THEMES IN ISLAMIC LAW

The Origins and Evolution of Islamic Law

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CHAPTER 7

The formation of legal schools

With the emergence of legal theory by the middle of the fourth/tenth century or thereabouts, Islamic law can be said to have become complete, save for one essential and fundamental feature which we have not yet discussed. This is the phenomenon of the legal schools, one of the most defining characteristics of Islamic law. In order to understand this complex phenomenon, it is perhaps best to begin with a survey of the meanings that are associated with the Arabic term "*madhhab*," customarily translated into the English language as "school."

1. THE MEANINGS OF *MADHHAB*

Derived from the Arabic verb *dhahaba/yadhhabu* (lit. "went/to go"), the verbal noun *madhhab* generally means that which is followed and, more specifically, the opinion or idea that one chooses to adopt. It is almost never applied by a jurist to his own opinion, but rather used in the third person, e.g., the *madhhab* of so-and-so is such-and-such. The most basic meaning of the term is thus a particular opinion of a jurist. Historically, it is of early provenance, probably dating back to the end of the first/seventh century, but certainly to the middle of the second/eighth. By the early third/ninth century, its use had become frequent.

The *madhhab*s and their history, however, are not associated with this basic usage to any meaningful extent, for it is conceivable that the usage might have persisted without there being any schools at all. In fact, it was already in circulation before any developed notion of "school" had come to exist. The concept of *madhhab* – so significant in the history of Islamic law – is rather associated with four other meanings that have emerged out of, and subsequent to, this basic usage, and which contributed to, or reflected, the formation of schools. The first of these was the technical meaning of the term as a principle that underlies a set of cases subsumed under such a principle. For example, a posited assumption of the Ḥanafites is that

usurpation, in order to qualify as such, must involve the unlawful removal of property from its original place, where it had been possessed by the owner. The Ḥanbalites, on the other hand, define usurpation as mere seizure of property, even if it is not removed from its original place of ownership. Thus, taking possession of a rug by sitting on it (without removing it) is considered usurpation by the Ḥanbalites, but not by the Ḥanafites. In terms of recovery of damages, this basic difference in definition has resulted in generating significant differences between the two *madhhab*s. Whereas the Ḥanbalites make the usurper liable to the original owner for all growth on, and proceeds of, the usurped object, the Ḥanafites place severe restrictions on the ability of the owner to recover his accruing rights – the reasoning being that the growth or proceeds of the usurped property was not yet in existence when the property was "removed" from the hands of the rightful owner, and since they had not been in existence, no liability on the part of the usurper is deemed to arise.

Now, this example illustrates a central meaning of the term *madhhab* as a legal doctrine concerning a group of cases, in this instance cases pertaining to the recovery of damages, which are subsumed under a larger principle. And it is in this sense that it can be said that one school's *madhhab* differs, sometimes significantly, from another. (Incidentally, the foregoing example, like so many others, also illustrates the falsehood of the notion, dominant in modern scholarship, that the differences between and among the schools are minor, or limited to matters of detail.[1])

The second meaning of *madhhab* represents a combination of the basic meaning outlined above and the first technical meaning, namely, a principle underlying a group of derivative cases, as exemplified in the case of damages. Once jurists consciously developed such principles, it was possible to use the singular term "*madhhab*" to refer to the collective doctrine of a school or of a *mujtahid*, first with reference to a segment of the law (e.g., the law of usurpation) and second, by implication, the entirety of a school's, or a *mujtahid*'s, positive law. Historically, it must be stressed, the reference to a *mujtahid*'s collective doctrine preceded reference to a school, since schools developed out of these *mujtahid*s' doctrines.

The third sense in which the term "*madhhab*" was used was with reference to the *mujtahid*'s individual opinion as the most authoritative

[1] In a recent commercial dispute (Delaware Superior Court, Case no. 00C-07–161), a party arguing on the grounds of the Ḥanbalite law of usurpation (*ghaṣb*) was awarded damages in excess of three hundred million US dollars, whereas in Ḥanafite law, it would have been entitled to no damages under the facts of the case.

in the collective doctrinal corpus of the school, irrespective of whether or not this *mujtahid* was the school's so-called founder. While this term appeared in the Arabic legal sources without qualification or conjunction with other terms, we will here assign to it the compound expression "*madhhab*-opinion." The most fundamental feature of the *madhhab*-opinion was its general and widespread acceptance in practice, as reflected in the courts and *fatwā*s. Thus, when an opinion is characterized as "*al-madhhab*" (with the definite article added), it signifies that that opinion is the standard, normative doctrine of the school, determined as such by the fact that practice is decided in accordance with it. The emergence and use of this term entailed a unanimity of doctrine and practice, which in turn entailed the existence of a school that, by definition, shared a common doctrinal ground.

Finally, the fourth meaning of *madhhab* is a group of jurists and legists who are strictly loyal to a distinct, integral and, most importantly, *collective* legal doctrine attributed to an eponym, a master-jurist, so to speak, after whom the school is known to acquire particular, distinctive characteristics (usually emanating from the first and third meanings of the term). Thus, after the formation of the schools – our concern here – jurists began to be characterized as Ḥanafite, Mālikite, Shāfiʿite or Ḥanbalite, as determined by their *doctrinal* (not personal) loyalty to one school or another. This doctrinal loyalty, it must be emphasized, is to a cumulative and accretive body of doctrine constructed by generations of distinguished jurists, which is to say, conversely, that loyalty is never extended to the individual doctrine of a single jurist–*mujtahid*. This (fourth) meaning of *madhhab* must thus be distinguished from its rudimentary predecessor, namely, a group of jurists who followed (but who, as we shall see, were not necessarily loyal to) the doctrine of a single, leading jurist. The latter's doctrine, furthermore, was not only non-accretive and, *ipso facto*, non-collective (in the sense that it was the product of the labor of a single jurist), but also represented merely a collection of the individual opinions held by that jurist.

Now, these four definitions roughly represent the development of the concept of *madhhab*, from the basic meaning of a jurist holding a particular opinion to strict loyalty to a collective, cumulative and self-contained body of legal doctrine. Obviously, such a development did not mean that one meaning would supersede or cancel out another meaning from which the former issued. Rather, with the exception of the rudimentary form of the fourth meaning, these notions of "*madhhab*" operated alongside each other throughout Islamic history, and were used variably in different contexts. By the middle of the fourth/tenth century, or shortly thereafter, these meanings were all present. The question that poses itself is: How and

when did the concept of *madhhab* evolve from its most basic meaning into its highly developed sense of a doctrinal school? In the course of our enquiry, we will also attempt to answer the question: Why did this uniquely Islamic phenomenon develop in the first place? But let us first turn to the first question.

2. FROM SCHOLARLY CIRCLES TO PERSONAL SCHOOLS

In chapter 3, we saw that the early interest in law and legal studies evolved in the environment of scholarly circles, where men learned in the Quran and the general principles of Islam began discussions, among other things, of quasi-legal and often strictly legal issues. By the early part of the second century (ca. 720–40 AD), such learned men had already assumed the role of teachers whose circles often encompassed numerous students interested specifically in *fiqh*, the discipline of law. Yet, by that time, no obvious methodology of law and legal reasoning had evolved, and one teacher's lecture could hardly be distinguished, methodologically, from another's. Even the body of legal doctrine they taught was not yet complete, as can be attested from each teacher's particular interests. Some taught family law and inheritance, while others emphasized the law of rituals. More importantly, we have no evidence that the legal topics covered later were all present at this early period.

By the middle of the second/eighth century, not only had law become more comprehensive in coverage (though still not as comprehensive as it would be half a century later) but also the jurists had begun to develop their own legal assumptions and methodology. Teaching and debates within scholarly circles must have sharpened methodological awareness, which in turn led jurists to defend their own, individual conceptions of the law. On adopting a particular method, each jurist gathered around him a certain following who learned their jurisprudence and method from him. Yet, it was rare that a student or a young jurist would restrict himself to one circle or one teacher, for it was not uncommon for aspiring jurists to attend more than one circle in the same city, and even perhaps several circles. During the second half of the century, aspiring jurists did not confine themselves to circles within one city, but traveled from one region to another in search of reputable teachers. "Travel in search of knowledge" became an activity indulged in by many, and one of the most impressive features of Islamic scholarship.

Each prominent teacher attracted students who "took *fiqh*" from him. A judge who had studied law under a teacher was likely to apply the teacher's

doctrine in his court, although, again, loyalty was not exclusive to a single doctrine. If he proved to be a sufficiently promising and qualified jurist, he might "sit" (*jalasa*) as a professor in his own turn, transmitting to his students the legal knowledge he gained from his teachers, but seldom without his own reconstruction of this knowledge. The legal doctrine that Abū Ḥanīfa taught to his students was largely a transmission from his own teachers, notably Nakhaʿī (d. 96/714) and Ḥammād b. Abī Sulaymān (d. 120/737). The same is true of Mālik, Awzāʿī, Shāfiʿī and many others. None of these, however, despite the fact that they were held up as school founders, constructed their own doctrine in its entirety. Rather, all of them were as much indebted to their teachers as their teachers had been to their own masters.

During the second/eighth century, therefore, the term "*madhhab*" meant a group of students, legists, judges and jurists who adopted the doctrine of a particular leading jurist, such as Abū Ḥanīfa or Thawrī (d. 161/777) – a phenomenon that I will call here a "personal school." Those who adopted or followed a jurist's doctrine were known as *aṣḥāb*, or associates, namely, those who studied with or were scholarly companions of a jurist. Most leading jurists had *aṣḥāb*, a term that often meant "followers." Thus, Abū Ḥanīfa, Awzāʿī, Abū Yūsuf and Thawrī, to name only a few, each had *aṣḥāb*, and each was associated with having a *madhhab*, namely, a personal school revolving around his personal doctrine. This was true even in the cases of Abū Ḥanīfa and his student Abū Yūsuf who each initially had what seem to have been independent followings – even personal *madhhab*s – although these personal *madhhab*s were later brought together under one doctrinal (not personal) *madhhab*, that of the Ḥanafites.

Adopting the doctrine of a certain jurist did not involve any particular loyalty to that doctrine, however. It was not unusual for a judge or a layman to shift from one doctrine to another or simultaneously adopt a combination of doctrines belonging to two or more leading jurists. A group of Medinese legists, for instance, is reported to have adhered to the doctrine of Saʿīd b. al-Musayyab but to have subsequently abandoned some parts of it in favor of others.[2] ʿAbd Allāh b. Ṭāhir al-Ḥazmī, who presided as judge in Egypt from 169/785 to 174/790, applied in his court the doctrines of Ibn al-Qāsim (d. 191/806), Ibn Shihāb al-Dīn al-Zuhrī, Rabīʿa and a certain Sālim.[3] Serving also as a judge in Egypt between 184/800 and 185/801 was Isḥāq b. al-Furāt, who is said to have combined the doctrines of several

[2] See Schacht, *Origins*, 7.
[3] Kindī, *Akhbār*, 383.

jurists, foremost among whom were the Medinese legist Mālik, whose disciple he was, and the Kūfan Abū Yūsuf.[4]

As late as the second half of the third/ninth century, some jurists were not yet sure of their affiliation, a fact that was inconceivable once the doctrinal schools emerged. Muḥammad b. Naṣr al-Marwazī (d. 294/906) was said to have been for long unable to decide which doctrine he should follow: that of Shāfiʿī, that of Abū Ḥanīfa or that of Mālik.[5] The fact that he finally adopted Shāfiʿī's doctrine, without combining it with others, is significant, since by his time it had become normative practice to adopt a single doctrine, and the combination of parts of various doctrines had ceased to be acceptable conduct. This is to be contrasted with the widespread acceptance during the second/eighth century of the practice of combining various opinions or doctrines.

In sum, by the middle of the third/ninth century, numerous jurists had established themselves as leaders in their field and acquired personal followings through the scholarly circles in which they debated legal issues, taught jurisprudence to students, and issued *fatwā*s. Most of those who were attracted to legal studies were free to attend one circle or another, and when some of these became judges or jurists, they also had the choice of what doctrine they wished to apply or propound. Some chose to combine, but others, who were more loyal to a single teacher, insisted on teaching or applying his doctrine alone. The case of Marwazī is a case in point, but even earlier, some students were loyal to a single teacher. During his tenure as judge in Egypt in around 246/860, Bakkār b. Qutayba seems to have insisted on applying Abū Ḥanīfa's doctrine exclusively, although he studied it not from Abū Ḥanīfa himself, but from one of the latter's students.[6]

3. FROM PERSONAL TO DOCTRINAL SCHOOLS

If the leading jurists did not always command total loyalty from their followers, then, strictly speaking, no claim can be made for a normative presence of personal schools. Therefore, we must be cautious not to generalize by saying that the period spanning roughly 80/700–250/865 was characterized by the emergence and operation of personal schools. The latter existed in a narrow sense. Only when a leading jurist attracted

[4] Ibid., 393.
[5] Tāj al-Dīn al-Subkī, *Ṭabaqāt al-Shāfiʿiyya al-Kubrā*, 6 vols. (Cairo: al-Maktaba al-Ḥusayniyya, 1906), II, 23.
[6] Kindī, *Akhbār*, 477; Subkī, *Ṭabaqāt*, II, 213–14.

a loyal following of jurists who exclusively applied his doctrine in courts of law or taught it to students, or issued *fatwā*s in accordance with it, can we say that a personal school of his existed. This was indeed the case with a number of prominent jurists, including Abū Ḥanīfa, Ibn Abī Laylā, Abū Yūsuf, Shaybānī, Mālik, Awzāʿī, Thawrī and Shāfiʿī. All these had loyal followers, but they also had many more students who did not adhere exclusively to their respective doctrines.

It is clear, however, that such personal schools, even when limited to loyal followers, do not truly represent what is referred to, in Islamic law, as the "*madhhab*," the doctrinal school, which possessed several characteristics lacking in the personal schools. First, the personal school, when fulfilling the condition of exclusive loyalty, comprised the positive legal doctrine of a single leading jurist, and, at times, his doctrine as transmitted by one of his students. The doctrinal school, on the other hand, possessed a cumulative doctrine of positive law in which the legal opinions of the leading jurist, now the supposed "founder" of the school, were, at best, *primi inter pares*, and at least, equal to the rest of the opinions and doctrines held by various other jurists, also considered leaders *within* the school. In other words, the doctrinal school was a collective, authoritative entity, whereas the personal school remained limited to the individual doctrine of a single jurist. For example, in the Ḥanafite doctrinal school, three categories of doctrine were recognized. The first was the so-called *ẓāhir al-riwāya*, attributed to Abū Ḥanīfa and his two students, Abū Yūsuf and Shaybānī. This possessed the highest level of authority, since it was transmitted, and surely worked out, by jurists considered to have been among the most qualified in the school. The second, known as *al-nawādir*, also belonged to these three masters, but without the sanctioning authority of the later, distinguished jurists. The third, termed *al-nawāzil*, represented the doctrinal constructions of the later, prominent jurists.[7] In contrast with the personal school of Abū Ḥanīfa, where his own doctrine constituted the basis of his following, the later doctrinal school of the Ḥanafites was a composite one, in which Abū Ḥanīfa's personal doctrine was one among many.

Second, the doctrinal school was, as we shall see, as much a methodological entity as a positive, doctrinal one. In other words, what distinguished a particular doctrinal school from another was largely its legal methodology and the positive principles it adopted – as a composite school –

[7] For a more detailed discussion of these doctrines, see Hallaq, *Authority*, 47–48, 181 f.

in dealing with its own law. Methodological awareness on this level had not yet existed in the personal schools, although it was on the increase from the middle of the second/eighth century.

Third, a doctrinal school was defined by its substantive boundaries, namely, by a certain body of positive law and methodological principles that clearly identified the outer limits of the school as a collective entity. The personal schools, on the other hand, had no such well-defined boundaries, and departure from these boundaries in favor of other legal doctrines and principles was a common practice.

The fourth characteristic, issuing from the third, is loyalty, for departure from positive law and methodological principles amounted to abandoning the school, a major event in the life (and biographies) of jurists. Doctrinal loyalty, in other words, was barely present in the personal schools, whereas in the later doctrinal schools, it was a defining feature of both the school itself and the careers of its members.

These four major characteristic differences, among others, sharply differentiate between personal and doctrinal schools. These fundamental differences also beg the question: How did the latter emerge?

A central feature of the doctrinal school – yet a fifth characteristic distinguishing it from the personal school – is the creation of an axis of authority around which an entire methodology of law was constructed. This axis was the figure of what came to be known as the founder, the leading jurist, in whose name the cumulative, collective principles of the school were propounded. Of all the leaders of the personal schools – and they were many – only four were raised to the level of "founder" of a doctrinal school: Abū Ḥanīfa, Mālik, Shāfiʿī and Ibn Ḥanbal, to list them in chronological order. The rest, perhaps with the possible exception of the Ẓāhirite school, did not advance to this stage, with the result that they, as personal schools, never survived beyond a relatively short duration. Later in this chapter, we will discuss the reasons behind the failure of these schools.

The so-called founder, the eponym of the school, thus became the axis of authority construction; and as bearer of this authority he was called the imam, and characterized as the absolute *mujtahid* who presumably forged for the school its methodology on the basis of which the positive legal principles and substantive law were constructed. The legal knowledge of the absolute *mujtahid* was presumed to be all-encompassing and thus wholly creative. The school was named after him, and he was purported to have been its originator. His knowledge included mastery of legal theory (*uṣūl al-fiqh*), Quranic exegesis, *ḥadīth* and its criticism, legal language, the

theory of abrogation, substantive law, arithmetic, and the all-important science of juristic disagreement.

All these disciplines were necessary for the imam because he was the only one in the school who could engage directly with the revealed texts, from which, presumably, he derived the foundational structure of the school's positive law. The imam's doctrine therefore constituted the only purely juristic manifestation of the legal potentiality of revealed language. Without it, in other words, revelation would have remained just that, revelation, lacking any articulation as law. Furthermore, his doctrine laid claim to originality not only because it derived directly from the revealed texts, but also, and equally importantly, because it was gleaned systematically from the texts by means of clearly identifiable hermeneutical and positive legal principles. Its systematic character was seen as a product of a unified and cohesive methodology that only the founding imam could have forged; but a methodology that is itself inspired and dictated by revelation. To all of this epistemic competence, the imam was viewed as having been endowed with exceptional personal character and virtues. He embodied pure virtue, piety, morality, modesty, and the best of ethical values.

Now, this conception of the founding imams cannot be considered historically accurate – at least not entirely – for although they were knowledgeable jurists, they were certainly not as accomplished as they were made out to be in the Muslim tradition. Yet, this conception of them as absolute *mujtahid*s amounted to nothing less than what we may call a process of authority construction that served, in turn, an important function, and can hardly be dismissed as either misrepresentation of history or historical myth. In order to elevate the founding imams to this sublime rank of absolute *mujtahid*s, each of whom could be made responsible for founding a school, a number of things had to happen. Two of these deserve special attention: First, as we have seen earlier, no leading jurist around whom a personal school evolved constructed his own doctrine in its entirety. Indeed, a substantial part of any doctrine was transmitted from teachers and other mentors. Yet, the doctrinal school founder is made – in the discourse of each school – solely responsible for forging his own doctrine directly out of the revealed texts and, furthermore, through his own methodologies and principles. This process was accomplished by dissociating the doctrines of the imams from those of their predecessors, to whom in fact they were very much in debt.[8] One example of this process must suffice

[8] For a detailed treatment of this process, see Hallaq, *Authority*, 24 ff.

here: In Mālik's *Muwaṭṭa*ʾ, it is stated: "Mālik heard (*balaghahu*) that if the faculty of hearing in both ears is completely lost [due to injury], then the full blood-money [for such an injury] is due." It is clear that this opinion was not Mālik's, but rather one transmitted to him from some unnamed authority. About half a century later, in Saḥnūn's *Mudawwana* (a foundational Mālikite work), Mālik begins to acquire the prestige of an absolute imam. There, in commenting on this case, Saḥnūn declares the following: "Mālik said: If hearing in both ears is completely lost, then the full blood-money is due."[9] This example, however simple, is typical of the process of dissociating the imams' doctrines from those of their predecessors, and with it of constructing their authority as imam-founders.

The second is a process of attributing to the imams the juristic accomplishments of their successors. A salient case in point is Aḥmad b. Ḥanbal, the reputed founder of the Ḥanbalite school. Whereas Abū Ḥanīfa, Mālik and Shāfiʿī were, to varying extents, jurists of high caliber, Ibn Ḥanbal could hardly be said to have approached their rank, as many of his own followers would admit. For instance, the distinguished Ḥanbalite jurist Najm al-Dīn al-Ṭūfī (d. 716/1316) openly acknowledged that Ibn Ḥanbal "did not transmit legal doctrine, for his entire concern was with *ḥadīth* and its collection."[10] Yet, within less than a century after his death, Ibn Ḥanbal emerged as the founding imam of a legal school of some renown. We discuss the emergence of the Ḥanbalite school because it illustrates an extreme example of authority construction, a process through which a legal doctrinal school arose out of meager juristic beginnings.

We may suppose, despite Ṭūfī's statement, that Ibn Ḥanbal did address some legal problems as part of his preoccupation with *ḥadīth*. This is probably the nucleus with which his followers worked, and which they later expanded and elaborated. It is therefore reasonable to assume that the bare beginnings of legal Ḥanbalism, which had already established itself as a theological school, are to be located in the juristic activities of the generation that followed Ibn Ḥanbal, associated with the names of Abū Bakr al-Athram (d. 261/874), ʿAbd Allāh al-Maymūnī (d. 274/887), Abū Bakr al-Marrūdhī (d. 275/888), Ḥarb al-Kirmānī (d. 280/893), Ibrāhīm Ibn Isḥāq al-Ḥarbī (d. 285/898), and Ibn Ḥanbal's two sons, Ṣāliḥ (d. 266/880 ?) and ʿAbd Allāh (d. 290/903). But these scholars are said to have been

9 Mālik, *Muwaṭṭa*ʾ, 748; Saḥnūn b. Saʿīd al-Tanūkhī, *al-Mudawwana al-Kubrā*, ed. Aḥmad ʿAbd al-Salām, 5 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1415/1994), IV, 563.

10 Najm al-Dīn al-Ṭūfī, *Sharḥ Mukhtaṣar al-Rawḍa*, ed. ʿAbd Allāh al-Turkī, 3 vols. (Beirut: Muʾassasat al-Risāla, 1407/1987), III, 626–27.

no more than bearers of Ibn Ḥanbal's opinions, however few in number. None of them, for instance, elaborated a complete or near-complete legal doctrine of the eponym. Rather, it was left to Abū Bakr al-Khallāl (d. 311/923) to bring together what was seen as the master's dispersed opinions. Khallāl was reported to have traveled widely in search of those of Ibn Ḥanbal's students who had heard him speak on matters legal, and he reportedly contacted a great number of them, including his two sons and Ibrāhīm al-Ḥarbī. A major Ḥanbalite biographer was to announce that Khallāl's collection of the eponym's opinions was never matched, before or after.[11]

That Khallāl managed to collect a sufficient number of opinions on the basis of which he could produce the first major corpus of Ḥanbalite law is remarkable, for the reputed founder had never interested himself in law per se, and when he did occasionally deal with legal issues, he did so in a marginal and tangential manner. That Ibn Ḥanbal emerged as a founder-imam is more a tribute to Khallāl's constructive efforts than to anything Ibn Ḥanbal could have contributed to the province of law. Khallāl, drawing on the increasing prestige of the Miḥna's hero, essentially transformed Ibn Ḥanbal into the author of a methodologically cogent legal doctrine that sustained all later doctrinal developments. To say that Khallāl and his associates (*aṣḥāb*) were the real founders of the Ḥanbalite school is merely to state the obvious.

But Khallāl would never have claimed for himself anything more than credit for having elaborated the law in a Ḥanbalite fashion – whatever that may have meant to him – and he himself possessed none of the prestige that was conveniently bestowed on Ibn Ḥanbal and that he efficiently used to construct a school in the master's name. That Khallāl long escaped notice as the real founder (or at least as the main contributor to the formation) of a doctrinal Ḥanbalite school illustrates the second process of authority construction we have alluded to earlier, namely, that the doctrines of the reputed founders were not only dissociated from those of their predecessors, but also expanded to include the juristic achievements of their followers, as we have seen in the case of Khallāl (and each school had its own Khallāl, so to speak).

The generation of Khallāl, as well as the following two generations, produced jurists who, by later standards, were known as the *mukharrijūn* (sing. *mukharrij*), a rank of legal scholars whose juristic competence was of

[11] Muḥammad b. Abī Yaʿlā Ibn al-Farrāʾ, *Ṭabaqāt al-Ḥanābila*, ed. Muḥammad al-Fiqī, 2 vols. (Cairo: Maṭbaʿat al-Sunna al-Muḥammadiyya, 1952), II, 113.

the first rank but who, nonetheless, contributed to the construction of a doctrinal school under the name of a reputed founder. The activity in which the *mukharrij* engaged was known as *takhrīj*, said to be exercised either on the basis of a particular opinion that had been derived by the founding imam or, in the absence of such an opinion, on that of the revealed texts, whence the *mukharrij* would derive a legal norm according to the principles and methodology of his imam. In both direct and indirect *takhrīj*, then, conformity with the imam's legal theory and his general and particular principles regarding the law was theoretically deemed an essential feature.

However, a close examination of this juristic activity during the formation of the doctrinal schools reveals that the imam's legal doctrine and methodology were by no means the exclusive bases of reasoning. For example, the early Shāfiʿite jurist Ibn al-Qāṣṣ (d. 336/947) reports dozens, perhaps hundreds, of cases in which *takhrīj* was practiced both within and without the boundaries of the imam's legal principles and *corpus juris*. In fact, he acknowledges – despite his clearly Shāfiʿite affiliation – that his work is based on both Shāfiʿī's and Abū Ḥanīfa's doctrines.[12] For example, in the case of a person whose speaking faculty is impaired, Shāfiʿī and Abū Ḥanīfa apparently disagreed over whether or not his testimony might be accepted if he knows sign language. Ibn Surayj (who was the Shāfiʿite equivalent of the Ḥanbalite Khallāl, and Ibn al-Qāṣṣ's professor) conducted *takhrīj* on the basis of these two doctrines, with the result that two contradictory opinions were accepted for this case: one that such testimony is valid, the other that it is void. What is significant about Ibn al-Qāṣṣ's report is that Ibn Surayj's *takhrīj* activity in deriving these two solutions was deemed to fall within the hermeneutical contours of the Shāfiʿite school. The two opinions, Ibn al-Qāṣṣ says, were reached "according to Shāfiʿī's way."[13] At times, however, Ibn Surayj's *takhrīj* became Shāfiʿī's own opinion. In the case of how the judge should deal with the plaintiff and defendant in the courtroom, Ibn al-Qāṣṣ reports that "*Shāfiʿī's opinion* is that the judge should not allow one of the two parties to state his arguments before the court without the other being present. *Ibn Surayj produced this opinion by way of takhrīj*."[14]

Like Ibn Surayj, Ibn al-Qāṣṣ, in his practice of *takhrīj*, also drew heavily on the Ḥanafite tradition, and to some extent on that of the Mālikites.

[12] Aḥmad b. Muḥammad Ibn al-Qāṣṣ, *Adab al-Qāḍī*, ed. Ḥusayn Jabbūrī, 2 vols. (Ṭā'if: Maktabat al-Ṣiddīq, 1409/1989), I, 68.
[13] Ibid., I, 306.
[14] Ibid., I, 214 (emphasis added).

Although most of his *takhrīj* cases are drawn from Shāfiʿite–Ḥanafite materials, he frequently relies exclusively on Abū Ḥanīfa's opinions. What is striking here is that even when Abū Ḥanīfa's doctrine is the sole basis of his reasoning, he and his successors considered these *takhrīj* cases to be of Shāfiʿite pedigree, and they were in fact often attributed to Shāfiʿī himself. This practice of drawing on the doctrinal tradition of another school and attributing the resulting reasoning to one's own school and its founder was by no means limited to the Shāfiʿites, although they were known to have engaged in it, together with the Ḥanbalites and Ḥanafites, more than did the Mālikites. It is quite common, for instance, to find Ḥanbalite opinions that have been derived through *takhrīj* exclusively from the Ḥanafite, Mālikite or, more frequently, the Shāfiʿite school.[15]

Generally speaking, *takhrīj*, as a process through which later opinions were attributed to the so-called founding imams, was not recognized either in practice or in theory. The legal literature is by and large silent on this feature of constructing doctrine (which may explain modern scholarship's near-total neglect of this important phenomenon). One of the rare exceptions, however, is found in the work of the later Shāfiʿite jurist Abū Isḥāq al-Shīrāzī (d. 476/1083), who devotes to this issue what is for us a significant chapter in his monumental *Sharḥ al-Lumaʿ*. The chapter's title is revealing: "Concerning the matter that it is not permissible to attribute to Shāfiʿī what his followers have established through *takhrīj*."[16] What is significant in Shīrāzī's discussion is that his school was divided between those who permitted such an attribution and those who did not. The former saw it as normal to place a *takhrīj* opinion fashioned by a later *mukharrij* in the mouth of the founding imam, as if he himself had formulated it. In defense of their position, they argued that everyone agrees that conclusions reached on the basis of *qiyās* are considered part of the Sharīʿa, attributed to God and the Prophet, when in fact they are fashioned by individual *mujtahid*s. Just as this is true, it should also be valid that the conclusions of *qiyās* drawn by other jurists on the basis of Shāfiʿī's opinions be attributed to Shāfiʿī himself. Be this as it may, it is clear that the general silence over the matter of attribution – itself a significant process in the doctrinal construction of the schools – bespeaks the significant weight of the juristic community that found this attribution "permissible." Furthermore, this process of attribution, which is one of back-projection, both

[15] For a detailed discussion of this phenomenon, see Hallaq, *Authority*, 46 ff.
[16] Abū Isḥāq al-Shīrāzī, *Sharḥ al-Lumaʿ*, ed. ʿAbd al-Majīd Turkī, 2 vols. (Beirut: Dār al-Gharb al-Islāmī, 1988), II, 1084–85.

complemented and enhanced the other process of attribution by which the so-called founding imams were themselves credited with a body of doctrines that their predecessors had elaborated. Out of all of this, the figure of the imam emerged as a focal point around which not only positive doctrine originated, but (and more importantly) an entire methodology and a system of principles came to be fashioned. Therefore, the imam's doctrine in fact represents the collective contributions of his predecessors and successors, a cumulative juristic history that, in theory, is reduced to the experience of one individual: the founding imam or the school master.

Now, it is important to realize that the *madhhab* – as explained in section 1 of this chapter – meant not only the doctrine of the reputed founding imam but also the cumulative positive doctrine propounded by his predecessors and, no less so, by his successors. The term referred to the authoritative doctrine of the school, while the eponym's positive doctrine – when seen to stand independently and separately – was held to be no more than a *primus inter pares*. In other words, in practical terms, his doctrine (as a collection of positive legal opinions) carried no greater weight than did that of each of his followers who came to be recognized as pillars of the *madhhab* – this last being not only a doctrinal school but a group of jurists loyal to an integral doctrine. For although the authoritative body of opinion that defined the *madhhab* doctrinally was certainly the work of the later jurists, in addition to that of the eponym, this body of opinion rested on an interpretive methodology or on an identifiable and self-sufficient hermeneutical system that not only permitted the derivation of individual opinions but also, and more importantly, bestowed a particular legitimacy and, therefore, authority on them.

The *madhhab*, therefore, was mainly a body of authoritative legal doctrine existing alongside individual jurists who participated in the elaboration of, or adhered to, that doctrine in accordance with an established methodology attributed exclusively to the eponym. The latter (whose knowledge was presumed to have been all-encompassing, and to have been utilized by him to confront revelation directly) thus becomes the absolute and independent *mujtahid*, and all subsequent *mujtahid*s and jurists, however great their contributions, remain attached by their loyalty to the tradition of the *madhhab* that is symbolized by the figure of the founder. What made a *madhhab* (as a doctrinal school) a *madhhab* is therefore this feature of authoritative doctrine whose ultimate font is presumed to have been the absolute *mujtahid*-founder, not the mere congregation of jurists under the name of a titular eponym. This congregation would have been meaningless without the polarizing presence of an

authoritative, substantive and methodological doctrine constructed in the name of a founder. Education and transmission of legal knowledge from teacher to student cannot therefore explain the formation of the *madhhab*s, as one modern scholar has recently contended.[17] For without the authoritative doctrinal feature of the school, there would have been no rallying doctrine around which loyalty to a *madhhab* can be manifested. Teaching and transmission were thus a vehicle for passing the school tradition from one generation to the next, but by themselves did not, as pedagogical mechanisms, contribute to the creation of the *madhhab* as defined in the three sentences opening this paragraph. In other words, the formation of the *madhhab*s – as we have conventionally come to recognize them, and which we have dubbed here as doctrinal schools – was very much, if not entirely, an internal process of doctrine-building, and for this process to have a sociological context (as all law must indeed rest in a sociological substrate), there had to be groups of jurists who participated in the creation of, and adherence to, that doctrine. This participation would give the *madhhab* its meaning as an association of jurists loyal to an eponym's doctrine (our fourth meaning as outlined in section I above). But the act of association itself was not the cause of the rise of the *madhhab*; rather, it was no more than an agency through which the doctrine found support in the social classes, and was transmitted from one generation to the next.

Thus the creation of educational institutions (the proto-*madrasa* and *madrasa*) that promoted the teaching of one school or another could hardly have been the cause of the rise of the *madhhab*s, since there must first have been a *madhhab* for it to be taught or promoted. The same is true of commentaries on the foundational texts of the early jurists (and not necessarily those of the eponyms). These commentaries started to appear around the very end of the third/ninth century and the beginning of the next and, like education, the commentaries constituted the media of authority construction but not its causes.

If education and commentaries were not the root causes of the unique institution (and concept) of doctrinal legal schools, then what was the real cause? It is often difficult to explain why a civilization adopts one cultural form or one institution rather than another. Islam certainly did not borrow the concept of schools from any cultural predecessor, since none is to be

[17] Christopher Melchert, *The Formation of the Sunni Schools of Law* (Leiden: E. J. Brill, 1997). The main reason behind this mistaken diagnosis is the definition of the *madhhab* as a personal school, which in our analysis represents merely a middle stage between the formation of the scholarly circles and the final emergence of doctrinal schools.

found in earlier civilizations. Thus, we can argue with confidence that the *madhhab*s were indigenous Islamic phenomena, having been produced out of the soil of Islamic civilization itself. That they were unknown to the Near Eastern cultures from which Islam inherited other features, coupled with the fact of their slow and gradual evolution within Islamic civilization, is demonstrable proof of their Islamic origins. The embryonic formation of the schools started sometime during the eighth decade after the Hijra (ca. 690 AH), taking the form of scholarly circles in which pious scholars debated religious issues and taught interested students. The knowledge and production of legal doctrine began in these circles – nowhere else. Due to their epistemic standing (i.e., their expertise and knowledge of the religious and legal values of the new religion), these scholars emerged as social leaders who commanded the respect of the populace. Once the Umayyads rose to power (as early as 41/661), the political leadership began to feel the need for a class of socially connected local leaders who could function as their link with the masses. Within three or four decades after the Umayyads had assumed power, and with the gradual abandonment by this dynasty of the egalitarian/tribal form of governance pursued by the early caliphs, this need was all the more obvious. The legal specialists, with their circles and social influence, were the perfect groups to be patronized and supported by the ruling power. We shall take up this theme in the next chapter.

The point, however, is that since law was from the beginning a matter of learning and knowledge, legal authority became epistemic rather than political, social or even religious. That epistemic authority is *the* defining feature of Islamic law need not be doubted.[18] In other words, a masterly knowledge of the law was the determinant of where legal authority resided; and it resided with the scholars, not with the political rulers or any other source. This is as much true of the last third of the first/seventh century as of the second/eighth century and thereafter. If a caliph actively participated in legal life – as ʿUmar II did – it was by virtue of his recognized personal knowledge of the law, not by virtue of his political office. Thus legal authority in Islam was personal and private; it was in the persons of the individual jurists (be they laymen or, on occasion, caliphs) that authority resided, and it was this epistemic competence that was later to be known as *ijtihād* – a cornerstone of Islamic law.

Devolving as it did upon the individual jurists who were active in the scholarly circles, legal authority never resided in the state, and this too was

[18] On epistemic authority as the defining feature of Islamic law, see Hallaq, *Authority*.

a prime factor in the rise of the *madhhab*. Whereas law – as a legislated and executed system – was state-based in other imperial and complex civilizations, in Islam the ruling powers had virtually nothing to do with legal governance or with the production and promulgation of law. Therefore, in Islam, the need arose to anchor law in a system of authority that was not political, especially since the ruling political institution was, as we shall see in the next chapter, deemed highly suspect. The scholarly circles, which consisted of no more than groups of legal scholars and interested students, lacked the ability to produce a unified legal doctrine that would provide an axis of legal authority. For while every region, from Kūfa to Medina and from Fusṭāṭ to Damascus, possessed its own distinct, practice-based legal system, there was nevertheless a multiplicity of scholarly circles in each, and oftentimes the scholars within the same circle were not in total agreement.

The personal schools afforded the first step toward providing an axis of legal authority, since the application (in courts and *fatwā*s) and the teaching of a single, unified doctrine – that is, the doctrine of the leading jurist around whom a personal school had formed – permitted a measure of doctrinal unity. Yet, the vast number of personal schools was only slightly more effective than the multiplicity of scholarly circles, so a polarizing axis of authority was still needed. The personal schools, forming around all the major scholars – including Ḥammād b. Abī Sulaymān, Ibn Shubruma (d. 144/761), Ibn Abī Laylā, Awzāʿī, Thawrī, Ibn Abī Sharīk al-Nakhaʿī (d. 177/793), Abū Ayyūb al-Sakhtiyānī (d. 131/748), Abū Ḥanīfa, Ḥasan b. Sāliḥ, Abū Yūsuf, Shaybānī, Mālik, Sufyān b. ʿUyayna (d. 198/814), ʿAbd Allāh b. al-Mubārak (d. during the 180s/800s), and Shāfiʿī, to name only a few who lived during the second/eighth century – were still very numerous. Furthermore, the personal schools did not guarantee a complete unity of doctrine. The leader's doctrine (which was little more than a body of legal opinions) was not always applied integrally, subjected, as it were, to the discretion or even reformulation of the jurist applying it. A case in point is that of Abū Yūsuf, presumably a member of the Ḥanafite personal school, who formulated his own doctrine and who in turn had his own following.

The second-/eighth-century community of jurists not only formulated law but also, as we saw in chapter 4, administered it in the name of the ruling dynasty. In other words, this community was – juristically speaking – largely independent, having the competence to steer a course that would fulfill its mission as it saw fit. Yet, while maintaining juristic (and largely judicial) independence, this community did serve as the ruler's link to the masses, aiding him in his bid to legitimacy. As long as the ruler benefited

from this legitimizing agency, the legal community benefited from financial support and easily acquired independence, to boot.

Rallying around a single juristic doctrine was probably the only means for a personal school to acquire loyal followers and thus attract political/financial support. Such support was not limited to direct financial favors bestowed by the ruling elite, but extended to prestigious judicial appointments that guaranteed not only handsome pay but also political and social influence. These considerations alone – not to mention others – can explain the importance of such rallying around outstanding figures. The construction of the figure of an absolute *mujtahid* who represented the culmination of doctrinal developments within the school was a way to anchor law in a source of authority that constituted an alternative to the authority of the body politic. Whereas in other cultures the ruling dynasty promulgated the law, enforced it, and constituted the locus of legal authority, in Islam it was the doctrinal *madhhab* that produced law and afforded its axis of authority; in other words, legal authority resided in the collective, juristic doctrinal enterprise of the school, not in the body politic or in the doctrine of a single jurist.

4. SURVIVING AND DEFUNCT SCHOOLS

As we have seen, it was not until the first half of the fourth/tenth century that the doctrinal school was finally constructed, although further doctrinal developments continued to take place even after this period.[19] So the process of transition from personal schools to doctrinal *madhhab*s was a long one indeed, spanning the second half of the second/eighth century up to the end of the next, and in the case of personal schools that emerged during the third/ninth century, notably the Shāfiʿite and Ḥanbalite, the process continued well into the middle of the fourth/tenth. This is to say that the Ḥanafites and Mālikites had constructed their doctrinal *madhhab*s before all others.

In addition to the personal schools that formed around such second-/eighth-century figures as we enumerated in the previous section, nearly as many emerged during the next century. One of these was Ibrāhīm al-Muzanī, presumed to have been a student of Shāfiʿī but independent enough to have formulated his own brand of jurisprudence.[20] In fact, the doctrinal Shāfiʿite school that was fashioned by Ibn Surayj and his students

[19] On this continuing process of doctrinal development, see ibid., 57–165.
[20] Muḥyī al-Dīn al-Nawawī, *Tahdhīb al-Asmāʾ wal-Lughāt*, 2 vols. (Cairo: Idārat al-Ṭibāʿa al-Munīriyya, n.d.), I, 285.

in Baghdad was in effect largely a synthesis of Shāfiʿī's and Muzanī's differing versions of jurisprudence. Until Ibn Surayj rose to prominence, Muzanī seems to have had his own following, notable among whom was Abū al-Qāsim al-Anmāṭī (d. 288/900), who was finally claimed as a pure Shāfiʿite when the school was later transformed into a doctrinal *madhhab*. Like Muzanī, Ḥarmala (d. 243/857) was another of Shāfiʿī's students, said to have reached such a level of legal learning and accomplishment that he was credited with a personal school of his own.[21]

Another of Shāfiʿī's students around whom a personal school was formed was Ibn Ḥanbal, discussed in the previous chapter. There, we also mentioned Dāwūd b. Khalaf, known as al-Ẓāhirī after his literalist jurisprudential method. Yet another personal school seems to have formed around the jurist Ibrāhīm b. Khālid Abū Thawr (d. 240/854), whose followers included Manṣūr b. Ismāʿīl (d. 306/918) and Abū ʿUbayd b. Ḥarbawayh (d. 319/931). Like Muzanī, the latter seems to have been a loyal adherent of Abū Thawr's doctrine, but the later Shāfiʿites claimed him as a member of their school.[22]

To this list we must also add the very distinguished group of jurists known as the "Four Muḥammads," namely, Muḥammad b. Naṣr al-Marwazī (d. 294/906), Muḥammad b. Jarīr al-Ṭabarī (d. 310/922), Muḥammad Ibn Khuzayma al-Nīsābūrī (d. 311/923) and Muḥammad b. al-Mundhir al-Nīsābūrī (d. 318/930). Around these four there likewise formed personal schools, represented by students who applied their doctrines in courts over which they themselves presided as judges or in *fatwā*s that they issued as *muftī*s; furthermore, they taught their legal doctrines to students in scholarly circles. Interestingly, the Four Muḥammads were finally absorbed by the Shāfiʿite doctrinal school, as evidenced in notices accorded them in this school's biographical dictionaries. Later Shāfiʿism also laid claim to those opinions of theirs that "accorded" with this school's madhhabic doctrine.[23] This appropriation in effect constituted part of the process of building the *madhhab* as a doctrinal school.

Be that as it may, only four personal schools survived, a fact of paramount importance in the legal history of Islam. Whereas the Ḥanafite, Mālikite, Shāfiʿite and Ḥanbalite schools continued to flourish, the other personal schools either met with total failure or were absorbed by one or

[21] Jalāl al-Dīn al-Suyūṭī, *al-Radd ʿalā man Akhlada ilā al-Arḍ wa-Jahila anna al-Ijtihāda fī Kulli ʿAṣrin Farḍ*, ed. Khalīl al-Mays (Beirut: Dār al-Kutub al-ʿIlmiyya, 1983), 188.

[22] Subkī, *Ṭabaqāt*, II, 301–02.

[23] Ibid., II, 126 ff.

the other of the surviving schools, notably the Shāfiʿite. The question that poses itself then is: Why did these schools fail? Or, conversely, why did the four schools succeed?

The brief answer to these questions is that none of the personal schools, except the four just mentioned, managed to reach a level of doctrine-building that allowed it to transform itself into a doctrinal school. In other words, the doctrine of these failed personal schools remained limited to what amounted to a collection of legal opinions representing the individual doctrine of the leader. There was no process of authority construction that would produce an accretive doctrine and methodology and that would raise the figure of the leader to the status of an absolute *mujtahid* whose solutions were presumed to be the result of a direct confrontation with the revealed texts.

Still, this answer begs yet another question: Why did these schools fail to proceed to the stage of authority construction? Or, conversely, why was their growth stunted to the point where they finally came to a halt at the stage of personal schools? Again a brief answer to these questions is that none of these schools attracted high-caliber jurists who, with their juristic contributions, would augment the authority of the so-called founding imam and who would thereby construct, over generations, an accretive, substantive and methodological doctrine in his name. To explain the absence of such jurists in particular, and the failure of these schools in general, a number of factors must be considered.

First, and of paramount importance, is lack of political support. In the next chapter, we discuss the significance of the schools, both personal and doctrinal, for the rulers' political legitimacy. Constituting the link between the masses and the ruling elite, the legal scholars were supported by the latter through financial and other means. For example, in one recent study, it was convincingly argued that the success of the Ḥanafite personal school in Iraq was mainly due to the backing of the ʿAbbāsids, who used the Ḥanafite scholars to garner popular support. Another conclusion of this study is that in several locales where the Ḥanafites did not have this support, their school failed to flourish or even to recruit members. Anti-ʿAbbāsid Syria (a region loyal to the Umayyads) is a case in point.[24] Political support also explains the success of the Andalusian Mālikites who, around 200/815, not only received the unqualified support of the Spanish Umayyads, but

[24] See N. Tsafrir, "The Spread of the Hanafī School in the Western Regions of the ʿAbbāsid Caliphate up to the End of the Third Century AH" (Ph.D. dissertation, Princeton University, 1993).

also managed to displace the Awzāʿite personal school which had until then been dominant in that region. Support from the ruling elite was so crucial that the flourishing of a school in some areas can be entirely explained in such terms. Syria is again a case in point. Until 284/897, this province had no Shāfiʿites at all. But at that time, this school was introduced there by the Ṭūlūnids, who seized the province from the ʿAbbāsids in that year. It is clear then that political interference/support played a role in the career of schools.

Second, and also of central importance, was the failure to bring the doctrine of a personal school to the paradigm of what we have called (in the previous chapter) the Great Synthesis, namely, the synthesis between rationalism and traditionalism. This was obviously the main cause of the demise of the Ẓāhirite school, and possibly that of Abū Thawr.

Third, and closely connected with the Great Synthesis, was the alliance with what were perceived as non-mainstream theological movements. The failure of a school often resulted from continued adherence to such movements; success, on the other hand, meant allying the school with popular – or, at least, non-sectarian – theology. The early Ḥanafites not only rehabilitated their rationalist jurisprudence (as represented in Thaljī's contributions), but also ultimately dissociated themselves from the Muʿtazilites – who lost their bid for power in the Inquisition – and instead allied themselves with the mainstream theological doctrine of the Māturīdites. Furthermore, they also managed to garner significant legal support in Khurāsān and Transoxania by virtue of the relevance of their theological Murjiʾite doctrine to the new converts in these regions. This relevance stemmed from the Murjiʾite tenet that belief in Islam – and therefore full membership in the community– depended on mere confession, and did not require actual performance of religious duties or obligations. This tenet proved useful for the new converts who struggled to get rid of the *jizya* (a tax imposed on non-Muslims) that the Umayyads had continued to impose on them notwithstanding their conversion.[25] As a central tenet of Abū Ḥanīfa, Murjiʾism was embraced by the populations of Khurāsān and Transoxania and, together with it, the Ḥanafite school and its law.

On the other hand, the Shāfiʿites allied themselves with the even more mainstream theology of the Ashʿarites. Such alliances, in a society that was heavily engulfed by theological debate, were crucial for the success of

[25] Wilferd Madelung, "The Early Murjiʾa in Khurāsān and Transoxania and the Spread of Ḥanafism," *Der Islam*, 59, 1 (1982): 32–39, at 33.

a school. By the same token, swimming against the current of a mainstream or popular movement tended to marginalize a personal school, and marginalization in effect meant extinction. A case in point was the Jarīrite school of al-Ṭabarī, whose personal attacks on the Inquisition's hero, Ibn Ḥanbal, seem to have had adverse effects on his following. The animosity exhibited against it by Ibn Ḥanbal's zealous supporters must have been sufficient cause to deprive Jarīrism of any chance it may have had for success.[26]

Fourth, there was the absence of distinguishing juristic features that lent a personal school its distinct juristic identity (we must here stress yet again that the modern scholar's notion – that differences between and among the schools' doctrines were insignificant and pertained to details – is thoroughly flawed). It is possible that the school of Ibn al-Mundhir was too close to Shāfiʿite doctrine in terms of legal thought and juristic principles, so that, combined with its later origins, it could offer too little too late. The same can be said of Awzāʿī's personal school, which not only seems to have been heavily influenced by the Medinese doctrine, but also was unable in the long run to construct its own juristic identity. Thus, when the Spanish Umayyads adopted the Mālikite school, thereby displacing that of Awzāʿī, they were not, juristically speaking, straying too far. It is plausible to assume that the Umayyad preference for the Mālikites was prompted by their desire to retain the law as constructed by its original expounders, the Medinese, and not their Syrian imitators.

These are the four most identifiable factors that may account for the failure or success of a personal school. When each school is considered separately, a combination of one or more of these factors may explain its failure. Thus these factors can operate separately or aggregately. At times, a dialectic existed between these factors, one feeding the other. Thus, failure to participate in the Great Synthesis or alliance with a sectarian theological movement may have reduced a school's appeal to new members. Consequently, reduction in membership made a school less attractive for political support, since the ruling circles needed influence over large numbers of people in order to generate the political legitimacy they were seeking. For instance, it would have been inconceivable for the Jarīrites to receive any political support during the formation of their school (i.e., ca. 300/910–350/960), since the Baghdadian ruling elite (where Jarīrism began) knew well that such a move would arouse the wrath of the city's Ḥanbalites. By the same token, the latter managed to succeed without

[26] George Makdisi, "The Significance of the Schools of Law in Islamic Religious History," *International Journal of Middle East Studies*, 10 (1979): 1–8.

willing or formal political support, in that the ruling circles, in Baghdad and elsewhere, merely tolerated this school and in fact appointed some of its members as judges in an effort to appease it. The fact, however, remains that large or active membership (the latter being the case of the Ḥanbalites, the former, the Ḥanafites) did command the attention and interest of political power, from which support – willing or otherwise – was garnered for those schools. Furthermore, the fourth factor – i.e., lack of distinct juristic identity – may well have combined with any of the other factors. The Awzāʿite school is a case in point, as its undistinguished character, combined with withdrawal of crucial political support both in Andalusia (with the introduction of Mālikism) and Syria (with the introduction of Shāfiʿism), contributed to its eventual dissolution (although Awzāʿism did not disappear altogether from Syria until later).

5. DIFFUSION OF THE SCHOOLS

Our preceding discussion has touched on the regions into which some of the personal schools spread. Before we proceed, it is necessary to discuss the means by which a school could penetrate a city or a region, and these are mainly three: first, by gaining judicial appointment; second, by establishing a teaching circle or circles; and/or third, by engaging the local scholars in legal debates. These three were not mutually exclusive, since a scholar/judge might have been active on all three fronts. But it was often the case that a judge appointed by the central government was unable to penetrate the local jurists' circles, as happened with a number of Iraqian/Ḥanafite judges appointed to Egypt during the third/ninth century. Thus, the appointment of a personal school member to the bench in a city was not, in and by itself, an indication of that school's penetration into that city, although it frequently constituted one of the means for such penetration in the longer run. A more efficient means for the spread of a school was the success of a member in establishing a teaching circle, which meant that the school had a better chance of growing through the future activities of the students. Nonetheless, it must be emphasized, teaching and grooming students were not in themselves activities that led to the spread or success of a school, since the success or failure of pedagogy depended mainly on the four factors discussed in the previous section.

By the death of Abū Ḥanīfa in 150/767, his personal school had come to dominate the legal scene in Kūfa, and opponents such as Ibn Abī Laylā quickly withered away. Within less than two decades after the ʿAbbāsids had established their rule over Iraq, the Kūfan Ḥanafites received the full

support of this dynasty, a fact that not only strengthened their judicial grip over this city, but also allowed them to export their brand of jurisprudence. In the early 160s/late 770s, the Ḥanafites arrived in Baghdad, the ʿAbbāsid capital, built in 145/762. There, they found legal circles mostly consisting of Medinese scholars – a number of whom were by then judges of the city. The Ḥanafite entrance to the city was also accompanied by Baṣran local scholars who seem to have added to the competition between and among the various groups. As befits a capital, Baghdad was represented by all the schools, first by the Mālikites and Ḥanafites, and, during the second half of the third/ninth century, also by the Shāfiʿites, Ḥanbalites and members of some soon-to-be-extinct schools.

But long before they penetrated the new capital, the Ḥanafites had begun to spread – though very slowly – into the cities adjacent to Kūfa. As early as 140/757 or thereabouts, Ḥanafite law was brought to Baṣra by the jurist and judge Zufar b. al-Hudhayl (d. 158/774), one of the four most distinguished of Abū Ḥanīfa's students (the three others having been Abū Yūsuf, Shaybānī and al-Ḥasan b. Ziyād).

In Wāsiṭ, a city located on the Tigris east of Kūfa, the Ḥanafites arrived during the 170s/790s, when their members began to be appointed as judges at the behest of the chief justice, Abū Yūsuf. It appears that the Medinese had until then been in control of this city's judiciary. But with the weakening of Ḥanafism during the second half of the third/ninth century – which was precipitated by the concurrent decline of the caliphate and Muʿtazilism, both of which supported the Ḥanafites and were supported by them – Wāsiṭ was to lose its Ḥanafite contingency in favor of the Mālikites and, later, the Shāfiʿites.

In Syria, however, the Ḥanafites failed to be even nominally represented, due to Syrian anti-ʿAbbāsid feelings, which were projected onto the Ḥanafites who allied themselves with this regime. But the failure of the Ḥanafites in Syria may also have to do with the strong presence, in the second/eighth century, of local legal circles headed by the Awzāʿite personal school. The latter's juristic loyalties, moreover, were not to the Iraqian jurists but rather to their opponents, the Medinese.[27]

The Ḥanafite presence in Egypt began when, for a brief period (164/780–167/783), Ismāʿīl b. Yasaʿ was appointed there as a judge by the caliph al-Mahdī. However, his Kūfan jurisprudence was rejected by the Egyptians, who finally managed to have him dismissed.[28] Two more

[27] Cf. Schacht, *Origins*, 288–89, who has a different view of Awzāʿī's legal doctrine.
[28] Kindī, *Akhbār*, 371–73.

Iraqians were appointed for relatively brief periods: Hāshim al-Bakrī spent eighteen months there between 194/809 and 196/811; Ibrāhīm b. al-Jarrāḥ, between 205/820 and 211/826.[29] But it was not until 246/860 that more permanent appointments of Ḥanafite judges were made. The first Ḥanafite judge to receive such an appointment was Bakkār b. Qutayba who served in this office between 246/860 and 270/883. Thereafter, and until the Ayyūbids rose to power in the sixth/twelfth century, the Ḥanafites continued to have little influence in that province, and much less so in North Africa.

Nowhere did the Ḥanafites enjoy as much success in diffusing their school as they did in the eastern provinces of Islam, although here again the extent of their success differed from one city to another. By the end of the third/ninth century, they were to be found active in most cities of Khurāsān, Fārs, Sijistān and Transoxania. In Iṣfahān, for instance, Ḥanafism was introduced, among others, by al-Ḥusayn b. Ḥafṣ (d. 212/827), al-Ḥusayn Abū Jaʿfar al-Maydānī (d. 212/827), and Zufar at the turn of the second/eighth century; and by the beginning of the next, the Ḥanafites had become established in that city. In Balkh, they seem to have been exceptionally influential, so much so that they virtually monopolized the office of judgeship from as early as 142/759 and for a long time thereafter.[30] By virtue of their popularity with the Sāmānids (who ruled Khurāsān and Transoxania around 280/893), the Ḥanafites gained significant strength in these regions. But their success was not matched in the Jibāl, a region lying between Iraq and Khurāsān, where they maintained a less active presence until the appearance of the Saljūqs in the fifth/eleventh century, when their school, in Iṣfahān as elsewhere in the Jibāl, was strengthened.[31]

Whereas Ḥanafism tended to spread in the eastern parts of the caliphate, the Mālikite school experienced growth in the west, first in Egypt and then in the Maghrib and Andalusia. With the death of Abū Muṣʿab al-Zuhrī in 242/857, the Mālikite school of Medina began to experience serious decline. No major scholars remained in it on either a permanent or long-term basis, while its juristic activity ceased to have a wide audience. A possible explanation for Medina's decline was the transfer of leading scholarship to Egypt which, by the turn of the second/eighth century,

[29] Ibid., 411–17, 427–33.
[30] Madelung, "Early Murjiʾa," 37–38.
[31] N. Tsafrir, "Beginnings of the Ḥanafī School in Iṣfahān," *Islamic Law and Society*, 5, 1 (1998): 1–21; Zayn al-Dīn Ibn Quṭlūbughā, *Tāj al-Tarājim* (Baghdad: Maktabat al-Muthannā, 1962), 61.

became the new center of Mālikism. This change in the Mālikite center is evidenced in the fact that nearly all students – from Baghdad to Andalusia – who were to rise to prominence in this school studied there with senior Mālikites.

Since the beginning, Baṣra had been under the influence of Medinese legal scholarship, and a number of its judges appear to have been either originally from Medina itself or students of Medinese jurists. But with the decline of Medina as the chief Mālikite center, the Baṣrans, like their Baghdadian and Andalusian schoolmates, looked to Egypt as the leading Mālikite center. During the first three or four decades of the third/ninth century, Baṣran Mālikism was headed by Ibn al-Muʿadhdhil (d. ca. 240/854), whose education was Egyptian, not Medinese. The spread of Mālikism to Baghdad originated with Ibn al-Muʿadhdhil's own students who became active in that city as jurists and judges. Most important of these were Yaʿqūb b. Shayba (d. 262/875), Ḥammād b. Isḥāq (d. 267/880), and his brother, the accomplished judge Ismāʿīl b. Isḥāq (d. 282/895). By the middle of the fourth/tenth century, however, the Mālikite school was waning in the ʿAbbāsid capital, and was on the verge of complete disappearance.

The two remaining major centers of Mālikism were Qayrawān and Muslim Iberia, especially Andalusia. Qayrawān's Mālikite school, like its Baghdadian counterpart, never gained significant strength throughout the entire early period, despite the presence among its members of such major figures as Saḥnūn. It is quite possible that Qayrawān's Mālikism failed to rise to a position of strength due to a lack of political support, by now a familiar feature that seems to explain the weakness of schools in many areas.

It is precisely the presence of such support that allowed Mālikism to dominate in Andalusia, and, as we have earlier mentioned, enabled it to oust the Awzāʿite school from that region permanently. However, Mālikism did not immediately receive the support of the ruling dynasty upon its introduction to that region. The initial spread of the school seems to have been associated with the name of Ziyād b. ʿAbd al-Raḥmān (d. ca. 200/815), and particularly that of Abū ʿAbd Allāh Ziyād b. Shabṭūn (d. 193/808 or 199/814), both of whom are reported to have been the first to introduce Mālik's *Muwaṭṭaʾ* to that country. And it was ʿĪsā b. Dīnār (d. 212/827) who appears to have been the more active scholar in recruiting students and propagating Mālikite doctrine. But government support came only later, at the hands of Yaḥyā b. Yaḥyā al-Laythī (d. 234/849), who seems to have convinced Amīr ʿAbd al-Raḥmān II (r. 206/822–238/852) to adopt the school's doctrine as the official law of the Umayyad caliphate. From that point onward,

Mālikism became Andalusia's unrivaled legal school, and it continued to dominate until the Muslims were expelled from the Iberian peninsula in 898/1492.

The Shāfiʿite school lagged far behind in its ability to gain followers during the third/ninth century. Shāfiʿī appears to have cultivated a limited number of students in Egypt, where he died after having spent no more than six years there. Furthermore, there is no evidence that he had groomed any students prior to his arrival in that country. Thus, apart from the activity of a small circle of Egyptian scholars who must have transmitted (and worked out) his positive legal doctrine, there was little to speak of in terms of a Shāfiʿite school. It was not until three-quarters of a century after Shāfiʿī's death that the first Shāfiʿite judge emerged. The Jewish convert Muḥammad b. ʿUthmān Abū Zurʿa (d. 302/914) was appointed to the bench in 284/897; and it was at just about this time that Ibn Ṭūlūn also appointed him as chief justice in Syria, apparently combining the jurisdictions of both regions. But Shāfiʿism could neither oust Awzāʿism from Syria nor compete with the powerful Mālikites in Egypt. Most Syrians remained loyal (at least for another half a century) to the Awzāʿite school,[32] and the Mālikite competition in Egypt was accentuated by the infiltration of Ḥanafism, however weak the latter may have been. With the Fāṭimid takeover of Egypt in 297/909, the Shāfiʿite school declined. It was not until the coming of the Ayyūbids, in the sixth/twelfth century, that the school began to recover and indeed gain strength.[33]

But Shāfiʿism did not limit itself to Egypt, although its spread outside that country became evident only toward the end of the third/ninth century, around the time Abū Zurʿa received his two judicial appointments. One of the first names associated with the spread of Shāfiʿism in the east was Aḥmad b. Sayyār, an obscure figure, who "brought the books of Shāfiʿī to Marw," a city in Khurāsān.[34] It appears that a local Marwazī scholar, ʿAbdān b. Muḥammad (d. 293/905), read and became intensely interested in these books. When his request "to copy the books" was rejected by Ibn Sayyār, he apparently traveled to Egypt to acquire them

[32] Ismāʿīl b. ʿUmar Ibn Kathīr, *al-Bidāya wal-Nihāya*, 14 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1985–88), XI, 131; Subkī, *Ṭabaqāt*, II, 174, 214.

[33] On the spread of the Shāfiʿite school in general, see Heinz Halm, *Die Ausbreitung der šāfiʿitischen Rechtsschule von den Anfängen bis zum 8./14. Jahrhundert* (Wiesbaden: Dr. Ludwig Reichert Verlag, 1974).

[34] For the spread of Shāfiʿism as described in this and the next paragraph, see Subkī, *Ṭabaqāt*, II, 50, 52, 78–79, 321–22; Ibn Qāḍī Shuhba, *Ṭabaqāt*, I, 48, 71; Shams al-Dīn al-Dhahabī, *Tārīkh al-Islām*, ed. ʿUmar Tadmurī, 52 vols. (Beirut: Dār al-Kitāb al-ʿArabī, 1987–2000), XXII, 107.

by other means. There, he reportedly studied Shāfiʿī's doctrine with Muzanī (264/877) and al-Rabīʿ b. Sulaymān al-Murādī (d. 270/884), two of the most important students of the master. But instead of coming back to Marw with Shāfiʿī's books (ʿAbdān's original intention), he returned with Muzanī's *Mukhtaṣar*, a work that exhibits the latter's juristic independence despite the claim that it was an abridgment of Shāfiʿī's doctrine. Be that as it may, on his way to Marw from Egypt ʿAbdān is reported to have stayed in Syria and Iraq where he presumably was active in preaching what he had learned in Egypt. Given the chronological proximity of the deaths of Muzanī and Murādī, ʿAbdān and Ibn Sayyār must have been two of the first Shāfiʿite protagonists to operate outside Egypt. During the same period or slightly thereafter, other minor scholars who apparently studied with Muzanī and Murādī also became active in the Iranian world. Two such figures were Isḥāq b. Mūsā (d. ca. 290/902) and Yaʿqūb b. Isḥāq al-Nīsābūrī (d. 313/925 or 316/928), who "carried Shāfiʿī's *madhhab*" to Astrabādh and Isfarāʾīn, respectively.

However, the spread of Shāfiʿism to the east of Egypt was not achieved primarily by such scholars, but rather through the school's infiltration into Baghdad. The jurist responsible for the introduction of Shāfiʿī's and, especially, Muzanī's works to the capital city was the accomplished Abū al-Qāsim al-Anmāṭī (d. 288/900), a student of Muzanī himself as well as of Murādī. Anmāṭī was the teacher of such distinguished figures as Abū Saʿīd al-Iṣṭakhrī (d. 328/939), Abū ʿAlī b. Khayrān (d. 320/932), Manṣūr al-Tamīmī (d. before 320/932), and Ibn Surayj himself. But it was particularly the latter who established himself as the leader of Iraqian Shāfiʿism and who cultivated a large number of students. These in turn diffused Shāfiʿism (mostly as a compromise between Shāfiʿī and Muzanī's doctrines) into Iraq as well as to the east of it. Among these were Ibn Ḥaykawayh (d. 318/930), Abū Bakr al-Ṣayrafī (d. 330/942), Ibn al-Qāṣṣ al-Ṭabarī (d. 336/947), al-Qaffāl al-Shāshī (d. 336/947) and Ibrāhīm al-Marwazī (d. 340/951), to mention only a few.

These three schools were also present as pockets in various other parts of Islamdom. Shāfiʿism, for instance, made an ephemeral appearance in Andalusia; and so did the Ẓāhirite school, which soon became defunct. Ḥanafism was present in Qayrawān, but without any success. By the end of the third/ninth century, some Ḥanbalite circles (mostly theological in orientation) were active in the capital city, Baghdad, but the school as a legal entity was not to show any meaningful presence in that city or elsewhere until much later, perhaps as late as the second half of the fifth/eleventh century.