‘Ilm al-ikhtilāf in Modern Western and Muslim Studies of Juristic Disagreement–A Critical Analysis*

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Received: 6/11/2022                         Peer-reviewed: 24/9/2023                          Accepted: 8/11/2023

Abstract

The acknowledgment of juristic disagreement (‘ilm al-ikhtilāf) as an independent field of Islamic law by Western historians of Fiqh and Uṣūl is over a century and a half old. Yet, there is still much ambiguity and confusion about this legal subarea, its history, its theories and methods, and its place in the emergence and development of Islamic law. This paper provides a critical reading of modern Western studies of ‘ilm al-ikhtilāf. It analyzes the ways in which Western scholars have conceived of this sub-science and visits key unresolved issues with a focus on the conceptual and methodological undertaking of ‘ilm al-ikhtilāf. Through its critical reading of modern Western studies of ‘ilm al-ikhtilāf, this paper mends two gaps in the examined scholarship: the conceptual confusion of the concepts of ‘ikhtilāf and ‘khilāf on the one hand, and the confusion of the genres of “ikhtilāf fiqhī” (juristic disagreement) and “jadal fiqhī” (juristic dialectics) on the other. The methodology employed in this study comprises a comprehensive and interdisciplinary approach, which bridges the realms of pre-modern and modern sources. It hinges on a meticulous analysis of both Muslim and Western studies of Islamic law, deliberately interweaving these two dimensions to provide a more holistic and nuanced perspective on the questions undertaken within this research. After close examination, it is observed that key distinctions made with regard to the science of ‘ilm al-ikhtilāf, such as between the concepts of ‘khilāf and ‘ikhtilāf, are a modern invention that has no lexical precedent. According to this study, distinction is to be made between Fiqh-based, practical disagreements and Uṣūl-based, theoretical disagreements. This study contributes the first source reading of Western scholarship on the science of juristic disagreement. In addition, classifying ‘ilm al-ikhtilāf in terms of practical (Fiqh-based) and theoretical (Uṣūl-based) studies is an original reading.

Keywords: Juristic disagreement; ‘ilm al-ikhtilāf; khilāf; Fiqh; Uṣūl; Islamic legal history

* The genesis of this paper is traced back to my PhD dissertation, “The Other Averroes: Revealed Law and the Craft of Juristic Disagreement,” unpublished, University of Toronto, 2017. Available at: https://hdl.handle.net/1807/79074. This paper revisits partially some of its preliminary discussions concerning ikhtilāf and expands some of the theoretical and analytical frameworks initially proposed there.
علم الاختلاف الفقهي في الدراسات الغربية والدراسات الإسلامية المعاصرة: دراسة تحليلية نقدية

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تاريخ القبول: 8/9/2023
تاريخ التحكيم: 24/9/2023
تاريخ الاستلام: 6/11/2023

ملخص البحث

أهداف البحث: مع أن أول بوادر اهتمام المؤرخين الغربيين بالاختلاف الفقهي تعود لأزيد من قرن ونصف مضت، ما زالت الدراسات الغربية لم تقن تفاصيل هذا العلم وتاريخه، ونظرياته ومباحثه، ودوهد ما شاخص الفقه الإسلامي وتطوره، وما زالت أيضًا يشوبها الارتباك وعدم الدقة في مسائل منهجية ومفاهيمية عدة. تقدم هذه الدراسة قراءة نقدية في الدراسات الغربية الحديثة التي تناولت الاختلاف الفقهي، سواء من باب مذهبي أم تلك التي تطرقت له بإجمال، وترتكز على التصور المفاهيمي والمنهجي المتصل بالاختلاف في الدراسات الإسلامية الغربية.

منهج الدراسة: من خلال قراءة نقدية للدراسات الغربية الحديثة التي اهتمت بالاختلاف، تسعى هذه الدراسة لمعالجة وسد فجواتتين رئيستين: الخطط المفاهيمي والمعجمي بين مصطلحي الاختلاف والخلاف والاختلاف الفقهي والجائزة الفقهي من جهة أخرى. ويعتمد منهج الدراسة في مقارنة هذا الموضوع على تقدير مقارنة شاملة وسليمة، بحيث تقلب بين الدراسات التراثية والمعاصرة من جهة، ومن جهة أخرى، تقدم تقديرًا نظريًا للدراسات الإسلامية والغربية التي عُنِيَت بمسألة الاختلاف الفقهي، بما أتاح للباحث تقديم نظرة متميزة أكثر دقة لمسائل هذه الدراسة وباحثها.

النتائج: بعد فحص عميق للعديد من الدراسات، تبين أن الاختلاف المنهجي عند بعض الباحثين، مثل التمييز بين مصطلحي الاختلاف والخلاف، هو ابتداع ليس له أساس معجمي في التراث الإسلامي. وفقًا لهذه الدراسة، فإن مقاربة الاختلاف يجب أن تقوم على التمييز بين ما نطلق عليه "الاختلاف المفاهيمي" الذي يرتبط بأصول الفقه ويعكس اهتمامات النظرية والعملية، في مقابل "الاختلاف العملي" الذي يرتبط بالفقه كمجال تطبيقي أساس.

أصالة البحث: تعد هذه أول دراسة مرجعية تغمى باهتمام الباحثين الغربيين بعلم الاختلاف، كما أن تصنيف دراسات الاختلاف الفقهي إلى عملية مرتبطة بالفقه ونظرية مرتبطة بأصول الفقه هي قراءة أصلية ومتميزة.

الكلمات المفتاحية: علم الاختلاف، الاختلاف، الفقه، أصول الفقه، الدراسات الإسلامية العربية

https://doi.org/10.29117/jcisis.2024.0389

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Introduction

Differences and disagreements within the field of Fiqh have been historically recognized by Western scholars and historians of Islamic law. The German Orientalist Gustav Flügel may be credited as one of the first to identify this phenomenon as an independent area of legal inquiry.¹ In his 1861 article on the categories of Ḥanafi jurists, Flügel made a passing reference to Abū Zayd al-Dabbūsī's (d. 430/1038) book, Taṣīs al-Naẓār,² as the inaugural treatise on ᶜilm al-ikhtilāf, subsequently referring to it in German as the “wissenschaft der theologischen controverse” (the science of theological controversy).³ Although Flügel did not explicitly attribute this information to a particular pre-modern source, but it is highly probable that his reference was the well-known 7ᵗʰ/13ᵗʰ century biographer Ibn Khallikān (d. 681/1282). For he remarks on one occasion in Wafayāt al-ʾaᶜyān (in Arabic) that al-Dabbūsī was “the pioneer scholar who laid the foundation and advanced the field of the science of ᶜilm al-ikhtilāf.”⁴

It took about two decades later before another German Orientalist, Ignaz Goldziher, briefly touched on the question of ᶜilm al-ikhtilāf as a scholarly discipline in his 1884 book on the Zāhirī legal school, Die Zāhiriten.⁵ He referred to it as ‘khilāfiyyāt’ and ‘ᶜilm al-ikhtilāfāt,’ defining it as the “comparative study of the differences among the orthodox schools.”⁶ Goldziher astutely remarked the relative absence of scholarly attention to this field and strongly urged the need for a comprehensive bibliographical exploration of ᶜilm al-ikhtilāf. This call was later reiterated a few decades later by Franz Rosenthal, another distinguished Western scholar of Islam, in his translation of Ibn Khaldūn’s historical preamble, Al-Muqaddima.⁷ However, despite more than a century and a half have passed since the recognition of the role of ᶜilm al-ikhtilāf in the evolution of Islamic law, ambiguity persists concerning this subfield. Within Western academic circles, there remains a considerable need for further exploration and in-depth investigation into the historical evolution, theoretical underpinnings, and methodological frameworks of ᶜilm al-ikhtilāf.

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³ Flügel, “Die Classen,” 301. ‘ʿAbd Allāh b. ‘Umar b. ʿĪsā Abū Zayd was known more by his nickname al-Dabbūsī after his birth town Dabbūsa, present-day Buxoro in modern Uzbekistan.
⁶ Goldziher, The Zāhiriten, 36, fn. 63. See his illustration on what he called the “differences of opinion of the Prophet’s companions” (ikhtilāf al-ṣaḥāba) and “the science of difference of opinion in the legal schools and their Imāms” (ᶜilm al-ikhtilāfāt), in Goldziher, The Zāhiriten, 210-11.
This study fills a critical gap in the existing body of scholarship by analyzing and reflecting upon Western scholars’ efforts in the domain of ‘ilm al-ikhtilāf. The primary objective of the present study is twofold. Firstly, it delineates the various approaches employed by scholars and historians of Islamic law in their exploration of the question of ‘ilm al-ikhtilāf. Secondly, it engages in a comprehensive reconsideration of unresolved related questions, with a particular emphasis on the conceptual discernment and utilization of key Arabic terms essential for grasping the question of ikhtilāf.

The methodology employed in this study comprises a comprehensive and interdisciplinary approach, which bridges the realms of pre-modern and modern sources. It hinges on a meticulous analysis of both Muslim and Western studies of Islamic law, deliberately interweaving these two dimensions to provide a more holistic and nuanced perspective on the questions undertaken within this research. Drawing on classical Arabic texts and modern scholarly works, this article navigates the intricate terrain of ikhtilāf, critically examining its historical evolution, theoretical foundations, and methodological underpinnings. By synthesizing an array of sources and scholarly traditions, this article seeks to contribute a more in-depth understanding of the subject matter, thus advancing the discourse on ‘ilm al-ikhtilāf within modern Islamic legal scholarship.

To facilitate this undertaking, I have structured this paper into three principal sections. The first section provides a concise yet comprehensive critical assessment of how ‘ilm al-ikhtilāf has been addressed within modern Western scholarship. The second section explores the challenge of differentiating between the concepts of ‘ikhtilāf and ‘khilāf. To mitigate the conceptual and terminological ambiguities arising from this conflation, I investigate the classical lexicographical foundations of both terms and subject them to critical examination within the context of significant modern legal studies. This section is further divided into three subsections. The first focuses on the interplay of the terms ‘khilāf and ‘ikhtilāf within modern Western Islamic studies. The second reflects on the pre-modern lexical deliberations of the questions at hand, with an emphasis on three noun forms. The last subsection examines them within key contemporary discussions in Islamic legal scholarship more broadly. Finally, the third section addresses a methodological quandary of pressing importance, namely, the conflation of the science of ‘ilm al-ikhtilāf with dialectic (jadal). I posit that a methodologically sound approach to the study and documentation of the history of juristic disagreements can be achieved by making a careful distinction between two subgenres within it. I categorize these genres as theoretical studies of ikhtilāf and practical studies of ikhtilāf.

In conclusion, it is important to note that, for the sake of technical precision and to preserve the depth of meaning inherent in the original phrase of “‘ilm al-ikhtilāf,” I will consistently use the Arabic expression instead of English equivalents, such as “the science of juristic disagreement.” In addition, on numerous occasions, I will take the liberty of using simply “Ikhtilāf” in capitalized form to signify this field as a distinct Islamic legal subfield.
1. ‘Ilm al-Ikhtilāf in Modern Western Scholarship on Islamic Law

Flügel’s assertion that Dabbūsī was the founder of ‘ilm al-ikhtilāf was challenged by Goldziher on two main grounds. Firstly, Goldziher argued that interest in ikhtilāf had already surfaced during the 3rd/9th century, insisting that Dabbūsī could not have been its originator. Secondly, Goldziher attributed the beginnings of this science to Shāfiʿī (d. 204/820), and especially refers to his treatise, Ikhtilāf al-‘Irāqīyyayn.1 However, it should be stressed that Goldziher’s perspective also falls short of accuracy. Given the most accessible and datable extant works on Ikhtilāf, and as contemporary source-critical studies of Shāfiʿī have demonstrated, neither of Goldziher’s arguments hold true. Shāfiʿī cannot be credited as the founder of Ikhtilāf. Ibn al-Nadīm (d. 385/995) recorded in the Fihrist (in Arabic), two Ikhtilāf works that were likely authored prior to Shāfiʿī’s time: Abū Yūsuf’s (d. 182/798) Ikhtilāf al-amsār and al-Shaybānī’s (d. 189/804) Al-Radd ‘alā ahl al-madīna.2

Furthermore, the very treatise upon which Goldziher relied to support his claim that Shāfiʿī was the pioneer of Ikhtilāf (i.e., Ikhtilāf al-‘Irāqīyyayn in the dual, not in the plural (al-‘Irāqīyyīn), as he mistakenly read it), was actually written by Abū Yūsuf, with Shāfiʿī providing a commentary on it. The same treatise is also known by the title, Ikhtilāf Abī Ḥanīfa wa Ibn Abī Laylā (the disagreement between Abū Ḥanīfa and Abū Laylā) (in Arabic).3 Therefore, considering the date of Abū Yūsuf’s death —regardless if one accepts Norman Calder’s dating of Shāfiʿī’s Risāla at 300/912 or Christopher Melchert’s earlier dating at just after 256/869-70—4 it appears that Abū Yūsuf indeed had engaged in a systematic study of Ikhtilāf before Shāfiʿī.

The first Western scholar to appropriately position Ikhtilāf within the practical domain of Fiqh, rather than kalām, was Joseph Schacht. In The Origins of Muhammadan Jurisprudence, he consistently and largely used the term ‘ikhtilāf’ (along with its English equivalent, ‘disagreement’) to highlight a direct contrast with consensus (ijmāʿ).5 His focus on their ‘antithetical’ relationship may be attributed to his close interest in Shāfiʿī’s Risāla, wherein he primarily addresses Ikhtilāf in contrast with Ijmāʿ. This binary focus

1 Goldziher, The Zāhirīs, 36, fn. 63.  
was not entirely uncommon among legal scholars of the formative period. Many authorities from that era frequently presented legal knowledge as a binary system that ends in either consensus or disagreement. Shāfiʿi, for example, has categorically stated that “knowledge has two facets: consensus and disagreement (fīl-ʿilm wajhān, al-ijmāʿ wal-ikhtilāf).” Before Shāfiʿi, Mālik consistently emphasized in the Muwaffaqaʿ that his main objective is to distinguish between legal rulings that had received consensus among the scholars of Medina and those that were subjects of their dispute.

Schacht’s work on Shāfiʿi’s legal theory has served as a source of inspiration for numerous subsequent studies delving into Shāfiʿi’s treatment of ʿilm al-Ikhtilāf. Scholars like Calder, Azizy, and Jaques have undertaken in-depth investigations into Shāfiʿi’s perspectives on Ikhtilāf. Jaques, in particular, examined Ṭabaqāt al-Shāfiʿīyya (The Classes of Shāfiʿī Jurists) by the Shāfiʿi scholar, Ibn Qāḍī Shuhba (d. 851/1448), and the course of legitimizing and disseminating juristic disputes within the Shāfiʿi School. Several other scholars have directed their focus towards Ikhtilāf works authored by other authorities. For instance, Saghir Masumi conducted a comprehensive study of Abū Jaʿfar al-Ṭaḥāwī’s (d. 321/933) Ikhtilāf al-Fuqahā˝. Noteworthy among these contemporary efforts is George Makdisi’s account in The Rise of Colleges, which presents the concept of ikhtilāf as a scholastic method of learning. While his broader emphasis centers on Muslims’ interest in dialectic (jadal), Makdisi’s distinct perspective that situates Ikhtilāf in the institutional framework of legal knowledge acquisition remains an original insight that warrants further exploration.

In addition to the aforementioned studies, it is crucial to include two significant works. The first is John Walbridge’s “ʿIlm al-Ikhtilāf and the Institutionalization of Disagreement,” in which he explores Ikhtilāf as a phenomenon and delves into how the pre-modern Muslim community managed to uphold religious unity by systematically tolerating juristic disagreement. Walbridge grapples with a pivotal question: why did Muslim scholars permit diversity of opinion in sensitive areas of religion that might seem to demand uniformity? However, despite his primary focus on what he uniformly refers to as “ʿilm al-ikhtilāf,” he offers limited insight into it as a distinct domain of legal knowledge —i.e., as an autonomous science, which has its own set of governing principles, analytical and synthesis methods, content structure, and writing style.

The second work, which, to some extent, addresses these aspects of the study of jurists’ disputes, is

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Mohammad Kamali’s article, “The Scope of Diversity and Ikhtilāf (‘ilm al-ikhtilāf) in the Sharī’a.” Kamali outlines the significance of khilāf in comparison to ījmār, its causes (asbāb al-ikhtilāf), and the ethical conduct surrounding it (adab al-ikhtilāf). He sheds light on these two aspects through practical examples, offering valuable insights into the science of Ikhtilāf.

2. ‘Ikhtilāf’ vs. ‘Khilāf’: Different Categories or Two Faces of the Same Coin?
2-1 The Interplay of ‘ikhtilāf’ vs. ‘khilāf’ in Western Scholarship

The role of ‘ilm al-ikhtilāf within the field of Fiqh, as established, has long been acknowledged by Western scholars of Islamic law. This recognition is evident in works where Ikhtilāf is either the primary focus of research, as in the studies by Calder, Kamali and Masud, or a secondary topic, as in the works of Goldziher, Schacht and Makdisi. However, Western scholars, like certain Eastern scholars — distinguished here strictly geographically — employ two different terms to refer to the science of juristic disagreement: ‘khilāf’ and ‘ikhtilāf’. This conflation poses key epistemological and methodological questions worthy of close attention. Essentially, are khilāf and ikhtilāf distinct subareas of ‘ilm al-ikhtilāf, or do they refer to the same concept? Three reactions can be identified in this regard. The first group of scholars consistently uses the term ‘khilāf,’ the second opts for ‘ikhtilāf,’ and the third and largest group uses both terms interchangeably and inconsistently.

For instance, Goldziher engages various expressions to signify ‘ilm al-ikhtilāf, including ‘al-khilāfīyyāt’, ‘al-khilāf’, ‘al-ikhtilāfāt’, ‘ikhtilāfāt’ and ‘ikhtilāf’. Scholars like Hallaq, Masud, Masumi and Jaques alternate between ‘khilāf’ and ‘ikhtilāf’. It appears that Hallaq does not make a clear distinction between ‘khilāf’ and ‘ikhtilāf,’ but rather, he often used both interchangeably, rendering them as “‘ilm al-ikhtilāf” or simply as “disagreement.” In contrast, Schacht, Calder, and Walbridge invoke ‘ikhtilāf’ almost exclusively. At one point, Schacht suggested that the term ‘khilāf’ implies inconsistency and self-contradiction, thus advocating for the use of ‘ikhtilāf’, even though some of the very books that he references carry within

3 Goldziher, *The Zāhirīs*, respectively, 36, x and 210, 36 and 66, 94 and 96.
4 E.g., Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), 24, 137 and 202; Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2004), 125. Similar patterns can be observed in the works of Masumi, Masud, and Jaques. For instance, Masud, writing from the perspective of the Mālikī School, borrows his terms from Shāṭibī, thus employs such expressions as “‘ilm al-khilāf,” “murā’at al-khilāf,” and “ikhtilāf.” Masud’s “Ikhtilāf al-Fuqahā;” 72 and 78 respectively.
their titles the word ‘khilāf’, such as ʿAbd Al-Wahhāb’s Al-Ishrāf alā Nukat Masāʿīl al-Khilāf. Calder, too, rarely uses the term ‘khilāf’ in his study. Walbridge upholds that the expression assigned by Muslim scholars to the discipline of juristic disagreement is “ilm al-Ikhtilāf.”

However, none of these scholars has elaborately clarified why they chose to use ‘khilāf’ or ‘ikhtilāf’, or both. Their preferences, it seems, have been shaped by the terminology used by the classical scholars they are studying. For example, Schacht and Calder worked extensively on Shāfiʿī, which is why they adopted the term ‘ikhtilāf.’ For Shāfiʿī himself used this term in several of his legal treatises, including the Risāla, Ikhtilāf al-Shāfiʿī wa Mālik and Ikhtilāf al-Ḥadīth. On the other hand, Goldziher and Masud use ‘khilāf’ and ‘ikhtilāf’ interchangeably, which is the approach taken by the classical authorities of their research, namely, Ibn Ḥazm in Goldziher’s work and Shāṭibī in Masud’s research.

Kamali stands out as one of the few scholars in the Western tradition who has endeavored to reconcile the distinction between ‘khilāf’ and ‘ikhtilāf’. He has done so within the context of his examination of the significance of ilm al-Ikhtilāf for legal reasoning (ijtihad). On the one hand, he contends that a disagreement could be considered legally permissible only if it is supported by valid textual evidence and does not lead to impractical injunctions. On the other hand, he delineates two categories of juristic disagreements: sound and unsound. He calls the former ‘ikhtilāf’ and the latter ‘khilāf’, claiming that the pre-modern Muslim jurists, with a particular focus on Shāfiʿī and Ibn Taymiyya, embraced the former and rejected the latter.

In the end of this subsection, it should be emphasized that it is accurate that some scholars, including al-Ghazālī and others, spoke of juristic differences in terms of praiseworthy (maḥmūd) and blameworthy (madhmūm). However, the attempt to draw a clear demarcation between ‘khilāf’ and ‘ikhtilāf’ on this ground, as will be shown in the subsequent discussion, is merely a modern construct that has no precedent in the discussions of the classical Muslim scholars, whether in the realm of Islamic jurisprudence or in lexicographical studies. This distinction has gained attention especially among modern Arab and Muslim scholars of Fiqh and Uṣūl, as will be established.

2.2 The Pre-modern Lexicographical Discussion of ‘Khilāf’ and ‘Ikhtilāf’

Classical Arabic lexicographers do not draw any significant distinctions between the concepts of ‘khilāf’ and ‘ikhtilāf’. A rigorous study of the root ‘khlf’ in seven of the most authoritative classical dictionaries

1 Schacht, Origins, 96, fn. 3.
2 Walbridge, “The Islamic Art of Asking Questions,” 70.
3 Goldziher, The Zāhirīs, 63, fn. 63. Masud draws extensively on Shāṭibī who distinguishes between ‘khilāf’ and ‘ikhtilāf’.
reveals that they predominantly consider both terms interchangeable. The meanings of disagreement, difference, and conflict of opinion associated with terms ‘khilāf’ and ‘ikhtilāf’ can be traced back to at least three derived word forms of the root ‘khlf’: ‘khalf’, ‘khalaf’, and ‘khilf’. In their first usage, disagreement conveys the sense of an opinion that stands behind (i.e., khalf) an established one. In the second, it refers to an opinion intended to succeed (khalaf) an established one. In the third usage, it takes the mental image of something not the same; something different, though not necessarily contradictory. The verb ‘khalafa’ (opp. of ‘wāfaqa’, to agree and conform) implies disagreement and acting in nonconformity but not contradiction. None of the referenced lexicographers above seems to consider ‘ikhtilāf’ and ‘khilāf’ as antithetical, in the manner Kamali, for example, does.

In a broader context of the root khlf, there are over fifteen meanings associated with various derived word forms. However, only the three ones mentioned above (‘khilf’, ‘khalf’, ‘khalaf’) are directly relevant to the context of ‘ilm al-ikhtilāf. All seven consulted lexicographers acknowledge these three noun forms to varying degrees, drawing extensively on the Quran as a primary source, supplemented by the rich reservoir of Arabic poetry, to elucidate the meanings and usages of these terms. The following is a detailed exposition of their understanding of these three noun forms.

**Noun Form 1: ‘khilf’,** a masculine noun (the feminine form being khilfa), is employed to describe two entities possessing distinct qualities that may not contradict each other. For instance, in early Arab usage, ‘khilfān’ was used to depict two brothers with opposing characteristics, such as one being tall while the other is short or one having light skin while the other has dark skin. Farāhīdī, along with Jawharī and Zabīdī, viewed ‘khilāf’ and ‘mukhālafa’ as synonymous, in the sense of “in disagreement with.” In his commentary on Quran 9:81, “Those who were left behind rejoiced at sitting behind the messenger of Allah” (Farāhīdī interpreted “khilāfa rasūli Allāhi” as signifying “disagreeing with him” (mukhālafatuhu). Several English translations of the meaning of the Quran, including versions by Pickthall, Yusuf Ali, Abdul Daryabadi, Taqi Usmani and Mohsin, translate ‘khilāf’ in this verse as ‘behind’. However, following Farāhīdī’s understanding of ‘khilf’ as equivalent to ‘mukhālafa’ (disagreement), Q 9:81 should read: “those who were left behind rejoiced at sitting (behind), in disagreement with the messenger of Allah,” thus offering a more precise rendition which maintains the original meaning and context.


2 Azharī, Tahdhib 7:397. Azharī’s same example was copied later in, Ibn Manẓūr, Līsān, 9-91.
Ibn Fāris also elucidates that can denote difference and dissimilarity. Therefore, when one says “ikhtalafa al-nās” and “al-nāsu khilfa,” it means that people are different (mukhtalifūn). Ibn Manẓūr further expands on this concept and underscores the verb forms ‘khālafa’, ‘takhālafa’ and ‘ikhtalafa’. He provides illustrations from poetry and colloquial usage where ‘khilf’ and ‘khilfa’ are used to convey the ideas of difference, diversity, disagreement, dissimilarity, multiplicity, and variation, as seen in Quran 6:141, “and the date-palm and crops of diverse flavor.” He associates the adjective ‘mukhtalif’ with the noun ‘khilfa’ and reinforces Azhari’s interpretation of ‘khilfān’. He then presents instances from everyday Arab speech, such as “dalwāya khilfān” (lit., my two [well] buckets are not the same), which vividly conveys the image of one bucket being full of water and ascending while the other is empty and descending, or one bucket being new while the other is old. Like Ibn Manẓūr, Zabīdī comprehends the phrase “ikhtalafa l-amrān” as referring to two disagreeing things, but he adds that they are inherently contradictory.

Iṣfahānī’s entry on the root “khlf” is one of the most inclusive. He mentions the noun form ‘ikhtilāf’ (verb: ikhtalafa) and links it to concepts of disagreement and difference. While he deems ‘ikhtilāf’ and ‘mukhālafa’ to be synonymous, Iṣfahānī, unlike Zabīdī, sees the term ‘khilāf’ as encompassing the idea of opposition and contradiction (taḍādd) without being entirely equivalent to it. In other words, he distinguishes between two opposites (aḍdād) that are inherently different, and two different things that are not necessarily opposites.

Iṣfahānī also observes that in the Quran, the word ‘ikhtilāf’ and its related forms are for the most part used to signify quarrels and disputes (munāzaᶜa and mujādala). He provides elaboration on approximately ten Quranic verses that feature ‘ikhtilāf’ in this context, including 3:105, 2:213, and 2:176. While Yusuf Ali’s translation renders this verse as “those who seek causes of dispute in the Book are in a schism far (from the purpose),” according to Iṣfahānī, “ikhtalafū fī l-kitāb” means they derive an interpretation from the Quran that is different from what Allah intended.

Noun form 2: ‘khalaf’ (verb: khalafa) covers a wide range of meanings, mainly entailing succeeding

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1 Ibn Fāris, Muᶜjam, 2:213.
3 Respectively, “And be not as those who became divided and differed after the clear proofs had come unto them...”
generations or posterity. For example, Ibn Fāris defines ‘khalafa’ as “something that succeeds another and takes its place.”

As such, he ascribes to the term such notions as succession, substitution, replacement, following, remaining behind, and regeneration (in the context of plants and animal parts). Ibn Fāris draws on the Quran to emphasize the idea of a succeeding generation, referring particularly to 7:169 (also 19:59): “a generation [khalaf] has succeeded them,” and 9:87 (also 9:93): “they are content to be with those who remain behind [khawālif].” The term “khawālif” in the latter verse is used to describe individuals who remain behind, such as women, the elderly, and the infirm, who were unable to accompany Prophet Muhammad in battles and trade journeys. Here, “staying behind” is derived from the concept of succeeding those who remained at home.

Within the specific context of Q 7:169 (and 19:59), Iṣfahānī remarks a clear distinction between ‘khalf’ and ‘khalaf’, despite both sharing the same verb ‘khalafa’ and entailing succeeding generations. ‘Khalaf’ conveys a positive meaning, signifying righteous offspring (khalaf ṣāliḥ). In contrast, ‘khalf’ carries a negative connotation, denoting depraved posterity (khalf fāsid). This distinction is illustrated by both verses successively. In 7:169, it is stated: “and a generation [khalf] succeeded them who inherited the Book” ﴿مِن بَعۡدِهِمۡ خَلۡـفٞ وَرِثُواْ ٱلۡكِتَٰـبَ﴾. In 19:59, “Then they were succeeded by a later generation [khalaf] who neglected prayer and followed base desires” ﴿ضَاعُـواْ ٱلصَّلَـوٰةَ وَٱتَّبَعُـواْ ٱلشَّـهَوَٰتِۖ فَخَلَـفَ مِـنۢ بَعۡدِهِـمۡ خَلۡـفٌ﴾. Among the six English translations consulted, only Yusuf Ali introduces the word ‘evil’ to describe the generation in the first verse, aligning more closely with the Quranic Arabic and Iṣfahānī’s differentiation between ‘khalf’ and ‘khalaf’.

Of all Quranic verses that signify succession, 25:62 stands out as particularly interesting: “And He it is Who made the night and the day successive [khilfa]” ﴿وَهُـوَ ٱلَِّي جَعَـلَ ٱلَّۡـلَ وَٱلنَّهَـارَ خِلۡـفَـةٗ﴾. It draws the image of the day and night succeeding and inheriting one another in an endless cycle. Farāhīdī interprets ‘khilfa’ (feminine of khilf) within the context as a form of ikhtilaf, emphasizing that the day and night succeed one another because they are inherently different. It is worth noting that the word ‘khilf’ finds its roots, according to all examined lexicographers, in ‘istisqā’, meaning drawing water from a water source. Ibn Manẓūr explains that Arabs used to say, for example, “min ayna khilfatukum?” and “min ayna tastaqūn?” to inquire about the source of water. They called a communal source of water ‘khilfa’ because the act of drawing water (istisqā) from it occurred in succession, whether for watering their cattle or obtaining household use. Therefore, ‘khilf’ and ‘khalaf’ are derived from the concept of coming after or taking place in succession.


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1 Ibn Fāris, Muᶜjam, 2:213.
3 Farāhīdī, Ayn, 4:268.
that which is before them and that which is behind them.” Another significant example found in the Quran and widely cited by lexicographers is 9:87, “They are content to be with those who remain behind [khawālif].” Notably, Azharī brings particular attention to the derogatory extension of the term ‘khawālif’ (with its singular forms ‘khalfā’ for the feminine and ‘khalf’ for the masculine). He informs that in early Arabic usage, ‘khalf’ and ‘khalfā’ were used to describe individuals who exhibited characteristics of mental instability and developmental challenges, akin to the use of the term ‘behind’ in English to describe someone who may be perceived as mentally or socially “left behind.”

In summary, the nuanced distinctions between the terms ‘khilāf’ and ‘ikhtilāf’ stem from the various derived word forms of the root ‘khlf’, particularly ‘khalf’, ‘khalaf’, and ‘khilf’. The first, ‘khalf’, entails an opinion that stands behind an already established one, while the second, ‘khalaf’, pertains to an opinion intended to succeed another. On the other hand, ‘khilf’ signifies something different, although not necessarily contradictory, since the verb ‘khalafa’ (opposite of ‘wāfaqa’, to agree and conform) implies a state of disagreement and non-conformity. Most significantly, as has been established, none of our consulted lexicographers considers ‘ikhtilāf’ and ‘khilāf’ to be antithetical. Instead, they regard them as largely interchangeable in their usage.

2.3 The Modern Debate of ‘Khilāf’ and ‘Ikhtilāf’ in Islamic Legal Studies

Before delving into the contemporary debate regarding the distinction between ‘khilāf’ and ‘ikhtilāf’, it is essential to highlight that early jurists within the classical traditions of Fiqh and Uṣūl showed little, if any, concern for potential lexical dissimilarities between these two terms. For instance, Shāfiʿī himself used them interchangeably in various treatises. His primary differentiation was between valid and invalid disagreements, for he prohibited divergence in matters addressed in the Quran and/or Sunna but allowed it in cases not covered by these sources where a ruling could be obtained through taʻwīl and qiyās.1 Numerous classical scholars, including Marwazī (d. 294/905), Ṭabarī (d. 310/922), Ṭaḥāwī (d. 321/933), Qāḍī ʿAbd al-Wahhāb (d. 422/1031), Asmandī (d. 552/1157), among others, used ‘ikhtilāf’ and ‘khilāf’ interchangeably.2 Jurists from the post-formative period, such as Qarāfī (d. 684/1285)3 and Shāṭibī

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1 Shāfiʿī designated several entries to juristic disagreement in the Risāla. See, Shāfiʿī, Al-Umm, 1:259-70. His use of the terms ‘khilāf’ and ‘ikhtilāf’ can also be seen in other texts, such as Kitāb Ikhtilāf Mālik wa al-Shāfiʿī, being vol. 8 of the Umm.


(d. 790/1388), also did not appear to differentiate between the two terms based on lexical distinctions. Although Qarāfī and Shāṭibī may have used ‘khilāf’ more frequently when referring to ċilm al-ikhtilāf as a legal subfield, they both considered ‘khilāf’ and ‘ikhtilāf’ to denote disputes in the process of ijtihād, which could be accepted if grounded in valid legal proof or rejected if rooted in capricious opinion.

Qarāfī further distinguishes rejected ‘khilāf’ as “remote disagreement” (khilāf shādhdh). In common usage, ‘shādhdh’ denotes something that is irregular and deviates from the norm and is as an exception to it. In its technical legal context, it signifies a viewpoint that not only deviates from the dominant opinion, but one that is also unsound and is based on weak evidence. Ibn Ḥazm (d. 456/1064), in Section 27 of his Iḥkām, delves into this concept extensively. I choose to translate it as ‘remote’ to convey the notion of a legal perspective that is distant in terms of possibility, akin to Ibn Rushd’s (d. 595/1198) term ‘baᶜīd’ (lit., far) which he uses to describe unsound and invalid disagreements. Regarding Shāṭibī, he did not dedicate a separate work to the question of ikhtilāf. However, he addressed it in various sections of the Muwāfaqāt, particularly in the book of Ijtiḥād.

The contemporary debate about the distinction between ‘khilāf’ and ‘ikhtilāf’ appears to be a modern invention that finds little support in the legal and lexicographical works and discussions of the classical Muslim scholars. This ongoing debate is characterized by three primary arguments. The first argument asserts that ‘ikhtilāf’ and ‘khilāf’ are two distinct concepts; a position advocated by scholars like ċAbd al-Karīm Zaydān, who argues that Shāṭibī permitted the former and forbade the latter. According to him, ‘khilāf’ means a divergent opinion based on a misleading whim rather than on the lawgiver’s intent. On the other hand, ‘ikhtilāf’ denotes a sustained opposing opinion contributed by an independent legal scholar on which no indicants are found in the Quran or Sunnah. Similarly, Tāha Jābir al-ᶜAlwānī described ‘ikhtilāf’ as “an aspect of rational speculation and ijtihād.” He established two conditions for a juristic disagreement to be accepted. First, it must be grounded in valid legal evidence. Second, it must provide only probable and realistic rulings. A dispute failing to meet these two requirements cannot be accepted and therefore is categorized as ‘khilāf’.

Other key modern scholars took the same stance on this quandary as ċAlwānī. For example, Kamali

5 Shāṭibī, Al-Muwāfaqāt, 4:89-243.
6 Zaydān, Al-Wajīz fi usūl al-fuṣḥ, (in Arabic), (Cairo: Mu'assasat Qurṭuba, 1976), 327-46.
7 Ibid, 328.
8 ċAlwānī, Adab al-Ikhtilāf, 104.
decries ‘khilāf’ for constituting “unrealistic disagreement.” Muḥammad ᶜAwwāma draws on Kafawī’s (d. 1094/1683), Al-Kulliyyāt, to underscore the same differentiation. Kafawī defines ‘khilāf’ as a dispute concerning the method and objective of revealed law that lacks legal evidence, thereby rendering it an invalid form of ijtihād and a potential source of division. On the other hand, Kafawī defines ‘ikhtilāf’ as a distinct opinion that pertains solely to the methods of revealed law, supported by legal proof, making it a valid form of ijtihād and a manifestation of mercy. To put it simply, ‘khilāf’ represents a dispute within a legal domain that necessitates no further exploration and contradicts the Quran, Sunnah, and ijmāᶜ. The second argument in this debate regards ‘khilāf’ as the valid form of disagreement and ‘ikhtilāf’ as the invalid form. This position is articulated, for example, in Muḥammad Marᶜashlī’s book, Al-Khilāf yamnaᶜ al-ikhtilāf (khilāf prevents ikhtilāf), (in Arabic). Marᶜashlī conceives of ‘khilāf’ as a manifestation of diversity and plurality of opinion that fosters unity and guards against dissension. Based on his interpretation of sources like Iṣfahānī, he defined ‘khilāf’ as an opinion grounded in valid legal proof, which stems from the inherent diversity in people’s dispositions. He thus argues that this form of disagreement does not lead to schism but rather promotes mutual understanding.

In contrast, Marᶜashlī views ‘ikhtilāf’ as divisive and detrimental to the integrity of Islamic law and the unity of the Muslim community. However, Marᶜashlī’s elaboration appears somewhat perplexing at times, as it contradicts some of his own claims. For instance, while he aligns with Qannūjī’s comparison of the approaches of ‘khilāf’ and jadal, he also maintains that ‘khilāf’ does not represent contention (munāzaᶜa and mushāqqa), which is essential to the practice of jadal. In addition, Marᶜashlī refers to Ibn Masʳūd’s statement: “al-khilāf sharr” (dissonance is evil), citing it as a warning against the practice of ‘ikhtilāf’, even though the saying pertains to ‘khilāf’. Also, this position differs from that of Kafawī, whom Marᶜashlī draws upon. As seen earlier, Kafawī tolerates and accepts ‘ikhtilāf’ but not ‘khilāf’.

The third argument in this ongoing debate represents ‘ikhtilāf’ and ‘khilāf’ as synonymous, considering them to be essentially the same concept. For instance, Mohammed Erougui defines ‘ikhtilāf’ and ‘khilāf’ as both entailing the opposite of ‘wifāq’ (agreement, conformity, harmony, and unity). He views them

1 Kamali, The Scope of Diversity, 317.
3 Marᶜashlī, Al-Khilāf, 11-17.
4 Qannūjī defined ‘khilāf’ as a science by which [scholars] learn [how to use] solid proof to present legal arguments and to reprove uncertainties and false disputes. It is [like] dialectic that is a division of logic, but with special focus on the religious objectives.” Qannūjī, Abjad al-ᶜUlūm: al-washy al-marqūm fī al-ulūm, (in Arabic), ed. ‘Abd al-Jabbār Zakkār (Damascus: Wizārat al-Thaqāfa wa l-Irshād al-Qawmī, 1978), 276.
5 Marᶜashlī, Al-Khilāf, 16. His two paragraphs that introduce Iṣfahānī and Kafawī (14) are almost word for word and may have been copied from ᶜAwwāma (reviewed above).
as disagreements between two or more jurists regarding legal matters, such as when one scholar permits an action while another prohibits it. Erougui also offers a reading of Shāṭībī’s conception of ‘khilāf’ and ‘ikhtilāf’ that differs from Zaydān’s position. According to Erougui, Shāṭībī used both terms interchangeably to indicate a form of ʿijtihād that could be based on valid legal proof and thus accepted or rooted in capricious opinion and therefore rejected.¹

In more recent scholarship, Nawwār ben Shallī shares the perspective that ‘ikhtilāf’ and ‘khilāf’ are synonymous terms, and refers to the concept as a legal sub-science through expressions like “ʿilm al-khilāf,” “ʿilm al-ikhtilāf,” and “al-khilāfiyyāt.” He aligns this field with contemporary comparative Islamic law, and defines it as the “comparison (muwāzana; lit., balancing) of practical legal injunctions to determine the most preponderant among them.”² According to Shallī, the term ‘muwāzana’ closely reflects the true goal of modern comparative Islamic law. This endeavor does not merely involve compiling rulings to contrast their areas of conflict (muqābala). Instead, it aims to balance these rulings for identifying which one prevails over another, and determine which are more appropriate to be admitted as valid and which are not. Shallī further distinguished between what he labels ‘doctrinal disagreements’ (khilāf madhhabī) and ‘superior disagreements’ (khilāf ʿālī). He clarifies that in the first type, jurists confine themselves to disputes within their respective legal schools, which in the second, they engage in comparing them across the different schools of law. In another study, I call the first type intra-madhhab and intra-doctrinal disagreements and the second inter-madhhab and inter-doctrinal disagreements.³

3. Khilāf, Ikhtilāf, and Jadal

Beyond the unresolved connection between ‘khilāf’ and ‘ikhtilāf’, another important relationship that warrants close attention, and has led to confusion, is between juristic disagreement and juristic dialectic (al-jadal al-fiqhī), as the two share similar characteristics. George Makdisi, in his seminal book, The Rise of Colleges, acknowledges the complex relationship between the concepts of khilāf, jadal and nazar, and shows how scholars have intermingled them sometimes. The primary source of this confusion, as Makdisi points out, lies in the very nature of ʿilm al-ikhtilāf, since “to deal with khilāf, one had to be skilled in jadal, dialectic, and in munāẓara, nazar, disputation.”⁴ It is essential to recognize the key role that the arts of disputation and argumentation played in theology, which may have led to the association of the terms khilāf, jadal and nazar. However, in the realm of Fiqh, we must remember that many authoritative scholars viewed dialectic with suspicion in its application to the law. They warned against its potentially detrimental impact on legal scholarship, as it could divert legal scholars from their primary objectives. Ibn Rushd, for example, consciously structured his comparative legal work, Bidāyat al-Mujtahid, in a way that deliberately

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¹ Erougui, Naẓariyyat al-Taqᶜī d, 181-2.
² Shallī, Asās, 22.
⁴ Makdisi, The Rise of Colleges, 109. Makdisi translated “nazar” and “al-nazar al-fiqhī” as disputation, although it is not certain if early Muslim jurists used “nazar” in the sense of disputation. Naẓar, not munāẓara, entails a rational process of speculation.
avoid aligning it with the dialectic style of kalām.

In his emphasis on the khilāf-madhhab antithesis and the role of dialectic in the evolution of Uṣūl al-Fiqh, Makdisi emphasizes that prospective law students had a structured educational path. First, they mastered the hermeneutics of their madhhab. Second, they explored controversial issues (khilāf) within it. Finally, they acquired the techniques of jadal. This last stage was crucial as it equipped them with the tools of argumentation, which were vital for defending their madhhab’s positions and, conversely, for refuting those of other schools. Makdisi sees khilāf and jadal here as instructional models, essentially considering them the same. This view might be linked to his influence by two authoritative sources.

The first source is Ibn ʿAqīl (d. 513/1119), especially his work, Al-Wāḍīh (the lucid in legal theory), (in Arabic), comprising three volumes, Kitāb al-madhhab (book of the [Ḥanbalī legal] school), Kitāb al-jadal (book of dialectic) and Kitāb al-khilāf (book of khilāf). 1 The second influential source is Ḥajjī Khalīfa (d. 1067/1657) and his Kashf al-ẓunūn (uncovering doubts), (in Arabic), particularly his section on “ʿIlm al-khilāf,” where he identifies juristic disagreement with dialectic and even intertwines them with logic. 2 The stance of Ibn ʿAqīl and Ḥajjī Khalīfa appears to have significantly impacted not only Makdisi’s understanding of the relationship between juristic disagreement and dialectic but also his broader conception of the scholastic method within the classical Muslim legal circles.

In a recent study of the place of juristic disagreement within the Mālikī School, Muḥammad al-ʿAlamī has taken a different perspective on the khilāf-ikhtilāf-jadal conundrum. He categorizes three fields and approaches within the realm of ʿilm al-ikhtilāf. He calls the first and overarching category “al-khilāf al-ʿālī” (superior khilāf). From this foundational domain, two more categories emerge, “ʿilm al-ikhtilāf” (science of ikhtilāf) and “ʿilm al-khilāf” (science of khilāf). 3 He defines “superior khilāf” as a comparative examination of Fiqh and Uṣūl that transcends the boundaries of individual legal schools. It is the antithesis of a narrow madhhab-focused study, which delves into the specific hermeneutics of a particular school. Such investigations, according to ʿAlamī, combine the methodologies of “ʿilm al-khilāf” and “ʿilm al-ikhtilāf,” and incorporate elements of jadal while traversing the hermeneutical frameworks of various schools.

To support this position, ʿAlamī quotes Ibn Juzayy of Granada (d.741/1340), who presented his work Al-Qawānīn al-Fiqhiyya (the canons of Fiqh) as a book that “fuses Mālikī law and the practice of superior juristic disagreement” (jamaʿa bayn tamhīd al-madhhab wa dhikr al-khilāf al-ʿālī). 4 He also references

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Ibn Farḥūn (d. 799/1397), particularly his representation of Muḥammad b. Yūsuf b. Masdī’s (d. 663/1264) 
َIَлَمَ al-Nāsīk bi-‘lām al-Manāsīk (in Arabic) as a study of the four legal schools and an examination of 
“al-khilāf al-‘ālī.” Furthermore, ʿAlāmī draws attention to Ḥajjī Khalīfa’s (d. 1067/1657) description of Ibn Ḥazm’s 
Muhallā as a work on “al-khilāf al-‘ālī.”²

‘Alāmī classifies the second category as the “science of ikhtilāf,” a comparative model primarily 
centered on exploring disagreements across the schools. However, it does not employ dialectical methods. 
This category often encompasses works with titles like “Ikhtilāf al-Fuqahā” (the jurists’ disagreements) or 
“Ikhtilāf al-Ulamā” (the scholars’ disagreements), as seen in the works of Ṭabarī and Marwazī.³ 

Contrary to this, the third category (science of khilāf) distinguishes itself by not making a specific 
school’s hermeneutics its central focus, which enables scholars to draw from theories and approaches of other 
schools. Another key characteristic of this group is that it incorporates various methodological frameworks 
and accepts other forms of legal writing as part of the science of ‘ilm al-khilāf. These forms of legal writing 
include the muwaṭṭaʿāt (path-breaking works of fiqh, such as Muwaṭṭaʿ Mālik), the jawaḥmī (comprehensive 
collections of Ḥadīth, such as Jāmiʿ al-Tirmidhī), and the sunan (fiqh-focused collections of Ḥadīth, such as 
Sunan Abū Dāwūd).⁴ ‘Ilm al-khilāf, according to ʿAlāmī, is conceptually aligned with jadal in terms of its 
objectives and methodology, for it, too, equips scholars with the tools necessary to defend the hermeneutics 
of their respective legal schools and refute those of rivaling schools. To further support the idea that ‘ilm al-khilāf 
shares methodological similarities with jadal, and in addition to the observations of Ibn ʿAqīl and 
Ḥajjī Khalīfa, ʿAlāmī cites similar views held by Ṭāshkubrī Zadah (d. 986/1561) as well as Ibn Khaldūn.⁵ 

Within the context of this debate, it is worth recognizing a prominent style found in jadal and invoked 
in jadal-driven legal works, which is founded on the use of conversational modes based on envisioning a 
dialogic exchange with an intellectual rival. These texts commonly employ phrases such as “if they say…, 
we say” (in-qālū… qulnā). Another technique borrowed from jadal is the use of objections and counter- 
objections that are structured through systematic questions and answers. Scholars use standard formulas 
like “then, we ask them why such and such (fa naqūlu lahum limadhā).” However, it is also worth noting 
that not all works of khilāf draw directly from the techniques employed in jadal. This distinction is evident 
when examining the tables of content in these works. The key question is whether categorizing khilāf 
wrítings based on the author’s personal style and intention is a helpful approach. In short, the answer is no. 
Looking at jadal does not offer much utility in distinguishing between works of khilāf and ikhtilāf, even 
if one assumes, for the sake of argument, that these two are indeed distinct subfields within the broader

2 Ḥajjī Khalīfa, Kashf al-Ẓunūn, 1:721. 
3 ‘Alāmī, Mustawʿib, 1:5. 
4 ‘Alāmī, Mustawʿib, 1:41-42. 
domain of ‘ilm al-ikhtilāf.

The value of jadal in the study of Islamic law, including ‘ilm al-ikhtilāf, is unquestionable. However, equating jadal and ikhtilāf, as proposed by Makdisi, does not help in understanding the genre boundaries of the latter. Additionally, probing the extent to which a work is rooted in jadal, as suggested by ‘Alamī, does not necessarily assist in distinguishing khilāf from ikhtilāf, even if one assumes that they are distinct categories in the first place. An examination of the contents and chapter divisions in the works of khilāf, which ‘Alamī claims to be jadal-focused, reveals some inconsistencies.¹ For instance, both Ibn Ḥazm’s Muḥallā and Ibn al-Qaṣṣār’s ‘Uyūn al-adilla, which ‘Alamī considers books of al-khilāf al-‘ālī, share the same structural elements as works he includes in the ikhtilāf category, like Ṭabarī’s Ikhtilāf al-fuqahā’ and Marwazi’s Ikhtilāf al-‘ulamā’. The likes of these works delve into practical issues, often starting with a chapter on cleanliness (jahāra). Nonetheless, while the approaches of jadal and ikhtilāf should not be conflated as the same, it is important to emphasize that students used to be trained in both as part what is sometimes described as ‘integration of knowledge’ (al-takāmul al-maᶜrifī).²

Contrarily, Ibn ‘Aqīl’s Kitāb al-khilāf, which ‘Alamī considers a work of ikhtilāf, focuses on theoretical topics commonly found in Uṣūl books. It explores topics such as qiyās, ijtihād, and a wide range of linguistic relations essential to legal inference (istinbāṭ), including general/specific (‘āmm/khāṣṣ) and literal/non-literal terms (ḥaqīqa/majāz).³ As for its outline and fields of focus, Ibn ‘Aqīl’s work appears to be similar to Ibn al-Sīd al-Baṭalyawsī’s (d. 521/1127) Kitāb al-Inṣāf.⁴ Another inconsistency in ‘Alamī’s account is considering Ibn Rushd’s Bidāyat al-Mujtahid as a book of superior khilāf, however, as it has been established by recent studies of Ibn Rushd’s legal thought, in almost no part of the book does Ibn Rushd engage with a dialectic approach.⁵

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² Not to be confused with the concept of ‘knowledge integration’ associated with the political project of ‘Islamization of knowledge’. For more on the classical conception of ‘al-takāmul’, see, Mourad Laabdi and Aziz Elbittioui, “From Aslamat al-Maᶜrifa to al-Takāmul al-Maᵊrifī.” Religions 15, 3:342 (2024).


⁴ The two, however, differ in that Ibn ‘Aqīl stresses the role of jadal in the field of ‘ilm al-ikhtilāf and applies it throughout, whereas Baṭalyawsī stresses on one occasion, deliberately it seems, that his intention is not to refute others’ doctrines but to “call attention” (al-tanbīḥ ‘alā) to jurists’ disputes and do so in an objective manner (bi-insāf). Ibn al-Sīd, Al-Inṣāf fi l-tanbīḥ ‘alā l-marḥāl wal-asbāb al-latif al-musulmin fi ‘ara’if, ed. Muḥammad al-Dāya (Damascus: Dār al-Fikr, 1987), 29-32.

In conclusion, the question of whether the terms of ‘ikhtilāf’ and ‘khilāf’ belong to the same genre holds significant importance within the study of Islamic law. While ʿAlamī’s attempt to delineate these terms in relation to fiqh, uṣūl and jadal is commendable, it is not without its limitations. A notable shortcoming in his approach is the identification of jadal as a distinguishing feature between “ʿilm al-khilāf” and “ʿilm al-ikhtilāf.” This model presupposes that these two terms represent distinct categories of inquiry. However, I propose an alternative way for conceptualizing the domain of ʿilm al-ikhtilāf. Firstly, I suggest the exclusion of al-jadal al-fiqhī (not jadal broadly) from discussions concerning ʿilm al-ikhtilāf. Indeed, works centered on jadal reasoning are typically identifiable through their use of the term ‘jadal’ in their titles, such as Ibn ʿAqīl’s Kitāb al-Jadal and Juwaynī’s Al-Kāfiya fī l-Jadal (both in Arabic).¹

Conversely, it should be recognized that certain works with the realm of khilāf necessitate closer examination. In several instances, these khilāf-oriented texts delve into matters akin to those explored in books on jadal. For instance, segments of Ibn ʿAqīl’s Kitāb al-khilāf address issues in a manner reminiscent of Juwaynī’s Al-Kāfiya. Consequently, it may be more advantageous to view ʿilm al-ikhtilāf as comprising two distinct writing genres, each addressing different aspects of this discipline. One genre focuses on the theoretical dimension of ʿilm al-ikhtilāf, while the other pertains to its practical applications. This alternative perspective underscores the unitary nature of ʿilm al-ikhtilāf, irrespective of whether it is labeled khilāf or ikhtilāf, while acknowledging the existence of two discernible subareas, one theoretical and the other practical.

Practical studies of ikhtilāf primarily encompass works with a pragmatic orientation, which are designed to facilitate immediate action and resolution. Their ultimate objective is to weigh legal rulings carefully and ensure the most suitable decisions are reached and juristic disputes are potentially resolved. Following ʿAlamī’s model, this category includes works typically attributed to “ʿilm al-ikhtilāf” and “al-khilāf al-ʿālī,” such as Marwazī’s Ikhtilāf al-ʿulamāʾ, Ṭabarī’s Ikhtilāf al-fuqahāʾ, Ṭahāwī’s Ikhtilāf al-fuqahāʾ, Ibn al-Qaṣṣār’s Uyūn al-adilla, and Ibn Ḥazm’s Al-Muhallā. Other works that may be included in this category are those written by ʿAbd Al-Wahhāb, Māwardī (d. 450/1058), Bayhaqī (d. 458/1066), Ibn ʿAbd al-Barr’s (d. 463/1070), Juwaynī, Shāshī (d. 507/1113), Asmandī (d. 552/1157), and Ibn Rushd the grandson (all in

These writings serve the practical realm of legal decision-making and contribute to resolving contemporary juristic issues.

On the other hand, theoretical studies of *ikhtilāf* do not prioritize the practical application of law as an ultimate end. Instead, they delve into the intricate world of juristic disputes, regardless of their immediate relevance for legal decision-making. Theoretical studies seek to contextualize the concept of *ikhtilāf* within the broader historical narrative of Islamic law. Unlike their practical counterparts, they do not focus solely on the disputed opinions themselves but rather on an array of issues related to the historical development and methodologies of *ikhtilāf*. Writings in this area are relatively scarce and appear to have emerged at a later stage in the history of Islamic law. Early exemplars of such theoretical works include Ibn ‘Aqīl’s *Kitāb al-khilāf* and Baṭalyawsī’s *Kitāb al-Inṣāf* (both in Arabic).

**Conclusion**

This study has embarked on a comprehensive exploration of ‘ilm al-*ikhtilāf*, the science of juristic disagreement within Islamic law, with the aim of addressing several crucial aspects related to its historical development, theoretical foundations, and methodological approaches. The journey into this domain began by exploring the Western scholarly interest in ‘ilm al-*ikhtilāf*, notably tracing it back to the work of Gustav Flügel. Subsequently, in the first section, this study has developed an in-depth examination of Western scholarship on ‘ilm al-*ikhtilāf* reflecting and commenting upon the persistent ambiguity surrounding its various fundamental aspects.

One of the pivotal discussions at the heart of this study is the differentiation between two closely related Arabic terms, ‘*khilāf*’ and ‘*ikhtilāf*’. This discussion has been expounded over the second section, which is further divided into three main subsections. The first subsection focused on the interplay of ‘*ikhtilāf*’ and ‘*khilāf*’ in Western scholarship. The second expanded on the pre-modern lexicographical discussion of

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2 For more on this division and a comprehensive list of works that represent each domain of ‘ilm al-*ikhtilāf*, see, Laabdi, “Legal Controversy ‘Ilm al-Khilāf,” Oxford Online Bibliographies in Islamic Studies (accessed October 27, 2022).
these two terms. The third reflected on their modern debate within Islamic legal studies more broadly. The conceptual and linguistic analysis advanced in this section has mainly highlighted the interchangeability of ‘ikhtilāf’ and ‘khilāf’ and demonstrated the extent to which both terms represent various facets of disagreement, diverse opinions, and non-conformity, however, without necessarily implying contradiction.

Finally, the last section grappled with a methodological dilemma of pressing significance, specifically the blurring of lines between the science of ‘ilm al-ikhtilāf and the domain of dialectic (jadal). As this study asserted and ultimately concluded, a methodologically robust framework for the examination and documentation of the historical trajectory of juristic disagreements can be established by diligently delineating two subgenres within this legal field: theoretical and practical. This variability underscores the necessity for a more systematic approach to ‘ilm al-ikhtilāf within Western academic circles and Muslim legal studies more broadly.

This study is a key step toward addressing some of the multifaceted questions surrounding this intellectual filed, and ultimately contributes to a more profound understanding of its historical development and the diverse scholarly undertakings. It underlines the urgent requisite for sustained exploration and in-depth analysis of ‘ilm al-ikhtilāf within the broader framework of Islamic law. Attaining a deep understanding of ‘ilm al-ikhtilāf, encompassing its historical roots, theoretical underpinnings, and methodological intricacies, is imperative to illuminate this significant discipline within Islamic jurisprudence. The future holds promise for more scholarship that will elucidate the intricate layers of ‘ilm al-ikhtilāf and provide more fresh insights and perspectives into this evolving area of legal inquiry.
Bibliography


