

Chapter 5

Codification and Dissemination

5.1. The Imperial Code: *Zāhir al-riwāya*

A characteristic feature of imperial law is “codification”. As indicated above, the literary period of Islamic law started at the end of the 8th century, that is, exactly at the time when the reception took place. Apart from the legal books by Shaybānī and Abū Yūsuf, some other works such as the *Muwaṭṭa’āt*, the *Umm* and the *Majmū’* entered the picture, marking a new era of legal writing. Some of Shaybānī’s works, however, clearly differ from all other works in this time and afterwards in that they form a formal unity entitled *Zāhir al-riwāya*. It has been demonstrated¹ that both the title of the whole *corpus* and the titles of the single parts and – last but not least – the inner structure of the principal work, the *Mabsūt*, exactly correspond to the *Corpus Iuris* by Justinian I, which represents a *Reichsrecht* par excellence. The fact that the new legal system is presented in a written and structured form and at the same time is based in form and content on a system which in turn was imperial² certainly confirms the imperial character of the *Zāhir al-riwāya*. Another question is of course to which extent independent jurists accepted the *Zāhir al-riwāya* as a coherent body of law.³ Not only did the *Zāhir al-riwāya* represent a new literary phenomenon for the scholars who up to the 9th century usually did not compose books in the narrow sense,⁴ it also raised suspicion because of its closeness to the government. No doubt oppositional jurists who had difficulties in accepting the content were even less interested in the form. The focus in ninth-century legal discourse was not on the form but on the authoritativeness of the content. Pious scholars such as Aḥmad b. Ḥanbal (d.

1 See above 105.

2 W. Turpin ‘The purpose of the Roman law codes,’ *SZ* 104 (1987) 625.

3 The Ḥanafīs always regarded the *Zāhir al-riwāya* as a coherent body of law ranking before the *nawādir* and the *fatāwā* (W. Hallaq *Authority* 181).

4 G. Schoeler ‘Die Frage der schriftlichen oder mündlichen Überlieferung,’ *Der Islam* 62 (1985) 213.