specification,” which “consists in making the interpretation of some expression in the sentence contextually more specific” (Recanati, *Literal Meaning*, pp. 23-24).

obligation (to set free a Muslim slave in case a Muslim kills another Muslim by mistake),
the second verse is declarative (i.e., declaring that a Muslim who kills another person
intentionally would reside in Hellfire for ever). We know this, he explains, because while
we can obey the command in the first verse, we cannot carry out the punishment of the
murderer in the second one.\footnote{1084}{Ibid., vol. 1, pp. 285-86.} Here he appeals to reason and knowledge of what we can
and what we cannot do. Without these, these two sentences appear to be indicating the
same thing.

Ibn Ḥazm uses other kinds of evidence that are related to the context of Islam
and Islamic law. Commenting on Q. 4:59 (“O you who believe, obey God, and obey the
Messenger and those who are in authority among you, and if you have a dispute
concerning any matter, refer it to God and his Messenger”), he argues that the \(ijmā'\) has
established that God does not mean only the direct addressees of the Qur’an (the Prophet
Companions) by this, but rather all subsequent Muslim generations.\footnote{1085}{Ibid., vol. 1, pp. 87-88.} Furthermore, it is
reported that the Prophet prohibited the killing of women. Ibn Ḥazm points out that the
\(zāhir\) meaning of this tradition means that no woman shall be killed. He, however, argues
that there is a consensus among Muslims that the \(zāhir\) of this tradition is qualified (i.e.,
restricted), and that women can be killed in certain cases. It was also proven (\(ṣaḥḥa\)) that
this tradition meant the killing of female prisoners of war in particular.\footnote{1086}{Ibid., vol. 1, p. 175. Ibn Ḥazm probably had to resort to this interpretation to reconcile this tradition
with another one, according to which the Prophet ordered the killing of anyone who changes his religion
\((mān baddala dīnahu fa-iqtulūh)\).} In both these
cases, \(ijmā'\) is used to not only identify the intended meaning, but also to qualify the
\(zāhir\) meaning.
Ibn Ḥazm acknowledges that there appears to be a contradiction between Q. 2:47 (“O Children of Israel! Remember my favor wherewith I favored you and how I preferred you to all creatures (‘alā ‘l-ālamîn”), and Q. 3:110 (“You [i.e. the Muslim community] are the best community that has been raised up for mankind”). In commenting on these two verses, he says that either the first verse means that the Children of Israel were preferred to all creatures except Muḥammad’s umma, or that the second means that the Muslim umma was better than all other communities except the Children of Israel. Since we know that the angles are better than the Jews, and since we do not have any textual or non-textual evidence indicating that the second verse is also qualified, we can conclude that the second possibility is the correct one.\footnote{Ibn Ḥazm, Iḥkām, vol. 1, p. 158.} In other words, to solve the problem, Ibn Ḥazm argues against the generality, and for the restrictedness, of the first verse, and for the generality or unrestrictedness of the second. Similar to the case of killing women, he is clearly struggling here between two apparently general terms, and what he is trying to do is justify why one of them is, in fact, not general.

This brings us back to the issue of the ʿumūm/khuṣūṣ dichotomy, in which Ibn Ḥazm’s views are consistent with our argument that the issue of the zāhir meaning was primarily associated with it. In some of the cases discussed above, Ibn Ḥazm is evidently trying to justify his qualification of the generality or unrestrictedness of some Qur’ānic verses. In other cases, he is even more explicit about this, severely criticizing what he sees as arbitrary restrictions of general terms. For example, he argues against those who said that Q. 2:34 (“And when we said to the angles: Prostrate yourselves to Adam . . .”) does not mean all the angles, but rather only those who were present. He calls this
“madness” (junūn) that cannot be supported on the basis of the quoted text. In the same vein, relying on the Prophetic tradition that says that “The blood of Muslims is equal (al-muslimūn tatakāfa’ dimā’uhum),” he argues that any Muslim who murders another is to be killed, regardless of the gender and freedom of either the killer or the victim.

Ibn Ḥazm mentions clearly the relationship between zāhir and the generality or unrestrictedness of terms and, also, the issue of the imperative. For him, every general term is zāhir. The zāhir meaning of Q. 5:38 (“As for the thief, both male and female, cut off their hands”) is that all thieves should be punished by cutting off their hands regardless of the value of what they have stolen (which, for ibn Ḥazm, is qualified by way of takhsīṣ, which restricts the scope of its application). As for the commands, their zāhir is taking them to indicate absolute obligation (wujūb) and the requirement of the immediate performance of what is commanded (fāwr).

III. Conclusion:

This chapter does not seek to demonstrate that Zāhīrīsm is not literalism because this is how Zāhīrī scholars regarded it. Zāhīrīsm is regarded as literalism only by modern scholars. The previous discussion is an argument against this understanding of Zāhīrīsm, which, admittedly, was probably not done consciously. Additionally, some scholars do regard textualism, which we take to be the closest legal philosophy and hermeneutic methodology to Zāhīrīsm, as a literalist approach. All this does not take into account that

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1088 Ibid., vol. 2, p. 918.
1089 Ibid., vol. 2, p. 928.
1091 Ibid., vol. 1, p. 40.
1092 Ibid., vol. 1, p. 259.
this understanding neglects that literalism is, and will probably continue to be, a subject of heated dispute among scholars of natural languages. Recanati’s discussion shows that even the minimalists, who believe that a literal meaning of a sentence can be identified with only a minimal appeal to the context, can easily be shown to be wrong when they assume that certain concepts, for instance, are inherent in the meanings of certain words or verbs. This indicates that any meaning identified as literal by some scholar could be shown to be a mixture of literal and derived, or stated and implicit, meaning. Furthermore, translating Zāhirism as literalism ascribes views to the former that it does not expound. According to the definition of literal meaning that most linguists seem to agree on – the semantic meaning of the words of a sentences read in light of the rules of language without consideration of the context of speech – it can easily be shown that Ibn Ḥazm, the only Zāhirī scholar whose views we can analyze with sufficient depth, was anything but a literalist in this sense. He did not regard the Qur’ānic text as one that only requires the minimal appeal to the context in order to be understood. Not only did he engage in pragmatic processes (which are not linguistically required) when interpreting the Qur’ānic text, but he also interprets it in light of particular assumptions about God, religion, and language, in addition to its textual and historical contexts. This does not mean that Ibn Ḥazm thought that he was deviating from what the text says in his view. What this says is that if we regard his methodology – Zāhirism – as literalism, we deprive ourselves of the opportunity to understand what he actually does and says. This is probably the mistake that Crapanzano made when he speaks about Scalia’s “literalist hermeneutics,” and his perception of Scalia as a literalist did not allow him to understand that Scalia’s appeal to the context to understand what a word like “use” mean, he did not
do that because he is inconsistent, but rather because he is not a literalist who disregards the context. Scalia himself does not regard his hermeneutics as being literalist, and those scholars who regard his methodology as literalist attribute to him what he does not acknowledge and judge him accordingly. In other words, they deal with fiction that they have created themselves.

Finally, a reference must be made to a debate that took place between Muḥammad ibn Dāwūd and the Shāfi‘ī scholar Ibn Surayj that Abū Ishāq al-Shīrāzī mentions in his discussion of textual implications (dalīl al-khīṭāb). Al-Shīrāzī mentions that scholars differed on Q. 17:23 (“And Say not fie to them [i.e., your parents]”), and Q. 4:40 (“Surely Allah does not do injustice to the weight of an atom”). How can it be concluded from the first verse that beating one’s parents is prohibited, and from the second verse that God does not do injustice to a weight that is more than that of an atom. Al-Shīrāzī argues that we can make these conclusions on the basis of the meaning (ma’nā) of the two verses, which indicates that these conclusions can only be validly derived from the meaning of the two verses in a pragmatic way. We take this to be a pragmatic reading of the two verses because according to the other view that al-Shīrāzī mentions, these two conclusions can be reached from a linguistic perspective (min nāhiyat al-lugha); i.e., they are regarded to be linguistically mandated. Al-Shīrāzī attributes to a certain scholar the view that what is more than an atom is two or more individual atoms, each of which is covered by the wording of the first second verse. Therefore, the language itself allows us to conclude from this verse that God does not do injustice to the weight of more than one atom, even though the verse speaks about one

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1093 Wa-lā taqul lahumā uffin wa-lā tanharhumā.
1094 Inna Allāha lā yazlimu mithqāla dharratin.
1095 Al-Shīrāzī, al-Tabṣira, p. 227.
atom only.1096 As for the first verse, al-Shīrāzī does not explain the view that we can conclude from the prohibition to say fie to one’s parent that one cannot beat them, and it is difficult to imagine the logic of this argument since beating does not consist of several instances of saying fie. Al-Shīrāzī himself refutes this view (of the possibility to make these two conclusions about the verse on the strength of their wording) by arguing that the word *uff* in the Arabic language is not used to refer to beating, just as the word atom is not used to refer to more than an atom. Therefore, scholars and lay people alike make these two conclusions on the basis of the meaning, rather than the wording, of the two verses.1097

What is interesting here is that the view that the wording of Q. 4:40 is the basis of our conclusion that God does not do injustice to more than the weight of an atom is attributed to Muḥammad ibn Dāwūd. Al-Shīrāzī adds that Ibn Surayj refuted this view by referring to half an atom, which is not made of single atoms as is the case with two or more atoms. Therefore, if we are to understand from this verse that God does not do injustice to the weight of half an atom, we can only do this on the basis of the meaning, rather than the wording, of the verse.1098 While al-Shīrāzī does not mention how Ibn Dāwūd responded to this point, it is not difficult to imagine that he could have simply argued that this point does not deal with our question in the first place. It is not against reason to say that while we can conclude on the basis of the working of the verse that God does not do injustice more than the weight of an atom, we can make a similar conclusion about half an atom only pragmatically on the basis of the meaning of the verse. Be this as it may, this account seems to suggest that Ibn Dāwūd was a literalist in

the technical sense of the term. He was of the view that one can only resort to pragmatic processes if, and only if, there is no possibility to appeal to the language itself, or make conclusions that are derived from the very wording of the text. This view is also attributed by al-Shīrāzī to some Shāfi‘ī scholars, the majority of theologians (ʿāmmat al-mutakallimīn), and some Zāhirīs (baʾd ahl al-zāhir). In other words, not all the Zāhirīs held Muḥammad ibn Dāwūd’s view.

Ibn Ḥāzm was not a literalist, but we can, with due caution, regard his legal philosophy to be close to Justice Scalia’s textualism. Truly, there are similarities between Zāhirism, textualism, and literalism, the most important of which is probably the conviction that “[f]or any conversation, dialogue, or debate to move in a meaningful way, its participants must share, or at least have the illusion of sharing, a set of assumptions about language, communication, interpersonal relations, the nature of their world of reference, the way to make sense of it, and how to evaluate divergent understandings and adjudicate differences.”1099 The three hermeneutic methodologies assume that the correct, intended meaning is identifiable. This notwithstanding, Zāhirism is not literalist for several reasons. Zāhirīs make use of pragmatic processes that are not linguistically required when interpreting legal statements. Rather than focusing on the semantic value of the text, they rely on the historical and textual contexts to determine the intended meaning. Their consideration of the context allows them to depart from the semantic meaning of the sentence (or what the sentence says) to what they believe the sentence intends to convey in a particular context (or what is communicated). Finally, they interpret texts in light of various extra-textual considerations.

1099 Crapanzano, Serving the Word, pp. 332-33.
The Zāhirīs, however, are textualists because they insist on the supremacy of the text and take the context into consideration at the same time to identify the intended meaning. This is the main difference between Zāhirism and textualism, on the one hand, and literalism, on the other hand. As legal philosophies, Zāhirism and textualism share many assumptions about the division of labor between the lawgiver and the legal interpreter, the goals of the law, and the necessity to follow the methodology authorized by the lawgiver regardless of the result. Their differences only emanate from the nature of Islamic law as a religious law.
Chapter Five

Case Studies

Arguments have been made about Dāwūd al-Ẓāhirī and the nature of his juridical thinking in the previous chapters. One of these is that what we know about Dāwūd and his juridical thinking strongly suggests that he was closer in profile and jurisprudence to the Ahl al-Raʿy than to the Ahl al-Ḥadīth, two legal trends that existed in his time. The general, unrestricted meaning of terms and sentences is identified as the zāhir meaning or its most important application, and we noted its close relationship with other central notions in Zāhirī jurisprudence, namely, the issues of al-ibāḥa al-aṣliyya and istiṣḥāb al-ḥāl, as well as the rejection of qiyyās. It was also noted that the Zāhirīs, like the Ahl al-Raʿy and modern American textualists, give consistency and systematization a special emphasis in their jurisprudence. This concern for consistency requires that legal thinking be governed by specific assumptions and proceed on the basis of well-defined rules that determine and regulate how the meaning of legal texts is determined, and how the evidence is dealt with. On the other hand, the Ahl al-Ḥadīth, particularly Aḥmad ibn Ḥanbal, were less interested in consistency and more concerned about morality. If Ibn Ḥanbal believed that morality was part of religion, he may be seen as an intentionalist or activist jurist who holds that the law has higher goals that it seeks to secure or protect than the immediate benefits for the society and the individuals concerned in legal cases. But Ibn Ḥanbal was also keen to incorporate all available evidence on a given issue. This concern for morality and for not abandoning any part of the evidence in a given question was the source of the main tension in his jurisprudence.
The following case studies, including those that belong strictly to the ritual part of Islamic law, have a clear social dimension. This makes possible drawing conclusions about the concerns that may have underlined various views on the issues discussed, as well as putting to the test some of our conclusions about Dāwūd al-Zāhirī and his Zāhirism, and how it compares with the juridical thinking of the Ahl al-Ra’y and the Ahl al-Ḥadīth. In the first two case studies, which are discussed at length, the evidence that could have been available to Muslim jurists starting from the second half of the 2nd/8th century is presented and discussed. This includes Qur’ānic verses as well as Prophetic traditions and non-Prophetic reports. Qur’ān commentaries that were written in the first three centuries of the Hijra are consulted to see how the relevant verses were interpreted. Ḥadīth compilations are used to identify relevant traditions and reports, paying particular attention to works compiled in the second half of the 2nd/8th century to find out whether Abū Ḥanīfa had the same sort of evidence that Aḥmad Ibn Ḥanbal and Dāwūd had a century later.

While the exact history of these compilations and their authenticity are beyond the scope of this study, it is assumed that when taken together, these sources can provide some sense as to what was in circulation in the 2nd/8th and 3rd/9th centuries. Works on legal *ikhtilāf* (works that deal with the disagreements among the Muslim jurists on legal matters) give an idea of the evidence that may have been used by the early jurists to solve each question under discussion, in addition to giving the attribution of each opinion to the jurists we deal with. These sources do not always give a sufficient account of why a certain jurist held a certain opinion and on the basis of what evidence. To remedy this, some legal works of the schools of Abū Ḥanīfa, Aḥmad ibn Ḥanbal, and Dāwūd are

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1100 That evidence is identified on the basis of the *ikhtilāf* works consulted here.
consulted. These works tend to give lengthier presentations, yet they also have their own weaknesses. They tend to confuse what the purported founders of their school held and what later scholars of the school thought. It is not always clear whether an argument made in a given case goes back to the founder of the school, to later scholars who belonged to that school, or even to the author of the work itself. Furthermore, while some of these works, many of which are also works on legal *ikhtilāf* (such as *al-Muḥallā* of the Zāhirī scholar Ibn Ḥazm, *al-Mughnī* of the Ḥanbalī scholar ibn Qudāma, and *al-Majmūʿ* of the Shāfi‘ī scholar al-Nawawī), are generally objective in presenting various points of view on each question, it is to be expected that each scholar would provide a more extensive and better supported presentation of views of his own school. Because of the succinct nature of the first set of works and the indeterminate and possibly partisan nature of the second, it is crucial to note that the analysis put forward here of how and why each jurist may have come to a certain conclusion is mostly presumptive rather than demonstrative.

I. Long Case Studies:

A. “Touching” Women and the Ritual Purity of Men:

i. The Problem:

The first case is whether touching a member of the other sex invalidates the ritual purity of either one or both of the two parties involved, assumed to be in a state of ritual purity (*tahāra*), and thus requires a new ritual ablution (*wuḍūʾ*) before they can pray. Following the tradition of our primary sources, however, it is here presumed that the question has to
do with a Muslim man, assumed to be in the state of ritual purity, who touches a woman and whether this affects his ritual purity.

On this question, Abū Ḥanīfa held that touching a woman (be she “legal” for the man who touches her to marry or not) does not influence the ritual purity of a Muslim man.1101 Dāwūd ibn ʿAlī is reported to have argued that touching a woman does invalidate the ritual purity of the man who touches her and thus requires a new ritual ablation.1102 Without reference to Aḥmad ibn Ḥanbal, this is probably how the opinions of these two scholars would have been reported to us. With reference to Aḥmad ibn Ḥanbal’s view, Abū Ḥanīfa’s view would be that touching a woman does not invalidate the ritual purity of either the woman who is being touched, or the man who touches her, irrespective of whether this (the touching) is with or without (sexual) desire (shahwa). Dāwūd’s view would be that touching any woman invalidates the ritual purity of the Muslim man (but not the woman’s) who touches her, be this with or without desire. The reason why the two positions would be characterized differently if we bring Ibn Ḥanbal into the picture is that he made the argument that if touching a woman involved some sexual desire on the part of the man who touches her, it invalidates his ritual purity; while if it does not involve any desire, it does not affect his ritual purity.1103

1101 For the attribution of this opinion to Abū Ḥanīfa, see, for instance, Abū Yūsuf, Kitāb al-Āthār, pp. 34-35, and Abū Ja’far al-Ṭāḥāwī, Ikhtilāf al-ʿUlamāʾ (abridged by Abū Bakr al-Jaṣṣāṣ), vol. 1, p. 162. In his Kitāb al-ʾAṣl, Muḥammad ibn al-Ḥasan al-Shaybānī attributes to Abū Ḥanīfa the view that touching, even one that involves sexual desire, or even touching the genitals of the wife, does not invalidate the ritual purity of the man. The only exception is when a naked couple lay together skin to skin and the husband’s penis becomes erect (idhā bāsharahā layṣa baynahumā thawbun wa-intashara lahā) (vol. 1, p. 47-48).
1102 This is attributed to Dāwūd in, for example, al-Qaffāl al-Shāshī, Ḥilyat al-ʿUlamāʾ, vol. 1, p. 186, and Sharaf al-Dīn al-Nawawī, al-Majmūʿ, vol. 2, p. 32. In al-Muhallā (vol. 1, p. 227), Ibn Ḥazm mentions that this is the opinion of the Aṣḥāb al-Ẓāhirī.
1103 Aḥmad ibn Ḥanbal did not in fact invent this argument, but it was thanks to him that it became one of the established opinions on this issue. Had it not been for him, this opinion would probably have been of minor significance in any discussion of this issue, just as was the case with other views attributed to earlier authorities on this and other issues. For ibn Ḥanbal’s opinion on this question, see Masāʾīl al-Imām Aḥmad
ii. The Evidence:

a. The Qur’ān:

Works on *ikhtilāf* identify one Qur’ānic verse that was used as a source of legal evidence on this issue, and while the verse does not directly address the question of what causes the ritual purity of a Muslim to be invalidated, it speaks about the situation when a Muslim needs to perform ritual washing but does not find water. In this case, the Qur’ān says, “dry” ritual wash (*tayammum*) is permitted and makes up for the normal ritual ablution or *wuḍū‘*. But before giving this permission, the Qur’ān mentions some things that would require a Muslim to wash before he “rises up for prayer.” Among these is *lāmastum al-nisā‘*.

> O you who believe! Draw not near unto prayer when ye are drunken, till ye know that which ye utter, nor when ye are polluted (*jumuban*), save when journeying upon the road, till ye have bathed. And if ye be ill, or on a journey, or one of you cometh from the closet, or ye have touched (?)1104 women (*aw lāmastum al-nisā‘*), and ye find no water, then go to high clean soil (*fatayammāt sa’idan ṣayyiba*) and rub your faces and your hands (therewith). Lo! Allāh is Benign, Forgiving (Q. 3:43).

In one of the earliest available Qur’ān commentaries, that of Mujāhid ibn Jabr (d. c. 102/720), the author mentions, probably approvingly, only one tradition that goes back to al-Ḥasan [al-Baṣrī] (d. 110/728), according to which *al-mulāmāsā* in this verse refers to sexual intercourse (*al-jimā‘*).1105 Zayd ibn ‘Alī (d. 122/739) agrees on this

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1104 Question mark mine.
interpretation. In his view, *al-mulāmasa* means *al-jimā‘*.\(^{1106}\) For Muqātil ibn Sulaymān (d. 150/767), *lāmāstum* means *jāma‘ tum*.\(^{1107}\)

In the late third/ninth century, there existed many reports from earlier scholars on the meaning of *lāmāstum* in this verse. Muḥammad ibn Jarār al-Ṭabarī (d. 310/922) gives a list of the early jurists who had differing opinions on the meaning of *lāmāstum* in the verse. Ibn ‘Abbās is mentioned as the Companion who argued that the *lams, mass* and *mubāshara* all refer to sexual intercourse (*al-jimā‘*), but God only alludes to it out of decency (*wa-lākinna ʻllāha ya‘īffu wa-yaknī*).\(^{1108}\) This report was transmitted by the famous jurist Sa‘īd ibn Jubayr (d. 95/713), and a son of Ibn ‘Abbās.\(^{1109}\) Sa‘īd ibn Jubayr also reports a number of anecdotes, with different names, according to which some jurists disagreed on this question on ethnic lines: while the Arabs argued that the *lams* in the verse was used figuratively to refer to sexual intercourse, non-Arab clients (*mawālī*) stuck to the “literal” meaning of the verb and argued that it referred to mere touching. When they asked Ibn ‘Abbās about it, he said that the Arabs won and the *mawālī* lost, meaning that the Arabs understood it correctly.\(^{1110}\) On this Ibn ‘Abbās was followed by al-Ḥasan [al-Baṣrī], Mujāhid [ibn Jabr], and Qatāda ibn Di‘āma (d. 117/735).\(^{1111}\)

As for those who argued that *lams* meant all kinds of touching (*kull lams*), ‘Abd Allāh ibn Mas‘ūd (d. 32/652) and ‘Abd Allāh ibn ‘Umar (d. c. 72/691) are mentioned as the Companions who argued that any touching of a woman invalidated the ritual purity of

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\(^{1107}\) Muqātil ibn Sulaymān, *Tafsīr Muqātil ibn Sulaymān*, vol. 1, p. 375.


\(^{1109}\) *Ibid.*, vol. 5, p. 102.

\(^{1110}\) *Ibid.*, vol. 5, pp. 102-03.

\(^{1111}\) *Ibid.*, vol. 5, p. 103.
a man.\textsuperscript{1112} Among the Successors, al-Ḥakam [ibn ʿUtayba] (d. 115/733) and Ḥammād ibn Abī Sulaymān (d. 120/737) held this opinion, while to Ibrāhīm al-Nakhaʿī (d. 96/714) is attributed the view that touching invalidates ritual purity only when it involves desire (\textit{shahwa}).\textsuperscript{1113}

Al-Ṭabarī’s own position on this subject is ambivalent, for he begins his discussion by stating that \textit{lāmastum} means “you touched women with your hands” (\textit{bāshartumu ʾl-nisāʾa bi-aydīkum}).\textsuperscript{1114} Later, he mentions a number of anecdotes according to which the Prophet kissed one of his wives and went to the prayers without repeating his ritual ablution. With the exception of only one tradition that was attributed to Umm Salama (Hind bint Abī Umayya, d. 59/678), a wife of the Prophet (who mentioned that the Prophet once kissed her while he was fasting, and did not break his fast nor repeated his ablution),\textsuperscript{1115} all these traditions were narrated by ʿĀʾisha bint Abī Bakr (d. 57/676), apparently the wife that the Prophet kissed, and transmitted by a certain ʿUrwa, a certain Ibrāhīm al-Taŷmī, and a certain Zaynab al-Sahmiyya.\textsuperscript{1116} Commenting on these traditions and concluding his discussion of this subject, al-Ṭabarī argues that they offer “clear evidence” that \textit{lams} in this situation means sexual intercourse.\textsuperscript{1117}

\textbf{b. The Sunna:}

Works on \textit{ikhtilāf} and some Ḥadīth compilations that have chapters on this issue mention a number of Prophetic traditions in the context of this subject. There are generally two

\begin{flushleft}
\textsuperscript{1112} \textit{Ibid.}, vol. 5, p. 104.
\textsuperscript{1113} \textit{Ibid.}, vol. 5, p. 105.
\textsuperscript{1114} \textit{Ibid.}, vol. 5, p. 101.
\textsuperscript{1115} \textit{Ibid.}, vol. 5, p. 106.
\textsuperscript{1116} For these traditions, see \textit{ibid.}, vol. 5, pp. 105-06.
\textsuperscript{1117} \textit{Ibid.}, vol. 5, p. 106.
\end{flushleft}
major sets of traditions (with different versions) and a few other traditions that were brought to the discussion by some isolated scholars.

The recurrent theme in the first set of traditions is that the Prophet kissed one of his wives and prayed without repeating his ritual ablution. With the exception of one version by Umm Salama, which is mentioned by al-Ṭabarī and very few other scholars, and the isolated version of Ḥafsa (bint ʿUmar ibn al-Khaṭṭāb, d. 41/661), which was transmitted by none but Abū Ḥanīfa himself,\(^{1118}\) most versions of this tradition feature ʿĀʾisha. From very early this tradition became one of the most popular traditions in discussions of this subject, and in later works of jurisprudence it became the standard source of Prophetic Sunna on the matter. As early as the late 2\(^{nd}/8\(^{th}\) century, it was mentioned as evidence for Abū Ḥanīfa’s view in al-Shaybānī’s \textit{al-Ḥujja ʿalā Ahl al-Madīna},\(^{1119}\) and later it was used by ʿAbd al-Razzāq al-Ṣanʿānī and Ibn Abī Shayba in their \textit{Muṣannafs} in the context of discussing the things that invalidated ritual purity.\(^{1120}\) This tradition was transmitted by three persons from ʿĀʾisha. The most famous version was transmitted by ʿUrwa, whom most scholars take to be ʿĀʾisha’s nephew and son of al-Zubayr ibn al-ʿAwwām (d. 94/712). ʿUrwa’s version of this tradition is reported by Ibn Māja, Abū Dāwūd, al-Tirmidhī, and al-Nasāʾī in their \textit{Sunan} compilations.\(^{1121}\) Al-Ṭabarī’s version from Ibrāhīm al-Taymi is reported by Abū Dāwūd\(^{1122}\) and al-Nasāʾī,\(^{1123}\) and his version from Zaynab al-Sahmiyya is reported by Ibn Māja in his \textit{Sunan}.\(^{1124}\)

\(^{1118}\) \textit{Musnad Abī Ḥanīfa}, collected by Abū Nuʿaym al-Iṣbahānī. Abū Ḥanīfa transmitted this tradition from the Kufan Abī Rawq ʿAṭīyya ibn al-Ḥārith. I did not find this tradition anywhere else.


\(^{1122}\) Abū Dāwūd, \textit{Sunan}, p. 34.

\(^{1123}\) Al-Nasāʾī, \textit{Sunan}, vol. 1, p. 75.

‘Ā’isha also figures in another set of traditions that involves touching the Prophet, mostly while he was prostrating (when praying?). According to one of these, the Prophet used to pray while ‘Ā’isha slept in front of him and her legs were in the direction of the qibla. ‘Ā’isha mentions that when the Prophet wanted to prostrate himself, he would squeeze her so that she fold her leg, and she would stretch her leg again when the Prophet stood up. This tradition is reported by al-Nasāʾī. A similar tradition also appears in al-Nasāʾī, according to which the Prophet would touch ‘Ā’isha with his leg when he was praying. Al-Nasāʾī mentions another tradition according to which ‘Ā’isha did not find the Prophet sleeping next to her one night, so she searched for him with her hand until she touched his feet while he was prostrating. ‘Ā’isha then mentions the prayer (duʿāʾ) that the Prophet was saying while he was in that position, from which it was assumed that the Prophet did not interrupt his “prayers” because he did not consider his ablution void.

A last Prophetic tradition that was used in this context was one that has the Prophet carry his grand-daughter Umāma bint al-Ḥārith while he was praying. The relevance of this tradition was refuted by Ibn Ḥazm in al-Muḥallā, which suggests that it was used by some earlier scholars as evidence for one opinion or another.

c. Views of the Companions:

In his Muwaṭṭa’, Mālik ibn Anas mentions the views of two Companions on this question. ‘Abd Allāh ibn ‘Umar is reported to have said that when a man kisses and

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1126 Ibid., vol. 1, p. 73.
1127 Ibid., vol. 1, p. 74.
touched his wife with his hand, this constitutes *mulāmasa* that necessitates repetition of ritual ablution. The same ruling is attributed to ‘Abd Allāh ibn Mas‘ūd.\(^{1129}\)

As noted, al-Ṭabarī attributes the same opinions to these two Companions, and during that time, reference to their opinions was made in almost all discussions of this subject. While most of the reports of Ibn ‘Umar mention kissing in particular, others speak of all kinds of touching. In some of these reports, Ibn ‘Umar identifies kissing in terms of touching (arguing that “kissing is [a kind of] touching,”\(^{1130}\)), which may indicate that for him it invalidated the ritual ablution for being just that. To Ibn Mas‘ūd is attributed the same opinion, but he adds to it, in some versions, lying with one’s wife skin to skin (*al-mubāshara*) and touching by hand.\(^{1131}\) For Ibn Mas‘ūd, *lāmasa* in Q. 3:43 means pressing or squeezing with the hand (*al-ghamz*).\(^{1132}\)

Ibn ‘Abbās, as we have seen, figures from early on as the Companion who held that touching had no effect on the ritual purity of the man who touches or kisses a woman.\(^{1133}\) The story that Sa‘īd ibn Jubayr reported on the dispute between the Arabs and non-Arabs on the meaning of *lāmastum* in the Qur'ānic verse is reported in some early Ḥadīth compilations.\(^{1134}\) Other reports have Ibn ‘Abbās argue that kissing does not require repeating ritual ablution.\(^{1135}\) In an isolated report, ‘Abd al-Razzāq al-Ṣan‘ānī mentions that ‘Umar ibn al-Khaṭṭāb once kissed his wife and went to the prayers without performing ablution.\(^{1136}\) No direct statement, to my knowledge, is attributed to ‘Umar.\(^{1137}\)

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1133 See, for instance, Masā‘il Ahmad ibn Hanbal (by his son ‘Abd Allāh), p. 20.
d. Views of the Successors:

In the generation of the Successors (tābi‘ūn), there are more statements that directly address our issue. In the Ḥijāz, Saʿīd ibn al-Musayyab (d. c. 100/718) (who mentions kissing in particular),1138 and Muḥammad ibn Shihāb al-Zuhrī (d. 124/741) (following Ibn ʿUmar in considering kissing a kind of touching that invalidates ritual purity)1139 were reported to have held that touching invalidated ritual purity. In Iraq, ʿĀmir ibn Sharāhil al-Shaʿbī (d. c. 105/723) is reported to have said that if a man kisses [his wife], he has to perform ablution.1140 The same opinion is also attributed to Qatāda ibn Diʿāma,1141 Sulaymān ibn Mihrān al-Aʾmash (d. 148/765), al-Ḥakam ibn ʿUtayba, and Ḥammād ibn Abī Sulaymān.1142 Contrary to this, Masrūq ibn al-Ajdā‘ (d. 63/682), al-Ḥasan al-Baṣrī, and ʿAtā‘ ibn Abī Rabāḥ (d. 115/733) are mentioned as having held that kissing did not invalidate the ritual purity of a man.1143 Sufyān al-Thawrī (d. 161/777) is also reported as having argued that if a man kisses his wife he does not have to repeat his ablution.1144

Ibrāhīm al-Nakhaʿī, who transmitted the traditions of Ibn Masʿūd and Ibn ʿUmar on this subject,1145 ruled that “if a man kisses or touches [his wife], he has to perform ablution.”1146 In other reports, however, he is said to have argued that only when kissing and touching involve sexual desire (shahwa) does it invalidate ritual purity.1147 A similar

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1137 In al-Majmūʿ, however, al-Nawawī mentions ʿUmar among those who argued that any kind of direct touching (mubāshara), regardless of whether it involves intention and desire or not, invalidates ritual purity (vol. 2, p. 31).
1138 Al-Ṣanʿānī, al-Muṣannaf, vol. 1, p. 103.
1139 Ibn Abī Shayba, al-Muṣannaf, vol. 1, p. 84.
1141 Ibid., vol. 1, p. 102.
1144 Al-Marwaẓī, Ikhtilāf al-Fuqahāʿ, p. 183.
1145 For al-Nakhaʿī’s transmission of Ibn Masʿūd’s tradition, see ‘Abd al-Razzāq, al-Muṣannaf, vol. 1, pp. 101-02, and for his transmission of Ibn ʿUmar’s, see Ibn Abī Shayba, al-Muṣannaf, vol. 1, p. 84.
1146 Ibn Abī Shayba, al-Muṣannaf, vol. 1, p. 84.
1147 Al-Ṣanʿānī, al-Muṣannaf, vol. 1, p. 102. See also Ibn Abī Shayba, al-Muṣannaf, vol. 1, p. 84.
opinion is attributed to ‘Abd al-Raḥmān ibn Abī Layla (d. 148/765), who held that “If a man touches his wife with lust, he [has to] perform ablution unless he ejaculates.”

Ḥammād ibn Abī Sulaymān agrees on this view, but he adds another element to the discussion. Reported as having held that any touching invalidated the ritual purity, he thought that if a man kisses his wife when she does not want it, he has to repeat his ablution but she does not have to, unless she feels sexual desire (wajadat shahwa). By the same token, if a wife kisses her husband while he does not want that, she needs to repeat her ablution, but he does not have to unless he feels sexual desire. To those scholars who made similar arguments, al-Nawawī adds al-Ḥakam, Mālik ibn Anas, al-Layth ibn Sa’d (d. 175/791), Ishāq ibn Rāhawayh (d. 138/755), al-Sha’bī and Rabī’a ibn Abī ‘Abd al-Raḥmān (known as Rabī‘at al-Ra’y, d. 136/753) in one opinion attributed to each of them.

iii. Discussion of the Evidence:

a. The Qur’ān:

In Muslim jurisprudence, it is assumed that the first source Muslim jurists consider to find an answer to any problem is the Qur’ān. On this issue, however, it seems that the Qur’ān triggered the controversy rather than serving as the source of its answer. The problem seems to have stemmed from the fact that the verb used in Q. 4:34 for “touching” is not used in the “normal” first form (lamasa), but rather in the third form (lāmasa), and it seems that it was the use of this and not the first form that made jurists

1148 Ibid., vol. 1, p. 87. This, of course, only means that he has to perform ghūsl (washing the whole body) if he ejaculates.
1150 Ibid., vol. 1, p. 85.
1151 Al-Nawawī, al-Majmū’, vol. 1, p. 31.
interpret the verse differently. In general, some of them understood lāmāsā here to refer to sexual intercourse, while others understood it to mean simply touching a woman, something that the first form would probably have indicated straightforwardly.\footnote{Some scholars held that lāmāsā is a homonym, which means that even if this form had been used the controversy over the meaning of the verb would still have taken place. This view was not mentioned by most of the ikhlāf works consulted here, although it was used by some others (see, for instance, Ibn Rushd, Bidāyat al-Mujtahid, vol. 1, pp. 77-78). Most other scholars, however, seem to have discussed the use of the third form in this verse in terms of the ḥaqiqā vs. majāz issue, probably following Ibn ‘Abbās’ anecdote where the Arabs, with their genuine sense of the language, won over the mawāli, who could not differentiate between God meaning what he says or something different.} What made the situation worse is the fact that some Companions did read the verb in this verse in the first form. This reading is attributed to ‘Abd Allāh ibn Mas‘ūd,\footnote{See Ibn Qudāma, al-Mugnī, vol. 1, p. 258.} and was maintained in the readings of the two Kufan scholars Ḥamza ibn Ḥabīb al-Zayyāt (d. 156/772) and ‘Alī ibn Ḥamza al-Kisā’ī (d. 189/804).\footnote{Cf. Abū ‘Amr al-Dānī, Mukhtasār fi ṭadālib al-Qurrah’ al-Sab’ā, p. 113. The verb was read in the third form by all other readers (ibid., p. 113). In al-Muqni’, al-Dānī mentions this as a case of mā ḥudhifā minhu ‘l-alif ikhtiṣāran (a case in which the alif was removed for the sake (or by way) of brevity), p. 11.}

In the earliest available Qur’ān commentaries, lāmastum was understood to mean jāma‘tum. The first Qur’ān commentary in which we find a controversy about this verb is al-Ṭabarī’s. This suggests that in the two centuries between Mujāhid and al-Ṭabarī something heated up the debate about this issue in Iraq, an observation discussed in a later context. Before moving on to comment on the Prophetic and non-Prophetic reports, it can be noted that the various ways this verb was construed by early scholars must have had a correlation with what they thought about this issue. Those who believed that lāmāsā meant sexual intercourse, like Ibn ‘Abbās, would be able to exclude this verse from the debate over the issue of touching a woman and its effect on the validity or otherwise of the ritual purity of the Muslim man who touches her. On the other hand, for those for whom the verb meant the mere touching of a woman, such as Ibn ‘Umar, the...
verse could have provided the basis of the ruling on our question and all other relevant evidence would then be assessed in its light.

b. The Prophetic Traditions:

Interestingly, none of the reports that involve the Prophet (which, in the absence of a direct statement from him, would be our only source as to what the Prophet thought about this issue) that were relied on by early scholars were immune from criticism by medieval scholars with regards to their relevance and authenticity.1155

It has been noted that the tradition of ‘Ā’isha (in which the Prophet would kiss one of his wives and then go to the prayers without repeating his ablution) became almost standard in most medieval discussions of this subject (although its relevance to the issue was not accepted by all early scholars, as discussed below). This tradition, however, was the target of much criticism regarding its authenticity.

The tradition of ‘Ā’isha is conspicuously absent from some early works where we would expect to find it. Zayd ibn ‘Alī, for instance, does not mention any tradition, including those reports from wives of the Prophet other than ‘A’isha, in his Majmū’ when he mentions that kissing does not invalidate ablution.1156 Mālik too does not mention this tradition, but not necessarily because it would contradict his opinion.1157 Nor does al-

1155 It is worth noting that although it may be expected to find traditions with clear-cut rulings on the issue of touching, which is most likely to happen on a regular basis for both men and women, early Muslim jurists did not invent Prophetic traditions to back their respective legal opinions. Finding no Prophetic traditions with unequivocal bearing on the subject, what they did was to try to find traditions that could be helpful, even if indirectly, in supporting their views. Arguably, the fact that no Prophetic traditions address this issue directly indicates that disagreements among early Muslims did not necessarily lead to fabrication of traditions. It also indicates that traditions used in this debate on the issue of touching are probably authentic, if they do not serve as conclusive evidence in another context.


1157 Mālik did not have a problem with mentioning a tradition and contradicting it, as noted in chapter two. It is indeed striking that not a single tradition of those used in later discussions of the subject is found in
Ṭayālisī (d. 204/819) mention any version of this tradition in his *Musnad*.

In the third century, each of the three versions of this tradition was rejected by one or more traditionists. The ‘Urwa version of the tradition, which was the most popular, was rejected by al-Bukhārī (and probably Muslim who does not mention it in his *Ṣaḥīḥ*) on the basis that Ḥabīb ibn Abī Thābit (d. 117/735) (who is supposed to have transmitted the tradition from ‘Urwa) never heard from ‘Urwa. Remarkably, it is even reported that Aḥmad ibn Ḥanbal himself had some doubts about the ‘Urwa version of the tradition. Abū Dāwūd, however, quoted the ‘Urwa version approvingly, but had to defend his selection of this version. He mentions that Yahyā ibn Sa‘īd al-Qaṭṭān (d. 198/813), the famous Ḥadīth critic, rejected it (al-Qaṭṭān is quoted as having said that this tradition was nothing (lā shay’)).

Abū Dāwūd also mentions that al-A‘mash identified the ‘Urwa in the tradition as ‘Urwa al-Muzanī, from whom, according to al-Thawrī, Ḥabīb ibn Thābit used to transmit. Abū Dāwūd disagrees with this view, insisting that Ḥabīb did transmit sound traditions from ‘Urwa ibn al-Zubayr also. Al-Tirmidhī mentions that “our companions (ašhābunā) have abandoned the ‘Ā’isha tradition because they do not consider it sound on account of the condition of its isnād (li-ḥāl al-isnād).” A few centuries later, al-Nawawī mentions that this tradition is weak according to the consensus of the traditionists (bi-ittifāqi ’l-ḥuffāz), as it was declared weak by Sufyān al-Thawrī, Yahyā ibn Sa‘īd al-Qaṭṭān, Aḥmad ibn Ḥanbal, Abū Dāwūd, Abū al-Ḥasan al-Dāraquṭnī

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Mālik’s *Muwatta*, which suggests that he either was not aware that they existed, did not think they were authentic, or did not think that they were relevant to the issue.

1158 Sulaymān ibn Dāwūd al-Ṭayālisī, *Musnad al-Ṭayālisī*.

1159 This is reported by al-Tirmidhī in his *Sunan* in the context of his discussion of the views on this tradition (vol. 1, p. 57).

1160 Ibid., vol. 1, p. 257.

1161 Abū Dāwūd, *Sunan*, p. 34.

1162 Ibid., p. 35.


1164 Al-Tirmidhī, *Sunan*, vol. 1, p. 58.
(385/995), Abū Bakr al-Bayhaqī (458/1065), and others. Ibn Rushd, however, mentions that while the Hijāzīs considered this version weak (wahhanahu ’l-hijāziyyūn), the Kufans “considered it sound” (ṣahhahahu al-kāfiyyūn).

The version of Ibrāhīm ibn Yazīd al-Taymī (d. 92/710) was also rejected by some scholars. Abū Dāwūd considered it weak because he believed that Ibrāhīm never heard from ‘Ā’isha. Despite his view that there was “nothing better than [this tradition] in this chapter,” al-Nasā’ī considered this version mursal, a tradition from the chain of transmission of which a transmitter is missing. (The missing transmitter is usually the Companion, but in this case it was either the Companion or the Successor who transmitted the tradition from ‘Ā’isha and from whom Ibrāhīm al-Taymī, supposedly, heard the tradition.) Ibn Māja mentions this and the other two versions of the tradition without commenting on their authenticity.

The version of Zaynab al-Sahmiyya [bint Muḥammad ibn ‘Amr ibn al-‘Āṣ], which was mentioned by Ibn Ḥanbal in his Musnad, Ibn Māja in his Sunan, and al-Ṭabarī in his Tafsīr, was the least popular version of this tradition, and was not without criticism. Al-Dāraquṭnī is reported to have considered Zaynab an unidentified person (majhūl). Later, al-Nawawī does not mention it even to say that it was yet weaker than the other versions of the tradition, which he also rejected. The similar tradition of

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1165 Al-Nawawī, al-Majmū’, vol. 2, p. 34.
1166 Ibn Rushd, Bidāyat al-Mujtahid, vol. 1, p. 78. Taṣḥīḥ al-Ḥadīth usually involves finding clues that support it. These clues can be other narrations of the tradition, or simply demonstrating its consistency with any other source of the law. Taṣḥīḥ, needless to say, can be a very arbitrary process (for this, see ibid., p. 34. Abū Dāwūd mentioned that this tradition is mursal for the above-mentioned reason.
1167 Al-Nasāʿī, Sunan, vol., 1, p. 74.
1169 Ibn Ḥanbal, Musnad, vol. 6, p. 73.
1170 Al-Nawawī, al-Majmū’, vol. 2, p. 34.
Umm Salama, to my knowledge, does not exist in any source other than al-Ṭabarī. This holds true for the tradition of Ḥafṣa that Abū Ḥanīfa transmitted.\textsuperscript{1172}

In addition to the problem of authenticity, this set of traditions also had a problem of relevance. Strictly speaking, this set of traditions deals with kissing, which is probably why Ibn Masʿūd and Ibn ʿUmar used to say \textit{al-qubla mina ʿl-lams}, interpreting it in reference to Q. 4:43, which, they held, referred to touching. Although this set of traditions was brought to the discussions of this subject very early, a medieval Ḥanbalī scholar still felt the need to prove that kissing was a form of touching.\textsuperscript{1173} But if the relevance of this set of traditions to the issue was dubious, this is even more so for the other important set of traditions, where the Prophet touches ʿĀʾisha while prostrating. Al-Bukhārī and Muslim, for instance, who have no chapters on \textit{lams al-marʿa} (which is usually mentioned in the \textit{kitāb al-ṭahāra} among the things that affect ritual purity and make \textit{wuḍūʿ} necessary), report the various ʿĀʾisha traditions in chapters that have nothing to do with our subject. For example, this tradition was mentioned by al-Bukhārī in a chapter in \textit{Kitāb al-Ṣalāḥ} on the issue of “Can a man squeeze his wife to prostrate himself?,”\textsuperscript{1174} and by Muslim in the context of the prayers (\textit{duʿāʾ}) that are or should be recited while bowing and prostrating, also in the \textit{Kitāb al-Ṣalāḥ}.\textsuperscript{1175} The other similar tradition by ʿĀʾisha, where she mentions that her leg would be in the direction of the

\textsuperscript{1172} The person from whom Abū Ḥanīfa supposedly got the tradition was Abū Rawq, who, according to al-Nawawī (who mentions him as a transmitter in one version of the ʿĀʾisha tradition as well), was declared unreliable by Yahyā ibn Maʿīn (\textit{al-Majmūʿ}, vol. 2, p. 34).

\textsuperscript{1173} For an interesting discussion of the various kinds of touching, see Abū Jaʿfar al-Hāshimī, \textit{Ruʿūs al-Masāʾ il fī al-Khilāf}, vol. 1, p. 62, where the author argues that the “reality of touching” is when two skins meet, and then differs on the basis of the skin used. If the touching is by mouth, it is called kissing (\textit{qubla}), if by the sexual organ (\textit{farj}), it is called sexual intercourse (\textit{waṭ’}), and if by hand, it is called touching (\textit{lams}).


\textsuperscript{1175} Muslim, Ṣaḥīḥ, vol. 1, p. 295.
qibla in front of the Prophet while he was praying, is mentioned by al-Bukhārī in a chapter on *al-taťawwu‘ khalfā al-mar‘a*.

Ibn Ḥazm openly dismisses this set of traditions, not on the basis of their authenticity, but on the basis of the fact that we do not know much about their context. He argues that we are not even sure that the Prophet was praying in the first place. Furthermore, the tradition as it is does not rule out the possibility that the Prophet did interrupt his prayers, if he was indeed praying, to repeat his ablution. But the main ground on which Ibn Ḥazm dismisses the relevance of this tradition is his argument (which meshes well with his opinion on the matter) that in all circumstances the Prophet was the one who was touched, not the one who did the touching. It was the absence of intention here that allowed the Prophet to maintain his ritual purity and go on with his prayers. Even a Shāfi‘ī scholar like al-Nawawī acknowledged many of these weaknesses of the traditions to dismiss them as evidence for the argument that touching and kissing do not affect the ritual purity of a Muslim. But to the best of my knowledge, no scholar other than Ibn Ḥazm argued that this set of traditions and even the first one, even if they do indicate what other scholars took them to say, were abrogated by the Qur’ānic verse *aw lāmastum al-nisā‘*. Ibn Ḥazm dealt similarly with the tradition that has the Prophet carrying his grand-daughter Umāma, which al-Bukhārī reports in a chapter on “carrying a young girl while praying.” Ibn Ḥazm argues that the tradition does not indicate whether the

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1178 Al-Nawawī, *al-Majmū‘*, vol. 2, p. 34.
Prophet’s skin touched Umāma’s, or whether he did not interrupt his prayers, repeated his ablution, and then prayed again.

Finally, al-Tirmidhī concluded his discussion on this subject by asserting that “nothing from the Prophet in this chapter [of touching women and how this affects the ritual purity] is sound” (wa-laysa yaṣiḥhu ‘ani ʾl-nabī fī hādha ʾl-bābi shay’).\textsuperscript{1181}

c. The Non-Prophetic Reports:

Remarkably, this subject seems to be almost purely Iraqi. Although there was some controversy on this issue in the Ḥijāz,\textsuperscript{1182} the Ḥijāzīs seem to have made up their minds very early that all kissing, and any touching that involves sexual desire invalidated ritual purity. This opinion was probably established by Saʿīd ibn al-Musayyab and al-Zuhrī, following the example of Ibn Masʿūd and Ibn ʿUmar. In Iraq, however, the differences in opinion between ʿAbd Allāh ibn Masʿūd and ʿAbd Allāh ibn ʿAbbās seem to have instigated a disagreement that was never resolved by their followers, nor by the students of their followers. The majority of the Iraqi Successors apparently accepted Ibn Masʿūd’s opinion, according to which touching invalidates the ritual purity of the one who touches. While some accepted this categorically (like Shuʿba, al-Ḥakam, and al-Shaʿbī), others sought to qualify it by introducing some further elements into the discussion. Ibrāhīm al-Nakhaʿī and Ibn Abī Laylā, in an opinion attributed to each of them, introduced the element of sexual desire. Al-Nakhaʿī’s student Ḥammād introduced the element of intention. Some other Iraqi scholars, such as ʿAṭāʾ, al-Ḥasan, Masrūq, and Sufyān al-Thawrī, however, sided with Ibn ʿAbbās, not only on his opinion that touching does not

\textsuperscript{1181} Al-Tirmidhī, \textit{Sunan}, vol. 1, p. 58.
\textsuperscript{1182} For the views of the Ḥijāzī Successors and early scholars on this issue, see al-Nawawī, \textit{al-Majmūʿ}, vol. 2, pp. 31-32.
invalidate the ritual purity, but also regarding his view that *lāmasa* in Q. 3:43 means having sexual intercourse.

The aim of this lengthy discussion of what was taken as textual evidence in this issue and of the opinions that were attributed to the earlier authorities is not to assess the evidence or the opinions. Rather, it is to find out what sort of evidence was used, even by later scholars, and how much of it could have been available to the three scholars we are dealing with here. What we have is much disagreement and contradictory opinion that the generation of Abū Ḥanīfa and later generations of jurists inherited and had to deal with. This is exactly what we need to be looking at to investigate how Abū Ḥanīfa, Aḥmad ibn Ḥanbal and Dāwūd dealt with what they inherited on this matter.

iv. The Three Scholars Compared:

On the question of what evidence was available to the three scholars on this issue, it seems fair to say that the evidence they confronted was similar. Abū Ḥanīfa was aware of the various views of the Companions and the Successors on the matter (their understandings of the meaning of *lāmastum*, and their various views on the issue of touching)\(^{1183}\) and a tradition very similar to the first tradition of Ḥaṭimah (which he also seems to have been aware of and might have considered relevant to the discussion as well).\(^{1184}\) By the time of Aḥmad ibn Ḥanbal and Dāwūd, all the traditions used in this controversy were used and considered relevant by at least some scholars. It can be safely assumed, then, that the three scholars had similar raw material to work with.

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\(^{1183}\) Abū Yūsuf, *Kitāb al-Āthār*, p. 5.

\(^{1184}\) This is probably so because al-Shaybānī mentioned it in his *Kitāb al-Ḥujja ‘alā Ahl al-Madīna*, pp. 65-66.
Abū Ḥanīfa, Dāwūd, and Ibn Ḥanbal, nevertheless, came to three different conclusions on this question. Abū Ḥanīfa probably started with the Qurʾān and had to choose one understanding of lāmastum in Q. 4:43. He chose the view that this verb referred to sexual intercourse probably on the basis of either one or both of the following two reasons. The first is the use of the third form of the verb, which was the most popular reading even if Ibn Masʿūd’s reading, which had the verb in the first form, was popular in Iraq. This form must have suggested to him, just as it did to many other jurists, that it was not the basic meaning of the root l-m-s that was meant. If this is how he thought of the verse, then the case was almost done for him since there was no other evidence that he would consider on the issue of touching.

It is also possible that Abū Ḥanīfa had rendered the Qurʾānic verse irrelevant to the discussion in a different way. The fact that even the Companions of the Prophet were uncertain about what the verb used in the verse meant may have undermined it as evidence in Abū Ḥanīfa’s view. If the Qurʾānic evidence is uncertain, there was no reason for him to ignore the evidence from the Prophetic tradition, which is at least not less certain than the Qurʾānic evidence. In this case, only one text should be accepted and the other one judged in its light. Abū Ḥanīfa chose the Prophetic traditions (for reasons that are discussed below) and assessed all other evidence accordingly. In both cases, having neutralized the Qurʾān (by rendering the Qurʾānic verse irrelevant, or reducing its epistemological value as evidence), he was ready to turn to Ḥadīth, where most traditions from the Prophet did not seem to convey that touching a woman invalidates the ritual purity of a Muslim man.
But even if Abū Ḥanīfa had some Prophetic traditions from which it could be understood that touching women voids the minor ritual purity of the Muslim man, he would probably not have accepted any evidence in this regard. This case falls under the category of what Ḥanafī scholars call ‘umūm al-balwā, which simply means that it was not a matter that only happens every now and then. Touching a member of the other sex is something that could, and probably does, happen on a daily basis. Since this is so, Ḥanafīs believe that if this was an issue that affects the ritual purity of people (which means that they would not be able to pray unless they repeated their ritual ablution), the Prophet would have made this clear, and the Muslim community would have transmitted it by way of tawātur, just as it is with the other causes of loss of ritual purity. It was on this very ground that Ḥanafī scholars did not accept the isolated traditions according to which touching the male sexual organ voids ritual purity, as noted earlier. Since this was something that was liable to happen frequently, there should not be any uncertainty about it among the Companions and the succeeding Muslim generations.1185 In fact, it may have been for this reason that Abū Ḥanīfa did not consider Ibn Mas‘ūd’s reading of the verb in the first form, for this would have had catastrophic consequences on one of the basic assumptions of his jurisprudence. He did not think that it was plausible for an issue like this to be handed down from the Prophet to the latter generations with all that confusion. He thought that this could not happen, and he was probably not willing to challenge his assumption of how issues like this ought to be transmitted on account of an isolated reading.

In view of this, Abū Ḥanīfa had no other choice but to proceed under the presumption of continuity, according to which, in this case, nothing voids ritual purity unless we know for certain that either God or his Prophet had so specified. Since this was not done regarding our issue, it followed that no touching of any woman had any effect on the ritual purity of a Muslim man. The isolated reports of the Prophet’s conduct must have added further confirmation for him. This does not necessarily means that this issue falls within the second category of knowledge that Jaṣṣāṣ mentioned (the category of uncertain evidence and ījtihād which only yield probable results). Rather, it falls within the first category of knowledge, one in which we know for certain what the law has to say. The law is silent on this issue, Abū Ḥanīfa must have thought.

There are two more points that are worth mentioning about Abū Ḥanīfa’s view on this issue. He ruled against what seems to have been the general attitude in his region. Not only did he reject Ibn Masʿūd’s reading, but he also rejected the views that were attributed to him and to Ibn ‘Umar concerning kissing and touching. More significantly, he rejected the views of his more immediate teachers: Ibrāhīm al-Nakhaʿī and Ḥammād. Arguably, this points to Abū Ḥanīfa’s independence as a jurist and the necessity of defining whom we mean by the Ahl al-Raʿy. What is significant about Abū Ḥanīfa’s rejection of his teachers’ views is not only the rejection itself, but also his refusal to take into account the elements that both teachers introduced to the discussion (the element of sexual desire introduced by al-Nakhaʿī, and the element of intention by Ḥammād). While it is not clear why he did not consider the element of intention (although we can speculate that the reason may be that Ḥammād did not provide evidence for his view, unlike Ibn Ḥazm, who thought that the element of intention was part of the Qur’ānic evidence
itself), his rejection of the more popular element of sexual desire seems to be in perfect line with what was said earlier about his jurisprudence and his predilection for systematization.

The element of sexual desire suffers from two weaknesses, subjectivity and uncertainty. Each of these elements suffices to disqualify it in a legal system like Abū Ḥanīfa’s, where only an exact and objective criterion would be considered. The only element that Abū Ḥanīfa is reported to have considered on this issue is that only when a man lies naked with his wife and erection occurs does he need to repeat his ritual ablution. While it could be argued that erection here serves as the objective and exact criterion that he was looking for, some later scholars, who probably sought to show that Abū Ḥanīfa was not as whimsical by considering this factor as other scholars (since there is no textual evidence for erection as a criterion), argued that what he probably had in mind is the fact that more often than not, when a man reaches this stage of intimacy with his wife, he would discharge some pre-ejaculatory fluid (called madhī) that requires ablution. Madhī in all Sunnī schools of law voids ritual ablution.

Unlike Abū Ḥanīfa, Dāwūd, regarding the Qur’ān and Prophetic Sunna as epistemologically equal textual sources, was considering the evidence from the Qur’ān and Sunna at the same time. He believed that the verb in the verse meant the mere and, apparently, the unconditional touching of women. He probably did not see why it should be understood otherwise. It is certain that the root l-m-s means touching, and even if it is assumed that the use of the third form of the verb could be suggesting something else, this does not furnish a valid reason for abandoning what we are certain of for a possibility.

1186 Footnote 1 in page 233 above.
1187 For this, see, for instance, Ibn Qudāma, Al-Mugni, vol. 1, p. 230 and pp. 232-33. In Jaʿfarī Shiʿī law, however, madhī does not invalidate ritual purity (for this, see al-Sharīf al-Murtada, Al-Intishār, p. 30).
that could be right or wrong. Dāwūd’s Ẓāhirism is quite obvious here: he takes the word to its fullest extension, including any and all kinds of touching. Therefore, and on the basis of the Qur’anic evidence, any touching of any woman (be she the mother, sister, wife, or daughter of the touching man) invalidates the ritual purity of the Muslim man who touches her.

But what about those Prophetic traditions that could be taken to suggest otherwise? The only element that Dāwūd was willing to accept and consider in this discussion was the element of intention (qaṣd), an element that is objective and exact.\footnote{For this, see, for instance, al-Qaffāl al-Shāshī, \textit{Hilyat al-ʿUlamā’}, vol. 1, p. 187.} This, Ibn Ḥazm argues, is an element that is inherent in the very third form of \textit{l-m-s} that the verse uses. While Ibn Ḥazm does not explain how this is so, it seems that for him the use of the third form rather than the first one indicates that the one who touches does so intentionally, which means that if a man unwittingly touches a woman, his ritual purity remains in effect; but if he touches her deliberately, regardless of any other factor, his ritual purity is void and he has to perform ritual ablution again.\footnote{Ibn Ḥazm, \textit{al-Muḥallā}, vol. 1, p. 227.}

This understanding resolved any contradiction between the verse and the second set of traditions (where the Prophet was touched while, apparently, he was praying). As for the first set (where the Prophet kissed and then went to the prayers), Dāwūd must have concluded that these traditions referred to a time when the verse had not yet been revealed. The verse, in other words, abrogated the original rule and established touching as one of the causes for the loss of ritual purity (which Ibn Ḥazm argued), for in the case of irresolvable contradiction among the textual sources, only one text can be the valid source of the law in light of which all other evidence is to be assessed, either through
reconciliation, if possible, or by complete exclusion on the basis of relevance, authenticity, or abrogation, all of which are used by Ibn Ḥazm in this discussion.

For his part, Aḥmad ibn Ḥanbal had much more evidence to consider on this issue. He had to deal with various views inherited from the earlier generations on the meaning of the verse and the practice of the Prophet and had to do this in a way that would incorporate all evidence. He had two options and both reveal the tension in his jurisprudence we spoke about earlier. The first was to accept Abū Ḥanīfa’s view, which was also the most popular view among the Companions and Successors (and this would have saved him from any embarrassment). But not only would this have put him at odds with what some great Companions like Ibn Masʿūd and Ibn ‘Umar thought, he must have also felt uneasy about not considering the possibility that touching, especially when it involves a member of the other sex (who might not be related to the touching person) may have an effect on ritual purity, if only as a precautionary measure. Ibn Ḥanbal’s morality was probably why he could not accept this view as it was. The second option was to accept the logic of the Zāhirīs. This, however, would have put him in sharp contradiction with the Prophetic traditions, which he was not willing to abandon. His desire to consider all evidence was probably why he could not accept this option either.

The solution that Ibn Ḥanbal found to resolve the problem shows clearly the synthetic nature of his jurisprudence and his moral approach at the same time. He adopted the element that Ibrāhīm al-Nakha’ī had introduced into the discussion (and which the Mālikīs partially used)\textsuperscript{1190} by making the whole argument revolve around the

\textsuperscript{1190} The Mālikīs held that kissing, regardless of whether or not it involves desire, invalidates ritual purity. “Normal” touching, however, only does so if it involves sexual desire. For this, see Sahnūn, \textit{al-Mudawwana al-Kubrā}, vol. 1, p. 131. Mālik also mentions the opinion of ‘Umar according to which both kissing and touching (jass) invalidate ritual purity and require a new ablution.
existence or absence of a particular factor; that is, (sexual) desire. If a man touches a
woman with desire, or if he touches her and consequently feels desire, he needs to repeat
his ritual ablution. However, if he neither sought nor felt sexual desire, his ablution
remains in effect. This way, Ibn Ḥanbal combined all the seemingly contradictory
evidence that reached him. If the Qur’ānic verse refers to sexual intercourse, this would
make it irrelevant to this subject because intercourse has its own rules. However, if it
means touching, then the evidence of the traditions qualifies this touching by restricting it
to the touching that involves sexual desire. This would exclude those women who are
unlawful for the man to marry (such as the mother, sister, and daughter), and would also
neutralize the “innocent” touching that could take place between the man and his wife.
When it comes to women who are related to the man, however, it would not be
implausible to believe that Ibn Ḥanbal’s scruples would have had him repeat his ablution,
and advise others to do so, every time they touch such women, for one may not always be
able to exclude the possibility that sexual desire was involved.

Elaborating on Ibn Ḥanbal’s position on this issue, the Ḥanbalī scholar Ibn
Qudāma argues that Ibn Ḥanbal probably thought that touching invalidated ritual purity
on account of the generality of the verse (of Q. 4:43) (li-‘umūmi ‘l-āyā), and thought that
it did not because of the traditions of ‘Ā’ishah in which she touches the Prophet while he
was praying in addition to the kissing traditions. He then decided that touching
invalidated ritual purity only if it was accompanied by sexual desire, thereby combining
the verse and the reports (jam‘an bayna ‘l-āyati wa-l-akhbār).1191

What is remarkable in this view is that this element of desire has no basis in the
Qur’ān or Sunna whatsoever. Discussing the various views on the subject, the celebrated

medieval Mālikī scholar Ibn Rushd concludes that everyone of the early scholars (who had views on the matter) had predecessors among the Companions, with the exception of those who made sexual desire (ladhdhah) a conditioning factor. “I am aware of no Companion,” he points out, “who made it a condition.” But Ibn Ḥanbal had to deal with the tension he always had between his moral commitment, which would have him wish to hold that mere touching would invalidate ritual purity, and his keenness to incorporate all available evidence. This tension is evident in the fact that two other views were attributed to him, according to one of which touching does not invalidate ritual purity regardless of anything, and according to the other one it does, also regardless of any factor. This indicates that Ibn Ḥanbal was hesitant about this issue, but he later managed to find a way to synthesize all the relevant evidence around a moral principle, where sexual desire serves as the basis of judgment.

B. The Number of Breast-feedings that Establishes Foster Relationships:

i. The Problem:

The second case concerns the number of breast-feedings (raḍ‘āt) that makes the sucking infant a son or daughter of the woman whose milk he or she sucks, with all the serious

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1194 Having different opinions attributed to Ibn Ḥanbal on one issue is not uncommon (for possible reasons for this, see Abū Zahra, *Ahmad ibn Ḥanbal*, pp. 189-99).
1195 Remarkably, from the 5th/11th century the discussion of this subject would involve many other considerations, such as the presence of sexual desire, intention, the presence or absence of a barrier between the two people who touch, the age of the woman who is being touched, whether or not the woman is legal for the man to marry, and the organs that are being used in touching (for this, see Ibn Qudāma, *al-Mughnī*, vol. 1, pp. 256-62, and al-Nawawī, *al-Majmū‘*, vol. 2, pp. 24-35).
consequences that this entails in Islamic law. On this question, we also get three different answers from the three legal scholars studied here. Abū Ḥanīfa held that even a single incident of breast-feeding establishes a foster relationship between the sucking infant and the woman who suckles him or her. Dāwūd held that only three incidents of breast-feeding could establish such a relationship. Aḥmad ibn Ḥanbal held that five separate incidents of breast-feeding are required.

ii. The Evidence:

a. The Qurʾān:

Q. 4:23 gives a list of different categories of women who are “prohibited” to Muslim men, or women whom men cannot marry, either temporarily or perpetually. One of these categories of women is ummahātukum allāti arḍaʾnakum, or women who breast-feed a Muslim and thus become, for some legal purposes, his or her foster mother (of whom there could be many). Unlike the Qurʾānic verse in the first case, there is no special difficulty in this verse, which is probably why Mujāhid ibn Jabr, Zayd ibn ʿAlī, Muqātil ibn Sulaymān, and al-Ṭabarī had nothing especially significant to say on this part of it.

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1196 All schools of law have accepted the tradition in which the Prophet is reported to have said that “Whatever is forbidden through lineage (nasab) is also forbidden through breast-feeding” (yahrumu mina l-ridāʾi mà yahrumu mina ’l-nasab). This tradition exists in almost all the works of Hadīth and fiqh.
1197 I did not find any reference to this in the works of Abū Ḥanīfa’s immediate students (who do not mention the issue in the first place), but many medieval sources attribute this opinion to Abū Ḥanīfa and to all the Ahl al-Raʾy (see, for instance, al-Marwāzī, Ikhtilāf al-Fuqahāʾ, p. 294, and al-Qaffāl al-Shāshī, Hilyat al-ʿUlamāʾ, vol. 7, p. 369).
b. The Sunna:

Also unlike the first case, there are many direct and indirect reports from the Prophet on this question, which are arranged here in different sets on the basis of the content.

In the first set of traditions, the Prophet is reported to have said that a single incident of sucking (muṣṣa), or even two such incidents, do not constitute effective or considerable breast-feeding and thus do not establish foster relationship (lā tuḥarrimu 'l-muṣṣatu wa-l-muṣṣatān). The first tradition in this set was transmitted from ‘Ā’isha by ‘Abd Allāh ibn al-Zubayr, and was mentioned by many traditionists in their Ḥadīth compilations. In an almost identical tradition (whose only difference from this one is the addition of min 'l-raḍā'a after la tuḥarrim), Ibn al-Zubayr relates directly from the Prophet himself a version that was used by, among others, al-Shāfi‘ī, al-Ṣan‘ānī and Ibn Abī Shayba. A third tradition is related from Umm al- Faḍl bint al-Ḥārith, wife of the Prophet’s uncle al-‘Abbās (who died during ‘Uthmān’s caliphate between 23/643 and 35/655), from the Prophet, according to which the Prophet said that one or two incidents of breast-feeding (imlājah) do not establish foster relationship (lā tuḥarrimu 'l-imlājah wa-l-imlājatān). This tradition is reported by Muslim in his Ṣaḥīḥ, and in his Muṣannaf, Ibn Abī Shayba mentions the same tradition with al-raḍ’atu wa-l-raḍ’atān, aw al-muṣṣatu wa-l-muṣṣatān, instead of al-imlājatu wa-l-imlājatān.

In the second, and equally popular, set of traditions on this subject, ‘Ā’isha is said to have reported that a verse of the Qur’ān that was revealed to the Prophet and dealt with

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1202 Muṣṣa refers to the act of sucking by the infant, while imlāj refers to the suckling of the nursing woman (for m-l-j and its derivatives, see Ibn Manẓūr, Lisān al-‘Arab, vol. 13, p. 167).
1203 Muslim, Ṣaḥīḥ, vol. 2, p. 870.
1204 Ibn Abī Shayba, Muṣannaf, vol. 6, p. 209.
the issue of *ridā'* specified that ten incidents of breast-feeding were needed to establish prohibition. This, she adds, was then abrogated by another verse which mentioned only five incidents of breast-feeding, a verse that she says was still recited when the Prophet died. This tradition is reported in almost all Ḥadīth compilations and some early legal works. In one report in this set, included by Ibn Māja in his *Sunan*, ‘Ā’isha mentions that she had under her bed a sheet on which that verse was written, but it was eaten by a goat (*dājin*) while they were busy preparing the Prophet for burial.

Some other Prophetic traditions are reported in the context of this subject and used by some later scholars for one reason or another. In one of these, the Companion ‘Uqba ibn al-Ḥārith went to the Prophet and told him that he had married a woman, but later a black slave girl told them that she had breast-fed both of them. When ‘Uqba first mentioned this to the Prophet, the Prophet turned away from him. But when he mentioned it to him again, the Prophet said: “How [can you stay with her] when she [the slave woman] has claimed that she had suckled you? (kayfa wa-qad za’amat annahā arda’atkumā?)” This tradition is reported by al-Bukhārī, al-Dārimī, and al-Tirmidhī in their compilations.

In a different set of traditions, the Prophet is reported to have advised Sahla bint Suhayl, wife of the Companion Abū Ḥudhayfa ibn ‘Utba, to “breast-feed” Sālim, who used to be Abū Ḥudhayfa’s adopted son and then his *mawlā* when the Qur’ān prohibited adoption, so that he become prohibited for her. This tradition is reported without any

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1207 A transmitter of this tradition seems to have inserted “jā-nahāhu ‘anhā,” to emphasize that the Prophet forbade ‘Uqba’s wife to him.


1209 Adult breast-feeding does not necessarily involve direct sucking. A woman can squeeze her milk into a cup from which the man would drink.
number of breast-feedings in many Ḥadīth compilations, but in another version of it, the Prophet is said to have told Sahla to breast-feed Sālim five times (ardīʿīhi khamṣa raḍaʿātin fa-yāhrum bi-labanihā), or, in yet other versions, ten times.

Related to this is a set of reports in which ‘Āʾisha would send the same Sālim, and other men whom she wanted to allow to be able to interact with her, to her sister Umm Kulthūm, asking her to breast-feed them. This tradition too appears without mention of the number of breast-feedings, but also with the ten breast-feedings that were required by ‘Āʾisha. However, after mentioning the ‘Āʾisha abrogation tradition (where she says that ten was abrogated by five), al-Shāfiʿī says that none would enter ‘Āʾisha’s house without completing the five acts of breast-feeding. He then mentions the tradition of Sālim where the latter says that he was only breast-fed three times by Umm Kulthūm, and was thus unable to see ‘Āʾisha because he did not complete the required ten. A similar tradition has Ḥafṣa bint ‘Umar doing the same thing with her sister Fāṭima, sometimes without mentioning a specific number of breast-feedings, and in other versions specifying ten breast-feedings. Ibn Abī Shayba mentions another report in which it was ‘Āʾisha who sent a certain ‘Āṣim ibn Sa’d to Fāṭima bint ‘Umar to be breast-fed ten times, after which he was allowed to enter her place and meet her.

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1213 See, for instance, Muslim, Ṣaḥīḥ, vol. 2, pp. 872-73, and al-Nasāʿī, Sunan, vol. 11, pp. 77-78.
1215 Al-Shāfiʿī, al-Umm, vol. 5, p. 44.
1216 Ibid., vol. 5, pp. 44-45.
1218 See, for instance, Mālik, al-Muwatta’, p. 408.
1219 Ibn Abī Shayba, al-Muṣannaf, vol. 6, p. 211.
In another set of traditions, the relevance of which to our subject will become apparent later, the Prophet is reported to have said that the breast-feeding that is effective in establishing prohibition is that which (moves the stomach?) and takes place before weaning (lā yuḥārrimu mina ʾl-raḍāʾātī illā mā fātaqa ʾl-amʿāʾa wa-kāna qabla ʾl-fīṭām).\(^{1220}\) In ʿĀʾisha’s version of this tradition, the Prophet once went home and found a man talking to ʿĀʾisha. The Prophet’s face, ʿĀʾisha reports, changed, and when she told him that the man was her brother’s foster-son, the Prophet said: “Mind whom you take as your brothers; [effective] breast-feeding is that which results from hunger [in infancy] (unẓūrna man ikhwānukunna; innamā ʾl-raḍāʾatu mina ʾl-majāʾah).”\(^{1221}\)

c. Views of the Companions:

Ibn Abī Shayba attributes to ʿAlī ibn Abī Ṭālib (through Ibrāhīm al-Nakhaʿī), ʿAbd Allāh ibn Masʿūd (through al-Nakhaʿī and Mujāhid ibn Jabr), ʿAbd Allāh ibn ʿUmar, and ʿAbd Allāh ibn ʿAbbās (through Ṭāwūs ibn Kaysān) the view that any number of breast-feedings suffices to establish foster relationship.\(^{1222}\) To ʿAbd Allāh ibn Masʿūd is also attributed the opinion that “[effective] breast-feeding is only one that leads to the growth of the flesh and strengthening of the bones (lā riḍāʿa illā mā shadda ʾl-ʿazma wa-anbata ʾl-lahm).”\(^{1223}\) Abū Mūsā al-As.harī is reported to have held a similar view, in which he speaks about the flesh and the blood.\(^{1224}\)

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1220 Al-Tirmidhī, Sunan, vol.
1222 Ibn Abī Shayba, al-Muṣannaf, vol. 6, p. 211.
Zayd ibn Thābit, however, held the view that effective breast-feeding requires three occasions, while ‘Abd Allāh ibn al-Zubayr, who transmitted the Prophetic report according to which one or two incidents of breast-feeding do not make it effective, is reported to have said that one, two, or three such incidents are not sufficient to make breast-feeding effective in establishing prohibition. A few centuries later, Ibn Qudāma attributes the view of his school (five breast-feedings) to ‘Ā’isha, Ibn Mas‘ūd, and Ibn al-Zubayr, and the requirement of ten incidents of breast-feeding to Ḥafsa bint ‘Umar.

d. Views of the Successors:

Sa‘īd ibn al-Musayyab, al-Ḥasan al-Baṣrī, ‘Amr ibn Dīnār, Makhlūl, Ibn Shīhāb al-Zuhrī, Qatāda ibn Di‘āma, al-Ḥakam ibn ‘Uṭayba, Ḥammād ibn Abī Sulaymān, ‘Abd al-Raḥmān al-Awzā‘ī, Sufyān al-Thawrī, al-Layth ibn Sa‘d, Mālik ibn Anas, and the Aṣḥab al-Ra’y are reported to have held that any number of breast-feedings is sufficient to establish prohibition. To Abū Thawr and Dāwūd ibn Khalāf is attributed the opinion that three breast-feedings are required to establish such prohibition. In al-Darārī al-Muḍiyya, al-Shawkānī attributes to ‘Aṭā’ ibn Abī Rabāḥ, Ṭāwūs ibn Kaysān, Sa‘īd ibn al-Jubayr, ‘Urwa ibn al-Zubayr, al-Layth ibn Sa‘d, al-Shāfi‘ī, and Ibn Ḥanbal the view that effective

1228 Ibid., vol. 11, p. 311.
1229 Ibn Abī Shayba, al-Muṣannaf, vol. 6, p. 211.
breast-feeding requires five incidents. Ṭāwūs is said to have held that only ten incidents of breast-feeding can be effective.

iii. Assessment of the Evidence:

a. The Qur’ān:

If it was the Qur’ān that instigated the controversy in the first case, the Qur’ān, arguably, was quite unjustly brought into the controversy over this issue. As it stands, the Qur’ān mentions the term *ardā’nakum* without qualifying it, which could be and was indeed taken to indicate that any breast-feeding is effective. This is probably why Mujāhid ibn Jabr, Zayd ibn ‘Alī, Muqātil ibn Sulaymān and al-Ṭabarī did not comment on it.

The only issue that is relevant to the Qur’ān does not come from the Qur’ān that we have today, but has to do with evidence that stands, literally, outside the Qur’ān itself, namely, ‘Ā’ishah’s tradition of the abrogation of the Qur’ān, where she said that one Qur’ānic verse, which was part of the Qur’ān and probably in use until the Prophet died, specified exactly the number of incidents necessary to make breast-feeding effective. It does not take an expert to realize how problematic this could be, for it could be suggesting that part of the Qur’ān that was recited during the Prophet’s life did not find its way to the Qur’ānic vulgate later on. This is an issue whose significance goes far beyond Islamic law and is beyond the scope of this study. For our purposes, however, this is a case of what may be called “compound abrogation.” Not only was the verse that mentioned ten incidents of breast-feeding abrogated by another that mentioned only five

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1232 Ibn Abī Shayba, *al-Muṣannaf*, vol. 6, p. 211.
1233 Mujāhid transmitted Ibn ‘Abbās’ view (considering any breast-feeding as effective), a view that was also shared by Zayd ibn ‘Alī (see Zayd ibn ‘Alī, *al-Majmū‘*, p. 217). The fact that neither Muqātil nor al-Ṭabarī comment on this part of the verse indicates that they held the same view.
(a typical case of abrogation), but the whole revelation on this issue was also dropped from the text of the Qur’ān, an incident that could be referred to as “verbal abrogation.” Those who used this tradition on the debate in this issue said that this was a case of naskh al-tilāwa dūna ‘l-hukm, or the abrogation of only the recitation of the verse but not the legal ruling that it establishes, a notion that is not without its problems in both Islamic law and theology.1234

This tradition does not seem to have enjoyed much popularity in the first two centuries of Islam. The Ḥijāzīs, for instance, seem to have rejected it completely. In his Muwaṭṭa’, Mālik commented on the tradition by saying that that was not the practice in Medina.1235 Since the Ahl al-Ra’y in Iraq apparently did not accept it, it seems that it was not popular there either. Pointing out how problematic this report is, the Ḥanafī al-Jaṣṣāṣ argued that, to be consistent, anyone who accepted this tradition has to either hold that the Qur’ān could be abrogated after the Prophet’s death or that it could not. If yes, he would be making a truly heinous statement that puts him in the category of the enemies of the Qur’ān. If he does not believe that it is possible, however, that the Qur’ān could be abrogated in any way after the death of the Prophet, then he cannot use this tradition as evidence in this case.1236 This report, therefore, he argues, is baseless either on the basis of the (lack of) integrity (‘adāla) of its transmitters, or on the basis of their (in)accuracy (dabṭ). In other words, the tradition, as it is, was either deliberately fabricated, or was transmitted by careless traditionists who inadvertently made changes to its content.1237

This is not to say that the report was abandoned. In fact, it was this report in particular

1234 On this, see al-Jaṣṣāṣ, al-Fuṣūl, vol. 1, pp. 389ff.
1237 Ibid., vol. 1, p. 400.
that al-Shāfi‘ī and later Ibn Ḥazm (against his school) relied on as a basis for their view on the requirement of five incidents of breast-feeding.

b. The Prophetic Traditions:

In this case, it was the various traditions that were attributed to the Prophet that clouded the picture, especially since every set of traditions that different scholars used was not without problems.

The first set of traditions (where the Prophet says that one or two incidents of breast-feeding do not suffice to make it effective) seems to have been accepted, in one or another of its versions, by many earlier and medieval scholars, although the fact that neither the majority of the Ahl al-Ra’y in Iraq nor the Ḥijāzīs accepted it (witness their view on this issue) suggests that there were some uncertainties surrounding it. Again, because of the limitations of the sources, speculation is inevitable here. It is possible that early scholars noticed that in the ‘Urwa version of the tradition (which was by far the most famous one from ‘Ā’isha), ‘Urwa transmitted the tradition from ‘Ā’isha at times, and directly from the Prophet (whom he never saw) at other times. He was also reported to have transmitted other reports from ‘Ā’isha in which she mentioned five, seven, and ten incidents of breast-feeding that were required to make it effective. All this must have cast some doubt not only on the attribution of the traditions to the Prophet, but also on the strength of the evidence it could furnish as to the number of incidents that make breast-feeding effective.  Furthermore, this and the similar traditions were problematic for both groups of scholars, those who held that any breast-feeding was effective, and

1238 For this, see, for instance, Ibn Ḥazm, al-Muḥallā, vol. 10, pp. 189-91.
1239 See, for instance, ibid., vol. 10, p. 201, where Ibn Ḥazm mentions this opinion to refute it.
those who argued that fewer than five incidents of it are not effective, although the latter
group must have been in a better position to reconcile the two sets of traditions (by
arguing, for instance, that the Prophet said that one or two incidents were not effective,
which we know for certain, but did not say that three or four were, which could be taken
to admit other possibilities).

In addition, the ‘Uqba tradition could also have been easily neutralized. Those
who had used the tradition must have made the argument that the Prophet did not ask
about the number of breast-feedings (which the slave women spoke about) because, they
would say, he did not think it was relevant. We saw in the first case that those traditions
whose context was not clearly identified could be easily dismissed. Just as we do not
know whether the Prophet’s skin touched his grand-daughter’s, as Ibn Ḥazm argues, we
also do not know whether or not the Prophet knew that ‘Uqba was not aware of what
constituted effective breast-feeding. In all circumstances, this tradition, probably for this
or similar reasons, did not seem to have been very popular in this subject. Al-Bukhārī, for
instance, mentions it only in the chapter on the testimonies of the nursing woman
(murdiʿa), and not in the chapter on the number of breast-feedings required to make it
effective, which suggests that he did not consider it relevant to our subject.

The remaining set of traditions, that of Sahla bint Suhayl and Sālim, and the other
traditions of ‘Āʾishah and Ḥafṣa (where they are reported to have had their nieces or sisters
breast-feed men), were used as evidence on two different issues. When no number of
breast-feedings was mentioned, they were primarily used in the chapter on the notion of
ridāʾ al-kabīr (adult breast-feeding). They were brought to the context of our question
only when they mentioned the number that was required by the Prophet and his wives to
establish the “desired” prohibitive relationship. In both cases, where the numbers are mentioned and where they are not, adult breast-feeding is an integral part of these traditions, which means that if a scholar rejects this notion, he cannot use these traditions, even when they give numbers, to substantiate his view on our subject. This notion of breast-feeding, however, has caused heated controversies in Islamic law, and was rejected by many scholars on the basis of its content.\(^{1240}\)

But this set of traditions could have been, and was, countered by the other Prophetic traditions, some of which were also narrated by ‘Ā’isha, in which the Prophet apparently says that effective breast-feeding is one that takes place before weaning and contributes to the growth of the body (which usually happens to infants but not to adults). Therefore, breast-feeding an adult is not valid and consequently does not establish any prohibitive relationship. This, it must be noted, is the context in which these traditions were mentioned very early. In his *Kitāb al-Āthār*, al-Shaybānī mentions that a husband went to Abū Mūsā al-Ash‘arī and told him that after his wife gave birth, their child died, and her breast was full of milk. To get rid of the milk, the wife asked her husband to suck and spit it out. The husband unintentionally swallowed some of the milk. Abū Mūsā told the husband that this made his wife unlawful for him. When he went to Ibn Mas‘ūd, however, Ibn Mas‘ūd told him that he was attending to her medical needs (*innamā kunta mudāwiyan*), and that “there is no breast-feeding after weaning; [effective] breast-feeding is that which contributes to the growth of flesh and bones.”\(^{1241}\)

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\(^{1240}\) These traditions still stir controversies today. Suffice it to mention that the Head of the Ḥadīth Unit in al-Azhar University in Egypt was fired from his position in 2007 because he argued that these traditions could provide a solution for the “prohibited *khalwa*” that many Egyptian men and women find themselves in for many reasons, especially in the workplace. An emergency meeting was called for and the Shaykh al-Azhar, the President of al-Azhar University, and other top officials in al-Azhar University agreed that what the Head of the Unit had said disqualifies him as a scholar who could chair a unit.

The notion of adult breast-feeding, therefore, was reportedly rejected by the majority of the Companions, such as ‘Umar ibn al-Khaṭṭāb, Ibn Mas‘ūd, ‘Alī ibn Abī Ṭālib, Abū Hurayra, Abū Mūsā, Ibn ‘Abbās, and Umm Salama, and by the Successors Sa‘īd ibn al-Musayyab, Sulaymān ibn Yasār, ‘Amr ibn Dīnār, ‘Aṭā’, and al-Sha‘bī. It is even reported that all the wives of the Prophet told ‘Ā’isha that the Ḥadīth of Sālim provided a special ruling for that particular case, and rejected allowing any men to enter to them through this method. Many reports mention that ‘Umar ibn al-Khaṭṭāb used to punish those women who would breast-feed other women to make them unlawful for their husbands. Just as the majority of the Iraqi and Hijāzī scholars rejected the ‘Ā’isha abrogation reports, so also they rejected her opinion on this matter. Al-Zuhrī is reported to have said that ‘Ā’isha continued to hold that breast-feeding after weaning was effective until she died, and it is not clear whether he wanted to say that she was the only one who held that view, or that she did not give up that unpopular view. In what could be taken as innuendo regarding the reports of her asking her niece to breast-feed men, al-Zuhrī also says that she mentioned five incidents of breast-feeding, in “what was reported to us, and God knows better” (fī-mā balaghanā, wa-‘llāhu a‘lam).

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1244 Ibid., vol. 7, pp. 369-70.
1246 Ibid., vol. 7, p. 367.
1247 Ibid., vol. 7, pp. 367-68. For a full discussion of how these Prophetic traditions were and could have been used as evidence in this subject, see al-Muṭī‘ī, al-Takmila al-Thāniya - al-Majmū‘, vol. 20, pp. 83ff.
c. The Non-Prophetic Reports:

There is nothing significant about the views attributed to the Companions and the following generations except that they were sharply divided between those who held that any breast-feeding was effective, and those who held that there must be a specific number of incidents of it (the minority). This last group was divided between those who held that there must be two or more such incidents (the minority), and those who held that there must be at least five such incidents to make the breast-feeding effective in establishing prohibitive relationships. Only a few scholars held the view that ten breast-feedings were required. The first view, of the unqualified breast-feeding, was the dominant view in the Ḥijāz and the most popular in Iraq. The other views were held by some scholars here and there in the different regions.

iv. The Three Scholars Compared:

How the three scholars dealt with the conflicting evidence and opinions of earlier authorities on this issue corroborates what was argued regarding them in previous chapters. It is safe to assume that even if we cannot be completely certain that they were dealing with exactly the same raw material, the three of them were probably dealing with evidence that could have suggested to them any of the possible conclusions on this issue, which makes this case also suitable for comparing them.

Abū Ḥanīfa probably started with the Qurʾān, which only had a general statement to make. Acting on the basis of his linguistic assumption that a term must be understood in an unrestricted manner unless it is restricted in meaning by a valid piece of evidence, he must have thought that the Qurʾān did not qualify the word ṭidāʾ. Since this word is a
general term that can possibly refer to a suckling of one drop of milk, it follows that any number of incidents of breast-feeding makes it effective in establishing foster relationships.

Qualifying this general term requires evidence that has the same epistemological value as the Qur’ān. But there were two main problems with the traditions that reached Abū Ḥanīfa from the Prophet. All these traditions were āhād traditions, i.e., they rested on shaky ground in his understanding. Furthermore, and probably more importantly, they are contradictory and problematic. Like the first case, this issue also falls within the category of ‘umūm al-balwā, where Abū Ḥanīfa would expect a clear ruling from the Prophet that is transmitted by tawātur. This was not the case, for even if many Companions held that one or two incidents of breast-feeding do not make it effective, others held that any breast-feeding is effective, not to mention the other views that require more than three incidents of breast-feeding to establish prohibition. This must have rendered all these traditions uncertain and therefore unusable for Abū Ḥanīfa’s purposes. This is in fact how the medieval Mālikī scholar Ibn Rushd accounts for Abū Ḥanīfa’s (and al-Thawrī’s and al-Awzā‘ī’s) view.1248

Abū Ḥanīfa, therefore, must have held that the evidence of the Qur’ān was the only relevant evidence, and without seeking to incorporate all reported views or consider extra-textual values of any sort, he simply argued that the Qur’ān mentioned ridā‘ without qualifying it, so any breast-feeding is effective.

Dāwūd would have come to the same conclusion had he held the same view of the epistemological value of the akhbār al-āhād. But since he thought that this category of

1248 Ibn Rushd argues that the reason why the three scholars came to this opinion was the contradiction between the ‘umūm of the Qur’ānic verse and the traditions, and between the traditions themselves (Ibn Rushd, Bidāyat al-Mujtahid, vol. 3, p. 315).
traditions had the same epistemological value as the Qur’ān, he was willing to qualify the relevant Qur’ānic verse on the basis of one tradition or another. The real problem that must have faced him is that he had to deal with contradictory reports from the Prophet. Since he proceeded on the assumption that only one of those traditions could be the source of the law on this issue, he was left with only two options: to show that all the traditions were sound but only one of them was the source of the law because the others were abrogated, or to argue that only one tradition was the source of the law because it was the only authentic tradition relevant to the question at hand. Our sources are not useful in indicating which route Dāwūd took, and what complicates the issue further is that Ibn Ḥazm himself differed with him and with all other Zāhirīs on this issue. He accepted the traditions, including ‘Ā’ishah’s abrogation report, that required five incidents of breast-feeding to make it effective. Ibn Ḥazm refutes the use of all other traditions either on the basis of the unreliability of the transmitters or on the basis of their relevance, and defends the ‘Ā’ishah abrogation tradition against all the views that rejected it. Rather than undermining our theory on how Dāwūd dealt with the evidence, Ibn Ḥazm’s disagreement with him demonstrates that the Ḥanafīs and Zāhirīs dealt similarly with the evidence. They considered only one textual source to be the source of the law and neutralized others, either by reconciliation, when possible, or by rejecting them as inauthentic or irrelevant. In either case, no factor, other than the certainty and authenticity of the evidence, is used to resolve the contradiction between the traditions or reconcile them.

1249 Ibn Ḥazm, al-Muḥallā, vol. 10, pp. 197-98. For how Ibn Ḥazm dealt with other reports that other scholars relied on to substantiate their views, see ibid., vol. 10, pp. 189-201.

1250 For this, see ibid., vol. 10, pp. 189-201.
Aḥmad ibn Ḥanbal was almost in Dāwūd’s position, but unlike Dāwūd, he was unwilling to give up any evidence and was also seeking to define a criterion or factor, mostly of a moral nature, that would be the basis of reconciling, in his view, the various traditions on this issue.

As in the first case, three opinions were attributed to Aḥmad ibn Ḥanbal, in the first of which he said that only one incident of breast-feeding was enough to establish foster relationship, while in the second he said three, and in the third five. Remarkably, the first source that mentions his opinion shows that he was hesitant about it. Al-Kawsaj mentions that when he asked him about the number of incidents of breast-feeding that establishes prohibition, Ibn Ḥanbal replied that one or two such incidents are not enough to establish that relation. This, in itself, evinces Ibn Ḥanbal’s desire to avoid giving a definite answer. When al-Kawsaj repeated the question, Ibn Ḥanbal said: “If somebody says five I would not blame him, but I have some hesitation, although I see it [this opinion] as more solid.”

Ibn Ḥanbal, who had no problem with the issue of the Qur’ān being “qualified” by a Prophetic tradition, seems to have liked to consider any number of incidents of breast-feeding sufficient to establish prohibitive relationship, not only as a precautionary measure, but also because it seemed closer to his perception of what morality was, the perception that we can understand from the cases that Spectorsky, for example, has discussed. It is indeed possible that this was the opinion that Ibn Ḥanbal held for some time in his life, and probably for this reason. Apparently, however, he had eventually to

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choose the many reports of ‘Ā’isha about the five breast-feedings, without, at the same time, trying to challenge the authenticity of the other reports from which it could be understood that any number of breast-feedings that exceed two is sufficient for the purpose of establishing prohibition. But it seems that he did not make this choice to accept one piece of evidence and abandon another arbitrarily. The fact that most later Ḥanbalī scholars insisted that the “growth of the flesh and strengthening of the bones” was the conditioning factor that distinguished between effective and ineffective breast-feeding suggests that this was probably the basis that he considered. In a sense, he used another Prophetic tradition, which relates to a wholly different context (the context of adult breast-feeding) to judge the contradictory evidence that he had on our issue. Remarkably, while Ibn Ḥanbal used this part of the riḍā‘ al-kabīr tradition, he, and probably on the same moral ground, rejected the notion of riḍā‘ al-kabīr itself. He must have used this same criterion to rule on the questions of drinking the milk of the nursing woman indirectly (through the throat (called wajūr), or through the nose (called saʿūṭ)), or eating the milk as cheese rather than drinking it, opinions that only this factor (of contributing to the growth of flesh and strengthening of the bones) can account for, and that also point to the moral aspect in his thought (as it could be argued that he probably held those views as a precautionary measure).

Be this as it may, the similarity between this criterion that Ibn Ḥanbal relied on in this case and the element of lust which he relied on in our case study is unmistakable.

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1254 For this, see Ibn Qudāma, al-Kāfī, vol. 3, p. 221.
1255 For the attribution of this opinion to Ibn Ḥanbal, see Ibn Qudāma, al-Mughnī, vol. 11, p. 314. For the view that this is the basis of the prohibition, see ibid., vol. 11, p. 315. Earlier than Ibn Qudāma, the Ḥanbalī scholar Abū Ja’far al-Hāshimī had argued that, contrary to Abū Ḥanifah, cheese made of a woman’s milk is a valid way of breast-feeding, for what is effective as a liquid (mā‘i’) is also effective as a hard substance (jāmid).
Both are not exact and can therefore be used to reconcile various pieces of evidence. Furthermore, the fact that he did not try to hide his hesitation about this issue indicates that certainty was not an element that Ibn Ḥanbal thought of seriously. Abū Ḥanīfa and Dāwūd (and Ibn Ḥazm), however, were absolutely certain about the soundness and bases of their views, even if they disagreed, and did not seek to rest or qualify those views on the basis of any factor similar to the one that Ibn Ḥanbal identified and used. The only factor that they considered was what they accepted as evidence, and they followed that without seeking to relate it to any other factor.

II. Short Case Studies:

A. The Status of Imra’at al-Mafqūd:

On the question of the marital status of a woman whose husband has disappeared, Abū Ḥanīfa and Dāwūd are reported to have held that she remains his wife until he reappears or his death is confirmed. Ibn Ḥazm cites various views of Companions on this issue, among which is ‘Umar ibn al-Khaṭṭāb’s view, also held by many other Companions and Successors, that the woman has to wait for four years and then start a waiting period of four months and ten days (according to Q. 2:34, which specifies this period for a widowed woman). After the waiting period, she is free to get married. ‘Umar’s view was held by Aḥmad ibn Ḥanbal, but he distinguished between a husband who disappears in war or at sea, and one who does not return home and nothing is known about what may have happened to him. ‘Umar’s view applies to the former case. In the

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1257 The verse reads: “And as for those of you who die and leave wives behind, they shall keep themselves in waiting (fa-ʿiddattuhum) for four months and ten days.”
latter case, the woman remains her husband’s wife until his whereabouts are known.\footnote{Ibn Ḥazm, \textit{al-Muhallā}, vol. 9, p. 323.} Ibn Ḥazm criticizes all views on this issue, arguing that they rely only on Companions’ opinions without any basis in the Qur’ān or the Sunna. In his view, a wife whose husband disappears remains his wife and no one has the authority to declare her otherwise.\footnote{Ibid., vol. 9, pp. 326-27.} Additionally, there is no waiting period for a woman whose husband has not died, and in the case under consideration, we do not know that her husband has actually died.\footnote{Ibid., vol. 9, p. 327.}

Abū Ḥanīfa and Dāwūd probably came to their conclusion on the basis of Ibn Ḥazm’s logic, for both accepted the notion of \textit{istiṣḥāb al-ḥāl}.\footnote{Ibn Qudāma mentions that those who held the view that the wife has to wait until she gets news about her husband relied on a Prophet tradition in which the Prophet says that the wife of a lost person remains his wife until she hears something about him (\textit{imra’atu ‘l-mafqūdi imra’atuḥu ḫattā ya’tiyahā ‘l-khabar}) (Ibn Qudāma, \textit{al-Mughnī}, vol. 11, p. 249). The authenticity of this tradition, he says, was not confirmed and it was not mentioned by the traditionists (\textit{ibid.}, vol. 11, p. 251).} Since it is certain that the woman was her husband’s wife, we need a valid reason to change her status.\footnote{Ibn Qudāma, \textit{al-Mughnī}, vol. 11, p. 250.} Both rejected ‘Umar’s view because it has no textual basis. Ibn Ḥanbal, however, accepted his view, but as expected, he does not apply it across the board. He had to deal with various views from the earlier generations of Muslims. At the same time, he wanted to find a solution that served the morality of the community. When a husband disappears in war or at sea, while there is a considerable chance that he may have perished for reasons that are outside his control, there is also a chance of his return. In both case, it is worth having his wife wait for him. Here he probably thinks of the husband and of what the community may expect of a wife whose husband disappears while fighting or working to provide for his family (if he is a fisherman, for instance). After four years and the expiration of the waiting period, however, his concern shifts to the fact that the

\footnote{This is the logic of some authorities who held this view, Ibn Qudāma points out (\textit{ibid.}, vol.11, p. 250).}
woman has remained effectively unmarried for a long period. Ibn Ḥanbal is reported to have held that marriage is obligatory (wājib) and that celibacy is not part of Islam.\(^{1264}\) But if a husband disappears mysteriously, his wife has to wait for him because there is always a chance of his return. Ibn Ḥanbal’s concern for the marriage bond here and for not letting a married woman marry another man overcomes his concern for her being unmarried. It is even reported that he expressed some hesitation about his view on the first case, when a husband disappears in war or at sea, preferring instead to keep his wife waiting until she dies or her husband appears or is confirmed dead. This is a more precautionary approach to the question, he is reported to have said, especially given that earlier authorities disagreed on it.\(^{1265}\) In both cases, Ibn Ḥanbal relies on Companions’ views, yet he cannot provide any evidence from the Qur’ān or the Sunna for either view.

**B. Ṭalāq al-Sakrān:**

On the question of the marital status of a woman whose husband divorces her while he is drunken, Abū Ḥanīfa is reported to have held that the divorce is valid,\(^ {1266}\) whereas Dāwūd held that it is invalid and the woman remains his wife.\(^ {1267}\) Three responses are attributed to Ahmad ibn Ḥanbal: she remains his wife, she is divorced, and a third response where he abstains from answering this question because the Companions disagreed on it.\(^ {1268}\) Ibn Qudāma mentions that those authorities who held that the divorce is valid relied on a Prophetic tradition according to which every divorce is valid except that of a madman.

\(^{1264}\) Laysat al-‘udhra fī amrī ‘l-islāmi fī shay’. For this, see Ibn Qudāma, *al-Mughni*, vol. 9, pp. 340-41.

\(^{1265}\) Ibid., vol. 11, p. 249.

\(^{1266}\) Ibid., vol. 10, p. 346.


Some of the Companions and Successors who held that the divorce is invalid relied on this tradition, arguing that by analogy, actions of any person who is not in his right mind are invalid. Ibn Ḥazm, who does not accept the authenticity of the tradition, accepts this view but not on the basis of the analogy. He refers to Q. 4:43 to demonstrate that a drunken person does not know what he says, for which reason uttering the divorce formula has no effect on his marriage.

Ibn Ḥanbal’s students adopted one or the other of the views attributed to him on this question. Ibn Ḥanbal’s hesitation is not unusual. He could have chosen to follow any of the Companions’ views on this issue or to rely on the ṭalāq al-‘āthār tradition to come to a conclusion similar to that of Abū Ḥanīfā. Apparently, he was choosing between what he saw as two equally bad outcomes. The first is the annulment of a marriage, and the second is letting a couple live together when they are no longer married. He does not seem to have thought of a possible formula that would allow him to say that it really depends on the situation and the parties involved. Be this as it may, his hesitation to decide this question reflects the tension between his desire to synthesize all available evidence (including views of the Companions), and his commitment to his moral worldview.

Abū Ḥanīfā relied on a text which mentions one condition that renders a divorce invalid. To remains faithful to his belief in ‘umūm, he considers this the only exception to the general rule that if a husband utters the divorce formula to his wife, their marriage is dissolved. It is remarkable that Abū Ḥanīfā did not use analogy in this case. He could

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1271 Wa-lā taqrahū ‘l-salāta wa-antum sukārā ḥattā ta’lamū mā taqūliūn ([O you who believe], do not approach prayer while you are drunken until you know [well] that which you say).
have relied on what other scholars regarded as the spirit of the law on this question by considering not being in one’s right mind, regardless of the cause, as sufficient reason to invalidate one’s utterances. Dāwūd may have relied on Q. 4:43 to prove that a drunken person is unaware of what he says, for which reason he cannot validly divorce his wife in this state.

C. Al-Luqaṭa:

The final case concerns a find, known as luqaṭa in Islamic law. There are numerous questions about finds: what counts as a find, who should declare it, how and where should it be declared, what happens after declaring it for one year, what happens if its owner appears after a year and his item has perished or been consumed, what happens if two people claim ownership of a find, etc.1273 Here we focus on the question of whether a person who finds something should take or leave it.

The Qur’ān does not speak about this issue, but there are seemingly contradictory Prophetic traditions on it. According to one tradition, when a person finds something, he has to declare it in public for one year, after which he is free to use it, but if its owner appears later, he has to return it to him.1274 According to another tradition, the Prophet told a person who asked him about a lost camel that he had no business with it, telling him to leave it until its owner finds it.1275 In a third tradition, the Prophet answers a

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1273 For a complete discussion of this issue, see Ibn Qudāma, al-Mughnī, vol. 8, pp. 290ff.
question about a lost sheep by instructing the questioner to take it, for if he does not, another person or a wolf will.\textsuperscript{1276} 

Abū Ḥanīfa is reported to have held that if a person finds something, he should take it,\textsuperscript{1277} or that he can take or leave it although taking it is better.\textsuperscript{1278} Ibn Ḥazm, relying on Prophetic traditions that indicate so, argues that it is obligatory to take a find and declare it for one year.\textsuperscript{1279} Ibn Qudāma attributes to Ibn Ḥanbal the view that if one finds something, it is better to leave it (\textit{al-afḍalu tarku 'l-iltiqāt}), a view that is attributed to Ibn ‘Abbās and Ibn ‘Umar.\textsuperscript{1280} In Ibn Qudāma’s view, Ibn Ḥanbal, who also expressed views on most of the questions concerning finds, held that view because of the risks involved in taking the find, risks that are evidently moral in nature. When a person takes a find, he risks “eating” or taking into his possession something that is not his and is therefore forbidden to him (\textit{ḥarām}). He may also be unable to declare it in the proper fashion. It is more precautionary (\textit{aslam}), therefore, to leave it.\textsuperscript{1281}

Dāwūd apparently came to his legal conclusion on the basis of some traditions that indicate that one should take a find. Abū Ḥanīfa probably did not consider any evidence on this issue valid, for which reason he held that it was up to the person, even if he would prefer that he take it. Dāwūd may have thought about this issue in the same way. For both scholars, if there is no textual evidence on an issue, or if the evidence is too contradictory to be reconciled, the original rule of permissibility applies. Since there

\begin{footnotesize}
\begin{enumerate}
\item Ibn Ḥazm, \textit{al-Muḥallā}, vol. 7, p. 115.
\item \textit{Ibid.}, vol. 7, pp. 110-13. Ibn Ḥazm does not mention that this was Dāwūd’s view, but the fact that he does not mention any disagreement among the Zāhīrīs on this issue indicates that this was the dominant view in the \textit{madhhab}. The view that one should take the find is attributed to Dāwūd by Muḥammad al-Shaṭṭī (Muḥammad al-Shaṭṭī, \textit{Majmū’}, pp. 23-24).
\item Ibn Qudāma, \textit{al-Mughnī}, vol. 8, p. 290.
\item \textit{Ibid.}, vol. 8, p. 291.
\end{enumerate}
\end{footnotesize}
is no evidence that indicates otherwise, taking a find is lawful. As for Ibn Ḥanbal, what is remarkable is how he expressed his view on this issue. To avoid contradicting some Prophetic traditions and Companions’ views (which indicate that one can take a find), he said that it is better not to take a find. He does not say that taking it is sinful, and he did express views on what happens when a person does take it. Ibn Qudāma’s explanation of Ibn Ḥanbal’s primary view on this question, however, is consistent with the contention made in this study that Ibn Ḥanbal was always grappling with the evidence, which, more often than not, is contradictory, and that his concern was for the morality rather than the legality of acts.

III. Conclusion:
The case studies discussed above reveal similarities between Ḥanafī and Zāhirī jurisprudence in terms of their assumptions and methodology. When dealing with a legal question, Ḥanafism and Dāwūdism typically accept one legal text (a Qur’ānic verse or a Prophetic tradition) as the primary source of evidence on the question, dealing similarly with the other problematic texts, which they usually reject as inauthentic or irrelevant. The presumption of ‘umūm helps them identify the zāhir meaning of the text they identify as primary. When formulating a certain ruling on the basis of this evidence, they consider it valid for all similar questions, regardless of the parties involved or any other personal or social considerations. Therefore, more often that not, they are able to say that something is either legal or illegal, but not that it depends on the situation. This is consistent with their concern for technicality and systematization of the law.
In contrast, Aḥmad ibn Ḥanbal apparently regarded morality as part of the religious law. For him, one thing can be *ḥalāl* in one situation but *ḥarām* in another. He therefore cannot answer a question like whether touching a woman invalidates a man’s ritual purity in definitive terms. In his view, this depends on a qualitative aspect of the touching involved, just as the number of effective breast-feedings is related less to the actual number of breast-feedings than to how much the milk that a baby suckles contributes to his growth. Yet Ibn Ḥanbal’s other main concern was to synthesize all the relevant legal evidence in each case, a job that was even harder for him than for other scholars given his consideration of evidence that others rejected (such as views of the Companions). The main tension in his jurisprudence, therefore, was his keenness to take all relevant evidence into account in a way that served his moral agenda. Striking a balance between these two concerns, or even prioritizing one over the other when reconciliation is difficult, requires flexibility in dealing with the available evidence. This need for flexibility may explain Ibn Ḥanbal’s apparent lack of interest in, or dislike of, holding to rigid rules, as well as his hesitation in accepting some of them.
General Conclusions

This study begins with several questions about the Zāhirī madhhab, and has made three main contributions to our knowledge and understanding of its history and doctrine. These questions include whether or not we can study Zāhirism without complete reliance on Ibn Ḥazm, what the term zāhir means, and why Zāhirism as a legal madhhab failed to survive. It raises the question of what we can learn about the founder of the madhhab – Dāwūd ibn ‘Alī ibn Khalaf al-Iṣbahānī al-Zāhirī – and how this may confirm or call into question what we generally hold regarding his scholarly status and juridical thinking. Chapter one surveys what we know about Dāwūd and subsequent Zāhirī scholars and provides the basis for the other chapters. Biographical evidence on Dāwūd suggests that his profile is closer to that of the Ahl al-Raʿy scholars of his time, an issue we take up in chapters two and three. It also shows that there has been no satisfying answer to the question why he was known as al-Zāhirī. The meaning of the term zāhir and how it may have been used in the 3rd/9th century is discussed in chapter three. Chapter four questions the received wisdom on the nature of Zāhirism, according to which Zāhirism is a literalist legal and hermeneutic philosophy. Finally, chapter five discusses five case studies that illustrate conclusions drawn about Dāwūd and Zāhirism in the first four chapters. The following conclusions summarize and expand on the findings of this study.

Zāhirism has been regarded as a failed school of law. This study challenges this mischaracterization of Zāhirism as a school of law and argues that it was only a madhhab if this term is defined loosely to refer to a set of doctrines that a particular scholar holds. However, if by madhhab we mean a full-fledged legal school – i.e., a set of doctrines (legal doctrine, in our case) attributed to a particular scholar, a hierarchical structure of
scholars and legal works, and institutionalized transmission of knowledge – then our survey of the legal history of the Zāhirī madhhab demonstrates that at no point in its history did it develop into anything similar to the Sunnī madhhab that have crystallized into the four existing schools of law. In fact, there is no evidence that Dāwūd’s immediate students thought that they belonged to a school of law, or that they sought to establish one.

There is evidence that Dāwūd was not an insignificant scholar. However, statements about his scholarly status cannot always be substantiated on the basis of the information given in the same sources that make them. While this may be a purely historiographical issue that has to do with what the authors of these sources – particularly the biographical dictionaries – elected to mention about Dāwūd, it is here assumed that they would have mentioned what they actually knew about him had there been anything particularly special about his personality or his views. There are lengthy accounts in these sources that seek to illustrate Dāwūd’s asceticism and piety. While this may or may not serve a particular or a significant purpose in a biography of a legal scholar, it suggests that if these authors had had other information about Dāwūd’s life, they would have reported it. Be this as it may, whether they knew things about Dāwūd that for some reason they did not mention, or did not know more than what they actually reported about him, is, in the final analysis, an idle question for us.

As for Dāwūd’s legal knowledge and scholarly interests, more often than not we have to rely on titles of works and views on uṣūl and furū’ attributed to him in medieval sources to determine the subjects to which he may have contributed. While these do not constitute conclusive evidence for his legal doctrine, the fact that medieval sources do not
attribute more than one view to him is very significant. Medieval sources report at times more than one view held by Zāhirī scholars, but they are always consistent in their attributions to Dāwūd. Views on the theory of law (uṣūl) that are attributed to Dāwūd are generally consistent with what al-Qādī al-Nuʿmān attributes to his son Muḥammad in his Ikhtilāf Uṣūl al-Madhāhib, which corroborates the attribution of these views to him. At the end of the day, given this level of consistency among medieval scholars in attributing certain views to Dāwūd, skepticism about the sources and their attributions seems unwarranted and unfruitful.

Besides what Dāwūd himself left behind, his immediate students and followers are reported to have had differing views on many issues, such that the prominent 4th/10th-century Zāhirī scholar ʿAbd Allāh ibn al-Mughallis compiled a work designed to refute the views of another Zāhirī. Consequently, regardless of how coherent Dāwūd’s views were, it is clear that he did not leave behind a unified group of students who shared similar views. In fact, he had a small number of students, and only two or three of them transmitted his legal knowledge. The most significant of these students was his own son Muḥammad, who was fairly young when his father died. Only through Muḥammad can we construct any meaningful chain of Zāhirī scholars. Muḥammad, however, had the same weakness as did his father in that he did not distinguish himself as a Hadīth scholar. It is probably for this reason, and also because he died relatively young, that Muḥammad had little success in spreading Dāwūd’s madhhab. The fact that Ibn al-Mughallis, who was one of Muḥammad students, is credited with spreading the madhhab among the Baghdadis in the first half of the 4th/10th century indicates that neither Dāwūd nor his son had much success in propagating their views in their lifetimes.
This situation continued until the 5th/11th century and the advent of Ibn Ḥazm, whose role and importance in the history of the Žāhirī madhhab goes far beyond being its best-documented scholar. Ibn Ḥazm provided Žāhirism with an extensive, well articulated and coherent literature on uṣūl and furūʿ al-fiqh that was probably unprecedented in the history of the madhhab, and which subsequent Žāhirīs evidently took great interest in preserving and transmitting. It was probably Ibn Ḥazm who shifted the focus of Žāhirism from the Qur’ān (which the few titles of Žāhirī works before his time suggest) to Ḥadīth, as indicated by the obvious interest of almost all subsequent Žāhirī scholars in Ḥadīth transmission. In fact, he believed that knowledge of Ḥadīth and the ability to distinguish authentic reports from fabricated ones are the fundamental part of a jurist’s work. He also played a role in developing Dāwūd’s image as the founder of Žāhirism. His evident keenness to connect himself to Dāwūd, his references to Dāwūd’s views to support his own against fellow Žāhirīs, and his agreement with him on almost all theoretical legal issues can be seen as securing Dāwūd’s position as the founder of the madhhab.

This was done in a very distinctive way. It has been noted that before Ibn Ḥazm, Dāwūd’s madhhab was generally known as al-madhhab al-Dāwūdī or al-Dāwūdiyya (Dāwūdism), and that a scholar who followed him was often referred to as al-Dāwūdī. After him, Dāwūd’s madhhab came to be known exclusively as al-madhhab al-Žāhirī, and his followers as the Ahl al-Žāhir, or the Žāhirīs. What is remarkable here is that while Dāwūd’s authority as the founder of the madhhab was being constructed, there was a simultaneous focus on his methodology rather than his personal authority. In other

1282 In his Risāla al-Bāhira (p. 21), Ibn Ḥazm argues that the jurists are the aṣḥāb al-Ḥadīth who are knowledgeable about authentic traditions and can distinguish them from weak ones similar to those used by the Ahl al-Ra’y.
words, rather than focusing on the person, Ibn Ḥazm, who apparently had some of Dāwūd’s books, focused on his methodology to demonstrate that Dāwūd was the founder of Zāhirism because he was the Zāhirī *par excellence*. In this respect, there was no process of authority construction similar to the one described by Wael Hallaq with regard to the surviving schools of law. In these cases, the process of authority construction led to the replacement of regional *madhhabs* with personal ones whose foundation a single scholar is credited, almost single-handedly, with having laid.\(^{1283}\)

Despite Ibn Ḥazm’s accomplishments and contributions, the number of Zāhirī scholars in subsequent generations remained quite limited in comparison with the number of scholars belonging to other schools. At the same time, other schools of law had become powerful enough – in terms of the number of scholars and lay people belonging to them and their association with caliphal and regional governments – to prevent new schools from emerging or weaker ones from growing. After Ibn Ḥazm, Zāhirī scholars were generally on the defensive. Many of them had to conceal their affiliation with Zāhirism, and others seem only to have admired the Zāhirī *madhab* such that Ibn Ḥajar was uncertain about their true affiliation. For these scholars, and for those Zāhirīs who worked as judges, Zāhirism remained a personal matter, and only one Zāhirī scholar (in the post-Ibn Ḥazm period) is reported to have given *fatwās* in public according to the doctrine of the Zāhirī *madhab*.

Admittedly, some Zāhirī scholars are reported to have engaged in defending Zāhirism. However, it was probably these same scholars who were also confronting the rulers of their times. We know that in one of these cases – that of Ibn al-Burhān –

\(^{1283}\) In Hallaq’s view, the process of constructing the authority of the four eponymous founders of the surviving Sunnī schools of law involved two simultaneous processes: demonstrating their originality vis-à-vis earlier scholars, and attributing later views to them. For this, see Hallaq, *Authority*, pp. 24ff.
confrontation arose from Ẓāhirī doctrines. This must have made affiliation with Ẓāhirism a risky matter. Even under the Almohad rule, which is commonly believed to have created an atmosphere conducive to the spread of Ẓāhirism, Ẓāhirī scholars do not appear to have fared better. Despite the fact that al-Manṣūr [r. 580/1184-594/1198] actively sought to promote Ẓāhirism, Camilla Adang has shown that there was no “significant increase in the absolute number of Ẓāhirīs in the Iberian peninsula and North Africa during the Almohad period, nor in the number of Ẓāhirīs employed in the judiciary.”

Almohad Caliphs, in her words, “continued to rely mainly on Mālikī, or at least non-Ẓāhirī, personnel, first of all because the pool of Ẓāhirīs from which judges, preachers, imāms etc. could be recruited, was apparently rather limited, and secondly because contrary to what has generally been assumed, the Almohad caliphs, with the exception of al-Manṣūr, did not adopt a policy of giving preferential treatment to Ẓāhirīs.” Be this as it may, neither the Almohads nor any other government would give preferential treatment to a madhhab that had only a few followers and a limited number of scholars who could fill judicial posts.

All this must have made it difficult for Ibn Ḥazm’s students and later Ẓāhirī generations to establish a real school of law. Although they now had a founder – be he Dāwūd or Ibn Ḥazm himself for some of them – and a substantial literature on uṣūl and furū’, there is no trace of any coordinated effort on their part to defend the madhhab and secure its survival. We do not hear of any specific venue in which Ẓāhirī scholars taught their madhhab, and the transmission of Ẓāhirī knowledge from teachers to students seems to have been done in private and only for interested students. We do not even find any

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1285 Ibid., p. 472.
1286 Ibid., p. 472.
commentaries or abridgements of Ibn Ḥazm’s works, which are often polemical in nature, that are intended to make them more suitable for educating new students. A situation like this cannot continue indefinitely. Unsurprisingly, references to Ţāhirī scholars in medieval sources steadily diminish. Our survey of Ţāhirī scholars until the 10th/16th century has shown that there is a sharp decrease in the number of Ţāhirī scholars after the 8th/14th century, with only a few scholars in the 9th/15th century, and one in the 10th/16th century. In the biographical dictionaries of the 11th/17th, 12th/18th, and 13/19th centuries, there do not seem to be any Ţāhirī scholars,1287 even in Egypt and Syria, where Ţāhirism existed in the 7th/13th and 8th/14th centuries.1288

1287 I could not find a single Ţāhirī scholar in al-Sakhawi’s Daw’ al-Lāmi’ li-Ahl al-Qarn al-Tāsi’, Najm al-Dīn al-Ghazzī’s Kawākib al-Sā’ira fī A’yān al-Mi’a al-‘Ashira, ‘Abd al-Qādir al-‘Ayyar al-Samann, said funeral prayers (ibid, vol. 3, pp. 192, 213-14. Ibn Ḥazm, al-Muḥallā, vol. 3, pp. 192, 213-14. Ibn Ḥazm reports that the distance between Mecca and Jedda, which is about 70 kilometers, is 40 miles (ibid., vol. 3, p. 196), which makes mīl the same distance as a mile), and the duration of travel is twenty days (ibid., vol. 3, p. 216). Within these days, a traveler has to shorten his prayers and can only fast voluntarily but not the obligatory fast of Ramaḍān (in other words, if he fasts, his fast does not count as the obligatory fasting and he has to make up for the missed days later when he is no longer traveling). Additionally, I could not find any reference that mentions that any Ţāhirī scholar held that ritual ablution is not needed for the funeral prayers (for Ibn Ḥazm’s views on the funeral prayers, see ibid., vol. 3, pp. 333-410). Ibn Ḥazm rejects clearly and categorically the idea that a woman can lead men in the prayers (ibid., vol. 3, pp. 135-37). Their most important view, and one that motivated the author to refute them in this book, was their proclamation that they were mujtahids exercising ijtihād mutlaq similarly to the founders of the legal schools, and their rejection of taqlīd and following the early imāms and the existing madhhabs (ibid., pp. 221, 348). These people were evidently actively seeking to convince
Ibn Ḥazm was then a real turning point in the history of Zāhirī madḥhab, and the picture of the madḥhab before and after him appears different. But the absence of any writings of Zāhirī scholars before Ibn Ḥazm, and Ibn Ḥazm’s apparent possession of some of Dāwūd’s writings and his keenness to distinguish Dāwūd’s views from views of other Zāhirī scholars, indicate that while we have no option but to rely on his writings for the study of Zāhirism, we can assume that they contain the views of the founder of the madḥhab as well as those of other Zāhirī scholars who lived prior to Ibn Ḥazm.

Yet the changing picture of the Zāhirī madḥhab before and after Ibn Ḥazm may indicate something deeper about his role in the history of the madḥhab. Ibn Ḥazm’s accomplishments probably contributed to the failure of Zāhirism in various ways. One of these ways was his unconditional conviction of the soundness of his methodology and rulings, and the massive literature that he produced. This is not a reinstatement of the view that Ibn Ḥazm’s uncompromising and offensive character, which brought on him...
the ire and hatred of scholars of his time and afterwards, was behind the failure of his madhhab. It is an argument about the effect of Ibn Ḥazm’s achievements in the development of Zāhirī madhhab and how this may be among the reasons for its ultimate demise.

Adam Sabra has recently argued that Ibn Ḥazm was against the madhhabs because he sought to “assert the individual responsibility of each Muslim to obey God’s law as it is clearly revealed in the sacred texts of Islam.” Whether Ibn Ḥazm regarded Zāhirism as a legal school or was consciously attempting to make it such is difficult to say, although it is worth noting that, to the best of my knowledge, he never speaks of al-madhhab al-Zāhirī (but rather of the Ahl or the Aṣḥāb al-Zāhirī).1290 Two things are certain, however. First, Ibn Ḥazm’s character and writings, if anything, only assert his own individuality and scholarly independence as jurist. He was intolerant of disagreement and always questioned the knowledge and integrity of scholars who disagreed with him. Presenting one’s legal findings as absolutely certain and not allowing a minimum degree of disagreement is, arguably, tantamount to claiming possession of an esoteric or divinely-inspired kind of knowledge. It is difficult to imagine how this attitude could lead to the assertion of each Muslim’s individual responsibility to discern and obey God’s law.

Second, the reception of Ibn Ḥazm’s legal heritage by later Zāhirī scholars was definitely going to establish Zāhirism as a legal school. Once a legal school is established, ʿijtihād is restricted and taqlīd sooner or later becomes the norm. This seems

1290 ‘Abd al-Raḥīm argues that Ibn Ḥazm and the Zāhirīs in general never regarded themselves as belonging to a certain madhhab, but rather as mujtahids who only had in common their commitment to a certain methodology (ʿAbd al-Raḥīm, al-Fikr al-Fiqhī, p. 545). A similar conclusion was reached by al-Ghaltazārī, who argues that Zāhirism is about ʿijtihād and rejection of taqlīd more than being a madhhab (al-Ghaltazārī, al-Madrasa al-Zāhirīyya, p. 338).
to have happened in the case of the Zāhirī madhhab. It has been noted that after Ibn Ḥazm, Zāhirī scholars took more interest in defending him than in defending Zāhirism or refuting other madhhabs. Ironically, although rejection of taqlīd seems to have been the hallmark of Zāhirism after Ibn Ḥazm (as evident in the fact that rejection of taqlīd was taken to indicate affiliation with Zāhirism),1291 this rejection seems to have been restricted to following the other madhhabs, not the madhhab to which Zāhirī scholars who rejected taqlīd belonged. We do not, of course, have positive evidence to support this point, but, to the best of my knowledge, no disagreements among Zāhirī scholars after Ibn Ḥazm are ever reported. The Almohads themselves are said to have tried to force Zāhirī views on the scholars of the time without enough preparation of their methodology of deducing legal rules from the authoritative texts.1292

Ibn Ḥazm’s accomplishments, in other words, froze Zāhirism.1293 If he managed to do without legal analogy and notions like istiḥsān and maṣlaḥa, he was able to do so because he was a true mujtahid who was able to produce what he took to be relevant and decisive textual evidence for many legal questions. His followers, however, were definitely less ingenious and more dependent on him than he on earlier Zāhirī scholars. It is unlikely, therefore, that they would have succeeded as jurists while remaining true to their madhhab. Arguing that there is an inherent inconsistency between the rejection of taqlīd and the notion of a school of law, de Bellefonds writes: “Du moment que chaque auteur Zāhirīte n’est pas lié par l’enseignement de ses prédécesseurs, it serait préférable de parler d’enseignement Zāhirīte ou de méthode Zāhirīte, et d’éviter l’expression

1291 In his Forward to ‘Abd al-Rahmān ibn ‘Aqīl’s Ibn Ḥazm khilāl Alī ‘Ām, p. 8, Ilhām ‘Abbās argues that “at its core, Zāhirism is a revolt against taqlīd.” ‘Abd al-Rahmān ibn ‘Aqīl is a Saudi Zāhirī scholar who is the most prominent among the new Zāhirīs.
1293 A similar conclusion was reached by Y. Linant de Bellefonds in “Ibn Ḥazm et le Zāhirisme juridique.”
The view that Ibn Ḥazm’s doctrine would rid Islam of “tout instrument d’adaptation et toute possiblité d’évolution,” therefore, seems accurate, even if only because later Zāhirī scholars “followed” him.

The failure of the Zāhirī madhhab may also be related to its own doctrine. It has been noted in the introduction to this study that although medieval Muslim jurists were tolerant of what they may have regarded as a “literal” reading of religious commands (which was how some of the Prophet’s Companions understood the Prophet’s command to not pray ‘aṣr except in the abode of the Banū Qurayṣa), this toleration was more of an admiration that did not materialize in their actually jurisprudence. The tension, which probably exists in all legal systems, between consistency and coherence on the one hand, and convenience and practicality on the other hand was settled in Islamic legal history in favor of the latter. Dāwūd believed that in cases that are under the purview of the law, there must exist only one relevant and decisive piece of evidence, which can determine the outcome with complete certainty, and because of which the soundness and validity of our legal views are also certain. Regardless of whether or not Dāwūd drew on the distinction that al-Jaṣṣāṣ presents between cases in which there is only one indicator (dalīl) and others in which conflicting indicators exist, it is not clear why he would seek to collect traditions that contradict each other and also contradict the Qur’ān. However, although Dāwūd was willing to argue that when there is no evidence in a certain case we

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1295 Cited in Sabra, “Ibn Ḥazm,” p. 9. Admittedly, Sabra does not reject Arnaldez’s view categorically, but rather seeks to qualify it by asserting that since Islamic law in Ibn Ḥazm’s view is “finite in scope,” what it covers in his understanding was much less than what it covers for other jurists. It has been noted, however, that Ibn Ḥazm does allow a degree of doubt in his jurisprudence. His certainty is conditional on the assumption that he had all the relevant evidence on a given case. What is beyond the scope of the law (i.e., what the sources do not seem to be tackling) according to the evidence available to him could easily come under its purview should additional textual evidence – a Prophetic tradition, for instance – be brought to his attention, which always remains a theoretical possibility.
1296 For this, see pp. 1-2 above.
can assume that it is not covered by the law, he probably drew on the traditions collected by the traditionists of his time, for which reason he was mistakenly thought to be their associate. Adopting the view that in every case there is only one relevant and sound piece of evidence and also the wealth of traditions that the traditionists gathered must have left a mark on Dāwūd’s juridical thinking, for he constantly and simultaneously had to argue for the relevance and authenticity of some pieces of evidence and the irrelevance and inauthenticity of others. This tension is very clear in Ibn Ḥazm’s writings, and it was noted that he did not abstain from rejecting many traditions and reports attributed to the Prophet, at times on the basis of their authenticity, and at other times on the basis of their relevance.

A juridical system with this inherent tension can only survive if scholars always have the freedom to assess the available evidence and select the one they deem relevant and sound in cases offered to them. Dāwūd and Ibn Ḥazm, and perhaps some scholars between them, were able to do this. The problem arose when social and cultural circumstances changed, and Zāhirī scholars whose mindset was shaped by different cultural mores had to deal with either new or old issues. In normal circumstances, even if a scholar openly rejects them as irrelevant to jurisprudence and the judicial process (as do Ibn Ḥazm and Justice Antonin Scalia), cultural mores and social conventions at least play a role in the selection and assessment of the legal evidence. Zāhirī scholars must always have found themselves in an insoluble dilemma. Rethinking any legal issue was a direct assault not only on the legal heritage of the madhhab, but also and primarily on its pivotal contention that in every legal issue there is one and only one valid piece of evidence.

1297 Eskridge, for example, argues that “it appears that norms are not absent from Scalia’s interpretation of statutes; he is merely influenced by different norms” (Eskridge, “Textualism,” p. 1553).
evidence which is necessarily identifiable. At the same time, following the legal views of any scholar, including Zāhirī scholars, is also detrimental to their belief in the absolute invalidity of taqlīd. Ibn Ḥazm, and perhaps earlier Zāhirī scholars, do not appear to have faced this dilemma. They disagreed with each other, and Ibn Ḥazm was able to disagree with them. However, Zāhirī scholars after him were choosing between being faithful to the beliefs and views of their school (which were basically Ibn Ḥazm’s beliefs and views at this point), and being able to practice independent thinking that may have taken social convenience into consideration even if they were not consciously operating on this ground. This dilemma must have made it difficult for the Zāhirī madhhab to survive.

The second contribution of this study concerns the relationship between Zāhirism and the two main legal trends of the 3rd/9th century. Against the predominant view that Dāwūd was affiliated with the Ahl al-Ḥadīth, this study has argued that the available biographical and doctrinal evidence about Dāwūd strongly suggests that he probably was closer to the Ahl al-Raʿy.

It has been noted that Dāwūd’s father was Ḥanafī. Dāwūd himself started his career as a Shāfīʿī scholar, and thus not particularly affiliated with either of the two legal trends, the Ahl al-Raʿy and the Ahl al-Ḥadīth. Among his teachers, Abū Thawr al-Kalbī, and possibly Abū ʿAlī al-Karābīṣī, were probably the two scholars who had the longest and strongest influence on him. These scholars were affiliated with the Ahl al-Raʿy, and al-Karābīṣī was an open enemy of the Ahl al-Ḥadīth. Furthermore, neither Dāwūd nor his immediate students were interested in Ḥadīth transmission, which was the main activity of the Ahl al-Ḥadīth scholars of his age. Nor did Dāwūd distinguish himself as a Ḥadīth transmitter or a Ḥadīth critic. Finally, there is evidence that Dāwūd was not on good
terms with ʿĀhmad ibn Ḥanbal and possibly with Ishāq ibn Rāhawayh, two scholars that the *Ahl al-Ḥadīth* held in high esteem. Therefore, it can be argued that Dāwūd belonged to a category of scholars other than the *Ahl al-Ḥadīth*. But to what extent is this consistent with what we know about his legal doctrine?

Chapter two examines how the term ʿẓāhir is used in two works from the 3rd/9th century deemed potentially useful for the purpose of determining why Dāwūd was labeled al-Ẓāhirī – al-Shāfīʿī’s *Risāla* and part of al-Ṭabarī’s Qur’ān commentary, *Jāmiʿ al-Bayān*. Despite some ambiguities and inconsistencies (which could indicate merely that ʿẓāhir was just beginning to be used as a technical term), al-Shāfīʿī’s and al-Ṭabarī’s uses of this term suggest that the word was employed in a specific context: the ʿumūm/khuṣūṣ dichotomy. Both scholars seem to be using ʿẓāhir to refer to *al-maʿnā al-ʿāmm*, the fullest possible extension or the broadest meaning that allows for the widest applicability of words and sentences. When the Qur’ān speaks about *al-nās*, for instance, *al-maʿnā al-ʿāmm* refers to all people rather than a specific group of people such as the Muslim believers or the Arabs, which is a *takhsīṣ* (restriction or limitation of the reference and applicability of words). *Takhsīṣ* requires a valid indicator in the view of the Zāhirīs and those scholars who hold the view that *al-maʿnā al-ʿāmm* should be the presumed indication of any word unless there is a valid indictor that suggests otherwise. Ibn Ḥazm, who, to the best of my knowledge, does not explain what the term ʿẓāhir actually means,1298 mentions clearly the relationship between ʿẓāhir and the generality or lack of restriction of terms and sentences. Remarkably, when describing Ibn Ḥazm’s legal methodology, Shams al-Dīn al-Dḥahabī points out that he relied on the ʿẓāhir *al-naṣṣ* and

1298 Al-Ghalbazūrī believes that because ʿẓāhir was the core of Ibn Ḥazm’s *madhhab* and was therefore clear in his mind, he did not need to define it in a precise way (*al-Ghalbazūrī, al-Madrasa al-Zāhirīyya*, p. 549).
the unrestricted terms and statements (‘umūmāt) of the Qur’ān and Ḥadīth, which may suggest that al-Dhahabī saw a connection between the zāhir al-naṣṣ and the ‘āmm/khāṣṣ dichotomy as suggested here.

What was Zāhirī about Dāwūd al-Zāhirī, then, was his unconditional belief that in the absence of indicator to the contrary, all words and sentences must be understood in an all-inclusive manner. The assumption that the unrestricted meaning is the intended meaning unless proven otherwise is one of the most important hermeneutic tools of the Ahl al-Ra’y scholars. Medieval sources attribute this view to Abū Ḥanīfa, the leading figure of the Ahl al-Ra’y. Dāwūd shared other theoretical legal views with Abū Ḥanīfa, such as the assumption that any imperative (amr) in the Qur’ān or Ḥadīth indicates absolute obligation (wujūb) rather than the mere recommendation or permissibility of doing something, and the assumption that any interdiction (nahy) indicates absolute prohibition rather than the mere recommendation that a certain act or belief be avoided. The two issues of ‘umūm and amr and what each of them indicates are probably the basic linguistic issues that the discipline of usūl al-fiqh deals with. More often than not, Muslim jurists disagree on how to construe a ‘āmm statement or a command.

While the term zāhir also appears in the context of commands and prohibitions in the 3rd/9th-century literature surveyed here, it appears much less frequently there than in the context of ‘umūm/khuṣūs. This may indicate that zāhir had more than one application depending on the text. However, our survey of al-Shāfi‘ī’s Risāla and al-Ṭabarî’s Jāmi‘ al-Bayān strongly indicates that its most common application was in the context of ‘umūm, the extension and scope of applicability of words and sentences. But the fact that the term zāhir appears in the context of these two issues may also indicate an underlying common

1299 Al-Dhahabī, Siyyar, vol. 18, p. 186.
element. This element is also the generality of unrestrictedness of commands, as well as the unconditionality and absoluteness of the indication of legal texts. That is, what is presumed to be the linguistic indication of a given expression, be it lafẓ ‘āmm or amr, is taken to be absolute. Just as any lafẓ ‘āmm is taken to refer to everything that could be included under it, any command establishes an unconditional religious obligation on all those who are addressed by divine law to do something in all circumstances, and any prohibition establishes a similar obligation to avoid doing something regardless of other factors. In both cases, challenging the unrestrictedness and unconditionality of statements requires an acceptable indicator.

Be this as it may, although Dāwūd shares this view with the Ahl al-Ra’y and with other scholars as well, what was distinctive about him was probably how his understanding of the meaning of ẓāhir led to the rejection of other tools of the Ahl al-Ra’y. I argue that there is an intimate relationship between the notion of ẓāhir and qiyās, and that Dāwūd’s understanding of the former led to his rejection of the latter. Qiyās essentially limits or restricts the scope of applicability of legal rules. In Dāwūd’s view, prohibiting something because of a resemblance to another thing that is prohibited infringes on God’s prerogative as the only legislator. This happens by widening the scope of prohibition and thus limiting the general rule that what is not prohibited by the law remains in the default state of legality and permissibility (al-ibāḥa al-ašliyya) according to the presumption of continuity (istișḥāb al-hāl). If religious law prohibits a certain beverage, for instance, declaring another beverage illegal because it shares a certain quality with the one that the law explicitly prohibits (a quality that scholars of qiyās identify as the cause of prohibition) is an assault on the presumed permissibility of all
drinks except that which is prohibited specifically and explicitly by the law. In the case of khamr, therefore, it was imperative for the Zāhirīs to argue that khamr is a generic term that refers to all intoxicating beverages. Had they accepted the view that khamr refers only to one kind of drink (grape-wine, for instance), there would be no ground on which they could argue that other intoxicating beverages were forbidden, for this would further limit the rule of original permissibility. The issue of ‘umūm thus came to play a central role in the juridical thinking of Dāwūd, and together with the belief in the notions of al-ibāha al-ašliyya and istiṣḥāb al-ḥāl, it represents the core of his doctrine.

Other than sharing these particular theoretical views with the Ahl al-Ra’y, Dāwūd also had their interest in producing consistent and coherent jurisprudence. This interest is evident in proceeding in legal issues on specific legal and linguistic assumptions and according to certain procedures of weighing the often contradictory evidence. On the other hand, the Ahl al-Ḥadīth were evidently not interested in proceeding according to such assumptions and rules. Instead, they had an obvious moral agenda, and the legality or illegality of a certain act was not their primary concern. Ibn Ḥanbal explains his rejection of a marriage between a man and a woman with whom the man’s father has had a sexual relationship without producing conclusive evidence for the illegality of this marriage from the Qur’ān and the Ḥadīth. In his view, this act was simply immoral, regardless of whether or not it was forbidden. It is probably because of this moral dimension that the Ahl al-Ḥadīth were not interested in adopting and employing rules, for serving their moral agenda required flexibility and freedom from the restriction of rules. The Ahl al-Ḥadīth wanted to be able to judge every case on its own merits to produce a

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1300 For this view, see Ibn Ḥazm, al-Muḥallā, vol. 6, pp. 176ff.
ruling that served their vision of the moral character of the Muslim individual and society.

The case studies discussed in chapter five demonstrate that in addition to producing rulings that reflected their moral character and worldview, the *Ahl al-Ḥadīth* also sought to synthesize all relevant legal evidence in a given case. In the case of how touching a woman affects the ritual purity of a Muslim man, for instance, Aḥmad ibn Ḥanbal argued that this depends on whether or not he feels sexual desire. Ibn Ḥanbal came to this conclusion on the basis of a number of Qur’ānic verses and Prophetic reports, none of which explicitly refers to the element of sexual desire. For him, there cannot be one answer to this question. It all depends on the context of each particular case. But whereas touching one’s mother or daughter may not involve sexual desire, touching a woman who is unrelated to a man may well involve it. On the other hand, the Ḥanafī insistence that no such touching ever affects the ritual purity of men regardless of any factors, and the Ṣāhirī view that all touching, regardless of anything, invalidates the ritual purity of men indicate that for these two groups of scholars, jurisprudence only dealt with verifiable factors, a basic requirement for consistency. Both groups assume that touching does not affect ritual purity without textual evidence, but the Ṣāhirīs accepted a Qur’ānic text that indicated otherwise, which the Ḥanafīs did not recognize as relevant. Whether their views contradicted any notion of morality (such as when a man touches a woman with lust and then prays without renewing his ritual purity), or caused unreasonable inconvenience or hardship (such as when one has to renew his ritual purity even if he touches his mother or daughter), was not a concern for either of them. What is important is to follow the evidence regardless of any considerations.
In the second case study, the Ḥanbalīs accounted for their choice of five sessions of breast-feeding to make a nursing woman a foster mother for the suckled baby by arguing that these five times ensure that the milk consumed contributes to the growth of flesh and strengthening of the bones of the baby. This explanation reveals their desire to identify and rely on notions that could serve their moral agenda. Accordingly, they are reported to have held that if cheese is made out of a woman’s milk and a baby happens to eat it five or more times, he becomes the woman’s foster son. However, they rejected the notion of adult breast-feeding despite reported traditions on this issue and also despite the fact that it can contribute to the growth of flesh and strengthening of bones. This clearly points to the moral dimension of their juridical thinking and the tension they sustained between following every piece of evidence in a single issue and remaining true to what they took to be moral requirements. Since this factor is not verifiable, however, it was of no use for either Abū Ḥanīfa or Dāwūd. The former relied on the ‘umūm of the word riḍā‘ in a Qur’anic verse to conclude that even one drop of milk is sufficient to establish prohibition of marriage between the nursing woman and the suckled baby. Dāwūd identified one tradition to be the only authentic one and thus the only valid evidence on this issue. According to this evidence, three incidents of breast-feeding are required to establish prohibition. Unlike the Ḥanbalīs, neither the Ḥanafīs nor the Žāhirīs seek to determine the rationale of what they take to be the correct view on this issue.

The centrality of the notions of ‘umūm, al-ibāha al-aṣliyya, and istišhāb al-hāl in Žāhirī and Ḥanafī jurisprudence are also confirmed by the short case studies. Abū Ḥanīfa

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1301 To show the relationship between morality and rules as I understand it, I would consider the possibility that Abū Ḥanīfa construed the Qur’anic evidence in this way on a moral ground only if he did not have a rule on the general term. But since he did have one, we can only assume that he simply followed his rule rather than having had other considerations in mind.
and Dāwūd insisted that the wife of a person who disappears remains his wife because we know that she was his wife when he disappeared but are not confident that he perished. A drunken person cannot divorce his wife in Abū Ḥanīfa’s view because he relied on one textual source according to which divorce in only one state – madness – is invalid. The ‘umūm of the validity of divorces and utterances, therefore, prevails in the case of drunkenness. Dāwūd held the same view either on the same basis, or on the basis of a Qur’anic verse that indicates that a drunken person is unaware of what he says. Finally, if someone finds something, there is no reason why he should not take it in Abū Ḥanīfa’s view. Dāwūd relied on another textual source – a Prophetic tradition in which the Prophet commands a person to take what he finds – to come the conclusion that one has to take lost items that one finds and deal with them in the way described by the Prophet (i.e., advertise their discovery for a year).

On these three issues, Aḥmad ibn Ḥanbal was also hesitant, not only because he had to deal with more evidence, but also because he sought to find solutions that served his moral worldview. While he was concerned not to let a wife marry another man if her husband disappears, he was equally concerned for letting her wait unmarried for so long. Therefore, he decided that if her husband disappears in a context that suggests his death – such as in war or at sea – she should wait for four years and then begin a waiting period of four months and ten days, after which she is free to remarry. Not only does this incorporate views of the Companions on this issue, but it also take into consideration the moral issues involved. When a drunken person divorces his wife, Ibn Ḥanbal struggled between the prospect of letting him live with her while they may not be married anymore, or separating them while they may still be married. His hesitation to decide on this issue
reflects his inability to synthesize the available evidence in a way that solves this moral
dilemma. Finally, notwithstanding the Prophetic traditions that indicate that one should
take a lost item one finds, Ibn Ḥanbal’s scruples and fear that he may not deal with it in
the required way led him to say that it is better, or safer, to not take it in the first place.

I have noted earlier the historiographical issue of the attribution of theoretical and
substantive legal views to Abū Ḥanīfa, Aḥmad ibn Ḥanbal, and Dāwūd al-Ẓāhirī. Here it
must be stressed that I do not advance any contention that the three scholars were
consistent in all their legal views. Proving the consistency of the views of any legal
scholar, I believe, is difficult; proving it for scholars who were contributing to the
formation and shaping of a certain legal philosophy and system is even more so. This
does not necessarily mean that we cannot or should not make general observations about
these scholars or their juridical thought. In fact, the lack of a reasonable degree of
consistency and coherence can suggest either false attribution or outright fabrication, and
a reasonable degree of inconsistency may indicate authenticity. In all circumstances, we
should be able to assume that there existed some general and perhaps rudimentary
guidelines that governed the legal thought of these scholars. To say this is one thing, and
to assume full or nearly full consistency is quite another.

In relating the substantive views of these three scholars to the theoretical views
attributed to them, I only assumed that if these theoretical views can explain the
substantive ones, these latter should also confirm the former. This should allow us to
question some the attribution of some views to these scholars on account of their being in
sharp contradiction to our understanding of their overall legal thought. Admittedly, this is
a tricky endeavor that can easily slide us into circularity and contradiction when we take
inconsistency to say something about the authenticity of some views and reject others as being inconsistent with the overall legal thought of a scholar. To my mind, there is no magic formula to solve this dilemma. We always have to make informed and reasonable guesses when we decide what to accept and what to reject. I have therefore sought to analyze the positive legal views attributed to these three scholars on the basis of what is generally known about their juridical thought among their followers. How historically true this might be is an issue that I have not sought to take up in depth, if indeed it is at all possible.

The third contribution of this study is challenging the commonly-held view that Zāhirism was a literalist approach. Chapter four has demonstrated that there are two fundamental problems with this understanding of Zāhirism. First, this characterization of Zāhirism does not take into account the fact that literalism is a controversial term in the fields of linguistics and the philosophy of language. Second and most importantly, Zāhirism is not literalist, but rather contextualist, and as such it resembles textualism, an American legal philosophy that shares with Zāhirism its most fundamental premises, its methodology, and its objectives.

Zāhirism and textualism insist on the absolute supremacy of the legal texts and dismiss, at least in theory, all non-textual evidence. Both share views on the division of labor between the lawgiver and the legal interpreter – the former (God for the Zāhirīs and Congress for the American textualists) makes the law and formulates it in a certain and deliberate way, whereas the job of the latter (be he a judge or a jurist) is to identify the relevant textual evidence for a given case and apply it faithfully regardless of the outcome. In both philosophies, the only intent of the lawmaker that matters is applying
the law as it is, not serving what the judge believes to be the objectives of the law or the interests it seeks to protect. Obviously, both philosophies seek to rid the interpretation and application of the law of the subjective views and prejudices of the judge. For this reason, proceeding in the legal process on the basis of specific assumptions and according to specific rules is essential, for abiding by rules is the guarantee that a willful judge will not be able to interpret the law according to his own liking.

However, while both textualism and Żāhirism share with literalism assumptions about the language and the ability of people to engage in meaningful communication, they differ from it in one crucial aspect that is generally regarded by philosophers of language to be the defining feature of literalism. Unlike literalism, which assumes that any text can and should be interpreted in “zero-context,” or independently of any context, Żāhirism and textualism take the historical and textual contexts into account when interpreting a text. When interpreting a constitutional article, for example, a textualist appeals to the historical context in which that constitution was written and to other articles in the constitution to figure out the intended meaning of the article at hand. A literalist, on the other hand, would focus only on what this particular article says, disregarding the social and historical contexts in which it was written, or where it falls within the framework of the constitution at large. The two case studies of Antonin Scalia and Ibn Ḥazm’s interpretation of some Qur’ānic verses that we have discussed demonstrate that neither jurist interprets legal texts according to the modern theory of formal semantics. Their reliance on the historical and textual contexts to identify the meaning intended by the lawgiver, and their drawing conclusions on the basis of linguistic assumptions that a strict literalist would not condone, indicate that their
hermeneutics can only be understood through pragmatics, the contextualist theory that is antithetical to literalist theory of formal semantics.

It has been noted earlier that the inherent tension in Zahirī doctrine between the necessity for constant assessment of the evidence and the requirements of membership in a legal madhab after Ibn Ḥazm may have contributed to the failure of the Zahirī madhab. It is this particular aspect of the Zahirī doctrine that may have contributed to its demise, and not its assumed restrictiveness and rigidity, hostility to human reason, and failure to incorporate rationalism or meet it half-way as some scholars have suggested.\footnote{For this, see section I in chapter two above.}

A relevant aspect of the pragmatic interpretation, according to Recanati, is its inconclusiveness, or ‘defeasibility.’ According to this, “[t]he best explanation we can offer for an action given the availability of evidence may be revised in the light of new evidence. . . . It follows that any piece of evidence may turn out to be relevant for the interpretation of an action. In other words, there is no limit to the amount of contextual information that can affect pragmatic interpretation.”

It would perhaps be assumed that Ibn Ḥazm would not be happy with this aspect of pragmatism. However, we have already seen how he appeals to contextual information or lack thereof to argue for or explain away the relevance of some textual evidence. He also acknowledges the possibility of changing some of his conclusions, even if he claims to be limiting this to cases that have contradictory verses and/or traditions, or to cases where there are traditions whose authenticity is not certain but may become so.\footnote{Ibn Ḥazm, Iḥkām, vol. 1, p. 21.} In such cases, we hold only that our conclusions are sound to the best of our knowledge, but
we cannot pretend to say that we know them for certain.\footnote{Ibid., vol. 1, p. 67; vol. 2, p. 657.} He is even willing to give the benefit of the doubt to those scholars who abandon the \textit{ẓāhir} of a text through an interpretation that they think is sound.\footnote{Ibid., vol. 2, p. 829.} Although he may have regarded this as a theoretical possibility that is unlikely to materialize, Ibn Ḥazm’s acknowledgment of the possibility of new textual evidence coming to the light, which can easily put the very methodology or any \textit{Ẓāhirī} view on \textit{uṣūl} and \textit{furū‘} at risk, is significant in that it shows that \textit{Ẓāhirism}, as Ibn Ḥazm practiced it, had the potential of considering new evidence and reassessing old evidence, not only in view of new emerging evidence, but also in light of contextual information about existing evidence. If the context is allowed a role in the process of interpretation, possibilities for new interpretation remain open. Taking the context into consideration was one practice that allowed Ibn Ḥazm to disagree with earlier scholars and assert his own independence.

This also points to Ibn Ḥazm’s damaging effect on the \textit{Ẓāhirī} madhhab. If \textit{Ẓāhirism} had the potential to renew itself, this was only possible when \textit{Ẓāhirī} scholars made use of that potential. After Ibn Ḥazm, this does not seem to have been the case. Whether this was due to his absolute belief in the soundness of his understanding of the evidence and of his legal views, or was because subsequent \textit{Ẓāhirī} scholars deferred to his authority and failed to follow his example by disagreeing with earlier \textit{Ẓāhirīs} including himself, does not change the fact that \textit{Ẓāhirism} after Ibn Ḥazm became rigid and stagnant. However, this rigidity is not inherent in the doctrine itself. Ibn Ḥazm’s \textit{Ẓāhirism} was anything but rigid in its reading of the authoritative texts or assessment of the evidence. The rigidity resulted from forsaking the methodology and freezing the
madhhab after Ibn Ḥazm. The Zāhirism that is rigid, therefore, is that of Zāhirī scholars after Ibn Ḥazm. Prior to Ibn Ḥazm, Zāhirī scholars disagreed, and Ibn Ḥazm was able to disagree with them, opening up new possibilities for the madhhab by challenging some pieces of textual evidence on the basis of their authenticity or relevance (which his contextualist theory made possible) and introducing new ones.

Finally, the following observations on Zāhirism and textualism are in order. By emphasizing the historical context to determine the meaning of words, these two legal philosophies make an unwarranted assumption: they assume that all people who lived in a certain historical period – like the 7th-century Arabs for the Zāhirīs and the late 18th-century Americans for the textualists – used language in exactly the same way. While this assumption is hard to prove in either case, it is harder to prove in the case of the Zāhirīs due to the lack of dictionaries that register the meanings of words as the Arabs used them in the 7th century.1306 Using the evidence pre-Islamic poetry is problematic. For one thing, using such evidence to determine the meaning of words requires considering every single instance in which a given word was used and its linguistic context in order to determine its meaning. The Zāhirīs and the textualists, to my knowledge, do not claim to be doing this. This does not necessarily doom their methodology, but it calls into questions their claim to stand on the solid ground of certainty (stated by Ibn Ḥazm and strongly evident in Scalia’s arguments), for there always remains a chance that their understanding of a certain word is different from the intended meaning. Secondly, knowledge of the indication and denotation of single words does not suffice in the process of understanding and interpretation. Knowledge of how the Arabs would understand a complete sentence

\[\text{1306 American originalists use dictionaries that show how words were used when a certain text they examine was written (Nelson, “Originalism,” p. 519). For the kinds of evidence that American Originalists and textualists use, see Eskridge, “Textualism,” p. 1532.}\]
on the basis of its syntax and structure is equally important. Ibn Ḥazm evidently assumes that the Arabs used rules of grammar and syntax consistently, an assumption that is impossible to prove historically. This also makes room for uncertainty in the Ţāhirī scheme. Finally, Ţāhirī and textualist scholars assume that the way they read the historical evidence they use to determine the meaning of words is sound. This practically leads to circularity, for if there were a way to determine the correct meaning of pre-Islamic poetry, for instance, directly determining the correct meaning of the religious texts themselves should not be problematic. On this point, Ţāhirism and textualism have the disadvantage of not being literalist.
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