## **Preface**

For many authors of the Islamic world "philosophy" was synonymous with "Aristotelianism," and modern-day scholars largely follow suit. Even while admitting that other influences, both Greek (Neoplatonism) and indigenous (*kalām*), affected the development of philosophy in the Islamic world, historians of philosophy have typically concentrated on issues that are at home within the Aristotelian course of study: logic and philosophy of language, epistemology, philosophy of mind, natural philosophy, metaphysics, ethics, and political philosophy. This despite the fact that philosophers nowadays recognise subfields of their discipline that had no place in the Aristotelian curriculum.

This is sensible enough for areas where the Islamic tradition has little to say. It isn't clear that a specialist in, say, decision theory, existentialism, or philosophy of quantum mechanics-even one with historical sensibilities-is missing out on a lot by not knowing Arabic or Persian. (Although, never say never.) But for many subdisciplines that have emerged in more recent times, the Islamic world offers riches. This has not gone unnoticed when it comes to such topics as philosophy of religion. But other areas would reward increased attention, such as aesthetics, philosophy of action, and philosophy of medicine. The present volume will, it is hoped, show that philosophy of law deserves a place on that list. Indeed, legal theory was an obvious choice for inclusion in the new series of which this book is a part. The series as a whole will look at various aspects of Islamic culture, investigating their intrinsic philosophical significance and also the question of how these cultural phenomena interacted with, and exerted influence upon, philosophy taken in the strict sense. Other planned volumes will, for instance, be looking at philosophy in the context of Arabic grammar and linguistics, poetry, translations, and mysticism.

Why is jurisprudence such an obvious candidate for this broader approach? First, because so many authors of the Islamic world contributed to both philosophy and jurisprudence. It is easy to reel off a list of famous names from whom we have both philosophical and juridical works: al-Ghazālī, Ibn Rushd (Averroes), and Fakhr al-Dīn al-Rāzī leap readily to mind, and the first two feature heavily in the present volume.<sup>2</sup> Ulrich Rudolph looks at al-Ghazālī's treatments of the sciences and the place of jurisprudence within these classifications. He

<sup>1</sup> For the latter see Adamson and Pormann 2017. The present volume is something of a sequel, approaching law in the same spirit as this previous collection approached medicine.

<sup>2</sup> For a philosophically rewarding study of Fakhr al-Dīn's legal thought see Opwis 2012.

argues that al-Ghazālī offers no truly explicit answer to the question of how practical philosophy relates to the study of law, but that his works opened the way for later authors to answer that question. Ibn Rushd is far more forthcoming here, as established in Ziad Bou Akl's paper, which conversely addresses the legal status of philosophy itself. Central figures of the classical period (roughly, the third-sixth centuries AH, ninth-twelfth centuries AD) who are not particularly known for their connection to jurisprudence, like al-Fārābī and Ibn Sīnā (Avicenna), were in fact well aware of developments in that field and developed their own thought with an eye to contemporary legal concerns. This is shown below in the contributions of Feriel Bouhafa and Hannah Erlwein.

As for the post-classical period, the *madrasa* educational system meant that nearly all authors who are of interest to the historian of philosophy at least enjoyed some training in jurisprudence. To take one particularly celebrated period, this would apply to Mullā Ṣadrā and other Safavid philosophers. (Ṣadrā called his own teacher Mīr Dāmād "lord (*sayyid*) of philosophers and the master of the jurists." Or, to take a more understudied period, the *dars-i nizāmī* curriculum devised in Islamic India gave young scholars a formation in logic as they worked towards a possible career as jurists. In the nineteenth century Ṣiddīq Ḥasan Khān (d. 1400/1890) duly integrated jurisprudence into his curriculum of the sciences, which was still organised on broadly Aristotelian principles.<sup>4</sup>

Just as figures we usually classify as philosophers often had legal interests, so significant jurists often made philosophical contributions. The genre of works devoted to the "principles of jurisprudence" (us $\bar{u}$ l al-fiqh) is the closest thing we have in Islamic civilization to a sustained reflection on philosophy of law. Accordingly, a number of the papers collected here look either at debates within us $\bar{u}$ l al-fiqh or at the writings of significant authors in the history of this genre. Few were more significant than al-Shāfi'ī, founder of an eponymous legal tradition that became one of the four main schools of Sunnī jurisprudence. As Georges Tamer shows in his contribution, al-Shāfi'ī's poetry reflects ethical concerns, as he develops an ascetic—one might say "stoic," in a non-technical sense—worldview that is intended to shield the believer from the disappointments

<sup>3</sup> Quoted from Rizvi 2018.

<sup>4</sup> I here draw on a forthcoming paper by A.Q. Ahmed, "What Was Philosophy in Late Pre-Modern Muslim India?" to appear in U. Rudolph et al., *Concepts of Philosophy in Asia and the Islamic World*, vol. 2 (Leiden: Brill, 2019). It should be noted that Asad Ahmed and Robert Gleave have also edited a recent collection of papers on philosophy and law, which appeared as *Oriens* 46 (2018). It features some of the same contributors and is strongly recommended as a complement to the studies offered here.

brought by change and the passage of time. A later author who is primarily classified as a jurist, Ibn Taymiyya, is well known for having engaged with philosophy, especially with his notorious critique of logic. In the present volume Jon Hoover finds that he too has something to contribute to the history of ethics in the Islamic world and can be seen as a forerunner of utilitarianism, something that has been suggested also with respect to Fakhr al-Dīn al-Rāzī.

Alongside ethical questions, the most philosophically rewarding debates in the Islamic legal tradition have to do with legal reasoning. Here we are dealing with issues of relevance to logic and meta-ethics, which are extensively represented in the papers collected below. Some contributors have chosen to focus on just one figure to illuminate the connections between juridical reasoning and logic. Joep Lameer discusses the famous Zāhirī jurist Ibn Ḥazm, who, like his fellow Andalusian Ibn Rushd or, somewhat further east, Ibn Taymiyya and Fakhr al-Dīn, should be familiar to both historians of philosophy and historians of law. Lameer points out that the classification of actions as impermissible, permissible, and obligatory is closely parallel to the three core notions of modal logic, namely impossible, possible, and necessary. Remarkably Ibn Ḥazm has noticed this too and shows that the rules governing modal inferences in Aristotelian logic can thus be transposed to a legal context.

We have already observed that *madrasa* education required fledgling jurists to become acquainted with logic. So it is unsurprising that as we move forward in history, many authors begin to deploy logical tools—especially those they found in the massively influential Ibn Sīnā—in their analyses of legal reasoning. A second paper on al-Ghazālī, by Felicitas Opwis, gives us one example. She shows how for him logic is a crucial tool for jurists quite generally, and can be used to validate reasoning by analogy in particular. As she points out this would have been suggested to him by the fact that the Arabic word *qiyās* was used both for analogical arguments in law and syllogisms in Aristotelian logic.<sup>7</sup> Nora Kalbarczyk looks more broadly at how a number of *uṣūlī*s (that is, authors who write on *uṣūl al-fiqh*), engaged with Avicennan logic to evaluate an argument pattern we can call *argumentum e contrario*, "argument from the contrary." For instance, if we have a rule that tax is owed on sheep that are not free-grazing, does that mean it is *not* to be paid on sheep that *are* free-grazing?

<sup>5</sup> See Hallaq 1993 and more generally Krawietz and Tamer 2013.

<sup>6</sup> See Shihadeh 2006.

<sup>7</sup> For discussion of the double meaning of *qiyās* in Ibn Rushd, see Bou Akl 2018b.

The study that ends this volume, Walter Edward Young's investigation of the legal concept of *darawān*, returns us to a central question of logical reasoning, which concerns the legitimacy of *qiyās*. Under what circumstances can one transfer a ruling from one class of things to another on the grounds that the "cause" justifying the ruling in one class also applies to the other? The debate over *darawān* concerns a specific answer to this question, which invokes "co-present" and "co-absent" properties. The idea is that, for instance, if grape-wine has the property of being intoxicating and the property of being forbidden, then anything else that has the first property (intoxicating) should have the second (being forbidden); and conversely for co-absent properties. The idea is simple, but the debate over the legitimacy of such inferences is not, especially because of the role of causation, which is held to license such transfer of properties. Here we have another point of contact between Aristotelian logic and legal reasoning, since in Aristotle too a syllogism must have a middle term that is causally explanatory if the syllogism is to be truly demonstrative.

While it is clear that the abovementioned studies touch on meta-ethics as well as logic, other contributions deal more squarely with meta-ethical questions. Amir Mohammad Emami and Mirza Mohammad Kazem Askari point out that another legal debate has a strong connection with the idea of "moral luck," that is, that one's moral blameworthiness (or, less alarmingly, praiseworthiness) may depend on factors outside one's control. It may be noticed that this paper deals almost solely with Shī'i legal thought, the tradition also discussed by Robert Gleave. His topic is also a meta-ethical one raised in usūl texts: if we find that something is not forbidden in the sources of the law (the Qur'an, hadīth, and for these authors the authority of the Imāms), may we immediately infer that it is therefore permitted? Or rather, given that we do make such an inference, on what basis do we do so? Here there were two camps, with one holding that permission is a kind of default in the absence of prohibition, the other that there is no legal assessment at all (and a fortiori no prohibition). As Gleave points out, there is at least a family resemblance between this debate and the famous kalām problem of whether non-existent things (here, the absence of a ruling) are "real" enough to bear predicates.

Obviously the goal of this volume is not to offer a complete survey of figures or topics for which legal and philosophical concerns coincide. To the contrary, it is hoped that the reader will come away with the sense that the interrelation of law and philosophy is nearly pervasive in Islamic culture, and that a more or less indefinite amount of research could be devoted to similar topics in various chronological periods and geographical regions. While the contributions do, as we've seen, range fairly widely in terms of chronology, and touch on both Shī'ī and Sunnī legal thought—and with Ibn Ḥazm even Zāhirism, not just the mainstream

schools—it would be easy to think of major topics that go unmentioned here. In particular, the volume does not include any study of the interplay between law and philosophy among Christian or Jewish authors in the Islamic world, even though this too would be a promising direction for enquiry. (Just consider that Maimonides was simultaneously the most important legal and philosophical mind of medieval Judaism.) Nor do the papers included here touch on contemporary developments. So this is far from an exhaustive inquiry of the fascinating and far-reaching connections between philosophy and law in the Islamic world. It would perhaps be too pessimistic, to conclude with Socrates and al-Shāfiʿi (quoted by Tamer below), that "the more I know, the more I know that I know nothing." But when it comes to the complex connections between these two disciplines, it seems likely that the more we know, the more we will realise that we don't know everything.

**<sup>8</sup>** For a relevant contribution by one of our authors, which draws connections to some of the medieval thinkers discussed in the present volume, see Opwis 2005.

<sup>9</sup> I would here like to record my immense gratitude to Hannah Erlwein for her extensive help getting this volume ready for press, and also making a number of insightful remarks on draft versions of the papers. I am also grateful for support from the Deutsche Forschungsgemeinschaft, sponsors of the research project "Natur in politischen Ordnungsentwürfen: Antike, Mittelalter, frühe Neuzeit," and from the Fritz Thyssen Stiftung, which provided funding for a workshop at which some of the papers included here were first presented. My thanks also to Rocio Daga, Mostafa Najafi, and Devin Stewart who participated at that event, and finally to Sophie Wagenhofer at De Gruyter and my fellow series editors for helping this book project to reach completion.