Hermeneutics in the Genre of Mukhtaṣar: Civil and Commercial Law in Islamic Law

Husain Kassim
Lanham: Lexington Books, 2019. 227 pages.

Historically, *mukhtaṣar* (abridged) works have played a significant role in the Islamic tradition as easy-to-memorize legal manuals. They concisely condense the corpus juris in all its enormous detail and outline the basic structure of the law around legal maxims and principles. In fact, as early as the fourth/tenth century, every school had already selected a *mukhtaṣar*, not only as a standard pedagogical manual but also as an authoritative survey of its substantive law. Despite its importance as a legal genre, however, few scholars have singled out the *mukhtaṣar* as a single unit of analysis nor studied its role in shaping and systemizing Islamic law. This title is one of the first to address this lacuna by examining the diachronic development of the *mukhtaṣar* literature across the four schools of Islamic law. Focusing on civil and commercial law, Husain Kassim's argument is twofold: first, that *mukhtaṣar*s are more than just succinct legal summaries of earlier jurists but also that in their own right they work to structure the law by incorporating the hermeneutical methodology of al-Shāfiʿī (d. 204/820); and, second, that *mukhtaṣar*s reflect legal development and change over time, a view most clearly expressed in their articulation of new legal positions

not found in the works of earlier jurists. This demonstrates that the Islamic legal system was never static nor immutable but always subject to change and reformulation.

Kassim divides his book into two parts and seven chapters. The first part consists of chapters one and two and focuses on the roles of the jurist al-Shāfiʿī and of the *mukhtaṣar* genre in the formation of the Islamic legal system. Chapter one introduces the hermeneutical methodology of al-Shāfiʿī based on his *Risālah*, which revolves around the concept of *bayān*. According to al-Shāfiʿī, *bayān* not only indicates the comprehensive and coherent nature of the legal tradition but also limits all legal discourse to an established, hierarchical set of scriptural sources. This tiered modality places the Qur'an at the center of legislative authority because of its ontological and epistemological priority. The prophetic hadith then follow and form the second tier, which represents an extension and elaboration of the Qur'anic authority (for the text itself commands obedience to the prophet). Finally, when neither the Qur'an nor hadith are sufficient to answer a legal question, legal analogy based on these two sources becomes permissible and constitutes the last tier. Kassim argues that this hermeneutic influenced the entire discourse of Islamic law and as a result made the legal tradition more systematic and comprehensive.

Chapter two explores the nature and aim of the *mukhtaṣar* genre. Emerging in the seventh/thirteenth century (although Wael Hallaq dates their emergence to the fourth/tenth century), *mukhtaṣar*s served as didactic textbooks for higher learning institutions and was usually taught under the guidance of a professor. For Kassim, they did not just function as 'abridgements' or 'summaries' of larger, existing works but also comprehensively systemized Islamic law according to the methodology of al-Shāfiʿī. This is because later jurists employed his hermeneutical paradigm when composing their own *mukhtaṣar* manuals, as was most clearly expressed in their consistent attribution of legal rulings to prophetic hadith reports. They also abstracted and created general legal principles while at the same time included additional positions not contained in the writings of earlier jurists.

In the second part of the book (chapters three to seven), Kassim explores the ways in which the *mukhtaṣar* genre treats civil and commercial law. He devotes each chapter to one school of law and provides lengthy translations of its legal manuals on the topics of sale contracts, *ṣarf* sale, *salam* sale, right of option, *ribā*, different types of partnership, and lease-hire. Chapter three compares two *mukhtaṣar* works in the Shāfiʿī school of law, the *Mukhtaṣar*

of al-Muzanī (d. 264/878) and the *Tanbīh* of al-Shirāzī (d. 479/1083), with al-Shāfiʿī's *Kitāb al-umm*. He argues that al-Shirāzī expands the law by covering aspects not discussed by the two earlier jurists. Chapter four, on the Ḥanafī school of law, focuses on the *Mukhtaṣar* of al-Ṭahāwī (d. 321/933), the *Mukhtaṣar* of al-Qudūrī (d. 392/1037), and the *Hidāyah* of al-Marghīnānī (d. 593/1197), all of which he compares with the *Jāmiʿ al-ṣaghīr* of al-Shaybānī (d. 189/804). Kassim argues that both al-Ṭahāwī and al-Qudūrī adopt the hermeneutical technique of al-Shāfiʿī because they explicitly attribute their legal rulings to the scriptural sources of the Qur'an and Sunna. Chapter five, on the Hanbali school of law, compares the *Mukhtaṣar* of al-Khiraqī (d. 324/946) with the *Musnad* of Aḥmad ibn Ḥanbal (d. 241/855). Kassim argues that since Ḥanbalī jurists were primarily considered traditionists, their jurisprudence heavily relied upon prophetic hadith and by extension al-Shāfiʿī's hermeneutics. Chapter six, on the Mālikī school of law, compares the *mukhtaṣar* of al-Khalīl (d. 776/1374) and the *Mudawwanah* of Saḥnūn (d. 320/935) with the *Muwaṭṭa'* of Mālik (d. 179/795). Kassim shows how on legal questions where earlier jurists did not transmit any definite rulings, al-Khalīl does not give any legal opinion. Instead, he restricts himself only to the *mashhūr* position, which are those legal opinions that have already been hermeneutically related to the legal canon. Chapter seven studies the difference of opinions amongst the classical jurists (*ikhtilāf al-fuqahā'*) in the eponymous genre. Rather than attributing these differences to varying hermeneutical sources within the schools of law, Kassim argues that they arise from different interpretations of the texts.

While Kassim's *Hermeneutics in the Genre of Mukhtaṣar* sheds light on an understudied topic, his decision to explain all of Sunni legal *mukhtaṣar* literature as fundamentally shaped by the hermeneutical paradigm of al-Shāfiʿī is perhaps ambitious. It is certainly not demonstrated by the evidence Kassim provides in his book, which for the most part consists of summaries and translations of classical legal manuals with minimal commentary or analysis on their hermeneutical strategies. The strategies he does ascribe to jurists and schools are often inferred from little specific evidence (e.g. 36, 63, 66, and 95). For example, he claims the Ḥanbalī jurist al-Khiraqī, by virtue of using hadith, employs the hermeneutics of al-Shāfiʿī and thus contributes to the development and systemization of the legal system—but he provides no evidence of such an approach nor explains how it specifically impacts the Ḥanbalī school (96). Furthermore, he claims to trace the diachronic development of the *mukhtaṣar* genre but leaves unexamined masses of relevant material.

He provides no account of the positionality of each jurist in his own political, social, and cultural context and the ways in which it impacted and shaped his composition of a *mukhtaṣar* text. He also neglects discussing the debates surrounding the reception of each *mukhtaṣar*, its proponents and detractors, as well as its wider implication on theology and other religious thought.

Aside from the legal manuals he cites, Kassim makes little to no use of outside material, as illustrated in his page and a half bibliography. He provides no literature review of previous scholarship and thus fails to communicate to the reader the state of the existing field on the topic and the contributions his scholarship will make. As for the *mukhtaṣar* texts he does employ, they are treated with interspersed (at times ambiguous) translations, paraphrase, and summary, for he does not use quotation marks and seems to abridge (or at least elide) his translation. On numerous occasions the reader is hard-pressed to find the connection between his central argument and his pages of translation detailing the civil and commercial law. He also makes reductionist, generalized, unsupported claims, such as the Western and Islamic legal systems being mutually entirely incompatible (ix).

Finally, the book is riddled with grammatical mistakes that makes the book difficult to read and sometimes unclear or ambiguous (e.g. xii, 4, 6-7, 53, 55, 62, 82-83, and 187). For example, he writes that "to the extent Ahmad ibn Hanbal uses the revealed sources consisting of the Qur'an and the prophetic hadith reports, he is considered in the party of al-Shafiʿi"—without noting that most earlier scholars like Abū Ḥanīfa and Mālik also relied upon these two sources in their legal thought (95). If he means Ibn Ḥanbal follows al-Shāfiʿī in not assigning legal weight to local communal traditions but rather privileging a more systematic and scholarly enterprise of engaging with a canon of selected texts, Kassim does not clearly articulate this argument nor cite its earlier advocates (e.g., Ahmed El Shamsy). Although there is much useful information in this book, and it helpfully brings to the fore a neglected subject in the field of Islamic law, it is poorly written, unclear, and disorganized. The argument is neither demonstrated nor sustained throughout, which mars the book's credibility and authority. Hopefully it will serve as a first step for further, more focused studies on the topic.

Umar Shareef
PhD candidate, Department of Arabic and Islamic Studies
Georgetown University, Washington, DC

doi: 10.35632/ajis.v37i1-2.721