Taqlid, Legal Scaffolding and the Scope of Legal Injunctions in Post-Formative Theory Muqallad and Mmm in the Jurisprudence of Shihab al-Din al-Qarafi

Sherman A. Jackson


Stable URL:
http://links.jstor.org/sici?sici=0928-9380%281996%293%3A2%3C165%3ATLSATS%3E2.0.CO%3B2-F

*Islamic Law and Society* is currently published by BRILL.
TAQLİD, LEGAL SCAFFOLDING AND THE SCOPE OF LEGAL INJUNCTIONS IN POST-FORMATIVE THEORY
MUṬṭAQA AND ‘ĀMM IN THE JURISPRUDENCE OF SHIḤĀB AL-DĪN AL-QARĀFĪ* 

SHERMAN A JACKSON
(Indiana University)

To David
(Samuel D Jackson 1949-1956)

Abstract

The controversy surrounding ijtiḥād and taqlīd is well-known in modern scholarship. In the present essay, I offer an alternative to the leading views on this crux by treating the issue of scope in the jurisprudential writings of Shihāb al-Dīn al-Qarāfī as a reflection of the manner and direction in which the Islamic legal tradition tended to develop subsequent to the so-called settling down of the four schools of law. At the center of this development stood the highly intricate and spirited institution of taqlīd, and I posit a causal relationship between the emergence of this institution and Muslim jurists' increased interest in issues such as scope. I also treat the technical aspects of al-Qarāfī's theory and compare it with the theories of a number of his predecessors.

Integral to the enterprise of legal interpretation is the task of determining a rule's scope, that is, the range of persons and activities subsumed under its jurisdiction. A typical question of scope might ask, for example, if the First Amendment of the U.S. Constitution protects all forms of speech, or if a Qur'ānic injunction to free a slave is satisfied by the freeing of any slave—male, female, Muslim, non-Muslim. For the majority of Muslim jurists—at least from the time of al-Shāfī‘ī and the rise of legal formalism1—such issues were understood largely

* A shorter version of this article was presented at the 202nd annual meeting of the American Oriental Society, Chapel Hill, NC, March, 1993. I would like to thank Norman Calder, David Powers and Michael Carter for their valuable comments on and criticisms of an earlier draft submitted to the Journal.

1 By legal formalism I refer to the tendency to assume or insist upon an essential relationship between the observable features of language (e.g., morphological patterns, syntactical variations) and the specification of meaning. Al-Shāfī‘ī, who is considered the founder of juridical uṣūl al-fiqh, began his seminal work, al-Risālah, with “Kitāb al-bayān,” which deals essentially with formal linguistic conventions. In the uṣūl al-fiqh works following that of al-Shāfī‘ī, this formalism takes on a more general application, as may be seen, for example, in Abū Husayn.

© E J Brill, Leiden, 1996

Islamic Law and Society 3,2
in terms of the signification of individual expressions (dīlālat al-alfāz) in various contexts and configurations. The scope of a rule was generally understood to be a function of the interaction between morphological patterns and the syntactical structure of sentences "‘Abd-an" (a slave), for example, a singular, indefinite noun, when used in an affirmative statement or a command was said to be unqualified, or muṭlaq. As such, a command like, "a’tiq ‘abd-an" (Free a slave), would be satisfied by freeing not all but any slave. However, were the same singular, indefinite noun used in a negative command, e.g., "lā tu’tiq ‘abd-an" (Do not free a slave) its signification would be not unqualified (muṭlaq) but rather universal, or what legal theoreticians refer to as ‘āmm. In this case, the object of the command would be the entire generic class of slaves, and conformance would be realized only if the entire class were exempted from manumission.

Both universal and unqualified expressions are subject to certain forms of restriction or qualification, i.e., by verses from the Qurʾān, Prophetic hadith, consensus or even reason. In the case of universal expressions, this process is known as "takhsīṣ al-‘āmm," or more simply "takhsīṣ," to which I shall refer hereafter as "specification." A typical example of takhsīṣ is said to be the Prophet’s restricting the right of inheritance to those lawful heirs who are not guilty of murdering those from whom they inherit. In the case of unqualified (muṭlaq) utterances, restriction is achieved by adding certain modifiers or qualifying stipulations. This is referred to as "taqyīd al-muṭlaq," that is, qualifying the unqualified. An example of this would be the stipulation that the slave manumitted as expiation for certain sins be not any slave but a Muslim slave. Both these processes, takhsīṣ al-‘āmm and taqyīd...
al-muṭlaq, serve the function of limiting the scope of legal injunctions. Both reduce the range of eligible specimens to some subset of the original universal or unqualified pool.

Elsewhere I have suggested that matters of scope (i.e., ʿamm, khaṣṣ, muṭlaq and muqayyad) become increasingly central to legal discourse as a legal tradition approaches maturity and jurists become involved in what the legal historian Alan Watson refers to as “legal scaffolding.” At this stage, rather than abandon existing rules in favor of new interpretations of the sources (i.e., ijtīḥād proper), jurists seek needed adjustments through new divisions, exceptions, distinctions, prerequisites and expanding or restricting the scope of existing laws. Such legal scaffolding is, on the one hand, the product of legal science at a significantly advanced stage of development. At the same time, it is part and parcel of the process commonly referred to as taqlīd, which, for the moment, I should seek my readers’ indulgence in considering a cognate of precedent, or stare decisis, in the Western tradition. Taqlīd, I wish to suggest, is in fact a natural and inevitable result of the

---


4 The Nature of Law (Edinburgh: Edinburgh University Press, 1977), 95

5 Muslim jurists commonly define ijtīḥād as “the exhaustion of one’s (mental) capacity in the attempt to gain probable knowledge about anything concerning the divine law to the extent that the individual feels that he is incapable of exerting any further effort” (istīfārghā’ī ‘al-wus’ī fi ṣalāḥ al-‘zann bi shay’ ‘in mina’l-ahkām ‘īl-‘sharī’ah alā wahj-in yuḥassu mina’l-naṣṣ ‘īl-‘ajzū ‘ānīl-maṣūd fīh) (see, e.g., Sayf al-Dīn al-Āmīdī, al-Iḥkām fi ʿusūl al-ahkām, 3 vols (Cairo, 1968), 3:204). This definition, however, is, in my view, reflective of a tendency perhaps common to most legal traditions: it obfuscates rather than acknowledges or explains change. While the primary activity of the early mujtahids was obviously the study of scripture, later jurists took the madhhab of the mujtahid-Imām as a primary object of study. Clearly, on such a fact, to “exhaust one’s (mental) capacity in the attempt to gain probable knowledge about anything concerning the divine law” would not have the same meaning when speaking of the early jurists as it would when speaking of later jurists. I consider ijtīḥād proper to be the interpretation of scripture directly with no intermediate authorities standing between the sources and the individual jurist. I do not consider it to be ijtīḥād in the proper sense. Nor do I consider to be ijtīḥād any activity involving the determination of facts, such as the direction of prayer or the presence or absence of certain attributes in things or individuals. Ijtīḥād may occur—and I argue elsewhere that it did—in a disguised form whereby a jurist places his insights and conclusions under the penumbra of some mujtahid-Imām or ancient authority. I would only caution, however, against taking such instances as proof that ijtīḥād continued as the dominant hegemony. For the very need to disguise interpretive activity in this fashion is reflective of a changed order. For more on this issue, see Jackson, State.

6 See, for example, Watson, The Nature of Law.
successes realized by the early mujtahids during the formative stages of the Muslim legal tradition. Legal scaffolding, meanwhile, constitutes the dominant activity at the more advanced stages of taqlid. In other words, it is the successful execution of ijtihād during the formative period that leads to the institutionalization of taqlid in the post-formative era, which in turn sets the stage for legal scaffolding.

By “formative” and “post-formative” I refer to the periods prior and subsequent to the so-called “settling down of the schools of law” (istiqrār al-madhāhib). The precise date of this development, which conferred mutual recognition upon the four Sunni schools, remains open to debate. N. J. Coulson was of the opinion that it occurred sometime around the end of the third/ninth century. J. Schacht, on the other hand, held that the process did not reach consummation until around 700/1300. Between these two extremes, there are a number of scholars who point to the end of the fifth/eleventh century as the approximate date of the settling down of the four schools. This was the view of the great Indian scholar, Shāh Wali Allāh al-Dahlawī (d. 1762 or 3). This same conclusion was independently confirmed by G. Makdisi (among others), who notes that, in his Tābaqāt al-fuqahā’, which gives the names and school affiliations of scholars whose opinions are considered in making or breaking consensus, Abū Ishāq al-Shirāzi (d. 476/1083) cites only the Hanafi, Mālikī, Shāfi’i, Hanbali and Zāhiri schools. The last member of the Zāhiri school died in Baghdad in 747/1150, which permanently reduced the number of mutually recognized schools to four. On this evidence, by “post-formative” I refer to the period following the settling down of the four Sunni madhhabs around the end of the fifth/eleventh century.


---


12 Rise, 4-5.
The development toward legal scaffolding begins with the fact that one of the essential aims of a mujtahid to begin with is to establish himself as an authority (i.e., one who possesses the ability to enlist compliance on the belief that it is right to follow him). Only in this way can he justify the acceptance or imposition of his interpretations as a guide to proper conduct. This need to undergird legal interpretations with some recognizable form of authority is particularly acute in a religion like Islam, which, on the one hand, is nomocratic while, at the same time, possesses no church, synod, or central authority to determine legal orthodoxy. Once a mujtahid has succeeded in establishing himself as an authority, it becomes difficult or even counterproductive for subsequent generations to dispense with the authority of the legal doctrines associated with his name. Instead, legal activity will tend increasingly toward the search for means and mechanisms by which to circumvent or remove the problematic aspects of these doctrines while maintaining conspicuous links with the name and authority of the mujtahid-Imâm, i.e., a follower of the latter’s madhhab. At this stage, legal scaffolding assumes a role formerly fulfilled by ijtihad, namely, to provide authoritative legal interpretations. This new activity is often identified as a form of ijtihad, “al-ijtihad fi al-madhhab,” as it is oftentimes called. But this, in my view, is misleading. For it conceals the fact that the mujtahid (i.e., the eponymous Imâm) functions as an authority in himself, requiring no intermediaries between him and scripture, whereas the so-called “mujtahid fi al-madhhab,” derives authority for his interpretations from his association with the mujtahid-Imâm, who in effect stands between him and scripture. Even when the post-formative mujtahid fi al-madhhab effects a novel interpretation based on independent study of scripture, he will be most effective if he places this view under the name of the mujtahid-Imâm. In such instances the mujtahid-Imâm effectively mediates between the mujtahid fi al-madhhab and the community. In short, the mujtahid fi al-madhhab is in effect a muqallid, or at least he must act like one.

Taqlid, however, should not be understood as primarily a movement in search of the content of previous interpretations. It was, rather, an attempt to gain authority for one’s interpretation by associating it with the name or doctrine of an already established authority-figure. This understanding of taqlid has already been alluded to by Bernard Weiss, who, in one of his studies on Sayf al-Din al-Âmidi (d 631/1233), notes, inter alia, that taqlid “entailed[ed] a choice, not of rules from a range of variant rules, but of an authority (i.e., a mujtahid) among
This aspect of taqlid is even more emphatically highlighted in Shi’ism: The Shi’i mujtahid is referred to as a “marja’,” which is essentially the closest available Arabic equivalent for “authority” (or perhaps “final authority”) in the non-political sense.

To be sure, this view of taqlid is not easily reconciled with the dominant paradigm prevailing among modern Muslim and non-Muslim scholars. The most common English renderings of taqlid include “blind following,” “imitation,” “servile imitation,” and “unquestioning acceptance,” that is, phrases that connote a certain fideism, intellectual timidity and or depletion of creative and interpretive energies. One explanation for this negative view of taqlid would seem to be “Orientalism.” But not all who subscribe to this understanding of taqlid were proponents of the latter. A better explanation might be found, therefore, in the tendency to approach Islamic law from the vantage-point of modern science or philosophy, the two disciplines that have most appreciably informed the modern mind and the modern academy. Both modern science and philosophy are decidedly forward-looking, priding themselves on novelty, change and innovation, placing little or no value on the preservation of views or perspectives from the past. August Comte’s “cerebral hygiene,” is expressive of this tendency among philosophers. And Thomas Kuhn has shown the extent to which progress in modern science turns on the ability to shatter existing paradigms. In short, both the modern scientific and the philosophical perspectives include an inherently negative bias toward authority and tradition. It is easy to imagine how, under their influence, a process like taqlid, which relies so heavily and so conspicuously on authority and tradition, might come to be understood in such a negative and unflattering light.

While the controversy among modern scholars over ijtihād and taqlid is well-known (the leading protagonists in the debate being the late Joseph Schacht and Wael Hallaq), what is perhaps not so obvious is that both sides in this debate entertain essentially the same negative

14 See, e.g., C. Mallat, The Renewal of Islamic Law: Muhammad Baqer as-Sadr, Najaf and the Shi‘i International (Cambridge: Cambridge University Press, 1993), 54, 73ff
15 Coulson, History, 80
16 Makdisi, Rise, 199
17 Schacht, Introduction, 71
18 See his The Structure of Scientific Revolutions (Chicago: University of Chicago Press, 1970)
view of taqlid as a legal institution. Both sides tend to see in it a decline to a less creative stage of legal development. Schacht, for example, described Islamic law under the régime of taqlid as suffering from a state of “ankylose.” It was apparently Hallaq’s acceptance of the idea, meanwhile, that taqlid was both a cause and an effect of any would-be rigor mortis that prompted his zero-sum response to Schacht. Schacht had claimed that sometime around the beginning of the fourth/tenth century a consensus gradually established itself to the effect that “no one might be deemed qualified to exercise independent judgment and that future activity would be confined to the explanation, application, and, at the most, interpretation of the doctrine as it had been laid down once and for all.” This “closing of the gate of ijtihād,” as he called it, amounted to the demand for taqlid, which he further described as “the unquestioning acceptance of the doctrines of the established schools.” Against this view, Hallaq insisted that ijtihād never ceased in Islam. Among his supporting arguments were the names of several jurists who openly contradicted the views of the early mujtahids (the implication being that their conclusions were reached on the basis of independent ijtihād), the fact that the qualifications required to reach the rank of mujtahid remained relatively easy to meet, the fact that a number of jurists who lived well after the fourth/tenth century openly insisted on the obligation of all jurists to practice ijtihād, and the very existence of the perduring controversy over ijtihād, which proved that there could have been no consensus on the extinction of mujtahids and, as such, ijtihād had to have continued throughout Muslim history.

To my mind, the tendency to view taqlid in negative terms appears to turn on the assumption that the content of what was borrowed from the past is the most important and operative element in the process. If, however, one accepts the idea that it is essentially not substance but authority that validates legal interpretations, one could more easily

---

19 “Was the Gate of Ijtihad Closed,” *International Journal of Middle East Studies*, 16 (1984): 3-41. For Hallaq’s response to Schacht on ankylose, see “Usul al-Fiqh: Beyond Tradition,” *Journal of Islamic Studies*, 3:2 (1992): 22ff. It should be noted, however, that in this latter article Hallaq alludes to the necessity of studying the period of taqlid in its own right.
20 *Introduction*, 71
21 Ibid
22 “Gate,” 15 and passim
23 Ibid, 4
24 Ibid, 27 and passim
25 Ibid, 4
entertain the possibility that it was essentially the search for established sources of authority that spawned the whole movement of looking back in the first place. On such an understanding, one’s assessment of taqlid would shift fundamentally, as one confronted the probability that its establishment had little to do with any real or perceived inability to effect novel interpretations. On such a view, instead of judging taqlid as the failed substitute for ijtihad, the real issue would become how to assess the value and effectiveness of taqlid as the means by which jurists sought to back their interpretations with the required degree of authority.

It is on the basis of such a construction that I argue elsewhere in favor of a modified version of the view of Schacht. Inasmuch, however, as I understand taqlid to have been primarily about authority and not content, I suggest, pace Schacht (and Hallaq), that it represented a more, rather than a less, advanced stage of legal development. This I contend in light of the fact that the régime of taqlid emerged after the era of ijtihad, during which time the repositories of authority with which to validate legal interpretations were still in the process of being established. Whereas the early mujtahids were confronted with the question of why someone should accept their views, later jurists enjoyed the benefit of being able to skip the enterprise of establishing themselves as (primary) authorities and could seek instead to gain acceptance for their views by simply setting up conspicuous links between their conclusions and the doctrines of the mujtahid-Imams. In other words, to use a rather trite though, I think, useful analogy, instead of having to re-invent the wheel at every turn, post-formative jurists could devote themselves to the more practical enterprise of building a car. It should be noted, however, that neither taqlid nor ijtihad represented mutually exclusive linear moments in the history of Islamic law. Both were, rather, competing hegemonies that stood (and continue to stand) in perpetual competition with each other. With the exception of the early period of the first few generations or so, there was perhaps never a time that could be characterized exclusively as one of ijtihad or taqlid. What obtained, rather, was the dominance or ascendancy of one hegemony over the other at different points in time. Ijtihad, as I see it, dominated the formative period, taqlid gained the upper hand from about the sixth/twelfth century on. But these were, Watson, The Evolution of Law (Baltimore: Johns Hopkins University Press, 1985), 117; R Posner, The Problems of Jurisprudence (Cambridge, Mass: Harvard University Press, 1990), 79-84

27 Jackson, State (forthcoming)
again, only dominant tendencies, which explains why one encounters, on the one hand, second/eighth and third/ninth century jurists, such as Ahmad b Hanbal, Ishâq b Râhawayh, Sufyân al-Thawri and al-Shaybâni, who allowed mujtahids to follow other scholars by way of taqlid,28 while such post-formative figures as Ibn ‘Abd al-Salâm, Ibn Taymiyyah, al-Suyûti and al-Shawkâni could both practice and advocate ijtihâd well after the sixth/twelfth century. Both régimes were, in other words, porous configurations, neither of which completely precluded activity in the opposite direction. The main advantage of Schacht’s thesis, however, is that it describes, albeit in approximate and in some instances extreme terms, what ultimately came to be the dominant tendency in Islam. If the tone of his thesis were adjusted to reflect a less cavalier attitude, while the substance were made to exclude the theory of depleted intellectual energies and to accomodate a more gradual ascendency of taqlid (over several centuries), one would be forced, in my opinion, to endorse his view as the closest to the actual situation on the ground.29 For it seems virtually undeniable that taqlid came to dominate after a certain point in Muslim history. And it is here that the accuracy and or significance of Hallaq’s thesis is most drastically reduced even if it is argued, or proved, that ijtihâd continued to be practiced, it cannot be claimed that it remained the dominant tendency in Islam. Ijtihâd, understood here not merely as the direct interpretation of scripture but as the clear and open advocacy of views as having resulted from such a process,30 ceased to dominate from around the sixth/twelfth century on.

Shihâb al-Din al-Qarâfi, whose theory and application of universal (‘amm) and unqualified (mutlaq) expressions shall be examined in the present article, lived and operated under what constituted for all intents and purposes a régime of taqlid. Born in 626/1228 and dying in either 682/1283 or 684/1285, he represents an important and characteristic manifestation of what I would call post-formative jurisprudence, that is, as a distinct and conscious stage of development in the history of Muslim jurisprudence in which legal scaffolding played an increasingly central role. Part of the argument I wish to make (and part of the justification for my lengthy introduction) is that al-Qarâfi’s preoccupation

28 See, e.g., al-Ghazâli, al-Mustasfâ, 2:384
29 See also Jackson, State (forthcoming) where I discuss certain problems with Schacht’s equating “doctrine” with madhhab and where I suggest that taqlid did not imply an “unquestioning” acceptance of previous doctrine.
30 See above, note 5
with the issue of scope was not incidental but a direct result of his involvement in post-formative jurisprudence. In other words, the necessity of being able to manipulate (used here in the non-pejorative sense) the scope of legal injunctions acquired an added premium at that stage in Muslim legal history when jurists, even as they sought to keep pace with changing demands and social exigencies, perceived that they could ill-afford to ignore, let alone dispense with, the virtually unimpeachable authority that went along with the names and doctrines of the mujtahid-Imāms represented in the madhhabs.

Discussion of scope was a common feature in manuals on usūl al-fiqh, going all the way back to al-Shāfi‘ī himself. In al-Qarāfī, however, we find what appears to be a departure from the dominant scheme. Without altogether ruling out the theory-for-theory’s-sake motive, we may provisionally assume al-Qarāfī’s innovativeness to have stemmed from a desire to put the mechanisms for determining scope to a significantly different use, or to apply them to a changed reality. For the sake of brevity, I shall take as a basis for comparison the views of his three most accomplished and well-known predecessors: Sayf al-Dīn al-Āmīdī (d 631/1233), Fakhr al-Dīn al-Rāzī (d 606/1209), and the great Abū ʿĀmid al-Ghazālī (d 505/1111).

All of these authors devote extensive sections to the issue of scope in their respective works on usūl al-fiqh. In his voluminous al-Maḥṣūl, al-Rāzī devoted some 232 pages to the subject. In al-Iḥkām fi usūl al-ahkām, al-Āmīdī would elaborate his theory in over 200 pages. Earlier, al-Ghazālī had treated the issue (a little more discursively) over some 154 pages. Al-Qarāfī, meanwhile, in addition to significant sections in his Sharh tanqih al-fusūl [on usūl al-fiqh], devoted an entire monograph exclusively to this subject. This work, entitled al-ʿIqd al-maḥṣūm fi al-khūṣṣ wa al-ʿumūm, is 136 large folios in length (the equivalent of approximately 272 pages in manuscript) including twenty-seven lines per folio. It delves into minute detail on seemingly every issue related to muflaq and ʿāmm expressions, including the related categories of khass and muqayyad. Out of this mass of

---

32 The Search for God’s Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Āmīdī (Salt Lake City: University of Utah Press, 1992), 390
33 Al-Muṣṭaṣfā, 1:368-410, 2:32-173
34 Sharh carries a completion date of 10 Shaʿbān 677. In al-ʿIqd (135r), meanwhile, al-Qarāfī cites the Hanafi chief justice, Ṣadr al-Dīn Sulaymān, after whose name he gives the panegyric, rahimu’llah. Ṣadr al-Dīn reportedly died in 677.
information, I shall try to extract those issues that are integral to an understanding of al-Qarāfī’s theory on muṭlaq and ‘āmm categories and expressive of his aims and manner of proceeding as a distinctly post-formative jurist

In the introduction to al-‘Iqd al-manẓūm, al-Qarāfī states that there existed massive confusion over the precise definition and function of muṭlaq and ‘āmm expressions. This in turn left issues of takḥṣīṣ and taqyīd in a similar state of disarray. Al-Qarāfī goes on to state that he knows of not a single jurist, ancient or modern, whose doctrine on muṭlaq and ‘āmm expressions is at once logically consistent and free of over- and underinclusiveness (jāmi’ mānī’).

I have seen many prominent jurists among those who specialize in the area of usūl al-fiqh and claim preeminence in this discipline who are unable to clarify the meaning of universality (al-‘umiim) and particularity (al-khāṣṣ) when they are confronted with [expressions purportedly bearing] these significations. At the same time, universal (‘āmm) and unqualified (muṭlaq) expressions are similarly confused. Indeed, I have found the meaning of universal signification to be lost on most of my esteemed colleagues. And though I have petitioned those of them with whom I have been able to confer for a clarification of this issue, I have found none of them able to offer one.

The problem with prior conceptualizations of ‘āmm and related categories begins with the fact that these doctrines proceeded on the basis of a porphyrian hierarchy which resulted in a kind of set-theory in which universal (‘āmm) and specific (khāṣṣ) expressions bore a binary and a relative relationship to each other. On the one hand, an expression was deemed to be either ‘āmm or khāṣṣ, not ‘āmm versus muṭlaq, or ‘āmm versus muqayyad. At the same time, the ‘āmm and khāṣṣ were both perceived in relative terms. An expression could be at one and the same time universal and specific, depending on the semantic or porphyrian context into which it was placed. “Human being” (al-insān), for example, was universal when juxtaposed to “men” (al-rijāl). It was specific, however, when juxtaposed to “animal” (hayawān).

35 For a more general treatment of muṭlaq, ‘āmm, takḥṣīṣ and taqyīd, one may consult the magnum opus of Bernard Weiss (The Search for God’s Law, 389-446) on the jurisprudence of the Hanbali turned Shāfī’i, Sayf al-Dīn al-Amādī.
36 ‘Iqd, 4r.
37 Muslim jurists were concerned primarily with expressions that were universal or specific in the relative sense, whence the popularity of the porphyrian hierarchy. In fact, it seems they recognized very few terms that were universal or specific in the absolute. Weiss (Search, 393-94) notes that al-Amādī, for example, was able to provide only one example of such absolutely ‘āmm expressions, namely, “al-madhkūr” Al-Ghazālī, who also endorsed the porphyrian hierarchy, adds “al-
Specification (takhṣīṣ), then, as one might anticipate, came down to the act of restricting the scope of a phrase or injunction to some subset of its original mother-set. But given that universal and specific expressions were understood in relative terms, establishing the dividing line between the two entailed a fairly conspicuous degree of arbitrariness. Such a weakness would prove grist to the mill of any serious adversary in a legal disputation. More fundamentally, however, it injected a certain meaninglessness into the claim that any particular command, e.g., “qātulu ‘l-mushrikīn” (Fight the polytheists), was universal, if, by simply assuming another semantic or porphyrian context, it could be legitimately claimed that it was specific. Little wonder that al-Qarāfī observed that it was extremely rare, even among the leading jurists, to find one who could establish with any clarity and logical consistency the distinction between the ‘āmm and the khāṣṣ.  

When we turn to the muṭlaq or unqualified expression, we find that it factors into the traditional scheme only as a distant and loosely related sub-category. It is distinctly marginal to discussions of universal (‘āmm) expressions. In fact, were it not for the parallel relationship of relativity between the ‘āmm and the khāṣṣ, on the one hand, and the muṭlaq and the muqayyad, on the other (a single expression can be either muṭlaq or muqayyad just as a single expression can be ‘āmm or khāṣṣ), one gets the impression that muṭlaq and ‘āmm expressions might never have been drawn into the same discussion. Weiss’s observation on al-Āmild is instructive in this regard. He notes that while the latter devotes over 200 pages to the ‘āmm (and khāṣṣ) expression, he treats the muṭlaq in a mere seven pages and directs his reader to apply everything that was said about the ‘āmm to the muṭlaq. It would seem rash to conclude that the reason for this asymmetrical treatment was that the muṭlaq was perceived to have no

---

38 One general issue should perhaps be commented upon here. Al-Qarāfī is among the so-called arbāb al-‘umām, i.e., those who believed that there were expressions of universal signification. He notes, however, that some advanced an argument to the effect that the only universal statement that had not been specified was God’s statement in the Qur’ān, “And God has knowledge of all things” (wa’llihū bi kulli shay’in ‘alim). On such an argument, al-Qarāfī objects, one could not argue on the basis of any apparently universal statement in the Qur’ān or the sunnah. And this, he protests, “would divest us of the ability to make interpretive inferences from these sources” (wa dhalika ta’īl li’l-istidlāl). See Sharḥ, 227.

39 ‘Iqd, 71v

40 For example, jism-un (body) is muṭlaq; jism-un nā‘im (sleeping body) is muqayyad; but nā‘im is also muṭlaq. See ‘Iqd, 13r.

41 Search, 390
distinctive qualities of its own that would justify a separate discussion of the depth and detail devoted to the 'āmm. It may be, however, that its utility as a jurisprudential concept was perceived, at least on the traditional scheme, to be much less than that of the 'āmm and khāṣṣ expressions.

When we come to al-Qarāfī, we find a very different scheme of things. According to his theory, the mutlaq stands at the center of discussion, and there is a sense in which the 'āmm can be understood only in light of its relationship with the mutlaq. This is very different from what one finds in the traditional scheme, according to which the primary juxtaposition is between the 'āmm and the khāṣṣ. Similarly, whereas, on the traditional doctrine, the 'āmm definiens appears as a large circle into which so many definienda are fitted, on al-Qarāfī's theory this definiens is an abstract universal (literally a mutlaq) placed at the center of a would-be circle where it acts as a beacon whose rays move out in all directions, drawing so many definienda into its orb. Whereas, on the one hand, the 'āmm expression denotes its definiens, i.e., the abstract universal, on the other hand, it merely connotes the resulting 'āmm category, the outer perimeters of which remain open-ended and undefined. In other words, "al-mushrikin," as in the command, qātilū 'l-mushrikin (Fight the polytheists), denotes not so many polytheists as a standing class but, rather, polytheism in the abstract, instantiated, as it were, in so many individuals.
This difference in perspective brings al-Qarāfī into conflict with his predecessors on both a theoretical and a practical level. I shall turn now to a brief discussion of some of the more substantive problems involving definitions, after which I shall turn to the more practical matter of applying the concepts of muṭlaq and ‘āmm as post-formative jurisprudential tools.

The view of al-Ghazālī, al-Rāzī and al-Āmīdī had been, mutatis mutandis, that the universal (‘āmm) expression was a single vocable that signified two or more referents simultaneously and without quantitative limit. Al-Ghazālī’s precise locution was, “a single vocable that signifies two or more referents simultaneously” (al-lāfzu’l-wāhidu’l-dālū min jihat-in wāhidat-in ‘alā shay’ayni fa ẓā’id-an) ⁴² Al-Rāzī, meanwhile, preferred, “a single vocable that embraces, by means of a single act of coinage, all of that to which it may properly apply” (al-lāfzu’l-mustaghriq li jamī’ī mā yāṣīlu ḫarra bi ḥāṣabi wa’d-in wāhid) ⁴³ He also cited a second definition, however “a single vocable that signifies two or more referents without quantitative limit” (al-lāfzu’l-dālūh ‘alā shay’ayni fa ẓā’id-an ma ghayrī ḫaṣr) ⁴⁵ This is the definition al-Qarāfī attributes to him. ⁴⁶ Al-Āmīdī defined the ‘āmm in the exact same terms as al-Ghazālī “a single vocable that signifies two or more referents simultaneously” (al-lāfzu’l-wāhidu’l-dālū min jihat-in wāhidat-in ‘alā shay’ayni fa ẓā’id-an) ⁴⁶ In sum, all of these definitions indicated that an expression was ‘āmm, or universal, when it referred to two or more things equally, simultaneously and without quantitative limit.

The first criticism leveled by al-Qarāfī against this view was that it was overinclusive (ghayr māni‘). All of these definitions, he pointed out, admitted the so-called “large plurals” (jumū‘ al-kathārah) ⁴⁷ along with collective nouns such as tā’ifah (faction), raḥṭ (group), and firqaḥ (party). These expressions, notes al-Qarāfī, also signify two or more referents, equally, simultaneously and without quantitative limit. But they are not considered ‘āmm. Indeed, compliance with a countermand

---

⁴² Al-Muṭṣafā, 2:32
⁴³ Al-Maḥṣūl, 2:309
⁴⁴ Ibid., 2:310
⁴⁵ ‘Īqād, ⁹v. Al-Qarāfī probably attributed this definition to al-Rāzī in order to respond to it after having already cited the traditional definition. It should not be understood, in other words, that, for purposes of argument, he took this to be al-Rāzī’s preferred opinion.
⁴⁶ Weiss, Search, 391
⁴⁷ Technically speaking, “large plurals” apply only to ten or more things. See, e.g., ‘Īqād, 10r
such as “lā taqtulū tāʾīfat-an” (Do not kill a faction) or “lā taqtulū raḥt-an” (Do not kill a group) could be achieved by abstaining from killing any more than two members of these respective groups. Universal expressions, meanwhile, are applicable to every constituent of the designated class. In other words, were injunctions such as lā taqtulū tāʾīfat-an universal, they would require one to abstain from killing all members of the designated group without exception. As already mentioned, however, on the traditional definition, one could kill one or two members of the said group and still not contradict an injunction like lā taqtulū tāʾīfat-an or lā taqtulū raḥt-an, since three is the number required to constitute such “groups.”

Another objection raised against the definition of al-Āmīdi, al-Rāżī, and al-Ghazālī was that it implied that the least possible number affected by a universal injunction was two. Assuming, however, a universal command, such as “qātīlū’l-mushrikin” (Fight the polytheists), what if one were to come across only one polytheist? Would it be incumbent to fight him? And would such an act of fighting this solitary polytheist constitute compliance with the universal command? Such questions were of course entirely rhetorical. For no jurist held that universal injunctions applied only to Muslims who were confronted with three or more specimens of the designated class. Al-Qārāfī’s point, however, was that, if, as his predecessors held, the ‘āmm expression applied only to two or more referents, then at least that number would be required in order to fulfill any universal command. Al-Qārāfī’s objections were an obvious refutation of the traditional view.

As for the first definition cited by al-Rāžī, i.e., that the ‘āmm was “a single vocable that embraces, by means of a single act of coinage, all of that to which it may properly apply” (al-lafzu’l-mustaghriqu li jarni yasluhu lahu bi hasab wagin wahid), this actually went back to the Muʿtazili, Abū al-Husayn al-Baṣrī (d. 436/1044). Even before al-Qārāfī, al-Āmīdi would point out that it was tautological, as ‘āmm and mustaghriq are actually synonyms. Al-Qārāfī would go on, however, to raise objections of a more substantive kind. For example, he asks, What is meant by “all of that to which it may properly apply” (jamiʿ mā yasluhu lahu)? If it is said, “that for which the expression was originally coined” (mā wudīʿa lahu), this would render this definition overinclusive. For numbers also serve this function “Five,” for example, applies to

---

48 See ‘Iqd, 10v
49 ‘Iqd, 9v
50 Weiss, Search, 390
five of anything, without qualification. Yet, numbers are not considered 'āmm, because they entail quantitative limits. If, on the other hand, it is said that something more general than original coinage is meant, this would imply that universal expressions signify their literal and non-literal (majāz) meanings simultaneously. But this would render them homonymous, while the preferred opinion among scholars is that 'āmm expressions are not homonyms. No one holds, for example, that a command such as "uqtulil'usūd" requires the killing of all lions and all brave men. Moreover, homonyms require the assistance of extraneous indicators, or qardā'in, to determine their intended use. Universal expressions, meanwhile, require no such extraneous indicators.

In al-Qarāfī's view, the doctrines of his predecessors had missed the point. His theory begins with the assumption that universal (‘āmm) expressions denote neither particulars nor sum-totals in themselves but rather an abstract universal, whose instantiation in any number of entities constitutes the designated class. It is, in other words, their mutual participation in this abstract universal that defines constituents' status as a member of a particular class. This abstract universal, or "kulli," as al-Qarāfī refers to it, stands in emphatic contradistinction to both the "kull," i.e., the sum-total, and the "kulliyah," i.e., the (noetic) class formed when a kulli is assumed to be concretized or instantiated in an unlimited number of things. In other words, the 'āmm expression denotes not a class but rather an abstract quality whose subsequent ontological instantiation comes to constitute the designated class.

There is of course a certain overlap, according to al-Qarāfī's scheme, between the mutlaq and the 'āmm, as both actually denote the same abstract universal. While "mushrik," for example, is mutlaq when used in an affirmative statement such as "qītīla mushrik-an" (Fight a polytheist) and "al-mushrikan" is 'dmm when used in an affirmative statement such as "qītīlīl-mushrikīn" (Fight the polytheists), both terms denote polytheism in the abstract. The difference between the two is that whereas there is no quantitative limit to the number of specimens
in which the 'āmm denotatum is instantiated, the mutlaq refers to the abstract universal instantiated in any single specimen. What this comes down to in legal terms is that universal or 'āmm injunctions entail no quantitative limit in terms of the number of affected specimens or acts of compliance. Unqualified or mutlaq injunctions, meanwhile, are satisfied by any single act of compliance involving any single specimen in which the abstract universal is found. As such, "qātīlū'l-mushrikīn" (Fight the polytheists) would oblige one to fight anytime one encountered an individual whose religion was polytheism, whereas "qātīlū mushrik-an" (Fight a polytheist) would require one to fight only one polytheist, even if one encountered an unlimited number of polytheists subsequent to this initial act of compliance.

This manner of thinking, while delivering al-Qarāfī from some of the problems and shortcomings of his predecessors, raises a number of difficulties of its own. To begin with, if both "qātīlū mushrik-an," which is mutlaq, and "qātīlū'l-mushrikīn," which is 'āmm, denote an abstract polytheism, what is it that distinguishes the former from the latter as an identifiable category? If it is said that they denote something other than the aforesaid abstract quality, precisely what is it that the two terms denote? From what has been said above, one might surmise that it is essentially number that distinguishes the two. As it turns out, however, even this is an oversimplification that requires additional explanation.

To the argument that the basic difference between the mutlaq and the 'āmm is that the 'āmm entails plurality, whereas the mutlaq entails singularity, al-Qarāfī responds that plurality is itself an abstract quality, and when one abstract quality is added to another the result is also an abstraction. In other words, if I understand him correctly, "plurality" plus "polytheism" results in a simple "plurality of polytheism." But this, according to al-Qarāfī, would be not 'āmm but rather a type of mutlaq. For a plurality of polytheism is constituted by the existence of any three or more polytheists. As such, a purportedly universal command such as "qātīlū'l-mushrikīn" would require only that Muslims campaign against any three polytheists. This, however, would again contradict the basic meaning of universality or 'umūm, which refers to every specimen in which the abstract quality is found.

Another approach to the problem was to say that the universal expression denoted the abstract quality plus all the possible differentia found in the various constituents drawn into its orb. In other words, an

---

56 'Iqd, 8v
expression such as “al-mushrikūn” signified both abstract polytheism, plus height, plus weight, plus color, etc. This of course solved the problem of unqualifiedness or iṯlāq, since on such a view a command such as “qāṭilū‘l-mushrikīn” would now apply to an unlimited number of constituents. But on this view, universal expressions would be rendered homonymous (mushtarak) in that they denoted not one but several things via several acts of coinage (wad‘). In other words, “al-mushrikūn” would now refer to polytheism, plus blackness, plus whiteness, shortness, tallness, etc. But this goes against the generally accepted view that universal expressions are not homonymous. Indeed, on al-Qārāfī’s doctrine, universal expressions are mutawāt, or what I term “connotative,” i.e., whereas they denote a single abstract quality, they connote several referents by virtue of the latter’s participation in the single abstract universal, which alone is the denotatum of the universal term and which is the result of not several but a single act of coinage or wad‘.57

A third alternative was to say that universal expressions referred to the abstract quality plus the differentia, this time not as separate, isolated qualities but in toto, i.e., as a single, multi-faceted ball of wax. This manner of proceeding averted the problem of homonymity. But, on such an understanding, expressions such as “al-mushrikūn” would refer to the sum-total of all polytheists in existence. This, al-Qārāfī observes, would render it impossible to use such expressions in negative commands and assertions. For if a negative command such as “lā taqṭulū‘l-nafṣā‘llāhi harrama‘llāhu illā bi‘l-haqq,” (Do not slay without just cause any soul which God has forbidden) is understood to mean do not slay the sum-total of innocent people, one could slay a full ninety-nine percent of them and still be in compliance with this injunction.58

We come, then, to al-Qārāfī’s own definition of muṭlaq and ‘āmm expressions. According him, an ‘āmm expression is “an expression coined to denote an abstract universal with the stipulation that whatever [ruling] applies to this abstract quality follows it [i.e., applies] wherever that quality is found” (al-lafzu‘l-mawdu‘ li ma‘nan kulliy-in bi wasfi taṣabbu‘īhi fi mahāllīhi bi ḥukmih). In other words, an affirmative expression such as “qāṭilū‘l-mushrikīn” (Fight the polytheists) is ‘āmm in that it refers to the abstract quality of polytheism with the stipulation that wherever this quality is found its practitioner is to be fought. This,

57 See ibid., 7v ff
58 Sharḥ, 39
proclaims al-Qarāfī, avoids the problem of number that afflicted the definitions of al-Ghazālī, al-Āmīdī and al-Rāzī. For on this definition, there is no question that even if a Muslim met only one polytheist, he would be bound to fight him. And by doing so he would be in complete compliance with this injunction as a universal command. Similarly, the problem of homonymity is overcome, since the denotatum of the ʿāmm can be seen in reality to be one, namely, the abstract universal, "polytheism." Finally, this definition raises no problem in employing ʿāmm expressions in negative commands. Indeed, "lā taqtulū'l-nafṣa'l-latī harrama'llāhu ʿillā bi'l-haqq" (Do not slay without just cause any soul which God has forbidden [6:151]), would simply require that one abstain from killing whenever innocent souls are found. While it may appear that there is essentially no difference between al-Qarāfī's doctrine and that of those who hold the difference between the mutlaq and the ʿāmm to be number, al-Qarāfī would insist that on his definition number is only incidental, what is essential is not number but rather the abstract universal plus or minus ṭāṭābbū', i.e., repetition of the commanded act if and whenever the instantiation of the abstract quality repeats itself.

A couple of explanatory notes are in order at this juncture. The first concerns my rendering of the phrase "ma'nan kulliy-in." I have taken this to be an adjectival phrase, while the Arabic text admits the possibility that it is a genitive construction, i.e., "ma'nā kulliy-in." This latter rendering would seem to comport with al-Qarāfī's subscription to the view that abstract universals exist only in the mind, since, on such an understanding, the universal of which he speaks in defining the ʿāmm could not be understood, qua universal, to inhere in the various definienda. It would be, rather, only some aspect of this universal that is instantiated in each particular instance of its existence. On such an understanding, it would make sense to say that al-Qarāfī refers to this aspect of the universal as a "ma'nā" and that this is the first part of a genitive (idāfah) construction, "ma'nā kulliy-in," "kulliy-in" being a noun rather than an adjective, as I have rendered it.

This is not the place for an exhaustive examination of the problem of the noetic versus the ontological reality of abstract universals. As al-Qarāfī himself points out, this is more properly a question for the science of logic. What can be said in the present context is that the fact that al-Qarāfī holds abstract universals to exist only in the mind.

59 Ḥid, 5r, 6r
60 Ibid., 6v
averts rather than raises a problem. For on this understanding, there is only a mental picture that is projected onto the outside world, and there is no question of the abstract universal 'physically' permeating any existing thing. Moreover, it is not merely an aspect of the universal that is imposed upon the outside world but the entire mental picture itself, which is the same for every entity upon which it is superimposed. In al-Qarāfī's words, the universal is a "ṣūrah dhīniyāh tantabīq 'alā umūr khaṭāriyyah intiḥāq-an 'aqīly-an wa hiya wāhidah" (a mental picture noetically superimposed upon outside entities and is one [and the same in all instances]) 61 It is thus not an aspect of the abstract universal but the universal itself that is 'found' in outside entities. On this basis, I translate the Arabic text, "ma'nan kulliy-un," as opposed to "ma'nnā kulliy-in." This rendering is also supported on formal grounds. At one point, for example, al-Qarāfī applies the definite article to the phrase, making it "al-ma'dnā al-kulliyu," 62 clearly showing the second term to be adjectival.

The second explanatory note concerns my rendering of "tatabbu" (lit. following) as "repetition." It may appear to some that this term implies not repetition but, rather, logical subordination whereby the definienda "follow" or fall under the definiens in a subordinate, albeit logically entailed, way. It is here, however, that we find the second fundamental difference between al-Qarāfī and the traditional view. Universality ("UMūM"), on his theory, is constituted not by the mere existence of unlimited definienda, but, rather, by how individuals relate to these definienda in terms of the actions (or judgments) they direct toward them. When he speaks of "tatabbu" he refers not to the relationship between the definienda and definiens but to whether the command, prohibition, inquiry or statement applied to the definiens applies to every definienda subsequently encountered. It is, in other words, the obligation to repeat the command, prohibition, etc., that renders an expression 'āmm. 63 Whereas the focal point of the traditional view was the "two or more things" to which the 'āmm expression referred "simultaneously and without quantitative limit," 64 al-Qarāfī's attention is directed toward the duplication of the implied act or

---

61 Ibid., 5r
62 See ibid., 13r
63 At Sharh, 38, for example, al-Qarāfī states explicitly, "By al-tatabbu' fi'l-maḥāll I refer to the [corresponding] ruling, be it an obligation, a prohibition, a license, a predicative, or an interrogative" (al-murād bi'l-tatabbu' fi'l-maḥāll ay bi'l-hukm, kāna wujūb-an aw tahrīm-an aw ibāhat-an aw khabar-an aw istifhām-an). See also 'Īqd, 9r and passim for a similar statement.
64 See above, 178
judgment. On his theory, this duplication or repetition becomes the *sine qua non* of an ‘âmm expression. This is clearly confirmed by his use of the term “takarrur” in describing the ‘âmm. At one point, for example, he states, “Whenever there is no repetition, there is no universality” (*idhâ intâfâ‘l-takarrur intâfâ‘l-‘umûm*) 65 This is what distinguishes the ‘âmm from the mutlaq.

For the mutlaq is restricted, in terms of its corresponding hukm [i.e., command, prohibition, inquiry, affirmation], to a single constituent from the designated class, and it does not go beyond this to subsequent constituents of that class. For example, manumitting a slave (*‘tâq raqabah*) whenever this occurs once, there remains no obligation to repeat it. As for the ‘âmm, whenever a constituent of its class is found, its corresponding hukm [command, prohibition, inquiry, affirmation] must be applied, even if it had been previously applied many times over. Thus, were we to kill one polytheist or thousands of polytheists, and then encounter more polytheists, we would be obliged to kill all the latter as well. 66

When we turn to al-Qarâfi’s definition of the mutlaq, we find that it is “an expression coined to denote an abstract universal, which [denotation] exhausts the signification of that expression” (*al-lafzu‘l-mawdâ‘ li ma‘nân kulliy-in huwa kamilu dâlika‘l-lafz*) Here, however, there is actually more than appears on the surface. For what is referred to is the actual existence or more properly, the instantiation, of the abstract universal as an ontological reality, as opposed to its simple conceptualization or presence in the mind. As such, a looser but more useful translation of al-Qarâfi’s definition might read (especially given his apparent endorsement of the Aristotelian notion that existence entails oneness) “an expression coined to denote an abstract universal unqualifiedly instantiated.” In other words, the instant this abstract quality is concretized or instantiated in *any* existing thing by *any* modality, a mutlaq is constituted. Thus, an unqualified command, such as “qâtîl murshik-an” (Fight a polytheist) or “aw tahrîru raqabah mu‘minah” (or the freeing of a believing slave) would be satisfied by any single act of fighting *any* polytheist or manumitting *any* believing slave. Again, the key difference between the mutlaq and the ‘âmm is that whereas the ‘âmm requires that the commanded act be repeated wherever the abstract quality is found, the mutlaq is satisfied by any single act of compliance, no matter how many times the abstract quality is subsequently instantiated. Thus, al-Qarâfi points out, whereas the

65 *‘lqd, 73v*
66 Ibid, 8v-9r
distinguishing characteristic of the ‘āmm is repetition (takarrur), the
distinguishing characteristic of the mutlaq is substitution (badaliyyah),
since any constituent of the generic class can be substituted for by any
other member of the designated class 67

I would like to turn now to the suggestion that al-Qarāfī’s ruminations
about mutlaq and ‘āmm were related to his involvement in what I
referred to as “post-formative jurisprudence,” a basic constituent of
which I suggested was legal scaffolding Under this scheme, jurists
would attempt to effect needed adjustments to existing rules through
new divisions, exceptions, prerequisites and expanding or restricting
scope, rather than returning directly to the sources for new interpre-
tations by way of ijtiḥād I would like at this point to introduce a few
examples that will hopefully demonstrate the utility of al-Qarāfī’s
theory on mutlaq and ‘āmm expressions as a post-formative con-
vention

A central desideratum of post-formative jurisprudence was the
mitigation of time-space restrictions imposed by the reliance—under the
auspices of taqlīd—upon legal interpretations effected in the past
Indeed, it was far easier to come up with new rules for new situations
(e.g., by way of qiyās, etc.) than it was to circumvent the authority of
old rules that no longer suited present circumstances For unlike legis-
lative bodies, Muslim jurists had no ability to abolish existing law At
the same time, not only were the great scholars of the past separated
from the present by time and space, much of what they handed down
included an admixture of legal interpretations and the facts to which
these were applied In addition, the science of legal interpretation (usūl
al-fiqh) underwent continuous development,68 which resulted in a
certain dissonance between earlier and later perspectives on certain
aspects of legal science The attempt to overcome the space-time restric-
tions imposed by tradition could take a number of forms, from more
emphatic articulations of the distinction between legal and para-legal
elements, to isolating custom as a basis for change, to simple revisions,
based on novel principles and precepts, of the interpretations of the
mujtahid–Imāms and ancient authorities 69 Al-Qarāfī appears to add to
this repertoire through his theory on mutlaq and ‘āmm expressions

67 This, by the way, was another source of confusion, as some jurists referred
to the mutlaq as “‘āmm ṣalāḥi,” since all specimens in which the universal quality
was found constituted bona fide candidates See ‘Iqd, 4ff
68 See for example, Hallaq, Beyond Tradition, 178-97
69 For more on these juridical motifs, see Jackson, State
In al-Furûq, for example, al-Qârî inveighs against what had apparently begun as a piece of legal sophistry that later crystallized into an accepted doctrine and was taught as such to law students in one of the madrasahs. The doctrine in question held that it was obligatory to perform ritual ablution from a particular fountain (or well—fasqiyah) apparently located on school grounds. The argument underlying this doctrine ran as follows: Since performing ablution is obligatory by consensus, and since consensus also establishes that it is not obligatory to perform ablution from any other place, performing ablution from this particular fountain is obligatory. Al-Qârî responds that this view is incorrect. He circumvents the argument of his opponents by pointing out that the obligation to perform ablution attaches neither to this or any other particular fountain but to the shared characteristic (qadr mush-tarak) that places this fountain in common with other watering places, namely, the fact that they provide water. In other words, according to al-Qârî, the obligation to perform ablution attaches to water unqualifiedly. As such, one is free to perform ablution from any source that provides sufficient water. This same argument is extended to a controversy surrounding the type of clothing worn when performing salah. Again, al-Qârî points out that the obligation to cover oneself is mutlaq. As such, once a person put on anything that covers the body, in his words, “mutlaq al-thawb,” this obligation was fully met, and it could not be claimed that there was any obligation beyond this in terms of the type of clothing worn when offering the ritual prayer.

In another example, al-Qârî takes up a problem involving the use of certain oaths. As shown by R. P. Mottahedeh, oaths were a seminal institution in Middle Eastern social and political life. Al-Qârî’s writings reveal that he spent a significant amount of time extricating laymen from unenviable predicaments into which they had sworn themselves. In this particular example, the focus was on the statement of a man who says to his wife, “If you enter this house, you are divorced.” The problem with this statement was that it included the use of the conditional “in,” and standard doctrine held conditionals (i.e., idhâ, in, matâ, haythu, etc.) to be ‘amm. As such, the effect of saying, “If you do X, Y occurs,” should be to bind one to Y anytime one engages in X. In other words, if the woman in question re-enters the

---

70 Al-Furûq, 2:78
71 Ibid., 2:78
house several times, she should be divorced each time up to the point that she exhausts all three divorces. It seems, however, that standard practice, probably in recognition of the frequency and carelessness with which laymen used such oaths, would not countenance triple divorces in such cases. This brought relief to dozens of would-be triply divorced couples. But it punched a conspicuous hole in the underlying legal theory.

In a rather interesting display of legal scaffolding, al-Qarāfī resolves this contradiction by arguing that only the condition (al-mu'allaq 'alayh) in such oaths is 'âmm, the result of fulfilling that condition (al-mu'allaq), meanwhile, is only mu'tlaq. The upshot of this is that once the wife enters the house, a single divorce is effected, and this completely exhausts the force of the oath. Even if she subsequently re-enters the house a thousand times, no additional divorces would be actioned. This is because, again, the result of fulfilling the condition of the oath is mu'tlaq, and the force of any mu'tlaq is exhausted by any single occurrence of whatever action (or judgment) it entails.73

Clearly, by insisting that these injunctions entail mu'tlaq-objects, al-Qarāfī goes a long way toward overcoming the space-time restrictions that might otherwise bind existing doctrine to institutions and/or perceptions of the past. One need only imagine the utility of such a doctrine in modern debates around such issues as the color and modality of Muslim women's hijāb or the application of the neologism "Islamic" to certain Middle Eastern and other practices and institutions.

Thus far very little has been said about the khāṣṣ (specific) and muqayyad (qualified) categories. In the brief space remaining I would like to introduce some of the more salient aspects of al-Qarāfī's theory as regards these two categories. As mentioned earlier, the basic function of takḥṣīṣ was to limit the scope of an 'âmm injunction to some subset of its original pool. Taqyīd, meanwhile, functioned to limit the scope of unqualified (mu'tlaq) injunctions by adding stipulations that effectively disqualified otherwise bona fide constituents of the original pool, e.g., to stipulate that the slave manumitted as expiation for certain sins be not any slave but a Muslim slave.

There appears to have been general agreement that takḥṣīṣ became an option only in the event of an apparent contradiction between a universal and purportedly specifying injunction (or other specifier, such as

---

73 See Sharh, 180; 'Iqd, 72 r-v
reason, custom, etc.) 74 For example, there is an apparent contradiction between the Qur'ān’s granting all sons the right to inherit from their fathers and the Prophet’s stipulation that murderers do not inherit from their victims. For his part, however, al-Qarāfī pushes this requirement a bit further and insists that the assumed contradiction be absolute. This is what he has in mind when he uses such terms as al-munafah or al-mukhālafah. By absolute contradiction, al-Qarāfī means that there can be absolutely no circumstances under which the universal command can apply to the entity purportedly excluded by the particularizing or specifying injunction. Otherwise, the result of the two injunctions would be not takḥīṣ but rather taqyid. This is because, according to al-Qarāfī, the universality or ʿumūm of an expression speaks only to the obligation of repeating the commanded act upon the recurrence of the abstract quality, again, what he refers to as ʿṭāṭabbu’. As for the time, place, circumstances and modality of the abstract universal’s recurrence, these are all, according to al-Qarāfī, mutlaq. In other words, it is the mere instantiation of the abstract universal in any—and this is the key word, any—time, place, circumstance or modality that is enough to require repetition and preserve the integrity of the ʿāmm injunction as an ʿāmm injunction. This is the meaning of al-Qarāfī’s seminal statement al-ʿāmm fiʿl-ʿayn mutlaq fi arbaʿ al-ahwāl wa l-biqāʿ wa l-azmān wa l-mutaʿalliqat. In other words, as long as the universal injunction can be carried out in any time, place or circumstance or applied to any dependent (mutaʿalliq), 75 there is no absolute contradiction between the two purportedly conflicting injunctions. As such, the injunction itself remains universal, or ʿāmm, while the time, place or circumstances in which it is applied undergo some modification. The result of such a situation, according to al-Qarāfī, is, again, not takḥīṣ but rather taqyid, since there remains at least one circumstance under which the universal injunction would apply, i.e., with ʿṭāṭabbu’. And this is all that is required of an expression in order for it to remain ʿāmm. For, again, “al-ʿāmm fiʿl-ʿayn mutlaq fiʿl-ahwāl wa l-biqāʿ wa l-azmān wa l-mutaʿalliqat.” 76

74 See nt. 2 above.
75 On this rendering of mutaʿalliq, consider the following. An individual becomes a polytheist by taking anything other than God as his God. This may be the stars, idols, trees or other human beings. All of these things are referred to by al-Qarāfī as “mutaʿalliq.” I refer to them as “dependents” in that they are logically subordinate to the act of polytheism itself.
76 Weiss reports that the Muʿtazilis appear to have endorsed a doctrine strikingly similar to this, and it is not inconceivable that al-Qarāfī took this over from them. See Search, 507.
To demonstrate the ban on killing protected religious minorities (*ahl al-dhimmah*) is generally understood to have particularized (*khaṣṣaṣa*) the universal command to campaign against all non-believers. Religious minorities, in other words, though non-believers, are deemed to have been excluded from this universal command. Al-Qarāfī retorts that religious minorities have not been excluded, for if they engage in fighting against the Muslims they too are to be killed. It is, according to him, only the situation under which religious minorities may be killed, namely, if they fight against the Muslims, that has been modified, while they themselves have not been *totally* removed from the scope of the universal command. This is thus a case of *taqyid al-mutlaq* not *takhṣīș al-‘āmm*.

Al-Qarāfī presents a similar argument in the case of the Prophet’s excluding murderers from the right to inheritance, he does the same thing regarding the rules on punishing adulterers and fornicators (i.e., based on whether or not they are or have been married). He goes on to reiterate that almost every case identified by the *fuqahāʾ* as an example of *takhṣīș* is actually a case of *taqyid*. What is interesting, however, is that none of this seems to change the actual scope of any of the rules in question, which of course begs the question: Was Al-Qarāfī simply drawn to these conclusions by his commitment to logical consistency, or was there something much larger behind this seemingly harmless revision?

As it turns out, *takhṣīș*, was intimately connected with the much more serious convention of *naskh* or abrogation. As Weiss points out, there was sizeable disagreement over the precise definition of *naskh*, some jurists, e.g., the Muʿtazilites, holding it to be no more than a type of *takhṣīș* according to which the injunction was restricted to certain times. Al-Qarāfī comes out in favor of this view, defining *naskh* precisely as “*takhṣīș fi l-azmān*.” In other words, *naskh* was for him a specification of the time period during which the injunction was to be applied. If we hold him to his word, this would appear to amount to little more than *taqyid* (i.e., adding stipulations to the circumstances under which an injunction remains applicable). This, however, would completely undermine *naskh* as a legal convention. Odd as this may seem, it is consistent with the appreciable hostility one notices in al-Qarāfī toward the use of *naskh* as an interpretive device. Criticizing the

---

77 *Iqd*, 85r; *Sharh*, 313-14
78 Weiss, *Search*, 507
79 *Iqd*, 121v
view of his fellow Mālikis, for example, he insists that all the evidence produced to show that isolated reports (khabar al-āhād) can abrogate the Qur'ān are actually cases of takhṣīs not naskh. To this point I am not satisfied with any of my conclusions as to what is exactly behind this controversy. As I stated earlier, none of this theory regarding naskh versus takhṣīs appears to have any effect on the actual substance of the law. This raises the possibility that what was really at stake was a not legal but a theological issue. We know that al-Qarāfī wrote refutations of both Judaism and Christianity, his al-Ghurbat al-fākhira raddan ʿālā al-millat al-kāfira, reigning, according to Brockelman, as “the greatest apologetic achievement in Islam”. The issue of abrogation would obviously figure heavily into any discussion with these two communities. The Jews, for example, attempted to refute the idea of naskh (which formed the basis of the argument that their scriptures had been superceded by the Qur'ān) by associating it with the notion of bādāʾ, or progressive realization. It seems possible that al-Qarāfī’s polemical discussions with Jews and Christians may have informed his doctrine on naskh. These, however, are only preliminary suggestions. A more definitive answer will have to await further study.

To conclude, if we assume the primary impetus behind taqlīd to be the search for recognizable repositories of authority as opposed to content, this institution comes to be seen in a very different light. With the settling down of the madhhabs in the late fifth/sixth to early sixth/twelfth centuries, these repositories became firmly established and universally recognized. It is at this juncture that legal scaffolding begins to emerge as a primary means of circumventing problematic aspects of existing law while maintaining recognizable links with the madhhabs.

---

80 Sharḥ, 313-14
81 GAL, S I, 665 This is probably similar if not identical to a work by al-Qarāfī published under the title al-Ajwībat al-fākhira ṣan al-as’ilat al-fājira, ed Zaki Bakr ‘Awad (Cairo: Maktabat Wahbah, 1407/1987). In this work, al-Qarāfī actually quotes the Hebrew Bible. See, for example, ibid., 226, where he quotes Genesis 49:10, and 239, where he quotes Deuteronomy 31:9. I am thankful to Professor Benjamin Hary of Emory University for his kind assistance in converting al-Qarāfī’s Arabicized Hebrew citations into Hebrew and then locating them in the Hebrew Bible.
and the authority of the mujtahid-Imāms Al-Qarāfī lived and operated under this new order. His doctrine on muṭlaq and ʿāmm was designed to add to the repertoire of post-formative mechanisms relied upon for legal scaffolding. It is perhaps no coincidence in this regard that, in addition to his large work on scope, he authored a monograph on exceptions (al-Istighnāʿ fiʾl-istiḥnāʿ) and a four-volume work on legal precepts (al-Furūq), which provided additional mechanisms for effecting needed adjustments to existing law as opposed to a return to unmediated ījīthād.