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METHODOLOGICAL FEATURES OF AL-ŞADR AL-SHAHĪD'S LEGAL REASONING: PRINCIPLES OF UŞŪL AL-FIQH AND APPROACHES TO FURŪ' AL-FIQH

Abstract. *The article analyses the legal methodology of Ḥusām al-Dīn 'Umar b. 'Abd al-'Azīz al-Şadr al-Shahīd al-Bukhārī (483–536/1090–1141), a leading Ḥanafī jurist of Bukhara, on the basis of his commentaries on Adab al-qāḍī and al-Jāmi' al-şaghīr, his fatwa collections and the reception of his opinions in later Ḥanafī literature. The study first situates al-Şadr al-Shahīd within the “method of the jurists” (ṭarīqat al-fuqahā'), the Ḥanafī approach to legal theory that derives general rules from the recorded rulings of the school's founders. It then identifies the principal features of his reasoning: consistent causal justification (ta'līl) of rulings, precise determination of the point of disagreement (taḥrīr maḥall al-nizā'), elimination of confusion between similar cases through the science of distinctions (furūq), the use of legal maxims (qawā'id fiqhiyya) such as “means take the ruling of ends” and the blocking of means (sadd al-dharā'i'), the extension of cases through derivation, and the weighing of opinions (tarjīḥ). In the field of substantive law the article describes further characteristics of his method, including comparative presentation of Ḥanafī and Shāfi'ī arguments, correction of transmitted reports, caution in issuing categorical judgements, preference for acts of public benefit and attention to the priorities of legal obligations (fiqh al-awlawiyyāt). The article concludes that al-Şadr al-Shahīd's method combines fidelity to the school with sensitivity to social needs, which explains the lasting authority of his preferred opinions in the Ḥanafī tradition.*

Keywords: *al-Şadr al-Shahīd, uşūl al-fiqh, furū' al-fiqh, Ḥanafī methodology, ta'līl, tarjīḥ, legal maxims, istiḥsān, Bukhara, Adab al-qāḍī*

INTRODUCTION

The scholarly standing of a jurist in the Ḥanafī tradition is measured not only by the number of his works but above all by the authority of his corrections (*taṣḥīḥāt*) and preferred opinions (*tarjīḥāt*) within the school. By this measure Ḥusām al-Dīn ‘Umar b. ‘Abd al-‘Azīz, known as al-Ṣadr al-Shahīd, belongs to the first rank of the jurists of Transoxiana. Later authors repeatedly cite his choices; Ibn ‘Ābidīn’s *Radd al-muḥtār*, one of the most authoritative reference works of the late Ḥanafī school, refers to him dozens of times, both as al-Ṣadr al-Shahīd and as Ḥusām al-Dīn (Ibn ‘Ābidīn, 1992). The editors of his works likewise emphasise that his commentaries stand out among those of his contemporaries. Muḥyī Hilāl al-Sarḥān, the editor of his commentary on *Adab al-qāḍī*, even recommended that it be adopted as a textbook for students of Ḥanafī law, recalling that Ḥājjī Khalīfa, more than five centuries after the author’s death, called it the most famous and widespread of the commentaries on al-Khaṣṣāf’s work (Ḥājjī Khalīfa, 1999:1/1).

Although al-Ṣadr al-Shahīd’s importance is widely acknowledged, his method has not yet been the subject of a separate study. Existing research concentrates on his biography and on the edition of individual texts (Hakimi, 2019: 389–409; Uygur, 2021: 309–333). The present article seeks to fill this gap by identifying the characteristic features of his reasoning in legal theory and substantive law. The analysis is based on his commentaries on al-Khaṣṣāf’s *Adab al-qāḍī* and al-Shaybānī’s *al-Jāmi‘ al-ṣaghīr*, on *‘Umdat al-fatāwā* and on the quotations from his lost or unpublished works preserved in later compendia such as *al-Muḥīṭ al-Burhānī*, *al-Baḥr al-rā‘iq* and *al-Fatāwā al-Hindiyya*. The methods used are textual analysis, comparison with parallel passages in other Ḥanafī works and contextual interpretation.

MAIN PART

All Sunni schools share basic principles such as the authority of the Qur’an and the Sunna, yet each has distinctive features shaped by the environment in which it developed and by the teachers of its founders. The Ḥanafī school spread more widely than any other: most of the judges of the Abbasid state, of the Seljuk sultanate and of the Khwārazmshāhs were Ḥanafīs, and when Nūr al-Dīn Maḥmūd b. Zangī, himself a Ḥanafī, ruled Syria, he spread the school there, as a result of which the number of Ḥanafīs in Egypt also increased (Taymūr, 1990:17).

In legal theory the Ḥanafīs developed what Ibn Khaldūn calls the method of the jurists, as distinct from that of the theologians. Their works, he notes, are closer to law and more suited to substantive rulings because they contain many examples and are built on the fine points of law. Muḥammad Abū Zahra explains that this method establishes general rules on the basis of the rulings transmitted from the founding imams, so that the rule never contradicts the recorded cases; it therefore took shape after the substantive law had been written down (al-Urmawī, 1988). In this tradition the earliest authors were ‘Īsā b. Abān (d. 220 AH), al-Karkhī (d. 340 AH), al-Jaṣṣāṣ (d. 370 AH), al-Dabūsī (d. 430 AH) and al-Sarakhsī, after whom came al-Ṣadr al-Shahīd. His short *Uṣūl al-fiqh* attracted glosses and commentaries, and a copy of it is preserved in St Petersburg (Hājjī Khalīfa, 1999:1/133; al-Ṣadr al-Shahīd, 2023: 28). His legal theory, however, is most visible not in this treatise but in the way he applies principles to concrete cases.

The most consistent feature of al-Ṣadr al-Shahīd’s method is his effort to justify almost every ruling he records. He does so by referring to what he has already established, by applying a principle of legal theory or by adducing a sound rational argument. Thus he states that a person raising his hands for the opening *takbīr* of prayer is not required to spread his fingers, nor is he required to do so during the *tashahhud*, whereas in bowing the fingers are spread, because the hands need to grasp the knees and this can only be done with open fingers (Burhān al-Dīn, 2004:1/291). When pronouncing the testimony of faith in the *tashahhud*, the worshipper does not point with his index finger, and this is the position on which fatwa is given (Ibn ‘Ābidīn, 1992: 1/508), because the basis of prayer is calm and dignity. If a worshipper says *subḥān Allāh* when called by a companion, his prayer is not invalidated, since this is not an answer but a notification that he is praying, in accordance with the Prophetic instruction that whoever is troubled by something in his prayer should glorify God.

The same method governs his treatment of judicial procedure. Discussing the vetting of witnesses (*tazkiya*), he explains that in his time and region judges preferred confidential vetting, either so that the person consulted would not be identified and deceived in an age when people’s conditions had changed, or so that the appearance of the witnesses would not intimidate him. He supports this with the example of the judge Shurayḥ, who initially accepted public vetting but later introduced confidential vetting; when asked why he had introduced something new, Shurayḥ replied: “People have

introduced new things, so we have introduced something for them” (al-Ṣadr al-Shahīd, Tazkiya MS: 33). This justification shows how al-Ṣadr al-Shahīd connected procedural rules to changing social conditions. In the same spirit he cites the report that ‘Umar b. al-Khaṭṭāb appointed Ḥābis b. Sa‘d al-Ṭā’ī as judge of Ḥimṣ and later dismissed him, using it as evidence that the ruler may remove a judge who delays in carrying out his duties (Ibn Nujaym, n.d.: 6/300).

A second feature is the precise determination of the point of disagreement (*tahrīr maḥall al-nizā’*), achieved by distinguishing what is agreed upon from what is disputed. An example is the case of a man who sets out for the obligatory pilgrimage, loses consciousness, and whose travelling companions enter the state of *iḥrām* on his behalf. According to Abū Ḥanīfa this suffices, whereas Abū Yūsuf and Muḥammad hold that it does not (al-Marghīnānī, 2018: 1/148–149). Al-Ṣadr al-Shahīd clarifies that all agree that *iḥrām* can be performed by proxy: if an unconscious person had explicitly instructed someone to enter *iḥrām* for him, this would be valid. The disagreement concerns only whether the contract of travelling companionship constitutes implicit permission when the traveller becomes incapable (al-Ṣadr al-Shahīd, 1971: 1/199). The two companions argue that permission was not explicit and that knowledge of such a permission cannot be presumed even among many jurists, let alone ordinary people. Abū Ḥanīfa’s argument is that by forming a travelling party the traveller sought the help of each companion in everything he could not do himself, and *iḥrām* is the very purpose of the journey; permission is therefore established by implication (al-Marghīnānī, 2018: 1/149).

Similarly, in the case of a husband who says to his wife “You are divorced” and intends two or three pronouncements, al-Ṣadr al-Shahīd first establishes the agreement between Ḥanafīs and Shāfi‘īs that three divorces take effect when the husband uses the verbal noun (“You are divorced with a divorce”) and intends three, and only then identifies the disputed question: whether the intention of two is valid. The Ḥanafīs, except Zufar, hold that the verbal noun, being a generic noun, can denote the whole genus (three) but not a number (two) in the case of a free woman (al-Marghīnānī, 2018: 1/225; al-Ḥaddādī, 1904:2/33). By locating the disagreement precisely, the jurist prevents the reader from generalising a dispute beyond its actual scope.

Al-Ṣadr al-Shahīd pays careful attention to the distinctions (*furūq*) between cases that look alike but have different rulings. He often introduces them with the formula “the difference is that...”. A drunk person whose mind is overcome is not required to renew

his ablution in the same way as one who has fainted, because the unconscious person is released from legal responsibility while the drunk person remains addressed by the law (Burhān al-Dīn, 2004: 9/12). Likewise, if a person dies owing missed prayers, half a *ṣāʿ* of wheat is given for each prayer, whereas for fasting half a *ṣāʿ* is given for each day: the whole fast of one day is a single act of worship, while each prayer is a separate act of worship. Such distinctions reveal the underlying rationale of the rulings and help both students and judges to avoid mistakes by analogy.

Al-Ṣadr al-Shahīd frequently grounds his fatwas in general legal maxims. Applying the maxim “means take the ruling of ends”, he rules that a Muslim may not lead his Christian father from his home to church, but may lead him from church back home, since the first involves assisting in an act the Muslim considers reprehensible while the second does not. Applying the principle of blocking the means (*sadd al-dharāʿi*), he advises that a man who takes his stepmother on pilgrimage should preferably not lift her onto or down from her mount, so as to avoid any possible occasion for wrongdoing.

His commentary on al-Khaṣṣāf’s *Adab al-qāḍī* contains a large number of maxims relating to procedure and evidence. Among them are the following: whoever’s statement is accepted by the law is accepted together with an oath; an oath is administered in every ruling that can be established despite doubt; evidence is prescribed to prove, not to deny; a creditor who finds property of the same kind as his claim may take it; events are attributed to the nearest time; the evidence of one who claims validity prevails over that of one who claims invalidity; liability corresponds to benefit; the evidence of the outside claimant prevails over that of the possessor; contradiction bars a claim; judgement against an absent person is not permitted; and what is established by acknowledgement is like what is established by direct observation (al-Ṣadr al-Shahīd, 1977:66–67). These maxims show that al-Ṣadr al-Shahīd sought to structure judicial practice around coherent principles rather than isolated precedents.

A further characteristic is the derivation of many subsidiary cases from a single basic case. For example, he rules that ablution with melted snow is valid only if the water drips from the hand, since otherwise the act amounts to wiping rather than washing, and he applies the same criterion to the removal of impurity from the body; from the impurity of a cat’s urine he derives rulings both for a well into which it falls and for a garment it touches (Ibn Nujaym, 1997:1/399). He also extends a ruling on the

prostration of recitation performed on a mount to the case of a person who recites at dawn and prostrates once mounted, reasoning in both cases that the act was performed in the manner in which it became obligatory.

His weighing of opinions (*tarjīh*) is particularly important because later authors often adopted his choices as the position of the school. Concerning the droppings of birds whose meat is not eaten, such as falcons and kites, Abū Ḥanīfa and Abū Yūsuf permit prayer in a garment soiled by more than the extent of a dirham, while Muḥammad does not. The later jurists disagreed over the basis of the permission: whether the droppings are pure, or whether they are impure but excused because of general hardship. Al-Ṣadr al-Shahīd prefers the second view: the droppings are impure, and the permission is due to the difficulty of avoiding them, so that if they fall into a small quantity of water they render it impure (al-Marghīnānī, 2018:1/38; al-Ṣadr al-Shahīd, 1971:80). Al-Bābartī records both interpretations of the disagreement (al-Bābartī, n.d.:1/207).

In family law he preferred the opinion that the standard of maintenance should take into account the circumstances of the wife. Although Muḥammad in *Kitāb al-nikāḥ* and al-Khaṣṣāf in one passage mention only the husband's circumstances, al-Ṣadr al-Shahīd states that the correct view is that the wife's condition is also considered (al-Ṣadr al-Shahīd, 1977: 4/232). Al-Marghīnānī adopts al-Khaṣṣāf's alternative position that the condition of both spouses is taken into account, explaining that if both are wealthy the maintenance of the wealthy is due, if both are poor that of the poor, and if the wife is poor and the husband wealthy, an intermediate amount (al-Marghīnānī, 2018: 2/39). On testimony he holds, against some scholars, that a person who hears another acknowledging a debt, a sale or a divorce may testify to it even if he was not asked to witness it (al-Ṣadr al-Shahīd, 1977: 4/426), a view consistent with al-Sarakhsī's principle that testimony rests on knowledge obtained by sight for what is seen and by hearing for what is heard (al-Sarakhsī, 1993: 16/116). He also defends the acceptance of an interpreter's statement in cases involving fixed penalties by arguing that the interpreter does not substitute for the defendant's words but conveys them to a judge who does not understand his language (Ibn Nujaym, 1999: 1/385).

Al-Ṣadr al-Shahīd's work in substantive law displays several further features. **First**, he adheres closely to textual evidence, particularly in matters of worship, which in his view are not governed by rational causes; he rejects practices for which there is no precedent from the Prophet or the Companions. **Second**, he explains obscure

terms, including Persian expressions used in legal practice; for example, he rules that if a husband, asked by his wife's relatives to divorce her, answers in Persian with a phrase meaning "I have withdrawn my hand" and intends divorce, an irrevocable divorce takes effect, because the phrase is equivalent to "I have set you free" (al-Ṣadr al-Shahīd, 2023:187).

Third, following al-Sarakhsī, he presents questions comparatively: he states the Ḥanafī position, then summarises the Shāfi'ī view with its strongest argument, and concludes with the Ḥanafī evidence introduced by the formula "our argument is...". In the case of fasting on the day of doubt, he reports the Shāfi'ī reliance on the hadith "there is no fast for one who did not resolve upon it before dawn" and answers with the Prophet's order to Bilāl, after a Bedouin testified to the sighting of the new moon, to announce that people should fast; he interprets the Shāfi'ī proof as negating perfection rather than validity (al-Marghīnānī, 2018:1/116). A similar structure appears in his discussion of the apostate woman, where he contrasts the Shāfi'ī analogy with the Ḥanafī evidence that the Prophet forbade the killing of women and children (al-Sarakhsī, 1993:10/108).

Fourth, he corrects confusion in reports transmitted from the founders of the school. He notes, for instance, that the reported disapproval of reciting the supplication of *qunūt* in a state of major ritual impurity is based on a report from Muḥammad that al-Ṭaḥāwī did not accept, and that the fatwa is given according to the latter; Ibn Nujaym confirms that the fatwa follows al-Ṣadr al-Shahīd's view (Ibn Nujaym, n.d.: 1/210). He also issued a fatwa, together with Ṣaḥīr al-Dīn al-Marghīnānī, that accumulated maintenance fixed by a judge lapses upon divorce unless it was borrowed by order of the judge, drawing an analogy with the poll tax of a non-Muslim that lapses upon his conversion; later authors debated this view extensively and warned that it should not become a means of depriving women of their rights (Ibn Nujaym, n.d.: 4/206).

Fifth, he avoids rigid and categorical judgements. In several fatwas he uses the expression "I hope" (*rajawtu*), seeking the easiest acceptable solution for the believers. A man who collected money for building a mosque, spent part of it on his own needs and then replaced it from his own property should return it to the donors or seek their renewed permission; if he cannot identify them, al-Ṣadr al-Shahīd "hopes" that spending an equivalent amount on the mosque will suffice. Likewise, he "hopes" that a debtor who died before repaying his debts, but intended to repay them, will not be punished,

since the sin of deliberate delay is absent. **Sixth**, he prefers acts whose benefit extends to others (*muta'addī*): learning in order to teach is superior to learning for one's own practice, and for a person who has already performed the pilgrimage, charity is superior to a second pilgrimage because its benefit reaches others (Burhān al-Dīn, 2004: 2/495). He also proposed a careful documentary procedure by which a daughter's trousseau could be secured as the property of her father, protecting the rights of both parties (*al-Fatāwā al-Hindiyya*, 1892:6/365).

Seventh, he gathers similar cases to show that they share one ruling, for example listing birds of prey, mice, snakes and cats whose contact makes water disliked but still usable for ablution (Burhān al-Dīn, 2004:1/13), or explaining that creatures without flowing blood do not render water impure when they die in it (Burhān al-Dīn, 2004:1/118). **Eighth**, he refrains from issuing fatwas that ordinary people might misunderstand; he did not declare supplications after the completion of the Qur'an reprehensible, lest people think that scholars were forbidding them to pray. **Ninth**, he pays attention to the order of priorities: acquiring the legal knowledge necessary for one's own practice is superior to memorising the whole Qur'an, since the former is an individual obligation and the latter a communal one; in a bequest, the share of the poor is used to complete an obligatory pilgrimage, because an obligation takes precedence over a supererogatory act. **Tenth**, he explains the intended meaning of ambiguous expressions by the formula "he means by it" (*yurīdu bihi*), as in the case of a person who intends to follow "the caliph" as imam and turns out to be following someone else (Burhān al-Dīn, 2004:1/539), or in the combination of prayers at 'Arafa (al-Marghīnānī, 2018:1/143). Finally, as al-Sarhān observes, he supplements and corrects the authors on whom he comments, pointing out what they omitted, noting the existence of two reports on a question and adding cases that fall under the same rule (al-Ṣadr al-Shahīd, 1977:65–66).

CONCLUSION

The analysis allows the following conclusions. First, al-Ṣadr al-Shahīd belongs to the Ḥanafī method of the jurists, which derives legal principles from recorded cases, and he stands in the line of theorists running from 'Īsā b. Abān and al-Karkhī through al-Dabūsī and al-Sarakhsī. His legal theory is expressed less in abstract formulation than in its systematic application to concrete questions.

Second, the main features of his method are consistent causal justification, precise determination of the point of disagreement, the science of distinctions between similar cases, reliance on legal maxims, extensive derivation of subsidiary cases and careful weighing of opinions. These features gave his commentaries a coherence that explains why later generations preferred them to the works of his contemporaries.

Third, in substantive law his method combines adherence to textual evidence with attention to social reality. His readiness to justify procedural innovations by changing circumstances, his preference for acts of public benefit, his caution in issuing categorical judgements, his sensitivity to how fatwas are understood by ordinary people and his attention to the priorities of obligations all show a jurist who regarded the law as a means of organising community life justly.

Fourth, the frequent citation of his preferred opinions in *al-Muḥīṭ al-Burhānī*, *al-Hidāya*, *al-Baḥr al-rā'iq*, *al-Fatāwā al-Hindiyya* and *Radd al-muḥtār* demonstrates that his methodology shaped the authoritative doctrine of the Ḥanafī school for centuries. A comprehensive study of his preferred opinions across all his extant works, including those still in manuscript, would make it possible to measure this influence more precisely.

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