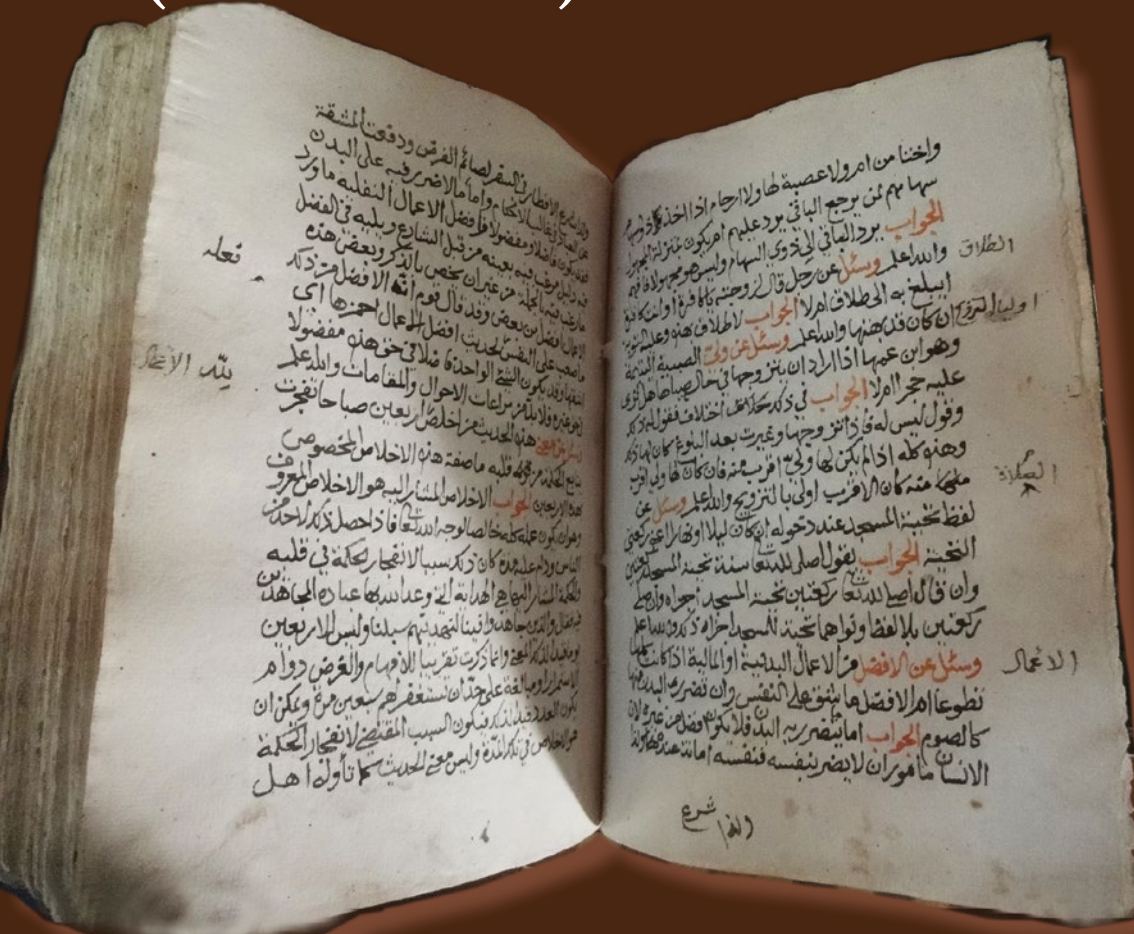
Ordering what cannot be done is not possible

The Legal Reasoning of Nūr al-Dīn al-Sālimī (1869–1914)



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Preface

Nūr al-Dīn al-Sālimī,[1] is generally known in the West as an Omani historian. John C. Wilkinson regards him as *raʾīs al-nahḍa*, or the leader of the insurrection that took place in 1913 in Oman.[2] However, al-Sālimī was not only a historian and the leader of the Ibāḍī Imamate restoration movement. He was also an outstanding jurist, who formulated over 1,500 maxims (*qawāʿid*, sg. *qāʿida*), making him a thinker of great importance for Islamic jurisprudence. In Oman, he is believed to have been the most important Ibāḍī jurist after Ibn Baraka, who died in 361 in the Muslim calendar (AH), corresponding to 972 CE.

This book presents Nūr al-Dīn al-Sālimī as a jurist (*faqīh*) who interprets the sources of law (texts and judgements of other jurists) and formulates canons to guide social behaviour. What was his method for deriving legal and ethical maxims? The analysis of selected *qawāʿid* allows us to formulate the hypothesis that central in al-Sālimī's legal reasoning was the question of the extent to which a maxim, that is, a generalisation derived from specific facts, retained its character for evaluating other facts. We maintain that al-Sālimī's heuristic was based on induction and consisted in analysing individual facts from *fiqh al-ʿibādāt* (rules governing the relationship between man and God) in order to formulate generalisations

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1 Actually ʿAbd Allāh b. Ḥumayd al-Sālimī. Also know as Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī. His full name was Abū Muḥammad ʿAbd Allāh b. Ḥumayd b. Sulūm b. ʿUbayd b. Khalfān b. Khamīs al-Sālimī.

2 John C. Wilkinson, "Al-Sālimi, Abū Muḥammad ʿAbd Allāh b. Ḥumayd b. Sullūm, Nūr al-Dīn," in *The Encyclopedia of Islam*, New Edition, vol. 8, ed. by Clifford Edmund Bosworth, Emeri Johannes van Donzel, Wolfhart P. Heinrichs (Leiden: E.J. Brill, 1995), 993.

that could be applied in *fiqh al-muʿāmalāt* (rules governing relations between humans).

Many authors have discussed the distinctive teachings of Ibāḍī Islam,[3] but only a few publications directly refer to the works of al-Sālimī.[4] However, an increasing number of studies, especially in Oman and the Arab world, are giving attention to the jurist and there are also growing numbers of publications that deal with Ibāḍi maxims. Research on Ibāḍi legal canons was conducted by Maḥmūd Muṣṭafā ʿAbbūd Āl Harmūsh and resulted in two monographs: *Muʿjam al-qawāʿid al-fiqhiyya al-ibāḍiyya* and *Al-Qawāʿid al-fiqhiyya al-ibāḍiyya*. Harmūsh's works present al-Sālimī's use of legal inference in comparison with other schools of Muslim law to show his contribution to the development of Islamic legal theory (*uṣūl al-fiqh*). Another author who has studied Ibāḍi legal canons is Muṣṭafā b. Ḥawm Arshūn, who published the monograph *Al-Qawāʿid al-fiqhiyya ʿinda al-ibāḍiyya*.[5]

Studies on the life and work of Nūr al-Dīn al-Sālimī open up exciting research fields. One of them is Islamic Modernism at the

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[3] The literature on Ibāḍī law is extensive. See for example Ismāʿīl b. Ṣāliḥ b. Ḥamdān al-Aghbarī, *Al-Madkhal ilā al-fiqh al-Ibāḍī* (Al-Sīb: Maktaba al-Ḍāmrī li-l-Nashr wa-l-Tawzīʿ, 2013). The issues of Ibāḍī theology are dealt with in the fourth publication in the series Studies on Ibāḍīsm and Oman, entitled *Ibadi Theology: Rereading Sources and Scholarly Works*, ed. by Ersilia Francesca (Hildesheim: Georg Olms Verlag, 2015). The sixth publication in this series, *Ibadi Jurisprudence: Origins, Developments and Cases*, ed. by Barbara Michalak-Pikulska and Reinhard Eisener (Hildesheim: Georg Olms Verlag, 2015) included contributions from such outstanding researchers on Ibāḍīsm as J.C. Wilkinson, W. Madelung, A. Gaiser, Abdulrahman al-Salimi, M. Muranyi, H. Modarressi, V. Hoffman, E. Francesca. With regard to Ibaḍī law, the works of Ersilia Francesca are significant.

[4] Among them, mention should be made of Anna Rita Coppola's study entitled "Al-Sālimī and the Ibāḍī Theology: The *Mashāriq anwār al-ʿuqūl*," in *Ibadi Theology: Rereading Sources and Scholarly Works*, 315–24, and Douglas Leonard's "A Basis for Oman's Religious Tolerance: A Review of the Late 19th and Early 20th Century Ibadi Jurisprudence of Nūr al-Dīn al-Sālimī from Oman and Muḥammad Aṭfayyish from North Africa Regarding Coexistence with Jews and Christians," in *Ibadi Jurisprudence: Origins, Developments and Cases*, 195–210.

[5] Maḥmūd Muṣṭafā ʿAbbūd Āl Harmūsh, *Muʿjam al-qawāʿid al-fiqhiyya al-ibāḍiyya*, ed. by Riḍwān al-Sayyid (Masqaṭ: Wizārat al-Awqāf wa-l-Shuʾūn al-Dīniyya, 2006); idem, *Al-Qawāʿid al-fiqhiyya al-ibāḍiyya*, 2 vols. (Masqaṭ: Wizārat al-Awqāf wa-l-Shuʾūn al-Dīniyya, no year); Muṣṭafā b. Ḥawm Arshūn, *Al-Qawāʿid al-fiqhiyya ʿinda al-ibāḍiyya* (Masqaṭ: Wizārat al-Awqāf wa-l-Shuʾūn al-Dīniyya, 2013).

turn of the twentieth century and the place of Oman in this movement. Another issue is the debate between the two schools of Ibāḍī history in Oman and Ibāḍī jurisprudence, the schools of al-Rustāq and Nizwā. The tradition of these two schools refers to events in the third AH/tenth CE century and the debates between two prominent jurists of that period: Abū Saʿīd Muḥammad al-Kudamī and ʿAbd Allāh b. Muḥammad b. Baraka al-Bahlawī (known as Ibn Baraka). These debates centred on the questions of who is an Ibāḍī and who is not, and who can and cannot lead the community. Since the answers to these questions were formulated through legal reasoning and became legal norms, the controversy around this question also defined the nature of Ibāḍī jurisprudence and legal tradition. What does the legal reasoning of Nūr al-Dīn al-Sālimī bring to this discussion?

At the heart of the answer to these questions is the discussion about the use of *ijtihād* to formulate ethical maxims and legal norms. In the Ibāḍī tradition, there were two schools of thought on this subject: the Maghrib school was cautious in applying *ijtihād*, and its exponents, Abū Yaʿqūb Yūsuf b. Ibrāhīm al-Wārjalānī (500–70/1106–75) and ʿUthmān b. Khalīfa al-Sūfī al-Marghannī (known as ʿAbd al-Sūfī, lived in sixth/twelfth c.), were reserved in applying logic in jurisprudence. "Al-Wārjalānī used mental axiomatic arguments and considered them to be the most important of knowledge" – we read in Mustafa Badjou's study.[6]

The Ibāḍī school in the East, particularly Ibn Baraka, was also attached to the Qurʾān and the Sunnah, the traditions and practices of Prophet Muḥammad, but it was more open to the opinions of the Companions of the Prophet, *ijtihād* and logic. Nūr al-Dīn al-Sālimī expressed a view on the admissibility of *ijtihād*, stating in his *Ṭalʿat al-shams. Sharḥ Shams al-uṣūl* that the Prophet Muḥammad used *ijtihād* in matters of war and politics.[7] Did al-Sālimī continue the tradition of Ibn Baraka in applying logic to legal reasoning? This book shows that he did so to a greater extent than is commonly believed.

The selected maxims reflect al-Sālimī's thinking about law as a set of societal norms regulating human life. He stresses that "the

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6 Mustafa Badjou, "The Concept of Ijtihād According to the Ibāḍī school of Jurisprudence," in *Ibadi Jurisprudence: Origins, Developments and Cases*, 104.

7 Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Ṭalʿat al-shams*. *Sharḥ Shams al-uṣūl*, 2 vols., ed. by ʿUmar Ḥasan al-Qayyām (Badiyya: Maktabat al-Imām Nūr al-Dīn al-Sālimī, 2010), vol. 2, 4–5.

rules are attached to the meanings, not to the names"[8] and if "there is controversy about two actions, it is necessary to correct one of the two interpretations by clarifying the meaning of the verse, and if the meaning of a verse is clarified, it will indicate that only one interpretation is valid."[9] A jurist formulates a norm, and its quality is a function of his appropriate preparation for interpreting texts and his ability to conclude. Al-Sālimī highlights that "if the meaning does not result directly from the linguistic notation, then it is necessary to refer to the extra-linguistic context."[10] However, "one should not interpret one verse dependent on another when they carry different meanings."[11] Similarly, "the frequency which a judgement is communicated does not lend credence to its source"[12] and "the aberrant should not be taken into account."[13]

Al-Sālimī recommends the most detailed interpretation to obtain the clearest norm. "Interpret until it sounds," he seems to say. The main difficulty in formulating standards is generalizing individual facts. Al-Sālimī considers that "the particular takes precedence over the general" because "the restricted is inevitably different from the absolute" (*al-muqayyadu yughāyyiru al-muṭlaqa lā maḥālatan*).[14] "The particular empowers the general from beginning to end."[15] However, "the general is different from the original point" (*al-ijmālu khilāfu al-aṣli*).[16] One has to accept that the generalisation does not cover all such facts, and one has to reckon that new facts may contest the durability of the norm. Neverthe-

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8 *Al-aḥkāmu innamā tuʿallaqu ʿalā-l-maʿānī lā ʿalā-l-asmāʾi* – see Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Maʿārij al-amāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl*, 5 vols., ed. by ʿAbd Allāh b. Muḥammad b. ʿAbd Allāh al-Sālimī (Badiyya: Maktabat al-Imām Nūr al-Dīn al-Sālimi, 2010), vol. 2, 172.

9 *Annahu law lam yakun al-fiʿlāni jāʾizayni la-wajaba immā raddu iḥdā al-qirāʾatayni, aw bayānu al-murādi min-l-āyati, wa-lam yathbut maʿahu bayānu al-murādi wa-lā waqaʿu al-raddu li-shayʾin min-l-qirāʾatayni, fa-thabuta ʿindahu al-takhyīru bayna al-ḥālayni* (vol. 1, 329).

10 *Idhā kāna al-kalāmu lā yastaqīmu illā bi-taqdīri fa-lā budda min taqdīri mā yastaqīmu bihi al-kalāmu* (vol. 2, 174).

11 *Lā nusallimu jawāza ḥamli iḥdā al-āyatayn ʿalā-l-ukhrā, li-ikhtilāfihimā ḥukman wa-sababan* (vol. 4, 703).

12 *In ḥukma al-mutawātiri lā yantaqilu ʿan aṣlihi* (vol. 4, 422).

13 *Al-shādhdhu lā yuʿataddu bihi* (vol. 1, 419).

14 *Al-khāṣṣu muqādamun ʿalā-l-ʿāmmi* (vol. 4, 729).

15 *Al-khāṣṣu qāḍin ʿalā-l-ʿāmmi quddima aw ukhkhira* (vol. 4, 433).

16 Ibid., vol. 1, 306.

less, "the possibility of interpretation arises after the generalisation confirms the probability."[17]

Norms are not formulated once and for all and may die with the change of social conditions in which they function. However, as long as they are accepted, they must be respected. "Ignorance of something that cannot be ignored is not an excuse" – we read.[18] The jurist is sure that "the obligations do not cancel each other out"[19] and "the right cannot be cancelled due to an injustice of wrongful people."[20] He gives an example of the rules of purification and says: "An excuse relieves of embarrassment and sin but not the ruling on impurity, for the ruling on impurity does not go away except with purity."[21] He concludes that, "Mistakes and forgetfulness may excuse the sin but does not justify failure to fulfil obligations" (*inna al-khaṭāʾa wa-l-nisyāna sababāni li yarfaʿi al-ithmi wa-l-ḥaraji lā li-rafʿi nafsi al-wājibi*).[22]

Overzealous application is as inappropriate as failure to observe them. "One who does more than the law requires is like one who abides by the rule."[23] According to al-Sālimī, the law must be a dynamic but flexible structure that shapes social relations but is also shaped by these relations. He stresses that "what is established by custom is equal to the written word" (*al-thābitu ʿādatan ka-l-thābiti bi-l-naṣṣi*).[24] At the same time, he considers that "if it is not feasible to do something, the obligation [to do it – J.Z.] may be lifted even though the reason for it was previously justified."[25] Finally, he expressed an idea, that *al-amru bi-mā la yustaṭāʿu muḥālun*, what can be understood that "ordering what cannot be done is not possible."[26]

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17 *Inna al-ijmāla athbata al-iḥtimāla* (vol. 4, 285).

18 *Li-annahu jahala shayʾan lā yasʿauhu jahluhu wa-hua mutaʿammidun li-l-fiʿili falā yakūnu al-jahlu bi-dhalika ʿudhran* (vol. 2, 186).

19 *Al-ḥuqūqu lā yusqiṭu baʿaḍuhā baʿaḍan* (vol. 4, 481).

20 *Al-ḥaqqu lā yasquṭu bi-ẓulmi al-ẓālimi* (vol. 2, 177).

21 *Wa-dhālika anna ʿudhrahu yarfaʿu anhu al-ḥaraja wa-l-ithma dūna ḥukmi al-najāsāti fa-innā ḥukma al-najāsati la yazūlu illā bi-l-ṭahārati* (vol. 1, 850).

22 Ibid., vol. 4, 382.

23 *Ii-annā man zāda ʿalā al-mashrūʿi shayʾan wa-adkhalahu fīhi fahuwa fī ḥukmin man naqaṣa minhu mā kāna dākhilan fīhi* (vol. 1, 354).

24 Ibid., vol. 4, 627.

25 *Idhā taʿadhdhara al-adāʾu irtafaʿa al-wujūbu wa-in taqaddama sababuhu* (vol. 4, 450).

26 Ibid., vol. 1, 787.

Introduction: Islamic law and *qawaʿid fiqhiyya*

There is a widespread belief that a fundamental feature of Islamic civilisation is the predominance of law in Islam. George Makdisi states: "In the realm of religion, everything must be legitimized through the schools of law. For Islam is nomocratic and nomocentric."[27] Wael B. Hallaq describes Islamic law by underlining that its primary characteristic is the centrality of scripture. The textual nature of the law also gave rise to the development of a methodology whose task was to discern the epistemological value of the texts according to the reliability or unreliability of their transmission, and the qualitative clarity of their linguistic implications. This tradition started with the grounding of Ḥanafī positive law in prophetic *ḥadīths*[28] and the adoption of "a thesis of Traditionalists, who equated the Sunnah of the Prophet with the contents of formal *hadiths* traceable back to the Prophet via an unbroken chain of transmitters (*isnād*)."[29]

The second feature of Islamic law concerns the controversy between traditionalists and rationalists about *ijtihād* or legal reasoning and its methods. The idea of *ijtihād* is treated as one of the most important in the legal thought of Islam, because it expresses the desire for change as opposed to inert persistence (*taqlīd*). Imam

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27 George Makdisi, "Hanbalite Islam," in *Studies on Islam*, ed. and trans. by Merlin L. Swartz (London: Oxford University Press, 1981), 264; see also Ovamir Anjum, *Politics, Law, and Community in Islamic Law: The Taymiyyan Moment* (Cambridge: Cambridge University Press, 2012), 1.

28 Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 127. *Ḥadīth*, literally "talk" means a record of the words and actions of the Prophet Muḥammad.

29 Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (Leiden: E.J. Brill, 1996), 57.

Shāfiʿī was a great supporter of *ijtihād* and his legal theory is the most advances as far as legal reasoning is concerned. He regarded *ijtihād* as an important source of law alongside the Qur'ān and the Sunnah, and believed that reasoning by analogy (*qiyās*) was one form of *ijtihād* and had a strong basis in the Qur'ān and the Sunnah.[30]

Finally, there are two methods of legal reasoning according to the Shāfiʿī legal school: the method of establishing meaning (*maʿnā*) by verifying the *ratio* and the second method of establishing the analogy by similitude.[31] Finally, in al-Shāfiʿī's view, not only positive law ultimately must rest on the sacred texts, but also the methods by which that law comes to be formulated must rest on those same texts. It is this that determines the critical importance of linguistic analysis in the formation of norms. "Linguistic and legal interpretation was the very feature that distinguished Islamic law from modern codified legal systems," Wael B. Hallaq concludes.[32]

It is commonly emphasized that Muslim law is different from that adopted in Europe, because it is revealed and was given to people by God in signs (texts and events). It existed before man appeared on Earth and is omnipresent. At the same time, it does not emerge until we begin to interpret and understand the signs given by God. Hence, there are two terms *shariʿa* and *fiqh*, which mean that what we define as law (*shariʿa*) is actually the interpretation (*fiqh*) of divine signs.[33] Any interpreter may be right in understanding these signs, but anyone may also be wrong, for only God knows the meaning of the signs given. As a result, Islamic law exists in interpretations, not in codes.[34]

Despite such significant differences from other systems, Islamic law is also a system of norms. These are formulated based on sources different from European law, and Islamic law does not function like European law in the form of codes. Nevertheless, the

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30 See Charles Saint-Prot, *La tradition islamique de la réforme* (Paris: CNRS Éditions, 2010), 67–68.

31 Wael B. Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2004), 77, 111.

32 Idem, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 88.

33 Luqman Zakariyah, *Legal Maxims in Islamic Criminal Law: Theory and Applications* (Leiden: E.J. Brill, 2015), 3.

34 Hallaq, *An Introduction to Islamic Law*, 166.

legal norms are firmly set out in Islamic law, and compliance with them is obligatory for those who define themselves as Muslims. Who lays down the ethical maxims (*qawaʿid*) that determine legal norms, and how? The answer to the first part of this question is that anyone who is properly prepared can determine what is correct and what is not, and what is unacceptable and punishable and what is not. Of course, the very phrase "properly prepared" narrows such people down to a circle of jurists known as *fuqahāʾ*. The answer to the second part of the question refers to textual analysis techniques and rules for interference. The Muslim jurist's thinking about norms in Muslim law takes place within language, reason and religion.

Assuming that Islamic law comprises *qawāʿid* or canons understood as criterion or standard of judgement and that the construction of canons is mainly down to the interpretation of the text, one may ask if there is a framework for interpretation and, if so, what constitutes that framework. The answer is that the interpretative framework is determined by *maqāṣid al-sharīʿa*, or the objectives of Islamic law. These are universally accepted principles and so they determine the nature of both moral and ethical canons[35] and also the legal norms based on which judicial decisions are taken. The *maqāṣid* or objectives of Islamic law constitute "a system of values that could contribute to a desired and sound application of the *shariah*."[36] Islamic law has a purposive nature, and its objectives are to promote the social welfare or benefit (*maṣlaḥa*) of Muslims. Following the work of medieval Muslim jurists such as Abū Ḥāmid Muḥammad al-Ghazālī (al-Ghazzālī, 450–505/1058–111) and Abū Isḥāq al-Shāṭibī (720–90/1320–88), modern scholars promoting the *maqāṣid* have identified five key objects that Islamic law was designed to protect: life, religion, intellect, lineage, and property.[37]

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35 *The Objectives of Islamic Law: The Promises and Challenges of the* Maqāṣid al-Sharīʿa, ed. by Idris Nassey, Rumee Ahmed, and Muna Tatari (Lanham: Lexington Books, 2018), 1.

36 Jasser Auda, "A Maqasidi Approach to Contemporary Application of the Shariʿah," *Intellectual Discourse* 19, 2 (2011), 194.

37 Ibid.; Abū Isḥāq Ibrāhīm ibn Mūsā al-Shāṭibī, *The Reconciliation of the Fundamentals of Islamic Law*, 2 vols., trans. by Imran Ahsan Khan Nyazee (Reading: Garnet, 2014), vol. 2, 10. See also *The Objectives of Islamic Law: The Promises and Challenges of the* Maqāṣid al-Sharīʿa.

Thus, *maqāṣid al-sharīʿa* form a broad ethical framework for formulating *qawāʿid fiqhiyya* or general principles, or maxims, or canons of an ethical nature that relate to various, often detailed, aspects of a Muslim's life and determine how Muslim judges and jurists make decisions on more narrow and particular issues. Khadiga Musa states that "*al-qawāʿid al-fiqhiyya* are legal maxims or principles that are usually expressed in the form of terse adages, such as *al-umūr bi-maqāṣidihā* (acts are [judged according] to the objectives behind them); and *al-mashaqqa tajlub al-taysīr* (hardship brings about facilitation)." Musa considers that the most accepted definition of this term is that a *qāʿida fiqhiyya* is "a predominantly valid legal determination (*ḥukm aktharī*) that applies to most of its particular cases (*juzʾiyyāt*) so that their legal determinations will be known from it."[38] Muhammad al-Tahrir Ibn Ashur stressed that "the jurists need to know *maqāṣid al-sharīʿa* on all levels of the legislative activity."[39]

In other words, *fiqh* as positive law, or a human-made law, that qualifies or specifies an action, is based on moral norms that determine how legal reasoning can be used to formulate purely legal norms. Islamic legal canons emerged at the beginning of Islam's history in the seventh century, and played a major role in the construction of Islamic law, Intisar A. Rabb underlines.[40] *Qawāʿid fiqhiyya* created a moral and ethical framework within which judges heard and adjudicated cases in court.[41] The sources of these canons were the Qur'ān, the Sunnah, consensus and analogy, but also jurisprudence in *sharīʿa* courts. Getting to know *qawaʿid fiqhiyya* is essential for getting to know the essence of judgements made

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38 Khadiga Musa, "Legal Maxims as a Genre of Islamic Law. Origins, Development and Significance of Al-Qawāʿid al-Fiqhiyya," *Islamic Law and Society* 21 (2014), 325.

39 Muhammad al-Tahrir Ibn Ashur, *Treatise on Maqāṣid al-Shariʿah*, trans. by Mohamed El-Tahrir El-Mesawi (London, Washington: The International Institute of Islamic Thought, 2006), 7–8.

40 See Intisar A. Rabb, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law* (Cambridge: Cambridge University Press, 2015), 348–57.

41 On the application of the *qawāʿid* to the court, see the book about the judge of the Supreme Court in Muscat: Zahrān b. Nāṣir b. Sālim al-Barāshdī, *Taṭbīqāt al-qawāʿid al-fiqhīyya* (Masqaṭ: Maktabat al-Jīl al-Wāʿid, 2014). See also the book about the outstanding judges in Omani history: ʿAbd Allāh b. Rāshid al-Siyābī, *Muʿajam al-quḍā al-ʿumāniyyin* (Barkā': Maktabat Khazā'in al-Athār, 2017).

by judges and the way jurists think about the relationship between faith and the daily life of believers and political issues, including relations with state authorities.

If some maxims are derived from texts, others are directly contained in these texts. According to *ḥadīth* 1907a in *Ṣaḥīḥ Muslim*, transmitted by ʿUmar b. al-Khaṭṭāb, the Prophet Muḥammad said: "Deeds are but with intentions" (*innamā al-ʿmālu bi-l-niyyati*), which means that the value of an action depends on the intention behind it.[42] Another example is *ḥadīth* 2340 in *Sunan b. Mājah*, transmitted by ʿUbāda b. al-Ṣāmit, about one who built something on his property that harmed his neighbour. The maxim expressed by the Prophet said: "There should be neither harming nor reciprocating harm" (*lā ḍarūr wa-lā ḍirār*). It can be understood that harm must be removed initially or prevented before it occurs and uplifted after it happens.[43]

Mohammad Hashim Kamali writes that the most comprehensive and broadly-based of all maxims have the character of norms that apply in all spheres of jurisprudence, no matter how specific those spheres may be and normative, or universal, legal maxims are accepted without exception by all schools of Islamic law. Kamali writes that universal legal maxims of *fiqh* (*qawāʿid kulliyya fiqhiyya*) constitute a separate genre of *fiqh* literature alongside other three research spheres: "*al-ḍawābiṭ* (rules controlling specific themes), *al-furūq* (distinctions and contrasts), and *al-naẓariyyāt al-fiqhiyya* (general theories of fiqh)."[44]

Mairaj U. Syed, the author of *Coercion and Responsibility in Islam: A Study in Ethics and Law*, states that "Islamic law's long and pluralistic history and the wide variety of domains it regulated (commerce, crime, ritual, theology) produced a lush diversity of canons." He gives three examples of *qawāʿid*: (1) each person's life deserves equal protection; (2) necessity may excuse certain prohibited acts; (3) punishment should be suspended when doubt is present.[45]

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[42] *Ṣaḥīḥ Muslim*, The Book on Government, *ḥadīth* 1907a, https://sunnah.com/muslim:1907a (accessed November 15, 2022).

[43] *Sunan Ibn Mājah*, The Chapters on Rulings, *ḥadīth* 2340, https://sunnah.com/ibnmajah:2340 (accessed November 15, 2022).

[44] Mohammad H. Kamali, "Legal Maxims and Other Genres of Literature in Islamic Jurisprudence," *Arab Law Quarterly* 20, 1 (2006), 77.

[45] Mairaj Syed, "Canons (Qawāʿid) and Reasoning in Islamic Law and Ethics," *Islamic Law Blog*, 21 May 2020, https://islamiclaw.blog/2020/05/21/canons-

Research shows that legal canons were formulated and circulated as early as in the "formative period" or the "old period" of Islamic law, i.e., between the first/seventh and third/tenth centuries, and that the sources on which they were based were the Qur'ān, the Sunnah, consensus, and legal reasoning.[46] From the eleventh/fourteenth century, jurists collected canons, and the most comprehensive modern collection contains about 900 of them, though this is merely a fraction of the maxims that exist in the *fiqh* literature. The usefulness of canons in legal reasoning stems from the fact that they occupy a middle ground between a normative conclusion, which is a concrete recommendation for behaviour of some sort (e.g., this type of contract is invalid; that act is forbidden), and a principle that is widely if not globally applicable (e.g., the welfare principle).[47] Some canons are specifically stated in the Qur'ān in some of the 190 verses that set out legal but not specifically religious rules. The fifth *surah* in the Qur'ān, for example, speaks of the need to honour contracts. The other canons are specifically stated in *ḥadīths*.[48]

Most *qawāʿid* are specific to each school of law, but all schools agree that there are two types of *qawāʿid*: "general *qawāʿid* that

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qawa%CA%BFid-and-reasoning-in-islamic-law-and-ethics/ (accessed November 15, 2022); see also: Intisar A. Rabb, "Interpreting Islamic Law through Canons," in *Routledge Handbook of Islamic Law*, ed. by Ahmad Atif Ahmad, Khaled Abou El Fadl, and Said Fares Hassan (London, New York: Routledge, 2019), 221–54; *The Wisdom of the Prophet: Sayings of Muhammad*, trans. by Thomas Cleary (Boston, London: Shambhala,1994), 9; *The Islamic Concept of Belief in the 4th/10th Century: Abū l-Laiṯ as-Samarqandī's Commentary on Abū Ḥanīfa al-Fiqh al-absaṭ*, introduction, text and commentary by Hans Daiber (Tokyo: Institute for the Study of Languages and Cultures of Asia and Africa, 1995), 243; Mairaj U. Syed, *Coercion and Responsibility in Islam: A Study in Ethics and Law* (Oxford: Oxford University Press, 2017), 195.

46 Rabb, *Doubt in Islamic Law…*, 8–9; Mohammad H. Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Cambridge University Press, 2003), 16–55, 58–60; Hossein Modarressi, *An Introduction to Shīʿī Law: A Bibliographical Study* (London: Ithaca Press, 1984), 57–58.

47 Syed, *Coercion and Responsibility in Islam…*, 15, 185–222. On the historical development of *al-qawāʿid al-fiqhiyya* see Zakariyah, *Legal Maxims in Islamic Criminal Law…*, 24–35; on the development of maxim literature see Necmettin Kızılkaya, *Legal Maxims in Islamic Law. Concept, History and Application of Axioms of Juristic Accumulation* (Leiden, Boston: E.J. Brill, 2021), part 2.

48 See Rabb, "Interpreting Islamic Law through Canons," 222; Roy Parviz Mottahedeh, *Introduction to Lessons in Islamic Jurisprudence* (Oxford: Oneworld, 2003), 1; Qurʾān, 5: 1.

apply to all or most fields of the law, which are therefore known as universal (*kulliyya*), and specific (*khāṣṣa*) *qawāʿid* that apply to one or more, rather than all, fields of *fiqh*; the latter are also known as *ḍawābiṭ* (sg. *ḍābiṭ*, regulators)."[49] Muslim jurists usually refer in their works to five universal canons, and all Sunnī and Shīʿite schools of Islamic law agree on the correctness of distinguishing these principles as universal. Those are: (1) harm is to be removed; (2) custom is legally authoritative; (3) hardship requires flexibility (of strict legal rules); (4) certainty is not superseded by doubt; (5) actions are to be evaluated according to their purposes.[50]

These maxims, defined as universal due to the broadest and most general nature of their content, have the character of moral and ethical norms rather than legal rules and create a framework for formulating canons that refer to a more narrow and detailed range of matters, as well as a framework for case law in court. In this sense, they are akin to *maqāṣid* as broad-based ethical tools for deriving legal canons. The possibility of this perception of the essence of the relationship between *qawāʿid* and *maqāṣid* is indicated by Kamali, who writes, "Legal maxims also closely relate to the *maqāṣid*, and provide useful insights into the goals and objectives of Shariʿa (*maqāṣid al-shariʿa*), so much so that some authors have subsumed them under the *maqāṣid*."[51] In other words, this category of maxims refers to the philosophy of law; it creates a philosophy of law understood as an answer to the question of what law is and what it should be. Since universal canons are formulated by reasoning, we can speak of the ethical reasoning that precedes legal reasoning.

Another classification divides the canons into three groups according to the type of source based on which they were formulated: substantive canons derived from textual sources or substantive law (*fiqh*) drawn from the Qur'ān and *ḥadīths*; interpretative canons based on interpretative sources (consensus and legal reasoning) relating to jurisprudence (*uṣūl al-fiqh*); and canons based on extrinsic sources: procedural (judicial practice, including precedents and procedures) and societal norms.[52]

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49 Musa, "Legal Maxims as a Genre of Islamic Law…," 325.

50 Rabb, "Interpreting Islamic Law through Canons," 229.

51 Kamali, "Legal Maxims and Other Genres of Literature in Islamic Jurisprudence," 77.

52 Rabb, "Interpreting Islamic Law through Canons," 227.

Rabb introduces an additional classification. She considers that there are supplementary sub-categories within substantive and interpretative canons. In the case of substantive canons, these are: universal (*qawāʿid fiqhiyya kulliyya*), general (*juzʾiyya*) and specific canons (*ḍawābiṭ fiqhiyya*). Within the interpretative canons, Rabb distinguishes: textual canons, which instruct jurists and judges on how to interpret Islam's foundational texts; source-preference canons, which define how judges and jurists should choose between various sources relating to the same legal issue; and extrinsic-source canons, which are based on non-textual sources and sources beyond the sources of traditional Islamic legal theory, referring to presumptions and the principles of equity or custom.[53]

There are two interpretative sources that "help jurists determine which rulings are authoritative,"[54] resulting in the formulation of appropriate legal canons. These are consensus and reasoning. Consensus as an interpretative source refers to the definition of a canon by jurists based on a majority agreement on a given matter that is not specified in the foundational text or on a matter on which many opinions exist. For jurists to arrive at this consensus, they must agree on the text's meaning and agree that the text is foundational. The need for interpretation may arise from the fact that the text, whose entire content must be disclosed, is not unambiguous.[55]

Reasoning as the second source for the creation of canons was much more critical in the history of law than consensus. In Sunnī Islam, reasoning by analogy was based solely on texts, while the Shīʿites referred to practical reasoning and rejected analogy. There were, however, exceptions to this categorical distinction, as many Sunnī authors referred to extra-textual sources and accepted "canons that might fairly be considered equitable principles – allowing the use of necessity (*ḍarūra*), equity (*istiḥsān* or *iṣṭiṣlāh*), or certain presumptions of continuity to derive new rulings."[56]

It can be noted that legal reasoning or *ijtihād* is, on the one hand, a broad concept in terms of clarification or conclusions, and in this sense, it is an argument for treating the relevant entries in textual sources, i.e., in the Qur'ān and *ḥadīth* reports, as canons. This applies both to commands prohibiting (for example, causing harm) and to commands ordering (for example, compliance with

53 Ibid., 229–33.

54 Ibid., 223.

55 Ibid.

56 Ibid., 224.

contracts), as well as the so-called doubt canons, ordering restraint from imposing a penalty in the event of doubts as to the defendant's guilt.[57]

In a narrower sense, legal reasoning should be treated as an interpretative source for legal canons and includes certain rules to be applied to logical reasoning, argumentation and presenting evidence that leads to the formulation of a canon. The skill of reasoning and argumentation involves the jurist's appropriate preparation and the question of what a *mujtahid* should know to be qualified to undertake interference aimed at formulating canons.

[57] See idem, *Doubt in Islamic Law*..., 4–5.

Chapter I.
Oman and Ibāḍīsm

1. Ibāḍīsm in Basra

The history of Ibāḍīism is related to ʿAbd Allāh b. Ibāḍ, known as Ibn Ibāḍ. There are discrepancies about the basic facts of his life, and he remains something of an enigma.[58] Some sources say that Ibn Ibāḍ was active in the first century of the Muslim era between 60 and 64 AH during the rule of Yazīd b. Muʿāwiya (ruled 60–64/680–83); others put his life in the time of ʿAbd al-Malik b. Marwān (r. 65–86/685–705). Accepting the former version would mean that Ibn Ibāḍ participated in defence of Mecca against the Umayyad attack in 64/683. Al-Ṭabarī writes,[59] and one of the Ibāḍī traditions says, that Ibn Ibāḍ fought side by side with ʿAbd Allāh b. al-Zubayr, the primary opponent of the Umayyads during this period.[60] He is also said to have supported ʿAbd Allāh b. al-Zubayr in 64–73/684–92, when the latter controlled Basra. The tradition goes on to say that, after the defeat of ʿAbd Allāh b. al-Zubayr and his death in Mecca, Ibn Ibāḍ sent a letter to Caliph ʿAbd al-Malik b. Marwān urged him

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58 John C. Wilkinson, *Ibāḍīsm: Origins and Early Development in Oman* (Oxford: Oxford University Press, 2010), 153.

59 *The History of al-Ṭabarī (Taʾrīkh al-rusūl waʾl-mulūk)*, vol. XX: *The Collapse of Sufyānid Authority and the Coming of the Marwānids*, trans. and annotated by Gerald R. Hawting (Albany: State University of New York Press, 1989), 102.

60 Julius Wellhausen, *The Arab Kingdom and its Fall* (London: Curzon Press; Totowa, NJ: Rowman and Littlefield, 1973), 200; W. Montgomery Watt, "Khārijīte Thought in the Umayyad Period," *Der Islam* 36 (1961), 219. Al-Ṭabarī only writes that, after breaking with ʿAbd Allāh al-Zubayr, a group of Khārijīs went to al-Basra and that ʿAbd Allāh Ibn Ibāḍ was among them; *The History of al-Ṭabarī…*, vol. XX, 102.

to accept the teachings of the Khārijites. The Caliph was to write back and present his views.[61]

There is also a popular view that Ibn Ibāḍ lived earlier and was among the first who wished to submit to arbitration the dispute between ʿAlī ibn Abī Ṭālib and Muʿāwīya b. Abī Sufyān about who had the right to lead the community under the judgement of God. These people were called *al-Muḥakkima* or *al-Ḥarūriyya* and later on the Khārijites.[62] However, neither al-Baghdādī nor al-Shahrastānī[63] mention Ibn Ibāḍ among those who rejected arbitration between two parties and fought against ʿAlī ibn Abī Ṭālib at the Battle of Ṣiffīn in 37/657. This supports the version that Ibn Ibāḍ became active only towards the end of the reign of the second Umayyad caliph Yazīd b. Muʿāwiya or his successors Muʿāwiya b. Yazīd (r. 64/683-4[64]), Marwān I b. al-Ḥakam (r. 65/684-5) and ʿAbd al-Malik b. Marwān (r. 65–86/685–705). During this period, tensions between the Khārijites and the Umayyad authorities escalated, and there were many uprisings against the Umayyads.[65]

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[61] The Caliph's letter has been translated into Italian (Roberto Rubinacci, "Il califfo ʻAbd al-Malik b. Marwan e glio Ibâḍiti," *Annali dell'Instituto Universitario Orientale di Napoli* 5 [1953], 99–121), but there is controversy regarding its authenticity; see Michael Cook, *Early Muslim Dogma: A Source-Critical Study* (Cambridge: Cambridge University Press, 1981), Chapter 8: "The letters of Ibn Ibad to ʻAbd al-Malik," 57–65; Wilferd Madelung, "The authenticity of the letter of ʻAbd Allâh b. Ibâḍ to ʻAbd al-Malik," *Revue des mondes musulmans et de la Méditerranée* 132 (2012), 37–43. See also Patricia Risso, *Oman and Muscat: An Early Modern History* (London, Sydney: Croom Helm, 1986), 17 n. 10.

[62] *Al-Muḥakkima* derives from "judgment (*ḥukm*) belongs to God alone", and *al-Ḥaruriyya* refers to the name of the village of Ḥarura' near Kufa, see – Giorgio Levi Della Vida, "Kharidjites," in *Encyclopaedia of Islam*, Second Edition, ed. by Peri Bearman, Thierry Bianquis, Clifford Edmund Bosworth, Emericus J. van Donzel, and Wolfhart P. Heinrichs, E.J. Brill 2012, https://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/*-COM_0497 (accessed November 15, 2022).

[63] Abū Bakr Aḥmad b. ʿAlī b. Thābit b. Aḥmad b. Māhdī al-Shāfiʿī, commonly known as al-Khaṭīb al-Baghdādī or "the lecturer from Baghdad" (392–463/1002–71), and Abū al-Fatḥ Muḥammad b. ʿAbd al-Karīm al-Shahrastānī (479–548/1086–1153), the historians of early Islam.

[64] These dates reflect that a Hijri calendar year is about 11 days shorter than a Gregorian calendar year. As a result, there is no direct correspondence between the years of the two calendars and a year in the Muslim calendar usually falls in two successive Gregorian years.

[65] See Watt, "Khārijīte Thought in the Umayyad Period," 215–16; Samuel M. Stern, *Studies in Early Ismāʿīlism* (Jerusalem: The Magnes Press; Leiden: E.J. Brill, 1983).

At the same time, there were divisions among the Khārijites themselves over how to fight against the Umayyads. Nāfiʿ b. al-Azraq (d. 65/684-5) and his followers, such as Najda b. Amīr, began to call for open armed rebellion (*khurūj*). The radicals' leaders very much hoped they would be able to take advantage of the numerous intertribal tensions and win over some of the tribes. At that time, there were sharp conflicts and fighting in Basra between the tribes of al-Azd and Banū Tamīm after the assassination in 64/683 of Masʿūd b. ʿAmr, the shaykh of the Azd tribes, who had been appointed temporary governor of Basra after the death of Caliph Yazīd b. Muʿāwiya. Al-Azds suspected the Banū Tamīm, but they said the Khārijites did it. When their traditional Banū Rabīʿa allies joined al-Azds, and the ʿAbd al-Qays tribes sided with the Banū Tamīm, the city found itself on the brink of civil war. From the description of al-Ṭabarī, it appears that some of the Khārijites incited the population to continue fighting in order to bring chaos to the city, even when the main parties to the conflict reached an agreement. "Then the people of Basra turned against the Khārijites and persecuted them, so they had to leave the city and follow their leader Nāfiʿ b. al-Azraḳ. Those who did not want bloodshed and did not incite were allowed to stay in the city."[66]

Among those who stayed in Basra after the rebellion of 65/684-5 was Ibn Ibāḍ. It can be assumed that he was one of those Khārijites who were against bloodshed in this case and against armed struggle in general and who favoured moderate methods. This group referred to the trend of quietism and were called *al-Qāʿidūn* ("the sedentaries"). One tradition states that the Khārijites split in 65/685 and that the followers of Nāfiʿ b. al-Azraq, called *al-Azāriqa*, left Basra and took up arms against the Umayyads.[67] These differences led to further divisions, which deepened in the following years. Al-Baghdādī lists seven main sects among the Khārijites, from which other sects had emerged. He adds that then they disintegrated into at least 20 groups.[68]

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66 *The History of al-Ṭabarī…*, vol. XX, 102.

67 See comment in Stanislav M. Prozorov, "Muhammad Ibn Abd al-Karim al-Shahrastani," in *Kniga o rieligijach i siektach*, part 1: *Islam*, trans. from Arabic, with an introduction and commentary by Stanislav M. Prozorov (Nauka: Moskwa, 1984), 214 n. 48.

68 Abū Manṣūr ʿAbd al-Qāhir ibn Ṭāhir al-Baghdādī, *Moslem Schisms and Sects (Al-Farḳ bain al-firaḳ) Being the History of the Various Philosophical Systems Developed in Islam by Abū-Manṣūr 'Abd-al-Ḳāhir ibn-Ṭāhir al-Baghdādī*

The leaders of the quietist movement were Abū Bilāl Mirdās b. ʿUdayya (or b. Ḥudayr) al-Tamīmī (known as Abū Bilāl, d. 61/680-1), Ibn Ibāḍ and ʿAbd Allāh b. al-Saffār al-Saʿdī al-Tamīmī. The latter figure is the least known and is believed to have led a group known as *al-Ṣufrīyya* or the Yellows, which held the position between Ibn Ibāḍ (his followers were called the Whites) and Nāfiʿ b. al-Azraq (his followers were called the Blues). All three groups joined ʿAbd Allāh b. al-Zubayr, who in 64/684 announced in Mecca the Caliphate alternative to the Umayyad Caliphate. However, soon they all left ʿAbd Allāh b. al-Zubayr and started to create their own political structures, also altenative to the Umayyad Caliphate.[69]

The origins of Ibāḍīsm and the figures of this early periode raise many questions due to the scarcity of historical sources. Some authors even question the existence of all these groups and doubt the essential doctrinal differences between them. Disputes continue about Ibn Ibāḍ, considered the founder of Ibāḍīsm, and the question of when he lived. It is certain that the name Ibāḍism was applied to the Basra group by other Muslims at a later date. The most important source on the origins of Ibāḍīsm is the *Kitāb Abī Sufyān*, which dates from the middle of the third/ninth–tenth century and is known only from other sources.[70]

An interesting thread is the tribal affiliation of the Ibāḍī community in Basra. Wilkinson believes that the dynamics of events at that time determined the origin of the Omani emigrants in Basra from the southern (Yamanī Arabs), while the other groups in Basra and the authority of the Caliphate belonged to the northern (Nizārī) Arabs. Ibāḍism became a form of Yamanī resistance against Nizārī domination.[71] The fact is that many inhabitants of Oman immigrated to Basra, which was one of the most important centres of the nascent Muslim state. Some migrated for bread, and others went there for knowledge. An example of the latter situation is al-Rabīʿ b. Ḥabīb al-Farāhīdi (c. 75–170/694/5–786/7). Born in the village of Ghaḍfān on the al-Bāṭina coast, he soon left for Basra to study Islam

(d. 1037), part I, trans. from the Arabic by Kate Chambers Seelye (New York: Columbia University Press, 1920), 14–15.

69 Cook, *Early Muslim Dogma…*, 64.

70 See Valerie J. Hoffman, "Ibāḍism: History, Doctrines, and Recent Scholarship," *Religion Compass* 9, 9 (2015), 297–307, https://doi.org/10.1111/rec3.12164.

71 John C. Wilkinson, *The Imamate Tradition of Oman* (Cambridge: Cambridge University Press, 1987), 9.

there. First, he became a student of Jābir b. Zayd al-Azdī, and later the third Imam of the Ibāḍi community in Basra.[72]

A figure about which relatively much historical sources say is Jābir b. Zayd al-Azdī (21–93/642–711). He became the leader of the group after Ibn Ibāḍ's death.[73] He was also the founder of Ibāḍī doctrine (*madhhab*) and Ibāḍī law (*fiqh*), i.e. practically the entire Ibāḍī tradition. Jābir b. Zayd al-Azdī, in particular, made a critical analysis of the narrations of the Prophet Muḥammad's Companions, which became the basis for the interpretation of *ḥadīths* by subsequent generations of Ibāḍī jurists. Jābir b. Zayd al-Azdī was an Omani native of Farq in the Nazwā region. From there, he went to Basra, where he settled and was educated in the Azdīs' quarter. He was a student of the noted Qur'ānic exegete Ibn ʿAbbās (d. 68/687-8). When he became a learned jurist and *muftī* of Basra, he began to call people to restore the Muslim state, i.e. to the times of the four first Caliphs, and return to the sources. After 658, he established contact with the Khārijites, particularly with Abū Bilāl, a shaykh of the quietists in Basra, who objected to killing Muslims or taking them captive. He expressed the view that the Khārijites, even if they were at war with such Muslims, should try to persuade them of their views and that the primary weapon of the community should be the preaching of the faith.[74]

It was Jābir b. Zayd al-Azdī who established a network of secret Ibāḍī groups in Basra during the persecution by the Umayyad authorities after 61/680. After his death, the new Ibāḍī leader Abū ʿUbayda Muslim b. Abī Karīma (known as Abū ʿUbayda, died between 136–58/753–75) established secret Ibāḍī schools in Basra. It was probably al-Rabīʿ b. Ḥabīb al-Farāhīdi, a student of Abū

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72 See ʿAbd Allāh b. Muḥammad b. ʿAbd Allāh al-Sālimī, "Introduction" to *Al-Jāmiʿ al-ṣaḥīḥ. Musnad al-Imām al-Rabiʿ b. Habīb*, ed. by Muḥammad Idrīs and ʿĀshūr b. Yūsuf (Masqaṭ: Dār al-Ḥikma; Bayrūt–al-Dimashq: Maktaba al-Istiqāma, 1995), 2–4.

73 It is not known when and under what circumstances.

74 For more on the doctrine, see Tadeusz Lewicki, "Ibāḍīyya," in *The Encyclopaedia of Islam*, New Edition, vol. 3, ed. by Bernard Lewis, Victor Louis Ménage, Joseph Schacht, and Charles Pellat (Leiden: E.J. Brill, 1986), 669–82. About the role of Jābir b. Zayd al-Azdī see Mohamed Said Khalfan Al Mamari, *Early Ibāḍī Jurisprudence: the Letters of Ǧābir Ibn Zayd Al-Azdī*, Ph.D. Thesis (Tübingen: Universität Tübingen, 2019), 40–41. Valerie J. Hoffman writes about the theological foundations of Ibāḍīsm, and especially about the issue whether God can be seen – eadem, "Refuting the Vision of God in Ibāḍī Theology," in *Ibadi Theology: Rereading Sources and Scholarly Works*, 245–55.

ʿUbayda and Imam who began to send the Ibāḍī schools alumni to various regions of the Muslim world to propagate Ibāḍīsm.[75] The Ibāḍī community gained the support of wealthy merchants from Basra, including the Muhallabī family, who generously financed the activities of the missionaries.[76] Merchants of Basra had commercial interests throughout the Caliphate and as far away as China, and war and conflict were not conducive to their activities, so the moderate views of the Ibāḍīs suited them. The support of the movement by Basrian merchants was crucial to the persistence of Ibāḍīsm during this period.[77]

Abū ʿUbayda tried to persuade Caliph Sulaymān b. ʿAbd al-Malik (r. 96–99/705–15) to embrace Ibāḍīsm. Sulaymān went as far as appointing an Ibāḍī a judge in Basra, but did not accept the Ibāḍī Imam's proposal. The final rupture occurred after the anti-Umayyad riots in Damascus in 101/720 during the reign of Yazīd b. ʿAbd al-Malik (r. 101–05/720–24). It led to a wave of persecution of the Ibāḍīs in Iraq, in response to which Abū ʿUbayda attempted to create an Imamate, a state independent of the Caliphate, in Basra. However, this attempt failed, and the Ibāḍīs then directed their efforts to creating imamates outside Iraq, on the outskirts of the Caliphate.[78]

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[75] See Wilferd Madelung, "Early Ibāḍī Theology," in *The Oxford Handbook of Islamic Theology*, ed. by Sabine Schmidtke (Oxford: Oxford University Press, 2014), 242–51; Wilkinson, *The Imamate Tradition of Oman*, 149–50.

[76] This family was descended from Abū Saʿīd al-Muhallab b. Abī Ṣufra al-Azdī, who was of the Azd tribe and was a military commander in the service of the Rightly Guided Caliphs and Umayyads, and then governor of several provinces until 702, see: *The History of al-Ṭabarī (Taʾrīkh al-rusūl waʾl-mulūk)*, vol. XXI: *The Victory of the Marwānids*, trans. and annotated by Michael Fishbein (Albany: State University of New York Press, 1990), 87, 92, 110, 118; Patricia Crone, "Al-Muhallab b. Abī Ṣufra," in *The Encyclopaedia of Islam*, Second Edition, vol. 8, ed. by Clifford Edmund Bosworth, Emericus van Donzel, Wolfhart P. Heinrichs, and Charles Pellat (Leiden: E.J. Brill, 1993), 357.

[77] This hypothesis was proposed in Tadeusz Lewicki in "The Ibadites in Arabia and Africa," *Journal of World History* (*Cahiers d'histoire mondiale*) 13 (1971), 3–81.

[78] See on this topic: John C. Wilkinson, "The Origins of the Omani State," in *The Arabian Peninsula: Society and Politics*, ed. by Derek Hopwood (London: George Allen and Unwin Ltd., 1972), 67–87; Lewicki, "The Ibadites in Arabia and Africa," 72–78.

2. The Ibāḍī Imamates in Oman

The first Ibāḍī state was established in Ḥaḍramawt in 128–30/745–48. The Ibāḍīs of Ḥaḍramawt subjugated Yemen and even captured Mecca and Madina. Caliph Marwān b. Muḥammad b. Marwān (r. 127–32/744–50) struggled to defeat them. Their Imam ʿAbd Allāh b. Yaḥyā al-Kindī (known as Ṭālib al-Ḥaqq – "Seeker of the Truth") was killed in a battle.[79] The second Ibāḍī state was established in 132/750 in Oman, and the third one in North Africa under the Rustamid Dynasty (140–296/757–909).

The spread of Ibāḍīsm in Oman was facilitated by the fact that the leading exponents of this movement, including Jābir b. Zayd al-Azdī, came from the Omani tribe of al-Azd. When the shaykhs of al-Azds accepted Ibāḍīsm in Basra, every member of the tribe who came to the city joined the movement willy-nilly.[80] Another factor conducive to the emergence of an Ibāḍīsm centre in Oman was the country's geographical location, far from the main arenas of political struggle and centres of power in the Caliphate. A tendency to create in this area structures independent of the Caliphate' authority was not as "noticeable" as similar ones in Iraq, Syria or the Hejaz. Another critical factor was the exile of Jābir b. Zayd al-Azdī to Oman in an attempt by the governor of Basra to weaken the influence of Ibāḍīs, al-Azds and the Muhallabīs in the city. However, this step did not bring the expected results. Jābir b. Zayd al-Azdī returned to Basra around 92/711 and quickly re-established his position in the city. He spent his stay in Oman preaching the teachings of Ibāḍīsm. At that time, the first Ibāḍī schools were established in Oman, and they quickly gained supporters. The teachers in these schools recruited the tribal shaykhs and became their trusted men. A factor favouring the spread of Ibāḍīsm was that Ibāḍī missionaries themselves came from Omani tribes, which made it easier for them to gain the trust of tribal leaders. The breakthrough moment for Ibāḍīsm in Oman was when it was accepted by the al-Julandā family, the leading family of the Azd tribes. By the end of the second century of the Muslim era, Ibāḍīsm was already very widespread among the people of Oman.

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79 See on this subject idem, "Les Ibāḍītes dans l'Arabie du Sud au moyen age," *Folia Orientalia* 1 (1959), 3–18.

80 See idem, "The Ibadites in Arabia and Africa," 66; *The History of al-Ṭabarī…*, vol. XX, 102.

At the same time, Oman separated politically from the rest of the Muslim community. From then on, Oman functioned as a *de facto* state independent of the Caliphate.[81]

The history of Oman from the period of the beginning of Ibāḍīsm is closely realated to the Azd tribes. The Azd were tribes that came to Oman from South Arabia when the country was under the influence of Persia. Oman is mentioned in sources both from the times of Darius I (521–486 BCE) and later rulers: Xerxes I (486–65), Darius II (423–04), Artaxerxes II (404–359), Artaxerxes III (359–38) and Darius III (336–31 BCE). The country was incorporated into the Persian Empire probably around 519 in the time of Darius I, and this situation continued until the reign of Darius III.[82] An Omani source directly mentioning the Persian presence in Oman at this time is a chronicle written by Sirḥān b. Saʿīd b. Sirḥān b. Muḥammad al-Izkawī (d. 1150/1737) under the title *Kashf al-ghumma. Al-Jāmiʿ li-l-akhbār al-umma*. Its author writes about the Persian presence in Oman regarding the influx of al-Azd tribes from South Arabia to the Omani Peninsula. In it, we read that the first of the Azdis who came to Oman was Mālik b. Fahm, and while he was still in Ḥaḍramawt, he learned that there were Persians in Oman and that they lived there. They were in Ṣuḥār, and Mālik b. Fahm asked them for permission to settle. However, they refused his request and sent an army of 30,000 to 40,000 people to the plain of Salyut, near Nizwā, where Mālik defeated them. Despite the arrival of reinforcements, the Persians suffered a second defeat at the hands of Mālik and the remnants of their army boarded ships and sailed across the sea to Persia.[83]

As a result of this victory, the tribes of Azd dominated the country's area. The most common research approach divides the history of Oman from the beginnings of Ibāḍīsm to modern times into the

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81 For more detail, see Risso, *Oman and Muscat…*, 6–7.

82 Richard N. Frye, *The History of Ancient Iran* (München: C.H. Beck'sche Verlagsbuchhandlung, 1984), 103.

83 "Annals of Omán, from Early Times to the Year 1728 A.D., from an Arabic MS by Sheykh Sirha'n Bin Sa'id Bin Sirha'n Bin Muhammad of the Benú 'Ali Tribe of Omán, translated and annotated by Edward Charles Ross, Political Agent at Muscat," *Journal of the Asiatic Society of Bengal* XLIII, part I (History, Literature, &C.) (1874), 112–115. The migration of al-Azds to Oman from Yemen and the history of Mālik b. Faḥm and his family is extensively described by al-ʿAwtabī – see Salama b. Muslim al-ʿAwtabī, *Kitāb al-Ansāb*, 2 vols., ed. by Muḥammad Iḥsān al-Nuṣṣ (Masqaṭ: Wizārat al-Turāth al-Qawmī wa-l-Thaqāfa, 2006), vol. 2, 687–785.

periods when the position of Imam remained in five lineages, all of them descended from the Azd tribes.

Julandā

The first Omani Imam was al-Julandā b. Masʿūd (d. 134/752). He was the grandson of Jayfar al-Julandā, who, along with his brother ʿAbd, was the first Omani shaykh to convert to Islam and became the first Muslim ruler of Oman. Omani tradition has it that, after the Prophet Muḥammad died, al-Azds sent a delegation to Caliph Abū Bakr, who approved ʿAbd and Jayfar as those who were to lead the Muslims in Oman. Caliphs ʿUthmān and ʿAlī similarly sanctioned ʿAbbād b. ʿAbd al-Julandā, who took over the leadership of the house of al-Azd from his father. However, under the Umayyads, the position of the Azdīs as the leading tribe of Oman was seriously threatened. The Umayyads resented Oman's growing independence. Caliph ʿAbd al-Malik b. Marwān decided to place Oman under tight control and remove al-Julandā from power. In 129/746-7, troops were sent to Oman, eventually driving the Omani tribes back from the coast, and the country came under direct management from Basra. The brothers Saʿīd b. ʿAbbād and Sulaymān b. ʿAbbād, who at that time were the heads of the al-Julandā family and ruled the country together, disobeyed the governor and sailed to East Africa.[84]

The Abbasids, like the Umayyads, treated Oman and al-Baḥrayn as part of the Basra Province.[85] The announcement in 132/750 by Ibāḍīs of a separate Imamate weakened the integrity of the Abbasid Caliphate and in 133/751 the Abbasid ruler Abū l-ʿAbbās ʿAbdallāh al-Saffāḥ (r. 132–36/750–54) sent an expedition to Oman under Khāzim b. Khuzayma to break up the forces of al-Julandā b. Masʿūd.[86] A council of tribal shaykhs was convened and decisively rejected the demand that they swear allegiance to the Caliph, and the two sides clashed at the Battle of Julfār, which

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84 *The History of al-Ṭabarī (Taʾrīkh al-rusūl waʾl-mulūk*), vol. XXVII: *The 'Abbāsid Revolution*, trans. and annotated by John A. Williams (Albany: State University of New York Press, 1985), 60; "Annals of Omán…", 119–21; *History of the Imâms and Seyyids of Omân, by Salil-ibn-Razîk, from A.D. 661–1856*, trans. and ed. with Notes, Appendices, and an Introduction, continuing the History to 1870 by George Percy Badger (London: The Hakluyt Society, 1871), 2–3.

85 *The History of al-Ṭabarī…*, vol. XXVII, 196.

86 Ibid., 88; Wilkinson, *Ibāḍīsm: Origins and Early Development in Oman*, 125–44.

lasted for two days and was inconclusive. Both sides licked their wounds for seven days and prepared for the decisive battle. According to al-Ṭabarī, the Caliph's troops resorted to trickery and set fire to the wooden Ibāḍī houses in Julfār. Hearing about this, Ibāḍī warriors abandoned the camp to save their families from dying in the fire. They all died at the hands of the Abbasid soldiers. Al-Julandā b. Masʿūd was also killed, and total Ibāḍī losses were said to be as many as 10,000 killed. Their heads were sent to Basra, from where they were transported to the Caliph in Baghdad.[87]

However, the victory at the Battle of Julfār did not lead to the permanent subordination of Oman to the Abbasids. The victors did not even attempt to advance inland, and their commander left Oman, according to al-Ṭabarī, summoned to Baghdad by the Caliph.[88] Al-Julandā b. Masʿūd, the first Ibāḍī Imam in Oman, during his period in office, became known as a just, generous and strict ruler, according to the image of him passed down by tradition. The Ibāḍī community multiplied at this time due to the adoption of Ibāḍīsm by local tribes and the influx of Ibāḍīs from Basra, especially from Ḥaḍramawt, where the Abbasids broke up the Imamate.[89]

Yaḥmad

In 179/795-6 al-Wārith b. Kaʿb al-Kharūṣī, who came from the Yaḥmad family and was a shaykh of one of that family's tribes, was proclaimed as the new Imam. According to tradition, he led the opposition against the rule of his predecessor and held a strong position in Nizwā. Since he was not an active member of the Ibāḍī community and his brothers were not Ibāḍīs at all, his election was primarily the result of intertribal bargaining. During his tenure, al-Wārith b. Kaʿb al-Kharūṣī became known as an efficient and just ruler and tensions between the tribes eased significantly. The Imam was known for his dedication to the cause of the ordinary people. In 192/807-8, a settlement in the Nizwā valley was hit by a flood that threatened to inundate the local prison and kill the prisoners there. Al-Wārith rushed to their rescue and drowned himself as a result.

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87 Idem, *Ibāḍīsm: Origins and Early Development in Oman*, 202; *History of the Imâms and Seyyids of Omân, by Salil-ibn-Razîk, from A.D. 661–1856*, 8.

88 "Annals of Omán…," 122.

89 *History of the Imâms and Seyyids of Omân, by Salil-ibn-Razîk, from A.D. 661–1856*, 7.

Ibāḍī chroniclers regard the period of al-Wārith's rule as the golden years of the Ibāḍī Imamate.[90]

After the death of al-Wārith, Ghassān b. ʿAbd Allāh al-Yaḥmadī became the new Imam. Initially, the Ibāḍī *ʿulamāʾ* wanted to stick to the principle of widespread consultation on the choice of leader. However, fearing that prolonging the election might revive intertribal feuds, they eventually decided on a new Imam themselves. The new Imam sought to protect the Imamate from outside threats, and a flotilla of ships was built for this purpose. They were to defend the coast not so much from the Abbasid fleet as from pirates, who plundered coastal settlements and even such ports as Ṣuḥār, Julfār and Dibā (Dabā). It is also known that Imam Ghassān b. ʿAbd Allāh al-Yaḥmadī moved the capital of the Imamate from Nizwā to Ṣuḥār, i.e. from the western slopes of the mountains to the eastern slopes, facing the coast, in order to better control the course of events.[91]

Ghassān b. ʿAbd Allāh al-Yaḥmadī went down in history as the ruler who decreed the strict application of Islamic law. He also introduced regulations regarding the work of enslaved people, whose numbers increased significantly at that time. They were brought to Oman from East Africa and Persia and worked in agriculture, trade and shipbuilding. It is worth noting that the Ibāḍīs were unsympathetic towards Shīʿites, and any attempt by Shi'a merchants to settle in Oman ended with their expulsion at the Imam's request. Ghassān b. ʿAbd Allāh al-Yaḥmadi died in 207/822-3 after ruling for almost 15 years. He was succeeded by ʿAbd al-Mālik b. Ḥumayd al-ʿAlwī, who ruled until 226/840-1 and continued the policy of his predecessor. Ibāḍī sources devote little attention to him, which is regarded as confirming that the rule of this Imam was one of peace and stability. Ṣuḥār also became a centre of intellectual life during this period. In addition to the well-known Ibāḍī *ʿulamāʾ*, there were also groups of Muʿtazilites, Qadarites and Murjiʾites, representatives of non-orthodox branches of Islam. Persians, Indians, Africans and Jews also lived there.[92]

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90 "Annals of Omán...," 124; *History of the Imâms and Seyyids of Omân, by Salil-ibn-Razîk, from A.D. 661–1856*, 10–12.

91 "Annals of Omán…," 124–25.

92 Ibid., 125–26. Wilkinson writes that at that time there were numerous theological disputes concerning, among others, the issue of the Created Qur'ān, God's revelation to Muḥammad (*tanzīl*), and His inspiration (*waḥā*). The most famous was the so-called Damā debate – idem, *Ibāḍīsm: Origins and Early Development in Oman*, 269–79.

The next Imam, Muhannā b. Jayfar al-Yaḥmadī, a relative of the third Imam, Ghassān b. ʿAbd Allāh al-Yaḥmadī, was elected in 226/840-1. His rule lasted until 237/851-2 and brought further internal and external strengthening of the state. The flotilla of armed ships that protected the country's coast grew to 300 during his rule. In the mainland, up to 10,000 men could quickly be called up to fight. The irrigation system was strengthened, which began to bring higher harvests and stimulated further development of trade. Chroniclers emphasize the growth of Oman's population as a result of political stability and commercial development. The Imamate then extended its influence to Ḥaḍramawt.[93]

After the death of Imam Muhannā b. Jayfar al-Yaḥmadī in 237/851-2, the new leader of the Omani Ibāḍīs was al-Ṣalt b. Mālik al-Kharūṣī. Like his predecessors, the new Imam was elected by the *ʿulamāʾ* and, like the previous Imams, he came from the lineage of the Yaḥmad. Al-Ṣalt b. Mālik ruled until 273/886 – longer than any of his predecessors. Initially, the Imamate's position towards the Abbasids was so defiant that the Ibāḍīs undertook an expedition to Socotra, where many Ibāḍīs had taken refuge after the fall of their Imamate in Ḥaḍramawt. Socotra was then in the sphere of influence of Abyssinia, and the Omani expedition was supposed to limit these influences. However, the positions of the Muslims on the island were fragile and the Omani warriors abandoned their plan and left the island.[94]

The main threat to the durability of the Imamate turned out to be not external forces but the lack of unity within the ranks of the Ibāḍīs. Imam al-Ṣalt b. Mālik was opposed by some tribal shaykhs, who were dissatisfied with the policy of appointing provincial and city governors. The opposition, led by Shaykh Mūsā b. Mūsā, accused the Imam of deviating from the principles of Ibāḍīsm and demanded that the *ʿulamāʾ* remove him from leadership of the state. In 272/886, the rebels stood with their army at Nizwā. Al-Ṣalt b. Mālik decided to resign and left the seat of the Imam. After taking Nizwā, Shaykh Mūsā b. Mūsā named Rāshid b. Naẓr al-Yaḥmadī Imam and himself took the position of chief *qāḍī* (judge) and adviser to the Imam. This way of assuming the function of the new Imam was widely criticized by the *ʿulamāʾ*, who accused Mūsā b. Mūsā of deviating from the principle of universal consultation in the selection

93 See Lewicki, "The Ibadites in Arabia and Africa", 11.

94 *History of the Imâms and Seyyids of Omân, by Salil-ibn-Razîk, from A.D. 661–1856*, 19.

of a new leader, which was fundamental to Ibāḍīsm. This criticism turned into a social protest and civil war, which eventually led to the fall of the Imamate.[95]

The events of 272/886 divided the *ʿulamāʾ* into two camps, al-Rustāq and Nizwā, and sparked fierce religious debates about the nature of the Imamate as a state and the conditions necessary to remove a person from leadership of a community. Theologically, this case deepened the controversy over who was and was not an Ibāḍī. This issue came to be known as the principles of *walāya* (association) and *barāʾa* (dissociation). This case also exposed the weakness of the Ibāḍī doctrine of government and it later transpired that it was one of the critical moments in the history of Ibāḍīsm. Discussions among the Ibāḍī *ʿulamāʾ* continued for several centuries. They were concerned primarily with the scope of the Imam's competences and the division of power between the *ʿulamāʾ* and the Imam. According to the *ʿulamāʾ* from Nizwā, the Imam was only the guardian of the divine laws and did not have the authority to interpret them, which belonged to the *ʿulamāʾ*. Opponents of this point of view claimed that when the Imam assumed supreme religious authority, he also became responsible for secular matters related to the functioning of the community.[96]

The conflict initially took the form of a family feud within the Yaḥmad lineage, from which both the Imam and his primary opponent Mūsā b. Mūsā came, but it soon turned into a theological and legal conflict, which also had an essential economic background. Mūsā b. Mūsā belonged to the Fajḥ family from which previous Ibāḍī Imam had descended. The Fajḥ belonged to the northern Yaḥmads, who occupied the northern part of the al-Bāṭina coast but on the western side of al-Jabal al-Akhḍar, where the main centre was Nizwā. Imam al-Ṣalt b. Mālik al-Kharūṣi, meanwhile, came from the Yaḥmads who occupied the eastern valleys of al-Jabal al-Akhḍar with a significant centre in al-Rustāq. These Yaḥmads controlled tribal settlements on the al-Bāṭina coast through alliances with their inhabitants, who conducted overseas trade and became wealthy in times of political stability. The northern Yaḥmad had not only lost their influence on state policy due to the election of al-Ṣalt b. Mālik al-Kharūṣi, but also did not benefit from the economic prosperity of

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95 Ibid., 20.

96 This story has been written in numerous publications and is the point of reference in numerous studies on the theology and jurisprudence of Ibāḍīsm. See Wilkinson, *The Imamate Tradition of Oman*, 166–67.

the al-Bāṭina coast. So the conflict was about control over the coast and its prosperous trading settlements.[97]

After the death in 277/890-1 of Rāshid b. Naẓr al-Yaḥmadī, the new Imam was elected. It was ʿAzzān b. Tamīm al-Kharūṣī. His rule lasted until 280/893-4, and during this time, there were numerous tribal conflicts. After about forty years, the Yaḥmads managed to overcome their differences and united. In the following years, new Imams were elected. In 320/932 it was Saʿīd b. ʿAbd Allāh b. Muḥammad b. Maḥbūb and he headed the community until 328/939-40. Sirḥān b. Saʿīd b. Sirḥān b. Muḥammad al-Izkawī (d. 1150/1737), the author of *Kashf al-ghumma. Al-Jāmiʿ li-l-akhbār al-umma*, the chronicle of Oman down to 1728 CE, emphasized the high moral qualities of Saʿīd b. ʿAbd Allāh b. Muḥammad b. Maḥbūb, and stressed that his people compared him to Imam al-Julandā b. Masʿūd, the first Ibāḍī Imam in Oman. Others believed that he was even more outstanding than al-Julandā b. Masʿūd. Such an opinion was certainly favoured by the fact that Saʿīd b. ʿAbd Allāh b. Muḥammad b. Maḥbūb was a mediator in complicated disputes and found solutions that satisfied both sides. During one of these situations, a fight ensued, during which the Imam was killed. Because he died while performing religious service, he was considered a martyr of the faith.[98]

The Yaḥmad lineage held the position of Imam until the end of the sixth/twelfth century. Internal conflict and division into the camps of al-Rustāq and Nizwā was constantly alive and in 445/1054 the *ʿulamāʾ* of al-Rustāq denounced the supporters of Mūsā b. Mūsā and cursed them. It ended all hopes of a lasting understanding within the Yaḥmad lineage.[99] Back in 449/1058, the Yaḥmads established a vital power centre with Imam Rāshid b. Saʿīd,[100] but by the end

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97 About Samah see Risso, *Oman and Muscat…*, 9; on the rivalry in the Yaḥmad family see: John C. Wilkinson, "Bio-bibliographical Background to the Crisis Period in the Ibāḍī Imāmate of Oman (End of 9th to End of 14th Century)," *Arabian Studies* III (1976), 137–39.

98 *History of the Imâms and Seyyids of Omân, by Salil-ibn-Razîk, from A.D. 661–1856*, 30; Sirḥān b. Saʿīd b. Sirḥān b. Muḥammad al-Izkawī, *Kashf al-ghumma. Al-Jāmiʿ li-l-akhbār al-umma*, 2 vols., ed. by Muḥammad Ḥabīb Ṣāliḥ and Maḥmūd b. Mubārak al-Salīmī (Masqaṭ: Wizārat al-Turāth wa-l-Thaqāfa, 2013), vol. 2, 164–72.

99 Wilkinson, "Bio-bibliographical Background to the Crisis Period in the Ibāḍī Imāmate of Oman (End of 9th to End of 14th Century)," 139.

100 Abdulrahman al-Salimi, „Makramid Rule in Oman," *Proceedings of the Seminar for Arabian Studies* 35 (2005), 247–53.

of the sixth/twelfth century, the influence of the Fajḥs and the entire Yaḥmad lineage had weakened so much that its representatives ceased to claim exclusive leadership of the Ibāḍī community. Their last Imams were Mūsā b. Abī al-Maʿālī, Muḥammad b. Khanbash and Muḥammad b. Ghassān.[101] Abdulrahman al-Salimi writes that "the schisms between the Imams" and the actual fall of the Imamate took place after the death of Muḥammad b. Ghassān.[102]

Nabhānī

The sixth/twelfth to ninth/fifteenth centuries are among the least explored in Omani history. The chronicle of Sirḥān b. Saʿīd b. Sirḥān b. Muḥammad al-Izkawī, *Kashf al-ghumma. Al-Jāmiʿ li-l-akhbār al-umma*, an important continuous narrative on the history of Oman in the period from the beginning of Islam to the beginning of European expansion, says that the time from the death of Imam Muḥammad b. Khanbash in 557/1162 to the election of Mālik b. al-Ḥawāri as Imam in 809/1406, "Imams were constantly elected, and power was in the hands of the house of Nabhānī," but gives neither the dates of their rule nor any details. He returns to a more structured narrative when he comes to the Omani rulers of the early ninth/fifteenth century.[103]

The existing fragmentary records only allow us to reconstruct the history of the country in outline. Particularly little is known about what was happening in the mainland. One of the few descriptions of Oman from this period is the well-known account of Ibn Baṭṭūṭa, who travelled in the Gulf of Oman and the Persian Gulf in 1331–47 CE. In his description, the Imam of Oman is a just ruler who "has neither chamberlains nor viziers and everyone – stranger or not – has access to it and will be heard."[104] However, this account was most likely based on stories heard in one of the Omani ports, and its author did not travel inland.[105]

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101 Wilkinson, *Ibāḍīsm: Origins and Early Development in Oman*, 395.

102 Abdulrahman al-Salimi, "The Nabhānīs: A Sketch for Understanding," *Studi Mağrebini* 18, 1 (2020), 92.

103 "Annals of Omán…," 141.

104 Ibn Battûta, *Voyages*, vol. 1: *De la Mecque aux steppes russes et à l'Inde*, trans. by Charles Defremery and Beniamino Raffaello Sanguinetti (Paris: Éditions la Découverte, 1880), 115.

105 Wilkinson, "Bio-bibliographical Background to the Crisis Period in the Ibāḍī Imāmate of Oman (End of 9th to End of 14th Century)," 159. There is no doubt that Ibn Baṭṭūta reached the coastal regions and was in Qalhāt.

Abdulrahman al-Salimi explains that the main obstacle in learning about this period is the need for historical sources that would allow us to reconstruct the sequence of events and present the country's history by presenting Imams or governors of major cities or regions chronologically.[106] Due to the lack of sounds sources, these centuries were treated very superficially or even omitted as 'Oman Dark Ages'. However, Abdulrahman al-Salimi emphasizes that new historical and literary sources constantly enrich knowledge about this period.[107]

The common opinion is that the sixth–eleventh/twelfth–seventeenth centuries was the reign of the Nabhānī lineage. Oman was becoming intertwined with world events and a shift in regional power balance more and more. Buyids and Carmathians, new regional powers, were born and fell. After the conquest of Baghdad by the Mongols in 656/1258, Oman's ties with Iraq weakened, and the importance of contact with the Red Sea region increased. Trade links with India became even more vital. In 674/1275-6, Oman was invaded by the army from Shirāz. In the seventh/thirteenth century, an influencial center of power was established on the island of Hormuz, off the coast of Oman. In the following century, the Kingdom of Hormuz extended its influence to al-Baḥrayn. In the era of great geographical discoveries, Oman fell under the influence of the Portuguese.[108]

Omani authors Nūr al-Dīn al-Sālimī (d. 1914) and his son Muḥammad (al-Shayba) al-Sālimī (d. 1985), and Sayf b. Ḥamūd al-Battāshī (d. 1999)[109] believe that the era of the Nabhānī dynasty fell into two periods: the early and the later. In 675/1276 the Nabhānī shaykh ʿUmar b. Nabhān defeated the Persian invaders, which strengthened the position of the Nabhānī lineage among the tribes of Oman. Thus, the early period lasted from the second half of the twelfth century to 1500, when the ruler Sulaymān b. Sulaymān al-Nabhānī died. The later period lasted from 1500 to 1624.[110]

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[106] This approach is taken by von Zambour and Ibn Ruzayq, see Bibliography.

[107] Abdulrahman al-Salimi, "The Nabhānīs: A Sketch for Understanding," 86.

[108] Ibid., 85–86.

[109] Nūr al-Dīn al-Sālimī (d. 1914) and his son Muḥammad (al-Shayba) al-Sālimī (d. 1985) are the authors of historical works, and Sayf b. Ḥamūd al-Battāshī (d. 1991) wrote a biographical dictionary of Omani *ʿulamāʾ* entitled *Itḥāf al-aʿyān fī taʾrikh baḍʿ ʿulamāʾ ʿUmān* (Masqaṭ: Maktab al-Mustashār al-Khāṣ al-Jalāl al-Sulṭān li-Shuʾūn al-Dīniyya wa-l-Taʾrikhiyya, 2016).

[110] Abdulrahman al-Salimi, "Different Succession Chronologies of the Nabhānī dynasty in Oman," *Proceedings of the Seminar for Arabian Studies* 32 (2002), 259.

Random – most often – information refers to the power of tribal shaykhs who gathered around their "kings" – *mulūk* residing in Nizwā and probably had little in common with the history of the Ibāḍī Imamate. The Ibāḍīs continued the traditions of their state. They elected successive Imams, but the two structures – tribal and religious – functioned independently or at least in parallel in those centuries. This situation created opportunities to treat the Imam's position instrumentally. We know of situations when the Ibāḍī community became so influential that its *ʿulamāʾ* proclaimed the Imam as a Sultan – a secular leader over the tribes. On the other hand, strong shaykhs sought to gain the Imam's support in order to reassert their supremacy over other tribal groups. However, in the period in question, such situations were unstable, and the two structures – tribal and religious – did not overlap again until the ninth/fifteenth century. The shaykh of the Nabhānī tribal group was then looking for a solid ally to help maintain the Nabhānīs' positions in central Oman, and the Ibāḍīs became that ally.[111]

Abdulrahman al-Salimi notes essential changes in the composition of the tribes in the region at this time. Tribes from Central Arabia flooded the shores of the Persian Gulf. The most numerous were the Banū Jabr tribes, which rose to political power in the late ninth–tenth/fifteenth–sixteenth centuries. It completely changed the arrangement of tribal alliances, especially since the Banū Jabr were Sunnī and Nizārī, and the tribes that lived in the south of Oman were the Yamanī and Qaḥṭānī.[112] This differentiation played a vital role in the twelfth/eighteenth century when two tribal confederations formed and civil war broke out.

The enmity between the al-Rustāq and the Nizwā camps, the source of which was the removal of al-Ṣalt b. Mālik al-Kharūṣī from the position of Imam in the third/ninth century, was alive in the following centuries and died out only at the turn of the tenth–eleventh/sixteenth–seventeenth centuries. In 1507, the Portuguese seized the

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111 Wilkinson, "Bio-bibliographical Background to the Crisis Period in the Ibāḍī Imāmate of Oman (End of 9th to End of 14th Century)," 159.

112 Abdulrahman al-Salimi, "The Nabhānīs: A Sketch for Understanding," 88–89. Abdulrahman al-Salimi, writing about the origins of the Nabhānīs, refers to the works of Ibn Ruzayq (1197–1291/1783–1874): Ḥamīd b. Muḥammad Ibn Ruzayq, *Al-Fatḥ al-mubīn fī sīrat al-Sāda al-Būsaʿīdiyyīn*, ed. by ʿAbd al-Munʿim ʿĀmir and Mursī ʿAbd Allāh (Masqaṭ: Wizarāt al-Turāth wa-l-Thaqāfa, 1977) and idem, *Al-Ṣaḥīfa al-Qaḥṭāniyya*, ed. by Maḥmûd b. Mubārak al-Salimī, Muḥammad Ḥabīb Ṣāliḥ, and ʿAlāl al-Ṣadīq al-Ghāzī (Masqaṭ: Wizārat al-Turāth wa-l-Thaqāfa, 2009).

Omani ports, and, in response to the European threat, the traditions of the Imamate as a symbol of the country's unity were revived among the Omani population.

Yaʿāriba

In 1033/1624, the theologian Khamis b. Saʿīd al-Shaqsi persuaded the tribal leaders of the al-Rustāq area to unite against the Portuguese and tribes from al-Baḥrayn and Persia who were pouring into Oman.[113] The leader and Imam was Nāṣir b. Murshid of the Yaʿāriba family, who probably came from the Nabhānī lineage. Over the next three decades, the Omani tribes managed to drive the Portuguese and other immigrants out of the country. The Yaʿāriba family had strengthened their positions to such an extent that members of that family inherited the position of Imam. Muḥammad (al-Shayba) b. ʿAbd Allāh al-Sālimī gives the names of the following Imams of the Yaʿāriba lineage: Nāṣir b. Sulṭān (1091–104/1680–92), Sayf b. Sulṭān (Qayd al-Arḍ) (1104–23/1692/3–1711), Sulṭān b. Sayf b. Sulṭān (1123–31/1711–19).[114]

In 1135/1722, Sayf b. Sulṭān II, a boy at the time, was elected Imam. Due to disputes between the regents and candidates for the position of Imam, a civil war broke out in the country. The tribes

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[113] Wilkinson, *The Imamate Tradition of Oman*, 12. Vital sources to the seventeenth-nineteenth century's history (CE) are the documents of the North African Ibāḍīs. Both groups, the Omani and North African Ibāḍīs, maintained contact during the pilgrimage to Mecca and through the direct exchange of religious thoughts. See on this subject: Zygmunt Smogorzewski, "Essai de bio-bibliographie Ibāḍīte-Wahhabite, avant-propos," *Rocznik Orientalistyczny* V (1927), 45–57; Tadeusz Lewicki, "Notice sur la chronique d'ad-Darğini," *Rocznik Orientalistyczny* XI (1935), 146–72; Wilkinson, *Ibāḍīsm: Origins and Early Development in Oman*, 284–85. On the archival resources of Oman, see G. Rex Smith, "The Omani Manuscript Collection at Muscat, part I: A general description of The MSS," *Arabian Studies* IV (1980), 161–90; John C. Wilkinson, "The Omani Manuscript Collection at Muscat, part II: Early Ibāḍī Fikh Works," *Arabian Studies* IV (1980), 191–208; Martin H. Custers, *Al-Ibāḍiyya. Bibliography*, 3 vols. (Hildesheim: Olms, 2016). I am not writing here about European travel literature, which is very rich. However, it concerns times after 1500 and it is discussed in Robin Bidwell, "Bibliographical Notes on European Accounts of Muscat 1500–1900," *Arabian Studies* IV (1980), 123–60. Much information about Oman, especially from the first half of the twentieth century, is contained in British documents from the India Office in the collection IOR R/15/6 Political Agency Muscat 1800–1947.

[114] Muḥammad (al-Shayba) b. ʿAbd Allāh al-Sālimī, *ʿUmān. Tā'rīhk yatakallam* (Al-Qāhira: Dar al-Kitāb al-Miṣrī, 2013), 124–32.

from the northwestern parts of Oman formed the Ghāfirī confederation, and the southern tribes formed the Hinā'ī confederation. In 1137/1724 Muḥammad b. Nāṣir al-Ghāfirī, who was the guardian of the minor Imam, removed him from this position and declared himself Imam. The Omani tribes were unable to resist the Persian invasion due to the weakened civil war, and Muscat and Ṣuḥār found themselves under Persian occupation.[115]

Sayf b. Sulṭān II regained the Imam's position in 1140/1728 when Muḥammad b. Nāṣir al-Ghāfirī was killed fighting the warriors of the Hinā'ī confederation. However, since the tribes of the Ghāfirī confederation constantly contested his power, the Imam could not force the Persian troops to let go of Omani territory. It further weakened his authority among the tribes.[116]

Būsaʿīdī

What Imam Sayf b. Sulṭān II failed to do, Aḥmad b. Saʿīd of the Būsaʿīdī family succeeded in 1153/1743. Aḥmad b. Saʿīd was the Imam's governor in the port of Ṣuḥār. When Imam Sayf b. Sulṭān II died in 1153/1743, Ahmad b. Saʿīd took the lead in the war against the Persians and forced them to let go of Oman. At the same time, he forced the pretenders of the Yaʿāriba lineage to give up their application for the position of Imam. Probably in 1167/1753-4, the *ʿulamāʾ* turned their backs on the Yaʿāriba lineage and proclaimed Aḥmad b. Saʿīd as Imam. When, after he died in 1197/1783, his son Saʿīd b. Aḥmad became the new Imam, the birth of a new dynasty of Imams became a fact.[117]

The Āl Būsaʿīdī established the capital in al-Rustāq and, in 1198/1784, discontinued the office of the Imamate but retained the title of Imam. They began simultaneously using the title of Sultan (*sulṭān*) to emphasize their power over the people of Oman. In 1206/1792, Sultan Ḥamad b. Saʿīd (r. 1786–92) moved the centre of his power from al-Rustāq to Muscat in order to be more independent of the politics in the mainland.[118]

Imams and Sultans

The rapprochement of the Āl Būsaʿīdī Sultans with the British was evident without a doubt. In the nineteenth century, the Āl Būsaʿīdī

[115] Wilkinson, *The Imamate Tradition of Oman*, 13.

[116] Ibid., 12–13.

[117] Ibid., 13.

[118] Ibid., 225–29.

signed several agreements with the British, and Muscat became an important trading centre in the Gulf region. Āl Būsaʿīdī Sultans used the title of *sayyid* to stress their noble status as descendants of Imam Aḥmad b. Saʿīd (1749–83), but the title of Imam was never dropped, and the Āl Būsaʿīdī used it in the correspondence with Europeans. In the middle of the nineteenth century, the primary reason for the division between the Āl Būsaʿīdī dynasty and the *ʿulamāʾ* became the treaty that Sultan Thuwaynī b. Saʿīd (r. 1856–66) concluded with the Wahhābī leader Fayṣal b. Turkī (r. 1843–65), in which the Omani Sultans waived part of his authority in the north of Oman. Notably, Wahhābīs occupied Buraimi in 1853. The leading *ʿulamāʾ* and the tribal leaders regarded this as insult and as interference by an external power in Omani internal affairs. As a result, an alliance of tribal leaders and Ibāḍī religious scholars developed to support ʿAzzān b. Qays Būsaʿīdī. Their joint forces entered the capital and, in October 1868, ʻAzzān was proclaimed the Imam. He evicted the Wahhabis from Buraimi and brought the whole of Oman under unified rule. However, his rule extended for less than three years, and the main reason for his downfall was being his failure to establish good relations with the British Indian Government. As a result, the British supported Fayṣal b. Turkī Āl Būsaʿīdī, who became Sultan in 1871.[119]

The Ibāḍī religious leaders did not accept the Sultans' sovereignty over the Ibāḍī population, and several uprisings, which were suppressed with the assistance of British troops, took place in the late nineteenth and early twentieth centuries. In early 1913, the tribes elected Sālim b. Rāshid al-Kharūṣī as Imam and took up arms against the Sultan Fayṣal b. Turkī Āl Būsaʿīdī. In June of the same year, a confrontation took place. The rebels captured several settlements, and the Sultan, faced with this situation, turned to the British authorities for help. On 9 July 1913, 256 British troops arrived from Bushehr on the Persian coast of the Persian Gulf and were stationed nearby in Matrah, where the coastal route led inland. The two sides started negotiations. The Imam agreed to make peace on condition that the Sultan severed relations with the British, relinquished control of several coastal settlements, including Sūr, and reduced the number of tariffs levied. Muḥammad (al-Shayba) b. ʿAbd Allāh al-Sālimī, an Omani historian and son of Nūr al-Dīn al-Sālimī, writes that the main condition of the Imam's

[119] Ibid., 236–37.

side was that the Sultan severs of relations of subordination with the British, and that this condition was formulated by his father. Nūr al-Dīn al-Sālimī believed that there was no compromise on this issue and that freedom required blood sacrifice. He is said to have explained: "Let no one expect that freedom will be achieved without blood and tears. Fear is the curse of life and doubt in victory is defeat."[120]

The Sultan refused the terms, and the Imam's warriors stormed al-Samāʾil. On 31 July, they captured this settlement, and on 4 August another – Nakhl. The Sultan's situation became critical, and the fall of Muscat was widely expected. In anticipation, the Imam prepared a proclamation to the British Resident in Muscat, in which he announced the removal of the Sultan from power on the grounds of his apostasy from Islam and violation of Muslim law. In these circumstances, Fayṣal b. Turkī fell ill and died on 4 October 1913. On 8 October, Fayṣal's son Taymūr was proclaimed the new Sultan. In January 1915, the Imam's warriors began marching towards Muscat and, on the night of 10/11 January, a fierce battle broke out between them and British soldiers near the village of Ruwī. As a result, 186 of the Imam's men and seven British soldiers were killed. Despite having gained the victory, the British authorities began to persuade the Sultan to start talks with the Imam. The talks were tough and did not bring results until the end of World War I. The Sultan failed to form a tribal coalition around him at that time, and his position as ruler of Muscat depended entirely on the British soldiers stationed near the city.[121]

Thus, the Imamate was reconstructed, and two parallel structures were created in Oman: the Imamate and the Sultanate. These events were the result of clan-tribal rivalries and the increasingly strong influence of external factors on Oman, of which Britain's interference in Oman's internal affairs was just one. Much more important was the impact of nineteenth-century globalisation in the Indian Ocean region. New technological solutions and civilisational patterns that began to flow to Oman in the second half of the nineteenth century stimulated thinking about a new reality and the need for a new look at the legal basis of the Imamate. As a result, there was an intellectual revival and renewal of Ibāḍī jurisprudence. The leading role in the intellectual revival that led to

[120] Muḥammad (al-Shayba) b. ʿAbd Allāh al-Sālimī, *Nahḍat al-aʿyān bi-ḥurriyyat ʿUmān* (Al-Qāhira: Dar al-Kitab al-'Arabi, 1961), 130.

[121] Wilkinson, *The Imamate Tradition of Oman*, 249–51.

the restoration of the Ibāḍī Imamate was played by the jurist Nūr al-Dīn al-Sālimī, who is regarded as *raʾīs al-nahḍa*, or the leader of the renaissance, but the role of this thinker, who was blind from the age of 12, was not military but intellectual. Formulating more than 1,500 legal maxims (*qawāʾid*), he contributed most to the renewal of the Ibāḍī jurisprudence.

3. The role of the Ibāḍī jurists

The Ibāḍī tradition emphasizes the vital role of jurists (*fuqahāʾ*) in the community's life. The eleventh/seventeenth-century Ibāḍī jurist Khamīs b. Saʿīd al-Shaqsī from al-Rustāq writes that jurists are the authoritative source of knowledge and that the believers, including "the people of the state" (*ahl al-wilāya*) should consult them, for "it is not permitted to make a judgement (*fatwā*) without proper knowledge of the subject of judgement."[122] Al-Shaqsī emphasizes that it is only knowledge that allows one to argue for a judgement and without it argument is invalid. No one without proper preparation should issue a *fatwā*, as he may make a wrong judgement.[123]

This belief relates to the responsibility of the *muftī* (one qualified to issue a *fatwā*), and the subsequent narrative expresses intense apprehension at the possibility of making an incorrect judgement that may create a false impression of the religion. Al-Shaqsī states: "There is no room for falsehood" (*walā ḥāuz qajūl al-bāṭil*), for "unfair judgments should not be made," and "falsehood shall not be accepted" (*walā yajūz qubūl al-bāṭil*).[124]

The issues of the jurist's responsibility for the correct verdict are addressed by another Ibāḍī theologian-jurist Muḥammad b. Yūsuf Aṭfayyish (Aṭfiyyash) (1130–1223/1820–1914) of Mzab.[125] In his work, *Sharḥ kitāb al-nīl wa shifāʾ al-ʿalīl*, he writes about the importance of giving fair judgments by those who decide what is according to religion and what is not and settle disputes that arise

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122 Khamis b. Saʿid al-Shaqsī, *Manhaj al-ṭālibīn wa-balāgh al-rāghibīn* (Masqaṭ: Maktabat Masqaṭ, 2006), vol. 1, 113–14.

123 Ibid., vol. 1, 128.

124 Ibid., vol. 1, 115, 128.

125 See Pessah Shinar, *Modern Islam in the Maghrib* (Jerusalem: The Max Schloessinger Memorral Foudantion, 2004), 107.

between people. Aṭfayyish writes: "If anyone sits in judgment, he must know that he is judging among the people, waiting for God, as one who wields his sword in the way of God."[126] The jurist refers to *surah* 5 of the Qurʾān, *Al-Māʾida*, and verse 45: "If thou judge, judge / In equity between them. / For God loveth those / Who judge in equity."[127] When a judge gives a fair sentence, it may amount to severe punishment of those who have been proven guilty. Verse 41 of the same *surah* says: "As to the thief. / Male or female, Cut off his or her hands: / A punishment by the way / Of example, from God, / For their crime / And God is Exalted in Power." On the other hand, the judge should consider the situation of those sincerely devoted to the faith but who cannot fulfil all their duties to God and the community because of illness, age or poverty. *Surah* 9, *Al-Tawba*, verse 91, puts it this way: "No ground (of complaint) / Can there be against such / As do right: and God / Is Oft-Forgiving, Most Merciful."

The vital role of jurists in the Imamate resulted precisely from the assumptions of the functioning of this structure. The basis of the political doctrine of Ibāḍism was the concept of the community leadership as based on Muslim law and the foundations of faith. The Ibāḍīs avoided the term *khilāfa* (Caliphate) for two reasons. First, they believed that the term *imāma* (Imamate) more broadly reflects the issue of community leadership, as it encompasses four aspects of leadership*: imāmat kitmān* (hidden leadership), *imāmat shirāʿa* (active leadership), *imāmat difāʿa* (defensive leadership) and *imāmat ẓuhūr* (overt leadership). Of particular importance was the first aspect – *imamat kitmān*, which was connected with the duty to propagate the faith *(daʿwa).* In conditions where it was impossible to do so openly, it had to be done secretly. The principle of *taqīya,* which provided for the possibility of concealing one's true beliefs, was then helpful. The second reason for Ibāḍism's rejection of the term *khilāfa* was the desire to break with the Umayyads and Abbasids and achieve full political and ideological separation from these states, which were considered by the Ibāḍīs to be

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[126] Muḥammad b. Yūsuf Aṭfayyish, *Sharḥ kitāb al-nīl wa-shifāʾ al-ʿalīl*, 17 vols. (Al-Riyāḍ: Maktabat al-Irshād, 1985), vol. 13, 53–54. Aṭfayyish lived at the same time as Nūr al-Dīn al-Sālimī. Correspondence between the two jurists has been preserved.

[127] Qura'nic quotes are from *The Holy Qur'an*, Text, Translation and Commentary by A. Yusuf Ali (Brentwood, MD: Amana Corp., 1983).

despotic (*jabābira*). However, in historical terms, both Imamate and Caliphate had the same meaning in the sense of the institution of inheriting from the Prophet Muḥammad the function of leading the Muslim community. According to Ibāḍīs, the introduction and maintenance of Imamate was a religious duty that amounted to the observance of Muslim law and thus the preservation of justice.[128]

The fundamental issue for the functioning of Ibāḍī communities as a political structure was the question of the position of their *imām* (leader), which was based on the principle of correct faith (*walāya*) and defined the limits of loyalty and obedience of group members to their leader: they remained faithful to him as long as they recognized his religious correctness. The same applied to the rank-and-file members of the community. Someone whose behaviour was considered beyond the bounds of Ibāḍī religiosity and ethics was excluded from the group and had to leave it, and it was the jurists who determined the correctness. A candidate to be Imam was expected to preside over the prayer, collect the *zakāt* (almsgiving), enforce the laws, oversee their observance, and settle disputes. Abū al-Khattāb ʿAbd al-Aʿlā b. al-Samḥ al-Maʿāfirī, the first Imam of the Ibāḍīs in North Africa (r. 141–44/758–61), was a political leader but also a judge and arbiter.[129]

The Ibāḍīs rejected the principle that the function of community leader should be inherited by one tribe or clan and they followed the principle of selecting in accordance with the candidate's qualifications. In addition to the piety and learning referred to above, he must be sound in mind and body. After the candidate swore an oath to follow the principles of faith contained in the Qurʾān, the Ibāḍīs took the oath of allegiance (*bayʿa*) to him. An Imam could be removed from leading a group for three reasons: 1) a physical disability that prevented him from participating in war; 2) a so-called the sin of committing, i.e. departing from the principles of faith; 3) a sin of omission, consisting, for example, in not declaring holy war at the right moment. As a political leader, the Imam was thus subjected to a constant test of his ability to lead and could easily

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[128] John C. Wilkinson, "The Ibâḍī Imâma," *Bulletin of SOAS* 39, 3 (1976), 530–39. The four Imamate-types laid the groundwork for contemporary Ibāḍī discussion of the four "stages of religion" (*masālik al-dīn*) – see Adam Gaiser, "The Ibāḍī 'stages of religion' re-examined: Tracing the history of the *Masālik al-Dīn*," *Bulletin of SOAS* 73, 2 (2010), 207–22.

[129] Wilkinson, *The Imamate Tradition of Oman*, 177.

be dismissed. The decisive role in judging his religious correctness was played by the *ʿulamāʾ*.[130]

The strong position of jurists in the Imamate resulted from the idea that the creation of legal norms to ensure fair governance and the harmonious development of society was one of the three foundations for the functioning of the Muslim community. The others were *wizāra* (proper government) and *al-minbar* (literally, the pulpit; the functioning of the mosque as a symbol of religion). These foundations were formulated by Ibn Baraka and have been upheld by successive generations of jurists. The critical role of jurists and theologians in the power structure was the consequences of the restrictions imposed on the power of the Imam. He conducted the Friday prayer and oversaw the observance of Muslim law, ensuring that no unlawful acts took place.[131] Although he belonged to the class of *ʿulamāʾ* or learned people, and thus could make decisions regarding the rulings, ethical and legal canons (*qawāʿid*) were created through the interpretation of texts by those who had the appropriate competence in this area, i.e. the jurists. These interpretations became norms whose correctness was a matter of unwritten consensus. The opinion of the *muftī al-islām*, the head of the jurists, was critical in this matter. The Imam could not take the position of *muftī al-islām* and had to take his opinion into account, which clearly emphasized the role of jurists in the Imamate. Wilkinson specifies that the Imam was "not a law-giver but a law-enforcer."[132]

Regarding the role of the jurists (*fuqahāʾ*) as part of the class of *ʿulamāʾ* class, Wilkinson refers to them as "the law's guardians and thereby the protectors and representatives of the people."[133] There was a significant difference between *faqīh* and *qāḍī*, which Abdulrahman al-Salimi points out when discussing the views of Joseph

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130 Ibid., 170–71, 174–76.

131 This duty stemmed from the principle known as "commanding good and forbidding wrong" (*al-amr bi-l-maʿrūf wa-l-nahy ʿan al-munkar*), which was accepted by Muslim jurists as the fundamental basis of Muslim law. This sense of command occurs 60 times in verbal forms and 130 times in nominal forms in the Qurʾān (see Gibril Fouad Haddad, "Good and Forbidding Wrong (amr bil-maʿrūf, nahy ʿan al-munkar)," *International Encyclopedia of the Qurʾān*, https://online.iequran.com/articles/C/81 (accessed November 28, 2022). Verse 104 of *surah* 3 of the Qurʾān, *Āl ʿImrān*, expresses this principle as follows: *wa ya'murūna bi-l-maʿrūfi wa yanhawna ʿan al-munkari*.

132 Wilkinson, *The Imamate Tradition of Oman*, 187.

133 Ibid.

Schacht on Ibāḍī jurisprudence. If the position of *qāḍī* (judge) was formalized and he was a paid civil servant, the position of an *ālim* (theologian or/and jurist) was not formalized. The Imam did not officially appoint him, and he had no official title. The most famous of the *ʿulamāʾ* received the honorary titles of *muʿallim al-dīn* (teacher of religion; ʿAbd al-ʿAzīz b. Ibrāhim al-Thaminī, 1130–1223/1718–1808), *quṭb al-dīn* (pillar of religion; Muḥammad b. Yusūf Aṭfayyish, 1237–1332/1820–1914), or *nūr al-dīn* (light of faith; ʿAbd Allāh b. Ḥumayd al-Sālimī, 1286–1332/1869–1914).[134]

Although the role of the *qāḍī* was crucial and even more important than that of the provincial governor (*wālī*) because the *qāḍī al-islām*, who was the *qāḍī* of the main mosque in the Imamate, was authorized to elect a new Imam, but apart from that, his competences related to practical issues and administrative tasks, namely the supervision of compliance with the law and the collection of taxes.[135] Theoretical issues regarding the tax system, determining who was and who was not an Ibāḍī, harmonizing Muslim and tribal laws, and the management of natural resources, especially water, were determined by the *fuqahāʾ*. However, this was only a small part of the issues that needed to be resolved and legal regulations introduced. Wilkinson stresses that: "Once the Imamate was established, […] the crying need was for the good and orderly conduct of day-to-day life and the specifics arising from the peculiarities of the country and its economy […]."[136]

The peculiarities of Oman's geography illustrate these specifics. Oman was a maritime country. People come to ports and move to the mainland, which used to be a mountainous country cut by hard-to-reach valleys. The Imamate authorities tried to control the movement of people and introduced the principle of declaring the purpose of travel. It was necessary to introduce regulations and penalties for perjury when someone was travelling contrary to the declared purpose. Another issue was the question of attending Friday prayer. Already in the early period of the functioning of the Imamate, the principle of obligatory attendance at this prayer was

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[134] Ibid., 189; see also Brannon Wheeler, "Ibāḍī Fiqh Scholarship in Context," in *The Lineaments of Islam: Studies in Honor of Fred McGraw Donner*, ed. by Paul M. Cobb (Leiden: E.J. Brill, 2012), 342, https://doi.org/10.1163/9789004231948_015.

[135] Wilkinson, *The Imamate Tradition of Oman*, 189.

[136] Idem, *Ibāḍīsm: Origins and Early Development in Oman*, 293.

introduced, depending on the distance from the place of residence to the mosque.[137]

One of the essential prerogatives of *fuqahāʾ* was to speak on issues known as *walāya* (association) and *barāʾa* (dissociation), which said that only righteous Ibāḍīs could be considered worthy of association. In contrast, sinners and non-Ibāḍīs should be condemned to ostracism and dissociation.[138] This concept is considered central to the Ibāḍī theology. It did not mean physical separation from non-Ibāḍīs and social isolation from other Muslims and non-Muslims, for Ibāḍī communities in practice were tolerant of other Muslims and non-Muslims. However, "an inner awareness of separation" between the Ibāḍīs and non-Ibāḍīs was necessary.[139] Who was a member of the community and who was not was decided by those who owned the *ʿilm* (knowledge) and thus could derive the legal norms from appropriate sources.[140]

The *ʿulamāʾ* (theologians and jurists) had an important influence on economic matters, including taxes. The income of the Ibāḍī state consisted of war booty, gifts, income from community land and taxes, the last being the primary source of state influence. Since paying one of the taxes (*zakāt*) was one of the pillars of faith, the entire tax system was closely related to religion, and *ʿulamāʾ* had a decisive influence in legitimizing this system. The Imam had the right to levy and collect taxes and to administer the state treasury (*bayt al-māl*), but he had to consult the *ʿulamāʾ*. His duties also included administering donations to the community (*awqāf*), distributing aid to the needy, supervising the observance of Muslim law, especially penalties, appointing governors to cities, settlements and provinces, appointing judges, and conducting the Friday prayer. One-fifth of war booty was transferred to the state treasury. The terms *zakāt* and *ṣadaqa*, having a religious background and being a kind of voluntary taxation for the community, were in the early history of the Imamate in Oman used interchangeably with such non-religious taxes as *ʿushr* (a tithe; one-tenth) and *khums* (one fifth) of taxable goods. The last two were levied on the value

137 Ibid., 293–94.

138 Valerie J. Hoffman, *The Essentials of Ibadi Islam* (New York: Syracuse University Press, 2012), 28.

139 Ibid., 29; eadem, "Ibāḍī-Omani Creeds and the Construction of Omani Religious Discource," in *Oman, Ibadism and Modernity*, ed. by Abdulrahman Al Salimi and Reinhard Eisener (Hildesheim: Georg Olms Verlag, 2018), 204–05.

140 Wilkinson, *The Imamate Tradition of Oman*, 163.

of property or on crops. Since few non-Muslims lived in the mainland, the issue of *jizya*, the poll tax levied on followers of other monotheistic religions, was virtually non-existent. In Oman, land tax (*kharāj*) was not introduced after Islamization, and the situation in the Imamate differed in this respect from that in the Caliphate.[141] Merchants paid *ʿushr*, although it was levied not at 10% but at 2.5% for Muslims and 5% for non-Muslims. There were disagreements between the Imam and the jurists regarding the amount of these levies. The Imam sought to increase them, while jurists believed religion required them to be kept low. In the eighteenth century, when import duties were as high as 8% and even 12%, jurists argued that any tax exceeding 2.5% or 5% was against the requirements of religion.[142]

The decisive importance of legal judgements (*fatāwā*) for economic activity is mentioned, for example, by Fahad Ahmad Bishara in his book about trade in the western Indian Ocean. According to Bishara, the law as a means of coordinating action furnished the institutions and instruments necessary to organize commerce and settlement between Oman, India, and East Africa. It played a critical role in how the Indian Ocean world was shaped. Bishara writes that, in particular, "undergirding [by medieval Muslim jurists – J.Z.] a creditor's ability to make claims on a debtor's heirs was an ontological schema that linked an actor's ability to buy, sell, borrow, lend, or inherit."[143] In this way, personhood and obligation were linked, which created the basis for the legal construction of credit.

The history of two great jurists from the Āl Kharūṣī, a distinguished lineage of scholars, can stand as an example of how significant the role of jurists was in economic life. Abū Nabhān Jāʿid b. Khamīs al-Kharūṣī (1147–1237/1734/5–1821/2) was considered the most powerful legal mind of his generation. He issued *fatāwā* on education and commercial activities, which started the

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[141] See idem, *Water and Tribal Settlement in South-East Arabia* (Oxford: Clarendon Press, 1977), 148–53.

[142] On the taxation system under the influence of the Būyid administration in Oman in the eleventh century, see ibid., 144–45, 154 n. 14; Risso, *Oman and Muscat…*, 30; on the later period, see Robert G. Landen, *Oman since 1856: Disruptive Modernization in a Traditional Arab Society* (Princeton, NJ: Princeton University Press, 1967), 310.

[143] Fahad A. Bishara, *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780–1950* (Cambridge: Cambridge University Press, 2017), 66.

so-called *Nahḍa*, the renaissance of Ibāḍī legal thought in Oman.[144] Abū Nabhān Jāʿid b. Khamīs al-Kharūṣī knocked, e.g. arguments from the hands of opponents of drinking coffee. His son Nāṣīr b. Abī Nabhān Jāʾid al-Kharūṣī (1191–1263/1777/8–1846/7) wrote numerous treatises on theology, medicine, astronomy and jurisprudence. When he left for Zanzibar, he was followed by many jurists and *qāḍī*s who saw the vast changes taking place in the global environment created by the Indians and who tried to interpret the character of these changes in the language of law.[145]

Another leading figure of the judicial renaissance (*Nahḍa*) of the first half of the nineteenth century was Saʿīd b. Khalfān al-Khalīlī (1230–87/1815–70/1). His life coincided with a tremendous commercial boom in East Africa and the Indian Ocean. Although he never left Oman, al-Khalīlī had an excellent understanding of what was going on in the community of merchants, growers, sailors and ordinary consumers. This jurist understood that Indian Ocean communities functioned in a network of obligations and legal personhood; he also tried to reconcile religion, morality and the rule of law with the challenges posed by the changing world of commerce and modern capitalism.[146] Apparently, "practices of credit and debt grew to involve a wide variety of people around the Western Indian Ocean."[147] Moreover, the jurists had no compunctions when it came to questions of debt. He stated: "Debt is *ḥalāl* according to the test of the book of God the Almighty."[148]

He considered that even debts incurred for consumption rather than for production were valid. Al-Khalīlī played an important role in inscribing personhood for Indian merchants by allowing Sanscrit Indian names to be used in commercial document with their *nasab*, or genealogy, to meet the requirements of traditional Omani Arabic commercial contracts. Even the personhood

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144 See Anke Iman Bouzenita and Khalfan Al-Jabri, "On the *fiqh* of Education–Traditional School Organisation and Religious Pedagogy in Oman. The Example of Shaykh Abū Nabhān Jāʿid b. Khamīs al-Kharūṣī (d. 1237/1822) and *fiqh al-madrasa*," *Hikma* 12, 1 (2021), 5–25, https://www.vr-elibrary.de/doi/abs/10.13109/hikm.2021.12.1.5 (accessed November 15, 2022).

145 Bishara, *A Sea of Debt…*, 10; Wilkinson, *The Imamate Tradition of Oman*, 204.

146 Saʿīd Khalfān al-Khalīlī is the author of the first treatise on money exchange in a new age. See Saʿīd Khalfān b. Aḥmad al-Khalīlī, *Maqālīd al-taṣrīf*, 3 vols. (Masqaṭ: Wizārat al-Turāth al-Qawmī wa-l-Thaqāfa, 1986).

147 Bishara, *A Sea of Debt…*, 61.

148 Ibid.

of manumitted slaves was recognized by being attached as the legal person to the *nasab* of their former masters. Bishara concludes that al-Khalīlī recognized many dimensions of the changing commercial society across the Indian Ocean. Through his *fatāwā*, "he developed a legal framework that would accommodate a range of different ethnic and religious groups, as well as different types of organizations and actors, together into one area."[149]

[149] Ibid., 79.

Chapter II.
Ibāḍī Jurisprudence

1. The Ibāḍī school of law

Ibāḍī jurisprudence is the result of theological debates on the sources of law and the principles of reasoning, the roots of which refer to the very origins of the Ibāḍi community in Basra. Wilkinson points out that theological debates concerned the creation of the Qurʾān, God's inspiration (*waḥā*), and God's revelation (*tanzīl*) to Muḥammad.[150]

ʿAmr Khalīfa Ennami (al-Nāmī) expressed in 1971 the opinion that we still knew little about the Ibāḍī school of law, even though it is the oldest school of Islamic law founded in the first century of the Hijrī era, i.e. in the seventh–eighth centuries CE. Although numerous studies have been undertaken since then, opinion of Ennami is still valid. Ersilia Francesca, presenting in 2020 the history of Ibāḍī law and jurisprudence, emphasizes that Ibāḍīsm "remains the most disacknowledged and misunderstood branch of Islam."[151] This is especially true of the Ibāḍī contribution to the field of law and jurisprudence, which remains mainly underestimated within mainstream Islamic studies, which privileges Sunnī and Shīʿite sources.

In the first period of research on Ibāḍī *fiqh*, the view adopted by Joseph Schacht in *The Origins of Muhammadan Jurisprudence* said that the Khārijī/Ibāḍī school of law did not differ from the

[150] Wilkinson, *Ibāḍīsm: Origins and Early Development in Oman*, 272–75.

[151] Amr Khalifah Ennami, *Ibadisme. Histoire et doctrine*, trans. by Soufien Mestaoui with Preface by Ersilia Francesca (Paris: Ibadica Éditions, 2019), 19–20; Ersilia Francesca, "Tracing the History of Ibāḍī Law and Jurisprudence: A State of Art", *Islamic Law Blog*, 17 December 2020, https://islamiclaw.blog/2020/12/17/tracing-the-history-of-iba%E1%B8%8Di-law-and-jurisprudence-a-state-of-art/ (accessed December 4, 2022).

Sunnī school because the first sects in the early history of Islam were in contact with the orthodox community. Consequently, they merely adopted the law already developed by Sunnīs. However, Schacht's position has been challenged by several scholars, who argued that the Khārijites and Ibāḍīs significantly contributed to the development of Islamic law, "as they were driven by a rigorous ethical code that was kindled by an intense, on occasion exaggerated, religiosity."[152]

Research undertaken since the 1970s, to mention only ʿAmr Khalīfa Ennami (al-Nāmī), J. Wilkinson, E. Francesca, A. al-Salimi (Al Salimi), A. Gaiser and M. Muranyi, has confirmed that the Ibāḍī school of law developed from the beginning independently from the Sunnīs. The roots of the Ibāḍī school have been associated with Jābir b. Zayd al-Azdī, who was from Oman, and also with Abū ʿUbayda and al-Rabīʿ b. Ḥabīb al-Farāhīdi, the leaders of the first Basran Ibāḍī community, where the master-pupil relationship aimed at the transmission of knowledge and the concept of the Imamate were shaped.[153]

Abdulrahman Al Salimi considers that Schacht was influenced by Ignaz Goldziher's view about Ibāḍī *fiqh* and largerly conditioned by an insufficient distinction being made between the positions of *qāḍī* (judge) and *faqīh* (jurist). The spread of Ibāḍīsm in the second/eighth century beyond Iraq and the formation of Imamates in Yemen, Ḥaḍramawt, North Africa, Oman and Khurasan required the creation of a new legal system regulating both issues of trade and religious obligations, i.e. secular matters and the practice of faith. The role of jurists in this process was vital, and attempts made in this field took place even before the formation of the Sunnī school. Al Salimi points out that the impact of Ibāḍī *fiqh* on Islamic jurisprudence is visible primarily in the legal terminology firstly developed by Ibāḍī jurists and then adopted by other schools of Islamic jurisprudence.[154]

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[152] See eadem, "Tracing the History of Ibāḍī Law and Jurisprudence…"; the first European studies on Ibāḍī law had already been undertaken in the colonial period by French (A. Imbert, M. Morand, M. Mercier, E. Zeys) and Germans (E. Sachau) scholars.

[153] On the early development of the Ibāḍī school, see Wilkinson, *Ibāḍism: Origins and Early Development in Oman*, 122–210.

[154] Abdulrahman Al Salimi, "Early Islamic Theological Influence in Jurisprudence: An Ibāḍī Perspective," in *Ibadi Jurisprudence: Origins, Developments and Cases*, 55.

The essential text for Islamic jurisprudence is *Risāla*, the treatise written by al-Shāfiʿī', the founder of one of the four Sunnī schools of law, who died in 204/820. This work contains the issues that have become fundamental to Islamic jurisprudence. Al-Shāfiʿī' analyses, in particular, the Qurʾān and the Sunnah with regard to what is general and what is specific and shows, at the same time, how the context explains its intended meaning. He also discusses the category "in which the ostensible meaning indicates its hidden meaning."[155] Among other issues fundamental to Islamic jurisprudence, the *Risāla* discusses the principle of abrogation (*al-nāsikh wa-l-mansūkh*) and the prophetic tradition. In the latter issue, al-Shāfiʿī refers to three cases: a situation giving rise to the *ḥadīth* of the prophetic tradition; the situation known as *al-jamʿ wa-l-tarjīḥ*, which means reconciliation and preponderance; and finally to the case of the acceptability of narration from a single source. What matters is that the *Risāla* speaks of *ijmāʿ* (consensus), *qiyās* (analogy) and *istiḥsān* (juristic preference) as sources for establishing a legal norm.[156]

There are disagreements as to who introduced these and other terms into legal discourse. Preference is given to the Shāfiʿīs and the Ḥanafīs but also to the Twelver Shīʿites. Abdulrahman Al Salimi analyses Ibāḍī treatises from the third/tenth century to show the contribution of the Ibāḍīs to Muslim jurisprudence. He believes that the beginnings of Ibāḍī jurisprudence should be associated with the activity of the Rustamid Imam ʿAbd al-Wahhāb b. ʿAbd al-Raḥmān b. Rustam (r. 171–208/788–824) in North Africa and two scholars who lived in Oman in the third/tenth century. One of them was Abū al-Mundhir Bashīr b. Muḥammad b. Maḥbūb, who died in 290/902-3. Another was ʿAbd Allāh b. Muḥammad b. Baraka al-Bahlawī, known as Ibn Baraka, who died in 361/971-2.[157]

ʿAbd al-Wahhāb b. ʿAbd al-Raḥmān b. Rustam rules the Imamate with its capital at Tiaret (present day Tagmet in Algeria). He was influenced by the teachings of the Imam Abū ʿUbayda Muslim b. Abī Karīma, who was a pupil of Jābir b. Zayd and succeeded him as leader of the Ibāḍī community in Basra (died between

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155 Ibid., 56.

156 Ibid. See *Al-Shafi'i's Risala: Treatise on the Foundation of Islamic Jurisprudence*, trans. with an Introduction, Notes, and Appendices by Majid Khadduri (Cambridge: The Islamic Texts Society, 2008).

157 Abdulrahman Al Salimi, "Early Islamic Theological Influence in Jurisprudence…," 55.

136–58/753–75).[158] Thus, he was one of the transmitters of the Ibāḍī knowledge and his rule "helped to promote the Ibāḍī approach to judicial practice and *fatāwā*."[159]

Abū al-Mundhir Bashīr b. Muḥammad b. Maḥbūb was the grandson of the last Basran Ibāḍī leader, Abū Sufyān Maḥbūb b. Raḥīl, who recolacted the family from Basra to Oman in the third–ninth century. The father of Abū al-Mundhir Bashīr b. Muḥammad b. Maḥbūb was Abū ʿAbd Allāh Muḥammad b. Maḥbub, an important scholar in his time who participated in the Damā Debate (230–31/844–45) over the issue of the creation of the Qurʿān. He also was a judge of Ṣuḥār, where he issued ordinances regarding the tax system.[160] In the works of Abū al-Mundhir Bashīr b. Muḥammad b. Maḥbūb, we find terms such as *jawhar* (substance) and *arāḍ* (accident) related to issues of cosmology and the creation of universal and divine power, as well as the terms *al-amr bi-l-maʿrūf wa-l-naḥy ʿan al-munkar* (commanding good and forbidding wrong), *taklīf* (legal duties), *taʾwīl* (esoteric interpretation of the Qurʾān), or *al-nāsikh wa-l-mansūkh* (abrogation) and *bughāt* (insurrections). With regard to *al-amr bi-l-maʿrūf wa-l-naḥy ʿan al-munkar*, Abū al-Mundhir Bashīr b. Muḥammad b. Maḥbūb "gives precedence to intellect over textual evidence," which makes his views similar to those of the Muʿtazilites, Al Salimi writes.[161] A similar convergence with the Muʿtazilites is evident in matters concerning the nature and role of *ʿaql* (intellect). The reasoning process is based on *takāmul al-ʿaql* ("intellectual wholeness"). Al Salimi believes that this principle means that intellect should serve to properly understand previously accumulated knowledge before making conclusions about a given phenomenon or fact.[162]

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158 See Hoffman, *The Essentials of Ibadi Islam*, 12–13.

159 Abdulrahman Al Salimi, "Early Islamic Theological Influence in Jurisprudence…," 55.

160 Wilkinson, *Ibāḍīsm: Origins and Early Development in Oman*, 269; see also Adam Gaiser's review of the book *Early Ibāḍī Literature. Abu l-Mundhir Bashīr b. Muḥammad b. Maḥbūb Kitāb al-Raṣf fi Tawḥīd, Kitāb al-Muḥāraba and Sīra*, introduced and ed. by Abdulrahman al-Salimi and Wilferd Madelung (Wiesbaden: Harrasovitz Verlag, 2011) in *Ilahiyat Studies* 2, 1 (2011), 137–40.

161 Abdulrahman Al Salimi, "Early Islamic Theological Influence in Jurisprudence…," 56–57; about Ibn Rustam see Knut S. Vikør "Ibadism and law in historical contexts," *Oñati Socio-Legal Series* 10, 5 (2020), 964–65, https://doi.org/10.35295/osls.iisl/0000-0000-0000-1155.

162 Abdulrahman Al Salimi, "Early Islamic Theological Influence in Jurisprudence…," 57.

Concerning Ibn Baraka's contribution to Muslim jurisprudence, in his work *Al-Jāmiʿ* (The Compendium), we find terms that have entered into Islamic jurisprudence. First, Ibn Baraka drew attention to the *muḥkam* (categorical) and *mutashābih* (allegorical) aspects of Qur'ānic verses and emphasized the latter's importance in jurists' deductions of legal canons. Ibn Baraka also emphasized that the Sunnah contains substantial and controversial narratives. Ibn Baraka "set three conditions for acceptance of a *khabar* [*ḥadīth* – J.Z.] transmission: Its narrators must be upright, there must be no contradictory version, and it must contain no glaring defects."[163]

Summarising the place of Ibāḍī jurisprudence in Islamic jurisprudence, Abdulrahman Al Salimi writes that Ibāḍī *uṣūl al-fiqh* (jurisprudence and hermeneutics) are no different from the *uṣūl* of other schools of Islamic law and no different from "their style of reasoning, nor concerning to the introduction of creedal or linguistic theological *masāʾil* (issues)."[164] However, "the compatibility between Ibāḍī *ijtihād* and the *ijtihād* of the other schools is not an indication of subjection, but a sign that they all followed the same methods of reasoning."[165] At the same time, legal treatises written at that time by the Ibāḍī scholars decided about the independence of the Ibāḍī school of law. Apart from the above-mentioned Abū al-Mundhir Bashīr b. Muḥammad b. Maḥbūb and Ibn Baraka, compendiums about jurisprudence were written by: Abū Qaḥṭān Khalid b. Qaḥṭān (*Jāmiʿ Abī Qaḥṭān*), Abū Jaʿfar Muḥammad b. Jaʿfar al-Izkawī (*Jāmiʿ Ibn Jaʿfar*, third–ninth c.), Abū al-Hawārī Muḥammad b. al-Ḥawārī (*Jāmiʿ Abī al-Ḥawārī*, d. 278/891-2) and Abū Muḥammad al-Faḍl b. al-Ḥawārī al-Sāmī (*Jāmiʿ al-Faḍl al-Ḥawārī*, third–ninth c.). Compendiums have become a popular genre of legal treatises in Oman. The best-known contributions of the Ibāḍīsm to Islamic jurisprudence include, among others: Muḥammad b. Ibrāhīm al-Kindī's *Bayān al-sharʿ* (508/1114-5), Abū Bakr Aḥmad b. ʿAbd Allāh b. Mūsā al-Kindī's *Al-Muṣannaf* (557/1161-2), and Salama b. Muslim al-ʿAwtabī's *Kitāb al-ḍiyā* (born around 440/1048 and died at the beginning of the sixth/twelfth c.).[166]

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[163] Ibid., 61. See also Ismāʿīl b. Ṣāliḥ b. Ḥamdān al-Aghbarī, *Al-Madkhal ilā al-fiqh al-ibāḍī* (Al-Sīb: Maktaba Ḍāmrī li-l-Nashr wa-l-Tawzīʿ, 2013), 106–67.

[164] Abdulrahman Al Salimi, "Early Islamic Theological Influence in Jurisprudence…," 60.

[165] Ibid., 67.

[166] Ibid., 60. See: Abū al-Hawārī Muḥammad b. al-Ḥawārī, *Jāmiʿ Abī al-Ḥawārī* (Masqaṭ: Wizārat al-Turāth al-Qawmī wa-l-Thaqāfa, 1985); Abū Jaʿfar

The question of "association" and "dissociation", considered a central issue in Ibāḍī literature, "is closely linked to Ibāḍī self-definition and distinguishes the Ibāḍīs most clearly from Sunnī Muslims."[167] The need to distinguish true believers from unbelievers emerged after the controversial ousting of the Omani Imam al-Ṣalt b. Mālik al-Kharūṣī in 272/886 by Mūsā b. Mūsā. This event became the subject of debates among theologians and jurists and led to the formation of the Nizwā and al-Rustāq schools. The Nizwā approved of Mūsā's action, believing that he intended the welfare of the people, while others faulted him on many grounds. Valerie J. Hoffman states that "with the passing of time, not only do earlier disputes become irrelevant, but changing circumstances impact the extent of Ibāḍīs' interactions with non-Ibāḍī Muslims, leading to new considerations of what dissociation means in practice." Hoffman points to the position of the current *muftī* of the Sultanate of Oman, Shaykh Aḥmad b. Ḥamad al-Khalīlī. The *muftī* has written against fanatic sectarianism and has worked to promote the unity of the *umma*.[168]

2. The three phases

J.C. Wilkinson emphasizes that the evolution of "Ibāḍī *fiqh* must be seen in its historical, geographical, economic and social contexts as well as its theological and legal."[169] E. Francesca believes that three periods are visible in the development of Ibāḍī law and

Muḥammad b. Jaʿfar al-Izkawī, *Jāmiʿ li-Ibn Jaʿfar*, ed. by Aḥmad b. Ṣāliḥ al-Shaykh Aḥmad (Masqaṭ: Wizārat al-Turāth wa-l-Thaqāfa, 2018); Abū Muḥammad al-Faḍl b. al-Ḥawārī al-Sāmī, *Jāmiʿ al-Faḍl al-Ḥawārī* (Masqaṭ: Wizārat al-Turāth wa-l-Thaqāfa, 1985); ʿAbd Allāh b. Muḥammad b. Baraka al-Bahlawī, *Kitāb al-jāmiʿ* ed. by ʿĪsā Yaḥyā al-Bārūnī (Masqaṭ: Wizārat al-Turāth al-Qawmī wa-l-Thaqāfa, 2007); Salama b. Muslim al-ʿAwtabī, *Kitāb al-ansāb*; idem, *Kitāb al-ḍiyā'*, 23 vols., ed. by al-Ḥājj Sulaymān b. Ibrāhiīm Bābzīz al-Wārjalānī and Dāwûd b. ʿUmar Bābzīz al-Wārjalānī (Masqaṭ: Wizārat al-Awqāf wa-l-Sh'ūn al-Dīniyya, 2015).

167 Valerie J. Hoffman, "Ibāḍī Scholars on Association and Dissociation, from the 10th to the 21st Century," in *Ibadi Jurisprudence: Origins, Developments and Cases*, 185.

168 Ibid., 187.

169 John C. Wilkinson, "Contextualizing the Development of Ibadi *Fiqh*," in *Ibadi Jurisprudence: Origins, Developments and Cases*, 15.

jurisprudence. The first is a formative stage in Basra in approximately the mid-first–third/seventh–ninth centuries when Ibāḍī jurists were in contact with the Sunnī community and remained under the influence of Sunnī jurists. However, several doctrines were then developed in Ibāḍī law that differed from Sunnī law. Francesca gives examples of such doctrines. The rejection of *masḥ ʿalā-l-khuffayn* (wiping shoes instead of washing feet as part of ablution) was one of them. Then, the tradition was established that the property of a client (*mawlā*) who had no relatives was to be inherited by his people and not by his patron. The third example refers to marriage. It was not allowed for the Ibāḍīs to conclude a marriage between an unmarried man and an unmarried woman who had committed fornication. It was at this time that the sense of the separateness of the Ibāḍī community in Basra from the rest of the Muslim community was born. Ibāḍī women stopped marrying non-Ibāḍī men and, in time, Ibāḍīs stopped praying behind non-Ibāḍī *imams*. These doctrines were maintained even after the community left Basra and settled in Oman, the North Africa and Ḥaḍramawt.[170] The doctrinal unity of the community was not only preserved but also developed, thanks to contacts between theologians and the tradition of transferring knowledge from one centre to another by transmitters, or "bearers of knowledge" (*ḥamalāt al-ʿilm*).

Wilkinson writes that, in the Basra environment, where the basic principles underlying Ibāḍī *fiqh* were established, a sort of advisory body (*ahl al-faḍl*) served as a reference for disputes. This body also trained missionaries who transmitted from it the *ʿilm* established over three or four generations.[171] Jābir b. Zayd al-Azdī and his friend al-Ḥasan al-Baṣrī (d. 110/728-9) were generally considered the two leading *muftī*s of Basra. In this early period, the emphasis was on fundamentals, the absolute duties of the Muslim and his dealings with clients (*mawālī*), slaves, wives and concubines, marriage, divorce and religious rituals. Opinions on these issues were not always unanimous, and doubt was recognized as a legal basis for discussion. At that time, legal interpretations were the opinions of community leaders. Wilkinson writes about the debates about four as opposed to two *rakʿas* (acts of prostration), which ended with adopting the principle of two *rakʿas*. On the other hand, communities in Basra, Khurasan, Oman and Ḥaḍramawt

[170] Francesca, "Tracing the History of Ibāḍī Law and Jurisprudence…".

[171] Wilkinson, *Ibāḍism: Origins and Early Development in Oman*, 166 ff.

did not agree on the question of whether date wine (*nabīdh*) could be drunk.[172]

However, the most vital element for the functioning of the Ibāḍī community was the regulation of taxes. Wilkinson writes that Jābir b. Zayd al-Azdī emphasized the need for proper collection of the poll tax (*kharāj*) by community leaders (*dihqāns*) and paying it to the common treasury (*bayt al-māl*), the responsibility of non-Muslims (*dhimmī*s) to pay the *jizya* tax, and the obligation of all Muslims to pay *zakāt*. Initially, the *jizya* played an essential role as a source of income for the community, but as non-Muslims converted to Islam, the *zakāt* became a more important source of income. The question of what expenses could be met with *zakāt* gained importance after the formation of the Imamate. In practice, it was about the meaning of the phrase *fī sabīl Allāh* ("for the sake of God") and the question of whether this phrase also includes *jihād*. A positive interpretation of this issue opened vast opportunities for the Imam to use *zakāt* income to strengthen his position in the state.[173]

The second phase in the development of Ibāḍī law, which Francesca calls the "intermediate phase" began in the fourth/tenth century and produced new works on both *uṣūl al-fiqh* (jurisprudence and hermeneutics) and *furūʿ al-fiqh* (branches of law and polemics on already established rules of different schools of law). The most important achievement of Ibāḍī jurisprudence was the work of the Omani jurist Abū Saʿīd Muḥammad al-Kudamī (d. early eleventh century CE) entitled *Al-Muʿtabar*. The second work that defined the character of Ibāḍī jurisprudence was the *Kitāb al-jāmiʿ* by Ibn Baraka. Both works pointed to three sources for establishing a legal norm: the Qurʾān, the Sunnah and *ijmāʿ* (consensus). The prophetic tradition took a central place in legal reasoning. Francesca emphasizes that it was characteristic of the Ibāḍī school of law to refer to the interpretation of texts of other schools of law. It is believed that Ibn Baraka said: "We do not deny the traditions of others as long as they are not corrupt."[174]

Francesca mentions three other theologians and jurists of the period who contributed significantly to the systematization and development of jurisprudence. They were active in the sixth/twelfth century,

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172 Idem, "Contextualizing the Development of Ibadi *Fiqh*," 15.

173 Ibid., 15–16.

174 Cit. after Francesca, "Tracing the History of Ibāḍī Law and Jurisprudence…".

when Ibāḍī law reached its maturity. They were Salama b. Muslim al-ʿAwtabī (d. early twelfth century), Muḥammad b. Ibrāhīm al-Kindī (d. 508/1114-5), and Abū Bakr Aḥmad b. ʿAbd Allāh b. Mūsā al-Kindī (d. 557/1161-2). Ibāḍī law underwent "hadithication", as Francesca calls it, which can be understood as the stage when stories of the Prophet Muḥammad were selected for their authenticity and relevance to the establishment of ethical and legal norms.[175]

Angeliki Ziaka analyses the sources of Ibāḍī *fiqh* and indicates that it is "based on an Ibāḍī corpus of *ḥadīth*, many of the saying of which are *marāsīl* (with incomplete *isnād* or the list of transmitters) ascribed by the Ibāḍīs to the founders of the *madhhab*, Jābir and Abū ʿUbayda Muslim."[176] Other specific features of Ibāḍī jurisprudence took shape in the course of the political conflict in the third/ninth century between Imam al-Ṣalt b. Mālik al-Kharūṣi and Mūsā b. Mūsā and Imam Rāshid b. Naẓr al-Yaḥmadi, which began a civil war that led to the downfall of the Imamate. The views of jurists were formed against the background of political struggles. As a result, the school of Nizwā of al-Kudamī and the Rustāq school of Ibn Baraka were established. Al-Kudamī was known for his moderation (*iʿtidāl*). He tried to find a balance between different opinions. In his book *Kitāb al-istiqāma*, he opposed Ibn Baraka's decision to excommunicate (*tabarraʾa*) Mūsā b. Mūsā and Imam Rāshid b. Naẓr al-Yaḥmadi for their deposition of Imam al-Ṣalt b. Mālik al-Kharūṣi. He considered that the judgement for this act should be left to God.[177]

The two jurists had different views on political events but entered history as the authors of works that are extremely important to Ibāḍīsm. Nūr al-Dīn al-Sālimī wrote in 1908 that *Kitāb al-istiqāma* was written in connection with specific political events. However, its form and content went beyond these events and it became a work on the foundations of religion and law.[178] The second work, al-Kudamī's *Al-Muʿtabar*, is a compendium of the norms of Muslim law. It systematizes the criteria for issuing a legal opinion (*fatwā*) formulated by Abū Jaʿfar Muḥammad b. Jaʿfar al-Izkawī, another

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175 Ibid.

176 Angeliki Ziaka, "The Roots of the *uṣūl al-fiqh* in the Ibāḍī *Madhhab*: A Comparison between Abū Saʿīd al-Kudamī and Ibn Baraka," in *Ibadi Jurisprudence: Origins, Developments and Cases*, 93.

177 Ibid., 94–95.

178 Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Al-Lumʿa l-murḍiya min ashiʿ al-ibāḍīyya*, ed. by Sulṭān b. Mubārak b. Ḥamad al-Shaybānī (Masqaṭ: Dhākira al-ʻUmān, 2014), 70–71.

outstanding Omani jurist from the third/ninth century, who in his book *Jāmiʿ Ibn Jaʿfar* paid particular attention to legal opinions on *walāya* and *barāʾa*. These opinions became the point of reference for future jurists' interpretations. Ziaka states that, in his third work, *Al-Jāmiʿ al-mufīd min aḥkām Abī Saʿīd*, al-Kudamī writes about the importance of knowledge (*ʿilm*) in the formulation of ethical maxims and legal norm.[179] However, it was Ibn Baraka who carried out a complete systematization of the principles of Ibāḍī jurisprudence.

The grave of Nūr al-Dīn al-Sālimī in Wadī Tanūf (author's photo)

3. The *ijtihād* issue

Mustafa Badjou writes about *ijtihād* in the Ibāḍī school of law and states that, although Western Oriental studies have given consideration to the history and theology of the Ibāḍīs, the legal works of Ibāḍī jurists have traditionally been ignored in the Muslim world because of the association of Ibāḍism with the Khārijites. As a result, Ibāḍī jurisprudence (*fiqh*) and the science

[179] Ziaka, "The Roots of the *uṣūl al-fiqh* in the Ibāḍī *Madhhab*...," 95.

of jurisprudence (*uṣūl al-fiqh*) are poorly studied and understood there. It is noteworthy that the Ibāḍī school was a pioneer in the field, evidenced by the fact that Imam Jābir b. Zayd was born in 21 AH and died in 93 AH, while Abū Ḥanīfa was born in 80 AH and died in 150 AH, and Mālik b. Anas was born in 93 AH and died in 179 AH.[180] This fact deserves attention as well as the contribution of Ibāḍi jurists to the development of the concept of *ijtihād* is concerned.

There is agreement as to the meaning of the term *ijtihād*. It is the effort of a *mujtahid*, i.e. a jurist qualified to form a legal ruling (*ḥukm*) on an issue that is not addressed in the Qurʾān and the Sunnah and has not been the subject of consensus. In the course of reasoning, even in the times of Muḥammad's Companions, references were made to analogy (*qiyās*) and public interest (*maṣlaḥa*). Nūr al-Dīn al-Sālimī writes in his 1908 work *Ṭalʿat al-shams. Sharḥ Shams al-uṣūl* that the first Ibāḍī jurists followed the rules of *ijtihād* inherited from Jābir b. Zayd, who in turn followed the rules handed down from the Companions of the Prophet, such as Ibn ʿAbbās.[181]

Badjou emphasizes that these rules envisaged strict adherence to the guidance of the Qurʾān and the Sunnah and then to the Companions' opinions. Only in the absence of any indications in these sources on a given issue was *ijtihād* to be used. The same principle was applied when issuing a legal opinion (*fatwā*). It could only be issued on the basis of a clear Qurʾānic text or a reliable text in the Sunnah. Some of Jābir's disciples allowed adjudication by way of *ijtihād* only in exceptional cases. Badjou concludes: "In fact, the Ibāḍī *fiqh* is based on religious texts; it did not incorporate scholars' opinions or Companions' views as an article of faith. It has been influenced, subsequently, by logic and *ʿilm al-kalām* (Islamic theology) that were influencing *ʿilm al-uṣūl*."[182]

The issue of *ijtihād* includes discussion on the necessary qualifications of a *mujtahid*. Badjou writes that Abū Yaʿqūb Yūsuf b. Ibrāhīm al-Wārjalānī named them and considered that a *mujtahid* "must be aware of the religious arguments of the Qurʾān

[180] Badjou, "The Concept of Ijtihād According to the Ibāḍī school of Jurisprudence," 103.

[181] Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Ṭalʿat al-shams*. *Sharḥ Shams al-uṣūl*, vol. 1, 13–14.

[182] Badjou, "The Concept of Ijtihād According to the Ibāḍī school of Jurisprudence," 104.

and the Sunnah; he must muster Arabic language […]; he must memorize by heart the prophetic tradition (*ḥadīths*)."[183] It was also obvious that he had to be an honest and pious man. There was disagreement over the need to know the Qurʾān and the Sunnah by heart, and some jurists believed this was unnecessary for legal reasoning. Nevertheless, everyone was concerned about the outcome of *ijtihād*, whether right or wrong. "Thus, they delimitated *ijtihād*, even prohibited it in explicit issues (*qaṭʿiyyāt*) and with regard to principles (*uṣūl*) […]. In secondary issues (*furūʿ*) where the argument is not explicit (equivocal), they widened the field of *ijtihād* and permitted divergence of ruling."[184]

As for the criteria for distinguishing principal issues from secondary issues (*uṣūl* and *furūʿ*), al-Wārjalānī pointed out that the former consists of religious issues (*masāʾīl al-diyāna*), such as monotheism (*tawḥīd*), prophecy, resurrection and so on. These principles were expressed in the Qurʾān and the Sunnah and were clearly understood, and therefore did not require *ijtihād*. Divergence with regard to the *uṣūl* was not permitted, but it was allowed divergence in matters of *furūʿ* and standardization through *ijtihād* was required. The *furūʿ* included issues related to worship (*ʿibādāt*), relationships between people (*muʿāmalāt*), and to what was permitted (*ḥalāl*) and what was forbidden (*ḥarām*).[185]

4. The *Naḥda*

The 80s and 90s of the nineteenth century saw the emergence of a new era in Ibāḍī jurisprudence, known as the *Nahḍa* (renaissance). It was a continuation of the efforts of earlier decades and expressed the thoughts of leading jurists on the essence and effects of the encounter with European civilisation, which was brought about by commercial expansion in the Indian Ocean basin and new technologies. A vital factor stimulating reflection was the development

183 Ibid., 105.

184 Ibid. About al-Wārjalānī see Nebil Husayn, *Opposing the Imam: the legacy of the Nawasib in Islamic literature*, Chapter 4: "The Ibāḍī: al-Wārjalānī" (Cambridge: Cambridge University Press, 2021).

185 Badjou, "The Concept of Ijtihād According to the Ibāḍī school of Jurisprudence," 105.

of a printing press in Zanzibar, which enabled the dissemination of legal treatises and interpretations of the sources of law. The leading figures in Ibāḍī theology during this period were Nūr al-Dīn al-Sālimī in Oman and Muḥammad b. Yūsuf Aṭfayyish in the Mzab Valley in Algeria.[186] They corresponded with each other, and their correspondence is archived in Mzab. Aṭfayyish was influenced by the Muslim reforms in Egypt at the turn of the twentieth century and wrote the well-known book *Sharḥ Kitāb al-Nīl*, which was a commentary to the book *Kitāb al-Nīl wa shifā' al-ʿalīl* of ʿAbd al-ʿAzīz b. Ibrāhīm al-Thamīnī (1130–1223/1717/8–1808/9). He also wrote numerous legal treatises.[187] Al-Sālimī was born in 1286/1869 at the time when Saʿīd b. Khalfān al-Khalīlī and ʿAzzān b. Qays Būsaʿīdī announced the rise of the Imamate on the coast of Oman. These events had a decisive influence on al-Sālimī's activities. His teacher was Ṣāliḥ b. ʿAlī al-Harithī, who was a student of al-Khalīlī and fought alongside ʿAzzān b. Qays Būsaʿīdī against the Sultan Sālim b. Thuwaynī Būsaʿīdī (r. 1866–68). In his work *Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān* (The Gift of the Notables to the History of the People of Oman), al-Sālimī treats the ʿAzzān b. Qays Būsaʿīdī Imamate as a continuation of the history of the Ibāḍīs in Oman from the first Imamate in the eighth century. Al-Sālimī emphasizes the achievements of ʿAzzān b. Qays Būsaʿīdī and al-Khalīlī in integrating the Omani tribes around the Imam and defending the Omani people against Wahhābī expansion and their invasions from Najd. Al-Sālimī's history is a counter-narrative to the history of the country written by British officials based in Muscat and supporters of the Sultans of the Būsaʿīdī family.[188]

Al-Salimī refers to his teachers with nicknames that place them among the reformers of Islamic law. Saʿīd b. Khalfān al-Khalīlī is called *al-muḥaqqiq*, or "the investigator", because he studied the provenance of a question (*taʾṣīl*) and its investigation (*taḥqīq*). ʿṢāliḥ b. ʿAlī al-Harithī bears the nickname *al-shaykh* as an

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[186] On the *Nahḍa*, see Amal D. Ghazal, *Islamic Reform and Arab Nationalism: Expanding the Crescent from the Mediterranean to the Indian Ocean (1880s to 1930s)* (London: Routledge, 2010), 41–45.

[187] ʿAbd al-ʿAzīz al-Thamīnī was the teacher of Ibrāhim, Aṭfayyish's older brother; see Badjou, "The Concept of Ijtihād According to the Ibāḍī school of Jurisprudence," 109, n. 16.

[188] See the narrative about the destructive influence of the Sultans' power on Islam – Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān*, 2 vols. (no place: Maktabat al-Istiqāma, no year), vol. 1, 284–85.

expression of the disciple's respect for the master. On the other hand, Muḥammad b. Yūsuf Aṭfayyish, whose work *Sharḥ Kitāb al-nīl* became known in Oman after it appeared in print in Zanzibar, was provided with the nickname *al-quṭb*, "the axis", because of the influence this work had on the Ibāḍī community.[189]

Nūr al-Dīn al-Sālimī's work leaves no doubt as to where the author's sympathies lay in the political conflict. The *Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān* describes at length the conflict between ʿAzzān b. Qays Būsaʿīdī and Turkī b. Saʿīd Būsaʿīdī (r. 1870–88), the defeat of the latter, and the help from the British India that saved him. It describes equally extensively the assassination of Saʿīd b. Khalfān al-Khalīlī, grandfather of the Imam-to-be (Muḥammad b. ʿAbd Allāh al-Khalīlī, elected in 1920), and the betrayal of the Imam by the British consul. In al-Sālimī's account, the British are masters of intrigue who first assured the Imam that they were protecting him and then provoked the events that resulted in al-Khalīlī being brutally murdered. Al-Sālimī calls them "colonizers whose only religion is their interests."[190]

Despite their aversion to the Sultans from Āl Būsaʿīdī, al-Sālimī and other jurists owed a lot to the results of the Sultans' policy of openness to civilisational innovations coming from Europe and India. The first was the printing press, which began to develop in Zanzibar under Sultan Barghash b. Saʿīd (r. 1870–88), a great supporter of modernization and promoter of civilisational change. This meant that Oman became even more closely linked to India and Egypt as the centres of the printing press. Cairo newspapers were available in Oman, and steamboats carried pilgrims from Oman to Jeddah, facilitating communication between Ibāḍī theologians from Algeria and Oman during the pilgrimage.[191]

Nūr al-Dīn al-Sālimī was a great supporter of the printing press, believing it to be an excellent means of propagating Ibāḍīsm. An example of such publications was Jumayyil b. Khamīs al-Saʿdī's (d. 1278/1861-2) *Qāmūs* (Dictionary), a compendium of knowledge about Ibāḍīsm from the middle of the nineteenth century, which, after it appeared in book form, began to circulate between East Africa, North Africa and South Arabia, stimulating interest in old texts and Ibāḍī jurists from a bygone era. Another example of a work

189 Ibid., vol. 2, 284.

190 Ibid., vol. 2, 281, n 1.

191 Ibid., vol. 2, 228–229.

that was popularized by printing was Aṭfayyish's *Sharḥ Kitāb al-nīl*. It consisted of 90 parts, 19 of which were published in Zanzibar. This work soon gained a reputation as the most authoritative collection of Ibāḍī *fiqh* and covered the whole of positive law, from rituals (*ʿibadāt*) to rules of social coexistence (*muʿāmalāt*). Bishara writes that the *Sharḥ* was the standard reference in British courts and among Muslim *qādī*s.[192]

[192] Bishara writes about the circulation in the Ovean Indian region of literature of the *manhaj* type (comprehensive works comprising all that concerned Muslims regarding creed, manners, worship and relations with other people) and of the *tuḥfat* type (comprehensive books regarding jurisprudence). See also *Islamic Law in Circulation*, ed. by Mahmood Kooria (Cambridge: Cambridge University Press, 2022) about the circulation of the Shāfiʿī texts across the Indian Ocean. On the steamship and railroad age, see James L. Gelvin and Nile Green, "Introduction: Global Muslims in the Age of Steam and Print," in *Global Muslims in the Age of Steam and Print*, ed. by James L. Gelvin and Nile Green (Berkeley: University of California Press, 2013), 1–24; Nile Green, *Bombay Islam: The Religious Economy of the Western Indian Ocean, 1840–1915* (New York: Cambridge University Press, 2011), 92–99.

Chapter III.
Al-Sālimī's Heuristic

1. Al-Sālimī's life and works

Abū Muḥammad ʿAbd Allāh b. Ḥumayd b. Sulūm b. ʿUbayd b. Khalfān b. Khamīs al-Sālimī was born into a noble Omani family that traces its origin to ʿAdnān, who, according to tradition, was a descendent of Ishmael, son of Abraham. He was born in the town of al- Ḥuwqiyn, in al-Rustāq province, the hometown of his father, Shaykh Ḥumayd b. Sulūm al-Sālimī, who was his first teacher and who taught him to read and understand the Qurʾān. Al-Sālimī's mother, Mawza, came from the Banū Kāsab tribe.[193]

The date of al-Sālimī's birth is uncertain. Most often, the year of his birth is given as 1286 AH, corresponding to 1869 CE.[194] There is no discrepancy as to the date of his death. We know he died on the 5th of Rabīʿal-awwal 1332 AH, which corresponds to the 21st of January 1914.[195]

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[193] Muḥammad (al-Shayba) b. ʿAbd Allāh al-Sālimī, *Nahḍat al-aʿyān bi-ḥuriyyat ʿUmān*, 89–103.

[194] This year of birth is given by Abdulrahman al-Salimi in the preface to the latest edition of this work, see Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān*, 2 vols., ed. by Abdulrahman al-Sālimī (Al-Qāhira: Dār al-Kitāb al-Miṣrī; Bayrūt: Dār al-Kitāb al-Lubnānī, 2022/2023), 4.

[195] The date 1284/1867 is given in the earlier editions of the Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī's works. See ʿAbd Allāh b. Muḥammad b. ʿAbd Allāh al-Sālimī, "Introduction," in Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Maʿārij al-amāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl*, vol. 1, 11–12; see also Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān*, 2 vols. (Badiyya: Maktabat al-Imām Nūr al-Dīn al-Sālimī, 2000), vol. 1, 2; idem, *Ṭalʿat al-shams. Sharḥ Shams al-uṣūl*, vol. 1, 13–14. Muḥammad (al-Shayba) b. ʿAbd Allāh al-Sālimī, the son of Nūr al-Dīn ʿAbd Allāh

In the Introduction to *Maʿārij al-amāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl* Shaykh ʿAbd Allāh b. Muḥammad b. ʿAbd Allāh al-Sālimī, a grand-son of al-Sālimī, indicates that there were several disctinct phases in the jurist's life. The first period lasts until 1314/1896 and may be called a period of "searching for knowledge." Having learned the Qurʾān by heart, al-Sālimī left for al-Rustāq, where he studied in a well-known school by the White Mosque (*Masjid al-Bayāḍa*). Traditional Qurʾānic instruction was given there, covering grammar, law (*fiqḥ*) and faith (*ʿaqīda*). There, at the age of 17, al-Sālimī studied commentaries on the law, legal terms and rhetoric and his masters were Shaykh Mājid b. Khamīs al-ʿAbrī, Sālim b. Sayf al-Mālikī and ʿAbd Allāh b. Muḥammad al-Hāshimī. In 1306/1888-9 he travelled to Nizwā, where Shaykh Muḥammad b. Khamīs al-Sayfī became his master. Then he went to to Shaykh Muḥammad b. Masʿūd al-Būsaʿīdī in the settlement of al-Fīqayn (the present-day *wilāya* of Manaḥ Umm al-Fīqayn in al-Dākhiliyya region). From there, he moved to the region of al-Muḍaybī, and then to the settlement of al-Qābil in the region of al-Sharqiyya because he wanted to hear the teachings of the theologian Shaykh Ṣāliḥ b. ʿAlī al-Ḥārithī, who lived there. While there, he was offered a post as a teacher, but he refused because he wanted to continue to learn and was looking for the right teacher.[196]

When al-Sālimī arrived and settled in al-Qābil in 1314/1896-7, this is when, under the guidance of Shaykh al-Ḥārithī, that the second phase of his life began – a phase of critical analysis of existing texts and formulating his views on various aspects of Islamic law in general, and Ibāḍī law in particular. Al-Qābil was a wealthy agricultural settlement in al-Sharqiyya region, whose inhabitants were also engaged in trade. At the time, this region was flourishing, thanks to the development of the agricultural system. The area had many schools where theologians and jurists taught and this created fertile ground for creative debates on academic topics.

b. Ḥumayd al-Sālimī, in his book *Nahḍat al-aʿyān bi-ḥurriyyat ʿUmān*, states that his father was 48 when he died, which would mean that he was born in 1867. Wilkinson gives 1870 as the year of the birth of Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī (Wilkinson, *The Imamate Tradition of Oman*, 371).

196 Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Ṭalʿat al-shams. Sharḥ Shams al-uṣūl*, vol. 1, 7–18; idem, *Jawābāt al-Imām Nūr al-Dīn al-Sālimī (1286–1332)*, 5 vols., ed. by ʿAbd Allāh b. Muḥammad b. ʿAbd Allāh al-Sālimī (Badiyya: Maktabat al-Imām Nūr al-Dīn al-Sālimī, 2010), vol. 1, 14–15.

During such debates, al-Sālimī gained a deep knowledge of the language, the interpretation of sacred texts, *ḥadīths*, *fiqh*, the basics of law and the rules of rhetoric and his knowledge gained for him the *laqab* Nūr al-Dīn, "Light of the Faith". He was also addressed as *imām*, a sign of respect for his religious and legal knowledge. Al-Ḥārithī made a most significant impact on al-Sālimī and the death of his teacher in 1314/1897 was very painful for him.[197]

The next significant event in al-Sālimī's life was his pilgrimage to Mecca in 1323/1905. This gave him an opportunity to visit Muscat, where he met Sultan Fayṣal b. Turkī (r. 1888–1913) and from where he sailed to Jeddah. In Mecca, he met preachers from many Muslim countries representing views different from those of the Ibāḍī school of Islamic law, and this inspired him to study their interpretations. By studying other law schools, he was able to make comparisons and deductions, and knowledge of other ways of thinking about law as the basis of social organization and appreciation of different interpretations of legal texts led him to think about the need to adapt the law to new forms of social life and social changes (*mutaghayyarāt*) that occur over time as well as to new circumstances, and to recognize the necessity for interpretations to be revive (*iḥyā'*).[198]

It may be considered that a breakthrough in the formation of al-Sālimī's personality and independence as a jurist, in the shaping of his views and in his maturation was a dispute with another jurist, also widely respected – and to some extent al-Sālimī's teacher – Shaykh Mājid b. Khamīs al-ʿAbrī from the settlement of al-Ḥamrāʾ in the al-Ḥamrāʾ region. The dispute concerned the possibility of bequeathing tombs to religious foundations (*awqāf al-qubūr*). Fencing off family tombs to separate them from other tombs with a shaft and treating them as a kind of real estate had become widespread. Al-Sālimī was against registering tombs as bequests to religious foundations because he believed that this practice was fundamentally wrong; tombs should not be regarded as a kind of material goods used for trade, and should therefore remain in the hands of the family of the person writing the will or, if there was no family, be transferred to the ownership of the Treasury. Al-Sālimī issued a *fatwā* on the matter, which further aggravated

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197 See, "Introduction" by ʿAbd Allāh b. Muḥammad b. ʿAbd Allāh al-Sālimī to Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Ṭalʿat al-shams. Sharḥ Shams al-uṣūl*, vol. 1, 18.

198 Ibid., 19.

the conflict with al-ʿAbrī. In order to ease the situation, al-Sālimī went to al-Ḥamrāʾ and had a conversation with the preacher.[199]

Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī spent his last years in settlement of al-Ẓāhir near Badiyya, and later, after he restored the Imamate, went to Tanūf in Wadī Tanūf north of Nizwā, where he died on the 21st of January 1914.[200] That is also where his grave is.

A few of the Ibāḍī preachers from whom he received his education played an essential role in the formation of al-Sālimī's views as a theologian and expert on *fiqh*. They were local theologians who interpreted the Qurʾān and *ḥadīth* literature and were often, at the same time, local judges, from whom the population sought legal and religious opinions or the settlement of disputes in line with religious principles. One of them was Ṣāliḥ b. ʿAlī al-Ḥārithī, a recognized authority on matters of family law, particularly divorce. He was born in 1250/1834-5 and died in 1314/1896-7 from a gunshot wound he suffered during a battle with the tribes hostile to the Ibāḍīs. It was therefore concluded that he died defending the faith. The second teacher was Mājid b. Khamīs al-ʿAbrī, who was born in 1252/1836-7 in the region of Ḥamrāʾ and died in 1346/1927-8. He was one of the best known theological and legal experts of his time. Another teacher was Rāshid b. Sayf al-Lamkī, who served as *muftī* in the al-Rustāq region. He came from that city and spent his entire life there (1262–1333/1845-6 until 1914-5). Al-Sālimī also received education from ʿAbd Allāh b. Muḥammad al-Hāshimī from al-Rustāq, who was a judge in that city. In Nizwā, where Nūr al-Dīn al- Sālimī was living, one of the best-known preachers and judges was Muḥammad b. Khamīs al-Sayfī, who was born in 1241/1825-6 and died in 1333/1914-5. During his long life, this jurist met people who had a deep understanding of the principles of faith and Ibāḍī law, including Saʿīd b. Khalfān al-Khalīlī (1230–1287/1814-5 until 1870-1) and Abū Nabhān Nāṣir b. Jāʾid al-Kharūṣī (1191–1263/1777/8–1846/7). Another preacher who had an impact on al-Sālimī was Muḥammad b. Masʿūd al-Būsaʿīdī (d. 1320/1902), who was teaching in settlement of al-Fīqayn in the region of Manaḥ.[201]

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[199] Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Jawābāt al-Imām Nūr al-Dīn al-Sālimī (1286–1332)*, vol. 1, 17.

[200] ʿAbd Allāh b. Muḥammad b. ʿAbd Allāh al-Sālimī, "Introduction," in Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Maʿārij al-amāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl*, vol. 1, 20.

[201] Ibid., 20–22.

Nūr al-Dīn al-Sālimī spent the early years of his intellectual activity in al-Rustāq – a region where the only nineteenth-century Imam ʿAzzān b. Qays Būsaʿīdī was elected in 1285/1868. Pro-Imamate sentiment was quite strong here after 1288/1871, but when the Būsaʿīdī Sultans established their capital there, the centre of the Ibāḍī movement shifted to the al-Sharqiyya. Al-Qābil was located in the al-Sharqiyya and so al-Sālimī, as an ardent supporter of the Ibāḍī Imamate, went there. He was becoming increasingly well-known as a theologian and jurist, and the local notables took his opinions into account. He was thus able to influence the formation of tribal alliances, which depended on the strength of the supporters of the Ibāḍī Imamate. Al-Sālimī became involved in local political activities and played an essential role in gathering warring tribes into a strong confederation that could confront the forces of the Sultan and even defeat them. Since the leader of the al-Hinā'i tribes in al-Sharqiyya felt personal antipathy toward al-Sālimī and so refused to support the forces of the Ibāḍī movement, al-Sālimī swore loyalty to the leader of the al-Ghāfirī tribes Ḥimyar b. Nāṣir al-Nabhānī (d. 1332/1914), even though he did not think he was the right candidate to lead the Ibāḍīs. This took place in the Tanūf settlement, where al-Sālimī was seeking legal knowledge. As it transpires, this was only one of the aims of his journey to that settlement. The other was to ally with the leader of the al-Ghāfirī tribes. The Ibāḍī movement was strengthened by this development and, in May–June 1913, the Ibāḍīs seized the Izkī fortress. On hearing the news, the shaykh of the al-Hinā'i tribes joined the Ibāḍīs, which ultimately determined the restoration of the Ibāḍī Imamate in the mainland.[202]

The dispute with Mājid b. Khamīs al-ʿAbrī from the al-Ḥamrāʾ region was not purely theological; it also concerned the financial resources needed for the Ibāḍī movement. Al-Sālimī stood against treating family tombs as real estate (*awqāf al-qubūr*) and bequeathing them to religious foundations like normal real estate, such as houses and farmland. In addition, he stated that the areas adjacent to the tombs and other immovable property that had already been bequeathed to the foundations together with the tombs where families gathered to pay their respects to the dead and the Qurʾān was read for the dead, should be confiscated by the authorities as this practice was, according to al-Sālimī, against the principles of monotheism.[203]

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[202] See Wilkinson, "Al-Sālimī, Abū Muḥammad ʿAbd Allāh b. Ḥumayd b. Sullūm, Nūr al-Dīn," 993.

[203] Ibid.

Nūr al-Dīn al-Sālimī left a vast legacy of literary works that covered many areas, of which the most important may be the analysis of lexical terms, phraseology and poetic rythm, as well as rules of grammar, in a work based on lines of poetry with a commentary, entitled *Bulūgh al-amal*. He completed this work in 1301/1883-4. Another vital aspect of his work was a critical elaboration on theological treatises against Wahhābī preachers, in which he collaborated with other jurists, including Ḥamad b. Rāshid b. Sālim al-Rāsbī. Later, al-Sālimī wrote theological treatises himself, including *Anwār al-ʿuqūl*, a 200-line poem on theology, written in 1312/1894-5. Another work *Bahjat al-anwār* was written in 1314/1896-7 and it is an abbreviated commentary (*sharḥ*) on his *Anwār al-ʿuqūl*. In a commentary on a *qaṣīda* written by Saʿīd b. Ḥamad al-Rāshidī, one of his close disciples, al-Sālimī argues against those who question the eternity of the Qurʾān, especially those who argued against the Ibāḍī scholar Ibn al-Naẓr'twelfth-century poem. In this commentary, al-Sālimī stresses that the poem was not by Ibn al-Naẓr and may have been added to his anthology later by someone else, a remark regarded as an important observation. The work was published in 1313/1895. Another work, the treatise *Shams al-uṣūl* was based on *fiqh* and written in approximately 1,000 lines of verse and was finished in 1314/1896-7. The treatise, *Ṭalʿat al-shams. Sharḥ Shams al-uṣūl* (literally "Sunrise", in the sense of the dawning of knowledge), also written in the form of a poem and finished in the same year, contains commentaries on *Shams al-uṣūl*. The treatise *Risālat al-tawḥīd*, also known as *Ṣawāb al-ʿaqīda*, was written at the request the above-mentioned Saʿīd b. Ḥamad al-Rāshidī, who died in 1314/1896-7. In turn, *Jawhar al-niẓām fī ʿilm al-dīn wa-l-ḥukkām* is a study of theology, law and literature. It is composed in 14,000 lines and was written between 1323–1329/1905-6 and 1911-2.[204]

In al-Sālimī's juridical works, two main topics can be discerned: *uṣūl al-fiqh* and *furūʿ al-fiqh*. *Uṣūl al-fiqh*, or principles of Islamic jurisprudence, is the study and critical analysis of the origins, sources and principles upon which Islamic jurisprudence is based and was universally recognized as one of the disciplines in the academic knowledge of Islam.[205] Meanwhile, the academic discipline of

[204] Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Jawābāt al-Imām Nūr al-Dīn al-Sālimī (1286–1332)*, vol. 1, 20–24; idem, *Ṭalʿat al-shams. Sharḥ Shams al-uṣūl*, vol. 1, 22–26.

[205] The fundamental component of this knowledge was theology, i.e. *ʿilm al-kalām*. According to al-Ghazālī, this was the most overarching knowledge about

furūʿ al-fiqh is the study of the "branches" of law. Both *uṣūl al-fiqh* and *furūʿ al-fiqh* combine academic study and literary works, the latter form of *uṣūl al-fiqh* being represented by fourth/tenth-century scholars of the Ḥanafī school, such as Aḥmad b. Muḥammad al-Shāshī and Aḥmad b. ʿAlī al-Jaṣṣāṣ.[206] Nūr al-Dīn al-Sālimī continued this tradition of *uṣūl al-fiqh* as a literary genre.

As far as Nūr al-Dīn al-Sālimī's own acknowledgement of the sources he used is concerned, they are books on Islamic jurisprudence, e.g. *Manhaj al-uṣūl* (The Method in *al-uṣūl*) written by al-Imam Muḥammad b. Yaḥyā b. Ḥusayn (al-Murtaḍā li-dīn Allāh) al-Zaydī (d. 310/922),[207] *Al-Talwīḥ ʿalā al-tawḍīḥ* (Comments on Interpretation) by Saʿd al-Dīnʿ Masʿūd b. ʿUmar b. ʿAbd Allāh al-Taftāzānī (722–39/1322–90), and the works on *mukhtaṣar* (the outline of Islamic jurisprudence) penned by Badr al-Dīn Abū al-ʿAbbās Aḥmad al-Shammākhī (d. 928/1522), including *Kitāb mukhtaṣar al-ʿadl wa-l-inṣāf*. Nūr al-Dīn al-Salimī also refers to the *Mustaṣfā min ʿilm al-uṣūl* on legal teory by al-Ghazālī, who represented the Shāfiʿī school of law. This school distinguished *uṣūl al-fiqh*, the knowledge of the sources of law, from *ʿilm al-khilāf* (the science of divergence), which was the knowledge of specific standards of law and their organic ties with the sacred texts. The knowledge of the sources of law was connected to the knowledge and formulation of hermeneutical principles of extrapolation of sacred texts. It was the domain of theologians, while *ʿilm al-khilāf* was the area of activity of jurists. The Shāfiʿī school took this division more

religion, covering topics such as the essence of God, the nature of the revelation and the meaning of prophecy. This knowledge determined the fundamental principles concerning the existence and the essence of God, the existence of prophets and the content of their revelations. Al-Ghazālī listed six academic Islamic disciplines. Apart from *ʿilm al-kalām*, the others were*: furuʿ al-fiqh*, *uṣūl al-fiqh*, *ʿilm al-ḥadīth*, *ʿilm al-tafsīr* and *ʿilm al-bāṭin*. The last occupied a special place as it was not part of the Islamic scholastic tradition but focused on the tradition of Ṣūfism, or mysticism. The *uṣūlīs* or the scholars of *uṣūl al-fiqh*, have to accept the results of the discipline of *ʿilm al-kalām* and *ʿilm al-ḥadīth.* See Norman Calder, "Uṣūl al-fiḳh," in *The Encyclopedia of Islam*, New Edition, vol. 10, ed. by Peri Bearman, Thierry Bianquis, Clifford Edmund Bosworth, Emericus van Donzel, and Wolfhart P. Heinrichs (Leiden: E.J. Brill, 2000), 931–34.

206 Ibid., 931.

207 He was the son of the first Zaydī Imam in Yemen Yaḥyā l-Hādī ilā l-Ḥaqq (d. 298/911), see Maher Jarrar, "al-Murtaḍā li-Dīn Allāh," https://referenceworks.brillonline.com/search?s.f.s2_parent=s.f.book.encyclopaedia-of-islam-3&search-go=&s.q=Murtada+al-Zaydi (accessed November 16, 2022).

seriously than the Ḥanafī school, which concentrated more on the protection of norms that were already known, seeing them in the context of the already existing legal tradition.[208]

Nūr al-Dīn al-Sālimī's works on *furūʿ al-fiqh* contain extensive material referring to different schools of law (*madhāhib*), the norms of law and polemics on already established rules. They contain arguments of varying lengths to defend explicit norms of greater or lesser importance. In this respect, the importance of *Ṭalʿat al-shams. Sharḥ Shams al-uṣūl* must be mentioned. It is a study in the field of knowledge of the Ibāḍī school and analysis of issues raised by jurists (*uṣūlīs*) and by the Ḥanafī school of Islamic jurisprudence, and it also considers the non-*uṣūlī* view, with discussion of *ijtiḥād* takings a special place. Al-Sālimī does not deny the possibility of differences in the interpretation of texts but only takes on board those differences that do not go beyond the foundations of faith. However, the significant contribution of this work to the discussion of *furūʿ al-fiqh* lies in showing a dialectical link between norms of law, standards of law and sources of law (*uṣūl al-fiqh*). From this point of view, *Ṭalʿat al-shams. Sharḥ Shams al-uṣūl* is considered a significant work for modern Islamic jurisprudence.[209]

Al-Sālimī contributed significantly to the systematization of the sources of Islamic religious and legal thought. He prepared an index of Qurʾānic poems, an index of *ḥadith* (*fihris al-aḥādīth al-nabawiyya*), an index of *ḥadiths* cited in court decisions (*al-shawāhid al-sharʿiyya*), an index of law schools (*fihris al-madhāhib*), theological courses in Islam and religious communities (*firaq* and *milal*), an index of published theological and legal works constituting the canon of individual schools of Muslim law, an index of names of the best-known Muslim jurists, and an index of issues that came under jurisdiction of Muslim courts. However, al-Sālimī's writings on *uṣūl al-fiqh* refer primarily to Ibāḍī law. They were published in a multi-volume work entitled *Maʿārij al-amāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl*.[210]

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208 "Introduction" by ʿAbd Allāh b. Muḥammad b. ʿAbd Allāh al-Sālimī to Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Ṭalʿat al-shams. Sharḥ Shams al-uṣūl*, vol. 1, 22–26.

209 Ibid.

210 Muḥmūd Muṣṭafā ʿAbbūd Āl Harmūsh, in his fundamental work on Ibāḍī law *Al-Qawāʿid al-fiqhiyya al-ibāḍiyya*, often refers to the works of Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī and especially *Ṭalʿat al-shams*. *Sharḥ Shams al-uṣūl*.

2. Al-Sālimī as a historian

As a historian, al-Sālimī is the author of a significant work on the history of Oman entitled *Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān* (A Gift of the Nobles to the History of the People of Oman), written in two parts in 1331/1912-3. A separate volume with comments on it was also finished in the same year.[211]

The history related in the *Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān* begins in to pre-Islamic times, making this work different from the writings of other Omani historians, who usually began the history of Oman with the Islamization of the country. The other difference, and a very characteristic element of al-Sālimī's way of thinking as a historian, is the book's complex approach to the historical process. The author refers to various determinants of historical development such as geography, geology, natural resources and settlement conditions, including people's contacts and exchanges with the outside world. He cites the works of other chroniclers and historians, specifically Salama b. Muslim al-ʿAwtabī's *Kitāb al-ansāb*, Sirḥān b. Saʿīd al-Izkawī's *Kashf al-ghumma*, or the annals of Oman to 1141/1728, and Ibn Ruzayq's (Ḥamīd b. Muḥammad b. Ruzayq, d. 1292/1874) *Al-Fatḥ al-mubīn fī sīrat sāda al-Būsaʿīdiyyīn*, and this makes al-Sālimī's work real scholarly research. The narrative of *Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān* ends in 1331/1912, just before the critical events of the restoration of the Ibāḍī Imamate, and gives a clear picture of Omani society at this time. In this respect, the historical narrative of *Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān* is understood better when analysed along with the *Jawābāt al-Imām Nūr al-Dīn al-Sālimī* (Responses of Imām Nūr al-Dīn al-Sālimī), which is the collection of his *fatāwā* on various aspects of everyday life in Oman, including power relations (*al-imāra*) and social relations, especially usury (*ribā*) and the rules on exploiting the *falaj* (irrigation) system.

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[211] The first edition of the first part of *Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān* was published in 1332/1914 in Cairo, and the second part was published in 1347/1928. Both parts were published in 1350/1931 by the Maṭbaʿa al-Shabāb Publishing House in Cairo with the annotations of Ibrāhim b. Yūsuf Aṭfayyish (see Preface to the latest edition of this work edited by Abdulrahman al-Sālimī in [1444] 2022/2023, pp. 16–17). The text was published many times in later years. In this book, one of the editions was used and the text was compared with the manuscript, the first part of which is in the National Library of Egypt and the second part in the Omani Ministry of Heritage and Omani Culture collection.

Nūr al-Dīn al-Sālimī connects the beginning of Omani history with ancient times and underlines that contacts with Persia played a decisive role in that period. The Persians attacked Oman around 2,000 years before the advent of Islam, and local tribes had to leave the country. The tribes of al-Azd migrated towards Central Arabia, and some settled in Mecca. When the Persians left Oman, the tribe of al-Azd came back to the homes of their ancestors. This fact has to a great extent determined the history of Oman, but the advent of Islam played a critical role in shaping the identity of the Omani people. Concerning the role of al-Azds, we read that, after returning to Oman, one of the shaykhs of al-Azds married a daughter of a local shaykh, strengthening the position of al-Azds as the leading tribal confederation in the country. We find the names of the main tribes that arrived in Oman and the author confirms that his narrative relies on al-ʿAwtabī's *Kitāb al-ansāb* (early twelfth century).[212]

Several paragraphs in *Ṭuhfat al-aʿyān* refer to al-Azds' Meccan connection, which needs some comment. First, al-Sālimī stresses the personal interest of the Prophet Muḥammad in the people of Oman, especially the Azd tribes. When the Prophet sent a man to Oman with his message, the people of Oman accepted him. Knowing this, Muḥammad described the people of Oman as the people of "politeness and knowledge". He recommended that his wife ʿĀʾisha should teach Islam to the people of Oman as he supposed they would come to Mecca after his death. He added that the people of Oman would enforce their faith and strengthen Islam. Muḥammad sent to Oman ʿAmr b. al-ʿĀṣ, who came back to Medina with a group of Azds. They were held in very high esteem in Medina and Abū Bakr addressed them in one of his sermons, stressing that, when the Prophet Muḥammad sent ʿAmr b. al-ʿĀṣ to the people of Oman, and they welcomed and supported him with arms and money. They were highly regarded for their religiosity and for their skill in speaking excellent Arabic (*al-faṣāḥa*).[213]

The story about the period spent by the Omani al-Azds in Medina reveals the very spirit of the people and the makeup of

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[212] Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān*, vol. 1, 19, 29–30 (edition of Maktabat al-Istiqāma). The tribes mentioned in this context are: Banū Saʿd, Banū ʿAbd al-Qays, Banū Tamīm, Banū al-Nabīt, Banū Qaḥṭān, Banū l-Ḥārith b. Kaʿb, Banū la-Muqayyin b. Jasr and Banū Ruwāḥa b. Qutayʿa b. ʿAbbās.

[213] Ibid., vol. 1, 10–13.

Omani society. Two religious men were among the Omani Azds in Medina – Maṣqala b. Ruqayya and his son Karb b. Maṣqala. They both preached two sermons in Medina under the titles *Al-ʿAjūza fī l-jāhiliyya* and *Al-ʿAdhrāʾ fī l-Islām*, which became well-known and were regarded as proof of the high devotion of the people of Oman to Islam. They were also noted for their admiration for their country. Al-Aṣmaʿī reported from Abū ʿAmr b. al-ʿAlāʾ, both inhabitants of Mecca at that time and known from *ḥadīths*, that the latter had an interesting talk with an Azd. When the Azd was asked where he came from, he answered: "from ʿUmān"; and then he was asked to describe this country, and he said that in his country: *sayfun afyaḥ, wa-faḍāʾun ṣaḥṣaḥ, wa-jabalun ṣaldaḥ, wa-ramlun aṣyaḥ* ("a large sword, and even plain and spacious mountain, and 'crying' sand"). This story also contains information about the main occupation of the Omanis, who were mostly cultivators of the date palm tree and secondarily camel drivers, considering dates to be more profitable.[214]

Two aspects that shaped the course of Omani history should be highlighted in al-Sālimī's historical writing: the composition of Omani society and the relationship between the people and the rulers. Omani society is presented as tribal and remains tribal, though increasingly complex, till the end of *Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān*. The men of the Azd tribe who came to Medina with ʿAmr b. al-ʿĀṣ were tribesmen and farmers. They cultivated palm trees and bred camels. The tribal composition of Omani society remains critical for the history of Oman. Al-Sālimī frequently refers to the rivalry between tribes and the reasons for forming tribal confederations. He attributes the division into the two groups of the al-Ghāfirī and the al-Hināʾi not only to the traditional composition of alliances but also to personal ambitions and disagreements between tribal leaders or failures of mediation.[215]

While remaining essentially tribal (*qabalī*), Omani society became more diversified, and new non-tribal loyalties emerged. In the course of the narrative, we find increasing numbers of references to the inhabitants of Omani towns and their leaders (*ruʾasāʾ*, but not *shuyūkh*) and also to their growing role in intertribal conflicts and Omani politics in general. Al-Sālimī often refers to the 'lords of towns' (for instance, *ṣāḥib al-Suwayq*) to stress the

[214] Ibid., vol. 1, 15.

[215] Ibid., vol. 2, 133.

growing independence of towns and townsmen from the tribes of the mainland.[216]

Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān also refers to the fact that the influence of *ʿulamāʾ* on state affairs was always strong. They formulated the idea of just rule and compelled the Sultans to rule the country according to it. This idea reflected Islamic concepts of the relationship between the people and their ruler as well as popular views on the justice and responsibilities of a ruler. Nūr al-Dīn al-Sālimī relates an event that took place under the rule of Sultan Aḥmad b. Saʿīd (r. 1749–83), the first ruler from the Būsaʿīdī family and the only Sultan who had religious authority, being elected an Imam. He sent around 30,000 men to fight a tribe in the al-Ẓāhira region. Only 70 tribesmen opposed the Sultan's army and they were all killed in a battle. Although many of the local population supported the authority of the Sultan, the events were characterized as an unjustified war and gave rise to sentiments unfavourable to the Sultan. Other cases described in *Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān* prove that people sometimes did not know who was fighting against whom, but they were, nevertheless, aware that the balance of power between the parties should be preserved and hostilities should abide by commonly accepted rules.[217]

The Sultan and the Imam were subject to 'public' control and guidance. When the *shuyūkh* elected an Imam, he swore an oath (*bayʿa*) that he would respect particular rules and keeps his promise to take care of the people. Al-Sālimī cites a message that people addressed to the Imam ʿAzzān b. Qays Būsaʿīdī to remind him of the oath he made to them at his election. It reads:

> We elected you to be obliged to obey what God says and what Muḥammad says, in order to do good things and refrain from doing bad things (*al-amr bi-l-maʿrūf wa-l-nahy ʿan al-munkar*). We appointed you for us and the people to protect us, not to make any deal or agreement and not to make any decision before asking the people for their opinion. We also elected you to implement God's rules and collect taxes and the *zakāt*, to support the indolent people, and to defend the weaker against the stronger.[218]

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[216] Ibid., for the people of Bahlāʾ, see vol. 2, 129; for the ruler of al-Suwayq, see vol. 2, 238.

[217] Ibid., vol. 2, 180–82.

[218] Ibid., vol. 2, 259–60.

Access to water was critical for economic activity and the rules regulating the work and the water channel system (*falaj*, pl. *aflāj*) constituted the core of social relations, especially in the countryside. This conclusion can be drawn from a long list of *fatāwā* issued by Nūr al-Dīn al-Sālimī on types and forms of the exploitation of the *falaj*. The water channels belonged to the local communities, or else were *waqf*s. Representatives of the local people or administrators of the *waqf*s controlled the proper functioning of the channels. Any attempt to change communal ownership of the water resources to private ownership by anyone, including the ruler, increased tension and made people uneasy. We read in one of al-Sālimī's *fatāwā* about a channel that supplied a whole village with water. The channel was a *waqf*, and it was administrated by *wakīl*s (administrators), who collected money from the leaders of the village communities. Each community paid from 100 to 200 *qurūsh* and could then freely use water from the *falaj*. After some time, the people of the village began to sense that the sum of money received by the *wakīl*s exceeded the cost of keeping the channel in good condition and that the *wakīl*s were no longer honest and spent the communal money on entertaining guests and men sent by the Sultan. Finally, the people asked Nūr al-Dīn al-Sālimī how the money they paid for use of the water should be spent. His answer was clear, concluding that rules regulated the functioning of the channel and that these rules could not be changed because such a change would destroy the system for using water. Accordingly, the money paid for water by the villagers could only be spent on the maintenance of the channel and could not be transferred to the Sultan to increase his power or spent on entertaining guests or even on organizing the defence of the village against its enemies.[219]

Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān and al-Sālimī's *fatāwā* show that the position of the Sultan, or the ruler, was essential for the country and its development. However, al-Sālimī criticizes any attempts by the ruler to impose his power by force to cause people harm. The Sultan has the right to collect taxes, but he cannot force people to pay and if he tries to do so, disobedience is justified. In one of his *fatāwā*, we read of a man who was appointed by the Sultan to be his *amīr* (commander) and sent to collect taxes that the people should pay in return for their protection. This man asked Nūr al-Dīn al-Sālimī how he should act if the people refused to pay

[219] Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Jawābāt al-Imām Nūr al-Dīn al-Sālimī (1286–1332)*, vol. 3, 349–50.

the taxes. Was it permissible to use force to collect payments for protection or not? Al-Sālimī answered by highlighting the broader aspect of the case. He started by saying that the Sultan was the shadow of God on Earth, referring to a popular *ḥadīth* attributed to Muḥammad that people must obey the ruler because whoever despises him will be despised by God, but rulers must behave justly as other people must. As long as he protects the people and treats them as equal to him, people must pay him their taxes, but if he does not, they can disobey and refuse to pay. However, if they refuse to pay without any justification, mediation and other methods of persuading them to obey should be applied, but without the use of force.[220]

3. *Maʿārij al-āmāl* and al-Sālimī's *manhaj*

Al-Sālimī's multi-volume *Maʿārij al-āmāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl*, published in 1314/1896-7 considers the origins, sources and principles of Islamic jurisprudence. It contains over 1,500 rules derived by Nūr al-Dīn al-Sālimī from interpretation (*tafsīr*) of the Qurʾān and explanation (*sharḥ*) of *ḥadīths* on topics related to the practice of faith. They have the nature of rules of conduct and moral canons and point to the hermeneutics of formulating legal norms. The title of the collection undoubtedly contains a reference to the Qurʾān. *Surah* 70 is called *Al-Maʿārij*, translated as "The Ways of Ascent". Its literal meaning is stairs or a ladder, but it has a profound spiritual meaning. The title of the *surah* implies a question: Can we ascend to God Most High? Man at his best has this privilege but the way is not easy. "At his best" can be understood as the state of moral perfection, the state of *fiṭra* in which we were created. Thus, the title *Maʿārij al-āmāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl* can be translated literally as "The ladder of hopes on the steps of perfection by arranging a summary of qualities", or, to summarize its content as "Soaring hopes for perfection" or "A guide to perfection."[221]

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220 Ibid., vol. 5, 253.

221 Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī's *Maʿārij al-āmāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl* was published in eighteen parts in 1983 by the Ministry of National Heritage and Culture of the Sultanate of Oman. In this

3.1. The preconditions for sound interpretation

The views of Nūr al-Dīn al-Sālimī on history were closely intertwined with his legal training and his position on particular legal cases that he discussed as a jurist. He formulated his concept of *ijtihād* as independent legal judgement, distinguishing its two forms: linguistic (*lughawī*) and legal (*sharʿī*). The first, *ijtihād lughawī*, refers to the use of new or current potentialities of language in a judgement on a case under consideration. The general precondition for good judgement is knowledge of *iṣṭilāḥ* (legal terminology). However, accurate mastery involves looking at a particular case as a part of the broader legal and social context. Thus, there are two specific preconditions (*ruknān*) for successful *ijtihād*: 1) the one who adjudicates should be well trained in the norms of law (he should be a *faqīh*), and 2) the case under judgement should be treated as an incident (*ḥādath*) whose nature is determined by place, time and other circumstances.[222]

Nūr al-Dīn al-Sālimī refers to one he called a *mujtahid muṭlaq*, that is, a perfect interpreter of legal and religious texts. This person should follow two principles: 1) he must be independent in his judgement but, at the same time, bound to the assumptions of the school from which he comes (*mustaqill wa-muntasib*), and 2) he must be guided by *ḥadīths* and precedents. Cases without precedents should be considered within a sequence of events to establish a cause-and-effect relationship between facts before an oral opinion (*kalām*) is pronounced. Al-Sālimī believed that everyone was entitled to express his opinion on legal or religious questions, but only on the condition that it met the criteria for good *ijtihād*. Freedom in making a judgement was relative, as every *mujtahid* was educated within a particular school of thought (*madhhab*), and his judgement would reflect its way of thinking. The expertise in precedents and a good command of juridical reasoning were essential for *qiyās* (deductive analogy) as a process for formulating a new injunction based on the Qurʾān and *ḥadīths*.[223]

As a consequence, a *mujtahid* had to master the art of *tafsīr* (Qurʾān interpretation), and he needed to know the *sirā* (biography)

book, quatations are from the 2010 five-volume version edited by Abd Allāh b. Muḥammad b. Abd Allāh al-Sālimī.

222 Idem, *Maʿārij al-amāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl*, vol. 2, 416.

223 Idem, *Ṭalʿat al-shams. Sharḥ Shams al-uṣūl*, vol. 2, 417.

of the Prophet Muḥammad and his Companions (*al-ṣaḥāba*). Al-Sālimī emphasized the role of *qiyās* and was a master of Qurʾānic deduction. *Maʿārij al-āmāl* contains deductions from more than 4,000 *ḥadīths*.[224]

As a jurist, he relied heavily on *ḥadīths* when a case was controversial and the Qurʾān contained no specific references to it. For example, *Maʿārij al-āmāl* refers to *ḥadīth* no. 3206 in the *Sunan* of Abū Dāwud, which says that, when ʿUthmān b. Maẓʿūn had died and was buried, Muḥammad told a man to bring him a stone and put it at the head of the buried man, saying: "I am marking the grave of my brother with it, and I shall bury here whoever dies from my family." This *ḥadīth* was understood to mean that it was permissible to mark someone's grave, so that the grave and its position would be known. However, according to a common view Muḥammad put two stones on the grave – one at the head and a second between the legs of the buried man. Al-Sālimī, when answering a question about how to mark the place of someone's burial correctly, stated that the *ḥadīth* about ʿUthmān b. Maẓʿūn speaks of only one stone. In such controversial cases, the *ḥadīth* should remain the only reliable source of knowledge.[225]

Concerning sources, Nūr al-Dīn al-Sālimī asks how to determine which *ḥadīth* is more vital and what to do when opinions of the Companions diverge. He answers by referring to a discussion about the amount of *zakāt* from harvested wheat that took place shortly after the death of the Prophet Muḥammad. The versions reported by the Prophet's Companions differed. On the one hand, Muʿāwiya (Ibn Abī Sufyān) said two measures of wheat were paid, and on the other, Abū Saʿīd b. Mālik Sinān al-Khazrajī al-Khudrī reported that he always paid one measure. Al-Sālimī believed that, if there were differences in the versions given by people in the Prophet's immediate circle, the most authoritative were those of the Companions who had learned from their own experiences and spent the most time around the Prophet.[226]

In the case of the wheat harvest *zakāt*, al-Sālimī indicates that both Muʿāwiya and al-Khudrī were among the first Muslims and they had handed down to posterity should be believed. However, Muʿāwiya was a relatively late follower of the Prophet because he

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224 Ibid.

225 Idem, *Jawābāt al-Imām Nūr al-Dīn al-Sālimī (1286–1332)*, vol. 4, 198–99.

226 Idem, *Maʿarij al-amāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl*, vol. 4, 661.

became the caliph almost 30 years after Muḥammad's death. On the other hand, Abū Saʿīd b. Mālik Sinān al-Khazrajī al-Khudrī, a contemporary of Muḥammad, was one of the *Anṣar al-dīn*, or "helpers of religion", and is considered one of the seven most prolific narrators of *ḥadīths* and one of the Companions. Al-Sālimī cites the authority of Abū Bakr Muḥammad b. Ishāq b. Khuzayma (d. 311/923-4), a prominent *mujtahid* and Shafiʿī jurist, best known for his *ḥadīth* collection. Ibn Khuzayma states that Abū Saʿīd al-Khudrī's *ḥadīth* "was most advanced and referred to those first people who paid for *zakāt* for grain." Besides, Muʿāwiya admitted that he had not heard the opinion he expressed from the Prophet himself, and at the same time it is known that 1,170 reliable *ḥadīths* came from Abū Saʿīd al-Khudrī. In this situation, the report of the one who is more knowledgeable and accompanied the Prophet more frequently should be accepted.[227]

Another example would be the controversy over the circumstances of the Prophet's marriage to the last wife of Maymūna bt. al-Ḥārith. According to some sources, the Prophet married her while he was free from the obligations of pilgrimage; according to others, it was while he was in the process of purifying himself for the pilgrimage. Nūr al-Dīn al-Sālimī believes that the most authoritative narrative comes from Abū Rāfī, a close companion of the Prophet and his servant.[228]

Nūr al-Dīn al-Sālimī recognizes consensus as one of the methods of formulating a norm but recommends extreme caution in applying it. While some situations do not raise doubts, in many other situations, arguments may undermine a unanimous decision. An example of the former is the way parents should care for a child. On this there is unanimous agreement, and a specific situation is described in the Qurʾān: "The mother shall give suck / To their offspring / For two whole years, / If the father desires / To complete the term. / But he shall bear the cost / of their food and clothing / On equitable terms."[229] In many cases, however, arguments may arise against a community-agreed norm if, for example, the norm is agreed upon by jurists accepted by the community but other jurists have a different opinion. Equally, an argument against the legitimacy of a norm established by consensus may arise if circumstances change. Al-Sālimī

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227 Ibid.

228 Ibid.

229 *The Holy Qur'an*, *surah* 2, *Al-Baqara*, verse 233.

concludes that differences of opinion among people are typical and to be expected, making it challenging to reach unanimity when agreeing on a norm of conduct. Since every argument against an agreed norm arises from doubts about its validity, the consensus ceases to be valid. Consensus can be a source of norm-making, but only in such cases when no one expresses a different opinion from that agreed by the original circle of jurists.[230]

Linguistic, logical and religious analysis is closely related. The jurist believed that it is essential that a norm be given linguistic form, but the meaning of the language used is most important. Only the meaning of words understood as related to others and explained in relation to social context makes it possible for a norm to be formulated whose reason for existence (*ratio legis*) will be understandable to those who are to be guided by it. Since, in al-Sālimī's reasoning, social context generally equals to religious context, the *ratio legis* of a jurist formulating the norm can be equated with *ratio religionis*.

An example of how meaning is critical in reasoning is the question of the purity of a woman after menstruation. The question in this regard is whether sexual intercourse with a woman is permitted after the flow of blood ends but before she washes. Most Muslim jurists ruled this out, although some believed it was permissible. The Ḥanafī school said that, if a woman was pure for less than for ten days, it was not permissible for her husband to have intercourse with her, and if she was pure ten days, he might have intercourse with her before washing. Nūr al-Dīn al-Sālimī believes that the word "pure" should be adequately understood in this matter and emphasises that purity does not occur at the moment when the flow of blood stop but at the moment when a woman's pre-menstrual state of purity is restored. We read: "The advent of menstruation is the fact that removes the purity of the woman, and the suspension of menstruation requires restoration of her previous state."[231] This restoration is achieved by washing with water. Then al-Sālimī formulates the principle that "rules are attached to the meanings, not to the names" (i.e. its linguistic form).[232]

Al-Sālimī asks how to deal with controversy when it is a matter of interpretation. As an example, he cites disagreement over ritual ablution when applied to the legs. The majority believed that

[230] Nūr al-Dīn ʾAbd Allāh b. Ḥumayd al-Sālimī, *Maʿarij al-amāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl*, vol. 4, 761.

[231] Ibid., vol. 2, 172.

[232] Ibid.

ablution meant *ghasl* (washing), but a minority opinion considered that ablution could mean *masḥ* (wiping). Well-known jurists such as Abū Dāwud believed that, when two interpretations sound reasonable, arguments in favour of one or the other should be sought from a clear understanding of a given Qurʾānic verse. In this case of ablution, decisive importance was attached to statements of the Companions of the Prophet that ablutions of the legs should be understood as "washing". Al-Sālimī believed that the controversy on this point arose from the understanding of the words. However, clarity was needed as different understandings could weaken one of the more critical requirements for purification before prayer. He believed that opinions of the Companions, along with the actions of the Prophet, could explain the discrepancies. This argument must be taken as conclusive evidence in favour of one interpretation, and as removing the excuse for another interpretation of the text. In this way, the jurist advocates striving for an unambiguous interpretation of a given recommendation or order to avoid conflicts within the Muslim community based on differences in interpretation. He writes: "if there is controversy about two actions, it is necessary to correct one of the two interpretations by clarifying the meaning of the verse, and if the meaning of a verse is clarified, it will indicate that only one interpretation is valid."[233]

3.2. What is a *qāʿida*?

Nūr al-Dīn al-Sālimī answers the question of what the canonical norm (*qāʿida*) is as follows. The canonical norm is a generalisation of individual facts we know by judgement about their essence as expressed by jurists or by custom. Al-Sālimī distinguishes at least three types of judgement: universally accepted, repeated (recurrent) or fixed, and isolated. A universally accepted judgement functions in the form of custom or results from the text and does not require an effort to interpret the nature of the case. A repetitive or fixed judgement (*ḥukm mutawātir*) is one made by people who cannot be suspected of being liars and who have formed the judgement on the basis of their beliefs and experience. Such a judgement does not depend only on a single source, e.g. a narrator from Muḥammad's circle, and it is difficult to question its credibility. It is also not easy to repudiate it because it is constantly repeated and the

[233] Ibid., vol. 1, 329.

general view is that it reflects the existing facts. For example, al-Sālimī refers to the account of the two angels, Munkar and Nakīr, who test the faith of the dead in their graves. The Qurʾān does not refer to these two figures, and their names appear for the first time in the *ḥadīth* of Abū Īsā Muḥammad b. ʿĪsā al-Sulamī al-Ḍarīr al-Būghī al-Tirmidhī, who lived in the third/ninth century and was a well-known Islamic scholar and collector of *ḥadīths*.[234]

Nūr al-Dīn al-Sālimī points out serious discrepancies about the two angels testing the faith of the dead. "Shīʿites and Muʿtazilites reject this message and claim that the deceased is unconscious and cannot be interrogated as to his faith."[235] Others stress that the story of the two angels should be believed. The jurist emphasizes that it is impossible to reach a consensus on this issue because there is no source text on the subject, but he does not take sides, either. Determining the credibility of a *ḥadīth* is not the purpose of his analysis, which is only an example judgement as a basis for shaping a legal norm. When a *ḥadīth* on a topic is repeated, the story it contains is perpetuated, but that does not make it a source that can be relied on for a judgement. It is difficult to challenge or change its content but, at the same time, it is also not credible enough to convince its critics that its content is valid. "The frequency with which a judgement is communicated does not lend credence to its source" – we read.[236]

Nūr al-Dīn al-Sālimī introduced the concept of "an isolated judgement" (*al-qawlu al-shādhdhu*), one that has not received unanimous acceptance. He believed that an isolated opinion cannot be taken as a basis for forming a norm and declared that unanimous acceptance or *ijmāʿ* is the source of law. If an opinion is isolated as inconsistent with the general opinion on a given subject, it should be disregarded in forming the norm. Al-Sālimī cites discussions about purity as an example, referring to the recommendation of the Prophet, who said: "The prayer of a person […] is not accepted till he

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234 Al-Tirmidhī lived for some time in Iraq, where he came into contact with local beliefs during the period of the Islamization of that country and the incorporation of pre-Islamic beliefs into Muslim eschatology, see Gualtherüs (Gautier) Hendrik Albert Juynboll, "al-Tirmidhī," in *Encyclopaedia of Islam*, Second Edition, https://referenceworks.brillonline.com/entries/vol.-of-islam-2/al-tirmidhi-SIM_7569 (accessed December 7, 2022).

235 Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Marʿārij al-amāl ʿalā madārij al-kamāl l bi-naẓm mukhtaṣar al-khiṣāl*, vol. 4, 221.

236 Ibid., vol. 4, 222.

performs the ablution."[237] According to Mālik b. Anas, "The Prophet performed ablution for each prayer."[238] The general opinion is that: "Ablution nullifies ten things: urine, defecation, semen, pre-seminal fluid, prostatic secretion, wind breaking from the anus, menstruation, puerperium and the disappearance of the mind through fainting, insanity, alcohol, or sleep." Some jurists believed that ablution did not nullify pre-seminal fluid and sleep. However, according to Nūr al-Dīn al-Sālimī, these were isolated opinions and should not be considered when shaping the norm on ablution. He writes: "This aberrant (*shādhdh*) opinion [about ablution – J.Z.] should be clarified and nullified" because "the aberrant should not be taken into account."[239]

Nūr al-Dīn al-Sālimī states that the norms are divided into two types: those relating to the relationship of man with God and those dealing with relations between people. These two types operate largely independently of each other and are mutually exclusive. Combining the norms relating to relations with God with those regulating relations between people may have the consequence of weakening religious fervour and so is not permitted. The jurist formulates this view in discussion of the payment of *zakāt*. Sharing with others what we have in excess is a religious duty, and thus a norm regarding people's behaviour towards God. The discussion referred to by al-Sālimī concerned the specific situation of indebted people who had to repay their debt and did not then have surpluses from their material resources from which they could pay *zakāt*. Outstanding jurists, including Sufyān al-Thawrī (93–161/716–78), founder of the Thawrī *madhhab*, Ibn al-Mundhir (241–318/855–930), Sulaymān b. Yasār (d. 106/725), one of the so-called "seven *fuqahāʾ* of Medina," and Ibn Ḥanbal believed that paying off a debt should not be an obstacle to paying the *zakāt*, as these are two different types of duties. Al-Sālimī refers to these jurists and shares their view. He writes that, in a situation where someone repays a debt, he should deduct it from what he has obtained and pay the *zakāt* from the rest

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237 See *Ṣaḥīḥ al-Bukhārī*, Ablutions, *ḥadīth* 135, https://sunnah.com/bukhari:135 (accessed December 7, 2022); *Ṣaḥīḥ Muslim*, The Book of Mosques and Places of Prayer, *ḥadīth* 680b, https://sunnah.com/muslim:680b (accessed December 7, 2022).

238 See *Sunan Abī Dāwud*, Purification, *ḥadīth* 171, https://sunnah.com/abudawud:171 (accessed December 7, 2022).

239 Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Marʿārij al-amāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl*, vol. 1, 419.

of his property. A debtor who cannot repay the debt should do the same – subtract the sum of the debt from his assets and transfer the *zakāt* from what he has left. This situation is comparable to not having enough water to quench one's thirst, prepare a meal and make ablution. In such circumstances, water should be used to sustain life, and ablution before prayer should be done with clean sand. This will allow acting humanely towards people while simultaneously fulfilling your duty to God. Nūr al-Dīn al-Sālimī concludes: "*Zakāt* is the duty of man to God, and the payment of debt is the duty of the debtor to the creditor." And he adds: "Obligations do not cancel each other out."[240]

3.3. How to derive the general from the particular

Nūr al-Dīn al-Sālimī considers that a norm of conduct is formed by generalizing from individual cases. Although it reflects selected cases, it also functions in relation to cases that may differ. This does not mean, however, that such cases should be treated as ineligible for individual judgements because arguments in favour of their being special cases may be of an absolute nature, i.e. indisputable. Such argumentation is stronger than argumentation for the norm because the norm covers hypothetical cases, i.e. cases that may or may not occur and so an argument to impose the norm is relative in this situation. An individual case refers to a specific situation and, if appropriate arguments are made, the case has its own considerations, even if they deviate from the rule.[241]

An example is the discussion among jurists at the time of the formation of the Sunnī law schools about who could receive aid from *zakāt*. The norm says that poor people can receive such help, while rich people should be excluded. However, the argument for this principle is relative, since the very notions of "poor" and "rich" are relative. A particular discussion referred to a fighter "for the sake of God" who was not registered to receive a specific salary and did not receive assistance from the *zakāt* fund because he was considered "rich". This was supported by the *ḥadīth* of ʿAmr b. al-ʿĀṣ, transmitted by Abū Hurayra, who said: "It is not permissible to give charity to a rich man (or one who is of independent means) or to one who is strong and healthy." We read in this *ḥadīth* that two men approached

[240] Ibid., vol. 4, 481.

[241] Ibid., vol. 4, 727.

the Prophet when he was preparing for the Farewell Pilgrimage and giving alms to other pilgrims. These men turned to the Prophet to help them as well. He looked them up and down and, seeing that they were robust, he said: "If you wish, I shall give you something, but there is nothing spare in it for a rich man or one who is strong and able to earn a living." This *ḥadīth* would therefore argue that any pilgrim could receive help from the funds collected as alms.[242]

Nūr al-Dīn al-Sālimī points out, however, that this *ḥadīth* says that the Prophet distributed funds to pilgrims from the *ṣadaqa* funds, i.e. the fund from which anyone can receive support, regardless of whether he is poor or rich. He analyses the case by pointing out that both Mālik b. Anas and al-Shāfiʿī believed that the soldier should receive *zakāt* support because he was fighting "for the sake of God". Abū Ḥanīfa, on the other hand, believed that a warrior could receive aid from the *zakāt* fund only if he had no means of his own. Many examples from that period testify that the main criterion for using the *zakāt* fund was fighting "for the sake of God" which led, in turn, to discussions about the phrase "for the sake of God" itself. Some jurists believed that the pilgrimage was for God's sake and that pilgrims could receive funds in order, for example, to buy copies of the Qurʾān. Zaydīs believed that the phrase "for the sake of God" included scholars and their disciples, whether poor or rich, because this helped them to obtain knowledge without being preoccupied with worldly matters. Al-Sālimī advocates the criterion "for the sake of God" as the most important one, as indicated by the *ḥadīth* that "*zakāt* is not allowed for the well-off person except for a fighter in the cause of God." On this basis, he formulates the principle that "the particular takes precedence over the general" because "the restricted is inevitably different from the absolute."[243]

The jurist pointed out the close relationship between what is particular and what is general. Suppose a particular is mentioned along with a general one. In that case, the particular specifies the general and is accepted out of the general. An example is the discussion on the amount of *zakāt* that should be paid for harvested fruit. This command was formulated by the Prophet, who did not indicate what part of the harvest should be given in alms, so the principle was not specified in this case. It was complemented by the messages contained in, for example, the *ḥadīth* from Muʿādh b. Jabal b. ʿAmrū,

[242] Ibid., vol. 4, 728–29.

[243] Ibid., vol. 4, 729.

one of the Companions of the Prophet. Muʿādh b. Jabal b. ʿAmrū was called by the Prophet "the one who will lead the scholars into Paradise" because of his extensive knowledge. This *ḥadīth* says: "The Messenger of God, may God bless him and grant him peace, sent me to Yemen and commanded me to take a tenth of the crops irrigated with rain and half of a tenth of those irrigated with a water wheel." Al-Sālimī writes that, on the basis of this message, the belief was established that "it is obligatory to take one-tenth of the crop if it is irrigated with rain or springs and a half-tenth if it is irrigated by sprinkling." For al-Sālimī, this case is an example of specifying a norm, and he regards this situation to be beneficial for the principle itself. He formulates a rule that reads that "the particular empowers the general from beginning to end."[244]

Nūr al-Dīn al-Sālimī believes that reality is a set of individual phenomena and that each canonical norm is a generalisation of the context of a selected individual case or cases. Consequently, he wonders what individual phenomena are, what a generalisation is, and how to derive a generalisation from a specific situation.

An example of al-Sālimī's deliberations on the relationship between what is particular and what is general is the *qāʿida* that says that "the general is different from the original point." The jurist wonders whether a generalisation derived from a specific case and based solely on logical reasoning can be valid. He examines this issue using the example of the controversy concerning the obligation to perform ablution (*wuḍūʿ*) before every prayer, referring to the opinion of Abū Dāwud, and citing numerous narratives about ablution. He raises no objection to the fact that *wuḍūʿ* is an absolute requirement (*farḍ*) but the question remains of whether it is obligatory before every prayer. He writes that, while Abū Dāwud's narratives show that ablution is compulsory for every prayer, "most jurists" (*akthar al-fuqahāʾ*) believe that it is not. The starting point for his reasoning on this matter is verse 7 of *surah* 5 of the Qurʾān, *Al-Māʾida*: "When you prepare for prayer, wash your faces" (*idhā qumtum ilā al-ṣalāti fa-ughsilū wujūhakum*).[245]

According to the "most jurists" mentioned above, the Prophet's words were addressed to specific people in his immediate environment and referred to a specific situation. In other words, it reflects a single (*al-khuṣūṣ*) situation, but if generalized, this can produce

[244] Ibid., vol. 4, 433.

[245] Ibid., vol. 1, 306.

a norm that ablution is not obligatory for every prayer. Al-Sālimī believes that such a generalisation is false and challenges it by, on the one hand, logical inference and, on the other, by specifying the *ratio legis* of ablution. He points out that the sentence *idhā qumtum ilā al-ṣalāti fa-ughsilū wujūhakum* does not contain any time limits for the described activity and so it cannot be said that it refers to an individual situation. From the syntactical point of view, this sentence is a generalisation (*al-ʿumūm*), and from the semantic point of view, it does not indicate that ablutions should be performed only before a specific prayer, not before all of them. It contains neither an exception (*istithnāʾ*) nor exclusion (*istibʿād*), which ultimately confirms that this sentence is intended to be taken generally.[246]

Moreover, the jurist links ablution with the concept of purity and argues his position by pointing to the reasoning behind of the Prophet's command to wash the face before praying. The fact that a face is indicated in the commandment is of secondary importance. It is not about washing the face as a specific body part but about fulfilling the command to cleanse oneself before prayer. In other words, "washing your face" is only a sign of obeying the requirement for cleanliness in prayer. The jurist is saying that a generalisation cannot be deduced solely as a result of the logic of argumentation; the *ratio* of the activity in question is the most important, and in revealing this *ratio*, one should consider factors outside of the text.[247]

One of the Nūr al-Dīn al-Sālimī's canons says: "The possibility of interpretation arises after the generalisation confirms the probability."[248] It reflects the jurist's concern about the validity of norms derived in a very particular way, namely, from selected meanings and random events. These meanings and events provide the argumentation for a given norm's existence. However, it can be assumed that these arguments may be weakened or challenged when the norm is confronted with new meanings and events. So what is the validity of a norm constructed in this way?

Al-Sālimī addresses this question by highlighting two aspects of an individual fact: form and content. An individual fact expressed in words is understood unequivocally from the point of view of syntax or words related grammatically. However, its meaning may vary as a result of argumentation about its content. Discussions in the early

246 Ibid.

247 Ibid.

248 Ibid., vol. 4, 285.

Islamic period about paying a tax on the harvest of crops serve as an example. Nūr al-Dīn al-Sālimī writes that, while some believed that the tax had to be paid on the raw products harvested, others believed that it should be paid on the products obtained after processing the raw materials. These discussions continued even when the harvest tax became a religious obligation as a *zakāt*. At that time, some jurists wondered whether the recommendations on this issue made by the Prophet in Medina were also valid in Mecca. Al-Sālimī has no doubt that the words "keep up prayer and pay the poor rate" should be treated as a generalisation applicable everywhere, regardless of where and in what circumstances it was formulated. It is only within the framework of this generalisation that one can reflect on the individual facts to which the question refers – whether the tax should be paid on fresh or dried fruit, for example.[249]

Another example views the need for a woman to cover her face. Verse 31 of *surah* 24 of the Qurʾān, *Al-Nūr*, speaks of the modesty of women who, therefore, "Should not display their / Beauty and ornaments except / What (must ordinarily) appear / thereof." Assuming there is no doubt regarding the need for female modesty in the public space, al-Sālimī points to differences of opinion among jurists about the meaning of the phrase "What (must ordinarily) appear thereof". Some believed that the face is an element of *ʿawra*, or an intimate part of the body, and should therefore be covered but others believed that it is not. The jurist does not speak for one of the parties, but the controversies allow him to highlight the significance of the argumentation regarding individual facts (in this case, the positions of jurists) *vis à vis* the generalisation that both parties accept. Thus, a generalisation creates a framework for discussing individual situations and this is how the canon "when the generalisation happens then possibility will be established" should be understood. Nūr al-Dīn al-Sālimī adds that generalisation plays this role as long as "all the individual facts relate to it."[250]

The jurist realizes that a generalisation does not cover all the individual facts and that there may be situations that deviate from the general rule envisaged by a norm. Nūr al-Dīn al-Sālimī distinguishes two reasons for a possible deviation from the rule. One may be a mistake, and the other may be deliberate avoidance of compliance with a rule. He examines this issue in the context

[249] Ibid., vol. 4, 378–79.

[250] Ibid., vol. 4, 284–85.

of violating the rules about ablution and prayer. As we know, the question of *khaṭaʾa*, or a mistake, arises in many *ḥadīths* that refer to reasons why a rule may be broken. *Sunan al-Nasāʾī*, in the section *The Book of Forgetfulness (in Prayer)*, refers to mistakes made in prayer. We read that when "ʿAlqama b. Qays forgot and made a mistake in his prayer, and they told him about that […]. So he undid his cloak, then he performed two prostrations of forgetfulness […]."[251] The well-known *ḥadīth* no. 7410 of al-Bukhārī "To One whom I have created with Both My Hands" emphasizes that to err is human and states that the prophets Adam, Abraham, Moses and Jesus admitted their mistakes.[252] In *Sunan Abī Dāwud*, we read: "If I have made a mistake unintentionally, I beg pardon of God and repent to Him."[253] *Sunan al-Tirmidhī* states: "If the Imam makes a mistake in forgiving, it would be better than making a mistake in punishment."[254]

Nūr al-Dīn al-Sālimī writes that departing from a rule formally negates and rejects the rule and the reason for the deviation from the rule must be considered. It may be due either to deliberate rejection of the rule itself or to a mistake or forgetfulness. He continues that both the Ḥanafī and Shāfiʿī schools recognize that deviation from the commands to perform ablutions and to pray is a sin, but expressing repentance and correcting the error abolishes the sin. Al-Sālimī focuses on the relationship between deviation from the rule and the on-going validity of the rule. He believes that the key in this matter is the nature of the *ʿudhr* (excuse) for breaking the rule. If the *ʿudhr* exculpates and vindicates the one who broke the rule, does this not undermine the value and durability of the principle itself? He writes that "an excuse relieves of embarrassment and sin but not the ruling on impurity, for the ruling on impurity does not go away except with purity."[255] In other words, one may say that the practice of justifying deviations from a rule and attempts to treat

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[251] *Sunan al-Nasāʾī*, The Book of Forgetfulness (in Prayer), *ḥadīth* 1257, https://sunnah.com/nasai/13 (accessed December 7, 2022).

[252] *Ṣaḥīḥ al-Bukhārī,* Oneness, Uniqueness of Allāh (Tawheed), *ḥadīth* 7410, https://sunnah.com/bukhari/ (accessed December 7, 2022).

[253] *Sunan Abī Dāwud*, Prayer, *ḥadīth* 1277, https://sunnah.com/abudawud/5 (accessed December 7, 2022).

[254] *Jāmiʿ al-Tirmidhī*, The Book of Legal Punishment, *ḥadīth* 1424, https://sunnah.com/search?q=makes+a+mistake+in+forgiving (accessed December 7, 2022).

[255] Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Maʿārij al-amāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl*, vol. 1, 850.

deviations as norms do not weaken the rule itself. Nor should there be any doubt that such attempts are a mistake.

Al-Sālimī is unequivocally in favour of strict adherence to religious and legal regulations (e.g., trade agreements) but is aware that unforeseen social situations require special regulations. Such situations arise as a result of, for example, natural disasters, which may cause crop failure or decline and the population's impoverishment. In such a situation, it is legitimate not to pay the tax immediately after the harvest, but to wait until the end of the year. Likewise, it is legitimate to expect prayer to be performed at the scheduled times unless there is an unexpected factor such as a woman's menstruation, in which case, the order to pray does not apply. Similarly, rules were adapted when dates were sold fresh before they were dried. The tax was traditionally paid on dates that were dried at the end of the year but this rule was relaxed when selling fresh products, with the justification that the population needed the dates while they were fresh. On the basis of these cases, al-Sālimī formulates the canonical norm: "If it is not feasible to do something, the obligation [to do it – J.Z.] may be lifted even though the reason for it was previously justified."[256]

The jurist is interested in the cause of a phenomenon and points out that every phenomenon has its causes. However, the mere occurrence of these causes does not inevitably give rise to a phenomenon. He formulates a canonical norm that says that "the causes [of certain phenomena – J.Z.] do not necessarily lead to the consequences in question."[257] The meaning of this canon becomes understandable in the context of the analysis of necessary and accompanying factors. An example is the jurist's reasoning regarding nail-clipping. Nail clipping (*qaṣṣ al-aẓāfir*) is one of the five actions required to attain the state of purity, or the state of moral perfection in which we were created (*fiṭra*). It was commanded by the Prophet and reflected in numerous narratives in the Sunnah. However, these narratives differ on how often this activity should be performed. According to some, it should be every Thursday before the Friday prayer and according to others every 15 days, while other versions mention trimming nails as needed. Nūr al-Dīn al-Sālimī does not say which narrative he thinks is the strongest but focuses on the Prophet's statement related to the command to

[256] Ibid., vol. 4, 449–50.

[257] Ibid., vol. 1, 908.

cut one's nails. This statement was given to us by Abū Isḥāq who referred that Muḥammad used to say that "who cuts his fingernails on each of forty Thursdays shall not become poor" (*lam yuṣbih al-faqīran*). This sentence is used by al-Sālimī to analyse the relationship between trimming nails and being rich, thus analysing the relation between the two. The jurist says that there are factors that determine a given phenomenon and those that may accompany it, although they do not have to be present in order for it to occur. In this case, regularly trimming the nails is necessary but is only incidentally related to becoming rich, as not everyone who trims their nails becomes rich.[258]

Nūr al-Dīn al-Sālimī gives other examples. He writes that marriage causes the birth of children, but it is not a factor that causes it inevitably since there are marriages that do not have children. It is similar to trade, which is the source of wealth. However, only some merchants become rich. Dealing in trade is not a factor that inevitably leads to wealth. Likewise, rain promotes the growth of the plants, but the plants continue to grow as the rainfall disappears. At the same time, rainfall is not necessarily accompanied by plant growth. Thus, there is no necessary causal relationship between rainfall and growth.[259]

In addition to analysing a sentence through logical reasoning, the jurist draws attention to the *ratio legis* of the sentence "He who cuts his nails on each of forty Thursdays will not become poor." He believes that the word "poor" is a metaphor. Nail clipping is cleansing, which is the way to attain the state of *fiṭra*, or moral perfection, in which we were created. If we can do something that will bring us closer to this moral perfection, we should do it. Thus, nail clipping is an imperative related not to material enrichment, but to moral cleansing and returning to the state described in verse 30 of *surah* 30 of the Qurʾān, *Al-Rūm*: "So set thou thy face, / Steadily and truly to the Faith."[260]

Al-Sālimī believed that, just as every fact is unique and must be evaluated as such, so too do people differ in their skills and abilities, and their behaviour should be evaluated accordingly. The jurist refers to the Prophet's statements about the obligation of every Muslim to follow religious rules and carry out religious activities. There is

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[258] Ibid.

[259] Ibid.

[260] Ibid.

no doubt about these obligations as they are stipulated in numerous *ḥadīths*. At the same time, the *ḥadīths* indicate that religious activity depends on the individual abilities of each believer. In particular, in al-Bukharī's collection, the *Book of Patients*, we read, "Do the deeds that are within your ability."[261] And al-Tirmidhī's collection includes the Prophet's words, "You can never surpass your ability."[262] Thus, each person has different abilities to perform activities and is unable to transcend them. When assessing a person's behaviour, his/her individual ability to act should be considered. Al-Sālimī refers to verse 16 of *surah* 64 of the Qurʾān, *Al-Taghābun*: "So fear God / As much as you can." The jurist interprets this verse as a call to observe religious correctness and indicates that the zeal of each believer in observing fasting, praying and especially caring for the poor and needy varies depending on how deep his faith is and what his material capabilities are. "You cannot demand that someone do something that exceeds his/her abilities", writes al-Sālimī, and formulates the canonical norm: "Ordering what cannot be done is not possible."[263]

One can agree with Maḥmūd Muṣṭafā ʿAbbūd Āl Harmūsh, who considers this principle to be one of the most important in Nūr al-Dīn al-Sālimī's legal work because when transferred from the sphere of *fiqh al-ʿibadāt* to the sphere of *fiqh al-muʿāmalāt*, it sets out an individualized and flexible approach to the assessment of human behaviour.[264]

Another example of cause-and-effect inference is al-Sālimī's opinion on the understanding of the rule regarding the purification of women after menstruation, derived from the command in verse 222 of *surah* 2 of the Qurʾān, *Al-Baqara*: "So keep away from women / In their courses, and do not / Approach them until / They are clean." Controversy arises from the wording "until they are clean" (*ḥattā yaṭhurna*); specifically how should purity and purification be understood here? Does purification occur when the blood stops, and is sexual intercourse possible? The jurist believes that purification occurs only after cleansing (*ightisāl*) with water, not when the blood stops. The argument in favour of this understanding is found in the

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[261] *Ṣaḥīḥ al-Bukhārī*, The Book of Patients, *ḥadīth* 5673, https://sunnah.com/bukhari/75 (accessed December 7, 2022).

[262] *Jāmiʿ al-Tirmidhī*, On Al-Fitan, *ḥadīth* 2249, https://sunnah.com/tirmidhi/33 (accessed December 7, 2022).

[263] Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Maʿārij al-amāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl*, vol. 1, 786–87.

[264] Harmūsh, *Al-Qawāʿid al-fiqhiyya al-ibāḍiyya*, vol. 1, 299.

other part of the same verse, which says, "But when they have / Purified themselves" (*fa-idhā taṭhurna*). The phrase "when they have purify themselves" presupposes the subject's activity, i.e., cleansing. So purity follows cleansing. Al-Sālimī deals with this issue by analysing the language and meaning and stresses the relationship between cleansing after menstruation, sexual intercourse and prayer. There is no doubt that a woman who is unclean after menstruation cannot pray. Since a prayer must be performed before sexual intercourse, it is evident that cleansing is a prerequisite for such a woman to have sexual intercourse. We see two premises here: (1) prayer is obligatory before sexual intercourse, and (2) ablution is obligatory before prayer. The conclusion is that it is unacceptable to have sexual intercourse without ablution first. This inference leads Nūr al-Dīn al-Sālimī to formulate the canon: "If the meaning does not result directly from the linguistic notation, then it is necessary to refer to the extra-linguistic context."[265]

Another complement to this *qaʿida*, also derived from considerations about the purity of a woman after menstruation, is a conclusion about the relation between the word and its form and meaning. Al-Sālimī refers to Abū Ḥanīfa's statement on this matter and says that "rules expressed in words are related to the meanings and not to the form of words."[266] The principle of abstaining from sexual intercourse before a woman is purged speaks of more than the record itself implies; namely, it speaks of the importance of the act of purification itself in the context of the practice of faith and of other restrictions that apply to a woman during this period (reciting prayers, praying, going to a mosque).[267]

Subsequently, al-Sālimī reflects on the semantic relations between two sentences when one is general and relates to a given activity and the other restricts a given movement to certain spheres. In linguistics, this problem is known as defining and non-defining relative clauses. The jurist asks whether the relative clause, narrowing a given activity to a selected sphere, excludes a non-defining relative clause. To answer this question, the jurist refers to the discussion about the path of charity, particularly in verses 12–16 of *surah* 90 of the Qurʾān, *ʿAl-Balad*. These verses relate to three specific

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265 Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Maʿārij al-amāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl*, vol. 2, 174.

266 Ibid., vol. 2, 172.

267 Ibid.

instances of charity: (1) freeing the bondman (verse 13); (2) feeding the orphan (verse 15); and (3) "feeding the indigent down in the dust" (*miskīnan dhā matrabatin*) (verse 16). The phrase "down in the dust" refers to a select group of people, that is, those who are in a challenging situation. Does this mean that less needy people should not be helped?[268]

Al-Sālimī notes another phrase in the verse 14, which mentions "giving food" (*iṭʿām*) and considers it to be a non-defining relative clause, proposing that the phrase "feeding the indigent down in the dust" plays the role of a relative clause, which should, for linguistic reasons, be treated as a subtype or subordinate clause to the one that precedes it. The phrase does not specify limits to the scope of the "feeding" by adding, for example "only" or "exclusively" and so al-Sālimī believes that the phrase "down in the dust" is figurative and is meant to indicate that charity should be completely disinterested. Persons "down in the dust" can be helped out of pure charity, no more, because no benefit can be expected from giving them food. However, there are varying degrees of need, and help should be provided to all who need it. Nūr al-Dīn al-Sālimī, therefore, formulates the canon: "One should not interpret one verse dependent on another when they carry different meanings."[269]

3.4. *Qawāʿid fiqhiyya* and society

Al-Sālimī points out that legal norms function in a social environment and regulate relationships between people. Since standards refer to rights and obligations, the failure of one person to comply with a standard may limit the exercise of another person's rights under the same standard. However, such a limitation on rights is temporary and ceases when the obligations provided for by the norm are fulfilled. The jurist arrives at this conviction as a result of his consideration of the purity of a post-menstrual woman. It is generally believed that a woman should wash her body with water after menstruation or after the *ʿidda*, period to return to a state of purity. If a woman does not wash every part of her body after menstruation, she will remain impure and then a man cannot have sexual intercourse with her. However, this does not mean the man loses the right to this

[268] Ibid., vol. 4, 702–03.

[269] Ibid., vol. 4, 703.

intercourse because of the wife's misconduct. "The right cannot be cancelled due to an injustice of wrongful people" – we read.[270]

The jurist favours strict adherence to the norms, but he is also against excessive zeal in observing them. Do what the standard says but nothing more! He refers to a *ḥadīth* that describes how ʿAlī performed ablutions. This *ḥadīth* says:

> ʿAbd Khayr said: Ali came upon us and he had already offered prayer. He called for water. We asked: What will you do with water when you have already offered prayer? – Perhaps to teach us. Utensil containing water and a wash-basin were brought (to him). He poured water from the utensil on his right hand and washed both his hands three times, rinsed the mouth, snuffed up water and cleansed the nose three times. He then rinsed the mouth and snuffed up water with the same hand by which he took water. He then washed his face three times, and washed his right hand three times and washed his left hand three times. He then put his hand in water and wiped his head once. He then washed his right foot thrice and left foot thrice, then said: "If one is pleased to know the method of performing ablution of the Messenger of Allah, this is how he did it."[271]

Nūr al-Dīn al-Sālimī believed that this *ḥadīth* was an indication of how anyone may perform ablutions because various methods were used and excessive zeal was shown in the number of washings. He refers to another *ḥadīth* narrated by of ʿAmr b. al-ʿĀṣ:

> A man came to the Prophet and asked him: Messenger of Allah, how is the ablution (to performed)? He (the Prophet) then called for water in a vessel and washed his hands up to the wrists three times, then washed his face three times, and washed his forearms three times. He then wiped his head and inserted both his index fingers in his ear-holes; he wiped the back of his ears with his thumbs and the front of his ears with the index fingers. He then washed his feet three times. Then he said: "This is how ablution should be performed. If anyone does more or less than this, he has done wrong and transgressed, or (said) transgressed and done wrong."[272]

Al-Sālimī evaluates this situation from the point of view of the law and stresses that transgressing the norm, even in good faith, is

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[270] Ibid., vol. 2, 177.

[271] *Sunan Abī Dāwud*, Purification, *ḥadīth* 111, https://sunnah.com/abudawud:111 (accessed December 7, 2022).

[272] Ibid., *ḥadīth* 135, https://sunnah.com/abudawud:135 (accessed December 7, 2022).

breaking the norm. He writes: "One who does more than the law requires is like one who abides by the rule."[273]

It is known that some norms of conduct in force during Muḥammad's lifetime were changed. One such norm was giving alms to "people of weak faith" who were not Muslims, although they gradually became convinced of the teachings preached by Muḥammad. At that time, they were the majority, which justified such behaviour towards them. However, after the death of Muḥammad and the strengthening of the community, this norm was abandoned. One view was that the abandonment of this practice was related to the death of the Prophet because his successors did not continue such behaviour towards non-Muslims. Al-Sālimī looks at this issue in the broader context of the history of the Muslim community. He believes that the deviation from the norm was related to the expansion of the community. It became increasingly numerous, and there was no need for special provision to allow non-Muslims to access the *zakāt* fund, which Muslims created. Similarly, in the time of Muḥammad, women prayed together with men, and this practice was only abandoned later. The jurist believes that every rule and custom is the result of certain circumstance, and when that circumstance changes, the rule and custom loses its force. He says: "It's like ruling the end of his illness" (*huwa min qabīl al-ḥukm bi-intihāʾ ʿillatih*).[274]

Nūr al-Dīn al-Sālimī notes that the rules are often not followed and wonders what effect this has on their durability. In this regard, it is essential to know the reasons for non-compliance which may include misinterpretations of obligations, errors in their fulfilment or forgetfulness. Someone may forget to pray, or someone may miscalculate their net income from which they pay the tax. Failure to fulfill one's duties is a sin, but "God forgives those who forget", al-Sālimī states. However, "Mistakes and forgetfulness may excuse the sin but does not justify failure to fulful obligations."[275]

If the prohibition applies to proceedings involving two parties, which of them is to blame for its violation? The party initiating the action, or both? For example, if intercourse occurs during a woman's menstruation, when the woman is impure and is forbidden to the man, or if the woman forgets to cleanse herself after menstruation, is the man complicit in breaking the prohibition? Al-Sālimī

[273] Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Maʿārij al-amāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl*, vol. 1, 354.

[274] Ibid., vol. 4, 712.

[275] Ibid., vol. 4, 382.

says, "Yes." Both men and women are to blame for breaking this prohibition. The jurist refers to the authority of Abū Saʿīd al-Khudrī, who believed that a man could not excuse himself in this case by not knowing whether the woman had cleansed herself after menstruation. On the other hand, a woman cannot claim that she could not refuse to allow her husband to have intercourse with her because, in this situation, she has the right to refuse.[276]

The same applies to the practice of usury, which is strictly forbidden by Islam. The lender and the borrower are both to blame. The latter cannot justify his action by claiming that he was in such a serious financial situation that he was forced to agree to take out a loan on usurious terms. Another example is homosexual relations. Both the party initiating such intercourse and the passive party who consented are liable for breaking the ban on such intercourse. "And a forbidden act, since it is not righteous for two sides, is forbidden to both sides" – we read.[277]

Practices that have become established in a given territory are as crucial as legal norms, and these two spheres – tradition and law – intertwine and complement each other. The condition for preserving a tradition is its compatibility with religion. Al-Sālimī discusses the relationship between tradition and the letter of the law using several examples. One of them says that a husband gave *zakāt* on behalf his wife on the occasion of the end of *ramaḍān* without agreeing with her. Formally speaking, he should not do this because the wife has the right to decide for herself. However, given the purpose of his action, it is difficult to imagine the wife being dissatisfied with what her husband did. Giving donations to help the poor in connection with the celebration of the end of *ramaḍān* is approved by God and traditionally practised by whole families. The husband's action, though arbitrary from the point of view of the wife's rights, was enshrined as legal by tradition. Al-Sālimī emphasizes in this context that many traditional social practices need not be expressed in a written text. If, for example, the transfer of the whole dowry in advance is established by custom in a particular country, it need not be written into the marriage contract.[278]

Yet another example is the widespread acceptance of a man's obligation to provide for his divorced wife and children. On this point,

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[276] Ibid., vol. 2, 190.

[277] Ibid.

[278] Ibid., vol. 4, 627.

a *ḥadīth* quotes the words of the Prophet, which leave no doubt as to this necessity. Consequently, this provision need not be written into the marriage contract since the man's duty is to his divorced wife is understood. Regarding the relationship between written regulations and tradition, al-Sālimī refers to Abū Ḥanīfa, who said that steps taken by a father on behalf of an older son or wife without first informing them of it may not be lawful from a legal point of view but if they are keeping with tradition, it makes them legal. Accordingly, al-Sālimī formulates the principle that: "What is established by custom is equal to the written word."[279]

Custom may even be more vital than a jurist's judgement, especially if his view is an isolated opinion.[280] However, universally accepted rulings must be respected. Al-Sālimī repeatedly states the need to practise faith and know the sources, especially the Qurʾān. One who knows the sources can easily fend off attacks from doubters made out of ignorance. He emphasizes that exploring the sources of faith is a duty. This does not only concern religious rituals, but applies to religious correctness in everyday life. The jurist refers here to the principle of sexual intercourse and the purity of a woman after menstruation, stating that not knowing that a woman should be purified before intercourse with a man cannot be an excuse, as it is stated in the Qurʾān and the Sunnah, the fundamental sources of the Muslim faith.[281] These sources say unequivocally that it is forbidden for a man to sleep with his wife before she cleanses herself. Al-Sālimī says that one who does so without knowing about the prohibition is like one who does do deliberately, because he "is ignorant of something that he cannot ignore and ignorance of that is not an excuse."[282]

279 Ibid.

280 See, ibid., vol. 1, 419.

281 Ibid, vol. 2, 7–8; vol. 4, 175.

282 Ibid., vol. 2, 186.

Conclusion

Nūr al-Dīn al-Sālimī's activity was multifaceted. As a historian, he introduced new methods in historical research and founded a school of history writing. While some Omani historians such as Sālim b. Ḥamūd b. Shāms al-Siyābī (1236–1412/1908–91) continued Salama b. Muslim al-ʿAwtabī's traditional way of writing on Omani history included the concept of tribal society and Islamization as a starting point, al-Sālimī introduced a new approach that combined historical narrative with geography and geology and Omani sources with European. By extending the historical narrative back to pre-Islamic times, he proposed a new vision of the Omani history and identity of the Omani society. This approach was fully developed in *Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān*, and then was adopted by historians such as ʿAbd Allāh al-Ṭāʾī and Muḥammad (al-Shayba) al-Sālimī.

In his writings, Nūr al-Dīn al-Sālimī popularized Ibāḍī law and "reminded" his contemporaries of the outstanding Ibāḍī jurists who were active in the past and whose works had been forgotten, including Badr al-Dīn Abū al-ʿAbbās Aḥmad al-Shammākhī, Ibn Baraka, al-Kudamī, Bashīr b. Muḥammad b. Maḥbūb, al-Wārjalānī, and another well-known Zaydī jurist – al-Imam al-Murtaḍā al-Zaydī. Al-Salimī writes respectfully of all of them. However, in terms of a more fundamental aspect of early Ibāḍīsm, the principle of association and dissociation, he continues the tradition of al-Kudamī.

Al-Sālimī's activity as a theologian and jurist should be seen in the context of the formation of Islamic law and jurisprudence (*uṣūl al-fiqh*) and the revival of the knowledge of the sources and methodology of Islamic law. For centuries, this discipline was traditionalist, limited to the study of the earliest works dealing with the sources of the law written in the mid-fourth/tenth century by the founders

of Muslim law schools. It was only in the twentieth century that attempts were made to take a new approach to the knowledge of the basis of law, particularly the art of formulating evidence (*dalīl*, pl. *adilla*), as well as introducing new terminology to the discipline of religious law, knowledge about rule (*ḥukm*) and duties (*taklīf*, pl. *takālīf*). The role of al-Sālimī was to comment on the verses of sacred texts relating to the basics of faith and create his interpretations. His works, though they concern Ibāḍī law, contain comparisons with other schools of law (*madhāhib fiqhiyya*), and thus deal with a subject known in Islam as *furūʿ al-fiqh*, that is, the branches of law. It gives Nūr al-Dīn al-Sālimī his place not only in the study of Ibāḍī jurisprudence but also in a broader range of research on new interpretations of Muslim law in general. He conducted studies of classical texts and the traditional basis of Islamic law and at the same time, demonstrated a remarkable ability to prove a thesis, using consequential reasoning and showing errors in reasoning.[283]

Regarding the question of Nūr al-Dīn al-Sālimī's heuristic, his works focused on the question of generalisation or the formation of norms. The central theme in his heuristic is the understanding that a norm is a generalisation based on a fact or facts, and the term *ijmāl* (generalisation) is one of the most common in his collection of canons. Al-Sālimī refers to the existing legal tradition and the interpretations of Islamic legal theorists. The jurist acknowledges differences in interpretation but tries to reconcile them. If he is critical of certain opinions, he avoids mentioning them by name and generally writes "most jurists" or "some jurists". His method of reasoning is induction and aims at deriving the general from the particular. Derivation means considering premises or declarations, making it possible to formulate the sentence that follows, i.e., the conclusion. Al-Sālimī asks: (1) what is particular and general, and how can a generalisation be derived from specific cases? (2) what factors are necessary for a phenomenon to occur? (3) is every fact unique, and should it be treated separately?

Analysis of the answers to these questions allows us to conclude that Nūr al-Dīn al-Sālimī's inference is conducted in three spheres: language, logic and religion. This approach holds that inference regards linguistic constructions as absolute and complete and cannot be changed in any way, as this would undermine the whole structure.

[283] See Abd Allāh b. Muḥammad b. Abd Allāh al-Sālimī, "Introduction" to Nūr al-Dīn ʿAbd Allāh b. Ḥumayd al-Sālimī, *Maʿārij al-amāl ʿalā madārij al-kamāl bi-naẓm mukhtaṣar al-khiṣāl*, vol. 1, 1.

For example, the subject always appears in the nominative and the object in the accusative. Similarly, the inference of norms in the sphere of religion refers to principles and hierarchies that, if not burdened with subjective interpretation, are obligatory. No injunction may be modified or detached from the rest without harming the structure. Ablution cannot be missed before prayer, and the form of prayer itself cannot be modified.

In contrast, legal inference and forming legal norms is subjective, and legal norms are relative because their formulation consists of generalising particular facts by jurists, who may assess, select and classify these facts differently. Additionally, no legal standard covers all the legal cases it is meant to regulate, and individual situations outside the legal norm make the norm relative. Al-Sālimī believes that the subjectivity of legal inference suggests the need for a framework to determine the correctness of jurists' thinking about legal norms. These frameworks take the form of moral norms – *qawāʿid.* They create a framework for formulating canons with a more narrow and detailed scope to deal with the matters to which they refer, as well as a framework for case law in the courts. In this sense, they are akin to *maqāṣid* as broad-based ethical tools for deriving legal canons.[284]

Text is the main reference point in generalizing events, but al-Sālimī also referred to extra-textual sources. When referring to the text, he is strongly oriented towards reality. Islamic law has for him a purposive nature and promotes the benefit (*maṣlaḥa*) of Muslims. In his thinking, there is room for rational inference when constructing a legal norm. "It is not possible to ask someone to do something that cannot be done" one of his *qawāʿid* says. The jurist believes this perspective strengthens a norm and is a sound basis for evaluating all individual actions. A norm derived in this way provides a framework for the ethical evaluation of facts. Deviations from it may happen due to exceptional circumstances, but that does not mean it loses its value; it retains its force if it is consistent with the rationale of the case from the religious point of view.

An essential stage in creating a norm is the logical reasoning of the linguistic appearance of a phenomenon. The linguistic form is generally metaphoric. The jurists believed that form should be discussed in the extra-linguistic context to make a norm sound and its *ratio* understandable for those who were supposed to follow it.

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[284] See Kamali, "Legal Maxims and Other Genres of Literature in Islamic Jurisprudence", 77.

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Index of names and places

1. Individuals are classified under the first name except when they are more commonly known by their family name or *nisba*, *kunya*, or patronymic.
2. Tribal and family names are classified under the main name, not Āl or Banū; exception Āl Būsaʿīdī.

Legal terminology

ahl al-wilāya (people of the state)
ʿālim, pl. *ʿulamāʾ* (theologian or/and jurist)
al-amr bi-l-maʿrūf wa-l-nahy ʿan al-munkar (commanding good and forbidding wrong)
ʿaql (intellect)
ʿawra (an intimate part of the body)

barāʾa (principles of dissociation due to incorrect faith)
bayʿa (oath of allegiance)
bayt al-māl (state treasury)

dalīl, pl. *adilla* (an evidence)
daʿwa (propagate the faith)
dihqāns (community leaders)

faqīh, pl. *fuqahāʾ* (jurist)
farḍ (an absolute requirement)
fatwā, pl. *fatāwā* (non-binding legal judgement)
fī sabīl Allāh (for the sake of God)
fiqh al-ʿibādāt (rules governing the practice of faith)
fiqh al-muʿāmalāt (law governing secular affairs)
furūʿ al-fiqh (branches of law)

ḥadīth (literally "talk", a record of what the Prophet Muḥammad said and did)
ḥalāl (permitted)
ḥarām (forbidden)
ḥukm (a legal ruling)
ḥukm, pl. *aḥkām* (positive laws derived by mujtahids)
ḥukm mutawātir (a fixed judgement)

ijmāʿ (consensus)

ijmāl (generalisation)
ijtihād (legal reasoning)
ijtihād lughawī (the use of linguistic potentialities in a judgement)
ʿilm (knowledge)
ʿilm al-kalām (Islamic theology)
ʿilm al-khilāf (the science of divergence)
ʿilm al-uṣūl (knowledge about the sources of law)
imāma (leadership, Imamate)
imāmat difāʿa (defensive leadership)
imāmat kitmān (hidden leadership)
imāmat shirāʿa (active leadership)
imāmat ẓuhūr (overt leadership)
istibʿād (an exclusion)
istiḥsān (juristic preference)
iṣṭilāḥ (legal terminology)
istithnā' (an exception)

al-jamʿ wa-al-tarjīḥ (rule of reconciliation and preponderance)
jihād (literally "striving" or "struggling", any effort to make life conform with God's guidance)
jizya (the poll tax levied on followers of other monotheistic religions)

kalām (an oral opinion)
khabar, here *ḥadīth*
kharāj (land tax)
khaṭaʾ (a mistake)
khilāfa (Caliphate)
khums (tax, one fifth)
khuṣūṣ (a single situation)

madhhab, pl. *madhāhib* (a school of thought within Islamic jurisprudence)
masāʾil (issues)
maṣlaḥa (public interest)
mawlā, pl. *mawālī* (client)

muftī (one qualified to issue a fatwā)
muftī al-islām (head of the jurists)
muḥkam (categorical)
mujtahid (someone qualified to undertake *ijtihād*)
mukhtaṣar (the outline of Islamic jurisprudence)
mutashābih (allegorical)

al-nāsikh wa-l-mansūkh (rule of abrogation)

qāḍī, pl. *quḍā'* (judge)

qāʿida, pl. *qawāʿid* (a maxim or generalisation)
qaṭʿiyyāt (explicit issues)
qawl shādhdh (an isolated judgement)
qiyās (analogy)

ribā (usury)

ṣadaqa (voluntary taxation for the community)
shādhdh (an aberrant opinion)
sharḥ (interpretation of *ḥadīths*)
sirā (biography)

tafsīr (interpretation of the Qurʾān)
taḥqīq (investigation of a question)
tajdīd (renewal)
takāmul al-ʿaql ("intellectual wholeness")
taklīf, pl. *takālīf* (legal obligation, responsibility)
tawḥīd (concept of monotheism in Islam)
taʾwīl (esoteric interpretation of the Qurʾān)

umma (community)
ʿumūm (general or generalisation)
ʿushr (tax, a tithe)
uṣūl al-fiqh (jurisprudence and hermeneutics)

waḥā (God's inspiration)
walāya (correct faith, principles of association)
waqf, pl. *awqāf* (endowment, donation to the community)
wizāra (proper government)
wuḍūʿ (ablution)

zakat (almsgiving)

In Badiyya

Nūr al-Dīn al-Sālimī is generally known as an Omani historian. However, al-Sālimī was an outstanding jurist who formulated over 1,500 maxims (*qawāʿid*), making him a thinker of great importance for Islamic jurisprudence. In Oman, he is believed to have been the most important Ibāḍī jurist after Ibn Baraka (d. 972). What was his method for deriving legal and ethical maxims? Al-Sālimī asks several questions: (1) what is particular and general, and how can a generalization be derived from specific cases? (2) what factors are necessary for a phenomenon to occur? (3) is every fact unique, and should it be treated separately? We maintain that al-Sālimī's heuristic was based on induction and consisted of analysing individual facts from *fiqh al-ʿibādāt* (rules governing the relationship between man and God) in order to formulate generalizations that could be applied in *fiqh al-muʿāmalāt* (rules governing relations between humans).

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