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STUDIES ON ISLAMIC
AND OMAN. VOL 6

Edited by Abdulrahman AlSalimi and Heinz Gaube.

IBADI JURISPRUDENCE ORIGINS, DEVELOPMENTS AND CASES

*EDITED BY BARBARA MICHALAK-PIKULSKA
AND REINHARD EISENER*

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The Built Environment in Ibadi Law of the 5th-6th Centuries H (11th-12th AD)

Abdulsattar Othman

1. Introduction

This paper deals with the Ibadi jurisprudence of building in the 5th-6th centuries H (11th-12th AD) in Oman as well as in the North African countries, particularly the Nafusa Mountains in Libya and the M'zab Valley in Algeria. It intends to clarify the responsibilities of the governing authority and the relationship between the governing authority and jurists who implemented the jurisdiction, which controls planning, construction, conservation, restoration, etc. It also deals with the main issues of planning in a larger scale such as networks of roads, inside and outside the settlements, the building of mosques, markets, houses, and other building which form the urban fabric of the settlements, and focuses on issues of ownership and use as well as the joint construction of houses, either with a neighbour or a group of partners. In addition, we present an important 'building type' that spread all over the countries of North Africa and particularly in the Nafusa Mountains and the M'zab Valley. This building type is well known as *qushur* (keeps), erected to be a shelter for residents in a time of danger. The residents also store there food like barley, wheat and olives. We shall also take up what jurists have written concerning water construction like *al-aflaj* (canals) in Oman, water-springs, wells and *al-mawajil* (water cisterns) which represent the backbone of life and agriculture in settlements both in Oman and in the North Africa countries. Jurists established the rules which control the division of water, the maintenance of water buildings and the change of ownership, whether through inheritance, donation, bequest, sale or any other act.

Ibadi laws reflect the life of the Ibadi communities in the Middle Ages and the commitment to achieve justice between litigants within the framework of Islam emanating from the Quran, the Sunna and other assets which governed the vision of Islamic jurisprudence in different eras. Ibadi laws reflect the vision of the Ibadi jurispru-

dents' culture and experiences in the field of jurisprudence in general and urban jurisprudence. It is the main system governing the management of a country's affairs and the role of people in the medieval Islamic ages. Here, the link seems to be clear between the ruling power and acolytes of thinkers who gave advice, and who directed the implementation of public policies relating to urbanization and justice in the country. Scholars and the rulers embody the management in Islamic societies. Scholars reflected in their works the remainder of their heritage in the field of 'legitimate politics'. Critical judges and jurists followed them and apply by their laws urbanization policies. They were adopted by the rulers according to the directions of scholars in the field of Islamic politics and became the leaders in the process of urbanization.

In Oman, the Ibadis established a distinguished community in creating an 'Ibadi state' with its 'Imams' at the top of the administrative hierarchy assisted by jurists and judges. The latter also received assistance from experts and the *abl al-nazar*, people who were knowledgeable and wise in specific fields. This system helped to adjust to the requirements of a given situation and the strict implementation of rules within the framework of the *shari'a*. In independence and stability, the Ibadi Imamate governed over long periods of Islamic history.

The condition of the Ibadi society in North Africa was different. Following the first Ibadi state of the Rustamids (160-296 H/ 776-887 AD), the Ibadi people faced repression under the Fatimids and other rulers of the countries of North Africa. In these long periods of time, the Ibadis were able to build up their own local administration relying on their judges and jurists and developed their own local administrative systems. The 'azzaba'-system is the most well known of these systems. This management system continued until the modern era. The impact of historical, geographical, religious and cultural factors is clear in the continuity of the Ibadi community with its rites, culture and heritage allowing it to survive. This unique Islamic experience deserves consideration and at-

tention. It confirms the strength and the effectiveness of this local administrative system.

Ibadi jurisprudence dealing with urbanism and building construction in the 5th- 6th centuries H (11th- 12th AD) is attributed to two jurists.² The first is Muḥammad al-Kindī and his book *Bayān al-sharʿ* (The Clearness of Islamic Law), and the second jurist is Aḥmad al-Kindī and his book *al-Muṣannaf* (The Classified Book). These two books rely on the Ibadi heritage of jurisprudence before them. The later and contemporary sources of Ibadi jurisprudence depend on them. As a consequence, these two sources are very important. They represent the eastern Ibadi jurists. This proves that there was a continuous contact between the eastern Ibadi jurists and the western Ibadi jurists, specifically of the Nafusa Mountain and the M'zab Valley.³ Ibadi juridical and other sources were spread all over North Africa, and we know of jurists and scholars of the Nafusa Mountains, who taught people in Algeria and west Africa.⁴

al-Fursuṭāʾī is a good example of an Ibadi jurist who played a leading role in this field. His book *al-Qisma wa uṣūl al-arḍ* (The Division and the Origins of the Lands) is one of the most important sources in the field of Ibadi urbanism and building. The author finished this book in Arīgh in the M'zab Valley at the end of the 5th century and the beginning of 6th century.⁵ al-Fursuṭāʾī was an expert in architecture, planning and construction.⁶ He was able to treat the problems in his environment somewhat differently from other Ibadi environments as was the case of Oman. This was very clearly implicitly reflected in his book.⁷

It is important to know that the cultural background of al-Fursuṭāʾī, which was forged in a family boasting scientists and scholars, played an effective role in the life of the Ibadi society in the Nafusa Mountains and the M'zab Valley. It is sufficient to know that the 'azzaba-system is attributed to them.⁸ This system is still current.⁹ These experiences and clear vision are reflected in his opinions about planning a network of roads,¹⁰ building houses,¹¹ keeps, wells and springs.¹² His opinions are concerned with use, conservation and complete restoration.

2. Main Items of Ibadi Urbanization and Buildings According to al-Fursuṭāʾī

First of all we should deal with al-Fursuṭāʾī's methodology. The first chapter of his book deals with the 'division', especially the division of land and building. He studied all the cases of division and expressed his views about it. He considered this chapter as a foundation for the

second part of his book, which deals with urbanization and building. In the second part, there is a chapter dealing with network of road, settlements, *quṣūr* (keeps) and houses. There are three main points that can be followed in his methodology, the rise and evaluation, the use, and restoration or rebuilding.

2.1 Network of Roads

al-Fursuṭāʾī explains in detail the rise of the road, the type of road according to its function and measurement.¹³ Then he interprets the relation between the road and the buildings around it, especially doors, the functions of walls, spouts (*mīzāb*, pl. *mayāzīb*) and building over the road (*sabāṭ*).¹⁴ There is a unique text in his book concerning the planning of a main road in a new settlement. He talks about the type of circular roads which consists of four roads in the four directions of the settlement: east, west, north and south which ended in eight gates (Fig. 1).¹⁵

He displayed other types of road infrastructure affected by the site of the settlement¹⁶ and the distribution of public buildings like mosques, markets and tombs.¹⁷ He interoperates a certain case concerning the site of a neighbour's settlement which on one side was owned by others. In this case the planning of the main roads must be directed to the other three sides (Fig. 2).

Then he treats all the problems connected with using all the types of roads. He deals with the maintenance of roads and changing the site of some roads which cross private property such as land or houses.¹⁸ Thus, it is very interesting to study the network of roads within Ibadi settlements, and the buildings around these networks from the archaeological and architectural point of view.

2.2 Settlements (*manāzil*)

Ibadi jurisprudence deals with all types of construction in the settlement (city, town, and village) both built on the land owned by a particular individual or built on public ground.¹⁹ al-Fursuṭāʾī discussed in detail the laws that control the relation between people who are participating in one building. He also treats all problems which might take place among neighbours. A neighbourhood faces many problems in the building process such as joint walls, the height of the building, position of the doors and windows, etc... al-Fursuṭāʾī explains all these problems and presents the solution according to his opinion and the opinions of other jurists.²⁰ These opinions or

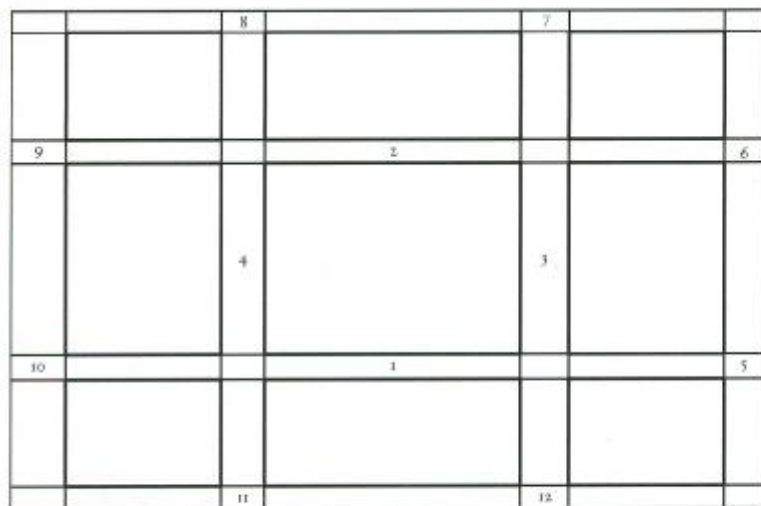


Figure 1

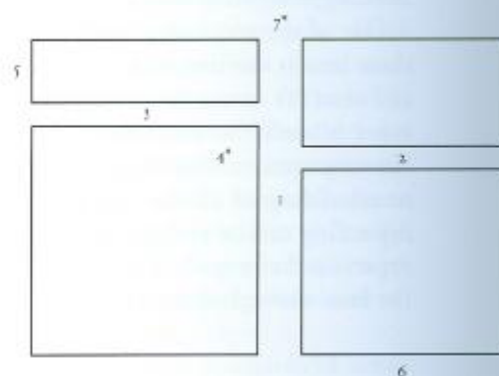


Figure 3a

- 1-3 Main Roads
- 4 The Mosque
- 5 Water Spring
- 6 Market
- 7 Mountain

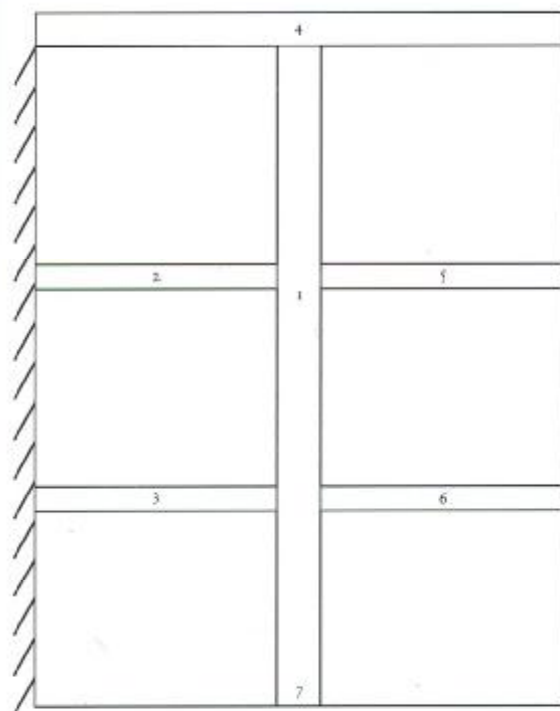


Figure 2

- 1-3 Main Roads
- 4-7 Gates

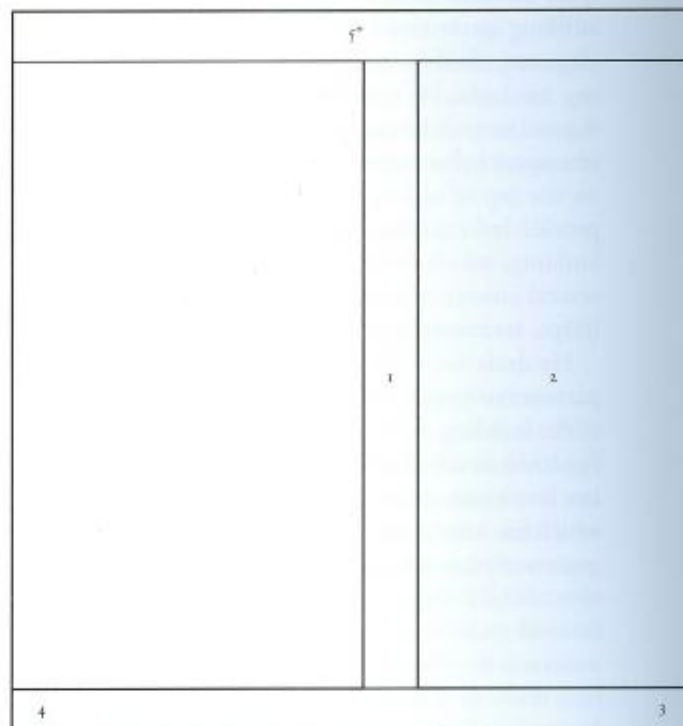


Figure 3b

- 1 Main Roads
- 2 The Mosque
- 3 Market
- 4 Grass Land
- 5 Tombs

laws are very important as they provide new information about the units and elements of the building, its plan, the building material as well as the building methods.

One of the very important ideas which is reflected in these laws is the rise of the settlement and its evolution. al-Fursuṭā'i's treatment is also focused on agricultural zones around the settlement and its water buildings.²¹ He concentrates also on the maintenance, restoration, or rebuilding of all the construction in the settlement depending on the people's agreement or on the views of experts (*abl al-naẓar*). This reflects once more the role of the local management in Ibadi societies.

2.3 The Keeps (*quṣūr*)

al-Fursuṭā'i talks in detail about the *quṣūr* in a completely separate chapter.²² His laws deal with the process of its establishment and construction. First of all he treats the problems of the land and the sites of building *quṣūr*. Then he discusses the relationship in the neighbourhood of *quṣūr* and the problems of the *ḥarīm* (the space between *quṣūr*) and its measurement. The laws of building *quṣūr* show many details about their planned elements, functions, building material and the building methods. He interprets all the problems concerning military elements like ditches, curtain walls, *fayṣals* (the space between two walls), *shurafāt* (military element on the top of walls), and the gate of the *qaṣr*. His laws provide information about the interior of this type of building, which consists of a central courtyard, portico, several storeys of rooms and other elements for passage (steps, staircases, pathways).

He deals with the problems that take place between partners in a *qaṣr*. Through this treatment the function of the building in this period became very clear. The *qaṣr* functions as a shelter for people in time of danger. People can live inside it for a long time depending on the food which has been stored there in special stores. That means *quṣūr* served as safe places containing food (barley, wheat, olive oil), as stores for Ibadi people in times of danger. In brief *quṣūr* represent a distinctive architectural phenomenon for residential Ibadi settlements in North Africa, many of which are still standing both in the Nafusa Mountains in Libya²³ or in the M'zab Valley in Algeria²⁴. The *quṣūr* reflect the deficiencies of Ibadi societies in this part of the Islamic world during this period and show the experience of Ibadi societies in North Africa which had been gained after the fall of the Rustamid state.

al-Fursuṭā'i's laws also deal with the systems of building *quṣūr*, their use, and system of guarding. He also

talks about maintenance or rebuilding in some cases, according to the partners' agreement or the decision of experts. Rebuilding takes place according to certain rules concerning the form of the building, the building material, the characteristics in the form of the architectural element and the height of the buildings.²⁵

2.4 Architectural Works of Water

Water is the backbone of life. Resources of water in desert areas are very important to maintain and to be used carefully. al-Fursuṭā'i treats all the problems concerning water. He interprets the methods of water division. His laws deal with all kinds of water buildings: *sawāqī* (water canals), springs, wells, cisterns, and also the architectural works related to these elements like bridges. He shows the rules which control its location, construction, use and maintenance or its rebuilding.²⁶ al-Fursuṭā'i's treatment contains the architectural works inside the settlement and in the agricultural areas.

He uses many architectural terms. Studying these terms is very important to understand the function of water networks in Ibadi architecture. It is also useful to understand the descriptive texts in medieval book resources of jurisprudence and branches of knowledge. Generally the architectural terms in al-Fursuṭā'i's book *al-Qisma wa uṣūl al-arḍīn* is a very important item in studying the Ibadi architecture and very useful in studying Islamic architecture in general.

3. Urban Ibadi Jurisprudence in Oman

Here we focus on two important resources of Ibadi jurisprudence in the 5th-6th centuries H (11-12 AD). The first is an encyclopaedia in the field of Ibadi Jurisprudence entitled *Bayān al-shar'*. The author of this encyclopaedia is Abū 'Abd Allāh Muḥammad ibn Ibrāhīm al-Kindī who died in 508 H (1114 AD).²⁷ After his death, the book was scattered and disorganized. This state of affairs persuaded Abū Bakr Aḥmad ibn 'Abd Allāh ibn Mūsā l-Kindī to collect the book's pages and to arrange the book into chapters according to the main subjects.²⁸ His work, called *al-Muṣannaf*, contains important chapters dealing with the problems of urbanism and of building. The main issues in this book concern road networks, *aflaj* (water canals), and mosque architecture.

3.1 The Rise of Road Networks and their Evolution

Muḥammad al-Kindī displays the laws of the road, the laws which control the rise and the evolution of roads. He explains also the types of roads, their measurements, their use, their maintenance as well as cases of site change. He interprets in detail the types of road networks inside the settlement and the roads outside which connect it with other settlements. The closeness between the laws of al-Fursuṭā'ī and that of al-Kindī is clear.²⁹ But a comparison between both of them also shows clearly the effects of the local environment.

al-Kindī explains the relationship between building and roads.³⁰ The book of al-Fursuṭā'ī was an important source in this field.³¹ This proves the affiliation between the jurists of Oman and the jurists of North Africa and reflects the communication of knowledge among scholars of the Islamic world's east and west during this period and how they benefited from the knowledge of other provisions in some issues and provisions that emanate from one base. This base is the Islamic religion through various interpretations.

3.2 *al-Aflāj* (Water Canals)

The *aflāj* represent the main element of public water. The laws of al-Kindī cover everything related to them, from digging, building, use, and maintenance or rebuilding in some case. He also treats the process of water division and the facilities of using water in irrigation and for other purposes.³² He concentrates on the mechanism and rules that control it. His laws provide one with an abundance of information about the network of water both inside the settlement and in farming areas.

Aflāj control the form of planning of settlements in Oman. People build their houses and other buildings along the conduit of the canal(s). al-Kindī treats the relation between *aflāj* and the buildings around it. His laws contain many architectural terms relating to *aflāj* and their architectural elements. These terms are very important in studying the Ibadi traditional architecture in Oman in general and the *aflāj* in particular.

3.3 Mosque architecture

The *Bayān al-shar'* contains a large chapter dealing with the laws about mosque architecture, the location of mosques, the planning of mosques, the cleanliness, the

wells of water, things which had been put inside mosques, the lighting of mosques and its endowments.³³

al-Kindī's laws show the vision of Ibadi jurisprudence concerning the architecture of Ibadi mosques, which were to be built following simple methods, from modest materials and without minarets so as to look like the mosque of the Prophet at Medina. The Ibadi jurisprudence has its laws concerning the congregational mosque, congregational prayer and the relation between this prayer and the existence of an Imam. Nūr al-Dīn ibn Humayd al-Sālimī wrote a book dealing specifically with this topic, entitled *al-Hujaj al-muqni'a fi abkām ṣalāt al-jum'a* (The Satisfied Proof of Friday Prayer).

al-Kindī's law deals also with the standards of urban planning which control the distribution of mosques inside settlements and outside of them and especially that of congregational mosques. The laws also treat the construction of a mosque within an agricultural area and especially in gardens. The laws touch on the relation between the site of a mosque at the commencement of a *ḥāra* (neighbourhood) and privacy.

This concept of choosing or selecting the site of a mosque also served other purposes in view of the security of a *ḥāra*. Strangers could not enter into its interior. They enter the mosque from the outer door of the mosque directly, without entering through the *ḥāra* gate or through a door adjacent to the *ḥāra* gate.

These laws dealing with mosque architecture enrich and increase our knowledge concerning the environment of building within Ibadi societies.

3.4 *al-Muṣannaf*

The second encyclopaedia of Ibadi jurisprudence in Oman is the *Kitāb al-muṣannaf* whose author is Abū Bakr Aḥmad ibn 'Abd Allāh ibn Mūsā l-Kindī (died 557 H/1162 AD).³⁴ This book consists of forty one parts and encompassed the assets and branches of the *shari'a* in detail. The book deals also with mosque architecture, the architectural elements of mosques, especially the columns and the relation between these columns and rules of prayer.³⁵ The effect of these rules extends to the planning of mosques themselves.

In part XVII of his work, Abū Bakr al-Kindī writes about networks of roads.³⁶ His laws integrate with those of al-Fursuṭā'ī and Abū 'Abd Allāh Muḥammad ibn Ibrāhīm al-Kindī in his book *Bayān al-shar'*. The laws explain the types of roads, their measurements, their use and the relation between roads and surrounding buildings. There are important details about the roads inside

the settlements and cemeteries.³⁷ All these laws resolve the problems that occur in Ibadi societies. The methodology of Abū Bakr's book is based on questions from scholars and answers from the author.³⁸

The subject of property is very important. The laws of Abū Bakr al-Kindī explain in detail its impact on solving the majority of problems concerning the urban design and construction of Ibadi buildings; they also address the process of restoration of roads as well as their diversion under certain conditions and the issues of ownership and measurement. The *Muṣannaf* deals also with the joint walls and resolves problems between partners.³⁹ The laws treat other problems on the use of the roof, especially those which cause harm to neighbours, such as viewing women. The law gives the solution by building a parapet around the roof of about 180 cm in height to prevent this.⁴⁰

The *Kitāb al-muṣannaf* deals also with *aflāj* architecture, its digging, its building, its use and its maintenance or rebuilding.⁴¹ The issue of *ḥarīm* is treated in this book as well. The author discussed the measurements and the exploiting of its space by humans and animals.

The *Kitāb al-muṣannaf* deals also with the problem of destroyed and damaged buildings and how to rebuild them without any harm.⁴²

4. Conclusion

Through the above review of the main sources of Ibadi jurisprudence on the laws that control the urban design and construction of buildings and the planning of road networks in the 5th-6th centuries H (11th-12th AD), it is clear that the Ibadi jurists dealt with many issues concerning Ibadi architecture. This treatment explained clearly the built environment. We can summarize the important topics in the following points:

1. Planning road networks both inside settlements that arise and grow natural or those that are planned to be created once. The planning vision to ensure continued urbanization and growth is achieved easily in a flexible vision. Understanding this vision of planning the road network is very important to understand the history of Ibadi architecture and discover its monuments. This also helps the archaeologists and restorers to study this architecture and prepare conservation- and labour projects to achieve cultural and tourist benefits.
2. The laws that deal with houses reflect many architectural phenomena, especially houses which had

been built by partakers. The laws explain clearly the forms of joint walls and their elements. These laws are very important in studying traditional Ibadi architecture, the planning of Ibadi houses, and the social relations among members of the Ibadi society.

3. The paper dealt with the prominent type of buildings in North Africa, the *quṣūr*. The laws show the criteria for selecting the site and methods and the building materials, the planning and the designs, the function of the building and also the standard for maintenance or rebuilding.
4. The *aflāj* are a famous type of architecture in Oman. The laws show the methods for their digging, their construction, their elements and explain in detail the process of water division. The maintenance of this type of building is very important to assure its function. The laws solved the problems that occur when this type of architecture is overseen through an important local system of management. All this information is necessary to study this type of architecture and prepare projects to restore or conserve it.
5. The laws highlighted the role of custom in constructing a new building or rebuilding or repairing one destroyed. The custom is different from one region to another; this shows the importance of tradition in studying Ibadi architecture and the various applications of traditional standards within different regions. It is important here to point out the complete convenience between people's customs and Islamic law.
6. Jurisprudence highlighted the role played by experts in the field of urban design, planning a network of roads and buildings, and the construction of all types of buildings. The Ibadi community depends on them to solve any architectural problems they are unable to solve themselves. Jurists and judges are helped by studying the experts' laws, opinions, and judgment. This role of experts reflects the level of civilized Ibadi communities.
7. The sources of Ibadi jurisprudence of the 5th-6th centuries H reflect a general view on urbanism, agricultural activities, construction and other aspects of life. Agriculture is the main activity of production in these periods. The jurists linked closely the architectural dimension and the urban dimension in their general concepts. This confirms that there was

a comprehensive vision of the concepts of urbanism with all its tributaries. This vision is very important to study urban design in general and architecture (construction) in particular, depending on the organic connection between them.

Notes

- 1 There exist many Islamic and Arabic sources in this field. It is important to know some of them like the *Sulūk al-mālik fī taḍbīr al-mamālik* of Ibn Abī l-Rabi' (for more about these sources see: 'Uthmān [2013]: 2648 ff.).
- 2 The main sources are *al-Qisma wa uṣūl al-arḍ* of al-Fursuṭā'i, the *Bayān al-ṣhar'* of Muhammad b. Ibrāhīm al-Kindī, and *al-Muṣannaf* by Aḥmad b. 'Abd Allāh al-Kindī.
- 3 See Baghṭūrī 2009.
- 4 Ibid.
- 5 Fursuṭā'i 1992: 24.
- 6 Ibid.: 98.
- 7 Ibid.: 76–223.
- 8 Ibid.: 30; Baghṭūrī 2009: 169–170.
- 9 Bālḥājī 2007: 70–81.
- 10 Fursuṭā'i 1992: 143–158, 195–219.
- 11 Ibid.: 143–158, 195–219.
- 12 Ibid.: 163–190.
- 13 Ibid.: 98.
- 14 Ibid.: 158–159.
- 15 Ibid.: 98.
- 16 Ibid.: 98.
- 17 Ibid.: 98.
- 18 Ibid.: 133–154.
- 19 Ibid.: 195–219.
- 20 Ibid.: 220.
- 21 Ibid.: 237–436.
- 22 Ibid.: 163–190.
- 23 Tījānī 1981: 38–119, 352–359.
- 24 Bālḥājī 2007: 46–52.
- 25 Fursuṭā'i 1992: 190.
- 26 Ibid.: 271–297, 445–457.
- 27 Bādī 2013: 10–49.
- 28 Ibid.
- 29 Kindī 1984–2006, XXXIX: 148–194.
- 30 Ibid., XXXIX: 195–217.
- 31 Ibid., XXXIX: 198.
- 32 Ibid., XXXIX: 8–124; XL: 46–93.
- 33 Ibid., XVI: 7–81.
- 34 Kindī 1979–1989, XIV: 89.
- 35 Ibid., V: 251–252.
- 36 Ibid., XVII: 134–183.
- 37 Ibid., V: 134–183.
- 38 Ibid., V: 137–138.
- 39 Ibid., V: 139–152.
- 40 Ibid., XVII: 205–206.
- 41 Ibid., XVII: 37.
- 42 Ibid., XVII: 307–312.

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