Islamic Law, Imams, & Schools: A Historical Survey

Overview

This chapter presents an analysis of classic/traditional schools of Islamic law (*madhāhib al-fiqh*) in terms of their history and fundamental sources. The concept of Islamic law and the various uses of the term in the English language is discussed in the first section. The second section briefly outlines the evolution of schools of Islamic law from the post-prophetic era until what was referred to as 'the declination era,' and criticises the 'feature-based' method used in traditional categorisation of *madhāhib*. Nine classic/traditional schools of Islamic law are considered, namely, Mālikīs, Ḥanafīs, Shafiʿīs, Ḥanbalīs, Shia Jaʿfarīs, Shia Zaydīs, Ẓahirīs, Ibāḍīs, and Muʿtazilīs.

3.1. WHAT IS 'ISLAMIC LAW?'

Fiqh and Shariʿah

The term 'Islamic law' is commonly used in literature written in the English language in reference to four different Arabic terms, namely, *fiqh, shariʿah, qānūn,* and *ʿurf*.[1] The word fiqh is used in the Qur'an and hadith in various forms to refer to understanding, comprehension, and gaining knowledge of the religion in general.[2] Eventually, and since the end of the era of the imams of the Islamic schools of law/

thought, the word fiqh has been typically defined as, 'knowledge of practical revealed rulings extracted from detailed evidences' (*al-ʿilmu bi al-aḥkām al-sharʿiyyah al-ʿamaliyyah min adillatihā al-tafṣīliyyah*).[3] Thus, fiqh is limited to 'practical' (*ʿamaliyyah*) versus theological (*iʿtiqādiyyah*) issues. 'Detailed evidences' are verses from the Qur'an and narrations of hadith.

On the other hand, the term 'shariʿah law' has negative connotations in the English language, because it is normally used to refer to various corporal punishments used in some countries. Statistically speaking, these punishments have been applied predominantly on the weak and marginalised in these societies.[4] This partial application raises serious questions about the political motives behind applying these punishments, regardless of the juridical/theological debates over them. Nevertheless, the word shariʿah is used in the Qur'an to mean a 'revealed way of life,' for example, the word '*shirʿah*' in Surah *al-Māʾidah*, and the word shariʿah in Surah *al-Jāthiyah*. Yusuf Ali translated them as 'Law' and 'Way,' respectively. Picktall translated them as 'divine law' and 'road.' Irving translated them as 'code of law' and 'highroad.' My translation of the word shariʿah to mean 'a way of life' is similar to Ramadan's.[5]

It is necessary, for a number of theoretical and practical reasons, to clearly distinguish the concept of fiqh from the concept of shariʿah. Theoretically speaking, the two terms refer to two different meanings. Fiqh represents the 'cognitive' part of the Islamic law, to use a systems term, while shariʿah, by definition, represents the 'heavenly' part of this law. Thus, the term *faqīh* is used for people with 'understanding' (*fahm*),[6] 'perception' (*taṣawwur*),[7] and 'cognition' (*idrāk*),[8] and is not to be used for God. On the other hand, the term *al-shāriʿ* is a name for God,[9] which means 'The Legislator,'[10] and could not be used for humans, except for the Prophet, when he 'conveys a message from God.'[11]
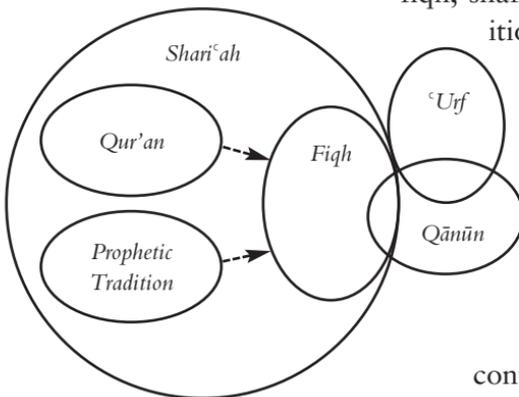
Qānūn and ʿUrf

The word *qānūn* is a Farsi word, which was 'arabised' to mean principles or *uṣūl*,[12] and since the nineteenth century to mean written laws.[13] Written laws, in countries which endorse Islam as a (or the)

source of legislation, could be directly derived from *fatāwā* of fiqh (that is, opinions from one or more of the schools of Islamic law, taken *verbatim*). This is specifically true in the family and inheritance laws in a number of countries. For example, Egyptian family law number 25/1925, amended by law number 100/1985, borrowed many of its statutes from the Ḥanafī fiqh.[14] However, many written laws in these countries are also borrowed from other (secular) systems of law, or are purely based on local custom, tradition, or *ʿurf*. For example, article 66 of the same law (25/1925) is based on an Egyptian custom that 'commits the bride to buying her own furniture at a level that is comparable to the dowry that she received,'[15] which is a stipulation that has no *fiqhī* basis in any classic school of law.

On the other hand, *ʿUrf* literally means custom or, more accurately, a 'good' custom that the community approves.[16] *ʿUrf* is sometimes claimed to be 'Islamic law' in some societies in order to approve some customary practices,[17] even if they were clearly prohibited in the Islamic schools of law, such as honor killings that take place in some Arabic Bedouin areas and south-east asian areas.[18] In the schools of fundamentals of law, most scholars consider custom to be an effective factor only in the application of the Islamic law, rather than a source of law in its own right.[19]

Chart 3.1 summarises all of the above (classic) relations between fiqh, shariʿah, *ʿurf* and *qānūn*. Traditionally, 'shariʿah' is believed to include the Qur'an, the prophetic tradition, and rulings of *fiqh/sharʿ* deduced from them.

Traditionally, *ʿurf* (custom) only affects the application of fiqh in some cases, hence the slight contact between their circles, as

Chart 3.1. A diagram illustrating the (traditional) relations between the concepts of shariʿah, fiqh, ʿurf, and qanūn. Notice the inclusion of fiqh with the Qur'an and the prophetic tradition in 'the revealed.'

shown in the chart. Finally, *qānūn* is the written law that could be borrowed from fiqh, *ʿurf*, and other sources, hence, the intersection between the three circles, as shown.

The Importance of Differentiating Between Fiqh and Shariʿah

Practically, blurring the line between fiqh and shariʿah gives way to claims of 'divinity' and 'sanctity' in human juridical ijtihad. Historically these claims have resulted in two serious phenomena, namely, mutual accusations of heresy and resistance of renewal of the Islamic law.

Mutual accusations of 'heresy' or 'apostasy', not just error or sin, have frequently occurred between groups of scholars who had different opinions about what they held as fundamental/essential/divine parts of the law. A large number of bloody conflicts throughout the Islamic history were instigated by such accusations between followers of different *madhāhib*. One example is the violent conflict between the Ashʿarite and Muʿtazilī schools of thought during the Abbasids reign, in the eighth century CE. A second example is the fierce battles, in Khurasan (1000 CE), Nisapur (1159 CE), Esfahan (1186 CE), and Jerusalem (1470 CE), between followers of the Shāfiʿī and Ḥanafī schools of law over their minor discrepancies. In Khurasan, around 1000 CE, the battle started after the Caliph, impressed by Abū Ḥāmid al-Ghazālī's knowledge, decided to change the official school of law in courts from the Ḥanafī to the Shāfiʿī school, to which al-Ghazālī belonged. *Fiqhī* differences between the two schools might explain the seeming cause of the conflict, but it is obvious that politics of power played a key role.

A third example is 'the sword' that Ibn al-Ṣalāḥ recommended his students to use on teachers of philosophy in the thirteenth century CE. The numerous battles between Sunni and Shia that lead to the repeated 'destruction, looting, and burning' of the cities of Baghdad, Basra, Karkh, and Rayy (for example, in 962, 972, 974, 981, 1008, 1015, 1031, 1041, 1047, 1079, 1184 CE) is yet a fourth example.[20] Similar accusations of heresy over differences of opinion in the Islamic law continue to breed ideologies of violence and intolerance, and suppress freedoms and a culture of co-existence in our present time.

On the other hand, inflexibility and resistance of renewal in the Islamic law has continued to intensify as the circle of the 'sanctified,' and hence 'unchangeable,' widened throughout the centuries. Gradually, the circle of the 'sanctified and unchangeable' started to include opinions of imams from various schools of law. Eventually, the 'door of ijtihad' was claimed to have been closed and the Islamic law, in general, lagged behind real-life changes that occurred since the medieval era.

3.2. SCHOOLS OF ISLAMIC LAW: A BRIEF HISTORY

Overview

The purpose of this section is to present a brief account of the historical development of the nine schools of law under consideration, from the 'post-prophetic era' until the 'declination era.' This account represents the 'historical context' of the development of the fundamental theories which will be presented in the following sections. This section also presents a critique of the traditional 'one-dimensional' and 'feature-based' categorisation of classic schools of Islamic law.

Post-Prophetic Era

In the beginning of the post-prophetic era, various historic accounts of the companions' reasoning (ijtihad) show a general tendency to reach agreements on juridicial matters based on direct citations of Qur'anic verses or accounts of prophetic decisions made in similar situations. Examples are the companions' famous debates over the 'inheritance of the grandmother' (*mīrath al-jaddah*), 'seeking permission for entering people's homes' (*al-isti'dhān*), 'the waiting period for a widow' (*ʿiddah al-armalah*), fasting while travelling (*al-ṣawm fī al-safar*), and also a number of other issues.[21]

Then, with the expansion of the 'Islamic State' and new experiences that the companions developed through their interactions with people from different civilisations, the companions started to face new questions with no available direct answers. In these cases, they clearly

applied their own sense of public interest (*maṣlaḥah*), especially those who were in government positions, for instance, the issues of the 'conquered land' (*al-arḍ al-maftūḥah*), that of 'laborer liability' (*taḍmīn al-ṣunnāʿ*), 'collecting the Qur'an' (*jamʿ al-muṣḥaf*), and 'ʿUmar's *ijtihādāt*' (previously discussed in Chapter One).

However, several factors contributed to a divergence of juridical opinions within the community of companions and, eventually, the formation of the first categorisation of schools of law based on their methodology of juridical reasoning (ijtihad). The schools, or rather 'tendencies,' were the 'supporters of opinion' (*ahl al-ra'ī*) and the 'supporters of narration' (*ahl al-athar*), and they are briefly discussed in various contemporary accounts of the 'evolution of fiqh.' The factors that led to the formation of these two 'tendencies' could be summarised in three factors, namely, political/sectarian conflicts, migration of the companions, and personalities of the imams of the time.

First, major conflicts followed the assassination of ʿUthmān ibn ʿAffān (d. 35 AH/655 CE), the third Caliph, which divided the community of companions into a number of political rivals. Political rivals quickly became fighting parties,[22] and political conflicts became 'sectarian divisions' when political differences generated philosophical differences over 'matters of faith,' as far as rivals claimed.[23] Political/Sectarian rivalism gave birth to a phenomenon that had a major impact on the law, which is 'forging of narrations' (*waḍʿ al-ḥadīth*). According to some narrators who took part in this process themselves, various sectarian/political rivals attempted to give legitimacy to their sectarian convictions or even political leaders by forging supporting prophetic narrations.[24]

Second, the personalities of the teachers of the time affected their students and the schools that eventually developed in their regions. A typical example is the difference between ʿAbdullāh ibn ʿUmar and ʿAbdullāh ibn ʿAbbās. When Abū Jaʿfar al-Manṣūr requested Mālik ibn Anas to write '*al-Muwaṭṭa*' (The Well-Trodden Path), it is narrated that he outlined a methodology for Mālik by saying: 'Put together a book that benefits people, in which you avoid Ibn ʿAbbās's provisions (*rukhaṣ*) and Ibn ʿUmar's strictnesses (*shadā'id*).'[25] ʿAbdullāh ibn ʿUmar was known for a sense of strictness. He, for example, hurt his

eyes by washing the inside of his eyelids during ablution. The effect of his personality was obvious on the opinions of some of his students, such as, Nāfiᶜ, Sālim, and Sulaymān ibn Yasār. On the contrary, ᶜAbdullāh ibn ᶜAbbās was known for a sense of leniency and magnanimity, which showed in his *fatāwā* and his students, such as, Jābir ibn Zayd, Ibrāhīm al-Nakhᶜī, and Saᶜīd ibn al-Musayyab. ᶜĀ'ishah (the Prophet's wife), for another example, was a strong and independent woman. Her character showed on a number of her *fatāwā* and opinions, in which she advocated women's independence and rights, notably against some of the other companions' direct narrations. Badr al-Dīn al-Zarkashī wrote a book dedicated to ᶜĀ'ishah's critiques to the other companions' narrations, which he called, 'ᶜ*Ayn al-Iṣābah fī Istidrāk ᶜĀ'ishah ᶜalā al-Ṣaḥābah*' (The Accurate Account on ᶜĀ'ishah's Amendments to the Companions' Narrations).[26] I noticed that ᶜĀ'ishah's opinions found their way especially to the Ḥanafī school. This is perhaps the effect of ᶜĀ'ishah's students, al-Shiᶜbī and Ḥammād, who were both teachers of Abū Ḥanīfa.[27]

Finally, the first Islamic century witnessed a wide movement of migration, starting with the companions, especially to Iraq, Syria, and Egypt, and ending with Arabian soldiers who travelled to far off lands and, eventually, decided to stay in these places. Chart 3.2 shows a map of seventh century Muslim Caliphate and how the 'battles' of the time shaped the migration paths. Iraq became home to a large number of companions, such as ᶜAlī ibn Abī-Ṭālib and his children, ᶜAbdullāh ibn ᶜAbbās, Moḥammad ibn Maslamah, Usāmah ibn Zayd, and Abū Masᶜūd al-Anṣārī. Egypt became home to ᶜAmrū ibn al-ᶜĀaṣ and his sons, Qays ibn Saᶜad, Moḥammad ibn Abū Bakr, ᶜAmmār ibn Yāssir, and others. Yemen became home to Muᶜādh ibn Jabal, ᶜUbayd Allāh ibn al-ᶜAbbās, and others. Syria became home to Muᶜāwiyah and many other Ummayyads, ᶜAbdullāh ibn ᶜUmar, Shuraḥbīl, Khālid ibn al-Walīd, al-Ḍaḥḥāk ibn Qays, and others. Oman became home to Hudhayfah ibn al-Yamān and others. Abū Ayyūb al-Anṣārī went as far as today's Istanbul, where he died. Yet, many of the companions remained in Makkah and Madinah.[28] Thanks to the civilisations in which the new immigrants merged, Islamic law began to incorporate new geographical and cultural dimensions.
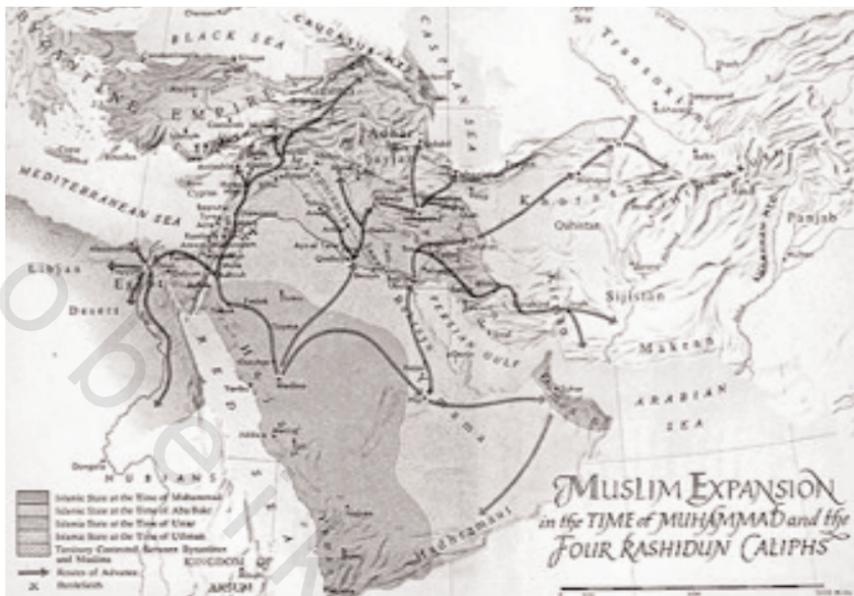
Chart 3.2. This map illustrates the seventh-century paths that battles, and immigrants, took. Scanned from: R. Roolvink et al., Historical Atlas of the Muslim Peoples (Amsterdam, 1957). Available in soft form on: http://www. princeton.edu/thumcomp/dimensions.html (visited: April 13, 2006).

Ahl al-ra'ī (Supporters of Opinion) and *ahl al-athar* (Supporters of Narration) generally reacted in two different ways with the above factors. The following is an outline of these reactions.

1. *Ahl al-Ra'ī*: The 'Supporters of Opinion' generally reacted to the phenomenon of forging of prophetic narrations by showing significant reluctance to accept 'single-chained' (*āḥād*) and especially 'disconnected-end' (*mursal*) chains of narrators. They tended to resort to principles mentioned in the general expressions (*ʿumūm*) of the Qur'an in their search for answers to new questions. Eventually, this method evolved into the (formal) procedures of reasoning by analogy (*qiyās*) and juridical preference (*istiḥsān*). Jurists of Iraq were famous for relying on 'reason' in their methods to the extent of being accused by some of the jurists of Madinah of, 'preferring their opinions over the Prophet's tradition.'[29]

2. *Ahl al-Athar*: 'Supporters of Narration' dealt differently with the phenomenon of forging prophetic narrations and with new questions. Their hadith approach was to verify the narrators' honesty via studying their biographies more carefully, and to intensify the search for any hadith that applies, via direct or indirect linguistic implications, to the unanswered questions they had. 'Supporters of Narration' generally preferred to resort to 'weak' (*ḍaʿīf*) narrations over analogical reasoning and over the principles 'deduced' from the general expressions of the Qur'an.[30]

Ahl al-ra'ī li ahl al-athar tendencies were not simply a matter of geography, as some researchers had thought.[31] It is true that the migration factor, explained above, played a role in the tendency of those who lived in Iraq towards opinion (perhaps also due to the influence of ʿAlī and Ibn ʿAbbās) and the tendency of those who lived in al-Hijaz and Syria towards narration (perhaps also due to the influence of Ibn ʿUmar and Abū Hurayrah).

However, while the Iraqi school practiced '*al-ra'ī*' through the methods of *qīyās* and *istiḥsān*, the Ḥijāzī school, especially in Madinah also practiced *al-ra'ī* through the method of interest/*maṣlaḥah*, especially in the fiqh of Mālik and his students. Nevertheless, Ḥijāzīs generally used 'unrestricted' *maṣlaḥah* in, what they called, the 'absence of a script', by which they mean the absence of a specific script that addresses the issue at hand. On the other hand, Iraqis generally used *qīyās*, and especially *istiḥsān*, even in the presence of scripts that they considered 'conflicting with reason.' These reasoning methods will be discussed in more detail in the next chapter.

Finally, the difference between *ahl al-ra'ī* and *ahl al-athar* was not a matter of 'traditionists' versus 'liberals,' over the 'effectiveness of the scripts,' as some current researchers thought.[32] It is clear that both methods were clearly 'traditional,' in being solely script- and narration-based. Nevertheless, *ahl al-ra'ī* were dealing with traditions in a more rational way, while *ahl al-athar* were more literal. In other words, the two schools represented two alternative methodologies of applying the scripts.

The Imams' Era

The second and third Islamic centuries could be called the 'era of imams.' Traditional schools of Islamic law (*madhāhib*), as we know them today, were named after a number of imams who lived at that time. The schools of Shāfiʿīs, Mālikīs, Ḥanafīs, Ḥanbalīs, Shia (I will consider Jaʿfarīs and Zaydīs here), and Ibāḍīs, were named after Moḥammad ibn Idrīs al-Shāfiʿī (d. 240 AH/854 CE), Mālik ibn Anas (d. 179/795 CE), Abū Ḥanīfa al-Nuʿmān ibn Thābit (d. 150/767 CE), Aḥmad ibn Ḥanbal (d. 241/855 CE), Jaʿfar al-Ṣādiq ibn Moḥammad al-Bāqir (d. 148 AH/765 CE, the sixth of the 'Twelve Imams'),33 Zayd ibn ʿAlī Zayn al-ʿĀbidīn (d. 121 AH/739 CE), and ʿAbdullāh ibn ʿIbād (d. 86 AH/705 CE), respectively.34 There are a few other Imams, who also lived in the second era, after whom some (extinct) *madhāhib* had been named, such as Sufyān al-Thawrī (d. 161AH/778 CE), Abū Thawr (d. 240AH/854 CE), al-Awazāʿī (d. 157 AH/774 CE), and al-Layth ibn Saʿad (d. 175 AH/791 CE). The only exception in this nomenclature was *al-ẓāhiriyyah* (the literalists or Ẓāhirīs). Their odd literal method and the modest charisma and popularity of its founder (Dāwūd ibn ʿAlī, d. 268 AH/881 CE) is perhaps the reason behind not naming the school in the same manner.

Imams left behind legacies and large numbers of narrations, *fatāwā*, and students. Each imam had developed procedures of ijtihad, which he followed consistently – according to his students – in issuing *fatāwā* and authenticating hadith. However, imams left behind only oral or written narrations of hadith and collections of *fatāwā*, and not theoretical accounts of their methodology in ijtihad, with the exception of al-Shāfiʿī's '*Risālah*' (The Message).35 The following is a brief account of the formation of each of the above schools of fundamentals of Islamic law, in which 'chains' of imams of each school are traced. I based this account on a survey of each *madhhab*'s currently familiar 'textbooks,' which are presently studied in traditional Islamic universities and institutes and considered 'authentic references' for these schools' opinions.

The Ḥanafī 'fundamentals of law' (*uṣūl*) were developed two generations after the founder of the school, Abū Ḥanīfa. From what we

know, Abū Ḥanīfa himself did not write specific volumes on fiqh. He wrote on issues related to Islamic creed and education, such as, *al-Fiqh al-Akbar* (The Most Important Law),[36] *al-Radd ʿAlā al-Qadarīyyah* (Refuting Pre-Destinationists),[37] and *al-ʿĀlim wa al-Mutaʿallim* (Teacher and Student).[38] Abū Ḥanīfa narrated hadith, which Abū Yūsuf (d. 182 AH), his chief student, collected in his '*Kitāb al-Āthār*' (The Book of Recounts).[39] Later, Abū Yūsuf wrote a book on *al-Kharāj* (Taxes),[40] in which he explained Abū Ḥanīfa's *fatāwā* regarding various financial issues, in addition to Abū Yūsuf's own positions, which were sometimes different from his teacher's. Abū Yūsuf also compiled, *Ikhtilāf Ibn Abī Laylā* (The Disagreement of Ibn Abū Laylā),[41] on the rulings of Ibn Abū Laylā, who was Baghdad's Chief Judge, which Abū Ḥanīfa disagreed with. Moḥammad ibn al-Ḥasan al-Shaybānī (d. 187 AH/ 803 CE), Abū Ḥanīfa and Abū Yūsuf's best student, narrated '*Ikhtilāf*' after Abū Yūsuf. Then, Moḥammad ibn al-Ḥasan wrote a number of comprehensive volumes on fiqh, which are now considered the main Ḥanafī references in fiqh, the most significant of which is, *al-Jāmiʿ al-Kabīr* (The Large Compendium).[42] Up to that point, the Ḥanafī school was studied and applied based on large collections of hadith and fatwa, rather than specific metho-dology. It was the next generation of students who elaborated on what came to be known as *uṣūl al-ḥanafiyyah* (fundamental methodology of the Ḥanafīs). Both al-Sarkhasī (d. 489 AH/1096 CE) and al-Bazdawī (d. 542 AH/1147 CE) wrote books called, *al-Uṣūl* (The Fundamentals),[43] in which they explained formal issues of methodology, such as com-mands (*al-amr*), specific and general expressions (*al-khāṣ wa al-ʿām*), juridical authority (*al-ḥujjiyyah*), analogical reasoning (*al-qiyās*), and abrogation (*al-naskh*). Al-Sarkhasī wrote in his introduction that, 'it was time to elaborate specifically on the fundamental concepts (*uṣūl*), on which Moḥammad ibn al-Ḥasan's detailed rulings (*furūʿ*) were based, in order for future generations to build their fiqh on these *uṣūl* when they face unprecedented matters.'[44] In my view, subsequent gen-erations of Ḥanafīs built their fatwa and ijtihad, even in unprecedented matters, on Abū Ḥanīfa, Abū Yūsuf, and Ibn al-Ḥasan's precedents and opinions, rather than al-Sarkhasī and al-Bazdawī's detailed *uṣūlī* methodology.

The Mālikī *madhhab* followed a similar course of development. Mālik left behind a large collection of *fatāwā* and hadith, especially in his '*al-Muwaṭṭa'*' (The Well-Trodden Path).[45] Ibn Wahb (d. 197 AH/813 CE), Mālik's student, wrote '*al-Mujālasāt*' (The Meetings),[46] in which he narrated the fiqh that he heard from Mālik during their meetings. Saḥnūn (d. 695 AH/ 1296 CE), another student of Mālik, wrote, '*al-Mudawwanah al-Umm*' (The Mother Account),[47] in which he also recorded a large number of Mālik's opinions. The methodology that Mālik and consequent generations of his students developed was not articulated until the time of Abū Bakr ibn al-ʿArabī (d. 545 AH/1150 CE) and Shihāb al-Dīn al-Qarāfī (d. 684 h /1285 CE), who wrote '*al-Maḥṣūl*' (The Harvest) and '*al-Qawāʿid*' (The Basic Rules), respectively.[48] However, Mālik's books of fiqh and hadith, especially '*al-Muwaṭṭa'*' remained to be the school's primary references.

Likewise, the Ḥanbalī *madhhab* started with Aḥmad ibn Ḥanbal's large volume of narrations, followed by collections of his *fatāwā* narrated by his students, such as that of his sons, Ṣāliḥ (d. 266 AH/879 CE) and ʿAbdullāh (d. 290 AH/903 CE), in addition to Abū Bakr al-Athram (d. 261 AH/875 CE), ʿAbdullāh al-Maymūnī (d. 274 AH/887 CE), Ḥarb (d. 280 AH/893 CE), and Abū Bakr al-Marwazī (d. 275 AH/888 CE). Abū Bakr al-Khallāl (d. 311 AH/923 CE), al-Marwazī's student, wrote an encyclopaedia on Aḥmad's fiqh that he called, *Kitāb al-Sunnah* (The Book of Traditions).[49] However, the theory of the Ḥanbalī school was articulated in the usual *uṣūl* manner much later by Ibn Taymiyah (d. 728 AH/ 1328 CE) and his student, Ibn al-Qayyim (d. 748 AH/1347 CE),[50] who both built on the contributions of Najm al-Dīn al-Ṭūfī (621 AH/1224 CE), Ibn Rajab (d. 795 AH/1393 CE), and Ibn al-Laḥḥām (d. 803 AH/1400 CE).

Zayd ibn ʿAlī Zayn al-ʿĀbidīn narrated hadith and issued a large number of *fatāwā*, which his student, Abū Khālid al-Wasīṭī compiled in his, '*al-Majmūʿ*' (The Anthology).[51] His student Ibrāhīm ibn al-Zabarqān (d. 183AH/ 799 CE) narrated it after him.[52] The consequent generations of Zaydīs elaborated on Imam Zayd's methodology, notably his grandson, Aḥmad ibn ʿĪsā ibn Zayd (d. 389 AH/999 CE), in addition to al-Qāsim (d. 242 AH/856 CE) and Imam al-Hādī (d. 298 AH/911 CE).[53]

Ibāḍīs are related by their name to ʿAbdullāh ibn Ibāḍ (d. 86 AH/705 CE), but they started to be known by this name and develop a distinct school of law in the third century AH (ninth century CE).54 The chief contributor to this school of law was Jābir ibn Zayd al-Azdī (d. 93 AH/711 CE), a student of a number of companions, including Ibn Masʿūd, ʿĀ'ishah, Ibn ʿUmar, Ibn ʿAbbās, and Anas ibn Mālik. The 'chain of students' after Jābir were Muslim ibn Abū Karīmah, al-Rabīʿ ibn Ḥabīb, Maḥbūb ibn al-Raḥīl, Moḥammad ibn Maḥbūb, in consequent generations.55 Jābir wrote a large book of traditions and juridical opinions known as, *Diwan Jābir Ibn Zayd* (The Collection of Jābir Ibn Zayd), which Ibāḍīs followed and upon which they based their school of law. 56

Jaʿfar al-Ṣādiq narrated hadith and issued *fatāwā*, in addition to practicing a number of other sciences, such as chemistry and mathematics.57 Jaʿfar al-Ṣādiq taught a distinct group of students who conveyed his narrations and opinions, especially his son Mūsā al-Kāzim (also one of the Twelve Imams), in addition to Abū Ḥanīfa, Mālik, Sufyān, Ibn Isḥāq, Ibn Abū Ḥāzim, Yaḥyā ibn Saʿīd, and Jābir ibn Ḥayyān, whose name was used in coining the term 'Algebra.'58 There are different opinions as to whether Imam al-Bāqir (Imam Jaʿfar's father) had written the first known book on *uṣūl al-fiqh*, even before al-Shāfiʿī's '*Risālah*,' or whether theorisation in the Jaʿfarī *madhhab* had taken place much later.59 In any case, there is general agreement in the Jaʿfarī *madhhab* that 'independent ijtihad' only started after the twelfth Imam (ninth century CE), because before that time, the followers of this school were only following the subsequent twelve imams in *taqlīd* (imitation).60

Finally, the Shāfiʿī school was exceptional in the sense that Imam al-Shāfiʿī wrote/dictated his own accounts of hadith, fiqh, and even methodology of juridical reasoning (*uṣūl al-fiqh*). In fact, it was al-Shāfiʿī, according to most scholars, who laid the foundations of *uṣūl al-fiqh* as a separate branch of knowledge in Islamic law, in his book, '*al-Risālah*' (The Message).61 The influence of Greek philosophy on al-Shāfiʿī's *uṣūl* is a matter of speculation amongst researchers. Some claim that al-Shāfiʿī was never exposed to Greek philosophy, and others claim that he was fluent in the Greek language and that Greek

influence 'shows in his writings.'[62] I found no historical evidence for any of the opposing arguments. However, based on my own exposure to both al-Shāfiʿī's writings and Greek philosophy, I would say that al-Shāfiʿī's methodology in *uṣūl*, especially as illustrated in '*al-Risālah*' and '*al-Umm*,' shows no direct influence from Greek logic or philosophy. Nevertheless, it is possible that he had read what was available from the Greek heritage at his time, as his biographers had claimed. In any case, the *uṣūl* of the Shāfiʿī school itself were developed a great deal through the works of later scholars/philosophers, such as, al-Qaffāl al-Shāshī (d. 336 AH/947 CE), Abd al-Malik al-Juwaynī (d. 478 AH/1085 CE), and Abū Ḥāmid al-Ghazālī (d. 504 AH/1111 CE), who were all clearly and indisputably influenced by Greek philosophy.[63]

A Formal Critique of Madhāhib Categorisation

	Qur'an	Sunnah	Consensus	Analogy	Interest	Juridical preference	Custom	Imam's opinion	Companion's opinion	Continuity
Mālikīs	√	√	√	√	√		√		√	√
Ḥanafīs	√	√	√	√		√	√		√	√
Shāfiʿīs	√	√	√	√					√	
Ḥanbalīs	√	√	√	√	√	√			√	√
Jaʿfarīs	√	√	√					√		√
Zaydīs	√	√	√					√		√
Zāhirīs	√	√								√
Ibāḍīs	√	√	√	√	√	√				√
Muʿtazilīs	√	√	√	√	√	√				

Chart 3.3. A summary of the 'sources of legislation' that are used as 'classifying features' between the schools of Islamic law. This classification approach has a number of limitations, including single-dimensionality and overgeneralisation.

Below is a formal analysis and critique of the traditional *madhāhib* categorisation, from a cognitive science point of view.[64] In Chapter Two, the concept of categorisation/classification was introduced, and feature- versus concepts-based categorisations were compared. Based on the above historical survey, one could conclude that *madhāhib* categorisation started as a 'concept-based categorisation' and ended up as a 'feature-based categorisation.' When jurists were classified according to how much opinion (*ra'ī*) versus narration (*athar*) they relied upon in their *fatāwā*, the classifying criterion was the 'concept' of reason (*al-ʿaql*), which *ahl al-ra'ī* trusted more than *ahl al-athar* in the formation of their opinions. However, this categorisation eventually evolved into a categorisation that derived its labels from the names of imams and derived its classifying features from a list of 'sources of legislation' that were articulated by the second or third generation students of these imams. Hence, categorisation of Islamic schools of law became a feature-based process (the features being: Qur'an, prophetic tradition, consensus, analogy, interest, juridical preference, custom, imam's opinion, companion's opinion, and presumption of continuity).

The following is a critique of the above feature-based categorisation of *madhāhib*, based on the theoretical analysis presented in Chapter Two.

1. Missing significant analytical information: The above feature-based classification of schools misses the similarity between 'sources' that have different names in different schools, for example, the Ḥanafī *qiyās* (analogy) and the Jaʿfarī *istiṣḥāb* (continuity) and the Mālikī purposes of law (*maqāṣid*) and the Shāfiʿī 'unrestricted interests' (*maṣlaḥah mursalah*). It also misses the significant differences between the Ẓāhirī, Mālikī, and Jaʿfarī *ijmāʿ* (consensus) and the Ḥanafī, the Mālikī, and Muʿtazilī '*istiḥsān*' (preference).

2. Overgeneralisations: Schools of law were identified or differentiated based on whether or not they endorse one feature or another, such as, 'consensus' or 'preference.' However, the very definition of these features varies greatly from one school to another, and hence, cannot be accurately used as bases for classification.

3. 'Pigeon-hole' binary choices: Despite the fact that al-Ṭūfī is classified as 'Ḥanbalī,' his method of 'giving interest precedence over (specific) scripts' makes him radically different from Ḥanbalī methodology and actually closer to the Muʿtazilīs. Likewise, al-Ghazālī is classified as 'Shāfiʿī' even though his analogies based on unrestricted interests and opinions on *maṣlaḥah* could put him somewhere between the Shāfiʿī and Mālikī schools. Ibn Taymiyah from the Ḥanbalī school, endorsed the Mālikī 'tradition of the People of Madinah.' Al-Naẓẓām, from the Muʿtazilī school, rejected reasoning by analogy, which is a Ẓāhirī and Shia position. And so on.

4. Multidimensional factors ignored: Historically, *madhāhib* were largely shaped by factors such as geography, politics, and court systems, as briefly outlined earlier. However, these factors were not accounted for in the classification of *madhāhib*, as were other (binary) factors.

5. In addition to the above limitations of the traditional feature-based method, the nomenclature of traditional Islamic schools of law reflects a general orientation towards the authority of their charismatic imams, rather than their detailed methodologies. In my view, the effect of the imams went further than nomenclature, and theories of fundamentals (*uṣūl*) were not as strictly observed as the individual opinions of the imams.

Chapter Five will present a categorisation of current theories in the Islamic law, in which an attempt to avoid the above drawbacks of feature-based categorisations will be made.

Chains of Studentship and Narration

To put all of the above jurists in one historical perspective, I designed Chart 3.4 in order to analyse some key teacher-student relations/connections in the *madhāhib*'s history. The chart shows a selective group of six companions (names in double-bordered boxes), 12 of their students (*tābiʿīn*), seven imams of popular *madhāhib* (names in boxes), and a few of their students.

Ibn al-Hasan

Abū Yūsuf

Al-Mazūdī

Al-Maymūnī

Ibn Ḥanbal

Ḥarb

Ibn Ḥarb

Ibn Hamām

Abū Mukhtār

Dāwūd

Ibn Rāhawayh

Al-Shāfiʿī

Al-Qawārīrī

Al-Maradī

Abū Thawr

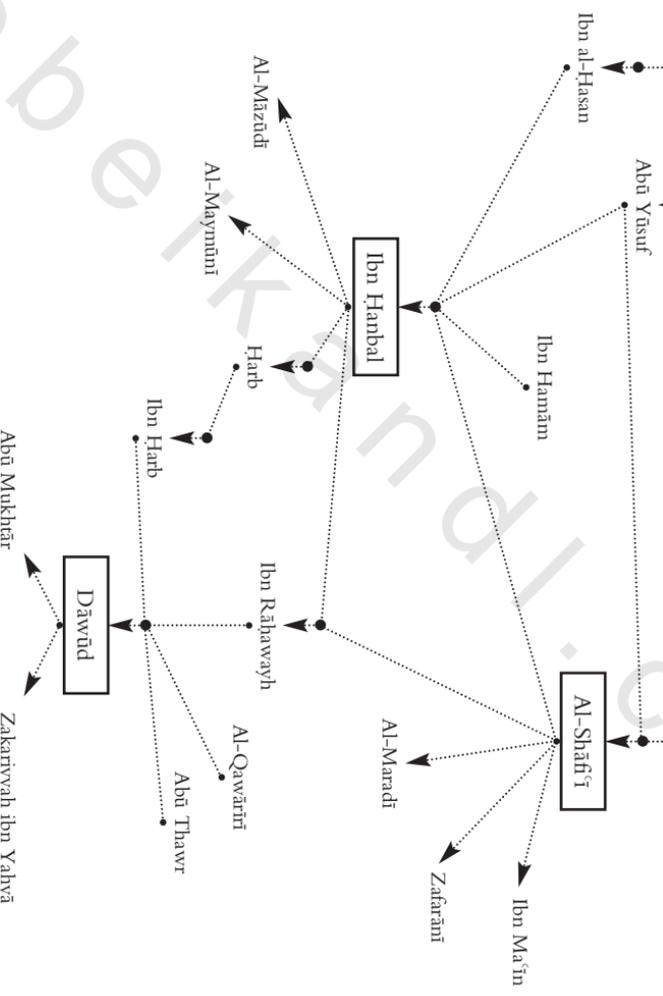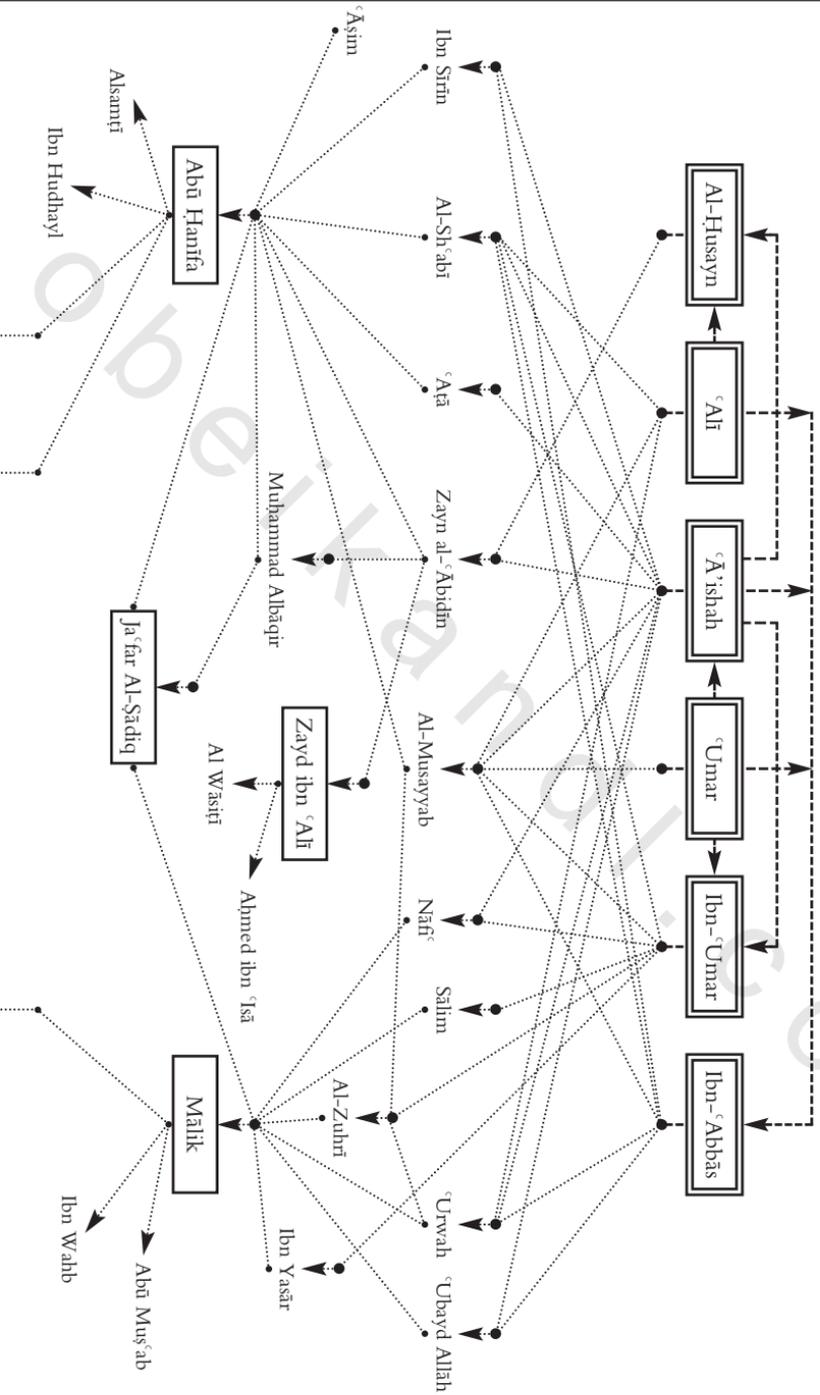Zakariyyah ibn Yaḥyā

Zafarānī

Ibn Maʿīn

Chart 3.4. Chains of students who eventually formed the schools of Islamic law, starting with (a selected group of) the companions and ending with (a selected group of) the uṣūlīs.

ʿĀṣim

Alsamiṭī

Ibn Hudhayl

Abū Ḥanīfa

Ibn Sīrīn

Al-Shaʿbī

ʿAṭā

Zayn al-ʿĀbidīn

Muhammad Albāqir

Jaʿfar Al-Ṣādiq

Al Wāsiṭī

Zayd ibn ʿAlī

Al-Musayyab

Ahmed ibn ʿĪsā

Nāfiʿ

Sālim

Al-Zuhrī

Mālik

Ibn Yasār

Ibn Wahb

Abū Musʿab

ʿUrwah

ʿUbayd Allāh

Al-Ḥusayn

ʿAlī

ʿĀʾishah

ʿUmar

Ibn-ʿUmar

Ibn-ʿAbbās

This specific group is selected for illustrative purposes. In all levels, the arrows go from each teacher to his/her student. This chart was compiled through recourse to a number of sources,[65] and the observations below were made based on the chart.

1. Learning and narration 'chains' of the companions and their students were highly interconnected. Students of the companions and the school imams were interconnected too, even though to a lesser extent. The chart illustrates how the level of interconnectivity decreased, generation after generation, until the schools of law became practically isolated in their evolution. I believe that lack of interaction between schools of law contributed to their lack of creativity and dominant partial views. It also resulted in different schools assigning different terms for similar concepts.

2. ʿĀ'ishah, Ibn ʿAbbās, and Ibn ʿUmar had great influence on the generation of *tabiʿīn*, as illustrated by the examples shown in the chart. However ʿĀ'ishah's influence and narrations through ʿAlī's lineage, narrated in Sunni sources, are disputed by the Shia school. ʿUmar and ʿAlī had a great influence on many of the companions, such as Ibn ʿAbbās and Ibn ʿUmar.

3. Jaʿfar al-Ṣādiq (the prime contributor to Shia fiqh, after whom the Jaʿfarīs/Imāmīs/Twelvers were named) influenced all Sunni schools through Mālik and Abū Ḥanīfa.

4. Each of al-Shiʿbī and Ibn al-Musayyab had learned from a large number of companions and influenced Mālik (through al-Zuhrī) and Abū Ḥanīfa, who, in turn, influenced all other imams.

5. Al-Shāfiʿī was influenced by Mālik and Abū Ḥanīfa (through Abū Yūsuf), Ibn Ḥanbal was influenced by Mālik (through al-Shāfiʿī) and Abū Ḥanīfa (through Abū Yūsuf and Moḥammad ibn al-Ḥasan), and Dawūd was influenced by Ibn Ḥanbal and al-Shāfiʿī (through Ibn Rahawayh). Both Jaʿfar and Zayd, the two main Shia imams, developed their knowledge through ʿAlī Zayn al-ʿĀbidīn ibn al-Ḥussain.

6. Finally, I cannot account fully for the diversity of methods and influences of the above key personalities via simple teacher-student chains, such as the ones drawn in this chart. For example,

ʿĀʾishah, Ibn ʿUmar, and Ibn ʿAbbās taught a number of *tabiʿīn*. However, the strength and nature of their influence on each student were subject to a number of social factors. For example, ʿUrwah ibn al-Zubair was ʿĀʾishah's nephew and hence was closer to her than many of her other students and was affected the most by her views and personality. ʿAbdullāh ibn ʿUmar had freed Nāfiʿ and Ibn Yasār from slavery and, hence, they had a special relationship with him. Ibn ʿAbbās was the Prophet's (and ʿAlī's) cousin, which gave him wide 'connections' and a special status in all schools of law.

The 'Era of Declination'

Eventually, what is known as the 'Era of Declination,' in the Islamic civilization in general and in the theory of Islamic law in specific, started in the middle of the seventh Islamic century (13th century CE) with the 'fall of Baghdad' to the Tatarians in 656 AH.[66] Afterwards, scholars started to develop the practice of calling the imam and his students' opinions '*naṣṣun fī al-madhhab*' (a 'script' in the school). These 'scripts' were practically given precedence over the original scripts, i.e., the Qurʾan and prophetic tradition. Jurists in the 'era of declination' were not allowed to make ijtihad, except when they found no related opinion narrated after their imam or his students.[67] Thus, they busied themselves with summarising the previous books in the form of exceedingly abstract exposés and complex pieces of poetry. Eventually what is known as the 'door of ijtihad' was closed, despite Wāʾil Ḥallāq's tracing of some remnants of independent ijtihad in various schools.[68] The factor that contributed most to the survival of certain *madhāhib* of fiqh in particular regions was courts, which had to belong strictly to one school. Divisions between schools reached every aspect of social and religious life, including prayer areas in major mosques, which were divided into separate areas for different schools of law.[69] Competition between *madhāhib* was so strong that it, eventually, resulted in major violent disputes and the destroying of a number of major cities numerous times, as explained before.[70]