Fundamentals of the Sunnī Schools of Law

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About 90 per cent of the Muslim people in the world are Sunnites. Sunnī Islam is essentially divided into four orthodox schools of law, each having its own, highly developed doctrine. The following article will give an overview of the genesis of these schools and the fundamental principles their doctrine is based on.

I. Introduction

In many predominantly Muslim countries, the *sharīʿa*, the classical, religiously founded Islamic law[1], still finds application in particular in the fields of family law, law on succession, and criminal law[2]. Furthermore, numerous Muslims living as refugees or guest workers in the diaspora align their life and behaviour with religious commandments they deduce from the *sharīʿa*. Both situations sometimes lead to conflicts with secular legal systems. For instance, in a series of cases, Muslim states are blamed by the international community for having actively or passively violated human rights conventions, and Muslim men and women in the diaspora see themselves as being restricted or rather discriminated against by state provisions concerning public prayer, ritual slaughtering, religious garments in school and at workplace, to mention only a few aspects. The supranational or national instances which are called upon to decide such cases might ask about the type and scope of the binding force of the *sharīʿatic* rules. Such questions do not mean a disparagement of the holy book of the Muslims, the Qur'an, and of the Sunnah. Instead, from the perspective of a Western judge, lawyer or official, there appears to be a confusing variety of legal opinions within Islam which often contradict each other and can neither be classified nor understood. Thus, the decisions and expert

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1 See on the notion *sharīʿa*, e.g., Maher S. Mahmassani, Le droit musulman et la vocation universelle de l'Islam, in: S. Jahel/A.-C. Dana/et al. (eds.), Une certaine idée du droit. Mélanges André Decocq, 2004, 437 footnote 2: "C'est le nom donné en langue arabe au corps global des règles de conduite et de droit conformément aux préceptes de l'Islam." Remarkably, this definition indicates that there may be parts of the *sharīʿa* which are not qualified as law.

2 Cf. Christine Schirrmacher, Der Islam. Geschichte, Lehre, Unterschiede zum Christentum, vol. 1, 1994, 276; about religious clauses in the constitutions of Muslim countries comprehensively Tad Stahnke/Robert C. Blitt, The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Predominantly Muslim Countries, Georgetown Journal of International Law 36 (2005), 947, 954 et seqq.

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opinions of Muslim courts or scholars could be regarded as arbitrary or at least dubious and incomprehensible, because of ignorance toward the actually existing, underlying concepts of what is and forms the *sharīʿa*. Against this background, it may be helpful to throw a little light onto the dogmatic differences between the established Sunnī schools of law (*maḏāhib*; sg. *maḏhab*), which are: the Hanafīya, the Mālikīya, the Shafiʿīya, and the Hanbalīya. To make these differences more clear, it is appropriate to go back in time to the origins of both the Islamic law and the schools of law.

The question about the very origins of Islamic law, the development of Muhammadan jurisprudence and the beginnings of the classical schools of law is not unanimously answered by orientalists and islamicists[3]. Some prominent Western scholars at the beginning, or rather in the middle, of the 20th century like Ignaz Goldziher[4], Gotthelf Bergsträßer[5], and Joseph Schacht[6] argued that the starting point of Muhammadan jurisprudence was the customary legal practice in the 8th century C.E. or the 1st century after the so-called *hiǧra* (meaning the move of Muhammad and his Companions from Mecca to Medina in 622 C.E.[7]) which was moulded by independent legal reasoning on the basis of individual insight (*ra'y*) without referring to the later recognized sources of Islamic law. In contrast, Muslim legal scientists and theologians, for instance Fuat Sezgin[8], Fazlur Rah-

[3] Cf., e.g., Harald Motzki, Die Anfänge der islamischen Jurisprudenz. Ihre Entwicklung in Mekka bis zur Mitte des 2./8. Jahrhunderts, Stuttgart 1991, 8 et seqq.

[4] Cf. Ignaz Goldziher, Die Zâhiriten. Ihr Lehrsystem und ihre Geschichte. Ein Beitrag zur Geschichte der muhammedanischen Theologie, Leipzig 1884 (quoted after the reprographic reprint Hildesheim 1967), 3 et seqq.; *idem*, Muhammedanisches Recht in Theorie und Wirklichkeit, ZVglRWiss 8 (1889), 406 et seqq.; *idem*, Muhammedanische Studien, vol. 2, Leipzig 1890, 72 et seq.; *idem*, Fikh, in: M. Th. Houtsma/A. J. Wensinck/W. Heffening/T. W. Arnold/E. Lévi-Provençal (eds.), Enzyklopaedie des Islam. Geographisches, ethnographisches und biographisches Wörterbuch der muhammedanischen Völker, vol. 2, Leiden/Leipzig 1927, 106 et seqq.

[5] See Gotthelf Bergsträßer, Anfänge und Charakter des juristischen Denkens im Islam. Vorläufige Betrachtungen, Der Islam 14 (1925), 76 et seqq.

[6] Cf. Joseph Schacht, The Origins of Muhammadan Jurisprudence, Oxford 1950, passim, in particular 138, 191, 224 et seqq. Schacht's book became a core literature for non-Muslim orientalists in the following decades and it still today receives attention by the scientific community; see, e.g., Philippe Rancillac, Des origines du droit musulman à la Risāla d'al Šāfiʿī, Mélanges de l'Institut Dominicain d'Etudes Orientales 13 (1977), 147 et seqq.; David Forte, Studies in Islamic Law. Classical and Contemporary Application, Lanham/New York/Oxford 1999, 50 et seqq.; *idem*, Islamic Law: The Impact of Joseph Schacht, Loyola of the Los Angeles International and Comparative Law Annual 1 (1978), 1, 15; Klaus Lech, Geschichte des islamischen Kultus, vol. 1, Wiesbaden 1979, 4; Gautier H. A. Juynboll, Muslim Tradition. Studies in Chronology, Provenance and Authorship of Early Hadīth, Cambridge 1983, 3; David S. Powers, Studies in Qur'an and Hadīth. The Formation of the Islamic Law of Inheritance, Berkeley/Los Angeles/London 1986, 1 et seq., 6.

[7] Cf., e.g., Heribert Busse, Grundzüge der islamischen Theologie und der Geschichte des islamischen Raumes, in: W. Ende/U. Steinbach (eds.), Der Islam in der Gegenwart, 4th ed., Munich 1996, 19, 25; Motzki (*supra* note 3), VI (advice).

[8] Cf. Fuat Sezgin, Buhârî'nin kaynakları hakkında araştırmarlar, Istanbul 1956, passim, in particular 3 et seqq.; *idem*, Geschichte des arabischen Schrifttums, vol. 1, Leiden 1967, 53 et seqq.

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man[9], Ahmad Hasan[10], and Mohammad Mustafa Azami[11], claimed that the concept of the Islamic law was already laid down during the lifetime of the Prophet, namely with the revelation of the Qur'an. Thus, the Qur'an and the Sunnah including "the speech, the action, and the implied approval of the Envoy as well as that which came from the Companions and from the Successors"[12] functioned as the main sources of legal knowledge from the very first years of Muslim history onwards. However, in recent time, new research that could rely on rediscovered old texts like the *muṣannaf* books, which are collections of traditions (*aḥādīṯ*) from the second century of the Muslim calendar, indicate that the truth probably lies between the two positions. According to that research, already since at least the last three decades of the first century, regional schools of law and theology spread in the religious centres of the then Islamic world, like Medina, Kufa, and Basra[13], and in these schools or rather scholarly circles both concrete cases and abstract legal problems were discussed against the background of provisions of the Qur'an and decisions of the Prophet[14]. At that time, the development from a jurisprudence that articulated itself by *ra'y* to one based on traditions was in full swing[15]. Nevertheless, there was not yet a doctrine concerning the canon of the sources of law, their relationship and rank toward each other, and the means to separate genuine from faked traditions. That would become, with regard to Sunnī Islam, the contribution of the schools of law which are further presented in the following.

II. The Formation of Personal Schools of Law

The scholarly circles or ancient schools of law undertook first efforts to collect the contemporary Islamic law, but mainly aimed at continuing the "living tradition" of their city or region. Later, after the turn of the first to the second century

[9] Cf. Fazlur Rahman, Islamic Methodology in History, Karachi 1965, passim, in particular 7, 31 et seqq., 76.

[10] Cf. Ahmad Hasan, The Early Development of Islamic Jurisprudence, Islamabad 1970, 88 et seqq., 109.

[11] Cf. Mohammad Mustafa Azami, Studies in Early Hadīth Literature, 2nd ed., Indianapolis 1978, 18 et seq., 238 seqq.; *idem*, On Schacht's Origins of Muhammadan Jurisprudence, New York etc. 1985, 118 et seqq.

[12] See, e.g., the traditional definition at Muhammad Šafīq Al-ʿĀnī, Al-fiqh al-islāmī wa mašrūʿ al-qānūn al-madanī al-muwahhad fī l-bilād al-ʿarabīya, Cairo 1965, 19. The translations here and in the following are mine (*dz*). About the single categories which form a part of the Sunnah comprehensively Harald Löschner, Die dogmatischen Grundlagen des šīʾtischen Rechts. Eine Untersuchung zur modernen imāmitischen Rechtsquellenlehre, Cologne etc. 1971, 88 et seqq.

[13] Cf. Motzki (*supra* note 3), 263.

[14] Cf. Motzki (*supra* note 3), 262; see also *idem*, The Muṣannaf of ʿAbd al-Razzāq al-Ṣanʿānī as a Source of Authentic Aḥādīth of the First Century A.H., Journal of Near Eastern Studies 50 (1991), 1, 12 et seq., 21; Yasin Dutton, The Origins of Islamic Law. The Qur'an, the Muwatta' and the Madinan ʿAmal, Richmond 1999, 61 et seqq., 178.

[15] Cf. Motzki (*supra* note 3), 263 et seq.

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of Muslim history, which is the time of the early ᶜAbbāsid Caliphs, the ancient schools which owed their separate existence to geographical circumstances did more and more focus on certain excellent teachers. Hence, they became a new type of school, based an allegiance to an individual master[16]. In that process, most scholars and students of the ancient school of Kufa transformed themselves into the Hanafī school; the ancient school of Medina became the school of the Mālikīs; and the ancient schools of Basra and Mecca each for their part diffunded in the two aforementioned schools. Another group of Kufians and probably also of Iraqis formed the school of Sufyān Thawrī (died 161 H. or 778 C.E.) that had adherents for several centuries. Even the ancient school of Syria became the school of Awzā'ī (died 157 H. or 773 C.E.) that existed for a somewhat shorter time[17]. Thus, the legal science was personalized; the new schools were "personal" schools[18].

III. The Hanafī School

The oldest of the orthodox schools of law is that of the Hanafīs. The Hanafī school was founded by the Iraqi scholar An-Nuᶜman ibn Thabit Abū Hanīfa who died in 150 H. or 767 C.E.[19] and whose legal opinions had been made public mainly by his two famous students Abū Yūsuf (died 182 H. or 798 C.E.) and Ahmad ben Hasan aš-Šaibānī (died 189 H. or 804 C.E.)[20]. Abū Hanīfa himself was a student of Hammād ibn Abī Suleymān (died 120 H. or 738 C.E.) who was, at his time, regarded as the greatest legal scholar of Iraq but was also known for having little knowledge about tradition[21]. Therefore, one might not wonder that Abū Hanīfa in his lectures, too, did not find it especially important to base decisions on tradition. Referring to reports about the Prophet played only a subsidiary role in his reasonings, which could have to do with the fact that Abū

[16] Cf. Joseph Schacht, An Introduction of Islamic Law, Oxford 1964, 57; see also Christopher Melchert, The Formation of the Sunnī Schools of Law, in: Wael B. Hallaq (ed.), The Formation of Islamic Law, Aldershot/Burlington 2004, 351 et seqq.

[17] Schacht (*supra* note 16), 57 et seq.

[18] See Schacht (*supra* note 16), 58; *idem*, The Schools of Law and Later Developments of Jurisprudence, in: M. Khadduri/H. J. Liebesny (eds.), Law in the Middle East, vol. 1, Washington 1955, 57, 63; Wael B. Hallaq, The Origins and Evolution of Islamic Law, Cambridge 2005, 153 et seqq.; in detail about the personalization of the Islamic schools of law Christopher Melchert, The Formation of the Sunni Schools of Law, 9th – 10th Centuries C.E., Leiden/New York/Cologne 1997, 32 et seqq.

[19] Cf. about the origin and the life of Abū Hanīfa, e.g., Charles C. Adams, Abu Hanifah, Champion of Liberalism and Tolerance in Islam, The Moslem World 36 (1946), 217, 218 et seqq.

[20] Cf. Peter Scholz, Scharia in Tradition und Moderne. Eine Einführung in das islamische Recht, Jura 2001, 525, 527; extensively about the most well-known scriptures of the Hanafī school Miklos Muranyi, Fiqh, in: H. Gätje (ed.), Grundriß der Arabischen Philologie, vol. 2, Wiesbaden 1987, 299, 309 et seqq.

[21] Cf. Goldziher, Die Zâhiriten (*supra* note 4), 13.

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Hanīfa had only a small repertoire of traditions[22]. Furthermore, he did not easily acknowledge each *hadīṯ* that was reported to him. According to the view of Abū Hanīfa and his followers, a tradition was only guaranteed to be a part of the Prophetic Sunnah if it was handed down in countless ways. However, in cases where only a single companion reported that the Prophet had announced a certain *sharī-ᶜatic* rule, that tradition could be qualified as transmitted by the general public if the companion had decided a case on the grounds of the statement attributed to the Prophet without the other companions having taken objection[23].

A characteristic of Hanafī doctrine is the use of analogy (*qiyās*). Therefore, in older orientalist literature, Abū Hanīfa was given the title "Imām of the Analogists"[24]. However, in cases where pursuing analogy strictly would lead to a result that did not seem to be entirely just, Abū Hanīfa made his decisions on the basis of discretion or considerations *ex aequo et bono*; that procedure was called "*istihsān*" (to consider better)[25]. It was justified by the argument that, with *istihsān*, a custom (*ᶜurf*) applied in all areas of the Islamic world was included in the process of searching for an appropriate determination[26]. Ultimately, this was nothing else than acknowledging *ra'y* as an independent source of law[27]. It gave the Hanafīs the chance to find flexible judgments which were not strictly attached to the wording of the Qur'an[28].

Therefore, contemporary opponents blamed Abū Hanīfa that in his school there was neither well-founded *ra'y* nor *hadīṯ*[29]; the method of *istihsān* was mere arbitrariness[30]. For instance, Muhammad ben Idrīs aš-Šāfiᶜī, the eponym of the Shafiᶜī school of law, commented on decision-making in the Hanafī school as follows: "I compare the *ra'y* of Abū Hanīfa at best with the thread of a female magician which occurs to be yellow or red, depending on the way she pulls it out."[31]

[22] Cf. Wael B. Hallaq, A History of Islamic Legal Theories. An Introduction to Sunnī Uṣūl Al-Fiqh, Cambridge 1997, 17.

[23] Tilman Nagel, Das islamische Recht. Eine Einführung, Westhofen 2001, 162.

[24] Goldziher, Die Zâhiriten (*supra* note 4), 14.

[25] Cf. Adams (*supra* note 19), 217, 224; Schacht (*supra* note 16), 60 et seq.

[26] Cf. Nagel (*supra* note 23), 275; Baber Johansen, Coutumes locales et coutumes universelles aux sources des règles juridiques en Droit musulman hanafite, Annales Islamologiques 27 (1993), 29 et seqq.

[27] Cf. Bernd Radtke, Der sunnitische Islam, in: Ende/Steinbach (*supra* note 7), 54, 64; Schacht (*supra* note 16), 60.

[28] Cf. Abdulaziz Sachedina, The Ideal and Real in Islamic Law, in: R. S. Khare (ed.), Perspectives on Islamic Law, Justice, and Society, Lanham 1999, 15, 17; similarly Gerhard Endreß, Der Islam. Eine Einführung in seine Geschichte, 3rd ed., Munich 1997, 83, who pointed out that the Hanafīs had granted a proper place to rational interpretation.

[29] See Goldziher, Die Zâhiriten (*supra* note 4), 23.

[30] Cf. Noel J. Coulson, A History of Islamic Law, Edinburgh 1964, 99; Adel Theodor Khoury, Die Rechtsschulen, in: A. Th. Khoury/P. Heine/J. Oebbecke, Handbuch Recht und Kultur des Islams in der deutschen Gesellschaft. Probleme im Alltag – Hintergründe – Antworten, Gütersloh 2000, 37, 48.

[31] Cited from Goldziher, Die Zâhiriten (*supra* note 4), 20.

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Some traditionalists even raised the accusation that Abū Hanīfa's system, "by the arbitrary neglect of the positive sources of the law in favour of speculative novelties, would delete the basics of the law and give legal titles for adultery and illicit sexual relations that Qur'an and Sunnah do not allow"[32]. That criticism was, of course, exaggerated. Analogies and considerations *ex aequo et bono* actually played a role in the other schools of law, too. But these schools based their decisions, at first glance, on Qur'an and Sunnah, whereas Abū Hanīfa directly referred to independent legal reasoning if the primary sources did not give an explicit answer to a certain legal question. Abū Hanīfa simply endeavoured to order and codify the Muhammadan law on the basis of the preliminary works of the famous legal scholars of the first century. Thus, in later times, his successors never tired of pointing out that their master only turned to *ra'y* in cases where the primary, written or handed down sources remained silent toward a certain legal problem[33].

Abū Hanīfa is, furthermore, regarded as the founder of the speculative legal scholarship[34], which led his opponents to say that he had invented the science of juridical tricks to circumvent the statutes[35]. For Abū Hanīfa made attempts to build up on scientific principles a set of rules which would answer every question of the law[36]. In his school legal problems were often discussed abstractly, without having regard to a concrete case[37]. This also did not find the sympathy of his conservative contemporaries: "The following statement is handed down from Hafs b. Gijât (died 177 [H. or 804 C.E.]): 'Abū Hanīfa is the best informed man with regard to things that never happened but the most ignorant with regard to things that really took place'; this means that he is an astute casuist but no scholarly expert of the law. As we can see, in all these stories and assessments the spirit of the legal method of Abū Hanīfa and his school, that is casuistic and directed to hair-splitting, is more or less ridiculed. While the traditional schools drew their attention to concrete [cases] which they, again, decided on the basis of given historical facts, the adherents of *ra'y* fancied themselves in casuistic hair-splittings that missed any actual interest."[38] Thus, Abū Hanīfa was more a philosopher who enjoyed discussing theoretical aspects of the law than a legal expert who focussed on writing opinions for lawsuits pending at courts.

However, the Hanafī school gained a predominant status under the schools of law in Iraq during the reign of the ᶜAbbāsids[39]. One reason was that Abū Yūsuf

[32] See ibid., 18.

[33] Ibid., 13.

[34] Ibid., 13.

[35] Cf. Khoury (*supra* note 30), 37, 48.

[36] Duncan Black Macdonald, Development of Muslim Theology, Jurisprudence and Constitutional Theory, New York 1903, 95; Adams (*supra* note 19), 217, 221.

[37] Cf. Nagel (*supra* note 23), 198, who hold that the decisions and judgments of Abū Hanīfa revealed that the founder of the Hanafī school, at times, was far away from the legal problems of daily life.

[38] Goldziher, Die Zâhiriten (*supra* note 4), 16.

[39] Coulson (*supra* note 30), 87.

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was made chief judge or rather Minister of Justice by Caliph Harun ar-Rašid, and he had the task to appoint the judges for the Islamic areas. That position enabled Abū Yūsuf to spread the teachings of his master and to make them a basis of practical jurisdiction[40]. Later, the Hanafī school became the official school of law of the Ottoman Empire[41]. Today, it has still a large sphere of influence that does not only include Turkey, Syria, the Lebanon, Jordan, and the Sunnites in Iraq but also extended in the East over Afghanistan, Pakistan, India, China, and Central Asia[42]. In Egypt, the Hanafī school is relevant as far as legal questions are concerned which do not relate to religious obligations[43].

IV. The Mālikī School

The Mālikī school of law owes its name to the Medinan scholar Mālik ben Anas who died in 197 H. or 795 C.E. Unlike many of his contemporaries who made long journeys searching for knowledge and attended the lectures of prominent masters in several cities, Mālik never left his native town Medina, except for his pilgrimages to Mecca[44]. According to Mālik's view, Medina was superior to all other religious centres because only there "a whole generation were able to transmit from a whole generation who had been alive at the time of the Prophet, whereas in all other cities the lines of transmission ended only with individual Companions [...]. This was Mālik's argument against Iraq and the other centres of learning of the Muslim world at that time. He acknowledged that they had received learning from individual Companions of great stature who had settled there, and he allowed that people in the outlying provinces were free to follow their own men of knowledge, but Medina was the origin of that knowledge, and the primary source was always preferable to the secondary"[45].

The Mālikī doctrine contained the first attempts of a legal science moulded by *hadīṯ*[46], that were, later, extended by others, in particular aš-Šāfiʿī. Thus, while the Hanafīs tried to find solutions for legal questions by means of individual decisions on the basis of their own reason and expert knowledge, the Mālikīs wanted to put the law (*fiqh*) on transmitted foundations[47]. Accordingly, traditions played an important role in their decision-making. Even Mālik's contemporary opponents acknowledged this, remarking that, in his school, one could find weak *ra'y* but cor-

40 Khoury (*supra* note 30), 37, 48 et seq.

41 Rüdiger Lohlker, Das islamische Recht im Wandel. Ribā, Zins und Wucher in Vergangenheit und Gegenwart, Münster etc. 1999, 69; Goldziher, in: Houtsma/Wensinck/Heffening/Arnold/Lévi-Provençal (*supra* note 4), 106, 110 left column.

42 Cf. Viviane Amina Yagi, Droit musulman, Paris 2004, 17.

43 See Radtke (*supra* note 27), 54, 64; Khoury (*supra* note 30), 37, 49.

44 Dutton (*supra* note 14), 11; Khoury (*supra* note 30), 37, 49.

45 Dutton (*supra* note 14), 36, 38.

46 Nagel (*supra* note 23), 144.

47 Ibid., 248.

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rect *hadīṯ*[48]. However, they rightly complained that Mālik in many cases did not follow *ahādīṯ* from the Prophet or his Companions, even when the sources of transmission were regarded as absolutely trustworthy[49]. Mālik and his successors held that the transmitted legal practice (*ᶜamal*) in Medina, in principle, had a higher reliability than *ahādīṯ*[50]. This had already been the opinion of Rabīᶜa ben Abī ᶜAbdarrahmān (died 136 H. or 753 C.E.), one of Mālik's teachers, who argued that "'[o]ne thousand from one thousand' means a large number of Successors [...] taking directly from a large number of Companions, which was only possible in Medina, where there were some ten thousand Companions [...] at the time of the death of the Prophet. 'One from one', however, was the situation in the rest of the Muslim world, where individual Sucessors took their knowledge from individual Companions. Thus, this directly-received knowledge of the Medinans of how the *sharīᶜa* was put into practice automatically had higher authority [...] than most *ahādīṯ*, since it had the status of what was *mutawātir* – i.e. what had been related by so many Companions that there could be no reasonable doubt about its authenticity – whereas most *ahādīṯ*, as we have seen, were not *mutawātir*."[51] Hence, there are some expressions transmitted from Mālik saying, for example, that "This sort of widespread knowledge (*hādhā l-khabar al-shā'īᶜ*) [in Medina] is more reliable (*athbat*) in our opinion than *hadīṯ*."[52] or: "If there is something [*scil.*: a custom] which is clearly acted upon in Medina, I am not of the opinion that anyone may go against it."[53]

This, though, does not mean that traditions, according to the view of the Mālikī school, are in any case a subsidiary source of law. There exist *ahādīṯ* that are regarded as a primary source and, thus, have priority toward *ᶜamal*. The Mālikīs developed a long catalogue of rules on how to manage conflicts between traditions and Medinan practice[54]. For example, absolute priority is given to a practice moulded or, at least, tacitly approved by Muhammad, whereas customary law of later times is recognized as having a certain authority but no priority.

Against this background, it is not odd that Mālik did not share the concept of the Sunnah of the other Sunnī schools of law which was essentially modelled by aš-Šāfiᶜī and, roughly speaking, identified the Sunnah with the sum of authentic *ahādīṯ*[55]. According to Mālik, the Sunnah is formed by *ᶜamal* which has itself its origins in the practice of the Prophet and sometimes even in pre-Islamic Medinan

[48] Cf. Goldziher, Die Zâhiriten (*supra* note 4), 23; in detail about aš-Šāfiᶜī's criticism toward the teachings of Mālik, e.g., Ali Dere, Die Hadīṯanwendung bei Imām Mālik b. Anas, Göttingen 1994, 89 et seqq.

[49] Cf. Dutton (*supra* note 14), 45, 47; Nagel (*supra* note 23), 203 et seq., 205.

[50] Cf. Dutton (*supra* note 14), 42, 45.

[51] See ibid., 45.

[52] See ibid., 43.

[53] Ibid., 39; cf. also Muranyi (*supra* note 20), 299, 313.

[54] Cf. Dutton (*supra* note 14), 36 et seq., 41.

[55] Cf. Coulson (*supra* note 30), 98 et seq.

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customs acknowledged by the Prophet[56], whereas the common opinion holds that the practice in Medina is only a territorially limited or local *iǧmāᶜ* or *consensus*[57] and, as such, not one of the four sources of the Islamic law according to the classical doctrine of the "roots of the law [*uṣūl al-fiqh*]"; it is a legal source *sui generis*.

Mālik did not restrict himself to recording and explaining the legal life in Medina casuistically. He endeavoured to establish binding definitions for various terms of Muslim law and to develop theoretical principles to make the Medinan customary law and individual practice a model for all Muslim people[58]. Mālik wanted to derive abstract and general rules from the transmitted legal practice in Medina. Hence, he was the first scholar systematizing the Islamic law.

In contrast to the Hanafīs, Mālik in his school did not allow discussions on the basis of hypothetical considerations. His students should deal with real problems occuring in practice so that they would know how to solve them. Thus, Mālik's way of teaching differed clearly from that of Abū Hanīfa: "It was not, of course, wrong to ask questions, but asking about a genuine problem that had arisen so that one knew how to act in that situation was very different from indulging one's intellectual curiosity by postulating unreal situations merely in order to know what the judgments might be if such-and-such were to happen. It was the latter tendency, which could (and did) lead to the creation of trained specialists whose expertise was intellection rather than action and which would thus create a split between the two, that Mālik discouraged. As he once said, when asked about a highly theoretical and [with regard to practice] improbable legal question, 'Ask about what happens and not about what doesn't happen'."[59]

However, there is one point where Mālikī doctrine is similar to that of the Hanafī school: In cases where Qur'an and Sunnah did not provide an unambiguous solution to a certain legal problem, the decisions were not made on the basis of strict analogy[60]. Instead, Mālik applied the principle of *istiṣlāh*, which means that he considered the public interest (*maslaha*)[61]. According to Schacht, that principle differs from the Hanafīs' reasoning only with regard to its name, not with regard to its substance; it must, essentially, be categorized in the same way[62]. It is probably an aspect or a "lesser degree […] of the […] principle of *istihsān*"[63]. Of course, the public interest or welfare was an argument in all Sunnī schools of law; it functioned, at least, as a guideline for the interpretation of existing provisions[64]. But

[56] Cf. Dutton (*supra* note 14), 40.

[57] Cf. Goldziher, Die Zâhiriten (*supra* note 4), 34; Schacht (*supra* note 16), 61.

[58] Cf. Khoury (*supra* note 30), 37, 49.

[59] See Dutton (*supra* note 14), 20.

[60] Cf. Khoury (*supra* note 30), 37, 49.

[61] Cf. Coulson (*supra* note 30), 91; Schacht (*supra* note 16), 61.

[62] Schacht (*supra* note 16), 61.

[63] Cf. Coulson (*supra* note 30), 91.

[64] Cf. David de Santillana, Law and Society, in: Th. Arnold/A. Guillaume (eds.), The Legacy of Islam, Oxford 1931 (reprint 1968), 284, 290; Schacht (*supra* note 16), 61.

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only the Hanafīs and the Mālikīs recognized *istihsān* or *istiṣlāh* being an additional, independent source of law which could be an alternative or rather a superior authority toward traditions and strict reasoning by analogy[65]. At times, *istihsān* and *istiṣlāh* were even used to justify exceptions from Qur'anic rules[66].

A further, last aspect that should be mentioned has to do with the contents of Mālikī doctrine. Mālik and his students tried to penetrate the legal structures with religious and ethical thoughts[67]: "In many respects the Mālikī system represents a moralistic approach to legal problems in contrast to a formalistic attitude adopted by the Hanafīs; for while the Mālikīs place great emphasis upon the intention of a person as affecting the validity of his conduct, the Hanafīs mainly confine their attention to the external conduct itself."[68] Therefore, the Mālikīs, unlike the other schools of law, hold, for example, that a prayer, although spoken with ritually impure body or clothing, was valid if the praying person either was not aware of his impure status or could not find the opportunity to dispel it[69].

In later centuries, some of Mālik's successors searched for a convergence toward the Shafiᶜīs, at least with regard to terminology[70]. However, the fundamental principles of Mālikī doctrine are still supported in our day[71]. The Mālikī school of law extended its area of influence from Medina toward the west and finally reached wide parts of Arabia, the whole Muslim Africa, and those parts of Spain occupied by the Moors[72]. Today, it is the leading school in Morocco, Tunisia, Libya, Mauritania, Nigeria, and Black Africa. It has adherents in Upper Egypt, Sudan, Bahrain, and Kuwait, too[73].

V. The Shafiᶜī School

As already stressed, the Shafiᶜī school was founded by Muhammad ben Idrīs aš-Šāfiᶜī (died 204 H. or 820 C.E.) who is regarded as the original theorist of Islamic law[74]. With his writings, aš-Šāfiᶜī more or less extensively influenced the doctrine

65 Cf. Coulson (*supra* note 30), 91 et seq.

66 Cf. Dutton (*supra* note 14), 162.

67 Bergsträßer (*supra* note 5), Der Islam 14 (1925), 76, 78.

68 Coulson (*supra* note 30), 99.

69 Cf. Nagel (*supra* note 23), 45 et seq.

70 Cf. Nagel (*supra* note 23), 252 et seq.

71 Cf. Coulson (*supra* note 30), 92.

72 See Lohlker (*supra* note 41), 69; Radtke (*supra* note 27), 54, 65.

73 Khoury (*supra* note 30), 37, 49.

74 Adel Theodor Khoury, Shafi'iten, in: A. Th. Khoury/L. Hagemann/P. Heine, Islam-Lexikon, vol. 3, Freiburg/Basel/Vienna 1991, 673; cf. Ahmad Hasan, Al-Shāfiᶜī's Role in the Development of Islamic Jurisprudence, Islamic Studies 5 (1966), 239 et seqq.; Wael B. Hallaq, Was Al-Shafiᶜi the Master Architect of Islamic Jurisprudence?, International Journal of Middle East Studies 25 (1993), 587 et seqq.

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of all other schools[75]. Aš-Šāfiʿī was from the tribe of the Quraiš and a close relative of the Prophet[76]. He grew up in Mecca. Encouraged by the prospering science of traditions of which he met personally its outstanding representative at that time, Sufyān ben ʿUğaina (died 197 H. or 813 C.E.)[77], aš-Šāfiʿī studied in several religious centres of the Islamic world. He heard, for instance, the teachings of Mālik in Medina and visited the lectures of some of the most important students of Abū Hanīfa, like aš-Šaibānī, in Iraq[78]. Hence, aš-Šāfiʿī was well-versed both in the doctrine of the Hanafīi school and in that of the Mālikī school. Aš-Šāfiʿī started lecturing in Baghdad counting himself to the successors of Mālik[79]. Later, he went to Fustat (on the fortresses of which Cairo was built) in Egypt where he, more than before, distanced himself from Mālikī doctrine. The move of the place for lessons is the reason why aš-Šāfiʿī's direct successors were divided into a Baghdadian and a more strict Egyptian school; but, in the course of time, the representatives of the Baghdadian school were gradually driven out by those of the Egyptian school[80].

According to aš-Šāfiʿī, the *ahādīṯ* of the Prophet were not a source of law *inter alia* but have the same rank and importance as the Qur'an[81], whereas all other sources of the law were subsidiary. Because of that strong pronounciation of traditions, aš-Šāfiʿī obtained a reputation as the "Vindex of Traditionalism"[82]. Aš-Šāfiʿī held that the personal view, the *ra'y*, of a scholar could never have more weight than a reliable tradition of the Prophet, for nobody other than Muhammad could claim any authority with regard to the divine message. Therefore, neither a dictum nor a tradition could be decisive if they either did not go back to the Prophet or contradicted a *hadīṯ* of the Prophet. Similarly, non-Prophetical traditions should not be consulted to confirm a tradition of the Prophet, for "the *hadīṯ* of the Prophet satisfies itself"[83]. Also for himself, aš-Šāfiʿī did not claim any authority to disregard comments of the Prophet. Characteristic is, insofar, aš-Šāfiʿī's statement concerning his doctrine of the "roots of the law": "What remark I may have ever made, what principle [...] I may have ever set – if there is something transmitted from the Prophet speaking against it, so remains what the Prophet has said; the same is, then, exactly also my opinion."[84]

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[75] Cf. Schacht, in: Khadduri/Liebesny (*supra* note 18), 57, 64 et seq.

[76] Majid Khadduri, Islamic Jurisprudence. Shafīʿī's Risāla, Baltimore 1961, 10; Nagel (*supra* note 23), 203.

[77] Cf. Nagel (*supra* note 23), 144.

[78] Ibid., 144, 203 et seq.; see about aš-Šāfiʿī's years of study already Eduard Sachau, Muhammedanisches Recht nach schafiitischer Lehre, Stuttgart/Berlin 1897, XIV et seq.

[79] Cf. Nagel (*supra* note 23), 145, 204; Goldziher, Die Zâhiriten (*supra* note 4), 23 et seq.

[80] Cf. Muranyi (*supra* note 20), 299, 318.

[81] Cf. Hasan (*supra* note 74), Islamic Studies 5 (1966), 239, 241 et seq.

[82] See Goldziher, Die Zâhiriten (*supra* note 4), 20, 23.

[83] Nagel (*supra* note 23), 205.

[84] Cited after Goldziher, Die Zâhiriten (*supra* note 4), 21.

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However, aš-Šāfiᶜī was not only a passionate advocate of traditionalism or, as one of his successors once put it, "a torch for the carriers of handed down information and for the reproducers of traditions"[85]. He was also and above all a mediator between the Hanafī and the Mālikī school of law, which means between independent legal reasoning and traditionalism which orientated itself toward *aḥādīṯ*[86]. He did not want to ban the *ra'y* totally from legal practice but strove to discipline its usage, to lead it in fixed channels[87]: "As we [...] could have seen, aš-Šāfiᶜī's doctrine has two sides. On the one side, he made concessions to the view of Abū Hanīfa, though he did not go as far as that one; and this restriction forms the second side of his system: above all, considering the tradition. He grants Abū Hanīfa the right to use *qiyās* as a source of law only insofar as it is [itself] based on written and [*scil.*: or] transmitted sources [*scil.*: Qur'an and *aḥādīṯ*]."[88] Thus, if there was for a legal problem neither an explicit Qur'anic rule nor a trustworthy tradition, the jurists should not decide according to their own arbitrariness. Instead, they should search for a statement in the authoritative texts to make it a starting point for analogy[89]. Only if that method did not lead to an appropriate solution, was the way open to use consensus (*iğmāᶜ*) as the fourth source of law. Thereby, aš-Šāfiᶜī did not understand *consensus*, as was usual in the times before and after him, as being the common opinion of the legal scholars of one period which embodied the "living tradition" of the ancient schools; for him, *iğmāᶜ* represented the unanimous view of the whole Islamic community. However, aš-Šāfiᶜī's successors did not stick to that opinion and returned to the conventional view[90].

With his doctrine of the *uṣūl al-fiqh*, the roots of the law, aš-Šāfiᶜī started out from the idea of a graduation of the sources of law, with Qur'an and Sunnah on the top positions. The Sunnah, which aš-Šāfiᶜī identified with the traditions of the Prophet, according to his view, both gives congenial explanations to the Qur'an and widens God's foundation of the law to areas that are not mentioned in the Qur'an[91]. Whenever possible, *ra'y* should be based on one of the two primary sources. The law (*fiqh*) could, though, not be equated with Qur'an and Sunnah; there was scope for free decision-making. Contemporary critics hold that this aspect of Shafiᶜī doctrine was not sufficiently taken into account by many of aš-Šāfiᶜī's successors: "[T]he adherents of the Shafiᶜī system were not able to stick theoretically to the fine union which the school's Imām had made for the two elements of the positive legal practice, from which one might think that they exclude

85 Cited after ibid., 25.

86 Ibid., 26; Khoury (*supra* note 74), 673 et seq.; Scholz (*supra* note 20), Jura 2001, 525, 527.

87 Goldziher, Die Zâhiriten (*supra* note 4), 21.

88 Ibid., 25.

89 Cf. Nagel (*supra* note 23), 175, 209, 275 et seq.; Hasan (*supra* note 74), Islamic Studies 5 (1966), 239, 252.

90 Cf. Schacht (*supra* note 75), 57, 64.

91 Cf. Nagel (*supra* note 23), 212 et seq., 214.

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each other. Only few maintained the awareness of the mediating role which was purported by the direction of aš-Šāfiᶜī as strong as, for instance, Ahmed b. Sahl (died 282 H. or 912 C.E.), an eye-witness of the fights of the extremists, who said: 'If I were *qādī*, I would let incarcerate both the one who is searching for *hadīṯ* without considering the *fiqh* and the other who is committing the reverse one-sidedness.' From the aurea media on which they were put they jumped soon into extremism."[92]

Remarkable is, finally, aš-Šāfiᶜī's idea about the law as such, for it sustainably moulded the Islamic legal science in the following centuries. According to aš-Šāfiᶜī, the Islamic law is not derived from any human system of law but it is completely of divine origin[93]. It was a supratemporal truth that is not bound to human genius. As a consequence, it was not allowed to question it critically or to try to find reasons for any single provision by means of comprehensive considerations[94]. The Islamic law was a fixed canon of rules; its provisions were once and for all times laid down by God[95]. However, the *sharīᶜa* was never obvious in all of its parts; there were always veiled, hidden parts. It was the most noble task of the legal scholars to investigate these parts of the *sharīᶜa*[96] which must be sifted from the Qur'an and the Sunnah, without having the possibility or rather competence to examine the results by means of any material, i.e. worldly standard[97]. *Fiqh* was, thus, no longer the insight into the profane and the ritual fields of existence, which was determined by the Islamic confession; instead, *fiqh* was the insight into the only partly evident system of rules of the *sharīᶜa*, in which the everyday life must be inscribed or subordinate[98].

Aš-Šāfiᶜī's doctrine spread very fast from Iraq to the East and became primarily established in Chorasan. Also the Hiǧaz and Yemen were, within a short period of time, dominated by aš-Šāfiᶜī's adherents. In Egypt, where aš-Šāfiᶜī spent the last years of his life, his students and their own students nearly completely drove away the Mālikīs[99]. Today, the Shafiᶜī school of law is the second biggest school in Sunnī Islam, after the Hanafīs[100]. It has many adherents in Egypt and Jordan with regard to questions concerning the religious obligations of the Muslims. The Shafiᶜī school is, futhermore, important in Syria, the Lebanon, and Iraq, in parts of the Hiǧaz in Arabia, Pakistan, India, and Indochina, in other parts of Central Asia, in particular in those areas which formerly belonged to the Soviet Union, and under

[92] Goldziher, Die Zâhiriten (*supra* note 4), 26.

[93] Cf. Nagel (*supra* note 23), 220 et seq.

[94] Ibid., 267.

[95] Ibid., 205.

[96] Ibid., 252.

[97] Ibid., 257.

[98] Ibid., 215.

[99] Ibid., 144; about the spreading of the Shafiᶜī school of law in the various regions in detail Heinz Halm, Die Ausbreitung der šāfiᶜitischen Rechtsschule von den Anfängen bis zum 8./14. Jahrhundert, Wiesbaden 1974, 15 et seqq.

[100] Khoury (*supra* note 30), 37, 50.

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the Sunnites in Iran and Yemen. In Indonesia, the Shafiᶜī school is predominant in questions concerning religious obligations and contract law[101].

VI. The Hanbalī School

The last school of law, the Hanbalī school, is known as the school of the strict traditionalists[102]. It goes back to Ahmad ibn Muhammad ibn Hanbal (died 241 H. or 855 C.E.) who was a collector of traditions, a theologian, and a legal scholar. Ibn Hanbal, who was of Arabian origin, studied the law from several experts of traditions like Sufyān ben ᶜUğaina from the Hiğaz, Wakīᶜ ibn al-Ğarrāh (died 197 H. or 812 C.E.) from Kufa, and ᶜAbdarrahmān ibn Mahdī (died 198 H. or 813 C.E.) from Basra, but he also visited the lectures of aš-Šāfiᶜī about *fiqh* and *uṣūl al-fiqh* in Baghdad. However, ibn Hanbal is not counted among the successors or students of aš-Šāfiᶜī[103].

According to the view of ibn Hanbal, the Qur'an in its wording, without any exegetic infringements and correcting interpretations, was the absolute, irrefutable basis of the law. The secondary source of law was the sum of Islamic traditions that could be handed down to Muhammad. Ibn Hanbal himself collected more than 80,000 *ahādīṯ* in his book "Musnad"[104] but, thereby, did not apply a theoretically founded procedure to distinguish between trustworthy and faked or, at least, dubious *ahādīṯ*; the critical method to ascertain the authenticity of a Prophetic tradition was developed after his death. Furthermore, ibn Hanbal acknowledged the statements of the Companions of the Prophet being a means for finding judgments, for the direct followers of Muhammad knew best the Qur'an and the tradition and translated their guidelines in the best way into practice. But ibn Hanbal, insofar, obviously did not want to open a further source of Islamic law. Rather, he wanted to get an authentic interpretation of the Qur'an and of the Prophetic words. The *consensus*, finally, was, according to ibn Hanbal, not an independent source of law; it only documented the Islamic community's unanimous understanding of the Qur'an and of the tradition[105].

Unlike Abū Hanīfa, ibn Hanbal rejected human considerations in any form as a source of law[106]. He held that referring to the own reason and not to Qur'an or Sunnah would enhance arbitrariness[107]. Even analogy, the fourth root of the Is-

[101] Cf. Khoury (*supra* note 74), 673, 674; Lohlker (*supra* note 41), 69; Radtke (*supra* note 27), 54, 65; Schacht (*supra* note 75), 57, 69; Yagi (*supra* note 42), 18.

[102] Cf. Schacht (*supra* note 16), 63.

[103] Cf. Muranyi (*supra* note 20), 299, 320.

[104] See about that book, e.g., Radtke (*supra* note 27), 54, 65.

[105] Cf. Khoury (*supra* note 30), 37, 51.

[106] Coulson (*supra* note 30), 71.

[107] Khoury (*supra* note 30), 37, 51.

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lamic law according to aš-Šāfiʿī, was suspect in the eyes of ibn Hanbal[108], for it could be misused to introduce new aspects into the law which contradicted rules stipulated by the Qur'an or by the Prophet[109]. Therefore, ibn Hanbal preferred a weak tradition to a strong analogy[110]; in cases, where the adherents of the Shafiʿī school used to find a decision on the basis of a comparison between not completely relevant expressions of the Qur'an or the Prophet with the facts to be judged, he liked to base his decision on a materially applicable *hadīṯ* of a less important authority[111]. Hence, the use of rational methods to find a judgment was more restricted in the Hanbalī school than in the Shafiʿī school[112]. The Hanbalīs hoped that they, insofar, could anchor the *fiqh* more securely in the divine provisions than the Shafiʿīs had been able to do[113].

Ibn Hanbal insisted that only such rules were an obligatory part of the Islamic law that had their origin either in the divine revelation of the Qur'an or in the practice or the example of Muhammad[114]. For instance, for the execution of religious obligations only such a practice should be allowed that was stipulated by the Qur'an or by the tradition. Moreover, the obligations should be fulfilled in exactly the way laid down in these sources. But in all other legal questions, the jurists should be generous: Only such things should be rendered to a duty that were dictated by Qur'an or Sunnah; and only such things should be not allowed that were explicitly prohibited there[115].

From the point of view of ibn Hanbal and his successors that the Islamic law is completely and clearly laid down in Qur'an and Sunnah results another difference towards the Shafiʿī school with regard to the procedure to find the law: The Hanbalīs hold that already completed is what the Shafiʿīs think to be the task of the legal scholars, i.e. investigating the hidden parts of the *sharīʿa*. According to the Hanbalīs, the *sharīʿa* is accessible in all of its parts. Thus, the independent search for a decision (*al-iǧtihād*) means for them just finding the right text, the relevant Qur'anic verse or *hadīṯ*, under which the prevailing facts can be subsumed[116].

For some time, ibn Hanbal and his successors were not recognized as a "real" school of law by the other schools; they were seen as mere experts of traditions. However, the Hanbalīya became one of the orthodox schools of law. The Hanbalī school never had a huge number of adherents but, remarkably, it found, with regard to the other schools, an above-average support of many first class scholars

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108 Cf. Coulson (*supra* note 30), 89; Endreß (*supra* note 28), 84; Radtke (*supra* note 27), 54, 65.

109 Cf. Khoury (*supra* note 30), 37, 51.

110 Schacht (*supra* note 75), 57, 66.

111 Cf. Coulson (*supra* note 30), 89 et seq.

112 Cf. Radtke (*supra* note 27), 54, 65.

113 Nagel (*supra* note 23), 252.

114 Coulson (*supra* note 30), 71.

115 Khoury (*supra* note 30), 37, 51.

116 Nagel (*supra* note 23), 252 with footnote 26.

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from all areas of Islamic legal science. Since the 3rd century H. or the 9th century C.E., the Hanbalīs developed a complete doctrine. They adopted the classical legal theory based on *consensus* and treated the *qiyās* as a recognized principle, but avoided putting it formally on the same level as that of the other *uṣūl al-fiqh*[117]. In the 8th century H. or 14th century C.E., the famous Islamic scholar Taqīaddīn ibn Taimīya (died 728 H. or 1327 C.E.) specified several aspects of the Hanbalī doctrine. In particular, he rejected the extensive function of *consensus* and, at the same time, stressed the necessity of a qualified analogy[118].

In the 13th century H. or 18th century C.E., the teachings of ibn Taimīya were picked up by the Wahhābī movement founded by Muhammad ibn ᶜAbdalwahhāb and Emir ibn Saᶜud, which took hold of the Arabian peninsula and proclaimed, there, the regime still ruling over Saudi Arabia[119]. Therefore, one might not wonder that the Hanbalī school even today has great influence on the legal life in Saudi Arabia[120]. Although there had been some convergence in particular with the Shafiᶜī school, the Hanbalīya remained a strict traditional, dogmatic school[121]. Its views are observed in several states of the Persian Gulf[122] but also in Baghdad, Damascus, and in other parts of Syria, in Palestine and everywhere else where the Saudi Arabian influence is noticeable[123].

VII. Conclusion

The explanations have revealed that the Sunnī schools' concepts of the *sharīᶜa* differ with regard to the catalogue and the binding effect of, and the weight that is given to, the sources of the Islamic law. This mainly goes for the role of traditions and the scope for deliberate considerations. It might not be surprising that the differences with regard to the dogmatic structures the Islamic law is based on frequently lead to different results when scholars or former students of the various schools decide concrete legal cases[124]. The variety of school doctrines and legal opinions was even more extensive in the past. Next to the four mentioned schools, there were some other Sunnī schools of law in Muslim history like those of Dāwūd

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117 Cf. Schacht (*supra* note 16), 60, 63.

118 Ibid., 63; see also Benjamin Jokisch, Ijtihād in Ibn Taymiyya's Fatāwā, in: R. Gleave/E. Kermeli (eds.), Islamic Law. Theory and Practice, London/New York 1997 (reprint 2001), 119, 120 et seq.

119 Khoury (*supra* note 30), 37, 51 et seq.; Schacht (*supra* note 75), 57, 70.

120 See Johannes Reissner, Saudi-Arabien und die kleineren Golfstaaten, in: Ende/Steinbach (*supra* note 7), 531, 536 et seqq.

121 Muranyi (*supra* note 20), 299, 322.

122 Cf. Peter Heine, Das Verbreitungsgebiet der islamischen Religion: Zahlen und Informationen zur Situation in der Gegenwart, in: Ende/Steinbach (*supra* note 7), 129, 143.

123 Khoury (*supra* note 30), 37, 52.

124 See, e.g., the comparative compendium of Lale Bakhtiar, Encyclopedia of Islamic Law. A Compendium of the Views of the Major Schools, Chicago 1996.

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ibn Khalaf (died 270 H. or 884 C.E.), Abū Thawr (died 240 H. or 854 C.E.) and Abū Ǧafar Muhammad ibn Ǧarir at-Tabarī (died 310 H. or 923 C.E.)[125]. But since about the year 700 H. or 1300 C.E., only the Hanafī, the Mālikī, the Shafiʿī and the Hanbalī school survived, and they remained, with their doctrine not having changed essentially, until our day[126]. Despite their different views, the four schools are regarded as equally orthodox[127]. In the first centuries after the foundation of the schools and before the Ottomans gained their hegemony over the Islamic world, there had been representatives of each school in any big city[128], who functioned, not least, as judges and discussed difficult cases in common senates[129]. Today, there is also an intensive scientific discourse and competition between the schools of law[130], with none claiming the binding nature of individual decisions in relation to the Muslim believers. Even legal expert opinions (*fatāwā*) which are given by scholars, by order of believers or on the occasion of a concrete legal problem, often explain the different positions of all schools of law[131]. Futhermore, in prominent Islamic institutions like the Al-Azhar University in Cairo, there all four schools of law are still represented by both scholars and students[132]. Thus, the Islamic law is in our day highly complex and differentiated; its different characteristics have dogmatic reasons. Anyway, the believer can turn to any school of law or legal scholar if he has a question concerning the *sharīʿa*; he is not bound to a certain school because of his geographic origin or present residence. It is deprecated, though, to request an opinion from one school after another so as to have the chance to choose the most comfortable answer[133].

[125] Cf. Radtke (*supra* note 27), 54, 65; Schacht (*supra* note 75), 57, 67 et seq.; Melchert (*supra* note 18), 178 et seqq.

[126] Schacht (*supra* note 16), 65.

[127] Goldziher, in: Houtsma/Wensinck/Heffening/Arnold/Lévi-Provençal (*supra* note 4), 106, 110 left column.

[128] Nagel (*supra* note 23), 288.

[129] Goldziher, in: Houtsma/Wensinck/Heffening/Arnold/Lévi-Provençal (*supra* note 4), 106, 110 left column.

[130] Cf., e.g., Nagel (*supra* note 23), 165.

[131] Ibid., 140.

[132] Cf. already Goldziher, in: Houtsma/Wensinck/Heffening/Arnold/Lévi-Provençal (*supra* note 4), 106, 110 left column.

[133] Nagel (*supra* note 23), 134; cf. also ibid., 286.

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