

FADEL: Well, let me explain how I proceeded. I have a CD of *al-Kutub al-tis'ah*. I did a root search under *r-h-n*. There were essentially two *ḥadīths* that came up, not counting a third one that was clearly not germane. One of the two related that the Prophet had died and his armor was pledged to a Jew that he had given it to in exchange for food that he bought on credit. That's pure *sunnah taqrīriyah*. It doesn't have anything to say about the issue of *ikhtisās*. In the second one, the Prophet says *al-rahn markūb wa'l-mahlūb* or something like that. There's just not much there, which is not surprising to me. Medina was not a very complex economy. I don't think it was a problem for Mālik either. He just said, this is what we're going to do. He says specifically in the *Muwatta'* when dealing with the question of *nīmāh*, well, people will pledge the trees but not the fruit. But you never see anyone pledging an animal fetus in the stomach of his mother. That's his argument for separating between fruit and the offspring of livestock. But that's just an appeal to practical reasoning.

ZYSOW: You could tease more out of it—with force.

MATTSON: Isn't that the point? Why force? The people who are trying to force are missing the point that they shouldn't have to force things.

ZYSOW: Let me just say that your notion of practical reasoning is interesting because it's responsible. However, there are notions of authority here that are unlikely to produce a legal system since everybody's reasoning would be practically equal to everyone else's. It's not just an Islamic problem. Some years ago I did some work on a rule of American commercial law. I traced it back—so I think, though I didn't publish the work—to a Prussian code, written in a natural law environment. Despite this natural law setting, the rule imposed an arbitrarily drawn period of time on a certain right. The authors of the code really had no choice; if they were going to make these rules they had to specify some sort of fixed period of time. In Islam specification of such periods in theory belongs only to the Prophet. We have this rule in some of the *madhhabs* that states that if a companion of the Prophet would pour at some particular point in time or measure this practice must go back to prophetic revelation. In American law the classic case would be the issue of abortion and the trimester. How does the Supreme Court according to our legal theory have the right to figure out when a fetus is a fetus. That's not what it's supposed to be doing. But there was a vacuum that had to be filled in that period, and so the justices started doing all this line drawing. And it's not surprising that it's being done. But I think that the notion that it can be done by the whole society seems unrealistic.

FADEL: I agree, but that's a practical problem. It's not an ontological problem. I guess that's the way I would respond.

BROCKOPP: I think the disconnect between what *uṣūl* demands and what *furū'* actually offers is important. It seems to me that the point is quite right that *uṣūl* is the development of theory for its own sake. So also is the point about elitism. But I'm still not convinced that the fact that you don't find *dalīl* makes a difference, because if you look at those chapters that have plenty of *adillah*, you're going to find all kinds of disputes there.

Just because you can quote a Qur'ānic verse and invoke it in a certain place doesn't mean that you don't in fact have practical reasoning going on at the point of making the actual decision. So in other words what are the specific criteria that we are going to use in trying to determine whether or not a particular book of *furū'* is or is not following ideals of *uṣūl*. Just one quick example. Mālik says with respect to the divine command *fa-kātibūhum* in Qur'ān 24:33: this is not something that God requires but it is something he recommends. Clearly, the determination that the imperative recommends rather than requires is based on practical reasoning which takes into account the fact that you can't possibly give the *kitābah* to everyone.

FADEL: I agree completely. That for me is the nutshell. It's like the story of the Wizard of Oz. When in the end they pull the curtain, there's nothing there.

BROCKOPP: But what do we make of it? What conclusions do we draw from it?

ZYSOW: That there's nothing there.

WEISS: You mean, I take it, that revelatory determinants of rules, though thought to be there, turn out in the end not to be there. But are we then to say that what *is* there is practical reasoning? Remember that in the story what turned out *not* to be there was what they thought *was* there; instead, something quite different was actually there—a rather ordinary man, not the wizard. Sherman's paper suggests that what he finds to be there when the curtain is pulled back is something rather different from what Mohammad finds. For Mohammad the real determinant of the law is practical reason. For Sherman it is the presuppositions and preconceived notions of those who declare the law. *Uṣūl al-fiqh* does, however, for Sherman have an important function: it retrospectively validates the law. What it does not do, for both Sherman and Mohammad, is determine or create the law.

HALLAQ: I agree with Sherman completely concerning the validating function of *uṣūl al-fiqh*. I don't have a doubt in my mind about it. I agree with him also that *uṣūl al-fiqh* does not really function as a source for deriving rules directly from revelation as totally new creations, because as Aron said earlier, and I think most of us would agree, the laws were there, or most of them anyway, before *uṣūl al-fiqh* appeared on the scene. But *uṣūl al-fiqh* does have a function that goes beyond mere validation, and that's where I disagree with Sherman. It has the function of pinning down positively the rulings. Let me give an example from an article I published a few years ago, a case of murder in Cordova. In deliberating on this case, Ibn Rushd took a stand single-handedly against a certain positive legal ruling related to homicide that happened at the time to be the unrivaled opinion in the Mālikī school and was based on *istihsān*. He challenged it on the basis of *qiyās*, producing a large argument that proceeded step by step to the point of final ruling. As I demonstrated in the article, Ibn Rushd's argument from beginning to end is in complete consonance with *uṣūl al-fiqh*. Now here is definitely a case where

*uṣūl al-fiqh* was conducive to the creation of a legal norm. It did not merely validate in this case; it created.

JACKSON: Are you saying that he approached *uṣūl al-fiqh* with zero presuppositions?

HALLAQ: No, no. I am sure that Ibn Rushd, in deliberating over the homicide case in question, had personal feelings about the matter, that he cared about the victim's children, that he hated murder as a social ill and wanted to fight it. We don't need to debate this. The point is that he used the methodology of *uṣūl al-fiqh* to create a law. I agree with you that *uṣūl al-fiqh* does not function in isolation from certain psychological and sociological conditions. However, it is still can be said that *uṣūl al-fiqh* anticipates and prescribes future law as much as it validates past law. Its function is not limited to validation.

JACKSON: Wael, I have to differ with you on the latter part of your statement. I think that instead of saying that *uṣūl al-fiqh* comes along and dictates to subsequent generations what the law will be all we can really say is that *uṣūl al-fiqh* dictates the parameters within which we'll have to work in order to justify whatever conclusions they want to come to. For *uṣūl al-fiqh* to dictate the law itself, you would have to have, in addition to *uṣūl al-fiqh*, a user's manual. For example, when do we stop looking for *qarā'in*? Where do we look? *Uṣūl al-fiqh* has nothing on that. All such matters are determined on the basis of presuppositions, and preconceived agendas.

HALLAQ: You are saying that procedures relating to *qarā'in* are not prescribed in *uṣūl al-fiqh*. That's right, but still their functioning is acknowledged in *uṣūl al-fiqh*, as is the functioning of *istihsān*, *maṣāliḥ mursalah*, and *munāsabah*. All these things are part of the methodology of *uṣūl al-fiqh*, and the jurists allow a certain leeway for their functioning. Actually, I think we are disagreeing on something we agree about.

ZYSOW: I think I can clarify the debate a little bit. In Shī'ī law there is the notion of *qarīḥah*, an intangible something that makes someone a *mujtahid*, something inexplicable that accounts for his genius. In later *uṣūl al-fiqh* the *qarīḥah* becomes something one attains as a result of training in the discipline. In other words, this formal field of study exists to teach people more than they know from their aptitude naturally. So the training in *uṣūl* enables one to develop a *qarīḥah*, which is in essence an extraordinary ability to know the law possessed only by certain people.

JACKSON: But how do we know when we've arrived at this *qarīḥah*?

ZYSOW: Well, that's another question. But it's as palpable as the presuppositions you've been talking about.

STEWART: What I hear Wael talking about is in essence the possibility of revision. Your theory can allow for the possibility that someone will revise the earlier rulings on the basis of the theory that is there, and in that way the theory is justifying the rules. Now it seems that when you're using "validating" you're using it in a more general sense. What I hear you saying is that everything is after the fact, that all the rulings are there, and then the theory comes in; the theory is never used to come

up with the correct answer, whereas when you revise something you're going to be using the theory to come up with—.

JACKSON: I think that what I'm saying, if I may be permitted to say so, is a bit more subtle than that. What I'm saying is unless we, as part of the human condition, can completely do away with the phenomenon of presupposition, then to talk about *uṣūl al-fiqh* as being determinative independently of anything is nonsense.

REINHART: Let me say a couple of things. The first is that although your points are well taken and persuasively made I think you do need to recognize that there is some space in *uṣūl al-fiqh* for the kinds of things you're talking about—for the recognition of the indeterminacy and to some extent unpredictability of language. Even discussions of *majāz* that we find in the literature, it seems to me, make it clear that the *uṣūlīs* did not see language in the way logical positivists do, that is, as functioning in the manner of recipes or of straightforward "cat is on the mat" statements. They recognized the richness and the elusiveness of language. The other thing I want to say is that while your study certainly moves us forward in our thinking about *uṣūl* it doesn't consider as fully as it might the notion that *uṣūl* does, if not determine the result, at least constrain the possibilities. And that constraint is itself a helpful feature. I did a paper a few years ago for AOS on the *madhhab*, on what the *madhhab* is about; and it occurred to me as I worked on this paper that the arguments supporting the *madhhab* had to do largely with fear of *wahm* (erroneous surmise). So this discipline does create a community of discourse among a remarkably diverse group of people, such as Indians, Maghribīs and so on. And I think the reason it succeeds is that it recognizes that there is a space there, a flexibility, that makes *uṣūl* less rigid than you are describing it as being.

JACKSON: I'm not sure I understand where I describe *uṣūl al-fiqh* as being rigid. My argument was not whether or not *uṣūl al-fiqh* was rigid. It was to question a claim about the very function of *uṣūl al-fiqh*. And I thought I was very careful in establishing that *uṣūl al-fiqh* does play a very important role and that meaning that's acceptable as *shar'ī*-validated meaning can only be achieved through *uṣūl al-fiqh*.

REINHART: But my understanding was that in your critique of the formalism of later *uṣūl* you were arguing that this formalism did not recognize variant communities and circumstances and interests and so on and that as such it prevented by its very nature diversity of interpretation, which you wanted to recognize.

STEWART: I think he's saying, not that *uṣūl al-fiqh* does not admit possible diversity but that it does not admit its own presuppositions, which is completely different.

JACKSON: Right. The point is there's a difference between operating under a fiction that we know is a fiction and maintain as a fiction because we need it and actually believing the fiction, treating it as a reality. An example is the fiction of equality in America. If we believe it to be a reality instead of maintaining it as a useful fiction, that limits the possibilities instead of increasing them.

GLEAVE: I have sensed in our discussions three models of how *uṣūl* relates to *furūʿ*. There is the determinative one, that the methods laid down in *uṣūl* can effect particular legal rulings. Then there's the validatory one, which is that legal rulings exist and then *uṣūl* comes along and justifies them. And then there was one that was joy to my ears, something Joe alluded to a while ago, which was that the medieval writers on *uṣūl al-fiqh* were drawn to this science by its beauty and esthetic appeal as an abstract system. They explored it as a joy, as an intellectual achievement of great beauty, as a demonstration of their intellectual prowess. I think we see all three trends in *uṣūl* throughout the ages. And different writers use their *uṣūl* in completely different ways. If I'm not mistaken—and I defer to Aron on this point—the Ḥanafī tradition is much less concerned with the determinative function of *uṣūl* than writers in other schools tend to be. For Ḥanafīs the validatory function is the important one. Now I think the job of those who work on *uṣūl al-fiqh* is to ascertain at what points in time and among which authors these three models—including the nuances that are within them—are in effect and why. What is there about certain parts of *uṣūl* theory as opposed to other parts that make them particularly useful in *furūʿ*, or not so useful. To speak in generalities about *uṣūl al-fiqh*, as we seem to be doing, and to construct a single overarching paradigm for it is, it seems to me, to overlook the fact that the influence of *uṣūl* on *furūʿ* and the influence of *furūʿ* on *uṣūl* varies so enormously across the centuries as to make the construction of a single paradigm quite tenuous. I just proposed three, and there may be others that one could come up with. I think it's a blind alley at the moment, because I don't think you will find a paradigm that will explain the majority of thinkers; I don't think you will find one that will apply to fifty percent of major *uṣūl* writers. I think that all you'll find agreement on is that *uṣūl* has some relationship with *furūʿ*. But you may find also that there are elements of intellectual showing off.

JACKSON: I would never deny that in toto. In some works—Qarāfī, Fakhr al-Dīn al-Rāzī—you find some arguments that are clearly irrelevant and are there to show off intellectual powers. But to regard that as one of the major functions of *uṣūl al-fiqh*—that I don't buy. In the context of writing an *uṣūl* work I might want to show how smart I am but that is not the function of *uṣūl al-fiqh*, as I understand it.

LOWRY: I have several comments for you, Sherman. The first has to do with your reading of the *Risālah*. I'm not sure there's an essential connection between the hermeneutic technique of *'amm* and *khāṣṣ* and Shāfi'ī's theory of the Arabicness of the Qur'ān. I think Shāfi'ī is ambiguous on the question of whether *'amm/khāṣṣ* is an intrinsic feature of language that is only understandable to people conversant with Arabic, or a tool of interpretation. Remember that Shāfi'ī has other hermeneutic techniques, so what does it mean if only *'amm/khāṣṣ* belongs to the domain of language. Let's assume that Shāfi'ī does think that it is primarily a feature of language and not a tool of interpretation. What do you do with other hermeneutic techniques like *jumlah/naṣṣ* and *naskh*. I think those are pretty hard to characterize as features of language. That's one

comment. My next comment is related to it. One reason one might think that *‘amm* and *khāṣṣ* have to do with language for Shāfi‘ī is because his discussion of language is immediately followed by his discussion of *‘amm* and *khāṣṣ*. Actually, there is good reason to believe that his discussion of *‘amm* and *khāṣṣ* should be moved. In one place in the *Risālah* he indicates that he will discuss *‘amm* and *khāṣṣ* after he has discussed *jumlaḥ* and *naskh*, thus separating his discussion of *‘amm* and *khāṣṣ* from his discussion of language. In several ways, that order of treatment makes more sense. About your discussion of formalism: I would say that just because Fish reduces all theory to theory talk and says that theory talk does not have consequences for the real world we should not suppose that there are not meaningful differences between different formalisms. I tend to think that Shāfi‘ī has one formalism and that later *uṣūl* writers have another formalism. Finally I must say that I’m very surprised, if you’re going to talk about communities of interpreters, that you did not get into the subject of *ijmā‘* as a kind of definition of the community of interpreters within which you can have diversity of views—in fact, contradictory views—and yet everyone’s view can be regarded as orthodox in some sense. Those are my comments.

JACKSON: I have difficulty with the notion of Shāfi‘ī wanting to be a legal formalist. If you mean by legal formalism the reduction of meaning to the verbal features of language, I don’t think that Shāfi‘ī would have been comfortable with that. Just to put language out there and strip it of its Arabness, making it equally accessible to everybody so that anybody who learned Arabic from a college textbook and a dictionary could come along and claim that this Qur’ānic passage means this, this *ḥadīth* means that—I don’t think that Shāfi‘ī was into that at all. As for Shāfi‘ī’s discussions of *‘amm* and *khāṣṣ*, I’m looking at them in terms of how you come to know what *‘amm* and *khāṣṣ* are. For example, at one point in the *Risālah* he adduces three verses from the Qur’ān and says that for some people who have learned Arabic (meaning non-Arabs) the first may be more clearly *‘amm* than the second, and the third may be more clearly *‘amm* than the first but all of these are the same for the *‘ālim*. The Arabs have this access to understanding immediately what’s going on in language that other people don’t. And that’s where I’m coming from in terms of setting Shāfi‘ī off as a kind of anti-formalist, because what you’re saying is that there are presuppositions that the Arabs are imbued with naturally that enable them to know.

LOWRY: *‘Amm/khāṣṣ* is one hermeneutic technique among six or seven, like contradictions among *ḥadīth* or the problem of contradictory commands. It’s not as though *‘amm/khāṣṣ*, which I think you’re suggesting is connected with language somehow, is prior theoretically, in Shāfi‘ī’s thinking, to the other hermeneutic techniques.

JACKSON: What I’m saying is this, Joe. If you look at later *uṣūl al-fiqh*, how do you get *‘amm*? You get *‘amm* by means of *alif lām*, for example, or an indefinite noun in a negative statement. This is foreign to Shāfi‘ī. We know *‘amm* because we know *‘amm*. That’s what I’m seeing, and I’m say-

ing that what comes later is a counter-thesis to this, making legal interpretation much more open-ended and the nativistic presuppositions of the Arabs much less important.

GLEAVE: By "open-ended" do you mean indeterminate?

JACKSON: No. I mean that a claim to correct understanding can be made by a larger pool of people.

WEISS: Reflecting on our discussion of Mohammad's and Sherman's papers, we can say, I think, that for both Mohammad and Sherman the methodology laid out in *uṣūl al-fiqh*, though designed to be a determinant of the law, in actual fact is not. *Uṣūl al-fiqh* is the paradigm, the ideal determinant; the real determinants must be sought elsewhere. On the other hand, Sherman does see validation of pre-existing law as an actual function, if I understand him correctly. Mohammad's study seems to leave the question of the real function of *uṣūl al-fiqh* open.

ZYSOW: Clearly one of the things *uṣūl al-fiqh* does is to supply a certain extremely large part of the vocabulary that is used in justifying the *furū'* in a large legal literature. In other words, someone asks, "What's the problem with this?" and the answer might be, "Well, it's a *ḥadīth mursal*". That is a term from *uṣūl al-fiqh*. Or one might say, "This is a certain kind of *qiyās*", or "This is based on *ijmā' sukūti*" or something on that order. So *uṣūl al-fiqh* is supplying a rhetorical language for the justification of *furū'*. That is at least part of what it is doing.

FADEL: I would like to offer a modest observation. I think that *uṣūl al-fiqh* can be viewed as an act of knowing oneself, of knowing that one lives in a society and is surrounded by rules, rules that one sees are normative to a certain extent, rules about which one becomes curious with the result that one begins to reflect upon, the sources of their legitimacy. So, as a reflexive exercise of trying to understand the general system so as to be able to explain why these rules are legitimate as opposed to some other set of rules, something on the order of *uṣūl al-fiqh* makes sense and we can appreciate the original impetus behind it and understand why people would want to pursue it. I'm not sure, however, that one would necessarily want to undertake the reverse of that and try to tie every single *mas'alah* to something in *furū'* thinking, "Where does this *mas'alah* have an actual impact in *furū'*?" As I was going through the list of *masā'il* in Āmidī distributed earlier this afternoon, I was trying to think, does this necessarily have any sort of echo in the actual *furū'*? Well, it might not because as you start questioning issues of legitimacy, as I said, in sort of a reflexive *ex post facto* manner, you might be drawn to some other questions, which might lead to still others. That, it seems to me, would be much more modest task for *uṣūl al-fiqh* than to provide *dalīls* for the entire body of rules, but on the other hand, it would also liberate legal reasoning from the notion that it has to be faithful to this sort of paradigm.

REINHART: Another thing we may wish to throw into the pot is something that Professor George Makdisi and his students who are here have reminded us of over the years, and that is that *uṣūl al-fiqh* serves an important function in the development of an academic institution, that

it was a kind of scholasticism, that it was a factor in the granting of academic tenure and promotion, and that whatever features have made this discipline difficult and arcane over the centuries are a function of this academic milieu, just as certain fields today have arcane features that one pursuing a Ph.D. must master. So I think we need to realize that *uṣūl* exists in part for *uṣūl*, and creates a distinctive and distinguishing discourse that separates the *‘āmmah* from the *khāṣṣah*.

**BROCKOPP:** I'd like to build on the comments just made by Aron, Mohammad and Kevin and say that what *uṣūl al-fiqh* does fundamentally is to provide legitimacy. How does it do that? By supplying three things. First of all, (1) a vocabulary. It gives us a terminology and definitions and struggles with issues related to terminology. This terminology is important, then, in enabling us to construct (2) arguments. Arguments are, themselves, modes of defense against opponents—real or imagined, within or without. And, why do we need arguments? For the (3) justification itself. There are multiple justifications, I would argue—that's part of my point—but one of the primary ones is this connection to God—to Ultimate Source, and this then, it seems to me, is the root of the conundrum between *uṣūl* and *furū'* because the *furū'* are already justified in their existence. They were there prior to *uṣūl*. Now, *uṣūl* provides for us, retrospectively, the justification of that which is already there. How does it do that? It, in some cases, tries to get rid of a human element by tying everything to *dalīls*. Then there is the point made by Kevin, which I really want to underscore as I think it's extremely important—and we've missed that by and large here today, although we have Christopher Melchert with us, because I think this function within an academic community is an important function of *uṣūl* and not to be somehow thought of as being of less value than its function of providing legitimacy.

**STEWART:** I want to agree with what has just been said. But, when I try to reflect on the functions of *uṣūl al-fiqh*, I see three main areas that we need to look at. First, there is the whole area of sacred epistemology, where the function of *uṣūl al-fiqh* is well known. Second, there is the legal establishment, and Kevin has just touched on the function of *uṣūl al-fiqh* in relation to this area. The third area is the actual *furū'*. Those are the three areas where *uṣūl al-fiqh* may be seen to have a function, as I see it. And, reflecting on what Bernard Weiss mentions in his book, that these people in their writing books on *uṣūl al-fiqh* had their eye on the classroom, I would like to add that they also had their eye on the legal establishment and on the *madhhab* as an institution, on a hierarchy of legal scholars and their place within it and all these other issues show up in *uṣūl al-fiqh* works in certain ways.

**BROCKOPP:** Devin, may I ask for clarification? I'm not sure how you distinguish the sacred epistemology from *furū'*. What distinction are you making?

**STEWART:** By sacred epistemology I have in mind the discussion of theoretical and semi-theological issues without an eye on the actual practice, on what the judge decides.

**BROCKOPP:** Discussion that they engage in only for themselves?



STEWART: For themselves as intellectuals, as people who see themselves as speaking in *uṣūl al-fiqh* to others who are arguing on the same level, as opposed to having an eye on what the judge actually does.

BROCKOPP: What's the function of that having a discussion among like people? Why do it?

STEWART: One of the reasons—if we may go back to the notion of theory talk—is to show that we all belong to the same club of very intelligent people.

GLEAVE: A somewhat different perspective comes from Norman Calder in his review of Bernard Weiss's book where he says that although there is an eye towards the judge, in the vast majority of issues which are discussed within *uṣūl*, it's a bit difficult to see the practical implication. There is simply a joy in searching out these intricate points, and there's—

REINHART: Didn't Calder compare *uṣūl al-fiqh* to a work of art?

GLEAVE: Yes, and I'm not sure if I'd describe this art aspect of *uṣūl al-fiqh* as a function as such.

BROCKOPP: Art separates the *'āmmah* from the *khāṣṣah*. It is elitist and concerns people who are saying, I can appreciate what you're doing because I'm learned. This is our clique, this is our crowd.

GLEAVE: But, that's not the real reason why one might write a work of *uṣūl al-fiqh*, just to seem clever and part of a group. People wrote *uṣūl* works in a spirit of devotion and piety, and that perhaps might be considered a function. They also wrote *uṣūl* works as a bit of intellectual fun.

FADEL: I was just thinking about this notion of not keeping an eye on what the judge does, which Devin mentioned. I thought of Mazadi who is, of course, a great Mālikī jurist, *mutakallim* and *uṣūlī*. There's an anecdote about him that has it that one day he was teaching in his circle about *taṣwīb*, a doctrine that he himself believed in, and he was pointing out how *taṣwīb* was the correct position of *ahl al-haqq*. The next day he issued a *fatwā* about what to do about a judge in Tunis who had given a ruling saying that a man who divorced his wife three times in one sitting was not bound by the divorce. Mazadi got very mad and said that this judge was subject to *ta'zīr*, that he should be punished, thrown in jail and removed from office—this Mazadi said even though he recognized that the judge had given an opinion that was valid in terms of *shar'*, according to the doctrine of *taṣwīb*. His argument was that if we allow something like this, then actual legal obligation will be over, people's properties will be destroyed, et cetera et cetera, and there will be no stability of rulings. And so, in some sense, people desire intellectual elegance and that in itself is a motivation for doing things, but then that doesn't mean that because I'm *muṣawwib* in theology that I'm going to allow judges to be *muṣawwibs* as judges. There are plenty of issues that people will want to resolve purely for the sake of truth with the attitude, "We want to know the truth. We'll worry about the practical implications later. If *taṣwīb* has terrible practical implications, we'll solve that politically—like require judges to follow certain rules", but that doesn't change the theological reality that these other positions are also divinely legitimate.

MATTSON: Mohammad, your talking about the importance of continuity and the appearance of consistency brings to mind a point I would like to make about *uṣūl* justifying change—that, even though in *furūʿ* you may have lots of change and development, if you want to actually justify the change, you need *uṣūl*. There are many people who are wondering—and Kevin you were wondering yesterday—why we don't come across many women among the authors of *uṣūl al-fiqh* works. It's not only that there aren't many women working on *uṣūl al-fiqh* in America today. There haven't been women in this field down through the centuries. Although there have been women specialists, perhaps, in some things like *ḥadīth* or even in various aspects of the *furūʿ*, you don't see them in *uṣūl*, and this only makes more evident for me the fact that there *is* this club that has this vocabulary, and *only* with this vocabulary, and *only* by belonging to this club can you justify change that might be needed. If they don't allow change that is not justified with *their* language, with *their* rules, then it's not justified.

Zysow: In response to what you said about the relationship between *uṣūl* and *furūʿ*, I think it's clear from what some *uṣūlīs* say and from the thrust of what is going on in *uṣūl* that this relationship can be fruitfully compared to the relationship between science and philosophy of science, which is an analogy I've used a number of times. If you study philosophy you'll learn that it's a real question: what is the function of philosophy of science? It's clearly not to direct science in most cases. Most scientists aren't studying philosophy of science. In fact, there's a debate whether they would profit from studying it, and the philosophers of science, themselves, are uncertain as to whether it's important for scientists to study it, but they still insist that it's important to get things straight conceptually in philosophy of science. The same sort of thing is true, after a certain point, of certain kinds of *uṣūl*—Āmidī, Juwaynī and others. Juwaynī actually speaks in this vein. He says, “It's nice to know what Shāfiʿī said and the *madhhab* holds but I want to get the answer right”. And it's clear that when the answer is right, then only as a secondary question does one ask whether that should then be used to set up a new system of *furūʿ* or whether it can even be used that way. In some cases, it might be used that way, or for one reason or another it might not. The practical implications are not always going to be drawn. The action is not going to be taken. In the paper I gave earlier, I discussed the issue of *ʿāmm*, the general term, but omitted discussion of its practical implications for interpretation. This is discussed by Samarqandī. Standing behind the teaching of al-Māturīdī, he says, “Yes, this could be used to change some very basic Ḥanafī approaches to dealing with *ʿāmm* and *khāṣṣ* that would bring it in line with the Shāfiʿī position, and some people have said that should be done, but I don't know if that follows of necessity”. It remains for him simply a conceptual kind of clarification. And, apparently in his *furūʿ*—and we have his book as well as Kāsānī's book—we see no sign of a big break with the Ḥanafī *madh-*

*hab*, although the *uṣūl* which they subscribe to is quite different from standard Ḥanafī *uṣūl* and has the potential for a revolutionary change in whole areas of *furūʿ*—that step was not taken. And, they knew it could be taken, but they didn't take it.

HALLAQ: I would like first to take issue with what Kevin said on the question of what *uṣūl al-fiqh* means for education. I don't think the function of *uṣūl al-fiqh* should be stated in terms of education. *Furūʿ* was also taught in the *madrasah*, as well as many other things. So are we going to say that the function of *uṣūl al-fiqh* is to be taught? I don't think so. That begs the question. I don't think it contributes in any way toward answering the question of the relationship between *uṣūl* and *furūʿ* or the question of the function of *uṣūl* in relation to *furūʿ*. As for Aron's comparison with the relationship between the philosophy of science and science, I find it appealing, although I don't agree with it. To be a scientist, you don't need to know about the philosophy of science—you could be a good scientist and be completely ignorant of the philosophy of science. Now, that is not the case with *uṣūl al-fiqh* and *furūʿ*. And that's where I will also disagree with you, Mohammad, because you mentioned just one instance where, clearly, theory was in one place and practice was in another, but you have not taken into consideration points of real connection between *uṣūl* and *furūʿ*. We can find such a point of connection in what I have called "operative terminology", something both Sherman and Mohammad have discussed to some extent. I have in mind especially the terms *ṣahīh* and *taṣhīh*, *mashhūr* and *tashhīr*. By "operative terminology" I mean the terminology that determines the supremacy of the dominant doctrine of a school. It was one of the most important factors in the constancy, determinacy and operation of the law, and without it I think the legal system in Islam would have been in chaos. But the application of operative terminology to any doctrine required training in *uṣūl al-fiqh*; otherwise, adequate justification would be lacking and the doctrine would not survive. True, many scholars of the law were not authors or specialists in *uṣūl al-fiqh*, but in order to be a *faqīh* you had to deal head on with *uṣūl al-fiqh* issues. One you arose to some level of competency, you would engage—and every one of the major jurists did engage—in *taṣwīb* or *tashhīr* or whatever. The set of terms employed in such operations entailed certain hermeneutical processes and activities that involved *uṣūl al-fiqh*. Nawawī is as good example as any of what I am talking about. Nawawī would address an opinion and say, "Well, that opinion is considered *ṣahīh* in the *madhhab*"—which means that it is the dominant opinion in the *madhhab*—"but I disagree with it and think there is an *aṣaḥḥ*". Now, once he makes this claim, he cannot just say, "This is an *aṣaḥḥ*", and close the book and go home. He has to justify why he considers it *aṣaḥḥ*. Now what kind of reasoning are we to suppose that he uses in order to do this. *Uṣūl al-fiqh*, of course; *uṣūl al-fiqh* in its very practical manifestations. All the intricacies of *nāsikh* and *mansūkh*, *bayān* and *qiyās*, come in. All you have to do is study five or six randomly