ᶜIlm al-ikhtilāf in Modern Western and Muslim Studies of Juristic Disagreement–A Critical Analysis*

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Abstract

The acknowledgment of juristic disagreement (ᶜilm al-ikhtilāf) as an independent field of Islamic law by Western historians of Fiqh and Uṣūl is over a century and a half old. Yet, there is still much ambiguity and confusion about this legal subarea, its history, its theories and methods, and its place in the emergence and development of Islamic law. This paper provides a critical reading of modern Western studies of ᶜilm al-ikhtilāf. It analyzes the ways in which Western scholars have conceived of this sub-science and visits key unresolved issues with a focus on the conceptual and methodological undertaking of ᶜilm al-ikhtilāf. Through its critical reading of modern Western studies of ᶜilm al-ikhtilāf, this paper mends two gaps in the examined scholarship: the conceptual confusion of the concepts of 'ikhtilāf' and 'khilāf' on the one hand, and the confusion of the genres of "ikhtilāf fiqhī" (juristic disagreement) and "jadal fiqhī" (juristic dialectics) on the other. The methodology employed in this study comprises a comprehensive and interdisciplinary approach, which bridges the realms of pre-modern and modern sources. It hinges on a meticulous analysis of both Muslim and Western studies of Islamic law, deliberately interweaving these two dimensions to provide a more holistic and nuanced perspective on the questions undertaken within this research. After close examination, it is observed that key distinctions made with regard to the science of ᶜilm al-ikhtilāf, such as between the concepts of 'khilāf' and 'ikhtilāf', are a modern invention that has no lexical precedent. According to this study, distinction is to be made between Fiqh-based, practical disagreements and Uṣūl-based, theoretical disagreements. This study contributes the first source reading of Western scholarship on the science of juristic disagreement. In addition, classifying ᶜilm al-ikhtilāf in terms of practical (*Fiqh*-based) and theoretical (*Uṣūl*-based) studies is an original reading.

Keywords: Juristic disagreement; ᶜilm al-ikhtilāf; khilāf; Fiqh; Uṣūl; Islamic legal history

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علم الاختلاف الفقهي في الدراسات الغربية والدراسات الإسلامية المعاصرة: دراسة تحليلية نقدية

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ملخص البحث

أهداف البحث: مع أن أول بوادر اهتمام المؤرخين الغربيين بالاختلاف الفقهي تعود لأزيد من قرن ونصف مضت، ما زالت الدراسات الغربية لم تعن بتفاصيل هذا العلم وتاريخه، ونظرياته ومناهجه، ودوره في نشأة الفقه الإسلامي وتطوره، وما زالت أيضًا يشوبها الارتباك وعدم الدقة في مسائل منهجية ومفاهيمية عدة. تقدم هذه الدراسة قراءة نقدية في الدراسات الغربية الحديثة التي تناولت الاختلاف الفقهي، سواء من باب مذهبي أم تلك التي تطرقت له بإجمال، وتركز على التصور المفاهيمي والمنهجي المتعلق بالاختلاف في الدراسات الإسلامية الغربية.

منهج الدراسة: من خلال قراءة نقدية للدراسات الغربية الحديثة التي اهتمت بعلم الاختلاف، تسعى هذه الدراسة لمعالجة وسد فجوتين رئيسيتين: الخلط المفاهيمي والمعجمي بين مصطلحي «الاختلاف» و»الخلاف» من جهة، والخلط المنهجي بين الاختلاف الفقهي والجدل الفقهي من جهة أخرى. ويعتمد منهج الدراسة في مقاربة هذا الموضوع على تقديم مقاربة شاملة وبينية، بحيث تقابل بين الدراسات التراثية والمعاصرة من جهة، ومن جهة أخرى، تقدم تحليلًا نقديًا للدراسات الإسلامية والغربية التي عُنيت بمسألة الاختلاف الفقهي، بما أتاح للباحث تقديم تصورٍ متعدد الأبعاد وأكثر دقة لمسائل هذه الدراسة ومباحثها.

النتائج: بعد فحص عميق للعديد من الدراسات، يتبين أن الخلاصات المنهجية عند بعض الباحثين، مثل التمييز بين مصطلحي «الاختلاف» «والخلاف»، هو ابتداع ليس له أساس معجمي في التراث الإسلامي. وفقًا لهذه الدراسة، فإن مقاربة الاختلاف يجب أن تقوم على التمييز بين ما نطلق عليه «الاختلاف النظري»، الذي يرتبط بأصول الفقه ويعكس اهتماماتها النظرية والآلية، في مقابل «الاختلاف العملي» الذي يرتبط بالفقه كمجال تطبيقي بالأساس.

أصالة البحث: تعدّ هذه أول دراسة مرجعية تعني باهتمام الباحثين الغربيين بعلم الاختلاف، كما أن تصنيف دراسات الاختلاف الفقهي إلى عملية مرتبطة بالفقه ونظرية مرتبطة بأصول الفقه هي قراءة أصيلة ومتميزة.

الكلمات المفتاحية: علم الاختلاف، الخلاف، الفقه، أصول الفقه، الدراسات الإسلامية الغربية

Introduction

Differences and disagreements within the field of Fiqh have been historically recognized by Western scholars and historians of Islamic law. The German Orientalist Gustav Flügel may be credited as one of the first to identify this phenomenon as an independent area of legal inquiry.[1] In his 1861 article on the categories of Ḥanafī jurists, Flügel made a passing reference to Abū Zayd al-Dabbūsī's (d. 430/1038) book, *Taʾsīs al-Naẓar*,[2] as the inaugural treatise on ʿilm al-ikhtilāf, subsequently referring to it in German as the "wissenschaft der theologischen controverse" (the science of theological controversy).[3] Although Flügel did not explicitly attribute this information to a particular pre-modern source, but it is highly probable that his reference was the well-known 7th/13th century biographer Ibn Khallikān (d. 681/1282). For he remarks on one occasion in *Wafayāt al-aʿyān* (in Arabic) that al-Dabbūsī was "the pioneer scholar who laid the foundation and advanced the field of the science of ʿilm al-ikhtilāf."[4]

It took about two decades later before another German Orientalist, Ignaz Goldziher, briefly touched on the question of ʿilm al-ikhtilāf as a scholarly discipline in his 1884 book on the Ẓāhirī legal school, *Die Ẓâhiriten*.[5] He referred to it as '*khilāfiyyāt*' and '*ʿilm al-ikhtilāfāt*,' defining it as the "comparative study of the differences among the orthodox schools."[6] Goldziher astutely remarked the relative absence of scholarly attention to this field and strongly urged the need for a comprehensive bibliographical exploration of ʿilm al-ikhtilāf. This call was later reiterated a few decades later by Franz Rosenthal, another distinguished Western scholar of Islam, in his translation of Ibn Khaldūn's historical preamble, *Al-Muqaddima*.[7] However, despite more than a century and a half have passed since the recognition of the role of ʿilm al-ikhtilāf in the evolution of Islamic law, ambiguity persists concerning this subfield. Within Western academic circles, there remains a considerable need for further exploration and in-depth investigation into the historical evolution, theoretical underpinnings, and methodological frameworks of ʿilm al-ikhtilāf.

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1 Flügel, "Die Classen der Ḥanefitischen Rechtsgelehrten," in *Abhandlungen der Philologisch-historische Classe der Königlich Sächsische Akademie der Wissenschaften* (Leipzig: Bei S. Hirzel, 1861), 267-358.

2 Al-Dabbūsī, *Taʾsīs al-Naẓar*, ed. Muṣṭafā al-Qabbānī (Cairo: Maktabat al-Khānjī, 1994).

3 Flügel, "Die Classen," 301. ʿAbd Allāh b. ʿUmar b. ʿĪsā Abū Zayd was known more by his nickname al-Dabbūsī after his birth town Dabbūsa, present-day Buxoro in modern Uzbekistan.

4 Ibn Khallikān, *Wafayāt al-Aʿyān wa anbāʾ al-zamān* (in Arabic), ed. Iḥsān ʿAbbās (Beirut: Dār Ṣādir, 1968), 3:48.

5 Goldziher, *The Ẓāhirīs, Their Doctrine and Their History: A Contribution to the History of Islamic Theology,* ed. Trans. Wolfgang Behn (Leiden: Brill, 2008), 36-39. Originally published in Leipzig in 1884 with the title, *Die Ẓâhiriten, ihr Lehrsystem und ihre Geschichte: Beitrag zur Geschichte der muhammedanischen Theologie*.

6 Goldziher, *The Ẓāhirīs*, 36, fn. 63. See his illustration on what he called the "differences of opinion of the Prophet's companions" (*ikhtilāf al-ṣaḥāba*) and "the science of difference of opinion in the legal schools and their Imāms" (ʿilm al-ikhtilāfāt), in Goldziher, *The Ẓāhirīs*, 210-11.

7 Ibn Khaldūn, *Al-Muqaddimah: An Introduction to History*, 3 vols., Trans. Frank Rosenthal (Princeton: Princeton University Press, 1967), 3:30, fn. 289. In this study, I cite predominantly Ibn Khaldūn's original book, *Al-Muqaddima*, without the letter 'h' at the end. Ibn Khaldūn, *Al-Muqaddima* (in Arabic), 3 vols, ed. ʿAbd al-Salām al-Shaddādī (Casablanca: Bayt al-Funūn wal-ʿUlūm wal-Ādāb, 2005). Unless otherwise clearly stated, my references are made to this Arabic edition.

This study fills a critical gap in the existing body of scholarship by analyzing and reflecting upon Western scholars' efforts in the domain of ᶜilm al-ikhtilāf. The primary objective of the present study is twofold. Firstly, it delineates the various approaches employed by scholars and historians of Islamic law in their exploration of the question of ᶜilm al-ikhtilāf. Secondly, it engages in a comprehensive reconsideration of unresolved related questions, with a particular emphasis on the conceptual discernment and utilization of key Arabic terms essential for grasping the question of ikhtilāf.

The methodology employed in this study comprises a comprehensive and interdisciplinary approach, which bridges the realms of pre-modern and modern sources. It hinges on a meticulous analysis of both Muslim and Western studies of Islamic law, deliberately interweaving these two dimensions to provide a more holistic and nuanced perspective on the questions undertaken within this research. Drawing on classical Arabic texts and modern scholarly works, this article navigates the intricate terrain of ikhtilāf, critically examining its historical evolution, theoretical foundations, and methodological underpinnings. By synthesizing an array of sources and scholarly traditions, this article seeks to contribute a more in-depth understanding of the subject matter, thus advancing the discourse on ᶜilm al-ikhtilāf within modern Islamic legal scholarship.

To facilitate this undertaking, I have structured this paper into three principal sections. The first section provides a concise yet comprehensive critical assessment of how ᶜilm al-ikhtilāf has been addressed within modern Western scholarship. The second section explores the challenge of differentiating between the concepts of 'ikhtilāf' and 'khilāf.' To mitigate the conceptual and terminological ambiguities arising from this conflation, I investigate the classical lexicographical foundations of both terms and subject them to critical examination within the context of significant modern legal studies. This section is further divided into three subsections. The first focuses on the interplay of the terms 'khilāf' and 'ikhtilāf' within modern Western Islamic studies. The second reflects on the pre-modern lexical deliberations of the questions at hand, with an emphasis on three noun forms. The last subsection examines them within key contemporary discussions in Islamic legal scholarship more broadly. Finally, the third section addresses a methodological quandary of pressing importance, namely, the conflation of the science of ᶜilm al-ikhtilāf with dialectic (jadal). I posit that a methodologically sound approach to the study and documentation of the history of juristic disagreements can be achieved by making a careful distinction between two subgenres within it. I categorize these genres as theoretical studies of ikhtilāf and practical studies of ikhtilāf.

In conclusion, it is important to note that, for the sake of technical precision and to preserve the depth of meaning inherent in the original phrase of "ᶜilm al-ikhtilāf," I will consistently use the Arabic expression instead of English equivalents, such as "the science of juristic disagreement." In addition, on numerous occasions, I will take the liberty of using simply "Ikhtilāf" in capitalized form to signify this field as a distinct Islamic legal subfield.

1. ᶜIlm al-Ikhtilāf in Modern Western Scholarship on Islamic Law

Flügel's assertion that Dabbūsī was the founder of ᶜilm al-ikhtilāf was challenged by Goldziher on two main grounds. Firstly, Goldziher argued that interest in ikhtilāf had already surfaced during the 3ʳᵈ/9ᵗʰ century, insisting that Dabbūsī could not have been its originator. Secondly, Goldziher attributed the beginnings of this science to Shāfiᶜī (d. 204/820), and especially refers to his treatise, Ikhtilāf al-ᶜIrāqiyyayn.[1] However, it should be stressed that Goldziher's perspective also falls short of accuracy. Given the most accessible and datable extant works on Ikhtilāf, and as contemporary source-critical studies of Shāfiᶜī have demonstrated, neither of Goldziher's arguments hold true. Shāfiᶜī cannot be credited as the founder of Ikhtilāf. Ibn al-Nadīm (d. 385/995) recorded in the Fihrist (in Arabic), two Ikhtilāf works that were likely authored prior to Shāfiᶜī's time: Abū Yūsuf's (d. 182/798) Ikhtilāf al-amṣār and al-Shaybānī's (d. 189/804) Al-Radd ᶜalā ahl al-madīna.[2]

Furthermore, the very treatise upon which Goldziher relied to support his claim that Shāfiᶜī was the pioneer of Ikhtilāf (i.e., Ikhtilāf al-ᶜIrāqiyyayn in the dual, not in the plural (al-ᶜIrāqiyyīn), as he mistakenly read it), was actually written by Abū Yūsuf, with Shāfiᶜī providing a commentary on it. The same treatise is also known by the title, Ikhtilāf Abī Ḥanīfa wa Ibn Abī Laylā (the disagreement between Abū Ḥanīfa and Abū Laylā) (in Arabic).[3] Therefore, considering the date of Abū Yūsuf's death —regardless if one accepts Norman Calder's dating of Shāfiᶜī's Risāla at 300/912 or Christopher Melchert's earlier dating at just after 256/869-70—[4] it appears that Abū Yūsuf indeed had engaged in a systematic study of Ikhtilāf before Shāfiᶜī.

The first Western scholar to appropriately position Ikhtilāf within the practical domain of Fiqh, rather than kalām, was Joseph Schacht. In The Origins of Muhammadan Jurisprudence, he consistently and largely used the term 'ikhtilāf' (along with its English equivalent, 'disagreement') to highlight a direct contrast with consensus (ijmāᶜ).[5] His focus on their 'antithetical' relationship may be attributed to his close interest in Shāfiᶜī's Risāla, wherein he primarily addresses Ikhtilāf in contrast with Ijmāᶜ. This binary focus

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1 Goldziher, The Ẓāhirīs, 36, fn. 63.

2 Ibn al-Nadīm, Al-Fihrist (in Arabic), 3 vols., ed. Riḍā Tajaddud (Beirut: Dār al-Masīra, 1988), 1:257. The first is Yaᶜqūb b. Ibrāhīm b. Saᶜd Abū Yūsuf. The second is Abū ᶜAbd Allāh Muḥammad b. al-Ḥasan al-Shaybānī. Abū Yūsuf's Ikhtilāf al-Amṣār seems to be non-extant, but Ibn al-Ḥasan's work is in print. Shaybānī's book is Kitāb Al-Ḥujja ᶜalā Ahl al-Madīna (in Arabic), ed. Mahdī al-Kīlānī. Beirut: ᶜĀlam al-Kutub, 1983.

3 Sohail Hanif has published a couple of articles on this treatise. E.g., Hanif, "A Tale of Two Kufans: Abū Yūsuf's Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā and Schacht's Ancient Schools," Islamic Law and Society 25-3 (2018): 173-211; and Hanif, "Abū Yūsuf's Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā and the Transmission of Knowledge in the Formative Period of the Ḥanafī School," Islamic Law and Society 29-1 (2021): 1-33.

4 Calder, Studies in Early Muslim Jurisprudence (Oxford: Oxford University Press, 1993), 242. Melchert, "Qurᵓānic Abrogation across the Ninth Century: Shāfiᶜī, Abū ᶜUbayd, al-Muḥāsibī, and Ibn Qutayba," Studies in Islamic Legal Theory, ed. Bernard Weiss (Leiden: Brill, 2002). 76-98.

5 Schacht, The Origins of Muhammadan Jurisprudence (Oxford: Oxford University Press, 1967), 82-97. See also his "Ikhtilāf." Encyclopaedia of Islam, Second Edition, eds., Peri Bearman et al. Accessed October 23, 2022. There, he restresses his ikhtilāf vs. ijmāᶜ thesis, cites select classical works on the topic, and draws attention to recent efforts of mending the gap between the Sunni and Shīᶜī traditions of law.

was not entirely uncommon among legal scholars of the formative period. Many authorities from that era frequently presented legal knowledge as a binary system that ends in either consensus or disagreement. Shāfiᶜī, for example, has categorically stated that "knowledge has two facets: consensus and disagreement (*fīl-ᶜilm wajhān, al-ijmāᶜ wal-ikhtilāf*)."[1] Before Shāfiᶜī, Mālik consistently emphasized in the *Muwaṭṭaʾ* that his main objective is to distinguish between legal rulings that had received consensus among the scholars of Medina and those that were subjects of their dispute.

Schacht's work on Shāfiᶜī's legal theory has served as a source of inspiration for numerous subsequent studies delving into Shāfiᶜī's treatment of ᶜilm al-Ikhtilāf. Scholars like Calder, Azizy, and Jaques have undertaken in-depth investigations into Shāfiᶜīꞌs perspectives on *Ikhtilāf*. Jaques, in particular, examined *Ṭabaqāt al-Shāfiᶜiyya* (*The Classes of Shāfiᶜī Jurists*) by the Shāfiᶜī scholar, Ibn Qāḍī Shuhba (d. 851/1448), and the course of legitimizing and disseminating juristic disputes within the Shāfiᶜī School.[2] Several other scholars have directed their focus towards *Ikhtilāf* works authored by other authorities. For instance, Saghir Masumi conducted a comprehensive study of Abū Jaᶜfar al-Ṭaḥāwī's (d. 321/933) *Ikhtilāf al-Fuqahāʾ*.[3] Noteworthy among these contemporary efforts is George Makdisi's account in *The Rise of Colleges*, which presents the concept of *ikhtilāf* as a scholastic method of learning.[4] While his broader emphasis centers on Muslims' interest in dialectic (*jadal*), Makdisi's distinct perspective that situates *Ikhtilāf* in the institutional framework of legal knowledge acquisition remains an original insight that warrants further exploration.

In addition to the aforementioned studies, it is crucial to include two significant works. The first is John Walbridge's "ᶜ*Ilm al-Ikhtilāf* and the Institutionalization of Disagreement," in which he explores *Ikhtilāf* as a phenomenon and delves into how the pre-modern Muslim community managed to uphold religious unity by systematically tolerating juristic disagreement.[5] Walbridge grapples with a pivotal question: why did Muslim scholars permit diversity of opinion in sensitive areas of religion that might seem to demand uniformity? However, despite his primary focus on what he uniformly refers to as "ᶜ*ilm al-ikhtilāf*," he offers limited insight into it as a distinct domain of legal knowledge —i.e., as an autonomous science, which has its own set of governing principles, analytical and synthesis methods, content structure, and writing style.

The second work, which, to some extent, addresses these aspects of the study of jurists' disputes, is

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1   Shāfiᶜī, "*Risāla*," in *Al-Umm*, (in Arabic), ed. Rifᶜat ᶜAbd al-Muṭṭalib (Cairo: Dār al-Wafāʾ, 2001), 1:16.

2   Respectively, Calder, "*Ikhtilāf* and *Ijmāᶜ* in Shāfiᶜī's *Risāla*," *Studia Islamica* 58 (1983): 55-81; Azizy, "*Ikhtilāf* in Islamic Law with special Reference to the Shāfiᶜī School," *Islamic Studies*. 34-4 (1995): 367-384; and Jaques, *Authority, Conflict and the Transmission of Diversity in Medieval Islamic Law* (Leiden and Boston: Brill, 2006).

3   Masumi, "Imām Ṭaḥāwī's *Ikhtilāf al-Fuqahāʾ*," *Islamic Studies* 8-3 (1969): 199-223.

4   Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981), esp., 107-111.

5   Walbridge, "The Islamic Art of asking Questions: ᶜIlm al-Ikhtilāf and the Institutionalization of Disagreement," *Islamic Studies* 41-1 (2002): 69-86.

Mohammad Kamali's article, "The Scope of Diversity and *Ikhtilāf* (ᶜ*ilm al-ikhtilāf*) in the *Sharīᶜa*."[1] Kamali outlines the significance of *khilāf* in comparison to *ijmāᶜ*, its causes (*asbāb al-ikhtilāf*), and the ethical conduct surrounding it (*adab al-ikhtilāf*).[2] He sheds light on these two aspects through practical examples, offering valuable insights into the science of *Ikhtilāf*.

2. *'Ikhtilāf' vs. 'Khilāf'*: Different Categories or Two Faces of the Same Coin?

2-1 The Interplay of *'ikhtilāf' vs. 'khilāf'* in Western Scholarship

The role of ᶜ*ilm al-ikhtilāf* within the field of *Fiqh*, as established, has long been acknowledged by Western scholars of Islamic law. This recognition is evident in works where *Ikhtilāf* is either the primary focus of research, as in the studies by Calder, Kamali and Masud, or a secondary topic, as in the works of Goldziher, Schacht and Makdisi. However, Western scholars, like certain Eastern scholars —distinguished here strictly geographically— employ two different terms to refer to the science of juristic disagreement: '*khilāf*' and '*ikhtilāf*'. This conflation poses key epistemological and methodological questions worthy of close attention. Essentially, are *khilāf* and *ikhtilāf* distinct subareas of ᶜ*ilm al-ikhtilāf*, or do they refer to the same concept? Three reactions can be identified in this regard. The first group of scholars consistently uses the term '*khilāf*,' the second opts for '*ikhtilāf*,' and the third and largest group uses both terms interchangeably and inconsistently.

For instance, Goldziher engages various expressions to signify ᶜ*ilm al-ikhtilāf*, including '*al-khilāfiyyāt*', '*al-khilāf*', '*al-ikhtilāfāt*', '*ikhtilāfāt*' and '*ikhtilāf*'.[3] Scholars like Hallaq, Masud, Masumi and Jaques alternate between '*khilāf*' and '*ikhtilāf*'. It appears that Hallaq does not make a clear distinction between '*khilāf*' and '*ikhtilāf*,' but rather, he often used both interchangeably, rendering them as "ᶜ*ilm al-ikhtilāf*" or simply as "disagreement."[4] In contrast, Schacht, Calder, and Walbridge invoke '*ikhtilāf*' almost exclusively. At one point, Schacht suggested that the term '*khilāf*' implies inconsistency and self-contradiction, thus advocating for the use of '*ikhtilāf*', even though some of the very books that he references carry within

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1   Kamali, "The Scope of Diversity and '*Ikhtilāf*' (Juristic Disagreement) in the Sharīᶜa," *Islamic Studies* 37-3 (1998): 315-37.

2 Muhammad Masud's "*Ikhtilāf al-Fuqahāʾ*" is a practical study of *Ikhtilāf* and its implications for Islamic family law. Masud, "*Ikhtilāf al-Fuqahāʾ*: Diversity in Fiqh as a Social Construction," *Wanted: Equality and Justice in the Muslim Family*, ed. Zainah Anwar (Selangor, Malaysia: Musawah, 2009), 65-93. The topic of the causes of *ikhtilāf* has been undertaken as a subarea of Islamic law and continues to generate more scholarly attention and studies. E.g., Nashmi, "Asbāb al-Khilāf fīl-Madhhab al-Mālikī min khilāl ᶜAqd al-Jawāhir al-Thamīna li-Ibn Shās," *Journal of the College of Sharia and Islamic Studies* 39-1 (2021): 103-23.

3 Goldziher, *The Ẓāhirīs*, respectively, 36, x and 210, 36 and 66, 94 and 96.

4 E.g., Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), 24, 137 and 202; Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2004), 125. Similar patterns can be observed in the works of Masumi, Masud, and Jaques. For instance, Masud, writing from the perspective of the Mālikī School, borrows his terms from Shāṭibī, thus employs such expressions as "ᶜ*ilm al-khilāf*," "*murāʾat al-khilāf*," and "*ikhtilāf*." Masud's "*Ikhtilāf al-Fuqahāʾ*," 72 and 78 respectively.

their titles the word '*khilāf*', such as ᶜAbd Al-Wahhāb's *Al-Ishrāf ᶜalā Nukat Masāʾil al-Khilāf*.[1] Calder, too, rarely uses the term '*khilāf*' in his study. Walbridge upholds that the expression assigned by Muslim scholars to the discipline of juristic disagreement is "ᶜ*ilm al-Ikhtilāf*."[2]

However, none of these scholars has elaborately clarified why they chose to use '*khilāf*' or '*ikhtilāf*,' or both. Their preferences, it seems, have been shaped by the terminology used by the classical scholars they are studying. For example, Schacht and Calder worked extensively on Shāfiᶜī, which is why they adopted the term '*ikhtilāf*.' For Shāfiᶜī himself used this term in several of his legal treatises, including the *Risāla*, *Ikhtilāf al-Shāfiᶜī wa Mālik* and *Ikhtilāf al-Ḥadīth*. On the other hand, Goldziher and Masud use '*khilāf*' and '*ikhtilāf*' interchangeably, which is the approach taken by the classical authorities of their research, namely, Ibn Ḥazm in Goldziher's work and Shāṭibī in Masud's research.[3]

Kamali stands out as one of the few scholars in the Western tradition who has endeavored to reconcile the distinction between '*khilāf*' and '*ikhtilāf*'. He has done so within the context of his examination of the significance of ᶜ*ilm al-ikhtilāf* for legal reasoning (*ijtihad*).[4] On the one hand, he contends that a disagreement could be considered legally permissible only if it is supported by valid textual evidence and does not lead to impractical injunctions. On the other hand, he delineates two categories of juristic disagreements: sound and unsound. He calls the former '*ikhtilāf*' and the latter '*khilāf*', claiming that the pre-modern Muslim jurists, with a particular focus on Shāfiᶜī and Ibn Taymiyya, embraced the former and rejected the latter.[5]

In the end of this subsection, it should be emphasized that it is accurate that some scholars, including al-Ghazālī and others, spoke of juristic differences in terms of praiseworthy (*maḥmūd*) and blameworthy (*madhmūm*). However, the attempt to draw a clear demarcation between '*khilāf*' and '*ikhtilāf*' on this ground, as will be shown in the subsequent discussion, is merely a modern construct that has no precedent in the discussions of the classical Muslim scholars, whether in the realm of Islamic jurisprudence or in lexicographical studies. This distinction has gained attention especially among modern Arab and Muslim scholars of *Fiqh* and *Uṣūl*, as will be established.[6]

2.2 The Pre-modern Lexicographical Discussion of '*Khilāf*' and '*Ikhtilāf*'

Classical Arabic lexicographers do not draw any significant distinctions between the concepts of '*khilāf*' and '*ikhtilāf*'. A rigorous study of the root '*khlf*' in seven of the most authoritative classical dictionaries

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1   Schacht, *Origins*, 96, fn. 3.

2   Walbridge, "The Islamic Art of Asking Questions," 70.

3   Goldziher, *The Ẓāhirīs*, 63, fn. 63. Masud draws extensively on Shāṭibī who distinguishes between '*khilāf*' and '*ikhtilāf*'.

4   Kamali, "The Scope of Diversity," 317.

5   Kamali, "The Scope of Diversity," 325-27.

6   E.g., Barhāmī, *Fiqh al-khilāf bayn al-Muslimīn: daᶜwa ilā ᶜalāqa afḍal bayn al-ittijāhāt al-Islāmiyya l-muᶜāṣira* (in Arabic), (Cairo: Dār al-ᶜAqīda: 2000), 16-90; and Shallī, *Al-Asās fī fiqh al-khilāf*: dirāsa tanẓīriyya taʾṣīliyya taṭbīqiyya jāmiᶜa fī ikhtilāfāt al-fuqahāʾ, (in Arabic), (Cairo: Dār al-Salām, 2009), 99-103.

reveals that they predominantly consider both terms interchangeable.[1] The meanings of disagreement, difference, and conflict of opinion associated with terms '*khilāf*' and '*ikhtilāf*' can be traced back to at least three derived word forms of the root '*khlf*': '*khalf*', '*khalaf*', and '*khilf*'. In their first usage, disagreement conveys the sense of an opinion that *stands behind* (i.e., *khalf*) an established one. In the second, it refers to an opinion intended to *succeed* (*khalaf*) an established one. In the third usage, it takes the mental image of something not the same; something different, though not necessarily contradictory. The verb '*khālafa*' (opp. of '*wāfaqa*', to agree and conform) implies disagreement and acting in nonconformity but not contradiction. None of the referenced lexicographers above seems to consider '*ikhtilāf*' and '*khilāf*' as antithetical, in the manner Kamali, for example, does.

In a broader context of the root *khlf*, there are over fifteen meanings associated with various derived word forms. However, only the three ones mentioned above ('*khilf*', '*khalf*', '*khalaf*') are directly relevant to the context of *ᶜilm al-ikhtilāf*. All seven consulted lexicographers acknowledge these three noun forms to varying degrees, drawing extensively on the Quran as a primary source, supplemented by the rich reservoir of Arabic poetry, to elucidate the meanings and usages of these terms. The following is a detailed exposition of their understanding of these three noun forms.

Noun Form 1: '*khilf*', a masculine noun (the feminine form being *khilfa*), is employed to describe two entities possessing distinct qualities that may not contradict each other. For instance, in early Arab usage, '*khilfān*' was used to depict two brothers with opposing characteristics, such as one being tall while the other is short or one having light skin while the other has dark skin.[2] Farāhīdī, along with Jawharī and Zabīdī, viewed '*khilāf*' and '*mukhālafa*' as synonymous, in the sense of "in disagreement with." In his commentary on Quran 9:81, "Those who were left behind rejoiced at sitting still *behind* the messenger of Allah ﴿فَـرِحَ ٱلۡمُخَلَّفُـونَ بِمَقۡعَدِهِـمۡ خِلَـفَ رَسُـولِ ٱللَّهِ﴾," Farāhīdī interpreted "*khilāfa rasūli Allāhi*" as signifying "disagreeing with him" (*mukhālafatuhu*). Several English translations of the meaning of the Quran, including versions by Pickthall, Yusuf Ali, Abdul Daryabadi, Taqi Usmani and Mohsin, translate '*khilāfa*' in this verse as 'behind'. However, following Farāhīdī's understanding of '*khilf*' as equivalent to '*mukhālafa*' (disagreement), Q 9:81 should read: "those who were left behind rejoiced at sitting (behind), in disagreement with the messenger of Allah," thus offering a more precise rendition which maintains the original meaning and context.

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1 Al-Farāhīdī (d. 173/789), *Kitāb al-ᶜayn*, (in Arabic), eds. Mahdī al-Makhzūmī and Ibrāhīm al-Sāmarrāʾī (Baghdad: Wizārat al-Thaqāfa wal-Iᶜlām, 1980-84), 4:265-9. Al-Azharī (d. 370/980), *Tahdhīb al-lugha*, (in Arabic), eds. ᶜAbd al-Salām Sarḥān et al. (Cairo: Al-Dār al-Miṣriyya lil-Taʾlīf wal-Tarjama, 1964-67), 7:393-417. Al-Jawharī (d. 393/1002), *Tāj al-lugha wa ṣiḥāḥ al-ᶜArabiyya*, (in Arabic), ed. Imīl Badīᶜ Yaᶜqūb and Muḥammad Nabīl Ṭurayfī (Beirut: Dār al-Kutub al-ᶜIlmiyya, 1999), 4:54-61; Ibn Fāris (d. 395/1005), *Muᶜjam maqāyīs al-lugha*, (in Arabic), ed. ᶜAbd al-Salām Hārūn (Cairo: Muṣṭafā al-Bābī l-Ḥalabī, 1969-72), 2:210-13. Ibn Manẓūr (d. 711/1311), *Lisān al-ᶜArab* (in Arabic), (Beirut: Dār Ṣādir, 1883), 9:82-97. Al-Zabīdī (d. 1205/1790), *Tāj al-ᶜarūs min jawāhir al-qāmūs* (in Arabic), (Kuwait: Wizārat al-Irshād wal-Anbāʾ, 1965), 23:240-81; Al-Rāghib al-Iṣfahānī (d. 502/1108), *Al-Mufradāt fī gharīb al-qurʾān*, (in Arabic), ed. Muḥammad Kīlānī (Beirut: Dār al-Maᶜrifa, 1994), 155-57.

2 Azharī, *Tahdhīb* 7:397. Azharī's same example was copied later in, Ibn Manẓūr, *Lisān*, 9:91.

Ibn Fāris also elucidates that can denote difference and dissimilarity. Therefore, when one says "*ikhtalafa al-nās*" and "*al-nāsu khilfa*," it means that people are different (*mukhtalifūn*).[1] Ibn Manẓūr further expands on this concept and underscores the verb forms '*khālafa*', '*takhālafa*' and '*ikhtalafa*'. He provides illustrations from poetry and colloquial usage where '*khilf*' and '*khilfa*' are used to convey the ideas of difference, diversity, disagreement, dissimilarity, multiplicity, and variation, as seen in Quran 6:141, "and the date-palm and crops of diverse flavor." He associates the adjective '*mukhtalif*' with the noun '*khilfa*' and reinforces Azharī's interpretation of '*khilfān*'. He then presents instances from everyday Arab speech, such as "*dalwāya khilfān*" (lit., my two [well] buckets are not the same), which vividly conveys the image of one bucket being full of water and ascending while the other is empty and descending, or one bucket being new while the other is old.[2] Like Ibn Manẓūr, Zabīdī comprehends the phrase "*ikhtalafa l-amrān*" as referring to two disagreeing things, but he adds that they are inherently contradictory.

Iṣfahānī's entry on the root "*khlf*" is one of the most inclusive. He mentions the noun form '*ikhtilāf*' (verb: *ikhtalafa*) and links it to concepts of disagreement and difference. While he deems '*ikhtilāf*' and '*mukhālafa*' to be synonymous, Iṣfahānī, unlike Zabīdī, sees the term '*khilāf*' as encompassing the idea of opposition and contradiction (*taḍādd*) without being entirely equivalent to it. In other words, he distinguishes between two opposites (*aḍdād*) that are inherently different, and two different things that are not necessarily opposites.

Iṣfahānī also observes that in the Quran, the word '*ikhtilāf*' and its related forms are for the most part used to signify quarrels and disputes (*munāzaᶜa* and *mujādala*). He provides elaboration on approximately ten Quranic verses that feature '*ikhtilāf*' in this context, including 3:105, 2:213, and 2:176.[3] While Yusuf Ali's translation renders this verse as "those who seek causes of dispute in the Book are in a schism far (from the purpose)," according to Iṣfahānī, "*ikhtalafū fī l-kitāb*" means they derive an interpretation from the Quran that is different from what Allah intended.[4]

Noun form 2: '*khalaf*' (verb: *khalafa*) covers a wide range of meanings, mainly entailing succeeding

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1   Ibn Fāris, *Muᶜjam*, 2:213.

2   Ibn Manẓūr, *Lisān*, 9:91.

3   Respectively, "And be not as those who became divided and differed after the clear proofs had come unto them…

﴿وَلَا تَكُونُوا۟ كَٱلَّذِينَ تَفَرَّقُوا۟ وَٱخْتَلَفُوا۟ مِنۢ بَعْدِ مَا جَآءَهُمُ ٱلْبَيِّنَـٰتُ وَأُو۟لَـٰٓئِكَ لَهُمْ عَذَابٌ عَظِيمٌ۞﴾﴾.

"Humans were one community; then Allah sent the prophets as bearers of glad tidings and warnings. And with them He sent down the Book in truth, to judge among humans concerning that wherein they *differed* [*ikhtalafa fīh*]. And only they who were given it *differed* about it [*ikhtalafa fīh*], after clear proofs came to them out of envy among themselves. Then Allah by His Will guided those who believe unto the truth of that about which they *differed*

﴿كَانَ ٱلنَّاسُ أُمَّةً وَٰحِدَةً فَبَعَثَ ٱللَّهُ ٱلنَّبِيِّـۧنَ مُبَشِّرِينَ وَمُنذِرِينَ وَأَنزَلَ مَعَهُمُ ٱلْكِتَـٰبَ بِٱلْحَقِّ لِيَحْكُمَ بَيْنَ ٱلنَّاسِ فِيمَا ٱخْتَلَفُوا۟ فِيهِ وَمَا ٱخْتَلَفَ فِيهِ إِلَّا ٱلَّذِينَ أُوتُوهُ مِنۢ بَعْدِ مَا جَآءَتْهُمُ ٱلْبَيِّنَـٰتُ بَغْيًۢا بَيْنَهُمْ فَهَدَى ٱللَّهُ ٱلَّذِينَ ءَامَنُوا۟ لِمَا ٱخْتَلَفُوا۟ فِيهِ مِنَ ٱلْحَقِّ بِإِذْنِهِۦ وَٱللَّهُ يَهْدِى مَن يَشَآءُ إِلَىٰ صِرَٰطٍ مُّسْتَقِيمٍ۞﴾ and "Truly those who differ [*ikhtalafū*] concerning the Book are in extreme schism ﴿وَإِنَّ ٱلَّذِينَ ٱخْتَلَفُوا۟ فِى ٱلْكِتَـٰبِ لَفِى شِقَاقٍۭ بَعِيدٍ﴾]."

4   Other Quranic verses Iṣfahānī mentions under the rubric of *mukhālafa* include: 3:55 (close in meaning to 5:48, 6:164, 16:92 and 22:69), 10:19, 10:93, 11:118, 16:13 (also 35:27 and 39:21) 19:37 (repeated in 43:65), 22:60, 51:8, 78:3, 10:93 (close in meaning to 45:17). Iṣfahānī, *Mufradāt*, 155-57.

generations or posterity. For example, Ibn Fāris defines '*khalafa*' as "something that succeeds another and takes its place."[1] As such, he ascribes to the term such notions as succession, substitution, replacement, following, remaining behind, and regeneration (in the context of plants and animal parts). Ibn Fāris draws on the Quran to emphasize the idea of a succeeding generation, referring particularly to 7:169 (also 19:59): "a generation [*khalf*] has succeeded them," and 9:87 (also 9:93): "they are content to be with those who remain behind [*khawālif*]." The term "*khawālif*" in the latter verse is used to describe individuals who remain behind, such as women, the elderly, and the infirm, who were unable to accompany Prophet Muhammad in battles and trade journeys. Here, "staying behind" is derived from the concept of succeeding those who remained at home.

Within the specific context of Q 7:169 (and 19:59), Iṣfahānī remarks a clear distinction between '*khalf*' and '*khalaf*', despite both sharing the same verb '*khalafa*' and entailing succeeding generations. '*Khalaf*' conveys a positive meaning, signifying righteous offspring (*khalaf ṣāliḥ*). In contrast, '*khalf*' carries a negative connotation, denoting depraved posterity (*khalf fāsid*). This distinction is illustrated by both verses successively. In 7:169, it is stated: "and a generation [*khalf*] succeeded them who inherited the Book" ﴿فَخَلَفَ مِنْ بَعْدِهِمْ خَلْفٌ وَرِثُواْ ٱلْكِتَـٰبَ﴾. In 19:59, "Then they were succeeded by a later generation [*khalf*] ﴿فَخَلَفَ مِنۢ بَعْدِهِمْ خَلْفٌ أَضَاعُواْ ٱلصَّلَـٰوةَ وَٱتَّبَعُواْ ٱلشَّهَوَٰتِۖ﴾ who neglected prayer and followed base desires" Among the six English translations consulted, only Yusuf Ali introduces the word 'evil' to describe the generation in the first verse, aligning more closely with the Quranic Arabic and Iṣfahānī's differentiation between '*khalf*' and '*khalaf*'.

Of all Quranic verses that signify succession, 25:62 stands out as particularly interesting: "And He it is Who made the night and the day successive [*khilfa*] ﴿وَهُوَ ٱلَّذِى جَعَلَ ٱلَّيْلَ وَٱلنَّهَارَ خِلْفَةً﴾".[2] It draws the image of the day and night succeeding and *inheriting* one another in an endless cycle. Farāhīdī interprets '*khilfa*' (feminine of *khilf*) within the context as a form of *ikhtilāf*, emphasizing that the day and night succeed one another because they are inherently different.[3] It is worth noting that the word '*khilf*' finds its roots, according to all examined lexicographers, in '*istisqā*ʾ', meaning drawing water from a water source. Ibn Manẓūr explains that Arabs used to say, for example, "*min ayna khilfatukum?*" and "*min ayna tastaqūn?*" to inquire about the source of water. They called a communal source of water '*khilfa*' because the act of drawing water (*istisqāʿ*) from it occurred in succession, whether for watering their cattle or obtaining household use. Therefore, '*khilf*' and '*khalaf*' are derived from the concept of *coming after* or *taking place in succession*.[4]

Noun Form 3: '*khalf*' conveys the notions of 'back' and 'behind', in contrast to 'front' and 'ahead'. Reflecting on this form, Iṣfahānī refers to 2:255 (similar to 20:110, 21:28, 22:76, and 36:45), "He knows

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1 Ibn Fāris, *Muʿjam*, 2:213.

2 Additionally, Iṣfahānī references in this context the following verses: 25:62, 6:165, 7:69, 10:73, 11:57, 38:26, and 53:39.

3 Farāhīdī, ʿ*Ayn*, 4:268.

4 Ibn Manẓūr, *Lisān*, 9:88.

Another .﴿يَعْلَــمُ مَـــا بَـــيْنَ أَيْدِيهِـــمْ وَمَـــا خَلْفَهُـــمّْ﴾ "that which is before them and that which is behind them" significant example found in the Quran and widely cited by lexicographers is 9:87, "They are content to be with those who remain behind [*khawālif*]" ﴿رَضُــواْ بِـأَن يَكُونُــواْ مَـعَ ٱلْخَـوَالِـفِ﴾. Notably, Azharī brings particular attention to the derogatory extension of the term '*khawālif*' (with its singular forms '*khalfāʾ*' for the feminine and '*khalf*' for the masculine). He informs that in early Arabic usage, '*khalf*' and '*khalfāʾ*' were used to describe individuals who exhibited characteristics of mental instability and developmental challenges, akin to the use of the term 'behind' in English to describe someone who may be perceived as mentally or socially "left behind."

In summary, the nuanced distinctions between the terms '*khilāf*' and '*ikhtilāf*' stem from the various derived word forms of the root '*khlf*', particularly '*khalf*,' '*khalaf*', and *khilf*. The first, '*khalf*', entails an opinion that stands behind an already established one, while the second, '*khalaf*', pertains to an opinion intended to succeed another. On the other hand, '*khilf*' signifies something different, although not necessarily contradictory, since the verb '*khālafa*' (opposite of '*wāfaqa*', to agree and conform) implies a state of disagreement and non-conformity. Most significantly, as has been established, none of our consulted lexicographers considers '*ikhtilāf*' and '*khilāf*' to be antithetical. Instead, they regard them as largely interchangeable in their usage.

2.3   The Modern Debate of *'Khilāf'* and *'Ikhtilāf'* in Islamic Legal Studies

Before delving into the contemporary debate regarding the distinction between '*khilāf*' and '*ikhtilāf*', it is essential to highlight that early jurists within the classical traditions of *Fiqh* and *Uṣūl* showed little, if any, concern for potential lexical dissimilarities between these two terms. For instance, Shāfiᶜī himself used them interchangeably in various treatises. His primary differentiation was between valid and invalid disagreements, for he prohibited divergence in matters addressed in the Quran and/or Sunna but allowed it in cases not covered by these sources where a ruling could be obtained through *taʾwīl* and *qiyās*.[1]

Numerous classical scholars, including Marwazī (d. 294/905), Ṭabarī (d. 310/922), Ṭaḥāwī (d. 321/933), Qāḍī ᶜAbd al-Wahhāb (d. 422/1031), Asmandī (d. 552/1157), among others, used '*ikhtilāf*' and '*khilāf*' interchangeably.[2] Jurists from the post-formative period, such as Qarāfī (d. 684/1285)[3] and Shāṭibī

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[1] Shāfiᶜī designated several entries to juristic disagreement in the *Risāla*. See, Shāfiᶜī, *Al-Umm*, 1:259-70. His use of the terms '*khilāf*' and '*ikhtilāf*' can also be seen in other texts, such as *Kitāb Ikhtilāf Mālik wa al-Shāfiᶜī*, being vol. 8 of the *Umm*.

[2] Respectively: Marwazī, *Ikhtilāf al-ᶜUlamāʾ*, (in Arabic), ed. Al-Sayyid Ṣubḥī (Beirut: ᶜĀlam al-Kutub, 1985). Ṭabarī, *Ikhtilāf al-Fuqahāʾ* (in Arabic), (Beirut: Dār al-Kutub al-ᶜIlmiyya, 1980). Ṭaḥāwī, *Ikhtilāf al-Fuqahāʾ*, ed. Muḥammad al-Maᶜṣūmī. Islamabad: Maᶜhad al-Abḥāth al-Islāmiyya, 1971). Qāḍī ᶜAbd al-Wahhāb, *Al-Ishrāf ᶜalā Nukat Masāʾil al-Khilāf*, (in Arabic), ed. Mashhūr b. Ḥasan (Riyadh: Dār Ibn al-Qayyim, 2008). Asmandī, *Ṭarīqat al-khilāf fī l-Fiqh bayn al-aʾimma l-aslāf*, (in Arabic), ed. Muḥammad ᶜAbd al-Barr (Cairo: Dār al-Turāth, 2007).

[3] E.g., Qarāfī, *Al-Iḥkām fī tamyīz al-fatāwā ᶜan al-aḥkām wa taṣarrufāt al-qāḍī wal-imām*, (in Arabic), ed. ᶜAbd al-Fattāḥ Abū Ghudda (Beirut: Dār al-Bashāʾir al-Islāmiyya, 1995), 35, 80, 133, 150 (*khilāf* and *masāʾil al-khilāf*), and 215 (*mawāqiᶜ al-ikhtilāf*). For a reliable English translation, see, Qarāfī, *The Criterion for Distinguishing Legal Opinions from Judicial Rulings and the Administrative Acts of Judges and Rulers*. Trans. Mohammad Fadel (New Haven: Yale University Press, 2017).

(d. 790/1388),[1] also did not appear to differentiate between the two terms based on lexical distinctions. Although Qarāfī and Shāṭibī may have used '*khilāf*' more frequently when referring to *ᶜilm al-ikhtilāf* as a legal subfield, they both considered '*khilāf*' and '*ikhtilāf*' to denote disputes in the process of *ijtihād*, which could be accepted if grounded in valid legal proof or rejected if rooted in capricious opinion.

Qarāfī further distinguishes rejected '*khilāf*' as "remote disagreement" (*khilāf shādhdh*).[2] In common usage, '*shādhdh*' denotes something that is irregular and deviates from the norm and is as an exception to it. In its technical legal context, it signifies a viewpoint that not only deviates from the dominant opinion, but one that is also unsound and is based on weak evidence. Ibn Ḥazm (d. 456/1064), in Section 27 of his *Iḥkām*, delves into this concept extensively.[3] I choose to translate it as 'remote' to convey the notion of a legal perspective that is *distant* in terms of possibility, akin to Ibn Rushd's (d. 595/1198) term '*baᶜīd*' (lit., far) which he uses to describe unsound and invalid disagreements.[4] Regarding Shāṭibī, he did not dedicate a separate work to the question of *ikhtilāf*. However, he addressed it in various sections of the *Muwāfaqāt*, particularly in the book of *Ijtihād*.[5]

The contemporary debate about the distinction between '*khilāf*' and '*ikhtilāf*' appears to be a modern invention that finds little support in the legal and lexicographical works and discussions of the classical Muslim scholars. This ongoing debate is characterized by three primary arguments. The first argument asserts that '*ikhtilāf*' and '*khilāf*' are two distinct concepts; a position advocated by scholars like ᶜAbd al-Karīm Zaydān, who argues that Shāṭibī permitted the former and forbade the latter.[6] According to him, '*khilāf*' means a divergent opinion based on a misleading whim rather than on the lawgiver's intent.[7] On the other hand, '*ikhtilāf*' denotes a sustained opposing opinion contributed by an independent legal scholar on which no indicants are found in the Quran or Sunnah. Similarly, Ṭāha Jābir al-ᶜAlwānī described '*ikhtilāf*' as "an aspect of rational speculation and *ijtihād*."[8] He established two conditions for a juristic disagreement to be accepted. First, it must be grounded in valid legal evidence. Second, it must provide only probable and realistic rulings. A dispute failing to meet these two requirements cannot be accepted and therefore is categorized as '*khilāf*'.

Other key modern scholars took the same stance on this quandary as ᶜAlwānī. For example, Kamali

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1 Shāṭibī, *Al-Muwāfaqāt fī uṣūl al-sharīᶜa*, (in Arabic), ed. ᶜAbd Allāh Darrāz (Beirut: Dār al-Maᶜrifa, 1975), 4: 89-243; For a reliable English translation, see, Shāṭibī, *The Reconciliation of the Fundamentals of Islamic Law*, Trans. Imran Nyazee (Reading, UK: Garnet, 2011).

2 Qarāfī, *Al-Furūq aw anwār al-burūq fī anwāᵓ al-furūq*, (in Arabic), ed. Khalīl al-Manṣūr (Beirut: Dār al-Kutub al-ᶜIlmiyya, 1998), e.g., 4:116.

3 Ibn Ḥazm, *Al-Iḥkām fī Uṣūl al-Aḥkām*, (in Arabic), ed. Aḥmad Shākir (Beirut: Dār al-Āfāq al-Jadīda, 1983), 5:86-89.

4 Ibn Rushd, *Bidāyat al-mujtahid wa nihāyat al-muqtaṣid*, (in Arabic), ed. Farīd ᶜAbd al-ᶜAzīz Jundī (Cairo: Dār al-Ḥadīth, 2004), e.g., 1: 91, 2: 212, 3: 231, and 4:15.

5 Shāṭibī, *Al-Muwāfaqāt*, 4:89-243.

6 Zaydān, *Al-Wajīz fī uṣūl al-fiqh* (in Arabic), (Cairo: Muᵓassasat Qurṭuba, 1976), 327-46.

7 Ibid, 328.

8 ᶜAlwānī, *Adab al-Ikhtilāf*, 104.

decries '*khilāf*' for constituting "unrealistic disagreement."[1] Muḥammad ᶜAwwāma draws on Kafawī's (d. 1094/1683), *Al-Kulliyyāt*, to underscore the same differentiation. [2] Kafawī defines '*khilāf*' as a dispute concerning the method and objective of revealed law that lacks legal evidence, thereby rendering it an invalid form of *ijtihād* and a potential source of division. On the other hand, Kafawī defines '*ikhtilāf*' as a distinct opinion that pertains solely to the methods of revealed law, supported by legal proof, making it a valid form of *ijtihād* and a manifestation of mercy. To put it simply, '*khilāf*' represents a dispute within a legal domain that necessitates no further exploration and contradicts the Quran, Sunnah, and *ijmāᶜ*.

The second argument in this debate regards '*khilāf*' as the valid form of disagreement and '*ikhtilāf*' as the invalid form. This position is articulated, for example, in Muḥammad Marᶜashlī's book, *Al-Khilāf yamnaᶜ al-ikhtilāf* (*khilāf* prevents *ikhtilāf*), (in Arabic).[3] Marᶜashlī conceives of '*khilāf*' as a manifestation of diversity and plurality of opinion that fosters unity and guards against dissension. Based on his interpretation of sources like Iṣfahānī, he defined '*khilāf*' as an opinion grounded in valid legal proof, which stems from the inherent diversity in people's dispositions. He thus argues that this form of disagreement does not lead to schism but rather promotes mutual understanding.

In contrast, Marᶜashlī views '*ikhtilāf*' as divisive and detrimental to the integrity of Islamic law and the unity of the Muslim community. However, Marᶜashlī's elaboration appears somewhat perplexing at times, as it contradicts some of his own claims. For instance, while he aligns with Qannūjī's comparison of the approaches of '*khilāf*' and *jadal*,[4] he also maintains that '*khilāf*' does not represent contention (*munāzaᶜa* and *mushāqqa*), which is essential to the practice of *jadal*. In addition, Marᶜashlī refers to Ibn Masᶜūd's statement: "*al-khilāf sharr*" (dissonance is evil), citing it as a warning against the practice of '*ikhtilāf*', even though the saying pertains to '*khilāf*'.[5] Also, this position differs from that of Kafawī, whom Marᶜashlī draws upon. As seen earlier, Kafawī tolerates and accepts '*ikhtilāf*' but not '*khilāf*'.

The third argument in this ongoing debate represents '*ikhtilāf*' and '*khilāf*' as synonymous, considering them to be essentially the same concept. For instance, Mohammed Erougui defines '*ikhtilāf*' and '*khilāf*' as both entailing the opposite of '*wifāq*' (agreement, conformity, harmony, and unity).[6] He views them

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1 Kamali, *The Scope of Diversity*, 317.

2 ᶜAwwāma, *Adab al-ikhtilāf fī masāʾil al-ᶜilm wal-dīn* (in Arabic), (Beirut: Dār al-Yusr, 2007), 7-10. For Kafawī's account, see Kafawī, *Al-Kulliyyāt: muᶜjam fī l-muṣṭalaḥāt wal-furūq al-lughawiyya*, (in Arabic), eds. ᶜAdnān Darwīsh and Muḥammad al-Maṣrī (Beirut: Muʾassasat al-Risāla, 1998), 60-2.

3 Marᶜashlī, *Al-Khilāf*, 11-17.

4 Qannūjī defined "*khilāf* as a science by which [scholars] learn [how to use] solid proof to present legal arguments and to reprove uncertainties and false disputes. It is [like] dialectic that is a division of logic, but with special focus on the religious objectives." Qannūjī, *Abjad al-ᶜUlūm: al-washy al-marqūm fī aḥwāl al-ᶜulūm*, (in Arabic), ed. ᶜAbd al-Jabbār Zakkār (Damascus: Wizārat al-Thaqāfa wa l-Irshād al-Qawmī, 1978), 276.

5 Marᶜashlī, *Al-Khilāf*, 16. His two paragraphs that introduce Iṣfahānī and Kafawī (14) are almost word for word and may have been copied from ᶜAwwāma (reviewed above).

6 Erougui, *Naẓariyyat al-taqᶜīd al-fiqhī wa atharuhā fī ikhtilāf al-fuqahāʾ* (in Arabic), (Rabat: Kulliyat al-Ādāb wa l-ᶜUlūm al-Insāniyya, 1994), 179-83.

as disagreements between two or more jurists regarding legal matters, such as when one scholar permits an action while another prohibits it. Erougui also offers a reading of Shāṭibī's conception of '*khilāf*' and '*ikhtilāf*' that differs from Zaydān's position. According to Erougui, Shāṭibī used both terms interchangeably to indicate a form of *ijtihād* that could be based on valid legal proof and thus accepted or rooted in capricious opinion and therefore rejected.[1]

In more recent scholarship, Nawwār ben Shallī shares the perspective that '*ikhtilāf*' and '*khilāf*' are synonymous terms, and refers to the concept as a legal sub-science through expressions like "*ᶜilm al-khilāf*," "*ᶜilm al-ikhtilāf*," and "*al-khilāfiyyāt*." He aligns this field with contemporary comparative Islamic law, and defines it as the "comparison (*muwāzana*; lit., balancing) of practical legal injunctions to determine the most preponderant among them."[2] According to Shallī, the term '*muwāzana*' closely reflects the true goal of modern comparative Islamic law. This endeavor does not merely involve compiling rulings to contrast their areas of conflict (*muqābala*). Instead, it aims to balance these rulings for identifying which one prevails over another, and determine which are more appropriate to be admitted as valid and which are not. Shallī further distinguished between what he labels 'doctrinal disagreements' (*khilāf madhhabī*) and 'superior disagreements' (*khilāf ᶜālī*). He clarifies that in the first type, jurists confine themselves to disputes within their respective legal schools, which in the second, they engage in comparing them across the different schools of law. In another study, I call the first type *intra-madhhab* and intra-doctrinal disagreements and the second *inter-madhhab* and inter-doctrinal disagreements.[3]

3. Khilāf, Ikhtilāf, and Jadal

Beyond the unresolved connection between '*khilāf*' and '*ikhtilāf*', another important relationship that warrants close attention, and has led to confusion, is between juristic disagreement and juristic dialectic (*al-jadal al-fiqhī*), as the two share similar characteristics. George Makdisi, in his seminal book, *The Rise of Colleges*, acknowledges the complex relationship between the concepts of *khilāf*, *jadal* and *naẓar*, and shows how scholars have intermingled them sometimes. The primary source of this confusion, as Makdisi points out, lies in the very nature of *ᶜilm al-ikhtilāf*, since "to deal with *khilāf*, one had to be skilled in *jadal*, dialectic, and in *munāẓara*, *naẓar*, disputation."[4] It is essential to recognize the key role that the arts of disputation and argumentation played in theology, which may have led to the association of the terms *khilāf*, *jadal* and *naẓar*. However, in the realm of *Fiqh*, we must remember that many authoritative scholars viewed dialectic with suspicion in its application to the law. They warned against its potentially detrimental impact on legal scholarship, as it could divert legal scholars from their primary objectives. Ibn Rushd, for example, consciously structured his comparative legal work, *Bidāyat al-Mujtahid*, in way that deliberately

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1   Erougui, *Naẓariyyat al-Taqᶜīd*, 181-2.

2   Shallī, *Asās*, 22.

3   Laabdi, "Ibn Khaldūn between Legal Theory and Legal Practice," *Journal of Islamic Studies* 32:1 (2021): 54-55.

4   Makdisi, *The Rise of Colleges*, 109. Makdisi translated "*naẓar*" and "*al-naẓar al-fiqhī*" as disputation, although it is not certain if early Muslim jurists used "*naẓar*" in the sense of disputation. *Naẓar*, not *munāẓara*, entails a rational process of speculation.

avoid aligning it with the dialectic style of *kalām*.

In his emphasis on the *khilāf-madhhab* antithesis and the role of dialectic in the evolution of Uṣūl al-Fiqh, Makdisi emphasizes that prospective law students had a structured educational path. First, they mastered the hermeneutics of their *madhhab*. Second, they explored controversial issues (*khilāf*) within it. Finally, they acquired the techniques of *jadal*. This last stage was crucial as it equipped them with the tools of argumentation, which were vital for defending their *madhhab*'s positions and, conversely, for refuting those of other schools. Makdisi sees *khilāf* and *jadal* here as instructional models, essentially considering them the same. This view might be linked to his influence by two authoritative sources.

The first source is Ibn ᶜAqīl (d. 513/1119), especially his work, *Al-Wāḍiḥ* (the lucid in legal theory), (in Arabic), comprising three volumes, *Kitāb al-madhhab* (book of the [Ḥanbalī legal] school), *Kitāb al-jadal* (book of dialectic) and *Kitāb al-khilāf* (book of *khilāf*).[1] The second influential source is Ḥajjī Khalīfa (d. 1067/1657) and his *Kashf al-ẓunūn* (uncovering doubts), (in Arabic), particularly his section on "ᶜ*Ilm al-khilāf*," where he identifies juristic disagreement with dialectic and even intertwines them with logic.[2] The stance of Ibn ᶜAqīl and Ḥajjī Khalīfa appears to have significantly impacted not only Makdisi's understanding of the relationship between juristic disagreement and dialectic but also his broader conception of the scholastic method within the classical Muslim legal circles.

In a recent study of the place of juristic disagreement within the Mālikī School, Muḥammad al-ᶜAlamī has taken a different perspective on the *khilāf-ikhtilāf-jadal* conundrum. He categorizes three fields and approaches within the realm of ᶜ*ilm al-ikhtilāf*. He calls the first and overarching category "*al-khilāf al-ᶜālī*" (superior *khilāf*). From this foundational domain, two more categories emerge, "ᶜ*ilm al-ikhtilāf*" (science of *ikhtilāf*) and "ᶜ*ilm al-khilāf*" (science of *khilāf*).[3] He defines "superior *khilāf*" as a comparative examination of *Fiqh* and *Uṣūl* that transcends the boundaries of individual legal schools. It is the antithesis of a narrow *madhhab*-focused study, which delves into the specific hermeneutics of a particular school. Such investigations, according to ᶜAlamī, combine the methodologies of "ᶜ*ilm al-khilāf*" and "ᶜ*ilm al-ikhtilāf*," and incorporate elements of *jadal* while traversing the hermeneutical frameworks of various schools.

To support this position, ᶜAlamī quotes Ibn Juzayy of Granada (d.741/1340), who presented his work *Al-Qawānīn al-Fiqhiyya* (the canons of *Fiqh*) as a book that "fuses Mālikī law and the practice of superior juristic disagreement" (*jamaᶜa bayn tamhīd al-madhhab wa dhikr al-khilāf al-ᶜālī*).[4] He also references

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1   Ibn ᶜAqīl, *Al-Wāḍiḥ fī uṣūl al-fiqh*, (in Arabic), ed. George Makdisi (Stuttgart and Berlin: Stainir and klaus Schwarz Verlag, 1996-2002).

2   Ḥajjī Khalīfa, *Kashf al-ẓunūn ᶜan asāmī l-kutub wa l-funūn*, (in Arabic), eds. Muḥammad Yaltkaya and Rifᶜat al-Kilīsī (Beirut: Dār Iḥyāʾ al-Turāth al-ᶜArabī, 1941), 1:721.

3   ᶜAlamī, *Al-Mustawᶜib li-tārīkh al-hhilāf al-ᶜālī wa manāhijih ᶜind al-Mālikiyya* (in Arabic), (Rabat: Markaz al-Dirāsāt wal-Abḥāth wa Iḥyāʾ al-Turāth and al-Rābiṭa al-Muḥammadiya lil-ᶜUlamāʾ, 2010), 1:29.

4   Ibn Juzayy, *Al-Qawānīn al-fiqhiyya fī talkhīṣ madhhab al-Mālikiyya wa l-tanbīh ᶜalā madhāhib al-Shāfiᶜiyya wal-Ḥanafiyya wal-Ḥanbaliyya*, (in Arabic), ed. Muḥammad Muḥammad (Beirut: Dār al-Qalam, 1980), 52.

Ibn Farḥūn (d. 799/1397), particularly his representation of Muḥammad b. Yūsuf b. Masdī's (d. 663/1264) *Iᶜlām al-Nāsik bi-Aᶜlām al-Manāsik* (in Arabic) as a study of the four legal schools and an examination of "*al-khilāf al-ᶜālī.*"[1] Furthermore, ᶜAlamī draws attention to Ḥajjī Khalīfa's (d. 1067/1657) description of Ibn Ḥazm's *Muḥallā* as a work on "*al-khilāf al-ᶜālī.*"[2]

ᶜAlamī classifies the second category as the "science of *ikhtilāf*," a comparative model primarily centered on exploring disagreements across the schools. However, it does not employ dialectical methods. This category often encompasses works with titles like "*Ikhtilāf al-Fuqahāʾ*" (the jurists' disagreements) or "*Ikhtilāf al-ᶜUlamāʾ*" (the scholars' disagreements), as seen in the works of Ṭabarī and Marwazī.[3]

Contrary to this, the third category (science of *khilāf*) distinguishes itself by not making a specific school's hermeneutics its central focus, which enables scholars to draw from theories and approaches of other schools. Another key characteristic of this group is that it incorporates various methodological frameworks and accepts other forms of legal writing as part of the science of *ᶜilm al-khilāf*. These forms of legal writing include the *muwaṭṭaʾāt* (path-breaking works of *fiqh*, such as *Muwaṭṭaʾ Mālik*), the *jawāmiᶜ* (comprehensive collections of *Ḥadīth*, such as *Jāmiᶜ al-Tirmidhī*), and the *sunan* (fiqh-focused collections of *Ḥadīth*, such as *Sunan Abū Dāwūd*).[4] *Ilm al-khilāf*, according to ᶜAlamī, is conceptually aligned with *jadal* in terms of its objectives and methodology, for it, too, equips scholars with the tools necessary to defend the hermeneutics of their respective legal schools and refute those of rivaling schools. To further support the idea that *ᶜilm al-khilāf* shares methodological similarities with *jadal*, and in addition to the observations of Ibn ᶜAqīl and Ḥajjī Khalīfa, ᶜAlamī cites similar views held by Ṭāshkubrī Zadah (d. 986/1561) as well as Ibn Khaldūn.[5]

Within the context of this debate, it is worth recognizing a prominent style found in *jadal* and invoked in *jadal*-driven legal works, which is founded on the use of conversational modes based on envisioning a dialogic exchange with an intellectual rival. These texts commonly employ phrases such as "if they say…, we say" (*in-qālū… qulnā*). Another technique borrowed from *jadal* is the use of objections and counter-objections that are structured through systematic questions and answers. Scholars use standard formulas like "then, we ask them why such and such (*fa naqūlu lahum limadhā*)." However, it is also worth noting that not all works of *khilāf* draw directly from the techniques employed in *jadal*. This distinction is evident when examining the tables of content in these works. The key question is whether categorizing *khilāf* writings based on the author's personal style and intention is a helpful approach. In short, the answer is no. Looking at *jadal* does not offer much utility in distinguishing between works of *khilāf* and *ikhtilāf*, even if one assumes, for the sake of argument, that these two are indeed distinct subfields within the broader

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1   Ibn Farḥūn, *Al-Dībāj al-mudhahhab fī maᶜrifat aᶜyān ᶜulamāʾ al-madhhab*, ed Muḥammad al-Aḥmadī (in Arabic), (Cairo: Dār al-Turāth, 1975), 2:334.

2   Ḥajjī Khalīfa, *Kashf al-Ẓunūn*, 1:721.

3   ᶜAlamī, *Mustawᶜib*, 1:5.

4   ᶜAlamī, *Mustawᶜib*, 1:41-42.

5   Ṭāshkubrī Zādah, *Miftāḥ al-saᶜāda wa miṣbāḥ al-siyāda fī mawḍūᶜāt al-ᶜulūm* (in Arabic), (Beirut: Dār al-Kutub al-ᶜIlmiyya, 1985); and Ibn Khaldūn, *Al-Muqaddima*, 3:1-48. See, ᶜAlamī, *Mustawᶜib*, 1:32-33.

domain of *ᶜilm al-ikhtilāf*.

The value of *jadal* in the study of Islamic law, including *ᶜilm al-ikhtilāf*, is unquestionable. However, equating *jadal* and *ikhtilāf*, as proposed by Makdisi, does not help in understanding the genre boundaries of the latter. Additionally, probing the extent to which a work is rooted in *jadal*, as suggested by ᶜAlamī, does not necessarily assist in distinguishing *khilāf* from *ikhtilāf*, even if one assumes that they are distinct categories in the first place. An examination of the contents and chapter divisions in the works of *khilāf*, which ᶜAlamī claims to be *jadal*-focused, reveals some inconsistencies.[1] For instance, both Ibn Ḥazm's *Muḥallā* and Ibn al-Qaṣṣār's *ᶜUyūn al-adilla*, which ᶜAlamī considers books of *al-khilāf al-ᶜālī*, share the same structural elements as works he includes in the *ikhtilāf* category, like Ṭabarī's *Ikhtilāf al-fuqahāʾ* and Marwazī's *Ikhtilāf al-ᶜulamāʾ*. The likes of these works delve into practical issues, often starting with a chapter on cleanliness (*ṭahāra*). Nonetheless, while the approaches of *jadal* and *ikhtilāf* should not be conflated as the same, it is important to emphasize that students used to be trained in both as part what is sometimes described as 'integration of knowledge' (*al-takāmul al-maᶜrifī*).[2]

Contrarily, Ibn ᶜAqīl's *Kitāb al-khilāf*, which ᶜAlamī considers a work of *ikhtilāf*, focuses on theoretical topics commonly found in Uṣūl books. It explores topics such as *qiyās*, *ijtihād*, and a wide range of linguistic relations essential to legal inference (*istinbāṭ*), including general/specific (*ᶜāmm/khāṣṣ*) and literal/non-literal terms (*ḥaqīqa/majāz*).[3] As for its outline and fields of focus, Ibn ᶜAqīl's work appears to be similar to Ibn al-Sīd al-Baṭalyawsī's (d. 521/1127) *Kitāb al-Inṣāf*.[4] Another inconsistency in ᶜAlamī's account is considering Ibn Rushd's *Bidāyat al-Mujtahid* as a book of superior *khilāf*, however, as it has been established by recent studies of Ibn Rushd's legal thought, in almost no part of the book does Ibn Rushd engage with a dialectic approach.[5]

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1 Ibn ᶜAqīl's *Kitāb al-Khilāf*, which he listed under "*ᶜilm al-khilāf*," and Ibn Ḥazm's *Muḥallā*, (in Arabic), ed. Muḥammad Manor (Cairo: Al-Ṭibāᶜa al-Munīriya, 1933), and Ibn al-Qaṣṣār's *ᶜUyūn al-adilla*, both of which he listed under "*al-khilāf al-ᶜālī*." Ibn Saᶜd's edition of *ᶜUyūn al-adilla* covers only its first volume (Ritual Purification). Ibn al-Qaṣṣār, Abū l-Ḥasan ᶜAlī b. Aḥmad. *ᶜUyūn al-adilla fī masāʾil al-khilāf bayn fuqahāʾ al-amṣār: kitāb al-ṭahāra*, (in Arabic), ed. ᶜAbd al-Ḥamīd b. Saᶜd (Riyadh: Jāmiᶜat al-Imām Muḥammad Ibn Saᶜūd al-Islāmiyya, 2006). The book in its entirety is yet to receive a proper edition.

2 Not to be confused with the concept of 'knowledge integration' associated with the political project of 'Islamization of knowledge'. For more on the classical conception of '*al-takāmul*', see, Mourad Laabdi and Aziz Elbittioui, "From *Aslamat al-Maᶜrifa* to *al-Takāmul al-Maᶜrifī*." *Religions* 15, 3:342 (2024).

3 Ibn al-Qaṣṣār's *Kitāb al-Khilāf* (book 3 of *Al-Wāḍiḥ fī Uṣūl al-Fiqh*) and book 3 of Ghazālī's *Mustaṣfā*. Al-Ghazālī, *Al-Mustaṣfā min ᶜilm al-uṣūl*, (in Arabic), ed. Ḥamza Ḥāfiẓ (Medina: Al-Madīna l-Munawwara lil-Ṭibāᶜa, 1992).

4 The two, however, differ in that Ibn ᶜAqīl stresses the role of *jadal* in the field of *ᶜilm al-ikhtilāf* and applies it throughout, whereas Baṭalyawsī dismisses *jadal* entirely. Baṭalyawsī stressed on one occasion, deliberately it seems, that his intention is not to refute others' doctrines but to "call attention" (*al-tanbīḥ ᶜalā*) to jurists' disputes and do so in an objective manner (*bi-inṣāf*). Ibn al-Sīd, *Al-Inṣāf fī l-tanbīḥ ᶜalā l-maᶜānī wal-asbāb al-latī awjabat al-ikhtilāf bayn al-muslimīn fī ārāʾihim*. ed. Muḥammad al-Dāya (Damascus: Dār al-Fikr, 1987), 29-32.

5 E.g., Laabdi, "The Other Averroes: Revealed Law and the Craft of Juristic Disagreement," unpublished dissertation, University of Toronto, 2017.

In conclusion, the question of whether the terms of '*ikhtilāf*' and '*khilāf*' belong to the same genre holds significant importance within the study of Islamic law. While ᶜAlamī's attempt to delineate these terms in relation to *fiqh*, *uṣūl* and *jadal* is commendable, it is not without its limitations. A notable shortcoming in his approach is the identification of *jadal* as a distinguishing feature between "ᶜ*ilm al-khilāf*" and "ᶜ*ilm al-ikhtilāf*." This model presupposes that these two terms represent distinct categories of inquiry. However, I propose an alternative way for conceptualizing the domain of ᶜ*ilm al-ikhtilāf*. Firstly, I suggest the exclusion of *al-jadal al-fiqhī* (not *jadal* broadly) from discussions concerning ᶜ*ilm al-ikhtilāf*. Indeed, works centered on *jadal* reasoning are typically identifiable through their use of the term '*jadal*' in their titles, such as Ibn ᶜAqīl's *Kitāb al-Jadal* and Juwaynī's *Al-Kāfiya fī l-Jadal* (both in Arabic).[1]

Conversely, it should be recognized that certain works with the realm of *khilāf* necessitate closer examination. In several instances, these *khilāf*-oriented texts delve into matters akin to those explored in books on *jadal*. For instance, segments of Ibn ᶜAqīl's *Kitāb al-khilāf* address issues in a manner reminiscent of Juwaynī's *Al-Kāfiya*. Consequently, it may be more advantageous to view ᶜ*ilm al-ikhtilāf* as comprising two distinct writing genres, each addressing different aspects of this discipline. One genre focuses on the theoretical dimension of ᶜilm al-ikhtilāf, while the other pertains to its practical applications. This alternative perspective underscores the unitary nature of ᶜ*ilm al-ikhtilāf*, irrespective of whether it is labeled *khilāf* or *ikhtilāf*, while acknowledging the existence of two discernible subareas, one *theoretical* and the other *practical*.

Practical studies of *ikhtilāf* primarily encompass works with a pragmatic orientation, which are designed to facilitate immediate action and resolution. Their ultimate objective is to weigh legal rulings carefully and ensure the most suitable decisions are reached and juristic disputes are potentially resolved. Following ᶜAlamī's model, this category includes works typically attributed to "ᶜ*ilm al-ikhtilāf*" and "*al-khilāf al-ᶜālī*," such as Marwazī's *Ikhtilāf al-ᶜulamāʾ,* Ṭabarī's *Ikhtilāf al-fuqahāʾ*, Ṭaḥāwī's *Ikhtilāf al-fuqahāʾ*, Ibn al-Qaṣṣār's ᶜ*Uyūn al-adilla*, and Ibn Ḥazm's *Al-Muḥallā*. Other works that may be included in this category are those written by ᶜAbd Al-Wahhāb, Māwardī (d. 450/1058), Bayhaqī (d. 458/1066), Ibn ᶜAbd al-Barr's (d. 463/1070), Juwaynī, Shāshī (d. 507/1113), Asmandī (d. 552/1157), and Ibn Rushd the grandson (all in

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1   Ibn ᶜAqīl, *Al-Jadal ᶜalā ṭarīqat al-fuqahāʾ*, (in Arabic), (Port Said, Egypt: Maktabat al-Thaqāfa al-Dīniyya, 1998), and Al-Juwaynī, *Al-Kāfiya fīl-jadal*, ed. Fawqiyya Maḥmūd (Cairo: ᶜĪsā l-Bābī l-Ḥalabī, 1979).

Arabic).[1] These writings serve the practical realm of legal decision-making and contribute to resolving contemporary juristic issues.

On the other hand, theoretical studies of *ikhtilāf* do not prioritize the practical application of law as an ultimate end. Instead, they delve into the intricate world of juristic disputes, regardless of their immediate relevance for legal decision-making. Theoretical studies seek to contextualize the concept of *ikhtilāf* within the broader historical narrative of Islamic law. Unlike their practical counterparts, they do not focus solely on the disputed opinions themselves but rather on an array of issues related to the historical development and methodologies of *ikhtilāf*. Writings in this area are relatively scarce and appear to have emerged at a later stage in the history of Islamic law. Early exemplars of such theoretical works include Ibn ᶜAqīl's *Kitāb al-khilāf* and Baṭalyawsī's *Kitāb al-Inṣāf* (both in Arabic).[2]

Conclusion

This study has embarked on a comprehensive exploration of ᶜilm al-ikhtilāf, the science of juristic disagreement within Islamic law, with the aim of addressing several crucial aspects related to its historical development, theoretical foundations, and methodological approaches. The journey into this domain began by exploring the Western scholarly interest in ᶜilm al-ikhtilāf, notably tracing it back to the work of Gustav Flügel. Subsequently, in the first section, this study has developed an in-depth examination of Western scholarship on ᶜilm al-ikhtilāf reflecting and commenting upon the persistent ambiguity surrounding its various fundamental aspects.

One of the pivotal discussions at the heart of this study is the differentiation between two closely related Arabic terms, '*khilāf*' and '*ikhtilāf*'. This discussion has been expounded over the second section, which is further divided into three main subsections. The first subsection focused on the interplay of '*ikhtilāf*' and '*khilāf*' in Western scholarship. The second expanded on the pre-modern lexicographical discussion of

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1   Respectively, (1) Māwardī, *Al-Ḥāwī al-Kabīr fī Fiqh Madhhab al-Imām al-Shāfiᶜī*, (in Arabic), ed. ᶜAbd al-Fattāḥ Abū Sinna (Beirut: Dār al-Kutub al-ᶜIlmiyya, 1999). Though the book is designated to Shāfiᶜī *furūᶜ*, Māwardī draws in it on disagreements from outside the Shāfiᶜī legal circles. (2) Bayhaqī, *Al-Khilāfiyyāt: Bāb al-Ṭahāra*, (in Arabic), ed. Mashhūr Āl-Salmān (Riyadh: Dār al-Ṣamīᶜī, 1994). I could not determine if this book has survived in full, but the three volumes so far edited cover ritual purification only. (3) Ibn ᶜAbd al-Barr, *Al-Istidhkār al-jāmiᶜ li-madhāhib fuqahāʾ al-amṣār wa ᶜulamāʾ al-aqṭār fīmā taḍammanah al-Muwaṭṭaʾ min maᶜānī al-raʾy wal-āthār wa sharḥ dhālika kullih bil-ījāz wal-ikhtiṣār*, (in Arabic), ed. ᶜAbd al-Muᶜṭī Amīn Qalᶜajī (Beirut and Cairo: Dār Qutayba and Dār al-Waᶜy, 1993). Also, see his *Al-Inṣāf*, which examines disputes about initiating the Quran's opening chapter, *Al-Fātiḥa*, with *basmala*; to say: "In the name of Allah, the Compassionate, the Merciful." Ibn ᶜAbd al-Barr, *Al-Inṣāf fī-mā bayn al-ᶜulamāʾ min al-ikhtilāf*, (in Arabic), ed. Muḥammad Munīr (Cairo: Al-Ṭibāᶜa al-Munīriya, 1924). (4) Juwaynī, *Al-Durra al-muḍiyya fī-mā waqaᶜa fīh al-khilāf bayn al-Shāfiᶜiyya wal-Ḥanafiyya*, (in Arabic), ed. ᶜAbd al-ᶜAẓīm al-Dīb (Doha: Jāmiᶜat Qatar, 1986). Two of Juwaynī's other works on *ikhtilāf* seem to have been lost: *Kitāb al-ᶜAmad* and *Al-Asālīb fī l-khilāfiyyāt*. He cited both in, *Al-Burhān fī Uṣūl al-Fiqh*, (in Arabic), ed. ᶜAbd al-ᶜAẓīm a-Dīb (Doha: Jāmiᶜat Qatar, 1978), 1:481. (5) Shāshī, also known by the nicknames al-Qaffāl and al-Mustaẓhirī, *Ḥiliyat al-ᶜulamāʾ fī maᶜrifat madhāhib al-fuqahāʾ*, (in Arabic), ed. Saᶜīd ᶜAbd al-Fattāḥ (Riyadh: Maktabat Nizār Muṣṭafā al-Bāz, 1998), and finally (6) Asmandī, *Tarīqat al-Khilāf*.

2   For more on this division and a comprehensive list of works that represent each domain of ᶜilm al-ikhtilāf, see, Laabdi, "Legal Controversy /ᶜIlm al-Khilāf." *Oxford Online Bibliographies in Islamic Studies* (accessed October 27, 2022).

these two terms. The third reflected on their modern debate within Islamic legal studies more broadly. The conceptual and linguistic analysis advanced in this section has mainly highlighted the interchangeability of '*ikhtilāf*' and '*khilāf*' and demonstrated the extent to which both terms represent various facets of disagreement, diverse opinions, and non-conformity, however, without necessarily implying contradiction.

Finally, the last section grappled with a methodological dilemma of pressing significance, specifically the blurring of lines between the science of *ᶜilm al-ikhtilāf* and the domain of dialectic (*jadal*). As this study asserted and ultimately concluded, a methodologically robust framework for the examination and documentation of the historical trajectory of juristic disagreements can be established by diligently delineating two subgenres within this legal field: theoretical and practical. This variability underscores the necessity for a more systematic approach to *ᶜilm al-ikhtilāf* within Western academic circles and Muslim legal studies more broadly.

This study is a key step toward addressing some of the multifaceted questions surrounding this intellectual filed, and ultimately contributes to a more profound understanding of its historical development and the diverse scholarly undertakings. It underlines the urgent requisite for sustained exploration and in-depth analysis of *ᶜilm al-ikhtilāf* within the broader framework of Islamic law. Attaining a deep understanding of *ᶜilm al-ikhtilāf*, encompassing its historical roots, theoretical underpinnings, and methodological intricacies, is imperative to illuminate this significant discipline within Islamic jurisprudence. The future holds promise for more scholarship that will elucidate the intricate layers of *ᶜilm al-ikhtilāf* and provide more fresh insights and perspectives into this evolving area of legal inquiry.

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