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Dear Assoc. Prof. Dr.,

DECISION OF THE PUBLICATION TECHNICAL COMMITTEE ON THE MANUSCRIPT ENTITLED: "ETHICS & FIQH OF CONTEMPORARY ISSUES"

May this letter reach you while you are in the best of health.

2. Please be informed that the above-mentioned manuscript was deliberated during the Publication Technical Committee Meeting No. 8/2024, which concluded on 18th December 2024.

3. We are delighted to notify you that the Committee has approved the manuscript for acceptance and further processes, with the intent of publication by IIUM Press.

4. The details of the manuscript are attached as Appendix I.

Your attention and cooperation in this matter are highly appreciated.

Thank you. *Wassalam.*

"Leading the Way"

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CHAPTER 6

EXPLORING SHARĪʻAH, FIQH, AND THE LEGACY OF IJTIHĀD

Bachar Bakour

Introduction

In the rich domain of Islamic legal tradition, two fundamental concepts stand as pillars: *Sharīʻah* and *Fiqh.* These concepts not only encapsulate the ethical and moral principles governing Muslim life but also provide a framework for understanding and navigating the complexities of Islamic law. Central to this framework is the concept of *ijtihād*, the process of independent legal reasoning, which has been instrumental in adapting Islamic jurisprudence to the ever-changing contexts of time and place. This chapter briefly presents the history and intricate dynamics of *Sharīʻah* and *Fiqh*, exploring their foundational principles, significance, and interplay. Then, it looks into the nuanced process of *ijtihād*, examining its methodologies and tools that have been employed by scholars across centuries to interpret and apply Islamic law in diverse contexts. Furthermore, this exploration extends to the historical evolution of the four major schools of Islamic jurisprudence: Hanafī, Mālikī, Shāfiʿī, and Hanbalī, tracing the development of these schools, from their origins in the early centuries of Islam to their establishment as distinct legal traditions, each with its own methodologies, principles, and interpretations. This provides basic understanding of the multifaceted nature of Islamic law and the enduring legacy of scholarly engagement with its principles.

Definition of *Sharī'ah*

Sharī'ah, in its broadest sense, refers to the entire body of Islamic laws, principles, and teachings derived from the Qur'an and the Sunnah. It encompasses not only legal matters but also moral, ethical, social, and spiritual aspects of life. *Sharī'ah* serves as the ultimate source of authority for Muslims and is regarded as the blueprint for a righteous and just society.

Acting as the axis or the backbone, *Sharī'ah* neither accepts change nor can be subject to reformation or evolution. A number of sub-categories are contained in the concept of *Sharī'ah*: (i) articles of faith: belief in God, Angels, Scriptures, Messengers, the Day of Judgment, and the Divine Decree; (ii) the Pillars of Islam: testifying that there is no god but Allah, and that Muhammad is the messenger of Allah, performing the prayers, paying the *Zakat*, making the pilgrimage to *ka'bah*, and fasting during Ramadan; (iii) various major legal rulings, dealing with matters like the whole cluster of financial transactions, inheritance, the principle of consultation, Jihad and so on; (iv) the common ethics and moral values, religiously and socially confirmed, like justice, truth, chastity, mercy, etc.; (v) habits which are socially and religiously counted as extremely bad manners, and thus prohibited, like arrogance, envy, pride, stinginess, backbiting and self-indulgence…; (vi) definite prohibitions, like gambling, polytheism, black magic, usury (including the banning of banking interest), *consuming the property of an orphan*, as well as showing a disrespectful treatment to one's parents…; (vii) fixed punishments for certain crimes, mentioned in the Qur'an and Sunnah, such as drinking alcohol, adultery, fornication, theft, killing a human being except for a legitimate cause, and slanderous accusation.

The above sub-categories are timeless and immune to change and development, no matter to what extent some people, on the pretext of modernity and progress, might think of the necessity of their being otherwise. The reason for such a static nature is directly related to the fact that these principles have the quality of being both definitive with respect to meaning[1] (*qat'ī al-dalālah*), and conclusive in terms of transmission[2] (*qat'ī al-thubūt*). Accordingly, all texts, be they Qur'anic or Prophetic, bearing such character are never, and cannot be, subject to change nor various

[1] A text, definitive in meaning, is a very clear text that has only one meaning, and no one can interpret it otherwise. In other words, it leaves no room for mere difference among jurists.

[2] A text, conclusive in transmission, refers to the fact that it has reached us by numerous means, from generation to generation, from whole groups to whole groups, so it is quite impossible that all these various channels could have colluded to fabricate it. And this is the way through which the holy Qur'an has been conveyed to us.

interpretations nor even to the principle of legal reasoning (*ijtihād*), simply owing to their explicit meanings, as well as established authenticity.[3]

Definition of Fiqh

The fundamental definition of *fiqh* pertains to comprehension and insight. In this context, *fiqh* and *fahm* are interchangeable, both denoting an understanding and knowledge of a subject. In its early usage, the term *fiqh* encompassed various aspects of Islam, including its principles, ethics, legalities, and spiritual inquiries. However, in its technical definition, *fiqh* became exclusively associated with Islamic jurisprudence, specifically defined as the knowledge concerning the practical legal rulings derived from detailed evidence within *Sharī'ah*.[4]

Fiqh can be understood as Islamic jurisprudence or the human understanding and interpretation of *Sharī'ah*. It is the scholarly process of deducing legal rulings and principles from the primary sources of Islamic law, namely the Qur'an and the Sunnah, as well as consensus (*ijmā'*) and analogical reasoning (*qiyās*). Traditional *fiqh* authors typically begin their writings with a segment dedicated to rituals (*'ibādāt*), followed by discussions on personal law (*ahwāl shakhsiyyah*), business transactions (*mu'āmalāt*), criminal justice (*jināyāt*), and international law (*siyar*).

Fiqh deals with the practical application of *Sharī'ah* in specific situations and contexts. It involves the study of legal principles, methodologies, and the development of legal theories. *Fiqh* is not fixed but dynamic, allowing for adaptation and interpretation over time in response to changing circumstances and new challenges faced by Muslim communities.[5] Therefore, *fatwas* are subject to change and modification. According to the majority of religious scholars, *fatwa* depends on various factors, such as time, place, circumstances, customs, and intentions.[6] Therefore, before issuing any specific *fatwa*, the *mufti* (jurisconsult) must carefully consider all surrounding circumstances.

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[3] See Nyazee, Imran Ahsan Khan. *Islamic Jurisprudence*. Islamabad: International Institute of Islamic Thought, 2000, 266-267.
[4] On a detailed elaboration of multiple meanings of *fiqh,* see Hasan, Ahmed. *The Early Development of Islamic Jurisprudence*. Islamabad, Islamic Research Institution, 1970, 1-10; Nyazee, *Islamic Jurisprudence*, 17-24.
[5] Ibid.
[6] For a detailed account of this matter, see Ibn al-Qayyim, Muhammad. *I'lām al-Muwaqqi'īn 'An Rabbil'ālamīn.* Damascus: Dār al-Bayān, 2000, 2: 13-24.

Fatwa is not a rigid garment that fits everyone universally, regardless of suitability. Instead, it is flexible, tailored to fit each individual and address specific problems accordingly. To illustrate this perspective, consider a few examples. Once, the prominent Companion Abū Dharr requested the Prophet (p.b.u.h) for a responsibility. The Prophet (p.b.u.h) responded, "Abū Dharr, you have a gentle nature, and I wish for you what I wish for myself. Do not seek authority over even two people, nor take charge of an orphan's property."[7] The Prophet (p.b.u.h) was aware of the diverse abilities and qualities of his companions, understanding that not all tasks were suitable for everyone. As Abū Dharr lacked the necessary qualities for the responsibility he sought, the Prophet's response served as a suitable fatwa for him and others like him. In another instance, a young person asked the Prophet if he could kiss his wife while fasting, to which the Prophet (p.b.u.h) initially responded negatively. Later, an elderly man posed the same question and received an affirmative response. The Companions were surprised by this inconsistency. Addressing their confusion, the Prophet (p.b.u.h) explained that the elderly man could control himself.[8]

As for the distinction between *fiqh* and *Sharī'ah*, the basic difference lies in the fact that *Sharī'ah* represents the immutable legal framework, whereas *fiqh* encompasses the understanding and application of these laws, adapting to varying contexts. *Sharī'ah* remains constant, while *fiqh* evolves based on situational nuances. *Sharī'ah* establishes broad principles, whereas *fiqh* delineates specific rulings, illustrating the practical implementation of *Sharī'ah* principles in specific scenarios.[9]

***Ijtihād*: Overview**

Ijtihād is regarded by many scholars as the third chief source of *Sharī'ah*, in whose structure, several legal devices are formed so as to help extract a variety of fresh legal rulings. *Ijtihād* is defined as the exertion of the utmost possible effort to discover, on the basis of the fundamental sources (the Qur'an and Sunnah) and by rational use of interpretational methodology, a rule of law.[10] Given that Qur'anic and Prophetic texts dealing with legal matters are limited, in contrast

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[7] Al-Nawawī, *Riyād Assālihīn.* Damascus: Dār Al-Fayhā'; Riyad: Dār Assalām, 2006, 244.
[8] Ibn Hanbal, Ahmad. Al-Musnad. Damascus: Dār al-Risālah, 1993-2001, 11: 351
[9] Hasan, *The Early Development of Islamic Jurisprudence*, 115; Nyazee, *Islamic Jurisprudence*, 24.
[10] Nyazee, *Islamic Jurisprudence*, 262-264.

to the infinite new conditions and circumstances, the primary task of the *Mujtahid* (a competent jurist, capable of practicing *ijtihād*) is either to infer the rules from their sources or implement such rules and apply them to particular issues.

As far as legal matters are concerned, *ijtihād* is confined to the sphere of probability. In other words, wherever the authentic texts are clear-cut and unambiguous with regard to a certain matter, *ijtihād* has no role to play, since God has made it very clear. The certainty of the knowledge that God has unambiguously stipulated his judgment on a specific issue precludes any human attempt at interpreting the law concerning that issue.[11] Hence, all definitive, clear, and authentic texts of sources, by nature, lie outside of the realm of *ijtihād*. The reason is that these, though limited in number, serve as the unchanging bedrock, the steadfast principles upon which *Sharī'ah* rests. They provide the jurist with a reference point to analyze, interpret, and elucidate speculative texts. Moreover, they enable the formulation of new rulings within a dynamic framework when the community encounters novel circumstances.

And the vast majority of the Qur'anic verses and the Prophet's traditions are not of this very strict nature. The Qur'an is authenticated *per se* (*qat'ī al-thubūt*) but the majority of verses containing legal rulings (*āyāt al-ahkām*) are subject to analysis, commentaries, and interpretations, as is the case for Prophetic traditions which are for the most part open to speculation regarding both their authenticity (*thubūt*) and their meaning (*dalālah*).

Conditions of ijtihād

In terms of the conditions of *ijtihād*, not every jurist is up to practicing it. In order to reach the degree of *ijtihād*, one must possess the following qualifications:

1. Proficiency in Arabic adequate for a comprehensive understanding of the Qur'an, Sunnah, and particularly the verses and traditions containing legal rulings.

2. Mastery of Qur'anic and Hadīth sciences to discern and interpret textual evidence, as well as derive legal rulings.

[11] Hallaq, Wael. "Ijtihād." *The Oxford Encyclopedia of the Modern Islamic World.* Editor in Chief, John Esposito. Oxford: Oxford University Press, 1995, 2: 179.

3. A profound grasp of the objectives *maqāsid al-Sharī'ah*, their categorization, and the consequent prioritization they entail.

4. Familiarity with matters on which scholarly consensus (*Ijmā'*) exists, necessitating knowledge of secondary legal literature (*furū'*).

5. Knowledge of the principles and methodology of analogical reasoning (*qiyās*).

6. Awareness of the historical, social, and political context, including the circumstances, customs, and conditions of the community.

7. Acknowledgment of the scholar's competence, integrity, dependability, and moral rectitude.[12]

It should be noted, however, that these qualifications are necessary for the *mujtahid mutlaq* (absolute one), i.e., a jurist who wants to exercise *ijtihād* in all spheres of Islamic law. But those jurists who aim to practice *ijtihād* in a limited area of the law do not have to meet all the requirements; only those relative to the methodological principles and the textual materials pertaining to the case at hand.[13]

It is widely recognized that the above conditions of *ijtihād* are so demanding that, for that last few centuries, it has been nearly impossible for anyone to reach the level of *ijtihād*. From this observation flowed the notion of the closure of the gate of *ijtihād* forever, and consequently, that contentment with the readily available legal products of *ijtihād* ought to be permanently maintained. In fact, this is a sheer misperception. These conditions, while posing a real challenge to the jurist, are not impossible to achieve. In fact, advancements in the authentication of hadith, along with improved access to reference materials and computerized categorization, facilitate the work of contemporary *mujtahids*.

Moreover, the majority of experts on *Usūl al-Fiqh* (the principles of Jurisprudence) hold the opinion that *ijtihād* may be partially exercised.[14] That is to say, a jurist who fails to meet the conditions of all-encompassing *ijtihād* can nevertheless practice it within a very narrow scope. For example, he may select one single legal matter (like divorce), then undertake absolutely exhaustive research on it, considering all relevant textual materials found in the sources, both primary and

[12] Nyazee, *Islamic Jurisprudence*, 270-272.
[13] Hallaq, *Ijtihād*, 2: 180.
[14] See Abū Zahra, Muhammad. *Usūl al-Fiqh*. Cairo: Dār al-Fikr al-'Arabī, 1997, 348.

secondary. After amassing every piece of information pertaining to the case in question, he then should do his utmost, through synthesizing, scrutinizing, and analyzing the available data, to attain the faculty for conducting *ijtihād* concerning this specified legal case only.

As history has shown, neither conclusive evidence nor consensus on the closure of *ijtihād* has ever existed. How can it be possibly or conceivably closed, given the fact that new social needs are repeatedly encountered! To leave these cases with no legal determinations pinpointing their position in law goes directly against *Maqasid al-Sharī'ah.* And this must be totally rejected.

As *Sharī'ah* was instituted to meet and even to enhance the basic needs and interests of human beings, its ability to achieve its purpose is intimately connected with the principle of *ijtihād*, which cannot do this assigned job if it is viewed as having its gate closed. The gate of *ijtihād* is and will remain wide open to everyone who is juristically qualified.

Modes of Ijtihad

As earlier referred to*, ijtihād*, as both a source and a legal device, contains all the judicial instruments used through reasoning and self-exertion for the sake of issuing a legal ruling to a new case.

(1) *Qiyās* (analogy). Technically, it is the assignment of a legal ruling *(hukm*) of an existing case, found either in the Qur'an, or Sunnah, or *Ijmā'* (consensus), to a new case whose legal ruling is not existent in these sources, on the basis of availability of a common underlying attribute (*'illa*) between both of them.

Analogy or inferential reasoning consists of four elements: (i) the new case that requires a legal solution; (ii) the original case that may be found either stated in the revealed texts or sanctioned by consensus; (iii) the *ratio legis*, or the attribute common to both the new and original cases; and (iv) the legal norm that is found in the original case and that, due to the similarity between the two cases, must be transported to the new case.[15] The archetypal example of legal analogy is the case of wine. If the jurist is faced with a case involving date-wine, requiring him to decide its status, he looks at the revealed texts only to find that grape-wine was explicitly prohibited by the Qur'an.

[15] Hallaq, Wael. *The Origins and Evolution of Islamic Law.* Cambridge: Cambridge University Press, 2005, 141.

The common denominator, the *ratio legis*, is the attribute of intoxication, in this case found in both drinks. The jurist concludes that, like grape-wine, date-wine is prohibited owing to its inebriating quality.[16] Within the domain of the legal theory, a lengthy discussion exists in relation to various types of analogy, its authoritativeness, the validity of *'illa* its conditions, as well as other relevant issues.[17]

(2) *Istihsān* (juristic preference). In this principle 'a jurist would abandon the result of a clear analogy (*Qiyās*) for a latent analogy or would reject a general rule for an exceptional rule, because of an indication that sparks in his mind,'[18] for example if a person forgets what he is doing and eats while he is supposed to be fasting, analogy dictates that his fasting becomes void, since food has entered his body, whether intentionally or not. But analogy in this case is abandoned in favour of a Prophetic tradition which pronounced the fasting valid if eating was the result of a mistake.

(3) *al-Maslaha*[19] (consideration of public interests). The five universal principles (preservation and protection of religion, of life, of mind, of private property and of progeny, or offspring) are a top priority in all diverse aspects of *Sharī'ah*. Accordingly, any new idea or concept that either serves and seeks benefit, or averts harm from one of these principles, is deemed legally sanctioned and supported by *Sharī'ah*. Equally, it is decisively rejected, if it contradicts the tenets of Islam, or, by way of more specification, one of the sub-categories of *Sharī'ah.*

Scholars have devised a classification system based on the proximity of *Maslaha* to primary sources. When *Maslaha* aligns with textual evidence from the Qur'an or Sunnah, it is termed *mu'tabara* (accredited) and deemed conclusive, beyond debate. Conversely, if a stipulated *Maslaha* contradicts explicit textual directives (*nass qat'ī*), it is labeled *mulghāh* (discredited) and rendered invalid. The third category arises in scenarios where no direct textual guidance exists: neither affirmed nor annulled by the Qur'an or Sunnah. This form of *Maslaha*, termed *Mursalah* (unrestricted), permits scholars to rely on their own analysis and reasoning to deduce legal rulings, considering historical and geographical contexts. While striving to adhere to the essence of Islamic

[16] Ibid.
[17] See Hallaq, *A History of....* 83-107.
[18] Ziadeh, Farahat. "Usūl al-Fiqh." *The Oxford Encyclopedia of the Modern Islamic World,* 4: 298.
[19] Also it is known as *Istislāh* literally means to seek what is good, technically a legal reasoning dictated by considerations of public interest that are, in turn, grounded in the universal principles.

legal principles, scholars navigate this terrain in the absence of explicit textual guidance, ensuring fidelity to the spirit of the legal framework despite the absence of specific textual directives.[20]

It is in the light of the foregoing classification of the *Maslaha* that one needs to understand the famous juristic rule that says, 'wherever the *Maslaha* exists, therein lies God's legal ruling' *(haythumā wujidat al-Maslaha fa thamma shar'ullah*). *Maslaha* here refers only to the first type, '*mu'tabara'* as well as the third one, '*mursala'.*

(4) *Istshāb* (the status quo shall be maintained). This denotes the principle by which a given judicial situation that had existed previously was held to continue to exist as long as it could not be proved that it had ceased to exist or had been modified. It serves as a means of preserving rights that have already been established. The presumption of continuity embodied in *istshāb* explains, for example, why the wife of a missing man cannot remarry, and why his heirs cannot benefit from his estate until his death has been established.

Istshāb is basically grounded on three general rules: (i) The rule for things and natural utilities is permissibility (*al-asl fī al-'Ashyā' al-'Ibāhah)*. This basic principle is largely derived from the following Qur'anic verses: "*It is He who created for you all that is in the earth*" (Qur'an, 2:29) and "*Have you not seen how that God has subjected to you whatsoever is in the heavens and earth, and He has lavished on you His blessings, outward and inward?*" (Qur'an, 31:20). Two remarks here: one is that, on the basis of making created things subservient to humans, what is permitted *(halāl*) is extensively large, yet what is prohibited (*harām*) is quite small in quantity. The second remark is that the original permission is not restricted to natural means and sources (food, drink...), but also, more broadly, applies to acts, customs, habits, dress, culture, etc. With a few exceptions, stipulated in the law, all these things are permitted.

(ii) Certainty does not give way to doubt (*al-yaqīn lā yazul bishshak).* It means once a thing has been established, it can only be set aside through equally certain evidence. For instance, when someone is sure about performing ablution, later doubt does not invalidate his certainty, and thus

[20] Kamali, Muhammad Hashim. *Principles of Islamic Jurisprudence.* Revised ed. Cambridge: Islamic Texts Society, 1991, 357-360.

he is still legally in the state of purity (*tahārah*). (iii) There is no presumption of liability against any one, and all liability has to be proved (*al-asl barā't al-thimmah*).

(5) *'Urf* (custom or 'what is commonly known and accepted').[21] Custom constitutes a basis for legal decisions. Several legal rules are grounded on it, such as: 'The use of people is evidence according to which it is necessary to act.' And: 'What is directed by custom is as though directed by law.' Also, 'A thing known by common usage is like a stipulation which has been made.'[22]

Custom can be general *('āmm*) or specific (*khāss*). The former is the one that is widely prevalent among people, irrespective of time and place, like the age-old practice of trade and sale. The latter, however, is the custom that is common in a particular place, occupation, or a group of people.

In terms of its conformity or otherwise with the norms of *Sharī'ah*, custom is divided into two types. One is valid or approved custom (*al-'urf assahīh*) which does not violate any of the fundamentals of Islam. On the opposite side lies invalid custom (*al-'urf al-fāsid*) which contradicts the plain teachings of Islam, like the pre-Islamic practice of disinheriting female relatives, as well as of burying infant girls alive in the dust.

Shedding light on the functional role of *'urf*, Kamali aptly notes that the *Sharī'ah* has, in principle, accredited approved custom as a valid ground in the determination of its roles relating to lawful and unlawful issues. This is in turn reflected in the practice of jurists, who have adopted *'urf*, whether general or specific, as a standard in the determination of rules of the law. The rules of jurisprudence which are based on juristic opinion (*ra'y*) or analogy and *ijtihād* have often been formulated in the light of prevailing customs. Therefore, it is allowed to depart from these rules if the custom on which they were founded changes with the passage of time.[23]

These aforementioned legal instruments, which fall within the remit of the *ijtihād*, represent a great manifestation of an adaptable and a variable judicial nature; a nature that is vastly important for

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[21] At a general level, both terms *'Urf* and *'ādah* may be used synonymously. But at a more specific level, the term *'ādah* means repetition or recurrent practice, and refers to both individuals and groups, while *'Urf*, excluding the habit of a person or a small group, signifies a collective practice or custom.

[22] On the basis of *'ādah*, a number of legal rules are formulated too, like, 'A thing impossible by custom is as though it were in reality impossible.' And 'Under the guidance of custom the true meaning of a word is abandoned.' 'Custom is of force' means that *'ādah,* whether it be general or special, is made the arbitrator for the establishment of a legal judgment.

[23] Kamali. *Principles of Islamic Jurisprudence,* 284-285.

coping with the never-ending, new conditions and needs of life, with all its diverse aspects and increasingly growing complexities.

The emergence of *madhhabs*: a brief overview

Islam lacks a centralized authority to definitively interpret its scripture, so the responsibility of interpretation falls largely on scholars. Throughout Islamic history, the dominant approach among scholars has been adherence to a *madhhab*, or a school of law. While the term "school" is commonly used, it doesn't fully encapsulate what a *madhhab* entails. Unlike typical schools which focus on individuals, a *madhhab* is primarily concerned with a collective interpretative methodology. Linguistically, *madhhab* translates to "a way," indicating it is a method of scripture interpretation that unites a group or school of scholars in their approach.

Madhhabs are occasionally misinterpreted as being divorced from scripture. Some Muslims may claim they adhere solely to the Qur'an and Sunnah, dismissing *madhhabs* as mere conjecture or personal opinions lacking evidence. This perspective stems from the mistaken belief that these legal schools are merely the arbitrary opinions of a select few jurists, rather than grounded in evidence from Islamic sources.

In Sunni Islam, four main legal schools, known as *madhhabs*, are named after their respective founders:

1.Abū Hanīfah (d. 150 AH/767 CE), a prominent jurist and theologian credited with formulating one of the four canonical schools of Islamic law. During his early years, he was drawn to theological discussions, but later shifted his focus to law. For approximately 18 years, he studied under Hammad, the foremost jurist of Iraq at the time. Following Hammad's passing, Abū Hanīfah succeeded him and furthered his education under various scholars, including the Meccan traditionist Ata' and the founder of the Shi'a school of law, Ja'far al-Sadiq. Abū Hanīfah's intellectual development was enriched by extensive travels and exposure to the diverse and sophisticated society of Iraq. The Hanafī legal school was propagated by Abū Hanīfah's disciples Abū Yūsuf (died 798) and Muhammad al-Shaybanī (749/750–805), and eventually became the dominant legal system for the Abbasids and Ottomans. While the Hanafi school recognizes the Qur'ān and Hadith as primary sources of law, it is renowned for its reliance on systematic

reasoning (ra'y) in the absence of precedent. Today, the Hanafī school predominates in regions such as Central Asia, India, Pakistan, Turkey, and the former Ottoman territories. [24]

2.Mālik ibn Anas (d. 179 AH/ 795 CE), a jurist and traditionist. Renowned for his intellect, he received authorization to issue fatwas at the tender age of 21. Preferring to absorb wisdom from visiting scholars in Medina, he became known as '*Imam Darul Hijra*'. Mālik's educational journey was enriched by notable figures such as Nāfi', Ayyub Al-Sikhtiyānī, from whom he extensively studied jurisprudence. The primary source for studying his teachings is the esteemed Hadith compilation known as the Muwatta'. This compilation not only serves as the cornerstone of the Mālikī school but also stands as the earliest existing compilation of Islamic jurisprudence. Mālikī madhhab is prevalent in North, West, and Central Africa. [25]

3.Muhammad ibn Idrīs Shāfiʿī (d. 204 AH/ 820 CE), the founder of the Shāfiʿiyyah school of law and significantly shaped Islamic legal thought. Born into the Quraysh tribe, he was distantly related to Prophet and raised by his mother in Mecca after his father's early demise. Al- Shāfiʿī's formative years were marked by exposure to Arabic poetry among the Bedouins. Around the age of 20, he journeyed to Medina to study under the renowned jurist Mālik ibn Anas. Following Mālik's passing, al-Shāfiʿī ventured to Yemen and later Baghdad, where he encountered legal and religious teachings from diverse traditions, including the Hanafī school. Al-Shāfiʿī's travels and studies across various jurisprudential centers endowed him with a comprehensive understanding of legal theory. His seminal work, *the Risālah*, written during the last five years of his life, entitles him to be called the father of Muslim jurisprudence. Al- Shāfiʿī school predominates in Eastern Africa, certain areas of Arabia, as well as in Malaysia and Indonesia. [26]

4.Ahmad ibn Hanbal (d. 241 AH/ 855 CE) was the eminent figure behind the establishment of the Hanbalī School of law and theology. He emerged as a prolific scholar of Hadith, a jurisprudent, and a significant public figure in Baghdad, where he was born and lived. From his formative years,

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[24] Nadwi, Mohammed Akram. *Abu Hanifah: His Life, Legal Method & Legacy*. Kube Publishing Ltd, 2011.

[25] Haddad, Gibril Fouad. *The Four Imams and Their Schools: Abu Hanifa, Malik, Al-Shafi'i, Ahmad*. London: Muslim Academic Trust, 2007; Abu Zahra, Muhammad. *Four Imams Their Lives, Works and Their Schools of Jurisprudence*. London: Dar al-Taqwa, 1999; Cottart, Nicole. "Mālikiyya." In *Encyclopaedia of Islam*. 2d ed. Vol. 6. Edited by C. E. Bosworth, E. van Donzel, and Ch. Pellat, Leiden, The Netherlands: Brill, 1991, 278–283.

[26] Al-Qawasimi, Akram Yusufʿ Umar. *Al-Madkhal ilā madhhab al-Imām al-Shāfī*. Cairo: Dar al-Nafaʾis, 2003; Chaumont, Éric. "al-Shāfiʿiyya." In *Encyclopaedia of Islam*. 2d ed. Vol. 9. Edited by C. E. Bosworth, E. van Donzel, W. P. Heinrichs, and G. Lecomte, Leiden, The Netherlands: Brill, 1997, 185–189.

Ahmad displayed a profound inclination towards religious studies. He pursued education under distinguished scholars of his era, including al-Shāfiʿī. Driven by a quest for knowledge, he embarked on extensive journeys across the Islamic world, delving into the realms of Hadith and jurisprudence. A staunch advocate of Islamic traditionalism, Ibn Hanbal vehemently opposed the Muʿtazilite belief in the createdness of the Qur'ān. His steadfast refusal to accept this doctrine led to his interrogation and torture during the *mihnah,* the inquisition initiated by the Abbasid caliph al-Maʾmun in 833 CE. Among Ahmad's notable contributions is his renowned compilation of Hadith, titled "Musnad Ahmad ibn Hanbal." This compendium, comprising thousands of narrations attributed to the Prophet Muhammad, is revered by scholars for its authenticity and reliability. [27]

Contrary to common belief, adhering to a *madhhab* does not mean blindly following the founder's opinions. Instead, it entails adhering to the methodology established by the founder. These *madhhabs* represent centuries of scholarly discourse and tradition. Despite being named after their founders, scholars within each *madhhab* may hold differing legal views. For instance, in the Hanafī school, prominent opinions often come from figures like Abū Yūsuf and al-Shaybānī, rather than solely from the eponymous founders. This variance in legal opinions extends beyond the founders' era, with later scholars often diverging from the positions of their *madhhab's* imam.[28]

1.Fiqh during the Prophet's time

The foundation of fiqh was laid during the lifetime of the Prophet Muhammad (p.b.u.h). The Qur'an provided overarching principles, while the Prophet's Sunnah elucidated their practical application in various contexts. Legal rulings were often given in response to specific situations, addressing matters of worship, ethics, governance, and interpersonal relations. The Companions of the Prophet (p.b.u.h) served as primary transmitters of his teachings, laying the groundwork for future legal scholarship.

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[27] Ibn al-Jawzī. *Virtues of the Imām Aḥmad ibn Ḥanbal* (Michael Cooperson, Ed. & Trans.) (Vols. 1 and 2). New York: New York University Press, 2013/2015; Haddad, *The Four Imams and Their Schools*; Abu Zahra, *Four Imams Their Lives.*

[28] Hamdeh, Emad. "What is Madhhab? Exploring the Role of Islamic Schools of Law," Yaqeen Institute, 2020. https://yaqeeninstitute.org.my/read/paper/what-is-a-madhhab-exploring-the-role-of-islamic-schools-of-law.

During the Meccan period (609-622 CE), the focus was primarily on foundational aspects of faith and morality. The majority of rituals, along with social and economic laws were revealed during the subsequent Medinan period (622-632 CE), with the Qur'an and Sunnah serving as the primary sources of law. While *ijmāʿ* and *qiyās* are not independent sources of law, they are tools used to derive rulings from the primary sources, and they were not invented by scholars but found within scripture. During the Prophet's lifetime, *ijtihād* was limited due to ongoing revelation and direct guidance from the Prophet (p.b.u.h). However, as the Companions encountered new situations, they employed *ijtihād* to address issues not explicitly covered by scripture. [29]

2.Fiqh during the Rightly guided Caliphs

During the era of the four Rightly guided Caliphs, spanning from the Prophet's demise to the mid-7th century CE (632-661), the Islamic state's expansion introduced Muslims to new systems and cultures, requiring solutions not explicitly covered by *Sharī'ah*. The Caliphs relied on *ijmā'* and *ijtihād*, taught by the Prophet (p.b.u.h), to address these challenges, establishing procedural frameworks that later influenced Islamic legislation. They followed a systematic approach: first consulting the Qur'an, then the Sunnah, seeking consensus among the Prophet's companions, and ultimately resorting to the Caliph's *ijtihād* if needed.[30]

Since not all of the Companions were scholars or engaged in Islamic law, they naturally sought guidance from those who possessed religious knowledge . Among the Companions renowned for their legal expertise were 'A'ishah bint Abī Bakr, Ibn Masʿūd, Zayd ibn Thābit, and Ibn ʿAbbās. Each of these figures had disciples who documented and adhered to their teachings in Islamic jurisprudence. Further, the Companions varied in their approaches and interpretations of the Qur'an and Sunnah, rather than adhering to a single methodology.

For example, after the Battle of the Confederates, in which the tribe of Qurayzah had thrown off the mask and renounced their covenant of allegiance to the Muslim community, the Prophet (p.b.u.h) gave an order to Muslims not to pray *'Asr* (afternoon prayer) except at the tribe of

[29] Hasan, *The Early Development of Islamic Jurisprudence*, 12-14; Al-Zarqa, Mustafa Ahmad, *Al-Madkhal al-Fiqhī al-Am* (Introduction to Islamic Jurisprudence), edited by Azman Ismail and Ahmad Zaki Salleh; translated by Muhammad Anas al-Muhsin, et al. Kuala Lumpur : IBFIM, 2014, 115-121.
[30] Al-Zarqa, *Al-Madkhal al-Fiqhī al-Am*, 122-127.

Qurayzah, urging them to fight, without delay, this treacherous ally. As the companions traveled, the time for *'Asr* prayer arrived. While some of them held the opinion that they should not perform the prayer before reaching their destination, others took the contrary opinion.[31] Commenting on this incident, Adil Salahi observes that among the Prophet's companions, there existed divergent viewpoints. Some believed that the Prophet (p.b.u.h) stressed the importance of promptness, advising them not to neglect an obligatory prayer or postpone it. Consequently, they halted their journey to pray before proceeding. Conversely, others contended that their actions aligned with the Prophet's instructions, absolving them of any fault in delaying the *'asr* prayer until reaching the Qurayzah. Consequently, some Muslims prayed during their journey, while others deferred until arrival at the destination. Notably, the Prophet (p.b.u.h) did not censure either group, demonstrating Islam's reverence for diverse opinions reached in good faith.[32]

On another occasion, Abū Saʿīd al-Khudrī recounted an incident where two travelers, lacking water for ablution, performed dry ablution with clean earth and prayed. Later, when they found water, one repeated his ablution and prayer, while the other did not. Upon hearing this, the Prophet (p.b.u.h) remarked that the one who did not repeat his prayer had followed the Sunnah correctly and would be rewarded for his prayer. To the one who repeated his prayer, the Prophet (p.b.u.h) promised a double reward.[33]

3.Fiqh from the mid-7th c. to the mid 8th c.

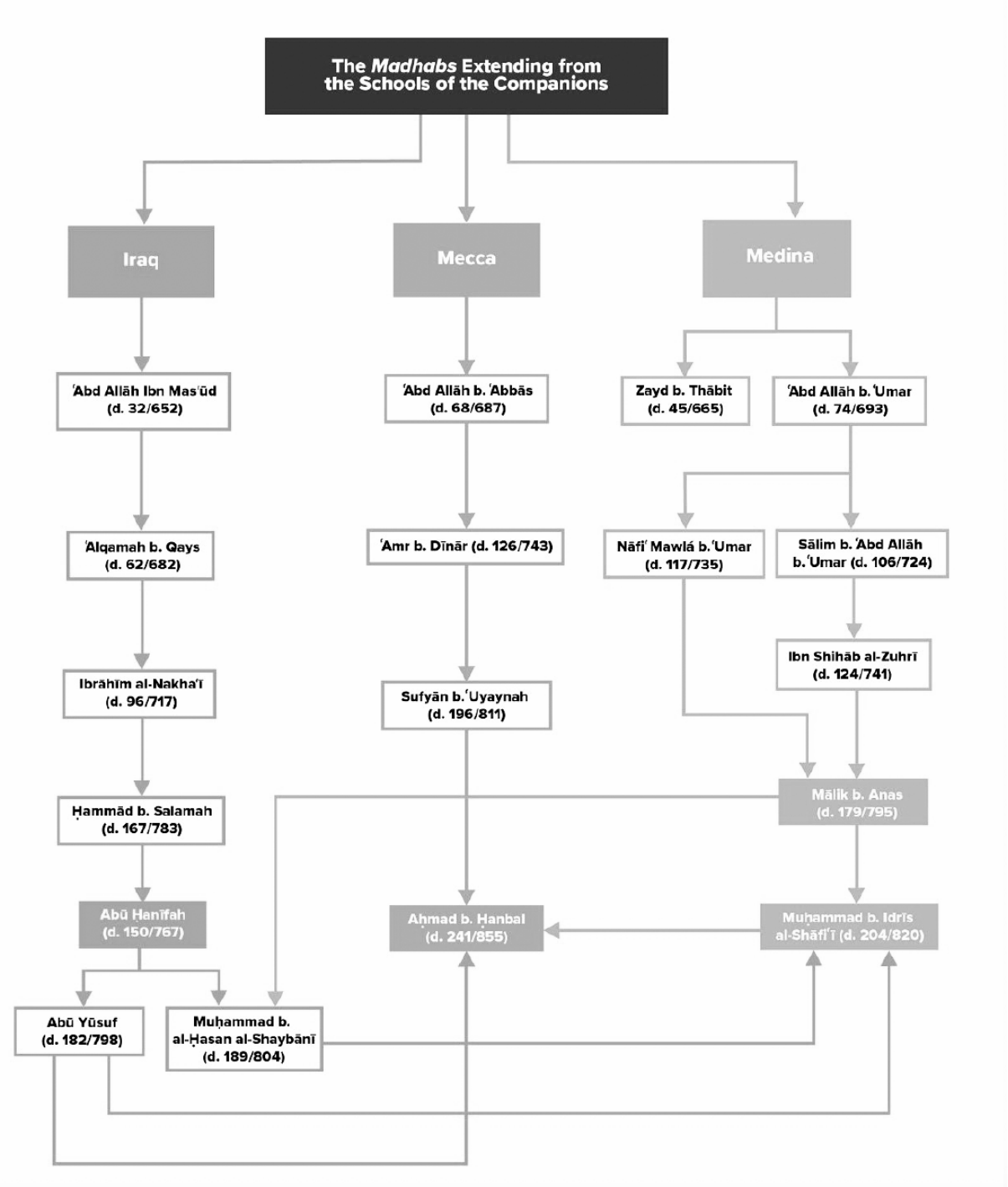
During his era, the caliph Umar ibn al-Khattāb prevented the Companions from departing Medina to seek advice on emerging matters. Following his assassination, the Companions scattered across various regions, including Hijaz, Yemen, Iraq, Egypt, and Sham. Abdullah Ibn Masʿūd, for example, relocated to Kufa, where he commenced teaching, attracting attendees who followed his guidance. He provided fatwas, which his students diligently recorded. Similarly, Zayd ibn Thābit and Ibn ʿUmar had their own followers in Medina, while Ibn ʿAbbās held classes in Mecca with dedicated students. People naturally sought out the most knowledgeable individuals in Islamic law for guidance. These Companions nurtured dedicated students who continued to disseminate their

[31] Narrated by Al-Bukhārī, Muhammad. *Sahih Al-Bukhāri*. Cairo: Dar al-Rayyan, 1987. No. 946; Hasan, *The Early Development of Islamic Jurisprudence*, 14.
[32] Salahi, Adil. *Muhammad: Man and Prophet*. Leicester: The Islamic Foundation, 2002. 459.
[33] Abu Dawūd, *Al-Sunan*, edited by Shy'ayb al-Arta'ūt. Dar al-Risalah al-'Alamiyyah, 2009, 1: 253. No. 338.

teachings.[34] Companions' numerous students laid the foundation for early *madhhabs* or "ways of understanding." Although they may not have been termed *madhhabs* initially, the practice of adhering to a specific individual's interpretation existed among the Companions.[35]

The chart below depicts the growth of *madhhabs* as organic continuations of the teachings of the Companions.

[34] Al-Zarqa, *Al-Madkhal al-Fiqhī al-Am,* 132.
[35] See Hasan, *The Early Development of Islamic Jurisprudence*, 19-28.



Source: Hamdeh, "What is Madhhab?[36]

[36] As the author notes, the chart highlights notable figures within these educational circles and illustrates how the *madhhabs* naturally stemmed from the teachings of the Companions. the chart also demonstrates the mutual influence among the four schools.

It is crucial to note that these *madhhabs* were not solely the reflections of individual scholars; instead, they were the result of a collaborative process. For instance, Abū Hanīfah would present issues to his students, who were accomplished scholars in their own right, for collective examination, debate, and refinement. His circle included experts in various fields such as language, hadith, adjudication, and jurisprudence. This rigorous process ensured that any opinion underwent thorough "peer review" before being adopted as the *madhhab's* stance. The insights and legal judgments of these scholars were documented in books, and over the centuries, thousands of scholars continued to study, reassess, and refine these opinions. In essence, the *madhhabs* served as a communal safeguard for Islamic law.[37]

There was not a set number of *madhhabs*, but rather a multitude of scholars developing methods for interpreting scripture. The subsequent generation after the Companions expanded Islamic legal theory, leading to the existence of many *madhhabs*, although not all endured due to a lack of dedicated students to carry on their teachings. Today, it is the four aforementioned *madhhabs* that have survived and proliferated across the Muslim world.

Conclusion

In conclusion, the concepts of *Sharīʿah* and *Fiqh* form the core of the Islamic legal tradition, encapsulating both ethical values and practical guidelines for Muslim life. Through the dynamic process of *ijtihād*, Islamic law has shown an enduring flexibility, enabling scholars to address new challenges across different times and places. This chapter highlighted the foundational principles of *Sharīʿah* and *Fiqh*, the role of *ijtihād*, and the historical evolution of the four major Sunni schools of jurisprudence—Hanafī, Mālikī, Shāfiʿī, and Hanbalī. Together, these elements demonstrate the depth and adaptability of Islamic law, underscoring the lasting impact of scholarly efforts to interpret and apply divine guidance in diverse contexts.

[37] Hamdeh, “What is Madhhab?...”