The Origins, Formation and Development of the Four Schools of Islamic Law

By Kasim Randeree

Abstract

The development of Islamic law in the first four centuries of the Islamic nation is of great interest as, similar to a learning curve, the Islamic nation was in a state of learning and establishing its identity. These times were tumultuous, yet, at the same time, what occurred during these early centuries formed the bedrock upon which a further millennium of growth has taken place in this global religion. Many forces were interplaying during these early years in the context of Islamic law. The independents, which formed a majority of Islamic theorists, gradually disappeared and gave way to *muqallids*; there was discourse and allegiance amongst rationalists and traditionalists; there was a shift away from early regional schools (of thought) to personal schools and tremendous debate raged about *ijtihâd* and *taqlîd*.

In more recent times, over the past century, orientalists who have painted a picture of these early centuries of the Islamic legal system and jurisprudence as being somewhat cut and dry have begun to be challenged. Schacht, for example, who wrote in the early to mid Twentieth century, has had his views widely challenged by scholars, such as Hallaq and others. This paper thus examines the early formation of the four schools of Islamic law, recounts brief biographical accounts of their founders and discusses the challenges faced during those early years of Islamic legal history, which are a source of argument among contemporary scholars.

Short description

An examination of the early history and contemporary viewpoints on the four schools of Sunni Islamic jurisprudence.

Keywords

Islamic Law, Religion, Islam, Sunni, Eponyms, Ijtihad, Taqlid

Introduction

In general terms, it is commonly understood that the development of the four schools of law followed an evolutionary process. In his book, "*Ṭâreekh al-Madhâhib al-Fiqhîya* – The Evolution of *Fiqh*: Islamic Law and the *Madhhabs*," Bilal Philips (1990, pp. 5-62) outlines four phases for the background and formation of the four schools of law (*madhâhib*, sg., *madhhab*), namely, foundation, establishment, building and flowering. These four stages, Bilal Philips argues, were followed by three further phases, consolidation, stagnation and decline (pp. 102-116).

In essence, the foundation phase relates to the era of the prophetic mission of the Prophet Muhammad (609-632 CE), dominated by Qur'anic revelation and prophetic *Hadîth* providing legislation and rulings to the followers of the early Muslim population.

The second phase, establishment, deals with the period of the four *Sunni* Caliphs, namely, Abû Bakr, Umar ibn Al-Khattâb, Uthmân and Ali ibn Abi Ṭâlib. This period extended from the death of the Prophet Muhammad in 632 until the assassination of Ali in 661 CE. The principles of deductive reasoning, or *ijtihâd*, were laid down in this time, in part out of the necessity to cope with the rapid and vast expansion of Muslim territories which brought with it new challenges requiring legal rulings distinctive from earlier times. Islamic jurisprudence and law thus remained linked to the state legislation governed by the Caliph and thus prevented the emergence of a plurality in *madhhabs* during this phase.

The third phase, building, covers the period of the Umayyad dynasty from 661 CE until the middle of the eighth century. This was a period of tremendous upheaval and change, a shift from the centrality of the unifying Caliphs gradually to kingships, the dispersal of scholars across vast territories and countless cultures, the emergence of sects such as Shi'i and the Khawarij, the fabrication of Hadîth in support of sectarian views and the division of scholars along the lines of rationalist (*aṣḥâb al-ra'y*) and traditionist (*aṣḥâb al-hadîth*). The emergence of the early schools of law occurred during this time, though the emphasis appeared to be on geographic schools rather than personal schools in this phase. Most prominently, Abû Ḥanîfa and Sufyan al-Thawri were active in Kufah, Mâlik ibn Anas in Medina, al-Awza'ee in Beirut and al-Layth ibn Sa'd in Egypt.

The final formative stage, flowering, covered the Abbasid dynasty and occurred from the middle of the eighth century and extended until around 950 CE. During this period, jurisprudence took on a formative shape, the four *madhhabs* became firmly rooted, Islamic jurisprudence became well-defined into *uṣûl* and *furu'*, the sources of Islamic law established a definitive hierarchy, centres of learning became more established and recognised, particularly in Iraq and Medina, compilations well-known by contemporary scholars were written, including the texts by the founders of the *madhâhib*, books of *hadîth* were completed in their entirety, including the six mashhur books of *hadîth* (Bukhari, Muslim and others). Towards the latter part of this phase, however, the established *madhâhib* witnessed the emergence of rigidity amongst the scholars and *taqlîd* amongst their followers.

The Four M*adhâhib*

Specifically, the four schools of Islamic jurisprudence display a number of nuances reflecting differences of opinion amongst the four eponyms. This is interesting given the fact that, at some level or another, the founders were known to each other and in some cases, students or teachers of one another. Doi (1984, p. 85) states,

> *"If one closely examines the fiqh of the four schools, one will never come across any difference of opinions as far as the basic principles of Islam are concerned. The differences mainly centre around furu ât (tiny branches) of theology rather than the Uṣûl (the fundamental principles) of belief."*

This view is supported by Bilal Philips (1990) who demonstrates that all the eponyms had the Qur'an and the Prophet's authority in common as their primary sources of Islamic law. Islamic law and the Prophetic injunction in relation to it are of further interest when discussing areas of contention and commonality amongst the eponyms. Jackson (1993) expounds that al-Shâfi'î, in his book *al-Risâla*, elaborates about the issue of the Prophetic legislation being binding, even on matters about which the Qur'an did not comment; an example of the view held by all the *madhâhib* consistently. However, when the Prophet's activities or more specifically, those that have a bearing on the derivation of Islamic law are analysed, nuances begin to emerge. To clarify the point, examine the roles of the Prophet Muhammad as a messenger, *muftî*, judge and head of state (*Imâm*). These four roles all have a direct relevance to derivation of law, namely and respectively, verbatim communications

from Allâh (messenger role); issuance of fatwa (*muftî* role); judicial rulings (role as judge); and discretionary rulings (the right of veto as head of state). In terms of the *madhâhib*, the view of Mâlik and al-Shâfi'î in this context was that the majority of the Prophet's actions constituted fatwa in his role as *muftî*, whereas the view of Abû Ḥanîfa was that his (the Prophet Muhammad's) actions were decrees in his role as the head of state. This nuance seems insignificant, but upon closer examination, the resultant effect can yield very divergent outcomes in terms of the ruling that is passed (Jackson, 1993). The eponyms differed on aspects such as *ijtihâd*, *qiyâs*, *'urf* and so on, but, even these differences seem largely based on emphasis rather than substance, though an extensive number of published works have deconstructed the differentiations over the past century.

Melchert (2001) outlines the most important transformations of mainstream jurisprudence in the first three centuries of Islam. At the outset, rational speculation was overshadowed by the use of textual sources, namely, the Qur'an and *hadîth*. Furthermore, *hadîth* reports from the Prophet took precedence over reports from Companions and the later authorities particularly within *Sunni* Islam, with Shi'i jurisprudence relying more evidently on reports from *imâms*. The reliance on *hadîth* texts quickly brought into light the issue of chains of narration (*isnad*) and personal qualities of transmitter (*rijâl*). Thus, information was filtered based on the reliability of transmitters as well as frequency of narration and other tools at the disposal of scholars.

The next stage was highly significant given the context of this paper, that is, personal schools, such as the four schools of Islamic law, winning superiority over regional schools, such as the Kufan or Medinese schools. Thus jurisprudents were no longer identified as being from a geographical region or centre of learning, but rather by their allegiance to a founder or teacher of Islamic law. Hallaq (2001) expounds this topic to claim that, in fact, neither did geographic schools exist, nor did they transform to personal schools, but rather, the transformation was *"from individual juristic doctrines to doctrinal schools*." This, again, is a challenge to Schacht's work, whose major argument on the subject, in his book "An Introduction to Islamic Law", was that legal scholarship came together around geographical centres. Schacht, as cited by Hallaq (2001: p. 2) says,

> *"The bulk of the ancient school of Kufa transformed itself into the school of the Ḥanafîs, and the ancient school of Medina into the school of the Mâlikîs, and the ancient schools of Basra and of Mecca, respectively, became merged*

> *into them... This transformation of the ancient schools into personal schools ... was completed about the middle of the third century of the ḥijra."*

This was followed by the establishment of core texts which formed the foundation of literary knowledge for a few personal schools. Examples would include *al-Muwaṭṭa'* of Mâlik, *al-Risâla* of al-Shâfi'î and the *Musnad* of Aḥmad ibn Ḥanbal. With this, the stage was set for *hadîth* studies and jurisprudence to becoming independent and distinct specialisations, with *muhaddithîn* and *fuqahâ* becoming established prior to the development of *uṣûl al-fiqh* as well as guild schools (which certified jurisprudents) appearing in the fifth and sixth centuries of Islam.

Another aspect to the founders of the four schools of thought is the pivotal role they played in the development of Islamic thought and jurisprudence. Al-Shâfi'î, for example, has long been credited with being the 'Master Architect' of Islamic jurisprudence. This notion of prominence, however, is being challenged by contemporary scholars. Hallaq (1993), in his paper, "Was Al-Shâfi'î the Master Architect of Islamic Jurisprudence?" states that the leader of this view, in recent years, was Joseph Schacht, the author of "The Origins of Muhammadan Jurisprudence" published in 1975. Hallaq says,

> *"Schacht's portentous findings, coupled with the high esteem in which Shâfi'î is held in medieval and modern Islam, have led Islamicists to believe that Shâfi'î was the "father of Muslim jurisprudence" and the founder of the science of legal theory, properly called uṣûl al-fiqh."* (p.587)

He continues,

> *"Shâfi'î's synthesis was, and remained for a long time, a minority view. The traditionalists rejected his qiyâs, and the rationalists were reluctant to accept his thesis that revelation is the first and last judge of human affairs. It was only towards the end of the ninth century that the two camps drew closer to each other, and a synthesis of traditionalism and rationalism was accomplished."* (p. 601)

Abû Ḥanîfa

Abû Ḥanîfa (Nu'man bin Thabit, 703-767 CE), born in Kufah, Iraq, regarded amongst the *tabi'ûn* due to his receiving knowledge from several of the companions of Muhammad,

including Anas ibn Mâlik (Abû Zahra, 2001), is best known for belonging to *aṣḥâb al-ra'y*, basing his teaching method on that of group discourse, or *shuru'*, and the concept of *istiḥsân* (precedence of situation) and *'urf* (local customs). His students most famously include Abû Yûsuf, who was appointed chief judge by Hârûn al-Rashîd amongst others, and Muhammad ibn al-Hasan al-Shaybânî, also chief judge under the same ruler as well as a student of both Abû Ḥanîfa and later Mâlik ibn Anas in Madina. Abû Ḥanîfa's refusal to take up the post of chief judge when offered by Caliph Mansur is reported to have angered the latter to such an extent, that he had Abû Ḥanîfa imprisoned and later poisoned, leading to the eventual demise of Abû Ḥanîfa (Doi, 1984, p. 92) in 767 CE (Hussain, 1998).

Mâlik ibn Anas

Mâlik was born in Medina in 717 CE, where he remained for almost the entirety of his life until his death within the city at the age of 83, in 801 CE. He and his followers are commonly known as *aṣḥâb al-hadîth*, due to his strict avoidance of speculative theology or hypothetical *fiqh*, as was well-known amongst the Ḥanafîs. His sources of Islamic law included the practices of the people of Madina as well as *istiṣlâḥ*, and his major and famous work, *al-Muwaṭṭa'*, remains a central document in Mâlikî jurisprudence. Even though the political capital of the Muslim empire had already relocated to Damascus, Medina remained important to Muslims due to its strong ties to the Prophet Muhammad, and thus it thrived as a centre of spiritual enlightenment, education and learning during and beyond the lifetime of Mâlik.

Muhammad ibn Idris al-Shâfi'î

Al-Shâfi'î was the best travelled of the four eponyms in his lifetime, a fact that has moulded and impacted the formation as well as the followers of his *madhhab*. Al-Shâfi'î, was from Quraish, and a direct descendant of the Prophet Muhammad. He was born in 769 CE on the Mediterranean coast, he moved to Medina in his early life to study under Mâlik, whose text, *al-Muwaṭṭa'*, Al-Shâfi'î memorised (Al-Baghdadi, 1931, p. 59). After the death of the latter in 801 CE, he taught in Yemen for four years, was taken as a prisoner to Iraq (accused of Shi'i views), where he proved his innocence before Hârûn al-Rashîd. He therefore remained in Iraq, where he studied under the Ḥanifî scholar, Muhammad ibn al-Hasan al- Shaybânî, before travelling to Egypt to study the *madhhab* of al-Layth ibn Sa'd. He remained in Egypt until his death in 820 CE.

As a consequence of his travel and related studies, he effectively combined Ḥanafî and Mâlikî jurisprudence. His three works, *al-Hujjah*, written in Iraq, articulating his early view, has become referred to as *Madhhab al-Qadeem*. His later work, *al-Umm*, written in Egypt and known as *Madhhab al-Jadîd*, was, in contrast, the formation of his thoughts after absorbing the *madhhab* of al-Layth, in which he reversed many of his earlier opinions. His most famous work, *al-Risâla*, is well regarded, and is central to the establishment of *Uṣûl al-Fiqh*. His sources of Islamic law rejected both *istiḥsân* and *istiṣlâḥ*, in favour of *istiṣḥâb*.

Aḥmad ibn Ḥanbal al- Shaybânî

Born in 778 CE in Baghdad, Ibn Ḥanbal studied, in his formative years, under Abû Yûsuf (the famous Ḥanîfî) and Al-Shâfi'î. Although he was persecuted and imprisoned at various points in his lifetime for some of his views, as were all his predecessor eponyms, Ibn Ḥanbal remained in Baghdad and taught until his death there in 855 CE. His extensive work, al-Musnad, which contains over 30,000 hadîths, remains a central manuscript underpinning the works of many of his followers, including Ibn Taymîyyah and Ibn al-Qayyim. He is also reported to have taught both Bukhâri and Muslim, the authors of the two *Ṣahîhs*. In terms of his sources of Islamic law, he differed from the others by including weak *hadîth* in preference to *qiyâs* in his judgement and rulings, in circumstances where transmitters are known not to have been either degenerate (*fâsiq*) or liars (*kadhhâb*). Today, the basis of the Kingdom of Saudi Arabia's legal system is based primarily on Ibn Ḥanbal's *madhhab* (Bilal Philips, 1990, pp. 63-87: Doi, 1984, pp. 85-111).

Independents to Eponyms

It is of value to understand, in the context of prominence and strict adherence to *Sunni madhâhib*, how these *madhâhib* were followed in the early centuries during their formation. One measure is to have an appreciation for Muslim jurists (*fuqahâ*) during that period, as this provides insights as to the extent of followership commanded by the eponyms of the four main *madhâhib*. In their paper about the geographical distribution of 406 *fuqahâ* in the first four centuries of Islam, Bernards and Nawas (2003) found that 13% were Ḥanafîs, 29% were Mâlikîs, 13% were Shâfi'îs, 14% were Ḥanbalîs, 5% were Switchers and 27% were Independents. Switchers are defined as *fuqahâ* who, during the course of their lives, switched from adherence to one *madhhab* to adherence to another. Independents were those

fuqahâ who did not adhere to any *madhhab*. There sample size was based on biographical accounts collected for the Ulama Project, which was completed in 2000. The database thus consisted of 1,049 biographical accounts of Islamic scholars of the early centuries of Islam, within the five main disciplines of Islamic sciences. The 406 *fuqahâ* cited by Bernards and Nawas were those specialised in Islamic law, thus establishing their relevance to the study of the background to the four schools of Islamic law. Consequently, Bernards and Nawas (2003) found that,

> *"For the entire 400-year period studied, the Mâlikî madhhab was the largest, followed by the "Independents", those fuqahâ who were not claimed by any of the four Sunni madhabs. The share of the other three Sunni madhhabs, the Ḥanafîs, the Shâfi'îs and the Ḥanbalîs, was more or less equal. The phenomenon of switching from one Sunni madhhab to another was marginal."*

Furthermore, the last eponym (Aḥmad ibn Ḥanbal) died in 241 AH, thus to examine the first two and a half centuries, is also of great value. This examination, Bernards and Nawas (2003) reveal, demonstrates that 13% were Ḥanafîs, 18% were Mâlikîs, 2% were Shâfi'îs, 9% were Ḥanbalîs, 5% were Switchers and 54% were Independents. In contrast, the following 150 years beyond the demise of the last eponym, show that the figures changed dramatically, with 13% being Ḥanafîs, 37% being Mâlikîs, 21% being Shâfi'îs, 17% being Ḥanbalîs, 5% being Switchers and 7% being Independents. Thus, as would be expected, proportionately most Independents disappeared in the duration of the first four centuries, with their proportions declining from 54% (0 - 250 AH) to 7% (250 - 400 AH). Consequently, large proportions of *fuqahâ*, in the most part, migrated from being Independents to being Mâlikîs (18%; 0 - 250 AH to 37%; 250 - 400 AH), and Shâfi'îs(2%%; 0 - 250 AH to 21%%; 250 - 400 AH).

The evaluation of the emergence and formation of the schools of Islamic law is further confounded by the classification of jurisprudence along rationalist (*aṣḥâb al-ra'y*) or traditionist (*aṣḥâb al-hadîth*) lines. Melchert (2001) states that as late as the fourth century, Ibn al-Nadîm classified jurisprudents in eight distinct categories based on their allegiance to opinion or prophetic sayings. These were; 1) Mâlikîyin; 2) Abû Ḥanîfa and his followers, the Iraqis or *aṣḥâb al-ra'y*; 3) al-Shâfi'î and his followers; 4) Dâwûd al-Zahîri and his followers; 5) Shi'i jurisprudents; 6) traditionists (*aṣḥâb al-hadîth*) and traditionist-jurisprudents (*al-*

muḥaddithîn); 7) al-Tabari and his followers; and 8) *Khârijî* jurisprudents (*shurat*). Only three of these classifications clearly demarcate one of the four *Sunni* schools of thought.

Ijtihâd and *Taqlîd*

The aspect of *ijtihâd* and *taqlîd* in the seventh century CE is also one of the central themes within a discourse on the development of the *madhâhib*, as at this time, there was great effort to formalise the doctrine of the legal schools. In the beginning, the judge had complete freedom as a *mujtahid*, to rule on issues that had no governance under revelation. As the Muslim nation expanded, this freedom began to be eroded and challenged in favour of more uniform regulations aimed at unifying the legal authorities and producing documents which could form the basis of a codification of laws. Fadel (1996) explores this issue with regard to the school of Mâlikî jurisprudence, stating that the school underwent a transformation from a case-law system to one approaching civil law, with the only immunity being for upper-level jurists who retained the right to mitigate these canonical laws in special circumstances. The Mâlikî school also effected abrogation to overcome contradiction when establishing these canons. Thus emerged the genre of the *mukhtaṣar*, with two works in Mâlikî law, the *Jâmi' al-ummahât* by Ibn al-Ḥâjib and the *Mukhtaṣar Khalil* in the seventh and eighth centuries respectively (Fadel, 1996). Two corresponding works were also important in Shâfi'î law, *al-Ghaya al-quswa fi dirâyât al-fatwâ*, by Qâdi al-Baydâwî and the *minhaj* of al-Nawawî, both of which were written in the seventh century.

Most references on the subject tend to indicate that *ijtihâd* had a higher intellectual standing than *taqlîd*. However, others challenge this view as it implies relegating *taqlîd* into being less desirable than *ijtihâd*. Fadel (1996), for example, cites Schacht as being of the view that, over time, jurists had achieved near perfection of the law that *taqlîd* was a natural and inevitable progression for later jurists. The view of *taqlîd* as a negative force, however, remains to the present day. In citing Hallaq (1986), Fadel (1996, p. 194) says,

> *"[T]aqlîd was more than a negative phenomenon – it was an apocalyptic sign of the end of religious knowledge and a harbinger of the final destruction of the Muslim community."*

A further aspect to the *taqlîd* / *ijtihâd* debate revolves around the extinction of *ijtihâd* in its entirety (Hallaq, 1984). Much has been published on the controversy, known as '*insidâd bâb al-ijtihâd*', or 'closing the gate of *ijtihâd*'. Schacht, Anderson and Gibb have all upheld that the gate of *ijtihâd* was indeed closed by the beginning of the fourth century. Schacht claims that this was out of a demand for *taqlîd*. In more recent times, the view that *ijtihâd* exists, and has consistently remained throughout Islamic history to the present day has become more pronounced. Hallaq (1984) cites its continuity based on the continuous developments in positive law and legal theory which could not have occurred without *ijtihâd*. Furthermore, he cites individuals who were proponents and practitioners of *ijtihâd* beyond the fourth century. In particular, he states that Juwayni, al-Ghazâlî and Ibn 'Aqil were opponents of *taqlîd* as well as being *mujtahids* who were accepted as such by others well into the fifth century.

In relation to the formation and development of the schools of law, the Ḥanbalîs in particular were proponents of the view that *mujtahids* have existed continually throughout Islamic history, whereas, in contrast, the Ḥanafîs have contended that extinction was likely (Hallaq, 1986 pp. 129-130).

Conclusions

A number of key issues have been brought to light in this paper.

1. Discourse and disagreement about the first four centuries of Islam in relation to the development of Islamic law has been steadily broadening over the past century, with a number of disagreements of contemporary (past thirty years) scholars becoming more pronounced. An example of this is the writings of Schacht in the early twentieth century and the rebuttals by Hallaq in the later part of the same century.
2. The evolution of Islamic law meant that *taqlîd* seemingly was a natural progression, as Islamic law slowly became more understood and the Islamic state became more structured. Consequently, rigidity could play a greater role. However, the spread of Islam and the exposure of existing Muslims to new cultures and environments, in addition to people accepting the Islamic religion within these new environments, played an important and growing role. Further to this, a greater number of prophetic traditions were being published beyond the death of the eponyms, which meant that

ijtihâd and *qiyâs* based upon them had to play a greater role to accommodate the interplay between geographical expansion and the emerging new knowledge.

3. The interrelationships between the eponyms were discussed and it can be clearly seen that *taqlîd* was never the intent of their work. In fact, they seemingly learned from one another as well as altered their views when new and overwhelming evidence was presented to them. They also, very much lived in their place and time in history and made judgements based on a level of pragmatism within the framework of Islamic teachings.
4. Another key point is that many other *madhâhib* did exist. The dying out of these and the remainder of only the four major schools of thought clearly needs further investigation. Many Muslim commentators have argued that the survival of the four major schools of thought was due to the personal sacrifice of the eponyms in their lifetimes, standing up against the status quo or, in some cases, resisting the pressure of the Caliph of their time to issue *fatwâs* in his favour, often resulting in torture and imprisonment. This view requires more research in order to substantiate if indeed there is a relationship between the schools enduring prominence and the personal sacrifice of the eponym.
5. Finally, the shift from being independent to following an eponym, amongst the *fuqahâ* of the first four centuries as well as the migration from regional schools to personal schools is of great interest, particularly when examining the stabilisation of Islamic law.

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