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**ABSTRACT**

**The Different Principles of Jurisprudence Formulated by Various Legal Scholars and their Legacy**

*أثر الاختلاف في القواعد الأصولية في اختلاف الفقهاء*

Originally Mustafa Sa‘id al-Khinn’s dissertation on *Ushul al-Fiqh* (the principles of Islamic law) submitted to al-Azhar University, this book elaborates on the usage of different legal maxims and methodology which result in different rulings among classical Islamic schools of law (*madzhab*). The book presents rulings of four predominant Sunni *madzhab*, which are widely adhered to and studied in the Muslim world.

The book has six chapters, with an introduction, prologue and epilogue. In the introduction, al-Khinn expresses his bewilderment that despite the Qur’anic injunctions to live as one nation (*ummah*)under one holy book, Muslims still adhere to various opinions of *madzhab*. After years of study, al-Khinn has realised that the differences are only the means of deducing the law from its source (p. 8). In the prologue, he explains the sources and legislation of Islamic law during the time of the Prophet, and enumerates seven important factors that generate differences of opinion. To be able to deduce the law from its textual source, the *‘ulama’* must understand the words of the text and their precise implications. Therefore, chapters one and two discuss in great length *dilalat al-alfadz* (textual implications), while chapter three is concerned with *amr* (obligation or recommendation) and *nahy* (prohibition or disapproval). The following chapters discuss legal sources (Qur’an, hadith, and *ijma‘*(consensus)), and rational methods of deducing laws, such as *istihsan* (discretion or juristic preference), *istishab* (presumption used in absence of proof), and *maslahah al-mursalah* (consideration of public interest).

Each chapter follows a similar pattern: after defining and explaining a certain legal terminology and method, al-Khinn provides examples of various legal cases; so, for instance, examples of the usage of *Mafhum Mukhalafah* (divergent meaning) in deducing laws from a sacred text (pp. 184–190) include different rulings on interfaith-marriage, selling unpollinated dates, purity/impurity of unbelievers, reciting *takbir* (saying “Allah-u Akbar”) when beginning prayer, forced marriages, and marriage proposals. In the epilogue, the treatment pattern is reversed; a single case on the availability of a guardian as a prerequisite for marriage, for instance, is an example of the application of different rules of interpretation and methods, such as *Mujmal* (having equal possibilities), *Iqtidha al-Nass* (requiring meaning), *‘Amm* (general), and *Ta‘arudh al-Adillah* (conflict of evidence)in inferring laws (pp. 574–577). The examples are derived from classical *fiqh* books and presented to make clear how the *ulama* utilise different legal maxims and doctrines and come to different rulings.

In presenting examples of divergent rulings, al-Khinn avoids exercising *tarjih* (giving more weight to a particular opinion) and perceives *ikhtilaf* (juristic disagreement and diversity of opinion) permissible and indicative of a dynamic intellectualism in Islamic legal thought. Since the focus of the book is on the rulings of classical *fiqh*, the reader will not find rulings on contemporary cases such as blood transfusion, cloning, or heart transplantation.

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