

Amr Osman. *The Zāhiri Madhhab (3rd/9th–10th/16th Century): A Textualist Theory of Islamic Law*. Leiden: Brill, 2014. 308 pages. ISBN: 9789004276192.

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Western scholarship on the Zāhiri *madhhab* began with pioneer orientalist Ignaz Goldziher's *Die Zāhiriten* (Leipzig: Otto Schulze, 1884). Goldziher identified Dāwūd al-Zāhiri's (d. 270/884) conception of *fiqh* to be closer to Ahmad ibn Ḥanbal's vis-à-vis Abū Ḥanifa's in the context of the *Ahl al-Ra'y* and *Ahl al-Ḥadīth* classification.<sup>1</sup> This association of Zāhirism with *Ahl al-Ḥadīth* is a widely accepted assumption in the majority of modern studies as well as the classical sources.

Goldziher did not examine the great volume of primary sources involving the works *al-Iḥkām* on *uṣūl* from the Andalusian Ibn Ḥazm (d. 456/1064), one of the main representatives of the school, and *al-Taqrīb*, his other work on logic that contained his views on *uṣūl*. Despite that, Goldziher argued that Ibn Ḥazm had applied the Zāhiri approach, which is known more as a legal school, to various disciplines.

Another early work on Zāhirism is Roger Arnaldez's *Grammaire et théologie chez Ibn Hazm de Cordoue* (Paris: J. Vrin, 1956). Arnaldez, who compared Ibn Ḥazm's views on *uṣūl* to al-Shāfi'ī's, argued Ibn Ḥazm to have adopted a religious system that was closed to change and adaptation as a result of his static language theory, which led him to understand the term *zāhir* in a static meaning as something clear and fixed.<sup>2</sup>

- 1 Ignaz Goldziher, *Zāhirīler: Sistem ve Tarihleri*, Tran. Cihad Tunç (Ankara: Ankara Üniversitesi Basımevi, 1982), 3–4, 64, 72–74.
- 2 Roger Arnaldez, *Grammaire et théologie chez Ibn Ḥazm de Cordoue: Essai sur la Structure et les Conditions de la Pensée Musulmane* (Paris: J. Vrin, 1956), 222–26, 248; Adam Sabra, "Ibn Ḥazm's Literalism: a Critique of Islamic Legal Theory", *Ibn Hazm of Cordoba: The Life and Works of a Controversial Thinker*, Eds. Camilla Adang, Maribel Fierro, & Sabine Schmidtke (Leiden: Brill, 2013), 98–99.

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Those early works were significant in terms of identifying Ibn Ḥazm's conception of *fiqh* and his position within the Zāhiri *madhhab*, yet they had their shortcomings. First of all, those studies evaluated Ibn Ḥazm's conception of *fiqh* without considering *al-Taqrīb*, his work on logic. However, thanks to more recent works, we now know that *al-Taqrīb* was one of the fundamental components underlying Ibn Ḥazm's views, particularly the methodological ones on *uṣūl*. Secondly, the difference between Ibn Ḥazm and other Zāhiris has been largely discussed based on Ibn Ḥazm's works. One of the main reasons behind this approach, in which Ibn Ḥazm's views and works seem to overshadow Zāhirism which existed before him, is simply the fact that the works of Zāhiri scholars that have reached us today all belong to Ibn Ḥazm. Furthermore, in some other studies not directly related to the field, Ibn Ḥazm's views were presented as if they had been commonly accepted by all Zāhiri scholars. Such studies that tend to equate the school with Ibn Ḥazm's understanding perceived Zāhirism as a movement with no internal differences or variety, one that did not change or develop but continued statically. Nevertheless, the discovery of additional sources and the publication of critical editions of many of Ibn Ḥazm's works in more recent times have allowed for a better understanding of the *madhhab* and led to the re-evaluation of certain views attributed to this school.

Amr Osman's *The Zāhiri Madhhab (3rd/9th–10th/16th Century): A Textualist Theory of Islamic Law* is among the most recent Western academic works on Zāhirism. The book is the published version of the author's doctoral thesis that he had completed in 2010 at Princeton University under the supervision of Michael Cook as "The History and Doctrine of the Zāhiri Madhhab." The first part of the study is about the life of Zāhiri scholars and their methodological views. The next section primarily deals with the position of Dāwūd's methodology in relation to the *Ahl al-Ra'y* and *Ahl al-Ḥadīth* trends and examines the meaning of the term *zāhir* during the period in which he lived. The third part compares Ibn Ḥazm's understanding of Zāhirism with its possible modern counterparts (i.e., modern legal interpretation theories such as literalism and textualism). Lastly, the views of Abū Ḥanīfa, Aḥmad ibn Ḥanbal, and Dāwūd are compared based on the examples from *furū' al-fiqh* in order to justify some of the theoretical assumptions made in the preceding sections.

The primary thesis of the book is that Zāhirism better aligns not to the *Ahl al-Ḥadīth* but to the *Ahl al-Ra'y*, especially to Ḥanafism, in terms of its basic conceptions of the primary sources and also in terms of producing jurisprudence. This thesis that Zāhirism accommodated more opinion-based (*ra'y*-based) methods and judgements than the *Ahl al-Ḥadīth* did had actually been proposed earlier by Melchert (1997) and Vishanoff (2011). For example, Vishanoff regarded Mu'tazilis of Baghdad and Zāhiris

to be separate from the *Ahl al-Ra'y* and the *Ahl al-Ḥadīth*, characterizing them as *scripturalists*. Scripturalists argue that legal rules consist only of the commandments in the Qur'an, and these have to be interpreted according to their literal meanings; furthermore, things that are not directly addressed in the Qur'an are permissible (*mubāḥ*). According to this, Vishanoff linked Dāwūd and other Ḍāhirīs with certain names from the Baghdad school of Mu'tazilism, claiming that both had shared views on: the literal interpretation of the Qur'an, the loose attitude toward accepting single-chain reports (*āḥād*) even though the Ḍāhirīs acknowledged the *sunna* as a religious source with the influence of al-Shāfi'ī, the presumption about the clarity of revelation for understanding and application without the intervention or mediation of a special group of people like the ulema, the frequent use of *istiṣḥāb* for the issues that the scripture had no direct reference to, and the rejection of rational juristic reasoning methods such as *qiyās*. Ibn Ḥazm, however, made many concessions in favour of al-Shāfi'ī's approach, as can be seen in his acceptance of all single-chain reports (*āḥād*) transmitted by *thiqa* narrators and in his adoption of a more flexible method of interpretation, including in particular the conditions of restrictions (*takhṣīs*) on general words.<sup>3</sup> But according to Melchert, while some relations were found between many of the Ḍāhiri scholars who lived in the early period and the Mu'tazilites, Dāwūd -the founding figure of the school- was closer to al-Shāfi'ī in terms of both his theological inclinations and legal thinking. Just like al-Shāfi'ī, Dāwūd attempted to reconcile the *Ahl al-Ra'y* and *Ahl al-Ḥadīth* instead of simply being an *Ahl al-Ḥadīth* defender.<sup>4</sup>

Amr Osman takes the argument that Ḍāhirism cannot be considered within *Ahl al-Ḥadīth* to a different point by developing a new definition and conception of Ḍāhirism. The author, who establishes a number of similarities between the Ḍāhiri and Ḥanafi schools, argues that if Dāwūd and his followers were to be included in either of the *Ahl al-Ra'y* or *Ahl al-Ḥadīth* camps, they would certainly be included in the former (91, 271).

By referring to the lives, teacher-student relationships, and teachings of Dāwūd and his followers in the first part of the study mainly based on biographical works such as *ṭabaqāt*, Osman tries to highlight the shared aspects between them and the *Ahl al-Ra'y*. While doing this, he pays limited attention to the views of the *Ahl al-*

3 David R. Vishanoff, *The Formation of Islamic Hermeneutics: How Sunni Legal Theorists Imagined a Revealed Law* (New Haven, CT: American Oriental Society, 2011), 11, 13, 37, 66–88, 98–107.

4 Christopher Melchert, *The Formation of the Sunni Schools of Law (9th–10th Centuries C. E.)* (Leiden: Brill, 1997), 75, 146, 179–184, 188–189, Christopher Melchert, "The Formation of the Sunni Schools of Law," *The Formation of Islamic Law*, Ed. Wael Hallaq (Aldershot: Ashgate Publishing, 2004), 358–59.

*Ra'y* scholars regarding *Zāhirīs*. However, the early-period *fiqh* texts, which provide more systematic information about the views of *Zāhirī* scholars, should have been treated more comprehensively, because no *Zāhirī* sources have survived to the present day other than Ibn Ḥazm's works. Instead, the author builds up his arguments by speculating about the views attributed to the early *Zāhirīs* using unknown contexts. However, he fails to come up with a theoretically consistent conception of pre-Ibn Ḥazm *Zāhirism* except for their suspicion of *qiyās* and other similar forms of legal reasoning, as well as their lack of interest in the transmission of *ḥadīths*. However, examining works from the early period of the *Ḥanafī* jurists of Iraq will show that those jurists had mentioned their debates with Dāwūd and his followers from the same region and that they had levelled heavy criticisms at them. Putting aside the *Ahl al-Ra'y*, who referred to their ignorance in terms of reasoning and *ijtihād* methodology, the *Ḥanafī* jurists who did not view them to be *fuqahā* regarded *aṣḥāb al-zāhir* to be at the level of ordinary commoners.<sup>5</sup> Meanwhile, Amr Osman mentions Dāwūd, who had previously belonged to the *Shāfi'ī* school, to have rejected *qiyās* based on a suggestion that al-*Shāfi'ī*'s reasons for opposing *istiḥsān* were equally valid for *qiyās*. Yet he does not concentrate on the influence al-*Shāfi'ī*'s views had on the formation of *Zāhirī madhhab* to the extent expected from him. Moreover, he shows no interest in identifying *Zāhirism*'s position in relation to the *Shāfi'ī* school in terms of being both an institutionalized school and an alternative method for interpreting the religious scriptures.

While drawing attention to the increasing interest toward *ḥadīths* among the *Zāhirīs* in Andalusia in the 5<sup>th</sup> century AH, Amr Osman does not succeed in consistently or coherently integrating the information he provides about the Andalusian *Zāhirism* with the historical development of the school. Also, the framework he presents about Ibn Ḥazm's views is mainly based on *al-Iḥkām*. The author's attempt to understand Ibn Ḥazm and early *Zāhirism* mainly through *al-Iḥkām* (85) makes it difficult to spot the differences between these two types of *Zāhirism*. According to him, while *Zāhirīs* were interested in the exegesis and the rulings (*aḥkām*) of the Qur'an in the formation period, Ibn Ḥazm and later *Zāhirīs* focused more on *ḥadīth* studies. Ibn Ḥazm, who viewed the Qur'an and *ḥadīths* to be equally binding, expanded the textual framework of the school with *ḥadīths* and thus made *ḥadīths* a primary

5 al-Jaṣṣāṣ, *al-Fuṣūl fī al-Uṣūl*, I-V, Ed. 'Ujayl Jasim al-Nashamī, (Beirut: Wizārat al-Awqāf wa-l-Shu'ūn al-Islāmiyya, 1994), IV, 23–24, 52–55, 88, 95, al-Ḥusayn b. 'Alī al-Saymārī, *Kitāb Masā'il al-Khilāf fī Usūl al-Fiqh: Les problèmes de divergences en méthodologie juridique de Husayn b. 'Alī al-Saymārī*, Ed. Abdelouahad Jahdani (doctoral thesis), (Université de Provence-Aix-Marseille, 1991), 203, al-Ḥusayn b. 'Alī al-Saymārī, *Akhbāru Abī Ḥanīfa wa ashābihi*, (Beirut: Dār 'Alimī'l-Kutub 1985), 166.

source within the school (83–84). While he mentions in the first part of the study that the sources do not provide any information on whether Dāwūd had accepted single-chain reports (*akhbār al-āḥād*) or whether such reports were rejected by some of the early Zāhirīs, particularly by the second imam of the school Ibn Dāwūd (46), the author does quote narrations that Dāwūd had accepted single-chain reports (16–17, 30). However, he makes other claims in the subsequent sections that Zāhirīs had accepted the validity of single-chain reports as *dalīl* (158) and that no reference is found to any dispute over the authoritativeness of ḥadīths despite the high number of disagreements among Zāhirīs on other matters (122). The author also states that Dāwūd had viewed single-chain reports and the Qur’an to be equal in terms of authenticity (*thubūt*) and signification (*dalāla*; 241, 254). Such contradictory statements show the author to have not reached a substantive conclusion about the school’s position concerning single-chain reports.

Amr Osman argues the divergence between the *Ahl al-Ra’y* and the *Ahl al-Ḥadīth* to have not been about the acceptability of rational opinions and *qiyās*. The name *Ahl al-Ra’y* was used to refer to those interested in establishing legal rulings that are consistent with each other within a fixed and coherent legal methodology, whereas the name *Ahl al-Ḥadīth* was used for those who were concerned with synthesizing all the present evidence and reaching legal conclusions suitable to their moral agenda. For example, due to his moral presuppositions and concerns, Aḥmad ibn Ḥanbal did not view a man marrying a woman who previously had an illicit sexual relationship with his father to be permissible, unlike many jurists from the *Ahl al-Ra’y*. In such a situation, the *Ahl al-Ra’y* would be more concerned with the consistent application of the same methodology and principles regardless of its ethical implication. In fact, their excessive use of *qiyās* was the result of their concerns about protecting legal consistency (115-16). Consequently, Dāwūd and Abū Ḥanīfa gave precedence to consistency, reliance on certain principles, systematization of rules, prevention of arbitrariness in law, and production of internally coherent jurisprudence (271). Using this approach, the author does not take into account the reasoning of *istiḥsān* that Ḥanafīs frequently used. Ḥanafīs are known for stretching their general legal system, which is based on *qiyās* or religious texts, by making exceptions for certain conditions and taking necessities, public interest (*maṣlaḥa*), social customs and needs into consideration. In my opinion, the problems Dāwūd and his followers had with ḥadīth narrators on the issue of the createdness of the Qur’an, their lack of interest in ḥadīth narration and relevant discussions, and their adoption of a style of authorship similar to the method of the *Ahl al-Ra’y* in producing *fiqhī* knowledge should not prevent us from considering them within the *Ahl al-Ḥadīth*. The approach of the *Ahl al-Ḥadīth* is not about a preoccupation with ḥadīth narration. The approach

represents a mindset that is satisfied with the linguistic implication of scripture as long as no exigency occurs without any interest for identifying the objectives for which the rules are set and through which aims are achieved.

In order to discover why Dāwūd and his followers were labelled as *Zāhirī* and what features distinguished them from other schools, Osman examines the technical meaning of the term *zāhir* in the 3rd century AH. According to him, the term was used in that period for the practice of prioritizing the plain meaning of a word or statement without going for any limitation or expansion. In this respect, Ḥanafīs and *Zāhirīs* resemble one another on the issue of subscribing to the texts' apparent meanings (165–170). According to Ḥanafīs, the signification of the general words (*‘āmm*) to the individual referents are certain (*qaṭ‘ī*) in the Qur’an, and therefore their having put stricter conditions for the particularization (*takhṣiṣ*) of such words has been rightly identified. However, this principle that general statements in the scripture cannot be subject to *ta’wīl* (allegorical interpretation) or *takhṣiṣ* (particularization) as long as there is no contrary evidence (despite the presence of disagreement on what can be considered as evidence) cannot be considered as the distinctive feature of *Zāhirism* as this is accepted by almost all Muslim schools of law with the exception of the *Bāṭinī* movements. Otherwise, the author would have to identify many other schools as *zāhirī* as well in the sense he has put forth.

According to Amr Osman’s other argument, *Zāhirīs* consider the contexts in the scriptures and thus differ from the literalists who insist on understanding legal texts in the light of language rules without going beyond their lexical literal meaning. As evidence for this, Osman mentions examples of issues in which Ibn Ḥazm had opted for allegorical interpretation (*ta’wīl*) in cases where the lexical meaning of the scripture contradicts the non-textual ones (i.e., contextual, historical, rational, or theological evidence; 214–220). In reality, this is related to both Ibn Ḥazm’s conception of epistemology and logic, as well as its influence on his understanding of the scripture and the production of jurisprudence. As Ibn Ḥazm had argued that those who do not know logic would be unable to understand the divine message and therefore should not issue *fatwās* for others, he also offered logical *qiyās* (i.e., syllogisms) as an alternative to the *fiqhī qiyās*, the method the *Ahl al-Ra’y* used and which he rejected.<sup>6</sup> Not only does the author neglect this detail, which has importance in terms of the differences between

6 For details, see: Muhammet Ali Acar, “İbn Hazm’ın Hanefilere Yönelik Kıyas Eleştirisi (İbn Hazm’s criticism of analogy (*qiyās*) against Hanafīs)” (MA Thesis, Sakarya University, Institute of Social Sciences, 2018), 5–12, 57–65.

Zāhirism and *the Ahl al-Ḥadīth* as well as between Ibn Ḥazm and early Zāhirism, he also does not make a comparison between Ibn Ḥazm's method of reasoning and the method that was attributed to Dāwūd in the pre-Ibn Ḥazm sources.<sup>7</sup> Moreover, Osman states that he could not identify any issue in which Ibn Ḥazm had opposed Dāwūd on the *uṣūl al-fiqh* level (79). However, many issues are found in which Ibn Ḥazm clearly opposed the views of not only Dāwūd but all other Zāhiris as well.<sup>8</sup> Furthermore, although Osman argues otherwise, his statements about Zāhiris' position in relation to the *Ahl al-Ra'y*'s and *Ahl al-Ḥadīth*'s legal thoughts on one hand and literalism and textualism on the other imply that the Zāhiri *madhhab* followed a single linear path during its formation and development. Even though this scenario completely contradicts the role he assigned to Ibn Ḥazm, no other option exists for the study of Zāhiri school than relying on Ibn Ḥazm's writings, according to Osman (85).

The last part of the study, which compares the views of Abū Ḥanīfa, Aḥmad ibn Ḥanbal, and Dāwūd concerning the *furū' al-fiqh*, is far removed from supporting the conclusion about Zāhirism's similarity to the *Ahl al-Ra'y*. Based on the legal judgements these jurists had adopted, many speculations are made here about their method of juristic inference as well as the proofs they possessed while reaching legal judgements. From my perspective, knowledge about the conclusions does not necessarily provide knowledge about the proofs behind these conclusions, nor the inferences and reasoning used to make judgements from these proofs. However, even this part of the book clarifies that serious differences existed between Abū Ḥanīfa's and Dāwūd's respective understandings of *fiqh*.

On top of that, errors and inconsistencies in the way the sources are used are found in this section. For example, Osman attributes to Abū Ḥanīfa the view that divorce is valid when a husband divorces his wife while drunk (258), whereas in Conclusion, Osman states that divorce in such situations is invalid according to both Abū Ḥanīfa and Dāwūd, arguing that those two jurists had adopted similar approaches (275). Another shortcoming of the study is that some of Abū Ḥanīfa's views are cited from the works of Ibn Qudāma and Ibn Ḥazm, not from the primary Ḥanafi sources (256, 258, 260).

7 For example, al-Jaṣṣāṣ argued that, instead of *qiyās*, Dāwūd al-Zāhiri had adopted a method of proof, based on one possible meaning (al-Jaṣṣāṣ, *al-Fuṣūl*, IV, 95).

8 The most important of such issues is arguably the method of the reconciliation of apparent conflicting evidence (*ta'arūḍ al-adilla*) in the scripture. See Ibn Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*, I-II (Beirut: al-Maktaba al-'Aṣriyya 2009) I, 149-166, 368-77.



In conclusion, the study seems to have not gone through a detailed final reading or editorial process but does contribute to the literature with its emphasis on the idea that Zāhirism had evolved and developed historically and had been more than mere unconditional commitment to literal meaning. However, the study fails to make a parallel contribution in terms of its methodology and the conclusions it reached. Despite its attempts to do otherwise, the study largely continues the longstanding tendency to study Zāhirism through Ibn Ḥazm's views. On the other hand, the argument that the Zāhiris are closer to the Ḥanafis than to the *Ahl al-Ḥadīth* was insufficiently substantiated due to errors in the use of sources. The author's questions and arguments, which indeed deserve a serious consideration, will seemingly remain as hypotheses that need to be re-investigated due to the mentioned errors and shortcomings. For the verification of these arguments, which are not very new except the one on the theory of generality (*ʿumūm*), the need continues to exist for a more comprehensive study to be carried out with a meticulous method, paying closer attention to classical sources and previous studies in the field.