The Ḥanafi Legal Theory: Some Significant Issues

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Abstract

Ḥanafi School has a comprehensive and internally coherent legal theory the most important characteristic of which is the use of the general principles of law. The School also developed a system of 'precedents' and, for that purpose, the grading of jurists and manuals of law which help in resolving analytical inconsistencies and resultant in a smooth functioning of the system. The jurists of the School have occasionally differed, but the disagreement has always remained at the level of 'interpretation of facts' and not at the level of 'legislative presumptions' of the School. It is these latter principles – the legislative presumptions – which determine the core legal theory of the School and give it a peculiar flavor.

Keywords: Significant features of Ḥanfi fiqh. Ḥanafi Legal Theory on taqlīd, Methodology for Extending the Law of takhrīj to new cases in Ḥanafi fiqh

Introduction:

Many questions have been raised in the modern world about the doctrine of *taqlīd* (following a particular school of law).[1] Various answers have been provided by different scholars. The position taken in this dissertation is that every school of law represents a peculiar 'legal theory' and a specific 'system of interpretation', which is why mixing the opinions of the jurists belonging to different schools leads to analytical inconsistency. Thus, the basic premise of this paper is that there is nothing in Islamic jurisprudence known as the 'common legal theory'. Hence, some significant aspects of the Ḥanafi legal theory will be briefly highlighted which will be followed by a discussion on the nature of disagreements within the School. Finally, the methodology of *takhrīj*, or reasoning from principles, will be elaborated to show how the jurists can extend the law to new cases without undoing the existing law.

Section One: Significant Features of the Ḥanafi Legal Theory:

First, some of the important 'legislative presumptions'[2] of the Ḥanafi School will be briefly presented followed by a discussion on the 'sources' of Islamic law recognized by the Ḥanafi School. Finally, the relationship of the various sources with each other and the methodology devised by the Ḥanafi School for resolving conflicts in these sources will be explained.

1.1 Legislative Presumptions of the Ḥanafi School:

In his monumental work, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, the very first presumption of Abū Isḥāq al-Shāṭibi (d. 790 AH/1388 CE), the famous Māliki jurist well-known for elaborating the theory of the higher objectives of Islamic law, is that "*uṣūl al-fiqh*" are definitive (*qaṭ'ī*).[3] This statement of Shāṭibi has been interpreted in many different ways.[4] Several scholars find it difficult to accept that all the *uṣūl* of *fiqh* are definitive. They point out that some of the *uṣūl* of *fiqh*, such as *khabar wāḥid* or *qiyās*, are *ẓannī* (probable), not *qaṭ'ī*.[5] Others say that Shāṭibi meant the sources of law 'generally' (*kulliyyatan*) so that *sunnah* generally is a definitive source even if individual reports may not be definitive.[6]

Nyazee has a different position on this issue.[7] After a thorough analysis of the work of Shāṭibi, he concludes that by *uṣūl al-fiqh* he means "the legislative presumptions" (*qawā'id uṣūliyyah*) of a

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school. These are definitive for the school as "evidence cannot be led by the jurists of the school to refute these rules".[8] Thus, for instance, the Ḥanafi School presumes: "Each time a *ḥukm* is discovered through the opinion of a Companion it is said to be proved",[9] i.e., it is said to be the *ḥukm* of Allah.[10] The jurists of the School have to presume this and they cannot challenge this presumption. If they do, they do not remain Ḥanafis.[11] This explains the nature of the disagreements among the jurists of the school. They may have disagreed on the "interpretation of facts" (*qawāʻid fiqhiyyah*), but they certainly did not disagree on the legislative presumptions. This will be explained more detail in Section 1.4 below.

Some of the legislative presumptions of a school relates to the so-called "sources of law". For instance, as opposed to the Māliki School, the Ḥanafi School did not deem the "practice of the people of Madinah" as a valid source of law.[12] Similarly, contrary to the position of the Shāfiʻi School, the Ḥanafi School does not deem *istiṣḥāb* valid for creating a new right even if it accepts it for the continued existence of the already established rights.[13] Other legislative presumptions relate to the "principles of interpretation", such as the following principles of the Ḥanafi School:

> Each time a command (*amr*) is found in the texts it conveys an obligation, unless another evidence indicates the contrary;
>
> Each time a *ḥukm* is expressed in general terms it applies to all its categories with certainty, unless restricted by equally strong evidence;
>
> The *ḥukm* is found through the persuasive power of the evidence and not through the number of the evidence.[14]

Nyazee points out that it is these legislative presumptions which determine the true color of a school and distinguishes it from other schools:

> The first set of rules or presumptions are what are called *uṣūl al-fiqh*. These are rules that determine the character of the school and identify its methodology. They are rules that elaborate the "theory of law" of the school. It is for this reason that there is unanimity about these rules, *or at least about the most important rules in the entire set*. Where there is a disagreement about any in this sense, *it has to be a minor or less important rule*. In this sense, the whole set consists of rules that are irrebuttable, that is, *evidence cannot be led by the jurists of the school to refute these rules*.[15]

This point will be further elaborated below:

1.2 The Characteristic Flavor of the Ḥanafi School:

As noted earlier, the Ḥanafi School developed a "theory of general principles" for deriving and extending the rules of Islamic law. Nyazee expounds the Ḥanafi theory in the following words:

> The first task for the Ḥanafi jurist, when he is faced with a new case, is to see whether this case can be accommodated under a general principle. If the case is covered directly by a principle, the jurist finds no difficulty in assigning to it the *ḥukm* of the governing principle. If the case does not fall under one principle, the jurist would try to accommodate it under another principle. A

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principle that governs a case may itself be a sub-principle of a wider principle, or even be an exemption from it or a corollary.[16]

As to where these principles are found, Nyazee explains that some of the principles are explicitly laid down in the texts of the Qur'ān or the *Sunnah*, while others are derived from the already settled cases. In the latter case, the jurist may derive a principle for the first time, or it may have been derived already by an earlier jurist and the school deems it binding on the later jurists.[17] The derived principle is not equal in strength to the one explicitly stated in the texts, but it may be strengthened by other evidences, such as the opinion of a Companion or the tacit consensus of the Companions.[18] The "main features" of the Ḥanafi methodology, according to Nyazee, can be summed up in the following points:[19]

1. The definitive nature of the general word (*'āmm*);[20]
2. The use of the general principle as the starting point of all legal reasoning;[21]
3. The opinion of a Companion as a binding precedent that not only governs the meaning of the *Sunnah* but also gives strength to a derived principle of law;[22]
4. Tacit consensus of the Companions as a strengthening evidence for a derived principle of law;[23] and
5. The non-acceptance of the apparent meaning of a *khabar wāḥid* if it clashes with an established principle of law, which it cannot restrict.[24]

Nyazee further points out that the use of the general principles enhanced the analytical consistency of the system and resulted in rapid development of the law. However, this also necessitated the "warding off or evading the effect of the traditions" which were not consistent with the general principles.[25] Thus, traditions with weaker or disconnected chains, such as *mursal* traditions, were deemed acceptable if they were consistent with the general principles and traditions with sound chains were made subservient to these principles.[26]

How do the Ḥanafi jurists ensure analytical consistency in the system by reconciling between the apparently conflicting texts and principles? The answer to this question highlights the true worth of the Ḥanafi methodology.

1.3 Ensuring Analytical Consistency in the System:

One important tool developed by the Ḥanafi School for ensuring analytical consistency in the system is *istiḥsān*.[27] The point emphasized here is that this concept has generally been misunderstood; so much so that the Ḥanafis were specifically charged for abandoning Divine law and creating rules on the basis of personal whims and caprices.[28] This was one of the reasons why they were termed as *ahly al-ra'y* as distinguished from the *ahl al-ḥadīth*.[29]

Another significant feature of the Ḥanafi methodology for ensuring analytical consistency in the system was the way they resolved conflicts in the various evidences (*'adillah*) of law.[30] Some of the later jurists assert that in case of conflicting evidences, the Ḥanafi School first opts for abrogation (*naskh*), failing which it goes for preference (*tarjīḥ*) and finally it tries reconciliation (*jam'*).[31] This view has generally been accepted by the modern scholars.[32] However, a thorough review of the classical manuals of the Ḥanafi School, both on legal

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theory (*uṣūl al-fiqh*) as well as settled law (*fiqh*), reveals that this view does not accurately represent the Ḥanafi methodology for resolving conflicts.[33]

The Ḥanafi School, instead, first determines the grading and strength of the conflicting evidences; then, it derives a general principle from the superior evidence; after this, it interprets the subordinate evidence in the light of the superior evidence; if that is not possible, it presumes that the superior evidence has abrogated the subordinate evidence; if no evidence of abrogation is available, it abandons the subordinate evidence presuming that the narrator may have committed a mistake in understanding or narrating this evidence. A summary of the Ḥanafi methodology as expounded by Sarakhsi is given here.

The first significant point Sarakhsi makes is that conflict exists only if the two evidences are equal in status and negate each other.[34] In case of an apparent conflict between two verses of the Qur'ān, the first thing the Ḥanafis do is to find a way out (*makhlaṣ*) in the verses themselves.[35] If that is not possible, distinction has to be made between the rules of the two verses.[36] If that is also not possible, one rule is applied to one situation and the other to another.[37] If these three options are exhausted and the conflict is not resolved, this is the case of the "conflict proper" and it is here that the Ḥanafis go for the option of abrogation.[38] If no direct or indirect evidence of abrogation[39] can be found, the Ḥanafis hold that the two evidences negate each other and one has to look for another source to find the law.[40]

A question arises here about preference. When the Ḥanafis prefer one of the evidences to the other, do they abandon the latter as they do in case of abrogation? Sarakhsi answers in negative.[41] By preference, the Ḥanafis only mean that the issue is governed by the preferred evidence and that the other evidence will be *interpreted* in the light of the preferred evidence.[42]

1.4 The Nature of Disagreements within the School:

Many contemporary scholars highlight the differences among the jurists of the Ḥanafi School, particularly the Great Imam and his Two Disciples, on the rulings about the various sets of facts in order to prove that the practice of *taqlīd* – which these scholars criticize – was developed quite late, and that the founding Fathers of the School did not deem it necessary. In this section, the work of a great scholar will be critically evaluated who has thoroughly examined the *uṣūl* as well as *fiqh* of the Ḥanafi School and has then concluded that Shaybāni, the disciple of Abū Ḥanīfah, was a *mujtahid muṭlaq* in his own right, and that he followed Abū Ḥanīfah neither in *uṣūl* nor in *fiqh*. Muḥammad al-Dasūqi wrote his PhD dissertation on *al-Imām Muḥammad bin al-Ḥasan al-Shaybāni wa Atharuhu fi al-Fiqh al-Islāmi*. It was later published and translated into many languages, including Urdu.[43] Dasūqi devoted Section One of Chapter Three for proving the above contention, and tried to show that Shaybāni had a separate and distinct set of principles and hence a separate and distinct theory.[44] Although Dasūqi has tried to make a long list of such "distinct" principles of Shaybāni, most of them relate to minor issues and they can be easily reconciled with the major Ḥanafi theory. Three issues, however, need some consideration: the authenticity of the *mursal* traditions, consensus of a later generation after disagreement of the earlier generation and conflict between a general word and a specific word.

Dasūqi quotes Shāfiʿi who ascribes an important principle to Shaybāni which, if proved definitively, makes Shaybāni's theory distinct from that of the Ḥanafi School, namely that Shaybāni did not deem the *mursal* traditions as valid, particularly those of Muḥammad Ibn

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Shihāb al-Zuhri.[45] However, Dasūqi does not deem this report authentic and shows that Shaybāni did use *mursal* reports and accepted the *mursal* reports of al-Zuhri.[46]

The second important issue highlighted by Dasūqi relates to the binding nature of the consensus of a later generation when the earlier generation had disagreed on an issue. Dasūqi asserts that Abū Ḥanīfah and AbūYūsuf are of the opinion that disagreement of the earlier generation cannot be eliminated by the consensus of the later generation, while Shaybāni holds the opposite view.[47] Dasūqi cites the example of the validity of the sale of *umm al-walad*.[48] The Companions of the Prophet (peace be on him) disagreed on the validity of this transaction, but the Followers of the Companions reached a consensus on disallowing it.[49] As Abū Ḥanīfah and Abū Yūsuf enforce the decision of the judge about the validity of such a transaction and Shaybāni disagrees with them. Dasūqi infers from this that Abū Ḥanīfah and Abū Yūsuf did not deem it a valid consensus while Shaybāni deemed it so.[50]

It seems that, in his eagerness to prove Shaybāni as a *Mujtahid Muṭlaq*, Dasūqi has oversimplified the issue. As Sarakhsi asserts, there is no disagreement in these three giants on this issue; all of them deem the consensus of the later generation after disagreement of the earlier generation valid and binding. However, Abū Ḥanīfah and Abū Yūsuf deem the disagreement of the earlier generation as a *shubhah* (mistake of fact or law) because of which they enforce the decision of the judge regarding the validity of such transaction.[51] Hence, it was a disagreement on the interpretation of facts (*qā'idah fiqhiyyah*), not on the legislative presumptions (*qā'idah uṣūliyyah*).

Among the hundreds of principles of interpretation, Dasūqi could find only one principle on which, in his opinion, Shaybāni differed with the position generally held by the School. This is the case of conflict between *'āmm* (general) and *khāṣṣ* (specific).[52] In this case, the Ḥanafi School generally deems a general text as equal to a specific text.[53] Dasūqi cites two examples to prove that Shaybāni preferred the specific to the general.

One issue is the conflict of the general command of keeping away from urine[54] with the specific command given to the people of the tribe of 'Uraynah to drink the urine of camels.[55] As the Ḥanafis generally hold the urine of the camels as *najas* (ritually unclean), and Shaybāni does not deem it so, Dasūqi infers that Shaybāni, like the Shāfi'is, held that the second narration specified the first one while the Ḥanafis prefer the first one because of its being general.[56] This is, however, not acceptable because in Sarakhsi has cited many cases from the texts of Shaybāni which definitely prove that Shaybāni, like Abū Ḥanīfah, deems the general and the specific equal in status.[57] How then has Shaybāni disagreed with Abū Ḥanīfah on the issue of the urine of camels? Sarakhsi explains this case in *Mabsut* and states that the reason for Shaybāni's disagreement with Abū Ḥanīfah was that *he saw no conflict in the two texts*.[58]

The other example given by Dasūqi is of the apparent conflict in two narrations about the *zakāh* imposed on agricultural produce.[59] One of the traditions is general, prescribing no *niṣāb* for such produce,[60] while the other specifically prescribes the *niṣāb* as 5 *awsuq*.[61] Abū Ḥanīfah interprets this latter tradition as referring to the *zakāh* of trade, not agricultural produce, as traders used to sell and buy through *wasaq*. Shaybāni and Abū Yūsuf disagree with him saying that the tradition prescribes *niṣāb* for the *zakāh* of agricultural produce. Here again, Sarakhsi explains the position of Shaybāni and Abū Yūsuf without in any way

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linking it to the conflict of the general and the specific.[62] Interestingly Abū Yūsuf shares the view of Shaybāni in the case while no one says that he preferred the specific to the general.

The conclusion, then, is that Shaybāni, like Abū Ḥanīfah and Abū Yūsuf, equated the general and the specific, as definitely proved by the cases referred to by Sarakhsi in his *Uṣūl*. In the two *apparently* deviant cases, Shaybāni preferred one tradition to the other for other reasons, as elaborated by Sarakhsi in *Mabsut*. Yet again, it is a disagreement on the interpretation of facts, not on the legislative presumption. God knows best.

Section Two: Methodology for Extending the Law to New Cases:

A major trend among the contemporary scholars of Islamic law is that they mix up the opinions of the jurists belonging to the various schools, practicing a kind of *talfiq* or "conflation".[63] This section will first identify a few serious problems in this approach, after which it will describe the methodology of *takhrīj* or reasoning by principles for extending the law to new cases.

2.1 Problems in Conflation:

The first problem to be discussed with conflation is that it can result in the formation of an opinion which goes against the consensus of the jurists. For instance, some scholars found an opinion of some of the Māliki scholars that the offence of sexual violence was covered by the concept of *ḥirābah*; they then opted for Iṣlāḥi's opinion that *rajm* was the punishment for the worst form of *ḥirābah*;[64] finally, after combining both these positions they concluded that the *rajm* was the punishment for *zinā bil jabr*![65] This conclusion goes against the consensus of all jurists that *rajm* is the punishment for *zinā*, not for *ḥirabah*.[66] Even those Māliki jurists who bring sexual violence under the rubric of *ḥirābah* do not consider *rajm* as the punishment of *ḥirābah*.

More importantly for our purpose here, such haphazard selection of opinions of the various schools breeds analytical inconsistencies within the system. For instance, Abū Ḥanīfah, after having considered the various sources of Islamic law came up with the principle that Muslim courts could enforce Islamic law only within the territorial limits of Muslim territory, thus recognizing the principle of 'territorial jurisdiction'.[67] Having accepted this principle, he applied it to all the relevant cases of law. Shāfi'i takes the opposite view as he rejects the principle of territoriality. Now, if someone were to accept this principle in one instance and reject it in another, it would lead to analytical inconsistency. Hence, following a particular school of law is not "academic parochialism," but the necessary corollary of integrity, which is the most important virtue for any jurist or judge.

Some people point out that new cases require new principles. This may be true but this does not mean that the already established law should be undone. Demolishing the already existing legal edifice and build an altogether new structure for addressing newer problems is futile, since the requirement of following a particular set of principle would remain. Hence, even if these scholars are allowed to come up with new principles, these may be deemed – at the most – as constituting new schools of law. The question then would be: why reinvent the wheel?[68]

The Ḥanafi jurists have devised the methodology of *takhrīj*[69] for extending the law to new cases without undoing the existing law. Some significant features of this methodology will be highlighted below.

2.2 Determining the Official Position of the School:

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The basic tenet of the methodology of *takhrīj* is that the jurist must not deviate from the established norms of the School and, as such, they must always follow the preferred opinion (*ẓāhir al-madhhab*) of the School.[70] The School must always have one preferred opinion, which becomes its official position, so to speak. Other opinions within the School are non-existent for the followers of the School not qualified for the status of the *mujtahid*.[71] Hence, it is incumbent upon the jurist to first find out the official position of the School on the various issues that relate to the case at bar. For this purpose, two important points need consideration.

First, the School has a particular division and grading of the jurists.[72] Most important among them are the first three grades of the *mujtahidūn*, namely, the *mujtahid muṭlaq*, the *mujtahid fi al-madhhab* and the *mujtahid fi al-masā'il*. In the first of these categories, the School recognizes only one jurist – Abū Ḥanīfah, the founder. It was him who chalked out the basic structure of the legal theory of the School, even if some of the details were provided by his disciples. Thus, he identified the sources of law, elaborated their relationship with each other, made a priority order among them, formulated the fundamental principles of interpretation and thus provided the legislative presumptions of the School.[73] He also derived rules for thousands of cases on the basis of this methodology.

Jurists of the second category, the *mujtahidīn fi al-madhhab*, accepted the legislative presumptions of the School and then derived rules for numerous cases. Abū Yūsuf and Shaybāni belonged to this category.[74] Many a times they disagreed with the founder of the School on the interpretation of facts, which is why they have disagreed on the rules for particular cases, while being in complete agreement regarding legislative presumptions. The School sometimes accepted the position of the disciples of the Imam and abandoned the view of the Imam.[75] Hence, one has to distinguish between the opinion of Abū Ḥanīfah and the official position of the Hanafi School on an issue, as the two may not necessarily coincide.[76] It is equally true, however, that in the final analysis, the opinions of the disciples are based on the opinion of the Imam because they accept and apply the legal theory which he expounded.[77]

Jurists of the third category, *mujtahidīn fi al-masā'il* – such as al-Ṭaḥāwi, al-Dabbūsi, al-Karkhi, al-Jaṣṣāṣ and al-Sarakhsi – are bound by the decisions of the cases settled by the jurists of the first two categories.[78] In case of difference of opinion in the jurists of the first two categories, these *mujtahidīn fi al-masā'il* may determine the official position of the School after a thorough analysis of the principles and manuals of the School.[79] Finally, they extend the law to new cases using the established principles of the School.[80]

The work of all these three categories of the *mujtahidūn* forms the binding source for the *aṣḥāb al-takhrīj*, who are not *mujtahidūn* but who extend the law to new cases using the established principles of the School.[81] Jurists in the category of *aṣḥāb al-tarjīḥ*, those who are skilled in finding the preferred opinion of the School, also exercise *takhrīj* for some new cases.[82] The major difference between the jurists categorized as *mujtahidīn fi al-masā'il* and those termed as *aṣḥā al-takhrīj* and *aṣḥāb al-tarjīḥ* (or even *aṣḥāb al-fatāwā*) is that jurists of these latter categories are not deemed *mujtahidūn*; otherwise, they all extend the law to new cases through the methodology of *takhrīj*.[83] This difference, in practical terms, means that the work of the *mujtahid* jurist is a binding source for the non-*mujtahid* jurist (called *faqīh* by Nyazee).[84] This hierarchy of the jurists is the cornerstone of the methodology of *takhrīj*.

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Another important tenet is the strict observance of a hierarchy of manuals that record the decisions of the jurists of the School on various issues. The *ẓāhir al-riwāyah* is placed on the top of the hierarchy.[85] This is the title given to the six texts composed by Shaybāni.[86] The decisions of the cases recorded in these books definitively represent the official position of the School. Even in these books, one occasionally finds differences of opinion among the jurists of the School – mostly between the Imām and his Two Disciples. However, two of these books, namely, *al-Siyar al-Ṣaghīr* and *al-Jāmi' al-Ṣaghīr*, record the preferred opinion of the School. Nyazee deems them the prototype of the *mukhtaṣarāt* or the *mutūn* of the School – manuals that record the official position of the School on the cases listed therein.[87]

Among these *mukhtaṣarāt*, an earlier example is that of *Mukhtaṣar al-Ṭaḥāwi*. Another important example is *Mukhtaṣar al-Qudūri*. The six books of *ẓāhir al-riwāyah* were also abridged in a *mukhtṣar* called *al-Kāfi fi Furū' al-Ḥanafiyyah*. However, perhaps the most influential text was composed by Burhān al-Dīn 'Ali b Abī Bakr al-Marghīnāni under the title of *Bidāyat al-Mubtadī,* in which he combined the texts of *al-Jāmi' al-Ṣaghīr* and *Mukhtaṣar al-Qudūri*. Thus, the *mutūn mu'tabarah* are the basic source for determining the official position of the School.[88]

These *mutūn* were then explained with the help of authoritative commentaries by jurists of high caliber. For instance, Sarakhsi, who was among the *mujtahidīn fi al-masā'il,* dictated a thirty-volume commentary on *al-Kāfi* under the title of *al-Mabsūṭ*, which till date continues to be the most authoritative text on Islamic law.[89] Similarly, Marghīnāni himself wrote two commentaries on *Bidāyat al-Mubtadī*. The detailed one is titled *Kifāyat al-Muntahī,* and the brief one is called *al-Hidāyah*. It is this later work which captured the jurists of the Ḥanafi School of the following generations who wrote detailed commentaries (*shurūḥ*) on it.[90] Later, glosses, or *ḥawāshi,* were written on these *shurūḥ*.[91] It is well-established that the *matn* has priority over the *sharḥ,* and *sharḥ* has priority over the *ḥāshiyhah*. Yet another category of manuals is titled *fatāwā*, such as the *al-Fatāwā al-Hindiyyah* and *Fatāwā Qāḍīkhān*.[92] All these manuals have a priority order and a hierarchical structure. As jurist of a lower category cannot override a jurist of a higher category, the same is true of the manuals of the various categories.[93]

2.3 Reasoning from Principles:

Nyazee identifies three tasks[94] for the *faqīh* or the jurist who, without deviating from the already settled cases, extends the law to new cases on the basis of the established principles of the School:

1. Follow the "precedents"[95] of the Elders of the School;[96]
2. Extend the law to new cases on the basis of the established principles; and
3. Where necessary, formulate a "new principle" which is compatible with the already established norms of the School.[97]

As far as the "sources" for the *faqīh* are concerned, Nyazee mentions two things:[98]

1. The manuals of the School, particularly those compiled by the *mujtahidūn* of the School;
2. The established principles of the School.

The manuals of the School and their hierarchy have already been described above. Details about the principles of the School are discussed below.

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As noted earlier, some principles have been explicitly stated in the texts of the Qur'ān and the *Sunnah*, while others have been derived by the jurists of the School. Moreover, principles of this latter category may have been strengthened by the opinion of a Companion or the tacit consensus of the earlier generations. For these principles, scholars generally refer to the works titled *al-Ashbāh wa 'l-Naẓā'ir.*[99] However, Ibn 'Ābidīn points out that these works must be 'handled with care,' and that the principles, along with their restrictions and exemptions, if any, must be checked from the proper manuals of the School.[100] The compilation of the principles by al-Karkhi and al-Dabbūsi are a rich source for this purpose.[101] Sarakhsi's *al-Mabsūṭ* is not only a treasure-trove of principles, but also explains how the principles are derived and then used for extending the law to new cases.[102]

As for formulating a new principle for novel cases, it is permitted on the condition that the new principle is compatible with the system. This, in essence, necessitates three tests:

1. That the new principle does not alter the implications of the texts of the Qur'ān and the *Sunnah*;[103]
2. That the new principle does not go against the already established principles of the School; and
3. That there is some positive evidence within the system in favor of the new principle that indicates that it is not altogether 'stranger' to the system.

This discussion may be concluded with the following quote from Nyazee:

> It should not be assumed that the *faqīh* cannot approach… the sources for the *mujtahid* [the Qur'ān and the *Sunnah*]. He certainly can, but the system erected by the *fuqahā'* appears to be saying that there is no need to reinvent the wheel. The entire law, after analytical systematization, has been organized around a large body of principles, precedents and rules. This body… provides enough flexibility for expansion and change. So why go through the whole process once again, a process over which centuries of labor has been expended by the *mujtahid*? Why not build on the work that has been done already? Why lose the heritage?[104]

Conclusion:

This analysis of the legal theory of the Ḥanafi School shows that the doctrine of *taqlīd* was developed for the purpose of ensuring analytical consistency in the legal theory. It also shows that the most important aspect of the Ḥanafi legal theory is the use of the general principles of law which not only helps in ensuring analytical consistency in the legal system but also in extending the law to new cases by using the methodology of *takhrīj*. Thus, it results in finding viable solutions to new issues without causing deviating from the established principles of law. This methodology allows introducing new principles, if and when needed, provided the new principle is compatible with the already existing legal system.

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EndNotes:

[1] Joseph Schacht, *Introduction to Islamic Law* (Oxford: Oxford University Press, 1953), 69-75; Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh Unviersity Press, 1964), 75-85.

[2] Legislative presumptions are like principles that help in interpretation. They are irrebuttable and are considered to be implied within the text of the statute. Examples include: "text to be the primary indication of intention of the legislature"; "the enactment is to be given the literal meaning"; "the court is to apply the remedy provided for the mischief". Francis A. R. Bennion, *Statutory Interpretation* (London: Longman, 1990), 325.

[3]Abū Isḥāq Ibrāhīm b. Mūsā al-Shāṭibi, *al-Muwāfaqāt fi al-Sharī'ah*, ed. Abū 'Ubaydah Mashhūr b. Ḥasan (Al-Khobar: Dār Ibn 'Affān, 1417/1997), 1:17-18.

[4] See, for instance, Aḥmad al-Raysūni, *Imām al-Shāṭibi's Theory of the Higher Objectives and Intents of Islamic Law*, tr. Nancy Roberts (Herndon, VA: The International Institute of Islamic Thought, 2005). See also: Muḥammad Khālid Mas'ūd, *Shāṭibi's Philosophy of Islamic Law* (Islamabad: Islamic Research Institute, 2003).

[5] Ḥusayn Ḥāmid Ḥassān, *Uṣūl al-Fiqh* (Islamabad: Dār al-Ṣidq, 1423/2003), 11.

[6]Ibid., 12-13.

[7] See his detailed note on this statement of Shāṭibi: Imran Ahsan Khan Nyazee, *The Reconciliation of the Fundamentals of Islamic Law* (Reading: Garnet Publishing Limited, 2011), 13-15.

[8] Imran Ahsan Khan Nyazee, *Islamic Legal Maxims* (Islamabad: Federal Law House, 2013), 21.

[9] Sa'd al-Dīn Mas'ūd b. 'Umar al-Taftāzāni, *al-Talwīḥ fi Kashf Ḥaqā'iq al-Tanqīḥ* (Beirut: Dar al-Kutub al-'Ilmiyyah, n.d.), 1:20. This wonderful book of Taftāzāni (d. 791 AH/1398 CE), who was a Shāfi'i jurist is commentary on the *matn* of *al-Tanqīḥ* and its commentary *al-Tawḍīḥ fi Ḥall Ghawāmiḍ al-Tanqīḥ* both by the Ḥanafi jurists Ṣadr al-Sharī'ah 'Ubaydullah b. Mas'ūd al-Bukhāri (d. 747 AH/1346 CE). Ṣadr al-Sharī'ah initially compiled the *matn* of *al-Tanqīḥ* on the basis of *Uṣūl al-Bazdawi*. Later, he wrote the commentary *al- Tawḍīḥ* to incorporate the discussions in *al-Maḥṣūl fi 'Ilm Uṣūl al-Fiqh* of Fakhr al-Dīn al-Rāzi (d. 606 AH/1210 CE), a Shāfi'i jurist, and *Muntaha 'l-Wuṣūl wa 'l-'Amal fi 'Ilmay al-Uṣūl wa 'l-Jadal* of Ibn Ḥājib 'Uthmān b. 'Umar (d. 647 AH/1249 CE), a Māliki jurist. These works of Ṣadr al-Sharī'ah and Taftāzāni greatly influenced the later jurists belonging to various schools of Islamic law many of whom deviated in one way or the other from the original position of their respective schools as they got influenced by the views of the other schools. It is for this reason that the works of the later jurists, both in *uṣūl* as well as *fiqh*, must be 'handled with care'.

[10] Taftāzāni, *al-Talwīḥ*, 1:20.

[11] Ibid. Imran Ahsan Khan Nyazee, *Theories of Islamic Law: The Methodology of Ijtihad* (Islamabad: Islamic Research Institute, 1994), 173-74.

[12] See for a detailed criticism on the legal theory of the Māliki School: Muḥammad b. al-Ḥasan al-Shaybāni, *al-Ḥujjah 'ala Ahl al-Madīnah*, ed. Abu 'l-Wafā' al-Afghāni, (Deccan: Lajnat Iḥyā' al-Ma'ārif al-Nu'māniyyah, 1385AH).

[13] See for details: Abu Bakr Muḥammad b. Abī Sahl al-Sarakhsi, *Tamhīd al-Fuṣūl fi 'l-Uṣūl* (hereinafter, *Uṣūl al-Sarakhsi*), ed. Abu 'l-Wafā' al-Afghāni, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1414/1993), 2:223-226.

[14] Nyazee gathers these principles from *al-Talwīḥ*. See: *Islamic Jurisprudence* (Islamabad: Islamic Research Institute, 2000), 36-37.

[15] Nyazee, *Islamic Legal Maxims*, 21 (Emphasis added.)

[16] Nyazee, *Theories of Islamic Law*, 173.

[17] Ibid., 173-74.

[18] Ibid., 174-75.

[19] Ibid., 175.

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[20] *Uṣūl al-Sarakhsi*, 1:131.

[21] *Al-Mabsūṭ* of Sarakhsi is full of examples for this methodology. On every issue he begins with citing the principle of law on which the whole issue is based and then interprets the various texts which apparently seem to deviate from that principle. See for some examples of this methodology: Muhammad Mushtaq Ahmad, "Ta'āruḍ awr Raf'-i-Ta'āruḍ ke Muta'alliq Ḥanafi Madhhab kī Taḥqīq", *Fikr-o-Naẓar*, 50:3 (2013), 29-85.

[22] *Uṣūl al-Sarakhsi*, 2:104-113.

[23] The title given by Sarakhsi to the analysis of the principle governing the status of the statement of a Companion is very significant: "On following the Companion (*taqlīd al-Ṣaḥābi*) when he gives a statement and no dissenting statement [from another Companion] is known". Ibid., 2:104.

[24] See for a detailed discussion on this principle: Ibid., 1:337-344.

[25] *Theories of Islamic Law*, 175-76.

[26] Ibid., 176. This was not acceptable to the Ahl al-ḥadīth and when Imām al-Shāfi'i expounded his theory he attacked each of these characteristic features of the Ḥanafi methodology. Ibid., 177-185.

[27] See for a detailed exposition of the Ḥanafi principle of *istiḥsān*: *Uṣūl al-Sarakhsi*, 2:202-206. As an example of how *istiḥsān* resolves conflicts and ensures analytical consistency in the system, see: Ahmad, *Ḥudūd Qawānīn*, 25-29.

[28] Muḥammad b. Idrīs al-Shāfi'i, *al-Risālah*, eds. Khalid al-Sab'and Zuhayr Shafiq (Beirut: Dār al-Kitāb al-'Arabi, 1426/2006), 326-352. See also: Ghazāli, *al-Mustaṣfā*, 1:213-316.

[29] Nyazee, *Theories of Islamic Law*, 161.

[30] The jurists discuss it under the notion of *mu'āraḍah* or *ta'ārauḍ*. See: *Uṣūl al-Sarakhsi*, 2:11ff. Some very important aspects of the issue are discussed under the notion of *tarjīḥ*. Ibid., 2:249ff.

[31] 'Abd al-'Ali b. Niẓām al-Dīn al-Anṣāri, *Fawātiḥ al-Raḥamūt Sharḥ Musallam al-Thubūt* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2002), 2:236.

[32] Wahbah al-Zuhayli, *Uṣūl al-Fiqh al-Islāmī* (Beirut: Dar al-Fikr, 1406/1986), 1176-1181.

[33] See for a detailed analysis of this issue: Ahmad, "Ta'āruḍ awr Raf'-i-Ta'āruḍ ke Muta'alliq Ḥanafi Madhhab ki Taḥqīq", *op. cit*.

[34] *Uṣūl al-Sarakhsi*, 2:18. Hence, there can be no conflict between *muḥkam* and *mujmal* or between a *khabar wāḥid* and a verse of the Qur'ān. Ibid. See also: 'Alā' al-Dīn 'Abd al-'Azīz b. Aḥmad al-Bukhāri, *Kashf al-Asrār 'an Uṣūl Fakhr al-Islām al-Bazdawi* (Beirut: Dār al-Kitāb al-'Arabi, n.d.), 3:88.

[35] For instance, if one is can be restricted by the other, the conflict is resolved. *Uṣūl al-Sarakhsi*, 2:18. Thus, the Ḥanafi School does not apply the verse about cutting of hand (Q 5:38) to the alien non-Muslim who commits theft after entering into the Muslim territory with the permission of the Muslim authority (*musta'min*) as they restrict this verse by Q 9:6 which commands Muslims to refrain from any hostile act against such a person.

[36] For instance, Q 2:225 declares that a person will be held liable if he intentionally takes an oath and this includes a false oath for asserting or denying an act done in past (*yamīn ghamūs*), while Q 5:89 prescribes expiation only for the breaking oaths taken for doing or omitting an act in future (*yamīn ma'qūdah*). The Ḥanafi School distinguishes between the 'liability' mentioned in these verses by asserting that Q 2:225 prescribes liability in the hereafter, while Q 5:89 prescribes the worldly expiation. *Uṣūl al-Sarakhsi*, 2:19.

[37] Ibid., 2:19-20.

[38] Ibid., 2:20.

[39] Ibid., 2:20-21.

[40] This final situation is only hypothetical, as many jurists assert.

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[41] *Uṣūl al-Sarakhsi*, 23.

[42] This is what he does so often in *Mabsūṭ*. This is what the Ḥanafi methodology is all about. See for a few examples of the application of this methodology: Ahmad, "Ta'āruḍ awr Raf'-i-Ta'āruḍ", 69-83.

[43] Muḥammad al-Dasūqi, *al-Imām Muḥammad bin al-Ḥasan al-Shaybāni wa Atharuhu fī al-Fiqh al-Islāmi* (Doha: Dār al-Thaqāfah, 1407/1987). Muḥammad Yūsuf Farooqi translated it into Urdu under the title: *Muḥammad bin Ḥasan Shaybāni: Ḥayāt-o-Khidmāt* (Islamabad: Islamic Research Institute, 2003).

[44] Dasūqi has tried to accumulate from *Uṣūl al-Sarakhsi* and other books the points where Shaybāni is reported to have disagreed with Abū Ḥanīfah, Abū Yūsuf or others in the School on some principle.

[45] Dasūqi, *al-Imām Muḥammad bin al-Ḥasan*, 216.

[46] Ibid., 217.

[47] Ibid., 230.

[48] Ibid., 231.

[49] *Uṣūl al-Sarakhsi*, 1:318.

[50] Dasūqi, *al-Imām Muḥammad bin al-Ḥasan*, 2:231-232.

[51] *Uṣūl al-Sarakhsi*, 1:319.

[52] Dasūqi, *al-Imām Muḥammad bin al-Ḥasan*, 223-24.

[53]*Uṣūl al-Sarakhsi*, 1:132.

[54] The tradition in which the command is mentioned has been narrated in *Sunan al-Dāruquṭni*, Kitāb al-Ṭahārah, Bāb Najāsat al-Bawl wa 'l-Amr bi 'l-Tanazzuh minh. The tradition about punishment in grave because of not avoiding the urine has been narrated by many Companions. See, for instance: Bukhāri, Kitāb al-Wuḍū', Bāb Min al-Kabā'ir 'allā Yastatira min al-Bawl.

[55] Bukhāri, Kitāb al-Wuḍū', Bāb Abwāl al-Ibil wa 'l-Dawābb wa 'l-Ghanam wa Marābiḍihā; Kitāb al-Maghāzi, Bāb Qiṣṣat 'Ukl wa 'Uraynah.

[56] Dasūqi, *al-Imām Muḥammad bin al-Ḥasan*, 224-25.

[57] *Uṣūl al-Sarakhsi*, 1:131-32.

[58] See for explanation of this disagreement: Abū Bakr Muḥammad b. Abī Sahl al-Sarakhsi, *al-Mabsūṭ*, ed. Ḥasan Ismā'īl al-Shāfi'i (Beirut: Dār al-Kutub al-'Ilmiyyah, 1997), 1:164-67.

[59] Dasūqi, *al-Imām Muḥammad bin al-Ḥasan*, 223.

[60] "In what the sky waters: one-tenth." 'Abd al-Razzāq al-Ṣan'āni, *Muṣannaf*, Kitāb al-Zakāh, Bāb Mā Tasqī al-Samā'.

[61] "No *ṣadaqah* in what is less than five *awsuq*." Bukhāri, Kitāb al-Zakāh, Bāb Zakāt al-Wariq.

[62] Sarakhsi, *al-Mabsūṭ*, 3:3-6.

[63] For views of Orientalists on *talfiq* see: Schacht, *Introduction to Islamic Law*, 106; Coulson, *A History of Islamic Law*, 196-201.

[64] Mawlānā Amīn Aḥsan Iṣlāḥi (d. 1997) briefly mentioned this view in his commentary on the verses about the punishment of *ḥirābah* (*Tadabbur-i-Qur'ān* (Lahore: Faran Foundation, 2001), 2:505-508.), and gave details while commenting on the verses about the punishment for *zinā* (Ibid., 5:361-377). See for a detailed analysis of this issue: Muhammad Mushtaq Ahmad, "The Crime of Rape and the Ḥanafi Doctrine of *Siyāsah*," *Pakistan Journal of Criminology*, 6:1 (2014), 161-192.

[65] Muhammad Tufail Hashimi, *Ḥudūd Ordinance Kitāb-o-Sunnat kī Roshni men* (Peshawar: National Research and Development Foundation, 2005), 70-75.

[66] The jurists have no disagreement on this issue. See: Abū Bakr al-Jaṣṣāṣal-Rāzi, *Mukhtaṣar Ikhtilāf al-'Ulamā'*, ed. 'Abdullah Nadhir Ahmad, (Beirut: Dar al-Bashā'ir al-Islāmiyyah, 1416/1995), 3:277-281; Abu 'l-Walid Muhammad b. Ahmad Ibn Rushd al-Ḥafid, *Bidāyat*

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al-Mujtahid wa Nihāyat al-Muqtaṣid, ed. ʻAbdullah al-ʻAbadi, (Cairo: Dar al-Salam, 1995), 4:2239; Muwaffaq al-Dīn Abū Muḥammad ʻAbdullah Ibn Qudāmah al-Maqdisi, *al-Mughni*, eds. ʻAbdullah al-Muḥsin al-Turki and ʻAbd al-Fattāḥ Muḥammad al-Ḥulw, (Riyadh: Dar ʻĀlam al-Kutub, 1417/1997), 12:309.

[67] For a detailed exposition of this principle, see: Muhammad Mushtaq Ahmad, "The Notions of *Dār al-Ḥarb* and *Dār al-Islām* in Islamic Law with Special Reference to the Ḥanafi Jurisprudence", *Islamic Studies*, 47:1 (2008), 5-37.

[68] For accepting a new principle, the jurists prescribe the 'compatibility' test, which ensures that the new principle is not a stranger to the system and can be accommodated with the existing law.

[69] Nyazee, *Islamic Jurisprudence*, 327-338.

[70] Imran Ahsan Khan Nyazee, *al-Hidāyah: The Guidance* (Bristol: Amal Press, 2006), xiii.

[71] Muhammad Amin Ibn ʻĀbidīn al-Shāmi, *Sharḥ ʻUqūd Rasm al-Mufti* (Lahore: Sohail Academy, 1396/1976), 16-20; Imran Ahsan Khan Nyazee, *The Secrets of Uṣūl al-Fiqh: Rules for Issuing Fatwa* (Islamabad: Federal Law House, 2013), 23-24.

[72] Ibn ʻĀbidīn, *Sharḥ ʻUqūd Rasm al-Mufti*, 6-8; Nyazee, *The Secrets of Uṣūl al-Fiqh*, 24-26.

[73] Nyazee, *Islamic Jurisprudence*, 334.

[74] Ibn ʻĀbidīn, *Sharḥ ʻUqūd Rasm al-Mufti*, 6.

[75] A famous example is that of the validity of *musāqah* and *muzāraʻah*. Abū Ḥanīfah deems these transactions invalid while the Two Disciples deem them valid and the Ḥanfi School has accepted this latter view.

[76] See for details: Nyazee, *The Secrets of Uṣūl al-Fiqh*, 57-82, particularly 58-64.

[77] Ibn ʻĀbidīn, *Sharḥ ʻUqūd Rasm al-Mufti*, 17-18.

[78] Ibid., 7.

[79] Ibid.

[80] Ibid.,7-8; Nyazee, *Islamic Jurisprudence*, 335.

[81] Ibn ʻAbidin, *Sharḥ ʻUqūd Rasm al-Mufti*, 8.

[82] Nyazee, *Islamic Jurisprudence*, 335-336.

[83] Nyazee draws parallels between the work of the *mujtahidūn* and that of the legislature and between the work of the *aṣḥāb al-takhrīj* and others with that of the superior judiciary. (*Islamic Jurisprudence*, 336-338). Nyazee's theory of legislation and theory of adjudication is a great contribution towards understanding the internal intricacies of the Islamic legal system and calls for further research in this area.

[84] Ibid., 341.

[85] Ibid., 341-42.

[86] These six books are: *al-Aṣl*, *al-Ziyādāt*, *al-Jāmiʻ al-Kabīr*, *al-Jāmiʻ al-Ṣaghīr*, *al-Siyar al-Kabīr* and *al-Siyar al-Ṣaghīr*. Al-Ḥākim al-Mirwazzi (d. 334), after removing repetitions and some minor cases, combined these six texts in one book called *al-Kāfi fī Furūʻ al-Ḥanafiyyah*. Sarakhsi's *al-Mabsūṭ* is a thirty-volume commentary on this latter book which he dictated to his students from inside a pit in which he was imprisoned.

[87] Nyazee, *al-Hidāyah*, xiv.

[88] Ibid.,xix-xxiii. See also: Ibn ʻĀbidīn, *Sharḥ ʻUqūd Rasm al-Mufti*, 11-16.

[89] Ibn ʻĀbidīn, *Sharḥ ʻUqūd Rasm al-Mufti*, 15-16.

[90] Some of the famous *shurūḥ* ofthe *Hidāyah* include: *Fatḥ al-Qadīr* by Kamāl al-Dīn Ibn al-Humām al-Iskandari; *al-Bināyah* by Badr al-Din al-ʻAyni; and *al-ʻInāyah* by Akmal al-Dīn al-Bābarti.

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[91] A famous example is that of the ḥāshiyah of Muḥammad Amīn Ibn 'Ābidīn al-Shāmi titled *Radd al-Muḥtar* on *al-Durr al-Mukhtār* of 'Alā' al-Dīn Muḥammad b. 'Ali al-Ḥaṣkafi (d. 1088/1677) which, in turn, is *Sharḥ* of the *matn* of *Tanwīr al-Abṣār* by Muḥammad b. 'Abdullah al-Tamartāshi (d. 1004/1596).

[92] Ibn 'Ābidīn, *Sharḥ 'Uqūd Rasm al-Mufti*, 12.

[93] In a separate article, with the help of the invaluable work of Ibn 'Ābidīn on the legal consequences of the offence of blasphemy, I have given a detailed example of how the official position of the School is determined. Muhammad Mushtaq Ahmad, "Pakistani Blasphemy Law between *Ḥadd* and *Siyāsah*: A Plea for Reappraisal of the *Ismail Qureshi Case*." (Forthcoming)

[94] Nyazee, *Islamic Jurisprudence*, 340-341.

[95] In what sense the decisions of the great jurists of the School are deemed "precedents" explains the true meaning of the doctrine of *taqlid*. See, Nyazee, *Islamic Jurisprudence*, 333-338.

[96] For an explanation of the phrase Elders of the School, see Nyazee, *The Secrets of Uṣūl al-Fiqh*, 58-64 and 85-86.

[97]*Islamic Jurisprudence*, 341.

[98] Ibid., 341-343.

[99] Zayn al-'Ābidīn b. Ibrāhīm Ibn Nujaym (d. 970 CE/1563 AH) and the influence of the Shāfi'i jurist Jalāl al-Dīn al-Suyūṭi (d. 911 AH/1505 CE) who wrote a similar book with similar title is more than obvious on this work.

[100] Ibn 'Ābidīn, *Sharḥ 'Uqūd Rasm al-Mufti*, 8.

[101]*Risālah fi 'l-Uṣūl allati 'Alayhā Madār Furū' al-Ḥanafiyyah* by Imām Abu 'l-Ḥasan 'Ubaydullah b. al-Ḥusayn al-Karkhi (d. 340 AH/951 CE) is among the earliest –and by far the best– compilations of the principles. Najm al-Dīn Abū Ḥafṣ 'Umar b. Aḥmad al-Nasafi (d. 537 AH/1142 CE) added to it explanatory notes and examples of cases. See: *Uṣūl al-Karkhi ma' Dhikr Amthiliatihā wa Naẓā'irihā wa Shawāhidihā* (Karachi: Mir Muhammad Kutubkhana, n.d.). This *risālah* has thirty-nine principles. Nyazee has translated these principles, notes and cases in his *Islamic Legal Maxims*, 245-280.Among the disciples of Karkhi, it was Abū Bakr Aḥmad b. 'Ali al-Jaṣṣāṣ al-Rāzi (d. 370 AH/980 CE), who further built upon the work of his great master. See his: *al-Fuṣūl fi 'l-Uṣūl*, ed. 'Ujayl Jāsim al-Nashmi, (Kuwait: Ministry of Religious Affairs, 1414/1994). However, Nyazee is of the opinion that the works of Abū Zayd 'Ubaydullah b. 'Umar b. 'Īsā al-Dabbūsi (d. 430 AH/1038 CE) is more important although scholars have not given it the attention it deserves. Nyazee shows that Dabbūsi greatly influenced not only the great Ḥanafi jurist Sarakhsi but also the revivalists of the Shāfi'i legal theory Imām al-Ḥaramayn al-Juwayni and his disciple Ghazāli. Dabbūsi's *Ta'sīs al-Naẓar*, ed. Muṣṭafā Muḥammad al-Dimashqi (Beirut: Dar Ibn Zaydun, n.d.) and *Taqwīm al-Adillah fi Uṣūl al-Fiqh*, ed. Al-Shaykh Khalil Muḥyī al-Dīn, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1421/2001), indeed contain treasure-troves of the legal principles and Nyazee has heavily relied in his *Islamic Legal Maxims* on these works. He also translated excerpts from *Ta'sīs al-Naẓar*. See: *Islamic Legal Maxims*, 281-302.

[102] For a selection of more than fifty principles taken from *Kitāb al-Ḥudūd* in *al-Mabsūṭ*, see Appendix One of this dissertation.

[103] This simply means that the interpretation of these texts already adopted by the School must be accepted. Sometimes people refer to the report of a saying of Abū Ḥanīfah: "When a *ḥadīth* is sound, take it as my legal position." See for a detailed discussion on the correct interpretation of this statement: Nyazee, *The Secrets of Uṣūl al-Fiqh*, 65-68.

[104] Nyazee, *Islamic Jurisprudence*, 339.

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