**Title**
Pre-Muḥammadan Law and the Muḥammadan Sharīʿah: Muslim Theories and Implementation of Biblical Law and the Laws of Prior Religious Communities



**Author**
Abdullah, Faisal

**Publication Date**
2020

Peer reviewed|Thesis/dissertation

UNIVERSITY OF CALIFORNIA

Los Angeles

# Pre-Muḥammadan Law and the Muḥammadan Sharī‘ah: Muslim Theories and Implementation of Biblical Law and the Laws of Prior Religious Communities

A dissertation submitted in partial satisfaction of the requirements for the degree Doctor of Philosophy in Islamic Studies

by

Faisal Zain Abdullah

2020

ABSTRACT OF THE DISSERTATION

Pre-Muḥammadan Law and the Muḥammadan Sharī‘ah: Muslim Theories and Implementation of Biblical Law and the Laws of Prior Religious Communities

by

Faisal Zain Abdullah

Doctor of Philosophy in Islamic Studies

University of California, Los Angeles, 2020

Professor Asma Sayeed, Chair

This dissertation examines Muslim legal thought on *shar‘ man qablanā*, or pre-Muḥammadan law, along with its application. Pre-Muḥammadan laws referred to those laws practiced by prophets or communities who were recognized within the Muslim theological framework as having been recipients of divinely sent messages in the past. In theorizing pre-Muḥammadan law, Muslim jurists discussed a number of issues relevant for the study of Islamic law, including the place of the Torah and the laws of pre-Muḥammadan communities (e.g., the Jews and Christians) within Islamic legal thought. This project first outlines Muslim legal understandings of pre-Muḥammadan law from the 2nd century onward, before providing case studies of early Muslim engagement with these laws. The case studies that are explored include examples where Muslim jurists explicitly cited Biblical legal dicta, referred to the lived practice of Jews and

Christians in the matter of dietary law, or derived pre-Muḥammadan law from Qur'ānic exegesis and elsewhere.

The dissertation of Faisal Zain Abdullah is approved.

Ahmad A. Ahmad

Michael David Cooperson

Khaled M. Abou El Fadl

Asma Sayeed, Committee Chair

University of California, Los Angeles

2020

بسم الله الرحمن الرحيم

# Table of Contents

# List of Figures

# List of Tables

# Acknowledgements/Preface

See here:

https://bit.ly/3nvmoB3

or

https://docs.google.com/document/d/e/2PACX-1vRZSic8EngMqGDhDB14pBXk65W9X44w1INuwIZfEmW2_oMnGe8zNI16ZrnxPfJm8sJVwHthfl3iAVM7/pub

# Vita/Biographical Sketch

**Education:**

**University of California, Los Angeles - PhD Program in Islamic Studies**

Ph.D. Candidate (December 14th, 2018-)

**Qasid Arabic Institute (Amman, Jordan)**

Completion of 'Classical Arabic' language certificate program (2013-2014)

**Jordan University (Amman, Jordan) and the Council on International Educational Exchange (CIEE)**

Advanced-level language and culture immersion program in Amman, Jordan (Fall, 2013)

**California State University, San Bernardino**

Completion of intermediate and advanced Arabic language studies in summer language intensive program both at CSU San Bernardino and abroad in Jordan (Summers of 2011, 2012, & 2013)

**Dār al-'Ulūm Zakariyyā (South Africa)**

Completion of semester of coursework in Arabic morphology and syntax, Urdu, and Islamic Law (Fall 2011)

**California State University, Los Angeles – BA in Political Science**

Graduated with honors (magna cum laude) (Spring 2011)
Matriculated through the university's Early Entrance Program

**Workshops:**

Participant in UCLA's 2018 Digital Research Start-Up Partnerships (DResSUP), a 6-week workshop for graduate students on the usage of digital humanities tools (July 9th-August 17th, 2018)

Participant in workshop series on digital humanities in the field of Islamic Studies, (February 24th-25th, 2015)

Helped lead an interactive workshop on Islamic manuscripts for K-12 educators in cooperation with UCLA Library's Special Collections Department. Also helped lead a reading group for the K-12 educators on material related to Islamic Studies. (June 19th-22nd, 2017)

Participated in an intensive workshop on Islamic Manuscript Culture (May 2019)

**Conference Experience:**

Presented on topic, "Shar' Man Qablanā ('The Laws of Those Who Preceded Us'): Muslim Views on Pre-Muḥammadan Religious Law and Its Utility in the Sharī'ah" at the "Law and Communal Identity in the Early

Medieval World" conference at UCLA (January 24th, 2020). Also served as the discussant for Lev Weitz's paper, "East Syrian Confessional Law in the Early Medieval Caliphate" at the same conference (January 24th, 2020).

**Employment:**

-Teaching assistant (2012-2020) with UCLA's ALC and NELC Departments

-Assistant online course developer for a UCLA course (2020)

-Co-founder of an ecommerce apparel store (current)

-Intern at New World Medical, Inc., Rancho Cucamonga, CA (June-July, 2008)

-Volunteer at Drake Family Farms, Ontario (Fall 2016, Winter 2017)

**Fellowships/Scholarships:**

-UCLA Islamic Studies Departmental Fellowship (2012-2013)

-Summer Foreign Language and Area Studies (FLAS) Fellowship (2013) - Applied towards intensive Arabic language studies at the Qasid Arabic Institute in Amman, Jordan

-Academic Year Foreign Language and Area Studies (FLAS) Fellowship (2013-2014) - Applied towards Arabic language study at Jordan University and the Qasid Arabic Institute

-Summer Foreign Language and Area Studies (FLAS) Fellowship (2014) - Applied towards private coursework in classical Arabic texts at the Qasid Arabic Institute and Markaz al-Anwar (Amman, Jordan)

-World Languages and Literatures Scholarship, CSUSB (summers 2011, 2012, and 2013)

-UCLA Graduate Student Research Mentorship (GSRM) awarded for an Arabic-English translation project (2015)

-Fellowship for manuscript research at the King Faisal Center for Research in Islamic Studies (Riyadh, Saudi Arabia) (March 2017)

-Near Eastern Languages and Cultures Departmental Scholarship for summer research (2016, 2020)

-Academic Year Foreign Language and Area Studies (FLAS) Fellowship (2018-2019) - Applied towards Hebrew language study at UCLA

# Introductory Remarks

As a global pandemic emerged in early 2020, Muslim jurists were forced to evaluate the virus's impact on daily religious practice, particularly the daily prayers performed in congregation in the mosque. Religious discussions looked to reported statements of the Prophet ﷺ regarding the plague, as well the practice of his Companions who were confronted with one in their conquests of the Levant. A religious case for quarantining and mosque shutdowns was soon made, and without significant pushback the grand mosques of Saudi Arabia were closed, followed by mosques around the world. In the context of these early religious discussions on mosque closures, one Azhari-trained scholar in America posted the following message on Facebook: "Make your homes a qiblah…" His post then featured a verse from the Qur'ān: "We revealed to Moses and his brother: 'House your people in Egypt and make these houses places of worship [qiblatan]; keep up the prayer; give good news to the believers!'"[1] The message was clear and well understood. The Israelites went through a trying time where they had to maintain their prayers in their homes, and so too could the Muslims in the midst of the pandemic. Even though the legal justification for mosque closures was ultimately based in other evidence and not this, the example nonetheless spoke to the practical meanings that Muslims could derive from an ancient community of believers, who, in Islamic theology, were similarly "Muslim" in their submission to the One God.[2]

---

[1] Qur'ān 10:87:
وَأَوْحَيْنَآ إِلَىٰ مُوسَىٰ وَأَخِيهِ أَن تَبَوَّءَا لِقَوْمِكُمَا بِمِصْرَ بُيُوتًا وَٱجْعَلُوا۟ بُيُوتَكُمْ قِبْلَةً وَأَقِيمُوا۟ ٱلصَّلَوٰةَ ۗ وَبَشِّرِ ٱلْمُؤْمِنِينَ ۝
[2] There are many examples in the Qur'ān of people before the Prophet being called "Muslim." E.g., Qur'ān 3:67:
مَا كَانَ إِبْرَٰهِيمُ يَهُودِيًّا وَلَا نَصْرَانِيًّا وَلَٰكِن كَانَ حَنِيفًا مُّسْلِمًا وَمَا كَانَ مِنَ ٱلْمُشْرِكِينَ ۝
Abraham was neither a Jew nor a Christian, but he was a Ḥanīf [Monotheist], a Muslim ["submitter"], and he was not of the polytheists ۝
Or Qur'ān 10:72, in the words of Noah:
فَإِن تَوَلَّيْتُمْ فَمَا سَأَلْتُكُم مِّنْ أَجْرٍ ۖ إِنْ أَجْرِيَ إِلَّا عَلَى ٱللَّهِ ۖ وَأُمِرْتُ أَنْ أَكُونَ مِنَ ٱلْمُسْلِمِينَ ۝

This project is ultimately concerned with a legal discussion in Islamic law that would justify this scholar's usage of the above passage for matters of Muslim practice and law. The legal discussion concerned "The Law of Those Who Preceded Us" (*shar' man qablanā*), hereon referred to as "pre-Muḥammadan law."[3] These laws were reported in the Qur'ān or prophetic Ḥadīth or could perhaps be inferred from a narrative detail found in these sources as in the "*qiblah*" example we just looked at. They could theoretically also be found as legal dicta in the Torah or learned from the lived example of the Jews and Christians. Even though these laws were occasionally mentioned as a 'disputed' source of law in many manuals of Islamic legal theory, they appear to have been cited a fair amount by the jurists. The topic is particularly significant, however, in helping us understand how Muslims conceived of their own legal system vis-à-vis the laws of other communities, and in raising the possibility that they may have openly referenced laws found in the Torah or in scriptures used by other communities. It is the objective of this study to engage with some of the Muslim theoretical discussions on pre-Muḥammadan law and to also provide several case studies that demonstrate Muslim engagement with pre-Muḥammadan law, found not just in the Qur'ān and ḥadīth, but known to Muslims through the Torah and the practice of the People of the Book. The examples this project will provide of open Muslim reference to biblical dicta will be among the first analyzed in a western study.

For the purposes of this study, I will note that my use of "Muḥammadan" is in reference to the Prophet ﷺ at the moment of his becoming a prophet with the coming of Qur'ānic revelation, believed to have occurred when he was 40 years old. "Pre-Muḥammadan" refers to

---

"And if you turn away, then [know] I did not ask payment from you. My reward is from God Alone. I have been commanded to be from among the Muslims ["Submitters"]"۞

[3] I refer to the nomenclature used by Dr. Ahmad Atif Ahmad in his short discussion of pre-Muḥammadan law in chapter 2 of the following work: Ahmad, Ahmad Atif. *The Fatique of the Shari'a*. Palgrave Series in Islamic Theology, Law and History. New York: Palgrave Macmillan, 2012.; I will define the term further as it relates to our purposes in this project.

matters before this moment, and in the context of this project, is used for people, communities and laws that were recognized within the Muslim theological framework as having been recipients of the divinely-sent truth in the past (e.g., past prophets sent by God, their revealed scriptures, and their communities). In other words, my usage of "pre-Muḥammadan communities" could be a reference to Jews and Christians and theoretically the communities associated with other Islamic prophets of the past, but not 'any' community that may have existed prior to the Prophet ﷺ becoming the Prophet. Thus, the pagan Jāhilī Arabs are not intended. As for why I've defined "pre-Muḥammadan" to be the precise moment before the Prophet ﷺ received the Qur'ānic revelation, this is because legal jurists and speculative theologians (*mutakallimūn*) discuss the possibility that the Prophet ﷺ followed these laws *before* he became a prophet. Thus, "pre-Muḥammadan" in this context would not mean before his birth, but before his prophethood ("قبل البعثة").[4] For the purposes of this project, I also tend to use "pre-Muḥammadan" and "Muḥammadan" over "pre-Islamic" and "Islamic"/"Muslim" in large part because the Muslim (*Muḥammadan*) sources that will be engaged with viewed the laws that were revealed to prophets that came before Muḥammad ﷺ's mission as being from the shared religion of Islam, Islam being the name given to the primordial way of submission to God practiced by all prophets and guided communities since Adam, these people also being called "muslim". To call the laws that came from this pre-Muḥammadan period as "pre-Islamic" would suggest they were "un-Islamic," which would conflict with the way pre-Muḥammadan law was theorized in the sources. That is why the jurists refer to these laws instead as "the law of those that came before us" and not, "the laws before Islam". As a final technical point, when I refer to Jews and Christians and their scriptures and laws as "pre-Muḥammadan communities", "pre-

[4] This latter topic, because of its recognized non-practical bearing, will not be dealt with in this project, but can be explored in the notes found in the appendix.

Muḥammadan scriptures" and "pre-Muḥammadan laws", this does not denote that these communities, scriptures and laws were not existing concurrently with the Muslim sources writing about them, but rather, they represent phenomena that the Muslim sources believed had their origins in a time before the Prophet ﷺ's mission.

The topic of Muslim theoretical engagement with pre-Muḥammadan law has not been extensively written about in western academic studies, even though it has significant bearing on a number of issues relevant for western scholarly interest in Muḥammadan law and its origins, e.g. the possibility that Muslim jurists may have referred to the Torah or the practice of the Jews and Christians for law. I have decided to place the bulk of my discussion of western literature as they relate to questions of legal origins and related matters in the appendices of this work, *not* the main body. I have made this decision to ensure that the focus of this project be ultimately on the source materials themselves. Additionally, I want to avoid the possibility that my conclusions (and those of the reader) be pre-defined by certain prevailing theories regarding the origins and sources of Islamic law, which I do not see as necessarily fitting with the study that will follow.

Here is a summary of what the following chapters and appendices hope to achieve:

- Chapter 1 - Pre-Muḥammadan Law and Islamic Legal Theory
    - This chapter will summarize some of the key issues raised in several dozen works of Islamic legal theory vis-à-vis the topic of pre-Muḥammadan law. Is it the nature of all the pre-Muḥammadan prophets' laws that they transfer to the following prophets, and thus also to the Prophet ﷺ? Was the Prophet ﷺ specifically commanded to follow the pre-Muḥammadan laws? If we accept that the Prophet ﷺ affirmed the place of pre-Muḥammadan law in his own law, can

prior scriptures or the reports of Jews and Christians be trusted regarding their legal dicta, or were cases limited to examples that may have been reported in the Qur'ān and ḥadīth only regarding the practice of a prior prophet or guided community? Were there examples that the jurists were aware of where the Prophet ﷺ or his companions referred to pre-Muḥammadan law? One of the key issues that these debates reveal is that jurists who believed in the utility of pre-Muḥammadan law in the Muḥammadan *sharī'ah* were concerned with the *authenticity* and 'source' of this material, a key reason for limiting its use to cases where it may have been reported in the Qur'ān and ḥadīth, two sources that the authors were far more comfortable with. However, the jurists' discussions recognized the possibility that non-Muḥammadan sources, such as the Torah, could be a source of law, and even note its acceptable usage as a position in the debate. The following chapters then look at practical juristic engagement with pre-Muḥammadan law, with a special emphasis on the *madhhab* founders.

- Chapter 2 - The Kufans and Pre-Muḥammadan Law: The Case of Leviticus 18
    - This chapter is the first of a few chapters that will explore the sunnī *madhhab*s and their engagement with pre-Muḥammadan law. I begin with a brief synopsis of later Muslim views on the early Ḥanafīs and their usage of pre-Muḥammadan law. I then look at unique case studies of the Kufan *madhhab*'s early engagement with pre-Muḥammadan law that will nuance some of these later assessments. I will spend most of the chapter engaging with an open reference to a Torah dictate by Muḥammad b. al-Ḥasan al-Shaybānī (d. 189 AH) that is known to him from an earlier Kufan authority. The example serves as a clear proof that open citations of

the Torah, rare as they were, did occur among the Muslim jurists. The example is related to sexual laws found in Leviticus 18. At least two other related dictates from Leviticus 18 were known to the 1st - 3rd century Muslims in the context of legal discussions on sexual laws, which I will touch on. I will also briefly demonstrate the occurrence of a phenomenon of attributing known biblical references to Islamic figures including the Prophet ﷺ himself, which appears to be an attempt at making the references more authoritative.

- Chapter 3 - Legal References to the Torah in the Muslim Sources
    - Having demonstrated that the Muslim sources did in fact make reference to biblical legal dicta, I use this chapter to provide additional examples of explicit reference to biblical legal dicta in the sources, along with further evidence of a process of turning these dicta into Prophetic pronouncements. I will suggest that the issue was related to that of the phenomenon of isnād back growth, or the re-attribution of traditions to a higher authority (for example, attributing a report of a later, non-prophetic figure to the Prophet ﷺ). While the ḥadīth scholars were aware of the former phenomenon to an extent, they were similarly aware of a phenomenon of false attribution of Israelite material to the Prophet ﷺ. Their interest in collecting variant isnāds for reports in the interest of coming to historical truth is why many reports referencing the Torah in law, e.g., were recorded in the first place. I will conclude the chapter by looking at how somewhat contradictory early Muslim traditions on the permissibility of referring to the Torah or the knowledge of the People of the Book are indicative of an early internal debate based in concerns of the early community about the accessibility

and utility of this material. Some of these concerns may have paralleled the later discourse of pre-Muḥammadan law in books of Islamic legal theory. I explore a famous ḥadīth cited in this discourse in which ‘Umar is rebuked by the Prophet ﷺ for having written down parchments of the Torah. I demonstrate a strong regional bias in the isnāds of this report that suggests that concern over the Torah being used as a source of guidance was a prominent Kufan feature. Further studies should consider evaluating the regional dimensions of other traditions representative of this early debate in order to uncover possible regional elements in early Muslim conceptions of the Torah and the scriptures of the Jews and Christians.

- Chapter 4 - Mālikīs and Pre-Muḥammadan Law: The Case of Dietary Law
    - This chapter begins with a short synopsis of some of Imām Mālik (d. 179 AH)’s own engagement with pre-Muḥammadan law, followed by a lengthier engagement with Mālikī (and Ḥanbalī) law on the slaughter of the Jews. Meats that were prohibited for the *Jews* to consume were impermissible for Muslims to consume when it came from *their* slaughter. The case study is a clear example where the laws of another community had bearing on Islamic law. The meat was prohibited or disliked for Muslims to consume for a variety of reasons: a Qur’ānic verse gave special status for the *Ahl al-Kitāb* with regards to their food and dietary law, Mālikī law valued the intentionality of the slaughterer, not consuming this meat was a means of enforcing the strict laws that Muslims viewed as a punishment on the Jews from God, and perhaps also as a means of social stratification. Even though this was a case where the jurists openly acknowledged

the practice of another community, the example shows us that they weren't very well acquainted with Jewish laws of slaughter.

- Chapter 5 - Qur'ānic Exegesis and Pre-Muḥammadan Law: The Case of *Qasāmah* and Deuteronomy 21:1-9
    - In this chapter I look at two cases where Ibn Ḥazm calls out the Mālikīs for basing a legal opinion of theirs on an unverifiable pre-Muḥammadan narrative found in Qur'ānic exegesis. Qur'ānic exegesis was a domain where biblical and Israelite narratives were commonly incorporated, and because of exegesis's connection to scripture itself, it took on a pseudo-scriptural status in its incorporation in some of the legal discussions looked at. The second case study will lead us into a discussion of the legal institution of *qasāmah*, which Crone argued was biblically derived in its Kufan mold, and by admission of the Muslim tradition itself. I will confirm some of her conclusions while rejecting some of her other claims. Through a study of the early exegetical traditions related to the Qur'ānic verses concerning the cow of the Israelites, I will show how certain legal discourses related to *qasāmah* were both being influenced by exegesis, and simultaneously *influencing* the exegesis of these verses. We see then how Qur'ānic exegesis was a source of pre-Muḥammadan law for the jurists (even when biblically derived) and it was legitimated by virtue of being related to Qur'ānic scripture.
- Chapter 6 - Al-Shāfi'ī and Pre-Muḥammadan Law: Dietary Law (Again)
    - This short chapter continues our engagement with the *madhhab* founders. The chapter begins by summarizing some of al-Shāfi'ī's engagement with pre-Muḥammadan law in his writings. I will give special attention to a curious

attribution to al-Shāfiʿī (d. 204 AH), wherein he was believed to have formulated a theory for pre-Muḥammadan law for ascertaining the permissibility or prohibition of certain animals for consumption based on the laws of the People of the Book. This would of course be a case of pre-Muḥammadan law being referred to from a source outside of the Qur'ān and ḥadīth, and the specific exception for dietary law appears to have been sanctioned by the Qur'ān according to the logic of this argument. While the ascription to al-Shāfiʿī is not possible to prove, it demonstrates that pre-Muḥammadan dietary laws may have been consequential in some circles of the Shāfiʿī *madhhab*, examples of which this study does not explore. Unlike the Mālikī case that was only concerned with meats acquired from the Jews that they themselves slaughtered, the Shāfiʿī formulation was theoretically more impactful on Islamic dietary law.

- Chapter 7 - A Very Short Chapter on Aḥmad b. Ḥanbal and Pre-Muḥammadan Law
    - This chapter addresses some cases of Aḥmad b. Ḥanbal (d. 241 AH)'s engagement with pre-Muḥammadan law to complete our assessment of the sunnī *madhhab* founders.
- Conclusion
    - The conclusion will offer some summary comments of the project. I will also provide some possibilities for future studies.
- Appendix A – On the Study of Influence and Origins
    - This chapter will summarize some of the academic debates on 'origins' in Islamic law. Is Islamic law derivative of Jewish law but the sources are in denial? Are notions of origins and foreign borrowing to be eschewed completely? Some of the

approaches laid out thus far have been more theory-first and come to conclusions that ignore some obvious material that this project engaged with.

- Appendix B – Prior Western Literature Related to *Shar‘ Man Qablanā*
    - The section is short, and includes a summary of some prior academic literature on *shar‘ man qablanā*. The literature is not very extensive.
- Appendix C: Establishing that Pre-Muḥammadan Law was Open to Abrogation: The Case of Mosaic Law
    - This section presents a fascinating theoretical legal discourse on whether the laws of the prophets are subject to abrogation. The discussion addresses a claim made by Jews that according to *mass-transmitted* statements made by Moses ﷺ, Mosaic law could not be abrogated. According to formalized Islamic legal theory, mass-transmitted reports must be accepted as true. This obviously posed a conundrum for the jurists, since the prior claim about Mosaic law would of course conflict with Islamic notions that the Prophet's *sharī‘ah* abrogated laws that came before him, an obvious example being the Sabbath. The jurists are forced to engage with Jewish history and their own knowledge of the Torah and its transmission to address this claim.
- Appendix D: Additional Perspectives on Pre-Muḥammadan Law Among the Jurists
    - This section includes my notes from dozens of authors related to pre-Muḥammadan law that could not be covered in the dissertation. Some of the additional issues that can be found in these notes include discussions on whether the Prophet ﷺ practiced pre-Muḥammadan law before becoming a prophet (e.g., by emulating the People of the Book) and whether the "*maqāṣid al-sharī‘ah*"

existed in prior *sharī'ah*s just as they did in the Muḥammadan one. Several additional examples of pre-Muḥammadan law are also noted that could not be incorporated in the dissertation. There are also some interesting tidbits to be found as well. Ibn Taymiyyah (d. 728 AH), who dabbled a bit in Hebrew himself, has some interesting comments on the authenticity of the pre-Muḥammadan scriptures. I also note Fakhr al-Dīn al-Rāzī (d. 606 AH)'s reference to Genesis as proof in a discussion on *theology*, this being an interesting application of pre-Muḥammadan scripture for which al-Rāzī was criticized for.

- Appendix E – Images
- Appendix F – Useful Bibliography of Secondary Literature
- Bibliography

Chapter 1

# Pre-Muḥammadan Law and Islamic Legal Theory

In this chapter I explore discussions of pre-Muḥammadan law among the Muslim legal theorists. The theorists discuss whether it was the nature of religious laws that they transfer from one prophet to the next, and whether this was the case with regards to pre-Muḥammadan laws and the Muḥammadan sharī'ah. I note that a majority of jurists upheld the utility of pre-Muḥammadan law, and while most seemed to restrict its acceptable cases to instances noted in the Qur'ān and ḥadīth, they also address the possibility of these laws being derived from the Torah itself. Among a large number of the surveyed jurists, the Torah was seen as a theoretically legitimate source of pre-Muḥammadan law, but it could not be referred to for law because of concerns over its authenticity. This having been said, a few jurists did suggest that testimony from converts or mass-transmission may have been acceptable means of accessing the scripture. The second half of the chapter deals with textual evidence the jurists cited from the Qur'ān and ḥadīth that either supported the utility of pre-Muḥammadan law or were evidence against it.

This chapter explores Muslim discussions regarding *shar' man qablanā*, or the "law of those who preceded us" (which I will refer to as "Pre-Muḥammadan law", i.e. the law of any "Islamic" prophet or divinely-guided community prior to the beginning of the Prophet's mission) as it was conceived by Muslim jurists in discussions of legal theory (*uṣūl al-fiqh*). The works that have been sampled are from the 2nd through the 9th centuries AH, and represent the thought of

Shāfi'ī, Ḥanafī, Mālikī, Ḥanbalī, Ẓāhirī and Mu'tazilī scholars on the utility of pre-Muḥammadan law in the Muḥammadan *sharī'ah*. Taken from the language of the Qur'ān[5] and ḥadīth[6], "those who preceded us" is a reference to the religious communities to whom God sent messengers and scriptures according to Islamic theology, the most well-known being the Jews and Christians. It will be noted at the outset that the primary intent of this chapter is to document the legal-theoretical discussions related to pre-Muḥammadan law. I will summarize some of the early contours of the debate among jurists and its framing in 'rational' and 'textual' terms among Muslim authors. Because of repetition and the large number of sources consulted, I have decided to focus on some of the more representative authors in the pages that follow. The ideas of all of the surveyed authors can be consulted in the appendix. A discussion of practical Muslim engagement with pre-Muḥammadan law is the topic of subsequent chapters.

The first recognition of a debate among Muslim jurists regarding the utility of pre-Muḥammadan law can be traced to as early as the 2nd century AH. Al-Shāfi'ī (d. 204 AH), whose status as one of the first systematizers of Islamic legal theory is well-known, raises the question in his *Umm* when he discusses the punishment of a Muslim who kills a non-Muslim, and the associated blood-price.[7] He engages with the Kufan jurists and others who, based on Qur'anic verses and early Muslim reports that they accept, hold that a Muslim is to be executed for killing a non-Muslim, and that the indemnity due for a non-Muslim life is equivalent to that of a

[5] E.g., Qur'ān 2:183: "Oh you who believe: fasting has been ordained on you as it was on those who preceded you (*qablikum*), so that you be God-fearing." And Qur'ān 3:186: "… and you will surely hear from those who were given the Scripture before you (*qablikum*), and from those who are idolaters, much hurt …" And Qur'ān 4:26: "God wants to make matters clear to you, and to guide you to the ways of those who preceded you (*qablikum*)"

[6] E.g., a well-known report in which the Prophet ﷺ informs his followers, "You will surely follow the ways of those who preceded you (*man qablakum*), hand-span by hand-span, arm-length by arm-length, even if they entered a lizard's hole." His followers ask, "The Jews and the Christians?" To which he responds, "Who else?" See Muḥammad b. Ismā'īl al-Bukhārī, *Al-Jāmi' al-Musnad al-Ṣaḥīḥ (Ṣaḥīḥ al-Bukhārī)*, ed. Muḥammad Zuhayr b. Nāṣir al-Nāṣir, 1st ed., 9 vols. (Dār Ṭawq al-Najāh, 2001). Vol. 4, pg 169.

[7] Muḥammad b. Idrīs al-Shāfi'ī, *Al-Umm*, 8 vols. (Beirut: Dār al-Ma'rifah, 1990). See vol. 7, pgs. 338-344, especially pg. 343.

Muslim. Al-Shāfi‘ī own opinion is that a Muslim is not executed for a non-Muslim life, and that the indemnity of Jews and Christians is one third that of a Muslim, on the basis of reports he argues are more authentic, and his own arguments regarding the relative status of the *ahl al-dhimma*. One of the two primary verses the Kufan position cites is Qur'ān 5:45[8]:

> And within it [the Torah], we prescribed for them [the Jews]: a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and retaliation for wounds. But whoever forgoes it, that will be an expiation for him. And whoever does not judge by what God has sent down, they are indeed the evil doers. ۞

The verse reports information regarding laws of biblical origin.[9] According to the Kufans, the general meaning of "a life for a life" here would imply that Muslim and non-Muslim life is to be dealt with equally in cases of retribution. Al-Shāfi‘ī notes a possible issue in citing this verse in a legal debate, however, given that it references a pre-Muḥammadan community. In the following passage, he asks the opposition a rhetorical question meant to reveal their underlying legal framework:

> I argue: "Regarding a law which God the Glorious and Mighty has informed us He legislated for the People of the Torah [i.e. the Jews]: is He legislating it for us [too]?" [They] reply: "Yes, unless it is known that He abrogated it with regard to us."[10]

[8] وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنفَ بِالْأَنفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ ۚ فَمَن تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَّهُ ۚ وَمَن لَّمْ يَحْكُم بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ ۞

[9] Also compare the Qur'anic verse above with Deuteronomy 19:21 and Exodus 21: 23-25.

[10] قُلْت وَمَا أَخْبَرَنَا اللَّهُ عَزَّ وَجَلَّ أَنَّهُ حَكَمَ بِهِ عَلَى أَهْلِ التَّوْرَاةِ حَكَمَ بَيْنَنَا؟ قَالَ نَعَمْ حَتَّى يُبَيِّنَ أَنَّهُ قَدْ نَسَخَهُ عَنَّا

Al-Shāfi‘ī’s questioning intends merely to ascertain the opposition’s view on this issue, as he does not dispute their response, instead moving on to reject their selective application of this verse after granting their usage of it. While the passage is short, it is perhaps the earliest recorded recognition in an available source of an internal Muslim discussion among the jurists regarding the utility of pre-Muḥammadan law. It is also apparent that those who espoused its utility justified the usage of these laws so long as it was not clearly abrogated by a law found in the Muḥammadan sharī‘ah. In other words, a presumption of continuity was assumed regarding pre-Muḥammadan law. It is also worth noting that in the context of this discussion, the pre-Muḥammadan law being cited here was known to the jurists via the intermediary of an Islamic textual source – the Qur’ān, though the position that is espoused does not define the acceptable sources for pre-Muḥammadan law.

Many later jurists will note al-Shāfi‘ī’s personal views in support of the utility of pre-Muḥammadan law, with some also ascribing to him a significant role in formalizing a distinct legal theory involving the laws of pre-Muḥammadan communities in matters of dietary law. These later engagements, along with evidence from al-Shāfi‘ī’s own writings that will point to his own engagement with pre-Muḥammadan law, will be discussed more fully in a separate chapter.[11] The purpose of this example was to show an early acknowledgement of a debate on pre-Muḥammadan law and its utility among the jurists. From here, we can now begin to trace the development of Muslim juridical discussions regarding this topic. As is known, extent works engaging with Islamic legal theory (أصول الفقه) are few in the time between al-Shāfi‘ī (d. 204 AH) and the late fourth century AH, when we begin to see dedicated works that are representative of a

[11] As will be shown later, al-Shāfi‘ī was willing to engage with an interlocutor’s citation of a passage from the Torah that was not known through the intermediary of the Qur’ān or ḥadīth, and in other examples referred to his knowledge of pre-Muḥammadan prophets and communities in his legal discussions.

more formalized field of study. Various scholars have identified fragments of works dedicated to legal theory or discussions on the topic of jurisprudence in separate genres in this interim period (e.g., positive law, exegesis and ḥadīth), suggesting that this gap in our extent sources of formal works on legal theory may not be representative of complete discontinuity of a genre of writing, but an evolution of the genre into a standalone field of Muslim inquiry.[12] Ahmed El Shamsy has identified a reference to pre-Muḥammadan law in one of these identified works from this interim period, found in the introduction to a work on Islamic positive law (*fiqh*) by the Shāfi'ī Abū Bakr al-Khaffāf (fl. early fourth century AH). He identifies it as the earliest known discussion of pre-Muḥammadan law, though the noted discussion in *al-Umm* would move this debate far earlier, into the second century. Interestingly, the 8th century AH Shāfi'ī jurist al-Zarkashī, renowned for his encyclopedic surveys of legal topics, was aware of and notes the existence of the same passage from al-Khaffāf as noted by El Shamsy.[13] Al-Khaffāf's introduction to his work includes a very short treatise on Islamic legal theory, his comment on pre-Muḥammadan law are expectedly brief. He states as a principle that the laws of pre-Muḥammadan prophets are binding except in two cases: in the case the laws were abrogated by the Prophet's sharī'ah, or in the case the law was already revealed in the Prophet's *sharī'ah* (in which case Muslims are to follow it by virtue of it appearing in the latter *sharī'ah*, not the former).[14] El Shamsy suggests that this rather

[12] For a summary of this debate and some of the available contributions that have informed our knowledge of the early historiography of Islamic legal theory, see pgs. 505-506 and footnotes in Ahmed El Shamsy, "Bridging the Gap: Two Early Texts of Islamic Legal Theory," *Journal of the American Oriental Society* 137, no. 3 (2017): 505–36.

[13] See al-Zarkashī (vol. 6, pg. 43 of the 1992 edition):
وَقَالَ الْخَفَّافُ فِي شَرْحِ الْخِصَالِ : شَرَائِعُ مَنْ قَبْلَنَا وَاجِبَةٌ عَلَيْنَا إِلَّا فِي خَصْلَتَيْنِ: إِحْدَاهُمَا أَنْ يَكُونَ شَرْعُنَا نَاسِخًا لَهَا، أَوْ يَكُونُ فِي شَرْعِنَا ذِكْرٌ لَهَا، فَعَلَيْنَا اتِّبَاعُ مَا كَانَ مِنْ شَرْعِنَا وَإِنْ كَانَ فِي شَرْعِهِمْ مُقَدَّمًا

[14] شرائع من كان قبلنا من الأنبياء عليهم السلام:
اعلم أن شرائع من كان قبلنا من الأنبياء عليهم السلام واجبة علينا إلا في خصلتين إحداهما أن يكون في شرعنا ناسخا لها أو يكون في شرعنا ذكر لها فعلينا اتباع ما كان في شرعنا وإن كان في شرعهم مقدما
See: Abū Bakr al-Khaffāf, "al-Aqsām wa al-Khiṣāl" (Dublin: Chester Beatty Library, n.d.), MS Arabic 5115; 43 fols., copied 660/1262. Fol 3b.; See also: Ahmed El Shamsy, "Bridging the Gap: Two Early Texts of Islamic Legal Theory," *Journal of the American Oriental Society* 137, no. 3 (2017): 505–36.

short statement indicates that biblical law derived directly from non-Muḥammadan sources was acceptable legal evidence in early Islamic law because it does not explicitly stipulate that the Qur'an and ḥadīth be the means of knowing what these prior laws were in the way he assumes later and more extensive works on legal theory will specify (and they generally do).[15] Keeping in mind that al-Khaffāf was likely writing in the much later 4th century, the assertion is far too sweeping a claim to make about early Islamic law without exploring al-Khaffāf's own treatment of pre-Muḥammadan law in his writings. It also assumes that al-Khaffāf's audience would have been openly receptive of biblical legal material even with questions looming over the authenticity and preservation of other scriptures, which were arguable impugned in Qur'ānic verses that will be noted later. A 5th century Mālikī, Abū al-Walīd al-Bājī (d. 474), makes a similar open-ended statement of support for pre-Muḥammadan law in his small work on legal theory,[16] but a search in his writings on positive law would make it clear that only the Qur'ān and authentic ḥadīth were assumed a priori to be the means of accessing pre-Muḥammadan law, not biblical material.[17] The reference of al-Khaffāf is still important, however, because of the

---

[15] Ahmed El Shamsy, "Muslims and Jews in Early Islamic Law and Legal Theory (DRAFT)" ("Islamic Legal Theory: Intellectual History and Uṣūl al-Fiqh," Istanbul University, 2019).; See pg. 10: "Al-Khaffāf's *muqaddima* predates most extant legal-theoretical writings, and the contrast between its stance and that of the later, classical *uṣūl al-fiqh* is thus extremely interesting. The latter came to see only those pre-Islamic laws that are explicitly mentioned in the Quran or the hadith corpus as potentially normative, for two reasons: first, because the textual authenticity of previous scriptures was disputed, and second, because Muḥammad was not reported to have consulted the scriptures of previous prophets on issues on which he himself had received no direct revelation… Al-Khaffāf's position thus not only supports the hypothesis that biblical law enjoyed a significant role in the early development of Islamic law, but in fact explicitly theorizes this role as part of a complete, if succinct, treatment of legal theory." Note that in all fairness, this argument is taken from a draft.

[16] Abū al-Walīd al-Bājī, *Al-Ishārah Fī Uṣūl al-Fiqh*, ed. Muḥammad Ḥasan Ismā'īl, 1st ed. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2003). See pgs. 42 and 71, where support for the utility of pre-Muḥammadan law is ascribed by the author to Imām Mālik and others from among the Mālikī, Ḥanafī, and Shāfi'ī schools, but where no indication is made that this law be derived from Qur'ān, ḥadīth, or other "Islamic sources."

[17] See, e.g., his comments regarding the law of retaliation in Qur'ān 5:45:
وَإِنْ كَانَتْ هَذِهِ وَارِدَةً فِي التَّوْرَاةِ فَإِنَّ شَرْعَ مَنْ قَبْلَنَا لَازِمٌ لَنَا إِذَا وَرَدَ فِي الْقُرْآنِ أَوْ حَدِيثٍ صَحِيحٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى نَسْخِهِ
See: Abū al-Walīd al-Bājī, *Al-Muntaqā: Sharḥ al-Muwaṭṭa*, 1st ed., 7 vols. (Egypt: Maṭba'at al-Sa'āda, 1332 AH). Vol. 7, pg. 96.; He makes a similar assertion that the source must be the Qur'ān or authentic ḥadīth in vol. 7, pg.

continuity and development it shows in Islamic legal theory between al-Shāfi'ī and the later Muslim jurists writing in Islamic legal theory. If we take al-Zarkashī's transmission of material to be reliable as it appears to be in many cases,[18] we might even have an *earlier* opinion than al-Khaffāf's from this intermediary period, that of Ibn Surayj (d. 306 AH), known as one of the key centralizers of the Shāfi'ī *madhhab*. Al-Zarkashī reports from Ibn Qaṭṭān, Ibn Surayj's student, that the latter viewed all that had been conveyed in the *Qur'ān* about the prophets as mandatory to follow in the Muḥammadan *sharī'ah*, provided it was not changed in the Muḥammadan sharī'ah.[19] The reference to Qur'ānic, as opposed to other material is significant. As will be shown shortly, Muslim authors who supported the utility of pre-Muḥammadan law were caught on the one hand between doubt over the authenticity of non-Muḥammadan scriptures and the veracity of the Jews and Christians transmitting it - a doubt emerging from Qur'ānic verses and well-known ḥadīth – and affirmation on the other hand that the religion of Islam was a continuity of the guidance given to pre-Muḥammadan prophets - a point of belief which also emerged from Qur'ānic verses and ḥadīth as we will see. While this balancing act not only informed the scholarly discussions Muslims had regarding pre-Muḥammadan law, it may also help us understand the few cases when Muslims *did* apply biblical dicta or the religious practice of pre-Muḥammadan communities, examples of which will be noted in subsequent chapters.

From the late 4th century onward we have a large number of works at our disposal. The following summary is of several dozen texts representative of the Sunni legal theoretical corpus

133.; His "legal" references to pre-Muḥuammadan law are also all based in the Qur'ān or ḥadīth, not another source. See same source, vol. 2, pg. 58, vol. 3, pg. 108, vol. 3, pg. 277, Vol. 6, pg. 80, vol. 7, pg 56, vol. 7, pg. 96, vol. 7, pg. 133, vol. 7, pg 201, and vol. 7, pg. 257.

[18] Investigation into numerous citations made by al-Zarkashī indicate a high level of accuracy in his transmissions when compared with printed copies, and he appears to have engaged with the most extensive array of works of any of the dozens of authors surveyed for this study.

[19] Al-Zarkashī (vol. 6, pgs. 43-44 of the 1992 edition):

قَالَ ابْنُ الْقَطَّانِ: كَانَ أَبُو الْعَبَّاسِ بْنُ سُرَيْجٍ يَقُولُ: مَا حَكَى اللَّهُ فِي كِتَابِهِ عَنْهُمْ فَهُوَ حَقٌّ، وَهُوَ وَاجِبٌ فِي شَرِيعَتِنَا إِلَّا أَنْ يُغَيَّرَ عَنْهُ

until about the 9th century (see appendix for all of the consulted sources). The works surveyed generally present the following positions as ones maintained by Muslim jurists (though there are variant ways that these positions were constructed): [1] The Muḥammadan *sharī'ah* is not addressed by any pre-Muḥammadan law, whether reported in the Qur'ān or ḥadīth, or determined through some other source, [2] the Prophet ﷺ and his community *are* addressed by the pre-Muḥammadan laws, and while pre-Muḥammadan scriptures theoretically contain these laws, they cannot be trusted given Qur'ānic statements suggesting that they have been falsified, and thus only examples of a pre-Muḥammadan practice or law found in the Qur'ān or prophetic ḥadīth could be referred to (e.g., through the Qur'ān or Prophet ﷺ reporting a pre-Muḥammadan law or a story with legal relevance), and [3] the Prophet ﷺ and his community *are* addressed by the pre-Muḥammadan laws, but in addition to the Qur'ān and ḥadīth, we may resort directly to prior scripture and/or the statements of the People of the Book regarding their scripture (a noted position with no ascription), convert testimony regarding pre-Muḥammadan laws (an ascribed to position), or mass-transmitted (*mutawātir*) reports regarding these laws (an ascribed to position). Position [2] was affirmed by most of the surveyed Ḥanafīs, Mālikīs, Ḥanbalīs and a large segment of Shāfi'īs, and allowed only for pre-Muḥammadan laws found in the Qur'ān and Ḥadīth to be used as a legal source. Examples of Qur'ānic-based pre-Muḥammadan law would include, e.g., the biblical law of retaliation which al-Shāfi'ī noted earlier, or the distribution of time-rights on natural resources, which was justified by Muḥammad b. Ḥasan al-Shaybānī (d. 189 AH) based on the pre-Muḥammadan story of the Prophet Ṣāliḥ ﷺ and a she-camel that was given such time-access to water in a Qur'ānic story.[20] As for pre-Muḥammadan law derived from

[20] This case will be cited in the subsequent chapter. The verses referenced include Qur'ān 54:28:
وَنَبِّئْهُمْ أَنَّ الْمَاءَ قِسْمَةٌ بَيْنَهُمْ ۖ كُلُّ شِرْبٍ مُحْتَضَرٌ ۝
AND INFORM THEM THAT THE WATER IS TO BE SHARED BETWEEN THEM: EACH DRINKING IN TURN ۝
And Qur'ān 26:155:

ḥadīth, an example would be the permissibility of being in a body of water with one's private parts exposed (e.g. to bathe), which was justified by the traditionist Isḥāq b. Rāhawayh (d. 238 AH) based on a Ḥadīth report that indicates Moses ﷺ did just that.[21] Position [2] signifies that pre-Muḥammadan scriptures *in theory* had something to offer since they carried with them at the very least, the kernels of divine truth and pre-Muḥammadan laws that were applicable to the Muḥammadan community, but could not be fully trusted without the authenticating intermediaries of the Qur'ān or perhaps a prophetic ḥadīth. Position [3] is the most inclusive of the positions and suggests that pre-Muḥammadan laws could be assessed through sources *outside of* the Qur'ān and ḥadīth. As will be noted below, there were lively discussions about whether laws found in the pre-Muḥammadan scriptures, e.g. the Torah, could be accessed by means of a convert's testimony, or whether mass-transmitted reports about the laws of pre-Muḥammadan prophets and communities could have binding weight. As we will note, there were jurists who did in fact hold these positions.

It should be noted that the imāms and founders of the sunnī legal schools had a special status in these debates. Their assumed positions on any given issue were critical in defining the

---

قَالَ هَٰذِهِ نَاقَةٌ لَّهَا شِرْبٌ وَلَكُمْ شِرْبُ يَوْمٍ مَّعْلُومٍ۝

He said, "This is a she-camel. For her is a [turn to] drink, and for you is a [turn to] drink on a specified day" ۝

See Muḥammad b. al-Ḥasan al-Shaybānī, *Al-Aṣl*, ed. Muḥammad Buynūkālin, 1st ed., 12 vols. (Beirut: Dār Ibn Ḥazm, 2012). Vol. 8, pg 184:

وإذا كان نهر بين رجلين لواحد الثلثان وللآخر الثلث فاصطلحا على أن يسقي صاحب الثلث منه يوماً وصاحب الثلثين منه يومين فهوجائز. ألا ترى إلى قول الله تعالى في كتابه: {وَنَبِّئْهُمْ أَنَّ الْمَاءَ قِسْمَةٌ بَيْنَهُمْ كُلُّ شِرْبٍ مُحْتَضَرٌ} وقال في مكان آخر: {لَهَا شِرْبٌ وَلَكُمْ شِرْبُ يَوْمٍ مَعْلُومٍ} فكذلك هذه القسمة

[21] See vol. 21, pg. 44 of al-Ribāṭ, Khālid, and Sayyid 'Izzat 'Īd. *Al-Jāmi' Li 'Ulūm al-Imām Aḥmad*. 1st ed. 22 vols. Faiyum: Dār al-Falāḥ li al-Baḥth al-'Ilmī wa Taḥqīq al-Turāth, 2009:

قال حرب: وسمعت إسحاق أيضًا يقول: إن لم يدخل بإزار، وتجرد في الماء حتى يستر بالماء عورته رجونا أن لا يكون آثمًا في فعله؛ لما صح أن موسى -صلى الله عليه وسلم- كان يغتسل وحده وبنو إسرائيل يغتسلون أيضًا فذكروا بينهم أن موسى عليه السلام إنما يترك الغسل معنا؛ لأنه آدر، فدخل يومًا فوضع ثوبه فجاءت الريح، وخرج موسى عليه السلام يتبع ثوبه وهو ينادي: "يا حجر ثوبي يا حجر ثوبي" حتى رآه بنو إسرائيل عريانًا؛ لما أراد الله أن يبين لهم إن ما قالوا ليس كما قالوا، فهو قول الله تعالى: {لَا تَكُونُوا كَالَّذِينَ آذَوْا مُوسَى فَبَرَّأَهُ اللَّهُ مِمَّا قَالُوا} ففي هذا بيان أنه كان يدخل الماء، ولا يستتر بشيء إلا بالماء...

A variant of the report appears in al-Bukhārī's *Ṣaḥīḥ*. See vol. 1, pg. 64 of Muḥammad b. Ismā'īl al-Bukhārī, *Al-Jāmi' al-Musnad al-Ṣaḥīḥ (Ṣaḥīḥ al-Bukhārī)*, ed. Muḥammad Zuhayr b. Nāṣir al-Nāṣir, 1st ed., 9 vols. (Dār Ṭawq al-Najāh, 2001).

schools themselves and so their believed positions on pre-Muḥammadan law and its utility were noted here in these debates as well. All of them were reported as having supported pre-Muḥammadan law, though in the case of Ibn Ḥanbal, both a supporting and opposing opinion were transmitted. The pre-Muḥammadan laws that the *madhhab* founders were ascribed with upholding were those attested to by Qur'ānic verses, though a handful of the jurists noted an exception with al-Shāfiʿī and Mālik, who were believed to have made an allowance for the laws of the People of the Book in matters of dietary law in particular. The positions of the *madhhab* imāms vis-à-vis pre-Muḥammadan law will be engaged with more fully in the following chapters, where it will be shown that they interacted with pre-Muḥammadan law in non-Qur'ānic forms as well. The case of dietary law will also be explored later.

Returning to our survey, we find that the position upholding the utility of pre-Muḥammadan law (mainly position [2] as opposed to [3]) was the dominant one among the sunnī *madhhab*s up until the middle of the 5th century, at which point opposition became mainstream among the Shāfiʿīs in large part due to the work of Abū al-Maʿālī al-Juwaynī (d. 478 AH). Prior to this mid-5th century period, those documented as having been opposed to pre-Muḥammadan law were primarily mentioned as having been from the Muʿtazilite legal-theological school. The Ẓāhirī Ibn Ḥazm (d. 456) is another noteworthy opponent from this earlier period, and despite his extensive essay critiquing jurists who utilized pre-Muḥammadan law and tracing their selective usage of it, his treatment of this topic was sadly not picked up by most later Muslim writers engaging with pre-Muḥammadan law. This was likely because of his generally isolated status in the tradition, being from the Ẓāhirī school that had few followers to transmit his ideas. As for the Muʿtazilites, the sources suggest that their legal-theological school viewed the possibility that the Prophet ﷺ could refer to pre-Muḥammadan law as rationally

impossible (غير جائز عقلا), an opinion born out of their belief that epistemic certainty could be ascertained from an understanding of "Good" and "Disagreeable" phenomena as they relate to divine wisdom (*al-taḥṣīn wa al-taqbīḥ*). If the Prophet Muḥammad ﷺ was believed to have followed the pre-Muḥammadan laws of other communities (which would imply that his followers must as well), than that would suggest not only that the Muḥammadan community must refer to pre-Muḥammadan communities for information, but it would detract from the rank of the Prophet ﷺ and the completeness of his way, a demotion that would contradict divine wisdom and be something that could not be rationally possible from the perspective of divine Good. I will address why this ascription to the Mu'tazilites may partially be a straw man shortly.[22] The Mu'tazilite involvement in this debate shows us the well-known interconnectedness between legal theory and theology in the Islamic tradition, both fields displaying a heightened concern for epistemic certainty in the primary sources of knowledge and the hermeneutic practices that build upon them, these sources and hermeneutical practices having legal and theological consequences.[23]

It was perhaps a similar concern for epistemic certainty in the works of the 5th century Ash'arī and Shāfi'ī al-Juwaynī that would lead him to argue against pre-Muḥammadan law as a "source" of Islamic law, a position that appears to have thereafter gained strong influence among shāfi'ī jurists, and less so among other jurists. This shift is all the more fascinating given that al-Juwaynī himself notes that the founder of his school, al-Shāfi'ī, leaned towards the acceptance of pre-Muḥammadan law, even building a legal theory regarding its use in dietary law, and that

[22] For this ascription to the Mu'tazilites, see, e.g., al-Juwaynī in *al-Burhān* (Vol. 1, pg. 189), among many others.
[23] See, e.g., Aaron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Thought* (Atlanta, Georgia: Lockwood Press, 2013). Pgs. xiv, 4, 46-47; Examples would include questions about the certainty established by information conveyed via mass-transmitted (*mutawātir*) vs. solitary (āḥād) reports, which had obvious consequence on the knowledge that could be derived from them regarding law or theology.

most of al-Shafi'ī's followers also upheld its utility.[24] He was therefore articulating a position that was against both the founder and the majority of his own *madhhab*. In her monograph on al-Juwaynī, Sohaira Siddiqui contends that he introduced several novel opinions that departed from dominant sunnī ones put forth before him in matters of legal theory and theology, and that this was the result of his contextual environment. On the one hand, his works sought to address concerns of epistemic certainty which were born out of Ash'arī and Mu'tazilī disagreements present in Nishapur. On the other, he sought to define principles that could ensure religious continuity, having lived through times of significant flux in political power that brought with it questions of religious stability.[25] Her study looks at a few examples of how al-Juwaynī reconceptualized commonly held proofs for core legal sources in Islamic law such as mass-transmitted (*mutawātir*) reports and consensus (*ijmā'*), rejecting prior notions, articulating new proofs, and assigning new stipulations for both based in his unique epistemology that was based in reason, a unique emphasis on "customary patterns in the world of phenomena" (*al-'ādah*) that point to necessary truths, and revelation.[26] Just as he rearticulated the proofs and indications of widely held legal sources like consensus and transmitted reports in his time as head of the Niẓāmiyyah in Nishapur where he completed most of his writings, al-Juwaynī would reevaluate the dominant opinion on pre-Muḥammadan law in an attempt to articulate a new orthodox

[24] See al-Juwaynī in *al-Burhān* (vol. 1, pg. 189)

[25] Sohaira Siddiqui, *Law and Politics under the Abbasids: An Intellectual Portrait of al-Juwayni* (Cambridge & New York: Cambridge University Press, 2019). The Basran Mu'tazilah affirmed the independence of the intellect and held that knowledge of what was good or bad – law and morality – could be determined through reason, even independently of revelation, a position linked with Zysow's classification of "materialists" who sought epistemic certainty in both the framework (sources) of law and its derivation, whereas the Ash'arī school affirmed the fallibility of human reason and what could be derived from it, and thus fit Zysow's category of "formalists," who sought epistemic certainty in the framework and sources of legal derivation, but not with the human act of derivation. Sohaira suggests that al-Juwaynī works sought to move beyond the Ash'arī framework to suggest that 'practical certainty' could be achieved for individuals and jurists (see e.g., pgs. 1-24 of Introduction, and Chapters 3 and 4 on intellectual fissures between the Ash'arīs and Mu 'tazilah and the epistemology of al-Juwaynī)

[26] Ibid., see chapters 5 and 6 on his engagement with ḥadīth and ijmā'. Regarding customary patterns, see, e.g., pg. 149-154, 170-171, 181-183.

position. Unlike the Mu'tazilites who argued against it as an impossibility given their epistemology based in *al-taḥsīn wa al-taqbīḥ* - which al-Juwaynī found to be intellectually faulty - he instead rejects it based on customary grounds: because generations of early Muslims never referred to pre-Muḥammadan law by referring to other scriptures or available knowledge from converts or mass transmitted material when it was available to them, this repeated customary reality indicates a consensus (*ijmā'*) that gives us epistemic certainty that pre-Muḥammadan law was *not* part of the teaching of the Prophet ﷺ, despite what supporters might argue otherwise (including his fellow Shāfi'īs). Al-Juwaynī's writings likely influenced a large audience at the Niẓāmiyyah where he reportedly had 300 students on average at his lectures.[27] One of his most famous students, al-Ghazālī (d. 505 AH), would go on to articulate the same position as his teacher on this matter, but building on his arguments. As al-Zarkashī reports, it was only until the end of his life that al-Ghazālī would go on to adopt this position, which is the opinion represented in his works *al-Mustaṣfā* and *al-Mankhūl* (the latter believed to have been written in the life of al-Juwaynī and representing the latter's own teachings along with al-Ghazālī's thoughts).[28] Al-Ghazālī's writings on the topic, which build on al-Juwaynī's while offering his own insights, would go on to influence several scholars of legal theory afterwards, no doubt also because of his own position as head of the prestigious Niẓāmiyyah in Baghdad. Interestingly a Shāfi'ī contemporary of al-Juwaynī, the famous Abū Isḥāq al-Shīrāzī (d. 476 AH), head of the Niẓāmiyyah in Baghdad, would have a similar 'conversion' on this point as al-Ghazālī. While formerly supporting pre-Muḥammadan law in his work *al-Tabṣirah* (but only in cases when

[27] On the life of al-Juwaynī, see ibid., pgs. 33-76, and Vol. 5, pgs. 165-222 of Tāj al-Dīn al-Subkī, Ṭabaqāt Al-Shāfi'īyyah al-Kubrā, ed. Maḥmūd Muḥammad al-Ṭannāḥī and 'Abd al-Fattāḥ Muḥammad al-Ḥilu, 2nd ed. (Dār hijr li al-ṭibā'ah wa al-nashr wa al-tawzī', 1413AH).

[28] See al-Karkashī (vol. 6, pg. 41); Frank Griffel dates *al-Mankhūl* to around 471 AH according to Frank Griffel, which Sohaira notes is in the life of al-Juwaynī. See *Law and Politics* (pg. 67) and pgs. 32-34 of

conveyed by the Qur'ān and ḥadith),[29] he would later make a small note in *al-Luma'* stating that he was correcting his former statement on the matter, and that he now held that pre-Muḥammadan law wasn't entirely binding on the Muḥammadan community because the Prophet ﷺ and his Companions did not refer to pre-Muḥammadan scriptures or refer to converts to Islam when they were available,[30] an argument that mirrors al-Juwaynī's remarks. Given the terseness of his remarks (i.e. it does not appear to be an argument that he expounds on in detail or defends in depth, suggesting a disconnectedness from the position that might signify the idea was unoriginal), biographical information that al-Shīrāzī and al-Juwaynī engaged in legal debates in person that would yield compromises on the part of both parties,[31] and the fact that his justifications seem to mirror the much more developed ones by al-Juwaynī, it would appear to me that al-Shīrāzī was in fact influenced by his contemporary. No doubt, al-Shīrāzī's revised position would go on to influence Shāfi'īs after who would look up to him as a distiller of legal theory. A final point of interest regarding the 5th century period and development of thought regarding pre-Muḥammadan law is that al-Juwaynī, al-Ghazālī, and Abū al-Muẓaffar al-Sam'ānī (d. 489 AH) all note the existence of an interesting text ascribed to al-Shāfi'ī, which will be looked at later, in which he allowed for reference to the pre-Muḥammadan communities in defining permissible or prohibited animals for consumption. As will be noted later, the text in its transmitted form is unattested to elsewhere. If this supposed opinion was circulating and implemented by Shāfi'ī jurists in the lifetime of al-Juwaynī, it might offer an additional reason for why this topic in particular was engaged with anew by the legal architect. This, however, will

[29] See *al-Tabṣirah* (pgs. 285-288). He indicates his support in *al-Ma'ūnah fī al-jadl* (pg. 46) as well.
[30] See *al-Luma'* (pg. 63)
[31] See vol. 4, pgs. 252-256 and vol. 5, pgs 209-218 of Frank Griffel, *Al-Ghazālī's Philosophical Theology* (Oxford: Oxford University Press, 2009).

need to be explored in a separate study. We will now summarize some of the contours of the debate.

Because works in Islamic legal theory tended to be intellectual engagements with theoretical and scriptural/textual proofs, I will loosely separate my summary into these two facets of the debate in the pages that follow. As for the 'theoretical' issues discussed, we can broadly cover the discussion into three points:

1. Do the laws of one prophet transfer to another?
2. If we accept the utility of pre-Muḥammadan law, could it come from a source other than the Qur'ān or ḥadīth?
3. What are the implications of accepting pre-Muḥammadan for the status of the Prophet ﷺ?

[1] Do the laws of one prophet transfer to another? We have a few possibilities discussed:

a. Is it assumed that all of the laws of a prophet continue for all who come after, unless explicitly abrogated by God in the message of a later prophet? And if one were to argue that the Prophet ﷺ did not explicitly abrogate in a single stroke all of the laws that came from the messengers that came before, can it be assumed that they are still in force for the Prophet's community?
b. Or is it not that these laws are assumed to remain in effect for all times by default, but that God wanted for them to become part of the Prophet's sharī'ah in particular, based on certain textual proofs that might indicate that the entirety, or certain parts of, pre-Muḥammadan law were to be followed by him? The difference in {a} and {b} is subtle, but {b} would imply that the laws are more clearly being followed because they are the

Prophet's laws, not because they were the laws of those before (i.e., an issue of who to ascribe the obligation of following the laws to).

c. Or are none of the laws of the prior prophets binding until the Prophet ﷺ or God explicitly state that a specific law from a past community has become the law of the Prophet ﷺ and his community, and thus only specific pre-Muḥammadan laws are assumed to be binding?

d. Or is it that there may be certain laws given to the Prophet ﷺ that the Qur'ān and ḥadīth may assert are in agreement in some form with the laws of prior prophets and communities, but this is only because all true religions are from the same source and would therefore naturally carry resemblance, and not because the Prophet ﷺ or his followers were expected to follow anything of these prior laws?[32]

As many of the authors point out, there are difficulties in assuming that one prophet's laws naturally carried over, since many prophets may have been sent only to their people (as inferable from some verses of the Qur'ān noted later), or several prophets may have been operating concurrently with different laws. According to reported statements of the Prophet ﷺ (noted later), he was sent to all of mankind, whereas other prophets were specifically sent to their people. If the pre-Muḥammadan prophets were sent to their individual communities *only*, then their laws would not carry over by default. A conundrum might also arise if the prophets contradicted each other in their laws. For those accepting of pre-Muḥammadan law and its role in the sharī'ah, these issues could be explained away: only those laws conveyed by certain textual religious proofs, i.e. the Qur'ān and ḥadīth, were to be followed (and thus, other past laws that were not conveyed were not practically relevant), and in cases where laws of the prior prophets conflicted,

[32] For some of the ways in which the debate was theoretically framed, refer to: Al-Jaṣṣāṣ (vol. 3, pgs. 21-22), al-Dabbūsī (pgs. 253), Ibn Ḥazm (vol. 5, pg. 161), Abū Ya'lā (vol. 3, pgs. 754-761), al-Sarakshī (vol. 2, pgs. 99-100)

it was assumed that the most recent and non-abrogated of the laws, or the laws that were not contradictory of those given by other prophets may have been what continued into the sharī‘ah of the Prophet ﷺ. These legal discussions note the possibility that it was the law of Moses ﷺ that likely continued with the Prophet ﷺ (the sources do not note a reason when documenting this position, but it may be because of an understanding of the Torah being a scripture with many laws referenced in the Qur’ān, and because of similarities that were recognized between the Islamic and Jewish legal traditions among the Muslim jurists), or perhaps Jesus ﷺ (since he was believed to be the last prophet before the Prophet, and thus his law would have been the most ‘up to date’ of whatever was continued from the prior prophets), or that it was the ancient law of Abraham ﷺ and no other whose laws the Prophet ﷺ continued with his final sharī‘ah (Abraham ﷺ is singled out in Qur’ānic verses that will be discussed). The Mu‘tazilī Abū al-Ḥusayn al-Baṣrī (d. 436 AH) claimed the “*ummah*” was of three opinions on this: that the Prophet ﷺ didn’t follow pre-Muḥammadan law, that he did and it was the law of Moses ﷺ and the Torah, or that he followed the various laws that came before except where they contradicted. The connection between the Prophet’s *sharī‘ah* and that of the Moses ﷺ in particular (as opposed to others) was thus one that appears to have been prominently recognized among the Muslim writers themselves. For those opposed to the utility of pre-Muḥammadan law, the default status of the laws revealed to other prophets is that they did not transfer, and that the Prophet’s community was only commanded to confirm the truth that the previous prophets were sent to their communities with, but not to follow their *sharī‘ah*s. Ibn Ḥazm is alone among the surveyed opponents of pre-Muḥammadan law in making a solitary exception for Abraham ﷺ and his *sharī‘ah*, which he believes the *sharī‘ah* of the Prophet ﷺ was affirming. With all of the positions encountered, however, the belief that the Prophet’s *sharī‘ah* may have matched what

came before was not disputed, since after all, the Qur'ān frequently affirmed the connection between the Prophet's message and the message of those who came before him – they all came from the same source.[33]

While many authors will not make a distinction between positions {a} and {b}, its existence is useful because it allows for one to theoretically acknowledge that the laws of pre-Muḥammadan prophets aren't assumed to be binding on those after. Having a position {b} would allow one to argue that it *circumstantially* happens to be the case that God wanted for the practice of prior prophets and their communities to be binding on the Prophet ﷺ and his community, as inferable from certain Qur'ānic verses and ḥadīth (see below), and not because of a presumption of continuity. Positions {a} and {b} are both broad in including all laws of the prior prophets, and as will be noted, was generally restricted by proponents of pre-Muḥammadan law to only include examples of pre-Muḥammadan law documented in the Qur'ān and ḥadīth. Position {c}, unlike {b}, would mean that only examples of pre-Muḥammadan law that were explicitly deemed binding on the Prophet's community by either the Prophet ﷺ or the Qur'ān could be accepted as such (these two sources being what defined the Prophet's law, and thus also the prior laws that would be subsumed within that final law). It could not be assumed a priori by this position that all laws known about the past communities and prophets (even if documented in the Qur'ān and ḥadīth), could be accepted as legally relevant material. Position {d} rejects all possibility that the prophet's law followed something that came before. Scholars that held this position did not mean by this that the prophet's law could not have had a parallel in a prior law. The parallel between the laws and practices of those who came before and the laws applicable on the Prophet's community is something recognized by the Qur'ān. E.g., the notion of fasting,

[33] See al-Dabbūsī (pgs. 253-254), Abū al-Ḥusayn (vol. 2, pgs. 338-339), Ibn Ḥazm (vol. 5, pg. 178)), al-Shīrāzī in *al-Tabṣirah* (pg. 285)

praying and alms-giving are all noted in the Qurān as having existed in prior laws while also being applicable on the Prophet's community in some form.[34] However, this position would argue that any such law was being followed by the Prophet ﷺ and his followers because it was *newly commanded* (أمر مجدد) to the Prophet ﷺ and not because it existed elsewhere before, and *may* also feature variation or leniency on what was prior.

[2] If we accept the utility of pre-Muḥammadan law, could it come from a source other than the Qur'ān or ḥadīth?

An area of obvious interest for western scholars is whether Muslim discussion of pre-Muḥammadan law encompassed material that was biblical or from a source other than the Qur'ān and ḥadīth. A majority of the legal treatises that maintained the utility of pre-Muḥammadan law will make it clear that these laws could only be known through the Qur'ān or the Prophet ﷺ (i.e. ḥadīth), and that these laws were relevant whether or not the reporting text noted that it was explicitly binding on the Muḥammadan *sharī'ah* or not.[35] As for referring to the pre-Muḥammadan scriptures, the Ḥanafī Abū Bakr al-Jaṣṣāṣ (d. 370 AH) states that the reporting of the People of the Book regarding the contents of their scriptures cannot be accepted because of their status as unbelievers. Because they are unbelievers, they are an unacceptable source for religious knowledge. Al-Jaṣṣāṣ is aware that there are Muslims who can transmit material from

---

[34] Fasting, e.g., Qur'ān 2:183:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِن قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ۝

Oh you who believe: prescribed on you is fasting as it was prescribed those before you, so that you be mindful ۝

Prayer and alms-giving, e.g., Qur'ān 2:83:

وَإِذْ أَخَذْنَا مِيثَاقَ بَنِي إِسْرَائِيلَ لَا تَعْبُدُونَ إِلَّا اللَّهَ وَبِالْوَالِدَيْنِ إِحْسَانًا وَذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينِ وَقُولُوا لِلنَّاسِ حُسْنًا وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ ثُمَّ تَوَلَّيْتُمْ إِلَّا قَلِيلًا مِّنكُمْ وَأَنتُم مُّعْرِضُونَ۝

[Recall] when We took a pledge from the Children of Israel: Do not worship except God, and towards your parents show excellence, and to relatives, orphans and those in need, and speak good, and establish the prayer and give alms. Then all but a few of you turned away, paying no heed ۝

[35] See, e.g., al-Shīrāzī in *al-Tabṣirah* (pg. 286-287), al-Sarakshī (vol. 2, pgs. 99-100) and many more in appendix

the Torah and Gospel, but he says that they too cannot be trusted, because the scriptures that they will refer to have already been altered by the People of the Book.[36] The Ḥanafī al-Dabbūsī elaborates that the Prophet ﷺ himself would need to certify the authenticity of something from the prior laws (presumably by his reporting of it), because the Qur'ān itself states that the People of the Book altered the words of scripture[37] and were deceptive in conveying it[38], making their testimony unacceptable, a point articulated by many of the authors.[39] He acknowledges that there is material that they (the People of the Book) claim is mass transmitted (*mutawātir*) – a method of transmission that Muslim legal theorists believed yields epistemic truth - but he believes that

---

[36] Al-Jaṣṣāṣ (vol. 3, pg. 20), see also al-Sarakhsī (vol. 2, pg. 100)

[37] Verses that may convey this include, e.g., Qur'ān 2:79:

فَوَيْلٌ لِّلَّذِينَ يَكْتُبُونَ الْكِتَابَ بِأَيْدِيهِمْ ثُمَّ يَقُولُونَ هَٰذَا مِنْ عِندِ اللَّهِ لِيَشْتَرُوا بِهِ ثَمَنًا قَلِيلًا ۖ فَوَيْلٌ لَّهُم مِّمَّا كَتَبَتْ أَيْدِيهِمْ وَوَيْلٌ لَّهُم مِّمَّا يَكْسِبُونَ ۝

Woe unto those who write the scripture with their hands and then say, "This is from God," so that they may exchange it for a small price. Woe to them for what their hands have written, and woe to them for what they earn! ۝

And Qur'ān 3:78:

وَإِنَّ مِنْهُمْ لَفَرِيقًا يَلْوُونَ أَلْسِنَتَهُمْ بِالْكِتَابِ لِتَحْسَبُوهُ مِنَ الْكِتَابِ وَمَا هُوَ مِنَ الْكِتَابِ وَيَقُولُونَ هُوَ مِنْ عِنْدِ اللَّهِ وَمَا هُوَ مِنْ عِنْدِ اللَّهِ وَيَقُولُونَ عَلَى اللَّهِ الْكَذِبَ وَهُمْ يَعْلَمُونَ ۝

There is indeed, among them, a party who twists the Scripture with their tongues to make you think that what they utter is from the Scripture, but it is not from Scripture. They say it is from God, but it is not from God. They speak lies about God while knowing it ۝

[38] Verses that may convey this include, e.g., Qur'ān 4:46 (note that these references appear to be accusations lodged against those with some form of interpretative authority, perhaps clergy):

مِّنَ الَّذِينَ هَادُوا يُحَرِّفُونَ الْكَلِمَ عَن مَّوَاضِعِهِ وَيَقُولُونَ سَمِعْنَا وَعَصَيْنَا وَاسْمَعْ غَيْرَ مُسْمَعٍ وَرَاعِنَا لَيًّا بِأَلْسِنَتِهِمْ وَطَعْنًا فِي الدِّينِ ۚ وَلَوْ أَنَّهُمْ قَالُوا سَمِعْنَا وَأَطَعْنَا وَاسْمَعْ وَانظُرْنَا لَكَانَ خَيْرًا لَّهُمْ وَأَقْوَمَ وَلَٰكِن لَّعَنَهُمُ اللَّهُ بِكُفْرِهِمْ فَلَا يُؤْمِنُونَ إِلَّا قَلِيلًا ۝

Among those who are Jews are ones who distort [revealed] words from their [right] places [contexts], saying, "We heard yet disobey," and, "hear, [but] as one who [actually] heareth not," and "Hearken to us," distorting it with their tongues and disparaging religion. If only they said [instead], "We heard and we *obey*," "Hear," and "give consideration to us," that would have been better for them and more proper. But God has cursed them for their disbelief, so they believe not, save a few.۝

And Qur'ān 5:41:

يَا أَيُّهَا الرَّسُولُ لَا يَحْزُنكَ الَّذِينَ يُسَارِعُونَ فِي الْكُفْرِ مِنَ الَّذِينَ قَالُوا آمَنَّا بِأَفْوَاهِهِمْ وَلَمْ تُؤْمِن قُلُوبُهُمْ ۛ وَمِنَ الَّذِينَ هَادُوا ۛ سَمَّاعُونَ لِلْكَذِبِ سَمَّاعُونَ لِقَوْمٍ آخَرِينَ لَمْ يَأْتُوكَ ۖ يُحَرِّفُونَ الْكَلِمَ مِن بَعْدِ مَوَاضِعِهِ ۖ يَقُولُونَ إِنْ أُوتِيتُمْ هَٰذَا فَخُذُوهُ وَإِن لَّمْ تُؤْتَوْهُ فَاحْذَرُوا ۚ وَمَن يُرِدِ اللَّهُ فِتْنَتَهُ فَلَن تَمْلِكَ لَهُ مِنَ اللَّهِ شَيْئًا ۚ أُولَٰئِكَ الَّذِينَ لَمْ يُرِدِ اللَّهُ أَن يُطَهِّرَ قُلُوبَهُمْ ۚ لَهُمْ فِي الدُّنْيَا خِزْيٌ ۖ وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ ۝

O Messenger, don't let grieve you those who hasten to disbelieve, from among those who saying "We believe" with their mouths but their hearts do not believe, and from among the Jews, avid listeners to falsities, to other people who have not come to you. They distort [revealed] words from their [right] places [contexts], saying, "If your are given this [ruling/teaching], take it, and if you are not, beware." Whoever God wishes to puth through trial, you will not have anything for him against God. Those are the ones whose hearts God does not wish to purify. For them in this life is disgrace, and for them in the next life is a great punishment.۝

[39] See, e.g., al-Jaṣṣāṣ (vol. 3, pg. 26), Ibn Ḥazm (vol. 5, pg. 179), and others in appendix

acknowledging such reported information as being mass-transmitted would be difficult to do unless the mass transmission occurred all the way back to the source itself. This would be a high enough standard that one can assume no such material could be accepted. However, his statement acknowledging that the pre-Muḥammadan scriptures could be acceptable if mass-transmitted, even if only a theoretical admission, allows him to accept the potentially binding nature of these prior scriptures. Interestingly, his high standard of mass transmission for reported material from the prior scriptures does not carry over as a concern for the authenticity of ḥadīth which may have reported this same pre-Muḥammadan material, and which also raised questions of authenticity. He likely believed that ḥadīth could be verified or falsified according to the standards of Muslim ḥadīth criticism (as varied as it was among jurists and traditionists/*muḥaddithūn*), unlike the pre-Muḥammadan scriptures. What appears to be an obvious concern for the jurists was the questionable transmission of pre-Muḥammadan scripture, whether they were proponents or opponents of the utility of pre-Muḥammadan law.[40] As will be discussed in an appendix, many of the authors held strong beliefs regarding the history and transmission of the Torah among the Jews which precluded their ability to accept this source from them as authentic, this being a separate issue from that of *taḥrīf*.

The Mu‘tazilī Abū al-Ḥusayn al-Baṣrī notes the existence of opinions which he unfortunately does not ascribe to anyone, that upheld that the Prophet ﷺ may have referred to reported knowledge from others to follow the particulars of worship and law laid out in prior *sharī‘ah*s, and that this was expected of him from God in the same way later Muslims relied on reported knowledge to know what *he* commanded. Abū al-Ḥusayn himself rejects the possibility that the Prophet ﷺ referred to other scriptures or transmitted information from other communities

[40] Al-Dabbūsī (pgs. 255 & 232)

(and thus this would be prohibited for his community to do). His reason for rejecting this is that there are examples where the Prophet ﷺ waited for Qur'ānic revelation to come to him when events requiring legal answers would take place, such as the well-known issues of *ẓihār, li'ān* and *ifk*[41]. Why would the Prophet ﷺ have needed to wait for revelation regarding these issues when he could have actively consulted the People of the Book and their scriptures for a solution? Because he did not, it cannot be assumed that he was expected to refer to them. Abū al-Ḥusayn points out a counterargument that the Prophet's *normal* action was to refer to the Torah, and these incidents of waiting for divine revelation were actually *the exception*. He rejects this by saying the only incident where the Prophet ﷺ *may* have referred to the Torah for a legal ruling was on the matter of stoning (to be discussed later), but it was *this* that was the exception. Abū Ya'lā, who appears to have been seconded by al-Shīrāzī, subscribed to a variant of the counterargument just noted, namely that the Prophet ﷺ waited for a response for God on legal matters only when there wasn't a law revealed to him or where an authentic legal precedent wasn't available to him from an established pre-Muḥammadan law (i.e. the *default* for him was to refer to pre-Muḥammadan law). He gives the example of the pre-Muḥammadan (Jewish) practice of praying towards the Temple in Jerusalem (*bayt al-maqdis*), and he suggests the Prophet ﷺ followed this because he knew it to be a true matter (likely through some form of inspiration separate from Qur'ānic revelation). Instead of waiting for specific revelation from God to pray towards Jerusalem, he hastened to follow what was already there in pre-Muḥammadan law, says Abū Ya'la. It wasn't until the Qur'ān commanded that he and the

[41] E.g., regarding the status of al-Ẓihār (a divorce-rendering formula used among the pre-Muḥammadan Arabs to separate from a wife by stating that she is like the back of their mothers), al-Li'ān (referring to the Islamic procedure that a husband and wife must follow when the former accuses the latter of *zinā* without witnesses), and the punishment of *al-Ifk* (falsely accusing a chaste woman of infidelity), all three of which were matters the Prophet is reported to have waited for an answer from God regarding, the revealed verses in question beginning at 58:3, 24:6, and 24:11, respectively.

Muḥammadan community turn to a direction that was more pleasing to Muḥammad ﷺ – the Ka'bah - and in contrast to what was being practiced by the Jews,[42] that the direction changed.[43]

Another evidence Abū al-Ḥusayn offers is that if the Prophet ﷺ did rely on transmitted information and this was a part of the religion, then the Companions and early Muslims (*salaf*) would have referred to it as well, and the books of the prophets that came before would have had the same status in the community as the Qur'ān and ḥadīth, and reference to them would have similarly been obligatory in questions of law. The resemblance to al-Juwaynī's own argument is hard to miss, and it appears these Mu'tazilite arguments may have formed the basis of al-Juwaynī's own argument regarding the existence of a 'legal consensus' against pre-Muḥammadan law. Abū al-Ḥusayn points out a strong counterargument to his own point, which suggests that the early Muslims *did* refer to pre-Muḥammadan scriptural law, though indirectly: yes, the early Muslims did not rigorously investigate the religious laws of the other communities, but that is because they were aware of information that was *mass-transmitted* which would have been understood as reliable and trustworthy by virtue of it being known and circulated among so many individuals. This was their source for pre-Muḥammadan scriptural knowledge, rather than referring to the testimony of one or two disbelievers which would not have been acceptable evidence for them. If we ignore the suggestion here that the Companions and early Muslims accepted only a 'technical' definition of *mutawātir* transmission, this counterargument might

---

[42] Qur'ān 2:144:
قَدْ نَرَىٰ تَقَلُّبَ وَجْهِكَ فِي السَّمَاءِ ۖ فَلَنُوَلِّيَنَّكَ قِبْلَةً تَرْضَاهَا ۚ فَوَلِّ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِ ۚ وَحَيْثُ مَا كُنتُمْ فَوَلُّوا وُجُوهَكُمْ شَطْرَهُ ۗ وَإِنَّ الَّذِينَ أُوتُوا الْكِتَابَ لَيَعْلَمُونَ أَنَّهُ الْحَقُّ مِن رَّبِّهِمْ ۗ وَمَا اللَّهُ بِغَافِلٍ عَمَّا يَعْمَلُونَ ﴿١٤٤﴾
We have seen you turn your face to the heavens, so We are turning you to a *qiblah* that pleases you. Turn [now] your face towards the Holy Mosque, and wherever you are, turn your faces towards it [in prayer]. Indeed, those who have been given scripture know well that it is truth from their lord. And God is not unaware of what they do.

[43] Abū al-Ḥusayn al-Baṣrī (vol. 2, pg. 338-339), Abū Ya'lā (Vol. 3, pgs. 762-763). The author states, regarding matters where a pre-Muḥammadan precedent was known to be true to the Prophet but no revelation had come down to him from God: لم يتوقف فيه، بل كان يسارع إلى اتباعه والاقتداء به; al-Shīrāzī in *al-Tabṣirah* (pg. 288)

imply that Islamic law in its earlier period was informed by osmosis, wherein the Companions may have been exposed to enough generally known information of what the pre-Muḥammadan laws were (what the author's interlocutors deemed as technically *mutawātur*), and this they took, because they did not have the expertise to investigate the other laws. The author responds, however, that even if information may be transmitted in mass within a community and is authentic, the Companions would have needed to *intermix* with these others to have gained access to this knowledge, which he suggests was not the case, and thus they were uninterested in this material. One might raise the place of key converts to Islam as a counterargument to this, such as Kaʿb al-Aḥbār and Wahb b. Munabbih, who seem to have transmitted biblical material to the Muslim community.[44]

As we saw with al-Juwaynī and Abū al-Ḥusayn's reference to the practice of early Muslims, an understanding of history and received tradition seemed to inform the contours of this debate. It was pointed out by many of the opponents of pre-Muḥammadan law that just as the Muslim legal jurists needed to understand and grasp the source materials of the Prophet's *sharīʿah* in order to make legal pronouncements, a strong study of the non-Muḥammadan sources and linguistic/contextual background would have been needed if laws found therein were binding, since it is possible that some of these pre-Muḥammadan laws may have abrogated others, or that some laws were to be acted on their apparent meanings as opposed to a specific meaning (both of these being cases found in the Muḥammadan *sharīʿah*). These are matters that could only be determined through careful study. Because the early Muslim community apparently did no such thing, it was argued that they therefore did not reference this material, and thus, one may argue that pre-Muḥammadan law was not binding.[45] The obvious response by

[44] Abū al-Ḥusayn al-Baṣrī (vol. 2, pg. 338-339)
[45] Abū Yaʿlā (vol. 3, pg. 764), al-Shīrāzī in *al-Tabṣirah* (287-288), and others in appendix

Muslim jurists who supported the utility of pre-Muḥammadan law was that examples of pre-Muḥammadan law were restricted to those found in the Muḥammadan sources anyways, because the early Muslims didn't refer to it from any other source because of concerns regarding authenticity (this being a historical claim). Thus, the suggestion that one needed to know how to navigate another legal system was a non-issue: cases of acceptable pre-Muḥammadan law (i.e., from the Qur'ān and ḥadīth) would be treated like all the Muḥammadan laws, since they were transmitted in a Muḥammadan source. Al-Juwaynī, who rejected the legal utility of pre-Muḥammadan law in all cases, even when transmitted by the Qur'ān and ḥadīth, takes issue with this line of reasoning. He says that if one says the Companions and early Muslims did not consult the other scriptures or non-Muḥammadan sources for this legal information because of questions of authenticity, while simultaneously upholding the 'theoretical' utility of these sources had these authenticity questions not been present, then one might raise the following question: why did God not inform the Muḥammadan community which areas of the prior scriptures were falsified from which were not, so that they would not be barred from a source of law that they were theoretically but not practically bound to?[46] A possible counter to al-Juwaynī's point (not noted by his opponents) is that according to this same line of questioning, God would have then also made clear the authentic from the inauthentic ḥadīths of the Prophet ﷺ.

On the basis of historical claims, al-Juwaynī suggests that there is even a binding legal precedence on the Muslim community that pre-Muḥammadan law derived from non-Muḥammadan sources could not be referred to. He says that after studying the periods of times that have passed, that he has not found any one of the first generation of believers (i.e. the Prophet ﷺ and his Companions) referring back to the laws of the Jews or Christians for matters

[46] Al-Juwaynī in *al-Burhān* (vol 2, pg. 189-190)

in the Torah (elsewhere he explains away the famous stoning incident which will be discussed later). Nor could he find examples from the generation of the Successors or the generation following them of reference being made to the Torah or some other scripture regarding legally relevant issues where they had no clear answers from the Muḥammadan sources. Instead of referring to these other scriptures or laws, they were willing to resort to the fairly subjective and debated form of legal analogy known as *qiyās al-shabah*[47], which they would not have done if it was understood by the early Muḥammadan community that they were expected to refer to pre-Muḥammadan scriptural law instead. If the latter was the case, then the Muslim scholars would have searched for these laws in other communities just as they searched for the Muḥammadan sources (e.g. ḥadīth reports). The parallel to the previously looked at Mu'tazilī argument is clear, but al-Juwaynī uses this historical inquiry (which he suggests he himself concluded) to be proof of a legal consensus on the matter that was transmitted through the actions of the early Muslim predecessors. While supporters of pre-Muḥammadan law as found in the Qur'ān and ḥadith (the majority of advocates being from this camp) would be quick to point out a straw-man in al-Juwaynī's argument, namely that his critique is applicable only to cases found in non-Muḥammadan sources which they themselves would reject for being untrustworthy sources having been altered and not authentically transmitted, al-Juwaynī in fact extends his argument further to encompass all cases of pre-Muḥammadan law, even those found in the Qur'ān and ḥadīth. He argues that if it is granted that non-Muḥammadan sources cannot be referenced because of an issue of reliable transmission, then the natural conclusion is that one is not held morally responsibility for it in other cases too. He continues that the Prophet ﷺ himself never

[47] See Sohaira Siddiqui's, *Law and Politics,* pgs. 209 and after. Qiyās al-shabah referred to legal analogies based on mere resemblance between two legal cases, whereas *qiyās al-ma'nā*, the stronger form of analogy, referred to legal analogies that were based in a clearly definable rationale (*'illah*) for a law.

attributed a legal ruling to the laws of a pre-Muḥammadan legal system, and as the Prophet ﷺ he would not have deceived people by hiding this. Note that some of the 'textual' examples that we will explore later may bring this point into question about the Prophet ﷺ not attributing anything to the pre-Muḥammadan laws (though as we will see, al-Juwaynī and others had their response for some of these). Al-Juwaynī concludes that any commandments that exist in the Muḥammadan sharī'ah that might parallel what existed before would be examples of the Muḥammadan sharī'ah 'reviving' the connection of an older commandment to the newer community, and that we cannot, with certainty, claim that pre-Muḥammadan laws or practices that are referenced in any source (Muḥammadan or otherwise) are applicable to the Muḥammadan community a priori. From al-Juwaynī's point of view, the argument against pre-Muḥammadan law is not because it would be inconceivable that the Prophet ﷺ or early Muslims could have referred to this material (he accepts this theoretical possibility), but rather it is because his historical assessment lead him to this conclusion. His argument, like that of all those engaging in this debate, doesn't negate the possibility that some of the laws that were found in a pre-Muḥammadan community may also be found in the Muḥammadan law. However, any case where a law was not clearly Muḥammadan, yet was reported as being from a pre-Muḥammadan prophet or community could not be *assumed* to be applicable per this argument. In the subsequent two chapters of this project we will offer examples that will suggest early reference to pre-Muḥammadan legal matter from non-Muḥammadan sources may have occurred as a limited phenomenon, which would impact some of the broad historical conclusion al-Juwaynī makes.[48]

[48] Al-Juwaynī in *al-Talkhīṣ* (vol. 2, pgs. 271-272) and *al-Burhān* (vol. 1, pgs. 189-190)

Were there cases where the jurists believed pre-Muḥammadan law could be ascertained from pre-Muḥammadan scripture, e.g., the Torah? Some of the surveyed authors seemed to have indicated that this was a position held in this debate, though it is hard to determine whether these were recorded as merely theoretical or real positions. The Ḥanafī al-Sarakhsī (d. 483 AH), e.g., tantalizes us by stating that one of the positions of the Muslim scholars (العلماء) is that pre-Muḥammadan law was applicable in the *sharī'ah* and could be learned about through the transmission of the People of the Book themselves, reports from Muslims about what was in the former groups' scriptures, and what may be conveyed in the Qur'ān and *sunnah*.[49] However, no names are given for this extremely inclusive position. Some of the future chapters will indicate that this may have been practiced in some circles, and it is possible that al-Sarakhsī was aware of this practice. Many of the theorists were clear that reference to the pre-Muḥammadan scriptures was completely out of bounds, and this was because of questions of authenticity, along with a famous ḥadīth wherein the Prophet ﷺ reportedly rebukes 'Umar for having parchments of the Torah, which we will look at shortly. Al-Qarāfī (d.  684 AH) upheld that there was no disagreement that the pre-Muḥammadan scriptures or the disbelievers could be referred to for pre-Muḥammadan law. Their texts were transmitted incorrectly, as in the case of the Torah prohibiting consumption of a baby goat cooked in the milk of its mother (a known biblical law that the Muslims did not follow). It also cannot be entertained that the Prophet referred to pre-Muḥammadan scripture either, according to al-Qarāfī. If there is agreement among Muslims that a ḥadīth must be rejected if it is transmitted by a single narrator whose status as a transmitter was unknown, then we certainly can't accept the reporting of the disbelievers who we know have altered their text, and who have no system of reporting as the Muslims do. Accepting these books

[49] Al-Sarakshī (vol. 2, pg. 99)

or referring to the transmissions of the disbelievers is contrary to *ijmā'* according to al-Qarāfī. The idea that the Prophet could ever have done so should never cross the mind of a scholar of the *sharī'ah*, he says (هذا لا ينبغي أن يخطر لأحد من علماء الشريعة).[50] We will come across later that Ibn Ḥazm viewed the idea that the Prophet could have referred to the Torah as near apostasy. Despite the general opposition to the Torah being used as a source of pre-Muḥammadan law, along with information transmitted from the Jews and Christians regarding their laws, even among those who supported the utility of pre-Muḥammadan law, there appeared to have been some exceptions.

As was seen in the case of al-Dabbūsī who upheld the possibility of mass-transmission as a source of pre-Muḥammadan law, there were in fact *named* jurists who supported the utility of pre-Muḥammadan law and simultaneously believed that it could be accessible from a source outside of the Qur'ān and ḥadīth, at least in theory. A mass transmitted report about the laws of a prior prophet was one potential source, but at least in the case of al-Dabbūsī, the position appeared more theoretical, since he suggested that such cases would be hard to verify. The Ḥanbalī jurist Abū Ya'lā (d. 458 AH) also upheld the possibility of pre-Muḥammadan law being derived from mass transmitted reports in addition to the Qur'ān and the ḥadīth.[51] While in his chapter dedicated to pre-Muḥammadan law he doesn't elaborate whether such mass-transmitted material actually existed or could be verified, in a completely unrelated discussion he asserts that such information *was* known and reported by the Companions about Moses ﷺ and Jesus ﷺ in particular (the other prophets having been too far in the past),[52] which might imply that

[50] See al-Qarāfī's *Nafā'is al-Uṣūl*, vol. 6, pgs. 2371-2373.; See also *Sharḥ tanqīḥ al-fuṣūl*, pgs. 298-299.
[51] Abū Ya'lā (vol. 3, pg. 753, 762-763)
[52] He makes the case in this separate discussion, that information that is necessary to be known by people must be transmitted by them in accordance with the natural laws of information transmission (he is attempting to refute, e.g., the claims of the *shī'ah* that a clear statement of leadership – *naṣṣ* - regarding 'Alī was made by the Prophet, yet covered up by the Companions). His interlocuter suggests that by this logic, the laws of prior prophets – which Abū

knowledge that the Companions had about pre-Muḥammadan laws and the reports conveying such information from the Companions were known to the Muslim community and could in theory have been acceptable evidence regarding these laws – evidence derived not from the Qur'ān or prophetic *sunnah*. As we will see in the coming chapters, a few biblical dicta were transmitted in the well-known ḥadīth compendiums (*muṣannafāt*) of the Yemeni 'Abd al-Razzāq al-Ṣan'ānī (d. 211 AH) and the Kufan Abū Bakr ibn Abī Shaybah (d. 235 AH), and it would not be surprising if Abū Ya'lā and other later jurists were aware of these and other circulating examples. Related to Abū Ya'lā's point on pre-Muḥammadan law that was mass transmitted, al-Bāqillānī (d. 403 AH), who is believed to have *opposed* the utility of pre-Muḥammadan law in any form, notes as a case of knowledge that must be accepted necessarily (الضروريات), mass transmitted reports, examples of which he states include mass transmitted reports existing about the mission of various prophets and their laws. He states that believing in the truth of such reports is the same as our certain knowledge - based on reports - of the existence of places like China and Khurasān (his readership likely not having visited such places). It appears then that reports were available regarding the laws of prior prophets and were considered mass transmitted and truthful accounts by at least *some* Muslims. In the case of al-Bāqillānī who did not affirm pre-Muḥammadan law as binding, this information had no practical bearing on the

---

Ya'lā would argue was important information for mankind to know and thus be transmitted - were actually *not* necessary to be known, since the Companions did not transmit them. Abū al-Ḥusayn argues back that they did not transmit these laws because they were too far back in history for many of the prophets. However, regarding Moses ﷺ and Jesus ﷺ in particular, however, the author says that the Companions apparently *did* transmit their laws because this was important historical knowledge given that communities still followed their messages, and their messages were relatively closer to the Companions in time than the other prophets. This might then imply that the laws of these communities *were* known to the Companions through mass transmission in this particular discussion here, whereas he suggests they were not known in the other discussion on pre-Muḥammadan law. See Abū Ya'lā (vol. 3, pgs. 852-853):

أن شريعة موسى عليه السلام لما لم تكن متباعدة العهد، وكان هناك ما يدعو إلى نقلها -وهو بقاء تمسك قوم بها- نقلت. وكذلك شريعة عيسى عليه السلام، ولم تنقل شريعة غيرهما من الأنبياء

Muḥammadan *sharī'ah*.[53] Al-Juwaynī, who earlier argued against the utility of pre-Muḥammadan law by citing historical precedent of the community, tries to bolster his argument by asserting that early Muslims did not refer to pre-Muḥammadan material *even when* it was available in reliable and authentic form as mass transmitted information that the community had knowledge of.[54] His statement would be another claim that mass-transmitted, and thus accurately conveyed pre-Muḥammadan laws were available to be acted on, at least in theory. In addition to al-Dabbūsī and Abū Ya'lā, the Ḥanafī Muẓaffar al-Dīn b. al-Sā'ātī (d. 694 AH) and the Ḥanbalī Ibn Taymiyyah (d. 728 AH) accepted mass transmitted reports about the prior laws as a binding source of law, and this was also entertained as a possibility by the Shāfi'ī al-Zarkashī (d. 794 AH).[55] It will be discussed in the appendix that several jurists in this study were still skeptical of claims of mass transmission from the Jews and Christians regarding Moses ﷺ and Jesus ﷺ. This is because all of their reporting was believed to ultimately go back to a small number of witnesses, and thus a continuous 'chain' of mass transmission would not hold throughout history, a necessary requirement to filter out cases where a few mistaken or bad actors may make an incorrect claim that was believed by large numbers thereafter.[56]

---

[53] See Abū Bakr al-Bāqillānī, *Al-Taqrīb Wa al-Irshād (al-Ṣaghīr)*, ed. 'Abd al-Ḥamīd b. 'Alī Abū Zunayd, 2nd ed., 3 vols. (Mu'assisat al-Risālah, 1998). Vol. 1, pg. 191-192.

[54] Al-Juwaynī in *al-Talkhīṣ* (vol. 2, pgs. 272-273). He asks: فهلا أخذ أهل الأعصار به؟

[55] See Vol. 2, pg. 661 of Muẓaffar al-Dīn Aḥmad b. 'Alī ibn al-Sā'ātī, *Badī' al-Niẓām (Nihāyat al-Wuṣūl Ilā 'ilm al-'uṣūl)*, ed. Sa'd b. Ghurayr b. Mahdī al-Salamī, 2 vols. (Jāmi'at Umm al-Qurā, 1985).; Also: pgs. 184-185 of Majd al-Dīn 'Abd al-Salām Ibn Taymiyyah, 'Abd al-Ḥalīm Ibn Taymiyyah, and Aḥmad Ibn Taymiyyah, *Al-Muswaddah Fī Uṣūl al-Fiqh*, ed. Muḥammad Muḥyī al-Dīn 'Abd al-Ḥamīd (Dār al-Kitāb al-'Arabī, n.d.).; Also: vol. 1, pg. 258 of Taqī al-Dīn Ibn Taymiyyah, *Majmū' al-Fatāwā*, ed. 'Abd al-Raḥmān ibn Muḥammad b. Qāsim, 37 vols. (Madinah: Majma' al-Malik Fahd li Tibā'at al-Muṣḥaf al-Sharīf, 1995).; Also: vol. 6, pg. 46 of Badr al-Dīn al-Zarkashī, *Al-Baḥr al-Muḥīṭ Fī Uṣūl al-Fiqh*, ed. 'Abd al-Qādir 'Abd Allāh al-'Ānī, 2nd ed., 6 vols. (Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyyah, 1992).;

[56] See e.g., al-Shīrāzī in *al-Tabṣirah* (pg. 292). Further relevant citations and discussions of this appear in a later appendix that will discuss Jewish claims that Moses rejected his *sharī'ah* could be abrogated, this statement from Moses being mass-transmitted. The Muslim jurists responded to this claim of mass transmission by questioning the transmission of the Torah.

Another possible non-Qur'ānic or non-ḥadīth source for pre-Muḥammadan law recognized by the theorists were converts to Islam. Just as al-Juwaynī argued that reliable information about pre-Muḥammadan law (from a non-Muḥammadan source) was available in the form of mass transmission, he argues that it could be known through convert testimony as well. He raises this possibility only for the purpose of arguing that it was never acted upon. According to him, there were some People of the Book who became Muslim, whose conversion was true (i.e., they could not be accused of converting with the intention of spreading false information), and who reached the highest position of being reliable and trustworthy narrators by Muslim standards of reporting (بلغ من الأمانة والثقه أعلى الرتبة). He mentions 'Abd Allāh b. Salām and Ka'b al-Aḥbār as examples of two rabbis knowledgeable in the Torah, the former believed to have been confirmed by the Qur'ān itself for his knowledge of prior scripture,[57] and the latter being a companion of 'Umar who was believed to be very knowledgeable regarding many religions and scriptures. Al-Juwaynī also suggests that these converts were aware of what was altered from what was authentic in the Torah,[58] which would address concerns of supporters of pre-Muḥammadan law who barred the utility of the Torah on concerns of it being altered. Al-Juwaynī rhetorically asks the supporters of pre-Muḥammadan law why these converts were not

[57] See Qur'ān 13:43, where "the one with knowledge of Scripture" is noted in classical exegeses as being a reference to 'Abd Allāh b. Salām specifically, and also members of the People of the Book in general [see al-Ṭabarī in *Jāmi' al-bayān* (vol. 16, pgs. 500-507)]:

وَيَقُولُ الَّذِينَ كَفَرُوا لَسْتَ مُرْسَلًا ۚ قُلْ كَفَىٰ بِاللَّهِ شَهِيدًا بَيْنِي وَبَيْنَكُمْ وَمَنْ عِندَهُ عِلْمُ الْكِتَابِ۞

THOSE WHO DISBELIEVE SAY, "YOU HAVE NOT BEEN SENT [BY GOD]." SAY, "SUFFICIENT IS GOD AS A WITNESS BETWEEN ME AND YOU, AND THE ONE WITH KNOWLEDGE OF THE SCRIPTURE"۞

and Qur'ān 46:10, with one of the well-known interpretations of "a witness from the Children of Israel" being 'Abd Allāh b. Salām [see al-Ṭabarī in *Jāmi' al-bayān* (vol. 22, pgs. 102-108)]:

قُلْ أَرَأَيْتُمْ إِن كَانَ مِنْ عِندِ اللَّهِ وَكَفَرْتُم بِهِ وَشَهِدَ شَاهِدٌ مِّن بَنِي إِسْرَائِيلَ عَلَىٰ مِثْلِهِ فَآمَنَ وَاسْتَكْبَرْتُمْ ۖ إِنَّ اللَّهَ لَا يَهْدِي الْقَوْمَ الظَّالِمِينَ۞

SAY, "HAVE YOU CONSIDERED, WHAT IF THIS [QUR'ĀN] REALLY IS FROM GOD AND YOU REJECT IT? WHAT IF A WITNESS FROM THE CHILDREN OF ISRAEL TESTIFIED TO ITS SIMILARITY [TO WHAT CAME BEFORE], AND BELIEVED IN IT, AND YET YOU WERE TOO PROUD [TO DO THE SAME]?" INDEED, GOD DOES NOT GUIDE THE UNJUST PEOPLE۞

[58] In our later discussion of the 'stoning' ḥadīth, 'Abd Allāh b. Salām reportedly informed the Prophet ﷺ of a Jewish coverup regarding verses of the Torah in some accounts, i.e. he knew what was being altered by them.

then referenced by the Companions for information about the prior scriptures, and why none of the jurist imāms ever referenced any sort of thing. Because they did not, he suggests that prior scriptures and non-Muḥammadan law were therefore not of interest to the early Muslims, and thus not binding on the Muḥammadan community. He also draws a fascinating parallel between reports about pre-Muḥammadan scriptures and laws, and reports about the Prophet ﷺ. He says that just as Muslims were willing to accept the reports of trustworthy narrators regarding the Prophet ﷺ, and otherwise categorize prophetic reports as being authentic or weak given issues of errant reporting, dubious attributions and blatant forgery found in ḥadīth transmission, than the reporting of trustworthy converts should also be accepted, if in theory pre-Muḥammadan law was binding according to its proponents. In fact, al-Juwaynī argues, the problems that Muslim scholars noted in the transmission of ḥadīth reports were *even more* than the alterations made to the pre-Muḥammadan scriptures (أكثر من التحريف في الكتب). His comparison between the transmitted reports regarding prior scriptures or laws and the ḥadīth literature would imply that it was *convenience* and *not principle*, that al-Juwaynī suggests is the reason jurists who believe in the utility of pre-Muḥammadan law restrict it only to cases where it is found in Muḥammadan sources. Though the sources would have argued back that the transmission of the Torah was qualitatively different than the prophetic traditions.[59]

In the Mālikī al-Abyārī's (d. 616 AH) commentary on al-Juwaynī's work *al-Burhān*, the commentator, who supports the utility of pre-Muḥammadan law, rejects al-Juwaynī's proposition and states that if any of these converts came to certainty regarding a matter from the prior scriptures and they transmitted it to the Muslim community, then these expert converts' knowledge would have the same status as a matter of 'religious consensus' (*ijmā'*) that they were

[59] Al-Juwaynī in *al-Burhān* (vol. 1, pg. 190) and in *al-Talkhīṣ* (vol. 2, pgs. 272-273)

then transmitting to the Muslim community through a solitary (*āḥād*) chain of transmission. According to the author, such information could *in fact* be used in the Muḥammadan sharī'ah in legal matters that required only probable evidence. He does, however, express his skepticism whether these converts would be able to determine what was altered from what was originally from the scripture (referring back to Muslim understandings of *taḥrīf*), since he suggests that the falsifying alterations made to the prior scriptures happened much before these converts. It is also unclear whether his acceptance of convert-testimony would apply to equally knowledgeable, but less prominent converts from a later period in Islamic history.[60] The 8th century Shāfi'ī Al-Zarkashī, who appears to have referred to an extensive library of works in summarizing aspects of the debate as noted before, transmits from and attributes to al-Qurṭubī (d. 671 AH) the position that any pre-Muḥammadan legal material that's reached the Muslim community from the Prophet or a convert like 'Abd Allāh b. Salām or Ka'b al-Aḥbār would acceptable legal evidence, though I am unable to confirm this attribution. Al-Zarkashī himself viewed pre-Muḥammadan law as binding only when there was an absence of relevant material from the Muḥammadan sources regarding a matter, and he suggests among the many authentic means of deriving this, the testimony of two converts who have knowledge of what was altered from what was original of the prior scriptures. His requirement of two witnesses is likely because Muslim jurists expected two believers in cases of testimony-giving, though interestingly this is not a requirement that was placed on transmitted prophetic ḥadīth.[61]

---

[60] Vol. 2, pgs. 422-423 of 'Alī b. Ismā'īl al-Abyārī, *Al-Taḥqīq Wa al-Bayān Fī Sharḥ al-Burhān Fī Uṣūl al-Fiqh*, ed. 'Alī b. 'Abd al-Raḥmān Bassām al-Jazā'irī, 1st ed., 4 vols. (Kuwait: Dār al-Ḍiyā', 2013).; The author states:
وإن تحقق من أحدهم العلم بحقيقة الحكم، ونقله إلينا، تنزل ذلك عندنا منزلة نقل الإجماع على ألسنة الآحاد. والصحيح عندنا الاكتفاء به في مسائل الظنون

[61] Vol. 6, pg. 44 & 46 of Badr al-Dīn al-Zarkashī, *Al-Baḥr al-Muḥīṭ Fī Uṣūl al-Fiqh*, ed. 'Abd al-Qādir 'Abd Allāh al-'Ānī, 2nd ed., 6 vols. (Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyyah, 1992).; He transmits from al-Qurṭubī the following (pg. 44):
قال القرطبي: فيما إذَا بَلَغْنَا شَرْعُ مَنْ تَقَدَّمَنَا عَلَى لِسَانِ الرَّسُولِ، أَوْ لِسَانِ مَنْ أَسْلَمَ كَعَبْدِ اللَّهِ بْنِ سَلَامٍ وَكَعْبِ الْأَحْبَارِ، وَلَمْ يَكُنْ ذَلِكَ مَنْسُوخًا وَلَا مَخْصُوصًا بِأَحَدٍ

Al-Abyārī entertains an interesting additional non-Muḥammadan source of pre-Muḥammadan law which was mainly theoretical for him, namely the legal consensus of non-Muslim jurists. Muslim legal theorists discussed, as a matter of only theoretical significance, the possibility that consensus was a certainty-yielding source of knowledge among pre-Muḥammadan communities as it was among the Muḥammadans. Was the significance and binding status of consensus for the Muḥammadan community specific to only them? Or was it the same among all communities based on how the world typically works, wherein opinions agreed upon unanimously by a community without disagreement are to be accepted as Truths (because such unanimous decisions would only exist if based on certainty yielding evidence available to those making the decision).[62] Al-Abyārī appears to be the first Muslim legal theorist to raise the question of whether this pre-existing debate on the *ijmā'* of other communities had any practical relevance for the Muḥammadan *sharī'ah* (as it potentially could for those who upheld pre-Muḥammadan law), or whether it was only a matter of historical inquiry like the question of whether the Prophet ﷺ practiced pre-Muḥammadan laws *prior* to becoming the Prophet (an issue discussed by most of the works surveyed, but which had only historical significance and no practical ramifications as al-Abyārī points out). Al-Abyārī notes that the consensus of a prior community is only relevant if a jurist believes in the utility of pre-Muḥammadan law. If a jurist does, then depending on the jurist's belief regarding the consensus

---

While al-Zarkashī's own position on pre-Muḥammadan law is ambiguous in his dedicated discussion on the matter (he merely lays out the argument), elsewhere he seems to suggest his own agreement with it, stating that it can only be referred to when there is an absence of Muḥammadan sources regarding a matter. See vol. 8, pg. 70 of the following edition: Badr al-Dīn al-Zarkashī, *Al-Baḥr al-Muḥīṭ Fī Uṣūl al-Fiqh*. 8 vols. (Dār al-Kutubī, 1994): لا يرجع إليه إلا عند عدم أدلة شرعنا;

As for al-Qurṭubī's position, he seems to only mention the Qur'ān and ḥadīth as a source of pre-Muḥammadan law in his tafsīr. See vol. 18, pg. 56 of Shams al-Dīn al-Qurṭubī, *Al-Jāmi' Li Aḥkām al-Qur'ān (Tafsīr al-Qurṭubī)*, ed. Aḥmad al-Bardūnī and Ibrāhīm Aṭfīsh, 2nd ed., 20 vols. (Cairo: Dār al-Kutub al-Maṣriyyah, 1964):
…وَالْآيَةُ نَصٌّ فِي الْأَمْرِ بِالِاقْتِدَاءِ بِإِبْرَاهِيمَ عَلَيْهِ السَّلَامُ فِي فِعْلِهِ. وَذَلِكَ يُصَحِّحُ أَنَّ شَرْعَ مَنْ قَبْلَنَا شَرْعٌ لَنَا فِيمَا أَخْبَرَ اللَّهُ وَرَسُولُهُ

[62] See, e.g., al-Jaṣṣāṣ in *al-Fuṣūl* (vol. 3, pg 257), al-Shīrāzī in *al-Tabṣirah* (pg. 357), and al-Juwaynī in *al-Talkhīṣ* (vol. 1, pg. 278)

of pre-Muḥammadan communities and its status, the *ijmā'* of these communities on matters of law (and one might assume about their scriptures, as well) should also be accepted as binding and relevant for Muḥammadan law, since this knowledge could not be questioned. Al-Abyārī himself postpones judgment regarding the *ijmā'* of other communities, because of the difficulty in ascertaining the validity of a claim of consensus in another community, and also because it is not established for him whether the special status granted to the Muḥammadan community of being free from uniting on error is something that might apply to others. While in the end al-Abyārī's discussion appears purely theoretical, it fascinatingly entertains another possible route by which Muslim jurists could in theory find their laws in that of another community and do so in a way that would be legitimate within the theory of Islamic legal *uṣūl*. It is also another example of how certainty in knowledge regarding pre-Muḥammadan laws was an issue of prime concern for the jurists.[63]

[3] What are the implications of accepting pre-Muḥammadan for the status of the Prophet ﷺ?

One question that was often raised in this debate was the impact of holding that pre-Muḥammadan law was legally binding on the rank and status of the Prophet ﷺ (and thus also the message he preached). If jurists stated that the Prophet ﷺ was commanded to follow the laws found in prior scriptures would this imply a reduction in his status, because he would be deemed a follower? For al-Dabbūsī, for whom these laws were followable if transmitted to the Prophet ﷺ through Qur'ānic revelation and also inspiration (the latter referring to cases where the Prophet ﷺ reported prior law that did not come in the form of the Qur'ān, but for which he was inspired regarding the truth of), it was actually from the perfection and nobility of the Prophet ﷺ that all

[63] Al-Abyārī in *al-Taḥqīq wa al-bayān* (Vol. 2, pgs. 914-917)

prior laws became *his*, and that all the prior prophets would be *his* followers had they been alive with him (see later section on textual proofs regarding this latter statement).[64] In many of the discussions of this topic by non-Mu'tazilites, it is noted that some of the Mu'tazilites believed it was rationally impossible (مستحيل عقلا) that the Prophet ﷺ could be a follower of the prior laws, because that would be contrary to God's Divine Good, since it would take away from the status of the Prophet ﷺ and his way by implying his message was a mere copy or based on the message of others (i.e., the negative connotation of "foreign influence"). The non-Mu'tazilite jurists would often make it a point to reject this notion of impossibility (and thus affirm their own reasonableness on the matter), whether or not they ultimately upheld that the Prophet ﷺ followed pre-Muḥammadan law or not.[65] The one Mu'tazilite surveyed for this study, Abū al-Ḥusayn al-Baṣrī, makes no indication that such a thing would be rationally impossible, and in fact rejects the suggestion outright. Further evidence that this may have been a generalized ascription by non-Mu'tazilites that does not accurately portray Mu'tazilite thought is that Abū al-Ḥusayn reports from al-Qāḍī 'Abd al-Jabbār (d. 415) that Abū Hāshim al-Jubbā'ī (d. 275), a key early Mu'tazilite thinker, reserved judgment on whether the Prophet followed pre-Muḥammadan law prior to his prophethood (an issue that non-Mu'tazilites frequently suggested was rationally impossible according to the Mu'tazilites because it might imply to outsiders that the Prophet copied his religion, which would go against God's Wisdom). Abū al-Ḥusayn does ultimately reject the possibility that the Prophet ﷺ followed pre-Muḥammadan law, but does so on primarily textual grounds, and not on the basis of what would be considered Divine Good, a

[64] Al-Dabbūsī in *Taqwīm al-adillah* (pg. 255)
[65] See, e.g., al-Juwaynī in *al-Burhān* (vol. 1, pg. 189) and *al-Talkhīṣ* (vol. 2, pg. 264)

frequent accusation of impaired logic lodged against the Mu‘tazilites by the non-Mu‘tazilites surveyed.[66]

The Ḥanbalī Ibn ‘Aqīl (d. 513 AH) is more blunt in addressing those concerned that the idea that pre-Muḥammadan law informed the Muḥammadan *sharī‘ah* may weaken the status of the Prophet’s religion in the eyes of others. The argument goes that if the Prophet ﷺ followed a previous law, it would have made people averse to following him. This is because if he was following the laws of Jesus ﷺ or Moses ﷺ, than the Christians or Jews would originally be satisfied by his following of their ways, but once the Prophet’s laws started to disagree with and abrogate what was theirs at some point, than the followers of those religions would accuse him of being a mere follower until he desired to be followed himself. And if he was originally a follower of another law before abrogating it, they would be inclined to follow the first set of laws attributed to the former prophet, since the new and changed laws would be of dubious status and possibly pursued because of the Prophet’s desire for leadership or because he was too proud to be a follower of another. Thus, it would be best to avoid suggesting that pre-Muḥammadan law is part of the Prophet’s law. Additionally, the argument continues, there are verses from the Qur’ān that make it clear that God was concerned with how the Prophet’s message was received by the people as a unique and unborrowed message,[67] and so the holding of this position might do the

---

[66] See Abū al-Ḥusayn (vol 2, pg. 337 & 339-340).

[67] E.g. Qur’ān 29:48:

وَمَا كُنتَ تَتْلُو مِن قَبْلِهِ مِن كِتَابٍ وَلَا تَخُطُّهُ بِيَمِينِكَ ۖ إِذًا لَّارْتَابَ الْمُبْطِلُونَ ۞

You have never been reciting any scripture before it, nor are you inscribing it with your right hand. Otherwise those who follow falsehood would have raised doubt ۞

And Qur’ān 41:44:

وَلَوْ جَعَلْنَاهُ قُرْآنًا أَعْجَمِيًّا لَّقَالُوا لَوْلَا فُصِّلَتْ آيَاتُهُ ۖ أَأَعْجَمِيٌّ وَعَرَبِيٌّ ۗ قُلْ هُوَ لِلَّذِينَ آمَنُوا هُدًى وَشِفَاءٌ ۖ وَالَّذِينَ لَا يُؤْمِنُونَ فِي آذَانِهِمْ وَقْرٌ وَهُوَ عَلَيْهِمْ عَمًى ۚ أُولَٰئِكَ يُنَادَوْنَ مِن مَّكَانٍ بَعِيدٍ ۞

If We had made it a foreign Qur’ān, they would have said, “If only its verses were clear! Foreign Speech and an Arab?” Say: “It is for the believers a guidance and cure. And the disbelievers, in their ears is a deafness and it is a blindness on them. They are being called from a distant place.” ۞

opposite of the good that God desires for His religion. The connection that this internal debate might have had with interreligious polemics is apparent here. Ibn ʻAqīl, however, negates the concerns laid out here by affirming that the Prophet's message was to be believed on its own merits and because of the miracles that affirmed the veracity of his message. His having been a follower of a prior law does not change the truth. He notes that there are a number of other aspects of the *sharīʻah* and the Prophet's life that might be received distastefully by people, pointing to the Prophet's marriages, the abrogation of verses, the changing of the prayer direction from Jerusalem to Mecca, etc., but that ultimately God has created within our minds the ability to ward off doubts, and given religious proofs that provide confidence from the suggestion that such things are problematic.[68]

---

In addition to the above theoretical discussions, a number of textual evidences (i.e. from the Qur'ān and ḥadīth) formed the basis of Muslim theoretical discourse regarding pre-Muḥammadan law and its utility. The following are some noted by the jurists for their relevance in this debate. As should be observed through a brief glance at the footnotes and discussion, some evidences were more commonly referred to in this debate, while others were referenced and perhaps limitedly known by only a few. Some of the latter include rare cases that might have substantively affected the trajectory of some of the arguments looked at above. The 'textual' proofs given below are generally listed in order of those most frequently cited by proponents and opponents as characterizing the contours of this debate.

Texts in support of the utility of pre-Muḥammadan law:

[68] Ibn ʻAqīl (vol. 4, pgs. 192-193 & 158-163)

[1] After noting the prior prophets and righteous communities, Qur'ān 6:90[69] makes the following statement:

> Those are the ones God has guided, so follow their guidance...۞

Those affirming the utility of pre-Muḥammadan law will note that the guidance being referred to here was comprehensive, and inclusive of matters of law. The Qur'ān notes the stories of many righteous personalities from the past. The conduct of any of these figures was in theory worthy of being emulated, and thus significant for law. Those who do not affirm the utility of pre-Muḥammadan law will argue that the guidance (هدى) referred to in this verse is likely referring to universal monotheism (*tawḥīd*) that the Qur'ān repeatedly states was inherent in the messages that came from God before (and the Mu'tazilites might add the notion of Divine Justice to this as well), and that this might also be gathered from some of the earlier verses in this passage which note Abraham's affirmation of monotheism, after which it notes that his progeny, other prophets and their kin were from among the righteous. Additionally, those whose guidance was being referred to here included non-prophets (the kin of the prophets noted in the preceding verses), from whom it wouldn't make sense to receive their laws, but instead belief about the universal faith of Islam. Furthermore, the laws of the pre-Muḥammadan communities disagreed with one

[69] أُولَٰئِكَ الَّذِينَ هَدَى اللَّهُ ۖ فَبِهُدَاهُمُ اقْتَدِهْ ۗ قُل لَّا أَسْأَلُكُمْ عَلَيْهِ أَجْرًا ۖ إِنْ هُوَ إِلَّا ذِكْرَىٰ لِلْعَالَمِينَ ۝

another as suggested in Qur'ān 5:48[70], 6:35[71] or abrogated one another[72], meaning that the guidance referred to here must be something permanent and shared among all of them that could be followed – the fundamental beliefs of religion that are universal to all the divinely originating religions, not the laws. Those who support the utility of pre-Muḥammadan law will respond that the word 'guidance' (هدى) as it appears elsewhere in the Qur'ān can be inclusive of laws[73], and that the meaning of guidance cannot be restricted here unless with strong evidence. Additionally, this verse may not be restricted by the context of the prior verses, instead being a broadly applicable commandment. The presence of non-prophets in this group doesn't pose a problem (even though Qur'ān 6:89[74] right before this verse might imply they were prophets), this group may argue, because their true guidance can also be followed, even if in matters of law, since they inherited from the Prophets, as indicated by Qur'ān 35:32[75], e.g.. Similarly, the fact that these pre-Muḥammadan laws may abrogate one another or contradict is not a problem, since only

---

70 وَأَنزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ وَمُهَيْمِنًا عَلَيْهِ ۖ فَاحْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ ۖ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ مِنَ الْحَقِّ ۚ لِكُلٍّ جَعَلْنَا مِنكُمْ شِرْعَةً وَمِنْهَاجًا ۚ وَلَوْ شَاءَ اللَّهُ لَجَعَلَكُمْ أُمَّةً وَاحِدَةً وَلَٰكِن لِّيَبْلُوَكُمْ فِي مَا آتَاكُمْ ۖ فَاسْتَبِقُوا الْخَيْرَاتِ ۚ إِلَى اللَّهِ مَرْجِعُكُمْ جَمِيعًا فَيُنَبِّئُكُم بِمَا كُنتُمْ فِيهِ تَخْتَلِفُونَ ۝
We have sent down to you the Scripture with truth, confirming that which came before it of the Scripture, and a protector for it. So judge between them according to what God has sent down, and do not follow their desires over the truth that has come to you. For each We have made a law and a method. Had God willed, He would have made you a single community, but [He did not] so that He may test you regarding what He has given you. So compete in good deeds. To God is all of your return, after which God will make clear to you about that which you disagreed ۝

71 وَلِكُلٍّ وِجْهَةٌ هُوَ مُوَلِّيهَا ۖ فَاسْتَبِقُوا الْخَيْرَاتِ ۚ أَيْنَ مَا تَكُونُوا يَأْتِ بِكُمُ اللَّهُ جَمِيعًا ۚ إِنَّ اللَّهَ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ ۝
For each a direction towards which it turns. Strive then in good deeds. Wherever you are, God will bring you all together. God is over all things powerful ۝

72 Ibn Ḥazm, e.g., references how the Qur'ān mentions Jacob (Israel) prohibiting somethings that were originally allowed (Qur'ān 3:93), which means his law was different from that of prophets before him like Abraham ﷺ, meaning their guidance is something not related to their individual laws.

73 E.g., Qur'ān 5:44 which refers to the Torah as 'guidance' (هدى) that the prophets would specifically give legal judgements through (يحكم بها). Also, the Qur'ān refers to itself as 'guidance' (see Qur'ān 2:2) and being that it is inclusive of laws, so is this guidance.

74 أُولَٰئِكَ الَّذِينَ آتَيْنَاهُمُ الْكِتَابَ وَالْحُكْمَ وَالنُّبُوَّةَ ۚ فَإِن يَكْفُرْ بِهَا هَٰؤُلَاءِ فَقَدْ وَكَّلْنَا بِهَا قَوْمًا لَّيْسُوا بِهَا بِكَافِرِينَ ۝
Those are the ones who we have given the Scripture and wisdom and prophethood. So if these people disbelieve in it, We have entrusted it with people who are not disbelievers of it ۝

75 ثُمَّ أَوْرَثْنَا الْكِتَابَ الَّذِينَ اصْطَفَيْنَا مِنْ عِبَادِنَا ۖ فَمِنْهُمْ ظَالِمٌ لِّنَفْسِهِ وَمِنْهُم مُّقْتَصِدٌ وَمِنْهُمْ سَابِقٌ بِالْخَيْرَاتِ بِإِذْنِ اللَّهِ ۚ ذَٰلِكَ هُوَ الْفَضْلُ الْكَبِيرُ ۝
Then we caused to inherit the scripture those who chose from our servants. From among them were those who oppressed themselves, those who were in the middle, and those who were foremost in doing good by the will of God. That is the greatest bounty ۝

those that are non-contradictory are followed, and anything from this that was abrogated by the Prophet's sharī'ah was not to be followed. The command to 'follow' is also something that shouldn't apply for belief in monotheism, a matter that the Prophet ﷺ would have deduced on his own, but would be more applicable for matters of practice.[76]

Some noted the existence of a report by the early Qur'ānic exegete Mujāhid (d. 104 AH), student of the Companion Ibn 'Abbās (d. 68 AH), in which the latter specifically cites the verse above to follow the guidance of the righteous predecessors, to justify performance of a "prostration of recitation" for Qur'ān 38:24[77], wherein David ﷺ is described falling in prostration upon realizing that God had tried him through a dispute that was brought to his attention and noted in the verses prior.[78] David ﷺ is one of those who the Prophet ﷺ was commanded to follow according to Qur'ān 6:90, and just as David ﷺ prostrated, so too did the Prophet ﷺ.[79] Ibn 'Abbās's (transmitted) words here seem to be suggest that David ﷺ prostrated upon recitation of this verse and so too did the Prophet ﷺ, which wouldn't make complete sense because the Qur'ān is *describing* David's bowing and repentance in this verse regarding a different context – his being

[76] Noted by al-Jaṣṣāṣ (vol. 3, pgs. 22-26), al-Dabbūssī (pg. 254), Abu al-Ḥusayn al-Baṣrī (vol. 2, pg. 340), Ibn Ḥazm (vol. 5, pg. 175-177), Abū Ya'lā (vol. 3, pgs. 757-759, also pg. 761 for his comment on Qur'ān 5:48), al-Bājī (pg. 42 and 71), al-Shīrāzī in *al-Tabṣirah* (pg. 286), al-Juwaynī in *al-Talkhīṣ* (vol. 1, pg. 266 & 269-270), al-Sarakhsī (vol. 2, pg. 103-104), al-Sam'ānī (vol. 1, pg. 317), al-Ghazālī in *al-Mustaṣfā* (pg. 167), al-Kalwadhānī (vol. 2, pg. 421), Ibn 'Aqīl (vol. 4, pg. 175-176), al-Rāzī (vol. 3, pgs. 272-275), al-Armawī (vol. 1, pg. 444-445), al-Qarāfī in *Sharḥ tanqīḥ al-fuṣūl* (pg. 298-299), al-Quṭlūbaghā (cites Qur'ān 35:32 in support of pre-Muḥammadan law, vol. 1, pg. 158)

[77] قَالَ لَقَدْ ظَلَمَكَ بِسُؤَالِ نَعْجَتِكَ إِلَىٰ نِعَاجِهِۦ ۖ وَإِنَّ كَثِيرًا مِّنَ ٱلْخُلَطَآءِ لَيَبْغِى بَعْضُهُمْ عَلَىٰ بَعْضٍ إِلَّا ٱلَّذِينَ ءَامَنُوا۟ وَعَمِلُوا۟ ٱلصَّٰلِحَٰتِ وَقَلِيلٌ مَّا هُمْ ۗ وَظَنَّ دَاوُۥدُ أَنَّمَا فَتَنَّٰهُ فَٱسْتَغْفَرَ رَبَّهُۥ وَخَرَّ رَاكِعًا وَأَنَابَ ۩

[David] said: "He has certainly wronged you in asking for your ewe in addition to his. Indeed, many partners oppress one another, except for those who believe and do righteous deeds, and few are they." And David realized that We had tested him, and he asked his Lord for forgiveness, fell down bowing and turning in repentance. ۩

[78] The Qur'ānic verses regarding this incident are a likely parallel to Nathan's rebuke of David, found in 2 Samuel 12, over David's taking of the wife of Uriah the Hittite, though this context is not explicitly confirmed by the Qur'ān.

[79] See, e.g., Muḥammad b. Ismā'īl al-Bukhārī, *Al-Jāmi' al-Musnad al-Ṣaḥīḥ (Ṣaḥīḥ al-Bukhārī)*, ed. Muḥammad Zuhayr b. Nāṣir al-Nāṣir, 1st ed., 9 vols. (Dār Ṭawq al-Najāh, 2001). Vol. 6, pg. 124.

humbled upon realization of a matter. The imitation happening here would then not be one of exact copying, but an act of deference to David's example: because the Qur'ān recounts David ﷺ realizing the need to seek forgiveness and falling to the ground, so to should the listener upon hearing of David's story in these verses, because he is one whose example is to be followed.[80]

[2] Qur'ān 42:13[81]:

> He has proscribed [legislated / شرع] for you as religion [الدين] what He charged Noah with, and what We have revealed to you, and what We charged Abraham with, Moses and Jesus: Perform the religion, and do not split up regarding it. Very hard is that for the idolaters, what you call them to. God chooses unto Himself whomsoever He will, and He guides to Himself whosoever turns, penitent. ۞

A similar line of arguments for and against the utility of pre-Muḥammadan law can be made as evidence [1], with the difference being that this verse also notes the verb (شرع) that can give the meaning of legislating (though perhaps anachronistically understood as such here). The opposition will point out that the meaning of religion (الدين/*al-dīn*) may be taken as broadly referring to the monotheistic belief system of Islam, and not specifically law, a matter agreed upon by all of the prophets, which is the issue that people are not to be "split up regarding." Using a somewhat anachronistic line of reasoning, the Mu'tazilī Abū al-Ḥusayn al-Baṣrī suggests that *al-dīn* must be referring to the fundamentals of religion (الأصول), including matters

[80] See al-Sarakhsī (vol. 2, pg. 103) & al-Sam'ānī (vol. 1, pg. 317). Al-Dabbūsī (pg. 254) also references this verse of prostration, but in his version of the report, Abd Allāh b. 'Abbās references Qur'ān 42:13 instead, which is the next evidence referenced.

[81] شَرَعَ لَكُم مِّنَ الدِّينِ مَا وَصَّىٰ بِهِ نُوحًا وَالَّذِي أَوْحَيْنَا إِلَيْكَ وَمَا وَصَّيْنَا بِهِ إِبْرَاهِيمَ وَمُوسَىٰ وَعِيسَىٰ ۖ أَنْ أَقِيمُوا الدِّينَ وَلَا تَتَفَرَّقُوا فِيهِ ۚ كَبُرَ عَلَى الْمُشْرِكِينَ مَا تَدْعُوهُمْ إِلَيْهِ ۚ اللَّهُ يَجْتَبِي إِلَيْهِ مَن يَشَاءُ وَيَهْدِي إِلَيْهِ مَن يُنِيبُ ۞

such as Islamic monotheism, justice and worshipping God with sincerity, and cannot be referring to peripheral legal matters (الفروع), because then one would be able to refer to the schools of law of Abū Ḥanīfah or al-Shāfi'ī as their respective *dīn*s, which is not the given nomenclature. The Shāfi'ī al-Sam'ānī (d. 489) appears to have copied from some of the Mu'tazilī's writings on this point, without attributing him. Al-Juwaynī makes the observation that if that was in fact a command to follow law, then where is evidence that the Prophet ﷺ made any attempt to search for Noah's laws. Others will point out that these laws would not have even been accessible, and thus unfollowable. Rather the shared religion that is being referred to is a rejection of idolatry.[82]

[3] Verses that uphold following the pre-Muḥammadan prophet Abraham ﷺ and his way (ملة/*millah*), such as 16:123[83], 2:130[84], 3:68[85], and 3:95[86]:

A similar line of arguments for and against the utility of pre-Muḥammadan law can be made as evidence [1], with the meaning of "way" (ملة) being the center of discussion here, whether it was or was not inclusive of specific laws or rather a broader term referring to system of belief (and

---

[82] Noted by al-Jaṣṣāṣ (vol. 3, pgs. 22-26), Abū al-Ḥusayn al-Baṣrī vol. 2, pg. 341, Ibn Ḥazm (vol. 5, pg. 175), al-Bājī (pg. 71), al-Juwaynī in *al-Burhān* (vol. 1, pg. 190), al-Juwaynī in *al-Talkhīṣ* (vol. 1, pg. 266 & 268-269), al-Sarakhsī (vol. 2, pg. 105), al-Sam'ānī (vol. 1, pg. 317 & 321), al-Ghazālī in *al-Mustaṣfā* (pg. 167), al-Kalwadhānī (vol. 2, pg. 423-424), al-Rāzī (vol. 3, pgs. 272-275), al-Āmidī (vol. 4, pg. 142), al-Armawī (vol. 1, pg. 444-445), al-Qarāfī in *Sharḥ tanqīḥ al-fuṣūl* (pg. 299)

[83] ثُمَّ أَوْحَيْنَا إِلَيْكَ أَنِ اتَّبِعْ مِلَّةَ إِبْرَاهِيمَ حَنِيفًا ۖ وَمَا كَانَ مِنَ الْمُشْرِكِينَ ۝

Then We revealed to thee: 'Follow thou the way of Abraham, a man of pure faith and no idolater.' ۝

[84] وَمَن يَرْغَبُ عَن مِّلَّةِ إِبْرَاهِيمَ إِلَّا مَن سَفِهَ نَفْسَهُ ۚ وَلَقَدِ اصْطَفَيْنَاهُ فِي الدُّنْيَا ۖ وَإِنَّهُ فِي الْآخِرَةِ لَمِنَ الصَّالِحِينَ ۝

Now, who else could have aversion to the way of Abraham but the one who has debased himself with folly and ignorance? Abraham was the one whom We chose for Our service in this world, and in the Next World he shall be among the righteous ۝

[85] إِنَّ أَوْلَى النَّاسِ بِإِبْرَاهِيمَ لَلَّذِينَ اتَّبَعُوهُ وَهَٰذَا النَّبِيُّ وَالَّذِينَ آمَنُوا ۗ وَاللَّهُ وَلِيُّ الْمُؤْمِنِينَ ۝

The most worthy of Abraham among the people are those who follow him, and this Prophet and those who believe. And God is close to the believers ۝

[86] قُلْ صَدَقَ اللَّهُ ۗ فَاتَّبِعُوا مِلَّةَ إِبْرَاهِيمَ حَنِيفًا وَمَا كَانَ مِنَ الْمُشْرِكِينَ ۝

Say: "God has told the truth. So follow the way of Abraham, the upright one (*ḥanīf*). He was not a polytheist."

here the specific Islamic monotheism of Abraham ﷺ). Abū al-Ḥusayn al-Baṣrī makes a similar linguistic argument that *millah* refers to the fundamentals of religion (الأصول) and not legal legal matters (الفروع), because then one would be able to refer to the schools of law of Abū Ḥanīfah or al-Shāfi‘ī as their respective *millah*s, which is not the given nomenclature. A stronger argument from him which was seconded by others after, is that the laws of Abraham ﷺ were not transmitted, and thus it would not make sense for God to command to something unknown, and thus it would need to refer to religious fundamentals. Al-Juwaynī, who believes the Prophet ﷺ was not obliged to directly follow prior prophets in matters of law, but perhaps through specific commands that revived them, argues that if law is intended here by following Abraham ﷺ, than the Prophet ﷺ is not directly following Abraham ﷺ, but perhaps receiving commands that renew dictates given to Abraham ﷺ. If following him in law was intended, there would have been specific reports of the Prophet ﷺ acting on laws that were followed by Abraham ﷺ. Rather, al-Juwaynī says that he sides with the interpretation of Qur’ānic exegetes that the word ‘follow’ is in reference to monotheism. Al-Ghazālī raises the interesting point that verse 2:130 asserts that those who do not follow the *millah* of Abraham ﷺ are fools, and because there were prophets that upheld different laws than he did and theologically could not be considered fools, then what is meant by *millah* must be monotheism. Those who uphold that this verse is inclusive of Abrahamic law might question why a command to “follow” is needed to adhere to monotheism and belief in God, a matter that one should be required to conclude a priori (عقلا), rather than through received knowledge and imitation (سمعا) of Abraham ﷺ.[87]

[87] Noted by al-Jaṣṣāṣ (vol. 3, pg 20), Abū al-Ḥusayn al-Baṣrī vol. 2, pg. 341., al-Bājī (pg. 42), al-Juwaynī in *al-Burhān* (vol. 1, pg. 190), al-Juwaynī in *al-Talkhīṣ* (vol. 1, pgs. 266 & 268), al-Sarakhsī (vol. 2, pg. 102), al-Sam‘ānī (vol. 1, pg. 316 & 320), al-Ghazālī in *al-Mustaṣfā* (pg. 167), al-Kalwadhānī (vol. 2, pg. 422), Ibn ‘Aqīl (vol. 4, pgs. 178-179), al-Rāzī (vol. 3, pgs. 272-275), al-Āmidī (vol. 4, pg. 142, 146), al-Zanjānī (pgs. 369-370), al-Armawī (vol. 1, pg. 444-445), al-Qarāfī in *Sharḥ tanqīḥ al-fuṣūl* (pg. 298-299)

[4] Qur'ān 4:163[88]:

> Indeed, we have revealed to you [Oh Muḥammad], as We revealed to Noah and the prophets after him. And We revealed to Abraham, Ishmael, Isaac, Jacob, the Descendants (al-asbāṭ), Jesus, Job, Jonah, Aaron, and Solomon, and to David we gave the Zabūr. ۞

The verse may suggest that the Prophet ﷺ was given the same matters as those that came before him, including the same laws ("as We revealed"). Those who believe the Prophet ﷺ didn't by default inherit from the prior prophets, only taking what was specific to him (which may have matched their law in instances), would argue that this verse merely refers to the mode of revelation being the same across prophets, and perhaps also the consistent message of belief shared among them all, not specific laws.[89]

[5] Qur'ān 5:43-44[90] which outwardly appears to uphold the guidance found in the Torah for the prophets who surrendered/submitted themselves (الذين أسلموا), the Prophet Muḥammad ﷺ seemingly being one of them. The verse is believed to have been revealed regarding the Prophet's determination in a case of adultery between two Jews. In the well-known incident, the Prophet ﷺ demands that the Torah's judgement on the matter be referred to, and after an apparent coverup from some members of the Medinese Jewish community wishing to hide that

---

[88] إِنَّا أَوْحَيْنَا إِلَيْكَ كَمَا أَوْحَيْنَا إِلَىٰ نُوحٍ وَالنَّبِيِّينَ مِن بَعْدِهِ ۚ وَأَوْحَيْنَا إِلَىٰ إِبْرَاهِيمَ وَإِسْمَاعِيلَ وَإِسْحَاقَ وَيَعْقُوبَ وَالْأَسْبَاطِ وَعِيسَىٰ وَأَيُّوبَ وَيُونُسَ وَهَارُونَ وَسُلَيْمَانَ ۚ وَآتَيْنَا دَاوُودَ زَبُورًا ۞

[89] See Abū al-Ḥusayn al-Baṣrī (vol. 2, pgs. 340-341), al-Kalwadhānī (vol. 2, pg. 423), al-Rāzī (vol. 3, pgs. 272-275), al-Āmidī (vol. 4, pg. 142), al-Armawī (vol. 1, pg. 444-445)

[90] وَكَيْفَ يُحَكِّمُونَكَ وَعِنْدَهُمُ التَّوْرَاةُ فِيهَا حُكْمُ اللَّهِ ثُمَّ يَتَوَلَّوْنَ مِنْ بَعْدِ ذَٰلِكَ وَمَا أُولَٰئِكَ بِالْمُؤْمِنِينَ ۞ إِنَّا أَنزَلْنَا التَّوْرَاةَ فِيهَا هُدًى وَنُورٌ ۚ يَحْكُمُ بِهَا النَّبِيُّونَ الَّذِينَ أَسْلَمُوا لِلَّذِينَ هَادُوا وَالرَّبَّانِيُّونَ وَالْأَحْبَارُ بِمَا اسْتُحْفِظُوا مِن كِتَابِ اللَّهِ وَكَانُوا عَلَيْهِ شُهَدَاءَ ۚ فَلَا تَخْشَوُا النَّاسَ وَاخْشَوْنِ وَلَا تَشْتَرُوا بِآيَاتِي ثَمَنًا قَلِيلًا ۚ وَمَن لَّمْ يَحْكُم بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْكَافِرُونَ ۞

their own legal practice in this case was different from the scripture of the Torah, the Prophet ﷺ has the text in question read, and the punishment is carried out in accordance with it[91]:

[91] The ḥadīth in question appears in several early ḥadīth compendia. In one of the earliest examples, found in the Muwaṭṭa' of Mālik (d. 179 AH) as reported by 'Abd Allāh b. 'Umar (d. 73 AH), some Jews come to the Prophet ﷺ and inform him that a man and woman have committed *zinā* (the term likely refers to adultery in this context, at least in the way Muslims have interpreted this text given their own law, but it can indicate fornication as well, which carries with it separate legal rulings in Islamic and biblical/Talmudic law). The Prophet ﷺ asks them what is found in the Torah regarding stoning, and they respond that they instead shame and lash those who commit *zinā*. The Prophet ﷺ responds that they have lied and that the Torah commands stoning. He asks that the Torah be brought, and they hide the verses in question, reading instead what is before and after it. The Jewish convert to Islam, 'Abd Allāh b. Salām commands them to reveal the stoning verse that they are hiding, and the Prophet ﷺ then commands that the be punishment be implemented. See: ibn Anas, *Al-Muwaṭṭa'*. Vol. 5, pg 1195.; In another early version reported by Abū Hurayrah and found in the *muṣannaf* of 'Abd al-Razzāq al-Ṣan'ānī (d. 211), we have some additional details. In this version of the report, the incident is identified as the first case where the Prophet implemented stoning. It is Jewish scholars who forward the case to the Prophet ﷺ, hoping that he will order something laxer than the stoning prescribed in the Torah, given their sense that he is a prophet that was sent to make laws easier (إن هذا النبي بعث بتخفيف). The Jews also specify to the Prophet ﷺ that the case was one of adultery ( زنيا بعدما أحصنا). The Prophet ﷺ then goes to the *beth midrash* of the Jews (بيت مدراس اليهود) and asks those studying the Torah what the scripture has to say about those who commit adultery. He is told that they are publicly shamed and their faces are blackened with charcoal (التحميم). The Prophet then presses one of the young rabbis who is silent, and he admits that stoning is the punishment prescribed in the text of the Torah. The Prophet inquires why the law was made lax. He is told that someone who was close to one of their kings committed adultery and the punishment was not carried out given his status. There was then outcry when the punishment was expected on someone else (i.e. a man of lesser standing), so a compromise was made between all parties to ease the punishment to what it became. The Prophet ﷺ then responds, "I will adjudicate with what is in the Torah" (فإني أحكم بما في التوراة). This statement is clear in attributing the Prophet's command as being based on the contents of the Torah. See: 'Abd al-Razzāq al-Ṣan'ānī, *Al-Muṣannaf*, ed. Ḥabīb al-Raḥmān al-A'ẓamī, 2nd ed., 11 vols. (India: al-Majlis al-'Ilmī, 1983). Vol. 7, pg. 315.; In the *Musnad* of Imām Aḥmad (d. 241 AH), the report is that the Prophet witnessed a Jew whose skin was blackened and who had received lashings in punishment for *zinā*. The Prophet first asks the Jews if that is the punishment given in the Torah ﷺ, and is told that it is. He then demands that a Jewish scholar swear on God, who revealed the Torah ﷺ on Moses ﷺ, to confirm whether it is as such in the Torah. The scholar, under religious oath, says that it is not, and that stoning is the punishment. He says that zinā had become common among the elite in society, and that the matter had gotten to the point that the punishment was not enacted on the elite, but was on those of lower status. The community then came to an agreement that a fair punishment should be enacted that both the rich and the poor be held to: coloring of the skin as a mark of shame, and lashes. The Prophet ﷺ then states that he is the best individual to revive a commandment of God that they (the Jews) had abandoned ( اللهُمَّ إِنِّي أَوَّلُ مَنْ أَحْيَا أَمْرَكَ إِذْ أَمَاتُوهُ). See Abū 'Abd Allāh Aḥmad b. Muḥammad b. Ḥanbal, *Musnad Al-Īmām Aḥmad b. Ḥanbal*, ed. Shu'ayb al-Arna'ūṭ and 'Ādil Murshid, 1st ed. (Mu'assisat al-Risālah, 2001). Vol. 30, Pgs. 489-491. In a variant of the report in the *Musnad*, the Prophet ﷺ refers to the command of God as a *sunnah* that the Jews abandoned. See ibid., vol. 30, pg. 610.; There is much discussion of this particular incident and the place of stoning in Islamic Law. A well-known report from 'Umar has the Caliph claim that stoning was found as a punishment in the Qur'ān, only to be abrogated from the text, but as he argued, still in practice. Though this project will not engage with this case in depth, al-Samarqandī offers an interesting attempt at understanding the report of 'Umar that is worth sharing: *zinā* had become common at some point, and thus the need for the strict verse of stoning (that is no longer extant). When the verse's objective was realized and *zinā* became rare, the verse was removed from the scripture and a softer punishment was sufficient. When the needs of the community dictated it however, it became prescribed that stoning and lashings were needed in different cases. See al-Samarqandī, *Mīzān al-'uṣūl* (pg. 479)

And how is it that they (the Jews) come to you for judgment while they have the Torah, in which is the commandment of God? Then they turn away, even after that, and they are not believers. ۞

Surely We sent down the Torah, wherein is guidance and light; the Prophets who surrendered themselves (الذين أسلموا) gave judgment with it for the jews, as did the masters and the rabbis, following such portion of God's Book as they were given to keep and were witnesses to. So fear not men, but fear Me; and sell not My signs for a little price. Whoso judges not according to what God has sent down - they are the unbelievers. ۞

This verse and the stoning case related to it (see footnote above) posed an interesting conundrum for the parties in this debate. While the earlier verses' broad endorsement of pre-Muḥammadan praxis and law could be restricted to examples of legally relevant material documented in the Qur'ān and ḥadīth, this verse and the related incident specifically suggest that the Torah itself was a source of law for the Prophet ﷺ, and that those who did not follow its injunctions – e.g. the Jews referenced in this verse and others - were committing unbelief. For those who uphold the utility of pre-Muḥammadan law, the Prophet's reference to the bible in this instance was not inherently problematic, and Muslim concerns regarding this scripture being altered and thus unusable were satisfied by the fact the Prophet ﷺ would have had access through inspiration from God about what was true within it. After all, in the incident in question, the Prophet ﷺ was somehow aware of the coverup before he ordered the contents of the text be made public. However, the Quranic verse's condemnation of those Jews who did not refer to this scripture still posed a problem, as it would suggest that Jews and Muslims (and not just prophets) were to refer to "what God has sent down," outwardly implying the Torah in this passage.

Al-Jaṣṣāṣ and others after him like al-Sarakhsī, who accepted pre-Muḥammadan law but through the medium of Qur'ān and ḥadīth, are forced to negotiate between the accepted Muslim belief that the Jews were expected to follow the Prophet's sharī'ah along with the commandment found here for them to follow the Torah. He argues that the Jews (and by extension, others) were being condemned here not for rejecting the ruling of stoning as found in the Torah, but for rejecting the ruling of stoning which had become the law of the Prophet, even if it was the law of Moses ﷺ before. It was their rejection of stoning by virtue of their rejection of the Prophet ﷺ that is the reason for their disbelief. The pre-Muḥammadan sharī'ah *became* the sharī'ah of the Prophet, and all are obliged to follow it by virtue of its attribution to the final Prophet, not it being from the Torah. No special status is being given to the Jews here to practice a separate law, since as al-Jaṣṣāṣ points out, the Prophet ﷺ was sent to all of humanity. Others, like the Ḥanafī al-Dabbūsī may have been okay with accepting that the Prophet stoned by the Torah (his having access to revelation would also mean that any falsities in the text would not have posed a problem for him), but he does suggest the somewhat exceptional nature of this incident, by stating that it was the *first* time the Prophet stoned when he did so by the Torah. The Prophet's later practice may have differed from the biblical law, and in fact, the Ḥanafī al-Sarakhsī argues that the Islamic condition of *Iḥṣān* for stoning, i.e. marriage (so adultery as opposed to fornication) was an abrogation to the way it was practiced in the Jewish case.

Ibn Ḥazm, who is vehement in his critiques against the usage of pre-Muḥammadan law asserts that any Muslim who believes the Prophet ﷺ stoned the two Jews in obedience with the Torah and *not* because of a commandment from God in the sharī'ah given to him has left the fold of Islam, because such a statement would mean the Prophet violated what he was commanded with in favor of the Torah. The Prophet was also commanded with very specific laws regarding

stoning in cases of *zinā* that were distinct from the Torah, namely that it only applies where the person has fulfilled the Islamic condition of *Iḥṣān* (إحصان). It is also not possible that the Prophet referred to a text that he was separately informed in the Qur'ān was altered, he argues. He criticizes the selective application of an Irāqī Mālikī judge, Ismā'īl b. Ishāq (d. 282), who believed the opposite - that the Prophet's stoning of the two Jews was indeed in accordance with the Torah - because he is selective in his application of this report, refusing to apply such a punishment on Jews who commit adultery, believing that such cases should be referred back to the Jewish community to be dealt with by them instead. He stops short of declaring the judge an apostate, saying that if ignorant people became apostates because of their ignorance, then he would be most deserving of being such because of the enormity of his statement.

The Mu'tazilī Abū al-Ḥusayn al-Baṣrī suggests that this may have been the only case where the Prophet ﷺ explicitly referred to the Torah on a legal matter, namely that of stoning. He suggests that it was exceptional, and thus the Prophet ﷺ did not have the practice of referring to the Torah, and that it is further not clear whether he was even referring to the Torah to derive this ruling. He and others will suggest that the Prophet's calling for the Torah was merely to prove his own truthfulness about its content and the cover-up of the Jews, a cover-up which would have also included prophecy of his coming as is asserted in various Quranic verses. Additionally, if he was referring to it for law, then he would have made reference to the Torah for the particulars and legal criteria related to the law of stoning. The idea that the Torah was altered would also be reason for why the Prophet ﷺ could not refer to the Torah, and the Jewish transmission of the Torah was also not mass-transmitted (*mutawātar*), but rather was the solitary transmission (*aḥād*) of non-believers, which could not be accepted. Even if the Prophet ﷺ relied on converted Rabbis like 'Abd Allāh b. Salām, their transmission of the Torah could not have

been considered reliable given the absence of a contiguous chain of transmission. Al-Rāzī suggests that the person reading the text in the incident in question could also not be relied upon for transmission, and thus the Prophet's calling on it to be read was merely to prove the obstinance of the Jews of Medina. Regarding the Quranic verse which notes the prophets' reference to the Torah for law, Abū al-Ḥusayn suggests that the verse in question could either be taken to mean that the prophets referred to the entirety of the Torah, or, because it references all of the prophets including those with laws that abrogated what is in it, it can only be referring to what is universally held by all the prophets, namely the notion of divine justice and Islamic monotheism, not specific laws.

Al-Qarāfī admits challenges brought up by this particular tradition and in reconciling it with orthodoxy. For one, the Prophet ﷺ received testimony in the legal case from disbelieving Jews, which would mean accepting the reporting of a disbeliever, which conflicts with formalized Islamic law. Furthermore, versions of this report have the Prophet ﷺ declare that he was reviving a law that the Jews killed in neglecting the stoning punishment, which would indicate that the Prophet ﷺ was indeed depending on the Torah as he came across it. Al-Qarāfī concludes that none of this can be explained unless the Prophet ﷺ received separate revelation regarding its contents and regarding the mandate to follow it (as opposed to depending on the Torah itself as it was before him). Al-Qarāfī does point out some interesting features about this tradition, however, that further complicate attempts at deriving legal precedent from it. For one, the incident in question appears to have happened when the Prophet ﷺ first entered Madinah when there were no sanctioned punishments (حدود) in place yet, and the specific Islamic stoning guidelines were not in order yet, indicating that this was an exceptional case. The Ḥanafī al-Dabbūsī also notes that this reference to the Torah occurred only in the first instance of the

Prophet stoning. Furthermore, he points out how in some versions of this report, Ibn ‘Umar narrates in the report that the punishment that the Muslims practiced at the time was flogging, in contrast to the stoning that was applied on the Jews in the report, and thus the argument that the Prophet ﷺ followed the prior law would not be the case (since the Muslims were practicing a different law). As for the legal import of this report, al-Qarāfī suggests it can be cited to uphold the punishment of stoning for disbelievers who commit *zinā*, not Muslims, who have their own laws.

For Ibn Ḥazm, the verse’s reference to prophets in the plural doesn’t mean that it is inclusive of all prophets. This is a position held by others as well. Rather, it is referring to a subclass, the Israelite prophets, who were also “Muslims”, i.e. ones who “surrendered themselves”/الذين أسلموا, in the same way other prophets did, as e.g., Noah ﷺ in Qur’ān 10:72[92], who came before the Torah and could not be one of those addressed here in the verse. Al-Ghazālī entertains the possibility that all of the prophets could have given laws that had parallels in the Torah, but based in their own commandments, which tacitly acknowledges the possibility that many Islamic laws, though commanded to the Prophet anew, existed prior as well. Al-Āmidī suggests that the verse should be read as a descriptive, that prophets have governed by the Torah, and not an injunction to do so.

Ibn Ḥazm attempts to reconcile the verses commanding obedience to the way of Abraham ﷺ and those that draw distinction between the Muslim community and the Jews and Christians. He argues that the only sharī‘ah that the Prophet’s community was commanded with was the original religion of Abraham ﷺ, not that of the Jews or the Christians, as declared in

---

[92] فَإِن تَوَلَّيْتُمْ فَمَا سَأَلْتُكُم مِّنْ أَجْرٍ ۖ إِنْ أَجْرِيَ إِلَّا عَلَى اللَّهِ ۖ وَأُمِرْتُ أَنْ أَكُونَ مِنَ الْمُسْلِمِينَ۝

“And if you turn away, then no payment have I asked from you. My reward is from God alone, and I have been commanded to be of the Muslims (the submitters).۝

Qur'ān 2:135 (which is a reference to the *millah* of Abraham ﷺ in opposition to religion of the Jews and Christians). And as affirmed in Qur'ān 3:65, the Torah was revealed *after* Abraham ﷺ, which means the Prophet and his community could not be commanded with something that came *after* and which was different from their original religion which was revealed during the time of Abraham ﷺ. The argument depends on the *millah* of Abraham ﷺ signifying law.

Al-Sarakhsī, who supports the utility of pre-Muḥammadan law, notes the existence of Qur'ān 17:2[93], which specifies the revelation given to Moses ﷺ as a "guidance for the Children of Israel." Though he doesn't bring it up in the context of our discussion of Qur'ān 5:43-44, it is noted here because of its potential relevance for the discussion. He notes that verse 17:2 doesn't mean that the Torah is *only* a guidance for the Children of Israel, just as the Qur'ān notes that it is a guidance for the God-fearing in Qur'ān 2:2 while also being a guidance for others as well.[94]

Parallel to Qur'ān 5:43-44 is Qur'ān 5:46-47[95], which states that those given the Gospel are to follow what is therein:

> We sent Jesus the son of Mary in their footsteps in confirmation of the Torah that had been sent before him, and We gave him the Gospel: in it is

---

[93] وَآتَيْنَا مُوسَى الْكِتَابَ وَجَعَلْنَاهُ هُدًى لِّبَنِي إِسْرَائِيلَ أَلَّا تَتَّخِذُوا مِن دُونِي وَكِيلًا۝
And We gave moses the Scripture, and made it a guidance for the children of Israel: "Do not take other than me a guardian"۝

[94] See references by al-Jaṣṣāṣ (vol. 3, pgs. 27-28), al-Dabbūsī (pg. 254), Abū al-Ḥusayn al-Baṣrī (vol. 2, pgs. 338-342), Ibn Ḥazm in *al-Iḥkām* (vol. 5, pgs. 161-162, 173-174, & 178-179), Abu Ya'lā (vol. 3, pg. 759), al-Juwaynī in *al-Talkhīṣ* (vol. 1, pgs. 266 & 270-271), al-Sarakhsī (vol. 2, pg. 101, 103-105), al-Sam'ānī (vol. 1, pg. 317 & 320-321), al-Ghazālī in *al-Mustaṣfā* (pgs. 167-168), al-Kalwadhānī (vol. 2, pg. 421-422), Ibn 'Aqīl (vol. 4, pgs. 178-179), al-Samarqandī (pg. 470), al-Rāzī (vol. 3, pg. 269, 272-275), al-Āmidī (vol. 4, pgs. 142, 144, & 146), al-Zanjānī (pgs. 369-370), al-Armawī (vol. 1, pg. 443-445), al-Qarāfī in *Nafā'is al-uṣūl* (vol. 6, pgs. 2375-2377).; The Ḥanafī al-Sarakhsī makes the technical point that for the Ḥanafī's, though the incident of stoning shows that this biblical law was part of Islamic law at some point, *iḥṣān* became part of the Islamic legal conditions on stoning at a later period, which means that this law was ultimately abrogated. For the Ḥanafī's the addition of new conditions to a law indicates an abrogation. See: al-Sarakhsī, *Uṣūl Al-Sarakhsī*. Vol. 2, pg. 100.

[95] وَقَفَّيْنَا عَلَىٰ آثَارِهِم بِعِيسَى ابْنِ مَرْيَمَ مُصَدِّقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ التَّوْرَاةِ ۖ وَآتَيْنَاهُ الْإِنجِيلَ فِيهِ هُدًى وَنُورٌ وَمُصَدِّقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ التَّوْرَاةِ وَهُدًى وَمَوْعِظَةً لِّلْمُتَّقِينَ۝
وَلْيَحْكُمْ أَهْلُ الْإِنجِيلِ بِمَا أَنزَلَ اللَّهُ فِيهِ ۚ وَمَن لَّمْ يَحْكُم بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْفَاسِقُونَ۝

guidance, light, and a confirmation of the Torah that was revealed before - a guide and lesson for those who take heed ۞ And let the People of the Gospel judge by what God has revealed therein. And whoever does not judge by what God has revealed – those are the disobedient ones ۞

Ibn Ḥazm notes that this verse is cited as proof of pre-Muḥammadan law becoming the law of the Prophet because he would have judged by what God had revealed – the Gospel. He points out that Muslim are in agreement that this verse is abrogated in meaning, since anyone who refers to the Gospel for law is considered a disbeliever.[96] It is worth noting that a prominent Kufan reading of this verse has the voweling on (وليحكم) as (ولِيَحْكُم), with the meaning of "…so that the people of the Gospel…" instead of "and let…," which would connect this verse with the previous verse describing the past revelation of the Gospel to Jesus ﷺ. This variant voweling would render the meaning to be a clearer reference to past followers of Jesus ﷺ, i.e. an abrogated meaning not applicable on the Muslim community.[97] Even though both Qur'ān 5:43-44 and Qur'ān 5:46-47 make parallel declarations that those who do not adjudicate by what has been revealed are committing disbelief or disobedience (and in the two sets of verses, the Torah and the Gospel are noted respectively), Qur'ān 5:48[98] and 5:49[99], from the same passage, indicate that the Prophet had his own revealed scripture to adjudicate by[100]:

---

[96] Ibn Ḥazm (Vol. 5, pg. 173)

[97] Muḥammad b. Jarīr al-Ṭabarī, *Jāmi' al-Bayān Fī Ta'wīl al-Qur'ān*, ed. Aḥmad Muḥammad Shākir, 1st ed., 24 vols. (Mu'assisat al-Risālah, 2000). Vol. 10, pg. 374.

[98] وَأَنزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ وَمُهَيْمِنًا عَلَيْهِ ۖ فَاحْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ ۖ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ مِنَ الْحَقِّ ۚ لِكُلٍّ جَعَلْنَا مِنكُمْ شِرْعَةً وَمِنْهَاجًا ۚ وَلَوْ شَاءَ اللَّهُ لَجَعَلَكُمْ أُمَّةً وَاحِدَةً وَلَٰكِن لِّيَبْلُوَكُمْ فِي مَا آتَاكُمْ ۖ فَاسْتَبِقُوا الْخَيْرَاتِ ۚ إِلَى اللَّهِ مَرْجِعُكُمْ جَمِيعًا فَيُنَبِّئُكُم بِمَا كُنتُمْ فِيهِ تَخْتَلِفُونَ ۞

[99] وَأَنِ احْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ أَن يَفْتِنُوكَ عَن بَعْضِ مَا أَنزَلَ اللَّهُ إِلَيْكَ ۖ فَإِن تَوَلَّوْا فَاعْلَمْ أَنَّمَا يُرِيدُ اللَّهُ أَن يُصِيبَهُم بِبَعْضِ ذُنُوبِهِمْ ۗ وَإِنَّ كَثِيرًا مِّنَ النَّاسِ لَفَاسِقُونَ ۞

[100] Ibn Ḥazm (vol. 5, pg. 177)

We sent to you [Muhammad] the Scripture with truth, confirming what came before it of Scripture, and as a criterion/protector/witness (مهيمنا عليه) over it: so judge between them with what God has sent down. Do not follow their whims over the truth that has come to you. We have assigned a law and a path to each of you. If God had willed, He would have made you one community, but He wanted to test you through that which He has given you, so compete in doing good: the return of all of you is to God and He will make clear to you the matters you differed about. ۞ And so judge between them with what God has revealed, and do not follow their whims, and beware of them, lest they tempt you away from some of what God has revealed to you. If they turn away, be assured that God wishes to afflict them with some of their sins. Indeed, many people are disobedient.۞

These verses appear to privilege the specific Scripture given to the Prophet (i.e. the Qur'ān) as not only a confirmation (مصدقا) of what came before as was stated regarding the Gospel in the verse two verses prior in Qur'ān 5:46, but now adds that it is a criterion/protector/witness (مهيمنا عليه) over what came before, and tells the Prophet to judge by what has been revealed to him in particular ("…lest they tempt you away from some of what God has revealed to you"). The prior verses commanding obedience to revelation are therefore rhetorically addressing past communities. However, even if the Prophet's revelation had privileged status over the prior scriptures, this does not negate the possible probative weight the prior Scriptures may have had, since this verse only explicitly pits the Prophet's revelation against the 'whims' of the other communities, not their scriptures.

[6] Qur'ān 5:45[101], from the same passage, which notes the law of retaliation as having been revealed in the Torah, and one which is to be followed:

> And therein We had ordained for them: 'A life for a life, and an eye for an eye, and a nose for a nose, and an ear for an ear, and a tooth for a tooth, and for all wounds, retaliation. But whosoever forgoes it as charity, it will be for him an expiation. Those who do not judge by what Allah has revealed are indeed the wrong-doers. ۞

This verse may be read as connected with the statement in Qur'an 5:43-44 to follow the guidance of the Torah. Because the Prophet's sharī'ah also upholds the law of retaliation, *al-qiṣāṣ*, and because the end of this verse might be taken as a commandment to obey this pre-Muḥammadan revelation, the Prophet's sharī'ah on retaliation derived itself from the Torah. However, it is by virtue of it now having become part of the sharī'ah of the Prophet ﷺ and being revealed in the Qur'ān (i.e. not derived from the Torah itself) that it is to be followed by the community of Muslims for the majority of jurists who upheld the utility of pre-Muḥammadan law but only when it came through Muḥammadan sources.[102] For those who are opposed to the utility of pre-Muḥammadan law, this verse is *not* evidence that the law as found in the Torah is the basis of the Islamic laws of retaliation, which are in fact based in separate injunctions in

[101] وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنفَ بِالْأَنفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ ۚ فَمَن تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَّهُ ۚ وَمَن لَّمْ يَحْكُم بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ ۞

[102] Noted by al-Jaṣṣāṣ (Vol. 3, pg. 28), Abu Ya'lā (vol. 3, pg. 759)

Qur'ān 2:178[103], Qur'ān 2:194[104], Qur'ān 16:126[105], Qur'ān 42:40[106] - which are addressed clearly at the Prophet's followers and slightly vary in rules by including indemnity - in addition to ḥadīth of the Prophet[107]. Thus, the law of retaliation may have had a parallel in a prior law, given that both laws are from God, but the law is binding on the Prophet's community by virtue of these separate verses. Ibn Ḥazm points out that indemnity payments (الأرش) are possible in the Prophet's law of retaliation, something that he suggests is not part of the Torah prescriptions. As will be noted in a later chapter, the Torah in fact prohibits the paying of blood money for cases where blood is spilled, which the Muslim sources were aware of. The verse therefore is taken as referring to the Jews of the past (see earlier comments).

Some will note evidence that the Prophet's rulings on retaliation were in fact based on the Torah commandment found in Qur'ān 5:45, because of an incident where he specifically recommended the punishment of retaliation for a maidgirl's tooth which was broken, and after she refused to initially accept indemnity. The Prophet upholds retaliation in this case, stating that it is from the Scripture of God ("كتاب الله القصاص"). The Prophet's suggested punishment here –

---

[103] يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى ۖ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ ۚ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ۗ ذَٰلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ ۗ فَمَنِ اعْتَدَىٰ بَعْدَ ذَٰلِكَ فَلَهُ عَذَابٌ أَلِيمٌ ۞
OH YOU WHO BELIEVE, PRESCRIBED FOR YOU IS RETRIBUTION IN CASES OF MURDER: THE FREE FOR THE FREE, THE SLAVE FOR THE SLAVE, THE FEMALE FOR THE FEMALE. HOWEVER, FOR ONE FORGIVEN BY HIS BROTHER, THEN RECOURSE TO PURSUING [THE CULPRIT] WITH WHAT IS FAIR, AND PAYMENT WITH GOODNESS. THAT IS A RELIEF FROM YOUR LORD AND A MERCY. AND WHOEVER TRANSGRESSES AFTER THAT, FOR THEM IS A PAINFUL PUNISHMENT ۞

[104] الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَاتُ قِصَاصٌ ۚ فَمَنِ اعْتَدَىٰ عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَىٰ عَلَيْكُمْ ۚ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ ۞
A SACRED MONTH FOR A SACRED MONTH: FOR VIOLATIONS RETRIBUTION. IF ANYONE COMMITS AGGRESSION AGAINST YOU, THEN SHOW AGGRESSION IN LIKE MATTER AS DONE ON YOU, BUT BE WARY OF GOD, AND KNOW THAT GOD IS WITH THOSE WHO ARE WARY OF HIM ۞

[105] وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُم بِهِ ۖ وَلَئِن صَبَرْتُمْ لَهُوَ خَيْرٌ لِّلصَّابِرِينَ ۞
AND IF YOU PUNISH, PUNISH WITH THE LIKE OF WHAT YOU WERE HARMED WITH. AND IF YOU OPT FOR PATIENCE, IT IS BETTER FOR THOSE WHO ARE PATIENT ۞

[106] وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِّثْلُهَا ۖ فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ ۚ إِنَّهُ لَا يُحِبُّ الظَّالِمِينَ ۞
AND RETRIBUTION FOR AN EVIL ACT IS EVIL LIKE IT, BUT WHOEVER PARDONS AND MAKES RECONCILIATION – HIS REWARD IS ON GOD. VERILY, HE DOES NOT LIKE THE UNJUST ۞

[107] E.g. the Prophet ﷺ is reported to have said that the blood of Muslims is equal in weight (تتكافأ دماؤهم) along with specifying rules of retaliation and blood money. See Abū 'Abd Allāh Aḥmad b. Muḥammad b. Ḥanbal, *Musnad Al-Īmām Aḥmad b. Ḥanbal*, ed. Shu'ayb al-Arna'ūṭ and 'Ādil Murshid, 1st ed. (Mu'assisat al-Risālah, 2001). Vol. 11, pg. 587.

because the case involved a tooth – could be taken as proof that biblical law (as presented in Qur'ān 5:45) was the criteria for punishment, since the referenced biblical idea in the verse specifically mentions retaliation as a punishment for a broken tooth, which is specific to the ḥadīth in question.[108] Ibn Ḥazm will point out that the ultimate acceptance of indemnity in this case makes it clear that the rule of retaliation is not based on the Torah's elaboration of it, but rather what was specific to the Prophet's community.[109]

[7] The Prophet ﷺ commanded fasting on the day of 'Āshūrā' after seeing the Jews fast this day in celebration of their deliverance from Pharoah, saying that he had more of a right to his forerunning prophet Moses ﷺ than they. The commandment to fast this day was later replaced with the Ramadan fast. The Prophet's adoption of this fast suggests that the practice of the Jewish community had some legal bearing for the Prophet, while the opposition would argue that he only commanded it because God had commanded him to do so, or that he merely recommended it to honor the day, and that this was also a day that the polytheist Quraysh reportedly fasted and which the Prophet ﷺ did out of piety.[110]

[108] The ḥadīth is about al-Rubayyi', a Muslim woman who broke the front tooth of a maid girl in the Prophet's time. The maidgirl initially refuses both to forgive Rubayyi' and offer any indemnity, and the Prophet ﷺ orders that the law of retaliation be applied. The maidgirl's representatives ultimately decide to pardon al-Rubayyi' in exchange for indemnity, and retaliation is not carried out. The tradition appears in the *ṣaḥīḥ* collections of al-Bukhārī and Muslim. See: al-Bukhārī, *Al-Jāmi' al-Musnad al-Ṣaḥīḥ (Ṣaḥīḥ al-Bukhārī)*. Vol. 3, pg 186, Vol. 6, pgs 24 and 52.; Also: Muslim b. al-Ḥajjāj al-Naysābūrī, *Al-Musnad al-Ṣaḥīḥ al-Mukhtaṣar (Ṣaḥīḥ Muslim)*, ed. Muḥammad Fu'ād 'Abd al-Bāqī, 5 vols. (Beirut: Dār lḥyā' at-Turāth al-'Arabī, n.d.). Vol. 3, pg. 1302.

[109] See Ibn Ḥazm (vol. 5, pg. 168 & 177), al-Shīrāzī in *al-Ma'ūnah* (pg. 46), Abū Ya'lā (vol. 3, pg. 760), al-Juwaynī in *al-Talkhīṣ* (vol. 2, pgs. 267 & 270-271), al-Ghazālī in *al-Mustaṣfā* (pg. 168), al-Kalwadhānī (vol. 2, pg. 418-419, 424-426), Ibn 'Aqīl (vol. 4, pgs. 178-179), al-Abyārī (vol. 2, pgs. 424-425), al-Āmidī (vol. 4, pgs. 142-143)

[110] Referenced by Ibn Ḥazm (vol. 5, pg. 178) and al-Samarqandī (pg. 470, 479-480). See the following reports, including versions indicating that this day was fasted by the Quraysh in pre-Islamic times as well, it also being the day that the Ka'bah was covered (كان يوما تُسْتَرُ فيه الكعبة): al-Bukhārī, *Al-Jāmi' al-Musnad al-Ṣaḥīḥ (Ṣaḥīḥ al-Bukhārī)*. Vol. 2, pg. 148, Vol. 3, pgs. 24, 43, 44, vol. 4, pg. 153, Vol. 5, pgs. 41, 70, Vol. 6, pgs. 24, 72, 96.

[8] Ḥadīth reports note that the Prophet ﷺ used to let down his forelock (سدل ناصيته) as the People of the Book used to and unlike the idolaters who used to part their hair. The report, documented as well in the *Saḥīḥ* of al-Bukhārī, has the Companion Ibn ʻAbbās explicitly comment that the Prophet ﷺ used to prefer agreeing with the People of the Book in matters where revelation did not come down. It is also noted that he began parting his hair at some later point (i.e. in disagreement with them). This can be taken as evidence that the practice of pre-Muḥammadan communities had some binding weight for the Prophet's law. Ibn Ḥazm argues, however, that this case is in fact evidence against the proponents of pre-Muḥammadan law, since the Prophet ﷺ in this case was acting in matters that were permissible to do in any way (مباح), and the debate for Ibn Ḥazm on this question of pre-Muḥammadan law was whether it is required for Muslims to follow a prior sharīʻah if we haven't been prohibited from something, whereas letting down one's hair is permissible to do in all ways, such that the Prophet ﷺ may have merely been acting on preference.[111] Ibn Ḥazm's critique doesn't seem to address the legal implications of the Prophet ﷺ preferring the practice of the People of the Book in this matter, or in matters where he didn't receive a command from God, which is fairly open-ended. Unfortunately, this rather significant example was not cited by many of those engaging in this debate, for or against the utilization of pre-Muḥammadan law. The rather encyclopedic al-Zarkashī (d. 794 AH) notes this evidence being cited by the Shāfiʻī Abū Bakr al-Ṣayrafī (d. 330 AH) in an unavailable work, with the latter making a similar argument as Ibn Ḥazm that this report is interpreted as referring to the Prophet ﷺ acting in optional matters. Al-Zarkashī also transmits from an unknown source the opinion that the People of the Book at the time of the Prophet ﷺ were practicing whatever

[111] أَنَّ رَسُولَ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، كَانَ يَسْدِلُ شَعَرَهُ، وَكَانَ المُشْرِكُونَ يَفْرُقُونَ رُءُوسَهُمْ، فَكَانَ أَهْلُ الكِتَابِ يَسْدِلُونَ رُءُوسَهُمْ، وَكَانَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يُحِبُّ مُوَافَقَةَ أَهْلِ الكِتَابِ فِيمَا لَمْ يُؤْمَرْ فِيهِ بِشَيْءٍ، ثُمَّ فَرَقَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَأْسَهُ
See: al-Bukhārī. Vol. 7, pg. 162.; Also: al-Naysābūrī, *Al-Musnad al-Ṣaḥīḥ al-Mukhtaṣar (Ṣaḥīḥ Muslim)*. Vol. 4, pg. 1817.

was left from the religion of the prior prophets, and so the Prophet ﷺ liked that he match them in matters that were not altered, in accordance to verses like 6:90 that called him to follow the guidance of prior prophets.[112]

[9] The Prophet ﷺ commanded that whoever sleeps through a prayer or forgets it should make it up when they remember, reciting as proof the verse "… AND ESTABLISH PRAYER FOR/AT MY REMEMBRANCE" (Qur'ān 20:14[113]), which was a command given to Moses ﷺ in the Qur'ān.[114] The Prophet's reference to something relevant for a prophet before him, and to ground a position of legal significance for Muslims in that precedence can be taken as proof that pre-Muḥammadan practice was binding on him. The opposition will suggest that the Prophet ﷺ did not cite the verse in obligating that prayers be made up. Rather, he may have cited it to tell the Companions that they are obliged to do so just as Moses ﷺ was before, and to additionally show them the interpretation of the verse in question.[115]

[10] The Prophet ﷺ is reported to have said that the religion of all of the prophets is one,[116] which might indicate the laws practiced by Abraham ﷺ, those given in the Torah, and those in the Prophet's sharī'ah are one. Similar to the critique noted earlier, the recognized differences across different sharī'ahs could be taken as evidence that this statement must be referring not to

---

[112] Referenced by Ibn Ḥazm (vol. 5, pg. 179), al-Zarkashī in *al-Baḥr al-muḥīṭ* - 1992 ed. (vol. 6, pg. 43) [the reference is to al-Ṣayrafī's book *al-Bayān fī dalā'il al-aḥkām*]

[113] إِنَّنِي أَنَا اللَّهُ لَا إِلَٰهَ إِلَّا أَنَا فَاعْبُدْنِي وَأَقِمِ الصَّلَاةَ لِذِكْرِي۝

[114] See: al-Bukhārī, *Al-Jāmi' al-Musnad al-Ṣaḥīḥ (Ṣaḥīḥ al-Bukhārī)*. Vol. 1, pg. 122.; Also: al-Naysābūrī, *Al-Musnad al-Ṣaḥīḥ al-Mukhtaṣar (Ṣaḥīḥ Muslim)*. Vol. 1, pgs. 471 and 477.

[115] See al-Bājī (pg. 71), al-Ghazālī in *al-Mustaṣfā* (pg. 168), al-Abyārī (vol. 2, pgs. 424-425), al-Āmidī (vol. 4, pg. 143)

[116] See, e.g.: Muslim b. al-Ḥajjāj al-Naysābūrī, *Al-Musnad al-Ṣaḥīḥ al-Mukhtaṣar (Ṣaḥīḥ Muslim)*, ed. Muḥammad Fu'ād 'Abd al-Bāqī, 5 vols. (Beirut: Dār Iḥyā' at-Turāth al-'Arabī, n.d.). Vol. 4, pg. 1837:

قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «أَنَا أَوْلَى النَّاسِ بِعِيسَى ابْنِ مَرْيَمَ، فِي الْأُولَى وَالْآخِرَةِ» قَالُوا: كَيْفَ؟ يَا رَسُولَ اللهِ قَالَ: «الْأَنْبِيَاءُ إِخْوَةٌ مِنْ عَلَّاتٍ، وَأُمَّهَاتُهُمْ شَتَّى، وَدِينُهُمْ وَاحِدٌ، فَلَيْسَ بَيْنَنَا نَبِيٌّ

law, but the fundamental religion of monotheism which was shared by all the prophets in Islamic theology.[117]

[11] The Prophet ﷺ is reported to have sent Mu‘ādh b. Jabal (d. 18 AH) to Yemen, and before doing so, establishing with him a procedure with which to decide on issues requiring his legal judgement. In the report, Mu‘ādh says that he will judge by what’s in the Scripture of God (كتاب الله), and if an answer is not there, then by the way (*sunnah*) of the Prophet, and if not there, by his own reasoned judgment (اجتهاد).[118] The open ended nature of “Scripture of God,” which does not by itself necessarily mean the Qur’ān, but could be inclusive of the Torah and Gospel per the Qur’ānic nomenclature, might imply that the Companions were authorized to refer to the scriptures of the Jews and Christians. This evidence is interesting, because it is being cited as evidence of a source other than the Qur’ān or sunnah being acceptable for Islamic law. Additionally, it is an example that speaks to lawgiving at a meta level. The obvious counter is that the Scripture of God is a reference to the Qur’ān as it is in almost all intra-Muslim contexts (and thus this report was also cited as evidence *against* the utility of pre-Muḥammadan law), though the acknowledgement that this reference could have linguistically carried this meaning during the Prophet’s time is noteworthy, and shows Muslim awareness of how these primary texts could be read to yield very interesting conclusions – in this case, the usability of the Torah, e.g., in matters of Islamic law.

[117] See Ibn Ḥazm (vol. 5, pg. 174). He cites as proof of different laws across different sharī‘ahs, Qur’ān 5:48, the idea that Jesus made permissible some matters that were made prohibited before (Qur’ān 3:50), how the rules of the Sabbath apply not on Muslims, the Jewish prohibition of animals with uncloven hoofs (كل ذي ظفر) for consumption (Qur’ān 6:146) that is not applicable on the Prophet’s community, and Jacob (Israel) ﷺ prohibiting matters that were once permissible in a prior law (Qur’ān 3:93).

[118] See, e.g., Abū ’Abd Allāh Aḥmad b. Muḥammad b. Ḥanbal, *Musnad Al-Īmām Aḥmad b. Ḥanbal*, ed. Shu’ayb al-Arna’ūṭ and ’Ādil Murshid, 1st ed. (Mu’assisat al-Risālah, 2001). Vol. 36, pg. 333.

Al-Ghazālī points out (and others follow his suit) another contention with this particular reading of the report: there is no evidence that Mu'ādh ever studied the Torah or Gospel or learned how to differentiate between what was altered and what was not. He did know the Qur'ān, however. If in fact the suggested reading were true, then it would have been needed for the Companions to have studied these other scriptures, in the same way they studied and memorized the Qur'ān. And they did no such thing. Those that cite this case, critique its use among unnamed proponents of pre-Muḥammadan law, and it is not cited by actual proponents of pre-Muḥammadan law who have written works of Islamic legal theory, likely because of this arguments' inclusion of sources other than the Qur'ān and *sunnah*. It is either possible that this evidence was championed by Muslims who are not represented in the formal legal theoretical tradition (at least that which has been available and reviewed by this study), or purely theoretical in origin. In a somewhat unrelated discussion of this report on whether the Companions exercised their owned reasoned judgement in legal matters while the Prophet was still alive (which the report suggests), the Mu'tazilite Abū al-Ḥusayn states that this report, being a report that has been transmitted through solitary chains of transmission (آحاد), could only offer probabilistic evidence regarding this issue. He comments that his own position is that it was not the habit of the Companions to do so, acknowledging that one or two may have, and he compares this to the Companions theoretically referring to the Torah for legal judgments: that it was not *what they normally did*, since these things would have been known about them. His comment is worth mentioning as an indirect acknowledgment that the Torah may have been an occasional source for early Muslims (which we will demonstrate in later chapters), and that this was not

necessarily seen as a heretical position by the authors we looked at, save a few such as Ibn Ḥazm.[119]

[12] al-Zarkāshī, who appears to have had a wide range of materials at his disposal, cites a few other evidences relevant for this debate not cited by others. One is a rather significant one that would be a second clear case of the Prophet ﷺ making reference to the Torah (the other being the stoning example examined earlier). In the report, documented in the *Mustadrak* of al-Ḥākim al-Naysābūrī (d. 405 AH), the Prophet states, "It is written in the Torah: whoever wishes to lengthen his life and increase his provisions, then let him maintain his ties of kin." In the famous and well-known iteration of this report found in the famous *Ṣaḥīḥ*s of al-Bukhārī and Muslim, the ascription to the Torah *is not* to be found. This example is not explicitly a 'legal' tradition, but it nonetheless covers an ethical and moral-imperative being derived from the Torah, which is likely the reason why al-Zarkashī includes it in this discussion. After noting this report, the author notes the problematic nature of referring to reports like these (that cite from the Torah) from individuals specifically not vetted by the Prophet ﷺ ( - والقول بجريان هذا في أخبار من لم يطلع النبي صلى الله عليه وسلم - عليه بعيد).[120] Interestingly, two *mitzvot* in the Torah are blessed with the reward of long life, the first is from the Ten Commandments (Exodus 20:12), "HONOUR THY FATHER AND THY MOTHER, SO THAT YOUR DAYS WILL BE LONG ON THE LAND WHICH YHWH,

[119] See Abū al-Ḥusayn al-Baṣrī (vol. 2, pgs. 243 and 339), al-Juwayni in *al-Talkhīṣ* (vol. 2, pg. 274), al-Sam'ānī (vol. 1, pg. 318), al-Ghazālī in *al-Mustaṣfā* (pg. 166), al-Kalwadhānī (vol. 2, pg. 419), al-Rāzī (vol. 3, pgs. 270-271), al-Āmidī (vol. 4, pg. 140-141, 143), al-Armawī (vol. 1, pg. 444), al-Qarāfī in *Sharḥ tanqīḥ al-fuṣūl* (pg. 300), and others in appendix

[120] مَكْتُوبٌ فِي التَّوْرَاةِ مَنْ سَرَّهُ أَنْ تَطُولَ حَيَاتُهُ وَيُزَادَ فِي رِزْقِهِ فَلْيَصِلْ رَحِمَهُ

See: Abū 'Abd Allāh al-Ḥākim al-Naysābūrī, *Al-Mustadrak 'alā al-Ṣaḥīḥayn*, ed. Muṣṭafā 'Abd al-Qādir "Aṭā," 4 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1990). Vol. 4, pg. 177. Note that al-Ḥākim notes other variants of the report that have the Prophet ﷺ state this without reference to the Torah.; For the more well-known versions of this report, see: al-Bukhārī, *al-Ṣaḥīḥ* (vol. 3, pg. 56, vol. 8, pg. 5) and Muslim, *al-Ṣaḥīḥ* (vol. 4, pg. 1982).; For author's statement, see Al-Zarkashī in *al-Baḥr al-muḥīṭ* - 1992 ed. (vol. 6, pg. 45).

YOUR GOD, GIVES YOU,"[121] and the other is the *mitzva* of *shiluach haken*, to send off the mother bird to take the offspring and eggs (Deuteronomy 22:7), "SO THAT IT BE GOOD FOR YOU, AND YOUR DAYS BE LONG"[122]. Honoring thy parents would appear to be a related parallel for the idea of maintaining ties of kin found in the ḥadīth, and likely well known.

[13] He also provides a report of the Christian king of Abyssinia al-Najāshī, who Muslim sources have becoming a Muslim in the life of the Prophet ﷺ, sharing a statement with the Companion ʻĀmir b. Shahr, that according to revelation from God, Jesus ﷺ said that a land that is ruled by youth (إمارة الصبيان) is cursed. The Companion indicates that this statement from Jesus ﷺ, and another by the Prophet ﷺ that the words of the Quraysh are to be listened to, but their actions left, as being his two favorite statements. Al-Zarkashī sees this statement of political wisdom from Jesus ﷺ and the implementation of it as being relevant for this discussion. Al-Najāshī and ʻĀmir b. Shahr's approval of Jesus' words indicate that reference to the guidance of prior prophets held normative weight for the early generation of Muslims even through a non-Qur'ānic, non-ḥadīth medium. Note that this warning against the rulership of the young is attributed in other sources to the Companion Abū Hurayrah, and elsewhere to the Prophet ﷺ himself (without making reference to Jesus ﷺ and his non-Muḥammadan revelation).[123]

[121] כַּבֵּד אֶת-אָבִיךָ, וְאֶת-אִמֶּךָ--לְמַעַן, יַאֲרִכוּן יָמֶיךָ, עַל הָאֲדָמָה, אֲשֶׁר-יְהוָה אֱלֹהֶיךָ נֹתֵן לָךְ

[122] שַׁלֵּחַ תְּשַׁלַּח אֶת-הָאֵם, וְאֶת-הַבָּנִים תִּקַּח-לָךְ, לְמַעַן יִיטַב לָךְ, וְהַאֲרַכְתָּ יָמִים

[123]See Ibn Ḥibbān al-Bustī and Shu'ayb al-Arna'ūṭ, *Al-Iḥsān Fī Taqrīb Ṣaḥīḥ Ibn Ḥibbān*, 1st ed., 18 vols. (Beirut, Lebanon: Mu'assisat al-Risālah, 1988). Vol. 10, pg 445.; This warning against the rulership of the young is attributed in other sources to the Companion Abū Hurayrah as in the *Muṣannaf* of Ibn Abī Shaybah: 'Abd Allāh Abū Bakr b. Abī Shaybah, *Al-Kitāb al-Muṣannaf Fī al-Aḥādīth Wa al-Āthār*, ed. Kamāl Yūsuf al-Ḥūt, 1st ed., 7 vols. (Riyadh: Maktabat al-Rushd, 1989). Vol. 7, pg. 461.; And also to the Prophet ﷺ himself, as in the *Musnad* of Imām Aḥmad: Abū 'Abd Allāh Aḥmad b. Muḥammad b. Ḥanbal, *Musnad Al-Īmām Aḥmad b. Ḥanbal*, ed. Shu'ayb al-Arna'ūṭ and 'Ādil Murshid, 1st ed. (Mu'assisat al-Risālah, 2001). Vol. 14, pg. 68.; For author's statement, see Al-Zarkashī in *al-Baḥr al-muḥīṭ* - 1992 ed. (vol. 6, pg. 44).

[14] al-Zarkashī notes another incident involving al-Najāshī, where he was seen sitting humbly in the dirt. When asked why by a Companion, he said that he was humbling himself for God because God had granted victory to the Prophet (at the Battle of Badr), and that he was doing so because it was from what was revealed to Jesus ﷺ that people must show humility when God blesses them. This would be an example of following the guidance of a prior prophet (from a non-Muḥammadan scripture) though the example does not have a strong legal connection as in the prior two cases.[124]

While the verses and reports above were cited as reasons to believe that pre-Muḥammadan law was binding on the Muḥammadan community, several other texts could be cited to indicate that pre-Muḥammadan law was not binding on the Prophet ﷺ, including:

{1} An incident where the Companion ‘Umar reportedly had parchments of the Torah that he was reading from. The Prophet ﷺ becomes angered and tells ‘Umar that if Moses ﷺ were alive, ‘Umar would be misguided to follow him, and in some versions of the report that even Moses ﷺ would have been obligated to follow the Prophet ﷺ.[125] This could be taken to mean that the Prophet’s coming abrogated the message of Moses, even if his message shared aspects with

[124] حَقًّا عَلَى عِبَادِ اللَّهِ أَنْ يُحْدِثُوا لِلَّهِ تَوَاضُعًا عِنْدَ كُلِّ مَا أَحْدَثَ لَهُمْ مِنْ نِعْمَةٍ
For the report, see Abū ’Abd Allāh Ibn al-Mubārak, *Al-Zuhd Wa al-Raqā’iq*, ed. Ḥabīb al-Raḥmān al-A’ẓamī (Beirut: Dār al-Kutub al-’Ilmiyyah, n.d.). Vol. 2, pg. 53.; See Al-Zarkashī in *al-Baḥr al-muḥīṭ* - 1992 ed. (vol. 6, pg. 44-45).; Note that this may be related, albeit a slight inverse to Jesus’ well known teaching in the New Testament: “Humble yourselves before the Lord, and He will exalt you.” (James 4:10).

[125] See, e.g. Abū Muḥammad al-Dārimī, *Sunan Al-Dārimī*, ed. Ḥusayn Salīm Asad al-Dārānī, 1st ed., 4 vols. (Saudi Arabia: Dār al-Mughnī li al-Nashr wa al-Tawzī’, 2000). vol. 1, pg. 403:
أَخْبَرَنَا مُحَمَّدُ بْنُ الْعَلَاءِ، حَدَّثَنَا ابْنُ نُمَيْرٍ، عَنْ مُجَالِدٍ، عَنْ عَامِرٍ، عَنْ جَابِرٍ رَضِيَ اللَّهُ عَنْهُ أَنَّ عُمَرَ بْنَ الْخَطَّابِ رِضْوَانُ اللَّهِ عَلَيْهِ أَتَى رَسُولَ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِنُسْخَةٍ مِنَ التَّوْرَاةِ، فَقَالَ: يَا رَسُولَ اللَّهِ، هَذِهِ نُسْخَةٌ مِنَ التَّوْرَاةِ، فَسَكَتَ، فَجَعَلَ يَقْرَأُ وَوَجْهُ رَسُولِ اللَّهِ يَتَغَيَّرُ، فَقَالَ: أَبُو بَكْرٍ رَحْمَةُ اللَّهِ عَلَيْهِ ثَكِلَتْكَ النَّوَاكِلُ، مَا تَرَى بِوَجْهِ رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ فَنَظَرَ عُمَرُ إِلَى وَجْهِ رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: أَعُوذُ بِاللَّهِ مِنْ غَضَبِ اللَّهِ وَغَضَبِ رَسُولِهِ رَضِينَا بِاللَّهِ رَبًّا وَبِالْإِسْلَامِ دِينًا وَبِمُحَمَّدٍ نَبِيًّا. فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ رَضِينَا بِاللَّهِ رَبًّا وَبِالْإِسْلَامِ دِينًا وَبِمُحَمَّدٍ نَبِيًّا. فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ، لَوْ بَدَا لَكُمْ مُوسَى فَاتَّبَعْتُمُوهُ وَتَرَكْتُمُونِي، لَضَلَلْتُمْ عَنْ سَوَاءِ السَّبِيلِ، وَلَوْ كَانَ حَيًّا وَأَدْرَكَ نُبُوَّتِي، لَاتَّبَعَنِي

them. If Moses ﷺ were alive he would have followed the Prophet ﷺ, so how is it that the Prophet should follow Moses ﷺ when the latter is no longer alive? I will provide a detailed analysis of the reception of this report along with questions of authenticity in chapter 3, but at this juncture it should be noted that the report was cited often in these debates (even among those in favor of the utility of pre-Muḥammadan law) as a prohibition against referring to the Torah directly. The Prophet's statement that Moses ﷺ would have followed him if he was alive runs parallel to Qur'ān 3:81[126], which suggests something similar that the pre-Muḥammadan prophets would have been followers of the Prophet if they were alive, without suggesting that the Prophet ﷺ was to follow *them*. For those who accept pre-Muḥammadan law, the statement about Moses ﷺ following the Prophet is taken to mean only that he would have been part of the Prophet's community if he were alive, and thus would have followed him. The ḥadīth is also taken as an express condemnation against reference to the other scriptures, but *not* a rejection that pre-Muḥammadan law could be known and followed if known to the Prophet or revealed in the Qur'an (the position that seems to have been espoused by most of the theorists who upheld pre-Muḥammadan law). Al-Qarāfī gives the example of an Imam who can occasionally be a follower in a prayer – the Prophet ﷺ would be followed if Moses ﷺ were alive, but that doesn't mean that the Prophet ﷺ cannot also follow Moses ﷺ.

Ibn 'Aqīl expresses his agitation at the double standard of those who use this report to suggest, from the perspective of Islamic legal theory, that the Prophet ﷺ did not follow pre-Muḥammadan law (this being a separate issue from whether the Torah could be accessed). They

[126] وَإِذْ أَخَذَ اللَّهُ مِيثَاقَ النَّبِيِّينَ لَمَا آتَيْتُكُم مِّن كِتَابٍ وَحِكْمَةٍ ثُمَّ جَاءَكُمْ رَسُولٌ مُّصَدِّقٌ لِّمَا مَعَكُمْ لَتُؤْمِنُنَّ بِهِ وَلَتَنصُرُنَّهُ ۚ قَالَ أَأَقْرَرْتُمْ وَأَخَذْتُمْ عَلَىٰ ذَٰلِكُمْ إِصْرِي ۖ قَالُوا أَقْرَرْنَا ۚ قَالَ فَاشْهَدُوا وَأَنَا مَعَكُم مِّنَ الشَّاهِدِينَ۝

And Remember, when God took a covenant with the prophets: If after I have given you from scripture and wisdom, a messenger comes to you confirming what is with you, you will believe in him and aid him. [God] said, "Do you acknowledge this and accept my covenant on this?" They replied, "We have acknowledged it." He replied, "Than bear witness, and I too will bear witness"۝

are willing to reject ḥadīth reports that are known through solitary (آحاد) means in other spheres of legal theory because they believe that such reports do not yield the level of epistemic certainty to build the essentials of religion, yet here utilize this report to do exactly that, even when, in his opinion, this report should be trumped by Qur'ānic verses that uphold the utility of pre-Muḥammadan law, including some of which we looked at earlier, and some additional ones he notes, because the Qur'ān's transmission is one that yields certainty.[127] Additionally, if the report is taken by some to indicate that the Prophet could not take guidance from Moses ﷺ because it was only Moses ﷺ who could have taken guidance from him, than this would be difficult to reconcile with another well-known tradition, in which the Prophet ﷺ, during his Night Journey and Ascension (الإسراء والمعراج), followed the repeated advice of Moses ﷺ to request that God reduce the number of mandatory daily prayers binding on the Prophet's community.[128] Ibn 'Aqīl is unique in offering this evidence, but a counter argument can be made that the Prophet ﷺ was only showing deferential respect to Moses' advice in this latter case, whereas the religious law and guidance of the final prophet is what is obligatory to follow. He interprets the Prophet's rebuke of 'Umar in this report as being a repudiation of referring to the Torah after it had been altered, and because it may have included fabrications such as the denial of any law to come after Moses ﷺ (an issue discussed in the appendix), the denial of Jesus ﷺ, or matters that the Jews may have fabricated about the Prophet ﷺ, that he was apparently only promised to be a ruler with dominion and not a Prophet ﷺ, or that he was sent as a prophet to the Arabs only and not to the followers of Moses ﷺ. The Prophet ﷺ also only followed from the Torah what God revealed to

[127] These include some that were discussed earlier, such as 6:90 (أُولَٰئِكَ الَّذِينَ هَدَى اللَّهُ ۖ فَبِهُدَاهُمُ اقْتَدِهْ) and 16:123 (ثُمَّ أَوْحَيْنَا إِلَيْكَ أَنِ اتَّبِعْ مِلَّةَ إِبْرَاهِيمَ حَنِيفًا…), and some not noted earlier, such as 17:77 (سُنَّةَ مَن قَدْ أَرْسَلْنَا قَبْلَكَ مِن رُّسُلِنَا ۖ وَلَا تَجِدُ لِسُنَّتِنَا تَحْوِيلًا) and 46:35 (فَاصْبِرْ كَمَا صَبَرَ أُولُو الْعَزْمِ مِنَ الرُّسُلِ…), which are indications to the Prophet ﷺ to follow the ways of those before him.

[128] See, e.g., al-Bukhārī, *Al-Jāmi' al-Musnad*. Vol. 1, pg. 178.

him. As for the Prophet's statement that Moses ﷺ would have followed him had been alive, there is no issue, since the Prophet ﷺ did abrogate aspects of Moses' *sharī'ah*.

The Ḥanafī al-Jaṣṣāṣ, who is a proponent of the latter position and one of the first to articulate ḥanafī legal theory, argues against an interlocutor – and it is not possible to identify whether this is a real or imagined interlocutor – who argues that the Prophet ﷺ was prohibiting 'Umar from referring to the text because there was some material that was altered within the Torah, and that his prohibition did not include what was *not* altered of the Torah, which could therefore be accessed. Although this argument is not associated with any named persons, it is worth pointing out al-Jaṣṣāṣ saw this as one of three possible arguments in the legal debate on pre-Muḥammadan laws' status, that it was binding, irrespective of it being known in an Islamic source. He also does not present this position as being heretical, just not in line with evidence as he sees it.[129]

{2} As was noted earlier, the laws of the pre-Muḥammadan communities disagreed with one another. Qur'ān 5:48[130] also seems to suggest that each community has its own set of laws to abide by, suggesting that what was applicable to one community is not for the Prophet ﷺ:

> We have sent down to you the Scripture with truth, confirming that which came before it of the Scripture, and a protector for it. So judge between them according to what God has sent down, and do not follow their desires over the truth that has come to you. For each We have made a law and a method. Had God willed, He would have made you a single community,

[129] See: al-Jaṣṣāṣ (vol. 3, pgs. 21-22), al-Dabbūsī (pg. 253 & 255), Abu Ya'lā (vol. 3, pgs. 762-763), al-Shīrāzī in *al-Tabṣirah* (pg. 286-287), al-Juwaynī in *al-Burhān* (vol. 1, pg. 189), al-Sarakhsī (vol. 2, pg. 102), al-Sam'ānī (vol. 1, pg. 318), al-Ghazālī in *al-Mustaṣfā* (pg. 166), Ibn 'Aqīl (vol. 4, pgs. 185-187), al-Armawī (vol. 1, pg. 443), al-Qarāfī in *Sharḥ tanqīḥ al-fuṣūl* (pg. 298-299), al-Qarāfī in *Nafā'is al-uṣūl* (vol. 6, pg. 2373)

[130] وَأَنزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ وَمُهَيْمِنًا عَلَيْهِ ۖ فَاحْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ ۖ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ مِنَ الْحَقِّ ۚ لِكُلٍّ جَعَلْنَا مِنكُمْ شِرْعَةً وَمِنْهَاجًا ۚ وَلَوْ شَاءَ اللَّهُ لَجَعَلَكُمْ أُمَّةً وَاحِدَةً وَلَٰكِن لِّيَبْلُوَكُمْ فِي مَا آتَاكُمْ ۖ فَاسْتَبِقُوا الْخَيْرَاتِ ۚ إِلَى اللَّهِ مَرْجِعُكُمْ جَمِيعًا فَيُنَبِّئُكُم بِمَا كُنتُمْ فِيهِ تَخْتَلِفُونَ ۝

BUT [HE DID NOT] SO THAT HE MAY TEST YOU REGARDING WHAT HE HAS GIVEN YOU. SO COMPETE IN GOOD DEEDS. TO GOD IS ALL OF YOUR RETURN, AFTER WHICH GOD WILL MAKE CLEAR TO YOU ABOUT THAT WHICH YOU DISAGREED.۞

The counter argument, as noted earlier, was that a contradiction between the laws of prophets doesn't mean that what was shared between them still continued in their general obligation, and the verse above may be in reference to only those things where there was disagreement, while there may be many other laws that are shared and continued in practice by the Prophet ﷺ and his community, just as monotheism and beliefs were believed to be shared. As Ibn 'Aqīl notes, the statement "FOR EACH WE HAVE MADE A LAW" is comparable to "for every jurist is a school of law," which does not negate that there are many laws shared across the schools of law. Al-Shīrāzī argues regarding pre-Muḥammadan laws that disagree (and for him, these are those that have been transmitted in the Qur'ān and ḥadīth), that the later of the incongruent laws is to be accepted, as is the case when transmitted legal reports of the Prophet ﷺ are incongruent, because it is assumed that the latter abrogated the former.

Related to this verse, there exist well known reports where the Prophet ﷺ states that he was sent to all mankind, whereas previous prophets were sent to their respective nations.[131] Some

[131] See, e.g. Muḥammad b. Ismā'īl al-Bukhārī, *Al-Jāmi' al-Musnad al-Ṣaḥīḥ (Ṣaḥīḥ al-Bukhārī)*, ed. Muḥammad Zuhayr b. Nāṣir al-Nāṣir, 1st ed., 9 vols. (Dār Ṭawq al-Najāh, 2001). Vol. 1, pg. 74:
قَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم " أُعْطِيتُ خَمْسًا لَمْ يُعْطَهُنَّ أَحَدٌ مِنَ الأَنْبِيَاءِ قَبْلِي، نُصِرْتُ بِالرُّعْبِ مَسِيرَةَ شَهْرٍ، وَجُعِلَتْ لِيَ الأَرْضُ مَسْجِدًا وَطَهُورًا، وَأَيُّمَا رَجُلٍ مِنْ أُمَّتِي أَدْرَكَتْهُ الصَّلاَةُ فَلْيُصَلِّ، وَأُحِلَّتْ لِيَ الْغَنَائِمُ، وَكَانَ النَّبِيُّ يُبْعَثُ إِلَى قَوْمِهِ خَاصَّةً، وَبُعِثْتُ إِلَى النَّاسِ كَافَّةً، وَأُعْطِيتُ الشَّفَاعَةَ "
Translation: The Messenger of God (May God's blessings and peace be upon him) said: "I have been given five things which were not given to any of the prophets before me. 1. I have been given victory through fear (of my enemies) by a distance of one month's journey, 2. the earth has been made for me pure and a place for prostration (مسجدا) such that anyone from my community can pray should he witness the prayer (time), 3. spoils of war have been made lawful for me, 4. prophets (of the past) were sent to their nation specifically, whereas I have been sent to mankind in its entirety, and 5. I have been given the right of intercession (الشفاعة)."
Note: the reference to the whole earth being suitable for prostration may possibly have some connection to rabbinic discussions on the prohibition to prostrate on stones other than those found in the Temple (see Megillah 22b:11), and the general observation among some Jews of using a rug to cover ground that is prostrated on.

verses of the Qur'ān seem to support this by stating that specific prophets were sent to specific nations,[132] while the Prophet ﷺ is explicitly noted as having been sent to all of mankind[133]. This might indicate that the Prophet ﷺ was not expected to follow them since their missions did not include him (since they came chronologically before him). However, it may be argued that their missions being inclusive of the Prophet ﷺ or not doesn't negate *his* own requirement to follow them in matters of law. Ibn 'Aqīl, who supports the idea that the Prophet ﷺ followed pre-Muḥammadan law, states that even if the Prophet ﷺ was a follower of Moses ﷺ and Jesus ﷺ, their respective followers (Jews and Christians) were commanded to obey the Prophet ﷺ and what he reported about their sharī'ahs. They could not refer to the Torah or Gospel for those laws.[134]

Ibn Ḥazm points out that other verses of the Qur'ān indicate that people in the Prophet's time – including the People of the Book - were unaware or ignorant of aspects of the teachings of the previous prophets, and thus the need for the Prophet ﷺ and his laws, rather than reference to

---

[132] See, e.g., Qur'ān 11:61 (۞ وَإِلَىٰ ثَمُودَ أَخَاهُمْ صَالِحًا… ۞/And [We sent] to Thamūd their Brother Ṣāliḥ…۞),
Qur'ān 7:65 (۞ ...وَإِلَىٰ عَادٍ أَخَاهُمْ هُودًا ۞ / And [We sent] to 'Ād their brother Hūd…۞),
And Qur'ān 11:84 (۞ ...وَإِلَىٰ مَدْيَنَ أَخَاهُمْ شُعَيْبًا ۞/And [We sent] to Madyan their brother Shu'ayb…۞),
And Qur'ān 71:1 (۞…إِنَّا أَرْسَلْنَا نُوحًا إِلَىٰ قَوْمِهِ ۞ / And We sent Noah to his people…۞) Ibn Ḥazm uses this verse to suggest that Noah ﷺ was not sent to the world, as some might infer because of the great flood and because of a ḥadīth partly implying this. He suggests that the occurrence of the great flood does not mean his message was universal, which would contradict the hadith in the prior footnote, and that the flood may have also been regionally restricted. See vol. 5, pg. 184 for his comments regarding this.

[133] See, e.g., Qur'ān 34:28:

وَمَا أَرْسَلْنَاكَ إِلَّا كَافَّةً لِّلنَّاسِ بَشِيرًا وَنَذِيرًا وَلَٰكِنَّ أَكْثَرَ النَّاسِ لَا يَعْلَمُونَ

And We did not send you except to all the people, a bearer of glad tidings and a warner, but most people do not know۞

And Qur'ān 7:158:

قُلْ يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا الَّذِي لَهُ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ ۖ لَا إِلَٰهَ إِلَّا هُوَ يُحْيِي وَيُمِيتُ ۖ فَآمِنُوا بِاللَّهِ وَرَسُولِهِ النَّبِيِّ الْأُمِّيِّ الَّذِي يُؤْمِنُ بِاللَّهِ وَكَلِمَاتِهِ وَاتَّبِعُوهُ لَعَلَّكُمْ تَهْتَدُونَ۞

Say [O Muḥammad], "Oh people, I am a messenger from God to all of you, from him to whom belongs the dominion of the heavens and the earth: there is no deity except Him, who brings life and death, so believe in God and His messenger, the Ummī/gentile/unlettered prophet, who believes in God and his words, and follow him such that you be guided."۞

[134] See al-Jaṣṣāṣ (vol. 3, pg 23-26), al-Dabbūsī (pg. 253), Abu Ya'lā (vol. 3, pg. 761) , al-Bājī (pg. 42), al-Shīrāzī (pg. 286 and 288), al-Juwaynī in *al-Talkhīṣ* (vol. 2, pg. 274), al-Sarakshī (vol. 2, pg. 101 & 104), al-Sam'ānī (vol. 1, pg. 318), al-Ghazālī in *al- al-Mustaṣfā* (pg. 166), al-Kalwadhānī (vol. 2, pg. 417), Ibn 'Aqīl (vol. 4, pgs. 183-185, 189-190), al-Zarkashī in *al-Baḥr al-muḥīṭ* - 1992 ed. (vol. 6, pg. 43)

previous ways[135]. What this all suggests is that the Qur'ānic commands to follow the ways of the previous prophets were likely understood as a reference to their shared message of monotheism. The Qur'ān also specifies that the message of the Prophet ﷺ matches with that of the previous prophets in its calling to knowledge of God in particular[136]. Separately, Qur'ān 2:133-134 appear to clearly lift the obligation to know what prior communities of prophets did, by explicitly indicating that the believers will not be asked about what was done by them. This would then indicate that their laws are not of concern for the Prophet's *ummah*, an interesting argument I have come across only in Ibn Ḥazm's treatment of this topic. As was noted above, Ibn Ḥazm believes that the sharī'ah of Abraham ﷺ is that of the Prophet ﷺ, and that he was not only the inheritor of Abraham's legacy, but because Abraham's mission was restricted by nation and the Prophet's was not, he would be the one that would universalize it for the world.[137]

---

It has hopefully been established from the preceding discussion on pre-Muḥammadan law as it featured within legal theoretical works that Muslim jurists discussed the relevance of these laws

[135] See, e.g., Qur'ān 36:6:

لِتُنذِرَ قَوْمًا مَّا أُنذِرَ آبَاؤُهُمْ فَهُمْ غَافِلُونَ۝

That you may warn a people whose forefathers were not warned, so they are unaware۝

And Qur'ān 5:19:

يَا أَهْلَ الْكِتَابِ قَدْ جَاءَكُمْ رَسُولُنَا يُبَيِّنُ لَكُمْ عَلَىٰ فَتْرَةٍ مِّنَ الرُّسُلِ أَن تَقُولُوا مَا جَاءَنَا مِن بَشِيرٍ وَلَا نَذِيرٍ ۖ فَقَدْ جَاءَكُم بَشِيرٌ وَنَذِيرٌ ۗ وَاللَّهُ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ۝

Oh People of the Book, Our messenger has come to you after a gap in sequence between messengers in order to make [matters] clear for you, lest you say, "No bearer of glad tidings or warner has come to us." But a bearer of glad tidings and warner has come to you, and God has power over everything۝

[136] See e.g., Qur'ān 41:43:

مَّا يُقَالُ لَكَ إِلَّا مَا قَدْ قِيلَ لِلرُّسُلِ مِن قَبْلِكَ ۚ إِنَّ رَبَّكَ لَذُو مَغْفِرَةٍ وَذُو عِقَابٍ أَلِيمٍ۝

Nothing is said to you [Oh Muḥammad], except what was said to the messengers before you: Your Lord is one of forgiveness but also of painful punishment۝

[137] See Ibn Ḥazm (vol. 5, pgs. 179-185)

in large part because of clear indications within the Qur'ān and the example of the Prophet ﷺ of some form of continuity between the way of the Prophet ﷺ and those who came before him. Did this continuity imply the need to refer to pre-Muḥammadan laws as they appear in other scriptures? And if the Prophet ﷺ himself referred to the Torah as might be inferable, can the Muḥammadan community similarly refer to this source? Of concern for the jurists analyzed was the question of authenticating these other scriptures. While most would deny it a priori, others believed, at least in theory, in the possibility that these laws could be accessible through some verifiable medium such as mass transmission or testimony. What the subsequent chapters attempt to do is provide examples of practical Muslim engagement with pre-Muḥammadan law, including instances where it was derived from the Torah or the practice of the Jews and Christians. I will place special emphasis on the practice of the *madhhab* founders, since the legal theorists were particularly concerned with their practice, but my discussions will engage with other early and later Muslim jurists as well.

Before moving to the next session, I will note that there are two additional topics that are related to pre-Muḥammadan law as they appear in works of legal theory, but which have been omitted from the main body of this essay but can be accessed in the appendix of this work. The first is a pertaining the Prophet's personal practice prior to his becoming a prophet, and whether he followed a pre-Muḥammadan law in the absence of revelation from God. As was pointed out by the 6th-7th century Mālikī al-Abyārī, this topic had no practical relevance for the derivation of Islamic law and was purely a matter of historical inquiry unlike the discussion of whether the Prophet ﷺ referred to pre-Muḥammadan law *after* he became a prophet, which would have set legal precedence for the community.[138] In additional to historical inquiry, the topic apparently

[138] See al-Abyārī (vol. 2, pgs. 430-431)

also bore relevance for theological debates on the nature of legal obligation for humans prior to or in the absence of revelation.[139] Readers interested in this can reference the appendix for notes gathered from each of the surveyed works where this topic is addressed. The second is a polemical discussion among the jurists regarding the 'abrogatability' of pre-Muḥammadan laws, which encompassed arguments against Jewish claims that Moses's *sharī'ah* was not subject to abrogation per his own words, and which Jewish interlocutors claimed was reported through mass transmission and thus must be accepted by the standards of Muslim legal theorists. The discussion is a rare glimpse at the knowledge of many of these Muslim authors regarding the Torah and its transmission. Refer to the separate appendix item for this unit. There are also several fine points regarding pre-Muḥammadan law that I was not able to cover in this chapter, but which can be found in the appendix containing my notes on several dozen authors.

[139] See A. Kevin Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought* (Albany: State University of New York Press, 1995).

Chapter 2

# The Kufans and Pre-Muḥammadan Law:

# The Case of Leviticus 18

Hi. In this chapter I begin with a short synopsis of later Muslim views on the early Ḥanafīs and their utility of pre-Muḥammadan law. The examples they cite are primarily Qur'ānic. I then look at unique case studies of the Kufan *madhhab*'s early engagement with pre-Muḥammadan law, spending most of the chapter engaging with an open reference to a Torah dictate by Muḥammad b. al-Ḥasan al-Shaybānī that is known to him from an earlier Kufan authority. The example serves as a clear proof that citations of the Torah, rare as they were, did occur among the Muslim jurists. The example is related to sexual laws found in Leviticus 18. At least two other dictates from Leviticus 18 are known to the 2nd and 3rd century Muslims in the context of their legal discussions, which we will touch on. I will also demonstrate the occurrence of a phenomenon of attributing known biblical references to the Prophet ﷺ himself.

Ḥanafīs will note that Muḥammad b. Ḥasan al-Shaybānī (d. 189), the pupil of Abū Ḥanīfah, permitted the distribution of time-access rights to water resources, and cited as proof for its validity verses of the Qur'ān about the pre-Muḥammadan community of the Prophet Ṣāliḥ ﷺ, where time access to water was designated between a she-camel and the community.[140] The

[140] The verses referenced include Qur'ān 54:28:

وَنَبِّئْهُمْ أَنَّ الْمَاءَ قِسْمَةٌ بَيْنَهُمْ ۖ كُلُّ شِرْبٍ مُّحْتَضَرٌ ۝

And inform them that the water is to be shared between them: each drinking in turn ۝

And Qur'ān 26:155:

قَالَ هَٰذِهِ نَاقَةٌ لَّهَا شِرْبٌ وَلَكُمْ شِرْبُ يَوْمٍ مَّعْلُومٍ ۝

He said, "This is a she-camel. For her is a [turn to] drink, and for you is a [turn to] drink on a specified day" ۝

Ḥanafī al-Jaṣṣāṣ, whose writings in legal theory would inform the works of many Ḥanafī legal theoretical manuals after him, claimed that al-Shaybānī's citation of these verses is clear proof that he viewed pre-Muḥammadan law as binding on Muslims provided it was not abrogated, and that this then shows his belief that pre-Muḥammadan law became the law of the Prophet Muḥammad ﷺ (and his community).[141] The verse would be cited by later Ḥanafīs as textual evidence for the permissibility of distributing access rights to different resources, with jurists frequently justifying their usage of the verses in question by stating that pre-Muḥammadan law was in fact applicable.[142]

Al-Jaṣṣāṣ (d. 370 AH) also notes that it was the practice of his teacher the Ḥanafī jurist and Muftī of Iraq Abū al-Ḥasan al-Karkhī (d. 340 AH) to enforce the law of retaliation (*qiṣāṣ*) equally between slaves and free people, and between Muslims and *dhimmīs* based on Qur'ān 5:45,[143] a verse reporting the law of talion as found in the Torah as "A LIFE FOR A LIFE,"

---

See Muḥammad b. al-Ḥasan al-Shaybānī, *Al-Aṣl*, ed. Muḥammad Buynūkālin, 1st ed., 12 vols. (Beirut: Dār Ibn Ḥazm, 2012). Vol. 8, pg 184:
وإذا كان نهر بين رجلين لواحد الثلثان وللآخر الثلث فاصطلحا على أن يسقي صاحب الثلث منه يوماً وصاحب الثلثين منه يومين فهوجائز. ألا ترى إلى قول الله تعالى في كتابه: {وَنَبِّئْهُمْ أَنَّ الْمَاءَ قِسْمَةٌ بَيْنَهُمْ كُلُّ شِرْبٍ مُحْتَضَرٌ} وقال في مكان آخر: {لَهَا شِرْبٌ وَلَكُمْ شِرْبُ يَوْمٍ مَعْلُومٍ} فكذلك هذه القسمة

[141] See: al-Jaṣṣāṣ, *Al-Fuṣūl Fī al-Uṣūl*. Vol. 3, pg. 20.; See also the following Ḥanafīs who cite al-Shaybānī's practice to inform their own positions that pre-Muḥammadan law was binding: al-Dabbūssī, *Taqwīm Al-Adillah Fī al-Uṣūl al-Fiqh*. Pg. 253.; Also: al-Sarakhsī, *Uṣūl Al-Sarakhsī*. Vol. 2, pg. 100.; Also: "Alā" al-Dīn al-Samarqandī, *Mīzān Al-Uṣūl Fī Natā'ij al-'uqūl*, ed. Muḥammad Zakī 'Abd al-Barr, 1st ed. (Doha, Qatar: Maṭābi' al-Dawḥah al-Ḥadīthah, 1984). Pg. 470.; Also: ibn al-Sā'ātī, *Badī' al-Niẓām (Nihāyat al-Wuṣūl Ilā 'ilm al-'uṣūl)*. Vol. 2, pgs. 659-660.; The Shāfi'ī al-Zarkashī (d. 794 AH) also notes this position of al-Shaybānī. See: al-Zarkashī, *Al-Baḥr al-Muḥīṭ Fī Uṣūl al-Fiqh*. Vol. 6, pg. 42.

[142] See, e.g., 'Alā' al-Dīn Abū Bakr al-Kāsānī, *Badā'i' al-Ṣanā'i' Fī Tartīb al-Sharā'i'*, 2nd ed., 7 vols. (Dār al-Kutub al-'Ilmiyyah, 1986). Vol. 6, pg. 188 and vol. 7, pg. 32. The author justifies usage of this verse by noting the applicability of pre-Muḥammadan law and also citing al-Shaybānī's usage of this evidence.; Also: Shihāb al-Dīn Aḥmad al-Shilbī and 'Uthmān b. 'Alī Fakhr al-Dīn al-Zayla'ī al-Ḥanafī, *Tabyīn Al-Ḥaqā'iq: Sharḥ Kanz al-Daqā'iq Wa Ḥāshiyat al-Shilbī*, 1st ed., 6 vols. (Cairo: al-Maṭba'ah al-Kubrā al-Amīriyyah, 1313AH). Vol. 5, pg. 275. Author notes applicability of pre-Muḥammadan law to justify his citing of this example.; Also: Abū Muḥammad Badr al-Dīn al-'Aynī, *Al-Bināyah: Sharḥ al-Hidāyah*, 1st ed., 13 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2000). Vol. 11, pg. 398. Author notes applicability of pre-Muḥammadan law to justify his citing of this example.

[143] وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنفَ بِالْأَنفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ ۚ فَمَن تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَّهُ ۚ وَمَن لَّمْ يَحْكُم بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ ۝

AND WITHIN IT [THE TORAH], WE PRESCRIBED FOR THEM [THE JEWS]: A LIFE FOR A LIFE, AN EYE FOR AN EYE, A NOSE FOR A NOSE, AN EAR FOR AN EAR, A TOOTH FOR A TOOTH, AND RETALIATION FOR WOUNDS. BUT WHOEVER FORGOES IT, THAT WILL BE AN EXPIATION FOR HIM. AND WHOEVER DOES NOT JUDGE BY WHAT GOD HAS SENT DOWN, THEY ARE INDEED THE EVIL DOERS. ۝

whereby capital punishment would be applied equally among the noted individuals.[144] According to al-Sarakhsī, Abū Yūsuf (d. 182 AH) cited this same verse regarding a Torah injunction to argue for equality in the application of *qiṣāṣ* between men and women.[145] Their practice here was taken as evidence of a Ḥanafī position that pre-Muḥammadan law, provided it was not explicitly abrogated and came from an Islamic medium (here, the Qur'ān), was binding on Muslims. Qur'ān 5:45 would be cited by later Ḥanafī jurists as the evidence for retaliatory capital punishment, and to defend equal application of capital punishment across different classes of people. This verse would be cited in some cases as primary evidence of the position and oftentimes as supporting evidence, and some of the authors would also find the need to explicitly justify the usage of this evidence by affirming the utility of pre-Muḥammadan law provided it was not abrogated.[146] The leading Ḥanafī jurist al-Qudūrī (d. 428) cites this verse to defend the Ḥanafī position for equal application of capital punishment for slaves and freemen, and addresses a response offered by an interlocutor (like Shāfi'ī), namely that the Children of Israel did not have slaves because the taking of captives and spoiled of war were only permitted for the Prophet ﷺ (the latter a reference to a well-known tradition cited elsewhere), and thus this verse's reference of "A LIFE FOR A LIFE" would not be inclusive of slaves per pre-Muḥammadan law. Al-Qudūrī responds that it has been established through authentic transmission (النقل الصحيح) that Hagar was the slave woman of Abraham ﷺ, and thus slavery was part of pre-Muḥammadan law,

[144] al-Jaṣṣāṣ, *Al-Fuṣūl Fī al-Uṣūl*. Vol. 3, pg. 20.; Also: al-Sarakhsī, *Uṣūl Al-Sarakhsī*. Vol. 2, pg. 100.
[145] al-Sarakhsī, *Uṣūl Al-Sarakhsī*. Vol. 2, pg. 100.
[146] See, e.g.: Abū Bakr al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar Al-Ṭaḥāwī*, ed. 'Iṣmat Allāh 'Ināyat Allāh Muḥammad et al., 1st ed. (Beirut: Dār al-Bashā'ir al-Islāmiyyah, 2010). Vol. 5, pg. 353 and 361. Author uses this as *supporting*, and not primary evidence for equal application across different groups, and notes that this evidence is admissible because pre-Muḥammadan law is admissible provided it is unabrogated; Also: Abū al-Ḥusayn al-Qudūrī, *Al-Tajrīd Li al-Qudūrī*, ed. Muḥammad Aḥmad Sirāj and 'Alī Jum'ah Muḥammad, 12 vols. (Cairo: Dār al-Salām / Markaz al-Dirāsāt al-Fiqhiyyah wa al-Iqtiṣādiyyah, 2006). Vol. 11, pg. 5470 (used as primary evidence); Also: Muḥammad b. Aḥmad al-Sarakhsī, *Al-Mabsūṭ*, 30 vols. (Beirut: Dār al-Ma'rifa, 1993). Vol. 26, pg. 60. The author justifies the evidence based on the admissibility of pre-Muḥammadan law.

and thus the verse would apply to slaves as well. It is not clear what 'authentic transmission' al-Qudūrī is referring to, as the identification of Hagar as Abraham's slave woman appears to have been widely known biblical knowledge in the Muslim community, and not of Qur'ānic or ḥadīth origin.[147] What's worth noting is that the interlocutor's knowledge of the Children of Israel was not based in the contemporary practice of Jews (Jews having owned slaves), but in the *imagined* practice of the Children of Israel inferred by the Prophet's comments. Al-Qudūrī's counter remarks used to justify his Qur'ānic legal interpretation were also concerned with the pre-Muḥammadan practice of the Jews and based in generally known biblical knowledge - the wide-spread nature of which he labels in this case as 'authentic transmission' - and *not* the Qur'ān or ḥadīth.[148]

As Haytham Khaznah, in his summary on the development of Ḥanafī legal *uṣūl* states, no example has been reported by the theorists of Abū Ḥanīfah (d. 150 AH) himself having a position relevant to this debate, unlike the other Ḥanafī Imāms cited earlier.[149] One relevant example this study has identified and not documented among the legal theorists is a position of Abū Ḥanīfah, along with his pupil Muḥammad b. al-Ḥasan al-Shaybānī, on the issue of fulfilling oaths impermissible to make in the first place. With regards to an oath to take the life of a child

[147] Hagar as the slave woman of Abraham ﷺ given to him by Sarah (in accordance with the biblical narrative) appears to have been reported by Ibn Isḥāq. Ibn al-Athīr al-Jazarī (d. 630 AH) indicates that this is something that has been said (قيل), suggesting the unknown origins of this; See: Muḥammad b. Jarīr al-Ṭabarī, *Tārīkh Al-Rusul Wa al-Mulūk*, 11 vols. (Beirut: Dār al-Turāth, 1387AH). Vol. 1, pg. 247.; Also: Jamāl al-Dīn Abū al-Faraj Ibn al-Jawzī, *Al-Muntaẓam Fī Tārīkh al-Umam Wa al-Mulūk*, ed. Muḥammad 'Abd al-Qādir 'Aṭā and Muṣṭafā 'Abd al-Qādir 'Aṭā, 1st ed., 19 vols. (Dār al-Kutub al-'Ilmiyyah: Beirut, 1992). Vol. 1, pg. 264; Also: 'Izz al-Dīn Ibn al-Athīr al-Jazarī, *Al-Kāmil Fī al-Tārīkh*, ed. 'Umar 'Abd al-Salām Tadmarī, 1st ed., 10 vols. (Beirut: Dār al-Kitāb al-'Arabī, 1997). Vol. 1, pg. 92.

[148] Abū al-Ḥusayn al-Qudūrī, *Al-Tajrīd Li al-Qudūrī*, ed. Muḥammad Aḥmad Sirāj and 'Alī Jum'ah Muḥammad, 12 vols. (Cairo: Dār al-Salām / Markaz al-Dirāsāt al-Fiqhiyyah wa al-Iqtiṣādiyyah, 2006). Vol. 11, pg. 5470.

[149] See Haytham Khaznah, *Taṭawwur Al-Fikr al-Uṣūlī al-Ḥanafī: Dirāsah Taṭbīqiyyah Li al-Adillah al-Mukhtalaf Fīhā* (Dār al-Rāzī, 1998).Haytham Khaznah, *Taṭawwur Al-Fikr al-Uṣūlī al-Ḥanafī: Dirāsah Taṭbīqiyyah Li al-Adillah al-Mukhtalaf Fīhā* (Dār al-Rāzī, 1998). Pg. 183.; I would like to thank Dr. Sohaib Baig for his suggestion of this work.

in particular, the two imams declared that the oath should be expiated and fulfilled by sacrificing in the child's stead a sheep.[150] The 2nd century writings of al-Shaybānī that ascribe this position to Abū Ḥanīfah and himself are terse and do not elaborate the reason for a sheep as a replacement for a child in the case of an oath taken on the latter's life, but the connection to Abraham ﷺ is obvious: because Abraham's sacrifice of his son was replaced by a sheep, so too a person's who makes an oath to sacrifice their child can do the same. And indeed, this legal premise behind Abū Ḥanīfah and al-Shaybānī's position was made explicit by the later Ḥanafīs for whom this Abrahamic connection was obvious, including Abū Ja'far al-Ṭaḥāwī (d. 321 AH),[151] al-Qudūrī (d. 428 AH)[152], al-Sarakhsī (d. 483 AH)[153], Ibn 'Ābidīn (d. 1252),[154] and others[155]. As these later Ḥanafīs note, the story of Abraham ﷺ was applicable either because of verses looked at earlier that command the Prophet ﷺ and his followers to follow the way of Abraham ﷺ, or because of a general obligation to follow pre-Muḥammadan law. As for the precise connection between Abraham's sacrifice and a person's oath, Ḥanafīs such as al-Ṭaḥāwī argued that the Qur'ānic narrative of Abraham ﷺ draws an equivalency between the slaughtering of a child to the slaughtering of a sheep, because God commanded the former, and fulfilled it by the latter. Al-Qudūrī, who we saw earlier was more open to tales about pre-Muḥammadan prophets that were popularly known but not necessarily based in the Qur'ānic verses or prophetic

[150] See Muḥammad b. al-Ḥasan al-Shaybānī, *Al-Makhārij Fī al-Ḥiyal* (Cairo: Maktabat al-thaqāfah al-dīniyyah, 1999). Pg. 69.; Also: al-Shaybānī, *Al-Aṣl*. Vol. 2, pg. 279.
[151] For al-Ṭaḥāwī's remarks, see: al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar Al-Ṭaḥāwī*. Vol. 7, pgs. 465-466.
[152] al-Qudūrī, *Al-Tajrīd Li al-Qudūrī*. Vol. 12, pg. 6507.
[153] al-Sarakhsī, *Al-Mabsūṭ*. Vol. 8, pg. 140.
[154] Muḥammad Amīn Ibn 'Ābidīn, *Radd Al-Muḥtār 'alā al-Durr al-Mukhtār*, 6 vols. (Beirut: Dār al-Fikr, 1992). Vol. 3, pg. 739.
[155] See, e.g., al-Asmandī (d. 552 AH): Muḥammad 'Abd al-Ḥamīd al-Asmandī, *Ṭarīqat Al-Khilāf Fī al-Fiqh Bayn al-A'immah al-Aslāf*, ed. Muḥammad Zakī 'Abd al-Barr, 2nd ed. (Cairo, Egypt: Maktabat Dār al-Turāth, 2007). Pg. 181.; al-Kāsānī (d. 587 AH): Abū Bakr al-Kāsānī, *Badā'i' al-Ṣanā'i' Fī Tartīb al-Sharā'i'*. Vol. 5, pg. 85.; Abū al-Faḍl al-Ḥanafī (d. 683 AH): ʾAbd Allāh Majd al-Dīn Abū al-Faḍl, *Al-Ikhtiyār Li Ta'līl al-Mukhtār*, ed. Maḥmūd Abū Daqīqah, 5 vols. (Cairo: Maṭba'at al-Ḥalabī, 1937). Vol. 4, pg. 78.

ḥadīth, similarly seems to borrow from the story of Abraham ﷺ as it was known in tafsīr and other genres in the context of this legal issue regrading oaths on a child. He says that Abraham ﷺ made a specific oath to slaughter his son, forgot to do so, and was told in a dream to fulfill it, only to have a ram suffice for his son's sacrifice in the end. An oath is *not* mentioned in the Qur'ānic narrative[156] of the "Binding of Isaac/Ishmael"[157] story. A version of the "Binding of Isaac/Ishmael" narrative in the Islamic tradition that specifically mentions an "oath" being made and parallels al-Qudūrī's account appears in a well-known story in Qur'ānic exegesis, reported by the Kufan al-Suddī (d. 127 AH).[158] This appears to be a likely basis for al-Qudūrī's comments, though there are apparently also transmissions attributed to Companions[159] that convey that Abraham ﷺ was fulfilling an oath in sacrificing his son as well. The mentioning of an extra-Qur'ānic detail of Abraham ﷺ taking an oath lets al-Qudūrī more seamlessly connect Abraham's story to the legal case at hand than with just the Qur'ānic verses. While there still remain questions as to how a very unique miraculous incident that happened for a pre-Muḥammadan prophet could somehow be taken as legal evidence,[160] this example shows how early jurists were interested in finding any sort of precedence for legal issues that confronted them. In fact, we learn from the *muṣannaf* of ʻAbd al-Razzāq that the Companion Ibn ʻAbbās was asked for help by someone who made an oath to kill himself, to which Ibn ʻAbbās recited a verse from the Qur'ān from the story of Abraham ﷺ, "AND WE RANSOMED HIS SON WITH A GREAT SACRIFICE" (Qur'ān 37:107[161]), thereafter telling the man to sacrifice a ram to fulfill his

[156] Refer to Qur'ān 37:100-111
[157] The Muslim disagreement over whether the story is in reference to Isaac or Ishmael is well known.
[158] See, e.g.: Muḥammad b. Jarīr al-Ṭabarī, *Jāmi' al-Bayān Fī Ta'wīl al-Qur'ān*, ed. Aḥmad Muḥammad Shākir, 1st ed., 24 vols. (Mu'assisat al-Risālah, 2000). Vol. 21, pg. 74.; Also: Also: Abū Isḥāq al-Tha'labī, *Al-Kashf Wa al-Bayān 'an Tafsīr al-Qur'ān*, ed. Abū Muḥammad b. 'Āshūr, 1st ed., 10 vols. (Beirut, Lebanon: Dār Iḥyā' at-Turāth al-'Arabī, 2002). Vol. 8, pg. 154.
[159] See: al-Ṭabarī, *Tārīkh Al-Rusul Wa al-Mulūk*. Vol. 1, pg. 267.
[160] I thank Dr. Ahmad Ahmad for pointing out this angle.
[161] وَفَدَيْنَاهُ بِذِبْحٍ عَظِيمٍ۝

oath.[162] This case is even more far removed from the context of the Abrahamic story, but here again we see the appeal to cite *some* form of scriptural precedent as the likely reason for this position than no precedent.

While not related to pre-Muḥammadan law precisely, a legal position is ascribed to Abū Ḥanīfah that the Torah, Gospels or Psalms could be recited in the Islamic prayer in lieu of the Qur'ān. In his *Aṣl*, al-Shaybānī gives the opinion that he and Abū Yūsuf hold that one may not recite from the Torah, Gospels (al-Injīl), or the Psalms (al-Zabūr), whether or not one knows the Qur'ān, as that would be considered regular (and unacceptable) speech in prayer, being neither Qur'ān, nor religious words glorifying God (التسبيح),[163] making subtle reference to a well-known tradition of the Prophet ﷺ in which he informed a Companion who uttered speech within prayer, "speech of people is not appropriate in this prayer; prayer is indeed the glorification of God (التسبيح), proclamation of His greatness (التكبير), and the recitation of the Qur'ān"[164]. The Ḥanafī jurists record the opposing position as that of Abū Ḥanīfah's and attempted to offer clarification for this view. Al-Sarakhsī (d. 483 AH) conveys a position in the *madhhab* (قيل) that opposite to al-Shaybānī's view, only pre-Muḥammadan scripture that does not agree with the Qur'ān is prohibited in prayer, since according to Abū Ḥanīfah (عند أبي حنيفة), if the scripture was in agreement with (موافقا) the Qur'ān, than it would be permitted in prayer, since it would be like reciting the Qur'ān in Syriac and Hebrew, which would be acceptable because Abū Ḥanīfah accepted the recitation of the Qur'ān in Persian.[165] Al-Kāsānī (d. 587 AH) expounds that Abū

---

[162] See 'Abd al-Razzāq's *al-Muṣannaf*, vol. 8, pg. 460:
عَبْدُ الرَّزَّاقِ، أَخْبَرَنِي ابْنُ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَطَاءٌ، أَنَّ رَجُلًا جَاءَ ابْنَ عَبَّاسٍ فَقَالَ: نَذَرْتُ لَأَنْحَرَنَّ نَفْسِي، فَقَالَ ابْنُ عَبَّاسٍ: " {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} "، ثُمَّ تَلَا: {وَفَدَيْنَاهُ بِذِبْحٍ عَظِيمٍ}، ثُمَّ أَمَرَهُ بِذَبْحِ كَبْشٍ " قَالَ: وَسَمِعْتُ عَطَاءً إِذَا سُئِلَ: أَيْنَ يَذْبَحُ الْكَبْشَ؟ قَالَ: بِمَكَّةَ، قُلْتُ: فَنَذَرَ لَيَنْحَرَنَّ فَرَسَهُ أَوْ بَغْلَتَهُ قَالَ: جَزُورٌ كُنْتُ أَمْرُهُ بِهَا أَوْ بَقَرَةٌ، قُلْتُ: «أَمَرَ ابْنُ عَبَّاسٍ بِكَبْشٍ فِي النَّفْسِ»

[163] al-Shaybānī, *Al-Aṣl*. Vol. 1, pg. 219
[164] See, e.g., Ibn Abī Shaybah's *Muṣannaf*, vol. 2, pg. 192, Aḥmad b. Hanbal's *Musnad*, vol. 39, pg. 175, Muslim's *Ṣaḥīḥ*, vol. 1, pg. 381.
[165] Al-Sarakhsī in *al-Mabsūṭ*, vol. 1, pg. 234.

Ḥanīfah's position was that recitation of a pre-Muḥammadan scripture was allowed in prayer only if there was certainty that the recited passages were not tampered with (محرّف), because otherwise they would constitute the "speech of people" and thus would vitiate prayer. Ibn Māzah (d. 616 AH) transmits that the Bukharan Ḥanafī Shams al-A'immah al-Ḥilwānī (448 AH)[166] encountered in some manuscripts that Abū Ḥanīfah's position was that reciting from the Torah or another scripture passages that merely impart the *meanings* found in the Qur'ān ( مؤديا للمعنى الذي في القرآن) would be acceptable in prayer. Ibn Māzah comments that many of the Ḥanafī jurists (كثير من مشايخنا) agree with what al-Ḥilwānī transmits from the manuscripts, since it falls in line with Abū Ḥanīfah's logic elsewhere that the permissibility of what is recited in prayer depends on the meaning of what is said.[167] His reference to the comments of Ḥanafī jurists on this issue suggests that it was an issue that was well discussed. Badr al-Dīn al-'Aynī (d. 855 AH) asserts that while al-Shaybānī's position is against the recitation of these scriptures, the reported traditions about the early Ḥanafī imāms' positions (النوادر) include the opinion that it *is* allowed without issue (لا يكره). He also transmits the opinion that recitation from these texts is allowed if they match the meaning of the Qur'ān, but *not* if they just have meanings that glorify God (التسبيح), and a separate opinion that reciting from the pre-Muḥammadan scriptures would be allowed where the content serves to glorify God, praise him, or uphold his Oneness, but not in other matters.[168] As these appear to be later jurists' views of Abū Ḥanīfah's position, it is not clear whether Abū Ḥanīfah's original position, assuming it was the inverse of his pupils' position, understood scriptural tampering (*taḥrīf*) in the way some of the above jurists made it appear, since, as was noted earlier, *taḥrīf* was understood among some Muslims as having been

[166] Khayr al-Dīn al-Ziriklī, *Al-A'lām* (Dār al-'Ilm li al-Malāyīn, 2002). Vol. 4, pg. 13.
[167] Abū al-Ma'ālī Burhān al-Dīn Maḥmūd Ibn Māzah, *Al-Muḥīṭ al-Burhānī Fī al-Fiqh al-Nu'mānī*, ed. 'Abd al-Karīm Sāmī al-Jundī, 1st ed., 9 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2004). Vol. 1, pg. 308.
[168] Badr al-Dīn al-'Aynī, *Al-Bināyah: Sharḥ al-Hidāyah*. Vol. 2, pg. 177.

done to the interpreted meanings of the pre-Muḥammadan scriptures, not the scriptures themselves. Qur'ānic passages were indeed conceived of as having parallels in the Torah according to the early Muslims,[169] since the two scriptures were ultimately believed to come from the same Divine Source. It is thus possible that this position may have been actionable. Its mention in conjunction with the question of whether the Qur'ān could be recited in Persian suggests it had some practical utility given that the other issue would have been of concern to Persian converts to Islam.

This case appears to have been engaged with non-Kufans as well. One of the early Mālikīs, Ashhab b. 'Abd al-'Azīz (d. 204 AH), commented that recitation from the pre-Muḥammadan scriptures would be considered like speech, and thus prohibited to be recited in prayer.[170] When Aḥmad b. Ḥanbal was asked about the matter, he reportedly became angry and was shocked that this was an issue for Muslims. His contemporary, the famous traditionist Isḥāq b. Rāhawayh (d. 238 AH) was asked whether a Jewish or Christian *convert* (who wouldn't know

---

[169] E.g., The opening chapter of the Qur'ān, *al-Fātiḥah*, is identified in ḥadīth as being a unique chapter in the Qur'ān that does not have a parallel in the pre-Muḥammadan scriptures, implying that other chapters do (See Mālik's *Muwaṭṭa'*, vol. 2, pg. 112; note that a parallel between the structure of the Lord's Prayer and the *Fātiḥah* has been suggested);
Ibn Mas'ūd reportedly identified the Qur'ānic Chapter *al-Mulk* as being found in the Torah as well, and stated that recitation of it every night is encouraged (see, e.g., al-Ḥākim al-Naysābūrī in *al-Mustadrak*, vol. 2, pg. 540: وَهِيَ فِي التَّوْرَاةِ سُورَةُ الْمُلْكِ، وَمَنْ قَرَأَهَا فِي لَيْلَةٍ فَقَدْ أَكْثَرَ وَأَطْنَبَ…). This is merely a possibility, but the *Shema Yisrael* is recommended to be recited before bed according to the Talmud (Berakhot 60b), as is the reciting of *Mulk* before bed within the Islamic tradition. Within the full *Shema* prayer which includes verses of the Torah is the Baruch Shem ("Blessed be the Name"), making up the second line of the prayer, which, even though is not part of the Torah, has language that an Arabic-speaking, non-Hebrew speaker might assume parallels the first line of the Qur'ānic chapter *al-Mulk* in its mention of "blessed be…" (בָּרוּךְ/تبارك) and "kingdom" (מַלְכוּתוֹ/الملك).;
Ibn Abī Shaybah has a short section of his *muṣannaf* (vol. 6, pg. 152) on a few reports identifying parallels between the Qur'ān, the Torah, and the Gospels (مَا شُبِّهَ مِنَ الْقُرْآنِ بِالتَّوْرَاةِ وَالْإِنْجِيلِ). In one report, Ka'b al-Aḥbār claims that the beginning of the Torah is like the beginning of the Qur'ānic chapter al-An'ām, and its ending is like the Qur'ānic chapter Hūd.; See al-Ḥākim's *Mustadrak* (vol. 2, pg. 448) for another of a suggested parallel.; I thank Dr. Michael Cooperson for also recommending the following essay by Angelika Neuwirth, in which the author points out Qur'ānic parallels to familiar biblical passages, e.g., the connection between the Qur'ānic chapter al-Ikhlāṣ to the first line of the *Shema* (see pgs. 748-752 of Angelika Neuwirth, "The Qur'ān and the Bible," in *The New Cambridge History of The Bible: From 600 to 1450*, ed. Richard Marsden and E. Ann Matter (Cambridge: Cambridge University Press, 2012), 735–52.).

[170] Ibn Abī Zayd al-Qayrawānī, *Al-Nawādir Wa al-Ziyādāt 'alā Mā Fī al-Mudawwanah Min Ghayrihā Min al-Ummahāt*, ed. Muḥammad Ḥajjī, 1st ed., vol. 4, 15 vols. (Beirut: Dār al-Gharb al-Islāmī, 1999). Vol. 1, pg. 178

the Qur'ān) could recited from the Torah or Injīl in prayer, and he refused.[171] The question raised to Ibn Rāhawayh makes it explicitly apparent that this issue was viewed as having relevance for converts. Even though there is a strong case for its practical utility, it is also conceivable that such a position would have been theoretical and an exercise in defining what constitutes the "Qur'ān," acceptable words expressing glorification of God and His praises, and what would fall under the speech of people. Uncovering Abū Ḥanīfah's position on the matter and the issue's application is ultimately outside the scope of this project[172] but is relevant here in so much as it gives us glimpses into early Muslim juristic engagement with the pre-Muḥammadan scriptures. Other issues related to this topic include discussions of whether an oath can be taken on the pre-Muḥammadan scriptures, or whether these scriptures, when found in written form, should be touched with ritual purity.

We turn back to al-Shaybānī for some examples which were *not* documented by the Ḥanafī legal theorists but are significant in showing an acceptance of pre-Muḥammadan material that was not Qur'ānic or Prophetic,[173] offering us a reevaluation of later theorizations of acceptable sources for pre-Muḥammadan law. In his *al-Ḥujjah 'alā ahl al-madīnah*, al-Shaybānī discusses the status of a marriageable girl whose uncle or brother married her to someone while her father was away, and the father had separately *also* married her to someone while away. He first offers Abū Ḥanīfah's position (and that of the Kufans) that the first of the marriages is what

[171] Abū Muḥammad Ḥarb b. Ismā'īl al-Kirmānī, *Masā'il Ḥarb b. Ismā'īl al-Kirmānī*, ed. Muḥammad b. 'Abd Allāh al-Surayyi', 1st ed. (Beirut: Mu'assisat al-Rayyān, 2013). Pg. 424.

[172] Omar Qureshi at the University of Southern California has written an essay on Abū Ḥanīfah's position vis-à-vis the non-Arabic recitation of the Qur'ān in prayer; his piece likely covers areas of shared legal logic with this particular question and should be consulted.

[173] E.g., the issue of prostration that is done upon reciting the Qur'ānic verse in which David himself prostrates, an example that was discussed earlier. See Muḥammad b. al-Ḥasan al-Shaybānī, *Al-Ḥujjah 'alā Ahl al-Madīnah*, ed. Mahdī Ḥasan al-Kaylānī al-Qādirī, 3rd ed., 4 vols. (Beirut: 'Ālam al-Kutub, 1403AH). Vol. 1, pgs. 109-113; Also, on the question of whether it is permissible to ask people for money, al-Shaybānī references the example of Moses ﷺ asking from God, and not people, in a moment of desperation according to Qur'ān 28:24. See: Muḥammad b. al-Ḥasan al-Shaybānī, *Al-Kasb*, ed. Suhayl Zakkār, 1st ed. (Damascus: 'Abd al-Hādī Ḥarṣūnī, 1400AH). Pg. 93.

would count, and that if the second marriage was consummated, then the husband from the second marriage would be separated and the girl would receive her marriage payment (الصداق) because she was entered into sexually. She would also be rejoined with the first, true husband. Abū Ḥanīfah's position specifically points out an analogy to the case where a woman consummates a marriage with a second husband and is returned to her first husband yet is still paid by the second husband for consummation of the marriage (there are two prominent cases of this, the first based in a Qur'ānic verse, the second in the practice of 'Alī[174]) – the assertion being that this position has a basis elsewhere in the Muḥammadan sharī'ah. He contrasts this with the Medinese position that doesn't appear to be based on any analogous case, wherein the girl is married to the first person she was married to (either arranged by her uncle/brother, or by her father), *unless* she already consummated with the second of them, in which case she is married to the man she consummated with. Al-Shaybānī responds that such a claim does not make sense because it would mean she was technically married to the man from the first marriage up until the second man had intercourse with her, and if the woman died without intercourse with either man, the first man would inherit according to this position, and he would also be the one entitled to divorce her, yet through the second man's mere sex with her, inheritance and the right of divorce would somehow transfer to *him*. Al-Shaybānī suggests the lack of basis for this position by saying that if this was even a position of the Children of Israel, the Medinese should have reported it from them (لو كان هذا من قول بني إسرائيل لتحدث به عنهم), which they don't.[175] While being

[174] Two situations come to mind in which a woman is returned to her first husband after being with second man who has to pay her for having consummated with her (بما استحل من فرجها). The more well-known case is a woman who returns to her first husband who divorced her after remarrying with a second husband, noted in Qur'ān 2:230. The other is the case of a husband that goes missing and is assumed dead, only to return alive and find his wife remarried, a case where the same ruling justified by the Kufans based on the precedent of 'Alī. For the latter, see al-Shaybānī, *Al-Aṣl*. Vol. 9, pg. 352.;

[175] See al-Shaybānī, *Al-Ḥujjah 'alā Ahl al-Madīnah*. Vol. 3, pgs. 171-174. See also editor's comments for Imām Mālik's positions as they relate to the Medinese positions described by al-Shaybānī. Al-Shaybānī's comments here:

no more than a side comment, al-Shaybānī very significantly suggests the possibility that contemporary Israelites may have had legal positions of relevance for the Muslims, though his almost derogatory mention here suggests that such evidence, if acceptable, would have had lesser status among the jurists. Without additional information, it is hard to infer much more.

In a highly significant example not documented by the legal theorists but bearing consequence on their discussions, al-Shaybānī cites a Torah dictate explicitly in a legal discussion found in his *al-Ḥujjah ʻalā ahl al-madīnah*, and importantly this dictate is *not* reported via the Qur'ān or a ḥadīth, but rather the supposed first-hand knowledge of a Successor regarding the contents of the Torah itself. The legal discussion pertains to the status of a man's wife if he has unlawful sexual relations with her mother. Verses 4:22-23[176] of the Qur'ān prohibit a man from marrying his wife's mother, or her daughters from a prior relationship that he is caring for if he has consummated marriage with her. If the act of marriage to a woman can create unmarriageable kin, then the question may naturally arise, do intercourse and intimate relations, when they happen outside of marriage have a similar impact on relations? This possibility has significance in cases where, e.g., a man may be married to a woman but has relations with her mother. Could this unlawful act create unmarriageable kin out of one's own wife, barring him from her forever? In al-Shaybānī's specific discussion in the text, he debates with the Medinese

---

...قيل لَهُم فاذا دخل الاخر بِامْرَأَة الأول صَارَت امْرَأَته بِدُخُولِهِ بهَا - لَو كَانَ هَذَا من قَول بني اسرائيل لتحدث بِهِ عَنْهُم - أرايتم لَو لم يدْخل بهَا مِنْهُمَا حَتَّى مَاتَت ايهما كَانَ يَرِثهَا وايهما يَقع طَلَاقه عَلَيْهَا قَالُوا الأول قيل لَهُم فَكيف تحولت من الأول إِلَى الآخر لدخلو الاخر بهَا وَقد كَانَ الأول زَوجهَا مَا يسْتَدلّ على هَذَا بِشَيْء اقبح مِنْهُ

176 وَلَا تَنكِحُوا مَا نَكَحَ آبَاؤُكُم مِّنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ ۚ إِنَّهُ كَانَ فَاحِشَةً وَمَقْتًا وَسَاءَ سَبِيلًا ۝ حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُم مِّنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمُ اللَّاتِي فِي حُجُورِكُم مِّن نِّسَائِكُمُ اللَّاتِي دَخَلْتُم بِهِنَّ فَإِن لَّمْ تَكُونُوا دَخَلْتُم بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَن تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ ۗ إِنَّ اللَّهَ كَانَ غَفُورًا رَّحِيمًا ۝

Do not marry women who your fathers married, except what has already happened ۝ Indeed, this is an immorality, a loathsome thing, and an evil way. Forbidden upon you [in marriage] are you mothers, your daughters, your sisters, your paternal and maternal aunts, the daughters of your brother, the daughters of your sister, your milk-mothers, your milk-sisters, your wives' mothers, the step-daughters under your care from your wives who you have consummated marriage with - but there is no harm if you have not consummated with them - and the wives of your sons born from you, and [forbidden also is] that you combine [in marriage] two sisters except for what already happened. Verily God is Ever Forgiving, Ever Merciful ۝

the situation of a man who commits adultery with his wife's mother or has what he believes to be lawful sex with her following a marriage contract that would have been invalid by its very nature (which may be contracted, e.g., if the man was unaware of her identity or the prohibition from marrying her). Would such relations cause the woman that he married to now be forbidden to him, being the daughter of the one whom he had intercourse with?[177] The Kufan position al-Shaybānī reports from Abū Ḥanīfah is that if a man had sex with his wife's mother either by committing adultery or through an invalid marriage contract, then both his wife and the mother-in-law become forever unlawful for him. Underpinning the Kufan argument here is a legal maxim that unlawful acts can make the lawful unlawful or void. Examples of this principle in application elsewhere might be the pilgrim's ritual state of *iḥrām* that is vitiated by acts that are forbidden within the state,[178] or how regular speech that is forbidden in ritual prayer will invalidate a Muslim's prayer when uttered[179]. For the Kufans, if the man merely made a marriage contract with the mother-in-law but did not have sex with her, only the invalid marriage with the mother-in-law would be voided, with no repercussions on the status of his wife or his marriage to her. It is sex with the mother-in-law, whether through adultery or a quasi-marriage, that makes the wife unlawful.

Al-Shaybānī points out the inconsistencies he finds in the legal thought of the Medinese, who on the one hand deny the use of the prior legal maxim and resultantly argue that a daughter's lawful status is not impacted by the act of adultery with her mother, but *simultaneously* also hold that in cases where sex occurs with a mother-in-law following the

[177] See al-Shaybānī's *Ḥujjah*, Vol. 3, pgs. 367-382. See also editor's comments for Imām Mālik's positions as they relate to the Medinese positions described by al-Shaybānī.
[178] Referenced vis-à-vis this Torah dictate, as known by another source. See Abū Muḥammad Ibn Qudāmah, *Al-Mughnī*, 10 vols. (Cairo: Maktabat al-Qāhirah, 1968). Vol. 7, pg. 118.
[179] For this example as it is analogized to this discussion, see Muḥammad b. Idrīs al-Shāfi'ī, *Al-Umm*, 8 vols. (Beirut: Dār al-Ma'rifah, 1990). Vol. 5, pg. 167.

contracting of a quasi-marriage with her, then both the mother and daughter would be prohibited on him.[180] After pointing out what he argues are logical inconsistencies in these two Medinese positions and citing analogous cases that demonstrate the applicability of the Kufan maxim, al-Shaybānī lists the textual proofs of the Kufan position: first, a dictate from the Torah that curses relations between a man and a woman and her mother, then a report containing the legal opinion of the Companion ʻAbd Allāh b. ʻAbbās that a man's wife becomes prohibited after intercourse with her mother, and then followed by several Successor reports similarly barring relations with one's wife after intimacy with her mother (the Kufan Ibrāhīm al-Nakhaʻī [d. 96 AH]'s cited position involves a man kissing or touching his mother-in-law with lust, so not intercourse). Al-Shaybānī also cites opinions from the successors Ṭāwūs and Mujāhid, that if a man had unlawful sex with a woman who he was not married to, that he would never be able to marry that woman's mother or daughter. This would be a natural extension of the Kufan argument, since sex, whether through marriage or outside of it, creates unmarriageable kin.

The Torah citation is reported by al-Shaybānī as follows:

[180] See editor's comment in *al-Ḥujjah* for citations from Mālik's Muwaṭṭa'; It appears that the Medinese position that makes a daughter unmarriageable kin in the case of intercourse with her mother following a quasi-marriage - and importantly not adultery - would be an attempt to derive a ruling closer to the Qur'ānic text than through analogy as with the Kufans: the Qur'ān prohibits *marriage* with the mother-in-law after marriage to the daughter, and so a scenario that might cause the daughter to become similarly prohibited as unmarriageable kin would be where a person marries his mother-in-law, which would be a quasi-marriage because it wouldn't be allowed in the first place, and *not* adultery (which isn't explicitly stated in the Qur'ānic text as something that creates unmarriageable kin). However, because the contracting of the marriage contract wouldn't have been allowed in the first place, it seems it would take the act of consummation to realize the expected reverse prohibition on the daughter. A larger evaluation of Mālikī discourse on this topic is needed to confirm this, which this essay will not engage with.

Qays b. al-Rabī‘ al-Asadī [d. 167 AH][181] reports to us from Abū Ḥuṣayn [d. ca. 127-128 AH][182], from Khaythamah b. ‘Abd al-Raḥmān al-Ju‘fī [d. 80 AH] [183], who said: “It is written in the Torah: ‘Cursed is the one who looks at the privates of a woman and her daughter.’”[184]

Al-Shaybānī’s quote appears to be a genuine reformulation of the sexual prohibition (also expressed euphemistically) found in Leviticus 18:17 (“Do not uncover the nakedness of a woman and her daughter…”[185]) and the curse at the end of this section of legal pronouncements in 18:29 (“For whosoever shall do any of these abominations, even the souls that do them shall be cut off from among their people”[186]). The prohibition against co-relations with a mother and her daughter can also be found in Leviticus 20:14 (“And if a man take his wife and her mother, it is lewdness. He and them will be burned in fire and there shall be no lewdness among you”[187]). Though al-Shaybānī does not elaborate any of the textual proofs he offers including the Torah dictate, assuming them to be self-evident, the utility of the Torah reference in this debate may be understood as follows: while the Qur’ān suggests that unmarriageable kin are created through marriage, it does not comment on *zinā* doing the same, even though it too involves sex. The Torah dictate (as he knows it) connects the wife to her mother through adultery

---

[181] See Shams al-Dīn Abū ’Abd Allāh al-Dhahabī, *Siyar a’lām al-Nubalā’*, ed. Shu’ayb Arnā’ūṭ, 25 vols. (Mu’assisat al-Risālah, 1985). Vol. 8, pg. 41.
[182] Ibid., vol. 5, pg. 413.
[183] Ibid., Vol. 4, pg. 320.
[184] Al-Shaybānī in *al-Ḥujjah*, vol. 3, pg. 375:
أخبرنا قيس بن الربيع الأسدي عن أبي حصين عن خيثمة بن عبد الرحمن الجعفي قال: مكتوب في التوراة: ملعون من نظر إلى فرج امرأة وبنتها
[185] עֶרְוַת אִשָּׁה וּבִתָּהּ, לֹא תְגַלֶּה: אֶת-בַּת-בִּנָּהּ וְאֶת-בַּת-בִּתָּהּ, לֹא תְגַלּוֹת עֶרְוָתָהּ--שַׁאֲרָה הֵנָּה, זִמָּה הִוא
The nakedness of a woman and her daughter: do not uncover. Nor the daughter of her son or the daughter of her daughter shall you take to uncover her nakedness: They are near kinswomen to her; it is wickedness.
[186] כִּי כָל-אֲשֶׁר יַעֲשֶׂה, מִכֹּל הַתּוֹעֵבֹת הָאֵלֶּה--וְנִכְרְתוּ הַנְּפָשׁוֹת הָעֹשֹׂת, מִקֶּרֶב עַמָּם
[187] וְאִישׁ, אֲשֶׁר יִקַּח אֶת-אִשָּׁה וְאֶת-אִמָּהּ--זִמָּה הִוא; בָּאֵשׁ יִשְׂרְפוּ אֹתוֹ, וְאֶתְהֶן, וְלֹא-תִהְיֶה זִמָּה, בְּתוֹכְכֶם

in particular, by connoting that a man has cursed status for engaging in relations with both a woman and her mother in particular, this cursed relationship described as sight of both of their privates, which by natural extension would include adultery. Applying the prior maxim that the prohibited makes the lawful unlawful, the conclusion is that relations specifically with both a woman and her mother would make the man's lawful marriage to one's daughter unlawful, just as marriage itself would make unlawful marital relations with the wife's kin. While the legal opinions of Ibn 'Abbās and the Successors he cites offer a prior precedent for the Kufan position based in the practice of members of the early Muḥammadan community, the Torah citation is scriptural evidence that al-Shaybānī has available for loosely justifying the position, the Qur'ān and prophetic reports available to him being silent on the matter.

This is a highly significant example from a major figure in our understanding of early Islamic jurisprudence, and can help us conclude the following:

- We can now confirm that legal dicta from the Torah were indeed legally relevant and transmitted among Muslims, even when *not* reported through the 'authenticating' intermediaries of the Qur'ān or Prophetic ḥadīth, at least within the 2nd century AH. While transmitted via a Kufan isnād, it is used as evidence, without qualification, against interlocutors in Medina, indicating that this evidence may have been admissible among non-Kufans as well. This example would be explicit evidence of the position accepting such evidence which was doxographically preserved in the works of legal theory looked at earlier, though unattributed.[188] Given that this is among a few examples found through

[188] Kevin Reinhart suggests that this position may have been held by Abū Ḥanīfah based on a hasty presentation of a later uṣūl text he consults, and in a footnote states that in order to prove such a position for the first two hundred years AH, a "reliable attribution ought to include quotations from the author's text" (endnote 6, pg. 187). This would be such an attribution, though from one of Abū Ḥanīfah's main pupils. Regarding Reinhart's comments, he states

extensive text mining attempts across numerous early texts, it also appears to have been infrequently practiced.

- The Shaybānī reference does not appear to be a verbatim translation of the Hebrew text we have, indicating that Khaythamah, a Successor who moved to Kufah from Medina, may not have been translating directly from the Torah (or perhaps the report mutated over time). The carry-over of the euphemistic wording from Hebrew into Arabic is worth noting. A search through the Islamic textual corpus shows a handful of examples of non-legal examples where Khaythama is believed to have transmitted material regarding pre-Muḥammadan prophets or material of questionable origin ascribed to the Torah.[189]

---

that Abū Ḥanīfah "said, for instance, that when in doubt on some point of law, one can consult the Books of the other Scriptuary peoples…" (pg. 11). His endnote reveals that he is referencing al-Zanjānī's (d. 656 AH) *Takhrīj* (endnote 4, pg. 187). However, al-Zanjānī states (pg. 369 of *al-Takhrīj*): "It has been transmitted from Abū Ḥanīfah that he said: 'whatever God has transmitted in His Book [i.e. the Qur'ān] of the prior laws, than it is our law, since there is no benefit in His mentioning [something] except that it can be used as legal proof.'" Al-Zanjānī's reference of "His Book" is a very clear reference to the Qur'ān, and the rationalization of the benefit or lack thereof in God's mentioning of a prior law in it is an issue that was discussed among Muslim jurists regarding pre-Muḥammadan law found *in the Qur'ān*. In his endnotes Reinhart seems to acknowledge this very "context," yet his in-text statement makes it appear as though Abū Ḥanīfah apparently held that one can consult the Books of other Scriptuary peoples directly, which is an obviously false reformulation of al-Zanjānī's comments. See A. Kevin Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought* (Albany: State University of New York Press, 1995), https://search.proquest.com/docview/43864184/D138091DD96143BBPQ/16.; Also: Abū al-Munāqib Shihāb al-Dīn al-Zanjānī, *Takhrīj Al-Furū' 'alā al-Uṣūl*, ed. Muḥammad Adīb Ṣāliḥ, 2nd ed. (Beirut: Mu'assisat al-Risālah, 1398).

[189] A search was conducted for references to خيثمة AND التوراة across 1413 texts spanning the genres of ḥadīth, tafsīr, tārīkh, ṭabaqāt, and Ḥanafī fiqh. Two examples where Khaythama claims to transmit from the Torah include one that is pietistic and another that suggests a Torah parallel to Qur'ānic language. He also seems to transmit statements of other Prophets not based in the Qur'ān or ḥadīth. Aside from the al-Shaybānī example, none seem to have legal significance and do not appear to have strong biblical origin. See, e.g.: Abū Bakr 'Abd al-Razzāq al-Ṣan'ānī, *Tafsīr 'Abd al-Razzāq*, ed. Maḥmūd Muḥammad 'Abduh, 1st ed., 3 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1419AH). Vol. 3, pg. 49. Khaythama states that the phrase "يَا أَيُّهَا الَّذِينَ آمَنُوا" ("OH YOU WHO BELIEVE…") appears in the Torah as "يَا أَيُّهَا الْمَسَاكِينُ" ("Oh you impoverished ones…").; See also: Abū Nu'aym al-Aṣfahānī, *Ḥilyat Al-Awliyā' Wa Ṭabaqāt al-Aṣfiyā'*, 10 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1409AH). Vol. 4, pg. 116, where he quotes the Torah as saying to dedicate oneself to the worship of God (the work where this is transmitted is a pietistic Sufi work). See surrounding pages as well. See also al-Ṭabarī, *Tārīkh Al-Rusul Wa al-Mulūk*. Vol. 1, pg. 444.; And also: Abū 'Abd Allāh Ibn al-Mubārak, *Al-Zuhd Wa al-Raqā'iq*, ed. Ḥabīb al-Raḥmān al-A'ẓamī (Beirut: Dār al-Kutub al-'Ilmiyyah, n.d.). Pg. 201.

Ibn Abī Ḥātim al-Rāzī, *Tafsīr Al-Qur'ān al-'Aẓīm Li Ibn Abī Ḥātim*, ed. As'ad Muḥammad al-Ṭayyib, 3rd ed. (Saudi Arabia: Maktabat Nizār Muṣṭafā al-Bāz, 1419AH). Vol. 7, pg. 2381.

- Al-Shaybānī cites this scriptural text as his *first* textual proof, exhibiting its privileged status in his argument over the opinion of a Companion that he cites next, and then the Successors who he references thereafter.
- Al-Shaybānī provides an isnād with *three* sources between him and the believed words of the Torah. His inability to produce a shorter *isnād* suggests he has no direct access to the Bible. This is significant to note because Crone and Cook have suggested, based on a statement by al-Shaybānī in his *Siyar* (adduced by Goldziher) that there existed Jews in Iraq who claimed (falsely, according to al-Shaybānī) that they were Muslims because they declared belief in God and the Prophet Muḥammad ﷺ, and thus there existed a "penumbra" between Judaism and Islam at the time of al-Shaybānī that might've explained Islam's hypothesized absorption of Jewish material.[190] The fact that al-Shaybānī cites three intermediaries before his biblical text indicates that this supposed 'penumbra' may not have been very strong or sought after by a jurist that was open to accessing biblical material for legal purposes. This example might therefore support the

[190] From an earlier footnote, rendered here again for convenience:
Michael Cook and Patricia Crone, *Hagarism: The Making of the Islamic World* (New York: Cambridge University Press, 1977), https://search.proquest.com/docview/60815550/B7FC4576D8304E88PQ/3. Pg. 180, endnote 12.; Ignaz Goldziher, "Usages Juifs d'aprés La Littérature Religieuse Des Musulmans," *Revue Des Etudes Juives*, 1894. Pg. 91f. The following text is rendered by Goldziher in French according to a manuscript of *Kitāb al-siyar* (*Droit de guerre musulman*) at the University of Leiden. Goldziher has the version read, in French, "Aujourd'hui, tous les Juifs reconnaissent dans les régions de l'Irak quil riy a pas de Dieu hormis Allah et que Mahomet est V envoyé de Dieu." Trans: "Today, all Jews recognize in the region of Iraq that there is no God but Allah and that Muḥammad was sent by God." The text I have (from the commentary of al-Sarakhsī [d. ca 483-500/1090-1106] on al-Shaybānī's *al-Siyar al-kabīr*), does not seem to make this statement necessarily apply to "all" Jews in Iraq: فَأَمَّا الْيَوْمَ بِبِلَادِ الْعِرَاقِ فَإِنَّهُمْ يَشْهَدُونَ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَلَكِنَّهُمْ يَزْعُمُونَ أَنَّهُ رَسُولٌ إلَى الْعَرَبِ، لَا إلَى بَنِي إسْرَائِيل. وَيَتَمَسَّكُونَ بِظَاهِرِ قَوْله تَعَالَى {هُوَ الَّذِي بَعَثَ فِي الْأُمِّيِّينَ رَسُولًا مِنْهُمْ} [الجمعة: 2]
See Muḥammad b. Aḥmad al-Sarakhsī, *Sharḥ Al-Siyar al-Kabīr*, 5 vols. (al-Sharikah al-Sharqiyyah li al-i'lānāt, 1971). Vol. 1, Pg. 151. Interestingly, these beliefs are similar to the *'Īsāwiyya* movement, who affirmed the prophecy of Muḥammad but only for the gentiles. See S. Pines, "Al-ʿĪsāwiyya," ed. P. Bearman et al., *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

thesis that there was limited direct Muslim access to Jewish scriptural sources, at least in the time of al-Shaybānī in the 2nd century AH.

- The veracity of the Torah dictate is assumed, without al-Shaybānī seeing any need to defend its authenticity, in spite of the previously discussed Qur'ānic verses about scriptural tampering by the People of the Book. It appears that the authenticity of this material was legitimated through the intermediary of an isnād of known Muslim transmitters. In many of the later theoretical works we encountered, non-Muḥammadan scriptural material was acceptable *in theory*, but mainly inaccessible because of questions of authenticity. It appears the isnād may have been a legitimizing tool in accessing pre-Muḥammadan law found in pre-Muḥammadan scriptures, just as it was in determining the words of the Prophet ﷺ, and was deemed sufficient enough evidence in this form that he was comfortable using it against his interlocutors in Medina without qualifying it.
- Each of the Kufans in the *isnād* that al-Shaybānī adduces were individuals that contributed to the preservation of this legal dictate and represent a tradition from at least the time of the Successors to his own that believed this biblical dictate was relevant enough for the Muslim community's benefit that it was to be transmitted.
- An important note is that the Torah dictate, even though it provides a strong scriptural backing for al-Shaybānī's position, could still be abandoned without detriment to al-Shaybānī's argument, which could still be defended through the legal precedent of the early Muslims he cites after the Torah dictate, along with analogical reasoning between illegitimate sex and marriage. Arguments that Islamic law was significantly indebted to biblical or Jewish law may also be questioned – based on this example alone - where biblical law *was* indeed openly cited, but where the meaning of the biblical dictate was

devoid of any biblical and Talmudic context, instead selectively framed within a discourse that was familiarly Islamic. Leviticus 20:14, which designates death by fire for "taking" a woman and her mother, is no-where referenced here as a punishment when it could have. In addition, Talmudic discussions seem to diverge from the Kufans here. As we saw for al-Shaybānī, intimate relations of any kind, irrespective of marriage, could create unmarriageable kin. When we look at Talmudic discussions on the topic of unmarriageable kin, however, we find that marriage, and not mere intercourse, e.g., was the defining factor. We learn in the *Mishna* that a man may marry a relative of a woman he raped or seduced outside of marriage, such as her mother or daughter (i.e. they did *not* become his unmarriageable kin), which would not be the case if he were married to her. The *Gemara* further makes it clear that kinship is formed through marriage, not outside of it.[191]

- The previously noted Talmudic discussions make reference to Leviticus 17:18, strengthening our case that this may be the basis of Khaythama's Torah dictate, since the dictate is similarly cited in Kufan debates pertaining to unmarriageable kin and intercourse with women outside of marriage. However, as was pointed out, the Talmudic and Kufan positions diverge in conclusions. One may hypothesize that Jewish knowledge regarding a legal question of concern to the Muslims (the formation of unmarriageable kin through intercourse) may have been sought or known, and that this may explain Muslim knowledge regarding the Torah passage in question, since it is referenced in the Jewish discussions pertaining this topic. But while the Torah verse was retained in the Kufan discourse given its theoretical utility as a pre-Muḥammadan scriptural source, the

[191] See Yevamot 97a: 9-17 of the William Davidson edition of the Babylonian Talmud.

separate Jewish legal discussions were deemed irrelevant (and likely liable to the Qur'ānic accusations regarding the meanings of the pre-Muḥammadan scriptures being altered by the People of the Book). While it is not possible to definitively rule out that the Torah dictate was the fundamental basis of the Kufan position, it is more likely that it was cited because it offered a form of scriptural confirmation of the Kufan position, which may have been separately established through analogy to the Qur'ānic paradigm, a pre-existing legal maxim, and the precedent of early Muslims who may have had greater issue with co-relations with one's wife and mother-in-law over other forms of unlawful relations.

- The modern Muslim writers interacting with al-Shaybānī's writings justify his Torah reference in different ways. For Mahdī Ḥasan al-Kaylānī, the editor of *al-Ḥujjah*, al-Shaybānī's reference to the Torah is not problematic because it has a sound isnād and is transmitted by a well-known Successor that can be relied on. This report was known and criticized by Ibn Ḥazm in his *Muḥallā*, as al-Kaylānī points out, but the reference Ibn Ḥazm deals with is transmitted by Wahb b. Munabbih from the Torah *without* an isnād. Al-Kaylānī suggests that al-Shaybānī's reference here is sound because of the existence of an isnād with trusted narrators (unlike Ibn Ḥazm's version), but also that Khaythamah may have read the Torah himself, or perhaps learned about it from the well-known early Muslim source for biblical material, Wahb b. Munabbih. In other words, the Torah dictate was authenticated by Khaythamah as demonstrated by his very narrating of it, and therefore admissible. Its origins in pre-Muḥammadan scripture do not seem to bother al-Kaylānī. Al-Kaylānī also notes the manuscript commentator's statements tying this Torah reference by al-Shaybānī to the legal theoretical debates on pre-Muḥammadan law. Dr.

Muḥammad Būynūkālin, editor of the Dār Ibn Ḥazm edition of al-Shaybānī's *Aṣl*, is more receptive of al-Shaybānī's reference to pre-Muḥammadan law in the case of time access rights, which was a Qur'ānic reporting of pre-Muḥammadan law, than he is of this direct reference to the Torah. He remarks that this particular citation by al-Shaybānī, because it is offered in conjunction to other legal proofs, needs to be seen as *supporting* evidence, and *not* standalone evidence, which may speak more to his own perceptions of non-Qur'ānic, non-ḥadīth references to pre-Muḥammadan law.[192]

Among al-Shaybānī's contemporaries, the same biblical curse against those who "view the privates" of one's mother-in-law is cited but attributed to alternative personalities. Al-Shāfi'ī (d. 204 AH), e.g., is also aware of this same Torah dictate (and a search through his available writings indicates that this is likewise the only non-Qur'ānic/non-Prophetic Torah dictate he references), but he knows it through Wahb b. Munabbih, and without an isnād. The discussion is similarly related to whether a man committing adultery with his wife's mother makes his wife forbidden to him, but also extends to the question of whether his relations with his father's wife or son's wife would cause *their* wives to be forbidden to *them* (since this act might make them unmarriageable kin to them as marriage does). Al-Shāfī'ī argues that a man committing adultery with his wife or the wife of his father or son would not create new unmarriageable kin, in opposition to his Kufan interlocutors[193], arguing it primarily on rational grounds by asserting that

[192] al-Shaybānī, *Al-Aṣl*. Introduction, pg. 224-225:
وينقل الشيباني في مسألة عن تابعي نقلاً عن التوراة ويستدل به. لكن هناك أدلة أخرى في المسألة. فلذلك ينبغي اعتبار هذا النقل عنصراً مساعداً في الاستدلال يستشهد به، وليس دليلاً أصلياً

[193] While he doesn't name the Kufans explicitly, it can be assumed given al-Shāfi'ī's frequent dialectics with them in his works, and because this position was famous among them (though held by others as well – see editor's footnotes in al-Shaybānī's *al-Ḥujjah* from this topic for more information). Al-Bayhaqī also ascribes al-Shāfi'ī's discussions here as having been with the Irāqīs. See: Abū Bakr al-Bayhaqī, *Ma'rifat al-Sunan Wa al-Āthār*, ed. 'Abd al-Mu'ṭī Amīn Qal'ajī, 1st ed., 15 vols. (Cairo: Dār al-Wafā', 1991). Vol. 10, pg. 115.

adultery cannot make forbidden that which marriage makes forbidden, as they are of unrelated natures, one being an unlawful act, the other lawful. The Kufans uphold the analogy because both marriage and adultery share the aspect of sex, and so if one makes individuals unmarriageable kin, so should the other. Al-Shāfi'ī disputes the analogy: sex in marriage is a blessing, whereas sex through adultery a forbidden act that one is punished for; the kinship ties formed from marriage are also a *blessing* in the Qur'ān[194] that make a man of such a status that he can travel with his wife's mother and daughter (who are unmarriageable to him), whereas unlawful sex is a source of punishment in this life and if unforgiven, punishment in the next. The apparent analogy is also selectively applied or results in strange conclusions, as al-Shāfi'ī argues with examples. For example, a woman who might otherwise be unable to divorce by Islamic law can circumvent this simply by kissing her son with lust, and by virtue of this Kufan position, become unmarriageable and forbidden to her husband. The legal maxims that al-Shāfi'ī derives in competition to the Kufan one is that the unlawful [i.e. adultery] cannot make unlawful that which already makes other matters unlawful [i.e. marriage], and that you cannot make something (marriage) unlawful through its opposite (unlawful sex). The bulk of his discussion attempts to make use of logic and analogous cases to prove his points, but he does eventually engage with the textual evidences cited by the Kufans in the end of his discussion, suggesting their periphery status in building their position. He concludes his discussion by citing the Torah reference used by the opposition, which is known to them (without a given isnād) from Wahb B. Munabbih: "It is written in the Torah: 'Cursed is the one who looks at the privates of a woman and her daughter'" – the same statement as what al-Shaybānī reported from Khaythama,

[194] Qur'ān 25:54:

وَهُوَ الَّذِي خَلَقَ مِنَ الْمَاءِ بَشَرًا فَجَعَلَهُ نَسَبًا وَصِهْرًا ۗ وَكَانَ رَبُّكَ قَدِيرًا ۝

It is He who created man from fluid, then made him [kin] by blood [i.e. lineage] and marriage: Your Lord is All Powerful ۝

but now ascribed to Wahb b. Munabbih. What is interesting is that al-Shāfi'ī does not make a point of rejecting the evidence based on its non-Qur'ānic or Muḥammadan origins, which one might expect if the utility of this source was considered immediately suspect. His engagement with it as the last of his interlocutors' offered evidence, however, and the brevity with which he dismisses this evidence when compared to the larger legal argument he makes for his position before, suggests the Torah dictate does little to strengthen the opposition's argument. He argues that the Torah dictate is not particularly relevant, since the curse of God is not limited to cases of unlawful relations with both one's wife and mother-in-law, but other cases of unlawful intimacy as well, in addition to seemingly unrelated cases like grave digging,[195] or women who wear fake hair[196]. And as al-Shāfi'ī's pupil al-Rabī' (d. 270 AH) points out,[197] if one were to use the mere fact that the man is cursed by committing adultery with his mother-in-law to prohibit relations with his wife, i.e. use the curse as reason to prohibit something not immediately related to the cursed act, then one would have to do the same with other "cursed" acts as well, which is *not* done by the jurists: the one who benefits from unlawful usury is not prohibited from ownership of things he did not profit from in his usurious transaction, nor would someone who was a grave digger be prohibited from digging a grave that was lawful to dig. Additionally, on the basis of this Torah statement, the Kufans would not be able to prohibit a man from his wife if his father had relations with her (as their current position holds) but did not 'look' at her own mother's privates in addition to the daughter's. The evidence from the Torah, in other words, is not legitimately applied.[198]

[195] See, Mālik's Muwaṭṭā', vol. 2, pg. 334.
[196] See, *Ṣaḥīḥ al-Bukhārī*, vol. 7, pgs. 165-166.
[197] It appears that al-Rabī' is now speaking in the passage
[198] See al-Shāfi'ī in *al-Umm* (Dār al-Wafā' edition), vol. 6, pgs. 398-406. The discussion on the Torah reference occurs on pgs. 405-406. I would like to thank Adeel Syed for helping me unpack some of the nuances of this passage.

A search through texts from the genres of fiqh and ḥadīth[199] helps us see that this dictate from the Torah, in addition to being recorded and known by the early jurists al-Shāfi‘ī and al-Shaybānī, was also known among the traditionists (*muḥaddithūn*) for its legal value as well. The Yemeni ‘Abd al-Razzāq al-Ṣan‘ānī (d. 211 AH) transmits the report with isnād to Wahb b. Munabbih,[200] as does the Kufan Ibn Abī Shaybah (d. 235 AH),[201] and it was also reportedly transmitted by Ibn al-Ḍurays (d. 294 AH)[202]. The former two traditionists cite this Torah dictate as a report of legal relevance to the issue of whether a man may have relations with his slave woman and her mother or daughter. Relations with a slave, just like *zinā*, are not explicitly noted in the Qur’ān as creating unmarriageable kin, but unlike *zinā* where the act is impermissible by its very nature, and where a ‘curse’ in the Torah might not signify a new prohibition on something that was already prohibited, relations with slave women relatives were theoretically legitimate as there was no clear scriptural statement against it. It appears that citation of the dicta in *this* case may have been far more relevant a legal evidence than in the case of the Kufan reference to it vis-à-vis *zinā* and marriage. The isnāds ‘Abd al-Razzāq and Ibn Abī Shaybah cite also include well known ḥadīth teachers and reliable transmitters, along with jurists from the

---

[199] Over 1104 texts were searched for matches to “التوراة” + “ملعون” + “فرج”

[200] ’Abd al-Razzāq al-Ṣan’ānī, *Al-Muṣannaf*, ed. Ḥabīb al-Raḥmān al-A’ẓamī, 2nd ed., 11 vols. (India: al-Majlis al-’Ilmī, 1983). Vol. 7, pg. 193:

عَنِ ابْنِ جُرَيْجٍ، عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: سَمِعْتُ وَهْبَ بْنَ مُنَبِّهٍ، يَقُولُ فِي التَّوْرَاةِ: «مَلْعُونٌ مَنْ نَظَرَ إِلَى فَرْجِ امْرَأَةٍ وَابْنَتِهَا»

Also, pg. 194:

عَنِ الثَّوْرِيِّ، عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ، عَنْ وَهْبِ بْنِ مُنَبِّهٍ قَالَ: سَمِعْتُهُ يَقُولُ: " إِنَّا نَجِدُهُ مَكْتُوبًا: مَنْ كَشَفَ عَنْ فَرْجِ امْرَأَةٍ وَابْنَتِهَا فَهُوَ مَلْعُونٌ "

[201] ’Abd Allāh Abū Bakr b. Abī Shaybah, *Al-Kitāb al-Muṣannaf Fī al-Aḥādīth Wa al-Âthār*, ed. Kamāl Yūsuf al-Ḥūt, 1st ed., 7 vols. (Riyadh: Maktabat al-Rushd, 1989). Vol. 3, pg. 482:

جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ، عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ، عَنِ ابْنِ مُنَبِّهٍ، قَالَ: «فِي التَّوْرَاةِ الَّتِي أَنْزَلَ اللَّهُ عَلَى مُوسَى أَنَّهُ لَا يَكْشِفُ رَجُلٌ فَرْجَ امْرَأَةٍ وَابْنَتِهَا إِلَّا مَلْعُونٌ مَا فَصَّلَ لَنَا خُرَّةً وَلَا مَمْلُوكَةً»

[202] Al-Suyūṭī (d. 911 AH) is aware of this dictate as reported by Wahb was transmitted by ‘Abd al-Razzāq, Ibn Abī Shaybah, and Ibn al-Ḍurays. I was unable to locate the tradition reported by Ibn al-Ḍurays in his available work, Faḍā’il al-Qur’ān, and so it is likely in another one of his works. See ’Abd al-Raḥmān b. Abī Bakr Jalāl al-Dīn al-Suyūṭī, *Al-Durr al-Manthūr*, 8 vols. (Beirut: Dār al-Fikr, n.d.). Vol. 2, pg. 478.; Also: Abū ’Abd Allāh Ibn al-Ḍurays, *Faḍā’il al-Qur’ān Wa Mā Anzala Min al-Qur’ān Bi Makkah Wa Mā Anzala Bi al-Madīnah*, ed. Ghazwat Badīr, 1st ed. (Damascus: Dār al-Fikr, 1987).

early Islamic period. These names include ‘Amr b. Dīnār (d. 126 AH)[203], Ibn Jurayj (d. 150 AH),[204], al-Thawrī (d. 161 AH),[205] Jarīr b. ‘Abd al-Ḥamīd (d. 188 AH),[206] and ‘Abd al-‘Azīz b. Rufay‘ (d. 130 AH)[207]. Ibn Abī Shaybah’s version, along with one of ‘Abd al-Razzāq’s two reports also utilize “uncovering” (كشف) instead of “viewing” (نظر) of the privates, which mirrors the Leviticus passage closer and might suggest a more direct lineage from the Torah. In addition, we also get some legal context in Ibn Abī Shaybah’s version. Wahb b. Munabbih indicates, after citing the dictate, its relationship to the question of co-relations with one’s slave woman and her mother/daughter: the dictate does not specify the prohibition as being for free or slave women (i.e. it is applicable for both).

In the section following this one, Ibn Abī Shaybah engages with relations between a master and two sister slaves that he owns, and he references *an additional* Torah dictate from Wahb b. Munabbih, this time providing additional details as to how this information was learned. According to the narrator ‘Abd al-‘Azīz b. Rufay‘ (d. 130), who we just saw was one of the narrators of the previous dictate regarding relations with a mother/daughter, he asked two famous Successors including Ibn al-Ḥanafiyyah (d. 81 AH)[208] and Ibn al-Musayyab (d. 94 AH)[209] whether relations with two sister slaves was allowed, and they indicated that it was a matter not clear by scripture, with one verse seemingly allowing it, and another seemingly prohibiting it (أَحَلَّتْهُمَا آيَةٌ، وَحَرَّمَتْهُمَا آيَةٌ), this confusion not only affecting these two successors, but also ‘Alī and

[203] See al-Dhahabī, *Siyar a’lām al-Nubalā’*. Vol. 5, pgs. 300-307.
[204] Ibid., vol. 6, pgs. 325-336.
[205] Ibid., vol. 7, pgs. 229 -279.
[206] Ibid., vol. 9, pgs. 9-18.
[207] Ibid., vol. 5, pgs. 228-229.
[208] See al-Dhahabī’s *Siyar*, vol. 4, pgs. 110-129.
[209] See Ibid., vol. 4, pgs. 217-246.

‘Uthmān[210]. Ibn Rufay‘ then asks Wahb b. Munabbih, who attests that in the revelation given to Moses ﷺ (i.e. the Torah), combining between two sisters (in relations) is cursed, without specifying them to be free women or slaves. Ibn Rufay‘ then goes back to Ibn al-Musayyib and informs him of the existence of this dictate, and the latter reacts positively to the information.[211] The report suggests therefore, that the Torah dictate was adduced from a Muslim with knowledge of the Torah after it was apparent that the Qur’ānic revelation did not give a clear statement on the matter.

Similarly, in the case of bestiality, regarding which there are several early Muslims who condemn it, there was an absence of scriptural evidence. Abd al-Razzāq transmits that the jurist Ibn Shihāb (d. 124 AH) was unaware of a *sunnah* regarding the matter, though he finds it akin to *zinā*. Here we are given a *third* Torah dictate from Wahb b. Munabbih, reported by a Successor (‘Amr b. Dīnār) who was likely interested in the former’s knowledge on the matter. The dictate condemns the one who has relations with an animal as cursed.[212] The early Muḥammadan community therefore *was* interested in dicta found in the Torah in matters that were unclear, a

---

[210] The two verses appear to be Qur’ān 4:22 and 4:24, the former prohibiting *marriage* to two sisters, the latter allowing relations with slave women. From Ibn al-Mundhir’s *Tafsīr* that goes into issues of law, these two verses are identified by ‘Alī:

حَدَّثَنَا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ، قَالَ: حَدَّثَنَا أَبُو غَسَّانَ، قَالَ: حَدَّثَنَا إِسْرَائِيلُ، عَنْ أَبِي إِسْحَاقَ، عَنِ الْحَارِثِ، عَنْ عَلِيٍّ، قَالَ: " فِي الْقُرْآنِ آيَتَانِ تُحَرِّمُ وَاحِدَةٌ، وَتُحِلُّ أُخْرَى، وَمَا كُنْتُ لِأَفْعَلُ وَاحِدًا مِنْهُمَا، لا أَنَا وَلا أَحَدٌ مِنْ أَهْلِ بَيْتِي، {وَأَنْ تَجْمَعُوا بَيْنَ الأُخْتَيْنِ إِلا مَا قَدْ سَلَفَ} ، {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ أَيْمَانُكُمْ كِتَابَ اللهِ عَلَيْكُمْ وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ} "

حَدَّثَنَا مُوسَى، قَالَ: حَدَّثَنَا أَبُو بكر بْن أبي شيبة، قَالَ: حَدَّثَنَا أَبُو بكر بْن عياش، عَنْ عَبْد العزيز بْن رفيع، قَالَ " سألت ابْن الحنفية عَنْ رجل عنده أمتان أختان، أيطأهما؟ قَالَ: أحلتهما آية، وحرمتهما آية، ثم أتيت ابْن المسيب، فَقَالَ مثل قول مُحَمَّد، ثم سألت ابْن منبه، فَقَالَ: أشهد أنه فيما أنزل الله جل ثناؤه عَلَى مُوسَى صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أنه ملعون من جمع بين الأختين، قَالَ: فما فصل لنا حرتين ولا مملوكتين قَالَ: فرجعت إِلَى ابْن المسيب، فأخبرته، فَقَالَ: الله أكبر "

See Abū Bakr Muḥammad b. Ibrāhīm Ibn al-Mundhir al-Naysābūrī, *Kitāb Tafsīr Al-Qur’ān*, ed. Sa’d Ibn Muḥammad b. Sa’d (Medinah, Saudi Arabia: Dār al-Ma’āthir, 2002). Vol. 2, pgs. 634-635.; Ibn Abī Shaybah narrates that ‘Uthmān was also confused about the issue because of the two verses:

خَالِدُ بْنُ مَخْلَدٍ، عَنْ مَالِكِ بْنِ أَنَسَ، عَنِ الزُّهْرِيِّ، عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ، قَالَ: سُئِلَ عُثْمَانُ بْنُ عَفَّانَ عَنِ الْأُخْتَيْنِ عَنْ مِلْكِ الْيَمِينِ يَجْمَعُ بَيْنَهُمَا، فَقَالَ: «أَحَلَّتْهُمَا آيَةٌ مِنْ كِتَابِ اللَّهِ، وَحَرَّمَتْهَا آيَةٌ، وَأَمَّا أَنَا فَمَا أُحِبُّ أَنْ أَفْعَلَ ذَلِكَ»

[211] See Ibn Abī Shaybah’s *Muṣannaf*, vol. 3, pg. 48:

أَبُو بَكْرِ بْنُ عَيَّاشٍ، عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ، قَالَ: سَأَلْتُ ابْنَ الْحَنَفِيَّةِ عَنْ رَجُلٍ عِنْدَهُ أَمَتَانِ أَيَطَؤُهُمَا؟ فَقَالَ: «أَحَلَّتْهُمَا آيَةٌ، وَحَرَّمَتْهُمَا آيَةٌ». ثُمَّ أَتَيْتُ ابْنَ الْمُسَيِّبِ، فَقَالَ: مِثْلَ قَوْلِ مُحَمَّدٍ. ثُمَّ سَأَلْتُ ابْنَ مُنَبِّهٍ فَقَالَ: «أَشْهَدُ أَنَّهُ فِيمَا أَنْزَلَ اللَّهُ عَلَى مُوسَى أَنَّهُ مَلْعُونٌ مَنْ جَمَعَ بَيْنَ الْأُخْتَيْنِ» قَالَ: فَمَا فَصَّلَ لَنَا حُرَّتَيْنِ، وَلَا مَمْلُوكَتَيْنِ، قَالَ: فَرَجَعْتُ إِلَى ابْنِ الْمُسَيِّبِ فَأَخْبَرْتُهُ، فَقَالَ: اللَّهُ أَكْبَرُ

[212] See ‘Abd al-Razzāq’s *Muṣannaf*, vol. 7, pg. 366.

point that al-Juwaynī rejected as was noted earlier. As for Wahb b. Munabbih's references to the Torah on relations with two sisters and with animals, they both appear to be legitimate references to the prohibition (and curse) against "taking" two sisters found in Leviticus 18:18 (the word "taking" understood to mean marriage in the biblical context),[213] and the prohibition (and curse) against lying with a beast (בְּהֵמָה/بهيمة) found in Leviticus 18:23[214]. These would be the biblical verses following the one referenced earlier regarding relations with mothers/daughters, indicating that Leviticus 18 in particular may have had some currency among the early jurists in the generation of the Successors. These two examples would of course be *additional* explicit examples of a biblical citation being made in the Muslim legal tradition. While this project will not engage further with these latter two dicta, please refer to the footnote at the end of this sentence for some separate references to these two dicta in the textual tradition.[215]

---

[213] וְאִשָּׁה אֶל-אֲחֹתָהּ, לֹא תִקָּח: לְצָרֹר, לְגַלּוֹת עֶרְוָתָהּ עָלֶיהָ--בְּחַיֶּיהָ

A WOMAN TO HER SISTER YOU SHALL NOT TAKE: TO BE A RIVAL TO HER AND UNCOVER HER NAKEDNESS IN THE OTHER'S LIFETIME.

[214] וּבְכָל-בְּהֵמָה לֹא-תִתֵּן שְׁכָבְתְּךָ, לְטָמְאָה-בָהּ; וְאִשָּׁה, לֹא-תַעֲמֹד לִפְנֵי בְהֵמָה לְרִבְעָהּ--תֶּבֶל הוּא

AND WITH ANY BEAST, DO NOT LIE: THEREBY DEFILING THYSELF. AND A WOMAN SHALL NOT STAND BEFORE A BEAST, TO LIE DOWN THERETO – IT IS PERVERSION.

[215] 1565 texts from the genres of ḥadīth, fiqh, and tafsīr were searched for terms "ملعون" + "الأختين", and separately, "بهيمة" + "ملعون". The dictate noting relations with two sisters being cursed with attribution to the Torah is referenced elsewhere by Ibn al-Mundhir (d. 318 AH), the student of al-Shāfi'ī's pupil al-Rabī' b. Sulaymān (d. 270 AH), and al-Suyūṭī (d. 911 AH). Al-Shāfi'ī references it unattributed to the Torah as a transmitted dictate, but given that he mentions it in a section where he also notes the curse for the one who sees the privates of a woman and her mother, which we noted elsewhere he was aware was a Torah dictate, it seems possible he was aware of it's Torah origins here too. This might also explain Ibn al-Mundhir's familiarity with it. See: Ibn al-Mundhir al-Naysābūrī, *Kitāb Tafsīr Al-Qur'ān*. Vol. 2, pgs. 634-635.; Also: Jalāl al-Dīn al-Suyūṭī, *Al-Durr al-Manthūr*. Vol. 2, pg. 477.; Also: al-Shāfi'ī in *al-Umm* (Dār al-Wafā'), vol. 8, pg 73. As a testament to his familiarity with the textual tradition, al-Suyūṭī is aware of this dictate being reporting by Ibn al-Mundhir, in addition to Ibn Abī Shaybah (his likely source), these two being the only other sources an extensive text search was able to uncover; There are other version of this report that note a curse but do *not* attribute to the Torah. For versions that attribute a similar curse from the Prophet (with variant language) see, e.g.: Fakhr al-Dīn Ibn al-Dahhān, *Taqwīm Al-Naẓr Fī Masā'il Khilāfiyyah Dhā'i'ah Wa Nubdh Madhhabiyyah Nāfi'ah*, ed. Ṣāliḥ b. Nāṣir Ibn Ṣāliḥ al-Khuzaym, 5 vols. (Riyadh: Maktabat al-Rushd, 2001). Vol. 4, pg. 101; 'Abd al-Karīm Abū al-Qāsim al-Rāfi'ī al-Qazwīnī, *Al-'Azīz: Sharḥ al-Wajīz al-Ma'rūf Bi al-Sharḥ al-Kabīr*, ed. 'Alī Muḥammad 'Iwaḍ and 'Ādil Aḥmad 'Abd al-Mawjūd, 1st ed., 13 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1997). Vol. 8, pg. 43.

As for the dictate cursing relations with animals, versions attributed to the Prophet appear in 'Abd al-Razzāq's *Muṣannaf*, vol. 7, pg. 365; Also, the *Musnad* of Aḥmad, vol. 3, pg. 368 and vol. 5, pg. 83; Also, al-Aṣfahānī, *Ḥilyat Al-Awliyā' Wa Ṭabaqāt al-Aṣfiyā'*. Vol. 9, pg. 232.; Also, Abū al-Qāsim Ibn Bashrān, *Amālī Ibn Bashrān*, ed. Abū 'Abd al-Raḥmān 'Ādil b. Yūsuf al-'Azāzī, 1st ed. (Riyadh: Dār al-Waṭn, 1997). Pg. 205; Also, Abū Bakr al-Bayhaqī, *Al-Sunan al-Kubrā*, ed. Muḥammad 'Abd al-Qādir 'Aṭā, 3rd ed., 10 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2003). Vol.

Coming back to the Torah dictate on relations with a mother and daughter, later jurists such as Ibn Ḥazm (d. 456 AH) and al-Bayhaqī (d. 458 AH) were also aware of its usage in the context of discussions related to unmarriageable kin, as do some modern Muslim scholars, indicating that this material was not casted out over the centuries that followed.[216] Ibn Ḥazm raises question to its utility by calling it "very odd" (طريف) without further comment,[217] and al-Bayhaqī knows it as Kufan evidence that al-Shāfi'ī engages with[218]. Despite its explicit presence in the tradition, however, competing versions of this report utilizing the same or similar language regarding the one who views the privates of a mother and her daughter, attributed not to the Torah, but to alternative Muslim personalities become the more cited versions of this dictate in discussions of unmarriageable kin. In fact, within the 2nd century itself when we explored the Torah version as it was cited among jurists and traditionists, Abū Yūsuf (d. 182 AH), the pupil of Abū Ḥanīfah, reports the same dictate but knew it as a statement of 'Umar without an isnād, without any mention of the Torah as a source, and al-Shāfi'ī is also aware of this version.[219] 'Umar making

8, pg. 407; A version attributed to the Successor 'Amr b. Abī 'Amr and not the Torah appears in the *Sunan* of Tirmidhī, see: Abū 'Īsā Muḥammad al-Tirmidhī, *Al-Jāmi' al-Kabīr (Sunan al-Tirmidhī)*, ed. Bashshār 'Awād Ma'rūf, 6 vols. (Beirut: Dār al-Gharb al-Islāmī, 1998). Vol. 3, pg. 109.; the Ḥanbalī work of Ḍiyā' al-Dīn al-Maqdisī. See: Ḍiyā' al-Dīn al-Maqdisī, *Al-Sunan Wa al-Aḥkām 'an al-Muṣtafā 'Alayhi al-Ṣalāt Wa al-Salām*, ed. Abū 'Abd Allāh Ḥusayn Ibn 'Ukāshah, 1st ed., 6 vols. (Saudi Arabia: Dār Mājid 'Asīrī, 2004). Vol. 5, pg. 457.; And a version attributed to Ibn 'Abbās appears in 'Abd al-Malik b. Ḥabīb al-Salamī, *Adab Al-Nisā' al-Mawsūm Bi Kitāb al-'Ināyah Wa al-Nihāyah*, ed. 'Abd al-Majīd Turkī (Dār al-Gharb al-Islāmī, 1992). Vol. 1, pg. 195.

[216] E.g., the Torah dictate is referenced in a discussion with the Salafī jurist Ibn al-'Uthaymīn (d. 1421 AH) and known from al-Shāfi'ī's *Umm*, along with Ibn Ḥazm's *Maḥallā*. Ibn al-'Uthaymīn does not comment on the Torah origins of this report. Ibn Ḥazm's reference is also known by Mahdī Ḥasan al-Kaylānī, the editor of the al-Shaybānī's *Ḥujjah*. See Ibn al-'Uthaymīn's commentary on *Zād al-Mustaqni'*, in special edition for al-*Maktabah al-Shāmilah*: Muḥammad b. Ṣāliḥ ibn Muḥammad al-'Uthaymīn, *Al-Sharḥ al-Ṣawtī Li Zād al-Mustaqni' (with al-Sharḥ al-Mumti')*, 2 vols. (al-Maktabah al-Shāmilah, n.d.). Vol. 1, pgs. 6138-6139.; Also, *al-Shaybānī*'s *Ḥujjah*, footnotes in Vol. 3, pg. 376.

[217] Ibn Ḥazm in *al-Maḥalla*, vol. 9, pg. 145

[218] Al-Bayhaqī in *Ma'rifat al-sunan*, vol. 10, pg. 97. See also Shihāb al-Dīn al-Ishbīlī, *Mukhtaṣar Khilāfiyyāt Al-Bayhaqī*, ed. Dhayyāb 'Abd al-Karīm Dhayyāb 'Aql, 5 vols. (Riyadh: Maktabat al-Rushd, 1997). Vol. 4, pg. 140.

[219] Abū Yūsuf al-Anṣārī, *Ikhtilāf Abī Ḥanīfah Wa Ibn Abī Laylā*, ed. Abū al-Wafā al-Afghānī, 1st ed., 1 vols. (India: Lajnat Iḥyā' al-Ma'ārif al-Uthmāniyyah, n.d.). Pgs. 173-174. The following is reported without full *isnād*, and Abū Yūsuf suggests that a version attributed to 'Umar is the reason for the Kufan position, as opposed to that espoused by Ibn Abī Laylā:

وبلغنا عن عمر بن الخطاب رضي الله عنه أنه قال: ملعون من نظر إلى فرج امرأة وأمها وبه نأخذ

See also, al-Shāfi'ī in *al-Umm* (Dār al-Wafā'), vol. 8, pg. 366

parallel comments as the Torah version is unattested to elsewhere in our source materials, but separate reports suggest that he held that viewing a slave woman in her nakedness would create prohibitions of intimacy for his kin.[220] If we accept that the dictate is in fact based in the Torah (because versions of the report with isnād make this clear and the language parallels that found in Leviticus), and if we also accept that reference to the Torah in the looked at cases may have been borne out of the absence of early Muḥammadan proof texts on the issues looked at, then these alternative, "non-Torah" versions of the dictate would appear to be the unoriginal later reconstructions of the original "Torah" version into a more Muḥammadan mold. The Abū Yūsuf version of the report from 'Umar suggests that a conscious reframing of biblical material into a possibly more "legitimate' mold may have already been in the works in the 2nd century AH, if not earlier, but that a tendency against pre-Muḥammadan material was not uniformly held among Muslims, given the examples looked at of famous traditionists and early Muslim jurists who appear to have been fine with the Torah version as was seen.

We find other versions of the report that borrow heavily from the language of the Torah dictate but are attributed to an early Muslim successor, and not attributed to the Torah, in addition to legal opinions that similarly refer to 'viewing' the privates of a mother and her daughter as creating unlawful relations.[221] In some cases, it is obvious that the suggested source was not the true origin of the reported information but was rather relaying the information from

---

[220] See, e.g., the following reports recorded by 'Abd al-Razzāq (from *al-Muṣannaf*, vol. 6, pg. 280):
عَنِ الْأَوْزَاعِيِّ، عَنْ مَكْحُولٍ، قَالَ: جَرَّدَ عُمَرُ بْنُ الْخَطَّابِ جَارِيَةً فَنَظَرَ إِلَيْهَا، ثُمَّ سَأَلَهُ بَعْضُ بَنِيهِ أَنْ يَهَبَهَا لَهُ، فَقَالَ: «إِنَّهَا لَا تَحِلُّ لَكَ»
عَنِ ابْنِ عُيَيْنَةَ، عَنْ يَزِيدَ بْنِ جَابِرٍ، عَنْ مَكْحُولٍ، أَنَّ عُمَرَ «جَرَّدَ جَارِيَةً فَنَظَرَ إِلَيْهَا، ثُمَّ نَهَى بَعْضَ وَلَدِهِ أَنْ يَقْرَبَهَا»

[221] E.g., Mujāhid, who is cited by al-Shaybānī as one of the evidences of the Kufan position he gives in addition to the Torah dictate, who uses language parallel to the dictate (see *al-Ḥujjah*, Vol. 3, pg. 382):
أخبرنا اسمعيل بن عَيَّاش قَالَ حَدثنَا سعيد بن ابي عُرْوَة عَن قيس بن سعد عَن مُجَاهِد فِي الرجل يفجر بالمراة قَالَ اذا نظر الى فرجهَا فَلَا تحل لَهَا امها وَلَا ابْنَتهَا

And al-Ṭāwūs (d. 106 AH), a famous early jurist and ḥadīth transmitter from the generation of the Successors, as transmitted by 'Abd al-Razzāq (see *al-Muṣannafî,* vol. 6, pg. 278 and 282):
عَنْ مَعْمَرٍ، عَنِ ابْنِ طَاوُسٍ، عَنْ أَبِيهِ قَالَ: «إِذَا نَظَرَ الرَّجُلُ فِي فَرْجِ امْرَأَةٍ مِنْ شَهْوَةٍ لَا تَحِلُّ لِابْنِهِ وَلَا لِأَبِيهِ»

elsewhere, and likely a believed scriptural source of some kind. For example, Ibrāhīm al-Nakha'ī states that on Judgment Day God will not look at the one who looked at the privates of a woman and her daughter.[222] 'Abd Allāh b. Mas'ūd reportedly makes a similar statement that God does not look at a man who does such a deed, without mentioning judgment day, this report being deemed a weak transmission by later Muslim scholars because of the inclusion of the two narrators with weak transmissions, Ḥammād and Layth, Ḥammād also being one of the narrators in the previous narration by Ibrāhīm al-Nakha'ī.[223] In an example cited as evidence by later Ḥanbalī jurists to defend the position that unlawful sex creates unmarriageable kin, Wahb b. Munabbih is reported by al-Jūzajānī (d. 259 AH) for reporting the same curse as in the Torah version of the dictate referenced before, but without mention of the Torah as he does in the versions we've encountered before, making this a strong proof for intentional omission of the Torah attribution from the sources.[224] Reports conveying the *ghaybiyyāt*, i.e. information not

---

[222] As transmitted by 'Abd al-Razzāq through two isnāds (Ibid., vol. 7, pg. 194):

عَنِ الثَّوْرِيِّ، عَنْ إِسْمَاعِيلَ، عَنْ رَجُلٍ يُقَالُ لَهُ إِبْرَاهِيمُ، عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ: «مَنْ نَظَرَ إِلَى فَرْجِ امْرَأَةٍ وَابْنَتِهَا، لَمْ يَنْظُرِ اللَّهُ إِلَيْهِ يَوْمَ الْقِيَامَةِ»

عَنْ هِشَامِ بْنِ حَسَّانَ، عَنْ وَاصِلٍ، مَوْلًى أَبِي عُيَيْنَةَ، عَنْ حَمَّادٍ، عَنْ إِبْرَاهِيمَ قَالَ: «مَنْ نَظَرَ إِلَى فَرْجِ امْرَأَةٍ وَابْنَتِهَا، احْتَجَبَ اللَّهُ عَنْهُ يَوْمَ الْقِيَامَةِ»

And as transmitted by Abū Bakr b. Abī Shaybah (see his *Muṣannaf*, vol. 3, pg. 481):

جَرِيرٌ، عَنْ مُغِيرَةَ، عَنْ إِبْرَاهِيمَ، وَعَامِرٍ، فِي رَجُلٍ وَقَعَ عَلَى ابْنَةِ امْرَأَتِهِ قَالَا: «حُرِّمَتَا عَلَيْهِ كِلَاهُمَا» وَقَالَ إِبْرَاهِيمُ: «وَكَانُوا يَقُولُونَ إِذَا اطَّلَعَ الرَّجُلُ عَلَى الْمَرْأَةِ، عَلَى مَا لَا تَحِلُّ لَهُ، أَوْ لَمَسَهَا لِشَهْوَةٍ، فَقَدْ حُرِّمَتَا عَلَيْهِ جَمِيعًا»

[223] As transmitted by Abū Bakr b. Abī Shaybah (see Ibid., vol. 3, pg. 480):

حَفْصٌ، عَنْ لَيْثٍ، عَنْ حَمَّادٍ، عَنْ إِبْرَاهِيمَ، عَنْ عَلْقَمَةَ، عَنْ عَبْدِ اللَّهِ، قَالَ: «لَا يَنْظُرُ اللَّهُ إِلَى رَجُلٍ نَظَرَ إِلَى فَرْجِ امْرَأَةٍ وَابْنَتَهَا»

And as transmitted by al-Dāraquṭnī, but deemed a weak transmission (see Abū al-Ḥasan b. 'Umar al-Dāraquṭnī, *Sunan Al-Dāraquṭnī*, ed. Shu'ayb al-Arna'ūṭ et. al, 1st ed., 5 vols. (Beirut: Mu'assisat al-Risālah, 2004). Vol. 4, pg. 402):

نا أَبُو بَكْرٍ الشَّافِعِيُّ , نا مُحَمَّدُ بْنُ شَاذَانَ , نا مُعَلَّى , نا حَفْصُ بْنُ غِيَاثٍ , عَنْ لَيْثٍ , عَنْ حَمَّادٍ , عَنْ إِبْرَاهِيمَ , عَنْ عَلْقَمَةَ , عَنْ عَبْدِ اللَّهِ , قَالَ: «لَا يَنْظُرُ اللَّهُ إِلَى رَجُلٍ نَظَرَ إِلَى فَرْجِ امْرَأَةٍ وَابْنَتِهَا» مَوْقُوفٌ لَيْثٌ وَحَمَّادٌ ضَعِيفَانِ

And as transmitted by al-Bayhaqī and similarly deemed a weak transmission (al-Bayhaqī, *Al-Sunan al-Kubrā*. Vol. 7, pg. 275):

وَرَوَى لَيْثُ بْنُ أَبِي سُلَيْمٍ، عَنْ حَمَّادٍ، عَنْ إِبْرَاهِيمَ، عَنْ عَلْقَمَةَ، عَنْ عَبْدِ اللهِ بْنِ مَسْعُودٍ وَقَالَ "لَا يَنْظُرُ اللهُ إِلَى رَجُلٍ نَظَرَ إِلَى فَرْجِ امْرَأَةٍ وَابْنَتِهَا "، وَهَذَا أَيْضًا ضَعِيفٌ

[224] Ibn Qudāmah (d. 620 AH):

وروى الجوزجاني بإسناده عن وهب بن منبه قال: ملعون من نظر امرأة وابنتها

See Ibn Qudāmah, *Al-Mughnī*. Vol. 7, pg 118.; Also: Shams al-Dīn Ibn Qudāmah al-Maqdisī, *Al-Sharḥ al-Kabīr (al-Maṭbū' Ma' al-Muqni' Wa al-Inṣāf)*, ed. 'Abd Allāh b. 'Abd al-Muḥsin al-Turkī and 'Abd al-Fattāḥ Muḥammad al-Ḥilū, 1st ed., 30 vols. (Cairo: Hijr li al-Ṭabā'ah wa al-Nashr wa al-Tawzī' wa al-I'lān, 1995). Vol. 20, pg. 288.;
Also, Zayn al-Dīn al-Tannūkhī (d. 695 AH):

وعن وهب بن منبّه: «ملعونٌ من نظرَ إلى فرج امرأةٍ وابنتِهَا». رواه الجوزجاني بإسناده

based on observed knowledge or opinion which could only be known through revelation, like the comments made by Ibrāhīm al-Nakha'ī and Ibn Mas'ūd about God's curse, were often believed to be based in the Prophet's knowledge (and thus deemed *marfu'* in ruling – i.e. having an isnād leading to the Prophet ﷺ), since such knowledge could not be known unless it came from him,[225] but it was also acknowledged by later Muslims that from some narrators, such information could be assumed to come from pre-Muḥammadan scriptures or Israelite narratives (and thus be potentially suspect),[226] since the reporting of pre-Muḥammadan material was an attested to phenomenon among some early Muslims such as Wahb b. Munabbih. Given that the version of Wahb b. Munabbih's comments here seem to exclude mention of the Torah when the attribution to the Torah seems apparent, a future study may be interested in conducting a digital search through available texts to references made to other figures known for their transmission of pre-Muḥammadan material (i.e. the *Isrā'īliyyāt*) such as Wahb b. Munabbih, Ka'b al-Aḥbār, 'Abd Allāh b. 'Amr b. al-'Āṣ[227] and 'Abd Allāh b. Salām in matters of legal relevance (e.g., in works of law or ḥadīth works dedicated to legal issues), which may convey legal material from the Torah even when not explicitly noted by these transmitters.

---

See Zayn al-Dīn al-Tannūkhī, *Al-Mumti' Fī Sharḥ al-Muqni'*, ed. 'Abd al-Malik b. 'Abd Allāh Ibn Duhaysh, 3rd ed., 4 vols. (Makkah: Maktabat al-Asadī, 2003). Vol. 3, pg. 587.

[225] See, e.g., Abū al-Faḍl Ibn Ḥajr al-'Asqalānī, *Al-Nukat 'alā Kitāb Ibn al-Ṣalāḥ*, ed. Rabī' b. Hādī 'Umayr al-Madkhalī, 1st ed., 2 vols. (Medinah, Saudi Arabia: al-Jāmi'ah al-Islāmiyyah, 1984). Vol. 2, pg. 531.; and Muḥammad b. Ṣāliḥ ibn Muḥammad al-'Uthaymīn, *Sharḥ Al-Manẓūmah al-Bayqūniyyah Fī Muṣṭalaḥ al-Ḥadīth*, ed. Fahd b. Nāṣir Ibn Ibrāhīm al-Sulaymān, 2nd ed. (Dār al-Thurayyā li al-Nashr, 2003). Pgs. 51-52, and 78.

[226] See Ibn Ḥajr's *Nukat*, vol. 2, pgs. 532-533:

[إذا كان الصحابي ينظر في الإسرائيليات فلا يعطى حكم الرفع]

إلا أنه يستثنى من ذلك ما كان المفسر له من الصحابة - رضي الله تعالى عنهم- من عرف بالنظر في الإسرائيليات، كمسلمة أهل الكتاب مثل عبد الله بن سلام وغيره. وكعبد الله بن عمرو بن العاص. فإنه كان حصل له في وقعة اليرموك كتب كثير من كتب أهل الكتاب فكان يخبر بما فيها من الأمور المغيبة حتى كان بعض أصحابه ربما قال له: حدثنا عن النبي - صلى الله عليه وسلم - ولا تحدثنا عن الصحيفة، فمثل هذا لا يكون حكم ما يخبر به من الأمور التي قدمنا ذكرها الرفع، لقوة الاحتمال - والله أعلم -.

[227] See text in prior footnote. 'Abd Allāh b. 'Amr b. al-Āṣ famously would transmit from prior scripture. See Imām Aḥmad's *musnad*, vol. 11, pg. 488 for an example of someone specifically asking 'Abd Allāh for information from the Prophet ﷺ and *not* from the Torah, because it was implied that he would report such material. In another report recorded in the *musnad* (vol. 11, pg. 638), the Prophet ﷺ interprets a dream of 'Abd Allāh wherein he has a finger with butter (*samīn*) on it, and another with honey. The Prophet ﷺ prophesizes it is because he will read from the Torah and the Furqān (i.e. the Qur'ān), which he apparently does.

The Prophet ﷺ himself is also made the originator of the Torah dictate in versions that becomes well transmitted in later books of Ḥanafī fiqh, starting with al-Sarakhsī (who importantly is a key transmitter of al-Shaybānī's works), with one version ["V1"] utilizing the same exact wording as the original "Torah version" and another ["V2"] using language similar to it. Both are offered with limited isnād information.[228] These versions appear to be an attempt at "Muḥammadanizing" evidence originally cited by al-Shaybānī and the Kufans in the 2nd century when it was explicitly coming from the Torah. We saw a similar occurrence earlier in a report on maintaining ties of kin in the previous chapter as noted by al-Zarkashī, where the Prophet ﷺ made reference to the Torah in one version of a report, but in a more commonly cited one, mention to the Torah is removed. In this case, a Torah dictate known to Successors is turned into a prophetic statement. But just as we saw that al-Zarkashī was likely aware of the transition that

---

[228] Al-Māturīdī (d. 333 AH):

ألا ترى إلى ما روي عن رسول الله - صَلَّى اللَّهُ عَلَيهِ وَسَلَّمَ - أنه قال: " مَلْعُون مَنْ نَظَرَ إِلَى فَرج امْرَأَةٍ وَابْنَتِهَا "

See Abū Manṣūr al-Māturīdī, *Tafsīr Al-Māturīdī (Ta'wīlāt Ahl al-Sunnah)*, ed. Majdī Baslūm, 1st ed., 10 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2005). Vol. 3, pgs. 97 and 102.

al-Sarakhsī (d. 483 AH) and the Ḥanafīs report two prophetic versions, one matching the wording of the original Torah dictate exactly, the other paralleling it's emphasis on viewing, but appearing to have juristic add-ons:

وَلَكِنَّا تَرَكْنَا الْقِيَاسَ بِحَدِيثِ أُمِّ هَانِئٍ - رَضِيَ اللَّهُ تَعَالَى عَنْهَا - أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ نَظَرَ إلَى فَرْجِ امْرَأَةٍ بِشَهْوَةٍ حَرُمَتْ عَلَيْهِ أُمُّهَا وَابْنَتُهَا» وَعَنْ عُمَرَ - رَضِيَ اللَّهُ تَعَالَى عَنْهُ - أَنَّهُ جَرَّدَ جَارِيَةً، ثُمَّ نَظَرَ إلَيْهَا، ثُمَّ اسْتَوْهَبَهَا مِنْهُ بَعْضُ بَنِيهِ، فَقَالَ: أَمَا إنَّهَا لَا تَحِلُّ لَك، وَفِي الْحَدِيثِ «مَلْعُونٌ مَنْ نَظَرَ إلَى فَرْجِ امْرَأَةٍ وَابْنَتِهَا»

See Vol. 4, pg. 208 of al-Sarakhsī, *Al-Mabsūṭ*.; Also, ibid. vol. 6, pg. 227, where he suggests this prophetic version of the dictate was adduced as proof by Abū Yūsuf (though as was noted earlier, Abū Yūsuf references a version that is attributed to 'Umar):

وَعِنْدَ أَبِي يُوسُفَ - رَحِمَهُ اللَّهُ تَعَالَى - يَكُونُ مُظَاهِرًا لِأَنَّ ثُبُوتَ الْحُرْمَةِ بِالنَّظَرِ إلَى الْفَرْجِ مَنْصُوصٌ عَلَيْهِ فِي قَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَلْعُونٌ مَنْ نَظَرَ إلَى فَرْجِ امْرَأَةٍ وَابْنَتِهَا»

Also 'Alā' al-Dīn al-Kāsānī (d. 587 AH):

وَرُوِيَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «مَنْ نَظَرَ إلَى فَرْجِ امْرَأَةٍ لَمْ تَحِلَّ لَهُ أُمُّهَا وَلَا ابْنَتُهَا» وَرُوِيَ «حُرِّمَتْ عَلَيْهِ أُمُّهَا وَابْنَتُهَا» وَهَذَا نَصٌّ فِي الْبَابِ؛ لِأَنَّهُ لَيْسَ فِيهِ ذِكْرُ النِّكَاحِ. وَرُوِيَ عَنْهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «مَلْعُونٌ مَنْ نَظَرَ إلَى فَرْجِ امْرَأَةٍ وَابْنَتِهَا»

See: Abū Bakr al-Kāsānī, *Badā'i' al-Ṣanā'i' Fī Tartīb al-Sharā'i'*. Vol. 2, pg. 261.;

Also Fakhr al-Dīn al-Zayla'ī (d. 742 AH):

قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «مَلْعُونٌ مَنْ نَظَرَ إلَى فَرْجِ امْرَأَةٍ وَابْنَتِهَا» وَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «مَنْ نَظَرَ إلَى فَرْجِ امْرَأَةٍ لَمْ تَحِلَّ لَهُ أُمُّهَا وَلَا ابْنَتُهَا»

See: al-Shilbī and Fakhr al-Dīn al-Zayla'ī al-Ḥanafī, *Tabyīn Al-Ḥaqā'iq: Sharḥ Kanz al-Daqā'iq Wa Ḥāshiyat al-Shilbī*. Vol. 2, pg. 106.;

Also Badr al-Dīn al-'Aynī (d. 855 AH):

قال الكاكي هنا: ولنا حديث أم هانئ _ - رَضِيَ اللَّهُ عَنْهَا - _ عن رسول الله - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «من نظر إلى فرج امرأة حرمت عليه أمها وابنتها» وفي حديث: «ملعون من نظر إلى فرج امرأة وابنتها»

Badr al-Dīn al-'Aynī, *Al-Bināyah: Sharḥ al-Hidāyah*. Vol. 5, pg. 37.

took place vis-à-vis the kinship report (or at least the existence of dual narrations), we find that the transition did not go completely unnoticed here either. When the Shāfi'ī al-Māwardī (d. 450 AH) rejects the Ḥanafī position regarding unmarriageable kin formed through *zinā*, he specifically addresses a version of the Torah report which the Ḥanafīs by his time are now reported as a statement of the Prophet's (without isnād): "God does not look at the man who views the privates of a woman and her daughter." Al-Māwardī's first response is that Wahb b. Munabbih declared that this very thing was written in the Torah (and thus he suggests it wasn't the Prophet ﷺ), and because it's from the Torah, it doesn't apply to us because the Qur'ān has abrogated it. He also rejects the report's relevance for the legal conclusion. His first statement seems to acknowledge that the Torah version was the original one, and not the prophetic one.[229]

The Ḥanafī Shihāb al-Dīn al-Shilbī (d. 1021 AH) tries to locate an isnād for these two prophetic versions to give them greater legal legitimacy. For V1, the version that copies the Torah dictate's language exactly, he claims that the Successor al-Jūzajānī has provided an isnād for it (خرّجه الجوزجاني), but the version from al-Jūzajānī goes to Wahb b. Munabbih and not the Prophet ﷺ as we saw.[230] Al-Shilbī does not comment on this important detail, and in doing so suggests that there is an isnād for the prophetic version he tries to provide a basis for. As for the other prophetic version that loosely follows the language of the "Torah version," V2, al-Shilbī states that it has been transmitted by Ibn Abī Shaybah (d. 235 AH), a third century source. In this version, the Prophet ﷺ says: "Whoever looks at the privates of a woman, forbidden on him is her mother and daughter."[231] This version does not face the obvious questions about the legal import

[229] Abū al-Ḥasan al-Māwardī, *Al-Ḥāwī al-Kabīr (Sharḥ Mukhtaṣar al-Muzanī)*, ed. 'Alī Muḥammad Mi'waḍ and 'Ādil Aḥmad 'Abd al-Mawjūd, 19 vols. (Beirut, Lebanon: Dār al-Kutub al-'Ilmiyyah, 1999). Vol. 9, pg. 216.

[230] A search through 7259 text across all genres of the *maktabah shāmilah* corpus for "ملعون" + "الجوزجاني" revealed only cases where al-Jūzajānī quote's this dictate from Wahb. See previous footnote on al-Jūzajānī's version for references.

[231] See Ibn Abī Shaybah's *Muṣannaf*, vol. 3, pg. 480:
جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ، عَنْ حَجَّاجٍ، عَنْ أَبِي هَانِئٍ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ نَظَرَ إِلَى فَرْجِ امْرَأَةٍ، لَمْ تَحِلَّ لَهُ أُمُّهَا، وَلَا ابْنَتُهَا»

of the original Torah dictate in the Hanafī/Kufan discourse, namely how an act being cursed could make a relationship prohibited (the Prophet ﷺ here clearly says it is *forbidden,* not cursed). It is also clearer in noting three generations being affected by sexual relations as opposed to two in the Torah version: the mother and daughter of a third woman, as opposed to just a woman and her daughter, further drawing out the Kufan legal logic. Al-Sarakhsī's version of V2 also includes "with desire" (بشهوة) as a qualification of the viewing, which would exclude cases where a woman's privates may be unintentionally seen, addressing a separate issue of concern for the jurists. Because al-Shilbī references Ibn Abī Shaybah for V2, one wonders why he did not realize V1, which copies the Torah dictate exactly in its language, was likely a dictate from the Torah, given that the section of Ibn Abī Shaybah's *Muṣannaf* where al-Shilbī cites V2 also reports the dictate of V1 from Wahb with clear attribution to the Torah. It is apparent that al-Shilbī was aware of the Torah origins of V1, but does not comment on it. Worth noting is that just as was the case with some of the versions of the dictate looked at earlier that were attributed to 'Umar or a Successor, issues in the isnāds of the prophetic versions have similarly been pointed out. In the case of V2, where we have an isnād leading to the Prophet ﷺ (as opposed to the al-Jūzajānī version), the famous ḥadīth expert al-Ishbīlī (d. 699 AH) points out a missing link in its isnād that would make trust in the reported content questionable, along with a weak transmitter.[232] It should be noted that a third prophetic version combines a number of "cursed" people into one report, including this biblical pronouncement on a mother and her daughter. Many of the remaining 'curses' correspond with known biblical prohibitions as well, including a curse against changing the boundaries of the earth, sacrificing in other than God's name, intercourse with an

[232] See al-Ishbīlī, *Mukhtaṣar Khilāfiyyāt Al-Bayhaqī*. Vol. 4, pg. 141.

animal (which we looked at earlier), and cursing one's parents.[233] The phenomenon of biblical reference and attribution to the Prophet ﷺ will be discussed in the next chapter.

[233] See 'Abd al-Razzāq's *Muṣannaf*, vol. 7, pg. 365:
عَنِ ابْنِ جُرَيْجٍ، عَنْ عَطَاءٍ الْخُرَاسَانِيِّ، قَالُ: لَعَنَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ سَبْعَةَ نَفَرٍ، فَلَعَنَ وَاحِدًا مِنْهُمْ ثَلَاثَ لَعَنَاتٍ، وَلَعَنَ سَائِرَهُمْ لَعْنَةً لَعْنَةً، فَقَالَ: «مَلْعُونٌ، مَلْعُونٌ، مَلْعُونٌ مَنْ عَمِلَ عَمَلَ قَوْمِ لُوطٍ، مَلْعُونٌ مَنْ سَبَّ شَيْئًا مِنْ وَالِدَيْهِ، مَلْعُونٌ مَنْ غَيَّرَ شَيْئًا مِنْ تُخُومِ الْأَرْضِ، مَلْعُونٌ مَنْ جَمَعَ بَيْنَ امْرَأَةٍ وَابْنَتِهَا، مَلْعُونٌ مَنْ تَوَلَّى قَوْمًا بِغَيْرِ إِذْنِهِمْ، مَلْعُونٌ مَنْ وَقَعَ عَلَى بَهِيمَةٍ، مَلْعُونٌ مَنْ ذَبَحَ لِغَيْرِ اللَّهِ عَزَّ وَجَلَّ»، عَبْدُ الرَّزَّاقِ، عَنِ ابْنِ جُرَيْجٍ قَالَ: بَلَغَنِي عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ مِثْلُهُ إِلَّا أَنَّهُ لَمْ يَذْكُرِ الْبَهِيمَةَ
See also, Abū al-Qāsim al-Ṭabarānī, *Al-Mu'jam al-Awsaṭ*, vol. 3, 10 vols. (Cairo, Egypt: Dār al-Ḥaramayn, n.d.). Vol. 8, pg. 234.; Also, al-Ḥākim's *Mustadrak*, vol. 4, pg. 396; Also, al-Bayhaqī's *Shu'b al-Īmān*, vol. 7, pg. 330.

Chapter 3

# Legal References to the Torah in the Muslim Sources

Hey there. This chapter picks up from the last one. I demonstrate additional examples of early Muslim knowledge of biblical legal dicta. In addition to pointing out how some of these dicta became legitimized or more authoritative by attribution to the Prophet ﷺ, I will suggest that the issue was similar to that of the phenomenon of "isnād backgrowth". The ḥadīth scholars were interested in determining the true origins of various reports and were aware of a phenomenon of false attribution of Israelite material to the Prophet ﷺ. Their interest in collecting variant isnāds for reports in the interest of coming to the truth is why many of these "Torah" reports were recorded for us in the first place. I will conclude the chapter by looking at how somewhat contradictory early Muslim traditions on the permissibility of referring to the Torah or the knowledge of the People of the Book are indicative of an internal debate based in concerns of the early community (and possibly pointing to an 'original' debate on pre-Muḥammadan law that preceded the ones we looked at in works of legal theory). I explore a famous ḥadīth cited in this discourse in which 'Umar is rebuked by the Prophet ﷺ for having written down parchments of the Torah, and I demonstrate a strong regional bias in the isnāds of this report that suggests that concern over the Torah being used as a source of guidance was a prominent feature among the Kufans.

In the previous chapter it was shown that the Muslim sources do contain examples of knowledge of Torah laws. It was argued that a dictate originally derived from the Torah may

have been cited by the early Muḥammadan community at the time of the Successors to give scriptural precedent precisely because of a lack of a Muḥammadan proof text. At some point *by* the 2nd century AH, we begin to see the remaking of the Torah reference into a more Muḥammadan mold, with the dictate's emphasis on 'viewing' of the privates being attributed to early Muḥammadan figures and the Prophet ﷺ himself by this period in time, even though versions that attributed the dictate to the Torah continue to be transmitted as well in this period and centuries after. A future project that seeks to identify additional examples of explicit Muslim references to the Torah or biblical knowledge would benefit from using basic data mining tools on a large a machine-readable textual corpus, such as the Open Islamicate Texts Initiative OpenITI,[234] or alternatively using a ready-made platform for searching such texts. Searches for obvious strings such as "التوراة" and "بني إسرائيل" should be supplemented in a mining script with positive or negative search phrases to limit the rather large number of hits such a query would result in. Such a study could help expand our knowledge further of the knowledge that early Muslims had of the Torah and biblical dicta more specifically. I note some additional cases of early Muslim figures referencing the Torah in something that may have had potential legal or advisory relevance (including the dicta we've covered so far) to hopefully demonstrate that such examples do exist, and to derive some conclusions. I have also included a couple inaccurately ascribed "Torah" citations, along with non-legal Torah citations for the purposes of discussion. These references do not fully take into account Muslim views regarding the authenticity of this material's ascription to the claimed early Muslim source, though I will note some comments at the end regarding this. I have also *not* performed any relevant study of the isnāds at play in these

[234] See the following: Lorenz Nigst et al., "OpenITI: A Machine-Readable Corpus of Islamicate Texts," n.d., http://doi.org/10.5281/zenodo.4075046. It is not clear to me if OpenITI has obtained copyright privileges for the texts in their database.

traditions. I will also note based on my attempts at extracting this information with a large number of texts that they are relatively rare. Those interested can research further the extent of these provided reports' permeation in the Islamic tradition. Lastly, I utilize translations of the Hebrew Torah available from the Jewish Publication Society, 1917 Edition for convenience.

Table 1:

| Claimed Source in the Isnād | Claimed Biblical Dictate | Suggested Biblical/Talmudic Parallel | Significance |
|---|---|---|---|
| Khaythamah b. ʻAbd al-Raḥmān al-Juʻfī (d. 80 AH) & Wahb b. Munabbih (d. 110 AH) | "It is written in the Torah: 'Cursed is the one who uncovers/looks at the privates of a woman and her daughter.'"[235] | Leviticus 18:17: Thou shalt not uncover the nakedness of a woman and her daughter; thou shalt not take her son's daughter, or her daughter's daughter, to uncover her nakedness: they are near kinswomen; it is lewdness.[236] | Laws on sexual relations. Prohibition also appears as prophetic report. See footnotes in earlier discussion. |
| Wahb b. Munabbih (d. 110 AH) | After being asked about the permissibility of a man having intercourse with two of his slaves who are sisters, Wahb says, "I bear witness that in what God revealed to Moses ﷺ [it is found]: 'Cursed is the one who | Leviticus 18:18: And thou shalt not take a woman to her sister, to be a rival to her, to uncover her nakedness, beside the other in her lifetime.[238] | Laws on sexual relations. Prohibition also appears as prophetic report. See footnotes in earlier discussion. |

[235] For al-Khaythama, see al-Shaybānī in *al-Ḥujjah*, vol. 3, pg. 375:
أخبرنا قيس بن الربيع الأسدي عن أبي حصين عن خيثمة بن عبد الرحمن الجعفي قال: ملعون من نظر إلى فرج امرأة وبنتها مكتوب في التوراة:
For Wahb, see, 'Abd al-Razzāq's *Muṣannaf*, vol. 7, pg. 193 and previous footnotes.

[236] עֶרְוַת אִשָּׁה וּבִתָּהּ, לֹא תְגַלֶּה: אֶת-בַּת-בִּנָּהּ וְאֶת-בַּת-בִּתָּהּ, לֹא תְגַלֶּה לְגַלּוֹת עֶרְוָתָהּ--שַׁאֲרָה הֵנָּה, זִמָּה הִוא

[238] וְאִשָּׁה אֶל-אֲחֹתָהּ, לֹא תִקָּח: לְצָרֵר, לְגַלּוֹת עֶרְוָתָהּ עָלֶיהָ--בְּחַיֶּיהָ.

| | | | |
|---|---|---|---|
| | COMBINED BETWEEN TWO SISTERS.' And [God] did not distinguish [in the verse] between two free women or two slave women."[237] | | |
| Wahb b. Munabbih (d. 110 AH) | "In the Torah [it says]: WHOEVER HAS INTERCOURSE WITH AN ANIMAL, HE IS CURSED WITH GOD"[239] | Leviticus 18:23: AND THOU SHALT NOT LIE WITH ANY BEAST TO DEFILE THYSELF THEREWITH; NEITHER SHALL ANY WOMAN STAND BEFORE A BEAST, TO LIE DOWN THERETO; IT IS PERVERSION.[240] | Laws on sexual relations. Prohibition also appears as prophetic report. See footnotes in earlier discussion. This and the two prior examples show that Wahb likely knew these dicta through some engagement with Leviticus 18 as a whole (either directly or from a source), i.e., he did not hear about them randomly in piecemeal form. |
| Abū Juḥayfah (d. 72 AH), one of the later Companions based in Kufah | "Cursed in the Torah is the price of a dog, the pay of a prostitute, and the price of blood."[241] | Deuteronomy 23:19: THOU SHALT NOT BRING THE HIRE OF A HARLOT, OR THE PRICE OF A DOG, INTO THE HOUSE OF THE LORD THY GOD FOR ANY VOW; FOR EVEN BOTH THESE ARE AN ABOMINATION UNTO THE LORD THY GOD.[242] | The connection between the pay of a prostitute and price of a dog in the Deuteronomic verse makes it very likely that the Bible is the direct source of the statement. The statement is famously attributed to the Prophet ﷺ in most versions (including via isnāds featuring Abū Juḥayfah), some that add additional |

[237] See Ibn Abī Shaybah's *Muṣannaf*, vol. 3, pg. 48:
أَبُو بَكْرِ بْنُ عَيَّاشٍ، عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ، قَالَ: سَأَلْتُ ابْنَ الْحَنَفِيَّةِ عَنْ رَجُلٍ عِنْدَهُ أَمَتَانِ أَيَطَؤُهُمَا؟ فَقَالَ: «أَحَلَّتْهُمَا آيَةٌ، وَحَرَّمَتْهُمَا آيَةٌ». ثُمَّ أَتَيْتُ ابْنَ الْمُسَيِّبِ، فَقَالَ: مِثْلَ قَوْلِ مُحَمَّدٍ. ثُمَّ سَأَلْتُ ابْنَ مُنَبِّهٍ فَقَالَ: «أَشْهَدُ أَنَّهُ فِيمَا أَنْزَلَ اللَّهُ عَلَى مُوسَى أَنَّهُ مَلْعُونٌ مَنْ جَمَعَ بَيْنَ الْأُخْتَيْنِ» قَالَ: فَمَا فَصَّلَ لَنَا حُرَّتَيْنِ، وَلَا مَمْلُوكَتَيْنِ، قَالَ: فَرَجَعْتُ إِلَى ابْنِ الْمُسَيِّبِ فَأَخْبَرْتُهُ، فَقَالَ: اللَّهُ أَكْبَرُ

[239] *Muṣannaf* of 'Abd al-Razzāq vol. 7, pg. 366. For additional references, see previous footnote on this dictate.
عَبْدُ الرَّزَّاقِ قَالَ: أَخْبَرَنَا ابْنُ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ، أَنَّ ابْنَ مُنَبِّهٍ، قَالَ «إِنَّ فِي التَّوْرَاةِ مَنْ أَصَابَ بَهِيمَةً فَهُوَ مَلْعُونٌ عِنْدَ اللَّهِ»

[240] וּבְכָל-בְּהֵמָה לֹא-תִתֵּן שְׁכָבְתְּךָ, לְטָמְאָה-בָהּ; וְאִשָּׁה, לֹא-תַעֲמֹד לִפְנֵי בְהֵמָה לְרִבְעָהּ--תֶּבֶל הוּא
And with any beast, do not lie: thereby defiling thyself. And a woman shall not stand before a beast, to lie down thereto – It is perversion.

[241] Abū 'Abd Allāh al-Bukhārī, *Al-Tārīkh al-Kabīr*, ed. Muḥammad 'Abd al-Mu'īd Khān, 8 vols. (Hyderabad: Dā'irat al-Ma'ārif al-'Uthmāniyyah, n.d.).Vol. 5, pg. 342-3:
قَالَ مَحْمُود حَدَّثَنَا هاشم نا شيبان عَنْ أشعث حَدَّثَنِي عَبْد الرَّحْمَن بْن أَبِي لبيد التغلبي: عَنْ أَبِي جحيفة، وقَالَ مُوسَى عَنْ أَبِي عوانة عَنْ أشعث عَنْ عَبْد الرَّحْمَن بْن أَبِي لبيد عَنْ أَبِي جحيفة أو غيره: ملعون في التوراة ثمن الكلب ومهر البغي وثمن الدم

[242] לֹא-תָבִיא אֶתְנַן זוֹנָה וּמְחִיר כֶּלֶב, בֵּית יְהוָה אֱלֹהֶיךָ--לְכָל-נֶדֶר: כִּי תוֹעֲבַת יְהוָה אֱלֹהֶיךָ, גַּם-שְׁנֵיהֶם

| | | | |
|---|---|---|---|
| | | Leviticus 7:27:<br>WHOSOEVER IT BE THAT EATETH ANY BLOOD, THAT SOUL SHALL BE CUT OFF FROM HIS PEOPLE.[243]<br><br>And Leviticus 17:10:<br>AND WHATSOEVER MAN THERE BE OF THE HOUSE OF ISRAEL, OR OF THE STRANGERS THAT SOJOURN AMONG THEM, THAT EATETH ANY MANNER OF BLOOD, I WILL SET MY FACE AGAINST THAT SOUL THAT EATETH BLOOD, AND WILL CUT HIM OFF FROM AMONG HIS PEOPLE.[244] | prohibitions, subtract from them, or exchange the "price from blood" with taking money from wet cupping, a natural extension of the former. A version of this report in fact appears in the *Ṣaḥīḥ* of al-Bukhārī (from Abū Juḥayfah and also Abū Mas'ūd), and the version from Abū Juḥayfah includes curses against those engaged in interest, tattooing and the making of images.[245] Al-Bukhārī is aware of the Torah version in his Tārīkh al-Kabīr where he preserves it for us, but he offers a version that is prophetic that also exists, but gives it preference because it is more attested to.[246] |

[243] כָּל-נֶפֶשׁ, אֲשֶׁר-תֹּאכַל כָּל-דָּם--וְנִכְרְתָה הַנֶּפֶשׁ הַהִוא, מֵעַמֶּיהָ

[244] וְאִישׁ אִישׁ מִבֵּית יִשְׂרָאֵל, וּמִן-הַגֵּר הַגָּר בְּתוֹכָם, אֲשֶׁר יֹאכַל, כָּל-דָּם--וְנָתַתִּי פָנַי, בַּנֶּפֶשׁ הָאֹכֶלֶת אֶת-הַדָּם, וְהִכְרַתִּי אֹתָהּ, מִקֶּרֶב עַמָּהּ

[245] Abū Dawūd al-Ṭiyālisī, *Musnad Abī Dāwūd Al-Ṭiyālisī*, ed. Muḥammad b. 'Abd al-Muḥsin al-Turkī, 1st ed., 4 vols. (Egypt: Dār Hijr, 1999). Vol. 2, pg. 374:

حَدَّثَنَا أَبُو دَاوُدَ قَالَ: حَدَّثَنَا شُعْبَةُ، عَنْ عَوْنِ بْنِ أَبِي جُحَيْفَةَ، قَالَ: اشْتَرَيْتُ غُلَامًا حَجَّامًا فَأَخَذَ أَبِي مَحَاجِمَهُ فَكَسَرَهَا فَقُلْتُ لَهُ: أَتَكْسِرُهَا فَقَالَ: إِنَّ رَسُولَ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ «نَهَى عَنْ ثَمَنِ الدَّمِ وَعَنْ ثَمَنِ الْكَلْبِ وَعَنْ كَسْبِ الْمُومِسَةِ وَعَنْ عَسْبِ الْفَحْلِ»

The *Muṣannaf* of Ibn Abī Shaybah (vol 4, pg. 347-348 and vol. 7, pg. 296):

حَدَّثَنَا أَبُو بَكْرٍ قَالَ: حَدَّثَنَا ابْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، عَنْ أَبِي بَكْرٍ، عَنْ أَبِي مَسْعُودٍ: «أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ مَهْرِ الْبَغِيِّ، وَثَمَنِ الْكَلْبِ»

حَدَّثَنَا أَبُو بَكْرٍ قَالَ: حَدَّثَنَا وَكِيعٌ، عَنْ أَبِي بَكْرٍ، عَنِ ابْنِ أَبِي لَيْلَى، عَنْ عَطَاءٍ، عَنْ أَبِي هُرَيْرَةَ، قَالَ: «نَهَى رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ مَهْرِ الْبَغِيِّ، وَعَسْبِ الْفَحْلِ، وَكَسْبِ الْحَجَّامِ، وَثَمَنِ الْكَلْبِ»

حَدَّثَنَا أَبُو بَكْرٍ عَنِ الْأَعْمَشِ، قَالَ: حَدَّثَنَا أَبُو سُفْيَانَ، ذَكَرَهُ عَنْ جَابِرٍ، قَالَ: «نَهَى رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ ثَمَنِ الْكَلْبِ»

حَدَّثَنَا أَبُو بَكْرٍ قَالَ: حَدَّثَنَا وَكِيعٌ، عَنْ يَزِيدَ بْنِ زِيَادِ بْنِ أَبِي الْجَعْدِ، عَنِ ابْنِ أَبِي جُحَيْفَةَ، عَنْ أَبِيهِ، قَالَ: «نَهَى رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَنْ مَهْرِ الْبَغِيِّ، وَكَسْبِ الْحَجَّامِ، وَثَمَنِ الْكَلْبِ»

حَدَّثَنَا أَبُو بَكْرٍ قَالَ: حَدَّثَنَا وَكِيعٌ، عَنْ إِسْرَائِيلَ، عَنْ عَبْدِ الْكَرِيمِ، عَنْ قَيْسِ بْنِ حَبْتَرٍ، عَنِ ابْنِ عَبَّاسٍ رَفَعَهُ قَالَ: «ثَمَنُ الْكَلْبِ وَمَهْرُ الْبَغِيِّ، وَثَمَنُ الْخَمْرِ حَرَامٌ»

Al-Bukhārī's Ṣaḥīḥ, vol. 3, pg. 84:

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ، أَخْبَرَنَا مَالِكٌ، عَنِ ابْنِ شِهَابٍ، عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي مَسْعُودٍ الأَنْصَارِيِّ رَضِيَ اللَّهُ عَنْهُ: «أَنَّ رَسُولَ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ ثَمَنِ الكَلْبِ، وَمَهْرِ البَغِيِّ، وَحُلْوَانِ الكَاهِنِ»

حَدَّثَنَا حَجَّاجُ بْنُ مِنْهَالٍ، حَدَّثَنَا شُعْبَةُ، قَالَ: أَخْبَرَنِي عَوْنُ بْنُ أَبِي جُحَيْفَةَ، قَالَ: رَأَيْتُ أَبِي اشْتَرَى حَجَّامًا، فَأَمَرَ بِمَحَاجِمِهِ، فَكُسِرَتْ، فَسَأَلْتُهُ عَنْ ذَلِكَ قَالَ: «إِنَّ رَسُولَ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ ثَمَنِ الدَّمِ، وَثَمَنِ الكَلْبِ، وَكَسْبِ الأَمَةِ، وَلَعَنَ الوَاشِمَةَ وَالمُسْتَوْشِمَةَ، وَآكِلَ الرِّبَا، وَمُوكِلَهُ، وَلَعَنَ المُصَوِّرَ»

Vol. 7, pg. 61:

حَدَّثَنَا آدَمُ، حَدَّثَنَا شُعْبَةُ، حَدَّثَنَا عَوْنُ بْنُ أَبِي جُحَيْفَةَ، عَنْ أَبِيهِ، قَالَ: «لَعَنَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ الوَاشِمَةَ وَالمُسْتَوْشِمَةَ، وَآكِلَ الرِّبَا وَمُوكِلَهُ، وَنَهَى عَنْ ثَمَنِ الكَلْبِ، وَكَسْبِ البَغِيِّ، وَلَعَنَ المُصَوِّرِينَ»

[246] Al-Tārīkh al-Kabīr, vol. 5, pg. 343:

وقَالَ أَبُو الوليد عَنْ شُعْبَة عَنْ عون سَمِعَ أباه: نهى النَّبِيّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، وهذا اشهر

| | | | |
|---|---|---|---|
| | | | Note that prohibition of many of these items were also debated in the sources, and the prohibitions therein had numerous legal ramifications: can one offer compensation for a killed dog? Can one sell a hunting dog or buy one? See Ibn Ḥajar's *Fatḥ al-bārī*, where he notes that there are 4-5 legal rulings that can be uncovered by these reports on the price of a dog in al-Bukhārī's *Ṣaḥīḥ*.[247] |
| Abū Juḥayfah (d. 72 AH) | "It is written in the Torah: 'CURSED IS THE ONE WHO EATS INTEREST'"[248] | Deuteronomy 23:20-21: THOU SHALT NOT LEND UPON INTEREST (*NESHEKH*) TO THY BROTHER: INTEREST OF MONEY, INTEREST OF VICTUALS, INTEREST OF ANY THING THAT IS LENT UPON INTEREST.[249]<br><br>UNTO A FOREIGNER THOU MAYEST LEND UPON INTEREST; BUT UNTO THY BROTHER THOU SHALT NOT LEND UPON INTEREST; THAT THE LORD THY GOD MAY BLESS THEE IN ALL THAT THOU PUTTEST THY HAND UNTO, IN THE LAND WHITHER THOU GOEST IN TO POSSESS IT.[250] | This report, again from Abū Juḥayfah, is narrated again by the same transmitter, 'Abd al-Raḥmān b. Abī Labīd al-Taghlabī. And what is important to notice is that just as he quoted Deuteronomy 23:19 regarding the prostitute and the dog, the next verse in Deuteronomy is about interest, meaning it is possible he was accessing the same passage in Deuteronomy in an engaged fashion, and not receiving dicta in piecemeal. This is similar to what we saw in Wahb's narration of three separate dicta, all from Leviticus 18. This particular dictate |

[247] Ibn Ḥajar's *Fatḥ al-bārī*, vol. 4, pg. 426.

[248] Al-Bukhārī's *Tārīkh*, vol. 5, pg. 343:
احمد بن ابى شريح اخ عبد الرحمن الرازي ح عَمْرو عَنِ الزبير بْن عدي عَنْ عَبْد اللَّه وعبد الرَّحْمَن ابني أبي لبيد عَنْ أَبِي جحيفة: مكتوب في التوراة " ملعون آكل الربا "

[249] לֹא-תַשִּׁיךְ לְאָחִיךָ, נֶשֶׁךְ כֶּסֶף נֶשֶׁךְ אֹכֶל: נֶשֶׁךְ, כָּל-דָּבָר אֲשֶׁר יִשָּׁךְ

[250] לַנָּכְרִי תַּשִּׁיךְ, וּלְאָחִיךָ לֹא תַשִּׁיךְ--לְמַעַן יְבָרֶכְךָ יְהוָה אֱלֹהֶיךָ, בְּכֹל מִשְׁלַח יָדֶךָ, עַל-הָאָרֶץ, אֲשֶׁר-אַתָּה בָא-שָׁמָּה לְרִשְׁתָּהּ

| | | | |
|---|---|---|---|
| | | Exodus 22:24:<br>If thou lend money to any of My people, even to the poor with thee, thou shalt not be to him as a creditor; neither shall ye lay upon him interest.[251]<br><br>Leviticus 25:36-37:<br>Take thou no interest (*Neshekh*) of him or increase (*tarbīt*); but fear thy God; that thy brother may live with thee. [252]<br><br>Thou shalt not give him thy money upon interest, nor give him thy victuals (*akhlek*) for increase (*marbīt*).[253] | does not seem to offer much additional legal value for the Muslim sources, as interest is already prohibited in the Qur'ān.<br><br>In the Prophetic report about the price of a dog and the pay of a prostitute referenced in Bukhārī's *Ṣaḥīḥ* above (taken from Abū Juḥayfah), this Torah statement from Abū Juḥayfah regarding interest is included as well, with the Prophet ﷺ reported as saying that those who benefit from interest in any form (وَآكِلَ الرِّبَا وَمُوكِلَهُ), tattoos, and those that make images are "cursed." The prohibition on tattoos and making images have biblical parallels.[254] The fact the biblical origin was made explicit regarding some of these "prohibited" items in reports transmitted by 'Abd al-Raḥmān al-Taghlabī, makes it likely the others may have been similar. We also now have several examples so far where biblical prohibitions are phrased as "curses" (as |

[251] אִם-כֶּסֶף תַּלְוֶה אֶת-עַמִּי, אֶת-הֶעָנִי עִמָּךְ--לֹא-תִהְיֶה לוֹ, כְּנֹשֶׁה; לֹא-תְשִׂימוּן עָלָיו, נָשֶׁךְ

[252] אַל-תִּקַּח מֵאִתּוֹ נֶשֶׁךְ וְתַרְבִּית, וְיָרֵאתָ מֵאֱלֹהֶיךָ; וְחַי אָחִיךָ, עִמָּךְ

[253] אֶת-כַּסְפְּךָ--לֹא-תִתֵּן לוֹ, בְּנֶשֶׁךְ; וּבְמַרְבִּית, לֹא-תִתֵּן אָכְלֶךָ

[254] Regarding Tattoos, see Leviticus 19:28:

Ye shall not make any cuttings in your flesh for the dead, nor imprint any marks upon you: I am the LORD.

וְשֶׂרֶט לָנֶפֶשׁ, לֹא תִתְּנוּ בִּבְשַׂרְכֶם, וּכְתֹבֶת קַעֲקַע, לֹא תִתְּנוּ בָּכֶם: אֲנִי, יְהוָה

Regarding images, see Exodus 20:3:

Thou shalt not make unto thee a graven image, nor any manner of likeness, of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth.

לֹא-תַעֲשֶׂה לְךָ פֶסֶל, וְכָל-תְּמוּנָה, אֲשֶׁר בַּשָּׁמַיִם מִמַּעַל, וַאֲשֶׁר בָּאָרֶץ מִתָּחַת--וַאֲשֶׁר בַּמַּיִם, מִתַּחַת לָאָרֶץ

| | | | |
|---|---|---|---|
| | | | they often are in the Bible as well), and we are seeing a pattern where prophetic statements referencing a "cursed" act have a reported Torah parallel. One wonders if other such Prophetic ḥadīth that utilize the language of curses may uncover strong biblical parallels as well (our next example will confirm this). As for the prophetic words cursing those who engage variously with interest (وَآكِلَ الرِّبَا وَمُوكِلَهُ), along with the Qur'ānic verses that prohibit interest compounded on top of more interest,[255] the language parallels with Deuteronomy 23:20 are worth noting. Given the connection that Abū Juḥayfah drew, it would not be surprising if the early Muslims already saw the Qur'anic parallel.<br><br>One may be interested in studying the parallels between certain Kufan ideas about *ribā* in non-Muslim lands and the Deuteronomic issue of interest with foreigners/gentiles.[256] |
| 'Urwah b. al-Zubayr (d. 94 AH) | "It is in the Torah: 'CURSED IS HE WHO SACRIFICES | Deuteronomy 22:19: HE THAT SACRIFICETH UNTO THE GODS, SAVE UNTO THE LORD | Remarkably all the dictates 'Urwah narrates (in two versions attributed to him) |

[255] See Qur'ān 3:130:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُضَاعَفَةً ۖ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ ۝

OH YOU WHO BELIEVE! DO NOT CONSUME INTEREST, DOUBLED AND REDOUBLED, AND BE MINDFUL OF GOD SO THAT YOU MAY SUCCEED ۝

[256] See al-Shaybānī's *al-Aṣl*, vol. 7, pg. 479.

| | | | |
|---|---|---|---|
| | IN OTHER THAN THE NAME OF GOD, CURSED IS HE WHO IS DISOBEDIENT TO HIS PARENTS, CURSED IS HE WHO HINDERS SOMEONE BLIND FROM THE ROAD, CURSED IS HE WHO CHANGES THE BOUNDARIES OF THE EARTH.'"[257]<br><br>"It is written in the Torah: CURSED IS THE ONE WHO CURSES HIS FATHER, CURSED IS THE ONE WHO CURSES HIS MOTHER, CURSED IS THE ONE WHO TEARS DOWN BORDERS OF THE EARTH, CURSED IS THE ONE WHO TURNS AWAY FROM THE PATH OF GOD, CURSED IS THE ONE WHO …?... [ **مَنْ صَدَّ عَنْ** | ONLY, SHALL BE UTTERLY DESTROYED.[259]<br><br>Deuteronomy 27:16-18: CURSED BE HE THAT DISHONOURETH HIS FATHER OR HIS MOTHER. AND ALL THE PEOPLE SHALL SAY: AMEN.[260]<br><br>CURSED BE HE THAT REMOVETH HIS NEIGHBOUR'S LANDMARK. AND ALL THE PEOPLE SHALL SAY: AMEN.[261]<br><br>CURSED BE HE THAT MAKETH THE BLIND TO GO ASTRAY IN THE WAY. AND ALL THE PEOPLE SHALL SAY: AMEN.[262]<br><br>Leviticus 20:9: FOR WHATSOEVER MAN THERE BE THAT CURSETH HIS FATHER OR HIS MOTHER SHALL SURELY BE PUT TO DEATH; HE | have very close parallels in the Torah. He mentions three separate dictates from Deuteronomy 27:16-18, indicating engagement with this passage as a whole. Several of these curses are noted in Prophetic form in the *Ṣaḥīḥ* of Muslim, along with other sources.[267] Its presence in Prophetic form in the *Muṣannaf*s of 'Abd al-Razzāq and Ibn Abī Shaybah indicate that it had become a prophetic report within the first 2 centuries. From a legal perspective the curse regarding changing borders had significance in that it was understood vis-à-vis boundaries between neighboring properties, and apparently understood by Abū 'Ubayd (d. 224 AH) as referring to the boundaries of the *Ḥaram* in Makkah set by Abraham ﷺ, i.e. that they could not be shifted.[268] |

[257] Abū Aḥmad b. 'Adī al-Jurjānī, *Al-Kāmil Fī Ḍu'afā' al-Rijāl*, ed. 'Ādil Aḥmad 'Abd al-Mawjūd, 'Alī Muḥammad Mi'waḍ, and 'Abd al-Fattāḥ Abū Sunnah, 1st ed., 9 vols. (Beirut: al-Kutub al-'Ilmiyyah, 1997). Vol. 4, pg. 207:
حَدَّثَنَا الْحَسَنُ بْنُ مُحَمد بْنِ الْمَدِينِيُّ، حَدَّثَنَا يَحْيى بْنُ عَبد اللَّهِ بْنِ بُكَير، حَدَّثَني اللَّيْثُ، عنِ ابْن الْهَادِ عَنْ زُمَيْلٍ عن عروة أنه قَال: إن في التوراة ملعون من ذبح لغير اسم اللَّه ملعون من عق والديه ملعون من صد أعمى عن الطريق ملعون من غير تخوم الأرض قال زميل فقال إنسان لعروة يا أبا عَبد اللَّه وما تخوم الأرض قال حدودها... ولا أدري من بن زَامِلٍ الْمَذْكُورِ فِي هَذَا الْحَدِيثِ من هو

[259] זֹבֵחַ לָאֱלֹהִים, יָחֳרָם--בִּלְתִּי לַיהוָה, לְבַדּוֹ

[260] אָרוּר, מַקֶּלֶה אָבִיו וְאִמּוֹ; וְאָמַר כָּל-הָעָם, אָמֵן

[261] אָרוּר, מַסִּיג גְּבוּל רֵעֵהוּ; וְאָמַר כָּל-הָעָם, אָמֵן

[262] אָרוּר, מַשְׁגֶּה עִוֵּר בַּדָּרֶךְ; וְאָמַר כָּל-הָעָם, אָמֵן

[267] See, e.g. Muslim's *Ṣaḥīḥ*, vol. 3, pg. 1567:
حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ، وَسُرَيْجُ بْنُ يُونُسَ، كِلَاهُمَا عَنْ مَرْوَانَ، قَالَ زُهَيْرٌ: حَدَّثَنَا مَرْوَانُ بْنُ مُعَاوِيَةَ الْفَزَارِيُّ، حَدَّثَنَا مَنْصُورُ بْنُ حَيَّانَ، حَدَّثَنَا أَبُو الطُّفَيْلِ عَامِرُ بْنُ وَاثِلَةَ، قَالَ: كُنْتُ عِنْدَ عَلِيِّ بْنِ أَبِي طَالِبٍ، فَأَتَاهُ رَجُلٌ، فَقَالَ: مَا كَانَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يُسِرُّ إِلَيْكَ، قَالَ: فَغَضِبَ، وَقَالَ: مَا كَانَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يُسِرُّ إِلَيَّ شَيْئًا يَكْتُمُهُ النَّاسَ، غَيْرَ أَنَّهُ قَدْ حَدَّثَنِي بِكَلِمَاتٍ أَرْبَعٍ، قَالَ: فَقَالَ: مَا هُنَّ يَا أَمِيرَ الْمُؤْمِنِينَ؟ قَالَ: قَالَ: «لَعَنَ اللهُ مَنْ لَعَنَ وَالِدَهُ، وَلَعَنَ اللهُ مَنْ ذَبَحَ لِغَيْرِ اللهِ، وَلَعَنَ اللهُ مَنْ آوَى مُحْدِثًا، وَلَعَنَ اللهُ مَنْ غَيَّرَ مَنَارَ الْأَرْضِ»
See also *Muṣannaf* of 'Abd al-Razzāq, vol. 7 pg. 265; *Muṣannaf* of Ibn Abī Shaybah, vol. 4, pg. 449

[268] Abū 'Ubayd al-Qāsim b. Sallām, *Gharīb Al-Ḥadīth*, ed. Ḥusayn Muḥammad Muḥammad Sharaf, 1st ed., 5 vols. (Cairo: al-Hay'ah al-'Āmmah li Shu'ūn al-Maṭābi' al-Amīriyyah, 1984). Vol. 2, pg. 514-515; Abū al-'Abbās al-

| | | | |
|---|---|---|---|
| | سَبِيلِ اللَّهِ أَوْ ضَالَّ سَائِلًا]"[258] | HATH CURSED HIS FATHER OR HIS MOTHER; HIS BLOOD SHALL BE UPON HIM.[263]<br><br>Leviticus 19:14: THOU SHALT NOT CURSE THE DEAF, NOR PUT A STUMBLING-BLOCK BEFORE THE BLIND, BUT THOU SHALT FEAR THY GOD: I AM THE LORD.[264]<br><br>Proverbs 22:28: REMOVE NOT THE ANCIENT LANDMARK, WHICH THY FATHERS HAVE SET.[265]<br><br>Deuteronomy 11:28: AND THE CURSE, IF YE SHALL NOT HEARKEN UNTO THE COMMANDMENTS OF THE LORD YOUR GOD, BUT TURN ASIDE OUT OF THE WAY WHICH I COMMAND YOU THIS DAY, TO GO AFTER OTHER GODS, WHICH YE HAVE NOT KNOWN.[266] | Notably, this whole tradition emphasizes a "curse," which matches a common biblical language, and which is preserved in the Prophetic version. |
| The Syrian Abū Bakr b. | I read in the Torah, "WHOEVER | Deuteronomy 21:15: | The report also appears in a Prophetic form though |

Qurṭubī, *Al-Mufhim Li Mā Ashkala Min Talkhīṣ Kitāb Muslim*, ed. Muḥyī al-Dīn Dīb Mīstō et al., 1st ed., 7 vols. (Damascus/Beirut: Dār Ibn Kathīr, 1996). Vol. 5, pg. 245.

[258] Ma'mar Ibn Rāshid, *Al-Jāmi' Li Ma'mar b. Rāshid*, ed. Ḥabīb al-Raḥmān al-A'ẓamī, 2nd ed., 2 vols. (Pakistan & Beirut: al-Majlis al-'Ilmī, 1403AH). Vol. 11, pg. 136. I am unable to make sense of the conclusion of the statement: أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، عَنْ مَعْمَرٍ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، قَالَ: «مَكْتُوبٌ فِي التَّوْرَاةِ: مَلْعُونٌ مَنْ سَبَّ أَبَاهُ، مَلْعُونٌ مَنْ سَبَّ أُمَّهُ، مَلْعُونٌ مَنْ نَزَعَ تُخُومَ الْأَرْضِ، مَلْعُونٌ مَنْ صَدَّ عَنْ سَبِيلِ اللَّهِ أَوْ ضَالَّ سَائِلًا»

Ma'mar's *Jāmi'* is derivative of 'Abd al-Razzāq's *Muṣannaf*, but I am unable to find this in the exact form in the published edition of the latter work

[263] כִּי-אִישׁ אִישׁ, אֲשֶׁר יְקַלֵּל אֶת-אָבִיו וְאֶת-אִמּוֹ--מוֹת יוּמָת: אָבִיו וְאִמּוֹ קִלֵּל, דָּמָיו בּוֹ

[264] לֹא-תְקַלֵּל חֵרֵשׁ--וְלִפְנֵי עִוֵּר, לֹא תִתֵּן מִכְשֹׁל; וְיָרֵאתָ מֵאֱלֹהֶיךָ, אֲנִי יְהוָה

[265] אַל-תַּסֵּג, גְּבוּל עוֹלָם-- אֲשֶׁר עָשׂוּ אֲבוֹתֶיךָ

[266] וְהַקְּלָלָה, אִם-לֹא תִשְׁמְעוּ אֶל-מִצְו□ת יְהוָה אֱלֹהֵיכֶם, וְסַרְתֶּם מִן-הַדֶּרֶךְ, אֲשֶׁר אָנֹכִי מְצַוֶּה אֶתְכֶם הַיּוֹם: לָלֶכֶת, אַחֲרֵי אֱלֹהִים אֲחֵרִים--אֲשֶׁר לֹא-יְדַעְתֶּם

| | | | |
|---|---|---|---|
| Abī Maryam (d. 156 AH) | STRIKES HIS FATHER, KILL HIM."[269] | AND HE THAT SMITETH HIS FATHER, OR HIS MOTHER, SHALL BE SURELY PUT TO DEATH.[270] | received critically by the Ḥadīth scholars. Ibn al-Jawzī specifically notes the non-Prophetic Torah version in his rejection of the prophetic version (both being narrated by the same person), along with criticizing the weak status of the narrators in both accounts, and lodging an accusation of fabrication against a narrator in the prophetic version.[271] Note that the ḥadīth was likely constructed for its potential legal value in some circles, and in this case, it provided a basis for execution. The isnāds could be pursued in an attempt to understand the regional dimensions of a potential discussion on punishments exacted in cases of disrespect against parents. A variety of Prophetic reports document the cursed status of disrespecting or cursing one's parent. See surrounding pages of some |

[269] al-Jurjānī, *Al-Kāmil Fī Ḍu'afā' al-Rijāl*. Vol. 2, pg. 210.

[270] וּמַכֵּה אָבִיו וְאִמּוֹ, מוֹת יוּמָת

[271] See Ibn 'Adī's *al-Kāmil*, vol. 2, pg. 209-210; Also: Abū Dāwūd al-Sijistānī, *Al-Marāsīl*, ed. Shu'ayb al-Arna'ūṭ, 1st ed. (Beirut: Mu'assisat al-Risālah, 1408AH). Pg. 335:

حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْمُخَرِّمِيُّ، حَدَّثَنَا زَكَرِيَّا بْنُ عَدِيٍّ، حَدَّثَنَا إِبْرَاهِيمُ بْنُ حُمَيْدٍ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِي حَازِمٍ، عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَ: قَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «مَنْ ضَرَبَ أَبَاهُ فَاقْتُلُوهُ» قَالَ: إِبْرَاهِيمُ: فَذَكَرْتُهُ لِسُفْيَانَ فَقَالَ: قَدْ سَمِعْتُهُ مِنْ أَبِي حَازِمٍ

See also Abū Bakr al-Kharā'iṭī al-Sāmirī, *Masāwa' al-Akhlāq Wa Madhmūmihā*, ed. Muṣṭafā Ibn Abū al-Naṣr al-Shilbī, 1st ed. (Jeddah: Maktabat al-Sawādī li al-Tawzī', 1993). Pg. 50:

حَدَّثَنَا الْفُلُوسِيُّ، ثنا يَعْقُوبُ بْنُ إِبْرَاهِيمَ، ثنا ابْنُ أَبِي حَازِمٍ، عَنْ أَبِيهِ، عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: «مَنْ ضَرَبَ أَبَاهُ فَاقْتُلُوهُ»

حَدَّثَنَا الْفُلُوسِيُّ، ثنا يَعْقُوبُ، ثنا عَبْدُ اللَّهِ بْنُ مُصْعَبٍ، عَنْ أَبِي حَازِمٍ، عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنْ ضَرَبَ أَبَاهُ فَاقْتُلُوهُ» وَقُلْتُ لِأَبِي حَازِمٍ: إِنَّهُ قَدْ رَفَعَهُ عَنْ أَبِيهِ: قَالَ: مَا أَنْكَرَهُ

Also Abū al-Faraj Ibn al-Jawzī, *Al-'Ilal al-Mutanāhiyah Fī al-Aḥādīth al-Wāhiyah*, 2 vols. (Faisalabad, Pakistan: Idārat al-'Ulūm al-Athariyyah, 1981). Vol. 2, pg. 32-33:

هَذَا حَدِيثٌ لا يَصِحُّ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَمَّا الطَّرِيقُ الأول فأبو بكر هُوَ ابن أَبِي مريم قال يَحْيَى لَيْسَ بِشَيْءٍ وَقَالَ ابْنُ حبان: "كان رديء الحفظ فاستحق الترك وقد رُوِيَ عَنْهُ من طريق آخر أنه قال قرأت فِي التوراة ولم يسنده إلى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

Note the presence of Hishām b. 'Urwah in the previous isnād. Hishām narrated to us the other Torah dictate about disrespecting one's parents or cursing them.

| | | | |
|---|---|---|---|
| | | | of the referenced sources in my footnotes to develop such a study.<br><br>Importantly, Ibn ‘Adī (d. 365) *corrects* one of the Prophetic isnāds to the Torah version offered by Ibn Abī Maryam yet also acknowledges a separate prophetic version with the same common link.[272] |
| Ibn Shihāb Al-Zuhrī (124 AH) | It is written in the Torah: ‘CURSED IS THE ONE WHO CHANGES IT BLACK,’ in other words, the beard”[273] | Deuteronomy 22:5:<br>A woman shall not wear that which pertaineth unto a man, neither shall a man put on a woman's garment; for whosoever doeth these things is an abomination unto the LORD thy God.[274]<br><br>The Talmudic discussions surrounding this verse prohibit extraction of white hairs from the beard.[275] | Appears in a section of Ibn Sa‘d *al-Ṭabaqāt al-kubrā* dedicated to reports describing attributes of the Prophet ﷺ, and here, regarding the Prophet’s practice of dying his beard with an orangish color but prohibiting that it be dyed black. Ibn Sa‘d narrates the “Torah” injunction in favor of the Prophet’s prohibition on black hair dying.<br><br>This report would lend strength to Ahmed El Shamsy’s recent argument on early Muslim hair |

[272] Ibn ‘Adī’s *al-Kāmil* (vol. 2, pgs. 209-210):
حَدَّثَنَا مُحَمد بْنُ تَمَّامِ بْنِ صالح الحمصي، حَدَّثَنا المُسَيَّب بْنُ وَاضِحٍ، حَدَّثَنا بَقِيَّةُ، عَن أَبِي بَكْرٍ، عَن أَبِي حَازِمٍ، عَن أَبِي هُرَيْرَةَ، قَال: قَال رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَنْ ضَرَبَ أباه فاقتلوه هكذا حدثنا ابْنُ تَمَّامٍ، عَنِ الْمُسَيَّبِ بْنِ وَاضِحٍ، عَنْ بَقِيَّةَ، عَن أَبِي بَكْرٍ، عَن أَبِي حَازِمٍ.
**قَالَ الشَّيْخُ: وَإِنَّمَا هُوَ بَقِيَّةُ عَنْ عَبَّادِ بْنِ كَثِيرٍ، عَن أَبِي حازم وبقية عن أَبِي بكر بن أبي مَرْيَمَ قَالَ قَرَأْتُ فِي التَّوْرَاةِ.**
حَدَّثَنَاهُ الْحُسَيْنُ بْنُ إِبْرَاهِيمَ السَّكُونِيُّ بِحِمْصٍ، حَدَّثَنا المُسَيَّب بْنُ وَاضِحٍ، حَدَّثَنا بَقِيَّةُ عَنْ عَبَّادِ بْنِ كَثِيرٍ، عَن أَبِي حَازِمٍ، عَن أَبِي هُرَيْرَةَ، قَال: قَال رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مِنَ ضرب أباه فاقتلوه.
حَدَّثَنَا الحسين بن ابراهيم، حَدَّثَنا المُسَيَّب، حَدَّثَنا بَقِيَّةُ، عَن أَبِي بَكْرِ بْنِ أَبِي مَرْيَمَ قَالَ قَرَأْتُ فِي التَّوْرَاةِ مَنْ ضَرَبَ أَبَاهُ فَاقْتُلُوهُ.
حَدَّثَنَا علي بن إبراهيم، حَدَّثَنا أَحْمَدُ بْنُ موسى الشطوي، حَدَّثَنا زَكَرِيَّا بْنُ عَدِيٍّ عَنْ إِبْرَاهِيمَ بْنِ حُمَيْدٍ الرُّوَاسِيِّ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَن أَبِي حَازِمٍ عَنْ سَعِيد بْنِ الْمُسَيَّب، قَال: قَال رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَنْ ضَرَبَ أَبَاهُ فاقتلوه.

[273] Abū ’Abd Allāh Ibn Sa’d, *Al-Ṭabaqāt al-Kubrā*, ed. Muḥammad ’Abd al-Qādir ’Aṭā, 1st ed., vol. 1, 8 vols. (Beirut: Dār al-Kutub al-’Ilmiyyah, n.d.). Vol 1, pg. 340.
أَخْبَرَنَا عَبْدُ الْوَهَّابِ بْنُ عَطَاءٍ قَالَ: أَخْبَرَنَا رَاشِدٌ أَبُو مُحَمَّدٍ الْحِمَّانِيُّ عَنْ رَجُلٍ عَنِ الزُّهْرِيِّ قَالَ: مَكْتُوبٌ فِي التَّوْرَاةِ مَلْعُونٌ مَنْ غَيَّرَهَا بِالسَّوَادِ. يَعْنِي اللِّحْيَةَ

[274] לֹא-יִהְיֶה כְלִי-גֶבֶר עַל-אִשָּׁה, וְלֹא-יִלְבַּשׁ גֶּבֶר שִׂמְלַת אִשָּׁה: כִּי תוֹעֲבַת יְהוָה אֱלֹקֶיךָ, כָּל-עֹשֵׂה אֵלֶּה

[275] See Makkot 20b:5 (The William Davidson Talmud): “The Gemara adds: And for a man, that matter is prohibited even during the week, due to the fact that it is stated: “Neither shall a man don a woman’s garment” (Deuteronomy 22:5). Removal of white hairs for the purposes of beautification is characteristic of women, and it is prohibited for a man to perform those actions.”

| | | | |
|---|---|---|---|
| | | | dying, where he suggests that "[t]he practice of dyeing grey hair in unnatural colours appears to be a finely calibrated statement that drew on an already known practice of dyeing hair in unnatural colours and that placed Muslims *doctrinally* within biblical norms [i.e. not dying black] but distinguished them *visually* from other Abrahamitic communities."[276] The Muslims sought to distinguish themselves from the Jews and Christians, and the Prophet ﷺ himself reportedly indicated his desire to be different from the Jews vis-à-vis hair practice (which other reports in Ibn Sa'd's collection also attest to[277]), *but importantly*, they also saw themselves as being in conformity to the biblical law (at least Ibn Sa'd does through open reference to this report about the bible).<br><br>Importantly, however, the practice is not strictly biblical, but based in Jewish legal *understandings* of a biblical command. |

[276] Pg. 197 of Ahmed El Shamsy, "The Curious Case of Early Muslim Hair Dyeing," in *Islam at 250: Studies in Memory of G.H.A. Juynboll*, ed. Petra Sijpesteijn and Camilla Adang, Leiden Studies in Islam and Society 10 (Boston and Leiden: Brill, 2020), 187–206. Italics that of the author's, not mine.

[277] See the page before of his *al-Ṭabaqāt al-Kubrā*, vol. 1, pg. 339:
أَخْبَرَنَا الْفَضْلُ بْنُ دُكَيْنٍ. أَخْبَرَنَا يُونُسُ بْنُ أَبِي إِسْحَاقَ. حَدَّثَنِي إِبْرَاهِيمُ بْنُ مُحَمَّدِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ قَالَ قَالَ رسول الله. ص: كَيْفَ تَصْنَعُ الْيَهُودُ بِشَيْبِهَا؟ قَالُوا: لا يُغَيِّرُونَهُ بِشَيْءٍ. قَالَ: فَخَالِفُوهُمْ فَإِنَّ أَمْثَلَ مَا غَيَّرْتُمْ بِهِ الشَّيْبَ الْحِنَّاءُ وَالْكَتَمُ

| | | | |
|---|---|---|---|
| ‘Umar or the Prophet ﷺ | “It is written in the Torah: WHOEVER’S DAUGHTER HAS REACHED THE AGE OF 12 AND HE HAS NOT GOTTEN HER MARRIED, AND SO SHE COMMITS A SIN, THEN IT IS ON HIM”[278] | Non-biblical<br><br>A girl is generally assumed to attain maturity by 12 years and one day in the Talmud.[279] A Talmudic mitzva recommends that children should be married when they are still young, and it is clear that there is interest in the marriage of the daughter protecting her from sin.[280] However, marriage of a daughter while she was a minor (as opposed to “being young”) appears to have been frowned upon or | The report doesn’t seem to have been quoted in legal discussions as far as I am aware, but it seems to signify some awareness in the Muslim sources of Jewish conceptions of the age of maturity for women. The report is referenced in a few ḥadīth collections, and the much later Muḥammad b. Ismā‘īl al-Ṣan‘ānī (d. 1182 AH) comments on the Torah reference, by saying the command has not been abrogated (being from the Torah), and the narration of it means that it is being confirmed.[282] I.e. the fact it is reported by an early authority means it has been a confirmed pre-Muḥammadan law that was not abrogated. |

[278] Abū Bakr al-Bayhaqī, *Shu’b al-Īmān*, ed. ’Abd al-’Alī ’Abd al-Ḥamīd Ḥāmid and Mukhtār Aḥmad al-Nadawī, 1st ed., 14 vols. (Riyadh: Maktabat al-Rushd, 2003). Vol. 11, pg. 138-139.

حَدَّثَنَا أَبُو عَبْدِ الرَّحْمَنِ السُّلَمِيُّ، أنا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ عُبْدُوسٍ، نا عُثْمَانُ بْنُ سَعِيدٍ، نا سُلَيْمَانُ بْنُ عَبْدِ الرَّحْمَنِ الدِّمَشْقِيُّ، نا بِشْرُ بْنُ بَكْرٍ، أنا أَبُو بَكْرِ بْنُ أَبِي مَرْيَمَ الْغَسَّانِيُّ، عَنِ الْمُجَاشِعِ الْأَزْدِيِّ، عَنْ عُمَرَ بْنِ الْخَطَّابِ، عَنْ رَسُولِ اللهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، قَالَ: " مَكْتُوبٌ فِي التَّوْرَاةِ: مَنْ بَلَغَتْ لَهُ ابْنَةٌ اثْنَتَيْ عَشْرَةَ سَنَةً فَلَمْ يُزَوِّجْهَا فَرَكِبَتْ إِثْمًا فَإِثْمُ ذَلِكَ عَلَيْهِ "

وَقَرَأْتُ بِخَطِّ الْحَاكِمِ أَبِي عَبْدِ اللهِ، وَهُوَ فِيمَا أَنْبَأَنِيهِ إِجَازَةً، نا بَكْرُ بْنُ مُحَمَّدِ بْنِ عَبْدَانَ الصَّيْرَفِيُّ، بِمَرْوَ مِنْ أَصْلِ كِتَابِهِ، نا أَحْمَدُ بْنُ بِشْرِ بْنِ سَعْدٍ الْمَرْثَدِيُّ، نا خَالِدُ بْنُ خِدَاشٍ، نا حَمَّادُ بْنُ زَيْدٍ، عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ، عَنْ أَنَسِ بْنِ مَالِكٍ، قَالَ: سَمِعْتُ رَسُولَ اللهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: " فِي التَّوْرَاةِ مَكْتُوبٌ: مَنْ بَلَغَتِ ابْنَتُهُ اثْنَتَيْ عَشْرَةَ سَنَةً فَلَمْ يُزَوِّجْهَا فَأَصَابَتْ إِثْمًا فَإِثْمُ ذَلِكَ عَلَيْهِ " قَالَ الْحَاكِمُ: هَذَا وَجَدْتُهُ فِي أَصْلِ كِتَابِهِ، وَهَذَا إِسْنَادٌ صَحِيحٌ وَالْمَتْنُ شَاذٌّ بِمَرَّةٍ. قَالَ الْإِمَامُ أَحْمَدُ: إِنَّمَا يَرْوِيهِ بِالْإِسْنَادِ الْأَوَّلِ، وَهُوَ بِهَذَا الْإِسْنَادِ مُنْكَرٌ

[279] See Niddah 46a.

[280] See Sanhedrin 76b, *The William Davidson Talmud*:

“The Gemara raises an objection to one element of the ruling of Rav from a *baraita*: One who loves his wife as he loves himself, and who esteems her by giving her clothing and jewelry more than he esteems himself, and one who instructs his sons and daughters to follow an upright path, and who marries them to appropriate spouses adjacent to theirreaching puberty, ensures that his home will be devoid of quarrel and sin. Concerning him the verse states: “And you shall know that your tent is in peace; and you shall visit your habitation and shall miss nothing” (Job 5:24). The *baraita* indicates that it is a mitzva to marry one’s children to appropriate spouses while they are young, contrary to the statement of Rav that one who takes a wife for his minor son causes sin. The Gemara replies: Adjacent to their reaching puberty is different from marrying her to a minor, as there is no concern that his daughter will sin during the brief period until her husband reaches puberty.”

[282] Muḥammad b. Ismā’īl al-Ṣan’ānī, *Al-Tanwīr: Sharḥ al-Jāmi’ al-Ṣaghīr*, ed. Muḥammad Isḥāq Muḥammad Ibrāhīm, 1st ed., 11 vols. (Riyadh: Maktabat Dār al-Salām, 2011). Vol. 9, pg. 565.

| | | | |
|---|---|---|---|
| | | prohibited, yet also a Jewish custom.[281] | Ibn Kathīr notes a non-Torah version wherein ‘Umar commands to marry one’s children when they reach puberty (so not before 12) to save oneself from the children sinning.[283]<br><br>See original reference from al-Bayhaqī’s Shu‘b al-Īmān, where al-Ḥākim al-Naysābūrī and Aḥmad b. Ḥanbal comment on the isnāds of this report. Others commented on the contents of the report being *shādh*, i.e. uncorroborated. |
| Abū al-‘Āliyah (d. 90 or 93 AH)<br><br>And al-Rabī‘ b. Anas (d. 139 AH), though | In providing his exegesis of Qur’ān 2:41[284] which includes a statement that the people of the book should to “NOT SELL MY SIGNS FOR A TRIFLE PRICE,” Abū al- | The Talmud informs us that the context of Moses’s command to teach the Israelites God’s law (see Deuteronomy 4:5 and 4:14), is that God told Moses ﷺ: “Just as I teach you for free, without payment, so too you also shall teach for | Abū al-‘Āliyah’s words are well known, especially within the exegetical tradition. They are sometimes attributed to him without attribution to prior scripture,[288] or |

[281] See, e.g., Kidushin 41a, *The William Davidson Talmud*:
“The mishna teaches: A man can betroth his daughter to a man when she is a young woman. The Gemara infers: When she is a young woman, yes, he can betroth her; when she is a minor, no, he cannot betroth her. This statement supportsthe opinion of Rav, as Rav Yehuda says that Rav says, and some say it was said by Rabbi Elazar: It is prohibited for a person to betroth his daughter to a man when she is a minor, until such time that she grows up and says: I want to marry so-and-so. If a father betroths his daughter when she is a minor and incapable of forming an opinion of the husband, she may later find herself married to someone she does not like.”
Also, Shulchan Arukh, Even HaEzer 37 (translation from the Sefaria.com community translation):
“It is a *mitzvah* to not marry off one's daughter when she is a *ketanah* [younger than 12 years old] until she grows up enough to say, "I want so and so." Rem"a: And some say, that today's custom is to marry off daughters who are *ketanot* because we are in exile and don't always have enough for a dowry. Also, we are few in number and can't always find a fitting mate. And this is our custom.”

[283] Ibn Kathīr al-Qurashī, *Musnad Al-Fārūq*, ed. Imām ibn ’Alī Ibn Imām, 1st ed., 3 vols. (Faiyum: Dār al-Falāḥ, 2009). Vol. 2, pg. 141.

[284] وَءَامِنُوا بِمَا أَنزَلْتُ مُصَدِّقًا لِّمَا مَعَكُمْ وَلَا تَكُونُوا أَوَّلَ كَافِرٍ بِهِۦ ۖ وَلَا تَشْتَرُوا بِـَٔايَاتِى ثَمَنًا قَلِيلًا وَإِيَّاىَ فَاتَّقُونِ۝
BELIEVE IN WHAT I HAVE SENT DOWN CONFIRMING WHAT YOU ALREADY POSSESS. DO NOT BE THE FIRST TO DISBELIEVE IN IT, AND DO NOT SELL MY SIGNS FOR A TRIFLE PRICE. BE MINDFUL OF ME.۝

[288] See, e.g., Shams al-Dīn al-Dhahabī, *Tārīkh Al-Islām Wa Wafayāt al-A’lām*, ed. ’Umar ’Abd al-Salām al-Tadammurī, 2nd ed., 52 vols. (Beirut: Dār al-Kitāb al-’Arabī, 1993). Vol. 18, pg. 527.; Also: Abū Bakr al-Bayhaqī, *Al-Madkhal Ilā al-Sunan al-Kubrā*, ed. Muḥammad Ḍiyā’ al-Raḥmān al-A’ẓamī (Kuwait: Dār al-Khulafā’ li al-Kitāb al-Islāmī, n.d.). Pg. 350.

| | | | |
|---|---|---|---|
| many versions have al-Rabī‘ narrate it from Abū al-‘Āliyah | ‘Āliyah interprets the words to mean, “Do not take payment for it, for it is written with them [the People of the Book] in the First Scripture: ‘Oh Child of Adam, teach for free, as you have been taught for free.’”[285]<br><br>In one version from al-Rabī‘ b. Anas, the Torah is identified as the source.[286] | free.” The statement from the “Oral Torah” features in Talmudic discussions on taking payment for religious teaching.[287] | elsewhere as coming from “wisdom”.[289]<br><br>In this case, the sunnī *madhhab*s did have discussions on the acceptability of payment for religious teaching, with some like the Ḥanafīs prohibiting it outright, but they do not cite this tradition.[290]<br><br>The report does appear in non-legal discussions on religious knowledge being taken and given for the sake of monetary benefit and the dislike associated with that. Al-Khaṭīb al-Baghdādī includes it (the Torah version) in a section of his *Kifāyah fī ‘ilm al-riwāyah* on the issue of taking money for narrating ḥadīth, and in support of those who don’t accept taking ḥadīth from those who charge.[291] |
| The Prophet ﷺ | “It is written in the Torah: Cursed is | Exodus 22:27: | Though this report does not yield ‘legal’ benefit, I note |

[285] See, e.g., al-Ṭabarī’s *Tafsīr*, vol. 1, pg. 565:
فحدثني المثنى بن إبراهيم قال: حدثنا آدم، قال: حدثنا أبو جعفر، عن الربيع، عن أبي العالية:"ولا تشترُوا بآياتي ثمنًا قليلا"، يقول: لا تأخذوا عليه أجرًا. قال: هو مكتوب عندهم في الكتاب الأول: يا ابنَ آدم، عَلِّمْ مَجَّانًا كما عُلِّمتَ مَجَّانًا

[286] See, e.g., Abū al-Qāsim al-Jurjānī, *Tārīkh Jurjān*, ed. Muḥammad ’Abd al-Mu’īd Khān, 4th ed. (Beirut: ’Ālam al-Kutub, 1987). Pg. 393:
أَبُو بَكْر مُحَمَّد بْن عَبْد الرَّحْمَن بْن شَهْر الوراق الرَّازِي سكن بِجُرْجَانَ أَخْبَرَنَا أَبِي حَدَّثَنَا أَبِي إِبْرَاهِيمُ بْنُ مُوسَى السَّهْمِيُّ حَدَّثَنَا أَبُو بَكْرٍ مُحَمَّدُ بْن عَبْد الرَّحْمَنِ بْن شَهْر الْوَرَّاقِ الرَّازِيُّ حَدَّثَنَا مُحَمَّدُ بْنُ قَطَنٍ الْخَفَّافُ حَدَّثَنَا عَلِيُّ بْنُ الْجَعْدِ الْجَوْهَرِيُّ حَدَّثَنَا أَبُو جَعْفَرٍ الرَّازِيُّ عَنِ الرَّبِيعِ بْنِ أَنَسٍ قال مكتوب في التوراة بن آدَمَ عَلِّمْ مَجَّانًا كَمَا عُلِّمْتَ مَجَّانًا

[287] See Nedarim 37a.

[289] Abū al-Qāsim al-Suhaylī, *Al-Rawḍ al-Anf Fī Sharḥ al-Sīrah al-Nabawiyyah*, 1st ed., 7 vols. (Beirut: Dār Iḥyā’ at-Turāth al-’Arabī, 1412AH). Vol. 2, pg. 376.

[290] See, e.g., al-Shaybānī’s *Aṣl*, Vol. 4, pgs. 15 and 23; al-Shāfi‘ī’s *Umm* (Dār al-Wafā’ publication) vol. 6, pg. 416, Saḥnūn’s *Mudawwanah*, vol. 3, pgs. 430-431.

[291] See e.g., Ibn ’Abd al-Barr al-Qurṭubī, *Jāmi’ Bayān al-’Ilm Wa Faḍlihi*, ed. Abū al-Ashbāl al-Zuhayrī, 1st ed., 2 vols. (Saudi Arabia: Dār Ibn al-Jawzī, 1994). Vol. 1, pg. 648; Also, Abū Bakr al-Khaṭīb al-Baghdādī, *Al-Kifāyah Fī ’Ilm al-Riwāyah*, ed. Abū ’Abd Allāh al-Sawraqī and Ibrāhīm Ḥamadī al-Madanī (Medina: al-Maktabah al-’Ilmiyyah, n.d.). Pg. 153.

| | | | |
|---|---|---|---|
| | THE ONE WHO CURSES HIS KABĪR, which means his Amīr or the one in charge of him."[292] | THOU SHALT NOT REVILE GOD, NOR CURSE A RULER OF THY PEOPLE.[293] | it here as an example of the Prophet ﷺ himself reportedly conveying material from the Torah, just like as in a case looked at earlier regarding the famous ḥadīth on kinship. Importantly, the report likely served the interests of political quietism. |
| Mujāhid (d. 83 AH) | It is written in the Torah to not engage in exchanges of *Muzābanah*, for it is prohibited.[294]<br><br>*Muzābanah* being the trade of fruits (or produce) for other fruit by measure, e.g., fresh dates with dried ones. The issue involves the possibility of an iniquitous exchange, or "increase" (*ribā*). | N/A<br><br>Leviticus 25:37 noted above regarding interest prohibits giving food items ("victuals") for increase, but as far as I am aware, the connection here or in Talmudic discussions are not clearly related to the issue of *muzābanah* in the Muslim sources. | Ibn 'Adī who shares this report notes that the isnād to Mujāhid is unattested to, and that the narrator, 'Amr b. Makhram has a history of reporting anomalous reports that lack corroboration.<br><br>The prohibition from the exchange of dried and fresh fruit falls within prophetic prohibitions that are tied to the issue of interest and the exchange of definable assets.[295] It is possible that ascription to the Torah was an attempt at legitimizing the practice, and based on popular understandings of the interest prohibitions among Jews, and not from intimate knowledge of the Bible. However, those interested in seeing if rules regarding *muzābanah* have |

[292] Ibn Abī 'Āṣim al-Shaybānī, *Al-Sunnah Li Ibn Abī 'Āṣim*, ed. Muḥammad Nāṣir al-Dīn al-Albānī, 1st ed., 2 vols. (Beirut: al-Maktab al-Islāmī, 1400AH). Vol. 2, pg. 262:
ثنا مُحَمَّدُ بْنُ بَكَّارٍ، ثنا حَمْزَةُ بْنُ عَبْدِ اللَّهِ الثَّقَفِيُّ أَبُو عُمَارَةَ، ثنا عُثْمَانُ بْنُ مُوسَى أَبُو عَمْرِو بْنُ عُثْمَانَ، الَّذِي كَانَ قَاضِيَ الْبَصْرَةِ، حَدَّثَنِي عَطَاءٌ، عَنِ ابْنِ عَبَّاسٍ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: " فِي التَّوْرَاةِ مَكْتُوبٌ: مَلْعُونٌ مَنْ لَعَنَ كَبِيرَهُ، يَعْنِي أَمِيرَهُ وَوَالِيَهُ "

[293] אֱלֹהִים, לֹא תְקַלֵּל; וְנָשִׂיא בְּעַמְּךָ, לֹא תָאֹר

[294] Ibn 'Adī's *al-Kāmil*, vol. 6, pg. 262:
حَدَّثَنَا أحمد، حَدَّثَنا جعفر، حَدَّثَنا عَمْرو بْنُ مَخْرَمٍ أَبُو قَتَادَةَ، حَدَّثَنا هُيَيْثَمٌ عَنْ لَيْثٍ عَنْ مُجَاهِدٍ قَالَ مَكْتُوبٌ فِي التَّوْرَاةِ أَنْ لا تَبَايَعُوا بِالْمُزَابَنَةِ فَإِنَّهَا حَرَامٌ.
وهذا بهذا الإسناد عَن مجاهد لا يُعْرَفُ إلاَّ مِنْ رِوَايَةِ عَمْرو ولعمرو غير ما ذكرت من الحديث مناكير كلها.

[295] See, e.g., Mālik's *Muwaṭṭa'*, vol. 4, pgs. 903-906.

| | | | |
|---|---|---|---|
| | | | a Talmudic precedent may pursue this further. |
| A convert from Judaism named Yūsuf, who is identified as companion of ʻAbd Allāh b. al-Zubayr (d. 73 AH) | "It is in the Torah: 'THE ONE WHO SHROUDS A DEAD BODY IS LIKE THE ONE WHO RAISED A YOUNG CHILD TO ADULTHOOD'" or in another version, "…RAISED A YOUNG CHILD UNTIL HE DIED"[296] | N/A | Noted by the famous traditionist ʻAbd al-Razzāq in a section on the shrouding of bodies, and from two separate isnāds that preserve the tradition. I include it here as an example of a non-biblical attribution to the Torah, and to demonstrate the interest in preserving such material, even in a work that contains legal material. The citation does not yield novel 'legal' benefit, but it offers religious exhortation. The source is also noted as a convert. |

This list of examples demonstrates that early Muslim sources engaged with biblical dicta in a legal sphere. Some of the examples were also cited to demonstrate that this knowledge was evidently faulty on occasion (or based in some non-biblical source) and used for advisory and non-legal purposes. It is worth noting that the Torah dictates are not necessarily the basis of *new* law in some of the cases above (not all) and may have also served the purpose of legitimating what was already accepted. A quick look through traditions regarding intercourse with an animal, e.g., show that the early Muslims who commented on it viewed it as a sexual perversity and comparable to *zinā*. The Torah text merely provided scriptural grounding for its prohibition.[297] Additionally, just as we saw with the juristic engagement with sexual laws from the Torah, the source materials

[296] ʻAbd al-Razzāq's *Muṣannaf*, Vol. 3, pg. 404:
عَنِ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي مَنْصُورُ بْنُ عَبْدِ الرَّحْمَنِ، أَنَّهُ سَمِعَ يُوسُفَ الَّذِي كَانَ يَهُودِيًّا فَأَسْلَمَ يَقُولُ: فِي التَّوْرَاةِ: «مَنْ كَفَّنَ مَيِّتًا كَمَنْ كَفَلَ صَغِيرًا حَتَّى صَارَ كَبِيرًا»
عَنِ الثَّوْرِيِّ، عَنْ مَنْصُورِ ابْنِ صَفِيَّةَ، عَنْ يُوسُفَ، رَجُلٍ كَانَ مَعَ ابْنِ الزُّبَيْرِ نَجِدُهُ فِي كِتَابِ اللَّهِ: «مَثَلُ الَّذِي يُكَفِّنُ الْمَيِّتَ كَالَّذِي كَفَلَهُ صَغِيرًا حَتَّى مَاتَ»

[297] See, e.g., ʻAbd al-Razzāq's *Muṣannaf*, vol. 7, pg. 366.

present the Torah references without rejecting the material's origins in the Torah. It was scripture after all. The fact they were transmitted from an early Muslim authority would have been the legitimating criteria. It was obvious, however, that despite this these traditions underwent a process of reattribution that had transformed these reports into prophetic ones. The process had already begun by the 2nd century, as we found Torah and non-Torah versions of biblically originating reports appearing in the *muṣannafāt* by this time, as indicated earlier. But while the Torah ascriptions for many of these reports remained within the tradition as a whole (which is why we know about them), the examples above proliferated in prophetic form. In many ways this is very much related to the phenomenon of isnād "backgrowth," wherein information originally reported about Companions and later authorities would be attributed to the Prophet ﷺ, only in this case, the ascription to the Torah was being removed and the reports aligned with the Prophet ﷺ. The ḥadīth scholars were aware of the phenomenon of isnād backgrowth to some extent,[298] which is why they collected numerous isnāds for different traditions in an attempt to find the 'original' tradition with the correct attribution. It is this interest in preserving isnāds with the interest of determining historical truth that explains why the ḥadīth scholars have preserved some of these Torah traditions for us, and why we have some examples of their comparative engagement between these traditions and the prophetic versions.

We encountered a few cases showing Ibn al-Jawzī, al-Bukhārī and Ibn 'Adī's comparisons between a Prophetic report with one that was attributed to the Torah. Elsewhere we find Aḥmad b. Ḥanbal was aware of a reported statement of the Companion Salmān regarding God's mercy, which in one version Salmān says he learned from the Torah, was also attributed to the Prophet ﷺ

[298] Regarding Muslim engagement with the backgrowth of isnāds, see: Jonathan Brown, "Critical Rigor vs. Juridical Pragmatism: How Legal Theorists and Hadith Scholars Approached the Backgrowth of Isnads in the Genre of 'Ilal al-Hadith," *Islamic Law and Society* 14 (2007): 1–41.

(*marfūʿ*).[299] What we see with the ḥadīth scholars in these cases, however, is that the issue of attribution was ultimately a question of isnāds. The existence of a non-prophetic version of a ḥadīth might typically raise a question about the Prophetic ascription of another version, which is why isnāds ending at a Companion or a Successor would need to be compared with a prophetic report. In this case, the Torah versions are referenced as possible alternatives. But, importantly, the mere presence of a version ascribing information to the Torah which could be verified by reference to the Torah was not in and of itself sufficient reason to reject a prophetic report for the ḥadīth scholars: after all, even if it was truly representative of the Torah, there is no reason why the Prophet ﷺ couldn't have also said it. In the case of Abū Juḥayfah's report regarding the price of a dog and the payment of a prostitute, al-Bukhārī only includes the prophetic version of the report in his authenticated collection, wherein Abū Juḥayfah reportedly hears the Prophet ﷺ prohibit these things (along with other biblically prohibited matters).[300] But as we saw, al-Bukhārī was aware of the Torah version as well, since he reported it to us in his *Tārīkh*. He gives us the likely reason for not relying on the Torah version in his *Tārīkh*: the prophetic isnād is the more attested to (أشهر) one from Abū Juḥayfah. And while al-Bukhārī doesn't note it explicitly, 'Abd al-Raḥmān b. Abī Labīd al-Taghlibī, who narrates from Abū Juḥayfah the Torah version, is a relatively unknown transmitter. His favoring of the prophetic version is thus ultimately on the basis of available isnād information. And apart from the Abū Juḥayfah account from the Prophet ﷺ, he has one from Abū Masʿūd as well to confirm it, similarly prohibiting the price of a dog, the wage of a prostitute, but adding the pay of a soothsayer in that account. The isnāds therefore are the ultimate evidence. In

[299] 'Abd Allāh Ibn Aḥmad b. Ḥanbal, *Al-'Ilal Wa Ma'rifat al-Rijāl*, ed. Waṣī Allāh Ibn Muḥammad 'Abbās, 2nd ed., 3 vols. (Riyadh: Dār al-Khānī, 1422AH). Vol. 2, pg. 418:
قَرَأت على أبي بن أَبِي عدي عَن دَاوُد عَن أَبِي عُثْمَانَ عَنْ سَلْمَانَ للَّهِ مِائَةُ رَحْمَةٍ وَسِعَتْ كُلَّ رَحْمَةٍ مَا بَيْنَ السَّمَاءِ وَالأَرْضِ سَمِعت أَبِي يَقُول حَدَّثَنَا بِهِ مُعَاذ عَن التَّيْمِيّ عَن أَبِي عُثْمَان عَن سلمَان لم يرفعهُ مُعَاذ وَرَفعه يحيى قَالَ أَبُو عَبْد الرَّحْمَن وَرَفعه لقوم بعد أبي حَدَّثَنِي أَبِي قَالَ حدّثنَاهُ يحيى عَن التَّيْمِيّ وَعَفَّان عَن مُعْتَمر أَيْضا مَرْفُوع وَقَالَ عباد بْن عباد عَن عَاصِم عَنْ أَبِي عُثْمَانَ عَنْ سَلْمَانَ قَالَ قَرَأت فِي التَّوْرَاة

[300] See Vol. 3, pg. 59 of his *Ṣaḥīḥ*

the case of Ibn al-Jawzī on the report regarding executing a child who strikes his father, he cites the Torah version to impugn the prophetic one, but can do so because there was weakness among the narrators in both versions anyways, and the existence of the non-prophetic version was only additional evidence for why it would not be a prophetic report.

What should be noted is that the later scholars weren't oblivious to the possibility of biblical or Isrā'īliyyat material being made into prophetic statements, this material being in heavy circulation in the domains of popular story-telling, works on exhortation, and Qur'ānic exegesis.[301] Burhān al-Dīn al-Abnāsī (d. 802 AH) notes an example that may have been a statement of Jesus ﷺ ascribed to the Prophet ﷺ as an example of Israelite narrations or statements of inherited wisdom being ascribed to the Prophet ﷺ.[302] As the scholar Shihāb al-Dīn al-Khuwayī (d. 693 AH) writes in a poetic verse on the ḥadīth sciences: وربما يُروى عن المختارِ ... ما جاء عن حَبْرٍ من الأَحْبَارِ ("and perhaps it be [falsely] narrated from the Chosen One, what has come from one of the Rabbis").[303] Ibn Ḥajr al-'Asqalānī (d. 852 AH) notes that specific Companions were known for narrating biblical or Israelite material, including 'Abd Allāh b. 'Amr b. al-'Āṣ, who reportedly transmitted from books that he had copied down from the People of the Book,[304] and converts like 'Abd Allāh b. Salām. If these specific Companions narrated matters that were not from their own opinion, such as

---

[301] 'Abd al-Raḥmān al-Sakhāwī, *Fatḥ Al-Mughīth Bi Sharḥ Alfiyyat al-Ḥadīth Li al-'Irāqī*, ed. 'Alī Ḥusayn 'Alī, 4 vols. (Egypt: Maktabat al-Sunnah, 2003). Vol. 1, pg. 324-325.

[302] Burhān al-Dīn al-Abnāsī, *Al-Shadhā al-Fayāḥ Min 'Ulūm Ibn al-Ṣalāḥ*, ed. Ṣalāḥ Fatḥī Hilal, 1st ed., 2 vols. (Maktabat al-Rushd, 1998). Vol. 1, pg. 229

[303] Shihāb al-Dīn al-Khuwayī, *Aqṣā Al-Amal Wa al-Sūl Fī 'Ilm Ḥadīth al-Rasūl Ṣallā Allāh 'Alayh Wa Sallam*, ed. Nawāf 'Abbās Ḥabīb al-Manāwir as a Masters Thesis (Kuwait: Barnāmij al-Ḥadīth al-Sharīf wa 'Ulūmi, Kulliyat al-Dirāsāt al-'Ulyā, 2015). Pg. 116.

[304] From al-Dārimī's critique against al-Marīsī, who claimed that 'Abd Allāh b. 'Amr had falsely attributed information to the Prophet from books he acquired from the People of the Book:

وَكَذَلِكَ ادَّعَيْتَ عَلَى عَبْدِ اللهِ بْنِ عَمْرِو بْنِ العَاص، وكَانَ مِنْ أَكْثَرِ أَصْحَابِ النَّبِيِّ - صلى الله عليه وسلم - رِوَايةً عَنْهُ، مَعْرُوفًا بِذَلِكَ، فَزَعَمْتَ أَنَّهُ أَصَابَ يَوْمَ اليَرْمُوكِ زَامِلَتَيْنِ مِنْ كُتُبِ أَهْلِ الكِتَابِ فَكَانَ يَرْوِيهَا لِلنَّاسِ عَنِ النَّبِيِّ - صلى الله عليه وسلم - وكَانَ يُقال لَهُ: أَلا تَحَدِّثُنَا عَنِ الزَّامِلَتَيْنِ.

وَيْحَكَ أَيُّهَا المُعَارِضُ! إِنْ كَانَ عَبْدُ اللهِ بْنُ عَمْرٍو أَصَابَ الزَّامِلَتَيْنِ مِنْ حَدِيثِ أَهْلِ الكِتَابِ يَوْمَ اليَرْمُوكِ، فَقَدْ كَانَ مَعَ ذَلِكَ أَمِينًا عِنْدَ الأُمَّةِ عَلَى حَدِيثِ النَّبِيِّ - صلى الله عليه وسلم - أَن لَا يَجْعَلَ مَا وَجَدَ فِي الزَّامِلَتَيْنِ عَنْ رَسُولِ الله - صلى الله عليه وسلم -، وَلَكِنْ كَانَ يَحْكِي عَنِ الزَّامِلَتَيْنِ مَا وَجَدَ فِيهِمَا، وَعَنِ النَّبِيِّ - صلى الله عليه وسلم - مَا سَمِعَ مِنْهُ، لَا يُحِيلُ ذَاكَ عَلَى هَذَا وَلَا هَذَا عَلَى ذَاكَ، كَمَا تأَوَّلتَ عَلَيْهِ بِجَهْلِكَ، وَاللهُ سَائِلُكَ عَنْهُ

Abū Sa'īd al-Dārimī al-Sijistānī and Abū 'Āṣim al-Shawāmī al-Atharī, *Naqḍ Al-Imām Abī Sa'īd 'Uthmān 'Alā al-Marīsī al-Jahmī*, 1st ed. (Cairo: al-Maktabah al-Islāmiyyah, 2012). Pg. 241

declaration about otherworldly punishment or reward, this information could not be assumed to come from the Prophet ﷺ as it would in the case of other Companions, since there was a preponderance of suspicion (لقوة الاحتمال) that they in particular may be narrating from a non-Muḥammadan source.[305] Al-Sakhāwī (d. 902 AH) tells us that in most cases where a younger or late Companion narrated from a Successor and not from a senior Companion, the material they were transmitting was likely of Israelite origin or the like.[306] While this was a noted phenomenon among the ḥadīth scholars, their method of addressing it was via isnāds as was noted.

Meir Kister provides us with one of the more detailed accounts of Muslim references to claimed biblical material in his piece[307] engaging with the well-known report from the Prophet ﷺ, "Narrate from the Children of Israel: there is no problem [with that]."[308]. In many narrations of this report, the Prophet ﷺ begins the statement with a command to convey from him, even a verse, and follows up the statement regarding Israelite material with, "But whoever lies with regards to me, let him take his seat in the fire." Given the very statement about lying and falsely attributions to the Prophet ﷺ being connected with the statement about transmitting from the Israelites, it is quite possible that this famous tradition was promulgated within a context of Israelite tales and biblical dicta being falsely ascribed to the Prophet ﷺ, and thus the relevance of the very specific warning. The Prophetic statement itself sanctioned narrating of material from the People of the

---

[305] See Ibn Ḥajar's *Nukat*, vol. 2, pg. 533.

[306] Al-Sakhāwī's *Fatḥ al-Mughīth*, Vol. 1, pg. 192:
وَلَا شَكَّ أَنَّهُمْ عُدُولٌ لَا يَقْدَحُ فِيهِمُ الْجَهَالَةُ بِأَعْيَانِهِمْ، وَأَيْضًا فَمَا يَرْوِيهِ عَنِ التَّابِعِينَ، غَالِبُهُ بَلْ عَامَّتُهُ إِنَّمَا هُوَ مِنَ الْإِسْرَائِيلِيَّاتِ، وَمَا أَشْبَهَهَا مِنَ الْحِكَايَاتِ، وَكَذَا الْمَوْقُوفَاتُ

[307] M. J. Kister, "Ḥaddithū 'an Banī Isrā'īla Wa-Lā Ḥaraja: A Study of an Early Tradition," *Israel Oriental Studies 2*, no. 1972 (n.d.): 215–39.

[308] See, e.g., 'Abd al-Razzāq's *Muṣannaf*, vol. 6, pg. 109 and vol. 10, pg. 311:
عَبْدُ الرَّزَّاقِ قَالَ: أَخْبَرَنَا الْأَوْزَاعِيُّ عَبْدُ الرَّحْمَنِ بْنُ عَمْرٍو، عَنْ حَسَّانَ بْنِ عَطِيَّةَ، عَنْ أَبِي كَبْشَةَ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «بَلِّغُوا عَنِّي وَلَوْ آيَةً، وَحَدِّثُوا عَنْ بَنِي إِسْرَائِيلَ وَلَا حَرَجَ، فَمَنْ كَذَبَ عَلَيَّ كَذْبَةً فَلْيَتَبَوَّأْ مَقْعَدَهُ مِنَ النَّارِ»
عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا الْأَوْزَاعِيُّ , عَنْ حَسَّانِ بْنِ عَطِيَّةَ , عَنْ أَبِي كَبْشَةَ , عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ , قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «بَلِّغُوا عَنِّي وَلَوْ آيَةً , وَحَدِّثُوا , عَنْ بَنِي إِسْرَائِيلَ وَلَا حَرَجَ , فَمَنْ كَذَبَ عَلَيَّ فَلْيَتَبَوَّأْ مَقْعَدَهُ مِنَ النَّارِ»
See also, Abū Bakr al-Ḥumaydī, *Musnad Al-Ḥumaydī*, ed. Ḥasan Salīm Asad al-Dārānī, 1st ed., 2 vols. (Damascus: Dār al-Saqā, 1996). Vol. 2, pg. 293.; Ibn Abī Shaybah's *Muṣannaf*, vol. 5, pgs. 318-319.; Aḥmad's *Musnad*, vol. 11, pgs. 25, 488, 583, vol. 16, pgs. 125, 313, vol. 17, pgs. 157, vol. 18, pgs. 19, 94; Bukhārī's *Ṣaḥīḥ*, vol. 4, pg. 170.

Book, but this was also restricted by traditions that prohibited receiving guidance from them, including the famous ḥadīth we noted in the debates on pre-Muḥammadan law in which the Prophet ﷺ rebukes ‘Umar for referring to parchments of the Torah.

Kister notes a number of Muslim reports claiming to be sourced from the books of the prophets of old to suggest an early tradition of engagement with this material, such as supposed prophecies from the book of Daniel, claims that certain Qur’ānic passages paralleled those found in the prior scriptures (see earlier footnote on this in Chapter 2), and wise statements claiming to be from David’s Psalms and elsewhere. Only a few of the “Torah” references are in fact derived from the Torah, and as Kister points out, the majority likely came from popular Jewish and Christian lore. Kister notes that Muslims were also aware of some of the non-Pentateuchal or non-biblical origins of some of these claimed attributions. He records al-Jāḥiẓ (d. 255 AH), e.g., who suggested that Ka‘b al-Aḥbār’s statements that something was “written in the Torah” were likely to mean they were derived from the books of the prophets, the books of Solomon and the like.[309] Ibn Kathīr (d. 774 AH) similarly notes this.[310] The transmission of Jewish and Christian tradition was part and parcel to Muslim tradition as Kister adduces, but as he suggests, this was “abundantly reflected in the literature of the *tafsīr, zuhd,* and *adab*,”[311] indicating that whatever material the Muslims did engage with, it was primarily pietistic or in the form of stories. The closest to knowledge of biblical dicta he provides is the command to obey one’s parents and to not covet the possessions of one’s neighbor or his wife, but these, like a few of the cases we noted above by way

[309] Abū ’Uthmān al-Jāḥiẓ, *Al-Ḥayawān*, 7 vols. (Beirut: Dār al-Kutub al-’Ilmiyyah, 1424AH). Vol. 4, pg. 358.

[310] ثُمَّ لَيُعْلَمْ أَنَّ كَثِيرًا مِنَ السَّلف يُطْلِقُونَ التَّوراة عَلَى كُتُب أهل الكتاب المتلوة عِنْدَهُمْ، أَوْ أَعَمّ مِنْ ذَلِكَ، كَمَا أَنَّ لفظ القرآن يطلق على كتابنا خصوصاً وَيُرَادُ بِهِ غَيْرُهُ، كَمَا فِي الصَّحيح: خُفِّفَ عَلَى دَاوُدَ الْقُرْآنُ فَكَانَ يَأْمُرُ بدوابّه فتسرح فَيَقْرَأُ الْقُرْآنَ مِقْدَارَ مَا يَفْرُغُ، وَقَدْ بُسِطَ هَذَا فِي غَيْرِ هَذَا الْمَوْضِعِ وَاللَّهُ أَعْلَمُ.

See vol. 6, pg. 69 of Ibn Kathīr al-Qurashī, *Al-Bidāyah Wa al-Nihāyah*, ed. ’Alī Shīrī, 1st ed., 14 vols. (Dār Iḥyā’ al-Turāth al-’Arabī, 1988).

[311] Kister, “Ḥaddithū,” pg. 239.

of example, do not yield legal benefit. Yet as our study shows, it is clear that the Muslim sources did have occasional access to accurate knowledge of biblical legal dicta.

Kister offers us traditions from the early period that suggest both an early allowance for reading the Torah, but also a clear "tendency of the orthodox circles to prevent the Faithful from learning or copying the Holy Scriptures of the People of the Book, and especially of legal chapters or chapters concerning the tenets of faith."[312]. With regards the former, the Prophet ﷺ reportedly foretold that 'Abd Allāh b. 'Amr b. al-'Āṣ would read the Torah, which he did.[313] I offer a few other examples that suggest the possibility that the Prophet ﷺ allowed the Torah to be read, or appeared to be comfortable with knowledge from the Jews. 'Abd Allāh b. Salām reportedly informed the Prophet ﷺ that he recited the Qur'ān, the Torah, and the Injīl, to which the Prophet ﷺ responded, "Recite this one night, and recite this one night" (اقْرَأْ بِهَذَا لَيْلَةً وَبِهَذَا لَيْلَةً).[314] In another incident upon arriving to Qubā' (i.e. before the changing of the Qiblah), the Prophet ﷺ told the residents that God had praised them for their cleanliness (the report indicates that Qur'ān 9:108[315] is what was being referenced by cleanliness, the verses being about the congregants of the mosque in Qubā', but the Qur'ānic incident appears to have occurred later in the Medinan period). The Prophet ﷺ then asks them to inform him about it and they respond that they find it written in the

---

[312] Ibid., pg. 234.

[313] Ibid., pg. 231. See Imām Aḥmad's *Musnad*, vol. 11, pg. 638. The Prophet interprets a dream of 'Abd Allāh wherein he has a finger with butter (*samīn*) on it, and another with honey. The Prophet prophesizes it is because he will read from the Torah and the Furqān (i.e. the Qur'ān), which he apparently does according to Muslim tradition. As was noted earlier, 'Abd Allāh b. 'Amr was known to have narrated material from books that were from the People of the Book.

[314] Abū al-Qāsim al-Ṭabarānī, *Al-Mu'jam al-Kabīr*, ed. Ḥamdī b. 'Abd al-Majīd al-Salafī, 2nd ed., 25 vols. (Cairo, Egypt: Maktabat Ibn Taymiyyah, n.d.). Vol. 13, pg. 155:
حَدَّثَنَا عَبْدَانُ بْنُ أَحْمَدَ، قَالَ: حَدَّثَنَا الْحُسَيْنُ بْنُ عَلِيِّ بْنِ الْأَسْوَدِ، قَالَ: حَدَّثَنَا مُحَمَّدُ بْنُ الصَّلْتِ، قَالَ: حَدَّثَنَا غِيَاثُ بْنُ إِبْرَاهِيمَ، عَنْ مُحَمَّدِ بْنِ أَبِي يَحْيَى، عَنْ يُوسُفَ بْنِ عَبْدِ اللهِ بْنِ سَلَامٍ، عَنْ أَبِيهِ، قَالَ: قُلْتُ: يَا رَسُولَ اللهِ قَدْ قَرَأْتُ الْقُرْآنَ وَالتَّوْرَاةَ وَالْإِنْجِيلَ، قَالَ: «اقْرَأْ بِهَذَا لَيْلَةً وَبِهَذَا لَيْلَةً»

[315] لَا تَقُمْ فِيهِ أَبَدًا ۚ لَّمَسْجِدٌ أُسِّسَ عَلَى ٱلتَّقْوَىٰ مِنْ أَوَّلِ يَوْمٍ أَحَقُّ أَن تَقُومَ فِيهِ ۚ فِيهِ رِجَالٌ يُحِبُّونَ أَن يَتَطَهَّرُوا۟ ۚ وَٱللَّهُ يُحِبُّ ٱلْمُطَّهِّرِينَ۝
AND DO NOT PRAY IN THAT MOSQUE EVER. SURELY A MOSQUE FOUNDED FROM THE FIRST DAY ON CONSCIOUSNESS OF GOD IS MORE WORTHY THAT YOU SHOULD STAND IN IT. IN IT ARE PEOPLE WHO LOVE TO PURIFY THEMSELVES. AND GOD LOVES THOSE WHO PURIFY THEMSELVES۝

Torah that bathroom cleanliness (*istinjā'*) is to be done with water.[316] Their use of water is not ascribed to the Torah in other versions of this incident. We also encountered the matter of *rajm* before, which the Prophet ﷺ in some accounts declared it a *sunnah* that he would revive, and also a version of the Prophetic ḥadīth regarding kinship, which in one version he reportedly said was from the Torah. In one report, Salmān al-Fārisī tells the Prophet ﷺ that he read in the Torah that the blessing of food is the washing (وضوء) done before eating. The Prophet ﷺ simply repeats the statement in one report, affirming it,[317] and in another version, the Prophet ﷺ corrects him by saying the blessing of food is in the washing done before *and* the washing after.[318] The Prophet ﷺ also seems to confirm some of the knowledge of the Jews, without necessarily rebuking the origins of this knowledge. In one reported incident, a person identified as a rabbi or a member of the People of the Book comes to the Prophet ﷺ and asks him if it has reached him that God holds all of creation on a finger, the trees on another, and the stars on another. The Prophet then laughs pronouncedly, in confirmation of what was said, says 'Abd Allāh b. Mas'ūd, and then he replies with Qur'ān 39:67[319] in confirmation.[320] A report also has a Jewish woman pray for Aisha that she

---

[316] See Ibn Abī Shaybah's Muṣannaf, vol. 1, pg. 141:
حَدَّثَنَا يَحْيَى بْنُ آدَمَ، قَالَ: حَدَّثَنَا مَالِكُ بْنُ مِغْوَلٍ، قَالَ: سَمِعْتُ سَيَّارًا أَبَا الْحَكَمِ، غَيْرَ مَرَّةٍ يُحَدِّثُ عَنْ شَهْرِ بْنِ حَوْشَبٍ، عَنْ مُحَمَّدِ بْنِ يُوسُفَ بْنِ عَبْدِ اللَّهِ بْنِ سَلَامٍ، قَالَ: لَمَّا قَدِمَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَلَيْنَا يَعْنِي قُبَاءَ قَالَ: إِنَّ اللَّهَ قَدْ أَثْنَى عَلَيْكُمْ فِي الطُّهُورِ خَيْرًا أَفَلَا تُخْبِرُونِي قَالَ يَعْنِي قَوْلَهُ تَعَالَى: {فِيهِ رِجَالٌ يُحِبُّونَ أَنْ يَتَطَهَّرُوا وَاللَّهُ يُحِبُّ الْمُطَّهِّرِينَ} [التوبة: 108] قَالَ , فَقَالُوا: يَا رَسُولَ اللَّهِ , إِنَّا لَنَجِدُهُ مَكْتُوبًا عَلَيْنَا فِي التَّوْرَاةِ: الِاسْتِنْجَاءُ بِالْمَاءِ
See also al-Ṭabarānī's al-Mu'jam al-Kabīr, vol. 17, pg. 271.

[317] Muṣannaf of Ibn Abī Shaybah, vol. 1, pg. 307:
نا الْفَضْلُ بْنُ دُكَيْنٍ، عَنْ قَيْسِ بْنِ الرَّبِيعِ، نَا أَبُو هَاشِمٍ، عَنْ زَاذَانَ، عَنْ سَلْمَانَ، قَالَ: قَرَأْتُ فِي التَّوْرَاةِ بَرَكَةُ الطَّعَامِ الوضوءُ قَبْلَهُ، قَالَ: فَذَكَرْتُ ذَلِكَ لِرَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَأَخْبَرْتُهُ بِمَا قَرَأْتُ فِي التَّوْرَاةِ، فَقَالَ: «بَرَكَةُ الطَّعَامِ الْوُضُوءُ قَبْلَهُ»

[318] Aḥmad's *Musnad*, vol. 39, pg. 136.

[319] وَمَا قَدَرُواْ ٱللَّهَ حَقَّ قَدْرِهِۦ وَٱلْأَرْضُ جَمِيعًا قَبْضَتُهُۥ يَوْمَ ٱلْقِيَٰمَةِ وَٱلسَّمَٰوَٰتُ مَطْوِيَّٰتُۢ بِيَمِينِهِۦۚ سُبْحَٰنَهُۥ وَتَعَٰلَىٰ عَمَّا يُشْرِكُونَ۝
THEY DO NOT GRASP GOD'S TRUE MEASURE. THE WHOLE EARTH, ON THE DAY OF RESURRECTION, WILL BE IN HIS GRIP. THE HEAVENS WILL BE ROLLED UP IN HIS RIGHT HAND. GLORY BE TO HIM! HE IS EXALTED FROM ALL THAT THEY ASSOCIATE۝

[320] Abū Bakr al-Bazzār, *Musnad Al-Bazzār*, ed. 'Ādil Ibn Sa'd, Maḥfūẓ al-Raḥmān Zayn Allāh, and Ṣabrī 'Abd al-Khāliq al-Shāfi'ī, 1st ed., 18 vols. (Madinah: Maktabat al-'Ulūm wa al-Ḥikam, 2009). Vol. 4, pg. 314 and vol. 5, pg. 181.

be protected from the punishment of the grave. When asked about the Jewish woman's statement, the Prophet confirms the truth of it.[321]

It is also the case that a practice of reading from the Torah continued after the death of the Prophet ﷺ among the early community, in some form. Among the Ahl al-Kitāb converts, we find that Ka'b al-Aḥbār reportedly read from the Torah on numerous occasions after the death of the Prophet ﷺ,[322] as did 'Abd Allāh b. Salām,[323] and both were apparently referred to by the Companions. We also have the examples referred to before of non-converts including Companions and Successors referencing the Torah in a way that might indicate reading from the text. Kister cites the example of the Basran Abū al-Jald Jaylān (d. ?), whom the tradition notes used to read from the Qur'ān and Torah on a weekly basis for blessing, and Crone and others have referenced his case study as well.[324] He was also a narrator of traditions and was deemed trustworthy as a transmitter by Aḥmad b. Ḥanbal. Ibn 'Abd al-Barr (d. 463 AH) notes that he ranked among the

---

[321] Ibid., vol. 18, pg. 243.

[322] There are many examples of Ka'b engagement with the Torah. Refer to Kister's article. See also, e.g., Mālik's *Muwaṭṭa',* vol. 2, pg. 150-152, e.g., where Abū Hurayrah refers to the knowledge of 'Abd Allāh b. Salām and Ka'b regarding the contents of the Torah on the blessings of Friday. See also vol. 6, pg. 304 from the *Muṣannaf* of Ibn Abī Shaybah:

حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ، عَنْ مِسْعَرٍ، عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ، عَنْ مُصْعَبِ بْنِ سَعْدٍ، قَالَ: قَالَ كَعْبٌ: «إِنَّ أَوَّلَ مَنْ يَأْخُذُ بِحَلْقَةِ بَابِ الْجَنَّةِ، فَيُفْتَحُ لَهُ مُحَمَّدٌ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، ثُمَّ قَرَأَ آيَةً مِنَ التَّوْرَاةِ أَضْرَابًا قَدَمَايَا نَحْنُ الْآخِرُونَ الْأَوَّلُونَ»

[323] See, example in footnote about Ka 'b from the *Muwaṭṭa'*. Also, see the *Muṣannaf* of Ibn Abī Shaybah, vol. 7, pg. 108:

أَبُو الْأَحْوَصِ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي عُبَيْدَةَ، قَالَ: قَالَ عَبْدُ اللَّهِ: إِنَّهُ لَمَكْتُوبٌ فِي التَّوْرَاةِ: لَقَدْ أَعَدَّ اللَّهُ لِلَّذِينَ تَتَجَافَى جُنُوبُهُمْ عَنِ الْمَضَاجِعِ مَا لَمْ تَرَ عَيْنٌ وَلَمْ تَسْمَعْ أُذُنٌ وَلَمْ يَخْطُرْ عَلَى قَلْبِ بَشَرٍ وَمَا لَا يَعْلَمُهُ مَلَكٌ وَلَا مُرْسَلٌ , قَالَ: وَنَحْنُ نَقْرَأُهَا: {فَلَا تَعْلَمُ نَفْسٌ مَا أُخْفِيَ لَهُمْ مِنْ قُرَّةِ أَعْيُنٍ} [السجدة: 17]

Also, vol. 6, pg. 558-559:

حَدَّثَنَا أَبُو أُسَامَةَ، قَالَ: ثنا مَهْدِيُّ بْنُ مَيْمُونٍ، قَالَ: ثنا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي يَعْقُوبَ، عَنْ بِشْرِ بْنِ شَغَافٍ، عَنْ عَبْدِ اللَّهِ بْنِ سَلَامٍ، قَالَ: " لَمَّا كَانَ حِينَ فُتِحَتْ نَهَاوَنْدُ أَصَابَ الْمُسْلِمُونَ سَبَايَا مِنْ سَبَايَا الْيَهُودِ , قَالَ: وَأَقْبَلَ رَأْسُ الْجَالُوتِ يُفَادِي سَبَايَا الْيَهُودِ , قَالَ: وَأَصَابَ رَجُلٌ مِنَ الْمُسْلِمِينَ جَارِيَةً يَسْرَةً صَبِيحَةً , قَالَ: فَأَتَانِي فَقَالَ: لَكَ أَنْ تَمْشِيَ مَعِي إِلَى هَذَا الْإِنْسَانِ عَسَى أَنْ يُثَمِّنَ لِي بِهَذِهِ الْجَارِيَةِ , قَالَ: فَانْطَلَقْتُ مَعَهُ فَدَخَلَ عَلَى شَيْخٍ مُسْتَكْبِرٍ لَهُ تُرْجُمَانٌ فَقَالَ لِتُرْجُمَانِهِ: سَلْ هَذِهِ الْجَارِيَةَ , هَلْ وَقَعَ عَلَيْهَا هَذَا الْعَرَبِيُّ؟ قَالَ: وَرَأَيْتُهُ غَارَ حِينَ رَأَى حُسْنَهَا , قَالَ: فَرَاطَنَهَا بِلِسَانِهِ فَفَهِمْتُ الَّذِي قَالَ: فَقُلْتُ لَهُ: أَبَحْتَ بِمَا فِي كِتَابِكَ بِسُؤَالِكَ هَذِهِ الْجَارِيَةَ عَلَى مَا وَرَاءَ ثِيَابِهَا , فَقَالَ لِي: كَذَبْتَ مَا يُدْرِيكَ مَا فِي كِتَابِي , قُلْتُ: أَنَا أَعْلَمُ بِكِتَابِكَ مِنْكَ , قَالَ: أَنْتَ أَعْلَمُ بِكِتَابِي مِنِّي؟ قُلْتُ: أَنَا أَعْلَمُ بِكِتَابِكَ مِنْكَ , قَالَ: مَنْ هَذَا؟ قَالُوا: عَبْدُ اللَّهِ بْنُ سَلَامٍ , قَالَ: فَانْصَرَفْتُ ذَلِكَ الْيَوْمَ , قَالَ: فَبَعَثَ إِلَيَّ [ص:559] رَسُولًا يَعْزِمُهُ لِيَأْتِيَنِي , قَالَ: وَبَعَثَ إِلَيَّ بِدَابَّةٍ قَالَ: فَانْطَلَقْتُ إِلَيْهِ لَعَمْرُ اللَّهِ احْتِسَابًا رَجَاءَ أَنْ يُسْلِمَ , فَحَبَسَنِي عِنْدَهُ ثَلَاثَةَ أَيَّامٍ أَقْرَأُ عَلَيْهِ التَّوْرَاةَ وَيَبْكِي , قَالَ: وَقُلْتُ لَهُ: إِنَّهُ وَاللَّهِ لَهُوَ النَّبِيُّ الَّذِي تَجِدُونَهُ فِي كِتَابِكُمْ , قَالَ: فَقَالَ لِي: كَيْفَ أَصْنَعُ بِالْيَهُودِ؟ قَالَ: قُلْتُ لَهُ: إِنَّ الْيَهُودَ لَنْ يُغْنُوا عَنْكَ مِنَ اللَّهِ شَيْئًا؟ قَالَ: فَغَلَبَ عَلَيْهِ الشَّقَاءُ وَأَبَى أَنْ يُسْلِمَ "

[324] See Ibn Sa'd's *al-Ṭabaqāt al-Kubrā*, vol. 7, pg. 165-166:

أَبُو الْجَلْدِ الْجَوْنِيُّ: حي من الأزد واسمه جيلان بن فروة. وكان ثقة.
قَالَ: أَخْبَرَنَا مُوسَى بْنُ إِسْمَاعِيلَ قَالَ: حَدَّثَنَا أَبَانُ قَالَ: حَدَّثَنَا أَبُو عِمْرَانَ قال: كان أبو الجلد يقرأ الكتب.
قَالَ: أَخْبَرَنَا سُلَيْمَانُ بْنُ حَرْبٍ قَالَ: حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ مَيْمُونَةَ بِنْتِ أَبِي الْجَلْدِ قَالَتْ: كَانَ أَبِي يَقْرَأُ الْقُرْآنَ فِي كُلِّ سَبْعَةِ أَيَّامٍ وَيَخْتِمُ التَّوْرَاةَ فِي سِتَّةٍ يَقْرَؤُهَا نَظَرًا فَإِذَا كَانَ يَوْمَ يَخْتِمُهَا حَشَدَ لِذَلِكَ النَّاسَ. وَكَانَ يَقُولُ: كَانَ يُقَالُ: تَنْزِلُ عِنْدَ خَتْمِهَا الرَّحْمَةُ.

senior Successors, but that he used to narrate material that was anomalous and uncorroborated (مناكير). Ibn ‘Abbās apparently used to transmit material from him as well.[325] And Abū al-Jald was not alone. The biographical dictionaries also note that Kirdaws b. ‘Amr (d. ?), who was either a late Companion or a Successor, used to read from the scriptures and narrate from the Injīl and the Torah, some of these narrations from scripture being available to us.[326] We also know that the Kufan Successor Yarīm b. As‘ad (d. ?), who narrated from the Companion Qays b. Sa‘d, is reported to have read the Torah, Zabūr, Injīl and the Qur’ān.[327] Similarly the Yemenite nephew of Wahb b. Munabbih, ‘Aqīl b. Ma‘qal b. Munabbih, is reported by Aḥmad b. Ḥanbal to have read the Torah and the Injīl.[328] Al-Biqā‘ī notes several additional examples, including from the exegetical tradition, of early Muslim engagement with the bible.[329] The narrative details that are present in early Qur’ānic exegetical traditions also suggest a very obvious reading of biblical and other Israelite narratives in this early period, along with some of the examples we have cited earlier.

---

[325] Abū ’Umar Yūsuf Ibn ’Abd al-Barr, *Al-Istighnā’ Fī Ma’rifat al-Mashhūrīn Min Ḥamalat al-’Ilm Bi al-Kunā*, ed. ’Abd Allāh Marḥūl al-Sawālah, 1st ed., 3 vols. (Riyadh: Dār Ibn Taymiyyah, 1985). Vol. 1, pg. 531.

[326] Muḥammad Ibn Ḥibbān, *Al-Thiqāt*, ed. Muḥammad ’Abd al-Mu’īd Khān, 1st ed., 9 vols. (Hyderabad: Dā’irat al-Ma’ārif al-’Uthmāniyyah, 1973). Vol. 5, pg. 342:

وَكَانَ يقْرَأ الْكتب ويحكى عَن الْإِنْجِيل والتوراة روى عَنهُ أَبُو وَائِل

Abū Nu’aym al-Aṣbahānī, *Ma’rifat al-Ṣaḥābah*, ed. ’Ādil Ibn Yūsuf al-’Azārī, 1st ed., 7 vols., ṣ (Riyadh: Dār al-Waṭn, 1998). Vol. 5, pg. 2414:

كُرْدُوسُ بْنُ عَمْرٍو وَقِيلَ: ابْنُ هَانِئٍ، رَوَى عَنْهُ أَبُو وَائِلٍ شَقِيقٌ، ذَكَرَهُ ابْنُ أَبِي دَاوُدَ وَالْحَسَنُ بْنُ سُفْيَانَ فِي الصَّحَابَةِ , وَخَالَفَهُمَا غَيْرُهُمَا

حَدَّثَنَا حَبِيبُ بْنُ الْحَسَنِ، ثنا يُوسُفُ الْقَاضِي، ثنا عَمْرُو بْنُ مَرْزُوقٍ، ثنا زَائِدَةُ، عَنْ مَنْصُورٍ، عَنْ شَقِيقٍ، عَنْ كُرْدُوسٍ، قَالَ: " كُنْتُ أَجِدُ فِي الْإِنْجِيلِ إِذْ كُنْتُ أَقْرَأُ: إِنَّ اللهَ عَزَّ وَجَلَّ لَيُصِيبُ الْعَبْدَ بِالْأَمْرِ يَكْرَهُهُ، وَإِنَّهُ لَيُحِبُّهُ , لِيَنْظُرَ كَيْفَ تَصَرُّعُهُ إِلَيْهِ " رَوَاهُ عَمْرُو بْنُ مُرَّةَ، عَنْ أَبِي وَائِلٍ

حَدَّثَنَا عُمَرُ بْنُ أَحْمَدَ بْنِ عُمَرَ الْقَاضِي، ثنا عَلِيُّ بْنُ الْعَبَّاسِ الْبَجَلِيُّ، ثنا سَهْلُ بْنُ مُحَمَّدٍ السِّجِسْتَانِيُّ، ثنا أَبُو جَابِرٍ، ثنا شُعْبَةُ، عَنْ عَمْرِو بْنِ مُرَّةَ، عَنْ أَبِي وَائِلٍ، عَنْ كُرْدُوسِ بْنِ عَمْرٍو، قَالَ: " فِيمَا أَنْزَلَ اللهُ تَعَالَى: إِنَّ اللهَ عَزَّ وَجَلَّ لَيَبْتَلِي الْعَبْدَ وَهُوَ يُحِبُّهُ , لِيَسْمَعَ صَوْتَهُ "

[327] Al-Khaṭīb’s *Tārīkh Baghdād*, vol. 16, pg. 520:

أَخْبَرَنَا مُحَمَّد بْن أَحْمَد بْن رزق، أَخْبَرَنَا إسماعيل بن علي الخطبي وأبو علي بن الصواف وأحمد بْن جَعْفَر بْن حمدان. قالوا: حَدَّثَنَا عَبْد اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ، حَدَّثَنِي أَبِي، حدثنا يحيى بن آدم، حَدَّثَنَا إسرائيل عَن أبي إِسْحَاق عَن يريم أبي هبيرة ابن يَريم- وهو يريم بْن عبدد- أَنَّهُ كَانَ يؤَمَّهم فيقرأ مائة من القرآن من البقرة، ومن آخر آل عمران. قَالَ: وكان يريم قد قرأ التوراة، والزبور، والإنجيل، والقرآن.

[328] Ibn Ḥajar al-’Asqalānī, *Tahdhīb Al-Tahdhīb*, 1st ed., 12 vols. (India: Maṭba’at Dā’irat al-Ma’ārif al-Niẓāmiyyah, 1326AH). Vol. 7, pg. 255:

روى عن عميه همام ووهب وعنه ابنه إبراهيم وابن أخيه يوسف بن عبد الصمد بن معقل وغوث بن جابر بن غيلان بن منبه وهشام بن يوسف الصنعاني وعبد الرزاق قال أحمد عقيل من ثقاتهم وقال عبد الصمد ثقة وقال أحمد أيضا قرأ عقيل بن معقل التوراة والإنجيل

[329] Burhān al-Dīn al-Biqā’ī and Walid A. Saleh, *In Defense of the Bible: A Critical Edition and an Introduction to al-Biqā’ī’s Bible Treatise*, ed. Walid A. Saleh (Leiden & Boston: Brill, 2008). See section 6, pgs. 99-123.

Yet we also have traditions that seem to restrict accessing the Torah or suggest a position of postponing judgment on the truth or lack thereof regarding the pre-Muḥammadan scriptures or material acquired from the People of the Book. The most famous prohibition is found in a report where ‘Umar is rebuked by the Prophet ﷺ for having parchments of the Torah that he acquired from a Jew. We encountered this report in our earlier discussion of legal debates on pre-Muḥammadan law. ‘Umar himself is said to have prohibited accessing pre-Muḥammadan scriptural material as will be noted later, even though reports suggest that he also consulted with Ka‘b regarding the latter’s knowledge of the traditions of the People of the Book[330]. According to a separate report, we learn that some of the Companions used to write material from the Torah, and the Prophet ﷺ then made a statement saying that it was from absolute misguidance and stupidity that people would leave what their own prophet came with for something from another prophet, or that they would turn to another community other than their own. This incident was claimed to be the context of revelation for Qur’ān 29:51[331] which suggests that the revelation given to the Prophet ﷺ was sufficient for the believers.[332] Other reports seem to emphasize the need to postpone judgement regarding information from the People of the Book. In a famous report noted in the *Ṣaḥīḥ* of al-Bukhārī, the *Ahl al-Kitāb* would read the Torah in Hebrew and explain it to the “People of Islam,” i.e. the Companions, in Arabic. The Prophet ﷺ reportedly said about this, “Do

---

330 فَإِنَّ كَعْبَ الْأَحْبَارِ لَمَّا أَسْلَمَ فِي زَمَنِ عُمَرَ كَانَ يَتَحَدَّثُ بَيْنَ يَدَيْ عُمَرَ بْنِ الْخَطَّابِ رَضِيَ اللَّهُ عَنْهُ بِأَشْيَاءَ مِنْ عُلُومِ أَهْلِ الْكِتَابِ فَيَسْتَمِعُ لَهُ عُمَرُ تَأْلِيفًا لَهُ، وَتَعَجُّبًا مِمَّا عِنْدَهُ مِمَّا يُوَافِقُ كَثِيرٌ مِنْهُ الْحَقَّ الَّذِي وَرَدَ بِهِ الشَّرْعُ الْمُطَهَّرُ فَاسْتَجَازَ كَثِيرٌ مِنَ النَّاسِ نَقْلَ مَا يُورِدُهُ كَعْبُ الأحبار لهذا
See vol. 1, pg. 19 of Ibn Kathīr al-Qurashī, *Al-Bidāyah Wa al-Nihāyah*, ed. ’Alī Shīrī, 1st ed., 14 vols. (Dār Iḥyā’ al-Turāth al-’Arabī, 1988).

331 أَوَلَمْ يَكْفِهِمْ أَنَّا أَنزَلْنَا عَلَيْكَ الْكِتَابَ يُتْلَىٰ عَلَيْهِمْ ۚ إِنَّ فِي ذَٰلِكَ لَرَحْمَةً وَذِكْرَىٰ لِقَوْمٍ يُؤْمِنُونَ ۝
Is it not sufficient for them that We revealed to you the Book that is being recited to them? There is mercy and good counsel in it for believing people ۝

332 حَدَّثَنَا أَبُو عِيسَى مُوسَى بْنُ عَلِيٍّ الْخُتُّلِيُّ بِبَغْدَادَ حَدَّثَنَا دَاوُدُ بْنُ رُشَيْدٍ، حَدَّثَنَا فُهَيْرُ بْنُ زِيَادٍ الرَّقِّيُّ، حَدَّثَنَا إِبْرَاهِيمُ بْنُ يَزِيدَ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ يَحْيَى بْنِ جَعْدَةَ، عَنْ أَبِي هُرَيْرَةَ، قَالَ: كَانَ نَاسٌ مِنْ أَصْحَابِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَكْتُبُونَ مِنَ التَّوْرَاةِ فَذَكَرُوا فَقَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِنَّ أَحْمَقَ الْحَمَقِ وَأَضَلَّ الضَّلَالَةِ قَوْمٌ رَغِبُوا مِمَّا جَاءَ بِهِ نَبِيُّهُمْ إِلَى نَبِيٍّ غَيْرِ نَبِيِّهِمْ وَإِلَى أُمَّةٍ غَيْرِ أُمَّتِهِمْ» ثُمَّ أَنْزَلَ اللَّهُ عَزَّ وَجَلَّ: {أَوَلَمْ يَكْفِهِمْ أَنَّا أَنْزَلْنَا عَلَيْكَ الْكِتَابَ يُتْلَى عَلَيْهِمْ} "
See vol. 2, pgs. 772-773 of Abū Bakr al-Ismā’īlī al-Jurjānī, *Al-Mu’jam Fī Asāmī Shuyūkh Abī Bakr al-Ismā’īlī*, ed. Ziyād Muḥammad Manṣūr, 1st ed., 3 vols. (Madinah: Maktabat al-’Ulūm wa al-Ḥikam, 1410AH).

not confirm the People of the Book, nor deny them, but rather, "Say: We believe in God and what has been revealed to us…,""[333] citing Qur'ān 2:136 which confirms the Prophet's revelation along with what came before.[334] This report thus allowed for receiving knowledge from the People of the Book regarding their scriptures, but emphasized postponing judgment on the veracity of what was shared. Other Prophetic traditions explicitly assert that the *Ahl al-Kitāb* should not be asked questions, because they themselves were not guided, but that information from them could be transmitted, a qualified version of the "Narrate from the Children of Israel…" report. Whatever they say should not be confirmed to be true because it may be false, nor should it be denied because it may actually be true from God.[335] 'Abd Allāh b. Mas'ūd similarly asserted that the People of the Book should not be consulted because they themselves were misguided, but he qualifies his statement by saying that if one *does* go to the People of the Book for knowledge, then there is a procedure to follow: whatever the Book of God, i.e. the Qur'ān judges in favor of, keep, and whatever it disagrees with, leave behind ( إِنْ كُنْتُمْ سَائِلِيهِمْ لَا مَحَالَةَ , فَانْظُرُوا مَا قَضَى كِتَابُ اللَّهِ فَخُذُوهُ , وَمَا خَالَفَ كِتَابَ اللَّهِ فَدَعُوهُ).[336] Ibn 'Abbās reportedly asked, "How is it that you ask the People of the Book

[333] See al-Bukhārī's Ṣaḥīḥ, vol. 6, pgs. 20-21:
حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ، حَدَّثَنَا عُثْمَانُ بْنُ عُمَرَ، أَخْبَرَنَا عَلِيُّ بْنُ المُبَارَكِ، عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ، قَالَ: كَانَ أَهْلُ الكِتَابِ يَقْرَءُونَ التَّوْرَاةَ بِالعِبْرَانِيَّةِ، وَيُفَسِّرُونَهَا بِالعَرَبِيَّةِ لِأَهْلِ الإِسْلاَمِ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: " لاَ تُصَدِّقُوا أَهْلَ الكِتَابِ وَلاَ تُكَذِّبُوهُمْ، وَقُولُوا: {آمَنَّا بِاللَّهِ وَمَا أُنْزِلَ إِلَيْنَا} [البقرة: 136] الآيَةَ

[334] قُولُوا آمَنَّا بِاللَّهِ وَمَا أُنْزِلَ إِلَيْنَا وَمَا أُنْزِلَ إِلَىٰ إِبْرَاهِيمَ وَإِسْمَاعِيلَ وَإِسْحَاقَ وَيَعْقُوبَ وَالْأَسْبَاطِ وَمَا أُوتِيَ مُوسَىٰ وَعِيسَىٰ وَمَا أُوتِيَ النَّبِيُّونَ مِنْ رَبِّهِمْ لَا نُفَرِّقُ بَيْنَ أَحَدٍ مِنْهُمْ وَنَحْنُ لَهُ مُسْلِمُونَ۝

Say: We Believe in God and in what was sent down to us and what was sent down to Abraham, Ishmael, Isaac, Jacob and the tribes, and what was given to Moses, Jesus and what was given to the prophet from their lord. We do not differentiate between any of them, and we devote ourselves to Him.

[335] See, e.g., 'Abd Al-Razzāq's *Muṣannaf*, vol. 10, pgs. 310-314:
- حَدَّثَنَا أَبُو عُمَرَ أَحْمَدُ بْنُ خَالِدٍ , قَالَ: حَدَّثَنَا أَبُو مُحَمَّدٍ عُبَيْدُ بْنُ مُحَمَّدٍ الْكَشْوَرِيُّ , قَالَ: حَدَّثَنَا مُحَمَّدُ بْنُ يُوسُفَ الْخُذَاقِيُّ , قَالَ: قَالَ ابْنُ جُرَيْجٍ: حُدِّثْتُ عَنْ زَيْدِ بْنِ أَسْلَمَ أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ , قَالَ: «لَا تَسْأَلُوا أَهْلَ الْكِتَابِ عَنْ شَيْءٍ , فَإِنَّهُمْ إِنْ يَهْدُوكُمْ قَدْ أَضَلُّوا أَنْفُسَهُمْ» , قِيلَ: يَا رَسُولَ اللَّهِ، أَلَا نُحَدِّثُ عَنْ بَنِي إِسْرَائِيلَ؟ قَالَ: «تَحَدَّثُوا وَلَا حَرَجَ»
عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ , عَنِ الزُّهْرِيِّ , قَالَ: أَخْبَرَنَا ابْنُ أَبِي نَمْلَةَ الْأَنْصَارِيُّ أَنَّ أَبَا نَمْلَةَ أَخْبَرَهُ أَنَّهُ بَيْنَا هُوَ جَالِسٌ عِنْدَ رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ إِذْ جَاءَهُ رَجُلٌ مِنَ الْيَهُودِ وَمُرَّ بِجِنَازَةٍ , فَقَالَ: يَا مُحَمَّدُ هَلْ تَكَلَّمُ؟ فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «اللَّهُ أَعْلَمُ» , فَقَالَ: الْيَهُودِيُّ: إِنَّهَا تَكَلَّمُ , فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: " مَا حَدَّثَكُمْ أَهْلُ الْكِتَابِ فَلَا تُصَدِّقُوهُمْ وَلَا تُكَذِّبُوهُمْ، وَقُولُوا: آمَنَّا بِاللَّهِ وَبِكُتُبِهِ وَرُسُلِهِ، فَإِنْ كَانَ بَاطِلًا لَمْ تُصَدِّقُوهُ وَإِنْ كَانَ حَقًّا لَمْ تُكَذِّبُوهُ "

[336] *Muṣannaf* of 'Abd al-Razzāq, vol. 10, pg. 312:
عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا الثَّوْرِيُّ , عَنْ عُمَارَةَ , عَنْ حُرَيْثِ بْنِ ظُهَيْرٍ , قَالَ: قَالَ عَبْدُ اللَّهِ: «لَا تَسْأَلُوا أَهْلَ الْكِتَابِ عَنْ شَيْءٍ , فَإِنَّهُمْ لَنْ يَهْدُوكُمْ وَقَدْ أَضَلُّوا أَنْفُسَهُمْ فَتُكَذِّبُونَ بِحَقٍّ , أَوْ تُصَدِّقُونَ بِبَاطِلٍ , وَإِنَّهُ لَيْسَ أَحَدٌ مِنْ أَهْلِ الْكِتَابِ إِلَّا فِي قَلْبِهِ تَالِيَةٌ تَدْعُوهُ إِلَى اللَّهِ وَكِتَابِهِ» قَالَ: وَزَادَ مَعْنٌ , عَنِ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ , عَنْ عَبْدِ اللَّهِ فِي هَذَا الْحَدِيثِ , أَنَّهُ قَالَ: «إِنْ كُنْتُمْ سَائِلِيهِمْ لَا مَحَالَةَ , فَانْظُرُوا مَا قَضَى كِتَابُ اللَّهِ فَخُذُوهُ , وَمَا خَالَفَ كِتَابَ اللَّهِ فَدَعُوهُ»

for something when the Book of God (the Qur'ān) is before you?" And in a version from al-Bukhārī, Ibn 'Abbās continues by saying the People of the Book altered the scriptures and charged for it a cheap price, referencing a Qur'ānic verse, and he points out that the People of the Book never seek knowledge from *you* regarding what was revealed to you (though you seek it from them).[337] This doubtfulness regarding the scriptures and knowledge of the Jews and Christians was reiterated by Mu'āwiyah, who, commenting on Ka'b al-Aḥbār, says that even though he was the most trustworthy or truthful (أصدق) of those who narrated from the People of the Book, it was still believed that what he conveyed was falsity (وَإِنْ كُنَّا مَعَ ذَلِكَ لَنَبْلُو عَلَيْهِ الكَذِبَ).[338]

What seems apparent from the above summary and Ibn 'Abbās's reported statement addressing his fellow Muslims, is that there was likely internal confusion among the early community regarding an approach for dealing with the scriptures and knowledge of the People of the Book. On the one hand, the early community was aware of Qur'ānic verses confirming a place for their scriptures, along with the Prophet's reported practice which appeared to also make reference to it. The prior scriptures were also believed to contain prophecies confirming the coming of the Prophet ﷺ. On the other, Qur'ānic verses clearly differentiated the practice of the community from the pre-Muḥammadan laws, with the Prophet ﷺ and his community given ease over what came before with regards to dietary law and the rules of retaliation, among others. It also seems apparent that early engagement with available biblical or claimed biblical material raised a number

---

[337] 'Abd al-Razzāq's *Muṣannaf*, vol. 10, pg. 314:
عَبْدُ الرَّزَّاقِ، أَخْبَرَنَا مَعْمَرٌ , عَنِ الزُّهْرِيِّ , عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ أَنَّ ابْنَ عَبَّاسٍ قَالَ: «كَيْفَ تَسْأَلُوهُمْ عَنْ شَيْءٍ وَكِتَابُ اللَّهِ بَيْنَ أَظْهُرِكُمْ»
Al-Bukhārī's *Ṣaḥīḥ*, vol. 9, pg. 111:
حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ، حَدَّثَنَا إِبْرَاهِيمُ، أَخْبَرَنَا ابْنُ شِهَابٍ، عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ، أَنَّ ابْنَ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا، قَالَ: " كَيْفَ تَسْأَلُونَ أَهْلَ الكِتَابِ عَنْ شَيْءٍ وَكِتَابُكُمُ الَّذِي أُنْزِلَ عَلَى رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَحْدَثُ، تَقْرَءُونَهُ مَحْضًا لَمْ يُشَبْ، وَقَدْ حَدَّثَكُمْ أَنَّ أَهْلَ الكِتَابِ بَدَّلُوا كِتَابَ اللَّهِ وَغَيَّرُوهُ، وَكَتَبُوا بِأَيْدِيهِمُ الكِتَابَ، وَقَالُوا: هُوَ مِنْ عِنْدِ اللَّهِ لِيَشْتَرُوا بِهِ ثَمَنًا قَلِيلًا؟ أَلاَ يَنْهَاكُمْ مَا جَاءَكُمْ مِنَ العِلْمِ عَنْ مَسْأَلَتِهِمْ؟ لاَ وَاللَّهِ مَا رَأَيْنَا مِنْهُمْ رَجُلًا يَسْأَلُكُمْ عَنِ الَّذِي أُنْزِلَ عَلَيْكُمْ "

[338] Al-Bukhārī's Ṣaḥīḥ, vol. 9, pg. 110-111:
وَقَالَ أَبُو اليَمَانِ، أَخْبَرَنَا شُعَيْبٌ، عَنِ الزُّهْرِيِّ، أَخْبَرَنِي حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ، سَمِعَ مُعَاوِيَةَ، يُحَدِّثُ رَهْطًا مِنْ قُرَيْشٍ بِالْمَدِينَةِ، وَذَكَرَ كَعْبَ الأَحْبَارِ فَقَالَ: «إِنْ كَانَ مِنْ أَصْدَقِ هَؤُلاَءِ المُحَدِّثِينَ الَّذِينَ يُحَدِّثُونَ عَنْ أَهْلِ الكِتَابِ، وَإِنْ كُنَّا مَعَ ذَلِكَ لَنَبْلُو عَلَيْهِ الكَذِبَ»

of obvious issues: this material was conflicting with the Qur'ān or the early community's notions of what was true: thus Ibn Mas'ūd's reported statement offering a criteria for accepting or rejecting this material in light of the Qur'ān, and Mu'āwiyah's suspicions over Ka'b's various narrations. The Qur'ān's own statements about alteration (*taḥrīf*) are also referenced in these early reports. Even with questions surrounding its authenticity, however, the *possibility* that reported biblical information conveyed what God may have wanted is one that persisted, and thus the reported statement from the Prophet ﷺ and Companions about postponing judgement about its veracity or lack thereof. A brief but telling example of this internal bind is a statement by the 5th century al-Sarakhsī, whose own formalized position on pre-Muḥammadan law was that it could only be obtained from the Qur'ān or prophetic ḥadīth (though he suggests there were some who didn't differentiate between what was in the Qur'ān and Ḥadīth and what came from the transmission of the People of the Book or what Muslims transmitted from them).[339] Yet in al-Sarakhsī's own treatment of *za'āmah* and *kafālah*, or the issue of legal surety, he concludes that while this was acceptable to act on given the law of the Prophet Joseph ﷺ as inferred from the Qur'ān[340] (i.e. Qur'ānic pre-Muḥammadan law) and prophetic statements to that effect, it is best to refrain from doing so out of caution, based on what is said (الِامْتِنَاعُ مِنْ مُبَاشَرَتِهَا أَقْرَبُ إلَى الِاحْتِيَاطِ عَلَى مَا قِيلَ) is written in the Torah: that "the beginning of legal surety is censure, after which is regret, followed by a loss

---

[339] Al-Sarakhsī's *Uṣūl*, vol. 2, pg. 99:
وَقَالَ بَعضهم شَرِيعَة كل نَبِي تَنْتَهِي ببعث نَبِي آخر بعده حَتَّى لَا يعْمل بِهِ إِلَّا أَن يقوم الدَّلِيل على بَقَائِهِ وَذَلِكَ بِبَيَان من النَّبِي الْمَبْعُوث بعده
وَقَالَ بَعضهم شرائع من قبلنَا يلْزمنَا الْعَمَل بِهِ على أَن ذَلِك شَرِيعَة لنبينا عَلَيْهِ السَّلَام فِيمَا لم يظْهر دَلِيل النّسخ فِيهِ وَلَا يفصلون بَين مَا يصير مَعْلُوما من شرائع من قبلنَا بِنَقْل أهل الْكتاب أَو بِرِوَايَة الْمُسلمين عَمَّا فِي أَيْديهم من الْكتاب وَبَين مَا ثَبت من ذَلِك بِبَيَان فِي الْقُرْآن أَو السّنة
وَأَصَح الْأَقَاوِيل عندنَا أَن مَا ثَبت بِكِتَاب الله أَنه كَانَ شَرِيعَة من قبلنَا أَو ببَيَان من رَسُول الله صلى الله عَلَيْهِ وَسلم فَإِن علينا الْعَمَل بِهِ على أَنه شَرِيعَة لنبينا عَلَيْهِ السَّلَام مَا لم يظْهر ناسخه فَأَما مَا علم بِنَقْل دَلِيل مُوجب للْعلم على أَنهم حرفوا الْكتب فَلَا يعْتَبر نقلهم فِي ذَلِك لتوهم أَن الْمَنْقُول من جملَة مَا حرفوا وَلَا يعْتَبر فهم الْمُسلمين ذَلِك مِمَّا فِي أَيْديهم من الْكتب لجَوَاز أَن يكون ذَلِك من جملَة مَا غيروا وبدلوا

[340] Qur'ān 12:72 has the officials under Joseph guarantee payment on his behalf as a reward for delivery of the king's cup:
قَالُواْ نَفْقِدُ صُوَاعَ ٱلْمَلِكِ وَلِمَن جَآءَ بِهِۦ حِمْلُ بَعِيرٍ وَأَنَا۠ بِهِۦ زَعِيمٌ۝
They [the officials] said: "We have lsot the king's cup," and "Whoever brings it shall have a camel-load [of provisions]," and "I am its guarantor (ZA'ĪM)" ۝

of property."[341] The bible may not have been formal legal evidence for him, but his knowledge of it in this matter was still something to be heeded of. No one wanted to go against what God *may* have said.

Given the existence of what appears to have been early ambiguity on the matter and an internal discussion on the possibility of narrating this material, I am not convinced by the hypothesis that the Muslim community went through a uniformly Pentateuchal period as espoused by Crone and others.[342] It appears that various members of the early community may have considered biblical knowledge as yielding legal, exegetical and other import, but that the obvious difficulties in doing so raised counter concerns very early on. It appears that in addition to the discourse on pre-Muḥammadan law that we saw in the works we looked at in an earlier chapter, a similar discourse was playing out in the earlier Muḥammadan community. What would be helpful for understanding the early period's opinions regarding engagement with the Torah is to consider the possibility of regional dimensions to these discussions. Where are the conflicting traditions emerging from, and from whom? While this project will not answer this, I offer the following example, of the famous report in which 'Umar is rebuked for referring to the Torah. The report itself does not appear in the authentic collections of al-Bukhārī and Muslim, and Ibn Ḥajar al-

---

[341] Muḥammad b. Aḥmad al-Sarakhsī, *al-Mabsūṭ*, vol. 19, 31 vols. (Beirut: Dār al-Ma'rifah, 1989). Pg. 161:

(وَأَمَّا الْكَفَالَةُ) فَلِقَوْلِهِ تَعَالَى {وَلِمَنْ جَاءَ بِهِ حِمْلُ بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ} [يوسف: 72] وَمَا ثَبَتَ فِي شَرِيعَةِ مَنْ قَبْلَنَا فَهُوَ ثَابِتٌ فِي شَرِيعَتِنَا مَا لَمْ يَظْهَرْ نَسْخُهُ وَالظَّاهِرُ هُنَا التَّقْرِيرُ فَإِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بُعِثَ وَالنَّاسُ يَكْفُلُونَ فَأَقَرَّهُمْ عَلَى ذَلِكَ وَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الزَّعِيمُ غَارِمٌ». وَالدَّلِيلُ عَلَى جَوَازِ الْحَوَالَةِ قَوْلُهُ «مَنْ أُحِيلَ عَلَى مَلِيءٍ فَلْيَتْبَعْ» أَيْ فَلْيَتْبَعْ مَنْ أُحِيلَ عَلَيْهِ وَالْكَفَالَةُ مَعَ جَوَازِهَا وَحُصُولِ الثِّقَةِ بِهَا فَالِامْتِنَاعُ مِنْ مُبَاشَرَتِهَا أَقْرَبُ إلَى الِاحْتِيَاطِ عَلَى مَا قِيلَ أَنَّهُ مَكْتُوبٌ فِي التَّوْرَاةِ الزَّعَامَةُ أَوَّلُهَا مَلَامَةٌ وَأَوْسَطُهَا نَدَامَةٌ وَآخِرُهَا غَرَامَةٌ

The reference parallels admonitions found in Proverbs against taking surety, such as 22:26-27:

אַל-תְּהִי בְתֹקְעֵי-כָף; בַּעֹרְבִים, מַשָּׁאוֹת.
אִם-אֵין-לְךָ לְשַׁלֵּם-- לָמָּה יִקַּח מִשְׁכָּבְךָ, מִתַּחְתֶּיךָ.

DO NOT BE ONE OF THOSE WHO GIVE THEIR HAND, WHO ARE SURETIES FOR DEBTS; IF THOU HAST NOT WHEREWITH TO PAY, WHY SHOULD HE TAKE AWAY THY BED FROM UNDER THEE?

See also Proverbs 11:15 and 17:18.

[342] Her statements in the context of *qasāmah* will be evaluated in a later chapter.

‘Asqalānī (d. 852 AH) points out weaknesses in the various isnāds available to him. An analysis of available isnāds yields the following transmission history of the report:

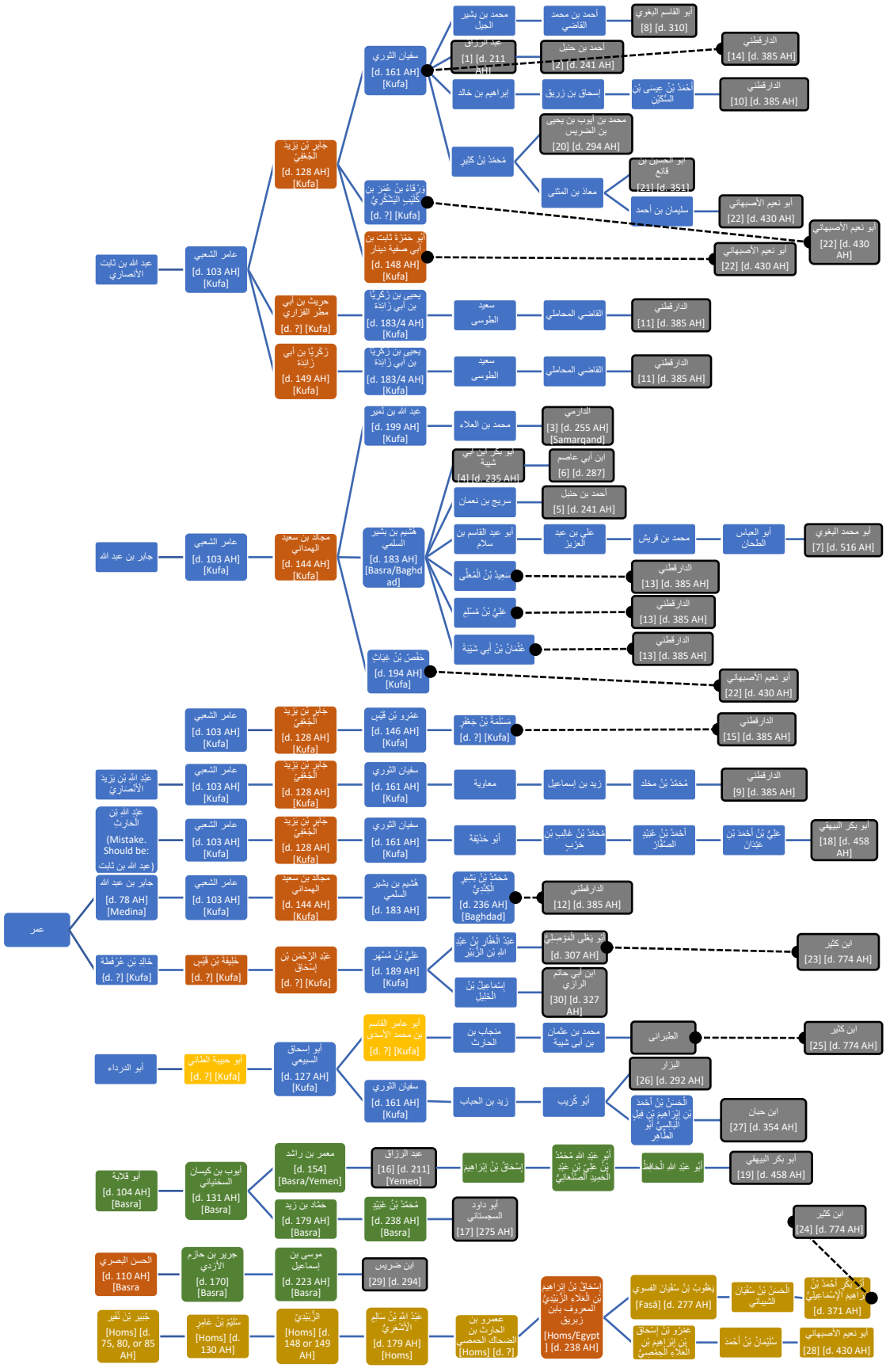

عمر
عبد الله بن ثابت الأنصاري
عامر الشعبي [d. 103 AH] [Kufa]
جابر بن عبد الله
عامر الشعبي [d. 103 AH] [Kufa]
عبد الله بن الحارث (Mistake. Should be: (عبد الله بن ثابت
عامر الشعبي [d. 103 AH] [Kufa]
جابر بن عبد الله [d. 78 AH] [Medina]
عامر الشعبي [d. 103 AH] [Kufa]
خالد بن عُرْفطة [d. ?] [Kufa]
خليفة بن قيس [d. ?] [Kufa]
أبو الدرداء
أبو حبيبة الطائي [d. ?] [Kufa]
أبو قلابة [d. 104 AH] [Basra]
الحسن البصري [d. 110 AH] [Basra]
جُنَيْر بن نُفَير [Homs] [d. 75, 80, or 85 AH]
جرير بن حازم الأزدي [d. 170] [Basra]
أيوب بن كيسان السختياني [d. 131 AH] [Basra]
معمر بن راشد [d. 154] [Basra/Yemen]
حَمّاد بن زيد [d. 179 AH] [Basra]
موسى بن إسماعيل [d. 223 AH] [Basra]
ابن ضريس [29] [d. 294]
سُلَيْمُ بْنُ عامِر [Homs] [d. 130 AH]
الزُّبَيْدِيّ [Homs] [d. 148 or 149 AH]
عَبْدُ اللهِ بْنُ سالِمٍ الأَشْعَرِيُّ [d. 179 AH] [Homs]
عبد الرزاق [16] [d. 211] [Yemen]
إسْحاقُ بْنُ إبْراهِيم
أبُو عبْد الله مُحَمَّدُ بْنُ عَلِيّ بْن عَبْد الحَمِيد الصَّنْعانِيُّ
أبُو عبْد الله الحافِظُ
أبو بكر البيهقي [19] [d. 458 AH]
عمرو بن الحارث بن الضحاك الحمصي [Homs] [d. ?]
إسْحاقُ بْنُ إبْراهِيم بْن العَلاء الزَّبَيْدِيُّ المعروف بابن زَبْرِيق [Homs/Egypt] [d. 238 AH]
يَعْقُوبُ بْنُ سُفْيان الفَسَوي [Fasā] [d. 277 AH]
الحَسَنُ بْنُ سُفْيان الشيباني
أبُو بكْر أحْمَدُ بْنُ إبْراهِيم الإسْماعِيلِيُّ [d. 371 AH]
عَمْرُو بْنُ إسْحاق بْن إبْراهِيم بْن العَلاء الحَضْرَمِيُّ
سُلَيْمانُ بْنُ أحْمَد
أبو نعيم الأصبهاني [28] [d. 430 AH]
ابن كثير [24] [d. 774 AH]
مُحَمَّدُ بْنُ عَبْدِ [d. 238 AH] [Basra]
أبو داود السجستاني [17] [275 AH]
عبد الله بن لهَيعة [d. 199 AH] [Kufa]
محمد بن العلاء
الدارمي [3] [d. 255 AH] [Samarqand]
هُشَيم بن بَشير السُلَمي [d. 183 AH] [Basra/Baghdad]
أبو بكر ابن أبي شيبة [4] [d. 235 AH]
ابن أبي عاصم [6] [d. 287]
سريج بن نعمان
أحمد بن حنبل [5] [d. 241 AH]
أبو عبد القاسم سلام
علي بن عبد العزيز
محمد بن قريش
أبو العباس الطحان
أبو محمد البغوي [7] [d. 516 AH]
سَعِيدُ بْنُ المَدَنِّي
الدارقطني [13] [d. 385 AH]
عَلِيُّ بْنُ مُسْلِم
الدارقطني [13] [d. 385 AH]
عُثْمانُ بْنُ أبي شَيْبَة
الدارقطني [13] [d. 385 AH]
حَفْصُ بْنُ غِياثٍ [d. 194 AH] [Kufa]
أبو نعيم الأصبهاني [22] [d. 430 AH]
مجالد بن سعيد الهمداني [d. 144 AH] [Kufa]
عامر الشعبي [d. 103 AH] [Kufa]
جابر بن يزيد الجُعْفي [d. 128 AH] [Kufa]
سفيان الثوري [d. 161 AH] [Kufa]
محمد بن بشير الجبل
أحمد بن محمد القاضي
أبو القاسم البغوي [8] [d. 310]
عبد الرزاق [1] [d. 211 AH]
أحمد بن حنبل [2] [d. 241 AH]
الدارقطني [14] [d. 385 AH]
إبراهيم بن خالد
إسحاق بن زريق
أحمد بن عيسى بن السكين
الدارقطني [10] [d. 385 AH]
مُحَمَّدُ بْنُ كَثِير
محمد بن أيوب بن يحيى بن الضريس [20] [d. 294 AH]
معاذ بن المثنى
أبو الحسين بن قانع [21] [d. 351]
سليمان بن أحمد
أبو نعيم الأصبهاني [22] [d. 430 AH]
وَرْقاءُ بْنُ عُمَر بن كُلَيْب اليَشْكُرِيُّ [d. ?] [Kufa]
أبو نعيم الأصبهاني [22] [d. 430 AH]
أبو حَمْزة ثابت بن أبي صفية دينار [d. 148 AH] [Kufa]
أبو نعيم الأصبهاني [22] [d. 430 AH]
جَرِير بْن يَزِيد الجُعْفي [d. 128 AH] [Kufa]
حريث بن أبي مطر الفزاري [d. ?] [Kufa]
يحيى بن زكريا بن أبي زائدة [d. 183/4 AH] [Kufa]
سعيد الطوسي
القاضي المحاملي
الدارقطني [11] [d. 385 AH]
زكريا بن أبي زائدة [d. 149 AH] [Kufa]
يحيى بن زكريا بن أبي زائدة [d. 183/4 AH] [Kufa]
سعيد الطوسي
القاضي المحاملي
الدارقطني [11] [d. 385 AH]
عامر الشعبي [d. 103 AH] [Kufa]
جابر بن يزيد الجُعْفي [d. 128 AH] [Kufa]
عمرو بن قيس [d. 146 AH] [Kufa]
مَسْلَمَةُ بْنُ جَعْفَر [d. ?] [Kufa]
الدارقطني [15] [d. 385 AH]
عَبْد الله بْن يَزِيد الأنْصارِيّ
عامر الشعبي [d. 103 AH] [Kufa]
جابر بن يزيد الجُعْفي [d. 128 AH] [Kufa]
سفيان الثوري [d. 161 AH] [Kufa]
معاوية
زيد بن إسماعيل
مُحَمَّدُ بْنُ مَخْلَد
الدارقطني [9] [d. 385 AH]
عامر الشعبي [d. 103 AH] [Kufa]
جابر بن يزيد الجُعْفي [d. 128 AH] [Kufa]
سفيان الثوري [d. 161 AH] [Kufa]
أبو حَنِيفة
مُحَمَّدُ بْنُ غالِبِ بْن حَرْب
أحْمَدُ بْنُ عُبَيْد الصَّفّار
عَلِيُّ بْنُ أحْمَد بْن عَبْدان
أبو بكر البيهقي [18] [d. 458 AH]
عامر الشعبي [d. 103 AH] [Kufa]
مجالد بن سعيد الهمداني [d. 144 AH] [Kufa]
هُشَيم بن بشير السلمي [d. 183 AH]
مُحَمَّدُ بْنُ بَشير الكِنْدِيُّ [d. 236 AH] [Baghdad]
الدارقطني [12] [d. 385 AH]
عَبْد الرَّحْمن بْن إسْحاق [d. ?] [Kufa]
عَلِيُّ بْنُ مُسْهِر [d. 189 AH] [Kufa]
عَبْدُ الغَفّار بْنُ عَبْد الله بْن الزُّبَيْر
أبو يَعْلى المَوْصِلي [d. 307 AH]
ابن كثير [23] [d. 774 AH]
إسْماعِيلُ بْنُ الخَلِيل
ابن أبي حاتم الرازي [30] [d. 327 AH]
أبو إسحاق السبيعي [d. 127 AH] [Kufa]
أبو عامر القاسم بن محمد الأسدي [d. ?] [Kufa]
منجاب بن الحارث
محمد بن عثمان بن أبي شيبة
الطبراني
ابن كثير [25] [d. 774 AH]
سفيان الثوري [d. 161 AH] [Kufa]
زيد بن الحباب
أبُو كُرَيب
البزار [26] [d. 292 AH]
الحسن بْنُ أحْمَد بْن إبْراهِيم بْن فِيل التلِيسي أبُو الطاهِر
ابن حبان [27] [d. 354 AH]

*Figure 1*

A quick key:

- Blue isnāds are Kufan, green isnāds are Basran, and the single golden brown isnād is Syrian
- Dark orange cells represent narrators with some sort of unreliability according to the Ḥadīth scholars. Golden cells represent generally unknown narrators among the Ḥadīth scholars.
- Gray cells represent books
- Dotted lines represent cases where a later author notes a partial isnād in their book, but the isnād does not lead to the author, i.e. they were aware of it from elsewhere.
- Though all of the reports narrate a story *about* ‘Umar, only two of the reports are marked with a cell for ‘Umar’ as a transmitter (Umar → Jābir b. ‘Abd Allāh) because he apparently was a source.
- Numbers in brackets, e.g. “[1]”, link to the footnotes noted in the next bullet point (on the next page). Red font text in footnotes focuses a detail regarding what ‘Umar brought to the Prophet ﷺ in a Kufan isnād, and green front text in footnotes refers to the same, but for the Basran isnāds.

- [1][343], [2][344], [3][345], [4][346], [5][347], [6][348], [7][349], [8][350], [9][351], [10][352], [11][353], [12][354], [13][355], [14][356], [15][357], [16][358], [17][359], [18][360], [19][361], [20][362], [21][363], [22][364], [23][365], [24][366], [25][367], [26][368], [27][369], [28][370], [29][371], [30][372]

---

[343] ʻAbd al-Razzāq's *Muṣannaf*, vol. 6, pg. 113, vol. 10, pg. 312:
عَبْدُ الرَّزَّاقِ قَالَ: أَخْبَرَنَا الثَّوْرِيُّ، عَنْ جَابِرٍ، عَنِ الشَّعْبِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ ثَابِتٍ قَالَ: جَاءَ عُمَرُ بْنُ الْخَطَّابِ إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: يَا رَسُولَ اللَّهِ، إِنِّي مَرَرْتُ بِأَخٍ لِي مِنْ قُرَيْظَةَ، وَكَتَبَ لِي جَوَامِعَ مِنَ التَّوْرَاةِ، أَفَلَا أَعْرِضُهَا عَلَيْكَ؟ قَالَ: فَتَغَيَّرَ وَجْهُ رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، قَالَ عَبْدُ اللَّهِ: فَقُلْتُ: مَسَحَ اللَّهُ عَقْلَكَ، أَلَا تَرَى مَا بِوَجْهِ رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ فَقَالَ عُمَرُ: رَضِيتُ بِاللَّهِ رَبًّا، وَبِالْإِسْلَامِ دِينًا، وَبِمُحَمَّدٍ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ نَبِيًّا قَالَ: فَسُرِّيَ عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، ثُمَّ قَالَ: «وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ، لَوْ أَصْبَحَ فِيكُمْ مُوسَى ثُمَّ اتَّبَعْتُمُوهُ وَتَرَكْتُمُونِي لَضَلَلْتُمْ، أَنْتُمْ حَظِّي مِنَ الْأُمَمِ، وَأَنَا حَظُّكُمْ مِنَ النَّبِيِّينَ»

[344] Aḥmad's *Musnad*, vol. 25, pg. 198, vol. 30, pg. 280:
حَدَّثَنَا عَبْدُ الرَّزَّاقِ، قَالَ: أَخْبَرَنَا سُفْيَانُ، عَنْ جَابِرٍ، عَنْ الشَّعْبِيِّ، عَنْ عَبْدِ اللهِ بْنِ ثَابِتٍ، قَالَ: جَاءَ عُمَرُ بْنُ الْخَطَّابِ إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: يَا رَسُولَ اللهِ إِنِّي مَرَرْتُ بِأَخٍ لِي مِنْ قُرَيْظَةَ، فَكَتَبَ لِي جَوَامِعَ مِنَ التَّوْرَاةِ أَلَا أَعْرِضُهَا عَلَيْكَ؟ قَالَ: فَتَغَيَّرَ وَجْهُ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، قَالَ عَبْدُ اللهِ: فَقُلْتُ لَهُ: أَلَا تَرَى مَا بِوَجْهِ رَسُولِ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ فَقَالَ عُمَرُ: رَضِينَا بِاللهِ رَبًّا، وَبِالْإِسْلَامِ دِينًا، وَبِمُحَمَّدٍ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ رَسُولًا، قَالَ: فَسُرِّيَ عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، ثُمَّ قَالَ: "وَالَّذِي نَفْسِي بِيَدِهِ، لَوْ أَصْبَحَ فِيكُمْ مُوسَى ثُمَّ اتَّبَعْتُمُوهُ، وَتَرَكْتُمُونِي لَضَلَلْتُمْ، إِنَّكُمْ حَظِّي مِنَ الْأُمَمِ، وَأَنَا حَظُّكُمْ مِنَ النَّبِيِّينَ"

[345] Abū Muḥammad al-Dārimī, *Sunan Al-Dārimī*, ed. Ḥusayn Salīm Asad al-Dārānī, 1st ed., 4 vols. (Saudi Arabia: Dār al-Mughnī li al-Nashr wa al-Tawzī', 2000). vol. 1, pg. 403:
أَخْبَرَنَا مُحَمَّدُ بْنُ الْعَلَاءِ، حَدَّثَنَا ابْنُ نُمَيْرٍ، عَنْ مُجَالِدٍ، عَنْ عَامِرٍ، عَنْ جَابِرٍ رَضِيَ اللَّهُ عَنْهُ أَنَّ عُمَرَ بْنَ الْخَطَّابِ رِضْوَانُ اللَّهِ عَلَيْهِ أَتَى رَسُولَ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِنُسْخَةٍ مِنَ التَّوْرَاةِ، فَقَالَ: يَا رَسُولَ اللَّهِ، هَذِهِ نُسْخَةٌ مِنَ التَّوْرَاةِ، فَسَكَتَ، فَجَعَلَ يَقْرَأُ وَوَجْهُ رَسُولِ اللَّهِ يَتَغَيَّرُ، فَقَالَ: أَبُو بَكْرٍ رَحْمَةُ اللَّهِ عَلَيْهِ ثَكِلَتْكَ الثَّوَاكِلُ، مَا تَرَى بِوَجْهِ رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ فَنَظَرَ عُمَرُ إِلَى وَجْهِ رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: أَعُوذُ بِاللَّهِ مِنْ غَضَبِ اللَّهِ وَغَضَبِ رَسُولِهِ رَضِينَا بِاللَّهِ رَبًّا وَبِالْإِسْلَامِ دِينًا وَبِمُحَمَّدٍ نَبِيًّا. فَقَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عليْهِ وَسَلَّمَ رَضِينَا بِاللَّهِ رَبًّا وَبِالْإِسْلَامِ دِينًا وَبِمُحَمَّدٍ نَبِيًّا. فَقَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ، لَوْ بَدَا لَكُمْ مُوسَى فَاتَّبَعْتُمُوهُ وَتَرَكْتُمُونِي، لَضَلَلْتُمْ عَنْ سَوَاءِ السَّبِيلِ، وَلَوْ كَانَ حَيًّا وَأَدْرَكَ نُبُوَّتِي، لَاتَّبَعَنِي»

[346] Ibn Abī Shaybah's *Muṣannaf*, vol. 5, pg. 312:
حَدَّثَنَا هُشَيْمٌ، عَنْ مُجَالِدٍ، عَنِ الشَّعْبِيِّ، عَنْ جَابِرٍ: " أَنَّ عُمَرَ بْنَ الْخَطَّابِ، أَتَى النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِكِتَابٍ أَصَابَهُ مِنْ بَعْضِ أَهْلِ الْكِتَابِ، فَقَالَ: يَا رَسُولَ اللَّهِ، إِنِّي أَصَبْتُ كِتَابًا حَسَنًا مِنْ بَعْضِ أَهْلِ الْكِتَابِ، قَالَ: فَغَضِبَ وَقَالَ: «أَمُتَهَوِّكُونَ فِيهَا يَا ابْنَ الْخَطَّابِ، فَوَالَّذِي نَفْسِي بِيَدِهِ، لَقَدْ جِئْتُكُمْ بِهَا بَيْضَاءَ نَقِيَّةً، لَا تَسْأَلُوهُمْ عَنْ شَيْءٍ فَيُخْبِرُوكُمْ بِحَقٍّ فَتُكَذِّبُوا بِهِ، أَوْ بِبَاطِلٍ فَتُصَدِّقُوا بِهِ، وَالَّذِي نَفْسِي بِيَدِهِ، لَوْ كَانَ مُوسَى حَيًّا مَا وَسِعَهُ إِلَّا أَنْ يَتَّبِعَنِي»

[347] Aḥmad's *Musnad*, vol. 23, pg. 349:
حَدَّثَنَا سُرَيْجُ بْنُ النُّعْمَانِ، قَالَ: حَدَّثَنَا هُشَيْمٌ، أَخْبَرَنَا مُجَالِدٌ، عَنِ الشَّعْبِيِّ، عَنْ جَابِرِ بْنِ عَبْدِ اللهِ، أَنَّ عُمَرَ بْنَ الْخَطَّابِ، أَتَى النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِكِتَابٍ أَصَابَهُ مِنْ بَعْضِ أَهْلِ الْكُتُبِ، فَقَرَأَهُ عَلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَغَضِبَ وَقَالَ: "أَمُتَهَوِّكُونَ فِيهَا يَا ابْنَ الْخَطَّابِ، وَالَّذِي نَفْسِي بِيَدِهِ لَقَدْ جِئْتُكُمْ بِهَا بَيْضَاءَ نَقِيَّةً، لَا تَسْأَلُوهُمْ عَنْ شَيْءٍ فَيُخْبِرُوكُمْ بِحَقٍّ فَتُكَذِّبُوا بِهِ، أَوْ بِبَاطِلٍ فَتُصَدِّقُوا بِهِ، وَالَّذِي نَفْسِي بِيَدِهِ لَوْ أَنَّ مُوسَى كَانَ حَيًّا، مَا وَسِعَهُ إِلَّا أَنْ يَتَّبِعَنِي"

[348] al-Shaybānī, *Al-Sunnah Li Ibn Abī 'Āṣim*. Vol. 1, pg. 27:
حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا هُشَيْمٌ، عَنْ مُجَالِدٍ، عَنِ الشَّعْبِيِّ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، أَنَّ عُمَرَ بْنَ الْخَطَّابِ، رَضِيَ اللَّهُ عَنْهُ، أَتَى النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِكِتَابٍ أَصَابَهُ مِنْ بَعْضِ الْكُتُبِ قَالَ: فَغَضِبَ، وَقَالَ: «أَمُتَهَوِّكُونَ فِيهَا يَا ابْنَ الْخَطَّابِ؟ وَالَّذِي نَفْسِي بِيَدِهِ لَقَدْ جِئْتُكُمْ بِهَا بَيْضَاءَ نَقِيَّةً»

[349] Abū Muḥammad al-Baghawī, *Sharḥ Al-Sunnah*, ed. Shu'ayb al-Arna'ūṭ and Muḥammad Zuhayr al-Shāwīsh, 3rd ed., 15 vols. (Damascus/Beirut: al-Maktab al-Islāmī, 1983). Vol. 1, pg. 270:
أَخْبَرَنَا مُحَمَّدُ بْنُ الْحَسَنِ، أَنا أَبُو الْعَبَّاسِ الطَّحَّانُ، أَنا أَبُو أَحْمَدَ مُحَمَّدُ بْنُ قُرَيْشٍ، أَنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ، أَنا أَبُو عُبَيْدٍ الْقَاسِمُ بْنُ سَلامٍ، نَا هُشَيْمٌ، أَخْبَرَنَا مُجَالِدٌ، عَنِ الشَّعْبِيِّ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ حِينَ أَتَاهُ عُمَرُ، فَقَالَ: إِنَّا نَسْمَعُ أَحَادِيثَ مِنْ يَهُودَ تُعْجِبُنَا، أَفَتَرَى أَنْ نَكْتُبَ بَعْضَهَا، فَقَالَ: «أَمُتَهَوِّكُونَ أَنْتُمْ كَمَا تَهَوَّكَتِ الْيَهُودُ وَالنَّصَارَى، لَقَدْ جِئْتُكُمْ بِهَا بَيْضَاءَ نَقِيَّةً، وَلَوْ كَانَ مُوسَى حَيًّا مَا وَسِعَهُ إِلا اتِّبَاعِي»

[350] Abū al-Qāsim al-Baghawī, *Mu'jam al-Ṣaḥābah*, ed. Muḥammad Amīn Ibn Muḥammad al-Juknī, 5 vols. (Kuwait: Maktabat Dār al-Bayān, 2000). Vol. 4, pg. 75:
حدثني أحمد بن محمد القاضي نا محمد بن [بشير الجيل] أخبرنا سفيان عن جابر عن الشعبي عن عبد الله بن ثابت الأنصاري قال: جاء عمر إلى النبي صلى الله عليه وسلم ومعه جوامع من التوراة فقال: إني مررت على أخ لي من قريظة فكتب لي جوامع من التوراة أفلا أعرضها عليك؟ قال: فتغير وجه رسول الله صلى الله عليه وسلم قال: فقلت: أما ترى ما بوجه رسول الله صلى الله عليه وسلم؟ فقال عمر: رضيت بالله ربا وبالإسلام دينا وبمحمد صلى الله عليه وسلم رسولا قال: فذهب ما كان بوجه رسول الله صلى الله عليه وسلم فقال رسول الله صلى الله عليه وسلم: " والذي نفسي بيده لو أصبح فيكم موسى صلى الله عليه وسلم فيكم ثم اتبعتموه وتركتموني لضللتم أنتم حظي من الأمم وأنا حظكم من النبيين.

[351] Abū al-Ḥasan 'Alī b. 'Umar al-Dāraquṭnī, *Al-'Ilal al-Wāridah Fī al-Aḥādīth al-Nabawiyyah*, ed. Maḥfūẓ al-Raḥmān Zayn Allāh al-Salafī, 2nd ed. (Riyadh: Dār Ṭībah, 1985). Vol. 2, pg. 100:
حَدَّثَنَا مُحَمَّدُ بْنُ مخلد، قال: حدثنا زيد بن إسماعيل، حدثنا معاوية، حدثنا سُفْيَانُ، عَنْ جَابِرِ بْنِ يَزِيدَ الْجُعْفِيِّ، عَنِ الشَّعْبِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْأَنْصَارِيِّ، قَالَ: جَاءَ عُمَرُ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي مَرَرْتُ بِأَخٍ لِي مِنْ قُرَيْظَةَ فَكَتَبَ لِي جَوَامِعَ مِنَ التَّوْرَاةِ أُحِبُّ أَنْ أَعْرِضَهَا عَلَيْكَ، فَتَغَيَّرَ وَجْهُ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، قَالَ: فَقُلْتُ لِعُمَرَ: مَسَحَ اللَّهُ عَقْلَكَ، أَمَا تَرَى مَا بِوَجْهِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ عُمَرُ: رَضِيتُ بِاللَّهِ

رَبًّا وَبِالْإِسْلَامِ دِينًا وَبِمُحَمَّدٍ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَبِيًّا، قَالَ: فَسُرِّيَ عَنْهُ، ثُمَّ قَالَ: وَالَّذِي نَفْسِي بِيَدِهِ، لَوْ أَصْبَحَ مُوسَى فِيكُمْ حَيًّا الْيَوْمَ فَاتَّبَعْتُمُوهُ وَتَرَكْتُمُونِي لَضَلَلْتُمْ، إِنِّي حَظُّكُمْ مِنَ النَّبِيِّينَ وَأَنْتُمْ حَظِّي مِنَ الْأُمَمِ. كَذَا قَالَ عَبْدُ اللَّهِ بْنُ يَزِيدَ الْأَنْصَارِيُّ.

[352] Ibid., vol. 2, pg. 101:
حَدَّثَنَا أَحْمَدُ بْنُ عِيسَى بْنِ السُّكَيْنِ، حَدَّثَنِي إسحاق بن زريق، حدثنا إبراهيم بن خالد، حدثنا الثوري، عن جابر، عن الشعبي، عن عبد اللَّهِ بْنِ ثَابِتٍ، قَالَ: جَاءَ عُمَرُ بْنُ الْخَطَّابِ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي مَرَرْتُ بِأَخٍ لِي مِنْ قُرَيْظَةَ، ثُمَّ ذَكَرَ نَحْوَهُ. وَقَالَ فِيهِ: فَقُلْتُ: نَسَخَ اللَّهُ غَفْلَتَكَ، وَالْبَاقِي مِثْلُهُ

[353] Ibid:
وَأَمَّا حَدِيثُ ابْنِ أَبِي زَائِدَةَ، فَحَدَّثَنَا بِهِ القاضي المحاملي، قال: حدثنا علي بن مسلم، حدثنا يَحْيَى بْنُ زَكَرِيَّا، بِذَلِكَ

[354] Ibid., vol. 2, pg. 99:
وَسُئِلَ عَنْ حَدِيثِ جَابِرٍ، عَنْ عُمَرَ؛ أَنَّهُ أَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِكِتَابٍ مِنَ التَّوْرَاةِ، فَغَضِبَ، وَقَالَ: لَقَدْ أَتَيْتُكُمْ بِهَا بَيْضَاءَ نَقِيَّةً لَوْ أَنَّ مُوسَى كَانَ حَيًّا مَا وَسِعَهُ إِلَّا أَنْ يَتَّبِعَنِي. فَقَالَ: حَدَّثَ بِهِ مُحَمَّدُ بْنُ بَشِيرٍ الْكِنْدِيُّ، عَنْ هُشَيْمٍ، عَنْ مُجَالِدٍ، عَنِ الشَّعْبِيِّ، عَنْ جَابِرٍ، عَنْ عُمَرَ

[355] Ibid:
وَخَالَفَهُ غَيْرُ وَاحِدٍ مِنْ أَصْحَابِ هُشَيْمٍ، مِنْهُمْ عُثْمَانُ بْنُ أَبِي شَيْبَةَ، وَعَلِيُّ بْنُ مُسْلِمٍ، وَسَعِيدُ بْنُ الْمُعَلَّى، وَغَيْرُهُمْ، فَرَوَوْهُ عَنْ هُشَيْمٍ، عَنْ مُجَالِدٍ، عَنِ الشَّعْبِيِّ، عَنْ جَابِرٍ، أَنَّ عُمَرَ جَاءَ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

[356] Ibid:
وَقِيلَ فِيهِ: عَنِ الثَّوْرِيِّ، عَنْ جَابِرٍ، عَنِ الشَّعْبِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ ثَابِتٍ الْأَنْصَارِيِّ، أَنَّ عُمَرَ جَاءَ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

[357] Ibid., vol. 2, pg. 100:
وَقَالَ مَسْلَمَةُ بْنُ جَعْفَرٍ: عَنْ عَمْرِو بْنِ قَيْسٍ، عَنْ جَابِرٍ، عَنِ الشَّعْبِيِّ، عَنْ عُمَرَ

[358] ʻAbd al-Razzāq's *Muṣannaf*, vol. 6, pg. 112:
أَخْبَرَنَا عَبْدُ الرَّزَّاقِ، عَنْ مَعْمَرٍ، عَنْ أَيُّوبَ، عَنْ أَبِي قِلَابَةَ، أَنَّ عُمَرَ بْنَ الْخَطَّابِ مَرَّ بِرَجُلٍ وَهُوَ يَقْرَأُ كِتَابًا، فَاسْتَمَعَهُ سَاعَةً، فَاسْتَحْسَنَهُ، فَقَالَ لِلرَّجُلِ: أَتَكْتُبُ لِي مِنْ هَذَا الْكِتَابِ؟ قَالَ: نَعَمْ، فَاشْتَرَى أَدِيمًا فَهَنَّأَهُ، ثُمَّ جَاءَ بِهِ إِلَيْهِ فَنَسَخَهُ لَهُ فِي ظَهْرِهِ وَبَطْنِهِ، ثُمَّ أَتَى بِهِ إِلَى رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَجَعَلَ يَقْرَؤُهُ عَلَيْهِ، وَجَعَلَ وَجْهُ رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَتَلَوَّنُ، فَضَرَبَ رَجُلٌ مِنَ الْأَنْصَارِ بِيَدِهِ الْكِتَابَ، وَقَالَ: ثَكِلَتْكَ أُمُّكَ يَا ابْنَ الْخَطَّابِ، أَلَا تَرَى وَجْهَ رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ مُنْذُ الْيَوْمِ وَأَنْتَ تَقْرَأُ عَلَيْهِ هَذَا الْكِتَابَ، فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عِنْدَ ذَلِكَ: «إِنَّمَا بُعِثْتُ فَاتِحًا وَخَاتِمًا، وَأُعْطِيتُ جَوَامِعَ الْكَلَامِ وَفَوَاتِحَهُ، فَلَا يُهْلِكَنَّكُمُ الْمُشْرِكُونَ»

[359] al-Sijistānī, *Al-Marāsīl*. Pg. 321. Note that it could be محمد بن عبيد بن حساب [d. 238 AH], or محمد بن عبيد بن عبد الرحمن [d. 204 AH], as both narrated from Ḥammād, and both narrate to Abū Dāwūd. Given that Muḥammad b. ʻUbayd b. Ḥisāb is the last Muḥammad b. ʻUbayd identified by name before this particular entry in Abū Dāwūd's *Marāsīl*, it is likely him:
حَدَّثَنَا مُحَمَّدُ بْنُ عُبَيْدٍ، حَدَّثَنَا حَمَّادٌ، عَنْ أَيُّوبَ، عَنْ أَبِي قِلَابَةَ، أَنَّ عُمَرَ مَرَّ بِقَوْمٍ مِنَ الْيَهُودِ فَسَمِعَهُمْ يَذْكُرُونَ دُعَاءً مِنَ التَّوْرَاةِ فَانْتَسَخَهُ، ثُمَّ جَاءَ بِهِ إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَجَعَلَ يَقْرَؤُهُ، وَجَعَلَ وَجْهُ رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَتَغَيَّرُ، فَقَالَ: رَجُلٌ: يَا ابْنَ الْخَطَّابِ أَلَا تَرَى مَا فِي وَجْهِ رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَوَضَعَ عُمَرُ الْكِتَابَ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِنَّ اللَّهَ عَزَّ وَجَلَّ بَعَثَنِي خَاتِمًا وَأُعْطِيتُ جَوَامِعَ الْكَلِمِ وَخَوَاتِمَهُ، وَاخْتُصِرَ لِيَ الْحَدِيثُ اخْتِصَارًا، فَلَا يُلْهِيَنَّكُمُ الْمُتَهَوِّكُونَ» فَقُلْتُ لِأَبِي قِلَابَةَ: مَا الْمُتَهَوِّكُونَ؟ قَالَ: الْمُتَحَيِّرُونَ

[360] Al-Bayhaqī, Shuʻb al-Īmān, vol. 7, pg. 170-171:
أَخْبَرَنَا عَلِيُّ بْنُ أَحْمَدَ بْنِ عَبْدَانَ، أنا أَحْمَدُ بْنُ عُبَيْدٍ الصَّفَّارُ، ثنا مُحَمَّدُ بْنُ غَالِبِ بْنِ حَرْبٍ، ثنا أَبُو حُذَيْفَةَ، ثنا سُفْيَانُ، عَنْ جَابِرٍ الْجُعْفِيِّ، عَنِ الشَّعْبِيِّ، عَنْ عَبْدِ اللهِ بْنِ الْحَارِثِ، قَالَ: دَخَلَ عُمَرُ بْنُ الْخَطَّابِ رَضِيَ اللهُ عَنْهُ عَلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِكِتَابٍ فِيهِ مَوَاضِعُ مِنَ التَّوْرَاةِ، فَقَالَ: هَذِهِ كُتُبٌ أَصَبْتُهَا مَعَ رَجُلٍ مِنْ أَهْلِ الْكِتَابِ أَعْرِضُهَا عَلَيْكَ، فَتَغَيَّرَ وَجْهُ رَسُولِ اللهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تَغَيُّرًا شَدِيدًا لَمْ أَرَ مِثْلَهُ قَطُّ، فَقَالَ عَبْدُ اللهِ بْنُ الْحَارِثِ لِعُمَرَ: أَمَا تَرَى وَجْهَ رَسُولِ اللهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ؟ فَقَالَ عُمَرُ: رَضِيتُ بِاللهِ رَبًّا، وَبِالْإِسْلَامِ دِينًا، وَبِمُحَمَّدٍ نَبِيًّا، فَسُرِّيَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: " لَوْ نَزَلَ مُوسَى فَاتَّبَعْتُمُوهُ وَتَرَكْتُمُونِي لَضَلَلْتُمْ، أَنَا حَظُّكُمْ مِنَ النَّبِيِّينَ وَأَنْتُمْ حَظِّي مِنَ الْأُمَمِ "

[361] Ibid., vol. 7, pg. 171:
أَخْبَرَنَا أَبُو عَبْدِ اللهِ الْحَافِظُ، أنا أَبُو عَبْدِ اللهِ مُحَمَّدُ بْنُ عَلِيِّ بْنِ عَبْدِ الْحَمِيدِ الصَّنْعَانِيُّ، ثنا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، أنا عَبْدُ الرَّزَّاقِ، عَنْ مَعْمَرٍ، عَنْ أَيُّوبَ، عَنْ أَبِي قِلَابَةَ، أَنَّ عُمَرَ بْنَ الْخَطَّابِ، مَرَّ بِرَجُلٍ يَقْرَأُ كِتَابًا، فَاسْتَمَعَهُ سَاعَةً فَاسْتَحْسَنَهُ، فَقَالَ لِلرَّجُلِ: اكْتُبْ لِي مِنْ هَذَا الْكِتَابِ، قَالَ: نَعَمْ، فَاشْتَرَى أَدِيمًا فَهَيَّأَهُ، ثُمَّ جَابَهُ إِلَيْهِ، فَنَسَخَ لَهُ فِي ظَهْرِهِ وَبَطْنِهِ، ثُمَّ أَتَى بِهِ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَجَعَلَ يَقْرَأُهُ عَلَيْهِ، وَجَعَلَ وَجْهُ رَسُولِ اللهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَتَلَوَّنُ، فَضَرَبَ رَجُلٌ مِنَ الْأَنْصَارِ بِيَدِهِ الْكِتَابَ، وَقَالَ: ثَكِلَتْكَ أُمُّكَ يَا ابْنَ الْخَطَّابِ، أَلَا تَرَى وَجْهَ رَسُولِ اللهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مُنْذُ الْيَوْمِ وَأَنْتَ تَقْرَأُ عَلَيْهِ هَذَا الْكِتَابَ؟ فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عِنْدَ ذَلِكَ: "إِنَّمَا بُعِثْتُ فَاتِحًا وَخَاتِمًا، وَأُعْطِيتُ جَوَامِعَ الْكَلِمِ وَفَوَاتِحَهُ ". " وَاخْتُصِرَ لِي الْحَدِيثُ اخْتِصَارًا، فَلَا يَهْلِكَنَّكُمُ الْمُتَهَوِّكُونَ"

[362] Abū ʾAbd Allāh Ibn al-Ḍurays, *Faḍā'il al-Qur'ān Wa Mā Anzala Min al-Qur'ān Bi Makkah Wa Mā Anzala Bi al-Madīnah*, ed. Ghazwat Badīr, 1st ed. (Damascus: Dār al-Fikr, 1987). Pg. 54:
" جَاءَ أَخْبَرَنَا أَحْمَدُ، قَالَ: حَدَّثَنَا مُحَمَّدٌ، قَالَ: أَخْبَرَنَا مُحَمَّدُ بْنُ كَثِيرٍ، قَالَ: أَخْبَرَنَا سُفْيَانُ، عَنْ جَابِرٍ، عَنِ الشَّعْبِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ ثَابِتٍ الْأَنْصَارِيِّ، قَالَ: عُمَرُ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَمَعَهُ جَوَامِعُ مِنَ التَّوْرَاةِ فَقَالَ: مَرَرْتُ عَلَى أَخٍ لِي مِنْ قُرَيْظَةَ يَكْتُبُ لِي جَوَامِعَ مِنَ التَّوْرَاةِ، أَفَلَا أَعْرِضُهَا عَلَيْكَ؟ فَقَالَ: فَتَغَيَّرَ وَجْهُ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ: أَمَا تَرَى مَا بِوَجْهِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ؟ فَقَالَ عُمَرُ: رَضِيتُ بِاللَّهِ رَبًّا، وَبِالْإِسْلَامِ دِينًا، وَبِمُحَمَّدٍ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ رَسُولًا. قَالَ: كَانَ بِوَجْهِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «وَالَّذِي نَفْسِي بِيَدِهِ لَوْ أَنَّ مُوسَى عَلَيْهِ السَّلَامُ أَصْبَحَ فِيكُمْ، ثُمَّ اتَّبَعْتُمُوهُ وَتَرَكْتُمُونِي لَضَلَلْتُمْ، أَنْتُمْ حَظِّي مِنَ الْأُمَمِ، وَأَنَا حَظُّكُمْ مِنَ النَّبِيِّينَ»

[363] Abū al-Ḥusayn Ibn Qāni', *Mu'jam al-Ṣaḥābah*, ed. Ṣalāḥ Ibn Sālim al-Miṣrātī, 1st ed., 3 vols. (Madinah: Maktabat al-Ghurabā' al-Athariyyah, 1418AH). Vol. 2, pg. 91:

حَدَّثَنَا مُعَاذُ بْنُ الْمُثَنَّى، نا مُحَمَّدُ بْنُ كَثِيرٍ، نا سُلَيْمَانُ، نا جَابِرٌ، عَنِ الشَّعْبِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ ثَابِتٍ الْأَنْصَارِيِّ قَالَ: جَاءَ عُمَرُ بْنُ الْخَطَّابِ بِجَوَامِعَ مِنَ التَّوْرَاةِ , فَقَالَ: إِنِّي زُرْتُ أَخًا لِي مِنْ بَنِي قُرَيْظَةَ , فَكَتَبَ لِي جَوَامِعَ مِنَ التَّوْرَاةِ , أَفَأَعْرِضُهَا عَلَيْكَ؟ فَتَغَيَّرَ وَجْهُ رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ , فَقُلْتُ: أَلَا تَرَى مَا بِوَجْهِ رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ؟ فَقَالَ عُمَرُ: رَضِيتُ بِاللَّهِ رَبًّا , وَبِالْإِسْلَامِ دِينًا , وَبِمُحَمَّدٍ رَسُولًا , فَذَهَبَ مَا كَانَ بِوَجْهِ رَسُولِ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَقَالَ: «وَالَّذِي نَفْسِي بِيَدِهِ , لَوْ أَنَّ مُوسَى أَصْبَحَ فِيكُمْ فَاتَّبَعْتُمُوهُ وَتَرَكْتُمُونِي لَضَلَلْتُمْ , أَنْتُمْ حَظِّي مِنَ الْأُمَمِ , وَأَنَا حَظُّكُمْ مِنَ الْأَنْبِيَاءِ»

[364] al-Aṣbahānī, *Ma'rifat al-Ṣaḥābah*. Vol. 3, pg. 1600:
قَالَ: جَاءَ عُمَرُ بْنُ الْخَطَّابِ رَضِيَ اللهُ عَنْهُ مَعَهُ جَوَامِعُ مِنَ التَّوْرَاةِ فَقَالَ: مَرَرْتُ عَلَى أَخٍ لِي مِنْ بَنِي قُرَيْظَةَ، فَكَتَبَ لِي جَوَامِعَ مِنَ التَّوْرَاةِ أَفَلَا أَعْرِضُهَا عَلَيْكَ؟ فَتَغَيَّرَ وَجْهُ رَسُولِ اللهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقُلْتُ: أَمَا تَرَى مَا بِوَجْهِ رَسُولِ اللهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ؟ فَقَالَ عُمَرُ: رَضِيتُ بِاللهِ رَبًّا، وَبِالْإِسْلَامِ دِينًا، وَبِمُحَمَّدٍ نَبِيًّا، فَذَهَبَ مَا كَانَ بِوَجْهِ رَسُولِ اللهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ثُمَّ قَالَ: «وَالَّذِي نَفْسِي بِيَدِهِ لَوْ أَنَّ مُوسَى أَصْبَحَ فِيكُمْ، ثُمَّ اتَّبَعْتُمُوهُ وَتَرَكْتُمُونِي لَضَلَلْتُمْ، أَنْتُمْ حَظِّي مِنَ الْأُمَمِ وَأَنَا حَظُّكُمْ مِنَ النَّبِيِّينَ» رَوَاهُ وَرْقَاءُ، وَأَبُو حَمْزَةَ وَغَيْرُهُمَا، عَنْ جَابِرٍ نَحْوَهُ وَرَوَاهُ مُجَالِدٌ، وَحُرَيْثُ بْنُ أَبِي مَطَرٍ، وَزَكَرِيَّا بْنُ أَبِي زَائِدَةَ، عَنِ الشَّعْبِيِّ، عَنْ ثَابِتِ بْنِ يَزِيدَ نَحْوَهُ وَرَوَاهُ هُشَيْمٌ، وَحَفْصُ بْنُ غِيَاثٍ فِي آخَرِينَ، عَنْ مُجَالِدٍ، عَنِ الشَّعْبِيِّ، عَنْ جَابِرٍ

[365] Ibn Kathīr's *Tafsīr*, vol. 4, pgs. 367-368:
وَقَالَ الْحَافِظُ أَبُو يَعْلَى الْمَوْصِلِيُّ: حَدَّثَنَا عَبْدُ الْغَفَّارِ بْنُ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ، حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ إِسْحَاقَ، عَنْ خَلِيفَةَ بْنِ قَيْسٍ، عَنْ خَالِدِ بْنِ عُرْفُطَةَ قَالَ: كُنْتُ جَالِسًا عِنْدَ عُمَرَ، إِذْ أُتِيَ بِرَجُلٍ مِنْ عَبَدِ الْقَيْسِ مَسْكَنُهُ بِالسُّوسِ، فَقَالَ لَهُ عُمَرُ: أَنْتَ فُلَانُ بْنُ فُلَانٍ الْعَبْدِيُّ؟ قَالَ: نَعَمْ. قَالَ: وَأَنْتَ النَّازِلُ بِالسُّوسِ، قَالَ: نَعَمْ. فَضَرَبَهُ بِقَنَاةٍ مَعَهُ، قَالَ: فَقَالَ الرَّجُلُ: مَا لِي يَا أَمِيرَ الْمُؤْمِنِينَ؟ فَقَالَ لَهُ عُمَرُ: اجْلِسْ. فَجَلَسَ، فَقَرَأَ عَلَيْهِ: {بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ الر تِلْكَ آيَاتُ الْكِتَابِ الْمُبِينِ إِنَّا أَنْزَلْنَاهُ قُرْآنًا عَرَبِيًّا لَعَلَّكُمْ تَعْقِلُونَ نَحْنُ نَقُصُّ عَلَيْكَ [أَحْسَنَ الْقَصَصِ] } إِلَى قَوْلِهِ: {لَمِنَ الْغَافِلِينَ} فَقَرَأَهَا ثَلَاثًا، وَضَرَبَهُ ثَلَاثًا، فَقَالَ لَهُ الرَّجُلُ: مَا لِي يَا أَمِيرَ الْمُؤْمِنِينَ؟ فَقَالَ: أَنْتَ الَّذِي نَسَخْتَ كِتَابَ دَانْيَالَ! قَالَ: مُرْنِي بِأَمْرِكَ أَتَّبِعْهُ. قَالَ: انْطَلَقَ فَامْحُهُ بِالْحَمِيمِ وَالصُّوفِ الْأَبْيَضِ، ثُمَّ لَا تَقْرَأْهُ وَلَا تُقْرِئْهُ أَحَدًا مِنَ النَّاسِ، فَلَئِنْ بَلَغَنِي عَنْكَ أَنَّكَ قَرَأْتَهُ أَوْ أَقْرَأْتَهُ أَحَدًا مِنَ النَّاسِ لَأَنْهَكَنَّكَ عُقُوبَةً، ثُمَّ قَالَ لَهُ: اجْلِسْ، فَجَلَسَ بَيْنَ يَدَيْهِ، فَقَالَ: انْطَلَقْتُ أَنَا فَانْتَسَخْتُ كِتَابًا مِنْ أَهْلِ الْكِتَابِ، ثُمَّ جِئْتُ بِهِ فِي أَدِيمٍ، فَقَالَ لِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "مَا هَذَا فِي يَدِكَ يَا عُمَرُ؟ ". قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ، كِتَابٌ نَسَخْتُهُ لِنَزْدَادَ بِهِ عِلْمًا إِلَى عِلْمِنَا. فَغَضِبَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ حَتَّى احْمَرَّتْ وَجْنَتَاهُ، ثُمَّ نُودِيَ بِالصَّلَاةِ جَامِعَةً، فَقَالَتِ الْأَنْصَارُ: أَغْضَبَ نَبِيُّكُمْ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ؟ السِّلَاحَ السِّلَاحَ. فَجَاءُوا حَتَّى أَحْدَقُوا بِمِنْبَرِ رسول الله صلى الله عليه وسلم، فقال: "يَا أَيُّهَا النَّاسُ، إِنِّي قَدْ أُوتِيتُ جَوَامِعَ الْكَلِمِ وَخَوَاتِيمَهُ، واخْتُصِرَ لِيَ اخْتِصَارًا، وَلَقَدْ أَتَيْتُكُمْ بها بَيْضَاءَ نَقِيَّةً فَلَا تَتَهَوَّكوا، وَلَا يَغُرَّنَّكُمُ المتهوّكون". قَالَ عُمَرُ: فَقُمْتُ فَقُلْتُ: رَضِيتُ بِاللَّهِ رَبًّا وَبِالْإِسْلَامِ دِينًا، وَبِكَ رَسُولًا. ثُمَّ نَزَلَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

[366] Ibn Kathīr's *Tafsīr,* vol. 4, pgs. 368-369:
فَقَالَ الْحَافِظُ أَبُو بَكْرٍ أَحْمَدُ بْنُ إِبْرَاهِيمَ الْإِسْمَاعِيلِيُّ: أَخْبَرَنِي الْحَسَنُ بْنُ سُفْيَانَ، حَدَّثَنَا يَعْقُوبُ بْنُ سُفْيَانَ، حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ بْنِ الْعَلَاءِ الزُّبَيْدِيُّ، حَدَّثَنِي عَمْرُو بْنُ الْحَارِثِ، حَدَّثَنَا عَبْدُ اللَّهِ بْنُ سَالِمٍ الْأَشْعَرِيُّ، عَنِ الزُّبَيْدِيِّ، حَدَّثَنَا سُلَيْمُ بْنُ عَامِرٍ: أَنَّ جُبَيْرَ بْنَ نُفَيْرٍ حَدَّثَهُمْ: أَنَّ رَجُلَيْنِ كَانَا بِحِمْصَ فِي خِلَافَةِ عُمَرَ، رَضِيَ اللَّهُ عَنْهُ، فَأَرْسَلَ إِلَيْهِمَا فِيمَنْ أَرْسَلَ مِنْ أَهْلِ حِمْصَ، وَكَانَا قَدِ اكْتَتَبَا مِنَ الْيَهُودِ صلاصفة فَأَخَذَاهَا مَعَهُمَا يَسْتَفْتِيَانِ فِيهَا أَمِيرَ الْمُؤْمِنِينَ وَيَقُولُونَ: إِنْ رَضِيَهَا لَنَا أَمِيرُ الْمُؤْمِنِينَ ازْدَدْنَا فِيهَا رَغْبَةً. وَإِنْ نَهَانَا عَنْهَا رَفَضْنَاهَا، فَلَمَّا قَدِمَا عَلَيْهِ قَالَا إِنَّا بِأَرْضِ أَهْلِ الْكِتَابَيْنِ، وَإِنَّا نَسْمَعُ مِنْهُمْ كَلَامًا تَقْشَعِرُّ مِنْهُ جُلُودُنَا، أَفَنَأْخُذُ مِنْهُ أَوْ نَتْرُكُ؟ فَقَالَ: لَعَلَّكُمَا كَتَبْتُمَا مِنْهُ شَيْئًا. قَالَا لَا. قَالَ: سَأُحَدِّثُكُمَا، انْطَلَقْتُ فِي حَيَاةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ حَتَّى أَتَيْتُ خَيْبَرَ، فَوَجَدْتُ يَهُودِيًّا يَقُولُ قَوْلًا أَعْجَبَنِي، فَقُلْتُ: هَلْ أَنْتَ مُكْتِبِي مَا تَقُولُ؟ قَالَ: نَعَمْ. فَأَتَيْتُ بِأَدِيمٍ، فَأَخَذَ يُمْلِي عَلَيَّ، حَتَّى كَتَبْتُ فِي الْأَكْرُعِ. فَلَمَّا رَجَعْتُ قُلْتُ: يَا نَبِيَّ اللَّهِ، وَأَخْبَرْتُهُ، قَالَ: "ائْتِنِي بِهِ". فَانْطَلَقْتُ أَرْغَبُ عَنِ الْمَشْيِ رَجَاءَ أَنْ أَكُونَ أَتَيْتُ رَسُولَ اللَّهِ بِبَعْضِ مَا يُحِبُّ، فَلَمَّا أَتَيْتُ بِهِ قَالَ: "اجْلِسِ اقْرَأْ عَلَيَّ". فَقَرَأْتُ سَاعَةً، ثُمَّ نَظَرْتُ إِلَى وَجْهِهِ فَإِذَا هُوَ يَتَلَوَّنُ، فَتَحَيَّرْتُ مِنَ الفرق، فَمَا اسْتَطَعْتُ أُجِيزُ مِنْهُ حَرْفًا، فَلَمَّا رَأَى الَّذِي بِي دَفَعَه ثُمَّ جَعَلَ يُتْبِعُهُ رِسْمًا رِسْمًا فَيَمْحُوهُ بِرِيقِهِ، وَهُوَ يَقُولُ: "لَا تَتْبِعُوا هَؤُلَاءِ، فَإِنَّهُمْ قَدْ هَوكوا وتَهَوَّكوا"، حَتَّى مَحَا آخِرَهُ حَرْفًا حَرْفًا. قَالَ عُمَرُ، رَضِيَ اللَّهُ عَنْهُ: فَلَوْ عَلِمْتُ أَنَّكُمَا كَتَبْتُمَا مِنْهُ شَيْئًا جَعَلْتُكُمَا نَكَالًا لِهَذِهِ الْأُمَّةِ! قَالَا وَاللَّهِ مَا نَكْتُبُ مِنْهُ شَيْئًا أَبَدًا. فَخَرَجَا بِصلاصفتِهِمَا فَحَفَرَا لَهَا فَلَمْ يألُوا أَنْ يعمّقَا، ودفناها فَكَانَ آخِرَ الْعَهْدِ مِنْهَا

[367] Abū al-Fidā' Ismā'īl ibn 'Umar, *Jāmi' al-Masānīd Wa al-Sunan al-Hādī Li Aqwam Sanan*, ed. 'Abd al-Malik ibn 'Abd Allah al-Duhaysh, 2nd ed., vol. 3, 10 vols. (Beirut, Lebanon: Dār Khaḍir li al-Ṭibā'ah wa al-Nashr wa al-Tawzī', 1998). Vol. 9, pg. 344:
قال الطبرانى: ثنا محمد بن عثمان بن أبى شيبة ثنا منجاب بن الحارث ثنا أبو عامر العقدى عن أبى إسحاق عن أبى حبيبة عن أبى الدرداء قال: جاء عمر بجوامع من التوراة. فقال: يا رسول الله، أخذتها من أخ لى من بنى زريق فتغير وجه رسول الله - صلى الله عليه وسلم - فقال عبد الله ابن زيد الذى أرى النداء: أمسخ الله عقلك ألا ترى الذى بوجه رسول الله - صلى الله عليه وسلم - فقال عمر: رضينا بالله ربًا وبالإسلام دينًا وبمحمد نبيًا وبالقرآن إمامًا فسرى عن وجه رسول الله - صلى الله عليه وسلم - ثم قال: «والذى نفس محمد بيده لو كان موسى بين أظهركم ما وسعه إلا اتباعى، ثم لو كان بين أظهركم ثم تبعتموه لضللتم ضلالاً بعيدًا، أنتم حظى من الأمم، وأنا حظكم من الأنبياء»

[368] al-Bazzār, *Musnad Al-Bazzār*. Vol. 10, pg. 32:
حَدَّثَنا أَبُو كُرَيب، قَالَ: حَدَّثَنا زيد بن الحباب، قَالَ: حَدَّثَنا سُفيان، عَن أَبِي إِسْحَاقَ، عَن أَبِي حَبِيبَةَ، عَن أَبِي الدَّرْدَاءِ، رَضِي اللَّهُ عَنْهُ، عَنْ النَّبِيِّ صَلَّى اللَّهُ عَلَيه وَسَلَّم قَالَ: أَنَا حَظُّكُمْ مِنَ الأَنْبِيَاءِ وَأَنْتُمْ حَظِّي مِنَ الأُمَمِ.
وهذا الحديث لانعلم أَحَدًا رَوَاهُ عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيه وَسَلَّم إلاَّ أَبُو الدَّرْدَاءِ، ولاَ نَعْلَمُ رواه عَن أبي الدرداء إلاَّ حَبِيبَةَ، ولاَ، عَن أَبِي حَبِيبَةَ إلاَّ أَبُو إِسْحَاقَ، ولاَ، عَن أَبِي إِسْحَاقَ إلاَّ الثَّوْرِيّ، ولاَ عَن الثَّوْرِيّ إلاَّ زَيْدٌ، ولاَ، عَن زَيد إلاَّ أَبُو كُرَيب، ولاَ نَعْلَمُ أَحَدًا تَابَعَهُ عَلَى هَذَا الْحَدِيثِ.

[369] Ibn Ḥibbān al-Dārimī al-Bustī, *Ṣaḥīḥ Ibn Ḥibbān*, ed. Shu'ayb al-Arna'ūṭ, 18 vols. (Beirut: Mu'assisat al-Risālah, 1988). Vol. 16, pg. 197:
أَخْبَرَنَا الْحَسَنُ بْنُ أَحْمَدَ بْنِ إِبْرَاهِيمَ بْنِ فِيلٍ الْبَالِسِيُّ أَبُو الطَّاهِرِ بِأَنْطَاكِيَّةَ حَدَّثَنَا مُحَمَّدُ بْنُ الْعَلَاءِ بْنِ كُرَيْبٍ حَدَّثَنَا زَيْدُ بْنُ الْحُبَابِ حَدَّثَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ عَنْ أَبِي حَبِيبَةَ الطَّائِيِّ عَنْ أَبِي الدَّرْدَاءِ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "أَنَا حَظُّكُمْ مِنَ الأنبياء وأنتم حظي من الأمم"

[370] Abū Nu'aym's Ḥilyat al-Awliyā', vol. 5, pg. 135-136:
حَدَّثَنَا سُلَيْمَانُ بْنُ أَحْمَدَ، قَالَ: ثنا عَمْرُو بْنُ إِسْحَاقَ بْنِ إِبْرَاهِيمَ بْنِ الْعَلَاءِ الْحِمْصِيُّ، قَالَ: ثنا أَبِي قَالَ: ثنا عَمْرُو بْنُ الْحَارِثِ بْنِ الضَّحَّاكِ، حَدَّثَنِي عَبْدُ اللهِ بْنُ سَالِمٍ، عَنْ مُحَمَّدِ بْنِ الْوَلِيدِ الزُّبَيْرِيِّ، قَالَ: ثنا سُلَيْمُ بْنُ عَامِرٍ، أَنَّ جُبَيْرَ بْنَ نُفَيْرٍ، حَدَّثَهُمْ: أَنَّ رَجُلَيْنِ تَحَابَّا فِي اللهِ بِحِمْصَ فِي خِلَافَةِ عُمَرَ، وَكَانَا قَدِ اكْتَتَبَا مِنَ الْيَهُودِ مِلْءَ صِفْنَيْنِ، فَأَخَذَاهُمَا مَعَهُمَا يَسْتَفْتِيَانِ فِيهِمَا أَمِيرَ الْمُؤْمِنِينَ، وَكَانَ أَرْسَلَ إِلَيْهِمَا عُمَرُ فِيمَنْ أَرْسَلَ إِلَيْهِ مِنْ أَهْلِ حِمْصٍ فَقَالَا: يَا أَمِيرَ الْمُؤْمِنِينَ، إِنَّا

An analysis of the isnāds of extent versions of this report demonstrate to us that this report was primarily an Iraqi tradition. The vast majority of isnāds (colored blue) are Kufan, and link back to ʻĀmir al-Shaʻbī (d. 103 AH) and generally contain the same *matn* (content), with ʻUmar being rebuked for having parchments of the Torah that he obtained from a Jewish person. The Prophet ﷺ states that if Moses ﷺ were alive, that he would follow him, and in many versions, if Moses ﷺ were to be followed over the Prophet ﷺ, that you would be misguided. Obedience to Moses ﷺ is what was feared in these reports (through Mosaic law?): لَوْ أَنَّ مُوسَى عَلَيْهِ السَّلَامُ أَصْبَحَ فِيكُمْ، ثُمَّ اتَّبَعْتُمُوهُ وَتَرَكْتُمُونِي لَضَلَلْتُمْ. The Kufan isnād from ʻArṭafah (d. ?) as reported by Ibn Kathīr is somewhat anomalous and lacks corroboration. It provides a lengthy and different account, in which ʻArṭafah, who we know was a commander based in Kūfa, witnessed ʻUmar beat a man for having copied down the Book of Daniel. He then tells the man that the Prophet ﷺ rebuked him for having copied from the People of the Book. In this version, the Prophet's rebuke emphasizes the Prophet ﷺ having been given comprehensive wisdom (قَدْ أُوتِيتُ جَوَامِعَ) and to not be confused by those who themselves were confused (فَلَا تَتهوَّكوا، وَلَا يَغُرَّنَّكُمُ المتهوّكون). ʻUmar then declares that he wholly accepts Islam and the Prophet (رَضِيتُ بِاللَّهِ رِبًّا وَبِالْإِسْلَامِ دِينًا، وَبِكَ رَسُولًا).

---

بِأَرْضِ أَهْلِ الْكِتَابَيْنِ، وَإِنَّا نَسْمَعُ مِنْهُمْ كَلَامًا تَقْشَعِرُّ مِنْهُ جُلُودُنَا، أَفَنَأْخُذُ مِنْهُمْ أَمْ نَتْرُكُ؟ قَالَ: لَعَلَّكُمَا اكْتَتَبْتُمَا مِنْهُ شَيْئًا؟ فَقَالَا: لَا، قَالَ: سَأُحَدِّثُكُمَا: إِنِّي انْطَلَقْتُ فِي حَيَاةِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ حَتَّى أَتَيْتُ خَيْبَرَ، فَوَجَدْتُ يَهُودِيًّا يَقُولُ قَوْلًا أَعْجَبَنِي، فَقُلْتُ: هَلْ أَنْتَ مُكْتِبِي مِمَّا تَقُولُ؟ قَالَ: نَعَمْ، قَالَ: فَأَتَيْتُهُ بِأَدِيمٍ ثَنِيَّةٍ أَوْ جَذَعَةٍ، فَأَخَذَ يُمْلِي عَلَيَّ حَتَّى كَتَبْتُ فِي الْأَكْرُعِ رَغْبَةً فِي قَوْلِهِ، فَلَمَّا رَجَعْتُ قُلْتُ: يَا رَسُولَ اللهِ، إِنِّي لَقِيتُ يَهُودِيًّا يَقُولُ قَوْلًا لَمْ أَسْمَعْ مِثْلَهُ بَعْدَكَ، قَالَ: «لَعَلَّكَ كَتَبْتَ مِنْهُ؟» قُلْتُ: نَعَمْ، قَالَ: «انْتِنِي بِهِ» فَانْطَلَقْتُ أَرْغَبُ عَنِ الْمَشْيِ رَجَاءَ أَنْ أَكُونَ جِئْتُ نَبِيَّ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ بِبَعْضِ مَا يُحِبُّهُ، فَلَمَّا أَتَيْتُهُ قَالَ: «اجْلِسْ فَاقْرَأْ عَلَيَّ» فَقَرَأْتُ سَاعَةً، ثُمَّ نَظَرْتُ إِلَى وَجْهِهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ فَإِذَا هُوَ يَتَلَوَّنُ فَصِرْتُ مِنَ الْفَرَقِ لَا أُجِيزُ حَرْفًا مِنْهُ، فَلَمَّا رَأَى الَّذِي بِي دَفَعْتُهُ إِلَيْهِ، ثُمَّ جَعَلَ يَتَتَبَّعُهُ رَسْمًا رَسْمًا فَيَمْحُوهُ بِرِيقِهِ، وَهُوَ يَقُولُ: «لَا تَتَّبِعُوا هَؤُلَاءِ فَإِنَّهُمْ قَدْ هَوَّكُوا وَتَهَوَّكُوا» حَتَّى مَحَا آخِرَهُ حَرْفًا حَرْفًا، قَالَ عُمَرُ: فَلَوْ أَعْلَمُ أَنَّكُمَا اكْتَتَبْتُمَا مِنْهُمْ شَيْئًا جَعَلْتُكُمَا نَكَالًا لِهَذِهِ الْأُمَّةِ، قَالَا: لَا وَاللهِ لَا نَكْتُبُ مِنْهُمْ شَيْئًا أَبَدًا، فَخَرَجَا بِصَفْنَيْهِمَا فَحَفَرَا لَهُمَا مِنَ الْأَرْضِ فَلَمْ يَأْلُوا أَنْ يُعَمِّقَا وَدَفَنَا، فَكَانَ آخِرَ الْعَهْدِ مِنْهُمَا

[371] See Ibn al-Durays's *Faḍā'il al-Qur'ān*, pg. 54:
أَخْبَرَنَا أَحْمَدُ، قَالَ: حَدَّثَنَا مُحَمَّدٌ، قَالَ: أَخْبَرَنَا مُوسَى بْنُ إِسْمَاعِيلَ، قَالَ: حَدَّثَنَا جَرِيرٌ، عَنِ الْحَسَنِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ، رِضْوَانُ اللَّهِ عَلَيْهِ قَالَ: " يَا رَسُولَ اللَّهِ، إِنَّ أَهْلَ الْكِتَابِ يُحَدِّثُونَنَا بِأَحَادِيثَ قَدْ أَخَذَتْ بِقُلُوبِنَا وَقَدْ هَمَمْنَا أَنْ نَكْتُبَهَا. فَقَالَ: «يَا ابْنَ الْخَطَّابِ، أَمُتَهَوِّكُنَّ أَنْتُمْ كَمَا تَهَوَّكَتِ الْيَهُودُ وَالنَّصَارَى؟ أَمَا وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ لَقَدْ جِئْتُكُمْ بِهَا بَيْضَاءَ نَقِيَّةً، وَلَكِنِّي أُعْطِيتُ جَوَامِعَ الْكَلِمِ، وَاخْتُصِرَ لِيَ الْحَدِيثُ اخْتِصَارًا»

[372] Ibn Abī Ḥātim al-Rāzī, *Tafsīr Al-Qur'ān al-'Aẓīm Li Ibn Abī Ḥātim*, ed. As'ad Muḥammad al-Ṭayyib, 3rd ed., 13 vols. (Saudi Arabia: Maktabat Nizār Muṣṭafā al-Bāz, 1419AH). Vol. 7, pg. 2100:
حَدَّثَنَا أَبِي، ثنا إِسْمَاعِيلُ بْنُ الْخَلِيلِ، ثنا عَلِيُّ بْنُ مُسْهِرٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ إِسْحَاقَ، عَنْ خَلِيفَةَ بْنِ قَيْسٍ، عَنْ خَالِدِ بْنِ عُرْفُطَةَ قَالَ: كُنْتُ عِنْدَ عُمَرَ ابن الْخَطَّابِ إِذْ أَتَى بِرَجُلٍ مِنْ عَبْدِ الْقَيْسِ، مَسْكَنُهُ بِالسُّوسِ، فَقَالَ لَهُ عُمَرُ: أَنْتَ فُلَانٌ ابْنُ فُلَانٍ الْعَبْدِيُّ؟ قَالَ: نَعَمْ، قَالَ: وَأَنْتَ النَّازِلُ بِالسُّوسِ، فَضَرَبَهُ بِقَنَاةٍ مَعَهُ فَقَالَ الْعَبْدِيُّ: مَالِيَ؟ فَقَرَأَ عَلَيْهِ: الر تِلْكَ آيَاتُ الْكِتَابِ الْمُبِينِ إِلَى قَوْلِهِ: وَإِنْ كُنْتَ مِنْ قَبْلِهِ لَمِنَ الْغَافِلِينَ فَقَرَأَهَا عَلَيْهِ ثَلَاثَ مَرَّاتٍ فَضَرَبَهُ ثَلَاثَ مَرَّاتٍ، ثُمَّ قَالَ لَهُ عُمَرُ: أَنْتَ الَّذِي انْتَسَخْتَ كِتَابَ دَانْيَالَ؟ قَالَ: نَعَمْ. قَالَ: اذْهَبْ فَامْحُهُ بِالْحَمِيمِ وَالصُّوفِ الأَبْيَضِ، وَلا تَقْرَأْهُ وَلا تُقْرِئْهُ أَحَدًا مِنَ النَّاسِ

However, Ibn Abī Ḥātim al-Rāzī (d. 327 AH) narrates the same upper isnād as the version from Ibn Kathīr, but it only features ‘Umar’s rebuke of the man who copied from the Book of Daniel. It appears that this account was tacked onto the account attributed to ‘Āmir al-Sha‘bī to give it narrative form. The other non-Sha‘bī Kufan isnād for the ‘Umar story is from Abū al-Dardā’ (d. ca. 31 AH), as narrated by a relatively unknown transmitter. However, it appears in this version that the narrative of ‘Umar being rebuked was tacked on to a separate report in which the Prophet ﷺ says, “You are my lot from among the nations, and I am yours from among the prophets” (أنتم حظى من الأمم، وأنا حظكم من الأنبياء), this separate report appearing with the same upper-isnād but lacking the rebuke of ‘Umar, and having been narrated by Ibn Ḥibbān (d. 354 AH) and al-Bazzār (d. 292 AH). Al-Bazzār comments on the anomalous transmission of the latter report, in that it doesn’t appear to be corroborated in its upper isnād.

The Basran accounts are distinct from the Kufan ones. The isnāds for both the version from Abū Qilābah (d. 104 AH) and al-Ḥasan al-Baṣrī (d. 110 AH) are considered *mursal*, because neither had witnessed the event in question but reported information that was known to them (because it was commonly reported in their time, or perhaps because of receipt from someone that they did not document). Abū Qilābah’s version is therefore included in Abū Dāwūd (d. 275 AH)’s *Marāsīl*. As far as the matns are concerned, the isnād Abū Qilābah → Ma‘mar (d. 154 AH) only states that ‘Umar came across a man (unspecified) reading/reciting from a book (unspecified) and he had it copied down. The contents of the book, or the person reading it (e.g. a Jew as in the other traditions) are not noted in this account, which is distinct from the Kufan accounts. The Prophet ﷺ rebukes ‘Umar for seeking whatever knowledge he obtained from the book, for the Prophet ﷺ was given comprehensive wisdom (جَوَامِعَ الْكَلَامِ). The Prophet ﷺ then tells him not to be destroyed by (the knowledge of) the polytheists (الْمُشْرِكُونَ), or,

in a separate version, those who are confused themselves (الْمُتَهَوِّكُونَ), the Prophet's language mimicking the version we encountered from 'Arṭafah with its emphasis on confusion and the information being referred to not being needed given the Prophet's comprehensive wisdom. The version from al-Ḥasan al-Baṣrī does not mention parchments of the Torah: 'Umar merely tells the Prophet that the People of the Book are narrating to them reports that were spiritually impactful (بِأَحَادِيثَ قَدْ أَخَذَتْ بِقُلُوبِنَا), and that they, the Companions, wanted to write them down. This version similarly has the Prophet ﷺ emphasize that he was given comprehensive wisdom and that they should not let themselves be confused by those already confused ( أَمُتَهَوِّكُنَّ أَنْتُمْ كَمَا تَهَوَّكَتِ الْيَهُودُ وَالنَّصَارَى). No mention of obedience to Moses ﷺ or the Torah. The version of Abū Qilābah → Ḥammād (179 AH) specifies the Torah as in the Kufan accounts, but it defines what was taken from the text, namely a supplication (دعاء) 'Umar heard being recited. Here too, the language references the Prophet's comprehensive wisdom and the issue of being confused.

The Syrian isnād has a developed narrative in its matn. It is reported in later sources with a lengthy isnād and features a story about two men from Homs (the isnād itself is reported by transmitters from Homs) who had written down material from the Jews ( وَكَانَا قَدِ اكْتَتَبَا مِنَ الْيَهُودِ صلاصفة). They tell 'Umar that they have heard things from the People of the Two Books (i.e. the Christians and the Jews) that causes their skin to shiver (إِنَّا نَسْمَعُ مِنْهُمْ كَلَامًا تَقْشَعِرُّ مِنْهُ جُلُودُنَا) and ask him whether it is fine to take this material from them Jews. 'Umar then shares that in the life of the Prophet ﷺ he heard a Jew in Khaybar say something that he liked, so he wrote it down. 'Umar than has it written down and he takes it to the Prophet ﷺ. The Prophet ﷺ has him sit down and read from the parchments. After some time it becomes apparent the Prophet ﷺ is displeased. The Prophet ﷺ then tells 'Umar to not to follow the Jews, because they were a confused people who will only confuse (لَا تَتَبِعُوا هَؤُلَاءِ، فَإِنَّهُمْ قَدْ هَوكوا وتَهَوَّكوا). The parchment is then erased. After

narrating this, ‘Umar then tells the two men from Homs that if they had written from the Jews, that he would punish them. The two men in the narrative then say they didn’t, and they later bury the material that they had written down. There is no mention in this Syrian account that it was the Torah that either the men from Homs took, or ‘Umar in the story of his rebuke. And just like the Basran account, the Prophet ﷺ emphasizes confusion as the reason for avoiding this material. What we see clearly from all of these accounts is that the emphasis on the Torah and obedience to Moses ﷺ through reference to the Torah are features of the Kufan narratives, and not the other accounts.

There are problematic narrators in many of these isnāds. Focusing just on the Kufan ones, we find that all of the ones that were narrated to al-Sha‘bī were done through a weak or problematic link – Jābir al-Ju‘fī (d. 128 AH) and Mujālid (d. 144 AH) who represent a common link for many of the isnād strands, and Ḥurayth (d. ?) and Zakariyyā ibn Abī Zā’idah (149 AH) who narrate only single isnāds. Jābir al-Ju‘fī was condemned by some for fabricating prophetic ḥadīth, including by his contemporary Abū Ḥanīfah,[373] whereas Mujālid’s reporting from al-Shu‘bī was considered particularly unreliable[374]. Zakariyyā b. Abī Zā’idah was considered a generally reliable narrator, but apparently would claim to narrate from al-Sha‘bī material that he would actually receive from the problematic Jābir al-Ju‘fī we just mentioned (i.e. he would perform *tadlīs*).[375] As for Ḥurayth, the ḥadīth scholars similarly held that he was unreliable

[373] See ibn ‘Adī’s *al-Kāmil*, vol. 2, pg. 327:
حَدَّثَنَا الْحُسَيْنُ بْنُ عَبد اللَّهِ الْقَطَّانُ، حَدَّثَنا أَحْمَدُ بْنُ أَبِي الحواري سَمِعْتُ أبا يَحْيى الحماني يَقُولُ: سَمعتُ أبا حنيفة يَقُولُ ما رأيت فيمن رأيت أفضل من عطاء، ولاً لقيت فيمن لقيت أكذب من جَابِر الجعفي ما أتيته قط بشَيْءٍ من رأيه إلا جاءني فيه بحديث وزعم أن عنده كذا وكذا ألف حديث عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لم يظهرها

[374] See Khālid al-Ribāṭ and Sayyid ’Izzat ’Īd, *Al-Jāmi’ Li ’Ulūm al-Imām Aḥmad (al-Rijāl)*, 1st ed., 22 vols. (Egypt: Dār al-Falāḥ li al-Baḥth al-’Ilmī wa Taḥqīq al-Turāth, 2009). Vol. 19, pgs. 101-103.; ibn ‘Adī’s *al-Kāmīl*, vol. 8, pg. 166.

[375] Abū ’Ubayd al-Ājurī and Abū Dāwūd al-Sijistānī, *Su’ālāt Abī ’Ubayd al-Ājurī Abā Dāwūd al-Sijistānī Fī al-Jarḥ Wa al-Ta’dīl*, ed. Muḥammad ’Alī Qāsim al-’Umarī, 1st ed. (Madinah: ’Imādat al-Baḥth al-’Ilmī bi al-Jāmi’ah al-Islāmiyyah, 1983). Pg. 185.; Also, al-Dhahabī’s *Siyar a’lām al-nubalā’*, vol. 6, pg. 202.

transmitter of material from al-Sha'bī in particular.[376] The version from the Companion 'Abd Allāh b. Thābit, considered to be a Kufan authority among some of the ḥadīth scholars,[377] was rejected by al-Bukhārī,[378] and it seems that he was a relatively unknown transmitter of ḥadīth. Issues with the Abū al-Dardā' and 'Artafah reports were noted above. Ibn Ḥajar al-'Asqalānī also engages with some of the isnāds of this report.[379]

He takes Badr al-Dīn al-Zarkashī to task for his criticisms of later scholars who allowed for reading from the Torah based on al-Bukhārī suggestion in a chapter heading of his *Ṣaḥīḥ* that the alteration of the Torah was only in its derived meaning.[380] Al-Zarkashī cites the Prophet's rebuke of 'Umar as evidence that the Torah cannot be accessed, and he states that the texts have indeed been altered and there is a consensus against referring to them. Ibn Ḥajar responds that there is no such *ijmā'* and he summarizes some of the scholarly debate on whether the texts have been altered or not (and to what extent). As for the report of 'Umar, Ibn Ḥajar goes through a few of the isnāds that we have noted and concludes that they contain narrators that are weak and upon whom binding evidence cannot be formed as al-Zarkashī attempts to do. This having been said, Ibn Ḥajar states that all of the reports together suggest that the story of 'Umar being rebuked has some basis. He interprets the report in a way that justifies scholastic inquiry into the Torah, saying the Prophet's anger, which he reads as signifying dislike, is regarding those who

---

[376] Ibn 'Adī's *al-Kāmil*, vol. 2, pg. 474:
وسمعتُ ابْن حَمَّاد يَقُولُ: قَالَ البُخارِيّ حريث بْن أَبِي مطر لَيْسَ عندهم بالقوي عَن الشعبي

[377] See, e.g., Abū Nu'aym's *Ma'rifat al-ṣaḥābah*, vol. 3, pg. 1600.

[378] See al-Bukhārī's *al-Tārīkh*, vol. 5, pg. 39

[379] See Ibn Ḥajar's *Fatḥ al-bārī*, vol. 13, pgs. 525-526

[380] See al-Bukhārī's chapter heading in his *Ṣaḥīḥ*, vol. 9, pg. 160:
بَابُ قَوْلِ اللَّهِ تَعَالَى: {بَلْ هُوَ قُرْآنٌ مَجِيدٌ فِي لَوْحٍ مَحْفُوظٍ} [البروج: 22]
{وَالطُّورِ وَكِتَابٍ مَسْطُورٍ} [الطور: 1] قَالَ قَتَادَةُ: «مَكْتُوبٌ»، {يَسْطُرُونَ} [القلم: 1]: «يَخُطُّونَ»، {فِي أُمِّ الكِتَابِ} [الزخرف: 4]: «جُمْلَةِ الكِتَابِ وَأَصْلِهِ»، {مَا يَلْفِظُ} [ق: 18]: «مَا يَتَكَلَّمُ مِنْ شَيْءٍ إِلَّا كُتِبَ عَلَيْهِ» وَقَالَ ابْنُ عَبَّاسٍ: «يُكْتَبُ الخَيْرُ وَالشَّرُّ»، {يُحَرِّفُونَ} [النساء: 46]: «**يُزِيلُونَ، وَلَيْسَ أَحَدٌ يُزِيلُ لَفْظَ كِتَابٍ مِنْ كُتُبِ اللَّهِ عَزَّ وَجَلَّ، وَلَكِنَّهُمْ يُحَرِّفُونَهُ، يَتَأَوَّلُونَهُ عَلَى غَيْرِ تَأْوِيلِهِ**» {دِرَاسَتُهُمْ} [الأنعام: 156]: «تِلَاوَتُهُمْ»، {وَاعِيَةٌ} [الحاقة: 12]: «حَافِظَةٌ»، {وَتَعِيَهَا} [الحاقة: 12]: «تَحْفَظَهَا»، {وَأُوحِيَ إِلَيَّ هَذَا القُرْآنُ لِأُنْذِرَكُمْ بِهِ} [الأنعام: 19]، «يَعْنِي أَهْلَ مَكَّةَ» {وَمَنْ بَلَغَ} [الأنعام: 19]: «هَذَا القُرْآنُ فَهُوَ لَهُ نَذِيرٌ»

are not scholars and not capable of accessing the Torah without risk to their faith. He also cites the fact that Muslims from early times would hold the Jews accountable for passages from the Torah that were confirmatory of the Prophet ﷺ, showing that this report must therefore not be a clear prohibition. What is clear is that even into the later centuries, this report's implications were being debated in light of contradictory evidences of early Muslim engagement with the Torah, and verses of the Qur'ān that may have been read one way or the other.

This brief study of a prominent report, one of several reports we noted were being cited in an early discourse on the accessibility of the Torah and of Jewish and Christian material in general, shows how this debate may have had a regional dimension to it. Future studies should evaluate some of the other reports noted in this early discourse and explore a potential Kufan connection we made here further. If we take the example of the Kufan Successor Khaythamah b. 'Abd al-Raḥmān al-Ju'fī, and the Kufans who cited a Torah dictate from him in the middle of the 2nd century, it is possible that a tradition that made deference to the Torah was a Kufan phenomenon. We also have Abū Juḥayfah, who we encountered earlier as another Kufan figure who narrated fairly precise dicta from the Torah, and in a future chapter will note how the Kufan model of the legal institution of *qasāmah* seems to model itself on biblical material found in Qur'ānic exegesis, distinct from the Ḥijāzī form of *qasāmah* practiced elsewhere. In addition to the Kufan connection, 'Umar's role in this discourse is also one that should be further evaluated. He appears in this Kufan tradition as accessing the Torah and being rebuked for it, but elsewhere had a known relationship with Ka'b al-Aḥbār who he would consult. 'Umar features in a biblical context elsewhere among the Kufans: we came across Abu Yūsuf's citation of the Torah dictate on sexual relations with a woman and her daughter, but it was put in the words of 'Umar. When we engage with *qasāmah*, we will find that the Kufans had associated with 'Umar a practice of

*qasāmah* that modeled itself on some biblical features. Separate from the Kufans, we find that in Yemen, Wahb b. Munabbih, who apparently served in some legal capacity in *San'ā'* (وَكَانَ على قَضَاء صنعاء),[381] was citing fairly precise biblical dicta for discourses on sexual prohibitions. His nephew, as we encountered, was also known to have knowledge of the bible. Thus, a regional phenomenon in Yemen should also be explored in a future study. As a related point, the early ḥadīth compendiums that transmitted the biblical material we looked at earlier were from Yemen and Kufah as well ('Abd al-Razzāq and Ibn Abī Shaybah). The presence of significant Jewish populations in Iraq and Yemen are worth noting. There is ultimately much room for further study on our available traditions.

[381] Abū al-Ḥasan al-'Ajlī, *Ma'rifat al-Thiqāt*, ed. 'Abd al-'Alīm 'Abd al-Aẓīm al-Bastawī, 1st ed. (Madinah: Maktabat al-Dār, 1985). Vol. 2, pg. 345.

Chapter 4

# Mālikīs and Pre-Muḥammadan Law:

# The Case of Dietary Law

Hello, hello! This chapter begins with a short synopsis of some of Imām Mālik's own engagement with pre-Muḥammadan law, followed by a lengthier engagement with Mālikī (and Ḥanbalī) law on the slaughter of the Jews. Meats that were prohibited for the *Jews* to consume were impermissible for Muslims to consume when it came from *their* slaughter. The case study is an example where the *practice* of the Jews, in addition to Qur'ānic conceptions of what was prohibited for the Jews to consume had bearing on Muslim consumption. The meat was prohibited for Muslims to consume for a variety of reasons: Qur'ānic verses gave a special status for the laws of the *Ahl al-Kitāb* with regards to dietary law, Mālikī law valued the intentionality of the slaughterer, not consuming this meat was a means of enforcing the strict laws that Muslims viewed as a punishment on the Jews from God, and it was perhaps also a means of social stratification. Even though this was a case where the jurists openly acknowledged a space for the practice of another community influencing Muslim consumption, the example shows us that they weren't very interested with biblical or rabbinic laws of slaughter, with the exception of one author we will look at.

The Mālikī Abū al-Walīd al-Bājī (d. 474 AH) suggests that Imām Mālik (d. 179 AH) upheld the utility of pre-Muḥammadan law because he also cited Qur'ān 5:45 (reporting the

Torah's law of talion) in his legal discussions on Qiṣāṣ,[382] and al-Qarāfī (d. 684 AH) similarly asserts that Mālik's position was that the Prophet Muḥammad ﷺ followed pre-Muḥammadan laws (and thus implying its relevance for his community)[383]. A few other examples are relevant in ascertaining the Imām's own application of pre-Muḥammadan law. The ex-Mālikī Ibn Ḥazm (d. 456 AH) takes Imām Mālik to task for citing the precedent of Moses' arranged marriage in the Qur'ān, in order to allow a man to marry off his previously-unmarried daughter (ابنته البكر) without her acceptance. In the Qur'ānic telling of Moses' marriage,[384] the future father-in-law allows Moses ﷺ to marry one of his daughters if he fulfills one of two possible terms of labor. Ibn Ḥazm finds it extremely bizarre (من عجائب الدنيا) that Mālik cites this pre-Muḥammadan incident to allow a father to marry his daughter without her permission, because there is nothing in the *Qur'ānic* story (at least in the verses) that states whether or not the daughter gives her consent. The Mālikī al-Qurṭubī gives us an answer by indicating that Mālik's position here was based on *isrā'īliyyāt* material, and he suggests that Mālik referred to material like this elsewhere.[385] The comment is significant, as it suggests that the jurists may have referred to exegetical material that was supplemental of the Qur'ānic narratives, but which may have been of biblical or Israelite origin. We will treat this topic in the next chapter. Ibn Ḥazm further criticizes Mālik in this case for being selective in his application of the verses in question, because there are theoretically additional laws that can be pulled from this pre-Muḥammadan

[382] Abū al-Walīd al-Bājī, *Al-Ishārah Fī Uṣūl al-Fiqh*, ed. Muḥammad Ḥasan Ismā'īl, 1st ed. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2003). Pg. 42.; In the *Muwaṭṭā'*, Mālik cites the verse to argue for equal application of *qiṣāṣ* between men and women. See Mālik ibn Anas, *Al-Muwaṭṭa'*, ed. Muḥammad Muṣṭafā al-A'ẓamī, 1st ed., 8 vols. (Abu Dhabi: Mu'assisat Zāyid li al-A'māl al-Khayriyyah wa al-Insāniyyah, 2004). Vol. 5, pg. 1283.

[383] See: al-Qarāfī, *Sharḥ Tanqīḥ Al-Fuṣūl*. Pg. 297.

[384] See Qur'ān 28:27-28

[385] See vol. 13, pg. 271 of Shams al-Dīn al-Qurṭubī, *Al-Jāmi' Li Aḥkām al-Qur'ān (Tafsīr al-Qurṭubī)*, ed. Aḥmad al-Bardūnī and Ibrāhīm Aṭfīsh, 2nd ed., 20 vols. (Cairo: Dār al-Kutub al-Maṣriyyah, 1964):
هَذِهِ الْآيَةُ تَدُلُّ عَلَى أَنَّ لِلْأَبِ أَنْ يُزَوِّجَ ابْنَتَهُ الْبِكْرَ الْبَالِغَ مِنْ غَيْرِ استيمار، وَبِهِ قَالَ مَالِكٌ وَاحْتَجَّ بِهَذِهِ الْآيَةِ، وَهُوَ ظَاهِرٌ قَوِيٌّ فِي الْبَابِ، وَاحْتِجَاجُهُ بِهَا يَدُلُّ عَلَى أَنَّهُ كَانَ يُعَوِّلُ عَلَى الْإِسْرَائِيلِيَّاتِ، كَمَا تَقَدَّمَ

incident that Mālik does *not* affirm, including that a person can marry off one of two daughters without specifying whom, marrying a girl with a contract of service (إجارة), requiring fulfillment of a contract of service for marriage based on one of two possible time frames, and marrying off a daughter for service done to the father. It's also not known, says Ibn Ḥazm, whether the girl in question was previously-unmarried (بكر) or married prior (ثيب), or perhaps unmarried but of an age where even Mālik would require her consent (بكر عانس). Ibn Ḥazm says that Mālik's usage of this example should serve as a lesson for others, likely because it demonstrates the rather selective usage of pre-Muḥammadan law for what he sees as the jurist's end.[386]

There are other examples of the Imām's engagement with pre-Muḥammadan law that are worth noting briefly. In a section in *al-Muwaṭṭa'* on the special time on Friday (Jum'ah) when God answers His servant's prayers (per a ḥadīth of the Prophet ﷺ), Mālik relays a report from Abū Hurayra in which the Companion learns that the special status of this time in Jum'ah is confirmed by Ka'b al-Aḥbār and 'Abd Allāh b. Salām as also being attested to in the Torah. 'Abd Allāh b. Salām then conveys that the specific time is known to him to be the last part of *Jum'ah*, i.e. before the sunset (this knowledge seemingly coming to him from his knowledge as a Jewish convert). Abū Hurayra then questions how this is possible, when prayer is not allowed to happen in this space of time, and 'Abd Allāh suggests that prayer can mean more than just the ritual act that cannot be performed at that time, citing a ḥadīth where the Prophet ﷺ says that one

---

[386] See al-Andalusī al-Ẓāhirī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 5, pgs. 170-171.; Ibn Ḥazm transmits the prior position of Mālik via isnad (أحمد من محمد بن الجسور ← وهب بن مسرة ← ابن وضاح ← سحنون ← ابن القاسم). I have been unable to find it in an earlier source, and a reference to this verse is not found in the relevant discussion in *al-Mudawannah*, where Mālik's opinions were transmitted by Saḥnūn and Ibn al-Qāsim who also appear in Ibn Ḥazm's isnād. See: Abū Sa'īd 'Abd al-Salām Saḥnūn, *Al-Mudawwanah*, 1st ed., 4 vols. (Dār al-Kutub al-'Ilmiyyah, 1994). Vol. 2, pg. 100; Al-Qurtubī (d. 671 AH) notes this reference to Moses' story from Mālik, and suggests from it that Mālik relied on *isrā'īliyyāt* (واحتجاجه بها يدل على أنه كان يعول على الإسرائيليات). See: Abū 'Abd Allāh al-Qurtubī, *Al-Jāmi' Li Aḥkām al-Qur'ān*, ed. Aḥmad al-Bardūnī and Ibrāhīm Aṭfīsh, 2nd ed., 20 vols. (Cairo: Dār al-Kutub al-Maṣriyyah, 1964). Vol. 13, pg. 271.
The verses from the Qur'ān related to this are 28:27-28.

who sits waiting for prayer is in a state of prayer. Mālik's citation of this report would be a reason for Muslims to engage in additional worship during this time over others, and the basis of this information appears to be non-Muḥammadan and from the knowledge of Jewish converts.[387] Elsewhere Mālik reports that Jesus ﷺ advised the Children of Israel to consume clean water, wild legumes, bread of barley, but abstain from wheat bread because they would not be grateful for it.[388] It is not clear what function this report held for Mālik, but Abū al-Walīd al-Bājī (d. 474) interprets the report as advocating for some form of asceticism and restricted diet, and comments that it does not contradict the Muḥammadan sharī'ah, because for some people such food practice would be recommended.[389] We now turn to a fascinating case of pre-Muḥammadan law being engaged with by Imām Mālik involving the case of the slaughter of the Jews.

Ibn Ḥazm, in his discussion on pre-Muḥammadan law, points out a significant case of pre-Muḥammadan law being referenced by the Mālikīs which we can trace to the Imām, and that is the Mālikī dislike or prohibition on meat acquired from the slaughter of Jews, where the slaughtered meat is considered impermissible according to *their* own laws. Ibn Ḥazm cites this example along with two others in his discussion of pre-Muḥammadan law to show that the jurists occasionally had fatwas in which they did in fact refer to pre-Muḥammadan law from a source other than the Qur'ān and authentic ḥadīth.[390] In this case, the meats may be impermissible for the Jews (and also the Muslims receiving it from them) because they've been classified as one of the animals or fats (*ḥelev*) prohibited to the Jews in the past as a form of punishment for their

[387] Mālik's *Muwaṭṭa'*, vol. 2, pg. 150.; This is also transmitted by Imām Aḥmad in his *Musnad*, vol. 16, pg. 204-205, among others.
[388] Ibid., vol. 5, pg. 1364.
[389] Abū al-Walīd al-Bājī, *Al-Muntaqā: Sharḥ al-Muwaṭṭa*, 1st ed., 7 vols. (Egypt: Maṭba'at al-Sa'āda, 1332). Vol. 7, pg. 246.
[390] Ibn Ḥazm in *al-Iḥkām* (vol. 5, pgs. 160-161):
وأما ما ليس في القرآن ولا صح عن النبي صلى الله عليه وسلم فما نعلم من يطلق إجازة العمل بذلك إلا أن قوما أفتوا بها في بعض مذاهبهم فمن ذلك...

disobedience (بغيهم) according to the Muḥammadan sources, e.g. in Qur'ān 5:146,[391] or something that they *themselves* deem impermissible as signified through their own practice of their laws, as some defect to the lungs, e.g., that might render it *ṭerefah* (طريف), and thus unkosher in Jewish law.[392] Ibn Ḥazm is astonished by the position, pointing out that a prohibition against *ṭerefah* is not even agreed upon by the Jews themselves whose practice is seemingly the basis of this avoidance: the Rabbinites may prohibit this meat, but not the Karaites (*al-'Ānāniyyah*), the *'Īsāwiyyah*[393] or the Samaritans who are in agreement that it is consumable. He continues: "These [Mālikīs] – may God give good to them and us – are careful not to eat from what the Jews have slaughtered where the Shaykhs of the Jews – may God curse them – had a disagreement on. They fear going against Hillel and Shammai, the two shaykhs of the Rabbinites! God have mercy on us (حسبنا الله ونعم الوكيل)!" According to Ibn Ḥazm, the Muḥammadan way and scripture abrogate all that came before, and the laws of the Jews are categorically of no consequence for the Muḥammadans, let alone their *opinions* regarding those laws.[394] Ibn Ḥazm's sarcasm here is fully apparent, knowing full well that the position regarding *ṭerefah* is not based in any study of Jewish legal disagreement, but rather the *observed* practice of the Rabbinites. But his point is clear, it is deference to Jewish understandings of their law that is the basis of this opinion, which has no basis in Islamic texts for him. David Freidenreich[395]

---

[391] وَعَلَى الَّذِينَ هَادُوا حَرَّمْنَا كُلَّ ذِي ظُفُرٍ ۖ وَمِنَ الْبَقَرِ وَالْغَنَمِ حَرَّمْنَا عَلَيْهِمْ شُحُومَهُمَا إِلَّا مَا حَمَلَتْ ظُهُورُهُمَا أَوِ الْحَوَايَا أَوْ مَا اخْتَلَطَ بِعَظْمٍ ۚ ذَٰلِكَ جَزَيْنَاهُم بِبَغْيِهِمْ ۖ وَإِنَّا لَصَادِقُونَ ۝

And for those who are Jews we forbade every animal of uncloven hoof, and of the cattle and sheep We forbade to them their fat, except what adheres to their backs or their entrails or what is joined to a bone. Thus We repaid them for their disobedience, and We are truthful۝

[392] See: al-Andalusī al-Ẓāhirī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 5, pg. 161.; For Talmudic discussions on *Ṭerefah* and the issue of defective lungs (which appears to have been the *ṭerefah*-rendering quality often referred to in the Muslim sources), see, e.g., *Babylonian Talmud, Chullin* 46b and nearby passages on lung defects.

[393] Referenced earlier. A group of Jews who believed in the Prophet's status as a legitimate prophet for the gentiles.

[394] Ibn Ḥazm's *Iḥkām*, vol. 5, pgs. 161-162.

[395] David M. Freidenreich, *Foreigners and Their Food: Constructing Otherness in Jewish, Christian, and Islamic Law* (Berkeley & London: University of California Press, 2011). pgs. 184-190

discusses the Mālikī case in a dedicated work on dietary law, and so does Camilla Adang[396] in a shorter article on Ibn Ḥazm's criticisms regarding it. Despite this, it appears that this case's relationship to the question of Muslim reference to pre-Muḥammadan law has been generally unacknowledged, even though it is a very open case of Muslim jurists referring to the practice of another community. In fact, even within the Islamic tradition, Ibn Ḥazm is one of the only authors of Islamic legal theory to explicitly recognize the connection between this case and the juristic debates on pre-Muḥammadan law, and this is likely because the Mālikī position is not that Jewish slaughter laws should be formally deferred to for understanding general Islamic dietary laws, the rules for these being different and theoretically self-contained, but rather, this position was relevant only when meat was consumed *from* the Jews. It was also likely born out of specific Qur'ānic verses related to the food of the People of the Book, in addition to internal Mālikī legal arguments regarding intentionality vis-a-vis ritual sacrifice. The position also appeared to ensure communal boundaries and strength.

In his *al-Muḥallā* Ibn Ḥazm attributes to Imām Mālik the view that it is religiously prohibited (لا يحل) to consume the prohibited *ḥelev* fats or impermissible meats of the Jews that they slaughter.[397] While this ascription to Mālik is noted in a handful of Mālikī works as one of the views ascribed to him regarding *ḥelev*,[398] the majority of Mālikī texts denote Mālik's position

[396] Camilla Adang, "Ibn Ḥazm's Criticism of Some 'Judaizing' Tendencies Among the Mâlikites," in *Medieval and Modern Perspectives on Muslim-Jewish Relations*, ed. Ronald L. Nettler (Harwood Academic Publishers, in cooperation with the Oxford Centre for Postgraduate Hebrew Studies, 1995), 1–15.; Note that Adang appears to translate "ملتصق الرئة بالجنب" as a lung "found to be stuck to its chest wall."

[397] See Ibn Ḥazm al-Andalusī al-Ẓāhirī, *Al-Muḥallā Bi al-Āthār*, 12 vols. (Beirut: Dār al-Fikr, n.d.). Vol. 6, pgs. 143-146.; Ibn Ḥazm attributes to Mālik the position that شحوم (*ḥelev*/suet in this context?) of Jewish-slaughtered meat was impermissible to consume, along with anything else the Jews slaughtered but deemed impermissible for themselves.

[398] In his book *al-Ma'ūnah*, Al-Qāḍī 'Abd al-Wahhāb says that Mālik viewed شحوم from the Jews as disliked and not prohibited, in agreement with the other Mālikī texts, but a separate riwāyah of a weaker status (قيل) has him prohibit it outright. See: al-Qāḍī Abū Muḥammad 'Abd al-Wahhāb, *Al-Ishrāf 'alā Nukat Masā'il al-Khilāf*, ed. al-Ḥabīb Ibn Ṭāhir, 1st ed., 2 vols. (Dār Ibn Ḥazm, 1999). Vol. 2, pg. 922.; See also 'Abd al-Wahhab's *al-Ma'ūnah*, Pg. 707.; Muḥammad b. Rushd also notes two positions from Mālik regarding this. See: Abū al-Walīd Muḥammad b. Aḥmad

as being mere dislike and *not* prohibition for these meats[399], religious prohibition being the position of some of his followers instead.[400] According to the key early Mālikī text *al-Mudawwanah*, it appears that Imām Mālik, according to his pupil Ibn al-Qāsim (d. 191 AH), had a change in thought regarding the issue, originally being fine with the meat that Jews slaughtered but deemed impermissible for themselves due to an issue with the lungs or another issue (*ṭerefah*), but that he later disliked the consumption of such meat (يَكْرَهُهُ). Ibn al-Qāsim's own position was that meat that Jews in particular prohibited on themselves should not be consumed (لَا يُؤْكَلَ) by Muslims if they (the Jews) slaughtered it, without using words religiously prohibiting them, such as "يحرم" or "لا يحل".

Unfortunately, given the terseness of the text of *al-Mudawwanah* regarding Mālik's position, we are not provided with a formal legal rationale from Mālik. As several later Mālikīs will point out, a relevant Qur'ānic verse on the food of the *Ahl al-Kitāb* and an underlying legal principle regarding intentionality in slaughter may very well underpin this position, which we will explore. Al-Shāfi'ī, Mālik's own pupil, references this same legal issue and the Qur'ānic verse we will look at, suggesting that the verse may have in fact been the underlying reason for

---

Ibn Rushd al-Qurṭubī, *Bidāyat Al-Mujtahid Wa Nihāyat al-Muqtaṣid*, 4 vols. (Cairo: Dār al-Ḥadīth, 2004). Vol. 2, pg. 213.; See also: Abū al-Ḥasan 'Alī b. Sa'īd al-Rajrājī, *Manāhij Al-Taḥṣīl Wa Natā'ij Laṭā'if al-Ta'wīl Fī Sharḥ al-Mudawwanah Wa Ḥall Mushkilātihā*, ed. Aḥmad Ibn 'Alī and Abū al-Faḍl al-Dimyāṭī, 1st ed., 10 vols. (Dār Ibn Ḥazm, 2007). Vol. 3, pg. 235.

[399] See, e.g., Saḥnūn, Vol. 1, pg. 544; Ibn Abī Zayd al-Qayrawānī, *Matn Al-Risālah* (Dār al-Fikr, n.d.). Pg. 82; Ibn Abī Zayd al-Qayrawānī, *Al-Nawādir Wa al-Ziyādāt 'alā Mā Fī al-Mudawwanah Min Ghayrihā Min al-Ummahāt*, ed. Muḥammad Ḥajjī, 1st ed., vol. 4, 15 vols. (Beirut: Dār al-Gharb al-Islāmī, 1999). Vol. 4, pg. 365; al-Qāḍī Abū Muḥammad 'Abd al-Wahhāb al-Baghdādī al-Mālikī, *Al-Ma'ūnah 'alā Madhhab 'Ālim al-Madīnah al-Imām Mālik Ibn Anas*, ed. Ḥumaysh 'Abd al-Ḥaqq, 3 vols. (Makkah: al-Maktabah al-Tijāriyyah, Muṣtafā Aḥmad al-Bāz (PhD Dissertation at the Umm al-Qurā University), n.d.). Pg. 707.; al-Qāḍī Abū Muḥammad 'Abd al-Wahhāb, *'Uyūn al-Masā'il*, ed. 'Alī Muḥammad Ibrāhīm Būrūybah, 1st ed. (Beirut: Dār Ibn Ḥazm, 2009). Pg. 498.; Abū 'Umar Yūsuf b. 'Abd Allāh Ibn 'Abd al-Barr, *Al-Kāfī Fī Fiqh Ahl al-Madīnah*, ed. Muḥammad Muḥammad Aḥīd Walad Mādīk al-Mūrītānī, 2nd ed., 2 vols. (Riyadh: Maktabat al-Riyādh al-Ḥadīthah, 1980). Vol. 1, pg. 438.; Shihāb al-Dīn Aḥmad b. Idrīs al-Qarāfī, *Al-Dhakhīrah Li al-Qarāfī*, ed. Muḥammad Bū Khubzah, 1st ed., vol. 4, 14 vols. (Beirut: Dār al-Gharb al-Islāmī, 1994). Vol. 4, pg. 123.

[400] For some of the Mālikī opinions prohibiting ḥelev, ṭerefah and the like from Jewish slaughter, see, e.g., al-Lakhmī's (d. 478 AH) *al-Tabṣirah*: Abū al-Ḥasan al-Lakhmī, *Al-Tabṣirah*, ed. Aḥmad 'Abd al-Karīm Najīb, 1st ed., 14 vols. (Qatar: Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyyah, 2011). Vol. 4, pg. 1537.

Mālik's position. In addition to the Qur'ānic basis and the legal rational, it is also possible that Mālik's position was based in concerns of his regarding communal identity and strength. We learn from Mālik's pupils that the Imām generally disliked that the slaughtered meat of the People of the Book (Jews and Christians) be consumed *in general*, or purchased from their butchers, without prohibiting it outright. He apparently cited the precedent of 'Umar, who reportedly addressed various regions of the empire that Jews and Christians should not be money changers or butchers in the Muslim markets or have dominating position in their markets (وأن يقاموا من الأسواق), because God has made the Muslims self-sufficient (فَإِنَّ اللَّهَ تَبَارَكَ وَتَعَالَى قَدْ أَغْنَانَا بِالْمُسْلِمِينَ).[401] The idea that Muslims should eat the left over *ṭerefah* or discarded fats of meat slaughtered by Jews might also have been perceived as a sign of symbolic inferiority, or perhaps an act of exploitation, even if consuming these meats was permissible in Muḥammadan law. Apparently the position of two of Imām Mālik's students, Muṭarrif b. 'Abd Allāh (d. ca. 220 AH) and Ibn al-Mājishūn (d. 213), was that purchasing meat from Jewish butchers was technically permitted, though the Muslim doing so would be blameworthy and doing themselves harm (فهو رجل سوء، ولا يفسخ شراؤه، وقد ظلم نفسه). However, the purchase of meat from the Jews that they themselves did not eat (مما لا يأكلونه), e.g., *ṭerefah*, would be void. The later Ibn Shās al-Mālikī (d. 616 AH) explains that while this latter purchase is not something that would outwardly be prohibited, the purchase is made void because it is part of the Islamic obligation to "command the right and forbid the wrong" (الأمر بالمعروف والنهي عن المنكر). Ibn Shās's reading might be that because it is prohibited on the Jews, that Muslims must hold them to it, an idea that we find some

[401] See Saḥnūn, *Al-Mudawwanah*. Vol. 1, pgs. 544-545.; Regarding the report from 'Umar, the 8th century Mālikī Khalīl b. Isḥāq al-Jundī's (d. 776 AH) interprets the reason for the Caliph's proclamation against Jews operating in select capacities in the Muslim markets because they will not advise Muslims as to what is best for them, and because their money changing involves interest. See: Khalīl Ibn Isḥāq al-Jundi, *Al-Tawḍīḥ Fī Sharḥ al-Mukhtaṣar al-Far'ī Li Ibn al-Ḥājib*, ed. Aḥmad b. 'Abd al-Karīm Najīb, 1st ed., 8 vols. (Markaz Najībawayh li al-Makhṭūṭāt wa Khidmat al-Turāth, 2008). Vol. 3, pg. 221.

of the Ḥanbalīs in support of, as we will encounter later. As will be noted, the Prophet ﷺ condemned the Jews for finding loopholes to sell *ḥelev* when it was prohibited on them.[402] Barring the purchase of such food stuff would be a way of confirming communal boundaries and emphasizing the difficult rules that the Qur'ān suggests were imposed on the Jews because of their own selves and because of divine punishment.

There appear to have been 4 positions attested to in the Mālikī *madhhab* regarding the status of this meat from the Jews, supported by either Mālik or the early followers of his school: that this meat was [1] disliked to consume without being prohibited (e.g. Mālik, and Ibn al-Qāsim (d. 191 AH)[403] in one narration), which Ibn Rushd al-Mālikī[404] understood as still being technically a position of "allowance", [2] accepted with no issue (e.g., Mālik's pupils 'Abd Allāh b. Wahb (d. 197 AH), Ibn Nāfi' (d. 206 AH) and Ibn 'Abd al-Ḥakam[405] (d. 214 AH)), [3] prohibition (the position of Ibn al-Qāsim, Ibn Kinānah (d. 186 AH), and a narration from Mālik) and [4] a combination of positions that drew a distinction between what was clearly prohibited on the Jews per the Muḥammadan sources - which *was* prohibited or disliked for Muslims to consume from their slaughter - and what the Jews prohibited on themselves outside of these

---

[402] Ibn Abī Zayd al-Qayrawānī, *Al-Nawādir Wa al-Ziyādāt 'alā Mā Fī al-Mudawwanah Min Ghayrihā Min al-Ummahāt*, ed. Muḥammad Ḥajjī, 1st ed., vol. 4, 15 vols. (Beirut: Dār al-Gharb al-Islāmī, 1999). Vol. 4, pg. 367; Abū Muḥammad Jalāl al-Dīn Ibn Shās, *'Aqd al-Jawāhir al-Thamīnah Fī Madhhab 'Ālim al-Madīnah*, ed. Ḥamīd Ibn Muḥammad Laḥmar, 1st ed., 3 vols. (Beirut: Dār al-Gharb al-Islāmī, 2003). Vol. 2, pg. 390.

[403] See: Abū al-Walīd Muḥammad b. Aḥmad Ibn Rushd al-Qurṭubī, *Al-Bayān Wa al-Taḥṣīl Wa al-Sharḥ Wa al-Tawjīh Wa al-Ta'līl Li Masā'il al-Mustakhrajah*, ed. Muḥammad Ḥajjī, 2nd ed., 20 vols. (Beirut: Dār al-Gharb al-Islāmī, 1988). Vol. 3, pg. 366.

قال ابن القاسم: وأنا ليس يعجبني أكله ولا أراه حراما ... قال محمد بن رشد: لابن القاسم في المدونة أنه لا يؤكل

[404] See e.g., Muḥammad b. Rushd's *Bayān*, vol. 3, pg. 366.;

[405] Al-Qayrawānī says that it was Muḥammad b. 'Abd al-Ḥakam, which may be Muḥammad b. 'Abd Allāh b. 'Abd al-Ḥakam (d. 268 AH), but other sources indicate that it was Ibn 'Abd al-Ḥakam (d. 214 AH), which would be his father and pupil of Imām Mālik. See: Ibn Abī Zayd al-Qayrawānī, *Al-Nawādir Wa al-Ziyādāt 'alā Mā Fī al-Mudawwanah Min Ghayrihā Min al-Ummahāt*, ed. Muḥammad Ḥajjī, 1st ed., vol. 4, 15 vols. (Beirut: Dār al-Gharb al-Islāmī, 1999). Vol. 4, pg. 368.; Abū al-Walīd Muḥammad b. Aḥmad Ibn Rushd al-Qurṭubī, *Bidāyat Al-Mujtahid Wa Nihāyat al-Muqtaṣid*, 4 vols. (Cairo: Dār al-Ḥadīth, 2004). Vol. 2, pg. 213.; Khalīl Ibn Isḥāq al-Jundi, *Al-Tawḍīḥ Fī Sharḥ al-Mukhtaṣar al-Far'ī Li Ibn al-Ḥājib*, ed. Aḥmad b. 'Abd al-Karīm Najīb, 1st ed., 8 vols. (Markaz Najībawayh li al-Makhṭūṭāt wa Khidmat al-Turāth, 2008). Vol. 3, pg. 219

confirmed prohibitions (e.g., *ṭerefah*), which may have been either allowed or merely disliked (e.g., Mālik's pupil Ashhab b. 'Abd al-'Azīz (d. 204) had issue with the former, and not the latter, and Ibn Habib (238 AH) appears to have prohibited the former and viewed the latter as disliked).[406] In addition to these four positions, the case of animal fat appears to have posed a separate set of problems as noted by later jurists, because it was technically one of the meat products prohibited on the Jews in the Qur'ān and the ḥadīth, but, was technically *still part* of meat that might otherwise be permitted from the Jews, an issue that will be addressed shortly. There was also a known report among the Mālikīs that the Prophet ﷺ allowed for Muslims to keep شحوم/*ḥelev* that was from the Jews and found in Khaybar, possibly offering a specific textual justification for this meat cut over others. The uniqueness of ḥelev is also likely why the Mālikī Ibn al-Jallāb (d. 378 AH), e.g., was against the consumption of camel meat slaughtered by Jews (camel meat being unkosher for the Jews per the Qur'ān's statements on hooved animals or animals that were ذو ظفر) but viewed the ḥelev of Jews as being merely disliked.[407] There were thus a number of issues converging in this discussion over the slaughter of the Jews: Qur'ānic verses about the slaughter of the People of the Book, legal conceptions of the place of intentionality in animal sacrifice, the possibility that an animal slaughtered by the Jews could have both prohibited and permissible parts to it as with *ḥelev*, and the place of *Jewish* understandings of their own Kosher laws.

We turn briefly to the distinction made by some Mālikī jurists between the prohibitions placed on the Jews according to the Muḥammadan sources, and prohibitions that the Jews themselves defined as coming from their laws but were not attested to in the Muḥammadan

[406] See al-Qayrawānī's *Nawādir*, vol. 4, pgs. 367-368.; Muḥammad b. Rushd's *Bidāyat al-Mujtahid*, vol. 2, pg. 213.; Muḥammad b. Rushd's *Bayān*, vol. 3, pg. 366

[407] See: 'Ubayd Allāh b. al-Ḥusayn Ibn al-Jallāb al-Mālikī, *Al-Tafrī' Fī Fiqh al-Imām Mālik b. Anas*, ed. Sayyid Kasrawī Ḥasan, 1st ed., 2 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2007). Vol. 1, pg. 319.

sources. The Mālikī Abū Muḥammad al-Qayrawānī (d. 386 AH) reports to us a statement from Ibn Ḥabīb that differentiates between [1] those meats and fats from the Jews that were prohibited on Muslims (لا تحل) to consume because their prohibition on the Jews was known from the Muḥammadan texts (Qur'ān 5:146[408] and a ḥadīth that will be referenced), and [2] those meats where the Muḥammadan evidence was silent but where the Jews themselves found something impermissible (i.e., according to their own understandings of *their* law), which was disliked for Muslims, but not religiously prohibited. As for the Qur'ānic prohibitions on the Jews – which some of the Mālikīs believed *were* the same as the prohibitions given in the Torah[409] - these included certain types of animals which were described as having a certain type of "hoof/nail" (ذي ظفر) in the Qur'ānic verse. This would seem to be a loose parallel to the issue of the un-split hoof that is an important part of Torah rules on the *kashrut* of land animals.[410] Al-Qayrawānī cites the early Mālikī figure Ibn Ḥabīb (d. 238 AH), who, along with the well-known exegete Mujāhid b. Jabr (d. 104), defined the animals whose prohibition on the Jews could be inferred by

---

408 وَعَلَى الَّذِينَ هَادُوا حَرَّمْنَا كُلَّ ذِي ظُفُرٍ ۖ وَمِنَ الْبَقَرِ وَالْغَنَمِ حَرَّمْنَا عَلَيْهِمْ شُحُومَهُمَا إِلَّا مَا حَمَلَتْ ظُهُورُهُمَا أَوِ الْحَوَايَا أَوْ مَا اخْتَلَطَ بِعَظْمٍ ۚ ذَٰلِكَ جَزَيْنَاهُم بِبَغْيِهِمْ ۖ وَإِنَّا لَصَادِقُونَ ۝

And for those who are Jews we forbade every animal of uncloven hoof, and of the cattle and sheep We forbade to them their fat, except what adheres to their backs or their entrails or what is joined to a bone. Thus We repaid them for their disobedience, and We are truthful ۝

409 See, e.g.: al-Lakhmī's *Tabṣirah*, vol. 4, pg. 1538; Muḥammad b. Rushd's *Bidāyat al-Mujtahid*, vol. 2, pg. 212-213; al-Zarqānī's *Sharḥ 'ala Mukhtaṣar al-Khalīl*, vol. 3, pg. 12; Muḥammad b. Aḥmad b. 'Arafah al-Dasūqī, *Ḥāshiyat Al-Dasūqī 'alā al-Sharḥ al-Kabīr*, 4 vols. (Dār al-Fikr, n.d.). Vol. 2, pg. 102.; Muḥammad b. Rushd's *Bayān*, vol. 3, pg. 366.; Ibn Rushd in his *Bidāyat*, e.g., draws a distinction between what the Jews were prohibited in the Torah (i.e., the Qur'ānic verse), and what they prohibited on themselves:

...أَوْ كَانَتِ الذَّبِيحَةُ مِمَّا حُرِّمَتْ عَلَيْهِمْ بِالتَّوْرَاةِ كَقَوْلِهِ تَعَالَى: {كُلَّ ذِي ظُفُرٍ} [الأنعام: 146] أَوْ كَانَتْ مِمَّا حَرَّمُوهَا عَلَى أَنْفُسِهِمْ مِثْلَ الذَّبَائِحِ الَّتِي تَكُونُ عِنْدَ الْيَهُودِ فَاسِدَةً مِنْ قِبَلِ خِلْقَةٍ إِلَهِيَّةٍ... وَأَمَّا إِذَا كَانَتِ الذَّبِيحَةُ مِمَّا حُرِّمَتْ عَلَيْهِمْ، فَقِيلَ: يَجُوزُ، وَقِيلَ: لَا يَجُوزُ، وَقِيلَ: بِالْفَرْقِ بَيْنَ أَنْ تَكُونَ مُحَرَّمَةً عَلَيْهِمْ بِالتَّوْرَاةِ، أَوْ مِنْ قِبَلِ أَنْفُسِهِمْ أَعْنِي بِإِبَاحَةِ مَا ذَبَحُوا مِمَّا حَرَّمُوا عَلَى أَنْفُسِهِمْ وَمَنْعِ مَا حَرَّمَ اللَّهُ عَلَيْهِمْ، وَقِيلَ: يُكْرَهُ وَلَا يُمْنَعُ، وَالْأَقَاوِيلُ الْأَرْبَعَةُ مَوْجُودَةٌ فِي الْمَذْهَبِ: الْمَنْعُ عَنِ ابْنِ الْقَاسِمِ، وَالْإِبَاحَةُ عَنِ ابْنِ وَهْبٍ وَابْنِ عَبْدِ الْحَكَمِ، وَالتَّفْرِقَةُ عَنْ أَشْهَبَ.

And as articulated by al-Dasūqī:

لِأَنَّ اللَّهَ سُبْحَانَهُ حَرَّمَهَا عَلَيْهِمْ فِي التَّوْرَاةِ عَلَى مَا أَخْبَرَ بِهِ الْقُرْآنُ الْعَظِيمُ فَلَيْسَتْ مِمَّا يَأْكُلُونَ

410 See Leviticus 11:3-8 and Deuteronomy 14:4-8. Note that the requirement of chewing cud, found in the Torah, is not referenced in the Qur'ānic verse. The Mālikīs engaging with this verse vis-à-vis this topic assume the contents of the verse *are* what are given in the Torah, at least the original, uncorrupted Torah as they see it. See, e.g., Abū al-Walīd Muḥammad b. Aḥmad Ibn Rushd al-Qurṭubī, *Bidāyat Al-Mujtahid Wa Nihāyat al-Muqtaṣid*, 4 vols. (Cairo: Dār al-Ḥadīth, 2004). Vol. 2, pg. 212.

the Qur'ānic verse's reference to animals featuring the described hoof/nail: camels, wild donkeys, ostriches, geese and anything that does not have an un-split hoof (مشقوق الخف) or foot (منفرج القائمة). Ibn Ḥabīb adds that chickens and small birds have 'open feet' (انفرجت قوائمها) which is why they are eaten by the Jews and not included in this Qur'ānic prohibition. Ibn Ḥabīb's reference to the lived practice of the Jews regarding chickens and small birds in interpreting the Qur'anic verse is noteworthy, but appears to be incorrectly applied, given that the *kashrut* of birds (as opposed to land animals) are based on separate biblical rules unrelated to the cloven hoof, which is why geese and ducks are in fact deemed kosher among most Jews, even though Ibn Ḥabīb's definition would suggest otherwise[411]. In addition to the Qur'ānic verse which provided the Muslims a (Muḥammadan) idea of Jewish meat prohibitions, there was also a famous ḥadīth where the Prophet ﷺ condemns the Jews who were prohibited from certain animal fats (الشحوم), but who melted them in order to resell them, thus finding a legal loophole.[412] Al-Qayrawānī defines the melted fats that can be interpreted from this ḥadīth, along with the specific fats that could be inferred from the prior Qur'ānic verse, which were those fats that adhere to the backs, entrails and bones of an animal. It is *these* animals inferred above from the Qur'ān, along with *these* fats that were defined by the Qur'ān and ḥadīth, that are religiously prohibited on the Muslims (فلا تحل لنا) to consume or derive monetary benefit from according to Ibn Ḥabīb. This is separate from specific meats and fats prohibited by the Jews themselves that were *not* defined by the Qur'ān and ḥadīth. These would be considered disliked to eat or derive

[411] The rules regarding birds are separate from the issue of the un-cloven hoof (and cud-chewing) associated with land animals in rules of *kashrut*. Leviticus 11:13-19 and Deuteronomy 14:11-18 note specific birds that are kosher, and Talmudic discussions spell out features of kosher birds. For a fun article on the kosher discussions surrounding the Muscovy duck found in the New World, as opposed to other ducks, see: Dan Nosowitz, "Is This Duck Kosher? It's Complicated," *Atlas Obscura*, January 4, 2019, https://www.atlasobscura.com/articles/is-muscovy-duck-kosher.

[412] See, e.g., al-Bukhārī (vol. 3, pg. 82 & vol. 4, pg. 170) and Muslim (vol. 3, pg. 1207):
قَاتَلَ اللَّهُ اليَهُودَ حُرِّمَتْ عَلَيْهِمُ الشُّحُومُ، فَجَمَلُوهَا فَبَاعُوهَا

benefit from monetarily, but not religiously prohibited, likely because of their disputed evidentiary basis. Al-Qayrawānī suggests that a distinction between these two categories was present from the generation of Mālik's pupils, as Ashhab b. 'Abd al-'Azīz (d. 204) only had issue with what was prohibited on the Jews according to the Muḥammadan textual evidence, as opposed to what the Jews prohibited separate from this. Ibn al-Qāsim did not approve of eating any of their prohibited meat as defined by Muḥammadan sources or themselves, whereas 'Abd Allāh b. Wahb (d. 197 AH) and Muḥammad b. 'Abd al-Ḥakam (d. 268 AH) on the other hand, had no issue with either classes of meats.[413]

While Mālik's dislike in *al-Mudawwanah* regarding *ḥelev* (شحوم) in particular did not appear to be clearly joined with an articulated rationale, the Mālikīs ascribed mainly two for the position. I will first note a legal and non-scriptural rationale that was concerned with intentionality and animal sacrifice, followed by a Qur'ānic justification for the position. As for the former, Al-Qāḍī 'Abd al-Wahhāb (d. 422 AH), al-Lakhmī (d. 478 AH) and others have suggested that the argument against consuming *ḥelev* from the Jews is related to the question of intentionality in slaughter. This discussion falls in line with Mālikī discourse elsewhere regarding intentionality and its effect on animal sacrifice. Mālik, e.g., believed that if a man was targeting a predatory animal for kill (unlawful to consume), but it turned out that he actually killed a dear (lawful to consume), the dear should not be eaten because of the original intention.[414] Al-Lakhmī (d. 478 AH) expounds on this example (using a wild donkey, also lawful to consume, as an example instead of a dear), saying that the situation can take three forms: [A] if the man intended merely to kill the predatory animal (i.e. he had no intention to make it

[413] See: Ibn Abī Zayd al-Qayrawānī, *Al-Nawādir Wa al-Ziyādāt 'alā Mā Fī al-Mudawwanah Min Ghayrihā Min al-Ummahāt*, ed. Muḥammad Ḥajjī, 1st ed., vol. 4, 15 vols. (Beirut: Dār al-Gharb al-Islāmī, 1999). Vol. 4, pgs. 365-368;
[414] *Al-Mudawwanah,* vol. 1, pg. 540

permissible for consumption through killing it), he cannot eat the wild donkey meat; [B] if the man mistakenly intended to ritually kill the predatory animal and purify its meat for consumption through hunting it (which he might believe if he didn't realize that the predatory animal was forbidden to eat, or if he thought it was merely disliked and not prohibited to eat), than the wild donkey he killed in the end is made lawful to eat, since he intended lawful ritual killing at first; and [C] if he intended only to purify the skin of the predatory animal, then only the skin of the donkey would be purified for use. We learn from his discussion that the hunter's *intention* impacts whether the end meat was purified or not for consumption, irrespective of the fact that the animal he ended up killing was in theory consumable.[415] The discussion has relevance here, as the Jewish slaughterer's intention, especially regarding what *parts* of the meat would become kosher through his animal sacrifice, are parallel to these cases. *Ḥelev* was not permissible for the Jews to consume but was still *part* of the otherwise Kosher animal that was being slaughtered.

As 'Abd al-Wahhab discusses, a Muslim who slaughters a sheep does so with the belief that the *meat* becomes lawful, but not the blood, which is assumed to be unlawful. His beliefs and intentions might be assumed to impact the ultimate status of the meat and its blood, which become lawful and unlawful respectively. Similarly, a Jew will slaughter an otherwise Kosher animal without believing that the *ḥelev* will be made lawful through the act of slaughter given his conception of the laws given to him, since the *ḥelev* is unlawful for him in his mind. This would be a justification for prohibiting the consumption of *ḥelev* received from Jewish slaughter, because it would be comparable to the blood of Muslim slaughter which was affected by the underlying belief. This argument obviously gives strong authority to the beliefs of the individual Jewish slaughterer. As al-Lakhmī points out, this type of argument can only be made regarding

[415] Al-Lakhmī in *al-Tabṣirah*, vol. 4, pg. 1492

*ḥelev* if one accepts that the purifying effect of the ritual slaughter can be distributed differently on individual units of the animal. I.e., is it possible for the act of slaughter to purify the meat separate from the blood or *ḥelev*? It also assumes here that fat is categorized as separate from meat in the way blood is (and important to note, Mālik believed animal fats were included under the definition of meat, not separate[416]). If one does *not* accept that the ritual slaughter can affect individual units of an animal differently (لا تتبعض), then if the one slaughtering intends to make the meat permissible, it won't make a difference what he believes regarding the fat or some other meat class, because this would also be deemed permissible, being the same as the meat.[417] By this logic, the *ḥelev* that is prohibited for the Jews would be permitted for Muslims to consume. 'Abd al-Wahhāb also recognizes an obvious argument for why *ḥelev* or similarly prohibited meats of the Jews would be permissible for Muslims to consume, and that is that a slaughterer's beliefs and intentions may in fact *not* impact the end product, which is why a Muslim who (incorrectly) believes he is making the meat of an animal lawful through ritual sacrifice but *not* its fat will have no impact on the lawful status of the fat, which is permitted for Muslims to consume irrespective of the Muslim slaughterer's beliefs regarding it. 'Abd al-Wahhāb uses some of the prior points to offer a reason for why the *ḥelev* would be deemed *disliked* as Mālik viewed, and not clearly permitted or prohibited.[418] He suggests that the position of an in-between dislike is because one may view that intentionality in sacrifice is *preferred* but not necessary, and because the case of *ḥelev* for the Jew is similar *yet also dissimilar* to the blood that a Muslim

[416] Mālik reportedly said that the one who made a vow not to eat meat (لحم) and then consumes animal fat (الشحوم) has broken his oath. In other words, the fat is considered meat. See: *al-Mudawwanah*, vol. 1, pg. 601.
[417] Al-Lakhmī in *al-Tabṣirah*, vol. 4, pg. 1492.
[418] In his *Ishrāf* he only offers a reason for its unlawfulness and another for its lawfulness. In his Ma'ūnah he offers the prior two arguments in addition to one for why it may be deemed disliked (as it was by Mālik), but the argument does not appear to be particularly strong.

doesn't believe to make lawful through ritual slaughter.[419] An ambiguity in one's underlying legal logic vis-à-vis the issue of intentionality and sacrifice is why *ḥelev* would be deemed disliked, rather than clearly permitted or prohibited. While the case above was related to *ḥelev*, i.e. a cut of meat, al-Lakhmī and Ibn Rushd note how intentionality as a condition of ritual sacrifice applied to all types of non-kosher meats slaughtered by Jews (including the slaughter of a non-kosher animal like a camel, and *ṭerefah*). It is thus this argument based in the intentionality of the slaughterer that might give the *practice* of the Jews a certain weight for these Mālikī jurists. Al-Lakhmī also tries to suggest that the reason Mālik's pupils had varying opinions on the issue may have been based in varying understandings of intentionality and its impact on slaughter, but their original statements do not mention this.[420] While we might write off these rather contrived explanations for early Mālikī positions on the slaughter of the Jews, the question of intentionality is one that features among Mālik and his early disciples in other contexts related to animal sacrifice, and so the matter may have had some relevance in the original position.

al-Qayrawānī (d. 386 AH), Muḥammad b. Rushd (d. 520 AH), and many others[421] also ascribe the issue of consuming meats unlawful for the Jews to the Qur'ānic verse that is the basis

[419] See al-Qāḍī Abū Muḥammad 'Abd al-Wahhāb, *Al-Ishrāf 'alā Nukat Masā'il al-Khilāf*, ed. al-Ḥabīb Ibn Ṭāhir, 1st ed., 2 vols. (Dār Ibn Ḥazm, 1999). Vol. 2, pg. 922.; al-Qāḍī Abū Muḥammad 'Abd al-Wahhāb al-Baghdādī al-Mālikī, *Al-Ma'ūnah 'alā Madhhab 'Ālim al-Madīnah al-Imām Mālik Ibn Anas*, ed. Ḥumaysh 'Abd al-Ḥaqq, 3 vols. (Makkah: al-Maktabah al-Tijāriyyah, Muṣtafā Aḥmad al-Bāz (PhD Dissertation at the Umm al-Qurā University), n.d.). Pg. 707.

[420] See Abū al-Ḥasan al-Lakhmī, Al-Tabṣirah, ed. Aḥmad 'Abd al-Karīm Najīb, 1st ed., 14 vols. (Qatar: Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyyah, 2011). Vol. 4, pgs. 1538-1539.; Also: Abū al-Walīd Muḥammad b. Aḥmad Ibn Rushd al-Qurṭubī, *Bidāyat Al-Mujtahid Wa Nihāyat al-Muqtaṣid*, 4 vols. (Cairo: Dār al-Ḥadīth, 2004). Vol. 2, pg. 213-214.

[421] See, e.g.: Abū Bakr Muḥammad b. 'Abd Allāh b. Yūnus al-Tamīmī al-Ṣaqalī, *Al-Jāmi' Li Masā'il al-Mudawwanah*, 24 vols. (Umm al-Qurā University: Ma'had al-Buḥūth al-'Ilmiyyah wa Iḥyā' al-Turāth al-Islāmī, 2013). Vol. 5, pg. 815; Also: al-Lakhmī's *Tabṣirah*, vol. 4, pgs. 1536-1538.; Also: Abū al-Ḥasan 'Alī b. Sa'īd al-Rajrājī, *Manāhij Al-Taḥṣīl Wa Natā'ij Laṭā'if al-Ta'wīl Fī Sharḥ al-Mudawwanah Wa Ḥall Mushkilātihā*, ed. Aḥmad Ibn 'Alī and Abū al-Faḍl al-Dimyāṭī, 1st ed., 10 vols. (Dār Ibn Ḥazm, 2007). Vol. 3, pgs. 212 and 238-239.; Shihāb al-Dīn Abū al-'Abbās Zarūq, *Sharḥ Zarūq 'alā Matn al-Risālah Li Ibn Abī Zayd al-Qayrawānī*, ed. Aḥmad Farīd al-Mazīdī, 1st ed., 2 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2006). Vol. 1, pgs. 590-591.; 'Abd al-Bāqī al-Zarqānī, *Sharḥ Al-Zarqānī 'alā Mukhtaṣar Khalīl*, ed. 'Abd al-Salām Muḥammad Amīn, 8 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2002). Vol. 3, pg. 11

of legal discussions regarding the food of the People of the Book, the relevant portion of the verse being: "The food of those given the Scripture is permitted to you, and your food has been made permitted to them"[422]. The "food" described in this verse was understood to refer either to the slaughtered meat of the People of the Book, or what they themselves ate. According to the first reading, if what they slaughtered was permitted, then this would mean the fats and *ṭerefah* that they don't eat would also be permitted to Muslims, since they would technically be part of "what they slaughtered" which is made lawful in this verse (irrespective of them finding it impermissible, or whether the Qur'ān/ḥadīth says this was prohibited for them). But it would also mean that animals unkosher for them to slaughter might not count as what would be permissible from them. In support of this reading would also be a known ḥadīth in which the Prophet ﷺ allowed the taking of fat that was found in a fortress of Khaybar as spoils of war, the fat assumed by the Muslim sources to be prohibited in Jewish law, but lawful because they were technically part of "their slaughter" per the verse.[423] If the verse was instead interpreted to mean that what "they ate" was made permissible for the Muslims, then whatever they did *not* eat of their slaughter - either according to the Qur'ān and ḥadīth (which would be more definitive sources for the Muslims as to what they were not allowed to eat), or according to their own practice (which would still constitute "what they eat," but perhaps not

---

[422] Qur'ān 5:5:
الْيَوْمَ أُحِلَّ لَكُمُ الطَّيِّبَاتُ ۖ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَّكُمْ وَطَعَامُكُمْ حِلٌّ لَّهُمْ ۖ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِن قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ مُحْصِنِينَ غَيْرَ مُسَافِحِينَ وَلَا مُتَّخِذِي أَخْدَانٍ ۗ وَمَن يَكْفُرْ بِالْإِيمَانِ فَقَدْ حَبِطَ عَمَلُهُ وَهُوَ فِي الْآخِرَةِ مِنَ الْخَاسِرِينَ ۝
Today permitted for you is the pure food. The food of those given the Scripture is permitted to you, and your food has been made permitted to them. And [permitted to you] are the chaste women from among the believing women, and the chaste women from among those who received scripture before you, as long as you pay them their marriage gift, being married and not going for lust nor having mistresses. Whoever rejects faith, his efforts will come to nothing, and in the afterlife, he will be of the losers ۝

[423] لما فتح بعض حصون خيبر، فأخذ رجل مزوداً مملوءاً شحماً فنازعه صاحب المغانم، فقال له النبي صلى الله عليه وسلم: خل بينه وبين جرابه يذهب إلى أصحابه
A similar version as the above report appears in Ibn Abī Shaybah's *Muṣannaf*, vol. 6, pg. 504 and Vol. 7, pg. 395; al-Bukhārī's *Ṣaḥīḥ*, Vol. 4, pg. 95, Vol. 5, pg. 135, and Vol. 7, pg. 93; And Muslim's *Ṣaḥīḥ*, vol. 3, pg. 1393, among others.

what God prohibited on them) - that these would be prohibited or disliked for Muslims, since they wouldn't be included in the verse. According to al-Qayrawānī and Muḥammad b. Rushd, it is the open interpretation vis-a-vis the meaning of 'food' in the verse that led Mālik to the lukewarm answer of it being merely disliked. Muḥammad b. Rushd transmits from the *Mudawwanah* as he knows it, that Mālik viewed the meat that the Jews slaughtered and did not eat themselves to be only disliked (e.g. *ṭerefah*), and when asked about the fats they did not eat, he said it was the same position, *or more disliked*. Muḥammad b. Rushd suggests that Mālik's non-committal answer is because he was aware about the disagreement in interpretation of this verse that could allow for either position. As for why his statement said that it was possibly "more disliked" to consume the fats (as opposed to the *ṭerefah*), this is because the prohibition on fats *are* mentioned in the Muḥammadan sources, unlike *ṭerefah*. Given the terseness of Mālik's original statements, it is hard to pinpoint the exact reasoning for his position, and it is very likely that his later followers interpolated their own logic into his statements. However, the verse's outward meaning does bear obvious relevance to this position, and was addressed in the context of this legal issue by al-Shāfiʿī as will be noted next, indicating that his teacher Mālik's own position may have had a basis in the verse, i.e. the verse's relevance was not necessarily a later projection onto Mālik's position.

While the verse was taken by many of the Mālikīs to suggest the prohibition or disliked nature of meats the Jews found prohibited, it was taken to mean something very different as well. The latter part of the quoted verse noted above is that food that was permitted for the Muḥammadan community would have been lawful for the People of the Book, i.e., their *ṭerefah* and *ḥelev* would have been made allowed to them, since it is allowed to the Prophet ﷺ and his community. And given the assumed abrogation of the Muḥammadan sharīʿah over all others

from verses like Qur'ān 3:85,[424] this would have made void any prohibitions that *they* had: whatever was permitted in the Muḥammadan sharī'ah could be taken from what they slaughter, and whatever was permitted or forbidden in the Muḥammadan sharī'ah was likewise for them, irrespective of their beliefs regarding their meat laws. This was, e.g., the opinion of the Mālikī Ibn Lubābah (d. 314 AH), as told by Ibn Rushd al-Mālikī, as it was of the Ẓāhirī Ibn Ḥazm who vehemently critiques the Mālikīs for this position. Ibn Ḥazm argues that this verse's reference to "food" *must* be in reference to what the People of the Book slaughter, and not what they eat and consume, since they consume pork, carrion and blood, which are all obviously not transferable for the Muḥammadan community as the verse would mean if understood that way. Al-Shāfi'ī similarly upheld that this verse cannot mean that whatever meats the Jews find impermissible in their slaughter are likewise impermissible for the believers, since the inverse would also need to be true based on the verse, namely that what they permit is permitted for Muslims to eat, which would not work in cases where they deemed a meat to be permitted that was in fact prohibited in the Muḥammadan *sharī'ah.* Ibn Rushd adds that if one assumes that the disbelievers are commanded with the Muḥammadan sharī'ah too, than this verse obligates the People of the Book with the Muḥammadan laws of permitted slaughter, but if this is not assumed, than the laws of the Jews (whether inferred from the Muḥammadan sources or from the Jews themselves) are theoretically also applicable by this verse. Al-Shāfi'ī affirms that the Muḥammadan sharī'ah has abrogated their laws such that the prohibitions that were upon them at some earlier point, such as the rules against ḥelev and like meats, are no longer applicable for them. This is like alcohol, he

[424] وَمَن يَبْتَغِ غَيْرَ الْإِسْلَامِ دِينًا فَلَن يُقْبَلَ مِنْهُ وَهُوَ فِي الْآخِرَةِ مِنَ الْخَاسِرِينَ۝
If anyone seeks a religion other than Islām [Submission], it will not be accepted from him, and he will be one of the losers in the Hereafter ۝

says, which has been made prohibited for them even though their law may have been otherwise before, and it is prohibited for them even if they do not become Muslim.[425]

A related summary worth including here is that while this discourse on the impermissible meats of the Jews is attested to originally among the Mālikīs, the Ḥanbalīs were one other group of scholars that *did* have a discourse on this topic (though not as developed as Mālikī thought), dating to Imām Aḥmad himself. We find that Aḥmad b. Ḥanbal was apparently aware of and pleased with Mālik's opinion that *ḥelev* from the Jews be disliked, and his son Ṣāliḥ transmits that this was also his own opinion. He furthermore subscribed to the idea that the Jews should be held to their laws on the issue of *ḥelev* (and like meat), saying that a Muslim should not feed prohibited fats to a Jew, "because it is forbidden for him [i.e. the Jew]." His conception of what defined prohibited meat for the Jew appears to have been Qur'ānic, and not based in Jewish understandings of their *kashrut*.[426] Al-Kalwadhānī (d. 510 AH) asserts that there is no evidence that the prohibition that was given to the Jews from eating *ḥelev* was ever lifted from them, and so they were still obliged to follow it as Jews, even though it no longer applies to the Muḥammadan community. As for whether a Muslim could consume ḥelev that was produced from Jewish slaughter, he believed there is no problem with this as it is permissible in the Muḥammadan law, though he notes Ibn Ḥanbal's dislike of it, and the Ḥanbalī Abū al-Ḥasan al-

[425] See: Ibn Abī Zayd al-Qayrawānī, *Al-Nawādir Wa al-Ziyādāt 'alā Mā Fī al-Mudawwanah Min Ghayrihā Min al-Ummahāt*, ed. Muḥammad Ḥajjī, 1st ed., vol. 4, 15 vols. (Beirut: Dār al-Gharb al-Islāmī, 1999). Vol. 4, pgs. 365-368; Also: Ibn Abī Zayd al-Qayrawānī, *Matn Al-Risālah* (Dār al-Fikr, n.d.). Pg. 82.; See also: Abū al-Walīd Muḥammad b. Aḥmad Ibn Rushd al-Qurṭubī, *Al-Bayān Wa al-Taḥṣīl Wa al-Sharḥ Wa al-Tawjīh Wa al-Ta'līl Li Masā'il al-Mustakhrajah*, ed. Muḥammad Ḥajjī, 2nd ed., 20 vols. (Beirut: Dār al-Gharb al-Islāmī, 1988). Vol. 3, pg. 366-368.; Ibn Ḥazm in *al-Maḥallā*, vol. 6, pg. 44 and 144, and vol. 7, pg. 411 and 477.; Also: al-Shāfi'ī's *Umm* (Dār al-Wafā' publication), vol. 3, pg. 626. From pg. 632:
فَإِنْ قَالَ قَائِلٌ : هَلْ يَحْرُمُ عَلَى أَهْلِ الْكِتَابِ مَا حَرُمَ عَلَيْهِمْ قَبْلَ مُحَمَّدٍ - صلى الله عليه وسلم - مِنْ هَذِهِ الشُّحُومِ وَغَيْرِهَا إذَا لَمْ يَتَّبِعُوا مُحَمَّدًا - صلى الله عليه وسلم - ؟ فَقَدْ قِيلَ ذَلِكَ كُلُّهُ مُحَرَّمٌ عَلَيْهِمْ حَتَّى يُؤْمِنُوا وَلاَ يَنْبَغِي أَنْ يَكُونَ مُحَرَّمًا عَلَيْهِمْ وَقَدْ نُسِخَ مَا خَالَفَ دِينَ مُحَمَّدٍ - صلى الله عليه وسلم - بِدِينِهِ كَمَا لاَ يَجُوزُ إنْ كَانَتْ الْخَمْرُ حَلاَلاً لَهُمْ إلَّا أَنْ تَكُونَ مُحَرَّمَةً عَلَيْهِمْ إذْ حُرِّمَتْ عَلَى لِسَانِ مُحَمَّدٍ - صلى الله عليه وسلم - وَإِنْ لَمْ يَدْخُلُوا فِي دِينِهِ
[426] Khālid al-Ribāṭ and Sayyid 'Izzat 'Īd, *Al-Jāmi' Li 'Ulūm al-Imām Aḥmad*, 1st ed., 22 vols. (Faiyum: Dār al-Falāḥ li al-Baḥth al-'Ilmī wa Taḥqīq al-Turāth, 2009). Vol. 12, pg. 392-393.

Tamīmī (d. 371 AH) religiously prohibiting it,[427] the latter apparently also writing a work defending this position and critiquing those who believed it was permissible.[428] In agreement with Abū al-Ḥasan al-Tamīmī, Ibn ʻAqīl (d. 513) similarly affirms the prohibition, arguing that this is the case because the Jews *believe* it is prohibited, this being akin to the slaughtered meat of the pilgrim in a state of iḥrām, who was prohibited from slaughtering game and he did so anyways, the meat of his slaughter now becoming unlawful for him and others because it was prohibited to do in the first place.[429] As we saw earlier, the impact of belief and intentionality was raised by the Mālikīs as well. Ibn Qudāmah (d. 620 AH) suggests that the *ḥelev* and any prohibited meat for the Jews was not prohibited based on the outward meaning of Aḥmad's b. Ḥanbal's opinion, which only showed agreement with Mālik's mere dislike of *ḥelev* without indicating prohibition. He also explains the reason for Abū al-Ḥasan al-Tamīmī's prohibition as being based both in the question of intentionality affecting the status of a sacrificed, and also the Qur'ānic verse which we encountered in the Mālikī discussions, whereby the *ḥelev* and like meats were not part of what was consumed by the Jews, and thus the lived practice of the Jews

---

[427] Maḥfūdh b. Aḥmad Abū al-Khiṭāb al-Kalwadhānī, *Al-Hidāyah 'alā Madhhab al-Imām Abī 'Abd Allāh Aḥmad b. Muḥammad b. Ḥanbal al-Shaybānī*, ed. 'Abd al-Laṭīf Hamīm and Māhir Yāsīn al-Faḥl (Mu'assisat Ghirās li al-Nashr wa al-Tawzi', 2004). Pg. 555-556.

[428] Muḥammad b. Abī Bakr Ibn Qayyim al-Jawziyyah, *Aḥkām Ahl Al-Dhimmah*, ed. Yūsuf Ibn Aḥmad al-Bakrī and Shākir b. Tawfīq al-'Ārūrī, 1st ed., 3 vols. (Dammam: Rumādī li al-Nashr, 1997). Vol. 1, pg. 532.

[429] Abū al-Wafā' Ibn 'Aqīl, *Al-Tadhkirah Fī al-Fiqh 'alā Madhhab al-Imām Aḥmad b. Muḥammad b. Ḥanbal*, ed. Nāṣir b. Sa'ūd Ibn 'Abd Allāh al-Salāmah, 1st ed. (Riyadh: Dār Ishbīlyā li al-Nashr wa al-Tawzī', 2001). Pg. 336.; The pilgrim who is prohibited from hunting game while in the state of *iḥrām*, per Qur'ān 5:95 and 5:96:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقْتُلُوا الصَّيْدَ وَأَنتُمْ حُرُمٌ ۚ وَمَن قَتَلَهُ مِنكُم مُّتَعَمِّدًا فَجَزَاءٌ مِّثْلُ مَا قَتَلَ مِنَ النَّعَمِ يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِّنكُمْ هَدْيًا بَالِغَ الْكَعْبَةِ أَوْ كَفَّارَةٌ طَعَامُ مَسَاكِينَ أَوْ عَدْلُ ذَٰلِكَ صِيَامًا لِّيَذُوقَ وَبَالَ أَمْرِهِ ۗ عَفَا اللَّهُ عَمَّا سَلَفَ ۚ وَمَنْ عَادَ فَيَنتَقِمُ اللَّهُ مِنْهُ ۗ وَاللَّهُ عَزِيزٌ ذُو انتِقَامٍ ۞
أُحِلَّ لَكُمْ صَيْدُ الْبَحْرِ وَطَعَامُهُ مَتَاعًا لَّكُمْ وَلِلسَّيَّارَةِ ۖ وَحُرِّمَ عَلَيْكُمْ صَيْدُ الْبَرِّ مَا دُمْتُمْ حُرُمًا ۗ وَاتَّقُوا اللَّهَ الَّذِي إِلَيْهِ تُحْشَرُونَ ۞

OH YOU WHO BELIEVE, DO NOT KILL GAME WHILE YOU ARE IN THE STATE OF CONSECRATION [FOR PILGRIMAGE]. IF SOMEONE DOES SO INTENTIONALLY THE PENALTY IS THE LIKE OF WHAT WAS KILLED FROM CATTLE, AS JUDGED BY TWO JUST MEN AMONG YOU: AN OFFERING BROUGHT TO THE KA'BAH; OR AN EXPIATION OF FEEDING THE POOR, OR FASTING ITS EQUIVALENT, IN ORDER THAT THE PERSON TASTE THE GRAVITY OF THEIR DEED. GOD FORGIVES WHAT HAS PASSED, BUT WHOEVER DOES IT AGAIN, GOD WILL SUBJECT THEM TO A PENALTY, AND GOD IS ALL MIGHTY, ONE WHO EXACTS PENALTY ۞ IT IS PERMITTED FOR YOU THE GAME OF THE SEA AND EATING THEREOF, A BENEFIT FOR YOU AND FOR TRAVELERS. BUT THE GAME OF THE LAND IS UNLAWFUL FOR YOU AS LONG AS YOU ARE IN THE STATE OF CONSECRATION [FOR PILGRIMAGE]. FEAR GOD TO WHOM YOU WILL BE BROUGHT TOGETHER ۞

was given importance in that it defined what they ate.[430] The Ḥanbalīs therefore did have various positions on this topic as did the Mālikīs, though it appears that the majority of Ḥanbalīs saw no issue with this meat,[431] with notable exceptions. This position does not appear to have been part of the legal tradition of the Shāfi'īs and Ḥanafīs, though jurists from these schools were aware of this position being held by members of the Mālikī and Ḥanbalī schools,[432] and as was noted earlier, al-Shāfi'ī engaged in the discussion himself.

In addition to al-Tamīmī, who apparently wrote a work on the topic, the Ḥanbalī Ibn Qayyim al-Jawziyyah (d. 751 AH) has covered the topic extensively in his *Aḥkām ahl al-dhimma,*[433] which Freidenreich identifies as the largest discussion on the meat of the People of the Book in medieval Sunni literature[434]. Ibn al-Qayyim's writing systematically separates the meats into that which was from an animal that was unkosher for the Jews to slaughter in the first place (per the Qur'ān's list of prohibitions on the Jews), ḥelev which is the unkosher part of their otherwise permitted animal slaughter (which I noted earlier was treated uniquely amongst the jurists, but is also one of the prohibited meats in the Qur'ān vis-à-vis the Jews, and which Ibn al-Qayyim acknowledges is also prohibited to the Jews in the Torah), and *ṭerefah*, which is unkosher for the Jews by their practice and *not* by the text of the Torah. He raises many of the arguments encountered before to defend the first two of these classes of meat, e.g., the proof that intentionality and the slaughterer's beliefs affect the animal slaughter (and that one's belief about

[430] Ibn Qudāmah al-Maqdisī, *Al-Kāfī Fi Fiqh al-Imām Aḥmad*, 4 vols. (Dār al-Kutub al-'Ilmiyyah, 1994). Vol. 1, pg. 548.; Abū Muḥammad Ibn Qudāmah, *Al-Mughnī*, 10 vols. (Cairo: Maktabat al-Qāhirah, 1968). Vol. 9, pg. 403.
[431] See: Muḥammad b. Abī Bakr Ibn Qayyim al-Jawziyyah, *Aḥkām Ahl Al-Dhimmah*, ed. Yūsuf Ibn Aḥmad al-Bakrī and Shākir b. Tawfīq al-'Ārūrī, 1st ed., 3 vols. (Dammam: Rumādī li al-Nashr, 1997). Vol. 1, pg. 529.
[432] See, e.g.: Abū Zakariyyā al-Nawawī, *Al-Majmū': Sharḥ al-Muhadhdhab*, 20 vols. (Dār al-Fikr, n.d.). Vol. 9, pg. 71.; Abū Zakariyyā al-Nawawī, *Al-Minhāj: Sharḥ Ṣaḥīḥ Muslim Ibn al-Ḥajjāj*, 18 vols. (Beirut: Dār Iḥyā' at-Turāth al-'Arabī, 1392AH). Vol. 12, pg. 102.; Abū Muḥammad Badr al-Dīn al-'Aynī, *Al-Bināyah: Sharḥ al-Hidāyah*, 1st ed., 13 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2000). Vol. 11, pg. 529.
[433] See: Ibn al-Qayyim's *Aḥkām*, Vol. 1, pgs. 529-531 on Jewish slaughter of animals they deem impermissible, pgs. 531-548 on *ḥelev*, and pgs. 549-550 on *ṭerefah*.
[434] Regarding Freidenreich's comments on Ibn Qayyim al-Jawziyyah, see *Foreigners*, pgs. 188-190.

a portion of the meat over the whole can have a restricted effect, as with *ḥelev*),[435] and that the prohibition of meats noted in the Qur'ān are *still* binding on the Jews as long as they do not join Islam, wherein those rules have been abrogated. Regarding this latter point, Ibn al-Qayyim emphasizes that the difficult prohibitions are still in place on the Jews because they are punishments from God for stubbornly rejecting faith, citing the same verse (6:146) that was often cited in this discussion to define the prohibitions on them, except focusing on the end of the verse to prove his point: "And for those who are Jews we forbade … [list of prohibitions] … Thus We repaid them for their disobedience, and We are truthful." While the previous discussions encountered in the Mālikī sources frequently cite this verse and are thus aware of the ending of it as well, the discussion was on the prohibitions that were forbidden. Ibn al-Qayyim appears to emphasize that it is because of their disobedience to God by not accepting the Prophet's message that they are still held to these laws, this being an additional reason why these foods are prohibited for Muslims to consume from Jewish slaughter.

Ibn al-Qayyim also engages with Ibn Ḥazm's critique on the prohibition of *ḥelev*, found in the latter's *Muḥallā*.[436] Ibn Ḥazm viewed the prohibition on the *ḥelev* of the Jews as an unacceptable deference to Jewish laws and a rejection of the idea that Islam abrogated the prior rules, a belief that would make one an apostate. Ibn al-Qayyim on the other hand, did not view the issue as that of deference, but of holding the Jews to the difficult laws that were imposed on them as a punishment. Ibn Ḥazm points out a number of other challenges with this position, which Ibn al-Qayyim attempts to answer, these challenges including reports from the Prophet ﷺ suggesting the absence of any issue with the *ḥelev* of the Jews, the fact that a Jew might not be

[435] E.g. if a Muslim ritually slaughtered an animal that he believed was not permissible for him to slaughter, e.g., a stolen animal, then the meat would be prohibited. See his *Aḥkām*, vol. 1, pg. 530.
[436] Ibn Ḥazm's *al-Muḥallā*, vol. 6, pgs. 143-146.

practicing and slaughters his meat with the intention of eating the ḥelev (which would impact the argument from intentionality), the fact that holders of this opinion do not raise issue with Jews who slaughter or fish on the Sabbath[437] (which would *also* be prohibited for them to do, even though this case is ignored), and why numerous Companions and Successors (with the exception of Qatādah (d. 117 AH)) all allowed for consuming the slaughter of the People of the Book without qualifying it with a prohibition on *ḥelev* or anything else.

While Ibn al-Qayyim would uphold the prohibited status of non-Kosher animals and ḥelev from the slaughter of the Jews (both defined by the Qur'ān), he would not believe this about *ṭerefah*, which he defines as meat with a certain condition of a lung attachment. He suggests that *ṭerefah* is not like the other meats because the prohibition is known through the Jews themselves, and not from a text of the Torah (إِنَّمَا عُلِمَ مِنْ جِهَتِهِمْ لَا بِنَصِّ التَّوْرَاةِ), unlike the meat of uncloven-hoofed animals and *ḥelev*. It is noteworthy that he references the contents of the Torah in the case of *ṭerefah* as though to suggest it would have some practical authority on its own in this discussion. But it appears he only does this because he already knows the Torah doesn't mention the prohibition of *ṭerefah* as the Jews practice it. He doesn't, for example, compare the Qur'ānic descriptions of unkosher animals and fats with the Torah as it was known, since these may have conflicted. He tells his readers to refer to his comments on the Torah and *ṭerefah* in his other work *Hidāyat al-ḥayārā*,[438] where he says the reader will see the reason why the Jews prohibited this on themselves based off of false interpretations of the actual Torah passage that he cites in this work. His discussion in *Hidāyat al-ḥayārā* appears to be lifted almost completely from the works of the Jewish convert to Islam, al-Samaw'al al-Maghribī (d. 570

[437] See Qur'ān 7:163, which references a group of Jews who violated the sabbath by fishing.
[438] Muḥammad b. Abī Bakr Ibn Qayyim al-Jawziyyah, *Hidāyat Al-Ḥayārā Fī Ajwibat al-Yahūd Wa al-Naṣārā*, ed. Muḥammad Aḥmad al-Ḥājj, 1st ed. (Jeddah: Dār al-Qalam, 1996). Vol. 2, pgs. 470-471.

AH), and the latter's discussions regarding the Jewish legal scholars (referring to the Rabbinites here) corrupting the meaning of *ṭerefah* from its original sense in the Torah. This is discussed in al-Samaw'al's *Ifḥām al-yahūd*[439] and also his work *Ghāyat al-maqṣūd fī al-radd 'alā al-naṣārā wa al-yahūd.*[440] All comments below refer only to material that Ibn al-Qayyim chooses to transmit from al-Samaw'al regarding the topic. Within these transmitted comments, Al-Samaw'al points out that the scriptural reference to *ṭerefah* is found in Exodus 22:30 (HOLY MEN YOU SHALL BE UNTO ME: YOU SHALL NOT EAT FLESH IN THE FIELD, TORN OF BEASTS (*ṭerefah*). CAST IT TO THE DOGS),[441] where "*ṭerefah*" refers to meat that has been torn into by a predator in its original biblical sense.[442] The Jewish jurists then derived a variety of rules from this verse, he says, found in a book called "هلكت شحيطا", which appears to be the Arabized form of "הלכות שחיטה," "The Laws of *Sheḥīṭa*," likely referring to a work on Jewish ritual slaughter. According to al-Samaw'al, this book describes the science of ritual slaughter and includes all of the obtuse rules that characterize the burdens and shackles (الْآصَارِ وَالْأَغْلَالِ)[443] that the Jews were debased with. The Jewish jurists command their slaughterers with various rules, says al-Samaw'al, and the examples he includes match known rabbinic ones,[444] including

---

[439] al-Samaw'al b. Yaḥyā Ibn 'Abbās al-Maghribī, *Ifḥām Al-Yahūd Wa Qiṣṣat Islām al-Samaw'al Wa Ru'yāhu al-Nabī Ṣall Allāh 'alayhi Wa Sallam*, ed. Muḥammad 'Abd Allāh al-Sharqāwī, 3rd ed. (Beirut: Dār al-Jīl, 1990). Pgs. 156-169.

[440] al-Samaw'al b. Yaḥyā Ibn 'Abbās al-Maghribī, *Ghāyat Al-Maqṣūd Fī al-Radd 'ala al-Naṣārā Wa al-Yahūd*, ed. Imām Ḥanafī Sayyid 'Abd Allāh, 1st ed. (Cairo: Dār al-Āfāq al-'Arabiyyah, 2006). Pgs. 81-84.

[441] וְאַנְשֵׁי-קֹדֶשׁ, תִּהְיוּן לִי; וּבָשָׂר בַּשָּׂדֶה טְרֵפָה לֹא תֹאכֵלוּ, לַכֶּלֶב תַּשְׁלִכוּן אֹתוֹ

[442] قَالُوا: التَّوْرَاةُ حَرَّمَتْ عَلَيْنَا أَكْلَ الطَّرِيفَا، قِيلَ لَهُمْ: الطَّرِيفَا هِيَ الْفَرِيسَةُ الَّتِي يَفْتَرِسُهَا الْأَسَدُ وَالذِّئْبُ أَوْ غَيْرُهُمَا مِنَ السِّبَاعِ، كَمَا قَالَ فِي التَّوْرَاةِ: **وَلَحْمٌ فِي الصَّحْرَاءِ فَرِيسَةٌ لَا تَأْكُلُوا لِلْكَلْبِ أَلْقُوْهُ**

[443] In reference to Qur'ān 7:157:

الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الْأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْتُوبًا عِندَهُمْ فِي التَّوْرَاةِ وَالْإِنجِيلِ يَأْمُرُهُم بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنكَرِ وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ ۚ فَالَّذِينَ آمَنُوا بِهِ وَعَزَّرُوهُ وَنَصَرُوهُ وَاتَّبَعُوا النُّورَ الَّذِي أُنزِلَ مَعَهُ ۙ أُولَٰئِكَ هُمُ الْمُفْلِحُونَ۞

THOSE WHO FOLLOW THE MESSENGER, THE UMMĪ PROPHET, WHOM THEY FIND WRITTEN WITH THEM IN THE TORAH AND INJĪL, AND WHO COMMANDS THEM TO DO RIGHT AND FORBIDS THEM WHAT IS WRONG, AND WHO MAKES GOOD THINGS LAWFUL TO THEM, AND MAKES BAD THINGS UNLAWFUL, AND WHO RELIEVES THEM OF THEIR BURDENS, AND THE SHACKLES THAT WERE ON THEM. SO THOSE WHO BELIEVE IN HIM, HONOR HIM AND ASSIST HIM, AND FOLLOW THE LIGHT WHICH HAS BEEN SENT DOWN TO HIM, THOSE ARE THE ONES THAT WILL PROSPER۞

[444] See, e.g., Chullin 45b-47b

blowing into the lungs to see if there are punctures, examining the lungs for defective attachments, and putting ones hands through the insides of the animal to look for issues with the heart. Even a small defect will make the animal prohibited to eat according to these rules, which the Jews then call *ṭerefah*, even though it is not the original meaning in the verse. This redefining of the *ṭerefah* found in the Torah is a perversion from the Jews, since its only meaning in Hebrew refers only to what has been torn by a predatory animal ( ليس موضوعها باللغة إلا المفترس الذي يفترسه بعض الوحوش). He even goes on to use Genesis 37:33,[445] in which Jacob, upon receiving the bloodied shirt of Joseph,[446] identifies his son Joseph as having been devoured by a predator by saying, "טָרֹף טֹרַף יוֹסֵף", which al-Samaw'al transcribes into Arabic from the Hebrew as " طاروف طورف يوسف" (and which Ibn al-Qayyim tries to copy as well) to offer another biblical example of a word with the same root letters (ṭ/r/f | ط/ر/ف | ט/ר/פ ) referring to devouring by a predator, but which the Jewish jurists have made to mean otherwise in their extrapolated rulings. Ibn al-Qayyim transmits also from al-Samaw'al that the biblical reference to casting this *ṭerefah* meat to a dog is understood by Jews to be permission to sell the *ṭerefah* (as they understand it) to the gentiles, the gentiles being analogized to dogs here, an interpretation that is attested to[447] in the

---

[445] וַיַּכִּירָהּ וַיֹּאמֶר כְּתֹנֶת בְּנִי, חַיָּה רָעָה אֲכָלָתְהוּ; טָרֹף טֹרַף, יוֹסֵף

And he (Jacob) knew it and said: "It is my son's coat. an evil beast has eaten him. Joseph is surely devoured."

[446] ودليل ذلك قول يعقوب لما جاءوا بقميص يوسف ملوثا بالدم: "ويكيراه ويومر كثوث بنى حياراعا احالا ثهوطاروف طوارف يوسيف". وتفسيره: فتأملها وقال: دراعة ابني، وحش رديء أكله، افتراسا افترس يوسف

The editor of Ifḥām, from where the above text appears, likely made mistakes with copying the Arabic transcription of the Hebrew (or perhaps those who transmitted al-Samaw'al's original text). Here is what al-Samaw'al's original manuscript may have likely transcribed it (based on the Hebrew):

ويكيراه ويومر كتنت بني حيا راعا اكالاتهو طاروف طورف يوسف

The Hebrew:

וַיַּכִּירָהּ וַיֹּאמֶר כְּתֹנֶת בְּנִי, חַיָּה רָעָה אֲכָלָתְהוּ; טָרֹף טֹרַף, יוֹסֵף.

[447] The Gemara comments that just as Deuteronomy 14:21 allows Jews to sell carrion meat to the gentiles ("Foreigners") that they themselves cannot consume, in this verse the prohibited meat that has been spoiled by a predator can similarly still be derived benefit from, since the dog can be fed from it, and so here too a Jew can sell this meat to a gentile. The Jewish commentator Rashi (d. 498 AH) appears to take the analogy a step further, by stating with regards to casting the meat to a dog, that the Gentile is as the dog (אַף הַגּוֹי כַּכֶּלֶב), and furthermore that the verse mentions a dog instead of a gentile to teach that the dog is to be respected more than the gentile ( שֶׁהַכֶּלֶב נִכְבָּד מִמֶּנּוּ). See Kiddushin 57b:10, and also Shlomo Yitzchaki Rashi, *Rashi 'al Ha-Torah* (Berlin: be-hotsʾot ha-motsi' le-or bi-defus Levenṭ, 1866). Pg. 142.; Deuteronomy 14:21:

Rabbinic tradition. Even though Ibn al-Qayyim seems to suggest that *ṭerefah* is not prohibited for Muslims to eat from Jewish slaughter because it has no basis in the Torah, even engaging with the actual Torah in this case, it is ultimately unclear if the Torah would have had relevance for him had the prohibition actually had a biblical basis. He seems to neglect the contents of the Torah for the other types of meats he addresses, assuming that they naturally align with the Qur'ānic verses. As for whether the Jewish slaughterer's beliefs regarding *ṭerefah* would make it prohibited (given that he upholds the significance of intentionality regarding the other meats), he answers that it does *not*, because with *ṭerefah*, the animal is slaughtered with the intention that it is kosher, and the meat is only determined to be unkosher *after* it is slaughtered.

A few comments regarding Freidenreich discussion on this topic. Freidenreich states that "Mālikī authorities are uniform in prohibiting the meat of an animal categorically forbidden to Jews which a Jewish butcher nevertheless slaughters, such as camel meat, but debate the status of nonkosher cuts of meat from an otherwise permitted animal."[448] As was pointed out, Mālikī authorities were *not* uniform in their prohibition of either types of meat. Freidenreich also makes the following assertion regarding Mālikī jurists who gave value to the intentionality of the slaughterer as 'Abd al-Wahhāb did (who's statements we encountered above), saying that these jurists

> "…imagine contemporary Scripturists [i.e. the Jews] to be 'living letters of scripture' to use the phrase coined by Bernard of Clairvaux in reference to the Jews of Christendom. Jewish butchers observe traditional dietary laws to which the Qur'an itself ascribes authority… It bears emphasizing, however, that the 'Jewish dietary laws' to which Mālikī jurists refer are Qur'ānic rather than Jewish: these jurists imagine Jews to be living letters of *Islam's* scripture…Mālikīs imagine Scripturists as the bearers of authentic divine teachings that consequently have a real impact on the permissibility of the meat their butchers prepare. For these jurists, discourse about Jewish and Christian slaughter practices

לֹא תֹאכְלוּ כָּל-נְבֵלָה לַגֵּר אֲשֶׁר-בִּשְׁעָרֶיךָ תִּתְּנֶנָּה וַאֲכָלָהּ, אוֹ מָכֹר לְנָכְרִי--כִּי עַם קָדוֹשׁ אַתָּה, לַיהוָה אֱלֹהֶיךָ; לֹא-תְבַשֵּׁל גְּדִי, בַּחֲלֵב אִמּוֹ
You shall not eat of any carcass. Give it for the stranger that is within your gates, that he may eat it; or you may sell it to a foreigner; for you are a holy people unto THE LORD your God. You will not boil a kid in his mother's milk.

[448] Freidenreich, *Foreigners and their Food*, pg. 185.

> offers a means of demonstrating the degree to which Scripturists are like Muslims: We grant weight to their beliefs about prohibited meat because the Qur'an accords the People of the Book a relatively elevated status among non-Muslims. The logic inherent in this discourse, of course, indirectly attests to the ultimate authority of the Qur'an and thus to the superlative status of Muslims themselves."[449]

It should be noted that the question of intentionality was raised by 'Abd al-Wahhāb and others *not* because living Jews were somehow the "living letters of scripture" who helped Muslim authors understand the prohibitions noted in the Qur'ān. Given the logic of this argument as was spelled out above, Jews could be violating God's scripture in their dietary law for all that mattered, just like a man who believes he is ritually killing a predatory animal, when in fact the predatory animal's meat is unlawful. Per this specific argument from intentionality, their beliefs matter not because they somehow align with what God prohibited on them, but rather because of a Mālikī juristic understanding that intentionality has an impact on the status of sacrificed meat, just as it does for Muslims. Even among Mālikī jurists who referred to the Qur'ānic verse to prohibit meat not noted in the Muḥammadan sources but deemed unlawful by the Jews themselves (e.g., *ṭerefah* or specific fats not inferred from the Qur'ān per Ibn Ḥabīb's comments), this was *not* necessarily because they believed the Jews were acting in accordance with what God prohibited on them, but rather, the mere fact they did not eat something in their slaughter would mean that it fell outside of the technical meanings of "THE FOOD OF THOSE GIVEN THE SCRIPTURE," where "food" was interpreted as what they consumed. As was noted above, some of the Mālikī sources in fact viewed the Qur'ānic prohibitions as *being* equivalent to those in the Torah, and indicate that *ṭerefah* and the like were things outside of what the "Torah" prohibited on the Jews, these prohibitions coming from themselves (and possibly a distortion). The practice of the Jews in this case (in the case of *ṭerefah*) was relevant because the Qur'ānic

[449] Ibid., pg. 186. Italics are Freidenreich's.

verse granted status to Jewish practice, not because it necessarily represented in the minds of the Mālikīs the actual prohibitions given by God. Furthermore, it is not clear how this Mālikī position necessarily 'elevates' the status of the Jews, when Mālik's own comments regarding engagement with Jewish butchers in general was very critical and intended to delineate Muslim strength in the marketplace. It appears that Ibn Ḥazm's critical comments of the Mālikī position, in which he makes it appear as though the Mālikīs were showing submissive deference to the Jews, may be a reason for Freidenreich's framing. In any case, this particular case study is a significant example of Muslim jurists seeing the practical impact of Jewish dietary law and practice in their own law, and in this case we find that the discussions were made relevant because of certain Qur'ānic verses, corollary legal cases related to intentionality in slaughter, concerns about communal boundaries, and also in defense of Imām Mālik's statements. We also saw examples where the Mālikī sources assumed the Qur'ānic prohibitions *were* those in the Torah. Even though this was a case where Jewish law might have had some bearing, there was no effort expended by the Mālikīs or Ḥanbalīs in uncovering what Jewish laws actually were. The only exception was Ibn al-Qayyim, who appears to give weight to what the Torah had to say on the matter, but he only does so on the matter of *ṭerefah*, which was a convenient choice because it was the one meat class that the jurists engaged with that was *not* noted in the Qur'ān and which he could similarly affirm was not noted in the Torah. He does not entertain the possibility that the available Torah may have had separate rules of kashrut than the Qur'ān's statements on the matter.

Chapter 5

# Qur'ānic Exegesis and Pre-Muḥammadan Law: The Case of *Qasāmah* and Deuteronomy 21:1-9

In this chapter I look at two cases where Ibn Ḥazm calls out the Mālikīs for basing a legal opinion of theirs on an unverifiable pre-Muḥammadan narrative found in Qur'ānic exegesis. Qur'ānic exegesis was a domain where biblical and Israelite narratives were commonly incorporated, and because of exegesis's connection to the Qur'ān itself, it took on a pseudo-scriptural status in the way it was incorporated in some of the legal discussions looked at. The second case study that we will look at will lead us into a discussion of the legal institution of *qasāmah*, which Crone noted was biblically derived in its Kufan mold, and by admission of the Muslim tradition itself. We will confirm some of her conclusions while rejecting some of her other claims. Through a study of the early exegetical traditions related to the Qur'ānic verses concerning the cow of the Israelites, we will see how certain legal discourses related to *qasāmah* were both being influenced by exegesis, and simultaneously *influencing* the exegesis of these verses. We see then how Qur'ānic exegesis was a source of pre-Muḥammadan law for the jurists (and likely biblically derived) and legitimated as an "Islamic source" by virtue of being related to Qur'ānic scripture.

We now turn to two cases that Ibn Ḥazm singles out of Mālikīs engaging with pre-Muḥammadan examples from a source outside of the Qur'ān and authentic ḥadīth. Both of these cases are instances of Muslim jurists referring to exegetical narratives regarding pre-Muḥammadan individuals and events, these stories having origins that were obviously not in the

Qur'ān or prophetic ḥadīth. Despite obvious questions that may have existed regarding the provenance of this material, I hope to show that exegetical narratives had a form of scriptural legitimacy by virtue of being the reference point for the Qur'ān. It is this scriptural legitimacy that made exegesis, as opposed to other potential mediums that may have conveyed pre-Muḥammadan material, a particularly accessible legal source for jurists. Exegesis was also a familiar source at hand for the jurist, since the jurist who sought to ground his opinion in Qur'ānic scripture naturally interacted with available exegesis as well. That is why jurists gave deference to the *ahl al-tafsīr* in understanding the meanings of debated words of legal relevance, or in determining whether one legally significant verse abrogated another.[450] As this chapter hopes to demonstrate, some of the pre-Muḥammadan exegetical narratives may have interacted with legal discourses as well. The first short example we will look at shows the jurist's willingness to search for legal precedent in an exegetical composition related to the practice of Moses ﷺ and Aaron ﷺ. The second, far lengthier example, will demonstrate through the legal case of *qasāmah* how exegesis was regional and may have also been a conduit by which *biblical* material had found its way into Kufan legal discourses.

In the first case, Ibn Ḥazm takes to task a Mālikī position that saying "āmīn" ("amen") is not said by the prayer leader after the final verse of the opening Qur'ānic chapter *al-Fātiḥah* is recited, but instead only by followers of the prayer leader. He attributes the position to Mālik in *al-Muḥallā*, and he accuses some of his blind followers (الممتحنين بتقليده) of offering weak proofs for this position, which he says goes against an explicit ḥadīth stating that the prayer leader and

[450] For examples of al-Shāfi'ī, e.g., referring to the opinion of the exegetes, see *al-Umm* (Dar al-Wafā' publication), Vol. 3, pgs. 604 and 626, vol. 5, pgs. 461, 655 and 660, vol. 6, pg. 384, vol. 7, pg. 61, and 610, vol. 8, pg. 289.; Al-Shaybānī notes the opinions of the exegetes regarding Qur'ānic passages as well, which have legal relevance. See, e.g., *al-Aṣl*, vol. 2, pg. 364, vol. 4, pg. 435, vol. 5, pg. 206, vol. 7, pgs. 218 and 436. He refers to the exegetes regarding the meaning of a verse in *al-Ḥujjah* as well, vol. 3, pg. 423.

the followers both should say "āmīn" (which incidentally Mālik *himself* transmits[451]), in addition to reports confirming that the Prophet ﷺ used to say "āmīn" himself as the prayer leader.[452] The Mālikīs cite, e.g., a ḥadīth where the Prophet ﷺ commands the followers in a congregation to say "āmīn" without commenting on the prayer leader also saying anything as proof that he does not say "āmīn". Ibn Ḥazm finds this argument to be completely indefensible, because it takes the Prophet's *not saying of something* as evidence for their position, in addition to ignoring the earlier ḥadīths that *do* comment on the matter. Furthermore, Mālik's position is unattested to among the early Muslims, he says. When we look to Mālik's own statements on this as recorded in *al-Mudawwanah,* he merely says that this is the way the prayer is to be practiced, without citing evidence.[453] This is likely because his positions were reflecting known Medinese practice.

In addition to offering what he considers unreasonable interpretations of the available ḥadīth evidence in order to defend Mālik's position, Ibn Ḥazm accuses his followers of referring to a dubious case of pre-Muḥammadan law as proof. They refer to reports transmitted in *tafsīr* literature regarding verses 10:88-89[454] of the Qur'ān, these verses telling us that Moses ﷺ made a prayer to God against Pharaoh and his chiefs, and God responded saying that he has answered "THE PRAYER OF THE TWO OF YOU," referring to Moses ﷺ and Aaron ﷺ.[455] The question

---

[451] See Mālik's *Muwaṭṭa'*, vol. 2, pg 119.

[452] Ibn Ḥazm in *al-Muḥallā*, vol. 2, pg. 293-294.

[453] *Al-Mudawwanah,* vol. 1, pg. 167:

وَقَالَ مَالِكٌ: إذَا فَرَغَ الْإِمَامُ مِنْ قِرَاءَةِ أُمِّ الْقُرْآنِ فَلَا يَقُلْ هُوَ آمِينَ وَلَكِنْ يَقُولُ ذَلِكَ مَنْ خَلْفَهُ

[454] وَقَالَ مُوسَىٰ رَبَّنَا إِنَّكَ آتَيْتَ فِرْعَوْنَ وَمَلَأَهُ زِينَةً وَأَمْوَالًا فِي الْحَيَاةِ الدُّنْيَا رَبَّنَا لِيُضِلُّوا عَن سَبِيلِكَ ۖ رَبَّنَا اطْمِسْ عَلَىٰ أَمْوَالِهِمْ وَاشْدُدْ عَلَىٰ قُلُوبِهِمْ فَلَا يُؤْمِنُوا حَتَّىٰ يَرَوُا الْعَذَابَ الْأَلِيمَ ۝ قَالَ قَدْ أُجِيبَت دَّعْوَتُكُمَا فَاسْتَقِيمَا وَلَا تَتَّبِعَانِّ سَبِيلَ الَّذِينَ لَا يَعْلَمُونَ ۝

AND MOSES SAID, "OUR LORD! YOU HAVE GIVEN PHARAOH AND HIS CHIEFS SPLENDOR AND RICHES IN THIS LIFE. OUR LORD! THEY ARE THUS LEADING OTHERS ASTRAY FROM YOUR PATH. OUR LORD! OBLITERATE THEIR RICHES AND HARDEN THEIR HEARTS SO THAT THEY DO NOT BELIEVE UNTIL THEY SEE THE PAINFUL PUNISHMENT" ۝ GOD RESPONDED, "THE PRAYER OF THE TWO OF YOU HAS BEEN ACCEPTED. SO STAND FIRMLY AND DO NOT FOLLOW THE WAY OF THOSE WHO DO NOT KNOW" ۝

[455] A somewhat related Torah parallel to this may be Exodus 8:4-9, wherein Pharaoh asks Moses ﷺ *and* Aaron ﷺ to plead with YHWH to remove the frogs afflicting him and his people, and if done he would let the people go. It is Moses ﷺ, and not Aaron ﷺ, who then makes the prayer which was requested of both of them. However, in Exdous 8:9 God says he is answering *Moses'* prayer without mentioning Aaron ﷺ, which would make this unlike the prayer in the Qur'ānic example.

obviously arose: why did Moses ﷺ make a prayer and both him and Aaron ﷺ get answered? The early exegetes then explain this, stating that Moses ﷺ had made the prayer and Aaron ﷺ said "āmīn" as a follower in the supplication, which would explain why the verse says "BOTH OF YOUR SUPPLICATION" when only Moses ﷺ made the supplication.[456] The Mālikīs then cite these exegetical reports as proof that the prayer leader does not say it and the follower does, based on the example of Moses ﷺ and Aaron ﷺ. Ibn Ḥazm criticizes the Mālikīs for what he sees as extremely selective application of this story and the verse. He asserts that no mention is in the Qur'ān itself about anyone saying "amīn," and that perhaps neither Moses ﷺ or Aaron ﷺ said it, or that Moses ﷺ did say it as well. He says that there is also no way that this supposed event between Aaron ﷺ and Moses ﷺ could even be verified as is recorded by exegetes, as it would need to be conveyed by either the Prophet ﷺ or be something that was transmitted by a large group (i.e., Ibn Ḥazm accepts *mutawātir* reports about pre-Muḥammadan events could yield historical truth). Ibn Ḥazm is thus taken aback by the rejection of stronger evidences in favor of dubious material reporting pre-Muḥammadan precedent, all in defense of an inherited position from the *madhhab* founder.[457] The opinion based on this supposed event involving Moses ﷺ and Aaron ﷺ does indeed appear to be a Mālikī position according to some sources (Ibn Ḥazm attributes it to the Irāqī Mālikī judge, Ismā'īl b. Ishāq (d. 282)), but it appears that a more 'mainstream' opinion that the Imām does say "āmīn" is also attributed to Imām Mālik.[458] One Mālikī who makes reference to the proof, Abū 'Abd Allāh al-Tamīmī (d. 536 AH), almost makes it seem as though Mālik's position is based in the Qur'ānic verse itself, with the exegetical

[456] See al-Ṭabarī in *Jāmi' al-bayān* (Vol. 15, pgs. 185-187)
[457] See Ibn Ḥazm in *al-Iḥkām* (vol. 5, pgs. 162-163) and *al-Muḥallā* (vol. 2, pg. 293-296)
[458] See, e.g., Abū 'Abd Allāh al-Tamīmī al-Mālikī, *Sharḥ Al-Talqīn*, ed. Muḥadmmad al-Mukhtār al-Salāmī, 1st ed., 5 vols. (Dār al-Gharb al-Islāmī, 2008). Vol. 1, pgs. 553-554.; Also, Aḥmad ibn 'Alī ibn Ḥajr Abū 'l-Faḍl al-'Asqalānī, *Fatḥ Al-Bārī: Sharḥ Ṣaḥīḥ al-Bukhārī*, ed. Muḥibb ad-Dīn al-Khaṭīb (Beirut, Lebanon: Dār al-Ma'rifa, 1959). Vol. 2, pg. 263.

information about Moses ﷺ and Aaron ﷺ assumed to be an undisputed context of the verse ( وقد قال تعالى في موسى وأخيه: "قد أجيبت دعوتكما" وأحدهما داع والآخر مؤمّن) – making this reference to pre-Muḥammadan information appear specifically Qur'ānic (when it is in fact *derived*).[459] What this example demonstrates is that the preoccupation that individual jurists might have had with defending an inherited legal position might have given them reason to search for examples of pre-Muḥammadan law from sources *other* than the Qur'ān and ḥadīth. Some of the exegetical reports here were narrated by a Companion (‘Ikrimah), Successors (Abū al-‘Āliyah and al-Rabī‘ b. Anas) and the son of a Jewish member of the tribe of Banū Qurayẓah who was respected as a narrator of ḥadīth (Muḥammad b. Ka‘b al-Quraẓī), the latter possibly seen as a qualified conduit of pre-Muḥammadan lore. Based on the standards for accepting pre-Muḥammadan law as defined by most of the theorists looked at earlier, this type of information could not be accepted as legal evidence from any of these narrators, but apparently was for its convenience.

The second example that Ibn Ḥazm points to of Mālikī jurists referencing non-ḥadīth and non-Qur'ānic forms of pre-Muḥammadan law is related to the legal issue of *qasāmah*. I hope to nuance in the discussions that will follow Patricia Crone's comments arguing for the biblical origins of *qasāmah*, which she sees as a smoking gun proving that the Muḥammadan community went through an apparent "Pentateuchal" period. I will on the one hand strengthen part of her argument by upholding that *qasāmah* for the Kufans did appear to borrow *some* Deuteronomic features, but that this was likely a regional phenomenon. I will contradict her conclusions about early Islam by demonstrating that the biblical features of Kufan *qasāmah* were likely the result of a complex legal-exegetical interaction, rather than the outcome of a silenced or forgotten period of Muslim fidelity to the bible. The institution of *qasāmah* lacks fidelity to the Torah in

[459] Al-Tamīmī in Sharḥ al-Talqīn (vol. 1, pg. 554):
وغير بعيد أن يسمى الداعي مؤمنًا كما يسمى المؤمن داعيًا وقد قال تعالى في موسى وأخيه: "قد أجيبت دعوتكما" وأحدهما داع والآخر مؤمّن.

key regards. I also hope to show that some of what Crone believes to be "early" and original about *qasāmah* given her assumptions about the Muḥammadan community's Jewish origins, may in fact be "later" given some of the evidence that I will adduce.

According to Mālik and his followers, a Muslim can be executed through the legal procedure known as *qasāmah*, in a case where a murdered person made a dying declaration accusing someone of having killed them. Per the statements of Mālik, as recorded in *al-Muwaṭṭa'* and *al-Mudawwanah*, the circumstance warrants the initiation of *qasāmah*, or the collective oath. Before proceeding, however, I will offer a brief summary of the *qasāmah* procedure. The Mālikī version of *qasāmah* refers to a procedure of obtaining an oath of 50 relatives of a victim *against* someone accused of murdering their kin. According to Mālik, the practice of giving the plaintiffs the initial right of oath is what was agreed upon by the major scholars (الأئمة), both past and present.[460] Mālik reportedly also held that the oath for *qasāmah* (as opposed to other types of oaths) should be worded, "By God who gives life and death" (أقسم بالله الذي أحيا وأمات),[461] followed by the accusation. This may lead to the execution of the accused, or in the case of accidental death, the payment of blood money. According to Mālik, *qasāmah* is only done in the presence of incriminating indications (*lawth*/لوث), but no substantiated evidence, e.g. in the case of only one trusted witness having seen the crime, known hatred between the accused and the victim, or in this case, a dying accusation by the victim. If the 50 oaths are not secured, the oath than transfers to the defendants who are then to offer oaths of acquittal.[462]

---

[460] Mālik's *Muwaṭṭa'*, vol. 5, pg. 1293:
قَالَ مَالِكٌ: الْأَمْرُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَنَا. وَالَّذِي سَمِعْتُ مِمَّنْ أَرْضَى فِي الْقَسَامَةِ. وَالَّذِي اجْتَمَعَتْ عَلَيْهِ الْأَئِمَّةُ فِي الْقَدِيمِ وَالْحَدِيثِ. أَنْ يَبْدَأَ بِالْأَيْمَانِ، الْمُدَّعُونَ فِي الْقَسَامَةِ. فَيَحْلِفُونَ.

[461] See al-Lakhmī's *Tabṣirah* (vol. 12, pg. 5532), Ibn Rushd's *Bayān*, vol. 9, pg. 185: وقد روي عن مالك وابن القاسم أن الحالف في القسامة يقول: أقسم بالله الذي أحيا وأمات. وقع ذلك في النوادر، وقاله ابن حبيب، ولو حلف والذي لا إله إلا هو وحده لم يجز، قاله أشهب في كتاب ابن المواز

[462] See Mālik's *Muwaṭṭa'*, vol. 5, pgs. 1290-1301; Also, Saḥnūn's, *al-Mudawwanah,* vol. 4, pgs. 640-650 and 674.; Also, Ibn al-Jallāb's *al-Tafrī'*, vol. 2, pgs. 186-193.

I will note here as well, because it will be relevant shortly, that the other form of *qasāmah* attested to is the Ḥanafī/Iraqi model, wherein *qasāmah* is invoked in a situation where a corpse bearing traces of violence is found within the quarters of a locale such as a town or tribal territory or its vicinity, and whereby 50 righteous individuals from the implicated locale ( صالحي العشيرة) are selected by the family of the murdered deceased to make an oath declaring their innocence and stating, "By God, we did not commit the murder, nor do we know who did" ( بالله ما قتلنا ولا علمنا قاتلاً). Indicative of the practical realities that *qasāmah* sought to address, the Kufans also state that if the body is found in one of the tribal domains of Kufah that is resided in by others, that the original residents, the "People of Prestige" (أهل الخطة) are the ones who are to take responsibility by taking the oath and paying the blood money. The Ḥanafī mold, which has numerous defendants give their statement on the crime, served an obvious investigational function in the case that could aid in the discovery of the cause of death and the conviction of a murderer. In the Ḥanafī case, even if all 50 individuals made the oath bearing innocence, however, they would still need to pay blood money to the relatives of the deceased, which the Kufans claim was based on the practice of the Prophet ﷺ and 'Umar, and the financial burden is then to be distributed among the members of the group in such a way that it was not excessive.[463] Importantly, Imām Mālik addresses a situation wherein a body is found within the territory of a people in a particular locale. In contrast to the Kufans, he says that the people are *not* to be implicated in the murder, and he gives his rationale: someone could be killed, and their body tossed among a people in order to frame them.[464] *Qasāmah* for the Mālikīs, therefore, was not about territorial responsibility in the way it was for the Ḥanafīs. While the Medinese, Iraqis and others were to cite ḥadīth reports justifying *qasāmah* and in the mold that they saw it, there were

[463] Al-Shaybānī, *al-Aṣl*, vol. 6, pgs. 565-572
[464] See Mālik's Muwaṭṭa', vol. 5, pg. 1280

reportedly several early Muslims who rejected the practice of *qasāmah* altogether, including the Medinese Sālim b. ʻAbd Allāh b. ʻUmar (d. 106 AH), the Basran Abī Qilābah (d. 104 AH), Qatādah (d. 118) according to one narration, and apparently some of the jurists of Makkah including Muslim b. Khālid al-Zanjī (180 AH), along with others, likely because it seemed to violate known legal principles by punishing the accused by mere oaths without the presence of sufficient evidence.[465] *Qasāmah* thus appears to have been a disputed legal institution, both in its practice and its exact form, despite Mālik's assertion otherwise. Aside from the basic outlines provided above, a variety of rules were elaborated among the jurists in defining the practical applications of *qasāmah*, e.g., who could or could not give an oath, how would the oath be given if there were less than 50 individuals to give it, what constituted incriminating evidence for Mālik, or in the case of the Ḥanafīs for whom the law of *qasāmah* placed greater emphasis on territorial liability, identifying the group that would bear the responsibility of performing the *qasāmah* in cases where the body was found on a boat, in a mosque, between two cities, etc.

Returning to our original case study, Ibn Ḥazm decries the Mālikī position wherein a person's dying declaration against someone could be used to ultimately execute the accused in the case of *qasāmah*. As Ibn Ḥazm points out, this would seemingly go against prophetic ḥadīths and widely accepted principles that reject that the mere claims of individuals could be accepted.[466] Instead of basing their position in the prophetic ḥadīth or accepted legal logic, Ibn

---

[465] See Aḥmad ibn ʾAlī ibn Ḥajr Abū ʾl-Faḍl al-ʾAsqalānī, *Fatḥ Al-Bārī: Sharḥ Ṣaḥīḥ al-Bukhārī*, ed. Muḥibb ad-Dīn al-Khaṭīb, 13 vols. (Beirut, Lebanon: Dār al-Maʾrifa, 1959). Vol. 12, pg. 232.; Also: Ibn ʾAbd al-Barr al-Qurṭubī, *Al-Istidhkār*, ed. Sālim Muḥammad ʾAṭā and Muḥammad ʾAlī Miʾwaḍ, 1st ed., 9 vols. (Beirut: Dār al-Kutub al-ʾIlmiyyah, 2000). Vol. 8, pg. 208.

[466] Found in the *Ṣaḥīḥ*s of Muslim and al-Bukhārī. From Muslim (see vol. 3, pg. 1336):
...عَنِ ابْنِ عَبَّاسٍ، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ، لَادَّعَى نَاسٌ دِمَاءَ رِجَالٍ وَأَمْوَالَهُمْ، وَلَكِنَّ الْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ»
From al-Bukhārī (see vol. 6, pg. 35):
...عَنِ ابْنِ أَبِي مُلَيْكَةَ، أَنَّ امْرَأَتَيْنِ، كَانَتَا تَخْرُزَانِ فِي بَيْتٍ أَوْ فِي الحُجْرَةِ، فَخَرَجَتْ إِحْدَاهُمَا وَقَدْ أُنْفِذَ بِإِشْفًى فِي كَفِّهَا، فَادَّعَتْ عَلَى الأُخْرَى، فَرُفِعَ إِلَى ابْنِ عَبَّاسٍ، فَقَالَ ابْنُ عَبَّاسٍ: قَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ لَذَهَبَ دِمَاءُ قَوْمٍ وَأَمْوَالُهُمْ»، ذَكِّرُوهَا بِاللَّهِ وَاقْرَءُوا عَلَيْهَا: {إِنَّ الَّذِينَ يَشْتَرُونَ بِعَهْدِ اللَّهِ} [آل عمران: 77] فَذَكَّرُوهَا فَاعْتَرَفَتْ، فَقَالَ ابْنُ عَبَّاسٍ: قَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «اليَمِينُ عَلَى المُدَّعَى عَلَيْهِ»

Ḥazm takes later Mālikīs to task for justifying the basis of their Imām's position with an Israelite story found in *tafsīr* works regarding Qur'an 2:67[467] and 2:72-73[468]. In summary, the verses in question state that the Israelites were commanded with sacrificing a cow with specific features. The verses then say that the Israelites murdered a man, which led to a dispute, followed by a command to strike the dead body (the *qatīl*) with part of the sacrificed calf (اضْرِبُوهُ بِبَعْضِهَا). The enigmatic verses conclude by declaring that God brings the dead to life and reveals His signs. The exegetical reports that we will analyze in more detail later offer a background narrative for the verses, relaying that an Israelite man was killed by a relative seeking to inherit from him, which led to a disagreement as to who committed the crime. The Jews were then commanded through Moses to sacrifice a cow per the earlier Qur'ānic verse, and part of the cow was then used to strike the *qatīl*, who then returns to life briefly to identify his killer, who is then executed, solving the dispute. Outwardly, the verses and the narrative deal with the case of a disputed murder, similar to when *qasāmah* may be employed in light of some suspicion-raising evidence – the placement of a body in a certain domain for the Ḥanafīs, or some incriminating evidence for the Mālikīs. The Mālikī jurists thus drew analogy between the dead man coming to life to name his murderer in the story, and the legal case of a dying man accusing his murderer. Just as the former's opinion lead to the execution of the accused, the same is applied to the dying man here.[469] Ibn Ḥazm is taken aback by this attempt at deriving legal justification for Mālik's

---

[467] وَإِذْ قَالَ مُوسَىٰ لِقَوْمِهِ إِنَّ اللَّهَ يَأْمُرُكُمْ أَن تَذْبَحُوا بَقَرَةً ۖ قَالُوا أَتَتَّخِذُنَا هُزُوًا ۖ قَالَ أَعُوذُ بِاللَّهِ أَنْ أَكُونَ مِنَ الْجَاهِلِينَ ۝

[Recall] when you Moses said to his people, "Verily God commands you to slaughter a cow." They said, "Are you making fun of us?" He replied, "I seek refuge in God from being among the ignorant ones" ۝

[468] وَإِذْ قَتَلْتُمْ نَفْسًا فَادَّارَأْتُمْ فِيهَا ۖ وَاللَّهُ مُخْرِجٌ مَّا كُنتُمْ تَكْتُمُونَ ۝

فَقُلْنَا اضْرِبُوهُ بِبَعْضِهَا ۚ كَذَٰلِكَ يُحْيِي اللَّهُ الْمَوْتَىٰ وَيُرِيكُمْ آيَاتِهِ لَعَلَّكُمْ تَعْقِلُونَ ۝

[Recall] when you [the Children of Israel] killed a man and blamed one another about it, but God was to bring out what you concealed ۝

We said, "Strike the [slain man] with part of [the cow]. And thus God brings the dead to life and shows you His signs so that you may ponder" ۝

[469] See, al-Ṭabarī in *Jāmi' al-bayān* (vol. 2, pgs. 182-189 and vol. 2, pgs. 226-232)

position through Israelite tales (فمن أعجب ممن يحتج بخرافات بني إسرائيل) which haven't been confirmed by scripture, mass transmission (نقل كافة), or a contiguous chain (*musnad*) to the Prophet ﷺ. Additionally, he points out, from his vantage point, that there is no analogous connection between this narrative and the highly specific *qasāmah* which the Mālikīs apparently tie it to, nor is there any applicability of this story in his opinion for the Muḥammadan community as he believes (remember, Ibn Ḥazm does not uphold the utility of pre-Muḥammadan law). What irks him further is how this Israelite story is used to justify a mighty affair – execution and the spilling of believers' blood. And he points out that even if this pre-Muḥammadan story is true and granted as acceptable evidence, it is not applied with any sort of principle by the jurists citing it: they are willing to take the word of a dying man that implicates another's execution or take his wealth as blood-money in *qasāmah*, but elsewhere won't accept the claims of a dying man if it involves claims of money or about money to be given to an inheritor (ولا في درهم يقربه لوارث). The story can also not be analogized to a dying man's last words, he says, because it involves a miracle story about the raising of the dead. And how do we know that the man who was raised from the dead in the story actually told the truth?[470]

It is clear that this exegetical story regarding the Israelites was in fact cited by the Mālikīs as the major "textual" proof of the Imām's position. Ibn al-'Arabī (d. 543 AH)[471] and the later Ibn Nājī al-Tannūkhī (d. 837)[472] suggest that Mālik himself cited the story as proof, though I am unable to verify this. It is, however, a likely possibility that this justification from exegesis was

---

[470] See Ibn Ḥazm in *al-Iḥkām* (vol. 5, pgs. 163-166 and Vol. 2, pg. 104); Also, Ibn Ḥazm al-Andalusī al-Ẓāhirī, *Al-Muḥallā Bi al-Āthār*, 12 vols. (Beirut: Dār al-Fikr, n.d.). Vol. 11, pg. 300.

[471] al-Qāḍī Muḥammad ibn 'Abd Allah Abū Bakr ibn al-'Arabī, *Al-Masālik Fī Sharḥ Muwaṭṭa' Mālik*, vol. 8 (Dār al-Gharb al-Islāmī, 2007). Vol. 7, pg. 10:
وأمّا قولُ المقتولِ: دَمِي عِنْدَ فُلانٍ؛ فإنّ مالكًا إنّما تعلَّقَ فيه بما رَوَى عنه كُبَرَاءُ أصحابه حديث بَقَرَةِ بني إسرائيلَ حينَ قامَ المقتولُ فقال: "دَمِي عِندَ فُلانٍ" و"فُلانٌ قتَلَنِي"

[472] Qāsim b. 'Īsā b. Nājī al-Tannūkhī al-Qayrawānī, *Sharḥ Ibn Nājī Al-Tannūkhī 'alā Matn al-Risālah Li Ibn Abī Zayd al-Qayrawānī*, ed. Aḥmad Farīd al-Mazīdī, 2 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2007). Vol. 2, pg. 281:
واحتج مالك على قوله بقوله تعالى: (فقلنا اضربوه ببعضها)

indeed his or that of an early follower, given that the exegesis of these Qur'ānic verses was more strongly associated with *qasāmah* by the jurists at the time of Mālik's expounding of the institution as we will see, than it was among later jurists. Thus, it seems that it would have made sense for him or an early follower to have referred to this story. Among the numerous later Mālikīs who cite this story in defense of the position we have the Qāḍī 'Abd al-Wahhāb (d. 422)[473], who cites this story, which he identifies as well-known, as the textual proof for accepting the statement of the killed person as true, in opposition to the Ḥanafīs and Shāfi'īs. He also separately offers us a non-textual rationale for accepting this testimony as well, namely that Muslims at the time of their death, knowing they are about to meet God, have less incentive to take on sins by lying about such a great matter. There are secular parallels to this latter rationale in western law as well.[474] Muḥammad b. Rushd (d. 520 AH), similarly cites this story as proof of Mālik's position, but he points out that several jurists by his time, including the famous Mālikī Ibn 'Abd al-Barr (d. 463 AH), strongly rejected usage of this story as evidence of the position, calling it an example of extreme juristic carelessness.[475] The latter raises some of the same issues as did Ibn Ḥazm, namely that the testimony given in the story was seemingly confirmed as true only because God raised the *qatīl* back to life, which could only be analogized with a similar

[473] See al-Qāḍī Abū Muḥammad 'Abd al-Wahhāb al-Baghdādī al-Mālikī, *Al-Ishraf 'alā Nukat Masā'il al-Khilāf*, ed. al-Ḥabīb bin Ṭāhir, 1st ed., 2 vols. (Dār Ibn Ḥazm, 1999). Vol. 2, pgs. 841-842.; Also, al-Qāḍī Abū Muḥammad 'Abd al-Wahhāb al-Baghdādī al-Mālikī, *Al-Ma'ūnah 'alā Madhhab 'Ālim al-Madīnah al-Imām Mālik Ibn Anas*, ed. Ḥumaysh 'Abd al-Ḥaqq, 3 vols. (Makkah: al-Maktabah al-Tijāriyyah, Muṣṭafā Aḥmad al-Bāz (PhD Dissertation at the Umm al-Qurā University), n.d.). Vol. 1, pg. 1347.

[474] There are obvious parallels within modern law on dying declarations being admissible evidence or hearsay. Some of the juristic rationale given by the Mālikīs that a dying person is not presumed to lie are also reflected in this legal discourse. See, e.g.: "Dying Declaration," Legal Information Institute (Cornell Law School), https://www.law.cornell.edu/wex/dying_declaration.; Also: Brendan Koerner, "Last Words: Why Are We So Sure That Death and Honesty Go Together?," December 2002, https://www.legalaffairs.org/issues/November-December-2002/review_koerner_novdec2002.msp.

[475] Abū al-Walīd Muḥammad b. Aḥmad Ibn Rushd al-Qurṭubī, *Al-Muqaddimāt al-Mumahhidāt*, ed. Muḥammad Ḥajjī, 3 vols. (Beirut: Dār al-Gharb al-Islāmī, 1988). Vol. 3, pg. 306-307.; Also, Ibn 'Abd al-Barr's *Istidhkār*, vol. 8, pg. 208.

miraculous coming-back-to-life event in our day. This miracle would also need to be verified as true by a prophet or in the company of a prophet as in the story. Additionally, Ibn ʻAbd al-Barr points out that no one in the story made an oath regarding the *qatīl* (لم يقسم عليه أحد), whether a single oath or 50 as in *qasāmah,* which makes this case unrelated and un-analogous to the incriminating evidence in a *qasāmah* case. Ibn Rushd, Ibn al-ʻArabī (d. 543),[476] Ibn Shās (d. 616 AH),[477] al-Qarāfī (d. 684 AH),[478] Khalīl b. Isḥāq (d. 776)[479] and others defended usage of the story by stating that the miraculous and un-analogous event was in the man being brought back to life, not in the testimony he gave after coming back to life accusing his relative of killing him, which is a matter all sane, critically unimpaired living adults can also give. Furthermore, it can be assumed from this story that the law among the Israelites (الشرع كان عندهم) - which would be applicable on the Muḥammadan community given the acceptability of pre-Muḥammadan law - was that dying declarations were accepted and would have been acted on in the law of Moses had the man's testimony been heard before he died. This is why he was raised back to life by God, to complete his testimony before the people. Thus, the miraculous event of him coming back to life was not the reason for believing the man, but it was a means for him to make his dying declaration. As for the criticism that the exegetical narrative makes no mention of *qasāmah*, and thus this evidence had no relevance, it appears the later Mālikīs understood the story as establishing the dying person's accusation as a separate issue, which would then fell under the banner of 'incriminating evidence', which, for Mālik, was a reason for performing the

[476] al-Qāḍī Muḥammad ibn ʾAbd Allah Abū Bakr ibn al-ʾArabī, *Al-Masālik Fī Sharḥ Muwaṭṭa' Mālik*, vol. 8 (Dār al-Gharb al-Islāmī, 2007). Vol. 7, pg. 11.
[477] Abū Muḥammad Jalāl al-Dīn Ibn Shās, *'Aqd al-Jawāhir al-Thamīnah Fī Madhhab 'Ālim al-Madīnah*, ed. Ḥamīd Ibn Muḥammad Laḥmar, 1st ed. (Beirut: Dār al-Gharb al-Islāmī, 2003). Vol. 3, pg. 1133.
[478] See Shihāb al-Dīn Aḥmad b. Idrīs al-Qarāfī, *Al-Dhakhīrah Li al-Qarāfī*, ed. Muḥammad Bū Khubzah, 1st ed., vol. 4, 14 vols. (Beirut: Dār al-Gharb al-Islāmī, 1994). Vol. 12, pg. 290-291.
[479] See Khalīl Ibn Isḥāq al-Jundi, *Al-Tawḍīḥ Fī Sharḥ al-Mukhtaṣar al-Far'ī Li Ibn al-Ḥājib*, ed. Aḥmad b. ʾAbd al-Karīm Najīb, 1st ed., 8 vols. (Markaz Najībawayh li al-Makhṭūṭāt wa Khidmat al-Turāth, 2008). Vol. 8, pg. 189.

*qasāmah*. Ibn al-‘Arabī, in responding to the claim that Moses ﷺ only knew to execute the killer because the miracle confirmed the *qatīl*’s testimony, says that the Qur’ān doesn’t explicitly mention that the *qatīl* needed to be believed (the Qur’ān also makes no mention about the *qatīl* coming back to life to give his testimony!). It is thus possible, says Ibn al-‘Arabī, that the *qatīl*’s testimony was accepted by Moses ﷺ because of a *qasāmah* procedure he conducted (as the Mālikīs do), or perhaps he received separate knowledge from Gabriel. We can infer from these comments that the story did not bear clear connection to *qasāmah* for these later jurists – this connection appeared to be forced. However, we will see later that this was likely not always the case.

What is noteworthy in the way this evidence is cited by the Mālikīs like ‘Abd al-Wahhāb and Ibn Rushd, just as we saw with Abū ‘Abd Allāh al-Tamīmī in the earlier case study, is that a citation is first made to the verses of the Qur’ān as the proof of their position (there being no connection between the outward meaning of the verses and the derived ruling), before they attempting to seamlessly derive the ruling from the non-Qur’ānic story connected to the verses. By connecting the legal issue to the Qur’ānic verse, the opinions *appear* to be based in scriptural proof, when in fact they are based only in a well-known story linked to the verses. No discussion of authenticity regarding this evidence is noted by the jurists citing the tale, but the story’s status as ‘well-known’ is emphasized, suggesting that it is its pervasively known status in the tradition that gives it its weight as reliable evidence.[480] As was the case in the previous case noted by Ibn Ḥazm, those upon whose isnad transmission this pre-Muḥammadan information was reported

---

[480] In *al-Ishrāf* (vol. 2, pgs. 841-842) ‘Abd al-Wahhab says the following after giving the position, citing the *verses* before noting the story:

...لقوله تعالى: " إن الله يأمركم أن تذبحوا بقرة " إلى قوله: " فقلنا اضربوه ببعضها "، فالقصة معروفة في الذي قتل عمدًا...

And in *al-Muqaddimāt* (Vol. 3, pgs. 306-307) Ibn Rushd says:

والدليل على صحة قول مالك قول الله عز وجل: {وَإِذْ قَتَلْتُمْ نَفْسًا فَادَّارَأْتُمْ فِيهَا وَاللَّهُ مُخْرِجٌ مَا كُنْتُمْ تَكْتُمُونَ} [البقرة: 72] {فَقُلْنَا اضْرِبُوهُ بِبَعْضِهَا كَذَلِكَ يُحْيِي اللَّهُ الْمَوْتَى} [البقرة: 73]. والقصة مشهورة في شأن الرجل الذي قتله ابن أخيه...

among the exegetes include the Companion (Ibn ‘Abbās) and various successors that will be noted later, none of whose narrations would be considered acceptable by most theoretical standards of acceptable pre-Muḥammadan law that we encountered earlier. Even so, various Mālikīs such Ibn Shās and Khalīl b. Isḥāq defend this example’s use by saying it is pre-Muḥammadan law, which the *madhhab*’s position is to accept.[481] The fact that there merely *existed* a discourse allowing pre-Muḥammadan law provided this example enough legitimacy to be used under the banner of “pre-Muḥammadan law”, even if it did not formally follow the rules theoretically elaborated regarding it.

This exegetical report and the related comments from Ibn Ḥazm directed at the Mālikīs are noted in passing by Patricia Crone in her article arguing for the Jewish origins of *qasāmah*.[482] This is one of several examples she adduces wherein the Muslim sources themselves seem to connect *qasāmah* to Mosaic law. Her larger argument attempts to demonstrate that the Ḥanafī/Iraqi mold of *qasāmah* (which was briefly summarized above) was the original form of *qasāmah* as opposed to the accusatory Mālikī/Ḥijāzī one, and that it had “Pentateuchal” origins that reflected the biblical law of an unsolved murder found in Deuteronomy 21:1-9. In the biblical passage,[483] if a slain body is found in a field that is near a town and the murderer is not

---

[481] Abū Muḥammad Jalāl al-Dīn Ibn Shās, *’Aqd al-Jawāhir al-Thamīnah Fī Madhhab ’Ālim al-Madīnah*, ed. Ḥamīd Ibn Muḥammad Laḥmar, 1st ed., 3 vols. (Beirut: Dār al-Gharb al-Islāmī, 2003). Vol. 3, pg. 1133.; Also, Khalīl ibn Isḥāq’s *Tawḍīḥ*, vol. 8, pg. 189.

[482] P. Crone, “Jāhilī and Jewish Law: The Qasāma,” *Jerusalem Studies in Arabic and Islam* 4 (1984): 153–201.

[483] כִּי-יִמָּצֵא חָלָל, בָּאֲדָמָה אֲשֶׁר יְהוָה אֱלֹהֶיךָ נֹתֵן לְךָ לְרִשְׁתָּהּ, נֹפֵל, בַּשָּׂדֶה: לֹא נוֹדַע, מִי הִכָּהוּ

If one is found slain in the land which the LORD your God gave you to possess, lying in the field, and it is not known who killed him;

וְיָצְאוּ זְקֵנֶיךָ, וְשֹׁפְטֶיךָ; וּמָדְדוּ, אֶל-הֶעָרִים, אֲשֶׁר, סְבִיבֹת הֶחָלָל

then your elders and your judges should come forth, and they should measure unto the cities which are round about the slain person.

וְהָיָה הָעִיר, הַקְּרֹבָה אֶל-הֶחָלָל--וְלָקְחוּ זִקְנֵי הָעִיר הַהִוא עֶגְלַת בָּקָר, אֲשֶׁר לֹא-עֻבַּד בָּהּ, אֲשֶׁר לֹא-מָשְׁכָה, בְּעֹל

And the city which is nearest unto the slain man, the elders of that city shall take a heifer of the herd, which hath not been worked with, and which hasn’t worn a yoke.

וְהוֹרִדוּ זִקְנֵי הָעִיר הַהִוא אֶת-הָעֶגְלָה, אֶל-נַחַל אֵיתָן, אֲשֶׁר לֹא-יֵעָבֵד בּוֹ, וְלֹא יִזָּרֵעַ; וְעָרְפוּ-שָׁם אֶת-הָעֶגְלָה, בַּנָּחַל

And the elders of that city shall bring the heifer down unto a valley which was not plowed nor sown, and shall break the heifer's neck there in the valley.

וְנִגְּשׁוּ הַכֹּהֲנִים, בְּנֵי לֵוִי--כִּי בָם בָּחַר יְהוָה אֱלֹהֶיךָ לְשָׁרְתוֹ, וּלְבָרֵךְ בְּשֵׁם יְהוָה; וְעַל-פִּיהֶם יִהְיֶה, כָּל-רִיב וְכָל-נָגַע

known, the elders of the town can absolve the Israelites of the crime by breaking the neck of a heifer in a certain valley. They then wash their hands over the heifer and make a communal oath, swearing that they did not see the crime or see it done and ask for God's forgiveness. Crone argues that the Ḥanafī *qasāmah* is derivative of this passage. Some of the parallels that she notes include both the cases involving a slain person's body found in the vicinity of a town, the Ḥanafī *qasāmah* oath swearing personal innocence and lack of knowledge of the crime ( بالله ما قتلنا ولا علمنا قاتلاً | "By God, we did not kill [him], nor do we know who did") more-or-less matching the beginning of the biblical oath (יָדֵינוּ, לֹא שפכה (שָׁפְכוּ) אֶת-הַדָּם הַזֶּה, וְעֵינֵינוּ, לֹא רָאוּ | "Our hands did not shed this blood, nor have our eyes seen it…"),[484] the interest among Jewish and Muslim sources as to the measurement of distance between the body and the towns, the expiatory measure (slaughtering of a heifer in the Torah, 50 oaths and payment of the *diyah* in the Ḥanafī case) being done in the absence of evidence of a murderer in order to expiate the people of a locale from an accusation, and the fact this oath is taken by elders of the town in the

---

The Levitical priests shall come near -- for the LORD thy God hath chosen them to minister unto Him and to bless in the name of the LORD; and according to their word shall every dispute and every assault be tried.

וְכֹל, זִקְנֵי הָעִיר הַהִוא, הַקְּרֹבִים, אֶל-הֶחָלָל--יִרְחֲצוּ, אֶת-יְדֵיהֶם, עַל-הָעֶגְלָה, הָעֲרוּפָה בַּנָּחַל

And all the elders of the city who are nearest unto the slain man shall wash their hands over the heifer whose neck was broken in the valley.

וְעָנוּ, וְאָמְרוּ: יָדֵינוּ, לֹא שפכה (שָׁפְכוּ) אֶת-הַדָּם הַזֶּה, וְעֵינֵינוּ, לֹא רָאוּ

And they shall speak and say: 'Our hands did not shed this blood, nor have our eyes seen it.

כַּפֶּר לְעַמְּךָ יִשְׂרָאֵל אֲשֶׁר-פָּדִיתָ, יְהוָה, וְאַל-תִּתֵּן דָּם נָקִי, בְּקֶרֶב עַמְּךָ יִשְׂרָאֵל; וְנִכַּפֵּר לָהֶם, הַדָּם

Forgive, Thy people Israel, who you redeemed, O Lord, and do not lay innocent blood to Thy people Israel." And the blood shall be forgiven from them.

וְאַתָּה, תְּבַעֵר הַדָּם הַנָּקִי--מִקִּרְבֶּךָ: כִּי-תַעֲשֶׂה הַיָּשָׁר, בְּעֵינֵי יְהוָה

So you will have put away the innocent blood from among you, when you do that which is right in the eyes of the LORD.

[484] From *al-Aṣl* (vol. 6, pg. 565):

وإذا وُجد الرجل قتيلاً في محلة قوم فعليهم **أن يُقْسِم منهم خمسون رجلاً بالله ما قتلنا ولا علمنا قاتلاً**، ثم يغرمون الدية

Deuteronomy 21:7-8:

וְעָנוּ, וְאָמְרוּ: **יָדֵינוּ, לֹא שפכה (שָׁפְכוּ) אֶת-הַדָּם הַזֶּה, וְעֵינֵינוּ, לֹא רָאוּ**

And they shall speak and say: "Our hands did not shed this blood, nor have our eyes seen it.

כַּפֶּר לְעַמְּךָ יִשְׂרָאֵל אֲשֶׁר-פָּדִיתָ, יְהוָה, וְאַל-תִּתֵּן דָּם נָקִי, בְּקֶרֶב עַמְּךָ יִשְׂרָאֵל; וְנִכַּפֵּר לָהֶם, הַדָּם

Forgive Thy People Israel who You redeemed, O LORD, and do not lay innocent blood to Thy people Israel." And the blood shall be forgiven from them.

bible, and are referred to as the "elders" (شيوخهم) in ḥadīth that we will look at, or the righteous people or resident members of a tribal domain (أهل الخطة) as was noted earlier regarding the Ḥanafī case.[485] One of her most significant arguments to show that the jurists borrowed this from the Torah, however, is that the Muslim sources themselves seem to draw a connection between *qasāmah* and mosaic law, in particular per the exegesis of the earlier noted verses in *Surat al-Baqarah* regarding the sacrifice of a cow and a disputed murder. Given her general distrust of the Muslim source material, she describes this internal Muslim recognition of a mosaic connection as an "inexplicable oddity."[486] The existence of these Muslim statements that we will analyze, combined with her earlier comparative analysis between Deuteronomy 21:1-9 and the Ḥanafī *qasāmah*, leads her to conclude that the institution of *qasāmah*, whether born in the practice of the Prophet ﷺ or after, was clearly Pentateuchal and emerged at a point when the Muḥammadan religion was not yet distinct from Judaism. The early Muslims who developed this institution saw themselves as committed to the Pentateuchal model.

She suggests that later scholars were unable to recognize the biblical connection that the earlier jurists were operating within. For example, she notes Ibn Ḥazm's confusion over the Mālikī citation of this exegetical story in the case of *qasāmah:* what connection did this story have to *qasāmah,* he asked. The true biblical origins of the institution, she suggests, were obfuscated by ḥadīth that identified *qasāmah* as an originally Jāhilī Arab institution. While later scholars were unable to make the biblical connection, it was the "early scholars" (i.e. the examples that she cites) who "were perfectly familiar with the Pentateuchal landscape behind the Islamic institutions… They found their law in the Pentateuch, saw Muḥammad as a Pentateuchal revivalist, and read *Sūrat al-baqara* as a commentary to this scripture: the Koranic injunction

[485] See Crone, "Jāhilī and Jewish Law," Pgs. 165-173.
[486] Crone, "Jāhilī and Jewish law", pg. 177

regarding the sacrifice of the cow was taken to be part of Deuteronomy, and the story of the murdered one of Israel belongs to the *asbāb al-nuzūl* of the *Pentateuch…*"[487] She then tries to extrapolate which Jewish community the Muslims received their bible and biblical knowledge from, and she uses the Muslim statements affirming a mosaic connection to offer us clues in this regard, because the anomalous existence of these statements means that they were original and true. Some of these statements (which we will look at) stated that the Jews were still practicing *qasāmah* after Moses ﷺ, and that the Prophet ﷺ continued it. The rabbinic Jews ceased practicing the oath of compurgation and slaughter, so she hypothesizes that Muslims took *qasāmah* from the Samaritans or a factor X, since the Samaritans continued making the oath of compurgation.

As for the Mālikī version, it was distinct from the Ḥanafī/biblical mold in that it involved incriminating evidence (as opposed to mere proximity of the body to a locale) and gives the initial communal oath to the plaintiffs before shifting it to the defendants if the plaintiffs are unable to carry out their oaths. Crone suggests that because the Ḥanafī version must have been first – since it is biblical - the Mālikī institution is a later development and not based in the Jāhiliyyah as suggested in some of the ḥadīth it bases itself in. The Mālikī version is still Jewish, but Rabbinic (as opposed to merely Pentateuchal), because it shares some commonality regarding the issue of oath making. She points out that the "post-Mishnaic oath," related to debts in the Talmud,[488] was one where the plaintiff has the defendant provide an oath, but if the defendant was unwilling, that this oath could be passed back to the plaintiff to then make. While this is the *opposite* of the Mālikī model, she asserts in a rather forced manner that the Talmudic model of the oath being with the defendant in the above Rabbinic case is only because the inner logic of the procedure has the oath shift to whoever has the presumption in their favor. In the

[487] Ibid., pgs. 177-178
[488] See, e.g. Shevuot 40b

rabbinic case, it thus started with the defendant, but the Medinese jurists decided that the presumption was in the favor of the plaintiffs (because of the body's presence near a town, and the existence of incriminating evidence as is attributed in the Mālikī model), and thus they followed through with the internal Rabbinic logic and gave the plaintiff the oath from the beginning.[489] In all fairness it should be pointed out that in a postscript to a later edition of her study, Crone distances herself from some of her conclusions, asserting that the "jump" she made from "the early Muslim identification of the *qasāmah* as a Mosaic institution and the exegetical familiarity with the Pentateuch" to what she identified as a Pentateuchal stage was "unwarranted," and may have benefited from additional study of Muslim tafsīr[490] (which this chapter will do).

In the pages that follow I will examine the examples she cites (a statement ascribed to Wahb b. Munabbih lacking isnād, two later exegetical accounts of the Qur'ānic verses looked at that lack ascription, and a prophetic ḥadīth narrated by al-Kalbī). I will also study exegetical traditions related to these verses. My study will conclude a few points. First, Kufan jurists were already seeking law from the exegesis of these verses as early as the mid-1st century (though about murder and not necessarily *qasāmah*). The Kufan Jurist 'Abīdah b. 'Amr al-Salmānī (d. 72 AH), who offers his own exegesis on these verses, comments on the inheritance of the murderer in the exegetical story, saying that following the incident of the slain Israelite, inheritance was never allowed for a murderer again. The later Kufan jurist al-Shaybānī cites this exegetical comment which was recorded in the Kufan tradition to prohibit the bequests of a murderer. In addition to the Mālikī citation of the exegetical narration of the dead man's testimony, this would be another example of the exegesis of *these verses* in particular being used for a matter of law.

[489] Ibid., pgs. 190-195.
[490] Ibid. pg. 201

My study of the early exegetical traditions will show regional variance in the understandings of these verses. It is the Iraqi exegetical traditions on this verse, and particular those attributed to Ibn ʻAbbās where we see an account of the story that builds off of what we find in Deuteronomy more than the non-Iraqi ones, yielding certain features that we then see in the Kufan form of *qasāmah*. But what is just as important is that in some of the likely 'later' Iraqi exegetical narratives, we see non-biblical aspects of the Kufan *qasāmah* become cast *onto* the exegesis, showing that both the exegetical story as it was being told in Kufah, and the law of *qasāmah* as it was practiced in Kufah, were operating in tandem. Crone doesn't seem to entertain that the exegetical examples that she builds some of her arguments on (which we will look at), may in fact be a later formulation to serve the jurist's end. We will also see a clear case of the exegetical-legal connection in the Kufan exegete Muḥammad b. al-Sa'ib al-Kalbī (d. 146 AH), who was close to the founders of the Ḥanafī school, being a teacher to Abū Yūsuf himself. Al-Kalbī appears to be the first exegete to explicitly tie the (Kufan) exegetical tradition of the Qur'ānic verses of the cow to *qasāmah* and Mosaic law (which Crone is not aware of), along with simultaneously providing a reformulation of a famous prophetic ḥadīth regarding *qasāmah* to show the Prophet ﷺ following Moses ﷺ in performing a *qasāmah* that fit a Kufan mold (which Crone *is* aware of, but assumes to be carrying ancient and original information). As I will show, it appears that al-Kalbī elsewhere also makes a point of legitimizing Muḥammadan practice by attributing it to Mosaic law, i.e. derivative of pre-Muḥammadan law. This may relate to a larger Kufan phenomenon in general, glimpses of which we saw in previous chapters. My conclusions shift Crone's, by suggesting what she considers to be the 'early' and true form of *qasāmah* was likely a regional variation of *qasāmah* that likely also went through development itself to take on the characteristics that she considers 'early' and original. The attribution to Mosaic law was also

a likely later act of legitimizing the Kufan institution in terms of pre-Muḥammadan law, and not 'a forgotten stage' that was recovered as Crone suggests. Furthermore, different exegetical traditions were known and dispersed geographically, and it is clear that at a regional level, there were likely distinct interactions taking place between exegesis and the law of *qasāmah*, wherein the juristic discourse may have been impacted, but also impacting the exegesis itself. While the Torah looks like it had a role to play in this story, it was not out of some pristine commitment or fidelity to the Torah that the Kufan *qasāmah* took on the mold that it did but rather a filtration of this material through exegesis and at least one forged prophetic ḥadīth. My study also points out the significance of *tafsīr* as a source of Islamic law.

Before proceeding, I want to note a separate criticism of Crone's argument, offered by Rudolph Peters.[491] Performing an isnād and matn analysis on the two major prophetic ḥadīths[492] cited in the discussion on *qasāmah* per the dating methods of Juynboll and Motzki, Peters concludes that both the accusatory form of *qasāmah* espoused in the Ḥijāz, and the Iraqi form that emphasized territorial liability were *both* already in existence by the middle of the first century AH, contradicting the notion held by scholarship that the original form of qasāmah must have been the accusatory tribal/"Jāhilī" one associated with the Medinese version (tribal because it gave the oath to the plaintiff), or according to Crone, the one represented by the Iraqis. Their genesis was regionally distinct, whereas for Crone the Mālikī version was a later restructuring of an original Iraqi one. He also states that the argument in favor of Pentateuchal origins for the

[491] Rudolph Peters, "Murder in Khaybar: Some Thoughts on the Origins of the Qasāma Procedure in Islamic Law," *Islamic Law and Society* 9, no. 2 (2002): 132–67.

[492] The first is a report that the *qasāmah* existed in the time of the Jāhiliyyah and was then confirmed by the Prophet ﷺ in a case where the Anṣār of Medinah claimed a person was killed by the Jews. This version is devoid of details. The second report provides a narrative of the Anṣār case of *qasāmah*, wherein the Prophet ﷺ first asks the Anṣār, the plaintiffs, if they want to make 50 accusatory oaths, which they refuse because they say the didn't witness the event. The Prophet ﷺ then offers the collective oath to the Jews, but the Anṣār object, so the Prophet ﷺ ultimately pays the blood price himself. In this second prominent report, the *qasāmah* is never actually exacted. For variants of these reports, in addition to others, see, 'Abd al-Razzāq's *Muṣannaf*, vol. 10, pgs. 27-50.

Iraqi model is conjectural, given that similar notions of territorial liability are found in other Near Eastern models such as Hammurabi's code. Additionally, he gives attention to a special feature of the Iraqi *qasāmah* in cases where a body was found among a tribe in Kufah where there were also residents in the tribal territory and people who owned homes there, that in this scenario the Kufan *qasāmah* required that the "People of Prestige" (أصحاب الخطة / *aṣḥāb al-khiṭṭah*) be the ones who give the oath and pay the blood money.[493] This very special case, according to Peters, suggests that the Iraqi *qasāmah* was developed to address certain uniquely Iraqi societal features: "it is likely that the responsibility of the inhabitants of quarters and villages for unsolved murders committed in their neighborhoods was introduced as a practical measure to ensure law and order in the newly founded garrison towns shortly after the conquest of Iraq."[494] This would then date the Iraqi *qasāmah* to before the end of the first century AH and reflect a time when the خطط / *khiṭaṭ* administrative units were operational in the garrison towns of Iraq, thus offering an *emic* and non-biblical explanation for some of the institutional features of the Iraqi *qasāmah*. My argument supports Peters' idea of two relatively separate regional trajectories for the institution, though I believe it is also quiet likely that the two institutions had some shared basis as they both feature certain non-biblical dimensions, namely the giving of 50 oaths and the solving of a dispute with payment of blood money or execution. I question Peters' wariness towards Crone's argument for the biblical origins of Ḥanafī *qasāmah* on the existence of mere parallels though, as he does not engage with a key strength in her argument, which is that she documents a handful of examples showing that the Muslim sources *themselves* appeared to recognize a connection between *qasāmah* and Deuteronomy 21:1-9. We now turn to these examples.

[493] See al-Shaybānī's *Aṣl*, vol. 6, pg. 567.
[494] See Peters, "Murder in Khaybar", pg. 160.

In addition to the example from Ibn Ḥazm previously noted, Crone locates four examples in the Muslim sources that indicate an early admission of *qasāmah*'s derivation from Mosaic law, which we will now look at. The first is a statement that the Kufan Ibn Qutaybah (d. 276 AH) ascribes to Wahb b. Munabbih without isnād in his *al-Ma'ārif*, in a section on "firsts" (الأوائل). Wahb is cited as saying that *qasāmah* was revealed to Moses ﷺ regarding the person who is murdered (*qatīl*) and found between two towns or locales. He says that the Children of Israel still practice this, and that the Prophet ﷺ also adjudicated with *qasāmah*.[495] Its inclusion in a Kufan source, which she does not give attention to, is significant, as we will see later. A text search across several thousand Islamic works, early and late, suggests that the only other ascriptions of this statement to Wahb appear to come from Ibn Qutaybah's *al-Ma'ārif*, and again, without any isnād.[496] Crone also notes two examples where the exegetes themselves appeared to tie the Qur'ānic passage we encountered above about the Jew who was brought back to life to Deuteronomy 21:1-9 itself, with one identifying a parallel to *qasāmah*. Her examples are al-Maqdisī (d. ca. 355 AH) in his *al-Bad' wa al-tārīkh*, and al-Tha'labī (d. 427 AH) in his work *Qiṣaṣ al-Anbiyā'*. Al-Maqdisī reports that one or some unnamed exegetes (قال بعض أهل التفسير) say regarding the Qur'ānic verses we encountered above, that a cow was requested to be slaughtered because of a Torah command that whenever a *qatīl* is found between two villages, the village

[495] Abū Muḥammad Ibn Qutaybah al-Daynūrī, *Al-Ma'ārif*, ed. Tharwat 'Ikāshah, 2nd ed. (Cairo: al-Hay'ah al-Miṣriyyah al-'Āmmah li al-Kitāb, 1992). Pg. 552.; The editor notes the broken isnāds in this book to Wahb and Ka'b al-Aḥbār for Isrā'īliyyāt material are problematic. See pg. 118.

[496] Searches were done on 7259 works across all genres of the *shāmilah* database for {(وهب) AND [(قسامة) AND/OR (مقاسمة)]}, along with [(وهب بن منبه) AND (قتيل)] and for a non-Wahb versions of this attribution (which I did not find), I searched for {[(موسى) AND (قتيل)] + [(قسامة) OR (مقاسمة)]}. Sibṭ ibn al-'Ajamī Aḥmad Abū Dharr (d. 884 AH) was aware of this attribution to Wahb, but his late work is likely borrowing from Ibn Qutaybah's *al-Ma'ārif*. His section also deals with 'firsts' as did Ibn Qutaybah (another reason he may be taking it from Ibn Qutaybah). See Aḥmad Abū Dharr Sibṭ ibn al-'Ajamī, *Kunūz Al-Dhahab Fī Tārīkh Ḥalab*, 1st ed., 2 vols. (Aleppo: Dār al-Qalam, 1417AH). Vol. 2, pg. 95; The modern al-Hararī is also aware of this statement from Ibn Qutaybah's *al-Ma'ārif*. See Muḥammad al-Amīn al-Hararī, *Al-Kawkab al-Wahhāj: Sharḥ Ṣaḥīḥ Muslim*, 1st ed., 26 vols. (Dār al-Minhāj/Dār Ṭawq al-Najāh, 2009). Vol. 18, pg. 321.

nearest the body is assigned guilt. The village is asked to make fifty oaths, and commanded to sacrifice a cow, putting their hands over the cow and swearing by God that they did not kill him, nor did they know the murderer (بالله ما قتلناه ولا عرفنا قاتله). This would be done to free them of guilt from the spilled blood (فيبرءون من دمه).[497] We find an institution that is *very* similar to the Kufan model of *qasāmah* in its emphasis of territorial responsibility and the fact that 50 individuals give their oath with the same language as the Kufan oath. This exegesis also formally ascribes itself to the Torah (though the 50 oaths are not biblical).

She also cites al-Tha'labī's (d. 427 AH) *Qiṣaṣ al-Anbiyā'* wherein we are told that the Jews were in dispute about a man who was killed and then placed between two towns. His heirs then ask Moses ﷺ for retribution (*qiṣāṣ*) to be applied, even though there was no clear evidence of their guilt. According to al-Tha'abī, this event was what preceded the rule of *qasāmah* coming down to Moses ﷺ in the Torah (وذلك قبل نزول القسامة في التوراة). Al-Tha'labī, a 4th-5th century source, does not give us his source for this comment here, who I will identify shortly. He continues that Moses ﷺ then commanded them to sacrifice the cow as in the Qur'ānic verses. After this incident, al-Tha'labī states, Moses ﷺ was commanded to go to the Holy Land with the Children of Israel, and find cases of a *qatīl* between villages or locales and assign responsibility for the blood money (*diyah*) upon the town closest to the body. If they were aware of the killer, they should hand them over to the family of the deceased, otherwise 50 of their elders and righteous ones (شيوخهم وصلحاءهم) would come together and slaughter a cow at the bottom of a valley, placing their hands over the cow and swearing by "God, the Mighty, Lord of the Heavens and

[497] al-Muṭahhir b. Ṭāhir al-Maqdisī, *Al-Bad' Wa al-Tārīkh*, 6 vols. (Būr Sa'īd: Maktabat al-Thaqāfah al-Dīniyyah, n.d.). Vol. 3, pgs. 90-91:
قال بعض أهل التفسير أنه كان مكتوبا عليهم في التوراة ايما قتيل وجد بين قريتين وليس إلى أقربهما واخذ أهل تلك القرية بذنبه فإن أنكروا استحلفوا منهم خمسون رجلا وذكوا بقرة ووضعوا أيديهم عليه يحلفون بالله ما قتلناه ولا عرفنا قاتله فيبرءون من دمه حتى قتل رجل ابن عم له يقال له عاميل مخافة أن يتزوج ابنة عمه فطرحه في بعض الأودية وأصبح القوم والقتيل بين أظهرهم ولا يدرون من قاتله ففزعوا إلى موسى فأمرهم بذبح بقرة من البقر فلم يزالوا يراجعونه ويشددون على أنفسهم حتى قصروا على الشيمة الموصوفة في القرآن فذبحوها وضربوه ببعضها فعاش فأخبر بقاتله

the Earth, the God of the Children of Israel, of Isḥāq, Ya‘qūb and Ismā‘īl that we did not kill him, nor do we know who killed him (ما قتلناه ولا علمنا له قاتلا)" The blood would then be forgiven them (فإذا حلفوا برؤا من دمه), but blood money would still be paid to the relatives (وأدوا ديته إلى أوليائه). Al-Tha‘labī continues that Moses ﷺ judged in this way until his death, and so did the Israelites until Islam, when the Prophet ﷺ adjudicated with *qasāmah* as well (mirroring Wahb's statement earlier that the practice continued among the Jews).[498] This version is *very* Kufan: there is a mandatory *diyah* that is paid.

In these two accounts from these 4th-5th century authors, we are given exegetical details that relate to *qasāmah*. Only al-Tha‘labī's version formally calls it *qasāmah*, saying that the Qur'ānic incident happened before *qasāmah* was revealed in the Torah. The Israelite practice as described in the two narratives feature elements with regards to the Deuteronomic ceremony and Muḥammadan *qasāmah* that:

1. Relate to both the *qasāmah* (in its Kufan form) and the Deuteronomic rite:
    a. Mention of a specific oath that declares their innocence and also lack of knowledge regarding the crime (باللَّه ما قتلناه ولا عرفنا قاتله)
    b. The town where the body is nearest is implicated in the crime and is the one that gives the oath, not the plaintiffs.
    c. The defendants become freed of guilt from the spilled blood (فيبرءون من دمه)

[498] Ibn Isḥāq Ibrāhīm al-Tha'labī, *Qiṣaṣ Al-Anbiyā' al-Musammāh 'Arā'is al-Majālis*, ed. Muḥammad Ibrāhīm Ibn al-Marḥūm, Nūr Muḥammad, and Malānūr al-Dīn Ibn Jaywakhān (Maṭba' al-Ḥaydarī, n.d.). Pgs. 315-320:
...وذلك قبل نزول القسامة في التوراة فسألوا موسى أن يدعو الله ليبين لهم أمر ذلك القتيل فسأل موسى ربه فأمرهم بذبح البقرة... فلما كان من أمر عاميل ما كان أوحى الله تعالى إلى موسى أن يتوجه إلى الأرض المقدسة ببني إسرائيل لينظر إلى كل قتيل يوجد بين قريتين أو محلتين فيأخذ أقرب القريتين إليه ويلزمهم الدية فإن علموا قاتله سلموه إلى أهله وإن لم يعلموا تخيروا خمسين رجلا من شيوخهم وصلحائهم ثم ليأخذوا بقرة حولية ويذبحوها ببطن واد يسميه لهم ثم ليضع الخمسون رجلا أيديهم عليها ثم ليحلفوا بالله العظيم رب السماوات والأرض إله بني إسرائيل وإسحاق ويعقوب وإشماعيل أنا ما قتلناه ولا علمنا له قاتلا فإذا حلفوا برؤا من دمه وأدوا ديته إلى أوليائه فلم يزل موسى يقضي بالقسامة بينهم إلى أن مات وكذا بنو إسرائيل حتى جاء الإسلام فقضى رسول الله صلى الله عليه وسلم بالقسامة والله أعلم.

d. The men who make the oath are from people of rank: elders and righteous ones (al-Thaʿlabī only)

2. Are uniquely biblical:
    a. The sacrifice of the cow (also Qur'ānic)
    b. Placing hands over the sacrificed cow
    c. The sacrifice happens in a valley (al-Thaʿlabī only)
    d. An oath that mentions Israel (al-Thaʿlabī only, but includes words that are non-biblical)
    e. The law was practiced in Israel (al-Thaʿlabī only)
3. Are uniquely for the benefit of (a primarily Kufan) *qasāmah*:
    a. An oath of 50 men (specifically 50 of the elders and righteous ones according to al-Thaʿlabī)
    b. The imposition of a *diyah* on the nearest town, even after making an oath of innocence (al-Thaʿlabī only)
    c. If the killer is actually known by those who would be making the oath, they are turned over to the victim's family, i.e. for separate prosecution (al-Thaʿlabī only)
    d. This was practiced by the Prophet ﷺ *himself* as a continuation of the Israelite law (al-Thaʿlabī only)

As is apparent from the above, the cited exegesis was clearly attributing Muḥammadan *qasāmah* to an Israelite practice, and in al-Thaʿlabī's version we come across noticeably Kufan elements of *qasāmah* fitting into the exegesis (the *diyah*, the number of oaths, the giving up of the killer through the process of the oath). The report also appears to make a strong attempt at legitimizing the institution as is presented in the narrative by claiming the Israelite practice (as

the *tafsīr* defined it) was continued by the Prophet ﷺ. While al-Tha'labī and al-Maqdisī do not attribute their comments that reflect Deuteronomy 21 to any specific source, it is the Kufan exegete Muḥammad b. al-Sā'ib al-Kalbī (d. 146 AH)[499] – father of Hishām ibn al-Kalbi (d. 204 AH) – who was the source of al-Tha'labī's very specific claim that the Qur'ānic events surrounding the cow were the prelude to the *qasāmah* that would be revealed in the Torah. Al-Tha'labī attributes this statement to al-Kalbī in his *Tafsīr*, while he does not in his *Qiṣaṣ al-anbiyā'*, which was the work consulted by Crone.[500] Al-Kalbī's statement declaring the incident of the *qatīl* in the Qur'ān as being the prelude to *qasāmah* as it was revealed in the Torah, i.e. connecting *qasāmah* to Mosaic law, was recorded by several later exegetes. Those who name him in addition to al-Tha'labī as the source of this information include al-Baghawī (d. 510 AH)[501], al-Biqā'ī (d. 885 AH)[502], and al-Khaṭīb al-Sharbīnī (d. 977 AH)[503]. Some tafsīrs cite the same statement that he makes, but do not mention his name, such as the tafsīrs of Al-Qurṭubī (d. 671 AH)[504] and al-'Ulaymī (d. 928 AH),[505] while Ibn Kathīr (d. 774 AH)[506] appears to transmit it

[499] For al-Tha'labī's isnād to al-Kalbī's *Tafsīr*, see Abū Isḥāq al-Tha'labī, *Al-Kashf Wa al-Bayān 'an Tafsīr al-Qur'ān*, ed. Abū Muḥammad b. 'Āshūr, 1st ed., 10 vols. (Beirut, Lebanon: Dār Iḥyā' at-Turāth al-'Arabī, 2002). Vol. 1, pg. 77.

[500] Ibid. Vol. 1, pg. 213-214:

قال الكلبي: وذلك قبل نزول القسامة في التوراة

[501] Abū Muḥammad al-Baghawī, *Ma'ālim al-Tanzīl Fī Tafsīr al-Qur'ān (Tafsīr al-Baghawī)*, ed. 'Abd al-Razzāq al-Mahdī, 1st ed., 5 vols. (Beirut: Dār Iḥyā' at-Turāth al-'Arabī, 1420AH). Vol. 1, pg. 127.

[502] Burhān al-Dīn al-Biqā'ī, *Naẓm Al-Durar Fī Tanāsub al-Āyāt Wa al-Suwar*, 22 vols. (Cairo: Dār al-Kitāb al-Islāmī, n.d.). Vol. 1, pg. 476, and Vol. 5, pg. 454.

[503] Shams al-Dīn al-Khaṭīb al-Sharbīnī, *Al-Sirāj al-Munīr Fī al-I'ānah 'alā Ma'rifat Ba'ḍ Ma'ānī Kalām Rabbinā al-Ḥakīm al-Khabīr*, 4 vols. (Cairo: Maṭba'at Būlāq al-Amīriyyah, 1285AH). Vol. 1, pg. 68.

[504] Abū 'Abd Allāh al-Qurtubī, *Al-Jāmi' Li Aḥkām al-Qur'ān*, ed. Aḥmad al-Bardūnī and Ibrāhīm Aṭfīsh, 2nd ed., 20 vols. (Cairo: Dār al-Kutub al-Maṣriyyah, 1964). Vol. 1, pg. 446.

[505] Abū al-Yumn al-'Ulaymī, *Fatḥ Al-Raḥmān Fī Tafsīr al-Qur'ān*, ed. Nūr al-Dīn Ṭālib, 1st ed., 7 vols. (Dār al-Nawādir, 2009). Vol. 1, pg. 124.

[506] Ibn Kathīr al-Qurashī, *Tafsīr Al-Qur'ān al-'Aẓīm (Tafsīr Ibn Kathīr)*, ed. Sāmī b. Muḥammad Salāmah, 2nd ed., 8 vols. (Dār Ṭībah li al-Nashr wa al-Tawzī', 1999). Vol. 1, pg. 293-4:

قَالَ أَبُو عَبْدِ اللَّهِ: أَعْلَمُ أَنَّ نُزُولَ قِصَّةِ الْبَقَرَةِ عَلَى مُوسَى، عَلَيْهِ السَّلَامُ، فِي أَمْرِ الْقَتِيلِ قَبْلَ نُزُولِ الْقَسَامَةِ فِي التَّوْرَاةِ

second hand from an Abū ‘Abd Allāh[507]. Ibn al-Jawzī (d. 654 AH) mistakenly attributes al-Kalbī’s statement to al-Suddī (d. 127 AH), along with other exegetical material, but this attribution does not confirm to al-Suddī’s *tafsīr* as we will see later and appears to be a mistake.[508] Importantly, al-Tha‘labī attributes this to al-Kalbī alone, and *not* to a higher source as he does with al-Kalbī’s tafsīr material elsewhere,[509] indicating that he himself was the source of this information. The next example will demonstrate that al-Kalbī was likely also the exegetical source connecting the Kufan style of *qasāmah* found in al-Tha‘labī’s exegesis to Moses ﷺ and the Prophet ﷺ.

In *al-Aṣl*, al-Shaybānī describes Kufan *qasāmah* by saying that when a murdered body is found in a locale, a specific oath, which we will call the “Deuteronomic oath” ( بالله ما قتلنا ولا علمنا قاتلاً) should be taken 50 times, and a blood price should also be paid by the defendants ( ثم يغرمون الدية).[510] This is the general form that he says the received practice of the Prophet ﷺ confirms (بلغنا نحو من هذا عن النبي صلى الله عليه وسلم). But we are not given the supporting Prophetic report for this. We find the report in al-Sarakhsī’s writings, one of the key transmitters of al-Shaybānī’s texts.[511] In his discussion on Ḥanafī *qasāmah*, Al-Sarakhsī provides us first with a Kufan ‘version’ of the famous *qasāmah* ḥadīth in which the Anṣār find one of their members killed in a

[507] It is not clear who he is referring to. If it is Abū ‘Abd Allāh al-Rāzī, then the statement is not attested to in his *tafsīr.* He refers to other Abū ‘Abd Allāhs in his tafsīr, but I have been unable to find the reference in some of their works.

[508] Sibṭ Ibn al-Jawzī, *Mir’āt al-Zamān Fī Tawārīkh al-A’yān*, ed. Muḥammad Barakāt, Muḥammad al-Khirāṭ, and ’Ammār Rayḥāwī, 1st ed., 23 vols. (Damascus: Dār al-Risālah al-’Ālamiyyah, 2013). Vol. 2, pg. 89.; It appears likely that Ibn al-Jawzī ascribed both the background story regarding the *qatīl*, along with the statement that this occurred prior to qasāmah being revealed in the Torah to al-Suddī, when only the former is his, the latter clearly being al-Kalbī’s per numerous other tafsīrs where he is named. A text search through 306 works across the genres of tafsīr and tārīkh for references to [السدي] + [قسامة] + [التوراة] revealed no matches for this Suddī reference aside from Ibn al-Jawzī.

[509] See, e.g., vol. 2, pgs. 13, 31, 47

[510] *Al-Aṣl*, vol. 6, pg. 565-6:
وإذا وُجد الرجل قتيلاً في محلة قوم فعليهم **أن يُقْسِم منهم خمسون رجلاً بالله: ما قتلنا ولا علمنا قاتلاً، ثم يغرمون الدية**. بلغنا نحو من هذا عن النبي صلى الله عليه وسلم وبلغنا عن عمر رضي الله عنه أنه قضى بالدية على عاقلتهم في ثلاث سنين. فإن لم يكمل العدد خمسين كررت عليهم الأيمان حتى تكمل خمسون يميناً. ولأولياء القتيل أن يختاروا في القسامة صالحي العشيرة الذين وجد بين أظهرهم فيحلفونهم

[511] Al-Sarakhsī in *al-Mabsūṭ*, vol. 26, pg. 107

territory of the Jews. The Prophet ﷺ first asks the Anṣār if the Jews (i.e. the defendants) can take an oath to free themselves of guilt (no mention of a specific oath formula, nor of 50), but the Anṣār refuse because the Jews are unbelievers. The Prophet ﷺ then offers the Anṣār the oath (i.e. as plaintiffs), but they refuse because they did not witness it, and so the Prophet ﷺ ultimately pays the blood price himself to resolve the case. This version has the defendants given the oath first, which follows the Kufan format, but the detail regarding the blood price does not conform to the Kufan mold. It is also a basic inverse of the famous version of this report that supports the Mālikīs/Ḥijāzīs, cited by Mālik, which has the Prophet ﷺ offer the Anṣār (i.e. the plaintiffs) the oath first.[512] It is another version of this report that Al-Sarakhsī cites, however, where we find al-Shaybānī's 'prophetic' model. This report is transmitted by none other than al-Kalbī and is the fourth example that Crone refers to of Muslim admission of biblical origins. Al-Kalbī transforms the ḥadīth about the Anṣārī *qatīl* in a way that explicitly ties *qasāmah* with Mosaic law just as we saw he did in his exegesis. In al-Kalbī's version, the Prophet ﷺ writes to the Jews of Khaybar that a body was found on their territory, asking them for a resolution. The Jews write back that a similar situation occurred to the Israelites, that God inspired Moses ﷺ with an answer, and that if the Prophet ﷺ was indeed a legitimate prophet, that he should ask God for the answer. The Prophet ﷺ then responds that God inspired him to choose 50 men from among them to swear, "We did not kill him, nor do we know who did" (بالله ما قتلناه ولا علمنا له قاتلا), i.e. the Deuteronomic/Kufan oath, then they should offer the blood money (ثُمَّ يَغْرَمُونَ الدِّيَةَ) – i.e. the Kufan practice. The Jews then affirm that the Prophet's verdict is truly from God's Holy Law,

[512] See, e.g., 'Abd al-Razzāq's *Muṣannaf*, vol. 10, pg. 30 and Mālik's *Muwaṭṭa'*, vol. 5, pgs. 1290-1292. In this version, the Prophet ﷺ first offers the oaths to the plaintiffs (the Anṣār), before the Jews, i.e. the Ḥijāzī *qasāmah*, and concludes with the Prophet ﷺ again offering blood money himself. This version includes mention of the 50 oaths (though no mention of the oath formula). Mālik reports a more detailed version of this account in his *Muwaṭṭa'* as proof of the Medinese position.

the *Nāmūs* (لَقَدْ قَضَيْت فِينَا بِالنَّامُوسِ). What is highly significant about this report is that it mimics the Arabic of the Ḥanafī *qasāmah* mold as given by al-Shaybānī almost precisely.[513] It also ascribes the *qasāmah*, defined here as the Kufan *qasāmah*, to Mosaic law in the same way done in al-Tha'labī's *tafsīr*. Crone was only aware of al-Kalbī originating the prophetic ḥadīth, and not the exegesis, and so she is unaware that he was also the likely source of some of the exegetical content she also cites from al-Tha'labī that detail Kufan *qasāmah*.

It is likely al-Shaybānī was referring to *this* report when he suggested that the specific mold of *qasāmah* he described was reported about the Prophet ﷺ. A search through al-Shaybānī's extant writings indicates that not only did he cite reports from al-Kalbī about matters related to the Prophet ﷺ or *tafsīr* (usually through an intermediary),[514] but the specific *isnād* that al-Kalbī utilizes in the dubious ḥadīth above (Ibn 'Abbās → Abū Ṣāliḥ → al-Kalbī), an isnād that was famously associated with al-Kalbī's *tafsīr* from Ibn 'Abbās, is cited by al-Shaybānī in his *Aṣl* several times through al-Kalbī's student, Abū Yūsuf.[515] It is thus very likely that al-Kalbī's report and exegesis was known to his fellow Kufans operating in law. What is also clear through this example is that al-Kalbī was not only operating in the realm of exegesis, but also of Islamic law, through the transformation of a well-known and legally valuable ḥadīth on the Prophet's *qasāmah* into one that was clearly Kufan. This ḥadīth also shifted the origins of the practice from the Jāhiliyyah, as attested to in other *qasāmah* traditions, to the pre-Muḥammadan law of Moses ﷺ instead,[516] which may have served to legitimize the institution, given understandings of the

---

[513] Compare to the statement in *al-Aṣl*:
ذَكَرَ الْكَلْبِيُّ عَنْ أَبِي صَالِحٍ عَنْ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُ - «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ إلَى أَهْلِ خَيْبَرَ إنَّ هَذَا قَتِيلٌ وُجِدَ بَيْنَ أَظْهُرِكُمْ فَمَا الَّذِي يُخْرِجُهُ عَنْكُمْ فَكَتَبُوا إلَيْهِ إنَّ مِثْلَ هَذِهِ الْحَادِثَةِ وَقَعَتْ فِي بَنِي إسْرَائِيلَ فَأَنْزَلَ اللَّهُ عَلَى مُوسَى - عَلَيْهِ السَّلَامُ - أَمْرًا، فَإِنْ كُنْت نَبِيًّا فَاسْأَلْ اللَّهَ مِثْلَ ذَلِكَ فَكَتَبَ إلَيْهِمْ أَنَّ اللَّهَ تَعَالَى أَرَانِي **أَنْ أَخْتَارَ مِنْكُمْ خَمْسِينَ رَجُلًا فَيَحْلِفُونَ بِاَللَّهِ مَا قَتَلْنَاهُ وَلَا عَلِمْنَا لَهُ قَاتِلًا، ثُمَّ يَغْرَمُونَ الدِّيَةَ** قَالُوا: لَقَدْ قَضَيْت فِينَا بِالنَّامُوسِ يَعْنِي بِالْوَحْيِ»

[514] See, e.g., *al-Aṣl*, vol. 3, pg. 268-269, vol. 3, pg. 272, Vol. 5, pg. 206, vol. 7, pg. 425-426, 430, 433, 436

[515] See, e.g., Ibid., vol. 7, pgs. 227, 285, 422, vol. 9, pg. 321

[516] Qiṣāṣ was another legal instution that was believed to be both practiced in the Jāhiliyyah and also from the practice of the Israelites (per the Qur'ānic verse referred to in an earlier chapter). Jāhilī vs. Israelite origins of a

Prophet's sharī'ah being a continuation of pre-Muḥammadan laws. In fact, we come across a nearly identical motif in one of al-Kalbī's other reported ḥadīth. In a search for other isnāds featuring al-Kalbī ← Abū Ṣāliḥ ← Ibn 'Abbās, we come across an account of the Prophet ﷺ sending 'Abd Allāh b. Rawāḥah to Khaybar to negotiate the distribution of half of the Jews' produce there. In Ibn al-Kalbī's account, the Jews are pleased with Ibn Rawāḥaḥ's terms, and they say that he judged in accordance with the *Nāmūs* of Moses ﷺ (قضيت بما في ناموس موسى),[517] just as they did in the likely forged ḥadīth above. It appears very likely that al-Kalbī was engaging in a legitimating project with these traditions. This is *not* to say that al-Kalbī is the originator of exegetical material that seems to show knowledge of Deuteronomy 21. As I will demonstrate, some of the biblical elements of *qasāmah* may have been part of an *Iraqi* exegetical tradition from before al-Kalbī, and this ḥadīth would have been evidence of an attempt (likely from al-Kalbī himself) to make this particular element of Qur'ānic exegesis (the Deuteronomic oath and emphasis on territorial liability) more legally actionable through the transformation of a well-known Prophetic ḥadīth that was being cited by the Medinese and others already. It should be noted that the al-Kalbī ← Abū Ṣāliḥ transmissions were believed to convey bizarre and

practice was also something we witnessed in an earlier chapter vis-à-vis reports regarding the practice of fasting on the day of 'Āshūrā'. It is highly conceivable that a form of qiṣāṣ was found in Jāhilī Arabia, given that laws of retaliation were common in other legal systems in the Near East. Regarding the fast of 'Āshūrā', this would appear to be a religiously ordained idea, and thus one may argue that the Jewish origins were being obfuscated by reports ascribing the fast to Jāhilī origins. This is a possibility; however, it cannot be discounted that the pre-Muḥammadan Arabs themselves may have understood their own history as being tied with biblical history. The Talmud, e.g., notes an Arab who was aware of the mythology surrounding Korah, even identifying to a Rabbi a location where he claimed the earth swallowed Kora up. See Bava Batra 74a.; As for the claim that *qasāmah* was a Jāhilī institution, see 'Abd al-Razzāq's *Muṣannaf*, vol. 10, pgs. 27 and vol. 3, pg. 321. We are told that it was associated with a blood payment of 100 camels (which the Prophet ﷺ also paid), this specific payment also having been offered by 'Abd al-Muṭṭalib, the grandfather of the Prophet ﷺ, to free himself of a vow to kill one of his sons if he was granted with 10 sons, a famous story from the *sīrah*. We also learn that *qasāmah* (as 50 oaths) was apparently performed in one other case in the Jāhiliyyah, and that was to claim a child as one's own (e.g., if one fornicated with another's wife or slave woman and was claiming the child as one's own to raise), but this was specifically rejected by the Prophet ("الولد للفراش وللعاهر الحجر"), who reportedly only confirmed the form of *qasāmah* that was done in the case of suspected murder.

[517] Abū Zayd 'Umar b. Shubbah, *Tārīkh Al-Madīnah Li Ibn Shubbah*, ed. Fahīm Muḥammad Shaltūt (Jeddah: Ṭubi'ah 'ala nafaqat al-Sayyid Ḥabīb Maḥmūd Aḥmad, 1399AH). Vol. 1, pg. 181

uncorroborated reports (منكرات) that were unacceptable by ḥadīth standards, which is why al-Bayḥaqī rejects this version of the *qasāmah* ḥadīth flat out.[518] In the biographical literature, we learn that al-Kalbī was accused of being a *saba'ī shī'ite* who transmitted ideologically motivated reports from the perspective of later Sunnīs who commented on him, including one in which Gabriel apparently revealed the Qur'ān to ʻAlī on an occasion. His transmissions from Abū Ṣāliḥ from Ibn ʻAbbās were deemed so questionable that the tradition has him make a confession: "Whatever you heard from me transmitting from Abū Ṣāliḥ from Ibn ʻAbbās, it is a lie," and elsewhere, "Abū Ṣāliḥ told me, 'Everything I transmitted to you was a lie.'" Apparently, it wasn't even believed that Abū Ṣāliḥ ever met Ibn ʻAbbās to begin with.[519]

What Crone does not seem to consider is that the statements that she cites serve a clear polemical purpose and may in fact lead back, in some form, to a Kufan narrator or a Kufan exegetical tradition. Even the statement from Wahb b. Munabbih that she cites, which lacks isnād, is reported by Ibn Qutaybah, a Kufan source, and is more likely a reflection of Kufan sentiments than they are of Wahb, to whom biblical lore and the like were often attributed. We will engage with Wahb's own reported exegesis of the Qur'ānic verses where his comments on *qasāmah* would be warranted, but he makes none of the claims Ibn Qutaybah quotes him on. Crone also assumes that these statements mentioning Mosaic origins, because they are anomalous and "inexplicable" in her mind, must be factual and original. This is why she entertains the question, based on *al-Thaʻlabī* and *Wahb's* statements that the Israelites continued practicing *qasāmah* into the time of the Prophet ﷺ, and according to Thaʻlabī that they practiced

[518] Abū Bakr al-Bayhaqī, *Al-Sunan al-Ṣaghir*, ed. 'Abd al-Mu'ṭī Amīn Qal'ajī, 1st ed., 4 vols. (Karachi: Jāmi'at al-Dirāsāt al-Islāmiyyah, 1989). Vol. 3, pg. 258; Abū Bakr al-Bayhaqī, Al-Sunan al-Kubrā, ed. Muḥammad 'Abd al-Qādir 'Aṭā, 3rd ed., 10 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 2003). Vol. 8, pg. 213.
[519] Ibn Ḥibbān al-Dārimī al-Bustī, *Kitāb Al-Majrūḥīn Min al-Muḥaddithīn Wa al-Ḍu'afā' Wa al-Matrūkīn*, ed. Maḥmūd Ibrāhīm Zāyid, 3 vols. (Aleppo: Dār al-Wa'ī, 1396AH). Vol. 2, pg. 255.

it in the land of Israel: "Who then were these Israelites?" She doesn't entertain that they may be fictional (remember, the biblical practice doesn't specify 50 oath takers, and as we will note, *could not* have included blood money). She rejects that Rabbinic Jews could have been the ones that lent the Arabs the bible that was the basis of their *qasāmah* (Arabs because she is referring to the early Arab Muslims), because the Talmud states that practice of the Deuteronomic law had ceased to be practiced in the past, and this would contradict these reports which say the Jews were practicing *qasāmah* until the time of the Prophet ﷺ, which she assumes as true. And because al-Tha'labī's *tafsīr* and the Deuteronomic passage suggests it occurred in Israel, it must be so: "when the Arabs say that they got the *qasāma* from Israelites who had maintained the institution in force since the time of Moses ﷺ, they can only be referring either to Samaritans [who still practiced it] or else to a factor X located in the Holy Land."[520] The conclusion is highly presumptive, as is her assumption that it is the Arabs who made this claim originally (she assumes that al-Tha'labī's statements and those attributed to Wahb b. Munabbih by Ibn Qutaybah must have been ancient information from the time of the first Arab Muslims). We will return to some of these claims later.

She also does not seem to sufficiently address the features of *qasāmah* that seem to contradict the biblical elements in Deuteronomy. For example, why is no cow slaughtered in the Kufan *qasāmah*, but a *diyah* is given instead? She suggests that following the rabbis who knew that the heifer sacrifice didn't fully resolve the murder that was committed, since the murderer could still be executed if discovered after the sacrifice ceremony,[521] the 'original,' Iraqi form of

[520] Crone, "Jāhilī and Jewish Law" pgs. 180-182

[521] Ibid., 172-173: "According to Deuteronomy the purpose of the ceremony is to 'put away the guilt of innocent blood': if the heifer's neck is broken, the 'blood shall be forgiven them.' But the rabbis did not, or did not want to, understand the expiatory nature of the heifer's sacrifice: naturally the elders and the innocent community which they represented were forgiven, but the injunction to put away the guilt of innocent blood meant that the murder itself was not. It is this reading of the passage which lies behind Muslim combination of purgatory oath and blood-money. On the one hand, the jurors and their wider group had been forgiven: retaliation was ruled out. But on the other

*qasāmah* similarly recognized that the blood (דָּם/دم) had not been forgiven through the ceremony of the oaths, and thus the murderer still needed to be avenged or paid for, from which they concluded that "blood-money must thus be what God had in mind." She even entertains the possibility that the Arabs received their Pentateuch from the Rabbis (as opposed to another group) based on this evidence that the jurists were playing on the hidden logic of the rabbis about the expiatory nature of the cow's sacrifice.[522] Her argument, however, is a huge stretch and assumes that not only were the jurists clearly following Deuteronomy as a guidebook, but they were simultaneously also engaging with the underlying logic of the rabbis. One obvious issue in her favoring of Jewish origins and pushing aside internal explanations for even this unique and non-biblical feature of Iraqi *qasāmah*, is that if the early Muḥammadan community was indeed basing their practice of *qasāmah* in the Pentateuch as she claims, they would have had no reason to remove the element of the cow for some other expiatory measure, since they already *had* ready-made models wherein expiation could be fulfilled through animal sacrifice. We already encountered the issue of sacrificing a sheep in the case of an oath made to sacrifice a child's life, this example showing the Muslim jurists' ability to equate human life with animal sacrifice. Separately, the jurists had a concept of "blood" (دم) to be paid - i.e. animal sacrifice - when rites of the pilgrimage were not fulfilled. And if we claim that the Muslims were trying to obfuscate

---

hand, the fact that the murder itself had not been forgiven meant that it had to be either avenged or paid for, or in other words that innocent blood should not be 'wasted': blood-money must thus be what God had in mind." She cites some rabbinic discussions in her footnote 100, which intersect with Numbers 35:33, wherein a murderer must be executed.; See also, pg. 179, where she uses this "Rabbinic" reading to entertain the possibility that the Muslims therefore took *qasāmah* from them, which would explain their usage of blood-money in place of the heifer. See Sotah 47b (The William Davidson Talmud): "GEMARA: The Sages taught: From where is it derived that if the heifer's neck was broken and afterward the killer was found, then the breaking of the neck does not exempt him from punishment? The verse states: 'And the land shall not be atoned, for the blood that was spilled in it, but by the blood of he who spilled it' (Numbers 35:33)."

[522] Building off of the discussion noted in the previous footnote, she later says, in her inquiry on which community of Jews the Arabs received their Pentateuch from: "…the combination of oath and blood-money, which is fundamental to the old [Kufan] *qasāma*, also rests on an interpretation of Deuteronomy 21:9 which is attested to (though not exclusive to) the rabbis." (pg. 179 of her "Jāhilī and Jewish law")

the institution of *qasāmah* by trying to make it appear Jāhilī as has been argued, they could have also referred to the example of the Prophet's grandfather, 'Abd al-Muṭṭalib, who famously had 100 camels sacrificed to expiate for an oath he made of sacrificing his son 'Abd Allāh, a famous case from the *sīrah* which is also noted in a *qasāmah*-related report to explain the Prophet's giving of 100 camels as *diyah* in the case of the Ansārī *qatīl*.[523] They also had the model of sacrificing a cow that they could have justified from the Qur'ānic verses themselves if they did not want to formally recognize the Bible. Rather, the Kufan *qasāmah* mandated a *diyah*, and claimed that it was based on the precedent of 'Umar (and the Prophet ﷺ). We run into another issue with her logic as well. If Muslims were indeed wholly committed to the Pentateuch as she claims, or even rabbinic explanations, then they shouldn't have allowed for blood money. Numbers 35:31[524] specifically states that blood-money cannot purify the land of the spilled blood, i.e. it could not expiate for a murder. That is precisely why in the case of an unsolved murder, the animal sacrifice and ritual serve as a substitute (the substitute being removed for the Rabbis if the killer is identified later). The supposedly Pentateuchal Arabs were therefore blatantly violating a very clear Biblical dictate in replacing the sacrifice of the cow with blood-money. However, interestingly enough the Muslims were already aware of this prohibition themselves and viewed their taking of the *diyah* as a blessing from God. Mujāhid narrates from Ibn 'Abbās that "those who preceded you" (من قبلكم) would kill the one who killed a *qatīl*, and they would not accept a *diyah* from him. God thus revealed Qur'ān 2:178 on the Muḥammadan community, which details the law of retaliation but allows for the giving of monetary payment,

[523] See 'Abd al-Razzāq's *Muṣannaf*, vol. 10, pg. 27.

[524] וְלֹא-תִקְחוּ כֹפֶר לְנֶפֶשׁ רֹצֵחַ, אֲשֶׁר-הוּא רָשָׁע לָמוּת: כִּי-מוֹת, יוּמָת.
You shall not take ransom for the life of a murderer that is guilty of death, but he shall be put to sure death.

what the verse refers to as an alleviation for the Muslims (تخفيف).[525] We encountered this verse earlier in our theoretical discussion of Pre-Muḥammadan law, wherein some of the authors noted that the *qiṣāṣ* laws mentioned in the Qur'ān as coming from the Torah were explicitly for the Jews, whereas this verse and others allowed for the payment of blood money in a situation of pardon, something the Israelites were not allowed. However, there is no reason why this 'alleviation' in cases of *qiṣāṣ* needed to have been applied in lieu of the cow's sacrifice, if the cow's sacrifice is indeed what God wanted. We therefore see that Muslim understandings of the *diyah* and expiation in general were based on their own set of premises and precedents.

The other unexplained matter is that of 50 oaths. She gives no biblical reason for the number 50. The best parallel I could find is in Genesis 18:20-33, where we come across Abraham ﷺ pleading with God to spare the city of Sodom, a city wherein there were righteous among the wicked. He asks God if he will destroy the whole city even if there are at least 50 righteous people, to which God responds that he will spare the city his wrath if this number of innocent souls are present. This would indicate that the territory would be spared if there were at least 50 innocent individuals. However, Genesis narrates that Abraham ﷺ repeatedly asks God to bring the number down from 50 to ultimately 10 in the bible. Indeed, even the Muslim exegetes are aware of the biblical passage, and use it to explain Qur'ān 11:74 that references Abraham ﷺ pleading with God regarding the people of Lot (يُجَادِلُنَا فِي قَوْمِ لُوطٍ…).[526] As is clear, even this potential argument would thus be a stretch, not to mention that a model that was supposedly derivative of a practice found in the Deuteronomic passage would have had no reason to refer to

[525] See al-Ṭabarī, vol. 3, pg. 374; Also, Ibn Ḥibbān al-Dārimī al-Bustī, *Ṣaḥīḥ Ibn Ḥibbān*, ed. Shu'ayb al-Arna'ūṭ, 18 vols. (Beirut: Mu'assisat al-Risālah, 1988). Vol. 13, pg. 362.

[526] See, e.g.: al-Ṭabarī's *Tafsīr* for the exegeses of Qatādah (vol. 15, pg. 403-404), Ibn Ishāq (vol. 15, pgs. 404-405), Abū al-Muthannā and Muslim Abū al-Jabīl al-Ashja'ī (vol. 15, pg. 405) and Wahb b. Munabbih (vol. 15, pg. 428), all of which Parallel the biblical narrative.

Genesis. It seems far more likely to me that some of the core non-biblical aspects of *qasāmah* which *are* shared in both the Ḥijāzī and Iraqi models point to some shared origin in some early juristic practice as the Muslim sources suggest. After all, situations of unresolved murders were not so uncommon that communities would lack pre-existing models for addressing them, and thus would need to decipher the bible or the hidden logic of the rabbis to create one from scratch. The existence of these shared, but non-Biblical features across ḥadīth literature on *qasāmah*, even with the divergent ends that these reports were cited for, thus strengthens the possibility that the institution as a whole had some non-biblical origins for the basic framework that may have been born out of some early constructive moment, say the administrative actions of a caliph or early figure, as the sources claim, or some regional law already in place. However, this is not to deny that the different models of *qasāmah* developed in separate trajectories, and that the Kufan *qasāmah* seems to take Deuteronomic features.

We now try to explain some of the biblical features of *qasāmah* through a study of early Qur'ānic exegesis. One of the key proofs of some biblical interaction with Kufan *qasāmah* is the usage of shared language as was pointed out earlier. We find this language as a feature of the exegetical tradition on the narrative of the *qatīl* and the cow. A search through several thousand works for references to the statement, "We did not kill him nor do we know who killed him" (مَا قتلنَا وَلَا علمنَا قَاتلا),[527] which seems to model itself closely on the Deuteronomic oath, confirms that it appears only in two places: [1] as an oath in *qasāmah* (and particularly the Iraqi mold, as the Mālikīs offered a separate formula) which we find referenced primarily in Ḥanafī *fiqh*

[527] A search was conducted across 7259 works of all genres of *Shamela* for page-by-page strings containing ["ما قتلنا" + "قاتلا" + ("علمنا" OR "عرفنا")]

discussions,[528] and in *qasāmah* cases attributed to ‘Umar[529], the Prophet ﷺ[530], or another early authority[531]; and [2] as a very particular oath taken by the Children of Israel in the exegesis of the Qur’ānic story of the Cow and the *qatīl*[532]. Given that this very specific oath formulation is not referenced anywhere else, e.g., as some other non-*qasāmah* oath in the legal tradition, it seems hard to deny that there was some sort of exegetical-legal connection on the issue of *qasāmah*. And in fact, we have proof that the jurists were referencing these passages. We encountered the Mālikī legal citation of the *qatīl*’s testimony in the story which we began our discussion with, and we also find that al-Shaybānī similarly cites the exegesis of these verses vis-a-vis a separate issue of whether murderers can bequeath. Al-Shaybānī gives three proofs for his position that they cannot in his *Aṣl*: ‘Alī and ‘Umar reportedly did not give inheritance for a murderer, and lastly, this is shown through the exegesis of the Kufan ‘Abīdah al-Salmānī (d. 72 AH), who we will encounter below, who states that after the incident of the *Ṣāhib al-Baqarah*, i.e. the *qatīl*

---

[528] As a representative sample, see, e.g.: al-Shaybānī’s *al-*Aṣl, vol. 6, pg. 565 and 572, vol. 12, pg. 51; Abū Bakr al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar Al-Ṭaḥāwī*, ed. ’Iṣmat Allāh ’Ināyat Allāh Muḥammad et al., 1st ed. (Beirut: Dār al-Bashā’ir al-Islāmiyyah, 2010). Vol. 6, pgs. 37, 42, 62-64.; Aḥmad b. Muḥammad al-Qudūrī, *Mukhtaṣar Al-Qudūrī Fī al-Fiqh al-Ḥanafī*, ed. Kāmil Muḥammad Muḥammad ’Uwayḍah, 1st ed. (Dār al-Kutub al-’Ilmiyyah, 1997). Pg. 192; al-Sarkhsī, *al-Mabsūṭ*, vol. 26, pgs. 106 -108, 115.; al-Kāsānī, *Badā‘i al-Ṣanā’i‘*, vol. 7, pg. 286, Burhān al-Dīn al-Marghīnānī, *Al-Hidāyah Fī Sharḥ Bidāyat al-Mubtadī*, ed. Ṭalāl Yūsuf, 4 vols. (Beirut: Dār Iḥyā’ at-Turāth al-’Arabī, n.d.). vol. 4, pg. 497.; Kamāl al-Dīn Ibn al-Humām, *Fatḥ Al-Qadīr*, 10 vols. (Dār al-Fikr, n.d.). Vol. 10, pg. 373-374; Ibn Qudāmah attributes the 50 oaths to the accused to the Ḥanafīs (Aṣḥāb al-Ra’y), along with al-Sha‘bī, al-Nakha‘ī and al-Thawrī, and he gives the oath for them as the Deuteronomic formula. See Ibn Qudāmah’s *Mughnī*, vol. 8, pg. 498.

[529] See, e.g., Ibn Abī Shaybah’s *Muṣannaf*, vol. 5, pg. 441, 443; Interestingly ‘Umar specifically adjudicates for the Kufans in this case. See also, pg. 442; al-Muḥallā bi al-Āthār, vol. 11, pgs. 288-290, Ibn Faraḥ al-Ishbīlī, *Mukhtaṣar Khilāfiyyāt al-Bayhaqī*, vol. 4, pg. 397;

[530] See, e.g.: Ibn Abī Shaybah’s *Muṣannaf*, vol. 7, pg. 471; al-Bukhārī’s Ṣaḥīḥ, vol. 9, pg. 9.; al-Dāraquṭnī’s *Sunan*, vol. 4, pg. 113; al-Sunan al-Ṣaghīr of al-Bayhaqī, vol. 3, pg. 258, and vol. 8, pgs. 213-214; Ibn Ḥazm’s *al-Muḥallā*, vol. 11, pg. 302 and 317. Ibn al-Humām, *Fatḥ al-Qadīr*, vol. 10, pg. 377; ’Abd al-’Azīz al-Bukhārī, *Kashf Al-Asrār: Sharḥ Uṣūl al-Bazdawī*, 4 vols. (Dār al-Kitāb al-Islāmī, n.d.). Vol. 4, pg. 342.

[531] Shurayḥ, al-Ḥasan, al-Sha‘bī’s usage of the formula, see: Ibn Abī Shaybah’s *Musannaf*, vol. 5, pgs. 442-443 and 471.; The Caliph Mu‘āwiyah, see Aḥmad b. Yaḥyā al-Balādhurī, *Jumal Min Ansāb Al-Ashrāf*, ed. Suhayl Zakkār and Riyāḍ al-Zarkalī, 1st ed., 13 vols. (Beirut: Dār al-Fikr, 1996). Vol. 5, pg. 390.

[532] See, e.g., Muqātil b. Sulayman’s *Tafsīr,* vol. 1, pg. 113; al-Ṭabarī’s *Tafsīr*, vol. 2, pgs. 226-227; Ibn Kathīr al-Qurashī, *Tafsīr Al-Qur’ān al-’Aẓīm (Tafsīr Ibn Kathīr)*, ed. Sāmī b. Muḥammad Salāmah, 2nd ed., 8 vols. (Dār Ṭībah li al-Nashr wa al-Tawzī’, 1999). Vol. 1, pg. 295-297.; ’Abd al-Raḥmān b. Abī Bakr Jalāl al-Dīn al-Suyūṭī, *Al-Durr al-Manthūr*, 8 vols. (Beirut: Dār al-Fikr, n.d.). Vol. 1, pg. 187.

from the Israelite story, no murderer was to ever receive inheritance money. Al-Shaybānī says that bequests are of the same status as inheritance, and so this exegetical statement, along with the received practice of the two Caliphs, proves that a murderer does not have the ability to bequeath.[533] We thus know that the Kufan jurists were referring to the exegesis of these verses about murder. The story was after all, about murder. It was also pointed out that they were likely referring to their fellow Kufan exegete's ḥadīth on the matter as well. In our comments regarding the isnāds of exegetical reports below, we will also encounter a case of one of Mālik's chief pupils interacting with the exegetical narrative of the cow, and his version presents the *qasāmah*-like incident among the Israelites (no one explicitly calls the procedure in the story *qasāmah* except for al-Kalbī) in a way that fits Medinese concerns regarding *qasāmah*, this in contrast with some of the Iraqi exegetical traditions.

It should therefore not surprise us to find examples where the language of exegesis and the Qur'ānic verses regarding the Cow appear in the context of *qasāmah*. Even Imām Mālik's preferred oath for *qasāmah* bears connection with the story in question. As might be recalled, his recommended oath was different from the Ḥanafīs: "I swear by God who gives life and death." This is a unique formulation of the oath that calls on God's ability to give life and death and appears only in the context of *qasāmah* for him, and seems like a conspicuous reference to the Qur'ānic statement "THUS GOD BRINGS THE DEAD TO LIFE" in the conclusion of the Qur'ānic story when the *qatīl* is struck with a part of the slaughtered cow and brought back to life.[534] In the Kufan Ibn Abī Shaybah's *Muṣannaf* we come across a Kufan isnād that reports the

---

[533] Al-Shaybānī's *Aṣl*, vol. 5, pgs. 445-446:
بلغنا عن علي بن أبي طالب - رضي الله عنه - أنه لم يجعل لقاتل ميراثاً. وبلغنا عن عمر بن الخطاب - رضي الله عنه - مثل ذلك. وبلغنا عن عَبِيدة السلماني أنه قال: لا يورث قاتل بعد صاحب البقرة. والوصية عندنا بمنزلة ذلك، ولا وصية لقاتل
As an aside, al-Shaybānī's legal justification for barring murderers from bequests as based in this Israelite tale is cited by later Ḥanafīs,[533] along with appearing in a Prophetic form as well. See, e.g., Al-Qudūrī's *al-Tajrīd*, vol. 8, pg. 3936.; also Al-Sarakhsī, al-Mabsūṭ, vol. 27, pg. 176, and vol. 26, pg. 60, and vol. 30, pg. 47.

[534] فَقُلْنَا اضْرِبُوهُ بِبَعْضِهَا ۚ كَذَٰلِكَ يُحْيِي اللَّهُ الْمَوْتَىٰ وَيُرِيكُمْ آيَاتِهِ لَعَلَّكُمْ تَعْقِلُونَ ۝

*qasāmah* of ‘Umar. He is approached by two Kufans (!) about an unsolved murder regarding their cousin. ‘Umar stipulates that in the absence of two witnesses, those who are in dispute with you (مَنْ يَدْرَأُكُمْ) – i.e. the defendants - should make an oath (بِاللَّهِ مَا قَتَلْنَا وَلَا عَلِمْنَا قَاتِلًا) – the Deuteronomic oath - otherwise 50 of the plaintiffs would make the oath, the *diyah* would then be given to them (the defendants). In addition to using the oath formula found in the Iraqi exegetical tradition and in the Kufan *qasāmah*, the usage of the verb درأ is conspicuous and has a connection to the rare verb فَادَّارَأْتُمْ in the verse on the Cow regarding the dispute over the murder, a word that the exegetes sought to define vis-à-vis the story of the disputed murder,[535] and which is used in like fashion by ‘Umar here.

S. Ali Aghaei has written a piece[536] tracing the morphological changes over three centuries of the exegetical stories related to Qur’ān 2:67-74, as found in the tafsīr works of Mujāhid[537] (d. 104 AH), Muqātil b. Sulaymān[538] (d. 150 AH), ‘Abd al-Razzāq al-Ṣan‘ānī[539] (d. 211 AH), al-Ṭabarī[540] (d. 310 AH) and Ibn Abī Ḥātim al-Rāzī[541] (d. 327). He identifies the details of each of the narratives that are ascribed to some earlier authority in these works, and it is my intention here to use his general template of early available exegeses that he derives from these works, but focus on the elements that explicitly relate to the Muḥammadan *qasāmah*, and

---

WE SAID, “STRIKE THE [SLAIN MAN] WITH PART OF [THE COW]. AND THUS GOD BRINGS THE DEAD TO LIFE AND SHOWS YOU HIS SIGNS SO THAT YOU MAY PONDER” ۞

[535] See al-Ṭabarī’s *Tafsīr*, vol. 2, pg. 222-225

[536] S. Ali Aghaei, “The Morphology of the Narrative Exegesis of the Qur’ān: The Case of the Cow of the Banū Isrā’īl (Q2:67-74),” in *Reading the Bible in Islamic Context: Qur’anic Conversations*, ed. Daniel Crowther et al. (London & New York: Routledge, 2018), 167–194.

[537] Abū al-Ḥajjāj Mujāhid, *Tafsīr Mujāhid*, ed. Muḥammad ’Abd al-Salām Abū al-Nīl (Egypt: Dār al-Fikr al-Islāmī al-Ḥadīthah, 1989). Pgs. 205-206.

[538] Abū al-Ḥasan Muqātil b. Sulaymān, *Tafsīr Muqātil b. Sulaymān*, ed. ’Abd Allāh Maḥmūd Shaḥātah, 1st ed. (Beirut, Lebanon: Dār Iḥyā’ at-Turāth, 1423AH). Vol. 1, pgs. 113-116.

[539] Abū Bakr ’Abd al-Razzāq al-Ṣan’ānī, *Tafsīr ’Abd al-Razzāq*, ed. Maḥmūd Muḥammad ’Abduh, 1st ed., 3 vols. (Beirut: Dār al-Kutub al-’Ilmiyyah, 1419AH). Vol. 1, pgs. 274-277

[540] Muḥammad b. Jarīr al-Ṭabarī, *Jāmi’ al-Bayān Fī Ta’wīl al-Qur’ān*, ed. Aḥmad Muḥammad Shākir, 1st ed., 24 vols. (Mu’assisat al-Risālah, 2000). Vol. 2, pg. 182-233

[541] Ibn Abī Ḥātim al-Rāzī, *Tafsīr Al-Qur’ān al-’Aẓīm Li Ibn Abī Ḥātim*, ed. As’ad Muḥammad al-Ṭayyib, 3rd ed. (Saudi Arabia: Maktabat Nizār Muṣṭafā al-Bāz, 1419AH). Vol. 1, pgs. 135-145

not to the narrative elements of the various stories as they interest Aghaei. It should be noted that some of the more detailed narrative elements are believed to have midrashic/Talmudic origins as Aghaei notes, but these ultimately do not concern us here. I identify the following potential "legal" elements of the story with the alphabets A, B, C, D, E, and F:

A. The dead person comes back to life to identify his murderer (relevant for the Mālikī *qasāmah*)
B. Mention that the *qatīl* was placed in another's territory (implying some guilt), domain or proximity
C. The implicated territory being specifically liable for payment of blood money (*diyah*)
D. The giving of some kind of an oath statement sworn to God, such as an oath denying involvement and knowledge of the murder that might parallel the Iraqi *qasāmah* oath and the Deuteronomic formula. The order of the oath-giving will be noted, as the plaintiff preceding the defendant is a Ḥijāzī element, whereas the defendant preceding the plaintiff would appear to parallel the Iraqi *qasāmah*'s emphasis on the defendant seeking acquittal.
E. Execution of the murderer who is identified by the *qatīl* (this being part of the Medinese *qasāmah* if the plaintiff's oaths are fully made)
F. 50 oaths (this is not mentioned in any of the exegetical traditions looked at)

I will list the 9 versions that Aghaei documents, along with one additional one from Wahb b. Munabbih (to contextualize the Wahb citation Crone made earlier), paying special attention to the above *qasāmah*-like elements which I will identify by alphabet letter. These details are often fitting into the narrative story, which can be summarized, vis-à-vis the Qur'ānic verses they relate to, as follows:

{1} An Israelite person (or persons) kills an individual (usually an uncle), and a reason is often given for the murder: most often to inherit his wealth, less commonly, to collect the *diyah* or to marry a girl. A dispute then occurs over who committed the murder, with many of the reports indicating that the killer(s) intentionally place(s) the body of the *qatīl* in a place that might implicate another party [Qur'ān 2:72]

{2} The confusion reaches Moses ﷺ, who then commands the sacrifice of a cow. The exegetical narratives detail the acquiring of this cow, and the discussions the Israelites had over the specific features that this cow needed, and the difficulties the Israelites placed on themselves in choosing the right animal for sacrifice [Qur'ān 2:67-71]

{3} A part of the sacrificed animal is used to strike the dead man, who then, according to exegesis, is brought back to life (the Qur'ānic verse only says that God brings back to life the dead). The dead man then reveals his killer in most accounts. [Qur'ān 2:73]

I will also note relevant isnād information that appear in the *tafsīrs* which demonstrate some of the regional dimensions of this Qur'ānic exegesis. I will also note cases where someone in the isnād has also commented separately on *qasāmah*, or an important detail about a transmitter in general. As will be shown below, a few of these exegetical accounts (#5, 6, 7, 8, and 9 in particular) either carry details that are of legal relevance to *qasāmah*, or that show the obvious signs of later interpolation of Medinese and Iraqi legal discourse *into* the exegesis, showing the importance of Qur'ānic exegesis for the Jurists vis-à-vis the issue of *qasāmah*, and the playing out of a legal discourse *within* the exegetical reports themselves.

1. The exegesis of the Meccan **Mujāhid b. Jabr (d. 104)** → the Meccan Ibn Abī Najīḥ (d. 131 AH)[542]
    1.1. Appears to be among the simplest of the tafsīrs in terms of narrative elements, merely documenting that a man was murdered and dumped at the gate of another people. The relatives hold responsible the people where the body was found, but they reject the accusation. The body is then hit with a part of the cow sacrifice and he reveals the killer before dying again. Aghaei suggests this account may be the oldest (based on the brevity of narrative detail).
    1.2. Includes A and B. The body is placed at another people's gate ( فألقاه على باب ناس آخرين)
2. The exegesis of the Basran **Qatādah** (d. 118 AH) → the Basran/Yemeni Ma'mar b. Rashīd (d. 153 AH), and partly from a Basran Sa'īd (either b. Abī 'Arūbah or b. Bashīr)[543]
    2.1. Includes only A.
    2.2. Similar as the Mujāhid exegesis, a simple narrative though with some additional elements. Likely early. The dispute over guilt happens *without* the body being placed anywhere that may imply guilt.
    2.3. Importantly, Qatādah, who reports this exegetical material, reportedly transmitted information elsewhere regarding *qasāmah* that signify his own position, and which

[542] See Mujāhid's *Tafsīr* (pgs. 205-206), along those of al-Ṭabarī (Vol. 2, pgs. 191, 193, 195, 200, 205, 214, 216, 220, 226, 229-230) and Ibn Abī Ḥātim al-Rāzī (vol. 1, pgs. 139, 142, and 144-145)
[543] Noted in the tafsīrs of 'Abd al-Razzāq (vol. 1, pgs. 274-274) and al-Ṭabarī (vol. 2, pgs. 187, 192-193, 196, 201-202, 205-206, 212-214, 216-217, 226, 230). As Aghaei points out, al-Ṭabarī's tafsīr attributes slight additional details to those found in 'Abd al-Razzāq's from Qatādah. Also, the Sa'īd who narrates a part of Qatadah's exegesis (which is also found through Ma'mar) is either the Basran Sa'īd b. Abī 'Arūbah (d. 156 AH) or Sa'īd b. Bashīr (d. 169 AH), who lived in Damascus and Basra. Both narrate from Qatādah in al-Ṭabarī's tafsīr, but here is unnamed. It is more likely to be Ibn Abī 'Arūbah however because he is the last named "Sa'īd" prior to this passage.

affirm a type of *qasāmah* that aligns more with the Ḥijāzī form of *qasāmah*, while still being distinct. He reports the famous Anṣār ḥadīth, but there are some important features to his narrative. There is no mention of the body being placed in some particular territory. The Anṣār witness their member struggling in his own blood before dying, and they have reason enough to name a person, but they lack clear evidence (بينة). The Prophet ﷺ then asks for 2 witnesses from other than them in order for him to award them the case (شَاهِدَانِ مِنْ غَيْرِكُمْ حَتَّى أَدْفَعَهُ إِلَيْكُمْ بِرُمَّتِهِ), but the Anṣār do not have it. It is then that the Prophet ﷺ lets them make 50 accusatory oaths (اسْتَحِقُّوا بِخَمْسِينَ تِهَامَةٍ أَدْفَعْهُ إِلَيْكُمْ بِرُمَّتِهِ), but they refuse to give an accusation on what they do not know, so the Prophet ﷺ then seeks to give the right of 50 oaths to the Jews (the plaintiffs), which the Anṣār reject. The Prophet ﷺ then pays a *diyah* from himself. Elsewhere Ibn Abī Shaybah narrates that Qatādah's position was that *qasāmah* required *diyah* and could not result in execution (يَسْتَحِقُّونَ بِهَا الدِّيَةَ، وَلَا يُقَادُ بِهَا). Importantly, the type of qasāmah Qatādah describes follows the Ḥijāzī one in the order of giving the plaintiffs the right of oath before the defendants, but it provides a *diyah* without allowing for execution (which the Mālikīs make as the punishment).[544] He therefore attests to the Medinese order, but parts from them on the point of execution, and was thus representative of an unsettled form of *qasāmah*

[544] Qatādah narrates that 'Umar b. 'Abd al-'Azīz apparently rejected *qasāmah* because it contradicted Qur'ānic verses that emphasize the need for witnesses. Incidentally 'Umar b. 'Abd al-'Azīz cites the children of Jacob (الأسباط), i.e., pre-Muḥammadan law, who tell each other in the Qur'ān to report to Jacob that they witnessed his son steal (the goblet), and that they testify with only what they know (whereas that is not the case with *qasāmah* is what 'Umar b. 'Abd al-'Azīz suggests). After reporting this, Qatādah transmits Sulaymān b. Yasār's critique of 'Abd al-'Azīz's statement, saying that the practice was done by the Prophet ﷺ. He then presents the report given above. Additionally, we a report from Qatādah that applies the *diyah* to *qasāmah*. See Ibn Abī Shaybah's *Muṣannaf*, vol. 5, pgs. 440 and 444, and vol. 6, pg. 17, and vol. 7, pg. 316

prior to its formalization among the Medinese and the Kufans by the end of the 2nd century.

3. The exegesis of the Kufan Jurist **'Abīdah b. 'Amr al-Salmānī** (d. 72 AH) → Basran Muḥammad b. Sīrīn (d. 110 AH) → the Basran Ayyūb al-Sakhtiyānī (d. 131 AH) and the Basran Ḥishām b. Ḥassān (d. 146 AH)[545]

   3.1. Includes only A and B.

   3.2. The body is placed with another tribe (فألقاه في سبط غير سبطه), at the gates of another people (فَأَلْقَاهُ إِلَى بَابِ قَوْمٍ آخَرِينَ), or at the door of a person (فَوَضَعَهُ عَلَى بَابِ رَجُلٍ مِنْهُمْ) in different versions reported from him. Even though 'Abīdah's version does not appear to tie the exegetical account very strongly to a practiced form of *qasāmah*, he does make a legal comment in his exegesis that connects Mosaic (Israelite) law to Muḥammadan law. After the dead man comes back and reveals his killer, 'Abīdah says that the killer did not receive inheritance, and that no killer was known to inherit thereafter (فَلَمْ يَرِثْ وَلَمْ يُعْلَمْ قَاتِلٌ وَرِثَ بَعْدَهُ). As noted above, al-Shaybānī is aware of this comment and cites it in denying a killer from bequests. Importantly, this Iraqi exegesis lacks the biblical narrative we found in Tha'labī or Maqdisī's later exegesis, indicating that a version of this story without biblical or *qasāmah*-related features was also available among the Iraqis as well.

   3.3. Muḥammad b. Sīrīn (the narrator receiving the exegesis from 'Abīdah) transmits the *qasāmah* practice of the Kufan Judge Shurayḥ (d. 103-104 AH), and includes that the oath be in the Deuteronomic formula (مَا قَتَلْنَا وَلَا عَلِمْنَا قَاتِلًا).[546] It would appear

[545] Found in the tafsīrs of 'Abd al-Razzāq (vol. 1, pgs. 274 and 276), al-Ṭabarī (vol. 2, pgs. 183, 184, 188, 204, 220, 221, 227, 230), and Ibn Abī Ḥātim (vol. 1, pg. 136)

[546] See Ibn Abī Shaybah's *Muṣannaf*, vol. 5, pg. 443 and 445:

then that the biblical connection with the oath of *qasāmah* was already made in Kufah, even though it does not feature in the exegesis Ibn Sīrīn transmits as it does in others we will see.

4. The exegesis of the Basran **Abū al-'Āliyah Rufay' b. Mihrān al-Riyāḥī** (d. 90 or 93 AH)[547] → the Basran al-Rabī' b. Anas (d. 139 AH) → and the Basran/Rayan Abū Ja'far al-Rāzī (d. 160 AH)

   4.1. Includes only A and E.

   4.2. The report mentions the body was thrown at the joining of a road ( ألقاه على مجمع الطريق), but the location of the body doesn't implicate anyone, nor does anyone accuse the other in this version of the report. Moses ﷺ is commanded with the Cow to help lift the confusion – the man is revived to identify his killer, who is then executed. The only potential legal relevance this version might have is that executions could be done on the basis of the *qatīl*'s word, a position that the Medinese held in cases of *qasāmah*, but not the Kufans.

5. An exegesis attributed to **Ibn 'Abbās** (d. 68 AH) → the Meccan [Ibn] Abī Mulaykah (d. 117 AH) → the famous Balkhan exegete Muqātil b. Sulaymān (d. 150 AH) of Baghdad → al-Hudhayl b. Ḥabīb (d. ?) of Baghdad[548]

   5.1. Includes A, B, and D and E.

---

حَدَّثَنَا أَبُو بَكْرٍ قَالَ: حَدَّثَنَا وَكِيعٌ، قَالَ: حَدَّثَنَا ابْنُ عَوْنٍ، عَنِ ابْنِ سِيرِينَ، عَنْ شُرَيْحٍ، أَنَّهُ قَالَ فِي الْقَسَامَةِ: «أَوْثِمْهُمْ وَأَنَا أَعْلَمُ؟ - يَعْنِي اسْتَحْلِفْهُمْ - مَا قَتَلْنَا وَلَا عَلِمْنَا قَاتِلًا»

حَدَّثَنَا أَبُو بَكْرٍ قَالَ: حَدَّثَنَا عَبْدُ الرَّحِيمِ، عَنْ أَشْعَثَ، عَنِ ابْنِ سِيرِينَ، عَنْ شُرَيْحٍ، قَالَ: «جَاءَتْ قَسَامَةٌ، فَلَمْ يُوفُوا خَمْسِينَ، فَرَدَّدَ عَلَيْهِمُ الْقَسَامَةَ حَتَّى أَوْفَوْا»

Also Ibn Ḥazm's *Muḥallā*, vol. 11, pg. 292

[547] See al-Ṭabarī's *Tafsīr*, vol. 2, pgs. 184-185, 188, 192-193, 196, 201, 205-206, 212, 213, 216, 221, 231

[548] See Muqātil's *tafsīr*, Vol. 1, pgs. 113-116. Al-Hudhayl transmitted Muqātil's *tafsīr* to Ya'qūb al-Thawrī al-Muqrī in the year 190 AH in Baghdad, per a note read by the latter's son. See al-Khaṭīb al-Baghdādī, *Tārīkh Baghdad*, ed. Bashshār 'Awād Ma'rūf, 1st ed., 16 vols. (Beirut: Dār al-Gharb al-Islāmī, 2002). Vol. 16, pg. 121.

5.2. We now begin to see biblically informed exegesis. This version attributed to Ibn ‘Abbās, transmitted in Iraq, has the events take place in Egypt (i.e. not Israel as in the bible), and the body is placed between two towns by the qatīl’s two nephews (فألقياه بين القريتين). Ibn ‘Abbās then reportedly says that the Israelites measured the distance between the two towns, which was equal, and so the Israelites took the people of the town[s][549] responsible, who then make the Deuteronomic statement, “By God, we did not kill him, nor do we know who did” (وَاللَّهِ مَا قَتَلْنَاهُ وَلا عَلِمْنَا لَهُ قَاتِلا). While this agrees with the later Ḥanafī conception of *qasāmah* in the oath formula, the emphasis on territorial responsibility, and the fact that the defendants are the ones who make the oath, it does not mention a *diyah*. It also includes the dead man giving his testimony, but I do not believe this has bearing on the Kufan *qasāmah* as it does for the Mālikīs.[550] This version thus includes features that reflect but also do not reflect the formalized Iraqi *qasāmah*. It also would contradict the formalized Mālikī *qasāmah*, which held that *qasāmah*, which did lead to execution, could only be done on a single person, not more than one, which Mālik says is unattested to.[551] In this version, there are two killers, and both get executed. The exegesis therefore does not conform, but it does begin to offer some parallels to the formalized Kufan *qasāmah*.

5.3. Ibn Abī Mulaykah, who transmits this exegesis from Ibn ‘Abbās, related a number of *qasāmah* related reports that offer a complicated picture of its practice in the

[549] The text reads village (singular), but the editor notes that it should be both villages, as it appears elsewhere (and which would agree with the fact the distance was equivalent)
[550] The Iraqi *qasāmah* articulated by the Ḥanafīs would impose a *diyah* and not allow for an execution. According to Ibrāhīm al-Nakha‘ī, whose practical argument made its way into the formalized Ḥanafī articulation of *qasāmah*, blood money was to be extracted in *qasāmah* and not an execution, because the latter would be a clear injustice (جور) in this type of case. See *Muṣannaf* of Ibn Abī Shaybah, vol. 5, pg. 444,
[551] See Mālik’s Muwaṭṭa’, vol. 5, pg. 1298.

early generations. He reports from Abū Hurayrah that the Prophet ﷺ confirmed *qasāmah* based on its practice in the Jāhiliyyah,[552] and he notes In the *Muṣannaf* of Ibn Abī Shaybah that ‘Umar b. ‘Abd al-‘Azīz and Ibn al-Zubayr both carried out executions with *qasāmah* (أقادا بالقسامة).[553] However, he reportedly also indicated that ‘Umar b. ‘Abd al-‘Azīz also argued against *qasāmah* at some point,[554] and that Mu‘āwiyah did not execute on the basis of it (لم يقد بها).[555] An exegetical-legal cross over with his comments here are not apparent.

5.4. Ibn ‘Abbās appears to have been the primary early figure to whom the “biblical” versions of this exegesis was ascribed (see next version too), and as we saw earlier, the dubious *qasāmah* ḥadīth of al-Kalbī was also ascribed to him. It should be noted that this version of the Ibn ‘Abbās narrative is found in Muqātil b. Sulaymān’s tafsīr and appears to have been the earliest exegesis to have reported it. Muqātil himself was considered to be a highly suspect transmitter whose reports were generally not trusted amongst later authorities. Ibn Ḥibbān (d. 354 AH) accused him of being a fabricator of ḥadīth, and important for us, he says that Muqātil used to match his knowledge of the Qur’ān with the [scriptures] of the Jews and Christians: ( كَانَ يَأْخُذ عَن الْيَهُود وَالنَّصَارَى علم الْقُرْآن الَّذِي يُوَافق كتبهمْ).[556] If the assessment is true, Muqātil himself may have been an originator of this “Israelite” exegesis, if not a compiler of it. The later Ibrāhīm al-Ḥarabī (d. 285 AH) suggests that Muqātil did not directly

[552] Abū al-Qāsim al-Ṭabarānī, *Al-Mu’jam al-Awsaṭ*, vol. 3, 10 vols. (Cairo, Egypt: Dār al-Ḥaramayn, n.d.). Vol. 8, pg. 209.
[553] See Ibn Abī Shaybah’s *Muṣannaf*, vol. 5, pg. 443.
[554] al-Muhallab b. Aḥmad al-Asadi al-Andalusī, *Al-Mukhtaṣar al-Naṣīḥ Fī Tahdhīb al-Kitāb al-Jāmi’ al-Ṣaḥīḥ*, ed. Aḥmad b. Fāris al-Salūm, 1st ed., 4 vols. (Riyadh: Dār al-Tawḥīd, 2009). Vol. 3, pg. 14.; al-Bayhaqī’s *Ma‘rifat al-sunan wa al-Āthār*
[555] Al-Bukhārī’s *Saḥīḥ*, vol. 9, pg. 8.
[556] Ibn Ḥibbān al-Dārimī al-Bustī, *Kitāb Al-Majrūḥīn Min al-Muḥaddithīn Wa al-Ḍu’afā’ Wa al-Matrūkīn*, ed. Maḥmūd Ibrāhīm Zāyid, 3 vols. (Aleppo: Dār al-Wa’ī, 1396AH). Vol. 3, pg. 14.

receive his reports from whom he claims he did (this assessment also confirmed by Muqātil's student Sufyān b. 'Uyaynah regarding Muqātil's transmissions from al-Ḍaḥḥāk as well apparently), but that his exegesis was instead a collection of available exegetical traditions that we would then comment upon.[557] We learn that Muqātil was also connected to al-Kalbī: in a possibly fictitious narrative to impugn his reputation as a transmitter, al-Kalbī reportedly accused Muqātil of fabricating a narration from him, to which Muqātil responded, "Shut up, oh Abū al-Naḍr [al-Kalbī], for [as you know] the beautifying/improving of reports among us [exegetes?] is in our [citing from] authorities (فإن تزيين الحديث لنا إنما هو بالرجال)."[558] The report clearly takes a jab at not only his transmission from authorities, but also that of al-Kalbī ("our"). Muqātil reportedly also praised al-Kalbī for his knowledge of tafsīr, but al-Kalbī apparently did not reciprocate the praise.[559] Separately we also know that Abū Ḥanīfah reportedly had some awareness of Muqātil, as he apparently rebuked him for his anthropomorphic beliefs.[560]

6. Another exegesis attributed to **Ibn 'Abbās** (d. 68 AH) → the Kufan 'Aṭiyyah b. Sa'd b. Junādah al-'Awfī (d. 110 or 127 AH) → his son, the Kufan al-Ḥasan b. 'Aṭiyyah al-

---

[557] al-Khaṭīb al-Baghdādī, *Tārīkh Baghdad*, ed. Bashshār 'Awād Ma'rūf, 1st ed., 16 vols. (Beirut: Dār al-Gharb al-Islāmī, 2002). Vol. 15, pg. 207:
قَالَ إبراهيم: وإنما جمع مقاتل بن سليمان تفسير الناس وفسر عليه من غير سماع، ولو أن رجلا جمع تفسير معمر عن قتادة، وشيبان عن قتادة كان يحسن أن يفسر عليه

[558] Ibid:
سمعت إسحاق بن إبراهيم، يقول: أَخْبَرَنِي حمزة بن عميرة، وكان من أهل العلم، أن خارجة مر بمقاتل وهو يحدث الناس، فذكر فيما حدثهم، قَالَ: أَخْبَرَنِي أَبُو النضر، يعني: الكلبي، إذ مررت معه عليه، فوقف الكلبي فقال: أبا الحجاج، ما حدثت بهذا الحديث الذي ترويه عني قط، فربضني ودنا منه، فقال: يا أبا الحسن، أنا الكلبي وما حدثت بهذا الحديث قط، فقال: اسكت يا أبا النضر، فإن تزيين الحديث لنا إنما هو بالرجال

[559] Al-Khaṭīb's *Tārīkh*, vol. 15, pg. 207:
أَخْبَرَنَا الحسين بن شجاع الصوفي، قَالَ: أَخْبَرَنَا مُحَمَّد بن عبد الله الشافعي، قَالَ: حَدَّثَنَا مضر بن مُحَمَّد الأسدي، قَالَ: حَدَّثَنَا حامد بن يحيى، عن سفيان بن عيينة...فقال لي مقاتل بن سليمان، وأردت أن أخرج إلى الكوفة: إن كنت تريد التفسير فسل عن الكلبي، قَالَ: فقدمت الكوفة، فسألت عن الكلبي، فقلت: إن بمكة رجلا يحسن الثناء عليك، قَالَ: من هو؟ قلت: مقاتل بن سليمان، فلم يحمده

[560] See Ibid., vol. 15, pg. See al-Dhahabī's *Siyar*, vol. 7, pgs. 201-202. From the former source:
حَدَّثَنِي مسعود بن ناصر السجزي، قَالَ: أَخْبَرَنَا علي بن بشرى السجستاني، قَالَ: حَدَّثَنَا مُحَمَّد بن الحسين الآبري، قَالَ: سمعت إِسْمَاعِيل بن أسد، يقول: سمعت إسحاق بن إبراهيم، يقول: قَالَ أَبُو حنيفة: أتانا من المشرق رأيان خبيثان: جهم معطل، ومقاتل مشبه

‘Awfī (d. unknown) → his son, the Kufan and then Baghdadian judge al-Ḥusayn b. al-Ḥasan al-‘Awfī (d. 210 or 211 AH) → his nephew Sa‘d b. Muḥammad b. al-Ḥasan al-‘Awfī (d. ?) → his son, the famous Muḥammad b. Sa‘d (d. 230 AH) of Baghdad, author of *al-Ṭabaqāt al-Kabīr*[561]

6.1. Includes A, B, C, and D.

6.2. This version of the previous Ibn ‘Abbās exegesis is far more doctrinal and makes the practice of the Israelites nearly match the Iraqi form of *qasāmah* that becomes expounded by Abū Ḥanīfah and his pupils. It also clears up issues found in the previous version that would have conflicted with the Iraqi *qasāmah* as it had been expounded by them. The previous version, narrated in Muqātil b. Sulaymān’s early tafsīr, would thus seem to be the earlier version that, while offering some sort of legally relevant material, did not appear to be interpolated with the features of a particular established form of *qasāmah* as in this case. In this version, the *qatīl*’s brother’s children plot his death by discussing how they can inherit his wealth, and, significantly, take the *diyah* from another town that they will accuse (وتغرموا أهل المدينة التي لستم بها ديته). This version then says that there were two towns, and in those days (i.e. a statement describing the *laws* of the Israelites) if a *qatīl* was found between two towns, the distance between them was measured and the nearest town was responsible for the *diyah* (فكان القتيل إذا قتل وطرح بين المدينتين، قيس ما بين القتيل وما بين المدينتين، فأيهما كانت أقرب إليه غرمت الدية). The obviously Iraqi dictate, which parallels the Arabic of the Ḥanafī articulations of the institution is phrased here as the legal custom of the Israelites. It also appears in the later exegetical traditions that were

[561] See al-Ṭabarī’s *Tafsīr*, vol. 2, pgs. 186, 188-189, 191, 201, 220-222, 226-227

not ascribed to anyone from al- Tha'labī. In this version, a set legal custom is presented from the get-go for the Israelites to follow, endowing it some legitimacy as well. The story continues, and we learn that given this existing legal custom, the relatives of the *qatīl* decide to kill him and place his body at the gate of the city they were not from, demanding that bloody money be paid per those rules. Importantly, they do not demand not that the murderer be killed or brought to justice (the Kufan *qasāmah* doesn't allow for execution) – the *diyah* is what concerns them. The accused than make an oath (a *qasm*), swearing by God that they did not kill him, nor did they know who did (نقسم بالله ما قتلنا ولا علمنا قاتلا), and that the gates of the city were closed, barring the possibility that they were responsible. When the accusers approach Moses ﷺ, the defendants once more make the same oath. It is then that the cow is ordered to be slaughtered to clear up the confusion. Unlike the Medinese exegesis we will encounter later, the defendants are the only ones who make the oath (as in the Kufan *qasāmah*), and in this version, they use the Deuteronomic oath (also as in the Kufan *qasāmah*). The addition of the *diyah* appears to be an obvious interpolation. What is interesting is that this version of the story, while it legitimizes the Iraqi *qasāmah* as having a pre-Muḥammadan basis, does not seem to address an important issue the Medinese seemed to note as we will see: If God intervenes with the miracle of bringing the man back to life to prove that the defendants were wrongfully being punished, doesn't this show the problem in casting blame on the town nearest the body? The exegesis doesn't seem to cast any explicit issue with the legal custom described.

6.3. This version relates to Muqātil's above, mentions Deuteronomic features and seconds the reference to Ibn ʻAbbās. Regarding these narrations from Ibn ʻAbbās that we see regarding this tradition (and we can also include al-Kalbī's ḥadīth report) it should be noted that Muslim sources viewed a significant amount of tafsīr material as having been falsely ascribed to Ibn ʻAbbās, with al-Shāfiʻī reportedly saying (perhaps intending some exaggeration) that only about a hundred tafsīr reports from Ibn ʻAbbās were authentic ( لم يثبت عن ابن عباس في التفسير إلا شبيه بمائة حديث).[562] And in this particular isnād we have some reason to be skeptical, with the divergence of death dates between ʻAṭiyyah and Ibn ʻAbbās being quiet large. A significant detail about this report is that ʻAṭiyyah b. Saʻd (d. 120 or 127 AH) reportedly studied Qur'ānic exegesis from al-Kalbī and transmitted material from him as well,[563] al-Kalbī who we see *also* reported from Ibn ʻAbbās a Kufan form of *qasāmah* that was ascribed to Mosaic law, which he attributes to the Prophet ﷺ as well. The Arabic found in ʻAṭiyyah's exegesis mimics al-Kalbī's prophetic report quiet strongly and describes a more Kufan mold than Muqātil's. And forming a three way triangle, we learn that ʻAṭiyyah was also connected to Muqātil: Muqātil apparently studied reports from ʻAṭiyyah in Baghdad, and he transmits material from him in his exegesis elsewhere.[564] Lastly, the isnād information for this

[562] See Abū Bakr al-Bayhaqī and al-Sayyid Aḥmad Ṣaqar, *Manāqib Al-Shāfi'ī Li al-Bayhaqī*, 1st ed., 2 vols. (Cairo: Maktabat Dār al-Turāth, 1970). Vol. 2, pg. 23.
[563] Abū Aḥmad b. 'Adī al-Jurjānī, *Al-Kāmil Fī Ḍu'afā' al-Rijāl*, ed. 'Ādil Aḥmad 'Abd al-Mawjūd, 'Alī Muḥammad Mi'waḍ, and 'Abd al-Fattāḥ Abū Sunnah, 1st ed., 9 vols. (Beirut: al-Kutub al-'Ilmiyyah, 1997). Vol. 7, pg. 84.; Also, Ibn Ḥibbān's *Majrūḥīn*, vol. 2, pg. 176
[564] See al-Khaṭīb's *Tārīkh Baghdad*, vol. 15, pg. 207; See also the introduction to Muqātil's *Tafsīr* with the editor's comments on the author's narrations in the tafsīr, vol. 1, pg. 25.

transmission lets us know that this report was known among the Iraqis and similarly reflects their *qasāmah.*

7. An exegesis of the Kufan **Ismā'īl b. 'Abd al-Raḥmān al-Suddī** (d. 127 AH) → the Kufan Asbāṭ b. Naṣr al-Hamadānī (d. ?) → the Kufan 'Amr b. Ḥammād b. Ṭalḥah (d. 222 AH)[565]
   7.1. Includes A, B, C, and E.
   7.2. Al-Suddī's Kufan account is the most detailed of the narratives and also plays on midrashic/Talmudic stories according to Aghaei. As far as our legal details are concerned, this Kufan tradition plays strong emphasis on the *diyah*. The story notes that the nephew wanted to kill his uncle for his *diyah* (لآكلن ديته), in addition to obtaining his inheritance and marrying his daughter (which his uncle had refused). He kills him after leading him to another tribe's locale, and then demands that they pay him the *diyah* due upon his uncle (فأدوا إلي ديته). This narrative strongly legitimizes the *diyah* being given to the defendants, as Moses ﷺ himself gives it to them (فقضى عليهم بالدية). This is a step further than the doctrinal Ibn 'Abbās report that merely had the *diyah* as part of the legal custom of the day. Here Moses ﷺ himself enforced it (even though the defendants are actually innocent!). Though it's not said as explicitly as in the other reports, it is assumed that the other tribe was deemed guilty because the body was found among them. The family of the *qatīl* then demand that the killer also be identified, because the *diyah* that they received was not sufficient justice. This then explains the commandment to sacrifice the cow

[565] See al-Ṭabarī's *Tafsīr*, vol. 2, pgs. 185-186, 192-193, 196, 201-202, 206, 212, 216, 220, 230

and strike the *qatīl*: when the *qatīl* comes back and identifies his killer and his motive, the killer is executed.

7.3. We have here another Kufan isnād. While al-Suddī is generationally related to both al-Kalbī (d. 146) and ʻAṭiyyah b. Saʻd who are also Kufans, his tafsīr does *not* place an emphasis on the oath statement, only focusing on the *diyah*, which is a more fundamental contrast between the Kufan and Medinese *qasāmah*. Unlikely the former two, his tafsīr is not attributed to a higher authority like Ibn ʻAbbās, and was thus an amalgam of available exegetical traditions. Al-Suddī's version also appears to be somewhat earlier than Muqātil's, based on a report from the Kufan/Meccan Sufyān b. Uyaynah (198 AH), a student of Muqātil's, that indicates that al-Suddī's narrations were already being transmitted by one of his students at the time of Muqātil's own teaching.[566]

8. An exegesis that al-Ṭabarī attributes to 3 individuals (it is unclear which parts of the narrative are taken from whom): [1] the Meccan **Mujāhid** (d. 104) who we encountered before → the Meccan Ibn Jurayj (150 AH) → Ḥajjāj b. Muḥammad (d. 206 AH) of Baghdad; [2] the Medinese/Kufan **Muḥammad b. Kaʻb al-Quraẓī** (d. 120 AH) and [3] the Medinese **Muḥammad b. Qays** (d. unknown) both of whom reportedly transmitted their exegesis to → Abū Maʻshar (d. 170 AH) of Medina/Baghdad → Ḥajjāj b. Muḥammad (d. 206 AH) of Baghdad [567]

8.1. Includes B and D.

[566] See al-Khaṭīb's *Tārīkh Baghdad*, vol. 15, pg. 207:
أَخْبَرَنَا الحسين بن شجاع الصوفي، قَالَ: أَخْبَرَنَا مُحَمَّد بن عبد الله الشافعي، قَالَ: حَدَّثَنَا مضر بن مُحَمَّد الأسدي، قَالَ: حَدَّثَنَا حامد بن يحيى، عن سفيان بن عيينة، قَالَ: أول من جالست من الناس: مقاتل بن سليمان، وأبا بكر الهذلي، وعمرو بن عبيد، وإنسانا يقال له: صدقة الكوفي، فكانوا يجتمعون خلف المقام، فيتذاكرون القرآن بينهم، فيقول مقاتل بن سليمان: حَدَّثَنَا الضحاك، ويقول الهذلي: حَدَّثَنِي الحسن، ويقول صدقة: حَدَّثَنِي السدي، ويقول عمرو بن عبيد: حَدَّثَنِي الحسن

[567] See al-Ṭabarī's *Tafsīr*, vol. 2, pgs. 187-189, 219, and 227

8.2. The narrative set up is different in this exegetical story about the *qatīl* and takes place in a city that the Israelites have apparently built to protect themselves from the sin surrounding them. Regarding the key elements we care for, the story states that Moses ﷺ, when he found that murder was frequently being committed among the Children of Israel, would hold those where the body was found responsible ( كان إذا رأى القتيل بين ظهري القوم أخذهم). This would be a clear assigning of a rule of territorial responsibility to Mosaic law. The town in the story is then implicated because of this expressly stated rule. The townspeople defend themselves by saying they made their city to keep evil away, and they say that they did not commit the murder, nor seen it done (ما قتلنا ولا علمنا قاتلا). This is the Iraqi *qasāmah* oath statement, sans the taking of God's name. Moses ﷺ conveys a command to slaughter a cow to resolve the dispute.

8.3. This report places the issue territorial responsibility as a practice of Moses ﷺ, thus giving it legitimacy, it also includes the biblical oath formula. Unfortunately, because it is attributed to three sources at once by al-Ṭabarī, it is unclear if all of these features existed in the three isnāds. All three end in Baghdad but claim isnāds of various regional origins. The Mujāhid isnād we encountered earlier (with simpler narrative form and sans these legal details) is the version that was reported in additional sources and may be more representative of his exegesis.

9. The exegesis of the Medinese **'Abd al-Raḥmān b. Zayd b. Aslam** (d. 182 AH), an author his own tafsīr and contemporary of Imām Mālik, → the Medinese-Egyptian pupil

of Mālik, ‘Abd Allāh b. Wahb b. Muslim (d. 197 AH) → the Egyptian Yūnus b. ‘Abd al-A‘lā (d. 264 AH)[568]

9.1. Includes A, B, C and D.

9.2. This exegesis leads to much later authorities than the former ones, indicating its much later formulation. Given his lateness, ‘Abd al-Raḥmān b. Zayd is assumed to have gathered the exegesis from the prior available ones. The isnād has a strong Medinese element and appears to interact with the other exegetical narratives that were doctrinally Iraqi. Importantly, the Isnād features a Medinese contemporary of Mālik’s narrating to one of Mālik’s chief pupils, Ibn Wahb, proving to us that the early Mālikīs were undoubtedly aware of this exegesis. The *qatīl* is thrown by his nephew (his murderer) among one of the tribes (فطرح في سبط من الأسباط). This version has the community of the *qatīl* condemn the ones where the body was found as having been responsible, and they do so by specifically swearing by God their belief that the other people were responsible for the murder (أنتم والله قتلتم صاحبنا). This is not the Deuteronomic oath, which is significant because the Mālikīs appear to have a number of possible oath formulas that were recommended to use in *qasāmah*,[569] in contrast with the Deuteronomic oath used by the Ḥanafīs, e.g., a general oath by God the one (يحلف بالله الذي لا إله إلا هو) or one that Mālik reportedly recommended, to swear by God who gives life and death (بالله الذي أحيا وأمات). The accused then respond to the accusation by swearing by God that they did not commit the act (لا والله). Moses ﷺ is then told by the accusers that the body was found among the accused, suggesting territorial responsibility, and they swear by

[568] See al-Ṭabarī’s tafsīr, vol. 2, pg. 187, 188, 192, 195, 196, 200, 202, 206, 216, 217, 221, 225, 228, and 231.
[569] See al-Lakhmī’s *Tabṣirah*, vol. 12, pg. 5532

God once more in his presence (as the plaintiffs) that the other tribe killed their member (فأتوا موسى فقالوا: هذا قتيلنا بين أظهرهم، وهم والله قتلوه). The opposing group swears once more their innocence (لا والله يا نبي الله، طرح علينا!). The set-up of this exegetical tradition favors the order of the Medinese *qasāmah* because the plaintiffs are the first to swear to Moses ﷺ, just as versions of the Anṣār ḥadīth cited by the Medinese favor their order of who is offered the oath. The reason for the accusation is also made clear: the body was in the defendant's territory, which is a reason offered in many of the accounts of this story (whether territory, the door of a person, or some other locale). Moses ﷺ is then commanded to have a cow slaughtered to resolve the dispute. When the *qatīl* is temporarily revived following the animal sacrifice, he identifies his nephew as his murderer. 'Abd al-Raḥmān b. Zayd's version adds a unique concluding statement in the narrative, that the nephew specifically killed his uncle and placed him among another tribe to collect the *diyah* ( وَكَانَ قَتَلَهُ وَطَرَحَهُ عَلَى ذَلِكَ السِّبْطِ، أَرَادَ أَنْ يَأْخُذَ دِيَتَهُ). The final statement emphasizes the clear wrong done in the case against the *qatīl*, and it is this wrong that the Medinese had qualms with in the Iraqi *qasāmah*: as Mālik states in his *Muwaṭṭa'*, people aren't to be made responsible for a *qatīl* that is found within the vicinity of their territory ( إِذَا وُجِدَ بَيْنَ ظَهْرَيْ قَوْمٍ فِي قَرْيَةٍ أَوْ غَيْرِهَا. لَمْ يُؤْخَذْ أَقْرَبُ النَّاسِ إِلَيْهِ دَاراً، وَلاَ مَكَاناً), and that is because a person may be killed and placed at the gates of a people to defile them ( يُلْقَى عَلَى بَابِ قَوْمٍ لِيُلَطَّخُوا بِهِ), and so a body's placement *should not be* considered, says Mālik.[570] The Medinese rejected the Iraqi idea that the accusers should get the *diyah* merely for a body being in someone else's territory, which they received even if the

[570] *Muwaṭṭa'* of Mālik, vol. 5, pg. 1280

accused defended their innocence through 50 oaths, and this tafsīr seems to emphasize this point.

10. An exegesis from the Yemeni **Wahb b. Munabbih** (d. 110 AH) ← ʻAbd al-Ṣamad ← Ismāʻīl b. ʻAbd al-Karīm[571]

    10.1. The only narrative detail that al-Ṭabarī is able to provide from Wahb via isnād is of narrative, and not legal significance. Wahb tells us the reason for the Israelites' initial push back against the idea of slaughtering the Cow (from the Qur'ānic verse: أتتخذنا هزوا), which is that they knew they would be scandalized (once the truth came out about who the actual killer was). This would explain their delaying of the sacrifice with numerous questions about the cow's features. Even al-Thaʻlabī's reference to Wahb in his *Tafsīr* is similarly related to narrative detail, this time about the background story regarding the cow that features in the verse.[572] I share Wahb's known contributions to the exegesis of these verses only to indicate that Ibn Qutaybah (d. 276 AH)'s citation of Wahb may be a later projection of a Kufan idea onto him.

The above study of early exegetical traditions reveals a number of things. For one, the famous exegetical traditions of Mujāhid, Qatādah and Abū al-ʻĀliyah, representing Meccan and Basran transmissions, do not offer the types of details regarding this report that one can assume were biblically derivative or that may have been useful in offering *qasāmah* with legal elements. Thus, the knowledge that would have presupposed a "Pentateuchal" *qasāmah* did not exist in at least *some* circles of the early Muslim community. The Deuteronomic features of *qasāmah* that

[571] See al-Ṭabarī's *Tafsīr*, vol. 2, pg. 221
[572] See al-Thaʻlabī's *Tafsīr*, vol. 1, pg. 215.

Crone suggests were well accepted by the early Arabs because they "read *Sūrat al-baqara* as a commentary to [the Pentateuch]" (based on her reading of al-Tha'labī's anonymous quotation which we said was from al-Kalbī) do not appear in these traditions. Rather, we see that predominantly the Iraqi transmissions make the connection between the narrative elements of the Qur'ānic verse and Deuteronomy 21 with regards the laws contained therein, but even here, we see that the legal issues from Deuteronomy that were incorporated were limited: an oath formula and significance placed on territorial responsibility and distance. Several details of the biblical ceremony, e.g., the washing and placing of hands over the heifer, the sacrifice occurring in a valley, the presence of the Levitical priests, the full language of the oath noted in Deuteronomy which seeks expiation from spilled blood (as opposed to just the first part of the statement), are nowhere mentioned in the early exegesis or legal tradition (though they appear in later exegesis). Additionally, we found that some of the legal details in the exegetical reports were non-conforming to later standardized forms of Ḥanafī and Mālikī *qasāmah*s. The fact that these exegetical narratives were very openly associated with *qasāmah* is clear though, given that we find some obvious later legal interpolation into the narratives, through mention of a particular order of oaths (a similar interpolative projection vis-à-vis the order of the oath happened with the ḥadīth reports of the Anṣār), and of the presence of *diyah*, which has no mention in several of the more basic exegetical narratives. Furthermore, we commented that the isnāds of some of the Iraqi isnāds that featured biblical elements shared common transmission elements, namely an ascription to Ibn 'Abbās that may be dubious, and interaction or connection between some of the core early transmitters and al-Kalbī, who we encountered elsewhere as having been explicit about the Kufan *qasāmah*-Torah connection and the Prophet's practice being based in Mosaic law. Even though al-Kalbī appears to be the first to make the connections explicit, it should not

surprise us that the narratives surrounding the Qur'ānic verses about the cow were likely associated with *qasāmah* from earlier, given that the verses specifically speak about a disputed murder in the first place. By the time of al-Kalbī, the legal association between the verses and *qasāmah* was apparent enough in the exegetical tradition of the Kufans that he could declare through the medium of ḥadīth that the Kufan *qasāmah* - with its non-biblical features as well – was not only practiced by the Prophet ﷺ himself, but was a continuation of Mosaic law, a point that would have been an easy jump for anyone familiar with Kufan exegesis in his time.

In terms of historical reconstruction of *qasāmah*, I offer the following suggested summary: the case of a murder occurring without sufficient evidence and the desire to identify a party at fault is a common enough event that we can assume that societies had prior legal precedents regarding it (as Peters suggests): whether in the practice of the Jāhilī Arabs (as the sources suggest) or regionally held customs of law and order (which the sources document as different practices of the early Muslim judges). The early and later jurists who sought to derive a basis for *qasāmah* had a number of *theoretical* sources at hand (and I list them without confirming whether they were available or acted on or not): the inherited precedent of the Prophet ﷺ or an early Muslim figure that served as an administrator or judge who would have adjudicated on a case of a disputed murder, local realities (the Kufans discuss the *ahl al-dīwān*, *ahl al-khiṭṭah*, and tribal groups in their discussions of responsibility in *qasāmah*), notions of ensuring justice (when is it fair to demand the *diyah* to reach some closure, or execute based on incriminating evidence), the paralleling case of a disputed murder in *Surat al-Baqarah* (i.e. Qur'ānic revelation), and the legal practice of others on the ground before them at the time of the initial military expansions. As for the Torah, we saw how this was consulted by some in a limited and selective way in the case of Leviticus and sexual laws in a previous chapter, but it

was obvious this knowledge tended to be of limited reach to them (i.e. certain early Muslims with interest and access to this material were the primary sources, and later jurists cited them secondhand through isnāds), and the interpretations were devoid of Jewish legal context (which we saw with the Muslims discussions of the sexual laws from Leviticus 18, that paid no attention to Talmudic discourses). In the case of *qasāmah*, given that it could be naturally connected to Qur'ān 2:67-73 that discusses a disputed murder, biblical information was likely (though *not* necessarily only) known through the conduit of Qur'ānic exegesis, with our isnāds (whether fictional or not), leading to Ibn ʻAbbās or al-Suddī and borrowing from Israelite and biblical narratives to varying and limited extents. The exegetical tradition's incorporation of biblical material is not surprising given that we have examples of exegesis being familiar with biblical material elsewhere (e.g. the case given earlier from Genesis regarding Abraham's pleading with God). The limited biblical information we find in these earlier exegeses (a partial citation of a specific oath formula for the "defendants," and a strong emphasis on defining territorial responsibility between locales) were then part of the scholarly "knowledge bank" of the region where they seem to have first emerged, i.e. Iraq (and *not* the Holy Land). Legal practices may have been supplemented by this knowledge in Iraq, and available *qasāmah* traditions of the Muslims could have been altered to reflect it (e.g. the al-Kalbī case, in which a known Prophetic ḥadīth that was general and vague in many details, now featured the Deuteronomic oath and the Kufan details of *qasāmah*). Through a back and forth process of exegesis being varyingly interpolated into legal ḥadīth and/or legal practice, and then legal practice (which had other basis as well) interpolated back into exegesis again, we end up with a situation where enough legal material is available that a 2nd century figure like al-Shaybānī could reference the practice of the Prophet ﷺ and ʻUmar for a *qasāmah* that featured both clear biblical features and those that were

not biblical, while Mālik could be in Medina claiming that the agreed upon practice was something other, with ḥadīth to prove it. Both *qasāmah*s could have had shared origins but were fleshed out with separate concerns and in environments with access or preferences for different types of evidence. For the Kufans, an ascription to pre-Muḥammadan law may have given traditions greater legitimacy as we saw with al-Kalbī's usage of the *Nāmūs* motif.

As long as the exegesis existed and its connection to both *qasāmah* and a practice of the Israelites was known, later exegetes continued to explore the biblical dimensions of the story: we came across al-Kalbī who made the connection to the Torah explicit, and then the 4th and 5th century comments by al-Maqdisī and al-Tha'labī which provide a much more biblical version of the exegesis then the earlier ones we saw. But they were not alone among later voices to provide biblical detail not known in the earlier tradition. They were followed by Al-Jurjānī (d. 471), who notes in his *Tafsīr* that the law of *qasāmah* was used by Moses ﷺ in Egypt (not Israel) regarding the *qatīl*, and that this law is in the Torah similar to the way it is in the Muḥammadan sharī'ah, except it has been related (فيما يروى) that the Children of Israel would put their hands over slaughtered cow and swear by God, the only God (بالله الذي لا إله إلا هو), the God of the Children of Israel, that "we did not kill him nor do we know who did" (ما قتلناه وما علمنا قاتله),[573] which shows us that in conjunction with Maqdisī and al-Tha'labī, a greater familiarity with the Deuteronomic passage had been made (but unattributed) among some exegetes by the 4th and 5th centuries, but these narratives were jumbled with other narrative features as well. It is only until we come to

[573] 'Abd al-Qāhir al-Jurjānī, *Darj Al-Durar Fī Tafsīr al-Āy Wa al-Suwar*, ed. Walīd b. Aḥmad Ibn Ṣālih al-Ḥusayn and Iyād 'Abd al-Laṭīf al-Qaysī, 4 vols. (Britain: Majallat al-Ḥikmah, 2008). Vol. 1, pgs. 198-199:
نزلت في قصة عاميل المقتول في بني إسرائيل بعد رجوع موسى - عليه السلام - بهم إلى مصر، قتله ابنا عمٍّ له ليرثاه فطرحاه بين قريتين عظيمتين. ورُوِيَ أن ابنَ أخٍ له قتله لينكحَ ابنته، ورُوِيَ أنه طرح على بابٍ من أبواب المسجد، وكان لمسجدهم اثنا عشر بابًا لكل سِبْطٍ بابٌ، فتخاصم الناسُ وتحاكموا إلى موسى - عليه السلام - فحكم بحكم القَسَامة، وهي في التوراة على نحو ما في شريعتنا، غيرَ أنهم كانوا متعبدين، فيما يروى بأن يضعوا أيديهم على بقرةٍ مذبوحةٍ ثم يحلفوا بالله الذي لا إلهَ إلا هو إله بني إسرائيل ما قتلناه، وما علمنا قاتله. فلما وقعت هذه الواقعةُ أَبَوْا إلا تعيين القاتل، ولم يدفنوا المقتول أيامًا، وآل بهم الأمر إلى الاختلاف والاقتتال. فلما طالَ الشرُّ شَكَوْا إلى موسى - عليه السلام - فوعدهُمُ الله تعالى إحياءَ المقتول على شريطة ذكرها في هذه الآية، لتبيين القاتل، ويكون ذلك آيةً على البعث والنشور

the Hebraist al-Biqā‘ī (d. 885 AH), that we come across, as Aghaei points out, the first Muslim to quote an Arabic translation of the Torah passage (and identify it explicitly as such).[574] The exegetical tradition therefore continued to have the potential of recreating biblical associations.

The previous examples show that pre-Muḥammadan law could be inferred by Muslim jurists from exegetical narratives, and in the case of the Israelite *qatīl*, these narratives could have been of biblical or Israelite origin. And while these traditions were rarely of "ṣaḥīḥ" Prophetic status, and thus technically unacceptable by most of the formal rules of pre-Muḥammadan law as espoused by later theorists, the examples of Moses' "amen," the dying declaration of the qatīl, and the exegete 'Abīdah's narrative extrapolation about a murderer's inheritance were all openly taken as evidence by the jurists, while al-Kalbī's exegetical knowledge may have been used to reformulate a ḥadīth that would then be taken as legal relevance for the jurists. The mere fact that these exegetical reports were part of the tradition and ascribed to a higher authority figure enhanced their legitimacy ("فإن تزيين الحديث لنا إنما هو بالرجال"), and the fact they were part of Qur'ānic exegesis made them familiar and linked to scripture. A further study may be interested in exploring the legal ramifications of various Qur'ānic exegetical reports that we know contain Israelites stories and biblical references. This chapter *did not* cover all of the cases where exegetical narratives were referenced in law, and there are others. This can be explored by others. Works in the genre of *Aḥkām al-Qur'ān* may be

[574] Burhān al-Dīn al-Biqā'ī, *Naẓm Al-Durar Fī Tanāsub al-Āyāt Wa al-Suwar*, 22 vols. (Cairo: Dār al-Kitāb al-Islāmī, n.d.). Vol. 1, pg. 484:
والذي رأيت فيها مما يشبه ذلك ويمكن أن يكون مسبباً عنه أنه قال في السفر الخامس منها ما نصه: فإذا وجدتم قتيلاً في الأرض التي يعطيكم الله ربكم مطروحاً لا يعرف قاتله يخرج أشياخكم وقضاتكم ويذرعون ما بين القتيل والقرية، فأية قرية كانت قريبة من القتيل يأخذ أشياخ تلك القرية عجلاً لم يعمل به عمل ولم يحرث به حرث، فينزل أشياخ تلك القرية العجل إلى الوادي الذي لم يزرع ولم يحرث فيه حرث يذبحون العجل في ذلك الوادي ويتقدم الأحبار بنو لاوى الذين اختارهم الله ربكم أن يخدموا ويباركوا اسم الرب وعن قولهم يقضي كل قضاء ويضرب كل مضروب، وجميع أشياخ تلك القرية القريبة من القتيل يغسلون أيديهم فوق العجل المذبوح في الوادي ويحلفون ويقولون: ما سفكت أيدينا هذا الدم وما رأينا من قتله فاغفر يا رب لآل إسرائيل شعبك الذين خلصت، ولا تؤاخذ شعبك بالدم الزكي، ويغفر لهم على الدم وأنتم فافحصوا عن الدم واقضوا بالحق وأبعدوا عنكم الإثم واعملوا الحسنات بين يدي الله ربّكم - انتهى. وهو كما ترى يشبه أن يكون فرع هذا الأصل المذكور في القرآن العظيم والله أعلم.

particularly useful for such a project. Additionally, a study of the isnāds of exegetical reports that accurately reflect biblical material might yield a better sense of which regional spaces and individuals may have had greater access to the Torah. In our brief analysis above regarding the exegesis of the *qatīl* story, we suggested that some of the Iraqi isnāds (not all) seemed to be aware of biblical elements that other regional isnāds did not, and that this information may have been later derived as well (likely when it was *learned*, i.e. it cannot be assumed biblical literacy was part of the "Arab" knowledge bank from the get go). An interest in biblical dicta was noted in the context of Kufah in earlier chapters as well and should be pursued. Further studies should be able to glean far greater insights or challenge these conclusions. I also understand that this was a long chapter, so thanks for reading… ☺

Chapter 6

# Al-Shāfi‘ī and Pre-Muḥammadan Law:

# Dietary Law (Again)

Don’t worry, this chapter is short. I begin by summarizing some of al-Shāfi‘ī’s engagement with pre-Muḥammadan law in his writings. I will give special attention to a curious and later attribution to al-Shāfi‘ī, wherein he apparently formulated a theory for ascertaining the permissibility of certain animals for consumption based on the laws of the People of the Book. This would of course be a case of pre-Muḥammadan law being referred to from a source outside of the Qur’ān and ḥadīth, and the specific exception for dietary law appears to have been sanctioned by the Qur’ān according to the logic of this argument (just as we saw in the Mālikī/Ḥanbalī case). While the ascription to al-Shāfi‘ī is not possible to prove, it demonstrates that pre-Muḥammadan dietary laws may have been consequential in some circles of the Shāfi‘ī *madhhab*, examples of which this study does not explore. Unlike the Mālikī/Ḥanbalī case that was only concerned with meats acquired from the Jews where they themselves slaughtered it and it was prohibited for them, the Shāfi‘ī formulation was theoretically much more impactful on Islamic dietary law. Future studies should evaluate the consequences of this articulated framework on dietary law as extrapolated by *Shāfi‘ī* scholars.

The cases cited in previous chapters showed how the founders of the *madhhabs* held positions that may have been premised in some way on pre-Muḥammadan laws, these laws being found in the Qur’ān, the practice of Jews with regards to dietary law (Mālik and *ṭerefah,* etc.), or

the Torah itself when transmitted via an isnad of Muslims (al-Shaybānī). Al-Shāfi'ī similarly held some limited positions premised in pre-Muḥammadan law, and is unique in that he also appears to have been the first to raise the theoretical issue of whether it could be referred to in the first place (as noted in chapter 1). We will see that some later Muslims ascribed to him a very significant role in the articulation of a formal theory on this topic which was not covered in the chapter on theory but which we will see below.

Some of the later sources make some interesting but questionable ascriptions to al-Shāfi'ī as they relate to his views on pre-Muḥammadan law.[575] In one fascinating example al-Shāfi'ī is

[575] I note three examples:
[1] According to the Ḥanafī al-Sarakhsī (d. 483 AH), an example that show's al-Shāfi'ī acceptance of pre-Muḥammadan law as binding is his argument that Muslims may apply the stoning punishment on the *ahl al-kitāb* in cases of adultery, citing the Prophet's stoning of two Jews. In the version of the incident as al-Sarakhsī presents it, the Prophet's injunction on the two Jews was based on the Torah (بحكم التوراة), as indicated by the Prophet's statement, "I have the most right to revive a law (سنة) that they [the Jews] killed" in reference to stoning. Al-Sarakhsī thus takes al-Shāfi'īs usage of this incident to mean that pre-Muḥammadan law was Islamic law for al-Shāfi'ī as he says it is for the Ḥanafīs in cases mediated by an Islamic source. However this does not appear to be a fully accurate representation of al-Shāfi'ī's own statements, as al-Shāfi'ī in the apparent reference from *Kitāb al-Umm* presents the incident involving the two Jews not as one where the Prophet ﷺ gave a command based on the Torah, but rather based in his own law and based in Islamic revelation that matched what was in the Torah in this instance.; For al-Sarakhsī's comments, see: al-Sarakhsī, *Uṣūl Al-Sarakhsī*. Vol. 2, pg. 100.; The statement, "I have the most right to revive a *sunnah* that they [the Jews] killed" (أنا أَحَق من أَحْيَا سنة أماتوها), appears in a slightly variant form from al-Barā' b. 'Āzib (d. 71-72 AH) in the *musnād* of Aḥmad (d. 241 AH) ( اللهُمَّ إِنِّي أُشْهِدُكَ، أَنِّي أَوَّلُ مَنْ أَحْيَا سُنَّةً قَدْ أَمَاتُوهَا) with the only context offered that this statement was made after the Prophet ﷺ ordered for a Jew to be stoned. See: Abū 'Abd Allāh Aḥmad b. Muḥammad b. Ḥanbal, *Musnad Al-Īmām Aḥmad b. Ḥanbal*, ed. Shu'ayb al-Arna'ūṭ, 1st ed. (Mu'assisat al-Risālah, 2001). Vol. 30, pg. 610.; In al-Shāfi'ī's own discussion of the legal issue, the example he cites has the two individuals appear before the Prophet ﷺ seeking an easier punishment than what they had in the Torah (stoning), only to find that the Prophet ﷺ commanded with stoning as well. In a separate discussion on applying punishments on *dhimmī*'s, al-Shāfi'ī asserts that the Prophet's arbitration in that case was his acting on the Islamic sharī'ah, and in accordance with the Qur'ānic commandments found in 5:42 ("…and if they come to you, judge between them or turn away from them. If you turn away from them they shall not harm you, and if you judge between them, then judge with justice…") and 5:49 ("So judge between them by what God has revealed and do not follow their desires, and be wary of them that they tempt you away from anything that God has revealed to you…"). These verses would thus illustrate that the Prophet's command was based on the laws and revelation sent to him specifically, according to al-Shāfi'ī. See al-Shāfi'ī, *Al-Umm*, 1990. Vol. 4, pg. 222, and Vol. 6, pg. 150.; The Ḥanafī Ḥusām al-Dīn al-Sighnāqī (d. 711 AH) makes the same claim about al-Shāfi'ī as al-Sarakhsī, but his wording is close enough to al-Sarakhsī that it is likely copied from him. See: Ḥusām al-Dīn al-Sighnāqī, *Al-Kāfī Sharḥ al-Bazdawī*, ed. Fakhr al-Dīn Sayyid Muḥammad Qānt, 1st ed., 5 vols. (Maktabat al-Rushd, 2001). Vol. 3, pgs. 1579-1580.; al-Sarakhsī makes the technical point that for the Ḥanafī's, though this incident shows that this biblical law was part of Islamic law at some point, *iḥṣān* became part of the Islamic legal conditions on stoning at a later period, which means that this law was ultimately abrogated. For the Ḥanafī's the addition of new conditions to a law indicates an abrogation. See: al-Sarakhsī, *Uṣūl Al-Sarakhsī*. Vol. 2, pg. 100.
[2] In his critique against those who believe in the utility of pre-Muḥammadan law, Ibn Ḥazm references the story of the prophet Joseph ﷺ taking his brother captive after he is framed for stealing a goblet (refer to Qur'ān 12:70-79).

even believed to have established a clear framework for the usage of pre-Muḥammadan law wherein these laws could be ascertained from sources other than the Qur'ān or ḥadīth. Al-Juwaynī (478 AH), who despite his own opposition to the utility of pre-Muḥammadan law which was noted earlier, asserts that the founder of his school had a leaning towards affirming pre-Muḥammadan law (للشافعي ميل إليه) and even "built one of his legal frameworks out of it" ( بنى عليه أصلا من أصوله) in his book on dietary law, *Kitāb al-aṭ'imah*.[576] This final comment regarding an apparent framework set forth in *Kītāb al-aṭ'imah* does not come with any further elaboration or detail, yet it becomes quoted by others that come after him.[577] A contemporary of al-Juwaynī, Abū al-Muẓaffar b. al-Sam'ānī (d. 489 AH) quotes al-Juwaynī's statement about *Kitāb al-aṭ'imah* without naming his source (al-Juwaynī), and he appears to signal his inability to verify

---

Ibn Hazm points out that his interlocutors are unwilling to adopt this pre-Muḥammadan law - enslavement as a punishment for theft - even when there is no legal consensus against this practice, there being evidence that the early Basran Qāḍī Zarārah b. Awfā (d. 93 AH) sold a freeman who was in debt, and that al-Shāfi'ī, based on an unreliable transmission (من طريق غريبة), held this as well. Ibn Ḥazm suggests that this was practiced in early Islam but abrogated by Qur'ān 2:280, which offers postponement to those in debt and in financial hardship. The existence of Zarārah and al-Shāfi'ī's positions here would mean that abandonment of this pre-Muḥammadan law was not a point of consensus, which Ibn Ḥazm uses to suggest that his interlocutors are selective in their usage of pre-Muḥammadan law that is noted in the Qur'ān. See: al-Andalusī al-Ẓāhirī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 5, pg. 169.; The Shāfi'ī Kamāl al-Dīn al-Damīrī (d. 808 AH) believes that Ibn Ḥazm's report of this aberrant position regarding Islamic theft laws is not authentically a position of al-Shāfi'īs (and Ibn Ḥazm also recognizes the unreliable transmission), though he notes that this position was ascribed to al-Shāfi'ī elsewhere in a book by Abū Bakr al-Kindī (d. 360 AH). See: Kamāl al-Dīn al-Damīrī, *Al-Najm al-Wahhāj Fī Sharḥ al-Minhāj*, 10 vols. (Jeddah: Dār al-Minhāj, 2004). Vol. 4, pgs. 378-379.; Regardless of its authenticity, this transmitted position is not explicitly linked to the story of Joseph ﷺ and could have been based in possible early legal practice reported of the Prophet ﷺ which was later abandoned (see the previously cited al-Damīrī's discussion for engagement with this). It should be noted that the Shāfi'ī al-Māwardī (d. 450 AH) notes the legal relevance of the Joseph ﷺ story, identifying this punishment for theft as coming from the sharī'ah of Jacob, but makes it clear that it has been abrogated by the corporal punishments (*ḥudūd*) laid out in the Muḥammadan sharī'ah, without noting the divergent position from al-Shāfi'ī. See: Abū al-Ḥasan al-Māwardī, *Al-Ḥāwī al-Kabīr (Sharḥ Mukhtaṣar al-Muzanī)*, ed. 'Alī Muḥammad Mi'waḍ and 'Ādil Aḥmad 'Abd al-Mawjūd, 19 vols. (Beirut, Lebanon: Dār al-Kutub al-'Ilmiyyah, 1999). Vol. 13, pg. 184.

[3] A solitary voice I have found of someone who believed al-Shāfi'ī was *opposed* to the utility of pre-Muḥammadan law is the Shāfi'ī Shahāb al-Dīn al-Zanjānī (d. 656), who in his very terse comments on pre-Muḥammadan law says that the imām did not view it as binding based on Qur'ān 5:48 ("… for each of you We have made a law (شِرْعَة) and way (منهاجا)…"). I have been unable to find any reference where al-Shāfi'ī engages with this verse. Given that his text on this topic is not very developed, it seems likely that al-Zanjānī is citing a verse that was used by later Shāfi'īs opposed to the usage of pre-Muḥammadan law, and has applied it to al-Shāfi'ī himself. His comment would also contradict clear examples cited above from al-Shāfi'ī's writings.

[576] al-Juwaynī, *Al-Burhān Fī Uṣūl al-Fiqh*. Vol. 1, pg. 189.

[577] Others such as al-Zarkashī (d. 794 AH) transmit al-Juwaynī's remarks about *Kitāb al-Aṭ'imah*, but do not comment further. See: al-Zarkashī, *Al-Baḥr al-Muḥīṭ Fī Uṣūl al-Fiqh*. Vol. 6, pg. 43.

this claim by introducing it as something that has been said (قيل).[578] What exactly is the text in question? Al-Juwaynī's student al-Ghazālī provides us with the text in question, and it does not match the corresponding discussion of dietary law in the *Kitāb al-aṭ'imah* that exists in our printed copies of *al-Umm* as transmitted by al-Rabī' b. Sulaymān al-Murādī (d. 270/884).[579] Given its significance, I will reproduce it here in full:

> al-Shāfi'ī (may God be pleased with him) said in *Kitāb al-aṭ'imah*: In determining the legal permissibility of animals [for consumption], recourse is made to the textual sources (*al-nuṣūṣ*) and reports of the Companions (may God be pleased with them). If it is not to be found there, then we refer to what the Arabs found to be agreeable and disagreeable [in terms of animals for consumption]. **If it is not to be found there, then if we come across that it was permitted or prohibited in the laws of those who preceded us and we also do not find something that abrogates it, then we follow it.** This opinion is supported by what is said regarding the dispatching of prophets [by God], that this does not necessitate the abrogation of [prior] laws. We know this to be the case since there were six affiliated with the communities (*milal*) that were given laws - Adam, Noah, Abraham, Moses, Jesus (upon them all be peace), and the Messenger of God (may God bless him and give him peace) – and it is not far off that they aided each other in one religion (*dīn*). After all, in the period of Moses (upon him be peace), there were a thousand prophets that legislated with the Torah. We also don't have any text transmitted from the Messenger (upon him be peace) abrogating the law of those who came before us. We lack a source for our law, [so] we turn to pre-Muhammadan law.[580]

The text as presented by al-Ghazālī espouses a formal Islamic theorization of recourse to the laws of other religious communities in matters of Islamic dietary law. And quite significantly, this theorization does not stipulate that these laws be uncovered through the intermediary of the

---

[578] Though he doesn't attribute it, the statement "he built a legal framework out of it" (بنى أصلا من أصوله) in *Kitāb al-Aṭ'imah* is taken from al-Juwaynī directly. Abū al-Muẓaffar b. al-Sam'ānī, *Qawāṭi' al-Adillah Fī al-Uṣūl*, ed. Muḥammad Ḥasan Ismā'īl, 1st ed., 2 vols. (Beirut, Lebanon: Dār al-Kutub al-'Ilmiyyah, 1999). Vol. 1, pg. 316.

[579] For the section on *Kitāb al-Aṭ'imah* in our copy of the *al-Umm*, refer to the two following editions: al-Shāfi'ī, *Al-Umm*, 1990. Vol. 2, pg. 264-277.; And: Muḥammad b. Idrīs al-Shāfi'ī, *Al-Umm*, ed. Rif'at Fawzī 'Abd al-Muṭṭalib, 11 vols. (Dār al-Wafā', 2001). Vol. 3, pg. 628-654.

[580] al-Ghazālī, *Al-Mankhūl Min Ta'līqāt al-Uṣūl*. Pg. 320. In the original Arabic:

قال الشافعي رضي الله عنه في كتاب الأطعمة الرجوع في استحلال الحيوانات إلى النصوص وآثار الصحابة رضي الله عنهم فإن لم يكن فإلى استخباث العرب واستطابتها يقول فإن لم يكن فما صادفنا حراما أو حلالا في شرع من قبلنا ولم نجد ناسخا له اتبعناه وعضد هذا المذهب بالدليل أن يقال نفس بعثة الرسول لا تتضمن نسخ الشرائع إذ أصحاب الملل من الشرائع ستة آدم ونوح وإبراهيم وموسى وعيسى عليهم السلام ورسول الله صلى الله عليه وسلم فلا بعد في التظاهر على دين واحد فكان في زمان موسى عليه السلام ألف نبي يحكمون بالتوراة ولم ينقل من الرسول عليه السلام نص في نسخ شريعة من قبلنا وقد عجزنا عن مأخذ من شريعتنا رجعنا إليه

Qur'ān and prophetic ḥadīth. Unlike the Mālikī and Ḥanbalī discourse on the very specific case of meat received from the slaughter of the People of the Book, al-Shāfi'ī's framework had significance for how Muslims defined *their own* slaughter rules. Looking at the text in question, pre-Muḥammadan law is clearly of a secondary status to the other sources that al-Shāfi'ī notes in this schema, and he is compelled to provide a theological justification for its relevance: all the prophets are part of the same universal religion, and the mere coming of a new prophet does not abrogate the entirety of the laws that came before. This would parallel the theoretical discussions we looked at in chapter 1. What is also significant is that neither al-Juwaynī nor al-Ghazālī, members of the shāfi'ī school, supported the utility of pre-Muḥammadan law, yet felt compelled to reference this text, indicating it may have had enough currency in Shāfi'ī circles to be addressed.

There are some peculiarities with this text, however, that raise questions regarding its attribution to al-Shāfi'ī. Though this text appears to have been available to al-Juwaynī and al-Ghazālī, it doesn't appear to exist elsewhere in our available sources,[581] making this an interesting case study for our understanding of the transmission of al-Shāfi'ī's ideas.[582] One other source that I have found provides a parallel to the text above, but it appears to be a likely paraphrasing based on al-Ghazālī's transmission.[583] The text's usage of the shorthand phrase

[581] A search of several thousand texts in the *maktabah shāmilah* corpus involving different text strings from the al-Ghazālī text (["ستة" + "آدم" + "نوح" + "موسى"] ["فلا بعد في التظاهر"], ["صادفنا حراما أو حلالا"], [ من "أصحاب الملل" + "من قبل"]) did not yield parallel examples that might indicate separate reception of this text, though one other source seems to quote a variant that is likely a reformulation of al-Ghazālī's text (see next sentence, above). Dr. Muḥammad Ḥasan Hītū and Dr. 'Abd Allāh al-Ḥakamī, editors of *al-Mankhūl* and *Qawāṭi' al-adillah* both note their inability to trace this text in *al-Umm*. See al-Ghazālī. Pg. 232, footnotes.; And Abū al-Muẓaffar b. al-Sam'ānī, *Qawāṭi' al-Adillah Fī al-Uṣūl*, ed. 'Abd Allāh b. Ḥāfidh b. Aḥmad al-Ḥakamī, 1st ed., 5 vols. (Maktabat al-Tawbah, 1998). Vol. 2, pg 211, footnotes.

[582] See, e.g. Ahmed El Shamsy, "Al-Shāfi'ī's Written Corpus: A Source-Critical Study," *Journal of the American Oriental Society* 132, no. 2 (2012): 199–220.; And: Christopher Melchert, "The Meaning of *Qāla 'l-Shāfi'ī* in Ninth-Century Sources," in *'Abbasid Studies*, ed. James Montgomery (Leuven: Peeters, 2004), 277–301.

[583] Muḥammad b. 'Abd al-Dā'im (d. 831) references al-Juwaynī's claim regarding al-Shāfi'ī's *Kitāb al-Aṭ'imah* in his discussion of pre-Muḥammadan law, and then reproduces what appears to be a paraphrasing of the text: "The

"*shar‘ man qablanā*" to refer to pre-Muḥammadan law, appears to have had a later usage and is at odds with alternative (and less concise) descriptions of it used by earlier sources including al-Shāfi‘ī himself elsewhere.[584] This seems to suggest that the text may not be a verbatim transmission.

Interestingly, when we compare the text with the relevant section in our copy of *al-Umm*, we find that his inclusion of pre-Muḥammadan law as a source for dietary prohibitions appears to be a logical extension of his larger discussion.[585] In the section at hand, al-Shāfi‘ī contends that the impermissibility of consuming a creature is based on the Qur’ān and *sunnah*, communal consensus (though not explicitly noted, this often refers to the consensus of the Companions), and our understanding of which creatures were considered "agreeable" to consume (*al-ṭayyibāt*)

---

legal foundation that is in *Kitāb al-Aṭ‘imah* is that if we find an animal for which it is not possible to determine its permissibility through any of our sharī‘ah sources, and its impermissibility is established in the law of those who preceded us, then the stronger of the two positions is that the impermissibility remains in effect" (والأصل الذي في الأطعمة: إذا وجدنا حيوانًا لا يمكن معرفة حِلّه بشيء مِن مَآخِذ شريعتنا وثبت تحريمه في شرع مَن قَبْلنا، فأظهر القولين أنه يُستصحب تحريمه). Given that Ibn ‘Abd al-Dā’im is a rather late author and appears to be summarizing the legal theoretical discussions of others on this topic, referencing al-Ghazālī’s position elsewhere in the discussion, there is a strong likelihood that he is basing his statements on al-Ghazālī’s *al-Mankhūl*. The material that he reproduces also does not appear to be a direct quotation, as his reference to "the stronger of two positions" seems to be an interjection on his part to contextualize the text with the debate he is describing. See: Shams al-Dīn Muḥammad b. ’Abd al-Dā’im, *Al-Fawā’id al-Saniyyah Fī Sharḥ al-Alfiyyah*, ed. ’Abd Allāh Ramaḍān Mūsā, 1st ed., 5 vols. (Egypt: Maktabat al-Taw’iyah al-Islāmiyyah, 2015). Vol. 5, pg 165.

[584] The earliest attestations I can find of this fully abbreviated label ("شرع من قبلنا") being used to refer to pre-Muḥammadan law include Abū Bakr al-Bāqillānī (d. 403) in *al-Taqrīb wa al-irshād* [vol. 2, pg. 63], the Mu‘tazilī Abū al-Ḥusayn al-Baṣrī (d. 436 AH) in *al-Mu‘tamad* [vol. 2, pg. 22 and pg. 341], and al-Qāḍī Abū Ya‘lā (d. 458 AH) in *al-Uddah fī uṣūl al-fiqh* [vol. 2, pg 392 and vol. 3, pgs. 761-766]. Earlier works that refer to pre-Muḥammadan law do so in slightly less terse formulations. al-Shafi’ī makes reference to it in the case of *ijārah* by citing it as the practice of prophets: ("قَدْ ذَكَرَ اللَّهُ عَزَّ وَجَلَّ الْإِجَارَةَ فِي كِتَابِهِ وَعَمِلَ بِهَا بَعْضُ أَنْبِيَائِهِ") [vol. 4, pg 26]. And was noted earlier, al-Shāfi‘ī asks whether what God has governed the Jews with applies to Muslims, without using a formulated label: ("مَا أَخْبَرَنَا اللَّهُ عَزَّ وَجَلَّ أَنَّهُ حَكَمَ بِهِ عَلَى أَهْلِ التَّوْرَاةِ حَكَمَ بَيْنَنَا؟") [vol. 7, pg. 343]. Al-Khaffāf (early 4th century AH) refers to it in *al-Aqsām wa al-khiṣāl* with reference to laws (plural) and mention of prior prophets: ("شرائع من كان قبلنا من الأنبياء عليهم السلام") [fol. 3b]. Al-Jaṣṣāṣ (d. 370 AH) refers to it in *al-Fuṣūl fī al-uṣūl* with usage of the past tense indicator *kāna*, and refers to law in terms of *sharī‘ah* (as opposed to *shar‘*) in its singular and plural forms: (شرائع من كان قبل نبينا) [vol. 3, pg 19], (شريعة لمن كان قبله) [vol. 3, pg 22] and (شرائع من كان قبلنا) [vol. 3, pg 23]. See: Abū Bakr al-Bāqillānī, *Al-Taqrīb Wa al-Irshād (al-Ṣaghīr)*, ed. ’Abd al-Ḥamīd b. ’Alī Abū Zunayd, 2nd ed., 3 vols. (Mu’assisat al-Risālah, 1998).; And: Abū al-Ḥusayn al-Baṣrī, *Al-Mu’tamad Fī Uṣūl al-Fiqh*, ed. Khalīl al-Mays, 1st ed., 2 vols. (Beirut, Lebanon: Dār al-Kutub al-’Ilmiyyah, 1403 AH).; And: Abū Ya’lā, *Al-’Uddah Fī Uṣūl al-Fiqh*.; And: al-Shāfi’ī, *Al-Umm*, 1990.; And: Abū Bakr al-Khaffāf, *al-Aqsām wa al-Khiṣāl*, manuscript (Dublin: Chester Beatty Library, MS Arabic 5115, 43 fols.].; And: al-Jaṣṣāṣ, *Al-Fuṣūl Fī al-Uṣūl*.

[585] See the following sections from *al-Umm*: al-Shāfi’ī, *Al-Umm*, 1990. Vol. 2, pgs 264-265. See especially pg. 271.

and "disagreeable" (*al-khabā'ith*), a criteria referenced in verses such as Qur'ān 7:157[586] and Qur'ān 5:4[587]. Regarding this last point, al-Shāfi'ī points out that in order to understand the "agreeableness" and "disagreeableness" referred to in the verses, we must refer to those addressed by the verses, namely the Arabs, in order to reveal the original intent of the verses. Al-Shāfi'ī says the audience in Qur'ān 5:4 are Arabs and builds his case from there for why their opinions on food (namely what defines "agreeable" and "disagreeable") matters. However, the other verse he cited, 7:157, very clearly addresses members of the People of the Book who followed the Prophet ﷺ, and thus the People of the Book being addressed would also have had knowledge of the "agreeable" and "disagreeable" foods by this logic. We therefore find that Al-Ghazālī's text could be a natural extension of the argument applied by al-Shāfi'ī on Qur'ān 5:4 onto 7:157.

We find that this very opinion of referring to pre-Muḥammadan law in dietary law, ascribed to al-Shāfi'ī in the text above, was theorized separately by the later Shāfi'ī al-Māwardī (d. 450 AH). Even though al-Māwardī held that pre-Muḥammadan law that wasn't known by means of the Qur'ān was not actionable given our inability to trust the authenticity of other

---

586 الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الْأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْتُوبًا عِندَهُمْ فِي التَّوْرَاةِ وَالْإِنجِيلِ يَأْمُرُهُم بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنكَرِ وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ ۚ فَالَّذِينَ آمَنُوا بِهِ وَعَزَّرُوهُ وَنَصَرُوهُ وَاتَّبَعُوا النُّورَ الَّذِي أُنزِلَ مَعَهُ ۙ أُولَٰئِكَ هُمُ الْمُفْلِحُونَ ۝

"those who follow the Messenger, the ummī Prophet, whom they find in the Torah and Gospel with them. He commands what is good and forbids them from what is bad, and makes lawful for them *al-ṭayyibāt* and prohibits *al-khabā'ith*. He removes from them their burdens and the shackles that were upon them. So those that believe in him, assist him, support him, and follow the Light that has been sent down with him – it is they who will succeed" ۝

587 يَسْأَلُونَكَ مَاذَا أُحِلَّ لَهُمْ ۖ قُلْ أُحِلَّ لَكُمُ الطَّيِّبَاتُ ۙ وَمَا عَلَّمْتُم مِّنَ الْجَوَارِحِ مُكَلِّبِينَ تُعَلِّمُونَهُنَّ مِمَّا عَلَّمَكُمُ اللَّهُ ۖ فَكُلُوا مِمَّا أَمْسَكْنَ عَلَيْكُمْ وَاذْكُرُوا اسْمَ اللَّهِ عَلَيْهِ ۖ وَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ سَرِيعُ الْحِسَابِ ۝

"They ask you what is permitted for them. Say: 'Al-Ṭayyibāt are permitted to you. As for the hunting creatures that you have taught, training them as hunting dogs, teaching them as God has taught you: eat what they catch for you and invoke God's name over it. And fear God, for God is swift in reckoning.'" ۝

sources,[588] he appears to make an exception in his discussion on dietary law.[589] Continuing off of al-Shāfi‘ī’s discussion from *al-Umm*, the food preferences of the Arabs are taken into account regarding animals not adjudicated on by the primary sources, and al-Māwardī adds a list of attributes that these Arabs must have.[590] He adds that if it is a matter outside the scope of the Arabs, recourse is made to those closest to the Arabs who have the attributes he then spells out. But if there is disagreement among them, then recourse is made to the laws existing among the *Ahl al-Kitāb*. If they too disagree regarding a particular animal, then al-Māwardī says that preference is given to the Christians, whose *sharī‘ah* is closer in time to that of the Muslims. What’s of note is that al-Māwardī quotes from al-Shāfi‘ī several times in his discussion on dietary law as it relates to the topic, but none of his citations reference this position regarding pre-Muḥammadan law, indicating they may be his own. His brief comments allowing for recourse to pre-Muḥammadan law appears to come entirely from his own self as an extension of his prior discussion, problematizing al-Ghazālī’s attribution. This position of al-Māwardī is documented elsewhere as well, without being associated with al-Shāfi‘ī. Al-Nawawī (d. 676 AH) notes the existence of a position allowing for pre-Muḥammadan law in matters of dietary law, but suggests the position against this is stronger (الأظهر), which can also be inferred, he says, from the majority of Shāfi‘īs and appears to be the position chosen by Shāfi‘īs in Islamic legal theory (وهو مقتضى المختار عند أصحابنا في أصول الفقه). If we do accept pre-Muḥammadan sharī‘ah for Islamic dietary law, however, then al-Nawawī asserts that this information must come from the

[588] "وَأَمَّا مَا تَضَمَّنَتْهُ شَرَائِعُ مَنْ قَبْلَنَا مِنَ الْأَنْبِيَاءِ مِنَ الْأَوَامِرِ وَالنَّوَاهِي فَمَا لَمْ يَقُصَّهُ اللَّهُ تَعَالَى عَلَيْنَا فِي كِتَابِهِ لَمْ يَلْزَمْنَا حُكْمُهُ لِانْتِفَاءِ الْعِلْمِ بِصِحَّتِهِ" See: al-Māwardī, *Al-Ḥāwī al-Kabīr (Sharḥ Mukhtaṣar al-Muzanī)*. Vol. 16, pg. 57.

[589] For his section concerning dietary law, see ibid., vol. 15, pgs. 132-180. See specifically pgs. 132-134.

[590] al-Māwardī’s list of attributes needed for those to whom recourse is made in dietary law: Arabness, being in their respective lands (أن يكونوا في بلادهم), that they be from a town or village as opposed to the open desert (so as not to have their preferences informed by unique necessities), that they have wealth (as the impoverished find things agreeable out of necessity), and be from a time of abundance (for the same reason as before). See ibid., vol. 15, pgs. 133-134.

Qur'ān, *sunnah*, or from the testimony of two trustworthy converts who know the difference between the altered and unaltered scriptures. The addition of these stipulations, specifically that of testimony, appear to be the product of discussions on *shar' man qablanā* in books of Islamic legal theory, as we discussed. Al-Nawawī also notes al-Māwardī's position that in cases of dispute among the other religions, than the Christian position must be adopted because of its nearness in time to Islam. As with al-Māwardī, al-Nawawī makes no reference to al-Shāfi'ī having this position.[591]

The rather late appearance of al-Ghazālī's text, the lack of additional transmissions of it, its likely nonverbatim transmission, and the absence of any reference to al-Shāfi'ī having this opinion among two Shāfi'ī sources that note this opinion all problematize the text at hand. Given that it is a natural outgrowth of al-Shāfi'ī's available arguments on dietary law, I believe this may be an example of a later legal discussion being interpolated and emended (accidentally or not) into the text of al-Shāfi'ī, as has been documented in a handful of other cases.[592] An alternative possibility which cannot be proven and still faces some of the issues listed above, is that this text could reflect material from al-Shāfi'ī's earlier Iraqi (as opposed to his later Egyptian) writings, an example of which El-Shamsy documents in Aḥmad b. Ḥanbal's (d. 241 AH) transmission of al-Shāfi'ī's writings.[593] Regardless of its attribution to al-Shāfi'ī, this rather open recognition of the utility of pre-Muḥammadan law in matters of dietary law by some Shāfi'īs is a topic that should be explored in a separate, dedicated study. Though far more

[591] See: Abū Zakariyyā al-Nawawī, *Rawḍat Al-Ṭālibīn Wa 'umdat al-Muftīn*, ed. Zuhayr al-Shāwīsh, 3rd ed., 12 vols. (Beirut, Lebanon: al-Maktab al-Islāmī, 1991). Vol. 3, pg. 277.; And: Abū Zakariyyā al-Nawawī, *Al-Majmū': Sharḥ al-Muhadhdhab*, 20 vols. (Dār al-Fikr). Vol. 9, pg. 27.

[592] See e.g., El Shamsy, "Al-Shāfi'ī's Written Corpus: A Source-Critical Study." pgs. 214-218

[593] See the example on Ibid., pg. 207.; Additional work uncovering manuscripts of both al-Shāfi'ī and his early followers may shed further light on this text.

inclusive of pre-Muḥammadan dietary law than the Mālikī and Ḥanbalī position, it does not appear in Freidenreich's work on dietary law.

I will briefly note that comments from al-Shāfi'ī elsewhere in *al-Umm* which are attested to in our present manuscripts, help us infer that he wasn't opposed to the utility of pre-Muḥammadan law, and that he himself referred to knowledge about pre-Muḥammadan law on a handful of occasions. In one example referenced earlier, al-Shāfi'ī engaged with a (Kufan) interlocutor's citation of a passage from the Torah as reported by Wahb b. Munabbih (d. ca. 110 AH), the same biblical curse based in Leviticus that was cited earlier as having been referenced by al-Shaybānī through a successor, though this time through Wahb b. Munabbih.[594] As might be recalled, he engages with the passage without rebuking it being utilized in the debate, demonstrating that he was at least open to pre-Muḥammadan legal evidence that was based in the Torah but known through a Successor known for his biblical knowledge. Elsewhere we find that al-Shāfi'ī defends service and lease transactions as valid undertakings by first citing Qur'ān 65:6 on giving women wages for suckling offspring,[595] and then stating that the prophets of God also acted on such contracts, citing Qur'ān 28:26-27[596], which retells the Qurānic story of the pre-Muḥammadan prophet Moses ﷺ and his marriage which was based on terms of hired service.[597] The 8th century Shāfi'ī Ibn al-Rif'ah (d. 710 AH) suggests that this example shows that al-Shāfi'ī

---

[594] See: al-Shāfi'ī, *Al-Umm*, 1990. Vol. 5, pg. 168. The statement from Wahb b. Munabbih: [It is] written in the Torah that cursed is the one who sees the privates of a women and her daughter ( مَكْتُوب فِي التَّوْرَاة مَلْعُونٌ مَنْ نَظَرَ إلَى فَرْج امْرَأَةٍ وَابْنَتِهَا). As noted before, the quote appears to be a genuine reformulation of the content of Leviticus 18:17 ("Thou shalt not uncover the nakedness of a woman and her daughter…" / "… עֶרְוַת אִשָּׁה וּבִתָּהּ, לֹא תְגַלֶּה") and the curse at the end of this section of legal pronouncements in 18:29 ("For whosoever shall do any of these abominations, even the souls that do them shall be cut off from among their people").

[595] "…and if they suckle for you [your offspring], then give them their wages (أجورهن)…" ۞

[596] "One of the two women said: 'Oh Father, hire him (استأجره). Truly the best person you can hire is someone strong and trustworthy.' ۞ He said, 'I desire to marry you to one of my two daughters on condition that you hire yourself to me (تأجرني) for eight years…' ۞

[597] al-Shāfi'ī, *Al-Umm*, 1990. Vol. 4, pg. 26.

upheld the utility of pre-Muḥammadan law, but his placement of the verse on suckling before this verse about a pre-Muḥammadan custom indicates that he viewed pre-Muḥammadan evidence as weaker.[598]

In another example from a discussion on entering Mecca in the ritual state of *iḥrām* without the intention of performing the *ḥajj* or *'umrah*, al-Shāfi'ī states that it's been reported that prior prophets performed the pilgrimage in Mecca in a state of respect. Furthermore, nothing has been reported (لم يحك) about any prior prophet or member of a pre-Muḥammadan community (الأمم الخالية) coming to the Sacred House in Mecca without being in a state of *iḥrām*, and that this, paired with the fact that the Prophet ﷺ only entered Mecca once without being *iḥrām* (on the occasion of Mecca's conquest), indicates that it is the *sunnah* of God that humans enter the sacred precinct in the ritual state.[599] Regarding the very same verse 5:45 about the law of talion in the Torah, al-Shāfi'ī cites a report of the Caliph 'Umar (r. 13-23 AH) stating that he applied the law of retaliation just as the Prophet ﷺ and the Caliph Abū Bakr (r. 11-13 AH) did before him. He then states that the law of retaliation applies on the Muslim community just as it applied on the Jews (أهل التوراة), and that he doesn't know anyone that disagrees with this.[600] Here then he seems to imply that a pre-Muḥammadan commandment carried over to the Muḥammadan community, thus agreeing with the interlocutors he engaged with in a separate discussion on this verse that we noted in Chapter 1.

---

[598] See Najm al-Dīn Ibn al-Rif'ah, *Al-Maṭlab al-'ālī Fī Sharḥ Wasīṭ al-Ghazālī: Min Bidāyat al-Bāb al-Thānī Fī Kitāb al-Musāqāh Ilā Nihāyat al-Bāb al-Awwal Min Kitāb al-Ijārah*, ed. Yūsuf b. 'Abd al-Ḥalīm Ṭahā (Saudi Arabia: Wizārat al-ta'līm (al-Jāmi'ah al-Islāmiyyah bi al-Madīnah al-Munawwarah), 1436 AH). Pg. 227.; See also al-Zarkashī's reference to Ibn al-Rif'ah's comments: Badr al-Dīn al-Zarkashī, *Al-Baḥr al-Muḥīṭ Fī Uṣūl al-Fiqh*, ed. 'Abd al-Qādir 'Abd Allāh al-'Ānī, 2nd ed., 6 vols. (Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyyah, 1992). Vol. 6, pg 42.

[599] al-Shāfi'ī, *Al-Umm*, 1990. Vol. 2, pg. 154.

[600] وَلَمْ أَعْلَمْ مُخَالِفًا فِي أَنَّ الْقِصَاصَ فِي هَذِهِ الْأُمَّةِ كَمَا حَكَمَ اللَّهُ عَزَّ وَجَلَّ أَنَّهُ حَكَمَ بِهِ بَيْنَ أَهْلِ التَّوْرَاةِ
al-Shāfi'ī. Vol. 6, pg. 53.

We now turn to Aḥmad b. Ḥanbal to wrap up our discussion of case studies as they relate to the *madhhab* imāms.

Chapter 7

# A Very Short Chapter on Aḥmad b. Ḥanbal and Pre-Muḥammadan Law

If you thought the last chapter was short, this one is shorter. Here I wrap up our treatment of the various sunnī madhhab founders by turning to Aḥmad b. Ḥanbal's engagement with pre-Muḥammadan law. I also note some examples of Aḥmad b. Ḥanbal transmitting pietistic references to the Torah. However, the latter do not have much legal import.

We have already encountered Aḥmad b. Ḥanbal's example in a prior discussion on Mālikī dietary laws on the prohibited meats of the Jews, where he agreed with Mālik's assessment that the consumption of such meat was disliked, an example where pre-Muḥammadan law had some role in a very limited legal case. He was also referenced in our discussion regarding the recitation of pre-Muḥammadan scripture in prayer. As far as what the legal theorists believed about Aḥmad b. Ḥanbal's stance on the topic, the Ḥanbalī Qāḍī Abū Ya'lā (d. 458) attributes two possible positions to Aḥmad b. Ḥanbal (d. 241 AH) and thus the *madhhab* on the question of whether pre-Muḥammadan law was binding in Islamic law. The first is that laws of the previous sharī'ah became the sharī'ah of the Prophet ﷺ, but they are followed as the Prophet's sharī'ah and not that of a pre-Muḥammadan prophet. As proof of this position he transmits from one of the Imām's pupils a position from the imām that the one who makes an oath to sacrifice his son must slaughter a ram in its stead, because of Abraham's sacrifice as

noted in the Qur'ān (37:07[601]) – the position we encountered from Abū Ḥanīfah as well. In addition, several of Ibn Ḥanbal's pupils transmit that he allowed for the casting of lots (القرعة) based on Qur'ānic verses about Jonah ﷺ doing the same (37:141),[602] in addition to verses about a group of people who did so in determining responsibility over caretaking of Mary (3:44)[603]. In another example, Aḥmad is asked by his pupils about Qur'ān 5:45 (regarding talion in the Torah), and how to make sense of the provision of "a life for a life" in light of a transmitted statement of the Prophet ﷺ that a believer is not executed for a non-believer. Aḥmad says that the injunction from the verse would not apply here because of the existence of the ḥadīth contradicting it, and Abū Ya'lā takes the fact that Aḥmad didn't raise issue with the verse being used even though it was regarding a pre-Muḥammadan community as evidence that it was applicable for the Muḥammadan community, but not followed in this instance because it was abrogated by a ḥadīth. Abū Ya'lā notes a second possible position of Aḥmad b. Ḥanbal, that only pre-Muḥammadan laws explicitly noted as continuing in the Muḥammadan *sharī'ah* could be considered Muḥammadan law, i.e., *they could not* be referred to for law a priori. According to a transmission from one of Ibn Ḥanbal's pupils, the Imām expressed that Qur'ān 5:45 was specific to the Jews, while Qur'ān 2:178[604] which gives an easier form of the talion law was what was

---

601 وَفَدَيْنَاهُ بِذِبْحٍ عَظِيمٍ ۞
And We ransomed him with a mighty sacrifice. ۞

602 فَسَاهَمَ فَكَانَ مِنَ الْمُدْحَضِينَ۞
And he [Jonah] cast lots and was of the losers. ۞

603 ...وَمَا كُنتَ لَدَيْهِمْ إِذْ يُلْقُونَ أَقْلَامَهُمْ أَيُّهُمْ يَكْفُلُ مَرْيَمَ...۞
...and you were not with them when they cast lots as to who would have charge over Mary... ۞

604 يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى ۖ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ ۚ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ۗ ذَٰلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ ۗ فَمَنِ اعْتَدَىٰ بَعْدَ ذَٰلِكَ فَلَهُ عَذَابٌ أَلِيمٌ ۞
Oh believers, prescribed for you is the law of retribution in cases of murder; freeman for freeman, slave for slave, female for female. But for one pardoned by his brother, let the prosecution (اتباع) according to common understand, and let the payment be with goodness. That is a lightening granted you by your Lord, and a mercy; and for him who commits aggression after that -- for him there awaits a painful chastisement. ۞

prescribed on the Muḥammadan community,[605] a point we noted in our theoretical discussions on pre-Muḥammadan law. The Ḥanbalīs legal theorists who were surveyed for this study appear to have subscribed to the first opinion, that pre-Muḥammadan law was binding.

Aḥmad Ibn Ḥanbal also makes 10 or so references to the Torah[606] in *Kitāb al-Zuhd*, a collection of reports he transmitted containing stories and information with pietistic benefit. He also references incidents that occurred to the Children of Israel or a pre-Muḥammadan prophet in this work as well. Almost all of these claimed Torah passages are pietistic in content, which is unsurprising given that this collection of reports from him is categorized within the genre of *raqā'iq* literature. Some of the claimed Torah references appear to be based in some scripture, such as the statements "SHOW MERCY AND YOU WILL BE SHOWN MERCY", or "YOU WILL REAP AS YOU SOW,"[607] references to Matthew 5:7[608] and Galatians 6:7[609] (so the New Testament and *not* the Torah). Others were of obviously dubious origin, such as a supposed claim made by an earlier Muslim who he transmits from that the Torah or one of the pre-Muḥammadan scriptures (the confusion is noted in the report) state that the heavens wept for 40 years for the caliph 'Umar b. 'Abd al-'Azīz (d. 101 AH).[610] This obviously fabricated passage had reached such fame that even Ibn Ḥazm was aware of it, critiquing in harsh terms an

[605] For Abū Ya'lā's prior discussion of Ibn Ḥanbal's opinions as transmitted by his pupils, see: Abū Ya'lā, *Al-'Uddah Fī Uṣūl al-Fiqh*. Vol. 3, pgs. 753-756.; The Ḥanbalī Abū al-Khaṭṭāb al-Kalwadhānī (d. 510 AH) also informs us that one of Aḥmad b. Ḥanbal's transmitted opinions is that pre-Muḥammadan law became the law of the Prophet ﷺ. See: al-Kalwadhānī, *Al-Tamhīd Fī Uṣūl al-Fiqh*. Vol. 1, pgs. 279-280.; Ibn Taymiyyah (d. 728) appears to transmit the same discussion from Abū Ya'lā. See: Majd al-Dīn 'Abd al-Salām Ibn Taymiyyah, 'Abd al-Ḥalīm Ibn Taymiyyah, and Aḥmad Ibn Taymiyyah, *Al-Muswaddah Fī Uṣūl al-Fiqh*, ed. Muḥammad Muḥyī al-Dīn 'Abd al-Ḥamīd (Dār al-Kitāb al-'Arabī, n.d.). Pgs. 184-185.

[606] See: Abū 'Abd Allāh Ibn al-Mubārak, *Al-Zuhd Wa al-Raqā'iq*, ed. Ḥabīb al-Raḥmān al-A'ẓamī (Beirut: Dār al-Kutub al-'Ilmiyyah, n.d.). pgs. 14, 44, 45, 71, 86, 88, 245, 265, 302.

[607] Ibid, pg. 44.

[608] "Blessed are the merciful, for they will be shown mercy."

[609] "Be not deceived; God is not mocked: for whatsoever a man soweth, that shall he also reap."

[610] Ibid., pg. 245.

esteemed Mālikī jurist for apparently making reference to it.[611] While this project is not interested in pietistic references to the Torah, which are many in works such as *Ḥilyat al-awliyā'* and others, there is one interesting one of the Torah passages he cites in a section related to the Qur'ānic ideal of "commanding the good and forbidding the wrong," which appears to be a genuine reformulation of the second part of Leviticus 19:17[612]: "YOU SHALL NOT HATE YOUR BROTHER IN YOUR HEART. **YOU SHALL REBUKE YOUR NEIGHBOR, AND NOT BEAR SIN BECAUSE OF HIM**." This second part is rendered as follows in Aḥmad b. Ḥanbal's version, as reported by the famous Successor Mālik b. Dīnār (d. 127 or 130 AH): "It is written in the Torah: 'WHOEVER HAS A NEIGHBOR WHO COMMITS SIN AND HE DOES NOT REBUKE HIM IS HIS PARTNER (in the sin)'"[613] In conjunction with our prior discussions on biblical dicta in chapters 2 and 3, this would be yet another biblical dictate accurately reported in the generation of the Successors. However, in this case this passage's purpose is to encourage the reader to uphold the Qur'ānic ideal of "commanding the good and forbidding the wrong," and is not used to develop any specific legal discussion as was done, e.g., by the Talmudic sages,[614] nor was this particular dicta evidence of something that could not be proven otherwise. What this example does show, however, is his willingness to engage with pre-Muḥammadan material from the Torah for personal moral benefit, and to add meaning to a Qur'ānic mandate.

---

[611] See Ibn Ḥazm's *al-Iḥkām*, vol. 5, pg. 163:
وقد كنا نعجب من قول شيخ من شيوخهم أدركناه مقدما في مشاورة القضاة له على جميع مفتيهم فإن ذلك الشيخ قال في كتاب ألفه وقد رأيناه ووقفنا عليه وناولناه بيده وهو مكتوب كله بخطه وأقر لنا بتألفه وقرأه غيرنا عليه فكان في بعض ما أورد فيه أن قال روينا بأسانيد صحاح إلى التوراة أن السماء والأرض بكتا على عمر بن عبد العزيز أربعين سنة قال أبو محمد هذا نص لفظه فلا أعجب من الشيخ المذكور في أن يروي عن التوراة شيئا من أخبار عمر بن عبد العزيز

[612] לֹא-תִשְׂנָא אֶת-אָחִיךָ, בִּלְבָבֶךָ; הוֹכֵחַ תּוֹכִיחַ אֶת-עֲמִיתֶךָ, וְלֹא-תִשָּׂא עָלָיו חֵטְא

[613] Aḥmad ibn Ḥanbal, *al-Zuhd*, pg. 86.; Also: al-Ribāṭ and ʻĪd, *al-Jāmi' li 'ulūm al-Imām Aḥmad*, vol. 13, pg. 193.
حَدَّثَنَا عَبْدُ اللَّهِ، حَدَّثَنَا أَبِي، حَدَّثَنَا سَيَّارٌ، حَدَّثَنَا جَعْفَرٌ، حَدَّثَنَا مَالِكُ بْنُ دِينَارٍ قَالَ: " مَكْتُوبٌ فِي التَّوْرَاةِ: مَنْ كَانَ لَهُ جَارٌ يَعْمَلُ بِالْمَعَاصِي فَلَمْ يَنْهَهُ فَهُوَ شَرِيكُهُ "

[614] See, e.g.: Arakhin 16b:4-5 and Bava Metzia 31a:17

We may also glean Aḥmad b. Ḥanbal's potential views on pre-Muḥammadan law from one of his contemporaries and teachers, his fellow traditionist Isḥāq b. Rāhawayh (d. 238 AH), who apparently upheld that one may enter a body of water with one's privates exposed based on Moses ﷺ doing just that in a story found in an authenticated Prophetic ḥadīth. Ibn Rāhawayh addresses a potential contention someone may have against pre-Muḥammadan law, and responds that if a practice of a prior prophet is known, it is good and acceptable to follow it ( فالاقتداء بذلك حسن جائز) provided nothing abrogates it from the Prophet's sharī'ah, citing Qur'ān 6:90, which we encountered in our chapter on legal theoretical debates. This would indicate that the verse was already understood as supporting pre-Muḥammadan law in the early 3rd century. Ibn Rāhawayh's position is recorded by one of Aḥmad b. Ḥanbal's pupil's Ḥarb b. Ismā 'īl al-Kirmānī (d. 280 AH), and it shows that ḥadīth-based pre-Muḥammadan law was also being referred to in traditionist circles. And in this case, Ibn Rāhawayh makes it clear that the tradition was authentic.[615]

[615] See vol. 21, pg. 44 of al-Ribāṭ, Khālid, and Sayyid 'Izzat 'Īd. *Al-Jāmi' Li 'Ulūm al-Imām Aḥmad*. 1st ed. 22 vols. Faiyum: Dār al-Falāḥ li al-Baḥth al-'Ilmī wa Taḥqīq al-Turāth, 2009:

قال حرب: وسمعت إسحاق أيضًا يقول: إن لم يدخل بإزار، وتجرد في الماء حتى يستر بالماء عورته رجونا أن لا يكون آثمًا في فعله؛ لما صح أن موسى -صلى الله عليه وسلم- كان يغتسل وحده وبنو إسرائيل يغتسلون أيضًا فذكروا بينهم أن موسى عليه السلام إنما يترك الغسل معنا؛ لأنه آدر، فدخل يومًا فوضع ثوبه فجاءت الريح، وخرج موسى عليه السلام يتبع ثوبه وهو ينادي: "يا حجر ثوبي يا حجر ثوبي" حتى رآه بنو إسرائيل عريانًا؛ لما أراد الله أن يبين لهم إن ما قالوا ليس كما قالوا، فهو قول الله تعالى: {لَا تَكُونُوا كَالَّذِينَ آذَوْا مُوسَى فَبَرَّأَهُ اللَّهُ مِمَّا قَالُوا} ففي هذا بيان أنه كان يدخل الماء، ولا يستتر بشيء إلا بالماء...

A variant of the report appears in al-Bukhārī's *Ṣaḥīḥ*. See vol. 1, pg. 64 of Muḥammad b. Ismā'īl al-Bukhārī, *Al-Jāmi' al-Musnad al-Ṣaḥīḥ (Ṣaḥīḥ al-Bukhārī)*, ed. Muḥammad Zuhayr b. Nāṣir al-Nāṣir, 1st ed., 9 vols. (Dār Ṭawq al-Najāh, 2001).

# Conclusion

In the previous chapters, I provided a summary of sunnī Muslim legal theorists' views on pre-Muḥammadan law, along with its implementation in the Muslim sources. I noted that the discourse was informed by the Prophet's own actions, along with Qur'ānic verses that gave the precedent of past prophets and communities a special status. These discourses also took into account theoretical understandings of the nature of law, an understanding of early Islamic history, and the believed precedents set forth by the famous founders of the *madhhab*s. While pre-Muḥammadan law was ultimately deemed an acceptable source by many jurists, its derivation was generally limited to instances where it was attested to in the Qur'ān and ḥadīth, e.g. through a retelling of a story or a reference to a law or practice that may have existed in a previously guided community. That having been said, the discourse theoretically allowed for a pre-Muḥammadan scripture like the Torah to be a valid source of law for the Muḥammadan community, but because of skepticism regarding the authenticity of this source, it was understood by the later theorists that it could not practically be used. The discussions on pre-Muḥammadan nonetheless preserved that there may have been jurists who accepted the Torah as a source of law and believed that it was accessible. We also came across theorists who were willing to entertain pre-Muḥammadan dicta coming from a non-Muḥammadan source provided it was conveyed by convert testimony or mass transmission. The theoretical discussions thus set the backdrop for our case studies: they demonstrated what was *possible* in Islamic law, in addition to questioning some common notions of what Muslim orthodoxy looked like.

We then looked at several case studies in the chapters that followed that demonstrated Muslim engagement with pre-Muḥammadan law. These cases were instances that challenged

some rigid perceptions of Muslim legal derivation, including perceptions held by some of the Muslim legal theorists themselves. We encountered some of the early jurists referencing law from biblical dicta or the dietary practice of the Jews, in addition to exegetical traditions that may have contained pre-Muḥammadan narratives. We also attempted to understand how these non-Qur'ānic and non-prophetic examples of pre-Muḥammadan law were understood as legitimately "Islamic." For one, the discourses on pre-Muḥammadan law demonstrated that such sources could be accessible and justified through the existence of well-known Qur'ānic verses and ḥadīth. But we also observed some other legitimizing phenomena. The isnād's ability to attribute information to a higher authority gave an air of authenticity to material conveyed from the Torah (if so-and-so Successor or Companion said it, it must have been verified by them). Additionally, all of the biblical legal dicta that we adduced were ultimately attributed via isnād to the Prophet ﷺ, his Companions, or their Successors, all of whom had a special founding authority among the *sunnīs*. Separately, Qur'ānic exegesis connected biblically derived material and Israelite tales to the Qur'ān, and thus gave this material the status of pseudo-scripture by means of association (the authenticity of this information was generally not questioned when cited). We also noted the increasing importance placed on "prophetic" evidence over the first three centuries AH which resulted in biblical legal references turning into more legally legitimate prophetic statements.

The mere existence of a discourse on pre-Muḥammadan law in Islamic legal theory was itself a legitimizing tool as well. We looked at an exegetical example which did *not* conform to the dominant rules for accepting pre-Muḥammadan law but was justified *because* it was pre-Muḥammadan law. Additionally, one important phenomenon that we saw come up a few times in our case studies was the regional element of biblical reception. A region such as Kufah may

have been more open to a pre-Muḥammadan scriptural citation as legitimate legal evidence than elsewhere (or perhaps had greater access). As for the unique case of dietary law for the Mālikīs/Ḥanbalīs and the separate case for the Shāfi'īs, we saw that there were specific reasons for accepting pre-Muḥammadan practice in these cases: there were Qur'ānic verses that gave some weight to the People of the Book in matters of dietary law in particular, and in the specific Mālikī/Ḥanbalī dietary case, there were other issues at play as well, including legal understandings of intentionality in slaughter and affirmation of the legal strictness of the Jews that Muslims believed was a punishment on them per the Qur'ān.

Ibn Ḥazm offers a rather cut-throat analysis of jurists' usage of pre-Muḥammadan law that we may find helpful in our concluding comments. As was noted earlier, his critiques of pre-Muḥammadan law as a source of jurisprudence were largely ignored in the writings of the legal theorists. Despite this, his critical remarks offer one of the most systematic engagements of pre-Muḥammadan law of any of the authors surveyed. While I could only cover some of his contributions to the debate in the earlier chapter on legal theory (readers can refer to the appendix for full details), I am interested in sharing here, in brief, one of Ibn Ḥazm primary criticisms of jurists who utilized pre-Muḥammadan law: they were very selective in their application, using and interpreting examples of pre-Muḥammadan law as it served their juristic purpose and without strict guiding principles. In his *Iḥkām*, Ibn Ḥazm goes through 28 examples of pre-Muḥammadan laws that he identifies within the Qur'ān, stating that those who claim to support pre-Muḥammadan law must follow all of them given their own claims of accepting this source.[616] His intention is to show how the jurists do not actually follow all of the pre-Muḥammadan laws in the Qur'ān, selectively choosing those that yield them legal benefit when

[616] See Ibn Ḥazm in *al-Iḥkām* (vol. 5, pgs. 166-173) and my appendix featuring additional views on pre-Muḥammadan law, section on Ibn Ḥazm's *Iḥkām*

needed. And in cases where they do cite an example, he tries to demonstrate how the interpretations are selective, clearly working to justify the jurist's pre-made legal objective, or based on an unfounded exegetical tradition. Interested readers can skim the examples that he offers which can be found in the section of the appendix featuring my notes on his *Iḥkām*. He suggests that some pre-Muḥammadan narratives or laws were cited based on far off analogies to justify a legal position (e.g., the punishment of stoning for the act of anal sex finding a textual basis for some jurists in the story of Lot's people and the storm of stones that kills them – the *storm* is somehow used to justify a law involving stoning), or which Ibn Ḥazm argues are very selectively applied (in the example of Lot's people, Ibn Ḥazm notes that the punishment from God was directed at those who denied Lot's warning, including women and children who did not commit the sexual acts that the jurists were trying to apply stoning for), or he will point out they were trumped by prophetic proof texts which are ignored because they likely did not support a pre-existing position.

What we can infer from Ibn Ḥazm's examples is that pre-Muḥammadan law was often a useful tool for jurists seeking to apply *some sort* of textual precedent for a law to give it some legitimacy, even if the precedence didn't have clear connection. We saw this in many of the cases we looked at in our study. For example, an oath to sacrifice one's child or one's life could be fulfilled by sacrificing a sheep in the person's stead, based on the story of Abraham ﷺ. The two cases are not very analogous at all, but Abraham's story is still cited because it has some remote connection, and the fact he was a prophet gives the derived law some assumed legitimacy. We can also add that pre-Muḥammadan law served as a legitimizing proof or a 'rubber stamp' for an already arrived at conclusion. Take for example the biblical citations we came across regarding intercourse with an animal or intercourse with a woman and her daughter.

The conclusions that were derived from the biblical dicta matched legal positions that were likely already on the ground as we noted, but they merely added scriptural justification for the position. Sometimes the justification was not particularly sound either, as in the Kufan citation of the Leviticus dictate on relations with a woman and her daughter: al-Shāfiʿī was quick to point out that the deed being cursed in the Torah was not a particularly relevant detail for the case it was being applied to (creating unmarriageable kin).

But it is clear that pre-Muḥammadan law was *useful*. It gave additional arsenal to the jurists who sought to derive law from some sort of religious precedent, and/or provide religious justification for their own reasoned derivations of law. It is perhaps this usefulness, then, that explains why we find someone like al-Juwaynī, who was a staunch opponent of pre-Muḥammadan law in his own writings in legal theory, still justify a certain procedure for freeing oneself from an oath based on Qur'ānic verses about the pre-Muḥammadan prophet Ayyub ﷺ, along with the exegetical details that relate to this verse. The practice is agreed upon he says, and the proof is this pre-Muḥammadan narrative.[617] In theory pre-Muḥammadan law could be dropped but was also practically useful. Shuʿbān Muḥammad Ismāʿīl thus writes in his work on pre-Muḥammadan law, that even though the topic is mentioned in works of Islamic legal theory as a secondary topic (we find that it is sometimes listed as a "disputed" source, other times it is nestled under the topic of "naskh" or abrogation), a study of works of *fiqh* and *aḥkām al-Qur'ān* reveal that the jurists have in fact built a lot of legal rulings off of Qur'ānic verses regarding pre-Muḥammadan communities.[618] Mohammed Fadel similarly addresses *istiḥsān* among the Mālikīs, another of the "secondary sources of law" in works of legal theory. Though its

[617] Abū al-Ma'ālī al-Juwaynī, *Nihāyat Al-Maṭlab Fī Dirāyat al-Madhhab*, ed. Maḥmūd al-Dīb, 1st ed. (Dār al-Minhāj, 2007). See vol. 17, pg. 192, vol. 18, pgs. 403 and 619.
[618] Shu'bān Muḥammad Ismā'īl, *Al-Islām Wa Mawqifuhu Min al-Sharā'i al-Sābiqah*, 1st ed. (Dār al-Fikr, 1985). Pg. 7.

application may have been restricted in formal works of legal theory, it was still liberally used in the derivation of law among the Mālikīs.[619] It was more so the practical, and not the formal considerations that defined the jurist's work.

A few suggestions for future study:

- The regional dimension of biblical reception needs to be explored further. I offered suggestions in earlier chapters for ways to explore this (e.g., assessing isnāds for biblical-based exegetical traditions of the Qur'ān or the references to biblical dicta I documented, along with assessing the isnāds of reports that were representative of an early communal disagreement regarding the Torah and knowledge derived from the *Ahl al-Kitāb*)
- The importance of uncovering additional manuscripts for 2nd and 3rd century authors. We uncovered relatively unknown examples of reference to the Torah being made by al-Shaybānī in his *Ḥujjah*, along with an obscure allusion to the legal position of the Israelites in a conversation he has with the Medinese. Given that these early texts had somewhat complicated transmission histories, it is unsurprising that we do not find similar references in al-Shaybānī's other works. Further work should be done to uncover manuscripts from this early period that may provide us with more details on the role of the bible and other sources of pre-Muḥammadan law in early jurisprudence (Kufan or otherwise)
- Exegesis should be explored as a potential source of law for the jurists, which we suggested could have been a legitimizing medium for biblical material to be utilized in Islamic law. Works from the genre of *aḥkām al-Qur'ān* should be consulted in particular.

[619] See Mohammad Fadel, "Istiḥsān Is Nine-Tenths of the Law: The Puzzling Relationship of Uṣūl to Furū' in the Mālikī Madhhab," in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden, Boston, Köln: Brill, 2002), 161–76.

- Given the issues of forgery and dubious attributions which the Muslim scholars recognized, ḥadīth reports could have been a conduit for material based in Israelite lore and biblical material. Such material may have also found application in Islamic law and should be explored.
- This study did not fully consider the *popular* practice of pre-Muḥammadan law, which may have operated separate from or in tandem with juristic discourses. Ibn Taymiyyah notes, e.g., that members of a sufi group in his time known as the *Baṭā'iḥiyyah* would wear a certain neck band to emulate an Israelite worshiper who was known about through one of Wahb b. Munabbih's narrations. Ibn Taymiyyah criticizes the group for the practice.[620] We also learn from the Shāfi'ī Abū al-Maḥāsin al-Rūyānī (d. 502) that a custom of fasting from speech in Ramadan was practiced in his time among some Muslims. Even though the Prophet ﷺ and the Companion did no such thing, he suggests that it had a basis in pre-Muḥammadan law,[621] as in the example of Mary as told in the Qur'ān.[622] Abū al-Maḥāsin notes that some of the Shāfi'īs who upheld pre-Muḥammadan law suggested that such a practice was praiseworthy, while those that did not said the opposite. These would be examples of popular emulation of pre-Muḥammadan law, and

[620] Taqī al-Dīn Ibn Taymiyyah, *Majmū' al-Fatāwā*, ed. 'Abd al-Raḥmān ibn Muḥammad b. Qāsim, 37 vols. (Madinah: Majma' al-Malik Fahd li Tibā'at al-Muṣḥaf al-Sharīf, 1995). Vol. 11, pgs. 462-463.

[621] Abū al-Maḥāsin al-Rūyānī, *Baḥr Al-Madhhab Fī Furū' al-Madhhab al-Shāfi'ī*, ed. Ṭāriq Fatḥī al-Sayyid al-Sayyid, 1st ed., 14 vols. (Dār al-Kutub al-'Ilmiyyah, 2009). Vol. 3, pg. 271:

جرت عادة بعض الناس بترك الكلام في شهر رمضان وليس له أصل في الشرع، والرسول صلى الله عليه وسلم والصحابة لم يفعلوا إلا أن له أصلًا في شرع من قبلنا، قال الله تعالى لزكريا عليه السلام {قَالَ آيَتُكَ أَلاَّ تُكَلِّمَ النَّاسَ ثَلاثَ لَيَالٍ سَوِيًّا} [مريم: 10]، وقالت مريم عليها السلام {إِنِّي نَذَرْتُ لِلرَّحْمَنِ صَوْمًا فَلَنْ أُكَلِّمَ اليَوْمَ إِنسِيًّا} [مريم: 26]، وقد قال بعض أصحابنا إن شرع من قبلنا يلزمنا فيكون هذا قربة تستحب. ومن قال: إنه لا يلزمنا شرع من قبلنا قال: هذا لا يستحب.

[622] Qur'ān 19:26:

فَكُلِى وَٱشْرَبِى وَقَرِّى عَيْنًا ۖ فَإِمَّا تَرَيِنَّ مِنَ ٱلْبَشَرِ أَحَدًا فَقُولِىٓ إِنِّى نَذَرْتُ لِلرَّحْمَٰنِ صَوْمًا فَلَنْ أُكَلِّمَ ٱلْيَوْمَ إِنسِيًّا ۝

So eat, drink and be contented. And if you see anyone, say, "I have vowed to the All-Merciful a fast [of silence], and so I will not speak today to anyone" ۝

the latter case suggests that the jurists themselves may have been responding to popular practice.

- Ibāḍī and Shi‘ite sources (Ja‘farī, Zaydī or otherwise) should be explored for discussions on pre-Muḥammadan law and their own possible utilization of this legal source.

Okay, I’m done. Thank you for reading. ¯_(ツ)_/¯

[Anything that was a mistake or deficiency in this dissertation is from me, and I am thankful to God for anything that may have been praiseworthy. And in the end, Allāhu A‘lam...]

Appendix A

# On the Study of Influence and Origins

This appendix will summarize some of the academic debates on 'origins' in Islamic law, and the question of Jewish legal influence. I point out some of the disadvantages of scholarship obsessed with identifying the 'origins' of Islamic law in biblical law or elsewhere (the highly speculative nature of some of these studies, the lack of explanation as to how assumed borrowings took place or were legitimated in the tradition, or the underlying assumption that potential biblical origins in Islamic law are "foreign," when the sources themselves may not see it that way). I also engage with a new trend in scholarship, which is reactive to the former and denies the very idea that ideas may originate elsewhere or transfer. I suggest that such a position is extreme and perhaps ideologically motivated and might prevent us from sufficiently considering the possibility that Muslim sources may have cited from biblical law or elsewhere, a point that was demonstrated in the chapters.

This project was related to various academic discussions of cross-over phenomena between Jewish and Islamic law: arguments that Islamic law was either derivative of biblical or Talmudic law though the source materials will not reveal this; or that it was a system that paid no heed to biblical or Jewish law because its laws were "internally" derived, i.e. it was derived from the Muḥammadan sources of the Qur'ān, ḥadīth and early Muslim legal traditions, along with near eastern patterns that would explain similarities between Jewish and Islamic law. Most of these discussions ignore Muslim jurists' views on pre-Muḥammadan law in general, where we find the jurists discuss whether the Torah and pre-Muḥamadan scripture and laws could be used.

We find that these discourses, representing a variety of viewpoints, theoretically conceived of biblical law as being a source of law, given very clear indications in the Qur'ān and ḥadīth regarding this, though its utility was often barred because of concerns of authenticity. In the chapters we discussed instances where pre-Muḥammadan law, whether derived from the bible or the lived practice of Jews and Christians was explicitly used in the Muslim sources. These would then constitute clear examples of Islamic law being derived from a source such as the bible or Jewish law but would be cases where such derivations were considered "Islamically" legitimate given discourses on pre-Muḥammadan law. In this appendix I will note how some past and current framings of inter-legal exchange or parallel legal phenomena are deficient without engaging with Muslim discourse on pre-Muḥammadan law, or cases where the sources themselves explicitly reference and derive law from pre-Muḥammadan law.

The issue of foreign religious influence and adoption has been the subject of a large number of studies engaging with the beginnings and early development of Islam. These have included, for example, works that have tried to demonstrate the influence of pre-existing ideas and textual sources on the Prophet ﷺ and the Qur'ān,[623] and others that have searched for the

[623] For general overviews, refer to Reuven Firestone, "The Qur'ān and the Bible: Some Modern Studies of Their Relationship," in *Bible and Qur'ān: Essays in Scriptural Intertextuality*, ed. John C. Reeves (Leiden & Boston: Brill, 2004), 1–22; Jaakko Hämeen Anttila, "Christians and Christianity in the Qur'ān," in *Christian-Muslim Relations: A Bibliographical History: 600-900*, ed. David Thomas, Barbara Roggema, and et al., vol. 1 (Leiden & Boston: Brill, 2009), 21–30.; For suggested 'borrowing' from Christian literature, and ideas shared between Islam and Manichaeism (such as the notion of successive prophecy), see pgs. 32-35 of Claude Gilliot, "Christians and Christianity in Islamic Exegesis," in *Christian-Muslim Relations: A Bibliographical History: 600-900*, ed. David Thomas, Barbara Roggema, and et al., vol. 1 (Leiden & Boston: Brill, 2009), 31–56.; See as early examples of this 'origins' research, *Richard Bell, The Origin of Islam in Its Christian Environment: The Gunning Lectures, Edinburgh University 1925* (London: Cass, 1968).; Abraham Isaac Katsh, *Judaism and the Koran: Biblical and Talmudic Backgrounds of the Koran and Its Commentaries* (New York: A.S. Barnes, 1962).; Charles Cutler Torrey, *The Jewish Foundation of Islam* (New York: KTAV Publishing House, 1968).; On the highly speculative suggestion that Jewish missionaries guided the Prophet's mission in the Meccan period, see S. D. Goitein, "Muhammad's Inspiration by Judaism," *Journal of Jewish Studies* 9 (1958): 149–62. For Wansbrough's influential argument that the Qur'anic text was composed of material from the Fertile Crescent and only stabilized around the year 200 A.H., see John E Wansbrough, *Quranic Studies:*

*Sources and Methods of Scriptural Interpretation* (Oxford: Oxford University Press, 1977).; John E Wansbrough, *The Sectarian Milieu: Content and Composition of Islamic Salvation History* (Oxford & New York: Oxford University Press, 1978).; A more sensational book arguing for hidden Christian hymn literature in the Qur'ānic text, see Günter Lüling, *Über den Ur-Qur'ān: Ansätze zur Rekonstruktion vorislamis-cher christlicher Strophenlieder im Qur'ān* (Erlangen: Lüling, 1974).; A modified form of the former source in English: Günter Lüling, *A Challenge to Islam for Reformation: the Rediscovery and Reliable Reconstruction of a Comprehensive Pre-Islamic Christian Hymnal Hidden in the Koran Under Earliest Islamic Reinterpretations* (Delhi: Motilal Banarsidass Publishers, 2003).; On a controversial study on the supposed Syriac origins of the Qur'ān, see Christoph Luxenberg, *Die Syro-Aramäische Lesart des Koran: Ein Beitrag zur Entschlüsselung der Koransprache* (Berlin: Das Arabische Buch, 2000).; In English: Christoph Luxenberg, *The Syro-Aramaic Reading of the Koran: A Contribution to the Decoding of the Language of the Koran* (Berlin: H. Schiler, 2007). It must be noted here that a few of the arguments espoused in the examples adduced above are no longer tenable. For example, Wansbrough's late dating cannot be reconciled with radiocarbon dating of the lower San'ā' 1 codex to a time range most likely before the year 650 A.D. and quite likely in the years shortly after (or even before) the Prophet's death in 632 A.D. See Sadeghi Behnam and Uwe Bergmann, "The Codex of a Companion of the Prophet and the Qur'ān of the Prophet," *Arabica* 57, no. 4 (2010): 343–436.; Behnam Sadeghi and Mohsen Goudarzi, "Ṣanʿā' 1 and the Origins of the Qur'ān," *Der Islam*, 2012, 1–129. Not only does the earlier dating drastically 'shorten' the window for direct foreign Iraqi and Syrian influence given our conquest dates, but another of Sadeghi's studies on stylistic features of Qur'ānic passages argues that the degree of internal unity of the text makes it statistically unlikely for the existence of more than a single authorial source, complicating the argument that the Qur'ān is largely a composition from collated foreign material. See Behnam Sadeghi, "The Chronology of the Qur'ān: A Stylometric Research Program," *Arabica* 58, no. 3/4 (2011): 210–99. This of course does not deny that the Qur'ān affirmed or adopted ideas already present in the surrounding milieu.

foreign origins of facets of Islamic law,[624] theology,[625] Sufism,[626] and historical writing[627] – to name just a few subjects. Of course, many of these are part of a larger project of rooting the

[624][624] On the influence of Jewish law, to which the largest body of literature exists, see as just a few examples, Torrey, *The Jewish Foundation of Islam*.; Michael Cook, "Magian Cheese: An Archaic Problem in Islamic Law," *Bulletin of the School of Oriental and African Studies*, University of London 47, no. 3 (1984): 449–67.; From the same author, "Early Islamic Dietary Law," *Jerusalem Studies in Arabic and Islam* 7 (1986): 217–77.; P. Crone, "Jāhilī and Jewish Law: The Qasāma," *Jerusalem Studies in Arabic and Islam* 4 (1984): 153–201.; Haggai Mazuz, "The Day of Atonement and Yawm ʿĀshūrā': From Assimilation to Differentiation," *Ancient Near Eastern Studies* 50 (2013): 255–61.; Khaleel Mohammed, "The Foundation of Muslim Prayer," *Medieval Encounters* 5, no. 1 (January 1, 1999): 17–28.; R. Peters, "Zinā or Zināʾ," ed. P. Bearman et al., *Encyclopaedia of Islam, Second Edition*, 2012.; J. Romney Wegner, "Islamic and Talmudic Jurisprudence: The Four Roots of Islamic Law and Their Talmudic Counterparts," in *Islamic Law and Legal Theory*, ed. I. Edge (Aldershot: Dartmouth, 1996), 35–81.; On suggested Zoroastrian elements in Islamic law, see Prods O. Skjærvø, "Goldziher and Iranian Elements in Islam," in *Goldziher Memorial Conference: June 21-22, 2000*, ed. Éva Apor and Istvān Ormos (Budapest: Library of the Hungarian Academy of Sciences, 2005), 245–50.; On the possible influence of provincial Roman law, see P. Crone, *Roman, Provincial and Islamic Law: The Origins of the Islamic Patronate* (Cambridge: Cambridge University Press, 1987). See the beginning of this work for a discussion/rebuttal of certain suggested 'Roman' (as opposed to Roman provincial) influences, which is also discussed in S. V. Fitzgerald, "The Alleged Debt of Islamic to Roman Law," in *Islamic Law and Legal Theory*, ed. I. Edge (Aldershot: Dartmouth, 1996), 13–34.; Pre-Islamic Arabia also had its own religious, cultural traditions of its own that were continued by Islam, which even medieval Muslims affirm. The latter still present the Prophet's religion as a significant rupture from the pre-Islamic legacy of Arabia, while admitting the continuation of some elements of this heritage like the *ḥajj* rites and the notion of the sacred months. Modern historians have sought to explain the genesis of Islamic institutions and thought from this milieu as well, though the dearth of available evidence from and about Arabia in the 7th and preceding centuries has made such arguments far more tentative on the basis of available evidence alone, than studies suggesting Islamic 'origins' in the traditions of the Fertile Crescent. For a brief overview of the tension between Arabian Ḥijāzī and extra-Ḥijāzī 'origins' as a framework for explaining various Islamic phenomenon, see pgs. 293-299 of Christopher Melchert, "The Early History of Islamic Law," in *Method and Theory in the Study of Islamic Origins*, ed. Herbert Berg (Leiden & Boston: Brill, 2003), 293–324.; On the continuation of pre-Islamic Arabian ideas and practices in Islam, see, e.g. Robert G. Hoyland, *Arabia and the Arabs: From the Bronze Age to the Coming of Islam* (London: Routledge, 2001).; Reuven Firestone, "Abraham's Association with the Mecca Sanctuary and the Pilgrimage in the Pre-Islamic and Early Islamic Periods," *Le Muséon*, 1991, 359–87.; H. A. R. Gibb, "Pre-Islamic Monotheism in Arabia," in *The Arabs and Arabia on the Eve of Islam*, ed. F. E. Peters (Aldershot: Ashgate, 1999), 295–306.; G. R. Hawting, "The 'Sacred Offices' of Mecca from Jāhiliyya to Islam," in *The Arabs and Arabia on the Eve of Islam*, ed. F. E. Peters (Aldershot: Ashgate, 1999), 244–66.; M. Habibur Rahman, "The Role of Pre-Islamic Customs in the Islamic Law of Succession," in *Islamic Law: Issues in Islamic Law*, ed. Mashood Baderin, vol. 2 (Farnham & Burlington: Ashgate, 2014), 147–63.; Uri Rubin, "Ḥanīfiyya and Kaʿba: An Inquiry into the Arabian Pre-Islamic Background of Dīn Ibrāhīm," *Jerusalem Studies in Arabic and Islam* 13 (1990): 85–112.; Also from the same author, "The Kaʿba: Aspects of Its Ritual Functions and Position in Pre-Islamic and Early Islamic Times," *Jerusalem Studies in Arabic and Islam* 8 (1986): 97–131.; Wael B. Hallaq, "The Use and Abuse of Evidence: The Question of Provincial and Roman Influences on Early Islamic Law," *Journal of the American Oriental Society* 110 (1990): 79–91. Hallaq argues against Crone's suggestion that the patronate institution came from Roman provincial law, suggesting Arabian origins instead.

[625] On the theory of Christian origins for early Muslim *kalām*, see M. A. Cook, "The Origins of 'Kalām,'" *Bulletin of the School of Oriental and African Studies*, University of London 43, no. 1 (1980): 32–43. Cook states: "That the dialectical technique of Muslim kalām is a borrowing from Christian theology is no secret." (pg. 32); Josef van Ess, "The Beginnings of Islamic Theology," in *Early Islamic History: Critical Concepts in Islamic Studies*. *Vol. IV: Scholarly Traditions*, ed. Tamima Bayhom-Daoui and Teresa Bernheimer (London & New York: Routledge, 2014), 177–92.; Samir Khalil Samir, "The Theological Christian Influence on the Qur'ān: A Reflection," in *The Qur'ān in Its Historical Context*, ed. Gabriel Said Reynolds (London & New York: Routledge, 2008), 141–62.; Alexander Treiger, "Origins of Kalām," in *The Oxford Handbook of Islamic Theology*, ed. Sabine Schmidtke (Oxford: Oxford University Press, 2016), 27–43.; David Thomas, *Christian Doctrines in Islamic Theology* (Leiden & Boston: Brill, 2008).

[626] See discussion of Christian ascetic origins of Sufism (and citations) from pgs. 16-23 of Nile Green, *Sufism: A Global History* (Chichester & Malden: Wiley-Blackwell, 2012).

[627] On the Isrā'īliyyāt, see pgs. 8-16 of Camilla Adang, *Muslim Writers on Judaism and the Hebrew Bible: From Ibn Rabban to Ibn Hazm* (Brill, 1996).; Özcan Hıdır, "Discussions on the Influence of the Judeo-Christian Culture on Hadiths," *Journal of Rotterdam Islamic and Social Sciences* 1 (2010): 20–41.; Jane Dammen McAuliffe, "Assessing the Isrā'īliyyāt: An Exegetical Conundrum," in *Story-Telling in the Framework of Non-Fictional Arabic Literature*, ed. Stefan Leder (Wiesbaden: Harrassowitz, 1998), 345–69.; S. Rosenblatt, "Rabbinic Legends in Hadith," *Moslem World* 35 (1945): 237–52.; Haim Schwarzbaum, *Biblical and Extra-Biblical Legends in Islamic Folk-Literature* (Walldorf-Hessen: Verlag für Orientkunde Dr. H. Vorndran, 1982).; Roberto Tottoli, "Origin and Use of the Term Isrā'īliyyāt in Muslim Literature," in *Islam and Religious Diversity: Judaism*, ed. Lloyd Ridgeon, 1 (London & New York: Routledge, 2012), 172–88.; For more specific studies: Philip S. Alexander, "Jewish Tradition in Early Islam: The Case of Enoch/Idrīs," *Journal of Semitic Studies*, 2000, 11–29.; Reuven Firestone, *Journeys in Holy Lands: The Evolution of the Abraham-Ishmael Legends in Islamic Exegesis* (Albany: State University of New York Press, 1990).; Haggai Mazuz, "Possible Midrashic Sources in Muqātil b. Sulaymān's Tafsīr," *Journal of Semitic Studies* 61, no. 2 (2016): 497–505.; Also from the same author, "Midrashic Influence on Islamic Folklore: The Case of Menstruation," *Studia Islamica* 108, no. 2 (2013): 189–201.; Mordechai Nisan, "Note on a Possible Jewish Source for Muhammad's 'Night Journey,'" *Arabica* 47, no. 2 (April 1, 2000): 274–277.; Uri Rubin, "'Become You Apes, Repelled!' (Quran 7:166): The Transformation of the Israelites into Apes and Its Biblical and Midrashic Background," *Bulletin of the School of Oriental and African Studies* 78, no. 1 (2015): 25–40.; From the same author, "Moses and the Holy Valley Ṭuwan: On the Biblical and Midrashic Background of a Qur'ānic Scene," *Journal of Near Eastern Studies* 73, no. 1 (2014): 73–81.; Brian Michael Hauglid, "Al-Tha'labi's 'Qisas Al-Anbiya'' Thinspace": Analysis of the Text, Jewish and Christian Elements, Islamization, and Prefiguration of the Prophethood of Muhammad." PhD Diss. The University of Utah, 1998.; For new testament references in ḥadīth, see David Cook, "New Testament Citations in the Ḥadīth Literature and the Question of Early Gospel Translations into Arabic," in *The Encounter of Eastern Christianity with Early Islam*, ed. Emmanouela Grypeou, Mark Swanson, and David Thomas (Leiden: Brill, 2006), 185–223.; For a suggested case of Zoroastrian influence on a ḥadīth report, see Maria E. Subtelny, "Zoroastrian Elements in the Islamic Ascension Narrative: The Case of the Cosmic Cock," in *Mediaeval and Modern Iranian Studies: Proceedings of the 6th European Conference of Iranian Studies, Held in Vienna on 18-22 September 2007 by the Societas Iranologica Europaea*, ed. Maria Szuppe, Anna Krasnowolska, and Claus V. Pedersen (Association pour l'Avancement des Études Iraniennes, 2011), 193–212.; On the Jewish conception of the written and oral Torah among Jews and the parallel Muslim conception of Islamic scripture as Qur'ān and ḥadīth, along with similarities between the isnād phenomenon in ḥadīth and references to authorities found in the Talmūd, see Michael Cook, "The Opponents of the Writing of Tradition in Early Islam," *Arabica* 44, no. 4 (1997): 437–530.

beginnings of Islam in the larger Near Eastern milieu, and it should be noted that work has also been done to study the influence that Islamicate ideas and institutions may have had on other religious traditions, though this is generally assumed not to have occurred until the late 8th/9th century onward when Islamic institutions are assumed to have become more 'developed,' as opposed to the formative period.[628]

My project hopes to show that both revisionist scholarship that has sought to pinpoint the origins of various facets of Islamic law in foreign legal systems, along with scholarship that has been reactionary to the former in eschewing the very possibility that Muslims may have considered the Torah or Jewish law as having relevance because of their rejection of models of 'origins', have failed to take into account some of the obvious and explicit Muslim discussions on this with regards to pre-Muḥammadan law. As a point of departure, I uphold the rather banal point that terms such as 'transmission' and 'origins,' terms that convey the movement and historical connectedness of ideas, can be useful when applied with caution and properly

[628] As examples of Islamic law's influence on Jewish law, see, e.g. Mark R. Cohen, *Maimonides and the Merchants: Jewish Law and Society in the Medieval Islamic World* (Philadelphia: University of Pennsylvania Press, 2017).; Gideon Libson, "Parallels Between Maimonides and Islamic Law," in *The Thought of Moses Maimonides: Philosophical and Legal Studies. La Pensée de Maimonide: Etudes Philosophiques et Halakhiques*, ed. Ira Robinson, Lawrence Kaplan, and Julien Bauer (Lewiston: Mellen, 1990), 209–48.; Layla Ibrahim Abu al-Majd, "Ibn Hazm and Maimonides and the Fiqh," in *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, ed. Abdelwahab Meddeb and Benjamin Stora (Princeton & Oxford: Princeton University Press, 2013), 696–700.; On Islamic influence in Jewish worship, see the following, in Hebrew: Naphtali Wieder, *Islamic Influences on the Jewish Worship* (Oxford: Phaidon Press, East and West Library, 1947).; Shalom Goldman, "An Appraisal of Naphtali Wieder's 'Islamic Influences On Jewish Worship' On the Fiftieth Anniversary of Its Publication," *Medieval Encounters* 5, no. 1 (January 1, 1999): 11–16.; Goldman (pg. 11) comments that the work was never translated into any other language. An Arabic translation exists: Naphtali Wieder, *al-Ta'thīrāt al-islāmiyyah fī al-'ibādah al-yahūdiyyah*, trans. Muḥammad Sālim al-Jaraḥ (Cairo: Maktabat dār al-'urūbah, 1965).; On influence in Jewish philosophy, mysticism, and other matters, see: S. D. Goitein, "The Cultural Development of the Jewish People Inside Arab Islam," in *Jews and Arabs: A Concise History of Their Social and Cultural Relations*, Reissue edition (Mineola, N.Y: Dover Publications, 2005).; On Mu'tazilī influence on Karaism, see: Yoram Erder, "The Karaites and Mu'tazilism," in *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, ed. Abdelwahab Meddeb and Benjamin Stora (Princeton & Oxford: Princeton University Press, 2013), 778–87.

contextualized.[629] As will be noted later, this is in opposition to a growing number of scholars working in a variety of related fields who have rejected the usage of such language altogether.[630] The admission of something have an 'origin' somewhere, at a most basic level, is quite useful in that it lets us conceive of the existence of points of contact and exchange between ideas, peoples and scriptures, individuals and communities, which in turn can shed light on the nature of these exchanges and on the boundaries within which an idea, community or phenomenon operates. The idea of origins and transmission is also something that our source materials themselves are concerned with, as the obsession with isnāds and defining acceptable and unacceptable 'sources' of law is a clear acknowledgement of. This is not to say that there aren't clear challenges to applying an 'origins' framework, and as we will see, some of these challenges feature very prominently in the study of early Islamic law. Even if we assume that the early Muslim community was a movement of believers in the One God, and inclusive of the Christians and Jews as espoused by Fred Donner,[631] the question of 'transmission' and the movement of ideas still has relevance – did members of the early community still entertain the possibility of laws coming from, i.e. originating in, the Torah, e.g.? Rejecting such a possibility from the get-go by assuming that similar institutions arise *only* from shared environments or rejecting the relevance of inquiries into the possible reception of ideas from the Torah – which may have been an acceptable source of law in some circles of Muslim jurists – appears to be more of an ideologically motivated position. This having been said, assigning the significance of particular

[629] As I will note, a growing number of academics working in interreligious history have pushed back against such language with increasing hostility, which is the reason why I will need to respond, lest I be accused of operating under an 'outdated' paradigm.
[630] The works I will select are merely samples of this position and come from a range of subfields including Islamic law, Sufism, exegesis, etc., in order to make the case that such a position is becoming quite prevalent in the field of interreligious studies as a whole.
[631] Fred M. Donner, *Muhammad and the Believers: At the Origins of Islam* (Cambridge: Belknap Press of Harvard University Press, 2010)

origins for anything is no doubt a difficult task, for the number of influences exerting themselves on any specific aspect of an idea, text, person, community or institution is inherently unquantifiable given that our knowledge of historical antecedents and points of contact will never be full. We must also be careful not to let the idea of origins force us to conclude that some ideas are necessarily 'foreign' or 'native' to a community. As Muslim discussions of pre-Muḥammadan law suggest, such notions of foreignness vis-à-vis a source such as the Torah may not actually describe how the sources themselves viewed it. Given many of these challenges, Quentin Skinner suggests that we should first expend our efforts on describing historical realities and contexts in their fullest detail before this may eventually result "in a successful appeal to similarities, and thence to an understanding of why the given historical situation was as it was and not otherwise."[632] I do not believe that the groundwork for understanding our object of study – Islamic law and its relationship with pre-Muḥammadan law in the pre-modern world – has been sufficiently done in a way that would make some of our present assertions of influence or lack thereof meaningful. My project ultimately hopes to be a contribution to this larger groundwork setting by exploring Muslim views of pre-Muḥammadan law, in addition to explicit, as opposed to *assumed*, case studies of it being referred to.

Turning our attention to the specific study of foreign influence on Islamic law, I believe that the field has generally addressed this question counter-intuitively, by privileging theoretical frameworks over full engagement with our source materials and the implications of works in the genre of *uṣūl al-fiqh*. As I will illustrate, unless we take these sources seriously, micro-studies that try to argue for the origins of one aspect or another of Islamic law in Jewish, Roman or

[632] Quentin Skinner, "The Limits of Historical Explanations," *Philosophy* 41, no. 157 (1966): 199–215. Pg. 214f. Refer to the rest of the article for a summary of some other issues at play in assigning influence from any phenomenon. I thank Mohsin Ali for recommending this source and for several meaningful conversations on this topic.

Roman provincial legal systems will continually fail at explaining how these borrowings took place if at all. While there has been a lot of ink spilled on the search for foreign origins in the development of early Islamic law,[633] with many claiming wholesale foreign importation,[634] especially from Judaism in the sphere of religious law,[635] it is perhaps *symptomatic* of the

[633] So much so that Schacht, *in 1950*, was to comment: "So much has been written on the problem of foreign elements in ancient Muhammadan law, and with so little result, that to discuss the subject afresh can be justified only if the author adduces new relevant facts or brings new light to bear on the elements of the case." See: Joseph Schacht, "Foreign Elements in Ancient Islamic Law," *Journal of Comparative Legislation and International Law* 32, no. 3/4 (1950): 9–17. Pgs. 9-10.

[634] As examples, Goldziher: "It was obvious that a quite uncultured people coming from a land in a primitive stage of social development into countries with an ancient civilization, where they established themselves as rulers, would adopt from among their new surroundings as much of the customary law of the conquered lands as could be fitted in with the conditions created by the conquest and be compatible with the demands of new religious ideas." Ignaz Goldziher, "Fiḳh," ed. M. Th. Houtsma et al., *Encyclopaedia of Islam, First Edition* (Leiden: Brill, 1993). pg. 102. [Note: Maghen in "Dead Tradition" (which will be cited later) misidentifies the source (on pg. 292, note 58) as coming from EI 2 (the Fiḳh article there is written by Schacht), when it is in fact from EI 1]; Schacht: "As had been the case in the time of the Prophet, law as such fell outside the sphere of religion… This attitude of the early Muslims accounts for the widespread adoption of legal and administrative institutions of the conquered territories, drawing on Roman (including Roman provincial) law, Sassanian law, Talmudic law, and the canon law of the Eastern churches." Joseph Schacht, "Pre-Islamic Background and Early Development of Jurisprudence," in *Origin and Development of Islamic Law*, ed. Majid Khadduri and Herbert J. Liebesny, Law in the Middle East (Clark, NJ: The Lawbook Exchange, Ltd., 1955), 28–56. Pg. 35.; See also from the same author pgs. 19-22 of *An Introduction to Islamic Law* (New York: Clarendon Press, 1982).; Coulson: "…the precise measure of this influence [in this context, Sasanian and Roman law's influence on Umayyad legal practices] cannot be known, but it must have been considerable." N. J. Coulson, *A History of Islamic Law* (Edinburgh University Press, 1964). Pg. 28.

[635] This is opposed to administrative law, where the 'source' is often debated as being either Roman and/or Roman provincial law. Regarding the sense that Islamic law took substantially from Jewish law, Crone remarks, "…the one legal system which, despite the asseverations of the lawyers, manifestly did contribute to the formation of the Sharī'a is not Roman, but Jewish law. The Sharī'a and the Halakha are both all-embracing religious laws created by scholars who based themselves on scripture and oral tradition, employed similar methods of deduction and adopted the same casuistic approach: the structural similarity between Jewish and Islamic law is obvious to the naked eye, and the habit of dubbing *'ulamā'* 'Muslim rabbis' is as old as Snouck Hurgronje. Since the order of the subjects in the Mishna and the Muslim lawbooks is related, while in a subject such as ritual purity there is virtual identity of both overall category and substantive provisions, it evidently was not by parthenogenesis that the similarity arose, and it does not take much knowledge of Jewish law to see its influence in the most diverse provisions of Islamic law." Crone, *Roman, Provincial and Islamic Law*. Pg. 3.; For an example of a rather extreme outcome of this prior position, see Michael Cook and Patricia Crone, *Hagarism: The Making of the Islamic World* (New York: Cambridge University Press, 1977). Pg. 30, e.g., states: "There can in fact be little doubt that Islam acquired its classical rabbinic form in the shadow of Babylonian Judaism, probably in the aftermath of the transfer of power from Syria to Iraq in the middle of the eighth century."; Schacht: "In the case of Roman and of Talmudic law, these influences extended not only to rules and institutions of positive law, but to legal concepts and maxims, to methods of reasoning ( *ḳiyās* , and conclusions *a*

premature nature of so many of these proclamations of foreign origins that there is also a very substantial amount of ink spilled *disproving* so many of these same claims and instead suggesting either internal Muslim developments as the reason for various legal dicta,[636] or perhaps origins elsewhere.[637] I believe there are a few reasons to explain this tendency to

---

*maiore ad minus and a minore ad maius*), and even to fundamental ideas of legal science…" J. Schacht, "Fiḳh," ed. P. Bearman et al., *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

[636] See as prominent examples, Ze'Ev Maghen, "Dead Tradition: Joseph Schacht And The Origins Of 'Popular Practice,'" *Islamic Law and Society* 10, no. 3 (October 1, 2003): 276–347. And also from the same author, "First Blood. Purity, Edibility, and the Independence of Islamic Jurisprudence," *Der Islam* 81, no. 1 (2009): 49–95. In these two meticulous articles, Maghen engages both the theory and substance of claims of 'mass importation' from Judaism into Islamic law assumed by a number of scholars in the field, including Goldziher, Schacht, Wensinck, Rosenthal and Crone among many others, and demonstrates after close study of various purity laws that were claimed to have been taken wholesale from Judaism (see Crone's remarks in the previous footnote, e.g.), that these assertions often reflect highly inaccurate readings of Jewish and Islamic sources, which he finds to be remarkably different in both substance and internal logic (at least with regards to the purity issues he looks at) such that even arguments that Islamic law consciously differentiated itself from Judaism (*mukhālafa*) do not appear at all likely. Also, Crone's claim (see footnote above) regarding Muslim ritual purity law that "there is virtual identity of both overall category and substantive provisions" is patently false according to Maghen (See pg. 55 and note 20 of "First Blood"). His footnotes are also very useful, as, e.g., footnote 46 of pg. 288-289 of "Dead Tradition," in which he argues against the notion that *ijmā'* was derived from Judaism, or that it even needed to: "I suppose this idea [i.e. the Rabbinic idea of following the majority] – which, incidentally, disappeared for all intents and purposes with the demise of the Sanhedrin in the fifth century CE – is as close to *ijmā'* as, say, the *iqṭā'* is to European feudalism or the *shūrā* to modern democracy… that a legal system would develop the position that a consensus of jurisprudential opinions carries legal force is far from remarkable: indeed it is quite natural and is what universal human common sense demands… Why, therefore, Snouck-Hurgronje, Crone, Schacht and others consistently seek outside sources and influences for such predictable and universally necessary legal principles – all the more so when the proposed foreign influence is far from identical to the Islamic precept/practice – is a mystery to me." In "Dead Tradition," Maghen also suggests (as does Marion Katz in *Body of Text: The Emergence of the Sunni Law of Ritual Purity* (Albany: SUNY Press, 2002).) that we shouldn't deny that the Qur'an (i.e. internal as opposed to external influence) informed the formation of various Islamic legal dicta, as was done in blanket fashion by Schacht who viewed the application of the Qur'ān and Prophetic example as gaining importance only in later Islamic history and were retrospectively applied as legal proofs to law as it was already being practiced. Maghen and Katz demonstrate the early role of the Qur'ān in their respective case studies; Additionally, the findings of Harald Motzki's study on early Meccan law "limit the scope" for foreign influence "temporally to the end of the first/seventh century (so including pre-Islamic influences) and spatially, to the Arabian Peninsula" (Pg. xv), and includes as sources of law personal opinion and also the Qur'an and rulings of the Prophet (the latter two assumed by Goldziher and Schacht as lacking legal importance at this stage in history), i.e. emphasizing internal developments as opposed to foreign influences (pg. 295). See Harald Motzki, *The Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools* (Leiden: Brill, 2002).

[637] Crone criticizes various purported claims of 'Roman' origins for Islamic legal institutions, stating, "Not a single item of Goldziher's and Schacht's list of Roman elements in Islamic law has been proved, and several are demonstrably wrong" (pg. 11) and suggesting that she has "raze[d] Schacht's citadel" of

prematurely declare 'origins.' For one, the sheer size of all that makes up the Islamic historical and legal tradition might make historical reconstruction from these sources seem like a remarkably daunting task. This, in turn, is compounded by a general hesitancy to refer to (and in some cases an outright rejection of the use of) these very same sources, both because of their assumed tendentious nature in upholding orthodox narratives, and also a general distrust of the mixed oral and written mechanisms by which the supposedly early material contained in these sources have reached us. Thus, we are led to believe that our situation requires of us the critical compromise of *first assuming* how early Islam *must* have looked in theory, and *then secondarily* reconstructing early Islamic history to prove that theory. Our underlying theory in this case might include the sense that Arab primitivism[638] combined with Islamic law's outward resemblance to Jewish law (or some other system) must mean that it borrowed wholesale to

---

purported Roman influence (pg. 12). She then offers Roman provincial law as the alternative basis for the Islamic conception of the patronate institution. See Crone, *Roman, Provincial and Islamic Law*. For another critique of claimed 'Roman' origins, see: Fitzgerald, "The Alleged Debt of Islamic to Roman Law."; Interestingly, Hallaq then, in turn, razes Crone's citadel, arguing that she has misread Islamic legal conceptions of patronage, and argues for pre-Islamic Arab origins for these institutions. He also denies (pg. 90) the possibility of reasonably finding influences in Islamic law, because the "ingenious process of assimilation, systematization and Islamicization managed to dissipate all the indigenous features of legal institutions and to recast them in a fashion that is not in the least reminiscent of the older institutions." The modifications made to these inherited traditions were also made "to accord with the laws laid down in the Qur'ān," i.e. affirming a legal role for the Qur'anic text as in Maghen and Katz's assessments (see previous footnote). Hallaq, "The Use and Abuse of Evidence."

[638] As was previously cited, Goldziher ("Fiḳh." Pg. 102.) held that it was "obvious that a quite uncultured people coming from a land in a primitive stage of social development into countries with an ancient civilization" would need to borrow extensively from the new environment.; Crone and Cook (*Hagarism: The Making of the Islamic World*. Pg. 73) had a similar sense of the pre- and early Islamic Arabs, stating that "Islamic civilization is the outcome of a barbarian conquest of lands of very ancient cultural traditions." As Hallaq states, "the determination of the actual occurrence and the extent of borrowing are intimately related to the manner in which one conceives of the general levels of culture of those who borrow and those who lend. Once a culture is seen as 'sophisticated' it becomes incapable, in the mind of those who see it as such, of borrowing from another, 'primitive' culture; whereas 'desolate' cultures are *a priori* given to appropriating from more developed ones" ("The Use and Abuse of Evidence." Pg. 80.).; Included in this assumption of primitive origins one could probably include Schacht's thesis that the Qur'an lacked much legal significance for early Muslims, and that the Prophetic ḥadīth had very little if any role to play in the earliest formation of Islamic law, which is why borrowing from other sources in mass was necessary.

reach its classical form. The theory that borrowing *must* have happened then leads us to recreate a history that makes that a reality by drawing linkages that later get proven wrong.

One illustrative example of this theory-first approach is the following passage from Crone's study of the Islamic law of patronate, which she argues had its origins in Roman provincial law (and which Hallaq later would argue against as highly unlikely and based on a false reading of the sources). In searching for "residues" (i.e. inherited influence), she states:

> "It is not primarily the lack of source material which makes the enterprise a difficult one, but rather a failure of imaginative nerve. When we consider what happened in the first hundred or hundred and fifty years, the sheer weight of a late, but huge and immensely repetitive tradition blights our imagination. We find it impossible to believe that the beginnings can have been very different from the end products which we know so well, and we all too often reconstruct origins by merely pushing the classical systems back in time towards the inevitable Meccan and Medinese terminals… Art is the only branch of Islamic civilization for which we have documentation for the first hundred years… And what is it that we see? Late antique sculpture, paintings in the nude, Greek allegories inscribed with Greek captions [etc…] Now if all this had been as wholly lost as is the evidence for other aspects of early Islamic culture, who would have dared to guess at its existence? Who would not have assumed Umayyad art to be some sort of Arabian art? Who indeed would have made the impious suggestion that the aniconic coinage, which is attested as early as fifty years after the conquests, was preceded by purely Byzantine and Sasanid coinages complete with imperial effigies, cross and fire-altars? Certainly, the suggestion that the familiar beliefs of Islam were preceded by a comparable collection of other people's beliefs has struck most of the scholarly world as utterly incredible… What follows is an attempt to reconstruct a legal equivalent to Mu'āwiya's Byzantine coins…"[639]

Crone, admitting that the tradition is in fact "huge," discredits its utility because it is both "repetitive" in projecting an image that belies the possibility of development or foreign influence, and because it is also "late." We should therefore be "imaginative" in our approach and reconstruct a history that contradicts the projected one by trying to discover equivalents to "Mu'āwiya's Byzantine coins," coins which featured the signs of foreign influence which our sources would have been uncomfortable revealing. Interestingly, however, the vast tradition that Crone finds as repetitive and unyielding of critical historical details provides us with rich

[639] Crone, *Roman, Provincial and Islamic Law*. Pg. 16-17.

information about the very coinage she suggests it had lost memory of. A quick text search through the source materials, for example, reveals that Ibn Khaldūn (d. 808/1406) was in fact very aware that the early Muslim conquerors were utilizing foreign coinage that featured iconography up until the reign of ʻAbd al-Malik b. Marwān (d. 86/705), "due to the bedouinism of the Arabs (*badāwat al-ʻarab*) and the simplicity of the religion (*sadhājat al-dīn*)" in the early conquest era. Interestingly, his recognition of ʻAbd al-Malik as the first to introduce a truly reformed Islamic coin, along with details regarding the dates of circulation and the text on these coins, is fairly precise and appear to be based on transmitted statements recorded from much earlier Muslim figures such as Saʻīd b. al-Musayyab (d. 94/715), Abū al-Zinād (d. 130-131/748-749) and al-Madāʾinī (d. 225/839-840).[640] The point being made here is that even with the naturally-occurring phenomenon of history being recast in light of later orthodoxies, there is a lot of significant details regarding the early period that appear to have been preserved by this 'vast' tradition, even in the later period.[641] Ancient information is still likely to seep through. All of this

[640] See Ibn Khaldūn, *Tārīkh Ibn Khaldūn*, ed. Khalīl Shaḥḥādah, 2nd ed. (Beirut: Dār al-Fikr, 1988). Vol. 1, pg. 323 and vol. 3, pg. 58. It should be noted that Ibn Khaldūn does not appear aware that the earlier 'foreign' coins which were in circulation among Muslims also featured some Islamized elements in addition to the imagery that was continued.

[641] On a related point, we are increasingly becoming aware of secondary corroboration for a variety of purportedly early data recorded in our sources, which should give us pause before taking the information recorded in the "late" sources as having been transmitted (or invented) unfaithfully. To give just a few random examples, we have found inscriptions confirming early dates and events offered by the tradition, in addition to the names of certain noted personalities. See for example the recent publication of Professor Moshe Sharon on an old Jerusalem plaque attesting to key companions of the Prophet, including ʻAbd al-Raḥmān b. ʻAwf, Abū ʻUbaydah b. al-Jarrāḥ, and Muʻāwiyah. Prof. Sharon dates the inscriptions to the year 32AH. See: Moshe Sharon, "Witnessed by Three Disciples of the Prophet: The Jerusalem 32 Inscription from 32 AH/625 CE," *Israel Exploration Journal*, no. 68 (2018): 100–111.; For a fascinating example of an Arabian stone inscription noting the death of the caliph ʻUmar (d. 23/644), see: ʿAli ibn Ibrahim Ghabban and Robert G. Hoyland, "The Inscription of Zuhayr, the Oldest Islamic Inscription (24 AH/AD 644-645), the Rise of the Arabic Script and the Nature of the Early Islamic State. Translation and Concluding Remarks by Robert Hoyland," *Arabian Archaeology and Epigraphy* 19, no. 2 (2008): 210–37.; For an inscription which attests to the rebuilding of the Kaʻbah under ʻAbd al-Malik, see: "An Inscription Mentioning The Rebuilding Of Al-Masjid Al-Haram, 78 AH / 697-698 CE," accessed July 23, 2018, https://www.islamic-awareness.org/history/islam/inscriptions/haram1.; Interestingly, Twitter has become a key source for finding rather early epigraphic data reported by amateur explorers.; As a non-

is not to deny the historiographic challenges that exist with our source materials, particularly in that purportedly early material prior to the end of the 2nd century has reached us through a mixed oral-written mode of transmission. There has been a lot written regarding the authenticity of these transmitted reports,[642] and there exist a variety of convincing methods for dating purportedly early Muslim traditions through a study of isnāds that has shown us that meaningfully engagement with the sources is possible. An example of which may be Motzki's *isnād*-cum-*matn* analysis.[643] And meaningful engagement with the sources will be necessary, however, in order to avoid the larger problem with Crone's approach, which is that she pushes us to intentionally try to 'reconstruct' evidence that supports conclusions we already assumed we would find. Whether the original theoretical assumptions in this case are true or not (Muslims borrowing from Judaism, the primitiveness of the Arabs, etc.) isn't the issue here. The problem is that the assumptions lead the type of search. Instead of developing a comprehensive picture of legal traditions we are studying – i.e. what would inform our initial search for origins – we start off with a search for parallels in the hopes that *this* will reveal that picture. The history of early Islam and Islamic law, therefore, becomes interchangeable with the search for foreign origins. Now no doubt some of the micro-studies proclaiming foreign origins may be very compelling,

---

epigraphical example of corroboratory evidence of the traditional accounts, the narratives regarding early Muslim attempts to preserve the Qur'an and descriptions of Qur'ānic variances seem to match well with the information obtained from a dated Qur'ānic palimpsest. See: Sadeghi and Goudarzi, "Ṣanʿā' 1 and the Origins of the Qur'ān." Also, see: Behnam and Bergmann, "The Codex of a Companion of the Prophet and the Qur'ān of the Prophet."

642 For two useful guides, refer to Harald Motzki, "Dating Muslim Traditions: A Survey," *Arabica* T. 52, no. Fasc. 2 (April 2005): 204–53.; Also, Jonathan A.C. Brown, "The Authenticity Question: Western Debates Over the Historical Reliability of Prophetic Traditions," in *Hadith: Muhammad's Legacy in the Medieval and Modern World* (Oxford, England: Oneworld Publications, 2009), 197–239.

643 See as demonstrable examples of this: Harald Motzki, "The Muṣannaf of 'Abd Al-Razzāq Al-Ṣan'ānī as a Source of Authentic Aḥadīth of the First Century A.H.," *Journal of Near Eastern Studies* 50, no. 1 (January 1991): 1–21; From the same author, *The Origins of Islamic Jurisprudence*; Also, Gregor Schoeler, *The Biography of Muhammad: Nature and Authenticity*, ed. James Montgomery, trans. Uwe Vagelpohl (New York: Routledge, 2010).

but the broader generalizations that will continue to be made about Islamic law, and many of the studies that these generalizations will perpetuate, will remain highly contested until we finally try to develop the 'thick descriptions' and preparatory groundwork needed as a prerequisite to the project.

Perhaps the most obvious sign that the current approach has failed is that after all that has been written on the question of foreign borrowing in Islamic law, scholars have not offered any particularly worthwhile explanations for how Muslims supposedly borrowed whatever it is speculated that they borrowed from the claimed sources, and how they were able to legitimately incorporate this foreign material within their own tradition, especially at the magnitude that is often claimed.[644] As an example of a case in the Islamic tradition where we do have a better understanding of how this assimilation took place is in Islamic philosophy, where open reference to Greek ideas is known, as was the legitimizing belief amongst Muslims (and this was obviously contested in a tradition as vast as Islam's) that "*wisdom is the believer's wherever he finds it*."[645] While scholars have tried to offer similar explanations in Islamic law, the magnitude of borrowing claimed is not sufficiently supported by these attempts.

For example, Schacht frequently alludes to a single reference from al-Balādhurī's *Futūḥ al-buldān* (this reference was also cited by Goldziher and Snouck Hurgronje) to a juristic debate on whether a non-Arab *sunna* can or should be changed by the Caliph if people complain about

[644] Ze'ev Maghen expresses his frustration at the frequent coupling by scholars of early Islamic history of claims of 'massive importation' with simultaneous disclaimers of being "unable to conclusively identify one single path of diffusion" (in the words of Wansbrough). See Ze'Ev Maghen, "Dead Tradition" Pg. 294f.

[645] See Crone, *Roman, Provincial and Islamic Law*. Pg. 112, endnote 18, where Crone states: "Given that the foreign origin of Islamic philosophy is openly admitted, the parallel with philosophy adduced by Gatteschi, Amos and later also by Goldziher is somewhat unfortunate…"

the hardship it causes them, and uses it to suggest that Islamic law had a principle of retention of pre-Islamic legal practices.[646] Crone contends that this example is "completely nondescript" and the fact it is cited so many times by Schacht indicates that "not even he had never [sic] come across another" example.[647] The example, though we have only been given one, is important, yet its relevance seems restricted to administrative law (the larger context of the passage is a discussion of the rules of *kharāj*), and doesn't explain the more controversial argument that Islamic law borrowed personal 'religious law' from Judaism, e.g.[648] Elsewhere Schacht suggests that Iraq was "deeply imbued with the spirit of Hellenistic civilization and at the same time contained great centres of Talmudic learning. *These are all the data we need* in order to account for the existence of concepts and maxims of Roman jurisprudence in early Islamic legal science, and the regular occurrence of parallels in Talmudic law."[649] He also muses that the study of Hellenistic rhetoric, which was widespread in the classical Hellenistic world, was the means by which Roman legal maxims (and Jewish legal maxims which were apparently based on the Roman ones) may have entered Islam.[650] But Crone argues that this latter point was "patently

---

[646] Schacht, *An Introduction to Islamic Law*. Pg. 19f. See Crone, *Roman, Provincial and Islamic Law*. Pg. 111f, note 17 for other citations of this same case by Schacht and others.
[647] Ibid.
[648] Parallels between pre-existing policy and caliphal administration, e.g. the details of *jizyah* or *kharāj*, are far easier to identify as having a basis in prior specific administrative laws and precedents for which there exists good documentation and which it makes much more sense for conscious adoption to have taken place. See also the following work on an argued codification process of Islamic Imperial law: Benjamin Jokisch, *Islamic Imperial Law: Harun al-Rashid's Codification Project* (Berlin: De Gruyter, 2007). I thank Dr. Michael Cooperson for this source. Also refer to the following critique: Rudolph Peters, "Review of Islamic Imperial Law: Harun Al-Rashid's Codification Project," *Journal of the American Oriental Society* 129, no. 3 (September 2009): 529–30.; With regards to personal religious law, however, the debate is much more contentious, and it appears harder to demonstrate foreign influence informed by administrative rulings. As Motzki states (*The Origins of Islamic Jurisprudence*. pg. 296.) based on his findings regarding early Meccan fiqh, "[t]he rulings of judges and governors or caliphs of the Umayyad period played – at least in the area of 'private law' – a very marginal role in the formation of the opinions of the early *fuqahā'*. In the sphere of criminal and 'public' law the situation was probably somewhat different, but here too one must not underestimate the influence in the opposite direction."
[649] Schacht, "Foreign Elements in Ancient Islamic Law." Pg. 13. Italics mine.
[650] Ibid., pg. 13f.

implausible" given that the study of rhetoric in the classical world did not involve a study of the specific types of legal stratagems that Muslims are believed to have borrowed from Roman law (and she negates most of these suggested "Roman" claims anyways), and more importantly, any such Hellenistic rhetoric and a form that would teach Roman legal thought made no sense in the context of *Sasanid* Iraq.[651] And while this conjectural theory relates to theoretical *legal maxims*, what of *religious legal dicta* borrowed from the Jews, since presumably the process of absorption for both of these would be separate (as it would be for administrative law)? The mere proximity to the Talmudic centers (and we are not told what this would mean in a premodern context) does not appear to solve the mystery, especially when no clear citation by jurists of biblical material have been adduced thus far.

We do have evidence of Jewish and Christian biblical lore being attested to in the Islamic tradition in the form of *isrā'īliyyāt* literature, though the known occurrences appear to be restricted to exhortation literature (*al-raqā'iq*) and exegesis. The connection between this known exchange of biblical lore and law has not yet been established clearly, though Crone makes an important allusion to an exegetical-legal connection in her discussion of the institution of *qasāmah*,[652] a significant point that we addressed in chapter 5. Importantly, many of the supposed biblical references that have been pointed to thus far do not appear to be of significant legal value. They also lack accuracy in many (not all) cases and appear to be closely tied to popular folk legend,[653] some of which may also have been circulating in the Arabian milieu from before the Prophet ﷺ's time[654]. The present examples thus complicate the idea of early Muslims

[651] Crone, *Roman, Provincial and Islamic Law*. Pgs. 8-10.
[652] P. Crone, "Jāhilī and Jewish Law: The Qasāma," *Jerusalem Studies in Arabic and Islam* 4 (1984): 153–201.
[653] For a useful summary on biblical material in early Islam, see Adang, *Muslim Writers on Judaism and the Hebrew Bible: From Ibn Rabban to Ibn Hazm*. Pgs. 1-22.
[654] The Talmud references an Arab merchant who identifies the chasms where Korah was pulled into the earth, indicating Arab knowledge of the biblical tales. See Bamidbar Rabbah 18.

diligently deriving law from these sources. They do, however, point to the probability of some form of intercommunal exchange taking place, especially as sanctioned by the famous ḥadīth allowing for narration from the Children of Israel, which Muir Kister has studied.[655] We also have known evidence that the Companion ʻAbd Allāh b. ʻAmr b. al-ʻĀṣ had knowledge of the Jewish and Christian scriptures, along with the well-known cases of Ka'b al-Aḥbār (d. 32-5) and Wahb b. Munabbih (d. 110-4), who are often referred to in the tradition for their knowledge of pre-Muḥammadan scripture. We also have an interesting example of a contemporary of Ḥasan al-Baṣrī (d. 110), an Abū al-Jald (d. ?), who read from the Qur'ān and Torah on a weekly basis for blessing, an example which Goldziher, Kister and Crone were aware of.[656] Examples such as these are important for better understanding the sources and transmission of Jewish and Christian material in the early Muḥammadan community, but the argument that Muslims derived their *law* in some part from the bible will need to address the conspicuous missing element of Muslim reference to such biblical dicta. Chapters 2 and 3 provided those references, along with indications that this material was refashioned into a Prophetic mold. Chapter 3 noted a few additional early figures that were recognized in the sources as having knowledge of the pre-Muḥammadan scriptures, to add more examples to the oft-cited Abū al-Jald.

Indeed, in speaking about the 'rabbinic form' of early Islam, Crone and Cook admit that there is a "paucity of evidence for the concrete character of intercommunal relations" between Jews and Muslims. Crone and Cook suggest implicitly that Jews or Muslims 'on the edge' may have been "the curious penumbra between Judaism and Islam,"[657] which they illustrate by

[655] M. J. Kister, "Ḥaddithū 'an Banī Isrā'īla Wa-Lā Ḥaraja: A Study of an Early Tradition," *Israel Oriental Studies 2*, no. 1972 (n.d.): 215–39.
[656] See Adang, *Muslim Writers*, pg. 10.; Kister, "Ḥaddithū", pg. 232; Crone, "Jewish and Jāhilī Law", pg. 178.; Abū al-Jald was discussed in chapter 3.
[657] Cook and Crone, *Hagarism: The Making of the Islamic World*. Pg. 180, endnote 12.

referring to a quote adduced by Goldziher from the jurist al-Shaybānī (d. 189/805), who reports that the Jews of Iraq in his day claimed to be Muslim (falsely, according to al-Shaybānī) by saying that they accept the prophecy of Muhammad, but meaning that he was only a prophet to the Arabs and not to the Jews, this being a view also attested to the *Isāwiyyah* movement.[658] What is suggested by this "penumbra between Judaism and Islam," is that either Muslims and Jews on 'the edge' may have been the points of exchange, or, in an iteration of this argument, that there was no 'edge' so to speak at some early point in Islamic history – i.e. a notion of highly fluid identity between Muslims and Jews.[659] The suggestion that Muslims and Jews living

[658] Ignaz Goldziher, "Usages juifs d'aprés la littérature religieuse des musulmans," *Revue des Etudes Juives*, 1894. Pg. 91f. The following text is rendered by Goldziher in French according to a manuscript of *Kitāb al-siyar* (*Droit de guerre musulman*) at the University of Leiden. Goldziher has the version read, in French, "Aujourd'hui, tous les Juifs reconnaissent dans les régions de l'Irak quil riy a pas de Dieu hormis Allah et que Mahomet est V envoyé de Dieu." Trans: "Today, all Jews recognize in the region of Iraq that there is no God but Allah and that Muḥammad was sent by God." The text I have (from the commentary of al-Sarakhsī [d. ca 483-500/1090-1106] on al-Shaybānī's *al-Siyar al-kabīr*), does not seem to make this statement necessarily apply to "all" Jews in Iraq: فَأَمَّا الْيَوْمَ بِبِلَادِ الْعِرَاقِ فَإِنَّهُمْ يَشْهَدُونَ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَلَكِنَّهُمْ يَزْعُمُونَ أَنَّهُ رَسُولٌ إِلَى الْعَرَبِ، لَا إِلَى بَنِي إِسْرَائِيل. وَيَتَمَسَّكُونَ بِظَاهِرِ قَوْله تَعَالَى {هُوَ الَّذِي بَعَثَ فِي الْأُمِّيِّينَ رَسُولًا مِنْهُمْ} [الجمعة: 2] See Muḥammad b. Aḥmad al-Sarakhsī, *Sharḥ Al-Siyar al-Kabīr*, 5 vols. (al-Sharikah al-Sharqiyyah li al-i'lānāt, 1971). Vol. 1, Pg. 151. Interestingly, these beliefs are similar to the *'Īsāwiyya* movement, who affirmed the prophecy of Muḥammad but only for the gentiles. See S. Pines, "Al-ʿĪsāwiyya," ed. P. Bearman et al., *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

[659] Variants of this notion of highly fluid communal boundaries feature in the works of other scholars including Fred Donner and his notion of the early believers' movement, and in a rather extreme work by Aaron Hughes, who practically denies the very notion of communal identity in the early Islamic period for both Muslims and Jews. See Fred M. Donner, *Muhammad and the Believers: At the Origins of Islam* (Cambridge: Belknap Press of Harvard University Press, 2010).; Also, Aaron W Hughes, *Shared Identities: Medieval and Modern Imaginings of Judeo-Islam*, 2017. As an example from outside of our field of this trend to deemphasize the existence of communal boundaries, see Erich S. Gruen, *Rethinking the Other in Antiquity* (Princeton: Princeton University Press, 2012).; As an example from outside of our field of this trend to deemphasize the existence of communal boundaries, see Erich S. Gruen, *Rethinking the Other in Antiquity* (Princeton: Princeton University Press, 2012).; These are conclusions worth pursuing in light of the evidence, but it should be noted that these arguments sometimes fail to fully incorporate (and in some cases clearly ignore) verses from the Qur'ān and early traditions that indicate a distinct identity or which seem to push a policy of conscious differentiation (*mukhālafa*) from the Jews and some of their laws, e.g. Qur'ānic verses that present Muḥammadan dietary laws and rules of retaliation as an easing for the Muḥammadan community from the difficult laws of the Jews. Refer to studies by Mazuz and Maghen: "The Relationship between Islam and Judaism: A Neglected Aspect," *Review of Rabbinic Judaism* 16, no. 1 (January 1, 2013): 28–40.; Ze'ev Maghen, *After Hardship Cometh Ease: The Jews as Backdrop for Muslim Moderation*, Reprint 2012 edition (Berlin & New York: Walter De Gruyter Inc, 2006).; El-Shamsi has recently argued with regards to early Muslim traditions on hair dying that there was a conscious effort by early Muslims to differentiate from the *lived* practice of Jews while simultaneously *conforming* to biblical commands, which were not seen as the same. See Ahmed El Shamsy, "The Curious Case of Early Muslim Hair Dyeing," in *Islam at 250: Studies in Memory of*

on the edge were the source of biblical legal dicta (and again, no examples are offered), does not offer a reasonable explanation for how the Islamic legal tradition could take in foreign material in a way that it could legitimate it to itself, and turn them into something divinely sanctioned. Some of the concrete examples that we looked at suggested that limited reference to biblical dicta was done in the wide open, and from recognized Muslim personalities that were interested in uncovering this material, not necessarily from figures on the 'edge.'

As an alternative theory for how this borrowing occurred, Von Kremer, Goldziher, Schacht, Crone and others, working on an implicit and sometimes explicit assumption that the Arabs that conquered the new lands were not culturally capable of producing what we would know as classical Islam, assumed that it was the non-Arabs who must have made up the largest number of jurists and contributors to the formation of Islamic law and civilization, and were thus the source of this foreign inspiration.[660] While this is admittedly a reasonable theory, it seems to have been disproven by Harald Motzki, who demonstrated through a sample study of early jurists that the majority were by in large Arab, that the particular ethnic origins of the non-Arab jurists does not match with our assumptions of what was borrowed by Islamic law (a majority were from Sassanian Persian background, and likely were not the source for suggested Roman and Roman provincial parallels, and those with Jewish roots were too few in number to suggest Jewish influence), and these non-Arab jurists appear also to have grown up in Arab-Muslim environments as second and third generation Muslims "cut off from their ethnic roots."[661] He

*G.H.A. Juynboll*, ed. Petra Sijpesteijn and Camilla Adang, Leiden Studies in Islam and Society 10 (Boston and Leiden: Brill, 2020), 187–206.

[660] For a summary of some scholarly opinions on the role of 'Non-Arabs' in law, see pgs. 294-296 of Harald Motzki, "The Role of Non-Arab Converts in the Development of Early Islamic Law," *Islamic Law and Society* 6, no. 3 (1999): 293–317.

[661] Ibid., pg. 316. The rest of Motzki's study should be read for some interesting details regarding the specific ethnic makeup of non-Arab early Muslim jurists and their relationship to the early conquests.

concludes, "we can no longer take for granted the idea that scholars of non-Arab descent were the most natural vehicles of borrowings from pre-Islamic non-Arab legal systems," and states that he knows of no such case from the first two centuries AH.[662]

It is this frustration in ascertaining a concrete admittance of assumed borrowing in the sources, and thus a reasonable explanation for *how* this supposed material "infiltrated" (using Schacht wording[663]) into the Islamic tradition, that leads Crone to conclude a "conspiracy of silence"[664] from the Muslim sources. As she puts it:

> "…the tradition is in fact armed to the teeth against imputations of foreign influence. Practically no borrowings are acknowledged, loan-words are extremely rare; and since both patriarchal practice and Canaanite malpractice are located in the Arab past, foreign systems are hardly ever mentioned, let alone discussed, not even by way of polemics. At the same time no sources survive from the formative first century of Islamic law. We are thus entirely dependent on a late tradition hostile to our designs."[665]

As I demonstrated in the course of this project, this belief could only be held if one ignores obvious facts presented by the sources themselves. I interrogated the claim that "no borrowings are acknowledged," or that Jewish law impacted Islamic law "despite the asseverations of the Muslim lawyers."[666] By showing that Muslims openly discussed reference to pre-Muḥammadan law, and demonstrating examples of open references to biblical dicta, it was my hope that we

---

[662] Ibid.
[663] Schacht, *An Introduction to Islamic Law*. Pg. 21.
[664] She states: "But [the Muslim acknowledgement of Islamic Philosophy's foreign origins] does not mean that it is gratuitous to assume a 'conspiracy of silence' regarding the origins of Islamic law, as FitzGerald inferred… The undisguised Greek nature of Islamic philosophy is the *quid pro quo* of its marginal status." Crone, *Roman, Provincial and Islamic Law*. Pg. 112, endnote 18.
[665] Ibid., pg. 2.
[666] Ibid.

could come to more accurate theories on how Jewish or biblical material may have become integrated into the Islamic legal tradition, and in fashion that was legitimate to the tradition itself.

There is a growing trend among academics to explicitly reject the usage of 'vertical' 'transmission'-based language such as 'influence,' 'borrowing,' 'adaptation,' and 'origins,'[667] and to instead explain the existence of parallel phenomena across religious traditions as part of a process variably described in terms of 'dialectic'[668] exchange, 'creative symbiosis,'[669] 'hybridity,'[670] 'semiotic *koinê*,'[671] or perhaps, 'intertextuality.'[672] Authors operating under this new paradigm will assert that 'transmission'-based language implicitly makes value judgments

---

[667] As examples: The "debtor-creditor model of influence and borrowing must be abandoned in favor of the dialectical analysis of intercivilizational and interreligious processes." Wasserstrom, *Between Muslim and Jew: The Problem of Symbiosis under Early Islam* (Princeton: Princeton University Press, 1995). Pg. 11.; The same quote is also cited in support by Lena Salaymeh on pg. 101 of *The Beginnings of Islamic Law: Late Antique Islamicate Legal Traditions* (Cambridge, UK: Cambridge University Press, 2016), by Phillip Ackerman-Lieberman on pg. 327, endnote 25 of *The Business of Identity: Jews, Muslims, and Economic Life in Medieval Egypt* (Stanford University Press, 2014)., and Carol Bakhos on pg. 227, note 28 of *The Family of Abraham: Jewish, Christian, and Muslim Interpretations* (Cambridge, MA & London: Harvard University Press, 2014). Bakhos also states (pg. 185, *The Family of Abraham*), "…the model of influence should be abandoned altogether…" Lena Salaymeh (pg. 90, *The Beginnings of Islamic Law*) rejects all use of 'influence' and 'origins' language, even when the origins suggested are *internal* to a tradition: "Many scholarly critiques largely operate within the same 'origins' paradigm by suggesting 'native' Muslim influence, rather than rejecting the entire framework of borrowing/influence. The problem with this scholarly debate is not that it misidentifies the source of 'borrowing,' but that it even accepts the possibility of 'borrowing.'"

[668] See e.g., pg. 11 of S. M. Wasserstrom, *Between Muslim and Jew.*

[669] See e.g., pgs. 11, 57, and 231 of Wasserstrom, *Between Muslim and Jew*.; Also, pgs. 22-23, 171, and 185 of Carol Bakhos, *The Family of Abraham.* Though the idea of 'creative symbiosis' was first popularized by Goitein in his *Jews and Arabs*, he clearly did not intend a rejection of 'influence' in his formulation of it, as is evident by his own words: "*Then came the second* and, in the past, most important, period of creative Jewish-Arab symbiosis lasting about 800 years, during the first half of which Muslim religion and Arab nationhood took form under Jewish impact, while in the second half traditional Judaism received its final shape under Muslim-Arab influence." Goitein, *Jews and Arabs*. Pg. 10. Italics are Goitein's.

[670] Lena Salaymeh, *"Legal-Historical Hybridity - Tracing Islam in Its Islamicate Context."*

[671] See, e.g., pgs 275-276 of Thomas Sizgorich, *Violence and Belief in Late Antiquity: Militant Devotion in Christianity and Islam* (Philadelphia: University of Pennsylvania Press, 2009).; Also, pg. 17 of Green, *Sufism*.

[672] See pg. 23 and note 26 on pg. 226 of Bakhos, *The Family of Abraham*

by suggesting the illegitimacy of the 'receiving' or absorbing tradition.[673] Indeed, examples do exist where 'origins' based frameworks have been used in the study of Islam both past and present to suggest illegitimacy, and in some cases clearly intending polemic.[674] Arguably as

[673] See, as examples: "Such terminology suggests… a distortingly moralizing perspective of debtor and creditor." Wasserstrom, *Between Muslim and Jew.* Pg. 231.; "Past efforts … resulted in the use of the term 'borrowing,' which implies that elements found in a later tradition belong to the earlier source. Attempts at 'source-hunting' contribute to the sense that the later tradition, in this case Islam, is derivative and owes a huge debt to the earlier source or tradition." Bakhos, *The Family of Abraham*. Pg. 22.; "In effect, many scholars treat Islamic law as the 'illegitimate' child of an 'Arab' mother and either an Aryan [i.e. Christian, Roman, or Persian – see pg. 87-89 of source] or a Semitic [i.e. Jewish – see pg. 88-89 of source] father – depending on whether a scholar understands Islamic law as purely Semitic or hybrid Aryan/Semitic… the notion of illegitimacy – and its inherent connection to birth metaphors – is reflected in Schacht's claim that 'concepts and maxims *originating* from Roman and Byzantine law, from the Canon law of the Eastern Churches, from Talmudic and Rabbinic law, and from Sasanian law, *infiltrated* into the *nascent* religious law of Islam during its period of *incubation*, to appear in the doctrines of the second century A.H" (pg. 89). And "I dispose of the 'origins' questions entirely because they are … prejudiced…" (pg. 100) from Salaymeh, *The Beginnings of Islamic Law*. Italics are Salaymeh's. Her quote from Schacht is from Pg. 21 of Schacht, *An Introduction to Islamic Law*.

[674] Haggai Mazuz affirms that some of the earlier literature describing 'influence' was not merely interested in the transmission of ideas and institutions, but appeared to be clearly polemical and indicative of contempt towards Islam as a religion. See Haggai Mazuz, "The Relationship between Islam and Judaism: A Neglected Aspect," *Review of Rabbinic Judaism* 16, no. 1 (January 1, 2013): 28–40. Pg. 28-29, footnote 2.; As a clear example of polemical objectives, Abraham Geiger's *Was hat Mohammed aus dem Judenthume aufgenommen?* was translated into English specifically for missionary purposes at the request of a Rev. G. A. Lefroy to help in his "dealings with the Muḥammadans" in India. See translator's preface of Abraham Geiger, *Judaism and Islam*, trans. F. M. Young (Madras: MDCSPCK Press, 1898).; Also refer to the previous note in which Salaymeh quotes Schacht's usage of 'infiltration' as clearly indicative of his sense that significant aspects of Islamic law were illegitimate (though probably not intending religious polemic here); To take one modern example of how 'influence' frameworks are used as anti-Islam polemics in supposedly 'academic' literature, we can refer to some of the edited volumes published by the publishing house known as Prometheus Books. A survey of their published literature on Islam (in comparison to other religions) makes it abundantly clear that the publishing house is primarily interested, with very little exception at all, in publishing sensational exposés on Islam (just a few representative titles include: *Islamic Fascism*, *Sharia Versus Freedom*, *Crescent Moon Rising: The Islamic Transformation of America*, *Jihad Incorporated: A Guide to Militant Islam in the US*, *The Myth of Islamic Tolerance*, *Sword of Islam*, and *The Day of Islam: The Annihilation of America and the Western World*). In addition to this body of more 'sensational' works, the publishers have featured the writings of notable academics like Gordon Newby, Norman Stillman, Andrew Rippin and Haggai Ben-Shammai (I presume with their consent, since they were contemporaneous with the publications, as opposed to some of the other authors featured like Goldziher) in volumes edited by known anti-Islam polemicists (and notably non-academics) Ibn Warraq and Andrew Bostom. See Fred Donner's review, cited below, in which he identifies Ibn Warraq's edited volume on Muḥammad as obvious religious polemic masquerading as scholarship. What is interesting is that the works of established academics seem to have been selected because they demonstrate either [1] examples of foreign influence [2] revisionist scholarship, or [3] examples of Muslim violence. I raise this example because it is one that clearly points to the ways in which 'foreign influence' is used polemically to convey illegitimacy or falsehood of a

historians we should be more interested in describing then ascribing value. This critique not withstanding, we should not completely abandon the possibility that ideas may have origins or transmission histories. In fact, a case can be made that language such as 'influence' and 'borrowing' does not connote a pejorative sense at all, but it is our modern Western obsession with 'originality' that leads to this perception.[675] This was the opinion of scholars like Hava Lazarus-Yafeh, building on the work of H. A. R. Gibb, who saw foreign influence and borrowing by past traditions as a positive sign of vitality, premised on a worldview where "It is more blessed to receive than to give," and involving remaking of inherited elements in a way that did not infringe on the fundamental values of the absorbing tradition.[676] We could of course debate whether less value-laden terms might be used to describe the same framework of vertical

tradition, as is apparent contextually in this case (even if the original authors did not intend their ideas to function in this manner). Examples of some of these edited volumes include: *The Hidden Origins of Islam, Christmas in the Koran: Luxenberg, Syriac, and the Near Eastern and Judeo-Christian Background of Islam*, *The Legacy of Islamic Antisemitism*, *The Quest for the Historical Muhammad*, and *Koranic Allusions: The Biblical, Qumranian, and Pre-Islamic Background to the Koran*. For Donner's review of one of Ibn Warraq's edited volumes, see Fred M. Donner, review of *The Quest for the Historical Muhammad*, by Ibn Warraq, *Middle East Studies Association Bulletin* 35, no. 1 (2001): 75–76.; Interestingly, the edited volumes of Ibn Warraq are cited in academic works with no acknowledgement of the obvious larger project that these publications, and Prometheus Books, are engaged in. Chase Robinson and Christopher Melchert, e.g., despite their critiques of the study of Islam from confessional tendencies brought by Muslim scholars working in the field (and sometimes it is unclear why they aim these criticisms at Muslims that do not consider themselves academics to begin with), cite (in the case of Robinson) or praise (in the case of Melchert) the works of Ibn Warraq without at the very least noting the obvious project that these works serve. 'Bias' in the veneer of academic literature is not strictly a 'Muslim' phenomenon. See pgs. 114-115 (and note 67), pg. 121 (note 94), and pg. 125 (note 110) of Chase F. Robinson, "Reconstructing Early Islam: Truth and Consequences," in *Method and Theory in the Study of Islamic Origins*, ed. Herbert Berg (Leiden & Boston: Brill, 2003), 101–34.; Also, pgs. 294-295 of Melchert, "The Early History of Islamic Law." Also, the same author's review of one of Warraq's works: Review of *The Origins of the Koran: Classic Essays on Islam's Holy Book*, by Ibn Warraq, *Middle East Studies Association Bulletin* 35, no. 1 (2001): 74–75.

[675] This vantage point "where authority plays a marginal if any role, and innovation is lauded as a virtue," may also explain the various negative appraisals of *taqlīd* that viewed the institution as a source of decadence in Islamic Law. See Sherman A Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb Al-Dīn Al-Qarāfī* (Leiden & New York: E.J. Brill, 1996). Pgs. 79-81.

[676] Hava Lazarus-Yafeh, "Judaism and Islam: Some Aspects of Mutual Cultural Influences," in *Some Religious Aspects of Islam: A Collection of Articles* (Leiden: Brill, 1981), 72–89. Pg. 72-73.

transmission[677] (perhaps words like 'adaptation' and 'absorption' may be better than 'borrowing'?), but scholars opposed to 'origins'-based frameworks suggest that semantics *alone* is not the issue why we should abandon the framework altogether. We are variably told that the suggestion of transmission must be abandoned because it is [1] hard to prove,[678] [2] not important or less important when compared to other issues of historical inquiry,[679] [3] suggests

[677] In fact, Lazarus-Yafeh, in suggesting the whole project may just be a matter of semantics, muses that Wasserstrom's usage of "creative symbiosis" is the same as the term "cultural borrowing," but just "a much nicer one to use." See Hava Lazarus-Yafeh, review of *Between Muslim and Jew: The Problem of Symbiosis under Early Islam*, by Steven M. Wasserstrom, *Journal of the American Oriental Society* 118, no. 1 (1998): 97–98. Pg. 97.

[678] See, as examples: "It is not my objective to suggest that Jewish legal traditions were relatively more 'influential' than other legal traditions; *such an inquiry is both impossible to measure* and based on imagined boundaries of separation" and "… *it is not possible to measure* how that assimilation process [conversion of non-Arabs to Islam] shaped Islamic law…" Salaymeh, *The Beginnings of Islamic Law*. Pg. 103 and 96, respectively. Italics mine.; "I cannot, in other words, responsibly conclude that the Jewish Aristotle should be understood straightforwardly as a function of the Islamic Aristotle. Even were this demonstrably the case [i.e. it is not demonstrable]… " Wasserstrom, *Between Muslim and Jew*. Pg. 230.; "To say that the story was either original or borrowed is to belie the complex web of interchange … between Muslims and Jews. Indeed, it is futile to post a unidirectional influence, and thus the model of influence should be abandoned altogether." Bakhos, *The Family of Abraham*. Pg. 185. In other words, the complexity of parsing out the complex transmission means that we should abandon the endeavor.; In the context of suggested Christian origins for Sufism, "The main problem with such searches for traces has been that while there exists plenty of evidence for similarities and even contacts between Muslims and Christians, there exists hardly any direct evidence for the actual 'borrowing' that is meant to have underlain the similarities." Green, *Sufism*. Pg. 21. He also criticizes the framework of 'influence' and 'borrowing' by citing two cases where the evidence was questionable (see pgs. 18 and 21).

[679] See, as examples: "…such an explanation yields a rather thin result: the conclusion that something went from point *A* to point *B*," Wasserstrom, *Between Muslim and Jew*. Pg. 230-231.; "I dispose of the 'origins' questions entirely because they are… ultimately irrelevant" Salaymeh, *The Beginnings of Islamic Law*. Pg. 100.; After presenting one example of a fairly compelling case of foreign borrowing in early Sufism, Green pushes back against the implications of 'borrowing' here by downplaying the importance of its conclusions: "… even if we accept that certain configurations of ideas were transmitted, ultimately we are left with no clearer understanding of how this happened and for historians this need for a clear explanation of how something happened is as important as the evidence that it did… we are presented with texts which are supposedly connected, but with no sense of the readers who are meant to have connected them." He then offers his framework of the 'semiotic *koinê*' as an alternative to the borrowing paradigm. Green, *Sufism*. Pgs. 21-22.; "We are *better served* by trying to understand how the story functioned in each tradition…" and "Traditions taking shape in new contexts should be understood not as 'borrowing,' then, but as a facet of how a religious system develops in multiple arenas of discourse, how it shapes and is shaped by its milieu, whether literary, theological, social or cultural." Bakhos, *The Family of Abraham*. Pg. 185 and pgs. 22-23, respectively. Italics mine. In other words, the question of origins should be abandoned because there are other details that are presumably more significant.

unidirectional transmission when instead we often have a 'dialectic' between communities,[680] [4] assumes a form of deterministic linearity where events cause other events[681] and [5] upholds an essentialist/reified understanding of religions interacting with one another when in fact abstract entities like religious traditions are fluid and porous.[682] [6] Lastly, this approach ignores the better alternative, which is to explain these parallels as the result of shared spaces and shared

[680] See, as examples: "Indeed, it is futile to posit a unidirectional influence, and thus the model of influence should be abandoned altogether" and "Literary traditions do not move in only one direction, of course. The sources attest to means by which Islamic literary material made its way back into Jewish interpretation, and Islamic theology, too, left its imprint on Jewish and Christian theology." Bakhos, *The Family of Abraham*. Pg. 185 and Pg. 22, respectively.

[681] See, as examples: "Such terminology suggests a quasi-physicalist scenario of material motion…" Wasserstrom, *Between Muslim and Jew*. Pg. 231.; Writing in support, Bakhos states, "Eschewing the language of 'borrowing' and the implications of the *genealogical* approach to the Qur'an and the larger Islamic tradition, recent scholars have begun to offer alternative explanations for parallels…" Pg. 23 of *The Family of Abraham*. Italics mine.; A significant portion of Lena Salaymeh's methodological framework in *The Beginnings of Islamic Law* is centered on a critique of linear causality, arguing that "the past does not lead inevitably to the present" (Ibid., pg. 3). Additionally, she criticizes a genealogical/evolutionary approach to Islam's history that looks for conception (i.e. 'origins'), parentage (i.e. 'influence'), and maturation (i.e. 'orthodoxies'), which she argues is mistaken because inherent to this is an affirmation of an essentialist notion of 'Islam' that is progressing in a unilinear fashion. Islam is diverse, however, evolutionary and genealogical models are unfounded, and there are many trajectories history can take (pgs. 4-6). She states elsewhere, "[t]he debate about 'borrowing' reveals that answering the 'origins' question requires defining culture in an impossibly monolithic way, often based on the fallacy of a single cause" (pg. 97).

[682] See, as examples: "…a model based on 'borrowing' or 'influence' between stable religions with retroactively projected essences is insufficient for the task of an analytical comparison. It is why I prefer to invoke the metaphor of porous borders, across which common ideas and social forms could move to be imagined and reimagined in any number of ways." Aaron W Hughes, *Shared Identities: Medieval and Modern Imaginings of Judeo-Islam*, 2017. Pg. 85.; "The underlying and deep problem is that the very notion of 'foreign' is based on an erroneous definition of Islam (as Arab) and on a mistaken presumption of clear boundaries between Islamic and non-Islamic." Salaymeh, *The Beginnings of Islamic Law*. Pg. 95.; "This historiography has recognized the inherent weakness of explanatory models that turn culture into static binary encounters, characterized by 'conflict,' 'resistance,' 'influence,' 'assimilation,' 'acculturation,' or 'appropriation.' It sees even the peoples whose history is told as themselves de-essentialized 'imagined communities' continuously forming and reforming their collective identity." And, "[a]ny historiography that either explicitly or implicitly ascribes an 'essence' or 'spirit' to a people is not tenable in today's academy." Michael L. Satlow, "Beyond Influence: Toward a New Historiographic Paradigm," in *Jewish Literatures and Cultures: Context and Intertext*, ed. Anita Norich and Yaron Z. Eliav (Providence (RI): Brown University, 2008), 37–54. Pg. 38f and pg. 46, respectively.

concerns among communities.[683] These points are recurrent ones made in support of this rather extreme position, and none of them appear to be entirely convincing.

[1] has already been granted, but it was suggested that this might be overcome through better understanding the objects of our study, [2] is ultimately a matter of perspective (we can still study how ideas are transformed and recreated by a community without ignoring the question of where the idea may have originated), [3] doesn't negate the utility of 'origins' based frameworks but merely suggests the complicating possibility of influence and transmission working in many directions (also a granted point), and [4] is not an issue if we conceive of causality in a much more complex manner than simple A to B effects, with numerous factors potentially influencing any one phenomenon. With regards to [5], the transmission of ideas is still a relevant framework as long as we are speaking of two separate entities (i.e., porous borders is not the same as no borders). And even if we assume that communities may have been porous or perhaps even interchangeable, it is still possible that an individual may have referenced ideas and the like from another individual, pointing again to 'transmission.' The problem with our

[683] See, as examples: "Islamic and eastern Jewish legal systems did not "borrow" from each other, but rather occupied the same socio-historical space and, in some cases, responded similarly to a shared context." Salaymeh, *The Beginnings of Islamic Law*. Pg. 17.; On Shī'ite conceptions of the Mahdī paralleling Jewish ideas concerning the Messiah: "The foregoing Jewish expectations and their accompanying frustrations simultaneously reerupted within Judaism and within Islam. This was not a "borrowing"; rather, a common culture shared a common telos, a longing for a figure of the ultimate, under the impact of common circumstances." Wasserstrom, *Between Muslim and Jew*. Pg. 55.; "The longstanding scholarly focus on 'origins' developed out of a perspective in which historical process was seen as necessarily vertical, that is, as a set of 'inheritances' and 'influences'… [b]ut historical process is not merely (nor even mainly) a vertical one and with a century of sociological thinking behind us we are now more likely to think in terms of history being made within the horizontal stratum we recognize as 'context' and 'contemporaries' in which the past is received less as an irresistible agent than as a set of cultural resources to be continued, adapted or abandoned at will." Green, *Sufism*. Pg. 17.; Bakhos argues that we should instead explain the existence of parallels in Jewish and Muslim exegetical literature through a "complex notion of intertextuality" (the idea that "every text is constructed as a mosaic of citations – that is, intertexts – that are in the same instance absorbed and transformed" [pg. 226, note 26]), "orality" (referring to a "complex web of interchange" in which information travels back and forth [pg. 185]) and the "symbiotic relationship of self definition" between communities. Bakhos, *The Family of Abraham*. Pg. 23.

alternative, [6], is that assigning the reason for parallel phenomenon to 'larger context' is still a matter of assigning influence, only the influence is from a far less discrete phenomena of 'context' (e.g., "deeply embedded Hellenism," or "patterns of religiosity in the Near East," or even more vague, "hybridity," "semiotic *koinê*" or "shared spaces"). The extent of utility that these larger 'contextual' explanations have on our construction of linkages in history largely depends on our ability to identify specific (and inclusive) features *within* this broader context as 'influences' (e.g., *specific elements* of Hellenistic culture as opposed to a broad Hellenistic milieu). Despite the suggestions of authors operating under this paradigm, this 'alternative' framework is in some ways merely a reformulation of the influence/transmission paradigm, since it too is an explanation of influence, however much we may try to deny it. It is also intentionally less precise in its explanatory power, which is fine *if* lack of evidence leads us to making a more conservative claim of influence, but otherwise is problematic for the reasons just described.[684] The indispensability of 'origins'-based paradigms for explaining historical connectedness is evidenced by the numerous contradictory (and possibly politically motivated) ways in which scholars claiming to eschew the framework simultaneously utilize it knowingly or unknowingly, sometimes trying to use different words that convey exactly the same thing.[685] I argue that

[684] Salaymeh (*The Beginnings of Islamic Law,* pg. 101, footnote 92) cites Robert Roberts in a footnote: "[t]here are many customs which are common to all Eastern nations and cannot be traced to the code of any particular people." However, instead of accepting Roberts's moderate position of merely admitting that specific customs cannot realistically be traced because of their pervasiveness, Salaymeh argues that they *should* never be traced. See Robert Roberts, *The Social Laws of the Qorân: Considered and Compared with Those of the Hebrew and Other Ancient Codes* (London: Curzon Press, 1971). Pg. 2.

[685] Take as examples (I've numbered them for easier reading):

[1] Bakhos (*The Family of Abraham*) rejects "borrowing" and "influence" frameworks (pgs. 23 and 185) yet simultaneously affirms them: "At the same time, to deny that Islam *absorbed* Near Eastern motifs and literary narratives, to ignore the existence of literary traditions found in other cultures and religions, is to strip it of its historical embeddedness, to deny it its rightful relationship to Judaism and Christianity and its place within the late antique Near Eastern realm." Pgs. 22-23. Italics mine. She also cites (pg 226,

endnote 24) Lazarus-Yafeh's writings on influence in approval, commenting (in line with Lazarus-Yafeh's writings as noted earlier) that the "absorption of foreign influences is a sign of vitality of a religion or culture." If she accepts foreign influence here in the endnotes explicitly, why argue that "the model of influence should be abandoned altogether" (pg. 185) in the body? If we go to the passage that corresponds with the endnote in which she affirms "influence," pg. 22, she intentionally avoids the word 'influence' (and she must because she negates the phenomenon in the same section), focuses instead on Lazarus-Yafeh's comment on "vitality." Also, her abandonment of "influence" seems mainly out of shyness for making this suggestion about Islamic material, as she interestingly doesn't stop herself from using 'influence' elsewhere when Jewish and Christian material may be the subject: "The Alexandrian exegete Didymus (also referred to as Didymus the Blind) (ca. 313-398) was heavily *influenced* by Origen and was admired by Jerome." Pg. 38. Italics mine. "Ephrem's exegetical works point to a familiarity with Jewish interpretation and reflect the *influence* of his Mesopotamian milieu." Pg. 39. Italics mine. "Origen's profound *influence* on him is clear in Jerome's *Hebrew Questions on Genesis…*" Pg. 40. Italics (except the book title) mine. Also, on pg. 234, endnote 100, she is okay citing in support a comment by Peter Awn affirming the possible influence of Muslim *qiṣaṣ* literature on non-Muslim sources. But again, this is the in the endnotes and not reflected in the body of her work.

[2] As was cited earlier in the context of Shī'ite parallels to Jewish Messianic ideas, Wasserstrom stated that "This was not a "borrowing"; rather, a common culture shared a common telos, a longing for a figure of the ultimate, under the impact of common circumstances" (Wasserstrom, *Between Muslim and Jew*. pg. 55). Yet he continues by saying, "The foundational myths of this Shi'i party, which was loyal to the family and to the cause of 'Ali, were initially and partially *typologized upon* Judaic paradigms… The Mahdi, then, could be understood by both Sunnis and Shi'is to have been *patterned in some sense on* Jewish antecedents" (Ibid., pgs. 55-56. Italics mine). He denies 'borrowing' yet uses 'typologized upon' and 'patterned in some sense on' as equivalents. He notes that stories about the Mahdī had entered Islam by means of Yemenite Jewish converts to Islam like Ka'b al-Aḥbār in the form of the isrā'īliyyāt. Is this not influence, borrowing, or the '*A* to *B'* transmission he criticizes elsewhere? (Ibid., pg. 56). Then he concludes that "Muhammad, 'Ali and the early Muslims did not borrow their Messiah from Judaism, nor was Jewish Messianic imagery lent by a Jew to a Muslim in the sense that a lender lends to a debtor. Rather, Muslims consciously and creatively reimagined the Messiah" (Ibid., pg. 57). But as Lazarus-Yafeh astutely observes, however, "this is exactly what cultural borrowing is all about. It is never like lending money, but always includes conscious or unconscious reshaping, reinterpreting, or rewriting of new material – whether an idea, a myth, or a ritual – almost to the point where it is hardly recognizable any more, in order to integrate it into its new cultural or religious setting." Clearly Lazarus-Yafeh does not sense a pejorative, moralizing sense to this word (Hava Lazarus-Yafeh, review of *Between Muslim and Jew.* Pg. 98). Elsewhere he simultaneously disavows borrowing while admitting it took place: In a passage on Muslim and Jewish engagement in philosophy, he states that, "Islamic and Jewish readers received Greek thought in strikingly parallel fashions not due to influence and borrowing (*though this factor obviously contributed*), nor because they coexisted in a 'common milieu.' Rather, I assume that these sibling monotheistic civilizations constituted scripture-based interpretive communities that familially shared analogous and characteristic scripturalist dilemmas, problems of defending the supernatural status of revelation" (Wasserstrom, *Between Muslim and Jew*. Pg. 229. Italics mine.). As a side note, his shared 'scripturalist dilemmas' is really the same as a 'common milieu,' only the common milieu affects Jews and Muslims together because they are both scripturalist religions. In another example, he does the same as the previous example of simultaneously affirming and disaffirming: right before a statement where he states that "purported 'parallels' between Muslim and Jewish Aristotles… are not to be 'explained' reductively in terms of influence and borrowing" (pg. 231), he admits that the

instead of dancing around the issue out of what appears to be an obvious motivation of political correctness, we admit that discussions of 'origins' can exist and can be useful, remind ourselves of issues to be cautious about (many of which have been raised in the critiques above), and

parallels are "not coincidental," and in a footnote gives Jewish transmission of and engagement with Muslim philosophical works as the reason (Pg. 230).

[3] Despite Salaymeh's vehement rejection of all 'influence' and 'origins'-based historical inquiries, her own meta inquiry into the western study of Islamic law applies this same framework. She states that the academic endeavor to identify linear relations and origins for certain elements of Islamic law from Jewish law represents the "influence" that earlier philological studies had on the academic study of Islamic law starting in the 19th and 20th centuries (Salaymeh, *The Beginnings of Islamic Law*, pg. 92). One might rebuff my nitpickiness here, and counter that the influence she describes here is different, since it is within the same tradition (western scholarship) and therefore not the same issue as influence/borrowing between traditions. But Salaymeh criticizes scholars who do just that, arguing against the claim of even *'native' Muslim influence in Islamic law*, because it assumes 'borrowing' and 'origins' and 'influence' (Ibid., pg. 90). The extremeness and impracticality of this position is evident here, and it reinforces a point made in above analysis of Bakhos' book about the selective shyness in using 'influence' for some traditions and not others. Perhaps this entire endeavor of masking one's language may be out of a desire to be politically correct and nothing more.

[4] Green, e.g., after negating the strength of evidence adduced elsewhere to suggest Christian origins for certain Sufi phenomena, then looks at an example where strong evidence *is* provided, in this case, Muslim reproduction of complex structural motifs found in earlier Christian works. His dislike for all things 'origins' makes itself evident: "Even if such direct structural parallels can be detected, again this can be just as efficiently explained as being the result of a shared horizontal symbolic imaginary – a 'semiotic *koinê*' – than as being the result of the one-way traffic of Muslims 'borrowing' from Christians." It is his obvious desire to avoid suggesting any form of borrowing that leads him to a less precise framework of 'shared environments.' As a side note, it is not clear why admitting that a motif may have 'originally' been found in another community implies that traffic was 'one-way.' It may have been 'one-way' pertaining only that motif but 'two-ways' with regards to others. Green, *Sufism*. Pg. 22. As another example of the unease the author has in using 'origins' frameworks while simultaneously accepting them: his introductory comments on the origins debate, after noting examples of suggested Muslim adoption of foreign legal institutions and narrative styles, on the one hand accepts that "certain early Sufis appear to have likewise adapted elements of Christian thought and practice for their own purposes. But unless we are working on the theological rather than the historical criterion that everything that is Islamic must come from the Quran, then such critical and selective adaptations need not render the final creations any less a product of the cosmopolitan Muslim circles of the ninth century Iraq. Rather than thinking in terms of 'adaptations' or 'borrowings,' we may be better off seeing the parallels as part of what has been described as a 'semiotic *koinê*' that was common to Muslims, Christians and Jews in the early centuries of Islamic rule." The example is telling. While initially accepting the notion of 'adaptation,' he then immediately discards it for the less precise framework because the former wording suggests lack of authenticity for the tradition. Ibid., pg. 17.

additionally try to be mindful that our language is not unnecessarily value-laden or inaccurate to the greatest extent possible (e.g., "borrowing" may not describe how Muslims who referenced biblical dicta saw it). My objective in asserting all of this is to create a practical space where I can suggest that Muslims could have and did cite information from the Torah, i.e. the information was *learned* and transmitted, that it originated from outside of their knowledge base (i.e. it did not emerge merely because of a shared environment), that our knowledge about this is indeed useful (as opposed to offensive or "ultimately irrelevant"[686]), and to also give weight to emic Muslim discussions that were concerned with sourcing, i.e. the origins of their law. While it would be inappropriate to say that those Muslims who may have cited the Torah were "borrowing" "foreign" material, since the Torah appears to have been a legitimate source of law for them within their own tradition, it would be harmful to preclude the possibility that such citations existed by asserting conversations about transmission and origins are unacceptable to have. Some of the expectations laid out by this more reactive trend in scholarship, especially those espoused by Lena Salaymeh (see earlier footnotes) that scholarship must eschew the very *basic* proposition that something could originate from somewhere, are very impractical to abide by. By virtue of being overly-reactive to prior scholarship that overemphasized 'borrowing' (that had its own set of problems), this newer trend in scholarship runs the risk of making the mistake of assuming all similarities between legal thought *must* be because of shared environment and context alone, which is not necessary.

[686] "I dispose of the 'origins' questions entirely because they are… ultimately irrelevant" Salaymeh, *The Beginnings of Islamic Law*. Pg. 100.

Appendix B

# Prior Western Literature Related to *Shar‘ Man Qablanā*

The section is short, and includes a summary of some prior academic literature related to *shar‘ man qablanā*. The literature is not very extensive.

Very few Western scholars have engaged with the topic of *shar‘ man qablanā* as it appears in the Muslim legal sources, and those who have briefly touched on the issue have generally not taken it to be much more than a theoretical debate at most. Lena Salaymeh's affirmation of the existence of "open Muslim acknowledgment of the relevance of pre-Islamic traditions," citing the *shar‘ man qablanā* debate, would be a valuable acknowledgement of this topic, but her present research's emphasis on shared socio-political space and time being the primary explanation of parallels between Islamic and Jewish law make one wonder if her understanding of Muslim views regarding pre-Muḥammadan law can accommodate the possibility that Muslims may have viewed the Torah as a source of law. Her work spends a considerable amount of time trying to push back questions of origins and transmission, which, in the context of her discussions appeared to be a way to push back against past studies that have suggested Muslims took their law from a biblical or Talmudic source (which our study confirmed occurred on occasion).[687] One other notable example of the *shar‘ man qablanā*

[687] Salaymeh, The Beginnings of Islamic Law. Pg. 96. See note 71. Also, pg. 84, note 1, where she states: "How late antique and medieval Muslim scholars viewed the relationship between Islamic law and pre-Islamic legal traditions is the subject of my ongoing and future research. Some scholars explored pre-

debates being referred to were comments made by Ahmed El Shamsy which were cited in Chapter 1.

The absence of this fascinating 'disputed source of law' in the writings of so many scholars of Islamic law is no doubt symptomatic of a tendency to view post-classical legal texts as generally insignificant. As Hallaq explains, "The position of the majority of today's Islamicists is predominantly this: that Islamic law was laid down in the first three or four centuries of Islam; that legal creativity was exhausted immediately thereafter; and that new ideas and principles have not evolved since then. The entire legal literature of Islam after the third-fourth/minth-tenth centuries is thus reduced to virtual nothingness."[688] He cites from Crone the rather illustrative sentiment of these scholars, "In practical terms… any legal work composed between 800 and 1800 may be cited as evidence of classical doctrine."[689] Hallaq responds to some of these long-held notions of stagnancy and in many of his writings on both legal theory and works dealing with positive law,[690] suggests, e.g., that the *uṣūl* literature is not repetitive but immensely rich and diverse in its expression of scholarly creativity,[691] and that the texts can help us understand the interconnectedness of theory and positive law.[692]

---

Islamic divine laws as a source of Islamic law; some scholars noted the ways in which Islamic law overruled pre-Islamic, pagan tribal laws; other scholars claimed that Islamic law was revolutionary, new, and authentically Islamic."

[688] Wael B. Hallaq, "Uṣūl al-Fiqh: Beyond Tradition," *Journal of Islamic Studies* 3 (1992): 172–202. Pg. 175f.
[689] Ibid., pg. 176.; Crone, *Roman, Provincial and Islamic Law*. Pg. 19.
[690] On *uṣūl al-fiqh*, refer to Hallaq, "Uṣūl al-Fiqh: Beyond Tradition."; And *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh* (Cambridge: Cambridge University Press, 1997).; For his works on *furū'* addressing this same issue of supposed stagnation, refer to "Was the Gate of Ijtihad Closed?," *International Journal of Middle Eastern Studies* 16, no. 1 (1984): 3–41.; "From Fatwas to Furū': Growth and Change in Islamic Substantive Law," *Islamic Law and Society* 1, no. 1 (1994): 29–65.
[691] Hallaq, "Uṣūl al-Fiqh: Beyond Tradition." Pg. 179.
[692] Ibid., pg. 182.

Yet, even when Hallaq[693] and Mohammad Hashim Kamali[694] treat the topic of *shar‘ man qablanā* (and it is noteworthy that these are not dedicated studies, but part of larger studies on *uṣūl al-fiqh* topics in general), their treatments suggest that this debate had little practical significance on the derivation of Islamic law.[695] Their summaries are short and they ultimately rely on only a few sources. Éric Chaumont,[696] writing a limited but dedicated study on the topic, refers only to a small sample of sources, declares the debate as merely theoretical and does not

---

[693] See, Hallaq, "Uṣūl Al-Fiqh: Beyond Tradition." Pgs. 184-185.; Also, Hallaq, *A History of Islamic Legal Theories*. Pgs. 115-117.

[694] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd ed. (Cambridge: Islamic Texts Society, 2003). Pgs. 306-312.

[695] In his article, "Uṣūl al-Fiqh: Beyond Tradition," Hallaq makes a brief reference to the topic as an example of a primarily theological and intellectual debate in *uṣūl al-fiqh* with very little practical relevance to juridical reality. He specifically references the exclusion of the topic from Shāṭibī's *Muwāfaqāt* as proof of the author's prioritization of the practicalities of deriving actual positive law over engaging in theoretical discussions in his work. Hallaq is mistaken however, in that Shāṭibī *does* list pre-Muḥammadan law as one of the "transmitted" sources of the *sharī‘ah* in his work, in addition to treating the topic and giving his own opinion in favor of it to defend his use of the example of Abraham in a matter he discusses. See pgs. 184-185 of Hallaq's article; and for al-Shāṭibī, see vol. 3, pgs. 227-228, vol. 2, pg. 461, vol. 3, pgs. 365-367, and vol. 4, pgs. 258-261 from Ibrāhīm b. Mūsā b. Muḥammad al-Shāṭibī, *Al-Muwāfaqāt*, ed. Abū 'Ubaydah Āl Salmān, 1st ed., 7 vols. (Dār b. 'Affān, 1997).; In his monograph, *A History of Islamic Legal Thought*, Hallaq gets to provide a more dedicated treatment of the topic, though using few sources. Describing the sides in this debate in truncated format and their respective arguments based in Quranic text and ḥadīth literature (which we will explore in greater depth), he points out that the debate over whether the Prophet referred to other scriptures was "not so theoretical," since it "determined in turn whether or not a theorist would accept Christian and Jewish scriptures as a source of the law" (pg. 115). Yet his presentation of this topic in mere outline format, the fact he makes no effort to find out the jurists who may have held any of the positions in the debate (and note his usage of the word 'theorists' in the debate as opposed to 'jurists'), nor demonstrate the practical ramifications that this debate may have had on positive law as he does elsewhere (see his treatment a few pages earlier of *maṣāliḥ mursala* on pg. 112f and *istiḥsān* on pgs. 107-111, e.g.), along with his own seeming interjection in favor of the position rejecting other scriptures as sources of law based on *his* own reading of the Prophet's mission, stops the debate from signifying anything more than a theoretical exercise. See pgs. 115-117.; See the following statement from al-Kamali where he cuts off any practical ramifications of this debate: "Finally, it may be added, as Abū Zahrah has pointed out, that disagreement among jurists on the authority or otherwise of the previous revelations is of little practical consequence, as the Sharī'ah of Islam is generally self-contained and its laws are clearly identified." See Kamali, *The Principles of Islamic Jurisprudence*. Pg. 312.

[696] Éric Chaumont, "Nous et la loi des autres: La question du statut des lois antérieurement révélées (shar' man kâna qablanâ) en théorie légale sunnite," in *Droits et cultures: Mélanges en l'honneur du Doyen Yadh Ben Achour*, ed. Kalthoum Meziou et al. (Tunis: Centre de Publication Universitaire, 2008), 83–105.

note jurists who held specific positions. He pre-empts the possibility that Muslims could have had any practical interest in pre-Muḥammadan scripture, because he assumes as a point of departure that all Muslims must believe in the doctrine that the Jews and Christians falsified the Bible. Thus, a position where the pre-Muḥammadan scriptures could be referred to directly or through some verifying intermediary couldn't *actually* be held even if the *uṣūl* texts say the position existed: "Les textes, comme les religions qui en sont issues, sont disqualifiés dès le départ pour tous les protagonistes du débat."[697] Chaumont tantalizes us, however, with his speculation that an acceptance of other scriptures' legal utility might've existed in the very early, pre-classical period, prior to the 'imposition' of the doctrine of *taḥrīf* among Muslims (and here he assumes textual *taḥrīf*).[698]

Walid Saleh has studied the fascinating late exegete al-Biqāʿī (d. 885/1480), who openly studied the Bible and used it as a way to explain the Qur'ān. While he doesn't seem to have defended the use of the bible in Islamic law, he defends his use of biblical material in exegesis against fierce critics in his time by noting that others in the Muslim tradition did (as our *uṣūl* sources also indicate). He even suggested that the Torah was epistemically as reliable as the ḥadīth literature as a whole, in that corrupted material in it could similarly be sifted from the uncorrupted parts.[699] This appears to have been an idea made earlier by al-Juwaynī as we saw.

---

[697] Ibid., pg. 89. Trans: "The texts, like the religions that come from them, are disqualified from the beginning for all the protagonists of the debate."

[698] "A ma connaissance, ce point de vue n'est plus défendu par personne au Vème/XIème S., mais il est intéressant de remarquer qu'il l'a sans doute été en islam « pré-classique », avant, sans doute, que le dogme du *tahrîf* ne se fut imposé. Un islam moins communautariste, moins replié sur lui- même, a peut-être existé durant sa prime jeunesse. " Ibid., pg. 91. Trans: To my knowledge, this point of view is no longer defended by anyone in the 5th / 11th century [i.e. when al-Sarakhsī was alive], but it is interesting to note that it was probably in "pre-classical" Islam, before, no doubt, the dogma of *taḥrīf* was imposed. A less communitarian Islam, less withdrawn, may have existed in its early period."

[699] Walid A. Saleh, "A Fifteenth-Century Muslim Hebraist: Al-Biqāʿī and His Defense of Using the Bible to Interpret the Qur'ān," *Speculum: A Journal of Medieval Studies* 83, no. 3 (2008): 629–54.

Saleh finds the example of al-Biqā‘ī "revolutionary," as evidenced by the controversy he stirred up in his day.[700] Saleh himself is quite clear that presumably before this, "Muslims hardly, if ever, used the Bible to argue for a religious truth or to deduce from it a divine message or a legal ruling," the possible exception being the rather murky early past, where he notes the case of the Islamic adoption of stoning as a punishment for adultery in the Prophet's life, which was a Biblical and not Qur'ānic injunction (though some Muslims scholars would hold the rule as reflecting an abrogated Qur'ānic verse).[701] Just as with Chaumont, Saleh shortchanges the implications of *taḥrīf al-ma'ānī* by suggesting it was a "modification" and "adoption" of the original notion of *taḥrīf* (for him the original was actual scriptural falsification), and done so "in order to allow Muslims to use the Bible apologetically, to argue from the Bible for the coming of Muhammad. It was not a doctrinal position developed to enable Muslims to use the Bible as a source of guidance."[702] Just as with Chaumont, Saleh tantalizes us by suggesting "Al-Biqā‘ī's position pointed to a possibility that was latent in Islam – and that was manifest in the early phase of Islam – *but never fully articulated or given expression*."[703] While "al-Biqā‘ī shows us that Islam could have appropriated the Bible" and that "[i]ndeed early Islamic tradition passed through such a phase," here likely referring to al-Biqā‘īs references to prior precedent and the previously stated practice of stoning, "the tradition ultimately decided against that option" out of "imperial considerations and practical religious expediency." What he means by the former is that Muslims, from a position of strength, no longer needed to refer to the precedent of the people of the book, while the issue of expediency was that acceptance of the Bible as relevant for the sharī‘ah would require Muslims to be "competent in Hebrew as the Jews were, something

[700] Ibid., pgs. 630-631.
[701] Ibid., pg. 632. See note 11.
[702] Ibid., pg. 632.
[703] Ibid., pg. 652. Italics mine.

they could never claim," and so the "Sharī'ah opted for legal indifference"[704] in its more "benevolent" form while it also "frowned upon reading [the other scriptures] or even touching them."[705] Saleh also seems to subscribe to the notion of a unified Muslim tradition that may have accepted Jewish scripture at some point, but which was discontinued by the tradition as a whole before being reignited by an aberrant example like al-Biqā'ī. What this precludes is the possibility of diversity or any form of continuity from this first Islamic period, which both he and Chaumont, perhaps also influenced by prior scholarship writing on this, imagine to be a time when Muslims may have openly borrowed from biblical precedent (but which we have little record of), and also assumes a scholar like al-Biqā'ī is articulating a position from a pseudo-vacuum. My project hopefully offered an alternative framework to these.

[704] Ibid., pg. 654.
[705] Ibid., pg. 645.

Appendix C

# Establishing that Pre-Muḥammadan Law was Open to Abrogation: The Case of Mosaic Law

This section presents a fascinating theoretical legal discourse on whether the laws of the prophets are subject to abrogation. The discussion addresses a claim made by Jews that according to *mass-transmitted* statements made by Moses ﷺ, Mosaic law could not be abrogated. According to formalized Islamic legal theory, mass-transmitted reports must be accepted as true. This obviously posed a conundrum for the jurists, since the prior claim about Mosaic law would of course conflict with Islamic notions that the Prophet's *sharī'ah* abrogated laws that came before him, an obvious example being the Sabbath. The jurists are forced to engage with Jewish history and their own knowledge of the Torah and its transmission to address this claim.

Within works of legal theory, the topic of pre-Muḥammadan law was often discussed within the context of abrogation (*naskh*), as one of the 'disputed sources' (الأصول الموهمة) of Islamic law, or under the category of *Istiṣḥāb*. For the Muslims writing on this topic, it was agreed that the sharī'ah of Muḥammad abrogated the sharī'ah of pre-Muḥammadan communities in some form, at the very least in matters where they disagreed.[706] The Qur'ān thus proclaims that the Prophet ﷺ relieved his Jewish and Christian followers of the "burdens" and "shackles"

[706] al-Ghazālī states that this is a matter of consensus (*ijmā'*), though Ibn Ḥazm believes the sharī'ah of Islam *is* the sharī'ah of Abraham. See: Abū Ḥāmid al-Ghazālī, *Al-Mustaṣfā*, ed. Muḥammad 'Abd al-Salām 'Abd al-Shāfi'ī (Dār al-Kutub al-'Ilmiyyah, 1993). Pg. 89.

that were upon them before (7:157[707]), and elsewhere notes the difficult laws that were imposed upon the Jews for their prior wrong doings (16:118[708], 4:160[709]).[710] The new law of the Prophet ﷺ was thus an alteration, in at least some ways, of what came before. Discussions regarding the utility of pre-Muḥammadan law were thus an exercise in understanding the extent to which these laws were abrogated. And if they were not abrogated fully, then these discussions sought to elaborate how they applied.

In works of legal theory, discussions of *naskh* were primarily meant to establish and frame a core legal tenant among Muslim jurists that laws revealed to the Prophet ﷺ could be abrogated by laws revealed to him at some later point, a hermeneutical tool that could be used to explain seemingly contradictory legal evidence in the Islamic sources. This tenant was accepted by practically all Muslim jurists save a fringe minority.[711] The discussions on *naskh*, however,

---

[707] الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الْأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْتُوبًا عِندَهُمْ فِي التَّوْرَاةِ وَالْإِنجِيلِ يَأْمُرُهُم بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنكَرِ وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ ۚ فَالَّذِينَ آمَنُوا بِهِ وَعَزَّرُوهُ وَنَصَرُوهُ وَاتَّبَعُوا النُّورَ الَّذِي أُنزِلَ مَعَهُ ۙ أُولَٰئِكَ هُمُ الْمُفْلِحُونَ ۝

"those who follow the Messenger, the ummī Prophet, whom they find in the Torah and Gospel with them. He commands what is good and forbids them from what is bad, and makes lawful for them *al-ṭayyibāt* and prohibits *al-khabā'ith*. He removes from them their burdens and the shackles that were upon them. So those that believe in him, assist him, support him, and follow the Light that has been sent down with him – it is they who will succeed" ۝

[708] وَعَلَى الَّذِينَ هَادُوا حَرَّمْنَا مَا قَصَصْنَا عَلَيْكَ مِن قَبْلُ ۖ وَمَا ظَلَمْنَاهُمْ وَلَٰكِن كَانُوا أَنفُسَهُمْ يَظْلِمُونَ ۝

"And upon the Jews We have forbidden what we related to you before, and We wronged them not, but they wronged themselves." ۝

[709] فَبِظُلْمٍ مِّنَ الَّذِينَ هَادُوا حَرَّمْنَا عَلَيْهِمْ طَيِّبَاتٍ أُحِلَّتْ لَهُمْ وَبِصَدِّهِمْ عَن سَبِيلِ اللَّهِ كَثِيرًا ۝

"And for the evildoing of those from among the Jews, We forbade them good things (*al-ṭayyibāt*) that were permitted to them, and for their barring of many from the way of God" ۝

[710] For a more extensive treatment of Muslim perceptions of Islamic law being one of ease when compared with Jewish law, see: Ze'ev Maghen, *After Hardship Cometh Ease: The Jews as Backdrop for Muslim Moderation*, Reprint 2012 edition (Berlin & New York: Walter De Gruyter Inc, 2006).

[711] This position is attributed to the mu'tazilī Abū Muslim 'Amr b. Yaḥyā al-Aṣfahānī by Abū Isḥāq al-Shīrāzī (d. 476 AH). Ibn Aqīl (d. 513 AH) also transmits this, though notes Abū Muslim didn't oppose abrogation in theory (عقلا), but that he just didn't believe it occurred (شرعا). Al-Dimashqī (d. 885 AH) states al-Aṣfahānī's position was only regarding laws found in the Qur'an, not in general. Examples of clear abrogation within the Islamic sharī'ah are pointed to as rebuttals to this claim, including the change made to the direction of prayer from the Temple in Jerusalem (بيت المقدس) to the Ka'bah. See Abū Isḥāq al-Shīrāzī, *Al-Tabṣirah Fī Uṣūl al-Fiqh*, ed. Muḥammad Ḥasan Hītū (Damascus: Dār al-Fikr, 1403). Pg. 251; Also: Ibn 'Aqīl, *Al-Wāḍiḥ Fī Uṣūl al-Fiqh*, ed. 'Abd Allāh b. 'Abd al-Muḥsin al-Turkī, 5 vols. (Beirut, Lebanon: Mu'assisat al-Risālah, 1999). Vol. 4, pg 196; Also: "Alā" al-Dīn al-Dimashqī al-Ḥanbalī, *Al-Taḥbīr: Sharḥ al-Taḥrīr Fī Uṣūl al-Fiqh*, ed. 'Abd al-Raḥmān al-Jabrayn, 'Iwaḍ al-Qarnī, and Aḥmad al-Sirāḥ, 1st ed., 8 vols. (Riyadh: Maktabat al-Rushd, 2000). Vol. 6, pg. 2986.; Also: al-Jaṣṣāṣ (d. 370 AH)

were frequently also used to expand on an interreligious point of contention between Muslims and Jews on whether Mosaic law could be abrogated. While the issue certainly had a theological component to it that was debated from at least the 3rd/9th century[712] and was featured in literature outside the realm of Muslim legal theory in addition to Jewish writings[713], it bears relevance to our discussion of pre-Muḥammadan law by affirming that it could be abrogated as a foundational principle, and so warrants being noted here.[714] The authors' reference to biblical material in the course of this discussion also allows one to explore Muslim scholarly knowledge of the bible.

---

identifies them as a later Muslim phenomenon (فريق من أهل الملة من المتأخرين لا يعتد بهم). See: Abū Bakr al-Jaṣṣāṣ, *Al-Fuṣūl Fī al-Uṣūl*, 2nd ed., 4 vols. (Kuwait: Wizārat al-Awqāf al-Kuwaytiyyah, 1994). Vol. 2, pg. 215.

[712] The earliest record known to me of this interreligious polemic on Mosaic law goes back to the 3rd/9th century as pointed out by John Wansbrough, in a report detailing a debate between the Mu'tazilī theologian Ibrāhīm al-Naẓẓām (c. 230/845) and an unknown Jew by the name Yassā b. Ṣāliḥ. Their debate engages with whether abrogation conflicts with divine wisdom (الحكمة) and the possibility that Moses declared his sharī'ah as binding for all times (إلى الأبد). For the Mu'tazilī, the intrinsic goodness (*ḥusn*) associated with a command was not in the command itself, but in following God's command, which can change according to God's wisdom, whereas the Jewish interlocutor presents intrinsic good as being linked to the command itself, thus making it irrevocable. As the debate unfolds, Yassā asks his Muslim interlocutor to explain how the sharī'ah of Moses could have been true if Moses also declared that it was binding for all times ("هي عليكم إلى الأبد ومن لم يعمل بها فاقتلوه") – an apparent Torah reference, if we simultaneously also grant that it was abrogated. Ibrāhīm states that Moses' cited words declaring the continuity of his sharī'ah would have to be accepted, since he came with miracles that affirmed the truth of his prophethood (miracles being a key proof of prophecy in Islamic *kalām*). However, his statement would need be interpreted as intending to convey a long period of time, *not* everlastingness. Ibrāhīm then goes on to cite Jeremiah 31:31-32 as proof for the necessary abrogation of Moses' sharī'ah, "THE LORD SAYS I WILL MAKE FOR ISRAEL AND THE HOUSE OF JUDAH A NEW COVENANT, NOT LIKE THE COVENANT I MADE FOR THEM WHEN I TOOK THEM [BY THE HAND] OUT OF EGYPT" (as it appears in the text: "يقول الرب سأشرع لإسرائيل ولبيت يهوذا عهدا جديدا لا كالعهد الذي شرعت لهم إذ أخرجتم من مصر"), in addition to the story of Abraham, who was commanded to slaughter his son before being forbidden to do so at the final moment – a case of abrogation. This report is from a collection of Christian Arabic writings from the 9th-13th centuries AD. For Wansbrough's comments on this exchange and his translation, see: John Wansbrough, *The Sectarian Milieu: Content and Composition of Islamic Salvation History* (London: Oxford University Press, 1978). Pgs. 110-112; For the original text in question, see: P. Louis Cheikho, Louis Malouf, and Constantin Bacha, eds., "Nubdha Thāniyah Fī Naskh Al-Sharā'i," in *Vingt Traités Théologiques d'auteurs Arabes Chrétiens (Maqālāt Dīniyya Qadīma Li Ba'ḍ Mashāhīr al-Katabah al-Naṣārā)*, 2nd ed. (Beirut: Imprimerie Catholique, 1920), 68–70. The text appears to be based on an unattributed manuscript fragment. Refer to the editors' comments on pg. 68.

[713] For a broader treatment of this debate on Mosaic law and abrogation, especially as it occurred in works outside of legal theory and in Jewish sources themselves, see: Camilla Adang, "Chapter Six: The Abrogation of the Mosaic Law," in *Muslim Writers on Judaism and the Hebrew Bible: From Ibn Rabban to Ibn Hazm* (Brill, 1996), 192–222.; Also: Daniel Boušek, "The Abrogation of Mosaic Law in Judaism's Medieval Polemic with Islam: Se'adyah Gaon, Ya'qūb al-Qirqisānī, Maimonides," in *Jewish Studies in the 21st Century: Prague - Europe - World*, ed. Marcela Zoufalá (Wiesbaden: Harrassowitz, 2014), 29–57.

[714] One of the first to address this topic in a work of *uṣūl al-fiqh* was the Ḥanafī al-Jaṣṣāṣ (d. 370 AH), who admits that his treatment of the topic is somewhat tangential in his own discussion of *naskh*, yet he defends its inclusion because of its relevance to abrogation broadly speaking:

In the Muslim sources, Jewish rejection of legal abrogation was based in two claims. The first was that if God changed His laws, this would indicate some deficiency in God's omniscience or wisdom, since God would only legislate what was intrinsically good for all times, and changing those laws would indicate an alteration based on new and previously unaware realities that necessitated the abrogation. The first claim appears to have been informed by earlier multi-confessional debate gatherings where we believe this debate first emerged, where Mu'tazilite styles of discourse referencing intrinsic good and evil helped shape the language of debates involving multi-confessional parties.[715] Various responses were offered: the goodness and benefit that we associate with God's commands and indicative of divine wisdom is subject to change based on circumstances and thus also the laws themselves;[716] God is not bound by human assessments of intrinsic good and wisdom and so this cannot be cited to negate abrogation;[717] and that abrogation does not conflict with God's omniscience, since God commands laws

وَقَدْ تَكَلَّمَ النَّاس عَلَيْهِمْ فِي هَذَا الْبَابِ بِأَشْيَاءَ كَثِيرَةٍ لَا انْفِصَالَ لَهُمْ مِنْهَا، وَلَيْسَ غَرَضُنَا فِي هَذَا الْمَوْضِعِ الْكَلَامَ عَلَى هَؤُلَاءِ وَإِنَّمَا الْقَصْدُ الْكَلَامُ فِي أُصُولِ الْفِقْهِ إلَّا أَنَّهُ لَمَّا عَرَضَ فِيهِ الْقَوْلُ بِالنَّسْخِ أَحْبَبْنَا أَلَا نُخَلِّيَهُ مِنْ جُمْلَةٍ تَدُلُّ عَلَيْهِ وَعَلَى بُطْلَانِ قَوْلِ مَنْ أَبَى ذَلِكَ مِنْ الْفِرْقَةِ الَّتِي تَنْتَحِلُ دِينَ الْإِسْلَامِ
See: al-Jaṣṣāṣ, *Al-Fuṣūl Fī al-Uṣūl*. Vol. 2, pg. 217.

[715] For some background on these debate gatherings, refer to pgs. 29-31 and footnoted references from Boušek, "The Abrogation of Mosaic Law in Judaism's Medieval Polemic with Islam."

[716] Though the language of intrinsic good (حسن) and evil (قبح) are hallmarks of mu'tazilī discourse (as in the case of Abū al-Ḥusayn al-Baṣrī), they appear in the writings of other sunnīs as well, either explicitly or in meaning through reference to concepts such as the benefits conferred by law (مصلحة/منفعة). See: Abū al-Ḥusayn al-Baṣrī, *Al-Mu'tamad Fī Uṣūl al-Fiqh*, ed. Khalīl al-Mays, 1st ed., 2 vols. (Beirut, Lebanon: Dār al-Kutub al-'Ilmiyyah, 1403). Vol. 1, pg 370-371.; Also: Abū al-Muẓaffar al-Sam'ānī, *Qawāṭi' al-Adillah Fī al-Uṣūl*, ed. Muḥammad Ḥasan Ismā'īl, 1st ed., 2 vols. (Beirut, Lebanon: Dār al-Kutub al-'Ilmiyyah, 1999). Vol. 1, pg 420.; Also: al-Jaṣṣāṣ, *Al-Fuṣūl Fī al-Uṣūl*. Vol. 2, pg. 216.; Also Muḥammad b. Aḥmad al-Sarakhsī, *Uṣūl Al-Sarakhsī*, ed. Abū al-Wafā al-Afghānī, 2 vols. (Hyderabad: Lajnat Iḥyā' al-Ma'ārif al-Uthmāniyyah, 1993). Vol. 2, pg 56.; Also: al-Qāḍī Abū Ya'lā, *Al-'Uddah Fī Uṣūl al-Fiqh*, ed. Aḥmad b. 'Alī al-Mubāraki, 2nd ed. (Riyadh, 1990). Vol. 3, pg. 776.

[717] See, e.g.: Ibn Ḥazm al-Andalusī al-Ẓāhirī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*, ed. Aḥmad Muḥammad Shākir, 8 vols. (Beirut: Dār al-Āfāq al-Jadīdah, n.d.). Vol. 4, pgs. 67-68, and 71. Ibn Ḥazm articulates that rules are merely associated with periods of time, and not with any intrinsic reason or benefit that can be ascertainable. The laws the Israelites followed during the exodus differ from what they were commanded in Jerusalem, just as the Jews follow some laws on the Sabbath which they do not on other days. In similar fashion, Mosaic law ceased to be relevant after the coming of the Prophet ﷺ, who Ibn Ḥazm notes is prophesied in the Torah, making references that appear to be based on Isaiah 42:1 and Deuronomy 18:17-19; See also: Abū al-Mu'ālā al-Juwaynī, *Al-Burhān Fī Uṣūl al-Fiqh*, ed. Ṣalāḥ b. Muḥammad b. 'Uwayḍah, 1st ed., 2 vols. (Beirut, Lebanon: Dār al-Kutub al-'Ilmiyyah, 1997). Vol. 2, pg 250.; Also: Abū al-Mu'ālā al-Juwaynī, *Kitāb Al-Talkhīṣ Fī Uṣūl al-Fiqh*, ed. 'Abd Allāh Jawlim al-Nabālī and Aḥmad al-'Umarī, 3 vols. (Bairut: Dār al-Bashā'ir al-Islāmiyyah, n.d.). Vol. 2, pg. 470-471

knowing beforehand that they will be abrogated with new ones, thus not indicating a change in God's will based on new information (البداء) as is the case with human will.[718]

The second claim these sources attribute to the Jews was textual (سمعاً) as opposed to rational (عقلاً) as in the first case.[719] As the Muslim sources assert, Jews transmit from Moses ﷺ and the Torah the express statement that Mosaic law and the law of the Sabbath are everlasting and thus could not be abrogated, just as Muslims claim the same regarding their own sharī'ah. These references[720] appear to be loosely based on biblical passages such as Deuteronomy 7:9[721]

---

[718] See, e.g., the following comments on البداء in the following sources: al-Andalusī al-Ẓāhirī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 4, pg. 68-69. Refer also to pgs. 69-71, where he argues that such argument-based stipulations on God's will are irreverent and characteristic of Jewish writings.; Also: al-Jaṣṣāṣ, *Al-Fuṣūl Fī al-Uṣūl*. Vol. 2, pg. 215-216.; Also: Abū Ya'lā, *Al-'Uddah Fī Uṣūl al-Fiqh*. Vol. 3, pg 774 and 776.; Also: al-Shīrāzī, *Al-Tabṣirah Fī Uṣūl al-Fiqh*. Pg. 253.; Also: al-Baṣrī, *Al-Mu'tamad Fī Uṣūl al-Fiqh*. Vol. 1, pg 372.; Also: al-Sam'ānī, *Qawāṭi' al-Adillah Fī al-Uṣūl*, 1999. Vol. 1, pgs. 420-421.

[719] Al-Āmidī, likely going off of comments from al-Bāqillānī, suggests that the Rabbinites (الشمعنية) were opposed to abrogation of Mosaic laws based on received knowledge and not because they believed it was rationally impossible to occur, whereas the Karaites (العنانية) were against it on both grounds. He places the 'Īsāwiyyah, a Jewish group that accepted the prophethood of Muḥammad but only for the Arabs, as accepting abrogation on both rational grounds and through received knowledge because of their acceptance of the Prophet Muḥammad ﷺ. See: Abū al-Ḥasan al-Āmidī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*, ed. 'Abd al-Razzāq Afīfī, 4 vols. (Beirut/Damascus: al-Maktab al-Islāmī, n.d.). Vol. 3, pg. 115.; For the related discussion in al-Bāqillānī's *Tamhīd*, which was not referred to for this study but appears to have informed al-Āmidī's comments, see: Abū Bakr al-Bāqillānī, *Al-Tamhīd*, ed. Richard McCarthy (Beirut: al-Maktabah al-Sharqiyyah, 1957). Pg. 160.; Refer to the earlier referenced Camilla Adang piece for Jewish engagement with this topic.

[720] The following examples indicate that the reporting of this information was a paraphrasing in the sources:
Al-Jaṣṣāṣ (d. 370 AH) [Vol. 2, pg 210]:
فَإِنْ قَالَ قَائِلٌ إِنَّ الْيَهُودَ تَزْعُمُ أَنَّ فِي التَّوْرَاةِ الْأَمْرَ بِالتَّمَسُّكِ بِالسَّبْتِ مَا دَامَتْ السَّمَوَاتُ وَالْأَرْضُ
Abū Zayd al-Dabbūssī (d. 430 AH) [pg. 228]:
فقد احتجوا بأنهم وجدوا في التوراة تمسكوا بالسبت ما دامت السموات والأرضون
Al-Qāḍī Abū Ya'lā (d. 458 AH) [Vol. 3, pg. 777]:
روي عن موسى عليه السلام أنه قال شريعتي مؤبدة ما دامت السموات والأرض
Abū Isḥāq al-Shīrāzī (d. 476 AH) [pg. 254]:
وَاحْتج قوم من الْيَهُود بِأَن مُوسَى عَلَيْهِ السَّلَام قَالَ لَهُم شريعتي مُؤَبّدَة
Al-Juwaynī (d. 478 AH) [Vol. 2, pg 251]:
وادعى طوائف من اليهود أن موسى عليه السلام أنبأهم أن شريعته مؤبدة إلى قيام الساعة
Ibn Aqīl (d. 513 AH) [vol. 4, pg 212]:
... ما حكته اليهودُ عن موسى عليه السلام، أنهُ قال شريعتي مؤبدةٌ ما دامت السماوات والأرض، وبعضهم يروي أنه قال الزموا السبتَ أبداً
Fakhr al-Dīn al-Rāzī (d. 606 AH) [vol. 3, pg. 301]:
قالوا ثبت بالتواتر إن موسى عليه السلام قال تمسكوا بالسبت أبدا وقال تمسكوا بالسبت ما دامت السموات والأرض
Refer to: al-Jaṣṣāṣ, *Al-Fuṣūl Fī al-Uṣūl*.; Also: Abū Zayd al-Dabbūssī, *Taqwīm Al-Adillah Fī al-Uṣūl al-Fiqh*, ed. Khalīl Muḥyī al-Dīn al-Mīs, 1st ed. (Dār al-Kutub al-'Ilmiyyah, 2001).; Also: Abū Ya'lā, *Al-'Uddah Fī Uṣūl al-Fiqh*.; Also: al-Shīrāzī, *Al-Tabṣirah Fī Uṣūl al-Fiqh*. Also: al-Juwaynī, *Al-Burhān Fī Uṣūl al-Fiqh*.; Also: Ibn 'Aqīl, *Al-Wāḍiḥ Fī Uṣūl al-Fiqh*.; Also: Fakhr al-Dīn al-Rāzī, *Al-Maḥṣūl*, ed. Ṭāhā Jābir Fayyāḍ al-'Alwānī, 6 vols. (Mu'assisat al-Risālah, 1997).

[721] Know therefore that YHWH your God is God; He is the faithful God, keeping His covenant of love to a thousand generations of those who love him and keep his commandments.

and 11:11[722], and Exodus 31:16[723]. The Jews also claim that these words have reached them through mass transmission (التواتر),[724] a form of reporting that yielded epistemic certainty for their Muslim interlocutors. While these authors had no issue defending legal abrogation in theory, these express statements reported from Moses ﷺ and a pre-Muḥammadan revealed scripture posed a unique challenge, for they were comparable to Islam's own claims of finality. The authors responded to these claims in a number of ways. Some note the Jewish transmission of the Torah could not be trusted, given the Qur'ān's assertions that they altered the scriptures.[725] The claimed mass transmission of the Torah was similarly rejected. While the Torah may have been transmitted in later history by large numbers of Jews, mass-transmission required that similar numbers be present contiguously through a chain of transmission which was not the case in their transmission.[726] Large numbers of Jews who would have transmitted the text were killed by Nebuchadnezzar (بختنصر)[727]. Some of the surveyed authors attempted to cast doubt on these

וְיָדַעְתָּ֣ הַיּ֗וֹם כִּי־יְהוָה֮ אֱלֹהֶ֣יךָ הוּא֒ הָאֱלֹהִ֗ים הַנֶּאֱמָ֤ן שֹׁמֵר֙ הַבְּרִ֣ית וְהַחֶ֔סֶד לְאֹהֲבָ֖יו וּלְשֹׁמְרֵ֣י מִצְוֹתָ֑ו ״מִצְוֹתָיו״ לְאֶ֖לֶף דּֽוֹר

[722] Love YHWH your God and keep His requirements, His decrees, His laws and His commands for all the days.

וְאָהַבְתָּ֞ אֵ֣ת יְהוָ֣ה אֱלֹהֶ֗יךָ וְשָׁמַרְתָּ֞ מִשְׁמַרְתּ֤וֹ וְחֻקָּתָיו֙ וּמִשְׁפָּטָ֔יו וּמִצְוֹתָ֖יו כָּל־הַיָּמִֽים

[723] The Israelites are to observe the Sabbath, observing it for the generations as a lasting covenant.

וְשָׁמְר֥וּ בְנֵי־יִשְׂרָאֵ֖ל אֶת־הַשַּׁבָּ֑ת לַעֲשׂ֤וֹת אֶת־הַשַּׁבָּת֙ לְדֹרֹתָ֔ם בְּרִ֥ית עוֹלָֽם

[724] See: al-Sarakhsī, *Uṣūl Al-Sarakhsī*. Vol. 2, pg 55.; Also: al-Āmidī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 3, pg. 120.; Also: Shihāb al-Dīn Aḥmad b. Idrīs al-Qarāfī, *Sharḥ Tanqīḥ Al-Fuṣūl*, ed. Ṭāhā 'Abd al-Ra'ūf Sa'd, 1st ed., 1 vols. (Sharikat al-Ṭibā'ah al-Fanniyyah al-Muttaḥidah, 1973). Pgs. 304-305.

[725] al-Dabbūssī, *Taqwīm Al-Adillah Fī al-Uṣūl al-Fiqh*. pg 230.

[726] al-Ghazālī, *Al-Mustaṣfā*. Pg. 107.; Maḥfūdh b. Aḥmad al-Kalwadhānī, *Al-Tamhīd Fī Uṣūl al-Fiqh*, ed. Mufīd Muḥammad Abū 'Amsha and Muḥammad Ibn 'Alī b. Ibrāhīm, 1st ed., 4 vols. (Saudi Arabia: Markaz al-Baḥth al-'Ilmī wa Iḥyā' al-Turāth al-Islāmī (Jāmi'at Umm al-Qurā), 1985). Vol. 3, pgs. 19. Note al-Kalwadhānī discusses this in his discussion on التواتر and is addressing a form of this reported statement from Moses that differs from the other authors and appears to be his own paraphrasing ("لا نبي بعدي").

[727] See: Abū Ya'lā, *Al-'Uddah Fī Uṣūl al-Fiqh*. Vol. 3, pg. 843-844.; Also: al-Rāzī, *Al-Maḥṣūl*. Vol. 3, pg. 305.; Also: Sirāj al-Dīn Maḥmūd b. Abī Bakr al-Armawī, *Al-Taḥṣīl Min al-Maḥṣūl*, ed. 'Abd al-Ḥamīd b. 'Alī Abū Zunayd, 2 vols. (Beirut, Lebanon: Mu'assisat al-Risālah, 1988). Vol. 2, pgs. 10-13.; Also: al-Qarāfī, *Sharḥ Tanqīḥ Al-Fuṣūl*. Pgs. 304-305.; Abū Bakr b. al-'Arabī (d. 543 AH) suggests that the Torah was burned twice (وقد أحرقت مرتين), perhaps an obscure reference to the first and second destructions of the Temple in Jerusalem. See: Abū Bakr Ibn al-'Arabī, *Al-Maḥṣūl Fī Uṣūl al-Fiqh*, ed. Sa'īd Fowda and Ḥusayn 'Alī al-Yadrī, 1st ed., 1 vols. (Amman: Dār al-Bayāriq, 1999). Pg. 145.; al-Qarāfī (d. 684 AH) explored this issue to a greater extent than the other authors. He records a debate with an unnamed Jewish contemporary, who claimed that what is transmitted among the Jews (المنقول عندنا) is that there were around 40 survivors who escaped to different regions of the world, a number that may have been sufficient for mass-

claims by transmitting a rather bizarre theory that the heretic Ibn al-Rāwandī (d. 298 AH) spread these ideas among the Jews,[728] and in some accounts, that they may have even paid him to do so[729]. Furthermore, the statement that Mosaic law was eternal could not be reconciled with the known miracles that Jesus ﷺ[730] and Muḥammad came with, miracles that sanctioned their respective messages which abrogated Mosaic law[731]; to reject their miracles would require the Jews to similarly reject the miracles confirming the prophethood of Moses ﷺ[732]. Additionally, if these statements were true about Mosaic law being eternally binding, then they would have been raised against the Prophet Muḥammad ﷺ in his own time, when the Jews were vehemently opposed to him and would have raised issue with him confirming Moses' prophethood while

transmission. The author responds that he disputes the authenticity of this. He adds that even if this was the case, those survivors may not have been those who preserved the Torah or aspects of its law. Being doubtful about the status of these transmitters makes us doubtful of the purported mass-transmission, and thus in the very foundation of their laws and claimed transmitted statements (such as this one from Moses). The author then engages with the uninformed (Muslim) reader, who might ask how Nebuchadnezzar could possibly have wiped out the Jews if they were spread out around the world. Al-Qarāfī responds that the Jews all lived together after leaving Egypt and migrated together to Jerusalem/the Temple (بيت المقدس), where Nebuchadnezzer found them all. In his narrative, these remaining Jews fled with Daniel (?) to Egypt. Nebuchadnezzar then pursued them to Egypt where he killed them, destroying the land of Egypt in the process. He references Ibn Diḥyah's النبراس في تاريخ بني العباس, that Egypt was completely razed along with its people. The Jews will admit all of this, al-Qarāfī claims, as there is no disagreement. While clearly indicating some interest in Israelite history, the author's remarks indicate limited knowledge on the topic. The reference to Daniel ending up in Egypt after the destruction of the Temple appears to be a possible confusion with Jeremiah, Nebuchadnezzar's destruction of Egypt *precedes* and does not follow the destruction of Jerusalem in the biblical account, and the number of 40 survivors his Jewish interlocutor claims as the figure transmitted among Jews is far less than numbers found in the bible of the Babylonian exiles (see, e.g., Jeremiah 52:28-30). See: Shihāb al-Dīn Aḥmad b. Idrīs al-Qarāfī, *Nafā'is al-Uṣūl Fī Sharḥ al-Maḥṣūl*, ed. 'Alī Muḥammad Mi'waḍ, 1st ed. (Maktabat Nizār Muṣṭafā al-Bāz, 1995). Vol. 6, pgs. 2434-2435. He repeats the claim that Daniel and a group of some 40 Jews escaped to Egypt on Pg. 2842 of the same volume.

[728] al-Shīrāzī, *Al-Tabṣirah Fī Uṣūl al-Fiqh*. Pg. 254.; Also: al-Juwaynī, *Kitāb Al-Talkhīṣ Fī Uṣūl al-Fiqh*. Vol. 2, pgs. 310 & 471.; Also: al-Kalwadhānī, *Al-Tamhīd Fī Uṣūl al-Fiqh*. Vol. 3, pgs. 19-20. Note al-Kalwadhānī discusses this in his discussion on التواتر and is addressing a form of this reported statement from Moses that differs from the other authors and appears to be his own paraphrasing ("لا نبي بعدي"); Also: al-Āmidī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 3, pg. 124.

[729] See: Abū Ya'lā, *Al-'Uddah Fī Uṣūl al-Fiqh*. Vol. 3, pg. 777.; Also: Ibn 'Aqīl, *Al-Wāḍiḥ Fī Uṣūl al-Fiqh*. Vol. 4, pg 213.

[730] Abū Ḥāmid al-Ghazālī, *Al-Mankhūl Min Ta'līqāt al-Uṣūl*, ed. Muḥammad Ḥasan Hītū, 3rd ed., 1 vols. (Damascus: Dār al-Fikr, 1998). Pg. 383. In the reference, al-Ghazālī only notes Jesus' abrogation of Mosaic law through his miracles.

[731] al-Āmidī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 3, pg 125.

[732] See: al-Juwaynī, *Al-Burhān Fī Uṣūl al-Fiqh*. Vol. 2, pg. 251.

simultaneously abrogating his sharī‘ah[733] - documentation of such opposition based in this scriptural evidence would necessarily have reached us through mass transmission because of its historical significance.[734] The Muslim authors offer as a counter the conversion of Jews like ‘Abd Allāh b. Salām and Wahb b. Munabbih in the early period, which would not have been reconcilable with the existence of this purported claim[735]. Ibn ‘Aqīl (d. 513 AH) claims that no such text existed in the Torah as translated into Arabic,[736] while al-Āmidī (d. 631 AH) suggests disagreement among the Jews on Moses’ recorded words, providing a variant statement of his that might allow for abrogation[737]. Many of the authors still allowed for the possibility that these

[733] See: al-Shīrāzī, *Al-Tabṣirah Fī Uṣūl al-Fiqh*. Pg. 254.; Also: Abū Ya’lā, *Al-’Uddah Fī Uṣūl al-Fiqh*. Vol. 3, pg. 778.; Also: al-Juwaynī, *Kitāb Al-Talkhīṣ Fī Uṣūl al-Fiqh*. Vol. 2, pgs. 471-472. The author extends this argument to Jesus as well.; Also: al-Kalwadhānī, *Al-Tamhīd Fī Uṣūl al-Fiqh*. Vol. 3, pgs. 19-20. Note al-Kalwadhānī discusses this in his discussion on التواتر and is addressing a form of this reported statement from Moses that differs from the other authors and appears to be his own paraphrasing (“لا نبي بعدي”). Here he also extends this argument to Jesus as well.; Also: Ibn ’Aqīl, *Al-Wāḍiḥ Fī Uṣūl al-Fiqh*. Vol. 4, pg. 212; Also, maybe cite report from Muqātil b. Sulayman about the sabab nuzul for the verse, أدخلوا في السلم كافة

[734] al-Juwaynī, *Al-Burhān Fī Uṣūl al-Fiqh*. Vol. 2, pg. 251.; Also: al-Juwaynī, *Kitāb Al-Talkhīṣ Fī Uṣūl al-Fiqh*. Vol. 2, pgs. 310-311.; Also: al-Ghazālī, *Al-Mankhūl Min Ta’līqāt al-Uṣūl*. Pg. 340.

[735] Ibn ’Aqīl, *Al-Wāḍiḥ Fī Uṣūl al-Fiqh*. Vol. 4, pg 213.; Also: al-Kalwadhānī, *Al-Tamhīd Fī Uṣūl al-Fiqh*. Vol. 3, pg 19-20. Note al-Kalwadhānī discusses this in his discussion on التواتر and is addressing a form of this reported statement from Moses that differs from the other authors and appears to be his own paraphrasing (“لا نبي بعدي”); Also: al-Āmidī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 3, pg. 124.

[736] Ibn ‘Aqil asserts that the Torah was known in Arabic (وقد علم ما في التوراة المنقول إلى العربي) and he conveys that prophets like Isaiah (أشيعيا), Simeon (شمعون) and Habakkuk (حبقوق) are referenced in this Torah translation, indicating that he may have had some first-hand knowledge of the text. However, Ibn ‘Aqīl also notes that this available Torah translation apparently mentioned the Prophet Muḥammad ﷺ, his ummah, and Mecca at the time of his prophethood, indicating to us that this translation was possibly serving an apologetic function. See: Ibn ’Aqīl, *Al-Wāḍiḥ Fī Uṣūl al-Fiqh*. Vol. 4, pg. 212.; In addition to the previous comments, Ibn ‘Aqīl appears to have had some other basic knowledge of the Torah as it related to apologetic material. In a discussion elsewhere in his *al-Wāḍiḥ*, he references the biblical prophecy (most likely a reference to Deutoronomy 18:17-19) of a prophet to come from whose mouth will emanate God’s words, linking it to the description of the Prophet ﷺ in Qur’ān 53:3-4. See Ibn ’Aqīl. vol. 5, pg. 403.;

[737] al-Āmidī (d. 631 AH) claims that some Jews transmit from Moses, “If you obey me in what I’ve commanded and prohibited, your kingdom will be established as the heavens and the earth,” (إِنْ أَطَعْتُمُونِي لِمَا أَمَرْتُكُمْ بِهِ وَنَهَيْتُكُمْ عَنْهُ ثَبَتَ مُلْكُكُمْ كَمَا ثَبَتَتِ السَّمَاوَاتُ وَالأَرْضُ) i.e. eternally. Al-Āmidī is likely basing his comments here on al-Baqillānī. The reference appears to be a summary of Deuteronomy 28, where God guarantees bounties to the Israelites provided they follow the commandments given to them. Deuteronomy 28:1, e.g., states, “And it shall come to pass, if thou shalt hearken diligently unto the voice of the LORD thy God, to observe to do all His commandments which I command thee this day, that the LORD thy God will set thee on high above all the nations of the earth.” [translations based on the JPS 1917 edition] See: al-Āmidī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 3, pg. 124.; For the reference in al-Bāqillānī’s al-Tamhīd (which was not extensively consulted for this study): al-Bāqillānī, *Al-Tamhīd*. Pg. 180.

transmitted statements from Moses ﷺ and the Torah were true, but if so, they stipulated the need to read them as rhetorically signifying a long time while allowing for later abrogation,[738] or instead applying to universal monotheism (التوحيد)[739]. Fakhr al-Dīn al-Rāzī (d. 606 AH), who appears to have possessed some command of the bible, attempted to demonstrate how the same language of 'eternality' does not convey a literal sense elsewhere in the Torah ( لفظ التأبيد في التوراة قد جاء للمبالغة دون الدوام في صور), citing four examples where the language of eternality was used but either couldn't mean that literally or couldn't be applied as such.[740] Al-Qarāfī (d. 684 AH), whose biblical knowledge as displayed in this case appeared less precise than al-Rāzī but perhaps more expansive, adds examples where God's commandments in the bible were abrogated,[741] as

[738] See: Abū Ya'lā, *Al-'Uddah Fī Uṣūl al-Fiqh*. Vol. 3, pg 778.; Also: Ibn 'Aqīl, *Al-Wāḍiḥ Fī Uṣūl al-Fiqh*. Vol. 4, pg 213.; Also: al-Rāzī, *Al-Maḥṣūl*. Vol. 3, pg. 305.; Also: al-Āmidī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 3, pg. 124.

[739] See: Ibn 'Aqīl, *Al-Wāḍiḥ Fī Uṣūl al-Fiqh*. Vol. 4, pg. 213; Also: al-Āmidī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 3, pg. 124.

[740] **[Case 1]** He references a biblical commandment that a slave is to be used for six years of labor before being freed on the seventh. If the slave chooses not to be freed, then his ear is pierced and he is to be used "forever" (أبداً), which only makes sense non-literally. His comments correspond with commandments pertaining to Hebrew slaves given in Exodus 21:2-6 and Deuteronomy 15:12-17, which both note the slave is forever the master's (Exodus 21:6: וַעֲבָדוֹ לְעֹלָם and Deuteronomy 15:17: וְהָיָה לְךָ, עֶבֶד עוֹלָם).
**[Case 2]** He says regarding the cow which the Jews were ordered to sacrifice (it appears al-Rāzī sees this as a reference to Qur'ān 2:67-71), it is said (قيل) that this is an everlasting law (يكون ذلك سنة أبداً), even though it is no longer practiced. He is likely referring to the red heifer sacrifice, noted in Numbers 19. The biblical passage in question discusses the red heifer that is to be sacrificed and burned, its ashes used for ritual purification. Numbers 19:10 notes that it is a statute "forever" (עוֹלָם). The practice ceased after the destruction of the temple. Note that the editor Dr. al-'Alwānī believes al-Rāzī's comments may be in reference to Deutoronomy 21 which also involves a heifer sacrifice, but Numbers 19 appears to be the more likely reference, given that the language of 'eternality' relevant to al-Rāzī's discussion.
**[Case 3]** Regarding Passover, Jews are commanded to sacrifice an animal (al-Rāzī states a camel) and eat its roasted meat, without breaking its bones. This is supposed to be an everlasting law for the Jews, but no longer practiced. Exodus 12:24 notes that the Passover sacrifice is a command binding on the Israelites and their progeny forever (עד־עולם), even though it ceased to be practiced after the destruction of the temple. Note the reference to camel meat appears to be a mistake from al-Rāzī, though the prohibition of breaking a bone is found in Exodus 12:46, as is the roast in Exodus 12:8-9.
**[Case 4]** According to Exodus (السفر الثاني), God commands that two lambs are to be offered to Him in the morning and evening, forever. This is a summary of Exodus 29:38-42, where the burnt-offering is a commandment that is to be done across the generations, continually (תמיד) at the Tent of Meeting before the LORD. Note the editor mistakenly places the passage in Exodus 31.
See: al-Rāzī, *Al-Maḥṣūl*. Vol. 3, pgs. 305-306.; Al-Rāzī is the first of the authors studied to document these cases. Others cite the same cases. See: al-Āmidī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 3, pg. 125.; Also: al-Armawī, *Al-Taḥṣīl Min al-Maḥṣūl*. Vol. 2, pgs. 10-13.; Also: al-Qarāfī, *Sharḥ Tanqīḥ Al-Fuṣūl*. Pg. 305.

[741] After listing the cases cited by al-Rāzī, al-Qarāfī presents additional cases from himself:

do others,[742] reflecting varying knowledge of biblical material that they may have had direct or indirect knowledge of. The authors also recognized that the Prophet Muḥammad ﷺ came with

---

**[Case 5]** The author claims that in the Torah if a thief steals a fourth time, his ear is pierced and he is sold into slavery. He claims that Jews are in agreement that this no longer applies. | I am unable to locate any biblical reference for this.

**[Case 6]** The author asserts that Jews and Christians are in agreement that God redeemed the child of Abraham from the original sacrifice that was ordered, as documented in the Torah. The authors says this is a very clear case proving the possibility of abrogation, as it illustrates how God can change his command. | Refer to Genesis 22.

**[Case 7]** In the Torah it was permitted in the *sharī'ah* of Abraham for a person to marry both a slave and free person, as in the marriage of Abraham to Sarah and Hagar. But this practice is also prohibited in the Torah. | I am unfamiliar with the biblical law on this matter, if there is one. Note that Hagar's marriage to Abraham in the bible is a point of debate, dependent on whether Hagar is the same person as Keturah, who did marry Abraham. Note: in the text of *Sharḥ al-Maḥṣūl* the author mistakenly refers to Jacob here as the husband of Sarah, whereas he correctly names Abraham in his *Sharḥ tanqīḥ al-fuṣūl*.

**[Case 8]** In the Torah, God commands Moses to leave with his people from Egypt and inherit the holy land promised to Abraham (the author presents it as a quote: أخرج أنت وشيعتك من مصر لترثوا الأرض المقدسة التي وعدت بها أباكم إبراهيم، أن أورثها نسله). But in the exodus, God says that they cannot enter because they have disobeyed Him ( لا تدخلوها لأنكم قد عصيتموني). These two commands are a clear case of abrogation, states the author. | Note that the author's quotation appears to be a summary of Deuteronomy 1:8 where Moses tells the children of Israel when they are in the wilderness to take possession of the land given to their fathers (mentioning Abraham, Isaac and Jacob and their descendants). Then in Deuteronomy 32: 48-52 God informs Moses that he will die before entering the land, just as Aaron did earlier, because he did not uphold God's holiness with the Israelites.

**[Case 9]** Work on the Sabbath was permitted before it was prohibited under Moses.

**[Case 10]** Hezekiah, who was king to the Jews (the text refers to حزقيال or Ezekiel the Prophet, but the story appears to be about Hezekiah, indicating a mistake in the printed edition or the original) became sick, and was told by Isaiah (أشعيا) through God's revelation, that he would die from his illness. The king, after hearing this, cried and prayed to God, so God informed Isaiah to tell Hezekiah that will arise from his sickness and come down from the Temple (الهيكل) after 3 days. The king's age was extended 15 years. The author states this is a clear example of *naskh* since God changed his original order that Hezekiah would die from his illness. He says there are other examples similar to this in the Torah. | Note, the story reflects Isaiah 38:1-5.

**[Case 11]** According to al-Qarāfī, in Genesis God declares that man would live no more than 120 years ( لما نظر بنو الله بنات الناس حسانا، ونكحوا منهم، قال الله تعالى:" لا تسكن الروح بعدها في بشر، وامهاتهم مائة وعشرين سنة), but the Torah also notes that Arphaxad (أرفخشذ) lived more than that. Arphaxad also had a son named Shelah (شالخ) who lived 463 years old. According to the author, he [Arphaxad?] is claimed to have lived 200 years, and Abraham 100. | The Genesis quote follows closely with Genesis 6:1-3. While it is possible the author had access to an Arabic translation of the Torah, he does not appear to have referenced it for the age information. According to Genesis 11:10-15, Arphaxad was 438 years old and Shelah 433.

**[Case 12]** Circumcision was allowed for the elderly in the sharī'ah of Abraham, but required on the day of birth under Moses. | The actual practice appears to have been done on day eight, based on Genesis 17:12. Note additionally that the discrepancy that he points out between Abraham's age and the circumcision of babies, however, doesn't appear to be a case of a change in legal injunction, given the context of Genesis 17.

**[Case 13]** Marrying between two sisters was allowed in the sharī'ah of Jacob but prohibited after him. | The obvious reference is to Jacob's marriage to Leah and Rachel (see Genesis 29), and the prohibition on marrying sisters being found in Leviticus 18:18.

See: al-Qarāfī, *Nafā'is al-Uṣūl Fī Sharḥ al-Maḥṣūl*. Vol. 6, pgs. 2430-2431.; See also al-Qarāfī, *Sharḥ Tanqīḥ Al-Fuṣūl*. Pg. 305-306. He repeats cases 5-9 in this latter source, which come from his earlier written Sharḥ on al-Rāzī's *Maḥṣūl*, and notes that he has offered even more examples in his book الأجوبة الفاخرة عن الأسئلة الفاجرة في الرد على اليهود والنصارى which was not consulted for this study.

[742] **[Case 14]** Ibn Ḥazm claims that animals save their blood were permissible to eat in general before Mosaic law was introduced. He says this law was commanded to Adam in the Torah, while Fakhr al-Dīn al-Rāzī, al-Āmidī and Ibn al-Sā'ātī associate the command with Noah. The biblical reference appears to be about Noah (see Genesis 9:1-4

laws that abrogated the laws that came before him, though this would not have satisfied the non-Muslim interlocutors in this debate.[743]

While the Muslim authors may have all taken for granted that pre-Muḥammadan law was abrogated, at least in part, they did not agree on whether it was abrogated in its entirety a priori. These laws, where they were not clearly abrogated by the Islamic sharī‘ah, could still be legally binding on the Muslim community (and the subject of our project). And while a majority of Muslim jurists were opposed to the usage of legal material derived from the bible itself for matters of Islamic law, the Qur’ān and ḥadīth literature contained stories and details about pre-Muḥammadan communities that reference their practices and laws. In theory, these could be referred to for guidance and law by Muslims. Thus, whether one saw these laws as abrogated or not had practical relevance. Manuals on Islamic legal debate theory (قواعد فقهية/جدل), therefore,

---

regarding the dietary commands given to Noah and compare with Genesis 1:29-30, regarding Adam). See al-Andalusī al-Ẓāhirī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 4, pg 71.; Also: al-Rāzī, *Al-Maḥṣūl*. Vol. 3, pg. 295.; al-Āmidī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 3, pg. 117.; Also: Muẓaffar al-Dīn Aḥmad b. ’Alī ibn al-Sā’ātī, *Badī’ al-Niẓām (Nihāyat al-Wuṣūl Ilā ’ilm al-’uṣūl)*, ed. Sa’d b. Ghurayr b. Mahdī al-Salamī, 2 vols. (Jāmi’at Umm al-Qurā, 1985). Vol. 2, pg 520. **[Case 15]** Adam had his two daughters marry his two sons which was unacceptable afterwards. Note that this particular example does not require biblical knowledge, as it is Qur’ānic as well. See: Ibn ’Aqīl, *Al-Wāḍiḥ Fī Uṣūl al-Fiqh*. Vol. 4, pg. 207-208.; Also: al-Rāzī, *Al-Maḥṣūl*. Vol. 3, pg. 295.; Also: ibn al-Sā’ātī, *Badī’ al-Niẓām (Nihāyat al-Wuṣūl Ilā ’ilm al-’uṣūl)*. Vol. 2, pg. 520. **[Case 16]** Ibn ‘Aqīl also notes that work on the Sabbath was permitted before it was not, **[Case 17]** Jacob married two sisters at once which wasn’t acceptable in Mosaic law, and **[Case 18]** circumcision was allowed for adults as done by Abraham but supposedly done when the baby was born in Moses’ law. See: Ibn ’Aqīl, *Al-Wāḍiḥ Fī Uṣūl al-Fiqh*. Vol. 4, pg. 207-208.; al-Āmidī (d. 631 AH) and Ibn al-Sā‘ātī (d. 694 AH) cite the same examples. See: al-Āmidī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 3, pg 118.; Also: ibn al-Sā’ātī, *Badī’ al-Niẓām (Nihāyat al-Wuṣūl Ilā ’ilm al-’uṣūl)*. Vol. 2, pg. 520.; Note: While it is claimed that circumcision happens on the day of birth in Mosaic law, the actual practice appears to be day eight, based on Genesis 17:12. Note additionally that the discrepancy that he points out between Abraham’s age and the circumcision of babies, doesn’t appear to be a case of a change in legal injunction, given the context of Genesis 17.

[743] Examples include the changing of the direction of prayer from *bayt al-maqdis* to the Ka‘ba as noted in Qur’ān 2:144, See: Ibn ’Aqīl, *Al-Wāḍiḥ Fī Uṣūl al-Fiqh*. Vol. 4, pg. 208.; See also: ibn al-Sā’ātī, *Badī’ al-Niẓām (Nihāyat al-Wuṣūl Ilā ’ilm al-’uṣūl)*. Vol. 2, pg. 522; Also the abovementioned easing of Jewish law referenced in Qur’ān 4:160. See: Ibn ’Aqīl, *Al-Wāḍiḥ Fī Uṣūl al-Fiqh*. Vol. 4, pg. 208.; Ibn Ḥazm notes the comparative ease that the Islamic sharī‘ah offers in comparison with Jewish law. He references, e.g., Moses’ command to his community to kill themselves for their taking of the calf for worship (see Qur’ān 2:54), or Jewish law holding the ritual impurity of one who touches a dead body (he appears to be off on the details in his comments). See: al-Andalusī al-Ẓāhirī, *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Vol. 4, pgs. 94-95.; al-Qarāfī notes the abrogation of the sabbath rules and prohibitions on animal fat/suet (الشحوم). See: Shihāb al-Dīn Aḥmad b. Idrīs al-Qarāfī, *Al-’Aqd al-Manẓūm Fī al-Khuṣūṣ Wa al-’Umūm*, ed. Aḥmad al-Khatm ’Abd Allāh, 1st ed., 2 vols. (Egypt: Dār al-Kutubī, 1999). Vol. 2, pg. 85.

note that depending on whether a jurist viewed pre-Muḥammadan law as abrogated (منسوخ) or not, these examples could be used as evidence or rebuffed.[744]

[744] For discussions on how claiming something was pre-Muḥammadan affected the utility of legal evidence by a jurist, see: Abū Isḥāq al-Shīrāzī, *Al-Ma'ūna Fī al-Jadl*, ed. 'Alī 'Abd al-'Azīz al-'Umayrīnī, 1st ed. (Kuwait: Jam'iyyat Iḥyā' al-Turāth al-Islāmī, 1407 AH). Pgs. 44-46, 61-65.; Also: Ibn 'Aqīl, *Al-Wāḍiḥ Fī Uṣūl al-Fiqh*. Vol. 2, pgs. 134-136 and pgs. 158-163.

Appendix D

# Additional Perspectives on Pre-Muḥammadan Law Among the Jurists

This appendix includes my notes from dozens of authors related to pre-Muḥammadan law that could not be covered in the dissertation. Some of the additional issues that can be found in these notes include discussions on whether the Prophet ﷺ practiced pre-Muḥammadan law before becoming a prophet (e.g., by emulating the People of the Book) and whether the "*maqāṣid al-sharī'ah*" existed in prior *sharī'ah*s just as they did in the Muḥammadan one. Several additional examples of pre-Muḥammadan law are also noted that could not be incorporated in the dissertation. There are also some interesting tidbits to be found as well. Ibn Taymiyyah (d. 728 AH), who dabbled a bit in Hebrew himself, has some interesting comments on the authenticity of the pre-Muḥammadan scriptures. I also note Fakhr al-Dīn al-Rāzī (d. 606 AH)'s reference to Genesis as proof in a discussion on *theology*, this being an interesting application of pre-Muḥammadan scripture for which al-Rāzī was criticized for.

The following chart is a list of works consulted for discussions on pre-Muḥammadan law:

Table 2:

| | Title | Author | *Madhhab* | Death Date (AH) |
|---|---|---|---|---|
| 1 | كتاب الأم | الشافعي | pre-*madhhab* | 204 |
| 2 | الأقسام والخصال | أبو بكر الخفاف | Shāfi'ī | Early fourth century |
| 3 | الفصول في الأصول | أبو بكر الجصاص | Ḥanafī | 370 |
| 4 | تقويم الأدلة في أصول الفقه | أبو زيد عبد الله بن عمر بن عيسى الدّبوسيّ | Ḥanafī | 430 |

| | | | | |
|---|---|---|---|---|
| 5 | المعتمد | محمد بن علي الطيب أبو الحسين البَصْري المعتزلي | Mu'tazilī | 436 |
| 6 | الحاوي الكبير في فقه مذهب الإمام الشافعي وهو شرح مختصر المزني | الماوردي | Shāfi'ī | 450 |
| 7 | الإحكام في أصول الأحكام لإبن حزم | ابن حزم | Zahiri | 456 |
| 8 | النبذة الكافية | ابن حزم | Zahiri | 456 |
| 9 | العدة في أصول الفقه | القاضي أبو يعلى | Ḥanbalī | 458 |
| 10 | الإشارة في أصول الفقه | أبو الوليد الباجي | Mālikī | 474 |
| 11 | التبصرة في أصول الفقه | أبو إسحاق الشيرازي | Shāfi'ī | 476 |
| 12 | اللمع | أبو اسحاق الشيرازي | Shāfi'ī | 476 |
| 13 | المعونة في الجدل | أبو اسحاق الشيرازي | Shāfi'ī | 476 |
| 14 | البرهان في أصول الفقه | أبو المعالي الجويني | Shāfi'ī | 478 |
| 15 | التلخيص في أصول ال فقه | أبو المعالي الجويني | Shāfi'ī | 478 |
| 16 | أصول السرخسي | شمس الأئمة السرخسي | Ḥanafī | 483 |
| 17 | قواطع الأدلة في الأصول | أبو المظفر السمعاني | Ḥanafī turned Shāfi'ī | 489 |
| 18 | المستصفى | الغزالي | Shāfi'ī | 505 |
| 19 | المنخول | الغزالي | Shāfi'ī | 505 |
| 20 | التمهيد في أصول الفقه | أَبُو الخطاب الكَلْوَذَاني | Ḥanbalī | 510 |
| 21 | الواضح في أصول الفقه | ابن عقيل البغدادي | Mu'tazilī turned Ḥanbalī | 513 |
| 22 | إيضاح المحصول من برهان الأصول | أبو عبد الله محمد بن علي بن عمر المازري | Mālikī | 536 |
| 23 | بذل النظر في الأصول | العلاء محمد بن عبد الحميد الأسمندي | Ḥanafī | 552 |
| 24 | المحصول | فخر الدين الرازي | Shāfi'ī | 606 |
| 25 | التحقيق والبيان في شرح البرهان في أصول الفقه | الأبياري | Mālikī | 616 |
| 26 | روضة الناظر وجنة المناظر في أصول الفقه على مذهب الإمام أحمد بن حنبل | ابن قدامة | Ḥanbalī | 620 |
| 27 | الإحكام في أصول الأحكام | الآمدي | Ḥanbalī turned Shāfi'ī | 631 |
| 28 | المسودة في أصول الفقه | مجد الدين ابن تيمية | Ḥanbalī | 652 |
| 29 | تخريج الفروع على الأصول | محمود بن أحمد بن محمود بن بختيار، أبو المناقب شهاب الدين الزَّنْجاني | Shāfi'ī | 656 |
| 30 | المجموع شرح المهذب | النووي | Shāfi'ī | 676 |
| 31 | روضة الطالبين وعمدة المفتين | النووي | Shāfi'ī | 676 |
| 32 | التحصيل من المحصول | سراج الدين محمود بن أبي بكر الأرْمَوي | Shāfi'ī | 682 |
| 33 | شرح تنقيح الفصول | القرافي | Mālikī | 684 |

| | | | | |
|---|---|---|---|---|
| 34 | نفائس الأصول في شرح المحصول | القرافي | Mālikī (al-Qarāfī) and Shāfi‘ī (al-Rāzī) | 684 |
| 35 | بديع النظام | مظفر الدين أحمد بن علي بن الساعاتي | Ḥanafī | 694 |
| 36 | الكافي شرح البزودي | الحسين بن علي بن حجاج بن علي، حسام الدين السِّغْنَاقي (and the main author, is al-Bazdawī) | Ḥanafī (al-Sighnāqī) and Ḥanafī (al-Bazdawī) | 711 (and 482 for al-Bazdawī) |
| 37 | مجموع الفتاوى | ابن تيمية | Ḥanbalī | 728 |
| 38 | الموافقات | إبراهيم بن موسى بن محمد اللخمي الغرناطي الشهير بالشاطبي | Mālikī | 790 |
| 39 | البحر المحيط في أصول الفقه | الزركشي | Shāfi‘ī | 794 |
| 40 | تشنيف المسامع بجمع الجوامع لتاج الدين السبكي | الزركشي | Shāfi‘ī | 794 |
| 41 | خلاصة الأفكار شرح مختصر المنار | أبو الفداء زين الدين قاسم بن قُطْلُوْبَغَا السُّوْدُوْنِي الجمالي الحنفي | Ḥanbalī | 879 |

Here are my notes. Ignore my personal comments, which may be dated and were recorded at a much earlier stage in the project, along with faulty transcriptions. I hope I didn't write anything embarrassing… :/

**al-Shafi:**

v. 4, pg 226 of Kitab al-Umm, he makes it clear that The torah has been altered (you can't put in your will the writing of the Torah or Injil, because it's been altered)

v. 5, pg 168, he responds to someone who quotes from the Torah via Wahb b. Munabbih and he doesn't dispute its origins (ملعون من نظر…)

v. 6, pg 9 of Kitab al-Umm, he doesn't read the al-nafs bi al-nafs verse as being a Jewish Hukm that the Prophet ﷺ continued. Rather, the Prophet's law was different on this. Di scussion continues v. 6, pg 26. See also v. 6, pg 53, I think he says something different than before, so See also v7, pg 337. .check

See v. 7, pg 343 (kitab al-Umm) and surrounding context:

فَقَالَ بَعْضُ مَنْ يَذْهَبُ مَذْهَبَ بَعْضِ النَّاسِ إنَّ مِمَّا قَتَلْنَا بِهِ الْمُؤْمِنَ بِالْكَافِرِ وَالْحُرَّ بِالْعَبْدِ آيَتَيْنِ قُلْنَا فَاذْكُرْ إحْدَاهُمَا فَقَالَ… إحْدَاهُمَا قَوْلُ اللَّهِ عَزَّ وَجَلَّ فِي كِتَابِهِ {وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ} [المائدة: 45] قُلْت وَمَا أَخْبَرَنَا اللَّهُ عَزَّ وَجَلَّ أَنَّهُ حَكَمَ بِهِ عَلَى أَهْلِ التَّوْرَاةِ حَكَمَ بَيْنَنَا؟ قَالَ نَعَمْ حَتَّى يُبَيِّنَ أَنَّهُ قَدْ نَسَخَهُ عَنَّا فَلَمَّا قَالَ {النَّفْسَ بِالنَّفْسِ} [المائدة: 45] لَمْ يَجُزْ أَنْ تَكُونَ كُلُّ نَفْسٍ بِكُلِّ نَفْسٍ إذَا كَانَتْ النَّفْسُ الْمَقْتُولَةُ مُحَرَّمَةً أَنْ تُقْتَلَ قُلْنَا فَلَسْنَا نُرِيدُ أَنْ نَحْتَجَّ عَلَيْك بِأَكْثَرَ مِنْ قَوْلِك إنَّ هَذِهِ الْآيَةَ عَامَّةٌ فَزَعَمْت أَنَّ فِيهَا خَمْسَةَ أَحْكَامٍ مُفْرَدَةً وَحُكْمًا سَادِسًا جَامِعًا فَخَالَفْت جَمِيعَ الْأَرْبَعَةِ الْأَحْكَامِ الَّتِي بَعْدَ الْحُكْمِ الْأَوَّلِ وَالْحُكْمُ الْخَامِسُ وَالسَّادِسُ جَمَعْتهمَا فِي مَوْضِعَيْنِ فِي الْحُرِّ يَقْتُلُ الْعَبْدَ وَالرَّجُلِ يَقْتُلُ الْمَرْأَةَ فَزَعَمْت أَنَّ عَيْنَهُ لَيْسَ بِعَيْنِهَا وَلَا عَيْنَ الْعَبْدِ وَلَا أَنْفَهُ بِأَنْفِهَا وَلَا أَنْفَ الْعَبْدِ وَلَا أُذُنَهُ بِأُذُنِهَا وَلَا أُذُنَ الْعَبْدِ وَلَا سِنَّهُ بِسِنِّهَا وَلَا سِنَّ الْعَبْدِ وَلَا جُرُوحَهُ كُلَّهَا بِجُرُوحِهَا وَلَا جُرُوحَ الْعَبْدِ وَقَدْ بَدَأْت أَوَّلًا بِالَّذِي زَعَمْت أَنَّك أَخَذْت بِهِ فَخَالَفْته فِي بَعْضٍ وَوَافَقْته فِي بَعْضٍ فَزَعَمْت أَنَّ الرَّجُلَ يَقْتُلُ عَبْدَهُ فَلَا تَقْتُلُهُ بِهِ وَيَقْتُلُ ابْنَهُ فَلَا تَقْتُلُهُ بِهِ وَيَقْتُلُ الْمُسْتَأْمَنَ فَلَا تَقْتُلُهُ بِهِ وَكُلُّ هَذِهِ نُفُوسٌ مُحَرَّمَةٌ قَالَ اتَّبَعْت فِي هَذَا أَثَرًا قُلْنَا فَتُخَالِفُ الْأَثَرَ الْكِتَابَ؟…

He is in a debate with someone in some setting (there are others there too) - probably a Kufan?, and he entertains the position that one can rely on the Torah for law, with the caveat that it hasn't been abrogated. He asks rhetorically if it's their position, and when they say it is, he doesn't reject it. Rather, he rejects their position for being a case of 'having one's cake and eating it' (in his perspective)

v. 6, pg. 171 - al-Shafi'i talks about case like the ones Shaybani talks about, where someone says the shahada but doesn't believe the Prophet's mission was directed towards them. Similar to al-Shaybani, he requires an additional affirmation on top of the shahada.

**Abū Ḥanīfa:**

Abu Hanifa believed that you would sacrifice a sheep if you made a vow to sacrifice a child, because that is what was implied by the Shariah of Ibrahim when he sacrificed his son.

مسألة: [حلف بنحر ولده أو غيره من بني آدم]

قال أبو جعفر: (ومن حلف بنحر ولده أو غيره من بني آدم، ثم حنث، فإن أبا حنيفة قال: عليه في حلفه لنحر ولده شاة، وليس عليه في حلفه بنحر غير ولده شيء.

وقال محمد: عليه أيضًا في حلفه بنحر عبده شاة، وقال أبو يوسف: لا شيء عليه في ذلك كله).

لأبي حنيفة: أنَّ نذره بنحر الولد قد صار عبارة عن ذبح شاة في شريعة إبراهيم عليه السلام، وذلك لأن الله تعالى أمره بذبح ابنه؛ لقول الله تعالى: [v 7, pg 465]

{إني أرى في المنام أني أذبحك فانظر ماذا ترى قال يا أبت افعل ما تؤمر}، فأمر بذبح ابنه، فكان موجبه شاة، فصارت هذه اللفظة في شريعته عبارة عن إيجاب ذبح شاة، فلزمه الوفاء به، وقد روي نحوه عن ابن عباس. [v. 7, pg 466]

**al-Jassas (al-fusul fi ‘ilm al-usul):**

الكتاب: الفصول في الأصول

المؤلف: أحمد بن علي أبو بكر الرازي الجصاص الحنفي (المتوفى: 370هـ)

الناشر: وزارة الأوقاف الكويتية

الطبعة: الثانية، 1414هـ - 1994م

عدد الأجزاء:4

Main section that discusses this [v. 3, 19-]:

He gives a few positions:

[A] The previous laws are not relevant (since the other prophets were not sent to us).

[B] Whatever has been established from the prior laws of the prophets is binding on us that hasn't been abrogated. The way to know these laws is either that God informs us in his book (Kitābihi) or we know through the Prophet ﷺ [<— v. 3, 19]. Legal material not from the Quran/Prophet cannot be accepted (lā i'tibār bihi) because the People of the Book have changed a lot of the laws given to them, and thus we don't turn to Muslims who who report what are in these texts (فَلَا يُلْتَفَتُ إلَى رِوَايَةِ مَنْ حَكَى مِنْ الْمُسْلِمِينَ: أَنَّ فِي التَّوْرَاةِ أَوْ الْإِنْجِيلِ كَذَا), or to the narration of people of the Book, because of their unbelief and being misguided. NOTE: this indicates that there are Muslims reporting this material (ahkam in particular).

His own position is [B], and he cites that Muhammad b. Al-Ḥasan did this with the story of of Ṣāliḥ and rules about distribution of water source, and takes from this the following: وَهَذَا يَدُلُّ دَلَالَةً بَيِّنَةً: أَنَّهُ كَانَ يَرَى أَنَّ مَا لَمْ يَثْبُتْ نَسْخُهُ مِنْ شَرَائِعِ الْأَنْبِيَاءِ الْمُتَقَدِّمِينَ فَهُوَ لَازِمٌ لَنَا. ثُمَّ جَائِزٌ لَنَا أَنْ يُقَالَ: إنَّهُ إنَّمَا رَآهُ لَازِمًا لَنَا لِأَنَّ عِنْدَهُ أَنَّهُ قَدْ صَارَ شَرِيعَةً لِنَبِيِّنَا - عَلَيْهِ السَّلَامُ

Interesting, this precludes him seeing the Torah example we adduced elsewhere. He also cites Abū al-Ḥasan (presumably al-Karkhy, mufti of Iraq, he refers to "Abu al-Hasan" as his sheikh elsewhere, v. 2 158) as taking the Quranic verses about qiṣāṣ from the Torah as a legal proof in his own rulings:

وَظَاهِرُ احْتِجَاجِهِ بِهَذِهِ الْآيَةِ يَدُلُّ عَلَى أَنَّهُ يَرَى هَذَا الْمَذْهَبَ صَحِيحًا

[<— v 3, 20]

Then he takes a related issue:

[1] Are the pre-Islamic laws binding for all times as long as they aren't abrogated [<— v 3, 20] (me: in which case, it is assumed, we must look for them), or [2] they are binding if/when they became the shari'ah of the Prophet ﷺ, not because they are the shari'ah of previous prophets [me: i.e. they are binding if in the Qur'an/sunnah and not abrogated], or [3] none of the laws of the previous prophets are binding (even if the Quran informs us about them), until the God or the Prophet ﷺ command us explicitly that they are our laws (me: i.e. their connection to the pre-Islamic prophets is therefore inconsequential for our law).

[1] can't be correct, says al-Jaṣṣāṣ, because the prophets were sent to their peoples, and Muhammad was sent to all mankind (per a tradition he cites), but also, he brings up a serious issue:

وَلِأَنَّ ذَلِكَ لَوْ كَانَ كَذَلِكَ لَوَجَبَ عَلَيْنَا طَلَبُ شَرَائِعِ الْأَنْبِيَاءِ - عَلَيْهِمْ السَّلَامُ - وَنَتَّبِعُهَا، وَلَدَعَا النَّبِيُّ - عَلَيْهِ السَّلَامُ - النَّاسَ إلَيْهَا دُعَاءً عَامًّا، كَدُعَائِهِ - عَلَيْهِ السَّلَامُ - إلَى اتِّبَاعِ شَرِيعَتِهِ، وَلَوْ كَانَ كَذَلِكَ لَنَقَلَتْ الْأُمَّةُ ذَلِكَ نَقْلًا عَامًّا، وَلَوَجَبَ عَلَى النَّبِيِّ - عَلَيْهِ السَّلَامُ - تَعْلِيمُهَا الصَّحَابَةَ وَتَبْلِيغُهَا إيَّاهُمْ، وَلَوْ كَانَ كَذَلِكَ لَنَقَلُوهَا كَنَقْلِهِمْ شَرِيعَةَ النَّبِيِّ - عَلَيْهِ السَّلَامُ [<— v3, 21]

Then there's the report that the Prophet ﷺ rebukes 'Umar from reading the Torah. However, his interlocutor responds by saying this report only prohibited it because the Jews changed the material, and so he was rejecting us from following what was changed. Jassas responds that the report doesn't say this, but rather indicates that if Moses ﷺ were alive, he'd follow Muhammad's laws, indicating that Moses' laws were not binding in and of themselves after the coming of the Prophet ﷺ [me: he's presented valid counterpoints, suggesting it's a real argument being made, but it's not as strong as what he presents regarding position [2], and [3], indicating it's a dying

position. It's hard to justify position [1] when by this time reports like the one regarding 'Umar have become very prominent, regardless of their authenticity. Also, regarding his comment on Moses' laws, note that this report potentially goes against the verse كيف يحكمونك which he has to interpret differently, see below].

Jassas agrees with [2], and gives as proof, some examples: al-An'am 83-90, ending in:

أُولَئِكَ الَّذِينَ هَدَى اللَّهُ فَبِهُدَاهُمُ اقْتَدِهْ

Al-Nahl 23:

ثُمَّ أَوْحَيْنَا إِلَيْكَ أَنْ اتَّبِعْ مِلَّةَ إِبْرَاهِيمَ حَنِيفًا

[<— v 3,22]

And Shura 13:

شَرَعَ لَكُمْ مِنْ الدِّينِ مَا وَصَّى بِهِ نُوحًا وَالَّذِي أَوْحَيْنَا إِلَيْكَ ومَا وَصَّيْنَا بِهِ إبراهيم وموسى وعيسى أن أقيموا الدين ولاتتفرّقوا فيه

Jassas holds that the apparent meaning of these verses (ظاهر هذه الآيات) is that these pre-Muhammadan laws are only binding by the coming of the Prophet ﷺ and his commanding of us to follow them, like the verse "كتب عليكم الصيام كما كتب على الذين من قبلكم" (me: i.e. these verses don't imply position 1). [<— v3, 23]. He now has to reject position [3], which offers strong counter-arguments:

[a] The An'am verses seem to be talking about Tawhid, not laws (they start off from verse 76 and the story of Abraham ﷺ learning that Allah is the creator of the heavens/earth). [b] Also, some of those mentioned in the verses don't have laws and weren't prophets (it says follow their fathers/progeny/brethren), which means it's probably referring to Tawhid. [c] Also, the laws of the prophets differed, so you can't follow all of them. [d] it is theoretically possible that the different shariahs had were abrogations of abrogated material of other prophets, and there's no

way you could combine those two ideas together, so what's being referred to in the verses is something that can't be abrogated or changed. Furthermore, God says in Maidah 48, " وكل جعلنا منكم شرعة

[<— v 3, 24]

ومنهاجا"

which proves that the different shariahs of the prophets were not the same, but different.

(Me: these are strong counters, which shows the real debate by this time period is between position [2] and [3] with some fringe personalities maybe holding [1], who have the burden of rejecting the weight of built up tradition by this time)

Jassas responds to [a]: "huda" includes things that point to his oneness, justice, his attributes and the laws of his various laws (أحكام شرائعه). Proof that Huda can mean this: Maida 44: " إِنَّا أَنْزَلْنَا التَّوْرَاةَ فِيهَا هُدًى وَنُورٌ، يَحْكُمُ بِهَا النَّبِيُّونَ الَّذِينَ أَسْلَمُوا"

Also, Quran is referred to as a Huda in Baqara 1, and it includes laws. To read Huda in the verse as just meaning what is required rationally (ما في العقل إيجابه) - i.e. Tawhid, without including what hearing and the senses produces (ما يدل السمع على وجوبه) - i.e. the ahkam - cannot be done without proof (لأنه تخصيص بلا دلالة). Also, the verse can be read as the beginning of a thought, and not necessarily connected to what came before, so we can take it to mean it's apparent meaning. (Me: his response is rather too casuistic and he's trying hard to defend what he takes to be the school's position). [v. 3, 25] In response to [b], even if they weren't prophets, it's about following their way, so no issue here [v. 3, 25-26]. [c/d] aren't issues since Jassas's position is just to follow whatever the Quran/Sunnah have informed us about while simultaneously not

noting that they've been abrogated. He also says his position doesn't obligate that one search for laws in non-Muhammadan sources (me: this is probably the accusation of the opposition, which wants to pit position [2] as in the same category as position [1]), since, as Jassas says:

We don't need to go to other sources other than the Quran/Sunnah, because they are not trustworthy and therefore we are not responsible (فقد سقط عنا تكليفه). (v. 3, 26)

Jassas now cites Maida 43-44 and confronts an interesting dilemma:

وكيف يحكمونك وعندهم التوراة فيها حكم الله ثم يتولَّون من بعد ذلك وما أولئك بالمؤمنين. إنا أنزلنا التوراة فيها هدى ونور يحكم بها النبيون الذين أسلموا للذين هادو والربانيون والأحبار بما استحفظوا من كتاب الله وكانوا عليه شهداء .....

He uses the verses (believed to be revealed in reference to the Jews coming to the Prophet ﷺ on the matter of stoning; in this tradition the Prophet ﷺ rebukes them for hiding references to him in the Torah and hiding the rules) to show that the Prophet ﷺ did inherit from the prior scriptures, but, these verses cannot be taken to mean that they committed kufr by not following the Torah (the most apparent meaning of the text, but which also suggests they are not bound to the Prophet's laws), but that they didn't follow the rule of rajm which became the shariah of the Prophet:

وَغَيْرُ جَائِزٍ أَنْ يَكُونَ الْحُكْمُ بِإِكْفَارِهِمْ مُتَعَلِّقًا بِتَرْكِهِمْ الرَّجْمَ الَّذِي كَانَ مِنْ حُكْمِ التَّوْرَاةِ، لِأَنَّهُمْ قَدْ كَانُوا مَأْمُورِينَ بِتَرْكِ تِلْكَ الشَّرِيعَةِ، وَاتِّبَاعِ شَرِيعَةِ النَّبِيِّ - عَلَيْهِ السَّلَامُ

[<— v3, 27]

Rather:

فَثَبَتَ أَنَّ مَا كَانَ فِي التَّوْرَاةِ مِنْ حُكْمِ الرَّجْمِ، صَارَ شَرِيعَةً لِنَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَخَرَجَ مِنْ أَنْ يَكُونَ شَرِيعَةً لِمُوسَى - عَلَيْهِ السَّلَامُ - فِي تِلْكَ الْحَالِ، بَلْ صَارَتْ تِلْكَ الشَّرِيعَةُ مَنْسُوخَةً بِشَرَائِعِ الرَّسُولِ - عَلَيْهِ السَّلَامُ -، إذْ كَانَ الرَّسُولُ مَبْعُوثًا إلَى كَافَّةِ النَّاسِ

[<— v3, 28]

[Me: Note that he recognizes that rajm is biblical in origin]. He is forced into the compromise of [2] because accepting the outward meaning of this verse would mean that the Jews aren't obliged to become Muslims - therefore by "torah" they are commanded to "that from the Torah which became part of the Prophet's law." He does this again with another verse that calls out those who don't follow the Torah's nafs-bi-al-nafs punishment as evil doers (Maida 45), saying

He also tackles the problematic verse for his position (Ma'idah: 48) that "We made for each group among you a law and way". [see v. 3 p 27]: he says that we can still be obligated to follow the rules of past laws if we acknowledge that some of them will be abrogated.

Interesting: He's presented with a dilemma about why the Jews are rebuked for not heeding the advice of the Torah in applying the Rajm. He argues it's because they rejected what became the binding law on them because it became the law of the Prophet, NOT because they didn't act on the Torah. (This conflicts with what I see to be the issue laid in the verse of them rejecting the Prophet as an interpreter of the Bible):

وَغَيْرُ جَائِزٍ أَنْ يَكُونَ الْحُكْمُ بِإِكْفَارِهِمْ مُتَعَلِّقًا بِتَرْكِهِمْ الرَّجْمَ الَّذِي كَانَ مِنْ حُكْمِ التَّوْرَاةِ، لِأَنَّهُمْ قَدْ كَانُوا مَأْمُورِينَ بِتَرْكِ تِلْكَ الشَّرِيعَةِ، وَاتِّبَاعِ شَرِيعَةِ النَّبِيِّ - عَلَيْهِ السَّلَامُ

[v3, p27]

Note that on [v3 p28] he says that the hukm of rajm was the law of Moses and BECAME the law of Muhammad.

For Maida 45, where God condemns those Jews who reject the nafs-bil-nafs injunction, he follows the previous logic of saying that they are rebuked not for rejecting the Torah injunction, but for rejecting the injunction in its form in the Shariah of Muhammad. He does the same with Maida 45 that expects the Christians to follow the Injil (i.e. he says they are told to follow that of it which Muhammad brought). He can't accept this meaning of the verses because it means that these groups are commanded to follow their scriptures without becoming Muslim [<— v3, p 28]

Me: note that Accepting the middle ground position like Sarakhsi wasn't useless. It meant that he had a sense to interpret the similarities between their legal system and the ones of the Jews and others. It let him see, e.g., that the rajm punishment came from the Torah originally

———

In a conversation on the language of law, and whether it allows for abrogation at a future date, Jassas holds the if a statement of the prophet, e.g., states that a law is explicitly "forever binding", that it is not open to abrogation. He is put into a difficult situation however, when he documents that there are some opposed to this view, who say, "The Jews claim in the Torah the necessity to hold the Sabbath is for all eternity" (me: It's in Exodus 31:16: "Wherefore the

children of Israel shall keep the sabbath, to observe the sabbath throughout their generations, for a perpetual covenant." "בְּרִית עוֹלָם"). This would go against the abrogation that came from later prophets, and so such statements are open to abrogation, even if stated as 'forever binding'. Jassas first questions whether it's actually in the Torah, and then says even if it is, maybe it means something different in Hebrew than what's been claimed. He then states that if what is claimed about the passage is necessarily true, it would be necessary that we have certain knowledge of it upon hearing about it (لوجب أن يقع لنا العلم به مع سماعنا لذلك كوقوع علمهم به في زعمهم). Since we don't get this level of certainty about the meaning from hearing these reports, what they are claiming can't be true. He says, however, that those who hold this view do so because they need to accept that the Prophet Muhammad's law (which doesn't hold the sabbath to be binding) must mean that this verse in the Torah should be interpreted as "hold the Sabbath for all eternity [unless I abrogate it]" (i.e. you do taqdir). He can't accept this because it'd open a pandoras box for other rulings [<— v 2, 210-211].

Elsewhere he deals with whether abrogation can even happen. According to Jassas, some Jews say it can't happen (which he argues against forcefully as an ignorant position), or accept it can happen in theory but say Moses said abrogation of the law of the Torah and the Sabbath wouldn't happen (and he argues that they did ta'wil to come to this conclusion and it's not the case otherwise we would have certain knowledge of it). He says that there are some later Muslims in his time period who also deny abrogation (فريق من أهل الملة من المتأرخين لا يعتد بهم) [v. 2, 215-216]. He says much has been written against the Jewish claim by others writing on the topic of abrogation, but he only meant to cover the topic as it related to Usul al-Fiqh and the topic of naskh came up. But also, he wrote it to refute those those misguided Muslims (who he also notes

as أهل الصلاة) who who resemble the Jews in this. [v. 2, 217]. He refutes them with Islamic proofs until pg. 220.

---

Another conversation Jassas has about it elsewhere:

One of the earliest Usul books to reference the shar' man qablana debate. [v2 p328] In a debate with an interlocutor who rejects the possibility of the Qur'an abrogating the Sunna or vice versa (where the opponents position is that the Quran abrogates the Quran and the Sunnah abrogates the Sunnah exclusively), the opponent is quoted as saying that various examples adduced of the Quran abrogating the sunnah (e.g., abrogating: praying towards Jerusalem, permissibility of wine and the prohibition to have sex/eat/drink after sleeping during the nights fast) are actually entirely in the Qur'an (the abrogating and the abrogated) without the sunna. E.g., facing the Qibla can be inferred by the verse 6:90 that says "by their guidance (that of the pre-Muhammadan Prophets), take an example." I.e. following the old ways *was* Islam until legislated against. Similarly permissibility of alcohol can be interpreted from a generous reading of 2:219, which says that wine has a big sin and also benefits (so it's not a clear prohibition, and also there are reports suggesting that companions were drinking even after this verse until the next verse about this which is more clear, indicating it wasn't seen as a prohibition).

[v2 p 329] Jassas responds: How do you reject the accusation that the above statements mean that in the Rasul's shariah there is NO idea of nasikh/mansukh, since you quoted the verse 6:90 which possibly implies that that all of what God legislates in the Quran/Sunna is following the laws of the pre-Muhammadan prophets (however variable these laws may have been), so what

we interpret as nasikh/mansukh is a ruling that existed in one time period with some pre-Muhammadan people's then switching to a different rule at some other, without there being an issue here of prohibition/obligation/making s.th. permissible, which would make it an issue of nasikh/mansukh, since whatever we have in our shariah could just be what was a rule in a previous religious law.

The respondent: That's not necessary since we know that some laws were *prohibited* or *allowed* before and then made the opposite in our system of law, like 6:146 (prohibition on Jews to eat a part of the fat of animals).

Jassas: But that's not a case of prohibition after permissibility or the opposite, since whatever the Prophet's shariah position was could just be exactly what was in a previous legal system (at some point in time) the same way. FURTHERMORE, this doesn't deny the possibility that even in previous religions that the sunan of the prophets couldn't be abrogated by the revealed book of that time (since no text or consensus has reached us barring that).

[v 2 p 330] Jassas then takes the verse saying it's okay to have sex/eat/drink in the nights of fasting (2:187) as not an example of an abrogation of something from the previous religious order, but a continuity of some religious law of the past. He then engages with some of the other verses the interlocutor quoted above… but the discussion ceases about Shar' man qablana.

Key take away (my opinion): Jassas nowhere rejects the possibility of the Prophet's law being based in the laws of previous prophets, rather taking it for granted (though this discussion has to do with a different matter al together).

**Al-Qadi abu Bakr al-Baqillani al-Maliki (al-taqrib):**

In a conversation about the types of 'knowledge,' he notes as an example of necessary knowledge (الضرورات) knowledge based on mass transmission (tawatur) of reports regarding the mission of the various messengers and their laws ( والعلم بما تواترت عنه الأخبار من دعوة الرسل وشرائعهم وتحذيرهم لقومهم), just as we have certain knowledge regarding places like China, Khurasan and other places far and near [v1, 191-192]. [me: this shows that we can *know* about their laws without the Qur'an/Sunna]

**Al-Dabbousi al-Hanafi (taqwīm al-adillah):**

On Shar' man qablana. Similar to Jassas, though more condensed (his usul book is also shorter in general):

The positions of "Ahl al-ilm" are that [1] The law of a prophet, if it is verified (ثبتت) remains as long as it is not abrogated (the Arabic بقيت له كذلك ما لم تنسخ suggests that it remains for THAT prophet, but I don't think it means that when compared to the other options he lists), [2] The law of one prophet ends by the coming of a new prophet except in those matters that aren't open to abrogation and limitation of time, [3] the law of a prophet continues, but it now becomes the law of the prophet sent after him. His position (القول القصد) is that the laws of all the prophets that God has told our Prophet about and aren't abrogated are the law of the Prophet, barring those laws

that God hasn't told us about (دون ما لم يحكها). It appears he holds this position because Muhammad b. al-Hasan took as proof for distribution a water source the Quranic verses regarding this. (Me: the implication is that his position in this debate is contingent on Shaybani's fiqh, which is strange when you realize he quoted from the Torah).

The proof of [1] (and Dabbousi doesn't spend much time here, suggesting it's not a serious position) is that a limitation in the time of a law can't be ascertained without a proof text. Proof of [2] is that you could have many prophets in a single time period in different places with different laws (and thus the verse لكل جعلنا منكم شرعة ومنهاجا). You can't have two laws in the same time or place without some secondary دلالة for this. Also, the verse ( وإذ أخذ الله ميثاق النبيين لما آتيتكم من كتاب وحكمة ثم جاءكم رسول مصدق لما معكم لتؤمنن به) implies that after the coming of another prophet, the other prophets become subsumed within the community of the new prophet, and their laws end with his coming. Furthermore, the report where the Prophet rebukes Umar for having the Torah with him ends with the Prophet saying that if Moses were alive, he would've followed him, thus implying the same thing as the verse quoted earlier (that he is part of the new community and his laws end). Furthermore, there is a practical dimension to [2], Dabbousi shares: the new prophet is calling people to HIS law because otherwise it'd mean people are being called to the laws of different prophets all with their unique laws, some conflicting with others [<— v1 p253]. Furthermore, you could have two prophet in one time in two places, and their laws would either be restricted to their individual geographic space, or, one would be following the law of the other, as was the case with Lot following Abraham (verse: فآمن له لوط), or Harun with Moses. Thus it must be the case in two different time periods (i.e. one follows the other or they have separate laws) [<— pg 253-254].

As for proof of [3]:

Verse: قل صدق الله فاتبعوا ملة إبراهيم حنيفًا

The Prophet's shariah is the millah of Abraham. Just as someone inherits the wealth of someone deceased and it ceases to be the property of the deceased, so too here. The verse ثم جاءكم رسول مصدق لما معكم لتؤمنن به implies both that the law lives on ( and that that it becomes part of) "مصدق لتؤمنن به" ( the new law).

Furthermore: أولئك الذين هدى الله فبهداهم اقتده the huda includes both Shariah and Iman.
Also, just as Jassas cites (check), Abdullah Ibn Abbas is asked about the sajdah in Surat Ṣād, and he says that David ﷺ prostrated, and he was one of those who the Prophet was ordered to follow, then Ibn Abbas recited شرع لكم من الدين ما وصى به نوحًا note that in this version of the report, Dabbousi doesn't note Ibn Abbas as saying that the Prophet also prostrated here for this reason (implying here that this was Ibn Abbas position). Furthermore, the first time the Prophet stoned, he did so by the Torah. Also the verse of وكيف يحكمونك and other reasons [<— pg 254]

Condition for following pre-Muḥammadan law: Following the old laws can only happen after the coming of the Prophet with his transmission of that material ("البقاء لا يثبت بعد مبعث رسول الله صلى الله عليه وسلم إلا بحكايته أنها ثابتة"). This is for a number of reasons: [a] Because God has informed us that they changed the word (حرفوا الكلم) and were deceptive in its transmission (خانوا في النقل) and thus their own testimony is rejected (فصاروا مردودي الشهادة). [b] We accept the Prophet's transmission because he is free from the possibility of lying, whereas their transmission, even if it's done with mass transmission now (تواتر للحال) is not free from doubt (شبهة) unless their mass transmission

goes back to the source, and thus it is necessary to leave what there is doubt in for that which there is no doubt. (Me: but the reports of the Prophet saying something have doubt. So this might imply only the Qur'an can be accepted as a source? Also, his words leave open the possibility that if it can be proven to go back to the source, it becomes binding law). [c] Because religious hostility was apparent, they (the Ahl al kitab? The Jews?) were accused of hiding their laws, and so their words are not a proof for us accept what the Prophet has transmitted and told us is authentic by means of recited revelation (وحي متلو) or that which is not recited (غير متلو) [me: on pg 232 he explains these words in a different usual context: الأحكام مرة تثبت بوحي متلو كالقرآن, ومرة بوحي غير متلو مما أوحى الله إلى النبي صلى الله عليه وسلم لا قرآنًا].

Position 3 is from the perfection of the nobility of the Prophet Muhammad, in that all the laws become his, and all the prophets would be his followers if they were alive.

He also interprets لكل جعلنا منكم شرعة ومنهاجا as meaning certain things can abrogate others, but not a total abrogation of everything, since all the shariahs share in many things, like belief in God and obeying him. [<— 255]

———

On the possibility of naskh, al-Dabbousi has the same information as Jassas about two groups of Jews and two groups of Muslims and their positions (with the Jews citing the verse about the Sabbath as proof against naskh). [<— v1, pg 228]. For the Jews, he states that it has been established by means of the Qur'an that the Jews changed what was in the Torah, and thus their transmission of laws from it (e.g. that of the Sabbath) are not proofs today. He gives as an example that Eve was made from Adam and thus made lawful to him, but that today it is

forbidden for a father any woman that comes from him (i.e. his daughters). [<— v1, 230]. I am assuming this is a reference to Genesis 23 (And the man said: "This is now bone of my bones and flesh of my flesh; she shall be called 'woman,' for out of man she was taken.") and 24 ("That is why a man leaves his father and mother and is united to his wife, and they become one flesh.")

**Abu al-Husayn al-Başri al-Mutazili (al-mu'tamad):**

On naskh of one shariah of another:

Muslims all agree (except for an anomalous minority position) that the different shariahs can abrogate each (اتفق المسلمون على حسن نسخ الشرائع). Jews are split into three camps: [1] some deny it's possibility (2) ,(عقلا] some deny it in terms of received knowledge (سمعا) but allowed for its possibility, and [3] some allow for it both in theory and practice (عقلا وسمعا).

He gives the Mu'tazili reason for naskh in terms of Ḥusn/Qubh: The proof for its Husn is that theoretically what God commands may at a future point become bad (يجوز أن يقبح), in which case it's prohibition would become Ḥasan, since the prohibition of that which is قبيح is حسن. [v. 1, pg 370]. Taking this position then, he then says it's not possible (لم يحسن) that God can say "Hold to the Sabbath as long as you live (ما عشتم)," unless it is referring to a very particular Sabbath ( إلا السبت الفلاني) [<— v. 1, p 370-371]. This is also because it is theoretically acceptable that adhering to the rules of the Sabbath may be good (مصلحة) in one time and bad (مفسدة) in another time.

The opposition: It is not possible for a command for something for all eternity (like "hold on to the Sabbath for all eternity") to be open to naskh because its very wording means that the act is

obligated forever, and this would mean that God would either be unaware at some point in time about the ḥusn or qubḥ of a matter and thus the change in laws, or that he commands things that are qabīḥ and prohibits that which is ḥasan, which is unacceptable [v. 1, pg 371-372].

His response: the meaning of eternality is implied by the wording of eternality, yes, but only until the morally obligated individual (المكلف) learns of its abrogation by means of the prophethood of Muhammad, in which case it can't meant that. The very fact it is abrogated implies otherwise. The qubḥ and ḥusn of the matter would be relative and thus the need for the changing law, and thus this would not be a matter where God was unaware about the reality of things, or commanding/prohibiting things inappropriately [<— v. 1, 372]. [me: he emphasizes the مصلحة and مفسدة that are relative based on time. Seems to be a Mu'tazili perspective.] Furthermore, al-Qadi Abd al-Jabbar (d. 415/1025), when addressing the issue of a command for something eternally [me: he doesn't say that Abd al-Jabbar was debating the sabt matter] argued that it doesn't actually imply eternality because moral obligation is not perpetual and ends (التكليف ينقطع), which is why when someone says to someone else to stay in the company of someone forever (لازم فلانا أبدا), or hold someone forever (أحبسه أبدا), it doesn't actually mean eternally [<— v. 1, p372].

---

In a discussion on whether the Companions of the Prophet performed ijtihad during the life of the Prophet: The author notes that Abū 'Alī (me: a famous mu'tazili?) was not certain, because the khabr of Mu'ādh which would imply this (in which Muadh asks the P about advice regarding adjudicating) was aḥād. al-Qadi 'Abd al-Jabbar similarly did not give a verdict of certainty ( لم

يقطع) that those Companions who were with the Prophet performed ijtihad, since the evidence for this is based on aḥād reports, but he did believe it was certain (قطع على) this was the case for Companions who weren't with the Prophet, since 'Abd al-Jabbar believed the Mu'ādh report was thābit according to him (عنده ثابت) because the Umma widely accepted it as a whole. The author, given the uncertainty in the evidence, says that what is most apparently likely to him is that ijtihad wasn't frequently done (لم يكن عادة الحاضرين عند النبي صلى الله عليه وسلم الاجتهاد) by the Companions who were in the company of the Prophet, since it would have been something very known about them, just as it wasn't their habit to cite rulings from the Torah ( كما أنه لم يكن عادتهم طلب الحكم من التوراة). He admits the possibility (يجوز) that a handful of companions (الواحد والاثنان) may have been permitted by the Prophet to perform ijtihad in his presence given that the khabr of 'Amr b. al-Āṣ may be authentic, just as they may have done so not in his presence, but the latter is more likely because the khabr of Mu'ādh is more likely authentic. [me: what's interesting here, is that even though he doesn't delve into the Torah example, he sees it as an issue of probable unlikeliness, not impossibility, given that his whole discussion is about relative certainties. He also implies, through his comments on the Companion's ijtihad, that referring to the Torah may have been done by a handful of companions.]

[v. 2, pg 243]

[Note, the hadith of 'Amr b. al-Aas is probably this one:
http://articles.islamweb.net/media/print.php?id=194653]

---

Chapter on [1] whether a prophet can follow the shari'ah of a previous prophet, and [2] on the Prophet not being a follower prior or after his prophecy to the shariah of those who came before, nor is his ummah followers of the previous shariah.

The author admits that there is no logical reason why a prophet would not be following the law of a previous prophet. He discards two counterarguments that suggest it's not possible (because [1] that would imply the مصلحة of both prophets was exactly the same since the ahkam are tied to that, or that [2] the coming of a second prophet with the same laws would be pointless - the Author says neither is necessary). [<— v. 2, pg 337]

As for whether the Prophet followed a prior shariah before his prophethood: a group has denied it, another has permitted it, and another have reserved judgment (توقف فيه). Qadi 'Abd al-Jabbar notes that Sheikh 'Abū Hāshim reserved judgement.

Then others debated on whether the Prophet followed a prior shariah after his prophecy: one group holds that he followed their shariah accept where a دليل made an exception, another group said he didn't.

As for those who said he did (before or after prophecy), some say he followed the shariah of Abraham, others that of Moses.

The author: proof that he didn't uphold their ways before prophethood is that if he did, he would've acted upon their ways and also mixed with those who transmitted information about

the previous shar' from the Christians or others, but this doesn't appear to have been done. Instead, his actions before his own Shariah and his prophethood and info hasn't reached us that he did what the Christians did, nor mix with them or other groups or ask them about their laws [me: this is fascinating. He's not scandalized by the possibility, but addresses it matter-of-factly]. The opposition who says that he did follow their ways use as proof that prior to prophethood he would do Hajj and Umrah at the Ka'ba, do tawaf, ritually purify and consume sacrificed meat (يزكي ويأكل اللحم), etc, and that wouldn't be appropriate unless it was in accordance with divine law (شرعا). Author's response: [I believe he says the evidence isn't there that he performed Hajj or umrah or performed ritual animal sacrifice himself (ولا أمر بها), but the line isn't clear: لو يثبت أنه حج واعتمر قبل البعثة وتولى التزكية بنفسه ولا أمر بها] [note for an alternative reading that Abū al-Muẓaffir al-Tamīmī copies this author, and in his version of this argument he says ولم يثبت أنه تولى التزكية وأمر بها]. As for the Prophet eating ritually sacrificed/cleansed meat (أكل اللحم المزكى), it is, rationally, a good thing for someone to do because there is no harm in it and it benefits the one eating it [<— v. 2, pg 337]. Similarly, doing Tawaf around the ka'ba might've been done to keep himself busy in walking as people do when they're in thought - and it's not necessarily the case that he did a lot of Tawaf anyways. As for the Prophet paying respect to the ka'ba (تعظيمه), this the intellect would find okay to do, since it makes sense for individuals to honor the places of the Prophets and the places they paid their respects as long as it wasn't abrogated against [<— v. 2, pg 338]. [me: kind of silly over-rationalizing of the Prophet's actions here].

[me: Muslim jurists weren't scandalized by the possibility that the Prophet referred to previous scriptures or even 'copied' from them - that's what he should've done as someone mukallaf who was God-fearing - find out what God wanted from him from those most likely to have it]

Different positions that uphold that the Prophet followed previous shariahs after his prophethood: [1] God revealed to him to him the obligation to worship in the way the previous people did (i.e. shar' man qablana), and also revealed the particulars of that worship, in which case the Prophet did not need to rely on transmitted information from the other predecessor communities. [2] The Prophet relied on transmitted knowledge to know both the obligation to follow the predecessor community's worship and also the particulars of that worship in the same way that we refer to transmitted knowledge to follow the Prophet's shar', [3] God revealed to him the obligation to follow the previous people's, but commanded him to refer to transmitted info from predecessor communities to know the particulars of that shar', [4] the Prophet referred to mass transmitted knowledge in understanding the obligation to follow the previous shariah, but in knowing the particulars, he referred to revelation. [ME: these are also reflections of how later Muslims could conceive of the relevance of the pre-Muhammadan laws for themselves, not just for the Prophet. E.g. (4) might reflect that some saw it as being mutawatir knowledge from the non-Muslims around them that Muslims were obligated to follow the ways of the pre-Muhammadan people, but needed to refer to revelation - in their case, transmitted revelation - to know the particulars. So this debate is projected back on the Prophet as well].

The author is willing to entertain the first position [1], but only in an insignificant manner: He said that the first one might imply that all of what was revealed to the Prophet agrees with something of the laws that came before (like those for Moses, etc), but he says this is impossible since we know that a lot of the laws of the Shariah of Muhammad do not have precedence in the shariah' of Moses or Jesus or others. If it means that some of the Prophet's shariah agree with

pre-Muhammadan prophets' laws, then the author doesn't dispute the possibility of this, BUT he says that the mere agreement in laws doesn't mean that he followed pre-Muhammadan laws, since he only learned about them (according to this position) by means of revelation (waḥy), and so it is safer/more conservative (أولى) to explain the agreement as being because of what was revealed to him, not that he followed the other laws (فإضافة ذلك إلى الوحي المنزل أولى).

The author rejects all of the other three possibilities [2-4] for the following reasons: (a) the Prophet used to wait for revelation to come to him when events would take place (e.g. involving الظهار or اللعان or الإفك), and not seek out the Torah or another source to know a particular rule and its particular. If he followed the pre-Muhammadan ways, he would've actively sought out these sources. A counterargument might be that these cited examples of events where the Prophet waited on revelation may have been the exception and that he normally may have referred to the Torah [<— v. 2, pg 338]

The author responds that the Prophet only referred to the Torah on the matter of Rajm [<— v 2, 338-339], so if he did refer to the Torah for law, it only happened here. The author says that the the Prophet didn't refer to the Torah for the purpose of getting a hukm in this case, and that even if it was established that he did intended to obtain a hukm from it, then it can only be that he referred to the Torah in this one case only. As additional evidence, the Salaf didn't refer to transmitted information from the people of other religions (Ahl al-milal) on matters, nor did they ask them about their laws regarding those matters, and if they were indeed followers of the pre-Muhammadan laws, then the books of the old Prophets would've had the same fate as the Quran and Sunnah in being sources that legal reference towards was obligatory.

Response of the opposing position: the salaf instead followed what was mass-transmitted (tawatar) from the pre-Muhammadan scriptures, instead of what was solitary (aḥād), because the transmission of one or two of the disbelievers cannot be acted upon (لا يجوز العمل به), and the Salaf did not vigorously investigate their shar' (لم يفحصوا عن شرعهم) because what reached them was that which was mass-transmitted without their inquiry. Author's response: this isn't the case because a lot of what is mass-transmitted is only known by those who mix with those transmitting this information and critically examine their transmission [me: i.e. he's implying this intermixing didn't take place by the Salaf]. The author gives as an example that fatawa of the salaf and their debates are similarly known through mass transmission, but only those who intermix with those who transmit this kind of information know this information [me: i.e. those in scholarly circles where this information is shared would have this access]. The author adds that the Prophet, when he advised Muādh to give legal verdicts by the Book of Good, the Sunnah of the Prophet, and afterwards his ijtihad, didn't tell him to give a verdict by means of the Torah/Injil. Opponent: The "Torah" is also within the Prophet's advice to Muadh to rule by the "Book of God". [me: strong! This means that Muslims back then understood this possibility!] Author: The phrase "Book of God" is not understood in the shariah to mean anything but the Qur'an (لا يعقل منه في الشريعة إلا القرآن) [me: this is circular logic]. He gives as examples the statements "قرأت كتاب الله" and "رأينا كتاب الله" and "حكمنا بكتاب الله" as proof, since we all understand them to mean the Qur'an and nothing else [me: but only now!]. He then also gives a practical problem: if the Prophet was following one of the pre-Muhammadan ways, was it that of Moses? Jesus? The first was abrogated by the second [me: according to later people!], which means it can't work, and the second wouldn't make sense because no one in the Ummah argues for that

[me: interesting! This debate was mainly focused on the Torah]. The Umma is of three positions on this, he says: those who say the Prophet didn't follow the pre-Muhammadan laws, those who said he followed the shar' of Moses and thus referred to the Torah [me: so Muslims recognized the clear agreements with Islamic law and the Halakha to have believed this], or that he followed the various sharā'i of those who preceded him except where they contradicted each other. [<— v. 2, pg 339].

Author: another reason why the Prophet couldn't have followed the laws of others and benefitted from them directly is that if that were the case then the entirety of the sharī'ah wouldn't be ascribable to to him as it currently is, just as we similarly don't ascribe the current shariah to any member of his Umma that benefitted from him [me: i.e. it's analogous since the Prophet would be benefitting from the pre-Muhammadan prophets just like members of his Umma benefit from him in matters of law - yet in both cases we don't ascribe them to where we got the benefit from]. [v. 2, pg 339-340]

Evidence given for why the Prophet followed the laws of pre-Muhammadan prophets:

[1] أُولَئِكَ الَّذين هدى الله فبهداهم اقتده

They read huda as including shariah. Author: no, its referring to what they (the people referred to in the verse) agreed on, named, justice and tawḥīd, and not law.

[2] إِنَّا أنزلنَا التَّوْرَاة فِيهَا هدى وَنور يحكم بهَا النَّبِيُّونَ} الْآيَة}

The verse also refers to the P since he is one of the prophets. Author: the outward meaning of the verse refers to all the prophets, and therefore it must be referring to justice and tawḥīd, not law, since some of them abrogated what was in the Torah. He says that he is leaving one of the outward meanings of the verses (that it's referring to the prophets' commanding to the entirety of what's in the Torah and not just justice and tawḥīd), to hold onto another outward meaning of the verse (that it's referring to something all the prophets gave a verdict on, namely justice and tawḥīd). Just as the opposition can chose one outward meaning and left the other, he's done the same, and thus his argument is of equal strength and cancels out the utility of their argument. (المستدل بالآية كذلك يفعل ساويناه وسقط استدلاله). [me: this is an interesting argumentative maneuver, but it ignores other contextual arguments of the verses that support the opponent's position] [v. 2, pg 340]

[3] {إِنَّا أَوْحَينَا إِلَيْك كَمَا أَوْحَينَا إِلَى نوح والنبيين من بعده} الْآيَة

Author: this verse merely means that God revealed to the P in the same way as he did to others not that he revealed the same exact thing. [v. 2, pg 340-341]

[4] {ثمَّ أَوْحَينَا إِلَيْك أَن اتبع مِلَّة إِبْرَاهِيم حَنِيفا}

Author: millah only refers to fundamentals (الأصول) including tawḥīd, justice, and sincerity to God in worship, not the periphery matters of positive law (الفروع), otherwise one would also say "ملة أبي حنيفة" and "ملة الشافعي" and intend their *madhhab*s, but in reality we know that their millah is not different [me: here's another instance of him not seeing how this is an anachronistic reading of this word]. Also, the verse includes "وما كان من المشركين" making it clear that millah

means a fundamental of religion (أصل الدين), and also the sharī'ah of Ibrahim is no longer transmitted, so it's not possible for God to be encouraging following a law that there is no way to know.

[5] شرع لكم من الدّين مَا وصّى بِهِ نوحًا وَالَّذِي أَوْحَينَا إِلَيْك وَمَا وصينا بِهِ إِبْرَاهِيم ومُوسَى وَعِيسَى} الْآيَة}

The word دين here refers to fundamentals (أصول) and not periphery legal matters (فروع). We know this for linguistic reasons: when we refer to "دين الشافعي" we don't intend his legal school, nor do we say that his دين differs from that of Abu Hanifah [me: i.e., it's talking about their religion, not law]. Furthermore, the completion of the verse is "أن أقيموا الدين ولا تتفرقوا", which means that what was meant by "شرع لكم" here is clearly leaving difference, and to hold onto the دين. If the verse intended that the Prophet SAAS followed the actual legal shariah of the prophets before, it would've been expressly noted (with an أمر مبتدأ) [<— v 2, pg 341]

[6] The Prophet SAAS referred to the Torah in the stoning of two Jews. Response: He didn't refer to the Torah to get a legal hukm from it, but rather to establish his truthfulness in relating that stoning is mentioned in it. If in fact he was seeking a ruling from it, then he would have referred to it for not only other laws, but also in the criteria for stoning (شرائط الرجم) like al-ihsān (الإحصان). Additionally, he couldn't have been dependent upon them because their transmission of this material was not in the form of mass transmission (المتواترين), and also the Āḥād reports of the disbelievers are not sources of knowledge (أخبار آحاد الكفار غير معلوم بها). Also, the Torah has been altered (محرفة), which would've prevented the Prophet from going to it for legal rulings. [<— v. 2, 341-342]

**Ibn Hazm (al-Ihkām):**

الكتاب: الإحكام في أصول الأحكام

المؤلف: أبو محمد علي بن أحمد بن سعيد بن حزم الأندلسي القرطبي الظاهري (المتوفى: 456هـ)

المحقق: الشيخ أحمد محمد شاكر

قدم له: الأستاذ الدكتور إحسان عباس

الناشر: دار الآفاق الجديدة، بيروت

عدد الأجزاء: 8

Through mass-transmission (tawatur), we know with certainty things we haven't seen about things like other lands, those who came before us including prophets, scholars, kings, events, etc]v. 1, pg 104[ .

He says that they wrote their own texts and claimed that it is from God (قالوا هو من عند الله), as the Qur'an informs us. [v. 1, pg 127]

In a long list of examples he gives of Malikis who relate the practice of the Prophet yet reject its legal import and claim it is not to be acted upon (ليس عليه العمل), he says that they relate that the Prophet stoned two adulterer Jews, yet they say this report is NOT acted upon and that stoning is not permitted. The proof that some of them give, which Ibn Hazm is disgusted by and declares is sufficient to take one out of the fold of Islam (وأتى بعضهم في ذلك بعظيمة تخرج عن الإسلام), is that the Prophet stoned the two adulterers in order to execute what was in the Torah (تنفيذا لما في التوراة), and thus the Prophet was made into an executor of the laws of the Jews [<— v. 2, pg 104]. God

protected his Prophet and his selected people in the right (خيرته من الإنس) from giving legal judgements according to anything other than what God commanded [me: i.e. not the Torah], and God commanded the Prophet:

قُل لَّا أَقُولُ لَكُمْ عِندِي خَزَائِنُ اللَّهِ وَلَا أَعْلَمُ الْغَيْبَ وَلَا أَقُولُ لَكُمْ إِنِّي مَلَكٌ ۖ إِنْ أَتَّبِعُ إِلَّا مَا يُوحَىٰ إِلَيَّ ۚ قُلْ هَلْ يَسْتَوِي الْأَعْمَىٰ وَالْبَصِيرُ ۚ أَفَلَا تَتَفَكَّرُونَ

[me: i.e. the Prophet only judges but what was revealed to him] [<— v. 2, pg. 105]

Author responds to those who reject naskh, including some Jews because they view it as contrary to the wisdom (حكمة) of God to change his laws. He argues that abrogation is just as any other act of God. Just as he gives power to oppressive disbelievers in some place, or believers in others, or any other act of his in the world, there is nothing that makes these things inherently possessive of 'wisdom' over their opposites. [v. 4, pg 67-68]. The response would be that these other acts are examples of 'البداء' and not 'النسخ'. Ibn Hazm rebuts by defining البداء as meaning acts where the one initiating them doesn't know what follows is. In this narrowly defined sense, Ibn Hazm argues, no act of Gods is from البداء . On the other hand, نسخ is from God's attributes, since it means to do something knowing that He will change it after a known time. When defined in this way, all things in this world are of the transient type and thus are examples of 'نسخ'. The quality of بداء is of Humans, Jinn and animals, not of God [v. 4, pg 68-69]. Ibn Hazm notes that naskh before its intended time is not something that God is incapable of doing, it's just that it won't happen. Thus when God informs us that there is no prophet after Muhammad, it won't happen, even though we recognize that God is fully capable of doing so [v. 4, pg 69].

Ibn Hazm preempts an issue that those who reject naskh might have: he says that there is no difference between God commanding us with something and telling us he'll change it in the future, and him commanding us and **not** telling us that he'll change it in the future, since we can't place any conditions (شروط) on God. [v. 4, pg 69-70] Not only is this necessary to believe about God, but God tells us in the Qur'an this:

ولا يحيطون بشيء من علمه إلا بما شاء

And

فلا يظهر على غيبه أحدا إلا من الرتضى من رسول

He says that no one substantively disagrees on this point except some Jews. In vitriolic fashion [me: known about Ibn Hazm - see Adang], he says that it is not a surprise, given their weak intellect, lies and personal anger with God over their difficult plight, that they claim there are additional conditions on God: they say regarding one of their Rabbis (who he refers to as a dog) [me: possibly referring to Rabbi YIshmael ben Elisha], that God clings to his clothing and seeks his blessings during the destruction of the temple [me: Rabbi Ishma'il is believed to be a child during the destruction of the Second Temple, or may have been Kohen Gadol shortly before the destruction. Ibn Hazm is possibly referring to him because in Talmud Berakhot 7a:4 on Yom Kippur while he is in the inner sanctuary he sees God who asks him to bless him. He may be going off a muddle up story or one from popular lore. See:

http://www.zissil.com/topics/Rabbi-Yishmael-ben-Elisha

https://www.encyclopedia.com/religion/encyclopedias-almanacs-transcripts-and-maps/ishmael-ben-elisha

[v. 4, pg 70]

Those who attribute such things to God, it is not strange to believe they'd be open to making a mockery of Him [me: and thus have additional requirements that God explain his future naskh]. [v. 4, pg 70-71]. But in spite of all of this, in the Torah the matter of the Prophet had been made clear to them, and that their practice of their shariah was contingent until the coming of the awaited Prophet, the hoped one of the nations [me: Maybe Isaiah 42:1, cited by Ibn Hazm elsewhere according to Adang - see pg. 265 of her book], the one given power from the mountains of Paran (والذي يستعلى من جبال فاران) [me: See Adang references for Paran biblical prophecies Muslims linked to the Prophet], with him thousands of righteous people, God would put His words in his mouth, and if he is disobeyed God will take vengeance [last two prophecies a reference to Deutoronomy 18:17-19]. The nature of their shariah is like what was commanded to the Jews during the exodus, differing from what they were commanded in Jerusalem, or how there are certain things prohibited during the Sabbath which are not on other days, or rules for when you can/can't fast, etc. All of these are examples of rules tied to time, when the time leaves, the rule changes. There is no reason for any of it or anything necessarily of benefit (مصلحة) in it, other than that God willed it, just as he creates whatever he wishes. [me: i.e, the same should apply here then, that the old law was abrogated by the new. It seems that for Ibn Hazm more so than some of the other authors, this debate is tied into real debates with Jews].

Ibn Hazm then concludes his discussion by merely saying that in the Torah of the Jews (توراتهم) [me: he believes they've altered it is why he says this], God permitted Adam and his children eating all animals save their blood (أكل حيوان حاشا الدم), and this is different from the law of Moses, and thus Naskh is established even for the Jews [me: the fact he concludes with this is further evidence they are his focus. Also, it appears that he got this mixed up. Adam ate plants. Noah

and his sons in Genesis 9:3-4 are granted the new law letting them eat animals, though without blood in it]. [v. 4, pg 71]

---

In a discussion on whether naskh only happens in the direction of an easier ruling which is the position of some (Ibn Hazm's position is that God can do whatever he wants, make things easier, harder, etc), he comments that the rulings God has obligated Muslims is an ease when compared to what was obligated on those who came before. He cites the verse to this effect:

ولا تحمل علينا إصرا كما حملته على الذين من قبلنا

He cites also:

الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الْأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْتُوبًا عِندَهُمْ فِي التَّوْرَاةِ وَالْإِنجِيلِ يَأْمُرُهُم بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنكَرِ وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ ۚ فَالَّذِينَ آمَنُوا بِهِ وَعَزَّرُوهُ وَنَصَرُوهُ وَاتَّبَعُوا النُّورَ الَّذِي أُنزِلَ مَعَهُ ۙ أُولَٰئِكَ هُمُ الْمُفْلِحُونَ

[v. 4, pg 94-95]

He notes that the Shariah is easier when compared to Jewish law, and he does this to explain the meaning of verses like the following that explain the ease in the religion, without arguing that God is bound to do naskh of things to make them easier:

يريد الله أن يخفف عنكم وخلق الإنسان ضعيفا

وما جعل عليكم في الدين من حرج

ولا تحمل علينا إصرا كما حملته على الذين من قبلنا

): how some from Moses' community had to kill themselves (see Quranic verse), or in the laws of the Jews, that **whoever touches a dead body is ritually impure a day and night** ( من خطر

على ميت تنجس يوما إلى الليل) and all of the other difficult things that have been put on the Jews and prohibited from them. [me: he uses the Jews as a trope of difficulty - see Ze'ev Maghen. Also in Numbers 19:11 says you're ritually impure for 7 days for touching a corpse, and 19:22 says something that the sages in the Talmud have to reconcile with. In either case, Ibn Hazm's reading seems to be off. Also, these ritual purity laws were not practiced during the Talmudic period after the destruction of the temple, so Ibn Hazm's knowledge is theoretically informed. See Ze'ev and elsewhere about purity laws being non-relevant.] [<— v. 4, pg. 94-95]

———

from vol 5, pg 108:

Ibn Hazm makes the case that the Shariah is binding on all, believers or otherwise, in opposition to the position that one is not obligated to perform Islamicly required acts as a non-Muslim. In the following verse, e.g., the disbelievers (deniers of the Last Day) are punished in the hell-fire for not feeding the poor and not praying:

قالوا لم نك من المصلين * ولم نك نطعم المسكين * وكنا نخوض مع الخآئضين * وكنا نكذب بيوم الدين

Some other verses:

ومآ أرسلناك إلا كآفة للناس

قل يأيها لناس إني رسول الله إليكم جميعا

[<— v. 5, pg 108-109]

اليوم أحل لكم الطيبات وطعام الذين أوتوا الكتاب حل لكم وطعامكم حل لهم

The verse above says that the food of Muslims is halal on them, whether they accept it or reject it. All of these various verses give certainty, says Ibn Hazm, that Islamic law is binding on the

disbelievers: the hadd should be exercised on drinking, adultery, their wine be poured out ( تراق خمورهم), their swine slaughtered, their interest absolved, and that they be obliged to follow all Islamic laws, including those pertaining to marriage, inheritance, trade, corporal punishments (الحدود), that the rabbits and camel meat that they slaughter and all animals they don't believe can be made halal [me: through slaughter] for consumption ( وأن يؤكل ما ذبحوا من الأرانب وما نحروا من الجمال ومن كل ما لا يعتقدون تحليله لأن ذلك حلال لهم بلا شك) be eaten [me: rabbits and camels are not kosher. Also, it appears that he is referring to animals that THEY slaughter, given the context of the later debate where he criticizes Malikis who don't eat parts of hanging defective meat slaughtered by Jews - this tells us that there are people living in his time who also don't eat this meat for not being kosher according to them, i.e. it's not just the hanging meat they were avoiding. Also, it's likely he's referring to fellow muslims because him saying that it's Halal for them is referring to the verse that says it is therefore halal for Muslims]. [<— v. 5, pg 109-110]

Continuing his rant against fellow Muslims for their laxity with the disbelievers, he says that anyone who permits for the non-Muslims wine, and then isn't content with just that, but then also fines a Muslim who pours out that very wine upon those disbelievers, then such a person [me: i.e., such a Muslim jurist] has given a legal verdict leaving the verdict of the Prophet and God. He says that the rulings of his interlocutors (خصومنا) is contradictory, in believing that the حد of قذف and سرقة on the disbelievers is the same as Muslims, but won't give them the same verdict with regards to adultery and wine. Additionally, they consume some of the animal which the Jews slaughter, and not others, acting on the lie of the Jews (إنفاذا لإفك اليهود), and leaving the express word of God that the food of the believers is Halal for them, and theirs is Halal for us. He asks God to protect us from such detestable positions. [v. 5, pg 110] For several pages

onward he talks about the status of disbelievers, the obligation of Islam, salvation, etc. Not relevant for this project.

———

Ibn Hazm starts off his section on Shar' man qablana saying that it's one of seven sources that are mistakenly referred to by jurists as sources of Islamic Law, these seven, which he addresses in his book, include:

[1] The laws of pre-Muhammadan prophets

[2] الاحتياط

[3] الاستحسان

[4] التقليد

[5] الرأي

[6] دليل الخطاب

[7] القياس

[<— v. 5, pg 160]

With regards to the laws of pre-Muhammadan prophets, there are two opinions, [1] that it is binding on us as long as the ruling isn't prohibited by the new system, and position [2] is that it is not binding on us, but that we've been told in our religion about things that are in agreement with the previous systems, but they're our laws in that we follow our prophet, not the laws that passed. Some from group [2] will add an exception for the shariah of Abraham. Ibn Hazm agrees with position 2, and holds that our shariah is in fact the shariah of Abraham [me: note that among the "everlasting covenants" noted in the Torah, one of them is for Abraham in Genesis 17].

As for position [1], Ibn Hazm isn't aware of anyone who says it is allowable to refer to pre-Muhammadan law from outside of the Qur'an or authentic hadith, except for some that have given individual fatwas from some of the madhhabs:

فما نعلم من يطلق إجازة العمل بذلك إلا أن قوما أفتوا بها في بعض مذاهبهم

Examples of this include the following:

[1] Some Malikis prohibit eating from the slaughtered meat of Jews the attached lung from the side of the animal (ملتصق الرئة بالجنب) [me: note Adang translates it as a lung "stuck to its chest wall"]. This is something that the Qur'an and Sunnah have not indicated was haraam on the Jews. Furthermore, the Jews themselves are not in agreement on this, as this is a position unique to the Rabbinites, whereas the Karaites (العانانية), the 'Īsawiyyah and the Samaritans are in agreement over its permissibility. Ibn Hazm expresses his shock: " These people have taken care not to eat from some thing that the Jews have slaughtered, this thing being a matter that the Sheikhs of the Jews - may God curse them - have a disagreement on, and they are fearful of contradicting Hillel and Shammai, the two shaykphs of the Rabbanites. Hasbun Allah wa Ni'ma al-Wakil. " [me: note the sarcasm in his voice].

[<— v. 5, pg. 161]

As another example, he criticizes Ismā'īl b. Isḥāq [me: presumably the Maliki judge (al-Zarkashi says the same, that he was a Maliki judge), also see earlier comment of his regarding this issue, where his interlocutor was unnamed.], who said that the Prophet stoned the two fornicating Jews **in accordance with the Torah** [me: his issue is with this]. Ismā'īl b. Isḥāq then gave the opinion that he personally did not have to perform stoning on fornicating Jews who were married ( اليهود الزناة المحصنين), keeping himself from doing what he claims the Prophet did. Ibn Hazm stops short

of making takfīr: if ignorants became kafirs by virtue of their ignorance, the one who made this statement is the most deserving of people to being a kafir for the enormity of his statement. [<— v. 5, pg 161-162]

Furthermore, the position is taken by some [me: it is not apparent if he's still referring to the Malikis or to Ismā'īl b. Isḥāq] that "Ameen" is not said by the imam after "wa la-ḍḍālīīn" because Moses, when he made a prayer, he didn't say Amen, but Aaron did, which is why God called them the (داعيين) in the verse (قد أجيبت دعوتكما) [me: see what this is referring to in books of fiqh online, also note the relationship to actual biblical passages/understandings]. Ibn Hazm rejects this verdict outright, and rhetorically asks what the source is for knowing whether Moses supplicated without saying Amen and Aron said Amen without supplicating. Author says this was said by some mufassirun without an isnād to the Prophet [me: look if there are examples to contradict him]. Author says that we can only accept such statements if [1] it's from the Prophet, or [2] from a large group transmission to its source. Without one of these two possibilities for a statement like this, the statement is as good as a lie. The author then says that even if this event pertaining Moses supplicating w/o amen and Aaron saying amen w/o supplicating were true, it doesn't cancel out the words of the Prophet regarding the Imam: "When [the Imam] says Amen, then say Amen [as followers]," or the statement of the transmitter [of this report?] that the Prophet, as Imam, would say Amen after reciting Fatihah in prayer. Furthermore, there's no denying that maybe Moses said Amen when he made his supplication, and that Aaron supplicated with Moses and also said Amen, or that one or neither of them said Amen. The Quranic verse (قد أجيبت دعوتكما) suggests they both made supplication together, and notes nothing about either of their saying Amen. How bizarre, Ibn Hazm muses, that those making this

inauthentic report about Moses and Aaron would be willing to abrogate the authentic words of the Prophet Muhammad regarding saying Amen [<— v. 5, pg. 162-163].

Ibn Hazm reflects on one of their [the Malikis?] important shaikhs, who he personally knew presided over a conference of judges over the muftis of the madhhab ( أدركناه مقدما في مشاورة القضاة له على جميع مفتيهم), write a statement in his own handwriting in his book, which Ibn Hazm has verified, transmitting things like, “We narrate through authentic isnāds to the Torah that the Heaven and the Earth cried for ‘Umar b. ‘Abd al-Aziz for forty years.” [me: Ibn Hazm finds the claim ridiculous and uses it to suggest the rather unquestioning way his colleagues accept obviously questionable material, and therefore it should come as no surprise that the Ismā’īl rejects the words and practice of the Prophet for a baseless tale about Moses and Aaron. [<— v. 5, pg. 163].

[me: regarding the ‘Umar b. ‘Abd al-Aziz claim: v. 7, pg 204-205 of Dhahabi’s Tarikh al-Islam says it was narrated by a Hisham b. Hassan from Khālid al-Raba’ī that he read it in the Torah, v. 10, pg. 312 of مرآة الزمان في تواريخ الأعيان of Sibt Ibn al-Jawzi says it was a Khālid al-Raba’ī who said he found it in the Torah, in the book أخبار أبي حفص عمر بن عبد العزيز v. 1, pg 82-83, the author narrates a longer chain, all pre-Ibn Hazm narrators: أخبرنَا مُحَمَّد قَالَ حَدثنَا جَعْفَر بن مُحَمَّد الصندلي قَالَ حَدثنَا عَليّ بن مُسلم الطوسي قَالَ حَدثنَا سيار بن حَاتِم قَالَ حَدثنَا جَعْفَر بن سُلَيْمَان قَالَ ثَنَا هِشَام بن حسان عَن خَالِد الربعي . Also in سير السلف الصالحين to Khalid, v. 1, pg 848, Also Ibn Asakirs Tarikh Damashq v. 45, pg 260 With these isnads: أخبرنا أبو سعد أحمد بن محمد أنا محمود بن جعفر بن أحمد الكوسج وعبد الرحمن بن محمد بن إسحاق وأبو منصور بن شكروية وأبو الطيب محمد بن أحمد بن إبراهيم ح وأخبرتنا أم الفتوح رابعة بنت معمر بن أحمد اللنبانية قالت أنا أبو الطيب قالوا أنا أبو علي الحسن بن علي بن أحمد بن سليمان نا أبو عبد الله الحسين بن علي (2) الكسائي بهمذان نا عمر بن

Also another Isnad from Ibn مدرك نا حرمي بن حفص نا خالد بن رجاء عن هشام بن حسان عن خالد الربعي أخبرنا أبو طالب علي بن عبد الرحمن أنا علي بن الحسن الفقيه أنا أبو محمد بن النحاس أنا أبو سعيد بن الأعرابي نا :Asakir الخضر بن أبان نا سيار بن حاتم نا جعفر بن سليمان عن هشام عن خالد الربعي and Also أخبرنا أبو سعد إسماعيل بن أبي صالح أنا أبو الفضل محمد بن أحمد بن أبي جعفر الطبسي (3) أنا أحمد بن محمد بن إبراهيم الصدفي (4) أنا الحسين بن محمد بن حكيم نا أبو الموجه محبن عمرو الفزاري نا الشافعي يعني إبراهيم بن محمد نا فضيل بن عياض عن هشام قال قال بعض العلماء - none appear to be Maliki scholars from the appropriate time period, also v. 2, pg 774 of معجم ابن الأعرابي you have isnad نا الْخَضِرُ، نا سَيَّارٌ، نا جَعْفَرٌ، عَنْ هِشَامٍ، عَنْ خَالِدٍ الرَّبَعِيِّ , al Hilyat al-Awliya v. 5, 342, isnad: حَدَّثَنَا أَبُو حَامِدِ بْنُ جَبَلَةَ، ثنا مُحَمَّدُ بْنُ إِسْحَاقَ، ثنا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى، ثنا مُعْتَمِرُ بْنُ سُلَيْمَانَ، عَنْ هِشَامٍ، عَنْ خَالِدٍ الرَّبَعِيِّ, In the book al-Zuhd of Imam Ahmed v. 1, pg 245, The following isnad, حَدَّثَنَا عَبْدُ اللَّهِ، [حَدَّثَنَا يَحْيَى بْنُ مَعِينٍ، حَدَّثَنَا عُمَرُ قَالَ: سَمِعْتُ هِشَامًا، يُحَدِّثُ عَنْ خَالِدٍ الرَّبَعِيِّ

Ibn Hazm then addresses a claim by some of them [malikis?] that a Muslim can be executed - probably implying in their dying state] makes مريض[ if a sick person - his inviolable blood spilt an accusation that the other person killed him. They take the claim of a dying person as an exception to the Prophet's statement, "If people were taken at their claims, people would claim Their). لو أعطى قوم بدعواهم لادعى رجال دماء قوم وأموالهم" (for the blood of others and their wealth proof? The transmitted Isrā'īliyyāt of some mufassirun about the story referenced in Qur'an this verse merely references that there was a dispute about the murder of a Jewish, 2:72-73 person from Banī Isrā'īl, God commanded that the dead man be struck by part of the slaughtered meat of a cow, and the dead man was brought to life as a sign of God's ability to bring the dead to life. This is all that the Qur'anic text tells us, Ibn Hazm states. The story that is adduced is not from the Qur'anic text, nor is it a mass-transmitted report [implying this could give us certainty , of something pre-Islamic], nor does it even go to the Prophet (musnad) [v. 5, pg. 163]. The tale

and Ibn Hazm gives us several isnad versions of it, all either mursal or mawqūf [me: investigate if a musnad version exists], details the following: how a rich Jewish man's nephew killed him wanting to inherit his wealth, and the Jews of two separate towns that the murdered man was linked to argued over who owed the blood-money. The dispute reaches Moses, who is instructed by God to command the sacrifice of a cow, and to have part of the meat of the sacrifice strike the dead man's body, who then comes to life and informs the people that his nephew was the killer before dying again [<— v. 5, pg. 164-165]. Ibn Hazm emphasizes that none of these details are present in the Quranic text, nor from the Prophet. He also adds that even if this report were authentic, it doesn't serve as a legal proof, but merely a miracle story about the raising of the dead, and while we believe that those who are brought alive in the next life will have no . option but to speak the truth, this isn't necessary for those who are brought alive in this life, i.e . how do we know the man in the story just got up from the dead and lied? [<— 165-166] Furthermore the jurists who apply this are highly selective: they will take the word of a dying man that implicates another for execution or taking his wealth for as blood-money, but they selectively won't accept the claims of a dying man if it involves claims of money or about [<— v. 5, pg. 166]. As another example) ولا في درهم يقربه لوارث( money to be given to an inheritor of their selective application of this story, [me: check if these are Maliki positions, in which case we'll know who's who here], the story doesn't mention anything about qasāma, nor that one needs two or more people to take an oath in qasāma - so where did these details come from [me: he's implying the malikis or whoever are tying in these issues as well]. Additionally, they are inconsistent, because when they deal with the verse (وكتبنا عليهم فيها أن النفس بالنفس), they argue that it's not binding on them because it's from the pre-Muhammadan laws, and so they won't kill a believer who killed a disbeliever, or a free man who killed a slave, but forget to do so on the

. transmitted to them from the bani Israeli. [<— v. 5, pg) خرافة( matter of qasāma based on a tale )].yes, I went back two pages( 164

[Me: his showing the inconsistencies above, and those below, suggests that the fuqaha were being selective on the star' man qablana thing as all legal scholars are for their own practical considerations (i.e. nothing surprising here), as Ibn Hazm normally takes them to task on other things where they ignore the sunnah]

Ibn Hazm then documents cases of pre-Muhammadan laws of the Prophets in the Qur'an, and explains where there is agreement among Muslims that they are not applicable, and where there is difference of opinion. [me: his documenting, systematically every single case he can find from the Qur'an shows that this is a really important debate he is invested in.]

[1] Qur'an 27:20-21: Solomon says that he will punish or slaughter the hoopoe bird for being absent if he doesn't come with a good reason (بسلطان مبين). Yet there is no disagreement that we don't punish birds, even if they act mischievously with us (وإن أفسدت علينا)

[2] Qur'an 21:78 until سليمان ففهمناها in verse 79. There are some jurists who claim that Solomon made the owners of the flock responsible for reparations for the crop that was damaged, or the harvest of one night (جبر ما أفسدت من الزرع أو الكرم ليلا) [me: check translation]. Again for Ibn Hazm, none of those details are in the verse, nor authentic reports of the Prophet, but rather stories found in some tafsir works. This report is no different from other reports found in tafsir works that claim that two angels fornicated, killed a man and drank alcohol - God has exalted

angels from committing such things. Or a story that Venus was an adulteress who was transformed into a shining star to guide people on land and on sea. Stories like this, Ibn Hazm, have led religious renegades (أهل الإلحاد) to ridicule the religion with statements like, "if this were the case, then there wouldn't remain a chaste woman (محصنة) except that she'd fornicate to become a star." [<— v. 5, pg 166-167]. Or a story that Joseph stayed away from the Aziz's wife the way a man would stay away from his wife (قعد من امرأة العزيز مقعد الرجل من امرأته) [me: check translation?] - again, God exalts his prophets from such things. Ibn Hazm says that false reports like this exist in large number.

The Solomon story contradicts the hadith of the Prophet in which he says that "The wound of the speechless creature, is a thing of which no account is taken" (جرح العجماء جُبار). An available counter hadith (known as the hadith of ناقة البراء) [me: the editor tell us that the report, found in Ahmed, Abu Dawud, Nasa'i and Ibn Majah and also reported by al-Shaf'i', says that the owner of an animal is responsible for what the beast does at night] doesn't have a complete isnad and is munqaṭi' in all its variations. [<— v. 5, pg 167].

[3] Zakariyya's law was told in Qur'an 19:10 where he is told not to talk for three nights. The Prophet cancelled this with this statement "No silence from the day to the night" ( لا صمت يوما إلى الليل). We also haven't been commanded with keeping silent, though avoiding everything but unnecessary speech or recommended words of religious remembrance (المستحب من الذكر) is best.

[4] Quran 3:44, where responsibility over Mary (presumably by those in the temple) was determined by lots. Some jurists have taken this verse to say that you can give verdicts by lots, making it a means of giving verdict on parental guardianship (المستلحق من الأولاد) [?], on cases of

disputed divorce of a woman (المشكوك في طلاقها), and other issues. Ibn Hazm says this is not acceptable because it's based on qiyās which is an invalid proof for him, and it's also not something we've been told to follow in our shariah (i.e. informed by his argument on pre-Muḥamamdan laws not being applicable by default).

[5] From the shariah of Moses, Qur'an 20:12, Moses is commanded to take off his sandals in the sacred valley. Whereas we do not take off our sandals on the Holy Land (الأرض المقدسة) [me: any holy earth or the Holy Land? - do search to confirm]. [tie this into the Kister article on this] [<— v. 5, pg 167]

[6] Quran 6:146: "And to those who are Jews We prohibited every animal of uncloven hoof; and of the cattle and the sheep We prohibited to them their fat, except what adheres to their backs or the entrails or what is joined with bone." Ibn Hazm: there's no difference of opinion (**khilāf**) that this is abrogated because God made all of that Halal on them based on the verse (وطعامكم حل لهم). [<— v. 5, pg 167]. And we know that the fat (الشحوم) is something acceptable in our food (طعامنا), so it's halal for them, despite their haughtiness (أنوفهم) [me: Jews implied because the next words] and the haughtiness of those who avoid consuming this fat, following the claims of the Jews who prohibit it (وإن رغمت أنوفهم وأنوف المجتنبين لها اتباعا لدعوى اليهود في تحريم ذلك). [**me:** line is very telling! The word ijtinaab suggests a cautious avoidance, implying there are many Muslims doing so out of deference to a possible Jewish claim that might be true, maybe out of religious scrupulousness? Note that he also said there's no khilaf, suggesting that those who do it are not jurists.]. [<v. 5, pg. 168]. [me: note he doesn't say absolute ijmā' consensus that it's abrogated as he does in some issues below, just that there is not Khilāf, i.e. a legal issue]

[7] The qisās details in verse 5:45 (a life for a life, etc.). Ibn Hazm: this verse isn't a command for us, but was commanded for others. Rather, the law of retaliation that we follow applies to all Muslims and is equal for all individuals, free or slave, male or woman, and it's based instead on other proofs: Quran 2:194 ( وإن( Quran 16:126ً ),...فمن اعتدى عليكم فاعتدو عليه بمثل ما اعتدى عليكم... and the words of the Prophet) ...عاقبتم فعاقبوا بمثل ما عوقبتم به... ,(Quran 42:40 )وجزاء سيئة سيئة مثلها( The same rule would apply for the free/slaves and males/females **among** the). تتكافأ دماؤهم( disbelievers. A believer, however, would not be killed for a disbeliever, based on Qur'an 4:141 )...ولن يجعل الله للكافرين على المؤمنين سبيلا (and the Prophet's words )ولا يقتل مؤمن بكافر(

[8] Qur'an 4:154 ( Ibn Hazm: there is absolute consensus (ijmā') this is). ...لا تعتدوا في السبت. abrogated. [note how he uses ijmā' differently than "no Khilāf" in these cases]

[9] Qur'an 2:54 ( Ibn Hazm: there is absolute consensus). ...فاقتلوا أنفسكم ذلكم خير لكم عند بارئكم. .(ijmā') this is abrogated

[10] The obligation to slaughter a yellow calf with bright color. Ibn Hazm: there is absolute consensus (ijmā') this is abrogated.

[11] From Lot's law Quran 54:33-34 (...كذبت قوم لوط بالنذر. إنا أرسلنا عليهم حاصبا) ("The people of Lot denied the warning. Verily We sent upon them a storm of stones…). Ibn Hazm: In our shariah we don't stone those who have denied the warning (النذر). However, a group has used this verse as evidence to stone the one who did the the crimes of the people of Lot. [<— v. 5, pg. 168]. This

argument doesn't recognize that the punishment as noted in the verse is for those who disbelieved, not for those who committed the acts of the people of Lot, since their children and women were also punished as well and they didn't do this act. The logic of using this verse is also selectively inconsistent, because in verse 54:37, God obliterates the eyes of some of the people of Lot who solicit Lot's guests, yet it is not taken as a legal proof to gouge out eyes. [<— v. 5, pg. 169]

[12] In the shariah of Yusuf [me: note how Ibn Hazm refers to 'shariah' loosely to refer to anything that happens in the presence of a Prophet] in Quran 12:26, deciding who was responsible when the Aziz's wife wanted to seduce with Yusuf based on the condition of the shirt: there is no khilāf that this verse can be used in claims of Zina.[<— v. 5, pg. 169]

[13] Quran 12:72 (...ولمن جاء به حمل بعير...) from the story of Joseph, in which a prize is assigned for the one who could find the King's drinking cup. Some have used this verse to uphold "al-ju'l" (الجعل), a payment contingent on completion of a task, but Ibn Ḥazm, who views this transaction as invalid, sees it as opposition to the words of the Prophet "Your wealth is prohibited/sacred on you" ( invalidates ju'l, unless a text from our shariah) أموالكم عليكم حرام , mandates it or the one offering the piece wage himself chooses to give it. [me: in the Mahalla . he rejects the Ju'l for not being one of the transactions that the Prophet has explicitly sanctioned If the reward is worded in a way similar to an isti'jar, than it's acceptable][<— v. 5, pg. 169]

[14] Qur'an 12:79 (قال معاذ الله أن نأخذ إلا مَن وجدنا متاعنا عنده…) [me: from Surah Yusuf when Yusuf takes Benjamin. The verse means that you can take a thief captive]. Ibn Hazm says there's no

disagreement with his interlocutors that this verse can't be used to argue for the enslavement of thieves. However, he argues that his interlocutors should be obligated to rule with this verse because there is no ijmā' on leaving it [me: **this means his opponents argue that you should follow shar' man qablana provided there is no ijmā' on leaving it**]. In fact, Ibn Hazm transmits that the Qāḍī Zarārah b. Awfā, [me: early qaḍī of Basra, narrated from Abū Hurayra and Ibn 'Abbās] sold a freeman who was in debt. Ibn Hazm also has a transmission of this position from al-Shāfi'ī, though from a طريق غريبة . Ibn Hazm says that this was practiced in the beginning years of Islam before being abrogated by Quran 2:280 "…فنظرة إلى ميسرة…" [the verse is that if the one with the loan is in financial hardship, then "[let there be] postponement until [a time of] ease"].[<— v. 5, pg. 169]

[15] From the shariah of Ayyub, Qur'an 38:44 (وخذ بيدك ضغثا فاضرب به ولا تحنث…) ["Take in your hand a **handful of fruit stalks of the raceme of a palm-tree** - ضغث - and strike with it and don't break your oath"]. [<— v. 5, pg. 169] [Sabab al-Nuzul not given by Ibn Hazm, but elsewhere we know that Ayyub made an oath to strike his wife a 100 times because of what she did if God were to free him of his illness. When God cured him and he was able to punish her, God had him take a ضغث and strike her just once to clear him of his oath] . Some have cited this to uphold (a) the permissibility of flogging a fornicator (الزاني), oath-breaker (القاذف) and consumer of alcohol (الشارب) if they are sick and crippled [me: because Ayyub was sick], with a palm-tree raceme (بعُرجُون) containing 100, 80, or 40 date stalks And (b) to free someone who made an. (شِمراخ(
. oath to flog his servant X numbers of times just a single lash

[وفي بر يمين من حلف ليجلدن غلامه كذا وكذا جلدة]

Ibn Hazm responds: those who cited their proof earlier in the matter of the dead man giving testimony that 'so-and-so killed me' from the story of the Cow and the Israelites [see earlier conversation], don't accept here that an oath-taker is made free of his oath if they "strike with ضغث" [as the verse and Saab al-nuzul suggests. Thus, they cite the isrā'iliyyat interpretation earlier and not here]. The sick person is flogged with grass (ضغث), yes, but **not** because of this verse, rather because of a hadith attributed to the Prophet where he commanded the flogging of a fornicator (الزاني) who was sick, with a palm raceme (عثكول) having 100 fruit-stalks (شِمراخ). Additionally, clearing an oath (البر) happens in the same matters that the word "flogging" and "striking" happen on [? Not sure what this means, but not critical.] ( ونرى البر يقع بما يقع عليه اسم جلد واسم ضرب) [<— v. 5, pg. 170]

[Me: an example of arbitrary citation to favor a less painful, more expedient, ruling]

[16] From the shariah of Moses and his in laws: ( إني أريد أن أنكحك احدى ابنتي هاتين...والله على ما نقول وكيل) [where Moses' father in law gives him an option of two terms of labor to fulfill]. Some use this as proof to allow a marriage contract on an ijāra of one of two terms, where neither of the two is specified. This is not permitted according to either Ibn Hazm or his adversaries (خصومنا) because an ijārah of unspecified time is corrupted (فاسد), since it is eating wealth wrongfully ( أكل مال بالباطل), and marriage based on something corrupted is corrupted, because all that is not sound except by the soundness of something that is not sound, than there is no doubt that it [the original matter] is not sound [me: i.e. the nikah requires a sound mahr]. Additionally, this time of ijāra is disadvantageous to the the wife, and in our religion (ديننا) the bridal-due is the right of the woman being wed, in accordance with the verse, "Give women their bridal-due graciously" [Quran 4:4]

(وآتوا النساء صدقاتهن نحلة). There is no share in it for the father nor anyone else of greater due (ولا حظ فيها للأب ولا للأولى). Ibn Hazm says that among the most bizarre things of this world is what's been reported to him from أحمد من محمد بن الجسور from وهب بن مسرة from ابن وضاح from سحنون from القاسم: [<— v. 5, pg. 170] that Mālik cited this verse to allow a man to give his virgin daughter (ابنته البكر) in marriage without her accepting it (بغير رضاها). [<— v. 5, pg. 170-171].

Ibn Hazm says that it is incredibly strange that he would cite this verse on a matter not found in this verse, even if perhaps the girl agreed to the marriage but it wasn't noted, but Malik still disagrees with the verse on 4 points: (1) marrying off one of two daughters without specifying which, (2) marrying the girl with an ijāra, (3) the ijāra being one of two periods, whichever one is completed the Nikāḥ is valid, and (4) marrying off a girl for service done to her father. Additionally, how does one know that the girl [in the verse] was a بكر, perhaps she was a ثيب. Ibn Hazm then says that in Malik's citation of this text as proof is a lesson for those who think [i.e., it's a sign of the ways in which fiqh is arbitrary for some]. Additionally, she may have been a virgin of older age بكر عانس, and so the father still needed her permission and agreement. [<— v. 5, pg. 171]

[17] From the shariah of Khiḍr Qur'an 18:74 (…حتى إذا لقيا غلاما فقتله) and Qur'an 18:80 (وأما الغلام فكان أبواه مؤمنين فخشينا أن يرهقهما طغيانا وكفرا). There is no خلاف that you can't kill a youth out of fear that he will hurt his parents with disobedience and disbelief. [<— v. 5, pg. 171]

[20] From the shariah of Noah: Quran 71:26-27 “…رب لاتذر على الأرض…ولا يلدوا إلا فاجرا كفارا” [Noah prays to have all the disbelievers removed]. The Azāriqa [sect of the Kharijites] cite this

to allow for the killing of children. They don't realize that Noah's words were for those , disbelievers in his time period who God destroyed, and none of their progeny remains today ذرية من حملنا مع نوح إنه كان( [Qur'an 37:77] and) وجعلنا ذريته هم الباقين( according to the words of God . [Qur'an 17:3], since Noah only kept believers from his people on the boat with him) عبدا شكورا Furthermore, given their ignorance, they aren't aware that the Prophet is the leader (سيد) of the . the children of Adam and he was the child of a disbelieving father and mother, as was 'Umar أو ليس خياركم أولاد?" (Also, the Prophet said: "Aren't the best of you the children of polytheists In our religion, says Ibn Hazm, we leave the disbelievers and don't take kill them, but). المشركين rather take from them the Jizya. We marry them, interact with them, eat from the meat they —. [<slaughter. Nor is it permissible to kill the children of those we are at war with on purpose . v. 5, pg. 171] Rather, God guides them through us and they do not misguide us [<— v. 5, pg have transmitted that] وقد نقل كافة بني إسرائيل[ A large number of the Children of Israel]. 171-172 ) أريحا( killed the children of Arīḥā) يوشع( Moses killed the children of Madyan, and that Joshua by the will of God. And this is not permissible in our shariah. [me: note he doesn't reject that Moses and Joshua did this, meaning he believes some reports of the Jews.] [<— v. 5, pg. 172]

[21] From the Shariah of Yunus, Qur'an 37:140-141 (إذ أبق إلى الفلك المشحون. فساهم فكان من المدحضين) ["Remember when he ran away to the laden ship. And he drew lots and was among the losers."] Some have cited this to justify the casting of lots, which Ibn Hazm says he has already discussed earlier [see ex 4 above about Mary]. He also says there is no disagreement that it is not acceptable to throw someone into the ocean by drawing lots [as the verse would imply]. [<— v. 5, pg. 172]

[22] From the shariah of Mary [me: does he considers her a Prophet, since he stated he is documenting examples of the laws of other Prophets>]: Qur'an 19:26 ( إني نذرت للرحمن صوما فلن… However this [me: implying silence] is not a condition of fasting for us. [me: note). أكلم اليوم إنسيا that some may have understood this fast as a fast of speech]. [<— v. 5, pg. 172]

[23] From God's sharā'i' for the Children of Israel, Qur'an 2:65 ( ولقد علمتم الذين اعتدوا منكم في السبت فقلنا لهم كونوا قردة خاسئين). We transgress a lot [me: i.e. the Sabbath] and we are not transfigured [me: i.e. into Monkeys]. Ibn Hazm says after saying this, to God Most high is all praise [slight humor here]. [<— v. 5, pg. 172]

[24] From the sharī'ah of the people from the time of Zakariyyā, the statement of the mother of Mary in Qur'an 3:35 "I vow to you what is in my womb in service of You" ( إني نذرت لك ما في بطني محررا… And this is not acceptable for us, says the author.[<— v. 5, pg. 172]).

[25] From the sharī'ah of Ya'qūb, Qur'an 3:93 ( كل الطعام كان حلا لبني إسرائيل إلا ما حرم إسرائيل على نفسه من قبل أن تنزل التوراة…). This isn't halāl in for us, says the author. Furthermore, no one can make something harām on himself what God hasn't made harām, except that some jurists differed on whether one could declare harām one's wife or concubine, with some arguing you can. Ibn Hazm rejects this position, stating that the wife or whoever would not become haraam, nor would there be a divorce or expiation on this. She would be halal for him. [<— v. 5, pg. 172]

[26] From the sharā'i of the Children of Israel, Qur'an 2:58 ( —). [<… ادخلوا الباب سجدا وقولوا حطة… v. 5, pg. 172] . This doesn't apply to us, says the author. [<— v. 5, pg. 173]

[27] From the sharī'ah of Adam, Qur'an 5:27-29, the story of the two sons of Adam who made an offering to God, one being accepted over the other, with the other killing the former. The author says that there is no khilāf that judgement cannot be made according to sacrifices. [<— v. 5, pg. 173]

[28] From the sharī'ah of the Ahl al-kitāb from the time of the People of the Cave, Qur'an 18:21 (قال الذين غلبوا على أمرهم لنتخذن عليهم مسجدا)

The author says this is Haram in our shariah, and quotes a statement of the Prophet that when someone from amongst those people (referring to the People of the Book) die, they build prayer houses (masjid) on their graves, and that those people are the worst of creation - sharār al-Khalq - note this hadith appears in Bukhari in which the Prophet refers to the practice of the Abyssinians [<— v. 5, pg. 173]

———

Ibn Hazm declares after listing these 28 cases, that these are the laws that those who subscribe to Shar' man qablana must abide by, and if not, than they have violated their own principles

He then rejects their proofs:

Proof [1] is the verse Quran 5:47 ( وَلْيَحْكُمْ أَهْلُ الْإِنجِيلِ بِمَا أَنزَلَ اللَّهُ فِيهِ ۚ وَمَن لَّمْ يَحْكُم بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْفَاسِقُونَ)

Ibn Hazm says that there is no disagreement between any two Muslims that this verse is abrogated, and that anyone who gives a legal judgment based on the laws of the Injīl that has not be upheld by textual revelation in the Shariah of Islam, then they are a Kāfir, Mushrik and outside of Islam. [note the remainder of the verse]

Proof [2] is the verse 5:44 (إِنَّا أَنزَلْنَا التَّوْرَاةَ فِيهَا هُدًى وَنُورٌ ۚ يَحْكُمُ بِهَا النَّبِيُّونَ الَّذِينَ أَسْلَمُوا لِلَّذِينَ هَادُوا وَالرَّبَّانِيُّونَ وَالْأَحْبَارُ بِمَا اسْتُحْفِظُوا مِن كِتَابِ اللَّهِ وَكَانُوا عَلَيْهِ شُهَدَاء…)

[<— v. 5, pg. 173] Ibn Hazm argues that God intended the prophets of the Children of Israel, not Muhammad, because elsewhere the Qur'an says in 3:85 (وَمَن يَبْتَغِ غَيْرَ الْإِسْلَامِ دِينًا فَلَن يُقْبَلَ مِنْهُ وَهُوَ فِي الْآخِرَةِ مِنَ الْخَاسِرِينَ) [<— v. 5, pg. 173-4]. Furthermore, the verse 5:44 refers to them as anbiyā, plural, and we only have one Prophet, and we know that all the Prophets were Muslims and said that they were commanded to be so [me: e.g., verse 10:72 about Noah], and thus this is referring to the Prophets of the Jews. Furthermore, Quran 2:135 (… كُونُوا هُودًا أَوْ نَصَارَىٰ تَهْتَدُوا ۗ قُلْ بَلْ مِلَّةَ إِبْرَاهِيمَ حَنِيفًا…). And thus God has rejected the religion of the Yahood and the Naṣāra, and commanded us with the faith of Ibrahim. Also, Qur'an 3:65 (… لِمَ تُحَاجُّونَ فِي إِبْرَاهِيمَ وَمَا أُنزِلَتِ التَّوْرَاةُ وَالْإِنجِيلُ إِلَّا مِن بَعْدِهِ…). Thus, Ibn Hazm argues that it is certain that Ibrahim's shariah came before the Torah, and that it is his shariah that is binding on us. It's not possible that we be commanded with anything revealed after our shariah. It makes sense that the original verse is referring to the Prophets of the Children of Israel.

Proof [3] is a report of the Prophet stating that the dīn of all the prophets is one. Ibn Hazm says that this can't be referring to their laws, because the Qur'an rejects this with verses like 5:48 (…لِكُلٍّ جَعَلْنَا مِنكُمْ شِرْعَةً وَمِنْهَاجًا…) , and the fact that Jesus made halal some of what was made

haraam (Qur'an 3:50), or how the rule of Sabbath was changed, or the prohibition of animals with uncloven hoofs (كل ذي ظفر) is no longer in our Shariah, or what Israel (Jacob) prohibited for himself. Thus the meaning of the Prophets having a single religion is a reference to Tawḥīd. [<— v. 5, pg. 174]

Proof [4] is 6:90 (…فَبِهُدَاهُمُ اقْتَدِهْ…)[<— v. 5, pg. 174] This is referring to what our shariah's agree upon, i.e. Tawḥīd, as inferred by other verses, including Quran 42:13 ( شَرَعَ لَكُم مِّنَ الدِّينِ مَا وَصَّىٰ بِهِ …نُوحًا وَالَّذِي أَوْحَيْنَا إِلَيْكَ وَمَا وَصَّيْنَا بِهِ إِبْرَاهِيمَ وَمُوسَىٰ وَعِيسَىٰ ۖ أَنْ أَقِيمُوا الدِّينَ وَلَا تَتَفَرَّقُوا فِيهِ) which is referring to what they agree on, just like the hadith above that the Dīn of the prophets is one, referring to what they share in common, since God has stated elsewhere that he has made their ways different, like Quran 6:35 (…ولو شاء الله لجمعهم على الهدى) or Quran 5:48 (… ولو شاء الله لجعلكم أمة واحدة ولكن ليبلوكم فيما آتاكم…) or Quran 2:148 (ولكل وجهة هو موليها…). The only shared feature between them all is tawḥīd, so that is the hudā that the Prophet is commanded to follow. [<— v. 5, pg. 175] Quran 12:38 Yusuf says he follows the ملة of his forefathers, including Abraham, Ishaq, and Yaqub, but we know that the shariah of Ya'qub included things (see list above of pre-Muhammadan laws) that weren't in the Shariah of Abraham, which is our Shariah, and so again, the shared religion is tawḥīd. [<— v. 5, pg. 175-176] Some say that it can't be referring to Tawḥīd because that can be learned from the mind, making the verses without benefit. Ibn Hazm sees this as false logic. Others argue that (فبهداهم اقتده) indicates indicates what hasn't been abrogated of other shariahs, and that (لكل جعلنا منكم شرعة ومنهاجا) refers to what has been abrogated [<— v. 5, pg. 176]. Ibn Hazm says this interpretation is without evidence, unlike his that argues what is being referred to is Tawḥīd [<— v. 5, pg. 177].

Proof [5] that is given is Quran 5:49 (وأن احكم بينهم بما أنزل الله…). The author says that this verse has been explained by Quran 5:48 ( وَأَنزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ وَمُهَيْمِنًا عَلَيْهِ ۖ فَاحْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ ۖ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ مِنَ الْحَقِّ ۚ لِكُلٍّ جَعَلْنَا مِنكُمْ شِرْعَةً وَمِنْهَاجًا… وَمَن …) and Quran 3:85 (يَبْتَغِ غَيْرَ الْإِسْلَامِ دِينًا فَلَن يُقْبَلَ مِنْه)

Proof [6] is an incident in the Prophet's life where a woman named al-Rubayya' (الربيع) hurt someone and the Prophet commanded her with Qiṣāṣ (he said "كتاب الله قصاص"). Ibn Hazm argues that what was being referred to is the verse (فمن اعتدى عليكم فاعتدوا عليه بمثل ما اعتدى عليكم) since this is the verse that is binding on us. Those who uphold Shar' man qablana will say it's referring to the verse (وكتبنا عليهم فيها أن النفس بالنفس). Ibn Hazm says that the reason the Prophet's statement is referring to the first verse (the Islamic commandment) is that the hadith mentions that blood-money was accepted in the end, which isn't part of the the rules of Qiṣāṣ in the Torah. [<— v. 5, pg. 177]

Proof [7] is that the Prophet commanded fasting on 'Āshūrā' after seeing the Jews fast this day. Ibn Hazm says this isn't a proof for shar' man qablanā because the Prophet commanded it, and he only did so because God commanded him to do so. Additionally, the Quraysh used to fast it in the days of Jahiliyyah and the Prophet did so as well out of piety.

Proof [8] is a rational proof, that the shariah of the Prophets is true, and therefore should be followed unless we have proof otherwise. Ibn Hazm responds that the shariah of the prophets are for the communities that they were addressed to, not us. Just because it's true for one person

doesn't mean it is true for another person. We've been told to confirm the previous prophets and that they were sent to their communities with truth, not that we act on their shariah.

Proof [9] is when the Prophet called for the Torah to be brought in the case of the two Jews who committed zina. When he finds out that the practice of stoning was dropped by the Jews, he states (أنا أول من أحيا أمر الله تعالى). Ibn Hazm says that without doubt that in the Prophet's revealed shariah he was ordered to stone who ever was (أحصن) and committed zina. He only called on the Torah to be brought to censure the Jews for their leaving what they were commanded with, and to inform them that they contradict the book that they affirm was revealed to them. Ibn Hazm says that anyone who believes that the Prophet stoned the two Jews in obedience to the Torah, and not because of a commandment from God in the shariah revealed to him to stone any (محصن) who commits zina, that such a person has left Islam and his blood is now halāl, because to believe this is to believe that the Prophet violated what he was commanded and left it to follow what was in the Torah [<— v. 5, pg. 178]. And because God has told us that the Jews have changed the word from its place (يحرفون الكلم عن مواضعه), to say that the Prophet gave a verdict in accordance with a text that he was informed was altered is kufr. [me: note that he reads into the meaning of the verse regarding alteration. Also, maybe the Prophet knew what was not altered in the text?]. Without naming his interlocutor, he then criticizes someone for simultaneously holding that the Prophet acted in accordance with the Torah in this case, but in his own legal practice believed that if two fornicating Jews were to come to him, he would send them back to their fellow Jews to be dealt with, rather than acting in accordance with what they believe the Prophet himself did.

Proof [10] are narrations that the the Prophet used to let down his forelock (سدل ناصيته) as did the People of the Book, before then parting it after. And that he used to prefer agreeing with the People of the Book in things that revelation did not come down concerning. Ibn Hazm says that this report is actually proof **against** those who argue for the validity of shar' man qablanā, since the report tells us that the Prophet used choose to be in agreement in things that were permissible (المباح) to do in any way, whereas the debate of shar' man qablana is whether we are required to do follow the shariah of previous communities in things as long as we haven't been prohibited from them, or in leaving their shariah until we've been commanded to do so. As for permissible attire and the parting or letting down of one's hair, all of that is mubāḥ to do in any way. [<— v. 5, pg. 179]

———

Ibn Hazm then gives his proofs against the pro-shar' man qablana position.

Counter-proof [1] Ibn Hazm gives a hadith where the Prophet states: "I've been given five things no one before me was given: every prophet was sent to specifically his people, while I was sent to every one (كل أحمر وأسود)…" He also gives another hadith where the Prophet says "I've been blessed over the Prophets with six things," with one of them being "I was sent to all of creation (أرسلت إلى الخلق كافة)" [<— v. 5, pg. 179-180]. Thus we know that the other prophets were just sent to their respective communities. This is confirmed by Quranic verses like ( (وإلى ثمود أخاهم صالحا) (وإلى عاد أخاهم هودا) (وإلى مدين أخاهم شعيبا)) and regarding the Prophet Muhammad, the verse 34:28 (وما أرسلناك إلا كافة للناس…) and 7:158 ( Furthermore, the shariah of the previous prophets were not known to many people that the Prophet was sent to, and so they weren't bound by it, as inferred by verse 36:6 (لِتُنذِرَ قَوْمًا مَّا أُنذِرَ آبَاؤُهُمْ فَهُمْ غَافِلُونَ) and 5:19 (يَا أَهْلَ …إني رسول الله إليكم جميعا…).

Ibn Hazm says that we). الْكِتَابِ قَدْ جَاءَكُمْ رَسُولُنَا يُبَيِّنُ لَكُمْ عَلَىٰ فَتْرَةٍ مِّنَ الرُّسُلِ أَن تَقُولُوا مَا جَاءَنَا مِن بَشِيرٍ وَلَا نَذِيرٍ therefore know that the sharā'i' given to Moses didn't apply to anyone other than the Children of Israel except tawḥīd. [<— v. 5, pg. 180]. The Qur'anic commands to follow the ways of the . previous prophets, as noted earlier, can only be referring to tawḥīd, since this is the shared point [<— v. 5, pg. 180-181] His opponents who argue for shar' man qablana take away from the rank of the Prophet, and suggest that he was a liar by denying his words that the other) فضيلة( prophets were sent to their people. Further confirmation that what we follow from their message is tawḥīd is found in verses like Quran 41:43 (ما يقال لك إلا ما قد قيل للرسل من قبلك إن ربك لذو مغفرة وذو عقاب أليم (or Quran 2:133-134 (أم كنتم شهداء إذ حضر يعقوب الموت إذ قال لبنيه ما تعبدون من بعدي قالوا نعبد إلهك وإله آبائك إبراهيم وإسماعيل وإسحاق إلها واحدا ونحن له مسلمون ئ تلك أمة قد خلت لها ما كسبت ولكم ما كسبتم ولا تسألون عما كانوا يعملون. (In the previous verse), ولا تسألون عما كانوا يعملون makes it clear that we are not) obligated to know what the Prophets did, and thus we are not responsible for it. [me: strong point!] [<— v. 5, pg. 181]

Ibn Hazm believes that the shariah of Abraham is the same as that of Muhammad (with somethings abrogated, of course, like the sacrifice of one's children, or asking for forgiveness for the mushrikīn), given verses (ثم أوحينا إليك أن اتبع ملة إبراهيم حنيفا) and ( بل ملة إبراهيم حنيفا وما كان من المشركين). However, Abraham wasn't sent to all of mankind, only the Prophet Muhammad was. [<— v. 5, pg. 182]

---

As for the question of what the Prophet followed before he was a Prophet, Ibn Hazm says that the Prophet wasn't responsible for the previous shariahs that he wasn't bound to, except for

Tawḥīd and also whatever God protected him from doing before He made them unlawful for him and the world, including Zina, exposing one's nakedness, lying, oppression, etc.

Some say that Nūḥ was sent to all of mankind. For Ibn Hazm, this would be a rejection of the Prophet's words that the prophets before him were sent to their respective communities. [<— v. 5, pg. 183] Also, the Qur'an says (إنا أرسلنا نوحا إلى قومه), and it'd be wrong to assume that everyone in the world was his community. Also, it's not known through authentic means if the flood affected the entire world [<— v. 5, pg. 184]. One counterargument is that the Prophet in a hadith describing Judgment day, people go to the different prophets, and to Noah they say ( أنت أول الرسل إلى أهل الأرض). Ibn Hazm says that given the other hadiths, we have to interpret this statement to not mean he was a messenger to EVERYONE on earth, but some of them [<— v. 5, pg. 184-185]. He also rejects the statement that Adam was sent to the entire world. [<— v. 5, pg. 185].

[me: Some of these examples also show how tafsir and popular lore also had a place as a source of Islamic law. Literally anything could be used by the jurists. ALSO separate point: IBN Hazm being a literalist gives us a very blunt picture of the reality of law, since he points out the inconsistencies of law when its made practical. Shar' man qablana was applied because it had practical ramifications]

**Ibn Hazm (an-nabdha fī uṣūl al-fiqh):**

الكتاب: النبذة الكافية في أحكام أصول الدين (النبذ في أصول الفقه)

المؤلف: أبو محمد علي بن أحمد بن سعيد بن حزم الأندلسي القرطبي الظاهري (المتوفى: 456هـ)

المحقق: محمد أحمد عبد العزيز

الناشر: دار الكتب العلمية - بيروت

الطبعة: الأولى، 1405

عدد الأجزاء: 1

[ترقيم الكتاب موافق للمطبوع]

Very short discussion compared to al-Ihkam. Here he upholds that we agree in the Shariah of the other religions only in what there is agreement (like tawḥīd and perhaps some other matters of agreement). We are followers of the shariah of Abraham (as told in the verse: مِلَّة أبيكم إِبْرَاهِيم), and Abraham came before the Torah and Gospels according to a verse ( وَمَا أنزلت التَّوْرَاة وَالْإِنْجِيل إِلَّا من بعده أَفلا تعقلون). Also the Prophet says in a hadith that he was sent to all people's unlike the other Prophets (i.e. their shariahs were limited).

[v. 1, pg 57-59]

**Ibn Hazm (al-muhalla): there are more comments elsewhere in this work about pre-Muḥammadan law**

حَدَّثَهُ أَنَّ يَهُودِيَّةً جَاءَتْ إلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَتْ: إنَّ ابْنِي هَلَكَ، فَزَعَمَتْ الْيَهُودُ أَنَّهُ لَا حَقَّ لِي فِي مِيرَاثِهِ؟ فَدَعَاهُمْ عُمَرُ فَقَالَ: أَلَا تُعْطُونَ هَذِهِ حَقَّهَا؟ فَقَالُوا: لَا نَجِدُ لَهَا حَقًّا فِي كِتَابِنَا؟ فَقَالَ: أَفِي التَّوْرَاةِ؟ قَالُوا: بَلَى، فِي الْمُثَنَّاةِ قَالَ: وَمَا الْمُثَنَّاةُ؟ قَالُوا: كِتَابٌ كَتَبَهُ أَقْوَامٌ عُلَمَاءُ حُكَمَاءُ؟ فَسَبَّهُمْ عُمَرُ وَقَالَ: اذْهَبُوا فَأَعْطُوهَا حَقَّهَا.

From the Muhalla, v. 8, 342

———

**Al-Qaḍī abū Ya’lā al-Hanbalī (العدة في أصول الفقه)**

الكتاب : العدة في أصول الفقه

المؤلف : القاضي أبو يعلى ، محمد بن الحسين بن محمد بن خلف ابن الفراء (المتوفى : 458هـ)

حققه وعلق عليه وخرج نصه : د أحمد بن علي بن سير المباركي، الأستاذ المشارك في كلية الشريعة بالرياض - جامعة الملك محمد بن سعود الإسلامية

الناشر : بدون ناشر

الطبعة : الثانية 1410 هـ - 1990 م

عدد الأجزاء : 5 أجزاء في ترقيم مسلسل واحد

Was the Prophet a follower of the shariah that came before? 2 positions attributed to Ahmad b. Hanbal. [1] As long as some thing from the previous shariah has not been established as abrogated, it is the shariah of our Prophet, and we are obligated to follow it because it is the shariah of the Prophet Muhammad (not because it is the shariah of a preceding Prophet). To establish it is a law of a pre-Muhammadan community, it must be based on absolute evidence (بمقطوع عليه), which includes the Qur’an (الكتاب), or a khabr from the Truthful [likely referring to the Prophet and not a truthful narrator - as shown by his later restriction of the acceptable evidence to that], or a khabr that was mass transmission [note: he uses “الخبر المتواتر” in v. 1, pg. 82 in the context of reports that inform us of knowledge of remote places, i.e. not a prophetic report]. However, we cannot refer to members of these other communities [he doesn’t say why, but probably because they may lie], or to their books directly.

This appears to be the position of Ahmad b. Hanbal as transmitted by his student Abū Ṭālib, where he said regarding someone who swears to sacrifice his son, that he must slaughter a ram in its stead and distribute its meet, because of the verse (وَفديناهُ بِذِبْح عَظِيم) [v. 3, pg 753]. This is from the Shariah of Ibrahim [v. 3, pg. 754].

In another event, transmitted by Abū al-ḥārith, al-Athram, Ḥanbal, al-Faḍl b. Ziyād, and ‘Abd al-Ṣamad, Ahmad b. Hanbal was asked about (القرعة) and accepted it based on the verses ( فَسَاهَمَ فَكَانَ مِنَ المُدْحضِينَ) and (إِذْ يُلقُونَ أقلامهُم) which are from the shariah of Yunus and Mary. [v. 3, pg. 754].

In another example, Abū Ṭālib and Ṣāliḥ transmit that Ahmad b. Hanbal is asked about the verse (وَكَتَبْنَا عَلَيْهِم فيهَا أَن النَّفْسَ بالنَّفْسِ) and how to reconcile it with a statement of the Prophet which is also attributed to some companions that: (لا يُقتل مؤمن بكافر). Ahmad takes the latter statement’s limitation on the verse as proof that the verse by itself (على ظاهرها) applies to both Muslims and pre-Muhammadan believers - if it wasn’t than the report wouldn’t have conflicted with the apparent meaning of the verse [v. 3, pg. 754-756]. The author notes that this position of Ahmad b. Hanbal was adopted by the Hanbali jurist Abū al-Ḥasan al-Tamīmī [d. 371 AH], and it is also the opinion of the Companions (aṣḥāb) of Abū Ḥanīfa. [v. 3, pg 756]

According to opinion [2] attributed to Ahmad b. Hanbal, the Prophet did not follow the previous sharā’i’, except for things where there is evidence suggesting that it was established in his shariah [i.e. it’s not that all previous laws are our laws unless proven otherwise]. This position is derived from a transmission of Abū Ṭālib where Ahmad states that (النفس بالنفس) applied to the Jews as indicated by (وكتبنا عليهم فيها) which refers to the Torah. As for our Shariah, the verse ( كُتِبَ

عَلَيْكُم الْقِصَاصُ فِي الْقَتْلَى الحُر بِالحر وَالعبْدُ بالعبد وَالْأُنْثَى بالأنْثَى) is what applies. This is also what the Mu'tazila and the Asharīs support. [v. 3, pg. 756].

The author then deals with whether the shariah that the Prophet followed [and thus that we follow] is that of Abraham, Moses or Jesus. The author argues that it is that of all the pre-Muhammadan laws, provided they are authenticated, proven by the verse ( أولئكَ الَّذينَ هَدىَ اللهُ فَبِهُداهُم اقْتَدِه) in reference to pre-Muhammadan prophets. Those opposed will counter that only tawḥīd is necessarily meant in this verse, and that legislation is only a possible meaning. Additionally, the way of non-Prophets is also implied in this verse, and the laws of those implied by this verse differ since we know that the shariah of Abraham was abrogated. The author's response is that 'hudā' in the verse includes both tawḥīd in addition to other things entailed by guidance, and thus those other matters are also obligated. Also, there is nothing problematic about following the guidance of non-Prophets. Also, the argument of abrogation bears no strength, since only those things non-abrogated are what are obligated. [v. 3, pgs 757-759].

Verses like (ثُم أوْحينا إليك أَنِ اتبعْ مِلةَ إبْرَاهيمَ حنِيفا) and ( إنا أَنْزَلْنا التَوْرَاةَ فيهَا هُدى وَنورٌ يحكُمُ بها النبيونَ الَّذينَ أسْلَمُوا للذينَ هادُوا) that are explicit in saying that the Prophet follows the pre-Muhammadan laws help us realize that even verses where it is not explicitly mentioned that we are to follow, like (( وَكتَبْنا عَليهم فِيها أَنَّ النفْس بِالنفْسِ), are referring to us [v. 3, pg 759]. This is further demonstrated by the hadith of al-Rabī', who broke the tooth of a slave girl and the Prophet stated that ( كتاب الله القصاص), i.e. the Torah and the rule "a tooth for a tooth," thus meaning that the Prophet was following the rules of the Torah. If one were to argue that (كتاب الله القصاص) is referring to what is implied by the neutral verse that doesn't suggest following the Torah: (فَمَنِ اعتَدى عَلَيْكُم فَاعتدوا عليْه),

the response would be that the “tooth for a tooth” is specifically what happened in this report, and so it seems most apparent that the statement of the prophet regarding Qiṣāṣ is referring to the verse referring to the Torah. goes with the verse referring to the Torah [v. 3, pg 760].

Another argument in support of this is that there is nothing in the coming of the Prophet that necessitates the abrogation of the pre-Muhammadan laws from God, and thus we are obligated to follow them unless there is evidence that some rule has been abrogated, as was the case in the time period that preceded the Prophet Muhammad. [v. 3, pg 761].

Counter arguments include citing (لِكل جَعلنا منكم شرعة ومنْهَاجاً) to suggest there is difference between the laws, but the author points out that this doesn’t apply to things that are in agreement. Opposition also cites the words of the Prophet that he was sent to all people ( بعثت إلى الأحمر والأصفر، وكل من بعث إلى قومه), indicating that the other prophets weren’t sent to us. The response is that they may have been directly sent to specific peoples, but that doesn’t mean that others don’t follow them. [v. 3, pg 761].

Opposition also cites the report where ‘Umar is rebuked for having a parchment of the Torah, and the Prophet states that if Moses was alive he would’ve followed him. Response is that the Prophet only rebuked him from referring to the Torah because the Torah has been changed and altered, and most of it abrogated, and so it can’t be referred to. The author says that it is not permissible to refer to the Torah, and we don’t find the verifiable pre-Muhammadan laws by referring to the Torah (نحن لا نرجع إلى ما ثبت بالتوراة), instead we find the verifiable pre-Muhammadan laws by referring to evidence that gives absolute certainty ( وإنما نرجع إلى ما ثبت بدليل

مقطوع عليه), which includes the Qur'an, a mass-transmitted report (خبر متواتر), or a mass transmitted practice (سنة متواترة), or divine inspiration to the Prophet about it (وحي نزل به). Also, the bit about Moses following the Prophet is merely to say that Moses would've been in Muhammad's ummah if he were alive then, and thus obligated to follow him. [v. 3, 762-763]

[Interesting:] Opposition says that if pre-Muhammadan laws were obligated on us, than why did the Prophet wait for a response from God in the form of revelation when acting on matters? He would wait for a response instead of acting on the laws of those who came before, therefore proving those laws didn't apply to him. Response: yes, the Prophet did wait for a response from God in matters where he didn't have a law or where it wasn't verifiable to him that there was a pre-existing law from a previous community available to act on - that's why he would wait for a response. However, when a pre-Muhammadan law was established as true to him, e.g., facing the Temple in Jerusalem (بيت المقدس) for prayer, or other matters, he didn't wait for revelation from God, but instead used to hasten to following those laws ( لم يتوقف فيه، بل كان يسارع إلى اتباعه والاقتداء به) [v. 3, pg 763]

[Interesting:] The opposition says that if we are obliged to follow the pre-Muhammadan laws, then we must follow and understand their legal evidence/source (أدلتهم), just as we do for our laws in Islam, and we must likewise grasp (حفظ) and study (دراسة) their shariah. Response: we can say that only some legal evidences/sources (الأدلة) [though not mentioned, we can understand textual evidence, like biblical passages, e.g.] have been established to us through the proper means elaborated above [Qur'an, mass transmitted sunnah, etc], and so we are obligated to follow whatever is suggested by that evidence/legal source, just as we are obliged to follow the implied

law itself, in addition to grasping (حفظ) and learning that evidence that gave us the law. But this is for what we have established is from their shar'. As for the shariah that they profess and which we can't verify, we are not obliged by them.

Opposition brings up another interesting point: we then need to study all of their laws in detail, because it is possible that there is something to abrogate one of the laws of theirs that we are following, or there might be something that specifies the general meaning of something else (شيء يخص العام). Response: What God has informed us about regarding their laws, what is apparent (الظاهر) is that it not abrogated or coming in a pre-limited meaning (مخصوص), because if it were it wouldn't have purpose (لكان مُطَّرَحا) as it wouldn't convey the law. [v. 3, pg. 764].

The author then discusses whether the Prophet followed pre-Muhammadan law prior to being a prophet. He argues that he did, and was not a follower of the ways of the Arabs. [This section is short and not relevant for my project.] [v. 3, 765-767]

In a discussion regarding the permissibility of abrogation of the shariah, the author notes as others have, the opinions of the Jews: there are some that deny it rationally, others deny it based on their transmitted evidence, and some accept it in theory but don't believe in the shariah of Muhammad or accept his miracles. He obviously argues against this, that abrogation is possible. [v. 3, pg 771] Regarding the claim that Moses said ( بما روي عن موسى عليه السلام أنه قال: "شريعتي مؤبدة ما دامت السموات والأرض), this is a lie (أن هذا كذب), it's also been said that Ibn al-Rāwandī told the Jews this in Isbahān, taking from them (دنانير) in exchange. Also, just as they say, we say that our shariah is everlasting [<— vol. 3, pg 777]. If it were true, than the Jews would've told Jesus and

our Prophet the same thing when they confirmed the message of Moses while disagreeing with his shariah. Because we don't know of this being said to the Prophet or Jesus, and they are vehemently opposed to the two of them, this means that the original statement wasn't said by Moses. Also, if it was said, than it was capable of being restricted in meaning. [<— v. 3, pg 778]

Elsewhere he argues that tawātur gives necessary knowledge. The opposition says if that's the case, then the Jews transmitted with tawātur that their shariah is binding forever [see earlier references, I believe this is in Exodus], yet Muslims don't accept that. The author responds that it is not true tawātur because they were killed off in large numbers by Nebuchadnezzar II (Arabic: بُخْتنصّر) [he sacked Solomon's Temple, d. ca. 562 BC]. [v. 3, pg 843-844]

[Interesting contradiction] Elsewhere the author argues that a very large group cannot hide information that is of a nature that it needs to be known. This is relevant as a refutation against the Imāmī's, e.g., who state that naṣṣ about 'Alī was kept hidden by the Companions. [v. 3, pg 852]. The opposition raises an issue: the Companions did not transmit the sharā'i' of pre-Muhammadan prophets, and if they can't collude on lying or withholding this per the principle, than what does that say about the significant of the sharā'i' of pre-Muhammadan prophets as necessary knowledge? The author responds that they didn't transmit it because they were far away in time from the information they might've needed to transmit. As for matters where they weren't too far from the information and it was needed that they transmit it ( أن شريعة موسى عليه السلام لما لم تكن متباعدة العهد، وكان هناك ما يدعو إلى نقلها -وهو بقاء تمسك قوم بها- نقلت. وكذلك شريعة عيسى عليه السلام، ولم تنقل شريعة غيرهما من الأنبياء), they transmitted that. This is the case of the shariah of Moses

and Jesus, the author says, but not the laws of Hūd and Yūnus, for which there did not remain those who followed their laws, those laws being abrogated (لما لم يبقَ من يتدين بها، وكانت منسوخة). [v. 3, pg 853]

**Al-Khatib al-Baghdadi (الفقيه والمتفقه)**

On the notion of abrogation, he notes as others have in passing that the Jews and a small group of Muslims reject it. [v. 1, pg 332]. That's it.

**Abu al-Walid al-Baji (الإشارة في أصول الفقه)**

الكتاب: الإشارة في أصول الفقه

المؤلف: أبو الوليد سليمان بن خلف بن سعد بن أيوب بن وارث التجيبي القرطبي الباجي الأندلسي (المتوفى: 474 هـ)

المحقق: محمد حسن محمد حسن إسماعيل

الناشر: دار الكتب العلمية، بيروت - لبنان

الطبعة: الأولى، 1424 هـ - 2003 م

عدد الأجزاء: 1

His summary is short regarding this debate but the book is small anyway(

Do the pre-Muhammadan laws apply to us if our shariah doesn't abrogate something of their law? This is the position of Mālik, says the author, because he used as a proof text (احتج ب…) al-Mā'ida:45 (the verse on a life for a life), which is a reference to the Torah. Following their guidance is inferred from the verse (أُولَئِكَ الَّذِينَ هَدَى اللَّهُ فَبِهُدَاهُمُ اقْتَدِهْ) and (أَنِ اتَّبِعْ مِلَّةَ إِبْرَاهِيمَ حَنِيفًا), which

tell us we follow their ways. The opposition uses as proof of their position the verse ( لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا). He states that this with regards to laws and forms of worship, it is possible for the laws to be abrogated, transfer, or be changed (يجوز فيها النسخ والنقل والتبديل), but there is no difference of opinion regarding tawḥīd, which is the same. [pg 42]

[He discusses it elsewhere in a chapter on abrogation, since it's related to scriptural abrogation]. He states that a group of the Malikis, and the Hanafis and Shāfi'īs hold that pre-Muhammadan law is binding on Muslims unless there is evidence that a law was abrogated. From among the Malikis, he states that al-Qāḍī Abū Bakr and others have argued against this position. He quotes the following proofs [the last one is new]:

أُولَئِكَ الَّذِينَ هَدَى اللَّهُ فَبِهُدَاهُمُ اقْتَدِهْ (al-an'am, 90)

شَرَعَ لَكُمْ مِنَ الدِّينِ مَا وَصَّى بِهِ نُوحًا(al-shura, 13) وَلَا تَتَفَرَّقُوا فِيهِ…

And because the Prophet said, (مَنْ نَامَ عَنْ صَلاة أَوْ نَسِيهَا فَلْيُصَلِّهَا إِذَا ذَكَرَهَا) and he cited the following verse which was addressed to Moses (وَأَقِمِ الصَّلَاةَ لِذِكْرِي) (Taha, 14) [It should not surprise us that the verses about the other Prophets and pre-Muhammadan communities in the Qur'an were used as proof text by the Prophet, and thus followed by the companions and others, since the Qur'an elsewhere says that you should refer to the "Book" for guidance anyways]. [pg. 71]

**Abu Ishaq al-Shirazi (التبصرة) (the volume is 537 pages long)**

الكتاب: التبصرة في أصول الفقه

المؤلف: أبو اسحاق إبراهيم بن علي بن يوسف الشيرازي (المتوفى: 476هـ)

المحقق: د. محمد حسن هيتو

الناشر: دار الفكر - دمشق

الطبعة: الأولى، 1403

عدد الأجزاء: 1

In a chapter on naskh, he notes that the Jews do not accept it, but he is opposed and argues otherwise [pg. 251-252]. The Jews state that Moses told them that their shariah is everlasting, and that negates abrogation. Al-shirazi responds that this is a lie. Moses did not say this, but rather Ibn al-Rawandi [the stereotypical heretic] suggested this to the Jews (لقنهم ذلك). Furthermore, if this was indeed Moses' statement, than the Rabbis would've used it as a proof text against the Prophet [during his life], but because the early Jews [vis-a-vis Islam] did not use this as a proof text, this is evidence that it was a lie they invented. [This latter bit is an interesting argument, because if the Jews didn't make this argument during the time of the Prophet - and we don't know this - then maybe they saw the Prophet as continuing their laws for them? As confirmation of the author's hypothesis, look to see if the Qur'an's response to Jewish criticism deals with this at all.] [pg 254]

[His larger chapter on shar' man qablana is also under the same section on abrogation]. Pre-Muhammadan laws are binding on us unless abrogation of some law is established. Opposing opinions include that it's not binding on us, and another opinion is that only Abraham's shariah is our shariah [i.e. Ibn Hazm's opinion]. [<— 285]

He cites the same proof (أُولَئِكَ الَّذين هدى الله فبهداهم اقتده) and responds to the same concerns that it is only referring to Tawḥīd. He also states that God notes the laws of pre-Muhammadan

communities intending application on both us and those previous communities, otherwise there would be no benefit (فائدة) to mentioning it. He responds to the oppositions' evidence ( لكل جعلنَا مِنْكُم شرعة ومنهاجا) in the same way as other authors, that the verse doesn't deny that some laws there is agreement between communities, just like there is agreement on Tawḥīd. [<— pg. 286].

Opposition also cites the hadith where 'Umar is rebuked for reading a parchment of the Torah, and is told that Moses would follow him if he were alive. The author responds that this is because the Torah is changed and altered, and what he refers to when he says that pre-Muhammadan law is binding, is specifically about laws that God has transmitted about their laws in his book, or which has been established by a hadith ( كلامنا فِيمَا حكى الله عَن دينهم فِي الْكتاب أَو ثَبت عَنْهُم بِخَبَر الرَّسُول عَلَيْهِ السَّلَام). [pg 286-287].

Another counter: laws are made binding because they provide benefit (مصلحة) to those obligated to follow them, but this isn't the case if we follow pre-Muhammadan laws. The author responds that we don't accept like logic, by ijmā', when understanding that the Tabi'ūn had to follow the laws the Companions received (even though it's *possible* the maslaḥa didn't apply in the next generation). [note: this is an interesting possibility being entertained but ultimately rejected]. It seems apparent, however, that the maṣlaḥa from specific pre-Muhammadan laws remain, otherwise they would have been abrogated for in our law.

The opposition says: if their laws are binding on us, than we have to follow their legal evidences [textual sources implied] (أدلتهم), and studying (تتبّع) their books as is the case in our shariah. Because this is not obligated, we don't have to follow their laws. The author responds: We only

follow their laws if established by a khabr from God [implying the Qur'an] or a khabr from the Prophet. Obeying these proofs is obligatory on us, as is studying (تتبع) that which leads us to understanding these proofs. That which is not established is not binding law on us, and we do not need to look for it or obey it. [<— 287]

Opposition: If we have to follow their laws, than we should learn their shariah [i.e. other rules in their legal system] or the meaning of their words [as in their texts], since it is possible that there are things that are abrogated (منسوخ) or made specific (مخصوص). Response: we are only obliged to follow what we've been told about by God [here is leaves out the Prophet, but we can infer the following still applies], and what is apparent (الظاهر) is that what we have is not abrogated nor made specific, and so we follow it. [<— 287-288]

Opposition: the ritual worship (العبادات) in their shariah is all different, so we can't follow it all. Response: we refer to the things in which there is no difference (اختلاف), as for that which there is difference in, we act on that which is later, as we do in our shariah ( عمل بالمتأخر مِنْهُمَا كَمَا يفعل ذَلِك فِي شرعنا)

Opposition: The other shariah are attributed (مضافة) to other communities, implying that it is theirs and not any others. Response: It is attributed to them because they were the first to be addressed by it and so the laws are known by virtue of its affiliation with them. Also, it's possible that one community may be responsible for following a shariah in its entirety which is why they are attributed to it, while others can also join them in following some of those laws

Opposition: If the prophet followed the other shariahs, then the rules of of الظِّهار or الميراث shouldn't have been depended on the Prophet waiting to receive revelation, since the rules pertaining their circumstances were clearly already in the Torah. Response: he waited for revelation because the Torah was altered and he couldn't rely on it. However, while he waited for revelation in some matters, he clearly did act pre-Muhammadan law in other cases, as when he prayed to بيت المقدس in accordance with pre-Muhammadan law - this disproves the oppositions' statement. [Interesting. This is similar to Abu Ya'la's statements, meaning he might be engaging with his work/ideas to some extent, assuming he was the first to come up with it? This can also be used to argue that Usul works work off of each other?] [<— pg 288]

[the next issue comes a few pages after his section on pre-Muhammadan law, this time regarding the khabr mutawatar]. Those opposed to to the statement that a khabr mutawatar gives absolute knowledge (العلم), than we have true knowledge regarding Moses from the reports of the Jews, about Jesus from the Christians, about Idrīs from the Majūs, and about the Shiite Imams from the Rawāfiḍ. Response: because the transmission of information from these groups goes back to a small number, it doesn't fulfill the requirements of tawatur, and thus we do not have certain knowledge from their reports. [<— pg 292] [though in theory, if this requirement were met, we would? Like the Biblical statement that Jewish law is forever binding, which a previous author I look at above tries to make sense of as a possible tawatur statement, but argues around]

**Abu Isḥāq al-Shirāzī (اللمع) (This is a much shorter work by the same author, only 134 pgs long in my edition)**

الكتاب: اللمع في أصول الفقه

المؤلف: أبو اسحاق إبراهيم بن علي بن يوسف الشيرازي (المتوفى: 476هـ)

الناشر: دار الكتب العلمية

الطبعة: الطبعة الثانية 2003 م - 1424 هـ.

عدد الأجزاء: 1

He notes [as others do] in the chapter on naskh that some Jews say that abrogation is not possible. [<— pg. 55]

[also in the chapter on abrogation he talks about Pre-Muhammadan law again as in التبصرة. This section is very short] The Shāfi'īs (أصحابنا) have three positions: [1] pre-Muhammadan law is not binding on us, [2] it is unless its abrogated, or [3] that we are bound to the shariah of Abraham alone, or Jesus alone, or the shariah of Moses except what Jesus abrogated. The author states that he supported in his book al-Tabṣira that all of the pre-Muhammadan laws were binding except what's been abrogated, but now he believes that the correct position [i.e. he's correcting himself] is that some of it is in fact not binding on us (والذي يصح الآن عندي أن شيئا من ذلك ليس بشرع لنا). His proof is that the Prophet did not refer to their their aḥkām, nor did the Companions refer to any of their books or the reports of any of them who converted to Islam. . [<— pg. 63]

**Abu Isḥāq al-Shirāzī (المعونة في الجدل) (This is a book from the genre of جدل or "قواعد فقهية",** **where** the author goes through the methods in which debate using the sources takes place (e.g. how jurists can go about critiquing the isnad of a hadith, or the different methods that can be

used to interpret Qur'anic verses differently), presenting different madhhabs usages of the variant debate methods to prove the Shafi'i position in the end)

الكتاب: المعونة في الجدل

المؤلف: أبو اسحاق إبراهيم بن علي بن يوسف الشيرازي (المتوفى: 476هـ)

المحقق: د. علي عبد العزيز العميريني

الناشر: جمعية إحياء التراث الإسلامي - الكويت

الطبعة: الأولى، 1407

عدد الأجزاء: 1

[In a section where he looks at different methods jurists can use to debate legal evidence from the Qur'an, he looks at claims of naskh as a tool of arguing one legal position over another. The last of three types of naskh he deals with is claiming that a verse is referring to pre-Muhammadan law and is therefore abrogated by another verse. The other two include stating that a verse was revealed with expressly to abrogate another, and the other is to claim that because a verse was revealed later, it abrogates the former on the same topic (<— pg 44-46)]

He gives as an example of claiming something from pre-Muhammadan law was abrogated the following example: the Shafi'i can argue for the the law of talion (Qiṣāṣ) for body parts, citing the verse "…and for wounds is legal retribution" (والجروح قصاص) [verse 5:45 in full: وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنفَ بِالْأَنفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ ۚ فَمَن تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَّهُ ۚ وَمَن لَّمْ يَحْكُم بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ]. The author says that the Hanafi [it appears to be generic who he's referring to, since I don't believe the Hanafis as a whole hold this position] argues back that this verse is telling us about Pre-Muhammadan law, and has been abrogated by our shariah.

The author responds that pre-Muhammadan law is binding on us, and also that this verse is referring to law binding on us because the Prophet told a woman who broke another woman's tooth  intending with that statement this verse [he assumes it's referring to this, (كتاب الله قصاص) .] verse because the verse explicitly notes teeth - see Ibn Hazm's rebuke of this possible reading ]pg 46 —[<

[In another chapter dealing with arguments used in debating evidence from the Sunnah, he states that there are four ways that naskh can be employed in a debate. Claiming pre-Muhammadan law is the last of four ways he notes, the other three being: claiming something from the sunnah was meant to abrogate something else, claiming that because something happened after a prior incident that it abrogates it, reporting actions of the companions contrary to a known sunnah and thus implying that it was abrogated (pg 61-62)]

He gives as an example of claiming something from pre-Muhammadan law was abrogated the following example: al-Shafi'ī cites the sunna evidence of the Prophet stoning two fornicating Jews to argue that dhimmīs get the punishment of stoning. The opposition [he doesn't note the madhhab] argues that the Prophet stoned them because it was a law of the Torah. But our shariah abrogated that. The author responds that pre-Muhammadan law is binding on us as long as it isn't abrogated. Since the Prophet acted on it, it is proof that it is binding on us. [Note: this is contrary to Ibn Hazm's view. Here the author is stating expressly that the Prophet is confirming the Biblical law for us as binding… though al-Shafi'i in this case is extending it to the Dhimmis, not the Muslims necessarily] [<— 64-65]

**Al-Juwayni (البرهان في أصول الفقه)**

الكتاب: البرهان في أصول الفقه

المؤلف: عبد الملك بن عبد الله بن يوسف بن محمد الجويني، أبو المعالي، ركن الدين، الملقب بإمام الحرمين (المتوفى: 478هـ)

المحقق: صلاح بن محمد بن عويضة

الناشر: دار الكتب العلمية بيروت - لبنان

الطبعة: الطبعة الأولى 1418 هـ - 1997 م

عدد الأجزاء: 2

[In this short analysis, he is arguing against following pre-Muhammadan law derived from prior scripture directly, since that is what his argument is about in the following pages. However, this isn't the argument being made by many jurists, nor even al-Shāfi'ī as he notes]

[1] al-Shafi leaned towards the position that pre-Muhammadan law is binding on us, and built a legal theory surrounding it (وبنى عليه أصلا من أصوله) in his (كتاب الأطعمة) [found in his book الأم]. Most Shāfi'ī's have followed him.

[2] Some of the mu'tazila were opposed to it on rational grounds (عقلا), and their position sees reference to pre-Muhammadan law as taking away from the value of our shariah, and implying a need to refer to those who came before us, which would take from the station of our shariah and the rank of the Prophet.

[3] Some say that it is not impossible on rational grounds (عقلا), but it is prohibited by our law (شرعا), when the Prophet rebuked Omar for referring to the Jews for the stories of the Banū

Isrā’īl. When he asked the Prophet about it, he was rebuked and the Prophet said, “If the son of ‘Imrān were alive he would have had to follow me” (لما وسعه إلا اتباعي) [note, this is a variant to the other reports we’ve read, no mention of the Torah, it’s about stories of the Banū Isrā’īl, and it’s not Moses mentioned but the son of Imran - who is the father of Mary]

The position of al-Juwayni is that rationally it is possible provided nothing in our Shariah has expressly abrogated it. The statement of the Mu’tazilites that it takes away from the status of our Shariah does not need a response, he says. **However**, it is established in our shariah that we are not bound by pre-Muhammadan laws based on the following evidence: the Companions used to refer to the Qur’an and Sunna for matters that would take place, and Ijtihād for matters not in those sources. They did not search for laws in the revealed books of pre-Muhammadan prophets.

The author opposes the possible response that the reason the Companions couldn’t refer to those books is because the other communities altered them. [<— v. 1, pg. 189] He responds with 3 points: [1] The natural conclusion of this statement is that the pre-Muhammadan laws can’t be followed because it is dubious and inaccessible, so it’s is as though they agree in the same conclusion [that we can’t follow their laws] but disagree regarding the reason given [<— pgs 189-190] [2] If we were expected to follow their laws, than God would have informed us of the areas where there existed falsity (التلبيس), so that we wouldn’t be prevented from accessing a source of law [Note: the counter is that then this would be required for hadith too, where there were falsities, but this is not the case]. [3] There were some Rabbis (أحبار) [further proof we’re talking about the Torah here] who were cognizant and aware of the areas that were falsified and who became Muslim. These include ‘Abd Allāh b. Sallām, about whom God refers to in the

Qur'an (وَمَنْ عِندَهُ عِلْمُ الْكِتَابِ) [Qur'an 13:43 - there are reports that this was revealed about 'Abd Allāh b. Sallām, but there is another recitation of this verse that is offered to reject this possibility that it was referring to him. See: http://quran.ksu.edu.sa/tafseer/tabary/sura13-aya43.html], and also the verse (وَشَهِدَ شَاهِدٌ مِّن بَنِي إِسْرَائِيلَ عَلَىٰ مِثْلِهِ فَآمَنَ وَاسْتَكْبَرْتُمْ) [Quran 46:10] about him [note there is also debate here about whether this is referring to 'Abd Allāh b. Sallām… there's some controversy here about wanting to make him a prominent figure. http://quran.ksu.edu.sa/tafseer/tabary/sura46-aya10.html]. Additionally, Ka'b al-Aḥbār became Muslim in the time of 'Umar and he knew all there was to know about other religions and deep knowledge of the scriptures (كان المنتهى في علوم الأديان والإحاطة بالكتب). Yet, in all of its entirety (بالجملة), we have absolutely no evidence that any Imam from any time period referred to the laws of the previous religions. [It appears he is referring not to the references contained in the Qur'an to other scriptural laws, but to actual reference to the Torah. Note Shaybānī reference].

If the jurists cite as proof the verses (إِنَّ أَوْلَى النَّاسِ بِإِبْرَاهِيمَ لَلَّذِينَ اتَّبَعُوهُ وَهَٰذَا النَّبِ…) [Quran 3:68], and (شرع لكم من الدين ما وصى به نوحا…) [Quran 22:78] and (…ملة أبيكم إبراهيم…) [QUr'an 42:13], then the response is that the context of these verses suggests that the meaning is a rejection of the polytheists, and the call of the prophets towards tawḥīd. Ibrahim's mission in rejecting the worship of idols was known, so when the Prophet was tested by the polytheists, these verses mentioning Abraham came to support tawḥīd and reject the worship of idols. [<— v. 1, pg. 190]

The author then notes that a topic mentioned by the Uṣūlīs in connection with this one is **what the Prophet was following prior to his mission as a Prophet** [<— v. 1, pgs 190-191]. [1] The Mu'tazilites argue that he did not follow any other prophet, but followed what was rational

(شريعة العقل) in rejecting what was inherently bad (القبائح) and following the inherently good (المحاسن العقلية). If he followed another law it would have been a shortcoming in him when he was sent as a Prophet. The author responds that this is wrong on two fronts, namely that their argument about the shariah of reason is unsound as the author elaborated elsewhere [I can look this up later in his book, look up "شريعة العقل"], and also their statement that it takes away from the rank of the Prophet is also weak.

[2] Another position is that the Prophet was on the shariah of Ibrahim. The author notes that this was in regards to Tawḥīd, and it cannot be used as certain (قطعي) evidence here. At most we can accept that it is a literal meaning of the text, but as was mentioned by the author elsewhere, literal meanings don't signify the epistemologically certain (القطعيات). Furthermore, this would be apparently contradicted by the verse (شرع لكم من الدين ما وصى به نوحا…) [since it extends it to others and not just Ibrahim].

[3] Some argue he followed the shariah of Nuḥ because of the previous verse, but this would be contradicted by the verse about Ibrahim.

[4] Others will argue it was the shariah of Jesus because he came with the last of the shariahs before the Prophet, and the people in general were obligated to follow his shariah, and thus this would include the Prophet. The author responds that it is not established that Jesus was sent to all people. And even if it was established, his shariah was nearly extinct and unknown, making it a shariah that one would not be obligated to follow. [<— v.1, pg 191]

[5] The position of al-Qāḍī [Abū Bakr al-Bāqillānī (d. 403 AH)] is that the Prophet did not follow a prior shariah, and he argued it as a point of epistemological certainty (وقطع بهذا), but unlike the Mu'tazila he did not claim it was rationally impossible. Rather, he argued that if did follow a prior shariah, that it would have been necessary that this be remembered and spoken about by people when he became a Prophet, as a matter that would be mass transmitted. [<— v. 1, pg 191-192]

The position of the author is that the matter is unclear and an opinion for or against it cannot be made. As for al-Baqillānī's argument, the counter is that if the Prophet was **not** following a prior shariah, then it would have been even more contrary to what is normally expected (المعتاد) that this not be mentioned, and yet it is not. Both of these possibilities are unaccounted for and contradict one another. It can be argued that what is normally expected (العادة) is not applicable with the Prophet in some matters, including, for example, the fact that in this case people didn't note or search for the dīn he was following [before becoming a Prophet]. [note: this argument ignores exploring the evidence mentioned to show that the Prophet was following a prior shariah, noted in other texts] [<— v. 1, pg 192]

Elsewhere the author notes [as do others] that the Jews reject abrogation. [v. 2, pg 250]. He rejects the claims of some Jews that Moses informed them that their shariah is everlasting until the Final Hour (إلى قيام الساعة), and that the way they know about this is is the same way we know our shariah is everlasting in our religion. The author responds that if their position were true, than the miracles of Jesus and Muḥammad which abrogated the (ملة) of Moses wouldn't have happened. If they reject these miracles which are an essential aspect of prophethood, then they

do it at their own expense, since it opens the door to rejecting the miracle brought by Moses. Another counter to their argument is that if their claim were true, then the Jews would've raised it in the time of the Prophet Muhammad, and this would have been transmitted to us through mass transmission, since it is a matter that wouldn't escape history. [v. 2, pg 251]

**Al-Juwayni (التلخيص)**

الكتاب: كتاب التلخيص في أصول الفقه

المؤلف: عبد الملك بن عبد الله بن يوسف بن محمد الجويني، أبو المعالي، ركن الدين، الملقب بإمام الحرمين (المتوفى: 478هـ)

المحقق: عبد الله جولم النبالي وبشير أحمد العمري

الناشر: دار البشائر الإسلامية - بيروت

سنة النشر:

عدد الأجزاء: 3

[More extensive treatment in this book]

He looks at two issues. Did the Prophet follow pre-Muhammadan law before he was a Prophet? How about after?

As for the first issue, there are a few position: The prophet [prior to his mission] followed Abraham's (ملة), others that he followed Moses, and others said he followed Jesus. Some took the position of postponing complete judgment in the manner (التوقف), some arguing that it was possible he was following pre-Muhammadan law prior becoming a prophet, and others that it was possible he had nothing to do with them [v. 2, pg 257-258].

al-Qāḍī [Abu Bakr al-Bāqillānī] states that the majority of Mutakallimūn (speculative theologians) hold that the Prophet absolutely did not follow any of the Pre-Muhammadan laws

prior to becoming a prophet. Some of these included the Mu'tazilites, who argue that this was rationally impossible. Others argued that it is possible that he followed pre-Muhammadan law prior to becoming a prophet, but it is an unsettled mater (لم ينعقد), and we know this through transmitted knowledge (سمعا). This is the position that the author supports.

The strongest argument [according to al-Juwayni] by those who say that the Prophet, prior to prophethood, followed pre-Muhammadan law is that Jesus's calling to faith was broad and meant for all (عامة), and therefore needed to be followed by the Prophet, provided there was nothing to abrogate the shariah of Jesus prior to him, which we have no evidence of. [<— v. 2, pg. 259]

The author responds that their suggestion is ironically built on the lack of evidence that they cite: where is their evidence that Jesus's calling (دعوة) was broad and meant for all, or that his calling was not restricted in time. They might respond that what is apparent about divine laws ( ظواهد الشرائع) is that they are broad in application/scope (العموم). The author responds that one can say that what is apparent is that they are actually restricted to the people who live in the time of the prophet. The author adds that it is clear that there is no established evidence that Jesus' was sent to all of the children of Adam. This is only established about the Prophet, who is also sent to man and jinn (الثقلين) [editor notes the evidence for this is the hadith cited by other authors that the Prophet was given 5 things not given to other Prophets, one of them being that he was sent to all people - this hadith is in the book of tayammum in Sahih al-Bukhari. Also, the evidence that the Prophet was sent to the Jinn is noted by the editor as Qur'an Surat al-Aḥqāf, verses 29-32]. [<— v. 2, pg 260]

The author states that it is possible these shariahs became inapplicable and effaced, and this seems to be the case in the time of the Prophet, since the religions were changed and the scriptures were altered. Additionally, historians (أهل التواريخ) have said that no one remained to maintain the Torah after Uzayr (Ezra), and no one to take care of the Gospels after (مرخيا) [no clue who this is, the editor doesn't note who it is or vowel it] [<— v. 2, pg 260-261]. The opposition doesn't have evidence to argue against the position that pre-Muhammadan law was non-accessible in the time between Jesus and the Prophet Muhammad (في زمن الفترة), since there was path to realize it. Thus the verse (لا يكلف الله نفسا إلا وسعها) is applicable.

The opposition might respond that this might open the door to saying the same about the shariah of the Prophet Muhammad. The author responds that we know through ijmā' that the religion of Islam will stay until the blowing of the trumpet. If it weren't for Ijmā', this would have been a possibility, says the author [interesting!]

Another opposition point is that the Prophet, prior to his mission, used to engage in worship, perform the Hajj with other pilgrims, stay away from the Haram and engage in things that were Halal, the status of which he couldn't have known except through some shariah, like animal slaughter, is all evidence that bears **absolute knowledge** (دلالة قاطعة) that he followed something from the pre-Muhammadan laws. [<— v. 2, pg. 261]

These are aḥād references that do **not** yield absolute certainty as this matter would require. Additionally, it is theoretically possible that matters like animal slaughter can be realized through reason (عقلا), but the opposition has built its argument assuming you need evidence from a

shariah to know this. As for the example of Hajj, assuming it is authentic, it doesn't necessarily mean anything about following the laws of a pre-Muhammadan prophet. The Arabs were doing pilgrimage, doing tayammum, and seeking blessing from the Sacred House, not because they were following (ملة), but merely following passed down traditions.

The oppositions' argument here is based either in reports that are inauthentic, or transmitted aḥād, and can't benefit matters of the (العقليات).

If the opposition responds that the Prophet used to maintain bonds of kinship and stay away from the Major sins (الكبائر) and detestable deeds (اللمم), which are matters learned from following a shariah. [the implication is maybe that these are matters that are agreed upon and certain, as opposed to above cited issues]. Response: maintaining kinship bonds (صلة الرحم) is from human nature and can be found even among those who deny God. As for stating away from abominable deeds, this doesn't necessarily imply following any (ملة) [<— v. 2, pg 262]

The evidence for the author's position is the following: the Prophet used to spend time with his Companions, and yet no information is transmitted about him being affiliated or searching for law from any shariah prior to being a Prophet, nor did he mention anything himself about being affiliated with a (ملة) or following any shariah prior to prophethood, when he used to share other details about his life prior to becoming a prophet. We know given the natural order of the world (مجاري العادات) that such information could not be concealed. Someone who rejects this is rejecting the means by which we learn necessary knowledge (الضروريات). [<— v. 2, pgs 262-263]

He author is also opposed to those who reject, on supposed ‘rational evidence,’ that the Prophet followed a pre-Muhammadan shariah because if he had it would’ve given fodder to the members of different religious groups to say, “He was one of us before.” The author says this is a weak argument, and is built on notions of what are good or better (الصلاح والأصلح) [I.e. a mu’tazilite form of reasoning, though he doesn’t say that explicitly] [<— v. 2, pg. 263]

- - -

As for whether the Prophet followed pre-Muhammadan law after he started his mission ( بعد المبعث):

The author starts the discussion by stating that no one can deem it impossible that laws existing in previous (ملل) be found in the laws of the Prophet through commands that revived them. Similarly, it is not rationally impossible that the Prophet was obligated to follow other religions in some of their laws. However, those individuals who rejected on rational grounds that the Prophet prior to his mission could have adopted these laws will reject it after his mission as well - but their case is weak as was shown. [<— v. 2, pg 264]

Some of the (علماء) have said that the Prophet and his community were commanded to follow the pre-Muhammadan laws as long as they weren’t abrogated [<— v. 2, pg. 264-265]. The **author’s position is** that the Prophet was **not** obligated to follow pre-Muhammadan law, but rather he was obligated to follow parts of it through commands that revived them. In some things he was commanded with things that matched the pre-Muhammadan laws, and in other it disagreed with

them. The author notes that some scholars have postponed judgment on the matter. [<— v. 2, pg 265].

For those that say the Prophet followed what was not abrogated (and so must we), they cite as proof verses including

(ثُمَّ أَوْحَيْنَا إِلَيْكَ أَنِ اتَّبِعْ مِلَّةَ إِبْرَاهِيمَ حَنِيفًا…)

[al-Naḥl, 16:123]

(شَرَعَ لَكُم مِّنَ الدِّينِ مَا وَصَّىٰ بِهِ نُوحًا……)

[al-Shūrā, 42:13]

(إِنَّا أَنزَلْنَا التَّوْرَاةَ فِيهَا هُدًى وَنُورٌ ۚ يَحْكُمُ بِهَا النَّبِيُّونَ…)

[al-Mā’ida, 5:44]

(وَمَن يَرْغَبُ عَن مِّلَّةِ إِبْرَاهِيمَ إِلَّا مَن سَفِهَ نَفْسَهُ…)

[al-baqara, 2:130] [<— v. 2, pg 266]

With regards to the verse:

(وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ…)

[al-Ma’ida, 5:45], the proponents say that the Prophet implemented legal pronouncements in accordance with what the verse suggests [<— v. 2, pg 266-267]. Also as proof they cite the story of the two Jews that the Prophet stones after referring to the Torah.

And also the verse

((فَبِهُدَاهُمُ اقْتَدِهْ

[al-An’am, 6: 90]

[<— v. 2, pg 267]

The author responds: 16:123 can be read as a case of the law being renewed. Opposition: then why call it (اتباع)? Reply: the word implies acting as he acted or in his character, otherwise it would've been reported that the Prophet following the specific شرائع of Abraham and what was required in his law. The scholars of tafsir understand this verse as meaning to follow Abraham in staying away from شرك and upholding monotheism. [<— v. 2, pgs. 267-268] Opposition: this would indicate that belief in God is not based in reason (عقلا) but in following (سمعا), since the verse is being interpreted as requiring one to follow Abraham in knowing God. Response: God is only saying in this verse that he is holding the Prophet responsible for the same as he held the previous prophet responsible for. [<— v. 2, pg. 268].

As for 42:13: The strongest counter proof against using this verse to defend the opposition's position is that the Prophet did not search for the law of Noah, which he would've if it were required of him. The verse must mean to stay away from (268 —>] (شرك-v. 2, pg. 269]

As for 6:90: again, this is referring to Tawḥīd, since the prophets are joined together in this and they didn't agree in their shariahs, meaning the common denominator is tawhid [i.e. the author prefers a خاص meaning here of tawḥīd as opposed to one that includes tawḥīd + Shariah] [<— v. 2, pg. 269-270].

As for 5:44, he gives a short response: this verse can only support them if it is taken to have a broad meaning (العموم) [in which case it would include the Prophet], but the author has already debated against this and suggested the meanings are خاص [as the author showed in the verse

addressed before (فبهداهم اقتده)] are خاص [note, Ibn Hazm argues that this verse does not include the Prophet] [<— v. 2, pg 270]

Response to the claim that 5:45 is used as proof of qiṣāṣ for body parts in particular, and is based on the pre-Muhammadan laws: the author responds that the idea of qiṣāṣ in general is suggested by the apparent meaning of other verses [though they may not mention body parts in particular], as in (42:40] (وجزاء سيئة سيئة) [2:194], (فمن اعتدى عليكم فاعتدوا عليكم) [2:178], (كتب عليكم القصاص). Perhaps the Prophet ruled according to the outward meaning of these other verses, or his own ijtihād or something inspired to him.

As for the two Jews who were stoned - the Prophet did this according to **his** religion. He searched in the Torah only because the Jews claimed stoning was not in it, so by bringing it to light so that the Jewish laity (لضعفاءهم) could be shown that their Rabbis concealed the truth to them about the Prophet's mention [in the Torah] ( تلبيس أحبارهم عليهم في تغيير لقب رسول الله صلى الله عليه وسلم). [<— v. 2, 270-271]

[**WRAP UP + UNIQUE ARGUMENT**] The author says that the evidence for his position is the following: the ijmā' of Muslims is a proof that yields certainty (حجة قاطعة), and he argues it exists here to support his position. After studying the different time periods (وقد تتبعنا الأعصار), the author says that we do not find the people of the first generation [i.e. the Companions/Prophet] referring back to the laws of the Jews or Christians nor to matters in the Torah, nor do we find the Successors or the Successors to the Successors take refuge regarding their problems ( مُعضِلات والمشكلات) in the Torah or some other scripture, when they were even willing to make qiyās on

similar rulings (قياس الشبه). If we were obligated with the pre-Muhammadan laws, then the scholars (العلماء) would have searched for it just as they did all of the other sources of the sharīah. [**his claim is debateable**] [v. 2, pgs. 271-272]

The response might be that the reason they didn't search for the old scriptures is because there wasn't a reliable means of accessing them (لم يكن إليها سبيل مستقيم) as they texts were altered. Nor did there remain from those who transmit it someone who we trust (ولم يبق من نقلتها من يوثق بهم).

The author says that if we can't access this source, than than it is impossible that one be held morally responsible for it (يستحيل أن يكلف شرعا) as access to it has been barred. [**But then why not say this about other sources? Note Walid Saleh's al-Biqā'ī who says that it is comparable to Hadith**]. The response is that what we are obligated to follow is what was revealed to the Prophet that includes mention of the previous scriptures, as we no longer have have access to direct revelation which would have been the way to find out the truth about these sources. The author responds that the Prophet never attributed a legal ruling to the laws of pre-Muhammadan legal systems (إلى الشرائع السالفة), and we also know that he did not hide or deceive people [which would allow for him to take from their sources and cover it up]. If what the opposition says is true, than the Prophet would have told us that it was obligated on him to follow the previous scriptures and laws [note: maybe the Bukhari hadith is evidence of this?]. Rather, we have commandments from him that aren't attributed to the other religions, and thus our shariah merely revives the connection of commandments to those morally obligated to follow them. The opposition has granted most of the debate, al-Juwayni says, since there is nothing from the Prophet where he attributes something to a pre-Muhammadan law, and thus a **certain** statement

cannot be made (فلا يمكننا أن نقطع القول) that were are being addressed in a matter by pre-Muhammadan law [<— v. 2, pg. 272].

[**INTERESTING**] The author asks: there are some pre-Muhammadan laws that have reached us through mass-transmission in a way that gives us absolute certainty about their truth - why then have Muslims over time never taken from these laws (فهلا أخذ أهل الأعصار به؟)? There are also some people of the book who became Muslim, their Islam was true (حسن إسلامه), and they reached the highest position of being reliable and trustworthy (بلغ من الأمانة والثقه أعلى الرتبة), such as ‘Abd Allāh b. Sallām, Ka’b, and others. Why did the Companions not refer to the statements of either of these two individuals in their reports about the Torah ( فهلا رجع أصحاب رسول الله صلى الله عليه وسلم إلى قولهما في الأخبار عن التورة؟)? [because he references the Companions, the converted Muslims he’s willing to consider are probably only those in the first generation and not later. Also, note that both of these might have examples to counter]. [<— v. 2, pg 272-273]

The opposition would respond that it’s because the texts were altered. The author responds: why didn’t they then trust their statements transmitting material that was not altered? [The editors (عبد الله جولم النبالي وبشير أحمد العمري) respond to this question in the footnotes, saying it’s because the texts were altered before even them, so they wouldn’t be able to differentiate]. We readily accept the reports of trustworthy narrators, but otherwise we break our reports into authentic and weak (الصحيح والسقيم). Since we know that there are issues of dubious attribution and reporting (التدليس والتلبيس), errant reporting, and blatant forgery of reports with regards to reports of the Prophet, and this **<u>even moreso than the falsification of the scriptures</u>** (أكثر من التحريف في الكتب), and we also know we can’t reject the reports of trustworthy narrators, then this would prove

wrong the oppositions' argument from all angles (من كل وجه). [implying that Ka'b and 'Abd Allah b. Sallām were not taken for their reports when they should have otherwise, given the rules about ḥadīth authenticating]. Thus the author states that not only did the Prophet not follow a previous shariah prior to his prophethood, but building on this, the laws after his prophethood were connected to other commands only by means of reviving them ( لم تثبت بعد المبعث إلا باتصال الأوامر على التجديد). [<— v. 2, pg. 273]

The author then engages with a few other proofs by the opposition that he considers weak. These include the statement where the Prophet asked Mu'ādh with what does he give verdicts, and he responded with the Book of Allah, then the Sunna of the Prophet if it's not in the former, then from his own opinion. The author responds that he didn't specify the pre-Muhammadan scriptures, and also the report is aḥād. The other argument is that all of the Umma is in consensus that the laws after the Prophet became a prophet are attributed to his shariah. If some of those laws are laws that pre-Muhammadan communities practices, than those laws should be attributed to pre-Islamic law [**Kind of like the modern western argument**]. The response is that if the opposition acknowledge that all of his laws are his laws since he revived them, then the attribution is only a matter of name [**perhaps that's all it is for the modern claims? Since in the end, it is the law of the Prophet (or Muslim tradition if introduced later)**]. The last argument the author deals with: the verse (5:48] (لكل جعلنا منكم شرعة ومنهاجا] could mean that the Prophet has jurisdiction with the entirety of the shariah, but this is problematic because the verse implies his having jurisdiction over some of the laws. Usage of the word shariah doesn't indicate all of the laws ever. [Note, my interpretation of this last minor issue is not the clearest, but what he's saying is not essential.] [<— v. 2, pg. 274]

—

The author notes a counter to tawatur which is that the Jews report that Moses stated his shariah is forever. The author states that while the Jews transmitting it in his time are truthful in relaying what they heard, but there was no mass transmission at earlier points. The author also reports that some scholars have suggested that it was Ibn al-Rāwandī who deceived them of this in Isfahan. [<— v. 2, 310] The evidence for this, the author points out, is that the Jews during the time of the Prophet did not raise this statement of Moses despite their other qualms with the message. This means that the statement is a later invention. It would be contrary to the normal order of the world for their bringing this up against the Prophet to have been lost and not transmitted. [<— v. 2, 310-311]

He notes that the Jews deny abrogation on rational basis (عقلا). [<— v. 2, pg. 450]. He notes elsewhere that they are two groups, one that denies it rationally, another that denies it based on the received statement of Moses [<— v. 2, pg. 467-468] He makes the same argument about Ibn al-Rāwandī fabricating the lie [<— v. 2, 471] and that if it were true the Jews of the Prophets time would have used it. [<— v. 2, pg. 471-472]

**<u>Uṣūl al-Sarakhsi</u>**

الكتاب: أصول السرخسي

المؤلف: محمد بن أحمد بن أبي سهل شمس الأئمة السرخسي (المتوفى: 483هـ)

الناشر: دار المعرفة - بيروت

[NOTE: the edition is actually published by Lajnat Iḥyā' al-Ma'ārif al-Uthmāniyyah as I cite in Zotero, the page numbers/volumes are the same though so no need to change anything]

عدد الأجزاء: 2

In a chapter on رخصة (circumstance-bound, legally granted ease), he notes in passing how the Islamic shariah is a (رخصة) of sorts, though not literally (مجازا), in that God took away some of the hardship associated with the pre-Muhammadan communities in verses like ( **وَيَضَع عَنْهُم إصرهم** **والأغلال الَّتِي كَانَت عَلَيْهِم**) and (**رَبنَا وَلَا تحمل علينا إصرا**) [<— v. 1, pg 120]

- - - -

He notes that Jews deny abrogation, either based on rational grounds, or the statement of Moses to hold on to the Sabbath as long as the heavens and the earth remain ( تمسكوا بالسبت ما دامت السموات والأرض), claimed to be in the Torah that is with them. They also claim that they have mass transmission that provides them with certainty (الموجب بالعلم) that Moses said (إن شريعتي لا تنسخ), just as Muslims claim the same about our Prophet. They claim that because of their obligation to the Sabbath, they cannot accept the claims of the Prophet.

Jews that denied it on rational ground argued that if something is prohibited, it is proof that the thing in essence is bad (دليل على قبح المنهي) and if commanded it is good (حسن المأمور به), and something can't be good and bad later. Also, it is not befitting for God's statements to be time bound when he makes a general unrestricted statement (مطلق الأمر), it is as though he said the command was forever. Otherwise God would have specified.

He responds that Jews and Muslims agree that marriage between siblings was once allowed in the Shariah of Adam, but it is no longer acceptable. Also, Ya'qūb made unlawful some food on himself that was originally lawful for the Jews (…**كل الطَّعَام كَانَ حلا لبني إِسْرَائِيل إِلَّا**) [<— v. 2, pg. 55]. Also, the Sabbath was lawful **before** Moses, so this proves that laws can change. [<— v. 2, pg. 56] [He also engages with the issue of whether it is naskh or bidā', etc, but I don't want to get into what doesn't mention the pre-Muhammadan law. See my notes on al-Rāzī earlier for what this debate looks like].

The jewish rejection of abrogation based on transmitted knowledge is rejected because we have the message of messengers after Moses who came with miracles and certainty-yielding proofs that their claim that it is in the Torah is not accurate. We know this because it has been established on the Tonge of someone who's message we know is true that they altered the Torah and added and took away from it [indicating the Prophet, though he is unnamed]. Also, the words of God can't be established unless it's done with mass transmission, which isn't possible for the Torah after what (بختنصر) did to the Jews when he killed them and burned the Torah scrolls (أسفار التوراة). [<— v. 2, pg. 58]

—

In a section on proving the recited Qur'an can abrogated a sunnah, he gives the example of the Prophet praying towards بيت المقدس for 16 months - a ḥukm that wasn't given in the Qur'an, but is abrogated by the verse (**كل الطَّعَام كَانَ حلا لبني إِسْرَائِيل إِلَّا**). The counter is that this example doesn't count because the Prophet was acting according to the Qur'an, since following pre-

Muhammadan law is required according to the Qur'an by the verse (أُولَئِكَ الَّذين هدى الله فبهداهم اقتده), and the author states that according to him, pre-Muhammadan law is binding provided it isn't abrogated. The author responds that for the opposition, the pre-Muhammadan law became binding on us when it because a sunnah of the Prophet through his words or actions, and thus this is still a case of a sunnah being abrogated by the Qur'an. The author also states that the Prophet used to pray to the Ka'ba when he was in Mecca, and then it became بيت المقدس when he moved to Medina, a case of a sunnah abrogated a sunnah. When the rule came to face the ka'ba again, it became a case of the Qur'an abrogating a sunnah. [<— v. 2, pgs 76-77]

The author then states that there is no khilāf that the pre-Muhammadan laws can be abrogated with the words or actions of the Prophet. And this would be an example of the Qur'an being abrogated by the Sunna [since the obligation to follow pre-Muhammadan laws is from the Qur'an] [<— v. 2, pg. 77]

———

[Note, a lot of this seems to follow al-Razi]

Chapter on Shar' man Qablana:

Different claims (أقاويل) for the scholars (1] .(العلماء] the law of a prophet remains forever it is abrogated. [2] the law of a prophet lasts until the coming of another prophet unless there's evidence that it continues, e.g. a statement of the prophet that comes after, [3] Pre-Muhammadan law is binding on us because it's binding on our Prophet as long as it isn't abrogated. **This group [note that he's referring to a position of the علماء] doesn't differentiate** between whether the pre-Muhammadan laws are learned about through the transmission of the People of the Book or

the reports of Muslims concerning what is in their scriptures, and between what is established of Pre-Muhammadan laws in only the Qur'an and Sunnah.

The author believes it is binding on us as long as it's not abrogated, and must come from the Qur'an or from the Prophet. [<— v. 2, pg 99] We can't rely on their transmission of material form the scriptures because we have certainty-giving evidence (موجب للعلم) that they altered the scriptures, and so we can't rely on their transmission of that material because there is doubt (لتوهم) that what is transmitted is part of what was altered. [<— v. 2, pg 99-100] This is the same reason we can't accept the understanding of Muslims reporting on what is in the scriptures as well. **The proof of that this is the position of the school** is that Muhammad (al-Shaybānī) relied on the verse (**ونبئهم أَن المَاء قسمة بينهم**) and the verse (**هَذِه نَاقَة لَهَا شرب وَلكم شرب يَوْم مَعْلُوم**) in his (كتاب الشرب) to argue for shared owners of water (المهايأة في الشرب). And these verses were about Ṣāliḥ, and Muhammadan al-Shaybānī only could have cited them after believing that those laws remained obligatory on our Prophet. [Note how crucial the opinions of al-Shaybanī are that he is deriving from him the school's position in this debate. Imagine if he had the Torah citation!]. Furthermore, Abū Yūsuf cited the verse (وكتبنا عليهم فيها أن النفس بالنفس) to uphold the Qiṣāṣ between men and women [i.e. their equality vis-a-vis this law]. Similarly الكرخي justified the Qiṣāṣ between a free person and a slave, and a Muslim and a dhimmi. On this matter, al-Shāfi'ī does **not** disagree, because he cites the Prophet's stoning of two Jews according to the Torah and in accordance with the Prophet's words (أنا أحق من أحيا سنة أماتوها) to mandate the stoning of the People of the Book, since he took that evidence to mean it became the shariah of our Prophet. The author says that while we don't disagree with this, it is our position [i.e., that of the school]

that this law was abrogated with the addition of the condition of الإحصان which makes stoning obligatory in our shariah. Additions like this count as abrogation for us [our school].

The Mutakallimūn **debated whether the Prophet followed a shariah prior to his being a Prophet**. Some [1] rejected it, [2] others postponed judgment, and [3] some said he did. The author states that since this topic is tied in with the matter of theology (أصول التوحيد), he will only mention here what is related to legal methodology (أصول الفقه).

Those who accepted it argue that commandments are everlasting unless specified, and so the prophet of one law will technically still be a prophet once a new prophet comes, and the prophet's laws similarly remain unless abrogated [<— v. 2, pg. 100]. The proof of this is that we are obligated to believe in all of the prophets, from the verse ( والمؤمنون كل آمن بالله وملائكته وكتبه ورسله لا نفرق بين أحد من رسله) [<— v. 2, pg. 100-101]. If we establish that something is from the shariah of a Prophet, then we know that it is something God is pleased with, and as long as it remains something that God is pleased with, those after a new prophet act on it as it was before the second prophet's mission. Thus the laws are in agreement between the prophets except what has been abrogated.

Those who reject it cite the following (لكل جعلنا منكم شرعة ومنهاجا). And also (وجعلناه هدى لبني إسرائيل) [me: new verse in this debate], which specifies the Torah as being a guidance for Banī Isrā'īl, and thus it's not obligated on us unless there's evidence otherwise to follow it. Also, the prophets were sent to explain what their people needed to receive, and if we don't cut off that shariah with the new prophet, then there wouldn't be a need for a second prophet, but their need for that

second prophet was clear to them through certainty-giving means (مبين عندهم بالطريق الموجب للعلم). Thus, the coming of a new prophet is a proof that the shariah prior to it was abrogated. This is also proof for why the Prophet's shariah will last until the Hour, because there will be no other prophet to abrogate his shariah. Also, most of the pre-Muhammadan prophets were sent to their people specifically, while ours was sent to all people given the report of the Prophet ( أعطيت خمسا لم يعطهن أحد قبلي: بعثت إلى الأحمر والأسود، وقد كان النبي قبلي يبعث إلى قومه… الحديث). Thus we know that it's possible for two prophets sent to two separate places to have their separate laws followed. [<— v. 2, pg 101] If that's the case, then they can be in two different times with two different laws, or in one time period and two different places with different laws [<— v. 2, pg 101-102]. With regards to our Prophet, he commanded us to follow specifically him, as in the verse ( فاتبعوني يحببكم الله). If the pre-Muhammadan laws were still binding, he would have called us to follow those laws, and commanded his Companions to to act on them, and if he did that we would've heard about it through mass transmission. Rather, what **is** transmitted from the Prophet is that he prohibited his Companions from doing so, as is clear from the report where the Prophet became angry when 'Umar had a ṣaḥīfa of the Torah in his hand, saying ( أمتهوكون كما تهوكت اليهود والنصارى! والله لو كان موسى حيا ما وسعه إلا اتباعي). This report makes clear that the first prophet, by the coming of the second, becomes obligated to follow his shariah. This is the idea in the verse ( وإذ أخذ الله ميثاق النبيين لَمَا آتيتكم من كتاب وحكمة ثم جاءكم رسول مصدق لما معكم لتؤمنن به) [And [recall, O People of the Scripture], when Allah took the covenant of the prophets, [saying], "Whatever I give you of the Scripture and wisdom and then there comes to you a messenger confirming what is with you, you [must] believe in him and support him."] This covenant is a strong proof that the status of these prophets is like being in the community of the next prophet in terms of their being obligated to follow him [when the next prophet comes]. This also adds to the status of the

Prophet Muhammad, since all of the Prophets have the ruling of being his followers, in the way the head follows the heart, and leg follows that.

The last group argues that the pre-Muhammadan laws became the shariah of our Prophet. The following verses (…3:95] (قل صدق الله فاتبعوا ملة إبراهيم…) [22:78], (ملة أبيكم إبراهيم…], and ( …وهو محسن واتبع ملة إبراهيم حنيفا… [quran 4:125]. If the) ملة , of Abraham was abrogated or had ended but these verses make clear that the Prophet was a follower of a pre-, متبع than you couldn't be a of Ibrahim. [<— v. 2, pg. 102]. Thus we know that it ملة Muhammadan system, and that was the became the shariah of our Prophet, and we are thus obligated to follow it unless there is proof of abrogation [<— v. 2, pg. 102-103]. As for there being more than one prophet in one time period or place, this has happened before, **but**, in those cases one was following the other, like Aaron and so the], 29:26] (فآمن له لوط)… following Moses, or Lot following Abraham, as God says shariah of one was obligated on the other. Thus, it is not possible for two prophets to come in أولئك الذين هدى الله( one time or place with different shariahs that conflict. This group also cites أصل الدين( where guidance includes both the fundamentals of religion and the shariah), فبهداهم اقتده وأحكام الشرع جميعا.(

One might respond that the verse about (أولئك الذين هدى الله فبهداهم اقتده) that it only refers to the fundamentals of religion/theology (أصل الدين) given the context of the verse and the fact that those mentioned include some non-Prophets (ومن آبائهم وذريتهم وإجوانهم) and the rules of shariah don't come from non-prophets. Also the prophets disagreed in their shariahs, so this verse couldn't ve referring that. Response: هدى includes both the fundamentals of religion/theology (أصل الدين) and shariah. This is what's shown by the verse (آلم ذلك الكتاب لا ريب فيه هدى للمتقين) where هدى is

comprehensive. Also the verse (إنا أنزلنا التوراة فيها هدى ونور يحكم بها النبيون) and حكم can only happen with shariah.

Mujāhid was asked about the prostration in surat Ṣād, and he said Dawūd did it and the Prophet also commanded it. He then recited the verse (فبهداهم اقتده). This report is proof that the general meaning here includes both the fundamentals of religion and also the sharā'i. [<— v. 2, pg. 103] As for the claim that the different shariahs had laws that abrogated one another so you couldn't combine them all, the response is that the same is the case even in our shariah, but that doesn't stop us from following our shariah [<— v. 2, pg. 103-104]. With regards to mentioning non-prophets in the verse: the context suggests that it is the Prophets being referred to ( واجتبيناهم وهديناهم إلى صراط مستقيم... أولئك الذين آتيناهم الكتاب والحكم والنبوة...) [Qur'an 6:87-89]. Regardless, we are only commanded to follow those who are rightly guided, whether it be a Prophet or a pious person (walī), the latter inheriting the shariah of the Prophets. This is suggested from the verse (ثُمَّ أَوْرَثْنَا الْكِتَابَ الَّذِينَ اصْطَفَيْنَا مِنْ عِبَادِنَا...) [Qur'an 35:32]

With regards to the verse (5:48) [لكل جعلنا منكم شرعة ومنهاجا], we know that it only suggests that they are different in some aspects of their shariah, not all. As for the verse (هدى لبن إسرائيل) this doesn't mean that it isn't a guidance for others as well, just as as the Qur'an is for everyone even though it is described in the Qur'an with (هدى للمتقين). Another proof of this is that the Prophet sought the law of stoning from the Torah, and he said (أنا أحق من أحيا سنة أماتوها), for one can only revive a dead سنة by acting on it. Another proof for this position in general is ( مصدقا لما بين يديه من الكتاب ومهيمنا عليه), which can only mean that what is that what is in الكتاب became a shariah for our prophet, until it's been proven as abrogated. This is the correct position according to us ( وهذا هو القول الصحيح عندنا). **However, we know that the People of the book, by virtue of their jealousy (الحسد) and enmity (العداوة) with regards to Muslims, their statements about what is in their**

**shariah is not to be trusted,** nor their statements that it has reached them by means of tawātur. Their witness on this is not accepted because their disbelief and misguidance have been established. Thus, we can only obtain knowledge of the Pre-Muhammadan laws through Qur'anic revelation or the statements of the Prophet. Whatever is found this way we must act on [<— v. 2, pg 104], unless there is evidence that it's been abrogated [<— v. 2, 104-105]. Proof of this requirement on us is the verse (ومن لم يحكم بما أنزل الله فأولئك هم الكافرون...فأولئك هم الظالمون...) (Qur'an 5:44-45). **It is known (معلوم) that they [implying the Jews] weren't refusing to act on the laws of the Torah, but rather they refused to act on it by means of it being the shariah of our Prophet, as they didn't accept his prophethood** That's why God called them (كافرين) and (ظالمين) and ones who refuse the laws revealed by God. Similarly, God says, ( وليحكم أهل الإنجيل بما أنزل الله فيه، ومن لم يحكم بما أنزل الله فأولئك هم الفاسقون) (5:47). They are called (فاسقين) because they didn't act on the Gospels by virtue of them being the shariah of Muḥammad (SAAS). Further proof that pre-Muhammadan law is to be acted on is the verse ( وكيف يحكمونك وعندهم التوراة فيها حكم الله) [he doesn't elaborate or explain the verse, which might be a can of worms?]. Also the verse (شرع لكم من الدين ما وصى به نوحا...أن أقيموا الدين): the word (الدين) means everything that one obeys God with (كل ما يدان الله به), which include laws, and thus the verse implies that these became part of the shariah of our Prophet, and thus we must follow them unless abrogated. [<— v. 2, pg. 105]

———

[Example of the use of pre-Muhammadan law, probably for my chapter 2. The point is tied into a larger discussion about qiyas, but what follows is what's relevant for the chapter. The author cites the following as corroboratory evidence to explain why money designated for zakat cannot be benefited from]: The author states that in the pre-Muhammadan shariah, accepted charity and

sacrifice was devoured by fire [referring to Cane/Able], and you couldn't benefit from what was offered. Similarly, the author states, it is not permitted for a rich person in our shariah to benefit from zakat. It is allowed for the poor [even though it's meant for God] given their need for it, in the way it is permitted to eat carrion meat if there is extreme need. [<— v. 2, pg 169]

**Qawāṭi' al-adillah fi al-Uṣūl (Abū al-Muzhaffir al-Tamīmī) - former Hanafi turned Shafi'i**

الكتاب: قواطع الأدلة في الأصول

المؤلف: أبو المظفر، منصور بن محمد بن عبد الجبار ابن أحمد المروزى السمعاني التميمي الحنفي ثم الشافعي (المتوفى: 489هـ)

المحقق: محمد حسن محمد حسن اسماعيل الشافعي

الناشر: دار الكتب العلمية، بيروت، لبنان

الطبعة: الأولى، 1418هـ/1999م

عدد الأجزاء: 2

[Starts v. 1, pg. 315]

It is not rationally problematic to say that God commanded or prohibited the Prophet from following a pre-Muhammadan shariah [v. 1, pg. 315]. It is possible for the laws of one prophet to have good (مصلحة) for that prophet's time only, and also possible that it has good in both that prophet's time and also that of another, and thus the laws can agree and disagree between communities. [v. 1, pg. 315-316]. If the 2nd prophet came with the same laws as the 1st, is there a point to his being sent as a prophet? The author responds that God is the only one that knows and we can't question his wisdom. However, there are some benefits: if the 2nd prophet agreed with some laws but disagreed with others, than you have new laws. Or perhaps the 1st prophet

was sent to one group and the 2nd to another. Or perhaps aspects of the 1st prophet's law were forgotten and so the 2nd prophet renewed them. Or perhaps something new in the first system is removed by the second Prophet's laws.

As for our Prophet in particular: [1] He did not follow pre-Muhammadan law but was prohibited from it. This is the position of some of the Shāfi'īs, most of the Mutakallimūn, and some of the Hanafīs. [2] The Prophet followed pre-Muhammadan law except what was abrogated, and this is the position of most of the Shāfi'īs, and many of the Hanafīs, and some of the Mutakallimūn. [3] the Prophet didn't follow any of their commands or prohibitions [not clear how this is different from (1)]. Some also argue he followed the shariah of Ibrahim, and that is the more exceptional position (قول شاذ).

**The author says that the correct position is [1], that he didn't follow pre-Muhammadan law**, even though many Shāfi'ī agreed with [2], and even al-Shāfi'ī himself leaned towards this in some of his books that he built some of his juridical - قيل - The author says that it's been said . note he doesn't realize this is from al-[ كتاب الأطعمة in his - أصل من أصوله - understanding . grounds شرعا Juwayni]. He is opposed to it on **both** rational and

The supporters cite the verse (قل صدق الله فاتبعوا ملة إبراهيم حنيفا) [Qur'an Āl 'Imrān: 95] to suggest it became the Shariah of the Prophet [V. 1, pg 316]. Also the verse ( (أولئك الذين هدى الله فَبِهُدَاهُمُ اقْتَدِهْ 6:90]], where هدى includes both faith and laws. Also the verse ( إِنَّا أَنزَلْنَا التَّوْرَاةَ فِيهَا هُدًى وَنُورٌ ۚ يَحْكُمُ بِهَا 5:44] (النَّبِيُّونَ الذين أسلموا]. The phrase (الذين أسلموا) includes the Prophet. It's also been said that the Prophet is intended by this verse in specific, and is related to the story of the two Jews who were

stoned by the Prophet after reference to the Torah. The author notes that most of the أهل التفسير support this, and this is what we have transmitted reports about. Additionally Ibn ‘Abbās was asked about the prostration of the chapter (ص), and he said that the Prophet prostrated it as well, following David who did before. [**NOTE: see Nathaniel passages bible**]. Also, the verse ( شَرَعَ لَكُم مِّنَ الدِّينِ مَا وَصَّىٰ بِهِ نُوحًا) [42:13]. And “Din” includes all that God is worshiped by (ما يدان الله به) which includes Shariah. Also, there’s nothing in the coming of a new prophet that would abrogate out the laws of a previous one that were meant for all people. He quotes Abū Zayd [al-Dabbousi]’s position that this is the correct position, except adding that after the Prophet, only those pre-Muhammadan laws are remaining in effect that we know of from the Prophet as being established, since God has told us that they [the people of the book] have altered their texts and were deceptive in transmitting the scriptures. Thus, they are rejected in their witness about what is their scriptures (مردودين الشهادة), and also because of religious enmity that is apparent among them. Thus their words [the people of the book] are not a proof for us, except what the Prophet informed us about as being established law, either through recited or un-recited revelation ( بوحي متلو وغير متلو) [I believe un-recited being prophetic Sunnah]. Thus, the laws of the first prophet remain in tact by themselves (تبقى حقا في نفسها), however only what the second prophet transmits of it is binding [i.e., in theory, it is recognized that Jewish law is binding].

This is also the practice of the Prophet, in that he didn’t believe others regarding pre-Muhammadan law (لم يصدق غيره عليه), and that the previous prophets would have been his followers if they were alive [reference to the ‘Umar hadith]. That’s why he didn’t refer to them in understanding pre-Muhammadan law. The author states that those who hold pre-Muhammadan law to be binding might also argue the Prophet followed this before he became a

prophet, given that he used to do Hajj, ‘Umrah, certain acts of good, animal slaughter, circumambulating and honoring the Ka’ba, etc, which are from other shariahs and because we know that God doesn’t leave a time period without there being a shariah, thus he was following pre-Muhammadan shariah. [<— v. 1, pg 317]

The author gives proof of his position: the verse ( وَإِذْ أَخَذَ الله مِيثَاقَ النَّبِيِّينَ لَمَا آتَيْتُكُم مِّن كِتَابٍ وَحِكْمَةٍ ثُمَّ جَاءَكُمْ رَسُولٌ مُّصَدِّقٌ لِّمَا مَعَكُمْ لَتؤمِنن بِهِ وَلَتَنصُرُنَّهُ) [And [recall, O People of the Scripture], when Allah took the covenant of the prophets, [saying], "Whatever I give you of the Scripture and wisdom and then there comes to you a messenger confirming what is with you, you [must] believe in him and support him.”]. The verse puts the other prophets, after the prophethood of the Prophet Muhammadan at the station of being in his ummah [since they say to follow him now], which suggests that their shariahs ended with the Prophet. Also, the verse ( لكل جعلنا منكم شرعة ومنهاجا) 5:48]] is proof. Abū Zayd [al-Dabbousi] responds about this latter verse that it is evidence of abrogation in general, not of the abrogation of every one of the pre-Muhammadan laws. And we know that this verse allows for the Prophets to agree on some things, like faith in God and obedience to him. The author replies that this verse implies that each Prophet had their own shir’ah and minhāj except for things where separate evidence might suggest otherwise. However, there IS evidence that pre-Muhammadan prophetic laws ended with the coming of the Prophet: [1] the hadith where the Prophet saw a ṣaḥīfa of the Torah in Umar’s hand and he rebuked him saying (أمتهوكون أنتم كما تهوكت اليهود النصارى لو كان موسى حيا ما وسعه إلا اتباعي), which means the prophets have the status of being in the Prophet Muhammad’s ummah if they were alive, and thus their shariah has ended with his coming. Also, [2] the Companions of the Prophet used to refer to the Kitāb [Qur’ān] and sunnah and ijtihad if not in the prior two sources for their issues,

as we learn from the hadith of Mu'ādh when he was sent to Yemen. There is no narration that any of the Companions went to the laws of the pre-Muhammadan revealed books, nor did they search for it, nor did they command anyone to search for what was in these books. If they followed pre-Muhammadan law, there would have been reports from them or from the Prophet doing so.

**Those that say the Prophet followed pre-Muhammadan law say that either** [1] God informed the Prophet of his obligation to follow the pre-Muhammadan laws through inspiration, and God also revealed to him the specific laws to follow and their characteristics without him needing to refer to material from the other communities, or [2] that the Prophet learned about the pre-Muhammadan laws by referring to the transmission of others, just like we do in learning the shariah of our Prophet, or [3] he learned about some pre-Muhammadan laws from revelation, and others through transmitted knowledge [<— v. 1, pg 318].

The author says that [1] is purely conjectural [that God informed the Prophet of this obligation and the details of the laws] [<— v. 1, pgs 318-319], but also even if it were granted that it was revealed to the Prophet laws followed by pre-Muhammadan prophets, than one could ask: are *all* laws that God revealed to the Prophet from pre-Islamic prophets, which the author rejects as impossible since the Prophet's laws don't appear to agree with the laws of Moses and Jesus, or do they include some laws that happened to also be practiced by previous prophets and also new laws? If the latter, than the fact that some of these laws are the same as pre-Islamic prophetic laws doesn't indicate that the Prophet Muhammad was following pre-Muhammadan laws, because by virtue of them being revealed to him, they became his laws outright, and there's no

evidence that by virtue of their being the laws of a pre-Muhammadan prophet they became the laws of the Prophet Muhammad [note: some of the verse evidences can be used to argue against this point]. If one were to say that God revealed to the Prophet that something of the shariah was from pre-Muhammadan times and that the Prophet was obligated to follow it, then where is the evidence of this? If one points to the verses cited earlier in the debate, there is no mention in them of a law from among their laws (شرع من شرائعهم). As for [2]

With regards to [2], that the P transmitted material from pre-Muhammadan communities, than this is false because we have no examples of him referring to their laws in matters that would occur. Rather, he would wait for revelation, as he waited in the matter of (الظهار) and (الإيلاء) and (اللعان) and other matters. It hasn't been reported that he asked any of those who followed the Torah or the Injīl about their laws when he would have needed to had this been the case [**note: unless the laws were already very well known. But the Quranic evidence would suggest this info was hidden**]. Likewise, we have no reports that any of the early Muslims (السلف) referred to the people of other religions and ask them about their laws. If they were obligated to follow pre-Muhammadan law, then the laws in the other prophets' scriptures would have been at the status of the Qur'an and Sunnah, and thus we would have needed to refer to them as we do the Qur'an and Sunnah. The author then states that if the opposition cites the incident of stoning, then he will respond to that shortly [see below]. If the opposition says that it is not possible to refer to pre-Muhammadan scriptures because they have been altered, then the response is as follows: if referring to these texts is not possible as is claimed, nor do we have evidence that pre-Muhammadan laws were directly revealed to the Prophet, than we know conclusively that the Prophet was not a follower of pre-Muhammadan law. If in fact he was supposed to follow pre-

Muhammadan law as is claimed, than we know that the other communities didn't completely alter the old scriptures, and thus it would have been necessary that God make clear what was altered so that we not be barred from this source of law. Some information that points to this conclusion is that there were Rabbis from among them **[me: evidence that Jews are being referred to mainly]**, like Abd Allāh b. Sallām, Zayd b. Shu'ba, and others in the time of the Prophet, and Ka'b al-Aḥbār and others after the Prophet, who could've clarified what was altered from what was not. In fact, God refers to 'Abd Allāh b. Salām directly in the verse ( قل كفى بالله شهيدا بيني وبينكم ومن عنده علم الكتاب), which is a verse referring to him according to a group (جماعة) of exegetes [<— v. 1, pg. 319] [**Note: he doesn't reference al-Juwayni, but because he's citing similar evidence, like this bit about 'Abd Allāh b. Salām, or some evidence noted earlier, al-Juwayni might be the one who initiates the shift among Shafi'ī jurists**] The opposition responds that you can't determine what is in those books by the narration of just one or two people [me: what about variant Qur'anic readings?] [<— v. 1, pgs. 319-320]. The author responds rhetorically, than through which means could you learn something [i.e., āḥād reports are adequate]? Additionally, the Prophet was with many people who transmitted the scriptures, and so it could have been known through tawātur and all of the laws could have been known in the scriptures [me: the issue is that the tawātur is late]. As for Abū Zayd [al-Dabbūsī]'s claim that you can only know their shariah through the statement of the Prophet: if this were the case, than God would have directed him towards these laws, and the Prophet would have informed us of these laws so that we would know all of their laws, which we are obligated to follow according to this position.

Some from those who uphold that pre-Muhammadan law is applicable, argue that if the Prophet followed pre-Muhammadan law, than we can't ascribe all of his شرع to him (the Prophet), just as we don't ascribe the Prophet's شرع to members of his community (أمة). [**i.e., the author is saying that some Muslims held that we can state that some Islamic laws are in fact Jewish in origin, e.g.**] The author states that this logic implies that the Prophet is like a member of the community (أمة) of those who came before. The author states that this claim takes away from the station and rank of the Prophet, and is a belief that he is subordinate to the prophets who came before. This, the author states, is something that no one in the religion (أحد من أهل الملة) finds acceptable, because the Prophet is followed (متبوعا), not a follower (تابعا), and not called to (religion) (مدعوا), but a caller (داعيا).

As for the verse (أن اتبع ملة إبراهيم حنيفا وما كان من المشركين) cited to suggest the Prophet is from the millah of Ibrahim [and thus a follower]: the word ملة applies to matters of الأصول - i.e. التوحيد and الإخلاص لله تعالى بالعبادة, etc., and not on فروع الشرائع where there is difference of opinion, which is why we we don't call it the millah of Abū Ḥanīfa or al-Shāfi'ī, but rather use the word madhhab, since you can differ in madhhab, but not in millah. The verse also suggests the word is referring to the fundamentals أصل of religion since the shariah of Abraham is no longer transmitted and there is no way God would would command obedience to something that is unknowable. [Note, his argument here about ascription of the laws and its effect on the rank of the Prophet, and also his argument about the word millah vs madhhab is taken directly from pages of Abu al-Husayn al-Baṣri al-Mutazili's work (see if it could be from Juwayni), though he doesn't cite it, showing the continuing presence of Mu'tazili thought in Usul literature, though stripped of its attribution. It'd be interesting to search the author's book for his attitudes about Mu'tazlis! Compare with

Hallaq comments on Mu'tazilite role in Usul al-Fiqh] As for the verse ( أولئك الذين هداهم الله فبهداهم اقتده), the huda that is linked to the group in the passage is that of tawhid, since that's what they agreed on.

As for the verse (5:44) [إِنَّا أَنزَلْنَا التَّوْرَاةَ فِيهَا هُدًى وَنُورٌ ۚ يَحْكُمُ بِهَا النَّبِيُّونَ الذين أسلموا], the apparent meaning of this verse, since it is including all the prophets, is that it is referring to the Tawhid, since we know with certainty (نقطع) that some laws abrogated others among the prophets. As for the argument that this verse was revealed regarding the two fornicating Jews, this is rejected for the reason given [me: that it has to be referring to something all the prophets agreed to? or perhaps the author's prior rejection of the Prophet's obligation to pre-Muhammadan law?]. Furthermore, it's possible that when it says the prophets who أسلموا it is referring specifically to a group of the prophets of the Banū Isrā'īl who were sent on the laws of the Torah [i.e. not ALL the prophets, which would include the Prophet Muhammad]. Evidence that the verse is in fact referring to what the author believes to be the case is that there is no transmitted evidence that the Prophet ever referred to the Torah to search for أحكام. [<— v. 1, pg. 320]. As for the story of the two Jews: it is not known if the Prophet referred to the Torah to seek knowledge about a dictate, and it's possible that he referred to it to expose the their [the Jews'] lies in claiming the punishment of fornication wasn't stoning in the Torah [<— v. 1, pg. 321], since the Jews claimed also that the Prophet wasn't described in the Torah, so by showing that they lied in their claims about the ruling pertaining to the one who fornicates, their lies about other matters could be exposed. Furthermore, it's possible that the Prophet had pronounced that the ruling of stoning was found in the Bible, and he referred to the Torah only to make it clear to them that he was truthful in knowing that stoning was indeed found in the Torah. If the Prophet had indeed referred in this

instance to the Torah in order to learn a dictate, than he would have done so for other dictates, and for things like the conditions needed for الإحصان and other matters [which he didn't. NOTE: the author ignores the part of the report where the Prophet says he is reviving a sunnah] [**note: he is copying the Mu'tazili author here again**].

As for the verse (42:13] (شَرَعَ لَكُم مِّنَ الدِّينِ مَا وَصَّىٰ بِهِ نُوحًا]. The word dīn refers to the fundamentals (الأصول) and not the (الفروع), that's why we don't say the "dīn of al-Shāfi'ī" intending his madhhab, nor is it said: the dīn of Abū Ḥanīfa and al-Shāfi'ī are different. Also, the verse ( أقيموا الدين ولا تتفرقوا فيه) 42:13) suggests that the dīn that has been proscribed (شرع) for us which was given by Nūh [as the verse says] is the leaving of differences and sticking to what's been legislated (وأن يتمسك بما شرع) [**note: he is copying the Mu'tazili author here and elsewhere again**].

As for the argument that the shariah that God legislates doesn't abrogated unless with evidence, the author says that he has given evidence before for why they have been abrogated and why all the pre-Muhammadan laws ended with the شرع of the Prophet. As for the claim that the Prophet was following pre-Muhammadan law prior to revelation: this is not the case, because if it were the case that he followed pre-Muhammadan law, we would have examples of him doing this and of him mixing (يخالط) with the people who transmitted those laws like the Christians, Jews and others. If he had done what these other communities had done and intermixed with them, than there would have reached us reports about this, since we have reports about him from before his being a Prophet and this information is not part of that. Furhtermore, if he was a follower of pre-Muhammadan law, than his followers would have followed him in this, and his detractors would

have opposed him on this, but we have no evidence this happened, suggesting the Prophet never followed pre-Muhammadan law. As for the claim that the Prophet used to perform Hajj and Umrah and circumambulate [the Ka'ba]: it is not verifiably known (لم يثبت) that he did Hajj, Umrah or ritual sacrifice before he became a prophet [**Note: without saying it, he's critiquing these reports as not being ثابت possibly because they are Āḥād, since this is the argument possibly made by the Mu'tazili he is copying from?**]. It's also possible that the Prophet was merely emulating the way of his people in matters that were in line with what was established by Abraham, since he was raised among them and these actions weren't prohibited in any "known shariah" (شريعة معروفة). [more copying of Abū al-Husayn al-Mu'tazili] And that concludes the author's chapter on this. [<— v. 1, pg. 321]

___

In a conversation about whether the statement of the Christians and Jews about Jesus being killed can be accepted as truth because of tawātur, he notes that the Īsāwiyyah (who he identifies as a large group of Christians) claimed that Jesus was not killed but raised to God. Also states they don't believe in the trinity. Additionally, the Christians of Abysinna, he states, claim the same. According to the other, **both of these groups claimed that the Prophet was send only to the Arabs.** [He doesn't engage with last point, just notes it]

___

Regarding Naskh, he notes the Jews say it can't happen, as does a small group of Muslims. Some Jews allowed it. Those who said laws can't abrogate say that because abrogation means بداء for God [me: changing your opinion?], in which He prohibits something He once made acceptable, and vice verse. This is something from the attributes of humans and not of God. Also, commanding an action implies that it be done for eternity, because if it were not implied in its outward meaning, the statement would be deceptive (ملبسا). Thus if a command implies eternal obligation, and is later prohibited, than that prohibition implies that something that was once unknown to God is now known to Him, or something became hidden that was once apparent, which is unacceptable to believe about God. [<— v. 1, pg 419]. Others argued that a command implies the absolute good of an act (حسنه), and a prohibition its absolute bad (قبحه), and thus abrogation would allow for a mixing of the two. Furthermore, the Jews transmit from Moses that the Sabbath will not be abrogated for eternity. **Or perhaps they transmitted** (ربما قالوا) that Moses said, "my shariah will never be abrogated" [note that with time, the authors are perhaps becoming less familiar with what the Jews actually transmitted, signifying that the debate was more interlinked between communities at an earlier period] [<— v. 1, pg. 419-420]. The author then gives his evidences for the majority position [me: these are similar to ones recorded by other sources: verses from the Qur'an permitted abrogation, rational defenses, the evidence that incest marriage was allowed for Adam's kids but not after, etc.] [<— v. 1, pg. 420-421]. Regarding the Moses statement, he says this is not a statement of Moses, but the Jews were in fact deceived by Ibn al-Rawandi. Further proof is that if this statement were actually from Moses, the Jewish rabbis didn't use it against the Prophet when he was alive, which would have been transmitted to us. [<— v. 1, pg. 421-422]. The author states that the Usūlīs (الأصوليين) present this debate as one with a group of the Jews and a small groups of Muslims. The author notes that Abū Isḥāq al-

Shīrāzī attributes this position to Abū Muslim Muḥammad Ibn Baḥr al-Asbahānī, who is well known for his knowledge, though he was once an Mu'tazilite before distancing from them. Author notes he has a big book in tafsīr and other books, and so he is dumbfounded why he held this position (فلا أدري كيف وقع هذا الخلاف منه). Muslims that hold this position, the author states, should simply be shown examples of abrogations, like the changing of the Qibla from Bayt al-Maqdis to the Ka'ba, or the abrogation of fasting Āshūrā to fasting Ramadan [<— v. 1, pg. 422]. With regards to things that can't be abrogated, those matters that are inferred rationally (e.g., monotheism, the attributes of God), these cannot be abrogated from one shariah to the next. An example is modesty, regarding which the Prophet said, "what the people have learned from the previous prophets is the following: if you have no modesty, do as you wish" ( إن مما أدرك الناس من كلام النبوة الأولى: إذا لم تستح فاصنع ما شئت) [me: hadith is in Bukhari]. This shows that modesty (الحياء) is good by its absolute nature and remains constant without room for abrogation by the religions/shariahs [<— v. 1, pg. 423].

—

In noting the abrogation of the first qibla of Jerusalem to the qibla of Mecca, the author treats it as the Qur'an abrogating a Sunnah, and he makes it clear that there is not evidence that we follow the Shariah of those before us, so we can't say the Prophet did this because he was following a pre-Muhammadan law [<— v. 1, pg. 457].

---

**Al-Mustaṣfā (al-Ghazzali)**

الكتاب: المستصفى

المؤلف: أبو حامد محمد بن محمد الغزالي الطوسي (المتوفى: 505هـ)

تحقيق: محمد عبد السلام عبد الشافي

الناشر: دار الكتب العلمية

الطبعة: الأولى، 1413هـ - 1993م

عدد الأجزاء:1

We know abrogation (naskh) has happened by consensus, because the Ummah is in agreement that the shariah of Muhammadan has abrogated the shariah of of those before him, either entirely or in matters where they disagree. Thus, this ijmā' is proof against the small number of Muslims who reject naskh. [<— v. 1, pg. 89]

—

On tawātur, the author says we don't accept the statement of the Jews, even if they are honest and in large number, that Moses rejected any abrogation to his shariah, because there needs to be mass transmission at all points in the transmission. [<— v. 1, pg. 107]

—

The author introduces Shar' Man Qablana as the first of four sources that are considered legal proofs in the shariah but are not (ما يظن أنه من أصول الأدلة وليس منها). The chapter is introduced as

(الأصل الأول من الأصول الموهومة: شرع من قبلنا). These four disputed sources are pre-Muhammadan law, the statement of a Companion, Istiḥsān, and Istiṣlāḥ.

Did the Prophet follow a pre-Muhammadan law before he was a Prophet? Some say he did (with different people saying he followed the law of Nuh, Abraham, Moses, or Jesus), others say he didn't. The author's opinion is that all of these are rationally possible, but we don't know the truth by any certain means (بطريق قاطع). Some will say there is certain proof that he did **not** follow the law of a pre-Muhammadan prophet, because if he did the other communities would have claimed the Prophet as their own and boasted about it, and this would have been used against him. The author offers as a counter argument that if the Prophet was **not** morally responsible or a follower of laws prior to being a prophet (منسلخا عن التكليف والتعبد بالشرائع), we could have similarly received knowledge of this, and people could have used **this** against him as well. The author suggests as a possibility that it is a miracle contrary to the natural order that we don't know the Prophet's status prior to his becoming a prophet (when the natural order might dictate we would know such a thing), and would be among other things unique to the Prophet.

Some will say that Moses and Jesus propagated their religions to all morally responsible slaves of God [i.e. they claimed to be universalist], and the Prophet would have been included in this group. The author says this is an invalid point, because we don't have tawātur means of knowing they said this, and the reason we assume they said this is by means of analogy on the religion of our Prophet. And even if they did claim their message was for all, it is possible there was an exception for the one who would abrogate their religions. Additionally, it's possible the Prophet lived in a time where there was an absence of the divinely-originating laws (الشرائع) and they

were extinct (اندراسها), and so one would not be obligated to establish them, and this would also be why the Prophet would need to have been sent.

Another evidence the supporters cite is that the Prophet used to pray, do hajj, umrah, give charity, ritually slaughtered meat (كان… يذبح الحيوان), and avoid carrion, all of which the intellect by itself wouldn't guide one to do. The author responds that there is no tawātur evidence to support without doubt that this happened. Furthermore, it's possible that he slaughtered the animals under the logic nothing is prohibited unless there is some revealed knowledge of it being prohibited, that he avoided carrion out of disgust just as he did so with lizards, that he did pilgrimage and prayer - if we take this to be authentic - as a means of seeking blessing (تبركا) from what may have been passed down from the previous prophets in their generality, even if the details of these acts were lost [by then].

The author then directs our attention to the main subject, whether the Prophet after he became prophet followed pre-Muhammadan law. The author states that it is possible rationally, and in terms of transmitted knowledge we have, it did happen (القول في الجواز العقلي والوقوع السمعي). It's rationally possible because God can obligate his slaves with whatever he wants from previous laws, or new laws, or a mix of the two. It is not impossible in that it would go against God's nature or is inherently bad (ولا لمفسدة فيه) [me: implying the Mu'tazilite stance].

Some of the Qadariyyah claimed that a prophet could only come with new laws, because if he didn't come to make commandments new, there would be no benefit to his mission, and God would not do that [<— v. 1, pg 165]. The author says that this position [which necessitates

benefit] is born out of cases where a prophet was sent with old laws if the previous shariah were extinct/lost (اندرست), or if his shariah included additional laws to what was there before [i.e. it wasn't an exact copy], or where the first prophet were sent to one group people and the second prophet to that group of people and additional people [me: since all of these cases would involve some additional benefit]. The author says that this position might actually be contradictory, because … [this sentence not clear, but not important].

The author's position is that it is possible for a prophet to have the same laws [contradicting the Qadariyya position], because we know that there can be two legal proofs for the same thing (جواز نصب دليلين), and because we know that two prophets could be sent at once, from the verse (إذ أرسلنا إليهم اثنين فكذبوهما فعززنا بثالث…) [Qur'an 36:14] and examples like Moses and Aaron, and David and Solomon who were sent together, or the fact we have two eyes even though one would suffice for vision. Furthermore, the Qadariyya position is built on finding benefit (فائدة) in the actions of God, which is arbitrary.

As for what we know about this issue through received knowledge about what is in actuality (الوقوع السمعي), there is no disagreement that our shariah doesn't abrogated ALL of the previous sharā'i', since we know it didn't abrogate the obligation of faith (الإيمان) [indicating that shariah has a more expansive meaning for the author, not just law], nor the prohibition of fornication, theft, murder and disbelief. Rather, the Prophet also prohibited these things, either [1] with a new divine injunction (خطاب مستأنف) OR [2] by means of a divine address that was revealed to others but which he continued to practice, in which case divine address was not given to him except in matters where the shariah was to differ with the other shariah. In this case, a circumstance would

take place and he was bound to follow their dīn (لزمه اتباع دينهم) unless revelation came contradicting them in a matter. This is where disagreement exists. The author says that his own position is that the Prophet did not follow the sharīah of those who came before, and he has 4 proofs:

[1] The Prophet sent Mu'ādh to Yemen and asked him what he would govern by, to which he replied, al-Kitāb [interpreted by the author as the Qur'an], the Sunnah, and Ijtihad, without mentioning the Torah, Injīl or Shar' man Qablanā. And the Prophet confirmed what Mu'ādh said. If it were a source of law, than we wouldn't be allowed to refer to ijtihād until after consulting those as sources. If one were to say that the report doesn't mention the Torah or Injīl because al-Kitāb includes verses that indicate one must refer to these two sources. The author responds that he will address these verses, but for the time being replies with the verse ( لكل جعلنا منكم شرعة ومنهاجا) [Quran 5:48] and the statement of the Prophet that if Moses were alive, he would've followed me (لما وسعه إلا التباعي). Furthermore, al-Kitāb (the Qur'an) already indicates that we must follow the Sunnah and Qiyās, so Mu'ādh could have limited himself to only mentioned al-Kitāb, and so if he mentioned those two things to elaborate, than mentioning pre-Muhammadan shariah would've been more worthy of mentioning if it were in fact a source. One might say that the Torah and Injīl are included in the meaning of al-Kitāb. The author responds that when the phrase "الكتاب والسنة" is mentioned, the only thing a Muslim understands from this is the Qur'ān [note this is anachronistic, like the Mu'tazilite response to the same question]. How could anything else be understood, when it is not known about Mu'ādh that he studied the Torah or Injīl, or learned how to differentiate between scripture that was altered from that which was not, unlike our knowledge that he studied the Qur'an. If in fact knowing these scriptures was

needed, all of the Companions would have studied them, since they were revealed scriptures where only some matters were abrogated and which contained legal injunctions [according to this position]. This was the reason why the Qur'an was memorized. But this is not the case, the author asserts, because then how is it that when 'Umar referred to a page (ورقة) from the Torah, the Prophet got angry to the point that his eyes turned red, stating, "if Moses were alive, he would have followed me" (ما وسعه إلا اتباعي)

[2] If the Prophet followed other laws, he would have deferred to those laws and searched for them (للزمه مراجعتها والبحث عنها), instead of waiting for revelation, not hold back as he did with the issue of (ظهار) or stoning of the (محصنات) or about inheritance, matters where he should have referred first to the previous scriptures, since they are rulings that are necessary for every ummah, and the Torah wouldn't have excluded these things [note he doesn't mention Injīl, meaning they recognize the Torah is more legal]. If the prophet didn't refer back to the scriptures because the knowledge was lost/extinct, or because it was altered, than this would mean he didn't follow these scriptures. If his referring back to these scriptures was a possibility, then this would have required him to search and study this material, but he never referred to this material (ولم يراجع قط), except for the case of the stoning of the Jews, which he did to show them that doing so was was not contrary to their religion. [<— v. 1, pg. 166]

[3] If pre-Muhammadan law was binding, than the study, transmission and preservation of it would have been a communal obligation (من فروض الكفايات), just as it was for the Qur'an and akhbār. The Companions would've needed to look to it to learn aḥkām, and refer to it in matters where they had disagreements and where a matter would be unclear to them, as in the cases of

(العول) [a situation in inheritance calculation… look up], the inheritance of grandparents, a woman married without mention of a dowry (المفوّضة), the sale of a slave woman who gives birth to her master's child (بيع أم الولد), the punishment for consuming wine (حد الشرب), interest (الربا) in cases where debt payment is not differed (في غير النسيئة), temporary marriage, the blood money on an unborn child, the ruling on a mukātab slave where payment installments are still due ( إذا كان عليه شيء من النجوم), returning [a slave] because of a defect after intercourse, and the point of intercourse (التقاء الختانين) [? Didn't understand التقاء الختانين which is mentioned by itself and no context], and other matters which according to the author are inseparable from the purvey of religions and sacred scriptures (أحكام لا تنفك الأديان والكتب عنها). Despite this, reference to the Torah [again, Torah is specified] has not been transmitted from any one of the Companions, despite their lengthy ages (مع طول أعمارهم) and the many events that happened in their lives, and their disagreements. And this was the case even though rabbis of the Jews converted to Islam whose words would have been authoritative (وقد أسلم من أحبارهم من تقوم الحجة بقولهم) [indicating that in theory these people's voices would be authoritative by the community regarding Jewish matters - note that this is probably why my separate evidence leads back to them as sources], including 'Abd Allāh b. Salām, Ka'b al-Aḥbār, Wahb and others. The legal tool of Qiyas [me: which presumably was used in these legal matters] can only be used after exhausting the الكتاب, so why was Qiyās used?

[4] The Umma is in total agreement that this shariah is abrogating of others, and that it is the shariah of our Messenger (PBUH) (شريعة رسولنا صلى الله عليه وسلم) in its entirety. If the Prophet was a follower of another shariah, he would have been an informer (لكان مخبرا) and not a law-giver ( لا شارعا), he would be known as a person of transmission (صاحب نقل) and not a person of law

(صاحب شرع). The author admits that this proof is weak, in that it rests on the meaning of the إضافة [I'm assuming referring to صاحب شرع], which can be interpreted metaphorically in meaning and could still refer to him even if he was a lawgiver for some and not all the laws.

The author says that the opposition cite as proof five verses and three hadith, which he then discusses:

[verse 1] (إولئك الذين هدى الله فبهداهم اقتده) [al-An'ām: 90]. Huda in this verse means Tawḥīd and the rational deduction of God's oneness and attributes, which can be shown in two ways. (1) [proof one not making precise sense to me but isn't that important]. (2) The verse isn't commanding to follow all their شرائع because they are all different, some abrogating others, and there are many so it wouldn't make sense. Thus the verse is referring to the type of 'huda' that is shared between them, which is their Tawḥīd.

[verse 2] (ثم أوحينا إليك أن اتبع ملة إبراهيم حنيفا) [al-Naḥl: 123]. This verse is cited by those who attribute the shariah being followed to Abraham, but this would contradict the verse above. Also, the verse obligates only what was revealed to the Prophet (since it says: أوحينا إليك), not what was revealed to others. When it says (أن اتبع) it is saying to do as Abraham did, and NOT to be a follower of him as one from his ummah. How would that be possible, when (الملة) refers to the fundamentals of faith (أصل الدين), Tawḥīd and the veneration of God which all of the sharā'i' agree on. If we take into account the verse (ومن يرغب عن ملة إبراهيم إلا من سفه نفسه) [al-Baqara: 130] we know it's not possible for the prophets to be foolish because of their disagreements with him in their sharā'i', which means mills here means something else. Further evidence is that the

Prophet did not search for the millah of Abraham, and he couldn't because his scripture is now lost and there is no chain of transmission that can reach him.

[verse 3] (شرع لكم من الدين ما وصى به نوحا) [al-Shura: 13], this verse is cited by those who attribute the shariah to Nūḥ, which can't be because it would contradict the previous two verses. Dīn in this verse refers to the fundamentals of Tawḥīd, and Nūḥ is specified in this verse as a way of honoring him. If it were as the opposition claims, then when did the Prophet refer to the details of Nūḥ's shariah? And how would that be possible when he is among the most ancient of prophets whose shariah is probably most forgotten. The verse could've been a better proof for the opposition if it instead said: (شرع لنوح ما وصاكم به), which would've indicated our Shariah is that of Nūḥs, but it doesn't say that.

[verse 4] (إنا أنزلنا التوراة فيها هدى ونور يحكم بها النبيون…) (al-Mā'ida: 44), where the Prophet is among the category of prophets mentioned in the verse [<— v. 1, pg. 167], and so he should govern by the Torah. This verse is cited by those who attribute the shariah to Moses, which contradicts the previous verses [me: is there really a contradiction?]. What is intended by Nūr and Hudā in the verse is the fundamental of Tawḥīd, since it is what the Prophets agree on, unlike their laws which were subject to abrogation [me: but this wouldn't make sense with the Rabbis and "what they preserved of the book" which would include more than just tawḥīd]. The author suggests that the prophets in the verse could perhaps be those from the time of Moses, not those after [me: weak argument]. Also, the verse is in the form of a statement (صيغة الخبر), not a command ( صيغة الأمر), so it can't be used as a proof [me: but it ends with statements that are very strong that it should be done!]. The author also suggests that the verse could be intending to say that the

prophets give laws according to the Torah but based on new commands that they received from God through revelation <u>to them</u> separately (which match the laws in the Torah), not through the revelation of Moses [me: this seems very unlikely given the whole verse, but it at least acknowledges that the laws could be the same across communities].

[verse 5] The continuation of the previous verse, after mentioning the Torah and it's laws: ( ومن لم يحكم بما أنزل الله فأولئك هم الكافرون) [al-Mā'ida: 44]: what is intended is "whoever doesn't govern by what God revealed, **disbelieving** and **renouncing it**" (ومن لم يحكم بما أنزل الله مكذبا به وجاحدا له) [i.e. THAT person is a kāfir, not the person who upholds the truth of the Torah without thinking it's binding on them], and it is not referring, according to the author, to "whoever governs by what God has revealed on him in particular" (لا من حكم بما أنزل الله عليه خاصة) [i.e. the Prophet wouldn't be kāfir for not governing by his own unique laws which might go against what is in the Torah]. It could also mean, according to the author [me: note, he's trying to offer a bunch of unlikely interpretations to make it fit into an orthodox reading]: "whoever doesn't govern by the Torah from among those upon whom it is obligatory to give rulings by it from the Umma of Moses and the Umma of the other prophets, **IF** what they don't rule by from the Torah ALSO goes against what was revealed to their specific prophet" ( أو من لم يحكم به ممن أوجب عليه الحكم به من أمته وأمة كل نبي، إذا خالفت ما أنزل على نبيهم) [i.e., you would be a kāfir according to the verse if you didn't govern by matters in the Torah if it were in accordance with your specific prophet. This interpretation let's the author maintain the orthodox narrative]. Or perhaps it means that the prophets govern by what's in the Torah, but through revelation that is unique to them, not because they are followers of it (لا بطريق التبعية).

As for the hadith that are often cited as proof, the author addresses them:

[hadith 1] The prophet ordered for Qiṣāṣ regarding a broken tooth, saying (كتاب الله يقضي بالقصاص), and the Qur'an doesn't mention Qiṣāṣ of teeth except that it transmits it as an injunction in the Torah in al-Mā'ida: 45 (والسن بالسن). The author responds that it is covered by the Qur'an, in the verse, (فمن اعتدى عليكم فاعتدوا عليه بمثل ما اعتدى عليكم) [al-baqara: 194].

[hadith 2] The Prophet said, "Whoever sleeps through a prayer or forgets it should pray it when they remember" and then he recited the verse (وأقم الصلاة لذكري) [Taha: 14], which was a command given to Moses. The author responds that the Prophet did not mention the verse as a proof for the obligation to make up the prayer, but rather obligated it because of what was inspired to him, and he cited the verse to inform [the Companions] that they were ordered to do so just like Moses was. Additionally, the Prophet is explaining that (لذكري) means, "because of the remembrance of My [God's] making obligatory of the prayer," because otherwise one might interpret it to mean something else like "for the remembrance of God Most High in the heart," or [I don't understand the other possible interpretation, but not important. Maybe, for the remembrance of the prayer which is mandated? ("لذكر الصلاة بالإيجاب")]

[hadith 3] The prophet refered to the Torah in the stoning of the two Jews. According to the author, the Prophet did this to call them out for their rejection of stoning, since technically he should have referred to the Injīl, being the last of the revelations. For this reason the Prophet didn't refer to other scriptures except in this one case. [<— v. 1, pg. 168]

**Al-Mankhūl (al-Ghazzali)**

الكتاب: المنخول من تعليقات الأصول

المؤلف: أبو حامد محمد بن محمد الغزالي الطوسي (المتوفى: 505هـ)

حققه وخرج نصه وعلق عليه: الدكتور محمد حسن هيتو

الناشر: دار الفكر المعاصر- بيروت لبنان، دار الفكر دمشق - سورية

الطبعة: الثالثة، 1419 هـ - 1998 م

عدد الأجزاء: 1

In the introduction to a section on المحكم and المتشابه the author records the opinion of الأصم that the description of the Prophet in the Torah and prior scriptures is المحكم and the description of the Prophet in the Qur'an is المتاشبه (with reference to the Qur'anic verse about المحكم and المتشابه this means that الأصم viewed previous scriptures as constituting "الكتاب") [<— v. 1, pg. 248]

_____

Regarding whether the Prophet, before becoming a prophet, followed a prior shariah, the author notes that the Mu'tazila are in agreement that he could not have been because it would take away from his mission, because as a follower he would not be someone that would be followed. The Shāfi'īs (أصحابنا) are in disagreement, some saying that it would take away from the Prophet's rank for him to have been without moral obligation to a shariah. Some claim he was on the shariah of Nūḥ, because of the verse (42:13] (**شرع لكم من الدين ما وصى به نوحا**], or Abraham because of the verse ( **…**3:68] (**إن أولى الناس بإبراهيم**) [<— v. 1, pg. 318]. Some claimed Jesus because his shariah came later and abrogated. If it is said that the scripture was altered, the author responds

that there were Rabbis who knew the scripture in its real form, such that the alterations that some of them may have performed did not void their shariah ( قلنا كان منهم أحبار يعرفونها على وجهها فتحريف بعضهم لا يرفع الشرع) [Note: similar to al-Juwayni, and al-Biqā'ī later], just as in the agreement found in a time period in our shariah (كاتفاق فترة في شرعنا) [this clause doesn't make sense]. For those who say it was the shariah of Abraham, the claim that Jesus' shariah abrogated it doesn't hold, because it is not established that Jesus was sent to all people, whereas the religion of Abraham was spread amongst his progeny, and the Prophet was among them. [note: Matthew 15:24 says He [Jesus] answered, "I was sent only to the lost sheep of the house of Israel." And Matthew 10:5-6: These twelve Jesus sent out, instructing them, "Go nowhere among the Gentiles and enter no town of the Samaritans, [6]but go rather to the lost sheep of the house of Israel.]

al-Qāḍī [al-Bāqillānī] holds that the Prophet did not follow the shariah of another prophet, because if he did it would have reached us through mass transmission, given that information about great figures get transmitted in mass. He believes that he was on the path of tawḥīd, but preferred postponing judgment (التوقف). The author counters [copying arguments made by previous authors] that if on the contrary the Prophet was not morally obligated to follow a shariah, then here too we would expect mass transmission. Because we have information of neither, the author prefers postponing judgement [<— v. 1, pg. 319]. Perhaps God made it a miracle that we do not know about the Prophet's situation even though the natural order would otherwise have it that information about his pre-prophethood days would have been transmitted [<— v. 1, pos 319-320].

The author then returns to the main subject of whether pre-Muhammadan scripture is binding on us [me: showing that he saw the question of the Prophet's status before he became a messenger less important, less practical, showing that one was less a theoretical exercise than the other for these authors]. He transmits from al-Shāfi'ī in his كتاب الأطعمة [The book referenced is in his الأم, but neither I nor the editor Hassan Hitō (see footnotes pg 232 of this edition: https://books.google.com/books?id=OQBICwAAQBAJ&dq) were able to find it. However, it is likely a summary of his comments regarding consuming the meat of Banū Isrā'īl, or an understanding of his text or a variant text that the author/Juwayni and the author of Qawāṭi' al-Adillah all followed since they are from the same generation and all made this claim about al-Shāfi'ī. See al-Umm, pg 630 from here: https://ia800208.us.archive.org/16/items/waqalom/alom03.pdf], that in determining the permissibility of certain animals, we return to the texts (النصوص) [Qur'an/Sunnah probably] and reports about the Companions. If it is not there, we refer to what the Arabs considered to be foul or pure. And if not there, we refer to and follow what was prohibited and permitted in pre-Muhammadan law, provided we find nothing to abrogate it. He supported this position with the proof [note, this isn't found in al-Umm, so it must be a different text he is referring to?] that the coming of the Prophet didn't necessitate an abrogation of the previous shariahs, and there were 6 prophets sent with laws: Adam, Nūḥ, Ibrāhīm, Mūsā, 'Īsā, and the Prophet, and its not far off to say they are one religion (text is not clear: فلا بعد في التظاهر على دين واحد), as in the time of Moses when there were 1000 prophets who gave law by the Torah [note, in other sources it is noted that 1000 prophets are believed to have existed between Moses and Jesus, all governing with the Torah. What he's saying here is that just like in the time of Moses you can have many prophets upholding laws from the same scripture, the same can be the case with the Prophet]. And

furthermore, it has not been transmitted from the Prophet the abrogation of pre-Muhammadan law, and if we are unable from accessing a source in our shariah, we refer to it ( وقد عجزنا عن مأخذ من شريعتنا رجعنا إليه) [this would explain why al-Shāfi'ī is also willing to give preference to Arab sensibilities in the matter of identifying prohibited animals, because the source material from the sunnah might be limited].

[because there aren't other editions I could find of this text, and some of the text is obscure, I should reproduce it in my footnotes:

قال الشافعي رضي الله عنه في كتاب الأطعمة الرجوع في استحلال الحيوانات إلى النصوص وآثار الصحابة رضي الله عنهم فإن لم يكن فإلى استخباث العرب واستطابتها يقول فإن لم يكن فما صادفنا حراما أو حلالا في شرع من قبلنا ولم نجد ناسخا له اتبعناه وعضد هذا المذهب بالدليل أن يقال نفس بعثة الرسول لا تتضمن نسخ الشرائع إذ أصحاب الملل من الشرائع ستة آدم ونوح وإبراهيم وموسى وعيسى عليهم السلام ورسول الله صلى الله عليه وسلم فلا بعد في التظاهر على دين واحد فكان في زمان موسى عليه السلام ألف نبي يحكمون بالتوراة

ولم ينقل من الرسول عليه السلام نص في نسخ شريعة من قبلنا وقد عجزنا عن مأخذ من شريعتنا رجعنا إليه]

[<— v. 1, pg 320].

As for which shariah the Prophet followed [after becoming a Prophet], the same disagreement exists as noted before. The author then gives his position, that there is no reference to any of the pre-Muhammadan religions, because if it were a source for our shariah than the Prophet would have made it clear to us, just as he did about Qiyās and other sources. Furthermore, at least one of the Companions would have referred to it, given the length of time they were around, the number of events that happened [that would have required legal opinions], the amount of information they transmitted, and their own reference to communal consultation ( رجوعهم في الاشتوار إلى الجماعة) when Ka'b al-Aḥbār was among them [and thus you would expect him to be

consulted about pre-Muhammadan law]. But pre-Muhammadan law was never referred to. Thus there is no basis for it. [<— v. 1, pg. 321]

_____

In a section on the transmission of reports, he notes that the Jews transmit from Moses that he was the Seal of Prophets (خاتم النبيين) [I am not aware of Jews making this claim, but maybe this happened in the time of al-Ghazzali?], but we know the Prophet challenged the Jews in his time and we know they argued against him, and because there is nothing transmitted from any of their rabbis that Moses made this claim, when such information would have been transmitted in mass, we know their transmission about Moses is untrue. [<— v. 1, pg. 340]

_____

In his section on Naskh, he states that the Jews reject the possibility of abrogation on a number of grounds, rational and transmitted (they claim abrogation is impossible according to what they transmitted from Moses - they don't specify his exact words - but the author says they are lying because Jesus came with a miracle [<— pg 383] and he abrogated their shariah), which he rejects. [<— V. 1, pg 383-386]

**Al-Tamhīd fī uṣūl al-fiqh (Abu al-Khiṭāb/al-Khaṭṭāb? al-Kalwadhānī)**

الكتاب: التمهيد في أصول الفقه

المؤلف: محفوظ بن أحمد بن الحسن أَبُو الخطاب الكَلْوَذَاني الحنبلي (المتوفى: 510 هـ)

المحقق: مفيد محمد أبو عمشة (الجزء 1 - 2) ومحمد بن علي بن إبراهيم (الجزء 3 - 4)

الناشر: مركز البحث العلمي وإحياء التراث الإسلامي - جامعة أم القرى (37)

الطبعة: الأولى، 1406 هـ - 1985 م

عدد الأجزاء: 4

المطبعة: دار المدني للطباعة والنشر والتوزيع

In a section discussing whether the meaning of a command addressing one person extends to others (e.g. a command made to the Prophet, does it apply to the community). After citing other proofs that this is how commands happen, the author notes that if the Prophet was bound by Shar' man Qablana, which he notes is a position held by his madhhab according to one of the transmitted opinions [of Aḥmad b. Ḥanbal presumably, as we know from other sources: "في رواية"], than it applies to us as well. [<— v. 1, pg 279-280]

———

The author notes in his section on Naskh that Jews have three positions on the matter. Some deny it rationally, others through transmitted knowledge, and some - the 'Īsāwiyyah - accepted it, the last group accepting the Prophet as a messenger of God, but only to the Arabs. [<— v. 2, pg 342] One of the points he notes from them is their claim that Moses said to stay steadfast with the Sabbath forever, as long as the Heavens and the Earth remain. The author says this is a lie. If it were true, then it wouldn't be possible for anyone to come with a miracle after him [implying here a miracle that would be used as divine proof that a Prophet was abrogating a previous law], but we know through tawātur that Jesus had miracles, and he came to abolish the Sabbath [note: he gives no proof that he came to abolish the sabbath, and it might be based on a popular understanding of Jesus, but maybe it's found in Islamic sources? I can check], meaning what the

Jews claim Moses said is not true. Also, if Moses said this, than we would've heard about Jews using it as proof against Jesus and Muhammad during their time, but this has not been transmitted. The author notes that it has been said that Ibn al-Rāwandī made up this lie and confused them in Isbahān. The author accepts that if this quote is in fact true, than its meaning must be understood as follows, that the Sabbath is to be followed for eternity *unless* abrogated, which is implied by command statements, since when you command someone, the understanding is they do it as long as they are able to or alive, but when that changes, e.g., the law get abrogated, they no longer must do it. More explicit wording would be needed to ensure the eternal requirement to follow a shariah and to bar abrogation [<— v. 2, pg 346-348]

___

On pre-Muhammadan law being binding as long as it is not abrogated: this is the position of his teacher [probably referring to his teacher Abū Ya'la al-Ḥanbali, who also has an uṣūl book covered earlier in my notes] and what Aḥmad b. Ḥanbal leaned towards according to the riwāya of al-Athram and others. He was asked about al-Qur'ah, and he said it was warranted by the Qur'an, citing (**فَسَاهَمَ فَكَانَ مِنْ الْمُدْحَضِينَ**) and (**إِذْ يُلْقُونَ أَقْلامَهُمْ**) which are from the shariah of Yunus and Zakariyya. The author notes this is the opinion of Abū al-Ḥasan al-Tamīmī, and that of the Ḥanafīs according to al-Rāzī. According to the riwāya of Abū Ṭālib, the shariah of others is not binding on us according to Aḥmad b. Ḥanbal, who cited (**وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ**) and said the rule of "a life for a life" (النفس بالنفس) is binding on the Jews, but for us is the verse ( **كُتِبَ عَلَيْكُمْ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ**) [which doesn't treat all lives the same in the law of retribution]. This position [that it's not binding on us] was held by the Mu'tazilīs and the Ash'ariyyah [note: look this up in books of theology]. The Shāfi'īs have two schools of thought

on this. There is also debate as to whether the Prophet followed the shariah of Abraham, or Moses. [<— v. 2, pg. 411]

Those who say it isn't binding cite the verse (لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجاً), and also the proof that our shariah is attributed to our Prophet, if it was otherwise it wouldn't be attributed to him. [<— v. 2, pg. 412]

The author says it is not rationally impossible - if for example one were to argue that there is no point to the shariahs being the same - since the second prophet could come with new things, or the first shariah was lost, or perhaps both communities benefited from the same laws. [v. 2, pgs. 412-413]

Did the Prophet follow a shariah before becoming a Prophet? This was the opinion of the author's teachers (شيخنا), and this is the opinion of aṣḥāb al-Shāfi'ī. Abū Yūsuf al-Sarakhsī reports regarding the aṣḥāb Abī Ḥanīfa that the Prophet didn't follow a shariah prior to prophethood. Some of the Mu'tazila reserved judgement on this matter, such as Abū Hāshim. The author says this is the strongest position (i.e., التوقف). [note the enduring presence of Mu'tazilī thought] [<— v. 2, pg 413]

Those who say he didn't follow a shariah before he became a prophet say that if he did, he would've followed what the pre-Muhammadan prophets did, and if he did this it would have been transmitted. It would have also been incumbent on the Prophet to mix with those who transmitted the prior shariahs, including Jews, Christians and others and to imitate them. But

since we have information about his actions prior to prophethood and we don't know of him mixing with the People of the Book or imitating them, or asking about their laws, he didn't follow their laws.

Those who say he did follow a shariah use as proof the fact the Prophet used to perform Hajj and Umrah and fast and circle the Ka'ba and pay it respect, and eat slaughtered meat, ride animals and carry things on it (يركب البهائم ويحمل عليها), which are all things that aren't good to do except with a shariah (لا يحسن إلا شرعا).

The author says that it is not established he did acts of worship like Hajj, Umrah, prayers, fasting, etc. Nor is there transmitted evidence that he sacrificed animals or commanded for ritual sacrifice. Whoever makes these claims needs evidence of it. [me: maybe look up reports about this?] And if this has been transmitted, it was from after he became a Prophet and prior to the Hijra when he was in Mecca for a period of time. As for eating slaughtered meat (اللحم المذكي), it is rationally a good thing (فحسن في العقل) because there is no harm in it for others and benefit for the one who eats it. As for riding animals, there is no harm in it, because animals were made for that and there is benefit for the rider, or because the benefit outweighs the harm [<— v. 2, pg. 414-415]. As for honoring the Ka'ba, because it was building of Abraham and Ismā'īl, paying respects to the buildings of the prophet and seeking baraka from them (التبرك) are good things rational (حسن في العقل). [NOTE, check if this is from the Mu'tazilī author, which would show continuing status of their writings, even among the Ḥanbalīs].

Those who say he did follow a shariah prior to being a Prophet say the mind is not capable of determing the good/evil of shariah-matters, so he must have followed a shariah.

Those who reserved judgment on whether he followed a shariah prior to prophethood did so because the evidence contradicted: we don't have evidence that he mixed with people of other religions and asked them about their laws, yet he also circled the Ka'ba, paid it respect, worshipped and fasted. And we know based on mass transmission that he used to devote himself consecutive days in the cave of al-Hira until God sent him revelation, which is something that is not good (لا يحسن إلا شرعا). The contradictory evidence thus requires we postpone judgment until the matter becomes clear.

Did the Prophet follow a shariah AFTER he became a prophet? And is it binding on us as long as it is not abrogated? [<— v. 2, pg. 415] Some say no, including the Mu'tazila and the Ash'ariyyah. Those who say it is binding include the author's sheikh [Abū Ya'la presumably], it's been transmitted this was the position of al-Tamīmī [probably **أبو الفضل عبد الواحد بن عبد العزيز بن الحارث التميمي البغدادي الحنبلي**], and is the position of the Aṣḥāb Abī Ḥanīfa according to the reporting of Abū Sufyān from al-Rāzī. The Shāfi'īs have two schools of thought on this, some saying the Prophet followed the shariah of Abraham, others the shariah of Moses. [<— v. 2, pg 416]

Those who argue against it cite the following proofs: The verse: (**لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجاً**) and the hadith (**بعثت إلى الأحمر والأصفر وكل نبي بعث إلى قومه**) and also the hadith where he rebukes 'Umar for handling the Torah and said (**ما هذه؟ ألم آت بها بيضاء نقية؟ لو أدركني موسى ما وسعه إلا اتباعي**). If one

were to say that this last hadith is only about the altered Torah, not what's been transmitted from it in our shariah, the response is that in the hadith the Prophet says his shariah is white and pure (**بيضاء نقية**), that one doesn't need to refer to anythign else, and that Moses would have followed him if he were alive. [<— v. 2, pg 417]. Another proof is that the Prophet did not refer to the laws of the Torah or Injīl when events would happen, nor would he ask about the laws of those who came before. He would rather wait for revelation. That's why he waited for revelation in the case of Hilal [bin Umayyah] who accused his wife [of infidelity], when the verses of اللعان came, or in the cases of الظهار and الإفك and other matters. If one were to say the Prophet referred to the Torah in the matter of stoning, or Qiṣāṣ on the tooth when he said that Qiṣāṣ is in the Book of Allah referring to the verse (**وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ - إلى قوله- والسن بالسن**), the response is that he referred to the Torah in stoning to make a point to them when they tried to deny it was in their shariah. The Prophet did not refer to the Torah for any of the conditions of stoning, such as الإحصان, etc. Furthermore, the Torah being altered bars reference to it for legal verdicts. [<— v. 2, pg 418] With regards to the Prophet's statement that Qiṣāṣ is from the Book of Allah, it is referring to the Qur'an, since that phrase is only understood to mean that [note: anachronistic], and in the Qur'an we have the verses (**وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ**) and (**وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ**). He was possibly intending that the ruling of God [i.e., not the Torah] is Qiṣāṣ in the matter, or perhaps the Prophet revealed inspiration that it was binding on him [i.e., it was not because it was from the Torah] [<— v. 2, pg 418-419]. Another proof for this position is the hadith of Mu'ādh, which doesn't specify pre-Muhammadan law. If one were to say that "Kitāb Allāh" in the hadith includes the Torah, the response is that it is only understood as meaning the Qur'ān ( لم يعقل منه إلا القرآن), and also, when we refer to their shariah, it is not just their book, just like our shariah is not just our book that defines it. Another proof is that the Companions did ijtihād [<—

v. 2, pg 419], had disagreements, etc, but we have no evidence they referred to pre-Muhammadan law regarding any law, nor inquired about it. If one were to respond that they didn't refer to them [the People of the Book] because their reporting is not accepted in the shariah, than the response is that if we can't refer to their statements or their book which has been altered, than there is no way to follow their laws. If one were to say that we only follow what has been revealed of their laws in **our** shariah, than there is no disagreement that their laws could have become laws for us through a renewing command (أمر مبتدأ), and that we don't need to search for their laws as this was never done. Another argument is that if he received his shariah from those before him, we wouldn't have attributed the entirety of the shariah to him, just as we don't attribute the shariah to the Companions of the Prophet, even though they had a role in it with their ijtihād, because even that ijtihad benefited from the Prophet. Another proof is that the shariah of Moses became lost and inaccessible, and it was also abrogated by the shariah of Jesus [<— v 2, pg. 420]. It's not possible for the Prophet to have been a follower of the shariah of Jesus because there in the scholarly disagreement that exists on this, there is ijmā' that he did not follow the shariah of Jesus: some say he didn't follow any shariah, others that he followed the shariah of all the Prophets, some that he followed the shariah of Abraham, and others that he followed the shariah of Moses, but none said that he followed the shariah of Jesus [me: he doesn't name anyone, and his summary of the debate conflicts with that of others (who also didn't name anyone) who did mention a position that Jesus was the one being followed].

Those who say that the Prophet did follow a pre-Muhammadan shariah cite the following: the verse (**أُوْلَئِكَ الَّذِينَ هَدَى اللَّهُ فَبِهُدَاهُمْ اقْتَدِهِ**), where the shar' is from their hudā. The response is that the hudā is attributed to all of them, which must mean tawḥīd, calling people to it, and having

patience in delivering the message, which would explain why God then says ( **فَاصْبِرْ كَمَا صَبَرَ أُوْلُوا الْعَزْمِ مِنْ الرُّسُلِ**). It can't mean laws because the prophets differed and you can't follow that. Another proof that is cited is (**إِنَّا أَنزَلْنَا التَّوْرَاةَ فِيهَا هُدًى وَنُورٌ يَحْكُمُ بِهَا النَّبِيُّونَ الَّذِينَ أَسْلَمُوا لِلَّذِينَ هَادُوا**), where the Prophet is from among the prophets notes [<— v. 2, pg 421]. The response is that it is possible that this verse is implying the prophets of Banī Isrā'īl, because it doesn't apply to all the prophets, for example those before Moses who couldn't govern by the Torah, and those after him like Jesus and our Prophet, who abrogated aspects of that shariah like the Sabbath and other things. Another response is that the literal meaning (ظاهر الآية) means that all the prophets governed by it, which would necessitate that what they are governing [giving rules?] with is tawḥīd (الحكم بالتوحيد) and spreading the message, since that would include all the prophets. It can't mean governing by the shariah because the prophets didn't agree in their laws, with the shariah of some abrogating what is in the Torah. Another proof is the verse ( **ثُمَّ أَوْحَيْنَا إِلَيْكَ أَنْ اتَّبِعْ مِلَّةَ إِبْرَاهِيمَ حَنِيفاً**). The response is that the word "millah" refers to the fundamentals of religion, including tawḥīd, sincerity to God in worship (الإخلاص لله بالعبادة), not laws (الفروع), that's why we don't call it the Millah of Aḥmad or Abū Ḥanīfa or al-Shāfi'ī with the meaning of their madhhabs [note: taken from the mu'tazili author], nor is it said that the millah of Aḥmad and Abū Ḥanīfa differ. That's also why the verse ends with (**وما كان من المشركين**). Also, the millah of Abraham [me: interesting that the author would use 'millah' here even though he made a linguistic case just now that what he's referring to is his 'shariah'] stopped being transmitted, and it's not possible for us to be commanded to follow what is inaccessible [<— v. 2, pg 422]. They also cite as proof (**إِنَّا أَوْحَيْنَا إِلَيْكَ كَمَا أَوْحَيْنَا إِلَى نُوحٍ وَالنَّبِيِّينَ مِنْ بَعْدِهِ**), with the meaning of "We have revealed to you **with what** we have revealed to them". The response is that the meaning isn't as was suggested, but rather the verse was revealed to remove anyone's surprise over scripture being revealed to the

Prophet. If the verse does mean He revealed to the Prophet **with what** He revealed to others, than it would mean Tawḥīd and related issues, or that the Prophet was following what was revealed to others by means of a renewed command (بأمر مبتدأ). Another proof this position cites **(شَرَعَ لَكُمْ مِنْ الدِّينِ مَا وَصَّى بِهِ نُوحاً وَالَّذِي أَوْحَيْنَا إِلَيْكَ وَمَا وَصَّيْنَا بِهِ إِبْرَاهِيمَ وَمُوسَى وَعِيسَى... الآية) is** The response is that Dīn here refers to tawḥīd and spreading the message, not law (الفروع), that's why we don't say the dīn of Aḥmad differs from the dīn of al-Shāfi'ī, intending their madhhabs [me: taking from the mu'tazili argument]. That is why God says [at the end of the verse], ( **أَنْ أَقِيمُوا الدِّينَ وَلا تَتَفَرَّقُوا فِيهِ كَبُرَ عَلَى الْمُشْرِكِينَ مَا تَدْعُوهُمْ إِلَيْهِ**) [Quran 42:13] [<— v. 2, pg 423]. The matter where there is no disagreement (الفرقة) is tawḥīd and ikhlāṣ, and is the thing that is difficult (يكبر) on the mushrikūn. The laws of the different prophets differed and abrogated one another so that isn't being referred to. And if it were referring to their laws, than the meaning is that the Prophet follows them by means of a renewed command (أمر مبتدأ). Another proof for this position is the verse (**وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ**), and in this verse God is telling us about their laws without explicitly commanding us to follow it, yet because we do rule by this law this means that we rule by it **because** we follow their laws. The response is that the verse does in fact command us to follow this law in specific in the words (**وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللَّهُ فَأُوْلَئِكَ هُمْ الظَّالِمُونَ**), which means it is obligatory on us to follow this specific law [i.e., it's a renewed command - أمر مبتدأ] in our shariah. But also, we don't rule on this issue by virtue of this verse, but rather the verse, (**وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُوْلِي الأَلْبَابِ** ) [<— v. 2, pg. 424] and (**وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ**) [<— v. 2, pg 424-425] and (**فَمَنْ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ**). Another proof they cite is that because the Prophet used to follow a pre-Muhammadan law prior to his becoming a prophet, and when he became a Prophet no abrogation came down, implying it's continuation. The response is that this point is not granted that he followed another shariah prior to becoming a

prophet. Another proof cited is that the Prophet came without rejecting what came before him, meaning that the law remains the same. The reply is that [the response is not comprehensible:

**الجواب: أنه عليه السلام غير مناف لما تقدمه.**

**ولا ملغ ماله فمن أوجب عليه التزامه يحتاج إلى دليل]**

The last proof given for this position is that God transmits information about pre-Muhammadan laws, and if he didn't intend an equality in our laws and their laws, there would be no point to mentioning their laws. The response is that God mentions them to command us with with those laws in certain places, or to note their abrogation and cancellation elsewhere. [that concludes the author's comments on this subject] [<— v. 2, pg. 425]

---

Those who argue against mass transmission will say that the Jews report from Moses that "there is no prophet after me" (لا نبي بعدي), and the Christians and Jews claim that the Jews crucified Jesus, and the Rāfiḍa claim what they do about their imams. The author responds that these reports do not fulfill the requirements of tawātur in all ends of their transmission [<— v. 3, pg 19]. Regarding the statement of Moses, the author reports that it's been said that Ibn al-Rāwandi told the Jews to say that in Isbahān, and if it were true than the Jews would have used it against Jesus and Muhammad during their time. Also, the Jews aren't unanimous about this report, otherwise a group of them wouldn't have become Muslim under the Prophet. Similarly, the Christians disagree about the death of Jesus, and the Shia about tier Imams [<— v. 3, pgs 19-20]

---

In a debate on whether there are multiple 'truths' in a legal matter, a verse is cited about Dawud and Sulayman both giving a verdict on a matter, but Sulayman being given 'fahm"/understanding on the issue. Regarding Dawud's hukm in the matter, the opposition suggests it may have been in his shariah, but the hukm doesn't carry in our shariah… [debate is not worth recounting or understanding for the purposes of this project], the author responds that the shariah of those who came before, if God informs us about it [in the Qur'an, e.g.] and it is not abrogated, is binding on us as our shariah. [I'm noting this as a clear statement of the author's position on the matter]. [<— v4, pg 317]

**Al-Wāḍiḥ fī uṣūl al-fiqh (Abu al-Wafā')**

الكتاب: الوَاضِح في أصُولِ الفِقه

المؤلف: أبو الوفاء، علي بن عقيل بن محمد بن عقيل البغدادي الظفري، (المتوفى: 513هـ)

المحقق: الدكتور عَبد الله بن عَبد المُحسن التركي

الناشر: مؤسسة الرسالة للطباعة والنشر والتوزيع، بيروت - لبنان

الطبعة: الأولى، 1420 هـ - 1999 م

عدد الأجزاء: 5

In a section on the characteristics of a scholar (صفة العالم), the author states that according to many of the people of knowledge (أهل العلم), it is also required to have memorized the Qur'an, be well-versed in the prophetic traditions relevant for legal rulings. The critical scholars [of usul] (المحققون) demand that the scholar know the laws related to the verses of the Qur'an, what verses abrogate and which have been abrogated and the history of that. In knowing these matters the

scholar suffices from having to refer to stories, exhortations, parables, and admonishing speeches (القصص والمواعظ والأمثال والزواجر), since these matters do not relate to legal rulings. If there are matters in these stories that are related to law [note: might be about stories in the Qur'an, not isrā'iliyyat], then they are the laws of those who came before us, and that is like the verses of revealed law in our shariah given our foundational understanding that the laws of those who came before us are laws for us.

(وذهب المحقِّقونَ إلى أنه يَلْزَمُه أن يحفظَ من الآي ما يتعلَّقُ به
أحكامُ الفقهِ، وما هو ناسخٌ ومنسوخٌ، وتاريخَ ذلك، وفي ذلك كفايةٌ له عن القَصَص والمواعظِ والأمثالِ والزَّواجرِ، إذ لا يتعلَقُ بذلك حكمٌ شرعيٌّ، فإن كان في القَصص ما يتعلَّقُ به (1) حكمٌ شرعيٌّ هو شرعٌ لمن قَبْلَنا، فذلك كآي الأحكامِ النازلةِ في شريعتنا، على أصلنا: أنَ (2) شَرْعَ من قَبْلَنا شرعٌ لنا)

] v. 1, pg 270-271[

---

The author discusses reasons why the jurists disagree over the legal significance or meaning of different sources of Islamic law, and gives one of the reasons for differing interpretations on Qur'anic verses as varying claims of abrogation. There are three types of claims of abrogation. One is when a clear event indicating abrogation is cited (e.g., a report by a Companions stating that one verse abrogated another - e.g. the Shafi'is/Hanbalis say that the fidya is due on a pregnant woman or woman who is breastfeeding who breaks the fast fearing for her child based on the verse 2:184. However, the Hanafis cite the Companion سلمة بن الأكوع that verse 2:185 abrogates it) [<— v. 2, pg 134-135]. Or for one to claim that one verse was abrogated by another verse that was revealed later (the Shafi'is/Hanbalis say the Imam can choose to keep prisoners of war according to Surah Muhammad, verse 4, but the Hanfis say it was abrogated by al-Tawba,

verse 5 which says to kill the mushrikūn, because it is revealed later). **The third form of naskh is to claim a verse is referring to pre-Muhammadan law**, and has been abrogated by our shariah [<— v. 2, pg 135]. E.g., the Shafi'is/Hanbalis mandate Qiṣāṣ on limbs based on the verse 5:45 (والجروح قصاص), but the Hanafi [according to the author] says this is referring to a law of the Torah, because the verse says (وكتبنا عليهم فيها…), and the Torah has been abrogated by the Qur'an, as has the shariah of Moses by the shariah of Muhammad. The Shafi'i would respond to this claim of abrogation by saying that the shariah of those who came before is our shariah as well - the author says he will explain this later in a section on masā'il al-Khilāf [see below], but affirms that pre-Muhammadan law is binding according to sound proof (بدلالة مرضية) and that we don't turn overturn it unless we have a clear statement of abrogation. [<— v. 2, pg. 136]

Regarding different strategies jurists use in coming to different legal conclusions with hadith [the previous section was on Qur'anic verses], the author again mentions the claim that something is pre-Muhammadan law as a sub-example of a claim of abrogation used to discredit the legal relevance of a hadith (other claims of abrogation with regards to hadith include: claiming a certain hadith was explicitly abrogated, or that something else contradicting it was reported in a later time period, or that the Companions were found doing something differently which would indicate abrogation, or lastly, claiming that it was pre-Muhammadan law and thus abrogated). [<— v. 2, pg. 158]. Regarding the claim that a hadith is referring to pre-Muhammadan law, the author gives the following example. The Hanbalis/Shafi'is cite on the مسألة إحصان الرجم that the Islam of the person doesn't matter based on the narration of the Prophet stoning two Jews who fornicated after their Iḥṣān (رجم يهوديين زنيا بعد إحصانهما). [<— v. 2, pg 162]. The Hanafis claim [note: it's possible the Hanafis around the author changed their position on this?] that the Prophet

stoned them based on a law in the Torah, and thus he ordered for the Torah to be brought and acted upon it. But our Shariah abrogates the law of the Torah. The response to this is that the Prophet would not have trusted the transmission of the Torah, because it was altered and changed and includes words that are not the words of God, and because it contains strange material ( وفيها العجائب), and how many events have taken place that have eradicated what was in it [the Torah], and they've [the Jews] had to rewrite the content … (فأعادوا تسطير ما تلقفوه من الرجال) [don't understand, but is a statement against its transmission]. All of this would have barred the Prophet from acting on the laws in the Torah by virtue of its transmission. He thus acted on it because he knew it was true by means of inspiration (الوحي). He wouldn't have mandated this ḥadd punishment if it weren't established through a way that shariah is needed to be established. It's also not possible that he acted on the Jews in this case in a way he wouldn't have done with the Muslims [i.e., different laws for them and us], since God says (**وأَنِ احْكُمْ بَيْنَهم بما أَنْزَلَ الله**) [Qur'an 5:49]. Rather, Prophet asked for the Torah to disprove the Jews' lies when they claimed that the punishment for الزاني is to blacken their faces with charcoal (التحميم), and to make it clear that they falsified what they reported of the Torah, and also that they hid his own mention in the Torah. [<— v. 2, pg. 163)

———

The author treats shar' man qablana elsewhere as a subcategory of istiṣḥāb, since it is considered istiṣḥāb of a law of the previous shariah. The author breaks it into three categories. [1] things we have been prohibited from of the previous shariah, e.g. holding onto the Sabbath and the prohibition of consuming pig and wine. [2] What we have been commanded by God to do from

the previous laws, such as the verse (5:45) [وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ … وَالْجُرُوحَ قِصَاصٌ]. And [3] what we haven't been explicitly commanded or prohibited from doing. Regarding this last case, there are two opinions. The Shafi'is have two takes on this, one of them being [note: author doesn't note the other position, so assume it's the opposite and these are the two opinions] that we are bound by it unless we are told not to because the first shariah is still a binding shariah of God and can't be abandoned unless we have express abrogation of it, and the coming of the Prophet is not an express abrogation because you could theoretically combine the Prophet's shariah with the one that came before, and this is what the Prophet is commanded in the verse (**أُولَئِكَ الَّذِينَ هَدَى اللَّهُ فَبِهُدَاهُمُ اقْتَدِهْ**) [Q 6:90] [<— v. 2, pg 319]. And also the verse (**ثُمَّ أَوْحَيْنَا إِلَيْكَ أَنِ اتَّبِعْ مِلَّةَ إِبْرَاهِيمَ حَنِيفًا وَمَا كَانَ مِنَ الْمُشْرِكِينَ**) [Q 27:123].

Regarding whether the Prophet followed a shariah prior to his being a Prophet, some said he followed whatever had reached him from the shariah of Abraham, such as when he devoted himself in the cave of Ḥirā'. Others said he didn't follow any of the previous shariahs. Others said he used his rational faculties to establish that there was a creator and that he was one, and that it was wrong to worship idols, just as Abraham had done prior to his becoming a prophet as God tells us in the Qur'an when Abraham observed the celestial objects. He also learned laws like when he observed Zayd b. 'Amr b. Nufayl refuse animals that were sacrificed to idols, and he did so himself [note from editor: أخرجه أحمد في "المسند" برقم (1648) طبع مؤسسة الرسالة، من حديث سعيد بن زيد بن عمرو، وفي اسناده ضعف.

وأخرجه أحمد في "المسند" برقم (5369) و (5631) و (6110)، والبخاري (3826) و (5499) من حديث عبد الله بن عمر، لكن ليس فيه قضية امتناعه - صلى الله عليه وسلم - بعد ذلك عن أكل شيء مما ذبح على النصب، وانظر تمام تخريجه في التعليق على "المسند"]

[<— v. 2, pg 320]

———————

[me: I'm skimming the work now for important details, not word-for-word representation of the argument] The author says that there is nothing rational that bars a second prophet from following what the first prophet followed, and this is confirmed by our own shariah, contrary to what some of the Uṣūliyyūn have stated [<— v. 4, pg 170]. For example, Moses and Aaron were sent in the same time, and there was a maṣlaḥa in that, since Aaron aided Moses and led his people when he was gone from them. More than one prophet can be sent as support as in the case (إِذْ أَرْسَلْنَا إِلَيْهِمُ اثْنَيْنِ فَكَذَّبُوهُمَا فَعَزَّزْنَا بِثَالِثٍ) [Yasīn: 14]. One might argue that if the second prophet doesn't abrogate the first law, there is no point to his coming, but the author's counterargument is that the second prophet can be a support who reminds people further [<— v. 4, pg 171].

As for whether the Prophet followed a previous shariah, there are two positions. One is that is followed what was authentic in their shariah by means of divine inspiration (الوحي), and not from their transmission or their altered books. This is Aḥmed's position, when he mandated the slaughter of a ram as ransom for a child in the case that someone vowed to slaughter their child, citing as proof the shariah of Abraham. With regards to the al-Qar'a, he cited as proof the story of Zakariyya regarding the care taking of Mary [see Quran 3:44, discussed in books of fiqh, etc.], and Dhū al-Nūn who also drew lots [see Qur'an 37:141, discussed in fiqh, see al-Jaṣṣāṣ, e.g.], and also what God revealed in the Qur'an regarding what's in the Torah involving Qiṣāṣ, which is from the shariah of Moses. This is also the position [of Aḥmad] that was chosen by Abū al-Ḥasan al-Tamīmī. It's also the position held by أصحاب أبي حنيفة according to what Abū Sufyān transmitted from Abū Bakr al-Rāzī, and one of the two positions of أصحاب الشافعي [<— v. 4, pg

173]. The other position in this debate is that he didn't follow laws from a previous shariah, except what was revealed to him in his shariah, this was the position of the Mu'tazilīs, Ash'arīs, and some of the Shāfi'īs.

As for which shariah he followed, some, including the Shāfi'īs, said he followed Abraham. Others that he followed Moses, and other Jesus because he was the nearest in time. [<— v. 4, pg. 174] The strongest position among the Hanbalis (أصحابنا) is that he followed all of their laws as long as it was authentically from them (كان متعبداً بكلِّ ما صحَّ أنَّهُ شريعةٌ لنبيٍّ قبلَهُ) and not abrogated. [<— v. 4, pg. 174-175]

Proofs for this position include (**أُولَئِكَ الَّذِينَ هَدَى اللَّهُ فَبِهُدَاهُمُ اقْتَدِهْ**) [al-An'ām: 90]. This is a command for the Prophet to follow their guidance in all that they came with that was guidance. If it is claimed this is referring to Tawḥīd since the laws differed among the prophets - e.g. one Prophet sanctifies Saturday, the other Sunday, one prohibits Shaḥm (animal fat), the other permits it, etc. Also, giving a ruling based on legal matters from other religions (فروع أديانهم) is not certain (مقطوع به) and is probable (الحكم به من طريق غلبة الظن) [<— v. 4, pg. 175]

The author responds first that tawḥīd is determined through rational faculties, and is not a matter where you would say that "following The prophet did not believe regarding). اقتداء( takes place " . the fundamentals of belief in tawḥīd **as an act of following** others who believed it before him Rather, he deduced it on his own, even if they believed it too. This is different from prayer and fasting. If it became established to the Prophet that his fasting of Ramadan corresponded with the fasting of previous Prophets, then we would say he fasted **as an act of following** those who

came before. This is shown by the revelation of God on the obligation of fasting as it had come before [reference to verse 2:183]. Similarly regarding prayer, the Prophet used to go into retreat and he worshipped God as Abraham did. This is what's technically meant), يتحنث بحراء' (in Ḥirā With regards to the verse, Hudā as a word includes all that is called). الاتباع" (by "following and there is no reason for saying it is only, )تعبدات( Hudā, which includes tawḥīd, but also rituals referring to one here [i.e. it's not just tawḥīd]. [<— v. 4, pg. 175-176] As for the fact that the other prophets' laws differed, then the response is that only what is common is followed, and if a law was abrogated for one prophet, we follow the law that abrogated it. *A third case* where the laws differed and one did **not** abrogate the other is not conceivable, says the author [me: it is conceivable if their messages were not universal]. For example, it cannot be that Jesus sanctified and this were combined with Moses prohibiting Saturday while also) تحريم الأحد( Sunday permitting Sunday. We would say that when Jesus came, he absorbed the laws of Moses (his prohibitions, his commandments, and what he made permissible), and when the new law came to him to make Saturday permissible and Sunday prohibited, that then became his law, and the first law - that of Moses - became abrogated. From our perspective then, Jesus and Muhammad are followers of what came to Moses in things where they didn't receive revelation prohibiting or permitting [matters where it was the opposite in his shariah]. [<— v. 4, pg. 176-177]

[me: the following is new, and the author relates this debate to the issue of Companions differing in opinions yet being authoritative] The existence of this third case [where there is difference in law and one doesn't cancel out the other] is similarly argued by those who reject the authoritativeness of the statements of the Companions. The author responds to that issue by quoting the Prophet that "My Companions are like the stars. Whoever of them you follow, you

will be guided" (**أصحابي كالنجومِ، بأيِّهم اقتَدَيْتُم اهتديتم**), and also, "Follow those who come after me, Abū Bakr and 'Umar" (**اقتدُوا باللذين مَنْ بعدي: أبي بكرٍ، وعمرَ**) [note: this is a weak hadith. Also, note the presence of اقتداء in both]. The opposition says we can't follow the Companions when their opinions differ, and if we only follow them in their ijmā', then that takes away from the rank of the Companions, because the ijmā' of the Tābi'īn and those after them has the same status as binding. The opposition continues, that if following the Companions includes where they disagree, you can't combine between the position of Abū Bakr and that of 'Alī regarding inheritance when there is a grandfather and also brothers (توريث الجد مع الإخوة), for Abū Bakr's position didn't give them [the brothers?] their inheritance (فإن أبا بكر يسقطهم به), while 'Alī and Zayd did (يورثانهم معه), and 'Alī and Zayd further disagreed on how they inherited (كيفية إرثهم معه). The author admits that this issue [differing and concurrent opinions] is valid to be raised in that case [pertaining the Companions], but not here, where he can't imagine that the Sabbath would remain in Jesus' shariah alongside Sunday [the author doesn't understand the origins of Sunday as a holy day]. If both Jesus and Moses agreed on something, then the Prophet would have followed it, just as he followed both Moses and Jesus in the fast of Ramadan, which remained in both their shariahs. [<— v. 4, pg 177-178].

As for the oppositions claim that tawḥīd is certain (مقطوع به), and so that is what the following goes back to [from the verse], and other matters lack that certainty. The author responds that only pre-Muhammadan law that is known through waḥī is considered the shariah of the Prophet. So if Gabriel informed him that a matter was from the shariah of Abraham or Moses, **the Prophet would follow them in the matter because it was their shariah,** and the original law and ruling from the first revelation would remain unless a revelation came that either narrowed it or rejected

it. As for matters known conjecturally (بظنٍ), or transmission (نقل), these do not provide certainly, and are thus not the shariah of the Prophet. [<— v. 4, pg 178]

Another proof is the verse (5:44) [**إِنَّا أَنْزَلْنَا التَّوْرَاةَ فِيهَا هُدًى وَنُورٌ يَحْكُمُ بِهَا النَّبِيُّونَ الَّذِينَ أَسْلَمُوا لِلَّذِينَ هَادُوا**] and (**…** 5:45)[**وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ**], regarding which the Prophet said when al-Rubbī' (**الرُّبيِّعُ**) broke the tooth of a servant girl: "كتاب الله القصاص", where Kitāb Allāh was referring to the Torah, since our Book does not mention Qiṣāṣ regarding a tooth except what it transmitted from the Torah. And God also condemned those not giving a ruling by the Torah, when He said ( **وَمَنْ** 5:45) [**لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ**] [<— v 4, pg 178], and refers to them as (5:44) [الكافرون], and (5:47) [الفاسقون], and these statements are repeated after (**وَمَنْ لَمْ يَحْكُمْ**) [which is found in each of those verses], and include all those who leave giving judgment by what's in the Torah, be they Muslim, Jew or otherwise. This is supported by the verse ( **وَأَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ** 5:48) [**مِنَ الْكِتَابِ وَمُهَيْمِنًا عَلَيْهِ فَاحْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ**], which is followed by a prohibition to listen to their whims (5:48) [**وَلَا تَتَّبِعْ أَهْوَاءَهُمْ**], which again indicates to follow what was sent to their prophets.

Another proof is (**ثُمَّ أَوْحَيْنَا إِلَيْكَ أَنِ اتَّبِعْ مِلَّةَ إِبْرَاهِيمَ حَنِيفًا وَمَا كَانَ مِنَ الْمُشْرِكِينَ**) [al-Nahl: 123], where a command is given to follow Ibrahim according to what was revealed to the Prophet. If it is said that the verse's stating of Abraham as Hanif and not a Mushrik is proof that what is meant is tawḥīd and not acts of worship or the furū' of religion, the response is that "millah" refers to shariah. And mentioning that he was Ḥanīf and not a Mushrik doesn't limit the 'following' referred to. Also, tawḥīd is not unique to Abraham but believed by all the Prophets, so when Abraham's millah is being singled out, what is meant are the rules of his shariah and not just

Tawḥīd. And as was mentioned earlier, tawḥīd is a matter that is learned rationally and through deduction and does not need revelation [<— v. 4, pg 178-179].

[some stuff on end of pg 179, beginning of 180 not understood but not necessary]. Another argument is that if God revealed a law to a prophet and it is clear that it is part of that Prophet's shariah, then nothing can remove or abrogate it other than a similar revelation. It is known that the coming of a second Prophet by itself doesn't negate a prior law unless he comes with something that conflicts with the previous law, abrogating it. **This is similar to two verses [of the Qur'ān dealing with a topic] in our Shariah, where we try to combine their meanings if possible without one abrogating the other. If combining the meanings is not possible, the ruling is with the later of the two, and the first is abrogated** [me: gives methodology for interpretation] [v. 4, pg 180].

Another proof is that Allah has shared with us in his book laws from the previous books, and there would be no point of mentioning it if we didn't need to follow it. God wouldn't mention these matters intending for us to act against them, or for no point. Thus he shared them so that we would act on them. Without any evidence of its abrogation, we must remain following the original ḥukm (ḥukm al-aṣl). This is analogous to instances where laws are abrogated only through contradictory evidence of the same epistemic strength, like two verses of the Qur'an, or two reports from the Prophet. [me: note that this logic would mean that non-Qur'anic reports about the content of the Torah - as opposed to Qur'anic verses about Mosaic law - would have the legal weight of a hadith or khabr and should in theory be admissible, even if not at the level of a Qur'anic verses].

Furthermore, the first prophet's laws are given with generalized wording (بلفظ مطلق) and imply their permanence unless specified otherwise. Likewise the second prophet doesn't change the first prophet's laws unless the second prophet explicitly states that.

Another proof is the Prophet used to seclude himself in worship (يتحنث) in Hirā', and perform Hajj/Umrah, slaughter animals, and work animals by riding them (يكدّ البهائم بالركوب), which are matters that aren't known rationally but through shariah. And he had not received revelation at this time, and so these were learned from a previous shariah. [<— v. 4, pg. 181]. It's been narrated that the Prophet used to inquire about the Shariah of Abraham and follow it, and that he used to stay away from idols and divination arrows (الأزلام) [<— v. 4, pg 181-182]. The opposition argues that these reports are not strong enough to build uṣūl from because they are Āḥād reports and their transmission are not certain. Furthermore, the Prophet before becoming a prophet did not have a reliable means of following a system, so we can't call him a "follower" (متعبد) of something, because the people were between worshiping idols and between people who followed corrupted and altered books. Without revelation, the Prophet did the things mentioned earlier - assuming he actually did those things - based on his opinion and what was likely in his mind to be true from other people. This type of reasoning cannot be considered following an actual shariah.

The author responds that Uṣūl al-Fiqh does **not** require matters of absolute certainty (القطعيات), despite the opposition repeating this condition, because these matters are not matters of Uṣūl al-Dīn (the fundamentals of religion) [me: the author is implying the opposition is conflating usul

al-fiqh with usul al-dīn], since the one who disagrees in this is not considered a fāsiq or kāfir, nor renounced (ولا يُهجَر). [**me: important claim here that the debate is fairly open**]

[didn't understand the end of the passage fully, but may not be needed:

قيل: لا (4) يُطلبُ لأصول الفقهِ القطعياتُ، وقد تكرَّرَ منكم هذا، وليس بصحيح؛ لأنَّ هذه تَنْحطُّ عن أصول الدين، بأنْ لا يُفسَّقَ المخالفُ، ولا يُكفرَ، ولا يُهجَرَ، ولا يُدركُ لها أدلةٌ قطعيةٌ، ولا يُظفرُ بها، ولأنَّ السِّيَرَ كلَها متطابقةٌ على ما ذكرنا، وقد تلقَّتها الأمةُ بالقبولِ، فصارت كالتواتر.]

The opposition: even if we accept these narrations [of the Prophet's actions before he became a prophet], we interpret them to be actions he did to personally benefit from them. He also did not worship idols because he rationally was able to deduce that through reflection, or see it as wrong (استقباحا) rationally. Thus he left idols not through following a previous shariah. [<— v. 4, pg 182] The author responds that the mind would not lead the Prophet to undertaking hardship and leaving pleasure, unless there was immediate damage that was perceived, or evidence of some future punishment, which could only be learned through material transmitted from the prophets or revelation from the Heaven, which he didn't receive till later. He only had the transmission of other people, and this is what is most apparent that he referred to, because humans don't normally (في العادة) separate from their families and people and become iconoclastic, and only break from tradition when warned or reminded by others of something. [v. 4, 182-183]

[The author now addresses the oppositions' evidence:]

The opposition cites (5:48) [لِكُلٍّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا], where the verse specifies for everyone their own shariah, and thus this verse disproves the idea that the second prophet follows the first.

The response is that individual (شرعة) are noted because the laws might disagree and abrogate one another, but this is similar to the statement that "for every faqīh is a madhhab" (لكل فقيه مذهب), which doesn't negate that the fuqahā' agree in some matters while disagreeing on others. [**me: interesting**]. [<— v. 4, pg 183]

The opposition also cites the hadith (**بُعِثْتُ إلى الأَحْمرِ والأَصفرِ، وكلُّ نبيٍ بُعِثَ إلى قومِه**), which indicates the other prophets were sent to specific peoples. So if they didn't even cover all the people in their time period [since they were responsible for only their nation], they were probably not responsible over people from other time periods. The author responds that they didn't cover all the people in their time period because there used to be more than one prophet in a single time period, each with their own shariah. The author states that the issue being addressed is the case where a prophet comes after another prophet without abrogating the previous shariah, as is the case with our Prophet (PBUH). When our prophet (PBUH) came w/ something that conflicted with a previous shariah, he was not following it in that, but when nothing came that was unique to him, he was following the shariah of those who came before. Another response the author gives is that when Allah knows that there is no benefit (مصلحة) in generalizing a particular prophetic mission to others, he limits it to only some people in a time period.

The author suggests the following interpretation [of the hadith], that if we take the shariah of a prophet as being sent to a specific nation (قوم), then it continues with that people [i.e. it doesn't end when that prophet dies]. The author says that Abraham was sent to the Arabs [me: this seems to be a strange claim], and the Prophet followed the millah of his father [me: from the verse. The genealogical connection is perhaps why the author assumes he was sent to the Arabs].

The author continues that one of the unique things about our Prophet (PBUH) is that no other prophet was contemporaneous with him [<— v. 4, pg 184], and no prophet would come after to abrogate his law, which is why his shariah would be binding on all who it reached, including those who still had their scriptures. Moses' shariah coexisted and was binding alongside that of Jesus's until the Prophet (PBUH) came, at which point divine law became whatever he came with, and there remained no other shariah alongside his that was followed. Even if he (the Prophet) himself were a follower of Moses and Jesus, their followers were commanded with obeying what the Prophet had to say. It is not the case, the author makes clear, that the Jews and Christians followed their respective prophet's except in matters that the Prophet (PBUH) abrogated them. Rather, they were expected to abandon the Torah and Injīl and acting in accordance with their laws, and instead follow what the Prophet came with, relying on what he (the Prophet) reported about their shariahs, not what was to be found in their books. [me: **important comment by author**].

Another evidence cited by the opposition is the report about 'Umar with the Torah parchment, where the Prophet said (لو كان موسى حَيّاً، لَمَا وَسِعَه إلا اتِّباعي) and in another narration ( أَلم آتِ بها بيضاءَ نَقيَّةً؛ لو أَدْرَكَني موسى، لَمَا وَسِعَه إلا اتِّباعي) [<— v. 4, pg 185]. The opposition says that the author's claim is that the Prophet follows those who came before except where something is abrogated or added to. But if according to this report Moses would be following the Prophet **if he were alive**, than how is it that the Prophet is following Moses when Moses is dead. The author now responds and expresses his agitation at the double standards being applied, where is the opposition's recurrent denouncing of Aḥād reports in matters of Uṣūl al-fiqh ( أين ما يتكرَّرُ منكم من إنكارِ أخبارِ الآحادِ في مثل هذا الأصل)? The Qur'an trumps the report (إن القرآن يقضي عليه), when it mentions many

prophets and then follows it with (**أُولَئِكَ الَّذِينَ هَدَى اللَّهُ فَبِهُدَاهُمُ اقْتَدِهْ**) [al-An'ām: 90], and also ( **ثُمَّ أَوْحَيْنَا إِلَيْكَ أَنِ اتَّبِعْ مِلَّةَ إِبْرَاهِيمَ**) [al-Naḥl: 123], (**سُنَّةَ مَنْ قَدْ أَرْسَلْنَا قَبْلَكَ مِنْ رُسُلِنَا**) [al-Isrā': 77] [me: he uses a verse not cited by others here]. And (**فَاصْبِرْ كَمَا صَبَرَ أُولُو الْعَزْمِ مِنَ الرُّسُلِ**) [al-Aḥqāf: 35] [me: he uses a verse not cited by others here]. These and other verses, says the Author, should that the Prophet was ordered to follow previous Prophets. Furthermore, the Prophet reported that he met Moses on the night of Mi'rāj, and Moses recommended he reduce the number of prayers from 50 numerous times until he reached 5, at which point the Prophet became embarrassed to ask more. The Prophet did not detest or scorn following Moses here [i.e., he listened to Moses when according to the opposition and the hadith of Umar, it should've been the opposite]. The author says that the Qur'an and this report [about the Mi'rāj incident] trump ( فالقرآنُ وهذا الخبرُ يقضي على خبرِ عمرَ والتوراة) the report about 'Umar and the Torah. [<— v. 4, pg 186]

The author then tries to understand the 'Umar report: the Prophet's repudiation was of 'Umar looking in the Torah after it had been altered, and perhaps including things that they [the Jews] fabricated, such as the the denial of any shariah after Moses, or their denial of Jesus, and what they fabricated about our Prophet (PBUH) that would suggest he was [merely] given dominion and was a ruler, not a prophet (مما يدلُّ على أنه متسلط وملك لا أنه نبي) [**me**: interesting, this is suggesting the Jews saw the Prophet as merely a Ḥakam over them], or that he was sent to the Arabs only and not to those who follow Moses, and other falsities.

As for the statement (لو أدركني موسى، لما وسعَه إلا أن يتبعني), the author says it is true, because the Prophet abrogated things like the Sabbath, and made lawful the shuḥūm that Moses prohibited, in addition to other laws changed from the Torah. If Moses were alive, he would have to follow the

new laws. The author says his understanding was able to successfully combine what is in the Qur'an with what is in the report, whereas the opposition is unable to do so.

The author states that the Prophet does not follow the shariah of Moses as he finds it in the Torah, but with what God commands him through revelation, where God tells him it is His shariah and was what Moses followed.

Another evidence cited by the opposition is that according to authentic narration, the Prophet used to wait for revelation when he was asked for a ruling. If he followed prior law, then he would have answered with the laws of those before instead of waiting for revelation. [v. 4, pg 187] The author responds that pre-Muhammadan law was known and transmitted by people who were testified as liars and people who changed their books, so the only way the Prophet could know if something was really true was if God revealed it to him, like the verse ( وكتبنا عليهم فيها أن النفس بالنفس…) (al-Mā'idah: 45). So the Prophet (PBUH) would wait for revelation because he needed true information.

Another opposition claim: Shariahs came for the benefit of the people, and laws are most beneficial when they are for their time. This would bar one prophet from following another. The author responds that the second prophet follows in laws that get continued, and those things are beneficial. As for where the law is abrogated, those things are changed and that change is beneficial [<— v. 4, pg 187]. The author adds that even if times and the needs (المصالح) differ, this doesn't prevent one group from being obliged to follow the other, as in the case of the Tābi'ūn following the Companions. If one responded that we follow the Prophet because no

abrogation has become apparent [i.e. why don't we stop following the Prophet's shariah based on our needs], than the response is that similarly no clear abrogation came down about the previous shariahs [<— v. 4, pg 187-188] [me: **interesting**].

Another opposition claim: If we were meant to follow their shariah, then their books and laws would need to have been studied, and the meanings of their laws studied from those who became Muslim from among them. And revelation wouldn't have been waited for [by the Prophet] except in cases where there was abrogation. But when this is not the case, it is clear we don't follow their shariah. The author responds that we only follow what has been revealed to our Prophet and transmitted to us from him (ما أوحي إلى نبينا صلى الله عليه وسلم ونقل إلينا عنه) [me: **the author leaves open possibility of hadith?**]. We cannot refer to what these communities have because of what has been established regarding their lies and obstinacy with the Prophet. As for those who became Muslim from among them, there is no criteria to determine what has been altered from what has not been altered, especially after what Nebuchadnezzer (بُخْت نَصَّر) did, and the killing of those who had preserved the Torah. So nothing remained of it that can be trusted.

Another opposition claim: the shariahs all disagree in terms of what they prohibit and permit, etc, so it's not possible to follow them [<— v. 4, pg 189]. The author responds: we only follow what is agreed upon. E.g., if God prohibited in the shariah of Jesus what was allowed with Moses, and permitted what was prohibited, then the first law is considered abrogated. As for if Jesus permitted what Moses prohibited and yet Moses' law remains, this is not a case, says the author.

Another opposition claim: all the shariahs are attributed to their respective prophets. If they shared with prophets who would come after, than one prophet wouldn't be more special (أخص) than the other. The author responds that the originator of something is the one who is named/specified with it. This is similar to the madhhabs, where you say "the madhhab of so-and-so," even if those who came after agreed with the first person based on his evidence and not blindly. Similarly here, we refer to the "millah of Jesus" and the "millah of Moses" because they came first in them, even if the Prophet follows their laws. We similarly refer to the "Shariah of Muhammad" because he abrogated many things from the laws of Moses and Jesus. [i.e. he started some new things through abrogation, so he gets the name] [<— v 4, pg 190]. The attribution of name can also be because more laws came from one than the other.

Another opposition claim: If it's not possible for many prophets to be in one time period with one shariah, than it can't be the case in two different time periods. The author responds that this is not the case. For example, Moses and Aaron had the same shariah. Also, the author sees a difference between many prophets in one time with one shariah, and prophets in different times with one shariah, since in one time period one prophet is sufficient, and with regards two time periods there is a break in time where the second prophet needs to remind people what was lost from the first [<— v. 4, pg 191] [some additional stuff pg 191-192, not important].

Another opposition claim: arguing the Prophet followed prior law makes people averse to him and following him (تنفير عنه ورغبة عن اتباعه), because if he was following the shariah of Jesus or Moses, than the people of those religions would originally be appreciative that he was a follower of their prophet and thus one of them. But if he started to disagree with what the previous

prophet brought on grounds of abrogation, than they would have said he was a follower until he desired to be followed himself and that because they heard he was a follower of the first prophet and content with following him, they would stay with the first of his two positions [i.e. before he changed the message], because the second position would be dubious, given that he may have pursued it for leadership (الرئاسة) or proud disdain of following. Thus, it should not be that he followed this path because it would have lead to this bad outcome ( فلا ينبغي أن يسلك به هدا المسلك المفضي إلى هذه المفسدة). This is evident given that the Qur'an cares about what brings the hearts to the message, rather than pushes them away. For example, the verses, ( ومَا كنت تتلو مِن قبلِهِ مِن كِتَابٍ ولا تخطه بيمِينِكَ إذا لارتاب المبطِلونَ) ["And you did not recite before it any scripture, nor did you inscribe one with your right hand. Otherwise the falsifiers would have had [cause for] doubt"] [29:48] and the verse (ولو جَعَلنَاه قرآنا أعجَميّا لّقَالوا لولا فصّلَت آيَاته أأعجميٌّ وعربي…) ["Had We made it a non-Arabic Qur'ān, they would have said, "Why are its verses not clearly explained? Is it a non-Arabic (book) and an Arab (messenger)?""] [41:44] [**me: the frankness with which this issue is raised is worth noting**]. [<— v. 4, pg 192] The author responds that whoever would have made this argument would have been disproven through obvious proofs, for example miracles that were witnessed that would have pointed to the truth of the Prophet's abrogation of what came before. There would be no difference in the obviousness of his prophethood if he was a follower of a prior prophet or if he came with a completely new, unprecedented shariah [<— v. 4, pg 192-193]. The author points out that the shariah has other things that might cause an aversion or a distaste in people, a topic the author deals with earlier [see pg. 158-163, which is a really frank discussion by the author about things like the Prophet's marriages, the abrogation of verses, the changing of the qibla, women in the spoils of war, etc, which show that people in the author's time also had issue coming to terms with some of these events], but God has created in our

minds the ability to ward off doubts, and given miracles that provide confidence. Whoever is averse after these things does so through his own carelessness and heedlessness.

Another opposition claim: claiming the Prophet followed prior law is a far claim, because we would have received narrations about this, given that there are many aḥkām and the issues affects many (لأنه أمر تعم البلوى به), yet we don't have reports that the Prophet referred to the Jews who converted who were trustworthy [note, the Christians aren't mentioned], e.g., 'Abd Allāh b. Salām and Ka'b al-Aḥbār [the latter didn't meet the Prophet, and most likely converted after his death]. The author responds that he wouldn't have needed to since revelation would come to him when an issue would arise. The author does note the account where the two Jews who fornicated [the text says, after their iḥṣān (بعد إحصانهما), i.e. they were married?], the Jews claimed that they only needed to be punished with (التحميم), but the Prophet demanded the Torah to judgement them, and entered with them into their study house (بيت الدراسة), [<— v. 4, pg 193] and a person named (ابن صوريا) covered the verse about stoning. Then 'Abd Allāh b. Salām told him to lift his hand, they saw the verse, then the two jews were stoned. The author says this is an example where the Prophet referred to the informing (خبر) of 'Abd Allāh b. Salām on a ruling in the Torah, and where he acted with it regarding the two Jews. [<— v. 4, pg 193-194]

Then the author starts a new section. He says the Prophet before becoming a prophet was not on the religion of his people, but followed what was true to him as coming from the shariah of Abraham. He didn't worship their idols, or participate in their divination arrows, etc., but instead retreated in (يتحنث) Hirā'. **According to Aḥmad**, "Whoever says the Prophet (SAAS) was on the religion of his people has spoken incorrectly (فهو قول سوء). Didn't he refuse to eat their meat that

was slaughtered on stone alters? (أليس لا يأكل من ذبائحهم على النصب؟).” This is also the opinion of the Shāfi’īs (أصحاب الشافعي), while some postponed judgment. Abū Sufyān al-Sarakhsī transmits regarding the position of the Ḥanafīs (أصحاب أبي حنيفة) that after prophethood previous law became law on him, but not because it was law on him before he became prophet. As for before his prophethood, he did not follow any of the previous shariahs [v. 4, pg 194].

Proof that he followed a previous shariah: he used to avoid things that his people used to partake in, and used to observe (يتحنث) whatever he knew and learned of Abraham’s shariah. If what he practiced was inspired by God, than it was divine legislation (تشريع), and if it was something that reached him through narration, than it was similarly a matter of him following a shariah, and if what he practiced happened to match what God revealed, than it was him being protected from the ways of the polytheists. As another proof, the Prophet also used to tire animals and work them according to religious laws (بمقتضى الشرائع), not according to the religious priests and those who work against the notion of prophethood (لا بمقتضى البراهمة وجحاد النبوات), and he would eat meat, and sacrifice animals. The apparent meaning of this is that he followed a shariah. If he was inspired to do the acts he did, than this was divine legislation. Someone might say that the intellect and not a shariah can lead one to leave things like idol worship, divination arrows, intoxication, etc [<— v. 4, pg 195]. The author responds that the intellect wouldn’t find it sensible to harm an animal without their being benefit [referring to tiring an animal], or tiring the body with hajj and ‘umrah and other things without knowing of a good that would come from it [me: counter argument is that these acts could bring social prestige], and yet the Prophet did these things according to what the tradition has authentically transmitted (بما صح به النقل), and what is well known from the sīra (واشتهر في السير) [<— v. 4, pg 195-196]

The opposition says that if he followed a path (دين) before he became a prophet, than that shariah would have been known by means of transmission, just as we know his shariah. The author responds that what he has referenced before is sufficient. [<— v. 4, pg 196]

-

The author then addresses whether a shariah can abrogate another. He says that Aḥmad made an indication that this was his position, and this is the position of the majority of scholars. The exception from the Muslims was Abū Muslim ‘Umar b. Yaḥyā al-Aṣfahānī [a Mu’tazilite], who said it’s possible rationally (عقلا), but did not happen in actuality (شرعا). The Jews had disagreement. Some said it’s not allowed based on what they’ve received (من طريق السمع) but accept it rationally, others said it’s also not possible rationally, calling it “beginning” (“البداء”) [<— v. 4, pg 196]

[he discusses the debate in the pages that follow, which I won’t spell out]

He notes as proof that naskh has happened [and negating the Jewish argument that it may be acceptable rationally but it doesn’t happen] the following examples. That Adam had his two daughter marry his two sons, which became prohibited afterwards. Also, doing work on the Sabbath was permitted until it was prohibited in the shariah of Moses. Also, circumcision was allowed for adults, as Abraham did, but then according to the Jews with Moses it became done on babies on the day they were born [v. 4, pg 207]. The Jews also claim, the author notes, that Ya’qūb combined between two sisters in one time [in marriage?], and this is prohibited in the

shariah of Moses. For Muslims he gives  proofs from the Qur'an, like the changing of the Qibla [al-Baqara: 144], and also the verse which says that the Jews had things prohibited on them as punishment [al-Nisā': 160] [v. 4, pg 208] [the discussion is more back and forth over the following pages, which isn't needed for this dissertation]

The author deals with a Jewish claim that Moses said his shariah was forever, as long as the heavens and the earth remain (شريعتي مؤبدة ما دامت السماوات والأرض). The author is exact though, and notes that some Jews transmit instead that the Sabbath is to be followed forever ( الزموا السبت أبدا). The author notes that some claim it's a fabricated statement by Ibn al-Rāwandi, which he made for payment by the Jews, and done to make a mockery of religion as is his style from books he's written. The author makes clear that this is a fabrication, because Jewish rabbis very familiar with the Torah, like Ibn Salām, Ka'b al-Aḥbār and Wahb b. Munabbih became Muslim after seeing the signs of the Prophet [me: i.e., if early Jews and rabbis accepted the Prophet, how did they reconcile it with this verse if it did exist? One possible theory is that they might've accepted him as a Prophet, but not requiring them to abandon the Sabbath?]. Additionally, the author says it known from the Torah as it has been transmitted into Arabic ( وقد علم ما في التوراة المنقول إلى العربي) [**me: shows the Torah was known in Arabic in the author's time**] mention of prophets like Isaiah (أشيعيا), Simeon (شمعون), Habakkuk (حبقوق) and others [me: **interesting he knows these names!**], without omitting mentions of description of the Prophet, his ummah, and Mecca at the time of his prophethood, all matters noted in the topic of signs of prophethood in books of uṣūl. Yet there was no mention of this supposed statement of Moses. When we don't have any transmission regarding the first Jews citing this as evidence [against the Prophet], it became known that this statement was fabricated in later times by the work of the uṣūliyyūn who

investigated their claim. [<— v. 4, pg 212] Also, even if we accept that this statement is true, we can interpret it in two ways. Either that the shariah that is everlasting is the one of fundamentals and tawḥīd, or that it is implied it is everlasting unless it is abrogated by a truthful person like Moses, who would come with evident miracles as they did with the Prophet Muhammad (SAAS). [<— v. 4, pg 213].

—

He notes as a side comment regarding the verses (وَمَا يَنْطِقُ عَنِ الْهَوَى (3) إِنْ هُوَ إِلَّا وَحْيٌ يُوحَى) [al-Najm: 3-4] that the Torah describes the Prophet as not speaking from God except what is said to him (ووصفه في التوراة بأنه لا يقول عن الله إلا ما قيل له), and throughout the Prophet's sīra he waits for revelation [v. 5, pg 403]

FOR THE FOLLOWING WORKS, UNLESS SPECIFIED OTHERWISE, ONLY THE AUTHOR'S POSITION AND NEW INFORMATION IS BEING NOTED BECAUSE I'M GETTING TIRED:

**الكتاب: إيضاح المحصول من برهان الأصول**

**المؤلف: أبو عبد الله محمد بن علي بن عمر المازري (536 هـ) (Maliki)**

المحقق: د. عمار الطالبي

الناشر: دار الغرب الإسلامي

الطبعة: الأولى

عدد الأجزاء: 1

[author discusses topic from pages 369-372. He discusses positions, doesn't seem to take a position himself, other than affirming its theoretical possibility]

The author notes that the discussion over whether the Prophet followed a shariah before revelation has very little relevance for a faqīh. [<— v. 1, pg. 369]

The author notes which shariah different scholars have claimed the Prophet followed prior becoming prophet, but that those who said the Prophet followed the shariah of Jesus did so because his religion was addressed to all of mankind. Those who didn't think it was Jesus say it is disputable whether Jesus's religion was addressed to all of mankind, and that even if it was addressed to all, it was a lost shariah, since it is built on the narration of four people, Luke (لوقا), Mark (مرقص), Matthew (متى) and John (يحنا), and true knowledge is not obtained through the reporting of just 4 people. [<— v. 1, pg 370] [me: interesting]

---

**الكتاب: ميزان الأصول في نتائج العقول**

**المؤلف: علاء الدين شمس النظر أبو بكر محمد بن أحمد السمرقندي (المتوفى: 539 هـ) (Hanafi)**

حققه وعلق عليه وينشره لأول مرة: الدكتور محمد زكي عبد البر، الأستاذ بكلية الشريعة - جامعة قطر، ونائب رئيس محكمة النقض بمصر (سابقا)

الناشر: مطابع الدوحة الحديثة، قطر

الطبعة: الأولى، 1404 هـ - 1984 م

عدد الأجزاء: 1

[Author deals with it on pgs. 468-480. He views the Prophet as receiving laws that other prophets had, but **he was not** following them]

The author differentiates the source from which we can receive knowledge of other shariahs: mention in the Qur'an where it isn't rejected in the text, and the words of the Prophet where he similarly does not reject of explicitly abrogate it. Statements from the communities themselves aren't accepted because they are accused of altering their texts. [v. 1, pg. 468-469]

The author gives the positions of his teachers (مشايخنا) [and thus his own], quoting the leader of them, al-Imām Abū Manṣūr al-Māturīdī, that we can know of the laws that remain from previous shariahs from the Qur'an or the words of the Prophet. If it isn't abrogated, than it becomes the shariah of our Prophet, and thus also our shariah. But it is our shariah because it is the shariah of the Prophet, **not** because it was the shariah of the previous prophets, as is the case with other things in our shariah that we follow because it was our Prophets [<— 469-470] [note: this is a brilliant compromise. We won't ever know what is actually in the previous shariahs, but if we can know it was practiced by the Prophet, that is enough. I.e., it doesn't matter what the Prophet *could've* seen as law, but what he *actually* did]

The author says this is the position of his madhhab (أصحابنا), and his proof is that Muḥammad b Ḥasan allowed for the (قسمة الشرب) citing the story of Ṣāliḥ, where God made for the she-camel a day for drinking, and a day for the people. [**me: note that the position of the school depends on this example from Shaybāni, and is subject to change with other examples**] [<— pg 470]

The job of a messenger of God (رسول الله) is to transmit the message of God, not the message of prior Prophets, in which case he would be a messenger to them, or a vicegerent (خليفة) in the way a jurist is a (خليفة) for the prophets. [<— 470-471] If something is ascribed as a law of the previous Prophets, than it is the shariah of God, not the shariah of pre-Islamic prophets, and the Prophet would need to share what he received, as prescribed in the verse ( **يا أيها الرسول بلغ ما أنزل إليك من ربك**) [Mā'idah 67 <— note, see if it's close to the other mā'idah verses], unless it was abrogated. [<— 472-473] Regarding the Abraham verse (**ثم اوحينا إليك أن اتبع ملة إبراهيم حنيفاً**) [al-Nahl: 123] and (**فاتبعوا ملة إبراهيم حنيفاً**) [Āl-'Imrān: 95], the author suggests that the Prophet was sent to preserve what God revealed to him only, not to preserve the shariahs of prior prophets, in which case he would be one the 'Ulamā' and Khulafā' of those prophets, not the Messenger of God, just like when the Prophet sent off messengers around the world, those were his messenger, not the messengers of God, as when he told Mu'ādh after he quizzed him on how he would adjudicate: (**الحمد لله الذي وفق رسول رسوله**) where he calls Mu'ādh a rasūl to himself, not to God. [<— 473-474] [**me:** so regarding the debate over whether it was Abraham, Noah, etc provided the verses that command the Prophet to follow them: we can interpret them not as "Follow the millah of Abraham in everything you can find of his law" or "Follow Noah in everything you can follow of his law," but instead: "We have given you laws with origins in the law of Abraham and Noah. So follow them."] [**me: this can let you then argue that only what the Prophet received of pre-Muhammadan law is binding, we're not responsible for more**]

Opposition claims that the Prophet followed the shariah of Abraham before becoming prophet, e.g.: Hajj and its rites, and according to some reports transmitted by reliable narrators (الثقات), he used to stay in 'Arafah whereas the polytheists used to stay in the Ḥaram [I'm assuming in the

Hajj?], and while they used to circle the Ka'ba naked, he was clothed, and he used to slaughter domesticated and wild animals (ويرى ذبح البهائم من النعم والوحش), ride horses and camels, and was circumcised as was in the shariah of Abraham. He followed whatever he knew of Abraham's shariah unless abrogation was established in his own shariah [after he received revelation]. He also didn't have to follow what he didn't know of it. As for after revelation, there is the case of the two Jews he stoned based on the Torah that he called for. He said regarding this: ( **أنا أحق بإحياء سنة أماتوها**). As another example, when he entered Medina he asked why the Jews were fasting 'Āshūrā', after which he commanded fasting on this day for the Umma, saying ( **أنا أحق بإحياء سنة أخي موسى عليه السلام**) [**note: in both these cases it appears, at least outwardly, that the Prophet *actively sought out and learned* about the ruling**] [<— 478]

The author responds: prior to revelation, the Prophet had the status of prophethood (مقام النبوة), as we know from the hadith where the Prophet said, (**كنت نبيًا وآدم بين الماء والطين**), and the Prophet - before revelation - was able to perform his own ijtihād regarding the things that he would hear, and he would do that which was ethically good (فرأى حسنه باجتهاده), him being incapable of making mistakes in matters of religion and all things that are morally wrong (كل قبيح خفي), and whatever decision he came to would become his own shariah, and this would become wājib on him to follow, and **it is like after revelation**, when he would apply his own personal ijtihād on matters without waiting for revelation [and that would also become his shariah]. [**me: interesting argument**].

With regards to the zina case, it was originally in the Prophet's shariah as 'Umar said it, that the law was once recited in the Book of Allāh as ( **الشيخ والشيخة إذا زنيا فارجموهما ألبتة نكالا من الله والله عزيز**

حكيم**) [verse that the tradition holds was abrogated in recitation]. The author says that fornication was common among people (من عادة القوم), and they were not forbidden and chastised [by others] for doing so. That's why the most severe of prohibitions was put in place [i.e. that of stoning]. Then when the people left the practice and it became rare among them, a lesser punishment became sufficient and thus the abrogation of the original for some time. However, when time changed and what was beneficial (المصلحة) changed, it became prescribed that some would be stoned, and others flogged. [me: **this is a very interesting theory on why the verse was abrogated**] The Jews, however, did not follow the Prophet, and they rejected stoning. The Prophet thus called on the Torah to show them that the rule was also in their own shariah, as a miracle to show that he had learned it from God even though they hid it. He enforced stoning *from his own shariah*, even if for the Jews it was being done from their shariah. The author also says that it is possible this law became the Prophet's shariah regarding only those two Jews, not regarding people in general. As for why the Prophet said (**أنا أحق بإحياء سنة أماتوها**) - or in other narrations (**أنا أحق بإحياء سنة أخي موسى عليه السلام"**), this was merely to respond to the Jews, but in reality, the law became the sunnah of the Prophet.

As for fasting on 'Āshūrā', according to some in our madhhab (بعض أصحابنا قالوا), it is not religiously mandated (فرض) in our shariah to fast, but rather the Prophet was instead recommending (ندب) the People to fast it because of the virtue of that day. And so the recommendation (ندب) is the Prophet's shariah, not because the Prophet was commanding the Companions to act on Moses' shariah [i.e. it's the Prophet's shariah we're following, not Moses] [<— 479-480]

**الكتاب: المحصول في أصول الفقه**

**المؤلف: القاضي محمد بن عبد الله أبو بكر بن العربي المعافري الاشبيلي المالكي (المتوفى: 543هـ)**

المحقق: حسين علي اليدري - سعيد فودة

الناشر: دار البيارق - عمان

الطبعة: الأولى، 1420هـ - 1999

عدد الأجزاء: 1

In a section on Naskh, the author notes that the Jews claim Moses said in the Torah that his shariah is everlasting until Judgement day. The author says this isn't possible to know when the Torah was burned twice (وقد أحرقت مرتين), and the Jews agreed on a fabrication. And even if it were established it's he said it, the remarks are general [<— 145]

[Doesn't discuss shar' man qablana, but it's a short book only about 156 pages. Note that his teachers included al-Māzirī (above), and Ghazzali.]

**الكتاب: بذل النظر في الأصول**

**المؤلف: العلاء محمد بن عبد الحميد الأسمندي (552 هـ)**

حققه وعلق عليه: الدكتور محمد زكي عبد البر

الناشر: مكتبة التراث - القاهرة

الطبعة: الأولى، 1412 هـ - 1992 م

عدد الأجزاء: 1

[Addressed by the author on pgs 679-688]

The author says the Prophet **did not** follow a prior shariah, neither before or after receiving revelation, and it is not binding on this ummah, though he says it's not because it was rationally impossible [<— 679]. [The Hanafi author seems to have been swayed by al-Ghazzāli, because just like al-Ghazzali, he lists five verses and three hadiths that are cited in support of this position, and then he rejects them. 4 out of the 5 verses are the same as al-Ghazzali's, and all three reports are the same as al-Ghazzali's. Because one of the hadiths is very unique to Ghazzali - the one where the Prophet said, "Whoever sleeps through a prayer or forgets it should pray it when they remember" and then he recited the verse (وأقم الصلاة لذكري) [Taha: 14], which was a command given to Moses - and the author's position is the same as Ghazzali's, it is very likely he reproduced the argument, which shows the influence of Ghazzali on non-Shāfi'īs].

---

**الكتاب: المحصول**

**المؤلف: أبو عبد الله محمد بن عمر بن الحسن بن الحسين التيمي الرازي الملقب بفخر الدين الرازي خطيب الري (المتوفى: 606هـ)**

دراسة وتحقيق: الدكتور طه جابر فياض العلواني

الناشر: مؤسسة الرسالة

الطبعة: الثالثة، 1418 هـ - 1997 م

[The author discusses this in v. 3, from pg 263-275. The author grants some laws may be the same as in prior religions because God commanded the same rule, but denies that the Prophet followed a prior shariah himself]

Prior to becoming the Prophet: some said he followed, others said he didn't, others postpone judgment. Those who say he didn't argue that we don't have mass transmission about him referring to the scholars of other shariahs nor is this well known, as we have mass transmission of other things regarding his state. [<— v. 3, pg 263], If he was on the religion of another, than the people of that religion would've boasted about it and it would've become famous. If one countered that if he wasn't following a religion than *that* would've been transmitted as well, the response is that his people weren't following a shariah to begin with, so him doing the same as them wouldn't have been out of norm, and thus there would be no impetus for that information to be transmitted as there would be had he followed a shariah.

Those who claim he did claim that the previous message was general, and thus he was included in it. Also, he used to ride animals, eat meat, and circle the ka'ba. The response to the first point is that the author doesn't accept that the previous message was generalized. [<— v. 3, pg 264]. And even if so, it didn't reach him in a way that would provide certainty or even probable knowledge of its truth. That is what is meant by (زمان الفترة). As for riding animals, it is rationally good (حسن), since you can preserve the animal by feeding it and other means. As for eating slaughtered meat, it is also rationally good (حسن), since it doesn't harm the animal. As for circling the Ka'bah, it is something that if done without a shariah mandate, might not necessarily be Haram.

As for after prophethood: most Mu'tazilites and many fuqahā' say he didn't follow a prior shariah. [<— v3., pg 265] The author says that those who say he followed the shariah of someone prior either means that God would reveal to him a ruling that was commanded to those prior, OR, they mean that God commanded him to take rulings from their books. As for the first possibility, if they mean that all of the Prophet's shariah is the same as prior law, this is wrong because we know that our shariah contradicts the shariah of those before us on a number of issues. If they mean in a few items, than the author accepts this. However, he doesn't accept that this means he was following a prior shariah, since that would make him a "follower" of someone else, not the originator of his own shariah [**me: is this a later reconciliatory position? It's present in Ibn Aqīl, but I'm not sure if it's attested to earlier than him**]. As for the position that the Prophet was commanded to take law from the previous scriptures, this is wrong [<— v. 3, pg. 266].

{1} As proof the Prophet didn't follow a prior shariah, the author says that if he did follow a prior shariah, he would need to refer to prior scriptures for matters that would come up of law instead of waiting for revelation. But this didn't happen because if it did this would have been known. And secondly, when 'Umar had a parchment of the Torah, the Prophet got angry at him and said if Moses were alive he would have followed him. **The opposition might respond**: perhaps in the circumstances that arose, the Prophet knew he was not supposed to follow the shariah of those before, and thus he waited for revelation, or perhaps the Prophet knew that their shariah didn't have a ruling on the issue that arose, and so he waited for revelation [<— v. 3, pg 267]. Or perhaps the rulings of those religions were known through mass transmission and thus one did not need to refer back to them or their scriptures, since referring back to their solitary

transmissions would not be acceptable since those narrators would have been disbelievers, and the transmission of disbelievers is not accepted [<— v. 3, pg 267-268]. [**me: this last point is actually a good possibility. Some things might've been so obviously known about the Jews, e.g., they stoned adulterers or something else, that they were safe to assume as true**]. We also know the Prophet referred to the Torah on the matter of stoning of the Jews. The author responds: regarding the claim that the Prophet knew in the circumstances that came up that he didn't need to refer to prior law [even though in theory he needed to in other cases], this is the same as saying the Prophet didn't follow prior law in anything [<— v. 3, pg 268]. Regarding the claim that he didn't refer to prior law because their scriptures didn't address the circumstances he was addressing: this could only be ascertained by the Prophet after extensive research and study, and thus we would've expected he have done this. As for information being known through mass transmission: yes, the text used as a legal proof may be known through mass transmission, but you need extensive study to be able to understand it fully to derive legal benefit, which would have required the Prophet to study their books and how to derive legal benefit from this material. [**me: not the strongest response. Maybe the Prophet didn't view law as so technical as the jurists make it out to be**] As for the Prophet's reference to the Torah in the matter of stoning: [1] the Prophet only referred to the Torah in this one case of stoning [**me: this shows that the debaters on this topic are not fully aware of the full evidence**], [2] the Torah was altered, so how could the Prophet have depended on it? [3] The person who informed the Prophet of the presence of stoning in the Torah was not someone from whom knowledge could be obtained from his reporting [because he was not Muslim?], and so we thus know that the Prophet referred to the Torah only to establish for the Jews that the law that was in his own shariah, was also present in their own, and that in rejecting it they were lying and being obstinate [<— v 3, pg 269]

{2} Another proof the author gives is that if the Prophet did follow a prior shariah, than it would've been necessary for scholars across history to refer in matters that would come up to the laws of those who came before the Prophet, because it would be needed for them to find a model to follow (لوجب على علماء الأعصار أن يرجعوا في الوقائع إلى شرع من قبله، ضرورة أن التأسي به واجب). But when they didn't do that, we know this can't be true. [**me: note, this can be disproven**]

{3} Another proof is that the the Prophet said Mu'ādh was correct in giving his personal judgment when a matter was not in the Kitāb or Sunnah. If the Torah was a source of law, this would've had priority over his personal judgment. [<— v 3, pg 270] One might respond that the Torah is also meant by "Kitāb", and that the Qur'ān has verses that point one to refer back to the Torah, just as the Prophet didn't mention ijmā' for this reason [because it can be inferred from the other sources]. The response is that Kitāb is only understood by people as Qur'ān unless there is evidence to suggest otherwise. Additionally, we don't know anything about Mu'ādh that he studied the Torah or Injīl, or learned how to differentiate the altered material from that which was original, whereas we know he studied the Qur'an.

{4} Another proof is that if this was binding on us, then preservation of this material would have been a communal obligation (من فروض الكفايات) as it is for the Qur'an and Akhbār and would have been referred to in matters of disagreement, like the issue of ( بيع أم), (المفوضة), (ميراث الجد), العول), (الولد), (حد الشرب), (الربا في غير النسيئة), (دية الجنين), (الرد بالعيب بعد الوطء), (التقاء الختانين), and other laws. Yet it has not been transmitted from anyone despite their lengthy ages, extensive events that took place, and their disagreements, their reference to the Torah [note, the author doesn't specify the

Companions as the ones who should be referring to the Torah as Ghazzali does, from whom this author copies] [**me: note, it is obvious the author is copying Ghazzali's Mustasfa. The presentation of the issues here, and the proofs above are copied, sometimes very closely**] [<— v 3, pg 271]. Even when rabbis from the Jews converted whose words would have been authoritative, like 'Abd Allah b. Salām, Ka'b, Wahb, and others. Qiyās would not have been allowable without referring to scripture first. [<— v 3, pg 271-272]

The opposition cites the following for proof:

(إنا أنزلنا التوراة فيها هدى ونور يحكم بها النبيون)

This can't be interpreted literally (على ظاهره) because all the prophets did not govern with all that was in the Torah, and that is necessarily known (وذلك معلوم بالضرورة) and thus we must restrict the meaning of (حكم) here to mean that all the prophets acted according to parts of the Torah [i.e., not all], which we don't have an issue with, since our Prophet applied what was in the Torah ( حكم بما فيه) in terms of knowledge of God, his angels, his books and his messengers. Alternatively, we who would have applied all that was in the Torah [though), النبيون( might restrict the meaning of ].not included our Prophet

(فبهداهم اقتده)

The guidance shared by all of them are the fundamentals of religion.

(إنا أوحينا إليك كما أوحينا إلى نوح والنبيين من بعده)

This is drawing a similarity between the revelatory process, not what was revealed.

(أن اتبع ملة إبراهيم حنيفا)

The (ملة) being referred to is the fundamentals of religion, not law (الفروع). Proof of this is that we say the (ملة) of al-Shāfi'ī and Abū Ḥanīfa are one, even if their madhhabs are different. Secondly, the verse is followed by (وما كان من المشركين). Also, the shariah of Abraham became extinct.

(شرع لكم من الدين ما وصى به نوحا)

The verse says to establish the dīn and not to fall into disagreement. The command is to establish the dīn, not that the dīns be the same. [<— v 3, pg 272-275]

---

On the topic of Naskh, the author responds to the Jews who deny it, by saying that in the Torah, God told Noah when he exited from the boat that he made allowable for him and his progeny all the creatures that walk, as long as it's without its blood [reference to Genesis: 9:1-4]. But later God forbids Moses and the children of Israel from many animals. Another proof of abrogation the author gives for the Jews, is that Adam married son to daughter, and that became prohibited by God upon Moses. [<— v. 3, pg 295]

The author presents the claim that according to Tawātur, Moses said, "Hold onto the sabbath forever" (تمسكوا بالسبت أبدا), or elsewhere, "Hold onto the sabbath for as long as the heavens and the earth" (تمسكوا بالسبت ما دامت السموات والأرض) [<— v. 3, pg 301] [These are probably Arabic translations for the Hebrew. The author doesn't quote it as "my shariah is everlasting," as others do, which means he probably checked it's in the Bible. His bible references above about Noah,

and below, show he is probably using a source. Here is the verse in the Exodus 31:16 - “The people of Israel must keep the Sabbath day by observing it from generation to generation. This is a covenant obligation for all time.” And in Hebrew: ( ושמרו בני־ישראל את־השבת לעשות את־השבת לדרתם ברית **עולם**) ]. He responds that Tawātur was not established in transmitting the Torah because of Nebuchadnezzar (بخت نصر). And even if we accept Moses said it, the statement is for emphasis (مبالغة) and not actually permanence.

The author then gives 4 examples from the Bible where similar statements are made that aren’t taken to mean everlastingness (لفظ التأبيد في التوراة قد جاء للمبالغة دون الدوام في صور).

[1] God says regarding the slave, that he is to be used for six years, then freed on the seventh year. If he refuses to be freed, then pierce his ear and he is to be used forever ( قوله في العبد: إنه يستخدم ست سنين ثم يعتق في السابعة فإن أبى العقت: فلتُثقب أذنه، ويستخدم أبداً) [this corresponds with the laws on acquiring a Hebrew slave, given in Exodus 21:2-6 and Deuteronomy 15:12-17, where the “slave in perpetuity” is referred to in Hebrew as (וַעֲבָדוֹ **לְעֹלָם**) (“…his slave forever”) in Exodus 21:6 and (לְךָ עֶבֶד **עוֹלָם**) (“…for you a slave forever”)]. [<— v. 3, pg. 305].

[2] It is said regarding the cow that the Jews are ordered to sacrifice (**قيل** في البقرة التي أمروا بذبحها) [author is referring to the story in Qur’an 2:67, which means he has connected it to the Torah passage noted below], that that is an everlasting practice (يكون ذلك سُنَّة أبداً), yet this is no longer practiced. [The author’s wording (قيل) makes clear that it’s everlastingness is said about it (by Jews), not that the text itself says that the practice is to be done forever. The editor ties this commandment to Deuteronomy 21, since it deals with cases of an unsolved murder where the body is found in a field, and the elders of the nearest town to the body need to take a heifer to an

uncultivated valley and sacrifice a heifer while taking an oath of innocence. There is no mention of it being an everlasting command. However, this is likely a reference to the Red Heifer sacrifice and burning noted in Numbers 19, which is noted as an eternal command]

[3] The author says that the Jews are commanded in the story of the blood of passover ( أمروا في قصة دم الفصح) to sacrifice a camel and eat its roasted meat, without breaking any of its bones. This is supposed to be for the Jews an everlasting law (ويكون لهم هذا سنة أبدا), yet it is no longer practiced the author points out. [The editor ties this to Deuteronomy 16, where the details of the Passover sacrifice are given. The bone being unbroken is not mentioned in this passage, nor is a camel specified, but the text dictates an animal be sacrificed at the Temple and its roasted meat eaten. Deuteronomy 16 doesn't state that this is an "everlasting" commandment, but in the story of the Passover, see Exodus 12:24-27, here it is noted as an everlasting statute: Exodus 12:24: ( ושמרתם את־הדבר הזה לחק־לך ולבניך **עד־עולם**) ("And you shall observe this command as a law for you and your descendants everlasting"), referring to the Passover sacrifice. Al-Rāzī correctly suggests, then, that laws in the Bible sometimes specify eternality but are not followed eternally, and in this case because the temple was destroyed where the sacrifice is done. Note that a search on Safaria for "everlasting statue" will yield other similar passages. Citations also present in Christian-Jewish debates, see: http://christianthinktank.com/finaltorah.html]

[4] The author than says that in the second book (السفر الثاني) [referring to Exodus], it says, ( قرّبوا إلي كل يوم خروفين، خروفا غدوة وخروفا عشية: قربانا دائما لاحقا بكم) [This is a summary of Exodus 29:38-42, where God commands that two lambs be offered in the morning and evening: "It shall be a continual (תָּמִיד) burnt-offering throughout your generations at the entrance of the tent of meeting

before the LORD, where I will meet with you, to speak there unto thee". Note the editor mistakenly places this passage in Exodus 31]

The author says that these four case involve wording of everlastingness, yet don't actually mean that. And the same would apply then about the aforementioned issue [of Moses stating the Sabbath was everlasting law] [<— v. 3, pg 306]

---

**الكتاب: التحقيق والبيان في شرح البرهان في أصول الفقه**

**المؤلف: علي بن إسماعيل الأبياري (المتوفى 616 هـ) [Maliki]**

(تنبيه) / ورد على الغلاف عام الوفاة 618 لكن المحقق رجح في المقدمة أن الوفاة عام 616

المحقق: د. علي بن عبد الرحمن بسام الجزائري

أصل التحقيق: أطروحة دكتوراة للمحقق

الناشر: دار الضياء - الكويت (طبعة خاصة بوزارة الأوقاف والشؤون الإسلامية - دولة قطر)

الطبعة: الأولى، 1434 هـ - 2013 م

عدد الأجزاء: 4

[Author's work is a commentary on al-Juwaynī's work al-Burhān, and on the topic of pre-Muhammadan law, the author disagrees with al-Juwaynī, showing how this debate was lively. He discusses the topic in v. 2 pgs 417-431]

Al-Juwaynī's positions is that even though it's not rationally impossible that we are obliged to follow pre-Muhammadan law, our religion doesn't obligate this on us based on the fact none of

the Companions did so, etc [see reasons given in his text] [v. 2, pgs. 419-420] The author then takes al-Juwaynī to task. As for why the Companions didn't refer to the prior scriptures, it's because this material has been transmitted so badly that it wouldn't classify as mutawātar or aḥād, and it would not give us knowledge or even probable knowledge (لا يفيد علما ولا ظنا) [<— v. 2, pg 420]. Juwayni says that if those who uphold pre-Muhammadan law accept that the pre-Muhammadan sources are inaccessible, than they pretty much agree that you can't use it, even if "in theory" you can [i.e. the debate is purely theoretical]. The author disagrees, and says that if the Qur'ān or Prophet say that something was a law of prior communities, than it becomes binding on us [i.e. it is practical], e.g. the following verses that he lists ( **وأخذهم الربا وقد نهوا عنه وأكلهم أموال الناس بالباطل**) [al-Nisā': 161], or (**... وكتبنا عليهم فيها أن النفس بالنفس**) [Qur'an 5:45] or ( **إن الله يأمركم أن تذبحوا بقرة**) [Qur'an 2:67], and (**فقلنا اضربوه ببعضها كذلك يحي الله الموتي**) [Qur'an 2:73] [Last two verses are probably referring to the stories regarding these verses, because there is no ruling to be followed in the verses unless you include the story, which is that a man was killed by someone who would inherit from him, and so Moses commands that they slaughter a cow, and then the murdered person arises to inform who it was… See Ibn Hazm notes and also al-Rāzi notes on Deuteronomy 21] [<— v. 2, pg 421]. Al-Juwaynīs says that if God wanted us to follow pre-Muhammadan law, he would have told us where the alterations in the scriptures were so that they would become usable. The author responds that this argument is weak, because humans have no right to demand that God do these things for us. He can do as He pleases. [v. 2, pg 422].

Juwaynī claimed that there were Rabbis who converted to Islam and knew what was altered of the scriptures, and thus their words about the scripture would have been authoritative proof (which was not taken by the ummah). ُThe Qur'an itself testified that they had knowledge of the

scriptures, like ‘Abd Allah b. Salām Or other examples like Ka’b al-Aḥbār from the time of . Umar, who was an expert in the knowledge of religions. The author states his skepticism over‘ whether these converted Rabbis could conclude a law from the Torah, since the text was altered before them. However, he says that if one of them came to certainty regarding a matter, and this was transmitted to us, then this would have the same status as a matter of ijmā’ that was transmitted through āḥād channels [where the converted Rabbis like Ka’b al-Aḥbar and ‘Abd Allāh b. Salām would make up the ijmā’], and this, at least for the author, would be sufficient .وإن تحقق من أحدهم العلم بحقيقة الحكم، ونقله إلينا، (for using in matters that only require probably evidence تنزل ذلك عندنا منزلة نقل الإجماع على ألسنة الآحاد. والصحيح عندنا الاكتفاء به في مسائل الظنون>] (— v2, pg 422- ]**VERY INTERESTING**] [423

The author then in the sharḥ gives evidence for why pre-Muhammadan law is binding on us (since Juwayni only presents [Quran 3:68], [Quran 22:78] and [Qur’an 42:13] as evidence for his opposition). He cites as examples of authentic reports, the case where the Prophet is asked about one who sleeps through a prayer, and he replies that, “whoever sleeps through a prayer or forgets it should pray it when he remembers, for verily God says, (وأقم الصلوة ذكري),” where the Prophet is here commanding with something that Moses was commanded with. Another example is when the Prophet commands (كتاب الله القصاص) in the story of the broken tooth and الرُّبَيّع بنت مُعَوّذ , a reference to the Torah injunction recorded in the Qur’an, which mentions the tooth specifically [<— v2, pg 424-425]. The author states that those who try to interpret the Prophet’s statements as referring to [Qur’an 2:194] (فمن اعتدى عليكم…) are turning away from what is most apparent/literal in favor of something interpretive. [**me: interesting point the author notes**]

The author gives as another proof the following: inductive reasoning leads us to the conclusion that most of the laws of the prior shariahs have continued with us, and the the disagreements are only in a few of the periphery matters, its proportion [that of the laws where there are differences] to our shariah is the proportion of abrogated matters in our shariah to matters that are not abrogated. This then leads us to the conclusion that our laws are the same [as those that came before], except in matters that have been abrogated and where disagreement has occurred. (فإن الاستقراء يرشدنا إلى أن أكثر أحكام الشرائع المتقدمة مستمرة علينا. وإنما الاختلاف في فروع قليلة، نسبتها إلى شريعتنا نسبة المنسوخ من شريعتنا إلى الثابت فيها، فيرشد ذلك إلى استواء الأحكام إلا في مواضع النسخ وتحقق المخالفة) [<— v. 2, pg 425] [**me: important acknowledgement**]

The author says that the shariah is here for the benefit of people (لمصالح الخلق) given the verse, (وما أرسلناك إلا رحمة للعالمن) [Anbiya: 107], which is the same for other prophets as well. Given that what people need and what benefits them have been shared and continue with us, it makes sense that the laws have continued as well. [<— v 2, pg 425-426]

The author admits though, that the topic is based on probable evidence and that there can be no absolute answer (والمسألة ظنية، ولا سبيل إلى القطع فيها على حال) [<— v 2, pg 426] [**an important admission**]

On whether the Prophet followed a shariah prior to receiving revelation, the author makes it clear that it is a matter that is not relevant to Uṣūl, nor for understanding aḥkām, as the only thing that matters is what the Prophet did after he became a prophet. It makes no difference whether one knows or does not know what the prophet followed before he received revelation. He discusses it

because it's been discussed by others, not because it has any relevance. al-Qāḍī (al-Bāqillānī) argued the Prophet didn't follow a shariah because it was a matter that would've been important and would have been transmitted in mass. The author doesn't hold that the state of the Prophet prior to revelation would have warranted massive attention that it be transmitted in the way al-Qāḍī would expect, given the significance of all that came like the Qur'an superseding anything before revelation. And so an absence of transmission about this would not point to the Prophet not having followed any religion before, since this could either not have been known, or have been known by singular individuals, or have been known by people in large numbers reaching tawātur, but was not transmitted as such because people didn't feel the need to. [<— v 2, pg 426-430] Juwaynī argued that if the Prophet did **not** follow a religion, that this would have warranted mass transmission just as though he did follow a religion, and given that we have no knowledge of either case, we accept this to be an unusual case special to the Prophet, where an answer is not available. The author disagrees with Juwaynī's assessment that both of these possible states of the Prophet equally merited being transmitted in mass, because the former case, where the Prophet followed a particular religion, would have warranted more attention from those who were part of that religion. The author concludes however, that the matter is unknowable (agreeing with Juwaynī), but upholds that the Prophet, like all the other Prophets, could not have associated partners with God. [<— v 2, pg 430-431]

—

The author brings up shar' man qablana in another interesting discussion in Uṣūl al-fiqh, which is whether the ijmā' of previous communities was binding just like ours. In Al-Juwaynī's text [i.e. not the author's sharḥ], al-Juwayni reports that some claimed that the special status of ijmā'

is unique to this ummah, because this ummah was favored over all others as attested to in the Quran [<— v. 2, pg 913-914]. Others said there is no difference between our community and those before and so their ijmā' would be equally binding [<— v. 2, 914]. al-Qāḍī postponed judgment on the matter, since no conclusive evidence (موجب عقلي) proves that ijmā' of our ummah is the same or different as the previous communities, and we have no transmitted evidence confirming that our ijmā' is the same as that of prior communities [<— v. 2, pg 914-915]. al-Juwaynī was of the opinion that when those who give ijmā' give their consensus that a matter is absolutely certain (إذا قطعوا), than that means their evidence relies on a proof that was certainty-yielding (حجة قاطعة) [and thus true on its own merits], and this is how things normally happen in the world (في قضية العادات), barring exceptional circumstances [i.e. it applies to previous communities too], but if these previous communities based their consensus on uncertain evidence (على مظنون), then al-Juwayni agrees with al-Qādī's conclusion of postponing judgment, since for al-Juwayni, we are unaware whether for the prior communities if those who opposed consensus were rebuked as is established in our religion [since this would imply the evidence was of such a high status that it invoked in the participants of the ijmā' enough certainty that they believed unanimously that anyone who opposed the consensus was censurable, see same text v. 2, pgs 830-831 for al-Juwayni's explanation of this condition of censurability - التبكيت - of the opposition to ijmā' for cases where the ijmā' is based on probable evidence] [<— v. 2, pg 915-916]. In the sharḥ, the author inquires whether this topic has any relevance or practical importance to the shariah, or if it is purely a matter of historical inquiry (منزلة علم التواريخ), like the issue of what the Prophet practiced before receiving revelation. If it is practical, the author says, than it warrants discussion by the person who engages in Uṣūl. Its practicality, the author argues, is tied to whether one believes pre-Muhammadan law is binding on us. If one does not, than it is

not needed to look into this topic. If one does hold it to be binding on us, as is the author's position according to what is most likely (مغلبا على الظن), than it is important for us (i.e. we need to) to figure out whether their ijmā' counted, he says ( والذي ثبت عندنا مغلبا على الظن أن شرع من قبلنا شرع لنا على حسب ما قررناه **فنفتقر** في هذا البحث عن إجماعهم، هل كان حجة أم لا؟). [<— v. 2, pg 914] He notes the positions that al-Juwayni presents in his text. al-Qāḍī holds the position to reserve judgment because he sees the evidence for ijmā' being a legal proof that our shariah informs us that this ummah has this special status, and not because it is from the natural order of the world (العادة). God has not similarly mentioned to us a similar status to previous communities [<— v. 2, pg 914-915]. As for those who say the ijmā' of previous communities works in the same way as ours, al-Abyārī suggests it is probably because they see it as part of the natural order (العادات), in that the group will only agree on evidence that is certainty-yielding [<— v. 2, pg, 915]. Al-Juwayni's position separates between whether the consensus is based on certainty-yielding evidence or probable evidence. al-Abyāri adds that according to al-Juwayni's discussion elsewhere of ijmā' based on probable evidence, there are additionally requirements that al-Juwaynī would require [which he doesn't mention here, but does so on v. 2, pgs 865-867] in addition to the need for opposition to be censured, namely that some time need pass and the legal issue that the ijmā' pertained to repeat itself over time (تكرار الواقعة), such that the ijmā' be tested until it reach a point of being incontestable ijmā', though the ijmā' would be based not on certainty-yielding evidence, but very strong evidence. These requirements would then need to be fulfilled when evaluating the ijmā' of prior communities to see if they hold. al-Abyāri agrees with al-Juwayni that it is unknown whether there existed censorship for the one who rejected ijmā' in prior communities [<— v. 2, pg 916]. al-Abyārī's own position is that of postponing judgment in the matter, because we can only ascertain the validity of a claimed ijmā' when those

who are in a position of making a consensus make such a claim and we can evaluate that it is satisfactory. Additionally, it has not been established for the author, as for al-Qāḍī, whether it was impossible for the previous ummahs to err [together] in their understanding of the law. If that is established, than the author accepts that the ijmā' of this ummah and the prior ones are the same [<— v. 2, pg 917].

[New discussion, also noted in al-Bahr al-Muḥīṭ of al-Zarkashi] [Ask Dr. Ahmed to verify this information, if it's what the author meant. This was a difficult passage for me. Though I was very conservative in the way I presented the material so it would be accurate.]

_____

Wael Hallaq's statement that Shar' man qablana is not mentioned in Shātibī's al-Mawāfaqāt is not true. It is there. The claim that it is not relevant for positive law is not true, as shown by its inclusion in books dealing with *jadl*.

See pg. 171 of Ibn Taymiyya's (اقتضاء الصراط المستقيم), where he says that ( شرع من قبلنا ليس شرعا لنا ما لم يرد في شرعنا ما يؤيده)

---

**الكتاب: روضة الناظر وجنة المناظر في أصول الفقه على مذهب الإمام أحمد بن حنبل**

**المؤلف: أبو محمد موفق الدين عبد الله بن أحمد بن محمد بن قدامة الجماعيلي المقدسي ثم الدمشقي الحنبلي، الشهير بابن قدامة المقدسي (المتوفى: 620هـ)**

الناشر: مؤسسة الريّان للطباعة والنشر والتوزيع

الطبعة: الطبعة الثانية 1423هـ-2002م

عدد الأجزاء: 2

[The author categorizes it as the first topic under "disputed sources of law" (أصول مختلفة), the others being (الاستحسان), (قول الصحابي), and (الاستصلاح). He treats the topic in volume 1, pgs 457-465. He presents the positions, the arguments against it and for it.] The author's own opinion is that because there is no trusted means of learning about the prior shariahs, given that God has told us their texts have been altered and the Prophet prohibited 'Umar from referring to the Torah and he also didn't tell his Companions to refer to it (e.g., he didn't tell Mu'ādh to do so), we therefore only refer to things from their shariah that are established in our own, like the verse of qiṣāṣ, the practice of stoning (الرجم) [i.e. a clear admission that it is from their shariah] and other things that are noted in the Qur'an and **Sunnah**. It is not allowed to go to ijtihād if this information about prior shariahs is present in our sources (فلا يجوز العدول إلى الاجتهاد مع وجوده) [<— v. 1, pg 465]

The editor of the work (شعبان محمد إسماعيل) says that scholars have derived many rulings based on shar' man qablana, including the prohibition of sorcery, the soundness of offering a benefit as a dowry, the etiquettes of adjudicating, **and other matters taken from books of tafsīr** and Qur'anic stories. ( وقد استنبط العلماء العديد من الأحكام الشرعية المترتبة على هذا الأصل: كحرمة السحر، وصحة جعل المنفعة صداقًا للمرأة، والآداب التي ينبغي على القاضي أن يتحلى بها، أخذًا من قصة داود عليه السلام، وغير ذلك مما ورد في كتب تفسير آيات الأحكام، وقصص القرآن) [**me: further evidence that tafsīrs are a source of law. Also,**

**look into sorcery and the other matters noted by the editor. The editor also says he has given examples of this in his research called (**"الإسلام وموقفه من الشرائع السابقة"**),** [<— v. 1, pg 465-466]

---

**الكتاب: الإحكام في أصول الأحكام**

**المؤلف: أبو الحسن سيد الدين علي بن أبي علي بن محمد بن سالم الثعلبي الآمدي (المتوفى: 631هـ)**

المحقق: عبد الرزاق عفيفي

الناشر: المكتب الإسلامي، بيروت- دمشق- لبنان

عدد الأجزاء: 4

The author categorizes (الاستحسان), (مذهب الصحابي), (شرع من قبلنا), and (المصلحة المرسلة) as sources that are considered legal proofs by some but in fact are not (ما ظُنَّ أنه دليل وليس بدليل) [v. 1, pg 158].

In the discussion on Naskh, the author names the particular Jewish groups who hold which position [see if this was done before?]: Those Jews who said Naskh was impossible rationally and also based on received knowledge (عقلا وسمعا) were the (**الشَّمْعُنِيَّةُ**), those who rejected it based on received knowledge and not rationally (سمعا لا عقلا) were the (**الْعَنَانِيَّةُ**), and those who said it was possible rationally and that it happened according to received knowledge as well ( جوازه عقلا ووقوعه سمعا) were the (**الْعِيسَوِيَّةُ**), who accepted the Prophethood of Muḥammad (SAAS), but only to the Arabs [note that this last case doesn't look like an actual case of accepting naskh, since it's not like they would hold that the Arabs before the Prophet held onto Jewish law]. [<— v. 3, pg 115] He notes as an argument for the Jews ( وأما بالنسبة إلى منكر ذلك من اليهود فيدل عليه أنه ورد في

…التوراة), separate from the argument he has for the Muslims [**indicating that it's important for them to make this case with the Jews, since they are the predecessors**], that the Torah allows for naskh. He cites God's address to Noah after he left the ship that made animals lawful for him and his progeny to eat, just as plants, provided it be free of blood. And later many animals were then prohibited [<— v. 3, pg 117]. Other examples include: work was allowed on the Sabbath but prohibited on Moses and his people, that circumcision on adults was allowed in the shariah of Abraham but became obligated on the day of birth for Moses, and marriage of two sisters was allowed in the shariah of Jacob but prohibited afterwards. [<— v. 3, pg 118]. [**note that there are back and forths to this evidence that the author(s) present, I'm just presenting the interesting content about the Torah, not the responsa, counter responsa and other arguments. I don't want to give the false impression that the debate is limited to my limited presentation of it**].

The Jews will respond, if they accept that naskh is rationally possible, that we know Moses said through tawātur means that (**هَذِهِ الشَّرِيعَةُ مُؤَبَّدَةٌ عَلَيْكُمْ مَا دَامَتِ السَّمَاوَاتُ وَالْأَرْضُ**) and it's also been narrated from him (**الْزَمُوا يَوْمَ السَّبْتِ أَبَدًا**). [<— v. 3, pg 120] The author says that the veracity of these statements have not been proven. It's been said that Ibn al-Rāwandī fabricated these to discredit the Prophet Muhammad. Also, Ka'b al-Aḥbār, Ibn Salām, Wahb b. Munabbih and others who were familiar with the Torah and became Muslim did not mention it. If this statement was in fact made by Moses, this would have been the strongest proof the Jews would have had against the Prophet, but this is not transmitted from them ( ولو كان ذلك صحيحا لكان من أقوى ما يتمسك به اليهود في زمن النبي صلى الله عليه وسلم في معارضته). Additionally, the author says that the Jews are in disagreement as to what was said by Moses, and some say he said the following ( **إِنْ أَطَعْتُمُونِي لِمَا**

(أَمَرْتُكُمْ بِهِ وَنَهَيْتُكُمْ عَنْهُ ثَبَتَ مُلْكُكُمْ كَمَا ثَبَتَتِ السَّمَاوَاتُ وَالْأَرْضُ), which doesn't bar the possibility of naskh [I could only find bible passages about if Israel follows the commands of God, they will be blessed, not forever though]. Additionally, if we accept what was transmitted about Moses, it may be that he was referring to tawḥīd when he referred to the shariah, or that he meant by (مؤبدة) that it was permanent until it was abrogated by another prophet [<— v. 3, pg 124]. If we accept these interpretations, then there would be contradiction with the certainty-yielding miracles that the Prophet came with that verified his message and truthfulness and his abrogation of prior shariahs. Furthermore, the language of "forever" (التأبيد) comes elsewhere in the Torah, but without meaning everlastingness. For example, ( إِنَّ الْعَبْدَ يُسْتَخْدَمُ سِتَّ سِنِينَ، ثُمَّ يَعْتِقُ فِي السَّابِعَةِ، فَإِنْ أَبَى الْعِتْقَ فَلْتُثْقَبْ أُذُنُهُ وَيُسْتَخْدَمْ أَبَدًا) , and regarding the cow that they were commanded to slaughter, ( هَذِهِ سُنَّةٌ لَكُمْ أَبَدًا), or the statement (قَرِّبُوا كُلَّ يَوْمٍ خَرُوفَيْنِ قُرْبَانًا دَائِمًا) [the author doesn't explain them as al-Rāzī does. **Check if other books mention these examples, to see who was the first to mention these examples**].

The response to the 'Īsāwiyyah are the following verses [since they accept the message of the Qur'an and the prophethood of the Prophet]: (يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا), and ( وَمَا أَرْسَلْنَاكَ إِلَّا كَافَّةً لِلنَّاسِ) and describing his message (هَذَا هُدًى لِلنَّاسِ). And also the words of the Prophet, ( بُعِثْتُ إِلَى الْأَحْمَرِ وَالْأَسْوَدِ) and (بُعِثْتُ إِلَى النَّاسِ كَافَّةً) and (لَوْ كَانَ أَخِي مُوسَى حَيًّا لَمَا وَسِعَهُ إِلَّا اتِّبَاعِي), and the fact that his message was sent to the people ofthe world, seeking their entrance into Islam, and that Arabs and non-Arabs were fought who rejected his message. [<— v. 3, pg 125]

—

[Author discusses topic of pre-Muhammadan law in v. 4, pgs 137-148]

Some like Abū al-Ḥusayn al-Baṣrī rejected that the Prophet followed the shariah of a prophet before he received revelation. Those that accepted it differed as to which shariah he followed. Some accepted its rational possibility but postponed judgment, such as al-Ghazāli and al-Qāḍī ‘Abd al-Jabbār, and this is the position of the author [v. 4, pg 137] [he presents the argumentس of this first debate, regarding the Prophet before revelation, in v. 4, pgs. 137-139].

As for after prophethood: the Hanafīs (أصحاب أبي حنيفة), one of Aḥmad’s reported positions, and some of the Shāfi’īs (بعض أصحاب الشافعي) held that the Prophet followed what was authentic from the prior shariahs that was revealed to him directly, not from their altered books or what was transmitted from their Rabbis. The ‘Asharī’s and Mu’tazila rejected this, **and this is the position of the author**. Four proofs that he didn’t follow their laws include: [1] the hadith of Mu’ādh which didn’t mention the other books or the sunnah of the prior Prophets, and the Prophet affirmed Mu’ādh’s responses. [2] If he did, than it would be religiously mandatory for the ummah (من فروض الكفايات) to study the prior shariah, as we do with the Qur’an and akhbār, and the Prophet would’ve referred back to it and not weight for revelation in issues that would occur that were dealt with in prior laws. The Companions would have done the same and sought out transmitters of this material in matters like the issue of ( مسألة الجد), (العول), (بيع أم الولد), (المفوّضة), حد الشرب)), etc, where they did seek out reports of the Prophet. This proves they didn’t follow prior law. [<— v. 4, pg 140] [3] If he was a follower, the shariah wouldn’t be attributed to him, as we don’t attribute his shariah to **his** followers. [4] The Ijmā’ of the Muslims is that the Prophet abrogated prior shariahs, so if he followed it, then he would be an affirmer (مقرّر) and transmitter (مُخبِر) of that shariah, not an abrogator of it (ناسخ), nor a law-producer (مشرّع), which is impossible.

Responses from opposition. As for [1]: “Kitāb” includes the other books, and the Qur’an itself says to follow these books. As for [2]: The Prophet **did** refer back to prior law, as he did in the case of stoning. As for the matters he didn’t refer back to prior law regarding, this was because those laws weren’t based on prior law, or because he only followed prior law when he received revelation regarding it [me: **another more direct response is the hadith from Bukhari that the Prophet would agree with Ahl al-Kitab in matters that were not revealed regarding**]. As for the Companions not searching for this material: what was mutawātir from the prior laws was already known amongst them and so they didn’t need to look for it [**me: strong argument. “Common knowledge” for the Companions was probably more reliable than what someone said about their law**], and because they didn’t follow the aḥād narrations of disbelievers. As for [3]: we attribute the prior laws we follow to him because we learned them through him, even if he didn’t give the laws himself. As for [4], whatever of the Prophet’s shariah disagreed with the prior law, he abrogated, and the laws he followed, he didn’t abrogate. [<— v. 4, pg 141] That’s why we don’t refer to the Prophet’s shariah as abrogating some of the laws that are found in prior to him, like the necessity of Īmān, the prohibition of disbelief, fornication, killing, theft and other matters that our shariah agrees with prior shariahs in [**me: admission of parallel laws**].

The positive evidence for the opposition (as opposed to rejections to the author’s points), include the following:

Verses: ( **إِنَّا أَوْحَيْنَا إِلَيْكَ كَمَا أَوْحَيْنَا إِلَى نُوحٍ**), (**شَرَعَ لَكُمْ مِنَ الدِّينِ مَا وَصَّى بِهِ نُوحًا**), (**ثُمَّ أَوْحَيْنَا إِلَيْكَ أَنِ اتَّبِعْ مِلَّةَ إِبْرَاهِيمَ**), (**إِنَّا أَنْزَلْنَا التَّوْرَاةَ فِيهَا هُدًى وَنُورٌ يَحْكُمُ بِهَا النَّبِيُّونَ**).

As for hadiths: the report about the Prophet referring to the Torah for stoning. [<— v. 4, pg 142]. And the report where the Prophet demanded al-Qiṣāṣ on a broken tooth. [<— v. 4, pg 142-143]. And also where the Prophet cited the verse directed to Moses to give the ruling to make up one's prayers if one slept through a prayer time or forget to pray.

Author's response for the reply to [1] the Mu'ādh evidence: the Qur'anic evidence pointing to the Torah and Injīl will be responded below. But it's not sufficient a reason that the Qur'an points to these things that they not be mentioned, because by that logic the Sunnah and Qiyas [<— should be ijtihād] should not have been mentioned in the report. As for whether the previous books are implied by (الكتاب), this isn't the case because that's not what is understood by the word when it is used in our shariah, and only the Qur'an was studied as diligently by Muslims, not the other books. As for their reply to [2] where they didn't concede that learning pre-Muhammadan law was not a communal obligation, the author responds: there is ijmā' of the Muslims, before the opposition existed, that there is no sin in leaving reference to it for all the mujtahidīn [somewhat unclear: ( **قَوْلُهُمْ: لَا نُسَلِّمُ أَنَّ تَعَلُّمَ مَا تُعُبِّدَ بِهِ مِنَ الشَّرَائِعِ الْمَاضِيَةِ لَيْسَ فَرْضًا عَلَى الْكِفَايَةِ.** **(قُلْنَا: لِأَنَّ إِجْمَاعَ الْمُسْلِمِينَ قَبْلَ ظُهُورِ الْمُخَالِفِينَ عَلَى أَنَّهُ لَا تَأْثِيمَ بِتَرْكِ النَّظَرِ عَلَى كَافَّةِ الْمُجْتَهِدِينَ فِي ذَلِكَ** ) ] [<— v. 4, pg 143]. As for the Prophet referring to the Torah, he did so to prove that he was correct in the knowledge he had that stoning was mentioned in the Torah and to reject the Jews, not to obtain the ruling of stoning. As for their reply that the Companions learned the material that reached them through mutawātir means, this could only be done if they mixed with transmitters of that material and scrutinized it, but we have no transmitted evidence from any of the Companions of this, even when they could have learned this from the Jewish rabbis that converted and were reliable and trusted like 'Abd Allāh b. Salām, and Ka'b al-Aḥbār and others. We have nothing of

the Prophet or anyone of the Umma who asked from them about this material. As for their reply to [3], this is an interpretation that is against the outward, apparent meaning. As for their reply to [4], when our shariah is referred to as an abrogator for the prior shariahs, it is understand that the previous rules are no longer applicable and that he did not follow them. [He also said one more thing about this reply, I didn't understand, but not important.]

As for the verses, the "hudā" that is shared among the prophets is tawḥīd, [<— 4, pg. 144]

[… the other responses are the same as other authors]

As for the verse about following the millah of Abraham, the verse ( **وَمَنْ يَرْغَبُ عَنْ مِلَّةِ إِبْرَاهِيمَ إِلَّا مَنْ سَفِهَ نَفْسَهُ**) negates that, because if we take millah here to mean shariah, than the prophets who didn't follow Abraham's shariah would be described by this verse as foolish, which is not possible. So it must mean tawḥīd, which the prophets did agree on.

As for the verse that says (**يَحْكُمُ بِهَا النَّبِيُّونَ**), it is stated as a descriptive, not a command, and so it doesn't imply that one must follow the Torah. If we take it as a command, then it means what is shared between all the Prophets, which must be tawḥīd. [<— v. 4, pg 146]

The author's opinion is that the Prophet did not follow prior shariah, but came with revelation that may have renewed it (لم يكن متعبدا بشريعة من تقدم إلا بوحي مجدد). [<— v. 4, pg 148]

**الكتاب: المسودة في أصول الفقه**

**المؤلف: آل تيمية [بدأ بتصنيفها الجدّ: مجد الدين عبد السلام بن تيمية (ت: 652هـ) [Grandfather of Ibn Taymiyya] ، [وأضاف إليها الأب، : عبد الحليم بن تيمية (ت: 682هـ) ، ثم أكملها الابن الحفيد: أحمد بن تيمية (728هـ)**

المحقق: محمد محيي الدين عبد الحميد

الناشر: دار الكتاب العربي

عدد الأجزاء: 1

[Discusses on pgs. 182-186, and again 193-194]

The author discusses the two positions for the Hanbalis. One is that we follow what was not abrogated of the pre-Muhammadan law, but not because we are following those who came before, but because it became the shariah of our Prophet [<— pos 183-184]. We can only establish that it was a shariah for them either through the Qur'an, a report from the Prophet (بخبر من جهة الصادق), **or through mass transmission** (بنقل متواتر), but **not** through referring to their books. The author says this is what Aḥmad leaned towards (أومأ أحمد إلى هذا) in the following cases: In the narration of Ṣāliḥ, Aḥmad ordered the slaughter of a ram (كبش) and donation of its meat for the one who vowed to sacrifice his son, citing the verse (وفديناه بذبح عظيم) [Surat al-Ṣāffāt: 107], which is from the shariah of Abraham. In the narration of Abū al-Ḥārith, al-Athram, Ḥanbal, al-Faḍl b. Ziyād, and 'Abd al-Ṣamad: Aḥmad was asked about (القرعة) and he justified it based on two verses, (فساهم فكان من المدحضين) [surat al-Ṣāffāt: 141] and (إذ يلقون أقلامهم) [surat Āl 'Imrān: 44], from the shariahs of Yunus and Maryam respectively. In the riwāyah of Abū al-Ḥārith, Aḥmad said (لا يقتل مؤمن بكافر), but when asked about the verse (النفس بالنفس), he said that this verse didn't apply in this case (ليس هذا موضعه), since 'Alī b. Abī Ṭālib reported from a ṣaḥīfa (لا يقتل مؤمن بكافر), and 'Uthmān and Mu'āwiya both said (لم يقتلوا المؤمن بكافر). The author says this shows that the outward meaning of the verse would have applied to both us and those before us,

but when Aḥmad brought up the hadith in the ṣaḥīfa, he negated that [default] understanding. If it wasn't what the verse implied [that we are also obliged to follow it], then Aḥmad wouldn't have cited this, but instead said, "That [rule in the verse] is only for those who came before us." The author states that this riwāyah is what Abū al-Ḥasan al-Tamīmī goes with. [<— pgs. 184-185]

The author also mentions another riwāyah/position for Aḥmad, that the Prophet didn't follow prior law, unless his shariah affirmed it explicitly, in which case it would be a new law (فيكون شرعا له مبتدأ). Aḥmad leaned towards this position in a separate narration of Abū Ṭālib, in which he explicitly says that (النفس بالنفس) verse is referred to the Jews, citing (وكتبنا عليهم فيها) as referring to the Torah, and than saying that for us is the verse (كتب عليكم القصاص في القتلى الحر بالحر والعبد بالعبد الأنثى بالأنثى) [2:178] [<— 185]

The author seems to uphold it, and says that we can know prior law through solitary reports from the Prophet, as learning it from the People of the Book is disputed (والصحيح أنه يثبت بأخبار الآحاد عن نبينا صلى الله عليه وسلم، وأما الرجوع إلى ملة أهل الكتاب ففيه الكلام). [<— 186]

He says elsewhere that the Prophet didn't follow any one particular prophet's shariah, but all of theirs provided it was not abrogated [<— pgs: 193-194].

—

Regarding the Jewish claim that Moses said (**شريعتي مؤبدة ما دامت السموات والأرض**), this is either a lie, or if true, its meaning is true until another truthful person comes with a miracle who establishes his prophethood like Moses did. [<— 219]

**الكتاب: تخريج الفروع على الأصول**

**المؤلف: محمود بن أحمد بن محمود بن بختيار، أبو المناقب شهاب الدين الزَّنْجاني (المتوفى: 656هـ)[Shafi'i]**

المحقق: د. محمد أديب صالح

الناشر: مؤسسة الرسالة - بيروت

الطبعة: الثانية، 1398

عدد الأجزاء: 1

Very short discussion. The author states that it is not binding on us according to al-Shāfi'ī ( شرع من قبلنا ليس شرعا لنا عند الشافعي), given the verse (لكل جعلنا منكم شرعة ومنهاجا), which is his position. Also, the Companions never referred to prior scripture in issues that would arise. He says that it's been reported that Abū Ḥanīfa's position was that anything in the Qur'ān that is from the prior shariahs is law for us, because there would be no benefit for mentioning it otherwise, and as is suggested by the verse (**ثُمَّ أَوْحَينَا إِلَيْك أَن اتبع مِلَّة إِبْرَاهِيم حَنِيفا**) and ( **إِنَّا أنزلنَا التَّوْرَاة فِيهَا هدى وَنور يحكم بهَا النَّبِيُّونَ الَّذين أَسْلمُوا**) [<— pgs 369 to 370]

The author then gives the following two issues that are derived on this position [which is limited]:

[1] If someone swore to sacrifice his child, his oath would not count according to us [the Shāfi'is], as there would be no basis in our shariah. For the Hanafis, the oath counts based on Abraham.

[2] Uḍḥiya is not wājib for the Shafi'is, but for the Ḥanafīs it is, because the Quran mentions about Abraham: (**قل إن صَلَاتي ونسكي ومحياي ومماتي لله رب الْعَالمين لَا شريك لَهُ وَبِذَلِك أمرت**), and so a command (الأمر) in Abraham's shariah is a command in our own. [pgs. 370-371]

---

**الكتاب: التحصيل من المحصول**

**المؤلف: سراج الدين محمود بن أبي بكر الأرْمَوي (المتوفى: 682 هـ)**

دراسة وتحقيق: الدكتور عبد الحميد علي أبو زنيد

أصل الكتاب: رسالة دكتوراة

الناشر: مؤسسة الرسالة للطباعة والنشر والتوزيع، بيروت - لبنان

الطبعة: الأولى، 1408 هـ - 1988 م

عدد الأجزاء: 2

[Topic appears in a section of the book dedicated to (الكلام في الأفعال), which deals with topics related to the Prophets's actions and what that signifies for law, this topic appears as the last of 4 topics, which deal with issues like whether prophets can sin (and if so, what types of sins) and also how the actions of the Prophet signify or don't a religious requirement to do the same][Author opposed to it]

Did the Prophet follow a shariah before becoming a Prophet? Some say he didn't, because this wasn't known about him, whereas the opposite - that he did not follow a shariah - would not have been a (بدع) for his people. Another position is that he did, because the prior shariahs were still open in their call to be followed, and because he ate meat [which shows that without objective morality, the fuqahā' saw this as wrong], rode animals, and circled the Ka'ba. The first group will respond that the call of the other religions was not still open to all, which is what is meant by (زمان الفترة), that riding animals and eating their meet can be understood as good rationally, and circling the Ka'ba is not a prohibited matter without a shariah. A third group postpones judgment [<— v. 1, pgs. 442-443].

As for after he became Prophet: most of the Mu'tazila and many fuqahā' said he didn't. Some said he did follow prior law except what was abrogated with evidence. Some disagreed whose shariah he followed.

The author states: if what is meant by the Prophet following a prior shariah that God revealed to him laws that were in their totality (كلاً) or partially (بعضًا) the same as the laws of a prior shariah, than this is wrong (باطل), because our shariah contradicts the shariah of those who came before in many laws [**me: his perspective on similarities/differences is different than al-Abyārī**]. It also cannot mean that God commanded him to seek out their laws from their books. This is also wrong (باطل) because if he did, he wouldn't have waited for revelation in a situation and would have researched hard for this material, since he didn't know that that situation was not covered in prior law, and yet we have no knowledge of him doing this (عدم اشتهارها منه). He didn't consult this material because it is not known about him. Also, he was angry when 'Umar had a sheet of

the Torah, and says Moses would have followed him if he were alive. As for him referring to the Torah in the stoning case, this was not to establish a matter of shariah, since he didn't refer to it in any other case, and because the text was altered to him, and because the statement of the person reporting this to him would not have sufficed categorical knowledge (لم يفد العلم). Rather, this was to prove the point to them when they made a claim about the issue. [<— v. 1, pg 443]

One might say that it is not necessary that the Prophet refer to these sources, because the transmission of these laws through tawātur means meant there was no need to refer to their books, and also since solitary transmission (نقلها آحاداً) couldn't be accepted given they are not Muslims. The author responds that it is possible that texts that give law (متن الدلائل) be transmitted tawātur, but the second step of deriving law (الاستدلال) requires one to engage in detailed investigation [of a matter], and so it would have been known about the Prophet that he did such investigation and research [me: but did he (PBUH) frequently do this with the Qur'an, or just cite it?]. Furthermore, if the Prophet followed prior shariah, than the scholars across the ages (علماء الأعصار) would have referred back to these books because of the obligation to do so, but since there was an absence of this from them, this negates its obligation. It would have been a religious obligation on us to preserve this material as was done with the Qur'ān and Akhbār [me: maybe Muslims did fulfill this obligation, but by preserving isrā'īliyyāt]

Furthermore, the Prophet said Mu'ādh was correct when he allowed for ijtihād only after the Qur'an and Sunna, and he would've needed to refer to the prior shariahs before doing ijtihad if it were obligated. The word Kitāb refers to Qur'an as it is first understood. If one says the Qur'an implies referring to prior law, this is negated since we know Mu'ādh didn't study the Torah and

Injīl, nor did he know how to differentiate the altered material from the unaltered. [<— v 1, pg 444]

As for the verse (إنا أنزلنا التوراة فيها هدى ونور يحكم بها النبيون): not all the prophets gave law with all the Torah, and so what is intended is that all of them gave law (حكموا) with some of what was in it, OR some of them gave law with all of what was in it.

The author also responds about the other verses ( فبهداهم اقتده), (إنا أوحينا إليك كما أوحينا إلى نوح والنبيين (من بعده), (أن اتبع ملة إبراهيم), (شرع لكم من الدين ما وصى به نوحا [<— v 1, pg 444-445]

—

Author deals with Naskh as other authors have: how the Torah has cases of abrogation of law, issues with the claim that Moses said his law was everlasting law (Nebuchadnezzar stopped the Jews from reaching tawātur, and even if it were true the author cites the examples given by Fakhr al-Dīn al-Rāzi earlier that show ‘everlasting’ doesn’t actually mean forever in the Torah) [<— v 2, pg 10-13]

———

**الكتاب: العقد المنظوم في الخصوص والعموم**

**المؤلف: شهاب الدين أحمد بن إدريس القرافي (626 - 682 هـ)**

دراسة وتحقيق: د. أحمد الختم عبد الله

الناشر: دار الكتبي - مصر

الطبعة: الأولى، 1420 هـ - 1999 م

عدد الأجزاء: 2

The author says, as all the others do, that one shariah can abrogate another, as the Muhammadan shariah (الشريعة المحمدية) abrogated the Sabbath, (الشحوم), and other matters. [<— v. 2, pg 85]

**الكتاب: الفروق = أنوار البروق في أنواء الفروق**

**المؤلف: أبو العباس شهاب الدين أحمد بن إدريس بن عبد الرحمن المالكي الشهير بالقرافي (المتوفى: 684هـ)**

الناشر: عالم الكتب

الطبعة: بدون طبعة وبدون تاريخ

عدد الأجزاء: 4

[It's a combination of fiqh/Uṣūl, so it's more relevant in chapter 2. He assumes prior shariah from the Qur'an is binding on us as is evident from his use of some Quranic verses about prior ummahs to derive a rule, but these are examples relevant for chapter 2. Below is something relevant for this chapter.]

Author notes in a separate discussion (not related to this topic) that in the stoning case, the Prophet didn't believe in the authenticity of the Torah, but his reference of the stoning verse was to show a proof against the disbelievers and display their lies and fabrications. [<— v 3, pg 126]. The prophet stoned them because of revelation that reached him separately, given that it's possible the Torah verse of stoning may have been a fabrication (من المحرفات). Also, 'Abd Allāh b. Salām reported that it was in the Torah does not mean that the text was authentic, because 'Abd Allāh was only reporting what he saw was written in a copy of the Torah, and he didn't

report that it was reported to him through an authentic means (بالطريق الصحيح) from Moses [<— v. 3, pg 127].

The author notes that there are five matters where the various ummahs are in agreement with the Muhammadan Ummah (خمس اجتمعت الأمم مع الأمة المحمدية عليها). These include: [1] the protection of life and [2] intellect, which is why all the shariahs are in agreement (بإجماع الشرائع) against intoxicants (المسكرات), only differing on drinking an amount that doesn't intoxicate ( وإنما اختلفت في شرب القدر الذي لا يسكر), with the prohibition of this Umma prohibiting things that lead to intoxication (الوسائل), and blocking the means to consumer intoxicating amounts ( سد الذريعة بتناول القدر المسكر), whereas these are acceptable in other shariahs because there is no harm in them ( لعدم المفسدة). [3] Preserving honor and dignity (حفظ الأعراض), and thus slander is prohibited, abusive language (4) .(السِّباب] Preserving lineage (حفظ الأنساب), and thus adultery (الزنى) is prohibited in all shariahs. [5] Preserving wealth is also in all shariahs, which is why theft and its like are prohibited. [<— v. 4, pg 33]

Author states elsewhere in a separate discussion that the prophet stoned the two Jews because of revelation that reached him, given that it's possible the Torah verse of stoning may have been a fabrication (من المحرفات) and it wouldn't have been allowed to rely on it. [<— v. 4, pg 86] Author repeats this again in v. 4, pg 143.

———

**الكتاب: شرح تنقيح الفصول**

**المؤلف: أبو العباس شهاب الدين أحمد بن إدريس بن عبد الرحمن المالكي الشهير بالقرافي (المتوفى: 684هـ)**

المحقق: طه عبد الرؤوف سعد

الناشر: شركة الطباعة الفنية المتحدة

الطبعة: الأولى، 1393 هـ - 1973 م

عدد الأجزاء: 1

[Author discusses pg 295-300, and it appears in the section on the actions of the Prophet and their nature. He believes prior law is binding on us, but the Prophet didn't refer to the Torah, only what was revealed to him (and similarly we must do the same)]

Before the Prophet was prophet: the Madhhab of Mālik and his companions is that he did not follow a prior shariah. Others have said he did. The author's position is that if he did, than the people of that religion would have boasted about it but that's not the case.

The correct word here is "muta'abbid" (مُتَعَبِّد), i.e. active participle [where the Prophet is choosing his path, rather than God commanding him, because he hasn't received revelation yet], which is as the sīra records: that the Prophet observed his people and found them on the wrong path with regards the Creator of the Universe (صانع العالم), and so he retreated in worship in the cave of Ḥirā', and exercised his judgment in doing what would be most appropriate ( ويقترح أشياء لقربها من المناسب في اعتقاده), and he feared that it would be inappropriate for the Creator of the Universe. This situation brought him much strife until God sent him with guidance and knowledge of misguidance. The weightiness he was in was taken away [<— 295]. This is what is meant by the verse (**ووضعنا عنك وزرك، الذي أنقض ظهرك**), according to one of the interpretations. [<—295-296] As for wether God expected him to follow a particular shariah, i.e., on what path he was "muta'abbad" (مُتَعَبَّد) [passive participle] with regards what preceded him, this doesn't

work because it goes to a disagreement on whether he followed the shariah of Moses and Jesus. But the laws of Moses and Jesus applied to the Children of Israel and did not extend to the Children of Ishmael: rather, Jesus, Moses and the other Prophets were sent by God to their respective peoples, and their messages didn't extend to others [note, he makes a caveat later in this text, and also in his work nafā'is al-uṣūl that this doesn't apply to Abraham, Noah and Ishmael]. The exegetes (المفسرون) transmit that Moses was not sent to the people of Egypt, but only to the Children of Israel to take them from the hands of Pharaoh. That is why when he crossed the sea, he did not return to Egypt to establish for them his shariah. Rather, he left them completely when he took the Children of Israel. Thus God did not have Muḥammad (PBUH) follow Moses or Jesus's shariahs, and so he was not a "muta'abbad" (متعبَّد) but a "muta'abbid" (متعبِّد). [**me: this is new**]

This is different from when he became a Prophet after, for God had him observe the shariah of those before him according to passages that came down on him in the Qur'an. Another reason he didn't follow a shariah prior to becoming a prophet is that those shariahs were inaccessible to him and he didn't travel and mix with the People of the Book to a point where he could observe how they were. If he did follow them, he would have referred to the scholars of those shariahs, and this is not known about him. Those who say he did follow a prior shariah argue that [1] the message of those before him had reached him, and so he was obliged to follow them, and [2] because he performed acts that must have been based in a prior law, such as eating meat, riding animals, and circling the Ka'ba. This is particularly the case for the Ash'arī's, says the author, who say that the mind cannot on its own come to legal rulings (الأحكام), but that they instead come from shariah. The author responds for [1] that this only applies for Ismā'īl, Abraham and Nūḥ,

because the Prophet is from their progeny, but not Moses and Jesus. [<— 296] And the shariah of these three Prophets had become extinct, so he wouldn't have worshipped God with them. As for [2], [I didn't fully understand this response, but not important. Something about the Prophet not being accountable in the state he was in for those acts, I didn't understand].

The author notes regarding the topic (فائدة), transmitting from al-Māzirī, al-Abyārī, al-Imām [?], al-Juwaynī and al-Tabrīzī that the topic of what the Prophet followed prior to prophethood is a historical matter, with no relevance to law.

As for after becoming a prophet, the madhhab of Mālik, the majority of his followers ( جمهور أصحابه) and those of al-Shāfi'ī and Abū Ḥanīfa say that the Prophet followed - and thus also his Umma - prior law, except when evidence suggested otherwise. [<— 297] This was argued against by al-Qāḍī Abū Bakr and others. [<— 297-298] The author supports the position, and cites the verse (أولئك الذين هدى الله فبهداهم اقتده) [al-An'ām: 90].

He separates the laws of those who came before in three categories: [1] what is known according to what these communities report, such as the text of the Torah that is with them that says that God prohibited for them consuming the meat of a young goat with the milk of its mother ( أن الله حرم عليهم لحم الجدي بلبن أمه) [the word for baby goat, جدي is the same as in the Hebrew for this commandment, found in Exodus 23:19, Exodus 34:26, and Deuteronomy 14:21: ( לֹא־תְבַשֵּׁל גְּדִי בַּחֲלֵב אִמּוֹ) - "Don't boil a young goat in its mother's milk"], which the author says is referring to (المضيرة) [a dish that is prepared with milk and meat, probably shows that his understanding of Jewish law is based in a real-world example that he's witnessed]. [2] What we know through our

shar' which also obligates us to do the same. The author says there is no disagreement that this type is law for us, as for example the verse (2:178] (**كتب عليكم القصاص في القتلى**] which the author pairs with the verse (**وكتبنا عليهم فيها أن النفس بالنفس**) [Mā'ida: 45] [by pairing the two verses, the author is suggesting the ruling of Qisas we are obligated in our shariah is in fact the ruling found in the Torah, as mentioned in the other verse]. And [3] what our shar' [religion] says was a law for them, but doesn't explicitly say that it is a law for us as well. According to the author, [3] is the point of disagreement. Examples of [3] include the following:

From the story of Joseph, (**ولمن جاء به حمل بعير وأنا به زعيم**), which can be used as evidence for the permissibility of legal surety (الضمان)

Or from the story of Shu'ayb and Moses: ( **إني أريد أن أنكحك إحدى ابنتي هاتين على أن تأجرني ثماني حجج، فإن أتممت عشراً فمن عندك**), which can be used as evidence for the permissibility of (الإجارة)

As for things established through information from those other communities, this cannot be admissible legal proof because the tranmission is inauthentic and broken (لعدم صحة السند وانقطاعه), and because the narration of a disbeliever is not accepted. Also, none of the People of the Book are able to narrate the Torah from a source other than the Torah itself ( ليس من أهل الكتاب من يروي التوراة فضلا عن غيرها) [i.e. they don't have an isnād to a source, just the book]. How can one consider something that lacks a transmission to be suitable legal evidence, asks the author. After raising this issue, the author discredits those who cite the story of the two Jews who were stoned to make a case that the Prophet relied on the reporting of Ibn Ṣuriyā (ابن صوريا) to know that stoning was in the Torah before verifying this himself. The author says that Jews who converted to Islam didn't have a transmission to the Torah (لم يكن له رواية في التوراة), but instead went off of

what they saw of it. As for the claim one might make that they have an unbroken isnād to Moses as the Muslims have in their books of hadith, this is not the case. [<— 298] This is necessarily known (معلوم بالضرورة) to anyone who knows about their situation. [<— 298-299]. Therefore, it is necessary that the Prophet relied on revelation that came from God when he had the two Jews stoned. The Prophet would not cause the death of a human being without true evidence. Therefore, citing this story to derive benefit for this topic is not correct. Instead, only what we know was from their shariah as reported in our book [the Qur'ān] **and from our Prophet** is acceptable.

Evidence to support that prior law is binding on us is the following:

Verses:

(أولئك الذين هدى الله فبهداهم اقتده) [al-An'ām: 90]

**( شرع لكم من الدين ما وصى به نوحاً والذي أوحينا إليه وما وصينا به إبراهيم وموسى وعيسى أن أقيموا الدين ولا تتفرقوا فيه)** [al-Shura: 13] where the (ما) is general in its meaning.

**(ملة أبيكم إبراهيم)**

Those that reject say that if it were binding on us, than the Prophet would have referred to these books, and not wait for revelation, which is not known about him. But he didn't because [1], Umar was scolded for holding a parchment of the Torah. And, [2] if the Prophet followed prior law, than it would be necessary that the scholars of all town and times do the same and refer to the laws of those who came before, but they didn't. [<— 299] And [3], the Prophet and the story of Mu'ādh.

The author responds to the above points by saying what is meant by following prior law is not that we refer to them, but to what was revealed to the Prophet.

The author then notes the disagreement amongst scholars about which prophet's shariah the Prophet followed, both before and after becoming a prophet. But the author doesn't take a stance. [<— 300]

—

On the issue of Naskh, the author deals with the Jewish claim that Moses says in the Torah, (**تمكنوا بالسبت أبداً**) and also (**تمسكوا بالسبت ما دامت السموات والأرض**), and these are mutawātir statements. He responds that they weren't mutawātir because of (بختنصر) o[<— 304-305]. Also, we can't take this meaning of everlastingness at face value, because the word for everlastingness (لفظ الأبد) is transmitted in the Torah in other places in a non-literal meaning:

[1] (**في العبد يستخدم ست سنين ثم يعتق في السابعة، فإن أبى العتق فلتثقب أذنه ويستخدم أبداً**) where everlastingness is for the age of the slave, not really forever.
[2] (**في البقرة التي أمروا بذبحها تكون لكم سنة أبداً**) but we know this will stop when the World ends (بخراب العالم) and coming of the Day of Judgment.
[3] ( **أمروا في قصة دم الفصح أن يذبحوا الجمل ويأكلوا لحمه ملهوجاً ولا يكسروا منه عظماً ويكون لهم هذا الجمل سنة أبداً**), but this wasn't forever.
[4] (**فروا إلى كلّ يوم خروفين خروفاً غدوة وخروفاً عشية قرباناً دائماً لأحقابكم**) but the Jews no longer act on it.

[the author now gives some not mentioned by al-Rāzi and other authors to show how Abrogation happened in the Bible]

[1] In the Torah is says that if a thief steals a fourth time, his ear is pierced and he is sold. Yet the Jews are in agreement about the abrogation of that rule.

[2] The Jews and the Christians are in agreement that God redeemed the child of Abraham from sacrifice, and this is a passage in the Torah. This is the strongest type of abrogation, because it was an abrogation that happened before the act happened, which the Mu'tazilites reject. So if abrogation can happen in the strongest form of it, than it necessarily can happen in other cases.

[3] In the Torah it was permitted in the shariah of Abraham for a person to marry both a slave and a free person, as in the marriage of Abraham to both Sarah, who was free, and Hagar, who was a slave. This was also prohibited in the Torah

[4] In the Torah God says to Moses to "leave, you and your people, to inherit the holy land that I promised to your father Abraham for his progeny." ( **أخرج أنت وشيعتك لترثوا الأرض المقدسة التي وعدت بها أباكم إبراهيم، أن أرثها نسله**). But when in the exodus God then says, "Do not enter it because you have disobeyed me" (**لا تدخلوها لأنكم قد عصيتموني**), which is a clear case of abrogation, the author says. [It's not word-for-word from the Bible, but a summary. Exodus 3 is God speaking to Moses, promising some land for God's chosen people (but not mentioning explicitly that it's the promised land of Abraham). Deutoronomy 1:8, Moses tells Israel when they are in the wilderness: "Go in and take possession of the land the Lord swore he would give to your

fathers—to Abraham, Isaac and Jacob—and to their descendants after them." But Moses is later told by God that he will die before entering the land, just as his brother Aaron died earlier, out of punishment because both of them did not uphold God's holiness with the Israelites, "Therefore, you will see the land only from a distance; you will not enter the land I am giving to the people of Israel." (Deuteronomy 32: 48-52)] [<— 305]

[5] Work on the sabbath was permitted before it was prohibited in the time of Moses. [<— 305-306]

The author says he has mentioned many additional cases on top of these in his book ( شرح المحصول) and also his book (306 —>] (الأجوبة الفاخرة عن الأسئلة الفاجرة في الرد على اليهود والنصارى) [both books are published]

—

**الكتاب: نفائس الأصول في شرح المحصول [This is a sharḥ on al-Rāzī's uṣūl work]**

**المؤلف: شهاب الدين أحمد بن إدريس القرافي (ت 684هـ)**

المحقق: عادل أحمد عبد الموجود، علي محمد معوض

الناشر: مكتبة نزار مصطفى الباز

الطبعة: الأولى، 1416هـ - 1995م

[Author discusses al-Rāzī's discussion of the topic from v. 6, pgs. 2359-2380]

Author discusses majāz involving God, and cites from the Torah: ( **جاء الله من سيناء، وأشرق من ساعير، واستعلى من جبال قازان**) where the author interprets it as referring to the guidance of God, his books and his signs, not literally God. He also gives example of similar majāz in the Qur'an, with the verse (**وجاء ربك والملك صفا صفا**) [<— v. 2, 617-218]

—

The author says that when it is said that one shariah can abrogate another shariah, the author qualifies this and says that it means one abrogates the other in only **some** of the laws of the prior shariah, but **not** the entirety of the former shariah, because God doesn't abrogate the fundamental theology of a religion (**لا ينسخ منها قواعد العقائد بأصول الدين**) [which is part of the shariah], nor does he abrogate the "5 Fundamental Predicates of Law" (الكليات الخمسة), which are the following: preservation of religion, blood (الدماء), intellect, lineage, and wealth. From these 5 fundamental predicates of law come the prohibition of murder, intoxication, adultery, and theft in all the shariahs. As for intoxicants, for non-intoxicating amounts of an intoxicating substance is where there is some disagreement. al-Ghazzali notes unanimity among the sharias on the prohibition of substances in amounts that intoxicate (القدر الذي يسكر). Further evidence [that God preserves things from the shariahs] is that God sent many prophets to reinforce the Torah and act on everything that was revealed in it, without any abrogation. And thus abrogation happens on some positive laws (يقع في بعض الأحكام الفروعية) [me: shows the larger cosmology of continuity in law, based on the author's observation of other religions]. [<— v. 4, pg 1932]

[I'm only mentioning his new ideas, not present in his other uṣūl book شرح تنقيح الفصول] The author prefers (متعبِّد) [active participle] for the issue of the Prophet's status in the period prior to

revelation, because it refers to how the Prophet himself chose to act. The question then becomes whether he used to worship and draw near to God according to a shariah that he chose based on his awareness of the great ills in Jāhilī society around him, or whether he instead did what he thought was most appropriate without following a shariah, like retreating to the cave of Ḥirā or something else [<— v. 4, pg 2360]. Some of the scholars have said that the verse ( **ووضعنا عنك وزرك الذي أنقض ظهرك**) refers to the Prophet's immense anxiety in trying to figure out how to best worship God, i.e. supporting position 2 that he didn't follow a particular shariah [<— v. 6, pg 2361]. The author says that there is debate whether he followed Jesus or Moses prior to becoming a prophet, and the author says it was neither because their messages were for the Children of Israel, and the Prophet wasn't one of them so God did not expect him to follow either of their sharias. [<— v. 6, pg 2361-2362]. But this wasn't the case for the shariah of Abraham or Noah, for whom the Prophet was from their progeny. ۞

There is ijmā' of the umma that those who were alive with the Prophet were morally responsible to believe in the prior sharias (مكلفين بالإيمان بالشرائع المتقدمة), and further ijmā' that the disbelievers from that time are in the fire. Because they were morally responsible (مكلفين بشرع من قبلهم), then the Prophet was also from among them. Thus, even though some may have said the Prophet didn't follow a prior shariah, based on the principles of uṣūl the author just laid out [the ijmā' regarding the status of the community around him being morally obligated], there is technically ijmā' existing that he followed a prior shariah. [The author is saying that there technically should be no debate here]. The issue where there **is** debate, then, is **after** the Prophet became a prophet, with the issue here being whether he was (متعبَّد), [passive participle] i.e. whether God obliged him to follow a prior shariah [<— v. 6, pg 2362].

The author rejects the idea that Jāhiliyya was a time of absence of moral obligation to a shariah (زمان فترة), because the ummah's ijmā' that anyone who didn't become Muslim from among them and died before prophecy was in the Fire, whereas (أهل الفترة) are not in the Fire, based on the verse (**وما كنا معذبين حتى نبعث رسولا**) [al-Isrā': 15]. As for who (أهل الفترة) are, the scholars have said that it refers to the people of (الأعراف) [a liminal space between Heaven and Hell, debated who is in there], since they are not in the Fire, or perhaps the children of the idolaters [in the time of Jahiliyya], or those whose good deeds and bad deeds are equal. One might respond that the people in the time of Jahiliyya were in a time of (فترة) with regards to being obligated to follow laws, but not beliefs, and so they were held responsible and will be punished for their idolatry, but not their disobedience to divine law, since it wasn't being transmitted in their time. [<— v. 6, pg 2363] And one of the requirements for moral responsibility (التكليف) is knowledge ( علما أو ظنا صحيحا). The author says that he doesn't reject this nuanced understanding of (الفترة), but rejects the blanket claim that those people were not morally responsible. [i.e. the author holds that they, and by extension the Prophet, may not have had access to the specifics of prior religions/shariahs in terms of their law, but were still obliged in other ways, like not committing an idolatry, which is technically a law]

The author rejects the notion that riding animals or eating meat by the Prophet was done solely because it was rationally good (حسن في العقل) without a shariah, since he rejects (الحسن) and (القبح) as rational proofs. He says it could be for a number of reasons, e.g., it's possible the Prophet did these acts because it had some origin in a shariah that reached him, or because he chose to do it

thinking that if God had a ruling in this matter, that it would be it, or because nothing was there saying God prohibited it. [<— v. 6, pg 2364]

Pre-Muhammadan law is of three types for us: [1] laws that we need their books and the reporting of disbelievers to inform us about. The author says there is no disagreement (فلا خلاف أن التكليف لا يقع به علينا ولا في حق رسول الله صلى الله عليه وسلم) because it wasn't transmitted correctly, like what's been transmitted in the Torah about the prohibition of young goat meat in the mother of its child, implying a dish called (المَضِيرَة) which the people of this time cook (يشير إلى المضيرة التي يطبخها أهل الزمان). [2] laws where there is ijmā' that their laws are followed by us, such as [the author assumes they are the same, which other authors didn't]. [3] Laws transmitted in our shariah ["shariah" meaning religion] as being from their religion, but we weren't ordered to follow it [explicitly]: this is where there is disagreement. Like what Shu'ayb says to Moses in teh Qur'an (إني أريد أن أنكحك أحدى ابنتي هاتين) [al-Qaṣaṣ: 27], which allows for al-Ijāra. So can we cite this to allow for (الإجارة) in our shariah? [<— v 6, 2371] Or from Surat Yusuf (وأنا به زعيم), can we cite this to allow for surety (الكفالة)?

The author takes al-Rāzī [and presumably others] to task for suggesting that the crux of this debate is whether the Prophet was commanded to refer to their books. The author says there is no way this is the issue, since everyone is in agreement (نحن مجمعون) that what is narrated from the Prophet through a narrator whose trustworthiness (عدالة) is unknown, that it is prohibited to follow it [note: doesn't apply to mursal reports for the Hanafis, e.g. But it does if we assume the Hanafis saw a mursal report as in fact verifying the trustworthiness of a narrator]. If that's the

case, than how can we rely on the reporting of disbelievers who didn't transmit from their previous generations for information about the prior prophets. There is no system of transmission (الرواية) in their religion. al-Riwāya and isnāds are unique to Islam, whereas the other religions are fraught with things like textual corruption [<— v. 6 pg 2372]. Accepting these books and their transmissions is against Ijmā' therefore [based on his logical argument that assumes narrating from an unknown narrator is a point of consensus (which it isn't)]. [<— v. 6 pg 2372-6373] If we can't accept our own reports that have a narrator of unknown trustworthiness for matters of law, than can we for those we know are disbelievers, we know have changed their text and lied. This would never cross the mind of any of our scholars of shariah ( هذا لا ينبغي أن يخطر لأحد من علماء الشريعة)

Regarding the 'Umar hadith where the Prophet said, "If Moses was alive he would have followed me," the author responds that just because the prophets would be followers of the Prophet doesn't mean that he can't be a follower of the prior sharias. It's like an Imam that can become a follower in prayer.

al-Rāzī's responded to the claim that the Prophet may have cited prior law that reached him through mutawātur means, but he rejects it because he says even if it were mutawātir, the process of extracting law from this evidence requires intense investigation (نظر دقيق) [and we don't have evidence of the Prophet doing this]. The author al-Qarāfī responds that it is possible to do this. He gives the example of Imam al-Juwaynī who was asked if it's allowed to listen to the speech of a young woman. He says no, because in the Qur'an Moses says (ربِّ أرني أنظر إليك) [al-A'rāf: 143]. The questioner asks what's the relationship with the verse and the questions. He says that

Moses asked to hear God first, but when he heard God, he wanted to see him next. Thus, listening to a woman will lead to seeing her, and what leads to Haram is Haram. al-Qarāfī says this is an example of doing (نظر دقيق) on a mutawātur evidence. [Note that this example is also based on pre-Muhammadan law] [<— v. 6, 2373]

With regards to the stoning of the two Jews, the author says that it is a difficult hadith ( وهذا الحديث مشكل), since he points out that it happened when the Prophet first entered Madina ( عند مقدمه عليه السلام المدينة), when there were no ḥudūd punishments and before the rajm that would come later. Also, according to some versions of the report relayed by (الطرطوشي) and others, Ibn ‘Umar says in the narration of the hadith that (وكان حد المسلمين يومئذٍ الجلد), and so the narrator is informing us that stoning was not the law then. And so the argument that this report shows the Prophet followed prior law doesn’t hold. [**me: good points**] Furthermore, if the Prophet relied on a disbeliever to know what was in the Torah, than that goes against our fundamental principles, and if he relied on a converted Rabbis like ‘Abd Allāh b. Salām or someone else, than that also doesn’t work, even if they were reliable and trustworthy people, because they don’t have a transmission to the Torah (ليس لهم رواية في التوراة), nor a contiguous chain of transmission ( ولا سند متصل), other than finding their forefathers reading from the book. [<— v 6, pg 2375] Thus we can infer that he received separate revelation that wasn’t transmitted to us. In this way, this hadith can be cited to say that disbelievers are to be stoned [for adultery], because that revelation that the Prophet received could have been directed broadly or specifically to the disbelievers, and in cases where it’s not clear, we go to the base case, which is that we take this report to signify only the stoning of the disbelievers [by this logic, why not specifically the Jews, which would make sense].

The hadith has other difficulties too. In the narration it says that the Prophet received testimony in the case from the disbelieving Jews (سمع في القضية بينة من اليهود الكفار), as noted in the narration of al-Ṭarṭūshī, which is problematic because it means accepting the reporting of a disbeliever and their testimony (قبول رواية الكفار وشهادتم). Furthermore, the Prophet in the hadith says ( اللهم إني أول من أحيا سنة أماتوها), which suggests the Prophet depended on the face reading of the Torah ( ظاهر التوراة). And none of this can be explained unless he received separate revelation in this case, says the author. [**me: a frank discussion of the issues with this hadith that don't conform to orthodoxy**] [<— v. 6, pg 2376]

The only way we can accept a report of the Bible is if we have a contiguous chain of trustworthy narrator to trustworthy narrator all the way back to Moses, and we know this isn't the case [<— v. 6, pg 2376-2377]

As for the verse that says (يحكم بها النبيون الذين أسلموا), the author al-Qarāfi says that if we have to restrict the meaning of (النبيون) because some came before the Torah, than that still includes the Prophet. If we have to restrict the meaning of what laws were being followed of the Torah, than that is fine. The Author includes the 5 Predicates of Law (protecting blood, intellect, lineage, wealth and honor) as being things that continued. As for other things, it is probable. [<— v. 6, pg 2377]

—

al-Qarāfī adds to al-Rāzī's examples of abrogation and the non-literalness of 'everlastingness' mentioned in the Torah:

[1] In the Torah it says that if a thief steals a fourth time, his ear is pierced and he is sold. Yet, we [? see other book, where he says the Jews, not "we"] are in agreement about the abrogation of that rule.

[2] The Jews and the Christians are in agreement that God redeemed the child of Abraham from sacrifice, and this is a passage in the Torah. This is the strongest type of abrogation, because it was an abrogation that happened before the act happened, which the Mu'tazilites reject. So if abrogation can happen in the strongest form of it, than it necessarily can happen in other cases.

[3] In the Torah it was permitted in the shariah of Abraham for a person to marry both a slave and a free person, as in the marriage of Ya'qūb [He means Abraham, as he says in his other book *sharḥ al-tanqīḥ*] to both Sarah and Hagar. This was also prohibited in the Torah. [Note: Also, whether Hagar was married to Abraham is disputed, depending on whether we take Hagar to be the same as Keturah, who the Torah says was married to Abraham] [<— v. 6, pg 2430]

[4] In the Torah God says to Moses to "leave, you and your people from Egypt, to inherit the holy land that I promised to your father Abraham for his progeny." ( **أخرج أنت وشيعتك من مصر لترثوا الأرض المقدسة التي وعدت بها أباكم إبراهيم، أن أورثها نسله**). But when in the exodus God then says, "Do not enter it because you have disobeyed me" (**لا تدخلوها لأنكم قد عصيتموني**), which is a clear case of abrogation, the author says. [It's not word-for-word from the Bible, but a summary. Exodus 3 is God speaking to Moses, promising some land for God's chosen people (but not mentioning explicitly that it's the promised land of Abraham). Deutoronomy 1:8, Moses tells Israel when they are in the wilderness: "Go in and take possession of the land the Lord swore he would give

to your fathers—to Abraham, Isaac and Jacob—and to their descendants after them." But Moses is later told by God that he will die before entering the land, just as his brother Aaron died earlier, out of punishment because both of them did not uphold God's holiness with the Israelites, "Therefore, you will see the land only from a distance; you will not enter the land I am giving to the people of Israel." (Deuteronomy 32: 48-52)]

[5] Work on the sabbath was permitted before it was prohibited in the time of Moses.

[6] The king of the Jews, (حزقيال)] (حزقيال) is Ezekiel, but that he was a prophet, not a king, and he didn't get sick. It might be a mistake by the editor, or the author himself. It is referring to King Hezekiah], who became sick. So God revealed to (أشعيا) [Isaiah] to tell the king that he will die from this illness of his. After telling him, the king wept and prayed. So God then revealed to Isaiah that he will arise from his sickness and come down from the temple (الهيكل) after 3 days. And the king's age was extended 15 years. [this is the story in Isaiah 38:1-5] There are many other examples like this in the Torah according to the author. Their argument against naskh based on (البداء) is canceled by this example, says the author.

[7] In Genesis, it says that when the sons of God saw that the daughters of humans were beautiful and they married them, God said that man would only live 120 years ( **لما نظر بنو الله بنات الناس حسانا، ونكحوا منهم، قال الله تعالى:" لا تسكن الروح بعدها في بشر، وامهاتهم مائة وعشرين سنة**) [close rendition of Genesis 6:2-3]. However, the Torah says that (أرفخشذ) [Arpachschad, one of the five sons of Shem] lived more than that and he had a child named Shelah. According to[ (شالخ) , Wikipedia: Arpachshad's son is called Shelah, except in the Septuagint, where his son is Cainan

[? Shelah being Arpachshad's grandson] who was was 463 years old. And it is said that he .father/son?] lived 200 years, and Abraham 100 years

[8] Circumcision was allowed for the elderly in the shariah of Abraham, but required by Moses on the day of birth.

[9] Marrying between two sisters was allowed in the shariah of Ya'qūb, but prohibited after him. Cases like this are many says the author. [<— v. 6, pg 2431]

[me: The author seems to be relying on some sort of medium for his knowledge about the Jews.] He says, "I witnessed some of the linguists (اللغويين) transmit two possibilities for ( ,(بخت نصر نصّر)) and (نصْر), with a tashdīd of the (صاد) or taskīn" [<— v. 6, pg 2434]

He also says he debated a Jew who said, "How can you claim that our shariah is not mutawātir because of (بختنصر), when what is transmitted amongst us is that a group of them, about 40, survived him and escaped to different regions (خرجوا إلى بعض الأقطار), and the likes of them could reach the number needed for tawātur" The author responds that he doesn't grant the authenticity of this, but even if he does, the existence of a group this large doesn't necessarily mean that they were people who preserved the Torah and aspects of the shariah and its principles ( فروع الشريعة وقواعدها), because they could've been the ones who didn't know anything. If we are doubtful about the situation of the people, then we are doubtful about the tawātur. And if there is doubt in some of the conditions of tawātur, than there is doubt in the very foundation of these laws. And

this impugns claiming anything with certainty from their texts [e.g., that their shariah is everlasting], as it all becomes suspect. [<— v. 6, pg 2434-2435]

The author than asks on behalf of the critical [Muslim] reader, how Nebuchadnezzar could wipe out the Jews, when they were spread out in all the world, and the way the world works (العادة) would say that's impossible. The author informs the reader that the Jews, from their time after living Egypt with Moses (AS) and the drowning of Pharaoh, lived together during the exodus, before migrating altogether to the temple (البيت المقدس), so Nebuchadnezzar found them all there together, and only a small group remained after, who then left with Daniel (AS) to Egypt. Nebuchadnezzar then captured them in Egypt and killed them, and he destroyed the land of Egypt. [Note, Book of Daniel has Daniel as one of the captives taken from Jerusalem to Babylonia. Nothing about Egypt I could find]. That author says that Ibn Diḥya (ابن دِحْية) says in his book (النبراس في تاريخ بني العباس) that Egypt was completely razed and not a single person was left. The author then says, to emphasize his point, that the Jews will admit this, and there is no disagreement, that they were all together in one place [me: yes, but not in Egypt after Jerusalem!]. [<— v. 6, pg 2435]

He repeats his claim elsewhere that the Jews were together in al-Shām in the Holy Land until Nebuchadnezzar. A group of about 40 of them escaped to Egypt with Daniel, and Nebuchadnezzar captured them in Egypt and and destroyed the land [<— v. 6, pg 2842]

Sayf al-Dīn al-Āmidī said, according to the author, that in every religion and shariah there is care for the 5 Legal Predicates (religion, life, intellect, lineage, and wealth) [<— v. 7, pg 3264] [note: many uṣūl authors probably note the same thing then]

---

**الكتاب: بديع النظام (أو: نهاية الوصول إلى علم الأصول)**

**المؤلف: مظفر الدين أحمد بن علي بن الساعاتي [Hanafi]**

المحقق: سعد بن غرير بن مهدي السلمي

الناشر: رسالة دكتوراة (جامعة أم القرى) بإشراف د محمد عبد الدايم علي

سنة النشر: 1405 هـ - 1985 م

عدد الأجزاء: 2 (في ترقيم واحد متسلسل)

[He discusses topic shortly in v. 2, pg 659-661 and covers it after his sections on the Qur'an, Sunna, Ijmā, al-Qiyās, and follows it with the opinion of a sahabī for law. He believes it is binding on us, provided it's not abrogated]

On naskh, author gives examples to from Torah: Adam's sons and daughters married and it became prohibited. Noah and his progeny after the flood were allowed to eat meat save the blood inside, and later many things become prohibited. Work on Sabbath was allowed before it was prohibited. Circumcision was allowed in general before, but later its after birth for the Jews. In the shariah of Ya'qūb you can marry two sisters, but it becomes prohibited for the Jews. He also deals with the claim that Moses said his shariah is permanent[<— v. 2, 520]

abrogated facing bayt- Proof for Muslims that naskh of shariah happens is that facing the ka'ba al-maqdis. [<— v. 2, pg 522]

His position is that we are obliged to follow pre-Muhammadan law that we are told about as long as it isn't abrogated. He says Muḥammad [al-Shaybani] did this with (القسمة) and (المهايأة). [<— v. 2, pg 659-660] What is accepted from their laws is what there was revelation on or what was mutawātir. [<— 2, pg 661]

——

**الكتاب: الكافي شرح البزودي**

**المؤلف: الحسين بن علي بن حجاج بن علي، حسام الدين السِّغْنَاقي (المتوفى: 711 هـ)**

المحقق: فخر الدين سيد محمد قانت (رسالة دكتوراه)

الناشر: مكتبة الرشد للنشر والتوزيع

الطبعة: الأولى، 1422 هـ - 2001 م

عدد الأجزاء: 5 (في ترقيم مسلسل واحد)

[deals with it v. 3, pg 1574-1580 in the section on the actions of the Prophet. See PDF, as Shamela doesn't include al-Bazdawī's original, only the sharḥ. Notes below based on PDF. Both authors say that it is binding on us.]

al-Bazdawī's position is that what God or the Prophet tells us without rejecting us, it is binding on us. [v.3 1574-1574]

This is also the author's position, who comments on the verse (ثما أورثنا الكتاب) [al-Fāṭir: 32] that al-Bazdawī points out, and says that inheriting signifies ownership to the one inheriting it, and so the prior shariah became that of our Prophet. [<— v.3, 1576-1577] al-Bazdawi points out that it has to be from the Prophet or God because of issues in the transmission of the prior scriptures and the issue of falsification of the text [<— v. 3, 1578-1579]

Also, Muḥammad (al-Shaybānī) used it to justify (المهايأة) and (القسمة) from the verses ( ونبئهم أن الماء قسمة بينهم) and (لها شرب ولكم شرب يوم معلوم), says al-Bazdawī, and because he used these as evidence in a manner that there was not prior precedent (في غير المنصوص عليه), this establishes that the correct position of the school is the one he chose [me: showing us how important Muhammad's citations are for the madhhab and later scholars]. The author al-Sighnāqī also adds that Abū Yūsuf justified Qiṣāṣ [equally] for males and familes using the verse ( وكتبنا عليهم فيها أن النفس بالنفس), and that (الكرخي) used this verse for evidence to justify Qiṣāṣ between free people and slaves, and between Muslims and dhimmīs. The author also adds that al-Shāfi'ī doesn't disagree, because he cited the Prophet's stoning of the two jews based the Torah to mandate stoning on the people of the book. The author says the Hanafis don't disagree with this, except they will add a condition of (الإحصان) to this ruling for our shariah, and thus this additional rule will constitute an abrogation to the prior law [<— v. 3, pg 1579-1580]

**الكتاب: الموافقات**

**المؤلف: إبراهيم بن موسى بن محمد اللخمي الغرناطي الشهير بالشاطبي (المتوفى: 790هـ)**

المحقق: أبو عبيدة مشهور بن حسن آل سلمان

الناشر: دار ابن عفان

الطبعة: الطبعة الأولى 1417هـ/ 1997م

عدد الأجزاء: 7

أَلَا تَرَى أَنَّهُ كَانَ لِلْعَرَبِ أَحْكَامٌ1 عِنْدِهِمْ فِي الْجَاهِلِيَّةِ أَقَرَّهَا الْإِسْلَامُ، كَمَا قَالُوا فِي الْقِرَاضِ، وَتَقْدِيرِ الدِّيَةِ وَضَرْبِهَا عَلَى الْعَاقِلَةِ، وَإِلْحَاقِ الْوَلَدِ بِالْقَافَةِ2، وَالْوُقُوفِ بِالْمَشْعَرِ الْحَرَامِ، وَالْحُكْمِ فِي الْخُنْثَى، وَتَوْرِيثِ الْوَلَدِ لِلذِّكْرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ، وَالْقَسَامَةِ، وَغَيْرِ ذَلِكَ مِمَّا ذَكَرَهُ الْعُلَمَاءُ. [v. 2, pg 125]

He notes Shar' man qablana when listing his sources of Islamic law. The transmitted sources are the Qur'an and Sunnah primarily, but include Ijmā', the madhhab of a Companion, and shariah of those who came before, since those are sources that refer to something transmitted and which need to be followed, as opposed to the interpretive sources, which are primarily Analogy and interpretation (الاستدلال), but include also al-istiḥsān and al-maṣāliḥ al-mursalah. [v. 3, pg 227-228].

In a section on abrogation, the author asserts that the fundamental of law (القواعد الكلية), i.e. the five fundamentals of the shariah (الأمور الخمسة), are not subject to abrogation, only matters of positive law are (أمور جزئية). The Uṣūliyyūn hold that these are preserved in all the religions. Evidence from the Qur'an include the following:

(...شرع لكم من الدين ما وصى به نوحا والذي)

[al-Shurā: 13]ال

(فاصبر كما صبر أولو العزم من الرسل)

[al-Aḥqāf: 35]

After mentioning many prophets: (وكيف يحكمونك وعندهم التوراة فيها حكم الله)

[al-Mā'ida 43]

(ملة أبيكم أبراهيم)

[al-Ḥajj: 78]

About Moses: (إنني أنا الله لا إله إلا أنا فاعبدني وأقم الصلاة لذكري)

[Tāhā: 14]

(...كتب عليكم الصيام كما كتب على الذين من قبلكم لعلكم)

[al-Baqara: 183]

(إنا بلوناهم كما بلونا أصحاب الجنة)

[al-Qalam: 17]

(وكتبنا عليهم فيها أن النفس بالنفس)

[al-Mā'ida: 45]

(فبهداهم اقتده)

[al-An'ām 90]

The verse (لكل جعلنا منكم شرعة ومنهاجا) [al-mā'ida: 48] is referring to matters of positive law ( الفروع الجزئية)

[v. 3, Pg 365-367]

In a section on the Qur'ān, the author deals with instances where the Qur'an transmits something about other people, e.g. what the disbelievers say. If what is transmitted is false, the Qur'an will respond to it, i.e. letting us know that that statement is untrue. In cases where the Qur'an does not reject what it transmits, it is accepted as true, because otherwise this would be contrary to the

Qur'an's function as guidance. An example of this is what the Qur'an reports about the prior sharias, when it doesn't note that they are fabrications or falsities. It can be accepted as true. And according to the author, a group of Muslims consider it a source (عمدة) for our shariah, whereas another rejects it, but because they believe it's been abrogated, not because they think it is untrue. This information about prior communities includes the Qur'ans reporting on the prior prophets, such as the story of Dhū al-Qarnayn, the story of Khiḍr with Moses, the Companions of the Cave, etc. [v.4, 160-161] [He includes this as a subtopic under Qur'an/Also, the example of Moses/Khidr came up before in his book, see my fiqh book notes for my second chapter… v. 2, pg 461]

The author makes the case that the Mufti's behavior is to be modeled, since he inherits from the Prophet, and just like the Prophet is to be followed, so is the Mufti [<— v. 5, pg 262]. The Muftis behavior is a type of fatwa [<— v. 5, pg 258]. Among the many proofs cited are examples that show that the Prophet's behavior is to be modeled (and by extension, that of those who inherit from him, the scholars), including the following verse, related to the marriage of the Prophet to Zaynab, [meant to be a lesson for the believers]:

)لقد كان لكم في رسول الله أسوة حسنة(

[al-Aḥzāb 21]

And about Abraham:

(قد كانت لكم أسوة حسنة في إبر هيم…)

[al-mumtaḥina: 4] And the verses after [about Abraham and those with him who disassociated from the disbelievers. The first verse in the chapter is a command to disassociate from the enemies of the religion, so Abraham is cited here to make this case] [<— v. 5, pg 260]. The

author states after citing the verse about Abraham, "(وشرع من قبلنا شرع لنا)" indicating that it's a proof for him. [v. 5, pg 261] [**me: so we know the author's position**].

—

**الكتاب: البحر المحيط في أصول الفقه**

**المؤلف: أبو عبد الله بدر الدين محمد بن عبد الله بن بهادر الزركشي (المتوفى: 794هـ)**

الناشر: دار الكتبي

الطبعة: الأولى، 1414هـ - 1994م

عدد الأجزاء: 8

[He discusses it in a section called (الأدلة المختلف فيها) in v. 8, pgs 39-52]

In one section the author explores whether statements in the Qur'an that address the people of the book (…يا أهل الكتاب , e.g.) can be taken as addressing the ummah. Within this category, what about statements in the Qur'an in the words of Moses or one of the other prophets, directed to their communities? He says this is an issue of (شرع من قبلنا). The author says we don't accept them as applying to us based on us generalizing the meaning of the verses from their originally specific audience [i.e. the communities being addressed], to include us. Rather, they apply to us based on separate evidence, according to the majority (الجمهور). This evidence include verses like (**لَقَدْ كَانَ فِي قَصَصِهِمْ عِبْرَةٌ لأُولِي الأَلْبَابِ**) [Yusuf: 111]. [note that this discussion was a side comment from him about a related topic to the one he was discussing] [v. 4, pg 249].

[In a section on Naskh, and the naskh of one shariah of another:] Author says that the Prophet's shariah abrogates all other sharias by ijmā'. Then he discusses the way the prior sharias abrogated one another (e.g. did Jesus' shariah totally abrogate that of Moses, or only in some laws). He doesn't get into shar' man qablana. [v. 5, pg 213-215]

In a discussion of whether the ijmā' of prior ummahs was binding for them, he transmits the words of al-Abyārī that its relevance as a topic is dependent on whether one holds pre-Muhammadan law binding or not. He doesn't transmit more from al-Abyārī or discuss whether the implication of their ijmā' for our law [<— v. 6, 395]

—

[For the following, I am using the PDF version, which is a different edition from above, because it is easier to read]

- عنوان الكتاب: البحر المحيط في أصول الفقه
- المؤلف: محمد بن بهادر بن عبد الله الزركشي بدر الدين
- المحقق: عبد القادر عبد الله العاني
- حالة الفهرسة: مفهرس على العناوين الرئيسية
- سنة النشر: 1413 - 1992
- عدد المجلدات: 6
- رقم الطبعة: 2

[In his chapter discussing the topic:]

**The position that the Prophet did not follow pre-Muhammadan law** (after becoming a prophet): it is the last of two opinions of Abū Isḥāq, and is what al-Ghazzali chose towards the end of his life. [<— v. 6, pg 41] It is also the position of Ibn al-Sam'ānī [<— v. 6, pg 41-42], and also al-Khawārizmī in his book (al-Kāfī), the latter basing his position on the hadith of Mu'ādh. (الصيرفي) also held this position in his book known as (الدلائل) [I don't think we have a published copy, but according to the Fihrist of Ibn Nadīm, it was called ( البيان في دلائل الأعلام على أصول الأحكام)]. al-Ṣayrafī said, regarding the hadith (**كَانَ يُحِبُّ مُوَافَقَةَ أَهْلِ الْكِتَابِ فِيمَا لَمْ يَنْزِلْ عَلَيْهِ**), that if it is authentic, then it is interpreted as matters that were optional and not required ( فإن صح فهو محمول على الاختيار لا الوجوب). [Note: aside from this Sayrafī quote, Ibn Hazm is the only other author (and I did a text search on all usul books prior to al-Zarkashi for the phrase موافقة أهل الكتاب) who references this hadith, but both see it as evidence against star' man qablana]. The author notes this hadith was narrated by al-Bukhārī. He also reports that someone said (قال بعضهم) regarding this hadith that the People of the Book were following whatever was left of the religion of the prior prophets, and so whatever was clear to the Prophet was not altered, he liked that they matched (فأحب موافقتهم) since the Qur'an also says (فبهداهم اقتده) [al-An'ām 90]. The matter was not that he was following them or that he was prohibited from following them ( ثم قضيته أنه غير متعبد بها ولا منهي عنها). The author transmits that according to al-Nawawī in his book (الزوائد), the more correct position is that pre-Muhammadan law is not shariah for us. The author also transmits from Ibn Hazm that this was his position (i.e. he was against it), and that he criticized ( إسماعيل بن إسحاق القاضي من المالكية) for saying that the Prophet's stoning of the Jews was him following the Torah, saying that this statement is close to kufr (قريب من الكفر). He also transmits from Ibn Hazm's book (الإعراب) that it isn't allowed to follow anything of their law because of the verse

(لكل جعلنا منكم شرعة ومنهاجا) [Ma'ida: 48]. This was also the position of al-Rāzī and al-Āmidī, he transmits.

**The position that he did follow it, provided it wasn't abrogated:** Ibn Sam'ānī says that most of the Shāfi'īs held this, as did most of the Hanafis, and a group of the mutakallimūn as well. Ibn al-Qushayrī says this is the position taken by the jurists (هو الذي صار إليه الفقهاء). This was Ibn Isḥāq's first position, as is clear in (التبصرة). This was also held by Muḥammad b. al-Ḥasan, who used as evidence the story of Ṣāliḥ and the she-camel on (الإجارة/المهايأة). al-Khaffāf also held this position ( وَقَالَ الْخَفَّافُ فِي شَرْحِ الْخِصَالِ ": شَرَائِعُ مَنْ قَبْلَنَا وَاجِبَةٌ عَلَيْنَا إِلَّا فِي خَصْلَتَيْنِ: إِحْدَاهُمَا أَنْ يَكُونَ شَرْعُنَا نَاسِخًا لَهَا، أَوْ يَكُونُ فِي شَرَعْنَا ذِكْرٌ لَهَا، فَعَلَيْنَا اتِّبَاعُ مَا كَانَ مِنْ شَرْعِنَا وَإِنْ كَانَ فِي شَرْعِهِمْ مُقَدَّمًا) Ibn al-Rif'a (ابن الرفعة) in his book (المطلب) says that al-Shāfi'ī had this position in his al-Umm, in the (كتاب الإجارة). [<— v. 6, pg 42] al-Juwayni in his book (النهاية) also said that al-Shāfi'ī followed it in his book ( كتاب الأطعمة), and that he argued for surety (الضمان) based on Surah Yusuf ( ولمن جاء به حمل بعير وأنا به زعيم) [Yusuf: 72]. In al-Juwaynī's book (كتاب الضمان) [which I believe is part of his book النهاية], al-Juwayni said that the scholars are in agreement that the verse about Ayyūb and his oath (which indicates that whoever swears to strike his slave a hundred times, e.g., that if he strikes him with palm material - العثكال - that his oath is fulfilled) is applicable in our religion. Also, Ibn 'Abbās performed sajda on the verse in Surat Ṣād, saying (أولئك الذين هدى الله فبهداهم اقتده) [al-An'ām 90], and the shariah uses this as evidence [for the verse of prostration]. [<— v. 6, pg 43]

The author then discusses debate about which prophet's shariah is to be followed, and he transmits different positions. Abraham/Moses/Jesus/all of them? Abū al-'Abbās b. Surayj [d. 306

AH, Shāfi'ī] said that all of what is told to us about the prophets in the Qur'an is truth, and we follow it unless otherwise stated.[<— v. 6, pg 43-44]

al-Qurtubī said that if it's reached us from the Prophet or someone who converted like 'Abd Allāh b. Salām and Ka'b al-Aḥbār and wasn't abrogated or limited, it's acceptable (قال القرطبي: فيما إذا بلغنا شرع من تقدمنا على لسان الرسول أو لسان من أسلم كعبد الله بن سلام…). [**me: look for this**] The author al-Zarkashi adds al-Najāshī to this list, and gives a hadith in Ibn Ḥibbān's Ṣaḥīḥ from 'Āmir b. Shahr (عامر بن شهر), that the latter heard two statements that he really loved more than the world and what was in it (كلمتان سمعتهما ما أحب أن لي بواحدة منهما الدنيا وما فيها). The first was from al-Najāshi, the second from the Prophet. The Najashi one is that 'Āmir was with him when one of his sons came reading from his writing board (يعرض لوحه) and he 'Āmir could understand bits), of what was being said and started laughing after one of the verses was recited. When asked why he was laughing, he said, "I swear that it was revealed from the Throne that Jesus the son of Mary said, 'The land that is run by children is cursed' (إن اللعنة تكون في الأرض إذا كان إمارة الصبيان)" Note: this is the first and only mention of this report in any of the Uṣūl books, doing a text[ search for إمارة الصبيان], and the statement of the Prophet was to listen to the Quraysh and leave)(اسمعوا من قريش ودعوا فِعلَهم). The author says that Abū Dāwūd also transmits this report too, but the first half [about Najāshi?] in his book (كتاب الجراح) and the rest in his book Ibn 'Abd al-Barr says this hadith is Ḥasan. [<— v. 6, pg 44]).(كتاب السنة

Another hadith is transmitted from 'Abd Allāh b. al-Mubārak, from 'Abd Al-raḥman b. Yazīd, from 'Abd al-Raḥman, a man from Ṣan'ā, who said that one day al-Najāshī called on Ja'far and his companions, and they came to him while he was in his home. He was sitting on the dirt and

was donned with old and worn out clothing (الخلقان). He then informed them of the good news of the Prophet's victory at Badr. They asked him why he was sitting in the manner he was, and he said, "We find in what God revealed to Jesus (صلى الله عليه وسلم) that the slaves of God are to be humble when God blesses them (حقا على عباد الله أن يُحدِثوا لله تواضعا عند كل ما أحدث لهم من نعمة), and since God aided his Prophet, I show my humility" [note: the hadith doesn't mention Ja'far in the version given by al-Zarkashi, but he is named in Ibn al-Mubārak's book, al-Zuhd wa al-Raqā'iq (v. 2, pg 53). Note that in the New Testament Jesus says to be humble and that God will exalt you, so a similar meaning as this verse] [note: I did a text search on this, and this is the first and only time this report is discussed in the Usul literature which is), تواضعا عند كل( I searched for . found in the Ibn al-Mubarak's hadith in his book on Zuhd as well]. [<— v. 6, pg 44-45]

The author notes that there is a report found in al-Ḥākim's al-Mustadrak, from 'Ikrimah, from Ibn 'Abbās that the Prophet said (مكتوب في التوراة من سره أن تطول حياته ويزاد في رزقه فليصل رحمه), and according to al-Ḥākim, the hadith is saḥīḥ in its Isnad, though Bukhari and Muslim didn't narrate it with this context (of it being from the Torah). [Note: I did not find this in a text search of other usul books, either before or after al-Zarkashi]. The author says that looking for these reports in people that the Prophet didn't verify is not acceptable ( - والقول بجريان هذا في أخبار من لم يطلع النبي صلى الله عليه وسلم - عليه بعيد) [double check this].

The author transmits the opinion of (إلكيا) [a shāfi'ī student of al-Juwaynī who died in 504], that as for referring to the scriptures they currently have (الموجود بأيديهم) there is no disagreement that it is not to be followed (فممنوع اتباعه بلا خلاف), and that (شرع من قبلنا) is referring to what God and His messenger have transmitted about their laws. [<— v. 6, pg 45]

The author says that (الأستاذ أبو منصور وغيره) [I believe this might be عبد القاهر البغدادي] say that the benefit of this theoretical disagreement is apparent in matters where there doesn't exist a clear textual proof or ijmā' (حادثة ليس فيها نص ولا إجماع), but it has a known legal position in a prior shariah (ولها حكم شرع معلوم في شرع قبل هذا الشرع). Is it okay to take from this ruling, or not? For example, if it is established that something is prohibited in a prior shariah by virtue of a text (بنص) or by someone's testimony (شهادة), then there are two position: one is that we assume the law remained the same unless abrogated. And the more correct position is that we don't act on it, but rather assume that the matter is ḥalal. As for the first position (that we take on the ruling), then according to al-Māwardi in his book (الحاوي), the ruling we consider is based on the shariah that is closest to the time of Islam [e.g., the Shariah of Jesus over that of Moses, though he doesn't say this], and if they disagree, then (وإن اختلفوا فوجها تعارض الأشباه) [I don't understand]. [NOTE: **this is apparently related to the issue of food laws, which al-Mawardi talks about**]

The author says that if we accept that prior shariah remains in force (استصحاب شرع من قبلنا), than there are 3 conditions:

[1] One is that it must be transmitted through authentic means, which is one of four ways. Either through the Qur'an, e.g., the verse in Surat al-Baqara, verse 67: أن تذبحوا بقرة, or authentic sunna, e.g. when the jurists cite (حديث الغار) to justify (بيع الفضولي وشرائه) [see this: https://www.alukah.net/sharia/0/74821/], or if it is transmitted through mutawātir means (and the author says that them being believers is not needed here for it to be mutawātir. He says he explained this in the chapter called باب الخبر) [he notes that al-Rāfi'ī in his book الأطعمة says we can't accept the words of the People of the Book], and the last way is if two converts from them

who knew what was changed in their text was to testify (بأن يشهد به اثنان أسلما منهم ممن يعرف المبدل). [<— v. 6, pg 46]

[2] The sharias shouldn't disagree about the prohibitedness/permittedness of a thing. If they disagree, e.g. if it was haram in the shariah of Abraham and halal in another shariah, than we should either take the later of the two, OR, we can choose, even if we don't know that the second shariah abrogated the first. If the second shariah **did** abrogate, and we don't know if the matter was forbidden in the prior or following shariah, then we postpone judgment and we return to the original state of it being permissible (

أن لا تختلف في تحريم ذلك وتحليله شريعتان، فإن اختلفتا كأن كان ذلك حراما في شريعة إبراهيم وحلالا في شريعة غيره فيحتمل أن يؤخذ بالمتأخر ويحتمل الخيير وإن لم نقل بأن الثاني ناسخ للأول، فإن ثبت كون الثاني ناسخا وجهل كونه حراما في الدين السابق أو اللاحق توقف ويحتمل الرجوع إلى الإباحة الأصلية

)

[**this doesn't make sense to me**] [<— v. 6, pg 46-47]

[3] That the matter that was prohibited or permitted is established as being from that shariah prior to their alteration of the scriptures. If they [the other communities] found something permitted or forbidden after it was abrogated or altered, then we don't consider it. [<— v. 6, pg 47]

According to Abū al-Faraj ibn al-Jawzī, the different sharias were originally easier (كان في التخفيف), as it is not known that the sharias of Noah, Ṣāliḥ and Ibrāhīm were difficult. Then Moses came with a difficult shariah (بالتشديد والأثقال), and Jesus came with something similar [i.e., the

same difficulty], and the shariah of our Prophet came and abrogated the difficulties of the shariah of the Ahl al-Kitāb. [<— v. 6, pg 48]

[Returning now to previous version of book because it's easier for me:

**الكتاب: البحر المحيط في أصول الفقه**

**المؤلف: أبو عبد الله بدر الدين محمد بن عبد الله بن بهادر الزركشي (المتوفى: 794هـ)**

الناشر: دار الكتبي

الطبعة: الأولى، 1414هـ - 1994م

عدد الأجزاء: 8

Shar' man qablanā is not referred to unless there is an absence of sources from our shariah for a matter (لا يرجع إليه إلا عند عدم أدلة شرعنا). [<— v. 8, pg 70]

**الكتاب: تشنيف المسامع بجمع الجوامع لتاج الدين السبكي**

**المؤلف: أبو عبد الله بدر الدين محمد بن عبد الله بن بهادر الزركشي الشافعي (المتوفى: 794هـ)**

دراسة وتحقيق: د سيد عبد العزيز - د عبد الله ربيع، المدرسان بكلية الدراسات الإسلامية والعربية بجامعة الأزهر

الناشر: مكتبة قرطبة للبحث العلمي وإحياء التراث - توزيع المكتبة المكية

الطبعة: الأولى، 1418 هـ - 1998 م

عدد الأجزاء: 4

As in his last book, the author mentions statements in the Qur'an in the words of Moses or one of the other prophets, directed to their communities - do they apply to us? He says this is an issue of

(شرع من قبلنا). The author says we don't accept them as applying to us based on us generalizing the meaning of the verses from their originally specific audience [i.e. the communities being addressed], to include us. Rather, they apply to us based on separate evidence, according to the majority (الجمهور) [<— v. 2, pg 709]

[deals with it v. 3 pg, 431-435]
He notes the debate, doesn't give his opinion but notes that of others. This is a summary treatment of his analysis in his other book, al-Baḥr al-Muḥīṭ]

**Zarkashi calls out al-Razi, who in the following passage in his book المطالب العالية من العلم الإلهي uses the Qur'an and Genesis to show that the scriptures - and he calls the Qur'an and Torah the two greatest heavenly books - don't discuss the createdness (حدوث) of the universe. See v. 4, pg 18, here:**
https://books.google.com/books?id=Qyx0DwAAQBAJ&pg=PT5&lpg=PT5&dq=+وذلك+أنها+بلغت+في+الصعوبة+إلى+حيث+تعجز+العقول+البشرية+عن+الوصول+إليها&source=bl&ots=PzFA-TfzeHkAhUMLK0KHQTlA4AQ6AEwFHoECAgQAQ#v=onepage&q=20%وذلك20%أنها20%بلغت20%في20%الصعوبة20%إلى20%حيث20%تعجز20%العقول20%البشرية20%عن20%الوصول20%إليها&f=false] [v. 4, pg 633-634] [Note, not related to pre-Muhammadan law, but can be used in a footnote when discussing Razi's torah references to show he had knowledge of their books]

**الكتاب: خلاصة الأفكار شرح مختصر المنار**

**المؤلف: أبو الفداء زين الدين قاسم بن قُطْلُوْبَغَا السُّوْدُوْنِي الجمالي الحنفي (المتوفى: 879هـ)**

المحقق: حافظ ثناء الله الزاهدي

الناشر: دار ابن حزم

الطبعة: الأولى، 1424 هـ - 2003 م

عدد الأجزاء: 1

[Short section, the book is only about 189 pages long, one volume]

The author merely says that our position (الصحيح عندنا) is that pre-Muhammadan law is binding on us, because of the verse (**ثُمَّ أَوْرَثْنَا الْكِتَابَ الَّذِينَ اصْطَفَيْنَا مِنْ عِبَادِنَا**). But because their books cannot be relied on because they altered them, we refer to what God and his messenger informed us if they didn't reject it, and we treat it as the shariah of our Prophet. [<— v. 1, pg 158]

**الكتاب: مجموع الفتاوى**

**المؤلف: تقي الدين أبو العباس أحمد بن عبد الحليم بن تيمية الحراني (المتوفى: 728هـ)**

المحقق: عبد الرحمن بن محمد بن قاسم

الناشر: مجمع الملك فهد لطباعة المصحف الشريف، المدينة النبوية، المملكة العربية السعودية

عام النشر: 1416هـ/1995م

[37 volumes, last two volumes are فهارس]

In a larger discussion about the inadmissibility of fabricated or extremely inauthentic hadiths in matters or law, he says this is similar to the Isrā'īliyyāt, where, one can transmit as long as one knows it is not fabricated (ما لم يعلم أنه كذب), in order to do (الترغيب والرهيب) to encourage matters that we know God has commanded or prohibited in our sharia. As for these Isrā'īliyyāt being used to establish matters of our shariah, when these reports are not verifiable or authentic, no

scholar accepts this (فأما أن يثبت شرعا لنا بمجرد الإسرائيليات التي لم تثبت فهذا لا يقوله عالم). Similarly, weak hadiths are inadmissible in law. [<— v. 1, pgs. 251]

The author addresses a report recorded by al-Ḥākim al-Naysābūrī and transmitted by others that Adam sought forgiveness for his sin by making intercession through Muhammad. The author rejects this report and ones like it as categorically inauthentic based on isnād criticism, and not a valid source by which people can build the shariah [and a source for folk practice] [<— v. 1, pgs. 253-257]. He says that reports like these are like Isrā'īliyyāt, in that the truth of their material can only be established through authentic transmission (نقل ثابت) from the Prophet. When Ka'b al-Aḥbār and Wahb b. Munabbih transmit material about the past communities from the People of the Book, it is still not allowed to use it as evidence in our religion, by agreement of the Muslims. If that is the case with reports that they transmitted, than how about people who transmitted this kind of material neither from the People of the Book, nor from trustworthy Muslim scholars? Rather, this material is transmitted by by someone who the Muslims consider to be a weak narrator whose reports are not acceptable as evidence. [<— v. 1, pg 257-258] The author continues that reports like this, if established as true about the prior Prophets, would be considered shariah for them. Using them as legal evidence for us, then, would be built on the issue of whether pre-Muhammadan law is binding on us or not. The author says the debate on this is well known (والنزاع في ذلك مشهور), but what the Imams (الأئمة) [probably referring to the 4 imams], and most of the scholars held is that it is binding on us provided our shariah doesn't go against it. This is regarding things that are established as being from the law of previous communities, which is known through authentic transmission (نقل ثابت) from our Prophet (PBUH), or what is known through tawātur from them (أو بما تواتر عنهم), not from a narration like

the one above, which no Muslim can use as legal evidence in our shariah. [<— v 1, pg 258] [**The author is for tawātur evidence from their communities being used, not just hadith**]

—

In his argument against seeking help from other than God and imploring the aid of dead people, he says that this was not only what the Qur'an and the Prophet, teach, but it is found in the shariah of the other Prophets as well. He says that in the Torah Moses prohibits the Children of Israel from calling to the dead (عن دعاء الأموات) and other types of idolatry. He says that the the religion of all the prophets is one, even if their sharias differ [Deuteronomy 18:10-11: Let there not exist among you anyone who passes his son or daughter through fire, who practices the kosem-occult; who practices time-frame-occult or who divines portentuous events or a sorcerer. Or a snake charmer, or one who invokes the spirit of Ov or *yidoni,* or communicates with the dead (ודרש אל-המתים). Leviticus 19:31: Do not turn to ghosts and do not inquire of familiar spirits, to be defiled by them: I the LORD am your God.] [<— v. 1, pg 357]

—

He says that if we learn things about the religion of the Ahl al-Kitab from converts to Islam who translate their material into Arabic, we can benefit to use them in our discussions and debates with them (انتفع بذلك في مناظرتهم ومخاطبتهم), as 'Abd Allāh b. Salām, Salmān al-Fārsī, Ka'b al-Aḥbār and others did in transmitting the knowledge they had. This material can be used to show them how what they have is in agreement with what the Prophet came with, and it can also be used as a proof against them. [<— v. 4, pg 109-110]. Ibn Taymiyya says as an aside that Hebrew words are similar to Arabic words, and that when he heard the words of the Torah in Hebrew from

converts to Islam, he found that the languages were extremely close (غاية التقارب), to the point that he was able to understand a lot of what they were saying in Hebrew with just his knowledge of Arabic (حتى صرت أفهم كثيرا من كلامهم العبري بمجرد المعرفة بالعربية). He says that the correct meanings [found in the Torah] were either near to the meanings of the Qur'an, similar to them, or the same, though the Qur'an has in its words and meanings great unique matters.

(وَالْأَلْفَاظُ الْعِبْرِيَّةُ تُقَارِبُ الْعَرَبِيَّةَ بَعْضَ الْمُقَارَبَةِ كَمَا تَتَقَارَبُ الْأَسْمَاءُ فِي الِاشْتِقَاقِ الْأَكْبَرِ. وَقَدْ سَمِعْت أَلْفَاظَ التَّوْرَاةِ بِالْعِبْرِيَّةِ مِنْ مُسْلِمَةِ أَهْلِ الْكِتَابِ فَوَجَدْت اللُّغَتَيْنِ مُتَقَارِبَتَيْنِ غَايَةَ التَّقَارُبِ حَتَّى صِرْت أَفْهَمُ كَثِيرًا مِنْ كَلَامِهِمْ الْعِبْرِيِّ بِمُجَرَّدِ الْمَعْرِفَةِ بِالْعَرَبِيَّةِ. وَالْمَعَانِي الصَّحِيحَةُ إمَّا مُقَارِبَةٌ لِمَعَانِي الْقُرْآنِ أَوْ مِثْلُهَا أَوْ بِعَيْنِهَا وَإِنْ كَانَ فِي الْقُرْآنِ مِنْ الْأَلْفَاظِ وَالْمَعَانِي خَصَائِصُ عَظِيمَةٌ.)

They [the ahl al-Kitab] can try to discredit the Qur'an through something they claim to transmit or based on rational proofs. E.g., they may claim to transmit from their books about the prophets something that contradicts what Muhammad PBUH came with, or that contradicts what God says is in their books, such as their claim to the Prophet that God commanded them to blacken the faces of the zānī (تحميم الزاني) as opposed to stoning, then the Prophet (PBUH) and the believers were able to seek out the Torah, and those who were able to translate it faithfully and honestly (ثقات التراجمة), such as 'Abd Allāh b. Salām were able to do so, and thus were able to say to their rabbi, "lift your hand from the stoning verse," revealing the truth. And thus the Prophet stoned the two zānīs after it was proven to them from their book, which was in agreement with what God revealed about stoning [i.e. what he revealed to the Prophet separately] [<— v.4, pg 110]. And thus the Prophet said that he was the first to revive God's command after [the Jews] killed it (اللهم إني أول من أحيا أمرك إذ أماتوه) [<— v. 4, pg 110]. This is why Ibn 'Abbās said regarding the verse (…يحكم بها النبيون الذين أسلموا…) that the Prophet is one of the prophets intended, and he only

gave rulings by what God revealed to him, as given in the verse (وأن احكم بينهم بما أنزل الله) [This is an interesting way of using this verse to show how the Prophet both gave a rule by the Torah, but depended on his own received revelation].

The author uses this to say that one can read a translated copy in Arabic [of the texts of the Ahl al-Kitab (he doesn't specify Torah but it's implied)], with the text and words rendered into Arabic by reliable Muslim translators or those Muslims who know their script, such as Zayd b. Thābit and others who the the Prophet commanded to learn it. The author says the hadith regarding this is well known in the sunnah (والحديث معروف في السنن). Bukhārī cited it as evidence in his (باب ترجمة الحاكم وهل يجوز ترجمان؟): Khārija the son of Zayd b. Thabit narrated from his father that the Prophet ordered him to learn the script of the Jews, so that I could write for the Prophet PBUH his writings, and recite to him their writings if they wrote to him. [i.e. we can learn their writing]. The author says that speaking in their language is like writing in their language. [<— v. 4, pg 111]

He then cites the verse

**كُلُّ الطَّعَامِ كَانَ حِلًّا لِبَنِي إِسْرَائِيلَ إِلَّا مَا حَرَّمَ إِسْرَائِيلُ عَلَى نَفْسِهِ مِنْ قَبْلِ أَنْ تُنَزَّلَ التَّوْرَاةُ قُلْ فَأْتُوا بِالتَّوْرَاةِ فَاتْلُوهَا إِنْ كُنْتُمْ صَادِقِينَ)**

[Quran 3:93]

as a command for us to seek from them (the Jews), that they bring the Torah and recite it if they are truthful in transmitting of what disagrees with it [what the Qur'an says about what's in it] [<— v. 4, pg. 111-112]. This is done because they "alter the Scripture with their tongues so you may think it is from the Scripture, but it is not from the Scripture" ( **يَلْوُونَ أَلْسِنَتَهُمْ بِالْكِتَابِ لِتَحْسَبُوهُ مِنْ**

3:78] (**الْكِتَابِ وَمَا هُوَ مِنْ الْكِتَاب**] and they "write the Scripture with their hands then say that this is from God" [2:79]. That is why only the translation of a trustworthy person is acceptable [**me: this suggests that the available Torah is accurate for Ibn Taymiyya?**]

For example, if one of them cites against the Qur'an a report from one of the prior messengers, e.g. what is reported about Moses that he said, "hold onto the Sabbath for as long as the Heavens and the Earth," we can respond, the author says, by asking them which book this is in. And thus we find out that it is not in their books, but rather a fabricated lie.

They [the Jews] have the 120 nubuwwāt [? Have no idea what this is, might be explained in his other book with the name Nubuwwāt. But it's not important for me here], and the (كتاب المثنوي), which the author says means (المثنّاة) [note, the Mishna actually does mean this. As Ibn al-Qayyim says: " يقول العبرانيون للكتب "المشنا" ، وَمَعْنَاهَا بلغَة الْعَرَب "الْمُثَنَّاة" ، الَّتِي تثنى ، أَي تقْرَأ مرّة بعد مرّة " انتهى ، من جلاء الأفهام (ص 198). Also, Ibn Hazm in his al-Muḥallā (v. 8, pg 341) gives hadith of 'Umar where he rebukes the Jews referring to the extra-biblical legal text Mishna, making it clear that this word is referring to the Talmud]. The author says this is the text that 'Abd Allāh b. 'Amr said was a sign of the Last Hour amongst us, that the Mishna will be read amongst the people and no one will reject them for doing so. When asked what the Mishna was, he replied that it is what was written down aside from the Book of God (ما استكتب من غير كتاب الله). [Note: this report seems to imply that reference to the Kitāb Allāh - the Torah presumably here - was normal, and that what was criticized was referring to this other text] [note 2: this text appears in al-Ḥākim's al-Mustadrak, but 'Abd Allāh b. 'Amr narrates it from the Prophet]. [the author seems to be suggesting that the Jews will say things are in their texts, but it's actually from the Talmud]

He continues that with knowledge of their text, if they are asked about the (أسماء الله وصفاته) in the Scripture, we can show them the agreement between the prior prophets and Muhammadan PBUH as a proof against them and others, for they have twisted the words of scripture ( فحرفوا الكلم عن مواضعه), which can be learned [i.e. their twisting of the words] as was noted earlier.

Aside from their claims of transmitted knowledge, they might make a rational argument, such as an argument against abrogation that God can't abrogated what he's prohibited or commanded. But the Qur'an argues against them in the verse ( **سَيَقُولُ السُّفَهَاءُ مِنَ النَّاسِ مَا وَلَّاهُمْ عَنْ قِبْلَتِهِمُ الَّتِي كَانُوا عَلَيْهَا**) [Quran 2:142] [<— v., 4, pg 112]. According to البراء بن عازب in the Ṣaḥīḥayn, this is referring to the Jews. And God gives his response: ( **قُلْ لِلَّهِ الْمَشْرِقُ وَالْمَغْرِبُ يَهْدِي مَنْ يَشَاءُ إِلَى صِرَاطٍ مُسْتَقِيمٍ**), which argues that God can abrogate based on Divine Will and because the new command may be better (أصلح وأنفع), as indicated by (يهدي من يشاء إلى صراط مستقيم), where God guiding you to the straight path is telling you the second command is better, and where the reference to God willing (من يشاء), is making it clear that the command is tied to what God wants. [**interesting use of this verse as an argument for naskh**] The Qur'an further makes an argument of Naskh [to the Jews] by noting that things were halāl for Isrā'īl (Jacob) before they were prohibited in the Torah [reference to that verse]. The things that were halal were commanded as being halal ( تحليلا شرعيا بخطاب), and so this was not a matter of them being in their natural state such that the later prohibition would not qualify as 'abrogation' as they claim. The verse also says to seek out the Torah to prove this [the abrogation of things], and this is what we find in the Torah in more than one place according to converts from the Ahl al-Kitāb. [One of the things the author is trying to

show in this larger section is that you don't need to be a mutakallim or philosopher to debate, the Qur'an and sunna lays out what is needed] [<— v. 4, pg 113]

—

The author says the Prophet was given knowledge of tawḥīd of God, his attributes and names, and about the angels, the prophets, etc., in a way also given in the books of the other Prophets, such as the Torah and other books. He says that whoever reflects on the Torah and the Qur'an will know that they both come from the same lamp (يخرجان من مشكاة واحدة) [<— v. 4, pg 212]. This is why God has verses linking the Torah and Qur'an, such as ( **لَوْلَا أُوتِيَ مِثْلَ مَا أُوتِيَ مُوسَى أَوَلَمْ يَكْفُرُوا بِمَا أُوتِيَ مُوسَى مِنْ قَبْلُ...إن كنتم صادقين**) [Qur'an 28:48] [<— v. 4, pg 212-213]. And the verse where the Jinn say, (**إِنَّا سَمِعْنَا كِتَابًا أُنْزِلَ مِنْ بَعْدِ مُوسَى مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ**) [Qur'an 46:30]. Author gives other verses too. [<— v. 4, pg 213]

—

In the famous debate on whether Abraham took Isma'īl or Isḥāq for sacrifice, the author argues it is Ismā'īl, because it is al-Kitāb and al-Sunnah are on. He says that the Torah that is in the hands of the Ahl al-Kitab (التوراة التي بأيدي أهل الكتاب) [i.e. not necessarily the original] suggests the same [<— v. 4, pg 331]. In it, it says that God told Abraham, (اذبح ابنك وحيدك) [your only, singular son], and according to another translation [so the author is referring to two translations], it says (بِكرَك) [the first born son] [Genesis 22:2 "And He said: 'Take now thy son, thine only son, whom thou lovest, Isaac…" (וַיֹּאמֶר קַח-נָא אֶת-בִּנְךָ אֶת-יְחִידְךָ אֲשֶׁר-אָהַבְתָּ, אֶת-יִצְחָק)] He says that Ismā'īl was the (وحيد) of Abraham and his (بكر), by agreement of both the People of the Book and Muslims, but the People of the Book changed the text (حرّفوا) and added Isḥāq, and this found its way among

the Muslims. [<— v. 4, pg 332] He then gives the evidence from the Qur'an and Hadith for this [<— v. 4, pg 332-336]

[See following article on Ibn Taymiyya's view on this, and also his view on the abrogation of the Bible:
https://www.tandfonline.com/doi/abs/10.1080/09596410.2013.786339
https://aha.confex.com/aha/2014/webprogram/Paper13896.html
]

—

Author defends the reality of the (صفات) of God rejected by the mutakallimūn and others who forced interpretation on them and denied the outward meaning of them out of fear of anthropomorphizing God. One of his proofs is that the Prophet called out the People of the Book for what they altered and changed of the scriptures, and we know that the Torah is full of (الصفات), so if this is what was altered and changed, than the Prophet would have necessarily called them out on it as the people who reject the (صفات) do, on the basis of these statements being (التجسيم والتشبيه). Yet when the Qur'an does call them out, it is for things like their statement that (يد الله مغلولة) or (إن الله فقير ونحن أغنياء), or their claim that God rested when he created the heavens and the earth, to which God responds, ( ولقد خلقنا السماوات والأرض وما بينهما في ستة أيام وما مسنا من لغوب). [so he is using the Torah as a proof again] [<— v. 5, pg 34]

—

Uses the religions of the prior Prophets [and it wouldn't be surprising if this was based on Torah evidence as inferred from the prior examples] to say the following:

(الِاسْتِدْلَالُ عَلَى حُدُوثِ الْأَجْسَامِ بِحُدُوثِ أَعْرَاضِهَا - هُوَ دَلِيلٌ مُحَرَّمٌ فِي شَرَائِعِ الْأَنْبِيَاءِ لَمْ يَسْتَدِلَّ بِهِ أَحَدٌ مِنْ الرُّسُلِ وَأَتْبَاعِهِمْ)

[<— v. 5, pg 290]

—

In a section on the true love of God being to love what God loves, i.e. to follow his commandments and what pleases him, as opposed to following religious innovations out of claims that they are from love of God, he quotes the Injīl to make the point that this is found in the prior scriptures as well, though the Christians don't truly love God because they do not obey what he wants them to obey. He says:

(فَفِي الْإِنْجِيلِ أَنَّ الْمَسِيحَ قَالَ: " أَعْظَمُ وَصَايَا الْمَسِيحِ أَنْ تُحِبَّ اللَّهَ بِكُلِّ قَلْبِكَ وَعَقْلِكَ وَنَفْسِكَ)

[Matthew 22:36-37: Master, which is the great commandment in the law? Jesus said unto him, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind.]

[<— v. 10, pg 211]

—

He calls out those who practice (خلوة) for forty days, citing the story of Moses retreated for 40 days, and the report that Jesus fasted for forty days before being spoken to. They claim that after doing so, one is spoken to by God (الخطاب والتنزل), as with the Prophet in the cave of Ḥirā. Ibn Taymiyya said that that the case of Moses and Jesus is not from the shariah of the Prophet, and following it would be like following an abrogated law, just as we don't follow the Sabbath. As for the Prophet in the cave, this was before he became a prophet, and is not in our shariah. [<— v. 10, pg 395]

—

The author discusses the story of Khidr and Moses, from which some Muslims claim that one can violate the shariah when one achieves gnosis as a (ولي) e.g., because Khidr left the shariah of Moses in doing what he did. But the Prophet was sent to all people, Arabs, non-Arabs, ascetics, scholars and the masses, even the Jinn, and all are obliged to follow the path he set forth of obligations and prohibitions, such that even if the other prophets were alive they would be bound to him, as is given in the verse (3:81), and the hadith found in the Sunna of al-Nasā'ī of the Prophet rebuking 'Umar for holding the parchment of the Torah, saying that if Moses were alive he would have had to follow him. And in a narration of Aḥmad in his mussed, the Prophet says that if Moses were alive and you followed him and left following me, you would have gone astray [<— v. 11, Pgs 422-423]. And from among the marāsīl (pl. of mursal) of Abū Dāwūd is the statement "People go astray in following a scripture other than their own scripture, revealed on a prophet other than their own prophet" ( كفى بقوم ضلالة أن يتبعوا كتابا غير كتابكم أنزل على نبي غير نبيهم) God revealed the verse related to this: (أولم يكفهم أنا أنزلنا عليك الكتاب يتلى عليهم) [Qur'an 29:51] [<— v. 11, Pgs 423-424] Furthermore, in authentic hadith we know that the Messiah Jesus, the son of Mary, when he descends from the heavens, will be a follower of the shariah of the Prophet. The author asks, if it becomes incumbent on the prophets themselves to follow and support him, than what about non prophets [i.e. the so-called saints]? He says that it is necessarily known from our religion (مما يعلم بالاضطرار من دين الإسلام) that it is not allowed for anyone who has received the message to follow the shariah of any other Prophet, e.g. Moses or Jesus. So if one can't follow another prophet instead of the Prophet, then what about someone who rejects following both the Prophet and all the prophets? [<— v. 11, pg 424] [**note: makes it clear that only the shariah of the Prophet Muhammad is to be followed**]

He adds that because there are things that have been altered in what has been transmitted by the People of the Book about the prior Prophets, we believe in the matters that we know to be true, and we reject what we know to be false, and for matters that we don't know about we don't say it is true or false. This is based on the hadith in Bukhāri's ṣaḥīḥ from Abu Hurayra that the Prophet said, "When the People of the Book narrate to you, don't say they are truthful or liars ( فلا تصدقوهم ولا تكذبوهم), because perhaps they narrate to you something false and you say they are truthful, or the narrate to you truth and you say they are liars. [Rather], Say, we believe in what has been revealed to us and what has been revealed to you." [<— v. 11, pg 425] [this appears to be a side comment by the author]

What proves Khadr didn't violate the shariah is that Moses wasn't sent to Khidr, given a hadith where the Prophet says that prior prophets were only sent to their people, and another hadith in the two Saḥīḥs where Khidr says to Moses that both of them were following respect knowledge given to them from God, which the other did not know. [<— v. 11, pg 425] Furthermore, Khidr didn't do anything contrary to the shariah, which is why when he told Moses the reason for his actions, Moses was in agreement. If it was against Moses' shariah, Moses wouldn't have accepted what Khidr did. The author goes on to explain why the actions of Khidr were not contrary to shariah. E.g., sinking the boat was acceptable because he knew it was in the interest of the owner, which is acceptable for us too, as in the example of someone who goes to someone else's house and does things in the home knowing the owner would be okay with it, either because of explicit confirmation by the owner, or a tacit understanding [<— v. 11, pg 426] He gives some hadith to prove that one can do this. E.g. a woman sacrificed a sheep as it was about

to die, without the permission of its owners. They owners asked the Prophet about it and the Prophet said they could eat from it and didn't demand the lady be responsible for the lost sheep, since this was understood based on customary permission, even if no vocal permission was given. The author gives other examples illustrating the same point.

As for killing the child, this is would be covered under the topic of self defense (دفع الصائل) for the parents, because Khidr knew that the child would try its parents' religion. Additionally, killing children is allowed when they fight in battle against the Muslims (إذا قاتلوا المسلمين), and it is permitted for them to be killed in self defense of ones property (لدفع الصول على الأموال). That is also why it is in the Bukhari's Ṣaḥīḥ that Najdah, the Harurī (نجدة الحروري) [i.e. the Kharijite], when he asked Ibn 'Abbās about killing youths (غلمان), Ibn 'Abbās said, "If you had knowledge of them as Khidr knew of the youth, then kill them. If not, do not." Also, in the Ṣaḥīḥayn, 'Umar sought permission from the Prophet to kill Ibn Ṣayyād (ابن صياد), a youth near to attaining puberty (مراهق) who he suspected was al-Dajjāl. The Prophet responded, "If he is [Dajjāl], then you won't overpower him, and if he isn't then you should not kill him (فلا خير لك في قتله)" He didn't say that if he **was** the Dajjāl that "you should not kill him" (فلا خير لك في قتله), only that he would be overpowered. [<— v. 11, pg 427] Meaning that if he could execute him prior to his puberty in order to end mischief he would bring (لقطع فساده), that would **not** be prohibited. If it was, arguing against it by saying he was a child would have sufficed as an argument, since the more general reason for a ruling would be more appropriate, as in the Prophet's statement regarding cats that they are not ritually impure (نجس) because they are from among those things that wander in the house (إنها من الطوافين عليكم والطوافات)

As for building the wall without taking a reward, despite their hunger, this was from Khidr's wisdom, because we was looking out for the interests of the father in doing this voluntary deed. [<— v. 11, pg 428]

———

The author publicly engaged a sheikh from an antinomian [Sufi?] group known as (البطائحية). This sheikh defended the wearing of his group of neck-rings (الأطواق) by citing a story about a worshipper (عابد) from Banī Isrā'īl who used to place a neck-ring around his neck, as narrated by Wahb b. Munabbih [<— v. 11, pg 462]. The author responded to this group that we don't follow in our religion any of the Isrā'īliyyāt that contradict our shariah. He cites the 'Umar hadith as narrated by Aḥmad, in which the Prophet says that if Moses were alive and you followed him and left following me, that you would be misguided. He also gives the Mursal report of Abū Dāwūd that the Prophet saw some of his companions with parts of the scriptures of the People of the Book (رأى مع بعض أصحابه شيئاً من كتب أهل الكتاب), and he said that a people would be misguided for following a scripture other than the one sent to them ( كفى بقوم ضلالة أن يتبعوا كتابا غير كتابهم أنزل إلى نبي غير نبيهم). Then God revealed the verse (أولم يكفهم أنا أنزلنا عليك الكتاب يتلى عليهم) [Qur'an 29:51]

We are not allowed to follow Moses or Jesus in matters where they differed from our shariah. We only follow what God has revealed to us, and the shariah and minhāj that God sent the messenger to us with. This is as is told in the verse ( فاحكم بينهم بما أنزل الله ولا تتبع أهواءهم عما جاءك من الحق لكل جعلنا منكم شرعة ومنهاجا) [5:48]. Then how can we follow the worshippers from Banī Isrā'īl in a story whose authenticity we do not even know. We have no reason to follow the [ascetic] worshippers (عُبَّاد) of Banī Isrā'īl, given the verse ( تلك أمة قد خلت لها ما كسبت ولكم ما كسبتم ولا تسئلون عما

2:134] (كانوا يعملون]. The author then demands from his interlocutor proof from the Qur'an and authentic hadith. [<— v. 11, pg 463] [note the continuation of the story on the following pages is fascinating]

—

[REALLY INTERESTING POINTS ON THE AUTHENTICITY/NATURE OF THE SCRIPTURES]

Ibn Taymiyya is asked how the Qur'an commands the Christians in the time of the Prophet to follow their book ( **وَقَفَّيْنَا عَلَىٰ آثَارِهِم بِعِيسَى ابْنِ مَرْيَمَ مُصَدِّقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ التَّوْرَاةِ ۖ وَآتَيْنَاهُ الْإِنجِيلَ فِيهِ هُدًى وَنُورٌ** ) [وَلْيَحْكُمْ أَهْلُ الْإِنجِيلِ بِمَا أَنزَلَ اللَّهُ فِيهِ ۚ وَمَن لَّمْ ] and ( **وَمُصَدِّقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ التَّوْرَاةِ وَهُدًى وَمَوْعِظَةً لِّلْمُتَّقِينَ**) [5:46] (**يَحْكُم بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْفَاسِقُونَ**] when the Gospels (كتب الأناجيل) that are with them say that Jesus came to them after he was crucified [i.e. why would the Qur'an command them to follow an altered text] [<— pg 102, v. 13] And before that verse is the verse, ( **وَكَيْفَ يُحَكِّمُونَكَ وَعِندَهُمُ التَّوْرَاةُ** [فِيهَا حُكْمُ اللَّهِ ثُمَّ يَتَوَلَّوْنَ مِن بَعْدِ ذَٰلِكَ ۚ وَمَا أُولَٰئِكَ بِالْمُؤْمِنِينَ) [5:43] and ( **إِنَّا أَنزَلْنَا التَّوْرَاةَ فِيهَا هُدًى وَنُورٌ ۚ يَحْكُمُ بِهَا** [النَّبِيُّونَ الَّذِينَ أَسْلَمُوا لِلَّذِينَ هَادُوا وَالرَّبَّانِيُّونَ وَالْأَحْبَارُ بِمَا اسْتُحْفِظُوا مِن كِتَابِ اللَّهِ وَكَانُوا عَلَيْهِ شُهَدَاءَ...**) [5:44], and ( **قُلْ يَا أَهْلَ** [وَلَوْ أَنَّهُمْ أَقَامُوا التَّوْرَاةَ وَالْإِنجِيلَ وَمَا أُنزِلَ إِلَيْهِم مِّن رَّبِّهِمْ لَأَكَلُوا مِن فَوْقِهِمْ وَمِن تَحْتِ أَرْجُلِهِم...**) [5:66] and ( **الْكِتَابِ لَسْتُمْ عَلَىٰ شَيْءٍ حَتَّىٰ تُقِيمُوا التَّوْرَاةَ وَالْإِنجِيلَ وَمَا أُنزِلَ إِلَيْكُم مِّن رَّبِّكُمْ ۗ وَلَيَزِيدَنَّ كَثِيرًا مِّنْهُم مَّا أُنزِلَ إِلَيْكَ مِن رَّبِّكَ طُغْيَانًا وَكُفْرًا ۖ فَلَا تَأْسَ عَلَى الْقَوْمِ الْكَافِرِينَ**) [5:68]. These are commands to the Prophet to tell the People of the Book he was sent to in his time. As for those who came after him until Judgement Day, he wasn't commanded to tell them this if they repented (لمن قد تاب منهم) [i.e. the rule that they follow

their books is applicable to the People of the Book during the life of the Prophet, and for those after him, only those who hadn't converted yet. I am assuming "repent" here means convert].

It's been said that there no longer exists in the world a copy (نسخة) of the Torah or Injīl as was revealed by God, for they have been altered. [<— pg. 103, v. 13] The Torah was not transmitted via tawātur, and the Injīl only taken up by 4 people [<— pg. 103-104, v. 13]. From this group [who claims all the copies have been altered], some say a lot of these texts are false, while others say only a small part of them are not the words of God. A second group [to the former that says it was altered in some amount] says that no one altered any of the text from these scriptures. Rather, they altered its meanings through their interpretations. The author says that many Muslims hold one of these two positions. He says the correct is a third position, which is that there exists in the world copies that are authentic (هو أن في الأرض نسخا صحيحة), and these had remained in the time of the Prophet (PBUH). There were also, however many altered copies as well that exist. The Qur'an [in these verses] commands them to rule by what God revealed in the Torah and Injīl, and informs us that in them are his laws [indicating the truthful texts existed]. Furthermore, the Qur'an doesn't state that they altered all of the copies (جميع نسخ).

So with regards to these verses, what God commanded them to follow [of the Injīl] is what they received from the Messiah. As for what was shared about him following his ascension, it is the same as the information found in the Torah after the death of Moses (PBUH). It is known (معلوم) that whatever is in the Injīl and Torah about Moses and Jesus after their deaths is NOT what God revealed and what they got from either of them. It is instead information that the people wrote to add details about the condition of their death (للتعريف بحال توفيهما). [<— pg. 104, v. 13]

The verses, (… 5:68] (… **لَسْتُمْ عَلَىٰ شَيْءٍ حَتَّىٰ تُقِيمُوا التَّوْرَاةَ وَالْإِنجِيلَ وَمَا أُنزِلَ إِلَيْكُم مِّن رَّبِّكُمْ**] and ( **التَّوْرَاةَ** 5:66] (**…وَالْإِنجِيلَ وَمَا أُنزِلَ إِلَيْهِم مِّن رَّبِّهِمْ لَأَكَلُوا مِن فَوْقِهِمْ وَمِن تَحْتِ أَرْجُلِهِم**] show us that to "establish" (إقامة) the scriptures is to act on what God said on the tongue of the messengers ( بما أخبر به على لسان الرسول) **[note: this would mean that the Injīl is only referring to the words of Jesus in the current Bible, not all the asbāb al-nuzūl which make up the current Bible. This is confirmed by John 12:49 which is exactly what Ibn Taymiyya is saying]. As for what was written down by copyists/scribes about details from after the death of that messenger, or about their life (من بعد وفاة الرسول ومقدار عمره ونحو ذلك), this is not what God revealed on the messenger or what is being commanded with or informed about here.** Ibn Taymiyya says this is similar to what happens with authored books (الكتب المصنفة), where an author will write the book, and the copyist (ناسخه) will add details about the life and details of the author that were not part of the words of the Author.

It is for this reason that the Saḥāba and Scholars ordered that the Qur'an be written by itself, and that nothing aside from the Qur'an be added in the Muṣḥaf, e.g., the names of the chapters, or numerical breaking by fives and tens (ولا التخميس والتعشير), nor "Ameen" or anything like it. The old Musḥafs were written in this style, whereas there are [now] muṣḥafs that have the chapter names, the numerical breaking by fives and tens, marked stops and beginnings, and the end will have an authentication (وكتب في آخر المصحف تصديقه), a supplication, the name of the person and other details not from the Qur'an [<— pg. 105, v. 13]

Similarly with the Injīl. The story of the the crucifixion, his death and coming back after he was raised to his Apostles (الحواريين) is not material that was said by the Messiah, but what was seen after him. What was "revealed by God" is what was heard directly from the Messiah as coming from God.

If it is said that the Apostles believed he was crucified and came back after a few days, and they are the same people who transmitted the Injīl and religion from the Messiah, then in their reporting there has entered doubt.

The author responds [**VERY INTERESTING**, suggests that this material can still be referred to]: It is necessary to accept only what has been transmitted from the prophets, whether from the Apostles or anyone who transmitted about the prophets. The acceptable evidence is in the direct words of the Prophets (فإن الحجة في كلام الأنبياء). What is aside from that has a liminal status ( فموقوف على الحجة) - it is accepted if true, and rejected otherwise. That is why what the Companions have transmitted from the Prophet (PBUH) [i.e. his direct words], including the Qur'an and ḥadīth, this must be accepted, especially the mutawātir material, which includes the Qur'an and many *sunan.* As for what they themselves said [i.e. this would include their extra material in the hadith reports], what they had consensus on we take to be infallible, and as for what they disagreed on, we defer to God and his messenger. 'Umar was the first to reject the death of the Prophet (PBUH) [**note: interesting parallel he is drawing between 'Umar and the Apostles after Jesus was raised**], until Abū Bakr rejected that. They also disagreed on the Prophet's burial until Abū Bakr pointed out the hadith he narrated, and disagreed on whether to send out the army of 'Usāma, or whether to fight those who said the Zakat was over. None of this disagreement,

however, means that we reject what they transmitted about the Prophet. [**so the Apostle's saying Jesus rose from the dead doesn't discredit their other reporting. Interestingly, Mark's gospel conspicuously has the sighting of Jesus after his crucifixion missing, while the other gospels do, showing internal disagreement like there was disagreement among the companions**] [<— v. 13, pg 106]

The author says that if an Apostle thought that Jesus was crucified, this doesn't mean they weren't believers, as long as they didn't alter what he said and maintained he was God's messenger [<— pg. 108, v. 13]. Similarly, if they claim they say the Messiah rose up from the dead, that doesn't make them disbelievers, since that's like many of the Muslim sheikhs - مشايخ المسلمين - who believe they've seen the Prophet come to them while they were awake yet they aren't denounced as disbelievers. In fact, the author says, this happened to someone who was the most obedient of followers of the Prophet and the sunnah, and who was greater than others in his asceticism and worship [he doesn't name him], and he saw who he thought was the Prophet visit him. This was a mistake on his part, but doesn't mean he's a kāfir. This is similar to the Apostles. This is also comparable to 'Umar, who didn't believe the Prophet died, and believed he went to his Lord just like Moses did, and that he wouldn't die until his Companions died. This belief he had didn't affect his status as a believer, but rather was only a mistake. [<— v. 13, pg 109]

[Note, this article discusses this: https://brill.com/view/journals/me/24/5-6/article-p530_3.xml?rskey=K1Ko16&result=7]

---

The author shows his knowledge of the Torah/Injil and says the latter is more of an attachment to the former, which is why the Christians study both the Torah and the Injil. The Injil also has fewer laws. Muslims only study the Qur'an, and that's because it's an all-encompassing text on it's own, kind of like the Torah. That is why many verses of the Qur'an and the Islamic traidtion compare the Qur'an and the Torah in particular, because of their similarities [<— v. 16, pg 43-45]

---

The Torah, Injīl are all the speech of God, but the Qur'an is at a higher status and not the same [<— v. 17, pg 11]

---

Given that the Qur'an is the best of God's speech, it was prohibited to follow other than it. The author gives the following verse in support, (**أَوَلَمْ يَكْفِهِمْ أَنَّا أَنْزَلْنَا عَلَيْكَ الْكِتَابَ يُتْلَى عَلَيْهِمْ**), and the hadith from al-Nasā'ī and others the Prophet spotting 'Umar with a parchment from the Torah and saying that Moses would've followed him if he was alive. In another narration, the author notes that the Prophet became angered when he saw 'Umar, and when an Anṣārī told this to 'Umar, 'Umar said, (زضينا بالله ربا وبالإسلام دينا وبمحمد نبيا). This is why the Companions prohibited against following the scriptures other than the Qur'an. 'Umar benefitted from this [i.e. the event in the hadith], to the point that when Alexandria was conquered and many books were discovered, including those of Rome, 'Umar ordered for them to be burned, saying (حسبنا كتاب الله) [<— v. 17, pg 42]. Ibn Taymiyya also transmits a report of 'Umar beating a man for transcribing the book of Daniel, telling him to erase his copies and not to spread it with others, citing the verse **{الر / تِلْكَ آيَاتُ الْكِتَابِ الْمُبِينِ / نَحْنُ نَقُصُّ عَلَيْكَ أَحْسَنَ الْقَصَصِ بِمَا أَوْحَيْنَا إِلَيْكَ هَذَا الْقُرْآنَ وَإِنْ كُنْتَ مِنْ قَبْلِهِ لَمِنَ الْغَافِلِينَ**

[<— v. 17, pos 41-42] See pg. 42 for some comments about the Qur'an having things the other books already have, but doing better.

———

The different sharias agree in fundamentals of religion like the prohibition on idolatry, the killing of human life, zinā, etc. [<— v. 17, pg 59]

———

The religion of all the prophets is Islam [<— v. 19, pg 180] That means submission to God (الاستسلام لله وحده) by obeying whatever He commands in that time. So facing Bayt al-Maqdis was the religion of Islam before it was abrogated, and facing the Ka'ba became the religion of Islam, and so facing (الصخرة) no longer was from the religion of Islam. That is why the Jews and Christians left the religion of Islam, because they left obeying God and confirming his messenger and stuck with that which was altered or abrogated. [<— v. 19, pg 181] [me: interesting]

———

The author says that no other scripture is as complete as the Qur'an and the Torah. As for the Zabūr, David's shariah was the same as that of the Torah. And as for the Injīl, Jesus only made some of the laws easier, but in the majority of things he followed the shariah of the Torah, and so it was connected to/secondary to the Torah (تبعا لها). The Qur'an is a comprehensive text, and even has aspects that are not found in the other scriptures, and so there is no need to refer to anything outside of it. [<— v. 19, pg 184]

————

Regarding the question of whether it is disliked (يكره) or preferred (يستحب) to do Wudu before eating. Ibn Taymiyya narrates two positions from Imam Ahmad. One is that it is preferred, citing as proof the hadith of Salmān:

**احْتَجَّ بِحَدِيثِ {سَلْمَانَ أَنَّهُ قَالَ لِلنَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَرَأْت فِي التَّوْرَاةِ إنَّ: مِنْ بَرَكَةِ الطَّعَامِ الْوُضُوءُ قَبْلَهُ وَالْوُضُوءُ بَعْدَهُ}**

Those who disliked it say that it is because it is against what Muslims have done, and is from the actions of the Jews. As for the above hadith, the author says some have said it is weak. It's also been said that it happened in the beginning of Islam when the Prophet used to prefer similarities with the People of the Book in matters that there wasn't revelation regarding. It's also why he fasted 'Āshūra before wanting to add an additional day:

**وَقَدْ يُقَالُ: كَانَ هَذَا فِي أَوَّلِ الْإِسْلَامِ لَمَّا كَانَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يُحِبُّ مُوَافِقَةَ أَهْلِ الْكِتَابِ فِيمَا لَمْ يُؤْمَرْ فِيهِ بِشَيْءِ وَلِهَذَا كَانَ يُسْدِلُ شَعْرَهُ مُوَافَقَةً لَهُمْ ثُمَّ فَرَّقَ بَعْدَ ذَلِكَ وَلِهَذَا صَامَ عَاشُورَاءَ لَمَّا قَدِمَ الْمَدِينَةَ ثُمَّ إنَّهُ قَالَ قَبْلَ مَوْتِهِ: {لَئِنْ عِشْت إلَى قَابِلٍ لَأَصُومَنَّ التَّاسِعَ} يَعْنِي: مَعَ الْعَاشِرِ لِأَجْلِ مُخَالَفَةِ الْيَهُودِ.**

[<— v. 21, pg 170]

---

The Author is asked about the permissibility of doing a prostration without wuḍū'. One of the proofs is the Quranic story of Pharoah's magicians prostrating to the God of Moses and Aaron, and they weren't in a state of Ṭahāra because they just found faith. He states ( **وَشَرْعُ مَنْ قَبْلَنَا شَرْعٌ لَنَا مَا لَمْ يَرِدْ شَرْعُنَا بِنَسْخِهِ**) [<— v. 21, pg 283]

---

Regarding some Muslims who are excessive in their ritual purity, the author comments that they resemble some tendencies among the Jews, or moreso the Samaritans, who go as far as to avoid touching people (**إِنَّمَا يَفْعَلُونَهُ مُضَاهِينَ لِلْيَهُودِ بَلْ لِلسَّامِرِيَّةِ الَّذِينَ يَقُولُونَ لَا مِسَاسَ**), while the religion of Islam is the middle path.

[<— v. 21, pg 332]

_____

[Similar to the reference above on pg. 170 of volume 21, but about washing the hands before/after eating (not wuḍū). Also, the author notes elsewhere (search لغة اليهود and وضوء together) that wuḍū' for the Jews means washing the hands]:

[<— v. 22, pg 319]

_____

Citing the story of Pharoah's magicians prostrating, he says [as cited earlier above] that wuḍū' is not needed for prostration, based on (شرع من قبلنا شرع لنا). [<— v. 23, 167]

____

Author notes [correctly] that the prior shariahs were very strict about oaths/vows, but that Islam made it easier in several verses to get out with an expiation if needed [very good points he raises] [<— v. 33, pg 147] [Also see v. 33, pg 216]

_____

أَمَّا قَوْله تَعَالَى {وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ وَمَنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ} فَهَذَا مَعَ أَنَّهُ مَكْتُوبٌ عَلَى بَنِي إسْرَائِيلَ، وَإِنْ كَانَ حُكْمُنَا كَحُكْمِهِمْ مِمَّا لَمْ يُنْسَخْ مِنْ الشَّرَائِعِ: فَالْمُرَادُ بِذَلِك التَّسْوِيَةُ فِي الدِّمَاءِ بَيْنَ الْمُؤْمِنِينَ

[<— v. 35, pg 87]

____

وَسُئِلَ - رَحِمَهُ اللَّهُ -:

عَنْ رَجُلٍ لَعَنَ الْيَهُودَ وَلَعَنَ دِينَهُ وَسَبَّ التَّوْرَاةَ: فَهَلْ يَجُوزُ لِمُسْلِمٍ أَنْ يَسُبَّ كِتَابَهُمْ أَمْ لَا؟

فَأَجَابَ:

الْحَمْدُ لِلَّهِ، لَيْسَ لِأَحَدِ أَنْ يَلْعَنَ التَّوْرَاةَ؛ بَلْ مَنْ أَطْلَقَ لَعْنَ التَّوْرَاةِ فَإِنَّهُ يُسْتَتَابُ فَإِنْ تَابَ وَإِلَّا قُتِلَ. وَإِنْ كَانَ مِمَّنْ يَعْرِفُ أَنَّهَا مَنْزِلَةٌ مِنْ عِنْدِ اللَّهِ وَأَنَّهُ يَجِبُ الْإِيمَانُ بِهَا: فَهَذَا يُقْتَلُ بِشَتْمِهِ لَهَا؛ وَلَا تُقْبَلُ تَوْبَتُهُ فِي أَظْهَرِ قَوْلَيْ الْعُلَمَاءِ. وَأَمَّا إنْ لَعَنَ دِينَ الْيَهُودِ الَّذِي هُمْ عَلَيْهِ فِي هَذَا الزَّمَانِ فَلَا بَأْسَ بِهِ فِي ذَلِكَ فَإِنَّهُمْ مَلْعُونُونَ هُمْ وَدِينُهُمْ وَكَذَلِكَ إنْ سَبَّ التَّوْرَاةَ الَّتِي عِنْدَهُمْ بِمَا يُبَيِّنُ أَنَّ قَصْدَهُ ذِكْرُ تَحْرِيفِهَا مِثْلُ أَنْ يُقَالَ نُسَخُ هَذِهِ التَّوْرَاةِ مُبَدَّلَةٌ لَا يَجُوزُ الْعَمَلُ بِمَا فِيهَا وَمَنْ عَمِلَ الْيَوْمَ بِشَرَائِعِهَا الْمُبَدَّلَةِ وَالْمَنْسُوخَةِ فَهُوَ كَافِرٌ: فَهَذَا الْكَلَامُ وَنَحْوُهُ حَقٌّ لَا شَيْءَ عَلَى قَائِلِهِ. وَاَللَّهُ أَعْلَمُ.

**[<— v. 35, pg 200]**

---

**الكتاب: الحاوي الكبير في فقه مذهب الإمام الشافعي وهو شرح مختصر المزني**

**المؤلف: أبو الحسن علي بن محمد بن محمد بن حبيب البصري البغدادي، الشهير بالماوردي (المتوفى: 450هـ)**

المحقق: الشيخ علي محمد معوض - الشيخ عادل أحمد عبد الموجود

الناشر: دار الكتب العلمية، بيروت - لبنان

الطبعة: الأولى، 1419 هـ -1999 م

عدد الأجزاء: 19

فَأَمَّا مَا لَمْ يَكُنْ فِي أَرْضِ الْعَرَبِ وَلَا فِي بِلَادِ الْعَجَمِ، اعْتَبَرْتَ فِيهِ حُكْمَهُ فِي أَقْرَبِ الْعَرَبِ عِنْدَ مَنْ جَمَعَ الْأَوْصَافَ الْمُعْتَبَرَةَ مِنْ بِلَادِ الْعَرَبِ، فَإِنِ اسْتَطَابُوهُ كَانَ حَلَالًا، وَإِنِ اسْتَخْبَثُوهُ كَانَ حَرَامًا، فَإِنِ اخْتَلَفُوا فِيهِ اعْتُبِرَ حُكْمُهُ عِنْدَ أَهْلِ الْكِتَابِ دُونَ عَبَدَةِ الْأَوْثَانِ، فَإِنِ اخْتَلَفَ فِيهِ أَهْلُ الْكِتَابِ اعْتَبَرْتَ فِيهِ حُكْمَهُ فِي أَقْرَبِ الشَّرَائِعِ بِالْإِسْلَامِ، وَهِيَ النَّصْرَانِيَّةُ، فَإِنِ اخْتَلَفُوا فِيهِ فَعَلَى ما ذكرناه من الوجهين.

[<— v. 15, pg 134… see context before and after to see priority is given for the Arabs]

---

**الكتاب: المجموع شرح المهذب ((مع تكملة السبكي والمطيعي))**

**المؤلف: أبو زكريا محيي الدين يحيى بن شرف النووي (المتوفى: 676هـ)**

الناشر: دار الفكر

(طبعة كاملة معها تكملة السبكي والمطيعي)

إذَا وَجَدْنَا حَيَوَانًا لَا مَعْرِفَةَ لِحُكْمِهِ مِنْ كِتَابِ اللَّهِ تَعَالَى وَلَا سُنَّةِ رَسُولِهِ وَلَا اسْتِطَابَةٍ وَلَا اسْتِخْبَاثٍ وَلَا غَيْرِ ذَلِكَ مِنْ الْأُصُولِ الْمُعْتَمَدَةِ وَثَبَتَ تَحْرِيمُهُ فِي شَرْعِ مَنْ قَبْلَنَا فَهَلْ يُسْتَصْحَبُ تَحْرِيمُهُ فِيهِ قَوْلَانِ (الْأَصَحُّ) لَا يُسْتَصْحَبُ وَهُوَ مُقْتَضَى كَلَامِ جُمْهُورِ الْأَصْحَابِ وَهُوَ مُقْتَضَى الْمُخْتَارِ عِنْدَ أَصْحَابِنَا فِي أُصُولِ الْفِقْهِ فَإِنْ اسْتَصْحَبْنَاهُ فَشَرْطُهُ أَنْ يَثْبُتَ تَحْرِيمُهُ فِي شَرْعِهِمْ بِالْكِتَابِ أَوْ السُّنَّةِ أَوْ يَشْهَدَ بِهِ عَدْلَانِ أَسْلَمَا مِنْهُمْ بِعِرْفَانِ الْمُبْدَلِ مِنْ غَيْرِهِ قَالَ الْمَاوَرْدِيُّ فَعَلَى هَذَا لَوْ اخْتَلَفُوا اُعْتُبِرَ حُكْمُهُ فِي أَقْرَبِ الشَّرَائِعِ إلَى الْإِسْلَامِ وَهِيَ النَّصْرَانِيَّةُ وَإِنْ اخْتَلَفُوا عاد الوجهان عن تَعَارُضِ الْأَشْبَاهِ (أَصَحُّهُمَا) الْحِلُّ وَاَللَّهُ سُبْحَانَهُ أَعْلَمُ * قال المصنف رحمه الله

[<— v. 9, pg 27… see context before and after to see priority is given for the Arabs]

---

**الكتاب: روضة الطالبين وعمدة المفتين**

**المؤلف: أبو زكريا محيي الدين يحيى بن شرف النووي (المتوفى: 676هـ)**

تحقيق: زهير الشاويش

الناشر: المكتب الإسلامي، بيروت- دمشق- عمان

الطبعة: الثالثة، 1412هـ / 1991م

عدد الأجزاء: 12

إِذَا وَجَدْنَا حَيَوَانًا لَا يُمْكِنُ مَعْرِفَةُ حُكْمِهِ مِنْ كِتَابٍ وَلَا سُنَّةٍ، وَلَا اسْتِطَابَةٍ، وَلَا اسْتِخْبَاثٍ، وَلَا غَيْرِ ذَلِكَ مِمَّا تَقَدَّمَ مِنَ الْأُصُولِ، وَثَبَتَ تَحْرِيمُهُ فِي شَرْعِ مَنْ قَبْلَنَا، فَهَلْ يُسْتَصْحَبُ تَحْرِيمُهُ؟ قَوْلَانِ: الْأَظْهَرُ: لَا يُسْتَصْحَبُ، وَهُوَ مُقْتَضَى كَلَامِ عَامَّةِ الْأَصْحَابِ، فَإِنِ اسْتَصْحَبْنَاهُ، فَشَرْطُهُ أَنْ يَثْبُتَ تَحْرِيمُهُ فِي شَرْعِهِمْ بِالْكِتَابِ أَوِ السُّنَّةِ، أَوْ يَشْهَدَ بِهِ عَدْلَانِ أَسْلَمَا مِنْهُمْ يَعْرِفَانِ الْمُبَدَّلَ مِنْ غَيْرِهِ. قَالَ فِي «الْحَاوِي» : فَعَلَى هَذَا لَوِ اخْتَلَفُوا، اعْتُبِرَ حُكْمُهُ فِي أَقْرَبِ الشَّرَائِعِ إِلَى الْإِسْلَامِ، وَهِيَ النَّصْرَانِيَّةُ. فَإِنِ اخْتَلَفُوا، عَادَ الْوَجْهَانِ عِنْدَ تَعَارُضِ الْأَشْبَاهِ.

[<— v. 3, pg 277]

———

وَاخْتَلَفَ أَصْحَابُنَا فِي شَرْعِ مَنْ قَبْلَنَا، هَلْ هُوَ شَرْعٌ لَنَا إِذَا لَمْ يَرِدْ شَرْعُنَا بِنَسْخِ ذَلِكَ الْحُكْمِ؟ وَالْأَصَحُّ أَنَّهُ لَيْسَ بِشَرْعٍ لَنَا، وَقِيلَ: بَلَى، وَقِيلَ: شَرْعُ إِبْرَاهِيمَ فَقَطْ

[<— v. 10, pg 205]

———————

**الكتاب: الجامع لأحكام القرآن = تفسير القرطبي**

**المؤلف: أبو عبد الله محمد بن أحمد بن أبي بكر بن فرح الأنصاري الخزرجي شمس الدين القرطبي (المتوفى: 671هـ)**

تحقيق: أحمد البردوني وإبراهيم أطفيش

الناشر: دار الكتب المصرية - القاهرة

الطبعة: الثانية، 1384هـ - 1964 م

عدد الأجزاء: 20 جزءا (في 10 مجلدات)

Regarding the verse:

قَدْ كَانَتْ لَكُمْ أُسْوَةٌ حَسَنَةٌ فِي إِبْرَاهِيمَ وَالَّذِينَ مَعَهُ إِذْ قَالُوا لِقَوْمِهِمْ إِنَّا بُرَآءُ مِنْكُمْ

Which tells the Prophet to follow Abraham and those with him who separated themselves from the disbelieving nation they were from.

The author says:

**وَالْآيَةُ نَصٌّ فِي الْأَمْرِ بِالِاقْتِدَاءِ بِإِبْرَاهِيمَ عَلَيْهِ السَّلَامُ فِي فِعْلِهِ. وَذَلِكَ يُصَحِّحُ أَنَّ شَرْعَ مَنْ قَبْلَنَا شَرْعٌ لَنَا فِيمَا أَخْبَرَ اللَّهُ وَرَسُولُهُ**

[note: this isn't as elaborate as al-Zarkashi makes out Qurtubī's position earlier, so maybe he's referencing another book ][<— v. 18, pg 56]

Appendix E

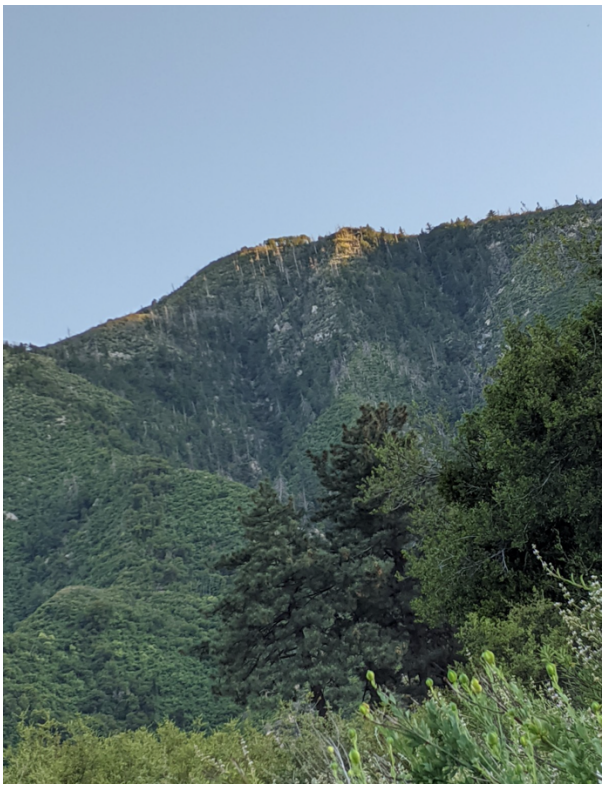
# Images

This appendix features pictures I took of random stuff. I'm only planning to write a dissertation once, so why not?

Here's a picture of some goats:

Here is a picture of some bread I baked once. It looks really nice but didn't come out the best because I used the wrong flour. The second time came out better.

Nature:



Appendix F

# Useful Bibliography of Secondary Literature

The following bibliography covers a number of secondary(western) sources on topics related to this dissertation, including legal theory, Muslims and the Bible, *Taḥrīf*, the notion of *mukhālafah*, *Isrā'īliyyāt* literature, Jewish-Muslim relations, Conversion, etc.


Accad, Martin. "Muḥammad's Advent as the Final Criterion for the Authenticity of the Judeo-Christian Tradition: Ibn Qayyim Al-Jawziyya's Hidāyat Al-Ḥayārā Fī Ajwibat Al-Yahūd Wa-'l-Naṣārā." In *The Three Rings: Textual Studies in the Historical Trialogue of Judaism, Christianity, and Islam*, edited by Barbara Roggema, Marcel Poorthuis, and Pim Valkenberg, 217–36. Peeters, 2005.

Adang, C., and R. L. Nettler. "Ibn Ḥazm's Criticism of Some 'Judaizing' Tendencies Among the MâLikites." In *Medieval and Modern Perspectives on Muslim-Jewish Relations*, 1–15. Harwood Academic Publishers, in cooperation with the Oxford Centre for Postgraduate Hebrew Studies, 1995.

Ahmad, Ahmad Atif. *The Fatigue of the Shari'a*. Palgrave Series in Islamic Theology, Law and History. New York: Palgrave Macmillan, 2012.

Al-Matroudi, Abdul-Hakim. "Al-Qarīna Wa Al-Ḥīla Fī Surat Yūsuf / Circumstantial Evidence and Legal Stratagems in Sūrat Yūsuf." *Journal of Qur'anic Studies* 9, no. 1 (2007): 235–199.

Amanullah, Muhammad. "Juristic Differences over the Implementation of Qiṣāṣ against a Muslim Who Kills a Non-Muslim." *Arab Law Quarterly*, no. 32 (2018): 185–203.

Bigger, S., and S. Bigger. "The Authority and Use of the Hebrew Bible: A Muslim Perspective." In *Creating the Old Testament: The Emergence of the Hebrew Bible*, 43–47. Blackwell, 1989.

Chaumont, Éric. "Nous et la loi des autres: La question du statut des lois antérieurement révélées (sharʿ man kâna qablanâ) en théorie légale sunnite." In *Droits et cultures: Mélanges en l'honneur du Doyen Yadh Ben Achour*, edited by Kalthoum Meziou, Ali Mezghani, M. L. Fadhel Moussa, and et al., 83–105. Tunis: Centre de Publication Universitaire, 2008.

El Shamsy, Ahmed. "Bridging the Gap: Two Early Texts of Islamic Legal Theory." *Journal of the American Oriental Society* 137, no. 3 (2017): 505–36.

Farahat, Omar. "Between God and Society Divine Speech and Norm-Construction in Islamic Theology and Jurisprudence." Ph.D., Columbia University, 2016.

Hallaq, Wael B. *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl Al-Fiqh*. Cambridge: Cambridge University Press, 1997.

———. "Uṣūl Al-Fiqh: Beyond Tradition." *Journal of Islamic Studies* 3 (1992): 172–202.

Johnston, David. "A Turn in the Epistemology and Hermeneutics of Twentieth Century Uṣūl Al-Fiqh." *Islamic Law and Society* 11, no. 2 (2004): 233–82.

Kamali, Mohammad Hashim. *Principles of Islamic Jurisprudence*. 3rd ed. Cambridge: Islamic Texts Society, 2003.

Kayadibi, Saim. "Istihsan (Juristic Preference) : The Forgotten Principle of Islamic Law." Doctoral, Durham University, 2006.

Kister, M. J. "Ḥaddithū 'an Banī Isrā'īla Wa-Lā Ḥaraja: A Study of an Early Tradition." *Israel Oriental Studies 2*, no. 1972 (n.d.): 215–39.

Newby, Gordon D. "Quranic and Islamic Interpretations of Biblical Materials." In *Dictionary of Biblical Interpretation*, edited by John H. Hayes. Nashville: Abingdon Press, 1999.

Omar, Mohamed Abdel-Khalek. "Reasoning in Islamic Law: Part One." *Arab Law Quarterly* 12, no. 2 (1997): 148–96.

Reinhart, A. Kevin. *Before Revelation: The Boundaries of Muslim Moral Thought*. Albany: State University of New York Press, 1995.

Renard, John, ed. *Islamic Theological Themes: A Primary Source Reader*. University of Califormia Press, 2014.

Saleh, Walid A. "A Fifteenth-Century Muslim Hebraist: Al-Biqāʿī and His Defense of Using the Bible to Interpret the Qur'ān." *Speculum: A Journal of Medieval Studies* 83, no. 3 (2008): 629–54.

Wheeler, Brannon M. "'This Is the Torah That God Sent Down to Moses'. Some Early Islamic Views of the Qur'ān and Other Revealed Books." *Graeco-Arabica* 7–8 (2000): 571–604.

Abdul-Rahim, Roslan. "Naskh Al-Qur'an: A Theological and Juridical Reconsideration of the Theory of Abrogation and Its Impact on Qur'anic Exegesis." Ph.D., Temple University, 2011.

Accad, Martin. "Muḥammad's Advent as the Final Criterion for the Authenticity of the Judeo-Christian Tradition: Ibn Qayyim Al-Jawziyya's Hidāyat Al-Ḥayārā Fī Ajwibat Al-Yahūd Wa-'l-Naṣārā." In *The Three Rings: Textual Studies in the Historical Trialogue of Judaism, Christianity, and Islam*, edited by Barbara Roggema, Marcel Poorthuis, and Pim Valkenberg, 217–36. Peeters, 2005.

Adang, Camilla. “The Question of the Authenticity of the Jewish Scriptures.” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, 189–213. 1. London & New York: Routledge, 2012.

Amjad, Moiz. “Abrogation and the Unalterable Word of God.” *Renaissance (a Monthly Islamic Journal)* 11, no. 7 (2001): 6–11.

Burton, J. “The Corruption of the Scriptures.” *Occasional Papers of the School of Abbasid Studies*, 1994, 95–106.

Burton, John. “The Exegesis of Q. 2: 106 and the Islamic Theories of ‘Naskh: Ma Nansakh Min Aya Aw Nansaha Na’ti Bi Khairin Minha Aw Mithliha.’” *Bulletin of the School of Oriental and African Studies; London* 48, no. 3 (January 1, 1985): 452.

Casewit, Yousef. “A Muslim Scholar of the Bible: Prooftexts from Genesis and Matthew in the Qur’an Commentary of Ibn Barrajān of Seville (d. 536/1141).” *Journal of Qur’anic Studies* 18, no. 1 (2016): 1–48.

Di Matteo, I. “Il ‘taḥrīf’ Od Alterazione Della Bibbia Secondo i Musulmani.” *Bessarione* 38 (1922): 64–111, 223–60.

Keating, Sandra Toenies. “Refuting the Charge of Taḥrīf: Abū Rā’iṭa (d. ca. 835) and His ‘First Risāla on the Holy Trinity.’” In *Ideas, Images, and Methods of Portrayal: Insights into Classical Arabic Literature and Islam*, edited by Sebastian Günther, 41–57. Leiden: Brill, 2005.

Kusmana. “Shāfi`ī’s Theory of Naskh and Its Influence on the ‘`Ulūm Al-Qur’ān.’” M.A., McGill University (Canada), 2000.

Lazarus-Yafeh, Hava. “Taḥrīf.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Matteo, Ignazio de. “‘Tahrif’ or the Alteration of the Bible According to the Moslems.” *Moslem World; Hartford, Etc.* 14 (January 1, 1924): 61.

Nickel, Gordon. “Early Muslim Accusations of Taḥrīf: Muqātil Ibn Sulaymān’s Commentary on Key Qur’anic Verses.” In *The Bible in Arab Christianity*, edited by David Thomas, 207–23. Leiden: Brill, 2007.

———. *Narratives of Tampering in the Earliest Commentaries on the Qur’an*. Leiden: Brill, 2011.

Nickel, Gordon D. “MuqâTil Bin Sulaimân on the Verses of ‘Tampering.’” *Islamic Culture* 76, no. 3 (2002): 1–25.

Rafiabadi, Hamid Naseem. “Abrogation (Naskh) in the Qur’an: An Overview of the Views of Islamic Scholars.” *Insight Islamicus: An Annual Journal of Studies and Research in Islam* 3 (2003): 75–89.

Reynolds, Gabriel Said. “On the Qur’anic Accusation of Scriptural Falsification (Taḥrīf) and Christian Anti-Jewish Polemic.” *Journal of the American Oriental Society* 130, no. 2 (2010): 189–202.

Rippin, A. “Al-Zuhri, ‘Naskh Al-Qur’an’ and the Problem of Early ‘Tafsir’ Texts.” *Bulletin of the School of Oriental and African Studies; London* 47, no. 1 (January 1, 1984): 22.

Rippin, Andrew. “The Exegetical Literature of Abrogation: Form and Content.” *Journal of Semitic Studies*, 2000, 213–31.

Sabjan, Muhammad Azizan. “Al-Shahrastānī on ‘the People of a Dubious Book’ (Ahl Shubhat Kitāb): A Study of Hisal-Milal Wa Al-Nihal.” *Hamdard Islamicus* 30, no. 2 (2007): 43–48.

Saleh, Walid A. “A Fifteenth-Century Muslim Hebraist: Al-Biqāʿī and His Defense of Using the Bible to Interpret the Qur’ān.” *Speculum: A Journal of Medieval Studies* 83, no. 3 (2008): 629–54.

Schaffner, Ryan. “The Bible through a Qur’ānic Filter: Scripture Falsification (Tahrīf) in 8th- and 9th-Century Muslim Disputational Literature.” Ph.D., The Ohio State University, 2016.

Schmidtke, Sabine, and Camilla Adang. “Muʿtazilī Discussions of the Abrogation of the Torah: Ibn Ḫallād (4th/10th Century) and His Commentators.” *Arabica: Journal of Arabic and Islamic Studies* 60, no. 6 (2013): 701–42.

Tarakci, Muhammet, and Suleyman Sayar. “The Qur’anic View of the Corruption of the Torah and Gospels.” *Islamic Quarterly* 49, no. 3 (2005): 227–45.

Wheeler, Brannon M. “‘This Is the Torah That God Sent Down to Moses’. Some Early Islamic Views of the Qur’ān and Other Revealed Books.” *Graeco-Arabica* 7–8 (2000): 571–604.

Whittingham, Martin. “The Value of Tahrif Ma’nawi (Corrupt Interpretation) as a Category for Analysing Muslim Views of the Bible: Evidence from Al-Radd Al-Jamil and Ibn Khaldun.” *Islam and Christian-Muslim Relations* 22, no. 2 (2011): 209–22.

———. “The Value of Taḥrīf Maʿnawī (Corrupt Interpretation) as a Category for Analysing Muslim Views of the Bible: Evidence from Al-Radd Al-Jamīl and Ibn Khaldūn.” *Islam and Christian-Muslim Relations* 22, no. 2 (2011): 209–22.

Accad, Martin. “Muḥammad’s Advent as the Final Criterion for the Authenticity of the Judeo-Christian Tradition: Ibn Qayyim Al-Jawziyya’s Hidāyat Al-Ḥayārā Fī Ajwibat Al-Yahūd Wa-’l-Naṣārā.” In *The Three Rings: Textual Studies in the Historical Trialogue of Judaism, Christianity, and Islam*, edited by Barbara Roggema, Marcel Poorthuis, and Pim Valkenberg, 217–36. Peeters, 2005.

Adang, C., and R. L. Nettler. “Ibn Ḥazm’s Criticism of Some ‘Judaizing’ Tendencies Among the MâLikites.” In *Medieval and Modern Perspectives on Muslim-Jewish Relations*, 1–15. Harwood Academic Publishers, in cooperation with the Oxford Centre for Postgraduate Hebrew Studies, 1995.

Ahmad, Ahmad Atif. *The Fatique of the Shari’a*. Palgrave Series in Islamic Theology, Law and History. New York: Palgrave Macmillan, 2012.

Al-Matroudi, Abdul-Hakim. “Al-Qarīna Wa Al-Ḥīla Fī Surat Yūsuf / Circumstantial Evidence and Legal Stratagems in Sūrat Yūsuf.” *Journal of Qur’anic Studies* 9, no. 1 (2007): 235–199.

Amanullah, Muhammad. “Juristic Differences over the Implementation of Qiṣāṣ against a Muslim Who Kills a Non-Muslim.” *Arab Law Quarterly*, no. 32 (2018): 185–203.

Bigger, S., and S. Bigger. “The Authority and Use of the Hebrew Bible: A Muslim Perspective.” In *Creating the Old Testament: The Emergence of the Hebrew Bible*, 43–47. Blackwell, 1989.

Chaumont, Éric. “Nous et la loi des autres: La question du statut des lois antérieurement révélées (sharʿ man kâna qablanâ) en théorie légale sunnite.” In *Droits et cultures: Mélanges en l’honneur du Doyen Yadh Ben Achour*, edited by Kalthoum Meziou, Ali Mezghani, M. L. Fadhel Moussa, and et al., 83–105. Tunis: Centre de Publication Universitaire, 2008.

El Shamsy, Ahmed. “Bridging the Gap: Two Early Texts of Islamic Legal Theory.” *Journal of the American Oriental Society* 137, no. 3 (2017): 505–36.

Farahat, Omar. “Between God and Society Divine Speech and Norm-Construction in Islamic Theology and Jurisprudence.” Ph.D., Columbia University, 2016.

Hallaq, Wael B. *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl Al-Fiqh*. Cambridge: Cambridge University Press, 1997.

———. “Uṣūl Al-Fiqh: Beyond Tradition.” *Journal of Islamic Studies* 3 (1992): 172–202.

Johnston, David. “A Turn in the Epistemology and Hermeneutics of Twentieth Century Uṣūl Al-Fiqh.” *Islamic Law and Society* 11, no. 2 (2004): 233–82.

Kamali, Mohammad Hashim. *Principles of Islamic Jurisprudence*. 3rd ed. Cambridge: Islamic Texts Society, 2003.

Kayadibi, Saim. “Istihsan (Juristic Preference) : The Forgotten Principle of Islamic Law.” Doctoral, Durham University, 2006.

Kister, M. J. “Ḥaddithū ’an Banī Isrā’īla Wa-Lā Ḥaraja: A Study of an Early Tradition.” *Israel Oriental Studies 2*, no. 1972 (n.d.): 215–39.

Newby, Gordon D. “Quranic and Islamic Interpretations of Biblical Materials.” In *Dictionary of Biblical Interpretation*, edited by John H. Hayes. Nashville: Abingdon Press, 1999.

Omar, Mohamed Abdel-Khalek. “Reasoning in Islamic Law: Part One.” *Arab Law Quarterly* 12, no. 2 (1997): 148–96.

Reinhart, A. Kevin. *Before Revelation: The Boundaries of Muslim Moral Thought*. Albany: State University of New York Press, 1995.

Renard, John, ed. *Islamic Theological Themes: A Primary Source Reader*. University of Califormia Press, 2014.

Saleh, Walid A. “A Fifteenth-Century Muslim Hebraist: Al-Biqāʿī and His Defense of Using the Bible to Interpret the Qur’ān.” *Speculum: A Journal of Medieval Studies* 83, no. 3 (2008): 629–54.

Wheeler, Brannon M. “‘This Is the Torah That God Sent Down to Moses’. Some Early Islamic Views of the Qur’ān and Other Revealed Books.” *Graeco-Arabica* 7–8 (2000): 571–604.

Abd-Allah, Umar F. *Mālik and Medina: Islamic Legal Reasoning in the Formative Period*. Leiden: Brill, 2013.

Ahmad, Ahmad Atif. *Structural Interrelations of Theory and Practice in Islamic Law: A Study of Six Works of Medieval Islamic Jurisprudence*. Leiden: Brill, 2006.

Ahmad, Mushtaq. “ʿUrf as a Source of Islamic Law: A Juristic Scenario.” *Research Journal RJIC (Sheikh Zayed Islamic Centre, University of Peshawar)*, 2005, 62–78.

Ahmed, Rumee. “Constructing an Islamic Legal Narrative: A Study of Classical Hanafī Legal Theories.” Ph.D., University of Virginia, 2008.

Ayoub, Samy. “We’re Not in Kufa Anymore: The Construction of Late Hanafism in the Early Modern Ottoman Empire, 16th-19th Centuries CE.” Ph.D., The University of Arizona, 2014.

Bernards, Monique, and John A. Nawas. “The Geographic Distribution of Muslim Jurists During the First Four Centuries AH.” *Islamic Law and Society* 10, no. 2 (2003): 168–81.

Brunelle, Carolyn Anne. “From Text to Law: Islamic Legal Theory and the Practical Hermeneutics of Abū Ja‘far Ahmad Al-Tahāwī (d. 321/933).” Ph.D., University of Pennsylvania, 2016.

Coulson, N. J. “Muslim Custom and Case-Law.” *Welt Des Islams*, 1959, 13–24.

———. “Muslim Custom and Case-Law.” In *Islamic Law and Legal Theory*, edited by Ian Edge. New York: New York University Press, 1996.

Dutton, Yasin. “Juridical Practice and Madinan ʿAmal: Qaḍā’ in the Muwaṭṭa’ of Mālik.” *Journal of Islamic Studies* 10, no. 1 (1999): 1–21.

———. *Original Islam: Mālik and the Madhhab of Madina*. London: Routledge, 2007.

———. *The Origins of Islamic Law: The Qur’an, the Muwaṭṭa’ and Madinan ʿAmal*. Richmond: Curzon, 1999.

———. “ʿAmal v. Ḥadīth in Islamic Law: The Case of Sadl Al-Yadayn (Holding One’s Hands by One’s Sides) When Doing the Prayer.” *Islamic Law and Society* 3, no. 1 (1996): 13–40.

El Shamsy, Ahmed. *The Canonization of Islamic Law: A Social and Intellectual History*. New York, NY: Cambridge University Press, 2013.

El-Awa, Mohames. “The Place of Custom ('Urf) in Islamic Legal Theory.” *Islamic Quarterly* 17 (1973): 177–82.

Faruqi, Muhammad Yusuf. “Consideration of ʿUrf in the Judgments of the Khulafā’ Al Rāshidūn and the Early Fuqahā’.” *American Journal of Islamic Social Sciences* 9, no. 4 (1992): 482–98.

Francesca, Ersilia. “The Concept of Sunna in the Ibāḍī School.” In *The Sunna and Its Status in Islamic Law: The Search for a Sound Hadith*, edited by Adis Duderija, 97–115. Basingstoke & New York: Palgrave Macmillan, 2015.

Goldziher, Ignaz. *Introduction to Islamic Theology and Law*. Princeton: Princeton University Press, 1981.

Hallaq, Wael. “Was Al-Shafiʿi the Master Architect of Islamic Jurisprudence?” In *The Formation of Islamic Law*, edited by Wael Hallaq, 257–75. Aldershot: Ashgate Variorum, 2004.

Hallaq, Wael B. *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl Al-Fiqh*. Cambridge: Cambridge University Press, 1997.

———. *The Formation of Islamic Law*. Aldershot: Ashgate Variorum, 2004.

———. “Uṣūl Al-Fiqh: Beyond Tradition.” *Journal of Islamic Studies* 3 (1992): 172–202.

Jackson, Sherman A. “Fiction and Formalism: Toward a Functional Analysis of Uṣūl Al-Fiqh.” In *Studies in Islamic Legal Theory*, edited by Bernard G. Weiss, 177–201. Leiden: Brill, 2002.

Kamali, Mohammad Hashim. *Principles of Islamic Jurisprudence*. 3rd ed. Cambridge: Islamic Texts Society, 2003.

Lowry, Joseph E. “Early Islamic Exegesis as Legal Theory: How Qurʾānic Wisdom (Ḥikma) Became the Sunna of the Prophet.” In *Jewish Biblical Interpretation and Cultural Exchange: Comparative Exegesis in Context*, edited by Natalie B Dohrmann and David Stern, 139–60. University of Pennsylvania Press, 2008.

———. *Early Islamic Legal Theory: The Risāla of Muḥammad Ibn Idrīs Al-Shāfiʿī*. Leiden: Brill, 2007.

———. “The First Islamic Legal Theory: Ibn Al-Muqaffa‘ on Interpretation, Authority, and the Structure of the Law.” *Journal of the American Oriental Society* 128, no. 1 (March 2008): 25–40.

Lucas, Scott C. “The Legal Principles of Muḥammad b. Ismāʿīl Al-Bukhārī and Their Relationship to Classical Salafi Islam.” *Islamic Law and Society* 13, no. 3 (2006): 289–324.

———. “Where Are the Legal Ḥadīth? A Study of the Muṣannaf of Ibn Abī Shayba.” *Islamic Law and Society* 15, no. 3 (2008): 283–314.

Lukito, Ratno. “The Role of Custom in the Formation of Islamic Law.” *McGill Journal of Middle East Studies. Revue d’Etudes Du Moyen-Orient de McGill* 5 (1997): 5–31.

Maghen, Ze’Ev. “Dead Tradition: Joseph Schacht And The Origins Of ‘Popular Practice.’” *Islamic Law and Society* 10, no. 3 (October 1, 2003): 276–347.

Melchert, Christopher. “The Early History of Islamic Law.” In *Method and Theory in the Study of Islamic Origins*, edited by Herbert Berg, 293–324. Leiden & Boston: Brill, 2003.

Meron, Ya’akov. “The Development of Legal Thought in Hanafi Texts.” *Studia Islamica*, no. 30 (1969): 73–118.

Mian, Ali Altaf. “The Concept of Sunna in Early and Medieval Ḥanafism.” In *The Sunna and Its Status in Islamic Law: The Search for a Sound Hadith*, edited by Adis Duderija, 117–38. Basingstoke & New York: Palgrave Macmillan, 2015.

Motzki, Harald. *The Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools*. Leiden: Brill, 2002.

Musa, Aisha Y. *Ḥadīth as Scripture: Discussions on the Authority of Prophetic Traditions in Islam*. Basingstoke: Palgrave Macmillan, 2008.

Newby, Gordon D. “Imitating Muhammad in Two Genres: Mimesis and Problems of Genre in Sirah and Sunnah.” *Medieval Encounters* 3, no. 3 (January 1, 1997): 266–83.

Othman, Mohammad Zain b Haji. “The Status of ʿUrf in Islamic Law.” *IIUM Law Journal* 3, no. 2 (1993): 40–51.

———. "ʿUrf as a Source of Islamic Law." *Islamic Studies* 20 (1981): 343–55.

Picken, Gavin N. "The Concept of Sunna in the Early Shāfiʿī Madhhab." In *The Sunna and Its Status in Islamic Law: The Search for a Sound Hadith*, edited by Adis Duderija, 139–62. Basingstoke & New York: Palgrave Macmillan, 2015.

Rahman, M. Habibur. "The Role of Pre-Islamic Customs in the Islamic Law of Succession." In *Islamic Law: Issues in Islamic Law*, edited by Mashood Baderin, 2:147–63. Farnham & Burlington: Ashgate, 2014.

Rippin, Andrew. "Al-Zuhri, 'Naskh Al-Qur'an' and the Problem of Early 'Tafsir' Texts." *Bulletin of the School of Oriental and African Studies; London* 47, no. 1 (January 1, 1984): 22.

———. "Studying Early 'Tafsir' Texts." *Der Islam* 72 (January 1, 1995): 310–323.

———. "The Exegetical Literature of Abrogation: Form and Content." *Journal of Semitic Studies*, 2000, 213–31.

Schacht, Joseph. *An Introduction to Islamic Law*. New York: Clarendon Press, 1982.

Serjeant, R. B. "Sunnah, Qur'ān, ʿUrf." In *Law and the Islamic World: Past and Present. Papers Presented to the Joint Seminar at the Universities of Copenhagen and Lund ... 1993*, edited by C. Toll and et al., 33–48. Copenhagen: Munksgaard, 1995.

Shabana, Ayman. *Custom in Islamic Law and Legal Theory: The Development of the Concepts of ʿUrf and ʿĀdah in the Islamic Legal Tradition*. New York: Palgrave Macmillan, 2010.

———. "'Urf and 'Adah within the Framework of Al-Shatibi's Legal Methodology." *UCLA Journal of Islamic and Near Eastern Law* 6, no. 1 (July 2006): 87–100.

Soufi, Youcef. "Pious Critique: Abū Ishāq Al-Shīrāzī and the 11th Century Practice of Juristic Disputation (Munāzara )." Ph.D., University of Toronto (Canada), 2017.

Warraq, Ibn, ed. "The Function of Asbab Al-Nuzul in Koranic Exegesis." In *The Quest for the Historical Muhammad*, 392–419. Amherst: Prometheus, 2000.

Zakariyah, Luqman. "Custom and Society in Islamic Criminal Law: A Critical Appraisal of the Maxim 'al-ʿĀdah Muḥakkamah' (Custom Is Authoritative) and Its Sisters in Islamic Legal Procedures." *Arab Law Quarterly* 26, no. 1 (2012): 75–97.

Ziadeh, Farhat. "ʿUrf and Law in Islam." In *The World of Islam: Studies in Honor of Philip K. Hitti*, edited by James Kritzeck and R. Bayly Winder, 60–67. London & New York: Macmillan & St Martin's Press, 1959.

Alexander, Philip S. “Jewish Tradition in Early Islam: The Case of Enoch/Idrīs.” *Journal of Semitic Studies*, 2000, 11–29.

Bar-Asher, Meir M. “The Isrā’īliyyāt.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 625–27. Princeton & Oxford: Princeton University Press, 2013.

Cook, David. “New Testament Citations in the Ḥadīth Literature and the Question of Early Gospel Translations into Arabic.” In *The Encounter of Eastern Christianity with Early Islam*, edited by Emmanouela Grypeou, Mark Swanson, and David Thomas, 185–223. Leiden: Brill, 2006.

Firestone, Reuven. *Journeys in Holy Lands: The Evolution of the Abraham-Ishmael Legends in Islamic Exegesis*. Albany: State University of New York Press, 1990.

———. “The Evolution of Islamic Narrative Exegesis in the Abraham-Ishmael Legends,” no. 5 (1988).

Hauglid, Brian Michael. “Al-Tha’labi’s ‘Qisas Al-Anbiya’’ Thinspace": Analysis of the Text, Jewish and Christian Elements, Islamization, and Prefiguration of the Prophethood of Muhammad.’” Ph.D., The University of Utah, 1998.

Hıdır, Özcan. “Discussions on the Influence of the Judeo-Christian Culture on Hadiths.” *Journal of Rotterdam Islamic and Social Sciences* 1 (2010): 20–41.

Lecker, Michael. “Biographical Notes on Abu ’Ubayda Ma’mar b. Al-Muthanna.” *Studia Islamica; Paris* 81 (January 1, 1995): 71.

Madelung, Wilfred. “Abū ‘Ubayda Maʻmar b. Al-Muthannā as a Historian.” *Journal of Islamic Studies*, no. 1 (1992).

Mazuz, Haggai. “Midrashic Influence on Islamic Folklore: The Case of Menstruation.” *Studia Islamica* 108, no. 2 (2013): 189–201.

McAuliffe, Jane Dammen. “Assessing the Isrā’īliyyāt: An Exegetical Conundrum.” In *Story-Telling in the Framework of Non-Fictional Arabic Literature*, edited by Stefan Leder, 345–69. Wiesbaden: Harrassowitz, 1998.

Moreen, Vera B. “Is(h)Maʿiliyat: A Judeo-Persian Account of the Building of the Kaʿba.” In *Judaism and Islam: Boundaries, Communication and Interaction. Essays in Honor of William M. Brinner*, edited by B. H. Hary, J. L. Hayes, and F. Astren, 185–202. Leiden: Brill, 2000.

Newby, Gordon D. “Quranic and Islamic Interpretations of Biblical Materials.” In *Dictionary of Biblical Interpretation*, edited by John H. Hayes. Nashville: Abingdon Press, 1999.

Nisan, Mordechai. “Note on a Possible Jewish Source for Muhammad’s ‘Night Journey.’” *Arabica* 47, no. 2 (April 1, 2000): 274–277.

Rosenblatt, S. “Rabbinic Legends in Hadith.” *Moslem World* 35 (1945): 237–52.

Rosenthal, F. “The Influence of the Biblical Tradition on Muslim Historiography.” In *Historians of the Middle East*, edited by P. M. Hold and Bernard Lewis, 35–45. London: Oxford University, 1962.

Schwarzbaum, Haim. *Biblical and Extra-Biblical Legends in Islamic Folk-Literature*. Walldorf-Hessen: Verlag für Orientkunde Dr. H. Vorndran, 1982.

Stewart, Devin. “Moses in the Quran and Islamic Exegesis.” *International Journal of Middle East Studies; Cambridge* 37, no. 1 (February 2005): 115–17.

Tottoli, Roberto. “Origin and Use of the Term Isrā’īliyyāt in Muslim Literature.” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, 172–88. 1. London & New York: Routledge, 2012.

Twakkal, Abd Alfatah. “Ka’b Al-Ahbār and the Isrā’īliyyāt in the Tafsīr Literature.” M.A., McGill University, 2008.

Abu al-Majd, Layla Ibrahim. “Ibn Hazm and Maimonides and the Fiqh.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 696–700. Princeton & Oxford: Princeton University Press, 2013.

Ackerman-Lieberman, Phillip. “Comparison between the Halakha and Shariʿa.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 683–93. Princeton & Oxford: Princeton University Press, 2013.

Ackerman-Lieberman, Phillip I. “Punishment and Freedom: The Rabbinic Construction of Criminal Law.” *Catholic Biblical Quarterly* 72, no. 1 (2010).

Ackerman-Lieberman P.I. “Contractual Partnerships in the Geniza and the Relationship Between Islamic Law and Practice.” *Journal of the Economic and Social History of the Orient* 54, no. 5 (2011): 646–76.

Amir-Moezzi, Mohammad Ali. “Shiʿism and Judaism: A Relation Marked by Paradox.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 816–23. Princeton & Oxford: Princeton University Press, 2013.

Bashear, Suliman. “ʿĀshūrā, an Early Muslim Fast.” *Zeitschrift Der Deutschen Morgenländischen Gesellschaft* 141, no. 2 (1991): 281–316.

Bashir, Mishri al-. *al-Mawrūth wa athruhu fī al-tashrī'' al-islāmī*. Beirut: Dār al-Ṭalī'ah, 2010.

Bell, Richard. *The Origin of Islam in Its Christian Environment*. The Gunning Lectures, Edinburgh University, 1925. London: Macmillan and Co., Limited, 1926.

Ben-Shammai, Haggai. "Between Ananites and Karaites: Observations on Early Medieval Jewish Sectarianism." *Studies in Muslim-Jewish Relations* 1 (1993): 19–29.

———. "The Scholarly Study of Karaism in the Nineteenth and Twentieth Centuries." In *Karaite Judaism: A Guide to Its History and Literary Sources*, edited by Meira Polliack, 9–24. Leiden: Brill, 2003.

Burton, John. "Notes Towards a Fresh Perspective on the Islamic Sunna." *Bulletin - British Society for Middle Eastern Studies; London* 11, no. 1 (January 1, 1984): 3.

———. *The Collection of the Qur'an*. CUP Archive, 1979.

Calder, N., and M. B. Hooker. "Sharīʿa." *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Cohen, Mark R. *Maimonides and the Merchants: Jewish Law and Society in the Medieval Islamic World*. Philadelphia: University of Pennsylvania Press, 2017.

Cook, Michael. "The Origins of 'Kalām.'" *Bulletin of the School of Oriental and African Studies, University of London* 43, no. 1 (1980): 32–43.

———. "Early Islamic Dietary Law." *Jerusalem Studies in Arabic and Islam* 7 (1986): 217–77.

———. "Magian Cheese: An Archaic Problem in Islamic Law." *Bulletin of the School of Oriental and African Studies, University of London* 47, no. 3 (1984): 449–67.

Crone, P. "Jāhilī and Jewish Law: The Qasāma." *Jerusalem Studies in Arabic and Islam* 4 (1984): 153–201.

———. *Roman, Provincial and Islamic Law: The Origins of the Islamic Patronate*. Cambridge: Cambridge University Press, 1987.

Erder, Yoram. "Daily Prayer Times in Karaite Halakha in Light of the Times of Islamic Prayers." *Revue Des Etudes Juives*, 1994, 5–27.

———. "The Karaites and Mu'tazilism." In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 778–87. Princeton & Oxford: Princeton University Press, 2013.

Feldman, Sam. “Reason and Analogy: A Comparison of Early Islamic and Jewish Legal Institutions.” *UCLA Journal of Islamic and Near Eastern Law* 2, no. 1 (March 2002): 129–54.

Firestone, Reuven. “Conceptions of Holy War in Biblical and Qur’ānic Tradition.” *The Journal of Religious Ethics; Waterloo, Ont.* 24, no. 1 (Spring 1996): 99.

———. “Islam, Judaism, and Christianity: Theological and Historical Affiliations.” *International Journal of Middle East Studies; Cambridge* 34, no. 2 (May 2002): 385–87.

———. “Merit, Mimesis, and Martyrdom: Aspects of Shiʿite Meta-Historical Exegesis on Abraham’s Sacrifice in Light of Jewish, Christian, and Sunni Muslim Tradition.” *Journal of the American Academy of Religion* 66, no. 1 (1998): 93–116.

———. “Rituals: Similarities, Influences, and Processes of Differentiation.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 701–11. Princeton & Oxford: Princeton University Press, 2013.

———. “The Qur’ān and the Bible: Some Modern Studies of Their Relationship.” In *Bible and Qur’ān: Essays in Scriptural Intertextuality*, edited by John C. Reeves, 1–22. Leiden & Boston: Brill, 2004.

Fitzgerald, S. V. “The Alleged Debt of Islamic to Roman Law.” In *Islamic Law and Legal Theory*, edited by I. Edge, 13–34. Aldershot: Dartmouth, 1996.

Frank, Daniel, ed. *Search Scripture Well: Karaite Exegetes and the Origins of the Jewish Bible Commentary in the Islamic East*. Leiden: Brill, 2004.

Freidenreich, David M. “Contextualizing Bread: An Analysis of Talmudic Discourse in Light of Christian and Islamic Counterparts.” *Journal of the American Academy of Religion* 80, no. 2 (2012): 411–33.

———. *Foreigners and Their Food: Constructing Otherness in Jewish, Christian, and Islamic Law*. Berkeley & London: University of California Press, 2011.

———. “Holiness and Impurity in the Torah and the Quran: Differences within a Common Typology.” *Comparative Islamic Studies*, 2010, 5–22.

Frishman, Judith, and Umar Ryad. “Law: Islamic and Jewish Legal Traditions.” In *The Routledge Handbook of Muslim-Jewish Relations*, edited by Josef Meri, 155–77. Routledge, 2016.

Gobillot, Geneviève. “Qur’an and Torah: The Foundations of Intertextuality.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 611–21. Princeton & Oxford: Princeton University Press, 2013.

Goitein, S. D. “Muhammad’s Inspiration by Judaism.” *Journal of Jewish Studies* 9 (1958): 149–62.

———. *Studies in Islamic History and Institutions*. Leiden: Brill, 2010.

———. “The Cultural Development of the Jewish People Inside Arab Islam.” In *Jews and Arabs: A Concise History of Their Social and Cultural Relations*, Reissue edition. Mineola, N.Y: Dover Publications, 2005.

Goldman, Shalom. “An Appraisal of Naphtali Wieder’s ‘Islamic Influences On Jewish Worship’ On the Fiftieth Anniversary of Its Publication.” *Medieval Encounters* 5, no. 1 (January 1, 1999): 11–16.

Halberstam, J. “Supererogation in Jewish Halakhah and Islamic Sharīʿa.” In *Studies in Islamic and Judaic Traditions: Papers Presented at the Institute for Islamic-Judaic Studies, Center for Judaic Studies, University of Denver*, edited by W.M. Brinner and S.D. Ricks, 85–98. Atlanta: Scholars Press, 1986.

Hallaq, Wael B. “The Use and Abuse of Evidence: The Question of Provincial and Roman Influences on Early Islamic Law.” *Journal of the American Oriental Society* 110 (1990): 79–91.

Hawary, Mohamed. “Prayer in Judaism and Islam.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Stora, 713–19. Princeton & Oxford: Princeton University Press, 2013.

Hawting, Gerald R. “The Slaughter of Aḍaḥiyya During Ḥajj and the Origins of ʿīd Al-Aḍḥā.” *Jerusalem Studies in Arabic and Islam* 31 (2006): 58–73.

Herman, Marc Daniel. “Systematizing God’s Law: Rabbanite Jurisprudence in the Islamic World from the Tenth to the Thirteenth Centuries.” Ph.D., University of Pennsylvania, 2016.

Hienz, Justin Paul. “The Origins of Muslims Prayer: Sixth and Seventh Century Religious Influences on the Salāt Ritual.” M.A., University of Missouri - Columbia, 2008.

Hollender, Elisabeth. “The Ritualization of Circumcision in Medieval Judaism in Relation to Islam and Christianity: An Overview.” *Religion* 42, no. 2 (2012): 233–46.

Islam, Jaan. “Understanding Christian–Muslim Scholarly Cooperation under ‘Abbāsid Rule from 800–1000 CE.” *Journal of Early Christian History* 7, no. 1 (2017): 46–61.

Jackson, Bernard. “Comparing Jewish and Islamic Law.” *Journal of Semitic Studies* 48, no. 1 (2003): 109–21.

Jackson, Bernard S. “Evolution and Foreign Influence in Ancient Law.” *The American Journal of Comparative Law* 16, no. 3 (1968): 372–90.

Janos, Damien. *Ideas in Motion in Baghdad and Beyond: Philosophical and Theological Exchanges Between Christians and Muslims in the Third/Ninth and Fourth/Tenth Centuries*. Leiden: Brill, 2016.

Jany, János. *Judging in the Islamic, Jewish and Zoroastrian Legal Traditions: A Comparison of Theory and Practice*. Farnham & Burlington: Ashgate, 2012.

Katsh, Abraham Isaac. *Judaism and the Koran: Biblical and Talmudic Backgrounds of the Koran and Its Commentaries*. New York: A.S. Barnes, 1962.

Khan, Geoffrey. "Al-Qirqisānī's Opinions Concerning the Text of the Bible and Parallel Muslim Attitudes Towards the Text of the Qurʾān." *The Jewish Quarterly Review* 81, no. 1–2 (1990): 59–73.

Kister, M. J. "'... And He Was Born Circumcised ...': Some Notes on Circumcision in Ḥadīth." *Oriens* 34 (1994): 10–30.

Klausner, Samuel Z. "Dietary Laws in Judaism and Islam: Common Practices and Divergent Meanings." In *American Sociological Association*, 2000.

Lasker, Daniel J. "Studies - Karaism and Christian Hebraism: A New Document." *Renaissance Quarterly* 59, no. 4 (2006): 1089.

Lazarus-Yafeh, H. "Judaism and Islam: The Relationship between Halakha and Sharīʿa." *Bulletin of the Israeli Academic Center in Cairo*, 1984, 9–10.

Lazarus-Yafeh, Hava. "Self-Criticism in Jewish and Islamic Traditions." In *Judaism and Islam: Boundaries, Communication and Interaction. Essays in Honor of William M. Brinner*, edited by B. H. Hary, J. L. Hayes, and F. Astren, 303–19. Leiden: Brill, 2000.

———. "Some Differences Between Judaism and Islam as Two Religions of Law." *Religion* 14, no. 2 (1984): 175–91.

———. *Some Religious Aspects of Islam: A Collection of Articles*. Leiden: Brill, 1981.

———. "The Religious Dialectics of the Ḥadjdj." In *The Development of Islamic Ritual*, edited by Gerald Hawting, 263–90. Aldershot: Ashgate, 2006.

Libson, Gideon. "Islamic Influence on Medieval Jewish Law? Sefer Ha'arevuth ('Book of Surety') of Rav Shmuel Ben Hofni Gaon and Its Relationship to Islamic Law." *Studia Islamica* 73 (January 1, 1991): 5–23.

———. *Jewish and Islamic Law: A Comparative Study of Custom during the Geonic Period*. Cambridge: Islamic Legal Studies Program, Harvard Law School, 2003.

———. “Parallels Between Maimonides and Islamic Law.” In *The Thought of Moses Maimonides: Philosophical and Legal Studies. La Pensée de Maimonide: Etudes Philosophiques et Halakhiques*, edited by Ira Robinson, Lawrence Kaplan, and Julien Bauer, 209–48. Lewiston: Mellen, 1990.

Lowin, Shari L., Nevin Reda, and Josef Meri. “Scripture and Exegesis: Torah and Qur’an in Historical Retrospective.” In *The Routledge Handbook of Muslim-Jewish Relations*, 57–75. New York: Routledge, 2016.

Lüling, Günter. *A Challenge to Islam for Reformation: the Rediscovery and Reliable Reconstruction of a Comprehensive Pre-Islamic Christian Hymnal Hidden in the Koran Under Earliest Islamic Reinterpretations*. Delhi: Motilal Banarsidass Publishers, 2003.

———. *Über den Ur-Qur’ān: Ansätze zur Rekonstruktion vorislamis-cher christlicher Strophenlieder im Qur’ān*. Erlangen: Lüling, 1974.

Luxenberg, Christoph. *Die Syro-Aramäische Lesart des Koran: Ein Beitrag zur Entschlüsselung der Koransprache*. Berlin: Das Arabische Buch, 2000.

———. *The Syro-Aramaic Reading of the Koran: A Contribution to the Decoding of the Language of the Koran*. Berlin: H. Schiler, 2007.

Maghen, Ze’Ev. “Dead Tradition: Joseph Schacht And The Origins Of ‘Popular Practice.’” *Islamic Law and Society* 10, no. 3 (October 1, 2003): 276–347.

———. “First Blood. Purity, Edibility, and the Independence of Islamic Jurisprudence.” *Der Islam* 81, no. 1 (2009): 49–95.

———. “‘They Shall Not Draw Nigh’: The Access of Unbelievers to Sacred Space in Islamic and Jewish Law.” *Journal of Arabic and Islamic Studies* 7 (2007): 103–31.

Mazuz, Haggai. “Islamic and Jewish Law on the Colors of Menstrual Blood.” *Zeitschrift Der Deutschen Morgenländischen Gesellschaft* 164, no. 1 (2014): 97–106.

———. “Menstruation and Differentiation: How Muslims Differentiated Themselves from Jews Regarding the Laws of Menstruation.” *Der Islam*, 2012, 204–23.

———. “Possible Midrashic Sources in Muqātil b. Sulaymān’s Tafsīr.” *Journal of Semitic Studies* 61, no. 2 (2016): 497–505.

———. “Qur’ānic Commentators on Jewish and Zoroastrian Approaches to Menstruation.” *Review of Rabbinic Judaism* 15, no. 1 (2012): 89–98.

———. “The Day of Atonement and Yawm ʿĀshūrā’: From Assimilation to Differentiation.” *Ancient Near Eastern Studies* 50 (2013): 255–61.

———. “The Islamic Ban on Menstruants’ Touching the Qur’ān - Whence?” *Journal Asiatique* 303, no. 1 (2015): 131–35.

———. “The Relationship between Islam and Judaism: A Neglected Aspect.” *Review of Rabbinic Judaism* 16, no. 1 (January 1, 2013): 28–40.

Mohammed, Khaleel. “The Foundation of Muslim Prayer.” *Medieval Encounters* 5, no. 1 (January 1, 1999): 17–28.

Nemoy, L., and W. Zajaczkowski. “Karaites.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Neusner, J., and T. Sonn. *Comparing Religions through Law: Judaism and Islam*. London: Routledge, 1999.

Neusner, Jacob, Tamara Sonn, and Jonathan E Brockopp. *Judaism and Islam in Practice: A Sourcebook*. London; New York: Routledge, 2000.

Newby, Gordon D. “Abraha and Sennacherib: A Talmudic Parallel to the ‘Tafsir on Surat Al-Fil.’” *Journal of the American Oriental Society; New Haven, Etc.* 94, no. 4 (October 1, 1974): 431.

Niazi, Imran Ahsan. “The Karaites Influence of Islamic Law on Jewish Law.” *Islamic Studies* 32, no. 2 (1993): 137–47.

Noja Noseda, S. “Al-Sāmira.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Pavlovitch, Pavel. “Early Development of the Tradition of the Self-Confessed Adulterer in Islam. An Isnād and Matn Analysis.” *Al-Qanṭara: Revista de Estudios Árabes* 31, no. 2 (2010): 371–410.

———. “The Islamic Penalty for Adultery in the Third Century AH and Al-Shāfiʿī’s Risāla.” *Bulletin of the School of Oriental and African Studies, University of London* 75, no. 3 (2012): 473–97.

———. “The Stoning of a Pregnant Adulteress from Juhayna: The Early Evolution of a Muslim Tradition.” *Islamic Law and Society* 17, no. 1 (2010): 1–62.

———. “The ʿUbāda b.Al-Sāmit Tradition: At the Crossroads of Methodology.” *Journal of Arabic and Islamic Studies* 11 (2011): 137–235.

Pavlovitch, Pavel, and David Powers. “‘A Bequest May Not Exceed One-Third’: An Isnād-Cum-Matn Analysis and Beyond.” In *Islamic Cultures, Islamic Contexts: Essays in Honor of Professor Patricia Crone*, edited by Behnam Sadeghi and et al., 133–72. Leiden: Brill, 2015.

Peters, R. “Zinā or Zināʾ.” Edited by P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, and W.P. Heinrichs. *Encyclopaedia of Islam, Second Edition*, 2012.

Pines, S. “Al-ʿĪsāwiyya.” Edited by P. Bearman, Th. Bianquis, C. E. Bosworth, Donzel van, and W. P. Heinrichs. *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Polliack, Meira. *Karaite Judaism: A Guide to Its History and Literary Sources*. Leiden; Boston: Brill, 2003.

———. “Rethinking Karaism: Between Judaism and Islam.” *The Journal of the Association for Jewish Studies* 30, no. 1 (2006): 67–93.

———. “The Karaite Inversion of ‘Written’ and ‘Oral’ Torah in Relation to the Islamic Arch-Models of Qur’an and Hadith.” *Jewish Studies Quarterly* 22, no. 3 (2015): 243–302.

Pregill, Michael E. “The Hebrew Bible and the Quran: The Problem of the Jewish ‘Influence’ on Islam.” *Religion Compass* 1, no. 6 (November 1, 2007): 643–59.

———. “The Living Calf of Sinai: Orientalism, ‘Influence,’ and the Foundations of Islamic Exegetical Tradition.” Ph.D., Columbia University, 2007.

Reid, Megan H. “ʿĀshūrāʾ (Sunnism).” *Encyclopaedia of Islam, THREE*, February 1, 2011.

Revel, Bernard. “Inquiry into the Sources of Karaite Halakah.” *Jewish Quarterly Review*, 1912 1911, 517–44.

———. “Inquiry into the Sources of Karaite Halakah. II.” *Jewish Quarterly Review*, 1913 1912, 337–96.

Rizvi, S. Saeed Akhtar. “Martyrdom of Imam Husayn and the Muslim and the Jewish Calendars.” *Alserāt*, 1980, 10–15.

Romney Wegner, J. “Islamic and Talmudic Jurisprudence: The Four Roots of Islamic Law and Their Talmudic Counterparts.” In *Islamic Law and Legal Theory*, edited by I. Edge, 35–81. Aldershot: Dartmouth, 1996.

Rubin, Uri. “‘Al-Walad Li-l-Firāsh’: On the Islamic Campaign Against ‘Zinā.’” *Studia Islamica* 78 (1993): 5–26.

Salaymeh, Lena. *The Beginnings of Islamic Law: Late Antique Islamicate Legal Traditions*. Cambridge, UK: Cambridge University Press, 2016.

Samir, Samir Khalil. “The Theological Christian Influence on the Qur’ān: A Reflection.” In *The Qur’ān in Its Historical Context*, edited by Gabriel Said Reynolds, 141–62. London & New York: Routledge, 2008.

Schacht, Joseph. “Ribā.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

———. “Foreign Elements in Ancient Islamic Law.” *Journal of Comparative Legislation and International Law* 32 (1950): 9–17.

———. “Wuḍūʾ.” *Encyclopaedia of Islam, First Edition (1913-1936)*, April 24, 2012.

———. “Zināʾ.” *Encyclopaedia of Islam, First Edition (1913-1936)*, April 24, 2012.

Schoeler, Gregor. “Oral Torah and Ḥadīth: Transmission, Prohibition of Writing, Redaction.” In *Ḥadīth: Origins and Developments*, edited by Harald Motzki, 67–108. Aldershot: Ashgate, 2004.

Schwarb, Gregor. “Capturing the Meanings of God’s Speech: The Relevance of Uṣūl Al-Fiqh to an Understanding of Uṣūl Al-Tafsīr in Jewish and Muslim Kalām.” In *A Word Fitly Spoken: Studies in Mediaeval Exegesis of the Hebrew Bible and the Qur’ān Presented to Haggai Ben-Shammai*, edited by Meir M. Bar-Asher and et al., 111–56. The Ben-Zvi Institute for the History of Jewish Communities in the East, 2007.

Schwartz, Howard. “Abraham’s Tent: Shared Traditions of the Desert in Jewish and Islamic Lore.” *Storytelling, Self, Society* 5, no. 1 (2009): 23–34.

Shaked, Shaul. *From Zoroastrian Iran to Islam: Studies in Religious History and Intercultural Contacts*. Aldershot & Brookfield: Variorum, 1995.

Skjærvø, Prods O. “Goldziher and Iranian Elements in Islam.” In *Goldziher Memorial Conference: June 21-22, 2000*, edited by Éva Apor and Istvān Ormos, 245–50. Budapest: Library of the Hungarian Academy of Sciences, 2005.

Smith, Henry Preserved. *The Bible and Islam; The Influence of the Old and New Testaments on the Religion of Mohammed*. New York: Arno Press, 1973.

Subtelny, Maria E. “Zoroastrian Elements in the Islamic Ascension Narrative: The Case of the Cosmic Cock.” In *Mediaeval and Modern Iranian Studies: Proceedings of the 6th European Conference of Iranian Studies, Held in Vienna on 18-22 September 2007 by the Societas Iranologica Europaea*, edited by Maria Szuppe, Anna Krasnowolska, and Claus V. Pedersen, 193–212. Association pour l’Avancement des Études Iraniennes, 2011.

Syukur, Iskandar. “The Question of Foreign Influences on Early Islamic Law.” M.A., McGill University (Canada), 1995.

Thomas, David. *Christian Doctrines in Islamic Theology*. Leiden & Boston: Brill, 2008.

Torrey, Charles Cutler. *The Jewish Foundation of Islam*. New York: KTAV Publishing House, 1968.

Treiger, Alexander. “Origins of Kalām.” In *The Oxford Handbook of Islamic Theology*, edited by Sabine Schmidtke, 27–43. Oxford: Oxford University Press, 2016.

Vajda, Georges. “ʿĀnāniyya.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

———. “Fasting in Islam and Judaism.” In *The Development of Islamic Ritual*, edited by Gerald Hawting, 133–49. Aldershot: Ashgate, 2006.

Wansbrough, John E. *Quranic Studies: Sources and Methods of Scriptural Interpretation*. Oxford: Oxford University Press, 1977.

———. *The Sectarian Milieu: Content and Composition of Islamic Salvation History*. Oxford & New York: Oxford University Press, 1978.

Wensinck, A. J., and Ph Marçais. “ʿĀshūrāʾ.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Wieder, Naphtali. *al-Ta’thīrāt al-islāmiyyah fī al-’ibādah al-yahūdiyyah*. Translated by Muḥammad Sālim al-Jaraḥ. Cairo: Maktabat dār al-’urūbah, 1965.

———. *Islamic Influences on the Jewish Worship*. Oxford: Phaidon Press, East and West Library, 1947.

Accad, Martin. “The Gospels in the Muslim Discourse of the Ninth to the Fourteenth Centuries: An Exegetical Inventorial Table (Part IV).” *Islam and Christian-Muslim Relations* 14, no. 4 (2003): 459–79.

Adang, Camilla. “A Fourth/Tenth Century Tunisian Mufti on the Sanctity of the Torah of Moses.” Accessed May 28, 2018.

———. “Medieval Muslim Polemics against the Jewish Scriptures.” In *Muslim Perceptions of Other Religions: A Historical Survey*, edited by J. Waardenburg, 143–59. New York: Oxford University Press, 1999.

———. *Muslim Writers on Judaism and the Hebrew Bible: From Ibn Rabban to Ibn Hazm*. Brill, 1996.

Al-Sharnoubi, A. M. A. “Critical Study and Edition of Manhaj Al-Sawab Fi Qubh Istiktab Ahl Al-Kitab.” Ph.D., University of Wales, Lampeter (United Kingdom), 2000.

Beaumont, Mark. “Appropriating Christian Scriptures in a Muslim Refutation of Christianity: The Case of Al-Radd Al-Jamīl Attributed to Al-Ghazālī.” *Islam and Christian-Muslim Relations* 22, no. 1 (2011): 69–84.

———. “Muslim Readings of John’s Gospel in the ʿAbbasid Period.” *Islam and Christian-Muslim Relations* 19, no. 2 (2008): 179–97.

Bigger, S., and S. Bigger. “The Authority and Use of the Hebrew Bible: A Muslim Perspective.” In *Creating the Old Testament: The Emergence of the Hebrew Bible*, 43–47. Blackwell, 1989.

Casewit, Yousef. “A Muslim Scholar of the Bible: Prooftexts from Genesis and Matthew in the Qur’an Commentary of Ibn Barrajān of Seville (d. 536/1141).” *Journal of Qur’anic Studies* 18, no. 1 (2016): 1–48.

Elkaisy-Friemuth, Maha. “God and the Trinity in Fakhr Al-Din Al-Rāzī.” *Islam and Christian-Muslim Relations* 22, no. 2 (2011): 113–26.

Griffith, Sidney H. *The Bible in Arabic: The Scriptures of the “People of the Book” in the Language of Islam*. Princeton: Princeton University Press, 2013.

Lazarus-Yafeh, Hava. *Intertwined Worlds: Medieval Islam and Bible Criticism*. Princeton: Princeton University Press, 1992.

Mazuz, Haggai, and Abū Muḥammad ʿAlī Ibn Ḥazm. “Ibn Ḥazm and Midrash.” *Journal of Semitic Studies* 62, no. 1 (2017): 137–52.

Metwali, Hanan Kamel. “Arabic Translations of the Hebrew Bible.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 628–35. Princeton & Oxford: Princeton University Press, 2013.

Moreen, Vera B. “Judeo-Persian Translations of the Hebrew Bible / Vera Basch Moreen.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 638–39. Princeton & Oxford: Princeton University Press, 2013.

Newby, Gordon D. “An Example of Coptic Literary Influence on Ibn Isḥāq’s Sīrah.” *Journal of Near Eastern Studies* 31, no. 1 (1972): 22–28.

———. “Quranic and Islamic Interpretations of Biblical Materials.” In *Dictionary of Biblical Interpretation*, edited by John H. Hayes. Nashville: Abingdon Press, 1999.

Nickel, Gordon. “‘Self-Evident Truths of Reason’: Challenges to Clear Thinking in the Tafsīr Al-Kabīr of Fakhr Al-Dīn Al-Rāzī.” *Islam and Christian-Muslim Relations* 22, no. 2 (2011): 161–72.

Pulcini, Theodore. “Exegesis as Polemical Discourse: Ibn Hazm on Jewish and Christian Scriptures (Volumes I and II).” Ph.D., University of Pittsburgh, 1994.

Sabjan, Muhammad Azizan. “Al-Shahrastānī on ‘the People of a Dubious Book’ (Ahl Shubhat Kitāb): A Study of Hisal-Milal Wa Al-Nihal.” *Hamdard Islamicus* 30, no. 2 (2007): 43–48.

Sachedina, Abdulaziz. “Early Muslim Traditionists and Their Familiarity with Jewish Sources.” In *Studies in Islamic and Judaic Traditions [II]: Papers Presented at the Institute for Islamic-Judaic Studies, University of Denver*, edited by William M. Brinner and Stephen D. Ricks, 49–59. Atlanta: Scholars Press, 1989.

Saleh, Walid A. “A Fifteenth-Century Muslim Hebraist: Al-Biqāʿī and His Defense of Using the Bible to Interpret the Qur’ān.” *Speculum: A Journal of Medieval Studies* 83, no. 3 (2008): 629–54.

———. *In Defense of the Bible: A Critical Edition and an Introduction to Al-Biqāʿī’s Bible Treatise*. Brill, 2008.

———. “Reflections on Muslim Hebraism: Codex Vindobonensis Palatinus and Al-Biqaʿi.” In *A Sea of Languages: Rethinking the Arabic Role in Medieval Literary History*, edited by Suzanne Conklin Akbari and Karla Mallette, 71–81. Toronto: University of Toronto Press, 2013.

———. “The Psalms in the Qurʾan and in the Islamic Religious Imagination.” In *The Oxford Handbook of the Psalms*, edited by William P. Brown, 281–96. Oxford: Oxford University Press, 2014.

Saleh, Walid A., and Kevin Casey. “An Islamic Diatessaron: Al-Biqāʿī’s Harmony of the Four Gospels.” In *Translating the Bible into Arabic: Historical, Text-Critical and Literary Aspects*, edited by Sara Binay and Stefan Leder, 85–115. Würzburg: Ergon, 2012.

Schmidtke, Sabine. “Abū Al-Husayn Al-Baṣrī and His Transmission of Biblical Materials from Kitāb Al-Dīn Wa-Al-Dawla by Ṭabarī: The Evidence from Fakhr Al-Dīn Al-Rāzī’s Mafātīḥ Al-Ghayb.” *Islam and Christian-Muslim Relations* 20, no. 2 (2009): 105–18.

Sharma, A. “Albiruni on Parallels between Hinduism and Christianity.” *Bulletin of Christian Institutes of Islamic Studies*, 1978, 24–29.

Swanson, Mark N. “Folly to the Ḥunafā’: The Crucifixion in Early Christian-Muslim Controversy.” In *The Encounter of Eastern Christianity with Early Islam*, edited by Emmanouela Grypeou, Mark Swanson, and David Thomas, 237–56. Leiden: Brill, 2006.

Thomas, David. “Abū ʿĪsā Al-Warrāq and the History of Religions.” *Journal of Semitic Studies* 41, no. 2 (1996): 275–90.

———. “ʿAlī Ibn Rabban Al-Ṭabarī: A Convert’s Assessment of His Former Faith.” In *Christians and Muslims in Dialogue in the Islamic Orient of the Middle Ages. Christlich-Muslimische Gespräche Im Mittelalter*, edited by Martin Tamcke, 137–55. Beirut: Ergon Verlag Würzburg in Kommission, 2007.

Waardenburg, Jacques. “(Muslim Studies of Other Religions:) The Early Period, 610-650.” In *Muslim Perceptions of Other Religions: A Historical Survey*, edited by Jacques Waardenburg, 3–17. New York: Oxford University Press, 1999.

Watt, W. Montgomery. “The Early Development of the Muslim Attitude to the Bible.” *Glasgow University Oriental Society Transactions* 16 (56 1955): 50–62.

Watt, W. Montgomery, and Hakim Mohammed Said. “Al-Bīrūnī and the Study of Non-Islamic Religions.” In *Al-Bīrūnī: Commemorative Volume. Proceedings of the International Congress Held in Pakistan*, 414–19. Karachi: Hamdard National Foundation, 1979.

Wheeler, Brannon M. “‘This Is the Torah That God Sent Down to Moses’. Some Early Islamic Views of the Qur’ān and Other Revealed Books.” *Graeco-Arabica* 7–8 (2000): 571–604.

Zellentin, Holger M. “Aḥbār and Rubān: Religious Leaders in the Qurʾān in Dialogue with Christian and Rabbinic Literature.” In *Qurʾānic Studies Today*, edited by Angelika Neuwirth and Michael A. Sells, 262–93. New York: Routledge, 2016.

Abdullah, Ismail. “Tawḥīd and Trinity: A Study of Ibn Taymiyyah’s Al-Jawāb Al Ṣaḥīḥ.” *Intellectual Discourse* 14, no. 1 (2006): 89–106.

Adang, Camilla. “Medieval Muslim Polemics against the Jewish Scriptures.” In *Muslim Perceptions of Other Religions: A Historical Survey*, edited by J. Waardenburg, 143–59. New York: Oxford University Press, 1999.

Amir-Moezzi, Mohammad Ali. “Shiʿism and Judaism: A Relation Marked by Paradox.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 816–23. Princeton & Oxford: Princeton University Press, 2013.

Anthony, Sean W. “Ghulāt (Extremist Shīʿīs).” *Encyclopaedia of Islam, THREE*, January 1, 2018.

Bashir, Aamir. “Muslim Views of Jews and Judaism in the Medieval Period: A Comparative Study of Ibn Ḥazm and Al-Shahrastānī.” *Lights: The MESSA Quarterly* 2, no. 2 (2013): 1–19.

Beaumont, Mark. “Muslim Readings of John’s Gospel in the ʿAbbasid Period.” *Islam and Christian-Muslim Relations* 19, no. 2 (2008): 179–97.

Behloul, Samuel-Martin. “The Testimony of Reason and Historical Reality: Ibn Ḥazm’s Refutation of Christianity.” In *Ibn Ḥazm of Cordoba: The Life and Works of a Controversial Thinker.Ed. Camilla Adang, Maribel Fierro, Sabine Schmidtke*, edited by Camilla Adang, Maribel Fierro, and Sabine Schmidtke, 457–83. Leiden & Boston: Brill, 2013.

Brodeur, P. “Arabic Muslim Writings on Contemporary Religions Other than Islam: A Framework for Inquiry.” In *Muslim Perceptions of Other Religions: A Historical Survey*, edited by J. Waardenburg, 240–49. New York: Oxford University Press, 1999.

Canard, M. “Al-Ḥākim Bi-Amr Allāh.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Casewit, Yousef. “A Muslim Scholar of the Bible: Prooftexts from Genesis and Matthew in the Qur’an Commentary of Ibn Barrajān of Seville (d. 536/1141).” *Journal of Qur’anic Studies* 18, no. 1 (2016): 1–48.

Cohen, Mark. “The Legal Position of Jews in Islam.” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, 93–123. 1. London & New York: Routledge, 2012.

Elkaisy-Friemuth, Maha. “God and the Trinity in Fakhr Al-Din Al-Rāzī.” *Islam and Christian-Muslim Relations* 22, no. 2 (2011): 113–26.

Emon, Anver M. *Religious Pluralism and Islamic Law: Dhimmīs and Others in the Empire of Law*. Oxford: Oxford University Press, 2012.

Fierro, Maribel. “Ibn Ḥazm and the Jewish Zindīq.” In *Ibn Ḥazm of Cordoba: The Life and Works of a Controversial Thinker*, edited by Camilla Adang, Maribel Fierro, and Sabine Schmidtke, 497–509. Leiden & Boston: Brill, 2013.

Fitzgerald, M. L. “Jesus in a Shi’ite Commentary.” In *Recueil d’articles Offert à Maurice Borrmans Par Ses Collègues et Amis*, 77–91. Pontificio Istituto di Studi Arabi e d’Islamistica, 1996.

Freidenreich, David M. “Christians in Early and Classical Shīʿī Law.” In *Christian-Muslim Relations: A Bibliographical History (1050-1200)*, edited by David Thomas, Alex Mallett, Juan Pedro Monferrer Sala, and et al., 3:27–40. Leiden & Boston: Brill, 2011.

———. “Christians in Early and Classical Sunnī Law.” In *Christian-Muslim Relations: A Bibliographical History: 600-900*, edited by David Thomas, Barbara Roggema, and et al., 1:99–114. Leiden & Boston: Brill, 2009.

———. “Five Questions about Non-Muslim Meat: Toward a New Appreciation of Ibn Qayyim Al-Ǧawziyyah’s Contribution to Islamic Law.” *Oriente Moderno: Rivista d’Informazione e Di Studi per La Diffusione Della Conoscenza Della Cultura Dell’Oriente Sopratutto Musulmano* 90, no. 1 (2010): 89–110.

———. “The Implications of Unbelief: Tracing the Emergence of Distinctively Shiʿi Notions Regarding the Food and Impurity of Non-Muslims.” *Islamic Law and Society* 18, no. 1 (2011): 53–84.

Gregg, Robert C. *Shared Stories, Rival Tellings: Early Encounters of Jews, Christians, and Muslims*. Oxford & New York: Oxford University Press, 2015.

Guenther, A. "Christian-Muslim Apologetics in the ʿAbbasid Period." *McGill Journal of Middle East Studies. Revue d'Etudes Du Moyen-Orient de McGill* 3 (1995 1994): 1–16.

Hämeen-Anttila, Jaakko. "John the Baptist and Early Islamic Polemics Concerning Jesus." *Acta Orientalia (Copenhagen)* 60 (1999): 72–87.

———. "The Corruption of Christianity: Salmān Al-Fārisī's Quest as a Paradigmatic Model." *Studia Orientalia* 85 (1999): 115–26.

Hannoum, Abdelmajid. "The Kahina: Jewish Symbol, Islamic Narrative." In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 994–98. Princeton & Oxford: Princeton University Press, 2013.

Heemskerk, Margaretha T. "A Muʿtazilite Refutation of Christianity and Judaism: Two Fragments from ʿAbd Al-Jabbār's Al-Mughnī Fī Abwāb Al-Tawḥīd Wa-'l-ʿadl." In *The Routledge Reader in Christian-Muslim Relations*, edited by Mona Siddiqui, 98–111. London & New York: Routledge, 2013.

Heemskerk, Margaretha T., Barbara Roggema, Marcel Poorthuis, and Pim Valkenberg. "A Muʿtazilite Refutation of Christianity and Judaism: Two Fragments from ʿAbd Al-Jabbār'sal-Mughnī Fī Abwāb Al-Tawḥīd Wa-'l-ʿadl." In *The Three Rings: Textual Studies in the Historical Trialogue of Judaism, Christianity, and Islam*, 183–201. Peeters, 2005.

Hodgson, M. G. S. "ʿAbd Allāh b. Sabaʾ." *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Hoyland, Robert G. "The Correspondence of Leo III (717-41) and ʿUmar II (717-20)." *Aram Periodical* 6 (1994): 165–77.

Husseini, Sara Leila. *Early Christian-Muslim Debate on the Unity of God: Three Christian Scholars and Their Engagement with Islamic Thought (9th Century C.E.)*. Leiden: Brill, 2014.

Janssens, Jules. "The Ikhwān Aṣ-Ṣafā' on King-Prophet Solomon." In *The Figure of Solomon in Jewish, Christian and Islamic Tradition: King, Sage and Architect.*, edited by Joseph Verheyden, 241–53. Themes in Biblical Narrative. Leiden: Brill, 2013.

Kister, M. J. "'ʿAn Yadin' (Qurʾān, IX/29) An Attempt at Interpretation." *Arabica* 11, no. 3 (1964): 272–78.

Koningsveld, P. S. van. "The Islamic Image of Paul and the Origin of the Gospel of Barnabas." In *The Routledge Reader in Christian-Muslim Relations*, edited by Mona Siddiqui, 33–48. London & New York: Routledge, 2013.

Korkmaz, Sıddık. “Two Images of Ibn Saba in the Historical and Heresiographical Literature.” *İslam Araştırmaları. Journal of Islamic Research (Islamitische Universiteit van Europa)* 3, no. 1 (2010): 243–62.

Lassner, Jacob. “The Origins of Muslim Attitudes Towards the Jews and Judaism.” *Judaism (American Jewish Congress)* 39, no. 4 (Fall 1990): 494–507.

Lazarus-Yafeh, Hava. “Ezra-ʿUzayr: The Metamorphosis of a Polemical Motif.” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, 231–48. 1. London & New York: Routledge, 2012.

Lecker, Michael. “Muḥammad b. Isḥāq Ṣāḥib Al-Maghāzī: Was His Grandfather Jewish?” In *Books and Written Culture of the Islamic World: Studies Presented to Claude Gilliot on the Occasion of His 75th Birthday. Islamicae Litterae Scripta Claudio Gilliot Septuagesimum Quintum Diem Natalem Celebranti Dicata*, edited by Andrew Rippin and Roberto Tottoli, 26–38. Leiden: Brill, 2015.

Levonian, Lootfy. “The Ikhwān Al-Ṣafā’ and Christ.” In *Rasā’il Ikhwān Aṣ-Ṣafā’ Wa-Khillān Al-Wafā’ (2nd Half 4th/10th Cent.): Texts and Studies, II*, edited by Fuat Sezgin, 237–41. Institute for the History of Arabic-Islamic Science at the Johann Wolfgang Goethe University, 1999.

Lewicka, Paulina. “Lakum Dīnukum Wa-Lī-Dīnī. Remarks on the Prehistory of Inter-Communal Antagonism in Dār Al-Islām.” *Rocznik Orientalistyczny* 69, no. 2 (2016): 147–57.

Lewinstein, Keith. “ʿAbdallāh b. Sabaʾ.” *Encyclopaedia of Islam, THREE*, January 6, 2016.

Ljamai, Abdelilah. *Ibn Ḥazm et la polémique islamo-chrétienne dans l’histoire de l’islam*. Leiden: Brill, 2003.

Maghen, Ze’ev. “Strangers and Brothers: The Ritual Status of Unbelievers in Islamic Jurisprudence.” *Medieval Encounters: Jewish, Christian and Muslim Culture in Confluence and Dialogue* 12, no. 2 (2006): 173–223.

———. “The Bread of Adversity: The Jews Refuse the Dīn Al-Yusr.” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, Lloyd, 214–30. 1. London & New York: Routledge, 2012.

Mattila, Janne. “The Ikhwān Al-Ṣafāʾ on Religious Diversity.” *Journal of Islamic Studies* 28, no. 2 (2017): 178–92.

Mazuz, Haggai. “Additional Contributions of ‘Abd Al-Ḥaqq Al-Islāmī to the Muslim-Jewish Polemic.” *Al-Qanṭara: Revista de Estudios Árabes* 37, no. 1 (2016): 111–28.

McAuliffe, Jane Dammen. “Perceptions of the Christians in Qur’anic Tafsir.” Ph.D., University of Toronto (Canada), 1984.

McAuliffe, Jane Dammen. “Persian Exegetical Evaluation of the ‘Ahl Al-Kitab.’” *The Muslim World; Hartford Siminary Foundation* 73, no. 2 (April 1, 1983): 87.

Meddeb, Abdelwahab. “Ibn Khaldun: The Jews and the Political.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 694–95. Princeton & Oxford: Princeton University Press, 2013.

Menasce, Jean de, and Robert Hoyland. “Questions Concerning the Mazdaeans of Muslim Iran.” In *Muslims and Others in Early Islamic Society*, 331–41. Aldershot: Ashgate, 2004.

Meri, Josef, ed. *The Routledge Handbook of Muslim-Jewish Relations*. New York: Routledge, 2016.

Metwali, Hanan Kamel. “Arabic Translations of the Hebrew Bible.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 628–35. Princeton & Oxford: Princeton University Press, 2013.

Mohamad, Mohamad Nasran. “Some Considerations of the Concept of Hudnah Based on Al-Nawawī’s Minhāj Al-Ṭālibīn.” *Hamdard Islamicus* 29, no. 1 (2006): 79–88.

Moreen, Vera B. “Judeo-Persian Translations of the Hebrew Bible / Vera Basch Moreen.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 638–39. Princeton & Oxford: Princeton University Press, 2013.

Nettler, Ronald L. “Our Struggle with the Jews.” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, 331–47. 1. London & New York: Routledge, 2012.

Nickel, Gordon. “‘A Common Word’ in Context. Toward the Roots of Polemics between Christians and Muslims in Early Islam.” *Collectanea Christiana Orientalia* 6 (2009): 167–200.

Nurit, Tsafrir. “The Attitude of Sunnī Islam toward Jews and Christians as Reflected in Some Legal Issues.” *Qanṭara: Revista de Estudios Arabes*, no. 2 (2005): 317–36.

Pratt, Douglas. “Muslim–Jewish Relations: Some Islamic Paradigms.” *Islam and Christian–Muslim Relations* 21, no. 1 (January 1, 2010): 11–21.

Rahman, Fazlur. “Islam’s Attitude Toward Judaism.” *Muslim World* 72 (1982): 1–13.

———. “Islam’s Attitude Toward Judaism.” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, 17–28. 1. London & New York: Routledge, 2012.

Sabjan, Muhammad Azizan. “Al-Shahrastānī on ‘the People of a Dubious Book’ (Ahl Shubhat Kitāb): A Study of Hisal-Milal Wa Al-Nihal.” *Hamdard Islamicus* 30, no. 2 (2007): 43–48.

Sabjan, Muhammad Azizan, and Noor Shakirah Mat Akhir. “The Concept of the People of the Book (Ahl Al-Kitāb) in Islamic Religious Tradition.” *Afkār: Jurnal Akidah Dan Pemikiran Islam. Journal of ʿAqīdah and Islamic Thought* 6 (2005): 15–35.

Sachedina, Abdulaziz. “Islamic Theology of Christian-Muslim Relations.” *Islam & Christian-Muslim Relations Islam and Christian-Muslim Relations* 8, no. 1 (1997): 27–38.

Saleh, Walid A. “A Fifteenth-Century Muslim Hebraist: Al-Biqāʿī and His Defense of Using the Bible to Interpret the Qur’ān.” *Speculum: A Journal of Medieval Studies* 83, no. 3 (2008): 629–54.

———. “Reflections on Muslim Hebraism: Codex Vindobonensis Palatinus and Al-Biqaʿi.” In *A Sea of Languages: Rethinking the Arabic Role in Medieval Literary History*, edited by Suzanne Conklin Akbari and Karla Mallette, 71–81. Toronto: University of Toronto Press, 2013.

Sarrió Cucarella, Diego. “Corresponding across Religious Borders: The Letter of Ibn Taymiyya to a Crusader in Cyprus.” *Islamochristiana / Dirāsāt Islāmīyah Masīḥīyah* 36 (2010): 187–212.

Schmidtke, Sabine. “Abū Al-Husayn Al-Baṣrī and His Transmission of Biblical Materials from Kitāb Al-Dīn Wa-Al-Dawla by Ṭabarī: The Evidence from Fakhr Al-Dīn Al-Rāzī’s Mafātīḥ Al-Ghayb.” *Islam and Christian-Muslim Relations* 20, no. 2 (2009): 105–18.

Shaked, S. “Some Islamic Reports Concerning Zoroastrianism.” *Jerusalem Studies in Arabic and Islam* 17 (1994): 43–84.

Shaked, Shaul. *From Zoroastrian Iran to Islam: Studies in Religious History and Intercultural Contacts*. Aldershot & Brookfield: Variorum, 1995.

———. “Medieval Jewish Magic in Relation to Islam: Theoretical Attitudes and Genres.” In *Judaism and Islam: Boundaries, Communication and Interaction. Essays in Honor of William M. Brinner*, edited by B. H. Hary, J. L. Hayes, and F. Astren, 97–109. Leiden: Brill, 2000.

Sharma, A. “Albiruni on Parallels between Hinduism and Christianity.” *Bulletin of Christian Institutes of Islamic Studies*, 1978, 24–29.

Shavit, Uriya. “Can Muslims Befriend Non-Muslims? Debating Al-Walā’ Wa-Al-Barā’ (Loyalty and Disavowal) in Theory and Practice.” *Islam and Christian-Muslim Relations* 25, no. 1 (2014): 67–88.

Shboul, Ahmad M. H. “Arab-Islamic Perceptions of Byzantine Religion and Culture.” In *Muslim Perceptions of Other Religions: A Historical Survey*, edited by J. Waardenburg, 122–35. New York: Oxford University Press, 1999.

Speight, R. M. “Attitudes Toward Christians as Revealed in the Musnad of Al-Ṭayālisī.” *Muslim World* 63 (1973): 249–68.

Swanson, Mark N. “A Curious and Delicate Correspondence: The Burhān of Ibn Al-Munajjim and the Jawāb of Ḥunayn Ibn Isḥāq.” *Islam and Christian-Muslim Relations* 22, no. 2 (2011): 173–83.

Thomas, David. “Abū ʿĪsā Al-Warrāq and the History of Religions.” *Journal of Semitic Studies* 41, no. 2 (1996): 275–90.

———. “Christian Religion (Premodern Muslim Positions).” *Encyclopaedia of Islam, THREE*, March 1, 2017.

———. “Extracts from Early Muslim Polemic against Christianity: Abū ʿĪsā Al-Warrāq’s ‘Against the Incarnation.’” In *The Routledge Reader in Christian-Muslim Relations*, edited by Mona Siddiqui, 65–71. London & New York: Routledge, 2013.

———. “Muslim Regard for Christians and Christianity, 900-1200.” In *Christian-Muslim Relations: A Bibliographical History: 900-1050*, edited by David Thomas, Alex Mallett, Juan Pedro Monferrer Sala, and et al., 2:15–27. Leiden & Boston: Brill, 2010.

———. “ʿAlī Ibn Rabban Al-Ṭabarī: A Convert’s Assessment of His Former Faith.” In *Christians and Muslims in Dialogue in the Islamic Orient of the Middle Ages. Christlich-Muslimische Gespräche Im Mittelalter*, edited by Martin Tamcke, 137–55. Beirut: Ergon Verlag Würzburg in Kommission, 2007.

Tsadik, Daniel. “Shiʿi Legal Attitudes toward the Jews.” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, 311–30. 1. London & New York: Routledge, 2012.

Waardenburg, Jacques. “(Muslim Studies of Other Religions:) The Early Period, 610-650.” In *Muslim Perceptions of Other Religions: A Historical Survey*, edited by Jacques Waardenburg, 3–17. New York: Oxford University Press, 1999.

Watt, W. Montgomery. “The Early Development of the Muslim Attitude to the Bible.” *Glasgow University Oriental Society Transactions* 16 (56 1955): 50–62.

Watt, W. Montgomery, and Hakim Mohammed Said. “Al-Bīrūnī and the Study of Non-Islamic Religions.” In *Al-Bīrūnī: Commemorative Volume. Proceedings of the International Congress Held in Pakistan*, 414–19. Karachi: Hamdard National Foundation, 1979.

Whittingham, Martin. “Al-Ghazālī on Jews and Christians.” In *The Three Rings: Textual Studies in the Historical Trialogue of Judaism, Christianity, and Islam*, edited by Barbara Roggema, Marcel Poorthuis, and Pim Valkenberg, 203–16. Peeters, 2005.

Yarbrough, Luke. “Upholding God’s Rule: Early Muslim Juristic Opposition to the State Employment of Non-Muslims.” *Islamic Law and Society*, 2012, 11–85.

Younès, Michel. “L’Herméneutique Scriptuaire aux 8e-9e Siècles: Enjeux Pour un Dialogue Islamo-Chrétien.” *Islamochristiana / Dirāsāt Islāmīyah Masīḥīyah* 33 (2007): 51–74.

Zellentin, Holger M. “Aḥbār and Rubān: Religious Leaders in the Qurʾān in Dialogue with Christian and Rabbinic Literature.” In *Qurʾānic Studies Today*, edited by Angelika Neuwirth and Michael A. Sells, 262–93. New York: Routledge, 2016.

Ahroni, Reuben. “Some Yemenite Jewish Attitudes towards Muḥammad’s Prophethood.” *Hebrew Union College Annual* 69 (1998): 49–99.

Becker, C. H. “Christian Polemic and the Formation of Islamic Dogma.” In *Muslims and Others in Early Islamic Society*, edited by Robert Hoyland, 241–57. Aldershot: Ashgate, 2004.

Ben-Shammai, Haggai. “The Attitude of Some Early Karaites Towards Islam.” In *Studies in Medieval Jewish History and Literature*, edited by Isadore Twersky, 2:3–40. Cambridge: Harvard University Center for Jewish Studies, 1984.

Bronwen, Neil. “The Earliest Greek Understandings of Islam: John of Damascus and Theophanes the Confessor.” In *Religious Conflict from Early Christianity to the Rise of Islam*, edited by Wendy Mayer and Bronwen Neil, 215–28. Berlin & Boston: De Gruyter, 2013.

Çoruh, Hakan. “Friendship between Muslims and the People of the Book in the Qur’an with Special Reference to Q 5.51.” *Islam and Christian-Muslim Relations* 23, no. 4 (2012): 505–13.

Davids, Adelbert. “John of Damascus: The Heresy of the Ishmaelites.” In *The Three Rings: Textual Studies in the Historical Trialogue of Judaism, Christianity, and Islam*, edited by Pim Valkenberg, Barbara Roggema, Marcel Poorthuis, and Pim Valkenberg, 71–90. Peeters, 2005.

Fiey, Jean-Maurice. “The Umayyads in Syriac Sources.” In *The Fourth International Conference on the History of Bilād Al-Sẖām during the Umayyad Period*, edited by M. Adnan Bakhit and Robert Schick, 2:11–25. Amman: University of Jordan Press, 1989.

Firestone, Reuven. “Can Those Chosen by God Dialogue with Others?” In *Contemporary Muslim-Christian Encounters: Developments, Diversity, and Dialogues*, edited by Paul Hedges, 33–50. London: Bloomsbury, 2015.

———. “Jewish Views on the Birth of Islam.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 650–52. Princeton & Oxford: Princeton University Press, 2013.

Fontaine, Resianne. “Abraham Ibn Daud’s Polemics against Muslims and Christians.” In *The Three Rings: Textual Studies in the Historical Trialogue of Judaism, Christianity, and Islam*, edited by Barbara Roggema, Marcel Poorthuis, and Pim Valkenberg, 19–34. Peeters, 2005.

Freidenreich, David M. “Muslims in Canon Law, 650-1000.” In *Christian-Muslim Relations: A Bibliographical History: 600-900*, edited by David Thomas, Barbara Roggema, and et al., 1:83–98. Leiden & Boston: Brill, 2009.

———. “The Use of Islamic Sources in Saadiah Gaon’s Tafsīr of the Torah.” *Jewish Quarterly Review*, 2003, 353–95.

Frenkel, Yehoshua, Michael M. Laskier, and Yaacov Lev. “The Use of Islamic Materials by Non-Muslim Writers.” In *The Convergence of Judaism and Islam: Religious, Scientific, and Cultural Dimensions*, 89–108. Gainesville: University Press of Florida, 2011.

Glei, Reinhold. “John of Damascus.” *Encyclopaedia of Islam, THREE*, March 1, 2018.

Gregg, Robert C. *Shared Stories, Rival Tellings: Early Encounters of Jews, Christians, and Muslims*. Oxford & New York: Oxford University Press, 2015.

Griffith, Sidney H. “Comparative Religion in the Apologetics of the First Christian Arabic Theologians.” In *Muslims and Others in Early Islamic Society*, edited by Robert Hoyland, 175–99. Aldershot: Ashgate, 2004.

———. “Jews and Muslims in Christian Syriac and Arabic Texts of the Ninth Century.” *Jewish History* 3, no. 1 (1988): 65–94.

Hämeen-Anttila, Jaakko. “John the Baptist and Early Islamic Polemics Concerning Jesus.” *Acta Orientalia (Copenhagen)* 60 (1999): 72–87.

Healey, J. F. “Syriac Sources and the Umayyad Period.” In *The Fourth International Conference on the History of Bilād Al-Sẖām during the Umayyad Period*, edited by M. Adnan Bakhit and Robert Schick, 1–10. Amman: University of Jordan Press, 1989.

Heide, Albert van der. “‘Their Prophets and Fathers Misled Them’: Moses Maimonides on Christianity and Islam.” In *The Three Rings: Textual Studies in the Historical Trialogue of Judaism, Christianity, and Islam*, edited by Barbara Roggema, Marcel Poorthuis, and Pim Valkenberg, 35–46. Peeters, 2005.

Hoyland, Robert G. *Seeing Islam as Others Saw It: A Survey and Evaluation of Christian, Jewish, and Zoroastrian Writings on Early Islam*. Princeton: Darwin Press, 1997.

———. “The Correspondence of Leo III (717-41) and ʿUmar II (717-20).” *Aram Periodical* 6 (1994): 165–77.

———. “The Earliest Christian Writings on Muḥammad: An Appraisal.” In *The Biography of Muḥammad: The Issue of the Sources*, edited by Harald Motzki, 276–97. Leiden: Brill, 2000.

Hoyland, Robert G., and R. L. Nettler. “Sebeos, the Jews and the Rise of Islam.” In *Medieval and Modern Perspectives on Muslim-Jewish Relations*, 89–102. Luxembourg: Harwood

Academic Publishers, in cooperation with the Oxford Centre for Postgraduate Hebrew Studies, 1995.

Husseini, Sara Leila. *Early Christian-Muslim Debate on the Unity of God: Three Christian Scholars and Their Engagement with Islamic Thought (9th Century C.E.)*. Leiden: Brill, 2014.

Lecker, Michael. "The Jewish Reaction to the Islamic Conquests." In *Dynamics in the History of Religions between Asia and Europe: Encounters, Notions, and Comparative Perspectives*, edited by Volkhard Krech and Marion Steinicke, 177–90. Leiden: Brill, 2012.

Leder, S. "The Attitude of the Population, Especially the Jews, Towards the Arab-Islamic Conquest of Bilād Al-Shām and the Question of Their Role Therein." *Welt Des Orients* 18 (1987): 64–71.

Moorhead, J. "The Monophysite Response to the Arab Invasions." *Byzantion* 51 (1981): 579–91.

Morony, Michael G. "Seeing Islam as Others Saw It: A Survey and Evaluation of Christian, Jewish, and Zoroastrian Writings on Early Islam (Review)." *International Journal of Middle East Studies; Cambridge* 31, no. 3 (August 1999): 452–53.

Palmer, A., and J. J. Van Ginkel. "Seventh Century in the West-Syrian Chronicles" 72, no. 2 (1993).

Paudice, Aleida. "Hebrew Translations and Transcriptions of the Qur'an." In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 640–49. Princeton & Oxford: Princeton University Press, 2013.

Saquer-Sabin, Françoise. "Relations between Jews and Muslims in Hebrew Literature." In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 559–65. Princeton & Oxford: Princeton University Press, 2013.

Schocken, G. "Jews, Arabs and the Halacha." *Jerusalem Quarterly* 35 (1985): 46–52.

Shapiro, Marc B. "Islam and the Halakhah." *Judaism: A Quarterly Journal of Jewish Life and Thought* 42, no. 3 (1993).

Shtober, Shimon. "Islam and Sabbateanism in the Chronicle Sefer Divrei Yosef." In *Jews and Muslims in the Islamic World*, edited by Bernard Dov Cooperman and Zvi Zohar, 321–34. Bethesda: University Press of Maryland, 2013.

———. "Muḥammad and the Beginning of Islam in the Chronicle Sefer Divrey Yoseph." In *Studies in Islamic History and Civilization in Honour of Professor David Ayalon*, edited by M. Sharon, 319–52. Jerusalem & Leiden: Cana & Brill, 1986.

Stanton, Graham, Guy G Stroumsa, and Moshe Halbertal, eds. “Coexisting with the Enemy: Jews and Pagans in the Mishnah.” In *Tolerance and Intolerance in Early Judaism and Christianity*. Cambridge & New York: Cambridge University Press, 1998.

Stroumsa, Sarah. “Jewish Polemics Against Islam and Christianity in the Light of Judaeo-Arabic Texts.” In *Muslims and Others in Early Islamic Society*, edited by Robert Hoyland, 201–10. Aldershot: Ashgate, 2004.

Suermann, Harald. “Early Islam in the Light of Christian and Jewish Sources.” In *The Qur’ān in Context: Historical and Literary Investigations into the Qur’ānic Milieu*, edited by Angelika Neuwirth, Nicolai Sinai, and Michael Marx, 135–48. Leiden & Boston: Brill, 2010.

Swanson, Mark N. “A Curious and Delicate Correspondence: The Burhān of Ibn Al-Munajjim and the Jawāb of Ḥunayn Ibn Isḥāq.” *Islam and Christian-Muslim Relations* 22, no. 2 (2011): 173–83.

Teule, Herman. “Paul of Antioch’s Attitude towards the Jews and the Muslims. His Letter to the Nations and the Jews.” In *The Three Rings: Textual Studies in the Historical Trialogue of Judaism, Christianity, and Islam*, edited by Barbara Roggema, Marcel Poorthuis, and Pim Valkenberg, 91–110. Peeters, 2005.

Waltz, J. “Muḥammad and the Muslims in St. Thomas Aquinas.” In *The Routledge Reader in Christian-Muslim Relations*, edited by Mona Siddiqui, 112–21. London & New York: Routledge, 2013.

Wiegers, Gerard A. “Muḥammad as the Messiah: A Comparison of the Polemical Works of Juan Alonso with the Gospel of Barnabas.” *Bibliotheca Orientalis*, 1995, 245–91.

Ahroni, Reuben. “Some Yemenite Jewish Attitudes towards Muḥammad’s Prophethood.” *Hebrew Union College Annual* 69 (1998): 49–99.

Becker, C. H. “Christian Polemic and the Formation of Islamic Dogma.” In *Muslims and Others in Early Islamic Society*, edited by Robert Hoyland, 241–57. Aldershot: Ashgate, 2004.

Ben-Shammai, Haggai. “The Attitude of Some Early Karaites Towards Islam.” In *Studies in Medieval Jewish History and Literature*, edited by Isadore Twersky, 2:3–40. Cambridge: Harvard University Center for Jewish Studies, 1984.

Bronwen, Neil. “The Earliest Greek Understandings of Islam: John of Damascus and Theophanes the Confessor.” In *Religious Conflict from Early Christianity to the Rise of Islam*, edited by Wendy Mayer and Bronwen Neil, 215–28. Berlin & Boston: De Gruyter, 2013.

Çoruh, Hakan. “Friendship between Muslims and the People of the Book in the Qur’an with Special Reference to Q 5.51.” *Islam and Christian-Muslim Relations* 23, no. 4 (2012): 505–13.

Davids, Adelbert. “John of Damascus: The Heresy of the Ishmaelites.” In *The Three Rings: Textual Studies in the Historical Trialogue of Judaism, Christianity, and Islam*, edited by Pim Valkenberg, Barbara Roggema, Marcel Poorthuis, and Pim Valkenberg, 71–90. Peeters, 2005.

Fiey, Jean-Maurice. “The Umayyads in Syriac Sources.” In *The Fourth International Conference on the History of Bilād Al-Sẖām during the Umayyad Period*, edited by M. Adnan Bakhit and Robert Schick, 2:11–25. Amman: University of Jordan Press, 1989.

Firestone, Reuven. “Can Those Chosen by God Dialogue with Others?” In *Contemporary Muslim-Christian Encounters: Developments, Diversity, and Dialogues*, edited by Paul Hedges, 33–50. London: Bloomsbury, 2015.

———. “Jewish Views on the Birth of Islam.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 650–52. Princeton & Oxford: Princeton University Press, 2013.

Fontaine, Resianne. “Abraham Ibn Daud’s Polemics against Muslims and Christians.” In *The Three Rings: Textual Studies in the Historical Trialogue of Judaism, Christianity, and Islam*, edited by Barbara Roggema, Marcel Poorthuis, and Pim Valkenberg, 19–34. Peeters, 2005.

Freidenreich, David M. “Muslims in Canon Law, 650-1000.” In *Christian-Muslim Relations: A Bibliographical History: 600-900*, edited by David Thomas, Barbara Roggema, and et al., 1:83–98. Leiden & Boston: Brill, 2009.

———. “The Use of Islamic Sources in Saadiah Gaon’s Tafsīr of the Torah.” *Jewish Quarterly Review*, 2003, 353–95.

Frenkel, Yehoshua, Michael M. Laskier, and Yaacov Lev. “The Use of Islamic Materials by Non-Muslim Writers.” In *The Convergence of Judaism and Islam: Religious, Scientific, and Cultural Dimensions*, 89–108. Gainesville: University Press of Florida, 2011.

Glei, Reinhold. “John of Damascus.” *Encyclopaedia of Islam, THREE*, March 1, 2018.

Gregg, Robert C. *Shared Stories, Rival Tellings: Early Encounters of Jews, Christians, and Muslims*. Oxford & New York: Oxford University Press, 2015.

Griffith, Sidney H. “Comparative Religion in the Apologetics of the First Christian Arabic Theologians.” In *Muslims and Others in Early Islamic Society*, edited by Robert Hoyland, 175–99. Aldershot: Ashgate, 2004.

———. “Jews and Muslims in Christian Syriac and Arabic Texts of the Ninth Century.” *Jewish History* 3, no. 1 (1988): 65–94.

Hämeen-Anttila, Jaakko. “John the Baptist and Early Islamic Polemics Concerning Jesus.” *Acta Orientalia (Copenhagen)* 60 (1999): 72–87.

Healey, J. F. “Syriac Sources and the Umayyad Period.” In *The Fourth International Conference on the History of Bilād Al-Sẖām during the Umayyad Period*, edited by M. Adnan Bakhit and Robert Schick, 1–10. Amman: University of Jordan Press, 1989.

Heide, Albert van der. “‘Their Prophets and Fathers Misled Them’: Moses Maimonides on Christianity and Islam.” In *The Three Rings: Textual Studies in the Historical Trialogue of Judaism, Christianity, and Islam*, edited by Barbara Roggema, Marcel Poorthuis, and Pim Valkenberg, 35–46. Peeters, 2005.

Hoyland, Robert G. *Seeing Islam as Others Saw It: A Survey and Evaluation of Christian, Jewish, and Zoroastrian Writings on Early Islam*. Princeton: Darwin Press, 1997.

———. “The Correspondence of Leo III (717-41) and ʿUmar II (717-20).” *Aram Periodical* 6 (1994): 165–77.

———. “The Earliest Christian Writings on Muḥammad: An Appraisal.” In *The Biography of Muḥammad: The Issue of the Sources*, edited by Harald Motzki, 276–97. Leiden: Brill, 2000.

Hoyland, Robert G., and R. L. Nettler. “Sebeos, the Jews and the Rise of Islam.” In *Medieval and Modern Perspectives on Muslim-Jewish Relations*, 89–102. Luxembourg: Harwood Academic Publishers, in cooperation with the Oxford Centre for Postgraduate Hebrew Studies, 1995.

Husseini, Sara Leila. *Early Christian-Muslim Debate on the Unity of God: Three Christian Scholars and Their Engagement with Islamic Thought (9th Century C.E.)*. Leiden: Brill, 2014.

Lecker, Michael. “The Jewish Reaction to the Islamic Conquests.” In *Dynamics in the History of Religions between Asia and Europe: Encounters, Notions, and Comparative Perspectives*, edited by Volkhard Krech and Marion Steinicke, 177–90. Leiden: Brill, 2012.

Leder, S. “The Attitude of the Population, Especially the Jews, Towards the Arab-Islamic Conquest of Bilād Al-Shām and the Question of Their Role Therein.” *Welt Des Orients* 18 (1987): 64–71.

Moorhead, J. “The Monophysite Response to the Arab Invasions.” *Byzantion* 51 (1981): 579–91.

Morony, Michael G. “Seeing Islam as Others Saw It: A Survey and Evaluation of Christian, Jewish, and Zoroastrian Writings on Early Islam (Review).” *International Journal of Middle East Studies; Cambridge* 31, no. 3 (August 1999): 452–53.

Palmer, A., and J. J. Van Ginkel. “Seventh Century in the West-Syrian Chronicles” 72, no. 2 (1993).

Paudice, Aleida. “Hebrew Translations and Transcriptions of the Qur’an.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 640–49. Princeton & Oxford: Princeton University Press, 2013.

Saquer-Sabin, Françoise. “Relations between Jews and Muslims in Hebrew Literature.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 559–65. Princeton & Oxford: Princeton University Press, 2013.

Schocken, G. “Jews, Arabs and the Halacha.” *Jerusalem Quarterly* 35 (1985): 46–52.

Shapiro, Marc B. “Islam and the Halakhah.” *Judaism: A Quarterly Journal of Jewish Life and Thought* 42, no. 3 (1993).

Shtober, Shimon. “Islam and Sabbateanism in the Chronicle Sefer Divrei Yosef.” In *Jews and Muslims in the Islamic World*, edited by Bernard Dov Cooperman and Zvi Zohar, 321–34. Bethesda: University Press of Maryland, 2013.

———. “Muḥammad and the Beginning of Islam in the Chronicle Sefer Divrey Yoseph.” In *Studies in Islamic History and Civilization in Honour of Professor David Ayalon*, edited by M. Sharon, 319–52. Jerusalem & Leiden: Cana & Brill, 1986. =

Stanton, Graham, Guy G Stroumsa, and Moshe Halbertal, eds. “Coexisting with the Enemy: Jews and Pagans in the Mishnah.” In *Tolerance and Intolerance in Early Judaism and Christianity*. Cambridge & New York: Cambridge University Press, 1998.

Stroumsa, Sarah. “Jewish Polemics Against Islam and Christianity in the Light of Judaeo-Arabic Texts.” In *Muslims and Others in Early Islamic Society*, edited by Robert Hoyland, 201–10. Aldershot: Ashgate, 2004. =

Suermann, Harald. “Early Islam in the Light of Christian and Jewish Sources.” In *The Qur’ān in Context: Historical and Literary Investigations into the Qur’ānic Milieu*, edited by Angelika Neuwirth, Nicolai Sinai, and Michael Marx, 135–48. Leiden & Boston: Brill, 2010. =

Swanson, Mark N. “A Curious and Delicate Correspondence: The Burhān of Ibn Al-Munajjim and the Jawāb of Ḥunayn Ibn Isḥāq.” *Islam and Christian-Muslim Relations* 22, no. 2 (2011): 173–83.

Teule, Herman. “Paul of Antioch’s Attitude towards the Jews and the Muslims. His Letter to the Nations and the Jews.” In *The Three Rings: Textual Studies in the Historical Trialogue of Judaism, Christianity, and Islam*, edited by Barbara Roggema, Marcel Poorthuis, and Pim Valkenberg, 91–110. Peeters, 2005.

Waltz, J. “Muḥammad and the Muslims in St. Thomas Aquinas.” In *The Routledge Reader in Christian-Muslim Relations*, edited by Mona Siddiqui, 112–21. London & New York: Routledge, 2013.

Wiegers, Gerard A. “Muḥammad as the Messiah: A Comparison of the Polemical Works of Juan Alonso with the Gospel of Barnabas.” *Bibliotheca Orientalis*, 1995, 245–91.

Ackerman-Lieberman, Phillip I. “The Muḥammadan Stipulations: Dhimmī Versions of the Pact of ʿUmar.” In *Jews, Christians, and Muslims in Medieval and Early Modern Times: A Festschrift in Honor of Mark R. Cohen*, edited by Arnold Franklin and et al., 197–206. Leiden: Brill, 2014.

Ayoub, Mahmoud. “Dhimmah in Qur’an and Hadith.” In *Muslims and Others in Early Islamic Society*, edited by Robert Hoyland, 25–35. Aldershot: Ashgate, 2004.

Ben-Shammai, Haggai. “Jew Hatred in the Islamic Tradition and the Koranic Exegesis.” In *The Legacy of Islamic Antisemitism: From Sacred Texts to Solemn History*, edited by Andrew G. Bostom, 221–25. New York: Prometheus Books, 2007.

Blankinship, Khalid Yahya. “Al-Ashʿath b. Qays.” *Encyclopaedia of Islam, THREE*, October 1, 2009.

Cohen, Mark R. “Islamic Policy Toward Jews from the Prophet Muhammad to the Pact of ʿUmar.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 58–73. Princeton & Oxford: Princeton University Press, 2013.

Cook, David. “Christians and Christianity in Ḥadīth Works Before 900.” In *Christian-Muslim Relations: A Bibliographical History: 600-900*, edited by David Thomas, Barbara Roggema, and et al., 1:73–82. Leiden & Boston: Brill, 2009.

Dziekan, Marek M. “Historical Memory of a Text: Khabar Describing the Jews from Khaybar in Kitāb Al-Istiqṣāʾ by Aḥmad b. Khālid Al-Nāṣirī.” *Al-Andalus Magreb* 23 (2016): 9–22.

Emon, Anver. “Reflections on the ‘Constitution of Medina’: An Essay on Methodology and Ideology in Islamic Legal History.” In *Islamic Political Thought and Governance: Roots of Islamic Political Thought: Key Trends, Basic Doctrines and Development*, edited by Abdullah Saeed, 1:55–82. Routledge, 2011.

Faizer, Rizwi Shuhadha. “Ibn Ishaq and Al-Waqidi Revisited: A Case Study of Muhammad and the Jews in Biographical Literature.” Ph.D., McGill University (Canada), 1995.

Firestone, Reuven. “The Failure of a Jewish Program of Public Satire in the Squares of Medina.” *Judaism* 46, no. 4 (1997): 439–52.

Gil, M. “The Medinan Opposition to the Prophet.” *Jerusalem Studies in Arabic and Islam* 10 (1987): 65–96.

Halperin, David J, and Gordon D Newby. “Two Castrated Bulls: A Study in the Haggadah of Kaʿb Al-Aḥbār.” *Journal of the American Oriental Society* 102, no. 4 (1982): 631–38.

Hämeen-Anttila, Jaakko. “The Corruption of Christianity: Salmān Al-Fārisī’s Quest as a Paradigmatic Model.” *Studia Orientalia* 85 (1999): 115–26.

Horovitz, J. “ʿAbd Allāh b. Salām.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Hoyland, Robert G. “The Earliest Attestation of the Dhimma of God and His Messenger and the Rediscovery of P. Nessana 77 (60s AH/680 CE).” In *Islamic Cultures, Islamic Contexts: Essays in Honor of Professor Patricia Crone*, edited by Behnam Sadeghi and et al., 51–71. Leiden: Brill, 2015.

Hussein, Mahmoud. “The Prophet and the Jewish Tribes of Arabia According to Al-Sira.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 54–57. Princeton & Oxford: Princeton University Press, 2013.

Ibn Saʿd, Muḥammad. “Excerpts from the Sira of Ibn Saʿd.” In *The Legacy of Islamic Antisemitism: From Sacred Texts to Solemn History*, edited by Andrew G. Bostom, translated by S. Moinul Haq and H. K. Ghazanfar, 283–95. Prometheus Books, 2007.

Kister, M. J. “The Market of the Prophet.” *Journal of the Economic and Social History of the Orient* 8 (1965): 272–76.

———. “The Massacre of the Banū Qurayẓa: A Re-Examination of a Tradition.” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, 44–74. 1. London & New York: Routledge, 2012.

Lassner, Jacob. “The Covenant of the Prophets: Muslim Texts, Jewish Subtexts.” *AJS Review* 15, no. 2 (1990): 207–38.

Lecker, Michael. “Zayd b. Thābit.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

———. “Abū Mālik ʿAbdallāh b. Sām of Kinda, a Jewish Convert to Islam.” *Der Islam* 71, no. 2 (1994): 280–82.

———. “Constitution of Medina.” *Encyclopaedia of Islam, THREE*, June 1, 2012.

———. “Did Muḥammad Conclude Treaties with the Jewish Tribes Naḍīr, Qurayẓa and Qaynuqāʿ?” *Israel Oriental Studies* 17 (1997): 29–36.

———. “Genealogy and Politics: Muḥammad’s Family Links with the Khazraj.” *Journal of Semitic Studies* 60, no. 1 (2015): 111–29.

———. “Glimpses of Muḥammad’s Medinan Decade.” In *The Cambridge Companion to Muḥammad*, edited by Jonathan E. Brockopp, 61–79. New York: Cambridge University Press, 2010.

———. “Ḥudhayfa b. Al-Yamān and ʿAmmār b.Yāsir, Jewish Converts to Islam.” *Quaderni Di Studi Arabi*, 1994, 149–62.

———. *Muslims, Jews and Pagans: Studies on Early Islamic Medina*. Leiden: Brill, 1995.

———. “On Arabs of the Banū Kilāb Executed Together with the Jewish Banū Qurayẓa.” *Jerusalem Studies in Arabic and Islam* 19 (1995): 66–72.

———. “On the Markets of Medina (Yathrib) in Pre-Islamic and Early Islamic Times.” *Jerusalem Studies in Arabic and Islam* 8 (1986): 133–47.

———. “The Assassination of the Jewish Merchant Ibn Sunayna According to an Authentic Family Account.” In *The Transmission and Dynamics of the Textual Sources of Islam: Essays in Honour of Harald Motzki*, edited by Nicolet Boekhoff-van der Voort and Joas Wagemakers, 181–96. Brill, 2011.

———. *The “Constitution of Medina”: Muḥammad’s First Legal Document*. Darwin Press, 2004.

———. “The Emigration of ʿUtba b. Abī Waqqāṣ from Mecca to Medina.” *Bulletin of the School of Oriental and African Studies* 59, no. 1 (1996): 116–19.

———. “The Ḥudaybiyya-Treaty and the Expedition Against Khaybar.” *Jerusalem Studies in Arabic and Islam* 5 (1984): 1–11.

———. “The Medinan Wives of ʿUmar b.Al-Khaṭṭāb and His Brother, Zayd.” *Oriens* 36 (2001): 242–47.

———. “Wāqidī (d. 822) vs. Zuhrī (d. 742): The Fate of the Jewish Banū Abī l-Ḥuqayq.” In *Le Judaïsme de l’Arabie Antique: Actes Du Colloque de Jérusalem (Février 2006)*, edited by Christian Julien Robin, 495–509. Turnhout: Brepols, 2015.

———. “Wāqidī’s Account on the Status of the Jews of Medina: A Study of a Combined Report.” In *The Life of Muḥammad*, edited by Uri Rubin, 23–40. Aldershot: Ashgate Variorum, 1998.

———. “Were Customs Dues Levied at the Time of the Prophet Muḥammad?” *Qanṭara: Revista de Estudios Arabes*, no. 1 (2001).

———. “Were There Female Relatives of the Prophet Muḥammad Among the Besieged Qurayẓa?” *Journal of the American Oriental Society* 136, no. 2 (2016): 397–404.

———. “Zayd B. Thabit, ‘A Jew with Two Sidelocks’: Judaism and Literacy in Pre-Islamic Medina (Yathrib).” *Journal of Near Eastern Studies; Chicago* 56, no. 4 (October 1, 1997): 259.

———. “ʿAmr Ibn Ḥazm Al-Anṣārī and Qur’ān 2,256: ‘No Compulsion Is There in Religion.’” *Oriens* 35 (1996): 57–64.

Lecker, Michael, and Simon Hopkins. “Yahūd / ʿUhūd: A Variant Reading in the Story of the ʿAqaba Meeting.” *Le Muséon*, 1996, 169–83.

Morrow, John Andrew. *The Covenants of the Prophet Muhammad with the Christians of the World*. Hillsdale: Sophia Perennis, 2013.

Mourad, Suleiman A. “Christians and Christianity in the Sīra of Muḥammad.” In *Christian-Muslim Relations: A Bibliographical History: 600-900)*, edited by David Thomas, Barbara Roggema, and et al., 1:57–71. Leiden & Boston: Brill, 2009.

Nickel, Gordon. “‘We Will Make Peace with You’: The Christians of Najrān in Muqātil’s Tafsīr.” *Collectanea Christiana Orientalia* 3 (2006): 171–88.

Peters, F. E. “The Quest of the Historical Muhammad.” In *The Routledge Reader in Christian-Muslim Relations*, edited by Mona Siddiqui, 256–78. London & New York: Routledge, 2013.

Rose, Paul Lawrence. “Muhammad, the Jews and the Constitution of Medina: Retrieving the Historical Kernel.” *Der Islam*, 2011, 1–29.

Rubin, Uri. “The Assassination of Kaʿb b. Al-Ashraf.” *Oriens* 32 (1990): 65–71.

———. “The ‘Constitution of Medina’: Some Notes.” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, 29–43. 1. London & New York: Routledge, 2012.

Rubin, Uri, and the Prophet Muḥammad. “Muḥammad the Exorcist: Aspects of Islamic-Jewish Polemics.” *Jerusalem Studies in Arabic and Islam* 30 (2005): 94–111.

Samarrai, Qasim al-, and Tudor Parfitt. “Sayf Ibn ʿUmar and Ibn Saba’: A New Approach.” In *Israel and Ishmael: Studies in Muslim-Jewish Relations*, 52–58. Richmond: Curzon, 2000.

Schmitz, M. “Kaʿb Al-Aḥbār.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Schöller, Marco, and Harald Motzki. “Sīra and Tafsīr: Al-Kalbī on the Jews of Medina.” In *The Biography of Muḥammad: The Issue of the Sources*, 18–48. Leiden: Brill, 2000.

Sells, Michael A. “Finhās of Medina: Islam, ‘the Jews’, and the Construction of Religious Militancy.” In *Fighting Words: Religion, Violence, and the Interpretation of Sacred Texts*, edited by John Renard, 101–34. Berkeley: University of California Press, 2012.

Serjeant, R. B. “The Sunnah Jami’ah, Pacts with the Yaṯẖrib Jews and the Tahrām of Yaṯẖrib: Analysis and Translation of the Documents Comprised in the So-Called ‘Constitution of Medina.’” *Bulletin of the School of Oriental and African Studies* 41 (1978): 1–42.

Shtober, Shimon. “Present at the Dawn of Islam: Polemic and Reality in the Medieval Story of Muhammad’s Jewish Companions.” In *The Convergence of Judaism and Islam: Religious, Scientific, and Cultural Dimensions*, edited by Michael M. Laskier and Yaacov Lev, 64–88. Gainesville: University Press of Florida, 2011.

Vacca, V. “Naḍīr.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Vacca, V., and Ruth Roded. “Ṣafiyya.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Vajda, Georges. “Jews and Muslims According to the Hadith.” In *The Legacy of Islamic Antisemitism: From Sacred Texts to Solemn History*, edited by Andrew G. Bostom, 235–60. New York: Prometheus Books, 2007.

Ward, Seth. “A Fragment from an Unknown Work by Al-Ṭabarī on the Tradition ‘Expel the Jews and Christians from the Arabian Peninsula (and the Lands of Islam).’” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, 75–92. 1. London & New York: Routledge, 2012.

Watt, W. Montgomery. *Muhammad at Medina*. Karachi; New York: Oxford University Press, 1981.

Wheeler, Brannon M. “Israel and the Torah of Muḥammad.” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, 249–72. 1. London & New York: Routledge, 2012.

Ackerman-Lieberman, Phillip I. “The Muḥammadan Stipulations: Dhimmī Versions of the Pact of ʿUmar.” In *Jews, Christians, and Muslims in Medieval and Early Modern Times: A Festschrift in Honor of Mark R. Cohen*, edited by Arnold Franklin and et al., 197–206. Leiden: Brill, 2014.

Ayoub, Mahmoud. “Dhimmah in Qur’an and Hadith.” In *Muslims and Others in Early Islamic Society*, edited by Robert Hoyland, 25–35. Aldershot: Ashgate, 2004.

Ben-Shammai, Haggai. “Jew Hatred in the Islamic Tradition and the Koranic Exegesis.” In *The Legacy of Islamic Antisemitism: From Sacred Texts to Solemn History*, edited by Andrew G. Bostom, 221–25. New York: Prometheus Books, 2007.

Blankinship, Khalid Yahya. “Al-Ashʿath b. Qays.” *Encyclopaedia of Islam, THREE*, October 1, 2009.

Cohen, Mark R. “Islamic Policy Toward Jews from the Prophet Muhammad to the Pact of ʿUmar.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 58–73. Princeton & Oxford: Princeton University Press, 2013.

Cook, David. “Christians and Christianity in Ḥadīth Works Before 900.” In *Christian-Muslim Relations: A Bibliographical History: 600-900*, edited by David Thomas, Barbara Roggema, and et al., 1:73–82. Leiden & Boston: Brill, 2009.

Dziekan, Marek M. “Historical Memory of a Text: Khabar Describing the Jews from Khaybar in Kitāb Al-Istiqṣāʾ by Aḥmad b. Khālid Al-Nāṣirī.” *Al-Andalus Magreb* 23 (2016): 9–22.

Emon, Anver. “Reflections on the ‘Constitution of Medina’: An Essay on Methodology and Ideology in Islamic Legal History.” In *Islamic Political Thought and Governance: Roots of Islamic Political Thought: Key Trends, Basic Doctrines and Development*, edited by Abdullah Saeed, 1:55–82. Routledge, 2011.

Faizer, Rizwi Shuhadha. “Ibn Ishaq and Al-Waqidi Revisited: A Case Study of Muhammad and the Jews in Biographical Literature.” Ph.D., McGill University (Canada), 1995.

Firestone, Reuven. “The Failure of a Jewish Program of Public Satire in the Squares of Medina.” *Judaism* 46, no. 4 (1997): 439–52.

Gil, M. “The Medinan Opposition to the Prophet.” *Jerusalem Studies in Arabic and Islam* 10 (1987): 65–96.

Halperin, David J, and Gordon D Newby. “Two Castrated Bulls: A Study in the Haggadah of Kaʿb Al-Aḥbār.” *Journal of the American Oriental Society* 102, no. 4 (1982): 631–38.

Hämeen-Anttila, Jaakko. “The Corruption of Christianity: Salmān Al-Fārisī’s Quest as a Paradigmatic Model.” *Studia Orientalia* 85 (1999): 115–26.

Horovitz, J. “ʿAbd Allāh b. Salām.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Hoyland, Robert G. “The Earliest Attestation of the Dhimma of God and His Messenger and the Rediscovery of P. Nessana 77 (60s AH/680 CE).” In *Islamic Cultures, Islamic Contexts: Essays in Honor of Professor Patricia Crone*, edited by Behnam Sadeghi and et al., 51–71. Leiden: Brill, 2015.

Hussein, Mahmoud. “The Prophet and the Jewish Tribes of Arabia According to Al-Sira.” In *A History of Jewish-Muslim Relations: From the Origins to the Present Day*, edited by Abdelwahab Meddeb and Benjamin Stora, 54–57. Princeton & Oxford: Princeton University Press, 2013.

Ibn Saʿd, Muḥammad. “Excerpts from the Sira of Ibn Saʿd.” In *The Legacy of Islamic Antisemitism: From Sacred Texts to Solemn History*, edited by Andrew G. Bostom, translated by S. Moinul Haq and H. K. Ghazanfar, 283–95. Prometheus Books, 2007.

Kister, M. J. “The Market of the Prophet.” *Journal of the Economic and Social History of the Orient* 8 (1965): 272–76.

———. “The Massacre of the Banū Qurayẓa: A Re-Examination of a Tradition.” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, 44–74. 1. London & New York: Routledge, 2012.

Lassner, Jacob. “The Covenant of the Prophets: Muslim Texts, Jewish Subtexts.” *AJS Review* 15, no. 2 (1990): 207–38.

Lecker, Michael. “Zayd b. Thābit.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

———. “Abū Mālik ʿAbdallāh b. Sām of Kinda, a Jewish Convert to Islam.” *Der Islam* 71, no. 2 (1994): 280–82.

———. “Constitution of Medina.” *Encyclopaedia of Islam, THREE*, June 1, 2012.

———. “Did Muḥammad Conclude Treaties with the Jewish Tribes Naḍīr, Qurayẓa and Qaynuqāʿ?” *Israel Oriental Studies* 17 (1997): 29–36.

———. “Genealogy and Politics: Muḥammad’s Family Links with the Khazraj.” *Journal of Semitic Studies* 60, no. 1 (2015): 111–29.

———. “Glimpses of Muḥammad’s Medinan Decade.” In *The Cambridge Companion to Muḥammad*, edited by Jonathan E. Brockopp, 61–79. New York: Cambridge University Press, 2010.

———. “Ḥudhayfa b. Al-Yamān and ʿAmmār b.Yāsir, Jewish Converts to Islam.” *Quaderni Di Studi Arabi*, 1994, 149–62.

———. *Muslims, Jews and Pagans: Studies on Early Islamic Medina*. Leiden: Brill, 1995.

———. “On Arabs of the Banū Kilāb Executed Together with the Jewish Banū Qurayẓa.” *Jerusalem Studies in Arabic and Islam* 19 (1995): 66–72.

———. “On the Markets of Medina (Yathrib) in Pre-Islamic and Early Islamic Times.” *Jerusalem Studies in Arabic and Islam* 8 (1986): 133–47.

———. “The Assassination of the Jewish Merchant Ibn Sunayna According to an Authentic Family Account.” In *The Transmission and Dynamics of the Textual Sources of Islam: Essays in Honour of Harald Motzki*, edited by Nicolet Boekhoff-van der Voort and Joas Wagemakers, 181–96. Brill, 2011.

———. *The "Constitution of Medina": Muḥammad's First Legal Document*. Darwin Press, 2004.

———. "The Emigration of ʿUtba b. Abī Waqqāṣ from Mecca to Medina." *Bulletin of the School of Oriental and African Studies* 59, no. 1 (1996): 116–19.

———. "The Ḥudaybiyya-Treaty and the Expedition Against Khaybar." *Jerusalem Studies in Arabic and Islam* 5 (1984): 1–11.

———. "The Medinan Wives of ʿUmar b. Al-Khaṭṭāb and His Brother, Zayd." *Oriens* 36 (2001): 242–47.

———. "Wāqidī (d. 822) vs. Zuhrī (d. 742): The Fate of the Jewish Banū Abī l-Ḥuqayq." In *Le Judaïsme de l'Arabie Antique: Actes Du Colloque de Jérusalem (Février 2006)*, edited by Christian Julien Robin, 495–509. Turnhout: Brepols, 2015.

———. "Wāqidī's Account on the Status of the Jews of Medina: A Study of a Combined Report." In *The Life of Muḥammad*, edited by Uri Rubin, 23–40. Aldershot: Ashgate Variorum, 1998.

———. "Were Customs Dues Levied at the Time of the Prophet Muḥammad?" *Qanṭara: Revista de Estudios Arabes*, no. 1 (2001).

———. "Were There Female Relatives of the Prophet Muḥammad Among the Besieged Qurayẓa?" *Journal of the American Oriental Society* 136, no. 2 (2016): 397–404.

———. "Zayd B. Thabit, 'A Jew with Two Sidelocks': Judaism and Literacy in Pre-Islamic Medina (Yathrib)." *Journal of Near Eastern Studies; Chicago* 56, no. 4 (October 1, 1997): 259.

———. "ʿAmr Ibn Ḥazm Al-Anṣārī and Qur'ān 2,256: 'No Compulsion Is There in Religion.'" *Oriens* 35 (1996): 57–64.

Lecker, Michael, and Simon Hopkins. "Yahūd / ʿUhūd: A Variant Reading in the Story of the ʿAqaba Meeting." *Le Muséon*, 1996, 169–83.

Morrow, John Andrew. *The Covenants of the Prophet Muhammad with the Christians of the World*. Hillsdale: Sophia Perennis, 2013.

Mourad, Suleiman A. "Christians and Christianity in the Sīra of Muḥammad." In *Christian-Muslim Relations: A Bibliographical History: 600-900)*, edited by David Thomas, Barbara Roggema, and et al., 1:57–71. Leiden & Boston: Brill, 2009.

Nickel, Gordon. "'We Will Make Peace with You': The Christians of Najrān in Muqātil's Tafsīr." *Collectanea Christiana Orientalia* 3 (2006): 171–88.

Peters, F. E. “The Quest of the Historical Muhammad.” In *The Routledge Reader in Christian-Muslim Relations*, edited by Mona Siddiqui, 256–78. London & New York: Routledge, 2013.

Rose, Paul Lawrence. “Muhammad, the Jews and the Constitution of Medina: Retrieving the Historical Kernel.” *Der Islam*, 2011, 1–29.

Rubin, Uri. “The Assassination of Kaʿb b. Al-Ashraf.” *Oriens* 32 (1990): 65–71.

———. “The ‘Constitution of Medina’: Some Notes.” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, 29–43. 1. London & New York: Routledge, 2012.

Rubin, Uri, and the Prophet Muḥammad. “Muḥammad the Exorcist: Aspects of Islamic-Jewish Polemics.” *Jerusalem Studies in Arabic and Islam* 30 (2005): 94–111.

Samarrai, Qasim al-, and Tudor Parfitt. “Sayf Ibn ʿUmar and Ibn Saba’: A New Approach.” In *Israel and Ishmael: Studies in Muslim-Jewish Relations*, 52–58. Richmond: Curzon, 2000.

Schmitz, M. “Kaʿb Al-Aḥbār.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Schöller, Marco, and Harald Motzki. “Sīra and Tafsīr: Al-Kalbī on the Jews of Medina.” In *The Biography of Muḥammad: The Issue of the Sources*, 18–48. Leiden: Brill, 2000.

Sells, Michael A. “Finhās of Medina: Islam, ‘the Jews’, and the Construction of Religious Militancy.” In *Fighting Words: Religion, Violence, and the Interpretation of Sacred Texts*, edited by John Renard, 101–34. Berkeley: University of California Press, 2012.

Serjeant, R. B. “The Sunnah Jami’ah, Pacts with the Yaṯhrib Jews and the Tahrām of Yaṯhrib: Analysis and Translation of the Documents Comprised in the So-Called ‘Constitution of Medina.’” *Bulletin of the School of Oriental and African Studies* 41 (1978): 1–42.

Shtober, Shimon. “Present at the Dawn of Islam: Polemic and Reality in the Medieval Story of Muhammad’s Jewish Companions.” In *The Convergence of Judaism and Islam: Religious, Scientific, and Cultural Dimensions*, edited by Michael M. Laskier and Yaacov Lev, 64–88. Gainesville: University Press of Florida, 2011.

Vacca, V. “Naḍīr.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Vacca, V., and Ruth Roded. “Ṣafiyya.” *Encyclopaedia of Islam, Second Edition*, April 24, 2012.

Vajda, Georges. “Jews and Muslims According to the Hadith.” In *The Legacy of Islamic Antisemitism: From Sacred Texts to Solemn History*, edited by Andrew G. Bostom, 235–60. New York: Prometheus Books, 2007.

Ward, Seth. “A Fragment from an Unknown Work by Al-Ṭabarī on the Tradition ‘Expel the Jews and Christians from the Arabian Peninsula (and the Lands of Islam).’” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, 75–92. 1. London & New York: Routledge, 2012.

Watt, W. Montgomery. *Muhammad at Medina*. Karachi; New York: Oxford University Press, 1981.

Wheeler, Brannon M. “Israel and the Torah of Muḥammad.” In *Islam and Religious Diversity: Judaism*, edited by Lloyd Ridgeon, 249–72. 1. London & New York: Routledge, 2012.

Awaisi, Abd al-Fattah M. el-. “Umar’s Assurance of Aman to the People of Aelia (Islamic Jerusalem): A Critical Analytical Study of the Greek Orthodox Patriarchate’s Version.” *World Journal of Islamic History and Civilization* 2, no. 3 (2012): 128–36.

Bashear, Suliman. “The Title ‘Fārūq’ and Its Association with ʿUmar I.” *Studia Islamica* 72 (1990): 47–70.

Borrmans, Maurice. “La ‘Charte de ʿUmar’ et ses lectures contemporaines.” In *L’Orient chrétien dans l’empire musulman: hommage au professeur Gérard Troupeau*, 91–108. Paris: Éditions de Paris, 2005.

Cohen, M. R. “What Was the Pact of ʿUmar? A Literary-Historical Study.” *Jerusalem Studies in Arabic and Islam* 23 (1999): 100–157.

Denawy, Mahmood Hassaan al-. “A Reappraisal of Attitudes to the ‘People of the Book’ in the Qur’an and Hadith, with Particular Reference to Muslim Fiscal Policy and the Covenant of ’Umar.” Ph.D., University of Durham (United Kingdom), 2006.

Levy-Rubin, Milka. “ʿUmar II’s Ghiyār Edict: Between Ideology and Practice.” In *Christians and Others in the Umayyad State*, edited by Antoine Borrut and Fred M. Donner, 157–72. Chicago: Oriental Institute of the University of Chicago, 2016.

Noth, Albrecht. “Problems of Differentiation between Muslims and Non-Muslims: Re-Reading the ‘Ordinances of ʿUmar’ (Al-Shurūṭ Al-ʿumariyya).” In *Muslims and Others in Early Islamic Society*, edited by Robert Hoyland, 103–24. Aldershot: Ashgate, 2004.

Palombo, Cecilia. “The ‘Correspondence’ of Leo III and ʿUmar II: Traces of an Early Christian Arabic Apologetic Work.” *Millennium: Jahrbuch Zu Kultur Und Geschichte Des Ersten Jahrtausends n. Chr.* 12 (2015): 231–64.

Safa, Isabelle. “Le Pacte d’Umar.” *Cahiers de l’Orient* 118 (2015): 23–25.

Tritton, A. S. *The Caliphs and Their Non-Muslim Subjects; a Critical Study of the Covenant of ’Umar,*. London: F. Cass, 1970.

Yarbrough, Luke. “Did ʿUmar b. ʿAbd Al-ʿAzīz Issue an Edict Concerning Non-Muslim Officials?” In *Christians and Others in the Umayyad State*, edited by Antoine Borrut and Fred M. Donner, 173–206. Chicago: Oriental Institute of the University of Chicago, 2016.

———. “Origins of the Ghiyār.” *Journal of the American Oriental Society* 134, no. 1 (2014): 113–21.

# Bibliography


‘Abd al-Ḥamīd al-Asmandī, Muḥammad. *Ṭarīqat Al-Khilāf Fī al-Fiqh Bayn al-A’immah al-Aslāf*. Edited by Muḥammad Zakī ’Abd al-Barr. 2nd ed. Cairo, Egypt: Maktabat Dār al-Turāth, 2007.

‘Abd al-Razzāq al-Ṣan’ānī, Abū Bakr. *Tafsīr ’Abd al-Razzāq*. Edited by Maḥmūd Muḥammad ’Abduh. 1st ed. 3 vols. Beirut: Dār al-Kutub al-’Ilmiyyah, 1419AH.

‘Abd al-Wahhāb, al-Qāḍī Abū Muḥammad. *Al-Ishrāf ’alā Nukat Masā’il al-Khilāf*. Edited by al-Ḥabīb Ibn Ṭāhir. 1st ed. 2 vols. Dār Ibn Ḥazm, 1999.

———. *Al-Ma’ūna ’alā Madhhab ’Ālim al-Madīnah al-Imām Mālik Ibn Anas*. Edited by Ḥumaysh ’Abd al-Ḥaqq. 3 vols. Makkah: al-Maktabah al-Tijāriyyah, Muṣtafā Aḥmad al-Bāz (PhD Dissertation at the Umm al-Qurā University), n.d.

———. *’Uyūn al-Masā’il*. Edited by ’Alī Muḥammad Ibrāhīm Būrūybah. 1st ed. Beirut: Dār Ibn Ḥazm, 2009.

Al-Abnāsī, Burhān al-Dīn. *Al-Shadhā al-Fayāḥ Min ’Ulūm Ibn al-Ṣalāḥ*. Edited by Ṣalāḥ Fatḥī Hilal. 1st ed. 2 vols. Maktabat al-Rushd, 1998.

Abū al-Khiṭāb al-Kalwadhānī, Maḥfūdh b. Aḥmad. *Al-Hidāyah ’alā Madhhab al-Imām Abī ’Abd Allāh Aḥmad b. Muḥammad b. Ḥanbal al-Shaybānī*. Edited by ’Abd al-Laṭīf Hamīm and Māhir Yāsīn al-Faḥl. Mu’assisat Ghirās li al-Nashr wa al-Tawzi’, 2004.

Abū al-Qāsim al-Rāfi’ī al-Qazwīnī, ’Abd al-Karīm. *Al-’Azīz: Sharḥ al-Wajīz al-Ma’rūf Bi al-Sharḥ al-Kabīr*. Edited by ’Alī Muḥammad ’Iwaḍ and ’Ādil Aḥmad ’Abd al-Mawjūd. 1st ed. 13 vols. Beirut: Dār al-Kutub al-’Ilmiyyah, 1997.

Abū Bakr al-Kāsānī, ‘Alā’ al-Dīn. *Badā’i’ al-Ṣanā’i’ Fī Tartīb al-Sharā’i’*. 2nd ed. 7 vols. Dār al-Kutub al-’Ilmiyyah, 1986.

Abū Dharr Sibṭ ibn al-’Ajamī, Aḥmad. *Kunūz Al-Dhahab Fī Tārīkh Ḥalab*. 1st ed. 2 vols. Aleppo: Dār al-Qalam, 1417AH.

Abū Ya’lā, al-Qāḍī. *Al-’Uddah Fī Uṣūl al-Fiqh*. Edited by Aḥmad b. ’Alī al-Mubāraki. 2nd ed. Riyadh, 1990.

Adang, Camilla. *Muslim Writers on Judaism and the Hebrew Bible: From Ibn Rabban to Ibn Hazm*, 192–222. Brill, 1996.

———. “Ibn Ḥazm’s Criticism of Some ‘Judaizing’ Tendencies Among the Mâlikites.” In *Medieval and Modern Perspectives on Muslim-Jewish Relations*, edited by Ronald L.

Nettler, 1–15. Harwood Academic Publishers, in cooperation with the Oxford Centre for Postgraduate Hebrew Studies, 1995.

Aḥmad b. Ḥanbal, Abū ’Abd Allāh. *Al-Zuhd*. Edited by Muḥammad ’Abd Al-Salām Shāhīn. 1st ed. Beirut: Dār al-Kutub al-’Ilmiyyah, 1999.

Al-‘Ajlī, Abū al-Ḥasan. *Ma’rifat al-Thiqāt*. Edited by ’Abd al-’Alīm ’Abd al-Aẓīm al-Bastawī. 1st ed. Madinah: Maktabat al-Dār, 1985.

Al-Ājurī, Abū ’Ubayd, and Abū Dāwūd al-Sijistānī. *Su’ālāt Abī ’Ubayd al-Ājurī Abā Dāwūd al-Sijistānī Fī al-Jarḥ Wa al-Ta’dīl*. Edited by Muḥammad ’Alī Qāsim al-’Umarī. 1st ed. Madinah: ’Imādat al-Baḥth al-’Ilmī bi al-Jāmi’ah al-Islāmiyyah, 1983.

Ali Aghaei, S. “The Morphology of the Narrative Exegesis of the Qur’ān: The Case of the Cow of the Banū Isrā’īl (Q2:67-74).” In *Reading the Bible in Islamic Context: Qur’anic Conversations*, edited by Daniel Crowther, Shirin Shafaie, Ida Glaser, and Shabbir Akhtar, 167–94. London & New York: Routledge, 2018.

’Alī b. Sa’īd al-Rajrājī, Abū al-Ḥasan. *Manāhij Al-Taḥṣīl Wa Natā’ij Laṭā’if al-Ta’wīl Fī Sharḥ al-Mudawwanah Wa Ḥall Mushkilātihā*. Edited by Aḥmad Ibn ’Alī and Abū al-Faḍl al-Dimyāṭī. 1st ed. 10 vols. Dār Ibn Ḥazm, 2007.

Al-Āmidī, Abū al-Ḥasan. *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Edited by ’Abd al-Razzāq Afīfī. 4 vols. Beirut/Damascus: al-Maktab al-Islāmī, n.d.

Ibn Anas, Mālik. *Al-Muwaṭṭa’*. Edited by Muḥammad Muṣṭafā al-A’ẓamī. 1st ed. 8 vols. Abu Dhabi: Mu’assisat Zāyid li al-A’māl al-Khayriyyah wa al-Insāniyyah, 2004.

Andalusī, al-Muhallab b. Aḥmad al-Asadi al-. *Al-Mukhtaṣar al-Naṣīḥ Fī Tahdhīb al-Kitāb al-Jāmi’ al-Ṣaḥīḥ*. Edited by Aḥmad b. Fāris al-Salūm. 1st ed. 4 vols. Riyadh: Dār al-Tawḥīd, 2009.

al-Sam’ānī, Abū al-Muẓaffar. *Qawāṭi’ al-Adillah Fī al-Uṣūl*. Edited by ’Abd Allāh b. Ḥāfidh b. Aḥmad al-Ḥakamī. 1st ed. 5 vols. Maktabat al-Tawbah, 1998.

———. *Qawāṭi’ al-Adillah Fī al-Uṣūl*. Edited by Muḥammad Ḥasan Ismā’īl. 1st ed. 2 vols. Beirut, Lebanon: Dār al-Kutub al-’Ilmiyyah, 1999.

al-Ṣan’ānī, Muḥammad b. Ismā’īl. *Al-Tanwīr: Sharḥ al-Jāmi’ al-Ṣaghīr*. Edited by Muḥammad Isḥāq Muḥammad Ibrāhīm. 1st ed. 11 vols. Riyadh: Maktabat Dār al-Salām, 2011.

Al-Anṣārī, Abū Yūsuf. *Al-Āthār*. Edited by Abū al-Wafā’. 1 vols. Beirut, Lebanon: Dār al-Kutub al-’Ilmiyyah, n.d.

———. *Ikhtilāf Abī Ḥanīfah Wa Ibn Abī Laylā*. Edited by Abū al-Wafā al-Afghānī. 1st ed. 1 vols. India: Lajnat Iḥyā’ al-Ma’ārif al-Uthmāniyyah, n.d.

Al-Armawī, Sirāj al-Dīn Maḥmūd b. Abī Bakr. *Al-Taḥṣīl Min al-Maḥṣūl*. Edited by ’Abd al-Ḥamīd b. ’Alī Abū Zunayd. 2 vols. Beirut, Lebanon: Mu’assisat al-Risālah, 1988.

Al-Aṣbahānī, Abū Nu’aym. *Ma’rifat al-Ṣaḥābah*. Edited by ’Ādil Ibn Yūsuf al-’Azārī. 1st ed. 7 vols. ṣ. Riyadh: Dār al-Waṭn, 1998.

———. *Ḥilyat Al-Awliyā’ Wa Ṭabaqāt al-Aṣfiyā’*. 10 vols. Beirut: Dār al-Kutub al-’Ilmiyyah, 1409AH.

Al-‘Asqalānī, Ibn Ḥajar. *Tahdhīb Al-Tahdhīb*. 1st ed. 12 vols. India: Maṭba’at Dā’irat al-Ma’ārif al-Niẓāmiyyah, 1326AH.

———. *Al-Nukat ’alā Kitāb Ibn al-Ṣalāḥ*. Edited by Rabī’ b. Hādī ’Umayr al-Madkhalī. 1st ed. 2 vols. Medinah, Saudi Arabia: al-Jāmi’ah al-Islāmiyyah, 1984.

———. *Fatḥ Al-Bārī: Sharḥ Ṣaḥīḥ al-Bukhārī*. Edited by Muḥibb ad-Dīn al-Khaṭīb. 13 vols. Beirut, Lebanon: Dār al-Ma’rifa, 1959.

Muẓaffar al-Dīn Aḥmad b. ’Alī ibn al-Sā’ātī. *Badī’ al-Niẓām (Nihāyat al-Wuṣūl Ilā ’ilm al-’uṣūl)*. Edited by Sa’d b. Ghurayr b. Mahdī al-Salamī. 2 vols. Jāmi’at Umm al-Qurā, 1985.

Al-Azraqī, Abū al-Walīd. *Akhbār Makkah Wa Mā Jā’ Fīhā Min al-Athār*. Edited by Rushdī al-Ṣāliḥ Malḥas. Beirut: Dār al-Andalus li al-Nashr, 2.

Badr al-Dīn al-’Aynī, Abū Muḥammad. *Al-Bināyah: Sharḥ al-Hidāyah*. 1st ed. 13 vols. Beirut: Dār al-Kutub al-’Ilmiyyah, 2000.

Al-Baghawī, Abū al-Qāsim. *Mu’jam al-Ṣaḥābah*. Edited by Muḥammad Amīn Ibn Muḥammad al-Juknī. 5 vols. Kuwait: Maktabat Dār al-Bayān, 2000.

Al-Baghawī, Abū Muḥammad. *Ma’ālim al-Tanzīl Fī Tafsīr al-Qur’ān (Tafsīr al-Baghawī)*. Edited by ’Abd al-Razzāq al-Mahdī. 1st ed. 5 vols. Beirut: Dār Iḥyā’ at-Turāth al-’Arabī, 1420AH.

———. *Sharḥ Al-Sunnah*. Edited by Shu’ayb al-Arna’ūṭ and Muḥammad Zuhayr al-Shāwīsh. 3rd ed. 15 vols. Damascus/Beirut: al-Maktab al-Islāmī, 1983.

Al-Baghdādī, Abū Bakr al-Khaṭīb. *Al-Kifāyah Fī ’Ilm al-Riwāyah*. Edited by Abū ’Abd Allāh al-Sawraqī and Ibrāhīm Ḥamadī al-Madanī. Medina: al-Maktabah al-’Ilmiyyah, n.d.

———. *Tārīkh Baghdad*. Edited by Bashshār ’Awād Ma’rūf. 1st ed. 16 vols. Beirut: Dār al-Gharb al-Islāmī, 2002.

Al-Bājī, Abū al-Walīd. *Al-Ishārah Fī Uṣūl al-Fiqh*. Edited by Muḥammad Ḥasan Ismā'īl. 1st ed. Beirut: Dār al-Kutub al-'Ilmiyyah, 2003.

———. *Al-Ishārah Fī Uṣūl al-Fiqh*. Edited by Muḥammad Ḥasan Ismā'īl. 1st ed. Beirut: Dār al-Kutub al-'Ilmiyyah, 2003.

———. *Al-Muntaqā Sharḥ al-Muwaṭṭa'*. 1st ed. 7 vols. Egypt: Maṭba'at al-Sa'ādah, 1332AH.

———. *Al-Muntaqā: Sharḥ al-Muwaṭṭa*. 1st ed. 7 vols. Egypt: Maṭba'at al-Sa'āda, 1332.

Al-Balādhurī, Aḥmad b. Yaḥyā. *Jumal Min Ansāb Al-Ashrāf*. Edited by Suhayl Zakkār and Riyāḍ al-Zarkalī. 1st ed. 13 vols. Beirut: Dār al-Fikr, 1996.

Al-Bāqillānī, Abū Bakr. *Al-Tamhīd*. Edited by Richard McCarthy. Beirut: al-Maktabah al-Sharqiyyah, 1957.

———. *Al-Taqrīb Wa al-Irshād (al-Ṣaghīr)*. Edited by 'Abd al-Ḥamīd b. 'Alī Abū Zunayd. 2nd ed. 3 vols. Mu'assisat al-Risālah, 1998.

Al-Baṣrī, Abū al-Ḥusayn. *Al-Mu'tamad Fī Uṣūl al-Fiqh*. Edited by Khalīl al-Mays. 1st ed. 2 vols. Beirut, Lebanon: Dār al-Kutub al-'Ilmiyyah, 1403.

Al-Bayhaqī, Abū Bakr. *Al-Madkhal Ilā al-Sunan al-Kubrā*. Edited by Muḥammad Ḍiyā' al-Raḥmān al-A'ẓamī. Kuwait: Dār al-Khulafā' li al-Kitāb al-Islāmī, n.d.

———. *Al-Sunan al-Kubrā*. Edited by Muḥammad 'Abd al-Qādir 'Aṭā. 3rd ed. 10 vols. Beirut: Dār al-Kutub al-'Ilmiyyah, 2003.

———. *Ma'rifat al-Sunan Wa al-Āthār*. Edited by 'Abd al-Mu'ṭī Amīn Qal'ajī. 1st ed. 15 vols. Cairo: Dār al-Wafā', 1991.

———. *Shu'b al-Īmān*. Edited by 'Abd al-'Alī 'Abd al-Ḥamīd Ḥāmid and Mukhtār Aḥmad al-Nadawī. 1st ed. 14 vols. Riyadh: Maktabat al-Rushd, 2003.

———. *Al-Sunan al-Ṣaghir*. Edited by 'Abd al-Mu'ṭī Amīn Qal'ajī. 1st ed. 4 vols. Karachi: Jāmi'at al-Dirāsāt al-Islāmiyyah, 1989.

———. *Manāqib Al-Shāfi'ī Li al-Bayhaqī*. Edited by al-Sayyid Aḥmad Ṣaqar. 1st ed. 2 vols. Cairo: Maktabat Dār al-Turāth, 1970.

Al-Bazzār, Abū Bakr. *Musnad Al-Bazzār*. Edited by 'Ādil Ibn Sa'd, Maḥfūẓ al-Raḥmān Zayn Allāh, and Ṣabrī 'Abd al-Khāliq al-Shāfi'ī. 1st ed. 18 vols. Madinah: Maktabat al-'Ulūm wa al-Ḥikam, 2009.

Boušek, Daniel. "The Abrogation of Mosaic Law in Judaism's Medieval Polemic with Islam: Se'adyah Gaon, Ya'qūb al-Qirqisānī, Maimonides." In *Jewish Studies in the 21st*

*Century: Prague - Europe - World*, edited by Marcela Zoufalá, 29–57. Wiesbaden: Harrassowitz, 2014.

Brown, Jonathan A. C. "How We Know Early Hadīth Critics Did Matn Criticism and Why It's so Hard to Find." *Islamic Law and Society* 15, no. 2 (2008): 143–84.

———. "Critical Rigor vs. Juridical Pragmatism: How Legal Theorists and Hadith Scholars Approached the Backgrowth of Isnads in the Genre of 'Ilal al-Hadith." *Islamic Law and Society* 14 (2007): 1–41.

Al-Bukhārī, 'Abd al-'Azīz. *Kashf Al-Asrār: Sharḥ Uṣūl al-Bazdawī*. 4 vols. Dār al-Kitāb al-Islāmī, n.d.

Al-Bukhārī, Muḥammad b. Ismā'īl. *Al-Tārīkh al-Kabīr*. Edited by Muḥammad 'Abd al-Mu'īd Khān. 8 vols. Hyderabad: Dā'irat al-Ma'ārif al-'Uthmāniyyah, n.d.

———. *Al-Jāmi' al-Musnad al-Ṣaḥīḥ (Ṣaḥīḥ al-Bukhārī)*. Edited by Muḥammad Zuhayr b. Nāṣir al-Nāṣir. 1st ed. 9 vols. Dār Ṭawq al-Najāh, 2001.

Al-Bustī, Ibn Ḥibbān al-Dārimī. *Kitāb Al-Majrūḥīn Min al-Muḥaddithīn Wa al-Ḍu'afā' Wa al-Matrūkīn*. Edited by Maḥmūd Ibrāhīm Zāyid. 3 vols. Aleppo: Dār al-Wa'ī, 1396AH.

———. *Ṣaḥīḥ Ibn Ḥibbān*. Edited by Shu'ayb al-Arna'ūṭ. 18 vols. Beirut: Mu'assisat al-Risālah, 1988.

Cheikho, P. Louis, Louis Malouf, and Constantin Bacha, eds. "Nubdha Thāniyah Fī Naskh Al-Sharā'i." In *Vingt Traités Théologiques d'auteurs Arabes Chrétiens (Maqālāt Dīniyya Qadīma Li Ba'ḍ Mashāhīr al-Katabah al-Naṣārā)*, 2nd ed., 68–70. Beirut: Imprimerie Catholique, 1920. http://www.johnclamoreaux.org/texts/cheikho_vingt.traites.theologiques.pdf.

Al-Dabbūssī, Abū Zayd. *Taqwīm Al-Adillah Fī al-Uṣūl al-Fiqh*. Edited by Khalīl Muḥyī al-Dīn al-Mīs. 1st ed. Dār al-Kutub al-'Ilmiyyah, 2001.

Al-Damīrī, Kamāl al-Dīn. *Al-Najm al-Wahhāj Fī Sharḥ al-Minhāj*. 10 vols. Jeddah: Dār al-Minhāj, 2004.

Al-Dāraquṭnī, Abū al-Ḥasan 'Alī b. 'Umar. *Al-'Ilal al-Wāridah Fī al-Aḥādīth al-Nabawiyyah*. Edited by Maḥfūẓ al-Raḥmān Zayn Allāh al-Salafī. 2nd ed. Riyadh: Dār Ṭībah, 1985.

———. *Sunan Al-Dāraquṭnī*. Edited by Shu'ayb al-Arna'ūṭ. 1st ed. 5 vols. Beirut: Mu'assisat al-Risālah, 2004.

Al-Dārimī, Abū Muḥammad. *Sunan Al-Dārimī*. Edited by Ḥusayn Salīm Asad al-Dārānī. 1st ed. 4 vols. Saudi Arabia: Dār al-Mughnī li al-Nashr wa al-Tawzī', 2000.

Dasūqī, Muḥammad b. Aḥmad b. ’Arafah al-. *Ḥāshiyat Al-Dasūqī ’alā al-Sharḥ al-Kabīr*. 4 vols. Dār al-Fikr, n.d.

Al-Dhahabī, Shams al-Dīn Abū ’Abd Allāh. *Siyar a’lām al-Nubalā’*. Edited by Shu’ayb Arnā’ūṭ. 25 vols. Mu’assisat al-Risālah, 1985.

———. *Tārīkh Al-Islām Wa Wafayāt al-A’lām*. Edited by ’Umar ’Abd al-Salām al-Tadammurī. 2nd ed. 52 vols. Beirut: Dār al-Kitāb al-’Arabī, 1993.

“Dying Declaration.” Legal Information Institute. Cornell Law School, n.d. https://www.law.cornell.edu/wex/dying_declaration.

El Shamsy, Ahmed. “Al-Shāfi’ī’s Written Corpus: A Source-Critical Study.” *Journal of the American Oriental Society* 132, no. 2 (2012): 199–220.

———. “Muslims and Jews in Early Islamic Law and Legal Theory (DRAFT).” Istanbul University, 2019.

———. “The Curious Case of Early Muslim Hair Dyeing.” In *Islam at 250: Studies in Memory of G.H.A. Juynboll*, edited by Petra Sijpesteijn and Camilla Adang, 187–206. Leiden Studies in Islam and Society 10. Boston and Leiden: Brill, 2020.

Fadel, Mohammad. “Istiḥsān Is Nine-Tenths of the Law: The Puzzling Relationship of Uṣūl to Furū’ in the Mālikī Madhhab.” In *Studies in Islamic Legal Theory*, edited by Bernard Weiss, 161–76. Leiden, Boston, Köln: Brill, 2002.

Freidenreich, David M. *Foreigners and Their Food: Constructing Otherness in Jewish, Christian, and Islamic Law*. Berkeley & London: University of California Press, 2011.

Al-Ghazālī, Abū Ḥāmid. *Al-Mankhūl Min Ta’līqāt al-Uṣūl*. Edited by Muḥammad Ḥasan Hītū. 3rd ed. 1 vols. Damascus: Dār al-Fikr, 1998.

———. *Al-Mustaṣfā*. Edited by Muḥammad ’Abd al-Salām ’Abd al-Shāfi’ī. Dār al-Kutub al-’Ilmiyyah, 1993.

Griffel, Frank. *Al-Ghazālī’s Philosophical Theology*. Oxford: Oxford University Press, 2009.

Al-Ḥanbalī, “Alā” al-Dīn al-Dimashqī. *Al-Taḥbīr: Sharḥ al-Taḥrīr Fī Uṣūl al-Fiqh*. Edited by ’Abd al-Raḥmān al-Jabrayn, ’Iwaḍ al-Qarnī, and Aḥmad al-Sirāḥ. 1st ed. 8 vols. Riyadh: Maktabat al-Rushd, 2000.

Al-Hararī, Muḥammad al-Amīn. *Al-Kawkab al-Wahhāj: Sharḥ Ṣaḥīḥ Muslim*. 1st ed. 26 vols. Dār al-Minhāj/Dār Ṭawq al-Najāh, 2009.

Al-Ḥumaydī, Abū Bakr. *Musnad Al-Ḥumaydī*. Edited by Ḥasan Salīm Asad al-Dārānī. 1st ed. 2 vols. Damascus: Dār al-Saqā, 1996.

Al-Biqā'ī, Burhān al-Dīn. *Naẓm Al-Durar Fī Tanāsub al-Āyāt Wa al-Suwar*. 22 vols. Cairo: Dār al-Kitāb al-Islāmī, n.d.

Al-Biqā'ī, Burhān al-Dīn, and Walid A. Saleh. *In Defense of the Bible: A Critical Edition and an Introduction to al-Biqā'ī's Bible Treatise*. Edited by Walid A. Saleh. Leiden & Boston: Brill, 2008.

al-Shāfi'ī, Muḥammad b. Idrīs. *Al-Umm*. Edited by Muḥammad Zuhrī al-Najjār. 8 vols. Beirut, Lebanon: Dār al-Ma'rifah, 1990.

———. *Al-Umm*. Edited by Rif'at Fawzī 'Abd al-Muṭṭalib. 11 vols. Dār al-Wafā', 2001.

Ibn 'Abbās al-Maghribī, al-Samaw'al b. Yaḥyā. *Ghāyat Al-Maqṣūd Fī al-Radd 'ala al-Naṣārā Wa al-Yahūd*. Edited by Imām Ḥanafī Sayyid 'Abd Allāh. 1st ed. Cairo: Dār al-Āfāq al-'Arabiyyah, 2006.

———. *Ifḥām Al-Yahūd Wa Qiṣṣat Islām al-Samaw'al Wa Ru'yāhu al-Nabī Ṣall Allāh 'alayhi Wa Sallam*. Edited by Muḥammad 'Abd Allāh al-Sharqāwī. 3rd ed. Beirut: Dār al-Jīl, 1990.

Ibn 'Abd al-Barr, Abū 'Umar Yūsuf. *Al-Istighnā' Fī Ma'rifat al-Mashhūrīn Min Ḥamalat al-'Ilm Bi al-Kunā*. Edited by 'Abd Allāh Marḥūl al-Sawālah. 1st ed. 3 vols. Riyadh: Dār Ibn Taymiyyah, 1985.

———. *Al-Kāfī Fī Fiqh Ahl al-Madīnah*. Edited by Muḥammad Muḥammad Aḥīd Walad Mādīk al-Mūrītānī. 2nd ed. 2 vols. Riyadh: Maktabat al-Riyādh al-Ḥadīthah, 1980.

Ibn 'Ābidīn, Muḥammad Amīn. *Radd Al-Muḥtār 'alā al-Dur al-Mukhtār*. 2nd ed. Vol. 5. 6 vols. Beirut: Dār al-Fikr, 1992.

———. *Radd Al-Muḥtār 'alā al-Durr al-Mukhtār*. 6 vols. Beirut: Dār al-Fikr, 1992.

Ibn Aḥmad b. Ḥanbal, 'Abd Allāh. *Al-'Ilal Wa Ma'rifat al-Rijāl*. Edited by Waṣī Allāh Ibn Muḥammad 'Abbās. 2nd ed. 3 vols. Riyadh: Dār al-Khānī, 1422AH.

Ibn al-'Arabī, Abū Bakr. *Al-Maḥṣūl Fī Uṣūl al-Fiqh*. Edited by Sa'īd Fowda and Ḥusayn 'Alī al-Yadrī. 1st ed. 1 vols. Amman: Dār al-Bayāriq, 1999.

Ibn al-Athīr al-Jazarī, 'Izz al-Dīn. *Al-Kāmil Fī al-Tārīkh*. Edited by 'Umar 'Abd al-Salām Tadmarī. 1st ed. 10 vols. Beirut: Dār al-Kitāb al-'Arabī, 1997.

Ibn al-Dahhān, Fakhr al-Dīn. *Taqwīm Al-Naẓr Fī Masā'il Khilāfiyyah Dhā'i'ah Wa Nubdh Madhhabiyyah Nāfi'ah*. Edited by Ṣāliḥ b. Nāṣir Ibn Ṣāliḥ al-Khuzaym. 5 vols. Riyadh: Maktabat al-Rushd, 2001.

Ibn al-Ḍurays, Abū ’Abd Allāh. *Faḍā’il al-Qur’ān Wa Mā Anzala Min al-Qur’ān Bi Makkah Wa Mā Anzala Bi al-Madīnah*. Edited by Ghazwat Badīr. 1st ed. Damascus: Dār al-Fikr, 1987.

Ibn al-Humām, Kamāl al-Dīn. *Fatḥ Al-Qadīr*. 10 vols. Dār al-Fikr, n.d.

Ibn al-Jallāb al-Mālikī, ’Ubayd Allāh b. al-Ḥusayn. *Al-Tafrī’ Fī Fiqh al-Imām Mālik b. Anas*. Edited by Sayyid Kasrawī Ḥasan. 1st ed. 2 vols. Beirut: Dār al-Kutub al-’Ilmiyyah, 2007.

Ibn al-Jawzī, Abū al-Faraj. *Al-’Ilal al-Mutanāhiyah Fī al-Aḥādīth al-Wāhiyah*. 2 vols. Faisalabad, Pakistan: Idārat al-’Ulūm al-Athariyyah, 1981.

———. *Al-Muntaẓam Fī Tārīkh al-Umam Wa al-Mulūk*. Edited by Muḥammad ’Abd al-Qādir ’Aṭā and Muṣṭafā ’Abd al-Qādir ’Aṭā. 1st ed. 19 vols. Dār al-Kutub al-’Ilmiyyah: Beirut, 1992.

Ibn al-Jawzī, Sibṭ. *Mir’āt al-Zamān Fī Tawārīkh al-A’yān*. Edited by Muḥammad Barakāt, Muḥammad al-Khirāṭ, and ’Ammār Rayḥāwī. 1st ed. 23 vols. Damascus: Dār al-Risālah al-’Ālamiyyah, 2013.

Ibn al-Mubārak, Abū ’Abd Allāh. *Al-Zuhd Wa al-Raqā’iq*. Edited by Ḥabīb al-Raḥmān al-A’ẓamī. Beirut: Dār al-Kutub al-’Ilmiyyah, n.d.

Ibn al-Mundhir al-Naysābūrī, Abū Bakr Muḥammad b. Ibrāhīm. *Kitāb Tafsīr Al-Qur’ān*. Edited by Sa’d Ibn Muḥammad b. Sa’d. Medinah, Saudi Arabia: Dār al-Ma’āthir, 2002.

Ibn al-Qaysrānī, Abū al-Faḍl. *Dhakhirat Al-Ḥuffāẓ (Min al-Kāmil Li Ibn ’Adī)*. 5 vols. Riyadh: Dār al-Salaf, 1996.

Ibn al-Rif’ah, Najm al-Dīn. *Al-Maṭlab al-’ālī Fī Sharḥ Wasīṭ al-Ghazālī: Min Bidāyat al-Bāb al-Thālith Min Kitāb al-Ijārah Ilā Nihāyat al-Faṣl al-Awwal Min Kitāb Iḥyā’ al-Mawāt*. Edited by Aḥmad b. ’Alī b. Aḥmad ’Awājī. Saudi Arabia: Wizārat al-ta’līm (al-Jāmi’ah al-Islāmiyyah bi al-Madīnah al-Munawwarah), 1433.

———. *Al-Maṭlab al-’ālī Fī Sharḥ Wasīṭ al-Ghazālī: Min Bidāyat al-Bāb al-Thānī Fī al-Ijārah Ilā Nihāyat al-Bāb al-Thānī Min Kitāb al-Ijārah*. Edited by Aḥmad b. Rāshid al-Raḥīlī. Saudi Arabia: Wizārat al-ta’līm (al-Jāmi’ah al-Islāmiyyah bi al-Madīnah al-Munawwarah), 1431.

———. *Al-Maṭlab al-’ālī Fī Sharḥ Wasīṭ al-Ghazālī: Min Bidāyat al-Bāb al-Thānī Fī Kitāb al-Musāqāh Ilā Nihāyat al-Bāb al-Awwal Min Kitāb al-Ijārah*. Edited by Yūsuf b. ’Abd al-Ḥalīm Ṭahā. Saudi Arabia: Wizārat al-ta’līm (al-Jāmi’ah al-Islāmiyyah bi al-Madīnah al-Munawwarah), 1436.

Ibn al-’Uthaymīn, Muḥammad b. Ṣāliḥ. *Al-Sharḥ al-Ṣawtī Li Zād al-Mustaqni’*. 2 vols., n.d.

Ibn ’Aqīl, Abū al-Wafā’. *Al-Wāḍiḥ Fī Uṣūl al-Fiqh*. Edited by ’Abd Allāh b. ’Abd al-Muḥsin al-Turkī. 5 vols. Beirut, Lebanon: Mu’assisat al-Risālah, 1999.

———. *Al-Tadhkirah Fī al-Fiqh ’alā Madhhab al-Imām Aḥmad b. Muḥammad b. Ḥanbal*. Edited by Nāṣir b. Sa’ūd Ibn ’Abd Allāh al-Salāmah. 1st ed. Riyadh: Dār Ishbīlyā li al-Nashr wa al-Tawzī’, 2001.

Ibn Bashrān, Abū al-Qāsim. *Amālī Ibn Bashrān*. Edited by Abū ’Abd al-Raḥmān ’Ādil b. Yūsuf al-’Azāzī. 1st ed. Riyadh: Dār al-Waṭn, 1997.

Ibn Ḥibbān, Muḥammad. *Al-Thiqāt*. Edited by Muḥammad ’Abd al-Mu’īd Khān. 1st ed. 9 vols. Hyderabad: Dā’irat al-Ma’ārif al-’Uthmāniyyah, 1973.

Ibn Isḥāq al-Jundi, Khalīl. *Al-Tawḍīḥ Fī Sharḥ al-Mukhtaṣar al-Far’ī Li Ibn al-Ḥājib*. Edited by Aḥmad b. ’Abd al-Karīm Najīb. 1st ed. 8 vols. Markaz Najībawayh li al-Makhṭūṭāt wa Khidmat al-Turāth, 2008.

Ibn Māzah, Abū al-Ma’ālī Burhān al-Dīn Maḥmūd. *Al-Muḥīṭ al-Burhānī Fī al-Fiqh al-Nu’mānī*. Edited by ’Abd al-Karīm Sāmī al-Jundī. 1st ed. 9 vols. Beirut: Dār al-Kutub al-’Ilmiyyah, 2004.

Ibn Qāni’, Abū al-Ḥusayn. *Mu’jam al-Ṣaḥābah*. Edited by Ṣalāḥ Ibn Sālim al-Miṣrātī. 1st ed. 3 vols. Madinah: Maktabat al-Ghurabā’ al-Athariyyah, 1418AH.

Ibn Qayyim al-Jawziyyah, Muḥammad b. Abī Bakr. *Aḥkām Ahl Al-Dhimmah*. Edited by Yūsuf Ibn Aḥmad al-Bakrī and Shākir b. Tawfīq al-’Ārūrī. 1st ed. 3 vols. Dammam: Rumādī li al-Nashr, 1997.

———. *Hidāyat Al-Ḥayārā Fī Ajwibat al-Yahūd Wa al-Naṣārā*. Edited by Muḥammad Aḥmad al-Ḥājj. 1st ed. Jeddah: Dār al-Qalam, 1996.

Ibn Qudāmah al-Maqdisī, Shams al-Dīn. *Al-Mughnī*. 10 vols. Cairo: Maktabat al-Qāhirah, 1968.

———. *Al-Sharḥ al-Kabīr (al-Maṭbū’ Ma’ al-Muqni’ Wa al-Inṣāf)*. Edited by ’Abd Allāh b. ’Abd al-Muḥsin al-Turkī and ’Abd al-Fattāḥ Muḥammad al-Ḥilū. 1st ed. 30 vols. Cairo: Hijr li al-Ṭabā’ah wa al-Nashr wa al-Tawzī’ wa al-I’lān, 1995.

———. *Al-Kāfī Fi Fiqh al-Imām Aḥmad*. 4 vols. Dār al-Kutub al-’Ilmiyyah, 1994.

Ibn Qutaybah al-Daynūrī, Abū Muḥammad. *Al-Ma’ārif*. Edited by Tharwat ’Ikāshah. 2nd ed. Cairo: al-Hay’ah al-Miṣriyyah al-’Āmmah li al-Kitāb, 1992.

Ibn Rāshid, Ma’mar. *Al-Jāmi’ Li Ma’mar b. Rāshid*. Edited by Ḥabīb al-Raḥmān al-A’ẓamī. 2nd ed. 2 vols. Pakistan & Beirut: al-Majlis al-’Ilmī, 1403AH.

Ibn Rushd al-Qurṭubī, Abū al-Walīd Muḥammad b. Aḥmad. *Al-Bayān Wa al-Taḥṣīl Wa al-Sharḥ Wa al-Tawjīh Wa al-Ta'līl Li Masā'il al-Mustakhrajah*. Edited by Muḥammad Ḥajjī. 2nd ed. 20 vols. Beirut: Dār al-Gharb al-Islāmī, 1988.

———. *Al-Muqaddimāt al-Mumahhidāt*. Edited by Muḥammad Ḥajjī. 3 vols. Beirut: Dār al-Gharb al-Islāmī, 1988.

———. *Bidāyat Al-Mujtahid Wa Nihāyat al-Muqtaṣid*. 4 vols. Cairo: Dār al-Ḥadīth, 2004.

Ibn Sa'd, Abū 'Abd Allāh. *Al-Ṭabaqāt al-Kubrā*. Edited by Muḥammad 'Abd al-Qādir 'Aṭā. 1st ed. Vol. 1. 8 vols. Beirut: Dār al-Kutub al-'Ilmiyyah, n.d.

Ibn Shās, Abū Muḥammad Jalāl al-Dīn. *'Aqd al-Jawāhir al-Thamīnah Fī Madhhab 'Ālim al-Madīnah*. Edited by Ḥamīd Ibn Muḥammad Laḥmar. 1st ed. 3 vols. Beirut: Dār al-Gharb al-Islāmī, 2003.

Ibn Taymiyyah, Majd al-Dīn 'Abd al-Salām, 'Abd al-Ḥalīm Ibn Taymiyyah, and Aḥmad Ibn Taymiyyah. *Al-Muswaddah Fī Uṣūl al-Fiqh*. Edited by Muḥammad Muḥyī al-Dīn 'Abd al-Ḥamīd. Dār al-Kitāb al-'Arabī, n.d.

Ibn Taymiyyah, Taqī al-Dīn. *Majmū' al-Fatāwā*. Edited by 'Abd al-Raḥmān ibn Muḥammad b. Qāsim. 37 vols. Madinah: Majma' al-Malik Fahd li Tibā'at al-Muṣḥaf al-Sharīf, 1995.

Ibrāhīm al-Tha'labī, Ibn Isḥāq. *Qiṣaṣ Al-Anbiyā' al-Musammāh 'Arā'is al-Majālis*. Edited by Muḥammad Ibrāhīm Ibn al-Marḥūm, Nūr Muḥammad, and Malānūr al-Dīn Ibn Jaywakhān. Maṭba' al-Ḥaydarī, n.d.

———. *Al-Kashf Wa al-Bayān 'an Tafsīr al-Qur'ān*. Edited by Abū Muḥammad Ibn 'Āshūr and Naẓīr al-Sā'adī. 1st ed. 10 vols. Beirut: Dār Iḥyā' at-Turāth al-'Arabī, 2002.

Al-Ishbīlī, Shihāb al-Dīn. *Mukhtaṣar Khilāfiyyāt Al-Bayhaqī*. Edited by Dhayyāb 'Abd al-Karīm Dhayyāb 'Aql. 5 vols. Riyadh: Maktabat al-Rushd, 1997.

Ismā'īl, Shu'bān Muḥammad. *Al-Islām Wa Mawqifuhu Min al-Sharā'i al-Sābiqah*. 1st ed. Dār al-Fikr, 1985.

Al-Jāḥiẓ, Abū 'Uthmān. *Al-Ḥayawān*. 7 vols. Beirut: Dār al-Kutub al-'Ilmiyyah, 1424AH.

Jalāl al-Dīn al-Suyūṭī, 'Abd al-Raḥmān b. Abī Bakr. *Al-Durr al-Manthūr*. 8 vols. Beirut: Dār al-Fikr, n.d.

Al-Jaṣṣāṣ, Abū Bakr. *Al-Fuṣūl Fī al-Uṣūl*. 2nd ed. 4 vols. Kuwait: Wizārat al-Awqāf al-Kuwaytiyyah, 1994.

———. *Sharḥ Mukhtaṣar Al-Ṭaḥāwī*. Edited by ’Iṣmat Allāh ’Ināyat Allāh Muḥammad, Sā’id Bakdāsh, Muḥammad ’Ubayd Allāh Khān, and Zaynab Muḥammad Ḥasan Falātah. 1st ed. Beirut: Dār al-Bashā’ir al-Islāmiyyah, 2010.

Jokisch, Benjamin. *Islamic Imperial Law: Harun al-Rashid’s Codification Project*. Berlin: De Gruyter, 2007.

Al-Jurjānī, ’Abd al-Qāhir. *Darj Al-Durar Fī Tafsīr al-Āy Wa al-Suwar*. Edited by Walīd b. Aḥmad Ibn Ṣālih al-Ḥusayn and Iyād ’Abd al-Laṭīf al-Qaysī. 4 vols. Britain: Majallat al-Ḥikmah, 2008.

Al-Jurjānī, Abū Aḥmad b. ’Adī. *Al-Kāmil Fī Ḍu’afā’ al-Rijāl*. Edited by ’Ādil Aḥmad ’Abd al-Mawjūd, ’Alī Muḥammad Mi’waḍ, and ’Abd al-Fattāḥ Abū Sunnah. 1st ed. 9 vols. Beirut: al-Kutub al-’Ilmiyyah, 1997.

al-Jurjānī, Abū al-Qāsim Hamzah al-Sahmī. *Tārīkh Jurjān*. Edited by Muḥammad ’Abd al-Mu’īd Khān. 4th ed. Beirut: ’Ālam al-Kutub, 1987.

Al-Juwaynī, Abū al-Ma’ālī. *Nihāyat Al-Maṭlab Fī Dirāyat al-Madhhab*. Edited by Maḥmūd al-Dīb. 1st ed. Dār al-Minhāj, 2007.

———. *Al-Burhān Fī Uṣūl al-Fiqh*. Edited by Ṣalāḥ b. Muḥammad b. ’Uwayḍah. 1st ed. 2 vols. Beirut, Lebanon: Dār al-Kutub al-’Ilmiyyah, 1997.

———. *Kitāb Al-Talkhīṣ Fī Uṣūl al-Fiqh*. Edited by ’Abd Allāh Jawlim al-Nabālī and Aḥmad al-’Umarī. 3 vols. Bairut: Dār al-Bashā’ir al-Islāmiyyah, n.d.

Al-Kalwadhānī, Maḥfūdh b. Aḥmad. *Al-Tamhīd Fī Uṣūl al-Fiqh*. Edited by Mufīd Muḥammad Abū ’Amsha and Muḥammad Ibn ’Alī b. Ibrāhīm. 1st ed. 4 vols. Saudi Arabia: Markaz al-Baḥth al-’Ilmī wa Iḥyā’ al-Turāth al-Islāmī (Jāmi’at Umm al-Qurā), 1985.

Al-Khaffāf, Abū Bakr. “al-Aqsām wa al-Khiṣāl.” Dublin: Chester Beatty Library, n.d. MS Arabic 5115; 43 fols., copied 660/1262.

Khaznah, Haytham. *Taṭawwur Al-Fikr al-Uṣūlī al-Ḥanafī: Dirāsah Taṭbīqiyyah Li al-Adillah al-Mukhtalaf Fīhā*. Dār al-Rāzī, 1998.

Al-Khuwayī, Shihāb al-Dīn. *Aqṣā Al-Amal Wa al-Sūl Fī ’Ilm Ḥadīth al-Rasūl Ṣallā Allāh ’Alayh Wa Sallam*. Edited by Nawāf ’Abbās Ḥabīb al-Manāwir. Kuwait: Barnāmij al-Ḥadīth al-Sharīf wa ’Ulūmi, Kulliyat al-Dirāsāt al-’Ulyā, 2015.

Al-Kirmānī, Abū Muḥammad Ḥarb b. Ismā’īl. *Masā’il Ḥarb b. Ismā’īl al-Kirmānī*. Edited by Muḥammad b. ’Abd Allāh al-Surayyi’. 1st ed. Beirut: Mu’assisat al-Rayyān, 2013.

Koerner, Brendan. “Last Words: Why Are We So Sure That Death and Honesty Go Together?,” December 2002. https://www.legalaffairs.org/issues/November-December-2002/review_koerner_novdec2002.msp.

Al-Lakhmī, Abū al-Ḥasan. *Al-Tabṣirah*. Edited by Aḥmad ’Abd al-Karīm Najīb. 1st ed. 14 vols. Qatar: Wizārat al-Awqāf wa al-Shu’ūn al-Islāmiyyah, 2011.

Majd al-Dīn Abū al-Faḍl, ’Abd Allāh. *Al-Ikhtiyār Li Ta’līl al-Mukhtār*. Edited by Maḥmūd Abū Daqīqah. 5 vols. Cairo: Maṭba’at al-Ḥalabī, 1937.

Al-Mālikī, Abū ’Abd Allāh al-Tamīmī. *Sharḥ Al-Talqīn*. Edited by Muḥammad al-Mukhtār al-Salāmī. 1st ed. 5 vols. Dār al-Gharb al-Islāmī, 2008.

Al-Mālikī, Abū Muḥammad ’Abd Allāh b. Abī Zayd ’Abd al-Raḥmān al-Nafazī al-Qayrawānī. *Al-Nawādir Wa al-Ziyādāt ’alā Mā Fī al-Mudawannah Min Ghayrihā Min al-Ummahāt*. Edited by ’Abd al-Fattāḥ Muḥammad al-Ḥilū and Muḥammad Ḥajjī, n.d.

Al-Mālikī, al-Qāḍī Abū Muḥammad ’Abd al-Wahhāb al-Baghdādī al-. *Al-Ishraf ’alā Nukat Masā’il al-Khilāf*. Edited by al-Ḥabīb bin Ṭāhir. 1st ed. 2 vols. Dār Ibn Ḥazm, 1999.

———. *Al-Ma’ūnah ’alā Madhhab ’Ālim al-Madīnah al-Imām Mālik Ibn Anas*. Edited by Ḥumaysh ’Abd al-Ḥaqq. 3 vols. Makkah: al-Maktabah al-Tijāriyyah, Muṣṭafā Aḥmad al-Bāz (PhD Dissertation at the Umm al-Qurā University), n.d.

Al-Maqdisī, al-Muṭahhir b. Ṭāhir. *Al-Bad’ Wa al-Tārīkh*. 6 vols. Būr Sa’īd: Maktabat al-Thaqāfah al-Dīniyyah, n.d.

Al-Maqdisī, Ḍiyā’ al-Dīn. *Al-Sunan Wa al-Aḥkām ’an al-Muṣṭafā ’Alayhi al-Ṣalāt Wa al-Salām*. Edited by Abū ’Abd Allāh Ḥusayn Ibn ’Ukāshah. 1st ed. 6 vols. Saudi Arabia: Dār Mājid ’Asīrī, 2004.

Al-Marghīnānī, Burhān al-Dīn. *Al-Hidāyah Fī Sharḥ Bidāyat al-Mubtadī*. Edited by Ṭalāl Yūsuf. 4 vols. Beirut: Dār Iḥyā’ at-Turāth al-’Arabī, n.d.

Al-Māturīdī, Abū Manṣūr. *Tafsīr Al-Māturīdī (Ta’wīlāt Ahl al-Sunnah)*. Edited by Majdī Baslūm. 1st ed. 10 vols. Beirut: Dār al-Kutub al-’Ilmiyyah, 2005.

Al-Māwardī, Abū al-Ḥasan. *Al-Ḥāwī al-Kabīr (Sharḥ Mukhtaṣar al-Muzanī)*. Edited by ’Alī Muḥammad Mi’waḍ and ’Ādil Aḥmad ’Abd al-Mawjūd. 19 vols. Beirut, Lebanon: Dār al-Kutub al-’Ilmiyyah, 1999.

Melchert, Christopher. “The Meaning of Qāla ’l-Shāfi’ī in Ninth-Century Sources.” In *’Abbasid Studies*, edited by James Montgomery, 277–301. Leuven: Peeters, 2004.

Mohd Fazrul Azdi Wan Razali, Wan, Ahmad Yunus Mohd Noor, and Jaffary Awang. “The Fourth Source: Isrā’īliyyāt and the Use of the Bible in Muslim Scholarship.” In *Reading the Bible in Islamic Context: Qur’ānic Conversations*, edited by Daniel Crowther, Shirin Shafaie, Ida Glaser, and Shabbir Akhtar. London & New York: Routledge, 2018.

Muḥammad al-Tirmidhī, Abū ’Īsā. *Al-Jāmi’ al-Kabīr (Sunan al-Tirmidhī)*. Edited by Bashshār ’Awād Ma’rūf. 6 vols. Beirut: Dār al-Gharb al-Islāmī, 1998.

Muḥammad al-’Uthaymīn, Muḥammad b. Ṣāliḥ ibn. *Al-Sharḥ al-Ṣawtī Li Zād al-Mustaqni’ (with al-Sharḥ al-Mumti’)*. 2 vols. al-Maktabah al-Shāmilah, n.d.

———. *Sharḥ Al-Manẓūmah al-Bayqūniyyah Fī Muṣṭalaḥ al-Ḥadīth*. Edited by Fahd b. Nāṣir Ibn Ibrāhīm al-Sulaymān. 2nd ed. Dār al-Thurayyā li al-Nashr, 2003.

Muḥammad b. ’Abd al-Dā’im, Shams al-Dīn. *Al-Fawā’id al-Saniyyah Fī Sharḥ al-Alfiyyah*. Edited by ’Abd Allāh Ramaḍān Mūsā. 1st ed. 5 vols. Egypt: Maktabat al-Taw’iyah al-Islāmiyyah, 2015.

Mujāhid, Abū al-Ḥajjāj. *Tafsīr Mujāhid*. Edited by Muḥammad ’Abd al-Salām Abū al-Nīl. Egypt: Dār al-Fikr al-Islāmī al-Ḥadīthah, 1989.

Nawawī, Abū Zakariyyā al-. *Al-Majmū’ Sharḥ al-Muhadhdhab*. 20 vols. Dār al-Fikr, n.d.

———. *Al-Majmū’: Sharḥ al-Muhadhdhab*. 20 vols. Dār al-Fikr, n.d.

———. *Al-Minhāj: Sharḥ Ṣaḥīḥ Muslim Ibn al-Ḥajjāj*. 18 vols. Beirut: Dār Iḥyā’ at-Turāth al-’Arabī, 1392AH.

———. *Rawḍat Al-Ṭālibīn Wa ’umdat al-Muftīn*. Edited by Zuhayr al-Shāwīsh. 3rd ed. 12 vols. Beirut, Lebanon: al-Maktab al-Islāmī, 1991.

Al-Naysābūrī, Abū ’Abd Allāh al-Ḥākim. *Al-Mustadrak ’alā al-Ṣaḥīḥayn*. Edited by Muṣṭafā ’Abd al-Qādir “Aṭā.” 4 vols. Beirut: Dār al-Kutub al-’Ilmiyyah, 1990.

Al-Naysābūrī, Muslim b. al-Ḥajjāj. *Al-Musnad al-Ṣaḥīḥ al-Mukhtaṣar (Ṣaḥīḥ Muslim)*. Edited by Muḥammad Fu’ād ’Abd al-Bāqī. 5 vols. Beirut: Dār Iḥyā’ at-Turāth al-’Arabī, n.d.

Neuwirth, Angelika. “The Qur’ān and the Bible.” In *The New Cambridge History of The Bible: From 600 to 1450*, edited by Richard Marsden and E. Ann Matter, 735–52. Cambridge: Cambridge University Press, 2012.

Nigst, Lorenz, Maxim Romanov, Sarah Bowen Savant, Masoumeh Seydi, and Peter Verkinderen. “OpenITI: A Machine-Readable Corpus of Islamicate Texts,” n.d. http://doi.org/10.5281/zenodo.4075046.

Nosowitz, Dan. “Is This Duck Kosher? It’s Complicated.” *Atlas Obscura*, January 4, 2019. https://www.atlasobscura.com/articles/is-muscovy-duck-kosher.

Peters, Rudolph. “Murder in Khaybar: Some Thoughts on the Origins of the Qasāma Procedure in Islamic Law.” *Islamic Law and Society* 9, no. 2 (2002): 132–67.

———. “Review of Islamic Imperial Law: Harun Al-Rashid’s Codification Project.” *Journal of the American Oriental Society* 129, no. 3 (September 2009): 529–30.

Al-Qarāfī, Shihāb al-Dīn Aḥmad b. Idrīs. *Al-’Aqd al-Manẓūm Fī al-Khuṣūṣ Wa al-’Umūm*. Edited by Aḥmad al-Khatm ’Abd Allāh. 1st ed. 2 vols. Egypt: Dār al-Kutubī, 1999.

———. *Al-Dhakhīrah Li al-Qarāfī*. Edited by Muḥammad Bū Khubzah. 1st ed. Vol. 4. 14 vols. Beirut: Dār al-Gharb al-Islāmī, 1994.

———. *Nafā’is al-Uṣūl Fī Sharḥ al-Maḥṣūl*. Edited by ’Alī Muḥammad Mi’waḍ. 1st ed. Maktabat Nizār Muṣṭafā al-Bāz, 1995.

———. *Sharḥ Tanqīḥ Al-Fuṣūl*. Edited by Ṭāhā ’Abd al-Ra’ūf Sa’d. 1st ed. 1 vols. Sharikat al-Ṭibā’ah al-Fanniyyah al-Muttaḥidah, 1973.

Al-Qayrawānī, Ibn Abī Zayd al-. *Al-Nawādir Wa al-Ziyādāt ’alā Mā Fī al-Mudawwanah Min Ghayrihā Min al-Ummahāt*. Edited by Muḥammad Ḥajjī. 1st ed. Vol. 4. 15 vols. Beirut: Dār al-Gharb al-Islāmī, 1999.

———. *Matn Al-Risālah*. Dār al-Fikr, n.d.

Al-Qayrawānī, Qāsim b. ’Īsā b. Nājī al-Tannūkhī. *Sharḥ Ibn Nājī Al-Tannūkhī ’alā Matn al-Risālah Li Ibn Abī Zayd al-Qayrawānī*. Edited by Aḥmad Farīd al-Mazīdī. 2 vols. Beirut: Dār al-Kutub al-’Ilmiyyah, 2007.

Al-Qudūrī, Abū al-Ḥusayn. *Al-Tajrīd Li al-Qudūrī*. Edited by Muḥammad Aḥmad Sirāj and ’Alī Jum’ah Muḥammad. 12 vols. Cairo: Dār al-Salām / Markaz al-Dirāsāt al-Fiqhiyyah wa al-Iqtiṣādiyyah, 2006.

———. *Mukhtaṣar Al-Qudūrī Fī al-Fiqh al-Ḥanafī*. Edited by Kāmil Muḥammad Muḥammad ’Uwayḍah. 1st ed. Dār al-Kutub al-’Ilmiyyah, 1997.

Al-Qurashī, Ibn Kathīr. *Jāmi’ al-Masānīd Wa al-Sunan al-Hādī Li Aqwam Sanan*. Edited by ’Abd al-Malik Ibn ’Abd Allāh al-Duhaysh. 2nd ed. 10 vols. Beirut: Dār Khaḍir li al-Ṭibā’ah wa al-Nashr wa al-Tawzī’, 1998.

———. *Musnad Al-Fārūq*. Edited by Imām ibn ’Alī Ibn Imām. 1st ed. 3 vols. Faiyum: Dār al-Falāḥ, 2009.

———. *Tafsīr Al-Qur’ān al-’Aẓīm (Tafsīr Ibn Kathīr)*. Edited by Sāmī b. Muḥammad Salāmah. 2nd ed. 8 vols. Dār Ṭībah li al-Nashr wa al-Tawzī’, 1999.

Al-Qurtubī, Abū ’Abd Allāh. *Al-Jāmi’ Li Aḥkām al-Qur’ān*. Edited by Aḥmad al-Bardūnī and Ibrāhīm Aṭfīsh. 2nd ed. 20 vols. Cairo: Dār al-Kutub al-Maṣriyyah, 1964.

Al-Qurṭubī, Abū al-'Abbās. *Al-Mufhim Li Mā Ashkala Min Talkhīṣ Kitāb Muslim*. Edited by Muḥyī al-Dīn Dīb Mīstō, Aḥmad Muḥammad al-Sayyid, Yūsuf 'Alī Badīwī, and Maḥmūd Ibrāhīm Bazāl. 1st ed. 7 vols. Damascus/Beirut: Dār Ibn Kathīr, 1996.

Al-Qurṭubī, Ibn 'Abd al-Barr. *Al-Istidhkār*. Edited by Sālim Muḥammad 'Aṭā and Muḥammad 'Alī Mi'waḍ. 1st ed. 9 vols. Beirut: Dār al-Kutub al-'Ilmiyyah, 2000.

———. *Jāmi' Bayān al-'Ilm Wa Faḍlihi*. Edited by Abū al-Ashbāl al-Zuhayrī. 1st ed. 2 vols. Saudi Arabia: Dār Ibn al-Jawzī, 1994.

Al-Qurṭubī, Shams al-Dīn. *Al-Jāmi' Li Aḥkām al-Qur'ān (Tafsīr al-Qurṭubī)*. Edited by Aḥmad al-Bardūnī and Ibrāhīm Aṭfīsh. 2nd ed. 20 vols. Cairo: Dār al-Kutub al-Maṣriyyah, 1964.

———. *Al-I'lām Bi Mā Fī Dīn al-Naṣarā Min al-Fasād Wa al-Awhām Wa Iẓhār Maḥāsin al-Islām*. Edited by Aḥmad Ḥijāzī al-Saqā. Cairo: Dār al-Turāth al-'Arabī, n.d.

Rashi, Shlomo Yitzchaki. *Rashi 'al Ha-Torah*. Berlin: be-hotsʾot ha-motsi' le-or bi-defus Leventṭ, 1866.

Al-Rāzī, Fakhr al-Dīn. *Al-Maḥṣūl*. Edited by Ṭāhā Jābir Fayyāḍ al-'Alwānī. 6 vols. Mu'assisat al-Risālah, 1997.

Al-Rāzī, Ibn Abī Ḥātim. *Tafsīr Al-Qur'ān al-'Aẓīm Li Ibn Abī Ḥātim*. Edited by As'ad Muḥammad al-Ṭayyib. 3rd ed. Saudi Arabia: Maktabat Nizār Muṣtafā al-Bāz, 1419AH.

Al-Ribāṭ, Khālid, and Sayyid 'Izzat 'Īd. *Al-Jāmi' Li 'Ulūm al-Imām Aḥmad*. 1st ed. 22 vols. Faiyum: Dār al-Falāḥ li al-Baḥth al-'Ilmī wa Taḥqīq al-Turāth, 2009.

———. *Al-Jāmi' Li 'Ulūm al-Imām Aḥmad (al-Rijāl)*. 1st ed. 22 vols. Egypt: Dār al-Falāḥ li al-Baḥth al-'Ilmī wa Taḥqīq al-Turāth, 2009.

Al-Rūyānī, Abū al-Maḥāsin. *Baḥr Al-Madhhab Fī Furū' al-Madhhab al-Shāfi'ī*. Edited by Ṭāriq Fatḥī al-Sayyid al-Sayyid. 1st ed. 14 vols. Dār al-Kutub al-'Ilmiyyah, 2009.

Saḥnūn, Abū Sa'īd 'Abd al-Salām. *Al-Mudawwanah*. 1st ed. 4 vols. Dār al-Kutub al-'Ilmiyyah, 1994.

Al-Sakhāwī, 'Abd al-Raḥmān. *Fatḥ Al-Mughīth Bi Sharḥ Alfiyyat al-Ḥadīth Li al-'Irāqī*. Edited by 'Alī Ḥusayn 'Alī. 4 vols. Egypt: Maktabat al-Sunnah, 2003.

Al-Salamī, 'Abd al-Malik b. Ḥabīb. *Adab Al-Nisā' al-Mawsūm Bi Kitāb al-'Ināyah Wa al-Nihāyah*. Edited by 'Abd al-Majīd Turkī. Dār al-Gharb al-Islāmī, 1992.

Salaymeh, Lena. *The Beginnings of Islamic Law*. Cambridge: Cambridge University Press, 2016.

Ibn Sallām, Abū ’Ubayd al-Qāsim. *Gharīb Al-Ḥadīth*. Edited by Ḥusayn Muḥammad Muḥammad Sharaf. 1st ed. 5 vols. Cairo: al-Hay’ah al-’Āmmah li Shu’ūn al-Maṭābi’ al-Amīriyyah, 1984.

Al-Samarqandī, ‘Alā’ al-Dīn. *Mīzān Al-Uṣūl Fī Natā’ij al-’uqūl*. Edited by Muḥammad Zakī ’Abd al-Barr. 1st ed. Doha, Qatar: Maṭābi’ al-Dawḥah al-Ḥadīthah, 1984.

Al-Sāmirī, Abū Bakr al-Kharā’iṭī. *Masāwa’ al-Akhlāq Wa Madhmūmihā*. Edited by Muṣṭafā Ibn Abū al-Naṣr al-Shilbī. 1st ed. Jeddah: Maktabat al-Sawādī li al-Tawzī’, 1993.

Al-Ṣaqalī, Abū Bakr Muḥammad b. ’Abd Allāh b. Yūnus al-Tamīmī. *Al-Jāmi’ Li Masā’il al-Mudawwanah*. 24 vols. Umm al-Qurā University: Ma’had al-Buḥūth al-’Ilmiyyah wa Iḥyā’ al-Turāth al-Islāmī, 2013.

Al-Sarakhsī, Muḥammad b. Aḥmad. *Al-Mabsūṭ*. Vol. 19. 31 vols. Beirut: Dār al-Ma’rifah, 1989.

———. *Uṣūl Al-Sarakhsī*. Edited by Abū al-Wafā al-Afghānī. 2 vols. Hyderabad: Lajnat Iḥyā’ al-Ma’ārif al-Uthmāniyyah, 1993.

Al-Sharbīnī, Shams al-Dīn al-Khaṭīb. *Al-Sirāj al-Munīr Fī al-I’ānah ’alā Ma’rifat Ba’ḍ Ma’ānī Kalām Rabbinā al-Ḥakīm al-Khabīr*. 4 vols. Cairo: Maṭba’at Būlāq al-Amīriyyah, 1285AH.

Al-Shāṭibī, Ibrāhīm b. Mūsā b. Muḥammad. *Al-Muwāfaqāt*. Edited by Abū ’Ubaydah Āl Salmān. 1st ed. 7 vols. Dār b. ’Affān, 1997.

Al-Shaybānī, Ibn Abī ’Āṣim. *Al-Sunnah Li Ibn Abī ’Āṣim*. Edited by Muḥammad Nāṣir al-Dīn al-Albānī. 1st ed. 2 vols. Beirut: al-Maktab al-Islāmī, 1400AH.

———. *Al-Aṣl*. Edited by Muḥammad Būynūkālin. 1st ed. 12 vols. Beirut: Dār Ibn Ḥazm, 2012.

———. *Al-Ḥujjah ’alā Ahl al-Madīnah*. Edited by Mahdī Ḥasan al-Kaylānī al-Qādirī. 3rd ed. 4 vols. Beirut: ’Ālam al-Kutub, 1403AH.

———. *Al-Kasb*. Edited by Suhayl Zakkār. 1st ed. Damascus: ’Abd al-Hādī Ḥarṣūnī, 1400AH.

———. *Al-Makhārij Fī al-Ḥiyal*. Cairo: Maktabat al-Thaqāfah al-Dīniyyah, 1999.

Shihāb al-Dīn al-Zanjānī, Abū al-Munāqib. *Takhrīj Al-Furū’ ’alā al-Uṣūl*. Edited by Muḥammad Adīb Ṣāliḥ. 2nd ed. Beirut: Mu’assisat al-Risālah, 1398.

Al-Shilbī, Shihāb al-Dīn Aḥmad, and ’Uthmān b. ’Alī Fakhr al-Dīn al-Zayla’ī al-Ḥanafī. *Tabyīn Al-Ḥaqā’iq: Sharḥ Kanz al-Daqā’iq Wa Ḥāshiyat al-Shilbī.* 1st ed. 6 vols. Cairo: al-Maṭba’ah al-Kubrā al-Amīriyyah, 1313AH.

Al-Shīrāzī, Abū Isḥāq al-. *Al-Ma'ūna Fī al-Jadl*. Edited by 'Alī 'Abd al-'Azīz al-'Umayrīnī. 1st ed. Kuwait: Jam'iyyat Iḥyā' al-Turāth al-Islāmī, 1407.

———. *Al-Tabṣirah Fī Uṣūl al-Fiqh*. Edited by Muḥammad Ḥasan Hītū. Damascus: Dār al-Fikr, 1403.

Siddiqui, Sohaira. *Law and Politics under the Abbasids: An Intellectual Portrait of al-Juwayni*. Cambridge & New York: Cambridge University Press, 2019.

Al-Sighnāqī, Ḥusām al-Dīn. *Al-Kāfī Sharḥ al-Bazdawī*. Edited by Fakhr al-Dīn Sayyid Muḥammad Qānt. 1st ed. 5 vols. Maktabat al-Rushd, 2001.

Al-Sijistānī, Abū Dāwūd. *Al-Marāsīl*. Edited by Shu'ayb al-Arna'ūṭ. 1st ed. Beirut: Mu'assisat al-Risālah, 1408AH.

Al-Sijistānī, Abū Sa'īd al-Dārimī, and Abū 'Āṣim al-Shawāmī al-Atharī. *Naqḍ Al-Imām Abī Sa'īd 'Uthmān 'Alā al-Marīsī al-Jahmī*. 1st ed. Cairo: al-Maktabah al-Islāmiyyah, 2012.

Al-Subkī, Tāj al-Dīn. *Ṭabaqāt Al-Shāfi'īyyah al-Kubrā*. Edited by Maḥmūd Muḥammad al-Ṭannāḥī and 'Abd al-Fattāḥ Muḥammad al-Ḥilu. 2nd ed. Dār hijr li al-ṭibā'ah wa al-nashr wa al-tawzī', 1413AH.

Al-Suhaylī, Abū al-Qāsim. *Al-Rawḍ al-Anf Fī Sharḥ al-Sīrah al-Nabawiyyah*. 1st ed. 7 vols. Beirut: Dār Iḥyā' at-Turāth al-'Arabī, 1412AH.

Al-Ṭabarānī, Abū al-Qāsim. *Al-Mu'jam al-Awsaṭ*. Edited by Ṭāriq Ibn Muḥammad and 'Abd al-Muḥsin Ibn Ibrāhīm al-Ḥusaynī. 10 vols. Cairo: Dār al-Ḥaramayn, n.d.

Al-Ṭabarī, Muḥammad b. Jarīr. *Jāmi' al-Bayān Fī Ta'wīl al-Qur'ān*. Edited by Aḥmad Muḥammad Shākir. 1st ed. 24 vols. Mu'assisat al-Risālah, 2000.

———. *Tārīkh Al-Rusul Wa al-Mulūk*. 11 vols. Beirut: Dār al-Turāth, 1387AH.

Al-Tannūkhī, Zayn al-Dīn. *Al-Mumti' Fī Sharḥ al-Muqni'*. Edited by 'Abd al-Malik b. 'Abd Allāh Ibn Duhaysh. 3rd ed. 4 vols. Makkah: Maktabat al-Asadī, 2003.

Al-Ṭiyālisī, Abū Dawūd. *Musnad Abī Dāwūd Al-Ṭiyālisī*. Edited by Muḥammad b. 'Abd al-Muḥsin al-Turkī. 1st ed. 4 vols. Egypt: Dār Hijr, 1999.

Al-'Ulaymī, Abū al-Yumn. *Fatḥ Al-Raḥmān Fī Tafsīr al-Qur'ān*. Edited by Nūr al-Dīn Ṭālib. 1st ed. 7 vols. Dār al-Nawādir, 2009.

'Umar b. Shubbah, Abū Zayd. *Tārīkh Al-Madīnah Li Ibn Shubbah*. Edited by Fahīm Muḥammad Shaltūt. Jeddah: Ṭubi'ah 'ala nafaqat al-Sayyid Ḥabīb Maḥmūd Aḥmad, 1399AH.

Wakī' al-Baghdādī, Abū Bakr Muḥammad b. Khalaf. *Akhbār Al-Quḍāh*. Edited by 'Abd al-'Azīz Muṣtafā al-Marāghī. 2nd ed. 3 vols. Egypt: al-Maktabah al-Tijāriyyah, 1947.

Wansbrough, John. *The Sectarian Milieu: Content and Composition of Islamic Salvation History*. London: Oxford University Press, 1978.

Al-Ẓāhirī, Ibn Ḥazm al-Andalusī. *Al-Iḥkām Fī Uṣūl al-Aḥkām*. Edited by Aḥmad Muḥammad Shākir. 8 vols. Beirut: Dār al-Āfāq al-Jadīdah, n.d.

———. *Al-Muḥallā Bi al-Āthār*. 12 vols. Beirut: Dār al-Fikr, n.d.

Al-Zarkashī, Badr al-Dīn. *Al-Baḥr al-Muḥīṭ Fī Uṣūl al-Fiqh*. Edited by 'Abd al-Qādir 'Abd Allāh al-'Ānī. 2nd ed. 6 vols. Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyyah, 1992.

Al-Zarqānī, 'Abd al-Bāqī. *Sharḥ Al-Zarqānī 'alā Mukhtaṣar Khalīl*. Edited by 'Abd al-Salām Muḥammad Amīn. 8 vols. Beirut: Dār al-Kutub al-'Ilmiyyah, 2002.

Zarūq, Shihāb al-Dīn Abū al-'Abbās. *Sharḥ Zarūq 'alā Matn al-Risālah Li Ibn Abī Zayd al-Qayrawānī*. Edited by Aḥmad Farīd al-Mazīdī. 1st ed. 2 vols. Beirut: Dār al-Kutub al-'Ilmiyyah, 2006.

Al-Ziriklī, Khayr al-Dīn. *Al-A'lām*. Dār al-'Ilm li al-Malāyīn, 2002.

Zysow, Aaron. *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Thought*. Atlanta, Georgia: Lockwood Press, 2013.