

Ibn Rushd
Mujtahid of Europe

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Asadullah Yate

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بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

To my teacher, Shaykh Dr. Abdalqadir as-Sufi, may Allah have mercy on him, transmitter of the deen of Islam, and defender of the Messenger of Allah, may the peace and blessings of Allah be upon him, and his companions

FOREWORD

This study of Ibn Rushd is not only a historical homage to the genius of this great European but it is also much more a reminder that “Law is more than merely state laws”. It is no coincidence that the important dimensions of the work of Ibn Rushd are now at last being made accessible by a European Muslim scholar, Dr. Asadullah Yate.

The last great German philosopher of this century, Martin Heidegger, indicated that European science itself had reached its end as it had become incapable of positing for itself its own basis or reason for existence. This state of affairs becomes apparent precisely in modern legal science which has subjected itself hopelessly to the monster of today’s global finance techniques. The functionality of the laws and their technical implementation obscure today’s student’s view of the basic core of law itself: justice. Without this far-reaching and all-embracing questioning and method of thinking, the science of law automatically loses its own *raison d’être*, its own grounds for existing.

This work about Ibn Rushd before us powerfully demonstrates the timeless dimension of the human quest for justice. This core question regarding the human social situation is inseparable also from the question as to the legitimacy of economic power. As a master jurist, Ibn Rushd is in a position – from the basis of Islam

– to separate the Law not only from the machinations of political-economic power but also to substantiate its basic claim to existence as a whole from the Qur’anic revelation. As revelation, the law is basically removed from man’s capacity to dispose of it arbitrarily in his political striving after power. This natural incorruptibility of the jurist from any political rule or hegemony is the foundation and prerequisite of a just society.

The on-going relevance right up to the present day of the work of Ibn Rushd is demonstrated above all also in his reflections upon usury. The prohibition of usury is a central fundamental phenomenon in Islamic law because in the event of any non-observance of this prohibition – as Ibn Rushd demonstrates – the whole body of society and all human transactions and behaviour are directly or indirectly influenced in a negative way. From here may be deduced to a certain degree the legal priority of the prohibition of usury – law as a whole stands or falls according to its observance or contravention.

This locating of Islam, this ability to situate the law of Islam is made possible for a European public for the first time by the work before us. The question as to “justice” seems to have taken a secondary place in academic activity today. However, this question is nevertheless preoccupying more and more Europeans. The issue of justice is today the basic question with respect to the present global system of law whose reality may be described for example by the fact that the five richest families of the world own more than the fifteen richest developing countries of the world. It is thus not only in Europe that the reversal of the Quranic directives is a reflected in the social reality – it is a worldwide phenomenon. In Qur’an it is clear: *“Allah has forbidden usury and permitted trade.”*

The European economy, more than ever before, is a system of monopolisation of trade in the hands of the few. Moreover the law and the legitimisation of the social reality is willingly monopolised

“by state authority”. Is it a coincidence that the forceful prohibition of usury in the work of Aristotle is today hardly a topic of European scientific study any longer? Islam is a tremendously challenging way of life precisely because its spirituality and its existential realm of experience can only flourish in an authentic way when justice is established. In this respect, its spiritual and political dimensions are not subjected to the dialectic of private and public. One cannot fulfil the demands of the Islamic pattern of living merely by acting alone in the private sphere. Justice in the framework of Islamic law is also a political task which is undertaken and fulfilled through the spiritual experience of the Muslims as a whole. Because of the independence and inherent supremacy of jurisprudence, Islam cannot ultimately develop merely as a political ideology.

Whether an Islam is authentic or not is apparent from a sober observation of the legal and economic reality of the society rather than any other evaluation.

The extremely important analysis of the work of Ibn Rushd presented here is thus a successful intellectual challenge to Muslims and non-Muslims. It is hoped that this enormously important facet of Islamic jurisprudence can enrich the actual discussion about Islam. Seen within the greater framework of European history, the dialogue between the Islamic revelation and European thinking could develop into a powerful reminder of the actual nature of justice itself. Until this aspect of the law which Ibn Rushd has bequeathed to the Europeans is confronted, Islam too will remain essentially misunderstood.

Abu Bakr Rieger

INTRODUCTION

This book is presented to the reader in a revised form. Despite the constraints of orientalism under which most of it was written (at the University of Cambridge), this work still makes abundantly clear that Ibn Rushd was a great European Maliki jurist whose aim was to propagate a revitalised Islam. Although denied any adequate audience on the part of the majority of the imams and fuqaha of his time, his dynamic encompassing of the sciences of the Greeks into the deen of Islam – and here it is refreshing to note that Islam is not regarded as a religion but as a great divine blueprint, manifest in the city of Madina, based on the values of justice, courage, generosity and correct human behaviour – was closely studied by the christians and incorporated, albeit in a diluted form, into their “renaissance”. The time has now come for the Muslims to recognise this important precursor of modern, scientific and technological society.

Ibn Rushd’s message is simple, both in his *Bidaya* and in the great philosophical work underlying the *Bidaya*, namely, *Fasl al-maqal fi ma bayna ash-shari’a’ati wal-hikmati min al-ittisal – The Clear Statement on the Connection between the Wisdom [of the Greeks] and Shari’a*, in which he delineates the principles underlying the relationship between the deen, in its strictest sense, and knowledge in general. Knowledge, he demonstrates, is a divine

gift and as such may be used by Muslims, even if its source lies outside dar al-Islam, as long as it is contained by the shari‘a and and as long as worshipping man and woman remain at the centre of Muslim society. The tyranny of the techno-socio-projects fuelled by the fiscal and banking entities of so-called “islamic” countries is inconceivable in Ibn Rushd’s ground-plan. As we can see from his final, tremendous words of the *Bidaya*, all activity must remain within the scope of the balanced human being, must be humanly possible and comprehensible.

The *Bidaya al-Mujtahid* of Ibn Rushd, on which a greater part of this book is based, is a legal manual composed during the age of the Muwahhids of Muslim Spain. It issues from an age untainted by the jewish science of economics¹, and from a European² society. From it we may understand the jurists’ overriding concern to eliminate any kind of injustice from commercial transactions. Among the injustices of that time was usury – here used in its original Christian and Muslim sense – namely any unjustified increase accruing to one party without a corresponding counter-value in goods or in work. What concerned these men was a scrupulous regard for equity: what was given by one party had to match, in value, that given by the other. If equity was missing in the day to day transactions of traders, then equity in society itself would be missing.

Usury, at that time, was considered to be the filthiest of crimes although it was not manifest in the overt and shameless way in which it is practised today. The jurists were usually only concerned with uncovering those transactions which were made with an intent to get round Allah’s prohibition of usury, or with transactions into which elements of usury had been introduced unwittingly by one of both of the partners to the transaction.

However it had become enough of a problem, at the time of the Muwahhids, for Ibn Rushd to write a separate treatise on the subject

in which he examines the question in more detail. The title of this treatise is not only concerned with an analysis of this phenomenon but also with placing it within a social context:

*Concerning the ruling regarding unjust [ly acquired] wealth, criminal governors and administrators and those of the same category like usurers, corrupt persons and the like.*³

Ibn Rushd, like all jurists before him, was insistent on the social importance of this question: “it is obvious from the law that the purpose of the prohibition of usury is [prevention of] the fraud that usury entails, equity in transactions consisting in close approximation and equivalence [between the goods exchanged]”. He points to the real and proper purpose of “money” – and here obviously only gold coins (dinars) and silver coins (dirhams), not bank notes, are referred to: “Since it is difficult to establish equivalence between things which are different in essence, dinars and dirhams have been instituted [as the means of] attaching prices to them, or in other words evaluating them.” This use of money in turn is subject to the overall goal of social equity: “When things are different in essence, that is, not sold by weight and measure, equity is to be found in a [matching] relationship: the value of the one thing in relation to its genus must be equal to the value of the other thing in relation to its genus”. However complicated a usurious transaction may seem there is always the underlying element of gain for one party and loss for the other: those engaged in such activity “pay out money and receive more back without performing any deed or assuming any liability”. Ibn Rushd lists eight “principles” underlying all the various usurious transactions possible in his time:

- (1) (transactions characterised by the saying) “Give me respite [from repayment] and I will increase [the amount to be paid back]”;
- (2) a sale with forbidden disparity;
- (3) a sale with forbidden delayed payment;

- (4) a sale combined with a loan;
- (5) a [sale of] gold and merchandise for gold;
- (6) the “reduce the amount in return for immediate settlement”;
- (7) the sale of foodstuff which has not been received in full;
- (8) or a sale combined with a money change.

Ibn Rushd cites “the protection of wealth and prevention of squandering” as a factor in Imam Malik’s reasoning regarding the prohibition of usurious transactions; he also mentions Ibn al-Majishun’s regard for “utility in property matters” and the latter’s assertion that “the cause of the prohibition of usury lies in the preservation of property (*hiyatat al-amwal*), in other words so that fraud should be prevented”.

In the concluding remarks to the *Bidaya*, Ibn Rushd points out that the underlying rationale of all transactions regulated by the law is the establishment and maintenance of human virtues on a social and human level; the virtue in this case is that of justice. The way of the Muslims, the shari’a, is composed of various behavioral patterns or sunnas. The prohibition of usury, risk and speculation are among the sunnas which “relate to the pursuit of justice and the avoidance of oppression: these are the kinds of sunnas which demand equity in financial matters and justice amongst people.”

It is clear from the above and the examples given in the text below that the word “usury” has a much wider definition than the modern, prescriptive dictionary-definition: usury, in effect, can occur in almost any transaction: thus pure sales, barter transactions, money exchanges, speculation, the leasing of land for a share of its produce, control through monopoly, for example, were all subject to the prohibition of usury.

What is significant for us is that parasitical third parties, state tax-agencies and excessively devious practices amongst traders were nowhere to be seen in the Muslim trading world prior to the age of “economics”; there were no money lenders, no bankers, no

speculators, no stock exchanges, no promissory notes, no bonds, no lotteries, no insurance brokers. The jurists were operating within a basically healthy society in which the pillars of sound trade were in place, namely free access to gold and silver as currency and the right to choose any means of exchange, unfettered by the tyranny of paper, plastic or computerised money, free of the monopoly of the banking system which governs all financial and political transactions today.

The great act of spiritual jihad in our times is no longer the inner purification of the heart but the purification of the outer, manifest arena of our everyday lives. As Shaykh Dr. Abdalqadir as-Sufi has made clear on numerous occasions, it is of no benefit to aspire to spiritual purity if the very place one is standing in is swilling in filth. That filth is usury and all that pertains to usury, in short the banking system and all its devious practices. All over Europe markets are now being set up which conform with the parameters laid down by the shari'a; gold and silver coins have been minted and are in circulation in these markets. At recent conferences in Edinburgh, Granada and Weimar, Shaykh Dr. Abdalqadir as-Sufi has urged the Muslims to reestablish the traditional trade routes with Istanbul, Albania, Uzbekistan, Kazakhstan, Kirgizstan and Turkistan. The Shaykh's reintroduction of gold and silver coins into the umma has had an extraordinary effect in Turkey where the valueless paper currency is being rejected by the people. This revitalisation of trade is a vital component in the reestablishment of the Khalifate.

The author of *The End of Economics*, Umar Vadillo, notes that Allah has not only forbidden usury but has also permitted trade. Our task, then, is not only to clear society of the polluting, paralysing effects of banking practice but also to facilitate the establishment of free markets and just trading practice. A careful study of the work of Ibn Rushd will help to understand the principles of sound

trade and will give inspiration to those who wish to take part in the revival of forgotten sunnas.

Part 1

IBN RUSHD AS JURIST

HIS LIFE AND CAREER

Muhammad ibn Ahmad ibn Muhammad ibn Ahmad ibn Ahmad ibn Rushd, known as Abu'l-Walid, was born in 520 in Cordoba, Spain.¹ He was the grandson of the famous Maliki jurist Muhammad ibn Ahmad ibn Ahmad² who died in the same year as his grandson's birth. We are told that he narrated [*hadith*] from his father Abu'l-Qasim,³ from whom he learnt the *Muwatta'* of Malik ibn Anas by heart.⁴ His title of *hafiz* presumably means that he also knew the Quran by heart,⁵ though it could also indicate that he had memorized the writings of the Mahdi.⁶ He studied substantive law (*furū'*), jurisprudence (*usul al-fiqh*) and philosophy (*falsafa*) under various teachers⁷ and we learn that he was more interested in the science of law (*diraya*) than the science of traditions (*riwaya*).⁸ Both al-Ansari and Ibn al-Abbar tell us that he was granted a licence to teach by Abu 'Abd Allah al-Ma'ziri and the former mentions that he related traditions from Qadi Iyad.⁹ Several biographers mention his brilliance in the science of legal controversy (*khilaf*).¹⁰ While continuing the long-held family association with the law, he departed from the example of his forefathers by his devotion to the sciences of medicine and

philosophy. This does not appear to have interfered with his legal concerns: he composed the lengthy Book of Pilgrimage in 684,¹¹ and he was still practising as a judge “with assiduity and care”¹² right up until the trial he was subjected to at the end of his life.¹³ Many biographers ascribe perfect mastery of the “ancient sciences”¹⁴ to him. They are all profuse in their praise of his courtesy, kindness, generosity and humility.¹⁵ We learn that Ibn Rushd had a strong personality, was sound of judgement and sharp of intellect, but also, one is surprised to hear, that he was shabby of attire.¹⁶ Like his father and his grandfather before him,¹⁷ he became a judge, first in Seville (in c. 565)¹⁸ and then in Cordoba (the first appointment being in 567 and the second in c. 578),¹⁹ where he became noted for his legal zeal.²⁰ This highly regarded profession²¹ seems to have become the occupation for which Ibn Rushd was best known to his contemporaries and later biographers.²² We learn from Ibn Abi Usaybi‘a that several of his sons distinguished themselves in the legal profession and became provincial judges.²³

For the greater part of his political life Ibn Rushd enjoyed extremely good relations with the caliphs of the Almohad dynasty:²⁴ first with ‘Abd al-Mu‘min (r. 527-58/A.D.1130-1163),²⁵ then with his son Abu Ya‘qub Yusuf (r. 558-80/A.D.1163-84)²⁶ and, in turn, with his son Abu Yusuf Ya‘qub al-Mansur (r. 580-95/A.D.1184-99).²⁷ These caliphs appear to have spent much of their energies in the reformist movement begun by Ibn Tumart (d. 524/A.D.1130)²⁸ and they effectively incorporated Ibn Rushd into this movement by appointing him to the highest posts of the realm: he succeeded Ibn Tufayl as chief physician to Abu Ya‘qub Yusuf in 578,²⁹ the year in which he became supreme judge of Cordoba.³⁰ He is praised for the just administration of this judgeship.³¹ He spent much of his time and energy travelling throughout the Almohad realms in the service of Abu Ya‘qub Yusuf.³² Ibn Rushd remained, however, devoted to writing and scholarship despite the disturbance and

hardship which this service at times caused him.³³ He is praised by his biographers for having avoided the corruption usually associated with high office³⁴ and for having used his influence not for his own benefit, but rather for that of his local area in particular, and for the rest of Andalusia in general.³⁵ They likewise credit him with being at ease in the company of both the sultan and the people.³⁶ According to one modern commentator, Ibn Rushd's influence was such that he became "a theological, ideological and philosophical spokesman for the new dynasty".³⁷

He died in Marrakush in 595³⁸ (C.E. 1198), where he was temporarily buried before being taken back, three months later, to Cordoba. Ibn 'Arabi has given us an eye-witness account of this second burial in his *al-Futubat al-Makkiyya*: when a companion points out that Ibn Rushd's coffin is being counter-weighted on the donkey's back by his life's works, Ibn 'Arabi finds the event of deep significance and exclaims "O would that I knew whether he had attained his desires."³⁹

1.2. HIS SCHOLARSHIP AND TEACHING

Ibn Rushd was an assiduous scholar who produced a vast corpus of writings on the Quranic and natural sciences.⁴⁰ Ibn Abi Usaybi'a informs us that "his compositions were good and the style (*ma'ani*) [of these compositions] elegant".⁴¹ There are numerous references to his command of the Arabic language,⁴² and we learn that he could deliver powerful sermons in the city mosque.⁴³ He knew by heart the poetry of al-Mutanabbi and Abu Tammam and cited it frequently in order to illustrate a point or to stimulate his students.⁴⁴ We are informed, clearly in a hyperbolic vein, that he only abandoned his investigations and reading "the night his father died and the night of his marriage".⁴⁵ He was an influential teacher of *fiqh* and numerous scholars of his day studied under him.⁴⁶ His home, according to one biographer was "a house of knowledge

and leadership (*riyasa*)".⁴⁷ People had recourse to him for medical treatment just as they did for his legal judgements⁴⁸ and he dispensed advice with "ample pronouncements and courtesies".⁴⁹ We have very little direct evidence of the role he played in the Almohad programme of reform although the title of one of his treatises – no longer extant – clearly suggests a positive attitude towards the Mahdi.⁵⁰ The only evidence we have to suggest that he diverged from the doctrine of the founder of the Almohad movement is his criticism of the Ash'arite philosophy which Ibn Tumart had espoused while studying in the East. Ibn Rushd's intimacy with the caliphs, his high rank as a state official and his often didactic or polemical tone eminently qualified him for the role of official purveyor of Almohad views.⁵¹

1.3. HIS DISGRACE AND EXILE

In the year 593 the fortunes of Ibn Rushd underwent a dramatic change. His trial or ordeal (*mihna*) captures the imagination of all his biographers and often occupies a large portion of their works.

According to al-Ansari, this "evil disaster" (*al-nakba al-shan'a*) occurred in 593.⁵² We are told by the historian Abu'l-Hajjaj ibn 'Umar⁵³ – who is clearly a partisan of Ibn Rushd – that for some considerable time, strong feelings of animosity (*wahsha*) had existed between him and certain people of Cordoba, and that the cause of this animosity was envy and rivalry (*muhasada* and *munafasa*). The more learned among them, we are told, began to criticize parts of his writings, interpreting them as evidence that he had departed from the "usages of the law" (*sunan al-shar'i'a*) and preferred "natural law" (*hukm al-tab'i'a*); in support of their claims they interpolated numerous words and passages into his texts. Abu'l-Hajjaj goes on to describe how they made repeated efforts to win over the caliph Abu Yusuf Ya'qub, but how the latter, at first, paid no attention to them, occupied as he was with preparations for war in the north.⁵⁴ When

however, the caliph himself came under criticism by the people of Cordoba,⁵⁵ presumably for failing to listen to the demands of Ibn Rushd's detractors, the latter renewed their conspiracies and plotting; they interpreted his writings in the worst possible light in open meetings to such an extent that people felt constrained to come out and defend the true teaching of Islam. Eventually the caliph gave in. Despite the severity of the accusations, however, he was reluctant to exact the death penalty.⁵⁶ Instead he ordered his students⁵⁷ and the *fuqaha'* to gather in the main mosque in order to state publicly that Ibn Rushd had deviated from the religion; he then banished Ibn Rushd to the village of al-Yassana.⁵⁸ Al-Dhahabi cites "the Shaykh of Shaykhs" Taj al-din as saying: "when I entered the country I enquired after him (i.e. Ibn Rushd) and was told that he had been banished to his house on the order of the caliph Ya'qub and that no-one was to see him and that he was to visit no-one. When [I asked] why, they replied: 'evil statements have been ascribed to him and he has been charged with preoccupation with the proscribed sciences of the Ancients.'" We are then informed that Ibn Rushd died under house-arrest in Marrakush.⁵⁹ This conflicts with another account, also attributed to al-Dhahabi, which states that the caliph forgave him after a deputation of the Seville aristocracy testified that Ibn Rushd had been falsely accused. According to this second manuscript, the caliph, on his return to Marrakush, "withdrew everything [he had avowed] in that [trial] and inclined [again] towards philosophy; he invited Ibn Rushd back in order to set matters aright and he came [to court]."⁶⁰

Marrakushi cites two reasons for the trial, "the manifest and the hidden". The "manifest" was the concerted efforts of his detractors, but it was the "hidden" reason which was the "more important of the two": some time before, Ibn Rushd had mentioned (in his commentary on Aristotle's *De partibus animalium*) how he had seen a giraffe "at the court of the Berber King" and he had commented on

it in accordance with the “methodology of the scholars [who write] about the history of the kings of peoples and about the names of regions, but without paying attention to what the servants of kings and the pseudo-writers (*mutahayyilu al-kuttab*) usually indulge in, [namely] eulogy and panegyric.” Marrakushi concludes that it was careless of Ibn Rushd to have said such a thing and that it caused resentment and hatred among those “servants of kings and pseudo-writers”.⁶¹

There are other interpretations as to why the caliph’s loyalty faltered: most, like al-Ansari and al-Marrakushi, consider that it was connected with the long-standing animosity of certain influential, but misguided men, towards Ibn Rushd;⁶² others hold that the caliph was under pressure to regain the favour of the Maliki ulema;⁶³ still others cite personal reasons, namely that Ibn Rushd had angered the caliph by his intimacy with the latter’s brother Abu Yahya,⁶⁴ or that he had insulted the caliph in certain of his writings;⁶⁵ finally some hold that the caliph was obliged to take the action he took because Ibn Rushd (and others) had been publicly accused (*bi-sabab ma yudda’u fihim*) of engaging in “the wisdom and sciences of the ancients”.⁶⁶

The public banishment of Ibn Rushd, the supreme judge, in the presence of the caliph and the most influential men of state was a major political event. This was not, however, an isolated attack: the persecution of philosophers was taking place all over the Islamic world at this time.⁶⁷ Ibn Rushd’s renown as a judge and jurist, however, outlived this temporary disgrace. The impression we have of him from the above mentioned biographers of the sixth and later centuries, is that he was somebody who had been wrongly accused of heresy and that he was in fact an eminent guardian of the law.⁶⁸ Despite his severe condemnation of the philosophers, Ibn ‘Arabi, writing in Mecca some time after Ibn Rushd’s death, is extremely generous in his praise of the latter’s application to the

law. Ibn ‘Arabi says that he was among “the most knowledgeable of people with respect to the noble rank of the Messengers (*bi-miqdar al-rusul*), the most tenacious in adherence to the *sunnas* of the Messenger, may the peace and blessing of God be upon him, the most vigilant in protecting the *sunnas*, knowledgeable about what befits the majesty of the Truth”.⁶⁹ He concludes his account by reiterating that Ibn Rushd accepted that, like the Prophets, there were certain persons favoured by God who received knowledge by way of divine emanation rather than by acquired learning. Al-Maqqari, of the eleventh century, citing a seventh century historian, Ibn Sa‘id, (who wrote some decades after Ibn Rushd’s death), states that Ibn Rushd and his son were both “shining luminaries of faith, and bright torches of the religious observances instituted by our holy Prophet”.⁷⁰

I.4. HIS LEGAL AND THEOLOGICAL WORKS

A complete list of Ibn Rushd’s theological and legal works may be ascertained by collating information from several of his biographers. The most complete list with respect to this field is the following, contained in al-Ansari’s bibliography:⁷¹

- *Bidayat al-mujtahid wa-nihaya al-muqtasid*⁷²
- *Manahij al-adilla fi usul al-din*⁷³
- *Fasl al-maqal fi ma bayn al-shar‘i‘a wa’l-hikma min al-ittisal*⁷⁴
- *Mukhtasar al-mustasfa*
- *Sharh al-‘aqida al-hamraniyya*⁷⁵
- *Maqala fi’l-jam‘ bayn i’tiqad al-mashsha’in wa’l-mutakallimin min ‘ulama’ al-islam*⁷⁶
- *Maqala fi kayfiyya wujud al-‘alam fi’l-qidam wa’l-huduth*
- *Maqala fi anna Allah ta‘ala ya‘lam al-juz’iyyat*
- *Maqala fi wujud al-sarmadi wa’l-wujud al-rabbani*
- *Maqala fi kayfiyya dukhulih fi’l-amr al-‘aziz wa-ta‘allumih fihi*
- *wa ma fadala min ‘ilm al-Mahdi*

– *al-Radd ‘ala’l-Ghazali fi tahafut al-falasifa* ⁷⁷

– *Kayfa yud a al-asamm ila’l-dukhul fi’l-islam* ⁷⁸

Of the works named by Ibn Abi Usaybi‘a,⁷⁹ two (*k. al-Tahsil*⁸⁰ and *k. al-Muqaddimat fi’l-fiqh*⁸¹) appear to be by the grandfather. A commentary on the former entitled *Sharh k. al-muqaddimat fi’l-fiqh li-jaddihi* – and also listed as *k. al-Tahsil* – does appear to be by the grandson.⁸² Works listed by him which are not mentioned by al-Ansari include:

– *k. fi’l-Fahs an masa’il waqa’at fi’l-‘ilm al-ilahi fi kitab al-shifa’ li-Ibn Sina*

– *Ma’sala fi’l-zaman*

– *Talkhis k. al-akhlaq li-Aristutalis* ⁸³

Al-Dhahabi cites Ibn Abi Usaybi‘a as his source for Ibn Rushd’s bibliography and his list contains only insignificant variations in certain titles.⁸⁴ Renan lists five theological and eight juridical books:⁸⁵ six of the juridical works do not appear to be listed by the three above-mentioned bibliographers, namely:

– *Cours complet de jurisprudence* ⁸⁶

– *Vigilia super errores repertos in textibus legis civilis*

– *Des causes du barreau*⁸⁷

– *Traite des sacrifices*

– *Traite des dimes*⁸⁸

– *Des profits illicites des rois, des presidents, des usuriers.*⁸⁹

Ibn Rushd’s *Commentary on Plato’s “Republic”* appears as *Jawami‘ siyasa Aflatun* in Renan’s list.⁹⁰ Nogales lists a manuscript pertaining to legal and theological matters entitled *Uryuza hawla qawa’id al-islam al-jamsa*.⁹¹ One seemingly important work of *fiqh* entitled *al-Da’awa (Legal claims)* does not appear in any of the early bibliographies but is credited to him by a modern scholar on the basis of the Escorial manuscript.⁹²

1.5. THE *BIDAYA AL-MUJTAHID WA NIHAYA AL-MUQTASID*

1.5.1 *The genesis of the Bidaya*

The genesis of the *Bidaya* is described as follows by al-Ansari:⁹³

I transmitted from the concise and precious historical writing of Abu'l-‘Abbas ibn ‘Ali ibn Harun: “I was informed by Muhammad ibn Abi'l-Husayn ibn Zarqun that the *Qadi* Abu'l-Walid ibn Rushd borrowed a book by one of the jurists of Khurasan from him; it contained the reasons for the differences (of opinion) which occur between the imams of the major cities, and he did not return it to him, but added some of the doctrines (*al-kalam*) of the two imams Abu ‘Umar ibn ‘Abd al-Barr⁹⁴ and Abu Muhammad Ibn Hazm⁹⁵ and ascribed it to himself. This is the book called *Bidaya al-mujtahid wa-nihaya al-muqtasid*.” Abu'l-‘Abbas said: “The man was not [well-]known for *fiqh*, even though he was eminent in sciences other than this [science]”.ⁱ

Ibn Rushd had, however, composed at least one other legal manual for he refers to it in the *Bidaya* as “our book concerning legal discussion, namely on the principles of *fiqh*”.⁹⁶

As well as the two sources quoted above, Ibn Rushd draws frequently on material from his grandfather, whom he refers to as *jaddi*,⁹⁷ and also from the Maliki jurist ‘Abd al-Wahhab,⁹⁸ and from

i This vitriolic attack would appear to identify Abu'l-‘Abbas and Muhammad ibn Abi'l-Husayn as concrete examples of Ibn Rushd’s detractors referred to above: Ibn Rushd is presented as an ignoramus who plagiarised his *Bidaya* from a work he had borrowed and did not even bother to return. The composition of the [main portion of] the *Bidaya* was in 564. It was in this year or shortly afterwards that Ibn Rushd was introduced to Abu Ya‘qub Yusuf and we are told by al-Marrakushi that he did indeed “become known and his ability became celebrated among men” (cf. *Mu jib*, p.174, and Hourani, *Averroes*, p.15).

the *Muntaqa* of al-Baji.⁹⁹ We learn from his biographers that he had memorized the *Muwatta'* and that he had written an abridgement (*Mukhtasar*) of al-Shaf'i's *Mustasfa*, a work on legal principles.¹⁰⁰

1.5.2. *The Bidaya as a work of ikhtilaf*

The *Bidaya* is classified as a work of *ikhtilaf*, that is, a work which expounds the differences of opinion within a school of jurisprudence or between different schools.¹⁰¹ The science of *ikhtilaf* may also encompass an investigation of inconsistencies within one particular doctrine;¹⁰² it also covers conflicting opinions not infrequently transmitted from a single jurist.¹⁰³ Works of *ikhtilaf* cover a very wide spectrum of writings. Some considered the divergence of teachings between just two *faqih*s,¹⁰⁴ for example, or between doctrines originating from two different geographical areas.¹⁰⁵ Others focused on the question of *hadith* material and were primarily concerned with comparing and classifying conflicting traditions according to their degree of relative authenticity.¹⁰⁶ Others sought to highlight the allegiances of certain sects to specific *hadith*s, being often polemical or political in nature.¹⁰⁷ Some works of *ikhtilaf* were composed from within the framework of one single school while others sought to champion one specific school above all others.¹⁰⁸ By the deliberate omission of specific *fuqaha'* from one's work of *ikhtilaf* one could effectively indicate their unacceptability, while avoiding the polemics of argumentation.¹⁰⁹ In the *Bidaya*, however, it is the *ikhtilaf per se* which is of overriding interest to the author. Ibn Rushd uses the genre in order to generate a set of principles which, in theory at least, governs the maximum possible number of variant rulings of all the known schools.¹¹⁰ Exposition of the *ikhtilaf* is geared towards uncovering the mechanisms which give rise to differences, rather than out of any consideration for a particular school; the association of the differences with their respective causes is thus made to demonstrate the variety of