

Authority in the Classical Ḥanafī School: the Emergence & Evolution of *Zāhir al-Riwāya*

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Abstract

The *madhhab* in its classical form was an authoritative entity with substantive boundaries that established the outer limits of the school and its authoritative doctrine. The latter involved, among other things, confronting the plurality of opinions found within the school. In this essay, I will analyse the manner in which Ḥanafī jurists attempted to limit this plurality through an authorizing discourse that created a taxonomy of legal doctrine ranking different opinions present in the *corpus juris* of their school. Specifically, I will examine the most authoritative corpus in this taxonomy, namely *zāhir al-riwāya*, in five parts: the first part will investigate the concept of legal authority prior to *zāhir al-riwāya*; the second part will identify the earliest usage of the term *zāhir al-riwāya*; the third and fourth parts will analyse the popularization of this doctrine, its spread, and earliest theorization; the final part will briefly investigate what *zāhir al-riwāya* denoted.

Keywords

Ḥanafī school – *zāhir al-riwāya* – legal authority – *taqlīd* – *fatwā*

1 Introduction

In his didactic poem on the juristic topic of *iftā'* (issuing legal rulings), Muḥammad Amin b. 'Ābidīn (d. 1252/1836) introduces the corpus of *zāhir al-riwāya* by stating:



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The books of *zāhir al-riwāya* are six
In number, also known as *al-Uşūl*.
Muḥammad al-Shaybānī authored them all,
Explaining in the name the Nu'mānī school.
al-Jāmi' al-Şaghūr and *al-Kabūr*,
al-Siyar al-Kabūr and *al-Şaghūr*.
Then *al-Ziyādāt* along with *al-Mabşūt*,
Mass transmitted through sound chains were they all.
His too: were legal cases known as *al-Nawādir*,
Their transmission in books being through unclear paths.
Then the legal cases known as *al-Nawāzil*,
Deduced by scholars through evidence.¹

In this statement, Ibn 'Ābidīn identifies a three-tiered taxonomy of legal sources in the Ḥanafī school. The first and most authoritative corpus was *zāhir al-riwāya*, a term referring to the legal opinions of Abū Ḥanīfa (d. 150/767), Abū Yūsuf (d. 182/798), and/or Muḥammad b. al-Ḥasan al-Shaybānī (d. 189/805) transmitted in six texts that the last had authored. These texts were *al-Aşl*, *al-Jāmi' al-kabūr*, *al-Jāmi' al-şaghūr*, *al-Siyar al-kabūr*, *al-Siyar al-şaghūr*, and *al-Ziyādāt*.² Of the various opinions ascribed to the Ḥanafī masters, those related in *zāhir al-riwāya* were treated by jurists as first-order precedent when it came to rule-determination (*tarjīh*) due to their being widely transmitted (*mutawātir/mashhūr*) from the Ḥanafī masters.³ This corpus was also referred

- 1 Muḥammad Amin b. 'Ābidīn, *Sharḥ 'uqūd rasm al-muftī*, ed. Şalāḥ Abū al-Ḥājī (Beirut: Dār al-Bashā'ir, 2015), 241–46; Norman Calder, "The 'Uqūd Rasm al-muftī of Ibn 'Ābidīn," *Bulletin of the School of Oriental and African Studies*, 63:2 (2000): 215–228, at 220.
- 2 Though these six texts were generally identified with *zāhir al-riwāya*, there was disagreement among Ḥanafī jurists on the texts that made up this corpus. Some opined that the number of *zāhir al-riwāya* texts were three, while others said four or five. See further Lu'ay 'Abd al-Ra'ūf al-Khalīlī, *Asbāb 'udūl al-ḥanafīyya 'an al-futya bi-zāhir al-riwāya* (Amman: Dār al-Fath, 2016), 45–64.
- 3 In this essay, I translate *tarjīh* as 'rule-formulation', which Al-Azem defines as "granting of preponderance to some opinions over others." *Taṣḥīḥ* is 'rule-review', i.e., the review, emendation, and correction of earlier rule-formulations by jurists. Both are delineated subprocesses subsumed under the term 'rule-determination', also *tarjīh*, in Arabic. To avoid confusion between *tarjīh* as rule-formulation and its more general meaning as rule-determination, I will mainly use the English terms. However, when I do use the Arabic, the more general meaning of rule-determination is intended, unless the contrary is indicated, e.g., *tarjīh* (rule-formulation). Finally, whenever *tarjīh* and *taṣḥīḥ* appear together, they refer to the two sub-processes, respectively. See further Talal Al-Azem, *Rule-Formulation and Binding Precedent in the Madhhab-Law Tradition: Ibn Qutlūbughā's Commentary on The Compendium of Qudūrī*, *Islamicate Intellectual History* 2 (Leiden: Brill, 2016), 9–10.