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1

JURISTIC TYPOLOGIES: A FRAMEWORK FOR ENQUIRY

I

A juristic typology is a form of discourse that reduces the community of legal specialists into manageable, formal categories, taking into consideration the entire historical and synchronic range of that community's juristic activities and functions. One of the fundamental characteristics of a typology is the elaboration of a structure of authority in which all the elements making up the typology are linked to each other, hierarchically or otherwise, by relationships of one type or another. The synchronic and diachronic ranges of a typology provide a synopsis of the constitutive elements operating within a historical legal tradition and within a living community of jurists. It also permits a panoramic view of the transmission of authority across types, of the limits on legal hermeneutics in each type, and of the sorts of relationships that are imposed by the interplay of authority and hermeneutics.

The evolution of the notion of the typology as a theoretical construct or conceptual model presupposes a conscious articulation of the elements that constitute them. To put it tautologically, since typologies purport to describe certain realities, these realities must, logically and historically speaking, predate any attempt at typification. And since Islamic juristic typologies presuppose, by virtue of their hermeneutical constitution, loyalty to the *madhhab* or legal school, then it is expected that no typology can be possible without positing a school structure.

Furthermore, and as a prerequisite to the formation of a typology, there must be developed a fairly sophisticated historical account of the school. In other words, no typology can be formulated without a substantial repertoire of the so-called *ṭabaqāt* (bio-bibliographical) literature. This literature, in its turn, totally depends on the conception of the *madhhab* as a doctrinal entity composed of jurist–scholars, their tradition of learning, and profession. The final formation of the schools was thus a

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precondition to the emergence of *ṭabaqāt* literature, just as this literature was a prerequisite for the rise of typologies.

Since the legal schools took shape by the middle of the fourth/tenth century,[1] and since the first *ṭabaqāt* works of the jurists seem to have been written by the end of the fourth/tenth century and the beginning of the fifth/eleventh,[2] we must not expect to find any typology emerging before the middle or end of the latter century. Indeed, it is no surprise that our sources have not revealed a typology prior to that of the distinguished Andalusian jurist Abū al-Walīd Muḥammad Ibn Rushd (d. 520/1126).

II

One year before his death, the Cordoban jurist Ibn Rushd was called upon to answer what is in effect three questions:[3] First, what are the qualifications of the *muftī* in "these times of ours" according to the school of Mālik? Second, what is the status of the *qāḍī*'s ruling if he is a *muqallid* within the Mālikite school and if, in his region, no *mujtahid* is to be found? Should his rulings be categorically accepted, categorically revoked, or only provisionally accepted? Third, should the ruler – with respect to whom the *qāḍī*s are but *muqallid*s – accept or revoke their decisions?

[1] This is based on extensive research by this writer as well as on Christopher Melchert, *The Formation of the Sunni Schools of Law* (Leiden: E. J. Brill, 1997). See also nn. 1 and 3 of the preface, above.

[2] It suffices here to quote one of the most important legal biographers in Islam, Tāj al-Dīn al-Subkī, who could not find a Shāfiʿite biography earlier than the beginning of the fifth/eleventh century. In explaining his sources, he states: "I have searched hard and researched much in order to find those who wrote on *ṭabaqāt*. The first one who is said to have discoursed on that [subject] is the Imām Abū Ḥafṣ ʿUmar Ibn al-Muṭawwiʿī [d. 440/1048] . . . who wrote a book he entitled *al-Mudhahhab fī Shuyūkh al-Madhhab*. After him, the Qāḍī Abū al-Ṭayyib al-Ṭabarī [d. 450/1058] wrote a short work." See Subkī, *Ṭabaqāt al-Shāfiʿiyya al-Kubrā*, 6 vols. (Cairo: al-Maktaba al-Ḥusayniyya, 1906), I, 114. Furthermore, in his *al-Majmūʿ: Sharḥ al-Muhadhdhab*, 12 vols. (Cairo: Maṭbaʿat al-Taḍāmun, 1344/1925), I, 40–54, Sharaf al-Dīn al-Nawawī devotes a section to *adab al-muftī* and there declares his debt to the works of Ibn al-Ṣalāḥ and ʿAbd al-Wāḥid al-Ṣaymarī (d. 386/996), another Shāfiʿite who wrote a work with the same title. But judging by the typology put forth by Nawawī, it is clear that his debt is exclusively to Ibn al-Ṣalāḥ, since nowhere in his discussion of the types of *muftī*s does he mention Ṣaymarī. On Ṣaymarī and his work, see Amīn b. Aḥmad Ismāʿīl Pāshā, *Īḍāḥ al-Maknūn fī al-Dhayl ʿalā Kashf al-Ẓunūn*, 6 vols. (repr., Beirut: Dār al-Kutub al-ʿIlmiyya, 1992), I, 633.

[3] Muḥammad b. Aḥmad Ibn Rushd, *Fatāwā Ibn Rushd*, ed. al-Mukhtār b. Ṭāhir al-Talīlī, 3 vols. (Beirut: Dār al-Gharb al-Islāmī, 1978), III, 1494–1504; Aḥmad b. Yaḥyā al-Wansharīsī, *al-Miʿyār al-Mughrib wal-Jāmiʿ al-Muʿrib ʿan Fatāwī ʿUlamāʾ Ifrīqiyya wal-Andalus wal-Maghrib*, 13 vols. (Beirut: Dār al-Gharb al-Islāmī, 1401/1981), X, 30–35.

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Ibn Rushd answered that the community of jurists consisted of three groups. The first had accepted the validity of Mālik's school by following it without knowledge of the evidence upon which the school's doctrine was based. This group concerned itself merely with memorizing Mālik's views on legal questions along with the views of his associates. It does so, however, without understanding the import of these views, let alone distinguishing those which are sound from those which are weak.

The second group deemed Mālikite doctrine valid because it had become clear to its members that the foundational principles on which the school was based were sound. Accordingly, they took it upon themselves to study and learn by heart Mālik's legal doctrines alongside the doctrines of his associates (*aṣḥāb*).[4] Despite the fact that their legal scholarship was not proficient enough to enable them to derive positive legal rulings from the texts of revelation or from the general precepts laid down by the founders, they also managed to learn how to distinguish between those views that accord with the school's principles and those that do not.

The third group also came to a deep and thorough understanding of Mālik's doctrine as well as the teachings of his associates. Like the second group, this group knew how to differentiate between the sound views that accord with the school's general precepts and those that are weak and therefore are deemed to stand in violation of these precepts. However, what distinguished the members of this group from those belonging to the other two is that they were able to reason on the basis of the revealed texts and the general principles of the school. Their knowledge encompassed the following topics: the legal subject matter of the Quran; abrogating and abrogated verses; ambiguous and clear Quranic language; the general and the particular; sound and weak legal *ḥadīth*; the opinions of the Companions, the Followers, and those who came after them throughout the Islamic domains; doctrines subject to their agreement and disagreement; the Arabic language; and methods of legal reasoning and the proper use in them of textual evidence.

Now in terms of their function, the members of the first group are disqualified from issuing *fatwā*s. True, they may have memorized the

[4] The term *aṣḥāb* (pl. of *ṣāḥib*) here means those who studied with Mālik, as well as those who happened, generations later, to follow his doctrines together with the doctrines of his immediate students. On *ṣuḥba* in the educational context, see George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981), 128–29; Michael Chamberlain, *Knowledge and Social Practice in Medieval Damascus, 1190–1350* (Cambridge: Cambridge University Press, 1994), 118–22; Jonathan Berkey, *The Transmission of Knowledge in Medieval Cairo* (Princeton: Princeton University Press, 1992), 34–35.

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founding doctrines of the Mālikite school, but they have not yet developed the critical apparatus which allows one to discriminate between doctrines that are sound and those that are less sound. What they possess, in other words, is not *ʿilm*, i.e., the genuine understanding of the quality of textual evidence and the lines of legal reasoning through which legal norms are derived. All they have managed to do is to acquire by rote the school's doctrine, which permits them to issue *fatwā*s only for themselves, that is, in situations where they are personally involved (*fī ḥaqqi nafsihi*). Should there be more than one opinion on the matter, then members of this group would be governed by the same rule applied to the layman (*ʿāmmī*), namely, that they are to accept one of the following options: (1) to adopt whichever opinion they deem suitable; (2) to investigate the credentials of the jurists who held these opinions so as to adopt the view of the most learned of them; and (3) to choose the most demanding of the available opinions in order to be on the safe side.

Since the members of the second group have distinguished themselves by a proficient knowledge of the school's doctrines and general precepts, they are qualified to give legal opinions lying within the doctrinal boundaries of the school of Mālik and his associates. In other words, they are not to attempt any form of *ijtihād* which may lead to the discovery of an unprecedented legal ruling.

By contrast, those belonging to the third group do have the freedom to exercise *ijtihād* since they have perfected the tools of original legal reasoning on the basis of the revealed texts. The qualifications permitting them to practice *ijtihād* are not a matter of quantitative memorization of legal doctrines; rather, they are the refined qualities of legal reasoning and an intimate knowledge of the Quran, the Sunna, and consensus. But how are these qualifications to be recognized? Ibn Rushd maintains that acknowledgment of an accomplished jurist who has reached such a distinguished level of legal learning must come from both the community of legal specialists in which he himself lives, and from the jurist himself. The judgment is thus both objective and subjective.[5]

Let us recall that the first question addressed to Ibn Rushd referred in part to the *muftī*'s qualifications during "these times of ours." It is remarkable, and quite significant for us – as shall become clear later – that Ibn Rushd did not view his own age as being any different from the ones preceding it, insisting that "the attributes of the *muftī* which he should fulfill do not change with the changing of times."[6]

[5] Ibn Rushd, *Fatāwā*, III, 1503. [6] Ibid.; Wansharīsī, *al-Miʿyār al-Mughrib*, X, 34.

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Ibn Rushd's tripartite classification of *muftī*s is intended to prepare the ground for a reply to the first question, namely, What are the qualifications of the *muftī* according to Mālikite doctrine? The answer is that, in light of the classification set forth earlier, no one is entitled to issue *fatwā*s – whether in accordance with Mālikite law or otherwise – unless he is able to investigate the textual sources of the law by means of the proper tools of legal reasoning. Put differently, if the jurist is unable to reach this level of competence, then no matter how extensive his knowledge of Mālikite law he lacks the necessary qualifications of a *muftī*. Thus, the prerequisite is the attainment of *ijtihād*, and *ijtihād*, Ibn Rushd seems to say, cannot be confined to any particular school or to boundaries preset by any other *mujtahid*, be he a contemporary, a predecessor or even the founder of a school.

As for the second question, the solution may be found in the discussion of the second category of jurists, namely, those who study and learn by heart the Mālikite doctrines and who are able to distinguish between sound and unsound opinions, but who are unable to derive positive legal rulings from the texts of revelation or from general precepts laid down by the masters. It is clear that Ibn Rushd places *qāḍī*s in this category by process of elimination, since they fit neither in the first category of *muqallid*s nor in the third, which comprises only *mujtahid*s. These *qāḍī*s are permitted to rule on cases already elaborated in Mālikite law, but in cases where there is no precedent they are obliged to seek the opinion of a *muftī* who is qualified to practice *ijtihād*, whether or not this *muftī* is to be found in the locality where the judge presides. Here, Ibn Rushd is merely acknowledging an age-old practice where jurists were in the habit of soliciting the opinion of a distinguished *muftī*.[7]

The third question Ibn Rushd answers summarily: If a *muqallid* presiding as a judge should rule on a matter requiring *ijtihād*, then his decision would be subject to judicial review. The ruler's duty is to decree that such judges should not dabble in matters involving *ijtihād* but should refer these matters to jurists who are properly qualified.[8]

The issues which gave rise to these questions were the subject of heated debate among the jurists of early twelfth-century Tangiers. Failing to persuade each other, these jurists addressed themselves to Ibn Rushd, at the time the most distinguished and recognized legal scholar in the

[7] Ibn Rushd's own *fatwā*s, published in three volumes, reflect this reality. A large number of the *istiftā*'s came from both *qāḍī*s and private individuals who resided in nearby and distant Spanish and North African locales. The present *fatwā*, for instance, came from Tangiers.

[8] Ibn Rushd, *Fatāwā*, III, 1504.

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Mālikite school. The authority that Ibn Rushd carried was beyond dispute, whether during his lifetime or centuries thereafter. What he said was taken seriously, and his *fatwā*s and other writings became, over the course of the following centuries, authoritative statements that were incorporated into law manuals, commentaries, and super-commentaries.[9] The *fatwā* discussed above, for instance, was incorporated in a number of works, including Wansharīsī's *Miʿyār*, Burzulī's *Nawāzil*, al-Mahdī al-Wazzānī's *Nawāzil*, Ibn Salmūn's *al-ʿIqd al-Munaẓẓam*, and Ḥaṭṭāb's *Mawāhib al-Jalīl*.[10] The point to be made here is that Ibn Rushd's opinion continued to have relevance for centuries after his death, and as such it stood as an authoritative statement reflecting a juristic reality within the Mālikite school both during and long after the lifetime of this eminent jurist.

I shall reserve further commentary on Ibn Rushd's *fatwā* to a later stage in the discussion, but for now it is worth noting one significant aspect. The point of departure in this *fatwā* is that the limits of legal interpretation are confined to Mālikism, an assumption that seems implicit in the question posed by the jurists of Tangiers. The three questions they submitted to Ibn Rushd revolved exclusively around the tasks and hermeneutical skills of *muftī*s and *qāḍī*s. These were the parameters that Ibn Rushd accepted in his discussion of the first two types of jurists, whom he regarded as indeed obliged to conform to school doctrine since they lacked the tools of *ijtihād* (although the second type was still permitted to issue *fatwā*s). When he came to discuss the third type, however, Ibn Rushd parted company with his fellow jurists. In his eyes, the *muftī–mujtahid* was not bound by the limitations of the school, and his task (once the case proved to require *ijtihād*) entailed a direct confrontation with the revealed texts. Dependence on the opinions and doctrines of the predecessors – that is, on established authority – was no longer relevant nor needed at this stage. Even *muftī*s of the second type were not permitted to issue *fatwā*s "according to Mālik's school" unless they themselves were able, through independent means, to verify the opinions they cited from earlier authorities. That is to say, once *ijtihād* enters the picture, independence of mind becomes a must. This is the context for Ibn Rushd's leading statement, which is of

[9] On the significance of incorporating *fatwā*s in law manuals and commentarial literature, see chapter 6, below.

[10] Editorial references to these works are to be found in Ibn Rushd, *Fatāwā*, III, 1496–97. Ḥaṭṭāb discusses Ibn Rushd's *fatwā* in Muḥammad b. Muḥammad al-Ḥaṭṭāb, *Mawāhib al-Jalīl li-Sharḥ Mukhtaṣar Khalīl*, 6 vols. (Ṭarāblus, Libya: Maktabat al-Najāḥ, 1969), VI, 94–96.

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particular significance for us: "The attributes of the *muftī* [–*mujtahid*] which he should fulfill do not change with the changing of times." Thus, the *ijtihād* of Mālik himself, and of the other founding masters of Mālikism, did not differ from that of later jurisprudents, including, probably, Ibn Rushd himself, who was known to have exercised *ijtihād* in a number of cases.[11]

If later *mujtahid*s were as qualified as the founding masters, however, did this mean that later *mujtahid*s could establish their own schools? To the best of my knowledge, Ibn Rushd does not address this question. But we can generally infer from his *ijtihād*ic activities[12] and writings that undertaking fresh *ijtihād* in one or more cases does in no way entail either the abandonment of a legal school or the establishment of a new one. For Ibn Rushd, this simply was not an issue. The three types of jurists he articulated operated entirely within the Mālikite system, with one significant exception. When *muftī*s of the third type encountered a case necessitating *ijtihād*, they dealt with it as independent *mujtahid*s, in the sense that they were not bound by the criteria which the founding masters had established for their own legal construction. This activity, however, though independent, did little to alienate them or their new opinions from the Mālikite school. On the contrary, the resulting opinions were added to the repertoire of the school's doctrine, and were memorized and debated in their turn by succeeding generations of jurists.

III

About a century later, another major jurist was faced with a similar question. This was Abū ʿAmr ʿUthmān Ibn al-Ṣalāḥ (d. 643/1245), a Shāfiʿite *muftī*, teacher, and author who lived in Damascus for a good part of his life.[13] Ibn al-Ṣalāḥ wrote at a time when the legal schools had already taken their final shape, which explains why he framed his discussion in terms of affiliation and loyalty to the school, and in a more developed and self-conscious manner than we found in Ibn Rushd.

[11] See, for example, Wael B. Hallaq, "Murder in Cordoba: *Ijtihād*, *Iftā*' and the Evolution of Substantive Law in Medieval Islam," *Acta Orientalia*, 55 (1994): 55–83, and Burzulī's commentary on the *fatwā* of Ibn Rushd discussed here, in Ibn Rushd, *Fatāwā*, III, 1504–06.

[12] See previous note.

[13] See his biography in Taqī al-Dīn b. Aḥmad Ibn Qāḍī Shuhba, *Ṭabaqāt al-Shāfiʿiyya*, ed. ʿAbd al-ʿAlīm Khān, 4 vols. (Hyderabad: Maṭbaʿat Majlis Dā'irat al-Maʿārif al-ʿUthmāniyya, 1398/1978), II, 144–46; ʿAbd al-Qādir b. Muḥammad al-Nuʿaymī, *al-Dāris fī Tārīkh al-Madāris*, ed. Jaʿfar al-Ḥusaynī, 2 vols. (Damascus: Maṭbaʿat al-Taraqqī, 1367/1948), I, 20–21.

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He begins by dividing the *muftī*s into two categories, independent (*mustaqill*) and dependent (*ghayr mustaqill*),[14] two terms that augur the emergence of a technical language through which juristic typification came to be articulated. The first category stands by itself, signaling the momentous achievement of the school founders. The second category encompasses four types to which a fifth informal type is added. Thus, all in all, Ibn al-Ṣalāḥ's typology consists of the following categories and types:

Category 1 (one type)
Category 2 (types 1, 2, 3, 4, and 5)

*Muftī*s of the first category, which he also identifies as absolute (*muṭlaq*), possess expert knowledge of *uṣūl al-fiqh*, which includes Quranic exegesis, *ḥadīth* criticism, the theory of abrogation, language, and the methods of exploiting the revealed texts and of deriving rulings therefrom. They are also knowledgeable in the realms of positive law (having mastered its difficult and precedent-setting cases), the science of disagreement (*khilāf*) and arithmetic. The *mujtahid*s in this category must maintain these qualifications in all areas of the law, thereby distinguishing themselves from lesser *mujtahid*s.[15]

Those who possess these lofty qualifications are able to dispense with the communal duty, the *farḍ al-kifāya*, which is incumbent upon all members of the community but discharged if certain members could fulfill it. They follow no one and belong to no school, the implication being – given the then current perception of the schools' history – that this definition applies to the founders of their own schools, the imams, who appeared on the scene during a fleeting moment in history. Ibn al-Ṣalāḥ declares these jurists long extinct, having left behind others to tread in their footsteps.

Those who follow in their path make up the second category, the dependent *muftī*s who are by definition affiliated with the founding masters, the imams. Ibn al-Ṣalāḥ falls short of making any explicit connection between the two types, but the connection seems to be assumed and appears to follow logically. The assumption is necessary because the entire community of *muftī*s is conceived here in terms of leaders and followers, of founding masters and succeeding generations of adherents who are progressively, in diachronic terms, inferior in knowledge to the

[14] Abū ʿAmr ʿUthmān b. ʿAbd al-Raḥmān Ibn al-Ṣalāḥ, *Adab al-Muftī wal-Mustaftī*, ed. Muwaffaq b. ʿAbd al-Qādir (Beirut: ʿĀlam al-Kutub, 1407/1986), 86 ff.
[15] Ibid., 89–91.

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imams. This is perhaps why, in the course of the discussion, Ibn al-Ṣalāḥ changes the designation of the second category from *ghayr mustaqill* to *muntasib*, the affiliated *muftī*.

This second category is in turn divided into four (possibly five) types:

Type 1: Curiously, the first type is far from being a *muqallid*, i.e. one who follows the positive doctrine of the founding master or absolute *mujtahid*. Rather, this type of *muftī* possesses all the qualifications found in the absolute, independent *mujtahid*, and seems to equal him in every way. However, his affiliation with the latter is due to the fact that the *muftī* has chosen to follow his particular methods of *ijtihād* and to advocate his doctrines. In this context, Abū Isḥāq al-Isfarā'īnī (d. 418/1027) is on record as saying that this was the case with a number of *mujtahid*s who affiliated themselves with the school founders not out of *taqlīd* but rather because they found the imams' methods of *ijtihād* most convincing. What he in effect means here is that the affiliation was created on the grounds that the *muftī* of the first sub-type happened to believe in the soundness of the *ijtihād* methods adopted by the absolute *mujtahid* because he had arrived independently at the same conclusions. *Taqlīd* plays no role here, because the adoption of the founder's *ijtihād* methods presupposes the existence of the quality of *ijtihād* which enables him to determine that the imam's methodology is the most sound.

This being the case, the distinction between these two types of *mujtahid* is drastically blurred, which raises, for instance, the question: Why should jurists of the second type "follow" the first if they are equally qualified? Or to put it another way: Why should those of the second type not establish their own schools? It is probably this ambiguity, or blurring of distinctions, that prompted Ibn al-Ṣalāḥ to interject a clarifying statement: The claim that the affiliated *mujtahid*s are devoid of all strands of *taqlīd* is incorrect, for they, or *most of them* (*aktharuhum*), have not completely mastered the sciences of absolute *ijtihād* and thus have not attained the rank of independent *mujtahid*s. This assertion seems to stand in flagrant contradiction to what Ibn al-Ṣalāḥ had said a little earlier, namely, that this kind of *muftī* possesses all the credentials of the absolute, independent *mujtahid* and stands on a par with him in nearly every way. The difficulty in accounting for the role of these *mujtahid*s in the school hierarchy is underscored by Ibn al-Ṣalāḥ's qualification "most of them." This is significant since it allows for a certain blurring of distinctions between this type of *muftī* and the absolute *mujtahid*. Isfarā'īnī's assertion thus remains largely unaffected, while Ibn al-Ṣalāḥ's undifferentiated reality tends to accord with the facts of history, for we now know that the eponyms were not exclusively responsible for the rise and evolution of the schools.[16]

[16] A point we shall develop in chapter 2, below. See also Wael B. Hallaq, "Was al-Shafiʿi the Master Architect of Islamic Jurisprudence?" *International Journal of Middle East Studies*, 4 (1993): 587–605.

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Type 2: The second type is the limited *mujtahid* (*muqayyad*) who is fully qualified to confirm and enhance the doctrines of the absolute *mujtahid*. His qualifications, however, do not allow him to step outside the principles and methods laid down by the imam of his school. He knows the law, legal theory, and the detailed methods of legal reasoning and linguistic analysis. He is an expert in *takhrīj*[17] and in deducing the law from its sources.[18] This last qualification becomes necessary because he is held responsible for determining the law in unprecedented cases according to the principles of his imam and of the school with which he is affiliated. Despite his ability to perform *ijtihād*, these qualifications of his are marred by a weakness in certain respects, such as in his knowledge of *ḥadīth* or in his mastery of the Arabic language. These weaknesses, Ibn al-Ṣalāḥ observes, have in reality been the lot of many *muftī*s who happened to be of this type. He also finds it easier to cite examples of such *muftī*s than he was when articulating the first type. He declares, for instance – without invoking the attestation of other authorities (as he did with Isfarā'īnī before) – that a certain class of eminent Shāfiᶜite jurists did belong to this type, calling these latter *aṣḥāb al-wujūh* and *aṣḥāb al-ṭuruq*.[19]

The relationship existing between the revealed texts and the absolute *mujtahid* appears identical to that which links the imam's founding positive doctrines to the limited *mujtahid* of the second type. This latter, in other words, derives rulings for unprecedented cases on the basis of the imam's doctrines, just as his imam derived his own doctrines from the revealed sources. In rare cases, he may even embark on *ijtihād* in the same manner as the *muftī* of the first type does. At a later stage of the discussion, Ibn al-Ṣalāḥ develops this point. He argues that in unprecedented cases the limited *mujtahid* is permitted to conduct *ijtihād* in the same manner as the absolute *mujtahid*. Shāfiᶜite *mujtahid*s who have mastered the fundamental principles (*qawāᶜid*) as laid down by Shāfiᶜī, and who are fully trained in his methods of legal reasoning, are considered to have the same abilities as the absolute *mujtahid* does. In fact, Ibn al-Ṣalāḥ continues, such *mujtahid*s may even be more capable than the absolute *mujtahid*, for they, we understand, have lived at a time when the fundamental school principles have long been prepared and established. Such tools as were available to them were never within the reach of the absolute *mujtahid*. Thus, Ibn al-Ṣalāḥ seems to say, they enjoy a definite advantage.

[17] For a detailed account of *takhrīj*, see chapter 2, sections III–IV, below.

[18] In fact, Jalāl al-Dīn al-Suyūṭī calls this type of jurist *mujtahid al-takhrīj* since the characteristic activity in which he is involved is that of *takhrīj*. See his *al-Radd ᶜalā man Akhlada ilā al-Arḍ wa-Jahila anna al-Ijtihād fī Kulli ᶜAṣrin Farḍ*, ed. Khalīl al-Mays (Beirut: Dār al-Kutub al-ᶜIlmiyya, 1983), 116.

[19] Norman Calder, "al-Nawawī's Typology of *Muftī*s and its Significance for a General Theory of Islamic Law," *Islamic Law and Society*, 4 (1996): 146, mistakenly defined *aṣḥāb al-wujūh* as "those [jurists] whose opinions are preserved." On this expression, see chapter 2, section III, below. On *aṣḥāb al-ṭuruq*, see chapter 5, section I, below.

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