

(b) *Al-Jâmi' al-Saghîr*. This is said to contain 1,532 propositions and is a highly esteemed work. Judges and *muftîs* were required to learn it by heart as a condition for appointment. It indicates the authorities. The arrangement and division into chapters were done later. The most well known of the many commentaries on it are those by (1) Fakhr-al-Islam al-Pazdawi (482/1089) and (2) Fakhr-al-Dîn al-Hasan ibn Mansûr al-Uzjandi Qâdhîkhân (592-1195).³¹

(c) *Al-Jâmi' al-Kabîr*. It contains principles (*mutûn al-dirâyât*) and niceties in legal deduction (*latâif al-fiqh*). Two supplements were written by Muhammad al-Hasan for this work: the *al-Ziyâdât* and the *Ziyâdât al-Ziyâdât*. These, too, were much commented upon.³²

(d) *Al-Siyar al-Saghîr wa'l-Kabîr*, the last of Muhammad's works and written after his departure from Iraq. The *Siyars* treat the subject of *Jihâd*. Many commentaries on this work were written.³³

2. *Al-Mukhtasar fi al-Fiqh*, by Abu Ja'far Muhammad al-Tahawi (321/933), in two sizes. It follows the arrangement of the *Mukhtasars al-Muzani*. Many commentaries were written on it.

3. *Al-Kafî fi Furû' al-Fiqh*, by Muhammad ibn Muhammad al-Marwazi al-Hâkim al-Shahîd (334/945). This work combines the works of Muhammad ibn al-Hasan already mentioned above, and is an authority for determining the views of al-Hanîfa and his two disciples.³⁴

4. *Al-Mukhtasar fi al-Fiqh*, by Abu al-Hasan 'Ubayd-allah ibn al-Hasan al-Karkhi (340/951).³⁵

5. *Mukhtasar al-Quduri*, by Abu al-Husayn Ahmed ibn Muhammad al-Quduri, al-Bagdadi (428/1036). This is a compendium with a very high reputation. It is referred to as "The Book," and there are many commentaries on it.³⁶

6. *Wiqâyah al-Riwâyah fî Masâil al-Hidâyah*, by Burhân-al-Dîn (Sharî'ah) Mahmud ibn Sadr-al-Sharî'ah al-Awwal 'Ubayd-allah al-Mahbubi (680/1281). This is a compendium based on the *Hidâyah*, with the omission of the reasons and the indication of the right views, written for his grandson, 'Ubayd-allah Ibn Mas'ûd. *Al-Niqâyah* or *Mukhtasar al-Wiqâyah* by 'Ubayd-allah Ibn Mas'ûd ibn Tâj-al-Sharî'ah Mahmûd ibn Sadr-al-Sharî'ah al-Thâni al-Mahbubi (747/1346). A well-known commentary on the

³¹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 443.

³² Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 450.

³³ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 53.

³⁴ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 333.

³⁵ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 523.

³⁶ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 520.

latter is the *Jâmi' al-Rumûz* by Shams-al-Dîn Muhammad al-Quhistânî (950/1543).³⁷

7. *Al-Mukhtâr (li al-Fatâwâ)*, by Abu al-Fa'al Majd-al-Dîn 'Ali ibn Mahmud al-Mawsili (683/1284). Another of the highly esteemed texts, *al-Ikhtiyâr*, is a commentary on it by the same author; it gives the reasons.³⁸

8. *Majma' al-Bahrayn wa Multaqâ al-Nahrayn*, by Muzaffar al-Dîn Ahmed ibn 'Ali ibn al-Sa'ati al-Bagdâdi (696/696). This is an "esteemed" compendium, based on the *Mukhtasar of al-Quduri* and the *Manzumah of al-Nasafi* (537/1142) with additions. It is extremely concise, hence easy to memorize but difficult to understand. It indicates the differences from Abu Hanîfa's disciples as well as those from al-Shâfi'î and Mâlik by some clever device such as using nominal sentences instead of verbal ones, etc.³⁹

9. *Kanz al-Daqâiq* by Hâfîz-al-Dîn al-Nasafi (710/1310). An abridgment of his own *al-Wâfi* (modeled after the *Hidâyah* and commented upon by the author himself in the *Kâfi*). This is one of the highly esteemed texts (*mutûn mu'tabarâh*), namely the texts that are based solely on *Zâhir al-Riwâyah* sources. Famous commentaries: (a) *Tabyîn al-Haqâiq* by Fakhr-al-Dîn 'Uthmân al-Zayla'î (743/1342). This work inquires at length into the differences from al-Shâfi'î and refutes his arguments from the Hanafite standpoint. (b) *Ramz al-Haqâiq* by Abu Muhammad Mahmud ibn Ahmed al-'Ayni (855/1451). (c) *Al-Bahr al-Râiq* by Abu Hanîfa al-Thâni (the second) Zayn-al-'Âbidîn ibn Nujaym al-Misri (970/1562). One of the most highly esteemed of later works. The author briefly indicates the reasons, makes many keen inquiries (*tahrîr*) and incorporates the principles involved in new *fatwâs*. The preface contains a list of the author's sources.⁴⁰

10. *Durar al-Hukkâm*, by Muhammad ibn Farâmurz ibn 'Ali Molla Khusraw (883/1478). There is a commentary on his own *Gurar al-Ahkâm*. This book enjoyed a special status in the Ottoman State and was used in *Madrasahs*. The author displays independence of opinion. This explains why ibn 'Abidîn would not place it among the highly esteemed texts.⁴¹

11. *Multaqâ al-Abhur*, by Ibrahim ibn Muhammad al-Halabî (956/1549). This work contains the determinations by *al-Quduri*, the *Mukhtâr*, *Kanz*, *Wiqâyah*, and partly the *Majma'* and the *Hidâyah*. It indicates the views to be preferred (*asahh*). At present, it is the standard Hanafite text (*matn*). A commentary on it is the *Majma' al-Anhur*, by 'Abdurrahman ibn Muhammad Shaykhzâdeh (1078/1078). This is

³⁷ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 806.

³⁸ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 513.

³⁹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 497.

⁴⁰ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 434.

⁴¹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, 571.

an all-round well-known commentary. It is known as *Dâmâd* and was used in *Madrasahs* in the Ottoman State.⁴²

12. *Tanwîr al-Absâr wa Jâmi' al-Bihâr* (995/1587), by Shams-al-Dîn Muhammad ibn 'Abdullah al-Gazzi al-Timurtâshi (1004/1595). This work combines the standard texts. Ibn 'Abidîn did not consider it as a highly esteemed text. The commentary *Al-Durr al-Mukhtâr* (1071/1660), by 'Alâ'-al-Dîn Muhammad ibn 'Ali al-Haskâfi (1088/1677), a *muftî* in Damascus, was condensed from his larger commentary *Khazâin al-Asrâr wa Badâyi' al-Afkâr*. That commentary is very concise. It utilizes new *fatwâs*. A commentary on this work is the *Radd al-Muhtâr* by Muhammad Amin ibn 'Abidîn (1252/1836). This work may be said to be the last word in the authoritative interpretation of Hanafite law. It shows originality in attempting to determine the status of present practical situations that are, as a rule, shunned by others. The author demonstrates a complete mastery of his subject. This book was used a great deal in the Ottoman State but less in India.⁴³

2.1.1.2.2 *Shâfi'î Books without Arguments on the Application of Fiqh*

1. *Al-Tanbîh* by Abu Ishaq ibn 'Ali al-Shirâzi (476/1083), ed. A.W.T. Juynboll, Leiden, 1879. That is a well-known compendium that may be said to have eclipsed its predecessors, even though it had a similar fate itself. It is clear and detailed. The most well-known commentary on it is *al-Muhadhdhab* by Badr-al-Dîn Muhammad al-Zarkashi (1344-91).⁴⁴

2. *Al-Taqrîb fi 'l-Fiqh or Mukhtasar Abu Shujâ'* (also called *Ghâyah al-Ikhtisâr*), by Abu Shujâ' Ahmed ibn al-Hasan al-Isfahâni (583/1187). This volume is brief, clear, and the most widespread Shâfi'ite compendium. Commentaries: a) *al-Iqnâ fi Hall Alfâz Abu Shujâ'* by Muhammad ibn al-Khatib al-Sharbini (977/1569). b) *Fath al-Qarîb al-Mujîb ila Sharh Alfâz al-Taqrîb*, also called *al-Qawl al-Mukhtâr fi Sharh Ghâyah al-Ikhtisâr*, by Muhammad ibn al-Qâsim al-Gazzi (981/1573). It was published in French by Van den Berg, Leiden, 1895. It is elementary, mainly explaining questions of grammar and syntax, and is used by students in Java.⁴⁵

3. *Minhâj al-Tâlibîn* by Muhyi-al-din. Abu Zakariyâ' Yahya ibn Sharaf al-Nawawi (676/1277), an improved abridgement of the *al-Muharrar* by Abu al-Qâsim 'Abd-al-karim ibn Muhammad al-Rafi'i (623/1226), a well-known work based on the works of

⁴² Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, 655.

⁴³ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, 404; Tashkopruzadeh, *Miftâh al-Sa'âdah*, vol. II, pp. 232-62; Hawwa, *al-Madkhal ila Madhhab*, pp. 353-74; Aghnides, *Islamic Theories of Finance*, pp. 177-82.

⁴⁴ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 395.

⁴⁵ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 516.

al-Gazzali. It is a standard, concise, clear text of great force. Using clever terminology, it indicates the original views (*nass* or *qawl*) of al-Shâfi'î as well as the views (*wajh*, *qawl mukharraj*) deduced by his followers by analogy. *Minhâj al-Tâlibîn: A Manual of Muhammadan Law According to the School of Shâfi'î*. Translated by E.C. Howard from the French translation by L.W.C. Van Den Berg (London: W. Thacker & Co., 1914).⁴⁶

Some commentaries: a) *Tuhfat al-Mukhtâj li Sharh al-Minhâj* by ibn Hajar al-Haithami, (974/1566). b) *Mughnî al-Mukhtâj ila Ma'rifat Ma'âni Alfâz al-Minhâj* by Muhammad ibn al-Khatib al-Sharbini (977/1566). A fairly exhaustive, useful work, presenting in a concise manner most of the matter found in other commentaries. It indicates the views that have found acceptance and briefly indicates the reasons but does not go into syntax and grammar. c) *Nihâyah al-Mukhtâj ila Sharh al-Minhâj*, by Shams-al-Dîn Muhammad ibn Ahmed al-Ramli (1004/1595). This work indicates clearly the views that have been endorsed by the Shâfi'îte School. By *qâlâ* (they two said) he means the "two Imâms," namely al-Rafl'î and al-Nawawi, by *al-Shârih* (the commentator) he means Jalâl-al-Dîn al-Mahalli, and by al-Shaykh Zakariyâ' al-Ansari. The *Muharrar* and the *Minhâj* with its two commentaries, the *Nihâyah* and the *Minhâj* are considered to be the Law books of the Shâfi'îte School."

4. *Manhaj al-Tullâb* by Abu Yahya Zakariyâ ibn Muhammad al-Ansâri (926/1520). An abridgement of the *Minhâj*, which itself became a classic and is used today in instruction. A well-known commentary on it is the *Fath al-Wahhâb* by the author himself. Glosses by Sulayman al-Bajirmi (1221/1806).⁴⁷

5. *Asnâ al-Matâlib* by the same Zakariyâ al-Ansari. That is a commentary on the *Rawd al-Tâlib* by Sharaf-al-Dîn Ismail ibn Abu Bakr ibn al-Muqri (837/1433). It was printed with glosses by Shihâb-al-Dîn ibn Ahmed al-Ramli (957/1550). It is very much like the *Mugni*, although not quite so exhaustive.

6. *Qurrah al-'Ayn* (982/1574), by Zayn-al-Dîn al-Malîbârî. A commentary on it by the author himself is the *Fath al-Mu'în*. Glosses on it in *I'ânah al-Tâlibîn* by Sayyid Bekri Abu Bekr Shatti (1302/1885), a professor in Mecca, giving the recent *fatwâs*. The works in this group are used a great deal in East Africa and the West and East Indies.⁴⁸

2.1.1.2.3 *Mâlikî Books without Arguments on the Application of Fiqh*

1. *Tahdhîb* by Abu Sa'îd al-Barâda'î (317/929). This work is a condensation of the

⁴⁶ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 698.

⁴⁷ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 224.

⁴⁸ Tashkopruzadeh, *Miftâh al-Sa'âdah*, vol. II, pp. 289-332; Aghnides, *Islamic Theories of Finance*, pp. 186-89.

Mudawwanah and the *Mukhtalifah* that found great favor with the jurists of *Ifriqiyyah* and superseded its predecessors.⁴⁹

2. *Al-Risâlah* by 'Ubayd-Allah ibn 'Abdurrahman ibn Abu Zaid al-Qayrawani (386/996). It is a clear, brief compendium – said to be the first in the Mâlikîte school to cover catechism questions as well and meant to be a guide for the laity. It is a compendium of great authority that has been copied and commented upon more than any other. The author also wrote a *Mukhtasar*, where he abridged the *Mudawwanah* and the *Mukhtalifah*.⁵⁰

3. *Jâmi' al-Ummahât (Mukhtasar)* by Abu 'Amr 'Uthmân ibn 'Umar ibn al-Hâjib (646/1248). This is a compendium that combines all the Mâlikîte views and was much read in the Maghreb in the days of ibn Khaldun.

4. *Al-Mukhtasar* by Dhiyâ al-Dîn Abu al-Safâ Khalil ibn Ishaq al-Jundi al-Misri (767/1366). This is the most famous compendium of the Mâlikîte School, and since being written virtually the most authoritative summing-up of the Mâlikîte doctrines. Perhaps no compendium has found such a favorable reception as this. It is said to contain 70,000 explicit and as many implicit legal determinations. It is an attempt to include in the briefest possible compass the accepted teachings of the school on the minutest details, the holders of the opinions and the unsettled points being hinted at by a clever use of words as explained in the preface. Probably here lies the secret of its success despite the fact that the work is extremely complicated and absolutely defies understanding. A French translation of the *Mukhtasar*, with explanatory phrases inserted into the text, by Perron, in *Exploration scientifique de l'Algérie*, vols. 10-16 (Paris, 1848-52). *Mâlikî law* (The *Mukhtasar* of Sidi Khalil) has been translated by F.H. Ruxton (London: Luzac & Co., 1916).

Some Commentaries: (a) *Fath al-Jalîl*, by Muhammad ibn Ibrahim al-Tatâi (942/1535). (b) By Abu 'Abdullah Muhammad al-Kharashi (1101/1690), with glosses by 'Ali al-'Adawi. This is a very well-known commentary. (c) By Ahmed ibn Muhammad al-Dardir (1201/1787). Glosses on it have been written by Muhammad ibn 'Arafah al-Dasuqi. Both the commentary and the glosses are very highly esteemed.

5. *Tabsirah al-Hukkâm fi Usûl al-Aqdiyyah wa Manâhij al-Ahkâm* by Ibrahim ibn 'Ali ibn Farhûn al-Andalusi (799/1397). Formerly used a great deal and intended for judges especially.⁵¹

6. *Tuhfah al-Hukkâm fi Nukat al-'Uqud wa'l-Ahkâm* by Abu Bakr Muhammad ibn Muhammad ibn 'Asim (829/1426) of Granada. A celebrated compendium in *rajaz*

⁴⁹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 414.

⁵⁰ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 619.

⁵¹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 295.

version. It is brief and clear.⁵²

7. *Aqrab al-Masâlik li Madhhab al-Imâm Mâlik* by Abu al-Barakât Ahmed ibn Muhammad al-Dardir al-‘Adawi al-Azhari (1201/1787). This is an abridgment of the *Mukhtasar* of Khalil. Though not quite as rich in details as the latter, it is remarkably clear for a Mâlikîte compendium. Where Khalil indicates two views, al-Dardir often gives only the one he prefers. This work and the author’s and al-Kharashi’s commentaries on Khalil are used by students in the Azhar.⁵³

2.1.1.2.4 Hanbalî Books without Arguments on the Application of Fiqh

1. *Mukhtasar al-Khiraqi* by Abu al-Qasim ‘Umar ibn Husain ibn ‘Abdullah al-Khiraqi (334/945). Abu al-Qasim al-Khiraqi summarized the book compiled by al-Khallal in a book called *Mukhtasar al-Khiraqi* (al-Khiraqi’s Compendium). This book was well received and captured the attention of the Hanbalî jurists who wrote more than 300 books explaining al-Khiraqi’s book and commenting on it. The best and most well-known among those 300 was *The Mukhtasar* by al-Khiraqi, a tenth-century work on Islamic jurisprudence, translated by Anas Khalid (New York: New York University, 1992). *Al-Mughnî*, by Shaikh al-Islam ibn Qudamah al-Maqdesi (630/1233). It is an explanation of *Mukhtasar al-Khiraqi*.⁵⁴

2. *Al-Muqni‘* by Shaikh al-Islam Muwaffaquddîn ibn Qudamah al-Maqdesi (630/1233). *Al-Sharh al-Kabîr*, by Shamsuddîn Abdurrahman ibn Qudamah, his grandson (681/1282). It is an explanation of *al-Muqni‘* by the grandfather. It cites all the legal arguments and different opinions of the Law Schools. We should not forget *Al-Insâf fî Ma‘rifah al-Râjih min al-Khilâf*, by Alâ‘addîn Ali al-Mardawî (885/1480).⁵⁵

3. *Al-Furû‘* by ibn Muflih (763/1362). *Tashîh al-Furû‘* (commentary on *al-Furû‘*), by Abu al-Hasan al-Mawardi al-Hanbalî (875/1470).

4. *Ghâyah al-Muntahâ* by Shaikh Mir‘i ibn Yusuf al-Karmi (1033/1624), printed with the following explanation. *Matâlib Uli al-Nuhâ* (explanation of *Ghâyah al-Muntahâ*) by Shaikh Mustafa al-Suyûti al-Rahbani (1243/1827).⁵⁶

5. *Al-Intisâr fî al-Masâ’il al-Kibâr* by Abu Al-Khattâb Mahfûz al-Hanbalî (510/1116).

⁵² Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 313.

⁵³ Aghnides, *Islamic Theories of Finance*, pp. 190-93.

⁵⁴ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 516.

⁵⁵ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 562.

⁵⁶ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 240.

2.1.1.2.5 *Shi'î Books without Arguments on the Application of Fiqh*

1. *Majmû' al-Fiqh*, attributed to Zaid ibn 'Ali (122/740), a Zaidî Shi'îte work, based on Iraqi teachings.

2. *Tadhkirah al-Fuqahâ* by al-Hasan ibn Yusuf al-Hillî (726/1326). This is a good compendium on the Ja'farî school.⁵⁷

2.1.2 *Books of Usûl al-Fiqh (Principles of Islamic Jurisprudence)*

The science of law was separated into two branches in Islamic Law. *The first* is known as the Science of *Fiqh* (Islamic Law) or *Furû' al-Fiqh*; some works on this have been mentioned above. *The second* is the Science of *Usûl al-Fiqh*. *Usûl* is the plural of *asl*, which means foundation, basis and principle. On the other hand, *fiqh* signifies, as is well known, Islamic Law. In this case, the apparent definition suggested by the name is this: the science that explains the references, essentials and general principles of law is called *Usûl al-Fiqh*. Islamic jurists define this science as theoretical legal information and principles that ensure that one learns and deduces the *Sharî'ah* decrees regarding applied (practical) issues from various evidences (sources) of it. In fact, works on *Usûl al-Fiqh* are inclusive of essentials and principles that enable *Mujtahid* (Expounder of the Holy Qur'an and *Sunnah*) jurists to deduce legal decrees from the sources. The definition of the Science of Law, the branches and objectives of it, the sources of Islamic Law, the quintessential origin of law, the types of legal decrees, personages and their proficiency, *Ijtihâd* (interpretation), contractual theory and similar theoretical issues form the basic study fields of these works. For instance, it is possible to find detailed information on competence and the types of competence in books on Islamic jurisprudence. One is to refer to books of *Usûl al-Fiqh* to get detailed information.

The first jurist to establish the theoretical principles of law was Imâm Shâfi'î, the author of the work called *Risâlah* (Treatise). We could mention some important examples of this methodology.⁵⁸

Books on *Usûl al-Fiqh* (Principles of Islamic Jurisprudence) were written according to three separate methods in the history of Islamic law:

⁵⁷ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 329.

⁵⁸ Tashkopruzâdah, *Miftâh al-Sa'âdah*, vol. 2, pp. 183-84; Pasha, *İslâm Hukuku Nazariyatı Hakkında Bir Etüd* (A Study on the Theory of Islamic Law), trans. Baha Arkan, vol. I (Ankara1956), vol. I pp. 115ff.; Sa'd-al-Dîn Mas'ud ibn 'Umar al-Taftâzani, *al-Talwîh li Kashf Haqâ'iq al-Tanqîh*, vol. I, (Beirut: Dar al-Arqam, d.n) pp. 6-7; al-Zarkashî, Bedruddîn Muhammad, *al-Bahr al-Muhîr Fî Usûl al-Fiqh*, vol. I (Kuwait: Ministry of Awqâf, 1988), pp. 10-11, 15-20.

2.1.2.1 Books on *Usûl al-Fiqh* according to the Hanafî (*Manhaj al-Fuqahâ*) Method

These are the works on *Usûl al-Fiqh* that were written according to the Hanafî method (or method of jurisprudence), written in an inductive and experimental method (*istiqrâ*) in which the theoretical rules of law were explicated through practical judgments and issues. The purpose was to establish those legal views of eminent jurists on legal bases and to show the links between them. The following could be mentioned as examples of the works that were written in this method:

1. *Al-Fusûl fi'l-Usûl* by Ahmad ibn 'Ali al-Râzî al-Jassâs (370/980). This is first and the most important book on *Usûl al-Fuqahâ*. It is the primary source for the next foundational books.

2. *Taqwîm al-Adillah* by Abu Zaid 'Abdullah ibn 'Umar al-Dabbûsi (430/1039), the Hanafîte. This is the best of the works written by the earliest writers. I edited this work as my master's thesis.⁵⁹

3. *Qawâ'id al-Wusûl ila Ma'rifah al-Usûl or Usûl al-Pazdawi* by Fakhr-al-Islam 'Ali ibn Muhammad al-Pazdawi (482/1089), the Hanafîte. This is a work of classic reputation among Hanafîtes. It gives the arguments at length, although the style is difficult in parts. *Commentaries*: (a) *Kashf al-Asrâr* by 'Abd-al-'Azîz ibn Ahmed al-Bukhârî (730/1330). This was the largest, most profitable and clearest commentary. With its text it is indispensable for critical research into the history of *Usûl-al-Fiqh*. (b) *al-Taqrîr* by Akmal-al-Dîn Muhammad .ibn Mahmud al-Misri al-Bâbarti (786/1384), the Hanafîte.⁶⁰ Later Hanafîte works are based chiefly on these two.

4. *Kitâb al-Usûl* by Shams-al-a'imma Abu Bakr Muhammad ibn Ahmed al-Sarakhsi (483/1090). It is a valuable source.

5. *Al-Muntakhab fi Usûl-al-Madhhab*, known as *al-Muntakhab al-Husâmi*, by Husâm-al-dîn Muhammad ibn Muhammad al-Akhsikati (644/1246). A text free of superfluous matter and well arranged with its divisions (*fusûl*) indicated *and* containing nice points; therefore very much sought after.⁶¹

6. *Manâr al-Anwâr* by Abu al-Barakât 'Abdullah ibn Abu Hâfiz-al-Dîn al-Nasafi (720/1320), the Hanafîte. An esteemed compendium, the most used of the author's works. Numerous commentaries were written on it. The most widely known of these is the *Sharh al-Manâr* by 'Abd-al-Latîf ibn 'Abd-al-'Azîz ibn Firishtah ibn al-Malak (830/1427).⁶²

⁵⁹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 380.

⁶⁰ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 145.

⁶¹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 680.

⁶² Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 662.

7. *Majâmi' al-Haqâ'iq*, by Abu Sa'id Muhammad al-Khâdimi (1200/1786), with his own commentary on it, the *Manafi' al-Daqâ'iq*. That is one of the works on *usûl-al-fiqh* that was used in *Madrasahs* in Ottoman State. Unquestionably the most methodical and complete of textbooks (classics) that served as references to *Majalla*.⁶³

2.1.2.2 Books of *Usûl al-Fiqh* according to the Method of Theologians (*Manhaj al-Mutakallimîn*)

The second method is known as the method of *theologians* (*Manhaj al-mutakallimîn = Manhaj al-Shâfi'î*), the quintessence of which is as follows: these jurists studied the rules of the science of *Usûl al-Fiqh* (Methods of Islamic Jurisprudence) within the framework of the principles of logic and only theoretically. In their opinion, the relations between the established theoretical rules and practical issues were of secondary importance. In this sense, the first jurist to establish the theoretical principles of law was Imâm Shâfi'î, the author of *Risâlah* (Treatise). We could mention some important examples of this methodology.

1. *Risâlah* by Muhammad ibn Idris al-Shâfi'î (204/819). This is the recension by al-Rabi' ibn Sulayman al-Murâdi. Said to be the first work in *usûl al-fiqh*. *Risâlah* represents the transition stage in the distinction of this science from *fiqh*. In many parts it reads like a Shâfi'îte work on *fiqh*. It is a most valuable source.

2. *Al-Taqrîb wa al-Irshâd* by Abu Bakr Muhammad al-Bâqillânî (403/1012). Imâm al-Haramain has abridged this book (*Kitâb al-Talkhîs*).

3. *Al-Mu'tamad* by Abu al-Husayn Muhammad ibn 'Ali al-Basri (436/1044), the Mu'tazilîte. A large work used as a basis by later writers. The *Mu'tamad* is a commentary on the *Umdah* by 'Abd-al-Jabbâr ibn Ahmed al-Asadâbâdi Qâdhî al-Qudhât (415/1024), chief of the Mu'tazilîtes but Shâfi'îte with respect to *fiqh*.⁶⁴

4. *Al-Burhân* by Abu al-Ma'ali 'Abd-al-Mâlik ibn 'Abdullah al-Juwayni Imâm al-Haramain (478/1085) the Shâfi'îte. It shows independence with respect to view. The style is very complicated. The work, although by a Shâfi'îte, was commented upon by Mâlikîtes such as 'Abdullah al-Mâziri and Abu al-Hasan al-Anbârî.⁶⁵

5. *Al-Waraqât* also by Imâm al-Haramain. It is a small compendium intended for beginners. This work was received quite well by the Shâfi'îtes and was commented upon by many (also by Hanafîtes), including Jalâl-al-Dîn Muhammad ibn Abu al-Mahalli (864/1459), with glosses called *Qurrah al-'Ayn* (953/1546) by Muhammad ibn

⁶³ Tashkopruzadeh, *Miftâh al-Sa'âdah*, vol. I, pp. 163-72; Hawwa, *al-Madkhal ila Madhhab*, pp. 343-52; Aghnides, *Islamic Theories of Finance*, pp. 173-77.

⁶⁴ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 594.

⁶⁵ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 235.

Muhammad al-Khattâb the Mâlikîte.

6. *Qawâ'id al-Adillah* by Abu Al-Muzaffar ibn al-Sam'ânî (489/1096). Beirut: Muassasah al-Risalah, 1996.

7. *Al-Mustasfâ* by Abu Hâmid Muhammad ibn Muhammad al-Gazzâli (505/1111) the Shâfi'îte. This is a valuable work used as a basis for later compilations. It is original in arrangement and looks at the arguments. The *Burhân* and the *Mustasfâ* on the one hand and the *'Umdah* and the *Mu'tamad* on the other are the four best basic works on *usûl al-fiqh* written from a theological (*mutakallim*) standpoint, namely, in a purely speculative way without reference to the applications of the principles in the field of *fiqh*. There is another book for Imam, which is *Al-Mankhûl*.

8. *Kitâb al-Wâdhih* by Abu al-Wafâ Ali ibn Aqîl al-Hanbalî (513/1119).

9. *Al-Mahsûl*, by Fakhr-al-Dîn Muhammad ibn Umar al-Râzi ibn al-Khatib (606/1209), the Shâfi'îte. A condensation of the four works cited above, especially the *Mustasfâ* and the *Mu'tamad*, whereby he literally transfers whole pages. *Abridgments*: (a) *al-Tahsîl* by Siraj-al-Dîn Abu al-Thanâ' Mahmud ibn Abu Bakr al-Urmawi (682/1283), the Shâfi'îte. The author abridged the *Tahsîl* from the *Mahsûl* "in order to supply" the great demand for abridgments, and the *Tahsîl* was widely used. (b) *al-Hâsil min al-Mahsûl* by al-Qâdhî Tâj-al-Dîn Muhammad ibn Husain al-Urmawi. This is an abridgment of the *Mahsûl* (by about one-tenth) with respect to words rather than meaning, as the author claims. (c) *Minhâj al-Wusûl ila 'Ilm al-Usûl* by 'Abdullah ibn 'Umar al-Baydhâwi (685/1286). (d) *Tanqîh al-Fusûl fi al-Usûl* by Shihâb-al-Dîn Ahmed ibn Idris al-Qarafi (684/1285), the Mâlikîte. This is based on the *Mahsûl* and the *Ifâdah* by al-Qâdhî Abd-al-wahhâb, the Mâlikîte. It is favored by beginners and much commented upon.⁶⁶

10. *Ihkâm al-Ahkâm* by Abu al-Husayin 'Ali ibn Sayf-al-Dîn al-Âmidî (631/1233), the Shâfi'îte. A condensation of the four basic works cited. The author indulges in argumentation (*tahqîq*) and illustrations from the applications (*tafrî'*). An abridgment of the *Ihkâm* is the *Muntahâ al-Sûl wa'l-Amal fi 'Ilm al-Usûl wa'l-Jadal* by Jamâl-al-Dîn Abu 'Amr 'Uthmân ibn 'Umar, ibn al-Hâjib (646/1248), the Mâlikîte. (b) *Mukhtasar al-Muntahâ* or *Mukhtasar ibn al-Hâjib* by the same. This was abridged from the former. This second abridgment was very popular and was annotated by both Mâlikîtes and Shâfi'îtes.⁶⁷

11. *Al-Bahr al-Muhîl fi Usûl al-Fiqh* by Badr al-Dîn Muhammad al-Zarkashî (794/1391). This is truly an excellent book; we could call it the Encyclopedia of *Usûl al-*

⁶⁶ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 508.

⁶⁷ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 78.

Fiqh. It was published in six volumes (Kuwait, Ministry of Awqâf, 1992).⁶⁸

12. *Rawdhah al-Nâzir wa Jannah al-Manâzir fi Usûl al-Fiqh alâ Madhhab al-Imâm Ahmad ibn Hanbal* by ‘Abdullah ibn Ahmad ibn Qudâmah al-Maqdisî (620/1223). There is a major commentary on this work, *Ithâf Zawil-Basâir* by Abdulkarim al-Namlah, published in eight volumes.⁶⁹

2.1.2.3 Books on *Usûl al-Fiqh* that Combine Both Methods

The third method was a mixed method, bearing the features of both previous ones. The works by contemporary authors on the issue stated are still written according to this method as well. Apart from the works on this issue by Haydar Effendi the Great (1321/1903), Ismail Hakki of İzmir and Sayyid Bey, the work *A Study on the Theory of Islamic Law* written by Sava Pasha, a Christian, who was a minister in the Ottoman State, is one of the contemporary works that merits mention.⁷⁰ There are many works for contemporary jurist from this kind, like Abdulkarim Zaidan, Abu Zahra and al-Dhahabî.

Some important examples of this methodology:

1. *Badî‘ al-Nizâm* by Muzaffar-al-Dîn ‘Abdullah ibn ‘Ali ibn al-Sâ‘âti (694/1294), the Hanafîte. An “elegant compendium” condensing the works of al-Amidi, and al-Pazdawi ibn Khaldun says that the leading *fuqahâ* of his time used to read it and that many commentaries were written on it.⁷¹

2. *Al-Tawdhîh li Hall Ghawâmidh al-Tanqîh* a commentary, by ‘Ubayd-Allah Ibn Mas‘ûd ibn Tâj-al-Sharî‘ah ibn Sadr-al-Sharî‘ah al-Awwal al-Mahbubi (747/1346), the Hanafîte, on his own compendium called *Tanqîh al-Usûl*. It is an elegant text of classical fame, based primarily on the *Mahsûl* by ibn al-Hâjib and especially the *Usûl* of al-Pazdawi. It is an able schematic arrangement of those works. The author claims priority for his arrangement. The best of its commentaries is the *al-Talwîh li Kashf Haqâ‘iq al-Tanqîh* by Sa‘d-al-Dîn Mas‘ud ibn ‘Umar al-Taftâzani (792/1390).⁷²

3. *Jam‘ al-Jawâmi‘* by Tâj-al-Dîn ‘Abd-al-Wahhâb ibn al-Subki (771/1369), the Shâfi‘îte. A very comprehensive compendium of great reputation collected from two

⁶⁸ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 224.

⁶⁹ Tashkopruzadeh, *Miftâh al-Sa‘âdah*, vol. II, pp. 170-71; Aghnides, *Islamic Theories of Finance*, pp. 173-77.

⁷⁰ Tashkopruzadeh, *Miftâh al-Sa‘âdah*, vol. II, pp. 163-72; Atay Hüseyin, *Islam Hukuk Felsefesi* (Ankara: The Faculty of Theology, 1973), pp. 75-147; Akgündüz, *Külliyât*, pp. 63-70; Pasha, *İslâm Hukuku Nazariyatı Hakkında Bir Etüd*, 1/115ff.

⁷¹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 231.

⁷² Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 40.

works that contain the cream of the author's commentaries on the *Minhâj* and the *Mukhtasar* by ibn al-Hâjib. That is a thorough commentary by Jalâl-al-Dîn al-Mahalli (864/1459). It is one of the textbooks used at al-Azhar.⁷³

4. *Al-Tahrîr* by Muhammad ibn 'Abd-al-wâhid ibn al-Humâm al-Siwasi (861/1456) the Hanafîte. This book treats both Hanafîte and Shaliite views with arguments. Its style is complicated. Commentary: *al-Taqrîr wa'l-Tahbîr*, by his student Muhammad ibn Muhammad ibn Amir al-Hâjj al-HalAbu (879/1474).⁷⁴

5. *Mirqât al-Wusûl fi 'Ilm al-Usûl* by Muhammad ibn Farâmurz Molla Khusraw (885/1480), the Hanafîte. Commentary: *Mir'ât al-Usûl* by the author himself. An elegant commentary containing the early views with original additions; the names of fourteen works on *Usûl-al-Fiqh* are given in the introduction. Both works were used in the *madrasahs* in the Ottoman State. Glosses by Mawla Hafid Efendi (1098/1686) and notes by Sulayman al-Izmiri (1102/1690).⁷⁵

6. *Fusûl al-Badâyi'* by Molla Fanari (834/1430), Qâdhî of Bursa, was actually compiled in the same method.⁷⁶

7. *Irshâd al-Fuhûl* by Muhammad ibn 'Ali ibn Muhammad al-Shawkani (1255/1839). A modern topical summary exposition of the views held by jurists of different schools, with arguments. The author indicates the views that merit preference, showing some independence of opinion.

8. *Al-Muwâfaqât fi Usûl al-Shari'ah* by Abu Ishaq Ibrahim al-Shâtibî (790/1388), which has been published many times. This book is an excellent book on *Usûl al-Fiqh* and the philosophy of Islamic law.

9. *I'lâm al-Muwaqqi'în 'an Rabb al-'Âlamîn* by Shamsuddîn Muhammad ibn al-Qayyim al-Jawziyya (751/1350). This is a unique book on the principles of *usûl al-fiqh* and the philosophy behind it.⁷⁷ He has given very important information on the developments of Islamic Law. This book has been published many times. He was among the second founders of the Hanbalî *Madhhab*.

2.1.3 Books on Hadîths (Traditions of Prophet Muhammad)

Another important reference for Islamic Law that developed under the influence

⁷³ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 467.

⁷⁴ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 308.

⁷⁵ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 539.

⁷⁶ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 248.

⁷⁷ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 154; Tashkopruzadeh, *Miftâh al-Sa'âdah*, vol. II, pp. 163-72; Hawwa, *al-Madkhal ila Madhhab al-Imâm Ebu Hanîfa al-Nu'man*, pp. 343-52; Aghnides, *Islamic Theories of Finance*, pp. 173-77.

of Islam are the books of the Traditions and Interpretations that were written to explicate the two essential sources of the Islamic Law, viz. the Holy Qur'an and the Traditions of Prophet Muhammad. Books on Traditions study the words and acts of Prophet Muhammad from all aspects, including the legal one. For instance, the twenty-volume '*Umdah al-Qâri*', which was written by Badruddîn 'Ayni (855/1451) from the city of Aynât and one of the leading scholars at Azhar University during the the Mamlukid period, as an exegesis to the *Hadîth* book called *Bukhâri* has also served as a reference for jurists.⁷⁸

2.1.3.1 Some Books of Tradition (*Hadîth*)

1. *Al-Muwatta'* by Abu 'Abdullah Mâlik ibn Anas (179/795). There are about sixteen recensions, Yahya's being considered the standard. The *Muwatta'* is said to be the first compilation of *hadîths*, although there is some disagreement here. It is, properly speaking, a work of law, with the *hadîths* in it invoked in support of the author's views. It contains many *hadîths* of the *mursal* and *mungati'* types. It is reported that al-Shâfi'î said that the *Muwatta'* is the most reliable book after the Qur'an.⁷⁹

2. *Musnad al-Imâm Ahmad* by Ahmed ibn Muhammad ibn Hanbal (241/855). This is the most famous collection of the *musnad* type, i.e. a collection where *hadîths* are transmitted, e.g. by the same Companion, are classified together regardless of content. The work is said to contain about 30,000 *hadîths*.⁸⁰

3. *Al-Jâmi' al-Sahîh*, known as *Sahîh al-Bukhâri* by Abu 'Abdullah Muhammad ibn Ismail al-Bukhâri (256/869). This work belongs to the type called *musannaf*, i.e., a collection of *hadîths* arranged in chapters according to content. It is the first of the six well-known *hadîth* collections considered to be reliable (*Sahîh*) and canonical. The work is said to contain 9,000 *hadîths*, 2,800 of which are repetitions.

We should mention here three commentaries: (a) *Fath al-Bâri* by Abu ibn 'Ali ibn Hajar al-Asqalâni (852/1448) the Shâfi'îte, with an introduction. It is well known and is one of the largest commentaries on the work. (b) '*Umdah al-Qâri*' by Badr-al-Dîn Abu Muhammad Mahmud ibn Ahmed al-'Ayni (855/1451) the Hanafîte. It was based largely on the former, with additional material. (c) *Irshâd al-Sârî li Sharh Sahîh al-Bukhâri* by Shihâb-al-Dîn Ahmed ibn Muhammad al-Khatib al-Qastallani (923/1517) the Shâfi'îte, with an introduction to '*ilm al-hadîth* and al-Bukhâri.⁸¹

⁷⁸ Mahmud 'Aynî, *Umdah al-Qâri*, (Beirut: Dâr al-Fikr, 1998), vol. I-XVI.

⁷⁹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 724.

⁸⁰ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 555.

⁸¹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 427.

4. *Al-Jâmi' al-Sahîh* by Abu al-Husain Muslim ibn al-Hajjaj al-Nisaburi (261/874) the Shâfi'îte. This is the second of the "Six Books." This work found special favor among the Muslims of the Maghreb (West), some of whom went so far as to place it above the *Sahîh* of al-Bukhâri. *Al-Minhâj fi Sharh Muslim ibn al-Hajjâj*, by Yahya ibn Sharaf al-Nawawi (676/1277) the Shâfi'îte, with an introduction to *'ilm al-hadîth*.⁸²

5. *Sunan Abu Dâwud* by Abu Dawud Sulayman ibn al-Ash'ath al-Sijistâni (275/888), the Shâfi'îte. This is a *hadîth* collection of the *Sunan* class.⁸³

6. *Al-Jâmi' al-Sahîh* also called *Sunan al-Tirmidhi*, by Abu 'Isa Muhammad ibn 'Isa al-Tirmidhi (279/892) the Shâfi'îte.⁸⁴

7. *Sunan Ibn Mâjah* by Abu Muhammad ibn Yazid Ibn Mâjah al-Qazwîni (273/886). Also this is one of the "Six Books."⁸⁵

8. *Jam' al-Jawâmi'* by Jalâl-al-Dîn 'Abdurrahman ibn Abu Bakr al-Suyûti (911/1277). This work combines the Six Books, several *Musnads* and others, and is intended by the author to exhaust the entire field of *hadîths*. The author abridged it in his *al-Jâmi' al-Saghîr*, which he supplemented with the *Zawâ'id*. A compilation and arrangement of all the three is the *Kanz al-'Ummâl fi Sunan al-Aqwâl wa al-Af'âl* by 'Ali ibn Husâm-al-Dîn al-Muttaqi (975/1567) the Indian. According to the numbering in the margin, it contains 46,681 *hadîths* in the form of books (*Kitâb*) (in the conventional manner of the *fiqh* books), arranged alphabetically. We could say that this is probably the easiest of the references.⁸⁶

2.1.3.2 The Books of *Hadîth* on Legal Rules (*Kutub al-Ahkâm*)

1. *Nayl al-Awtâr* by Shawkânî (1250/1832), a Zaidî Shi'îte author, using Sunnî materials.

2. *I'lâ' al-Sunan* by Mawlânâ Zafar Ahmad al-'Uthmânî al-Tahânawî (1394/1974). This is a *hadîth* codification for the Hanafî school.

3. *Bulûgh al-Marâm min Adillah al-Ahkâm* by Ahmad ibn Hajar al-'Asqalânî (852/1448). This is the work of a very important Shâfi'î scholar, who arranged all *hadîths* according to *fiqh* subjects. The most important commentary on this book is *Subul al-Salâm* by Muhammad ibn Ismail al-Kahlânî (1182/1768).⁸⁷

⁸² Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 438.

⁸³ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 46.

⁸⁴ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 441.

⁸⁵ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 45.

⁸⁶ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 468.

⁸⁷ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 243.

4. *Nasb al-Râyah li Ahâdîth al-Hidâyah* by Jamâluddîn ‘Abdullah al-Zayla‘î (762/1360). This is a reference book for all *hadîths* that was used in *al-Hidâyah* for al-Marghinânî. This is a manual for all Hanafî scholars.⁸⁸

5. *Mishkât al-Masâbih* is a new and augmented edition of *Masâbih* of al-Farra al-Baghawi by Shaykh Wali al-Dîn Abu ‘Abdullah Muhammad ibn ‘Abdullah al-Khatib (737/1336).⁸⁹

2.1.3.3 Some Books on the Science of Tradition (*Usûl al-Hadîth*)

1. (*Ma‘rifah*) ‘*Ulûm al-Hadîth*, also called *Funûn al-Hadîth*, *Muqaddimah ibn al-Salâh and Usûl al-Hadîth*, by Abu ‘Amr ‘Uthmân ibn ‘Abdurrahman ibn al-Salâh (643/1245), the Shâfi‘ite. This is the first work on the subject to achieve classical fame. It contains 65 topics (*naw’*).⁹⁰

2. *Al-Kifâyah fi ‘Ilm al-Riwâyah*, by Ahmad ibn ‘Ali al-Khatib al-Baghdadi (1002-1071). It is one of the earliest works.

3. *Al-Taqrîb wa’l-Taysîr ila Ma‘rifat Sunan al-Bashîr al-Nadhîr*, by Yahya ibn Sharaf al-Nawawi (676/1277). It is a second abridgment of a first abridgment of that work by the same author called *Kitâb al-Irshâd li-Ma‘rifah Hadîth Khayr al-‘Ibâd*.⁹¹

4. *Tadrîb al-Râwî Sharh Taqrîb al-Nawawi* by Jalal-al-Dîn ‘Abdurrahman ibn Abu Bakr al-Suyûti (911/1277). The work is also intended as a commentary on the works of ibn al-Salâh and others. It is replete with information.⁹²

5. *Nukhbah al-Fikar fi Istilâh Ahl al-Athar* by Ahmed ibn ‘Ali ibn Hajar (852/1448), with a commentary by the same author.⁹³

6. *Al-Bâ‘ith al-Hathîth Sharh Ihktisâr ‘Ulûm al-Hadîth*, by Ismail ibn Kathir (1301–1373).

7. *Qawa‘id al-Tahdîth min Funûn Mustalah al-Hadîth* by Muhammad Jamaluddîn al-Qasimi. This is a contemporary and useful book.

8. *‘Ulûm al-Hadîth wa Mustalahuhû* by Subhi Sâlih. This is a very important manual, summarizing previous works well.

⁸⁸ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 759.

⁸⁹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 569; Hawwa, *al-Madkhal ila Madhhab al-Imâm Ebu Hanîfa al-Nu‘man*, pp. 375-83; Aghnides, *Islamic Theories of Finance*, pp. 169-72; Sircar, *The Muhammadan Law*, pp. 18-23.

⁹⁰ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 166.

⁹¹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 378.

⁹² Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 323.

⁹³ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 746.

9. *Usûl al-Hadîth 'Ulûmuhû wa Mustalahuhû* by Muhammad Ajjaj al-Khatib.⁹⁴

2.1.3.4 Shî'a *Hadîth* Books

1. *Al-Kâfî fi 'ilm al-Dîn* (The One Sufficient in the Knowledge of Religion). By Thiqat al-Islam al-Shaykh Abu Ja'far Muhammad ibn Ya'qub ibn Ishaq al-Kulayni (328/329/ 940). This is eight volumes containing 16,099 traditions with their authorities and sources, related to both *Usûl* and *Furû'*.

2. *Man lâ Yahduruhu al-Faqîh* (For the One Who Is Not in the Presence of Jurisprudents). By al-Shaykh Abu Ja'far Muhammad ibn 'Ali ibn Husayn ibn Babawayh al-Qummi (al-Shaykh al-Saduq) (381/991). This the work consists of four volumes, 9,044 Traditions.

3. *Tahdhîb al-Ahkâm* (Rectification of the Statutes). By Shaykh al-Ta'ifah, Abu Ja'far Muhammad ibn Hasan al-Tusi (460/1068). It consists of ten volumes with 13,416 *ahadîths* in 393 sections.

4. *Al-Istibsâr (al-Istibsâr fi ma ukhtulif fihî min al-akhbâr)* (Reflection on the Disputed Traditions). By al-Shaykh Abu Ja'far Muhammad ibn Hasan al-Tusi (460/1068). It consists of four volumes with 5,558 *ahadîths*.

5. *Bihâr al-Anwâr* (Oceans of Lights). By Muhammad Baqir ibn Muhammad Taqi al-Majlisi (1110/1690). It is 110 volumes. It is like a Shî'a encyclopedia on faith, law and history.

6. *Wasâ'il al-Shî'a*. By al-Shaykh Muhammad ibn Hasan al-Hurr al-'Amili (1104/1692). It consists of 29 volumes with 35,868 *ahadîths*.

7. *Mustadrak al-Wasâ'il wa Mustanbat al-Masâ'il*. By al-Hajj Mirza Husayn al-Nuri al-Tabarsi (1320/1902). It consists of 18 volumes.

2.1.4 *Books of Tafsîr (Interpretation of the Holy Qur'an)*

The Books of *Tafsîr* (Interpretation) are works that are intended to explain the Holy Qur'an. Those verses in the Holy Qur'an that are related to law have been particularly expounded by some authors.

2.1.4.1 Some Commentaries on the Qur'an

1. *Jâmi' al-Bayân fi Ta'wîl Ây al-Qur'an (Tafsîr al-Qur'an)* by Abu Ja'far Muhammad ibn Jarir al-Tabarî (310/922). The entire Muslim community has agreed that

⁹⁴ Aghnides, *Islamic Theories of Finance*, pp. 172-73.

nothing like this has been written. It is the most excellent and greatest of Qur'an commentaries and is the basic authority. It goes into the motives (*wajh*) of the opinions and indicates those that merit preference; it also takes up questions of syntax (*i rāb*) and legal deductions (*istinbāt*).⁹⁵

2. *Mafâtîh al-Ghayb*, known as *al-Tafsîr al-Kabîr*, by Fakhr al-Dîn Muhammad ibn 'Umar al-Razi (606/1209). This is a large, unfinished work. The author wrote it to disconcert some of "the jealous people" who did not believe a statement by him to the effect that 10,000 propositions could be derived from the hidden meanings of the opening chapter of the Qur'an. The book is full of singular views and replete with the views of the philosophers.⁹⁶

3. *Rawâyi' al-Bayân Tafsîr Âyât al-Ahkâm min al-Qur'an* by Muhammad 'Ali al-Sâbûnî. This is a comparative and contemporary work.

4. *Al-Mîzân fi Tafsîri'l-Qur'an*, popularly known as *Tafsîr al-Mîzân*. This is a remarkable Shî'a Muslim *Tafsîr* (or exegesis of the Qur'an) written by Ayatollah Sayyid Muhammad Hussein Tabataba'i. The work consists of twenty volumes. Up until now more than three editions have been printed in Iran and Lebanon.⁹⁷

2.1.4.2 The Books on Ahkâm al-Qur'an (Qur'anic Fiqh)

2.1.4.2.1 Hanafî Works on Fiqh al-Qur'an

Among the Hanafî 'ulamâ, several have attained fame as contributing to the development of *fiqh al-Qur'an*. Some of their works are noted below.

1. *Ahkâm al-Qur'an*, by 'Ali ibn Hajar Sa'di al-Maruzi al-Khurasani (244/858).

2. *Ahkâm al-Qur'an al-Karîm*, by Abu Ja'far Ahmad al-Tahâwî (321/933). He explains Qur'anic verses from the Hanifite perspective especially.⁹⁸

3. *Ahkâm al-Qur'an* (Decrees of the Holy Qur'an) by Abu Bakr Jassas al-Râzî (370/980) from the City of Raz of Turkistan. He explains Qur'anic verses from the Hanafite perspective especially.⁹⁹

4. *Anwâr al-Qur'an fi Ahkâm al-Qur'an*, by Muhammad Kâfi ibn Hasan al-Basandi al-'Aqhisari (1025/1616).

⁹⁵ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 370.

⁹⁶ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 373.

⁹⁷ Tashkopruzadeh, *Miftâh al-Sa'âdah*, vol. II, pp. 54-112; Mannâ' al-Qattân, *Mabahith fi 'Ulûm al-Qur'an* (Beirut: al-Risâlah, 1996), pp. 376-81; Aghnides, *Islamic Theories of Finance*, pp. 167-68.

⁹⁸ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 80.

⁹⁹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 80.

5. *Anwâr al-Qur'an fi Ahkâm al-Qur'an*, by Muhammad Shams al-Dîn al-Harawi al-Bukhârî (1109/1697), apparently not printed.

6. *Ahkâm al-Qur'an*, by Isma'il Haqqi (1127/1715).

7. *Madârik al- Ahkâm and Anwâr al-Qur'an* by `Abd Allah al-Balkhi (1189/1775), not printed.

8. *Ahkâm al-Qur'an* by `Abd Allah al-Husayni al-Hindi (1270/ 1853).

9. *Nayl al-Murâd min Tafsîr Âyât al- Ahkâm*, by Muhammad Siddiq al-Bukhârî (1307/1889).

2.1.4.2.2 *Mâlikî Works on Fiqh al-Qur'an*

Several scholars among the Mâlikî `ulamâ, as well, have been noted for their substantial research and contributions to fiqh al-Qur'an. Some of these are noted below:

1. *Ahkâm al-Qur'an*, by Abmad ibn Mu'dhal (240/854).

2. *Ahkâm al-Qur'an*, by Muhammad ibn `Abd Allah, known as ibn al-Hakam (268/881).

3. *Ahkâm al-Qur'an*, by Isma'il ibn Ishaq al-'Azdi (282/895).

4. *Âyât al-Ahkâm*, by al-Qasim ibn Asbagh al-Qurtubi al-'Andalusi (304/916).

5. *Ahkâm al-Qur'an*, by Muhammad ibn Ahmad al-Tamimi (305/917).

6. *Ahkâm al-Qur'an*, by Musa ibn `Abd al-Rahman, known as Qattan (306/918).

7. *Ahkâm al-Qur'an*, by Muhammad ibn al-Qasim, known as ibn al-Qurtubi (355/966).

8. *Ahkâm al-Qur'an*, by Ahmad ibn `Ali, known as al-Baghati (401/1010).

9. *Ahkâm al-Qur'an* (Decrees of the Holy Qur'an) by Abu Bekr Muhammad ibn al-Arabî (543/1148). He explains Qur'anic verses from the Mâlikîte perspective especially.¹⁰⁰

10. *Ahkâm al-Qur'an*, by `Abd al-Mun'im ibn Muhammad al-'Andalusi al-Gharnati (597/1200).

11. *Âyât al-Ahkâm*, by Yahya ibn Sa'dun al-'Azdi al-'Andalusi (670/ 1271).

12. *Al-Jâmi' Li Ahkâm al-Qur'an* by the Mâlikîd Jurist Abu `Abdullah al-Qurtubi or Abu `Abdullah Muhammad ibn Ahmad ibn Abu Bakr al-Ansari al-Qurtubi (1214-1273). We can say that this is an encyclopedia of Islamic Law according to the Qur'an.

13. *Mukhtasar Ahkâm al-Qur'an* by Makki ibn Abu Tâlib al-Qaysi al-Qayrawani (437/1045).

¹⁰⁰ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 80.

2.1.4.2.3 *Shâfi'î Works on Fiqh al-Qur'an*

Several Shâfi'î `ulamâ' have become well known for their compilations concerning fiqh al-Qur'an. Some of their works are noted below.

1. *Ahkâm al-Qur'an*, compiled by Muhammad ibn Idris al-Shâfi'î, the leader of the Shâfi'î school of fiqh (204/819).
2. *Ahkâm al-Qur'an*, by Ibrahim ibn Khalid, known as Abu Tur al-Kalbi (240/854).
3. *Âyât al-Ahkâm*, by Ahmad ibn al-Husayn al-Bayhaqi (458/1066).
4. *Ahkâm al-Qur'an*, and *Ikhlîl fi Istinbat al-Tanzil*, by `Abd al-Rahman ibn Abu Bakr al-Misri (911/1505).
5. *Manâr al-Islam fî sharh Âyât al-Ahkâm*, by Ahmad Zayni Dahlin al-Hasani (1304/1886), Muftî of Makkah.
6. *Ahkâm al-Qur'an* by Ahmad ibn Yusuf Samin (756/1355).

2.1.4.2.4 *Hanbalî Works on Fiqh al-Qur'an*

Hanbalî `ulamâ' have also greatly contributed to this subject and compiled several treatises. Their works include the following.

1. *Âyât al-Ahkâm*, compiled by Qadi Abu Ya'la al-Kabir (458/1066).
2. *Âyât al-Ahkâm*, by Muhammad Abu Bakr al-Dimashqi, known as ibn al-Qayyim al-Jawziyya (751/1350).

2.1.4.2.5 *Shi'î Works on Fiqh al-Qur'an*

1. *Âyât al-Ahkâm* by Muhammad ibn Sa'ib al-Kalbi (146/763). Besides this book, he had written a complete Tafsîr of the Qur'an.

2. *Tafsîr al-Khamsemi'at Âyât al-Ahkâm*, by Muqatil ibn Sulayman al-Khurashni al-Balkhi (150/767).

3. *Tafsîr Âyât al-Ahkâm*, by Hisham ibn Muhammad ibn Sa'ib al-Kalbi al-Kufi (204 or 206/819 or 821).

4. *Ahkâm al-Ahkâm*, by `Abbad ibn al-`Abbas al-Taliqani (385/995).

5. *Fiqh al-Qur'an fî Âyât al-Ahkâm*, by Qutb al-Dîn al-Rawandi (573/ 1177).

6. *Kanz al-'Irfan fî Fiqh al-Qur'an*, by Fadil Miqdad ibn `Abd Allah al-Suyuri al-'Asadi al-Hilli (826/1423). This book has been translated into Persian.

7. *Minhâj al-Hidâyah fî Tafsîr Âyât al-Ahkâm*, by Ahmad ibn `Abd Allah, known as

ibn al-Mutawwaj (836/1432).

8. *Âyât al-Ahkâm*, by `Ali ibn Muhammad al-Shahaftiki al-Mashhadi (907/1501).

9. *Zubdah al-Bayân fi sharh Âyât Ahkâm al-Qur'an*, by Ahmad ibn Muhammad, known as al-Muqaddas al-'Ardabili (993/1585).

10. *Âyât al-Ahkâm* by Muhammad ibn 'Ali al-Husayni al-Mar`ashi (during the reign of Shah Tahmhsib I).

11. *Dala'il al-Maram fi Tafsîr Âyât al-Ahkâm*, by Muhammad Ja'far ibn Sayf al-Dîn al-'Astarabadi, known as Sharî'ahtmadar (1263/ 1847).

12. *Âyât al-Ahkâm*, by Muhammad Baqir ibn Muhammad Hasan Qayini (1352/1933)

2.1.4.2.6 Zaidî Works on Fiqh al-Qur'an

Some `ulamâ' among the Zaidîs who have acquired well-deserved fame have compiled books on *Âyât al-Ahkâm*. Some of their works are listed below.

1. *Sharh Âyât al-Ahkâm*, by Yahya ibn Hamzah al-Yemeni (749/1348).

2. *Sharh Âyât al-Ahkâm*; by Muhammad ibn Yahya Sa'di al-Yemeni (957/1550).

3. *Âyât al-Ahkâm*, by Husayn al-'Amri al-Yemeni (1380/1960).

2.1.4.2.7 Zâhirî Works on Fiqh al-Qur'an

Some `ulamâ' of the Zâhirî School have also written books on fiqh al-Qur'an. Their works include the following.

1. *Ahkâm al-Qur'an*, compiled by Dawud ibn 'Ali al-Zâhirî al-'Isfahani (201-270/816-883).

2. *Ahkâm al-Qur'an*, by `Abd Allah ibn Ahmad, known as ibn al-Mughallis (324/936).

2.1.4.3 The Books on the Science of Qur'an Interpretation ('Ulûm al-Qur'an)

1. *Al-Burhân fi 'Ulûm al-Qur'an* by Badr-al-Dîn Muhammad ibn 'Abdullah al-Zarkashi (794/1391).¹⁰¹

2. *Al-Itqân fi 'Ulûm al-Qur'an* by Jalâl-al-Dîn al-Suyûti (911/1277). This was intended as an introduction to the exhaustive Qur'an commentary he began writing, the *Majma' al-Bahrayn* and *Matla' al-Bahrayn*, which he apparently did not com-

¹⁰¹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 72.

plete. The *Itqân* is the most useful of his works.¹⁰²

3. *Manâhil al-'Irfan fi 'Ulûm al-Qur'an* by Muhammad Abdulazim al-Zarqani; two volumes.

4. *Mabâhith fi 'Ulûm al-Qur'an*, by Subhi al-Sâlih. This manual offers good summaries.

5. *Mabâhith fi 'Ulûm al-Qur'an* by Manna' al-Qattan.¹⁰³

2.1.5 Monographic Works (Treatises=Rasâ'il)

As dissertations, thesis' and research articles are written today that reflect diverse opinions and ideas regarding important current legal issues that are supposed to be solved, this is the case for the history of Islamic Law as well. Especially when civil servants and officials trespassed against the law in any way, the jurists wrote concise treatises (monographic works or articles) that illuminated the legal aspects of the issue concerned, which – from our point of view – are among the most noteworthy references for Islamic Law. For instance, the issue of Cash Money Endowments in the Ottoman State was negotiated during the reign of Sultan Sulaiman the Legislator and there were about ten treatises on that subject, either for or against. The treatises by Abu al-Su'ûd, Bali Effendi and Birgivi are the most notable. Among those authors who defended the superiority of law in the state's affairs in the treatises they wrote and cast light on the history of Islamic Law we could cite Shaikh al-Islam Abu al-Su'ûd Effendi (982/1577), Ahmed Hamawi; Shaikh al-Islam Ibn al-Kamal (940/1533), Ibn Nuja'im, an Egyptian Hanafite jurist (970/1563), Hasan Shurunbilali (1069/1658) and Ibn al-'Abidîn from the jurists in the area of Damascus in recent times. These are some Hanafite jurists; there are many jurists from other schools.¹⁰⁴

Some treatises (*Rasâ'il*) are the following.

1. Al-Ghazzâlî, *Majmû'ah Rasâil al-Ghazzâlî*. There are twenty-six *Risâlahs* that have been published.

2. *Rasâil Shaikh al-Islam* ibn al-Kamal (940/1533). There are many *Risâlahs* on Islamic sects; five *Risâlahs* on ilm al-kalâm; *Risâlah al-Tanbih ala Ghalat al-Jâhil wa al-Nabih*.

3. *Majmû'ah Rasâil al-Hamawî* by Hâmid ibn Ali al-Imâdî al-Hamawî (1171/1757).

¹⁰² Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 234.

¹⁰³ Al-Qattân, *Mabahith fi 'Ulûm al-Qur'an*, pp. 391-92; Aghnides, *Islamic Theories of Finance*, pp. 168-69.

¹⁰⁴ See especially Süleymaniye Library, Şehit Ali Pasha No: 782 (*Treatises by ibn al-Nuja'im*); Yeni Cami, 1198 (*Treatises by Shurunbilali*) and Mahmud Effendi No: 1006 (*Treatises by Ibn al-Kamal*); ibn al-Abidin's son is a member of the Association of *Majalla*.

There are eighteen *Risâlahs*; among them we can mention *Salâh al-Âlam bi Iftâ' al-Âlim and Jawâb an al-Afyon*.

4. Ibn Taimiyya, *Majmû'ah al-Rasâ'il wa al-Masâ'il*. There are many *Risâlahs* for Ibn Taimiyya.

5. *Rasâil Shaikh al-Islam Abu al-Su'ûd Effendi* by Muhammad ibn Muhammad al-Imâdî (982/1577). There are many *Risâlahs* for Abu al-Su'ûd in different subjects. *Risâlah fi Waqf al-Nuqûd* is famous among them. There are approximately thirty *Risâlahs*.

6. *Rasâ'il Ibn Nujaym* or, as it is also called, *al-Rasâ'il al-Zayniyyah fi Fiqh al-Hanafiyyah*, by Zayn-al-'âbidîn ibn Nujaym al-Misri, an Egyptian Hanafîte jurist (970/1563); these books have been published again. There are forty *Risâlahs* on fiqh and one of them is *Risâlah fi Talab al-Yamin ba'da Hukm al-Mâlikî*.

7. *Rasâ'il Shurunbilali* by Hasan ibn Ammâr al-Shurunbilali (1069/1658). There are sixty-one *Risâlahs* in this *Majmû'ah*.

8. *Majmû'ah Rasâ'il Ibn 'Abidîn* by Muhammad Amin Efendi, known as ibn 'Abidîn (1250/1834) the Hanafîte. One of these, *Rasâ'il is 'Uqud Rasm al-Muftî*, gives valuable information about the original Hanafîte sources and the meanings of the terms used by Hanafîte *fuqahâ* in connection with the transmission of early opinions.¹⁰⁵

2.1.6 Lexicological Sources (*al-Ma'âjim*)

These sources are very important for explaining the terminology of Islamic law. For this reason we should mention some sources on different subjects.

1. **Personal Names:** *al-Mushtabih fi Asmâ' al-Rijâl* by Shams-al-Dîn Abu 'Abdullah Muhammad ibn Abu al-Dhahabu (748/1347), the Shâfi'îte; gives the spelling of ambiguous proper names, ethnic names, surnames (*kunya*) and honorary names (*alqâb*).

2. **Place Names:** *Mu'jam al-Buldân* by Yaqut ibn 'Abdullah al-Rûmî al-Hamawî (626/1228). This work gives the spelling of the names of towns, villages, countries, stations, mountains, rivers, etc., occurring in *hadîths*, histories, and poems, with situations indicated. It quotes the respective verses.¹⁰⁶

3. **Terms of the Qur'an:** 1) *Mufradât Alfâz al-Qur'an* by Abu 'I-Qâsim al-Husain ibn Muhammad al-Râgib al-Isfahânî (502/1108). This book has been alphabetically arranged and it is very usable. It cites verses and traditions.¹⁰⁷ 2) *Al-Mu'jam al-*

¹⁰⁵ <http://www.alazharonline.org>.

¹⁰⁶ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 595.

¹⁰⁷ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 624.

Mufahras li Alfâz al-Qur'an al-Karîm by Muhammed Fu'âd is a modern and useful work for researchers.

4. **Terms of the Tradition:** *al-Nihâyah fi Gharîb al-Hadîth wa'l-Athâr*, by Majd-al-Dîn Abu 'l-Sa'adat al-Mubarak ibn Muhammad al-Jazari ibn al-Athir (606/1209). Alphabetically arranged with respect to roots; quotes the entire *hadîth* where the word is found. It is very easy for reference and full of valuable information.¹⁰⁸

5. Terms of Islamic Law:

a) *Gharîb al-Fiqh* by Abu Mansûr Muhammad ibn Abu al-Azhari (370/980); explains words used by Shâfi'îte jurists.¹⁰⁹

b) *Mafâtih al-'Ulûm* by Abu 'Al Muhammad ibn Abu al-Khuwarizmi al-Kâtib (387/997). Ed. G. van Vloten. Leiden: 1895; gives brief explanations of technical terms used in the sciences and arts (for example, *fiqh*, dogmatics, syntax, tax and other administration [*kitâbah*], music and chemistry) in separate chapters analytically arranged. It is very a valuable work.¹¹⁰

c) *Al-Mughrib fi Tartîb al-Mu'rib* by Abu 'l-Fath Nasir ibn Abd-al-sayyid al-Mutarrizi (610/1213) the Hanafîte. This is a condensed, alphabetically arranged version of his own *al-Mu'rib*. It explains words and locutions used in Hanafîte works on *fiqh*.¹¹¹

d) *Al-Ta'rifât* by 'Ali ibn Muhammad al-Jurjani, al-Sayyid al-Sharîf (816/1413) the Hanafîte. This is a well-known work giving brief definitions of technical terms only.¹¹²

e) *Ishârât ila ma Waqa'a fi Kutub al-Fiqh min al-Asmâ wa'l-Amâkin wa'l-Lughât* by Abu Tâhir Muhammad ibn Ya'qub al-Firuzâbâdi (817/1414); explains proper names and terms of *fiqh* books.

f) *Kashshâf Istilâhât al-Funûn* (1158/1745) by Muhammad 'Ali ibn 'Ali al-Tahanawi, the Hanafîte; explains technical terms by long quotations from standard works and contains an introduction on the definition, subject-matter, etc. of the sciences.

g) *Talibat al-Talabah*, by Abu al-Hafs al-Nasafi (537/1142), Hanafîte.

h) *Tahdhib al-Asmâ wal-Lughât* by Imâm Nawawi (676/1277), second part; the first part is a dictionary of proper names occurring in works on Islamic Law) (Shâfi'î).¹¹³

¹⁰⁸ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 783.

¹⁰⁹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 202.

¹¹⁰ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 611.

¹¹¹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 605.

¹¹² Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 350.

¹¹³ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 413; Hawwa, *al-Madkhal ila Madhhab*, pp. 397-402; Aghnides, *Islamic Theories of Finance*, pp. 165-67.

2.1.7 Biographical Sources (Books of *Tabaqât*)

We should also mention in particular biographical works, called “books of *Tabaqât*” by former Muslim jurists, which give information on the life stories and works of jurists. Tashkopruzade’s work *Al-Shaqâ’iq al-Nu‘maniyyah* on the lives of Ottoman scholars and, again, his work *al-Tabaqât al-Hanafiyyah* on the lives of Hanafite jurists could be given as examples here. Apart from the independent books on *Tabaqât* that narrate the separate biographies of Shâfi‘î, Mâlikî, Hanbalî and Hanafî jurists, there are also books of *Tabaqât* that narrate the biographies of all Islamic jurists.

2.1.7.1 Companions and Followers

1. *Tabaqât al-Sahâbah wa’l-Tâbi‘în* or simply *Tabaqât ibn Sa‘d* by Abu ‘Abdullah Muhammad ibn Sa‘d al-Zuhri al-Basri (230/844). That is the earliest and the most comprehensive book.¹¹⁴

2. *Al-Isâbah fi Tamyîz al-Sahâbah* by Shihâb-al-Dîn Abu’l-Fadl Ahmed ibn ‘Ali ibn Hajar al-Asqalâni (852/1448) the Shâfi‘îte; contains in all 12,279 lives, omitting all but the Companions.¹¹⁵

2.1.7.2 General *Tabaqât*

1. *Târikh ‘Ulamâ al-Andalus* by Abu al-Walid ‘Abdullah ibn Muhammad al-Azdi ibn al-Faradi (403/1012). It gives briefly in alphabetical order the lives of 1,642 *fuqahâ*, jurists, etc. of Spain with indexes on persons, books and places appended.¹¹⁶

2. *Hilyah al-Awliyâ wa Tabaqât al-Asfiyâ* by Abu Na‘îm Ahmad al-Isfahanî (430/1038). This work contains information on most Muslim scholars and moral leaders.

3. *Târikh Baghdâd* by Abu Bakr Abu ibn ‘Ali al-Khatib al-Baghdadi (463/1070). A celebrated extensive history, particularly of the scholars, of Baghdad.¹¹⁷

4. *Kitâb Wafayât al-A‘yân wa Anbâ‘u Abnâ al-Zamân* by Shams-al-Dîn Ahmed ibn Muhammad ibn Khallikan (672/1273) the Shâfi‘îte. This is a celebrated work relating the lives of persons of note in every area. It omits Companions and early caliphs as

¹¹⁴ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 121.

¹¹⁵ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 140.

¹¹⁶ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 263.

¹¹⁷ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 265.

too well known; alphabetically arranged according to real names.¹¹⁸

5. *Tahdhîb al-Asmâ wa'l-Lugât* by Abu Zakariyâ Yahya ibn Sharaf al-Nawawi (676/1277), the Shâfi'îte. This is a very frequently quoted, useful work. The first part (*qism*) gives the proper names and the second part the common names and technical terms occurring in the Shâfi'îte *fiqh* books. It is alphabetically arranged according to with respect to real names, surnames, etc. grouped in separate sections. The lives presented are mostly those of Companions and Followers, with a few of the leading jurists of different schools.¹¹⁹

6. *Siyar A'lâm al-Nubalâ* by Shamsaddîn Muhammad Al-Dhahabî.

7. *Al-A'lâm; Qamus li ashhar al-Rijâl wa al-Nisâ* by Khayraddîn al-Zirikli. This is an encyclopedia on all Muslim scholars, orientalists and Islamologists.

8. *Qamus al-A'lâm* by Shamsuddîn Sâmî, who was an Ottoman scholar. This book is useful, especially with respect to Ottoman scholars.

9. *Mu'jam al-Mu'allifîn* by 'Umar Ridha Kahhâlah. This is a new and important source for all Muslim authors.¹²⁰

2.1.7.3 Hanafîte *Tabaqât*

1. *Al-Jawâhir al-Mudhi'ah*, by Muhyi-al-Dîn 'Abdulqâdir ibn Abu al-Wafa al-Qurayshi al-Misri (775/1373).¹²¹

2. *Tâj al-Tarâjim Tabaqât al-Hanafiyyah* by Abu al-Fadl Zayn-al-Millah Wa'l-Dîn al-Qâsim ibn 'Abdullah ibn Qutlubugha (879/1474). The work deals only with jurists who left writings – in all, 330 persons.¹²²

3. *Al-Shaqâ'iq al-Nu'maniyyah fi 'Ulamâ al-Dawlah al-'Uthmaniyyah* by Mawla Ahmed ibn Mustafa Tashkopruzâdeh (968/1560) with additions and supplements by Majdî and 'Atâ'î. The work contains about 600 lives. It was written to save the *fuqahâ* (*ulamâ*) who lived and flourished in the Ottoman Empire from oblivion. Many supplements were written of which extensive was a 7-volume work by Atâ'ullah New'î-zâdeh.¹²³

4. *Al-Tabaqât al-Saniyyah fi Tarâjim al-Hanafiyyah*, by Taqi-al-Dîn ibn 'Abdulqâdir al-Tamimi al-Gazzi (1010/1601), with an introduction. This book is alphabetically ar-

¹¹⁸ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 804.

¹¹⁹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 413.

¹²⁰ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 530; Tashkopruzadeh, *Miftâh al-Sa'âdah*, vol. I, pp. 260-61.

¹²¹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 482.

¹²² Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 117.

¹²³ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 84.

ranged with respect to proper names (*asâmi*). There are separate sections for ethnic (*ansâb*) and honorary names (*alqâb*). This is the most excellent of the works composed on the lives of Hanafites (*ahl al-ra'y*): It includes the lives of the *Shaqâ'iq* and later works until the author's time, namely 993/1585, the year of its completion.¹²⁴

2.1.7.4 Shâfi'ite *Tabaqât*

Al-Tabaqât al-Shâfi'iyyah, by Taj-al-Dîn Abd-al-wahhâb al-Subki (771/1369). Overflowing with information, this work was intended by the author to include the name of every jurist mentioned in the books of his time. It often quotes long passages from their works and relates debates, etc. at length. Alphabetical (but not strictly so) with respect to real names (*asmâ'*) within each group, except those jurists whose first name is Ahmad, and then those first name Muhammad. These are treated first. The first group gives al-Shâfi'î's personal disciples; the other groups consist of jurists who died in the same century.¹²⁵

2.1.7.5 Mâlikite *Tabaqât*

1. *Tartîb al-Madârik wa Taqrîb al-Masâlik li Ma'rifat A'lâm Madhhab Mâlik* by al-Qâdhî 'Iyadh ibn Musa al-Yahsab (544/1149). An esteemed work that is much quoted.¹²⁶

2. *Al-Dîbâj al-Mudhahhab fi Ma'rifat A'yân Ulamâ' al-Madhhab*, also *Tabaqât al-Mâlikiyyah* by Burhân-al-Dîn Ibrahim ibn 'Ali ibn Farhûn (799/1396). This is an elegant work.¹²⁷

2.1.7.6 Hanbalite *Tabaqât*

1. *Tabaqât al-Hanbaliyyah* (513/1119), by al-Qâdhî Abul Husayin Muhammad ibn Muhammad al-Farrâ' al-Bagdâdi (526/1131).

2. *Zayl Tabaqât al-Hanbalîyyah* by ZaynudDîn Abdurrahman ibn Rajab al-Dimishqi (795/ 1393).¹²⁸

¹²⁴ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 117; Tashkopruzadeh, *Miftâh al-Sa'âdah*, vol. I, p. 261.

¹²⁵ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 118; Tashkopruzadeh, *Miftâh al-Sa'âdah*, vol. I, p. 261.

¹²⁶ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 332.

¹²⁷ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 123; Tashkopruzadeh, *Miftâh al-Sa'âdah*, vol. I, p. 261.

¹²⁸ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, 116; Tashkopruzadeh, *Miftâh al-Sa'âdah*, vol. I, p. 261.

2.1.7.7 Shi'ite *Tabaqât*

1. *Majâlis al-Mu'minîn* (996/1587) by Nurallah ibn Sharîf al-Husayni al-Shushtari. This is a frequently quoted work.

2. *A'yân al-Shi'a*, by Sayyid Muhsin al-Amin, six volumes. Damascus: Dâr al-Ta'âruf 1935.¹²⁹

2.1.8 Bibliographical Sources

1. *Kitâb al-Fihrist* or *Fihrist al-'Ulûm* (377/987) by Abu al-Faraj Muhammad ibn Ishaq al-Warrâq al-Bagdadi. A list of the Arabic books written up to 377/987, topically arranged with occasional bibliographical details. Good with respect to the earliest writers.¹³⁰

2. *Fihrist Kutub al-Shi'a* by Abu Ja'far Muhammad ibn al-Hasan al-Tûsi (459/1066), the Imâmîte. It gives a list of Shi'ite works.

3. *Kitâb al-'Ibar we Dîwân al-Mubtadâ we al-Khabar fi Ayyâm al-'Arab we al-'Ajam we al-Barbar*, etc. by Abu Zaid 'Abdurrahman ibn Muhammad ibn Khaldun al-Maghribi (808/1405) the Mâlikîte; contains a valuable bibliographical and critical review of the literature of the religious and other sciences.¹³¹

4. *Miftâh al-Sa'âdah we Misbâh al-Siyâdah* by Abu al-Khayr Abu ibn Muslih-al-Dîn Mustafa Tashkopruzadeh (968/1560) the Hanafîte. It describes the subjects of 159 disciplines, indicating the well-known books pertaining to each.¹³²

5. *Kashf al-Zunûn 'an Asâmî al-Kutub wa'l-Funûn* by Mustafa ibn 'Abdullah Kâtib Chelebi Haji Khalifah (1068/1657). Aside from the Mâlikîte works, it gives a nearly exhaustive list of Arabic (also Turkish and Persian) books arranged alphabetically according to title, with a long introduction to science, its definition, purpose, division, etc., and with learned reviews of the different sciences and their literature in their proper places. It is profuse in giving dates of death and bibliographical information.¹³³

2.1.9 History Books (Especially Histories of Institutions)

History books play a great role in the references for the history of Islamic Law. For example, the history by Mustafa Nuri Pasha called *Natâ'yij al-Wuqu'ât* (Conse-

¹²⁹ Hawwa, *al-Madkhal ila Madhhab*, pp. 406-28; Aghnides, *Islamic Theories of Finance*, pp. 159-63.

¹³⁰ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 275.

¹³¹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 138.

¹³² Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 615.

¹³³ Aghnides, *Islamic Theories of Finance*, pp. 163-65.

quences of Events) and the history by Jawdat Pasha called *Târikh-i Jawdat (History of Jawdat)* are very important, for they not only include chronological information but also give information on the legal, social and economic aspects of the Ottoman state. Still, all the works written by I.H. Uzunçarşılı during the Republican Age and Ö.L. Bar-kan's works on the history of economics are essential references for Islamic Law during the Ottoman period.

Among books of history are found some that only elaborate on the organization and bureaucratic life of the state, such as that by the Mamlukid scholar Kalkashandi called *Subh al-A'shâ fi Sinâ'ah al-Inshâ* (fourteen volumes, Egypt, 1913), which are particularly significant references for Public Law. What is more, the works by the officials of *Dîwân al-Inshâ* in various Islamic states (as in the Mamlukids) and those of the official historians in the Ottoman State that began to be called *Waq' anuwis* (Writers of Events) from the 14th. century onwards are original references. Apart from the aforesaid works, the following could be included among history books as original and authentic references for the history of Islamic Law: books of memoirs (like Ahmed Jawdat's *Tadhâkir*), travel books like Awliya Chelebi's *Seyâhatnâmah* (Travel Book), *Safâratnâmahs* (Ambassadors' Memoirs) and *Siyâsatnâmahs* (Politicians' Memoirs), which closely concern public law (like the *Siyâsatnâmah* by Nizâm al-Mulk, Kochi Bey's *Treatise* and Abu Yusuf's *Kitâb al-Kharâj*).¹³⁴

2.1.10 Books on Differences among Islamic Law Schools (*Ikhtilâf al-Madhâhib*)

The differences center mainly on the derivative legal rulings (*furû'*) and principles of *fiqh* (*usûl al-fiqh*) rather than the fundamental principles of religion. *Ikhtilâf*, which means disagreement, difference of opinion and diversity of views, especially among the experts of Islamic law, is widely recognized in Islamic tradition as a natural phenomenon. In its meaning as diversity, *Ikhtilâf* is also a recurring theme in the Qur'an, with reference to the diverse phenomena of nature and diversity as a sign of God and proof of God's existence and creation.¹³⁵ According to a saying by Prophet Muhammad, diversity among the Muslim people is a blessing (*Ikhtilâfu ummati rahmah*).¹³⁶

¹³⁴ Cf. Ahmet Mumcu and Coşkun Üçok, *Türk Hukuk Tarihi Ders Kitâbi*, (Ankara: Law School, 1982), pp. 166 ff.

¹³⁵ The Qur'an: 2:164; 3:190; 10:6; 23:80; 30:22; 45:5.

¹³⁶ This *Hadîth* is cited in al-Nawawi's commentary on *Sahîh Muslim*, a book on *waqf*. *Sahîh Muslim*, p. 91. The authenticity of this *Hadîth* was questioned by several scholars. Al-Khattabi, in his commentary on *Sahîh Muslim*, mentions that Jahiz and Musili had rejected this *Hadîth*, saying that if disagreement was a blessing, then agreement would be punishable. Al-Khattabi, however, explains that disagreement here particularly refers to legal matters, not to disagreement in matters of belief.

The Islamic tradition takes pride in sciences developed for studying the differences in the recitation and interpretation of the Qur'an and the differences in the transmissions of the *Hadîths*, the reports about Prophet Muhammad's statements, and the *Sunnah*, his practices. Since the beginning of the development of *fiqh*, *Ikhtilâf* among the jurists did not only exist but was also respected.¹³⁷

In Islamic jurisprudence *Ikhtilâf al-fuqahâ* (disagreement among the jurists) is one of the most frequently discussed subjects, yet current studies of Islamic law generally ignore its implications for the development of *fiqh* and its relevance for law reform in the modern context. It is neither possible nor advisable to analyse the doctrine of *Ikhtilâf al-fuqahâ* in detail in this short space. Therefore, we would like to underscore the significance of *Ikhtilâf al-fuqahâ* as a rich source for understanding the development of the Islamic legal tradition and as an important juristic tool for reinterpreting Muslim family laws in today's globalised world in which difference is increasingly valued.¹³⁸

We could mention some books relating to comparative law in the law schools:

1. *Ikhtilâf al-Fuqahâ* by Abu Ja'far Muhammad ibn Jarir al-Tabarî (310/922), the Shâfi'îte.¹³⁹

2. *Sharhu Ma'ânî al-Âthâr (Ikhtilâf al-Fuqahâ)* by Abu Ja'far Abu ibn Muhammad al-Tahâwi (321/933), the Hanafîte.¹⁴⁰

3. *Ta'sîs al-Nazar* by al-Dabbusi, al-Hanafî (430/1039).¹⁴¹

4. *Bidâyah al-Mujtahid wa Nihâyah al-Muqtasid* (ibn Rushd), by Abu al-Walid Muhammad ibn Ahmed ibn Rushd al-Qurtubi, known as ibn Rushd al-Hafid (the grandson) (595/1198). It is a masterly analysis of the main issues in law, with the views held by jurists of various schools and the grounds underlying their viewpoints ably discussed. The grounds ascribed by ibn Rushd to the jurists do not, therefore, always tally with those claimed by them.

5. *Rahmah al-Ummah fa Ikhtilâf al-A'immah* (780/1378), by Sadr-al-Dîn Muhammad al-Dimashqî al-'Uthmâni, the Shâfi'îte.¹⁴²

6. *Al-Mizân al-Kubrâ*, by 'Abd-al-Wahhâb ibn Abu al-Sharâni (973/1565), the

¹³⁷ Zuhaylî, *al-Fiqh al-Islamî*, vol. I, pp. 83-89.

¹³⁸ Muhammad Khalid Masud, "Ikhtilâf al-Fuqahâ: Diversity in Fiqh as a Social Construction," in *Wanted: Equality and Justice in the Muslim Family*, ed. Zainah Anwar Musawah (Kuala Lumpur: Sisters in Islam, 2006), pp. 65-93.

¹³⁹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 90.

¹⁴⁰ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 591.

¹⁴¹ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 291.

¹⁴² Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 630.

Shâfi'îte.¹⁴³

2.1.11 Books on Religious and Philosophical Sects

1. *Kitâb al-Farq bayn al-Firaq wa Bayân al-Firaq al-Nâjiyah minhum* by Abu Mansûr 'Abdulqâdir ibn Tâhir al-Bagdadi (429/1037) the Shâfi'îte.¹⁴⁴

2. *Kitâb al-Fisal fi al-Milal wa'l-Nihal* by Abu Muhammad 'Ali ibn Ahmed ibn Hazm (456/1064), the Zâhirîte. That is a polemical book, going into lengthy metaphysical and other arguments.¹⁴⁵

3. *Kitâb al-Milal Wa'l-Nihal* by Abu al-Fath Muhammad ibn 'Abd-al-karim al-Shahristâni (548/1153). This is a compact work treating religious and philosophical sects in general in a clear and concise way.¹⁴⁶

2.1.12 Books and Works by Non-Muslim Scholars

Non-Muslim scholars started to pay attention to and research Islamic Law since the beginning of the colonial period. For example, Dutch scholars or orientalists started to research the Shâfi'î School because the Dutch had invaded Indonesia. French orientalists became interested in the Mâlikîte School because the French had invaded North Africa. German orientalists have been interested generally in Islamic Law. For this reason we will classify books of orientalists, now called Islamolog, into different kinds.

2.1.12.1 General Books and Works by Non-Muslim Scholars

1. Von Kremer, A., *Culturgeschichte des Orients under den Chalifen*. Vienna 1875-77; chapters on law, pp. 470-547, and science and literature, vol. II, pp. 396-484. Also goes into the origin of *fiqh*.

2. Goldziher, Ignaz, *Muhammadanische Studien*. 2 vols., (1889-90), Hildsheim, 1961; trans. by C. R. Barber & S. M. Stern, *Muslim Studies*, 2 vols., London, vol. I: 1967, vol. II: 1971. The work contains a chapter (vol. II) on *hadîth* literature. It is a masterly study of the entire subject of *hadîth*; *die Zâhirîten*, Leipzig, 1884.

¹⁴³ Tashkopruzadeh, *Miftâh al-Sa'âdah* vol. II, p. 556; Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 732; Aghnides, *Islamic Theories of Finance*, p. 194.

¹⁴⁴ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 660.

¹⁴⁵ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 660.

¹⁴⁶ Kâtib Chelebi, *Kashf al-Zunûn*, vol. II, p. 660; Aghnides, *Islamic Theories of Finance*, pp. 194-95; Fy-zee, *Outlines of Muhammadan Law*, pp. 487-93.

3. Brockelmann, Carl, *Geschichte der arabischen Litteratur*, Zweite den Supplementbänden angepaßte Auflage. Leiden, E.J. Brill, 1943–49. 2 supplementary volumes. Leiden: Brill, 1937–42. 3 vols. Vol. I divides Arabic literature into two main periods: Book I looks at Arabic literature from its beginning until the downfall of the Umayyads. Book II explores Islamic literature in Arabic in a period of about 300 years. Within each of these periods, Brockelmann treats the literature according to subject: first *belles lettres*, then history, then religious writing, *hadith*, *fiqh*, Qur'an exegesis, mysticism, then astronomy and medicine, and finally encyclopedias. In each category the authors and works cited are grouped geographically. Vol. II is organized slightly differently from Vol. I. The periods treated are as follows: Book III looks at the decline of Islamic literature first from the period of Mongol rule until the conquest of Egypt by Sultan Selim in 1517, then from 1517 to the Napoleonic expedition to Egypt in 1798, and finally from 1798 to the present (i.e., ca. 1900).

The Supplementary Volumes: Volume I supplements the first two books of Vol. I of the original work. It includes an appendix of corrections and additions. Vol. II supplements book III of Vol. II of the original work. It has an appendix of authors whose time and place cannot be ascertained, arranged alphabetically according to the European alphabet, within subjects, in the same order as given above for Vol. I. Vol. III of the supplement is devoted to modern Arabic literature up until the outbreak of the Second World War, organized by country and then by literary genre.

4. MacDonald, D. B., *Development of Muslim Theology, Jurisprudence and Constitutional Theory*, Lahore: Premier Book House, 1960.

5. Schacht, J. *The Origins of Muhammadan Jurisprudence*, Oxford: Oxford University Press 1959; *An Introduction to Islamic Law*. Oxford: Oxford University Press 1964. Brief, but contains the most exhaustive references to modern books and articles.

6. The *Encyclopedia of Islam (EI)* is the standard encyclopedia of the academic discipline of Islamic studies. It contains articles on distinguished Muslims of every age and country, on tribes and dynasties, on the crafts and sciences, on political and religious institutions, on the geography, ethnography, flora and fauna of the various countries and on the history, topography and monuments of the major towns and cities. In its geographical and historical scope it encompasses the old Arabo-Islamic empire, the Islamic countries of Iran, Central Asia, the Indian sub-continent and Indonesia, the Ottoman Empire and all other Islamic countries.

It is an encyclopedia *about* the Islamic world, not a Muslim or an Islamic encyclopedia. Topics deal mostly with the pre-modern period, but some entries are contemporary. The primary editor was Martijn Theodoor Houtsma (M. Th. Houtsma).

7. J. Zaidan, *Târikh al-Tamaddun al-Islâmî*, (Cairo: Dar al-Hilal, 1958).

8. Coulson, J. *A History of Islamic Law*. Edinburgh: Edinburgh University Press

1994.

9. Snouck Hurgronje, C. "Le droit musulman," *Revue de l'histoire des religions* 37 (1898): 1ff, and 174ff; *Verspreide Geschriften*, vol. II Bonn and Leipzig: 1923, cf. also Selected Works of C. Snouck Hurgronje. Edited in English and in French by G.-H. Bousquet and J. Schacht. Leiden: Brill, 1957. The writings of Snouck Hurgronje are fundamental for understanding the nature of Islamic Law from the Western Perspective.

10. Gibb, H.A.R. *Modern Trends in Islam*. Chicago: The University of Chicago Press, 1947; H.A.R. Gibb and H. Bowen, *Islamic Society and the West*. London: Oxford University Press, 1950-57.

11. Macnaghten, W.H. *Reports of Cases Determined in the Court of Nizâmut Adawlut*. Calcutta: 1827; *Principles and Precedents of Mohummudan Law*. Calcutta: 1825.

12. Baillie, N.B.E. *The Mohummudan Law of Sale and The Land Tax of India: Introductions*. London: Smith, Elder, & Co., 1853.

13. Wilson, Sir Roland Knyvet, *An Introduction to the Study of Anglo-Muhammadan Law*. London: 1894.

14. Wilson Sir R.K. *Anglo-Muhammadan Law*, London: 1930.

15. Tyabji F.B., *Muhammadan Law*. 3rd ed. Bombay: 1940.

16. Milliot, Louis. *Introduction a l'etude du Droit Musûlman*. Paris: Recueil Sirey, 1953.

17. Tyan Emile. *Histoire de l'Organisation Judiciaire en Pays d'Islam*. Paris: Institutions du Droit Public Musûlman, 1938-43; 1954-56.

18. Hallaq, Wael B. *A History of Islamic Legal Theories: An Introduction to Sunnî Usûl al-Fiqh*. Cambridge: Cambridge University Press, 2007; *The Origins and Evolution of Islamic Law*. Cambridge: Cambridge University Press, 2007; *Authority, Continuity, and Change in Islamic Law*. Cambridge: Cambridge University Press, 2001; *The Formation of Islamic Law*. Aldershot: Ashgate/Variorum, 2004.

19. Peters, Rudolph. *Crime and Punishment in Islamic Law*. Cambridge: Cambridge University Press, 2005; *Jihâd in Classical and Modern Islam*, 1996; *Sharî'ah Criminal Law in Northern Nigeria*. 2003.

20. Gleave, Robert, and Eugenia Kermeli. *Islamic Law: Theory and Practice*. London: I.B.Tauris, 2001.

21. Mallat, Chibli, and Jane Frances Connors. *Islamic Family Law*. Leiden: Brill, 1990.

22. Khadduri Majid and Herbert J. Liebesny. *Origin and Development of Islamic*

Law. Washington: AMS Press, 1984.

23. Vogel Frank E., and Samuel L. Hayes. *Islamic Law and Finance: Religion, Risk, and Return*. Leiden: Brill, 1998.

24. Haddad, Yvonne Yazbeck and Barbara Freyer Stowasser. *Islamic Law and the Challenges of Modernity*. Walnut Creek: Rowman Altamira, 2004.

25. Masud, Muhammad Khalid, Brinkley Messick, and David Powers. *Islamic Legal Interpretation: Muftīs and Their Fatwās*, Cambridge: Harvard University Press, 1996.

26. Mumīsa, Michael. *Islamic Law: Theory and Interpretation*. Maryland: Amana Publications, 2002.

27. Motzki, Harald, and Marion H. Katz. *The Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools*. Leiden: Brill, 2002.¹⁴⁷

2.1.12.2 Books and Works by Non-Muslim Scholars on the Hanafi school

1. Pacha, Savvas, *Etudes sur la theorie du droit musulman*. Paris: 1892; *Le droit musulman explique*. Paris: 1896, with special reference to those used in instruction in Madrasahs in the Ottoman State.

2. D'Ohsson, Muhammad de M. *Tableau général de l'empire ottoman*. Paris:, 1787. This work contains an account of the actual legal system, based on the *Multaqâ 'lAbhur*.

3. Aghnides, Nicholas. *Islamic Theories of Finance: With an Introduction to Islamic Law and a Bibliography*. New York: Columbia University, 1916. This is an excellent book on the principles of Islamic Law and Financial law. We have benefited a great deal from it and have cited many parts from that book.

4. Heidborn, A. *Manuel de droit public et administratif de d'Empire ottoman*. Vienna/Leipzig: 1908.

5. Gattesehi, D. *Real Property, Mortgage and Waqf according to Ottoman Law*. Translated from Italian by E.A. Van Dyck. London: 1884.

6. Gatteschi, D. *Manuale di Diritto Pubblico e Privato Ottomano*. Alexandria: 1865. This work reflects conditions before the introduction of the Mejlle.

7. Young, G. *Corps de droit Ottoman*. Oxford: Oxford University Press, 1905-06. This book is about Majalla.

8. Baillie, B.E. *The Mohummudan Law of Inheritance according to Aboo Huneefa*

¹⁴⁷ Aghnides, *Islamic Theories of Finance*, pp. 164-65, 195-96; Fyze, *Outlines of Muhammadan Law*, pp. 487-93; J. Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1964), pp. 215-85.

and his Followers. London: 1874.¹⁴⁸

2.1.12.3 Books and Works by Non-Muslim Scholars on the *Shâfi'î* School

1. Juynboll, T. W. *Handbuch des islamischen Gesetzes*. Leiden/Leipzig: 1910. Trans. G. Baviera, *Manuale di diritto musulman*. Milan: 1916]; *Handleiding tot de kennis van de Mohammedaansche wet*. Leiden: Brill, 1925; reprinted 1930. This work concentrates on the Islamic aspect, the religious duties, and those institutions that have remained of practical importance for the Muslims in Indonesia, the *Shâfi'î* school. The main source for this book is *Minhâj al-Tâlibîn for al-Nawawi*.¹⁴⁹

2. Payne, C. H. Withers. *The Mahomedan Law of Inheritance According to the School of Shâfi'î*. Singapore: Printers, Ltd., 1932.

2.1.12.4 Books and Works by Non-Muslim Scholars on the *Mâlikî* School

1. Tores, Muhammad Del Nido Y. *De recho musulman*, Tetuan: 1927. This is a treatise on private law, with particular reference to the practice of law in the former Spanish zone of Morocco; the *Mâlikî* school.

3. Bousquet, G.H. *Précis de droit musulman*, vol. II: *Le Droit musulman par les textes*. 3rd ed. Algiers : 1960; *Du droit musulman et de non application effective dans le monde*. Algiers : 1949.

4. Vincent, Muhammad B. *Etudes sur la loi musulmane. Législation criminelle*. Paris: 1842. This work gives historical, bibliographical information on early important *Mâlikî* works of law.

5. Berque, J. *Essai sur la méthode juridique maghrébine*. Rabat : 1944.

6. A. Guiraud. *Jurisprudence et procédure musulmanes*. Casablanca : 1925 ; Tunis: 1948.

7. Norès, Ed. *Essai de codification du droit musulman algérien* (statut personnel).

8. Ghali, R. *De la tradition considérée comme source du droit musulman*. Paris: 1909.

9. Morand, Muhammad. *Avant-Propos de code du droit musulman algérien*. Algiers: 1916. (with detailed annotations).

10. Roussier, J. *Le Mariage et sa dissolution dans le statut civil local algérien*. Al-

¹⁴⁸ Aghnides, *Islamic Theories of Finance*, pp. 164-65, 195-96; Fyze, *Outlines of Muhammadan Law*, pp. 487-493; Schacht, *An Introduction to Islamic Law*, pp. 215-85.

¹⁴⁹ Nicolas Aghnides, *Islamic Theories of Finance*, pp. 164-65, 195-96; Fyze, *Outlines of Muhammadan Law*, pp. 487-93; Schacht, *An Introduction to Islamic Law*, pp. 215-85.

giers: 1960.¹⁵⁰

2.1.13 Some Books by Muslim Scholars in Western Languages

1. Rahman, Abdur. *Muhammadan Jurisprudence*. Madras: 1911.
2. Fyzee, Asaf A.A. *Outlines of Muhammadan Law*. Delhi: 1978. *A comprehensive manual, containing Shi'î and Sunnî outlines and references; Compendium of Fatimid Law*.
3. Yusoof, Mahomed, *Mahomedan Law Relating to Marriage, Dower, Divorce, Legitimacy and Guardianship of Minors*, 3 vols. Calcutta and London: 1895-98; with translations from Arabic texts.
4. Rahman, A.F. Muhammad Abdur. *Institutes of Mussalman Law: A Treatise on Personal Law*. Calcutta: 1907; with extracts from Arabic texts; inspired by the work of Kadri Pasha.
5. Mulla, D.F. *Principles of Mahomedan Law*. 14th ed. Calcutta: 1855.
6. Sircar, Shama C., *Muhammadan Law: Tagore Law Lectures*. Calcutta: 1873 and 1874.
7. Azîz, Ahmad. *Islamic Law in Theory and Practice*. Lahore: 1956.
8. Maudoodi, Abul A'la. *Islamic Law and Constitution*. Karachi: 1955; *The Islamic Law and its Introduction in Pakistan*. Karachi: 1955; *The Limits of Legislation in Islam and the Place of Ijtihâd in It* (in Urdu).
9. Kamali, Mohammad Hashim. *Principles of Islamic Jurisprudence*. City Kuala Lumpur: Plenaduk Publications. 1944. This is a good manual on *Usûl al-Fiqh*.
10. Ramic, Sukrija Husejn. *Language and the Interpretation of Islamic Law*. Cambridge: The Islamic Texts Society, 2003. This is a good work on *Usûl al-Fiqh*.
11. Auda, Jasser. *Maqasid al-Shar'ah as Philosophy of Islamic Law: A Systems Approach*. London: The International Institute of Islamic Thought, 2008.
12. Bakhtiar, Laleh, 'Abd al-Rahmân al-Jazîrî, Kevin Reinhart, and Muhammad Jawâd Maghnîyah. *Encyclopedia of Islamic Law: A Compendium of the Views of the Major Schools*. Based on two main Arabic sources: *al-Fiqh alal madhhab al-arba'ah* and *al-Fiqh alal madhhab al-khamsa*. Cairo: ABC International Group, 1996.
13. 'Azmah, 'Azîz. *Islamic Law: Social and Historical Contexts*. London: Routledge, 1988.
14. al-Dîn, Mû'il Yûsuf 'Izz. *Islamic Law: From Historical Foundations to Contem-*

¹⁵⁰ Aghnides, *Islamic Theories of Finance*, pp. 164-65, 195-96; Fyzee, *Outlines of Muhammadan Law*, pp. 487-93; Schacht, *An Introduction to Islamic Law*, pp. 215-85.

porary Practice. Edinburgh: Edinburgh University Press, 2004.

15. Nyazee, Imran Ahsan Khan. *Bibliography of Islamic Law: The Original Sources*. (Law Publishers, 1995; *Islamic Jurisprudence: Usûl al-Fiqh*. International Institute of Islamic Thought, 2000.

16. Islahi, Amin Ahsan,, and S. A. Rauf. *Islamic Law: Concept and Codification*. Kazi Publications, Incorporated, 1988.

17. Abbas, Amanat, and Frank Griffel. *Sharî'ah: Islamic Law in the Contemporary Context*. Stanford: Stanford University Press, 2007.

18. Muslehuddin, Mohammad. *Philosophy of Islamic Law and the Orientalists: A Comparative Study of Islamic Legal System*. Islamic Publications, 1977.

19. Maududi, Sayyid Abul A'la, and Khurshid Ahmad. *The Islamic Law and Constitution*. Islamic Publications, 1960.

20. Arabi, Oussama. *Studies in Modern Islamic Law and Jurisprudence*. Leiden: Brill, 2001.

21. Khan, Rashid Ahmad. *Islamic Jurisprudence*. Muhammad Ashraf, 1978.

22. Faruki, Kemal A. *Islamic Jurisprudence*. National Book Foundation, 1975.

23. Hasan, Ahmad. *The Early Development of Islamic Jurisprudence*. London: Islamic Research Institute, 1970.

24. Alauya, Saaduddîn A. *Fundamentals of Islamic Jurisprudence: With Appendix, Islamic Penal Law*. Manila: Rex Bookstore, Inc., 1999.¹⁵¹

25. Fuat Sezgin, *Geschichte des arabischen Schrifttums (GAS)*, 12 vols. to date, Leiden: E. J. Brill, 1967 onwards, from 2000 onwards Frankfurt am Main: Institut für Geschichte der Arabisch-Islamischen Wissenschaften. This work is a bio-bibliographical survey of Islamic literature up to about the middle of the eleventh century, arranged according to subject. For all known authors Fuat Sezgin lists all known works and all available manuscripts or printed editions thereof, as well as all related modern literature. This work supersedes the work of C. Brockelmann in different respects.

2.1.14 Books on Legal Maxims of Islamic Law (*al-Qawa'id al-Kulliyah al-Fiqhiyyah*)

1. *Al-Ashbâh wa'l-Nazâ'ir* by Zayn-al-'âbidîn ibn Nujaym (970/1562). This is the only Hanafite work where general legal principles are discussed as such and not incidentally with respect to the legal determination of cases. It is probably the best

¹⁵¹ Aghnides, *Islamic Theories of Finance*, pp. 164-65, 195-96; Fyzee, *Outlines of Muhammadan Law*, pp. 487-493; Schacht, *An Introduction to Islamic Law*, pp. 215-85.

source for obtaining knowledge of the extent to which Hanafite legal discussion becomes strictly scientific. The author is not a pioneer in this respect, since he admits to having followed the examples of Tâj-al-Dîn al-Subki (771/1369) the Shâfi'ite. The work treats, in seven sections (*fasl*), general principles (*gawâ'id kulliyyah*), extensively drawn upon in the *Majalla*, similarities, differences, niceties, legal tricks, etc.¹⁵²

2. *Kitâb al-Ashbâh wa'l-Nazâ'ir* by Jalâluddîn Suyutî (911/1505), Shâfi'î.¹⁵³

3. *Al-Qawâ'id* by ibn Rajab (795/1393), Hanbalî.

4. *Kitâb al-Furûq: Anwâr al-Burûq fi Anwa' al-Furûq* by Ahmad ibn Idris Qarafi (684/1285).

5. *Majalla-i Ahkâm-i Adliyyah*. The first 100 articles are on general principles. The *Majalla* incorporates the Hanafî *fiqh* related to *buyu'* (commercial transactions) codified during the Ottoman period. The English translation of this by C.R. Tyser *et al.*, called *The Majalla*, was published in 1967 by the All Pakistan Legal Decisions on Nabha Road, Lahore.

6. *Kitâb Majalla al-Ahkâm al-Shar'iyyah 'ala Madhhab al-Imâm Ahmad ibn Hanbal al-Shaybani* by Qari, Ahmad 'Abdullah (Jeddah: 1981). This is the Hanbalî counterpart of the Hanafî *Majalla*.¹⁵⁴

2.1.15 Comparative and Contemporary Books by Muslim Scholars

We should divide this group into different categories. First of all, the main characteristic of contemporary books is that they are intended to be comparative. This is true for books on *fiqh* or *Usûl al-Fiqh*. We should draw attention to a new group of Islamic law books, i.e. Islamic Law concerning Muslim minorities (*Fiqh al-Aqalliyât*). We cannot mention all existent works and books, but we will mention some important works.

2.1.15.1 Comparative and Contemporary Books on *Fiqh*

1. al-Zuhayli, Sheikh Wahba Mustafa (1932-). *Al-Fiqh al-Islâmî wa Adilatuhu (Islamic Jurisprudence and its Proofs)*. This is a very long summary of the different schools of Islamic Law and their debates on various legal questions. It has been translated into Turkish, Urdu, Malay, and Farisi, and is currently being translated into English; *al-Fiqh al-Islâmî 'ala Madhhab al-Mâlikî* (Islamic Law according to the Mâlikî

¹⁵² Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 135.

¹⁵³ Kâtib Chelebi, *Kashf al-Zunûn*, vol. I, p. 136.

¹⁵⁴ Hawwa, *al-Madkhal ila Madhhab*, pp. 394-97.

madhhab).¹⁵⁵

2. Muhammad Abu Zahra (1898-1974). His more than forty books include biographies of *Abu Hanîfa*, *Imâm Mâlik*, *Shâfi'î*, *ibn Hanbal*, *Zaid ibn Ali*, *Ja'far as-Sâdiq*, *Zain al-Abidîn*, *ibn Hazm*, and *Ibn Taimiyya*, as well as works on personal status (*al-Ahwâl al-Shakhsiyyah*), pious endowments (*Muhâdarât fi al-Waqf*), property (*Haqq al-Milkiyyah*), and crime and punishment in Islamic Law (*al-Uqûbah*) and *Târikh al-Madhâhib al-Islâmiyyah*.¹⁵⁶

3. Al-Qaradawi, Yusuf (September 9, 1926). *Al-Halâl Wa'l-Harâm fi al-Islâm* (Translated into English as *The Lawful and Prohibited in Islam*); *Fiqh al-Zakâh* (in my view his most famous book) and *Fatâwâ Mu'asirah* in two volumes. The last book treats comparative and contemporary problems.¹⁵⁷

4. Mustafa Ahmad al-Zarqa (Aleppo, Syria, 1904-1999). *Al-Madkhal al-Fiqhi al-Âm Ila al-Fiqh al-Islâmî*, (A Comprehensive Introduction to Islamic Law), in three large volumes. This served as a textbook in faculties of Law and Sharî'ah for a long time. Written in modern, simple style, this book gives a thorough introduction to *Fiqh*, or Islamic jurisprudence, to law students who are unfamiliar with Islamic studies. Thus, it bridges the gap between traditional Islamic scholarship and modern university study;

¹⁵⁵ Dr. Professor Sheikh Wahba Mustafa al-Zuhayli (1932-) born in Dair Atiah, Syria is a prominent professor and Islamic scholar specializing in Islamic law and legal philosophy. He is also currently a preacher at Badr Mosque in Dair Atiah. He is the author of scores of books on Islamic and secular law, many of which have been translated to English. He is chairman of Islamic jurisprudence in the College of Sharia at Damascus University.

Dr. Zuhayli has written numerous extremely detailed works mostly about Islamic law and legal theory. In total, Dr. al-Zuhayli has written over one hundred and sixty books. Among them are: 1) *Âthâr al-Harb fi al-Fiqh al-Islâmî: Dirasa Muqarin* ("The Influences of War in Islamic Jurisprudence: A comparative study"). It has been translated into French. 2) *al-Fiqh al-Islâmî wa Adillatuha* ("Islamic Jurisprudence and its Proofs") a very long eight volume summary of the different schools of Islamic jurisprudence and their debates on various legal questions. It has been translated into Turkish, Urdu, Malay, and Farisi and is currently being translated into English. 3) *Usul al-Fiqh al-Islâmî* ("The Roots of Islamic Jurisprudence") a two volume treatise on Islamic legal theory and philosophy.

¹⁵⁶ Muhammad Abu Zahra (1898-1974) was a conservative Egyptian public intellectual, traditional scholar of Islamic law and author. He was educated at the Ahmadi Madrasa, the Madrasa al-Qada al-Sharî and the Dar al-Ulûm. He taught at al-Azhar's faculty of theology and later, as professor of Islamic law at Cairo University. He also served as a member of al-Azhar's Academy of Islamic Research.

¹⁵⁷ Yusuf al-Qaradawi born (September 9, 1926) is an Egyptian Muslim scholar and preacher best known for his popular al-Jazeera program, *ash-Sharî'ah wal-Hayat* ("Sharî'ah and Life"), and IslamOnline (a website that he helped to found in 1997), where he offers opinions and religious edicts ("fatwâ") based on his interpretation of the Qur'an. He has also published some fifty books, including.

*Al-'Uqûd al-Musammat fi al-Fiqh al-Islâmî.*¹⁵⁸

5. Abd al-Qâdir Awdah (1906-1954). *Al-Tashrî' al-Jinai al-Islâmî Muqâranan bil-Qânûn al-Wadh'î.* This is a manual on Islamic penal law; *al-Mal Wa al-Hukm Fi al-Islam.*

6. Minsitry of Awqâf in Kuwait, *al-Mawsû'ah al-Fiqhiyyah*, in more than forty volumes. This is an excellent work on Islamic Law; *Majmû'ah al-Fatâwâ al-Shar'iyah* in eight volumes.

7. Akgündüz, Ahmed. *Ottoman Legal Codes and Their Analysis according to Islamic Law (Osmanli Qânûnnâmeleri)*, in twelve volumes and in Turkish. This work aims to present 764 legal codes in Ottoman State; *Shar'iyah Sijilleri* in two volumes with a committee. This is an exceptional guide to the practice of *Shar'ah* Law in Shar'iyah Courts; *Turk Hukuk Tarihi (Turkish Legal History)*, in two volumes; *Islam Hukukunda ve Osmanli Tatbikatinda Vakif Muessesesi; Mukayeseli Islam ve Osmanli Hukuku Kulliyâtî.*

8. Bilmen, 'Umar Nasuhi. *Huquq-i Islâmiyyah wa Istilâhât-i Fiqhiyyah*, which has been published by the Law School of Istanbul University in eight volumes. This is among the best comparative books in Islamic schools in Islamic Law in recent times.¹⁵⁹

9. Al-Sanhuri, Muhammad Ahmad Faraj. *Majmû'ah al-Qawânîn al-Misriyya al-Mukhtâra min al-Fiqh al-Islâmî (Corpus of the Egyptian Laws Derived from Islamic Jurisprudence)*, (The Law of Wakf), 2 volumes. Cairo: 1949.

10. Al-Jazîrî, Abdurrahman. *Kitâb al-Fiqh 'ala al-Madhâhib al-Arba'a.* This is a modern manual published by the Egyptian Ministry of Wakfs.

11. Al-Makhmasani, Subhî. *Falsafah al-Tashrî' fil-Islam (The Philosophy of Jurisprudence in Islam)*. Beirut: 1946; *al-Nazariyya al-'Âmma lil-Mûjabât wal-'Uqûd fi al-Shar'ah al-Islamiyya (The General Theory of the Law of Obligations and Contracts under Islamic Law)*, 2 volumes. Beirut: 1948.

¹⁵⁸ Mustafa Ahmad al-Zarqa was born in Aleppo, Syria, in 1904 into a family with a long history of learning and Islamic scholarship. His father, Sheikh Ahmad al-Zarqa, was an Islamic scholar of distinction, while his grandfather, Sheikh Muhammad al-Zarqa, was recognized as one of the top *fiqh* scholars of the 19th century. Hence, it was not surprising that the young Mustafa should show the signs of great promise in his early years in the same field of scholarship. He was later to rank among the top ten Islamic scholars of the 20th century. Mustafa al-Zarqa died in Riyadh on 3 July 1999.

¹⁵⁹ Ömer Nasuhi Bilmen was born in 1882 in Erzurum. He is one of the most famous Muslim scholars in Turkey and was President of Religious Affairs. He has started to study at Ahmediye Medresesi form Abdürrezzak İlmî and Müderris Hüseyin Raki Muftî of Erzurum. He obtained *ijazah* (1908) in Istanbul from Tokatlı Şakir Efendi and graduated from Medreset'ül Kudhat. He was appointed Professor in Sahn Madrasah and Dar al-Shafaqa. He taught *Ilm al-Kalâm* and *fiqh* for many years at Islamic High College. He became President of Religious Affairs in 1960 and died on 13 October 1971. He wrote many books on *Tafsîr*, *fiqh* and *kalâm*.

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13. Al-Sanhuri, 'Abd al-Razzâq Ahmad. *Masâdir al-Tashrī' al-Islâmi fimâ lâ Nass fih* (Bases of Islamic Law in the Absence of Material Sources). Cairo: 1955; *Masâdir al-Haqq Fil-Fiqh al-Islâmî* (The Bases of Rights in Islamic Law), 4 volumes. Cairo: 1954-59.

14. Al-Khudarî, Muhammad. *Târikh al-Tashrī' al-Islâmî*.

15. Mu'awwadh, 'Ali Muhammad, and Âdil Ahmad Abdulmawjûd. *Târikh al-Tashrī' al-Islâmî*, published in two volumes. The subject has been well researched.

16. Zaidan, Abdulkarim. *Al-Madkhal Li Dirâsah al-Sharī'ah al-Islâmîyyah*. Baghdad: Matba'ah al-Ānî, 1977; *Ahkâm al-Zimmiyyîn wa al-Musta'manîn*, Beirut: 1967.

2.1.15.2 Comparative and Contemporary Books on Usûl al-Fiqh

1. Sheikh Wahba Mustafa al-Zuhayli, (1932-). *Usûl al-Fiqh al-Islâmî*, Beirut: Dâr al-fikr, 1996, 2 vols. (The Roots of Islamic Jurisprudence), a two-volume treatise on Islamic legal theory and philosophy.

2. Muhammad Abu Zahra, (1898-1974). *Usûl al-Fiqh*, Cairo: Dâr al-Fikr al-Arabî, d.n.

3. 'Abdul-Karim Zaidan, *al-Wajîz fi Usûl al-Fiqh*, Beirut: al-Risâlah, 1996.

4. 'Abd al-Wahhâb Khallâf, *'Ilm Usûl al-Fiqh*, Cairo.

5. Muhammad Bek al-Khudarî, *Usûl al-Fiqh*, Beirut: Dâr Ibn al-Hazm, 2003.

6. Muhammad Sallâm Medkûr, *Usûl al-Fiqh al-Islâmî*, Cairo: Dâr al-Nahdhah al-Arabiyyah, 1976.

7. Muhammad Hasan Hito, *al-Vajîz fi Usûl al-Tashrī' al-Islâmî*, Beirut: al-Risâlah, 1983.

2.1.15.3 Books on Muslim Minorities (*Fiqh al-Aqalliyât*)

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2. Al-Qaradawi, Yusuf (September 9, 1926). *Fatâwâ Mu'âsirah*. Beirut: al-Maktab al-Islâmî, 2000.

3. Al-Tabataba'î al-Hakîm, al-Sayyid Muhammad Sa'id, *Murshid al-Mughtaribîn*. 2001. This is a Shi'î book on *Fiqh al-Aqalliyât*.

4. Al-Buti, Muhammad Sa'id Ramadan. *Qadâyâ Fiqhiyyah Mu'âsirah*, Damascus: Maktabah al-Fârâbî, 1999, in three volumes.

5. Al-'Uthmani, Muhammad Taqî. *Qadâyâ Fiqhiyyah Mu'âsirah*. Damascus: Dâr al-Qalam, 2003.

6. Abdalqâdir, al-Shaykh Khâlid. *Fiqh al-Aqalliyât al-Muslimah*. Lebanon: 1998. This is a comprehensive work on *fiqh al-aqalliyât*.

7. Al-Râfi'î, Sâlim ibn Abdulghanî. *Ahkâm al-Ahwâl al-Shakhsiyyah Lil-Muslimîn fi'l-Gharb*. Beirut: 1974.

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2.1.15.4 Comparative and Contemporary Books on Shi'a

1. Al-Hakîm, al-Sayyid Muhammad Taqî. (1924-), *al-Usûl al-Âmmah Lil-Fiqh al-Muqâran*. Qum: 1997. This is actually a comparative book on *Usûl al-Fiqh*.

2. Mughniyyah, Muhammad Jawâd. *Al-Fiqh alâ al-Madhâhib al-Khamsah*. Beirut: 1982. This is a very important comparative book on the Shi'î and Sunnî Schools.

3. Al-Khuyî, al-Sayyid al-Musawî *Minhâc al-Sâlihîn*. Foundation of Khuyi, Iran 2000. It consists of two volumes: the first concerns *fatâwâ* on 'ibâdât and the second is on *Mu'âmalât*.

2.1.15.5 Miscellaneous English Sources in Islamic Law

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93. Welchman, Lynn. *Beyond the Code: Muslim Family Law and the Sharī'ah Judiciary in the Palestinian West Bank*. The Hague: Kluwer Law, 2000.
94. Zubaida, Sami. *Law and Power in the Islamic World*. London: I.B. Tauris, 2003.¹⁶⁰

2.2 Applied References

This category covers legal arrangements directly involving applied law, court decisions and archival documents. Let us look at these briefly as well:

¹⁶⁰ Laila al-Zwaini/Rudolph Peters, *A Bibliography of Islamic Law 1980-1993* (Leiden: Brill 1994); <http://www.muslimphilosophy.com/ip/is-biblio.htm#VII> (accessed 8.6.2009).

2.2.1 Shar'iyah Records

Shar'iyah records in the Ottoman State were preserved better than in other states of the Muslim world. There are 20,000 Shar'iyah Records books (*Sijillât-i Shar'iyah*) for the Istanbul Shar'iyah Courts alone. Is this because of the existence of some laws, official decrees and orders concerning preserving and archiving Shar'iyah records?

In the light of the archival documents, we could say that the Ottoman State arranged policies and plans reinforced by laws, decrees and local orders to preserve the Shar'iyah records. The first law was a legal decree enacted by Sultan Bâyezid I (1389-1403), in which there were rules about writing and preserving legal documents and registrations by *Qâdhî* as well as the fees involved. This law stipulates: "In the time of Bâyezid I (1389-1403), it was ordered to the *Qâdhîs* of provinces that they should not only take fees on *hujjah* registrations (*hujjah akchasi*), on heritage distributions (*rasm-i qismah*) and other kinds of registrations (*sijil akchasi*), but should preserve these records as well. This was enacted as a law in 796/1394."¹⁶¹

The 49th article of Sultan Mehmed II's (1451-1481) Public Ottoman Legal Code concerns the Shar'iyah Records and their respective fees. It states: "Judges (*Qâdhîs*) should receive 32 *akcha* for any registration in the Shar'iyah records and for *hujjah* documents; and 12 *akcha* for giving one copy from these Shar'iyah records to the plaintiff and the defendant, and for signing any Shar'iyah record 12 *akcha*." This article presupposes that all the judges have to enter their official documents in the Shar'iyah Records and give copies to the parties involved if demanded or needed. In explaining the tasks of the judges, the main Ottoman Legal Codes mention, among other official tasks, entering Shar'iyah records and the judicial documents (*katb-i sijillât ve sukûk*).¹⁶²

After Mehmed II (1451-1481), new and independent legal guidelines about the registration of the Shar'iyah records were enacted by the Ottoman authorities. These legal guidelines were called the *Qânûnnâme-i Rusûm* (The Legal Code for the Shar'iyah Court Fees). One article from this code stated that, in early times, the fees for written judgment records were obtained – from the parties involved – in different amounts, according to the views of Muslim scholars. But at this time these fees were

¹⁶¹ Ahmed Akgündüz, Shari'ah Courts and Shari'ah Records: The Application of Islamic Law in the Ottoman State, *Islamic Law and Society*, Volume 16, Number 2, 2009, 202-230; *Qânûn-i Cedid*, MTM (Milli Tettebbular Mecmuası), I/326.

¹⁶² Ahmed Akgündüz, *Osmanlı Qânûnnâmeleri*, vol. 1 (Istanbul: OSAV, 1989), p. 331; *Qânûn-i Cedid*, MTM (Milli Tettebbular Mecmuası), II/541, The Süleymaniye Library, Turhan Valide Sultan, No. 326, p. 155/a.

determined in the following way: All parties have to pay 25 *akcha* to the Shar‘iyyah Courts for written documents about marriage contracts, Shar‘iyyah *hujjah*, transference testimonies and petitions, 20 *akcha* for the judge and 5 for the staff of the Shar‘iyyah court. Sixty-six *akcha* were paid for the written document of emancipation (*‘itqânâme*); fifty *akcha* for the judge, ten *akcha* for the deputy judge (*nâib*), and six *akcha* for the staff of the Shar‘iyyah court. Sixteen *akcha* was the price determined for the judge’s letters of appointments (*murâsala*), and eight *akcha* for all the legal cases that were registered into the Shari‘yyah Records as a *rasm-i sijil*; six *akcha* for the judge and two for the staff of the Shar‘iyyah court.¹⁶³

Could a judge be punished if he removed the book of the Shar‘iyyah Records or neglects registering any legal issues into the Shar‘iyyah Records? There are many articles on such issues in the Ottoman Legal Codes. In the Public Legal Code enacted by Bâyezid II, article 138 stipulates: “*If the judge resigned his judicial task and quitted his old task, he had to hand the Shar‘iyyah Records Book over to the next judge. If he leaves without handing it over, he may be punished, and/or accused and punished for harming the affairs of the people.*” In a legal code dated 1510, the 8th article settles the second issue and states: “*You, as a judge, should register the copy of these guidelines in the Shar‘iyyah records. Be careful you do not lose this book! Obey these rules every time! After examining this code, the emîn (The official preserver of the Shar‘iyyah records) has to preserve this document. Whoever becomes the emîn has to preserve the Shar‘iyyah Records.*”¹⁶⁴

After the *Tanzîmât* movement, new arrangements were established with respect to the writing and preservation of the *Shar‘iyyah* Records. The Solemn Instruction (*Ta‘limât al-Saniyyah*), dated 1296/1878, fixed the arrangements and the preservation procedures of the decrees (*i‘lâms*) and deeds (*hujjahs*) on more solid principles.

The decisions issued by *Qâdhîs* (judges) in the Seljuqids, Ayyubids, Mamlukids and especially in the Ottoman State and the minutes were recorded according to the dates in books called Records of *Qâdhîs*, in which *hujjahs* represent the minutes of the judge’s determination in certain legal case or dispute; *i‘lâms*, the copies of verdicts issued by *Qâdhîs*; *Ma‘rûdhs*, decrees and records related particularly to criminal law and rather public law; *fîrmans*, the written edicts by the sultan to *Qâdhîs* on certain issues. Among the documents mentioned could be found official statements by *Qâdhîs*, *muhtasibs* and *subashis* – executive officials of a sort – regarding all the branches of private law and criminal law, trial and financial law as well as certain administrative decisions in public law. In short, the records mentioned are the best and

¹⁶³ *Qânûnnâme* (Ottoman Legal Code), Istanbul University Library, Turkish Manuscripts, No. 1807, p. 68/a-b.

¹⁶⁴ Akgündüz, *Osmanlı Qânûnnâmeleri*, vol. II, p. 141.

most outstanding examples of applied theoretical law. Given the ones that are known and have been classified, there are 20,000 Books of Records in eighteen museums, chiefly in the Archives of *Sharī'ah* Records at the Istanbul Muftī's Office. Since there were *Qādhīs* in each township, small town and subdistrict, the importance of the aforesaid legal sources can be easily perceived.¹⁶⁵

2.2.2 Books of *Fatâwâ* (Religious Opinions and Answers)

There is another kind of Islamic Law Digest that discusses the *'Ilm al-Fatâwâ* (the science of legal opinions or decisions). In Islam a *fatwâ* is a religious opinion on Islamic law issued by a Muslim scholar. In Islamic law all *fatwâs* are non-binding, whereas in some situation a *fatwâ* could be binding, depending on the status of the scholar. The works of this nature are also very numerous and are, for the most part, called *Fatâwâ* (Legal Opinions) with the name of their authors. Although they are called *Fatâwâ*, most also contain the rules of law as well as legal opinions.¹⁶⁶

Books of *Fatâwâ* are those works that are composed of the replies given to questions posed by people on legal issues they encountered in practical life. In earlier times, if no view had been uttered by the eminent jurists who founded the Hanafī school concerning a certain legal issue, the jurist who encountered such a problem would solve the problem on the basis of his personal view and such new issues were called *Wâqī'ât* or *fatâwâ*. Particularly during the Ottoman State, the replies given to legal issues by *Shaikh al-Islams*, who were regarded as the heads of the judicial institution and the class of *ilmiyyah* (sciences) during the period of their office were either collected by themselves or compiled by somebody else who was occupied with those question while the *Shaikh al-Islams* in question were still alive or after they had died into a great number of *Majmû'ah al-Fatâwâ* (Collections of *Fatwâs*). Decisions and minutes in the aforementioned *Sharī'ah* Records were kept in complete accord with *fatwâs*. For this reason they could – though not in the precise sense – be compared to decisions of the current Supreme Court of Appeal.¹⁶⁷

There are several collections of *fatâwâ*. From the collections of *fatwâs* that pio-

¹⁶⁵ For an example see *Beşiktaş Mahkemesi Sicili* (Records of Court of Beşiktaş), *Defter* (Book) No: 23/127; Baltacı Cahit, *Şer'îye Sicillerinin Tarihsel ve Kültürel Önemi* (The Historical and Cultural Significance of Shariyyah Records), *Osmanlı Arşivleri ve Osmanlı Araştırmaları Sempozyumu* (A Symposium on Ottoman Archives and Ottoman Researches) (Istanbul: Basbakanlık, 1985), pp. 121 ff. Akgündüz/Board, *Shar'îye Sijilleri*, 1/1 ff.; Cf. Bogac A. Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Cankiri and Kastamonu (1652-1744)*, (Leiden: Brill, 2003), pp. 99-170.

¹⁶⁶ Sircar, *The Muhammadan Law*, p. 50.

¹⁶⁷ Akgündüz, *Osmanli Qânûnnâmeleri*, vol. 1, pp. 39ff; Mumcu and Üçok, *Türk Hukuk Tarihi Ders Kitâbı*, p. 172; Sircar, *The Muhammadan Law*, p. 50.

neered the Ottoman history of law: the *fatâwâ* by Abu al-Su'ûd Effendi, the major two-volume work by Mantasihzâdah Abdurrahim Effendi called *Fatâwâ al-Abdurrahim Effendi* and the *Fatâwâ al-Fawdhîyyah* by Shaikh al-Islam Faizullah Effendi may be given as examples. Also, we should note here that several legal codifications were prepared through the incentives and sponsorship of some civil servants in Islamic Law and they were called *al-Fatâwâ*, which – one should bear in mind – were unlike those books of *fatâwâ* with which we are familiar but were a sort of *corpus juris*, which consisted of all the provisions of law. In actual fact, *al-Fatâwâ al-Hindiyyah* (prepared during the Babur Empire, 1556), which we will discuss later, and “*Fatâwâ al-Tatarkhâniyyah*” (prepared during the Chagatai State) were works of this type.¹⁶⁸

We should remember that the distinction between so-called *fatwâ* collections and works on law proper (*fiqh*), as the terms are used by the jurists, is often shadowy. Thus the term *fatwâ* collection is given to works like the ‘*Alamgîriyyah*, which by no means answer questions about concrete actual cases but simply give the legal principles on particular points as determined in the first instance by early *fuqahâ* or as involved in existing *fatwâs* on actual cases. These principles, however, are still too general to be applied to actual cases without further interpretation. As it is, a work on *fatwâs* differs from a work on *fiqh* proper in that the latter, besides being somewhat less complete as to details, also indicates the motives and grounds, and is meant to furnish a more or less academic training whereby one might apply the law to new cases.

We ought also to remember here that when the Ottoman sultans demanded that one of the current views about a disputed matter be preferred, they definitely received a *Fatwâ-i Sharîfah* – again as it was called in Ottoman law – from the *Shaikh al-Islam*, and thus based the administrative and political acts they executed on Islamic law. One can find many examples of *fatwâ*-based verdicts in the Prime Ministerial Ottoman Archives. Again, the same method was followed in the *firman*s sent to *Qâdhîs*.¹⁶⁹

2.2.2.1 *Fatwâ* Collections of Hanafî School

1. *Kitâb al-Nawâzil*, by Abu al-Laith Nasr ibn Muhammad al-Samarqandi (376/986). Said to be the first work combining the legal determinations (*masâ'il*) of later *fuqahâ* (*mashâyikh*). The work also contains, under the heading ‘*Uyûn al-Masâil*, legal opinions reported from early jurists (*ashâb*) that were not recorded in

¹⁶⁸ The Committee, *al-Fatâwâ al-Hindiyyah* (Beirut: Dâr al-Kutub al-Ilmiyyah, 1980), vol. I-VI; ‘Âlim ibn’Alâ, *Fatâwâ al-Tatarhâniyyah* (Istanbul: Library of Istanbul Muftî’s Office, MS.); Akgündüz, *Kuliyât*, pp. 36-40.

¹⁶⁹ For ‘ilm *al-fatâwâ* see Tashkopruzadeh, *Miftâh al-Sa’âdah*, vol. II, pp. 557-59.