CHAPTER 1

Introduction to Part I

The term 'Islamic legal theory' used in this section is not restricted to a single literary genre: discussions concerning the nature of God's law (*Sharīʿa*), and the mechanisms by which rules have been, and can be, deduced all fall under this term. Works of *uṣūl al-fiqh* ('the roots of the law') are the obvious place to find these discussions – and translation from such works feature heavily in this section (Chapters 2, 3 and 5). We include here other types of legal theoretical work, such as legal theory miscellanea (Chapter 4) in which theoretical considerations are discussed through juristic maxims, hard cases and legal conundrums. In all these types of literature the author's focus is on describing the legal system that lies behind individual legal doctrines, and this gives all the discussions – whether found in works of *uṣūl al-fiqh* or not – a meta-ethical or meta-legal character.

It should be said at the outset that literature discussing Islamic legal theory is, perhaps, the most demanding and complicated of the various types of Islamic legal literature covered in this volume. The texts translated and presented in this section are designed for specialist, advanced students of the law. Often translation of the text alone is insufficient to convey to the general reader the significance of what is being said. For these reasons, readers wishing to gain an understanding of how jurists discussed the law may wish to begin with the more straightforward discussions of Islamic law in Part II (jurisprudence literature (*fiqh*)) or Part III (juristic decisions (*fatwās*)). Out of necessity, we have provided occasional footnotes to reword the authors' often highly technical arguments.

Whilst the set of issues discussed in works of *uṣūl al-fiqh* across time is reasonably predictable, there is variation in the structure of such works. An influential format (often associated with the Shāfiʿī legal school) was to structure the examination of the law as a system as follows:

(1) postulates: that is, fundamental bodies of knowledge required before one can examine the law – including theological issues such as God,

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Prophets and Messengers; the operations of reasoning (i.e. logic and philosophy more generally); and how language communicates meaning generally.

(2) indicators: discussing the sources to which a jurist turns to understand why a legal norm is as it is, and where to look first to discover legal norms. These include the textual sources of the law, such as the Qurʾān, the actions of the Prophet and other authoritative figures, and the consensus of the community. Chapters 2 and 3 come from this section of *uṣūl* works – they both discuss analogy (*qiyās*) and how it functions. *Qiyās* is one of the four standard sources of law in Sunnī legal theory, and received its own chapter (or set of chapters) in *uṣūl al-fiqh* works.

(3) interpretation: how to derive legal norms from these sources, who is qualified to do so and the status of their opinion when they have done so. Chapter 5 is a discussion usually found in this section of *uṣūl* works, examining the problem posed by the fact that different jurists will come to different conclusions on an issue when they exercise their legal reasoning (the process termed *ijtihād*). If God has one, single, law, how are Muslim jurists to account for the variety of legal opinion?

The structures varied considerably, however, and each author expresses their individuality by organising the discussions in their own manner. As in most established scholastic genres, legal or otherwise, condensed, abbreviated works (*mukhtaṣar*s) were the subject of commentary and supercommentary. Chapter 3 shows an example of this type of literature, when a text is picked apart by the commentator and subject to forensic examination.

Theoretical discussions of God's law are found outside *uṣūl* works, and a particularly popular set of genres looked at legal maxims (*qawāʿid*). In *qawāʿid* works a general principle is announced, and the cases falling under this general principle are discussed to exemplify how it operates in legal practice. Such works overlap with books of 'similarities and differences' (*al-ashbāh wa-l-naẓāʾir*): one case is shown to operate along similar legal lines to another case, demonstrating consistency in the legal system; other cases may not follow the same pattern, demonstrating exceptions to general rules. Some legal rules in particular cases might seem counterintuitive, and therefore need explanation. All of these are found in this type of work, a classic example of which is presented in Chapter 4.

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