**Scholars of *Ḥayḍ* and *Nifās*?**

**The Endurance of Islamic Law in Late Colonial Sudan**

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**Abstract**

This paper relocates the study of contemporary Islamic law from state judiciaries and reformist polemics to the learning circles of late colonial Sudan. It focuses on the careers of two Mālikī jurists: ʿUthmān b. Ḥasanayn Barrī al-Jaʿalī (d. 1960) and Abū Ṭāhir Ḥasan Fāy al-Bijāwī (d. 1984). Hardly indifferent to the pressures of modernity, each attempted to resuscitate a Mālikī school beset by colonial reforms from above and revisionist critiques from below. A Sufi, political adviser, and traditionalist, al-Jaʿalī composed an homage to the “slavish imitation” of Mālikī jurists (*taqlīd*) that nevertheless admitted the intervention and frequent rebuke of its author. al-Bijāwī did the opposite, employing his expertise in *ḥadīth* to recast demands for dissolving legal schools (*madhhab*s) in a clever justification of Mālikī doctrine. Together they highlight examples of internal reform, as well as the significance of Africa’s jurists, that remain understudied in the contemporary history of Islamic law. Less the dissolution of the *madhhab* than its resilience, they attest to the ways in which Mālikī scholars continued to defend the classical legal tradition long after its presumed demise at the hands of modernity.

**Keywords**

Islamic law – Islam in Africa – Mālikī school *–* Sudan – legal reform – modern Islamic thought – contemporary *madhhab –* Mauritania – legal hermeneutics (*uṣūl al-fiqh*) – substantive law (*furūʿ* *al-fiqh*) – independent legal reasoning (*ijtihād*) – legal imitation (*taqlīd*) – revealed proofs (*dalīl*) *–* widespread legal opinion (*mashhūr*) *–* preponderant legal opinion (*rājiḥ*)

**Introduction**

Among Sudan’s leading Islamist intellectuals of the twentieth century, Ḥasan al-Turābī (d. 2016) was often asked for his opinion of the country’s scholars of Islamic law. His response was rarely encouraging.[[2]](#footnote-3) Jurists, in al-Turābī’s mind, had long ago abandoned their role as the prized exponents of God’s law (*sharīʿa*).[[3]](#footnote-4) Once characterized by the vibrancy of Islam’s early scholarship, jurisprudence of the medieval period had deteriorated into barely more than inspired plagiarism. al-Turābī maintained that legal specialists themselves were to blame. Fixated on the past, those tasked with interpreting divine law settled on reproducing the opinions of previous generations. The “slavish” imitation of earlier authorities (*taqlīd)* came to define an Islamic law increasingly out of touch with the needs of contemporary Muslims.[[4]](#footnote-5) By the beginning of the twentieth century, colonial administrators stripped the legal tradition of whatever dynamism it still retained.[[5]](#footnote-6) Specialists in classical jurisprudence were left in particularly inauspicious territory in the modern Sudanese state. Weighed down by arcane doctrine and limited to an increasingly narrow definition of Islamic law, they concerned themselves with little beyond questions of purity and divorce. They were, in the phrase commonly attributed to al-Turābī, merely scholars of menstruation (*ḥayḍ*) and postpartum bleeding (*nifās*).[[6]](#footnote-7)

Such a characterization of legal scholarsis not surprising. One of his generation’s most prominent Muslim reformers, al-Turābī continued a long tradition of modernist critique of Islamic law popularized by Muḥammad ʿAbduh (d. 1905) and Rashīd Riḍā (d. 1935) among many others.[[7]](#footnote-8) He was hardly the first to malign legal scholars as mere experts in bodily fluids.[[8]](#footnote-9) Similar critiques of the diminished authority of Islamic law and the changing expectations of gender prompted many in colonial Sudan to dismiss its Sharīʿa courts as the province of “women’s judges” (*quḍāt al-nisāʾ*).[[9]](#footnote-10) Yet if such a depiction of Islamic law was not unique, it is worth asking whether it was correct. Was Islamic law in mid-twentieth-century Sudan as dismal al-Turābī described it?

In many ways al-Turābī’s pessimism was justified. The enforcement of Islamic law in colonial and postcolonial Sudan indeed bore little resemblance to its depiction in classical legal texts.[[10]](#footnote-11) Egypt’s conquest of northern Sudan in 1820 marked the first in a series of ambitious efforts to transform Islamic law in the country. As with British rule a century later, a newly established Islamic judiciary was located under the authority of a centralized state and made subservient to the civil and criminal codes of the colonial government.[[11]](#footnote-12) A codified “*sharīʿa*” was relegated to issues of personal status and enforced according to the official Ḥanafī school of the Ottoman Empire. The overthrow of Turco-Egyptian rule by Muḥammad Aḥmad b. ʿAbdallāh (d. 1885) brought not a return to the country’s tradition of Mālikī and Shāfiʿī law, but its prohibition.[[12]](#footnote-13) ʿAbdallāh appointed himself the prophesized Mahdi and banned school doctrine from the country’s courts. Britain’s invasion in 1898 ended the short-lived experiment with eschatological jurisprudence, restoring Islamic law to its subordinate status and again making the Ḥanafī *madhhab* compulsory in Sudan’s courts.[[13]](#footnote-14) The resulting Anglo-Egyptian Condominium quickly soured on promoting an “enlightened” *sharīʿa*, however, as discontent with *ʿulamā*ʾ allied to the state prompted a move toward customary law. With the transition toward the end of direct rule, secular education emerged as the focus of colonial efforts to produce a native elite. Islamic and customary law were left to coexist in a mutual state of neglect until Sudan’s independence in 1956.

Yet, as dispiriting as that history was, al-Turābī was not just impugning the receding jurisdiction of Islamic courts in Sudan. His critique targeted a specific class of the country’s legal professionals, its traditional jurists (*fuqahāʾ*).[[14]](#footnote-15) Long before the imposition of a colonial judiciary, Islamic law in Sudan was the domain of a range of specialists, the majority of whom practiced jurisprudence (*fiqh*) well outside of any authority afforded by a state.[[15]](#footnote-16) As early as the sixteenth century, accounts describe a Sudan abounding with the production of Islamic law in its many forms.[[16]](#footnote-17) Students dedicated years to the study of Mālikī *fiqh*.[[17]](#footnote-18) Jurisconsults (*muftī*s) personally issued the school’s opinions to laity and judges.[[18]](#footnote-19) Scholars produced a substantial gloss literature exploring the classic texts of their legal school (*madhhab*).[[19]](#footnote-20) On at least one occasion they returned from Egypt carrying the turban and flag of its leading jurist as proof of his surrender in debate.[[20]](#footnote-21)

Despite many such accounts of the virtuosity of its legists, Sudan’s tradition of Mālikī *fiqh* remains neglected by the Western academy today. Almost nothing is written of its classical legal scholars. Less still is known of the teaching institutions, textual practices, and hermeneutics that defined Islamic law in the country for better than four hundred years. Among the preeminent historians of Sudan, R.S. O’Fahey acknowledged as much more than two decades earlier. In his benchmark study of the country’s Islamic scholarship, O’Fahey noted a peculiar feature of Sudan’s libraries. While discussion usually emphasized the mystical character of the country’s Muslims, local manuscripts reveal a precolonial Sudan chiefly concerned with Islamic law. The disconnect was exacerbated by Western scholarship. Of the countless studies exploring Sufism in Sudan, none had taken seriously its legacy of *fiqh*.[[21]](#footnote-22)

This paper is an attempt to begin filling that gap. It relocates the study of Islamic law in Sudan from a question of modern courts and constitutions, already well attested to in the literature, to a consideration of the social, ethical, and hermeneutical practices that constitute a longer history of Islamic jurisprudence in the country.[[22]](#footnote-23) It highlights the lives and texts of two legal scholarsactive in the country’s mid-twentieth century: ʿUthmān b. Ḥasanayn Barrī al-Jaʿalī (d. 1960) and Abū Ṭāhir Ḥasan Fāy al-Bijāwī (d. 1984). Through a close reading of their work, oral accounts of their lives, and unstudied biographical notes, it asks what constituted a career in legal scholarship during the waning years of colonial Sudan. How did the country’s Mālikī jurists navigate efforts to redefine Islamic law by Condominium officials and Muslim reformists alike? What does their work reveal about the evolution of traditional institutions of Islamic law in modern Muslim societies? Put most simply, was *fiqh* in Sudan just a question of *ḥayḍ* and *nifās* as al-Turābī claimed?

The following discussionargues it was most certainly not. Contrary to their portrayal by al-Turābī, Sudan’s traditional jurisprudents did not resign themselves to matters of ritual purity. al-Jaʿalī and al-Bijāwī poorly resembled the pedants of reformist critiques, nor were they the charlatans of colonial fantasies.[[23]](#footnote-24) Each was intimately involved in the politics of their day, seeking to defend and reshape a Mālikī legal tradition that continued, albeit scarred, through Sudan’s independence.

In the scholarship of al-Jaʿalī, the alarming state of the Mālikī school in Sudan inspired one of the period’s most celebrated restatements of the *madhhab*. Its author was a graduate of the country’s *khalwa*s, Sudan’s traditional centers of Islamic studies and the repositories of its most advanced knowledge of jurisprudence.[[24]](#footnote-25) By the time al-Jaʿalī embarked on a teaching career of his own, those institutions of law and education were already beginning to collapse under the weight of colonial reforms and modernist polemics. The promise of state employment drew waves of students from *khalwa*s to secular and modern religious education, leaving a growing number of Sudan’s Mālikīs ill-equipped to navigate their school’s texts and doctrine. The Condominium’s replacement of the country’s tradition of Mālikī *fiqh* with Ḥanafī and codes that crossed *madhhab*s and curricula encouraged others to question the utility of maintaining loyalty to the school at all.

To the first, al-Jaʿalī sought to distill the sprawling doctrine of the Mālikī school through the preeminent genres and methodological conventions of its postformativetradition.[[25]](#footnote-26) His legal oeuvre, *Sirāj al-sālik sharḥ Ashal al-masālik*, aimed less at revision than reclamation. It employed the familiar literary techniques of commentary and verse to render accessible the methodology and doctrine of the later Mālikī school. That tradition was dominated by the arguments of jurists, custodians of a hermeneutic in which new claims to the school’s doctrine were rooted in their conformity with those of the past. More than just a defense of the *madhhab*, al-Jaʿalī’s text sought to reaffirm this notion of authority within the school. For students that lacked the legal training characteristic of precolonial Sudan, *Sirāj al-sālik* simplified the arguments of the school’s leading jurists. For those contemplating calls to abandon the obligations of Mālikī *fiqh* for immediate access to the texts of revelation, it upheld the popular – and disputed – practice of authorizing opinions based solely on their adoption by the school’s legal scholars (*tashhīr*).[[26]](#footnote-27) When subtlety failed, al-Jaʿalī addressed wavering Mālikīs directly, extolled the virtues of the *madhhab* while condemning Sudan’s judges that transcended it.

The worrying condition of the Mālikī school prompted a radically different approach from al-Bijāwī. It was indebted to a growing subliterature that sought to relocate divine proofs (*dalīl*) at the center of scholarship on Islamic law.[[27]](#footnote-28) His apparent disinterest in the opinions of jurists for the original sources of law was not an accident. Where al-Jaʿalī sought to reinforce a community willing to accept the precedential arguments of the Mālikī school, al-Bijāwī aimed to refute its critics. Opponents of school restrictions typically argued that *madhhab*s were not only inflexible, they were quite often wrong. Mālikīs themselves were especially suspect. Mālik’s reliance on Medinan praxis, even at the exclusion of reports of the Prophet, long attracted claims that the school’s doctrine reflected less the word of God than the vicissitudes of custom.[[28]](#footnote-29) An authority on reports of the Prophet (*ḥadīth*) and a devoted Mālikī, al-Bijāwī was uniquely suited to counter allegations that his school’s jurisprudents were no longer reliable interpreters of divine will. His *al-Fiqh al-kāmil ʿalā madhhab al-imām Mālik* did so by exploitingthe sources and arguments typically employed in attacks on traditional Islamic law. A veteran of the study circles of the Hejaz, al-Bijāwī recognized that calls to privilege *dalīl* in jurisprudence usually signaled a deep antipathy for school doctrine. His *al-Fiqh al-kāmil* inverted this logic by compiling a record of *ḥadīth*s that conveniently supported the leading positions of his own school. The move transformed a vision of Islamic legal reform that sought dissolve the boundaries of the *madhhab* into a shrewd justification for the postformative Mālikī tradition.

Though neglected in study of the contemporary period, such examples of internal legal reformwere not unique to Sudan.[[29]](#footnote-30) They represented only a small part of a continuous process of redefining the methodologies, canons, and doctrine of the Mālikī school that stretched back to its infancy. al-Jaʿalī and al-Bijāwī are proof that those efforts did not end with colonialism. They also challenge the claim that legal hermeneutics (*uṣūl al-fiqh*) and substantive law (*furūʿ al-fiqh*) were largely irrelevant to one another.[[30]](#footnote-31) Their reactions to an imperiled Mālikī school reveal the ways in which *uṣūl* provided critical, if surprisingly malleable, tools for reinforcing *furūʿ*. They suggest that novel uses of legal theory were not by themselves inimical to the postformative legal tradition. al-Jaʿalī and al-Bijāwī encourage a similar reading of the theory and practice of Islamic law.[[31]](#footnote-32) Rather than confirm their separation, their scholarship points to the importance of local concerns in interpretating the *sharīʿa*.

Those concerns rarely conformed to expectations of Islamic law and Africa.[[32]](#footnote-33) al-Bijāwī and al-Jaʿalī were both practicing Sufis, finding little contradiction in the pursuit of legal and mystical knowledge. They were also hardly peripheral to debates over law and authority that circulatedthroughout the wider Muslim World. A product of Sudan’s traditional institutions of Islamic learning, al-Jaʿalī authored perhaps the twentieth century’s most famous work of Mālikī *fiqh*. al-Bijāwī left Sudan for the cosmopolitan learning circles of the Hejaz and Cairo, returning home as part of an expanding community that sought to resuscitate the status of revelation in their school’s doctrine.[[33]](#footnote-34) Together they present an image of the contemporary *madhhab* that was anything but indifferent to the changes overtaking Muslim societies of the twentieth century.

**ʿUthmān b. Ḥasanayn Barrī al-Jaʿalī (d. 1960)**

ʿUthmān b. Ḥasanayn Barrī al-Jaʿalī was born in 1888 in the village of al-Zaydāb, a small riverine community some 255 kilometers north of Sudan’s capital, Khartoum.[[34]](#footnote-35) His father served as an appointee under the Mahdi, nominally administering parts of western Sudan until his death several years later. Despite being left blind by smallpox as a youth, ʿUthmān won praise as a promising student of the Islamic sciences. He memorized the Qurʾān in his village’s *khalwa*, Ḥillat al-Mashāykha, while still a young boy, eventually leaving during the early years of the Condominium to train under Sudan’s leading scholars of the day. He continued lessons in the famed *khalwa* of al-Ghubush, one of the country’s oldest institutions of Islamic education, studying there under Wad Ḥumayda, before relocating to the southeastern state of al-Jazīra to undertake advanced courses with ʿAbdallāh Ḥājj Ḥāmid in Dallawat al-Baḥr and Wad Madanī. After completing classical works of grammar, theology, and Mālikī jurisprudence, al-Jaʿalī returned to al-Zaydāb where he taught *fiqh* and Qurʾānic exegesis daily in his home. As accounts of his erudition spread, members of the town’s Grand Mosque requested that he also serve as imam. al-Jaʿalī agreed, holding additional lessons on the principles of Mālikī law in the mosque each week after Friday prayer. He also twice weekly lectured on law in al-Zaydāb’s market, and later in his career offered extended tutorials in *fiqh* each year in Omdurman, Barakāt, and Wad Madanī. In addition to a teaching career, al-Jaʿalī served as a sought-after *muftī*. He held a semi-weekly forum in al-Zaydāb where he provided legal opinions to questioners according to the views all four Sunni schools of law. An authority in multiple *madhhab*s, al-Jaʿalī’s responsa nevertheless left little doubt of his commitment to the Mālikī school.[[35]](#footnote-36)

As his popularity grew, accounts of his mastery over the Islamic sciences circulated widely. The country’s premier institution of modern Islamic studies, Omdurman’s *al-Maʿhad al-ʿIlmī*, was said to have once sent a student to al-Jaʿalī’s home to request a *fatwā* resolving a particularly thorny dilemma of Islamic law. After listening to the question, al-Jaʿalī amazed the visitor by handing his students a text and telling them that the relevant legal opinion could be found in the commentarial note located on the margin of the seventh line of p.132, complete with his own initials verifying its accuracy.[[36]](#footnote-37) Another anecdote tells of al-Jaʿalī’s early purchase of a radio. Before a lesson, he asked his students to transcribe his recollection of lecture broadcast the previous night. He explained that the speech was by the fabled “dean of Arabic literature,” Egypt’s Ṭāhā Ḥusayn (d. 1973), telling them they were going to correct a grammatical mistake Ḥusayn made in his introduction. The students began writing, and before finishing dictating Ḥusayn’s greeting to his audience, al-Jaʿalī identified the mistake. He explained the incorrect use of classical Arabic in a letter he sent personally to Ḥusayn in Cairo. Three weeks later, Ḥusayn shocked the students by acknowledging al-Jaʿalī on the air. He declared that even among the scholars of al-Azhar, he had not once been corrected until he received the letter of the esteemed Sheikh al-Jaʿalī. Ḥusayn acknowledged his mistake, reassuring his listeners that “we thought the Arabic language was dead, but thank God we found someone who protects it if it loses its way.”[[37]](#footnote-38)

al-Jaʿalī’s reputation as an authority in Islamic law did not preclude his involvement in other institutions of religion and politics. He was a leader of Sudan’s Khatmiyya Sufi order, responsible for initiating and guiding new members into the litany.[[38]](#footnote-39) He also mediated on behalf of al-Zaydāb’s trade unions while advising the country’s nascent National Unionist Party, a role that led to his friendship with Sudan’s future president Ismāʿīl al-Azharī. Yet al-Jaʿalī’s contribution to Islamic law remains his enduring legacy. He is known to have authored only two works during his career, an unfinished history of twentieth-century Sudan, and the study of Mālikī *fiqh* for which he is most famous, *Sirāj al-sālik*, a commentary on the Egyptian Muḥammad al-Bashshār’s (fl. 1748) didactic poem *Ashal al-masālik fī madhhab al-imām Mālik*.

Completed in 1945 duringthe twilight of Condominium rule, *Sirāj al-sālik* is the most comprehensive treatment of Mālikī jurisprudence composed in colonial Sudan. It represents the third in a chain of abridgments, versifications, and glosses that begin with the *Mukhtaṣar* of the seventeenth-century Azharī scholar Ibrāhīm b. Muḥammad al-Suhāʾī (d. 1669).[[39]](#footnote-40) As was expected of the commentarial tradition, al-Jaʿalī sought to both synthesize and reconstruct the school’s doctrine, clarifying lingering ambiguities in his text’s predecessors while presenting a survey of the dominant opinions and ongoing disputes of the school’s largely postformative scholars. His *Sirāj* draws from a wide range of Mālikī sources, returning most frequently to the seminal text of the later Mālikī school, the fourteenth-century abridgment of the Cairene master jurist Khalīl b. Isḥāq (d. 1374), as well as glosses of *Aqrab al-masālik,* an eighteenth-century summary of the same work composed by the Egyptian Aḥmad al-Dardīr (d. 1786).[[40]](#footnote-41)

Though it was limited to the opinions of non-Sudanese jurists, *Sirāj al-sālik* betrayed the eye of a keen observer of the legal practices of local Muslims.[[41]](#footnote-42) It also reflected the increasing diversity of the country’s midcentury scholarship, referencing not only the opinions of Mālikīs, but of other *madhhab*s entirely. al-Jaʿalī’s primary concern was members of his Mālikī school, however. Unlike the younger al-Bijāwī, his text was not aimed at those calling for transcending the strictures of the *madhhab*. al-Jaʿalī sought to reassert the methods and doctrine of his own tradition to the growing numbers of its students who lacked the training to engage either.

al-Jaʿalī’s understanding of Islamic law emerges most clearly in hisdiscussion of three legal questions: intoxicants, divorce, and preemptive rights in sales. Considering the first, just five-lines of verse in al-Bashshār’s *Ashal al-masālik*, al-Jaʿalī distinguishes between the purity and the permissibility of a range of possible inebriants. Though several cited by al-Bashshār were no longer common by al-Jaʿalī’s day, two remained widespread: tobacco and coffee.[[42]](#footnote-43) Of the former, al-Jaʿalī writes:

It is known by people today as al-Tunbāk. Scholars remain divided regarding its acceptability within the [Mālikī] school. According to [the seventeenth-century Fāsī jurist] Muḥammad b. Aḥmad Mayyāra (d. 1662), there are different opinions among Mālikī jurists regarding whether smoking is exempted from the rulings regarding intoxicants. There are some that permit it, and others that prohibit it.[[43]](#footnote-44)

He continued that in his commentary on *al-ʿIzziyya,* Egypt’s senior Mālikī authority ʿAbd al-Bāqī al-Zurqānī (d. 1688) held that “smoking is permitted generally… but is prohibited inside mosques, when reading the Qurʾān, and in enclosed spaces surrounded by other people as they would suffer from inhaling the smoke.”[[44]](#footnote-45) As was not uncommon for glosses of the genre, al-Jaʿalī refrains from directly stating his own opinion, instead presenting students a collection of the views of the school’s leading thinkers on the matter. Nevertheless, his position is not especially difficult to guess. In the two opinions he recorded – that there were conflicting views on the matter (Mayyāra) and that tobacco was generally permitted with the exclusion of certain spaces (al-Zurqānī) – the blanket prohibition of tobacco as either impure or intoxicating is notably absent.[[45]](#footnote-46) al-Jaʿalī’s choice of sources suggests that while he may have felt it was morally reprehensible, he did not maintain that smoking was legally forbidden.

He approaches a subchapter on divorce with similar concern for the arguments of the school’s later jurists.[[46]](#footnote-47) al-Jaʿalī treats the question of whether allusion (*kināya)* could be employed to end a marriage through a variety of possible utterances.[[47]](#footnote-48) After distinguishing apparent from indirect language, he considered the binding legal force of *kināya* in a declaration of divorce, for example saying one’s spouse was prohibited to them no differently than was consuming the flesh of a pig or the carcass of an animal. To resolve the question, al-Jaʿalī cites the nineteenth-century Azharī jurist Aḥmad al-Ṣāwī (d. 1825). In his supercommentary (*ḥāshīya*) on al-Dardīr’s own gloss of his *Aqrab al-masālik*, al-Ṣāwī argued that if the marriage was consummated, the utterance had the force of three divorces (*ṭalāq thalāth*), a permanent dissolution that prohibited the couple from remarrying until the wife wed another man, consummated their marriage, was subsequently divorced, and completed the legally prescribed waiting period (ʿ*idda*).[[48]](#footnote-49) However, were the original marriage unconsummated, the husband’s intention was crucial to determining the legally binding quality of the language. If his aim indeed was to divorce the woman three times, al-Ṣāwī held that the statement enacts a triple divorce no differently than for the consummated marriage. In instances where the husband’s objective was more limited, he was required to take an oath and only the number of divorces he intended when making the statement was considered valid.

In another case of potential ambiguity, al-Jaʿalī describes a husband who announces that he is absolving himself of legal custody of his wife, telling her she was “*khāliṣa”* or “*lasti lī ʿalā dhimma.*”[[49]](#footnote-50) He excerpts al-Ṣāwī who clarified that because Mālik did not explicitly address the issue (*lā naṣṣ fīhi*), it remained open for selecting from among the various positions of the Mālikī school (*istiẓhār*).[[50]](#footnote-51) He cites the conflicting views of two of its foremost thinkers, the Egyptians Khalīl b. Isḥāq and one of his more prominent supercommentators ʿAlī al-ʿAdawī (d. 1775). The former considered the phrase the equivalent of three divorces. On the other hand, al-ʿAdawī classified the act only a single and irrevocable divorce (*ṭalqa bāʾina),* a case of separation in which the marriage is technically dissolved but, in the first and second occurrences, could be resumed after the completion of the ʿ*idda* provided they obtained a new marriage contract.[[51]](#footnote-52)

To both, al-Jaʿalī adds a third interpretation relayed by al-Ṣāwī in his *Bulghat al-sālik*.al-Ṣāwī notes that “*lasti lī ʿalā dhimma”* was still a common repudiation in Egypt at the time of his writing. In customary practice, the phrase was so widely understood to convey only a temporary separation that, unless triple divorce was intended, later scholars regarded the phrase as equivalent to just one instance of revocable divorce(*ṭalqa rajʿiyya)*, the least severe form in which both parties could immediately reconcile without the conclusion of the waiting period or the need of a new marital contract.[[52]](#footnote-53)

A final scenario also emerges in the chapter. al-Jaʿalī relates the case of a husband who proclaims that his wife is forbidden to him if she performs some future designated action.[[53]](#footnote-54) For al-Jaʿalī’s reading of school doctrine, the issue is largely one of specification. After distinguishing declarations made with explicit terms, oaths that clearly define the actors, behaviors, and durations involved, al-Jaʿalī considers those prone to various types of ambiguity.[[54]](#footnote-55) In cases where the prohibition did not include stipulating language, or was both general and not intended to include his wife, the statement held no legal power.[[55]](#footnote-56) If, however, it was sufficiently qualified in advance by the husband such that his wife was both aware of his intention and capable of avoiding the behavior, under certain conditions the declaration was in fact enforceable. al-Jaʿalī again quotes al-Ṣāwī who held that the wife’s completion of such an act would initiate three simultaneous divorces of a consummated marriage regardless of the husband’s intent.[[56]](#footnote-57) However, when the couple had not yet engaged in intercourse, he concedes that the distinguished seventeenth-century jurist ʿAlī al-Ujhūrī maintained the opposite view.[[57]](#footnote-58) The senior Mālikī authority in Egypt at the time, al-Ujhūrī argued that that the intention of the husband was legally binding if he took an oath affirming that he sought a weaker form of separation, effectively reducing the repudiation to a *bāʾina* divorce short of its third and final iteration.[[58]](#footnote-59)

al-Jaʿalī continues by pointing to still another interpretation of the case, quoting a student of al-ʿAdawī, the Moroccan Muḥammad al-Bannānī (d. 1780), who rejected any distinction between a consummated and unconsummated marriage.[[59]](#footnote-60) al-Bannānī justified the view according to judicial practice (*ʿamal*) in and around Fes.[[60]](#footnote-61) He explained that where the conditions of a prohibiting action were sufficiently clarified by a husband, pronouncing “*ʿalayya al-ḥarām*”, regardless of intent or prior intercourse between the couple, necessitated only a single rather than three irrevocable divorces. Though al-Ṣāwī argued that both al-Ujhūrī and al-Bannānī’s views were reliable, al-Jaʿalī suggests that Sudan’s Mālikīs were less impartial. He concluded the debate by cautioning his reader:

Understand that the most authoritative position of the school upon which *fatwās* are based (*alladhī takūn bihi al-fatwā*) holds that such a marriage is terminated according to the rules governing irrevocable divorce just as al-Bannānī argued. This is particularly true according to our scholars in Sudan. Based on customary practice in the country, declaring one’s spouse forbidden to them is treated no differently than [explicitly] proclaiming them divorced. Ambiguous language cannot trigger the end of a marriage unless it is accompanied by a desire to dissolve the marital contract (*ḥall al-ʿiṣma*).[[61]](#footnote-62)

A seemingly endless collection of opinions and rebuttals, al-Jaʿalī’s writing on divorce is illustrative of the vision of the Mālikī school he sought to reinforce with his text. Islamic law was not to be the product of disconnected entreaties to its original sources, but of the casuistry expected of the postformative *madhhab* tradition.[[62]](#footnote-63) General rules were brought into relief by interpreting their many subordinate cases, occasionally hypothetical scenarios that were themselves judged according to their agreement with positions already recognized by the school. For al-Jaʿalī, that recognition was dominated by the Mālikīs of early modern Egypt. It was not impervious to local influence, however. Distinct from much of the legal literature of the genre, and perhaps curious given the text’s omission of any of his country’s venerable Mālikīs that preceded him, al-Jaʿalī periodically adds to the responses of his interlocutors additional examples of Mālikī practice from colonial Sudan.

al-Jaʿalī approaches contract law with similar respect for the literary conventions and preeminent scholars of the postformative Mālikī school. He begins discussion of a notoriously complicated question of sales, preemptive rights in partnership contracts (*shufʿa*), by noting its correspondence to two other forms of obtaining property, usurpation (*ghaṣb*) and restitution (*istiḥqāq*).[[63]](#footnote-64) Though restitution may resemble preemption, each is governed by a distinct set of injunctions. al-Jaʿalī cites al-Dardīr’s *Aqrab al-masālik* in observing that there are four necessary elements for preemption: the remaining and partial owner of the property, the preemptor; the buyer of a partner’s stake of the property without the preemptor’s permission; the value of the selling partner’s shares of the property; and the form of preemption, a claim contingent on the details of the departing partner’s contract with any potential buyer.[[64]](#footnote-65)

al-Jaʿalī provides detailed examples for each. After an intriguing discussion of the Sudanese vegetables eligible for both joint ownership and *shufʿa,* he considers the harvesting of crops.[[65]](#footnote-66) He notes that Mālik justified their inclusion under the rules of preemption through juristic preference (*istiḥsān*), a legal instrument that he employed in exceptional cases. He specifies the four instances in which the school’s founder exercised such discretion by pointing to a well-known verse often attributed to the Andalusian polymath and specialist of law, Muḥammad b. Muḥammad al-Ruʿaynī (d. 1547), better known as al-Ḥaṭṭāb.[[66]](#footnote-67) According to al-Ḥaṭṭāb, “Mālik ruled according to juristic preference regarding the preemption of dwellings as well as the harvesting of crops, by treating cases of injury like those of financial transactions, and in awarding five camels as compensation for the severance of a victim’s thumb.”[[67]](#footnote-68) Returning to al-Dardīr, al-Jaʿalī explained that in each case Mālik suspended analogical reasoning (*qiyās*) in favor of custom, the general good, consensus, or avoiding unnecessary harm. He clarified that the laws of injury designated by al-Ḥaṭṭāb referred to the principle of proportional retaliation (*qiṣāṣ*) that governed torts.[[68]](#footnote-69) However, Mālik relied on juristic preference when admitting the testimony and oaths of women in cases of injury because, as al-Ḥaṭṭāb indicated, such allegations are to be treated with the same standards of evidence as financial transactions.[[69]](#footnote-70)

al-Jaʿalī concludes by exploring the various scenarios that annulled one’s claims to preemption. Among the many such exceptions, one was of particular interest: neighboring property. Its treatment by al-Jaʿalī offers a fascinating, if brief, insight into the conflicting legal regimes operating in colonial Sudan. Though all four Sunni schools of law provide the right of preemption to owners of shared property, only the Ḥanafī tradition confers it on neighbors as well. According to the dominant view of that school, both owners and those that live adjacent to a shared property have recourse to preemption when a partner seeks to sell their share. al-Jaʿalī notes that although Mālik was doubtful of Abū Ḥanīfa’s (d. 767) expansion of preemptive rights, Sudan’s colonial courts had no such reservations. He alludes to the distance separating the country’s *sharīʿa* laws from its existing traditions of *fiqh*, reflecting: “Today, judges in Sudan rule according to the views of Abū Ḥanīfa [rather than Mālik] because they award *al-shufʿa* to neighbors.”[[70]](#footnote-71)

He provides no further explanation, but the significance of his remark was clear. Despite the legal affiliation of an overwhelming majority of its Muslim subjects, the Anglo-Egyptian Sudan imposed a tradition of Islamic law unknown to the country’s history. The monopoly of the Mālikī and, to a lesser degree, Shāfiʿī school over the country’s Islamic legal heritage was so complete that finding mention of Ḥanafī jurisprudence in the country prior to the beginning of Turco-Egyptian rule in 1820 is nearly impossible.

al-Jaʿalī’s observation of Sudan’s judges points to a related tension running throughout his text. Though his Mālikī school was predominant in Sudan since at least the early seventeenth century, al-Jaʿalī never witnessed its enforcement by a government. Instead, he would be subjected to Ottoman, Egyptian, Mahdist, and finally British claims to the Sharīʿa until his death in 1960. Their application of various forms of Ḥanafī jurisprudence – as well as the Mahdi’s antipathy toward legal schools altogether – was not only alien; it forcibly separated the country’s living traditions of *fiqh* from the enforcement of Islamic law by a political authority.

al-Jaʿalī’s admission that local judges awarded *shufʿa* to neighbors was evidence of that disconnect in action. It laid bare the incongruities of the colonial Sharīʿa in Sudan, a narrowed revision of Islamic law elaborated by the state and at odds with the legal traditions of its subjects. The legacy of al-Jaʿalī’s own text is a prime example. He completed his commentary on a Mālikī classic, the product of decades of study under the foremost legal minds of Sudan, under a Condominium government that refused to acknowledge its existence in the country’s Islamic courts. al-Jaʿalī’s commitment to preserving those same precolonial traditions of Mālikī *fiqh* was no doubt a response to a lifetime of such marginalization.

It also marked a rebuttalto a growing cadre of Muslim scholars that accused the postformative legal tradition of having fallen into disrepair. al-Jaʿalī eschewed demands for modernizing Islamic law at the expense of legal schools, reasserting the legitimacy of the very same postformative methodology pilloried by its critics. His *Sirāj* confirmed that the era of independent legal reasoning (*ijtihād*) had indeed ended with Islam’s earliest generations.[[71]](#footnote-72) al-Jaʿalī argued that simply loosening the restrictions on independent legal reasoning was not a legitimate solution for adapting the law to meet the challenges of contemporary life.[[72]](#footnote-73) Neither, he maintained, was *talfīq*, a practice popular among many in the country’s judiciary who cobbled together new legal opinions by combining partial rulings from multiple schools.[[73]](#footnote-74)

al-Jaʿalī found such hermeneutical revisionismdeeply troubling. He explained in *Sirāj al-sālik* that loyalty to a single *madhhab* was a divine gift, the benefits of which God bestowed upon Muslims to ease their compliance with the Sharīʿa. As the period of even limited *ijtihād* within schools lapsed long ago, such affiliation to a school required following the opinions of its founder and leading jurists.[[74]](#footnote-75) Their views represented the most authoritative of *madhhab*’s doctrine, a sprawling, sometimes conflicting, corpus that al-Jaʿalī relied on throughout his career.

As much as endorsing any particular doctrine, *Sirāj al-sālik* intended to reaffirm an understanding of legal authority that characterized the late Mālikī school. Unlike al-Bijāwī’s scholarship, al-Jaʿalī ignored calls to abandon the conventions and opinions of legists for revelation. His text instead sought to render the precolonial traditions of the school more accessible to contemporary Muslims. He chose the principal literary and legal techniques of the medieval period to do so. al-Jaʿalī refined Mālikī orthodoxy by glossing an eighteenth-century didactic poem, itself a commentary on an earlier abridgment. He divided general legal principles into an inventory of particular cases, treating each with a variety of authoritative positions of the school. Both practices upheld the view that new claims were judged primarily on their command of previous ones, thatcontemporary efforts to elaborate God’s law were based on their success mediating those that already existed. al-Jaʿalī’s efforts as both commentator and school activist depended on how effectively he interpreted the arguments of earlier jurists and selected, with ample room for intervention, the strongest among them.

His *Sirāj al-sālik* then offered a defense of Mālikī *fiqh* through a study of its great books.[[75]](#footnote-76) It accepted the foundations of the premodern *madhhab*, aiming not at reformists already outside the school, but those still within it. Though it reinforced a notion of Islamic law rooted in the boundaries of *madhhab*s and the authority of their earlier jurists, *Sirāj al-sālik* was hardly a work of the rote imitation oft-alleged of *taqlīd*. al-Jaʿalī regularly included exceptions to his school’s *mashhūr* doctrine, finding the restrictions supposed of a “restatement” of Mālikī *fiqh* more than adequate to caution his readers against the worrying practices of Sudanese judges and modernist revisions of Islamic law. His was not the only response to the Mālikī school’s decline in Sudan, however. Little more than a decade after al-Jaʿalī completed *Sirāj al-sālik*, another scholar, this time heavily influenced by studies in the Hejaz and North Africa, returned to the country with a very different plan for reviving the *madhhab*’s fortunes.

**Abū Ṭāhir Ḥasan Fāy al-Bijāwī (d. 1984)**

Abū Ṭāhir Ḥasan Fāy al-Bijāwī was born in 1928 to a Beja family in a village southwest of one of the country’s remaining centers for Shāfiʿī learning, Sawākin.[[76]](#footnote-77) His father sent him to a local *khalwa* in the neighboring city of Sinkāt where al-Bijāwī memorized the Qurʾān at the early age expected of a promising scholar.[[77]](#footnote-78) After studying classical texts in Sudan as a youth, al-Bijāwī relocated to Mecca in his early twenties.

There, al-Bijāwī moved between the study circles of the city’s Grand Mosque where he attended tutorials in Islamic law and *ḥadīth* for upwards of a decade. He eventually left the Hejaz for Cairo, spending several more years specializing in Prophetic reports under Egypt’s preeminent Tijānī and *ḥadīth* specialist, Muḥammad al-Ḥāfiẓ al-Tijānī (d. 1978). al-Bijāwī’s training with Muḥammad al-Ḥāfiẓ was central to his command of revealed proofs, eventually winning the latter’s permission to teach the six canonical works of *ḥadīth* in Sunni Islam.[[78]](#footnote-79) al-Bijāwī supplemented this with additional teaching licenses (*ijāza*s) from the period’s leading scholars.[[79]](#footnote-80) The Meccan judge and *ḥadīth* specialist Ḥasan b. Muḥammad al-Mashshāṭ (d. 1979) authorized al-Bijāwī to transmitreports through his personal chain of transmission (*isnād*), while another student of the reading circles of Mecca’s Grand Mosque, Muḥammad al-Muḥtasib b. Sulaymān al-Khazrajī, issued to al-Bijāwī his permission to teach the entirety of that which he audited from all religious sciences.[[80]](#footnote-81) Yet al-Bijāwī’s relationship with a third scholar, the Sudanese legist and *ḥadīth* expert Ḥasan Sāttī (d. 1962) proved especially influential.

Several decades before serving as a jurist and judge in eastern Sudan, Sāttī was a pupil of the Mauritanian Muḥammad Ḥabīballāh b. Māyāba al-Jakanī (d. 1944), among the most innovative Mālikī *muḥaddith*sof the twentieth century.[[81]](#footnote-82) Before his death, Ḥabīballāh awarded Sāttī permission to narrate Prophetic reports through the chain of transmission made famous by the renowned Mālikī jurist and *ḥadīth* expert Muḥammad al-Amīr al-Kabīr (d. 1817), anauthority Sāttī in turn issued to al-Bijāwī years later in eastern Sudan.[[82]](#footnote-83) al-Bijāwī invoked Ḥabīballāh often in his scholarship.[[83]](#footnote-84) His own legal opus concludes with a copy of an *ijāza* Sāttī issued to him on the authority of Ḥabīballāh.[[84]](#footnote-85) al-Bijāwī dedicated another work to summarizing the Mauritanian’s six-volume *ḥadīth* treatise *Zād al-muslim fīmā ittafaqa* ʿ*alayhi al-Bukhārī wa-Muslim*.[[85]](#footnote-86) Even the teaching licenses al-Bijāwī awarded to students in Sudan ended with a quote from Ḥabīballāh extolling the virtues of knowledge.[[86]](#footnote-87)

These credentials put al-Bijāwī in unique company in midcentury Sudan. He returned in the final years of Condominium rule boasting an expertise in *ḥadīth* that few possessed in the country. He set about founding a *khalwa*near his family’s home in Sinkāt where he conducted lessons in grammar, law, *ḥadīth*, Qurʾānic exegesis,andcreed (*ʿaqīda*) until his death several decades later. Though he taught additional texts upon request, even those well outside his own legal school, the curriculum al-Bijāwī oversaw was characteristic of higher Islamic studies in the country for centuries.[[87]](#footnote-88)

An avid critic of Sudan’s postcolonial politics, al-Bijāwī is best known for his study of Mālikī jurisprudence, *al-Fiqh al-kāmil ʿalā madhhab al-imām Mālik*.[[88]](#footnote-89) Written nearly 20 years after *Sirāj al-sālik*, the text represents a milestone in Sudanese legal scholarship: a reworking of Mālikī doctrine based not on the views of its jurists but its conformity with the sources of revelation. His approach was shaped by formative years spent studying abroad where he witnessed firsthand the power of modernist reinterpretations of Islamic law. He returned to Sudan to find a Mālikī school in distress. The country’s independence brought not the governance depicted in Islamic political theory, but a largely secular state modeled after Sudan’s former colonial authorities. A military coup soon after hardly assuaged concerns over the future of Mālikī *fiqh* in the country. As dissatisfaction with the junta grew, protests swept through Sudan calling for a return to civilian rule.

Among those demanding the regime step down was a young Ḥasan al-Turābī.[[89]](#footnote-90) Upon returning from Paris in 1964, al-Turābī was appointed lecturer at the University of Khartoum where he won acclaim as a gifted debater and incendiary critic of the military regime. He also attracted the attention of the country’s Islamist movements, quickly rising to prominence in the Muslim Brotherhood before winning a seat to Sudan’s Parliament. Months later, al-Turābī was named head of the newly-formed Islamic Charter Front, an institution from which he would craft a vision of Islamic revival famously hostile to legal schools that he condemned as the purveyors of mere “acquired religion.”[[90]](#footnote-91)

While al-Turābī emerged as a staunch opponent of the Islamic legal tradition, there was perhaps one promising development concerning the future of Mālikī *fiqh* in the country. In 1964, the Syrian jurist and professor Muṣṭafā al-Zarqā (d. 1999) was invited to Sudan to assess its courts.[[91]](#footnote-92) A leading modernist and critic of *taqlīd*, al-Zarqā considered a number of reforms to the country’s judiciary. Among them, one stood out: the status of Mālikī *fiqh* in Sudan. al-Zarqā was asked to determine whether the country’s Muslims would be better served by replacing the Ḥanafī doctrine of colonial authorities with the legal school of an overwhelming majority of its citizens. For the first time since the beginning of Turco-Egyptian rule in 1820, there appeared a possibility, however improbable, that the Mālikī school would serve as the official *madhhab* of a Sudanese state.[[92]](#footnote-93)

al-Bijāwī began circulating his *al-Fiqh al-kāmil* the same year al-Zarqā was to issue his response. Given the preoccupations of al-Bijāwī’s text, the timing may seem odd. Where the internal logic or precedential debates of the Mālikī school are central to al-Jaʿalī’s *Sirāj al-sālik*, at first glance they appear to be of no particular interest to al-Bijāwī.[[93]](#footnote-94) The summaries of Mālikī doctrine that begin each section of his text are left uncited and without comment.[[94]](#footnote-95) Much of his discussion of law drops *fiqh* completely, putting in its place a lengthy inventory of *ḥadīth* proofs numbered for later reference. Even al-Bijāwī’s introduction appears ambivalent to the study of jurisprudence. As al-Jaʿalī attempted with the legal texts of the Mālikī canon, al-Bijāwī opens his study by ranking the most authoritative works not of *fiqh* but of *ḥadīth*. He cites as his model a text with no obvious connection to law, but one firmly in the later *ḥadīth* tradition, *al-Tāj al-jāmiʿ li-l-uṣūl fī aḥādīth al-Rasūl* of his Egyptian contemporary Manṣūr ʿAlī Nāṣif (d. 1951).[[95]](#footnote-96)

al-Bijāwī’s discussion of ritual purity highlights his work’s seeming indifference to *fiqh*. Of the seven marginal notes al-Bijāwī provides authenticating the Mālikī school’s doctrine of ablutions (*wuḍū*ʾ), none resembles a legal opinion as such. He substantiates his text’s opening proposition that *wuḍū*ʾis justified through revelation by citing a Qurʾānic verse that explains the ritual purpose of rainwater.[[96]](#footnote-97) He continues by recording several *ḥadīth*s that detail the unique properties of natural springs and wells. al-Bijāwī narrates that in one, the Prophet and his Companions came upon the well of Buḍāʿa.[[97]](#footnote-98) Observing that it was frequently filled with various types of refuse, the carcasses of dogs, menstrual rags, and human excrement among them, the Prophet nevertheless assured the group that the well’s water was pure for drinking and performing ablutions.[[98]](#footnote-99) al-Bijāwī clarified that the *ḥadīth* was not legally binding in all cases, but rather that the well of Buḍāʿa was so large and its depth so vast that any impurities that incidentally accumulated in it did not change the essential characteristics of the water, namely its color, taste, and smell.[[99]](#footnote-100)

The synthesis of school doctrine and revealed evidence is a consistent feature elsewhere in al-Bijāwī’s text. Like ablutions, al-Bijāwī supplements an unattributed collection of Mālikī views regarding prayer with correlatingaccounts of the Prophet’s life. He justifies the opinion that the concluding *taslīm* be performed a second time only when another congregant is seated to one’s left with the reports of a deputy governor of Basra and Companion of the Prophet, Samura b. Jundub (d. 680).[[100]](#footnote-101) Jundub’s account of the Prophet conducting prayer follows each section of al-Bijāwī’s summary of Mālikī dicta. Though he avoids discussing the school’s legal opinions themselves, al-Bijāwī devotes the bulk of the section to assessing the reliability of the *ḥadīth* proofs that substantiated them.

Prophetic practice also emerges as the defining source for resolving more controversial aspects of ritual. Of raising one’s hands while reciting “God is greatest” (*takbīr*) at designated intervals of the prayer, al-Bijāwī presents a firsthand account of the Prophet’s approach to worship that was transmitted in no fewer than five of the six canonical *ḥadīth* works.[[101]](#footnote-102) He was more exhaustive regarding starting prayer with the phrase *bismi ʾllāh* or “in the name of God.”[[102]](#footnote-103) The practice is acceptable in other legal schools, though it is not among a majority of Mālikī scholars. al-Bijāwī supported the opinion that such use of *bismillāh* is reprehensible, condensed to one word in his legal text, with four different narrations of the Prophet’s Companions recalling his omission of the phrase when beginning prayer.[[103]](#footnote-104)

al-Bijāwī’s most meticulous use of *ḥadīth*, however, emerges in his discussion of *sadl* and *qabḍ*. The issue remains one of the enduring debates of the Mālikī school.[[104]](#footnote-105) As early jurists elaborated a system of rules governing worship, they often disagreed over the preferred placement of one’s hands during prayer. Mālik himself relayed contradictory opinions on the matter.[[105]](#footnote-106) His *Muwaṭṭaʾ* affirms that both the Prophet and his followers in Medina (*ahl al-Madīna*) approved praying with one’s right hand folded over the left (*qabḍ)*.[[106]](#footnote-107) Yet Mālik implies the opposite in the view attributed to him in the *Mudawwana.* Themost detailed record of his legal methodology, the text cites Mālik’s explanation that among the Muslims of Medina, he was “unaware” of worshippers performing *qabḍ* during obligatory prayer.[[107]](#footnote-108) If a petitioner was not engaged in required but lengthy supererogatory prayer (*nafl*), however, he saw no harm in folding each arm across the other to ease the fatigue of prolonged periods of standing.

al-Bijāwī found the second of Mālik’s opinions more convincing. He supports the widespread view of the school that extending one’s arms parallel to their sides (*sadl*) during prayer was indeed commendable, though he makes no distinction between obligatory and supererogatory worship.[[108]](#footnote-109) To opponents, he clarified that although Mālik’s position in the *Mudawwana* may appear to represent a tacit endorsement of *qabḍ*, it did not. He points to Mālik’s closest student and source for his views in the text, Ibn al-Qāsim (d. 806).[[109]](#footnote-110) Ibn al-Qāsim argued that his teacher’s response “*lā aʿrifu-hu”* did not mean that he was uncertain of whether *qabḍ* was performed during obligatory prayer in Medina, but rather that to Mālik’s knowledge, *qabḍ*, unlike *sadl*, was not part of the agreed upon practices of the first three generations of the Prophet’s disciples in Medina (*ʿamal ahl al-Madīna)*.[[110]](#footnote-111)

al-Bijāwī justified his position by attaching five Prophetic reports and an extended passage from the former teacher of his own Ḥasan Sāttī, Muḥammad Ḥabīballāh. Ḥabīballāh defended *sadl* by reiterating that Medinan practice was by itself compelling proof (*ḥujja*) to issue a legal opinion.[[111]](#footnote-112) Even in cases where a *ḥadīth* attributed to the Prophet contradicted the practice of his Medinan followers, Mālik privileged the latter over reports that were narrated by a single transmitter (*akhbār al-aḥād*).

That hierarchy is essential to champions of *sadl*. According to Ḥabīballāh, Mālik’s endorsement of *qabḍ* in the *Muwaṭṭa’* is precisely such a dubious *ḥadīth*; evidence for praying with one’s arms extended to their sides, however, is validated by the practice of three generations of the Prophet’s closest disciples in Medina. al-Bijāwī agreed, though his *al-Fiqh al-kāmil* extended Ḥabīballāh’s argument further, affirming that its omission from Medinan practice in fact abrogated (*nasakha*) the authority of any statement by Mālik in defense of *qabḍ*.[[112]](#footnote-113) Therefore, according to either the logic of Mālik’s legal methodology or the authoritativeaccounts of the Prophet’s prayer, *sadl* was the only tenable position of the school.

**A Modern Age of *Dalīl*: The (Re)emergence of Proofs in Legal Discourse**

al-Bijāwī’s defense of *sadl* raises an interesting question: how central really was Islamic law to his text? Despite the ambition of its title, jurisprudence appears conspicuously absent from *al-Fiqh al-kāmil*. The sources of revelation dominate its discussion of a Mālikī doctrine that features unexpectedly few jurists. Though a poor fit for much of the scholarship of the later Mālikī school, the scarcity of jurisprudence in a text otherwise dedicated to Islamic law is perhaps not as surprising as it would seem.

By the time al-Bijāwī left Sudan for studies in the Hejaz, deference to the seminal thinkers of the school’s past had grown increasingly divisive. To a growing number of reformists, the failure of Muslim rulers to resist European occupation was only a symptom of a deeper illness plaguing the Islamic community(*umma*)for centuries.[[113]](#footnote-114) They argued that a preoccupation with the dusty tomes and endless commentaries on Islamic law was characteristic of a medieval intellectual tradition that had grown complacent in the face of an ascendant Europe. The scientific advancements of the West stood in contrast with an Islamic World fixated on the achievementsof its past. To their critics, the *fuqahāʾ* were particularly guilty of such memorializing. Opponents maintained that centuries of needless conformity to legal schools and the opinions of master jurists had plunged Islamic law into a period of doctrinal stagnation. They pointed to the neglected status of the Qurʾān and *sunna* as proof of the need to reform not only law, but the very foundations of Muslim society and politics. Returning the *Umma* to the heights of its formative glory demanded a return not to those responsible for its medieval collapse, the isolated jurists of a history better forgotten, but to God’s unerring vision for creation, the *sharīʿa*.

A mix of modernists, revivalists, mystics, and even colonial governments argued that independent legal reasoning offered just such a solution. They maintained that a newly egalitarian approach to *ijtihād* held the dual promise of freeing Islamic law from its subservience to legal schools while reviving the ingenuity, and even the piety, of contemporary Muslim societies. According to those that still accepted the legitimacy of the Mālikī *madhhab*, merely identifying the most widely circulated opinions of its scholars, *tashhīr*, was no longer adequate for issuing *fatwā*s. They were instead expected to weigh each of the school’s views according to its basis in revelation (*tarjīḥ*) and select the position that enjoyed a preponderance of evidence drawn from the Qurʾān and *sunna*.[[114]](#footnote-115) With the *mashhūr* views of the first subordinated to the *rājiḥ* of the second, jurists were to be liberated from reproducing the most frequently cited views of the school, a shift its supporters argued would generate more reliable interpretations of Islamic law.[[115]](#footnote-116)

The stakes of the debate were not simply methodological. Justifications for reassessing the school’s doctrine according to *tarjīḥ* returned to the basic principles of Islamic theology. Rather than those based on the opinions of jurists (*naql*), only a textual proof drawn from revelation (*naṣṣ*) provided unequivocalknowledge of the *sharīʿa*.[[116]](#footnote-117) It alone represented the highest standard on which a substantive legal rule could be based. By abandoning the vagaries of *naql* for the certitude of *naṣṣ*, the school’s proponents of divine proofs argued that Mālikī doctrine was to be finally wrested from the conjecture of men and once again returned to the infallible word of God.

Calls to refocus attention on *dalīl* were especially popular among specialists of *ḥadīth*. From learning circles in Mecca and Medina to Cairo’s al-Azhar, a growing number of Mālikī *muḥaddith*s sought to reinterpret legal rulings through the deeds and sayings attributed to the Prophet. Saharan scholars figured prominently among the group, particularly Mauritanians with ties to the teaching networks of the Hejaz. The Mauritanian polymath and colonial resistance hero Māʾ al-ʿAynayn (d. 1910) was among them.[[117]](#footnote-118) Near the end of his life, Māʾ al-ʿAynayn hosted two of the period’s leading voices for privileging revealed proofs in Mālikī law, the aforementioned Muḥammad Ḥabīballāh and his brother Muḥammad al-Khiḍr b. Māyāba al-Jakanī (d. 1935-36).[[118]](#footnote-119) In the midst of a career that saw him serve as the senior Mālikī judge of Medina and establish the judicial system of Transjordan, al-Khiḍr attempted arguably the most unique, if not ambitious, effort at reinterpreting his school’s canon through *dalīl*, a multi-volume gloss of Khalīl’s *Mukhtaṣar* based not just on the sources of revelation, but the rulings of all four Sunni legal schools.[[119]](#footnote-120)

Yet it was Muḥammad al-Khiḍr’s brother Ḥabīb Allāh that enjoyed even a greater role popularizing the use of *ḥadīth* in Mālikī legal scholarship.[[120]](#footnote-121) After studying under one of the preeminent Saharan jurists of his time, Muḥammad b. Sālim al-Majlisī (d. 1885), Ḥabīb Allāh relocated to the Hejaz and later Egypt where he was employed at the leading teaching institutions of Medina, Mecca, and Cairo.[[121]](#footnote-122) Two of al-Bijāwī’s teachers, Ḥasan Sāttī and Ḥasan al-Mashshāṭ, were themselves students of Ḥabīb Allāh’s in Mecca.[[122]](#footnote-123) Both issued al-Bijāwī teaching licenses for the major works of *ḥadīth* that they studied under Ḥabīb Allāh, a textual lineage he recalled frequently in his own writing.[[123]](#footnote-124) al-Bijāwī was not Ḥabīb Allāh’s only admirer in Sudan.[[124]](#footnote-125) His influence evidently reached even the highest levels of the colonial state. A pupil of Muḥammad ʿAbduh’s and later the rector of al-Azhar and the senior judge of the Condominium’s Muslim judiciary, Muṣṭafā al-Marāghī (d. 1945) was such an admirer that his commendation praising *Zād al-muslim* is prominently displayed at the conclusion of Ḥabīb Allāh’s text.[[125]](#footnote-126)

***Tarjīḥ* in Support of *Tashhīr*? Repurposing Critique of the Later Mālikī School**

al-Bijāwī encountered Ḥabīb Allāh comparatively late in his career. By the time he found the Mauritanian’s students abroad, the effects of colonial reforms at home left Sudan’s institutions of Islam scarcely recognizable from their recent past. The condition of its Mālikī tradition was not more encouraging. More than a century after its introduction under Turco-Egyptian rule, the Ḥanafī school remained the official *madhhab* of a newly independent Sudan. Its *khalwa*s, once the epicenter of both higher Islamic studies and Mālikī jurisprudence in the country for some four hundred years, suffered from decades of state neglect and waning popular interest. By the latter half of the twentieth century, the rigorous training in the school’s legal literature for which they were once celebrated had, in most cases, receded to little more than introductory study of the Qurʾān.[[126]](#footnote-127)

To al-Bijāwī and many of his contemporaries elsewhere, maintaining the methodological preoccupations of the school was no longer viable in such an environment. His *al-Fiqh al-kāmil* marked a response to those challenges confronting legal schools not only in Sudan but across the modern Islamic World.[[127]](#footnote-128) The result makes for an unusual book of law: a work of Mālikī jurisprudence seemingly uninterested in the doctrine of its own school.[[128]](#footnote-129) It evokes less a survey of *furūʿ al-fiqh* than one of the period’s many polemics condemning its postformative history.

A closer reading, however, reveals that al-Bijāwī’s text was far from unconcerned with the arguments of his Mālikī predecessors. Though not the ostensible aim of his text, the opinions of the school’s jurists are well represented throughout al-Bijāwī’s work. The initial of the three sub-texts comprising *al-Fiqh al-kāmil* is itself an abridgment of Mālikī rules governing ritual. Despite leaving the opinions unattributed and mostly unexplained, al-Bijāwī returns to the school’s doctrine often in the concludingremarks (*tatimma*s) of each chapter. There the shadow of the postformative period looms large as al-Bijāwī’s construction of the Mālikī corpus appears markedly similar to al-Jaʿalī’s in *Sirāj al-sālik*.[[129]](#footnote-130)

The prominence of later restatements of Mālikī doctrine points to another feature distinguishing *al-Fiqh al-kāmil* from similar calls for reestablishing *dalīl* in law. al-Bijāwī was a committed follower of a *madhhab*. His efforts at building an intellectual genealogy that both shaped and legitimated his scholarship attest to this.[[130]](#footnote-131) Of the many scholars he cited studying under, save for those who transmitted to al-Bijāwī specific narrations of *ḥadīth*s, all were in fact Mālikīs. Such parochialism could perhaps be expected of a Sudan in which most of its scholars were at least nominally Mālikī. It could not in Mecca and Cairo. The eclecticism of the teaching institutions in both cities suggests that al-Bijāwī made a deliberate choice to confine his training to specialists from the school.

More than just an affiliation, his *al-Fiqh al-kāmil* reveals a surprisingly conservative Mālikī jurist operating beneath the surface of what otherwise resembled a screed against school provincialism.[[131]](#footnote-132) al-Bijāwī did not support loosening the restrictions of independent legal reasoning or engaging revealed proofs directly, each a staple of reformist legal literature that condemned basing legal opinions on the rulings of prior jurists.[[132]](#footnote-133) Unlike calls to dissolve *madhhab*s reverberating from Sanaa to Nouakchott, al-Bijāwī has little problem admitting the traditions of postclassical *fiqh*. His scholarship neither rejectsthe validity of *taqlīd,* a defining featureof reformist luminaries ʿAbduh, Riḍā, and al-Turābī among countless others, nor does it promote a vision of Islamic law free from the methodological encumbrances of its schools.

al-Bijāwī’s views also poorly fit those of popular Salafī or Wahhābī intellectuals of his day.[[133]](#footnote-134) His legal opinions typically abstained from the most punitive positions of the school, while his scholarship lackedantagonism for the social practices that usually drew the ire of similar works demanding a return to the Qurʾān and *sunna*.[[134]](#footnote-135) An active member of one of Sudan’s largest Sufi brotherhoods, the Shādhiliyya, al-Bijāwī permitted grave visitation and the practice of *dhikr*.[[135]](#footnote-136) He personally authored several poems in praise of the Prophet, and led weekly recitations of Muḥammad b. Saʿīd al-Būsīrī’s (d. 1294-7) *al-Burda*, the most famous – and to its critics, idolatrous – such elegy.[[136]](#footnote-137)

Even among Sudan’s Mālikīs also calling to reform the *madhhab*, al-Bijāwī’s scholarship was unique. His construction of school doctrine rarely deviated from the postclassical tradition. Despite reassessing law through the divine proofs of revelation, al-Bijāwī seldom mentions a *rājiḥ* opinion by name.[[137]](#footnote-138) He more often cites those regarded as authoritative precisely because of their widespread adoption by Mālikī scholars, so-called *mashhūr* views.[[138]](#footnote-139) Unlike a number of more prominent reformist scholars in Sudan, al-Bijāwī also made no claim to Prophetic inspiration. He avoided justifying his methodology through his perception of the unseen (*kashf*) or communication with the Prophet (*ruʿyā*). al-Bijāwī’s refusal to incorporate either into his approach to *fiqh* distinguished him from another *ḥadīth* specialist, veteran of the study circles of Medina, and an erstwhileMālikī, the celebrated Muḥammad al-Majdhūb (d. 1831).[[139]](#footnote-140) Though al-Bijāwī did occasionally provide readers with the dominant opinions of all four legal schools, his defense of the *mashhūr* tradition separated him not only from al-Majdhūb, a partisan of both *rājiḥ* and Shāfiʿī views, but also from a number of better-known proponents of *dalīl* that would emerge in the decades after Sudan’s independence, notably Abū Ṭāhir al-Sawākinī and Muḥammad al-Dāh.

al-Bijāwī’s rendering of Mālikī doctrine would appear then considerably less radical than the hermeneutic he employed to produce it. The opinions he adopted in *al-Fiqh al-kāmil* position him well within the school’s premodern tradition. The legal content of his work was often the result of the same methodology critiqued by reformists for its subservience to the mere caprices of jurists. Indeed, a large part of the material al-Bijāwī furnishes with *dalīl* is directly superimposed from the iconic text of the school’s *mashhūr* tradition, the *Mukhtaṣar Khalīl*.

His opening chapter on ritual ablution is instructive. The section’s initial text, its *matn*, is a summary of Mālikī legal opinions governing the use of water to remove impurity. Its prose is interspersed throughout the chapter in short phrases followed by multiple commentarial additions. Stitched back together, it reads:

Minor impurity (*ḥadath*) is only removed, as is the ruling governing unclean substances (*khabath*), with pure (*ṭāhir*) and purifying (*muṭahhir*) water. This is water that has not changed in color, taste, or smell, even if it mixes with something else, such as water in natural springs, wells, or the ocean. Water combined with a pure substance, such as oil or other things that are normally separated from it, is rendered pure. It is not, however, permissible to use for removing minor impurity and the unclean substances. Conversely, a substance mixed with an impurity is itself impure. It is not to be used in daily activities or in ritual practice. There is no harm in [using] water mixed with parts of earth, such as that with high concentrations of salt (*sabkha*), blackish mud (*ḥam*ʾ*a*), and ochre (*mughra*), as well as those things that grow in them, for example moss.[[140]](#footnote-141)

There is little that distinguishes the passage from other orthodox works of Mālikī *fiqh*. Of the six stipulations that he cited regulating the use of water in ablutions, five are also supported by Khalīl’s *Mukhtaṣar*.[[141]](#footnote-142) While the sixth, the permissibility of water mixed with earth, is not explicitly referenced by Khalīl, it is by one of his most influential commentators, al-Ḥaṭṭāb, who also authorizes the three types of soil mentioned by al-Bijāwī.[[142]](#footnote-143)

Khalīl’s record of the school’s *mashhūr* doctrine is even more apparent in *al-Fiqh al-kāmil*’s discussion of ritual prayer. Writing of its requirements, al-Bijāwī notes that performing the concluding salutation is necessary only in response to the leader of the prayer, and a second time to the worshipper’s left if someone is in fact engaged in prayer alongside them.[[143]](#footnote-144) The text is almost an exact reproduction of Khalīl’s view of the school’s authoritative doctrine.[[144]](#footnote-145) Later, al-Bijāwī again excerpts Khalīl when listing the commendable practices of prayer.[[145]](#footnote-146) He writes:

Raising both hands until they are parallel with each other while saying God is greatest (*takbīr al-iḥrām*), and [then] dropping both hands [to one’s sides] calmly is commendable. It is also commendable to lengthen the recitation [of the two chapters] during dawn (*ṣubḥ*) and noon (*ẓuhr*) prayer, as well as shortening their recitation at afternoon (ʿ*aṣr*) and sunset (*maghrib*) prayers, as well as performing a medium length recitation during evening (ʿ*ishāʾ*) prayer. It is commendable for someone praying behind an imam (*maʾmūn*) to say, “Our lord, praise be unto you” (*rabbana wa laka al-ḥamdu*).[[146]](#footnote-147)

Like the last, the passage is nearly identical to the *Mukhtaṣar*. Its few amendments are of style rather than substance. Though al-Bijāwī occasionally adds brief clarifying remarks that were elided from its notoriously condensed prose, much of *al-Fiqh al-kāmil’s* arrangement, terminology, and legal material are taken directly from Khalīl’s text itself.

His reliance on the *Mukhtaṣar* was calculated. The work’s status as the preeminent record of the most widely circulated opinions of the later Mālikī school was ideal for testing its contemporary doctrine against proofs drawn from revelation. It also presented an especially persuasive rebuttal to opponents of the *madhhab* who argued that its members too eagerly retreated to the views of their school’s medieval jurists, a popular critique of postclassical scholarship that targeted Khalīl’s abridgment with particularzeal.[[147]](#footnote-148)

Those calls to abandon not just the practice of *taqlīd*, a crutch for many connected to the enduring authority of the *Mukhtaṣar*, but even nominal affiliation to the Mālikī school, were based on a clear separation between its majority opinions and the original sources of law. Yet, if al-Bijāwī proved that in most cases no such distinction existed, dissolving the requirements of *madhhab*sand returning jurisprudence to its founding sources made little sense. More pressing for his Mālikī school, were al-Bijāwī able to show that revealed evidence supported not any of its canonical works, but the very text denounced by reformists as proof of its scholars’ neglect of the Qurʾān and *sunna*, it would mark a particularly compelling defense of the school and the legitimacy of its *mashhūr* tradition.

The brilliance of al-Bijāwī’s approach not coincidentally resembled the writing of his frequent inspiration, Muḥammad Ḥabīballāh, though in an unexpected way. Ḥabīballāh also counterintuitively drew from the popularity of scholarship oriented around *ḥadīth* to support the legitimacy of the Mālikī school. Unlike both al-Bijāwī and his brother Muḥammad al-Khiḍr however, Ḥabīballāh defended the validity of the school through the superiority of the revealed proofs narrated by its founder, Mālik b. Anas. Ḥabīb Allāh’s *Iḍā*ʿ*at al-ḥālik min alfāẓ Dalīl al-sālik ilā Muwaṭṭaʾ al-imām Mālik* argued that Mālik’s *Muwaṭṭa’* was in fact the most authoritative source for deriving the opinions of the Prophet.[[148]](#footnote-149) He maintained that the text was a more accurate record of the *sunna* than the later collections that constituted the Sunni *ḥadīth* canon, particularly the *Ṣaḥīḥayn* of al-Bukhārī and Muslim.[[149]](#footnote-150) As such, the *Muwaṭṭaʾ* by itself legitimated the opinions of the school’s later jurists that were based on the text; the *madhhab*’s later doctrine was validated by the proximity of its founder to the Prophet.

al-Bijāwī made a similar claim but in reverse. Instead of Mālik’s knowledge of Prophetic practice, he defended the *madhhab* through its conformity to non-Mālikī sources. His *al-Fiqh al-kāmil* relied almost exclusively on *ḥadīth*s not narrated by Mālik in an effort to authenticate the views of his school’s leading scholars.[[150]](#footnote-151) Similarly, where polemics attacking *madhhab*s and the positions of their master jurists typically supplied revealed proofs in support of minority opinions, or even those foreign to the school entirely, al-Bijāwī again did the opposite. He gathered evidence from the Qurʾān and *sunna* that reinforced the doctrinal center of the school, often the same *mashhūr* views condemned as tantamount to heresy by their critics. In response to accusations that the most widely circulated views of Mālikī jurisprudents contradicted, or at minimum, displaced the founding sources of Islamic law, al-Bijāwī numbered each of his proofs to facilitate their use in scholarship, and presumably in debate, as well. The result was a subversive repurposing of legal critique in service of the *madhhab*. By employing the hermeneutic demanded by modernists to justify the very same positions they sought to discredit, al-Bijāwī ingeniously deployed the methods of *ijtihād* to support the conclusions of *taqlīd*.

**Conclusion: Revisiting Tradition and Reform Through Islamic Law in Africa**

Writing more than five decades ago on the decline of traditional sources of authority among Muslims, the anthropologist Clifford Geertz famously asked: “How do men of religious sensibility react when the machinery of faith begins to wear out?”[[151]](#footnote-152) Geertz acknowledged that they do many things. Some adapt old institutions to new realities, while others leave them altogether for novel interpretations of the faith. An unfortunate few, however, simply fail to notice. Either oblivious or unwilling to contend with the changes transforming religion and society around them, they recede to the margins of the past rather than the debates of the present. Then with scarcely an objection, they simply vanish, their institutions replaced by Geertz’s “vehicles” of religion better suited to the demands of the modern world.

Such is the fate often supposed of Islamic law. The literature has long alleged that faced with the encroachment of Western modernity, the inheritors of the Islamic legal tradition merely conceded, surrendering their authority over *fiqh* to state judiciaries and reformist ideologues intent on resuscitatinga *sharīʿa* they argued had for centuries languished under the neglect of its clerics.[[152]](#footnote-153) The dwindling numbers of jurists that survivedinto the twentieth century have commonly been depicted as little more than living artifacts. Their attachment to learning circles and obscure texts offer a quaint, if uncomfortable, reminder of Islam’s precolonial institutions of law and authority that were rendered obsolete by the emergence of modern Muslim societies.[[153]](#footnote-154)

al-Jaʿalī and al-Bijāwī paint a different picture. Contrary to the assumption that the rising tides of colonial reform and Islamic modernism signaled the death of Islam’s existing traditions of law, both suggest that neither *fiqh*, nor those authorized to undertake it, disappeared quietly. al-Jaʿalī and al-Bijāwī taught the school’s canonical texts daily to students, issued *fatwā*s to petitioners looking to supplement, or even avoid, state courts, and were engaged in the doctrinal issues of their communities. They defended Sudan’s tradition of Mālikī law from marginalization by a Condominium judiciary and the hermeneutical revisionism of Muslim reformists. al-Jaʿalī and al-Bijāwī represented champions of *fiqh* in an age of the colonial *sharīʿa*.

Their commitment to Islamic law did not exclude them from Sudan’s other institutions of piety and politics. Contrary to al-Turābī’s caricature of obscurantist jurists, both were active in the political debates of midcentury Sudan. al-Jaʿalī negotiated with officials on behalf of his village’s trade unions, famously befriending the country’s future president Ismāʿīl al-Azharī. Years later, al-Bijāwī emerged as a particularly scathing critic of European influence in the country, condemning both general elections and the spread of British schools he argued were no less a weapon of colonialism than military occupation.[[154]](#footnote-155)

al-Jaʿalī and al-Bijāwī were deeply invested in Sudan’s traditions of Sufism as well. They were, in this sense, both *faqīh*s and *faki*s.[[155]](#footnote-156) They studied in *khalwa*s and under scholars renowned for their prowess in a range of fields of which law and Sufism were only two. al-Bijāwī was himself a member of the Shādhilī order. A staunch defender of Sufi practice in the country, he argued that grave visitation was permissible while also devoting several works to support the Sudanese tradition of poetry in praise of the Prophet.[[156]](#footnote-157) al-Jaʿalī was a local leader of the Khatmiyya, inducting new members into the order as one of its senior *khalīfa*s. His treatise on jurisprudence, *Sirāj al-sālik*, concludes not with the words of a legal specialist, but with a verse from the fifteenth-century Yemeni praise poet and Sufi ʿAbd al-Raḥīm al-Burʿī (d. 1400-1).[[157]](#footnote-158) Despite colonial efforts to divide scholars according to their presumed epistemological character, such accounts of the entangled worlds of *ʿilm al-bāṭin* and *ʿilm al-ẓāhir* are legion in premodern Sudan.[[158]](#footnote-159) al-Jaʿalī and al-Bijāwī were part of a larger intellectual tradition in the country that found little problematic with a notion of knowledge in which law and mysticism were intertwined.

Their careers also resist notions of center and periphery that have plagued the study of Islamic law and Africa.[[159]](#footnote-160) Sudan of the nineteenth and twentieth centuries was hardly isolated from the scholarly debates of the wider Islamic World. Nor was it uninterested in the intricacies of Islamic law. An abiding concern with Mālikī *fiqh* was a feature of much of the country’s intellectual and social history of the period. Again, al-Jaʿalī and al-Bijāwī are instructive. They studied under the foremost Sufi scholars of their day, received teaching licenses from among the Islamic World’s leading specialists in *ḥadīth*, and drew the attention of no less than the Dean of Arabic Literature. Their talent for teaching attracted students from across the region, while one of their texts emerged as likely the most circulated Mālikī work of the twentieth century. In few cases were they passive recipients of a legal tradition imposed from abroad.

Both suggest that Sudan’s supposed peripheries were in fact critical spaces for the practice and development of Islamic law. al-Jaʿalī and al-Bijāwī fulfilled the roles of scholar and jurist on the margins of any government authorized Islamic law.[[160]](#footnote-161) They enjoyed no formal employment, nor were they part of the state’s religious institutions. They taught in unofficial schools and issued legal opinions outside of the national judiciary. By every measure of the colonial and postcolonial Sudanese state, they failed to possess any qualification that warranted their recognition as scholars. Not holymen nor “model” *ʿulamāʾ*, they represented not just a class of legal authorities, but a tradition of Islamic law that was erased from colonial renderings of the *sharīʿa*.[[161]](#footnote-162)

However, that tradition of *fiqh* was not immune from the transformations reshaping religion and society throughout the Islamic World. While al-Jaʿalī and al-Bijāwī continued to teach the canonical works of their school, by the middle of the twentieth century, this commitment to the pedagogy and curriculum of premodern Sudan had grown increasingly rare. There existed little support for reclaiming the country’s Islamic intellectual heritage amid the cacophonous politics of the Condominium’s waning years. For most among Sudan’s Islamists, unionists, communists, and nationalists, the persistence of the teaching institutions and the doctrinal conventions of its Mālikī school served as an embarrassing reminder of a history at odds with the vision of a modern Sudanese state.[[162]](#footnote-163)

al-Jaʿalī and al-Bijāwī confronted the declining authority of their *madhhab* in remarkablydifferent ways. Unlike his younger contemporary, al-Jaʿalī was exclusively a product of Sudan’s *khalwa*s. He did not pursue studies abroad, avoiding the inter-school diversity and reformist debates that defined al-Bijāwī’s years in Mecca and Cairo. Instead, al-Jaʿalī remained for the entirety of his career in traditional institutions of Islamic learning that were distinguished foremost by their attention to the canonical works of the Mālikī school. Such an orientation to doctrine and methodology emerges clearly in his response to the distressing condition of Mālikī *fiqh* in colonial Sudan. al-Ja’alī rejected modernist revisions of Islamic law by returning to the literary and hermeneutical conventions of his school’s precolonial history. He attacked the practice of *ijtihād* and *talfīq*, both common in the Sudan of his day, through gloss rather than polemic. al-Jaʿalī’s commentary transformed an otherwise nondescript eighteenth-century poem into an opportunity to reassert the legitimacy of the Mālikī tradition, on at least one occasion drawing attention to its displacement in Sudan by the Condominium’s enforcement of a Ḥanafī legal code. The choice of genre and style of gloss suggested the audience al-Jaʿalī sought to persuade with *Sirāj al-sālik*, the growing numbers in Sudan that still maintained some affiliation to the Mālikī school but for whom the texts and arguments of its premodern tradition had grown increasingly opaque.

Where al-Jaʿalī sought to revive the *madhhab* by returning to the hermeneutics and canonical works for which it was best known, al-Bijāwī turned elsewhere. *Sirāj al-sālik* was written just two decades earlier for an audience still willing to accept the authority of Mālikī jurisprudence. al-Bijāwī’s *al-Fiqh al-kāmil* claimed no such pretense. He began distributing the text the same year one of the Islamic World’s most famous critics of postformative law was asked to consider the future of Mālikī doctrine in Sudan’s courts. The timing was not a coincidence. The changing landscape of Islamic activism as well as the possibility for even partial recognition of the country’s Mālikī school echo loudly throughout his text. It took aim at opponents in and outside the *madhhab*, possibly even Muṣṭafā al-Zarqā himself, the growing numbers of critics, reformists, and revivalists for whom speculative enterprise of jurists was no longer sufficient grounds for accepting a legal ruling.

al-Bijāwī was well positioned to challenge such charges on their own terms. A specialist of *ḥadīth*, he set out to disprove the claim that opinions based in the Qurʾān and *sunna* should yield different results than those validated by Mālikī jurists. al-Bijāwī began by reversing the relationship between doctrine and evidence that was characteristic of the school’s postformative scholarship. Rather than interpreting the Sharīʿa through the views of jurists, his *al-Fiqh al-kāmil* explained the views of jurists through evidence drawn from the Sharīʿa. He found that instead of disproving the legitimacy of his school, the divine proofs of law’s *uṣūl* largely confirmed the speculative opinions drawn by Mālikī specialists of its *furūʿ*.

al-Bijāwī’s conclusion undermined the claim that there existed any break between the Sharīʿa and legal schools. To those critics within his own *madhhab*, he transformed calls to issue legal opinions solely on their basis in revealed evidence into a counterintuitive method for validating the same traditions of premodern Mālikī *fiqh* they derided as needlessly imitative. By unifying *ḥadīth* proofs with the most circulated opinions of the school’s jurists, his *al-Fiqh al-kāmil* effectively recast *ijtihād* not as an antagonist but a weapon of *taqlīd.* To members of his own school, al-Bijāwī rendered *tarjīḥ* no longer a competitor but a servant to *tashhīr*.[[163]](#footnote-164)

The scholarship of al-Jaʿalī and al-Bijāwī highlight the need for reconsidering the relationships between Islamic law and modernity more generally. Though *tarjīḥ* and *tashhīr* did impose different evidentiary requirements, for much of their recent history, they have as commonly doubled as symbols for the political orientations of those that employed them.[[164]](#footnote-165) Among Mālikīs, they served as shorthand not just for the methodologies of which they were a part, but also for the increasingly contentious arguments over law and authority reshaping the Islamic World. Nothing less than the gates of *ijtihād* seemed to swing in the balance, each *rājiḥ* view supposing the need for a radical revision of the school’s hermeneutics, if not its doctrine, while every *mashhūr* opinion presumed their continued legitimacy.[[165]](#footnote-166)

al-Jaʿalī and al-Bijāwī present a corrective to such an understanding of Islamic law and politics. They underscore that *tarjīḥ* and *tashhīr* were legal tools first and signifiers of reform and tradition second. Rather than normative categories of *fiqh*, they were, strictly speaking, simply methodologies, practical tools employed by scholars to accomplish a variety of legal ends. Their use was neither mutually exclusive nor an especially helpful indicator for the broader legal or political orientations of those that invoked them.

al-Jaʿalī’s *Sirāj al-sālik* is revealing. By all accounts, it was a study of the doctrinal orthodoxy of the Mālikī school. al-Jaʿalī collected the authoritative positions of its postformative history, often through the glosses of its later Egyptian specialists. Yet the text was not merely a reproduction of the school’s *mashhūr* canon. Contrary to critiques that the Mālikī school had too long confined itself to views regarded as the most widely circulated by jurists, al-Jaʿalī’s *Sirāj* cites a variety of other techniques for authenticating legal opinions, not least of which, *tarjīḥ*.[[166]](#footnote-167) His commitment to *taqlīd* did not limit al-Jaʿalī’s ability to intervene in the legal debates of his interlocutors or to supply revealed evidence in support of his view.

*al-Fiqh al-kāmil* was no different. al-Bijāwī’s reliance on *dalīl* did not prohibit him from authenticating the iconic text of the school’s *mashhūr* canon. Among the many hundreds of *ḥadīth* reports and non-Mālikī opinions he includes in the text, virtually all yielded, with rare exception, the same interpretations of the Sharīʿa as those views most widely circulated by Mālikī jurists. Ironically, his *al-Fiqh al-kāmil* did so by marginalizing not just the leading jurists of his school, Khalīl included, but even its founder. al-Bijāwī’s disregard for the arguments of legal scholars was a shrewd choice, one that targeted the growing numbers of current and former Mālikīs questioning the relevance of such restrictions to interpreting Islamic law.

Though he presented the opinions of jurists as only one among many possible methods for substantiating the school’s doctrine, al-Bijāwī’s exercise in trans-*madhhab* legal interpretation was less impartial than it sounds. His text repurposed *tarjīḥ*, a tool of *uṣūl al-fiqh* used to unsettle otherwise established legal rules, into a means for reinforcinghis school’smajority opinions and sources of authority that had come under scrutiny in Sudan and beyond. The effect upended popular critiques of traditional Islamic law. By employing divine proofs to reaffirm the iconic work of alleged school imitation, the *Mukhtaṣar Khalīl*, al-Bijāwī transformed modernist calls to abandon the *madhhab* for the Qurʾān and *sunna* into a clever apologetic for Mālikī doctrine.

Returning to Geertz’s earlier metaphor, the experiences of al-Jaʿalī and al-Bijāwī then perhaps offer a more optimistic reading of the Islamic legal tradition in modernity.They are evidence that although the previous institutions of *fiqh* were indeed under pressure in colonial and postcolonial Africa, they did not necessarily recede to the margins of contemporary Muslim societies. al-Jaʿalī and al-Bijāwī continued to teach, write, and fulfill the roles of jurisprudents independently of the Condominium’s efforts to redefine Islamic law and scholarship. They argued for the relevance of the Mālikī school and the methodological concerns of its medieval tradition long after the presumed demise of both. Far from denying the changes overtaking the Muslim societies in which they lived, al-Jaʿalī and al-Bijāwī represent arbiters of tradition that sought to reclaim the institutions of Islamic law no less meaningfully than so-called modernists.

One of the great ironies of the country’s legal reform remains that two of its most innovative specialists of Islamic law were ignored by colonial and Sudanese governments alike. Neither jurists *or* Sufis, modern *or* traditional, al-Jaʿalī and al-Bijāwī resisted categories of knowledge imposed by the state. Nor were they simply the products of ideas forged abroad. Though they were engaged in the networks and debates of the wider Islamic World, their scholarship, in its inspirations and aims, was expressly Sudanese. Each drew from local traditions of Mālikī *fiqh*, responded to local concerns over judicial practice, and upheld local institutions of knowledge production. Their contributions call not only for revisiting contemporary Islamic law and Africa, but for expanding the range of practitioners, institutions, and epistemologies traditionally subjected to the study of both.

1. \* Much of this article is based on fieldwork that was conducted with the generous support of Harvard University’s Weatherhead Center for International Affairs and under the sponsorship of the Centre d’Études et de Documentation économiques, juridiques et sociales (CEDEJ) in Khartoum. Earlier versions of this research were presented at Northwestern University’s Institute for the Study of Islamic Thought in Africa (ISITA) in April 2018 and the Institut National des Langues et Civilisations Orientales (INALCO) in June 2018. I am grateful for the comments of colleagues in both workshops, as well as the generous feedback of Ann Blair, Michael Cook, Ambassador Khaled Farah, Indira Falk Gesink, Suheil Laher, Noah Salomon, Ahmed El Shamsy, and Alex Thurston on previous drafts of this paper. Finally, I am indebted to the suggestions of two anonymous reviewers without which this article would be much diminished. [↑](#footnote-ref-2)
2. On al-Turābī’s many critiques of jurisprudence and the legists he argued were responsible for its stagnation, see Ḥasan al-Turābī, *Tajdīd uṣūl al-fiqh al-Islāmī* (Beirut: Dār al-Jīl, 1980), 6–12, 37–38; Ḥasan al-Turābī, *Tajdīd al-fikr al-Islāmī* (Rabat: Dār al-Qarāfī li-l-Nashr wa-l-Tawzīʻ, 1993), 33–53, 107–11; Ḥasan al-Turābī, *Qaḍāyā al-tajdīd: naḥwa manhaj uṣūlī* (Khartoum: Maʻhad al-Buḥūth wa-l-Dirāsāt al-Ijtimāʻīya, 1995), 55–71, 78–88, 187–204, 227–41. For thorough studies in English of his vision of a modern Islamic law and state, see Aharon Layish and Gabriel Warburg, *The Reinstatement of Islamic Law in Sudan under Numayrī: An Evaluation of a Legal Experiment in the Light of Its Historical Context, Methodology, and Repercussions* (Leiden: Brill, 2002), 79–94; Willow Berridge, *Hasan al-Turabi: Islamist Politics and Democracy in Sudan* (Cambridge: Cambridge University Press, 2017), 144–76. [↑](#footnote-ref-3)
3. Arabic terms presumed to be less familiar to readers are italicized in this paper. The term “*sharīʿa*” is occasionally put in quotations when the author has sought to convey a distinction between the *sharīʿa* as a legal and theological principle and legislation by colonial and modern governments of the same name. The *sharīʿa* is rendered “God’s law” in the text to aid readers unfamiliar with the subject. However, in technical terms the Sharīʿa encompasses God’s normative vision for all creation, an unerring and eternal guide that is conveyed through the revealed texts of the Qurʾān and *sunna* of the Prophet and confirmed in the consensus of the master jurists of each generation (*ijmā*ʿ). [↑](#footnote-ref-4)
4. *Taqlīd* will be discussed at length below. Islamic law’s medieval stagnancy, one wrought principally by the rise of imitation in jurisprudence, is among the oldest tropes in the Western study of Islam. Thankfully such a depiction of *taqlīd* has come under increased scrutiny in recent decades. For three of its most prominent critiques, see Wael Hallaq, “Was the Gate of Ijtihad Closed?”, *International Journal of Middle East Studies* 16:1 (1984), 3–41; Sherman Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (Leiden: Brill, 1996); Mohammad Fadel, “The Social Logic of Taqlīd and the Rise of the Mukhtaṣar”, *Islamic Law and Society* 3:2 (1996), 193–233. [↑](#footnote-ref-5)
5. Sudan endured two colonial occupations in the nineteenth and twentieth centuries: Turco-Egyptian rule (1820–85), often termed the *Turkiyya*, and Anglo-Egyptian rule (1899–1956), a condominium government under which control of most of contemporary Sudan and South Sudan was shared by the United Kingdom and Egypt. [↑](#footnote-ref-6)
6. A deeply misogynistic rendering of law and gender, the phrase nevertheless has an extensive history in Islamic legal discourse. Long before itemerged as a favorite of contemporary reformists, variations of the epithet *ʿulamāʾ al-ḥayḍ wa-l-nifās* were invoked in medieval critiques of legal scholars, including those by the Meccan *ḥadīth* specialist Abū Jaʿfar Muḥammad al-ʿUqaylī (d. 934) and the famed Granadan Mālikī Ibrāhīm b. Mūsā al-Shāṭibī (d. 1388). For their mockery of the state of Muslim jurisprudence, see Muḥammad b. ʿAmr al-ʿUqaylī, *Kitāb al-ḍuʿafāʾ al-kabīr* (Beirut: Dār al-Kutub al-*ʿ*Ilmiyya, 1984), 3: 285; Ibrāhīm b. Mūsā al-Shāṭibī, *al-Iʿtiṣām* (al-Khubar: Dār Ibn *ʿ*Affān, 1992), 2: 742. [↑](#footnote-ref-7)
7. The literature on all three is immense. For classic studies of their reforms, see Albert Hourani, *Arabic Thought in the Liberal Age, 1798–1939* (Cambridge: Cambridge University Press, 1962); Malcolm Kerr, *Islamic Reform: The Political and Legal Theories of Muḥammad ʻAbduh and Rashīd Riḍā* (Berkeley, CA: University of California Press, 1966). [↑](#footnote-ref-8)
8. He was almost certainly the most famous to do so in Sudan, however. [↑](#footnote-ref-9)
9. On the emergence of this discourse in Sudan, see Ibrahim, *Manichaean Delirium*, 101–3, 156–63. [↑](#footnote-ref-10)
10. For a valuable history of Islamic law’s application in Sudan, see Olaf Köndgen, *The Codification of Islamic Criminal Law in the Sudan: Penal Codes and Supreme Court Case Law under Numayrī and Bashīr* (Leiden: Brill, 2017), 29–105. [↑](#footnote-ref-11)
11. There is a dearth of scholarship on the Turco-Egyptian judiciary compared with those of the regimes that followed it. Abdelrahman Ibrahim Elkhalifa offers a helpful if brief summary in English, while Ḥusayn Sayyid Aḥmad Muftī’s work in Arabic is easily the standard on the period’s courts. See Abdelrahman Ibrahim Elkhalifa, “Development and Future of English Law and Islamic Law in the Sudan” (DCL Thesis, Montreal, McGill University, 1988), 21–29; Ḥusayn Sayyid Aḥmad Muftī, *Taṭawwur niẓām al-qaḍā*ʾ *fī l-Sūdān* (Khartoum: Maṭba*ʿ*at Miṣr, 1959), 73–167. [↑](#footnote-ref-12)
12. Aharon Layish, *Sharīʻa and the Islamic State in 19th-Century Sudan: The Mahdī’s Legal Methodology and Doctrine* (Leiden: Brill, 2016), 26–57. [↑](#footnote-ref-13)
13. J. N. D. Anderson, “The Modernization of Islamic Law in Sudan”, *The Sudan Law Journal and Reports*, 1960, 292–313; Ibrahim, *Manichaean Delirium*, 59–60, 97–108. [↑](#footnote-ref-14)
14. A brief note regarding terminology is necessary. Though “modernist”, “reformist”, and “traditional” are used throughout this paper, they are done so keenly aware of their limitations. Every effort has been made to replace them with explicit descriptions of the orientations in question. When this was not possible, this paper uses them in the narrowest possible sense. It defines traditional Islamic law as an understanding of *fiqh* rooted in the legitimacy of legal schools and the doctrinal and methodological commitments they implied, and modernist critiques of Islamic law as those that regarded such juristic scaffolding as an impediment to the only truly certain method for divining God’s law, the unmediated interpretation of revelation. [↑](#footnote-ref-15)
15. This is not to imply that premodern Sudan lacked either centralized states or authorities interested in Islamic law. Among its best-known Muslim polities, the Kingdoms of the Funj (1504–1821) and Darfur (1603–1874, 1898–1916), both patronized Islamic scholars in hopes of bolstering their legitimacy. Though the former actually appointed Muslim judges at the behest of the sultan, there is little evidence that either was especially successful at influencing the practice of Islamic law outside its capital. On the religious and intellectual milieu of the Funj, the biographical dictionary ofthe Mālikī jurist and historian Muḥammad al-Nūr b. Ḍayf Allāh (d. 1809–10), best known as WadḌayf Allāh, is unparalleled. For its politics, the chron§icle largely written by a granary in the Turco-Egyptian government, Aḥmad b. al-Ḥājj Abū *ʿ*Alī (b. 1784–5), is similarly indispensable. Regarding precolonial Darfur, R.S. O’Fahey provides a classic study of its political history. See Muḥammad al-Nūr b. Ḍayf Allāh, *Kitāb al-ṭabaqāt fī khuṣūs al-awliyāʾ wa-l-ṣāliḥīn wa-l-ʿulamāʾ wa-l-shuʿarā*ʾ *fī l-Sūdān*, ed. Yūsuf Faḍl Ḥasan, 2 vols. (Khartoum: Dār al-Ta*ʾ*līf wa-l-Tarjama wa-l-Nashr, Jāmiʿat al-Kharṭūm, 1985); Aḥmad b. al-Ḥājj Abū ʿAlī, *Tārīkh mulūk Sinnār wa-l-ḥukm al-Turkī al-Miṣrī fī l-Sūdān (910-1288H / 1504-1871/2M)*, ed. Yūsuf Faḍl Ḥasan (Khartoum: SUDT&TK Limited, 2018); R. S. O’Fahey, *State and Society in Dār Fūr* (London: C. Hurst, 1980). [↑](#footnote-ref-16)
16. The first explicit mention of Islamic legal doctrine in the country is generally attributed to the sixteenth-century Sudanese jurist Maḥmūd b. Muḥammad al-ʿArakī (fl. 1520). Studying at al-Azhar under several of the great Mālikī legal specialists of his day, including the brothers Shams al-Dīn (d. 1528-29) and Nāṣir al-Dīn al-Laqqānī (d. 1551), al-ʿArakī returned to Sudan at the invitation of the Funj sultan where he reputedly established the country’s first school of Islamic sciences*.* For al-ʿArakī, see Ḍayf Allāh, *Kitāb al-ṭabaqāt*, 2: 344. [↑](#footnote-ref-17)
17. The seminal text of the later Mālikī school, the fourteenth-century *Mukhtaṣar* *Khalīl* was a particular favorite. Though its tutorials were typically among the country’s most intensive, a notoriously dense work that often took upwards of a year to finish, Sudan’s aspiring legists often completed it multiple times. One of its most famous early specialists in Sudan was said to have finished the *Mukhtaṣar* no fewer than forty times before beginning a career in law. Two generations later, a pupil of his nephew reportedly completed some twenty courses in the text before authoring one of its first commentaries in Sudan. Ḍayf Allāh, 2: 245, 251. [↑](#footnote-ref-18)
18. On the Mālikī *muftī*s of precolonial Sudan, Ḍayf Allāh’s *al-Ṭabaqāt* is unrivaled. For several of the more evocative accounts of the lives and careers of the leading jurisconsults of medieval Sudan, see Ḍayf Allāh, 1: 78, 2: 253, 255, 371. [↑](#footnote-ref-19)
19. A full appraisal of Sudan’s Mālikī legal literature is badly overdue. Though limited source material makes any definitive history difficult, by at least the second half of the sixteenth century, Sudanese scholars are described as teaching the school’s advanced works of *fiqh*. Reference to local texts of theology, grammar, and especially law, are more common one hundred years later as Ḍayf Allāh attributes a growing library of Sudanese Mālikī scholarship to author-jurists of the late seventeenth century. For a sample of the earliest, as well two of the more lengthy, works of legal scholarship of the period, see Ḍayf Allāh, 2: 251, 1: 73, 103; Yusuf Badri, “A Survey of Islamic Learning in the Fūnj State (910–1236 A.H./1505–1820 A.D.)” (Bachelor’s thesis, University of Oxford, 1970), 78, 121. [↑](#footnote-ref-20)
20. Ḍayf Allāh, *Kitāb al-ṭabaqāt*, 1: 54. [↑](#footnote-ref-21)
21. John Hunwick and R.S. O’Fahey, eds., *Arabic Literature of Africa I: The Writings of Eastern Sudanic Africa to c. 1900*, vol. 1 (Leiden: Brill, 1994), 4. [↑](#footnote-ref-22)
22. This is not to diminish the contribution of the former to Sudanese legal history. It is only to observe that they have failed to prompt a similar focus on the traditions of Mālikī and Shāfiʿī *fiqh* that preceded, and often escaped, such official articulations of Islamic law by Sudanese states. For a sample of the scholarship on the country’s courts, see Ibrahim, *Manichaean Delirium*; Köndgen, *The Codification of Islamic Criminal Law in the Sudan;* Layish and Warburg, *The Reinstatement of Islamic Law in Sudan under Numayrī*; Carolyn Fluehr-Lobban, *Islamic Law and Society in the Sudan* (London: Routledge, 1987); Mark Fathi Massoud, *Law’s Fragile State: Colonial, Authoritarian, and Humanitarian Legacies in Sudan* (New York, NY: Cambridge University Press, 2013). [↑](#footnote-ref-23)
23. On the hucksterism alleged of Africa’s Islamic authorities, the Bavarian missionary Theodor Krump offers a characteristic early account. Krump traveled through Sudan between 1700 and 1702, remarking often that the scholars and Sufis he encountered enjoyed influence not through learning or asceticism but by merely exploiting the naivety of local Muslims. See Theodor Krump, *The Sudanese Travels of Theodoro Krump*, trans. Jay Spaulding (n.p.: n.p., 2001), 32–3. [↑](#footnote-ref-24)
24. The paradigmatic institution of Islamic studies in Sudan since at least the sixteenth century, the *khalwa* is often glossed by Western academics as a Qurʾānic school. Though not inaccurate in recent years, Sudan’s *khalwa*s historically served as the country’s premier institution for studying a range of Islamic disciplines, theology, law, *ḥadīth*, and logic among them. Memorizing the Qurʾān was of course an introductory stage in a student’s education, but it by no means represented the entirety of the typical *khalwa* curriculum. Until the reforms of successive colonial governments, most visibly the Condominium’s founding in 1901 of an alternative center for higher Islamic learning, *al-Maʿhad al-ʿIlmī*, the pursuit of advanced religious studies in the country was undertaken in Sudan’s *khalwa*s. Historians of Sudan have discussed the *khalwa* in varying levels of detail. Though none has produced a work dedicated solely to the institution in English, several exist in Arabic. For the most thorough of the latter, see al-Ṭayyib Muḥammad Ṭayyib, *al-Masīd* (Khartoum: Maṭba*ʿ*at Jāmi*ʿ*at al-Kharṭūm, 1991). Regarding one of the more comprehensive theses on the subject in English, see Osman Mohammad Eid, “The Khalwa as an Islamic Educational Institution in the Sudan” (PhD diss., University of Edinburgh, 1985). For a shorter discussion of the *khalwa* in late medieval Sudan, see Neil McHugh, *Holymen of the Blue Nile: The Making of an Arab-Islamic Community in the Nilotic Sudan, 1500-1850* (Evanston, IL: Northwestern University Press, 1994), 85–95. [↑](#footnote-ref-25)
25. The author acknowledges the fraught legacy of the terms “formative” and “classical” in periodizing Islamic history. They are used here not to reify but to question many of the stereotypes that continue to follow them in the Western academy. As a means of critiquing that literature, this paper employs a standard historical schema: formative/classical (seventh–ninth centuries), postformative/postclassical (tenth–eighteenth centuries), and colonial (nineteenth–twentieth centuries) and modern periods (twentieth century–present). For an excellent critique of these categories in the study of Islamic law, see Leon Buskens, “A Medieval Islamic Law? Some Thoughts on the Periodization of the History of Islamic Law”, in *O Ye Gentlemen: Arabic Studies on Science and Literary Culture in Honour of Remke Kruk*, ed. Jan Hogendijk and Arnoud Vrolijk (Leiden: Brill, 2007), 469–84. [↑](#footnote-ref-26)
26. One undertook *tashhīr* to arrive at the view regarded as *mashhūr*. A key classification for grading the school’s opinions, Mālikī jurists nevertheless offered a variety of explanations for *mashhūr*. Their definitions ranged from the last statement attributed to Mālik; the *Mudawwana*’saccount of Mālik’s position; only Ibn al-Qāsim’s narration of that text; the opinion that enjoys the strongest evidence regardless of its provenance; and finally, the view most widely adopted by jurists themselves. The last, abridged in law books simply as “*mā kathura qāʾiluh*”, is the most commonly cited by later Mālikī sources. On the range of definitions circulating throughout the medieval Mālikī school, Ibn Farḥūn’s (d. 1397) study of legal terminology remains the preeminent source. See Ibrāhīm b. *ʿ*Alī Ibn Farḥūn, *Kashf al-niqāb al-ḥājib min muṣṭalaḥ Ibn al-Ḥājib* (Beirut: Dār al-Gharb al-Islāmī, 1990), 62–90. For an exceptional discussion of Mālikī *mashhūr* in English, see Mohammad Fadel, “Adjudication in the Mālikī Madhhab: A Study of Legal Process in Medieval Islamic Law” (PhD diss., University of Chicago, 1995), 242–55. [↑](#footnote-ref-27)
27. To be precise, *dalīl* is most literally rendered an “indicant”, that which uncovers something hidden. It is translated here alternatively as “evidence” or “proof” to capture the spirit of its use in *fiqh*, particularly by Mālikī authors, as well as to ease the reader’s burden of contending with the famously complexvocabulary of Islamic law. [↑](#footnote-ref-28)
28. On critiques of Medinese *ʿamal* by jurists and Western academics, see Umar Faruq Abd-Allah, *Mālik and Medina: Islamic Legal Reasoning in the Formative Period* (Leiden: Brill, 2013), 183–218; Yasin Dutton, *Early Islam in Medina: Mālik and His Muwaṭṭa’* (London: Bloomsbury, 2021), 79–116. [↑](#footnote-ref-29)
29. The literature on contemporary Islamic law and its rather dispiriting view of the institutions and authorities of precolonial *fiqh* will be discussed at greater length in this paper’s conclusion. [↑](#footnote-ref-30)
30. For earlier and still influential claims of their unimportance to one another, see Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 60, 77, 115. For a prominent ethnographic account, see Lawrence Rosen, *The Justice of Islam: Comparative Perspectives on Islamic Law and Society* (Oxford: Oxford University Press, 2000). [↑](#footnote-ref-31)
31. On the claim that Islamic law had little to do with the actual legal practices of Muslims, as well as its welcome repudiation by Hallaq, Johansen, and others, see Wael Hallaq, *Sharī’a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 159–96; Baber Johansen, *The Islamic Law on Land Tax and Rent: The Peasants’ Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Periods* (London: Croom Helm, 1988). [↑](#footnote-ref-32)
32. For a thoughtful discussion of the ways in which contemporary scholarship has misrepresented African Muslims, see Rüdiger Seesemann, “African Islam or Islam in Africa? Evidence from Kenya,” in *The Global Worlds of the Swahili: Interfaces of Islam, Identity and Space in 19th and 20th-Century East Africa*, ed. Roman Loimeier and Rüdiger Seesemann (Berlin: Lit, 2006), 229–50; Scott S. Reese, “Islam in Africa/Africans and Islam,” *The Journal of African History* 55:1 (2014), 17–26; Hanretta, “Muslim Histories, African Societies”; Benjamin Soares, “The Historiography of Islam in West Africa: An Anthropologist’s View,” *The Journal of African History* 55:1 (2014), 27–36; Triaud, “Giving a Name to Islam South of the Sahara”; Robert Launay, “An Invisible Religion? Anthropology’s Avoidance of Islam in Africa,” in *African Anthropologies: History, Critique, and Practice*, ed. Mwenda Ntarangwi (New York, NY: Zed Books, 2006), 188–203. [↑](#footnote-ref-33)
33. Demands to recenter Mālikī *fiqh* on the original sources of law will be treated later in the paper. [↑](#footnote-ref-34)
34. Unless otherwise noted, al-Jaʿalī’s biography is based on the author’s interview with his family and one of his last living students, ʿAbd Allāh Muḥammad Nūr, in al-Zaydāb on April 2, 2015. [↑](#footnote-ref-35)
35. Students recalled that after providing a survey of the views of other *madhhab*s, al-Jaʿalī never failed to remind them that as Mālikīs, they were to return to the teachings of the school’s founder, Mālik b. Anas (d. 795). Unfortunately, the content of al-Jaʿalī’s *fatwā*s are unknown. Blind, he delivered them orally, and according to family accounts, without the aid of a student designated to record them. Though petitioners (*mustaftī*s) may have recorded al-Jaʿalī’s replies, to date these remain undiscovered. On al-Jaʿalī’s *fatwā*s, see ʿAbd Allāh Muḥammad Nūr, “Jamʿiyya al-Qur’ān al-karīm qiṭāʾ al-Zaydāb: rijāl fī dhākiratinā” (unpublished manuscript, n.d.), 2–3; Author interview with al-Jaʿalī’s family and ʿAbd Allāh Muḥammad Nūr, al-Zaydāb, Sudan, April 2, 2015. [↑](#footnote-ref-36)
36. Author interview with al-Jaʿalī’s family and ʿAbd Allāh Muḥammad Nūr, al-Zaydāb, Sudan. [↑](#footnote-ref-37)
37. Nūr, “Jamʿiyyat al-Qur’ān al-karīm qiṭāʾ al-Zaydāb: rijāl fī dhākiratinā”, 3–4; Author interview with al-Jaʿalī’s family and ʿAbd Allāh Muḥammad Nūr, al-Zaydāb, Sudan. [↑](#footnote-ref-38)
38. In this al-Jaʿalī was regarded as an inheritor of the Order’s founder, reaching the stage of a senior authority and successor (*khalīfat al-khulafāʾ).* For a classic history of Sudan’s Khatmiyya in English, see John Voll, “A History of the Khatmiyyah in the Sudan” (PhD diss., Harvard University, 1969). [↑](#footnote-ref-39)
39. The first of the three, al-Suhāʾī’s *Targhīb al-murīd al-sālik ilā madhhab al-imām Mālik,* appears to be no longer extant. Little is also known of its author. He was a student of the celebrated Mālikī jurist ʿAlī al-Ujhūrī (d. 1656) and appeared to have been sufficiently influenced by Khalīl b. Isḥāq and his commentators, not least of whom al-Suhāʾī’s famous teacher, that some have speculated his *Targhīb* was an attempt to simplify the famously dense *Mukhtaṣar*. Lacking a copy of the work, judging its genealogy with any precision is difficult. Yet, a general synopsis of the text is possible through a careful reading of its versification (*naẓm*) by the second interlocutor of the group, the eighteenth-century Egyptian Muḥammad al-Bashshār. al-Bashshār’s *Ashal al-masālik fī madhhab al-imām Mālik* in turn was the titular motivation for al-Jaʿalī’s own exploration of the Mālikī school through his gloss, *Sirāj al-sālik ʿalā Ashal al-masālik*. [↑](#footnote-ref-40)
40. The exact date of Khalīl’s death varies in premodern accounts. Though prominent Mālikī jurists and historians have also recorded 1348, 1365, and 1367-68, the most commonly cited, and the one relied upon here, is the thirteenth of Rabīʿ I, 776 (August 22, 1374). It was first recorded by the Tilimsānī jurist Ibn Marzūq al-Jadd (d. 1379) and later confirmed by several of the subsequent eras’ most prominent jurists, among them Ibn Ghāzī (d. 1513), Nāṣir al-Dīn al-Laqqānī, Shams al-Dīn al-Tatāʾī (d. 1535), and Aḥmad Bābā (d. 1627). On Khalīl and his *Mukhtaṣar*, see this author’s forthcoming entry in the Encyclopedia of Islam. For a survey of the various accounts of Khalīl’s death, see Aḥmad b. Aḥmad Bābā, *Nayl al-ibtihāj bi-taṭrīz al-Dībāj* (Tripoli: Dār al-Kātib, 2000), 172; Badr al-Dīn al-Qarāfī, *Tawshīḥ al-dibāj wa-ḥilyat al-ibtihāj* (Cairo: Maktabat al-Thaqāfa al-Dīniyya, 2004), 72. [↑](#footnote-ref-41)
41. For a collection of his references to the customary practice (*ʿurf*) of the country’s tribes and their interpretations of Islamic legal doctrine, see ʿUthmān b. Ḥasanayn Barrī al-Jaʿalī, *Sirāj al-sālik sharḥ Ashal al-masālik* (Beirut: Dār Ṣādir, 1994), 1: 198, 2: 309, 317, 319, 322, 330, 338, 346, 372, 420. [↑](#footnote-ref-42)
42. For lucid studies of the first in premodern Islamic law, see Justin Stearns, *Revealed Sciences: The Natural Sciences in Islam in Seventeenth-Century Morocco* (Cambridge: Cambridge University Press, 2021), 147–62; Dorrit van Dalen, *Doubt, Scholarship and Society in 17th-Century Central Sudanic Africa* (Leiden: Brill, 2016), 154–87, 260–92; Aziz Batran, *Tobacco Smoking under Islamic Law: Controversy over Its Introduction* (Beltsville, MD: Amana Publications, 2003). [↑](#footnote-ref-43)
43. al-Jaʿalī, *Sirāj al-sālik*, 1: 65. [↑](#footnote-ref-44)
44. al-Jaʿalī, 1: 65. [↑](#footnote-ref-45)
45. The last of these was not unheard of among Mālikīs as Nāṣir al-Dīn al-Laqqānī issued such a ban. [↑](#footnote-ref-46)
46. Divorce is typically among the richest chapters for exploring the intersections between legal doctrine and social practice in books of law. Given the privileged the status designated to marriage in Islam’s founding texts, scholars did not take lightly when and how such unions could be dissolved. Their discussion of divorce typically included debates over questions of gender, agency, sexual health, infidelity, morality, spousal maintenance, financial compensation, and expectations for raising children among many others. The *Mukhtaṣar*’streatment of divorce not surprisingly emerged as a touchstone for later Mālikī jurists. Particularly in the Sahara, a number of scholars completed glosses on just a single line of Khalīl’s text, the notoriously terse “*khaṣṣaṣat niyyat al-ḥālif*.” The preeminent scholar-historian of medieval West Africa, Aḥmad Bābā, was among them, authoring an abridged supercommentary on a sixteenth-century Nigerian’s study of the same line in which both explore the thorny question of when a general oath of divorce may be clarified, or more technically made conditional or particular, based on the intention of the person who takes it. For Bābāʾs work, copies of which are held in various manuscript archives throughout Africa, see Aḥmad Bābā, “Tanbīh al-wāqif ʿalā taḥqīq wa khaṣṣaṣat niyyat al-ḥālif” (n.p., n.d.). [↑](#footnote-ref-47)
47. al-Jaʿalī, *Sirāj al-sālik*, 2: 329. [↑](#footnote-ref-48)
48. The supercommentary is still popular among Mālikī scholars in Sudan today. It is variously titled *Bulghat al-sālik li-Aqrab al-masālik* or *Ḥāshīyat al-Ṣāwī ʿalā al-Sharḥ al-ṣaghīr li-l-Dardīr*. As the first is the most frequent in Sudan, *Bulghat al-sālik* is used here. On the ʿ*idda*, though Mālikī jurists occasionally disagreed on the exact length, the waiting period between marriages wasusually taken to be the duration of three menstrual cycles. For al-Jaʿalī’s reference to al-Ṣāwī, see al-Jaʿalī, 2: 330. [↑](#footnote-ref-49)
49. al-Jaʿalī, 2: 330. [↑](#footnote-ref-50)
50. To clarify or, more precisely, to uncover the truth, in a legal context, *istiẓhār* implies both choosing an existing position and demonstrating its superiority or, literally, the obviousness of its claims relative to alternative views. [↑](#footnote-ref-51)
51. al-Jaʿalī incidentally cites yet another opinion of later jurists that *khāliṣa* was merely a disrespectful term and not a valid oath capable of ending a marriage. al-Jaʿalī, *Sirāj al-sālik*, 2: 330. [↑](#footnote-ref-52)
52. This assumes that the husband did not intend additional instances of divorce when uttering the phrase. al-ʿAdawī follows the others in regarding such intent as legal binding. He echoed a general principle of Mālikī jurisprudence by also arguing that such a divorce applied in cases where the marriage had already been consummated, while the more rigorous *al-ṭalqa al-bāʾina* held when sexual intercourse had yet to occur. The distinction aimed to prevent impulsive divorce among new couples while encouraging reconciliation among established ones. al-Jaʿalī, 2: 330. [↑](#footnote-ref-53)
53. A woman’s cavorting with male non-relatives is a popular such example in law books. [↑](#footnote-ref-54)
54. al-Jaʿalī, *Sirāj al-sālik*, 2: 330. [↑](#footnote-ref-55)
55. Here al-Jaʿalī summarizes the view of al-Dardīr in his *al-Sharḥ al-ṣaghīr*. See Aḥmad b. Muḥammad al-Ṣāwī, *Bulghat al-sālik li-aqrab al-masālik ilā madhhab al-imām Mālik* (Cairo: Dar al-Maʿārif, n.d.), 2: 563. [↑](#footnote-ref-56)
56. The implication is not that wives were to be punished for disobeying their spouses, but rather that husbands were to avoid, at all costs, employing their right to dissolve a marriage out of anger. Rather than invalidate the legitimacy of such a prohibition, jurists sought to dissuade husbands from engaging in brinksmanship by rejecting the claim that they were merely angry and did not actually seek divorce when they prohibited their wives from impossibly common tasks. al-Jaʿalī, *Sirāj al-sālik*, 2: 330. [↑](#footnote-ref-57)
57. Among the most famous Mālikīs of the medieval period, al-Ujhūrī is best known in the county’s history for famously gifting in defeat his flag and turban to the Sudanese jurist and Sufi Idrīs wad al-Arbāb (d. 1650-51) at the conclusion of their debate over tobacco. Ḍayf Allāh, *Kitāb al-ṭabaqāt*, 1: 54. [↑](#footnote-ref-58)
58. al-Jaʿalī, *Sirāj al-sālik*, 2: 330. [↑](#footnote-ref-59)
59. Also occasionally transliterated as al-Bunānī, the form cited in the text is the most common rendering of his name in English. al-Jaʿalī, 2: 330. [↑](#footnote-ref-60)
60. This is not surprising given his admiration for the text and preference for later Egyptian authorities, al-Jaʿalī transmits al-Bannānī’s view second-hand via al-Ṣāwī’s *Bulghat al-sālik*. [↑](#footnote-ref-61)
61. al-Jaʿalī, *Sirāj al-sālik*, 2: 330. [↑](#footnote-ref-62)
62. On casuistry in Islamic law, see Baber Johansen, “Casuistry: Between Legal Concept and Social Praxis”, *Islamic Law and Society* 2:2 (1995), 135–56. [↑](#footnote-ref-63)
63. The basic rules of preemption are well established in the Mālikī school. Drawing fromreports attributed to the Prophet, a party has the right to sell their share of a jointly held property only after securing the approval of the remaining owner. The latter enjoys priority in purchasing the stake of their counterpart before it is made available to other parties. If they are not notified in advance of a potential sale, they are entitled to purchase back the share of the departing partner from a new buyer regardless of their consent. For an accessible summary of the later school’s views regarding *ghaṣb, istiḥqāq, and shufʿa*, see Muḥammad b. Aḥmad al-Dusūqī, *Ḥāshiyat al-Dusūqī ʿalā al-Sharḥ al-kabīr* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1996), 5: 157-248. [↑](#footnote-ref-64)
64. While Mālikīs specify four such principles (*qawāʾid*) underlying preemption, Shāfiʿīs and Ḥanbalīs only require three. al-Jaʿalī, *Sirāj al-sālik*, 2: 436. [↑](#footnote-ref-65)
65. He cites *tibish* and *ʿajūr*, local varieties of melon and cucumber respectively. al-Jaʿalī, 2: 437. [↑](#footnote-ref-66)
66. A descendant of Andalusia, al-Ḥaṭṭāb was born in Mecca and later relocated to Tripoli in present-day Libya where he won widespread acclaim as a teacher. al-Jaʿalī ascribes the poem to al-Ḥaṭṭāb, as does al-Ṣāwī though only regarding its last verse. However, the poem seems to first appear in the work of the Moroccan scholar Ibn Ghāzī several decades earlier. For its attribution to al-Ḥaṭṭāb, see al-Jaʿalī, 2: 438; al-Ṣāwī, *Bulghat al-sālik*, 3:638. On its authorship by Ibn Ghāzī, see Abū ʿĪsā Sīdī al-Mahdī al-Wazzānī, *al-Nawāzil al-jadīdat al-kubrā fīmā li-ahl Fās wa-ghayrihim min al-badw wa-l-qurā al-musammā bi-l-Miʿyār al-jadīd al-jāmiʿ al-muʿrib ʿan fatāwā al-muta*ʾ*akhkhirīn min ʿulamā*ʾ *al-Maghrib* (Beirut: Dār al-Kutub al-*ʿ*Ilmiyya, 2014), 7: 381. [↑](#footnote-ref-67)
67. al-Jaʿalī, *Sirāj al-sālik*, 2: 438. [↑](#footnote-ref-68)
68. This is often translated as “talion” or, more idiomatically, the principle of an eye for an eye. [↑](#footnote-ref-69)
69. al-Jaʿalī, *Sirāj al-sālik*, 2: 438. [↑](#footnote-ref-70)
70. al-Jaʿalī, 2: 438. [↑](#footnote-ref-71)
71. al-Jaʿalī, 1: 56, 2: 460. [↑](#footnote-ref-72)
72. It is with much irony that the *ijtihād* of the Condominium judiciary not infrequently resulted in the adoption of Mālikī doctrine. This was not motivated by any special concern for the practices or institutions of Sudan’s Mālikīs, however, but for the growing demands to modernize law and education spreading across its northern border. Egyptians held the senior judicial post in the Condominium from 1902 until 1947, a period in which amendments to the state’s Ḥanafī codes were either reproduced verbatim from those in Egypt or were provisionally issued in Khartoum prior to their enforcement in Cairo. Though the Condominium’s grand *qāḍī*s occasionally found the views of Mālikī jurists expedient, their inclusion was hardly an endorsement of the school. Such efforts to modernize Islamic law by ending the burden of the *madhhab* shared little in common with al-Jaʿalī’s defense of the Mālikī tradition. For a detailed account of the legislative reforms, see J. N. D. Anderson, *Islamic Law in Africa* (London: Routledge, 1955), 311–21. [↑](#footnote-ref-73)
73. The concept’s emergence in Sudan owed in no small measure to its earlier reinterpretation by Muḥammad ʿAbduh in Egypt. A number of the country’s reformist judges, several of whom studied under ʿAbduh personally in Cairo, extended his support for legal patchwork. On *talfīq*’s history in colonial Sudan, see Anderson, “The Modernization of Islamic Law in Sudan”, 304–5. [↑](#footnote-ref-74)
74. al-Jaʿalī, *Sirāj al-sālik*, 1: 56, 2: 460. [↑](#footnote-ref-75)
75. In this, his work is not entirely different from a contemporary in Sudan far more celebrated for his mystical prowess. ʿAbd al-Bāqī al-Mukāshifī (d. 1960) completed a versification of the introductory Mālikī legal text *al-ʿAshmāwiyya* during the same period, a gloss that was itself subjected to supercommentary a decade later by the Sudanese scholar Wad al-Uḥaymir. [↑](#footnote-ref-76)
76. Typically rendered Beja in English and *Bija* in Arabic, they are an ethnic group inhabiting parts of Sudan, Eritrea, and Egypt. Though early converts during Islam’s spread through Sudan in the fourteenth century, the Beja still today maintain a distinct language from Arabic derived from Afro-Asiatic Cushitic. For one of the few extended discussions of Beja history, see Andrew Paul, *A History of the Beja Tribes of the Sudan* (Cambridge: Cambridge University Press, 1954). On the religious and political terrain of Beja society of the late nineteenth century, particularly its significance in the rise of one of the period’s most influential Sufi figures, Albrecht Hofheinz’s dissertation is invaluable. See Albrecht Hofheinz, “Internalising Islam: Shaykh Muḥammad Majdhūb, Scriptural Islam, and Local Context in the Early Nineteenth Century Sudan” (PhD diss., Bergen, University of Bergen, 1996). [↑](#footnote-ref-77)
77. Several of al-Bijāwī’s writings offer intriguing details of his intellectual pedigree, though no published biography of the scholar exists. Unless noted otherwise, the information provided here is based on the author’s interview with al-Bijāwī’s son, al-Ṣādiq, in his father’s library, now a charitable endowment near Sinkāt on April 7, 2015. [↑](#footnote-ref-78)
78. It is perhaps interesting that he did not also receive the Tijānī litany from Muḥammad al-Ḥāfiẓ. al-Jaʿalī was inducted into the Shādhilī Sufi order while a student in Egypt. For al-Tijānī’s teaching license, see Abū Ṭāhir Ḥasan al-Bijāwī, *al-Lālī fī l-masānīd al-ʿawālī* (n.p.: Maṭbaʿat al-Baḥr al-Aḥmar, n.d.), 9. [↑](#footnote-ref-79)
79. Of many varieties, the teaching license functioned not only as a symbol of authority in the Islamic scholastic tradition, but one that permanently connected the legitimacy of students to that of their teachers and *vice versa*. For a classic introduction to *ijāza*s, particularly regarding *ḥadīth* and later law**,** see George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981), 140–52. [↑](#footnote-ref-80)
80. Unfortunately, little is known of al-Khazrajī beyond a brief record of those under whom he studied in Mecca and most probably Cairo. He is mentioned in al-Bijāwī, *al-Lālī*, 9. [↑](#footnote-ref-81)
81. al-Mashshāṭ was incidentally also a student of Ḥabīballāh. [↑](#footnote-ref-82)
82. The chain of transmission was regarded as firm or reliable (*thabt)* by scholars of *ḥadīth*, a grade also used to judge the veracity of individual reports. al-Bijāwī, *al-Lālī*, 9. [↑](#footnote-ref-83)
83. al-Bijāwī’s admiration was such that he even quoted a verse of Ḥabīballāh’s older brother Muḥammad al-ʿĀqib while condemning secular governance in Sudan. A well-known poet for many in Mauritania, al-ʿĀqib was not well known in Sudan at the time. Abū Ṭāhir Ḥasan al-Bijāwī, *Bayān al-ḥaqq fī ikhtīyār al-walā bi-ṭarīq al-ḥaqq* (n.p.: n.p., n.d.), 9. [↑](#footnote-ref-84)
84. Abū Ṭāhir Ḥasan al-Bijāwī, *al-Fiqh al-kāmil ʿalā madhhab al-imām Mālik* (n.p., n.d.), 88. [↑](#footnote-ref-85)
85. Abū Ṭāhir Ḥasan al-Bijāwī, “Mukhtārāt al-Bijāwī li-ifādat al-muslim min Zād al-muslim” (n.p., n.d.). [↑](#footnote-ref-86)
86. al-Bijāwī, *al-Lālī*, 12. [↑](#footnote-ref-87)
87. al-Bijāwī’s son recounted one of the more unusual examples of such requests, citing the cases of two Eritrean jurists, one a Ḥanafī and the other a Ḥanbalī, who arrived at al-Bijāwī’s *khalwa* asking to teach them advanced legal texts. Whether the story actually occurred is less important than the message it conveys. Though al-Bijāwī was an avowed Mālikī, his reputation as an uncommonly gifted scholar was sufficient to attract jurists not just from other countries, but other *madhhab*s as well. [↑](#footnote-ref-88)
88. On his concern for the country’s politics, nearly a third of al-Bijāwī’s texts were polemics targeting British or Sudanese reforms. [↑](#footnote-ref-89)
89. Regarding helpful English sources that chronicle al-Turābī’s participation in the October Revolution of 1964, as well as his early rise among the country’s Islamist movements, see Abdelwahab El-Affendi, *Turabi’s Revolution: Islam and Power in Sudan* (London: Grey Seal, 1991), 63–90; Masaki Kobayashi, “The Islamist Movement in Sudan: The Impact of Dr. Hassan al-Turabi’s Personality on the Movement” (PhD diss., University of Durham, 1996), 60–78; Berridge, *Hasan al-Turabi*, 49–76. [↑](#footnote-ref-90)
90. For a reading of al-Turābī’s view of religion and religiosity, a distinction he also terms true (*al-dīn al-haqq*) and acquired religion (*al-dīn al-kasb*), see Ibrahim, *Manichaean Delirium*, 333–60. [↑](#footnote-ref-91)
91. Richard Hill, “Islam in the Sudan”, in *Religion in the Middle East: Three Religions in Concord and Conflict*, ed. A. J. Arberry, vol. 2 (London: Cambridge University Press, 1969), 192. [↑](#footnote-ref-92)
92. This did not imply that Muslim courts were likely to enforce anything resembling its precolonial doctrine. That any newly formed Mālikī judiciary would continue to be confined to issues of personal status and subordinated to civil law was sufficiently obvious that it was not subjected to debate. [↑](#footnote-ref-93)
93. In a bit of semantic confusion, al-Bijāwī’s work is at least notionally dependent on works used for Islamic law, rather than on works of Islamic law. The distinction lies in the sources used to derive Islamic law, namely the Qurʾān and *ḥadīth*, from texts of substantive law that extrapolate rules from them. al-Jaʿalī’s *Sirāj al-sālik* is a notable example of the latter. [↑](#footnote-ref-94)
94. They were cited with more frequency in his concluding remarks to each chapter (*tatimma*s). [↑](#footnote-ref-95)
95. al-Bijāwī explains that he follows Manṣūr’s approach to grading and deploying *ḥadīth* reports, accepting only the soundest of the canonical narrations of the Prophet. al-Bijāwī, *al-Fiqh al-kāmil*, 2. [↑](#footnote-ref-96)
96. al-Bijāwī, 3. [↑](#footnote-ref-97)
97. al-Bijāwī, 3. [↑](#footnote-ref-98)
98. Narrated by Abū Saʿīd al-Khudrī(d. 693-94). According to al-Bijāwī, the *ḥadīth* was verified and re-transmitted by Ibn Mājah (d. 886), Abū Dāwūd (d. 888), al-Tirmidhī (d. 892), and al-Nasāʾī (d. 915). The group comprises the *aṣḥāb al-sunan*, four of the seven most authoritative *ḥadīth* collections of Sunni Islam. al-Bijāwī, 3. [↑](#footnote-ref-99)
99. al-Bijāwī, 3. [↑](#footnote-ref-100)
100. al-Bijāwī, 31. [↑](#footnote-ref-101)
101. al-Bijāwī abbreviates the seminal works in his introduction as simply “the five.” They include the two *Ṣaḥīḥ*s of al-Bukhārī (d. 870) and Muslim b. al-Ḥajjāj (d. 875), the two *Sunan*s of Abū Dāwūd and al-Nasāʾī, and the *Jāmiʿ* of al-Tirmidhī. al-Bijāwī, 3. [↑](#footnote-ref-102)
102. al-Bijāwī, 38. [↑](#footnote-ref-103)
103. al-Bijāwī, 38. [↑](#footnote-ref-104)
104. Yasin Dutton’s excellent work on Medinese practice and Mālik’s legal methodology is one of the few studies in English dedicated to the conflicting proof texts and early legal disagreements over the issue. See Yasin Dutton, “Amal v Ḥadīth in Islamic Law: The Case of Sadl al-Yadayn (Holding One’s Hands by One’s Sides) When Doing the Prayer”, *Islamic Law and Society* 3, no. 1 (1996): 13–40. [↑](#footnote-ref-105)
105. The disagreements were not limited to early jurists. The choice of *qabḍ* or *sadl* also emerged as a source of contention between Sufi and Salafi movements in twentieth-century West Africa. For the notable defense of *qabḍ* by Senegal’s Ibrāhīm Niasse (d. 1975), founder of the largest Sufi movement in the region, see Zachary Wright, *Living Knowledge in West African Islam: The Sufi Community of Ibrahim Niasse* (Leiden: Brill, 2015), 223–28. On defenses of *sadl* in Nigeria by the reformists Yan Izala, see Roman Loimeier, *Islamic Reform in Twentieth-Century Africa* (Edinburgh: Edinburgh University Press, 2016), 168. Alternatively, for support of *qabḍ* in Gambia by the missionary group Tablīghī Jamāʿat, see Marloes Janson, *Islam, Youth, and Modernity in the Gambia: The Tablighi Jamaʻat* (London: Cambridge University Press, 2014), 83. [↑](#footnote-ref-106)
106. Literally the inhabitants of Medina. As a legal concept employed by Mālik, *ahl al-Madīna* consisted of those most capable of verifying the practices of the Prophet during his residence in the city, namely his Companions (*ṣaḥāba*) including the first four Caliphs (*al-khulafāʾ al-rāshidūn*), their Successors (*tābiʿūn*), and the third generation of followers that encountered them (*tābiʿ al-tābiʿīn*). [↑](#footnote-ref-107)
107. Saḥnūn b. Saʿīd al-Tanūkhī, *al-Mudawwana al-kubrā li-l-imām Mālik b. Anas al-Aṣbaḥī* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1994), 1: 170. [↑](#footnote-ref-108)
108. al-Bijāwī, *al-Fiqh al-kāmil*, 33. [↑](#footnote-ref-109)
109. Typical of much of his text, al-Bijāwī does not cite Ibn al-Qāsim here. [↑](#footnote-ref-110)
110. On two rare but outstanding studies of *ʿamal ahl al-Madīna*, its various types, and its use by Mālik as a source of law in place of reports narrated by a single chain of transmission, or solitary *ḥadīth*s, see Abd-Allah, *Mālik and Medina*; Yasin Dutton, *The Origins of Islamic Law: The Qurʾan, the Muwaṭṭaʾ and Madinan ʻAmal* (Surrey: Curzon Press, 1999). [↑](#footnote-ref-111)
111. For the original text, see Muḥammad Ḥabīb Allāh al-Shinqīṭī, *Zād al-muslim fīmā ittafaqa ʿalayhi al-Bukhāri wa-Muslim* (Cairo: Dār Iḥyāʾ al-Kutub al-ʿArabiyya, n.d. Reprint of the Cairo edition published by ʿĪsā al-Bābī al-Ḥalabī), 4: 390-1. On its partial reproduction by al-Bijāwī, see al-Bijāwī, *al-Fiqh al-kāmil*, 34. [↑](#footnote-ref-112)
112. Advocates of *qabḍ* understandably reject this characterization. A detailed study of such critiques of *sadl* by Mālikī scholars is needed. For the purposes of this discussion, proponents of *sadl* typically argued that any evidence of Mālik’s defense of *qabḍ* was either erroneously attributed to him or misinterpreted by later authorities. Ḥabīb Allāh and al-Bijāwī maintained that in any case, such *ḥadīth*s were abrogated by the Prophet’s Companions and their successors in Medina’s observance of *sadl*. Dutton also highlights Mālik’s reliance on Medinan practice over even well-attested *ḥadīth*s. See al-Bijāwī, *al-Fiqh al-kāmil*, 34; Dutton, *The Origins of Islamic Law*, 37–52. [↑](#footnote-ref-113)
113. On the reformist landscape of the early modern and colonial periods, there is a wealthof insightful work. For only a sample of its intellectual and geographic breadth, see Chanfi Ahmed, *West African ʿUlamāʾ and Salafism in Mecca and Medina: Jawab al-Ifrīqī-the Response of the African* (Leiden: Brill, 2015); Bernard Haykel, *Revival and Reform in Islam: The Legacy of Muhammad al-Shawkani* (Cambridge: Cambridge University Press, 2003); Leor Halevi, *Modern Things on Trial: Islam’s Global and Material Reformation in the Age of Rida, 1865–1935* (New York, NY: Columbia University Press, 2019); Henri Lauzière, *The Making of Salafism: Islamic Reform in the Twentieth Century* (New York, NY: Columbia University Press, 2016). [↑](#footnote-ref-114)
114. Though it admitted other types of *dalīl*, namely consensus and analogical reasoning (*qiyās*), in its most popular iteration among Mālikī critics of later school doctrine, *tarjīḥ* was limited to evidence drawn directly from revelation. In this sense, though they were but one of many techniques available to the jurisconsult, *tarjīḥ* and *tashhīr* often served as a kind of Mālikī equivalent for many of the larger debates around *ijtihād* and *taqlīd* that echoed across the early modern Islamic World. On discussion of *tarjīḥ* by jurists themselves, a voluminous literature on the subject exists within legal hermeneutics. While Western research is meagre by comparison, several sources are nevertheless instructive. For overviews in English and German, see Wael Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 126–46; Jackson, *Islamic Law and the State*, 83–9, 166–8; Ulrich Rebstock, “Abwägen als Entscheidungshilfe in den uṣūl al-fiqh: Die Anfänge der tarğïḥ-Methode bei al-Ğaṣṣāṣ”, *Der Islam* 80:1 (2003), 110–21; Mohd Daud Bakar, “Conflict of Law and the Methodology of Tarjīẖ: A Study in Islamic Legal Theory” (PhD diss., University of St Andrews, 1993). [↑](#footnote-ref-115)
115. Their call, of course, was not new. Scholars of legal hermeneutics devoted more than a millennium to developing the techniques and restrictions for precisely such an undertaking. Experts of substantive law themselves were also far from averse to privilege the place of revealed proofs in *fiqh*. While the Ḥanbalī Ibn Taymiyya’s (d. 1328) *Bayān al-dalīl ʿalā buṭlān al-taḥlīl* is perhaps the most famous such work today, it is hardly the only one. Within the Mālikī school alone, there exists a long tradition of seeking to reinforce the views of Mālik, as well those extrapolated by later jurists, through the original sources of law. For several of the most noteworthy, see the elder Ibn Rushd’s (d. 1126) reworking of the *ʿUtbiyya*, *al-Bayān wa-l-taḥṣīl wa-l-sharḥ wa-l-tawjīh wa-l-taʿlīl fī masā*ʾ*il al-Mustakhraja*; his grandson, the younger Ibn Rushd’s (d. 1198) effort at comparative jurisprudence, *Bidāyat al-Mujtahid*; al-Shāṭibī’s attack of illicit innovation, *al-Iʿtiṣām*; and Ibn Marzūq’s (d. 1439) early recasting of Khalīl’s *Mukhtaṣar* according to revealed proofs, *al-Manzaʿ al-nabīl fī sharḥ Mukhtaṣar Khalīl wa-taṣḥīḥ masā*ʾ*ilahu bi-l-naql wa-l-dalīl.* [↑](#footnote-ref-116)
116. Textual in this sense has little to do with legal literature as such. A *naṣṣ* refers not to a physical bookof any particular jurist, but an unassailableproof drawn from the divine texts of revelation, the Qurʾān and *sunna*. Similarly, the term *naql* is also often misleading. When opposed to reason *(ʿaql*), it simply designates knowledge derived from revelation. In law, however, *naql* denotes the narrower act of seeking to resolve a legal dilemma by transmitting the opinion of another jurist. Though it usually foregrounded the authority of legal scholars by selecting their views from any number of possible alternatives, resorting to *naql* in no way implied that the cited opinion lacked a basis in revelation. Indeed, in only the rarest cases were the positions of a school’s leading figures absent some claim to the letter or intent of scripture. Less a difference of sources, the distinction between *naṣṣ* and *naql* instead revolved around their methods for authenticating the rules drawn from them. In theory, the first required engaging with revealed texts independently of their prior interpretation by jurists; the second, engaging with the opinions of jurists irrespective of the content of revelation. The inversion highlights the starkly different levels of authority conferred to those in each category. Access to *naṣṣ* was enjoyed by only the most advanced jurists, a small number of learned elites presumed to dwindle with each passing generation after the death of the Prophet. *Naql* was compulsory of a majority of the legal specialists of the postformative period, a vast community regarded as sufficiently versed in their school’s doctrine but unable to safely interpret original sources without leading the Muslim community astray. Their separation from those eligible to extrapolate law from *naṣṣ* closely parallels the formal divisions between *taqlīd* and *ijtihād*, and for Mālikīs, *tashhīr* and *tarjīḥ*. Both will be treated at length later in the paper. Regarding the significance of *naṣṣ* in legal hermeneutics, see Hallaq, *Sharī’a*, 87–98; Bernard Weiss, *The Spirit of Islamic Law* (Athens, GA: University of Georgia Press, 1998), 38–65. [↑](#footnote-ref-117)
117. *Dalīl al-rifāq ʿalā shams al-ittifāq* is one of the more unique efforts to join *ḥadīth* and substantive law. Already famous for his sizable literary output, the legal treatise is among Māʾ al-ʿAynayn’s most difficult works to classify. It is nominally a text of ritual law, though in practice it treats both *uṣūl* and *furūʿ al-fiqh*, as well as *ḥadīth*, medicine, and a range of contemporary matters of interest to the author. He composed the work in the model of the younger Ibn Rushd’s *Bidāyat al-mujtahid wa-nihāyat al-muqtaṣid*, one of the earlier, and more controversial, studies of comparative *fiqh*. Regarded by some as a *mujtahid*, Māʾ al-ʿAynayn rarely limited himself to the views of the Mālikī school. His *Dalīl al-rifāq* nevertheless reveals the Mauritanian roots of its author. It returns often to Khalīl’s *Mukhtaṣar*, supplying proofs that support and occasionally undermine the positions in the text. [↑](#footnote-ref-118)
118. Along with their brothers Muḥammad Taqī Allāh b. Māyāba (d. 1915) and Muḥammad al-ʿĀqib b. Māyāba (d. 1909), Ḥabīballāh and al-Khiḍr fled Mauritania as the French colonial presence expanded at the turn of the century. They set off toward the Hijaz, meeting Māʾ al-ʿAynayn while crossing Mauritania’s northern border. Long before the group gained renown across the region, the eldest brothers Taqīallāh in Medina as a teacher of Qurʾānic recitation and al-ʿĀqib as a poet in Fes, the four were hosted by Māʾ al-ʿAynayn as they entered what was then Morocco’s southern city of al-Samāra. The three joined a number of prominent Mauritanian scholars who also resided with Māʾ al-ʿAynayn as they fled or fought French rule. Though their stay was not long, the memory of his host would follow Ḥabīballāh throughout his career. For their visit to al-Samāra, see Muḥammad al-Ḥāfiẓ b. al-Mujtabā, *al-Ḥadīth al-Sharīf:* ʿ*ulūmuhu wa-*ʿ*ulamāʾuhu fī bilād Shinqīṭ* (Mauritania: n.p., 2001), 323. For Taqīallāh and Muḥammad al-ʿĀqib, see Muḥammadan b. Aḥmad b. al-Maḥbūbī, *Adab al-riḥla fī bilād Shinqīṭ khilāl al-qarnayn al-thālith wa-l-rābi*ʿʿ*ashar al-hijrīyayn* (n.p.: n.p., 2012), 171; Muḥammad Ḥabīballāh al-Shinqīṭī, *Iḍā*ʿ*at al-ḥālik min alfāẓ Dalīl al-sālik ilā Muwaṭṭaʾ al-imām Mālik* (Beirut: Dār al-Bashā*ʾ*ir al-Islāmīyah, 1995), 5. [↑](#footnote-ref-119)
119. An accomplishment, it should be noted, still not replicated in the many decades after al-Khiḍr’s *Īḍāḥ Mukhtaṣar Khalīl bi-l-madhāhib al-arba*ʿ*a wa-aṣaḥḥ al-dalīl.* Unfortunately, only the first volume of the text appears to have survived. On its author, al-Khiḍr remained in the then British Protectorate for much of his later career, serving at the request of Emir ʿAbdallāh I (r. 1921–51) as Transjordan’s senior judge and legal architect. Though largely forgotten outside of that country for his work in jurisprudence, al-Khiḍr is best known across Africa today as a source of controversy. His polemic *Mushtahā al-kharif al-jānī fī radd zalqāt al-Tijānī al-jānī* is regarded as one of the best-known critiques of the Tijānī Sufi order. [↑](#footnote-ref-120)
120. The Palestinian jurist and prolific author Yūsuf al-Nabhānī (d. 1932) considered Ḥabīballāh one of the great *ḥadīth* specialists of his day, calling his *Zād al-muslim* *fīmā ittafaqa* ʿ*alayhi al-Bukhāri wa-Muslim* among the bestworks of the discipline written in any period. The Egyptian modernistand a former student of ʿAbduh,ʿAbd al-Majīd al-Labbān (d. 1942), called Ḥabīballāh an absolute authority amongst *ʿulamāʾ*, while the Grand Muftī of Egypt Muḥammad Bakhīt al-Muṭīʿī (d. 1935), incidentally a noted foe of ʿAbduh’s, named Ḥabīballāh the defining scholar of his era. His *Zād al-muslim* reached even the Zaydī imam of Yemen, Yaḥyā Muḥammad Ḥamīd al-Dīn (d. 1948), who after lamenting that he had received only the first two volumes, wrote that the text had delighted and astonished him. For praise of the work, see al-Shinqīṭī, *Zād al-muslim*, 6: 993–6, 1000, 1002. [↑](#footnote-ref-121)
121. Before his death he would publish no fewer than 45 works, among them a call to privilege the *Muwaṭṭaʾ* above the most authoritative collections of Sunni *ḥadīth*, as well as a six-volume study of the soundest reports transmitted by the seminal works of al-Bukhārī and Muslim. The latter, *Zād al-muslim,* is a supercommentary on Ḥabīballāh’s original poem, *Dalīl al-sālik ilā Muwaṭṭaʾ al-imām Mālik*, a 1600 verse introduction to the *Muwaṭṭaʾ* of Mālik b. Anas. It is a provocative critique, setting its sights not on the margins of the Sunni *ḥadīth* canon but its two preeminent texts, the ninth century *Ṣaḥīḥayn* of al-Bukhārī and Muslim. Ḥabīballāh argued that such later compilations were prone to the biases of contemporary authors, leaving questionable the certainty of the reports and chains of transmission they included. The solution lay in a return to a work ironically omitted from most lists of canonical *ḥadīth* collections, the *Muwaṭṭaʾ*, the original source text of Mālik that sought to transmit the teachings of the Prophet based only on those who witnessed them personally. For Ḥabīballāh’s view of the *Muwaṭṭa’*, see al-Shinqīṭī, *Iḍā*ʿ*at al-ḥālik*, 1995, 11, 22. [↑](#footnote-ref-122)
122. Though not Sudanese, al-Mashshāṭ explained that his own study of the revealed proofs permissible for Mālikī *fiqh* was completed at the behest of Ḥabīballāh. See Ḥasan Muḥammad al-Mashshāṭ, *al-Jawāhir al-thamīna fī bayān adillat* ʿ*ālim al-madīna* (Beirut: Dār al-Gharb al-Islāmī, 1990), 111. [↑](#footnote-ref-123)
123. al-Bijāwī, of course, also frequently cited Ḥabīb Allāh’s actual work. He excerpts him at length in his *al-Fiqh al-kāmil* and even devotes a second unpublished text to Ḥabīballāh’s *Zād al-muslim* entitled *Mukhtārāt al-Bayjāwī li-ifādat al-muslim min Zād al-muslim*. Regarding his teaching licenses, al-Bijāwī appends the *ijāza*s he received from al-Mashshāṭ and Sāttī in his *al-Lālī fī l-masānīd al-ʿawālī* and *al-Fiqh al-kāmil* respectively. See al-Bijāwī, *al-Lālī*, 2–8; al-Bijāwī, *al-Fiqh al-kāmil*, 88. [↑](#footnote-ref-124)
124. Among the many scholars in Sudan who studied with Ḥabīballāh or were heavily influenced by his texts, the onetime Shāfiʿī Abū Ṭāhir al-Sawākinī (d. 1982) read *Zād al-muslim* under Ḥabīballāh personally in Cairo. He was joined by Mauritanian Muḥammad al-Ḥabīb al-Shinqīṭī (d.1982) who also studied under Ḥabīballāh in the Hijaz before establishing a *khalwa* in Sudan’s northeastern city of al-Qaḍārif. Like Muḥammad al-Ḥabīb, still another Mauritanian émigré to the country, Muḥammad Aḥmad al-Dāh (d. 1983), echoed Ḥabīballāh’s call to recenter divine proofs at the heart of Mālikī jurisprudence. For a thorough reading of their work, see the author’s forthcoming dissertation. [↑](#footnote-ref-125)
125. al-Shinqīṭī, *Zād al-muslim*, 6: 993. [↑](#footnote-ref-126)
126. Such is the discouraging state of the institution today. Among those that still exist, most that were once venerated for their prowess in higher learning have been reduced to a mix of museums, primary schools, and rudimentary study of the Qurʾān for young children. For an account of several such *khalwa*s in the early 1980s, see Eid, “The Khalwa as an Islamic Educational Institution in the Sudan”, 186–337. Their activities more recently are based on author visits beginning in 2011. [↑](#footnote-ref-127)
127. Those challenges were by no means unique to the Mālikī school alone. al-Bijāwī’s attempt at joining its doctrinal center with the original sources of lawparalleled the efforts of a range of scholars throughout the Islamic World who were unwilling to concede the authority of their school’s doctrine. The Ḥanafīs of South Asia were among the most active of the period, developing a robust literature of *dalīl* works that revised their school’s canonical texts to counter the popularity of the Ahl-i Ḥadīthmovement sweeping through much of the region. For thoughtful studies of their interactions, see Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: Custodians of Change* (Princeton, NJ: Princeton University Press, 2002); Barbara Metcalf, *Islamic Revival in British India: Deoband, 1860-1900* (Princeton, NJ: Princeton University Press, 1982). [↑](#footnote-ref-128)
128. This is not to say that Mālikī texts did not address *ḥadīth*, but rather that abridgements of *fiqh*, particularly shorter works such as al-Bijāwī’s, typically recorded legal rules first, and explicated them if room permitted. They did not as commonly devote the bulk of their commentary to exploring the sources on which such rules were based. [↑](#footnote-ref-129)
129. Both lean heavily on the glosses of medieval and early modern Egyptian jurists. al-Bijāwī most frequently cites Aḥmad b. Ghunaym al-Nafrāwī’s (d. 1714) gloss of al-Qayrawānī’s *Risāla*, followed by Muḥammad b. ʿArafa al-Dusūqī’s (d. 1815) supercommentary on al-Dardīr’s gloss of the *Mukhtaṣar* and al-Zurqānī’s gloss of the same text. [↑](#footnote-ref-130)
130. For al-Bijāwī’s presentation of his Mālikī lineage, see al-Bijāwī, *al-Lālī*, 9–12. [↑](#footnote-ref-131)
131. Conservative not in the social or political sense, but institutionally. al-Bijāwī was concerned with preserving the methodologies and the sources of authority of the late Mālikī school in which he was raised, not replacing them. [↑](#footnote-ref-132)
132. Though of course he openly engages in the latter in *al-Fiqh al-kāmil*. His intention in doing so, and his aversion to endorsing the technique openly, will be discussed shortly. [↑](#footnote-ref-133)
133. This is not to say that either implied a stable collection of beliefs and practices. For the evolution of Salafī and Wahhābī thought over time, see Lauzière, *The Making of Salafism*. On the textual traditions that characterized Salafi communities in contemporary Africa, Alex Thurston’s work is exemplary: see *Salafism in Nigeria: Islam, Preaching, and Politics* (Cambridge: Cambridge University Press, 2016). [↑](#footnote-ref-134)
134. al-Bijāwī consistently advocated for the less severe of the school’s dominant opinions regarding apostasy for example. For his views regarding crimes against Islam, a legal category that included both apostasy and heresy, see al-Bijāwī, *al-Fiqh al-kāmil*, 23. [↑](#footnote-ref-135)
135. As a social practice usually associated with Sufi brotherhoods, *dhikr* (remembrance) involvesthe recitation of a variety of supererogatory prayers and invocations that aim to increase one’s proximity to God and the Prophet. On al-Bijāwī’s view of grave visitation, see al-Bijāwī, 84. For his participation in *dhikr*, see Author interview with al-Ṣādiq al-Bijāwī, Jabayt, Sudan, April 7, 2015. [↑](#footnote-ref-136)
136. According to its detractors, often – though not always – those identifying as Salafīs or Wahhābīs, *al-Burda* constituted polytheism (*shirk*) because several of its verses implied that the Prophet enjoyed equal or even superior status to God. That its performance commonly assumed special social significance and was occasionally accompanied by music only intensified these accusations. al-Bijāwī’s weekly recitation of the poem is based on the author’s discussions with his son, al-Ṣādiq. [↑](#footnote-ref-137)
137. For one of the rare occurrences al-Bijāwī does reference a preponderant opinion by name, see al-Bijāwī, *al-Fiqh al-kāmil*, 4. [↑](#footnote-ref-138)
138. al-Bijāwī’s use of *mashhūr* views will be discussed in detail below. Of his mention of the most authoritative (*muʿtamad*) opinions of Mālikī scholars, see al-Bijāwī, 4, 6. For his mention of *mashhūr*, see al-Bijāwī, 14, 20, 23. [↑](#footnote-ref-139)
139. On al-Majdhūb’s legal theory, school affiliation, and his opinions regarding *bismi ʾllāh*, *sadl*, and *takbīr*, all issues in which he conflicts with al-Bijāwī, the work of Albrecht Hofheinz is unmatched.See Albrecht Hofheinz, “Transcending the Madhhab-in Practice: The Case of the Sudanese Shaykh Muhammad Majdhub (1795/6–1831)”, *Islamic Law and Society* 10:2 (2003), 234–45. [↑](#footnote-ref-140)
140. al-Bijāwī, *al-Fiqh al-kāmil*, 3. [↑](#footnote-ref-141)
141. Khalīl b. Isḥāq al-Jundī, *Mukhtaṣar Khalīl* (Cairo: Dār al-Ḥadīth, 2005), 15. [↑](#footnote-ref-142)
142. Muḥammad b. Muḥammad al-Ḥaṭṭāb, *Mawāhib al-jalīl fī sharḥ Mukhtaṣar Khalīl* (n.p.: Dār al-Fikr, 1992), 1: 56–7. [↑](#footnote-ref-143)
143. al-Bijāwī, *al-Fiqh al-kāmil*, 31. [↑](#footnote-ref-144)
144. Khalīl’s passage reads, “*wa raddu muqtadin ʿalā imāmihi, thumma yasārihi wa bihi ahadun*”, while al-Bijāwī writes, “*wa raddu muqtadin ʿalā imāmihi al-salāmu, wa radduhu ʿalā man ʿalā yasārihi in kāna bihi aḥadun*.” Presumably because of the former’s interest in brevity, al-Bijāwī adds to it two not especially necessary clarifications. He writes that the response of the worshipper is “*al-salām”–* a point that would otherwise require little clarification for practicing Muslims – and that a second *taslīm* is performed only if someone is actually present to the left. Both amendments are sufficiently implied in Khalīl’s work. For Khalīl’s view, see al-Jundī, *Mukhtaṣar Khalīl*, 32. On its reproduction by al-Bijāwī, see al-Bijāwī, *al-Fiqh al-kāmil*, 31. [↑](#footnote-ref-145)
145. Meritorious acts (*faḍāʾil*) are defined in the classical sources as actions that are preferred but are not obliged by God. Their execution is divinely rewarded (*yuthāb*), but they are not regarded as sinful if neglected (*lā yaʾtham*). They are sometimes described as synonymous with *mustaḥabāt*, a subset of laudatory practices within the wider category of behaviors deemed preferrable (*mandūbāt*). Jurists varied widely in their estimation of how many practices of prayer were considered *faḍāʾil*. al-Ṣāwī counted approximately 50y such actions. For a brief discussion of the various types of meritorious deeds in law, see Abū Bakr b. Ḥasan al-Kashnāwī, *Ashal al-madārik sharḥ Irshād al-sālik fī madhhab imām al-aʾimmat Mālik* (Beirut: Dār al-Fikr, n.d.), 1:215. On their classification by al-Ṣāwī, see al-Ṣāwī, *Bulghat al-sālik*, 1: 323. [↑](#footnote-ref-146)
146. al-Bijāwī, *al-Fiqh al-kāmil*, 33. [↑](#footnote-ref-147)
147. Among two of the more influential claims, the Guinean *ḥadīth* specialist and émigré to Medina Ṣāliḥ al-Fullānī (d. 1803) lamented that a large faction of Mālikīs believed that the entirety of that which God revealed to the Prophet was in fact contained within Khalīl’s text, essentially rendering the authority of the *Mukhtaṣar* no different than the Qurʾān. The Moroccan historian and reformist Muḥammad b. al-Ḥasan al-Ḥajwī (d. 1956) similarly disparaged the school’s members for devoting themselves to a text that was in his words, “an abridgement of an abridgment of an abridgment.” al-Ḥajwī concluded that their loyalty to such an inscrutable text had “deadened the minds of generations through its excessive brevity and omission of many legal issues.” See Ṣāliḥ b. Muḥammad al-Fullānī, *Īqāẓ himam ulī al-abṣār lil-iqtidāʾ bi-Sayyid al-muhājirīn wa-l-anṣār: wa-taḥzīruhum min al-ibtidāʿ al-shāʾiʿ fī l-qurā wa-l-amṣār min taqlīd al-madhāhib maʿa al-ḥamīya wa-l-ʿaṣabīyah bayna fuqahāʾ al-aʾṣār* (Kūjranwālah: Dār Nashr al-Kutub al-Islāmīyah, 1975), 26; Muḥammad b. al-Ḥasan al-Ḥajwī, *al-Fikr al-sāmī fī tārīkh al-fiqh al-Islāmī* (Beirut: Dār al-Kutub al-ʻIlmiyya, 1995), 2: 287, 457–8. [↑](#footnote-ref-148)
148. He was hardly the first to claim as much. Of its more surprising advocates, the Indian revivalist Shāh Wālīallāh (d. 1762) also argued that the *Muwaṭṭa’* was superior to the other members of the Sunni *ḥadīth* canon. He argued for the privileged place of Mālik’s text – second only to the Qurʾān – as part of an innovative effort to refute the practice of *taqlīd*, one that in South Asia Wālī Allāh decried as undue loyalty to the Ḥanafī school predominant in the region. In this the *Muwaṭṭa’* was doubly persuasive. A work of *ḥadīth* *and* Mālikī jurisprudence, it provided a common source for deriving law regardless of *madhhab*s; it was, at the same time, a work expressly produced by a *madhhab*, and even better, one distinct from the legal traditions common to India at the time. Wālīallāh therefore sought to critique school affiliation by invoking, somewhat ironically, the scholarship of the Mālikī school’s founder. I am indebted to one of the reviewers of this article for recommending Ahmad Dallal’s fascinating discussion of Wālī Allāh and the *Muwaṭṭaʾ*. See Ahmad Dallal, *Islam without Europe: Traditions of Reform in Eighteenth-Century Islamic Thought* (Chapel Hill, NC: The University of North Carolina Press, 2018), 249–59. [↑](#footnote-ref-149)
149. Muḥammad Ḥabīb Allāh al-Shinqīṭī, *Iḍā*ʿ*at al-ḥālik min alfāẓ Dalīl al-sālik ilā Muwaṭṭaʾ al-imām Mālik* (Cairo: Dār al-Faḍīla, 2003), 8–44. [↑](#footnote-ref-150)
150. Of the better than a dozen *ḥadīth*s al-Bijāwī cites in his earlier discussion of *takbīr*, *taslīm*, *taqṣīr al-ṣalā*, *bismillāh*, and *sadl*, he mentions Mālik only twice. Such an aversion to his school’s founder is consistent throughout the text. For comparison, he references Mālik roughly as often, and in some cases less, than al-Shāfiʿī, Abū Ḥanīfa, and even Ibn Taymiyya. [↑](#footnote-ref-151)
151. Clifford Geertz, *Islam Observed: Religious Development in Morocco and Indonesia* (New Haven, CT: Yale University Press, 1968), 3. [↑](#footnote-ref-152)
152. Such an image of an *ʿulamāʾ* either incapable or unwilling to adapt to modernity is a consistent feature of that literature. An otherwise excellent volume dedicated to the Islamic legal school is representative. Of the 13 chapters that explore the *madhhab*, only three include the colonial or postcolonial period. These largely employ the legal school in name only, presenting it as a synonym for nationalism and digital legal fora among others. The only of the three to explore the *madhhab* in its traditional variety begins by heralding the inexorability of its death in modernity. See Peri Bearman, Rudolph Peters, and Frank Vogel, eds., *The Islamic School of Law: Evolution, Devolution, and Progress* (Cambridge: Islamic Legal Studies Program, Harvard Law School, 2005). [↑](#footnote-ref-153)
153. On notable, if still uncommon, challenges to such a depiction of traditional jurists, see Indira Falk Gesink, *Islamic Reform and Conservatism: al-Azhar and the Evolution of Modern Sunni Islam* (London: I. B. Tauris, 2009); Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley, CA: University of California Press, 1993); Etty Terem, *Old Texts, New Practices: Islamic Reform in Modern Morocco* (Stanford: Stanford University Press, 2014); Junaid Quadri, *Transformations of Tradition: Islamic Law in Colonial Modernity* (Oxford: Oxford University Press, 2021); Muhammad Qasim Zaman, *The Ulama in Contemporary Islam*; Malika Zeghal, *Gardiens de l’Islam: les oulémas d’Al Azhar dans l’Egypte contemporaine* (Paris: Presses de la Fondation nationale des Sciences politiques, 1996). [↑](#footnote-ref-154)
154. al-Bijāwī, *Bayān al-ḥaqq*, 2; Abū Ṭāhir Ḥasan al-Bijāwī, *Tadhkīr al-umma li-manāhij al-milla* (n.p.: Maṭbaʿat al-Baḥr al-Aḥmar, n.d.), 15–16. [↑](#footnote-ref-155)
155. The comparison plays on a distinction often implied in Western studies of the country. The term *faki* is simply the Sudanese corruption of *faqīh*, the standard Arabic term used to designate a legal specialist throughout the Arabophone Islamic World for better than a millennium. However, in discussion of Sudan the two commonly serve to index separate communities and epistemologies entirely. Authors frequently employed *faqīh* to denote an exemplar of Muslim orthodoxy presumably originating or still residing outside the country, and *faki*, its opposite, a local holyman distinguished as much by his piety or miraculous faculties as his dubious expertise in Islamic doctrine. In practice any such distinction reliably dividing legists from gnostics is not only difficult to find, it is contradicted by the biographies of Sudan’s premodern scholars and Sufis themselves. On an insightful study of both terms, along with the more generic “holyman”, see McHugh, *Holymen of the Blue Nile*, 17–20. For a fascinating note on the resistance of many of Sudan’s contemporary Sufis to adopting the title *faki*, see Noah Salomon, *For Love of the Prophet: An Ethnography of Sudan’s Islamic State* (Princeton, NJ: University Press, 2016), 36. [↑](#footnote-ref-156)
156. al-Bijāwī’s fondness for Prophetic poetry was well known. In addition to teaching the *Burda* and holding recitations of *madīḥ* each Thursday, he authored at least one poem dedicated to praising the Prophet, *Rajāʾ al-saʿāda fī l-ṣalāt ʿalā ṣāhib al-siyāda*. See al-Bijāwī, *al-Lālī*, 12; Author interview with al-Ṣādiq al-Bijāwī, Jabayt, Sudan. [↑](#footnote-ref-157)
157. Though al-Burʿī may seem an odd choice, he is not altogether surprising considering al-Jaʿalī’s milieu. Sudan’s most beloved praise poet of the twentieth century, if not its most famous of any period, ʿAbd al-Raḥīm Muḥammad Waqīʿallāh (d. 2005), was best known simply as Sheikh al-Burʿī due to his poetry’s resemblance to the Yemeni’s. For his Sudanese namesake, see Noah Salomon, “In the Shadow of Salvation: Sufis, Salafis, and the Project of Late Islamism in Contemporary Sudan” (PhD diss., University of Chicago, 2010), 250–312. [↑](#footnote-ref-158)
158. Translated literally as “hidden” and “apparent knowledge”, ʿ*ilm al-bāṭin* and *ʿilm al-ẓāhir* are synonymous with Islam’s traditions of esoteric and exoteric sciences. For a longer discussion of their relationship in Sudan and elsewhere in Africa, see the author’s forthcoming dissertation. On two such examples of the supernatural exploits of Sudan’s precolonial legists, and no less often, the scholastic achievements of the country’s Sufis, see Ḍayf Allāh, *Kitāb al-ṭabaqāt*, 1: 83–7; 2: 329–32. [↑](#footnote-ref-159)
159. For a discussion of Africa’s portrayal in the study of Islamic law and, conversely, Islamic law in the study of Africa, see this author’s dissertation. [↑](#footnote-ref-160)
160. As does the country’s preceding four centuries of Islamic scholarship, the majority of which was produced from *khalwa*s deliberately isolated from the country’s urban and political centers. [↑](#footnote-ref-161)
161. On the parody of Sudan’s “holymen”, a euphemism for Muslims colonial officials derided as illiterate *faki*s and fanatical dervishes, the historian and longtime Anglican missionary in colonial Sudan, J.S. Trimingham, provides a typical account. See J.S. Trimingham, *Islam in the Sudan* (New York, NY: Frank Cass, 1965), 129–30, 140–2. For the Condominium’s efforts at creating a model *ʿulamāʾ* loyal to the Anglo-Egyptian government and amenable to calls for modernizing Islamic law, see John Voll, “The British, The ‘Ulamâ’, and Popular Islam in the Early Anglo-Egyptian Sudan”, *International Journal of Middle East Studies* 2:3 (1971), 212–8; Shamil Jeppie, “Sharia and State in the Sudan: From Late Colonialism to Late Islamism”, in *Powers: Religion as a Social and Spiritual Force*, ed. Meerten ter Borg and Jan Willem van Henten (New York, NY: Fordham University Press, 2010), 149–66. [↑](#footnote-ref-162)
162. ʿAbd Allāh ʿAlī Ibrāhīm, *al-Sharī*ʿ*a wa-l-ḥadātha: mabḥath fī jadal al-aṣl wa-l-*ʿ*aṣr* (Cairo: Dār al-Amīn li-l-Nashr wa-l-Tawzīʿ, 2004), 37–84. [↑](#footnote-ref-163)
163. Whether al-Bijāwī would agree with this characterizationis an interesting question. In technical terms, his text is an example of *istidlāl*, the process of mining sources for proofs that resolved a given legal dilemma. However, in practice, because al-Bijāwī provides evidence for only a single position, one that he implies is the most authoritative of the *madhhab* and the mostjustified by revealed proofs, his *al-Fiqh al-kāmil* almost certainly involved some variety of *tarjīḥ*. Though the Mālikī tradition of preponderance has received scant attention in English – and thankfully considerably more in Arabic – Sherman Jackson has observed a similar phenomenon among earlier scholars. For their examples of surreptitious *tarjīḥ*, see: Jackson, *Islamic Law and the State*, 88. [↑](#footnote-ref-164)
164. Broadly speaking, *tarjīḥ* entailed some form of the independent legal reasoning enjoyed by *mujtahid*s, while *tashhīr* signaled the evidentiary restrictions imposed on *muqallid*s. [↑](#footnote-ref-165)
165. Indeed, in contemporary Mauritania, Morocco, and elsewhere in the Mālikī World, the reliance of scholars on not only *mashhūr* views but Khalīl’s *Mukhtaṣar* are still among the most common criteria used to gauge a legist’s orientation to the school. [↑](#footnote-ref-166)
166. Regarding al-Jaʿalī’s presentation of *rājiḥ* opinions, see al-Jaʿalī, *Sirāj al-sālik*, 1: 67, 2: 226, 413. For his mention of the *mashhūr* positions of the Mālikī school, see al-Jaʿalī, 1: 334–5, 493. On his reference to other designations for the school’s authoritative doctrine, most commonly *madhhab* and *maʿrūf*, see al-Jaʿalī, 1: 64, 2: 326, 336. [↑](#footnote-ref-167)