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# Codicology and the Transformation of Islamic Law

## *A First Assessment of the Tarjihāt al-bayyināt in the Princeton Garrett Collection*

Tobias Scheunchen | ORCID: 0000-0003-2551-1731

University of Chicago, Chicago, IL, USA

*scheunchen@uchicago.edu*

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### Abstract

In Islamic law, preponderance (*tarjih*)—a practical method for *mujtahids* to resolve legal contradictions (*ta'arud*) between proofs—has been known in the *uṣūl* tradition from at least the 10th-century jurist al-Jaṣṣāṣ (d. 370/981). Yet, it is in several 17th and 18th-century Arabic and Ottoman manuscripts of Princeton's Garrett Collection that we encounter summary-like lists labelled “*tarjihāt al-bayyināt*” (“TBS”), which succinctly compile the complex rules of preponderance. Organized into three-columned lists, on loose leaves, as annotations in the margin or separate textual units, the TBS follow a grammatical and visual layout that made them predictable and recognizable for manuscript readers. This paper examines the TBS as a codicological phenomenon, arguing that they served as a shorthand for legal practitioners familiar with evidentiary law and that their presence suggests a broader transformative process of readers'/legal practitioners' relationship with codices of positive law at this critical moment in the history of Islamic law.

### Keywords

*tarjih* – *ta'arud* – proofs – Islamic law – evidentiary law – Princeton Garrett Collection – codicology

## 1 Introduction<sup>1</sup>

As a primordial cultural register, death carries meaning beyond living organisms. When applied to manuscripts, death may indicate a manuscript's physical state of decomposition or its "having fallen out of use." The former is often the result of natural conditions such as humidity, flooding, or fire, or it could be induced through direct human interference such as regular usage, transport, storage, or even war. These conditions can cause a manuscript's sully, tearing, altering, and, ultimately, its complete destruction. Yet, it is the second category, a manuscript's "having fallen out of use," that is more tedious to grapple with, conceptually and codicologically. On the one hand, a manuscript's physical existence indicates that it has not yet been entirely abandoned in the social world in which it creates meaning and from which it derives its social currency. On the other, even if one accepts the plausible claim that manuscripts do fall out of use all the time, there is no straightforward way to identify, let alone determine, the characteristics of cultural degradation—codicological clues or recognizable features that securely indicate a manuscript's "having fallen out of use."

To understand the process of a manuscript's cultural degradation—its loss of social currency and the concomitant value reduction as a commodity that can be traded or exchanged—and how that degradation has a bearing on its layout, contents, and even the social practices surrounding it, we may begin from Arjun Appadurai's observations in *The Social Life of Things*. According to Appadurai, the cultural biography of things is distinct from their social history: the former denotes the specific biography of a thing—its perception, usage, and movement through time. A social history approach, on the other hand, ventures into tracing the long-term shifts in the aesthetics of and cultural expectations towards things and scrutinizes these shifts as large-scale processes that effect not just one particular thing, but a class of things of similar characteristics, transforming the meaning they carry in the social world.<sup>2</sup>

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1 I want to thank Marina Rustow and the participants of the Introduction to Arabic Manuscripts seminar at Princeton University, who offered their insights and feedback on this project at its very early stages; Adrienne Rusinko and the members of the Princeton Special Collections for their support and patience and for kindly providing me with high-resolution images of the manuscripts; and Ahmed El Shamsy, who provided feedback on a complete draft of this paper. I am grateful to Princeton University for generously supporting my research on the *tarjūhāt* with a Friends of the Princeton Library Research Grant in the summer of 2022.

2 Arjun Appadurai, "Introduction: Commodities and the Politics of Value," in *The Social Life*

It is the second approach that I pursue in this essay. Specifically, I examine a curious phenomenon that I came across during my study of the Arabic legal manuscripts in the Robert Garrett Collection, which is known in the Islamic legal tradition as “preponderances of proof” (*tarjihāt al-bayyināt*). Simply put, these preponderances are lists that conveniently summarize evidentiary law. I argue that their normed layout and predictable arrangement indicate their growing popularity between the 17th and 19th centuries, while showing that the relatively homogenous structural and codicological features of these lists are not the result of mere historical accident but instead point towards the substantive transformation of the manners in which Muslim legal practitioners read, arranged, and reproduced manuscripts of positive law. The presence of the *tarjihāt* lists, I argue, hints at a turning point in the social currency of these Arabic legal manuscripts because they embody legal practitioners’ novel hermeneutic and professional commitments and their collective efforts at compiling, abbreviating, and synthesizing evidentiary laws from a wide array of legal manuals. Whereas the phenomenon of these lists does not necessarily bespeak the social abandonment of the manuscripts of which they are part (their “death”), their addition clearly signifies a peculiar juncture in the life cycle of these manuscripts. Methodologically, the essay pushes us to reflect on the potential of codicological analysis to aid us in historically reconstructing the social situations in which manuscripts were being used and the social and professional practices they attracted, in addition to understanding their material composition, compilation process, and origins.

From among the over 11,000 manuscripts collected by Robert Garrett that are now housed at Princeton’s Firestone Library, I have identified ten Arabic manuscripts in which copyists and bookbinders included sections—occasionally entire treatises, at other times loose leaflets, stubs, or scribbles in the margins—that carry the title “*tarjih al-bayyināt*” (preponderance of proofs),<sup>3</sup> “*majma‘ tarjih al-bayyināt*” (collection of preponderance of proofs),<sup>4</sup> or “*ta‘āruḍ al-bayyināt*” (contradiction of proofs).<sup>5</sup> Seven of the ten manuscripts constitute codices (*majmū‘āt*)—multiple text collections written by one or several scribes in which distinct, yet often related texts are gathered to form a single volume.<sup>6</sup>

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*of Things: Commodities in Cultural Perspective*, ed. Arjun Appadurai (Cambridge: Cambridge University Press, 2013 [1986]), 34.

3 See MSS Garrett 5755Y, 5736Y, 5477Y, and 5448Y.

4 See MSS Garrett 5869Y and 5642Y.

5 See MSS Garrett 4753Y, 2793Y, 2699Y, and 255L.

6 I do not distinguish here between what, based on the works of Peter Gumbert and Gerhard Endress, Torsten Wollina refers to as composite manuscripts (“bound from originally separate

Three are single text collections. All of them must be classified as collections of positive law, that is, works concerned with juristic discourse (*fiqh*) and responsa (*fatāwā*) issued by qualified jurists. The essay's focus lies on those manuscripts in which the *tarjihāt* are arranged into succinct, at times three-columned, lists or where they occupy the margins. The absence of such predictably arranged and visually distinct lists in MSS Garrett 2699Y, Garrett 255L, and Garrett 5755Y led me to exclude them from the essay's analysis even though these manuscripts also contain treatises on the *tarjihāt*.<sup>7</sup>

Occupying an essential place in *uṣūl al-fiqh* treatises since as early as the 10th-century jurist al-Jaṣṣāṣ, preponderance (*tarjih*) was known as a practical method for interpreters of law (*mujtahids*) to resolve legal contradictions (*ta'arud*).<sup>8</sup> Birgit Krawietz notes that in the process of applying *tarjih*, a *mujtahid* would typically scrutinize two contradictory sources that, on the surface, seem equivalent as to their evidentiary value, and then identify in them secondary criteria to establish the superiority of one over the other.<sup>9</sup> In his commentary on al-Bazdawī, 'Alā' al-Dīn 'Abd al-'Azīz b. Aḥmad al-Bukhārī at one point describes *tarjih* as:

In law, *tarjih* is an expression for demonstrating the preponderance of one of two conflicting proofs (*dalīlayn*), which, taken by themselves, do not indicate any contradiction. This is the meaning of what the author of *al-Mizān* [al-Samarqandī] says about *tarjih*: when one of two proofs

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codicological units") and multiple text compilations ("organized and united by one scribe") because during my work on the Garrett manuscripts I was rarely clear about who in a manuscript's history did the organizing and uniting of codicological units. Even where the same scribe wrote multiple parts of a manuscript, it often remains ambiguous whether they were intended to be bound together in the form that we have them preserved today. Torsten Wolina, "Tracing Ibn Ṭūlūn's Autograph Corpus, with Emphasis on the 19th–20th Centuries," *Journal of Islamic Manuscripts* 9 (2018): 310, *supra* note 8.

- 7 MS Garrett 2699Y contains, among other jurisprudential texts, a complete copy of *Malja' al-quḍāh 'inda ta'arud al-bayyināt* by Ghānim b. Muḥammad al-Baghdādī. MS Garrett 255L also contains a partial copy of the same text.
- 8 Birgit Krawietz, "The Weighing of Conflicting Indicators in Islamic Law," in *Law, Christianity, and Modernism in Islamic Society. Proceedings of the Eighteenth Congress of the Union Européenne des Arabisants et Islamisants held at the Katholieke Universiteit Leuven (September 3–September 9, 1996)*, eds. U. Vermeulen and J.M.F. van Reeth (Leuven: Uitgeverij Peeters, 1998), 71–74. Ulrich Rebstock, "Abwägen als Entscheidungshilfe in den 'uṣūl al-fiqh': Die Anfänge der 'tarjih'-Methode bei al-Ġaṣṣāṣ," *Der Islam* 80 (2003): 110–121.
- 9 Krawietz, "Weighing," 73. For a refutation of those maintaining the equivalence of proofs, see the translated section of Ibn Ḥazm's *al-Fiṣal fi l-milal wa-l-ahwā' wa-l-niḥal* in Moshe Perlmann, "Ibn Ḥazm on the Equivalence of Proofs," *The Jewish Quarterly Review* 40, no. 3 (January 1950): 279–290.

becomes solid by establishing an apparent contradiction. Some *uṣūlīs* say it is the consolidation of one of two paths over the other to make known the one that is firmer and for it to be followed and for the other one to be abandoned.<sup>10</sup>

At once juristic method and idiosyncratic genre, the *tarjihāt* were especially widespread among early modern Ḥanafīs as illustrated by the fact that all the manuscripts I identified were unmistakably written from within the Ḥanafī legal tradition. Nevertheless, this method of evaluating proofs was not exclusive to them, as can be gleaned from the school-specific discussions and their varying requirements and preferences for applying *tarjih*.<sup>11</sup>

In our manuscripts, the structurally independent character of the *tarjih al-bayyināt* and *ta'arūḍ* sections (hereafter, "TBS") can be inferred from the fact that they are usually set off visually and placed under a separate heading (see Fig. 1). In addition, they were typically added to the manuscripts after the main texts had been completed, as is obvious from their often-isolated position in the quiring. Stylistically, they are unique and easy to distinguish from other legal discussions since they follow a highly formulaic and repetitive linguistic structure. For example, the first two preponderances in the relevant section in MS Garrett 5448Y (see Fig. 1) read:

[1] A husband's proof about his wife's silence when she reaches maturity ranks above proof by his wife that she rejected their marriage upon matu-

10 'Alā' al-Dīn 'Abd al-'Azīz b. Aḥmad al-Bukhārī, *Kashf al-asrār 'an uṣūl Fakhr al-Islām al-Bazdawī* (Istanbul: Sharikat al-Ṣahāfa al-'Uthmāniyya, 1890), 4:78:

[الترجيح] هو في الشرع عبارة عن إظهار قوة لأحد الدليلين المتعارضين لو انفردت عنه لا تكون حجة معارضة. وهو معنى قول صاحب الميزان الترجيح أن يكون لأحد الدليلين زيادة قوة مع قيام التعارض ظاهراً. وعبارة بعض الأصوليين أنه تقوية أحد الطريقتين على الآخر ليعلم الأقوى فيعمل به ويطرح الآخر.

See also Rafiq al-'Ajm, *Mawsū'at muṣṭalahāt uṣūl al-fiqh 'inda al-muslimīn* (Beirut: Maktabat Lubnān nāshirūn, 1998), 1:424.

11 See, for example, *Al-Mawsū'a al-Fiqhiyya* (Kuwait: Wizārat al-Awqāf wa-l-Shu'ūn al-Islāmiyya, 1988), 12:184–197. Until now, there is very little research in Western languages on the matter of the *tarjihāt*, and they have predominantly been understood alongside juristic methods like *jam'* (combination) and *naskh* (abrogation). Rebstock, "Abwägen," 112. Not only is the history of the *tarjihāt's* development still to be written, especially concerning their relation to the *qawā'id fiqhīyya*, but we also lack a study on the practical and everyday usage of these rules. See also Wael Hallaq, "Can the Shari'a Be Restored," in *Islamic Law and the Challenges of Modernity*, eds. Yvonne Y. Haddad and Barbara F. Stowasser (Walnut Creek, CA: AltaMira Press, 2004), 21–53.

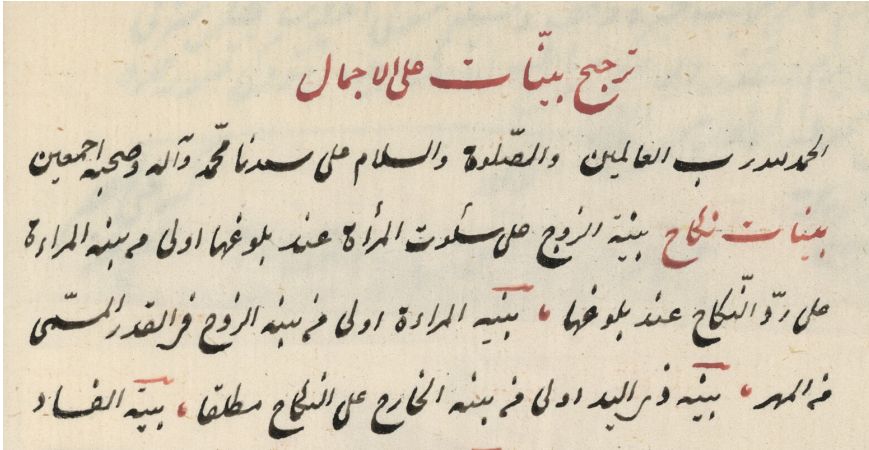


FIGURE 1 *Tarjihāt* chapter heading in MS Garrett 5448Y f. 47v

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rity. [2] A wife's proof about the specified value of the dower ranks above proof by her husband.<sup>12</sup>

This grammatical structure is common to all the TB lists discussed here, and it can be schematically plotted as adhering to the formula “بينة فلان (على فلان) أولى” or “Proof by someone (about something) ranks above proof by someone else (about something).”

The essay's objectives are to first describe and classify the different types of TB lists encountered in the seven manuscripts under review by way of generating a taxonomy to analyse the structural and codicological characteristics of each type. Accordingly, I divide the TBs into four groups: (1) TBs that appear in three columns, either on a stub or at the end of a codex; (2) TBs found on a loose leaf; (3) TBs squeezed into the margins; (4) and TBs of various origins clustered into a single, continuous text. Analysing the TBs' codicological make-up will pave the way for investigating the proposition that the TBs do not simply constitute a genre but served as an auxiliary tool for legal practitioners that conveniently summarizes for them the complicated rules of evidentiary law. Their summary character, it is argued, indicates a shift in the relationship between the manuscripts of which the TBs are part and their intended readers since their addition suggests that they were intended to replace lengthy descriptions of positive laws by equipping legal practitioners and judges with

<sup>12</sup> MS Garrett 5448Y, f. 47v.

more timely, easy-to-remember, and terse adages that offered them practical assistance whenever faced with contradictory evidence.

There are at least two implications to my claim, the first of which concerns manuscript reading practices, the second, the social and legal world of which these manuscripts were part. The first has to do with the notion of manuscripts “having fallen out of use,” as discussed at the beginning of this essay. Specifically, if the TBs found on the final pages, loose leaves, and in the margins were placed there in order to serve as a kind of shorthand for more complex legal content, then their presence suggests a particular life stage of the original text from which they were drawn, where that text was either so widely known as to make its reading superfluous or where it had lost its significance in the real world with the TBs functioning as a useful abridgement sparing readers time and energy to read the text proper. In both cases, the TBs assume a quasi-abrogative quality and alter the relationship that readers would have had with the original text in significant ways.

The second implication is that the widespread attestation of the terse TBs in the Garrett manuscripts may suggest a broader epistemological shift in legal discourse towards more practically useful, summary-like statements of law, which, like the *qawā'id fiqhīyya* studied by Intisar Rabb,<sup>13</sup> represent the changing legal-professional commitments of legal practitioners in the early modern period. This claim, of course, requires a much deeper and more comprehensive investigation than this paper offers, but it might help us comprehend the little-understood process of Islamic law's fateful transformation at the dawn of modernity and its co-optation into the service of modern nation states.<sup>14</sup> I argue that the morphing of positive laws into a new, more succinct medium did not necessarily eviscerate positive legal rulings, but rather rearranged, restructured and resignified them within legal discourse. The presence of the *tarjihāt* lists, then, intersects with a critical juncture in the life of legal manuscripts, as they at once indicate the departure from lengthy, positive rulings, and mark

13 See Intisar Rabb, *Doubt in Islamic Law. A History of Legal Maxims, Interpretation, and Islamic Criminal Law* (Cambridge: Cambridge University Press, 2015).

14 I do not seek to undermine the formidable scholarship covering this critical moment in the history of Islamic law, for instance, by Wael Hallaq. It is conceivable that the *tarjihāt* are part and parcel of the process that Hallaq describes as when “the Sharī'a itself was eviscerated, reduced to providing no more than the raw materials for the legislation of personal status by the modern state.” Wael Hallaq, *Sharī'a: Theory, Practice, Transformations* (Cambridge University Press, 2009), 19. Yet, it is my conviction that the field of Islamic legal scholarship still lacks explanations sufficiently specific to show how Islamic legal discourse and practice were transformed at this historical juncture and what that transformation meant for legal practitioners.

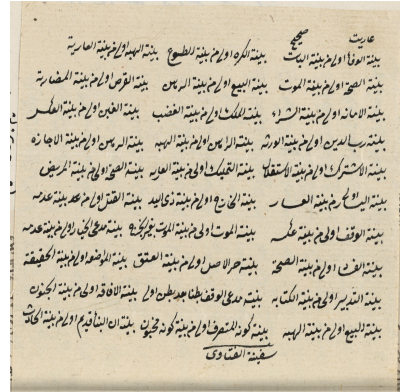
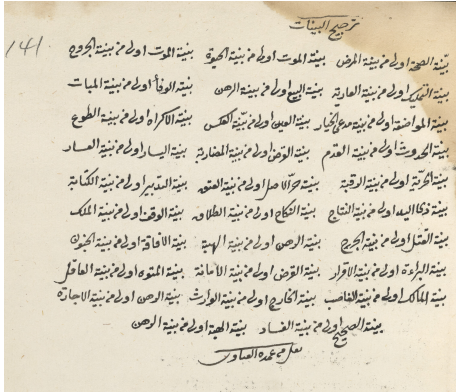


FIGURE 2  
 F. 141r in MS Garrett 5642Y (“TB-end”)  
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FIGURE 3  
 Singleton featuring *tarjihāt* and bound  
 into MS Garrett 5477Y as a stub, f. 123ar  
 (“TB-stub”)  
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the increasing commonality and widespread use of a different register of legal writing that was guided by concerns over practicality.

The essay arguments will be developed based on a codicological and textual analysis of MSS Garrett 2793Y, 4753Y, 5448Y, 5477Y, 5642Y, 5736Y, and 5869Y. The scribal colophons indicate that these manuscripts were all composed at some point between the early 17th and early 19th century.<sup>15</sup> Above all, the comparative study of the *tarjihāt* lists as a codicological phenomenon can be justified by noteworthy formal resemblances between these manuscripts that cannot be dismissed as mere historical coincidence: for instance, the almost identical visual arrangement of the *tarjihāt* in MSS Garrett 5642Y and 5477Y (see Figs. 2 and 3) or the observation that the majority of *tarjihāt* lists constitute distinct codicological units being placed at the end of a *majmū'a*, on a separate sheet, or in the margins.

15 MS Garrett 2793Y contains four composition dates, ranging from as early as 1195/1781 to 1236/1821. MS Garrett 2793Y, f. 22v, 62v, 69r, and 97r. The scribe of MS Garrett 4753Y, judging from the colophon on f. 75v, notes its composition date as Sha'bān 1049/1639. MS Garrett 4753Y, f. 75v. The composition process of MS Garrett 5477Y is more tedious to determine, primarily because it constitutes an unruly compilation of several Ottoman and Arabic texts, many of them undated, which do not seem to follow any discernible order. A colophon on f. 83v—at the end of the first text, which is entitled *Fawā'id zayniyya fi madhhab ḥanafīyya*—mentions a completion date of 1156/1743–1744. In a second colophon on f. 83v, the scribe notes the completion date as 1156/1743–1744.

## 2 Analysis

### 2.1 *The Three-Columned TBs: MSS Garrett 5642Y and 5477Y*

MS Garrett 5642Y is a codex comprised of four distinct textual units (I–IV): a text by Aḥmad b. Ibrāhīm b. Khalīl (I, f. 2v–105r); a one-page annotation that constitutes an excerpt from the marginalia of Sājaqlī Zādah's (Saçaklızâde) *Tanzihāt* (II, f. 106v); a text entitled *Tarjīḥ al-bayyināt 'inda ta'āruḍ al-barāhīn wa-l-bayyināt* (III, f. 107v–140v); and a final annotation with the title *Tarjīḥ al-bayyināt* (IV, f. 141r). Whereas the main texts, I and III, were written by the same copyist who identifies himself twice as Ibrāhīm Çelebī bin Shāhīn Bey,<sup>16</sup> II and IV represent later-added compositions. By focusing on the position of the TBs in IV (hereafter, "TB-end"; see Fig. 2) and their relationship to the manuscript as a complete unit, we can infer some of the functions they had for legal practitioners.

Based on the gatherings, we can securely establish that TB-end and II represent textual compositions that were made after Ibrāhīm had completed his copying I and III. Most importantly, TB-end's position in the codex (f. 141r) coincides with an irregularity in the quiring: the gathering that it is part of is a quinion that is followed by a binion (f. 138–141) and a singleton (f. 142). Because III already ends on f. 140v, we should assume that the gathering initially contained several blank folios at the back, which only later came to serve the purpose of writing TB-end on f. 141r. A similar pattern, showing that II was added after Ibrāhīm had completed the main text units, can be observed for I's final gathering, which consists of a singleton (f. 102) and a binion (f. 103–106). Because the colophon is placed on f. 105r, the gathering must have initially contained three empty folios at the back (f. 105v–106v). Therefore, the one-page annotation found on the gathering's last folio (f. 106v), written in a distinct Persian hand, was likely composed ad hoc, before the manuscript was bound into its current form. Before that, it would have served as a quasi-back cover protecting I. The later composition of II and TB-end can also be established through a different line of argument. Because I and III were copied by the same author, Ibrāhīm,

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phon, at the end of the third text (f. 100v), the completion date is stated as "al-yawm al-khamīs min jumādā al-ūlā sanat tis'a wa-khamsīn wa-mi'a wa-alf" (H 1159=AD 1746). MS Garrett 5477Y, f. 83v and 100v. In MS Garrett 5642Y, the composition date is noted by the copyist on f. 140r as 1102, which corresponds to AD 1690–1691. MS Garrett 5642Y, f. 140r. The colophon in MS Garrett 5736Y on f. 30r notes a completion of the text in 1262/1846. MS Garrett 5736Y, f. 30r. The copyist of the first text in MS Garrett 5869Y provides a completion date of 11 Muḥarram 1115 (AD 1703). MS Garrett 5869Y, f. 122r. I could not find a composition date in MS Garrett 5448Y.

16 His name can be found in the colophons. MS Garrett 5642Y, f. 105r and 140r.

they would have most likely left his premises only after he had fully written both sections. This is also supported by internal textual evidence. Because the last writing line in II notes that the one-page long annotation constitutes an excerpt from the marginalia in Sājaqlī Zādah's *Tanzihāt*, we can reasonably infer that II was composed much later than I and III since Sājaqlī Zādah was only born towards the end of the seventeenth century, whereas Ibrāhīm completed his writing in 1102/1690–1691.

Like the previous manuscript, MS Garrett 5477Y is a codex, and it consists of nine legal texts (I–IX): a text entitled *Fawā'id zayniyya fī madhhab ḥanaḥfiyya* (I, f. 9v–83v); an Ottoman text on *fatāwā* (II, f. 84r–87v); an Ottoman text featuring various responsa (III, f. 91v–100v); a text with the title *Al-Rujhān 'inda ta'arūḍ al-burhān* attributed to al-Khiṣālī (IV, f. 101r–120r); a two-page note (V, f. 120v–121r); another page written by a different scribe and containing several annotations (VI, f. 121v); an isolated Arabic annotation (VII, f. 122v); a second text named *Tarjih al-bayyināt* by al-Khiṣālī (VIII, f. 123v–133r); and two final notes (IX, f. 133v–134r). In its current form, the manuscript contains two independent stubs (f. 111a and f. 123a). Although the second stub on f. 123a (hereafter, “TB-stub”; see Fig. 3) contains a list of *tarjihāt*—just like VIII, which encloses it—because it is written in a different hand and on distinct paper, we can assume that it is not part of VIII. Indeed, TB-stub is awkwardly jammed between folios 123 and 124, implying that it originally constituted a loose leaf. Furthermore, the catchword on f. 123v, which neatly corresponds to the beginning of f. 124r indicates that TB-stub is not part of the original composition of VIII.<sup>17</sup>

What do the TBs' independent and final positions respectively tell us about their function for legal practitioners? Being placed in either of these locations does not by all means support the argument that the TBs functioned as a shorthand for positive law and a practical tool that could be consulted by *mujtahids*. In his *tarjih* article, Ulrich Rebstock argues that it was common practice among *uṣūlīs* to postpone the discussion of *tarjih* to the very end of their treatises.<sup>18</sup> Krawietz, on the other hand, notes that, in theoretical treatises of law, systematic *tarjih* treatments can be found before as well as after the section on *ijtihād*.<sup>19</sup> Unlike the systematic *tarjih* discussions that form part of the *uṣūl al-fiqh* genre, TB-end and TB-stub (and, as we will see, “TB-margin” in MS Garrett

17 The catchword used on f. 123v is “bayyināt al-mar'a.” MS Garrett 5477Y, f. 123v and 124r.

18 Rebstock, “Abwägen,” 110.

19 Birgit Krawietz, *Hierarchie der Rechtsquellen im tradierten sunnitischen Islam* (Berlin: Duncker und Humblot, 2002), 373.

4753Y) fall within a much narrower scope.<sup>20</sup> Their authors are concerned with neither the place of *tarjih* in legal philosophy nor the methodological horrors that *mujtahids* encountered when harmonizing legal sources of different epistemological rank. Indeed, most *tarjihāt* lists that I came across in the Robert Garrett Collection do not come near the sophisticated theoretical debates in the *uṣūl* genre referenced by Rebstock and Krawietz. The Garrett lists represent simple, non-complex pieces written in the manner of “judge, if you encounter this, do that” or “if a woman claims X and her husband claims Y, then give preference to X.” To understand the peculiarity of these “simple-minded” lists, as well as the significance of their methodological inversion of the process of *ijtihād*, it is imperative that we describe them in more detail.

Resembling each other in remarkable ways, TB-end and TB-stub are both written in a Persianate *shikastah* or *nasta‘liq-i shikastah*, with the final *yā’* oriented rightwards and the head of the *kāf* carrying a long outward stroke that often comes close to the previous writing line. Although unlikely, a paleographic analysis might conclude that both were composed by one and the same copyist. From a codicological viewpoint, the three-column division of the TBs in both cases (see Figs. 2 and 3) is puzzling and the function of the columns remains to be explained. Why, for instance, did both copyists choose to arrange the TBs into three columns rather than four or two? In Arabic literature, a two-column division is usually reserved for poetry, with each hemistich (*miṣrā‘*) of a verse (*bayt*) being placed into a separate column.<sup>21</sup> Copyists may have chosen the three-columned layout of the TBs as a way of visually distinguishing them from poetry. Similar to poetry, which even in the most recalcitrant Arabic manuscripts can be identified easily due to its visual arrangement, the authors may have opted for the three-column division to let readers anticipate the content visually. A second explanation is that the visual arrangement into columns reinforces the didactic purpose of the TBs in an oral learning environment. The three-columned layout not only isolates and emphasizes discrete units of meaning, but it also conveys to readers where to pause when memorizing or

20 For discussions concerning the (im)permissibility of engaging in *tarjih*, cf. Al-Qarāfi, *Al-Furūq* [= *Anwār al-burūq fi anwā’ al-furūq*] (Beirut: ‘Ālam al-kutub), 4:106 ff. Najm al-Dīn al-Ṭūfi, *Sharḥ mukhtaṣar al-rawḍa*, ed. ‘Abd Allāh b. ‘Abd al-Muḥsin al-Turkī (Mu’assasat al-Risāla, 1987), 3:683 ff. ‘Alī b. Ismā‘īl al-Abyārī, *Al-Taḥqīq wa-l-bayān fi sharḥ al-burhān fi uṣūl al-fiqh*, ed. ‘Alī b. ‘Abd al-Raḥmān Bassām al-Jazā‘irī (Dār al-Ḍiyā’, 2013), 4:198 ff. Ibn al-Tilimsānī, *Sharḥ al-ma‘ālim fi uṣūl al-fiqh*, eds. Aḥmad ‘Abd al-Mawjūd and ‘Alī Muḥammad Mu‘awwaḍ (Beirut: ‘Ālam al-Kutub, 1999), 2:414 ff.

21 For an overview of the different poetry layouts in Arabic manuscripts, see Frederike Wiebke Daub, “Standards and Specifics: The Layout of Arabic Didactic Poems in Manuscripts,” *Manuscript Cultures* 5 (2017): 52–67.

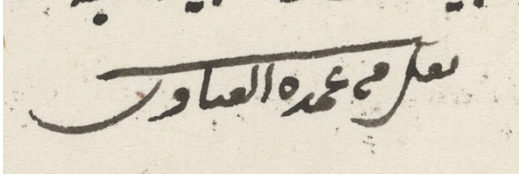


FIGURE 4

Last line on f. 141r in MS Garrett  
5642Y

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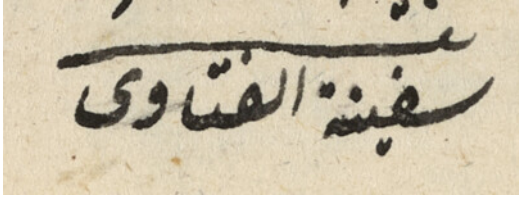


FIGURE 5

Last line on f. 123ar in MS Garrett  
5477Y

COURTESY OF PRINCETON UNI-  
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reciting the *tarjihāt*.<sup>22</sup> Because the *tarjihāt* do not rhyme, the visual gaps in their arrangement do not coincide with rhymed patterns as is the case in poetry or in manuscript prefaces by scribes who frequently employed rhymed prose (*sajʿ*).<sup>23</sup>

Another curious observation is that TB-end and TB-stub contain exactly ten lines of *bayyināt*, which may be accidental. Below them, the scribes drew horizontal lines under which a reference (book title) is given (see Figs. 4 and 5). In TB-end, the note states, “transmitted from *The Distinguished Responsa*” (*nuqila min ʿumdat al-fatāwā*). Conveniently, we do have a work by that name by ʿUmar b. ʿAbd al-ʿAzīz b. ʿUmar, known as al-Ṣadr al-Shahīd, a Ḥanafī legal theorist from Khurāsān who died in 536/1141. The author’s *uṣūlī* background makes him a plausible candidate for being the author of the legal manual in question, especially as the *tarjihāt* have their conceptual origins in the *uṣūl* genre. In TB-stub, the final note states “*The Ship of Responsa*” (*safīnat al-fatāwā*). This note, again, is to be read as a reference to the title of a legal manual, although I am not aware of any work by that name.

Let us, for now, operate under the assumption that the endnotes in both cases embody references to legal manuals and that the horizontal lines placed above them, similar to footnote separators, function to visually signal the mention of a title. Does that imply the scribes’ verbatim copying of the TBs from

22 For example, the first line of f. 141r in Garrett 5642Y reads: “proof of health ranks above proof of illness / proof of death ranks above proof of life / proof of death ranks above proof of injuries.”

23 Examples of this can be found amply in the Princeton manuscript collection. See, for instance, MS Garrett 5462Y, f. 2v–3r; MS Garrett 4753Y, f. 3v; or MS Garrett 5869Y, f. 3v–4r.

the legal manuals of al-Ṣadr al-Shahīd and the anonymous author? Since we have no clues about the whereabouts of the *Safīnat al-fatāwā* mentioned in TB-stub, we will have to rely exclusively on al-Ṣadr al-Shahīd's *Umdat al-fatāwā* to answer the question. A manuscript copy of this text was (and perhaps still is) preserved in the Millet Genel Kütüphanesi in the Feyzullah Efendi Medresi in Istanbul.<sup>24</sup> A second copy is housed in the Beinecke Rare Book Collection at Yale Library and archived as Arabic MS suppl. 657. Even though the Istanbul copy has been digitized, I did not locate in it the *tarjihāt* listed in TB-end, which means that I either missed them or—which I take to be more likely—that the author of the *tarjihāt* did not copy them from the *Umdat*, but that they, instead, constitute his own summary statements of legal rulings found in that same manual. In short, we cannot establish with certainty how precisely the *tarjihāt* lists in the two Garrett manuscripts relate to the titles mentioned below the footnote separators. For reasons that will become obvious, we can be certain that they indeed are titles, but we do not know whether the scribe just copied them verbatim or if they are the fruits of his own musings of the laws he encountered in those texts.

That said, there is some evidence to suggest that the *tarjihāt* in TB-end and TB-stub embody the intellectual fruits of the two scribes. To support this theory, we must look at the preface to III in MS Garrett 5642Y. Being one of the two texts copied by Ibrāhīm, III is a combination of *tarjihāt* and short descriptions explaining their reasoning. In the preface, Ibrāhīm conveys information not only about the author Ibn Naṣūḥ al-Busnawī whose text he copied, but also by what means the latter had arranged it:

[Ibrāhīm speaking:] Now, Ḥasan b. Naṣūḥ al-Busnawī, the needer of his lord, the self-sufficient one, writes: "I put together this book on weighing proofs where proofs and indications conflict with each other *from the esteemed books of some of my judge brothers by arranging them into a single book* which I named *The Collection of Preponderances of Proof*, and by seeking the help of God who guides us to good deeds with his proofs."<sup>25</sup>

24 The digitized copy is available here: <https://ketabpedia.com/تحميل/عمدة-الفتاوى-عمدة-المفتي-المستفتي-لح>.

25 MS Garrett 5642Y, f. 107v:

اما بعد فان العبد الفقير إلى ربه الغني حسن بن نصح البسوي يقول هذا الكتاب في ترجيح البيئات عند تعارض البراهين والبيئات جمعه من الكتب المعتربات لبعض اخواني من القضاة مرتبا بالكتاب مسميا بجمع ترجيح البيئات مستعينا بالله وهو الهادي إلى الأعمال بالبيئات

Incidentally, Ibn Naṣūḥ al-Busnawī explains the process of arranging the *tarjihāt* into an independent book, a process during which he claims to have consulted several books written by his colleagues. His method appears eclectic, as he allegedly drew bits and pieces from here and there before compiling them into a single text. Although, for now, the precise mechanics of Ibn Naṣūḥ al-Busnawī's undertaking remain obscure, the passage emphasizes that legal practitioners were compiling *tarjihāt* as a shorthand to other works, summarizing and abridging the evidentiary laws they encountered in them, and that they were seemingly intended to serve as a practical tool to condense a large number of rules excerpted from the legal manuals of eminent authorities for evaluating conflicting pieces of evidence.

Some perplexing questions about the three-columned TBs remain: why were they organized into three columns? What is their relationship with the surrounding texts? And does the three-columned arrangement represent an anomaly or can similar examples be identified in the Garrett or other manuscript collections? While it is hoped that a more comprehensive study of the three-columned TBs will be undertaken, the analysis of the *tarjihāt* in MSS Garrett 5642Y and 5477Y produced evidence to suggest that:

- scribes likely did not just copy the TBs from other texts/legal manuals, but they instead reflect their own intellectual endeavours resulting from reading, summarizing, and abridging them;
- and TB-end and TB-stub may have been used for didactic purposes as indicated by their peculiar layout into three columns and their remarkably similar visual arrangement.

Furthermore, it is unmistakable that the *tarjihāt* lists encountered in these two manuscripts do not match the sophistication of theoretical legal debates that Krawietz and Rebstock attest for their treatments in *uṣūl al-fiqh* works. Although in the Garrett manuscripts studied here, one can sparingly locate sections that adopt a more contextual, theory-minded approach to the *tarjihāt*, a few are committed to explaining the underlying reasoning of such judgements.<sup>26</sup> That said, the terse *tarjihāt* lists remain peculiar as they defy such theoretical complexity and generally constitute simple, memorable phrases clearly written for the purpose of everyday utility.

26 For example, section III in MS Garrett 5642Y. As mentioned earlier, this is the text by Ibn Naṣūḥ al-Busnawī entitled *Tarjih al-bayyināt 'inda ta'aruḍ al-barāhīn wa-l-bayyināt* (f. 107v–140v). Here, each TB is overlined with red ink, after which usually follows a short passage with explanations and examples.

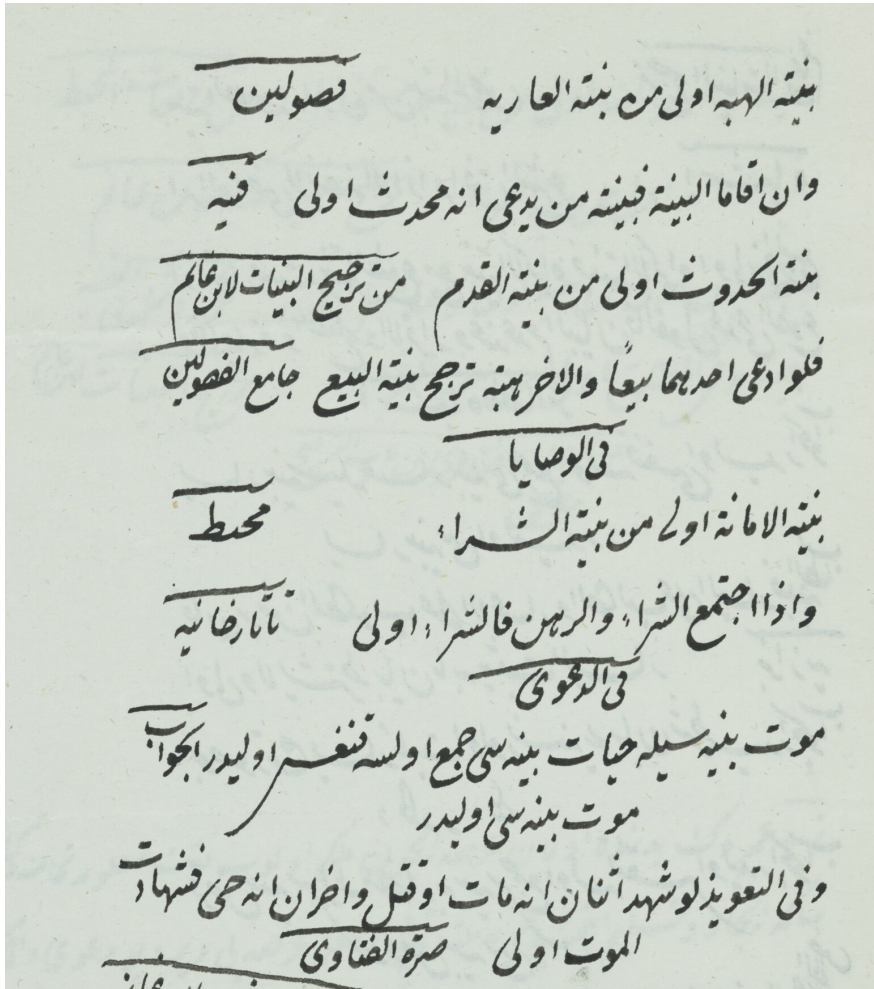


FIGURE 6 f. 48r in MS Garrett 2793Y (“TB-loose leaf”) COURTESY OF PRINCETON UNIVERSITY LIBRARY

2.2 TBS on a Loose Leaf: MS Garrett 2793Y

Halfway into MS Garrett 2793Y, on the folios numbered 48 and 49, we come across a three-page list of *tarjihāt* whose layout and composition sheds important light on how legal practitioners arranged and used these lists. Curiously, even though paginated, the bifolio in question is not bound into the manuscript; it is a separate, loose sheet, suggesting that it was produced either entirely independent from it, after the manuscript had been written, or both. This assumption is substantiated by the fact that this bifolio (hereafter, “TB-loose leaf”) overlaps with an anomaly in the paper employed in this part of the

codex: its colour is much brighter; it only shows eight chain lines, one less than the paper surrounding the bifolio; and it contains a watermark unlike those imprinted on the other sheets. Furthermore, the disconnected, self-sufficient character of TB-loose leaf can be established textually: although it is thematically related to the text section on the enclosed folios, it does not constitute a part of it. The most obvious proof of that is the catchword at the lower left margin on f. 47v (“Abī Ḥanīfa”), which is only repeated at the beginning of f. 50r, indicating that the bifolio does not form a content unit with the surrounding text. Because it is codicologically and textually unrelated to its environs, we may conjecture that the sheet was originally placed in a position other than its current location or that it stems from a different manuscript altogether, even though the codex’ pagination suggests otherwise.

The 18th/19th-century codex of which TB-loose leaf is part consists of ten discrete sections. I (f. 2v–22v) is a treatise on property law, offering iterations of a hypothetical case and advice to judges on how to rule in a case where two parties claim ownership to an object, the object being either in the possession of one of them, both of them, or with a third party. II (f. 23r–62v) constitutes a copy of the previously encountered *Ta’āruḍ al-bayyināt* by Abū Muḥammad Ghānim b. Muḥammad al-Baghdādī. The property law theme continues into v (f. 65v–69r), which compiles 25 *masā’il*. Several other texts are contained in the codex, not all of which I could securely identify. It is noteworthy that the manuscript’s general focus on property law is also echoed in TB-loose leaf, which mainly addresses matters of sales, purchases, and loans.

The *tarjihāt* listed on the bifolio (see Fig. 6) do not follow the three-columned arrangement of those we saw in the previous two manuscripts (TB-end and TB-stub) but show important similarities. After each *tarjih*, the author notes a reference to the source from which he excerpted it, visually emphasizing it with black ink overlining above the title. As illustrated by the first three lines on f. 48, this way of referencing remarkably resembles modern citational practices:

Proof of a gift (*hiba*) ranks above proof of a loan (*‘ariya*)—*Fuṣūlayn*  
 If they both establish proof, then the proof of the one who claims that  
 something happened recently (*muḥdath*) is ranked above—*Qaniyya*  
 Proof of recent occurrence (*al-ḥudūth*) is ranked above proof of occur-  
 rence in the past (*al-qidam*)—from the *Tarjih al-bayyināt* by Ibn  
 Ghānim<sup>27</sup>

<sup>27</sup> MS Garrett 2793Y, f. 48r.

The precise recording of sources at the end of each line is noteworthy because, on the one hand, it establishes that legal practitioners compiled these lists with the intention of abridging and summarizing positive laws from other manuals, and, on the other, it indicates that such lists were generated based on their reading of a wide array of legal manuals. The list thus offers to readers a panoramic view on the sources and reading practices of 18th-century Ḥanafī legal practitioners (see Table 1), unfolding a large web of legal manuals deemed authoritative at the time. By compiling *tarjihāt*, copyists were not simply restating or abridging earlier school opinions, but, more importantly, demarcating the boundaries of authoritative positive laws and legal opinions of their own time through the means of inclusion and exclusion.<sup>28</sup>

The legal manuals referenced in the list span from as early as the late 11th until the late 17th century, the earliest being al-Sarakhsī's (d. 483/1090) *Muḥiṭ* and the latest Ṣādiq b. Muḥammad b. 'Alī al-Sāqazī's (d. 1099/1688) *Ṣurraṭ al-fatāwā*. As in MSS Garrett 5477Y and 5642Y, we come across references to *Safīnat al-fatāwā*, whose author remains unknown, and al-Ṣadr al-Shahīd's *Umdat*. Most references occurring in the list are compressed into brief, often one-word statements such as "muḥiṭ" or "ashbāh," indicating that readers would have been familiar with the manuals referred to, even in the case where multiple works existed under the same title (e.g. Ibn Māza and al-Sarakhsī's *Muḥiṭ*). Underlining the already-noted widespread circulation and usage of Ghānim b. Muḥammad al-Baghdādī's *Tarjih al-bayyināt* in the 17th and 18th centuries, his manual, as well as the *Ṣurraṭ al-fatāwā*, is the most referenced work in the list with a total count of five references to each. Apart from being the most referenced works, they are also those most contemporary to the author. Indeed, the list clearly indicates a bias for later works, with 19 references to works written between the 15th and 17th centuries, and only six to earlier ones (see Fig. 7).

A question eschewed so far is why the composer of TB-loose leaf opted for listing *tarjihāt* from a multiplicity of legal manuals instead of restricting himself to summarizing from a single author. As pointed out earlier, by referencing eminent Ḥanafī authorities, authors and legal practitioners positioned themselves

28 That restating, abridging, and revising the legal opinions of school predecessors occupy a central place in the process of creating interpretive communities has been most convincingly argued by Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013). Similarly, Guy Burak argues that the Ottoman imperial order and its authoritative judiciary heavily depended on the selective co-optation and integration of specific legal opinions into Ḥanafī legal discourse, see Guy Burak, *The Second Formation of Islamic Law: The Ḥanafī School in the Early Modern Empire* (Cambridge: Cambridge University Press, 2015).

TABLE 1 Legal works cited in TB-loose leaf (sorted chronologically by author death date)

Reference as listed in TB-loose leaf	Reference count	Name of work	Author	Death date
<i>min shahādāt al-muḥīṭ al-Sarakhsī fī bāb al-bayyinātayn</i>	1	<i>al-Muḥīṭ al-raḍawī fī furū' al-fiqh al-ḥanafī</i>	al-Sarakhsī	483/1090
<i>'Umdat al-fatāwā</i>	1	<i>'Umdat al-fatāwā</i>	al-Ṣadr al-Shahīd	536/1141
<i>bidāya fī bāb mā yadda'ihī al-rajulān</i>	1	<i>Bidāyat al-mubtadī or al-Hidāya fī sharḥ bidāyat al-mubtadī</i>	Burhān al-Dīn al-Marghīnānī	593/1197
<i>Muḥīṭ/min wāqī'āt al-muḥīṭ</i>	2	<i>al-Muḥīṭ al-burḥānī fī al-fiqh al-nu'mānī or al-Muḥīṭ al-raḍawī fī furū' al-fiqh al-ḥanafī</i>	Ibn Māza or al-Sarakhsī	616/1219–1220 or 483/1090
<i>Tātārakhāniyya (fī al-da'wā)</i>	1	<i>al-Fatāwā al-tātārakhāniyya</i>	'Ālim b. al-'Alā' al-Indirbitī	786/1384–1385
<i>Fuṣūlayn/Jāmi' al-fuṣūlayn (fī al-waṣāyā)</i>	2	<i>Jāmi' al-fuṣūlayn</i>	Badr al-Dīn b. Qāḍī Samāwnā	819/1416
<i>Bazāziyya</i>	1	<i>al-Fatāwā al-bazāziyya</i>	al-Bazāzī	827/1423–1424
<i>Ghurar/Ghurar (wa-mithluhu fī al-Qaniyya)</i>	2	<i>Ghurar al-aḥkām fī furū' ḥanafīyya</i>	Mullā Khusraw	885/1480
<i>Qaniyya/(Ghurar) wa-mithluhu fī al-Qaniyya</i>	2	<i>Qaniyya</i>	Ibn Nujaym	969–970/1563
<i>Ashbāh/Ashbāh nazā'ir</i>	2	<i>al-Ashbāh wa-l-nazā'ir 'alā madhhab Abī Ḥanīfa al-Nu'mān</i>	Ibn Nujaym	969–970/1563
<i>min tarjīḥ al-bayyināt li-Ibn Ghānim/Tarjīḥ al-bayyināt li-Ibn Ghānim</i>	5	<i>Tarjīḥ al-bayyināt 'inda ta'arūḍ al-barāhīn wa-l-bayyināt</i>	Abū Muḥammad Ghānim b. Muḥammad al-Baghḍādī	1030/1620–1621
<i>Ṣurraṭ al-fatāwā/Ṣurra (naqlan 'an al-khizāna wa-l-'imādīyya)</i>	5	<i>Ṣurraṭ al-fatāwā</i>	Ṣādiq b. Muḥammad b. 'Alī al-Sāqazī	1099/1687–1688
<i>min safinat al-fatāwā min bāb al-tarjīḥ mulakkhkhaṣan</i>	1	<i>Safīnat al-fatāwā</i>	Unknown author	Unknown
<i>al-Jawāb</i>	1	?	?	?
<i>min fatāwā 'alā ... [?]</i>	1	?		? ?
<i>min bāb al-tarjīḥ</i>				

within the normative legal discourse of their time and it is through such citational practices that legal practitioners accumulated the weight of earlier legal authorities behind them and partook in the professional sanctity accorded to them. However, such arguments do more to justify the general habitus of legal practitioners to engage in citational practices than to explain why references to a multiplicity of legal authorities were needed for the compilation of *tarjīḥāt* lists. Basing oneself on the authority of one or two prominent figures of the

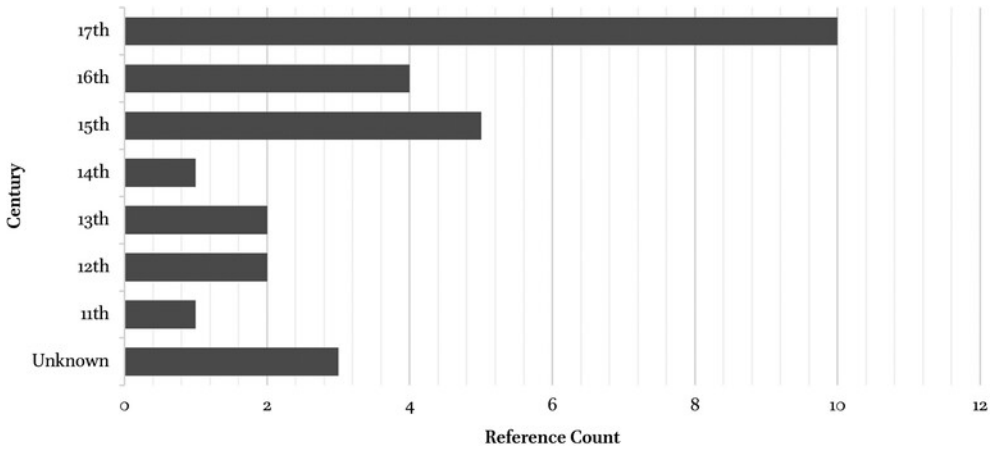


FIGURE 7 References to legal manuals in MS Garrett 2793Y, f. 48r–49r by century

calibre of al-Sarakhsī or Ibn Nujaym alone would, arguably, have had a similar effect. Yet, it was by means of mobilizing the legal repertoire of the entire tradition that jurists could manoeuvre substantive laws and achieve legal flexibility in line with the changing societal, economic, and even personal conditions of their time.<sup>29</sup> Our three-page *tarjihāt* list illustrates that the intra-*madhhab* discourse on the evaluation of conflicting proofs was sufficiently heterogenous and pluralistic to respond to the varying conditions and personal preferences of legal practitioners, while simultaneously adhering to a methodological conformism that enabled those practitioners to be reckoned as authorities inside that tradition.

Our observations about the *tarjihāt* based on TB-loose leaf can be summarized as follows:

- scribes appear to have formulated the succinct *tarjihāt* lists based on reading and studying a multiplicity of manuals of positive law;
- the source from which the *tarjihāt* are derived is usually mentioned at the end of such lists or, in the case of *tarjihāt* from various sources, right after each statement;

29 Sami Ayoub makes a similar point for Ghānim b. Muḥammad al-Baghdādī's *Malja' al-Qudāh*, arguing that "al-Baghdādī's insistence that the opinions of the founders are contingent upon time, location, and economic and social conditions points to the importance of legal methodology and legal change rather than to imitation and loyalty." Sami Ayoub, "The Sulṭān Says': State Authority in the Late Ḥanafī Tradition," *Islamic Law and Society* 23 (2016): 252.

- the manuscript gatherings, paper, and textual evidence suggest that the *tarjihāt* lists were compiled independent of the manuscripts/codices of which they are part;
- by featuring references to a variety of authoritative intra-*madhhab* sources, the authors of such lists partook in their professional authority but could also express personal preferences;
- in TB-loose leaf, there is a clear preference for referencing legal sources from later rather than earlier centuries; whether this constitutes a general trend is to be shown.

### 2.3 *TBS in the Margin: MS Garrett 4753Y*

The previous sections focused on *tarjihāt* with noteworthy codicological similarities, appearing on either a separate or an isolated sheet inside the manuscript as a whole and with no immediately discernible relationship to its base texts. In MS Garrett 4753Y, the succinct *tarjihāt* are spread out over the manuscript's margin (*hāshiya*) as if to annotate and expand its main points (see Fig. 8). What precisely is the relationship between these *tarjihāt* in the margin (hereafter, "TB-margin") and the base text? Why would somebody place them there? Were they written by the same person that copied the main text? And do they have a function similar to the previously analysed *tarjihāt* lists?

Unlike the other manuscripts looked at here, MS Garrett 4753Y is not a codex but a single text, namely, the already discussed *Malja' al-quḍāh 'inda ta'āruḍ al-bayyināt* composed by Ghānim b. Muḥammad al-Baghḍādī (d. 1030/1620–1621).<sup>30</sup> Even though we have a colophon at the end of the text stating the completion date as 1049/1639,<sup>31</sup> the copyist nowhere identifies himself. Strangely, on the same folio, after the colophon, we encounter several, hardly legible notes, clearly written by a different hand, and some of them appear to refer to different registers (*sijillāt*).<sup>32</sup> The fact that MS Garrett 4753Y is not a codex is of potential interest because it indicates that *tarjihāt* lists do not only feature in multiple-text collections.

30 MS Garrett 4753Y, f. 3v. This text was recently edited. See Ghānim b. Muḥammad al-Baghḍādī al-Ḥanafī, *Malja' al-quḍāh 'inda ta'āruḍ al-bayyināt*, ed. 'Abd Allāh b. Sa'd al-Takhīsī (Riyad: Dār al-Idāwa li-l-Nashr, 2021).

31 MS Garrett 4753Y, f. 75v.

32 One of them appears to read:

Another one:

صورة أخرجت عن أصلها الأصل

باقية من الملقوص (?) اخرج عن السجل المحفوظ



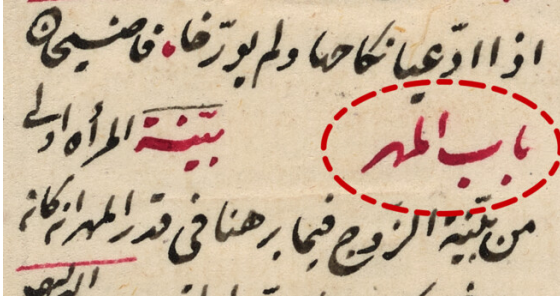


FIGURE 9

Addition of chapter headings in the margins (here: “bāb al-mahr”), MS Garrett 4753Y on f. 4r

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In this manuscript, we find *tarjihāt* in the margins of f. 3v–4r, 9r, 13v–14r, 26v, 27v, 31r–32r, and in several other places. They are generally more abundant in the first half of the manuscript and appear less frequently towards the end. Curiously, they run parallel to the main text, never diagonally, as is often, if not usually, the case with Arabic annotations in the *hawāshī*. The diagonal arrangement prevents multiple annotations from running into each other, allowing readers to clearly distinguish one annotation from another.<sup>33</sup> However, the TB-margin do not adhere to this style and appear purposefully arranged into block text, one after the other, each *tarjih* separated with a small blank space (*farāgh*) from the next. To make them more reader-friendly, the author emphasized the first word “bayyina” of each *tarjih* by writing it in red ink (see Fig. 8). The *tarjihāt* are not only separated individually from each other, but also from the surrounding base text since they adhere to their own internal structure that is signposted by chapter headings in the margins. For example, on f. 4r, the transition from *tarjihāt* pertaining to marriage to such on bridal dowers is indicated by the mention of the chapter title “bāb al-mahr” (chapter on the dower) in the margin (see Fig. 9). Because this is the case throughout the TB-margin, the marginalia of MS Garrett 4753Y not only conveniently summarize for readers Islamic positive law, but they also make superfluous the core structure of the base text as the TB-margin themselves replicate the general outline of the book (*al-nikāh*, *al-mahr*, *al-ṭalāq*, etc.).

This does not mean, however, that the TB-margin replace or supersede the base text as was argued for TB-end, TB-stub, and TB-loose leaf. Indeed, a close look at the textual interplay between the margin and the base text reveals that the former neither reiterates nor abbreviates the latter but instead contains *tarjihāt* derived from other legal manuals. As in TB-loose leaf, every *tarjih* is followed by reference to the source origin, this being the case for the margin, as well as the base text (see Fig. 10). On f. 3v, the base text begins with a *tarjih*

33 A proper theory and explanation of this phenomenon in Arabic manuscripts are still to be provided, especially as it appears in several texts I came across.



Although a simple paleographic analysis of the two handwritings suggests that the margin is written by a person other than the copyist of the main text,<sup>35</sup> the confession-like note hints that the base text author lacked the time for revisions and opted for simply listing the *masā'il* that had been omitted in the margins. Whichever way we read the note, it does securely establish that the margins do not replicate or amend the base text, nevertheless leaving room for uncertainty about whether the *tarjihāt* that appear in the margins were originally intended to be part of the base text. Consequently, the TB-margin cannot be attributed the same function as TB-end, TB-stub, and TB-loose leaf. Even though they conveniently summarize for legal practitioners the rules for resolving conflicting evidence, in contrast to the previously analysed *tarjihāt* lists, they form a textual and codicological unit with the base text, not just relating to it thematically, but also expanding and complicating its rules.

Some important observations about the TB-margin could thus be made:

- they run parallel to the main text, never diagonally, and reproduce the overall structure of the manuscript by restating its chapter headings;
- they form a textual and codicological unit with the base text and do not abridge or amend but expand and complicate it;
- as for TB-loose leaf, each *tarjih* is followed by a reference to its source.

#### 2.4 *TBs as a Continuous Text: mss Garrett 5448Y, 5869Y, and 5736Y*

Despite the layout variations of the *tarjihāt* we encountered, the essay has mainly focused on those that occur in places we may consider codicologically “marked”: on an isolated folio at the end of a codex; a stub; a loose leaf; or in the margins. Indeed, a critical feature of the majority of *tarjihāt* lists in the Robert Garrett Collection is that they typically supplement a manuscript’s main text units as indicated by irregularities in the quiring structure, as well as the marginal position they occupy relative to the main text units. This underlines that they were often later attached and served as auxiliary or mnemonic devices for readers. However, as already noted for MS Garrett 4753Y, occasionally the *tarjihāt* form complete treatises, in which they are written up as a continuous, single unit of text (hereafter, “TB-single text”), which defies the supplementary character of the previously analysed *tarjihāt* lists.

An example of this are the *tarjihāt* in MS Garrett 5448Y, which consists of eight text units on positive law. In this codex, f. 47v–49v form a discrete text

35 For example, the base text scribe consistently puts the dot of the *nūn* in the word “nikāḥ” above the *kāf* but never below. In the margin hand, though, the dot is consistently put below the *kāf*.

unit that is preceded by the heading “Summary of preponderances (*Tarjih bayyināt ‘alā al-ijmāl*)” (see Fig. 1).<sup>36</sup> After the customary invocation of God, the Prophet, and his followers, and without offering insights into the origins of the text, the scribe immediately proceeds to listing the *tarjihāt*, starting from the book on marriage (*kitāb al-nikāh*) all the way to commercial partnerships and shares (*al-sharika wa-l-qisma*). In contrast to all the previous lists, the source of these statements is nowhere mentioned, neither after each individual preponderance nor at the end of the text. Indeed, due to the absence of a colophon, the text contains no clues as to where these statements were derived from, who wrote them, or when they were written. The only evidence we have is codicological. The gatherings reveal that f. 47–51 are written on a binion to which a stub is attached to the front, supporting the notion that TB-single text originally formed an independent quire. On the four folios at the end, we find several notes written in Ottoman, none of which is helpful for establishing the origins of TB-single text. It should also be noted that the paper used for the quire is much glossier compared to that of the quires preceding it, giving weight to the supposition that TB-single text originally constituted a separate codicological unit.

Similarly, at the very end of MS Garrett 5869Y on f. 123v–127v, we also find a continuous list of *tarjihāt* in which the author or scribe consistently omits references to the sources. Even though the preface to the short treatise mentions that these *tarjihāt* were compiled by Ḥasan b. Naṣūḥ al-Busnawī based on the eminent works of his colleagues, it is curious that no author references to those works are made.<sup>37</sup> Each *tarjih* is preceded by the word “mas’ala,” but we do not encounter any of the common visual features, such as red-ink overlining or spacing, to separate the individual *tarjihāt* from each other (see Fig. 11). It is significant that, while the *tarjihāt* list is written up as a continuous text unit, it shows codicological features similar to TB-end and TB-stub: the entire section is written on a separate quire (f. 123r–127v) consisting of a binion with two stubs attached to the front, and the paper used for the quire has been trimmed down to a notably smaller size than the remainder of the codex (see Fig. 12). The codicological markedness of the *tarjihāt* and their final position inside the codex supports the theory that they were attached to facilitate readers’ navigation of the manuscript in addition to summarizing positive laws.

36 MS Garrett 5448Y, f. 47v.

37 MS Garrett 5849Y, f. 123v.

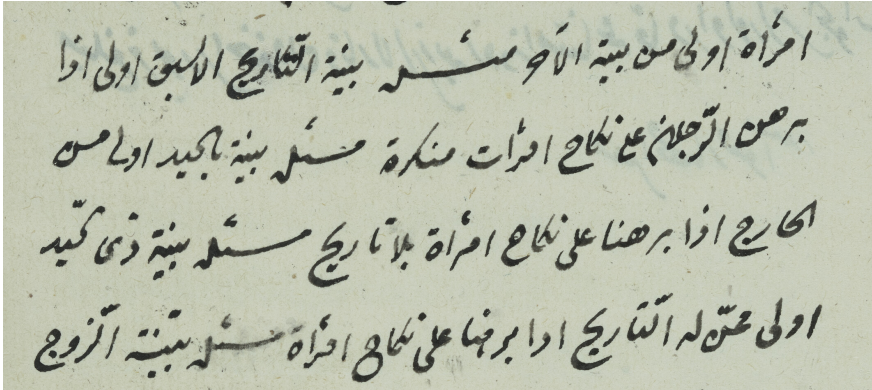


FIGURE 11 *Tarjīhāt* in MS Garrett 5869Y on f. 123v  
COURTESY OF PRINCETON UNIVERSITY LIBRARY



FIGURE 12 Distinct trimming of the last quire of MS Garrett 5869Y, which contains TB-single text  
IMAGE TAKEN BY AUTHOR WITH COURTESY OF PRINCETON UNIVERSITY LIBRARY

Another single-text unit of *tarjīhāt* can be located in MS Garrett 5736Y, which contains a complete version of al-Khiṣālī’s (d. 1087/1676–1677) *Mukhtaṣar* and was copied in 1262/1846 by Muḥammad Sa’īd Zayūr Ṭurunjizādeh, who identifies himself in the colophon.<sup>38</sup> According to the preface, al-Khiṣālī prepared

38 MS Garrett 5736Y, f. 30r.

the list by consulting various esteemed legal manuals, and he duly notes that it was him who turned the positive laws found in them into the form of succinct statements (*qad ikhtaṣara bi-hādhihi al-risāla bi-ḥasab al-amākin min al-kutub al-mu'tabara li-l-bayān*).<sup>39</sup> In contrast to TB-single text in MSS Garrett 5448Y and 5869Y, al-Khiṣālī diligently notes the source of each *tarjih* immediately after mentioning it, visually emphasizing each source by red-ink overlining.

It is tempting to argue that the continuous, single-text narratives of *tarjihāt* present a more mature and developed version of the much shorter single-folio lists we encountered at the beginning. The absence of references to the original source text, as seen in MSS Garrett 5448Y and 5869Y, may point to a growing historical tendency to omit such references altogether as the genre became more commonly used. Yet, because the current evidence does not allow us to put these lists into a chronological order, such claims remain mere speculation for now. Apart from these two manuscripts, all the variations of *tarjihāt* we came across in the Robert Garrett Collection—whether located at the end of a codex, on a stub, in the margin, or even when compiled as a continuous text—indicate that references to the legal sources were deemed an indispensable feature of such lists. It is undeniable that the reproduction of legal authority achieved by reiterating and laying claim to the opinions of eminent authorities in the *madhhab* explain this tendency to some extent. However, there was more at stake for individuals compiling such lists and the development of Islamic legal practice at large. By omitting references to the original source texts from which the *tarjihāt* had been derived, the *tarjih* genre would be susceptible to accusations of methodological opacity. The accurate and painstaking recording of sources assured compilers and readers that such lists were, indeed, based on normative legal discourse even if the former had summarized and abridged those laws using their own words, allowing both of those groups to verify the origins and accuracy of such statements. The acute need for verifiability was the greater because the method of compiling these succinct and highly useful lists entailed more than simply restating or reformulating authoritative opinions, as normative viewpoints were not only being removed from the original sociolegal context of the manuals from which they were derived, but reshuffled and reorganized to form new textual bodies of positive law that, accidentally or purposefully, managed to conceal the legal reasoning that lay behind the substantive nature of the *tarjihāt*.

The findings from the analysis of TB-single text can be summarized as follows:

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39 Ibid, f. 1r.

- in two out of three manuscripts reviewed, TB-single text omits references to the original legal sources;
- despite these omissions, authors appear to have summarized *tarjihāt* stemming from various legal manuals;
- one of these lists is codicologically marked as it appears in the final position of the codex and written on a separate gathering, suggesting that it was attached to the manuscript at a later point and to conveniently summarize for readers positive laws.

### 3 Conclusion

We may usefully conceptualize the *tarjihāt* variations in the Garrett manuscripts as falling within a spectrum (see Table 2): on the one end, we have TB-end and TB-stub, both of which form completely independent textual and codicological units inside the manuscripts of which they are part; next, we have TB-loose leaf, which, even though written on a separate bifolio, thematically relates closely to the adjoining text in the manuscript; towards the other end of the spectrum is TB-margin, in which the *tarjihāt* form a semantic and codicological unit with the base text; and lastly, we have TB-single text in which the TBs constitute the core text unit of the manuscript. While I am not making a chronological claim about either of these *tarjihāt* variations appearing historically earlier or later than others, it would be worthwhile pursuing this line of inquiry in future studies.

The essay started from the proposition that, due to the codicological and textual similarities of the *tarjihāt* lists contained in several Arabic legal manuscripts of the Robert Garrett Collection, these lists hint at a shift in the ways that legal practitioners read, wrote, and used Arabic legal manuscripts. The fact that the majority of the *tarjihāt* lists is codicologically marked—being placed on separate sheets, quires, at the end of a codex, or in the margin—indicates that these lists constitute attempts by writers and legal practitioners to summarize the rules of evidentiary law into succinct, easy-to-read, and memorable lists. These lists were easily accessible in the manuscript as a whole. While the preparation of these lists was, for the most part, accompanied by methodological transparency, as indicated by the tendency of writers to reference the sources from which they had derived *tarjihāt*, their existence and arrangement bespeaks the importance of a new register of Islamic legal writing in the 17th and 18th centuries. As a mnemonic aid, this register was constituted by practical commands that could conveniently be employed by jurists whenever faced with conflicting pieces of evidence. The citational practices adhered to in many

TABLE 2 Overview of the *tarjihāt* lists and their characteristics in the Princeton Garrett manuscripts

	Three-columned TBs		TB-loose leaf	TB-margin	TB-single text		
	MS Garrett 5642Y (TB-end)	MS Garrett 5477Y (TB-stub)	MS Garrett 2793Y	MS Garrett 4753Y	MS Garrett 5448Y	MS Garrett 5869Y	MS Garrett 5736Y
Codicologically marked (quire or paper irregularity, separate sheet, margin, etc.)	Yes	Yes	Yes	Yes	No	Yes	No
Three-columned arrangement	Yes	Yes	No	No	No	No	No
<i>Tarjihāt</i> excerpted from single/various source(s)	Single	Single	Various	Various	Not clear	Probably various	Various
Source references mentioned	Yes	Yes	Yes	Yes	No	No	Yes

of these lists aided compilers in situating themselves across time and space and within the great web of intra-*madhhab* authorities, while facilitating reasoned legal plurality within the parameters of the school. Overall, it is clear that, despite the seemingly innocuous nature of these lists, they rather significantly reshaped the rules of evidence. Not only do they present them outside their original legal-theoretical context by rephrasing and reformulating them into discrete textual units, but they also made these rules of evidence—as seen in the cases of MSS Garrett 5448Y and 5869Y—more susceptible to authorial omissions.

Future inquiries into the *tarjihāt* as a codicological and sociolegal phenomenon should endeavour to identify more such lists in the Arabic manuscript tradition, expand the provisional typology offered in this essay, and collect data about how such lists were used by and reshaped the everyday lives of judges and legal practitioners.

### Works Cited

#### *Manuscript Sources*

- MS Garrett 255L, Special Collections, Princeton University Library.
- MS Garrett 2699Y, Special Collections, Princeton University Library.
- MS Garrett 2793Y, Special Collections, Princeton University Library.
- MS Garrett 4753Y, Special Collections, Princeton University Library.
- MS Garrett 5448Y, Special Collections, Princeton University Library.

MS Garrett 5477Y, Special Collections, Princeton University Library.  
 MS Garrett 5642Y, Special Collections, Princeton University Library.  
 MS Garrett 5736Y, Special Collections, Princeton University Library.  
 MS Garrett 5755Y, Special Collections, Princeton University Library.  
 MS Garrett 5869Y, Special Collections, Princeton University Library.

### *Published Sources*

- al-Abyārī, ‘Alī b. Ismā‘īl, *Al-Taḥqīq wa-l-bayān fī sharḥ al-burhān fī uṣūl al-fiqh*, ed. ‘Alī b. ‘Abd al-Raḥmān Bassām al-Jazā‘irī, 4 vols. (Dār al-Ḍiyā‘, 2013).
- al-‘Ajm, Rafīq, *Mawsū‘at muṣṭalahāt uṣūl al-fiqh ‘inda al-muslimīn*, 2 vols. (Beirut: Maktabat Lubnān nāshirūn, 1998).
- al-Bukhārī, ‘Alā’ al-Dīn ‘Abd al-‘Azīz b. Aḥmad, *Kashf al-asrār ‘an uṣūl Fakhr al-Islām al-Bazdawī*, 4 vols. (Istanbul: Sharikat al-Ṣaḥāfa al-Uthmāniyya, 1890).
- Al-Mawsū‘a al-Fiqhiyya*, 45 vols. (Kuwait: Wizārat al-Awqāf wa-l-Shu‘ūn al-Islāmiyya, 1983–2006).
- Al-Qarāfī, Abū al-‘Abbās Aḥmad b. Idrīs al-Ṣanhāja, *Al-Furūq* [= *Anwār al-burūq fī anwār al-furūq*], 4 vols. (Beirut: ‘Ālam al-kutub).
- Appadurai, Arjun, “Introduction: Commodities and the Politics of Value,” in *The Social Life of Things: Commodities in Cultural Perspective*, ed. Arjun Appadurai (Cambridge: Cambridge University Press, 2013 [1986]), 3–63.
- Ayoub, Samī, “‘The Sulṭān Says’: State Authority in the Late Ḥanafī Tradition,” *Islamic Law and Society* 23 (2016): 239–278.
- Burak, Guy, *The Second Formation of Islamic Law: The Ḥanafī School in the Early Modern Empire* (Cambridge: Cambridge University Press, 2015).
- Daub, Frederike-Wiebke, “Standards and Specifics: The Layout of Arabic Didactic Poems in Manuscripts,” *Manuscript Cultures* 5 (2017): 52–67.
- El Shamsy, Ahmed, *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013).
- Hallaq, Wael, “Can the Shari‘a Be Restored,” in *Islamic Law and the Challenges of Modernity*, eds. Yvonne Y. Haddad and Barbara F. Stowasser (Walnut Creek, CA: AltaMira Press, 2004), 21–53.
- Hallaq, Wael, *Sharī‘a: Theory, Practice, Transformations* (Cambridge University Press, 2009).
- Ibn al-Tilimsānī, ‘Abd Allāh b. Muḥammad b. ‘Alī Sharaf al-Dīn Abū Muḥammad, *Sharḥ al-ma‘ālim fī uṣūl al-fiqh*, eds. Aḥmad ‘Abd al-Mawjūd and ‘Alī Muḥammad Mu‘awwad, 2 vols. (Beirut: ‘Ālam al-Kutub, 1999).
- Ibn Muḥammad al-Baghdādī al-Ḥanafī, Ghānim, *Malja’ al-quḍāh ‘inda ta‘āruḍ al-bayyināt*, ed. ‘Abd Allāh b. Sa’d al-Takhīsī (Riyad: Dār al-Idāwa li-l-Nashr, 2021).
- Krawietz, Birgit, *Hierarchie der Rechtsquellen im tradierten sunnitischen Islam* (Berlin: Duncker und Humblot, 2002).

- Krawietz, Birgit, "The Weighing of Conflicting Indicators in Islamic Law," in *Law, Christianity, and Modernism in Islamic Society. Proceedings of the Eighteenth Congress of the Union Européenne des Arabisants et Islamisants held at the Katholieke Universiteit Leuven (September 3–September 9, 1996)*, eds. U. Vermeulen and J.M.F. van Reeth (Leuven: Uitgeverij Peeters, 1998), 71–74.
- Najm al-Dīn al-Tūfi, *Sharḥ mukhtaṣar al-rawḍa*, ed. ‘Abd Allāh b. ‘Abd al-Muḥsin al-Turkī, 3 vols. (Mu’assasat al-Risāla, 1987).
- Perlmann, Moshe, "Ibn Ḥazm on the Equivalence of Proofs," *The Jewish Quarterly Review* 40, no. 3 (January 1950): 279–290.
- Rabb, Intisar, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law* (Cambridge: Cambridge University Press, 2015).
- Rebstock, Ulrich, "Abwägen als Entscheidungshilfe in den ‘uṣūl al-fiqh’: Die Anfänge der ‘tarḡīḥ’-Methode bei al-Ġaṣṣās," *Der Islam* 80 (2003): 110–121.
- Wollina, Torsten, "Tracing Ibn Ṭūlūn’s Autograph Corpus, with Emphasis on the 19th–20th Centuries," *Journal of Islamic Manuscripts* 9 (2018): 308–340.