THE ZĀHIRĪS
THEIR DOCTRINE AND THEIR HISTORY

A CONTRIBUTION
TO THE HISTORY OF ISLAMIC THEOLOGY

BY

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CHAPTER FOUR

No tenet of the Zâhirite school can serve as a more plastic illustration for illuminating its relationship to the other orthodox schools than its tenet concerning usury. In the traditions which elaborate upon the laws concerning usury, six commodities are mentioned with which it is prohibited to practise usury—in the manner prohibited by Islamic law. They are: al-dhahab, al-fe'ddah, al-burr, al-shâ'ir, al-tamr, and al-zâbâh, gold, silver, wheat, barley, dates, and raisins respectively. The analogical schools now teach that these six commodities are listed in the traditions as examples only, and that they do not comprise exclusively the whole field of commodities subject to usury. In order to decide for what the above-said commodities serve as an example, the analogical schools search first for the cause (‘illah) of the prohibition for each group according to the method of ta’lîl, and secondly, for the aspect under which these commodities fall with regard to this specific law—they search for the next higher classes of which these commodities are a subdivision. From this, their reasoning, follows that not only the subdivisions, but also the classes to which they belong are subject to the prohibition of usury. Certainly in very early times, Rabî‘ah, a Medinese jurist and teacher of Mâlik b. Anas, to whom the name Rabî‘ah of ra‘y (Rabî‘at al-ra‘y) was given, made the assertion that the prohibition of usury is applicable to everything which is subject to the alms-tax (zakât). It would follow from this that domestic animals and riding animals also are included in this prohibition. The legal schools made still more specific distinctions. Thus, for example, the school of Abû Hanîfah says that the first two commodities are nothing but examples for the entire genre which can be defined (mausûn) by weight, and whose sub-classes they are. Al-Shâfi‘î’s school regards these commodities as representing everything of value (jins al-athmâq), and the fruit mentioned merely as examples of food (maťâmîl), etc. Therefore, even according to these schools, the prohibition of usury is applicable not only to those commodities enumerated in the traditions, but to everything that belongs to such a category. These schools, as can be seen, tolerate analogy, and extend the written sources by applying analogy to material not explicitly recorded. The Zâhirite school is unable to consent to this extension of the written law since this is based on speculative arbitrariness; if the Prophet had meant those classes, he would have most certainly used the more concise expression, and used the name of the class rather than enumerating individual kinds. As far as the Zâhirite school is concerned, the law of usury can refer only to those six commodities which are specifically mentioned in the traditions. A person does not transgress this law if he trades with objects that are not included in these six kinds in a way regarded as usurious by Islamic jurisprudence.

In this example, we recognize the dominant attitude of the jurisprudence of the Zâhirite school in contradistinction to other orthodox fiqh. Now orthodox fiqh always keeps in mind the question: what is the reason that something is legislated for a certain individual or a certain thing? The more important the constitutional validity accorded to ra‘y, but particularly to analogy, the more systematically this principle is applied. The orthodox schools, then, apply such a law beyond the case explicitly stated in the scripture and tradition to everything that, according to such legal causality, is analogous (cf. p. 30 above). The Zâhirite school, on the other hand, views such syllogism as an arbitrary notion which is falsely and arbitrarily attributed to the purpose of the legislator. It delimits the law (hukm) exclusively to the personal or non-personal cases (al-mašûsîn) enumerated in the law. According to the view of the Zâhirite school, one must not search for the cause

1 Mafâtîh, II, p. 530: “An nashâr halân min al-khulâr wa-al-tâwûb”.

Cf. in still greater detail al-Sha‘râni, II, p. 77-78.
of any of God's laws, just as the cause for the creation of any of God's works must not be investigated. The only cause for their creation is God's sovereign will; exactly the same applies to law.

In the tradition which prohibits the believer any kind of luxury, the text mentions only “drinking from golden or silver vessels”: 

الذى يَاَلَىُ كُلَّ اَئْمَةٍ (أَوَّلَ) يُشرِبُ فِي النَّخْلِ وَهُوَ يُشرِبُ مِنْ ذَهَبٍ أَوْ فِضَّةٍ فَيُحْرِرُ “He who drinks from a golden or silver vessel, sips (with this draught) hellfire into his stomach.” 3 However, it is true that in some parallel versions of this tradition eating from such vessels is mentioned besides drinking (أَوَّلَ) يُشرِبُ فِي النَّخْلِ. But the above-cited version is the more authentic, and Dāwūd and the Zähirite school adhere to that one, since they teach that the prohibition refers merely to what the literal meaning of the words implies. Drinking from gold and silver vessels is exclusively forbidden; any other usage, even eating from them, is allowed. 4 This teaching of Dāwūd is quoted by the historian Abū al-Fīdā‘ as an example of the method of the Zähirite school. 5 In this case, too, the gīyās schools search for the spirit of the law according to their method of investigation which is based on the purposes of the laws and on the deduction from analogies. Since the usage of gold and silver, as explicitly stated in the tradition, could have been prohibited solely because the legislator condemned luxurious usage in order to dampen arrogance and pride (khuyfā‘), any detail which is stated by way of an example consequently must encompass every kind of use. For example, they also prohibit the usage of such vessels for the ritual ablution (wuḍū‘). 6 Some codices even mention that the small probe used for applying ḥuḍr must not be made of gold or silver. 7 It will be clear from these examples what is meant when we say that the main distinction between the law, according to the view of the Zähirite school and applied ġiḥā (furū‘), as developed by the gīyās schools, lies in the fact that in the former, the literal wording of legal texts recognized as authoritative is the exclusively determining factor, while the latter goes beyond the strict wording in elaboration of the law. The basic difference in the elaboration of the law of the two schools, as just pointed out, refers both to the written authoritative source of Islamic law, i.e. to the kitāb, and to the sunnah. Let us examine some concrete examples of this distinction from both fields.

1. In sūrah II:283, Muḥammad issues the following decree from God: After he orders that in ordinary commercial dealings, security of the creditor’s property is required by means of a written receipt from the debtor for the sum borrowed, he says: ... 8

2. In the early period of Islam, some jurists — particularly Mujāhid (d. 100/4) from Mecca during the first century A.H., and al-Ḍāhāk (d. 212) from Başra during the second century — interpreted the verse according to the letter of the word so that they restricted the right of pledge to travelling. But if the two parties are either at home or at regular permanent places of residence of human society (fī al-ḥadār), then, according to these interpreters, the pledge is not applicable for business transactions. Under such conditions, the creditor must secure his claim by drawing up a bond. 9 The legal schools rejected this literal

3 Ibn Ḥanbal, I, fol. 32b: “Ibn Ḥanbal’s authority is great, and he is the most trustworthy of the Companions;” cf. Ḥudayl, fol. 3a, 14a.

4 Muslim, Kitāb al-lubās, no. 2.

5 al-Nawawi, IV, p. 416: “And the Muslims are not to use the crown and the ring and the gold and the silver, except in these ways, without committing an obvious sin: Those who use them unnecessarily, those who use them as a symbol of their status and not as a symbol of their respect for the sanctity of the transaction.”


7 al-Sha‘râni, I, p. 123: “The smallest act of arrogance is an assault on one’s dignity.”

8 Burhân al-Dîn al-Birzî’s supercommentary to Abū al-Qâsim al-Ghazân’s Sârî al-ghîyâb, Süleymaniye 1387, p. 17.

9 Mafâtîh, II, p. 558: “The allegory of the horseman on the road (or road) al-ṭâlî‘ī al-ṣamā‘ī al-ṣafâ‘ī, which occurs in the digression, and which is explained by these interpretations as a symbol of the angel of death and paradise, one must understand that it is not an allegory, but a symbol of the promise of the Day of Resurrection. The Sunnah, in fact, indicates that the horseman is one of the recipients of the promise of the Day of Resurrection, and that he is the angel of death who is about to receive the promise of salvation. The Sunnah indicates that the promise of salvation is made to the horseman in order to show the power of the Turkiah and to make clear to the one who hears this promise that he is the one who will receive the promise of salvation.”
interpretation and practical application of the Koranic letters of the law for obvious reasons. The rejection of the literal interpretation went so far that al-Bukhārī could feel justified in acknowledging the validity of the pledge in circumstances which seem to be excluded by the Koran in the very wording of the relevant chapter of his work on tradition. Thus he gave the following sub-heading to the chapter on the pledge:

The traditional communications of the contemporaries and companions of the Prophet collected in that chapter show, indeed, that the Prophet made pledges to his creditors in Medina, i.e. in the ḫadār. Only Dāwūd al-Zāhirī and his school espouse this forgotten teaching of Muḥāfīd and al-Ḍabḥāk ¹ and do not conform to the general view according to which the circumstances of the journey are mentioned in the Koran only a potiori, without intending to express a restriction. We find in the note that Fakhr al-Dīn al-Rāzī finds in sūrat IV:102 evidence for the fact that for certain Koranic laws certain cases are given a potiori only (‘ala sabāl al-ḥābiḥ), without this indicating that the law in question refers exclusively to this specific case. But also with regard to the law contained in this evidential passage do Dāwūd and his Zāhirite school cling to the letter of the word. The fact is that, in this case alone, the rural schools are the ones who, among the proponents of the literal meaning, deduct a restriction from the spirit of the law. The Zāhirite school, on the other hand, again opposes the inclination of the qiyās schools to generalize. Concessions to the so-called salāt al-ḥanāfī and salāt al-mudāfi‘ī are based on this verse. In it Muḥāmmed says: 

وجاء ضربهم في الأرض فليس علكم جناح أن تقصرو من الصلاة إن خفتم أن ينكسمُ الذين كُروهَا (sūrat IV:101) "And when you are travelling in the country you will not be blamed for shortening your prayer if you fear you might be afflicted by the unbelievers". ²

In this case, the common legal schools ³ lay down certain geographic limits for the application of this concession which is made for the purpose of shortening the prescribed prayer of travellers. For example, both Mālik and al-Shāfi‘ī stipulate that this “travelling in the country” must extend to no less than the distance of four courier stations — the courier station of four fasākh each, three mīl to the parasang, i.e. 12000 feet or 3000 ḵafwahs to the mīl (for four feet, agām, constitute one ḵafwah). Some give different rules with regard to the distance, but all of them take as authority traditions which the Zāhirite literalists reject as insufficiently documented (āhād). Short distances from the place of residence cannot be considered adequate travelling to permit a Muslim to avail himself of the concession for the short salāt al-ḥanāfī. The ahl al-ṣāḥīr have no part of this exegetic restriction. They adhere to the literal words of the Koranic law and say: This Koranic verse contains a conditional sentence; whenever the case stated in the protasis occurs, namely, every time that there is “travelling in the country”, i.e. when there is absence from the ordinary place of residence, the short prayer is permitted. The stipulation about the required distance from the usual place of residence is an arbitrary innovation of those traditionists whom the rival schools quote and of no importance vis-à-vis the explicit naṣṣ of the Koran ⁴. But it is always assumed that the other conditions which are mentioned in the Koranic verse are also fulfilled — namely, threat from hostile unbelievers — a secondary condition to which the other schools attach no importance so that they recognize the short prayer also in different circumstances. In a Shāfi‘ite codex, I find, for example, mention of the following cases in which the short prayer of fear is permitted: in any authorized fight, or when fleeing from such a fight, for instance, when the just person is fighting the oppressor, or the rich man is fighting against a person intending to deprive him of his possessions; when some one is fleeing from either flood or fire, or from a wild beast from which one cannot escape in an other way; or when some one is leaving a country where tyranny reigns; even when a debtor unable to pay is fleeing his creditor ⁵. Thus, sentences introduced by the conditional particles in and

¹ al-Qaṣṣāfī, IV, p. 233: صلى الله عليه وسلم وَهُوَ يَنْبِعُ بِقُولِ مَا جَاهَدْتَ وَفَضَّلْتَ، قال: داود وَأَهَلُ النَّظَر

² Shāfi‘ī law, too, prescribes precisely the type and conditions of the journey under which the shortened salāt al-mudāfi‘ī becomes applicable. Querrey, Droit musulman, I, p. 129-132.

³ Mafātīḥ, III, p. 446: أَمَّا خِزَاءُ الْأَظْهَارِ بَلَا يَقَالُوا أَنْ قَوْلَهُ عَلَى أَذَاثَةَ مَقْلِدَةً فَفِي جَوْزَ الْخَرَّةَ، يَوْمَئِذٍ فَلَا يَقَالُ "أَنَّ الْأَظْهَارَ عَجِيِّسُ"، فَأَنَّ الْأَظْهَارَ عَجِيِّسُ، فَأَنَّ الْأَظْهَارَ عَجِيِّسُ، فَأَنَّ الْأَظْهَارَ عَجِيِّسُ.


⁵ Būrkhān al-Dīn al-Bīrānī, p. 121.
this interpretation into the text of this verse by inserting wa-antum muhaddithun between the words al-salāt and fa-ighsilū. A story related also in the biography of the impious poet al-Uqayshir al-Asadī makes it quite clear that wudhu’ used to be much neglected before the individual prayer, certainly in early times, so that very soon the most unrestrained custom prevailed. The pious aunt of this poet intended to have her nephew observe the prayers at all cost. “Your importunities have started to bother me!” said the poet finally. “Now, choose between two possibilities. Either I perform the ablutions without praying, or I pray, but without performing the preceding ablutions” — “Well, if there is no other choice”, the aunt replied, “then pray without wudhū”. 1 It is reported explicitly that several pious Muslims of the first centuries used to perform the evening prayer and the following morning prayer with one ablation. 2 This shows — it can be observed quite frequently also on other occasions in this field — that the jurisprudents made concessions to less stringent practice; by means of tricks of interpretation they adapted the law to the freely developing life which they wanted to harmonize at all costs with the requirements of the law. This process of assimilation is a phenomenon which runs like a red thread through exegesis and literature of tradition. However, we encounter this also in non-Islamic religious literature. It is easy to understand that Dāwūd’s school rejected such an attitude and, in agreement with the teachings of the Shī‘ah advocating the letter of the Koran and nothing else, required that, before every canonical prayer, wudhū be performed in all circumstances. The school considered this act strictly obligatory. The traditional accounts that differ from this view 3 are considered not entirely authentic and too weak to modify the sense of the scripture. Indeed, even if supposing they were authentic 4, they would not be able to weaken the Koranic decree because of the axiom to which the Zāhirite school adhered: An al-dalāla al-qawīyya 3 biirdīyāt al-dalāla al-zawjīyya

1 Kitāb al-aghānī, X, p. 91.
3 The decisive passage is Kitāb al-wudhū‘, no. 85 (66) in which Anas relates that the Prophet performed the wudhū‘ before every prayer, but as for the companions: “They would not perform wudhū‘ if they desired.”
4 al-Shahrūnī does not mention this controversy among the masā’il al-ikhālīf, but in his introduction to Muṣnān, I, p. 89, he gathers together traditions which — contradicting each other — can serve to support either of the two teachings.

Idhā are meant to mean that whenever the conditions stated in such sentences exist, the statement contained in the subordinate clause becomes applicable; yet these sentences do not indicate that the latter condition is exclusively bound to the condition in the main clause; rather, this condition is valid in all similar or related cases. It goes without saying that the Zāhirite school opposes this generalization. 1

Also the following difference between the rival legal schools is based on the scope of the Koranic statement introduced by a conditional particle. Sura: 8 3:88: 1

Yā ayyūba! 2 wa-l-aiyūba nāsīgūn 3 ‘lä kām youm’s 4 l-salāma 5 fā-ulā sūl 6 wajahum wajāhūm 7 yā idīyūm yā idā’i 8 l-mafrūq 9 . “O you who believe, when you stand up to pray wash your faces and your hands etc.” One frequently meets the totally erroneous view that it is one of the ritual obligations of the Islamic way of life to perform the ritual ablution (al-wudhū‘) before every of the five canonical prayers. Indeed, this follows from the afore-mentioned Koranic verse, and also from the actual custom of pious Muslims. Yet on the other hand, no difference of opinion prevails among the four recognized legal schools about the fact that this pious custom is indeed commendable (musāhāf, 9 but that it is by no means obligatory (fard 10 wajib). A single ablation alone is obligatory for all five prescribed daily prayers. The validity of this single ritual act extends to the period of these five prayers so long as the status puritatis is not invalidated by an action which, according to Islamic religious law, requires ablation. It has been transmitted that on the day of the conquest of Mecca, the Prophet himself performed all five prayers with one ablation. He specifically mentioned to ‘Umar that he was acting in this way deliberately, and that he considered this to be proper. On the basis of this tradition, the four recognized legal schools, who display complete consensus in this respect, interpret this Koranic verse — the contents of which are in complete contradiction to their teachings — as presupposing the existence of the above-mentioned circumstances before yet another ablution, prior to a prayer, becomes necessary. 1 People did not hesitate to introduce

1 Mafāḥīṣ, p. 446: ‘ān al-kalāma ‘in wa-l-kalāma ‘aţa fiḏā an ‘ud-dhum wajīb 4 al-shārūf al-shārūf wa-l-a‘sāf al-shārūf. 5 wa-l-idīyμ wa-l-wajihμ 6 yā idīyμ yā idīyμ l-mafrūq 7. This statement shows that the repeated wudhū‘ is an opus supererogationis in status puritatis.
2 Abū Su‘ūd cites the following tradition in support of this interpretation of the wudhū‘ in his Taṣfīr, marginal ed. Būlāq, III, p. 388: wajāhūm yā idīyμ yā idīyμ l-mafrūq. 8 al-Bayḍāwī, I, p. 268, 14, to the passage, this is awkwardly discussed.
practice began to prevail with regard to this. It can be witnessed again and again in private collections of Muslims of impeccable piety when they indulge in a kind of flaunting luxury with magnificent copies of the Koran. Indeed, the older exegesis rightfully does not apply the afore-mentioned Koranic verse to the written Koran (masâfâ) at all, but to the “well-guarded tables”; the “mutâkhabârât” who touch them are in this case not the “ritually purified humans”, but the angels who are free of carnal afflictions and who alone can touch the lauhoh mozhfîfâ with their hands. In spite of this — as can also be seen from al-Baydawi, to the passage — the later, and less probable explanation has penetrated ritual practice and all four legal schools teach that a copy of the Koran should be touched only in the state of ritual purity. It was to be expected that the Shi’ites, influenced by remnants of old Parsee views, developed the Islamic laws on ritual purity most rigorously and followed this interpretation of the Koranic verse quite willingly. By the way, in the tradition of the account of ‘Umar’s conversion, this attitude is certainly presented as being part of the view of the earliest Islamic period. In this instance, too, the Zâhirite teachers adhere to the literal meaning of the scriptural passage and bring this to practical application in their jurisprudence. Contrary to the consensus of the recognized schools, they teach in this case that the individual right to touch the Koran is subject to no restrictions at all. I ought to add, however, that in that part of

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1 Vol. 2, p. 310; cf. also the other explanations quoted there.
3 Ibn Hishâm, p. 226, l. 5 from the bottom; ibid., 961, 9; cf. also Spranger, Das Leben und die Lehre des Mohammed, II, p. 85.
4 al-Sharârî, I, p. 134: From this connection cf. ibid., p. 143: "From this connection of the word "qabla" in the beginning of the paragraph of the Ma’in have the meaning of "Concerning the questions about which different legal schools hold different views."

1 Majâzah, III, p. 383 ff.

فَقَالَ الْفَلِيقِ أَنَّهُ كَلِمَةً إِذَا لَمْ يَتَّبِعِ الرِّجُلُ الْعَمَّ، وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الرَّأْبُ وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الْعَمَّ. 2 فَقَالَ الْفَلِيقُ: "إِنَّهُ كَلِمَةً "اِذَا لَمْ يَتَّبِعِ الرِّجُلُ الْعَمَّ، وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الرَّأْبُ وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الْعَمَّ. 3 فَقَالَ الْفَلِيقُ: "إِنَّهُ كَلِمَةً "اِذَا لَمْ يَتَّبِعِ الرِّجُلُ الْعَمَّ، وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الرَّأْبُ وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الْعَمَّ. 4 فَقَالَ الْفَلِيقُ: "إِنَّهُ كَلِمَةً "اِذَا لَمْ يَتَّبِعِ الرِّجُلُ الْعَمَّ، وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الرَّأْبُ وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الْعَمَّ. 5 فَقَالَ الْفَلِيقُ: "إِنَّهُ كَلِمَةً "اِذَا لَمْ يَتَّبِعِ الرِّجُلُ الْعَمَّ، وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الرَّأْبُ وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الْعَمَّ. 6 فَقَالَ الْفَلِيقُ: "إِنَّهُ كَلِمَةً "اِذَا لَمْ يَتَّبِعِ الرِّجُلُ الْعَمَّ، وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الرَّأْبُ وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الْعَمَّ. 7 فَقَالَ الْفَلِيقُ: "إِنَّهُ كَلِمَةً "اِذَا لَمْ يَتَّبِعِ الرِّجُلُ الْعَمَّ، وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الرَّأْبُ وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الْعَمَّ. 8 فَقَالَ الْفَلِيقُ: "إِنَّهُ كَلِمَةً "اِذَا لَمْ يَتَّبِعِ الرِّجُلُ الْعَمَّ، وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الرَّأْبُ وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الْعَمَّ. 9 فَقَالَ الْفَلِيقُ: "إِنَّهُ كَلِمَةً "اِذَا لَمْ يَتَّبِعِ الرِّجُلُ الْعَمَّ، وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الرَّأْبُ وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الْعَمَّ. 10 فَقَالَ الْفَلِيقُ: "إِنَّهُ كَلِمَةً "اِذَا لَمْ يَتَّبِعِ الرِّجُلُ الْعَمَّ، وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الرَّأْبُ وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الْعَمَّ. 11 فَقَالَ الْفَلِيقُ: "إِنَّهُ كَلِمَةً "اِذَا لَمْ يَتَّبِعِ الرِّجُلُ الْعَمَّ، وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الرَّأْبُ وَلَمْ يَقْلِ إِنَّهُ اسْتَطَلَّ الْعَمَّ.
Ibn Ḥazm’s great religio-political work in which the author discusses the question of the extent to which the Koran is to be considered the word of God, our Koranic verse is used as evidence in such a way as if this passage referred to the written Koran.

Among all exegetical differences encountered in the Zāhirīte camp, none is more radical in relation to the generally accepted exegesis than the one of sura VIII: 4 and 5 which veer from the literal and correct interpretation of the words: “Those who renounce their wives...” The correct interpretation of the words: “Those who renounce their wives with the formula ṣidār (i.e. the formula of renunciation of the Jāhiliyyah, anti ʿalayya ka-zahr ummat), and then later return to what they said, must free a slave before these couples are permitted to touch each other”. Now, what is the meaning of “and then later return to what they said”? In this case, the interpretation vulgata points to the exact opposite of the meaning of the words. In the sense of this general interpretation, the passage states that the husband, after the completed, formal renunciation, regrets it and intends to take back his wife. This interpretation has also been adopted by our European translators of the Koran. For example:

Maracci: “Qui autem vocant dorum matris suae aliquam ex uxorisuis sine.; deinde poetet eos ejus quo discerunt: poena eorum erit liberatio cervices, etc.”

Savary and Kasimirski: “Ceux qui jurent, de ne plus vivre avec leurs femmes, et qui se repentent de leur serment, ne pourront avoir commerce avec elles avant d’avoir donné la liberté à un captif”.

Ullmann (p. 475): “Diejenigen, welche sich von ihren Frauen trennen mit der Erklärung, dass sie dieselben wie den Rücken ihrer Mütter betrachten wollen, später aber das, was sie ausgesprochen, gern wieder zurücknehmen möchten u.s.w.” (Those who separate from their wives with the statement that they are going to regard them like their mothers’ backs later, however, intend to retract what they have said, etc.).

Palmer: “But those who back out of their wives and then would recall their speech,—then the manumission of a captive before etc.”.

The Muslim canons among the proponents of the interpretation vulgata holding different views on this word yaʿudāna all agree on the general meaning of the Koranic quotation; namely, that this concerns both a regret of the divorce, and the wish of the husband to annul the pronounced formula of renunciation and return to his wife. This is the interpretation of this verse as it is recognized by the Shiʿite deduction of Islamic law too. The Shiʿites, as the Sunnite schools, base an entire chapter of ordinances concerning ṣidār on this interpretation. We find the different conceptions of yaʿudāna compiled in the original commentaries. Most remarkable is the view of Sufyân al-Thawri: “Those who (as heathens before Islam) used to dismiss their wives with the customary ṣidār formula at that time, and who later, as professors of Islam, have recourse to this formula, must submit to the prescribed stonement”. It cannot be denied that this interpretation comes much closer to the wording of the Koran than all attempts of elaboration within the circle of the interpretation vulgata. Still closer to this is the explanation of the Zāhirīte school. It interprets the law as contained in the Koranic verse as follows: When the husband has used the ṣidār formula once and repeats the same later on, then he must submit to the prescribed stonement. Al-Bayḍāwī, to the passage, hints at this interpretation with the short words: bi-tahrīshī laṣfam wa-huwa qawal al-zāhiriyah; the same can be found, as usual clearer and more elaborate, in Fakhru al-Dīn al-Rāzī. In this instance, too, it becomes evident what we could observe in the case of the law on the pledge, namely, that the Zāhirīte exegetical endeavours which leave the trodden path of ordinary interpretation occasionally rejuvenate older opinions which have disappeared from practice. Finally, it cannot be overlooked that inherent in the interpretation of this Koranic verse there is a theoretical, exegetical moment. Yet, this interpretation has considerable influence on the shaping of the legal practice because, in the sense of the Zāhirīte interpretation, 1

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1 In Queriy, Droit musulman, II, p. 64-65.
2 In al-Bayḍāwī, to the passage, II, p. 217, 21. تغلب يظهرون يعني يعتدون الظاهر اذ كانوا يظهرون في الجاهلية وهو قول التوري.
3 Kūth al-aḫbār, VIII, p. 60, 13, states the following about the origin of this formula as formula of divorce among the pagan Arabs: It was used first by Hishām ibn al-Mughrīr against his wife Aṣmā. It was then taken over by the Quraysh as formula of divorce. — The first use of the ṣidār from the time of Islam is reported from Awa b. Awa (d. 32), Tabkht, p. 130.
4 Majāls, VIII, p. 158. إذا كرز لل舥 الظاهر فقد عاد وإن لم يكرز لم يكن جدا. وعدها قول احل الظاهر واحتجوا عليه اذ ان ظاهر قوله ثم يعودون ما قالوا يدل على اعداد ما فعلوه وهذا لا يكون إلا بالتكريم.
he who regrets the repudiation of his wife and intends to revoke it
doing no way conduce the execution of his intention by performing
the prescribed atonement.

2. The Zahiris are just as meticulous in deducing a law from the
hadith as when they are using the wording of the Koran as a basis
for their juriprudential deduction. It is in that field too, that they
follow unsparingly their basic doctrine of the relationship of the
jurisprudent to the words of the law-giver. They consider it unjustifi-
able to try and to guess the intention of the law-giver on the basis
of subjective judgement and to draw an analogy from this intention
and give to legal practice a direction which, under the pretense of
following the spirit of the law, departs from the objective meaning
of the text.

Musagat indicates in Islamic agricultural affairs a contract falling
under the jurisdiction of social contracts. It states “that a landowner
guarantees the cultivator a certain share of the yield in exchange for
the care and management of fruit trees, vineyards, and vegetables”[1].

There is great difference of opinion among the Islamic
teachings as regards the admissibility of such contracts[2].
In the whole field of commercial, rental, and contract law, Islamic
law follows the principle that for every contract and purchase there
must prevail complete clearance eliminating any doubt and deception
concerning price or rent respectively. Business deals and contracts
which later turn out to deceive one of the contracting parties can be
invalidated, and indeed, very often become null and void, since the
later-evolving fact that it involved a premeditated deception makes
the contract illegal to begin with. The uncertainty about the yield,
and the possibility of deception of the sharecropper in the case of
musagat and similar contracts, raised serious doubts about the validity
and legality of such contracts among the legisla.

As for the share-
cropping contract in particular, the opinions diverge as follows:

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1 See Kremer, Cultuurgeschiede de Orients, I, p. 514. Van den Berg, De contractu
"de ut des" fons mohammedano, p. 67. De Beginselen van het Mohammadnansche Recht,
p. 68.
2 One gets a good impression of the singular indecisiveness which prevails among the
legislative Muslim circles concerning the entire category of social contracts when one
reads the traditions on muskhabara, musara’ah, etc. Because of lack of space, I can
merely refer to them; al-Bukhari, Kitab al-bara’ wa-al-musara’ah, no. 9-10, but particular-
ly no. 18-19 (cf. with this al-QasimI, IV, p. 198-202) and Muslim, Kitab al-haya’,
no. 15.

Abu Hanifah considers it completely inadmissible[1] — a proof of what
little regard he had for the explicit words of the traditions when his
notions of social ethics inspired him with something different. The
exact opposite to this are Malik’s teachings. He considers the musagat
applicable to the whole field of gardening. Al-Shafi’, on the other hand,
restricts applicability of the contract to date-trees and vineyards.
But it is important to know the tradition from which the musagat
derives its legal basis. When Khaybar was conquered, the Jews
asked the Prophet to let them continue living there on the condition
that they cultivate the land for the price of half the yield of all date-
trees and produce. Then the Prophet said: “On this condition I permit
you to stay as long as you want”[2]. This shows that Malik and al-
Shafi’i considered the contract about the date-trees which was
concluded with the Jews as example and basis for further analogies.
Since vine and date-trees are subject to the same regulations in many
other aspects, al-Shafi’i puts them on the same level even as regards
the musagat — the permissibility of which is documented by this
tradition. Malik searches for the general reason of the admissibility
and concludes that the economic requirement inevitably led the
legislator to the conclusion of the contract with the former owner of
the land. Starting from this point of view, naturally no distinction
can be made between the two kinds of fruit. We observe in this instance
two kinds of giyys as bases for legal deduction. It goes without saying
that Dawud[3], frowning upon any kind of extension of the law arrived
at by a speculative method, adheres strictly to what the letter of the
law permits or prohibits. Dawud does not examine the reasons for pro-
hibition or permission, does not concern himself with investigating
the points of view of the law-giver, for him, nothing but the written

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1 His school, however, abandoned his original teachings at a later time; see v. Kremer,
I.e., I, p. 514.
2 Muslim, Kitab al-musagat, no. 1.
3 al-NawawI, IV, p. 30: قال داود جوز عليه السلام من الأشجار
، وقال نابا على النخل خاصا وقال الأخضر على النخل والعنب
، وقال بالكل جوز على جميع الأشجار وهو قول الشافعي قاتل
، داود، والحاوي، ووافق داود في كونها خاصا، لكن قال الحكيم
العنب النخيل في معظم الأشواب وانما المالك قال جوز عليه
الجميع نفاس عليه.
material alone is the determining factor. In the written text, he saw nothing but a document supporting the admissibility of the musāqāt contract as applicable to dates. Therefore, he decided to pronounce this one kind of fruit as the exclusive, permissible subject of this contract.

Indeed, in no part of the material in question can the purely external orientation of the Zāhirite school’s interpretation of the law in its contrasting relationship to the deeper motives of the analogy schools be better observed than in the interpretation of legal texts, where, with reference to a single aspect of religious life, ritual practice, or social intercourse, specific details are mentioned. Everywhere in such passages, the Zāhirite school will exert its coercive view. Besides the previous example, let us select yet another, one which seems to be rather unimportant fundamentally, but which is formally a splendid example from the ritual part of Islamic tradition of the point of view taken by the school, namely, its teaching about ṣadqāt (or zakāt) al-fīr. After completing the fast of Ramādān, and before indulging in the joy of the “minor festival”, Muslims must make this offering which, in the opinion of theologians, is, as it were, a general atonement for transgressions possibly committed against the law of the fast. According to the opinion of some theologians, this tax, introduced prior to the alms-tax (al-zakāt) which took its place, is supposed to have lost its obligatory character after the institution of the latter one, but Muslims as far as Central Africa still give it readily. The Awdám Sulaymān, deep in the Sudan, give the Ḥajj ‘Abd al-‘Azīz at the end of Ramādān a ma‘dd dukhr in ṣadqāt. The following tradition is the main legal source as to what this offering must consist of, and as to which persons are obliged to give it: “The messenger of-God ordered compulsory zakāt al-fīr one ṣā‘ dates or one ṣā‘ barley; (this obligation is applicable to) slaves and free men, to men and women, to young and old Muslims. He ordered that this offering be made before people leave for the prayer (of the following holiday)”.

In this case, Ibn Ḥazm arrives at the most extreme consequence of the

Zāhirite system by teaching that the zakāt al-fīr must be paid in this commodity exclusively and that it has no validity if a different kind of produce of equivalent quantity is given. In this he is in complete disagreement with the rest of the schools who see in the ṣā‘ dates or barley nothing but a specification of the obligatory minimum offering which could also consist of a different kind of produce not particularly mentioned in the tradition. With this example, the peculiar Zāhirite interpretation of the tradition in question is by no means exhausted. The tradition stipulates that zakāt al-fīr is incumbent upon slaves. From this the four schools conclude that the owner has the duty to make the offering on behalf of his slaves since they have no personal property. Dāwūd, however, adheres obstinately to the wording ‘dāl al-‘āb: the slave himself is obliged and responsible to make this fast offering; in this respect, his master has no obligation other than to supply the slave with extra means of earnings from which he can defray the expenses of the offering which is his personal obligation.

Indeed, Ibn Ḥazm goes further than this. Although the tradition mentions young ones, but without conclusively stating that born children are concerned, he makes it the duty of the father to pay the prescribed zakāt al-fīr even for an embryo once it has passed 120 days of its embryonic stage. It must not be overlooked that the Ḥanbalīte

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1 al-Qastallānī, III, p. 97: نَظَارِهِ اللَّهُ ﺇِلَى أَيْمَاهُ شَاء صَانِعًا وَلا يُضَرِّي: غَيْرَهُ وَبِذَلِكَ قَالَ إِنَّ حَزْمٍ لَّكَ وَرَدَّ فِي رَوَايَاتٍ أُخْرَى ذَكَرْ أَجْنَاسٌ أَخْرَى.
2 al-Birnāwī, p. 142, enumerates the following types according to their value: wheat (ṭurūr), peas (ṣā‘), barley (ṣī‘), durra (ṭabarr), rice (ṣī‘), chickpeas (ṣū‘), Indian peas (ṣū‘), lentils (ṣī‘), beans (ṣū‘), dates (ṭurūr), raisins (ṣū‘), cheese from curdled milk (ṣū‘), milk (ṣū‘), cheese (ṣū‘). A rhyme of their order attempts to facilitate memorisation. The first letters of the first line are the first letters of the types enumerated.
3 al-Sayyid, p. 10: فَلَمَّا دُوِّنَ أَفْتَاهُ فَأَفْتَاهُ عَلَى الْعَدَدِ بَعْضُهُ، وَأَفْتَاهُ عَلَى السَّبْعِ. كَيْنَةُ مِنْ كَسْبِهِ كَيْنَةً مِنْ صَلاةِ الْفَضْرِ وَمَهْدُهُ.
4 al-Qastallānī, III, p. 103: فَلَمْ تَأْتِي عَلَى الْحَزْمِ خَلَفًا لَّا إِنَّ حَزْمٍ حَيْثَ ثُلُثُ مِنْ الْعَمَّامِ، فَأَدْهَلَهُ بِقَتَالِهِ وَسَلَّمَ وَقَالَ لَأَنَّ الْحَزْمَينَ فِي بَيْنِي أَنَّ عِلْمَيْنَ. كَيْنَةُ مِنْ كَسْبِهِ كَيْنَةً مِنْ صَلاةِ الْفَضْرِ وَمَهْدُهُ.
of people who belong to the ahl al-kitāb, and we use their dishes. Furthermore, we live in a land where there is game. I hunt both with my bow and also with the assistance of trained and untrained dogs. Now, inform me which of these things are permitted’. Upon this, the Prophet replied: ‘As for the first question, you are not supposed to eat from their dishes if you can find dishes other than those of the ahl al-kitāb; however, should you find none but theirs, wash them; then you can eat from them’”.

1 All Muslim theologians deduce from this that the use of utensils of non-Muslims is basically not permitted, for were this the case, then such vessels would not be permitted to be used even in cases when others could not be obtained, for something prohibited does not become permissible simply by the absence of the latter one. Rather, the form of the prohibition in the above-mentioned tradition (we shall give more examples in the fifth chapter) is interpreted as the wish of the Prophet. This is in some measure what Christian theology calls consilium evangelicum, compliance to which is well received, negligence of which, however, does not constitute a transgression. Indeed, the fujahah restrict the command expressed in the tradition to the case where such vessels have been used by non-Muslims for purpose which, according to Islamic law, are considered najas. In other cases their use, without prior cleansing, does not even belong into the makrūh category. As a matter of fact, we learn from the tradition — although Ibn ‘Asākir has excluded it from his edition of Bukhāri — that ‘Umar performed his ritual ablution in a vessel fetched from a Christian house.

The question of whether a Muslim is permitted to eat meals prepared by followers of other faiths has occupied Muslim theologians on numerous occasions. The spectrum of the attitudes and teachings which have evolved concerning this problem represents almost all shades of opinion towards the adherents of other faiths — from the most barbaric to the most liberal. To the scope of this question belongs yet another one: whether or not a Muslim is permitted to use utensils belonging to Christians and Jews for the preparation of his own meal. The traditions offer the following information: ‘The Prophet was asked by a Muslim who had frequent opportunity to come in contact with non-Muslims in Syria: ‘O Messenger of God, we live in a country

1 al-Bāhilānī, Kātib al-dhākhārih, no. 10: يقلل ابن مسعود صلى الله عليه وسلم قائلًا: يا رسول الله أرأوا أهل الكتاب نأكل في أئتيهم ونشرفهم وأصدقهم يفوضي وآثراً على المسلمين والذين ليس سبباً فأنكرته ما الذي يفعل لنا من ذلك قال أبا أبا ذكرت أئتيهم نأكل في أئتيهم فأنكرتهم وفعاً أثراً على المسلمين ولنا أن نأكل فيما كان لنا أن نأكل...


differently Ibn Ḥazm: he quite willingly takes the opportunity to give an example of his intolerance, and to substantiate a law which, in addition, serves to impede free intercourse with non-Muslims. Quite consistently, he deduces from the letter of the tradition the validity of the following law: "Usage of vessels of the ahū al-kitāb is generally not permitted except in circumstances in which lawful vessels cannot possibly be obtained, and even in this case, only after they have been washed." ¹

This, Ibn Ḥazm's opinion, is a logical conclusion of his teachings of the ritual uncleanness of believers of other faiths, and is identical with the Shi'ite view. The Shi'ites, as it well known, have taken the extreme consequences of the Koranic teachings (sūrah IX:28) ². They reach the utmost rigorism and intolerance with their legislation on ṭahārah and Ṽajāṣah ². They have included in their dāh najāṣah the body of the unbeliever and the heretic, and they extended this judgement to everything the unbelievers touch. Chardin ⁴ has related many a curious thing about his travel experiences concerning this aspect of the ritual life of the Persians; its codification can be read in Query's exhaustive book. ⁵ Sumite Islam ⁶, on the other hand, has displayed in this point a splendid example of its perfectionability, its possibility of evolution, and also the ability to adapt its rigid formalism to the requirements of social intercourse by modifying the Koranic tenets of the impurity of unbelievers through its own interpretation, until it reached the point when it abandoned this doctrine. ⁸ Al-Nawawi says this quite frankly in his commentary on this tradition in which the purity of the Muslims is stated: "This is the law for the Muslim, but as for the unbeliever, as far as purity and impurity are concerned, he is to be judged from the same point of view as the Muslim" ⁹. Fakhr al-Dīn al-Rāzī decisively rejects the right of the intolerant tenet to consensus for the interpretation which is contained in the Koran and which is adduced by the Zaydis (Shi'ites) — in agreement with the older interpretation to be found in al-Bayḍawī too — by referring to the traditional account which presents the Prophet as having drunk also from vessels of non-Muslims. "How could it be possible", so he concludes, "that the mere embracing of Islam should cause the state of impurity to change into a pure one on the body of a single person?" ¹⁰. Concerning this point, and contrary to the more liberal opinions spreading already during his time — we find Ibn Ḥazm in the camp of those who are not satisfied with considering the ritual najāṣah of the unbelievers as an accessory

¹ The three more liberal of the legal schools represent in their interpretations of this Koranic verse one stage each of this gradual progress. Al-Shīfiyy's school is of the opinion that nothing can be deduced from this verse but the prohibition for unbelievers to enter the holy territory of Meca; the Mālikite school extends this prohibition to all the mosques of Meca; according to the view of the Ḥanafīs, believers of other faiths are not even barred from entering the holy šarī'ah territory of Meca for a provisional stay (al-Muwattī', p. 290). The latter interpretation just about abrogates the validity of the Koranic prohibition.

² Muslim, Kitāb al-ṭahārah, no. 56.

³ Ibn Ḥazm, Fī ḥikmat al-ḥikmah, p. 856.

⁴ Ka'b ibn al-Qais, p. 296. ² Quraṣḥ, p. 321 ff.

⁵ Chardin, Voyages en Perse, VI, p. 321 ff.

⁶ Querry, Droit musulman, I, p. 47, art. 267 ff.

⁷ For a historical study of this question it is not to be overlooked that Jāzm b. Thābit's pledge is mentioned as a rare exception in Ibn Ḥazm's traditional sources: "أَنْ لاَ كَيْسَةِ مُشْرَكَةٍ وَلَا يَمْسَكَ مُشْرَكَةٌ أَيْدًا" Iblās, p. 697 and ⁸ Irshād, p. 987; cf. however ibid., p. 987.

9 Quraṣḥ, p. 422 ff.

10 Maqāṣid, IV, p. 614.

11 Al-Qasimī, p. 49.

12 Chardin, Voyages en Perse, VI, p. 321 ff.

13 Al-Nawawi, I, p. 421 ff.

14 Ka'b ibn al-Qais, p. 856.
which they observe less scrupulously than Muslims who follow in this respect precisely prescribed laws, but who label the substance of the unbeliever impure. Ibn Ḥazm adheres faithfully to the exclusive point inherent in the science of tradition inna al-muslim la yanjus, 1 while all the rest of the Muslim teachers extend this attitude to unbelievers too. I believe that what was responsible for this attitude was not only Ibn Ḥazm’s method of deduction, but also his personal fanaticism against followers of other religions. I have shown on other occasions how malicious his language is when he speaks about non-Muslims; also in the excerpts from his main work which I quote in this treatise, we shall have an opportunity to observe this. Let it be also mentioned that Ibn Ḥazm extends this apellation to all non-Muslims, contrary to Abū Hanīfah who does not include the Jews in the expression mushrik. This point of view has the most serious consequences in applied jurisprudence. 2

Finally, one more example may be cited which, on the one hand, shall prepare us for the development of the legal interpretation treated in the following chapter, and on the other hand, can demonstrate how the common legal schools, in contrast to the Zāhirite school, rise to the utmost level of distortion when faced with reconciling the text of the law to the practice of daily life, if daily usage has departed from the requirements of the rigid law. In such instances, the representatives of the Zāhirite school appear as rescuers of the true meaning of the scripture; the objective claim to represent the correct exegesis is in such cases undoubtedly on their side. Such a case is the following:

Muslim tradition prescribes the true believer to perform a complete ablution (ghusl) before the Friday prayer; it is well known that it is entirely different from the waṣa. The text of the tradition expresses this in the following words: “The ablution on Friday is necessary (i.e. obligatory) for all who have reached the age of puberty.” 3. To indicate the degree of this ritual obligation, the word wajib is used here, a word which indicates in the terminology of Islamic law the highest degree of unconditional obligation. Nevertheless, although all the variations of the tradition emphasize unanimously and undoubtedly

the “wajib” of this law, the orthodox schools now say — and even the rigid Ḥanbalite school makes no exception of this — that the duty prescribed in this law is not in the nature of an obligation, but merely a suggested, pious custom (sunnah), the negligence of which is by no means equal to the transgression of obligatory duty. Shīʿite jurisprudence, too, considers this custom among the aqhāl maṣūmīn. 4. To justify this view and to reconcile this with the explicit word wajib, all kinds of tricks had to be applied. Some representatives of the anti-traditional view think that the above-mentioned law in this form has been abrogated (mansūkh). This, however, is not recognized by all, since no authentic tradition could be found to prove the alleged abrogation (nāṣīḥ). Others tried to read the prevailing custom into the text of the law by means of a grammatical tagàir. They claim that the word wajib stands for ka-al-wajib “if necessary” and seems to indicate the high esteem in which the Prophet held this pious custom, but without considering it obligatory. 5. Another interpretation, whose author is the famous Ḥanafite canonist al-Qudūrī, shows us the highest efflorescence of violent sophistry of the epigones of Muslim jurisprudence; he claims that wajib in this case has the meaning of falling off (from wasāb to fall) and that āla stands for an so that into “indispensable (incumbent upon) for everybody”, the following is read: “dispensable for everybody” i.e. omissible, unnecessary for people in general; in other words, the exact opposite of the literal meaning. 6. In this question, too, the Zāhiris are the only ones who

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2 E.g., Shāfiʿī’s law according to Abū al-Qāsim al-Ghaznavī, Dīwān, 1357, p. 39 with the addition: Wajib al-ʿaṣāl al-ṣalāt al-wāḥidah.

3 Querry, Droit mosulman, I, p. 36.


6 In the related Talmudic literature, I find an interesting analogy to the terminological change in jurisprudence supported philologically in al-Qudūrī’s treatment of the term wajib. Among the deductions made from Biblical law, Levisius xx:32, we find in the Babylonian Qiddushin, fol. 35a: ṣāḥib la-ʿahidah le-ṣalāt la-ʿahidah le-ṣalāt, i.e., that craftsmen are not permitted to interrupt their work as a visible sign of respect (gettiug up) to which scholars are otherwise entitled. This law is related to the great moral importance which the Talmud attributes to craftsmanship and to honest enterprise in general. The expression used
CHAPTER FIVE

In the opinion of Muslim theologians, not everything that appears in the form of prescriptions and prohibitions in the transmitted sources of Islamic law is commanded or forbidden, nor does it carry the same imperative or prohibitive force. Many statements are represented in the external — linguistic — form of a prescription or prohibition without their transgression entailing the divine or secular punishment decreed for transgressions of the law.

From this point of view, Islamic jurisprudence recognizes generally five categories:

1. Al-wāṣib or al-farḍ, obligatory actions, the absolute duty, commission of which is rewarded and omission, punished. mā yuḥābū 'alā fi-līhi wa-yu’aqabū 'alā tarkihī.

2. Al-mandāb, commendable actions, i.e. what is decreed not as obligation, but as pious action, the performance of which God reciprocates, but the omission of which does not entail punishment. mā yuḥābū 'alā fi-līhi wa-lā yu’aqabū 'alā tarkihī. In the sense of the latter definition, mandāb is identical with that category of religious practices which, in contrast to the first category, is designated as sunnah.

66 The exact theological terminology does not always recognize this complete identity; rather, it attempts to find differential aspects. In this context, the definition of the concept of sunnah which is most widely recognized is the one which states that this concerns such pres-

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The Hana‘ite school distinguishes between al-farḍ and al-wāṣib with regard to the degree of evidence of a certain law as the term al-farḍ is applied to such actions the compulsory nature of which can be proven by a compelling argument (dalīl ga‘īr or burhān). The compulsory nature of al-wāṣib, on the other hand, is supported merely by probability arguments (dalīl zannī or amrurah). — Both classes are further subdivided.

At this point, I call attention to al-Ḥarīrī, Maqāmah 32, p. 403, 2 (de Saucy’s 2nd ed.).

In the analogous field of Talmudic jurisprudence the two degrees ṣe’irah and ṣana‘ah are to be noted (Babyl. Yeḇḥamoth, fol. 65b).

1 It may be mentioned as characteristic for the tradition of pagan Arabian poetry that these two terms are transmitted in a pre-Islamic panegyric poem to the ‘Adwān tribe by al-‘Āṣa’ī ‘Aḏwānī (Aṯnā, III, p. 2, 15; Ibn Ḥishām, p. 77, penult.; Ṭūbārī, pp. 306f., 551, 567, 654, 780, 811, 813, 815); and this poem, even Arab critics doubt the authenticity of a large part of this poem (Aḏr. ibid., p. 5, 20).
cripta or prohibitions, the obligation of which is based on one of two things: either on a scriptural passage, the interpretation of which does not necessarily, or exclusively, indicate this obligation, but also can be seen differently, or else on traditions with defective or insufficiently attested ismā 1.

3. Al-mārah or al-halāl, permissible actions, i.e., acts, the performance or omission of which the law views with total indifference. Certain it is that the performance of such actions is neither prohibited nor frowned upon, and the omission, neither decreed not suggested; the former stipulation entails no reward and the latter, no punishment. mā lā yuθābū 'alā fī līhi wa-lā yu'āqabu 'alā tarkih.

4. Al-makrāh, reprehensible actions. As for ritual considerations, there are more weighty arguments for their omission than for their admissibility. mā kāna tarkuhu rājihi 'alā fī līhi fī naṣīr al-shar'.

This category is divided into two sub-divisions according to the degree of forcefulness of their arguments: (a) al-makrāh kārahū tames, i.e., an action which is reprehensible only in so far as its omission is recommended to everyone who aims at a pious way of life, but without such practice being punishable, and (b) al-makrāh kārahū tahrim which is reprehensible to such a degree that it is almost identical with

5. Al-ḥārām or al-maḥṣur, the plainly forbidden actions, the performance of which is punished and omission of which is rewarded. mā lā yuθābū 'alā fī līhi bai yu'āqabu wa-lā yu'āqabu 'alā tarkih bai yuθābā.

For different reasons, two classes are appended to these five categories; they are designated by the correlative terms 'āṣimah and rukkṣah. Literally, 'āṣimah is a 'summoning'; i.e., the law per se without considerations for possible impediments to its compliance.

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1 Cf. Snouck Hurgronje's opinion of Van den Berg's edition of Minhāj al-ḥadīth. (Ind. Gids van April 1888, p. 11 of the off-print). — For a definition of the concept of the sunnah laws I consider the following old passage to be of importance: Wādha ibn 'Abī an-Nūrī in Ṭabarī's glossary to the Mālikites' compilation on the 'ismā 1 màṣṣaf al-ṣawājīh, the western Mālikites made this a separate class while the eastern followers of this school classify it in category 2. The above definitions are mostly derived from the Waraqāt.

2 A part from the generally recognized classification, individual theologians, departing from their personal (moral, theosophical, etc.) principles, devised other classes of 'halāl and ḥārām; I mention only al-Ghazālī, Itṣāq, II, p. 80-88.
difference of opinion as to the possible classification of a given action or its neglect in the above-mentioned categories. This depends either on the traditions that each school produces, or on the particularly favoured interpretation of the quoted texts, or lastly, on the different analogical deductions to which they have recourse if the texts are silent on a certain question. To give just one example: Consumption of horse meat is considered mubah according to al-Shāfi‘ī and to Ahmad b. Hanbal, makrūh karāhat taḥrīm according to Abū Hanīfah, makrūh karāhat tanbih according to Mālik, etc. 1. The most important section of the shahīdīfī al-madāhirī is concerned with these questions of legal qualification which the different schools, setting out from the same premise, answer in different ways.

The disagreement of Dāwūd al-Ẓāhirī, whose school frequently opposes the unanimous view of all orthodox legal schools, is based on a matter of principle. In this chapter, let us approach one of these principles since this will demonstrate the conflict between the Zāhirite school and the prevailing orthodoxy in one important question of the science of wujūd upon which there is unanimous agreement among the latter. For instance, we can observe that the Zāhirite school concedes a far greater scope to the absolute wajib and maṣḥūr than the rest of the legal schools. At first glance, it might be thought that the Zāhirite school is led to this kind of interpretation of the legal commissions by its endeavour for sweeping rigorism. Indeed, it cannot be denied that wherever possible, this school raises the "consilia evangaeica", and the daily habits of the Prophet, attested as authentic, to religious duties. By the same token and in agreement with Ibn Rāhwayhi, but in opposition to the consensus of all important teachers 2, the school also intended to institute as wajib the habit of salāh, the removing of the teeth before prayer as recommended by the Prophet. Others, however, doubt the authenticity of the tradition.

The striving for rigorism is nothing but an automatic consequence of strictly following certain Zāhirite principles in the practical application of legal texts. In these questions, too, we generally have the impression that their practical application is determined by the literal interpretation. In such passages in which the Koran or the text of a tradition states a decree of God or Muḥammad in a philological version.

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1 This particular question together with the complete line of argument of the individual opinions in al-Dimšqī, II, p. 266 ff.
2 al-Nawawī, I, p. 325, detailed.

which includes the imperative or prohibitive nature of the statement in itself, the followers of the Zāhirite school are always inclined to see in it a law belonging to category (1) or (5) or, respectively, to category (4b). The four orthodox schools, on the other hand, adopt a less literal view towards the law and classify the command or prohibition in question as one of the intermediate categories. According to this prevailing orthodox legal interpretation, the texts may say explicitly amara rasūl Allāh i.e. “the Messenger of God gave the order”; without this formula’s requiring the indispensable obligation (wajib) of the particular command, as ought to be deduced from its wording. A command uttered in this definite form, according to their interpretation, can mean something that the law-giver merely recommended. Not infrequently, we find such commands accompanied by the words of the commentator amr bīl-nadāb 3. With regard to the strictest of the imperative and prohibitive forms respectively, it is the canonical science of the orthodox schools that has characterized this point of view most clearly. The grammatical form of the imperative, wajib — so they say — indicates in jurisprudence an obligatory law solely when the circumstances under which such a law appears do not indicate that this is to be understood only as a recommendation of the legislator, or his consent to perform an action. The imperative form can be considered a binding command only if detached from such accompanying circumstances. There are two kinds of accompanying circumstances: either such as are inherent in the command itself, or the wording of the text or the inherent circumstances under which it was decreed or performed, or such as are independent of the text itself. To the latter kind belong commands such as contained in Koran, surah II:282 "takā witnesses when you conclude purchase contracts". Here, the imperative ashhadā is used; nevertheless, the majority of the imāms teach 4 that this represents a wish only, not an obligating command, and this, because the tradition testifies to the Prophet’s custom of concluding purchases and sales without witnesses. This custom, then, represents the most reliable commentary to the intention of the law. This is a circumstance which, although independent of the text of the law, is nevertheless an external circumstance which influences the meaning of the same, and which abrogates the

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3 al-Bukhārī, Kitāb al-talāq, no. 43.
4 Of. also al-Bayḍawī, I, p. 142, 8; "والواوئر التي في هذه الآية للاستحباب عند أكثر الأئمة الخ.
obligatory character of the command. To the first category belongs
for instance, surah V.3 “When (after completing the ḥajj) you (once
again) enter the secular state, then go hunting”. In spite of the usage
of the imperative (fa-istādā) in this sentence, this can never be inter-
preted as a command that “you must go”; rather, in this instance,
hunting, which was prohibited for the believers in their state of șurām,
is simply permitted once again. Circumstances inherent in the text
proper point to this interpretation — that is either according to the
rule that a command following antithetically upon a prohibition
cannot be considered a command but a permission, or, if we do not
recognize this principle, then according to the analogy of surah II:232.
Also in surah LXII:10 (And when the prayer is over you may disperse
in the land and seek (benefit from) God’s grace) the imperative fa-
ṣintashrū and wa-ibtāghū must be considered permissive because of
the preceding prohibition of doing business during prayer.

According to the explanation of Ibn Qutaybah who dealt with our
question in one of his responses, the context of the speech cannot
determine whether an imperative expresses command or recom-
mandation; rather, this is a matter of instruction and investigation in
each individual case.

The representatives of the science of the principle of jurisprudence
are certainly those most interested in enumerating the different
functions fulfilled by the imperative in order to decide from case
to case whether a saying in the form of a command or prohibition
has to be declared as such, or whether such a saying has to be classified
in a different category. The famous Shi’ite theologian Imām al-
Haramayn treats this question very conclusively. “At times”, so he
says, “there appears in the text the form of command; meant, how-
ever, (a) either as a permission (see the examples above); (b) as a threat
(‘therefore do whatever you want’) surah XII:40; al-Bayḍāwī, on
the passage, taḥrīd ṣafādī); or (c) as an expression of indifference to the
action of the person addressed (e.g. “May you burn — in hellfire —
regardless of whether or not you can bear it”); literally, bear it or do not
bear it, surah LI:16; or as a secular example: “Thunder and make
lightning, o Zayd!”; this cannot be a command, but it is (no mat-
ter whether you thunder or make lightning). Even in cases in which the
creation of a thing or a state is announced, the decision to create it
is expressed in the form of a command, although, because of the
inability of the creature to comply with it, a command is in this case
ill-timed (e.g. “Become monkeys” surah II:61; “O fire! turn to
coollness and become salvation for Abraham” surah XXI:69). Naturally,
these latter points are treated in more detail in grammar;
theology is concerned with them because the form of command serves
to express other categories. By the same token, the use of the command
as an expression of permission strictly speaking belongs to the scope
of jurisprudence.

It is the orthodox schools who make the most extensive use of
the concession to declare the form of command il-istīḥāb, il-nabū, il-
ṣabāh. Whoever reads carefully any commentary, either of the Koran
or the traditions, will not have overlooked how these terms so often
follow the imperative in the text by way of explanation. Naturally,
the followers of the Zāhirite school could not always avoid the accept-
ance of such an interpretation. But as a rule, they oppose it in cases
of strictly legislative texts. We have seen one example of this above
(p. 47); for a closer illustration of this idiosyncrasy in the present
chapter which deals particularly with this point of fiqh of the Zāhirite
school, we might add to the examples of the Zāhirite legal interpreta-

1 Cf. al-Bayḍāwī, I, p. 246, 3; ibid., II, p. 333, 14: 
2 Kūštā al-maṣīb (arabische Handschrift der herzöglichen Bibliothek in Gotha,
no. 636) fol. 5v: 
3 al-Bayḍāwī, to the passage, I, p. 64, 25: 
4 Wāqīdat, fol. 12a, 17a (in our Supplements).
already presented in this respect some others from the field of the Koran and the tradition. Even with respect to this point of their interpretation of the law, the Zähirite school applies its methods of interpretation equally to both sources of Islamic law 1.

1. There is the example of Koran surah IV:3: fa-inkihū mà ṯāba la-
kum mín al-niṣāʿ. Although the common interpretation is that every Muslim is free to marry, or, at the most, that God recommends married life to Muslims, the Zähiris deduced from the imperative fa-inkihū that He makes it obligatory for them 2, and that this contains a binding obligation, wujūb, for those who meet the condition to fulfill this command 3. To what extent the Zähiris are concerned with merely asserting the text can be seen from the fact that, according to their point of view, the requirements of the law are met with a single 4 marriage, for it is not the continuous state of marriage that is recommended in the above-mentioned verse, rather, the single act of concluding a marriage 5.

1 Some ʿṣūlīs represent the extreme opposite to this view with their interpretation of the categories of the individual Islamic laws. They say that even in cases in which it is explicitly stated in the traditions that a prohibition belongs to the sahrūt category, very often tāḥām is actually meant. Such a prohibition ought to be interpreted in this manner since the early Islamic theologians, because of modesty and good manners, hesitated to use the Koranic term of prohibition for a prohibition which they deduced. Al-Sirārī, I, p. 136 cites this attitude in the name of his teacher ʿAll al-Khawāṣī and gives a detailed explanation.

2 There are also logics who cited traditions supporting ʿalāma; cf. on this difference of opinion Query, Droit musulman, vol. 1, p. 633.

3 This restriction follows from the words of the tradition, ʿAbd al-Malik b. Abī ʿAmir, vol. 1, p. 633.

4 This restrictio in this connection the following motivation: Calel abul al-zahār abul al-ʿamār as-yuṣūrī i.e. of the tradition cited in note 3. — al-Nawawī, III, p. 306.

Surah VI.121. Wa-lā taʿkhlū mimmā lām yusākhar ism Allāh ‘alayhi wa-mannu la-fisq: “Do not eat from that over which God’s name has not been pronounced, for this is sin”. It cannot be denied that an objective examination of this verse will discover in this law a matter which Muslim theologians classify in the first and fifth of the foregoing categories respectively. Nevertheless, the orthodox schools found that this was not exactly a prohibition — with the exception of Aḥmad, but only according to one version of the law transmitted by him — and encouraged a less stringent custom, namely, that it was no absolute condition for the ritual legality of food to pronounce the name of God before its preparation. This principle is of practical importance particularly with regard to slaughtered animals because, according to this interpretation, Muslims can consume meat of animals that were killed without mentioning God’s name beforehand 1. However, excluded from this leniency is the case that the name of other gods might have been mentioned. The so-called tasmiyāḥ, then, is according to these schools a pious custom, just as Muslim tradition generally insists that it should not be omitted before any major action 2. It is well known how carefully this principle is observed in every day life. Ibn Ḥabbās is represented as having heard the Prophet make the statement that the devil is riding with anyone who mounts an animal without mention of the formula biṣmīllah 3. However, all this is simply pious custom and not at all obligatory. The four orthodox schools, in the interest of harmonizing the law with the lax daily practice (cf. p. 47), are attempting to reduce the law as con-
tained in the afore-mentioned Koranic verse to the same level, although not to the same degree. They cite traditions that purport to show the superficialness of the outward mention of Allāh $^1$. Strictest of all is Abū Ḥanīfah who elevates the dhikr Allāh to an obligation, adding, however, that when this custom has inadvertently been omitted, this neglect has no bearing on the legality of the food $^2$. Also the Shi‘ite interpretation of Islamic law distinguishes between deliberate and involuntary omission $^2$. Dāwūd al-Ẓahirī protests against all of these concessions; he advocates the prohibitive text of the Koranic law and declares any food absolutely prohibited (ḥarām) over which Allāh’s name has not been mentioned, regardless of whether or not this was done purposely or simply inadvertently $^4$. Ahmad ibn Hanbal, whose tenets, as we shall see, correspond most closely to that of the Zāhirite school, is represented as having taken the same point of view, although according to a version that has received little consideration.

Let us proceed to examples that are connected with statements from the traditions. For the purpose of transition, we choose a statement from the tradition, the interpretation of which is closely related to a Koranic verse from which it is actually derived. It shows us in full light the Zāhirite method of adhering to the literal text. There is a well-known tradition which usually serves as an example in grammar to demonstrate the dialectic usage of *am* as an article (in place of *a*): *layaṣṣ min al-barr al-sayyām fī al-safar* “Fasting on a journey is not part of piety” $^3$. This statement from the tradition must be viewed with relation to sūrah II:180 *fa-ma nāma mūkum maradh aw ‘alā safar fa-‘iddah min ayyām akhar* “But he of you who is sick or on a journey (for him is prescribed) a (equal) number of other days”. The

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1. The tradition *ibid.*, no. 37, seems to have been fabricated in support of this interpretation: عن أنَّ بن مالك قال: كُل شرَف مَنْ شَارَفُ مَنْ ضَلَّ فَلِيُعْبَد الْمَلَكُ وَالْمُلْكُ عَلَى الْمَلَكِ وَلَا الْمُلْكُ عَلَى الْمَلَكِ.


5. *Bayādāwī, L.*: ذهب في تَحْرِيم مَتَرْوَك التَّسْمِيَة عمَّا أو نسبان وَلَا يَبَعِضَ الْمَلَكُ وَلَا الْمُلْكُ عَلَى الْمَلَكِ.


7. *al-Bayādāwī, L.*, p. 101, to the above-mentioned Koranic verse. وهذا في سبيل الرَحْصَة وَبَيْلٍ عَلَى الْوَجْرِ وَلَا يَبَعِضَ الْمَلَكُ وَلَا الْمُلْكُ عَلَى الْمَلَكِ.
the Zāhirite school. The legal tradition which he represents is often in disagreement with the tenets of the exponents of ḥādīth, and it is cited as an objection against them. This is probably one reason that traditions from Abū Hurayrah, even such as are incorporated in the canonical collections, are often rejected as authorities for legal decisions by jurists. Al-Dāmirī’s article on the “snake” supplies us with interesting information about this from older works. There is unfortunately no space here to elaborate on this. A typical remark of Abū Ḥanīfah is taken from an alleged dialogue between Abū Hurayrah and Abū Ḥanīfah. “What would happen”, asked Abū Ḥanīfah, “if your view were contrary to that of Abū Bakr?” — “I would”, replied the imām, “abandon my opinion in favour of his and that of Umar, Uthmān, Ali, and even, indeed, in favour of the rest of the Prophet’s companions with the exception of Abū Hurayrah, Anas b. Mālik, and Samurah b. Jundab.” It is reported that Umar b. Ḥabīb (d. 207) almost forfeited his life because he defended Abū Hurayrah against attacks from Ḥārūn al-Rashid’s court scholars. A passage in al-Azraqī cannot be overlooked which proves that Abū Hurayrah was considered capable of false information.

One tradition says literally the following: “A male Muslim who wants to bequeath one of his possessions has no right to spend two nights without having his written will on him.” The legal schools see in this an encouragement for the institution of making a will and recognize this as a command of the Prophet, but only as a command belonging to the second category of the commandments. Only Dāwūd and his school see in the categorical form of the statement a clue that the Prophet has made a binding command which is not to be transgressed and is to be complied with by everybody. Consequently, every Muslim has the duty to make out an early will if he possesses property.  

It is known that points connected with this question play an important role in the disputes between Sunnites and Shi’ites.

In the chapter on assignations,1 we read the following statement of the Prophet: “Delaying (payment of debts) on the part of a rich person is injustice; given the case that a person (instead of payment in cash) receives a draft drawn on a rich man, he ought to accept it (in order to compel the rich person to discharge his liability to pay)” 2. The Zāhirīs, in agreement with some followers of the Ḥanbalite school, find in this a command of the first category because of the linguistic form in which Muḥammad made this statement, i.e. the assignor is in no circumstance permitted to refuse the assignation and to demand payment in cash. The rest of the schools are content to see in the foregoing tradition an optional recommendation of the Prophet which does not purport a binding, compulsory law. 3

For the Zāhirīs, the employment of the imperative suffices to determine a command of the first category, and this, even when the tradition expresses no general law, but represents merely a casual decision because of the inquiry of an individual. “Sa’d b. ‘Ubadah questioned the Prophet concerning a vow his mother made but did not discharge because she had died beforehand. The Prophet said: “So you discharge it on her behalf?” 4. Only the Zāhirī school sees here an opportunity to deduce from this the compulsory law that the heir must discharge the vow of the deceased on his behalf. The rest of the schools do not consider this a legal obligation but only a pious act, unless, of course, the vow has bearing on the bequest of part of the property and can be discharged from the estate. In no other case

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2. In al-Sha’rānī, I, p. 75.
3. Tadkhirat, p. 446.
5. Al-Maliki, Kitāb al-wasâyaf, no. 1: 17.

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2. al-Bukhārī, Kitāb al-bayāt, no. 2: 81 [another version: 82].
5. Al-Nawawī, IV, p. 84a: "Wahāwyān, Kitāb al-waṣaïf, no. 19: 8.

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1. Ibid. Sa’d, where quite a number of different versions of Sa’d’s request to the Prophet are related in Sa’d’s biography, is entirely different. Only one MS contains the request as reported in the collections of traditions. See Loth, Das Gesammbuch des Ibn Sa’d, p. 74.
can the heir be made responsible for discharging a vow which he has not made himself.

3.

From what has just been discussed follows yet another basic point of view that causes the Zahirite school to increase the number of wájibát and māṣṣūrát contrary to the identical teachings of all other orthodox schools. No disagreement exists among the different theological schools of Islam as to whether every summah of the Prophet constitutes a binding law. The Prophet testified himself that his conduct was only of individual importance and that no generally applicable law for the Muslim community ought to be deduced from it. Khalid b. al-Walid, commonly called "the Sword of God", tells Ibn 'Abbas that he, together with the Prophet, visited the Prophet's wife Maymunah, his aunt. Maymunah treated her guests with roasted lizard (dhabb mahnadh) that her sister Hafidah bint Al-Harith had brought from Najd. This dish was put before the Prophet who never touched food without first mentioning the name of God over it. When the Prophet was going to help himself to the food offered, one of the women present said to the lady of the house: "Why do you not tell the Prophet that what you have put in front of him is meat of a lizard?" When the Prophet heard this, he abstained. Khalid, however, asked: "Why is this food prohibited, O Messenger of God?" — "No!" replied the Prophet, "but where I come from this food is unknown and I refrain from it." — "As for myself", so Khalid continues, "I cut up the roasted lizard and ate it while the Messenger of God was watching me [and did not stop me, Muslim]". In Muslim traditions, are given according to which the Prophet gave the following decision from the pulpit when questioned about the meat of lizards:

2. Of for instance an example in Abû al-Mahbâm, I, p. 316.
3. It is reported about Ibn 'Umar that he always had his siesta (qiyām) in a particular tree between Mecca and Medina because the Prophet used to do this. — Ahmad b. Hâsân, throughout his life, abstained from watermelons because there was no tradition instructing him how the Prophet used to eat them. (Al-Sha'rânî, I, p. 67).
5. This passage as well as the following are very informative for the meaning of the word rā'y. Al-Nawawî interprets this word in our passage: ای فی امر الدنيا وعمایشها لا على التشريع قانًا ما قاله باجهادة صعلم ورآه شرعًا.
such cases I am not the messenger of the divine will but I am simply giving you my own opinion).” Later Muslim theologians consistently followed this principle of the Prophet. “During his gatherings”, says al-Baţalaynhi, “the Prophet used to make statements in a narrative form intending neither command nor interdiction, nor least of all, to elevate the contents of these statements to Islamic principles” 1. Ibn Khaldun makes the same remark on the occasion of the Prophet’s statement on medicine (al-ţibb al-nabawi) in order to show that such advice by Muḥammad cannot have obligatory character, for “the Prophet was sent to us to teach us the laws of religion, but not to inform us on medicine or on other matters belonging to daily affairs” 2. A Muslim theologian from the ninth century A.H., Rajab b. Āḥmad 3, says with reference to the following tradition:

“We were once travelling with ‘Umar b. al-Khaṭṭaab when we noticed that at a certain point on the road he suddenly turned off the road. When questioned whether or not he was doing this deliberately he said: ‘I have seen the Prophet doing the same thing, so I just imitate him’”.

that “such sunnahs are called al-sunnah al-’adiyyah ‘concerning everyday practice’ or also al-sunnah al-’az’īdah ‘superfluous’ (superceratory)

1. Muraqqa’ d’Olsoum, Tableau général, vol. 1, p. 34.
2. al-Wajīlih al-Ma‘mūdiyyah wa-al-dhāri‘ah al-sarnādiyyah fi sharī‘ arībat al-Ma‘mūdiyyah (MS of the Hungarian National Museum, Orient. no. XVI) fol. 19a: وُثِّقَتْ هذِه الْسَّنَّةُ عَالِدَةَ وَالْسَّنَّةُ الزَّائِدةَ، إِذْ هُمْ يُحْتَكِرُونَ عِنْدَهُمْ عِنْدَ يَمِينَهُمْ مَعَ نَفْسِهَا، وَيَبْدِلُونَهَا بِمَا يَلَدُونَهَا، وَهُمْ مَعَ نَفْسِهَا، وَهُمْ مَعَ نَفْسِهَا، وَهُمْ مَعَ نَفْسِهَا، وَهُمْ مَعَ نَفْسِهَا، وَهُمْ مَعَ نَفْسِهَا، وَهُمْ مَعَ نَفْسِهَا، وَهُمْ مَعَ نَفْسِهَا.
4. Cf. on his work Hājji Khālīfah, VI, p. 161. This book laden with information was printed in Istanbul 1201/1845 in two quarto volumes. This edition, however, is not at my disposal.

— cf. sunnat al-hudâ 1. Their omission is not sinful but their performance, a pious act; their omission is reproachable, but without entailing divine punishment. Inherent in this is merely an encouragement to follow the sunnah in general, regardless of whether it purports to provide divine guidance or whether it belongs to the so-called ‘superfluous ones’ 2.

This is the generally accepted view of Islamic theology which prevails also in the best documented interpretations of the collections of traditions. There have always been extremists, either individuals or groups, who, in their evaluation of the religious, practical aspects of individual traditions, went beyond the limit determined by the majority, but their views have never achieved canonical validity. The Zahirite school is one of these. From the examples of their interpretation of a number of the so-called “traditions of custom” which we have examined, we can conclude that the Zahirīs adhere to this literal point of the linguistic expression. They see obligatory commands or interdictions (1. and 5. category) in passages in the traditions which contain the Prophet’s advice on actions towards which religious law is totally indifferent. I shall give an example from each of the two mentioned categories. In a statement from the tradition, Anas b. Mālik reports: “Domestic sheep (saḥā‘ātīn) in Anas b. Mālik’s house were milked for the Messenger of God, and the milk mixed with water from the well on Anas’ property. The cup was offered to the Prophet who emptied it with one draught. Sitting on his left was Abū Bakr and to his right a bedouin. Then ‘Umar who was afraid that the Prophet would offer the cup to the bedouin said: “Give it to Abū Bakr next to you!” But the Prophet offered it to the bedouin and then said: “Always to the right, always to the right” 3. Legists infer

1 Muraqqa’ d’Olsoum, Tableau général, vol. 1, p. 34.
2 al-Wajīlih al-Ma‘mūdiyyah wa-al-dhāri‘ah al-sarnādiyyah fi sharī‘ arībat al-Ma‘mūdiyyah (MS of the Hungarian National Museum, Orient. no. XVI) fol. 19a:
3 al-Bukhārī, Kitāb al-kibāh, no. 4; Ashribah, no. 18; Mughāl, no. 2.
from this tradition that it is a recommendable custom for proper living and superior etiquette to pass food or drinks etc., always in a circle from left to right, and generally, to give preference to the right side \(^1\) and to practise this in all actions \(^2\). No one but the Zāhiri Ibn Ḥazm sees a religious law in this, and he takes the consequences from this view \(^3\).

By the same token, the Zāhīrīs make use of the mere linguistic form of an interdiction — even where it is intended to give only advice on proper custom — to establish a religious interdiction (tahřīm), while the other schools see in this nothing but a disapproval (karākat tanaẓẓ). “The Prophet prohibited (nahd) the ḥārān or the qirān unless it were done with special permission of the companion” \(^4\). The foregoing expressions refer to the custom of holding two dates side by side and then of eating from both at the same time. The commentators agree that this statement intends to teach only that one should not exhibit voracity and gluttony in front of one’s guests and table companions, since this creates an offensive impression and gives the eating companions the impression of wanting to be first. Only the followers of the Zāhīrī school see in this a religious law equal to other interdictions, on account of the word nahd. This is their interpretation of all passages in which they find the word: “he prohibited” or synonyms of it \(^5\).

\(^86\) CHAPTER SIX

It has already been emphasized that in the rigorous interpretation of the judicial sources, Āḥmad b. Ḥanbal’s school approaches most closely the method of the Zāhīrī school. It was shown in the last chapter that in disputable legal questions, the founder of the Ħanbalite school decides according to the same principles which guide the Zāhīrī school. There would have been more numerous examples if, in the selection of examples for decisions of the Zāhīrī school, we had not been led by the principle to consider only points in which the Zāhīrīyah demonstrates a special position vis-à-vis all other canonical schools \(^1\). The Ħanbalite school permits the literal application of statements contained in the tradition also in instances for which we have, in any case, no certain proof that the Zāhīrī school would have taken the same position on the practical application of ritual law and canonical law in the particular questions.

It is reported that ʿAnas, the companion of the Prophet, reported the following: “We got up early for the Friday service and had our siesta after it was finished” \(^2\). All legal schools interpret this to mean that the Prophet’s companions hurried to hold the Friday prayer in time to finish it before the siesta. The Ħanbalites conclude that the Friday prayer can be legally performed also in the morning \(^3\); this, as it is well-known, is contrary to all Islamic practice.

In the book on legal decisions (Krehi’s edition had not yet been published), we read: “Abū Bakrah wrote to his son (who was a judge) in Sījistān: Do not pass judgement on two (parties seeking legal advice) if you are in anger, for I have heard the Prophet say: ‘A judge ought not pass judgement when he is in anger’” \(^4\). This statement is

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\(^1\) Such dissenting votes from the general consensus are called mufradāt.

\(^2\) al-Bukhārī, Kitāb al-jum`ah, no. 18.

\(^3\) al-Qaṣṭalānī, P. p. 196. أبى نادر بصلاتها قبل التوبة، ودَمَتْ تنكره الخلوة في عيناقه يقول: كتب أبو بكر إلى ابنه وكان يسجَّطان بان لا تقضي بين اثنين وقت غضبان فتاء سمعت النبي صلى الله عليه وسلم يقول لا يقضين حكم بين اثنين وهو غضبان.