

## *Editorial*

# **Ibn Hazm's Legal Contribution**

In profiling Ibn Hazm, the previous editorial shed some light on his genealogy, early life and education, and breadth of knowledge. In this issue, I concentrate only on his legal dimensions.

## **A Shot at a Political Career?**

Ibn Hazm's childhood of luxury ended abruptly when his family estate was destroyed in 1013 and the family fled to Jativa. Like his father, Ibn Hazm's early career began in political arena. Sympathetic to the the Umayyads, he was imprisoned after Sulayman's overthrow in 1016.<sup>1</sup> A few years later, however, Abd al-Rahman IV al-Murtada appointed Ibn Hazm his vizier, which caused him to fight in the battle of Granada. In 1023, released after years in jail, he returned to Cordoba and, in 1023, was again appointed vizier by Abd al-Rahman V al-Mustazhir. Seven weeks later the caliph was murdered and Ibn Hazm was again imprisoned. Upon his release, he became an academic and withdrew from political and public life.<sup>2</sup>

## **Legal Works and Ideas**

He began to study jurisprudence at the age of twenty-six, when he was publicly shamed by not knowing "how to restore (*ajbur*) any of the daily prayers," did not know how to perform the "greeting of the mosque" prayer, and was unaware that it was not done before sunset. He immediately sought out Abu Abd Allah ibn Dahhun (d. 1030), who "showed me to the *Muwatta'* of Malik ibn Anas which I begun to read on the next day. And I continued to study from him and others for about three years, and [thereafter,] I started to debate."<sup>3</sup>

Although he was first exposed to Maliki jurisprudence, there is no evidence that he wrote any books based on it. As a scholar who valued intellectual independence, he found the school's "insistence on unquestioning obedience to authority (*taqlid*)," quite unsettling and eventually joined the Shafi'i school, which he considered more liberal. During this time he wrote *Kitāb al-Muḥallā bi al-Āthār*,<sup>4</sup> an abridgement of his earlier *Al-Mujallā*. Brockelmann refers to the full title as *Kitāb al-Muḥallā bil' Āthār fī Sharḥ al-Mujallā bil Iqtisār (Ikhtisār)*.<sup>5</sup> Ibn Hazm apparently wrote *Al-Muḥallā* to simplify *Al-Mujallā*, for:

its understanding would be simple for the student and the beginner, and would serve for him as a ladder to becoming knowledgeable in debate, disagreement and correction of proofs that lead to the knowledge of truth.<sup>6</sup>

Ibn Hazm felt uncomfortable with some Shafi'i principles (e.g., *qiyās* and *ra'y*), and therefore moved to the the Zahiri school, whose principles he delineated in *Al-Iḥkām li Uṣūl al-Aḥkām*. But his reason for doing so may have been dictated by various intellectual and historical considerations.

At a time of ethical and social imbalance, Andalusia's religious scholars were driven by greed for wealth and lust for higher status, and thus were the chief supporters of the "party kings" (*mulūk al-tawā'if*) quest for authority and attitude to injustice. By now an expert in Maliki and Shafi'i law, Ibn Hazm realized that these scholars abused *qiyās* and used it to legitimize the rulers' actions rather than uphold Islam's fundamentals. Consequently, he adopted Zahirism and waged an intellectual war against the other schools.<sup>7</sup>

By becoming a Zahiri he could also work to accomplish his initial political goals. Unable to restore his society's well-being through its leaders, he turned to Zahiri-based jurisprudence as a way to restore the people's social, economic, and moral life. By ensuring that its principles were rightly founded, the impact would encompass all aspects of life including, perhaps, political life.

### **Zahiriyah (Literalism): Principles**

Although Ibn Hazm developed and elaborated principles of Zahiriyah (a school founded several decades earlier by Abu Sulayman Dawud ibn Ali al-Isbahani, d. 884), how he defined it is unclear. R. Strothmann defines it as "a school of law, which would drive the law only from the literal text (*zāhir*) of the Kur'ān and Sunna."<sup>8</sup> But Ibn Hazm understood it as a methodology that could be applied to law, theology, and any discipline in which he engaged himself. His strong efforts to elucidate Zahiri doctrine culminated in his *Al-Iḥkām fī Uṣūl al-Aḥkām* and *Al-Fiṣal fī al-Milal wa al-Ahwā' wa al-Niḥal*.

For Ibn Hazm, Zahirism signified:

bypassing obscure and esoteric meaning and going to that which is obvious and apparent by itself, which can be discovered instinctively by the intellect through spoken language and the understanding of its meaning, by the use of what is customary, and under the auspices of the Qur'an and the Sunnah.<sup>9</sup>

The principles of his methodology are identified as:

1. Commitment to the text (Qur'an and Sunna) within the confines of the literal meaning, based on what the obvious (*wādih*) language indicates.

2. Recognition and acceptance of the Companions' consensus as a source of religious legislation, as well as rejection of the principles of analogy, application of preference (*istihsān*), imitation, causation, etc.
3. Citing the opponent's arguments and avoiding as much as possible putting words in their mouths.
4. Holding all the Companions at the same level of authority; and although the opinions of some of them can be followed and others' rejected, there is no inherent authority for some over others when they disagree.
5. Giving all the leaders of the schools of law the same consideration without attaching any superiority to any of them.
6. Giving attention to several sources, but only citing the names when uses them as evidence, such as al-Bukhari, and Malik.
7. No authority for the many as long as there is a dissenting voice.
8. More reliance on the Companions' actions than their sayings that are based on the Prophetic Traditions.<sup>10</sup>

It is observed that most of the principles that Zahirism challenged, and through which it became distinguished, were of a legal nature (e.g., *qiyās* and *taqlīd*).<sup>11</sup> Hence, a selective discussion on consensus and analogy follows.

### Consensus (*Ijmā'*)

Islamic jurisprudence considers consensus, defined in essence as all Muslim individuals or scholars agreeing on a specific legal rule based on specific texts of the Qur'an and Sunnah, a source of Islamic law. Ibn Hazm, who approves of this, rejects the idea of consensus based on collective opinion in the absence of any supporting Qur'anic text or *sunnah* of the Prophet. For him, Qur'an 4:59's injunction to obey the religious and political leaders does not override the command to obey God and the Prophet. Hence, scholars can neither issue opinions nor agree on certain issues (which act would be binding) without basing themselves on the Qur'an and Sunnah.

He stated that only the Companions' consensus was binding, for they had seen Muhammad establish Islam. Moreover, they were all Muslims, something that cannot be said of any subsequent generation, and so only their consensus is truly reliable. Also, they were easily identifiable, as was everything they said and believed. Hence, the possibility of real consensus belongs to them alone.<sup>12</sup>

Ibn Hazm asserts that no one needs to explain the nature of consensus. This certain consensus (*al-mutayaqqan*) is two types: (1) that which is beyond doubt and thus all Muslims believe (e.g., the *shahādah* and the obligatory five daily prayers) and (2) what all the Companions witnessed the Prophet say or do, or what he was known to have done with certainty by those who were absent (e.g., his decision to allow Khaybar's Jews to go into exile).<sup>13</sup>

Ibn Hazm is unique here in restricting consensus to the Companions, rejecting their consensus if there is even one dissenting voice, and ignoring the consensus of a particular place (e.g., Madinah or Kufa).

### **Analogy (*Qiyās*)**

Rejecting analogy as a source of jurisprudence is perhaps the signature doctrine of Ibn Hazm’s Zahiri system.<sup>14</sup> According to other schools, analogy, like consensus, is a “source” of law “through” which a legal rule can be derived or reached in the absence of a directly pertinent Qur’anic or Sunnah text dealing with a particular issue that may share the same basic cause (*‘illa*) with an available text. Ibn Hazm vehemently objects to this practice:

The Zahiris reject analogy ... and say one cannot rule – in anything at all – except on the basis of a text from the Qur’an or the Hadith, through an authenticated deeds or affirmation (*iqrār*), or through a consensus of all Muslim scholars, with the certainty that there was absolutely no dissent.<sup>15</sup>

According to him, other schools use three types of analogy: (1) “the most similar and suitable” (*al-ashbah wa al-awlā*), in which a decision of a known ruling is applied to another unknown, due to a high degree of similarity between them, such as applying a couple’s separation due to the lack of sexual intercourse to a husband who does not support his wife; (2) “the similar” (*al-mithl*), such as al-Shafi’i’s claim that a vessel used by a dog must be washed seven times can be applied to a vessel used by a pig; and (3) “the least similar” (*al-adnā*), as in case between urine and blood.<sup>16</sup> Ibn Hazm views this typology as nothing but a collection of controversies (*shaghab*) falsified by the adherents of the other schools.

He opines that, initially, there was no obligation (*ijāb*) or forbidding (*tahrim*) in religion. After God sent down His legislation, however, whatever He ordered, forbade, or was silent about became, respectively, obligatory, forbidden, and absolutely permissible (*mubāh muṭlaq*) and thus allowed (*ḥalāl*). Hence, “there is no way (*sabīl*) at all for a fourth type [to exist],” and therefore no need for analogy.<sup>17</sup> He ridicules the opinion that analogy can be done by taking the original (*aṣl*) and applying it to the “branch” (*far’*) in Islamic law, and so concludes that “all religious rulings are original and there is no ‘branch’, and all have texts.”<sup>18</sup>

Although his concepts could not place the Zahiri school on an equal footing with the others in terms of following and application, nor to enable it to survive as a distinct school, he did leave his mark on Islamic jurisprudence. I hope to address his theological views in the coming issues.

## This Issue

Over the years, the third volume of the year has been viewed as a “special issue.” This issue is an exception; this year’s “special issue” will be 30:4.

We open with Nihan Altınbaş’ “Honor-related Violence in the Context of Patriarchy, Multicultural Politics, and Islamophobia after 9/11.” Altınbaş attempts to contextualize this violence in relation to patriarchy and a society’s economic wellbeing, to migratory experience in terms of multicultural politics and, finally, to critiques of its use in post-9/11 misrepresentations of Islam. She argues that the global phenomenon of honor-related violence is shaped not by religion, but by unequal power relations and patriarchal domination.

Yousef Rahath and Rosnani Hashim’s “Contemporary Islamic Educational Discourse and the Philosophy of Empowerment” proposes a new conceptual framework for empowerment in lieu of the traditional views, which see it in terms of infrastructural development or shifting power from the powerful to the powerless. They argue that any process of education that seeks to empower people must provide the fundamental freedom and resources so that the students can understand the world and thereby acquire the ability to change it.

In “The Genesis and Development of the *Maqāṣid al-Qur’ān*,” Tazul Islam explores the genesis and conceptual developments of this new academic field by analyzing its roots and how it has fared over time. He concludes that (1) it has achieved the status of a “specific science” that could be presented to the public in a compact form; and (2) although hardly any theoretical work appears in the very early studies of the Qur’an, surely those early authors understood the *maqāṣid* both in theory and in practice, for the all-exclusive changes occurring at that time reflected them.

We close with Peter O’Brien’s “Islamophobia, Euro-Islam, Islamism, and Post-Islamism: Changing Patterns of Secularism in Europe.” O’Brien contends that ideological elements of Islamism, Islamophobia and Euro-Islam have all found their way into policymaking processes in several European lands, targeting Muslims and resulting in “policy messiness” and “mutual fragilization.” He insists on a fourth ideological position, “post-Islamism,” which can freely and constructively explore cross-fertilizations and has the potential for creative hybridity among a younger generation of European Muslims.

I hope that our readers will find these papers thought-provoking, stimulating, and sources of inspiration and motivation for their own research.

## Endnotes

1. Eric L. Ormsby, “Ibn Hazm,” *Dictionary of the Middle Ages*, ed. Joseph Strayer (New York: Scribner, 1985), 6:117.

2. Ibid.; Pellat suggests that Ibn Hazm probably wrote his celebrated *Ṭawq al-Ḥamāmah* during this time (1027). C. Pellat, "Ibn Hazm al-Andalusī," *Journal of the Pakistani Historical Society* 9 (1961): 71-72.
3. Yaqut al-Hamawi, *Irshād al-Arīb ilā Ma'rifat al-Adīb* (Beirut: Mu'assasat al-Ma'arif, 1999), 4:482.
4. Ibn Hazm, *Ṭawq al-Ḥamāmah fī al-Uḷfah wa al-Ullāf*, ed. Ihsan Abbas (Beirut: al-Mu'assasat al-'Arabiyya, 1993), 87. This translation is adopted from Ormsby, "Ibn Hazm," *Dictionary*, 117. Others argue that *Al-Muḥallā* is one of Ibn Hazm's Zahirī encyclopedias, which means that he wrote it after joining the Zahirī school. Sharaf al-Din Abd al-Hamid Amin, *Ibn Hazm al-Andalusī wa Naqd al-'Aql al-Uṣūlī* (Kuwait: Dar Su'ad al-Sabah, 1995), 54; 'Uways, *Ibn Hazm*, 90.
5. C. Brockelmann, *G.A.L.*, S1 (Leiden: E.J. Brill, 1937), 695.
6. Ibn Hazm, *Al-Muḥallā bi al-Āthār* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1988), 1:21.
7. Roger Arnaldez, "Ibn Hazm," *Encyclopaedia of Islam* (Leiden: E.J. Brill, 1937), 3:795.
8. R. Strothmann, "Zahirīya," *Encyclopaedia of Islam* (Leiden: E.J. Brill, 1913-36), 8:1192.
9. 'Abd al-Halim 'Uways, *Ibn Hazm al-Andalusī: Juhūdūhū fī al-Baḥṭh al-Tārikhī al-Ḥaḍārī* (Cairo: al-Zahra' li al-'Ilam al-'Arabi, 1988), 90.
10. 'Uways, *Ibn Hazm*, 92-93.
11. A. G. Chejne, *Ibn Hazm* (Chicago: Kazi Publications, 1982), 120.
12. Ibn Hazm, *Al-Iḥkām fī-Uṣūl al-Aḥkām* (Cairo: Matba'at al-Sa'ada, 1926), 4:128 and 147. "However," Chejne observes, "Ibn Hazm does not close the door to agreement reached by the Companions' successors, provided that they conform to the truth and based on evidence which resides in the Qur'an and the authenticated Traditions." Chejne, *Ibn Hazm*, 114.
13. *Al-Iḥkām*, 144-50. For more on consensus, see Wael B. Hallaq, *A History of Islamic legal Theories: An Introduction to Sunni Usul al-Fiqh* (New York: Cambridge University Press, 1997).
14. "Da'ud al-Isfahani had rejected the use of *ra'y* (individual insight) as one of the 'roots' of jurisprudence and had sought to reduce the reliance on *qiyās* (analogy). Ibn Hazm would go further and reject the use of analogy altogether." Eric Ormsby, "Ibn Hazm," in *The Literature of Al-Andalus*, ed. Maria R. Menocal, Raymond P. Scheindlin, and Michael Sells (Cambridge, NY: Cambridge University Press, 2000), 239.
15. *Al-Iḥkām*, 7:55-56.
16. Ibid., 7:55. Some of the translations on the types of analogy are taken from Chejne, *Ibn Hazm*, 126.
17. Ibid.
18. Ibid.