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ISSN 0928-9380
E-ISSN 1568-5195

This journal is printed on acid-free paper and produced in a sustainable manner.

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ISLAMIC LAW AND SOCIETY 28 (2021) 1-31

Islamic Law and Society

brill.com/ils

"Why Study *Uṣūl al-Fiqh*?": The Problem of *Taqlīd* and Tough Cases in 4th-5th /10th-11th Century Iraq

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Abstract

The function of *uṣūl al-fiqh* (legal theory) within classical Islamic law has been the object of protracted debate. Based on the writings of Abū Isḥāq al-Shīrāzī (d.476/1083), I propose that *uṣūl al-fiqh* served two pedagogical purposes within the Iraqi legal community of the 4th/10th and 5th/11th centuries: first, to avoid *taqlīd*, defined as the subscription to a position without evidence; and second, to provide jurists with tools to assess the validity of a proof when they were confused about its merits. My analysis sheds light on *uṣūl al-fiqh*'s role in providing epistemological foundations for juristic reasoning. It also reveals that practical engagement on disputed legal matters (*masā'il al-khilāf*) prevailed over *uṣūl al-fiqh* in the training of jurists. The consequence: *uṣūl al-fiqh* was a methodology of last resort.

Keywords

uṣūl al-fiqh – *taqlīd* – *ijtihād* – *masā'il al-khilāf* – *fiqh* – al-Shīrāzī

In a September 1999 conference on Islamic legal theory, held in Alta, Utah, nineteen Islamic legal studies scholars gathered at a roundtable to discuss a series of historical questions about *uṣūl al-fiqh* (legal theory).[1] The historians

1 The Alta conference participants use the term "legal theory" more or less synonymously with *uṣūl al-fiqh*. In his introduction to the edited volume of the Alta conference papers, Bernard Weiss states: "Although it would be rash to suppose that *uṣul al-fiqh* subsumes everything that may be regarded as Muslim legal theory in the broadest possible sense of