

The Paradoxical Hermeneutic of Sunni Jurisprudence:
Its Emergence and Triumph from al-Muzanī to Ibn Ḥazm

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Presentation version

Introduction

Last year in Seattle I described how the 5th-century Ḥanbalī Abū Ya‘lā Ibn al-Farrā’, pursued two seemingly antithetical goals in his legal hermeneutics: power to derive as much definite legal meaning as possible from the language of revelation, and flexibility to modify that meaning as needed to correlate it with a coherent legal system. For example, he held that imperatives entail obligation, they require immediate and continual obedience, and they constitute prohibitions against doing the opposite of what they command. At the same time, an imperative can easily be reinterpreted as a mere recommendation on the basis of some other evidence. General expressions may be assumed without hesitation to refer to everything they possibly could refer to, yet they can be reinterpreted more narrowly (particularized) by appealing to even weak evidence revealed at some later occasion, or non-textual evidence such as analogy. Abū Ya‘lā interpreted revealed language as addressed to the broadest audience possible – male and female, slave and free, believer and unbeliever, present and future persons; and he recognized even the most debatable forms of implied meaning. In short, he affirmed that every expression in revelation has a strong and definite default meaning, yet can easily be reinterpreted so as to agree with other texts and with existing law.

I noted last year that this pragmatic but paradoxical combination of power and flexibility was shared by many jurists from all the legal schools, but was opposed during the 3d and 4th centuries by theologians, who were more cautious in ascribing meaning to language. For example, the Mu‘tazilī ‘Abd al-Jabbār said imperatives convey only recommendation, while the Ash‘arī al-Bāqillānī said they convey neither obligation nor recommendation without some additional evidence that makes their meaning clear. The Mu‘tazila were also more cautious about modifying default interpretations; for example, they denied that a later revelation could particularize an earlier general text. By the middle of the 5th century, however, both theologians

and jurists of all the Sunnī schools had all adopted some version of this pragmatic “jurists’ hermeneutic.” I believe I can now trace how this approach to language emerged and eventually triumphed, beginning with the followers of al-Shāfi‘ī, from the 3d century through the middle of the 5th century. You can follow along on your handout.

The Shāfi‘iyya

The jurists’ combination of power and flexibility is a natural development of al-Shāfi‘ī’s claim that the entire law is implicitly contained in revealed language (power), and that interpreters can resolve conflicts within revelation by exploiting the ambiguity of Arabic (flexibility). al-Shāfi‘ī’s main concern, however, was flexibility. For example, he allowed general texts to be particularized by many different types of evidence, regardless of whether that evidence was revealed before or after the general text. He did not stress the power of language: he avoided specifying a default meaning for commands, for instance. I have therefore placed him left of center in the Shāfi‘ī column, on the side of those who stressed ambiguity and flexibility.

al-Shāfi‘ī’s Baghdād disciples were not able to defend his hermeneutic against attacks of the Ḥanafī ‘Īsā ibn Abān, but some of his Egyptian disciples began to develop it. I won’t know about al-Buwaytī (d. 231/846?) until Ahmed El Shamsy finishes his edition of his *Mukhtaṣar*, but al-Muzanī (d. 264/878?) reportedly went beyond al-Shāfi‘ī in explicitly affirming the doctrine of delayed clarification, which was being denied at the time by the Mu‘tazilī Abū al-Hudhayl and his student al-Shaḥḥām. He also began to develop powerful default interpretations, arguing that commands by default are general, entail obligations, and require continual obedience.

Ibn Surayj (d. 306/918) further elaborated this hermeneutic in the direction of what would become the jurists’ paradigm. He did not consistently maximize the power of language, but he argued that the Prophet’s actions entail obligation by default, and he expanded the meanings of words by a kind of linguistic analogy. He also promoted interpretive flexibility, explicitly permitting delayed clarification, and allowing earlier texts to particularize later texts. His contemporary al-Iṣṭakhrī (d. 328/940) shared similar views, but did not influence as many students. It was Ibn Surayj who made legal theory a formal part of his students’ training, and they in turn made it the subject of comprehensive treatises. Some, such as Ibn Abī Hurayra

(d. 345/956) and perhaps his successor Abū ‘Alī al-Ṭabarī (d. 350/961), defended the jurists’ paradigm. Others, such as Abū Bakr al-Fārisī (d. 305/917?) al-Ṣayrafī (d. 330/942) moved toward a Mu‘tazilī-style literalism or minimalism. Still others, such as al-Marwazī (d. 340/951), al-Marwarrūdhī (d. 362/972), al-Qaffāl al-Shāshī (d. 365/976?), and Abū Ḥāmid al-Isfarāyīnī (d. 406/1016), came down somewhere in between. Also at this time some of the Ash‘ariyya were developing a hermeneutic that maximized interpretive flexibility by suspending judgment on the meaning of many expressions, but they apparently had little influence among Shāfi‘ī jurists. By the time the Ash‘arī school in Khurāsān took the lead in Shāfi‘ī legal theory, they had abandoned al-Ash‘arī’s suspension of judgment and embraced the jurists’ paradigm. Ibn Fūrak (d. 406/1015), Abū Ishāq al-Isfarāyīnī (d. 418/1027), and ‘Abd al-Qāhir al-Baghdādī (d. 429/1038) all upheld a default of obligation for commands, and a flexible default of generality open to many forms of particularization. Ibn Fūrak formalized the category of speech that is at once both clear and ambiguous, having a definite default “apparent meaning” while being open to other literal interpretations. al-Isfarāyīnī was especially notable for his combination of Ash‘arī theology with markedly traditionalist hermeneutical views, such as commands requiring continual obedience. Their elaboration of the jurists’ hermeneutic proved decisive, because it served as a point of departure for the great classical Shāfi‘ī legal theorists Abū Ishāq al-Shīrāzī (d. 476/1083), Imām al-Ḥaramayn al-Juwaynī (d. 478/1085), and al-Ghazālī (d. 505/1111), all of whom were trained by students of this Khurāsānian tradition.

The Hanafiyya

A similar development can be traced in the Ḥanafī school, except that its “founding fathers” did not enunciate any formal hermeneutic for interpreting revealed language. The first Ḥanafī to do this was ‘Īsā ibn Abān (d. 221/836), who wrote on a number of legal-theoretical topics, and was later held up as the Ḥanafī counterpart to al-Shāfi‘ī. He accepted al-Shāfi‘ī’s claim that law should be grounded in revelation, but resisted al-Shāfi‘ī’s exploitation of ambiguity, especially particularization. Mu‘tazilī theologians such as Abū al-Hudhayl (d. 227/841?) and Abū ‘Alī al-Jubbā‘ī (d. 303/915) shared Ibn Abān’s view that general expressions must be interpreted as general, but leading Ḥanafīs of the next few generations – including Ibn al-Thaljī (d. 266/879), al-Barda‘ī (d. 317/929), and al-Māturīdī (d. 333/944) – actually sided with the Murji‘a and al-Ash‘arī, suspending judgment on general expressions. Ibn

Abān's principle of generality was revived, at least symbolically, by Abū al-Ḥasan al-Karkhī (d. 340/952), but his hermeneutic did not stem from Mu'tazilī principles; he adopted a powerful view of language (especially commands), and actually began to break down Ibn Abān's principle of generality by allowing particularization by weak evidence such as analogy. Overall his hermeneutic fits the jurists' paradigm, despite his rhetoric about general expressions. His disciple Abū Bakr al-Jaṣṣāṣ (d. 370/981) further softened the principle of generality in a number of interesting ways. Their Ḥanafī version of the jurists' hermeneutic was preserved by Abū 'Abd Allāh al-Jurjānī (d. 398/1008) and by al-Ṣaymarī (d. 436/1045). al-Dabbūsī (d. 430/1039) appeared to revive a strong Mu'tazilī-style principle of generality by stating that general expressions are known with certainty to be general, so that only evidence that gives certainty can particularize them; but this statement was practically meaningless because he also said that once a general text is known to be particularized in some way, it can be further modified by weak evidence, and he admitted that in law *every* general text is known to be particularized in one way or another. al-Dabbūsī recognized that Ḥanafī law depended on the use of particularization, even by weak evidence such as analogy and individually transmitted reports. For these jurists the trademark Ḥanafī principle of generality was more a symbol of opposition to the Shāfi'iyya than a real hermeneutical disagreement.

The final triumph of the jurists' hermeneutic, in the preclassical period, was the conversion of the Baṣra Mu'tazila themselves. Abū Hāshim (d. 321/933) and Abū 'Abd Allāh al-Baṣrī (d. 369/980?) had already made some concessions to the jurists' paradigm; finally Abū al-Ḥusayn al-Baṣrī (d. 436/1044) undertook to reconcile it with Mu'tazilī conceptions of law and language. On point after point Abū al-Ḥusayn departed from the views of his teacher 'Abd al-Jabbār, and aligned himself with the hermeneutic of al-Karkhī and al-Jaṣṣāṣ.

The Mālikiyya

The Eastern Mālikiyya developed a mature legal hermeneutic somewhat later than the first two schools, but they too flirted with Ash'arī and Mu'tazilī ideas before turning to the jurists' paradigm.

Mālik (d. 179/795) never formulated an explicit hermeneutic, though of course he was later said to have held views consonant with the jurists' paradigm. al-Qāḍī Ismā'īl (d. 282/896) brought Mālik's Iraqi followers into the Shāfi'ī project of correlating law with revelation, and his

disciples began to formulate answers to the hermeneutical questions that project raised. Some evidence suggests Abū Bakr Ibn Bukayr (d. 305/917) may have been sympathetic to the jurists' hermeneutic, but Ibn al-Muntāb al-Karābīsī (fl. early 4th/10th century) and Abū al-Faraj al-Laythī (d. 331/943) adopted some Mu'tazilī views. So did Abū Bakr al-Abharī (d. 375/986), who completed the institutionalization of the Iraqī Mālikī school and made legal theory a part of its curriculum. His students, however, did not. al-Bāqillānī (d. 403/1013), following Ibn Mujāhid (d. 370/980), defended a highly flexible Ash'arī hermeneutic that emphasized ambiguity at the expense of definite meanings. Others embraced the jurists' paradigm. The radical traditionalist Ibn Khuwayzmindād (d. ca. 400/1010), who shunned all theologians as heretics, offered a particularly strong version of it: commands require immediate and continual obedience, though this can be modified by context; the Prophet's actions entail obligation; all forms of negative implication are valid; masculine plurals apply to both men and women. He admitted delayed clarification, and allowed particularization even by non-revealed evidence such as custom. Ibn al-Qaṣṣār (d. 397/1007) advanced a more moderate jurists' hermeneutic, which was shared by Abū Tamām (fl. late 4th/10th cent.) and 'Abd al-Wahhāb Ibn Naṣr (b. 421/1030). After this the Mālikī school petered out in Iraq, but its hermeneutical tradition was soon taken up by the Andalusian al-Bājī (d. 474/1081), who reaffirmed a moderate jurists' hermeneutic, tempered somewhat by the objections of the theologians.

The Hanbaliyya

The last Sunnī *madhhab* to formulate a comprehensive hermeneutic was the Ḥanbalī. Neither Aḥmad (d. 241/855) nor those who canonized his legal views – al-Khallāl (d. 311/923) and al-Khiraqī (d. 334/945) – joined the Shāfi'ī project of correlating a canon of law with a canon of revelation, and consequently they did not develop a hermeneutical theory. This was left to Ghulām al-Khallāl (d. 363/974), who led the Ḥanbalī school in two major steps, adopting the Shāfi'ī project, and simultaneously formulating a hermeneutic to support it, modeled on the paradigm already established by jurists of the other schools. Those of his students who took up legal hermeneutics split in two directions. Abū al-Ḥasan al-Tamīmī (d. 371/982), who took a somewhat rationalist approach to law, restricted both the power of language and the flexibility of interpretation. Ibn Shāqullā (d. 369/979) and Abū al-Ḥasan al-Jazarī (fl. late 4th/10th century) may have adopted a similar hermeneutic. The anti-rationalist Ibn Ḥāmid (d. 403/1013), on the

other hand, appears to have embraced the jurists' paradigm, and his star pupil and designated successor Abū Ya'ālā (d. 458/1065) gave it its definitive traditionalist formulation.

The Zāhirī movement

Finally, I want to note that the Zāhiriyya, although they remained opposed to the Shāfi'ī hermeneutical project and to the jurists' combination of power and flexibility throughout most of their brief history, eventually succumbed to most aspects of the jurists' hermeneutic. By the time Ibn Ḥazm (d. 456/1064) sought to revive the Zāhirī tradition in the West, the jurists' paradigm was so dominant that he had to reconcile his view of law and language with several of its key elements: a strong default meaning for commands, a default of generality readily subject to particularization, and a preference for reconciling rather than rejecting conflicting texts, even by means of delayed clarification. He retained only the Zāhirī rejection of implicit meaning, which, together with their trademark rejection of analogy, was essential to their denial of any coherent moral reality behind the law. It is only Ibn Ḥazm's late form of Zāhirī thought, largely reconciled to the Shāfi'ī project and to the jurists' hermeneutic, that is still studied by other Sunnī schools today. I hope to have for you by next year a fuller account of Zāhirī hermeneutical thought up to Ibn Ḥazm.

Conclusion

All four major Sunnī schools developed their hermeneutical thought following more or less the same historical pattern, albeit on different timetables. First, except for al-Shāfi'ī, none of the schools' "imams" formulated an explicit hermeneutic for the interpretation of revealed language. Later scholars' claims about their imams' hermeneutical views rested on dubious and sometimes tendentious inferences. Second, there was significant engagement with al-Shāfi'ī's hermeneutical proposals at some point during the 3d century in all the schools except for the late-blooming Ḥanbaliyya. The regular production of comprehensive treatises on legal theory, however, did not begin until a school became institutionalized, with a regular system for transmitting its curriculum of legal knowledge. This development may be traced in large part to the formative influence of one major figure in each school – the Shāfi'ī Ibn Surayj (d. 306/918), the Ḥanafī al-Karkhī (d. 340/952), the Mālikī al-Abharī (d. 375/986), and the Ḥanbalī Ghulām al-Khallāl (d. 363/974). My dates for the institutionalization of legal hermeneutics as part of the

legal curriculum within each school correlate quite well with Christopher Melchert's dates for the institutionalization of the *madhāhib*, and this suggests that the formulation of a comprehensive legal theory – or at least of its linguistic or hermeneutical dimensions – might usefully be regarded as one criterion for the formation of a *madhhab* in Melchert's institutional sense.

Notice, however, that these four pivotal figures did not themselves seal the fate of hermeneutical thought within their schools. There was considerable debate within each school between those who leaned toward the combination of power and flexibility called for by al-Shāfi'ī's project, and those who were drawn to the arguments of theologians such as the Ash'ariyya, favoring ambiguity and interpretive flexibility (on the left hand side of each column), or the Mu'tazila, favoring clarity and limiting flexibility (on the right). By the first half of the 5th century, however, the theologians' hermeneutical models were no longer considered viable alternatives, so that in all four Sunnī legal schools, and even in the last stages of the Zāhirī movement, we find that even the most theologically inclined thinkers were working to reconcile their hermeneutical principles with the jurists' interpretive rules. This did not mean that legal hermeneutics would henceforth be atheological; great classical legal theorists such as Imām al-Ḥaramayn al-Juwaynī showed great theological sophistication. But they worked largely within the parameters of the jurists' combination of power and flexibility. The earlier theological models of suspension of judgment and literalism were abandoned. The first and perhaps most decisive battle in the development of Islamic legal hermeneutics was over.

Why did it end so? I can suggest two possible explanations. First, as the curriculum of the jurists displaced that of the theologians in the competition for support from the ruling class, the practical interpretive concerns of the jurists trumped the theologians' concern for theoretical consistency. Second, the Shāfi'ī project of correlating law with revelation, which all four major Sunnī schools eventually adopted, was such an improbable task that it demanded a truly paradoxical combination of hermeneutical power and flexibility – the ability to claim maximum legal meaning, and the ability to modify that meaning with impunity.