Innovation, Influence, and Borrowing in Mamluk-Era Legal Maxim Collections: The Case of Ibn ʿAbd al-Salām and al-Qarāfī

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Recent scholarship has emphasized the contributions of the great Maliki jurist Shihāb al-Dīn al-Qarāfī (d. 684/1285) to Islamic legal thought. However, al-Qarāfī's compilation of legal maxims and distinctions, *al-Furūq*, has not yet been studied, nor has the collection of his teacher, the prominent Shafiʿi jurist Ibn ʿAbd al-Salām (d. 660/1262), known as *al-Qawāʿid al-kubrā*. Furthermore, the original thought of Ibn ʿAbd al-Salām and his formative influence on al-Qarāfī have been understated. This article compares their two works to demonstrate that al-Qarāfī based his collection in large part on Ibn ʿAbd al-Salām's *al-Qawāʿid* and it examines the techniques that al-Qarāfī used, which included reordering, refining, and supplementing borrowed maxims, and anonymizing references to his teacher. Most salient, however, is al-Qarāfī's "Malikization" of maxims, which entailed replacing Shafiʿi doctrines and authorities with their Maliki counterparts and deploying maxims to defend Maliki doctrines. The article concludes by explaining al-Qarāfī's authorial choices in light of his Maliki affiliation and the politics between the legal schools in Mamluk Cairo.

INTRODUCTION

In his groundbreaking work *The Anxiety of Influence*, Harold Bloom observes that Romantic poets display an abiding anxiety about being seen as derivative, leading them to avoid being associated with the source of their influence. A similar anxiety is sometimes palpable in the writing of premodern Islamic writers, who frequently borrowed material or selectively omitted their sources for specific ends. In Islamic legal literature, the heavy debt owed to an earlier authority, or even to a contemporary or direct teacher, was at times intentionally obfuscated. Jurists did this to shore up their own authority by claiming original ideas as their own, to avoid being associated with controversial ideas or individuals, or to legitimize their participation in a discourse associated with a rival legal school.

This article utilizes Bloom's insight to explore the relationship between the original thought of a leading seventh/thirteenth-century Shafiʿi jurist, Ibn ʿAbd al-Salām (d. 660/1262), and the cognate contribution of his close student, the Maliki jurist Shihāb al-Dīn Aḥmad b. Idrīs al-Qarāfī (d. 684/1285). Ibn ʿAbd al-Salām was a pioneering figure in the development of a discursive analysis of the law through its higher aims and structuring principles, which he articulated in the form of legal maxims or canons (*qawāʿid*), distinctions (*furūq*), and a discourse about how the law realizes human interest (*maṣlaḥa*). His magnum opus, *Qawāʿid*

Author's note: This essay draws on research carried out as a Visiting Fellow at the Program in Islamic Law at Harvard Law School. For their helpful comments, suggestions, and help with sources, I would like to thank Intisar Rabb, Ahmed El Shamsy, Devin Stewart, the two *JAOS* anonymous reviewers, and audiences who heard earlier versions of this essay at the AOS Annual Meeting on March 17, 2019 and at the HLS Program in Islamic Law on April 16, 2019.

*al-aḥkām fī maṣāliḥ [*or *iṣlāḥ] al-anām*, known as *al-Qawāʿid al-kubrā* for short,[1] is an early collection of Shafiʿi legal maxims that prompted the disciplined interest in maxims among Mamluk-era jurists across the legal schools. Although his influence on al-Qarāfī is evident in many of the latter's works, this article focuses on a close comparison between Ibn ʿAbd al-Salām's *al-Qawāʿid* and al-Qarafī's four-volume collection of legal distinctions, *Anwār al-burūq fī anwāʾ al-furūq* (hereafter, *al-Furūq*), which offers a unique window into the reception and interpretation of Ibn ʿAbd al-Salām's original analysis of the law through the prism of its maxims. Furthermore, as one of the last works that al-Qarāfī authored, *al-Furūq* represents the culmination of his legal thought, thus further illuminating our knowledge of the intellectual production of one of the better-known Muslim jurists in Western historiography of Islamic law.[2]

At first glance, *al-Furūq* may appear unrelated to *al-Qawāʿid*, and the close connection between the teacher and student has been largely overlooked. The primary reason for this is that al-Qarāfī never cites *al-Qawāʿid* and rarely quotes his teacher. When he does, it is almost always to refer to individual substantive views that Ibn ʿAbd al-Salām held on contentious issues. Even so, he borrows many maxims from *al-Qawāʿid*, duplicates long passages from the book without citation, and further obscures his heavy debt to Ibn ʿAbd al-Salām by substantially reordering and refining the material that he borrowed. Moreover, he effectively "Malikizes" borrowed maxims by substituting Maliki authorities and detailing and championing Maliki doctrines in place of the Shafiʿi sources and doctrines discussed by his teacher.

Below I will reconstruct how al-Qarāfī incorporates Ibn ʿAbd al-Salām's maxims and adapts them to conform with the expectations of his Maliki audience. I first demonstrate that *al-Furūq* is heavily indebted to *al-Qawāʿid* as evidenced by the extensive incorporated material. I analyze al-Qarāfī's borrowings under three rubrics: adapted maxims, gaps addressed, and maxims contested. For each category I analyze a representative example in detail and I highlight al-Qarāfī's literary techniques of concealing the borrowed maxims. Then I show how al-Qarāfī "Malikizes" them, arguing that he intended thereby to claim normative authority for maxims in Maliki law and a long-standing pedigree of maxim development in Maliki reasoning, which he is merely the first to compile in *al-Furūq*. Accordingly, he does not cite Ibn ʿAbd al-Salām in order not to appear derivative or unoriginal vis-à-vis the Shafiʿis, whose dominance in seventh/thirteenth-century Cairo was attained at the expense of the waning prestige of Malikism.

I. IBN ʿABD AL-SALĀM AND AL-QARĀFĪ

Ibn ʿAbd al-Salām was born in Damascus in 577/1181f. to a poor and otherwise obscure family of North African origin.[3] Despite not being born into a scholarly family and a late

1. This title distinguished the work from its shorter counterpart, *al-Qawāʿid al-ṣughrā* or *al-Fawāʾid* (Ibn ʿAbd al-Salām 1996a). To avoid confusing the two titles, I refer to them as *al-Qawāʿid* and *al-Fawāʾid* respectively. For Ibn ʿAbd al-Salām's thought in detail, see Sheibani 2018: esp. chaps. 5, 6.

2. For studies of al-Qarāfī's thought, see al-Qarāfī 2017; Jackson 1996a; Jackson 1995; Jackson 1996b; Opwis 2010: chap. 3; Cucarella 2015.

3. His full name was Abū Muḥammad ʿIzz al-Dīn ʿAbd al-ʿAzīz b. ʿAbd al-Salām b. Abī al-Qāsim b. al-Ḥasan b. Muḥammad b. Muhadhdhab al-Sulamī. I refer to him by his patronym to conform to how his contemporaries and historical sources referred to him (he was also occasionally referred to as ʿIzz al-Dīn b. ʿAbd al-Salām to distinguish him from other scholars with the same patronym, or as Abū Muḥammad). While his biographers do not note a specific month for his birth, Iyād Khālid al-Ṭabbāʿ, the primary editor of his published works, notes that he was born around Rabīʿ II in 577*h*, but does not cite a source (Ibn ʿAbd al-Salām 1996b: 7). Some sources date his birth to

start to his studies, he was apparently a gifted student who consistently surpassed his teachers' expectations. Apart from a month spent collecting hadith transmissions in Baghdad, his scholarly formation took place exclusively in his native Damascus at the hands of the city's two leading Shafiʿi jurists: Fakhr al-Dīn ʿAbd al-Raḥmān b. Muḥammad b. ʿAsākir (d. 620/1223) and Jamāl al-Dīn ʿAbd al-Ṣamad b. Muḥammad al-Ḥarastānī (d. 614/1218).[4] When Sayf al-Dīn ʿAlī al-Āmidī (d. 631/1233) arrived in Damascus in 617/1220f.,[5] Ibn ʿAbd al-Salām kept close company with him, and lauded his ingenuity and the benefits he personally derived from his classes.[6]

After completing his scholarly training, Ibn ʿAbd al-Salām taught in Damascus, where he quickly garnered a reputation as an outspoken social reformer. He reached the apex of his career in Damascus when he was appointed to the prestigious position of preacher of the Umayyad Mosque, where he railed against ritual and social innovations, raising the ire of his colleagues and of the Ayyubid sultans whom he repeatedly defied.[7] When he and his Maliki colleague Abū ʿAmr ʿUthmān Ibn al-Ḥājib (d. 646/1249) criticized the emir of Damascus for colluding with the Crusaders against his nephew al-Ṣāliḥ Najm al-Dīn Ayyūb b. al-Kāmil (r. 637–647/1240–1249), they were exiled from Damascus and found shelter with al-Ṣāliḥ Ayyūb in Cairo. He appointed Ibn ʿAbd al-Salām as chief justice and preacher of the revered ʿAmr b. al-ʿĀṣ mosque (*jāmiʿ Miṣr*).

His tenure as chief justice lasted for a little less than a year, during which his intransigence embroiled him in recurring conflicts with the sultan and his entourage.[8] Al-Ṣāliḥ Ayyūb accepted his resignation and assigned him as the first chair of Shafiʿi law at the newly built Ṣāliḥiyya madrasa, which quickly became the most prestigious and influential madrasa in the city.[9] The notes that have reached us from his classes suggest that he lectured on an array of topics, from Shafiʿi law, jurisprudence and theology, to hadith, quranic exegesis, and Sufism;[10] it is likely also where he dictated *al-Qawāʿid*. Largely withdrawing from public life from that moment on,[11] Ibn ʿAbd al-Salām held this position until his death in 660/1262.

Ibn ʿAbd al-Salām's classes attracted students from other legal schools, which signaled his renown and the dexterity and appeal of his thought across school lines.[12] The largest contingent of his students were Shafiʿis, and included the leaders of the school in Cairo and Upper and Lower Egypt in the next generation. Alongside them sat a sizeable group of

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the following year, 578*h*. For the earlier year, see al-Subkī [1964–1976], 8: 245–46. For biographical information, see Ibn ʿAbd al-ʿAzīz 2006; Abū Shāma 1974: 216; al-Subkī [1964–1976], 8: 209–55 (notably one of the longest biographies in the book); Ibn Ḥajar 1998: 239–41; al-Dāwūdī 1983, 2: 315–29. Ibn ʿAbd al-Salām is a relatively unknown figure in Western historiography, for which, see Chaumont 1997; Ali [1978].

4. On these two respectively, see, e.g., Sibṭ Ibn al-Jawzī 1951–1952, 8: 630–31, 590–92; Abū Shāma 1974: 136–39, 106–8; al-Subkī [1964–1976], 8: 177–87, 196–99.

5. On al-Āmidī, see, e.g., Weiss 2013: 339–51.

6. Al-Subkī [1964–1976], 8: 307.

7. Ibid.: 210; Ibn ʿAbd al-Salām 2007: 35–36, 77, 80–81, 85.

8. Ibn ʿAbd al-ʿAzīz 2006: 20; Ibn Ḥajar 1998: 240; al-Dāwūdī 1983, 2: 316.

9. Jackson 1996a: 14. The Ṣāliḥiyya had a chair for each of the four Sunni schools.

10. See Ibn ʿAbd al-Salām 2015.

11. Al-Subkī [1964–1976], 8: 211.

12. It is difficult to say how common interschool learning was in Ayyubid and Mamluk realms. Anecdotally we know it occurred, and it appears to have been most common between Shafiʿis and Malikis on the one hand, and Shafiʿis and Hanbalis on the other. See, for example, Bori 2010: 32, 37–41, where Ibn Taymiyya's circle included a number of traditionalist Shafiʿis; and Goerke 2011: esp. 112–13.

Malikis— the second largest contingent. Al-Qarāfī stands out as one of Ibn ʿAbd al-Salām's closest students, and he was certainly his most prominent Maliki heir.[13]

Al-Qarāfī was born in Cairo in 626/1228, into a Berber family that originated from the environs of Marrakesh.[14] His primary Maliki teacher was al-Sharīf al-Karakī (d. 688 or 689/1290 or 1291), who had mastered Shafiʿi law under Ibn ʿAbd al-Salām's tutelage. Al-Qarāfī also associated with Ibn al-Ḥājib, whom he referred to as "our master" (*shaykhunā*) and highly esteemed as the leading Maliki jurist of his generation.[15] He was also deeply influenced by Shams al-Dīn al-Khusrūshāhī (d. 652/1254), a scholar of Ashʿarī theology and Shafiʿi jurisprudence who trained directly with Fakhr al-Dīn al-Rāzī (d. 606/1209) and spread al-Rāzī's teachings in Cairo and Damascus.[16] Notwithstanding these teachers' influence, al-Qarāfī's most important and influential teacher was undoubtedly Ibn ʿAbd al-Salām, despite their differing school affiliations.

We know little about the tenor of their relationship, but in his writings al-Qarāfī occasionally comments on their interactions and discussions, offering an eyewitness account of Ibn ʿAbd al-Salām's conduct, noting a significant point he heard his teacher state or recording his answers to questions.[17] In some instances, al-Qarāfī upholds Ibn ʿAbd al-Salām's view as the solution to a vexing question,[18] while elsewhere he jettisons his teacher's opinion in favor of his own.[19] Yet even when disagreeing, he expresses only the highest admiration for his teacher's legal acumen, about which he states: "I have seen no one throw questions into relief as did Shaykh ʿIzz al-Dīn ibn ʿAbd al-Salām . . . . Indeed, he had a striking ability to resolve difficult legal questions, both theoretical and textual, and was blessed with insights totally unknown to others."[20]

Al-Qarāfī's career centered on teaching and writing, and his written works were decisive for postformative Maliki law. Though he never served in the judiciary, al-Qarafī held three teaching appointments as chair of Maliki law in Cairo: at the Ṭaybarsiyya, at the mosque of ʿAmr b. al-ʿĀṣ, and most importantly, at the Ṣāliḥiyya. His primary written contribution to Maliki substantive law is *al-Dhakhīra*, which he wrote early in his career.[21] A second important book is *al-Iḥkām fī tamyīz al-fatāwā ʿan al-aḥkām wa-taṣarrufāt al-qāḍī wa-l-imām*, which addresses crucial questions of institutional divisions of power and their legal implications.[22] Importantly, al-Qarāfī incorporates maxims first discussed in *al-Dhakhīra* and *al-Tamyīz* into *al-Furūq*, which represents the crowning achievement of his intellectual career and is the most influential and commented upon of his works.[23]

13. For biographical information on al-Qarāfī in historical sources, see Ibn Farḥūn [1975?–1976], 1: 236–39; al-Ṣafadī 2000, 6: 146–47; Ibn Taghribirdī 1984, 1: 233–35; al-Suyūṭī 1967–1968, 1: 316.

14. Al-Qarāfī 1999, 1: 440.

15. Al-Qarāfī 2001, 1: 64. Jackson (1996a: 5–6) claims that al-Qarāfī spent little time with Ibn al-Ḥājib and hardly cited him in his writings. The editors of *al-Furūq* (al-Qarāfī 2001, 1: 17) assert that he cited Ibn al-Ḥājib a great deal. As this article demonstrates, the frequency of citations does not necessarily indicate the extent of influence and benefit derived from a teacher.

16. Jackson 1996a: 175; al-Qarāfī 2001, 1: 17.

17. See, for example, al-Qarāfī 2001, 2: 620; al-Qarāfī 1995b, 2: 699–700, 5: 2147, 7: 2942, 8: 3423.

18. See, for example, al-Qarāfī 2001, 2: 598.

19. See, for example, ibid., 1: 189–92, 2: 474–75.

20. Ibid., 2: 600; Jackson 1996a: 12.

21. Al-Qarāfī 1994.

22. Al-Qarāfī 1995a. For a translation, see al-Qarāfī 2017, along with a useful interpretive introduction. For a study of the work and the sociopolitical context in which it was authored, see Jackson 1996a; Jackson 1995.

23. Jackson 1996a: 16–19.

II. MAXIMS AND DISTINCTIONS: *AL-QAWĀʿID* AND *AL-FURŪQ*

Ibn ʿAbd al-Salām entitled and organized *al-Qawāʿid* as a compilation of maxims, while al-Qarāfī characterized *al-Furūq* as a compilation of distinctions. What exactly are maxims and distinctions, and how are they related?

Legal maxims express in a succinct adage or aphorism broad tendencies or fundamental patterns that characterize the entire body of legal rulings, or a subset thereof.[24] These general maxims represent broad principles that regulate numerous particular cases. For example, "certainty is not removed by doubt" (*al-yaqīn lā yazūl bi-l-shakk*, the certainty maxim) provides an epistemological rule of thumb that finds application in nearly every area of the law, such as whether one's ritual ablution has been vitiated or whether a debt has been repaid. "Hardship requires accommodation" (*al-mashaqqa tajlib al-taysīr*, the hardship maxim) is deployed to lighten ritual obligations and to permit common contracts and financial transactions that would ordinarily be proscribed.

A subset of maxims is subject-specific (*ḍābiṭ*, pl. *dawābiṭ*) and has a limited scope, restricting them to specific legal topics, such as ritual purity or inheritance. These specific maxims often qualify general maxims, and are frequently disputed and contested within and between schools.[25] An example of a specific maxim shared among the schools is one that applies narrowly to family law. "The child belongs to the marriage bed" (*al-walad li-l-firāsh*, the paternity maxim) means that the default assumption for assigning paternity of a contested child is based on the marital relationship of the mother.[26]

Legal distinctions are closely related in that they compare and distinguish two or more legal maxims (or submaxims or rulings) that share a resemblance, making them appear identical when they are in fact distinct. For example, the hardship maxim was stated by both Ibn ʿAbd al-Salām and al-Qarāfī in the form of a distinction that differentiated between hardships that lighten obligatory acts of worship and those that do not.[27]

The distinctive literary form of these two conceptual tools has led some scholars to analyze maxims and distinctions separately as instantiations of different discourses and as constituting two different genres.[28] However, close comparison of the two works and their reception shows that, at least for the works in question, maxims and distinctions were inextricably linked and functionally constituted a single discourse, making it ineffective to study them separately. Ibn ʿAbd al-Salām explicitly and implicitly frames many of his maxims in the form of distinctions, while al-Qarāfī's primary interest is in maxims, which he analyzes through the contrastive mode of distinctions. Furthermore, both works shift between maxims and distinctions continuously and seamlessly, revealing the nearly completely porous boundaries between them. For these and other reasons, works of legal maxims and distinctions should be studied synchronously and considered constitutive of the third genre of Islamic legal literature alongside substantive law (*furūʿ*) and theoretical jurisprudence (*uṣūl al-fiqh*).[29]

24. On legal maxims, see Rabb 2014; Rabb 2019; Musa 2014.

25. Rabb 2019: 230–31.

26. The paternity maxim applies to legal relationships, both marital and slave. Its origin has been the subject of extensive debate. See, for example, Schacht 1950: 181–88; Motzki 2002: 91, 125–27; Rubin 1993.

27. Ibn ʿAbd al-Salām 2000, 2: 13–22; al-Qarāfī 2001, 1: 238–48.

28. See, for example, Saba 2017; Musa 2014; Kızılkaya 2013: 109–35.

29. As suggested in Rabb 2019: 227.

1. Al-Qawāʿid

Ibn ʿAbd al-Salām's most important work is *al-Qawāʿid*, which he continuously revised and taught throughout his life. When assessed by the systematized standards of Mamluk-era maxim compilations, it is often considered a disorderly patchwork of arbitrary maxims or classified as a work concerned with explicating *maṣlaḥa*, the law's overarching objective of achieving human interests, rather than maxims.[30] However, for its contemporary audience and for Ibn ʿAbd al-Salām's successors, *al-Qawāʿid* was lauded as a pioneering study that entwined *maṣlaḥa* and maxims into a comprehensive legal philosophy, and "innovated" the genre of analytical maxim-compilations on which succeeding contributions built, among them *al-Furūq*.

Al-Qawāʿid is known by three different titles, each of which introduces an additional nuance that refines our understanding of the book's content, structure, and purpose. *Qawāʿid al-aḥkām fī maṣāliḥ al-anām* (Legal maxims for realizing human interests) implicates the major theme of the work, namely, the analysis of the maxims regulating legal rulings, with an emphasis on how they secure human interests. *Qawāʿid al-aḥkām fī iṣlāḥ al-anām* (Legal maxims for rectifying mankind) highlights the moralizing thrust of the project, namely, to underscore the law's concern for the ethical cultivation of human beings.[31] Finally, *al-Qawāʿid al-kubrā* (The greater [collection of] maxims), distinguishes the work from Ibn ʿAbd al-Salām's shorter collection of maxims.[32]

The significance of Ibn ʿAbd al-Salām's pioneering project is twofold. First, he transformed the pertinence and scope of *maṣlaḥa*, a concept first introduced by Muʿtazilī thinkers as a deductive proposition within their wider theological system. *Maṣlaḥa* was largely de-theologized by Khurasani Shafiʿi Ashʿarīs, notably Abū al-Maʿālī al-Juwaynī (d. 478/1085) and Abū Ḥāmid al-Ghazālī (d. 505/1111), who integrated it into their theory of legal analogy (*qiyās*) and rationalized it inductively to cohere with their Ashʿarī commitments.[33] Ibn ʿAbd al-Salām made *maṣlaḥa*, previously a marginal legal concept buried in the chapter on analogy in works of theoretical jurisprudence, the centerpiece of his legal philosophy.[34] His exposition of *maṣlaḥa* in the concrete language of legal maxims, which demonstrate pointedly how it is realized by the law, is unprecedented. His second key contribution is the identification and articulation of a hierarchy of legal maxims that illustrate how the law concretely achieves and regulates human wellbeing. Some of these maxims were previously in circulation among jurists, but others are introduced by Ibn ʿAbd al-Salām. In both cases, however, Ibn ʿAbd al-Salām's singular contribution is his exhaustive compilation of particular substantive rulings that comply with individual maxims and his penetrating analysis of how, collectively, these maxims form a sophisticated legal regime that operates to factually realize human interests.

Al-Qawāʿid is organized around this project of demonstrating *maṣlaḥa* through its maxims, and validating maxims through the detailed provisions of the law. It begins with a lengthy

30. See, for example, Heinrichs 2002: 375, 382; al-Amiri 2003: 114–17.

31. In *al-Qawāʿid*, Ibn ʿAbd al-Salām deliberately engages in a moralizing project that seeks to reform the thought, practice, and inward disposition of his reader. This theme not only permeates the work, but also comprises the integration of theological and Sufi themes within what are typically legal discussions.

32. Authored after *al-Qawāʿid al-kubrā* and comprising approximately one-tenth of its size, *al-Fawāʾid* is either a direct abridgment of his greater collection or at least the basis for the lesser collection. Most of the content of *al-Fawāʾid* is found in *al-Qawāʿid,* including duplication of much of the primary maxims, subsidiary maxims, illustrative cases, and prooftexts, though articulated much more concisely.

33. On the development of *maṣlaḥa* in Islamic law, see Opwis 2010; El Shamsy 2015.

34. On Ibn ʿAbd al-Salām's philosophy of *maṣlaḥa*, see Sheibani 2018: 264–337.

introduction in which Ibn ʿAbd al-Salām articulates the most important arguments and maxims framing the book, followed by seventeen chapters of drastically differing length, each of which is devoted to the explication of a single maxim flagged explicitly with the heading *Qāʿida* (maxim). At least some of these operate in the work as universal maxims (*qawāʿid kulliyya*) that subsume subsidiary maxims beneath them, while others have a narrower scope and are better described as specific maxims.[35] However, what is often lost on readers is that within his meandering explication of these seventeen maxims, Ibn ʿAbd al-Salām interjects and expounds dozens of other maxims. In both *al-Qawāʿid* and *al-Fawāʾid*, some of these are referred to or explicitly introduced by subtitles such as *faṣl* (section), *masʾala* (issue), *fāʾida* (beneficial note), and *tanbīh* (note of caution).[36] Others are not explicitly signaled, but instead interspersed ad hoc when implicated by Ibn ʿAbd al-Salām's commentary. We can identify these principles as maxims because of the way in which they encapsulate and rationalize particular substantive rulings and because they were understood to be maxims by Ibn ʿAbd al-Salām's successors, starting with al-Qarāfī.

2. Al-Furūq

Al-Qarāfī's work has received very little scholarly attention despite being the first comprehensive compilation of Maliki maxims and the first known collection of distinctions differentiating maxims (rather than merely rulings) in any legal school.[37] As noted above, *al-Furūq* is one of al-Qarāfī's last works, and he spent many years collecting the maxims he analyzes, some of which he professes to have contemplated for as long as eight years.[38] Already when he composed his acclaimed tome of Maliki substantive law, *al-Dhakhīra*, al-Qarāfī was deliberately attentive to discursively analyzing substantive rulings through the prism of maxims, which was exceptional among existing Maliki works of substantive law.[39] In the introduction to *al-Furūq*, he explains that the work originated as a collection of the maxims he extracted from *al-Dhakhīra*, to which he added others until he reached a total of 548 maxims, or more precisely, 274 distinctions.[40]

Each of the distinctions is discussed in a discrete chapter with a title framing its topic. While *al-Furūq* is approximately three times the size of *al-Qawāʿid* and a great deal more organized, its arrangement was not without criticism. According to Abū ʿAbd Allāh Muḥammad b. Ibrāhīm al-Baqūrī (d. 707/1307f.), al-Qarāfī's student who condensed and reordered *al-Furūq*, it was copied and disseminated before al-Qarāfī had finished editing it, resulting in various drafts circulating, which prevented him from revising the work.[41] Nonetheless, a careful reading reveals that al-Qarāfī loosely groups together related topics and roughly structures the work according to the standard organization of a book of law: he begins with ritual practice, then continues to oaths and food consumption (approximately

35. On the varying scope of maxims, see Rabb 2019: 227–38.

36. Tellingly, later maxim compilers, such as Jalāl al-Dīn al-Suyūṭī (d. 911/1505), continue to refer to general and specific maxims by this same terminology; Musa 2018: 19–20.

37. There are a handful of earlier books of Maliki maxims and distinctions, but these collect only substantive rules of Maliki law restated as maxims, or distinctions that differentiated between substantive doctrines of Maliki law. See, for example, al-Khushanī 1985; Ibn Mūsā [1995]; al-Baghdādī 2003. Judging from the approach and content of these works, al-Qarāfī does not appear to have been influenced by them in any meaningful way. However, a closer study of these works is needed to confirm this impression.

38. Al-Qarāfī 2001, 1: 74.

39. Al-Qarāfī 1994, 1: 36.

40. Al-Qarāfī 2001, 1: 71–72. Some distinctions discuss more than two maxims, so al-Qarāfī's total of 548 is not accurate.

41. Al-Baqūrī 1994, 1: 44.

distinctions 120–139); marriage and divorce (140–164); sale, ownership, and contracts (165–219); criminal law and inheritance (220–251), and, finally, a concluding section mostly concerned with ethics and theology (252–274). This structure is more clearly discernable after the first 120 distinctions, which are less precisely organized and comprise broad principles of theoretical and interpretive concern—many drawn from *al-Qawāʿid*—as well as occasional substantive and specific maxims, mostly related to acts of worship such as prayer, fasting, and the pilgrimage.

Within this broader meta-structure of the work, an internal structure governs each distinction. Every chapter begins with a title that isolates the two maxims or rulings being compared. In the latter case, when the distinction is between individual rulings, al-Qarāfī states that he differentiates them by reference to maxims, and that "these maxims are the intended goal, while the particular issue is but a means to achieving that end."[42] Al-Qarāfī usually begins each chapter by concisely explaining the distinction at hand before offering illustrative examples that demonstrate how the two maxims apply differently. He frequently also discusses exceptions to the maxims, additional points related to the maxims, and difficult issues that can only be correctly resolved by recourse to the maxims. The examples, exceptions, and related issues are mostly numbered and presented in a logical sequence. In all of these ways, the clarity and organization of *al-Furūq* is an improvement on *al-Qawāʿid*.

Despite their divergent structure and literary form, both works are concerned with a discursive analysis of the law through inductively derived principles, expressed primarily as maxims, and when comparatively discussed, as distinctions. The resemblance between the two is all the more conspicuous when we examine the intertextuality between them, to which we now turn.

III. THE INTERTEXTUALITY BETWEEN *AL-QAWĀʿID* AND *AL-FURŪQ*

1. Al-Qarāfī's Sources and Attributions

In his writings al-Qarāfī alternates between citing his sources, anonymizing his references, and incorporating material without citation. His cited sources in *al-Furūq* are most often prominent Maliki authorities, who would have been familiar to his audience and whose mention legitimized his project. While al-Qarāfī occasionally mentions his teachers and colleagues, he more often anonymizes the names of contemporaries with whom he engages, perhaps because most of these passages constitute critical discussions of their views.[43]

In his study of al-Qarāfī's thought, Sherman Jackson notes that Ibn ʿAbd al-Salām is al-Qarāfī's most cited contemporaneous source.[44] If so, it confirms the broader observation that al-Qarāfī rarely cites contemporaneous sources, because his references to Ibn ʿAbd al-Salām are scant, redundant, and often reproduced in multiple books: about a dozen times in the four-volume *al-Furūq*, twice in *al-Dhakhīra*, a dozen times in his nine-volume *Nafāʾis al-uṣūl*, and a handful of times in shorter works such as *Sharḥ Tanqīḥ al-fuṣūl* and *al-ʿIqd al-manẓūm*.[45] The dozen references to Ibn ʿAbd al-Salām in *al-Furūq* are similar to those in the other works: almost always perfunctory mentions of Ibn ʿAbd al-Salām's individual opinions about particular legal issues or the interpretation of a text rather than an acknowledgement of borrowed maxims.

42. Al-Qarāfī 2001, 1: 72.

43. See, for example, al-Qarāfī 2001, 1: 363–65, 381–82.

44. Jackson 1996a: 13.

45. See al-Qarāfī 1994, 1: 141, 13: 300; al-Qarāfī 1973: e.g., 100, 108, 169, 433–34; al-Qarāfī 1995b: e.g., 2: 700, 5: 2147, 7: 2942, 8: 3423; al-Qarāfī 1999, 2: 106–7, 379–80, 387–88.

Al-Qarāfī's decision to occasionally cite Ibn ʿAbd al-Salām with reference to individual questions but seldom to borrowed maxims appears to be deliberate. This is particularly poignant when in a single passage al-Qarāfī incorporates both a borrowed maxim alongside a particular view that Ibn ʿAbd al-Salām held. For example, while explicating the borrowed hardship maxim,[46] al-Qarāfī also integrates two other borrowed maxims—one in which Ibn ʿAbd al-Salām had offered an original test for differentiating between grave sins (*kabāʾir*) and minor sins (*ṣaghāʾir*), and the second, a related original maxim that delimited the measure for the repetition of a minor sin that rendered it grave[47]—reproducing everything verbatim in *al-Furūq*, including the elucidatory commentary and illustrative examples found in *al-Qawāʿid*, all without reference to Ibn ʿAbd al-Salām. In the same passage, however, al-Qarāfī cites Ibn ʿAbd al-Salām by name twice when he mentions two unique opinions he held.[48] The exceptions to this approach are few.[49]

2. Al-Qarāfī's Unattributed Borrowings

The unacknowledged maxims in *al-Furūq* that are taken from Ibn ʿAbd al-Salām can be summarized in three categories: adapted borrowings, filling gaps or resolving unanswered questions, and countering maxims. Here I give an example of each type of borrowing and focus on how al-Qarāfī adapts borrowed maxims through the techniques of reorganization, refinement, anonymization, and most importantly "Malikization."

2.A. Adapted Borrowings

The vast majority of al-Qarāfī's borrowed maxims are directly culled from Ibn ʿAbd al-Salām's *al-Qawāʿid* and only slightly adapted to conform to the style of *al-Furūq* and the expectations of its Maliki audience. The range of borrowings vary in their scope: some are among Ibn ʿAbd al-Salām's universal maxims, others are specific maxims with a limited scope, and yet others originated as illustrative examples or exceptions in *al-Qawāʿid*, which al-Qarāfī then expands into full-fledged distinctions in *al-Furūq*. Despite the absence of attribution, we can identify these as instances of borrowing by noting the parallels between the discussions in *al-Qawāʿid* and *al-Furūq*, the similar examples and prooftexts employed, the correspondence between words, phrases, and sentences, and, at times, reference to an anonymous interlocutor who can be identified as Ibn ʿAbd al-Salām.

An illustrative example is the personal and collective obligation maxim. Table 1 provides a summary comparing Ibn ʿAbd al-Salām's and al-Qarāfī's presentations of this maxim.

In *al-Qawāʿid*, Ibn ʿAbd al-Salām centers *maṣlaḥa* in his definition of acts that are commanded.[50] He delimits obligations as acts that a person is either rewarded for performing because of the great *maṣlaḥa* attendant in their performance or punished for neglecting due to the great harm attendant their omission. He then further divides obligations into personal

46. Ibn ʿAbd al-Salām 2000, 1: 111, 2: 13–22; al-Qarāfī 2001, 1: 238–48.

47. Ibn ʿAbd al-Salām 2000, 1: 31, 34; al-Qarāfī 2001, 1: 241, 244.

48. Al-Qarāfī 2001, 1: 247–48. The first opinion addressed when prostrating to another than God was judged an act of disbelief, and the second raised a contentious view that Ibn ʿAbd al-Salām held about the relation of attributing actions or providence to the stars (*nisbat al-afʿāl ilā al-kawākib*).

49. I have found only three borrowed maxims attributed by al-Qarāfī to Ibn ʿAbd al-Salām: the overturning legal opinions and judicial outcomes maxim (2001, 1: 174–75, 2: 546, 4: 1167; 1995a: 135–41), the means and ends maxim (2001, 2: 600), and the distinguishing grave and minor sins maxim (1995b, 7: 2960).

50. Ibn ʿAbd al-Salām 2000, 1: 70–73.

Table 1. A Visual Comparison of the Personal and Collective Obligation Maxim in *al-Qawāʿid* and *al-Furūq*

Ibn ʿAbd al-Salām, *al-Qawāʿid*	al-Qarāfī, *al-Furūq*
Two types of *maṣlaḥa*: – personally obligatory – collectively obligatory	Two types of *maṣlaḥa*: – personally obligatory – collectively obligatory
When collective obligations are fulfilled and status of latecomers	Four issues: 1. *Sunna kifāya*
Hypothetical question: The Funeral prayer	2. Certainty vs belief of fulfillment of collective obligations
Hypothetical question: Prophet's seeking forgiveness	3. When collective obligations are fulfilled and status of latecomers
Sunna kifāya	4. The Funeral prayer

(*farḍ ʿayn*) and collective (*farḍ kifāya*).[51] The rest of the discussion of the maxim comprises a disorderly presentation of various topics related to personal and collective obligations, interspersed with relevant issues posed as hypothetical questions. Ibn ʿAbd al-Salām begins with the question of when a collective obligation is fulfilled, and the merit and reward for the latecomer who contributes to it either after it is underway or has already been completed. The specific maxim articulated here is that an obligation is suspended (root *s-q-ṭ*) sometimes by its completion and at other times by the inability to accomplish it. He answers the question about the status of latecomers explicitly in relation to the benefit pursued: if a group undertakes a collective obligation, and is then joined by others before the benefit of the act is achieved, the latecomers are also counted as having contributed to fulfilling the obligation because the benefit had not yet been achieved, even if the collective obligation was suspended from the group before they had joined. For example, if a group went out to fight an enemy and was later joined by some latecomers who arrived before the combat ended, the latecomers were also rewarded for fulfilling a communal duty, even if each combatant's reward was commensurate with his contribution.[52]

The same principle applies to those who undertake the communal obligation of washing, shrouding, praying for, and burying the deceased. From this case Ibn ʿAbd al-Salām proceeds to a hypothetical question (*in qīla*, *fa-l-jawāb*) concerning the performance of a second funeral prayer (*ṣalāt al-janāza*), which Shafiʿis count as fulfilling an obligation even though

51. On the doctrine of collective obligation, see Zulfiqar 2018, which discusses in rich detail the themes and paradigmatic collective duties that Ibn ʿAbd al-Salām explores, such as jihad and funerary rites. Although Zulfiqar does not look at *al-Qawāʿid*, two of his main sources are *al-Fūrūq* and *al-Dhakhīra*, as well as later Shafiʿi jurists influenced by Ibn ʿAbd al-Salām. As a result, he does not identify Ibn ʿAbd al-Salām as al-Qarāfī's "hypothetical interlocutor," nor does he detect the interschool disagreements that were at stake. In other cases, Zulfiqar credits Ibn ʿAbd al-Salām's original contributions to his successors, like al-Zarkashī (see, for example, pp. 50–53, 199–201).

52. Ibn ʿAbd al-Salām 2000, 1: 71–72.

the first prayer suspends the collective obligation. Ibn ʿAbd al-Salām frames his answer to this question in terms of the outcome sought, namely, forgiveness and acceptance of the supplication made for the deceased. He upholds the status of the second funeral prayer because it is possible that God did not answer the supplications for the deceased on behalf of the first congregation but he did from the second.[53] Ibn ʿAbd al-Salām then discusses several tangentially related issues before he returns to the second category of duties, namely, recommended (*mandūb*) acts.[54] He subdivides these into personal and collective recommendations—the former includes voluntary prayers and the latter the call to prayer. Finally, Ibn ʿAbd al-Salām concludes the section by dividing harms into those that are forbidden (*ḥarām*) and those deemed reprehensible (*makrūh*), and defining each according to the reward and benefits of abstaining from them.[55]

Al-Qarāfī, on the other hand, articulates the personal and collective obligation maxim as a single distinction between personal and communal obligations, rather than in relation to all four legal categories.[56] He also defines both obligations in terms of their attendant benefits. He identifies a personal obligation as an act that God made obligatory on every individual in order to compound its benefit by its frequent repetition, like the five daily prayers. In contrast, collective obligations are acts the benefits of which are not augmented by repetition, such as rescuing a drowning person or clothing the naked—after fulfillment, no additional benefit is accrued through repeating the act.[57] Having defined both obligations to his satisfaction, and more clearly than his teacher, al-Qarāfī then discusses four issues, sequentially numbered, that enable the precise determination of these categories. Each of these issues is found in *al-Qawāʿid*, though in a different sequence and without enumeration.

Al-Qarāfī begins with Ibn ʿAbd al-Salām's final issue, namely, that like personal and collective obligations, there are also personal and collective recommendations, which he illustrates with examples matching those in *al-Qawāʿid*.[58]

The second issue is the level of certainty required to remove an obligation.[59] Al-Qarāfī asserts that the preponderant belief (*ghalabat al-ẓann*) that a communal obligation has been accomplished suffices to suspend the duty, and that ascertaining its factual fulfillment is not required. This consideration approximates one of the hypothetical questions in *al-Qawāʿid* in which Ibn ʿAbd al-Salām discusses whether it is necessary to repeat the funeral prayer as many times as it takes to believe that God has accepted and answered it. Contradicting his teacher, al-Qarāfī takes the position that there is no specific maxim to determine when God has answered a prayer, so there is no obligation to repeat the prayer multiple times, which comprises an undue hardship.

Al-Qarāfī elaborates this more fully in his fourth issue, the legal status of multiple funeral prayers.[60] While both the Maliki and Shafiʿi schools consider the prayer over the deceased a collective obligation, the Shafiʿis, as Ibn ʿAbd al-Salām explains, allow its repetition, while the Malikis do not. Al-Qarāfī defends the Maliki position, using both consequentialist and textual arguments. He argues that the sought-after benefit from the funeral prayer is forgiveness for the deceased, which can never be definitively established but only presumed to have

53. Ibid., 72–73.
54. Ibid., 73–74.
55. Ibid., 74.
56. Al-Qarāfī 2001, 1: 234–37.
57. Ibid., 234.
58. Ibid., 235.
59. Ibid., 235–37.
60. Ibid., 236–37.

been achieved by the single required congregational prayer on behalf of the deceased. For this reason, he claims, Mālik maintained that repeating the funeral prayer was not allowed. Al-Qarāfī further deploys al-Shafiʿi's own characterization of the funeral prayer, as one that is never supererogatory but always obligatory, as an argument against permitting its recurrence.[61]

The third issue is the status of the latecomer to a collective obligation, which is lifted verbatim with its examples from *al-Qawāʿid*. Al-Qarāfī chooses to center his analysis on a Maliki source—Sanad b. ʿInān b. Ibrāhīm al-Azdī's (d. 541/1146f.) commentary on *al-Mudawwana*—which states that while the obligation is lifted from the latecomer to the jihad, the latecomer is nonetheless rewarded for having fulfilled an obligation that was not binding on him. Al-Qarāfī then refers to "another person" (*ghayruhu*, an oblique mention of Ibn ʿAbd al-Salām[62]), who extends this principle to all communal obligations, such as burial preparations and pursuing knowledge—precisely the two cases that Ibn ʿAbd al-Salām noted alongside the latecomer to the jihad. Al-Qarāfī emphasizes that this "other person" reasons that the intended benefit of the obligation has not yet been acquired and is therefore realized through the efforts of the collective, including the latecomers—exactly the argument advanced by Ibn ʿAbd al-Salām.[63]

In this comparative assessment of the personal and collective obligation maxim, we see the ways in which al-Qarāfī draws heavily on Ibn ʿAbd al-Salām in composing *al-Furūq*, as well as the techniques he uses to adapt borrowed maxims—restructuring and refining Ibn ʿAbd al-Salām's discursive analysis and illustrative rules, and anonymizing him as a source. Finally, we see how al-Qarāfī grounds his maxims in Maliki sources and champions Maliki views against Shafiʿi doctrines (e.g., the permissibility of repeating the funeral prayer), which had the effect of rendering the maxims borrowed from a Shafiʿi collection relevant to and authoritative for a Maliki audience.

2.B. Filling Gaps and Addressing Ibn ʿAbd al-Salām's Unanswered Questions

The second mode in which al-Qarāfī engages with Ibn ʿAbd al-Salām is by responding to questions or gaps in legal reasoning that his teacher identified. Ibn ʿAbd al-Salām frequently flags legal doctrines, rationalizations, or maxims as problematic, imprecise, or incomplete. At times he proffers an answer, an alternative explanation, or a delimiting maxim;[64] but when he leaves them unresolved, succeeding jurists, such as al-Qarāfī, address them.

An example is the question regarding the limits of obedience and disobedience to parents. In discussing the grave sin of disobedience to parents, Ibn ʿAbd al-Salām comments that he has not found a specific maxim delimiting what constitutes disobedience to parents and what rights are distinctly owed to them. The difficulty of distinguishing between these two categories is that "any [right] forbidden to transgress of any person is equally forbidden to transgress in their [the parents'] rights, and what [right] is due to any person is equally obligatory for them [the parents]."[65]

Al-Qarāfī takes up this question as the subject of one of his distinctions and frames it using terms and phrases that echo Ibn ʿAbd al-Salām. He states: "This is a difficult question (*mawḍiʿ mushkil*) because what [right] is due to any person is equally obligatory for them

61. Ibid., 237.

62. Oblique mentions of Ibn ʿAbd al-Salām can be detected throughout *al-Furūq,* where his views are attributed to "some scholars," "a great deal of scholars," or "others espousing the view" (ibid., 239, 235, 283).

63. Ibid., 235–36.

64. See, for example, Ibn ʿAbd al-Salām 2000, 1: 34.

65. Ibid., 31.

[the parents], though there are [rights] due to parents that are not due to others. So, what is the specific maxim governing this?"[66] Although he does not quote *al-Qawāʿid*, he notes that he has seen many scholars over the years who could not render precisely this distinction (*yaʿsur ʿalayhim taḥrīr dhālik*).[67] He addresses the question by proposing a specific maxim, the parental deference maxim,[68] which states that all rights and considerations owed to others generally are also owed to parents, in addition to which they are distinguished by two additional duties. First, parents are not to be caused any harm in any matter (*muṭlaq al-adhā*) unless avoiding harming them causes intolerable harm to their child, and second, they are owed obedience in all matters even if it entails leaving off other recommended acts or collective obligations.[69] Others are not owed such a degree of deference such that one has a moral duty to abstain from a recommended act or collective obligation to assist them.

Here we see an instance in which al-Qarāfī takes up the challenge posed by Ibn ʿAbd al-Salām to articulate a specific maxim. While it is certainly possible that there were other jurists unable to precisely delimit this maxim, in view of the framing and language that al-Qarāfī employs to discuss this maxim, and the consistent trend of intertextual borrowings in the work more broadly, Ibn ʿAbd al-Salām was his most likely interlocutor in this passage. Other Mamluk-era jurists and hadith commentators, such as Ibn Daqīq al-ʿĪd (d. 702/1302), Yaḥyā b. Sharaf al-Nawawī (d. 676/1277), and Badr al-Dīn al-ʿAynī (d. 855/1451), note that few jurists had attempted to delimit a specific maxim regarding the limits of filial piety and that most of the discussion of parental rights consisted of scattered references and remained at the level of particulars, which further supports Ibn ʿAbd al-Salām's claim that the issue was undertheorized.[70]

2.C. Countering or Supplanting Ibn ʿAbd al-Salām's Maxims

The third way in which al-Qarāfī engages with Ibn ʿAbd al-Salām's *al-Qawāʿid* is by contesting his maxims and suggesting alternatives. Unsurprisingly, this is often the case for doctrines associated with the Maliki school that Ibn ʿAbd al-Salām opposes and al-Qarāfī seeks to defend. One telling example is al-Qarāfī's divinely designated merit maxim (*qāʿidat al-tafḍīl*), which responds to Ibn ʿAbd al-Salām's maxim on the same subject employed to uphold the superiority of Mecca over Medina. This was an old debate culminating in the Maliki Qāḍī ʿIyāḍ b. Mūsā (d. 544/1149) famously declaring a consensus affirming that the Prophet's grave was superior to all other places on earth, including the sanctuary of Mecca.[71] In *al-Qawāʿid* Ibn ʿAbd al-Salām contests this, relying on a maxim that he developed about God's designation of special merits to specific times and places.[72]

In articulating his maxim Ibn ʿAbd al-Salām first distinguishes between worldly and other-worldly preferment. He outlines a number of ordinary reasons for preferring mundane places and times over others, such as the beauty and natural resources of, e.g., the spring season, or a land endowed with rivers, vegetation, and a gentle breeze. He characterizes other-worldly preferment as times consecrated because God generously bestows gifts and liberally rewards

66. Ibid., 271.

67. Ibid., 283.

68. Ibid., 271–83.

69. Ibid., 283.

70. See, for example, Ibn Daqīq al-ʿĪd 1953, 2: 293–97; al-Nawawī 1929, 2: 81. They reproduce Ibn ʿAbd al-Salām's assessment of the difficulty of determining a precise maxim, often alongside a fatwa from his contemporary and adversary Abū ʿAmr Ibn al-Ṣalāḥ (d. 643/1245), which may have been intended as a response to Ibn ʿAbd al-Salām (Ibn al-Ṣalāḥ al-Shahrazūrī 1986: 199–201).

71. Ibn Mūsā 1998, 4: 511.

72. Ibn ʿAbd al-Salām 2000, 1: 62–63.

acts of worship performed in them, such as the month of Ramadan, the day of Ashura, the first ten days of Dhū l-Ḥijja, and the last third of the night, as well as places, among which he singles out Mecca for its superiority over all other lands.[73]

This last point concerning Mecca's singular status sets Ibn ʿAbd al-Salām off on a lengthy disquisition framed as a response to Mālik's claim that Medina was more sanctified then Mecca.[74] Ibn ʿAbd al-Salām enumerates twelve reasons why Mecca enjoys a loftier rank,[75] and then discusses the textual evidence from the Quran and hadith that buttresses Mecca's superiority, alongside the texts that countenance the virtues of Medina.[76] He concludes by contesting the consensus asserted by "a certain person" (*baʿḍ al-nās*, an oblique reference to Qāḍī ʿIyāḍ) that the Prophet's grave was the most sanctified plot on earth.[77] Ibn ʿAbd al-Salām questions the accuracy of the transmission of this consensus, and argues that it should be understood in light of his divinely designated merit maxim—that the relative sanctity of times and places are commensurate with the mercy and grace that God causes to descend on the faithful in them. What God bestows upon the Prophet in his grave, he asserts, is specific to him, and therefore does not elevate the rank of his mosque or confer on Medina a special virtue elevating it above Mecca.[78]

Al-Qarāfī defends the Maliki doctrine of the superiority of Medina, especially the Prophet's grave, by articulating a broader counter-maxim that demonstrates that the reasons for preferment are numerous and cannot be reduced to the single valuation of virtue in terms of reward, as Ibn ʿAbd al-Salām proposes. Instead, al-Qarāfī articulates twenty subsidiary maxims, each comprising one reason for elevating people, places, times, and objects over their counterparts.[79] He states plainly that he composed these maxims to respond to what "some virtuous Shafiʿis had disputed from Qāḍī ʿIyāḍ."[80] We know whom he has in mind because he goes on to sum up Ibn ʿAbd al-Salām's views that virtue and preferment are tied to reward and that since there is no specific devotional act to be performed at the Prophet's grave, the consensus claimed by Qāḍī ʿIyāḍ is untenable. Furthermore, later Shafiʿi and Maliki sources also explicitly remark that the consensus claimed by Qāḍī ʿIyāḍ was contested by Ibn ʿAbd al-Salām and then defended by al-Qarāfī.[81]

Al-Qarāfī's twenty maxims governing divinely designated merits include intrinsic preferment (e.g., life over death and knowledge over ignorance); preferment through lineage (e.g., the Prophet Muḥammad's progeny); according to outcomes (e.g., the scholar over the worshipper); and God's unrestricted, absolute grace, by which he elevates whatever and whomever he wills over others.[82] When these maxims conflict, the virtues of each object are aggregated to determine which was superior overall, so the less meritorious may still be distinguished in a single attribute or aspect above the object of greater overall rank.[83]

Having articulated his maxims to his satisfaction, al-Qarāfī then brings them to bear on the debate about the status of Mecca and Medina. His analysis is more evenhanded than that of his teacher. He acknowledges that each is distinguished by virtues absent in the other

73. Ibid.
74. Ibid., 63–69.
75. Ibid., 63–66.
76. Ibid., 66–69.
77. Ibid., 69.
78. Ibid.
79. Al-Qarāfī 2001, 2: 660–74.
80. Ibid., 679–80.
81. See, for example, al-Subkī n.d., 1: 279; al-Zurqānī 2003, 1: 672–73.
82. Al-Qarāfī 2001, 2: 660–74.
83. Ibid., 674.

and that only some of their merits are known.[84] He then lists the relative merits of Medina that establish its superiority over Mecca, while anticipating and even conceding possible objections.[85] He does the same for Mecca, which is the passage in which the borrowings from *al-Qawāʿid* are indisputable[86]—all twelve reasons enumerated by Ibn ʿAbd al-Salām for the relative superiority of Mecca to Medina are adopted, with only slight modifications in expression, a single alteration, and the addition of a thirteenth rationale that Ibn ʿAbd al-Salām cites but leaves unnumbered.[87] Al-Qarāfī equally reproduces Ibn ʿAbd al-Salām's maxim that the preferment of times and places could be worldly or other-worldly, and relies on similar examples to illustrate each category.[88]

This comparison is another example that demonstrates how al-Qarāfī engages critically with borrowed maxims that he contests. In this case, he characterizes Ibn ʿAbd al-Salām's divinely designated merit maxim as mistakenly narrow, and formulates a broader counter-maxim that he believes more accurately reflects the diverse ways in which God assigns merit to places, times, and acts. In addition, he devises his counter-maxim expressly to defend the normative Maliki view and Qāḍī ʿIyāḍ's statement as at least probative, if not more persuasive than the competing view. Al-Qarāfī also betrays his Maliki partisanship when he interjects the Maliki contention that the transmission of the people of Medina is the most reliable transmission of the Prophetic precedent as one of the reasons for Medina's superiority to Mecca.[89]

Al-Qarāfī's controversion of his teacher's maxim notwithstanding, perhaps the most significant finding from this analysis is that Ibn ʿAbd al-Salām elevates an old debate from being deliberated through competing texts to being examined through the prism of its underlying maxims. Al-Qarāfī in turn responds by articulating an alternative maxim rather than doubling down on the textual evidence presented by the Maliki school. While we can speak of al-Qarāfī's debt to his teacher by identifying the maxims he incorporates into *al-Furūq*, it is honing the competence to discursively analyze the law through its maxims and in light of *maṣlaḥa* that is the most significant intellectual debt that al-Qarāfī incurs from his studies with Ibn ʿAbd al-Salām.

IV. THE "ANXIETY OF INFLUENCE" AND MALIKIZATION OF MAXIMS IN MAMLUK CAIRO

An analysis of al-Qarāfī's borrowings from Ibn ʿAbd al-Salām's *al-Qawāʿid* raises the question of why al-Qarāfī did not attribute these borrowings. More broadly, did this relate to the objectives he intended *al-Furūq* to achieve, to his broader thought, and to the intellectual and social milieu in Mamluk Cairo? Considering *al-Furūq* in these broader contexts provides us with two insights. First, according to the prevailing standards of seventh/thirteenth-century scholarship, al-Qarāfī would have been expected to cite Ibn ʿAbd al-Salām when borrowing from *al-Qawāʿid*, or at least to acknowledge its formative influence. Second, much of al-Qarāfī's intellectual production was prompted by a desire to produce for the Maliki school intellectual discourses that the Shafiʿis had pioneered, while resisting appearing overtly influenced by a rival school—thus, he sought to claim for the Maliki legal tradi-

84. Ibid., 660, 675.
85. Ibid., 675–78.
86. Ibid., 678–80.
87. Compare Ibn ʿAbd al-Salām 2000, 1: 63–66 and al-Qarāfī 2001, 2: 678–79.
88. Al-Qarāfī 2001, 2: 679.
89. Ibid., 675.

tion an indigenous interest in theoretical jurisprudence and legal maxims that he was merely the first to consolidate.

1. Practices of Borrowing and Attribution in Mamluk Literature

Some studies have examined plagiarism, borrowing, and conventions of attribution in a variety of Mamluk and Ottoman-era literature, including hadith commentaries,[90] historical chronicles,[91] pedagogical manuals,[92] legal and ethical treatises,[93] and studies of the quranic sciences.[94] Together, these studies provide us with a rudimentary theory for the conventions of attribution and borrowing in literature from this period, while also corroborating this study's findings that al-Qarāfī deliberately concealed maxims he borrowed from *al-Qawāʿid*. The studies also show that scholars specializing in various disciplines shared an expectation that borrowings, especially of original materials and from near contemporaries, would be attributed. Breaking with this convention by either incorporating content without attribution or anonymizing a known source was looked upon unfavorably and could elicit criticism or accusations of theft. The studies identify techniques for concealing borrowed material similar to those seen in *al-Furūq*—rearranging borrowed material, anonymizing sources, and substituting sources with those from the author's school—and suggest three motives to explain why authors would not conform to established norms of attribution: to discredit a view without disparaging its author, to avoid drawing attention to a controversial source whose authority one did not wish to buttress, and to conceal reliance on a source and claim its ideas as one's own.[95] Of these, only the third motive is relevant to al-Qarāfī.

But might legal maxims be an exception to the conventions identified in these studies? We know that as early as the first Islamic century many maxims were already circulating in various legal literatures and were employed in legal practice.[96] Could al-Qarāfī have encountered maxims also found in *al-Qawāʿid* elsewhere? This raises a number of historical and textual problems. First, legal maxims are by no means unique in constituting a genre that draws primarily on a common pool of existing materials. Joel Blecher has shown that Mamluk-era hadith commentaries largely draw on a shared pool of interpretive materials and yet there was a shared understanding that contributions that explicate a hadith in an original way or recast conventional commentary in an inventive manner could not be appropriated without attribution.[97]

Second, while al-Qarāfī may have come across the basic content of some of the maxims that he borrows in works of substantive law, he appropriates the lengthy discursive analysis of these maxims from *al-Qawāʿid*. Ibn ʿAbd al-Salām was the first known author to explicate legal maxims in such detail: presenting copious illustrative examples drawn from all legal topics, contemplating their exceptions, and articulating ancillary specific maxims to explain their operation. As seen in the examples above, al-Qarāfī's borrowed maxims duplicate identical wording, illustrations, and exceptions. In some cases we know for certain that the max-

90. Blecher 2018: 57–64.

91. Bauden 2010.

92. Stewart 2010.

93. Dayeh 2018; Stewart 2017.

94. Nolin 1968. I thank Devin Stewart for bringing this reference to my attention.

95. Anecdotal evidence, such as the accusations of plagiarism leveled at al-Qarāfī's near contemporaries, Badr al-Dīn Ibn Jamāʿa (d. 733/1333) and Sirāj al-Dīn Ibn al-Mulaqqin (d. 804/1440), gives us ample reason to believe that later practices of attribution were similar to those of al-Qarāfī's early Mamluk Cairo. See Blecher 2018: 62.

96. On the historical development of legal maxims, see Rabb 2014; Kızılkaya 2013: 109–289.

97. Blecher 2018: 57–64.

ims al-Qarāfī has borrowed were articulated for the first time by Ibn ʿAbd al-Salām.[98] While it is certainly possible that al-Qarāfī encountered some of the maxims identified in this study elsewhere, Ibn ʿAbd al-Salām was his most immediate and likely source for the vast majority. Furthermore, the deliberate steps that al-Qarāfī takes to conceal his borrowings from Ibn ʿAbd al-Salām lend further support to the account presented here.

Finally, while Ibn ʿAbd al-Salām is rarely cited in their collections, succeeding Mamluk-era compilers of maxim collections consistently acknowledge him as the undisputed pioneer of the genre of legal maxims and their intellectual debt to *al-Qawāʿid*.[99] The rare citations are because they built directly on the work of their immediate predecessor and would not have been expected to return to the earliest compilations to discover who was the first author to articulate or explain a given maxim. In contrast, as his direct student and contemporary, al-Qarāfī was drawing on an original work in a literary genre that Ibn ʿAbd al-Salām was widely recognized as having pioneered. There was no question of al-Qarāfī not knowing the precise source of the maxims he borrowed. Accordingly, he was expected to acknowledge his debt to Ibn ʿAbd al-Salām. As Frédéric Bauden explains, "there was undoubtedly a difference between a book written several decades or centuries before and another one published by a contemporary. Old books were considered a common heritage and as such could be plundered without paying one's debts towards their authors."[100] While later Shafiʿi compilers still acknowledged their debt to Ibn ʿAbd al-Salām, no doubt to also claim Shafiʿi supremacy in developing legal maxim literature, al-Qarāfī in contrast makes a sustained effort to obscure his reliance on him. This breach of propriety can in part be explained by his Maliki affiliation and the politics between the legal schools in Mamluk Cairo, to which we now turn.

2. Al-Qarāfī's Indigenization of Maliki Maxims and Maliki Anxiety of Influence

Throughout *al-Furūq* al-Qarāfī repeatedly argues, implicitly and explicitly, that legal maxims have a long history in Maliki law and are endemic to his school's modes of legal reasoning.[101] Even in his earlier work of substantive law, *al-Dhakhīra*, al-Qarāfī is uncharacteristically concerned with the maxims underlying substantive Maliki doctrines, noting in his introduction that highlighting them was a major priority in composing the book.[102] His claim of the authoritativeness of maxims in the Maliki school extends to Malikizing maxims borrowed from *al-Qawāʿid*: he reshapes them to conform to Maliki doctrines, substitutes Maliki authorities for Shafiʿis, and deploys maxims in the service of Maliki doctrines. In some passages he also replaces Ibn ʿAbd al-Salām's terminology with Maliki terms—for instance, when al-Qarāfī adapts Ibn ʿAbd al-Salām's detailed differentiation between means and ends, he alters the terminology from *wasāʾil* and *maqāṣid* to *dharāʾiʿ* and *maqāṣid*, and prefaces the chapter with an exposition of the concept's long pedigree in Maliki jurisprudence.[103]

Al-Qarāfī's Malikization of maxims is not the only instance in which he seeks to promulgate Maliki thought in the going discourses of the day, which were typically spearheaded

98. See, for example, the maxim distinguishing grave and minor sins and the typology of innovation maxim, both listed in the appendix.

99. To characterize his role in inventing the genre, Badr al-Dīn al-Zarkashī (d. 794/1392) and Ṣalāḥ al-Dīn al-ʿAlāʾī (d. 761/1359) use the verb *ikhtaraʿa*, which denotes introducing something new that was not known before. See, for example, al-Zarkashī 1992, 1: 25; al-ʿAlāʾī 2004, 1: 13.

100. Bauden 2010: 198.

101. He also maintains that Malikis had invariably been using maxims to reason their conclusions and that he was merely the first to compile these disparate maxims into a single collection; al-Qarāfī 2001, 1: 71, 2: 546.

102. Al-Qarāfī 1994, 1: 36.

103. Al-Qarāfī 2001, 2: 450–53.

by Shafiʿis. In early Mamluk Cairo, Shafiʿi scholars were at the forefront of producing cutting-edge scholarship and advancing developments in various disciplines. Most leading Ashʿarī theologians in the Ayyubid and Mamluk periods were Shafiʿis, and it was also members of that school who composed the most noteworthy books of theoretical jurisprudence and of legal maxims. Maliki students like al-Qarāfī flocked to study theology, theoretical jurisprudence, and comparative law with these Shafiʿi authorities, like Ibn ʿAbd al-Salām and al-Khusrūshāhī. Al-Qarāfī's close association with Shafiʿi teachers and scholarship has led some to wrongly assume that he was himself a Shafiʿi.[104] Later Malikis were acutely aware of his Shafiʿi predilections, and many viewed him as an idiosyncratic thinker whose assertions about Maliki doctrine had to be verified. Commentators on his work, such as Ibn al-Shāṭṭ (d. 723/1323), assiduously note and correct his deviations from normative Maliki doctrine.[105]

There are numerous indications that much of al-Qarāfī's life's work was intended to produce for the Malikis scholarly discourses and literatures that the Shafiʿis had successfully developed; indeed, it is a motive that he often alludes to in his various works. The influence of Shafiʿi jurisprudence on al-Qarafī is evident in his multivolume commentary on al-Rāzī's *Maḥṣūl* and in his short treatise of jurisprudence on which he also wrote a commentary, *Sharḥ Tanqīḥ al-fuṣūl*. Al-Qarāfī expresses the ambition of his jurisprudential scholarship as "elucidating the exalted status of his [Mālik's] unique jurisprudential principles, [so that they] would become apparent just as the status of his substantive doctrines has become apparent."[106] Similarly, in *al-Dhakhīra* al-Qarāfī includes—in imitation of the Shafiʿi and Hanafi practice—a section on inheritance, which was unconventional in Maliki works.[107]

Al-Qarāfī's claim for the longstanding authoritativeness of Maliki maxims and the singular status of Mālik's jurisprudence was not made in a vacuum, but rather against the weight of Shafiʿism's intellectual and social dominance in Mamluk Cairo. Although the Maliki school had been the preeminent legal school for several centuries in Egypt prior to the advent of Saladin (r. 569–589/1174–1193) and his Ayyubid successors, they favored Shafiʿism and considerably strengthened the school's position.[108] Not only did Shafiʿis receive the lion's share of madrasa endowments, they also dominated the majority of judicial, ministerial, and ambassadorial appointments; Mamluk rulers were even in the habit of adopting Shafiʿism as their personal legal school upon acceding to power.[109]

The intellectual prowess and charisma of Shafiʿi scholars, as well as the greater opportunities for upward mobility afforded them, led to Maliki defections to Shafiʿism in seventh/thirteenth-century Cairo, especially in Ibn ʿAbd al-Salām's circle. Al-Sharīf al-Karakī, al-Qarāfī's primary teacher of Maliki law, received his formative Maliki training in Fes before relocating to Cairo where he mastered Shafiʿi law under the tutelage of Ibn ʿAbd al-Salām.[110] Tāj al-Dīn Ibn Bint al-Aʿazz (d. 665/1267), a scion of a prominent Maliki family, embraced Shafiʿism and was appointed vizier and chief justice, apparently at the behest of Ibn ʿAbd al-Salām.[111] Similarly, Ibn Daqīq al-ʿĪd had mastered Maliki law in his native Qus but later joined the Shafiʿi school and set out to Cairo seeking out Ibn ʿAbd al-Salām,

104. Ḥājjī Khalīfa n.d., 2: 1359; al-Qarafī 2017*:* 9.
105. See, e.g., al-Baqūrī 1994, 2: 285–87, nn. 167–68.
106. Al-Qarāfī 1994, 1: 39.
107. Ibid.
108. See Jackson 1996a: 33–68; Leiser 1976: 187–267.
109. Jackson 1996a: 53–56.
110. Ibn Farḥūn [1975?–1976], 2: 326.
111. Al-Subkī [1964–1976], 8: 318–23; Ibn Ḥajar 1998: 222–24.

with whom he kept constant company, and he, too, served as chief justice.[112] There are even indications that a youthful Ibn ʿAbd al-Salām himself may have abandoned the Malikism of his North African family to join the Shafiʿi school.[113]

Al-Qarāfī thus inhabited a world in which Malikism was facing a downturn. If his Maliki colleagues were experiencing the same anxiety of appearing beholden to their Shafiʿi contemporaries, perhaps al-Qarāfī's concealment of his debt to Ibn ʿAbd al-Salām was also intended to interest them in the genre by presenting maxims and distinctions as an indigenous and longstanding mode of Maliki legal reasoning.[114]

CONCLUSION: REVISITING IBN ʿABD AL-SALĀM'S LEGACY

To date, al-Qarāfī has received a great deal more scholarly attention than Ibn ʿAbd al-Salām, whose thought has not yet been closely studied. As a result, scholars have tended to overlook the influence of Ibn ʿAbd al-Salām on his student and to diminish the significance of the teacher.[115] As we learn more about Ibn ʿAbd al-Salām and the Khurasani legal pedigree that shaped him, we come to appreciate his unique contributions to Islamic legal philosophy and the development of legal maxims. Part of the challenge thus far has been that his *al-Qawāʿid* is not as systematic and organized as succeeding compilations of maxims, in part because he did not have the benefit of preceding models to emulate. Nonetheless, a careful comparison with later collections, such as *al-Furūq*, and with earlier works of proto-maxims reveals that *al-Qawāʿid* pioneered the discursive analysis of the law through its inductively derived maxims and distinctions, foremost of which was the law's overarching objective of achieving *maṣlaḥa*. Ibn ʿAbd al-Salām exhaustively demonstrates, for the first time, how this overarching policy is concretely achieved through the mediation of a hierarchy of interrelated maxims of varying scope.

Ibn ʿAbd al-Salām's project inspired Mamluk-era jurists to give due consideration to the legal maxims regulating the law, and many of them then composed maxim collections of their own. Among them, al-Qarāfī stands out as one of the earliest direct inheritors of Ibn ʿAbd al-Salām's legacy. As shown, while al-Qarāfī organizes *al-Furūq* as a collection of distinctions comparing similar maxims, he is heavily indebted to his teacher's analysis and presentation of legal maxims in *al-Qawāʿid*, and incorporates these maxims into *al-Furūq* through direct borrowings, filling gaps, and supplanting maxims. More significantly, perhaps, it is now clear that the most important competence that al-Qarāfī gained from his studies with Ibn ʿAbd al-Salām was honing the acumen to discursively analyze the law and distinguish legal rulings on the basis of their underlying maxims. Ironically, al-Qarāfī skillfully developed maxims expressly to debate his teacher on an old doctrinal disagreement between the Shafiʿi and Maliki schools concerning the relative status of Mecca and Medina.

112. Al-Subkī [1964–76], 9: 207–49; Ibn Ḥajar, 1998: 394–96.

113. Ibn Ḥajar 1998: 239.

114. *Al-Furūq* was widely studied in North Africa and became the primary source and inspiration for subsequent Maliki maxim treatises, as is apparent in the works of Muḥammad b. Muḥammad al-Maqqarī (d. 758/1357) and his student Ibrahīm b. Mūsā al-Shāṭibī (d. 790/1388), as well as Aḥmad b. Yaḥyā al-Wansharīsī (d. 914/1509) and others.

115. Sherman Jackson, for instance, asserts (1996a: 13) that a comparison of Ibn ʿAbd al-Salām and al-Qarāfī's writing "reveals al-Qarāfī to have been the deeper, more careful thinker," while Ibn ʿAbd al-Salām's prominence is merely owing to "the sheer force of his personality and the magnitude of his reputation." Éric Chaumont (1997) characterizes Ibn ʿAbd al-Salām's thought as typical and unoriginal and maintains that the attention lavished on him in historical sources is largely due to his political intransigence. Felicitas Opwis (2010: 133–73) credits al-Qarāfī for some of the contributions of his teacher, including having articulated and applied *maṣlaḥa* in the form of legal maxims.

The considerable influence of Ibn ʿAbd al-Salām on al-Qarāfī's *al-Furūq* is difficult to detect due to the techniques al-Qarāfī uses to adapt borrowed maxims, which include restructuring and refining them, anonymizing Ibn ʿAbd al-Salām as a source or substituting Maliki authorities in his stead, and introducing Maliki doctrines to substantiate his maxims. We can understand al-Qarāfī's reluctance to acknowledge his intellectual debt to his teacher in light of both his ambition to claim authoritativeness for maxims in Maliki reasoning and the "anxiety of influence" borne of the tensions between Maliki jurists vis-à-vis their more dominant Shafiʿi contemporaries in Mamluk Cairo. This study of interschool learning and cross-pollination sheds light on how rival schools influenced each other and how members of one school introduced changes in their methodology and legal discourse while creating the impression that the new was rooted in the old within their legal school.

APPENDIX

This appendix lists a representative sample of maxims borrowed from Ibn ʿAbd al-Salām's *al-Qawāʿid* and incorporated into al-Qarāfī's *al-Furūq*. Where possible, they are organized according to topic and scope, with universal maxims introduced alongside their subsidiary general and specific maxims. It is important to note that in these early maxim compilations, the wording of the maxims is not terse and laconic, as in later collections, but often explained in several sentences. Below, I condense these principles as succinctly as possible. Furthermore, as noted above, these maxims are not all strictly pertinent to law, but some more broadly relate to theology, ethics, and religious practice.

MAXIMS DISCUSSED IN THE ARTICLE

1. Hardship maxims
   a. Hardship typology vis-à-vis impact on legal obligations (severe hardships are those that impact the general good and thus trigger licenses and facilitations [e.g., moral probity not required of the head of state]. Light hardships are private and particular to private individuals, and thus do not trigger facilitation [e.g., moral probity of testator]. Mid-ranking hardships between the two are subject to dispute in terms of their impact on facilitation [e.g., judges]).[116]
   b. Obligations are lightened according to their importance (matters to which the law attaches importance are only lightened when outweighed by difficult or widespread hardships. Matters to which the law does not attach great importance are lightened by light hardships).[117]
   c. Establishing hardships through minimums (the hardship of every act of worship is determined according to the lightest hardship considered for that act).[118]
   d. Approximating hardships (hardships cannot be exactly delimited, but only approximated).[119]

116. Ibn ʿAbd al-Salām 2000, 1: 111, 2: 13–22; al-Qarāfī 2001, 1: 238–48.
117. Ibn ʿAbd al-Salām 2000, 2: 15; al-Qarāfī 2001, 1: 239.
118. Ibn ʿAbd al-Salām 2000, 2: 20; Ibn ʿAbd al-Salām 1996a: 101; al-Qarāfī 2001, 1: 239–40.
119. Ibn ʿAbd al-Salām 2000, 2: 20; Ibn ʿAbd al-Salām 1996a: 99–101; al-Qarāfī 2001, 1: 240.

2. Maxims distinguishing between grave and minor sins

   a. Grave sins are acts the consequences of which comprise great harms, while minor sins are acts the consequences of which comprise negligible harms.[120]
   b. A sin is deemed grave when the religious indifference it entails is commensurate to that of the least of the grave sins established by revelation.[121]
   c. Insistence on a minor sin is tantamount to a grave sin when its recurrence gives notice of indifference to the person's religion as a grave sin would. Whether the person's insistence is on a single minor sin or a variety of minor sins, his transmission and witness testimony are rejected.[122]

3. Personal and collective duties maxims

   a. Obligations are classified according to their benefits (personal obligations are acts that have recurrent benefits when the act is repeated [e.g., prayer] while collective obligations are acts the benefits of which are not recurrent when the act is repeated [e.g., saving the drowning person]).[123]
   b. Personal and collective recommendations (just as obligatory acts exist as personal and collective duties, likewise recommended acts can be personal or collective recommendations).[124]
   c. Lifting of a collective obligation (by either its completion or the inability to accomplish it. The preponderant belief [*ghalabat al-ẓann*] that a collective obligation has been accomplished suffices to lift the obligation from the community; certainty of its factual fulfillment is not required).[125]
   d. Latecomer to a collective obligation (he is considered a contributor to fulfilling the obligation if he joins before the intended benefit of the obligation has been achieved, even if the collective obligation was lifted before he joined. Each individual is, however, rewarded in accordance with his contribution).[126]

4. Divinely designated merit maxim

   a. Places, times, people, and objects are preferred for worldly and other-worldly reasons.[127]
   b. Other-worldly merit is associated with times and places made sacred because God generously bestows gifts and liberally rewards the acts of worship performed in them.[128]
   c. Al-Qarāfī articulates twenty maxims governing religious preferment, which include: (1) intrinsic preferment (e.g., life over death and knowledge over ignorance); (2) preferment through lineage (e.g., the Prophet Muḥammad's descendants); (3) according

120. Ibn ʿAbd al-Salām 2000, 1: 34; Ibn ʿAbd al-Salām 1996a: 76; al-Qarāfī 2001, 1: 242–43, 4: 1199.
121. Ibn ʿAbd al-Salām 2000, 1: 31; Ibn ʿAbd al-Salām 1996a: 76; al-Qarāfī 2001, 1: 242–43, 4: 1200; al-Qarāfī 1995b, 7: 2960.
122. Ibn ʿAbd al-Salām 2000, 1: 34; al-Qarāfī 2001, 1: 244, 4: 1202.
123. Ibn ʿAbd al-Salām 2000, 1: 70–74; al-Qarāfī 2001, 1: 234–39.
124. Ibn ʿAbd al-Salām 2000, 1: 73–74; al-Qarāfī 2001, 1: 235.
125. Ibn ʿAbd al-Salām 2000, 1: 71–72; al-Qarāfī 2001, 1: 235–37.
126. Ibn ʿAbd al-Salām 2000, 1: 71–72; al-Qarāfī 2001, 1: 235–36.
127. Ibn ʿAbd al-Salām 2000, 1: 62–63; al-Qarāfī 2001, 2: 679.
128. Ibn ʿAbd al-Salām 2000, 1: 62–63.

to outcomes (e.g., the scholar over the worshipper); and (4) God's unrestricted, absolute grace, by which he elevates whatever and whomever He wills over others.[129]

5. Parental deference maxim

   a. All rights and considerations owed to others generally are also owed to parents, in addition to which they are distinguished by two additional duties: parents are not to be caused any harm in any matter (*muṭlaq al-adhā*) unless avoiding harming them causes intolerable harm to their child, and they are owed obedience in all matters even if it entails leaving other recommended acts or collective obligations.[130]

MAXIMS NOT DISCUSSED IN THE ARTICLE

6. Intention maxims

   a. Purpose of intention (intentions distinguish acts of worship from secular transactions and differentiate between the degrees of a devotional act).[131]
   b. Intentions for intentions (intentions are acts of the heart and do not themselves require intentions).[132]
   c. Timing of intention (intentions are required at the outset of an act of worship (*niyya ḥaqīqiyya*, by virtue of which they persist throughout the act, *niyya ḥukmiyya*).[133]
   d. Intentions for permissible acts (permissible acts are not enactments of pious devotion, *lā taqarrub bi-l-mubāḥ*. If intended as such, the reward is for the intention not for the act itself, e.g., sleeping to gain strength for devotion).[134]

7. Maxims distinguishing between ends and means

   a. Means take the rulings of their ends.[135]
   b. Virtue of means and ends (the virtue and reward of means are commensurate with their ends, and ends are evaluated by the degree to which they serve interests.[136] The sin of means to disobedience are commensurate with the evil end they serve and harm they engender).[137]
   c. The status and reward or sinfulness of ends are always greater than their means (with exceptions).[138]
   d. Means are tied to ends (the status of means is tied to the status of ends: when the fulfillment of an end is no longer tenable or desirable, its means are no longer desirable).[139]

129. Al-Qarāfī 2001, 2: 660–74.
130. Ibn ʿAbd al-Salām 2000, 1: 34; al-Qarāfī 2001, 1: 283.
131. Ibn ʿAbd al-Salām 2000, 1: 311–15; al-Qarāfī 2001, 2: 492; al-Qarāfī 1994, 3: 136.
132. Ibn ʿAbd al-Salām 2000, 1: 310–27; Ibn ʿAbd al-Salām 1996a: 101–2; al-Qarāfī 2001, 1: 253–56, 2: 476–81.
133. Ibn ʿAbd al-Salām 2000, 1: 311, al-Qarāfī 2001, 1: 338–42, 169, 3: 987; al-Qarāfī 1994, 1: 248–49.
134. Ibn ʿAbd al-Salām 2000, 1: 258–59; al-Qarāfī 2001, 1: 253; al-Qarāfī 1994, 1: 245.
135. Ibn ʿAbd al-Salām 2000, 1: 177; al-Qarāfī 2001, 2: 451, 3: 875. On means and ends, see generally Ibn ʿAbd al-Salām 2000, 1: 165, 167, 169, 176, 238; al-Qarāfī 2001, 2: 450–53.
136. Ibn ʿAbd al-Salām 2000, 1: 165; Ibn ʿAbd al-Salām 1996a: 140–41.
137. Ibn ʿAbd al-Salām 2000, 1: 173.
138. Ibn ʿAbd al-Salām 2000, 1: 177; al-Qarāfī 2001, 2: 451, 665, 670.
139. Ibn ʿAbd al-Salām 2000, 1: 167; al-Qarāfī 2001, 2: 452.

e. Ends may justify the means (at times, evil and sin are permitted as a means to securing a greater benefit, such that the sin is an inadvertent consequence and not the intended goal).[140]

8. Maxims related to the rights of God and the rights human beings owe one another

a. Acts are divided between the rights of God and the rights of servants. God's rights are the acts entailed by his commands and prohibitions. The rights of human beings are the benefits they are owed.[141]

b. The defining characteristic of the rights of human beings is that they can be relinquished (*isqāṭ*), [even if] they still entail a right of obedience to God's command that a person fulfill his obligations to others.[142]

9. Deputizing an agent for acts of worship maxim

Agents are not permitted in bodily acts of worship, except for acts expressly excepted (e.g., pilgrimage, making up obligatory fasts for the deceased).[143]

10. Legal substitutes maxim (*taqdīrāt*)

a. Existent things are sometimes given the ruling of nonexistent things (e.g., water needed later on is treated as though it does not exist and dry ablution is permitted), and vice versa (e.g., rulings of belief and disbelief assumed of the insane and children).[144]

b. All financial transactions permit the exchange of an existent for a non-existent.[145]

11. Doubt maxim

Doubts, *shubuhāt*, that avert criminal punishments can relate to the assailant, the victim, or the act.[146]

12. Bias (*tuhma*) in judicial proceedings

Bias that undermines witness testimony and judicial decisions are of three types: acute bias that dismisses a testimony or decision (e.g., a judge deciding a case involving his interests); weak bias that does not undermine a testimony or decision (e.g., a witness testifying for his friend); and midlevel bias the effect of which is disputed (e.g., a judge ruling according to his own knowledge and a witness testifying against his enemy).[147]

140. Ibn ʿAbd al-Salām 2000, 1: 176; al-Qarāfī 2001, 2: 452.

141. Ibn ʿAbd al-Salām 2000, 1: 219–59; Ibn ʿAbd al-Salām 1996a: 61–62; al-Qarāfī 2001, 1: 269–70, 2: 675.

142. Ibn ʿAbd al-Salām 2000, 1: 238; al-Qarāfī 2001, 1: 269–70, 2: 675.

143. Ibn ʿAbd al-Salām 2000, 1: 188, 2: 294; al-Qarāfī 2001, 2: 652–53, 3: 984–89.

144. Ibn ʿAbd al-Salām 2000, 2: 205–8; Ibn ʿAbd al-Salām 1996a: 134–35; al-Qarāfī 2001, 1: 169, 2: 648, 3: 987–88.

145. Ibn ʿAbd al-Salām 2000, 2: 209; al-Qarāfī 1994, 5: 307–8.

146. Ibn ʿAbd al-Salām 2000, 2: 279–80, 2: 221; Ibn ʿAbd al-Salām 1996a: 113–14; al-Qarāfī 2001, 4: 1307–9 (expanded to include expiations, *kaffārāt*); al-Qarāfī 1994, 9: 61.

147. Ibn ʿAbd al-Salām 2000, 2: 69–71; al-Qarāfī 2001, 4: 1171–72.

13. A person cannot enact both sides of a financial transaction maxim (with a handful of exceptions countenanced for particular benefits).[148]

14. Maxims related to valid and invalid social transactions

a. Unrealized ends maxim (any act that is legislated to realize a specific end or ends; when it does not accomplish its aim(s), the act is invalidated, *bāṭil*).[149]

b. Reasons for invalidation maxim (an act of worship or a social transaction that is prohibited when a pillar or condition is missing becomes invalid, *fāsid*, whereas an act that is prohibited because of a matter related to it, although its conditions and pillars are intact, is sound, *ṣaḥīḥ*).[150]

15. Legal checks and remedies maxim (*zawājir wa-jawābir*)

Legal checks are to ward off a harm that is realized or expected, while remedies are to redress a benefit that was missed.[151]

16. Governance and institutional maxims

Related to the condition of moral probity for the head of state, his public agents and trustees (*wilāya*),[152] and for private agents and trustees (*wakāla*).

a. Precedence of appointment (for all appointments, precedence is given to the candidate who is most capable, knowledgeable, experienced in that field, and who will best secure its benefits and remove its harms).[153]

b. Appointments and agencies conditioned on moral probity (moral probity is a condition for all agents, *wilāyāt,* that are necessary, e.g., head of state, court witnesses. There is a disagreement about requiring moral probity of agents who are needed, e.g., imam of the ritual prayer. Moral probity is not a condition for embellishment-level agents, e.g., contracting a marriage for one's ward, child custody, because a natural disposition ensures that the best interests are served).[154]

Exception: There is disagreement about requiring moral probity of the head of state because of the impossibility of finding a candidate who meets the standards of moral probity.[155]

17. The head of state must act in the public interest

The head of state is obligated to always act in the public interest.[156]

18. Drawings lots maxim

Drawing lots is legislated when two parties have equal claim to a right or appointment that cannot be reconciled. This is intended to avoid malice, spite, and jealousies.[157]

148. Ibn ʿAbd al-Salām 2000, 2: 308–9; al-Qarāfī 2001, 2: 681–82.
149. Ibn ʿAbd al-Salām 2000, 2: 163, 2: 249; al-Qarāfī 2001, 3: 914.
150. Ibn ʿAbd al-Salām 2000, 2: 163; Ibn ʿAbd al-Salām 1996a: 129–32; al-Qarāfī 2001, 2: 512–17.
151. Ibn ʿAbd al-Salām 2000, 1: 263–73; al-Qarāfī 2001, 1: 357–62; al-Qarāfī 1994, 3: 301–3.
152. See Rabb 2019: 31–32 for discussion of governance maxims.
153. Ibn ʿAbd al-Salām 2000, 1: 106–7; Ibn ʿAbd al-Salām 1996a: 80–84; al-Qarāfī 2001, 2: 601–5, 3: 1006.
154. Ibn ʿAbd al-Salām 2000, 1: 109–11; Ibn ʿAbd al-Salām 1996a: 80–84; al-Qarāfī 2001, 4: 1157–60.
155. Ibn ʿAbd al-Salām 2000, 1: 109–11; al-Qarāfī 2001, 4: 1157–60.
156. Ibn ʿAbd al-Salām 2000, 2: 158; al-Qarāfī 2001, 4: 1165.
157. Ibn ʿAbd al-Salām 2000, 1: 124, 127–28; al-Qarāfī 2001, 4: 1273–76.

19. Overturning legal opinions and judicial decisions maxim

Any legal opinion or judicial decision that contravenes any of four principles—consensus; univocal texts of revelation, *naṣṣ*; universal legal maxims, *qawāʿid ʿāmma*; or a fortiori analogy, *qiyās awlā*—is invalid and overturned. A valid countervailing consideration can justify a legal opinion or judicial decision and contravene all but consensus.[158]

20. The Prophet Muḥammad's legal acts maxim

The Prophet's legal acts are differentiated as (1) judicial rulings, *ḥukm*, (2) fatwas, or (3) administrative decrees, *taṣarruf bi-l-imāma*. They are assumed to be fatwas, which is his predominant legal act, unless there are contrary indications.[159]

21. Religious innovation (*bidʿa*) maxim

Innovation can be assessed according to all five legal values: obligatory, recommended, permissible, disliked, and prohibited.[160]

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158. Ibn ʿAbd al-Salām 2000, 2: 119; al-Qarāfī 2001 1: 174–75, 2: 546, 4: 1167; al-Qarāfī 1393*h*: 473–74; al-Qarāfī 1995a: 88–89, 135–41, 207–8. Mohammad Fadel (2017: 17–21) discusses this maxim at length.

159. Ibn ʿAbd al-Salām 2000, 2: 244; al-Qarāfī 2001, 1: 346–50.

160. Ibn ʿAbd al-Salām 2000, 2: 337–39; al-Qarāfī 2001, 4: 1333–37.

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