

The Formation of Islamic Hermeneutics:
How Sunnī Legal Theorists Imagined a Revealed Law

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VII

CONCLUSIONS

Thousands of scattered citations and hundreds of arguments about dozens of interpretive rules have now been stitched together into a coherent narrative – a meaningful narrative, which attempts to identify the larger significance of each debate and each opinion, not only for the early development of Muslims’ ways of imagining a revealed law, but also for contemporary Muslim efforts to reimagine that law, and for comparative attempts to understand the relationships between other religious laws and other sacred texts. It is time to make those larger meanings and implications more explicit.

The Origins of Legal Hermeneutics

First, this study makes several important claims about the origins of the discipline of legal hermeneutics, which it dates to the time of al-Shāfi‘ī. Muslim scholars have long asserted that the interpretive principles of classical legal theory were from the outset the implicit method that the Prophet’s Companions and those who succeeded them employed in answering legal questions. al-Shāfi‘ī has been credited with merely putting into writing an interpretive method that had been intuitive to the pious figures of earlier generations.¹²⁵⁷ This “salvation

¹²⁵⁷ See note 125.

history” of legal theory is usually dismissed by Western historians, but its existence should not be ignored. The Western academy can no longer pretend to be an island unto itself, surveying other intellectual systems at its leisure. Some scholars in the Islamic academic world read Western academic publications; some Western scholars return the favor; and a growing number of scholars belong to both academic realms. It needs to be acknowledged, therefore, that the present study flies in the face of the traditional narrative when it presents the legal hermeneutics of al-Shāfi‘ī, and of all preclassical Sunnī legal theorists except the Zāhiriyya, as a justification of a novel claim about the revealed origin of law, rather than as the interpretive method by which Islamic law was actually brought into being.

The present study leaves no doubt as to why the traditional narrative about the origins of Islamic legal theory was invented: it was an almost inevitable corollary of the claims of legal theory itself. In order to legitimate the claim that Islamic law is a revealed law, it was advantageous to assert not only the logical possibility of correlating law with revelation (which is what legal hermeneutics is designed to prove), but also the historical actuality of law’s genetic relationship to revelation. If the hermeneutical project of documenting the law was going to enable jurists to claim a share in the divine authority of revelation, it was necessary to present that project not as a novel task, but as a reconstruction of what jurists had been doing all along. As Robert Cover has said, every law requires a history that shows how that law fits into its community’s normative universe. “Objectification of the norms to which one is committed frequently, perhaps always, entails a narrative – a story of how the

law ... came to be, and more importantly, how it came to be one's own."¹²⁵⁸ Peter Fitzpatrick has argued that this is true even of modern Western law, which is generally regarded as deriving from the people rather than from God, yet is buttressed by various myths of origin that lend it a quasi-divine transcendence.¹²⁵⁹ That explains why it was not enough for the Muslim jurists to claim that Islamic law was compatible with revelation; they also had to assign it a genetic relationship to revelation, through a narrative about its origin in some pristine moment of unblemished normative vision and interpretive clarity. Without such a narrative, law could be elaborated and perhaps even enforced, but it could not constitute a shared normative universe.

That classical legal theory was not in fact a historically accurate description of what jurists had been doing all along is indisputable, for two reasons. First, it is now well established that the content of Islamic law was derived not only from the Qur'ān and precedents set by the Prophet, but also from a range of other sources such as Arabian customary law,¹²⁶⁰ the prior legal institutions of conquered lands including elements of Jewish and Roman and "provincial" law,¹²⁶¹ local customs and administrative practices from the time

¹²⁵⁸ Cover, "Nomos and Narrative," 45; see also 4-5 and 15.

¹²⁵⁹ Fitzpatrick, *The Mythology of Modern Law*.

¹²⁶⁰ See e.g. Hallaq, *Origins*, 4, 18, 24-25, 32.

¹²⁶¹ See Crone, *Roman, Provincial, and Islamic Law*, passim, especially 1, 3, 15-16, 93, and 99. See now also Jokisch, *Islamic Imperial Law*.

of the Umayyads,¹²⁶² and the systematic reasoning and ideals and practical accommodations of early jurists,¹²⁶³ all of which became part of a “living tradition” of law¹²⁶⁴ that was subsequently buttressed with non-Prophetic and finally Prophetic traditions.¹²⁶⁵ The observation that some point of Islamic law resembles some aspect of an earlier practice or legal system does not necessarily imply that this point was absent from the Prophet’s message, because as Wael Hallaq has emphasized, the Prophet’s message was not proclaimed in a cultural vacuum, but was framed in terms of preexisting Near Eastern legal concepts.¹²⁶⁶ Nevertheless, the claim that the content of Islamic law stemmed entirely from the Prophet is no longer historically plausible.¹²⁶⁷ Future debate over the origins of Islamic law can only be a debate over the degree to which Islamic legal systems were shaped by the Prophet’s message, and the degree to which they were shaped by other factors. I have not entered into that debate, but my observations about the tremendous hermeneutical sophistication required for correlating law with revelation lend support to the mainstream Western academic view that Islamic law was far from a transparent application of the Prophet’s message when al-Shāfi‘ī came on the scene in

¹²⁶² Schacht, *Origins*, 1, 5, 58-61, 190-213, 283; Judd, “al-Awzā‘ī and Sufyān al-Thawrī,” 15-16.

¹²⁶³ Schacht, *Origins*, 21, 98-119, 269-283; Hallaq, *Origins*, 113-116.

¹²⁶⁴ Schacht, *Origins*, 2-3, 58-77, 80-81.

¹²⁶⁵ Schacht, *Origins*, 4-5, 20-22, 30, 33, 57, 138, 156-157, 176; Hallaq, *Origins*, 70, 102, 104, 108-109; Calder, *Studies*, 19, 27, 35-37, 65, 146, 223, 228, and *passim*.

¹²⁶⁶ Hallaq, *Origins*, 18-19, 24-28, 197-198.

¹²⁶⁷ Notwithstanding efforts to rehabilitate that traditional thesis by restating it in more nuanced ways, as in Dutton, *Origins*, 180.

the late 2d/8th century. If it had been, the Zāhiriyya, who wanted law to be a direct application of revealed language, might have fared much better than they did.

A second reason to deny the historical claim that Islamic law was actually created entirely by interpretation of Prophetic revelation is that the theoretical claim that Islamic law should be created in this way does not appear to have been formally articulated prior to al-Shāfi'ī.¹²⁶⁸ There were certainly many who advocated following the Prophet's message in one way or another: scripturalists argued for following the Qur'ān alone, but resisted elaborating a comprehensive law; traditionists emphasized following reports from earlier authoritative figures, among whom the Prophet figured fairly prominently, but they too resisted legal systematization; and even the comprehensive legal systems of the rationalist jurists took account of well-known Qur'ānic and Prophetic injunctions. But a formal statement that a comprehensive legal system could be constructed by interpretive reasoning based entirely on the Qur'ān and Prophetic traditions, without any other substantive basis, has yet to be convincingly adduced from any figure prior to al-Shāfi'ī. Occasional reports from early Muslims that sound vaguely like statements about the sources of law have often been seized upon as evidence that classical legal theory was operative already among the Prophet's Companions. The most famous example is the story of Mu'ādh ibn Jabal (d. 18/639), who when sent by the Prophet to serve as judge in the Yemen reportedly said that he would judge first by the Book of God, then by the Sunna of the Prophet, and then, if he could find no answer to his

¹²⁶⁸ See e.g. Schacht, *Origins*, 20-35; Burton, *Sources*, ch. 1, especially p. 15; Calder, *Studies*, ch. 9 and passim; Hallaq, *Origins*, 109, 117.

question in those sources, by his own independent judgment (*ajtahidu ra'yī*). This report sounds suspiciously like a back-projection of later concepts of Sunna and independent legal reasoning;¹²⁶⁹ but even if it is authentic, it cannot be interpreted as an early version of al-Shāfi'ī's legal theory, because it states explicitly that Mu'ādh did not consider the Qur'ān and Prophetic Sunna a sufficient basis for law. It could only be made to agree with al-Shāfi'ī if *ijtihād al-ra'y* were interpreted to mean analogical reasoning based on the dictates of revealed texts, which would require a highly anachronistic back-projection of al-Shāfi'ī's identification of *ijtihād* with *qiyās al-'illa*. There is at present no convincing evidence that anyone before al-Shāfi'ī formally advocated his project of correlating a comprehensive legal system with the Qur'ān and Prophetic traditions. It is therefore not reasonable to suppose that anyone before him ever systematically implemented the hermeneutical method that he constructed in support of that project.

al-Shāfi'ī himself framed his hermeneutical ideas not as a summary of what jurists had been doing all along, but as a novel proposal, which he had to justify, in the face of objections from all sides, by overcoming the obvious discrepancies between and within the twin canons of law and revelation. This is not to deny that his hermeneutical ideas had any precedent; as we saw in chapter 2, many of his concepts had already been adumbrated by Qur'ānic exegetes and theologians and even jurists. But no one had yet brought them together and exploited

¹²⁶⁹ See Goldziher, *Zāhirīs*, 9-10; Schacht, *Origins*, 105-106, 130. Jokisch (*Islamic Imperial Law*, 526-527) argues that this tradition was invented by al-Shaybānī on the basis of a work of Roman law that prescribed adherence first to written law, then custom and usage, then analogy.

them as a set of hermeneutical tools for correlating revelation with law, for the simple reason that no one before him is known to have attempted the correlation that he was proposing.¹²⁷⁰

The discipline of legal hermeneutics, therefore, represents not a record of some interpretive process whereby Islamic law was actually brought into being, but a choice to imagine Islamic law in a certain way. This observation provides some important perspective on contemporary Muslim debates about Islamic law. To say that the idea of a comprehensive revealed legal system emerged only in the late 2d/8th and 3d/9th centuries is to recognize that current debates over the legal implications of certain Qur'ānic verses and Prophetic reports are being conducted in terms of a conception of Islamic law that is usually assumed by Sunnīs to be self-evidently or essentially Islamic, but in fact is only one (and by no means the earliest or most obvious) of many possible ways of imagining the legal implications of the Prophet's mission. This is not to say that the idea of a comprehensive legal system derived from revealed texts is an arbitrary or unreasonable way of imagining Islamic law; some aspects of the Prophet's message itself (e.g. Q 5:43-50) can be read as suggesting that the revealed books conveyed by prophets should be interpreted as legal systems. But other aspects of the Prophet's message (e.g. Q 6:151-153) seem to envision a revealed law that is far from

¹²⁷⁰ It has been claimed that Wāṣil ibn 'Aṭā' (d. 131/748) wrote on *uṣūl al-fiqh* and promoted a four-source theory of law (Hasan, *Early Development*, 41, 58 n. 31, 179); but cf. 'Abd al-Jabbār, *Faḍl al-ī'tizāl*, 234, which contradicts the four-source claim, and van Ess, *Theologie und Gesellschaft*, 2:277-278 and 5:162. Van Ess rightly emphasizes the primarily theological orientation of Wāṣil's hermeneutical concepts.

comprehensive,¹²⁷¹ and we have seen that scripturalists and traditionists and rationalist jurists (not to mention various Shīʿī groups) explored alternatives to al-Shāfiʿī's conception of a revealed law for several centuries. The rationalist approach to law quickly succumbed to the requirement of grounding laws in Prophetic revelation, so that even Ḥanafī jurists like Ibn Abān and Ibn al-Thaljī were deeply engaged in the project of “documenting” the law early in the 3d/9th century. The scripturalist vision of law survived somewhat longer, but as we saw in chapter 3, even the Zāhiriyya eventually began to rely heavily on Prophetic reports and on unacknowledged forms of reasoning by analogy, and they never took root as an independent legal guild. The traditionists' approach likewise did not survive: chapter 6 noted how the Ḥanbaliyya, after a short-lived attempt to keep applying traditions directly without converting them into fixed legal rules, followed the lead of the other schools by developing a comprehensive body of legal doctrine, as well as a legal hermeneutic capable of grounding that doctrine in revelation. The disappearance of those alternative conceptions of law means that contemporary Muslim debates are taking place for the most part within a much narrower range of imaginative possibilities than the debates of the first three centuries. This range of possibilities was narrowed by the success of al-Shāfiʿī's project, and by that project's

¹²⁷¹ In a paper titled “Qurʾān 6 (al-Anʿām): 135-153; A Minimalist Legal Philosophy for the Qurʾānic Community,” delivered at the American Oriental Society meeting in San Diego on March 13, 2004, Joseph Lowry argued that Q 6:135-153 expresses a minimalist vision of religious law. Hallaq has argued (*Origins*, 19-21) that the Prophet did not envision establishing a legal system until about the year 5/626.

entrenchment in the discipline of classical legal theory. Legal theory has served ever since to keep al-Shāfiʿī's conception of a comprehensive revealed law woven into the fabric of Sunnī discourse.

To say that Islamic legal hermeneutics was a deliberate attempt to recast not only the epistemological basis but also the historical origins of Islamic law, is also to make a point about the general operation of hermeneutical and legal theories. Thanks to developments in critical legal studies, it is now a commonplace to point out that theories of interpretation and law are sometimes formulated not as a means of discovering the legal meanings of texts, but as mechanisms for justifying preconceived interpretations and laws.¹²⁷² We have now added a further point: theories of interpretation and law can also serve to recast the entire history of an interpretive or legal discourse. A new hermeneutic implies not just a restatement of the meaning of a text, but also a retelling of the history of that text and its reception. This is readily apparent in the case of Rabbinic law, which was justified not only by the creation of an interpretive theory, but also by the invention of a historical narrative that portrayed the Rabbinic discourse as having been operative from the time of Moses himself. This insight might fruitfully be applied to other interpretive or legal theories, by asking how they may have shaped historical narratives. Have Catholic and Protestant hermeneutical theories led to competing narratives about how the Church Fathers interpreted scripture? Have different

¹²⁷² See Jackson, "Fiction and Formalism," 180-185, 195.

approaches to the U.S. Constitution generated competing narratives about that document and the history of its interpretation?¹²⁷³

We have concluded that the discipline of legal hermeneutics represents not a record of the genesis of Islamic law, but a later choice to imagine Islamic law in a certain way. I have dated the beginning of that choice to al-Shāfiʿī (d. 204/820), who was instrumental (though probably not alone¹²⁷⁴) in instigating a collective choice that would be made by the Sunnī community over the course of the following century. There has been some resistance among Western scholars, however, to portraying al-Shāfiʿī as the founder of Islamic legal theory. Wael Hallaq and Joseph Lowry have pointed out that al-Shāfiʿī's *Risāla* is far removed in both form and content from the systematic legal theory works that have come down to us from the 4th/10th century and beyond.¹²⁷⁵ Lowry has demonstrated conclusively that al-Shāfiʿī never articulated the classical theory of four sources of law (Qurʾān, Prophetic Sunna, consensus, and

¹²⁷³ Cf. Cover, “*Nomos and Narrative*,” 4-5 n. 4, which notes that competing narratives about the framing of the U.S. Constitution can lead not only to new interpretations but to new Constitutional texts.

¹²⁷⁴ Hallaq (*Origins*, 117) presents al-Shāfiʿī as one of many who contributed to the movement to ground law in Prophetic revelation.

¹²⁷⁵ Hallaq, “Was al-Shāfiʿī the Master Architect,” 592-593; Hallaq, *Origins*, 128, 148; Lowry, “Legal-Theoretical Content,” 12, 485, 488; Lowry, “The Legal Hermeneutics of al-Shāfiʿī and Ibn Qutayba,” 40-41. Makdisi (“The Juridical Theology of Shāfiʿī,” 14-18, 26, 43-44) interprets this discontinuity as a result of the infiltration of rationalist theology into legal theory.

analogy) that has so often been read into his writings.¹²⁷⁶ Norman Calder even suggested (but never demonstrated) that the *Risāla* is a collective work finalized around the turn of the 4th/10th century, rather than an original work of al-Shāfiʿī.¹²⁷⁷ I have shown elsewhere that Calder's redating is not necessitated by the textual features of the *Risāla*,¹²⁷⁸ and chapter 2 of this study has demonstrated that although al-Shāfiʿī's hermeneutic was original in important ways, it was not out of step with the hermeneutical categories of his time. I can therefore agree with Hallaq and Lowry in treating the *Risāla* as an early work attributable to al-Shāfiʿī, and this explains why its form and content seem so far removed from those of classical works on legal theory, as these scholars have rightly pointed out. Part of what this study has accomplished, however, is to show in what way the *Risāla* does actually form the starting point of classical legal theory, despite these obvious disjunctures. It does so not only because it canonizes Prophetic reports to the exclusion of other traditions, as has often been emphasized,¹²⁷⁹ but also and especially because it articulates the classical thesis that the entirety of Islamic law can be correlated with the canon of revelation, and then goes on to show how such a correlation, implausible as it may seem at first blush, can in principle be

¹²⁷⁶ Lowry, "Four Sources." Cf. Schacht, *Origins*, 1, 134-135.

¹²⁷⁷ Calder, *Studies*, 225-226, 241-242.

¹²⁷⁸ Vishanoff, "Early Islamic Hermeneutics," 136-142.

¹²⁷⁹ E.g. Schacht, *Origins*, 11-20; Makdisi, "The Juridical Theology of Shāfiʿī, 12; Hallaq, "Was al-Shāfiʿī the Master Architect," 592; idem, *Origins*, 117; Crone, *Roman, Provincial, and Islamic Law*, 24-25.

established by exploiting certain linguistic ambiguities.¹²⁸⁰ This remained the principal problem of classical legal theory, and its principal solution. This study has explored in depth the tremendous theoretical weight that legal theorists of all schools placed on the concepts of clarity and ambiguity, which were the crux of al-Shāfiʿī's *Risāla*. The continuity between al-Shāfiʿī and the classical theorists is to be found precisely in this hermeneutical analysis of ambiguity, and in the purported correlation between law and revelation that this analysis was designed to support. al-Shāfiʿī may not have been the “architect” of Islamic legal theory, but he certainly appears to have launched it as a hermeneutical enterprise.

Furthermore, this study has shown that al-Shāfiʿī's hermeneutical proposal did not lie dormant for most of the 3d/9th century, as has been claimed.¹²⁸¹ Chapters 3 and 6 recounted numerous instances of opposition to al-Shāfiʿī's proposals during his own lifetime and those of his early followers, especially from scripturalists and from Ḥanafī figures such as ʿĪsā ibn Abān (d. 221/836). His ideas were also adopted and elaborated, beginning with the first generation of his students, by figures such as al-Muzanī (d. 264/878?), who began to develop the interpretive power that al-Shāfiʿī had neglected in favor of flexibility. al-Shāfiʿī's hermeneutic soon also influenced figures outside the circle of his immediate followers, such as Dāʿūd al-

¹²⁸⁰ Lowry (“Four Sources,” 49) recognized this two-fold thrust of the *Risāla*, but missed its continuity with classical legal theory.

¹²⁸¹ Hallaq, “Was al-Shāfiʿī the Master Architect,” especially 590-591, 598, and 601; idem, *History*, 30; cf. Stewart, “Muḥammad b. Jarīr al-Ṭabarī,” 322-323.

Zāhirī (d. 270/884) and Muḥammad ibn Jarīr al-Ṭabarī (d. 310/923),¹²⁸² and by the second half of the 3d/9th century his proposals were a major point of contention among participants in the vibrant new discipline of legal hermeneutics. Devin Stewart has been gradually uncovering the traces of a literary genre of legal theory that was already well established before the end of the 3d/9th century.¹²⁸³ This study has reconstructed much of the hermeneutical substance of that early discourse.

It can fairly be said, therefore, that the discourse of Islamic legal hermeneutics was launched around the end of the 2d/8th century, by al-Shāfiʿī, in support of his notion of a revealed law. He was not the only person of his day to attempt to formulate a legal theory,¹²⁸⁴ or even a legal hermeneutic; we have encountered Muʿtazilī contemporaries such as al-Nazzām, or at least Ibn ʿUlayya and his disciples, as well as the important Ḥanafī Ibn Abān, who would gladly have seen their visions of law and hermeneutics overshadow al-Shāfiʿī's. But they did not; it was only al-Shāfiʿī's way of imagining revealed law that came to be enshrined in the discipline of legal theory that dominated Sunnī thought, eventually assimilating even the resistant Ḥanbaliyya and Zāhiriyya. As his legal vision quickly gained ground during the 3d/9th century, a vibrant hermeneutical discourse developed around the nucleus of his key hermeneutical concepts. When the dust finally settled early in the 5th/11th century, it was

¹²⁸² On al-Ṭabarī see Stewart, "Muḥammad b. Jarīr al-Ṭabarī," 335.

¹²⁸³ Stewart, *Islamic Legal Orthodoxy*, 31-37; idem, "Muḥammad b. Dāʿūd," idem, "Muḥammad b. Jarīr al-Ṭabarī."

¹²⁸⁴ See Stewart, "Muḥammad b. Jarīr al-Ṭabarī," 341-349.

al-Shāfiʿī's hermeneutic, strengthened and systematized to meet the requirements of the jurists, that emerged as the dominant paradigm on which the great works of classical legal theory would be based. In retrospect it can be said that al-Shāfiʿī was indeed the founder or instigator, if not of legal theory itself, then at least of the subdiscipline of legal hermeneutics.

The Functions of Legal Hermeneutics

The second major set of issues raised by this study revolves around the intellectual function or purpose of hermeneutical theory, and of legal theory as a whole.

Muslim legal theorists themselves, in keeping with their claim that legal theory was the method by which Islamic law was originally constructed, have often assumed or claimed or insisted that legal theory is an *a priori* method that governs the construction of law, and that its hermeneutical dimensions are the part of that method that prescribes rules for the interpretation of revealed texts. Some of the figures we have studied, including most notably the theologians al-Bāqillānī and ʿAbd al-Jabbār, regarded legal theory as logically preceding and governing the construction of law, at least in principle.¹²⁸⁵ Others, however, especially jurist types such as al-Karkhī and Abū Yaʿlā, treated law as primary, and regarded legal theory as a retrospective attempt to describe and justify it.¹²⁸⁶ We have also seen that some aspects of

¹²⁸⁵ See al-Bāqillānī, *al-Taqrīb wa-l-irshād*, 1:305; Abū al-Ḥusayn al-Baṣrī, *al-Muʿtamad*, 2:353-354.

¹²⁸⁶ See Abū Yaʿlā, *al-ʿUdda*, 1:70, 4:1136-1138; Abū al-Ḥusayn al-Baṣrī, *al-Muʿtamad*, 2:353-354. Cf. Bernand, "Les *uṣūl al-fiqh* de l'époque classique," 278; Chaumont, "Bāqillānī," 96-97. For al-Karkhī see also page 320 above.

legal theory were framed in ways that presupposed the primacy of law over hermeneutics; for instance, texts were classified as clear or ambiguous depending on whether or not they required reinterpretation to match existing law.¹²⁸⁷ Some medieval scholars actively resisted the nagging suspicion that legal theory might not actually be the methodological fount of all Islamic law, by composing works whose purpose was to demonstrate that the principles of legal theory really do have some bearing on the determination of specific legal rules.¹²⁸⁸ Some scholarship by contemporary Western Muslims continues in the same vein, insisting that Islamic legal theory is an interpretive method, in order to maintain the genetic claim of the revealed origin of Islamic law.¹²⁸⁹

Among Western historians there has been a major debate about the actual function of legal theory.¹²⁹⁰ Wael Hallaq has maintained that legal theory is in fact a method for constructing law.¹²⁹¹ Others have nuanced that claim, arguing in various ways that legal theory

¹²⁸⁷ See pages 6, 69, and 356.

¹²⁸⁸ Several such works on *takhrīj al-furū‘ ‘alā al-uṣūl* have been studied by Ahmad, “Structural Interrelations” (Harvard, 2005); now also idem, *Structural Interrelations* (Brill, 2006). See also Weiss, *Studies*, 419.

¹²⁸⁹ E.g. Ramić, *Language and the Interpretation of Islamic Law*, ix-xv, 208. The positions of Hallaq and Ahmad are more nuanced, but have the same aim; see Hallaq, *Origins*, 148-149; Ahmad, “Structural Interrelations” (Harvard, 2005).

¹²⁹⁰ See for example the record of the Alta symposium’s discussion in Weiss, *Studies*, 398-419.

¹²⁹¹ E.g. Hallaq, “Was al-Shāfi‘ī the Master Architect,” 588, 592; idem, “Was the Gate of Ijtihad Closed,” 4-5; idem, *Origins*, 131-132, 148-149; and Hallaq’s comments in Weiss, *Studies*, 399-400.

shapes law without unilaterally determining its content;¹²⁹² for example, legal theory has been characterized as the “grammar” of legal discourse, or as ground rules for legal argument.¹²⁹³

Others have argued that legal theory has not had much formative impact on legal rules at all,¹²⁹⁴ and some have bluntly described legal theory as a *post facto* justification of prior legal opinions,¹²⁹⁵ or as a justification for regarding divergent legal opinions as equally legitimate.¹²⁹⁶

I have suggested several additional possibilities: legal theory is a way of understanding and making plausible the very concept of revealed law; it justifies a certain textual canon as the basis for law; it integrates revelation into an Islamic epistemology; and it legitimates the authority of a class of scholars.¹²⁹⁷ There is no need, however, to choose from among these options a single description of the timeless role of some abstraction called legal theory. This debate should be a matter of identifying which function or functions legal theory served for

¹²⁹² Ahmad Ahmad speaks of “structural interrelations” and a dialectical relationship between the theory (*uṣūl*) and practice (*furūʿ*) of Islamic law, but in fact he emphasizes the “*uṣūl* dictates *furūʿ*” side of the dialectic. Ahmad, “Structural Interrelations” (Harvard, 2005), 19–20, 38, 284–287, 308–311, and passim.

¹²⁹³ Chaumont, “Introduction,” 7–8, 17.

¹²⁹⁴ E.g. Fadel, “*Istiḥsān* Is Nine-Tenths of the Law.”

¹²⁹⁵ See e.g. Burton, *Sources*, 17: “The primary business of the *uṣūl* was to maintain by verifying the *fiqh* of the *madhhab*.” Also Jackson, “Fiction and Formalism.” Cf. Weiss, *Studies*, 400, 406, 411.

¹²⁹⁶ See Calder, “*Ikhtilâf* and *Ijmâʿ*,” especially 59, 61, 64, 68, 71.

¹²⁹⁷ Cf. Ingrid Mattson’s comment on the legitimation of authority in Weiss, *Studies*, 402.

different theorists at different times.¹²⁹⁸ The answer may presumably vary from century to century, from group to group, from theorist to theorist, and even from book to book or from one argument to another. It should be possible, however, to identify some general patterns in its function, and this study does just that, at least for the hermeneutical dimensions of legal theory during the formative period.

First, the initial purpose of legal hermeneutics was to lend meaning and plausibility to al-Shāfiʿī's claim that law stems from a certain revealed canon. al-Shāfiʿī was not reinventing the law by applying a new interpretive method, nor was he trying to defend his particular legal opinions by grounding them in some universally accepted authoritative canon, because there was no such established canon. On the contrary, we have seen that he was engaged in a debate with scripturalists and traditionists and rationalists, over whether a legal system should be grounded in a revealed canon at all, and if so what the nature of that canon should be. His legal hermeneutic, as well as the other elements of his legal theory enunciated in his *Risāla*, were designed to show that the obvious disparities between existing legal structures and his proposed canon were not in fact an obstacle to the correlation he argued should exist between them. The first purpose of legal hermeneutics, therefore, was to justify al-Shāfiʿī's choice of a particular textual canon as the sole proper basis of law. This was not the only situation in which a hermeneutic has played this role. As Peter Goodrich has observed, the discourse of hermeneutics has often been a means of sacralizing laws, lending them legitimacy and force by

¹²⁹⁸ Cf. Weiss, *Studies*, 409, 420.

linking them to sacred texts, while at the same time obscuring those texts and putting them beyond the reach of those the law is intended to govern. Goodrich has also noted that this same function is often served by the formation of a professional class of lawyers qualified to interpret the sacred texts,¹²⁹⁹ and we have seen that this was in fact an important byproduct of al-Shāfiʿī's hermeneutic: by making the meaning of the texts hinge upon knowledge of the ambiguities of Arabic, he reserved interpretive authority for a particular class of scholars, namely Arab scholars, whom he declared the sole qualified mediators of the divine authority of his proposed canon.

We have seen that justifying the role of revelation remained the foremost aim of the legal hermeneutics of the theologians ʿAbd al-Jabbār and al-Bāqillānī. For them hermeneutics was no longer about settling the dispute between scripturalists and traditionists and rationalists, but it was still about explaining how revelation could be the basis of law. Each of these theologians had developed a comprehensive epistemological theory on which to ground his theological claims, and needed to define revelation's place in that epistemology.

al-Bāqillānī appears to have shared al-Shāfiʿī's concern with explaining how a conflicting body of texts could represent a coherent law, so he argued that God's speech itself, which creates law, is unitary and coherent; the divergent data of the Qurʾān and traditions are but dim and partial expressions of that speech. He used his theory of divine speech to stress the ambiguity of revelation and the flexibility of the interpretive process, and thus justified theologically

¹²⁹⁹ Goodrich, "Law, Religion, and Critical Theory," 8:5360.

al-Shāfiʿī's way of explaining the apparent discrepancies within and between the canons of law and revelation. He integrated his Shāfiʿī vision of law with his epistemology and his Ashʿarī doctrine of God's speech. The fact that he left the meaning of many revealed expressions radically underdetermined shows that, despite his statements about the programmatic nature of his legal theory, he was not trying to facilitate the practice of actually deriving laws from texts; he was only trying to justify al-Shāfiʿī's canon as a plausible basis for existing law. ʿAbd al-Jabbār's premises were somewhat different, but he too was attempting to integrate al-Shāfiʿī's canon into his epistemology. He gave revelation little substantive role in the construction of his theology, but since existing Islamic law clearly could not be grounded in rational considerations alone, and because al-Shāfiʿī's claim that law stems from revelation had become so widely accepted, he needed to find a way to explain how divine speech could be a source of legal knowledge. This is what he accomplished with his legal hermeneutic, which established a chain of reasoning from the words of revelation to the beneficial or harmful consequences of human actions, via God's will. He secured the reliability of this chain of reasoning using his doctrines of God's justice and the created Qurʾān.

This interpretation of the goals of the theologians' legal-hermeneutical discourse shows that the interpretive categories and rules spelled out and defended in the opening chapters of legal theory manuals were not just technical prolegomena to the real substance of legal theory. Many Western scholars have passed over the linguistic or hermeneutical dimensions of legal theory far too quickly, assuming that they were just preliminary steps necessary for establishing the textual meaning from which the real business of legal reasoning

could proceed.¹³⁰⁰ This study has shown, however, that a great deal of legal reasoning was often packed into the analysis of language, and, more importantly, that this linguistic analysis was crucial to the very possibility of imagining a revealed law and fitting revelation into an Islamic epistemology. For the theologians, legal hermeneutics was a philosophical inquiry into the nature of communication in general, and divine communication in particular. Our discussion of legal hermeneutics, therefore, has not explored every detail of every interpretive rule, as though the point of the discourse were to make possible the interpretation of every text in the corpus of revelation; we have focused instead on meta-interpretive questions that run through the entire discourse, and that are addressed implicitly and sometimes explicitly in the course of stating and defending individual interpretive rules. Debates over those rules, it turns out, were a way of discussing broader hermeneutical issues that remain just as important to students of contemporary Western hermeneutics as they were to preclassical Muslim legal theorists. Where does meaning reside – in the verbal form of an utterance (as per the *Zāhiriyya*), in an attribute of the speaker or an idea in the speaker’s mind (*al-Bāqillānī*), in the intentionality that accompanies an act of speaking (‘*Abd al-Jabbār*), or in the interpersonal effects of a speech act (*Abū Ya‘lā*)? How do verbal utterances convey that meaning – indicatively (‘*Abd al-Jabbār*, *al-Bāqillānī*) or performatively (*Abū Ya‘lā*); self-sufficiently, or with the help of contextual factors; immediately and intuitively, or only with the help of a rational interpretive process? What kinds of meaning can be conveyed implicitly, and what

¹³⁰⁰ E.g. Hallaq, *Origins*, 132-134.

kinds of meaning must be conveyed explicitly or arrived at by rational deduction? When must speech refer to precisely those things that its verbal form denotes according to the Arabic lexicon, and when may it be declared ambiguous and then reinterpreted? Such questions were not asked and answered simply to guide jurists in establishing the meanings of specific verses; they were philosophical questions about the nature of communication, closely akin to questions that are asked today by students of modern hermeneutics. A few scholars have now begun to recognize the connections between Islamic legal theory and Western hermeneutics, and to engage in systematic comparative analysis of the two discourses.¹³⁰¹ Comparative analysis has contributed to the present study of Islamic hermeneutics, by enabling me to identify concerns and presuppositions that are not immediately visible at the surface of the Muslim theorists' discourse. It has the potential to yield new insights for students of Western hermeneutics as well; for example, I will suggest below that the intellectual history traced in these pages suggests the need for a reexamination of the category of literalism in contemporary Western discourse.

That is why I have read my sources at several different levels. The first and most concrete level is that of actual interpretations of specific texts. Like my sources, I have occasionally cited specific interpretations as illustrations of general interpretive rules; but the specific interpretive consequences of hermeneutical rules are not the concern of this study. The second level, consisting of definitions of terms and general interpretive rules, is the

¹³⁰¹ Most notably Ali, *Medieval Islamic Pragmatics*. See also Fākhūrī, *ʿIlm al-dilāla ʿinda al-ʿArab*.

principal overt concern of the legal theory manuals themselves, but it has not been my principal concern. At a third level, by taking a bird's eye view of each theorist's views and arguments, I have identified the larger hermeneutical tendencies or principles that characterize his particular combination of interpretive rules – tendencies such as literalism, minimalism, underdetermination of meaning, or interpretive flexibility. These overall tendencies have revealed important groupings of theorists, showing for example how similar Ḥanafī and Shāfi'ī jurists were theoretically, despite their differences on some specific rules, and how different they both were from the theologians. Fourth, I have assessed how each author's overall hermeneutic serves his view of the epistemological relationship between law and revelation. For example, 'Abd al-Jabbār's literalist and minimalist hermeneutic is demanded by his view that revelation must serve as indicative evidence of the harmful or beneficial consequences of human actions. Fifth, I have sought to identify what explicit or implicit theory of speech is employed or assumed by each author in his defense of his interpretive rules. This has highlighted how different theological positions on the nature of God's speech are bound up with different ways of imagining a revealed law. For example, al-Bāqillānī's Ash'arī doctrine that God's speech is a single eternal speech-meaning subsisting in his essence allows him to think of the law as a coherent and comprehensive divine command, despite the fragmentary nature of the evidence that expresses that command. Sixth, I have attempted to reconstruct each theorist's overall way of imagining how revelation communicates law. The diversity of ways in which preclassical theorists imagine the concept of revealed law is reflected in the analogies I have used to evoke them: the jigsaw puzzle, the

crossword puzzle, the road sign, the last will and testament, and the phonograph record. Finally, I have also pointed to some institutional and social consequences of each author's way of imagining revealed law, such as its implications for the role and authority of the juridical guild. It is only by looking beyond the second level, on which the legal theory manuals are ostensibly written, that I have been able to identify what drove theologians like 'Abd al-Jabbār and al-Bāqillānī to develop their hermeneutical theories. As theologians, they had to answer the larger philosophical questions about the location of meaning and the nature of communication, not so that they could interpret the Qur'ān – their predecessors had been doing that for centuries – but so that they could explain the philosophically puzzling concept of revelation – something that had not yet been accomplished. How can one conceive of God speaking, and, more difficult yet, communicating with humans? How it is possible for the purposes of a transcendent God to become knowable to humans through the temporal medium of human language? To what extent can God's communication be assumed to function like human communication, and in what ways must it differ? And how can a specific body of texts be fitted into a coherent Islamic epistemology, and made amenable to the interpretive maneuvers needed to correlate it with law, so that those texts can fulfill their assigned role of communicating God's law? What was at stake during the formative period of Islamic legal hermeneutics, at least for the theologians, was not an interpretive method, but the plausibility of al-Shāfi'ī's canon, and of the place he assigned it in his epistemology.

Only once al-Shāfi'ī's canon had become widely accepted, and its role as the basis of law had come to be largely taken for granted, could legal hermeneutics begin to serve the function

of justifying the law itself. Chapter 6 described how Sunnī jurists of all schools, once they had bought into the Shāfiī vision of law, developed legal theories designed for the pragmatic purpose of justifying their claims that their legal views were in fact dictated by revelation. Some of those jurists (most notably al-Karkhī and Abū Ya‘lā) frankly acknowledged that their legal theories were designed not to create the law but to justify it.¹³⁰² Even theologians like Abū al-Ḥusayn al-Baṣrī eventually showed an increasing interest in the practical interpretive power and flexibility needed for defending specific legal views, and thus turned toward the jurists’ pragmatic hermeneutical paradigm, as legal studies came to dominate the curriculum of endowed teaching institutions, and as the need for theoretical justifications of revelation’s role receded from view. By the end of the formative period, therefore, legal theory served primarily as the grammar or ground rules of legal argument, whereby individual legal opinions could be justified in debate, and whereby the whole enterprise of Islamic law could be legitimated as an authoritative offshoot of divine revelation. We noted in chapter 6 that the formulation of this legal grammar was an important step in the institutionalization of each Sunnī school. Only with such a mechanism for debate could a school maintain a standard body of legal doctrine, defending it point by point in debates with members of other schools; and only with such an overall justification of the general correlation between law and revelation, could a school claim that its legal doctrines had the backing of revelation.

¹³⁰² See note 1286.

In the course of this formative history, only in one small enclave did legal hermeneutics serve as an actual method for the construction of law. This was within the scripturalist tradition, culminating in the Zāhiriyya, who applied al-Shāfiʿī's ideas by actually reinventing law on the basis of revelation. We saw in chapter 3 that the resulting legal opinions sometimes ran sharply counter to widely established legal views. That the Zāhiriyya failed to gain any significant foothold in the discourse shows how little room there was among the mainstream jurists for actually applying legal hermeneutics as a method of constructing law from revealed texts. The mainstream were too committed to existing legal doctrines, and therefore required a powerful and flexible hermeneutic that they could use to justify those rules without having to revise them.

Islamic legal hermeneutics thus played four major roles during its formative period: it justified al-Shāfiʿī's canon as the basis of law; it fitted that canon into a coherent Islamic epistemology; once that canon was widely accepted, it served to justify the authority of the jurists and their legal systems, both by legitimating the overall enterprise of law and by providing a set of ground rules for debates over particular points of law; and for a time, among a small minority, legal hermeneutics served as an interpretive method for the construction of law. This has important implications for the comparative study of hermeneutics. Jonathan Z. Smith, in a classic article on the notion of canon, argued that the closure of a canon gives rise to the need for a hermeneute who can apply that finite canon to the unbounded range of new

and unexpected situations to which it may need to be applied.¹³⁰³ Limiting the canon gives rise to the need for hermeneutical flexibility. al-Shāfiʿī's successful delimitation of the canon of revelation did indeed give rise to the need for a flexible hermeneutic, but not for the sake of applying the canon to new situations. In his case, most "applications" of the canon were already well established, and although interpretive flexibility might occasionally be required to address some new legal question, a hermeneutic was needed principally to support the claim that the proposed canon was in fact the basis of the existing "applications." A hermeneutic was needed not to apply an accepted canon, but to justify a newly defined canon, and thus to symbolically assert the law's sacrality. Later, as the canon came to be widely accepted, the hermeneutic could serve to justify specific "applications" of that canon. But it did not actually serve as a method for applying the canon; it served rather to justify laws by showing that they could be reconciled with the canon, and could therefore be viewed as applications of that canon. Only the scripturalists, culminating in Dā'ūd al-Zāhirī and his Eastern followers, actually employed their hermeneutic as a method for applying a closed canon, and they were not particularly flexible. Indeed they preferred not to apply the canon to situations it did not appear to address; they accepted the finite nature of the canon, and therefore left many areas of life unregulated. This study has shown that a hermeneutic can indeed function as a method for applying a closed canon, but can also function just as well as a

¹³⁰³ Smith, "Sacred Persistence," 48-50 and passim. Tillschneider (*Die Entstehung der juristischen Hermeneutik*, 191, 207) expresses a similar view of canonization demanding hermeneutics for the sake of application.

legitimation of that canon, or as an explanation of its epistemological function, or as a legitimation of established norms, or as a toolbox of tactics for debate, or as a validation of the social authority of a religious class that claims to interpret the canon.

It is these different functions of legal hermeneutics that account for the most important differences between Muslim legal theorists. Those theorists who desired above all to justify their schools' legal views all gravitated toward a single overall paradigm that was well suited to that general purpose. Those few who wished to rewrite the law by applying the words of revelation directly to each legal question developed an entirely different "literalist" hermeneutic. And those who pursued hermeneutical theory for the purpose of fitting revelation into their theological and epistemological systems developed paradigms suited to their own theological premises, resulting in quite different theories for the Baṣra Mu'tazila and the Ash'ariyya. Adherence to a particular set of legal doctrines had almost no bearing on a scholar's hermeneutical views. If the schools of law had arrived at their legal doctrines primarily through the interpretation of revealed sources, it might be expected that their legal differences would stem from differences in interpretive method, and that each school would have its own hermeneutic that would be particularly well suited to justifying its own doctrines. The fact that jurists of all legal schools shared essentially the same hermeneutic, which was equally useful for defending all their different views, confirms that their legal views were not in fact arrived at by the application of any consistent hermeneutical method. Because law was not in fact a product of hermeneutics, legal disagreements did not imply hermeneutical disagreements. Hence the great legal-hermeneutical disputes of the formative period were not

waged between legal schools. Within each legal school, there were profound divisions between those who adopted the jurists' paradigm and those who were swayed by Mu'tazilī or Ash'arī arguments. But those who opted for the jurists' paradigm agreed among themselves on a broad set of major principles, differing only on relatively minor points, regardless of their affiliation with one legal guild or another. Even the oft-cited Ḥanafī principle of generality, which supposedly set them apart from the Shāfi'ī and other legal schools, turns out to have been more a symbol of Ḥanafī identity than a real difference in interpretive theory. This was because the jurists all shared the same goal – to justify existing legal views – and this goal was facilitated for all by maximizing both the power and the flexibility of one's hermeneutic.

This affects how we carve up the world of Islamic hermeneutical discourse: as reflected in the chapter divisions of this book, the lines of debate during the formative period must be drawn between theologians and jurists, and then between theological camps, rather than between legal schools. This also implies that the debate among Western scholars over whether Islamic legal theory is an essentially theological or legal enterprise¹³⁰⁴ is misplaced. There is no

¹³⁰⁴ Makdisi, in "The Juridical Theology of Shāfi'ī," presents legal theory as an essentially traditionalist enterprise that became contaminated with the concerns of rationalist theologians. Hallaq, in his review of *The Search for God's Law*, by Bernard G. Weiss, criticizes "the false notion, widely prevalent in the field, that legal theory is engulfed by theological concerns, and hence [...] has a severely constrained relationship with positive law and actual legal practice if indeed there is any relationship at all." He also denies that doctrines of divine speech have anything to do with legal theory, whereas this study has shown that they were intimately intertwined with the legal hermeneutics of the theologians.

need to choose between the two; one may simply distinguish between those legal theorists whose goals were more theological and epistemological, and those who were more concerned with justifying their own legal systems. The latter had the upper hand by the end of the formative period, and some deliberately sought to keep theology out of legal theory,¹³⁰⁵ but this does not make the entire discipline an essentially non-theological enterprise.

Some distinction between theologians and jurists has long been recognized as an important marker of different approaches to legal theory.¹³⁰⁶ Ibn Khaldūn (d. 808/1406), in his overview of the Islamic sciences, famously separated the history of legal theory into “the way of the theologians” and “the way of the Ḥanafī jurists.” The former were said to arrive at their interpretive principles by rational deduction, while the latter were said to construct their interpretive principles on the basis of specific legal opinions held by their Ḥanafī forebears.¹³⁰⁷ This dichotomy has been repeated endlessly, and has been taken to mean that the Ḥanafī jurists created their legal theory to fit the law, whereas everyone else created law by carrying out the interpretive implications of their *a priori* theoretical reflections.¹³⁰⁸ This study has

¹³⁰⁵ See e.g. Abū al-Ḥusayn al-Baṣrī, *al-Mu‘tamad*, 3-4; Makdisi, *Ibn ‘Aqīl: Religion and Culture*, 80-81; idem, “The Juridical Theology of Shāfi‘ī,” 33-38 and *passim*.

¹³⁰⁶ See for example Chaumont, “Bâqillânî,” 86, 98; Makdisi, “The Juridical Theology of Shāfi‘ī.”

¹³⁰⁷ Ibn Khaldūn, *Muqaddima*, 3:21-23.

¹³⁰⁸ E.g. Khalīl al-Mays, in his introduction to Abū al-Ḥusayn al-Baṣrī, *al-Mu‘tamad*, 1:ج-د; Kamali, *Principles*, 7-8; Weiss, “Language in Orthodox Muslim Thought,” 42-44; Weiss, *Search*, 18-19. Cf. Moosa, “The Legal Philosophy of al-Ghazālī,” 52-53, and Makdisi, “The Juridical Theology of Shāfi‘ī,” 42, who both criticize the dichotomy.

shown, however, that this understanding of the difference between theologians and jurists is misleading, at least with regards to the hermeneutical dimensions of legal theory. There was among the early Ḥanafīyya a kind of hermeneutical discourse that actually fits Ibn Khaldūn’s description of the “way of the jurists.” This was their analysis of the language of human contracts and oaths, which was based on solutions the early Ḥanafī masters had given to hypothetical legal cases, as in their debate about what happens if someone bequeaths a ring to one person and its stone to another.¹³⁰⁹ Snippets of that discourse were preserved in the works of Ḥanafī legal theorists such as al-Jaṣṣāṣ, al-Dabbūsī, and al-Bazdawī, but only as one component of a much larger discourse about the language of revelation. That discourse, which was begun by al-Shāfi‘ī and very quickly taken up by the Ḥanafīyya, depended heavily on rational argument, and this is just as evident in Ḥanafī legal theory works as it is in works from other schools.¹³¹⁰ Furthermore, the Ḥanafīyya were not the only ones who sometimes appealed to the legal views of earlier jurists. The Ḥanbalī Abū Ya‘lā, for example, began each section of his *‘Udda* with references to Ibn Ḥanbal, though sometimes he had to interpret those citations quite creatively to make them support his hermeneutic.¹³¹¹ Abū Ya‘lā’s defense of his

¹³⁰⁹ See page 43.

¹³¹⁰ This is true, for example, of al-Jaṣṣāṣ, *al-Fuṣūl*; al-Dabbūsī, *Taqwīm al-adilla*; and al-Bazdawī, *Uṣūl* – works that are generally classified as examples of “the way of the jurists.” In order to apply Ibn Khaldūn’s distinction between the “two ways,” historians have mischaracterized Ḥanafī books, and described many other books as combining the two ways. See for example Khalīl al-Mays, introduction to Abū al-Ḥusayn al-Baṣrī, *al-Mu‘tamad*, 1:•-•; Kamali, *Principles*, 8-9.

¹³¹¹ See page 355 and note 1100.

hermeneutical choices rested principally on rational arguments akin to those of the theologians; his appeals to Ibn Ḥanbal served mainly as a claim of legitimacy. So quoting prior legal opinions was not a specifically Ḥanafī device, and it did not indicate that hermeneutical principles were actually being inferred from the law. Indeed there probably was no system of law consistent enough for a formal hermeneutic to be inferred from it, for the simple reason that no existing system of law had actually been constructed by means of a consistent hermeneutic. But there was, as we have seen, a certain tendency among jurists of all schools to prefer flexible interpretive rules that could accommodate as much existing law as possible, and in this respect at least, Ibn Khaldūn’s intuition about a “way of the jurists” was well founded. We have also seen that there was a certain tendency for theologians to be more principled and more restrained than jurists in formulating their hermeneutical theories, and in this too Ibn Khaldūn’s intuition is borne out by our study of legal hermeneutics in the formative period. But these theologians cannot be identified with the Shāfi‘iyya,¹³¹² and they were not “principled” in the sense that they “created law by carrying out the interpretive implications of their *a priori* theoretical reflections.” Only the Zāhiriyya can be said to have done that. If the theologians’ hermeneutical views had the virtue of being consistent with their theological premises, this was because hermeneutics was for them principally a theological enterprise: they were trying to incorporate revelation into a theologically and philosophically coherent epistemology. The crux of the division between jurists and

¹³¹² As stressed by Makdisi, “The Juridical Theology of Shāfi‘ī,” 42.

theologians was not whether law governed theory or *vice versa*; it was what function hermeneutical theory served for each group. The theologians' goal was to integrate revelation into their theological discourse, so they tended to opt for hermeneutical principles that they could reconcile with their theological premises, whereas jurists tended to opt for hermeneutical principles that facilitated their project of justifying their legal views.¹³¹³ Ibn Khaldūn's distinction is only applicable to the formative period of legal hermeneutics if it is understood in this way, and is shorn of its association with particular legal schools.

A major conclusion of this study is that the jurists' project of justifying existing laws came to dominate legal hermeneutics early in the 5th/11th century. This was at least in part a consequence of the marginalization of theology and the endowment of teaching institutions focused on the transmission of positive law, which made the concerns of the jurists the paramount concerns of the Islamic academy.¹³¹⁴ Hermeneutics thus lost its theological moorings, and became a pragmatic tool for justifying preconceived legal views. This state of affairs is still in evidence among Muslim scholars today, when many appeals to classical legal theory, as well as to alternative modernist and postmodernist hermeneutical theories, seem to be driven by preconceptions of what Islamic law should be, rather than by inquiry into the theological concept of revelation or the philosophical problem of divine-human

¹³¹³ My emphasis on the different intellectual programs does not exclude the possibility of other factors such as competition for authority between theologians and jurists. See Chaumont, "Introduction," 13-14.

¹³¹⁴ See page 382.

communication. Hallaq has noted that many modernist revisions of legal theory are frankly utilitarian, putting a certain vision of human welfare before hermeneutical principle.¹³¹⁵ Khaled Abou El Fadl has noted how often contemporary jurists, conservative and reformist alike, use elements of classical legal discourse selectively and opportunistically to advance their own preconceived legal agendas.¹³¹⁶ But there have also been important exceptions. There has been much discussion about the revival of classical legal theory as a positive method for Islamic thought as a whole, which suggests a return to a more philosophical function for legal theory.¹³¹⁷ Some recent challenges to classical legal theory have also been theologically grounded. Naṣr Ḥāmid Abū Zayd, for example, has reopened the question of the nature of revelation, arguing that the Qur'ān should be regarded as a literary text rather than as speech, and raising again the issue of the eternity or createdness of the Qur'ān.¹³¹⁸ Maḥmūd Shaḥrūr has based his hermeneutical proposals on distinctions between different aspects of revelation, most notably “the Book” and “the Qur'ān.”¹³¹⁹ Old debates about the nature of God’s speech

¹³¹⁵ Hallaq, *History*, ch. 6.

¹³¹⁶ Abou El Fadl, *Speaking in God’s Name*, xi, 97-98, 170-177.

¹³¹⁷ Muḥammad al-Sulaymānī (Introduction to Ibn al-Qaṣṣār, *al-Muqaddima*, 9-10) calls *uṣūl al-fiqh* “the pure Islamic philosophy that the Muslim mind has created,” and cites several who have preceded him in this view.

¹³¹⁸ See Abū Zayd, “Divine Attributes in the Qur’an,” 192, 197-198; Abū Zayd, *al-Imām al-Shāfi‘ī*, 18-19.

¹³¹⁹ See Shaḥrūr, *al-Kitāb wa-l-qur’ān*, 51-61; Hallaq, *History*, 246-247.

have thus begun to resurface, in new guises, and they are playing a role once again in the present debate over the hermeneutics of Islamic law.

The possibility that legal theory is once again becoming a theological and philosophical project does not, however, mean that it is becoming an interpretive method that will actually be applied in the construction and revision of Islamic law. Even ‘Abd al-Jabbār and al-Bāqillānī, who wanted their hermeneutical theories to be guided by theological premises rather than by preconceived legal agendas, did not create practical interpretive methods. The theologians’ legal hermeneutics began and ended with theological concerns. If history is any guide, there is little reason to expect that hermeneutical systems will suddenly start to govern the construction and reform of law by unilaterally determining the results of interpretation. The weight of established social and legal norms was far too great to be displaced by the Zāhirī attempt to actually reconstruct law through a principled interpretation of revealed texts. Islamic law has seldom been dictated by legal theory, and is unlikely to be dictated by it today, regardless of rhetoric about new hermeneutical “methods.” It is sometimes lamented that hermeneutical proposals today often serve only to justify preconceived social and legal opinions, but this is nothing new; this was precisely how legal hermeneutics had come to function by the end of the formative period. The main difference is that modern reform proposals are often more dramatic, because their authors no longer feel as strictly bound by the inherited doctrines of the legal schools. Reforms there will be; but they will be governed more by the evolution of social norms among Muslims, and by the shift of persuasive authority from classically trained jurists to other public figures, than by systematically applied theories

of Qur'ānic interpretation. Islamic law can be whatever Muslims are willing to make it, regardless of the constraints that seem to be imposed by legal theory, or hermeneutics, or even by revelation itself.

Nevertheless, hermeneutical theories have the potential to play an important role in the continuing evolution of Islamic law – not by dictating developments, but by legitimating them. Hermeneutical theories of all types, those founded in classical legal theory as well as modernist and postmodernist alternatives, will still be used to persuade Muslims that individual interpretations constitute legitimate readings of revealed texts. Perhaps more importantly, hermeneutical theory will remain an important forum for creating, maintaining, and revising Muslims' ways of imagining what religious law is, and how it relates to the Qur'ān and to the community's collective memory of its Prophet. If legal hermeneutics continues to function as it has, it will neither bring about nor prevent legal reforms, but it will determine how Muslims are able to imagine those reforms as God's revealed will. And legal hermeneutics will remain contested, because so long as Islamic law is conceived of as a revealed law, each attempt to preserve or reform that law will gain its legitimacy in part from its claim to rest on a persuasive account of how God reveals his law.

The Former Diversity of Legal Hermeneutics

This study's third major claim concerns the striking diversity of hermeneutical visions that populated Sunnī discourse during the formative period, and the eventual hegemony of one of them.

Even once the notion of a revealed law had been proposed and accepted, there was no one obvious or self-evident way of conceptualizing that law's relationship to revelation. Is the law an arbitrary set of commands that can be known only to the extent it is explicitly revealed, or is it a coherent morality whose missing pieces can be extrapolated from those parts that are explicitly revealed? Does revelation constitute the evidentiary basis for a rational process of constructing law, or does it bring about the law performatively? Is revelation a part of the created order, or a part of the divine nature that can only be known by inference from created things that humans can perceive? Wherein lies the meaning of revelation – in its verbal form, in its interpersonal function as a speech act, or in an attribute of the speaker such as intent? Under what conditions can its meaning be different from the ordinary and explicit linguistic meaning of its verbal form? And what kind of rational or intuitive process leads to knowledge of its meaning? A revealed law might be imagined in accordance with many different combinations of answers to these questions.

al-Shāfi'ī's proposal explained how to reconcile revelation with law – by manipulating bits of revelation so that they could fit together like the pieces of a jigsaw puzzle to form the already well-known picture of Islamic law. But al-Shāfi'ī did not solve the philosophical problem of how God communicates law. The Zāhirī, Mu'tazilī, Ash'arī, and juristic responses to his proposal, however, were associated with distinctive ways of imagining how revelation functions. The Zāhiriyya argued that revelation itself constitutes the entire law, which they conceived of as a purely verbal entity without any underlying moral rationale. They therefore sought to implement revelation directly, without extending it or reinterpreting it to construct

a separate body of legal pronouncements covering every area of life. They imagined revealed law the way we might think of a crossword puzzle: revelation is a finite list of verbal clues that jurists must plug into a grid to answer a limited subset of the many legal questions presented by daily life. The resulting grid of answers is perfectly consistent – we never find two different letters in the same square – but it does not have any coherent meaning of its own, and it cannot possibly tell us anything about legal questions that lie beyond the borders of the grid, or about the gaps in the grid that are not addressed by the clues. Thus the *Zāhiriyya*, following in the footsteps of certain Mu‘tazilī theologians of Baghdād, resisted al-Shāfi‘ī’s project of interpreting revelation to match a comprehensive body of legal discourse. The Baṣra branch of the Mu‘tazila, on the other hand, adopted al-Shāfi‘ī’s basic project, but resisted his emphasis on ambiguity for theological reasons. They argued that God’s justice requires that his speech never be unclear; it must always function as evidence from which humans can confidently infer the beneficial and harmful consequences of their actions. The great Mu‘tazilī synthesizer ‘Abd al-Jabbār argued that this was possible only if one accepted the Mu‘tazilī doctrine of the created Qur’ān – which shows that this doctrine should not be assumed to reflect a low view of revelation. ‘Abd al-Jabbār therefore imagined revelation as a piece of created verbal evidence, like a road sign erected by God in the midst of his creation, indicating the upright path in plain speech. al-Ash‘arī and al-Bāqillānī likewise accepted al-Shāfi‘ī’s claim that existing law can be correlated with revelation, but unlike the Mu‘tazila they wholeheartedly embraced his hermeneutic of ambiguity, and supported it with their doctrine of God’s eternal speech. They imagined the words of revelation as dim, ambiguous, and incomplete indicators of God’s

inscrutable command – rather like a last will and testament, which gives expression to a person’s desires and instructions, but must be deciphered in the author’s absence by those who would implement it. Finally, most jurists did not directly address the philosophical problem of how revelation communicates God’s law, but we did manage to discern, just beneath the surface of the writings of one particularly thoroughgoing adherent of the jurists’ paradigm, one way of imagining revealed law that was particularly well suited to the jurists’ combination of interpretive power and flexibility. The Ḥanbalī Abū Ya‘lā imagined revelation as an eternal speech act, by which God brings about the law performatively and with intuitive immediacy – just as the recorded voice of the master emerging from the phonograph is immediately recognized as a personal summons by the little dog on the old RCA Victor record label “His Master’s Voice.”

Reconstructing these diverse ways of imagining revealed law adds much to our appreciation of the formative history of Islamic legal thought. But it also provides important perspective on contemporary debates among Muslims, because it shows that the dominant vision of revealed law, which has been embedded in Sunnī legal theory for the last thousand years, represents but one – and by no means the most sophisticated or philosophically coherent – of many alternative visions of revealed law that Muslims have thought up. Many assumptions about the nature of Islamic law are so often taken for granted in contemporary legal discourse that they are not even articulated, but are assumed to be part and parcel of the very notion of a revealed law. For example, it is usually assumed that Islamic law consists of a body of rules (*fiqh*) distinct from revelation itself, but constructed on the basis of revealed

texts. Those rules are not regarded as arbitrary, but as a reflection of a coherent divinely willed morality, whose missing pieces can be extrapolated from those parts that are explicitly revealed. It is taken for granted that the task of jurists is to reduce the performative dimensions of revealed speech to indicative statements about the legal values of acts. It is assumed that the meaning of revelation is not identical to its verbal form, but depends on factors such as the speaker's intent, so that the law does not necessarily have to match the ordinary linguistic meaning of a revealed expression. But at the same time it is often tacitly claimed that the meaning of revelation is so intuitively obvious that it is indisputable. This study has shown that such assumptions are the contingent results of a vigorous debate whose outcome hung in the balance for two centuries. Contemporary challenges to those assumptions, therefore, are not unprecedented deviations from the way the Muslim community has always understood Islamic law; they constitute a revival of a long struggle to come to grips with what it means for law to be revealed. Those contemporary challenges might be significantly enriched, and tied more persuasively to the Sunnī intellectual heritage, if they were understood as part of this tradition of debate, and if they drew not only from modern Western hermeneutical theories, but also from the largely forgotten intellectual resources offered by the Zāhiriyya, the Mu'tazila, and the Ash'ariyya. Those resources cannot simply be resurrected and put to the service of contemporary agendas; indeed even the most liberal contemporary thinkers may find that the dominant jurists' hermeneutic, with its great power and flexibility, serves their purposes far better than the more "rationalist" hermeneutic

of the Mu'tazila. But forgotten ways of imagining revealed law can at least provoke questions, clarify assumptions, and expand the range of imaginative possibilities.

This study has put special emphasis on the rise of one hermeneutical paradigm – that of the jurists – to a position of dominance and even hegemony by the middle of the 5th/11th century. During the 4th/10th century, jurists within each legal school were torn between those who advocated a pragmatic juridical hermeneutic that maximized interpretive power and flexibility, and others who felt the pull of the arguments for clarity or suspension of judgment that were being advanced by Mu'tazilī and Ash'arī theologians. The latter included, for example, the Shāfi'ī jurists al-Ṣayrafī, al-Marwazī, al-Marwarrūdhī, and al-Qaffāl al-Shāshī; the Mālikī jurists Ibn al-Muntāb, Abū al-Faraj al-Laythī, and al-Abharī; and the Ḥanbalī Abū al-Ḥasan al-Tamīmī, who all inclined toward Mu'tazilī hermeneutical views, as well as the Ḥanafī jurists al-Bardaī and al-Māturīdī and al-Simnānī, who advocated suspension of judgment to varying degrees. This illustrates a significant intellectual diversity within each of these legal traditions, which may seem surprising especially in the case of the Ḥanbaliyya. But by the middle of the 5th/11th century even the most theologically sophisticated adherents of Mu'tazilī and Ash'arī theology, such as Abū al-Ḥusayn al-Baṣrī and Ibn Fūrak, and even the staunch Zāhirī Ibn Ḥazm, had yielded to the main principles of the jurists' hermeneutic. This development is at least partly attributable to institutional factors such as the resurgence of Sunnī traditionalism and the marginalization of theology from the curriculum of the endowed colleges. But it was also a natural development of the basic premises of al-Shāfi'ī's project. al-Shāfi'ī emphasized the interpretive flexibility needed to resolve conflicts within and

between the canons of revelation and law, but his project also implied a need for interpretive power to extend the legal import of revelation beyond the very limited domain of what revelation actually says. It was therefore natural, if not entirely inevitable, that the jurists should elaborate and formalize this need for both flexibility and power, and transform al-Shāfiʿī's rudimentary interpretive theory into a pragmatic but paradoxical hermeneutic in which language is ambiguous enough for jurists to manipulate it into a coherent system of legal rules, yet clear enough for them to regard those rules as the plain and obvious meaning of the text. Such a hermeneutic supported al-Shāfiʿī's project, and in so doing it buttressed the social authority of the juristic class, in that it enabled them to claim the authority of Prophetic revelation for a wide range of legal doctrines.

The effects of this hermeneutical quest for authority are visible today. Contemporary articulations of mainstream Sunnī legal theory still reflect the dominance of the jurists' paradoxical hermeneutic,¹³²⁰ and contemporary jurists still employ that hermeneutic to claim that their legal pronouncements constitute the plain meaning of revealed texts, even though they can only be reconciled with the texts by selectively exploiting the hermeneutical and other devices provided by classical legal theory. Khaled Abou El Fadl has sharply criticized what he calls the "authoritarianism" rampant in contemporary Islamic jurisprudence – the arrogation of authority that often occurs when an interpreter identifies his or her

¹³²⁰ See for example Ḥasab Allāh, *Uṣūl al-tashrīʿ al-islāmī*; Kamali, *Principles*; or Ramić, *Language and the Interpretation of Islamic Law*.

interpretation as the plain and obvious meaning of God's speech.¹³²¹ This is precisely what the jurists' paradigm makes possible, because that paradigm legitimates the interpretive and intertextual moves whereby jurists correlate revealed texts with their own preconceived values and legal opinions, while at the same time allowing them to insist that the meanings they assign to texts are in fact the literal meanings of those texts, immediately apparent to anyone who knows the language and the context of God's speech. The jurists' paradigm equates legal opinions with revelation itself, because it disguises the interpretive process of correlation that bridges the gap between revelation and law. Abou El Fadl has suggested that the prevalence of authoritarianism in contemporary law may be due to a deterioration of the rigor of classical legal theory, which he presents as a sophisticated and dynamic system that formerly restrained jurists from exploiting their authority to pursue their own whims. This decline, he suggests, has resulted from the demise of the traditional educational and legal institutions in which classical law and legal theory were kept alive, and within whose confines legal interpretation was once practiced.¹³²² My study suggests that while some aspects of classical legal theory, such as the doctrine of consensus, may have restrained authoritarian legal pronouncements, the hermeneutic that emerged triumphant from the formative period was designed precisely to legitimate jurists' claims that their legal views had the authority of revelation. Authoritarianism does not require a rejection of the jurists' hermeneutical paradigm; it is precisely what that paradigm's paradoxical combination of power and

¹³²¹ Abou El Fadl, *Speaking in God's Name*, 5, 7, 93, and passim.

¹³²² Abou El Fadl, *Speaking in God's Name*, xi, 5-6, 9-18, 170-172, 268.

flexibility was designed to support. If classical jurists were indeed less capricious than contemporary jurists, this must be because the strictures of the legal guilds, and the slowly developing norms of society, placed limits on how far the power and flexibility of legal hermeneutics could be exploited. Modernity has loosened those strictures, and increased the pace of social change, but this has only made more visible an authoritarian potential that has characterized the jurists' legal hermeneutic all along.

This study sets the authoritarianism of both contemporary and classical jurisprudence in a new light: it was not the inevitable result of the choice to regard Islamic law as revealed. It was, perhaps, one natural outworking of al-Shāfiʿī's project of finding a revealed basis for preconceived laws, but there were other, more disciplined hermeneutical alternatives capable of supporting the notion of revealed law. The Zāhiriyya, the Muʿtazila, and the Ashʿariyya all advanced sophisticated alternatives that did not fulfill the pragmatic desires of the jurists, but did provide coherent explanations and justifications of the concept of revealed law, while placing much greater restraints on the jurists' ability to claim revealed authority for their pronouncements. All three of those alternatives were more principled, more sophisticated theologically, and more coherent philosophically, than the paradoxical and theologically rootless hermeneutic chosen by the jurists. By recovering those alternatives from the forgotten debates of the 4th/10th century, this study suggests that philosophical and theological coherence are not unreachable goals for contemporary Islamic hermeneutical discourse.

There is also much to be learned from the specific content of those forgotten debates. They were not just about interpretive rules; they were about larger issues such as literalism, ambiguity, the location of meaning, and the nature of communication. The category of literalism, in particular, has been problematized by the history reconstructed in this study. In the history of Christian Biblical exegesis, literal interpretation long meant simply taking a text at a historical or descriptive level, in contrast to allegorical, tropological (moral), or anagogical (eschatological) interpretation, all of which involved projecting the text onto a new level of meaning to which it did not explicitly refer.¹³²³ Such literal interpretation could be quite broad, and could itself include multiple levels of meaning;¹³²⁴ it did not necessarily entail rigid adherence to the primary linguistic sense of each word in the text. In this broad sense of the word, all of the legal theorists studied here were literalists; none argued that God's commands should be interpreted as veiled references to spiritual realities or future events. More recently, however, at least since the rise of fundamentalism in American Protestantism, literalism has become a term of opprobrium (or, depending on one's perspective, a badge of honor) designating strict or conservative interpretations of sacred texts, and resistance to the evolution of social norms. It connotes a reactionary fundamentalism that clings to the clarity of revealed words and fears that the exercise of human reason will lead to a denial of the authority of revelation. The terms fundamentalism and literalism both preserve these same

¹³²³ These four forms of interpretation, which make up the *Quadrige*, are explored in Lubac, *Exégèse médiévale*.

¹³²⁴ Hayes, "A History of Interpretation," 32.

connotations when they are applied to Muslims. But this study has shown that in the field of Islamic legal hermeneutics, literalism – even in the narrow sense of rigid adherence to the primary linguistic sense of each word in a text – did not stem from a fear of human reasoning at all. We have seen that Ibn Dā’ūd, the most consistent of the “literalist” Zāhiriyya, was inspired not by the conservative pietism of the traditionists, but by the confident rationalism of the Baghdād scripturalists. He was highly optimistic about the ability of human reason to ascertain the meaning of revelation and apply it to daily life. The Zāhiriyya may have been strict in some of their legal views, but not because of some pious zeal for difficulty; in fact, they left many areas of life unregulated and subject to human discretion. Ibn Ḥazm’s view of music, for example, was so liberal that it was recently retrieved to justify a contemporary legal opinion.¹³²⁵ Zāhirī literalism was not a rejection of social change; it was a rejection of what the Zāhiriyya felt was the mainstream jurists’ self-serving attempt to claim revealed status for the legal status quo. For a Zāhirī, being a literalist was not a way of subjecting all of life to the sole authority of revelation; on the contrary, it was a way of limiting the legal impact of revelation to a relatively small segment of life. The other school that inclined toward literalism was the Baṣra Mu’tazila. They were more approving than the Zāhiriyya of the legal status quo, and they accepted the project of legitimating that status quo by correlating it with revelation, which would not have been possible with a strictly literalist hermeneutic. But they did insist on the clarity of revelation, and limited themselves as far as possible to the minimum literal

¹³²⁵ Adang, “Ignaz Goldziher and the Zāhirīs,” xxv; see also xxiii.

meanings of verbal expressions. This moderate literalism was not motivated by any fear of human reason. Indeed in the sphere of theology the Mu'tazila were notorious for their metaphorical interpretations of scripture, which they felt were mandated by rational considerations. They became literalists in the field of law only because they desired to give revelation a place within a rational theology, in which the meaning and reliability of revelation depended entirely on human reason. It was precisely in order to maintain their rational theology, and particularly their insistence on God's perfect justice, that they insisted God's revelation of law must be crystal clear, and therefore should be interpreted as literally as the available evidence allows. The two groups we have characterized as literalist are thus the furthest, of all the groups we have studied, from the current anti-rationalist connotations of the terms fundamentalism and literalism. If anyone can be characterized as strict conservatives who wanted revelation, rather than reason, to be the basis for a complete regulation of human life, it was al-Shāfi'ī and the adherents of the jurists' paradigm; and as we have seen, their hermeneutical principles were not literalist at all, at least not in the narrow sense. They were the ones willing to cram the most legal meaning into the words of revelation, yet they were willing to depart from their default interpretations with the least justification.

If it seems counterintuitive that those conservatives who tended to uphold the legal status quo had the most flexible hermeneutic, while relatively rationalistic thinkers who were more willing to challenge established norms had the most literalist hermeneutic, this is because the role of hermeneutics is misunderstood. The correlation between hermeneutical

flexibility and legal rigidity is surprising only if one assumes that hermeneutics generates law. If one assumes instead that hermeneutical theory is the product of a desire to correlate an existing law with an existing text, then it makes perfect sense that those who are least willing to change the law will need the most flexible hermeneutic. This explains why literalism died out: it did not serve the actual purposes of the jurists. Literalism, understood as the hermeneutical principle of adhering as much as possible to the primary linguistic sense of each word, did not survive the debates of the formative period, and has no significant presence in Islamic legal discourse today, despite the jurists' rhetoric about adhering to the plain meaning of revelation. Those strict or conservative or fundamentalist Muslim scholars who are sometimes labeled literalists today rely largely on the same free-wheeling hermeneutic as the preclassical jurists. If, then, the category of literalism is to serve as a useful analytical category for the study of Islamic or comparative hermeneutics, and not merely as a polemical label, it will have to be severed from its present connotations of anti-rationalism and fundamentalism.

Conversely, it is often assumed that a more flexible hermeneutic, which recognizes the ambiguity of language and the role of the reader in creating meaning, is a necessity for reforming Islamic law, or for keeping any authoritative text a "living" text, or for maintaining the vitality and relevance of any legal system based on such a text. This study has shown that hermeneutical flexibility, and the recognition of ambiguity on which it is based, as well as the interpretive space that it opens up for the reader, have served primarily to legitimate an established legal orthodoxy. al-Shāfi'ī's hermeneutic of ambiguity, al-Bāqillānī's theoretical justification of it, and the jurists' pragmatic elaboration of it, were not designed to open up the

doorways to reform, but to lend the authority of Prophetic revelation to law as it existed in their times. Of course, this hermeneutic could and did also serve to legitimate developments in the law. If the jurists' hermeneutic had functioned as an actual interpretive method, it could have led to much more rapid changes. As it was, it could only help to legitimate whatever changes jurists were able and willing to make, within the mechanisms available to them for selecting and reapplying the views of prior jurists.¹³²⁶ With the decline of the legal guild as a context for the construction and maintenance of law, the jurists' highly flexible hermeneutic has allowed more rapid changes, but those changes have been, as always, guided by the *a priori* social norms and values of jurists. Today as ever, it is not the jurists' hermeneutic that restrains the evolution of the law. That hermeneutic is not rigid or literalist at all, but highly flexible, providing ample room to adapt law. The principal limit on legal change is the willingness of the Muslim community to be persuaded that some new legal doctrine can plausibly be considered to have the authority of revelation. Calls by would-be reformers for greater flexibility in the hermeneutics of Islamic law, therefore, are beside the point. Flexibility, and space for the reader to construct the meaning of a text in relation to his or her own concerns and presuppositions, are amply provided for by the classical discourse. But hermeneutical flexibility can legitimate the status quo, or reactionary or fundamentalist changes, just as easily as it can legitimate the changes desired by liberalizing reformers. In fact, a powerful and flexible hermeneutic is arguably a more convincing legitimation of the

¹³²⁶ On the evolution of Islamic law through selection from among prior views, see Hallaq, *Authority*, chs. 5-6, especially pp. 142-145, 189, 208, 233-235, and Jaques, *Authority*, 249 n. 85, 252.

status quo than of challenges to it, because the interpretive moves necessary for correlating revelation with the status quo are already taken for granted, whereas the interpretive moves necessary for correlating revelation with a new proposal are likely to be questioned, so that they will have to be made explicit. Part of the genius of the jurists' hermeneutical paradigm is that even as it maximizes opportunities for the reader's involvement in the construction of meaning, it masks that involvement by claiming that the meaning constructed by jurists is in fact the plain and obvious meaning of the text itself.

This concealment of interpretive labor was facilitated in part by the jurists' category of *ẓāhir* speech – speech that has an apparent meaning (usually assumed by default to be a very strong legal meaning), yet also has other literal and ordinary meanings which can be substituted for the default meaning with minimal justification. More fundamentally, it was also legitimated by Abū Ya'ālā's theory of divine speech. By making God's speech an interpersonal speech act, rather than a piece of evidence from which to reason to a knowledge of God's law, Abū Ya'ālā in effect denied that the human who is addressed by God's speech needs to go through any process of interpretive ratiocination to arrive at the meaning of revelation. The Mu'tazilī and Ash'arī theologians, whether they regarded God's speech as clear or ambiguous, at least agreed that God's speech functions as indicative evidence, and must therefore be reduced to indicative statements about the law through a process of inference that relies on all the available evidence, and on the reader's ability to piece that evidence together into an interpretive argument. Abū Ya'ālā, on the other hand, argued that all the relevant evidence constitutes one single act of interpersonal address, with each part of that

evidence serving as part of the immediate context of each other part, so that the person so addressed can immediately and unreflectively grasp the full meaning of God's speech, whether that be the most apparent default meaning or some other alternative meaning. This did not lead Abū Ya'lā to explore the imaginative possibilities suggested by a performative analysis of revelation; like other jurists, he continued to mechanically reduce performative speech to indicative statements about the law. But his performative theory of divine speech did allow him to claim that the jurists' legal views were the immediately and intuitively obvious meaning of revelation. This theory of divine communication was further developed by Ibn Taymiyya,¹³²⁷ whose thought has been a major source of inspiration for many contemporary Muslims of an Islamist or fundamentalist orientation.

Thus the classical legal hermeneutic, with all of its opportunities for flexible reinterpretation, is made plausible by a view of God's speech which denies that reinterpretation is what is taking place. Hence the frustration of more liberal reformers such as Khaled Abou El Fadl, who cry foul and insist that the interpretive labor of the jurist be recognized and made transparent. Classical legal theory is certainly powerful and flexible enough to support the proposals of Abou El Fadl and indeed of far more radical reformers; but as long as their reforms are presented as explicitly novel interpretations, produced by the application of some theory of interpretation, they will face an uphill battle for acceptance: not only will their proposals have to resonate with the social norms and aspirations of significant

¹³²⁷ See page 384.

portions of the Muslim community; they will also have to be explicitly defended as plausible interpretations of revelation, arrived at on the basis of a theologically and philosophically plausible theory of how God communicates law. Advocates of classical legal views, or of new doctrines justified by appeal to the classical discourse, have a great advantage: as long as the classical hermeneutical paradigm is taken for granted as the basis for Islamic law, they will not have to defend their hermeneutical theories or their interpretive labor, because these have been rendered invisible by the triumph of the jurists' hermeneutical paradigm. This is the principal legacy of the formative period of Islamic legal hermeneutics: interpretive labor has been disguised within a hermeneutic which no longer has to be defended, but has come to be identified with the very concept of a revealed law.

These concluding suggestions about the nature of legal and hermeneutical theory, and about contemporary debates in Islamic law, are just that: suggestions, not claims, about the ways in which the history reconstructed in this book might fruitfully be employed to shed new light on contemporary debates. But the historical reconstructions on which they are based, and which form the body of this book, are no mere suggestions; they are historical claims about a vibrant but largely forgotten stage in the development of a crucially important but neglected discourse. It is to be hoped that these historical claims, which rest on careful but not indisputable interpretations of the available evidence, will be tested, nuanced, critiqued, and modified. But however that history is eventually rewritten, it is vitally important that it not be ignored. It is far too important for our comparative understanding of laws and sacred texts, and for our understanding of Islamic legal thought, past, present, and future.