FRAMING THE JURIST:
THE LEGAL PERSONA OF JALAL AL-DIN AL-SUYUTI

A Dissertation
submitted to the Faculty of the
Graduate School of Arts and Sciences
of Georgetown University
in partial fulfillment of the requirements for the
degree of
Doctor of Philosophy
in Arabic

By

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Washington, DC
April 20, 2012
FRAMING THE JURIST:
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ABSTRACT

This research looks at attempts by the Egyptian polymath Jalāl al-Dīn al-Suyūṭī (d. 1505) to frame his authority as a jurist in his legal writings. The research aims to access the multi-faceted legal persona that the author constructs through his use of the written word. I suggest that al-Suyūṭī seeks to assert his authority as a superior scholar at a time in which claims to practice independent legal reasoning (ijtihād) were often met with hostility by members of the scholarly community.

Each chapter is intended to analyze in detail a different aspect of al-Suyūṭī’s legal persona as well as a different rhetorical strategy that the author uses to establish, defend, and maintain his authority. The texts examined as case studies include: a legal opinion (fatwā) concerning scholarly stipends funded by ‘public’ endowments, a fatwā condemning the study of logic, independent treatises and sections of the author’s autobiography dealing with the concepts of ijtihād and tajdīd (religious renewal), and a book on legal precepts (qawā’id).

I assume that the author’s choice of form and genre is deliberate and that his use of language speaks to his pragmatic goals. In order to claim the rank of mujtahid (jurist capable of independent reasoning) and mujaddid (renewer of religion), al-Suyūṭī must speak and act as such. To understand how al-Suyūṭī uses language to accomplish these goals, I incorporate into my analysis theories and methodological tools from the realm of sociolinguistics, including
framing techniques, interdiscursivity, communities of practice, critical discourse analysis, and pragmatics. Sociolinguistic theories are a valuable means with which to understand not only what the author wishes to convey but also how he says it and why he chooses to say it in the way that he does.

Finally, this research allows me to evaluate, to some degree, the relative effectiveness of al-Suyūṭī’s efforts to frame his persona as a jurist and to negotiate this identity in the world through practice. I conclude that, while al-Suyūṭī’s framing effort may have failed to convince most of his contemporaries, he is vindicated by the continuing legacy of his works.
ACKNOWLEDGEMENTS

This research would not have been possible without the support of so many wonderful colleagues, family, and friends. First, I would like to thank members of my committee who generously devoted time to this project, including Felicitas Opwis, John Voll, and Reem Bassiouny. Dr. Opwis exemplifies what a great advisor can be. She encouraged me when I needed encouragement and challenged me when I needed to be challenged, all the while managing to be both professional and caring. Whenever I need to place a figure or intellectual trend within its historical context, I know that I can rely on the insights of Dr. Voll. I am truly fortunate to have such an excellent group of mentors. Any errors in the text are, of course, entirely my own.

In addition to my committee, other colleagues offered valuable insights and advice, including Jonathan A.C. Brown. I was lucky enough to meet Elizabeth Sartain and to benefit from her incredible knowledge of al-Suyūṭī’s work during the crucial first stages of the research. I would also like to thank in particular Shaykh ‘Amr al-Wardānī of Egypt’s Dār al-Iftā’ who helped to make al-Suyūṭī’s legacy come alive and who carved out many hours of his busy schedule to discuss the texts with me. This work also continues the legacy of the outstanding academic mentors who helped to guide my nascent scholarly career, especially Tamara Sonn, Barbara Stowasser, and Michele Dunne.

This research benefited from a number of grants and research opportunities. I would like to thank Georgetown University’s Graduate School of Arts and Sciences for their financial support
of my graduate studies over the last eight years. A Foreign Language and Area Studies (FLAS) fellowship sponsored by the U.S. Department of Education allowed me to pursue language study and dissertation research in Cairo. Also, a Prince Alwaleed Bin Talal Fellowship helped to support my research during the summer of 2010.

Last but not least, I am grateful for the support of my family and friends. My friend and colleague Aja Chaker stepped in at a key moment and she along with Rebecca Kallem have been a great source of strength. I am always thankful for my amazing family, especially my parents, who patiently read through drafts of this work and who have been constant in their support of me. I consider them to be my role models, both intellectually and spiritually. This research would not have been completed in a timely manner without the help of my in-laws, particularly my marvelous mother-in-law, Roxanne Hernandez. My husband Nelson deserves special acknowledgement for his unfailing kindness and loving care. Finally, I wish to express boundless affection for our sweet Helen who was a newborn at the same time that this dissertation was coming into the world. Your mama loves you!
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INTRODUCTION

The identity formation of a public intellectual does not occur at random; it takes work. The literary critic Stephen Greenblatt, in his *Renaissance Self-Fashioning: From More to Shakespeare*, looks at the efforts of sixteenth-century European scholars to shape and control their own identities. He calls this endeavor “self-fashioning,” or the achievement of “a distinctive personality, a characteristic address to the world, a consistent mode of perceiving and behaving.” Erving Goffman, speaking from a sociological perspective, would refer to this process as establishing “footing,” meaning how one positions or aligns oneself in a conversation. Goffman assumes that more goes on during a conversation than a simple speaker-hearer model of communication. To grasp the full effect of a speaker’s efforts to convey a “projected self” to several different actual and imagined audiences, one must take into account the larger context in which the discourse is produced and consumed.

Greenblatt points out the obvious difficulty in attempting to assess the constructed identity of a sixteenth-century figure who, in the present day, exists only in the literary artifacts that he or she left behind for others to read. Since we cannot interview the Renaissance or medieval scholar, we must approach him or her indirectly through interpretation. In interpreting the text, one should approach it as a living document in dialogue with its social context, including the context of the interpreter. As Greenblatt puts it: “Language, like other sign systems, is a collective construction; our interpretive task must be to grasp more sensitively the consequences of this fact by investigating both the social presence to the world of the literary

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text and the social presence of the world in the literary text.”

Even selecting a limited number of “resonant texts,” as Greenblatt does, is in itself an act of interpretation imposed on the data.

**Aims of the Study**

This study looks at attempts by the fifteenth-century jurist, Jalāl al-Dīn al-Suyūṭī, to frame his authority as a superior jurist of his time in his legal writing. The research aims to access the persona that al-Suyūṭī seeks to convey specifically as a jurist in his legal works and examines how the author constructs and maintains this authority through his use of language. As an interpreter of al-Suyūṭī and his world, I chose to analyze in detail a few texts that speak particularly to the role of the jurist both in al-Suyūṭī’s personal frame of reference as well as within the larger context of late medieval Mamluk Cairo. The texts on which the study is focused are ones that the author produced in the midst of conflict and that stirred up further controversy in their own right. I assume that it is in these moments of crisis that al-Suyūṭī feels most keenly the need to reinforce his own authority relative to that of his opponents.

The “resonant texts” that I selected for this study are two fatwās (legal opinions) by al-Suyūṭī written in response to specific issues, various treatises and a section from his autobiographical work concerning the concepts of *ijtihād* (independent legal reasoning) and *tajdīd* (religious renewal), plus al-Suyūṭī’s full-length book on legal precepts (*qawā'id fiqhiyya*). My strategy in approaching these texts is to look both for internal evidence in the text and external evidence in the context in order to access the author and his world indirectly. Each chapter is intended to illustrate a different aspect of al-Suyūṭī’s legal persona and contains, I

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4 Kristen Brustad discusses the potential benefits of such an approach in her article, “Imposing Order: Reading the Conventions of Representation in al-Suyūṭī’s Autobiography,” in *Edebiyāt* 7:2 (1997), pp. 327-344.
hope, a balance between detailed textual analysis and “big picture” questions about the historical and social context within which the author was operating. Taken as a whole, the individual aspects form a coherent framework within which the jurist situates himself and frames his own authority.

Al-Suyūṭī makes a good subject for discourse analysis because he has a distinct narrative and an ardent desire to profess his authority through the written word. While many viewed his claim to be the *mujaddid* (renewer) of the age as the final outrage in a series of audacious and arrogant assertions, it also reads as a tragic plea by a man who “saw himself as the only scholar capable of preserving knowledge in the face of increasing ignorance.” I hypothesize that al-Suyūṭī’s effort to frame his own legal persona represents an assertion of authority on the part of the author. The uproar that al-Suyūṭī’s opinions caused among his contemporaries suggests that he was an active and vocal participant in an ongoing power struggle and, as such, had something to prove within his own community of scholars. Al-Suyūṭī’s fatwās and treatises read as the work of a scholar who sought to construct his own identity in the face of a constant discursive assault on his authority – a conflict that is reflected in his use of language.

In this study, I aim to answer three broad questions: What does al-Suyūṭī want to say? How does he say it? What was heard then and now? Or, to address the same questions but from a different angle: What do the results of the study tell us about al-Suyūṭī’s efforts to frame his own legal persona and to assert his authority as a jurist? In what ways does the methodology contribute to these results? What implications does the study have for understanding the role of the jurist during al-Suyūṭī’s era and how is this relevant to the contemporary context?

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The Results: What Does al-Suyūṭī Want to Say?

I argue that al-Suyūṭī constructs a narrative of authority as a legal scholar based on three main themes. First, al-Suyūṭī creates an opposition frame that distinguishes between those who possess knowledge (‘ilm) in opposition to those who are ignorant or who claim to have knowledge but really do not. Second, he argues that within the realm of learning, some types of knowledge, or means of acquiring knowledge, are superior to others. Thirdly, in addition to a hierarchy of types of knowledge, al-Suyūṭī outlines a hierarchy amongst scholars and positions himself within that framework. I will discuss each of these points in more detail, drawing on my analysis of al-Suyūṭī’s legal discourse.

Opposition Frame

Greenblatt adds another insight in relation to his analysis of Renaissance figures, which is that “self-fashioning is achieved in relation to something perceived as alien, strange, or hostile.”\(^6\) It is characteristic of al-Suyūṭī that any positive assertion of his authority is made either in response to a challenge or anticipating future opposition. His discourse is “double-voiced” in the Bakhtinian sense in that al-Suyūṭī’s speech references the speech of others either directly or as a kind of “hidden polemic.”\(^7\) Also, Tannen detects the operation of frames in how a speaker responds to what she calls “structures of expectation.”\(^8\) So, if a speaker negates an idea, the implication is that the positive is expected. Other linguistic evidence that might indicate that a frame is in effect is the use of qualifying statements, hedges and repetition. Therefore, I assume

in approaching a text like one of al-Suyūṭī’s fatwās that the author goes out of his way to elaborate on certain points because he feels that they require extra justification or argumentation.

Al-Suyūṭī sets up the opposition frame in his writings about how stipends should be distributed that derive from public funds in the form of religious endowments. As the supervisor in charge of the distribution of funds at a major endowed institution (the Baybarsiyya), al-Suyūṭī became embroiled in a dispute surrounding which stipends should be given priority in times of economic distress. In his fatwā, *al-Inṣāf fī tamyīz al-awqāf* (“Fairness in Distinguishing Endowments”), al-Suyūṭī constructs a power equation that differentiates between three competing groups: the state bureaucracy as represented by the Mamluk amīr who founded the endowment (*waqf*), the scholar appointed to the administration of the *waqf*, and the Sufi students who collect a monthly stipend from the endowed institution.

In his *Inṣāf*, al-Suyūṭī defines the entitlement of the scholar to funding from the state Treasury by virtue of his learning (regardless of whether or not he fulfils the duties stipulated in the endowment deed). Meanwhile, in a letter addressed to the Sufis of the Baybarsiyya, he contrasts the true scholar as one who possesses knowledge with the undeserving ‘fake’ Sufis and riffraff occupying the once great educational institutions that flourished under the Mamluks whose low standard of learning does not qualify them for such an entitlement. He laments the fact that the quality of the students has declined along with dwindling state revenues, thus forcing the supervisors of religious endowments (such as himself) to make tough decisions regarding how the remaining funds should be apportioned. Al-Suyūṭī’s insistence that the shaykh receive priority in deference to his higher level of learning did not sit well with the Sufi students under his supervision, who felt that their interests were being neglected.
In the discussion about scholarly stipends, al-Suyūṭī’s opposition frame is completed with a third element – that of the state authority. Al-Suyūṭī argues that in the case of a ‘private’ or family *waqf*, the wishes of the endower must be adhered to at all costs, whereas with ‘public’ endowments that derive from the state Treasury there is a greater degree of flexibility in how the funds are disbursed. Even in the case of state funds, al-Suyūṭī’s priorities are clear. He suggests that for the Mamluk *amīrs*, as (former) slaves, any property they possess already belongs to the state Treasury. Therefore, if a Mamluk *amīr* establishes an endowment for an institution such as a school or Sufi lodge (*khānqāh*), it should be administered as a public fund, which includes an earmark set aside for the maintenance of scholars. Even if the endowment becomes pressed for funds, the rights of the scholar must not be compromised.

Al-Suyūṭī emphasizes that the right of the scholar to receive a stipend from an endowed institution does not entail a wage for services rendered like any other state employee, but represents, rather, a sum allotted to the scholar with respect to his level of learning. For this reason, al-Suyūṭī refused to go up to the Citadel every month to collect his own stipend and wrote a treatise warning the virtuous scholar against associating himself unduly with the sultan and his coterie. Much as these actions angered the ruler, al-Suyūṭī stood doggedly by his principles. Al-Suyūṭī portrays himself in this dispute as someone whose only interest is to uphold the true religious Law and to respect people of learning, as opposed to the worldly concerns of the rabble occupying the *khānqāh* and those scholars who are subservient to their patrons within the state bureaucracy.

It was not uncommon for al-Suyūṭī to write several treatises on the same subject in the hopes of having the last word in a debate. His fatwā prohibiting the study of logic, *al-Qawl al-mushriq fī taḥrīm al-ishtighāl bi-l-manṭiq* (‘An Enlightening Statement Prohibiting
Preoccupation with Logic”), is the fourth installment in a series of works on the subject of logic, including a much earlier fatwā, a long treatise, and an abridgement of a book condemning logic by Ibn Taymiyya. Why did al-Suyūṭī find it necessary to issue yet another statement on logic towards the end of his life?

The answer, as Sartain explains, lies in the context surrounding the fatwā. When al-Suyūṭī put forward claims in the year 889/1484 affirming that he had attained the rank of *mujtahid*, his enemies looked for ways to discredit him and prove him unworthy of the title. They used al-Suyūṭī’s earlier statements condemning the study of logic to suggest that he was deficient in that area and therefore lacked one of the skills required of the *mujtahid*. They also appealed to a famous statement by al-Ghazālī in his *Mustasfā* that one who does not know logic cannot be trusted in his scholarship as a means to attack al-Suyūṭī’s credentials. Thus, the scholar was placed “in the awkward position of having to demonstrate his knowledge of the subject, while of course maintaining his view that it was a ‘forbidden’ discipline.”

While ostensibly about logic, al-Suyūṭī’s fatwā fulfils the dual purpose for its author of at once asserting the scholar’s authority as a *mujtahid* as well as countering the opposition of those who doubted his authority. The argument is framed as that of a righteous scholar (al-Suyūṭī) against someone to whom the author refers only as *al-jāhil*, or ‘the ignoramus.’ The question on which the legal opinion is based catalogues a list of claims made by this particular person, which al-Suyūṭī considers to be misguided at best and, at worst, heretical. For al-Suyūṭī, the Ignoramus represents the opposition.

Al-Suyūṭī’s opposition frame is even more harshly defined when he addresses the question of his *mujtahid* and *mujaddid* status directly. For example, in a fatwā on the subject of the apocalypse and the need for a renewer of the faith, al-Suyūṭī makes the vivid assertion:

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“whoever puffs himself up and claims to rival me and to deny my claims to *ijtihād* and peerless scholarship at the turn of this century and asserts that he opposes me and mobilizes others against me is one that, if he and they were to be assembled on a single plateau and I blew on them one breath, they would become like scattered dust.”

Hierarchy of Knowledge

Al-Suyūṭī’s writings on logic as well as his remarks on the qualifications of the *mujtahid* reveal another theme central to the formation of his own legal persona, that of a hierarchy of different types and means of pursuing knowledge. As noted earlier, al-Suyūṭī fervently opposes the idea that training in the discipline of logic is necessary in order to attain knowledge (‘*ilm*) or that is it helpful to the believer striving to comprehend the Oneness of God (*tawḥīd*).

Furthermore, al-Suyūṭī insists that the earliest generations of scholars, or “those who set down jurisprudence and demonstrated how to issue legal opinions,” had no need of logic, which only entered the Islamic world around 180 A.H. as a result of Greek influence. The Greek-inspired sciences, such as logic, mathematics, philosophy and metaphysics, are suspect in al-Suyūṭī’s view because, if used improperly, they can lead the unheeding scholar into dangerous heresies and unbelief.

In contrast, al-Suyūṭī affirms in the logic fatwā that the ‘noble sciences’ of Qur’ānic exegesis (*tafsīr*), *ḥadīth* and jurisprudence (*fiqh*) are a collective duty (*fard kifāya*) for the Muslim community. It is these fields as well as training in the Arabic language, according to al-Suyūṭī, that are indispensable to the aspiring *mujtahid*. Interestingly, these are also the areas in


which al-Suyūṭī claims himself to have superior knowledge. In his autobiographical work, *al-Tahadduth bi-ni‘mat Allāh*, al-Suyūṭī says that he has attained the rank of *mujtahid* in the three disciplines of religious law (*al-aḥkām al-shar’iyya*), Prophetic traditions (*al-ḥadīth al-nabawī*) and the Arabic language (*al-‘arabiyya*) – a feat that he claims was not achieved by anyone since the great Taqī al-Dīn al-Subkī (d. 756/1355). Al-Suyūṭī clarifies that his knowledge in these areas was achieved through authentically ‘Arab’ methods, not the ways of the non-Arabs or philosophers.

Hierarchy of Scholars

The hierarchy of knowledge in al-Suyūṭī’s worldview is closely linked to a second hierarchy amongst scholars, or those who possess knowledge. This hierarchy is reflected in discussions during al-Suyūṭī’s time regarding the existence and qualifications of the *mujtahid* and the *mujaddid*. In Chapter Four, I argue that al-Suyūṭī’s career marks an important transition between the classical understanding of the ‘renewer of the age’ and the early modern interpretation of the same concept. As a transitional figure, al-Suyūṭī is well placed to draw on the resources of the *tajdīd* tradition as they accumulated over the preceding centuries and to make these resources available to future generations to use towards their own goals.

Al-Suyūṭī’s formulation of *ijtihād* and *tajdīd* is shaped both by the historical context in which he worked as well as by his own personality. First, al-Suyūṭī defines the role of the *mujtahid* according to the expectations of later jurists during an era of consolidation and systematization of the corpus of Islamic law as it was developed by the *mujtahids* of old. Therefore, he is careful to distinguish between the independent *mujtahid* (*mujtahid mustaqill*)

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and the *mujtahid* who is unrestricted in the sense that he can derive rulings from the primary sources of the Qur’ān and Sunna and yet is also affiliated with a particular school of legal thought (*madhhab*). The latter type, the *mujtahid muṭlaq muntasib*, is the rank that al-Suyūṭī claims for himself. It would be a mistake, he says, to equate the independent *mujtahid* (which applies only to the eponyms of the legal schools) and the unrestricted *mujtahid*, as al-Suyūṭī’s contemporaries did, just as it would be wrong to relegate al-Suyūṭī to the lesser rank of *mujtahid muqayyad* who, due to a deficiency in his knowledge of ḥadīth or Arabic language, is not qualified to interpret the sources directly but must follow the opinion of other scholars within the school.\\footnote{Al-Suyūṭī, *al-Radd ‘alā man akhlad ilā al-arḍ wa-jahal ann al-ijtihād fī kull ‘aṣr farḍ* (Alexandria: Mu’assasat Shabāb al-Jāmi’a, 1985), p. 98.}

Al-Suyūṭī’s portrayal of himself as a *mujtahid* is grounded both in his belief in his own superior talents (especially in the fields of *tafsīr*, *ḥadīth* and the Arabic language) as well as his disdain for the low level of learning of most of his contemporaries. Sartain suggests that al-Suyūṭī’s “intractability was due largely to his conviction that he alone, in an age of increasing ignorance, was a true scholar, and it must have been this conviction which led him, first to claim the right to exercise *ijtihād*, and secondly to express his hope that he might be recognized as the *mujaddid*, or restorer, believed to appear at the turn of every century to bring about a religious revival.”\\footnote{Sartain, *Jalāl al-Dīn al-Suyūṭī*, p. 61.}

Faced with skepticism by his colleagues about his qualifications as a *mujtahid*, al-Suyūṭī did not desist but instead took his claims a step further to declare his candidacy as the awaited ninth *mujaddid* appointed by God to guide the community in true belief and away from heretical innovations. In doing so, he positions himself as the ninth member of a line of illustrious (mostly) Shāfi‘ī restorers, including ‘Umar ibn ‘Abd al-‘Azīz (d. 101/720), al-Shāfi‘ī (d. 202/817), ‘Abd al-‘Azīz ibn ‘Abdullāh (d. 250/864), al-Rāzi (d. 260/873), al-Shāfī‘ī (d. 299/911), al-Thirmidhi (d. 300/912), al-Hadīthī (d. 310/921), al-Mardari (d. 330/941), and al-Suyūṭī (d. 350/961).
204/820) himself, Ibn Surayj (d. 306/918), Abū Ḥāmid al-İsfarā’înî (406/1015-16), al-Ghazâlî (d. 505/1111), Fakhr al-Dîn al-Râzî (d. 606/1209), Ibn Daqîq al-‘Îd (d. 702/1302) and Sirâj al-Dîn al-Bulqînî (d. 805/1403).

In addition to having death dates shortly after the turn of the century, al-Suyûṭî describes each of these scholars as mujtahids during their time periods. It follows, therefore, that in order to be a mujaddid for the ninth century, al-Suyûṭî must first also be recognized as a mujtahid. Also, seeing a decline in scholarship and increasing anxiety about the coming apocalypse as the millennium was drawing to a close, al-Suyûṭî argues that the end times are still at least two hundred years away, thus allowing the need for a mujaddid for his century. Above all, al-Suyûṭî, as the most accomplished scholar of his time, sees it as his duty to preserve knowledge before it becomes too corrupted and lost to the ages.

The Methodology: How Does He Say It?

How does al-Suyûṭî assert his authority as a mujtahid and discredit his opponents using language? Modern sociolinguistic concepts such as interdiscursivity, frames, communities of practice, genre, and the pragmatics of communication provide helpful tools to the analyst in answering this question. Of course, discourse analysis and its various techniques is only one of many possible approaches, and there is considerable overlap between the types of questions that scholars of sociolinguistics ask and those of analysts in other fields, such as history and literary criticism.

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16 Al-Suyûṭî mentions these and a few other possible mujaddids in the nineteenth chapter of his autobiographical work, entitled “A record of those sent at the turn of every century.” See: al-Taḥadduth bi-nî’mat Allâh, pp. 215-227. He repeats and expands on these claims in a longer treatise entitled al-Tabî’a bi-man yab’uthu Allâh ’alâ ra’s kull mi’a (Mecca: Dâr al-Thîqa li-l-Nashr wa-l-Tawzi’, 1990).
17 See: al-Suyûṭî, al-Kashf ’an mujâwazat hâdhîhi al-umma al-alf.
18 Sartain, Jalâl al-Dîn al-Suyûṭî, p. 115.
It is my intention in this study to highlight some of the possible benefits that discourse analysis can contribute to a “traditional” Islamic Studies approach. In this section, I will first discuss some of the methodological choices that went into this study and in what ways those methods contributed to the results. Secondly, I will reflect on some of the strengths and weaknesses in my chosen methodologies that emerged during the course of this study in the hopes that it will be of use to others interested in asking new questions about Islamic legal literature.

Selection of the Texts and Methodology

Just as the themes and case studies vary from chapter to chapter, the methodological focus also shifts depending on the type of data. My aim, therefore, in deciding which linguistic concepts to apply to which texts is to let the form and content of the text drive the selection of the methodology. In other words, I singled out texts that contain some element of controversy, on the one hand, and that speak to the role of the jurist in al-Suyūṭī’s context on the other. I then selected an appropriate linguistic methodology that best allows us to understand how and why al-Suyūṭī frames his arguments in the texts in the way that he does. As noted earlier, the task of choosing specific case studies from al-Suyūṭī’s extensive array of legal works, as well as determining to which discourse strategies I should direct my attention, are themselves acts of interpretation. I do not seek to deny my own role as a modern interpreter of a late fifteenth-century figure. Rather, my aim is to augment our understanding of the role of the jurist, as framed by al-Suyūṭī, by looking at his works through a slightly different lens.
Pragmatic Approach to the Texts

I approach the texts with the basic assumption that the discourse demonstrates the pragmatic goals of its users within its real and immediate social context. In each case I ask the question: what goals does the author hope to accomplish in the text and what sort of rhetorical or discursive techniques does he use to achieve those goals? Also, in what ways does the form of the text help to meet these objectives? It should be noted that I do not dictate what al-Suyūṭī’s pragmatic goals should be, only how they are communicated. As Michele Dunne explains in her work on democracy in Egypt: “I determined that I could get further by examining what speakers did in public discourse and democracy and how they did it with language than by considering whether they should have done it or not.”

That being said, some discursive techniques are more effective than others in meeting the pragmatic goals of the speaker and this success is manifested in the power dynamics surrounding the text. To use Wenger’s term, in an “economy of meaning” there are winners and losers – those whose narratives shape public discourse and those whose words are lost in the fray. As the following discussion will show, the linguistic methodology employed in this study will allow me to evaluate to some degree the relative effectiveness of al-Suyūṭī’s rhetorical techniques both during his lifetime and beyond.

Chapters Two and Three, which focus on al-Suyūṭī’s legal opinions on the subjects of scholarly stipends and logic, present the bulk of the evidence regarding how the author positions his own authority relative to other groups in society as well as within his own community of scholars. In particular, I am interested in how al-Suyūṭī uses language to indicate belonging to a

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certain privileged group and to exclude the opinions of those who are deemed less worthy according to his proposed framework.

Analyzing Power Relations

I focus in Chapter Two on the concept of power relations because al-Suyūṭī in his fatwās on religious endowments and stipends for scholars is attempting to juggle the interests of several different parties and to steer the discourse in favor of one of those groups. Al-Suyūṭī differentiates between the three levels of the executive (the sultan and Mamluk amīrs), the scholars, and the Sufis who occupy the institution so that he can rank them in terms of their relative authority. He differentiates further between ‘real’ Sufis genuine in their desire for knowledge and ‘fake’ Sufis who claim maintenance through the endowment but who have little interest in learning.

Here, the field of Critical Discourse Analysis (CDA) developed by Teun van Dijk and others and the work of Foucault provide a helpful framework with which to analyze the interplay of power relations between the three groups. These thinkers approach the discourse by asking the critical question of who can speak and who is denied a voice. I show how al-Suyūṭī uses his moral authority and persuasive power as a jurist as well as the institution and mechanisms of rationalization of Islamic jurisprudence to shape the discourse in favor of the scholar. Also, al-Suyūṭī’s strategy of differentiating between ‘private’ and ‘public’ endowments creates the flexibility necessary to depart from the stricter rules envisioned by earlier jurists and to adapt to new and changing circumstances brought on by developments (or deterioration) in the system of endowments during the later Mamluk period.
The Polemics of Inclusion and Exclusion

In Chapter Three, I argue that al-Suyūṭī seeks to associate his own condemnation of logic with the authoritative opinion of respected exemplars within the tradition, particularly those belonging to his own Shāfi‘ī legal school. I use Bakhtin’s notions of interdiscursivity and “hidden polemic” to analyze how al-Suyūṭī’s opinion references statements by other authorities within his school, in particular those of Ibn al-Ṣalāḥ (d. 643/1245) and al-Ghazālī (d. 505/1111). Al-Suyūṭī walks a fine line in his discourse between the harsh condemnation of logic by Ibn al-Ṣalāḥ and the more nuanced approach of al-Ghazālī. Al-Ghazālī’s opinions on logic changed over the course of his career, thus making him a potential spokesperson both for logic as a tool and prerequisite to other sciences as well as a skeptic regarding the logic of the philosophers.

Also helpful to this discussion is Wenger’s concept of “communities of practice,” which explains how people participating in a joint enterprise exploit the repertoire of ideas and terms of the community to perpetuate a sense of belonging and mutual engagement. As a Shāfi‘ī jurist and aspiring mujtahid, al-Suyūṭī seeks to derive authority from his esteemed predecessors in all four Sunnī legal schools, many of whom he lists at the beginning of the fatwā, characterizing them as “the leaders of the faith and legal scholars” who have written on the subject of logic (even though some of those listed did not exclusively condemn logic per se). The list format allows al-Suyūṭī to imply a consensus of opinion against logic as well as to insert a mention of his own work at the end of the list as an indication that his views are an accepted continuation of the opinion of those who came before him.

By asserting the correctness of his opinion as representative of those of a righteous group of scholars, al-Suyūṭī automatically excludes from that group anyone who disagrees with the alleged consensus. Specifically, al-Suyūṭī frames his fatwā in opposition to statements put
forward by someone to whom he refers as ‘the Ignoramus.’ Denying this person a name in the
text is one way of dismissing the validity of his views, as is labeling the person as both a fool and
an unbeliever.

Also, al-Suyūṭī takes the opportunity in his answer to the claims posed by ‘the
Ignoramus’ to describe the role of the mujtahid as one who revises and systematizes the doctrine
of the legal school (as al-Ghazālī did in his fiqh works) and selects preferable opinions from “the
statements of those who came before him.” In effect, al-Suyūṭī defines the role of the mujtahid
as one that he himself fulfils. As one of the premier consolidators of religious knowledge of his
time, al-Suyūṭī implies that he too is worthy of belonging to the community of mujtahids within
the Shāfi‘ī school of law.

Chapters Four and Five, on religious renewal (tajdīd) and legal precepts respectively, are
intended as a bridge between al-Suyūṭī’s role as a jurist during his own time period and his
legacy for Islamic legal thought into the modern era. Both al-Suyūṭī’s formulation of the tajdīd
tradition as well as his work on legal precepts, al-Ashbāḥ wa-l-naẓāʿ ir fī l-qawāʿid al-fiqhīyya,
showcase al-Suyūṭī’s talents as an expert consolidator who continues to provide information and
inspiration for subsequent generations of reformers and legal scholars.

The Concept of a “Tajdīd Genre”

Al-Suyūṭī addresses the concepts of ijtiḥād and tajdīd in a number of different works, so
Chapter Four is less about a particular text and more about a broadly conceived “tajdīd genre.” I
examine how al-Suyūṭī draws on the resources of the past (the classical formulation of tajdīd),
and then reaffirms and invigorates the concept for use in the future. Al-Suyūṭī affirms the need
for at least one mujtahid and mujaddid in every age charged with guiding the community of
believers towards correct doctrine and practice and away from dangerous innovations. He cites numerous authorities condemning taqlīd, which he defines as blindly transmitting the statements of other scholars without questioning whether the information is correct. Knowledge obtained in this manner is not considered ‘ilm and the muqallid lacks the abilities necessary to qualify as a true scholar (‘ālim).  

Al-Suyūṭī’s call for ḵtihād and tajdīd in every century resonated with later reformers such as the Zaydī scholar Muḥammad al-Shawkānī (d. 1255/1839) in Yemen, who sought to convince his contemporaries of his status as a mujtahid and counter the attacks of those who denied that ḵtihād was even possible in later centuries. Similarly, al-Suyūṭī’s bold declaration of his hopes to be recognized as the mujaddid for the ninth century set an important precedent for figures like Shaykh Aḥmad Sirhindī (d. 1034/1624) in India and Usumanu Dan Fodio (d. 1232/1817) in west Africa and other self-proclaimed mujaddids across the Islamic world. 

The concept of tajdīd in particular has proven to be somewhat elusive to critics due to its lack of concrete, defining parameters as well as its tendency to change and evolve over time. Methodologically speaking, it is difficult if not impossible to make generalizations about the tajdīd tradition and the qualifications of the mujaddid without taking into account its different permutations and adaptations in many disparate eras and contexts. 

In his later writings on genre, Bakhtin sheds some light on the issue of how the literature of the past can continue to live in the present. Bakhtin presents what may seem to be a paradox; he says that if “it is impossible to study literature apart from an epoch’s entire culture, it is even more fatal to encapsulate a literary phenomenon in the single epoch of its creation.”

21 Al-Suyūṭī, al-Radd, p. 110.
works are ones that have roots in the past but that also carry significance for the future. As Bakhtin puts it, in “the process of their posthumous life they are enriched with new meanings, new significance: it is as though these works outgrow what they were in the epoch of their creation.”

Shakespeare, for example, did not create works of literary genius out of thin air; he used forms and semantic structures already present in the culture of his time that had accumulated over past centuries. The “great Shakespeare” whom we know today has been liberated from the captivity of his epoch because of the significance that later authors and critics continue to discover in his works. Similarly, as Bakhtin points out, the ‘ancient’ Greeks did not think of themselves in those terms, but “in fact the temporal distance that transformed the Greeks into ancient Greeks had an immense transformational significance: it was filled with increasing discoveries of new semantic values in antiquity, values of which the Greeks were in fact unaware, though they themselves created them.”

Although al-Suyūṭī clearly did not invent the classical formulation of *tajdīd*, he built on and consolidated the work of earlier scholars, like Ibn ‘Asākir (d. 571/1153), Tāj al-Dīn al-Subkī (d. 773/1371), and Zayn al-Dīn al-‘Irāqī (d. 806/1404) to further what would later become a culture of *tajdīd* or a “*tajdīd* genre.” Not only did al-Suyūṭī set the precedent for declaring oneself a candidate for the rank of *mujaddid*, he also affirmed the link between *ijtihād* and *tajdīd* and argued forcefully for the continuance of both concepts in an age in which such pronouncements were met with doubt and even anger. Even as the *tajdīd* genre changed to incorporate more political and Sufi elements, it retained a sense of the primacy of the Qur’ān and

23 Bakhtin, “Response to a Question,” p. 4.
24 Bakhtin, “Response to a Question,” pp. 4-5.
Sunna and a distrust of *taqlīd* and heretical innovations encroaching on upright belief and practice.

A Pragmatic Interpretation of Legal Precepts

In addition to his views on *ijtihād* and *tajdīd*, al-Suyūṭī’s lasting influence in Islamic legal thought lies in the area of legal precepts, *al-qawāʿid al-fiqhiyya*. His work, *al-Ashbāh wa-l-naẓāʿir*, stands as one of the core works of Shāfiʿī *fiqh* in the *qawāʿid* genre of legal literature. In Chapter Five, I engage in a pragmatic interpretation of Islamic legal maxims based primarily on al-Suyūṭī’s work. Pragmatics, as a subfield of linguistics, studies how people use language to pragmatic effect in certain contexts. The philosopher H.P. Grice generated much discussion amongst scholars of pragmatic theory by laying out a number of rules or constraints that explain how people communicate in conversation. Grice assumes that, when acting “felicitously,” people communicate in a way that is optimal in terms of quantity, quality, manner, and relevance of speech. When one of these constraints is violated, it results in a conversational “implicature” that must be explained using contextual factors.

I argue that legal precepts, which normally take the form of pithy statements or questions that sum up areas of law, fulfill a number of pragmatic functions for the jurist. The form and syntax of the statements adds to their function. For example, statements that are brief and often rhyming (such as *al-ʿāda muḥakkama*, or “custom has legal authority”) are catchy and easy to memorize. Presented as general truths, these phrases have an air of timelessness that seems to represent the collective voice of jurists over the centuries.

Precepts became powerful tools in the hands of jurists during the post-formative period of Islamic law because they allow jurists to practice a form of *ijtihād* by manipulating and
systematizing the existing body of substantive law, taming its vastness to distill its essential principles and purposes. The purposes of the law, or *maqāṣid al-Sharī‘a*, could then be applied to new rulings while preserving a sense of continuity within the tradition. Looking at how al-Suyūṭī uses precepts pragmatically reveals interesting insights about his assumptions and expectations as a jurist as well as how contextual factors influence his thinking.

For example, al-Suyūṭī makes strategic use of legal precepts in interpreting certain kinds of speech acts, such as endowment deeds and oaths. In each case, al-Suyūṭī attempts to reconcile what he interprets to be the original intentions of the speaker with the realities of al-Suyūṭī’s own contemporary context. The tension between semantics and context is particularly prominent in the section of *al-Ashbāh wa-l-naẓā‘ir* in which al-Suyūṭī discusses precepts relating to customary law (*‘urf*). When a contradiction and resulting “implicature” arises between the words of the speaker and the meaning as derived from context, the jurist resorts to the precept *al-‘āda muḥakkama* (“custom has legal authority”) to resolve the contradiction.

However, as my analysis of al-Suyūṭī indicates, the jurist has a considerable amount of leeway in how he chooses to go about this process of reconciliation. At times, the personal objectives of the jurist can shape his approach to a given issue. Al-Suyūṭī makes pragmatic choices at each stage in his argument with a final goal in mind. In the issue of the changing association of the words ‘the judge’ in assigning supervision of endowment funds, for instance, al-Suyūṭī cleverly subverts the principle that later associations take precedence over earlier ones by arguing that ‘the judge’ should continue to refer to the chief Shāfi‘ī judge, even after the shift to four chief justices from each of the legal schools. In this instance, al-Suyūṭī favors an interpretation that benefits his own legal school by emphasizing the continuity of powers.

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assigned to the Shāfi‘ī judge. In doing so, al-Suyūṭī contradicts other instances in which a later customary usage takes precedence over an earlier one (such as practices relating to teachers taking leave at certain times and to the teaching of hadith in endowed institutions). Pragmatic theory helps bring to light where such discrepancies exist and provides a valuable reminder that context affects meaning.

Strengths and Weaknesses of the Methodology

In my view, the value of the interdisciplinary approach used in this study lies in three main areas. First, the approach allows me to analyze not just what al-Suyūṭī says but also how he says it. Discourse analysis assumes that the content and form of utterances are inescapably linked and that a speaker chooses a certain register, speech genre or “footing” to pragmatic effect depending on both the actual and imagined audiences being addressed, as well as the projected self that the speaker wishes to convey.

Secondly, the approach promotes a healthy balance between a detailed analysis of a sample of spoken or written discourse (in this case, a certain text) and larger questions based on the historical and social context in which the discourse is produced. Again, the idea of the inherent “dialogic” nature of language is based on an awareness that utterances derive meaning from context and that a given utterance “cannot fail to brush up against thousands of living dialogic threads, woven by socio-ideological consciousness around the given object of an utterance.”

27 Focusing on the semantic content of an utterance without regard for its context risks missing some of the complex layers that give it meaning as part of a dialogue of past, present, and future utterances.

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The third potential benefit of discourse analysis for Islamic Studies is that it allows the critic to venture into quality analysis. I attempt to evaluate, to some degree, the effectiveness of the techniques employed by al-Suyūṭī in his legal discourse. One way to do this is to compare al-Suyūṭī’s opinions with those of other jurists. The fatwā genre in particular lends itself to such analysis because the form assumes that the competent jurist has taken into account the precedent set by his esteemed predecessors, particularly those within his own legal school. It is instructive to examine which authorities the author cites and, in some cases refrains from citing, because their opinions do not match his own. I do not take al-Suyūṭī’s assertions that his views represent the consensus of his fellow jurists at face value, but rather, I test his claims against those of his peers.

Another way to evaluate the relative effectiveness of al-Suyūṭī’s discourse strategies is to see how his ideas are appropriated and treated as normative by later scholars. Needless to say, this second task is a huge undertaking that quite often exceeds the limitations of the current study. However, such an endeavor would be a necessary element of future attempts to investigate in more detail al-Suyūṭī’s legacy for subsequent generations of jurists.

The approach used in this study also carries with it some potential drawbacks. Linguists who are accustomed to using quantitative methods (measuring the occurrence of certain discourse markers, for example) may find the methodology lacking a degree of precision. Also, focusing on the personal motivations and agendas of the fifteenth-century author runs the risk of ascribing ideas to the subject that are anachronistic or difficult to substantiate based on the available evidence. From a methodological standpoint, it is often perilous to mix theories and approaches from different disciplines due to the danger of being too superficial in one’s analysis and of not doing justice to either field. I have tried to keep all of these pitfalls in mind in my
approach to al-Suyūṭī. My hope in venturing into new territory by applying tools from sociolinguistics to analyze Islamic legal texts is that the strengths of such an endeavor will, in the end, overcome and outweigh the possible weaknesses.

**The Implications: What was Heard Then and Now?**

Were al-Suyūṭī’s attempts to frame himself as a *mujtahid* and *mujaddid* successful in the eyes of his contemporaries? The short answer is no. Although he did find some supporters, especially amongst his own students, rivals like al-Sakhāwī (d. 902/1497) were quick to attack al-Suyūṭī’s qualifications as a *mujtahid*. In his scathing biographical entry on al-Suyūṭī, al-Sakhāwī points to his lack of accomplishments in logic and arithmetic and accuses him of having exaggerated his number of works and even of stealing outright the works of other scholars and attributing them to himself.\(^{28}\) Another enemy, Ibn al-Karakī (d. 922/1516), criticized al-Suyūṭī’s claims to be a *mujaddid*, decrying al-Suyūṭī’s arrogance and pride in the superiority of his scholarship.\(^{29}\)

It is undeniable that al-Suyūṭī stirred up disputes at several times in his life that became so rancorous that the ruler was compelled to intervene. The situation came to a head in 903/1498 when the Sufi residents of the Baybarsiyya *khānqāh* rebelled against al-Suyūṭī’s leadership as their shaykh and supervisor of the endowment that provided their monthly stipends.\(^{30}\) Tensions became so great that al-Suyūṭī was forced to go into hiding at one point in fear for his life. After his dismissal from the Baybarsiyya in 906/1501, al-Suyūṭī went from partial to full retirement,


\(^{29}\) Sartain, *Jalāl al-Dīn al-Suyūṭī*, p. 78. Ibn al-Karakī, as Sartain points out, was a favorite of Sultan Qāytbāy and tried to turn the ruler’s opinion against al-Suyūṭī. Many sought Ibn al-Karaki’s wordly influence, but not his knowledge. Al-Suyūṭī responds by likening him to a privy, “to which one repairs to satisfy a need” (Sartain, *Jalāl al-Dīn al-Suyūṭī*, p. 80).

\(^{30}\) I discuss this incident in detail in Chapter Two.
resigning from his remaining academic posts and retreating to his house on Rawḍa until his death in 911/1505. Sartain characterizes al-Suyūṭī’s withdrawal from public life in part as result of his disillusionment about the declining state of scholarship, but especially due to “the bitterness and disappointment he felt when his colleagues refused to acknowledge him as the outstanding scholar he believed himself to be.”

Although al-Suyūṭī’s framing effort may have been a failure during his lifetime, the irony is that he succeeded as a mujtahid after the fact and almost in spite of his own efforts. Al-Suyūṭī’s lasting legacy and reputation can be attributed to the enduring popularity and value of his works. This popularity stems not only from the sheer quantity of works that the author produced (estimated at close to five hundred titles) but also from their quality. It is no surprise that al-Suyūṭī’s most influential works are in the fields that he considered to be the most noble and worthy of study, the Qur’ānic sciences, hadīth, and the Arabic language. Al-Suyūṭī’s succinct and practical exegesis of the Qur’ān, Tafsīr al-Jalālayn, is still popular and his Itqān fi ‘ulūm al-Qur’ān “remains a work of reference wherever Kur’ānic sciences are taken up.” Of al-Suyūṭī’s many important titles in hadīth collection, criticism, and terminology, his Jāmi’ al-jawāmi’ (and its abridgement, al-Jāmi’ al-ṣaghīr) and his Tadrīb al-rāwī fī Taqrīb al-Nawawī are worthy of special mention as works that are in regular use. In the Arabic language, al-Suyūṭī’s major work is al-Muzhir fi ‘ulūm al-lugha.

As far as al-Suyūṭī’s legal thought is concerned, his fatwās and treatises are still read and his work on legal precepts, al-Ashbāh wa-l-naẓā’ir fī l-qawā’id al-fiqhiyya, is still taught as a

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31 Sartain, Jalāl al-Dīn al-Suyūṭī, p. 84.
32 The Sufi biographer, Yūsuf ibn Ismā’īl Nabhānī (d. 1932), writes that the greatest of al-Suyūṭī’s miracles was the number of his books. See: Nabhānī, Kitāb Jāmi’ kārāmāt al-awliyā’, vol. 2 (Beirut: Dār al-Kutub al-‘Ilmiyya, 1996), p. 132. I am grateful to Jonathan A.C. Brown for alerting me to this reference.
key text of Shāfi‘ī fiqh. Al-Suyūṭī’s fatwās have been compiled in a two-volume set, *al-Hāwī li-l-fatāwī*, which continues to come out in new editions. Even during the author’s lifetime, al-Suyūṭī says proudly that his works have traveled as far as Syria, the Ḥijāz, Yemen, India, the Maghrib, and Takrūr (in West Africa). Al-Suyūṭī’s fatwās have been compiled in a two-volume set, *al-Hāwī li-l-fatāwī*, which continues to come out in new editions. Even during the author’s lifetime, al-Suyūṭī says proudly that his works have traveled as far as Syria, the Ḥijāz, Yemen, India, the Maghrib, and Takrūr (in West Africa).

Although al-Suyūṭī was able to travel quite extensively within Egypt and went on pilgrimage to Mecca, his fame abroad was due largely to the spread of his works and his response to questions from both near and far.

Indeed, al-Suyūṭī’s opinions as a jurist may have been received with more acclaim and admiration abroad than they were in his own scholarly circles at home in Cairo. Marjlis Saleh observes, not without irony, that “al-Suyūṭī seems to have been appreciated best at a distance,” citing positive biographical entries by ‘Abd al-Wahhāb al-Sha‘rānī (d. 973/1565), Ibn Iyās (d.c. 930/1524), Najm al-Dīn al-Ghazzī (d. 1061/1651) and Ibn al-‘Imād (d. 1089/1679). Saleh also notes “what might be termed a revival of interest in al-Suyūṭī and his work,” including two international conferences on al-Suyūṭī in 1976 and again in 1993. If it is possible, as Saleh suggests, to “attempt to judge the value placed on a given work by succeeding generations by seeing whether or not that work was copied and has left surviving manuscripts” and whether or not, in modern times, the work has been published, then al-Suyūṭī’s repertoire is impressive

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34 Sartain, *Jalāl al-Dīn al-Suyūṭī*, p. 41. I discuss the spread and influence of al-Suyūṭī’s works in detail in Chapter Four.


indeed. Saleh counts 392 works by al-Suyūṭī “that have been published at least once, not counting additional editions of the same title,” and one effort to locate extant manuscripts yielded as many as 724 works.

Despite this flourishing of publications and interest in al-Suyūṭī, there remains much work still to do. Sartain, in her excellent study of al-Suyūṭī’s life published in 1975 (which is still the only full-length study on al-Suyūṭī in English), explains that her work is “primarily a historical and not a literary study, no attempt has been made to evaluate al-Suyūṭī’s works. The proper assessment of al-Suyūṭī’s contribution as a scholar is a task which must be left to specialists in each of the fields in which al-Suyūṭī worked.” While it is commendable that so much of al-Suyūṭī’s work has been published, scholars have yet to subject these works to detailed analysis and scholarly criticism. This research is meant to provide an initial evaluation of al-Suyūṭī’s contribution to the field of jurisprudence through the lens of sociolinguistic analysis. To this end, each chapter is intended as an individual snapshot making up the larger projected image of the jurist within his social context.

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CHAPTER ONE
Literature Review

I. Literature Review

The challenge of an interdisciplinary study such as this one is that it must speak to several different audiences. Therefore, I draw on two main bodies of literature for this study from two very different fields: sociolinguistics and Islamic law. In the first section, I look at various methodologies that fall under the broad rubric of sociolinguistics, selecting concepts that stand out as particularly relevant to the approach that I will develop in the course of this study. I order the topics according to the scale of the data, starting from the level of the individual utterance and progressing to frames, metaphors, narratives, communities and discourse. The second section, which deals with literature concerning Islamic law, is organized in an opposite progression from general to specific. I begin with a discussion of Islamic legal history and the phenomenon of change in general before talking specifically about fatwās, individual jurists and, finally, Jalāl al-Dīn al-Suyūṭī.

Sociolinguistics

Approach to Language

I use as a starting point for this study semiotician Mikhail Bakhtin’s investigation of the inherent dialogic nature of language. Bakhtin disputes the notion that written or spoken “utterances” can be taken in isolation or that they can be seen to represent the product of only one speaker. Rather, any utterance is produced in reference to previous utterances and anticipates future utterances; it is, in this sense, essentially “dialogic.” As Bakhtin puts it, a
speaker “is not, after all, the first speaker, the one who disturbs the eternal silence of the universe. And he presupposes not only the existence of the language system that he is using, but also the existence of preceding utterances – his own and others’ – with which his given utterance enters into one kind of relation or other (builds on them, polemicizes with them, or simply presumes that they are already known to the listener). Any utterance is a link in a very complexly organized chain of other utterances.”

Although Bakhtin’s own language is obscure at times, he is insightful in pointing out that any living language must be understood in relation to its social context. All discourse is dialogic because all discourse contains threads of other discourse. As Bakhtin explains: “The living utterance, having taken meaning and shape at a particular historical moment in a socially specific environment, cannot fail to brush up against thousands of living dialogic threads, woven by socio-ideological consciousness around the given object of an utterance; it cannot fail to become an active participant in social dialogue.”

By focusing on the utterance as a unit of speech communication, Bakhtin breaks away from the traditional concept of the ‘sentence’ as a subject of linguistic analysis. Unlike the sentence, a whole utterance is finalized by a change in speaker and demands a response from other speakers. Utterances, in turn, can be classified into types or “speech genres.” A speech genre can range anywhere between a line of dialogue in everyday speech to a command to scientific analysis, lyrical speech, or even scholarly commentary. Speech genres are either unmediated primary genres (such as rejoinders of everyday dialogue) or more sophisticated secondary genres. For Bakhtin, novels, dramas and commentaries constitute “secondary

(complex) speech genres” because they “absorb and digest various primary (simple) genres that have taken form in unmediated speech communion.” Bakhtin refers to the phenomenon of multiple speech genres being absorbed into a whole utterance as “interdiscursivity.”

Also relevant to my study is Bakhtin’s idea of hidden polemic. According to the theory of interdiscursivity, a given concrete utterance (a novel, for example) can contain snippets of other discourse from multiple genres. Sometimes these other utterances are explicitly cited, but often the reference is only implied; the speaker assumes that the reader or audience will recognize the reference. A speaker can use interdiscursivity to pragmatic effect by using someone else’s words deliberately in a manner that can be either positive or satirical. Therefore, according to Bakhtin, hidden polemic is a kind of “double-voiced discourse” because “the author’s discourse is directed towards its own referential object, as in any other discourse, but at the same time every statement about the object is constructed in such a way that, apart from its referential meaning, a polemical blow is struck at the other’s discourse on the same theme.”

In the latter part of his career, Bakhtin expanded on his theory of genre to speculate in broad terms about the relationship between literary works and the cultural context in which they are produced. Literary criticism, he argues, has often been stymied by the need to locate a literary work within the culture of its epoch but, at the same time, not limiting or restricting the significance of a writer’s work to one particular era. The critic should approach a “great work” as a living utterance that builds on the semantic structures, themes, forms and modes of thought of the past; it is created by its author in a particular cultural context and then transcends that epoch to continue its life within the realm of “great time.” Therefore, a great writer like

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6 Bakhtin, “Response to a Question from the Novy Mir Editorial Staff” in *Speech Genres and Other Late Essays*, p. 3.
Shakespeare is not confined to the Elizabethan epoch in which he lived as readers continue to find meanings in his works, which “neither he himself nor his contemporaries could consciously perceive and evaluate in the context of the culture of their epoch.”

Frame Analysis

Linguists interested in the study of pragmatics assume that utterances can best be analyzed within their social context. One tool that has proven useful to anthropologists, psychologists, sociologists, and linguists alike is that of frame analysis. The anthropologist Gregory Bateson introduced the term “frame” in 1955 and it has since been taken up by Erving Goffman as a unit of analysis with which to investigate what he calls “the organization of experience.” As Goffman explains: “I assume that definitions of a situation are built up in accordance with principles of organization which govern events – at least social ones – and our subjective involvement in them; frame is the word I use to refer to such of these basic elements as I am able to identify.” When one speaks of a person “playing a role,” for example, one evokes a “theatrical frame” that carries its own set of assumptions. In the context of a theatrical performance, a distinction is made between a stage actor and the character that he or she represents to the audience. The audience members in turn have a function within the frame as theatergoers that is separate from that of casual onlookers. Indeed, the term “persona” evoked in this study implies a projected self that is distinct from the author’s identity as a human being.

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7 Bakhtin, “Response to a Question,” p. 4.
10 Goffman, Frame Analysis, pp. 10-11.
11 Goffman, Frame Analysis, p. 129.
12 Goffman, Frame Analysis, pp. 130-131.
In his discussion of frames and how they operate in discourse, Goffman challenges the traditional paradigm of the speaker-hearer model of talk. He suggests that a lot more happens during a conversation than simply an interaction between two people; even if the talk is seemingly directed at one listener, it is assumed that the talk also involves “bystanders” or unaddressed recipients. The purpose of speech, therefore, is not just to communicate information to one listener but also to address an imagined audience as well as to convey the speaker’s own “projected self.” A participant’s alignment in a conversation is referred to as “footing” and a change in footing (in words, but also in tone, register, and even physical stance) can indicate the presence of a shift in frame. Building off of Goffman, Ron Scollon approaches each example of discourse not with the question ‘What does the text say?’ but rather with the question ‘What is going on here?’

In her work on discourse analysis, Deborah Tannen looks for linguistic evidence of frames and how they operate. Tannen identifies what she calls “structures of expectation” which shape how we perceive events and form our response linguistically. Examples of linguistic evidence that an expectation (or frame) is at work include negation, statements that indicate moral judgments, “hedges” and other qualifications, omission and repetition. For instance, by negating an idea, the speaker implies that the positive is expected. In English, using qualifying words like ‘just’ and ‘even’ suggest a response to an expectation that could be explicit in the discourse but is more often only implied. The expectations might differ depending on the...
cultural background of the speaker, but telltale signs that a frame is at work can be found in all discourse by the careful observer.

Of course, analysts have been quick to make the move from looking at frames as cognitive shortcuts that people use to make sense of everyday experience to examining framing as a powerful rhetorical tool that allows people to shape the ways in which events and actions are understood. Jim Kuypers explains that frames “are so powerful because they induce us to filter our perceptions of the world in particular ways, essentially making some aspects of our multidimensional reality more noticeable than other aspects.” The omission of information is often just as telling in this regard as emphasizing or highlighting it.

This rhetorical function of frames is especially pronounced in news media where the way in which an issue is framed is likely to influence public opinion on that issue. A demonstration, for example, can be framed either as a lawful expression of free speech or as a public disturbance. It follows that people’s perception of that event will vary depending on which frame they use to interpret the action. Therefore, it is the selection of a certain frame (in this case, by the press) that fulfils the function of “agenda-setting.” The rhetorical effectiveness of frames in discourse will be explored further in the following sections.

Metaphor and Narrative

The cognitive scientist George Lakoff takes Goffman’s theory of frame analysis in an interesting direction in his work on metaphor and narrative. His book, *The Political Mind*, though expressly written to promote the author’s own “progressive” political agenda,

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20 Kuypers, “Framing Analysis,” p. 182.
nevertheless brings up useful concepts for understanding how frames work both in terms of language and in the subconscious mind.

Lakoff examines what he calls “modes of thought” on a cognitive level. He endeavors to show that adopting a certain mode of thought can have far-reaching political consequences and that those with power on a political level are those who are most persuasive in communicating their mode of thought so that it becomes the dominant understanding. He calls us to look deeper than the level of language as words to determine the cognitive and emotional effects of certain word choices on the human brain. As he explains it: “Language gets its power because it is defined relative to frames, prototypes, metaphors, images and emotions. Part of its power comes from its unconscious aspects: we are not consciously aware of all that it evokes in us, but it is there, hidden, always at work. If we hear the same language over and over, we will think more and more in terms of the frames and metaphors activated by that language.”

Lakoff uses the media coverage surrounding the death of the celebrity Anna Nicole Smith (a “remarkable variety of narratives”) to show how frames and emotions interact. These “narratives we live by” are constructed of smaller narratives or building blocks that correspond to Goffman’s idea of frames. While narratives contain prototypes that are culture-specific (“the gold digger, the martyr, the playboy, and so on”), they are rooted in what Lakoff calls “deep narratives” that transcend cultural boundaries. The Rescue narrative, for example, involves the common elements of the Hero, the Victim, the Villain and the Helpers. These narratives, while

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23 Lakoff, *The Political Mind*, p. 22.  
drawing on themes from the surrounding culture, are reinforced in the brain itself to become part of our consciousness as human beings.\textsuperscript{25}

For a politician or any public figure, politics is about “the stories they have lived and are living, the stories they tell about themselves, the stories the opposition tries to pin on them, and the stories the press tells about them.”\textsuperscript{26} Therefore, the successful politician not only recognizes the existence of these frames and their corresponding narratives but is able to use them to his or her advantage and, in effect, to shape public discourse and appeal to the deeply resonant emotions within people’s hearts, souls and minds.

As a self-described “narrative psychologist,” Dan P. McAdams studies the “stories” that people tell about their lives and the underlying metaphors that they employ to shape their identities and to make sense of their experiences. His book, \textit{The Redemptive Self}, provides an intriguing look at some of the common patterns or themes that permeate the life stories of Americans in particular – the primary narrative being one of redemption. McAdams argues that “highly generative adults,” or individuals who are committed through their achievements to improving society and to leaving a positive and transforming legacy for future generations, tend to see their lives as redemption narratives: “the protagonist encounters many setbacks and experiences a great deal of pain in life, but over time these negative scenes lead to essentially positive outcomes, outcomes that might not have occurred had the suffering never happened in the first place.”\textsuperscript{27}

\textsuperscript{25} Lakoff, \textit{The Political Mind}, pp. 24-25.
\textsuperscript{26} Lakoff, \textit{The Political Mind}, p. 35.
Communities of Practice

Etienne Wenger expands on the notion of how people consciously, or unconsciously, shape their own narratives in relation to a certain group or “community of practice.” He describes this process as a constant “negotiation of meaning” that is in turn driven by the dual processes of “participation” and “reification.”28 Participation he defines as “the social experience of living in the world in terms of membership in social communities and active involvement in social enterprises” and reification as “the process of giving form to our experience.”29

Reification focuses the negotiation of meaning by giving us terms that we can all recognize and understand, such as when we talk about “democracy” or “the economy” as though these abstract concepts were “active agents.”30 Other examples of reification include “setting down a law, creating a procedure, or producing a tool”: by giving form to a certain understanding we, in effect, shape our own experience.31 Wenger warns that reification can be “double-edged” if it reflects a distortion of reality or is “appropriated in misleading ways.”32 Put differently, the “notion of assigning the status of object to something that really is not an object conveys a sense of mistaken solidity, of projected concreteness. It conveys a sense of useful illusion.”33 For example, a mathematical formula reifies “in a few terms a regularity that pervades the universe,” but, at the same time, “the knowledge of a formula can lead to the illusion that one fully understands the processes it describes.”34

29 Wenger, Communities of Practice, pp. 55-58.
30 Wenger, Communities of Practice, p. 58.
31 Wenger, Communities of Practice, pp. 58-59.
32 Wenger, Communities of Practice, p. 61.
33 Wenger, Communities of Practice, p. 62.
34 Wenger, Communities of Practice, p. 61.
According to Wenger’s theory, this discursive process of negotiation of meaning through participation and reification can be used to form what he calls a “community of practice.” Communities of practice contain the three elements of mutual engagement, a joint enterprise, and a shared repertoire. When people become engaged in a joint enterprise, they will naturally develop a “regime of accountability” that lets participants know “what matters and what does not, what is important and why it is important, what to do and not to do, what to pay attention to and what to ignore, what to talk about and what to leave unsaid, what to justify and what to take for granted, what to display and what to withhold, when actions and artifacts are good enough and when they need improvement or refinement.”

Similarly, the “shared repertoire” that Wenger refers to as one of the common elements of a community of practice “includes routines, words, tools, ways of doing things, stories, gestures, symbols, genres, actions, or concepts that the community has produced or adopted in the course of its existence, and which have become part of its practice.” These bonding elements allow members of a community of practice to understand and shape their identity in relation to the group and perhaps even to use this shared repertoire to their advantage to secure positions of power within the community.

Identity, as Wenger suggests, is much more complex than just the notion of “self-image” or even how others view us or talk about us in words. As Wenger argues: “Identity in practice is defined socially not merely because it is reified in a social discourse of the self and of social categories, but also because it is produced as a lived experience of participation in specific communities. What narratives, categories, roles, and positions come to mean as an experience of

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35 Wenger, Communities of Practice, p. 73.
36 Wenger, Communities of Practice, p. 81.
37 Wenger, Communities of Practice, p. 83.
participation is something that must be worked out in practice.”

Therefore, identity exists in this constant negotiation of meaning as “a complex interweaving of participative experience and reificative projections.” Of course, an individual can belong to several different communities of practice at the same time, and thus his or her identity is not limited to a certain local experience but instead reflects “an interplay between the local and the global.”

Also instructive is the idea that all meanings are not equal but rather compete in what Wenger calls an “economy of meaning.” In an economy of meaning, “different meanings are produced in different locations and compete for the definition of certain events, actions, or artifacts.” In other words, it is possible for a certain meaning to “achieve special status” above others and for participants in a community of practice to have “ownership of meaning,” or, “the degree to which we can make use of, affect, control, modify, or in general, assert as ours the meanings that we negotiate.”

Although situated in the context of insurance claims processing, Wenger’s prose remains quite abstract and repetitive as he works to develop his theory of communities of practice in relation to identity. However, his theory contains concepts that are useful for my purposes, including negotiation of meaning, participation and reification, a regime of accountability, and a shared repertoire as elements that form a community of practice. The theory helps us to understand how an individual shapes his or her identity as belonging to certain groups within society. It also allows us to evaluate the effectiveness of an individual’s negotiation of meaning within a broader “economy of meaning” in which some ideas survive to shape the discourse while others die out or are swept aside.

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38 Wenger, *Communities of Practice*, p. 151.
39 Wenger, *Communities of Practice*, p. 151.
40 Wenger, *Communities of Practice*, p. 162.
41 Wenger, *Communities of Practice*, p. 199.
42 Wenger, *Communities of Practice*, pp. 199-200.
Discourse and Power

Wenger’s idea of the negotiation of meaning and how certain meanings can be appropriated and its implications for notions of power and control evokes the work of the great theorist Michel Foucault and his study of the relationship between knowledge (as expressed through discourse) and power. A full elaboration of Foucault’s theories is beyond the scope of this project, but I would like to touch on one of Foucault’s ideas that will be useful for my analysis – that of the rules governing discourse.

Rather than using the “utterance” as his unit of analysis like Bakhtin, or the “frame” like Goffman, Foucault talks about the “discursive formation,” which can be defined as “a cultural code, characteristic system, structure, network, ground of thought, or style of organization that governs the language, perception, values, and practices of a system, a community, or a historical period.” These discursive formations are governed by subtle rules that determine who is authorized to produce certain kinds of discourse and in what ways. For example, a doctor who is trained in the medical field may be deemed qualified or competent to issue statements on health-related issues. Academics are expected to produce discourse that conforms to what is commonly perceived as scholarly writing and must conform to certain norms in order for their work to be taken seriously by their peers in the discipline. Rules dictate the form and style in which certain discourse can be articulated and even inform the behavior, gestures, and outer appearance of the speaker.

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44 Foss et al., Contemporary Perspectives on Rhetoric, p. 349.
45 Foss et al., Contemporary Perspectives on Rhetoric, pp. 349-350.
Also helpful to a discussion of discourse and power relations is the subfield of Critical Discourse Analysis (CDA) or Critical Discourse Studies (CDS).\textsuperscript{46} Teun A. van Dijk defines the aims of this field as “the study of the discursive reproduction of power abuse.”\textsuperscript{47} Van Dijk’s work is relevant to this project because it looks at how elites use language to set the power equation and to dominate and manipulate weaker groups. Another example of CDA is work that examines the linguistic expression of sexism and gender relations. One such approach is Penelope Eckert and Sally McConnell-Ginet’s \textit{Language and Gender}.\textsuperscript{48} Theorists in this field address the important questions of who can speak and who is kept silent. Scholars enjoy a privileged position as producers of discourse that can play a key role in how people in society view a particular subject. As such, practitioners of CDA would argue that scholars also share a special responsibility to draw attention to marginalized groups whose voices often go unheard.

\section*{Islamic Law}

\section*{Legal History and Change}

For an authoritative voice on Islamic legal history, I turn first to the works of Wael Hallaq. Over the years, Hallaq has produced numerous influential books and articles touching on diverse aspects of the development of Islamic legal methodology (\textit{uṣūl al-fiqh}) as well as changes in substantive law and the way in which jurists dealt with key concepts of authority construction and identity. In his important book \textit{Authority, Continuity, and Change in Islamic Law}, Hallaq sets out to examine the mechanisms and structures within the law that allowed it to accommodate significant changes from roughly the 4\textsuperscript{th}/10\textsuperscript{th} to the 9\textsuperscript{th}/15\textsuperscript{th} centuries. Broadly speaking, these mechanisms revolved around the dual institutions of \textit{ijtihād} (independent legal reasoning) and \textit{taqlīd} (adherence to school doctrine), which in turn carry a spectrum of meaning.


and sub-categories. Hallaq argues effectively that, as mechanisms of both continuity and change in the law, *ijtihād* and *taqlīd* are really “two sides of the same coin, both involving the reasoned defense of doctrine, with the difference that continuity requires the sustained defense of an established doctrine while change demands the defense of a new or, more often, a less authoritative one.”

Hallaq shows that *taqlīd* in particular accomplished several different objectives for jurists over the centuries, representing much more than a simple “‘blind’ or mindless adherence to the opinions of others.” Rather, *taqlīd* functioned through a complex “operative terminology” to manage the vast diversity and multiplicity of legal opinion into cohesive and authoritative categories and principles. For example, jurists used processes such as *tarjīḥ* and *taṣḥīḥ* to rank opinions and to confer authoritativeness on some opinions over others. Therefore, Hallaq suggests that the process of identifying precedent and rendering it authoritative through the application of operative terminology is in itself a creative act and “vehicle of legal change” to the same extent as *ijtihād* was during the formative period. Later generations of jurists distinguished themselves by articulating a hierarchy of opinion and, by means of a complex epistemological interplay, defending and defining the boundaries of their legal school (*madhhab*). Thus, as Hallaq points out, the transition from the *ijtihād* of the formative period and construction of the authority of the school founders by their followers to the articulation and

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51 *Tarjīḥ* refers to the process through which jurists establish the preponderance of some opinions over others. *Tashīḥ*, or rendering an opinion as correct (*ṣaḥīḥ*) according to the leading authorities within the legal school, is part of the *tarjīḥ* process. For a detailed analysis of these terms and others making up the operative terminology of Islamic substantive law, see: Wael B. Hallaq, “Can the Shari‘a Be Restored?” in *Islamic Law and the Challenges of Modernity*, eds. Yvonne Yazbeck Haddad and Barbara Freyer Stowasser (Oxford, U.K.: AltaMira Press, 2004), pp. 21-53.  
52 Hallaq, *Authority*, p. 239.
application of precedent by later jurists through taqlīd did not occur haphazardly but came as the result of a process that was both natural and inevitable.\textsuperscript{53}

However, this shift from the \textit{ijtihād} of the formative period to the taqlīd that accompanied the rise of the legal schools does not mean that independent legal reasoning ceased to exist after the 4\textsuperscript{th}/10\textsuperscript{th} century. Hallaq adds his voice to the debate preoccupying much of Orientalist scholarship on Islamic legal history to question the notion that the “gate of ijtihād” closed sometime before the end of the 3\textsuperscript{rd}/9\textsuperscript{th} century, never to be reopened.\textsuperscript{54} Challenging Joseph Schacht and others, Hallaq analyzes a range of primary legal sources to reach the conclusion that “the gate of ijtihād was not closed in theory nor in practice” and, in fact, ijtihād has remained an indispensable part of Islamic legal theory throughout the centuries.\textsuperscript{55}

The discussion about the existence of the mujtahid in Islam plays out in the primary sources in the literature concerning the typology of jurists in which scholars achieved certain ranks depending on how much ijtihād they were allowed to practice. The major medieval jurists differed as to who could be considered a mujtahid after the passing of the school founders and in what areas of law. As Hallaq suggests, many of the same jurists shaping this debate (including al-Juwaynī [d. 478/1085], al-Ghazālī [d. 505/1111], and Ibn ʿAqīl [d. 513/1119]) not only took the existence of ijtihād for granted, but “also presented themselves as qualified mujtahids and were accepted by others as such.”\textsuperscript{56} Hallaq points to al-Suyūṭī as an example of a scholar who, even by the 9\textsuperscript{th}/15\textsuperscript{th} century, still insisted that ijtihād was a sacred duty and claimed to be a mujtahid himself in some areas of scholarship. Al-Suyūṭī’s later claims to be the mujaddid (renewer of religion) for his century further emphasize that, according to his reasoning, he must

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\textsuperscript{53} Hallaq, Authority, p. 85.
\textsuperscript{54} Wael Hallaq, “Was the Gate of Ijtihād Closed?” in the \textit{International Journal of Middle East Studies} 16 (1984), p. 3.
\textsuperscript{55} Hallaq, “Ijtihād,” p. 4.
\textsuperscript{56} Hallaq, “Ijtihād,” p. 15.
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also deserve the rank of mujtahid. The cause of promoting ijtiḥād was taken up by eighteenth and nineteenth century reformers in a debate that would continue into the modern era and that still exists in different forms even today.

Norman Calder contributes to the discussion of judicial hierarchy and typology through his analysis of the 7th/13th century jurist al-Nawawī’s ranking of muftīs in his Majmūʿ. He identifies two major themes in al-Nawawī’s account: loyalty to the madhhab and the differing roles of the teacher-jurist and the muftī. Muftīs, who could either be independent (in the case of the school founders), affiliated, or deficient according to this typology, were responsible for dealing with real cases, whereas the teacher-jurist did not have to respond to specific questioners. Although it was widely accepted by al-Nawawī’s time that affiliated muftīs were expected to show some allegiance to their madhhab in their legal opinions, the extent to which they could draw upon ijtiḥād to further build on precedent was under dispute. Indeed, Calder asserts that by creating the typology al-Nawawī is himself both demonstrating his affiliation with the Shāfi‘ī school as well as his “engagement in the interpretive process, not only in the sense that this text interprets the tradition, but also in the sense that it creates a new pattern and texture of discourse, itself demanding to be interpreted.”

Muftīs and Fatwās

Like Hallaq, Calder focuses on terminology in al-Nawawī’s text to trace how different types of muftīs transmit authority. Although Hallaq and Calder disagree on some issues, they

60 Calder, “al-Nawawī’s Typology of Muftīs,” p. 149.
agree on an important point: muftīs and teacher-jurists (or “author-jurists”) were the primary agents of change in Islamic legal thought. Hallaq argues persuasively against the view that Islamic law was largely a speculative enterprise carried out by scholars detached from reality; it was, in fact, the very adaptability of law to real situations and concerns that allowed it to thrive for hundreds of years. At the center of this equation was the fatwā. As a response by a muftī to a specific question, fatwās represented the link between the sacred sources of law as interpreted by the jurist and reality. Although some fatwās were written in response to a hypothetical scenario, Hallaq argues that the majority of fatwās preserved in books of substantive law “emanated from a particular social reality involving real people with real problems.”

The anthropologist Brinkley Messick explores the relationship between the jurist, the text, and the world in his work on Islamic jurisprudence in Yemen. Messick describes the function of ʿiftāʾ as “the channel through which mundane, earth-hugging realities, including new factual developments, were formally noticed by and reflected upon by qualified scholarly minds, leading to analogical extensions of the body of legal knowledge” and muftīs as “the creative mediators of the ideal and the real of the shariʿa.” Messick’s emphasis on “qualified scholarly minds” is important because it hints at the structures of authority through which individual scholars came to be seen as respected producers of legal opinions. As Messick notes, this authority was both textual and social, incorporating both “the literary processes behind the constitution of authority in texts and the social and political and social processes involved in articulating the authority of texts.”

63 Hallaq, “From Fatwās to Furūʿ,” p. 38.
The system contained its own mechanism of checks and balances through which scholars were deemed worthy of *iftāʾ* by virtue of their knowledge and training on the one hand, and the acceptance of their opinions by their community of scholars and some areas of the public on the other. Approved opinions carried both a local as well as a global impact as they affected not only the community in which they were issued but came to be incorporated into *fatwā* collections, *furūʿ* works, and even included as citations in other *fatwās* across the Islamic world. Decisions that were not considered valuable were marginalized from legal discourse while the authority of the scholar was also questioned or even discredited. As Messick puts it:

> Despite strong egalitarian counter-currents, the shari‘a understanding of the social order was anchored in the distinction between knowledge and ignorance, a distinction that concerned, not differences of intelligence, but rather control of the cultural capital acquired in advanced instruction. Associated with the relation of interpretation and hierarchy was a state and wider polity of the question and response, in which, like muftis, imams, governors and judges made themselves available to answer petitions and claims.

As Messick points out, the third actor in addition to the individual muftī and the questioner (and imagined audience) is the state. Even the private muftī who was not a salaried state official did not operate in a vacuum but rather was still connected to state authority at some level. This was particularly the case during the Mamluk period, where a strong state bureaucracy challenged religious scholars to vie for patronage and resources. Often, muftīs were called to consult on cases in the shari‘a courts and *mażālim* tribunals, and some even advised the sultans on policy matters. Scholars regularly make the distinction between the duties of the judge as a state official bound by procedure and the private muftī whose opinions could be preserved in legal

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become precedent for future jurists: “Whereas a judgment carries the presumption of finality, a fatwa enters a world of competing opinions.”\(^68\) Thus, the qāḍī, unlike the muftī, was not given as much credit as an agent of legal change after the formative period.\(^69\)

However, in spite of this lesser role in the overall development of Islamic law, the judge was capable of wielding considerable power at a local level. For example, when the Mamluk sultan al-Zāhir Baybars appointed chief judges in Cairo from each of the four Sunnī legal schools in 663/1265, it had broad implications not only from a political standpoint, but also for the judiciary and the way law was practiced at the time. As Yossef Rapoport observes, the decision spoke both to the need for uniformity within the judicial system as represented by taqlīd, while at the same time allowing for greater flexibility and diversity.\(^70\) Of course, this equation changed fundamentally in the modern era with the emergence of state muftīs in the nineteenth century. With the rise of secularism and decline of the Islamic court system, the institution of iftā’ changed to accommodate both a new audience and even a new kind of authority.\(^71\)

**Individual Jurists**

In addition to legal histories spanning centuries of Islamic law and works examining the institution of iftā’ and the role of muftīs in legal development and in society, some important studies published in recent years attempt to capture the life, methodology and influence of individual jurists.\(^72\) These studies reveal an inherent tension between the historian’s efforts to

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\(^68\) Masud et al., “Muftis, Fatwas and Islamic Legal Interpretation,” p. 19.
\(^69\) Hallaq, Authority, p. 171.
\(^71\) See, for example, the penetrating study on Egypt’s Dār al-Iftā’ by Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftīs and Fatwas of the Dār al-Iftā’* (Leiden: Brill, 1997).
\(^72\) Some noteworthy examples include: George Makdisi, *Ibn ‘Aqīl: Religion and Culture in Classical Islam* (Edinburgh, Edinburgh University Press, 1997); Kate Zebiri, *Maḥmūd Shaltūt and Islamic*
locate the jurist within his local political and social context while also drawing conclusions about that jurist’s legacy as reflected in the discourse of future generations of scholars. Bernard Haykel’s study of the life and legacy of Muḥammad al-Shawkānī (1759-1839) is a good example of this tension. On the one hand, Haykel shies away from drawing generalizations about al-Shawkānī as a reformer by lumping him together with other eighteenth-century scholars “under one ideological rubric.”73 However, at the same time, the whole premise of Haykel’s book is that al-Shawkānī’s “Traditionist” approach carried an appeal beyond his immediate context that resonated with later salafī-minded reformers who then appropriated his views as ammunition in ideological battles that al-Shawkānī could not have anticipated during his own time.

A useful model for this project is Scott Kugle’s study of the Moroccan jurist and Sufi saint, Aḥmad Zarrūq (d. 1493).74 As a close contemporary of al-Suyūṭī (d. 1505), Zarrūq lived through “the transitional period in Islamic society from the late medieval era to the early modern.”75 He exemplified both the spiritual identity of a Sufi saint as well as the scholarly authority of the jurist, thus proving that the two are far from being irreconcilable. Kugle’s approach is interesting in the way that he links the present and the past. Rather than leaving Zarrūq’s legacy till the end, Kugle’s book opens in the United States post-September 11th, 2001.


before backtracking to medieval Fes. Kugle argues that even though Zarrūq’s saintly authority was rejected by his contemporaries and his ambitions for reform never realized, the scholar’s spiritual and intellectual legacy has acquired new currency in the struggle of modern Sufis (like Shaykh Ḥamza Yūsuf) against “fundamentalist” ideologies.76

Another instructive aspect of Kugle’s work is the delicate balance that he achieves between issues of identity and authority on the one side and textual analysis on the other. Kugle surveys an impressive number of Zarrūq’s works on a range of subjects, including prodigious archival material. Kugle brings across very clearly the sensitive and often perilous environment in which Zarrūq was operating and catalogues his efforts to construct the ideal identity of the “juridical saint” and the “conservative rebel” in opposition to the critique of most of his colleagues. Given this dangerous rhetorical environment, Kugle tends to place more emphasis on the “legal, theological, ethical, and sociological dimensions” of Zarrūq’s arguments rather than focusing on the particular linguistic techniques that he employs through detailed textual analysis.77

**Jalāl al-Dīn al-Suyūṭī**

Published in 1975, E.M. Sartain’s *Jalāl al-Dīn al-Suyūṭī: Biography and Background* remains the only authoritative full-length study in English of al-Suyūṭī’s life and work. Sartain’s stated purpose in the book is to provide a historical overview of al-Suyūṭī’s place as a scholar in late Mamluk Egypt based on his own biography, *al-Taḥadduth bi-ni’mat Allāh*, as well as biographies by two of his students, ‘Abd al-Qādir al-Shādhilī and Shams al-Dīn al-Dāwūdī al-

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77 Kugle, *Rebel Between Spirit and Law*, p. 158. Some exceptions include Kugle’s analysis of Zarrūq’s use of the term ‘*bid’a*’ (pp. 166-170) and his use of the metaphor ‘eating the flesh of carrion’ to accuse his enemies of corruption (pp.195-196).
Mālikī. Sartain’s first volume provides historical background and information on al-Suyūṭī’s various disputes with his rivals making extensive use of historical chronicles and especially the important biographical dictionary, *al-Ḍawʿ al-lāmiʿ*, by one of al-Suyūṭī’s chief antagonists, al-Sakhāwī (d. 902/1497). The second volume is the edited manuscript of al-Suyūṭī’s autobiography with notes by Sartain. However, as Sartain explains, her work is “primarily a historical and not a literary study, no attempt has been made to evaluate al-Suyūṭī’s works. The proper assessment of al-Suyūṭī’s contribution as a scholar is a task which must be left to specialists in each of the fields in which al-Suyūṭī worked.”

Since then, scholars have addressed al-Suyūṭī’s contributions in such fields as the Qur’anic sciences, history, grammar and literature. As far as al-Suyūṭī’s legal thought is concerned, some work has been done on al-Suyūṭī’s role in the debates surrounding the existence of the mujtahid in late medieval Islam, and a recent article by Mufti Ali looks at al-Suyūṭī’s

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opposition to Greek logic based on three treatises and a fatwā, which I will discuss in detail in Chapter Three. I have not, however, seen an analysis of al-Suyūṭī’s framing of his legal persona based on evidence from his fatwās and writings on legal precepts (*qawā'id*). This study aims to address that question.

II. Sources

**Works by al-Suyūṭī**

Al-Suyūṭī is a challenging figure to study due to his extraordinary productivity (he is estimated to have produced around 500 works). For this project, I have chosen to focus on al-Suyūṭī’s legal works, in particular his fatwā collection and book on legal precepts. Also relevant to the discussion of *ijtihād* and al-Suyūṭī’s claims to be the *mujaddid* of his age are statements from his autobiography as well as his two major treatises, *al-Radd ‘alā man akhdad ilā al-ard wa-jahal ann al-ijtihād fī kull ‘asr farḍ* and *al-Tanbi’a bi-man yab’athuhu Allāh ‘alā ra’s kull mi’a*.  

Al-Suyūṭī’s fatwā collection, *al-Ḥāwī li-l-fatāwī*, contains a wide variety of legal opinions answering specific questions as well as a number of treatises written in response to certain disputes. The more controversial the dispute, the more driven al-Suyūṭī was to defend his own opinion and to condemn what he saw as the ignorance of his enemies. The two-volume collection is arranged according to legal topics first (ritual purity, prayer, almsgiving, commercial transactions, endowments, etc.) before moving on to decisions concerning exegesis,

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86 My translation of Chapter 19, *Dhikr al-mab’ūthīn ’alā ra’s kull mi’a* (“A Record of Those Sent at the Turn of Every Century”) in *al-Taḥadduth bi-ni’mat Allāh*, pp. 215-227, can be found in Appendix Three.


ḥadīth criticism, grammar and other religious sciences and fields of study (including an innovative section on Sufism). The issues range from abstract matters of doctrine, such as whether or not women can see God on Judgment Day, to mundane but, nevertheless, sensitive concerns, such as whether or not squirrel fur becomes purified in the tanning process.

My aim in choosing fatwās for this study is twofold. First, I focus on legal opinions that stirred up controversy during al-Suyūṭī’s lifetime. I assume that it is in these moments that the scholar most feels the need to defend his own authority as a jurist whose opinions are worthy of respect and that this effort finds expression in the author’s use of language. Secondly, the fatwās used as case studies are ones that speak to the role of the jurist (as exemplified by al-Suyūṭī himself) relative to other groups vying for power within society. These groups include al-Suyūṭī’s peers within his community of scholars, officials representing the Mamluk state authority, and students within endowed institutions who rely on the endowment system for financial support. Al-Suyūṭī’s fatwā on scholarly stipends derived from awqāf (religious endowments) sets up the power dynamic between the three groups of the state, the scholar, and the students. Al-Suyūṭī then seeks to defend his own reputation as a mujtahid (within the Shāfi‘ī legal school) and to discredit the attacks of opponents from among his fellow scholars in a fatwā condemning the study of logic.

Al-Suyūṭī’s book on legal precepts, al-Ashbāh wa-l-nazā‘ir fī l-qawā‘id al-fiqhiyya, provides an interesting point of comparison with his fatwās and represents one of his most

92 My translation of al-Suyūṭī’s al-Inṣāf fī tamyīz al-awqāf (“Fairness in Distinguishing Endowments”) in al-Hāwī li-l-fatāwī, vol. 1, pp. 150-152, can be found in Appendix One.
93 My translation of al-Suyūṭī’s al-Qawl al-mushriq fī tahrim al-ishtighāl bi-l-manṭiq (“An Enlightening Statement Prohibiting Preoccupation with Logic”) in al-Hāwī li-l-fatāwī, vol. 1, pp. 244-246, can be found in Appendix Two.
important contributions to the legal field. As Hallaq points out, the popularity of al-Suyūṭī’s book is symptomatic of a broader shift in Islamic legal thought after the 5th/11th century towards greater generalization and a focus on distilling the principles of legal methodology in a manner that could easily be learned by jurists in training and applied to cases. According to Hallaq, the *qawā‘id* and *ashbāh wa-l-naẓā‘ir* genres “embody a systematic construction of higher general principles that derived from a variety of sources, including individual cases and lower general principles.”94 Legal precepts like the ones outlined in al-Suyūṭī’s work form the “backbone of taqlīd” because jurists demonstrated their loyalty to the school (*madhhab*) by defending and applying these principles in individual cases.95

I examine how jurists like al-Suyūṭī use legal precepts and how this pragmatic interpretation is indicative of the role that the author plays in legal development and change during his time period and even still today. I approach *al-Ashbāh wa-l-naẓā‘ir* as a vital part of al-Suyūṭī’s legacy and argue that al-Suyūṭī demonstrates a control of the sources and purposes underlying the corpus of Shāfi‘ī *fiqh* worthy of a true *mujtahid* in the post-formative era.

**Other sources**

Of course, al-Suyūṭī’s legal works cannot be considered fairly in isolation, but must be supplemented by the rich information available from other sources. In order to analyze al-Suyūṭī’s legal persona, it is important to situate him within the context of Islamic legal thought. Looking at al-Suyūṭī’s opinions relative to those of other legal authorities is instrumental in evaluating the effectiveness of his rhetorical strategies within the broader “economy of meaning.” Fortunately, a plentiful amount of literature from the late Mamluk period still exists,

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95 Hallaq, *Authority*, pp. 103-104.
even in published form. For example, it is possible to compare al-Suyūṭī’s fatwā collection with those of other Shāfi‘ī jurists (such as ‘Izz al-Dīn ibn ‘Abd al-Salām, al-Nawawī, Ibn al-Ṣalāh, Taqī al-Dīn al-Subkī and Ibn Ḥajar al-Haythamī). The Mālikī jurist Aḥmad ibn Yaḥyā al-Wansharīsī’s collection of North African fatwās as well as that of the Ḥanbalī Ibn Taymiyya also complement al-Suyūṭī’s Ḥāwī li-l-fatāwī.

Biographical dictionaries and historical chronicles are also useful in filling out the historical and socio-political context of al-Suyūṭī’s legal works. As one of the major biographers of this period, al-Suyūṭī’s rival, al-Sakhāwī, offers a particularly arch account of al-Suyūṭī’s accomplishments in his al-Ḍaw’ al-lāmi‘ li-ahl al-qarn al-tāsi‘. Also available are biographies by Ibn Iyās (d. 930/1524), ‘Abd al-Wahhāb al-Sha‘rānī (d. 973/1565), al-‘Aydarūsī (d. 1036/1627), Najm al-Dīn al-Ghazzī (d. 1061/1651), and Ibn al-‘Imād (1089/1679). Historical chronicles from this period tend to be multi-volume works filled with information on the political, economic, intellectual and social history of the Mamluk state. Some of the outstanding works in this genre include al-Maqrīzī’s Khiṭaṭ and Kitāb al-sulūk, al-Qalqashandī’s Ṣubḥ al-a’shā, Ibn Shahīn al-Zāhirī’s Kashf al-mamālik, and Ibn Taghrībirdī’s al-Nujūm al-zāhira. In addition to the primary sources, there are excellent studies of the Mamluk period by modern historians, including David Ayalon, Ira Lapidus, Donald Little, and Carl F. Petry.
CHAPTER TWO

Al-Suyūṭī’s Waqf Fatwā

Introduction

In the year 903/1498, the Sufis of the Baybarsiyya lodge became so enraged with their shaykh, Jalāl al-Dīn al-Suyūṭī, that they seized him and hurled him into a fountain. The same Sufis had so poisoned the atmosphere between al-Suyūṭī and the reigning sultan, al-ʿĀdil Ṭūmānbāy, that by 906/1501 the shaykh was forced to go into hiding afraid for his life.¹ These events mark the climax of a tense situation that had built up over several years exacerbated by personal rivalries as well as political and economic factors outside of any direct control by the individuals involved. Indeed, although the Baybarsiyya incident may seem a relatively trivial chapter in the saga of political upheaval and economic deterioration that marked the later Mamluk period, it is, on the contrary, an instructive case study in power relations at a particularly precarious moment in Islamic history.

Leonor Fernandes writes that when Baybars al-Jāshankīr (r. 708-709/1308-1309)² founded the Baybarsiyya, he “opened the way for the full integration of the khanqah institution into Mamluk society and ensured the historical importance of his foundation forever.”³ The khanqāh as an institution was a cross between a lodge or residence and a teaching facility for students training in the religious sciences and in Islamic mysticism

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² Not to be confused with al-Zāhir Baybars al-Bunduqdārī (r. 658-676/1259-1277).
(Sufism). With a total of four hundred Sufi affiliates, one hundred of whom were in residence, the Baybarsiyya was indeed a major institution and its shaykh an important figure. The shaykh was responsible for making sure the stipulations in the endowment deed were followed both in terms of instruction and, very importantly, the distribution of funds for employee salaries, stipends for scholars and students, and general maintenance.

In addition to the *khānqāh* itself, the endowment also included a *ribāṭ* (hospice for impoverished residents) and a mausoleum (*qubba*), each with its own staff, as well as agricultural lands in Egypt and Syria. By the fourteenth and fifteenth centuries, the line between the *khānqāh* and *madrasa* became blurred as more emphasis was put on teaching in the *khānqāh*.

The quarrels that arose between al-Suyūṭī and the Sufi residents of the Baybarsiyya reveal a great deal about how power relations had become institutionalized through the system of religious endowments (*awqāf*). Also, conflicts between the scholar and the sultan demonstrate the results of a breakdown in the system during times of economic uncertainty and widespread corruption and abuse. The financial crisis led to a decline in revenues, including funds set aside for endowments and stipends for scholars. Treatises by al-Suyūṭī dealing with these endowments and how funds should be disbursed and employees appointed are indicative not only of al-Suyūṭī’s position in regards to several different legal controversies surrounding the administration of *waqf*, but also speak to a broader dynamic of how power was defined and distributed among the levels of state officials, the scholarly elite, and the common people in Mamluk society.

Al-Suyūṭī’s role in the crisis surrounding scholarly stipends in late Mamluk Egypt is of particular interest because it reveals a great deal about the jurist’s conception of his
own place in society relative to the state authority and to the Sufi students under his supervision. In his writing on stipends, al-Suyūṭī creates a hierarchy in which the scholars, by virtue of their learning, take precedence over the Mamluk amīr and the Sufi students. To argue this point, al-Suyūṭī makes forceful use of the linguistic techniques at his disposal as one of the privileged scholars.

In this chapter, I show how al-Suyūṭī uses language to differentiate between the three levels of the state, the scholar and the Sufis. As a jurist, al-Suyūṭī makes the case for his preferred group within the institutional framework of iftā’ and using the modes of rationalization expected from a scholar of his rank. In contrast to the legislative power wielded by a judge (qāḍī), al-Suyūṭī deploys the moral authority of the jurist charged with interpreting God’s law. Also, unlike the state authority whose weapon is the sword, al-Suyūṭī promotes the interests of his group and discredits those of his opponents using the persuasive power of the pen.

First, I survey the historical background by describing economic and political factors influencing Mamluk society in general and al-Suyūṭī’s struggles with the administration of the Baybarsiya lodge in particular. Secondly, I examine as a case study one of al-Suyūṭī’s legal opinions concerning endowments, paying special attention to what the text suggests about how power relations operated at the time. Taking a careful look at al-Suyūṭī’s discourse on the subject of state funding of scholarly activities through the lens of power relations helps to explain not only the personal objectives of the author, but also the significance of his views within the larger debates and issues that preyed on the minds (and pocketbooks) of jurists in 9th/15th century Cairo.
**Historical Background**

**Evaluating the Sources**

This analysis focuses on one of al-Suyūṭī’s legal opinions, *al-Inṣāf fi tamyīz al-awqāf* (“Fairness in Distinguishing Endowments”). I have chosen to use this treatise as a case study because it summarizes the scholar’s positions as well as offering numerous telling statements about how the author perceives his role relative to the state authority and to the Sufis whose stipends he is in charge of distributing. We are also fortunate to have access to a letter that al-Suyūṭī composed addressed to the Sufis of the Baybarsiyya that he intended to be read aloud to them. The letter provides an interesting point of comparison with the author’s legal treatises and, like the fatwā, is laced with striking implications about how power relations functioned both in this particular instance and beyond. Evidence from historical and biographical literature and the work of other jurists rounds out the picture.

The Mamluk era provides a wealth of information to the historian, including a rich variety of documents ranging from historical chronicles and biographical dictionaries to manuals of statecraft and legal documents, including endowments deeds (*waqfiyyas*) and fatwās. Using these sources, historians have been able to construct an impressive history of military, political, economic and social life under Mamluk rule in Egypt and Syria. Of course, these sources are not without their complications. For example, manuals of statecraft such as those of Ibn Shahīn and al-Qalqashandī tend to give an idealized, “systematic, yet all too often static and – in al-Qalqashandī’s case – even

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4 My translation of this text can be found in Appendix One.
anachronistic view of the contemporary social and political order.”

A similar difficulty applies to manuals for notaries on drawing up endowment deeds as the provisions stated in the waqfiyya were at times contradicted in practice. Fatwās, too, are not immune to such dangers, as conditions could vary considerably from one institution to the next, thus limiting the relevance of the opinion. Also, as George Makdisi cautions: “One must avoid here the tendency to consider a fatwa as a statement of fact. It was merely a legal opinion; it may or may not have been put into execution.”

The Rise of the Waqf System Under the Mamluks

In spite of these pitfalls of historiography, however, it is possible to get a pretty clear view from the sources how endowments became institutionalized as part of the Mamluk state and transformed over time to accommodate changing conditions. Although private endowments existed since the first centuries of Islam, it was not until the tenth and eleventh centuries that waqf was “first used by state officials as an instrument of policy, most notably in the case of the madrasas.”

A turning point came during the Ayyubid dynasty when Ṣalāḥ al-Dīn endowed the first Sufi lodge (khānqāh) in Cairo in 1173. Many historians suggest that Ṣalāḥ al-Dīn’s abiding interest in endowing Sunnī

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educational institutions may have been due to his desire to free Egypt from its Shi'ī Fatimid past and to promote Sunnism as the new state-sanctioned form of religion.\footnote{Muḥammad Muḥammad Amīn, \textit{al-Awqāf wa-l-ḥayāt al-ijtimā'iyya fī Miṣr} (Cairo: Dār al-Nahḍa al-‘Arabiyya, 1980), p. 66. Eerik Dickinson also suggests that the Ayyubids, as non-Arabs, sought religious legitimacy through their numerous endowments and generous support of scholars like Ibn al-Ṣalāḥ. See: “Ibn al-Ṣalāḥ al-Shahrūzī and the Isnād,” \textit{Journal of the American Oriental Society} 122:3 (2002), pp. 481-505.}

Even with the precedent set by Ṣalāḥ al-Dīn’s patronage and that of the Ayyubids in founding institutions like the \textit{khānqāh}, it was “not until the Mamluks came to power that the institution underwent the full development that led to its complete acceptance by the religious class and its integration into Egyptian society.”\footnote{Fernandes, “The Foundation of Baybars,” p. 21.} Indeed, the Mamluk era (1250-1517) witnessed a striking profusion of religious endowments such that the historian al-Maqrīzī (d. 845/1441) could devote a large section of his \textit{Khīṭat} to an inventory of “several hundred” endowed institutions.\footnote{Carl Petry, “A Paradox of Patronage During the Later Mamluk Period,” \textit{The Muslim World} 73 (1983), p. 190. See Aḥmad Ibn ‘Aḥmad Ibn ‘Abī al-Maqrīzī, \textit{al-Mawāʾiz wa-l-tūbār fī dhikr al-khīṭat wa-l-āthār} (Cairo: Maṭba’a Būlāq, 1853-54), vol. 2, pp. 244-452.}

\section*{Patronage of Scholars}

With this proliferation of state-sponsored religious, social welfare, and educational institutions came a corresponding increase in what has been termed the ‘institutionalization’ or ‘bureaucratization’ of the ‘\textit{ulamā}’ as a scholarly elite. Although the ‘\textit{ulamā}’ had long valued their independence from the state authority, a process began around the second half of the eleventh century, in which scholars started to lose some of their autonomy and became more closely involved in state institutions.\footnote{Michael Winter, “‘Ulamā’ Between the State and Society in Pre-modern Sunni Islam,” \textit{Guardians of the Faith in Modern Times: ‘Ulamā’ in the Middle East}, ed. Meir Hatina (Leiden: Brill, 2009), p. 25.} When this
process of institutionalization increased in earnest in the twelfth and thirteenth centuries, the new patronage came to yield tangible benefits for those who agreed to participate: “permanent provision of special places of instruction, residence, and employment for a majority of scholars and lasting endowments to pay the salaries of the personnel and building costs.”

By the time of the Mamluks, this system of state patronage escalated to the point where “collaboration” between the state authority and religious notables became the new norm. As I will show, jurists came under increasing pressure to adapt to the circumstances of their times by allowing practices in the administration of waqf that would have seemed questionable at best to some of their predecessors. With appointments of scholars to lucrative posts with fixed stipends proving such an effective mechanism of control and “means of identifying the interests of pious circles with those of the ruling class,” some came to question the motives behind the endowments. While no doubt piety and a desire to seek favor from God (qurba) were motivating factors in many cases, it is difficult to explain the extraordinary proliferation of endowments that occurred during the Mamluk regime purely in religious terms.

Uses and Abuses of the Waqf System

The waqf system as it developed held certain practical advantages for the endowers beyond the recognition that they received for serving the public good.

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Securing one’s property in the form of an endowment ensured that one’s heirs would have a share in that revenue with less worry that the estate would be confiscated and returned to the state after the death of the founder. As Petry observes, the policy of allotting fiefs to Mamluk officers temporarily in exchange for military service struck many Mamluks as a kind of usufruct that posed a “threat to their descendants’ future prosperity, and they devised a variety of maneuvers to circumvent it – of which charitable trusts were the most reliable.”

Even in the height of patronage and endowments during the Mamluk period, the old suspicion of scholars towards rulers and the corruption that so often accompanied them never quite disappeared. In fact, the increase in funding and appointments granted to scholars by the state authorities eventually led to a kind of backlash in scholarly circles as the ‘ulamā’ struggled to come to terms with many competing interests. For example, “the availability of stipends in particular schools might lead to competition, sometimes fierce, between prospective students and teachers for succession to a lucrative post.”

Some scholars expressed indignation that practices once discouraged such as collecting a salary from multiple posts in different institutions, buying and selling appointments, passing down appointments to one’s sons and appointing a substitute to carry out one’s duties while still benefiting from the stipend, had all become routine by the fourteenth and fifteenth centuries (though still a source of some resentment). A scholar as respected and irreproachable as Ibn Hajar (d. 852/1449), for instance, was

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known to have held “well over a dozen” professorships during his career.21 This state of affairs put jurists like al-Suyūṭī in the uncomfortable position of feeling the need to justify what had become standard practice by his time while explaining away any contradiction between his rulings and those of his earlier ‘heroes’ of the Shāfi‘ī school, such as Ibn al-Ṣalāḥ, al-Nawawī and ‘Izz al-Dīn ibn ‘Abd al-Salām.22

The changing practices and the pressure to provide legal sanction for such activities contributed to a general atmosphere of anxiety and uncertainty during the later part of Mamluk rule. As Berkey points out, the “process of making appointments to paid teaching positions in academic institutions was in practice extremely fluid. Lines demarcating the limits of authority were not necessarily clear.”23 This unease within the scholarly community was reflected in society as a whole as the boundaries of authority were often ambiguous. The economic decline under the Circassian Mamluks only exacerbated the “profound instability of the relations between the firmly corporate Mamluk elite, on the one hand, and the ‘ulamā’ class, on the other.”24

Decline of the Waqf System

Even before the Circassian regime came to power in 784/1382, Egypt and Syria had suffered the ravages of the Black Death, which caused serious depopulation.25 The debasement of the currency due to a shortage of silver coins and their replacement with copper dirhams only added to the instability and caused some stipends to lose much of

21 Berkey, Transmission of Knowledge, p. 45.
22 I will discuss this point in greater detail in a later section.
24 Haarmann, “Rather the Injustice of the Turks,” p. 73.
their value.\textsuperscript{26} To make matters worse, key industries started to decline in Egypt and Syria as European textiles and other goods came to dominate the markets.\textsuperscript{27} By the fifteenth century, the Mamluks were increasingly unable to finance expensive military campaigns with revenue from the Treasury nor could they afford to continue living in the opulence and luxury to which many in the ruling class had become accustomed.\textsuperscript{28} The shortage of revenue led naturally to changes in the way that institutions endowed with funds from the Treasury were administrated, which, in turn, had an effect on how jurists sought to rationalize such changes. It was in just this situation that al-Suyūṭī found himself in 1498.

The Baybarsiyya Controversy

Briefly, the crisis that beset the Baybarsiyya unfolded as follows: when the revenues of the institution fell into decline in the latter part of the fifteenth century, the Sufi residents of the \textit{khānqāh} went to their shaykh, al-Suyūṭī, demanding that he intercede on their behalf and accusing him of neglecting his duties and of giving priority to some individuals over others in deciding how the stipends were to be disbursed. In a sharply worded letter, al-Suyūṭī responded that, if he were indeed showing favoritism, it was because many so-called Sufis in the institution were hardly worthy of the title due to their low level of knowledge of the basic tenets of Sufism and, as such, were not entitled

\begin{footnotesize}
\textsuperscript{26} Ashtor, \textit{Social and Economic History}, p. 305. See also Sabra, \textit{Poverty and Charity}, p. 11.
\textsuperscript{28} Little, \textit{History and Historiography}, p. 167.
\end{footnotesize}
to stipends according to the stipulations of the endowment. Al-Suyūṭī further emphasized his position, as he was wont to do, with three different legal treatises concerning the designation of endowments, in which he concludes that priority should be given to the shaykh in times of need by virtue of his learning, while those without such learning do not deserve an entitlement. Furthermore, the scholar should be entitled to his stipend from the Treasury regardless of whether or not he fulfils his stipulated duties. Unimpressed by these arguments, the Sufis of the Baybarsiyya threw their shaykh into a fountain and convinced the Sultan that he should be killed. Al-Suyūṭī was dismissed from his position in the Baybarsiyya in 906/1501 and died four years later having withdrawn from public life.

Al-Suyūṭī’s cutting remarks about the paltry qualifications of some students are not entirely unjustified. It seems that by the fifteenth century, the Baybarsiyya was losing its stature and exclusivity as an institution of learning and devotion for Sufis, leading al-Maqrīzī to comment that “although worthy and scholarly people used to live there, they have gone, and now the khānqāh is occupied by insignificant people, shoemakers, and other common people.” As institutions became subject to economic hardship, standards started to slip, regardless of what was stipulated in the original endowment deeds. For example, when faced with reductions in stipends, some Sufis sought positions outside the


30 The three treatises are: al-Inṣāf fī tamyīz al-awqāf (the case study for this chapter), Kashf al-ḍabāba fī mas’alat al-istinābā and al-Naqī al-mastār fī jawāz qabd al-ma’lūm ma’a ‘adam al-ḥudūr. The first two can be found in al-Ḥāwī lil-fatāwī, vol. 1 (Beirut: Dār al-Kutub al-‘Ilmiyya, 2000), pp. 150-157 and the third exists in manuscript form (Egyptian National Library, Majāmī’ Taymūr, 1).

foundation, while to “make money, other Sufis undertook the selling of their positions to outsiders, acting against the stipulations of the waqifs. As a result, khanqahs came to be filled by individuals who were for the most part unworthy of their positions. Added to this were the new practices of allowing Sufis to hold more than one position in different foundations, and the sharing of one position by two or more individuals within the same foundation.”

In his sweeping study of Sufism in the later Mamluk era, Éric Geoffroy remarks that the troubles that beset the Baybarsiyya lodge during al-Suyūṭī’s tenure there as shaykh (891-906/1486-1501) were symptomatic of the rise and fall of the khānqāh as an institution. By the end of the fifteenth century, the khānqāh’s decline was assured as more endowments favored the less expensive zāwiya. The decay that afflicted the institution of the khānqāh struck observers like al-Suyūṭī as a reflection of a broader degradation in society in general and in the realm of scholarship in particular. In the end, even religious endowments were not immune to confiscation by state authorities with or without legal sanction. Therefore, it appears rather ironic that the same Mamluks who allowed Sufism to flourish with their support of the khānqāh also, through fiscal irresponsibility, became the authors of its destruction.

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34 Fernandes, Evolution of a Sufi Institution, p. 111. For more on the difference between the khānqāh, zāwiya and ribāṭ and how each institution changed over time, see Fernandes, Evolution, p. 18 and Amin, al-Awqāf, p. 219 as well as Little, “The Nature of Khānqāhs, Ribāṭs and Zāwiyas under the Mamlūks,” pp. 104-105.
35 Geoffrey, Soufisme en Égype et en Syrie, p. 175.
Analysis: The Baybarsiyya and Power Relations

Discourse and Power

Before engaging in an analysis of the texts, it is helpful to define what I mean by the term ‘power relations’ and its connection with the concept of discourse. Sociologists have long grappled with the notion of authority. The sociologist Max Weber made an important contribution with his classification of authority into rational (legal), traditional, and charismatic authority. Of particular interest to the field of Religious Studies is Weber’s idea of the process through which an individual’s charismatic authority is ‘routinized’ by a community of followers in order to preserve that authority for future generations. While Weber’s approach is fruitful for looking at how authority functions within a community from a sociological perspective, it falls short of providing a mechanism with which to analyze the specific content of the leader’s message. The crucial link between the concept of power and the discourse that shapes it and is shaped by it can be found in the work of Michel Foucault.

For Foucault, ‘power’ is not an object in the sense that one either has it or one does not. Rather, power relations are observable in all social relations, which are, in turn, expressed in the form of discourse. As Elizabeth Castelli explains: “Power may be analyzed by tracing its practice, it may be read in the processes by which it is articulated, but it may not be pinned down as a thing in itself. We can understand power by observing its workings, but we cannot grasp it as an object apart from its role in social

37 Polaski, Paul and the Discourse of Power, p. 34.
relationships.”  

Or, as Foucault puts it: “in a society such as ours, but basically in any society, there are manifold relations of power which permeate, characterize and constitute the social body, and these relations of power cannot themselves be established, consolidated nor implemented without the production, accumulation, circulation and functioning of a discourse.”

My intention here is not to explain Foucault’s entire body of work in all of its complex and often convoluted aspects, but rather to understand how power relations function in the discourse and practice of al-Suyūṭī by asking a new set of questions. The central question for Foucault is not who is powerful and who powerless in a given society, but rather who has the authority to speak, or who controls the discourse. As Sandra Hack Polaski points out in her interesting analysis of how power relations function in the letters of the Apostle Paul: “Discourse is less what is said than control over what may be said; control, that sometimes operates by repression or exclusion (such as censorship) but much more often operates in a positive mode, by making certain questions possible and their answers sensible, by encouraging the disciplines and institutions which in turn sustain the discourse, and by failing to generate the questions for which discourse has no answers.”

Thus, power for Foucault is not merely a negative force but also a positive, productive one: “What makes power hold good, what makes it accepted, is simply the fact that it doesn’t only weigh on us as a force that says

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Critical Discourse Analysis

Modern sociolinguistics, and in particular the subfield of Critical Discourse Analysis (or CDA), has added another perspective to the notion of discourse and power defined in terms of control. However, CDA tends to focus much more on the negative aspects of power, such as power abuse, and on how forms of injustice (racism, for example) are reproduced through discourse.\(^{42}\) CDA does not, therefore, claim to be a ‘neutral’ science since its practitioners express openly their desire to expose certain kinds of injustice as they appear in discourse and shape society, institutions, and even people’s perceptions and opinions. Even so, CDA is grounded in the basic assumption that power can be detected through modes of discourse, meaning through “text and talk.”\(^{43}\)

Those who control access to knowledge and information are able to affect change in society in ways in which those without such access cannot. It stands to reason that, in modern times, these knowledge brokers are usually part of an educated elite composed of journalists, politicians, and academics in their various disciplines. Van Dijk cautions, though, that these elites cannot work entirely independently from the patrons that maintain them. Scholarship needs sponsorship, after all. As van Dijk observes:

Because, however, most of these elites are managed by the state or private corporations, they too have constraints on their freedom of articulation that emerge in various properties of their discourse. The voice of the elite is often the voice of the corporate or

\(^{41}\) Foucault, *Power/Knowledge*, p. 119.
\(^{43}\) Van Dijk, *Discourse and Power*, p. 63.
institutional master. The interests and ideologies of the elites are usually not fundamentally different from those who pay or support them.\textsuperscript{44}

This question of who controls the production of knowledge and ‘truth’ on the one hand, and who provides the funding and means of support for scholars and their institutions on the other, brings us back to the personal battles of al-Suyūṭī. The issue of how stipends and religious endowments were managed in fifteenth-century Cairo (and of the power relations behind these transactions) played out in the discourse of al-Suyūṭī and, in so doing, helped to shape his legal persona and identity. Al-Suyūṭī’s own professional crisis comes at the tail end of a process in which religious endowments proliferated to a remarkable degree before sinking into inevitable decline as state revenues dwindled. The resulting conflict pitted different sectors of society against others in a power struggle to claim the same limited resources.

Analyzing Power Relations

One way to understand more fully the struggles within the Baybarsiyya during the later fifteenth century, as well as the larger conflicts within Mamluk society, is through the lens of power relations. Foucault writes that five factors must be taken into account when analyzing any given set of power relations:\textsuperscript{45}

1. A system of differentiations

2. Objectives pursued by each of the actors

3. A means of bringing power relations into being

\textsuperscript{44} Van Dijk, \textit{Discourse and Power}, pp. 32-33.

4. A system of institutionalization

5. Degrees of rationalization

I propose to keep these factors in consideration in my approach to al-Suyūṭī’s legal opinion, *al-Inṣāf fī tamyīz al-awqāf*. Specifically, I am interested in the discursive strategies that al-Suyūṭī employs in framing his arguments in order to get a clearer picture of how power functions in the text. Looking at how power relations work in a text like *al-Inṣāf* will help to reveal not only what is going on in the text itself but also in its social and political context, or, in other words, the story behind the text.

1. Differentiation

The crux of al-Suyūṭī’s argument lies in the system of differentiations established by the author. The question of the fatwā itself introduces a series of differentiations even before al-Suyūṭī launches into his response. The question reads roughly as follows:

An *amīr* endows a *khānqāh* and appoints a shaykh and Sufis to it, providing them money, oil, soap, bread and meat; then, the endowment becomes pressed [for revenue]: does the shaykh take precedence over the Sufis or does he distribute the funds amongst them in allotments? Is [funding] restricted to any one of the ranks appointed by the endower and not the others, or is it given to all of the ranks appointed by the endower in allotments? Is it permissible to make appointments [of substitutes] to certain positions or not?

First, while the question is phrased in general terms rather than in reference to a particular institution, it is noteworthy that the question specifies that the institution is a *khānqāh* housing Sufi residents (as opposed to a mosque, *madrasa* or any other institution in which beneficiaries might receive salaries) and that the endower is an *amīr* (as Baybars al-Jāshankīr was initially when the Baybarsiyya was founded).46

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While fatwās seem rarely to be based on pure hypotheticals divorced from any real context, this particular one comes across as conveniently suited to fit the circumstances at the Baybarsiyya. Al-Suyūṭī includes al-Insāf in a list of disputes between him and al-Jawjarī (d. 889/1484), a merchant and scholar who shared many of the same professors but who frequently came out with fatwās contradicting those of al-Suyūṭī. If the timing is accurate, this would mean that al-Suyūṭī composed the fatwā before al-Jawjarī’s death and thus before his appointment as shaykh of the Baybarsiyya in 891/1486. However, since the fatwā fits the events of the Baybarsiyya so well, one should not exclude the possibility that al-Suyūṭī included the treatise after the Baybarsiyya incident to justify his claims.

The scenario presented in the fatwā is relevant to al-Suyūṭī’s situation in other ways as well. Like many scholars of his day, al-Suyūṭī held multiple appointments simultaneously; there is evidence to suggest that even before adding the Baybarsiyya position, he was already receiving salaries as professor of hadīth at the Shaykhūniyya madrasa and as shaykh of Barqūq’s tomb. Sartain points out that al-Suyūṭī’s posts at the mosque of Shaykhū and the Shaykūniyya directly opposite it involved teaching, whereas his position of shaykh of Sufis at the mausoleum of Barqūq and as supervisor at the Baybarsiyya appear to be more administrative in nature. After his appointment at the Baybarsiyya in 891/1486, when al-Suyūṭī was about forty-two years old, he entered a period of “semi-retirement” leading up to his complete withdrawal in 906/1501. Al-Suyūṭī’s partial withdrawal took place after the scandal caused by his claims to be a

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48 Sartain, Jalāl al-Dīn al-Suyūṭī, p. 81.
49 Sartain, Jalāl al-Dīn al-Suyūṭī, pp. 44-45.
50 Sartain, Jalāl al-Dīn al-Suyūṭī, p. 82.
mujtahid in 889/1484 but before his even more serious claim to be the mujaddid (restorer of religion) around 896/1490-1.

Sartain speculates that, during his time of semi-retirement, al-Suyūṭī may have retained his posts at the Shaykhūniyya and Shaykhū’s mosque and “perhaps appointed a deputy to teach in his place, as was commonly done.”⁵¹ If al-Suyūṭī did appoint substitutes for these posts, they would presumably have received his salary as well (though this point is not clear). As far as the Baybarsiyya is concerned, however, it is evident from his letter that, after his appointment there as shaykh, al-Suyūṭī did not attend to his duties, allowing the payment of stipends to lapse and tensions among the Sufis to increase.

So, while al-Inṣāf appears to anticipate the Baybarsiyya controversy, it also speaks to issues of the time such as appointing substitutes, holding multiple posts and receiving a salary while not fulfilling one’s duties that may have had a direct bearing on al-Suyūṭī’s situation. Sartain concludes therefore that the timing of al-Inṣāf and al-Naql al-mastūr makes it unlikely that al-Suyūṭī was “defending something that he stood to gain by at that stage. Nevertheless, the theory can be applied so beautifully to his position once he had ceased to teach that one is very tempted to suggest that, putting his theory into practice, he sought to continue taking salaries from the Shaykhūniyyah and from Shaykhū’s Mosque even though he had given up teaching there.”⁵²

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⁵¹ Sartain, Jalāl al-Dīn al-Suyūṭī, p. 82.
⁵² Sartain, Jalāl al-Dīn al-Suyūṭī, p. 86. The third treatise, Kashf al-dabāba, was probably written after the other two since it refers to other works that al-Suyūṭī wrote on the same subject. This treatise complements al-Inṣāf with a fuller discussion of appointments of substitutes and a brief summary of the main points from al-Inṣāf regarding stipends.
Three Groups: The State Official, the Scholar, and the Sufi Student

By examining the power relations in *al-Inṣāf*, I hope to dig deeper into al-Suyūṭī’s motives in producing the text as well as to discover how he perceives the role of the jurist in the discourse relative to the other actors. The question of the fatwā differentiates between three distinct groups: the *amīr* who founded the institution, the shaykh, and the Sufis who receive stipends from the endowment. The question itself applies a ranking to the groups by asking which takes precedence: the stipulations intended by the founder, the rights of the shaykh in claiming priority for payment, or the Sufis who expect each to receive a share of the benefits in allotments?

In his answer, al-Suyūṭī must begin with one more differentiation before considering the interests of each of the three groups. The differentiation is between two types of *waqf*: private endowments that do not derive from the Treasury and public ones that do because the founder is either a caliph or one of the rulers of the Ayyubid or Mamluk states.⁵³ For the first type of endowment, the wishes of the founder must be respected at all costs, whereas for the second the rules are far more flexible, according to al-Suyūṭī. In his classic and very thorough study of endowments during the Mamluk era, Muḥammad Amīn cautions that there was, in fact, a third type of *waqf* that mixes between the strictly private and the public charity of the state.⁵⁴ As previously noted, Mamluk *amīrs* would ensure that, even in the case of charitable endowments benefiting public welfare, provisions were in place that would give the founder’s own heirs a fixed share and priority in claiming any surplus from the endowment. In *al-Inṣāf*, al-Suyūṭī

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⁵³ Al-Suyūṭī does not use the Arabic terms for ‘private’ and ‘public’; I have added them to clarify the point (see *al-Inṣāf*, p. 150). The two types are sometimes referred to as ‘family’ *waqf* (*ahlī* or *dhurrī*) and ‘charitable’ *waqf* (*khayrī*).

conveniently sidesteps the issue of the founder’s heirs for endowments derived from the Treasury.

The Rights of the Founder

Having introduced the crucial differentiation between private and public kinds of waqf, al-Suyūṭī proceeds to address the claims of each of the three groups. He turns first to the rights of the founder, who, in this case, is one of the Mamluk amīrs and thus represents that group in the text. It is here that the author launches into what might seem at first to be a bizarre digression from the matter at hand. He states that one reason that an endowment made by an amīr derives from the Treasury is that the amīrs are themselves property of the state as slaves, meaning that everything that they own also goes back to the Treasury. He goes on to assert that there is some disagreement amongst jurists as to whether or not slaves belonging to the Treasury can be manumitted. Tāj al-Dīn al-Subkī (d. 771/1370), for example, says that they can be freed provided that the Treasury is compensated in payment for the loss, whereas ‘Izz al-Dīn ibn ‘Abd al-Salām (d. 659/1261) was strongly opposed to their manumission. Al-Suyūṭī concludes that it is not in the public interest to free the Mamluk slaves.55

Sartain comments on the obvious oddness of al-Suyūṭī’s argument. He seems to be making a “purely academic point,” since it was normal procedure to free Mamluk slaves after they had completed their training.56 What then could be the reason for this

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55 Al-Suyūṭī, al-Inṣāf, p. 150-151.
56 Sartain, Jalāl al-Dīn al-Suyūṭī, p. 85. Berkey confirms that, having finished their training, the Mamluks “were freed, and entered the service of the government, or of particular Mamluks within it, in a variety of military and political capacities. From their number were drawn the sultan, who wielded considerable authority, and the amirs (military officers) of varying ranks who held the chief positions of government,” Transmission of Knowledge, p. 10.
rather convoluted argument on the part of al-Suyūṭī? The reference to the great Shāfi‘ī jurist and Sufi master, ‘Izz al-Dīn ibn ‘Abd al-Salām, might provide a clue. For al-Suyūṭī, ‘Izz al-Dīn represents the ideal scholar activist (‘ālim ‘āmil), both accomplished in learning and pious in asceticism.\(^{57}\) The life of ‘Izz al-Dīn, presented glowingly by Tāj al-Dīn al-Subkī in his \(\text{Tābaqāt al-shāfi‘īyya}\)\(^{58}\) and by al-Suyūṭī in his historical work, \(\text{Ḥusn al-muḥāḍara fī akhbār Miṣr wa-l-Qāhira}\),\(^{59}\) contains many actions worthy of emulation. In addition to denying the Mamluks the right to free themselves from the Treasury, he also censured the sultan al-Ṣāliḥ Ismā‘īl for surrendering territory to the Franks and refused to allow the \(\text{amīr} \) Quṭuz to extract money from the populace to finance his campaign against the Mongols.\(^{60}\) This “sultan of scholars” – as he was called by his student, Ibn Daqīq al-‘Īd – even endured imprisonment and exile as a result of his protests.\(^{61}\)

Sultan vs. Scholar

The image of the courageous and virtuous scholar standing up to the corrupt power of the sultan became a kind of trope in Islamic literature, especially during the 7th/13th and 8th/14th centuries. Usually, a ruler would try to appropriate funds through unjust taxation or confiscation of property (including \(\text{waqf}\)) to pay for his expensive military campaigns, only to be rebuffed by the righteous figure of the scholar, thus either


\(^{58}\) Tāj al-Dīn al-Subkī, \(\text{al-Ṭabaqāt al-shāfi‘īyya al-kubrā}\) (Giza: Hajr, 1992), vol. 8, pp. 209-255.


\(^{60}\) Garcin, “Opposition Politique,” p. 75.

\(^{61}\) Al-Subkī, \(\text{al-Ṭabaqāt al-shāfi‘īyya}\), vol. 8, p. 243.
causing the ruler to recognize his error and back down or else be punished by God (often in the form of illness or other calamity). Examples of such scholars who figure prominently in al-Suyūṭī’s mythos include al-Nawawī, ʿIzz al-Dīn ibn ʿAbd al-Salām, Ibn Daqīq al-Ṭīd and Sirāj al-Dīn al-Bulqīnī. On the other side of this equation was the enduring suspicion against allowing oneself as a scholar to become co-opted by the ruling classes out of temptation for worldly rewards. Indeed, al-Suyūṭī devotes an entire treatise to just this subject.

One wonders in reading these accounts why the ruling classes bothered to solicit the approval of scholars in the first place. Clearly, the Mamluk rulers felt the need to have their authority and legitimacy recognized by the scholarly elite and, by extension, the populace. As non-Arab military officers who began their careers as slaves, the Mamluks endeavored to compensate for their questionable legitimacy in religious circles by appointing a “puppet caliph,” offering scholars attractive teaching positions and judgeships, and spending lavish amounts of money from the Treasury on charitable foundations and stipends. At the same time, Mamluk officials were not above imposing harsh measures such as arbitrary taxes and outright confiscation of property, amounting to what Petry describes as a “paradox of patronage.”

In the power struggle between the ‘umarā’ (rulers) and ‘ulamā’ (scholars), neither group was entirely subordinate to the other; the overriding attitude was one of ambivalence rather than complete hostility. There is evidence to suggest that some rulers

62 For a detailed account of the opposition of these and other scholars against efforts to confiscate waqf, see Amīn, al-Awqāf, pp. 323-372.
64 Haarmann, “Rather the Injustice of the Turks,” p. 62.
did respond to the “spiritual power perceived to be vested in the religious classes,” of whom the Ayyubid monarch Ṣalāḥ al-Dīn was a shining example. Also, in spite of the stereotypes, the Mamluk officers were not, on the whole, boorish cretins with no appreciation for learning and high culture. Many Mamluks took an interest in religious learning and some even rose to become respected scholars in their own right (despite the fact that Arabic was not their first language). As Berkey points out, “Regardless of the success or lack thereof of their intellectual endeavors, the decision of individual Mamluks to endow institutions of learning must be seen against this background, as a gesture of an individual to an academic world to which, in some limited but meaningful way, he had shared.”

Scholar vs. Sufis

However, in spite of any grudging respect that al-Suyūṭī may have had towards individual Mamluks, his differentiation of groups in the fatwā makes it clear which is the favored party. While the Mamluk amīrs do not even have the right to buy their freedom from the Treasury, the scholars, on the other hand, are always entitled to support from the Treasury by virtue of their learning alone, even if they do not fulfill their stipulated duties. As for the third group, the Sufis, al-Suyūṭī explains their role in terms of another differentiation. This time, the differentiation is between ‘real’ Sufis worthy of their stipend and ‘fake’ Sufis unqualified to receive such an entitlement.

The deciding factor for al-Suyūṭī in determining who is most deserving of endowment funds is active engagement in learning (al-ishtighāl bi-‘ilm) and not mere attendance (ḥuḍūr) of lectures. A student can be in attendance but not actually learning; by the same token, he or she can be engaged in acquiring knowledge even while not physically present. Al-Suyūṭī does not consider stipends paid out of public funds to students and teachers as a kind of remuneration for services rendered (al-ijāra). Rather, this type of payment falls under the category of maintenance or grants (al-īrṣād wa-l-arzāq) for those who benefit society through their scholarship. Furthermore, al-Suyūṭī contends that such ‘earmarks’ were set aside for scholars since the days of ‘Umar ibn al-Khaṭṭāb (r. 634-644) up to the time of the Caliph al-Musta‘ṣim (r. 1242-1258). Therefore, scholars came to regard endowments from public funds as compensation for the money that they had received in the past but that had been discontinued. Still, the fact remains that there were some residents of the Baybarsiyaa expecting a handout who did not, in al-Suyūṭī’s view, meet the requirement of learning that would qualify them to receive the funding.

Al-Suyūṭī is certainly not alone in criticizing the poor academic standards of Sufis in khānqāhs during the late Mamluk period. For example, Tāj al-Dīn al-Subkī was known for his strict reproof of false Sufis who take advantage of the institution for

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69 Makdisi presents a useful explanation of the difference between the concepts of ishtighāl and ḥuḍūr. See his Rise of Colleges, pp. 207-209.
70 Here, al-Suyūṭī appears to be in accordance with the opinions of the Ḥanbalī jurists Ibn Taymiyya (d.728/1328) and Abū Ya’lā (d. 458/1065). See Makdisi, Rise of Colleges, p. 58.
71 According to Sartain, al-Suyūṭī qualifies this statement in al-Naqī al-mastūr, saying that “scholars did not receive anything from the public treasury in Umayyad and ‘Abbāsid times, unless they frequented the wazīr or caliph and did what they asked, and most scholars refused to do this. Later, Nūr al-dīn b. Zangi and Ṣalāḥ al-dīn b. Ayyūb began to set aside properties belonging to the public treasury to provide for scholars, students, Ṣūfīs, poor people, and others” (Jalāl al-Dīn al-Suyūṭī, pp. 85-86).
worldly ends. He states clearly in his *Muʿīd al-niʿam wa-mubīd al-niqam* that any person who comes to the *khānqāh* in pursuit of material gains rather than devotion to God and retreat from worldly desires is forbidden from benefiting from an endowment designated for Sufis, since he does not qualify as one.\(^{72}\)

Al-Subkī’s *Muʿīd al-niʿam* has attracted the interest of historians because it describes what the 8\(^{th}/14\(^{th}\) century author thinks are laudable and contemptible qualities in a broad range of public figures, everyone from the sultan and his underlings to the beggar in the street. This work brings home the idea that when a writer like al-Suyūṭī differentiates between groups such as the *amīr*, the scholar and the Sufi he does so for polemical purposes, whereas, in reality, the situation was a lot more complex. The ‘ruler’ was not a single individual but was represented by a vast staff of bureaucrats. The title of ‘Sufi’ was clearly under dispute. Even the educated elite or ‘ulamā’ was “not a distinct class, but a category of persons overlapping other classes and social divisions, permeating the whole of society.”\(^{73}\)

2. Objectives

The second factor that Foucault says is necessary when analyzing power relations in discourse is to consider the objectives of the actors involved. The obvious question, of whether al-Suyūṭī had anything material to gain from his rulings on endowment funds, is far from clear in *al-Inšāf*. However, as mentioned previously, in his personal life al-Suyūṭī did face issues such as giving priority to some ranks over others in the disbursement of stipends and the appointment of successors or deputies to public posts.

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\(^{73}\) Lapidus, *Muslim Cities*, p. 108.
In his letter to the Sufis of the Baybarsiyya, he defends himself from suspicions regarding his personal motivations and attempts to find alternative explanations for his attitude and behavior. First, al-Suyūṭī admits that there was a period in which he did not attend to the affairs of the Sufis because he saw a lot of disagreement and conflicts of interest amongst them, but he knew that if he acted according to the divine Law that it would grieve a lot of people because the ‘Truth’ (*al-ḥaqq*) can be bitter. Al-Suyūṭī says that he was faced with a choice: he could either please people by giving them what they want (stipends in equal shares), or he could do what is right in accordance with the Law (*al-shar*).

The Scholar Represents the Law

Al-Suyūṭī repeats several times in the relatively short letter that his actions regarding the disbursement of funds at the Baybarsiyya were carried out in adherence to the divine Law and the Sunna. At times, al-Suyūṭī’s interpretation of the Law even trumps the stipulations set down in the actual endowment deed. For example, he says that he is well within his rights as stipulated in the *waqf* deed to collect his entire salary as shaykh even during times of economic hardship, but he did not do so. Furthermore, if he had chosen to treat the residents according to the conditions of the endower, that would have harmed many of them, since the endower stipulated that the money go to proper Sufis and the majority do not fit that description. If most of them were asked twenty questions on the basic tenets of Sufism, they would not even have an answer, much less a

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detailed understanding of the issues.\textsuperscript{75} If the Sufis are not prepared to accept his judgment about whose stipends should be given priority and whose delayed and to treat him and his representative with respect and decorum, then they should not blame him if he neglects their interests and delegates the matter to someone else instead of him.\textsuperscript{76}

Al-Suyūṭī insists that his main objective in this affair is to respect the divine Law and honor knowledge and people of learning. No manner of attack or insult could persuade him to act against the Law. There have always been scholars who resolve to keep the law and uphold the Sunna, even if it means defying the rulers, without regard for the number of enemies against them. After all, when the shaykh ‘Izz al-Dīn ibn ‘Abd al-Salām waged his great acts of resistance on his own and without support from any helper except God, could anyone harm him?\textsuperscript{77} Again, the reference to the mighty paragon of Sufi scholarly resistance to despotism, ‘Izz al-Dīn ibn ‘Abd al-Salām, is telling of al-Suyūṭī’s desire to emulate this important figure.

I would argue, therefore, that al-Suyūṭī’s main objective in his discourse regarding \textit{waqf} and the Baybarsiyya is moral rather than material in nature. In short, he wants to be right. In other words, by casting himself as the voice of the divine Law (\textit{al-shar‘}) and of the Sunna, al-Suyūṭī claims the right to interpret the will of God in this situation and it is his knowledge (\textit{‘ilm}) that gives him the moral authority to do so. Furthermore, al-Suyūṭī shows himself to be blameless and his name clear of any wrongdoing.

\textsuperscript{75} Arazi, “al-Risāla al-Baybarsiyya,” p. 347.
\textsuperscript{76} Arazi, “al-Risāla al-Baybarsiyya,” p. 348.
\textsuperscript{77} Arazi, “al-Risāla al-Baybarsiyya,” p. 345.
The Scholar Controls the Discourse

This use of power on the part of al-Suyūṭī touches on one of the fundamental questions posed by Critical Discourse Analysis (CDA): who can speak? The scholar, al-Suyūṭī, controls the means of discursive production in this case because he is the one writing the fatwās. We do not hear a counterargument from the Sufis directly but only through al-Suyūṭī’s representation of their position in his letter and fatwā as well as the physical act of throwing their shaykh in a fountain (as recorded by the historian Ibn Iyās). By denying that the Sufis have knowledge, al-Suyūṭī effectively denies them a voice in the debate, since only scholars can give fatwās.

3. Means of Bringing Power Relations into Being

As the envisioned voice of moral authority in the Baybarsiyya controversy and waqf dispute, al-Suyūṭī’s means of realizing this objective are primarily persuasive. Unlike the ruler who has the coercive threat of force at his disposal, al-Suyūṭī must rely on his ability to influence social formation through discourse. As a jurist, the source of al-Suyūṭī’s persuasive power is his degree of learning and ability to interpret the law. While it must be remembered that even a fatwā like al-Inṣāf is still just a non-binding opinion, it carries the moral weight of the reputation of its author as a privileged knower and speaker. When a jurist like al-Suyūṭī issues a ruling, he is taking part in an ongoing negotiation of meaning. In order to be considered authoritative, his opinion must take into account the opinions of respected jurists who came before him and should anticipate future developments in the discourse. At the same time, a legal opinion must be relevant
to the needs of the social context in which it is produced in order to be considered effective.

Putting Knowledge into Action

As al-Suyūṭī makes clear, having knowledge and keeping it to oneself does not give one authority as a jurist. The simple property of knowledge is not enough to command authority in a given set of power relations. Rather, this knowledge must be expressed through authoritative forms of discourse and then realized through lived experience. Al-Suyūṭī tries to identify with ‘Izz al-Dīn ibn ‘Abd al-Salām, for example, as someone who embodies the ideal persona of the jurist both through his level of knowledge (‘ilm) and through his practice and action in society (‘amal). It is al-Suyūṭī’s firm belief, as articulated in his writing, that the jurist’s duty is to uphold the Law, even if it puts him at odds with the ruler. As Khaled Abou El Fadl explains: “Muslim jurists’ rhetorical and moral power was grounded in the fact that they could plausibly argue that ruler and ruled are normatively bound by God’s law. The legitimacy of any political or social institution should and must be evaluated according to its compliance with God’s law.”

One example of how al-Suyūṭī brings power relations into being through practice is his stubborn refusal to go up to the Citadel to collect his stipend. After going to great lengths to argue in al-Inṣāf and in his other treatises on endowments that scholars are entitled to their stipends from the Treasury by virtue of their learning, al-Suyūṭī deliberately angered Sultan Qāytbāy by refusing to make the trip to the Citadel to collect

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his own stipend. Al-Suyūṭī’s student, al-Shādhilī, records how Qāytbāy sent multiple envoys to the shaykh to try to persuade him to change his mind, but all efforts were rebuffed.79

Al-Suyūṭī justifies his actions by arguing that he is following the practice of the early Muslims who avoided visiting kings except when absolutely necessary. To this effect, al-Suyūṭī composed his Mā rawāhu al-asāṭīn fī ‘adam al-majī’ ilā al-salāṭīn and made a point of resigning from his post of shaykh at Barqūq’s tomb (an endowment linked to Qāytbāy). Meanwhile, the Sultan’s rancor was kindled further by another one of al-Suyūṭī’s enemies, Ibn al-Karakī, who tried to convince the ruler to punish the shaykh for his insolence. Luckily for al-Suyūṭī, Qāytbāy became ill and died in 901/1496, thus diffusing what could have been a very dangerous situation for al-Suyūṭī.

Sartain interprets this incident as another example of al-Suyūṭī’s overwhelming belief in the soundness of his argument and conviction that God would protect him against danger. He even went so far as to regard incidents like the fire in the Citadel and Qāytbāy’s illness as “punishments inflicted by God upon the sultan for his treatment of him,” and thus, “it would seem that his enormous self-confidence, so far from being shaken, was actually bolstered by this episode.”80 Notwithstanding the inconvenience of leaving his studies to go up to the Citadel every month, al-Suyūṭī seems to have resented that a scholar such as himself was expected to go collect his payment like any other employee of the state.81 No doubt al-Suyūṭī’s declination to collect his own salary also had an effect on the stipends of the Sufis at the Baybarsiyya, though he does suggest that

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79 Sartain provides a translation of al-Shādhilī’s abridgement of al-Suyūṭī’s account of this episode in Jalāl al-Dīn al-Suyūṭī, pp. 87-90.
80 Sartain, Jalāl al-Dīn al-Suyūṭī, p. 91.
81 Sartain, Jalāl al-Dīn al-Suyūṭī, pp. 90-91.
the Sultan continued to pay them even while withholding al-Suyūṭī’s salary. Sartain concludes from this episode that al-Suyūṭī’s “refusal to call upon Qāytbāy at the beginning of every month is more likely to have been regarded as stubborn arrogance than as an example of pious humility; certainly al-Suyūṭī’s fellow scholars seem to have had no such scruples about keeping on good terms with the sultan, or receiving money from his hands.”

Also, it is worth nothing that even though al-Suyūṭī’s uncompromising attitude caused him to run afoul of three different sultans, he had no such issues when it came to the caliph. He was on especially good terms with al-Mutawakkil (r. 1479-1497) who was a student of al-Suyūṭī’s father. It was al-Mutawakkil who allegedly facilitated his appointment as shaykh of the Baybarsiyya and who later attempted to reinstate the position of chief judge (qāḍī al-quḍāt) to accommodate al-Suyūṭī, though he was forced to abandon the plan due to the outcry and opposition of the scholarly community.

Objective Achieved

Al-Suyūṭī’s moral objective to cast himself as the pious scholar uncorrupted by worldly rewards and to live out this role through practice were not a complete failure, however. Another one of al-Suyūṭī’s students, ‘Abd al-Wahhāb al-Shaʿrānī (d. 973/1565), presents an admiring biography of his shaykh in which he reiterates the information from al-Shādhilī’s account and adds a positive spin to the controversies.

82 Sartain, Jalāl al-Dīn al-Suyūṭī, p. 88.
83 Sartain, Jalāl al-Dīn al-Suyūṭī, p. 91.
described, including the Baybarsiyya incident. He writes approvingly of al-Suyūṭī’s refusal to seek favor from the sultan, especially after his full retirement from public life in 906/1501. At this time, the new sultan, Qānṣūh al-Ghawrī, tried to convince him to accept honorary posts and gifts of money but al-Suyūṭī turned down all offers. Al-Sha’rānī warns that those who have tried to persecute scholars and saints often end up dying in horrible ways as punishment, implying that this was the case with al-‘Ādil Ţūmānbāy (whose death al-Suyūṭī predicted to the day).

### 4. Institutionalization and 5. Rationalization

The fourth characteristic of power relations outlined by Foucault is that of institutionalization, which can take the form of a family, a government, a legal system or some other structure with its own set of regulations and hierarchy. As a jurist, al-Suyūṭī positions himself as part of the formidable institution of Islamic law as it has developed over the centuries. Therefore, when al-Suyūṭī claims to represent ‘the Law’ (*al-shar*') and the Sunna, this is what he means. The legal structure demands that the individual jurist frame his opinion within the bounds established by generations of earlier jurists according to a hierarchy and using a particular methodology and set of stylistic conventions. In other words, the modes of rationalization and argumentation are an integral part of the system itself. It is for this reason that I have grouped together

Foucault’s fourth and fifth factors, institutionalization and rationalization, because in the

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87 Al-Suyūṭī’s reputation as Sufi saint receives additional support in al-Sha’rānī’s account due to the miracles that he is said to have performed, such as seeing visions of the Prophet while awake, traveling from Cairo to Mecca in seconds, and predicting the fall of Egypt to the Ottomans in 923/1517. See: al-Sha’rānī, *al-Ṭabaqāt al-ṣughrā*, pp. 15-17. For more on the miracles attributed to al-Suyūṭī, see: Geoffrey, *Le Soufisme en Égypte et en Syrie*, pp. 296-297.
context of Islamic jurisprudence one cannot exist without the other. With these factors in mind, I will take a closer look at the legal arguments in al-Suyūṭī’s *Inṣāf*.

‘Public’ vs. ‘Private’ *Waqf*

One can learn a lot about the power relations surrounding the administration of endowments during al-Suyūṭī’s time by looking closely at how these power relations are institutionalized and rationalized in a text like *al-Inṣāf*. As noted previously, al-Suyūṭī’s legal argument hinges on the differentiation that he makes between two kinds of *waqf*: those in which funds do not originate from the Treasury and ones in which they do. For the first type, the stipulations of the endower must be strictly adhered to in all cases, whereas the second type can be handled more leniently, especially during times of economic hardship. Al-Suyūṭī says that he is not alone in making this distinction; Walī al-Dīn al-‘Irāqī made such a differentiation regarding the issue of passing down an appointment to one’s son and al-Adhraʿī may have preceded him in that opinion. Furthermore, al-Bulqīnī argued that students and teachers were entitled to funds from the Treasury during the council conducted by al-Ẓāhir Barqūq.88

However, it becomes clear from al-Suyūṭī’s rhetoric in *al-Inṣāf* that the permissibility of a sultan making an endowment with funds from the Treasury was not a foregone conclusion but was, rather, a topic of debate among earlier jurists. For example, al-Nawawī (d. 676/1277) ruled that a sultan is allowed to purchase land from the Treasury and use it to endow a foundation such as a school or hospital, because the

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Treasury is intended for the benefit of Muslims (li-maṣāliḥ al-muslimīn).\(^89\) As Amīn points out, this precedent allowed later sultans, like Qāytbāy, to take advantage of their license to funds belonging to the Treasury, including using state holdings to create special earmarks for scholars.\(^90\) Naturally, it was in the scholars’ interest to approve such a move.

### Earlier vs. Later Jurists

Al-Suyūṭī argues that jurists at the time of al-Nawawī and Ibn al-Ṣalāḥ (d. 643/1245) tended to be very strict in their fatwās regarding endowments, whereas later scholars like al-Subkī (d. 771/1370) and al-Bulqīnī (d. 805/1403) were more permissive in their rulings. Al-Suyūṭī explains that “there is no contradiction between these later scholars and al-Nawawī; rather, each one speaks according to the reality of his time.

Most of the endowments from the time of al-Nawawī and Ibn al-Ṣalāḥ were private, whereas the endowments of the Turks started at the end of the seventh century [A.H.] and increased during the eighth century [A.H.], which was the age of al-Subkī and those after him.”\(^91\) This is a highly significant statement from al-Suyūṭī because it demonstrates in clear terms the ability of Islamic law as an institution to change and adapt to new circumstances over time.\(^92\)

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\(^{90}\) Muḥammad Amīn, *al-Awqāf*, p. 95. See also Sabra, *Poverty and Charity*, p. 71.

\(^{91}\) Translations from the fatwā are my own unless otherwise indicated.

\(^{92}\) Al-Suyūṭī’s statement also seems to support Wael Hallaq’s thesis that the fatwā, as both a “legal discourse” and a “social instrument” played “a considerable role in the growth and gradual change of Islamic substantive law.” See: “From Fatwās to Furūḥ: Growth and Change in Islamic Substantive Law,” *Islamic Law and Society* 1:1 (1994), p. 31.
Al-Suyūṭī’s assertion that earlier jurists tended to be stricter in their rulings regarding the administration of \textit{waqf} is largely correct, though the private/public distinction may not have been as simple as he describes. As the practice of religious endowments expanded under the Ayyubids and then exploded under the Mamluks, new situations arose that required attention from jurists. Another example of the initial strictness on the part of the early 7\textsuperscript{th}/13\textsuperscript{th} century jurists are the opinions by ‘Izz al-Dīn ibn ‘Abd al-Salām, al-Nawawī and Ibūn al-Ṣalāḥ all affirming that if an endower stipulates in the deed that a \textit{madrasa} or other such institution is to follow a certain \textit{madhhab} (legal school), then it is not permissible to deviate from that condition, even if the majority in a certain region belong to a different school. Similarly, an individual imām cannot change his affiliation from one school to another just for the sake of the \textit{waqf}. If no such conditions are known, then custom (\textit{al-‘āda}) must be followed.\footnote{See: al-Nawawī, \textit{Fatāwā al-Imām al-Nawawī}, p. 107, ‘Izz al-Dīn ibn ‘Abd al-Salām al-Sulami, \textit{Fatāwā Shaykh al-Islām ‘Izz al-Dīn ibn ‘Abd al-Salām} (Beirut: Mu’assasat al-Risāla, 1996), pp. 444-446 and Ibūn al-Ṣalāḥ al-Shahrūzūrī, \textit{Fatāwā wa-masā’il Ibūn al-Ṣalāḥ}, vol. 2 (Beirut: Dār al-Ma’rifā, 1986), pp. 633-644. See Chapter Five for a discussion of customary law and jurists’ interpretation of \textit{waqf} stipulations.}

All of these opinions by Shāfi‘ī jurists favored the status quo of Shāfi‘ī dominance in Egypt and Syria under the Ayyubids. The system was turned on its head, however, in 663/1265 when Sultan al-Ẓāhir Baybars decided that a chief \textit{qāḍī} should be appointed from each of the four legal schools. Although this decision ultimately helped to introduce more flexibility into the legal system,\footnote{For the implications of this decision for legal practice, see: Yossef Rapoport, “Legal Diversity in the Age of \textit{Taqlīd}: The Four Chief \textit{Qādī}s Under the Mamluks,” \textit{Islamic Law and Society} 10:2 (2003), pp. 210-228.} it was also regarded by many Shāfi‘īs as an offensive attempt by the ruler to control the ‘\textit{ulamā}’ and to break Shāfi‘ī
dominance in favor of the Ḥanafī school preferred by the Mamluks. Al-Suyūṭī, for instance, praises the Shāfi‘ī chief qāḍī at the time, Ibn Bint al-A‘azz, for his resistance to Baybars’ power play. In any case, the Mamluks’ promotion of the Ḥanafī school in mostly Shāfi‘ī Egypt and Syria would change the way madrasas and khānqāhs were structured, regardless of the original stipulations of the founders, and these changes naturally necessitated accommodation from the legal system and the jurists.

It is also the case, as al-Suyūṭī says, that later jurists tended to be more lenient in general regarding rules for waqf, though there were occasional exceptions. Tāj al-Dīn al-Subkī and Ibn Taymiyya, for example, were both critical of scholars holding simultaneous appointments in multiple institutions, even though the practice had become “all but institutionalized” by this time. Despite Ibn Taymiyya’s censure of “those who took multiple posts with salaries beyond their needs, and those who hired substitutes to work in their place for a fraction of the pocketed salary,” the fact was that appointing substitutes was considered not only expected but also beneficial to the ‘ulamā’, allowing them to “replicate their own power, wealth, and position in their offspring.”

At the same time, these later jurists were realistic about the state of endowed institutions and the position of scholars in these institutions. For example, the practice of istibdāl (seizing an already existing waqf and re-endowing it under a new set of

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97 Berkey, Transmission of Knowledge, p. 113.
98 Makdisi, Rise of Colleges, p. 169.
99 Berkey, Transmission of Knowledge, p. 125.
conditions) was widely tolerated by the judiciary by the 8th/14th century. Later jurists ruled with a newfound awareness of economic hardship and a decline in revenue as factors in the administration of endowments. Ibn Taymiyya, for one, allows students to pursue sources of funding outside of their stipulated salaries if their financial needs are not being met, since providing adequate support to scholars is a universal duty under the Law and should be considered as a religious matter and not as a wage in the secular sense.

Rules for Students

As Makdisi notes, the issues of payments to students according to their varying degrees of attendance and learning and whether or not their stipends could be forfeited under certain circumstances “were questions which arose early in the history of endowed colleges and continued down through the centuries.” Ibn al-Ṣalāḥ’s early ruling on this issue anticipates al-Suyūṭi’s later interpretation, but is a bit more qualified in distinguishing between finishing students and continuing students and citing custom (al-‘urf) as a reason to expect attendance from students if the stipulations are not already clear from the endowment deed. For al-Suyūṭi, the degree of learning on the part of the student (and, to some extent, financial need) is the determining factor. Also, al-Suyūṭi makes it a function of whether or not the funds are coming from the Treasury or a private source, which had not yet become an issue for Ibn al-Ṣalāḥ.

100 Fernandes, Evolution, pp. 45-46. For more on istibdāl, see: Amīn, al-Awqāf, pp. 341-354.
102 Makdisi, Rise of Colleges, p. 185.
Rules for Teachers

The question of giving priority to the shaykh is a bit more problematic, however. Again, al-Suyūṭī makes the distinction between the two different kinds of \textit{waqf}. His argument is as follows:

For the first kind, no one is given priority over anyone else except with written consent by the endower. The second kind is subject to examination; if the shaykh is entitled to [funding] from the Treasury by virtue of his learning and the rest of the ranks are not as such, then the shaykh is certainly given priority when the endowment becomes pressed for funds because he is singled out for entitlement. If everyone is of equal learning and the shaykh is the most needy, then he is given priority just as when the Treasury becomes pressed for funds priority is given in order of need. If everyone is equal in both learning and need, then they are given funding according to shares without preference.

Al-Suyūṭī does not cite any other jurists who held this opinion, indicating that the matter is far from being settled. He also declines to mention any jurists whose views on giving priority conflicted with his own, though such views did exist and were probably known to al-Suyūṭī. Ibn Taymiyya, for example, acknowledged that jurists were in disagreement about this issue but “declared that the principle of giving priority to the professor of law, or to someone else, was invalid; and that he knew of no reliable jurisconsult who adhered to such a principle, or anything like it, even though it had been enforced by qadis.”\footnote{Makdisi, \textit{Rise of Colleges}, p. 67.} In a related opinion, he ruled against giving priority to the supervisor of the \textit{waqf} because there was nothing in the conditions of the endowment to allow it.\footnote{Ibn Taymiyya, \textit{Majmū‘ fatāwā Shaykh al-Islām Ibn Taymiyya}, vol. 31, pp. 66-67.}

Actual practice seems to favor some degree of prioritization, but not in favor of the shaykh. Berkey suggests that, from the point of view of the endower, the most
important groups to be supported in times of need are the endower’s own relatives and those responsible for the basic upkeep of the buildings. Even prayer leaders and preachers are considered more essential than teachers and students, according to endowment deeds like the one at the madrasa of Sulṭān Ḥasan. In any case, by al-Suyūṭī’s time standards for both teachers and students had become considerably more lax than in previous centuries while their sense of entitlement had only increased. The pervasive practice of appointing deputies (al-istināba) made it easier for shaykhs to avoid attending to their duties, essentially “allowing the shaykhs benefit from a salary without having to work for it.”

Conclusion

We may never know the details of what transpired between al-Suyūṭī and the Sufis of the Baybarsiyya khānqāh in the late 9th/15th century. However, by looking at the power relations at work in al-Suyūṭī’s legal discourse, it is possible to discover intriguing strands in an impressive network of power relationships that characterized late Mamluk Egypt. This mode of inquiry also reveals a lot about al-Suyūṭī’s own perception of himself as a jurist in relation to other jurists, to the state authority, and to the Sufi students under his supervision. We can also begin to get a clearer picture of how these relations played into al-Suyūṭī’s larger narratives of self-representation in his discourse.

Some initial observations include the following: first, al-Suyūṭī believes in a social hierarchy that, contrary to what one might suppose for a medieval context, does not give top billing to the ruler. Instead, the moral authority lies in the hands of the scholar

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107 Fernandes, Evolution of a Sufi Institution, p. 51.
by virtue of his learning and ability to benefit society through knowledge and ethical witness. According to this rubric, the scholar is entitled to preferential treatment and respect in the form of earmarks and maintenance. The problem is that by the Mamluk period these earmarks were increasingly under the control of the Treasury, which gave the ruler much greater power over the scholars. The sultan could decide who was appointed to certain desirable positions and could even dismiss a scholar if he became troublesome.

In short, scholars were in danger of becoming petty public officials and of losing their special privileges as representatives and interpreters of God’s law and Sunna. The ultimate manifestation of this trend, for al-Suyūṭī, was the intolerable indignity of requiring the scholar to come up to the Citadel every month to collect his salary like a common state employee. Following in the footsteps of the great ‘Izz al-Dīn ibn ‘Abd al-Salām, al-Suyūṭī refused to subordinate himself to the authority of the ruler, which nearly cost him his life.

The deterioration of relations between the ruler and the ‘ulamā’ coupled with economic upheaval and political instability created a very tenuous state of affairs in late Mamluk society. Once considered a reliable way to protect one’s estate, waqf too became subject to corruption and unlawful appropriation by the ruler, causing a subsequent decrease in funding for stipends. At the same time, al-Suyūṭī laments what he sees as a general decline in the standards of scholarship such that once illustrious

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108 Al-Suyūṭī also envisions a hierarchy amongst scholarly disciplines, with jurists and hadīth experts assuming superiority over philosophers and those who preoccupy themselves with forbidden foreign sciences (see Chapter Three on logic).
educational institutions came to be filled with ignorant Sufi poseurs and riffraff. It is no wonder, then, that al-Suyūṭī’s discourse often assumes an apocalyptic tone.109

Faced with the risk of irrelevancy, jurists like al-Suyūṭī came under pressure to justify in legal terms the reality of changes in the way that waqf was administrated over time. These jurists had to situate their discourse within the institutional parameters of the Islamic legal structure and in accordance with its accepted modes of rationalization in order to be considered authoritative. For al-Suyūṭī, this means making a crucial differentiation between different kinds of waqf, a distinction that allows him both to pay respect to the views of earlier Shāfi‘ī greats like Ibn al-Ṣalāḥ and al-Nawawī and to provide the flexibility needed to re-negotiate some of their ideas in light of changed circumstances. It is this discursive ability to negotiate and to interpret the Law in response to new situations that gives the scholar a meaningful role in the power relations that govern society; therein lies the true power of the jurist.

109 See Chapter Four for al-Suyūṭī’s views on the coming of the end times and its implication for tajdid (religious renewal).
CHAPTER THREE
Al-Suyūṭī’s Logic Fatwā

Introduction

In the year 889/1484, Jalāl al-Dīn al-Suyūṭī sent waves of furor rippling through the scholarly community by declaring that he had attained the level of *ijtihād* (independent reasoning) in the fields of law, *ḥadīth* and the Arabic language. Al-Suyūṭī’s enemies, especially someone to whom al-Suyūṭī refers only as ‘the Ignoramus,’ seized on a controversial legal opinion that he wrote as a young student condemning the study of logic to allege that the author was deficient in his knowledge of logic and thus not qualified to claim the rank of *mujtahid*. To bolster their assault, they used a famous statement by the renowned jurist al-Ghazālī (d. 505/1111) that one who does not know logic cannot be trusted in his scholarship to suggest that proficiency in logic and the rational sciences was a requirement for *ijtihād*.

Al-Suyūṭī responded to the latest round of attacks on his reputation by issuing yet another fatwā on the subject of logic, entitled *al-Qawl al-mushriq fī tahrīm al-ishtighāl bi-l-maṭiṣiq* (‘An Enlightening Statement Prohibiting Preoccupation with Logic’). In the text, the author tries to accomplish several complex rhetorical goals. First, al-Suyūṭī is faced with the delicate task of showing himself to be well versed in an area of study that he and others have already declared prohibited. At the same time, the author must try to discredit his opponent without casting any blame on his hero and exemplar within the Shāfi‘ī legal school, al-Ghazālī. Ultimately, al-Suyūṭī hopes to position himself as a

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1 My translation of this text can be found in Appendix Two.
mujtahid whose opinions are in line with other authorities within his community of scholars.

In this chapter, I argue that al-Suyūṭī’s logic fatwā is a plea on the part of the author to gain recognition from his community of scholars as a mujtahid and one of the leading scholars of his age. At the same time, it is a polemic not solely against the study of logic per se but also against those who would use the logic debate as a weapon with which to damage al-Suyūṭī’s own reputation and authority. My analysis of the text takes into account both linguistic factors internal to the text as well as external contextual factors.

Starting with the internal factors, I examine how al-Suyūṭī uses the stylistic conventions of the fatwā genre such as the question and answer frame device and the citation of authorities from each of the four legal schools to perform a dual function. First, the author creates a clear opposition between the correct righteous opinion of himself and his exemplars versus the ignorant and heretical views of his enemies. Second, al-Suyūṭī seeks to derive transitive authority from his predecessors within his “community of practice” of fellow jurists, particularly from such paragons of learning as Ibn Taymiyya, Ibn al-Ṣalāḥ and al-Ghazālī. The particular linguistic strategies that al-Suyūṭī employs in the fatwā allow him to appeal to deeper narratives within the scholarly community. These themes include the limits of ijtihād in an age of taqlīd, preservation of learning against the threat of growing ignorance, and the perceived superiority of some means of acquiring knowledge over others.

In order to assess how successful al-Suyūṭī is in meeting his objectives, I turn to external evidence from the larger context, including the opinions of other jurists before,
during, and after al-Suyūṭī’s time, in order to understand how their arguments match up (or not) with those of al-Suyūṭī. Finally, I look at the broader historical tension within Islamic thought between suspicion towards Greek-inspired disciplines such as logic on the one hand, and the gradual acceptance of logic as part of the curriculum for Islamic scholars (including al-Suyūṭī) on the other. I question whether or not al-Suyūṭī’s condemnation of logic represents the “mainstream” view as he implies in the fatwā or whether, at least as far as the logic debate is concerned, he is on the wrong side of history.

**Approach to the Text**

I examine al-Suyūṭī’s fatwā condemning the study of logic from the standpoint of literary and discourse analysis. An instructive model for this approach is Kristen Brustad’s article analyzing al-Suyūṭī’s autobiography, *al-Taḥadduth bi-niʿmat Allāh* (as expertly edited by Sartain)\(^2\). Therefore, I take a brief look first at how al-Suyūṭī constructs and defends his authority in the autobiography through his use of language before turning to the fatwā itself. In my own analysis, I add to Brustad’s literary approach sociolinguistic tools and theories (such as interdiscursivity, framing, and communities of practice) to better understand how al-Suyūṭī uses language to accomplish his pragmatic goals.

Brustad approaches *al-Taḥadduth bi-niʿmat Allāh* “in light of questions raised by modern scholarship surrounding individuality, textual cohesion and coherence, and public versus private in medieval Arabic autobiography,” paying particular attention to


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recurring tropes and “conventions of representation” in the account. Brustad considers both internal textual evidence as well as external information to argue that al-Suyūṭī sought, through the use of literary conventions characteristic of medieval Arabic autobiography, to “impose his authority as the leading scholar of his day.”

Authority Construction and Self-Representation

The overall goal of al-Suyūṭī’s autobiography, according to Brustad, is one of authority construction. Therefore, if al-Suyūṭī neglects to mention some topics it is because such matters do not serve the larger purpose of the text. For example, Brustad calls into question the seeming lack of tension between the “private” and “public” self that has caused some modern critics to judge medieval autobiographies as dry and lacking in personal details and emotional depth. As Brustad points out, the medieval Arabic autobiography differs in many ways from what we today understand by genres of self-narrative. She notes, for example, al-Suyūṭī’s avoidance of any information regarding his wives or children (though he does name several women in connection with his study of ḥadīth). Brustad concludes from this, not that al-Suyūṭī refrains from delving into family matters out of a sense of prudishness or modesty, but that this aspect of his life is not considered relevant to the goal of the text, namely, to prove the intellectual

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authority of the author himself. Al-Suyūṭī makes his emotions known through his autobiography through the cultural and literary conventions of his time and social context rather than through the emphasis on personal reflection and self-discovery that the modern reader might expect.

Both Sartain and Brustad interpret the autobiography as a whole as a kind of last-ditch effort by a scholar towards the end of his career to gain the respect and recognition of his peers that he feels that he deserves but that has eluded him up to the point of writing. Begun at a time when al-Suyūṭī had more or less retired from public life (and left uncompleted), the text reads as an attempt by the author to set the record straight, as it were, so that not only can he have the last word in the many disputes that plagued him throughout his career, but also in the hopes that he may one day be acclaimed as the renewer of his age, much like his heroes were before him.

When speaking of “authorial intent” and self-representation in the autobiography, one is reminded of Bakhtin’s notions of interdiscursivity and the “dialogic” nature of language, or the idea that all utterances are built on past utterances and anticipate future ones. As Bakhtin suggests, an author can even use “double-voiced” discourse to strike a “polemical blow” at another person’s speech. Thus, as Brustad observes, al-Suyūṭī’s autobiography “shows the author’s recognition of the performative nature of the act of self-representation. Not only is the past viewed from the standpoint of the present of writing, it is also viewed with an eye to the future.” In other words, self-representation is not limited to the self but is used to comment on others’ utterances as well.

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“Transitivity” and “Exemplarism”

One method through which al-Suyūṭī appeals to the cultural and literary conventions of the day to aid his project of authority construction is through what Cooperson has called “transitivity.”⁹ In an intellectual context in which scholars were considered (ideally) the heirs of the Prophet, the author found it part of his mission to associate himself with his forerunners in the tradition. Paired with this idea of transitivity is that of “exemplarism;” al-Suyūṭī cites anecdotes relating to his heroes, such as al-Shāfīʿī (d. 204/820), al-Ghazālī (d. 505/1111), and Ibn Ḥajar al-ʿAsqalānī (d. 852/1449), in the hopes that he might himself be placed in the same class of intellect and religiosity as his esteemed predecessors. As Brustad puts it: “The fact that most of the figures he invokes are renowned for their piety and scholarship points to al-Suyūṭī’s view of his role in God’s Plan as one who leads in the expansion of religious knowledge. By emulating exemplary figures, he becomes one.”¹⁰

Offensive and Defensive Use of Language

One need not infer passionate conviction in al-Suyūṭī’s autobiography from literary conventions alone. Rather, Sartain and Brustad acknowledge moments in the narrative when raw emotion bubbles to the surface. Never is this phenomenon more vivid than when al-Suyūṭī describes his enemies and their relentless attacks upon both his personal and professional reputation. Both Sartain and Brustad find remarkable the more informal register employed by al-Suyūṭī in portraying these disputes as well as the

intensity of the bitterness and resentment behind the words.\textsuperscript{11} For example, Brustad highlights a passage in which al-Suyūṭī switches from third to second person pronouns to address the reader directly, saying: “By God, those of you with intelligence, \textit{look} [\textit{unẓurū}] at someone who has reached this degree of paucity of intellect.”\textsuperscript{12} The author emerges as a victim in the narrative unfairly wronged by his opponents, much as the early Muslims (\textit{salaf}) were sent enemies by God to confront them and to test their faith. Even al-Suyūṭī must have sensed, however, that his career had sparked more conflict and exchanges of abuse than was common to most scholars, thus putting him in the defensive position of having to explain that he is not trying to disagree with people just for the sake of being ornery but strives only for impartial truth.\textsuperscript{13}

As Brustad suggests, by taking the offensive in his narrative against his enemies, al-Suyūṭī ends up appearing on the defensive: “It is here that the author most vehemently emphasizes his authority, and here that the final authority of the text most escapes him, because he controls his words but not the reception of them which will ensue.”\textsuperscript{14} While the majority of al-Suyūṭī’s enemies represent named historical figures (Ibn al-Jawjarī, Ibn al-Karakī and al-Sakhāwī, to name a few), one opponent is considered too contemptible even to be cited by name and is instead referred to as either \textit{abū jahl} or \textit{al-jāhil}, ‘the Ignoramus.’ As Brustad points out, al-Suyūṭī has already spent three chapters describing the origins of his own name and thus: “The absence of the antagonist’s name stands in

\textsuperscript{11} Brustad, “Imposing Order,” p. 340. Sartain writes: “The lively descriptions of al-Suyūṭī’s disputes with other scholars, which are written in a very conversational, almost colloquial, style, are particularly valuable, and such revealing personal statements as we find here are rare in Arabic autobiographical writing, of which impersonality is one of the main characteristics,” (\textit{Jalāl al-Dīn al-Suyūṭī}, p. viii).
\textsuperscript{12} Brustad, “Imposing Order,” p. 342 [Brustad’s translation and emphasis].
\textsuperscript{14} Brustad, “Imposing Order,” p. 340.
sharp contrast to the narrator’s lengthy establishment of his own, and represents al-
Suyūṭī’s attempt to impose anonymity upon the ‘ignoramus.’” The Ignoramus, although
most likely a real person,\(^{15}\) becomes for the purposes of the narrative a kind of generic
opponent for the author to refute. Rather than simply ignoring the man’s attacks as
beneath his notice, al-Suyūṭī goes to great lengths to defend his point of view and to
correct what he sees as gross errors on the part of the enemy.

The Logic Fatwā

Many of the discourse techniques governing al-Suyūṭī’s use of language in his
autobiography come back in full force in his fatāwā. Although legal opinions fall under a
different literary genre entirely, they nevertheless contain many of the same pragmatic
uses of language as the autobiographical narrative. Never are these techniques more
pronounced than in al-Suyūṭī’s fatwā concerning the study of logic, \textit{al-Qawl al-mushriq fī
tahrīm al-ishtighāl bi-l-manṭiq}, or “An Enlightening Statement Prohibiting Preoccupation
with Logic.”\(^{16}\) In my analysis of the fatwā, I seek to show how theories and
methodologies from the broadly defined field of sociolinguistics can help us to
understand al-Suyūṭī’s rhetorical techniques, including those mentioned by Brustad. Like
Brustad, I will consider both internal and external evidence to examine the text, paying
particular attention to the author’s pragmatic use of language (including cultural and
literary conventions of representation) and what it might reveal about the goals of the

\(^{15}\) Sartain deduces that \textit{al-jāhil} was probably someone by the name of Shams al-Dīn al-Ṭūlūnī,
who fits the description based on the sparse biographical details provided (Jalāl al-Dīn al-Suyūṭī,
pp. 56-57).

\(^{16}\) The text that I am using comes from al-Suyūṭī’s fatwā collection, \textit{al-Hāwī li-l-fatāwī}, (Beirut: Dār al-Kutub al-‘Ilmiyya, 2000), pp. 244-246. Therefore, all comments concerning the format
and content of the text are based on this print edition unless otherwise specified. Quotations in
English from the logic fatwā are from my own translation of the text.
producer of the discourse. My aim is to get beyond what the text says in order to access what it means both for the author and within its broader social and intellectual context.

The Frame Device

First, it must be stated that the fatwā follows a standard question and answer format common to legal opinions, where the issue is outlined under the heading “mas’ala” and the answer given as “al-jawāb.” Hallaq, for example, has pointed out that there is no reason to assume that this format was not based on a real question presented by an actual questioner rather than a purely hypothetical device created by the jurist. The fact that the questioner’s name was usually omitted indicates that the fatwā “was not merely an ephemeral legal opinion or legal advice given to a person for immediate and mundane purposes but also an authoritative statement of the law that was considered to transcend the individual case and its mundane reality.” It should be noted also that many of the fatwās (especially those regarding controversial or contested issues) in al-Suyūṭī’s fatwā collection, al-Ḥāwī li-l-fatāwī, were in fact stand-alone treatises that were later incorporated into the collection. Al-Qawl al-mushriq is such a treatise and, as such, exists in manuscript form separate from the other fatwās and treatises in al-Ḥāwī.

The question setting up the frame device for al-Suyūṭī’s logic fatwā reveals immediately some rather perplexing inconsistencies. Mufti Ali, one of the few contemporary scholars to address the contents of the fatwā to any degree of detail, presents a somewhat odd portrayal of the question. Stating first that al-Suyūṭī gives no

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18 Hallaq, “From Fatwās to Furū‘,” p. 34.
“information about the identity of the questioner,” he then suggests that the statements defending logic that al-Suyūṭī refutes one by one in the fatwā were attributed to al-Ghazālī.20 This reading of the question does not seem to agree with the latter part of the fatwā, in which al-Suyūṭī passionately upholds al-Ghazālī’s reputation as a jurist and denounces the questioner as a sinner and a fool. Earlier in his analysis, Ali suggests: “one understands that this treatise was written in answer to a question about the study of logic and the status of the knowledge of logic as a condition of undertaking ijtihād,“21 an interpretation that appears much more likely in light of the text itself.

In the print edition of the fatwā, al-Suyūṭī’s lead-up to the question consists simply of the statement: “There is a person claiming knowledge who says” (fī shakhṣ yada’i fiqhan yaqūl) without mentioning any names. He then lists seven claims made by this person, four of which relate directly to logic and three that seem unrelated to the issue of logic but are nevertheless lumped into the same list. The statements relating to logic are as follows:

1. Monotheism rests on the knowledge of the science of logic.
2. The study of logic is an individual duty (farḍ ‘ayn) for every Muslim.
3. To learn it in all its detail is [the equivalent of] ten good deeds.
4. He who does not learn [logic] is not correct in his faith and he who issues rulings but does not know [logic] is wrong in his rulings.

The other three statements included in the question are as follows:

5. Anyone who uses ḥashīsh is an unbeliever.
6. The mujtahid makes allowed the prohibited and prohibits the allowed.

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21 Ali, Muslim Opposition to Logic, p. 156.
7. Abū Ḥāmid al-Ghazālī was not a jurist but rather an ascetic.

The variety of these statements leaves open the question whether they were all made by the same person or were grouped together either by al-Suyūṭī himself or by a later editor. In any case, it is clear from the text of the reply that al-Suyūṭī not only considers the statements themselves to be false, but the person who made them “a man of extreme ignorance and stupidity and depravity” who deserves to be beaten with a whip and imprisoned in order to deter others from making such dangerous claims.²²

Timing of the Fatwā

Like the autobiography, this particular fatwā was composed fairly late in al-Suyūṭī’s life. We can conclude this based on references in the text to earlier works by al-Suyūṭī on the same subject. He mentions an abridgement that he made of Ibn Taymiyya’s al-Radd ‘alā manṭiq al-Yunān²³ as well as a volume condemning logic in which he quotes statements from the religious authorities on the topic, most likely in reference to his Šawn al-manṭiq wa-l-kalām ‘an fann al-manṭiq wa-l-kalām. In the introduction to Šawn al-manṭiq, al-Suyūṭī recalls a treatise that he wrote many years before (about 867-8/1461-2)²⁴ in which he condemned logic and cited Ibn Taymiyya’s book even though he was not able to obtain an actual copy of the manuscript until twenty

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²² Al-Suyūṭī, al-Qawl al-mushriq, pp. 245-246.
²³ This abridgement, entitled Jahd al-qariḥa fi tajrīd al-Naṣīḥa, has been edited and translated by Wael Hallaq as Ibn Taymiyya Against the Greek Logicians (Oxford, U.K.: Clarendon Press, 1993).
²⁴ Al-Suyūṭī describes the uproar that arose after this pamphlet was made public as the first of his many disputes (Sartain, Jalāl al-Dīn al-Suyūṭī, p.32). Clearly, the controversy had not abated by the time he composed Jahd al-qariḥa and Šawn al-manṭiq twenty years later.
years later— the same year in which he declared himself to have attained the rank of mujtahid (889/1484). Al-Suyūṭī describes his purpose in writing Ṣawn al-manṭiq as both a refutation of the claim brought against him that one of the conditions for achieving ijtihād is a knowledge of logic (the implication being that al-Suyūṭī was deficient in this regard) as well as a defense of the famous and highly disputed fatwā of Ibn al-Ṣalāḥ al-Shahrazūrī (d. 643/1245) denouncing the study of logic, which was, evidently, still receiving criticism in al-Suyūṭī’s time.

As Sartain observes, al-Suyūṭī’s claim to ijtihād provided his enemies with “fresh ammunition for their attacks on him” and rekindled the dispute about logic that had plagued him as a student— except that this time, the stakes were higher. When someone used al-Ghazālī’s statement in his famous introduction to the science of logic in al-Mustasfā that one who is not well-versed in the rational sciences cannot be trusted in his scholarship to suggest that al-Suyūṭī did not fulfill the conditions for ijtihād, the scholar was therefore “in the awkward position of having to demonstrate his knowledge of the subject, while of course maintaining his view that it was a ‘forbidden’ discipline.” Not only does al-Suyūṭī set out to show his own familiarity with arguments by previous generations of scholars against the study of logic, philosophy, and theology in his Ṣawn al-manṭiq, he also derides his opponents for criticizing what they do not understand by trying to debate the use of logic without employing it in their own work.

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26 Sartain, Jalāl al-Dīn al-Suyūṭī, p. 59.
28 Sartain, Jalāl al-Dīn al-Suyūṭī, p. 69.
30 Sartain, Jalāl al-Dīn al-Suyūṭī, p. 69.
Many of the same issues come back yet again in al-Suyūṭī’s fatwā, which is the latest of his writings on logic. It is interesting that a scholar with three known works on the subject of logic (an early treatise, an abridgement and a full-length book) would feel compelled to write yet another treatise on the subject in the form of a fatwā. One surmises that Ṣawn al-manṭiq did not put matters to rest, as the author intended, since some of the same accusations resurface in the fatwā along with new claims that al-Suyūṭī felt also needed to be countered.

**Audience and Opponent**

In addition to Cooperson’s notions of “transitivity” and “exemplarism,” the concept of communities of practice as outlined by Etienne Wenger and others is helpful in determining the intended audience of the text and the pragmatic rhetorical strategies employed by the author in appealing to that audience. According to Wenger, members of a community of practice are united by mutual engagement, a joint enterprise and a shared repertoire (of tools, concepts, or symbols). Individuals participate in an ongoing “negotiation of meaning” both by being actively engaged in the social practice of the community (participation) and by helping to define the terms and character of the community (reification). Taking part in a joint enterprise “gives rise to relations of mutual accountability among those involved.” This “regime of mutual accountability” is not expressed usually as formal rules as much as it exists as a set of unspoken

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32 Wenger, *Communities of Practice*, p. 73.

33 Wenger, *Communities of Practice*, p. 81.
expectations governing appropriate practice within the community, which is itself subject to further negotiation.

As noted above, the immediate context for the fatwa appears to be al-Suyūṭī’s attempt to refute specific remarks made by an unnamed person whom he considers to be both ignorant and sinful. The author uses this person’s claims as the frame device for his response, returning time after time to condemn the person and to declare each claim to be more misguided than the last. Therefore, it seems that, like so many of al-Suyūṭī’s treatises, the text bears an element of personal grudge but, at the same time, its intended impact is not limited to a private exchange between two individuals but includes a wider community as well. A major element of al-Suyūṭī’s audience probably consisted of his peers within the scholarly community – the same colleagues who fiercely contested al-Suyūṭī’s own claims to ijtiḥād and tajdīd.

When al-Suyūṭī came out with his claim of having attained the rank of mujtahid, he challenged the expectations of his community of scholars and provoked a heated discussion and renegotiation of what it meant to be a mujtahid as defined by the shared practice of the community. In seeking to convince his fellow scholars of his identity as a mujtahid, al-Suyūṭī makes full use of the repertoire of his community, including the statements of past authorities (such as Ibn al-Ṣalāḥ, al-Ghazālī and Ibn Taymiyya). At the same time, he strives to counter rival interpretations of the same references by his opponents.

The fatwa acts as a vehicle for the jurist who aims to negotiate his own identity within the community through participation in practice. The authority of the fatwa (which represents the reified opinion of the jurist and the consensus of the legal school)
depends on the authority of the speaker as defined through practice. In order to be considered worthy of the title of mujtahid, al-Suyūṭī must do ijtihād, as the concept has been defined and interpreted by the community. One of the ways in which an individual jurist could practice ijtihād in the post-formative era was to issue legal opinions that must then be accepted as authoritative by his peers.

List of Scholars Opposed to Logic

One way in which al-Suyūṭī appeals to an audience of fellow scholars is to show that his opinion is in line with that of other jurists, especially those within his own Shāfi‘ī legal school. Here, al-Suyūṭī employs heavily Cooperson’s idea of “transitivity” and “exemplarism” (described above) to suggest that he is the natural intellectual heir of these great luminaries and that anyone who questions this consensus is, at best, ignorant and, at worst, a heretical betrayer of the tradition. A lengthy portion of the fatwā is taken up with a list of names of “the leaders of the faith and legal scholars (a’immat al-dīn wa-‘ulamā’ al-Sharī’a)” who have written against logic. Mufti Ali helpfully provides a list of these names in his study of the fatwā, indicating which individuals were also included in al-Suyūṭī’s earlier works on logic.34

Although I agree with Ali that these lists provide “rich prosopographical data which shed light on the history of logic and theology in the Islamic world as well as of

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34 Ali, Muslim Opposition to Logic, pp. 157-160. There are a few inconsistencies between the names as they appear in the print edition of the fatwā and those listed by Mufti Ali. For example, the fatwā includes the name Ibn Rushd, which Ali lists as Ibn Rashīd al-Sibtī (d. 721/1322) and Ibn Abī Jamra, which Ali includes as Ibn Abī Ḥamza (d. 695/1296). Jamra and Ḥamza have the same rasm in the Arabic script, which may account for the discrepancy. For more on Ibn Rashīd, see Mufti Ali, Muslim Opposition to Logic, p. 45.
the opposition to both,” I would submit that such data must be approached with caution and that taking al-Suyūṭī’s citations at face value may, in fact, distort the results more than it helps to elucidate them. For example, as Ali notes, an overwhelming proportion of scholars listed are Shāfi‘īs (twenty-eight) in comparison to Mālikīs (twelve), Ḥanafīs (two) and Ḥanbalīs (three). One cannot conclude from this, however, that Shāfi‘īs were necessarily more opposed to logic than their counterparts in other schools, since it would be expected that al-Suyūṭī, as a proud Shāfi‘ī scholar, would be more familiar with and thus more likely to cite authorities within his own school. Also, while the individuals listed do cover a large geographical area, again, it is likely that al-Suyūṭī would be most familiar with the work of scholars in Egypt and Syria, even though he clearly (albeit to a lesser degree) had access to more far-flung resources as well. Furthermore, it is ultimately in al-Suyūṭī’s interest to show that a majority of Shāfi‘ī scholars support his opinion, so bulging the ranks of Shāfi‘īs in the list would aid this goal.

The list of scholars has interesting implications in terms of timing. The list begins with al-Shāfi‘ī (d. 204/820), who is the only one of the four school founders to be mentioned in the text. Presumably, this is meant to be consistent with al-Suyūṭī’s assertion in the fatwā that logic did not enter Islam until the year 180 A.H. (796 C.E.) even though in his Șawn al-maṭiḥiq he quotes Abū Ismā‘īl al-Anṣārī al-Harawī (d.

35 Ali, Muslim Opposition to Logic, p. 164.
36 Ali, Muslim Opposition to Logic, p. 160.
37 For al-Suyūṭī to claim that al-Shāfi‘ī has laid down stipulations against logic is rather a stretch. Just for instance, Roger Arnaldez draws a connection between Shāfi‘ī’s early formulations of juridical logic, especially the concept of analogy (qiyyās), and Greek thought, noting the influence of Aristotle’s Topics. See: R. Arnaldez, “Maṭiḥiq,” in The Encyclopaedia of Islam, Second Edition (Brill Online, 2010).
in listing five generations of scholars before al-Shāfi’ī, all of whom, he says, opposed speculative theology and heretical innovation (though not logic explicitly). The majority of names listed in the fatwā are of scholars who lived from the 7th/8th-13th-14th centuries, which is significant given that by the 8th/13th century logic was fully entrenched as a tool in the field of theology and “an established part of the official curriculum for training theological students in the madrasah”39 – even as it continued to draw opposition in some circles.

Also, in some cases, the individuals in the fatwā are not listed in strict chronological order. For instance, directly after al-Shāfi’ī, al-Suyūṭī mentions Imām al-Ḥaramayn [al-Juwaynī] (d. 478/1085) followed by al-Ghazālī (d. 505/1111) before al-Qushayrī (d. 469/1077), Ibn al-Sabbāgh (d. 477/1085) and Naṣr al-Maqdisī (d. 490/1098). It is difficult to say why al-Suyūṭī chose to put al-Juwaynī and al-Ghazālī at the top of the list after Shāfi’ī, though perhaps he considers them to have attained a higher rank within the school and are thus worthy of preferential treatment. The list ends with the Ḥanbalīs and the illustrious Ibn Taymiyya (d. 728/1328), giving al-Suyūṭī an opportunity to mention his abridgement of Ibn Taymiyya’s work as well as his own volume condemning...
logic, which he considers to be an example of independent reasoning and inference (‘alā ṭarīqat al-ijtihād wa-l-istidlāl).\textsuperscript{40}

Al-Suyūṭī accomplishes two pragmatic goals with this list. First, he attempts to show that there is a consensus amongst the leading Sunnī authorities within the four legal schools against the study of logic and philosophy. Second, he associates himself with these scholars whom he sees as his exemplars, especially within his own community of Shāfi‘ī jurists. With this reasoning in mind, however, the fatwā omits many individuals, including some who appear much stronger in their opposition to logic than those who do make the list. First of all, as Ali notes, neither the fatwā nor any of al-Suyūṭī’s other works on logic include the work of non-Sunnī scholars condemning logic. For example, he does not include statements condemning logic by key Shi‘ī figures such as Ja‘far al-Ṣādiq (d. 148/764) and Ḥasan ibn Mūsā al-Nawbakhtī (d.c. 310/922), nor does he include the Zaydī scholar Ibn al-Wazīr al-Ṣan‘ānī (d. 840/1374) or the Mu‘tazilī Ibn al-Shirshīr (d. 293/905).\textsuperscript{41}

Even if one considers just the Shāfi‘īs in the list, one encounters some notable absences. In his list of Syrian scholars, for example, al-Suyūṭī does not include anyone from the prominent Subkī family in the fatwā, even though he does refer to three of them (Zayn al-Dīn, Taqī al-Dīn and Tāj al-Dīn) in his much earlier treatise.\textsuperscript{42} It could be that al-Suyūṭī was trying to minimize the length of the fatwā by not including a comprehensive list of scholars, but when one examines the statements by Taqī al-Dīn and Tāj al-Dīn about logic, they are not conclusive in their condemnation of the discipline.

\textsuperscript{40} Al-Suyūṭī, Ṣawn al-maṭīq, p. 3.
\textsuperscript{42} Ali, “Statistical Portrait,” p. 266.
Tāj al-Dīn (d. 771/1370), for example, seems to recognize that logic can be used for good by those with a firm grounding in the religious sciences even as it can become dangerous in the hands of those with inferior training.\textsuperscript{43} Elsewhere, he is quoted as saying that logic is “like a sword, which may be used in fighting for Islam and in a highway robbery.”\textsuperscript{44} Similarly, al-Suyūṭī omits mention of Sayf al-Dīn al-Āmidī (d. 631/1233) who was “heavily involved in the study of logic alongside the traditional sciences.”\textsuperscript{45} Also missing from this list is al-Suyūṭī’s own respected contemporary, the judge Zakariyyā’ al-Anṣārī (d. 926/1520), who defends logic in his commentary on the most popular and widely studied handbook on logic during al-Suyūṭī’s time, the Īsāghūjī of Athīr al-Dīn al-Abhārī (d. 633/1264).\textsuperscript{46}

As a framing device, al-Suyūṭī’s list is telling both in terms of which names the author chooses to include as well as which he omits. In her work on how frames operate in discourse, Tannen explains that frames act as a filter through which we perceive information. She looks for certain kinds of linguistic evidence that point to the expectations of the speaker. If a speaker omits information, for example, it could indicate that the speaker finds that detail unremarkable and thus not worth reporting, or the


\textsuperscript{46} El-Rouayheb, “Sunnı Muslim Scholars,” p. 216.
speaker has chosen to leave out information that might contradict their interpretation of events.\(^{47}\)

In this case, al-Suyūṭī presents his audience with a list of authorities all of whom, he says, have written in opposition to logic. While al-Suyūṭī does include al-Ghazālī with the qualification that he opposed logic “in the end,” he omits others whose more nuanced views on logic might contradict his otherwise monolithic framing of the issue. He frames the debate as one in which a consensus exists amongst Sunnī scholars against the study of logic when, in reality, the situation was more complicated.

**Two Exemplars in the Crossfire: Ibn al-Ṣalāḥ and al-Ghazālī**

Two important members of al-Suyūṭī’s historical community of practice whose opinions have a bearing on al-Suyūṭī’s own reputation (and who thus play a key role in the polemic behind the logic fatwā) are Ibn al-Ṣalāḥ and al-Ghazālī. These two stand out as having driven much of the debate about the permissibility of logic within the community of Shāfī’ī jurists over the ages, and support of one over the other appears to have acted as a kind of litmus test to determine a given jurist’s stance on logic. Similarly, the desire to defend both Ibn al-Ṣalāḥ and al-Ghazālī in the debate about logic (as al-Suyūṭī attempts to do) tends to result in complex linguistic and conceptual maneuverings in the discourse.

Ibn al-Ṣalāḥ’s Harsh Critique

Al-Suyūṭī declares in the introduction to his Ṣawn al-manṭiq the intention to prove the correctness of Ibn al-Ṣalāḥ when he denied the permissibility of pursuing the studying and teaching of logic. 48 This famous fatwā of Ibn al-Ṣalāḥ carries an even more hostile tone than al-Suyūṭī’s towards people who study logic and philosophy. While al-Suyūṭī directs most of his wrath against a single person whose claims he dismisses as ignorant and misguided, Ibn al-Ṣalāḥ goes further in actually calling for the authorities to punish those currently teaching philosophy by removing them from their positions, arresting them, and threatening them with execution. 49

As Goldziher points out, Ibn al-Ṣalāḥ also employs some polemic against al-Ghazālī in his harsh condemnation of the “use of the terminology of logic in the investigation of religious law” and of “those who think that they can occupy themselves with philosophy and logic merely out of personal interest or through belief in its usefulness.” 50 Ibn al-Ṣalāḥ clearly felt the need to react against a trend that had started to grow more and more pervasive after al-Ghazālī – namely, the use of the terminology of logic in fields other than philosophy and kalām, including grammar and law. As Goldziher also notes, it was not in fact unheard of for scholars during Ibn al-Ṣalāḥ’s time to experience persecution and removal from their teaching positions on charges relating to the teaching of philosophy and related disciplines, as happened to his contemporary, Sayf al-Dīn al-Āmidī (d. 631/1233). Indeed, the historian Michael Chamberlain portrays Ibn al-Ṣalāḥ’s intellectual environment as one of frequent fitna and upheaval amongst the

48 Al-Suyūṭī, Ṣawn al-manṭiq, p. 3.
scholarly elites, though rarely did these disputes require direct intervention by state authorities in order to suppress heresies.\textsuperscript{51}

The severity of Ibn al-Ṣalāḥ’s critique of the teaching of logic as a discipline as well as his indirect but still biting allusion to al-Ghazālī made this fatwā the go-to text “to which the enemies of logic referred.”\textsuperscript{52} It also put the onus on later Shāfiʿī scholars in particular to explain the basis for Ibn al-Ṣalāḥ’s criticisms on the one hand, while, at the same time, showing some deference to al-Ghazālī as a leading authority in Shāfiʿī fiqh whose own stance on logic is problematic and far from straightforward.

Al-Ghazālī’s Challenging Legacy

In his \textit{Radd ‘alā manṭiq al-Yūnān} (abridged by al-Suyūṭī), Ibn Taymiyya (d. 728/1328) confronts al-Ghazālī’s difficult legacy in the logic debate head on. He notes that the method of the logicians “has become widespread since the time of Abū Ḥāmid [al-Ghazālī]” and lists al-Ghazālī’s compositions in the field of logic, including his \textit{Mi’yār al-‘ilm}, \textit{Miḥakk al-naẓar}, the treatise \textit{al-Qisṭās al-mustaqīm} and the introduction to \textit{al-Mustasfā} in which is recorded the notorious statement that “the learning of those who do not know this logic is not to be trusted.”\textsuperscript{53} Ibn Taymiyya then goes on to insist that al-Ghazālī, towards the end of his life, refuted the views of the logicians and “showed that their method, which is more erroneous than that of the speculative theologians, contains so much ignorance and heresy that it must be censured.”\textsuperscript{54} This defense of al-Ghazālī based on his changing attitudes towards logic over the course of his

\begin{footnotes}
\item[53] Wael Hallaq (ed. and trans.), \textit{Ibn Taymiyya Against the Greek Logicians}, p. 111.
\item[54] Hallaq, \textit{Ibn Taymiyya}, p. 112.
\end{footnotes}
career is taken up again by al-Suyūṭī in his early treatise against logic \(^{55}\) and alluded to in the fatwā, where he includes al-Ghazālī’s name near the top of the list of scholars who have written against logic with the important qualification: “in the end” \([fī ākhir amrihi]\).

While it is fair to say that al-Ghazālī’s views did evolve over the course of his career, attempts to constrain this accomplished polymath in any sort of ideological box tend to prove unsuccessful. In his \(Ṣawn al-maṇṭiq\), al-Suyūṭī quotes two passages by al-Ghazālī, the first from his \(Tafriqa bayna al-īmān wa-l-zandaqa\) and the second from \(Iḥyā’ ‘ulūm al-dīn\). Neither passage mentions logic, but they do warn against those who base their faith on \(kalām\) rather than on transmitted texts and who use their knowledge of \(kalām\) to accuse others of unbelief. \(^{56}\)

At the same time, al-Ghazālī acknowledges that the purpose of \(kalām\) is to preserve correct belief and that, while immersing oneself in it is prohibited in most cases, it is permissible in one of two types of person: someone who is plagued by doubts that will not dissipate any other way and a person who is of strong mind and well rooted in his faith who wants to use \(kalām\) to refute the attacks and temptations of dangerous innovators. \(^{57}\) It is also worth noting that, in the passage from \(al-Tafriqa\) in particular, al-Ghazālī uses mystical language to describe the correct means with which to pursue enlightenment and soundness of faith, including references to purifying the inner self (\(al-bāṭin\)) from the murkiness of the world and embracing the knowledge that comes from opening oneself to the light of God – a kind of knowledge that cannot be attained through

\(^{55}\) Mufti Ali, \(Muslim Opposition to Logic\), p. 169. Ali also suggests that al-Suyūṭī purposefully limited Ibn Taymiyya’s negative references to al-Ghazālī in his abridgement of \(al-Radd\).

\(^{56}\) Al-Suyūṭī, \(Ṣawn al-maṇṭiq\), p. 184.

\(^{57}\) Al-Suyūṭī, \(Ṣawn al-maṇṭiq\), pp. 186-187.
the weakness of kalām. 58 This more nuanced viewpoint stands in contrast to Ibn al-
Ṣalāḥ’s rather hostile call to arrest teachers of kalām and to denounce them as
unbelievers.

Al-Ghazālī’s legacy in the debate on logic and kalām is double-edged in the sense
that his work helped to insure the survival of logical studies in eastern Islam by
effectively exempting it as a methodological tool from the attacks made against
philosophy, 59 even as it helped to fuel a trend of misology in Islamic thought that would
continue “in theological and philosophical circles long after the twelfth century” 60 in the
writings of Ibn Taymiyya, al-Suyūṭī and others. The difference, though, is that while Ibn
Taymiyya at least tries to refute the claims of the philosophers one by one in a systematic
and substantive manner, by al-Suyūṭī’s time the arguments have already been made, and
thus he finds it necessary to repeat them in what Hallaq calls “a shallow and ineffective
critique which lacked a respectable methodology or theoretic.” 61

A Closer Look at the Arguments

After establishing the intellectual context of the logic fatwā within the author’s
community of practice, I would like to return to the text itself to analyze in more detail
the specific arguments of the author. Looking at al-Suyūṭī’s arguments will allow an
expansion from the micro level of linguistic analysis to the macro level of broader
narratives that spring from the text. These larger narratives include the rhetoric of ijīthād
and taqlīd, learning versus ignorance, and hierarchies of knowledge.

58 Al-Suyūṭī, Šawn al-mašīq, p. 188.
59 Rescher, The Development of Arabic Logic, p. 53.
60 Majid Fakhry, A History of Islamic Philosophy, Third Edition (New York: Columbia
61 Hallaq, Ibn Taymiyya, p. xlix.
The Rhetoric of *Ijtihād* and *Taqlīd*

One of the great ironies behind al-Suyūṭī’s logic fatwā is that, while it was written as part of the author’s defense of his claims of *ijtihād*, the arguments in the text predominantly support an attitude of *taqlīd*. Or, to put it differently, al-Suyūṭī distinguishes between the *ijtihād* of Shāfi’ī and “those leading authorities of the four schools whom we have named [above], those who set down jurisprudence and demonstrated how to issue legal opinions, those who are the guardians of religion” and the *ijtihād* of his own time. He protests vehemently against the notion that “if one does not know logic then his legal opinions are not correct,” arguing that the Companions and Followers got along just fine without the use of formal logic. He evokes the name of Shāfi’ī to suggest that this great early eponym was aware of what logic had to offer and rejected it, even though logic as a discipline within Islamic thought was nowhere near developed by the beginning of the 3rd/9th century.

Similarly, al-Suyūṭī’s defense of al-Ghazālī in the fatwā is not based on the latter’s ideas as such but on his standing and authority within the *madhhab*. He denounces the claim that “Abū Ḥāmid al-Ghazālī was not a jurist but rather an ascetic,” not by arguing that the two are not mutually exclusive, but by stating that al-Ghazālī must be a jurist because the entire edifice of Shāfi’ī *fiqh* rests on his works in jurisprudence. After listing al-Ghazālī’s contributions in the form of “*al-Basīṭ* and *al-Wasīṭ* and *al-Wajīz* and *al-Khulāṣa*” he then makes the point that the books of the two shaykhs (*kutub al-shaykhayn*) rely on al-Ghazālī’s works in an allusion to the two pillars of later Shāfi’ī *fiqh*, al-Nawawī (d. 676/1277) and al-Rāfi’ī (d. 623/1226). Therefore, the implication is
that anyone who casts doubt on one aspect of al-Ghazālī’s reputation undermines all of it, which is completely unacceptable to someone like al-Suyūṭī who sees himself as the natural heir of his esteemed predecessors within the Shāfi‘ī school of law. Al-Suyūṭī responds to such accusations by recommending beating and imprisonment “so that no ignoramus would have the insolence to speak about one of the leaders of Islam words that reveal any failing [on their part].”

Finally, there is no better argument for taqlīd (or for ījtiḥād within the confines of the madhhab) than al-Suyūṭī’s highly revealing statement at the end of the logic fatwā to the effect that:

The mujtahid does not make permissible that which is forbidden and does not make forbidden that which is permissible, for prohibition and permission is God’s alone and no other’s. In fact, the opinion does not even come from the jurist himself; rather, his job is to examine the statements of those who came before him and to choose an opinion for which there is evidence for its being preferable.62

This conceptualization of the role of the mujtahid contrasts significantly with that which the author mentions just a few lines earlier – the mujtahidīn during the first few centuries of Islam, or “those who set down jurisprudence and demonstrated how to issue legal opinions” as an example for subsequent generations to follow.

Thus, al-Suyūṭī is careful to portray his own role in the debate within the parameters that he has set up in the text. On the one hand, he begins his answer by stating unequivocally that the “discipline of logic is a harmful and reprehensible discipline with which it is forbidden to occupy oneself,” but then quickly adds: “All of

62 This process of weighing different opinions to choose the most preferable was known as tarjīḥ. See: Wael B. Hallaq, Authority, Continuity and Change in Islamic Law (Cambridge, U.K.: Cambridge University Press, 2001), p. 127.
what I mentioned has been expressed by the leaders of the faith and legal scholars.” In
other words, while he is making the assertion that preoccupying oneself with the study of
logic is harām, he also wants to make it clear that this opinion is based on the precedent
set by the leading authorities both within his own school of law and by scholars from
other schools throughout the centuries of Islamic thought. Al-Suyūṭī casts his own stance
as a continuation of the views of the mujtahids of old, thus seeking to claim a place in the
hierarchy for himself.

Learning vs. Ignorance

One of the narratives that resonates quite strongly throughout al-Suyūṭī’s logic
fatwā is that of the learned against those who are ignorant. Rather than naming his
questioner, al-Sūyūṭī refers to him simply as “this ignorant person” (hādha al-jāhil). Al-
Suyūṭī portrays this person as someone who does not know what he is talking about and
who may even be lying outright to serve some malicious intention. At one point, al-
Suyūṭī goes so far as to accuse his questioner of polytheism on the grounds that “he said
that monotheism rests on the knowledge of [logic] though he does not yet know logic.”
The questioner’s views are contrasted with those of people “who have examined and who
know logic.” Indeed, it is the repeated references to the “ignorant person” and his
outrageous statements that serve as the common theme tying together what would
otherwise be seemingly random topics (including everything from the study of logical
principles to the use of ḥashīsh).

Of course, the central contention (and inherent contradiction) of the fatwā and of
al-Suyūṭī’s other works on logic is that one must be well versed in a prohibited discipline
in order to refute its study. When al-Suyūṭī’s enemies took al-Ghazālī’s famous statement that the knowledge of one who does not know logic cannot be trusted in his scholarship and interpreted it to mean that a knowledge of logic is a requirement for attaining the rank of *ijtiḥād*, they put al-Suyūṭī in the uncomfortable position of having to prove his familiarity with the discipline while at the same time having to uphold his early condemnation of it as *ḥarām*.

In his characteristically frank and acerbic introduction to *Ṣawn al-manṭiq* al-Suyūṭī’s asserts: “In the year that I spoke of what God had endowed upon me in reaching the rank of *ijtiḥād*, someone mentioned that one of the conditions for *ijtiḥād* is a knowledge of the art of logic, meaning that this condition was lacking in me according to his claim. What the pathetic person did not realize was that I know it better than those who claim to know it and use it in their disputes. I know its principles and foundations and [how much] of the knowledge of the teachers of logic now is drawn from it; only our teacher Muḥyī al-Dīn al-Kāfiyajī [knows more].” Al-Suyūṭī then sets out to prove his knowledge of logic by listing a plethora of statements from scholars against logic and *kalām*, which make up the text of *Ṣawn al-manṭiq*.

It is significant that in the passage above, al-Suyūṭī mentions his own teacher, al-Kāfiyajī, because it brings to mind the author’s account of his own education in the rational sciences as described in his autobiography. He explains that as a youth he studied the Ḥāfiz al-Dīn al-Kāfiyajī and even composed an abridgement of al-Juwaynī’s *Waraqāt*. Then, a qāḍī from Tarsus came to stay with al-Kāfiyajī at the Shaykhūniyya madrasa and took al-Suyūṭī’s abridgement and left, perhaps with the intention of attributing the work to

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himself back in his own land. Al-Suyūṭī says that he studied some aspects of law with this person and found him lacking in knowledge, so he began to hate logic in general. After seeing statements from scholars against it including the fatwā of Ibn al-Ṣalāḥ, al-Suyūṭī became utterly opposed to logic.64 According to this account, al-Suyūṭī’s distaste towards logic began as a personal problem between him and a teacher whose training he did not respect and then became an ideological issue once he found sources to support his opinion.

Al-Suyūṭī’s account of his own conversion from one who occupied himself with logic to one who was completely opposed to the discipline bears a striking similarity to Ibn al-Ṣalāḥ’s own early struggle with logic as reported in the biographical work of Ibn Khallikān (and quoted in al-Subkt’s Ṭabaqāt al-shāfi‘iyya). Both accounts also contain echoes of al-Ghazālī’s change of heart later in life in regards to the sciences of logic and philosophy. Indeed, Ibn al-Ṣalāḥ and al-Suyūṭī’s accounts are so alike that one suspects a literary topos or motif at work. According to this narrative, Ibn al-Ṣalāḥ traveled to Mawṣil to study logic with the great master of the rational sciences, Kamāl al-Dīn ibn Yūnus. However, Ibn al-Ṣalāḥ found himself incapable of learning the discipline and was counseled to abandon it before damaging his reputation to no avail.65 As Goldziher points out, “Not only did Ibn al-Ṣalāḥ give up the study of logic which proved to be too difficult for him. In the name of religion, he came forward as its archenemy”66 in his fatwā declaring the study of logic to be ḥarām and calling for the arrest and dismissal by the state authority of those who currently teach logic in the schools. One difference

64 Al-Suyūṭī, al-Tahadduth bi-ni‘mat Allāh, p. 241. Sartain provides a translation of this passage in Jalāl al-Dīn al-Suyūṭī, p. 32.
65 Goldziher recounts this story in his “Ancient Sciences,” pp. 204-205.
between the two accounts is that, while Ibn al-Ṣalāḥ’s brain refused to absorb logic, al-Suyūṭī was perfectly capable of producing enviable works in the discipline but declined to do so.67

A Hierarchy of Knowledge

At the very end of the account from al-Suyūṭī’s autobiography where he describes his early flirtation with logic and subsequent rejection of it, the author adds: “Therefore I gave it up, and God gave me in compensation the science of ḥadīth, which is the noblest of all branches of knowledge.”68 So, like Ibn al-Ṣalāḥ, al-Suyūṭī’s lack of expertise in the morally questionable field of logic is more than made up for by his brilliance in the irreproachable discipline of ḥadīth. This view of a ranking of disciplines by their relative merits is not limited to al-Suyūṭī’s autobiography but comes out quite clearly in several of his works, including the fatwā on logic. When faced with the assertion that “logic is an individual duty of every Muslim,” al-Suyūṭī retorts: “the sciences of exegesis, ḥadīth and jurisprudence – the most noble sciences – are not an individual duty [fard ‘ayn] by consensus but rather a collective duty [fard kifāya]. So, how could logic be greater than those [sciences]?”

Of course, exegesis (tafsīr), ḥadīth and jurisprudence (fiqh) hold a privileged place in the catalogue of Islamic sciences because they are closely linked to the sacred textual sources of the Qurʾān and Prophetic traditions, whereas rational sciences like

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67 Dwight Reynolds points out that Ibn Sīnā (d. 428/1037) in his autobiography also admits to failing initially to understand Aristotle’s Metaphysics. Reynolds observes that youthful confessions of failings are “probably the single most enduring theme of childhood in the pre-modern Arabic autobiographical tradition.” See: Dwight Reynolds, “Childhood in One Thousand Years of Arabic Autobiography,” Edebiyāt 7:2 (1997), pp. 384-385.

68 Sartain’s translation, Jalāl al-Dīn al-Suyūṭī, p. 32.
logic, mathematics, astronomy and medicine are seen as foreign in origin and distant
from the textual sources, relying instead on the human faculty of reason. Therefore,
accomplishments in the preferred fields did more to enhance the reputation of scholars
who mastered them than proficiency in the rational sciences. In fact, a preoccupation
with the rational sciences was more likely to attract accusations of heretical innovation
and dangerous philosophical tendencies for the practitioner.

This tension tended to spill over into theological disputes within Sunnī Islam
(especially between Muʿtazilī and Ashʿarī schools of thought) involving the omnipotence
of God and the correct means with which to find absolute truth. Al-Suyūṭī alludes to
some of these disputes in the fatwā when he states at the beginning of the opinion that
logic is “based on talk of ‘primary matter’ that [amounts to] unbelief.” He goes on to
assert: “the proofs of logic are based on universals that do not exist outside of it and do
not indicate a particular at all.” Both of these arguments can be found in Ibn Taymiyya’s
Radd ʿalā manṭiq al-Yunān. For example, Ibn Taymiyya refutes the idea of the
philosophers that “matter independent of form subsists outside the mind, and that this
matter is the primary matter (hayūlā) on the basis of which they have constructed the
doctrine of the eternity of the World. The majority of scholars have proven them wrong
on this score.” Also, Ibn Taymiyya is highly critical of sciences like mathematics and

69 As Goldziher observes, the ‘ulūm al-awāʾil or the “ancient sciences” included “those branches
of learning in the literature of Islam that found their way into the sphere of Muslim culture
through the direct influence or mediation of works (kutub al-awāʾil) that had been taken over
from Hellenistic literature … Since the cultivation of these fields of learning followed the
Neoplatonic tradition, occult practices and various types of witchcraft (not to mention astrology)
were included in the ‘ulūm al-awāʾil and the sciences of the philosophers” in “Ancient Sciences,”
p. 185.
70 Hallaq, Ibn Taymiyya, p. 25.
metaphysics that rely on concepts (or universals) that exist only in the mind but that “have no reality in the external world.”\(^71\)

Al-Suyūṭī likewise dismisses the notion that one’s faith or belief in the Oneness of God (\textit{tawḥīd}) is dependent on one’s ability to draw logical inferences. Al-Suyūṭī distinguishes between the kind of inference that is based on the principles of logic and the faculty of deduction (\textit{al-istidlāl}) that is innate to all human beings, regardless of their rank or status as intellectuals. He remarks that this absolute faculty of deduction is in the nature of every person, “even in the nature of the elderly, the Bedouins, and the youth, such as the ability to deduce from the stars that they have a Creator or from the heavens, or the rivers or from fruits and so forth – and this does not require logic or anything like it. The masses and the common people are all believers in this manner.” Therefore, al-Suyūṭī tries to show that one does not need to master the principles of logic in order to comprehend the Oneness of God and to be a true believer.

Surely it is no coincidence that while al-Suyūṭī rejects firmly the notion that knowledge of logic is a requirement for \textit{ijtihād}, he does allow for one to achieve the rank of \textit{mujtahid} in areas in which he himself excels, namely religious law (\textit{al-ahkām al-shar‘īyya}), Prophetic traditions (\textit{al-ḥadīth al-nabawī}) and the Arabic language (\textit{al-‘arabiyya}).\(^72\) Furthermore, al-Suyūṭī states that these three were not united in anyone after Taqī al-Dīn al-Subkī (d. 756/1355) except in him.\(^73\) As Sartain observes, it was rather unusual for al-Suyūṭī to speak of attaining the rank of \textit{mujtahid} in fields other than law, which he then had to justify by trying “to define the degree of knowledge in

\(^71\) Hallaq, \textit{Ibn Taymiyya}, p. 151.
\(^72\) Al-Suyūṭī, \textit{al-Tahadduth}, p. 205.
\(^73\) Al-Suyūṭī, \textit{al-Tahadduth}, p. 205.
Prophetic tradition and Arabic language which entitles one to claim the rank of mujtahid.”\textsuperscript{74}

Although I discuss al-Suyūṭī’s concept of ijtihād in more detail in a later chapter, suffice it to say for now that logic is not included in al-Suyūṭī’s list of fields in which he excelled to varying degrees of proficiency. Rather, he makes a point of saying that his accomplishments in these fields were reached “according to the way of the great Arab scholars and not according to the methods of the non-Arabs and philosophers.”\textsuperscript{75} Elsewhere in the autobiography he asserts even more clearly: “As for logic and the philosophical sciences, I do not occupy myself with them because they are harām, as al-Nawawī and others have stated, and, even if they were permissible, I would not prefer them to the religious sciences.”\textsuperscript{76} In short, one cannot ignore the fact that al-Suyūṭī’s hierarchy of disciplines was likely not purely a theoretical typography but had a distinctly personal aspect to it as well. Therefore, the idea that knowledge of the science of logic was a requirement for ijtihād contradicted al-Suyūṭī’s view of himself as a jurist and a mujtahid.

The Larger Context: What is “Mainstream”?\textsuperscript{77}

Al-Suyūṭī frames his logic fatwā to suggest that there is a consensus amongst scholars from each of the four Sunnī legal schools against the study of logic as a discipline that is both suspiciously foreign in origin and unnecessary as a means of acquiring knowledge. In fact, the situation is considerably more complicated than al-Suyūṭī would have his readers believe. The discourse on logic in Islamic thought (to

\textsuperscript{74} Sartain, Jalāl al-Dīn al-Suyūṭī, p. 63.
\textsuperscript{75} Al-Suyūṭī, al-Tahadduth, p. 203.
\textsuperscript{76} Sartain’s translation, Jalāl al-Dīn al-Suyūṭī, p. 33.
\textsuperscript{77}
which al-Suyūṭī is a fairly late contributor) is most often portrayed in the secondary literature as a struggle between the “mainstream” Sunnī view and dissenting opinion from a minority opposition. The issue, however, is that both medieval and modern scholars differ as to what the majority and minority opinions are in the case of the permissibility of logic. In this section, I will examine some of the key arguments in the secondary literature about the logic controversy before stating my own interpretation of where al-Suyūṭī fits into this debate based on both external and internal evidence from the text.

The secondary literature on the status of logic in Islamic thought takes as a starting point the influential article by Ignaz Goldziher first published in 1916 and translated into English under the title: “The Attitude of Orthodox Islam Toward the ‘Ancient Sciences.’” Goldziher lays out the history of opposition to the ‘ulūm al-awā’il as foreign in origin, even though they received patronage at times, particularly from some of the ‘Abbāsid caliphs. Following a swift discussion of mathematics and astronomy, Goldziher moves to logic, explaining that: “While orthodoxy expressed its distrust of these other fields of Greek learning simply by showing a certain preventative concern, the battle against logic was an opposition of fundamental importance. It (orthodoxy) maintained that the recognition of Aristotle’s methods of proof was a serious threat to the validity of religious doctrines.”

As Goldziher points out, much of the perceived danger surrounding the study of logic lay in its link to theological disputes. Al-Ghazālī changed the terms of the debate by, as Hallaq says, making sure logic “was sifted out of Aristotelian philosophy and thus

77 Goldziher, “Ancient Sciences,” p. 185.
cleared of its ‘non-theistic’ tendencies” and bringing it into the field of legal methodology as a tool with which to derive rulings from scripture. Goldziher suggests that it was after al-Ghazālī’s time, in the 7th/13th century, that opposition to logic “made decisive progress.” He focuses on Ibn al-Ṣalāḥ (d. 643/1245), Ibn Taymiyya (d.728/1328), and finally al-Suyūṭī (d. 911/1505) as representative of a general current of hostility towards logic amongst Sunnī orthodox scholars after the thirteenth century.

However, it is important to note that even Goldziher at the end of his article admits that his sources indicate that: “the viewpoint of those who condemned logic was not victorious in the educational system of Islamic theology.” He notes that the great rationalist theologian Fakhr al-Dīn al-Rāzī (d. 606/1210) frequently used Aristotelian philosophy “as a methodological tool.” Al-Abharī (d. 663/1264) produced a logic textbook (al-Īsāghūjī) that became a standard of the theological curriculum and that continued to be used well into al-Suyūṭī’s time. Finally, Goldziher acknowledges: “Just how little impact the anathema of Ibn al-Ṣalāḥ al-Shahrazūrī against logic had, has only recently become evident in the theology of the North African Sanūsī (d. 982/1490) who employed the methods of Greek philosophy and whose theology achieved a position of dominance within the orthodox schools of Islam.” In fact, al-Sanūsī was a close contemporary of al-Suyūṭī.

Khaled El-Rouayheb makes an important contribution to the debate surrounding the status of logic in “mainstream” Sunnī Islamic thought, particularly in regards to the

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80 Goldziher, “Ancient Sciences,” p. 204.
period between 1500 and 1800 C.E. He brings in a new corpus of evidence to challenge Goldziher’s assertion that opposition to logic was the prevailing attitude amongst Sunnī scholars after the 7th/13th century. By focusing on the roots of pro-logic opinion that led to its flourishing between 1500 and 1800, El-Rouayheb seeks to show that “hostility to logic was indeed a minority view in scholarly circles throughout his period” and even questions “whether hostility to logic was ever a predominant view amongst Sunnī scholars, at least between the endorsement of the discipline by Abū Ḥāmid al-Ghazālī (d. 505/1111) and the rise of the Salafiyya in the nineteenth and twentieth centuries.”

El-Rouayheb’s article begins with a look at three influential Egyptian jurists, Zakariyyā’ al-Anṣārī (d. 926/1520), Shihāb al-Dīn Aḥmad al-Ramlī (d. 957/1550) and Ibn Ḥajar al-Ḥaythamī (d. 973/1566), all of whom indicated that “logic was permissible, indeed praiseworthy and necessary” in contrast to al-Suyūṭī’s condemnation of it as prohibited less than a generation before. By the sixteenth century, jurists were still quoting al-Ghazālī’s famous remark that he who has no knowledge of logic cannot be trusted in his scholarship and including knowledge of logic as a precondition for ijtihād, even as they tried to explain away the objections of Ibn al-Ṣalāḥ by saying that he prohibited the “logic of the philosophers” as opposed to the benign logic of their time.

Although most of these scholars criticized al-Suyūṭī indirectly by attacking his position but not mentioning his name, al-Sanūsī’s commentator, the Moroccan scholar al-Ḥasan al-Yūsī (d. 1102/1691), specifically rejects many of al-Suyūṭī’s claims. For example, he considers laughable al-Suyūṭī’s assertion that logic should be prohibited

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because it relies on universals that do not indicate existing particulars, arguing that all sciences necessarily use universals and to suggest otherwise betrays al-Suyūṭī’s ignorance of the discipline. 88 El-Rouayheb notes that al-Yūsī’s discussion is clearly a direct response to al-Suyūṭī’s fatwā and that he “seems to have been unaware of the much longer and more formidable attack on logic by Ibn Taymiyyah.” 89

El-Rouayheb makes the point that, not only did the Maghribī scholars al-Sanūsī and al-Yūsī exert considerable influence through the large number of commentaries produced on their work, they also trained generations of scholars who would later carry the Maghribī expertise in the field of logic back to Egypt in what amounted to a revival of the study of logic in Egypt during the eighteenth century. 90 This trend is reflected, for instance, in the work of the prominent Egyptian scholars Aḥmad al-Mallawī (d. 1181/1767) and Aḥmad al-Damanhūrī (d. 1192/1778). 91 Al-Mallawī, al-Damanhūrī and ʿAlī al-ʿAdawī al-Ṣaʿīdī (d. 1189/1775) all agree that the type of logic about which there was disagreement was that which was linked with philosophy, whereas the logic of their day was not harmful in any way and, in fact, constituted a communal duty (farḍ kifāya). 92

It is interesting that the scholars of present-day North Africa should be considered particularly accomplished in the logical sciences given al-Suyūṭī’s statements in the logic fatwā. In his list of authorities that wrote in opposition to logic, al-Suyūṭī includes under the Mālikī school “most of the North African jurists” (ʿāmmat ahl al-maghrib). This assertion would seem to be in direct contradiction to the evidence presented in El-

90 El-Rouayheb expands on this idea in his subsequent article: “Was There a Revival of Logical Studies in Eighteenth-Century Egypt?” in Die Welt des Islams 45:1 (2005), pp. 1-19.
Rouayheb’s research where he shows that, by the end of the seventeenth century, Maghribī scholars had acquired “a reputation for brilliance in the field” that must have had roots during the time of al-Sanūsī and al-Suyūṭī, since such a reputation would presumably have taken a few generations to develop. Nicholas Rescher suggests that, as far as Muslim Spain was concerned, logical studies experienced a decline by the thirteenth century after a period of intense activity during the twelfth century. The locus of logical studies shifted back to the East and flourished in Persia, while, by “the year 1300 the fine logical tradition of al-Andalus, which had preserved the work and the standards of al-Fārābī and which produced the magnificent commentaries of Averroes, was extinct.” However, the link between the rise and fall of logic in al-Andalus and its apparent revival in North Africa (which later influenced Egypt) is still unclear.

Another important later figure to emerge out of El-Rouayheb’s research on logic is Murtaḍā al-Zabīdī (d. 1205/1791). This famous lexicographer and hadīth scholar enjoyed enormous popularity during his life to the point that he was called “the Suyūṭī of his time.” Al-Zabīdī’s attitude towards the study of logic is quite revealing in terms of which of al-Suyūṭī’s ideas he chose to support and which he chose to reject. El-Rouayheb describes al-Zabīdī’s position, “formulated in opposition to the views of Yūsūf,” as “a qualified defense of Suyūṭī’s condemnation of logic.” While not declaring logic to be prohibited, he shares al-Suyūṭī’s suspicion towards the discipline as encouraging

94 Rescher, The Development of Arabic Logic, p. 65.
96 Stefan Reichmuth, “Glimpses of Islamic Scholarship in the 18th Century,” p. 66.
dangerous innovation and contributing to the decline of the study of hadīth (which was a concern in both centuries). Also, like al-Suyūṭī, he affirms that logic is not essential to faith and that an awareness of the Oneness of God (tawḥīd) comes through a more direct experience of the divine rather than through logical demonstration.\textsuperscript{98} El-Rouayheb comments that: “Zabīdī’s hostility to logic was not representative of Islamic religious scholars of the eighteenth century,” in which logic continued as an accepted field of instruction and scholarship.\textsuperscript{99}

Opposition to logic did make a comeback, though, according to El-Rouayheb, in the nineteenth and twentieth centuries with the rise of the Salafiyya movement. This movement, which he identifies as “inspired in part by the Yemeni scholars Muḥammad b. Ismāʿīl al-Amīr (d. 1182/1768) and Muḥammad al-Shawkānī (d. 1250/1834), and in part by the Wahhābī movement of central Arabia” revived the ideas of Ibn Taymiyya as central to their enterprise, including his condemnation of logic.\textsuperscript{100} Even though al-Suyūṭī and his fellow Sunnī scholars opposed to logic may have represented a minority view during the medieval period, their ideology did gain ground in the more recent Salafi and Wahhābī movements, which “were so influential that they could hardly be called an ‘undercurrent.’”\textsuperscript{101}

In a recent article, Mufti Ali criticizes El-Rouayheb’s thesis and defends Goldziher’s contention that resistance to logic began in the 2\textsuperscript{nd}/8\textsuperscript{th} century and reached a peak in the thirteenth and fourteenth centuries. Ali bases his conclusions on the “rich

\textsuperscript{98} El-Rouayheb, “Sunnī Muslim Scholars,” p. 228.
\textsuperscript{99} El-Rouayheb, “Revival of Logical Studies,” p. 5.
\textsuperscript{100} El-Rouayheb, “Sunnī Muslim Scholars,” p. 230. For more on al-Suyūṭī’s connection to the salafi scholars of Yemen, especially al-Shawkānī, see Chapter Four.
\textsuperscript{101} El-Rouayheb, “Sunnī Muslim Scholars,” p. 231.
prosopographical data” found in al-Suyūṭī’s four works on logic.\textsuperscript{102} While the
background information that Ali provides concerning the composition and content of
these works is laudable, and the table listing the authorities cited by al-Suyūṭī is also
extremely useful, the conclusions that he draws from the data require careful
examination. First, the individuals are given equal weight in Ali’s analysis whether they
composed a whole volume specifically condemning logic or if they mentioned
philosophy in passing. Also, it should be noted that the list includes only works known to
al-Suyūṭī and, of those, only those that he chose to record. As mentioned earlier, it is
problematic to assume that the majority of scholars who opposed logic were Shāfi‘īs
based in Egypt and Syria, since those would automatically be the group most known to
al-Suyūṭī and closest to his own community of practice. So, although Mufti Ali’s
research presents a valuable set of data, he does not perhaps go far enough in questioning
some of the motives behind al-Suyūṭī’s account and its larger significance.\textsuperscript{103}

A broader view of the history of logic in Islamic thought suggests an ebb and flow
of two parallel strains – one accepting of logic and one in opposition to it. Rescher
outlines the development of logic as following more or less distinct phases where the
locus of creative output in the logical sciences shifted geographically in response to
political events in different time periods. While instances of violence against logicians

\textsuperscript{103} Aaron Spevack adds a third interpretation occupying a middle ground between Ali and El-
Rouayheb in his “Apples and Oranges: The Logic of the Early and Later Arabic Logicians,” in
Islamic Law and Society 17 (2010), pp. 159-184. He argues that the period between the thirteenth
and fifteenth centuries marked a transition in the thought of Sunnī scholars in which neither
opposition to logic nor support thereof achieved predominance. Spevack criticizes Ibn Taymiyya
and al-Suyūṭī for taking a “monolithic” stance that lumped together two different approaches to
logic practiced by earlier and later logicians. While earlier logicians tended to incorporate ideas
from Greek philosophy into the realm of logic, later logicians generally did not include these
elements.
and their works did occur, this undeniable current of hostility did not succeed in stamping out logic as a field of study in Islamic scholarship. The watershed moment came with the work of al-Ghazālī, who did the most to separate logic as a tool from that which was associated with philosophy, thus allowing its gradual incorporation into the fields of theology and law. Even the loud and persistent protests of Ibn al-Ṣalāḥ and Ibn Taymiyya did not manage to stem the tide advocating the permissibility of logical studies. As Tony Street puts it, Ghazālī’s “achievement was not the end of all opposition to logic among Muslim scholars, though future attacks on logic never seriously affected the study of the discipline.” By the 7th/13th century, logical studies had become an accepted sub-discipline of religious instruction as students memorized handbooks as part of their education.

Conclusion

The aim of this chapter is to demonstrate a method with which to access the meaning behind a text like al-Suyūṭī’s fatwā prohibiting the study of logic. As with Brustad’s approach to al-Suyūṭī’s autobiography, I attempt to gain insight into the pragmatic goals and motivations driving the arguments of the author though an analysis of both internal linguistic evidence and external historical evidence from the immediate and broader social context in which the text was produced. Identifying certain themes and narratives that underlie the framing of the text not only helps to explain the

104 See, for example, recorded instances of book burning, exile and threats made against scholars in Rescher, The Development of Arabic Logic, pp. 59-60.
105 Rescher, The Development of Arabic Logic, p. 53.
significance of this particular fatwā, but will prove useful in looking at other parts of al-Suyūṭī’s legal discourse as well. This approach allows me to make a number of observations regarding the role of the jurist in al-Suyūṭī’s fatwā and where the author might envision himself within that framework.

First, even though the fatwā does prohibit the study of logic, that is not its primary function. The frame device of the fatwā allows al-Suyūṭī to reply to specific challenges to his authority as a mujtahid. The most serious of these claims is the contention that knowledge of logic is necessary both for correct faith and for authoritative legal rulings. Al-Suyūṭī’s rejection of logic was clear even from the age of eighteen when he produced his first statement on the subject (much to the disgust of some of his fellow scholars). It was his claim to be a mujtahid that was still under fiercely critical discussion towards the end of his life, and the logic debate only helped to fuel the ongoing controversy.

In answering his questioner, al-Suyūṭī frames the argument as one of the pious and learned against the sinful and ignorant. He uses phrases like “this ignorant person” to diminish the status of his opponent and even goes so far as to recommend flogging and imprisonment as punishment for the person’s offensive statements. In contrast, the author portrays himself as the latest in a list of experts and leaders of the faith who have reached the same conclusion regarding logic after careful and informed study. Thus, al-Suyūṭī appeals to his community of jurists by showing his own opinion to be in accordance with the scholarly consensus. In order to do this, he has to resort to some rhetorical posturing, such as his support of both al-Ghazālī and Ibn al-Ṣalāḥ, even though their views on logic conflicted to a large extent. Also, in order to prove his own
knowledge of the discipline, al-Suyūṭī has to demonstrate an understanding of principles that he has just declared to be forbidden.

Internal and external evidence from al-Suyūṭī’s logic fatwā reveal it to be the final desperate effort of a scholar to gain the recognition of his peers in the face of criticism and attack. Al-Suyūṭī provides a defense of his own early and forceful opposition to the study of logic by arguing that it is consistent with the opinion of other leading scholars of law, especially within his own Shāfi‘ī school (omitting reference to Shāfi‘īs like al-Āmidī who did not support this view). Through the discussion on logic, al-Suyūṭī seeks to influence the broader debate surrounding the role and qualifications of the mujtahid. He casts the mujtahid as one who shows a high level of achievement in what he considers to be the superior sciences of hadīth and tafsīr, while denying such a distinction in inferior and morally questionable foreign fields such as logic (in contrast to al-Ghazālī in his Mustasfā). Moreover, he frames the mujtahid of the 9th/15th century as one who does not deviate from precedent but rather selects preferable opinions from those that already exist, thereby re-defining what it means to do ījtihād. Therefore, al-Suyūṭī sets out to define the role of the mujtahid as one that he himself fulfills, while his enemies and detractors are left to occupy the positions of ignorant fools and dangerous heretics.
Introduction

Jalāl al-Dīn al-Suyūṭī is above all else known for his claims to be a *mujtahid* (scholar capable of independent legal reasoning) as well as the *mujaddid* (renewer or restorer of religion) at the turn of the ninth century A.H. Indeed, Sartain does not exaggerate when she says that these claims made al-Suyūṭī “the most controversial figure of his time.”¹ It is no surprise, then, that this aspect of his legal persona has also received the most attention in the secondary literature. In fact, it would be difficult to write about al-Suyūṭī’s legal thought and portrayal of himself as a jurist without including a discussion of *ijtihād* and *tajdīd* and what those two important concepts mean to the 9th/15th century author. Al-Suyūṭī’s status as a *mujtahid* and *mujaddid* represents the linchpin of his self-framing enterprise and it is these elements of his legal persona that bear the most significant implications for his legacy.

There can be little doubt that *ijtihād* and *tajdīd* are closely linked in al-Suyūṭī’s frame of reference. Hallaq and others have been swift to point out that al-Suyūṭī considered attaining the rank of *mujtahid* a prerequisite to claiming the title of *mujaddid,*² which is clear from his autobiography where al-Suyūṭī prefaces a chapter on *tajdīd* with a chapter entitled: “A record of God’s favor in granting me mastery over the sciences and

attaining the rank of *ijtihād*.”³ The author does not limit his claims to the autobiography but repeats them for good measure either directly or indirectly in a number of different instances,⁴ perhaps in the hopes that his assertions would gain greater acceptance through repetition. Sartain notes that it was a habit of al-Suyūṭī when challenged in a dispute to issue an angry treatise (or two or three) declaring the correctness of his opinion and the ignorance of his opponents, striving to have the last word on the matter in question.⁵

Even when his initial claims to the rank of *mujtahid* were poorly received by his colleagues, al-Suyūṭī’s “confidence in his ability was such that he went ahead undaunted to make the more serious claim to be the awaited *mujaddid*.”⁶

Despite the strong link between the rank of *mujtahid* and *mujaddid* in al-Suyūṭī’s writings, there are some important differences between the two concepts as well. The secondary literature focuses on the fact that, “whereas the concept of *ijtihād* was extensively discussed, developed and systematized by Muslim scholars, that of *tajdīd* was not.”⁷ This observation leads Ella Landau-Tasseron to conclude “that *tajdīd* was not a central concept in the evolution of medieval Islamic thought; it was rather an honorific

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⁴ For example, in a short treatise entitled *Taqrīr al-istikmāl fī tafsīr al-ijtihād* (Alexandria: Dār al-Da’wa li-l-Ṭab’ wa-l-Nashr wa-l-Tawzī’, 1983), al-Suyūṭī outlines the levels and qualifications for the *mujtahid* before including the section, “The *mujtahid* is a *mujaddid* for the religion in every century,” in which he argues that all of the designated *mujaddids* were also *mujtahids* in their time (pp. 59-62) and that *ijtihād* has never ceased (p. 66).

⁵ Sartain, Jalāl al-Dīn al-Suyūṭī, p. 53.


title bestowed on individuals over the ages, and the conceptual aspect was secondary, involving mainly the qualifications of the candidates.”

In a similar but slightly different vein, after arguing that the concept of *tajdīd* “appeared initially in Islam under the influence of Jewish sources,” Hava Lazarus-Yafeh goes on to say: “its appearance in Arabic literature never became very frequent, and it is questionable whether it has ever served in classical Islam as the stimulus for a movement or a concrete action.”

Hamid Algar also admits the relatively undeveloped ideas surrounding *tajdīd* in the medieval Islamic context: “The attention paid to the *mujaddid* in Islamic history has, however, been remarkably uneven; it cannot be said that even the pious have regularly attempted to identify the *mujaddid* of their age at each turn of the century.”

Although the secondary literature interprets this difference between *ijtihād* and *tajdīd* in various ways, much of the confusion seems to lie in the elusiveness and fluidity of the *tajdīd* concept itself as well as its subtle changes in meaning over time. The concept of *tajdīd* in Islamic thought has accumulated meaning over time in the sense that scholars working in different eras have molded it to address the concerns of their particular contexts. At the same time, though, *tajdīd* remains rooted in certain common themes, symbols, ideologies and modes of expression. In this way, the scholar uses the *tajdīd* framework much in the same way that Bakhtin suggests that a great author uses genre. As he puts it: “Genres (of literature and speech) throughout the centuries of their life accumulate forms of seeing and interpreting particular aspects of the world. For the

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8 Landau-Tasseron, “Cyclical Reform,” p. 84.
writer-craftsman the genre serves as an external template, but the great artist awakens the semantic possibilities that lie within it.”\textsuperscript{11} The individual scholar taps into the potential stored within the existing framework, supplementing and shaping it “to give it more roundness and finality.”\textsuperscript{12} The artist frees the concept from the captivity of the past to imbue it with new meaning for the future.

I believe that al-Suyūṭī as an individual played a pivotal role during a key transitional era in Islamic thought by striving to recapture the classical concept of \textit{tajdīd} from possible obscurity and transforming its potential as a tool in later discussions about reform and orthodoxy in the early modern and modern eras. In a period of great anxiety and instability, al-Suyūṭī affirmed the need for an unbroken chain of \textit{mujtahids} for every age and declared in bold terms the imperative to restore the community to correct belief and practice and to fight against the threat of intellectual stagnation and corruption.

Although al-Suyūṭī’s framing of himself as the \textit{mujaddid} of the ninth Islamic century failed to convince many of his contemporaries, his legacy spread as later champions of \textit{ijtihād} and \textit{tajdīd} continued to find meaning in his works. These later reformers built on the legacy of past scholars adding their own significant contributions to what can be termed a “\textit{tajdīd} genre” in Islamic thought. In this chapter, I trace the development of the \textit{tajdīd} genre as it existed before, during and after al-Suyūṭī’s time. Looking at which themes changed and which remained consistent over time, I argue that al-Suyūṭī succeeded in liberating the classical concept from the shackles of the past and in helping to unlock its potential for future generations almost in spite of his own efforts.


\textsuperscript{12} Bakhtin, “Response to a Question,” p. 6.
Eschatological Implications of the Tradition

The Prophetic hadith that provides the textual basis for the mujaddid tradition can be found in the Sunan of Abū Dāwūd: “God will send to this community at the turn of every century someone to renew for it its religion.”\(^{13}\) The placement of the text in Abū Dāwūd’s Kitāb al-malāḥim (book of battles, or portents of the end of the world) has prompted a debate in the secondary literature about the possible eschatological context for the tradition. Yohanan Friedmann, for example, postulates a link between the appearance of the centennial renewer and postponement of the Day of Judgment, but admits that this may not have been the tradition’s primary role,\(^{14}\) while Landau-Tasseron is more skeptical about the eschatological connection citing limited evidence.\(^{15}\) Landau-Tasseron and Algar are probably right in suggesting that the apocalyptic context in which the hadith appears depends on the “circumstances of the times and places in question, not to the conditions under which the Hadith first entered circulation.”\(^{16}\) It is likely not a coincidence that the role of the mujaddid in delaying the Day of Judgment would crop up in the eighth century A.H. in the writings of Zayn al-Dīn al-‘Irāqī (d. 806/1404) when anxieties about the end of the Islamic millennium were starting to run rampant.\(^{17}\)

The eschatological connotations of the tradition are similarly important for al-Suyūṭī, who was writing at a time when scholars were actively debating how many years

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\(^{13}\) Algar observes that this tradition is absent from the Shī‘ī collections, though one does run across the occasional list of Shī‘ī renewers (“The Centennial Renewer,” p. 292 n. 3).


\(^{15}\) Landau-Tasseron, “Cyclical Reform,” p. 80.

\(^{16}\) Algar, “The Centennial Renewer,” p. 293.

\(^{17}\) Landau-Tasseron, “Cyclical Reform,” p. 80. See also al-Suyūṭī, al-Taḥadduth, p. 227.
the community had left before the coming of the Mahdī. Al-Suyūṭī devotes a sizeable section of his Tanbi’ā to this question, chronicling all of the trials and disasters that the community has faced at the turn of each century. Some of the disasters listed include plagues, political and doctrinal corruption, invasions by foreign powers such as the Mongols and the Franks, and of course the deterioration of scholarship in general leading to a dangerous scarcity of mujtahids. He argues in accordance with Ibn ‘Asākir’s interpretation that, since the trial (miḥna) affects the whole community, the mission of the renewer must also be of universal benefit. As is so often the case, al-Suyūṭī’s remarks are “double-voiced” in response to critics who would argue that the imminent apocalypse and arrival of the Mahdī eclipses the need for a ninth mujaddid.


The Ahl al-Bayt Factor

A variant of the same tradition reads: “God will send to this community at the turn of every century a man from my family [min ahl baytī] to renew their religion for them.” The mention of the Prophet’s family strengthens the case for the first two renewers, ‘Umar ibn ‘Abd al-Azīz (d. 101/720) and Muḥammad ibn Idrīs al-Shāfi‘i (d. 204/820) but complicates the matter for later mujaddids who could not claim such descent. This issue occasioned some creative interpretations of who could be considered rightfully to be from the Prophet’s family. For example, Tāj al-Dīn al-Subkī (d. 773/1371) in his famous biographical dictionary, al-Ṭabaqāt al-shāfi‘iyya, acknowledges that it is more difficult to speak of a mujaddid after the second century who fits this
criterion, but explains that most of the renewers are from the Shāfi‘ī legal school and were sent to fulfill the task of strengthening the school at the turn of every century.\textsuperscript{21} Al-Subkī suggests that being a Shāfi‘ī scholar and working in the interests of the school amounts to the same function as claiming descent from the Prophet’s family. While medieval jurists like al-Subkī tried to explain away the \textit{ahl al-bayt} factor or modify it to suit their own polemical purposes, this aspect of the \textit{tajdīd} genre was never completely forgotten and would resurface later in connection to ideas about the emergence of the Mahdī.\textsuperscript{22}

Soundness of the Tradition

The great authorities on \textit{ḥadīth} criticism, al-Ḥākim al-Nīsābūrī (d. 405/1014) and Ibn Ḥajar al-‘Asqalānī (d. 852/1449) evaluate the \textit{mujaddid} tradition as sound based on the reliability of its transmitters as well as on statements attributed to Ibn Shihāb al-Zuhrī (d. 124/742) and Aḥmad ibn Ḥanbal (d. 241/855). Ibn Ḥajar, for instance, notes that al-Zuhrī preceded Ibn Ḥanbal in affirming that ‘Umar was the \textit{mujaddid} for the first century, which to him indicates that the tradition was known already in the first century, thus strengthening its authority.\textsuperscript{23} Al-Suyūṭī records several different statements by Ibn Ḥanbal, all affirming ‘Umar’s status and praising al-Shāfi‘ī as the renewer at the turn of the second century.

\textsuperscript{22} Algar, “The Centennial Renower,” p. 295. A sizeable section of al-Suyūṭī’s \textit{Tanbi‘a} deals with the \textit{ahl al-bayt} factor (see: pp. 34-45). Al-Suyūṭī even hints at one point that his own genealogy includes a possible connection to the Prophet’s family (p. 67).
\textsuperscript{23} Al-Suyūṭī, \textit{al-Tahadduth}, p. 216.
Of course, it is prudent to consider these statements with some degree of skepticism. First, although Ibn Ḥanbal was certainly familiar with al-Shāfi‘ī and his work, and “despite the abundance in the biographies linking the two, it does not seem that they were well acquainted.”

At a time when orthodoxy and innovation had yet to be fully defined, it is safe to say that al-Shāfi‘ī and Ibn Ḥanbal were not always in agreement and in fact differed considerably in their legal methodologies. Indeed, Ibn Ḥanbal has even been cast as critical of al-Shāfi‘ī’s use of opinion (ra’y) in his works. Also, the mujaddid tradition as a concept was not regularly cited by Muslim scholars until much later, becoming more frequent during the 5th/11th century. It is therefore possible that Ibn Ḥanbal’s endorsement of al-Shāfi‘ī reflects a need on the part of later scholars both to validate al-Shāfi‘ī as an orthodox mujaddid as well as to render greater authority and legitimacy to the Shāfi‘ī school in general.

Polemical Implications of the Tradition

It is clear that pro-Sunnī, pro-Shāfi‘ī and pro-Ash’arī polemics played a key role in the development of the tajdīd genre prior to the time of al-Suyūṭī. One of the fundamental functions of the mujaddid is to promote correct and proper practice (sunna) and to eradicate heresy and dangerous innovations (bid’a). One might even say that during the 4th/10th and 5th/11th centuries and beyond the device of naming a mujaddid for the turn of each century acted as a kind of proxy in the larger theological and doctrinal debates occupying legal scholars. Landau-Tasseron, for example, notes that “the mere

names of the *mujaddidūn* served as an argument in the Sunnite polemics against the Muʿtazila.”

Two sources that al-Suyūṭī cites regarding the *mujaddid* are Tāj al-Dīn al-Subkī’s *Ṭabaqāt* and Abū al-Qāsim ibn ‘Asākir’s (d. 571/1153) *Tabyīn kadhib al-muftarī ‘alā Abū al-Ḥasan al-Ashʿarī*, both of which have been identified by George Makdisi as “Ashʿarite propaganda.”

Al-Suyūṭī quotes extensively from al-Subkī but the reference to Ibn ‘Asākir is contained within a long quotation from a source that al-Suyūṭī is not able to identify but which Sartain has traced to Badr al-Dīn al-Ahdal’s (d. 855/1451) *al-Risāla al-mardīyya fī nuṣrat madhhab al-Ashʿariyya*. Al-Ahdal notes that Ibn ‘Asākir, for example, prefers Ashʿarī as the *mujaddid* for the third century over Ibn Surayj (d. 306/918) as well as Abū Bakr al-Bāqillānī (d. 403/1013) who, in spite of being a Mālikī jurist and not a Shāfiʿī like the majority of the renewers, was nevertheless a strong supporter of Ashʿarī theology.

Makdisi speaks of a broader struggle within Sunnī Islamic thought starting around the 5th/11th century in Baghdad and Khurāsān and later moving towards Damascus that went beyond a simple clash of Ashʿarī and Muʿtazilī theological schools. Instead, he describes a conflict within the Shāfiʿī school itself between rationalist and traditionalist forces as Ashʿarism started to take hold. This infiltration of Ashʿarism into the Shāfiʿī school was not as smooth as later pro-Ashʿarī sources (like al-Subkī) suggest, but rather

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“proved for the Ashʿarites a very hard nut to crack.” This debate played into another controversy within the ranks of Shāfiʿī scholars and beyond about the role of rationalist kalām in the Islamic sciences versus the primacy of ḥadīth in which the renowned Abū Ḥāmid al-Ghazālī (d. 505/1111) played a key role. Interestingly, al-Ghazālī is overwhelmingly recognized by Shāfiʿī sources as the mujaddid for the fifth century A.H. Remnants of these discussions were still alive in the scholarly community during al-Suyūṭī’s time, forcing him to situate his own claims to be a mujtahid and mujaddid within this highly sensitive arena.

The Importance of al-Ghazālī

Al-Ghazālī is also significant in the history of the development of the tajdīd genre because he is the only scholar before al-Suyūṭī to claim the rank for himself (in addition to having it conferred upon him by others). Naturally, he does so in a suitably indirect and humble fashion. In al-Ghazālī’s “spiritual autobiography,” al-Munqidh min al-ḍalāl, he reflects upon his decision to return to teaching after an eleven-year absence. He explains that his return in the year 499 A.H. was pre-ordained by God because God promised to revive (bi-ḥiyā’) His religion at the turn of every century.

There are a number of noteworthy sentiments contained within al-Ghazālī’s statements. First, it has been observed that al-Ghazālī’s use of the term iḥyā’ may reflect a deliberate choice on his part in order to draw a connection with his own masterpiece,
It is clear from the passage in question that al-Ghazālī saw his own task in terms of imparting knowledge (‘ilm), not in the pursuit of glory but in the interests of reforming himself first and then others. Also, al-Ghazālī is not the last to use the term ḫlāh in relation to reform and renewal, though the term would come to take on meanings and significance for reformers in later Islamic thought that al-Ghazālī could not have anticipated. Finally, al-Ghazālī is careful to characterize his decision to return to teaching not as a personal one made on the basis of practical or mundane considerations, but as one that was ordained by God and then communicated to him by righteous persons who had in turn come to the idea through recurring dreams and visions.

Thus, al-Ghazālī provides three different justifications for his return and desire to implement a revivification and reform of the religious sciences: the will of God, the favorable opinion of his contemporaries, and instruction through dreams. Al-Ghazālī’s interpretation of the tajdīd genre would find resonance not only with al-Suyūṭī but also with reformers after him, particularly those inclined towards Sufism. It remains a matter for debate, however, how aware al-Ghazālī was of the mujaddid tradition at the end of the 5th/11th century that had yet to be fully developed. Lazarus-Yafeh, for instance, writes: “although al-Ghazālī considered himself destined to be a messenger of religious renewal, and therefore wrote this book [the Iḥyā’], there is no indication that he believed that this was the special task of a specific person at the end of every century – a conviction that was subsequently consolidated in Islam.”

38 Al-Ghazālī, al-Munqidh, pp. 190-191.
40 Al-Ghazālī, al-Munqidh, p. 190.
Still, for al-Ghazālī, the assertion paid off in the sense that he was recognized quite decisively as the most influential Shāfi‘ī scholar of his generation, whereas for other mujaddids the process was not resolved so neatly and “no formal method of appointing a mujaddid ever evolved.”\(^\text{42}\) This ambiguity in the historical process of identifying mujaddids has given rise to some debate in the secondary literature. For example, Goldziher in his classic article asserts: “The mujaddid was to be recognized not through a majority of votes in authoritative circles; rather he would owe this distinction to his popularity and, as we have noted, to the vox populi, on which no influence could generally have been exerted and certainly, in most cases, not until after the death of the person recognized as the regenerator would there arise a general manifestation of this.”\(^\text{43}\) Landau-Tasseron disputes the notion that a general consensus was the determining factor but insists rather that the claim must first be made and “it depended on ijmā‘ whether or not it was accepted.”\(^\text{44}\) Landau-Tasseron also points out that the claim was generally put forward by a person’s disciples or by a small circle of students, often during their master’s lifetime.\(^\text{45}\) Al-Suyūṭī elected to take his cue from al-Ghazālī and “did not wait for public opinion but with due (false) modesty expressed the hope that God had chosen him to be the ninth mujaddid.”\(^\text{46}\)

Rhyming Lists of Mujaddids

One popular method of naming scholars as mujaddids before al-Suyūṭī was by composing lists, often in poetic form. Such lists appealed to the tendency in medieval

\(^{42}\) Landau-Tasseron, “Cyclical Reform,” p. 86.
\(^{43}\) Goldziher, “Ignaz Goldziher on al-Suyūṭī,” p. 81.
\(^{44}\) Landau-Tasseron, “Cyclical Reform,” p. 86. See also Friedmann, Prophecy Continuous, p. 97.
\(^{45}\) Landau-Tasseron, “Cyclical Reform,” p. 88.
\(^{46}\) Landau-Tasseron, “Cyclical Reform,” p. 87.
literature to produce texts that were easy to memorize and to communicate orally across several generations. They also helped to codify past learning and to build on it as later scholars contributed verses and added to the record. One of the earliest lists of preferred restorers was that of Ibn ʿAsākir (d. 571/1153) in his previously mentioned pro-Ashʿarī polemic. Tāj al-Dīn al-Subkī is again instrumental in bringing together previous lists, explaining any discrepancies or disagreements concerning some of the candidates and including new names – all in one long poem in his Ṭabaqāt.\footnote{Al-Subkī, al-Ṭabaqāt al-shāfiʿiyya, vol. 1, p. 203.}

Al-Suyūṭī uses al-Subkī’s text as a starting point for his listing, presenting a slightly abridged version in his own work.\footnote{Al-Suyūṭī, al-Taḥadduth, pp. 217-221.  Al-Suyūṭī also composed his own rhyming list of mujaddids entitled Tuhfat al-muhtadīn bi-akhbār al-mujaddīn. The poem can be found in Muḥammad Shams al-Ḥaqq al-ʿAzīmābādī, ʿAwn al-maʿbūd fī sharḥ Sunan Abī Dāwūd, (Medina: al-Maktaba al-Salafiyya, 1969), vol. 11, pp. 393-394.  Al-Suyūṭī’s Urjūza (as it is also called) appears at the end of his Tanbiʿa (pp. 74-75).} The quotation from al-Subkī and other supporting evidence brings al-Suyūṭī’s account up to the seventh mujaddid, Ibn Daqīq al-ʿĪd. The next long quotation is from Zayn al-Dīn al-ʿIrāqī, who adds some alternate names for previous centuries and suggests that the eighth renewer could be the Mahdī, since the Muslim community is already starting to see signs of the last days such as the disappearance of outstanding scholars.\footnote{Al-Suyūṭī, al-Taḥadduth, pp. 221-224.} Al-Suyūṭī’s clinching argument is from the scholar that he is unable to identify in the autobiography, Badr al-Dīn al-Ahdal. Al-Ahdal is crucial to al-Suyūṭī’s narrative because, coming a generation after al-ʿIrāqī, he is able to attest to the fact that al-ʿIrāqī’s prediction has not come to pass and that “it is possible that there could still be a ninth at the turn of the ninth century that we are in currently and that the Mahdī or ʿĪsā ibn Maryam could [come] in the tenth century at the
end of the [millennial] cycle and the Arabic numeration.”50 This introduction sets the stage for the final statement in al-Suyūṭī’s chapter in the autobiography in which he claims that not only is a ninth mujaddid a possibility, but he hopes to be that person.

**Tajdīd and al-Suyūṭī**

Al-Suyūṭī’s major contribution to Islamic scholarship in general is based on his extraordinary ability to gather vast amounts of information and to synthesize it in such a way that it is accessible to later generations who may not possess the same encyclopedic scope as that of their predecessors. Al-Suyūṭī’s consolidating efforts were by no means mindless collections of data but represented a selective skill on the part of the author that was of direct benefit to his students as much as it was indirectly self-serving. The concept of tajdīd offers a valuable case study of al-Suyūṭī’s role as a scholar both as he imagined it and expressed it pragmatically through his writings as well as how this role was interpreted by his contemporaries and by later generations. It is characteristic of al-Suyūṭī that very often the two aspects were in conflict and the tajdīd debate is no exception.

The secondary literature seems to agree on the idea that, regardless of the original context or purposes of the mujaddid tradition in medieval Islam, by al-Suyūṭī’s time the rank had more or less become an honorary title bestowed on the person who was thought to be the most outstanding scholar of his age in terms of adherence to the Sunna, rejection of bid’a, and of the benefit derived from his works. For example, Lazarus-Yafeh concludes that al-Suyūṭī “used the word as a term of praise for himself and others, and in

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this sense it has been used up to the present day.” Friedmann summarizes al-Suyūṭī’s role as consolidator: “al-Suyūṭī also assembled the traditions relevant to the issue, and his works are the chief source for the history of the mujaddidūn until the beginning of the tenth century of the Islamic era.” While correct in a sense, these assessments risk underrating al-Suyūṭī’s contribution to the concept of tajdīd in particular and also to the larger picture of Islamic renewal and reform more generally.

The Concept of Genre

I would submit that one way to think about al-Suyūṭī’s role in the sphere of Islamic reform is to examine the way in which his work facilitated the formation of a “tajdīd genre.” To clarify, by ‘genre’ I do not mean a literary genre in the restricted sense, but rather a concept of genre as formulated by the semiotician and literary critic, Mikhail Bakhtin. Particularly in his later work on the novel and Dostoevsky, Bakhtin opened up the concept of genre beyond a formal Aristotelian categorization of literary types to encompass what he refers to as “speech genres.”

Speech genres, according to Bakhtin, are a means by which a producer of written or spoken discourse organizes and expresses “utterances,” which serve as the basic units of any discourse. Examples of speech genres could include lines of dialogue in everyday speech, commentary, scientific analysis, or lyrical genres. A novel, for example, is

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52 Friedmann, Prophecy Continuous, p. 98.
53 Of course, Bakhtin himself was strongly influenced by his predecessors and contemporaries in Russian Formalist literary circles. For a brief discussion of his thought in context and its influence on later theorists, see David Duff (ed.), Modern Genre Theory (Harlow, U.K.: Pearson Education Limited, 2000), pp. 10-11.
classified as a complex secondary genre because it is a collection of different interlocking speech genres. Utterances have a sociological aspect in the sense that they are created in a particular social and cultural context and in reference to past and future utterances. Therefore, no utterance can be said to exist in a vacuum but is inherently “dialogic” in response to other utterances.\(^{55}\)

Bakhtin adds a historical understanding to the concept of genres by emphasizing the fact that they accumulate and build up over time. The eminent translators and interpreters of Bakhtin’s thought, Gary Saul Morson and Caryl Emerson, put it this way: “Genres are a residue of past behavior, an accretion that shapes, guides, and constrains future behavior.”\(^{56}\) The process of genre formation occurs naturally but not at random. Genres carry with them potential meanings that the successful artist is able to unlock or exploit in “unforeseeable circumstances.”\(^{57}\) Or, in other words:

Genres provide a specific field for future activity, and such activity is never just an ‘application,’ ‘instantiation,’ or repetition of a pattern. Genres carry generalizable resources of particular events; but specific actions or utterances must use those resources to accomplish new purposes in each unrepeatable milieu. Each utterance, each use of genre, demands real work; beginning with the given, something different must be created.\(^{58}\)

Dostoevsky serves as an example of a great novelist who was able both to tap into the past resources of the genre and to “create potentials for the future.”\(^{59}\) Another example that Bakhtin uses is Shakespeare who, during his own Elizabethan epoch, was not yet the great Shakespeare that we know today. Shakespeare’s greatness is not simply a result of

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\(^{55}\) Bakhtin, *Speech Genres*, p. 69.


\(^{57}\) Morson and Emerson, *Mikhail Bakhtin*, p. 286.

\(^{58}\) Morson and Emerson, *Mikhail Bakhtin*, p. 291.

“modernization and distortion” by later generations; rather, Shakespeare “has grown because of that which actually has been and continues to be found in his works, but which neither he himself nor his contemporaries could consciously perceive and evaluate in the context of the culture of their epoch.”

In order to be considered ‘great,’ a work has to be able to transcend its original context while still being firmly grounded in the speech genres, forms, plots, and mythologies of the past. These elements constitute the ‘bricks’ that an artist like Shakespeare uses to construct a great work. Once formed, the work only gains in meaning over time until it is able to break free of its epoch and cross into what Bakhtin calls “great time.”

Another metaphor that Bakhtin uses is that of a great work as a tree with roots extending into the distant past; after centuries of preparation, for the artist “it is merely a matter of picking the fruit that is ripe after a lengthy and complex process of maturation.”

The “Problem of Articulation”

The social historian Robert Wuthnow describes a similar process in his study of the discourse, ideologies and social structures that brought about such enormous societal transformations as the Protestant Reformation, the Enlightenment and the development of European socialism. In order to be successful, reformers like Martin Luther, for example, had to shape their discourse in such a way that it would “articulate with its social

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60 Bakhtin, “Response to a Question from the Novy Mir Editorial Staff” in Speech Genres and Other Late Essays, p. 4.
61 Bakhtin, “Response to a Question,” p. 4.
62 Bakhtin, “Response to a Question,” p. 4.
environment and to disarticulate from this environment at the same time.”

Wuthnow describes the “enigmatic” and seemingly paradoxical relationship of great works of art and literature (such as Luther’s sermons) to their social environment as a “problem of articulation.” As he explains, great works “draw resources, insights, and inspiration from that environment: they reflect it, speak to it, and make themselves relevant to it. And yet they also remain autonomous enough from their social environment to acquire a broader, even universal and timeless appeal.” In the case of discourse that challenges the status quo, it can even be powerful enough under the right conditions to motivate large numbers of people to form a social movement.

Significance for al-Suyūṭī

Although Bakhtin’s genre theory can seem rather obscure and overly complicated in its expression, I believe that it offers significant insight and indeed a degree of poignancy to the question of al-Suyūṭī’s persona and legacy as a scholar. Perhaps the ultimate irony of al-Suyūṭī’s life was that he succeeded as a mujaddid in spite of himself. As a prolific scholar and champion of the Sunna who died shortly after the turn of the ninth century, al-Suyūṭī would seem to fulfill at least the bare requirements of the mujaddid. However, rather than letting his accomplishments speak for themselves, al-Suyūṭī insisted on making grand claims in such a way that was derogatory and insulting

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64 Wuthnow, Communities of Discourse, p. 3.
65 Wuthnow, Communities of Discourse, p. 4. For a helpful survey of studies relating to discursive framing processes and their relationship to the formation and operation of social movements, see: Robert D. Benford and David A. Snow, “Framing Processes and Social Movements: An Overview and Assessment,” Annual Review of Sociology 26 (2000), pp. 611-639.
to his fellow scholars. As Sartain describes the conflict: “It is probable that subsequent generations have derived far greater profit from al-Suyūṭī’s many works than from the works of any other scholar who died at the beginning of the tenth century. But he was certainly not recognized as mujaddid by his contemporaries, who found his conceit intolerable, even in an age in which self-praise was not unusual.”

Although al-Suyūṭī may have failed to convince the majority of his contemporaries of his status as a mujtahid and mujaddid, his works and conceptualization of tajdīd transcended his particular context and became building blocks in the hands of later reformers seeking to articulate their own interpretation of tajdīd suitable to their own time periods.

Al-Suyūṭī’s ultimate success can be attributed to the fact that his writings inspired the continuation of a “tajdīd genre” in reformist Islam. He did this by carefully collecting evidence to support the contention that true ijtiḥād and renewal were still possible in later generations and indeed necessary in order to save the community from intellectual and spiritual torpor. Al-Suyūṭī’s works dealing with ijtiḥād and tajdīd draw on certain themes that find resonance and continuity in the thought of later reformers. These themes represent the resources of the genre that al-Suyūṭī helps to make available to future generations, even as he strives to promote his personal agenda.

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67 Of course, these themes existed long before al-Suyūṭī. Fazlur Rahman, for instance, traces the reformist impulse back to the early schisms and heresies that plagued Umayyad rule and “generated theological, legal, and spiritual rationales” that “have become so entrenched and permanently settled that they have provided an unexceptionable and unique framework for whatever future elaboration, alteration, development, and reform may take place or had been attempted during the last thirteen centuries.” See his Revival and Reform in Islam (Oxford, U.K.: Oneworld Publications, 2000), p. 32.
Themes of Reform

In his work on the history of the concepts of *tajdīd* and *islāḥ* in Islamic thought, Voll argues that though the terms may have changed in meaning over time, “there has been a continuity of mood that lies behind the changing specifics of meaning.” Voll identifies some of these continuing themes as including: a return to the Qur’ān and Sunna, an affirmation of the need for *ijtihād* and a rejection of *taqlīd*, and an assertion of the authenticity of the Qur’ān as opposed to the incorporation of non-Islamic practices into the religion.

The purpose of reform is therefore not to improve upon the religion itself but to “implement an already existing ideal.” Reformers do not assume that the religion is in any way flawed, but they do react to what they see as heretical interpretations within the community or unacceptable innovations that deviate from the ideal behavior of the earlier generations (*salaf*). In order to be effective, these reforms must respond to the particular needs of the society in which they arise, which means that the reformer must be in tune with the demands of the present (and future), even as he or she is thoroughly conversant with the accomplishments and resources of the past.

The Ongoing Need for *Ijtihād*

Al-Suyūṭī’s career represents a crucial point of transition in Islamic history, a time both of political unrest and apocalyptic anxiety as well as a period in which scholars had come to doubt that non-derivative, independent reasoning in keeping with the standard of preceding generations was at all possible. Al-Suyūṭī responds to such skeptics in his

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68 John Voll, “Renewal and Reform,” p. 32.
69 Voll, “Renewal and Reform,” p. 35.
70 Voll, “Renewal and Reform,” p. 34.
short treatise, *Taqrīr al-istinād fī tafsīr al-ijtihād*, and then again in his long treatise, *al-Radd ‘alā man akhlad ilā al-arḍ wa-jahal ann al-ijtihād fī kull ‘aṣr farḍ*, stating adamantly that *ijtihād* is a collective duty in every generation and thus it is not permitted to have a period without a *mujtahid.*

While the discussion in *al-Radd* consists mostly of a lengthy set of quotations from authorities from each of the four schools supporting this opinion, al-Suyūṭī is much more pointed in his *Taqrīr* saying that if someone were to make the same statement today he would be torn apart by his colleagues; he would be regarded as haughty and his words would probably be counted as senseless drivel. He goes on to say that the reason for their doubt is that none of them are able to claim the rank of *mujtahid* for themselves since the best that they can do is become proficient in one field at the most.

Similar to the rank of *mujaddid*, al-Suyūṭī considers it perfectly justifiable to claim the rank of *mujtahid* for oneself. In fact, al-Suyūṭī’s self-declaration of *mujtahid* and *mujaddid* status constitutes one of his most important contributions to the *tajdīd* genre. He argues in *al-Radd* as well as in his *Taqrīr* that the scholar knows when he has met the conditions of *ijtihād* and is able to extract rulings from the sources using the appropriate tools and methods. The public can only become aware of this, however, if he declares it for himself. If he is known by his associates to be pious and of good character then there is no reason to doubt the honesty of his claim.

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In listing the sciences necessary for attaining the rank of *mujtahid*, al-Suyūṭī makes a point of putting arithmetic as a lower priority, really only relevant to the *mujtahid* working on calculating inheritances (he admits elsewhere that arithmetic is his weakest subject).\(^{75}\) As for logic, al-Suyūṭī states his distaste for the discipline in several different contexts and discounts it completely as a prerequisite for *ijtihād*.\(^{76}\) Of course, mastery of the sciences of the Qurān and Sunna are the number one and number two priorities with legal theory and methodology (*uṣūl al-fiqh*) coming third.\(^{77}\)

When stating his claims to the rank of *mujtahid*, al-Suyūṭī quickly runs into a terminology problem. Exactly what type of *mujtahid* does he imagine himself to be? Since truly independent *ijtihād* has not existed since the time of the four *imāms* (eponyms of the legal schools), he must settle for the next highest rank, which for al-Suyūṭī is the *mujtahid muṭlaq muntasib*, or the unrestricted *mujtahid* affiliated with one of the schools. This is in contrast to the restricted *mujtahid*, or *mujtahid muqayyad*, who is not qualified to draw directly from the sources of law and must therefore base his rulings on precedent within the school. Al-Suyūṭī objects to what he sees as the common error of equating the independent *mujtahid* (*mujtahid mustaqill*) with the unrestricted or absolute *mujtahid* (*mujṭlaq*).\(^{78}\)

\(^{75}\) Al-Suyūṭī, *Taqrīr*, p. 49. Al-Suyūṭī discusses his own struggles with arithmetic in *al-Taḥadduth*, p. 204. He goes on to disparage arithmetic as a subject and quotes Ibn Taymiyya to the effect that anything that could be accomplished using the terminology of arithmetic could just as easily be done in a more authentically Arabic manner.

\(^{76}\) Al-Suyūṭī, *Taqrīr*, p. 50 and *al-Radd*, pp. 151-152.


\(^{78}\) Al-Suyūṭī, *al-Radd*, p. 98. Sartain refers to the distinction between the two types in *Jalāl al-Dīn al-Suyūṭī*, p. 64 and Hallaq also notes the confusion surrounding the terms in “Was the Gate of Ijtihād Closed?” p. 25 and p. 27.
Furthermore, al-Suyūṭī states in his *Tanbi‘a* that no one, to his knowledge, has reached the level of unrestricted *ijtihād* at the current time except for him. ⁷⁹ Although al-Suyūṭī’s assertion is couched in terms of a lament decrying the marked decrease in qualified *mujtahids*, it should be noted that it was not in al-Suyūṭī’s interest as an aspiring *mujtahid* and *mujaddid* to open up the practice of *ijtihād* to the less qualified; it is for such people that *taqlīd* exists and is so prevalent. Indeed, al-Suyūṭī comes across as less than tactful when “he states that he has striven to free his contemporaries from the sin of not fulfilling the collective duty (*farḍ kifāyah*) of *ijtihād* by himself discharging this duty on their behalf.”⁸⁰

Al-Suyūṭī’s arguments are “double-voiced” in the Bakhtinian sense in that his words carry a “twofold direction” – they are “directed both toward the referential object of speech, as in ordinary discourse, and toward another’s discourse, toward someone else’s speech.”⁸¹ In the case of “hidden polemic,” the speaker directs a “polemical blow” at the other’s discourse even if not stated explicitly; here “the other’s words are treated antagonistically, and this antagonism, no less than the very topic being discussed, is what determines the author’s discourse.”⁸² Al-Suyūṭī’s discourse responds to two basic groups of opponents: “one of which denies the possibility of the existence of any *mujtahid*, and the second of which admits the possibility, but attempts to show that al-Suyūṭī is unworthy of the rank.”⁸³

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⁸² Bakhtin, *Dostoevsky’s Poetics*, p. 195.
Al-Suyūṭī reserves his most vituperative remarks for the latter group. For example, in his treatise arguing that the end times will not occur before the turn of the millennium, al-Suyūṭī takes time to set the tone: “whoever puffs himself up and claims to rival me and to deny my claims to *ijtihād* and peerless scholarship at the turn of this century and asserts that he opposes me and mobilizes others against me is one that, if he and they were to be assembled on a single plateau and I blew on them one breath, they would become like scattered dust.”\(^84\) Although the treatise is not explicitly about *ijtihād*, it is clear that the same enemies who questioned al-Suyūṭī’s claims to be a *mujtahid* and *mujaddid* tried to use the expectation of the apocalypse as further justification for their doubt, thus prompting him to lash out with yet another treatise to prove the point.

Attack by al-Sakhāwī

One of al-Suyūṭī’s most famous enemies was the *ḥadīth* scholar and historian, Muḥammad ibn ‘Abd al-Raḥmān al-Sakhāwī (d. 902/1497). The fact that al-Sakhāwī’s very specific and personal criticisms of al-Suyūṭī in his biographical dictionary *al-Ḍaw’ al-lāmi’* have been preserved while other attacks have not makes him one of al-Suyūṭī’s more notorious rivals, even though he was by no means alone in his sentiments.\(^85\) Al-Sakhāwī’s accusations range from somewhat substantive (he lists titles that al-Suyūṭī was

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\(^85\) Sartain, *Jalāl al-Dīn al-Suyūṭī*, pp. 72-73. Sartain’s work contains a detailed analysis of al-Suyūṭī’s many disputes, so it is unnecessary to repeat all of them here. Al-Sakhāwī represents just one example of contemporary scholarly opinion of al-Suyūṭī.

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supposed to have “stolen” from Ibn Ḥajar and others) to rather petty (he mentions that even al-Suyūṭī’s mother used to complain about him).86

When it comes to al-Suyūṭī’s claims of *ijtihād*, al-Sakhāwī’s rebuttal is more personal than ideological; he quotes al-Suyūṭī’s claim to have achieved mastery of the sciences and to have fulfilled the requirements for *ijtihād* only to suggest that his level of accomplishment was not as high as he claimed. The fact that arithmetic is his poorest subject further proves al-Suyūṭī’s stupidity, according to al-Sakhāwī, since arithmetic is a science of intelligence.87 He notes that people rose up against al-Suyūṭī after his claims became known and repeats an accusation that al-Suyūṭī’s claims of *ijtihād* were meant to disguise his own errors.88

As with Dostoevsky and the novel, *tajdīd* as a generic concept existed before al-Suyūṭī and continued to exist after al-Suyūṭī. What made al-Suyūṭī a successful *mujaddid*, in the end, was that the significance of his works was not confined to the narrow-minded squabbles of jealous fifteenth-century scholars. Had this been the case, the significance of al-Suyūṭī’s works would have died along with him. In the next section, I will look at the ways in which early modern and modern reformers of the eighteenth, nineteenth and twentieth centuries articulated their own visions of religious renewal and reform in accordance with the needs and realities of their distinct social and intellectual environments. For these reformers, al-Suyūṭī’s conceptualizations of *ijtihād* and *tajdīd* as expressed in his works (and those of other exemplary classical scholars such

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as al-Ghazālī and Ibn Taymiyya) provided the resources from which new examples of the genre could be constructed.

**Tajdīd After al-Suyūṭī**

Al-Suyūṭī did receive support both before and after his death from his students, including Shams al-Dīn al-Dāwūdī, ‘Abd al-Qādir al-Shādīlī, and Ibn Iyās (all of whom wrote complementary biographies of their teacher). Later, they were joined by other biographers such as ‘Abd al-Wahhāb al-Sha‘rānī (d. 973/1565), Najm al-Dīn al-Ghazzī (d. 1061/1651) and Ibn al-‘Imād (d. 1089/1679). Al-Suyūṭī’s claims to greatness were not fully vindicated, however, until years later. This vindication came in the form of later scholars who sought to emulate al-Suyūṭī as a polymath and defender of the Sunna and of *ijtihād* as opposed to *taqlīd* – in other words, to draw on the resources of the *tajdīd* genre that al-Suyūṭī had helped to make available to future generations.

Defense by al-Shawkānī

One such defender of *ijtihād* and enemy of *taqlīd* is the Zaydī Yemeni scholar, Muḥammad al-Shawkānī (d. 1255/1839). Hallaq says of Shawkānī that his “writings seem to represent not only the classical Sunnī trend in favor of *ijtihād* but also the highest stage to which the controversy between advocates of *ijtihād* and *taqlīd* had reached.”

Shawkānī joins a distinguished cadre of pro-*ijtihād hadīth* scholars in Yemen, including Ibn al-Amīr al-Ṣaḥābīnī (d. 1182/1768) and Murtaḍā al-Zabīdī (d. 1205/1791). Shawkānī aligned himself with the Traditionists of Yemen to argue for the continued practice of *ijtihād* in an age in which *taqlīd* had become the norm.

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89 Hallaq, “Ijtihād,” p. 32.
Bernard Haykel in his work on Shawkānī notes that he “drew inspiration from the
great Sunnī-Shāfi‘ī scholars of Egypt, such as Ibn Ḥajar al-ʿAsqalānī and Jalāl al-Dīn al-
Suyūṭī, as well as Ḥanbalī ones, like Taqī al-Dīn Aḥmad Ibn Taymiyya” and Ibn Qayyim
al-Jawziyya.90 Indeed, Haykel goes on to say: “the argument can be made that Shawkānī
modeled himself on them, seeking to emulate the polymathic nature of their works, and
perhaps wanted to be considered as having their stature as first-rank scholars and
‘renovators.’”91 While it is clear from his works that Shawkānī considered himself to be
a mujtahid, his mujaddid status was left to his students to argue based on the scholar’s
legacy as opposed to any direct claims from Shawkānī to that effect.92

Haykel suggests that Shawkānī identified with other scholars who were attacked
because of their claims to ijtihād. One such scholar was al-Suyūṭī, for whom Shawkānī
concocts a stirring defense in his biographical dictionary, al-Badr al-ṭāli‘ bi-maḥāsin man
ba‘d al-qarn al-sābi’. In the introduction to the book, Shawkānī states his purpose to
counter those who claim that mujtahids are not to be found after the 6th/12th century or the
7th/13th century.93 It is ignorant to claim that God would restrict grace to one era over
others, thus depriving some ages of the means to interpret the Qur’ān and Sunna; rather,
it is God’s intention to preserve the religion, not just in books, but by providing scholars
to explain the faith to people in every age and according to every need.94 Shawkānī
hopes to show through the entries in his biographical dictionary of scholars after the
7th/13th century that God has been just as generous to the successors (khalaf) as to the

90 Bernard Haykel, Revival and Reform in Islam: The Legacy of Muḥammad al-Shawkānī
91 Haykel, Revival and Reform in Islam, pp. 86-87.
92 Haykel, Revival and Reform in Islam, p. 83.
93 Muḥammad al-Shawkānī, al-Badr al-ṭāli‘ bi-maḥāsin man ba‘d al-qarn al-sābi’, vol. 1 (Cairo:
94 Shawkānī, al-Badr al-ṭāli‘, pp. 2-3.
predecessors (salaf), to the extent that some later scholars were so accomplished in different fields of knowledge that they had few rivals from earlier generations.\textsuperscript{95}

Shawkānī begins his biographical entry of al-Suyūṭī with a short description of his studies and praise of his compositions in every accepted field (excluding, presumably, non-accepted fields like logic) that have spread throughout the nations like the flow of rivers.\textsuperscript{96} In spite of his achievements, though, al-Suyūṭī did not escape envy and rejection on account of his virtues, one example being al-Sakhāwī whose biography of al-Suyūṭī amounts to abuse and slander.\textsuperscript{97} Shawkānī then proceeds to quote extensively from al-Sakhāwī’s insulting biography so that he can refute the allegations point by point.

First, Shawkānī insists that al-Suyūṭī’s difficulties with arithmetic are not indicative of a lack of intelligence, since arithmetic rarely reveals one’s intelligence (Shawkānī’s contemporaries being a case in point).\textsuperscript{98} Also, it is normal procedure to compile and collect the work of previous scholars without implying that one is passing it off as one’s own work. Furthermore, al-Suyūṭī never claimed to have written over three hundred volumes, so it is no surprise that some of his works are no more than a page in length. In short, Shawkānī writes that the state of competition that existed between the two scholars makes al-Sakhāwī’s evidence unacceptable.\textsuperscript{99}

Shawkānī concludes with a statement that is clearly “double-voiced” in its implications. It is both a comment on al-Suyūṭī’s situation as well as an expression of the author’s own frustration with those in his age who mock and denigrate scholars like al-

\textsuperscript{95} Shawkānī, \textit{al-Badr al-ţāli‘}, p. 3.
\textsuperscript{96} Shawkānī, \textit{al-Badr al-ţāli‘}, p. 328.
\textsuperscript{97} Shawkānī, \textit{al-Badr al-ţāli‘}, pp. 328-329.
\textsuperscript{98} Shawkānī, \textit{al-Badr al-ţāli‘}, p. 333.
Suyūṭī and Ibn Taymiyya for claiming to have attained the level of *ijtihād*. Al-Suyūṭī was vindicated (as Shawkānī hopes to be) because God has raised him up after his death to receive the praise that he deserves but that was denied by his contemporaries, allowing his works to benefit people across the nations.

The Spread of al-Suyūṭī’s Works

Even though al-Suyūṭī was no world traveler during his lifetime, he achieved “international” influence through the spread of his works. Al-Suyūṭī boasts in his autobiography that his works made their way to the Maghrib, Yemen and the Ḥijāz, and even as far as Takrūr in West Africa. In his *Tanbi’ā*, he expands the list to include also the Levant (*al-Shām*), Anatolia (*al-Rūm*), Persia (*al-ʿAjam*), India, Abyssinia and beyond. Al-Suyūṭī describes how he met with students traveling in caravans from Takrūr who would then transport copies of his works back with them to be studied and copied further by their colleagues. In addition to this direct contact, al-Suyūṭī also carried on an indirect correspondence with scholars and ruling authorities in West Africa and issued fatwās in response to their questions. In another incident, al-Suyūṭī recounts

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102 See: Sartain, *Jalāl al-Dīn al-Suyūṭī*, pp. 46-52. For al-Suyūṭī’s account of how students copied and transported his works across the Islamic world, see *al-Tahadduth*, pp. 155-159.
how the Sultan of India sent a representative to purchase some of al-Suyūṭī’s works and take them back with him. The minister from India even visited al-Suyūṭī in Rawḍa, where the scholar engaged him in intellectual discussion, treated him to a recitation, and wrote out an *ijāza* certificate for him. Accompanying the exchange of works amongst al-Suyūṭī’s network of scholars was a flow of ideas, including those themes that characterize the *tajdīd* genre.

Evolution of the *Tajdīd* Genre

Although it is difficult to generalize about *mujaddids* after al-Suyūṭī in their quite disparate contexts, it is possible to make some observations about how the *tajdīd* genre changed over time. First, the tradition lost its connection to Egyptian Shāfī‘ī scholars to encompass a much greater range of geographical areas across the Islamic world. India became an important center for renewers, beginning with Shaykh Aḥmad Sirhindī (d. 1034/1624) who declared himself the *mujaddid-i alf-i thānī*, or Renewer of the Second Millennium. The terminology is significant because it shows a shift in Sirhindī’s thought away from the usual centennial chronology in favor of a millennial one.

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and R.W. Johnson (Cambridge, U.K.: Cambridge University Press, 1970), pp. 7-33. Hunwick suggests that al-Lamtūnī may have been a local reformer who sought backing from al-Suyūṭī in his condemnation of corrupt practices, particularly those of the ‘establishment’ scholars. Hunwick notes that many of the issues that come up in al-Lamtūnī’s questions recur in the works of the West African reformer Usmanu dan Fodio three hundred years later. Alvi emphasizes the Sufi aspects of Shaykh Sirhindī’s *mujaddid* status. For more on Sirhindī, see: Yohanan Friedmann, *Shaykh Ahmad Sirhindī: An Outline of his Thought and a Study of his Image in the Eyes of Posterity* (Montreal, McGill University: Institute of Islamic Studies, 1971).
While al-Suyūṭī had already hinted at a connection between the need for a *mujaddid* and the arrival of the Mahdī, after the turn of the Islamic millennium would-be renewers increasingly defined their role in relation to the Mahdī. Al-Suyūṭī’s assertion that the Mahdī’s coming would not occur for at least another five hundred years or so after the turn of the millennium provided justification for restorers of the faith in the 10th/16th century and beyond. For example, the chronicler of Aḥmad Ibrahīm al-Ghāzī’s conquest of Abyssinia in the 10th/16th century cites al-Suyūṭī’s opinion that the Islamic nation will outlast one thousand years as license for renewal and propagation of the faith:

> He [the Prophet], may God bless him and grant him salvation, had indicated who would be the restorers for this nation of the authority of religion. Some there will be among them who will renew it by spreading knowledge in faraway countries; others will renew it by striking schismatics and hypocrites with their swords. Others again will renew it by good administration and knowledge born of experience.\(^{107}\)

In addition to the chronological aspect, it is significant that the Abyssinian chronicler refers to both renewal through scholarship as well as by force of arms. The idea of *jihād* and political uprising as vehicles for religious renewal represents a new interpretation of the *tajdīd* tradition that occurred after the time of al-Suyūṭī. Although by al-Suyūṭī’s time the term *mujaddid* had come to be used as an honorary title of sorts to designate the most outstanding scholar of the age, it was understood that the scholar must benefit the community through his works and the knowledge that students derive from his writings. However, this agency on the part of the reformer did not translate into political action.

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during al-Suyūṭī’s era. As Algar explains: “it is a strictly modern (not to say modernist) expansion on the concept of tajdīd to have it include political activism as a defining element.”

Usumanu dan Fodio (d. 1232/1817) in West Africa, who claimed to be the mujaddid of the twelfth Islamic century, also saw himself as the last mujaddid before the appearance of the Mahdī and also saw jihād through force as part of his reformist mission. The concept of tajdīd as it developed in West Africa has a long history extending back to al-Suyūṭī’s time. Among the many works of al-Suyūṭī to achieve popularity in West Africa was his urjūza, a poem listing the mujaddids through the centuries, which scholars of the Kunta clan extended to include West African mujaddids for the tenth and eleventh century A.H. In his Tanbīh al-Ikhwān ‘alā aḥwāl arḍ al-Sudān, Dan Fodio quotes in full a letter written by al-Suyūṭī addressing the Kings and Sultans of Takrūr warning them against injustices and condemning superstitious or un-Islamic practices such as sacrificing slaves in order to cure illness. By arguing that certain kingdoms within the region of central Sudan are outside of the nation of believers

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108 Although al-Suyūṭī did not see his reformist mission as explicitly political, he did consider it part of his duty as a righteous scholar to resist worldly gain and especially the corrupting favors of the political authorities. For more on al-Suyūṭī’s complex and often fraught relationship with the Mamluk state, see Chapter Two.


111 Al-Suyūṭī’s rhyming list of mujaddids also appears under the title Tuhfat al-muhtadin bi-akhbār al-mujaddidīn.

112 Cl. Gilliot, R.C. Repp, K.A. Nizami, M.B. Hooker, Chang-Kuan Lin, and J.O. Hunwick, “Ulama” in the Encyclopaedia of Islam, Second Edition (Brill Online, 2010). The authors note that this flow of learning and ideas went both ways as the works of West African scholars spread to the Arab world and even as far as India.

and that their practices deviate from true Sharī‘a, Dan Fodio seeks to legitimize taking up arms against them.

Continuing Calls for Ijtihād

The eighteenth and nineteenth centuries witnessed a proliferation of revivalist movements and ideologies across the Islamic world, from Muḥammad ibn ‘Abd al-Wahhāb (d. 1201/1787) in Arabia to Shāh Walī Allāh (d. 1175/1762) in India to Usmanu dan Fodio (or ‘Uthmān ibn Fūdī) in West Africa and Muḥammad ‘Alī al-Sanūsī (d. 1275/1859) in North Africa.114 While historians tend to agree that a common language of Islamic revival and of the continuing need for ijtihād as opposed to taqlīd seems to characterize these diverse movements, it could be misleading to group them into one ideological category.115 Of course, a cursory examination of these different movements cannot hope to do justice to their individual significance. Suffice it to say, though, that while revivalist movements tend to draw on a common language or framework of tajdīd, they do so in ways suited to their quite separate contexts and in a manner that the fifteenth-century Jalāl al-Dīn al-Suyūṭī could never have imagined. It is in precisely this way that Bakhtin says that a genre operates.

114 Rudolph Peters examines the opinions of the “fundamentalist” authors Shāh Walī Allāh, Ḥamd ibn Nāṣir ibn Mu’ammar (d. 1810) of Arabia, Muḥammad al-Shawkānī and Muḥammad ibn ‘Alī al-Sanūsī on the necessities of ijtihād and dangers of taqlīd arguing that, while the views of these authors are clearly not identical, a systematic investigation of their writings and the quotations embedded in them could yield valuable insight as to the “continuity of the fundamentalist tradition.” See: Rudolph Peters, “Idjtihād and Taqlīd in 18th and 19th Century Islam,” Die Welt des Islams 20: 3-4 (1980), p. 144.

115 Ahmad Dallal, for example, cautions against lumping together such distinct figures and intellectual trends in one category on the grounds that “no unifying themes can be identified that warrant grouping these ideologies, and by extension the movements they initiated, under one rubric.” See: Ahmad Dallal, “The Origins and Objectives of Islamic Revivalist Thought, 1750-1850,” Journal of the American Oriental Society 113: 3 (1993), pp. 358-359. Certainly, the terms ‘Wahhabī’ and even ‘salafi’ have proven to be particularly problematic in characterizing a wide range of pre-modern and modern Islamic movements.
Of interest here is how eighteenth and nineteenth century reformers continue to draw on the semantic and thematic resources of the *tajdīd* genre to support their own projects of reform. For example, Rudolph Peters points out that Shāh Wālī Allāh and al-Sanūsī both adopt “lock, stock and barrel” the classification of *mujtahids* championed by al-Nawawī (d. 676/1277), al-Suyūṭī, and other Shāfi‘īs that distinguishes between the absolute independent *mujtahid* (*mujtahid muṭlaq mustaqill*) and the absolute *mujtahid* affiliated with one of the legal schools (*mujtahid muṭlaq muntasib*). Shāh Wālī Allāh makes this point of distinction in his treatise *al-Inṣāf fī bayān sabab al-ikhtilāf*, quoting as evidence al-Suyūṭī’s commentary on al-Shirāzī’s *Tanbīh*. Meanwhile, al-Sanūsī explains the difference between the independent and affiliated *mujtahid muṭlaq* in his *Īqāẓ al-wasnān fī l-‘amal bi-l-ḥadīth wa-l-Qur‘ān* including a lengthy quotation from al-Suyūṭī’s *Radd*. Peters explains the benefit of this typology to scholars hoping to engage in unrestricted *ijtihād* after the formation of the legal schools: “this theory recognized the possibility that there were still absolute *mudjtahids*, without however compromising the superiority of the founders of the *madhhab*.”

Perhaps the only truly unifying factor in the ideologies of the eighteenth and nineteenth century reformers is that they all see a problem affecting the Islamic

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118 Muhammad ibn ‘Alī al-Sanūsī, *Īqāẓ al-wasnān fī l-‘amal bi-l-ḥadīth wa-l-Qur‘ān* (Beirut: Dār al-Kitāb al-Lubnānī, 1968), pp. 62-63. Al-Sanūsī includes al-Suyūṭī in a list of later scholars who claimed the rank of *ijtihād* (p. 74). Later, al-Sanūsī quotes from al-Suyūṭī’s *Radd* again saying that the Ḥanbalīs were of the opinion that it was not permitted to have an age devoid of a *mujtahid* (p. 82).

120 Peters, “Idjtihād and Taqlīd,” p. 137.
community and choose to respond to the problem by drawing on resources from within the Islamic tradition rather than searching for solutions outside of the tradition. The problem in question was not yet the West or secularism, which would come to loom large in later modernist thought. Rather, the problem could be found in several different arenas: incorrect belief, dangerously innovative or deviant practice, intellectual disagreement and disunity, or even political tyranny and oppression. The same answer in these diverse cases was to return to the sources and to seek a solution in the revival of Islamic ideals. The solution, in turn, could take various forms: intellectual synthesis and reconciliation, purification of the creed through a rejection of all forms of unbelief, as well as social and political action to promote the needs of the community. The concept of ājīdīd appealed to reformers who saw the need to restore an ideal past at a time when Islamic doctrine and practices had become stagnant and corrupted.

Revival of the Hadīth Sciences

The greatest threat to the integrity of the Islamic community in al-Suyūṭī’s view was a decline in scholarship, particularly in the sciences most needed for ājīdīd, such as the sciences of Qur’ān and hadīth. Al-Suyūṭī saw it as part of his mission as one of the few remaining mujtahids and as the renewer of his age to save the traditional sciences from the onslaught of ignorance and degradation. Al-Suyūṭī faced this task by doing what he did best – carefully compiling, preserving and recording knowledge before it could be lost.122

122 Sartain, Jalāl al-Dīn al-Suyūṭī, p. 115.
A fitting example of al-Suyūṭī’s need to preserve knowledge is his vast compendia of Prophetic traditions, Ḥadīth. Although unfinished at the time of his death, al-Suyūṭī’s Jāmiʿ al-kabīr (as it is also known) was intended “to contain every single Prophetic tradition known, with a decision on its reliability.” This “mega-collection,” as Jonathan Brown calls it, apparently gave rise to the “widespread belief that if a hadith was not in the Jāmiʿ al-kabīr it did not exist.” The shorter version of al-Suyūṭī’s Jāmiʿ al-jawāmiʿ, his Jāmiʿ al-ṣaghīr, has also proven enormously popular among Muslim scholars, especially those who are not primarily specialists in hadīth studies. For example, the Moroccan hadīth expert, ‘Abd Allāh ibn al-Ṣiddīq al-Ghumārī (d. 1960) says somewhat derisively of Rashīd Riḍā that his knowledge of hadīth consisted of looking them up in al-Jāmiʿ al-ṣaghīr or in one of the Six Books (al-kutub al-sitta).

Al-Suyūṭī’s insistence on the primacy of Qurʾān and hadīth studies as an integral part of his vocation as a mujtahid and mujaddid of Islam in some ways anticipated an effort on the part of the early modern reformers to revive the study of hadīth as an important aspect of the tajdīd genre. With the rise of the eighteenth-century revivalist movements came a parallel resurgence of interest in hadīth studies that also extended to diverse areas of the Islamic world. Brown notes that this renewed focus on hadīth served the common interest of the reformers “of bypassing the rigid institutions of the Late

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125 Brown, Hadith, p. 59.
126 ‘Abd Allāh ibn al-Ṣiddīq al-Ghumārī, Sabīl al-tawfiq fi tarjamat ‘Ābd Allāh ibn al-Ṣiddīq (Cairo: al-Dār al-Bayḍā’ li-l-Ṭibā’ī, 1990), p. 58. Al-Ghumārī’s autobiography in many ways echoes al-Suyūṭī’s al-Tahadduth bi-ni’mat Allāh, especially the section in which he discusses his own scholarly achievements (pp. 53-55). Thanks to Jonathan A.C. Brown for alerting me to this reference and for lending me a copy of Sabīl al-tawfiq.
Sunni Tradition to revive the pure Islam of the Prophet’s time and purge it of later
cultural or intellectual impurities.”127 Like the revivalist movements, the locus of ḥadīth
studies shifted away from Iran, Egypt and Syria towards the increasingly “dynamic
reformist regions of the Hejaz, Yemen, India, and eventually Morocco.”128 Although
well after al-Suyūṭī’s time, the feeling on the part of the early modern reformers that “the
Muslim community had lost its moorings in the legacy of the Prophet” and that it “had
been led astray by heretical accretions in theology and worship as well as by chauvinistic
loyalty to the schools of law,”129 is a sentiment that al-Suyūṭī would whole-heartedly
endorse.

The Role of Sufism

This renewed drive to promote correct Sunna and rid the tradition of heretical
encroachments meant that later reformers very often had to address the complex role of
Sufism and Sufi practices in their ideological endeavors. The increased prominence of
Sufi brotherhoods prompted reformers to include issues relating to Sufism as part of the
tajdīd genre, to varying degrees of intensity. On one level, the issue was to reconcile
orthodox Sunnī belief with doctrines that had come to be associated with some types of
mystical thought, such as monism (waḥdat al-wujūd), a belief in the infusion of the
divine spirit into the human body (ḥulūl), as well as the unity of the divine and human
natures (ittiḥād).130 Secondly, reformers were often forced to confront the issue of Sufi

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130 See Sartain, Jalāl al-Dīn al-Suyūṭī, p. 36.
ritual in terms of correct and forbidden practice, which involved such questions as visiting tombs, entering into ecstatic trances, seeking saintly intercession and the like.

Not surprisingly, al-Suyūṭī was uncompromisingly orthodox on issues of belief and imagined the true Sufi to be one who adhered to the primacy of the Sunna and to the rules of Sharī’ah. This approach fits with al-Suyūṭī’s idea of the mujaddid as an advocate of Sunna and an enemy of unlawful innovation. As Sartain notes: “al-Suyūṭī’s emphasis on the careful observance of the sharī‘ah, with his rejection of all the more extreme Ṣūfī doctrines, is very much in keeping with his attitude towards logic and the philosophical sciences.” Even so, al-Suyūṭī was known to issue interesting responses to some of the specific concerns of his community, such as his arguments for the Sufi hierarchy of saints and his fatwā allowing the celebration of mawlüds. He even took sides in the debate about the accusation of heresy regarding Ibn ‘Arabī and Ibn al-Fārîḍ, both of whom al-Suyūṭī chooses to defend. While remaining a strong supporter of the Sunna, al-Suyūṭī does not exhibit the same concern over aspects of Sufi ritual that would come to preoccupy someone like Ibn ‘Abd al-Wahhāb a few centuries later.

There appears to be some conceptual overlap between the hierarchy of scholars possessing certain gifts and types of knowledge in Sufism and the tradition of naming a centennial (or millennial) mujaddid. It was not unusual for a potential mujaddid to

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131 Sartain, Jalāl al-Dīn al-Suyūṭī, p. 36.
132 Sartain, Jalāl al-Dīn al-Suyūṭī, pp. 36-37.
133 Alexander Knysh warns against a simplistic Eurocentric classification of Islamic thought based on the broad categories of “orthodoxy” and “heresy” or “heterodoxy.” He points out that an individual’s worldview was never monolithic but was more of a patchwork of different ideas, creeds and doctrines. Furthermore, definitions of “orthodoxy” varied according to region and time period, resulting in a “blend of ‘orthodox’ ideas” that was often “rather unstable and subject to a drastic change as a result of redressing the political and social balance of powers.” See: Knysh, “Orthodoxy’ and ‘Heresy’ in Medieval Islam: An Essay in Reassessment,” The Muslim World 83:1 (1993), pp. 48-67.
receive special guidance through visions or through the symbolic bestowal of a Sufi cloak or robe. In Algar’s study of the Turkish renewer, Bediüzzaman Said Nursi (d. 1960) he emphasizes the gift of a cloak as a symbol of continuity between him and another renewer, Mawlānā Khālid, one hundred years earlier.\footnote{134 Algar, “The Centennial Renewer,” p. 303.} Similar reports surround the appointment of Sirhindī and Shāh Wāfī Allāh, both of whom were said to have received a cloak as a symbol of their mujaddid status.\footnote{135 Algar, “The Centennial Renewer,” p. 300.} In this fluid environment, it is understandable that titles like mujaddid and mahdī were often conflated with Sufi-related honorifics like murshid and qutb.\footnote{136 Algar, “The Centennial Renewer,” p. 310.}

*Tajdīd* in the Modern World

By the time that modernist reformers like Jamāl al-Dīn al-Afghānī (1838-1897), Muḥammad `Abduh (1849-1905), and Rashīd Riḍā (1865-1935) entered the picture, the Islamic world was faced with a new set of problems that demanded a novel type of response from scholars and activists. The main concern for this group of reformers came to be the perceived decline of the Islamic world and rise of the West, resulting in the imposition of Western culture and values (not to mention military, political and economic force) on Islamic societies. Reformers struggled with a desire to preserve the Islamic identity of their communities by proving that the tradition was compatible with modern scientific innovation and progress. They called for concrete action to improve their societies, such as education and language reform. At the same time, they resisted pressure to adopt all of the practices and ideas of the foreign powers that threatened to undermine religion as a basis for transformation in society.
I would like to focus briefly on Rashīd Riḍā as an example primarily because he was more overt than other modernist reformers in appealing to the *mujaddid* tradition as justification and inspiration for his project of religious revival and renewal. For Riḍā, the *tajdīd* framework acts as a kind of template that the individual author can adapt to the purposes of his own context. The framework provides a vital link to the cumulative authority of past tradition while still granting flexibility in its articulation. Like al-Suyūṭī and the writers of old, Riḍā uses the device of naming *mujaddids* both to confer honor on those whom he sees as his ideological and spiritual mentors as well as to suggest that their legacy must be continued through his own reform efforts and those of others within his circle.

Riḍā’s treatment of the *tajdīd* genre in many ways embodies his *salafī* ideals. Bypassing much of the Shāfi‘ī-dominated discourse, Riḍā goes back to the *hadīth* reports and composes his own list of renewers based on his own ideological priorities.\(^\text{137}\) In addition to abandoning the *madhhab* allegiance that characterized much of the medieval discourse on *tajdīd*, Riḍā also drops the chronological requirement that the reformer’s death date be close to the turn of the century. Riḍā’s list starts with ‘Umar ibn ‘Abd al-‘Azīz as the *mujaddid* for the second century A.H. but then omits al-Shāfi‘ī and names instead Aḥmad ibn Ḥanbal as the next renewer. Abū al-Ḥasan al-Ash‘arī is fourth followed by al-Ghazālī. It is after al-Ghazālī that Riḍā’s list starts to diverge considerably from the classical Shāfi‘ī lists. Riḍā praises the Ṣāhirī jurist Ibn Ḥazm as

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the mujaddid for the sixth century, followed by the Ḥanbalī Ibn Taymiyya and his student, Ibn al-Qayyim.\textsuperscript{138}

Riḍā acknowledges the shift in reformist thought after the eighth century A.H. to diverse regions of the Islamic world by identifying a subset of “regional” mujaddids whose renewal efforts were confined to a certain area or people, including the Andalusian Mālikī jurist Abū Ishāq al-Shāṭibī (d. 790/1388),\textsuperscript{139} Shāh Walī Allāh and Muḥammad Ṣiddīq Khān in India, Muḥammad ibn Pīr ‘Alī al-Birkawī (d. 981/1573) in Turkey, Ibn ‘Ābd al-Wahhāb in Najd, and finally the Zaydī scholars Ṣāliḥ al-Maqbalī (d. 1108/1696), Ibn Ibrāhīm al-Wazīr (d. 840/1436), and al-Shawkānī (d. 1250/1832) in Yemen. Riḍā singles out Shawkānī’s works in ḥadīth studies (\textit{al-Nayl al-awṭār fī sharḥ muntaqā al-akhbār}) and fiqh (\textit{Irshād al-fuḥūl fī taḥqīq al-ḥaqq min ‘ilm al-usūl}) and the ḥadīth commentary of Ibn Ḥajar al-‘Asqalānī (d. 852/1448), \textit{Fatḥ al-bārī}, as indispensable to scholars in the current age.\textsuperscript{140}

Of course, naming scholars that one admires in the form of a list of mujaddids and actually using their ideas to construct a project of reform are two very different matters.

For instance, in an insightful article dealing with Riḍā’s appropriation and

\textsuperscript{138} Riḍā’s inclusion of Ibn Taymiyya (d. 728/1328) and Ibn Qayyim al-Jawziyya (d. 751/1349) is symptomatic of the regard accorded to these two figures by modern salafī reformers. For example, the well-known Islamist thinker Mawlānā Mawdūdī (d. 1979) praises Ibn Taymiyya as a mujaddid in \textit{A Short History of the Revivalist Movement in Islam}, trans. Al-Ash’arī, Second Edition (Lahore: Islamic Publications, 1972), pp. 63-69. Ibn Taymiyya is not included as a possible mujaddid in the Shāfi‘i-dominated medieval lists as far as I have seen. Al-Suyūṭī does not mention Ibn Taymiyya in his discussion of \textit{tajdīd}, much as he respects him as a fellow mujtahid. The evolving reputation of Ibn Taymiyya as well as that of his student, Ibn al-Qayyim, deserves more extensive research.

\textsuperscript{139} Al-Shāṭibī’s views on the objectives of the law (\textit{maqāṣid al-Sharī‘a}) and on the public good (\textit{maslaḥa}) make him particularly appealing to modern reformers like Riḍā. For a detailed analysis of al-Shāṭibī’s legal theories, see: Wael B. Hallaq, \textit{A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh} (Cambridge, U.K.: Cambridge University Press, 1997), pp. 162-206 and Felicitas Opwis, \textit{Maṣlaḥa and the Purpose of the Law: Islamic Discourse on Legal Change from the 4\textsuperscript{th}/10\textsuperscript{th} to 8\textsuperscript{th}/14\textsuperscript{th} Century} (Leiden: Brill, 2010), pp. 247-320.

\textsuperscript{140} Riḍā, \textit{Tafsīr al-Manār}, vol. 7, p. 145.
“reconstruction” of Shawkānī’s opinions regarding the use of legal analogy (qiyās).

Dallal observes that “there is a basic tension between Riḍā’s celebration of these reformers and his own ideas and program of reform. Riḍā’s general assertions regarding the standing of his reformers inevitably runs into problems as soon as he proceeds to discuss their ideas in greater detail and specificity.”\textsuperscript{141} Dallal argues, for example, that Riḍā cast Shawkānī as being more receptive to qiyās than he actually was in his writings. Riḍā is no exception to the general rule that the “requisites of renewal” upon which the mujaddids are selected “have been defined retrospectively; as such, they are better representations of the perceived needs of the age of the examiner than of the period under examination.”\textsuperscript{142}

In a speech entitled, \textit{al-Tajdīd wa-l-tajaddud wa-l-mujaddidūn} (“Renewal, Renewing, and Renewers”), Riḍā outlines further his interpretation of the \textit{tajdīd} genre.\textsuperscript{143} Riḍā distinguishes between true renewal, which involves “excellence in knowledge or wisdom, guidance or virtue, or in revealing unknown truths” and “initiating practices useful to the umma in preserving its true nature, developing its wealth, or restoring its glory” and false renewers, whose idea of reform means adopting the trappings of Western civilization in service to a secular idea of ‘progress.”\textsuperscript{144} A model for this misguided kind of renewal is Ottoman Turkey with its rapid secularization, while Japan represents a country that is able to advance economically, militarily and politically while preserving its “religion, culture, laws and language, and its national characteristics of dress, good


\textsuperscript{142} Dallal, “Appropriating the Past,” p. 327.

\textsuperscript{143} The speech was published originally in several issues of Riḍā’s journal, \textit{al-Manār}. The translation by Emad Eldin Shahin can be found in Modernist Islam, 1840-1940: A Sourcebook, ed. Charles Kurzman (New York: Oxford University Press, 2002), pp. 77-85.

\textsuperscript{144} Riḍā, “Renewal,” p. 79.
traditions, and values."¹⁴⁵ For Riḍā, the key to real renewal is striking a balance between the old and the new, reaping the benefits of both but rejecting innovations that are at odds with religion.

Riḍā quotes the famous *mujaddid* tradition twice during the course of the speech, saying that al-Suyūṭī testified to the correctness of the report in his *ḥadīth* collection, *al-Jāmiʻ al-ṣaghīr*.¹⁴⁶ However, it is clear that Riḍa’s interpretation of the *tajdīd* concept differs in some key ways from that of the medieval scholars. First, *tajdīd* is not confined to religious renewal, but also entails social, political, scientific and civic reforms. Additionally, while Riḍā speaks of the Islamic *umma*, he also takes into account the reality of the modern nation-state and its concerns, issues that did not occupy the medieval scholars as part of their project of *tajdīd*. It is significant that Riḍā opens up the field of *tajdīd* to encompass multiple reform efforts by people in different occupations, such as scientists and legislators. While the original wording of the tradition does allow for multiple renewers in a centennial cycle, Riḍā does not try to argue this point exegetically but assumes it to be the case, much as the medieval renewers tended to assume that the *mujaddid* had to be a religious scholar (and even a *mujtahid*).¹⁴⁷

**Conclusion**

In order for the *tajdīd* genre to survive, it had to be adaptable and responsive to the needs of different ages and generations. As Bakhtin would put it, a great work

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¹⁴⁵ Riḍā, “Renewal,” p. 78.
¹⁴⁷ Riḍā’s idea of multiple *mujaddids* in different occupations is not entirely without historical precedent. Al-Suyūṭī cites several authorities who allow for more than one *mujaddid* per cycle and includes a long quotation from Ibn al-Athīr to the effect that legal scholars are not the only ones that can benefit the religion; political leaders, *muhaddithūn*, Qur’ān reciters, preachers, and ascetics are all benefactors in their own ways. See: al-Suyūṭī, *al-Tanbiʻa*, pp. 54-55.
“cannot live in future centuries without having somehow absorbed past centuries as well. If it had belonged entirely to today (that is, were a product only of its own time) and not a continuation of the past or essentially related to the past, it could not live in the future. Everything that belongs only to the present dies along with the present.”

Al-Suyūṭī’s career marks an important transition in the history of the debate in Islamic scholarship surrounding the concepts of *ijtihād* and *tajdīd*. Hallaq observes that al-Suyūṭī “can be seen as the last major Sunnī *mujtahid* in a nine-century chain of *mujtahids*” since after his lifetime fewer and fewer jurists were in a position to claim the level of *ijtihād*.

It was certainly the case that by al-Suyūṭī’s time the golden age of classical *ijtihād* was coming to an end, a deterioration of which al-Suyūṭī and his contemporaries were well aware. However, while al-Suyūṭī does mark the end of one era, he also anticipates the beginning of another. Al-Suyūṭī’s claims of *mujtahid* and *mujaddid* status could easily have died with the dismissal and mockery of rivals like al-Sakhāwī, but they did not do so. Instead, al-Suyūṭī’s formulation of the *mujaddid* tradition became an important point of reference for future generations as they sought to mold the *tajdīd* framework to suit their own purposes, while his works continue to stand as testament to his relevance and reputation.

Al-Suyūṭī’s ability to distill the ideas of past scholars into a format that was adaptable by later scholars as diverse as Shawkānī, Dan Fodio and Riḍā in their own efforts to encourage *ijtihād* and religious revival ensured that his thought not only survived but even took on a life of its own. Pre-modern and modern reformers could use the legitimacy of the tradition as established by al-Suyūṭī and others as a starting point for

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148 Bakhtin, *Speech Genres and Other Late Essays*, p. 4.
149 Hallaq, “*Ijtihād*,” p. 29.
their own projects of renewal, reinterpreting the tradition to meet the various needs of their specific circumstances. It is fitting that with the survival of the *tajdīd* genre, al-Suyūṭī was at last able to find the personal vindication and regeneration that so eluded him during his own lifetime.
CHAPTER FIVE

Al-Suyūṭī’s Legal Precepts

Introduction

In recent years, a resurgence of interest in the genre of Islamic legal scholarship known as qawā‘id has put this field and its related subfields at the center of new and vital work in jurisprudence (fiqh). The study of legal precepts and their application to cases in the substantive law within the framework of the legal schools has gained prominence as a key part of the curricula within Islamic institutions of higher learning and knowledge of these precepts is incumbent on the aspiring jurist. One observer notes what amounts to an “explosion” of works on legal precepts in Arabic and other Near Eastern languages in the last few decades. Western critical scholarship has yet to catch up with this trend, leaving a sizeable gap for future scholars to fill in our understanding of legal precepts in both classical and modern Arabic literature.

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1 Legal precepts are short pithy statements (or questions) that sum up areas of the law. These statements perform a number of discourse functions for the jurist, which I will explore in this chapter. Legal precepts are sometimes also referred to as ‘rules’ or ‘principles’ or ‘maxims.’ In this chapter, I will refer to precepts and maxims interchangeably, but will avoid rules and principles to escape confusion between the different Arabic terms.


Historical Development of Legal Precepts

Scholars differ on the question of when legal maxims first appeared in Islamic legal writing. Heinrichs suggests that jurists as early as the 4th/10th century had begun to identify general rules (then termed *uşūl* rather than *qawā‘id*) in works of substantive law (*furū‘*). It was not until the 7th/13th century, though, that the *qawā‘id* literature reached its zenith, a period which lasted through to the 10th/16th century. Jurists in each of the legal schools (*madhāhib*) worked to derive general principles that would help both to consolidate school doctrine and procedure and to aid the *mujtahid* within the *madhhab* seeking to apply the opinion of the school to new rulings. Scholars worked to identify the similarities (*ashbāh*) uniting cases and the differences (*furūq*) that produce different rulings in cases that appear similar. For the Mālikī school, Shihāb al-Dīn al-Qarāfī (d. 684/1285) did much to advance the *qawā‘id* genre during this earlier period, as did Ibn ‘Abd al-Salām (d. 660/1262) for the Shāfi‘īs. The 8th/14th century saw the rise of important works in *qawā‘id* under the title *al-Ashbāh wa-l-nazā‘ir*, including works by the Shāfi‘īs Tāj al-Dīn al-Subkī (d. 771/1370) and Ibn al-Wakīl (d. 716/1317), a trend that continued with al-Suyūṭī (d. 911/1505) and the Ḥanafī Ibn Nujaym (d. 970/1563).

For the Shāfi‘ī school of law, Jalāl al-Dīn al-Suyūṭī’s *al-Asbāh wa-l-nazā‘ir fī l-qawā‘id al-fiqhīyya* remains one of the core pre-modern works in the field. Together with his fatwās, al-Suyūṭī’s work in the area of *qawā‘id* constitutes a major part of his legacy as a legal scholar. Not only is his book still coming out in new editions today, it is also in regular use as a textbook for students in Islamic institutions of higher learning.

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6 Heinrichs, “‘Ḳawā‘id Fiḳhiyya.”
training to become the next generation of muftīs and legal scholars. Therefore, any study of al-Suyūṭī’s legal discourse would be remiss without a discussion of his work on legal precepts as one of the author’s primary contributions to Islamic legal thought.

The renewal of interest in legal precepts by teachers and researchers of Islamic law in the last few decades can be attributed to a number of factors. Put simply, legal precepts are useful to the jurist striving to interpret God’s law in context. With the waning importance of Islamic law as part of state legal systems, modern jurists struggle to maintain relevance and to achieve a delicate balance between preserving the spirit of the law as it has developed over the centuries while still allowing it to change and adapt to contemporary circumstances. Legal precepts therefore represent a powerful tool for jurists seeking to tap into the essence of substantive fiqh and to extract from it principles universal enough to meet the demands of the current day.

While some precepts do make direct reference in their wording to statements from the Qur’ān and hadīth, they can be described as “extratextual” in the sense that they are removed from the textual sources to some extent. Rather, precepts are formulated by jurists for jurists and their relevance lies in how they are used in legal discourse. Jurists derive precepts inductively from the body of the substantive law (unlike the deductive process of establishing a ratio legis [‘illa] for rulings based on an interpretation of the sources that is normally associated with legal theory methodology [uşūl al-fiqh]). Therefore, precepts are constructed by jurists for a purpose and in a particular context. Indeed, separated from their context, legal precepts become meaningless abstractions of doubtful utility.

7 Rabb, Doubt’s Benefit, p. 3.
Pragmatic Theory

For modern linguistic theory, legal precepts fit comfortably within the area known as pragmatics. Pragmatics is, roughly speaking, the study of speech acts in context. A speech act is an utterance produced by a speaker with a particular intention. This branch of linguistics assumes that utterances (units of discourse) are produced within a certain context and reflect the pragmatic goals of the speaker. It also assumes that contextual factors contribute to how a hearer infers meaning from an utterance outside of the semantic content of the utterance.

The field of pragmatics expanded considerably in the late 1960s with the work of the philosopher H.P. Grice, who examined the unspoken rules that govern conversation. Grice’s theory hinges on the idea that conversation is a “cooperative and purposive process” in which participants contribute according to agreed upon standards of quantity, quality, relation and manner.9 Any flouting of these conversational maxims results in an aberration (or, as Grice would say, an “implicature”) that demands an explanation. Very often, the apparent contradiction is resolved through knowledge external to the conversation itself. For instance, a statement that is clearly untrue (and thus flouting the maxim of quality) could be intended sarcastically. However, the listener would interpret the statement in such a manner only if he or she knew something about the personality and intentions of the speaker.

Grice’s maxims are useful in understanding how legal precepts work in terms of the specific discourse functions that they fulfill for the jurist. Legislative speech is

similar to conversation in that it conforms to certain guidelines and according to a set of assumptions and expectations. Legal language in general and maxims in particular have attracted attention by scholars seeking to justify the use of such devices pragmatically. M.B.W. Sinclair, for example, looks at statutes in light of Grice’s conventions to construct a set of pragmatic rules that apply specifically to statutory interpretation. As Sinclair explains, his work offers a theory of pragmatics that is “based on the assumption that legislatures act in a context, for a purpose, and within the requirements imposed by communication.”

Building off of Sinclair’s article, Geoffrey Miller puts forward a further interpretation of legal maxims using Grice’s conversational constraints as a model. Miller expands his analysis to include examples of maxims not just from American law, but also from the early Hindu, Christian, and Jewish traditions. However, Miller makes no mention of Islamic law and its highly developed system of legal precepts.

A Pragmatic Interpretation of Legal Precepts

In this chapter, I make an initial foray into a pragmatic interpretation of Islamic legal precepts. I argue that legal precepts perform specific discourse functions both in terms of their form and content. As such, they can be considered within the framework of pragmatic speech acts that fulfill objectives for the speaker within a certain context. I consider how the form and content of Islamic legal precepts contribute to their function. Keeping in mind Grice’s maxims of conversation, I examine the assumptions and expectations behind the operation of legal precepts as they derive meaning from context.

Also, I look at one precept, *al-ʿāda muḥakkama* (“custom has legal authority”), as an example of a concept that demands knowledge of context as an essential part of its function. Although the analysis focuses on al-Suyūṭī’s *al-Ashbāh wa-l-naẓāʿir*, it necessarily draws on other pre-modern and modern works within the *qawāʿid* genre as well. I investigate how al-Suyūṭī uses custom (within the framework of legal precepts) pragmatically both to resolve contradictions in the law and to interpret speech acts such as contracts and oaths. I suggest that al-Suyūṭī employs contradictory arguments to the strategic benefit of his own legal school. Finally, I argue that this effort by the jurist to negotiate a preferable outcome based on the realities of the context does, in fact, constitute a form of *ijtihād* within the bounds of the legal school. Al-Suyūṭī’s own authority as a *mujtahid* is thereby strengthened due to his ability to consolidate, organize, and manipulate a vast corpus of substantive law.

**Form**

Legal precepts bear some similarity to proverbs in terms of their formal structure. Like proverbs, maxims are “pithy full sentences embedded in discourse.” Also, like proverbs, they display certain formal features that play a role in their function as pragmatic speech acts. Lelia Gándara explains in the case of proverbs that they often contain qualities like lexical or morphological archaism, binary rhythmic structure

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13 Although maxims and proverbs share some formal features and discourse functions, they also differ in other aspects. Proverbs, as Gándara observes, tend to represent popular usage, whereas maxims tend to be more formal (“They That Sow the Wind,” p. 348). Thus, a politician, for example, might insert a proverb into his or her speech in order to appear connected to the populace, while maxims tend to be confined to legal and educational discourse.
("penny wise, pound foolish"), rhyme, assonance, alliteration or repetition. Examples of such formal features in Islamic legal maxims include al-tābiʿ tābiʿ ("the attachment follows") as well as the famous ḥadīth and legal precept, lā ḍarar wa-lā dirār ("no harm or retaliatory harm"), which uses two words from the same root. The root and pattern structure of the Arabic language as well as its propensity for assonance and parallel syntactic constructions facilitates the formation of catchy or memorable phrases.

Another common format for Arabic maxims is a binary opposition that indicates two options. One example of such a maxim is the general directive championed by the prominent jurist, ‘Īzz al-Dīn ibn ‘Abd al-Salām (d. 660/1262): jalb al-maṣāliḥ wa-dar’ al-mafāsid ("attaining benefits and averting harms"), where the verbal nouns jalb and dar’ are in opposition and the broken plurals maṣāliḥ and mafāsid are also in opposition.

Often, an opposition is put forward where one side of the equation is indicated as clearly preferable to the other and is thus given priority in the determination of a legal ruling. For instance, the precept iʿmāl al-kalām awlā min ihmālihi ("acting on a statement is better than omitting it") puts two verbal nouns of the same pattern (iʿmāl and ihmāl) in opposition, where the former is preferable to the latter.

These formal features of assonance, repetition and binary rhythmic structure yield the clear advantage of rendering the maxim simple to memorize and to repeat. As Gándara points out, the memorable nature of proverbs and maxims adds to their illocutionary force, "so much so that any proverbs used in the development of an argument are likely to be among the most easily recollected items." Therefore, this

15 Gándara, “They That Sow the Wind,” p. 349.
discussion leads me to identify the first discourse function of Islamic legal precepts in terms of form: *legal precepts aid memorization*.

This feature of legal precepts also adds to their convenience as a teaching tool. The importance of memorization in the traditional Islamic studies curriculum is well known and was certainly one of the main factors driving the collection of *ḥadīth* and the preservation of poetry (even from pre-Islamic times). It seems, though, that the late medieval era, particularly the 7th/13th-9th/15th centuries, marked a subtle change in the kind of material that was memorized for the purpose of teaching. This period, for instance, saw a rise in popularity of verse grammars, of which the *Alfiyya* of Ibn Mālik (d. 672/1273) is a prime example. Ibn Mālik’s work attempts to compress the essence of classical Arabic grammar into one thousand lines of verse. The *Alfiyya* quickly became a standard of the Islamic studies curriculum and continued to be a required text for generations of students as late as the nineteenth century. Like legal precepts, verse grammars sought to consolidate vast amounts of information and theoretical discussion into pithy memorable phrases. However, with the educational reforms of the nineteenth century, classical works like the *Alfiyya* were gradually phased out in favor of more modern grammar textbooks, whereas legal precepts have gained prominence as a mainstay of *fiqh* instruction in Islamic institutions such as Egypt’s al-Azhar.

In addition to their distinctive syntactic structure, legal precepts are also characterized by their brevity and abstraction. This formal feature of legal maxims has both positive and negative implications for their pragmatic function. On the one hand, the trenchant literary style of legal precepts and their “abstract and synoptic character”

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imbue them with a degree of inherent objectivity.\textsuperscript{17} In other words, \textit{legal precepts are presented as general truths}. As Gándara notes, this trait makes proverbs and maxims difficult to refute rhetorically, except with other proverbs.\textsuperscript{18} It also adds to their continuity, since, as Kamali observes, it “gives them a degree of versatility and timelessness that is not hampered by burdensome detail.”\textsuperscript{19}

However, it is easy to overestimate the truth value of legal precepts. In the context of the Islamic legal tradition, for instance, jurists tend to agree that maxims do not have the same authoritative level of certainty as other sources of law and can thus be considered only a probable indicator for a ruling that is non-binding to the jurist.\textsuperscript{20} While legal precepts may be presented as general, they are not universal in the sense that they allow for exceptions and particularization.\textsuperscript{21} Legal precepts may contribute to the formation of rulings, but they are not rulings in themselves. In this way, they are actually similar to the principles of pragmatics (such as Grice’s maxims), which, as Sinclair explains: “are not rules that bind their subjects as do, say, the rules of chemistry or mathematics. They are not invalidated by individual counter-examples, and they can even conflict with one another.”\textsuperscript{22}

\begin{footnotes}
\item[18] Gándara, “They That Sow the Wind,” p. 348.
\item[20] This is not always the case, however. Pre-modern jurists engaged in a lively debate about whether or not indicators based on inductive reasoning could yield certain knowledge. For example, Opwis shows how the Ḥanafi jurist, Najm al-Dīn al-Ṭūfī (d. 716/1316), gives preponderance to the precept of \textit{lā ḍarar wa-lā ḍirār} (“no harm or retaliatory harm”) and its corollary, the injunction to safeguard the public good (\textit{maslaha}), thus elevating the concept to the level of certainty as an indicator of legal rulings. See: Felicitas M. M. Opwis, \textit{Maslaha and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century} (Boston, Massachusetts: Brill Academic Publishers, 2010), pp. 209-216.
\end{footnotes}
On the other hand, it is also this sense of abstraction that has caused some to question the scope and relevance of legal maxims, particularly in the Western legal tradition. Indeed, both Sinclair and Miller frame their articles as responses to attacks on legal maxims by Karl Llewellyn and others. Llewellyn argues that maxims are indeterminate as canons of construction since for every maxim there is a counter-maxim supporting a contradictory interpretation. The implication is that, because maxims are so general and abstract, a judge can effectively use maxims as “mere conclusory explanations appended after the fact to justify results reached on other grounds.” When applied in an arbitrary manner or “diverted from their original function of standards for the decision of controversies,” maxims can become “vague high-sounding generalities, of no practical import, and may even serve to darken counsel and to retard the working out of a sound principle.” These criticisms are a good reminder that precepts divorced from their context lose much of their meaning.

Content

Taking a step back from the level of form, legal precepts also perform a number of important discourse functions on the broader level of content. Most of these functions are tied to the fact that “legal maxims represent a late development in the history of

23 Khaleel Mohammed points out that the fact that most legal maxims in the Western tradition are in Latin also makes them less accessible to contemporary jurists. See: Mohammed, “The Islamic Law Maxims,” p. 207.
Islamic jurisprudence.” Although writing on precepts has roots as early as the 4th/10th century, they did not become prevalent in Islamic legal literature until roughly two hundred years later, or not till after the 6th/12th century. The rise of precepts corresponds to a larger transition in legal thought from an era in which school doctrine was under formation to one in which consolidation and systematization were the primary goals. Therefore, legal precepts seek to manage an already existing vast corpus of Islamic jurisprudence. In other words, legal precepts consolidate information.

Sherman Jackson describes this function of legal maxims in terms of “legal scaffolding,” where “rather than abandon existing rules in favor of new interpretations from the sources, needed adjustments are sought through new divisions, classifications, distinctions, exceptions and expanding or restricting the scope of existing rules.”

Jackson emphasizes, however, that this process does not constitute a mere rehashing of previous thinking but leaves room for skill and positive innovation on the part of the jurist. In fact, he uses the development of the qawā‘id genres in Islamic jurisprudence to argue that following precedent (taqlīd) does not necessarily indicate a “decline to a more primitive stage of development,” but rather, “it is in this very process of legal scaffolding that a legal tradition reaches the height of innovative acumen.”

The discourse function of legal precepts and their role in the development of Islamic jurisprudence does not end with consolidation. Even more importantly, legal precepts provide a bridge between the substance of the law and the purposes of the law. Roscoe Pound explains that in an advanced legal tradition a transition takes place in

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30 Jackson, Islamic Law and the State, p. 99.
which jurists move from considering just the substance of the law as a body of rules and individual legal opinions to take on the spirit or intent behind the law.\textsuperscript{31} As the product of conscious reflection and inductive reasoning on the part of the jurist, legal precepts help to “bridge the gap between customary moral rules and ethical principles.”\textsuperscript{32}  

The close relationship between legal precepts and the purposes of the law (\textit{maqāṣid al-Sharī’a}) is key to understanding their significance not only during the age of consolidation in Islamic law but also their renewed popularity in modern scholarship. Kamali notes that the “renewed interest in legal maxims is also informed by a parallel revival of interest, among teachers and researchers of Sharī’a, in the \textit{maqāṣid al-Sharī’a}, goals and objectives of Islamic law.” For modern scholars, it is often the case that since “legal maxims bear close affinity to the \textit{maqāṣid}, they tend to provide an efficient entry into the understanding of the \textit{maqāṣid al-Sharī’a}.”\textsuperscript{33}  

This link between the substance of the law as it was forged by generations of jurists and the purposes and objectives behind the law is crucial both in establishing continuity with past precedent and in facilitating new legislation. Even in an age of \textit{taqlīd}, jurists worked tirelessly to solidify the doctrine of the legal school (\textit{madhhab}) and to extract greater theories and principles from the sources to guide current and future decisions. \textit{Qawā’id} and its various subgenres such as \textit{ashbāh wa-naẓā’ir} (the study of the similarities binding cases) and \textit{furūq} (the study of the differences producing separate outcomes in similar cases) represents an area in which the jurist can still practice independent reasoning (\textit{ijtihād}) in the post-formative period. As Heinrichs explains: “As

\begin{itemize}
\item \textsuperscript{31} Pound, “The Maxims of Equity,” p. 813.
\item \textsuperscript{32} Pound, “The Maxims of Equity,” p. 810.
\item \textsuperscript{33} Kamali, “Legal Maxims,” p. 78. Heinrichs also points out the overlap between the \textit{qawā’id} and \textit{maqāṣid} genres. See: “\textit{Qawā’id} as a Genre of Legal Literature,” p. 376.
\end{itemize}
opposed to full *ijtihād* which goes beyond the confines of the *madhāhib*, it is the structuring of the *furū* within a certain *madhhab* that the latter-day jurist tries to achieve.”

**Legal precepts help the jurist to extract new rulings** by acting as a kind of shortcut for the jurist, allowing him to examine groups of cases arranged around a common *‘illa* (or to establish the *‘illa* himself) without forcing him first to sift through vast amounts of raw data to determine the commonalities and differences before coming to a decision. It is this function of legal precepts that prompts the Ḥanafī jurist, Ibn Nujaym (d. 970/1563) to declare that the jurist can “rise to the level of *ijtihād* through them, if only as a jurisprudent (*wa-law fī l-fatwā*) [within the *madhhab*]”.

Indeed, during the 6th/12th and 7th/13th centuries when works on legal precepts began to emerge in larger numbers, *ijtihād* within the *madhhab* was effectively the only form of *ijtihād* available. As Jackson sums up the situation:

“Meanwhile, the appearance, between the 6th/12th and 7th/13th century, of works on legal precepts or so-called *qawā‘id* mark the beginning of an era during which, in treating unprecedented cases, judges and jurists retain access to the sources of law only through the lenses of their *mujtahid*-Imāms and other recognized ancient authorities. All of this stood as a confirmation of a new order, according to which not only was the judicial function restricted to choosing rules already deduced, but legal opinions themselves came ultimately to be judged not on the basis of their intrinsic quality but by whether or not they carried the endorsement of the *madhhab* as a whole.”

Interestingly, legal precepts as a tool for the jurist in forming new rulings may be losing some of their *taqlīd*-laden characteristics in the modern era. Kamali points out that, as in the case of the *maqāṣid*, modern jurists are increasingly turning to the *qawā‘id* to meet

36 Jackson, *Islamic Law and the State*, p. 79.
the demands of *ijtihād*. He asserts that legal maxims are not as burdened by the legacy of *taqlīd* as other areas of *fiqh* literature and “can thus be more readily utilised as aids in the renewal of *fiqh* and contemporary *ijtihād* (independent reasoning).”

To summarize from the previous sections on form and content, legal precepts perform a number of key discourse functions for the jurist. In pragmatic terms, these functions serve to bolster the use of legal precepts on the dual fronts of continuity and applicability and are rooted in both the form and content of the maxims themselves. The five functions that I have identified above are the following:

1. Legal precepts aid memorization.
2. Legal precepts are presented as general truths.
3. Legal precepts consolidate information.
4. Legal precepts provide a bridge between the substance of the law and the purposes of the law.
5. Legal precepts help the jurist to extract new rulings.

Naturally, the pragmatic significance of legal precepts is not confined to these five functions but includes others as well. I explore these and other functions in more detail in the final section of this chapter where I look more closely at precepts dealing with customary law.

**Legal Precepts and Pragmatics**

Before turning to customary law as an example of the discourse functions of legal precepts, it will be helpful first to clarify some aspects of pragmatic theory. This section examines the ways in which legal discourse resembles conversation and to what extent
conversational constraints such as Grice’s maxims can be applied to legal precepts. As noted previously, legal precepts are, on the whole, constructed by jurists for other jurists and are thus limited in scope to the professional practice of jurisprudence. Therefore, as Sinclair points out: “legislative discourse more closely approaches the idealized conversation than does ordinary social discourse.”

This last point raises the question of who is the speaker in legislative discourse. Sinclair refers to legislatures as the speaker and to statutes as the speech acts that the legislatures produce. Of course, he acknowledges that legislatures do not speak “in the literal sense,” but rather, they “speak through their statutes.” He also argues that the conversation is “one-sided” since the addressee of the legislative utterance is not usually present and able to respond. For Islamic law, it is harder to speak about legislatures issuing statutes since, prior to the modern era, “fiqh was mainly developed by private jurists who were not acting on behalf of governments and institutions that might have exerted a unifying influence.” Indeed, Kamali suggests that legal maxims helped to provide some continuity and a “set of general guidelines in an otherwise diverse discipline that combined an impressive variety of schools and influences into its fold.”

Even if we consider the jurist to be the speaker when it comes to the qawā‘id literature, the matter is not without complication. All jurisprudence is necessarily cumulative in that each statement by a jurist draws on the opinions of previous jurists and incorporates their combined learning into the formation of a new ruling. This cumulative effect is particularly pronounced in the case of legal precepts, which “are essentially

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41 Kamali, “Legal Maxims,” p. 93.
42 Kamali, “Legal Maxims,” p. 93.
broad-based rules or tests deduced from the aggregate opinions of the early Imāms.”

So, while al-Suyūṭī is the author of *al-Asbāb wa-l-naẓā’ir*, his discussion of legal precepts encapsulates the thinking of his predecessors, particularly those authorities within his own legal school. One might even go further and say that legal precepts not only epitomize the views of earlier jurists, they also exemplify the larger social context in which they are produced. Legal precepts, like proverbs, “reflect a culture’s evaluative attitudes towards certain facts or events; they are impregnated with value judgements and legitimise behavior, attitudes or points of view.” Thus, legal precepts represent a collective voice to which new interpretations are constantly being added. In the ongoing conversation that is jurisprudence no one has the last word.

Grice’s Maxims

Grice’s conversational maxims are rooted in what he calls the “cooperative principle,” namely: “make your conversational contribution such as is required, at the stage at which it occurs, by the accepted purpose or direction of the talk exchange in which you are engaged.” In other words, one assumes that a conversational utterance is purposive, relevant and timely. Broken down further, Grice’s maxims are as follows:

Maxims of Quantity:

1. Make your contribution sufficiently informative.
2. Do not make your contribution excessively informative.

Maxims of Quality:

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44 Gándara, “They That Sow the Wind,” p. 347.
46 I have used Miller’s phrasing of the maxims from Grice’s notes. See: Geoffrey Miller, “Pragmatics and the Maxims of Interpretation,” pp. 1226-1227.
1. Do not say anything false.

2. Do not say anything for which you lack sufficient evidence.

3. Do not say anything meaningless.

4. Do not say anything self-contradictory.

Maxim of Relevance:

1. Do not say anything irrelevant.

Maxims of Manner:

1. Avoid obscurity.

2. Avoid ambiguity.

3. Be brief.

4. Be orderly.

According to Grice, if one conforms to the maxims, then one is acting “felicitously” and, if one flouts one or more of the maxims, it results in a conversational “implicature” that requires other information in order to interpret its meaning. Either way, the theory of pragmatics assumes that the speaker chose a particular wording at a certain juncture in order to fulfill a purpose. As far as legal discourse is concerned, Sinclair notes that in order to use Grice’s maxims as a framework for understanding “canons of construction” or legal precepts: “we must assume legislative compliance, that is, that the legislature did act felicitously, saying as much as it could, as clearly as it could, to further its purposes as best it could.”47 This assumption does not rule out the possibility that a statute could be composed in a manner that is deliberately obscure in order to create an implicature that necessitates interpretation as well as added effort on

the part of the jurist. In fact, as this discussion will show, it is in these instances of implicature in legal discourse that change is most likely to occur.

_Ejusdem Generis_

Sinclair and Miller point to several canons of construction in American statutory law that lend themselves to interpretation using pragmatic theory. In keeping with the nature of pragmatic principles as well as legal precepts in allowing for exceptions and contradictions, the two authors explain some of the same canons in different ways. One such canon is the rule of _ejusdem generis_, which holds that “general terms in a list take their meaning from specific terms.”48 Thus, the task for the court or jurist is to determine what sort of items are akin to those listed in the statute.

For example, for a statute barring “cats, dogs, and other animals” from a public park, the kinship rule helps to determine which specific references are included under the general term “animal.”49 Miller analyzes the application of _ejusdem generis_ in terms of the cost and benefit of providing more general or specific information. Grice’s maxim of quantity requires the speaker (or statute) to offer just as much information as necessary, no more, no less. Any extra or lacking information results in an implicature that the jurist must try to explain if the statute is to be properly enacted and applied to other cases that arise. Miller assumes, according to the cooperative principle, that the statute uses the more general term “animals” rather than “pets” in order to cover cases that would not be included under the more specific term (such as a canine model used to film a dog food commercial). As he explains: “the benefits of greater specificity must be weighed against

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48 Miller, “Pragmatics and the Maxims of Interpretation,” p. 1199.
49 Miller, “Pragmatics and the Maxims of Interpretation,” p. 1200.
the costs; in many cases the cooperative purposes of the communication would be best
served by a more general term even if it is slightly less precise.“\textsuperscript{50}

Sinclair approaches the \textit{ejusdem generis} maxim from a slightly different angle, though still using the rubric of Grice’s conversational constraints. For him, determination of the “criterion of similarity” binding items in a list falls under Grice’s first maxim of quality adapted to suit statutory legislation: “do not enact a provision that can be shown not to further the legislative purpose.”\textsuperscript{51} Therefore, for Sinclair, the purpose of the legislation is the deciding factor in determining kinship. As he puts it: “Only if the item in question can be shown to further the legislative purpose in the same way as do the items listed should it be held to come under the statutory provision.”\textsuperscript{52}

\textit{Expressio Unius est Exclusio Alterius}

A second canon of construction common to both Sinclair and Miller’s pragmatic approach to statutory law is \textit{expressio unius est exclusio alterius} (“to express one thing is to exclude others”).\textsuperscript{53} Again, Miller interprets this canon as reflecting Grice’s maxim of quantity, where one is expected to provide as much information as is required and no more. One example he uses is of a statute ruling “that no one under eighteen may operate a motor vehicle on a public street.”\textsuperscript{54} Using \textit{expressio unius}, one might assume that,

\begin{flushleft}
\textsuperscript{50} Miller, “Pragmatics and the Maxims of Interpretation,” p. 1202.  \\
\textsuperscript{51} Sinclair, “Law and Language,” p. 397.  \\
\textsuperscript{52} Sinclair, “Law and Language,” p. 412.  \\
\textsuperscript{53} This maxim closely resembles the concept in Islamic jurisprudence of \textit{mafhūm al-mukhālaфа}, or “divergent meaning.” As Kamali explains, it is generally assumed that “a legal text never implies its opposite meaning” without “a separate text to validate it.” In order to be accepted, the divergent meaning must be in harmony with the pronounced meaning contained in the words of the text. See: Mohammad Hashim Kamali, \textit{Principles of Islamic Jurisprudence}, Third Edition (Cambridge, U.K.: The Islamic Texts Society, 2003), pp. 175-185.  \\
\textsuperscript{54} Miller, “Pragmatics and the Maxims of Interpretation,” p. 1196.
\end{flushleft}
since the ruling specifies “on a public street,” a person who is under eighteen is allowed to operate a motor vehicle in a location other than a public street, such as driving a tractor in a field. Miller explains that, since “the legislature is obviously capable of stating other areas in which the statute applies, the fact that it did not do so gives rise to the implicature that it did not intend the statute to apply in settings other than in those expressly mentioned.”

This premise also applies to other rules that attempt to maintain a status quo and make it difficult for governing bodies or courts to interfere with existing statutes. For example, the plain meaning rule “expresses the principle that where the statute is narrowly and tightly drawn, the courts have considerably less interpretive flexibility than when the statute is phrased in vague or general terms.” Generally speaking, the more specific the statute, the harder it is to extend or change.

Sinclair also interprets expressio unius from the standpoint of Grice’s maxim of quantity. He responds to the criticism that this rule can lead to logical fallacies. For instance, if one were to say that “some swans are white,” it is incorrect to deduce that “some swans are not white.” If “all swans are white” is true, then “some swans are white” is also true, but “some swans are not white” is false. Therefore, if a speaker who is assumed to be acting felicitously makes the statement that “some swans are white” he violates the maxim of quantity by not providing as much information as he could, thus creating a pragmatic implicature. As Sinclair observes, the implicature can be resolved by considering the context: one concludes that the speaker believes that some swans are not white. As he puts it: the “pragmatic implicature comes not just from the truth

56 Miller, “Pragmatics and the Maxims of Interpretation,” p. 1199.
conditions of the words used but from the context of their use and the social conventions governing conversation.\(^{57}\)

**Islamic Maxims of Interpretation**

For Islamic legal precepts, the closest equivalent to Sinclair and Miller’s canons of construction are the maxims of interpretation that some jurists refer to as *qawā‘id uṣūliyya*. These canons of interpretation or “hermeneutic principles” guide the jurist in extracting rulings from the sources of law.\(^{58}\) Like the canons of construction described by Sinclair and Miller, these precepts often concern the language itself, thus helping the jurist to interpret ambiguous statements, for example, based on linguistic expression as well as the pragmatic intent behind the statements. A precept like *al-amr li-l-wujūb* (“the imperative produces obligation”), for instance, derives legal action from the use of the grammatical imperative. Heinrichs notes that some later sources distinguish between *qawā‘id uṣūliyya* and *qawā‘id fiqhiyya*, which are general rules derived from substantive legal rulings that usually encompass several specific sub-categories.\(^{59}\) Earlier sources tend to blend the two together and, indeed, there is a large degree of conceptual overlap between different types of *qawā‘id* that may perform several different functions.\(^{60}\)

Like *expressio unius*, many of the precepts in Islamic law set a baseline or default condition that makes it more difficult for the legislature or jurist to change the framework already in place. Such precepts usually identify a “norm” or *aṣl* under the assumption

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\(^{58}\) Wolfhart Heinrichs, “*Qawā‘id* as a Genre of Legal Literature,” p. 372.


\(^{60}\) Rabb recognizes the overlap between interpretative and substantive maxims by including a separate category of combined “interpretive-substantive maxims.” See: Doubt’s Benefit, p. 12.
that anything contrary to the norm will require further justification by the jurist using
textual (or contextual) evidence to resolve the implicature. One such maxim is *al-aṣl baqā’ mā kāna ‘alā mā kāna* (“the norm is maintaining the status quo”) and an example
would be the missing person who is presumed to be alive unless evidence emerges to
prove the contrary.\(^\text{61}\) Another application of this precept is a wife’s continued right to
maintenance as long as she remains married to her husband.\(^\text{62}\)

Even more general are the maxims *al-aṣl fī l-ashyā’ al-ibāḥa* (“the norm
regarding things is permissibility”) and *al-aṣl barā’at al-dhimma* (“the norm is non-
liability”), which assume that a given action is permitted unless otherwise specified and a
given person is not liable unless proven guilty. The first maxim applies, for instance,
when one is unsure whether or not a certain type of animal (like a giraffe) is lawful to eat.
The default position is that it is permissible unless it can be proven to fall into a category
of foods that are expressly forbidden.\(^\text{63}\) The second maxim is similar to the idea that a
defendant is presumed to be innocent unless more than one witness can attest to his
guilt.\(^\text{64}\) The same is true with a disputed loan – the burden of proof falls on the accuser
rather than on the one accused.\(^\text{65}\)

In each of these cases, a baseline or default is established that conforms to the
legal interpretation of Grice’s maxim of quantity: the law as it stands is assumed to be
sufficiently informative. Therefore, any change to the status quo requires extra work on
the part of the court or jurist to prove that the law extends to a case not already covered in

\(^\text{62}\) Kamali, “Legal Maxims,” p. 84.
\(^\text{63}\) Jalāl al-Dīn al-Suyūṭī, *al-Ashbāh wa-l-nazā’ir fī l-qawā’id al-fiqhiyya* (Cairo: al-Maktab al-
\(^\text{64}\) Al-Suyūṭī, *al-Ashbāh wa-l-nazā’ir*, p. 85.
the language of the statute. Also illustrative of this idea is the much debated maxim *lā yansub li-l-sākit qawl* (“do not ascribe a statement to one who is silent”). In most cases, silence should not be interpreted as equivalent to a statement such as denial or assent. For example, if a house is not intended for rent and the owner is silent on the matter, the silence is not to be interpreted as a demand for rent in a contractual obligation and the owner has no right to claim such a demand retroactively.66

However, there are some notable exceptions to this precept that have rather significant implications. In a situation where a statement is required and no such statement is made, it is possible to attribute tacit denial or assent to the one who is silent. If a defendant is asked to respond to charges against him and remains silent, his silence is taken to indicate denial of the charges and the burden of proof falls to the accuser.67 Also, if a young virgin is asked by her guardian to respond to a marriage proposal, her silence is equivalent to approval of the marriage contract.68 Al-Suyūṭī specifies that this is not the case with a non-virgin widow or divorcée whose silence is never to be taken as acceptance of a marriage proposal.69 The case of the virgin versus the non-virgin from whom a statement is required in response to a marital contract would seem to be contradictory and an apparent flouting of the maxim of quality (“Do not say anything self-contradictory”). The resulting implicature would need to be explained using information external to that which is already available from the text.70 While al-Suyūṭī

69 Al-Suyūṭī, *al-Ashbāh wa-l-naẓā‘ir*, p. 188.
70 The implicature could be resolved, for example, if one assumes that more weight is given to the opinion of the experienced woman who has had legal intercourse as opposed to that of the inexperienced virgin.
offers no such explanation, he does seem to acknowledge that many of the exceptions to *lā yunsab li-l-sākit qawl* are either weak or contested.\(^{71}\)

In addition to these substantive and procedural issues of jurisprudence, Grice’s maxims are also relevant to the *qawā‘id uṣūliyya*, the interpretive principles that aid the jurist in drawing legal implications from different kinds of speech acts. Grice’s maxims of quality and manner are instructive, for example, when the literal meaning of an oral or written statement comes into question. The interpretive maxim *al-aṣl fī l-kalām al-ḥaqīqa* (“the norm for a statement is its literal meaning”) assumes that a statement is true and not contradictory or absurd according to its literal meaning. Consequently, if the literal meaning of the statement renders it impossible or absurd, then the implicature can be resolved by taking into account a metaphorical or non-literal meaning.

If a man sets up an endowment for his ‘children,’ for example, the literal interpretation would preclude grandchildren from the endowment. However, if the man does not have any immediate children, then the non-literal meaning of the word ‘children’ is understood to include grandchildren as well.\(^{72}\) Similarly, if someone swears not to eat from a certain tree, he is understood to mean that he will not eat the fruit from the tree, since eating the bark or leaves would not make sense, even though the literal meaning would allow such an interpretation.\(^{73}\) In both cases, violation of the maxim of quality (“Do not say anything false”) and the maxim of manner (“avoid ambiguity”) is resolved by resorting to the metaphorical or non-literal meaning.

\(^{71}\) Al-Suyūṭī, *al-Ashbāh wa-l-naẓā‘ir*, p. 188.


Pragmatics and Customary Law

I have chosen to look at customary law (‘urf) as an example of the pragmatic function of legal maxims for two main reasons, one historical and the other conceptual. Like the literature on qawā‘id, Western critical scholarship on ‘urf is extremely sparse.\(^7^4\) However, it is possible to piece together the major developments that led customary law to shift from its status as less than a formal source of law to assume a more prominent role in Islamic jurisprudence as a source in its own right. It is significant in my view that growing acceptance by jurists of custom as a source of law reached a new high around the late medieval and early modern period, or in other words, during and after al-Suyūṭī’s lifetime.

In addition to being closely related in terms of historical development, legal precepts and custom share a number of conceptual similarities that offer an intriguing area of study. Shabana describes the relationship between legal precepts and custom as interdependent and of mutual benefit. He notes that custom, though rooted in the Qur’ān and Sunna, was mostly derived by jurists inductively from normative behavior and then made subject to further classification and abstraction by later generations of scholars. As he puts it: “Through the abstraction process, custom was incorporated into legal theory as one of the inductive secondary sources of law. Together with this development, custom was concurrently incorporated within the genre of legal maxims. Following these two

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parallel processes, substantive law was able to reinvigorate legal theory while being constantly shaped by it.”

The conceptual similarities between legal maxims and customary law are even more striking from the standpoint of pragmatic theory. Like *qawā'īd*, custom as it was abstracted and formulated by jurists became a useful discursive tool fulfilling a variety of pragmatic functions. First, custom, much like legal maxims, is helpful in resolving contradictions in the substantive law by drawing in extra-textual information. In this way, custom provides a crucial link between the theory of jurisprudence and its context. By bringing context into the equation, custom allows the law to grow and adapt to changing circumstances. This function became especially important in the post-formative era where much of the methodology and substance of the law was already in place and jurists were looking for new ways to apply the tradition and maintain its relevance in society.

In addition to helping to resolve contradictions in the law, custom is useful in the interpretation of speech acts. Speech acts, as discussed by theorists of pragmatics, are utterances that are not only informative but also “performative;” they are used to *do* things instead of just to say things. Examples of speech acts would include marital vows or a statement declaring war. In these cases, as Levinson explains, the words themselves are “performative” because they are by convention linked to institutional procedures.

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75 Shabana, *Custom in Islamic Law and Legal Theory*, p. 11.
In the context of Islamic law, the declaration of divorce is a classic situation in which words fulfill a purpose with clear legal consequences for the speaker and addressee. Thus, it is often crucial for the jurist to be able to judge in cases of doubt or ambiguity whether the linguistic form of the utterance matches the intentions of the speaker and to resolve any discrepancies that might arise. Custom very often provides the vital link between the words themselves and the context in which they were produced. The same is true for other oaths or contracts where custom supplies the key clue as to how the speaker’s words should be interpreted and given legal import. For this reason, many of the standard examples that jurists like al-Suyūṭī use to demonstrate the authority of custom involve the interpretation of oaths and contracts (such as endowment deeds, sales, hiring services and other financial transactions).

Thirdly, custom relies on a framework of expectations and assumptions regarding acceptable social behavior and practice. ‘Urf is usually defined as “recurring practices that are acceptable to people of sound nature.” This definition implies that not every practice that recurs can be considered worthy of consideration in law-making and that a distinction must be made between what amounts to ‘bad’ ‘urf and ‘good’ ‘urf. For instance, pre-Islamic practices such as usury and disinheriting female relatives, while widely practiced, are deemed not in conformity with the principles of Sharī’a.

As the modern expert on customary law, Aḥmad Fahmī Abū Sunna warns, basing the authority of custom solely on human judgment (or even on the judgment of most Muslims as implied by the hadīth ‘what the Muslims deem to be good is good in the eyes

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of God’) is problematic since humans are capable of error.\textsuperscript{80} The difficulty is compounded by the fact that rulings based on social custom are subject to ‘changes of conditions of time and place.’\textsuperscript{81} Nevertheless, in spite of these problems, later jurists in particular were unable to deny the importance of custom in shaping social practice and behavior and were challenged to come up with guidelines reconciling social realities and the purposes of the law. The \textit{qawā‘id} genre provided a convenient framework for such discussions.

In the next section, I examine how custom is used pragmatically by jurists like al-Suyūṭī to resolve contradictions in the law, to interpret speech acts such as oaths and contracts, and to reconcile social realities and the purposes of the law in reference to the overarching legal maxim, \textit{al-‘āda muḥakkama}, or ‘custom has legal authority.’ I use as a template for this discussion the chapter on custom in al-Suyūṭī’s major \textit{qawā‘id} work, \textit{al-Ashbāḥ wa-l-naẓā’ir}. My analysis follows roughly the same layout as al-Suyūṭī’s (with some adaptations), using many similar headings and emphasizing examples that feature prominently in al-Suyūṭī’s work in order to reflect better the intentions of the author.

1. Introducing the concept

Like Tāj al-Dīn al-Subkī (d. 771/1370) in his earlier \textit{Ashbāḥ} work, al-Suyūṭī examines \textit{al-‘āda muḥakkama} as one of the five major precepts that are general enough

\textsuperscript{80} Ahmad Fahmī Abū Sunna, \textit{Qā’idat ʿān fiqhiyyatān} (Cairo: Dār al-Baṣā’ir, 2004), p. 20. Although both al-Suyūṭī and Ibn Nujaym cite this tradition as the textual proof for the authority of custom, they indicate that it is not Prophetic in origin but is attributed to the Companion ‘Abd Allāh ibn Mas‘ūd.

\textsuperscript{81} Kamali, \textit{Principles of Islamic Jurisprudence}, p. 380.
that each one encompasses several sub-maxims. The fact that this maxim is included as one of the five universal maxims points to its growing significance by al-Suyūṭī’s time. Al-Subkī’s section on custom is a relatively terse list of cases and does not include any of the linguistic interpretation that was later subsumed under the custom precept. Another prominent Shāfi‘ī jurist, al-Zarkashī (d. 794/1392) includes a similar list of cases in which ‘urf can be applied, as do al-Suyūṭī and Ibn Nujaym.

Each item in the list, such as assigning weights and measures to commodities where there is no clear text indicating its value during the Prophet’s time or obtaining tacit approval to collect ripened fruit that has fallen to the ground from privately-owned trees, encapsulates a whole legal discussion on its own. Al-Suyūṭī makes it clear that by lumping the various topics together he wants the reader to see just how many issues can be attributed to ‘āda and ‘urf. As he says: “Know that recourse is given to consideration of ‘āda and ‘urf in fiqh in regards to countless issues.” Ibn Nujaym echoes al-Suyūṭī’s sentiment and takes it a step further, adding the clause: “to the extent that they made it a source [ḥattā ja‘alū dhālik aṣlan].” Libson highlights this impulse on the part of the later jurists (particularly those from the sixteenth century onwards) to

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84 Jurists tend to use the terms ‘āda and ‘urf interchangeably in relation to customary practice. Some scholars differentiate between the two by saying that ‘āda can be used to refer to the personal practice or habit of an individual, whereas ‘urf can only refer to the collective practice of a group of people. See: Kamali, Principles of Islamic Jurisprudence, p. 367.
85 Al-Suyūṭī, al-Asbhāh, p. 127. Translations are mine unless otherwise indicated.
86 Ibn Nujaym, al-Asbhāh, p. 93.
“collect all the legal rulings relating to custom” in what amounted to “recognition of custom as a formal source of law, as stated explicitly by Ibn Nujaym.”

Having established the relevance of custom to a broad range of legal issues, al-Suyūṭī goes on to investigate areas in which a contradiction or discrepancy has given rise to a dispute amongst legal scholars. In the absence of a clear text indicating a particular ruling, the jurist draws on contextual factors to resolve the contradiction. In each case, the jurist engages in a complex negotiation of meaning in which the semantic content of a statement is weighed against a framework of expectations and assumptions located outside of the literal meaning of the words themselves. For this reason, writes Ibn Nujaym, jurists often included custom in uṣūl works in cases where literal meaning is abandoned on the basis of an inferential indicator and custom.

2. Contradictions between general and specific ‘urf

Jurists tend to classify custom as either general (‘urf ʿāmm) or specific (‘urf khāṣṣ). A general custom is one that is predominant in most places, whereas a specific custom pertains only to a particular locality or to the technical terminology of a certain profession. Normally, a general ‘urf would take precedence over a specific one. However, the issue arose as to whether under certain conditions a particular custom could act as a general one in the absence of a clear statement to the contrary. Al-Suyūṭī cites two rather interesting examples, both in relation to endowed institutions.

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88 Ibn Nujaym, al-Ashbāḥ, p. 93. The maxim, al-ḥaqīqa tatruk bi-dalālāt al-ʿāda (“literal meaning is abandoned on the basis of an indicator of custom”) is sometimes listed as a sub-maxim of the custom precept. See, for example: al-Daʾās, al-Qawāʾid al-fiqhiyya, p. 51.
The first example is taken from the Shāfi‘ī jurist Ibn al-Ṣalāḥ (d. 643/1245) concerning vacation days for teachers in schools that are financed through religious endowments (waqf). As al-Suyūṭī reports:

When asked about this issue, Ibn al-Ṣalāḥ answered that the vacation time that falls during the months of Ramaḍān and half of Sha‘bān does not prevent [the teacher] from earning his wages, since there is no text from the endower stipulating that one work during the period in question, but any vacation time that occurs before these two months is prohibitive because there is no continuous custom to support it, nor does it occur for certain in a majority of schools or locales. If a prior custom does occur in some regions and is prevalent and not contradictory, then a dispute arises in those regions as to whether a specific custom can act in place of a general custom. The evident [opinion] is that it does act as such for that group of people.⁹⁰

The issue described by Ibn al-Ṣalāḥ and cited by al-Suyūṭī evokes the earlier discussion surrounding the legal maxim, expressio unius est exclusio alterius (“to express one thing is to exclude others”). In guessing the intentions of the endower, the jurist assumes that if the endower did not wish for salaried employees to collect their wages during certain specified vacation times, then he would have included such a stipulation in the original deed. Assuming that the endower was acting felicitously, one would expect his statement to provide sufficient information (according to Grice’s maxim of quantity).

By Ibn al-Ṣalāḥ’s time, though, people had clearly become accustomed to taking vacation days during certain months of the year and expected to continue to collect a salary during that time. Therefore, it became incumbent on the jurist to prove that the new practice was in accord with the intent of the endower, thus cancelling out any implicatures that would arise from a violation of the maxim of quantity. In this case, ‘urf provides the needed justification and resolves the potential implicature. Also, since general custom tends to carry more weight than specific custom by virtue of being more

⁹⁰ Al-Suyūṭī, al-Ashbāḥ, p. 129.
prevalent, it is convenient to say that the specific custom acts in the same way as the
general one for certain groups of people in some contexts (though this argument is
disputed).

Effectively, Ibn al-Ṣalāḥ’s opinion opens the door for customs established after
the time of the endowment – even those that vary according to region – to prevail in the
absence of a direct statement against them. The problem is that relying on a later custom
to interpret the original intention of the founder also allows for abuse and exploitation of
the system as waqf rules grew more lax. Indeed, al-Suyūṭī himself observes in one of his
fatwās on the issue of scholarly stipends that if one looks at the opinions of Ibn al-Ṣalāḥ
and al-Nawawī regarding waqf, one will find them exceptionally strict, whereas the
opinions of later scholars like al-Subkī and al-Bulqīnī are much more lenient and
accommodating.91 By al-Suyūṭī’s time, practices that had been frowned upon by earlier
jurists (such as appointing deputies to endowed positions and holding multiple posts in
different institutions) had become commonplace, thus ramping up the pressure on jurists
to justify such practices. Customary law presented an appealing option for making these
kinds of arguments.

A remark by Ibn Nujaym in his corresponding discussion of the vacation issue is
quite revealing of the corruption that had crept into the waqf system by the sixteenth
century. He asserts that teachers, like judges, should be allowed to collect their salaries
during vacation days since it is necessary to rest on occasion. He goes on to say:

“However, the convention of scholars in our day is to take such a long vacation that their

91 Al-Suyūṭī, al-Inṣāf fi tamyīz al-awqāf in al-Hāwī li-l-fatāwī (Beirut: Dār al-Kutub al-‘Ilmiyya,
2000), vol. 1, p. 151. See Chapter Two for a detailed discussion of this fatwā.
days off outnumber their teaching days.”  

Ibn Nujaym continues: “Some teachers even claim precedence in compensation since teaching is a religious rite, citing al-Ḥāwī al-qudsī, in spite of the fact that al-Ḥāwī al-qudsī refers only to teachers in the madrasa, not to any teacher. Teachers in mosques (like in Egypt) are excluded, the difference being that the school would fail without the teacher, but the mosque would not shut down if the teacher were absent.”

As it turns out, al-Suyūṭī was, among his many professional appointments, a teacher of hadīth in the Shaykhūniyya madrasa, which becomes obvious from his second example. This example pertains to endowed schools in which hadīth is one of the subjects stipulated by the founder. Again, the problem is one of insufficient specificity since it is not clear what the endower intends by the study of hadīth. Does he mean the technical terminology of hadīth criticism as laid out in works like the Mukhtaṣar of Ibn al-Ṣalāḥ, or the analysis of topics relating to the content of traditions? Al-Suyūṭī indicates that the latter approach constitutes the current custom, as he observed in the stipulations of the founder of the Shaykhūniyya madrasa.  

Al-Suyūṭī then cites the opinion of the great hadīth scholar and teacher of Ibn Ḥajar, Abū Faḍl al-ʿIrāqī, to the effect that the founder’s stipulations should be followed, even if the stipulations and teaching methodology vary from one region to the next (Syria is different from Egypt, for example).

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92 Ibn Nujaym, al-Ashbāh, p. 96.
94 The reference is to Ibn al-Ṣalāḥ’s well known manual of the science of hadīth criticism, Muqaddima Ibn al-Ṣalāḥ fī ʿulūm al-ḥadīth.
95 Al-Suyūṭī, al-Ashbāh, p. 130.
The implication is that, if the intentions of the founder in regards to *ḥadīth* methodology are unknown, then specific custom steps in to resolve the dispute. The example is striking because it represents a rare occasion in which al-Suyūṭī speaks from direct experience rather than just relating examples already formulated by earlier scholars. Al-Suyūṭī demonstrates the task on the part of the jurist to reconcile the intention of the founder (as inferred from the text) with social practice as he witnessed it in context.

3. Contradictions between customary usage and *sharīʿi* usage

In the next two sections, al-Suyūṭī launches into an analysis of contradictions arising from the linguistic interpretation of speech acts, especially various oaths and contractual agreements. The first scenario is one in which linguistic expressions as they appear in the Qurʾān conflict with how people would normally understand those terms. If one swears not to eat meat, for example, eating fish will not break the oath, even if the Qurʾān uses the word ‘meat’ [*laḥm*] to refer to fish, since fish is not conventionally classified as meat. This logic flies in the face of the notion that *sharīʿi* usage should always outrank the authority of custom. Jurists try to evade this difficulty by arguing that if the speech act concerns a legal provision [*ḥukm*], such as prayer or fasting, the *sharīʿi* usage overrules the customary usage. If one swears not to pray, for instance, it is

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96 Normally, a ruling would be based on how a particular term is used in the Qurʾān or Sunna (or its *sharīʿi* usage). The example of oaths presents an interesting exception to that rule, allowing more authority to be attributed to customary usage in many cases.

interpreted to mean ritual prayer as required by divine law with the appropriate prostrations, not any invocation commonly referred to as ‘prayer.’

4. Contradictions between custom and language

The second set of examples involves conflicts in how certain terms are used by convention and their literal meanings. Jurists dispute in the case of oaths, for example, whether customary usage or literal connotation should take precedence in how the oath is enforced. Here, al-Suyūṭī cites a number of standard examples repeated from earlier fiqh works such as Ibn al-Wakīl’s *al-Ashbāh wa-l-naẓā’īr* and al-Zarkashī’s *al-Manthūr fī l-qawā’id*. If one swears not to eat ‘bread,’ for instance, eating rice bread will break the oath since it still falls under the linguistic definition of ‘bread’ as baked goods (even if one comes from a region where people are not accustomed to rice bread). However, if one swears not to eat ‘heads’ or ‘eggs’ the oath is not broken by consuming fish or locust eggs nor by the heads of birds or fish, since these are not customarily included in those categories.

Ibn al-Wakīl acknowledges the difference of opinion amongst jurists and comes down in favor of the customary usage specific to the region in which the oath is made. Therefore, as Ibn Nujaym later clarifies, ‘heads’ in Egypt are understood to refer only to

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99 Al-Suyūṭī, *al-Ashbāh*, p. 131. On this point, al-Suyūṭī seems to be at odds with the general consensus. Ibn Nujaym favors the opposite opinion, which is that one breaks the oath only by eating the kind of bread prevalent in the particular region where the oath is made. So, for Cairo one commits perjury only by eating wheat bread, in Ṭabaristān rice bread, and in Zabīd corn or millet bread. He adds that one does not break the oath with donuts, except by intention. See: *al-Ashbāh*, pp. 97-98.
sheep heads that are sold in the market.\textsuperscript{102} For al-Zarkashī, the deciding factor is whether or not a certain group is accustomed to selling the heads separately or not. So, if it is the custom in a certain region to sell fish heads separately, then the oath is broken by eating them in that region.\textsuperscript{103} 

While these examples seem to contain numerous contradictions even in themselves, some unifying concerns stand out as guiding the jurist’s reasoning in these and similar cases. First, the issue is one of pragmatic interpretation because it takes into account the communicative goals of the speaker within a certain context. Unless the hearer can interpret what the speaker means when he swears not to eat ‘meat’ or ‘heads’ or ‘eggs’ or to ride an ‘animal’ or to enter a ‘house,’ the maxims of manner (“avoid obscurity” and “avoid ambiguity”) and relevance (“do not say anything irrelevant”) remain violated and the resulting implicatures unresolved. As these examples show, the jurist will usually resort to customary usage, where the conventional sense of a term is given priority in interpretation over an unconventional sense. The customary usage is determined by context, either because it is the understanding of people in a certain region or the technical terminology of a certain trade or profession.

As Miller explains in relation to Western statutory law: “For the most part the maxim that words in a statute should be interpreted according to their ordinary usage does not give rise to implicatures, simply because the maxim is not flouted.”\textsuperscript{104} So, as al-Zarkashī observes in relation to the heads issue: “If someone swears not to eat heads, he breaks the oath with that which is sold separately, such as [the heads of] sheep and cows, not the heads of birds and fish, because custom does not apply the word ‘heads’ (meaning  

\textsuperscript{102} Ibn Nujaym, \textit{al-Ashbāh}, p. 98.  
\textsuperscript{103} Al-Zarkashī, \textit{al-Manthūr fi l-qawā‘id}, vol. 2, p. 117.  
\textsuperscript{104} Miller, “Pragmatics and the Maxims of Interpretation,” p. 1222.
those which are normally eaten either fried or boiled) to them; custom and language do not conflict in this case, rather, they agree on the lack of designation.” However, if the same oath were to be made in a region in which people are accustomed to referring to the heads of birds and fish sold individually as ‘heads,’ then the speaker flouts the maxim of manner and an implicature is created. In that case, the hearer looks for a way to ascertain the speaker’s intention based on context.

Another way to assess the intentions of the speaker from context is to adopt a process of interpretation based on the principle of relevance. Dan Sperber and Deirdre Wilson argue in favor of such an approach in their revision and expansion of Grice’s inferential model of communication. Consider, for example, the utterance, ‘the child left the straw in the glass.’ According to Sperber and Wilson: “At a purely linguistic level, there is no reason to assume that the cereal-stalk sense of ‘straw’ is less accessible than the drinking-tube sense; no reason, then, why one interpretation should be preferred. The selection manifestly involves contextual factors.” In this case, the hearer searches for an interpretation that matches his or her expectations of relevance. The theory assumes that the speaker is communicating cooperatively to convey a particular thought and has left enough clues that the hearer will be able to infer the speaker’s intended meaning as efficiently as possible.

5. Contradictions between earlier and later meanings

The final set of examples involves words in contracts whose connotations have changed over time. Is the new association considered a particularization of the previous

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one? Al-Suyūṭī writes that for contracts in which the meaning of words is attributed to custom, the later association would normally take precedence over the previous one.\footnote{Al-Suyūṭī, \textit{al-Ashbāh}, p. 133.} This idea is consistent with Ibn al-Ṣalāḥ’s vacation issue mentioned earlier, where endowments made after it had become customary to take certain months off take precedence over endowments preceding that custom. Therefore, the prevailing custom for teachers to take vacation time during the months of Sha‘bān and Ramaḍān is the interpretation that must be upheld and any previous associations are not supported.

Al-Suyūṭī’s argument changes when it comes to the second endowment issue. Here, the jurist takes a stance that is inconsistent with the previous vacation example (thus creating an implicature). This discussion takes up a sizeable portion of al-Suyūṭī’s chapter on customary law, indicating that the issue was both close to his heart and that it required extra justification. For the Shāfi‘ī jurist, like al-Zarkashī and al-Suyūṭī, a problem arises when the rule regarding earlier and later word associations extends to cases in which a later interpretation would decrease the power held by their legal school. In such instances, it was in the interest of Shāfi‘īs like al-Suyūṭī to uphold a previous association and to maintain the status quo.

So, in the case of old endowment deeds that specify that the supervision of the \textit{waqf} should be assigned to ‘the judge’ [\textit{al-ḥākim}], there was no doubt that this term referred to the head Shāfi‘ī judge (supported by deputies from the other legal schools). Then, in 663/1265, the sultan al-Ẓāhir Baybars established a new judicial system with four chief judges, one from each of the legal schools. Thus, al-Zarkashī concludes: “for endowments made before this new custom came into effect, the supervisory role was confined solely to the Shāfi‘ī judge and no one else. As for assigning supervision after
that, the matter is disputed due to a contradiction between the linguistic expression [al-lafz] and the custom, since the word ‘judge’ [ḥākim] was not normally understood to refer to anyone other than the Shāfi’ī judge, especially since he was already the one connected to the supervision of public endowments.\footnote{Al-Zarkashī, \textit{al-Manthūr}, vol. 2, p. 121.}

Al-Suyūṭī repeats the problem as stated by al-Zarkashī and adds evidence from a fatwā\footnote{The fatwā can be found in Taqī al-Dīn al-Subkī, \textit{Fatāwā al-Subkī} (Cairo: Maktabat al-Qudsī, 1937), vol. 2, pp. 21-26.} by Taqī al-Dīn al-Subkī (d. 756/1355), who affirms that even after the imposition of the three additional judges, the Shāfi’ī judge did not relinquish any of the supervisory roles already assigned to him. When that judge passed away, the new Shāfi’ī judge assumed all of the responsibilities of his predecessor with the other three continuing to act as his deputies, not his replacements.\footnote{Al-Suyūṭī, \textit{al-Ashbāh}, pp. 134-135.} Furthermore, says al-Suyūṭī, the intention of the endower is to promote the interests of the endowment and several judges competing over supervision of the \textit{waqf} leads to harm because of the difference of opinion. Therefore, the supervisory role should belong only to one person, that person being the most important [i.e. the Shāfi’ī judge].\footnote{Al-Suyūṭī, \textit{al-Ashbāh}, p. 135.} Similarly, if someone makes an endowment for the upkeep of the \textit{ḥaram} in Mecca and stipulates that the endowment be administrated by ‘the judge,’ the preferred option is that the supervision be entrusted to the judge of the region in which the endowment was made, not the judge where the \textit{ḥaram} is located.\footnote{Al-Suyūṭī, \textit{al-Ashbāh}, pp. 135-136. An analogous situation is a case where an orphan and his source of funding are in two different places. Is the orphan’s maintenance supervised by the judge of the region where the orphan is located or by the judge of the region where his money is kept? See: Ibn Nujaym, \textit{al-Ashbāh}, p. 102.}

\footnote{Al-Zarkashī, \textit{al-Manthūr}, vol. 2, p. 121.}
\footnote{The fatwā can be found in Taqī al-Dīn al-Subkī, \textit{Fatāwā al-Subkī} (Cairo: Maktabat al-Qudsī, 1937), vol. 2, pp. 21-26.}
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The Ḥanafī jurist Ibn Nujaym has yet another take on the waqf issue. He omits the reference to al-Ẓāhir Baybars and the four chief judges entirely and instead formulates the question as the following: “An endower stipulates that the supervision of the endowment belong to ‘the judge’ [al-ḥākim], who at that time was Shāfiʿī but is now Ḥanafī with no judges other than him (except as deputies). Is the supervision his because he is ‘the judge’ or not because it is a later [interpretation] (and thus the previous one does not apply?)”¹¹³ Ibn Nujaym compares the situation to a governor who swears an oath, where the oath is cancelled upon the resignation of the governor and is not carried over to his successor. Presumably, then, the supervision of the waqf also would not transfer to the successor of the Shāfiʿī judge.

The example is interesting because it shows two divergent attempts on the part of the Shāfiʿī and Ḥanafī jurists to force a reconciliation between the law and changing circumstances. It also shows al-Suyūṭī using two different arguments in matters relating to endowments in order to achieve a pragmatic goal. The determining factor for al-Suyūṭī is that the earlier custom of Shāfiʿī dominance in the judiciary was more favorable than the shift to the four judge system and later ascendance of the Ḥanafī school preferred by the Mamluks and Ottoman Turks. Thus, supported by al-Subkī, al-Suyūṭī argues that the supervision of endowments established before the shift should remain in the hands of the Shāfiʿī judge, who is still ‘the judge’ stipulated by the endower regardless of changes in the organization of the judiciary. Even though al-Suyūṭī shows a reluctance to acknowledge the implicature presented by al-Zarkashī where the original wording of the deed conflicts with changed reality, he still devotes a substantial section of the chapter to the issue (indicating that the matter is far from clear).

The dispute was not confined to semantics, but involved a considerable amount of power and money as well. The person in charge of the disbursement of endowment funds could manipulate the salaries of employees and even give priority to some employees over others if he so wished.\textsuperscript{114} The control of ‘public’ endowments and the large reserves of money associated with them was crucial both to the function of the Mamluk state and to the ever increasing numbers of employees, scholars, and welfare recipients who depended on endowment stipends. Meanwhile, as endowments shifted in favor of the Ḥanafī school, it was in the interests of Ḥanafī jurists like Ibn Nujaym to highlight the disconnect between the old association of ‘the judge’ \textit{[al-ḥākim]} with the Shāfi‘ī judge and the new desire of Ḥanafīs to assume control.

Implications for the Jurist

Al-Suyūṭī’s chapter on customary law raises several important questions that have a bearing on how jurists use ‘urf, particularly during the post-formative period of Islamic law. It is telling that the same criticisms that have been leveled against legal maxims also apply to the use of custom. For instance, Llewellyn’s charge that jurists can pick and choose maxims based on a desired outcome could just as easily be said of al-Suyūṭī’s use of customary law. However, it is the very fickleness of custom that allows it to adapt to new situations and contexts, thus making it a valuable tool for the mujtahid in the post-formative era. In his treatise on ‘urf, Ibn ʿĀbidīn (d. 1252/1836) gets to the heart of the matter:

\textsuperscript{114} In fact, al-Suyūṭī was the supervisor in charge of managing the funds of the Baybarsiyya Sufi lodge, an institution with an endowment dating back to 706/1306. The residents of the lodge took issue with al-Suyūṭī’s performance as supervisor causing uproar and leading to al-Suyūṭī’s eventual dismissal from the position. See Chapter Two for an analysis of this incident and of al-Suyūṭī’s opinions regarding the disbursement of endowment funds from the state Treasury.
Many rulings vary according to different time periods due to changes in people’s practice as new needs arise to the extent that some rulings, if kept in place, would actually cause harm to people and would contradict precepts of Sharī’a designed to promote ease and deter corruption. For this reason, many scholars within the school [al-madhhab] departed from the statements of an [earlier] mujtahid in several instances where the statements were based on the situation at the time of the mujtahid, knowing that if he were around during their time he would rule as they did, taking [his opinion] from the principles of the madhhab.\textsuperscript{115}

The process of interpretation that Ibn ‘Ābidīn describes is one in which the mujtahid quite deliberately breaks with precedent to promote a preferred outcome based on the needs of people within a particular context. At the same time, Ibn ‘Ābidīn specifies that this effort is done not through personal whim but rather in accordance with the precept that the purpose of the Law is to promote ease over difficulty and corruption. Also, the preferred opinion is expected to come from within the bounds of the legal school.

Thus, al-Suyūṭī’s flouting of the maxim of quality (“do not say anything self-contradictory”) in the two scenarios involving endowments alerts the reader to the possibility that more is being implied in the text than the words themselves suggest. From clues in the context, one infers that al-Suyūṭī has opted for the interpretation that most benefits his own legal school by preserving the authority of the Shāfī’ī chief judge. For al-Suyūṭī, the ability to decide when a later customary interpretation supersedes an earlier one and when it does not is not purely academic but translates into real authority and power on the part of the jurist. Al-Suyūṭī demonstrates in his pragmatic use of legal precepts his skill as an interpreter of the law and as a master consolidator of knowledge.

His careful use of customary law in particular to interpret the intentions of a speaker in context represents the work of a true mujtahid according to the expectations of the era.

**Conclusion**

I have tried to show in this chapter that jurists use legal precepts pragmatically in order to achieve a purpose within a certain context. In the first section, I examined how the form and content of legal maxims contribute to their rhetorical function as an important part of a mature and developed legal discourse. By the 7th/13th-9th/15th centuries, jurists were looking for ways to consolidate a vast corpus of substantive law and to distill from it core principles, which could in turn be adapted to guide the formation of new rulings in changing circumstances. Legal precepts provide a useful vehicle for such an endeavor. In the second part of the chapter, I illustrated the link between legal precepts and customary law. Jurists resort to custom to resolve contradictions (or implicatures) between the linguistic form of a speech act (such as an oath, deed, or contract) and the intended meaning of the speaker. They also draw on contextual factors to reconcile the purposes of the law (as inferred from substantive fiqh) with social practice as they observe it in the world.

With his work on legal precepts, al-Suyūṭī proves himself as a late medieval jurist extraordinaire. Rather than just claiming greatness and titles, al-Suyūṭī engages in the actual business of jurisprudence in the manner that the later scholars did best: consolidation, systematization, and reformulation of the tradition. In his application of the precept, *al-ʿāda muḥakkama* (“custom has legal authority”), al-Suyūṭī goes beyond strictly formulaic arguments to address issues that were of vital importance to those
within Mamluk society who administrated or benefited from endowments (a group that includes al-Suyūṭī himself). He suggests that, while later custom replaces prior interpretations in the case of teachers claiming leave from their duties, the authority of the chief Shāfi‘ī judge over the administration of public endowments should be preserved regardless of subsequent changes in the judicial system to allow for multiple chief justices. Al-Suyūṭī shows (through pragmatic implicature) the ability of the mujtahid to select an opinion with the aim of reinforcing the authority of his legal school and, by so doing, ultimately strengthens his own authority as a jurist as well.
CONCLUSION

In the introduction to this study, I posed three broad questions with which to approach al-Suyūṭī’s legal persona: ‘what does al-Suyūṭī want to say,’ ‘how does he say it,’ and ‘what was heard then and now.’ Implicit in this framework is also a ‘Why?’ question. I hypothesized that al-Suyūṭī frames his legal persona as a jurist with the intention of asserting his own authority. I also proposed that this positive assertion of his own authority is made as a negation of the views of his opponents. Al-Suyūṭī’s authority as one who possesses knowledge is contrasted with that of inferior members of his own community of scholars as well as students of low intellectual caliber who nevertheless demand stipends from institutions that derive funding from the state Treasury. Similarly, al-Suyūṭī differentiates his own moral authority as a righteous interpreter and upholder of God’s Law from that of the corrupt worldly power of the state as represented by the sultan and his amīrs. While these observations might provide a useful starting point in understanding al-Suyūṭī’s goals, they do not go far enough in answering the ‘Why?’ question motivating the construction of al-Suyūṭī’s legal persona.

In this concluding section, I take a closer look at the strategies that al-Suyūṭī uses to assert his authority as a jurist in his legal writings. I propose that al-Suyūṭī uses the form of the legal opinion (fatwā), his treatises on independent legal reasoning (ijtihād) and religious renewal (tajdīd), and his work in the genre of legal precepts (qawā‘id) to assert authority in four key ways:

1. Authority by persuasion

2. Authority by association
3. Authority by articulation
4. Authority by aggregation and abstraction

Of course, these strategies overlap in al-Suyūṭī’s work as he applies multiple means of asserting authority in his writings. In order to simplify the discussion here, I highlight one strategy per chapter that I feel best characterizes the author’s overall goal in the text. An assessment of the relative effectiveness of each of these strategies will help us to understand better how a fifteenth-century jurist like al-Suyūṭī constructs and maintains his authority through his use of the written word. Sociolinguistic theories provide a valuable tool in this endeavor because they remind us that the content, form, and context of discourse are inseparable, and all three aspects contribute to the meaning of a given utterance. In other words, the ‘what?’ the ‘how?’ and the ‘why?’ of discourse inform each other and if one focuses on one of these and neglects the others one misses part of the story. Finally, theories like Wenger’s “communities of practice” teach us that it is not enough to assert authority through words alone; identity must be negotiated both discursively and socially through practice. I end with a brief discussion of ways in which this study has opened up possibilities for future research.

A Consideration of Content, Form, and Context

Of the questions submitted above, the ‘What?’ question is perhaps the easiest to answer. We are fortunate enough to have access to a wealth of sources both in the form of al-Suyūṭī’s own works as well as sources contemporary to him such as historical chronicles, biographical dictionaries, endowment deeds, and court records. Historians such as Elizabeth Sartain have done an excellent job of using these sources to paint a
portrait of the man and his times. We are also lucky in the sense that al-Suyūṭī makes explicit statements in several of his works that in one way or another testify to his desire to claim the ranks of mujtahid within the Shāfi‘ī legal school and of mujaddid (renewer or restorer of the religion) for the ninth century A.H. Al-Suyūṭī writes in his autobiography and elsewhere as a scholar who is fully cognizant of his own intellectual achievements and of the value of his works (which had already begun to spread far and wide during his lifetime). He is also explicit in referring to his disputes with other scholars and frames many of his works as responses to attacks in an ongoing discursive affray.

Of course, this is not to say that more insights cannot be drawn from these sources (especially as manuscripts continue to become available in published form) in regards to both the facts of al-Suyūṭī’s life and context as well as to his perception of himself as a superior scholar and as an innovative preserver and consolidator of knowledge. For example, it is helpful to highlight certain pervasive themes in his work, as I have done here, that feed into the broader narrative with which al-Suyūṭī constructs his legal persona and asserts his authority as a jurist.

The themes that I identify in this study are the following: first, an opposition frame in which the soundness of al-Suyūṭī’s opinion is contrasted with the follies espoused by his enemies; second, a hierarchy of knowledge in which the “noble” sciences of Qur’ān, ḥadīth, fiqh and the Arabic language are given precedence over the lesser foreign-influenced disciplines of logic, philosophy, kalām (speculative theology), and arithmetic; and third, a hierarchy amongst scholars in which al-Suyūṭī alone can profess
to having attained the level of unrestricted *ijtihād* within the legal school and express his wish to be considered the renewer of his age.

However, an individual’s “projected self” or constructed identity goes beyond a statement of fact and is also more than just a notion of self-image. Wenger reminds us that, while the words (or discourse) one uses to define oneself are important, they are incomplete without the social aspect of identity as lived experience. As he puts it: “Identity in practice is defined socially not merely because it is reified in a social discourse of the self and of social categories, but also because it is produced as a lived experience of participation in specific communities. What narratives, categories, roles, and positions come to mean as an experience of participation is something that must be worked out in practice.”¹ So, someone can put ‘M.D.’ next to his or her name and claim to be a doctor, but if he or she has not been through the grueling experience of medical school and residency and does not practice medicine (whether through clinical work, teaching, or research), then he or she cannot be said to be ‘a doctor’ in any meaningful way.

The question of *how* one negotiates one’s identity and asserts authority through practice is where sociolinguistic methodology is most useful. Research in this field assumes that the content, form, and context of spoken and written utterances are inextricably linked. Pragmatic theory assumes, for instance, that a speaker produces discourse in a certain way in a particular context in order to accomplish specific goals. Thus, the ‘what?’, the ‘how?’, and the ‘why?’ of discourse operate in conjunction to provide utterances with meaning.

Marilyn Waldman in her important and controversial work, *Toward a Theory of Historical Narrative: A Case Study in Perso-Islamicate Historiography* (1980),\(^2\) argues that historians have traditionally fixated on what the ancient chroniclers say while paying insufficient attention to how they say it. At the outset of her study, Waldman contends that: “Instead of asking what a premodern Muslim author was trying to do as a historian and how he accomplished his goals, the scholar of Islamicate history has usually been content to ask what information the source provides that can be useful in solving *his own* problems.”\(^3\)

In order to demonstrate an alternative approach, Waldman undertakes a detailed structural analysis of a single work, the Persian narrative history of al-Bayhaqí (d. 1077). Her analysis of the text is informed by Speech Act Theory as developed by Mary Louise Pratt (and inspired by H.P. Grice and William Labov). In particular, she focuses on the idea of a “display text” in which the author is less concerned with communicating factual information to the reader as much as with the “tellability” of the text, inviting his readers to take part in an imaginative interpretation of the events described.\(^4\)

The critical reception of Waldman’s work has been decidedly mixed, ranging from reasonably favorable\(^5\) to openly skeptical.\(^6\) Some critics have suggested that in her eagerness to correct what she sees as failings on the part of “traditional” historiography,

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\(^2\) I am grateful to Felicitas Opwis for bringing this work to my attention.  
Waldman has let the pendulum swing too far in the opposite direction, focusing too much on analyzing the ‘how?’ at the expense of the content of al-Bayhaqī’s narrative. Stephen Humphreys points out by way of critique that Waldman “sometimes seems more concerned with questions of theory than with the actual interpretation of the text.”\(^7\) For my part, I would have liked to see Waldman spend more time applying the theory throughout her analysis rather than just briefly and in a rather unsatisfying manner at the end of the book.\(^8\) However, I share Waldman’s aspiration that other scholars would consider the potential value of applying methods of textual and literary analysis to a variety of different texts.

I believe that “traditional” historiography with its focus on content and textual criticism that emphasizes literary structure, genre, and an author’s pragmatic use of language, can and should work hand-in-hand rather than at odds with one another. After all, if we do not have some idea of the historical events as well as the social, economic, political, and intellectual trends that constitute the context in which a figure like al-Suyūṭī or al-Bayhaqī was writing, then we cannot very well evaluate his individual contribution to the literature of his era. At the same time, we assume that the literary forms that the author chooses to use are not arbitrary but can lead us to insights both about the expectations imposed by the genres themselves as well as how the author works within the limits of form to achieve his own set of goals.


Despite his critical assessment of Waldman’s work, the approach that Humphreys advocates in interpreting a text like the history of al-Bayhaqī is one that takes into account both what the historian tells us and how he chooses to do so:

First, we need to decide precisely what we want to know, quite apart from what our sources have chosen to tell us; when we read these texts, we need to bring with us a questionnaire of our own making. We cannot of course learn things concerning which they are utterly silent, but at least we will have an independent perspective on the information they do contain. Second, we need to understand the conceptual and literary structures within which this information is embedded. On a certain level, their data can never really be disengaged from these structures; in a sense, it exists only in the context given it by these historians.⁹

Sociolinguistic analysis provides valuable tools with which to understand the “conceptual and literary structures” used in the text and to assess to what degree these formal features assist the author in achieving his or her pragmatic goals. If we assume, as Wenger’s theory suggests, that in order to affirm his identity as a mujtahid al-Suyūṭī must engage in the actual practice of ijtihād within the bounds set by his “community of practice,” then we must consider the formal possibilities open to him and ask ourselves why al-Suyūṭī chose the particular forms that he did. Thus, in seeking to understand how al-Suyūṭī frames his legal persona, the goals of the author are never far behind.

As a late fifteenth-century jurist, al-Suyūṭī was writing at a time in which the doctrine of each of the four Sunnī legal schools was well established and anyone who claimed to practice unrestricted legal reasoning was regarded with suspicion and even hostility. In this context, a jurist could wield influence in a limited number of ways. First, he could serve as a judge (qāḍī) appointed by a strong state bureaucracy with the clearly defined legislative authority to issue rulings in a court of law (as well as the

⁹ Humphreys, *Islamic History*, p. 147.
benefit of enforcement by the state). Since al-Suyūṭī seems to have failed in his bid to have the office of chief judge (qāḍī al-quḍāt) reinstated for his benefit, this method of asserting his authority as a jurist was effectively closed to him.

A second way in which a jurist during al-Suyūṭī’s time could wield influence was as a muftī with the authority to issue legal opinions. This method proved especially appealing to al-Suyūṭī, who fired off treatises and fatwās by the dozens. The fatwā form carries with it both benefits and risks for the author. Although a legal opinion, unlike a judge’s ruling, is non-binding, its authoritativeness depends on the stature of the person who produced it. Very often, fatwās by public figures like al-Suyūṭī were written down as a physical reification of his opinion on a certain issue and then passed into the hands of other scholars who would respond by issuing their own fatwās in response. Thus, when al-Suyūṭī selects the register or “footing” that he will adopt in his writing, it is with the knowledge that the fatwā will most likely be read, not by a single individual in a private exchange, but by a whole audience of imagined addressees. There is an element of polemic inherent in the form of the discourse, as al-Suyūṭī uses the fatwā format to respond to challenges by his opponents and to anticipate future attacks.

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10 E.M. Sartain, Jalāl al-Dīn al-Suyūṭī: Biography and Background, vol. 1 (Cambridge, U.K.: Cambridge University Press, 1975), p. 91-94. The established qāḍīs were understandably outraged by this power play on the part of the caliph and forced him to rescind the appointment of al-Suyūṭī as qāḍī al-quḍāt.

1. Authority by Persuasion

In the legal opinions selected for this study, al-Suyūṭī uses the form of the fatwā to assert his authority as a jurist in two essential ways. First, in his fatwā regarding the proper distribution of stipends for scholars in endowed institutions, al-Suyūṭī seeks to assert authority by persuasion. In contrast to the coercive authority of the state officials, al-Suyūṭī appeals to the moral authority of the scholar as a representative and interpreter of God’s law. Foucault’s framework for analyzing power relations is helpful in this case because it allows us to examine how al-Suyūṭī pursues this moral objective using the resources (i.e., the modes of rationalization) available to him within the larger institution of Islamic jurisprudence. Al-Suyūṭī’s arguments revolve around a series of differentiations that he makes in the text between the interests of different groups in society vying over the distribution of public funds, between the rules regarding ‘public’ and ‘private’ types of waqf, and between the views of earlier and later legal scholars.

Al-Suyūṭī argues that the scholar should be entitled to a special earmark from the funds of a ‘public’ endowment derived from the Treasury by virtue of his learning. This privilege does not extend to the Sufi students under his supervision whose low standard

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13 Khaled Abou El Fadl differentiates between coercive authority as “the ability to direct the conduct of another person through the use of inducements, threats, or punishments” and persuasive authority as the normative power to “direct the belief or conduct of a person because of trust.” The difference is that of being “in authority” in contrast to being “an authority.” One heeds an authority “in deference to the perceived special knowledge, wisdom or insight” of that person. See: Abou El Fadl, Speaking in God’s Name: Islamic Law, Authority and Women (Oxford, U.K.: Oneworld Publications, 2001), p. 18.
14 Foucault suggests that five factors must be considered in analyzing a given set of power relations: a system of differentiations, objectives pursued by each of the actors, a means of bringing power relations into being, a system of institutionalization, and degrees of rationalization. See: Michel Foucault, “The Subject and Power” in Hubert L. Dreyfus and Paul Rabinow, Michel Foucault: Beyond Structuralism and Hermeneutics (Chicago: Chicago University Press, 1983), pp. 221-224.
of learning disqualifies them from receiving the entitlement. Al-Suyūṭī tries to negotiate a delicate power dynamic in which the political regime depended on the ‘ulamā’ to affirm its legitimacy, while, at the same time, the scholars had come to rely more and more on patronage by the state in the form of stipends and lucrative posts in endowed institutions.

Although money is at stake in the decision, al-Suyūṭī is at pains to show that it is not the material gain that concerns him as a scholar but the symbolic recognition of his moral authority by the system. He attempts to demonstrate this authority in practice by refusing to collect his own stipend from the sultan every month as if he were no more than any other state employee. Interestingly, although al-Suyūṭī evidently lived in relative austerity as an ascetic, he was able to support himself and his household by selling copies of his works (which represent his intellectual and spiritual capital and hold the key to his legacy). In this sense, the text of the fatwā is also a physical reification of al-Suyūṭī’s moral authority as a righteous possessor of knowledge.

Al-Suyūṭī also uses his discussion of stipends in the fatwā to address changes in the waqf system as endowments expanded under the early Mamluk regime and then deteriorated during the economic crises that plagued society under later Mamluk rule. He contends that earlier jurists like Ibn al-Ṣalāḥ (d. 643/1245) and al-Nawawī (d. 676/1277) favored stricter rules regarding endowments, while later jurists like al-Subkī (d. 771/1370) and al-Bulqīnī (d. 805/1403) were more lax in the practices that they allowed (implying that these later jurists also benefited from the changes). Some of these later

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15 Sartain, Jalāl al-Dīn al-Suyūṭī, pp. 45-46. Devin Stewart examines the theme of accumulation as it is catalogued in the tarjama genre of Arabic autobiographical and biographical writing. He highlights “two parallel processes of accumulation” in the autobiography of the Shi‘ī scholar Yūsuf al-Bahrānī (d. 1186/1772): one of material wealth and the other of “religious knowledge as embodied in the certificates of study (ijāzāt), books, treatises, and, finally, in works of his own authorship” that constitute the author’s “spiritual capital.” See: Devin J. Stewart, “Capital, Accumulation, and the Islamic Academic Biography,” Edebiyāt 7:2 (1997), p. 354.
practices included continuing to collect a stipend during a period of absence and appointing a substitute (such as one’s own son) to one’s endowed position. Though both practices might have been frowned on by earlier jurists, by al-Suyūṭī’s time they had become standard, thus increasing the pressure on the jurist to provide legal justification for such practices in his fatwās.

The events of al-Suyūṭī’s dismissal as supervisor at the Baybarsiyya institution in 906/1501 and forced seclusion during the reign of the sultan al-‘Ādil Ṭūmānbāy may represent a setback for al-Suyūṭī in the short term, but his efforts to assert persuasive moral authority in this matter were effective in the end. Al-Suyūṭī’s own actions, both in refusing to accept monetary gifts from Sultan al-Ghawrī and his gradual withdrawal from public life to focus on his scholarship, demonstrate his ability to bring power into being (as Foucault would put it) and to negotiate his own identity as a scholar activist (‘ālim ‘āmil) through practice. It is in this light that biographers like ‘Abd al-Wahhāb al-Sha’rānī (d. 973/1565) interpret al-Suyūṭī’s quarrels with the sultan and the Sufis of the Baybarsiyya; the sultan received his punishment in the form of an early death, and al-Suyūṭī’s authority as a saint and righteous scholar was assured.¹⁶ Al-Suyūṭī manages to keep the moral high ground in the wake of the Baybarsiyya incident and to overcome any short-term damage to his reputation. Sultans and students may come and go, after all, but it is al-Suyūṭī’s legal opinions that have been preserved.

2. Authority by Association

The second strategy by which al-Suyūṭī asserts authority in his fatwās is by associating his opinion with those of established earlier authorities. In his legal opinion

condemning the study of logic,\textsuperscript{17} al-Suyūṭī ends a list of “leaders of the faith and legal scholars” from each of the four legal schools who, he says, have written against logic, with a mention of his abridgement of Ibn Taymiyya’s book as well his own work on the subject. The list is telling in some ways and problematic in others both in terms of whom it includes as well as whom it omits. First, it includes scholars like al-Shāfi‘ī (d. 204/820) and al-Ghazālī (d. 505/1111) whose opposition to logic is far from clear in the sources available to us. Second, it suggests that there is a consensus of opinion amongst scholars against the study of logic when, in fact, one could construct an equally long and impressive list of scholars who approved of logic and regularly incorporated it into their works.

Al-Suyūṭī tries to evade these problems by using the form of the fatwā itself to frame the issue as one of correct righteous opinion versus heretical ignorance. The question and answer format of the fatwā allows al-Suyūṭī to refute a collection of statements made by an opponent to whom he refers only as al-jāhil, or ‘the Ignoramus.’ In directing his wrath against this person, al-Suyūṭī avoids appearing critical of his respected Shāfi‘ī exemplar, al-Ghazālī, whose controversial comments about logic in his Mustasfā underlie the whole debate. Al-Suyūṭī refutes the notion that knowledge of logic is a prerequisite for the mujtahid by attributing it to ‘the Ignoramus.’ At the same time, he engages in a passionate defense of al-Ghazālī whom he characterizes as “an authority of Islam and a master-jurist with many great works in jurisprudence.”

While framed as a condemnation of logic, the fatwā in question serves the additional purpose of bolstering al-Suyūṭī’s own claim that he has achieved a high

\textsuperscript{17} Al-Qawl al-mushriq fī tahrīm al-ishtighāl bi-l-maṭīq in al-Ḥāwī li-l-fatāwī, vol. 1, pp. 244-246.
enough level of scholarship in the areas of law, *ḥadīth*, and the Arabic language to qualify as a *mujtahid*. Written towards the end of al-Suyūṭī’s career, this fatwā follows a much earlier treatise condemning logic that he wrote as an eighteen-year-old student. Al-Suyūṭī is therefore faced with the rhetorical challenge of defending his earlier opinion in the wake of new attacks on his qualifications following his declaration of having attained the rank of *mujtahid* in the year 889/1484.

The strategies that al-Suyūṭī uses to assert authority by association in the logic fatwā are the least successful of those examined in this study. There are several possible reasons why this might be the case. First, by emphasizing the opposition to logic displayed by some scholars and omitting the views of those who disagree with him, al-Suyūṭī’s framing of the issue misrepresents the status of logic as a generally accepted part of the curriculum during his time period. In a sense, by casting his lot with Ibn al-Ṣalāḥ, Ibn Taymiyya, and others who were forthright in their criticism of logic, al-Suyūṭī picks the losing side of the debate. Furthermore, the rigidity and lack of nuance of his views on the logic issue results in their marginalization (in contrast to those who took a more balanced approach). Finally, al-Suyūṭī was already fighting an uphill battle with most of his contemporaries on the matter of his status as a *mujtahid* and the logic debate did not serve to convince them of his claims.

3. Authority by Articulation

Although al-Suyūṭī failed to convince many of his contemporaries of his status as a *mujtahid* and as the *mujaddid* (renewer) of his age, his articulation of the concepts of

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ijtihād and tajdīd has proven to be influential to later scholars seeking to connect their own projects of reform with the classical tradition of tajdīd as it was developed by the medieval scholars. Al-Suyūṭī articulates his vision of ijtihād and of the role of the mujaddid in a number of different works, most notably in his autobiography, al-Taḥadduth bi-ni’mat Allāh, as well as in two major treatises on the topics of ijtihād (al-Radd ‘alā man akhlad ilā al-arḍ wa-jahal ann al-ijtihād fī kull ‘aṣr farḍ) and tajdīd (al-Tanbi’ā bi-man yab’athuhu Allāh ‘alā ra’s kull mi’a). The treatises allow the author to present all of the traditions on each topic in a compact format in order to argue a larger point; namely, that ijtihād and tajdīd are necessary in every age and that al-Suyūṭī sees it as his duty to answer that call. Meanwhile, the chapters on ijtihād and tajdīd in the autobiography represent the culmination of al-Suyūṭī’s self-narrative of authority.

Al-Suyūṭī’s articulation of the concepts of ijtihād and tajdīd is significant in a number of ways. First of all, by following al-Ghazālī’s lead and declaring his desire to be recognized as a mujaddid, al-Suyūṭī made it easier for would-be mujaddids such as Shaykh Aḥmad Sirhindī (d. 1034/1624) and Usumanu Dan Fodio (d. 1232/1817) to do the same in later centuries. Secondly, al-Suyūṭī insistence that at least one mujtahid must be present in every age, and that the community must renew its focus on the traditional sciences of Qur’ān and ḥadīth and stamp out un-Islamic encroachments threatening the integrity of the religion, proved inspirational to early modern and modernist thinkers of a salafī mindset such as Muḥammad al-Shawkānī (d. 1839) and Rashīd Riḍā (d. 1935).

It is essential to note that these are no vain assertions on al-Suyūṭī’s part but ones that he lived out in practice in his scholarship. If one of the expectations for the mujaddid is that he benefit the Muslim community through his works, then al-Suyūṭī certainly
fulfilled that requirement. Al-Suyūṭī’s impressive array of works in the sciences of Qur’ān and hadīth, for example, is indicative of the importance that he accorded these areas of scholarship. Al-Suyūṭī rightly took pride in the spread of his works across the Islamic world and in the fact that scholars as far away as India and West Africa sought his counsel.

Al-Suyūṭī succeeded as a mujaddid in the end because people continue to find meaning in his works and continue to use his ideas as a point of reference in their own articulations of renewal and reform. Bakhtin’s literary concept of genre and Wuthnow’s discussion of the “problem of articulation” as it plays out in social history add valuable insight to our understanding of the ultimate success of al-Suyūṭī’s articulation of tajdīd. Bakhtin describes in broad terms how an artist is able to unlock the resources of the genre (its semantic forms, themes, plots, and mythologies) to create a “great work” that transcends the barriers of its epoch and continues to gain in significance over time.19 Wuthnow explains that in order to influence larger intellectual and social trends, a great work of art or literature must speak to the environment in which it was produced while, at the same time, disarticulating from it to acquire a “broader, even universal and timeless appeal.”20

Al-Suyūṭī’s contribution to a wider “tajdīd genre” in Islamic thought allowed his articulation of the concepts of ijtihād and tajdīd to break free of the narrow context of his squabbles with other scholars to help shape how others would view these concepts in the

future in their own intellectual and social environments. This discursive effort on the part of al-Suyūṭī to assert his authority as a jurist through articulation translates into practice as people continue to reap the benefit of his works. In spite of the controversies and ugly episodes that marred al-Suyūṭī’s reputation (in some circles) during his lifetime, by both the sheer quantity and quality of his works, al-Suyūṭī’s legacy is a testament to the notion that writing well is the best revenge.

4. Authority by Aggregation and Abstraction

In addition to his fatwās and treatises dealing with the concepts of *ijtihād* and *tajdīd*, al-Suyūṭī asserts his authority as a jurist through the medium of substantive law. In fact, Hallaq argues that there is a strong link between fatwās as a form of legal writing and works of substantive (or positive) law. A jurist’s response to a real question that arose in society would often come to be incorporated either into a fatwā collection or into compilations of substantive law (*furū’*). These *furū’* works are of great importance because they are seen to represent the authoritative opinion of the legal school on a variety of cases. With subsequent generations, jurists expanded, explained, and supplemented these classic works of substantive law with commentaries and super-commentaries (in addition to producing new works of *furū’*). Of course, growth in the branches (*furū’*) of the law could not be made without maintaining a connection with the roots (*uṣūl*) as embodied in works of legal theory and methodology (*uṣūl al-fiqh*).

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22 Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī uṣūl al-fiqh* (Cambridge, U.K.: Cambridge University Press, 1997), p. 153. Of the seven fields in which al-Suyūṭī claims thorough knowledge, he acknowledges that *fiqh* is the only subject in which his knowledge does not match or surpass that of his teacher. He places his knowledge of *uṣūl al-fiqh*...
As Hallaq notes, scholars who produced abridgements, commentaries, and super-commentaries had quite a bit of leeway and influence over how the original works were presented. In the case of “secondary fatwās,” for example, the editor would subject the original question and answer to a process of abridgement and abstraction.\(^\text{23}\) Also, jurists would cite fatwās in their furū‘ works under the assumption that, in cases of dispute, a more recent opinion would replace an earlier one as the conditions present in society changed. In fact, Hallaq contends that it was the selective assimilation of fatwās into works of substantive law that had the most impact in terms of adding new material to the body of existing legal doctrines.\(^\text{24}\)

Works of substantive law are useful to the jurist, especially in the post-formative period, because they provide a body of cases representing the established doctrine of the legal school from which the jurist can draw in addressing new issues that arise.\(^\text{25}\) The body of substantive law as encapsulated in works of furū‘ became subject to further aggregation and abstraction with the rise of the genre of legal literature known as qawā‘id through which jurists seek to distill the purposes of the law into the form of pithy precepts or maxims. These maxims then serve to guide the jurist in the formation of new rulings, thus allowing the law to adapt to changing circumstances while staying grounded in the cumulative tradition as developed by jurists over the centuries.

Al-Suyūṭi excels in the area of legal precepts (qawā‘id) with his important work of Shafi‘i jurisprudence, al-Ashbāh wa-l-nażā‘ir fī l-qawā‘id al-fiqhīyya. It is with his Ashbāh that al-Suyūṭi is most successful in asserting his authority as a consolidator,

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\(^{23}\) Hallaq, “From Fatwās to Furū‘,” p. 45.

\(^{24}\) Hallaq, “From Fatwās to Furū‘,” p. 50.

\(^{25}\) Hallaq, A History of Islamic Legal Theories, p. 153.
organizer, and aggregator of Shāfi‘ī fiqh. The power wielded by the aggregator is manifested in his ability to influence how others access information. In our contemporary society, search engines like Google act as a filter through which we can target the information we seek and sift out extraneous data. No one will dispute that Google programmers (and the corporation they represent) have an extraordinary and sometimes uncomfortable level of control over how people access information. Al-Suyūṭī’s authority as an aggregator and abstractor of the law rests in the power of framing, or “taking some aspects of our reality and making them more accessible than other aspects.”

In the chapter of al-Ashbāh wa-l-naẓā’ir dealing with the legal maxim, al-‘āda muḥakkama (“custom has legal authority”), al-Suyūṭī carefully selects cases and opinions that reflect not only the cumulative thinking of past authorities (particularly those within the Shāfi‘ī legal school) but that speak also to the needs of the context in which he is operating. Al-Suyūṭī focuses on instances where a contradiction or discrepancy exists and employs a selective use of custom to resolve the issue. Pragmatic theory can help us to see where such discrepancies exist and to understand how a jurist like al-Suyūṭī resolves the issue by bringing in contextual factors.

For example, when the jurist interprets a “speech act” such as an oath, contract, or endowment deed, he tries to ascertain the intentions of the speaker in cases of ambiguity or conflict using evidence external to the text. In the absence of another authoritative text, the jurist resorts to custom to resolve the conflict. If someone uses words in an oath that, if interpreted according to their literal meaning, do not make sense, then one must

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interpret these words according to how they are customarily understood (by people in a certain region, for example). If someone swears not to eat from a certain tree, he might mean that he will not eat the bark or the leaves of the tree, but this meaning would violate the expectation that the speaker is communicating in a way that is relevant and not deliberately obscure or nonsensical. Therefore, it is understood by convention that he means that he will not eat from the fruit of the tree.27

I suggest that the choices that al-Suyūṭī makes in privileging some possible solutions over others are both pragmatic and deliberate. For example, in a question about the interpretation of the term ‘the judge’ in assigning supervisory power over endowments, al-Suyūṭī subverts the assumption that a later interpretation replaces an earlier one. Al-Suyūṭī argues instead that the previous association of the term ‘the judge’ with the head Shāfi‘i judge should be upheld regardless of later changes in the judiciary that allow for chief judges from each of the four legal schools.

Al-Suyūṭī’s conclusion in this case also violates the communicative principle that one should not speak in a manner that is self-contradictory, thus prompting the reader to look for an explanation with which to resolve the aberration (or “implicature,” to use Grice’s terminology). The most likely explanation is that al-Suyūṭī wants to benefit his own legal school by keeping the supervisory power in the hands of the Shāfi‘i judge. One could even speculate that al-Suyūṭī’s own administrative roles as supervisor of the endowments of the Baybarsiyya khānqāh and the mausoleum of Barqūq and his personal aspiration to be appointed as chief judge (qāḍī al-quḍāt) may have factored into his reasoning as well.

Of course, the ultimate authority of the jurist lies in his ability to interpret God’s law from its sources and to make this interpretation accessible to Muslims who wish to act in conformity with the Sharī‘a. In the post-formative era, it was assumed that the jurist would work within one of the established legal schools and that he would derive rulings in reference to both the textual sources as well as to the precedent put in place by earlier authorities within the school. The process by which a jurist gives preference to certain opinions within the school over others is known as tarjīḥ. This concept is of paramount importance because it constitutes the primary method through which later jurists like al-Suyūṭī could still practice a form of ijtihād. In so doing, these later jurists manage to redefine what it means to do ijtihād. According to this framework, if one were to ask whether al-Suyūṭī realized his persona as a mujtahid successfully through practice, then the answer would have to be ‘yes.’

Directions for Future Research

This study has opened up many avenues for further research. First, I believe that the approach employed here to examine the rhetorical techniques that the jurist uses to frame his arguments as well as to assert his own identity and authority is not confined to al-Suyūṭī, or even to the medieval era. While al-Suyūṭī makes an appealing subject for such analysis because we know so much about his life and about the various conflicts in which he was embroiled, many other figures in the history of Islamic thought present similarly intriguing narratives that would benefit from the same type of study. Also, looking at a contemporary figure who is still alive today and interviewing him or her
about his or her choice of arguments and use of language would add a valuable ethnographic element that is missing with a medieval personality.

As far as al-Suyūṭī is concerned, having investigated the legal persona that he tries to construct and how he uses language to assist in that goal, the next step would be to assess how the scholar’s legacy has been appropriated and reinterpreted by those working in jurisprudence today. It would be interesting to see, for example, to what degree al-Suyūṭī’s firm advocacy of ḥadīth studies and ījtihād and rejection of Greek logic has been echoed in the rhetoric of modern salafī thinkers. I start to approach this topic in my discussion of the changing concept of tajdīd before, during, and after al-Suyūṭī’s time, but the subject merits much more extensive analysis than I was able to do here.

Also, it would be fruitful to bring the fieldwork and data collection elements of discourse analysis into the equation by seeing how a text like al-Suyūṭī’s al-Ashbāh wa-l-naẓāʾir, for example, is taught to aspiring jurists in their studies of Shāfiʿī fiqh. One could learn a great deal from analyzing how scholars talk about the law as well as how this discourse translates into practice. What elements in a text like al-Ashbāh wa-l-naẓāʾir resonate most with students of the law today and what do they find in al-Suyūṭī’s fifteenth-century examples that speaks to their current needs?

I found while delving into the literature on scholarly stipends and on legal precepts that both areas cry out for further research. The stipend issue is important because of what it tells us about the power dynamics within late Mamluk society and the place of the religious scholar relative to the state authority. Since we are fortunate enough to have a large number of endowment deeds extant in archives in Cairo and elsewhere, it would be instructive to conduct a more detailed comparison between the
intentions of the founder as recorded in the documents and the social reality as salaried positions were, effectively, bought, sold, and traded amongst the ‘ulamā’ and state officials.

The qawā'id literature in its various forms has received barely enough attention from scholars of Islamic legal history. The same is true of customary law (‘urf), which I was able to touch on here only very slightly. I hope to show in my discussion of the pragmatic principles behind the use of precepts, particularly in the realm of customary law, that scholars like al-Suyūṭī did, in fact, practice a form of ijtihād according to the expectations of their era. To see how this kind of ijtihād carries into the early modern and modern eras, one should examine more closely the link between legal precepts and the purposes of the law, maqāṣid al-Sharī'a. This area of the law has proven especially profitable to today’s jurists who seek to respond to new and changing circumstances and, at the same time, to preserve the spirit and essential principles of the vast accumulation of substantive law as it developed over the centuries. Although al-Suyūṭī might have difficulty recognizing many aspects of Islamic law as it exists today, he would, perhaps, take comfort in the fact that his calls for ijtihād as a duty in every era have not been forgotten.
APPENDIX ONE
Waaf Fatwa Translation

Jalal al-Din al-Suyuti:

Al-Insaafi tamyiz al-awqaf, “Fairness in Distinguishing Endowments”

In the name of God the Merciful and Compassionate

Question: An amir endows a khanaqah and appoints a shaykh and Sufis to it, providing them money, oil, soap, bread and meat; then, the endowment becomes pressed [for revenue]: does the shaykh take precedence over the Sufis or does he distribute the funds amongst them in allotments? Is [funding] restricted to any one of the ranks appointed by the endower and not the others, or is it given to all of the ranks appointed by the endower in allotments? Is it permissible to make appointments [of substitutes] to certain positions or not?

Answer: I say first of all (and may God grant success): Endowments are of two kinds; one kind is not taken from the Treasury and does not originate from it, this endowment is based on strictness and vigilance; it is not permitted to take even a little bit from it without adhering to what the endower has stipulated because it is the money of a third party that does not come out of its [the Treasury’s?] property except in a specific manner according to the stipulations mentioned. The [second] kind is taken from the Treasury because the endower is a caliph or one of the past monarchs, such as Salah al-Din ibn Ayyub and his relatives, or it originates from the Treasury as the endowment of one of the amirs of the Qalawun state or those who came after them up until our present day.

Actually, we said that [the endowment] originates from the Treasury because its endowers are slaves [owned by] the Treasury and proof of their emancipation is up to debate; the shaykh Taj al-Din ibn Subki has mentioned a case that took place after [the year] 700 in which a slave’s ownership by the Treasury ended so he wanted to purchase himself from the agent of the Treasury; some [jurists] ruled to prohibit it because it would be a contract of manumission and a slave belonging to the Treasury cannot be manumitted; others ruled to allow it because it is a contract of compensation not free of charge [?], so the Treasury does not lose anything from it; al-Subki chose the second [option] as he stated in al-Tarshih. So if there is disagreement regarding the permissibility of manumission with compensation, then what is one to think of [manumission] without compensation? The earlier jurists did not write about this issue specifically because it was not a general necessity in their time but only increased after the [year] 600. The shaykh ‘Izz al-Din ‘Abd al-Salam – when the issue occurred during his time – strongly resisted the sale of [Mamluk] amirs, saying: they are slaves of the Treasury and I do not authorize their manumission. The hafiz Abul-Qasim ibn ‘Asakir narrated in support of [this opinion] on the authority of ‘Umar Ibn ‘Abd al-‘Aziz that some of the children of the Umayyad caliphs came to him and said to him: give me my due from the Treasury. So ‘Umar said to them: what is your need that I sell you and pay out your price in the interest of the Muslims? [The slaves] said: how so? ['Umar] said:
because your father the caliph took your mother from the slaves belonging to the Treasury and wanted to produce you with her but he did not [have the right] to do that, so he is a fornicator and you are a slave of the Treasury. According to some of the biographies of scholars in the Ṭabaqāt al-Ḥanafiyya, there was a Mamluk belonging to the caliph al-Nāṣir who was working to pursue learning and distinguished himself, becoming an imām in teaching and ʿifāʿ, so the caliph al-Nāṣir sent word of his manumission, saying to him: you are engaged in the benefit of Muslims. He refused the manumission, saying: I am a slave of the Treasury, so my manumission is not authorized.

If someone states that the jurists have mentioned in regards to prisoners that the ruler makes the choice between execution or reprieve or enslavement, we would say that the analogy with the issue of prisoners is not correct, because it is permitted to avoid execution through reprieve [?] and because nothing from the Treasury is spent on it, in contrast to that which was purchased for a sum from it. Also, the jurists have written that it is not for the leader to [decide about] prisoners according to whim, but rather he must consider what the public interest requires and then do it, and the proven interest is that to free this large group of slaves of the Treasury is [too] unfeasible or difficult; even if you found [an interest in freeing] one or ten of a hundred, you would not find it for thousands of thousands; any interest that there is in freeing them and everything demanded of them they can do under slavery [?]; by knowing that you would know that everything that they have goes back to money [?]. 

This differentiation has several indications: one is that the shaykh Walī al-Dīn al-ʿIrāqī, when he related the statement of al-Subkī about giving the position of teacher and jurist to his younger son, differentiated between private endowments and those taken from the Treasury, and I think that al-Adhraʿī preceded him in that [opinion]. [Another] is that in some of the statements of al-Bulqīnī there is an affirmation that students benefit from the endowments that exist now given that they are entitled to that from the Treasury; others in addition to [Bulqīnī] stated that during a council that was convened over this [issue] during the days of al-Zāhir Barqūq. [Another indication] is that, when you examine the fatwās of al-Nawawī and Ibn al-Ṣalāḥ, you will find them both extremely strict regarding endowments, and when you examine the fatwās of al-Subkī and al-Bulqīnī and most of the later scholars, you will find them lenient and permissive; this is not a contradiction between them and al-Nawawī, rather, each one speaks according to the reality of his time. Most of the endowments from the time of al-Nawawī and Ibn al-Ṣalāḥ were private, whereas the endowments of the Turks started at the end of the 7th century and increased during the 8th century, which was the age of al-Subkī and those after him. The funds that were given to scholars every year from the Treasury during the age of ‘Umar ibn al-Khaṭṭāb up to the Caliph al-Must‘aṣīm were cut off, so the scholars thought that these endowments were paid to them from the Treasury as compensation for [the money] they had taken from it every year, so they ruled permissibly about them, since they had been taking that amount without doing the work to earn it but rather by virtue of their learning alone. So, anyone who fits this description [of learning] is permitted between him and God to take from [these endowments], even if it does not conform to what the endower
has stipulated, and anyone who is not engaged in furthering learning is prohibited from taking from [these endowments] even if he carries out the work.

Al-Damīrī said in *Sharḥ al-minhāj*: I asked our teacher –meaning al-Isnawī – twice about whether a student who is absent from his lessons is entitled to his stipend or should his share be given to those in attendance? [Al-Isnawī] said: if the student is engaged in learning during his absence then he is entitled but if he is not [learning] then he is not [entitled], and if he attends but does not intend to work then he is not entitled because the purpose is that he benefit from learning and not just that he attend; and he viewed that as pertaining to the category of earmarks. Al-Zarkashī said in *Sharḥ al-minhāj*: some [jurists] thought that awarding a stipend on the basis of teaching and scholarship and such falls under the category of remuneration, even [saying] that one is not entitled if one misses some prayers or days, but this is not the case. Rather, it falls under the category of earmarks and maintenance, which is based on charity and beneficence, as opposed to remuneration, which falls under the category of contracts [?]; for this reason it is forbidden to take remuneration for a judgeship, but it is permitted to maintain [a judgeship] using the Treasury, according to consensus.

That which al-Zarkashī says is correct and applies to endowments of the second kind, which were the majority during his time. When we defend what he says about entitlement during absence we [also] defend appointments under the same category; we do not claim either one for endowments of the first kind, which al-Nawawī’s fatwā prohibits. We say for the second kind that it is permissible to resign and to give one’s position to one’s younger son, but we do not say this for the first kind [of endowment].

Related to this also is the issue of giving priority to the shaykh: for the first kind no one is given priority over anyone else except with written consent by the endower. The second kind is subject to examination; if the shaykh is entitled to [funding] from the Treasury by virtue of his learning and the rest of the ranks are not as such, then the shaykh is certainly given priority when the endowment becomes pressed for funds because he is singled out for entitlement. If everyone is of equal learning and the shaykh is the most needy, then he is given priority just as when the Treasury becomes pressed for funds priority is given in order of need. If everyone is equal in both learning and need, then they are given funding according to shares without preference.

Related to this also is the issue of restricting [funds] to one rank among the designated ranks. So, for the first kind [of endowment] it is not restricted but rather [funds] are distributed to each rank in allotments according to the intention of the endower; for the second kind it is permitted to impose restrictions during times of need; it is preferable to impose restrictions on payment because it is easier for most of the ranks to attain [some funding], and God knows best.
APPENDIX TWO
Logic Fatwā Translation

Jalāl al-Dīn al-Suyūṭī:

Al-Qawāl al-mushriq fī tahrīm al-ishtighāl bi-l-manṭiq, “An Enlightening Statement Forbidding Preoccupation with Logic”

In the name of God, the Merciful and Compassionate.

Thanks to God and peace to His servants whom He chose.

Question: There is a person claiming knowledge who says: monotheism rests on the knowledge of the science of logic and that the study of logic is an individual duty for every Muslim and that to learn it in all its detail is [the equivalent of] ten good deeds; he who does not learn [logic] is not correct in his faith and he who issues rulings but does not know [logic] is wrong in his rulings. He said: anyone who uses hashīsh is an unbeliever. [And] he said: the mujtahid makes allowed the prohibited and prohibits the allowed. [And] he said: Abū Ḥāmid al-Ghazālī was not a jurist but rather an ascetic. So, what is necessary in [this case]?

Answer: The discipline of logic is a harmful and reprehensible discipline with which it is forbidden to occupy oneself, some of which is based on talk of ‘primary matter’ that amounts to unbelief and leads to philosophy and heresy, having no spiritual or even worldly value. All of what I mentioned has been expressed by the leaders of the faith and legal scholars. The first to write about this was Imām al-Shāfi‘ī – God be pleased with him – and those of his followers who state it include: Imām al-Ḥaramayn, al-Ghazālī (in the end), Ibn al-Ẓabbāgh (author of Al-Shāmil), Ibn al-Qushayrī, Naṣr al-Maqdisī, al-‘Imād ibn Yūnus and his grandson, al-Salafī, Ibn Bandār, Ibn ‘Asākir, Ibn al-Athīr, Ibn al-Ṣalāḥ, Ibn ‘Abd al-Salām, Abū Shāma, al-Nawawī, Ibn Daqīq al-‘Īd, al-Dhahābī, al-Ṭībī, and many others. Leaders of the Mālikī [school] who write about [logic] include: Ibn Abī Zayd (the author of Al-Risāla), the Judge Abū Bakr ibn al-‘Arabī, Abū Bakr al-Ṭārūshī, Abū al-Walīd al-Bājī, Abū Ṭālib al-Makkī (author of Qūt al-gulūb), Abū al-Ḥasan bin al-Ḥisār, Abū Ṭāmir ibn al-Ḥabī, Abū Ḥabīb al-Mālaqī, Ibn al-Mūnir, Ibn Rushd, Ibn Abī Jamra, and most of the North African jurists. From the Ḥanafī [school], those who write about [logic] include: Abū Sa‘īd al-Sayrāfī and al-Sirāj al-Qazwīnī, who composed a book censuring [logic] called Advice of the Concerned Muslim to those Afflicted with a Love of the Study of Logic. Those who cite it from the Ḥanbalī [school] include: Ibn al-Jawzī, Sa‘d al-Dīn al-Ḥārithī and Taqī al-Dīn ibn Taqīmiyya, who wrote a large volume censuring [logic] and critiquing its principles called Advice of those with Faith against Greek Logic, which I
have abridged to about a third of its size.\textsuperscript{1} I wrote in condemnation of logic a volume in which I laid out the statements of the jurists on the subject.\textsuperscript{2}

[As for] the statement of this ignorant person, that ‘logic is an individual duty of every Muslim,’ he is answered that the sciences of exegesis, ḥadīth and jurisprudence – the most noble sciences – are not an individual duty by consensus but rather a collective duty. So, how could logic be greater than those [sciences]? So, the one who gave this statement must be either an unbeliever, a heretic, or mentally unsound and irrational. And his statement, ‘monotheism rests on knowledge of [logic],’ is one of the worst lies and gravest of calumnies that makes unbelievers out of the majority of Muslims secure in their faith. Even if logic is, in itself, valid and not harmful, it is of no use to [the concept of] monotheism at all and no one thinks that it is useful to it, except those who are ignorant of logic and know nothing about it because, rather, the proofs of logic are based on universals that do not exist outside of it and do not indicate a particular at all. Thus it has been established by those who have examined and who know logic. So, the statement of this person shows that he does not know logic and is not good at it, therefore his statement necessitates the conclusion that he is a polytheist, since he said that monotheism rests on the knowledge of [logic] though he does not yet know logic.

So, when he says: ‘I meant that the faith of one who imitates blindly is not correct but rather the faith of one who [uses] inference is correct,’ We said: they did not mean one who deduces using the principles of logic but instead they meant the absolute [faculty of] deduction that is in the nature of every person, even in the nature of the elderly, the Bedouins, and the youth, such as the ability to deduce from the stars that they have a Creator or from the heavens, or the rivers or from fruits and so forth – and this does not require logic or anything like it. The masses and the common people are all believers in this manner.

As for his statement: ‘those who master [logic] in all its detail acquire ten good deeds,’ this is unheard of except in the case of the Qur’ān, which is the word of the Most High God. So, if this ignorant person meant to link logic, which is the invention of unbelievers, to the word of the Lord of the Worlds then he has committed a grave error and an obvious depravity. It is astounding that he would reckon God to be in error and would equate talk with pious deeds not attained by anyone except for the Prophet (peace be upon him).

And as for his statement: ‘if one does not know logic then his legal opinions are not correct’ leads to the conclusion that the opinions of the Companions and the Followers (and those after them) are incorrect, since logic only entered the regions of Islam around the year 180 A.H. Therefore, Islam existed during this period without the existence of logic in it. It was during this period that there [appeared] the majority of mujtahidīn whose opinions are sought after in religious matters; so, would a reasonable person think

\textsuperscript{1} Al-Suyūṭī’s abridgement, entitled \textit{Jahd al-qarīḥa fī tajrīd al-Naṣīḥa}, has been edited and translated by Wael Hallaq as \textit{Ibn Taymiyya Against the Greek Logicians} (Oxford, U.K.: Clarendon Press, 1993).

\textsuperscript{2} Refers to al-Suyūṭī’s \textit{Ṣawn al-manṭiq wa-l-kalām ‘an fann al-manṭiq wa-l-kalām}. 
these sorts of thoughts? Shāfi’ī himself – may God be pleased with him – came out against the occupation of logic, so how can this cretin say such a thing about the likes of Shāfi’ī (may God be pleased with him)? Or of those leading authorities of the four schools whom we have named [above], those who set down jurisprudence and demonstrated how to issue legal opinions, those who are the guardians of religion?

As for this ignorant person’s statement: ‘al-Ghazālī is not a jurist,’ he deserves a sound flogging with the whip and a long imprisonment so that no ignoramus would have the insolence to speak about one of the leaders of Islam words that reveal any failing [on their part]. So his statement to that effect comes from excessive ignorance and from paucity of faith; he is one of the most obtuse of the ignoramuses and most wanton of sinners. Al-Ghazālī was, in his time, an authority of Islam and a master-jurist with many great works in jurisprudence; the Shāfi’ī school now revolves around his works; he refined the school [opinion] and revised it and summarized it in al-Basīṭ and al-Wasīṭ and al-Wajīz and al-Khulāṣa; the books of the two Shaykhs [al-Nawawī and al-Rāfiʿī] rely on his works. In short, this man who produced these statements is a man of extreme ignorance and stupidity and depravity, so it is incumbent on those who are vigilant in their faith to surrender him to God and to take him as an enemy and as one who is detestable until God deals him a mortal blow that counts him amongst the bygones.

As for his statement on ḥashīsh, ‘he who uses it is an unbeliever,’ the application of this statement is not frowned upon because it is permissible to say something similar to this as a form of deterrence or declaring something to be boorish, as in his statement (peace be upon him): ‘he who leaves prayer has committed unbelief;’ [this statement] refers to a person who deems [abandoning prayer] permissible or the intended is unbelief in [the prayer’s?] benefaction – not unbelief in religion. For if he meant the fact of unbelief without any allegorical interpretation, then he erred, since the school of thought of the people of the Sunna is that one does not commit unbelief through a [lesser] sin; so, when the jurist issues an opinion with a similar expression, he employs allegorical interpretation only as we mentioned [above]. The mujtahid does not make permissible that which is forbidden and does not make forbidden that which is permissible, for prohibition and permission is God’s alone and no other’s. In fact, the opinion does not even come from the jurist himself, rather, his job is to examine the statements of those who came before him and to choose an opinion for which there is evidence for its being preferable.
APPENDIX THREE
Tajdid Chapter Translation

Jalāl al-Dīn al-Suyūṭī:

Al-Taḥadduth bi-ni’mat Allāh

Chapter 19: “A record of those sent at the turn of every century”

Abū Dāwūd in his Sunan and al-Ḥākim in the Mustadrak narrated on the authority of Abū Hurayra on the authority of the Prophet (peace be upon him), saying: “God sends to his community at the turn of each century someone to renew for it its religion.” The ḥāfiẓ Abū al-Faḍl al-‘Irāqī said in his Takhrīj ahādīth al-Iḥyā’: “Its chain of transmission is sound.”

Abū Bakr al-Bazzār said: “I heard ʿAbd al-Malik ibn ʿAbd al-Ḥamīd al-Maymūnī say: ‘I was with Aḥmad ibn Ḥanbal and he was mentioning al-Shāfiʿī and I saw Aḥmad praise him and say: it is narrated on the authority of the Prophet (peace be upon him) that he said: God sends at the turn of every century someone to teach the people their religion. And he [Aḥmad] said: ‘Umar ibn ʿAbd al-ʿAzīz was at the turn of the first century and I hope that Shāfiʿī will be at the turn of the other century.’”

Al-Bayhaqī quotes from Abū Bakr al-Marwazī that Ahmad ibn Ḥanbal said: “if I were asked about an issue where I didn’t know a tradition relating to it, I would use a statement from Shāfiʿī because he is a leading scholar of the Quraysh and it has been narrated on the authority of the Prophet (peace be upon him) [that] a scholar of the Quraysh fills the Earth with knowledge. Also, it is mentioned in the tradition that God sends at the turn of every century someone to teach the people correct practice [al-sunan] and to remove lies

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1 Abū Dāwūd al-Sijistānī (d. 275/889) was a major hadīth scholar whose Sunan is considered one of the six authoritative hadīth collections.
2 Al-Ḥākim al-Nīsābūrī (d. 405/1014) was known for his work in hadīth criticism, especially his Mustadrak 'alā al-Ṣaḥīḥayn.
3 Ṣabd al-Raḥmān ibn al-Ḥusayn Zayn al-Dīn al-‘Iraqī (d. 806/1404) was a notable hadīth scholar and the teacher of Ibn Ḥajar.
4 Aḥmad ibn Ḥanbal (d. 241/855) was a champion of Sunnism, respected hadīth scholar and eponym of the Ḥanbalī school of law. Although he was familiar with Shāfiʿī’s work, it seems that he only met him once (see H. Laoust’s article “Aḥmad ibn Ḥanbal” in the Encyclopaedia of Islam Online).
5 Muḥammad ibn Idrīs al-Shāfiʿī (d. 204/820) was a distant relative of the Prophet through the tribe of Quraysh and the descendents of al-Muṭṭalib. He is the eponym of the Shāfiʿī school of law and left a strong influence on his students, especially during his time in Egypt. He is the author of the Risāla, a major foundational work of Sunnī uṣūl al-fiqh. Al-Shāfiʿī is also universally recognized as the mujaddid for the second century.
6 ‘Umar ibn ʿAbd al-ʿAzīz (d. 101/720) was governor of Medina and an Umayyad caliph who reigned from 99/717 to 101/720. He was known for his piety and was often likened to ‘Umar ibn al-Khaṭṭāb. He is universally recognized as the mujaddid for the first century.
about the Prophet (peace be upon him), so we examined [it] and if ‘Umar ibn ‘Abd al-‘Azīz is at the turn of the century, [then] al-Shāfi‘ī is at the turn of the second century.”

Abū Ismā‘īl al-Harawī quotes from Ḥamīd ibn Zanjawayh that he heard Aḥmad ibn Ḥanbal say: “it is narrated in the tradition on the authority of the Prophet (peace be upon him) that God bestows upon the people of His religion at the turn of every century a man from my family to explain their faith to them. I examined the first hundred years and there was a man from the family of the Messenger of God (peace be upon him) and he is ‘Umar ibn ‘Abd al-‘Azīz and at the turn of the second century he is Muḥammad ibn Idrīs al-Shāfī‘ī.”

The ḥāfiẓ of the age, Ibn Ḥajar,7 said in his book Manāqib al-Shāfi‘ī: “al-Zuhrī preceded Aḥmad in counting ‘Umar ibn ‘Abd al-‘Azīz for the first century; al-Ḥākim, following his narration of the tradition in question, quotes from Ibn Wahb on the authority of Yūnus on the authority of al-Zuhrī, saying: ‘when it was the turn of the century, God bestowed on this community ‘Umar ibn ‘Abd al-‘Azīz.’” The ḥāfiẓ Ibn Ḥajar said: “this suggests that the tradition was well-known at that time period, which strengthens the chain of transmission of the tradition, even though it is [already] strong based on the reliability of its transmitters.” Al-Ḥākim said: “I heard Abū al-Walīd Ḥassān ibn Muhammad the faqīh say on more than one occasion [that he] heard a teacher from amongst the scholars say to Abū al-‘Abbās ibn Surayj: 8 ‘tell the good news, judge, that God has bestowed on the believers ‘Umar ibn ‘Abd al-‘Azīz at the turn of the century to reveal every correct practice [sunna] and to exterminate every dangerous innovation [bid’a]. And God bestowed al-Shāfī‘ī upon the turn of the second century to reveal correct practice and to conceal dangerous innovation. And God bestowed you upon the turn of the third century so that every correct practice would be strengthened and every dangerous innovation would be weakened.’”

Abū Ja‘far al-Nahḥās said in his Tārīkh: “Sufyān ibn ‘Uyayna said: ‘I was told that every hundred years after the death of the Messenger of God (peace be upon him), a man appears from amongst the scholars whom God uses to strengthen the religion, and that ‘Īsā ibn Ādam is one of them.’”

Ibn al-Subkī9 said in al-Ṭabaqāt al-kubrā: “the tradition, ‘God sends at the turn of every century a man from my [the Prophet’s] family to explain their religion to them,’ appears in various forms. The imām Ahmad ibn Ḥanbal mentioned it and then followed it by saying: ‘I examined the first century and there is from the family of the Messenger of God (peace be upon him) ‘Umar ibn ‘Abd al-‘Azīz. And I examined the second century

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7 Ibn Ḥajar al-‘Asqalānī (d. 852/1449) was the greatest ḥadīth scholar of his generation. Al-Suyūṭī attended some of his lectures as a young student. Ibn Ḥajar was also the teacher of al-Suyūṭī’s rival, al-Sakhāwī.
8 Aḥmad ibn ‘Umar ibn Surayj (d. 306/918) was a prominent Shāfī‘ī jurist who is considered a possible mujaddid for the third century.
9 Tāj al-Dīn al-Subkī (d. 773/1371) is a key figure in later Shāfī‘ī legal thought. His biographical dictionary, al-Ṭabaqāt al-shāfī‘īyya, provides a wealth of information on the history and development of the Shāfī‘ī school of law.
and there is from the family of the Messenger of God (peace be upon him) Muḥammad ibn Ḫālid al-Ṣaḥḥāḥ. Ibn al-Sabkī said: “As far as what is added to this narration, I cannot speak about the centuries after the second because no one from the family of the Prophet (peace be upon him) was mentioned for them.”

And he [Ibn al-Subkī] said: “But this is a detail that we would caution you about by saying: when we did not find after the second century someone from the [Prophet’s] family who fit this role, [but] we found some for whom it was said that he is the one sent at the turn of each century who belongs to the Shāfiʿī legal school and who is led by his [Shāfiʿī’s] statements; we learned that he [Shāfiʿī] is the sent imām whose statements guide the affairs of people and for whom one is sent after him at the turn of each century to establish his legal school.”

And he [Ibn al-Subkī] said: “For this reason, Ibn Surayj takes precedence in my opinion for the third century over Abū al-Ḥasan al-Ashʿarī, even if he was also from the Shāfiʿī school, except that he was a theologian [mutakallim] who undertook to defend doctrinal principles and not their application, whereas Ibn Surayj was a jurist who undertook to defend the applied law of this legal school. So, Ibn Surayj is first for this position, especially since al-Ashʿarī’s death occurred late after the turn of the century, after twenty years. Also it was attested that this tradition was mentioned during the majlis of Abū al-ʿAbbās Ibn Surayj when a teacher from amongst the scholars said: ‘Tell the good news, judge, that God sends at the turn of the first century ‘Umar ibn ‘Abd al-ʿAzīz and of the second al-Shāfiʿī and has sent you at the turn of the third century.’ Then he composed [verses] saying:

‘Two [centuries] have passed and blessed in them were the Caliph ‘Umar [who] allied the powers [and] al-Shāfiʿī the wise, Muḥammad, heir to the prophethood and the cousin of Muḥammad;
I hope, Abū al-ʿAbbās, that you are the third
After them who will water Aḥmad’s soil.’ [?]

Ibn Surayj cried out and wept and said: ‘He has announced my death.’ And he died that [same] year…”

“As for the fourth century, it has been said that it is the shaykh Abū Ḫāmid al-İsfarāʾīnī, or it is said rather the ustādh Sahl ibn Abū Sahl al-Ṣuʿlūkī. Both of them are among the leaders of the Shāfiʿīs…”

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10 Abū al-Ḥasan al-Ashʿarī (d. 324/935-6) founded the orthodox Ashʿarī school of theology in opposition to the doctrines of the Muʿātꜵila. Many Shāfiʿī scholars, including Tāj al-Dīn al-Subkī, were defenders of Ashʿarī theology. He is a possible mujaddid for the 3rd century along with Ibn Surayj.

11 Abū Ḫāmid al-İsfarāʾīnī (d. 406/1015-16) was a Shāfiʿī scholar active in Iraq and a colleague of al-Ḥākim al-Nīṣābūrī. He is a possible mujaddid for the 4th century along with al-Ṣuʿlūkī.

12 Sahl ibn Muḥammad al-Ṣuʿlūkī (d. 404/1014) was a prominent jurist in Nishapur. Known as Abū al-Ṭayyib, he is a possible mujaddid for the 4th century.
Al-Ḥākim said: “When this narration was told to me – meaning the story of Ibn Surayj and the verses that they (the members of his majlīs) wrote, including a learned jurist and writer – it was when he was in the second majlīs and some of those present said to me that this shaykh had added to those verses mentioning Abū al-Ṭayyib Sahl and putting him at the turn of the fourth century, saying:

‘And the agreed upon fourth [one] is Sahl Muḥammad, [who] brought great light to every believer, [with whom] all of the Muslims would take refuge in learning if they came to a serious calamity; there is still among us the best of all mankind of the chosen school [madhhab], the ultimate restorer.’

Al-Ḥākim said: “When I heard these additional verses I fell silent and did not speak and I was filled with sadness that God had destined his death for that [same] year.”

Ibn al-Subkī said: “Sahl was among those whose position is not disputed, which is made clear by his association with Abū Ḥāmid in jurisprudence and the proximity of his death to the turn of the century, in contrast to al-Ash’ārī and Ibn Surayj, and in addition to his mysticism and mastery of the other sciences.”

He [Ibn al-Subkī] said: “the fifth is the ḥujjat al-islām al-Ghazālī and the sixth is the imām Fakhr al-Dīn al-Rāzī. And he said: “it is possible that it is the imām al-Rāfī’ī except that al-Rāfī’ī’s death was later than 620, just as al-Ash’ārī’s death was later.” And he said: “it is remarkable that Ibn Surayj’s death was in the year 306 and the difference between that and al-Ash’ārī, whose death was after the twenties. Similarly, the [difference] between the death of the imām Fakhr al-Dīn after 606 and that of al-Rāfī’ī, whose death was later and so on. The seventh is the shaykh Taqī al-Dīn ibn Daqīq al-Īd as far as we have been made aware by our teachers.” He said: “I have appended the previous verses with the following:

It is said that al-Ash’ārī is the third [one] sent to the eternal true religion And it is not right to deny one or the other [when] there are two [possible] decrees; this [one] is deemed

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13 Abū Ḥāmid Muḥammad al-Ghazālī (d. 505/1111) was not only a pillar of Shāfi‘ī legal thought but also one of the most renowned figures in medieval Islamic scholarship as a jurist, theologian and mystic. He is acknowledged among Shāfi‘īs as the mujaddid of the fifth century.

14 Fakhr al-Dīn al-Rāzī (d. 606/1209) was an outspoken defender of Sunnism and a famed Ash’ārī theologian and exegete. Known as Ibn al-Khaṭīb, he is a possible mujaddid for the sixth century along with al-Rāfī’ī.

15 ‘Abd al-Karīm Abū al-Qāsim al-Rāfī’ī (d. 623/1226) was a Shāfi‘ī jurist in Qazwīn and the author of a number of important works in fiqh, including his Kitāb al-Muḥarrar. He is a possible mujaddid for the sixth century along with al-Rāfī’ī.

16 Taqī al-Dīn ibn Daqīq al-Īd (d. 702/1302) was a jurist and hadīth scholar based in Egypt and author of al-Ilmām fī aḥādīth al-aḥkām. He is a possible mujaddid for the seventh century.
in support of the root of the religion of Muḥammad
and that [one] as its counterpart, the branches of [the religion of] Muḥammad;
the necessity of Islam is to call for
[both] this and that to guide those who will be guided;
People have decided that Aḥmad al-Isfarā’īnī
Is the fourth [one] of them, which is not unlikely;
The fifth is the learned imām Muḥammad –
He is an authority without question;
And Ibn al-Khaṭīb is the sixth [one] sent, since
He was such a supporter of the Sharī’a;
And al-Rāfīʿī would be like him, if his death had not been [too] late like al-Ashʿarī and
Aḥmad;
And the seventh is Ibn Daqīq ‘Īd, so listen [?]
So the people are between Muḥammad or Aḥmad.”

Al-Muṭṭawwiʿī said in his book, al-Mudhhab fī dhikr mashāyikh al-madhhab, in his
biography of the imām Sahl al-Ṣuʿūlūkī: “He was [someone] of whom it was said [that he
was like] a scholar in character and a nation in soul [?] and a leader of the world without
exception and Shāfiʿī ’ī was his contemporary in agreement [?]. Some of his
contemporaries have praised him [thus]:

We have narrated on the authority of the Prophet of guidance
In the clear and exalted Sunna
That God ordained a leader
Of the religion at the end of every century;
The scholar ʿUmar the successor to ʿAlī
[God] ordained him for the first century
and al-Shāfiʿī ʿī is approved after him,
[God] appointed him for the second century
and Ibn Surayj after him [who] had come
in the following third century
and the shaykh Sahl a leader to mankind
in the current fourth century.”

The ḥāfiẓ Abū al-Faḍḥ al-ʿIrāqī said in his biography that he did for Isnawī: “I was told
that some scholars put al-Nawawī18 for the sixth century and for the fifth century before it
Abū Ṭāhir al-Silafī19 and for the fourth century before it the shaykh Abū Ishāq al-
Shīrāzī.20 Each one of those mentioned died in the year 76 of the century in which he

17 This quotation omits some passages and reorders others from al-Subkī’s original in his Ţabaqāt
(Sartain, vol. 1, p. 212).
18 Muḥyī al-Dīn Abū Zakariyyā’ al-Nawawī (d. 676/1277) was a major Shāfiʿī jurist and author of
Minhāj al-ṭālibīn.
19 Abū Ṭāhir al-Silafī (d. 576/1180) was a very long-lived Shāfiʿī ḥadīth scholar based in
Alexandria.
20 Abū Ishāq al-Shīrāzī al-Fīrūzābādī (d. 476/1083) was a well-connected Shāfiʿī jurist and the
author of al-Muhadhdhab who taught at the Niẓāmiyya in Baghdad.
passed away. So, if what he said about that is correct, then it seems that the author of the biography is their counterpart in this century and thus he is the one intended as the scholar who will restore to the people their religion. Thus, even if it is possible, [the matter] requires further study, because in the tradition are the [words], ‘at the turn of every century.’ For this reason, the imām Ahmad made it out to be that the one intended for the first century is ‘Umar ibn ‘Abd al-‘Azīz and, for the second, al-Shāfi‘ī.’

He [al-‘Irāqī] said: “it is said that, at face value, the tradition refers to religious authorities, meaning rulers, and for this reason Abū Dāwūd included it in the eschatology section [kitāb al-malāḥim]21. I said: it has come out in the words of the imām Ahmad that the reference is to one who teaches them correct behavior as al-Khaṭīb has cited it. He [al-Khaṭīb] said: Ahmad ibn Muḥammad al-Atīqī told us, according to ‘Abd al-Raḥmān ibn ‘Umar ibn Naṣr al-Dimashqī, according to Abū ibn al-Ward, according to Abū Sa‘īd al-Firyābī, who said that Ahmad ibn Hanbal said: ‘God sends to the people every hundred years someone to teach them correct behavior and to deny falsehood about the Messenger of God (peace be upon him), so we examined [it] and at the turn of the first century is ‘Umar ibn ‘Abd al-‘Azīz and at the turn of the second century al-Shāfi‘ī.’ Al-Bazzār, author of al-Musnad, said: I heard ‘Abd al-Malik al-Maymūnī say: I was with Ahmad ibn Hanbal, who was mentioning al-Shāfi‘ī, and I heard him praise him, saying: it is narrated on the authority of the Prophet (peace be upon him) that God sends to this community at the turn of every century someone who will establish for it its religion, so it was ‘Umar ibn ‘Abd al-‘Azīz at the turn of the first century, and I hope that it will be al-Shāfi‘ī at the turn of the other century. Ibn ‘Adī said: Muḥammad ibn ‘Alī ibn al-Ḥusayn said: I heard our colleagues say: in the first century was ‘Umar ibn ‘Abd al-‘Azīz and in the second century [it was] al-Shāfi‘ī.’

Al-‘Irāqī said: “I ordered the three remaining [ones] at the turn of every century up to our time with my statement:

The fifth is al-Ṭūsī,22 I mean the ḥujjat al-islām who is Muḥammad ibn Muḥammad And the one who revived us with his Iḥyā’ Who killed blindness [ignorance] and cleared the heart of obstacles; And the sixth is al-Fākhr the approved imām. Ibn al-Khaṭīb, who blinded the eyes of envy, The one who displayed the indicators for guidance And who erased the doubt [caused by] the atheist’s error; And the seventh is al-bathjarī [?]23 Abū al-Faṭḥ who Reached independent scholarship [ijtihād al-‘ilm], seizing it with [his] hand, He revived the trust of mankind and had risen In his commentary, al-Ilmām, above the stars; It is probable that the eighth is the Mahdī, From among the descendents of the Prophet, or the rightly-guided Messiah

21 The word malāḥim literally means ‘battles.’
22 Refers to al-Ghazālī.
23 Sartain is unable to identify this word in the manuscript, but assumes it to be one of the names of Abū al-Faṭḥ ibn Daqīq al-Īd (Vol. 1, p. 212).
For the time is close at hand — dhū al-hijja\(^{24}\)
Is late — and he [will] reign and [will] not be ruled
Or you will see the dying out of the scholars, who will
Pass away without a successor to the throne [?] —
Not in the removal of scholarship, but rather
Its elimination [will be] in the dying out of the scholars, and [thus] it has come to pass.”\(^{25}\)

Then I saw a treatise on the same subject by some later scholars of our teachers’ generation or slightly preceding them, [but] I do not know who [the author] is exactly. He said in [the treatise]: “As for the appointment of he who will restore the religion at the turn of every century, Ahmad ibn Ḥanbal has appointed ‘Umar ibn ‘Abd al-‘Azīz at the turn of the first century, whose death was in the year 101, and for the turn of the second century al-Shāfī‘ī, whose death was in the year 204.”

He [al-Ahdal] said: “At the turn of the third century it was, according to general belief, Abū al-‘Abbās ibn Surayj, who died in the year 306. And, it is said, Abū al-Ḥasan al-Ash‘arī, who is preferred by the ḥāfiz Abū al-Qāsim ibn ‘Asākir\(^{27}\) as well as al-Yāfī‘ī and other scholars. He [al-Ash‘arī] had turned against the school of the Mu‘tazila and let triumph the school of the Sunna at the turn of the third century until he passed away in the year 324. And at the turn of the fourth century it is said to be Sahl ibn Muḥammad al-Ṣu‘lūkī, and it is said Abū Ḥāmid al-Bāqillānī\(^{28}\) whom Ibn ‘Asākir and others prefer. At the turn of the fifth century is the ḥujjat al-islām al-Ghazālī, about whom I know of no dispute, whose death was in the year 505. At the turn of the sixth century is the imām Fakhr al-Dīn al-Rāzī whose death was in the year 606. At the turn of the seventh century is Taqī al-Dīn ibn Daqīq al-Īd, whose death was in 702. At the turn of the eighth century it is said to be Sirāj al-Dīn al-Bulqīnī,\(^{29}\) and it is said Ṣāḥib al-Dīn ibn bint al-Maylaq al-Shādhilī\(^{30}\) due to the large quantity of his works in the religious sciences and his challenge to the heretics, especially the Ḥulūliyya and the Ittiḥādiyya.\(^{31}\) The first is supported by a group of the jurists of Egypt, including Shams al-Dīn al-Jazarī, who decided on him in his Mashaykha and

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\(^{24}\) The reference is probably to the twelfth and final month in the Islamic calendar.

\(^{25}\) Goldziher refers to this part of the poem, pp. 84-85.

\(^{26}\) Sartain identifies the quotation as being from Badr al-Dīn al-Ahdal’s [d. 855/1451] al-Risāla al-mardhiyya fi nuṣrat madhhab al-Ash‘arīyya (vol. 1, p. 213).

\(^{27}\) Abū al-Qāsim ibn ‘Asākir (d. 571/1153) was from a family of scholars in Damascus and is the author of the Tārīkh madīnat Dimashq. A devoted defender of Ash‘arī Sunnism, he composed an apologetic work, Tabyīn kadhib al-mufṭara ‘alā Abū al-Ḥasan al-Ash‘arī, in which he lists his preferred mujaddids.

\(^{28}\) Abū Bakr al-Baqqillānī (d. 403/1013) was a Mālikī jurist and a strong supporter of Ash‘arī theology.

\(^{29}\) Sirāj al-Dīn al-Bulqīnī (d. 805/1403) was a Shāfī‘ī jurist based in Egypt and one in a family of scholars.

\(^{30}\) Ṣāḥib al-Dīn al-Shādhilī (d. 797/1394) was an important mystic of his age.

\(^{31}\) Sartain refers to the Ḥulūliyya and Ittiḥādiyya as “Christians and those sections among the Ṣūfis and the Shi‘īs who believe in ḥulūl, incarnation or infusion of the divine spirit into the body of man, or in ittiḥād, the identification of the divine and human natures” (vol. 1, p. 213). See also L. Massignon’s article, “Ḥulūl” in the Encyclopaedia of Islam Online.
praised him a great deal; the second one is supported by a group of Şūfīs [but] that is not correct because the shaykh Nāṣir al-Dīn passed away before the turn of the century – he died in the year 797, [whereas] al-Bulqīnī’s death was in the year 805. It is possible that it is the shaykh Zayn al-Dīn al-‘Irāqī, who was the leading hadith scholar of his age with both piety and trustworthiness as well as beneficial works and whose death was in the year 806. All of them are possible, since the restorer could be one or more.”

He [al-Ahdal] said: “You should know that the appointment of the restorer is through the opinion of his contemporaries, based on a preponderance of probability, who know his circumstances and the benefit of his learning. The restorer can only be a scholar of the religious sciences, both exoteric and esoteric, a champion of the Sunna and suppressor of dangerous innovation. [The restorer] could also be one person in the whole world, such as ‘Umar ibn ‘Abd al-‘Azīz as the only one to hold the caliphate, or like the imām al-Shāfi‘ī due to the consensus of the scholars that he was the most learned in his time period. It could be two people or several if there is no consensus over the appointment of a single person.”

He [al-Ahdal] said: “also there could be someone during the century who is preferable to the restorer at the turn of the century, as some of the scholars have determined. However, the restoration of religion [al-tajdīd] is only at the turn of the century, brought on by the general disintegration of the scholars of the century and the extinction of correct practices and the appearance of dangerous innovations, which necessitates the restoration of the religion; God brought to the successors the [ways of] the ancestors as restitution. In this sense, the tradition was revealed: ‘there is still one faction of my community who knows the truth and keeps the faith, who will not be hurt by abandonment.’ When the imām Aḥmad ibn Ḥanbal appointed ‘Umar ibn ‘Abd al-‘Azīz and al-Shāfi‘ī for the first two centuries, those who came after him were bold enough to appoint those whom we have mentioned; the one named at the turn of the century was only appointed by the [opinion] of his contemporaries, based on probability, as well as the benefit derived from him by his students and from his works.”

Then he [al-Ahdal] quoted the verses cited previously by al-‘Irāqī and said: “that which is quoted that for the turn of the eighth century it will be the Mahdī or ‘Īsā ibn Maryam due to the closeness of the Hour [of Judgment] is not correct; we are now in the year 830 and there has been no sign of that happening.” He said: “it is possible that there could still be a ninth at the turn of the ninth century that we are in currently and that the Mahdī or ‘Īsā ibn Maryam could [come] in the tenth century at the end of the [millennial] cycle and the Arabic numeration. God knows best.”

I said: his statement that ‘it is possible that there could still be a ninth at the turn of the ninth century…’ is correct, since we are now in the year 896 and neither the Mahdī nor ‘Īsā have come, nor have there been any signs of that happening. The indigent one has

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32 Refers to Jesus Christ.
33 John Hunwick translates this passage in the notes to Goldziher’s article (note 20, p. 85).
34 Refers to al-Suyūṭī himself.
begged God’s favor to bestow on him the [rank] of restorer of religion [\textit{al-mujaddid}] at the turn of the century, and that is not difficult for God the Almighty to do.
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