

## IBN ḤAZM'S LITERALISM: A CRITIQUE OF ISLAMIC LEGAL THEORY (I)

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Ibn Ḥazm's insistence that the Qur'ān and Sunna be interpreted literally has frequently lead modern scholars to conclude that he is a conservative or dogmatic thinker. In fact, he is neither. Ibn Ḥazm's Zāhirism emphasizes the limited scope of Islamic law and attempts to curtail the claims made by Muslim jurists to speak on behalf of God's law. This method leads him to support rationalism, individualism, and anti-clericalism. Ibn Ḥazm argues in favor of these principles consistently in his works on Islamic legal theory, including the text *al-Nubdha al-kāfiya fī uṣūl aḥkām al-dīn*, which is translated here. This approach promises to undermine the whole *madhhab* system, which explains the negative response it received from the religious establishment. In place of the *madhhab* system, Ibn Ḥazm seeks to assert the individual responsibility of each Muslim to obey God's law as it is clearly revealed in the sacred texts of Islam.

**Keywords:** Ibn Ḥazm of Cordoba; Islamic Law; *Qur'ān*; *Sunna*; *Ijtihād*; *Taqlīd*; *Madhhab*; *Ijmā'*; *Qiyās*; *Sharī'a*; Zāhirism.

La insistencia de Ibn Ḥazm en la interpretación literal del Corán y la Sunna ha llevado frecuentemente a los investigadores modernos a concluir que él es un pensador conservador o dogmático. En realidad, no es ninguna de las dos cosas. El zāhirismo de Ibn Ḥazm enfatiza el alcance limitado de la ley religiosa islámica, e intenta reducir las pretensiones de los juristas musulmanes de hablar en nombre de la ley de Dios. Esta metodología le lleva a apoyar el racionalismo, el individualismo y el anticlericalismo. Ibn Ḥazm argumenta con consistencia a favor de estos principios en sus trabajos sobre teoría legal islámica, entre los que se incluye el texto *al-Nubdha al-kāfiya fī uṣūl aḥkām al-dīn* que traducimos aquí. Esta propuesta implica socavar todo el sistema del *madhhab*, lo que explica la reacción negativa que recibió del sistema religioso establecido. En lugar del *madhhab*, Ibn Ḥazm intenta hacer valer la responsabilidad individual de cada musulmán en la obediencia a la ley de Dios, tal y como se revela claramente en el texto sagrado del Islam.

**Palabras clave:** Ibn Ḥazm de Córdoba; Derecho Islámico; *Qur'ān*; *Sunna*; *iṭihād*; *taqlīd*; *madhhab*; *iymā'*; *qiyās*; *Sharī'a*; Zāhirismo.

Ibn Ḥazm of Cordoba (384-456/994-1064) is a well-known, yet poorly understood figure in Western scholarship on medieval Islam. He has been the object of numerous studies dating back to the nineteenth century. Originally published in German in 1884, Ignaz Goldziher's *The Zāhirīs: their Doctrine and their History. A Contribution to the History of Islamic Theology* is an important contribution to the study of Zāhirism, but Goldziher lacked access to Ibn Ḥazm's

legal works.<sup>1</sup> Most subsequent studies have focused either on his literary output, especially his *Tawq al-ḥamāma*, or on his theological views, especially his views of Christianity and Judaism as expressed in his *al-Fiṣal fī l-milal wa-l-ahwā' wa-l-nihal* and in his refutation of Ibn Nahrila.<sup>2</sup> Other studies have dealt with his classification of the sciences and his ethics.<sup>3</sup> There have also been a number of studies of his views on law, including his *uṣūl* and *furū'*, but many of these studies have generally focused on explicating his positions on specific legal debates or topics.<sup>4</sup> In the Arab world, on the other hand, there has been considerably more interest in Ibn Ḥazm as a legal theorist. A long-standing tradition of modernist Muslim thought has been fascinated with Ibn Ḥazm's critique of Islamic legal method. The roots of this fascination are in need of study, but one can point to certain key moments in modern Arab intellectual history: Aḥmad Muḥammad Shākir's 1928 edition of *Al-Iḥkām fī uṣūl al-aḥkām* (reprinted a number of times, including a 1983 edition with an introduction by Iḥsān 'Abbās), Shākir's 1928-34 edition of *Al-Muḥallā bi-l-āthār*, the 1940 Maṭba'at al-Anwār edition of *Al-Nubdha al-kāfiya fī uṣūl aḥkām*

<sup>1</sup> Goldziher, I., *The Zāhirīs: Their Doctrine and Their History*, Wolfgang Behn (ed. and transl.), Leiden, 1971. Originally published as *Die Zāhiriten: Ihr Lehrsystem und ihre Geschichte: Ein Beitrag zur Geschichte der muhammedanischen Theologie*, Leipzig, 1884.

<sup>2</sup> Asín Palacios, M., *Abenházam de Córdoba y su historia crítica de las ideas religiosas*, Madrid, 1984; Arnaldez, R., *Grammaire et théologie chez Ibn Ḥazm de Cordoue: essai sur la structure et les conditions de la pensée musulmane*, Paris, 1956; Adang, C., *Muslim Writers on Judaism and the Hebrew Bible: from Ibn Rabban to Ibn Hazm*, Leiden, 1996; Pulcini, T., *Exegesis as polemical discourse: Ibn Ḥazm on Jewish and Christian Scriptures*, Atlanta, 1998; Ljamai, A., *Ibn Ḥazm et la polémique islamo-chrétienne dans l'histoire de l'Islam*, Leiden, 2003.

<sup>3</sup> Chejne, A. G., *Ibn Ḥazm*, Chicago, 1982; Abu Laylah, Muḥammad, *In Pursuit of Virtue: the Moral Theology and Psychology of Ibn Hazm al-Andalusi (384-456 AH 994-1064 AD): with a Translation of His Book Al-Akhlaq wa'l-Siyar*, London, 1990.

<sup>4</sup> Adang, C., "From Mālikism to Shāfi'ism to Zāhirism: the "conversions of Ibn Ḥazm," in Mercedes García-Arenal (ed.), *Conversions islamiques: Identités religieuses en Islam méditerranéen / Islamic Conversions: Religious Identities in Mediterranean Islam*, Paris, 2001, 73-87; *idem*, "Ibn Ḥazm's Criticism of Some 'Judaizing' Tendencies among the Mālikites," in Ronald L. Nettler (ed.), *Medieval and Modern Perspectives on Muslim-Jewish Relations*, Studies in Muslim-Jewish Relations, 2, Luxembourg, 1995, 1-15; *idem*, "Ibn Hazm on Homosexuality. A Case-Study of Zāhiri Legal Methodology," *Al-Qanṭara*, XXIV (2003), 5-31; *idem*, "Islam as the Inborn Religion of Mankind: The Concept of *Fiṭra* in the Works of Ibn Ḥazm," *Al-Qanṭara*, XXI (2000), 391-410; *idem*, "Women's Access to Public Space according to *al-Muḥallā bi-l-Āthār*," in Manuela Marín and Randi Deguilhem, *Writing the Feminine: Women in Arab Sources*, London, 2002, 75-94.

*al-dīn*, and Sa'īd al-Afghānī's 1960 edition of *Mulakhkhaṣ ibṭāl al-qiyās wa-l-ra'y wa-l-istiḥsān wa-l-taqlīd wa-l-ta'līl*.<sup>5</sup> Iḥsān 'Abbās's 1980-3 edition of the *Rasā'il* made some additional texts dealing with Ibn Ḥazm's polemics with the Mālikīs available, and Muḥammad Abū Zahra's 1954 study *Ibn Ḥazm: ḥayātuhu wa-'aṣruhu wa-fiqhuhu* provides a comprehensive account of Ibn Ḥazm's contributions to a number of fields, including Islamic legal method.<sup>6</sup>

Among the Western scholars, Goldziher was the first to argue that Ibn Ḥazm's Zāhirism constituted a consistent method which he applied across disciplines. Roger Arnaldez emphasizes the same point, focusing on elements of Ibn Ḥazm's views on language and theology. While Goldziher did not have access to Ibn Ḥazm's legal works, Arnaldez uses the *Iḥkām*, the *Nubadh* (=Nubdha) and *Marātib al-ijmā'*. Arnaldez contrasts Ibn Ḥazm's views on legal theory with those expressed by al-Shāfi'ī in his *Risāla*. For Arnaldez, Ibn Ḥazm's theory of language is static, while that of al-Shāfi'ī is dynamic.<sup>7</sup> It is this redefinition of the term *zāhir*, in such a way as to denote a manifest, fixed meaning, that underlies Ibn Ḥazm's whole approach to a variety of disciplines, including legal theory.<sup>8</sup> After examining Ibn Ḥazm's treatments of analogical reasoning, abrogation, and consensus, Arnaldez concludes that Ibn Ḥazm's thought is a closed system which deprives Islam of "tout instrument d'adaptation et toute possibilité d'évolution."<sup>9</sup>

As we will see, the accusation that Ibn Ḥazm's system is closed is correct. For him, the divine message contained in the Qur'ān and Sunna is unambiguous and unchanging. At the same time, however,

<sup>5</sup> Ibn Ḥazm, *al-Iḥkām fī uṣūl al-aḥkām*, Aḥmad Muḥammad Shākir (ed.), Beirut, Dār al-āfāq al-Jadīda, 1983; *idem*, *Mulakhkhaṣ ibṭāl al-qiyās wa-l-ra'y wa-l-istiḥsān wa-l-taqlīd, wa-l-ta'līl*, Sa'īd al-Afghānī (ed.), Damascus, Maṭba'at Jāmi'at Baghdād, 1960. The edition I have used of the *Nubdha* is: *Al-Nubadh fī uṣūl al-fiqh al-Zāhirī*, Muḥammad Ṣubḥī Husayn Hallāq (ed.), Beirut, Dār Ibn Ḥazm, 1993. For the *Muḥallā*, I have used: *Al-Muḥallā bi-l-āthār*, 'Abd al-Ghaḥfār Sulaymān al-Bandārī (ed.), Beirut, Dār al-Fikr, n.d.

<sup>6</sup> 'Abbās, Iḥsān (ed.), *Rasā'il Ibn Ḥazm al-Andalusī*, Beirut, al-Mu'assasa al-'arabiya li-l-dirāsāt wa-l-nashr, 1987 (2nd edition). The relevant texts are *Risālatān ajāba fihimā 'an risālatayn su'ila fihimā su'al 'anif* and *Risāla fī l-radd 'alā al-hātif min bu'd*. Abū Zahra, Muḥammad, *Ibn Ḥazm: ḥayātuhu wa-'aṣruhu-arā'uhu wa-fiqhuhu*, Cairo, Maṭba'at Aḥmad Mukhaymar, 1954.

<sup>7</sup> Arnaldez, *Grammaire et théologie*, 222.

<sup>8</sup> Arnaldez, *Grammaire et théologie*, 226.

<sup>9</sup> *Ibidem*, 248.

one must note that Arnaldez fails to observe one of the most important conclusions to be drawn from Ibn Ḥazm's arguments: Islamic law is closed because it is finite in scope. Unlike al-Shāfi'ī and mainstream Islamic legal theory, which empower the Muslim jurist to develop an infinite range of divine commands and prohibitions, Ibn Ḥazm argues that religious law is limited to the explicit texts of the Qur'ān, Sunna, and the consensus of the Companions.

Influenced by Arnaldez's account as well as by the use of Ibn Ḥazm's work by some modern Arab legislators, Y. Linant de Bellefonds undertakes a systematic exposition of the medieval thinker's legal method.<sup>10</sup> He gives particular attention to Ibn Ḥazm's attack on the delegation of authority (*taqlīd*) and therefore on the *madhhab* system.<sup>11</sup> Thus, he prefers to label Zāhirism a method, rather than a school of law. In addition, he examines the application of that method in the *Muḥallā*, in an effort to determine whether Ibn Ḥazm's ideas could form the basis for a modern reform of Islamic law. He answers in the negative, concluding that Ibn Ḥazm's application of his legal theory leads to results similar to those reached in the "orthodox" schools of law.<sup>12</sup> Although Lillant de Bellefonds rejects the conclusion that Ibn Ḥazm is always narrowly dogmatic, he also concludes that he is not always liberal either. Rather, Ibn Ḥazm applies his method in a rigorous manner, regardless of where it may lead.<sup>13</sup>

In general, this conclusion is fair. Unlike some modern authors, who have determined in advance what conclusions they wish Islamic law to reach, Ibn Ḥazm genuinely attempts to understand the meaning of the sacred texts of Islam. This means that his conclusions will not always be to the liking of a modern, Western or Westernized liberal. At the same time, Linant de Bellefonds, like Arnaldez, fails to note that Ibn Ḥazm argues for the limited scope of the *Sharī'a*. Rather, he focuses on the possibility of using Ibn Ḥazm's method to reverse or overrule existing legal rules. Since many of the rules he wishes to re-

<sup>10</sup> Bellefonds, Y. Linant de, "Ibn Ḥazm et le Zahirisme juridique," *Revue algérienne, tunisienne et marocaine de législation et de jurisprudence*, LXXVI (1960), 1-43.

<sup>11</sup> *Ibidem*, 5-7.

<sup>12</sup> Bellefonds, Y. Linant de, "Ibn Ḥazm et le Zahirisme juridique," 42.

<sup>13</sup> *Ibidem*, 43.

form are based on explicit texts from the Islamic canon, Ibn Ḥazm's works are of little help.

The most extensive review of Ibn Ḥazm's legal methodology in a Western language is undertaken by Abdel Magid Turki.<sup>14</sup> Using the Andalusian Mālikī al-Bājī as a foil, Turki examines Ibn Ḥazm's legal theory in considerable detail. He makes a number of criticisms of Ibn Ḥazm's method. Most damning is his argument that Ibn Ḥazm's method, while logically consistent, leads to illogical or inconsistent conclusions.<sup>15</sup> Having rejected analogical reasoning and other techniques for establishing universal principles in the law (such as *maqāṣid al-Sharī'a*), Ibn Ḥazm forfeits any chance of harmonizing the contradictory rulings of the *Sharī'a*. Turki is right to argue that Ibn Ḥazm's method leads to piecemeal rulings which he cannot harmonize with one another. On the other hand, however, Ibn Ḥazm never claims that God's law is, or should be, consistent and harmonious, only that the method by which God reveals it is consistent. Furthermore, as Ibn Ḥazm repeatedly points out, the use of analogical reasoning has not led to certain and harmonious results, but rather to a plethora of competing claims about God's law. In the absence of clear textual proof for one's argument, these claims are irresolvable. Consequently, the use of analogical reasoning does not lead to a more harmonious and consistent legal system. What it does do, in combination with the *madhhab* system, is to place enormous power in the hands of the jurists. The jurists have the task of arriving at a potentially infinite series of laws, each of which the layperson is obliged to follow for the sake of his or her salvation. Finally, one must suspect that at least some of the contradictions in Islamic law originate in the canon of sacred texts. So long as one accepts the validity of these texts, it is not possible to arrive at a perfectly harmonious set of laws.

My aim in this introduction is to undertake a reassessment of Ibn Ḥazm's legal theory based on one of his works, "The Sufficient Tract on the Rules [Derived from] the Sources of Religion" (*al-Nubdha al-kāfiya fī uṣūl aḥkām al-dīn*), the text of which I have here provided in a complete English translation. I will argue that Ibn Ḥazm's method is based on a relatively small number of principles which he

<sup>14</sup> *Polémiques entre Ibn Hazm et Bagi sur les principes de la loi musulmane*, Algiers, 1973.

<sup>15</sup> *Ibidem*, 311-2.

derives from the text of the Qur'ān, whose wording he closely follows and even mimics.<sup>16</sup> This method leads Ibn Ḥazm to reject the entire structure of Islamic law and its institutions as they existed in his time (and as they still exist today) in favor of a substantially more restricted view of the scope of religion. This narrowing of the scope of religious law, along with Ibn Ḥazm's commitment to rationalism, individualism, and anti-clericalism, have made him a figure of enduring interest, both within pre-modern Islamic intellectual history, and to modern Muslims in search of an alternative to the *madhhab* system.

The *Nubdha* is a good choice to explicate Ibn Ḥazm's legal method for a number of reasons. First, Ibn Ḥazm wrote it with the intention of providing a summary of the arguments of "our larger book on this", that is, of his *Ihkām*. Thus, although the *Nubdha* is much shorter than the *Ihkām* (short enough to be translated here in its entirety), it is comprehensive in that it covers the main arguments of the larger work in an abbreviated manner. From a passage in the *Muḥallā*, it is clear that Ibn Ḥazm wrote the *Nubdha* before the *Muḥallā*, but clearly after his adoption of Zāhirism.<sup>17</sup> Unlike *Marātib al-ijmā'*, which was written prior to Ibn Ḥazm's turn towards Zāhirism, the *Nubdha* represents his mature thought.<sup>18</sup>

The text of the *Nubdha* does present a few problems. The closest version one has to a critical edition is Muḥammad Ṣubḥī Ḥasan Ḥallāq's 1993 edition, published by Dār Ibn Ḥazm. Ḥallāq uses a manuscript from the Rāshidiya Library in Pakistan, which was copied in 787/1385-6. With the exception of a few corrections in punctuation and wording, the 1993 edition is identical with preceding editions of this text. It appears that all existing editions depend on the same manuscript, or manuscript tradition. There is some disagreement about the proper title of the work, and some editors have entitled it *al-Nubadh fī uṣūl al-fiqh al-Zāhirī*. Following the example of Sa'īd

<sup>16</sup> For quotations from the Qur'ān, I have used A.J. Arberry (transl.), *The Koran Interpreted*, New York, 1955. In some cases, it has been necessary to alter Arberry's translation in order to accommodate Ibn Ḥazm's understanding of the Qur'ānic text.

<sup>17</sup> For the latest periodization of Ibn Ḥazm's works, see Ljamai, *Ibn Ḥazm et la polémique islamo-chrétienne*, chapter two.

<sup>18</sup> Ibn Ḥazm, *Marātib al-ijmā' fī l-'ibādāt wa-l-mu'āmalāt wa-l-i'tiqādāt*, Ḥasan Aḥmad Ispir (ed.), Beirut, Dār Ibn Ḥazm, 1998. The doctrine of consensus expounded in this work is closer to that of conventional *uṣūl al-fiqh* texts. As will be clear from what follows, Ibn Ḥazm's conversion of Zāhirism led him to adopt a very different theory of consensus.



al-Afghānī, and Carl Brockelmann, I have entitled the text, *al-Nubdha al-kāfiya fī uṣūl aḥkām al-dīn*, which seems likely to have been Ibn Ḥazm's original title.<sup>19</sup>

Ibn Ḥazm begins his treatise by reminding his reader that God has imposed on mankind the obligation to obey Him and His Messenger; that one's very salvation depends on one's obedience to God's commands. Furthermore, he quotes God as saying in the Qur'ān, "Today I have perfected your religion for you," (al-Mā'idā, 3) indicating that God's declared commands are already comprehensive and final. Unlike many Muslim jurists who have taken the comprehensiveness of Islamic law to be a warrant to extend the limited number of texts contained in the Qur'ān and the Sunna to the potentially limitless number of legal topics through the use of analogical reasoning and other techniques of legal reasoning, Ibn Ḥazm rejects any addition to this fixed body of completed texts. Indeed, he argues that God's promise to preserve "the Remembrance" (al-Ḥijr, 9) guarantees that no valid proof text can be totally forgotten, such that it would be lost from the Qur'ān or Sunna. Nothing may be added or subtracted from the corpus of explicit proof texts, and no human authority can replace, add to, or subtract from, the authoritative sacred texts. "What is lawful in the age after the death of the Prophet (pbuh) is lawful forever, what was unlawful at that time cannot ever be lawful."

Having established this basic principle, Ibn Ḥazm moves on to discuss consensus "because there is a difference of opinion concerning it." In fact, Ibn Ḥazm rejects consensus (*ijmā'*) as it is usually understood by the Sunni Muslim community. Instead, he quotes the Qur'ān, "If it [the revelation] had been from other than God surely they would have found in it much inconsistency." (al-Nisā', 82) Disagreement is part of human nature, and only God can resolve such differences in a final manner. As such, it is futile to demand that people all share a single opinion, and even if they were to agree, this agreement would not constitute a command from God, and hence constitute *Shari'a*. Ibn Ḥazm does accept a kind of consensus, but limits it to the consensus of the Companions of the Prophet. Given that the Companions disagreed on so many things, he argues, any consensus they reached can only be attributed to having received that opinion from the Prophet, and, indirectly, from God. Attempts by

<sup>19</sup> See Afghānī's introduction to his edition of *Mulakhkhaṣ ibṭāl li-qiyās*, 14.

later scholars to reach a consensus on a matter of law have no validity since by excluding the generation of the Companions they cannot include all of the Muslims, and because they substitute human for divine authority. Thus, the idea that consensus can be productive of new law is unacceptable to Ibn Ḥazm. For him, a consensus of the Companions is nothing more than a tradition passed down from the Prophet without a text. This consensus must be passed down by the Muslim community as a whole, and thus is not specific to the people of Medina, as many Mālikīs claimed. Once established, a consensus cannot be abrogated without a clear text. That is, there is a presumption of continuity (*istiṣhāb al-ḥāl*). If a consensus appears that violates an existing rule, the only exceptions that may be made to the rule are those specifically indicated by that consensus. Ibn Ḥazm calls this “the minimum opinion” (*aqall mā qīl*). This last principle is clearly intended to limit the opportunities for jurists to use consensus as a way of voiding the rules contained in authentic texts.

Of course, there are relatively few rules that are determined by consensus, especially given the narrow definition of consensus permitted by Ibn Ḥazm. This leads him to consider reports (*akhbār*). Since the Qur’ān has been transmitted by a sufficient number of recurrent (*mutawātir*) narratives, one can be certain of its authenticity. The major source of disagreement, therefore, is the categorization of *ḥadīths*. The major problem is whether one should accept unique reports (*akhbār al-āḥād*). Unique reports are of three types: 1) those passed down by a single reliable narrator in each link of the chain of transmission (*isnād*) until it reaches the Prophet; 2) those passed down by single narrators, including one who is unreliable, has a poor memory or is unknown; 3) a chain which is missing a link, such as a follower narrating from the Prophet without an intervening companion.

Here we encounter another fundamental principle of Ibn Ḥazm’s method — certainty. Since God obliges us to follow his rules, these rules must be clear and knowable with certainty. Of the three types of reports indicated above, one may only accept the first category — namely, those narrated by single individuals in a complete chain going back to the Prophet. The number of narrators is unimportant, but the second and third categories of reports must be rejected since there is doubt about their authenticity. Ibn Ḥazm sternly rebukes most of the Ḥanafīs and the Mālikīs, whom he accuses of accepting these reports of unknown value, citing the Qur’ānic injunction, “O believers,



if a grave sinner comes to you with a tiding, make clear, lest you afflict a people unwittingly, then repent of what you have done” (al-Ḥujurāt, 6). For the same reason, one must not relate reports some of whose narrators are unknown, or whose memory is known to be poor. On the other hand, the number of narrators is unimportant. The Prophet entrusted important messages to individuals and acted on reports he received from individuals, so there is no reason to reject unique reports so long as their narrators are known to be reliable.

It may be objected that one cannot be certain that such reports are authentic, even if the narrators to whom they are attributed were reliable. After all, witnesses lie or are mistaken with disconcerting regularity. It is possible that false reports have been attributed to reliable men and women, who, once deceased, cannot denounce these falsities. Ibn Ḥazm accepts that this is possible with regard to testimony, and notes that our responsibility is limited to acting in accordance with the information in our possession. Nonetheless, he rejects applying this principle to the revelation of God’s law. God has guaranteed the preservation of the Remembrance and this means that no rule that belongs to the religion can be lost over time. What has been lost or is uncertain is not part of the religion of Islam. This does not mean that everyone knows the truth. At any one moment, there need only be one scholar who knows the truth to pass it on to the next generation. Knowledge is not distributed equally, and the truth lies with the one who can provide a certain proof for his opinion.

With regard to his opinion of the Companions of the Prophet, Ibn Ḥazm holds opinions typical of a Sunni Muslim. He regards all of the Companions as legitimate sources of reports from and about the Prophet. He believes that the Qur’ān testifies to the Companions’ truthfulness, so all of their reports must be accepted, provided there is a valid chain of transmission leading back to one of them. Nonetheless, the fact that a Companion acted contrary to a report he or she is supposed to have passed down from the Prophet has no effect on our obligation to accept the report. A Companion’s deeds have no influence on *Shari’a*, and they cannot be used to infer instructions from the Prophet. Although the Companions are reliable narrators, they are not immune from error, nor do their opinions constitute law. The only exception to this is the consensus of the Companions, for the reasons stated above.

Another fundamental principle of Ibn Ḥazm's method is clarity. God says in the Qur'ān, that He made the religion clear to the Prophet so that he may teach it to the believers (see al-Naḥl, 89 and 44). As the name Zāhirī implies, Ibn Ḥazm argues that one must follow the "manifest" or "literal" (*ẓāhir*) meaning of the sacred texts. In general, one must accept texts at face value, unless one can produce another text that clearly indicates that another meaning was intended. God may also coin technical meanings for words (*ṣalāt*, *zakāt*, etc.), which is His right, since it is He who assigns meanings to words. Although Ibn Ḥazm does not discuss the use of figurative speech (*majāz*) in the *Nubdha*, he does do so in the *Iḥkām*. There he argues that God may use metaphorical meanings in place of literal ones, and that we can know when that is His intent because the literal meaning would be contrary to reason. For example, if a passage of the Qur'ān refers to the sky as if it were a living, sentient being, we know that this must be meant metaphorically.<sup>20</sup> When it is possible to understand a word in its literal sense, however, we must do so. To resort to allegorical interpretation under these circumstances is to distort God's speech from its intended meaning. Furthermore, if we allow others to deny that God's statements are intended literally, this opens up the door to a radical skepticism about language that would make communication impossible. Anyone could assert that any utterance was not meant literally.

The Qur'ān can be divided into three parts according to Ibn Ḥazm: those passages which are understood by all, those which are understood by none, and those which are understood by some. The disconnected letters that begin some chapters, as well as the oaths contained in the Qur'ān, cannot be understood by men and have no value as law. Otherwise, the entire Qur'ān is clear, although not all passages are understood by everyone all of the time. At any time, however, someone must understand the intent of each passage which expresses a law. Thus, although the meaning of all passages in the Qur'ān is not clear to every individual, the community as a whole cannot be ignorant of God's law.

<sup>20</sup> *Iḥkām*, iv, 31-2. In the following section (p. 33), Ibn Ḥazm gives the example of a Mālikī who was so intent on denying the existence of *majāz* that he concluded that stones have rational minds.

The next principle that underlies Ibn Ḥazm's method is that of obtaining the maximum utility from the fixed canon of sacred texts. For example, when a word has more than one meaning, one must not restrict it to one meaning. All possible meanings are valid, provided they do not result in a logical absurdity. Similarly, when texts of the Qur'ān and the Sunna contradict one another, one must attempt to use them all, and not claim that one text has abrogated another, unless one has certain proof that this is the case. If one text is broader in meaning than the other, the more narrowly construed text constitutes an exception from the more general rule. It is unacceptable for us to speculate on the meaning of the text, or to guess at God's intentions in revealing a rule. Unless God specifically indicates His intent in the text, we have no way of ascertaining why He sent down a given rule. Ibn Ḥazm does accept that there are clear instances of abrogation, but we must be able to determine with certainty that this has occurred. Furthermore, once God abrogates one rule with another, the abrogating rule remains in force until the Day of Judgment, while the abrogated rule cannot be reinstated. Otherwise, it would be impossible to be certain which rule applied or applies to which period of time. In all of this, the Sunna is the equal of the Qur'ān since they are both part and parcel of the same revealed law. Both are equally authoritative. In addition, God's ability to abrogate His revelations is limited. God only abrogates a rule, that is, a command or prohibition, that originates in His will. He does not abrogate information since this would mean that the abrogated information has been false. God always speaks truthfully and clearly.

Another example of Ibn Ḥazm's principle that we must make the maximum use of the sacred texts is that we are obliged to interpret God's and the Prophet's commands as obligations and their interdictions as prohibitions. We cannot assume that some commands indicate obligations while others indicate recommendations, or that some interdictions indicate prohibitions while others are intended to dissuade us, unless we can provide proof contained in an authentic text or consensus. When, however, God does not explicitly rule on a human act, we are not permitted to fill this gap using analogical reasoning or personal opinion. In the absence of a rule revealed by God, human acts are indeterminate (*'afw*), left without a legal rule (*matrūk*). In leaving many human acts without a ruling in the *Sharī'a*, God lightens Man's burden since these acts are permitted. Further-

more, not all of the Prophet's acts indicate obligations. Unless the Prophet stated that a specific act was obligatory, his acts merely indicate that something is permitted, while his abstention from an act merely indicates permission to abstain from that act. God calls the Prophet a "good example" (*uswa ḥasana*) (al-Mumtaḥana, 6), but this is not the same thing as saying that everything he did or did not do indicates a legal obligation or prohibition. Thus, while it may be meritorious to imitate the Prophet in all things, one is only required to obey specific commands and prohibitions.

Ibn Ḥazm is nothing if not an individualist. From the point of view of medieval Sunnism, however, this individualism could be quite controversial. There was a common view that one should adhere to the majority view of the community, and the doctrine of consensus is understood by Sunnis to support this principle. Ibn Ḥazm, on the other hand, is a fierce defender of the right of the individual to dissent. As we have seen, he believes that only one scholar in each generation need know the truth for it to be preserved and passed on. For that reason, he is willing to accept unique reports as valid, provided all of the authorities in the chain of transmission are known to be reliable. That one's opinion is shared by the majority is no proof, and even one person's reasoned objection is sufficient to refer the matter back to the Qur'ān and Sunna. Thus, he reinterprets "isolation" (*shudhūd*) to mean isolation, even of the majority, from the truth, not the defense of a minority opinion. As an example of this point, he notes that the Caliph Abū Bakr disagreed with the other companions when he made war on the apostates. When the other companions realized that the Qur'ān supported Abū Bakr's actions, they accepted his opinion as authoritative.

The next principle is that human reasoning, while necessary to ascertain God's law from the sacred texts, cannot determine God's law independently of a clear command or prohibition from God. God's law issues from His will, and as such cannot be predicted by human reason. It is unacceptable to resort to personal opinion (*ra'y*) in determining God's law. No human being can usurp God's role as sole legislator, to do so would be a challenge to God's authority. This principle, combined with the principle that God has completed His religion by fixing the canon of sacred texts, leads Ibn Ḥazm to conclude that if God intended to legislate a law, He must have clearly communicated

that law through the Prophet. Therefore, anything left unstated has no ruling in God's law.

The same logic leads him to reject analogical reasoning (*qiyās*). Analogical reasoning requires the jurist to identify a *ratio legis* ('*illa*') in an existing rule (usually contained in a text) which can be used to extend that rule to cases which are not covered by any existing rule. In theory, this allows the jurist to determine an infinite number of rulings based on a finite number of texts. Ibn Ḥazm argues that there is no basis for this practice. First, the various proof texts cited by jurists who advocate the use of analogical reasoning do not actually mention analogical reasoning at all. The proponents of *qiyās* have twisted the meaning of these texts in order to fabricate a justification for their own use of analogy. Analogical reasoning is not necessary since God has already provided all of the rules He wishes us to follow in the Qur'ān and Sunna. Since we cannot speculate on God's intention in commanding or prohibiting certain things, we have no business stating that we know what the '*illa*' of a certain rule is, much less making analogies based on the supposed '*illa*'.

For Ibn Ḥazm, the absurdity of using analogical reasoning to determine a rule of the *Sharī'a* becomes clear when one considers the similarities that allow one to make analogies. Any given human act or created thing may have many different qualities. How can we claim to know which of these qualities carries with it the legal rule? Unless God specifically indicates the ratio, it is simply arbitrary to identify one characteristic as a basis for analogical reasoning. Clearly, analogical reasoning violates the principle of certainty, which we have seen is fundamental to Ibn Ḥazm's concept of *Sharī'a*. This is not to say that every created thing is unique, and therefore incommensurable. If this were the case, it would be impossible to generalize at all. Ibn Ḥazm acknowledges that different individual things may belong to the same genus and species, and therefore share the same legal rule, but this is not the same as asserting the existence of an '*illa*' shared by two different species. For example, two pigs (members of the same species) share the rule that they are impure, but this rule cannot be extended to other animals without a clear textual basis.

The obvious consequence of eliminating analogical reasoning as a legitimate tool to determine Islamic law is that the scope of Islamic law is reduced considerably. This does not bother Ibn Ḥazm. Citing both the Qur'ān and Sunna, he argues that God specifically leaves

many matters indeterminate (*'afw*) in law, thus making them permitted. The Qur'ān says, "He created all for you that is in the earth", (al-Baqara, 29) and the Prophet said, "Whatever things He is silent about are indeterminate". God's law is comprehensive, but only in the sense that God, by His silence, allows His servants considerable latitude. Since God has not assigned a ruling to many things, human beings are free to choose.

Having opposed the use of analogical reasoning, Ibn Ḥazm also opposes the use of implied meaning (*dalīl al-khiṭāb*) and particularization (*khuṣūṣ*). Implied meaning means that if God indicates that a rule applies to a certain class of acts or things, then the opposite rule applies to acts or things that have different qualities. For example, if God indicates that herd animals are to be taxed at a certain amount, we cannot assume that this implies that non-herd animals must be taxed at a different amount. Ibn Ḥazm argues that one cannot logically combine analogical reasoning with "implied meaning"; the two are based on mutually exclusive assumptions. Analogical reasoning assumes that different things share the same characteristic which allows us to use a textually stipulated rule to arrive at a rule for something about which the sacred texts are silent. Implied meaning assumes that when we have a textually stipulated ruling we can assume that things not stipulated in text are subject to the opposite ruling. A proponent of these types of argument would no doubt reply that there is no contradiction since, in the case of analogical reasoning, the two things share a common ratio, whereas in the case of implied meaning, the ratio that is present in the textually stipulated rule is absent from the thing whose rule is not stipulated.

Ibn Ḥazm concludes his treatise with a polemic against delegating authority (*taqlīd*) to human experts. By delegating authority, he means accepting someone else's opinion without proof. Of course, this is a direct attack on the *madhhab* system, which was (and is) based on the division of Muslim into experts (sing. *mujtahid*) and laypersons (sing. *muqallid*). As one would expect, Ibn Ḥazm argues that God alone has the right to legislate in religion, and that this authority cannot be usurped by any human being. The Prophet, of course, merely passed on God's commands to us. The Qur'ān (al-Baqara, 170) specifically forbids us from following blindly the teachings of our forefathers, which in the case of the Meccans would have been paganism. While we may follow an individual opinion of a



jurist such as al-Shāfi'ī, Abū Ḥanīfa, Mālik, Aḥmad b. Ḥanbal, or one of the Companions, it is forbidden to accept all of their opinions. That is, we must inquire as to the basis of their opinions. Insofar as their opinions can be proven to be based on the Qur'ān and Sunna, we must accept them. Accepting all of the opinions of a certain jurist, however, would imply the delegation of authority to that jurist. No one is always right, and we are bound by religion to investigate every legal opinion before accepting it as God's law.

Ibn Ḥazm argues that the *madhhab* system has led Muslims into some obvious absurdities. First, laypersons, although not regarded as competent to decide on matters of law, nonetheless must choose which legal authority to follow. On what basis should they choose an authority? Can they ask for several opinions and then decide which one they like best? Furthermore, different schools of law prevail in different regions of the world. Is Islam a different religion in Khurasān than it is in al-Andalus or in Yemen?

This hostility towards the delegation of authority has led some modern commentators to argue that Ibn Ḥazm is demanding the impossible from laypeople. Islamic law is too complex, and there are too many proof texts for every individual to be familiar with them all.<sup>21</sup> As Muḥammad Abū Zahra points out, Ibn Ḥazm does not require each believer to be equally learned in Islamic law. He simply requires each individual, when consulting a more knowledgeable person, to ask for the proof text for his opinion. Thus, the diffusion of Islamic law is not fundamentally different from the diffusion of *ḥadīth*. Some persons are more knowledgeable than others, but no one can claim that his opinion is to be accepted without clear proof.

Ibn Ḥazm's independent reasoning (*ijtihād*) is something which every believer can practice. For him, independent reasoning simply means doing one's utmost to seek out the relevant text. So long as we do not substitute our own opinions for God's law, we will be rewarded for our efforts, even if we commit errors. For Ibn Ḥazm, there is no reason why *ijtihād* cannot be divisible. Each of us is knowledgeable about some aspects of Islamic law, if only in a limited way. Since that knowledge is no less valid than if we were familiar with

<sup>21</sup> This is the view expressed by the first editor of the *Nubdha*, al-Shaykh Muḥammad Zāhid b. al-Ḥasan al-Kawtharī. For this quotation and a response in defense of Ibn Ḥazm, see Abū Zahra, *Ibn Ḥazm*, 279.

many aspects of the law, we are entitled to give our opinion (*fatwā*) on those areas of the law that we know.

The consequence of this rejection of the delegation of authority is the creation of an Islamic “priesthood of all believers”. The distinction that grew up between the ‘*ulamā*’, and the laypeople in Islam crystallized into the *madhhab* system not long before Ibn Ḥazm wrote. He was well aware that this distinction between believers was an innovation, and he was determined to put a stop to it. His approach validated the right of every Muslim to seek knowledge, pass on that knowledge, and demand that others who claim knowledge provide proofs of their views.

Again, I would argue that these principles constitute a method. Zāhirism cannot be called a *madhhab*, since it rejects the division of believers into experts and laypersons, the fundamental basis for the establishment of a school of law. Even the results reached by Ibn Ḥazm in works such as the *Iḥkām* and the *Muḥallā* are merely provisional. The nature of Ibn Ḥazm’s method is that it perpetually seeks the correct interpretation of the Qur’ānic text, and that it seeks to establish the canon of authentic traditions and to interpret them. Ibn Ḥazm had no interest in establishing a school of law that would replace the existing schools. Rather, he proposed a much more radical change in the way in which Muslims understood (and still largely understand) their relationship to the sacred texts of the Islamic tradition. His attack on the authority of experts threatened to reshape the way in which religious authority is constituted in Islam.

Unsurprisingly, this frontal assault on the *madhhab* system met with considerable resistance. It is not my intent here to review the history of Zāhirism after Ibn Ḥazm, or to examine the later influence his thought had on a variety of medieval Muslim thinkers. Despite the controversial character of his views, Ibn Ḥazm exercised considerable influence on a number of thinkers of the Almohad period, and on Sufi thinkers influenced by Muḥyī l-Dīn b. al-‘Arabī’s adoption of Zāhirism. My task in this introduction and in the translation that follows is to demonstrate the importance of Ibn Ḥazm’s critique of Islamic legal theory for medieval Islamic intellectual history, and to suggest why his ideas have been and continue to be of enduring interest.

The reasons for Ibn Ḥazm’s importance can be stated simply. On the one hand, Ibn Ḥazm insists on taking the texts of the Qur’ān and the Sunna as authoritative and at face value. It would be incorrect,

however, to characterize Ibn Ḥazm as a “fundamentalist.” As we have seen, he clearly had little sympathy for those who insisted on the literal meaning of every passage, regardless of the plausibility of such a narrow understanding of the canon of sacred texts. While God is free to impose any set of rules He wishes on His creation, we are obliged to use reason to ascertain these rules from the relevant texts. Where God does not provide a rule, we are free to choose, but we cannot assert that these choices constitute divine law. The fact that Ibn Ḥazm allows us so much freedom to choose makes him a liberal, at least within the context of a religion based on sacred law.<sup>22</sup> Ibn Ḥazm's liberal critique of Islamic legal theory was a powerful attack on the religious establishment of his time, and it has lost little of its potency today.

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### **The Sufficient Tract on the Rules [Derived from] the Sources of Religion**

Ibn Ḥazm of Cordoba

The Shaykh, the jurist, the Imām, the Ḥāfiẓ, the Wazīr, Abū Muḥammad ‘Alī b. Aḥmad b. Sa‘īd ibn Ḥazm of al-Andalus, of Cordoba, may God be pleased with him, said:

Praise God who created us and gave us sustenance, and who granted us hearing, sight, and hearts. We ask him to make us among those who are grateful to him. May God bestow the most complete, most excellent, and most pure blessings upon the Lord of the Messengers, Muḥammad, His servant and Messenger. Upon him the most excellent and best greetings from his Lord, then from us; then upon his wives, his family, his companions, and their followers. There is no power or might save in God, the sublime, the almighty.

<sup>22</sup> Adang, (“Ibn Ḥazm on Homosexuality,” 30) notes Ibn Ḥazm's relatively liberal views on homosexuality, but argues for caution in assessing the results of Ibn Ḥazm's distinctive methodology. In another study (“Women's Access to Public Space,” 90), she argues that Ibn Ḥazm advocated greater visibility for women in religious and social gatherings than did his Mālikī opponents. In my view, Ibn Ḥazm's liberalism is inherent in his Ḍāhirism. Adang is preparing study of Ibn Ḥazm's legal views that should add further material to the discussion.

To begin:

May Exalted God grant us and you success in discharging the obligations that He has imposed on us and safeguard us from doing that which He has forbidden. When we wrote our long book on jurisprudence, and examined the opinions and arguments of our opponents, with Exalted God's help and favor we made clear the demonstrative proofs concerning all of this. Having asked God for guidance and having implored him for His aid in making the truth clear, we decided to sum up these points in a short book that would be easy to understand and memorize, and, God, the all-powerful, the sublime, willing, would be a stair overlooking the contents of our large book on this. God is our sufficiency, and the blessings of the deputy.

## Chapter

Know, may God have mercy on you, that our Lord did not expel us into the world that it should be our abode of residence, but that it should be a way station on our journey, a fortified stopping place. What is desired from us is only that we perform the obligations which our Exalted Lord has imposed upon us, which He sent to us with His Messenger, may peace be upon him. For this [purpose] He created us, for this reason He settled us in this abode, then to be transferred from it to one of the two [eternal] abodes. "Surely the pious shall be in bliss, and the libertines in a fiery furnace."<sup>23</sup> Then He, may He be exalted, made clear to us who the pious are and who the libertines are, saying, may He be exalted, "Whoso obeys God and His Messenger, He will admit him to gardens underneath which rivers flow, therein dwelling forever; that is the mighty triumph. But whose disobeys God, and His messenger, and transgresses His bounds, him He will admit to a Fire, therein dwelling forever, and for him there awaits a humbling chastisement."<sup>24</sup>

We must ask, "How does one obey, how does one disobey?" We find that He, may He be exalted, has said, "We have neglected nothing in the Book."<sup>25</sup> And He, may He be exalted, said, "And We have

<sup>23</sup> Al-Infīṭār, 13-14.

<sup>24</sup> Al-Nisā', 13-14.

<sup>25</sup> Al-An'ām, 38.

not sent down upon thee the Book except that thou mayest make clear to them that whereon they were at variance, and as a guidance and as a mercy to a people who believe.”<sup>26</sup> And He, may He be exalted, said, “O believers, obey God, and obey the Messenger and those in authority among you. If you should quarrel on anything, refer it back to God and the Messenger, if you believe in God and the Last Day.”<sup>27</sup> And He, may He be exalted, said, “Today I have perfected your religion for you.”<sup>28</sup>

So, praise God, we are certain that the religion which our Lord made obligatory upon us and which He made our only salvation from Hell is made clear in its entirety in the Qur’ān, in the Sunna of His Messenger (pbuh), and in the consensus of the community, and that the religion has been completed; there is nothing to be added or subtracted from it. And He made us certain that all of this is preserved and kept accurate, for Exalted God said, “It is We who have sent down the Remembrance, and We preserve it.”<sup>29</sup> It is true with a certainty which leaves no room for doubt that it is not permissible for anyone to issue a legal opinion, render judgment, or act in religion except on the basis of a text of the Qur’ān, an authentic text of a judgment rendered by the Messenger of God (pbuh) or a certain consensus of those in authority over us from which not one of them dissents. It is true that whoever forbids something or makes it obligatory, [his opinion] will not be accepted without proof. For no one but Exalted God can make something obligatory or forbid it. It is not permissible to transmit information about God except on the basis of a report originating with Him, may He be exalted. Licitness requires one who makes licit, prohibition requires one who prohibits, and obligation requires one who makes obligatory. There is no one who makes lawful, no one who prohibits, and no one who makes obligatory but Exalted God, creator and possessor of all. There is no god but He.

<sup>26</sup> Al-Nahl, 64.

<sup>27</sup> Al-Nisā’, 59.

<sup>28</sup> Al-Mā’ida, 3.

<sup>29</sup> Al-Ĥijr, 9.

## The Discourse on Consensus and What It is

We begin with consensus because there is a difference of opinion concerning it. We say, and success comes from God, that it is correct to relate from God, the all-powerful, the sublime, the obligation to follow consensus on the basis of what we have mentioned and on the authority of [God], the all-powerful, the sublime, having said, "But whoso makes a breach with the Messenger after the guidance has become clear to him, and follows a way other than the believers', him We shall turn over to what he has turned to and We shall roast him in Gehenna-an evil homecoming."<sup>30</sup> He, may He be exalted, censured differences of opinion and forbade them by His saying, may He be exalted, "And hold you fast to God's bond, together, and do not scatter",<sup>31</sup> and by His saying, may He be exalted, "And do not quarrel together, and so lose heart, and your power depart."<sup>32</sup> Religion is either consensus or disagreement. He, may He be exalted, relates that the disagreements do not come from [God], the all-powerful, the sublime. He, may He be exalted, said, "If it had been from other than God surely they would have found in it much inconsistency."<sup>33</sup> [Thus,] it is necessarily true that consensus comes from Him, may He be exalted. For the truth comes from Him, may He be exalted, and there is nothing in the world but consensus and disagreement, and [since] disagreement is not from Exalted God, nothing remains but consensus which without a doubt is from Exalted God. Whoever, having known this or this having been proven to him, violates [this consensus], deserves the threat mentioned in the verse.

We investigated this consensus which we are obliged to follow and we found it to be one of two types, not more.

Either it is the consensus of every age from the beginning of Islam until the end of the world and the coming of the Day of Resurrection, or the consensus of one age to the exclusion of others. It is not possible that the consensus which God obliges us to follow is the consensus of every age from the rise of Islam until the end of the world because if this were so, no one would be obliged to follow consensus because

<sup>30</sup> Al-Nisā', 115.

<sup>31</sup> Āl 'Imrān, 103.

<sup>32</sup> Al-Anfāl, 46.

<sup>33</sup> Al-Nisā', 82.



without a doubt there would be ages that come after him, so the consensus would not yet have been completed. Exalted God's command would be invalidated by this. This is infidelity on the part of he who regards it as possible if he knows this and persists in [this opinion]. This type is certainly invalid, without a doubt. Only the second type remains. It is the consensus of one age, to the exclusion of others. We investigated this to learn which is the age whose people's consensus is the one which Exalted God commanded us to follow and not violate. We found the opinions on this to be of three types, no more.

Either this age is one of the ages after the age of the Companions, may God be pleased with them, or it is only the age of the Companions, or the age of the Companions and any age after them whose people also agreed on something is consensus. We investigated the first opinion and found it to be false due to two sufficient proofs:

First, there is a consensus that it is invalid; [i. e.] no one has been of this opinion.

Second, it is an unproven claim and as such it is certainly invalid due to two proofs.

First, [God's] saying, "Say: 'Produce your proof, if you speak truly.'" <sup>34</sup> So it is true that whoever lacks proof is not truthful in his claim.

Second, it is not impossible for an opponent to make a claim similar to his. One person may say it is the second age, while another says rather it is the third, and a third says rather it is the fourth. This is clear insanity, so this opinion is invalid, praise God.

We have investigated this second opinion, which is the opinion of one who says that the people of the age whose agreement is the consensus which Exalted God ordered us to follow are none other than the Companions, may God be pleased with them. We have found it to be true due to two proofs.

First, it is a consensus with which no one disagrees. There have never been two Muslims who disagreed concerning a matter on which all of the Companions, may God be pleased with them, agreed without single one of [the Companions] disagreeing, a consensus whose validity is absolutely certain. This is a valid consensus which no one is permitted to violate.

<sup>34</sup> Al-Naml, 64.

Second, it is true that the religion has been completed due to His having said, may He be exalted, "Today I have completed your religion."<sup>35</sup> If this is true, then it is invalid to add anything to [religion], and it is true that [the religion] has been completed. We have agreed that it is all stipulated by God, the all-powerful, the sublime. If this is so, then the only way to know that which does not come from Exalted God is through the Prophet (pbuh) to whom prophecy came from God. Otherwise, whoever attributes something to Exalted God about which he has not received knowledge from God, attributes to God that which he does not know. This is comparable to polytheism and Satan's advice. Exalted God said, "Say: 'My Lord has only forbidden indecencies, the inward and the outward, and sin, and unjust insolence, and that you associate with God that for which He sent down never authority, and you say concerning God such as you know not.'"<sup>36</sup> And Exalted God said, "And follow not the step of Satan; he is a manifest foe to you. He only commands you to evil and indecency, and that you should speak against God such things as you know not."<sup>37</sup>

Thus, since it is true that there is no way to know what Exalted God wills except through the Messenger of God (pbuh); religion can only come from Exalted God. The Companions, may God be pleased with them, are the ones who saw the Messenger of God (pbuh) and heard him. Their consensus on what they agreed upon is the consensus which one is obliged to follow because they transmitted it from the Messenger of God (pbuh) [who] undoubtedly [transmitted it] from Exalted God.

Then we investigated this third opinion that the consensus of the Companions is a valid consensus and that the consensus of the people of any age after them is also a consensus, although there is no valid consensus on that by the Companions, may God be pleased with them. We found it to be invalid, because it must be one of three types.

Either the people of this age agree on what the Companions, may God be pleased with them, agreed on.

Or they agree on something on which there is no valid consensus or disagreement. Either because it is on a matter concerning which no opinion of any of the Companions, may God be pleased with them, has been preserved.

<sup>35</sup> Al-Mā'idā, 3.

Or they agree on a matter concerning which the opinions of some of [the Companions] have been preserved, while [the opinions] of others among them have not.

If the consensus of the people of an age later than them is in accordance with the consensus of the Companions, may God be pleased with them, we can suffice with the consensus of the Companions, may God be pleased with them, and it is obligatory for those who come after them to follow [this consensus]. It is not possible for the consensus of the Companions to increase in its force of obligation due to the agreement of those who came after them, just as the disagreement of those who come after them, should they disagree, does not lessen it. Rather, he who disagrees with them and knowingly violates a certain consensus is an infidel, if this is proven to him and made clear to him, and he persists in denying the truth.

If the consensus of a later age is on a matter about which it was valid for the Companions, may God be pleased with them, to disagree, it is invalid. It is not permissible for consensus and disagreement to coincide on the same question, because they are opposites, and opposites never coincide. Since it is true that the Companions, may God be pleased with them, disagreed amongst themselves, it is not possible for the investigation which they regarded as licit to be forbidden to those who come after them and for [later scholars] to be prevented from exercising the independent reasoning which led to the disagreement on this question and which was permitted to those who preceded them, even if a person who comes after them provides a textual proof for the opinion in addition to the proof put forward by one of the Companions. For, as we have already said, the religion does not change. What was lawful in the age after the death of the Prophet (pbuh) is lawful forever; what was unlawful at that time, cannot ever be lawful. Exalted God said, "Today, I have completed your religion."<sup>38</sup>

Another proof is that these people of a later age and those among the Companions who agree with them are certainly only some of the believers since those Companions, may God be pleased with them, whose disagreement on this matter is related, are not included among

<sup>36</sup> Al-A'raf, 33.

<sup>37</sup> Al-Baqara, 168-9.

<sup>38</sup> Al-Mā'ida, 3.

them. Thus, there is no doubt that they are some of the believers, and there cannot be a consensus. For consensus is only the consensus of all the believers, not the consensus of some of them. Because Exalted God stipulated this, saying, may he be exalted: “And those in authority among you. If you should quarrel on anything refer it to God and the Messenger, if you believe in God and the Last Day.”<sup>39</sup> If some, to the exclusion of others, are in agreement, this is a quarrel. In this case, Exalted God did not command one to follow some to the exclusion of others, but rather to refer it to Exalted God and the Messenger (pbuh). So, this opinion is certainly invalid, without a doubt, praise God.

Then we investigated the third section, the consensus of a later age on a matter on which neither the consensus or difference of opinion of the Companions, may God be pleased with them, has been preserved, but which is either on a matter on which the opinion of some of the Companions, may peace be upon them, to the exclusion of others has been preserved, or on which the opinion of none of the Companions, may God be pleased with them, is preserved. We found it to be invalid due to two proofs.

First, they are some of the believers, not all of them. The name all of the believers is never used for the people of any age after the Companions, may peace be upon them, because the best of the believers have preceded [the later generations]. Therefore, the people of every age after the Companions, may God be pleased with them, are only some of the believers, without a doubt. On this basis, it is false that this is the consensus of the believers, and Exalted God never obliged us to follow the way of some of the believers, nor to obey some of those in authority among us. As for the Companions, may God be pleased with them, in their age they were all of those in authority, since there was no one else [who preceded] them. It is certainly true that their consensus is the consensus of all the believers, without a doubt, praise God, Lord of the worlds. That opinion [that the consensus of later generations is valid] is entirely invalid, since it is not lawful for anyone to oblige as religion that which Exalted God did not oblige on the tongue of his Prophet [pbuh]. Also, whoever [says he] is certain about this is without a doubt lying because it is not possible to determine or count the opinions of all of [the scholars of] the ages af-

<sup>39</sup> Al-Nisā', 59.

ter the Companions, may God be pleased with them, the Followers, and those who came after them, because they have spread over the earth, praise God, from farthest Sind, Khurasan, Armenia, and Azerbaijan, to the Arabian Peninsula, Iraq, al-Ahwaz, Fars, Kirman, Mukran, Sijistan and Ardabil, and all the lands in between.

It is impossible for anyone to know the opinion of every person in these countries.

By a clear proof, it is only correct to be certain of their consensus on matters upon which the Companions agreed.

This proof is that certainty is only valid on condition that every one of those persons who agrees with the consensus of the Companions, may God be pleased with them, is a believer. The opinion of one who disagrees out of ignorance of their consensus is nonsense, unworthy of consideration. Whoever intentionally violates it, knowing that it is their consensus, is an infidel. Thus it is invalid for him to be one out of the group of believers whose agreement constitutes consensus. This judgment does not apply to one who differs with the people of his own age; certainty is only valid for the consensus of the Companions, may God be pleased with them, because they were a limited number of people gathered in Medina and Mecca, and it is known with certainty that they were obedient to the Messenger of God (pbuh). Whoever considered it lawful to disobey [the Prophet] (pbuh) was not one of them; rather, he was outside the faith, expelled from the believers.

It is certainly valid, without a doubt, that the consensus that we are obliged to follow is none other than the consensus of the Companions, may God be pleased with them. It is not permissible for the people of any age after them to agree on an error, because Exalted God has guaranteed us that, "But they continue in their differences excepting those on whom thy Lord has mercy."<sup>40</sup> According to the text of the Qur'ān, [this] mercy is only for those who do good. If it is known with certainty that there is no disagreement, then there must be a consensus on a truth which requires mercy; there is no [third] alternative. If it is not known with complete certainty that there is a consensus on a truth that requires mercy, then there is a disagreement; there is no [third] alternative. As the Qur'ān stipulates, and as we relate in the

<sup>40</sup> Hūd, 118-9.

following tradition, it is impossible for there to be a consensus on something which does not require mercy. From ‘Abd Allāh b. Yūsuf, from Aḥmad b. Faṭḥ, from ‘Abd al-Wahhāb b. ‘Īsa, from Aḥmad b. Muḥammad, from Aḥmad b. ‘Alī, from Muslim b. al-Ḥajjāj, from Sa‘īd b. Manṣūr and Abū al-Rabī‘ al-‘Atakī and Qutayba, who said, from Ḥammād, and he is Ibn Zayd, from Ayyūb al-Sakhtiyānī, from Abū Qilāba, from Abū Asmā’ al-Rahbī, from Thawbān, he said, the Messenger of God (pbuh) said, “One group among my community will continue to make the truth manifest; those who wish to deceive them will be unable to harm them until God’s decree arrives.” Al-‘Atakī and Sa‘īd added in their narration, “while they are still like that.”

‘Abd al-Raḥmān b. ‘Abd Allāh al-Hamdānī informed us, from Abū Ishāq al-Balkhī, from al-Farbarī, from al-Bukhārī, from al-Ḥumaydī, from al-Walīd b. Muslim, from Ibn Jābir, who is Ibn ‘Abd al-Raḥmān b. Yazīd b. Jābir, he said, from ‘Umayr b. Hānī’, that he heard Mu‘āwiya say, I heard the Messenger of God (pbuh) say, “One group among my community will continue to undertake God’s work, and those who wish to deceive them, or who disagree with them, will be unable to harm them, until God’s decree comes, while they are still doing this.”

Abū Muḥammad, may Exalted God have mercy on him, said what we have said above concerning the invalidity of the third type invalidates the opinion of one who says, if one has authoritative knowledge about the opinion of some of the Companions, may God be pleased with them, and none of the others are known to have disapproved of that opinion, then this is a consensus on their part, because this is only the opinion of some of the believers as we have mentioned. Also, he who is certain that other persons agree with that opinion has followed what he knows nothing about, and this is a crime. Exalted God said, “And pursue not that thou hast no knowledge of; the hearing, the sight, the heart—all of those shall be questioned of.”<sup>41</sup> Let every person fear for himself before Exalted God. Let him consider that Exalted God will question his hearing, his sight, and his heart about what he said concerning matters he had no certain knowledge about. Whoever is certain about something about a person, who did not in-

<sup>41</sup> Al-Isrā’, 36.



form him of it directly, commits an act he has been warned against, and thus sins.

If it is said, [the Companions] were the virtuous and the first to adopt Islam. Had they disapproved of something, they would not have remained silent about it. We say, and success comes from Exalted God, even if you are right that they all knew of it and remained silent, and there is no way for anyone to say that this [knowledge] can ever exist, because the Companions, may God be pleased with them, dispersed in the lands, Yemen, Mecca, Kufa, Basra, al-Raqqā, Syria, Egypt, Bahrayn, and others. Thus it is true that whoever claims concerning an opinion narrated from one of the Companions, whether from the Caliphs or others, that they all were aware of it, has slandered them all, without a doubt. One may only have certain knowledge of their consensus on matters that it is manifest that they knew about, such as the five prayers, fasting the month of Ramadan, the pilgrimage to the Ka'ba, the prohibition on the consumption of carcasses, blood, swine flesh, wine, and the rest of what they undoubtedly knew and certainly said, about which there is no doubt. This is despite the fact that only 138 of them are reported to have issued legal opinions, while [the total number of Companions] numbered more than 20,000. Thus, what the persons who hold this opinion suppose is undoubtedly false.

As for the Ḥanafīs, the Mālikīs, and the Shāfi'īs who use this to support their delegation of authority, they, of all God's creation, disagree the most with the group of the Companions, among whom no dissenter is known. For example, they disagree with what is authoritatively known from 'Alī and Ibn 'Abbās concerning the obligation for a menstruating woman to perform major ablutions for every prayer, or two combined prayers, and from 'Ā'isha that she should perform major ablutions every day before the noon prayer, although no one among the Companions, may God be pleased with them, is known to have disagreed. There are many such examples. We have collected in a book two hundred such controversial points, praise God.

Yes, [the adherents to the legal schools] disagree with valid consensus, of which we have certain knowledge, such as their disagreement with all of the Companions, from the first of them to the last, in permitting the people of Khaybar an open-ended lease contract, saying to them, we may expel you, if we wish. This continued throughout the caliphates of Abū Bakr and 'Umar, without their being any dissent

whatsoever. There are many such examples; we have investigated them as well. And success comes from Exalted God.

## Chapter

As for those who say that consensus is the consensus of the people of Medina, due to their merit, and because its people witnessed the revelation of prophecy, this is mistaken for a number of reasons.

First, it is an unproven claim.

Second, the merit of Medina remains as it was. The majority of its people today are grave sinners, even infidels - the extreme Shī'īs. Our opinion, and we belong to God and to him we shall return, is in accordance with this.

Third, those who witnessed the revelation were none other than the Companions, may God be pleased with them, not those Medinans who came after them. Those who came after [the Companions] in every city received their knowledge from the Companions.

Fourth, every difference of opinion that exists among the community exists in Medina, as we have previously written. Much praise to Exalted God.

Fifth, the Caliphs who were in Medina did one of two things, no more.

Either they explained the rules of religion to the people of the cities among their subjects, or they did not explain the religion to them. The people of Medina and others are equal in this.

If they did not explain it to them, this is a characteristic of evil [the like of] which Exalted God spared them. Therefore, these people's opinion is certainly wrong.

Sixth, some of the moderns have said this in order to justify delegating authority to Mālik b. Anas, rather than to all of the scholars of Medina. They cannot produce a single point of law on which all of the known jurists among the Medinan Companions and Followers agree, while the [scholars of] the rest of the cities disagree.

Seventh, as we have mentioned, they have disagreed with the consensus of the people of Medina on the lease contract, and on other matters.

## Chapter

If people hold two or more opinions, and there is an authentic text which is evidence for one of them, [that opinion] is the truth, and the consensus of those who have the truth is the truth.

### Chapter: On Two Types of Consensus

If the community agrees that something is licit, forbidden, or obligatory, and then one of them claims that this ruling has changed, his opinion is to be ignored unless he can produce a text. Otherwise, his opinion is wrong because it is a claim without the support of a consensus, a text from the Book, or a sunna. It is invalid, due to His saying, may he be exalted, "Say: 'Produce your proof, if you speak truly.'" <sup>42</sup> It is true that whoever has no proof is not truthful - I mean in this matter.

As for if he produces a text containing a legal rule, and then a consensus specifies part of [that rule], one must follow the consensus, even if someone claims that this specification and the reexamination of the text are proof.

The proof of this is that the claim of specification here lacks a consensus and contradicts the text. Thus [this claim] is false.

First, what we call the presumption of continuity. For example, our opinion concerning the claim made by some people about the annulment of a marriage due to impotence or deformity. The marriage is valid by consensus, and can only end on the basis of a text or a consensus.

Second, what we call the minimum opinion. Such as when a text appears which forbids speaking. Then comes a consensus which regards some speech as licit. We do not regard speech beyond that authorized by the consensus to be licit. This is the ruling and explanation of consensus, praise God, Lord of the worlds.

<sup>42</sup> Al-Naml, 64.

### Chapter: On the Discourse on Controversial Rulings

If there is no valid consensus, then quarreling and dispute must occur, due to what Exalted God said, “And those in authority among you. If you quarrel on anything, refer it to God and the Messenger...”,<sup>43</sup> and His saying, may He be exalted, “But they continue in their differences excepting those on whom thy Lord has mercy.”<sup>44</sup> As we have described, if there is no consensus, there must necessarily be a disagreement, because they are mutually exclusive. If one is absent the other must occur, there is no alternative. If this is so, one should consult the Qur’ān and Sunna which Exalted God obliges us to consult, when He says, may He be exalted, “If you should quarrel on anything, refer it back to God and the Messenger, if you believe in God and the Last Day.”<sup>45</sup> He, the all-powerful, the sublime, says about His Prophet (pbuh), “Nor speaks he out of caprice. This is naught but revelation revealed.”<sup>46</sup> It is true that all of [Prophet’s] speech (pbuh) is prophecy from Exalted God if it relates to that which we rely on to worship our Exalted Creator, due to his saying (pbuh), “I am the most knowledgeable with regard to your religion”, etc. He says, may He be exalted, “We have sent down to thee the Remembrance that thou mayest make clear to mankind what was sent down to them.”<sup>47</sup> Thus it is true that when there is a difference of opinion the only licit solution is to judge in accordance with the Qur’ān and Sunna.

### Chapter: On Recurrent Narratives

The Qur’ān has been narrated in sufficient and recurrent narrations. The Sunna includes reports that are recurrent and those which are unique, narrated by one trustworthy authority from another. At times there may be one trustworthy authority who narrates from two or three trustworthy authorities, or three who narrated from one. This is common, and [such reports] are authentic, properly preserved, and can be found if sought.

<sup>43</sup> Al-Nisā’, 59.

<sup>44</sup> Hūd, 118-9.

<sup>45</sup> Al-Nisā’, 118-9.

<sup>46</sup> Al-Najm, 3-4.

<sup>47</sup> Al-Naḥl, 44.

As for those reports which have been narrated by a sufficient number of authorities, no two Muslims disagree with the obligation to obey them, despite the fact that some [of the authorities] may have differed with regard to the details, they narrated their opinions, although they were certainly mistaken.

### On the Unique Report and Its Types

As for a report that has been transmitted by one person on the authority of another; it falls into three categories.

First, a report transmitted by one reliable informant on the authority of another reliable informant until it reaches the Messenger of God (pbuh).

Or, a report transmitted in the same manner, one of whose authorities is a man who is unreliable, has a poor memory, or is unknown.

Or, a report transmitted in the same manner whose chain of transmission is known with certainty, such as a report that reaches a Follower, who then says, the Messenger of God (pbuh) said, is disconnected (*mursal*). If a Follower or someone of a later generation says, so-and-so the Companion reported from the Messenger of God (pbuh), this report is missing a link (*munqaṭi'*).

We investigated these types and found some people who say, it is all the same, they must all be accepted; this is the opinion of all of the Ḥanafīs and Mālikīs. This is an error because the narrators of disconnected reports and reports missing a link are unknown. If their narrators are unknown, are they reliable or unreliable? It is not licit to reach a ruling on religion on the basis of the narration of an unknown narrator, whose status and manner of bearing tradition is unknown. He may be reliable and pious or a propagandist for heresy. All of this cannot be guaranteed with regard to an unknown narrator on whose authority a disconnected tradition is proven to be reliable. Exalted God has commanded us to put aside what we don't know. He, may He be exalted, said, "And that you say concerning God such as you know not."<sup>48</sup> He, may He be exalted, said, "And pursue not that thou hast no knowledge of."<sup>49</sup> Whoever accepts reports narrated by an un-

<sup>48</sup> Al-A'rāf, 33.

<sup>49</sup> Al-Isrā', 36.

known person, says concerning God and his Messenger (pbuh) that which he has no knowledge of, and this is not licit. The same is true of a narrator whose reliability is unknown.

As for reports narrated by an unreliable narrator, such an unreliable narrator is a grave sinner. Exalted God said, "O believers, if a grave sinner comes to you with a tiding, make clear, lest you afflict a people unwittingly, then repent of what you have done."<sup>50</sup> Whoever makes a ruling on the basis of a disconnected tradition narrated by an unknown narrator, a deed attributed to a Companion, or a narrator whose reliability is unknown, has ignorantly afflicted a people. Even if he proceeds carefully, he will be one of those who repent of their sins.

Abū Muḥammad, may Exalted God have mercy on him, said, whoever is reliably known to falsely attribute unknown traditions by weak narrators to reliable narrators is either unreliable or his narrations should be categorized as disconnected. It is not permissible to accept his narration. One may say that he is of lesser status than the narrator of a disconnected tradition, because [the narrator of a disconnected tradition] may narrate it disconnected on the authority of a reliable narrator, and he may narrate it disconnected on the authority of an unreliable narrator. We have chosen to be more cautious by revealing the status of the narrator of a disconnected tradition. One who falsely attributes unknown traditions is not like that; he is more worthy of rejection.

In sum, it is only permissible for us to relate from Exalted God and His Messenger (pbuh), what Exalted God has commanded us to relate from Him. No text of the Qur'ān, reliable tradition, or consensus exists which requires one to accept a disconnected tradition, nor a tradition which is missing a link, nor the narration of a grave sinner, nor a narrator whose reliability is unknown, from Exalted God or His Messenger (pbuh). All that remains is what reliable narrators have related continuously from the Messenger of God (pbuh). We have investigated this and found two proofs whose acceptance Exalted God requires, without a doubt.

First, Exalted God's saying, "Why should not a party of every section of them go forth, to become learned in religion, and to warn their people when they return to them, that haply they may beware?"<sup>51</sup>

<sup>50</sup> Al-Hujurāt, 6.

<sup>51</sup> Al-Tawba, 122.



God, the all-powerful, the sublime, does not require all of the believers to disperse to become learned in religion and warn their people about what they have learned. A party, in the language of the Arabs, in which the Qur'ān was sent down, and God said, "in a clear, Arabic tongue", <sup>52</sup> is part of something. The word "party" is not specific to a certain number, rather it is word that can be used for one or more than one, as many as can exist, even millions, if they can be added to others.

We know with certainty that had Exalted God intended to specify a certain number, He would have made that clear, but He, the all-powerful, the sublime, did not make this clear. We know with certainty that He intended one or more, since it is impossible for Him, may He be exalted, to alienate us and deceive us. He, may He be exalted, said, "We have made everything clear." <sup>53</sup> Thus, it is valid to accept the oath of a single, isolated, narrator who is reliable in religion, and to accept his oath out of caution from the punishment feared from Exalted God for the sin [of omission]. Accepting his oath is none other than relating the report borne by the one who takes the oath.

Abū Muḥammad said, he is either a grave sinner or an upright person. Accepting the narration of a grave sinner is invalid, due to His saying, may He be exalted, "If a grave sinner comes to you with a tid-ing, make clear, lest you afflict a people unwittingly, and then repent of what you have done." <sup>54</sup> All that remains is that he is just, so the obligation of accepting his oath is certainly valid, as is the obligation of accepting his word concerning what he relates that he has learned and has reached him from the Messenger of God (pbuh), transmitted by one reliable narrator from another reliable narrator, or by a reliable narrator from more than one person, or by more than one person from a reliable narrator. Success comes from Exalted God.

The second proof is the consensus of all of the nations, believers and unbelievers, that the Messenger of God (pbuh) sent his messengers to the tribes and kings, calling them to God, the all-powerful, the sublime. And he sent a commander to every region to teach them their religion and to execute upon them Exalted God's rulings in teaching

<sup>52</sup> Al-Shu'arā', 195.

<sup>53</sup> Al-Naḥl, 89.

<sup>54</sup> Al-Ḥujurāt, 6.

them the rules of prayer, fasting, the alms-tax, the pilgrimage, holy war, and the rules in legal disputes, marriage, divorce, and sales, the licit, the illicit, and the obligatory, the licit and the illicit foods, drink, and clothes. There is no difference of opinion concerning this. [The Prophet] (pbuh) obliged them to obey these commanders during his lifetime (pbuh) while he was absent from them. Thus, it is true that this [obligation] continues until the Day of Resurrection.

And [this is] certainly [the case] after [the Prophet's] death (pbuh), without a doubt, because the report of an upright man is binding, without exception. If someone objects, citing the tradition about Dhū al-Yadayn, that [the Prophet] (pbuh) did not believe him until he asked people, this is not a proof for [his objection]. For Dhū al-Yadayn only narrated to the Prophet (pbuh) a report concerning the Prophet's deed (pbuh) not concerning anything else. And informed him (pbuh) that he was mistaken, when he (pbuh) did not believe that he was mistaken. It was possible that Dhū al-Yadayn was mistaken. For this reason, and none other, the Prophet (pbuh) proceeded cautiously. Otherwise, there is no difference of opinion that when one of his people came to [the Prophet] (pbuh), he would believe [that person], act on his narration, send a betrothed message and governor with him, and the like. He would send the alms tax collector alone or in twos and would thus present proof against those to whom the collector came and require them to pay their alms to the collector. He did likewise in everything in religion.

If it is said that messengers and the commanders [appointed by the Prophet] brought their reports with them, before them, or after them, we say, and success comes from God, there is no doubt that their companions did not accompany every ruling which the commanders and messengers narrated. Thus, this objection is certainly invalid, praise God, Lord of the worlds.

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