



Monthly Lectures on Islamic Legal Genres: Genre as a Tool for Understanding Islamic Law

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Form, Function and Historical Development of Mukhtasars in Post-Mamluk Islamic Law

February 24th, 11am (EST), 5pm (Münster) 7pm (Istanbul) via zoom

Abstract:

Maliki fiqh witnessed the rise of three influential epitomes (mukhtasars) in the course of less than 200 years that coincided with the establishment of the Mamluk state in Egypt and the Levant. The first, authored by Ibn Shas (d. 612), goes by the title 'Iqd al-Jawahir al-Thamina. The second, authored by Ibn al-Hajib (d. 646), goes by the title Jami' al-Ummahat. The third, authored by Khalil b. Ishaq al-Jundi (d. 767), is popularly known as Mukhtasar Khalil. Of course, these weren't the first works designed to epitomize the doctrines of the school. One of Malik's earliest students is said to have authored two books that used the term mukhtasar: Mukhtasar Ibn 'Abd al-Hakam, the longer and the shorter (al-mukhtasar al-kabir and al-mukhtasar al-saghir). Yet, the evolution of the genre in the Mamluk period marked a radical departure from earlier works that used the same title, particularly the Jami' al-Ummahat and the Mukhtasar Khalil. Even in relation to Ibn Shas's work, the latter two were characterized by a terseness of style, combined with an ambition to cover the entire breadth of the school's doctrine, that rendered the texts themselves nearly unintelligible on their own. The relative opacity of these texts did not prevent them from becoming extremely influential: Ibn al-Hajib's text was very popular and garnered several important commentaries until it was displaced by Mukhtasar Khalil, which came to occupy the field in later Malikism as the primary text of Maliki fiqh.

One can see similar trends in Mamluk-era Hanafism and Shafi'ism, although I don't believe either school depended entirely on text in the fashion of the later Malikis on Khalil. Nevertheless, the rise of this genre of writing raises several important questions. First, what advantages did these texts have in the eyes of the jurists who wrote them and then used them in teaching and daily practice over older, more discursive texts? Second, how should we understand the relationship of these texts to the four hundred or five hundred years of legal writings that preceded them? Third, how were these texts used by jurists in the generations after they were authored? Fourth, what was the relationship of this genre to Muslim society and whether this accounts in part for its success?

In my article, I attempt to answer in part two principal questions: first, the historical relationship of the mukhtasar to its literary predecessors and the criteria that Khalil was able to use to compile a work that could credibly claim to restate the entirety of Maliki law; and second, the sociological function of these works, arguing that this genre played an important role in institutionalizing the rule of law by reducing legal indeterminacy. In another article, I attempted to measure the success of such a project by comparing the contents of fatwas to the theoretical doctrines articulated by Khalil.

A thorough understanding of this genre will require research over at least three dimensions: (1) a much better understanding of the editing process: how did the author cull prior centuries of legal discourse to fashion his restatement?; (2) how were these texts used in the production and reproduction of legal knowledge, whether teaching (when were they introduced during legal education, and how were they introduced) or writing (what kinds of commentaries did such works spawn, and what were their function); and, (3) how successful were these works in guiding legal practice? What kinds of methods could we use to measure "success"?

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Registrations will be confirmed and zoom details will be sent out shortly before the conference.