# *Ikhtilāf* Before and After the Age of *Taqlīd:* Rethinking Islamic Law Through the Lens of Juristic Disagreements *

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## Abstract

Sharia law represents a profoundly diverse and adaptable legal system with *ʿilm al-ikhtilāf* (the science of juristic disagreement) as the most prominent manifestation of its comparative and pluralistic nature. While modern scholarship acknowledges the diverse origins of Islamic law, the pivotal role of foundational discords in its development remains understudied. This article unravels the intricate fabric and consequential implications of *ikhtilāf* by examining the emergence of Sharia law through the lens of juristic disagreements. It argues that a deeper historical understanding of the pluralistic bases and inherent social dynamism of Islamic law is essential for fostering nuanced discussions of the Muslim legal tradition and reinforcing the notion that diversity and flexibility are integral to its identity. This study is structured into three main sections. The first two sections explore the status and function of *ikhtilāf* across two historical phases: before and after the age of *taqlīd*. The third section retraces *ikhtilāf* as articulated in some of its key classical works.

**Keywords**: Islamic law, Islamic history, juristic disagreement, legal pluralism, *ʿilm al-ikhtilāf*

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## 1. Introduction

The perception of Sharia law in contemporary Western and Muslim contexts has been shaped by a confluence of cultural, political, and ideological factors, which has given rise to a spectrum of skewed representations. Sensationalism, contextual manipulations, and undue emphasis on corporal penalties (*ḥudūd*) and on radical interpretations are among its common mischaracterizations. Such rhetorical discourses stem not only from the prejudiced tendencies of Sharia's critics but also from a lack of historical awareness among some of its proponents. Caught between these opposing views, Sharia law has been reimagined in ways that conflate legal frameworks with religious beliefs, neglect cultural subtleties, and dismiss internal struggles, ultimately reducing a remarkably complex and flexible system to a monolithic and rigid construct.

The pluralistic and adaptive nature of Sharia law starkly manifests in the inclination of early Muslim generation to accommodate their differences of legal opinion. This tolerance produced and maintained a culture marked by continually "asking questions and disagreeing about their answers," which became a defining feature of the Muslim intellectual tradition at large (Walbridge 2002, 69). This intellectual ethos found its most marked expression within the domain of jurisprudence. What began as individual acts of curiosity and inquiry evolved into an established discipline called "*ʿilm al-ikhtilāf*" or "*ʿilm al-khilāf*" (the science of juristic disagreement). Methodologically and structurally, this discipline bears significant similarities to modern comparative law. Scholars of *ikhtilāf* engage in meticulous and rigorous comparative analyses of jurists' disputes, often with the explicit aim of harmonizing their divergent opinions and conclusions.

While Western scholars and historians of Islamic law acknowledge its pluralistic core foundation, the narrative of its inception and evolution has remained largely underexplored (Laabdi 2024). Yet, understanding this history is crucial for appreciating the significant role of the legal system and for challenging its dismissive portrayals. Reconstructing this narrative not only facilitates more informed discussions about the complexities of the Muslim legal tradition within its varied local contexts but also underscores its dynamic character. It stresses Sharia law's ability to adapt to perpetual shifts in social and moral paradigms, thus affirming its enduring relevance across different historical periods.

To systematically reconstruct of the narrative of Islamic legal pluralism, this study concentrates on the science of juristic disagreement (*ʿilm al-ikhtilāf*) during the formative and

classical periods. In this endeavor, it draws on Ibn Khaldūn's (d. 808/1406) historical account of Islamic law in his seminal work, *Al-Muqaddima*, to establish the pivotal role that disputes among jurists played in the evolutionary trajectory of Islamic law. Ibn Khaldūn's account is further enriched by the insights of other authoritative legal scholars, notably Ibn ᶜAbd al-Barr (d. 463/1070) and Ibn Ḥazm (d. 456/1064) of Cordova. The significance of these scholars to this study lies in their compelling portrayal of the early history of Islamic law as an intricate tapestry of disagreements. Their expositions serve as a foundational canvas on which I weave my own narrative in the following three sections. In the first section, I explore *ikhtilāf* prior to the establishment of the dominant Sunni legal Schools (*madhhabs*), in other words, before the age of *taqlīd*. The second section examines the evolution of *ikhtilāf* after the formation of the *madhhabs*. The third section traces the history of *ikhtilāf* through its main classical texts.

Before delving into the main study, it is essential to clarify two key distinctions. First, conceptually, this paper concentrates on 'Sharia law' rather than 'Sharia' in its broader sense. 'Sharia' broadly refers to the divine principles and rules articulated in the Quran and Sunna. In contrast, 'sharia law' denotes the human interpretation and application of these principles, thus clearly separating between a uniform divine construct and a flexible human legal system. Second, methodologically, I employ a dual periodization framework. The first distinguishes between the formative era (1st/7th - mid-2nd/8th century) and the classical era (2nd/8th - 7th/13th century). The second periodization system separates *ikhtilāf* works over two phases: before and after the formation of the Sunni schools of law. This division aligns with the pre-modern classification of Muslim scholars into an "earlier generation" (*al-mutaqaddimūn*) and a "later generation" (*al-mutaʾakhkhirūn*).

## 2. Legal Pluralism Before the Age of *Taqlīd*

In his seminal work, *Al-Muqaddima*, Ibn Khaldūn (d. 808/1406) dedicates two sections to the history of Sharia law (Ibn Khaldūn, *Al-Muqaddima*, 3:15-22). The first section expounds on jurisprudence (*fiqh*). The second on legal theory (*uṣūl al-fiqh*), including a discussion of what he calls '*al-khilāfiyyāt*'. In Franz Rosenthal's translation of *Al-Muqaddima*, '*khilāfiyyāt*' is rendered in the plural as "controversial questions" and "differences of opinion," suggesting individual divergences in legal matters (Ibn Khaldūn, *The Muqaddima*, 3:30). However, Ibn Khaldūn's narrative reveals that he invokes the term to denote an independent field of Islamic law. This is evident in devoting a separate discussion to *khilāfiyyāt* along dialectic (*jadal*) and

describing it as 'attachment' of legal theory (*uṣūl al-fiqh wa mā yataᶜallaqu bihi min al-jadal wal-khilāfiyyāt*) —'*mutaᶜalliqāt*' (lit. attachments) is used in classical Islamic scholarship to refer to a subfield of a broader science. Moreover, Ibn Khaldūn explicitly defines *khilāfiyyāt* as "*ṣinf min al-ᶜilm*" (class of knowledge), therefore underscoring its status as an independent domain of legal inquiry (Ibn Khaldūn, *Al-Muqaddima*, 3:20-21).

A distinctive element of Ibn Khaldūn's account of fiqh and uṣūl in the *Muqaddima* is his integration of the narrative of *ikhtilāf*, implying that grasping the formation of Islamic law is inherently tied to understanding the role of juristic conflicts, diversity, and change (Laabdi 2021, 52-56). Both sections of *Al-Muqaddima* underline that multiplicity of legal opinion was inevitable in early legal discourse and depict the nascent era of Islam as a time when Muslims freely embraced different rulings based on their individual contexts. Ibn Khaldūn was not the first to draw this picture. Three and a half centuries earlier, Ibn ᶜAbd al-Barr of Cordoba had portrayed a similar image. In *Jāmiᶜ Bayān al-ᶜIlm*, Ibn ᶜAbd al-Barr chronicles that from the era of the Caliphs through the period of the Followers (*tābiᶜīn*) and their successors (*atbāᶜ al-tābiᶜīn*), legal disputes were not only commonplace but widely acknowledged. He supports this view with numerous instances where jurists showed acceptance of *ikhtilāf*. A particularly illustrative example is a poem by Abū Muzāḥim al-Khāqānī (d. 325/937) the following two verses of which encapsulates this ethos (Maḥmaṣānī, *Mukhtaṣar*, 252-53):

*I choose from their views as I see,*
*Not bragging nor scornful in my decree.*
*My choice from their discord by law is allowed,*
*For Allah wills ease for all, His will is endowed.*

فآخذ من مقالهم إختياري وما أنا بالمباهي والمسامي
وأخذي باختلافهم مباح لتوسيع الله على الأنام

In the first hemistich, "I choose from their views as I see," al-Khāqānī eloquently expresses a firm embrace of diverse legal opinions. In the second, "my choice from their discord by law is allowed," he justifies this practice by asserting that it is legal permissible to adopt different views. Furthermore, he defends his position by framing *ikhtilāf* as a manifestation Allah's encompassing mercy —"for Allah wills ease for all." Ibn ᶜAbd al-Barr elaborates that such an attitude towards juristic disagreements represented one of two dominant approaches. The first reaction, initiated by al-Qāsim Ibn Muḥammad (d. 108/730), the grandson of the first Caliph, Abū Bakr (d. 13/634), and endorsed by key figures like al-Khāqānī, advocated for the highest

degree of tolerance towards divergent legal opinion. Proponent of this view considered these conflicts an expression of divine mercy and benevolence bestowed by Allah upon the Muslim community.

Al-Qāsim held that the disagreements among the Prophet's companions were integral to God's intention of broadening the range of legal options available to Muslims. According to this perspective, Muslims are free to choose from the various legal conclusions based on what best fits their circumstances. To illustrate this position, Ibn ᶜAbd al-Barr cites the case of Usāma b. Zayd who inquired of al-Qāsim whether worshippers should recite the Quran aloud or silently following the Imam during congregational prayers. Al-Qāsim's answered: "if you choose to recite aloud, you will follow one group of the Prophet's companions; if you choose not to recite, you will follow another group of the Prophet's companions" (Maḥmaṣānī, *Mukhtaṣar*, 254). Thus, he affirmed that both approaches legally valid.

The second attitude is attributed to prominent jurists such as Abū l-Ḥārith al-Layth of Egypt (d. 175/761), Abū ᶜAmr al-Awzāᶜī (d. 157/774) of Syria, along with other advocates of speculative reasoning (*naẓar*). For these scholars, *ikhtilāf* does not represent divine mercy in a way that allows for indiscriminate selection of different opinions. Instead, when divergent conclusions arise, only one passes as legally valid. Ibn ᶜAbd al-Barr references Imām Mālik's response to inquiries about the status of juristic disputes among the Companions, noting that they are "right and wrong" (Maḥmaṣānī, *Mukhtaṣar*, 255-56). Building upon this stance, Ibn ᶜAbd al-Barr asserts that in cases of contested legal matters, the *mujtahid* must prioritize the argument supported by compelling textual indicant (*dalīl*). However, when competing views are of similar strength or weakness, the *mujtahid* is required to choose the interpretation that most faithfully aligns with the tenets of the Quran and the Sunna.

Ibn ᶜAbd al-Barr further elaborated on this view through the hadith: "righteousness is that with which the soul *feels* at peace, and sin is what brings it discomfort; thus, leave what you doubt for what you do not doubt" (Maḥmaṣānī, *Mukhtaṣar*, 255). He reinforces this conception by asserting that the truth (*al-ḥaq*) is inherently devoid of contradiction, rendering the coexistence of two opposing legal rulings, such a prohibition and a permission, untenable. Consequently, he counsels that in the absence of clear evidence from the legal sources, jurists must exercise extreme caution and rigor in their pursuit of the truth. Therefore, once a *khilāf* opinion has been substantiated as accurate, the other jurists are obligated to uphold it.

Another important scholar who probed the early Muslim attitudes towards the diverse aspects of juristic differences, writing more than two centuries before Ibn Khaldūn, is Tāj al-Dīn al-Shahrastānī (d. 548/1153) in his seminal comparative study of religions, *Al-Milal wal-niḥal* (Shahrastānī, *Al-Milal*, 1:10-29). One notable dispute he discusses involves the news of Prophet Muhammad's death. ᶜUmar Ibn al-Khaṭṭāb (d. 23/644) vehemently ejected this news and denounced it as a fabrication spread by the Hypocrites to sow discord and division within the Muslim community. Believing that Muhammad had been elevated (*rufiᶜa*) to God, akin to the ascension of Jesus as described in the Quran, he threatened against contrary claims. This impasse persisted until Abū Bakr cited verses 3:144 and 39:30, which eventually led ᶜUmar to concede that Muhammad had indeed passed away (Shahrastānī, *Al-Milal*, 1:12; Ibn Hishām, *Sīra*, 4:363-4).

Another dispute among the Companions concerned the final resting place for the body of the Prophet, which generated four distinct views. The Meccan Companions (*muhājirūn*) articulated their wish for interring him in Mecca, emphasizing its symbolism as his birthplace and the ancestral home of his clan. Conversely, Medinese Companions (*anṣār*) preferred his burial in Medina, foregrounding its role as the city where he sought refuge and established the Islamic state. A third perspective advocated for transporting him to Jerusalem, as a site of previous prophets and the location of his miraculous nigh journey. Ultimately, Abū Bakr's suggestion triumphed based on his recall of a hadith stating that "prophets are buried where they pass away" (*mā qubiḍa nabiyyun illā dufina ḥaythu yuqbaḍ*). Muhammad's grave was excavated beneath the spot where he had drawn his last breath (Shahrastānī, *Al-Milal*, 1:12; Ibn Hishām, *Sīra*, 4:373; Tirmidhī, *Al-Jāmiᶜ*, 2:327-8).

A third example lies in the grievous controversy over the rightful successor of Prophet Muḥammad, about which Al-Shahrastānī says: "no sword in Islam has been unsheathed in the cause of a religious rule as it had been unsheathed concerning the subject of successorship" (Shahrastānī, *Al-Milal*, 1:13). The gravity of this dispute becomes apparent within the context of a nascent Muslim community, where tribal allegiances held sway and a structured system of succession was yet to be established. In his biography of the Prophet, Ibn Hishām recounts the emergence of three main factions following the Prophet's death, each ardently supporting a different successor. The Medinese Companions proposed Saᶜd Ibn ᶜUbāda. The Meccans championed Abū Bakr, while some advocated for ᶜUmar. Meanwhile, the Prophet's family distanced themselves from both groups. The discord between the first two factions escalated to the brink of civil strife, imperiling the unity of the Muslim community. After a prolonged

and arduous process of deliberations, Abū Bakr was ultimately chosen as the first Caliph (Ibn Hishām, *Sīra*, 4:364-70).

Delving more deeply into the domain of jurisprudence, Ibn Ḥazm's deliberations upon certain conflicts among the Prophet's companions are particularly insightful (Ibn Ḥazm, *Al-Iḥkām*, 6:61-66). For example, in his discussion of the primacy of *ijtihād* over *taqlīd*, he accentuates the pervasive and intrinsic nature of juristic disputes among Companions, noting that they were so pronounced that even scholars with only a modest acquaintance with Hadith cannot overlook them (Ibn Ḥazm, *Al-Iḥkām*, 6:65-66; Ibn Qayyim, *Iᶜlām*, 6:66). He broadens his discussion by highlighting cases of disagreements between ᶜUmar and ᶜAlī, Ibn ᶜAbbās and Zayd b. Thābit, and ᶜUmar and Ibn Masᶜūd who was recognized as the Prophet's closest confidants and the most knowledge of the Quran and its historical contexts (*asbāb al-nuzūl*). Ibn Ḥazm estimates that there were more than a hundred legal disputes between ᶜUmar and Ibn Masᶜūd alone, thereby illustrating the dynamic nature of legal discourse within the early Muslim community (Ibn Ḥazm, *Al-Iḥkām*, 6:61; Maḥmaṣānī 1996, 260-63; Marᶜashlī 2009, 28-34; ᶜAlwānī 1992, 49-70).

The Hadith corpus is replete with traditions documenting varied opinions among the Companions on issues ranging from ritual observance and financial affairs to civil offenses and inheritance. A frequently cited episode is the day of the Coalition Expedition, where the Prophet instructed his followers: "No one shall pray ᶜAṣr till Banū Qurayẓa" (Bukhārī, *Ṣaḥīḥ*, 1011). The Companions set off toward the tribe, but as the time of ᶜAṣr prayer approached, a spirited debate ensued as to whether they should continue without stopping or halt for prayer. One group adhered strictly to the literal interpretation of the Prophet's directive and pressed on. Another group construed the directive as an urging to hasten, invoking the Quran precept dictating that obligatory prayers must be performed at their appointed times (Q 4:103). When the matter was brought to the Prophet, as classical sources assert, he did not censure either group.

The era of Prophet Muhammad, often referred to as "*al-ṣadr al-aᶜẓam*" (the greatest era), might seem romanticized in the works of Ibn ᶜAbd al-Barr and Ibn Ḥazm. Yet, what they emphasize and deeply admire is not an image of unblemished harmony devoid of discord, but the early generation's extraordinary capacity to accommodate and tolerate differences in legal opinion. Even during the Prophet's lifetime and in the immediate aftermath of his passing, the Muslim community witnessed a broad spectrum of disagreements over legal matters. As will be shown in the following section, these juristic dissensions played a crucial role in reshaping

the hermeneutical foundations of Sunni legal schools. The early deliberations on *ikhtilāf* and its permissibility went hand in hand with discussions on *ijmāᶜ* (unanimous consensus). For on the one hand, some scholars, advocating for ultimate certainty (*yaqīn*), viewed *ijmāᶜ* as the sole viable means to solve discord. On the other hand, a larger group of scholars rejected this *ijmāᶜ*-only approach and deemed it impractical. Instead, they accepted the validity of *ikhtilāf* as a central component of Islamic legal discourse.

## 2. Legal Pluralism after the Formation of the Legal Schools

Following the passing of Muhammad, the city of Medina was home to approximately 12000 of his Companions, with around 10000 residing there permanently. During the rule of ᶜUmar b. al-Khaṭṭāb (d. 23/644), these Companions were largely confined to Medina by his edict, a measure interpreted as a precautionary step to preserve the Quran which had not yet been systematically transcribed (Ḥajwī, *Al-Fikr*, 2:88-89). This decision played a significant role in limiting the scope of juristic disputes during that period (Shallī 2009, 42; Khinn 1992, 36-7). After ᶜUmar's demise, his successor, ᶜUthmān Ibn ᶜAffān's (d. 35/656), lifted this restriction, which allowed dozens of eminent Companions to leave Medina for burgeoning urban centers either voluntarily or by directive. The new destinations sought their expertise and guidance to spread Islamic knowledge and resolve legal issues faced by the growing Muslim population (Ḥajwī, *Al-Fikr*, 2:89).

According to several classical sources, the initial dissemination of religious and legal knowledge began with figures such as Zayd b. Thābit (d.45/665) and ᶜAbd Allāh b. ᶜUmar (d. 74/693) in Medina, ᶜAbd Allāh b. ᶜAbbās (d. 67/687) in Mecca, and Ibn Masᶜūd (d. 32/650) in Iraq (Ibn Qayyim, *Iᶜlām*, 2:38). Muslims in these canters, including other Companions, turned to them for guidance on a range of legal and ritual matters. Subsequently, a cohort of erudite scholars, known as "the followers" (*al-tābiᶜīn*) emerged. They absorbed the legal methods of their mentors and were deeply influenced by their legal exchanges and disputes. The students imparted those disagreements to their students and the next generation of scholars called "the followers' followers" (*atbāᶜ al-tābiᶜīn*). During this phase, juristic disagreements continued to proliferate. Their widespread nature is captured by their description by many scholars as "too numerous to be counted" (*akthar min an yuḥṣā*) and similar expressions (e.g., Ibn ᶜAbd al-Barr, *Al-Jāmiᶜ*, 90-91; Ibn Ḥazm, *Al-Iḥkām*, 2:127).

Ibn Khaldūn's analysis of the role of *ikhtilāf* in shaping the genesis of the schools of law shows that their founders not only tolerated differences of legal opinion but also endorsed certain views of one another, expressing a nuanced dynamicity in their intellectual exchange (*Muqaddima*, 3:20). Among the eponyms of the four dominant legal schools, Idrīs al-Shāfiᶜī is often accredited as the first scholar to lay the foundation of the systematic study of *ikhtilāf*. He rigorously and practically engaged with this issue in several treatises within his *magnum opus*, *Al-Umm*, such as "Ikhtilāf al-Hadith," "Ikhtilāf Mālik wal-Shāfiᶜī," "Ikhtilāf Abī Ḥanīfa wal-Awzāᶜī," and "Ikhtilāf al-Shāfiᶜī maᶜa Muḥammad Ibn al-Ḥasan." Other treatises address *ikhtilāf* from a theoretical perspective, particularly his monumental work of legal theory, *Al-Risāla* (esp., vols. 1, 8 and 10).

Mālik (d. 179/795) did not dedicate a full work to *ikhtilāf*. However, he emphasizes its primacy throughout his *Muwaṭṭaᵓ*, repeatedly using such phrases as "*for us* the established *sunna* upon which there has been no disagreement is" and "*for us* the matter on which there has been no disagreement is" (Mālik, *Muwaṭṭaᵓ*, 7:226-27). In his edition of the *Muwaṭṭaᵓ*, Al-Aᶜẓamī indexed over 100 legal cases where Mālik used these and similar phrases. The phrase 'for us' entails the scholars in Medina and the *iijmāᶜ* Mālik refers to should be read in the practical sense of undisputed rulings, rather than its later conceptual usage as a method and source of legal authority (Abd Allah 2013, 130-36). Furthermore, the *muwaṭṭaᵓāt* genre has been regarded as a genre concerned with *ikhtilāf* (ᶜAlamī 2010, 41-42). Similar to Mālik and Shāfiᶜī, Abū Ḥanīfa (d. 150/767) also addressed the question of *ikhtilāf* significantly in his work. His book, *Al-Fiqh al-Akbar*, initiates an extensive exploration of various key legal and theological controversies, including the question of whether *ikhtilāf* should be interpreted as an expression of God's benevolence.

The founders of the Sunni schools were not only aware of *ikhtilāf* as a distinct field of legal knowledge but also recognized its essential role in the promotion to the status of *ijtihād*. Their canonical texts confirm that thorough training and a profound understanding of juristic disagreements are critical prerequisites for attaining the positions of *mufti* (jurisconsult) and *faqīh* (jurist). Ibn ᶜAbd al-Barr's insights regarding the qualifications for both positions have been highly influential and widely adopted by other key classical scholars (cf., e.g., Shāṭibī, *Al-Muwāfaqāt*, 4:160-62; Ibn Qayyim, *Iᶜlām*, 2:62-67). One of the hadiths Ibn ᶜAbd al-Barr cites to substantiate the necessity of training in *ikhtilāf* is the Prophet's report that "the most knowledgeable among people is the one who can discern the truth amidst dissensions" (Ibn ᶜAbd al-Barr, *Jāmiᶜ*, 213). Another example is a statement by Abū al-Khaṭṭāb Qatāda of Basra

(d. 117/735) that one who does not understand *ikhtilāf* does not truly know *fiqh*, or "his nose has not savored *fiqh*," as he illustrated it. Ibn ᶜAbd al-Barr also quotes in this vein Ayyūb al-Sakhtayānī (d. 131/748) as saying "one who hastens to issue *fatwā* is the least knowledgeable of the jurists' disputes, while one who exhibits patience is the most well-versed in them" (Ibn ᶜAbd al-Barr, *Jāmiᶜ*, 216). He also references several other scholars who made knowledge of *ikhtilāf* a requirement for issuing *fatwā*, including Ibn ᶜUyayna (d. 198/814), Yaḥyā b. Sallām (d. 200/816), and Saᶜīd b. Abī ᶜUrūba (d. 156/773).

Ibn Khaldūn acknowledges a transformation in both the extent and purpose of *ikhtilāf*. He describes its historical development in *Al-Muqaddima* as follows. In the earlier period, legal scholarship witnessed a proliferation of disagreements (*khilāfiyyāt*) among *mujtahid*s in regards the interpretation of the legal sources and the principles deduced from them. These differences were inevitable due to the diverse analytical methods employed, which resulted in a spectrum of views and conclusions that became pervasively diffused within society. Thus, individuals had the liberty to follow scholars whose legal views aligned with their personal inclinations. As time progressed, the founders of the legal schools' gained prominence, and adherence to a single school became more common. This shift resulted in a rise of *taqlīd* and decline in the practice of *ijtihād* as scholars increasingly focused on refining the doctrines of their respective schools. Ultimately, people were discouraged from simultaneously following multiple schools (Ibn Khaldūn, *Muqaddima*, 3:21).

This transformation crystallized after the formation of the legal schools. During this stage, the emphasis on *ikhtilāf* shifted from inter-doctrinal disputes across the *madhhabs* to intra-doctrinal disputes within one school. Scholars increasingly focused on expatiating the legal methods and hermeneutics specific to their own schools. Recent studies have shown that intra-doctrinal disagreements majorly contributed to the development of legal maxims and meta-rules (*al-qawāᶜid al-fiqhiyya*), and the schools' processes of *takhrīj* in particular (e.g., ᶜAṭiyya 1987, 141-46; Bāḥusayn 1994, 147-82.). Key illustrations of this approach include al-Dabbūsī's (d. 430/1038) *Taᵓsīs al-naẓar* and Ibn Juzayy's (d. 741/1340) *Al-Qawānīn al-fiqhiyya*. While Ibn Khaldūn accurately notes that the solidification of the *madhhab* reduced the practice of *ijtihād*, he also emphasizes that plurality of legal opinions persisted, although within each individual legal school.

## 4. A History of *Ikhtilāf* through its Major Writings

In concluding his section on *khilāfiyyāt*, Ibn Khaldūn enumerated key authoritative works of the subject and observed that Ḥanafīs and Shāfiʿīs demonstrated greater engagement with this field. He attributes this difference to their inclination towards reasoning (*qiyās*). In contrast, Mālikīs rely on tradition and eschew speculation, since many of them are from the Maghreb, are predominantly Bedouins, and show little interest in the crafts" (Ibn Khaldūn, *Muqaddima*, 3:21). This dichotomy reflects the longstanding debate between *raʾy* (rationalist) and *ḥadīth* (traditionalist) methods, with the Ḥanafīs advocating rationalist approaches and the Mālikīs adhering more closely to traditionalist methods. Ibn Khaldūn seems to exclude the Shāfiʿīs from this dichotomy, possibly because he views their school as an attempt to provide balance between traditionalist and rational approaches.

Ibn Khaldūn identifies five key works of *ikhtilāf* to reflect the deep engagement of the legal schools with juristic disagreements. From the Shāfiʿī School, he lists Abū Ḥāmid al-Ghazālī's *Maʾākhidh.* From the Mālikī, he mentions Ibn ʿArabī's *Talkhīṣ* and Ibn al-Qaṣṣār's *ʿUyūn al-Adilla*. From the Ḥanafī School, he cites al-Dabbūsī's *Al-Taʿlīqa* and a commentary on Uṣūl by Ibn al-Sāʿātī, likely his *Nihāyat al-Wuṣūl*. As detailed elsewhere (Laabdi 2017), *ikhtilāf* literature evolved through three main stages. The following paragraphs will succinctly examine some of the influential extant works from each stage, not to provide an exhaustive list (see for this, ʿAṭiyya 1987, 136-41; Shallī 2009, 47-53; and Juwaynī, *Al-Durra*, 51-82), but rather to demonstrate the centrality of juristic disagreement in shaping the legal cannon.

In the first phase, from the late 2nd/8th to the end of the 3rd/9th century, *ikhtilāf* writings reflect a distinguishably *defensive* tone. This predilection may be attributed to the scholars of that era who focused less on comparing legal hermeneutics of the various schools' and more on defending their own doctrinal positions by refuting the arguments of their opponents. The titles of *ikhtilāf* works from this period echo this adversarial dynamism, frequently featuring phrases such as "*al-ḥujja ʿalā*" (the proof against) and "*al-radd ʿalā*" (the refutation of). They also sometimes include the names of scholars involved in these disputes, as indicated by titles like "*ikhtilāf* x and z" or "*al-ikhtilāf bayn* x and z" (the disputes between x and z).

Pertinent examples of this phenomenon include al-Shaybānī's (d. 189/804) *Al-Ḥujja ʿalā ahl al-madīna* (the proof against the scholars of Medina), which directly challenges the legal views held by the scholars of Medina. Al-Shāfiʿī authored several works that reflect the same contentious spirit, such as *Ikhtilāf Mālik wal-Shāfiʿī* (the disputes between Mālik and al-Shāfiʿī), *Ikhtilāf Abī Ḥanīfa wal-Awzāʿī* (the disputes between Abī Ḥanīfa and al-Awzāʿī), *Ikhtilāf al-Shāfiʿī maʿa Muḥammad Ibn al-Ḥasan* (al-Shāfiʿī's disagreement with Ibn al-

Ḥasan), and Ibn Isḥāq's (d. 282/896) *Al-Radd ʿalā Muḥammad Ibn al-Ḥasan wa l-Shāfiʿī wa Abī Ḥanīfa* (the refutation of Ibn al-Ḥasan, Al-Shāfiʿī, and Abī Ḥanīfa). While encapsulating the defensive feature of early *ikhtilāf* debates, these texts also reveal the vigorous intellectual exchanges that differentiated this period of Islamic legal thought.

During the second period, spanning the 4th/10th century, a significant transformation occurred in the scholarship of *ikhtilāf* as legal scholars began to shift away from the defensive stance that qualified the previous phase. Instead, there was an increasing inclination towards a more comparative and objective analysis of *ikhtilāf* across various schools. This approach is exemplified by key contributions such as al-Marwazī's (d. 294/906) *Ikhtilāf al-ʿUlamāʾ*, Ibn al-Mundhir's (d. 319/931) *Al-Ishrāf ʿalā madhāhib al-ʿulamāʾ* and *Al-Awṣaṭ fīl-sunan wa l-ijmāʿ wal-ikhtilāf*, al-Ṭabarī's (d. 310/923) *Ikhtilāf al-Fuqahāʾ*, al-Ṭaḥāwī's (d. 321/933) *Ikhtilāf al-ʿUlamāʾ*, and Ibn al-Qaṣṣār's *ʿUyūn al-Adilla*. These works provide comprehensive overviews of contentious legal perspectives and their underlying causes as they reflect a more dispassionate and analytical engagement with juristic disagreements. One can argue that this phase marks a maturation in *ikhtilāf* literature, where the emphasis shifted from polemics to a more scholarly and inclusive examination of legal diversity.

In the third stage of *ikhtilāf* scholarship, from the 5th/11th century onwards, there was a pronounced resurgence in studies with a heightened focus on consolidating and refining the methodological foundations of the established schools. This stage is marked by a robust effort to systematize and elaborate on the principles underpinning juristic disagreements. Key texts from this period include ʿAbd Al-Wahhāb's (d. 422/1030) *Al-Ishrāf ʿalā nukat masāʾil al-khilāf*, al-Dabbūsī's *Taʾsīs al-naẓar*, al-Māwardī's (d. 450/1058) *Al-Ḥāwī*, Ibn Ḥazm's (d. 456/1064) *Muḥallā*, Abū Yaʿlā al-Farrāʾ's (d. 458/1066) *Al-Taʿlīqa fī masāʾil al-khilāf*, al-Bayhaqī's (d. 458/1066) *Al-Khilāfiyyāt*, Ibn ʿAbd al-Barr's (d. 463/1070) *Al-Istidhkār* and *Al-Inṣāf*, and al-Juwaynī's (d. 478/1085), *Al-Durra al-muḍiyya*. At least two of al-Juwaynī's key texts on *ikhtilāf* are nonextant, *Al-ʿAmad* and *Al-Asālīb fīl-khilāfiyyāt*, both of which he cites in *Al-Burhān* (Juwaynī, *Al-Burhān*, 1:481). His student, al-Ghazālī (d. 505/1111), contributed significantly to ikhtilāf scholarship with works like *Maʾākhidh al-khilāf* (not lost) and *Taḥṣīn maʾākhidh al-khilāf*, which has been edited. Additional noteworthy texts from this era include al-Shāshī's (d. 507/1113) *Ḥilyat al-ʿulamāʾ*, al-Asmandī's (d. 552/1157) *Tarīqat al-Khilāf*, and Ibn Rushd's (d. 595/1198) *Bidāyat al-Mujtahid*, all of which represent a culmination of the methodological rigor and comparative analysis that defined the transformation of *ikhtilāf* literature during this stage.

The expansion of the legal schools and the growing prominence of the *madhhab* after this phase of *ikhtilāf* had major implications for the genre of *khilāf* in at least two profound ways. First, scholars began to focus more on comparing their own *madhhabs* with others. This endeavor was not necessarily aimed at invalidating the legal systems of rival schools but at defining the hermeneutics and methodologies of their respective madhhabs. Ibn Khaldūn observes that this new approach was largely motivated by the need to highlight the unique characteristics and strengths of each school's legal reasoning (*Al-Muqaddima*, 3:21). This *madhhab*-centered approach found expression in key writings such as al-Ṭaḥāwī's *Mukhtaṣar Ikhtilāf al-fuqahāʾ* and al-Kāsānī's (d. 587/1191) *Badāʾiʿ al-ṣanāʾiʿ* in Ḥanafī law, Ibn Shās' (d. 610/1213) *ʿAqd al-jawāhir al-thamīna* in Mālikī law, and Ibn Qudāma's (d. 620/1223) *Al-Mughnī* in Ḥanbalī law. The latter work, while it shares a thematic alignment with the former three books, it distinguished itself by focusing not only on internal differences (*mukhālafāt*) within the Ḥanbalī School but also on the points of agreement (*muwāfaqāt*). Secondly, most investigations of *ikhtilāf* during this phase concentrated on internal conflicts, often involving conflicts between the school's founder and his direct associates, as well as disagreements among the followers. An illustrative example of this internal focus is *Al-Qawānīn al-fiqhiyya* by Ibn Juzayy.

## 5. Conclusion:

By rethinking the formation and development of Sharia law through the historical framework of *ikhtilāf*, this article has sought to emphasize the inherently diverse, pluralistic, and adaptive nature of Islamic law. Through an evaluative exploration of canonical classical texts and the contributions of authoritative legal scholars, the current study sought to lay the foundation for a nuanced analysis of legal pluralism within Islam, with *ʿilm al-ikhtilāf* as its most manifest expression. It proposes approaching a historical approach to understanding the inception and development of *ikhtilāf* that focuses on two major historical phases. The first phase, I named the age of *taqlīd*, spun from the birth of Islam to the establishment of the dominants schools of law (*madhhabs*). The second phase encompasses the era following the maturation of these schools, which marks continued development and refinement of Islamic legal thought within the schools' established frameworks.

The current has unfolded across three distinct sections. The first section examines the phenomenon of *ikhtilāf* before the foundation of the *madhhabs*. It analyzes engages with two

responses from the early generations of Muslim scholars to juristic disagreements. One group embraced disputes as a sign of divine mercy, hence allowing for the selective endorsement of divergent conclusions. The other group, while acknowledging *ikhtilāf*, insisted that only one of the competing views could be deemed valid. The second section explores *ikhtilāf* after the formation of the *madhhabs*. this period initially witnessed a considerable degree of tolerance for *ikhtilāf* as the *madhhabs*' founders endorsed each other's views when confronted with stronger textual evidence. However, as time passed and the schools gained prominence, both legally and politically, the practice of adhering to a singly *madhhab* became increasingly enforced, which may have led to a surge in *taqlīd* and a corresponding decline of *ijtihād*. The third section traces the development of *ᶜilm al-khilāf* through some of its most important texts. By uncovering the wealth of classical works, it reveals how *ikhtilāf* not only emerged as a substantial legal phenomenon but also how it evolved into a robust scholarly genre, thus reflecting the unique pluralistic and adaptive nature of the Islamic legal tradition.

In a broader framework, the current study contributes to a corpus of scholarship aimed at reframing contemporary discussions on Islamic law and deepening our understanding of its intricate architecture. By delving into *ikhtilāf*, this study reveals a rich tapestry of intellectual engagement and pluralistic dialogue and illustrates the resilience, adaptability, and intricacy inherent in the Islamic legal tradition. This nuanced investigation challenges reductionist and simplistic portrayals, whether by champions or critics. Therefore, a through and contextual study of Sharia law necessitated recognizing its intrinsic diversity and evolving nature, and consistently affirming these elements as central to its essence and structure.

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