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 sharī'a, the classical, religiously founded Islamic law¹, still finds application in particular in the fields of family law, law on succession, and criminal law². Furthermore, numerous Muslims living as refugees or guest workers in the diaspora align their life and behaviour with religious commandments they deduce from the sharī'a. 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 sharī'atic 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 Dr. jur., Research Fellow at the Institute. The article is based on a speech held at the Heidelberg Research Fellow Conference on October 17, 2005. It goes back to results of a project financed by the German Research Community (Deutsche Forschungsgemeinschaft). For a more detailed analysis see Diana Zacharias, Islamisches Recht und Rechtsverständnis, in: S. Muckel (ed.), Der Islam im öffentlichen Recht des säkularen Verfassungsstaates, forthcoming.

² See on the notion sharī'a, e.g., Maher S. Mahmoudi, Le droit musulman et la vocation universelle de l'Islam, in: S. Jäkel/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 sharī'a which are not qualified as law.

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 shari‘a. Against this background, it may be helpful to throw a little light onto the dogmatic differences between the established Sunnite schools of law (madāhib; sg. madhab), which are: the Hanafiya, the Mālikiya, the Shafi‘iya, and the Hanbaliya. 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. Some prominent Western scholars at the beginning, or rather in the middle, of the 20th century like Ignaz Goldziher, Gotthelf Bergsträßer, and Joseph Schacht 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 hijra (meaning the move of Muhammad and his Companions from Mecca to Medina in 622 C.E.) 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, Fazlur Rah-
man’s, Ahmad Hasan10, and Mohammad Mustafa Azami11, 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 muṣṣānnaf books, which are collections of traditions (ahādīṯ) 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 Basra13, 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 Prophet14. At that time, the development from a jurisprudence that articulated itself by ʿaʿy 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

12 See, e.g., the traditional definition at Muhammad Šafīq Al-ʿĀnī, Al-īfāq al-islāmī wa maṣāʾer al-qānūn al-madāf al-muwahhād fī l-bilād al-ʿarbīyā, 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 Lōschn, Die dogmatischen Grundlagen des šīʿīschen Rechts. Eine Untersuchung zur modernen imāmīschen Rechtsquellenlehre, Cologne etc. 1971, 88 et seqq.
13 Cf. Mōṭzki (supra note 3), 263.
15 Cf. Mōṭzki (supra note 3), 263 et seq.
of Muslim history, which is the time of the early ‘Abbāsid 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. 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 diffused in the two aforementioned schools. Another group of Kufians and probably also of Iraqis formed the school of Suwayne 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. Thus, the legal science was personalized; the new schools were "personal" schools.

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-Nu‘man ibn Thabit Abū Hanīfa who died in 150 H. or 767 C.E. and whose legal opinions had been made public mainly by his two famous students Abū Yusuf (died 182 H. or 798 C.E.) and Ahmad ben Hasan aš-Saibānī (died 189 H. or 804 C.E.). Abū Hanīfa himself was a student of Hammād ibn Abī Suleymān (died 120 H. or 738 C.E.) who, at his time, regarded as the greatest legal scholar of Iraq but was also known for having little knowledge about tradition. 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

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17 Schacht (supra note 16), 57 et seq.
Hanīfa had only a small repertoire of traditions\(^{22}\). Furthermore, he did not easily acknowledge each hadīth 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 šari‘ī 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 (qīyās). 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 “istībṣān” (to consider better)\(^{25}\). It was justified by the argument that, with istībṣān, a custom (urf) 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‘ī 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‘ān\(^{28}\).

Therefore, contemporary opponents blamed Abū Hanīfa that in his school there was neither well-founded ra‘ī nor hadīth\(^{29}\); the method of istībṣān was mere arbitrariness\(^{30}\). For instance, Muhammad ben Idrīs aš-Šāfi‘ī, the eponym of the Shafi‘ī school of law, commented on decision-making in the Hanafī school as follows: “I compare the ra‘ī 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.”\(^{31}\)


\(^{23}\) Tilman N a g e l , Das islamische Recht. Eine Einführung, Westhofen 2001, 162.

\(^{24}\) G o l d z i h e r , Die Zâhiriten (supra note 4), 14.

\(^{25}\) Cf. A d a m s (supra note 19), 217, 224; S c h a c h t (supra note 16), 60 et seq.

\(^{26}\) Cf. N a g e l (supra note 23), 275; Baber J o h a n s e n , Coutumes locales et coutumes universelles aux sources des règles juridiques en Droit musulman hanafite, Annales Islamologiques 27 (1993), 29 et seqq.

\(^{27}\) Cf. N a g e l (supra note 23), 275; Baber J o h a n s e n , Coutumes locales et coutumes universelles aux sources des règles juridiques en Droit musulman hanafite, Annales Islamologiques 27 (1993), 29 et seqq.

\(^{28}\) Cf. Bernd R a d t k e , Der sunnitische Islam, in: Ende/Steinbach (supra note 7), 54, 64; S c h a c h t (supra note 16), 60.

\(^{29}\) Cf. Abdulaziz S a c h e d i n a , 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 E n d r e ß , Der Islam. Eine Einführung in seine Geschichte, 3rded., Munich 1997, 83, who pointed out that the Hanafīs had granted a proper place to rational interpretation.

\(^{30}\) See G o l d z i h e r , Die Zâhiriten (supra note 4), 23.


\(^{32}\) Cited from G o l d z i h e r , Die Zâhiriten (supra note 4), 29.
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’ān and Sunnah do not allow”\(^\text{32}\). That criticism was, of course, exaggerated. Analogies and considerations \textit{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 \textit{ra’y} in cases where the primary, written or handed down sources remained silent toward a certain legal problem\(^\text{33}\).

Abū Hanīfa is, furthermore, regarded as the founder of the speculative legal scholarship\(^\text{34}\), which led his opponents to say that he had invented the science of juridical tricks to circumvent the statutes\(^\text{35}\). For Abū Hanīfa made attempts to build up on scientific principles a set of rules which would answer every question of the law\(^\text{36}\). In his school legal problems were often discussed abstractly, without having regard to a concrete case\(^\text{37}\). This also did not find the sympathy of his conservative contemporaries: “The following statement is handed down from Hāfīs b. Gījāt (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 \textit{ra’y} fancied themselves in casuistic hair-splittings that missed any actual interest.”\(^\text{38}\) 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 Hanafi school gained a predominant status under the schools of law in Iraq during the reign of the ‘Abbāsids\(^\text{39}\). 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 Hanafi school, at times, was far away from the legal problems of daily life.
\(^{38}\) Goldziher, Die Zāhiriten (supra note 4), 16.
\(^{39}\) Coulson (supra note 30), 87.

ZaöRV 66 (2006)
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. Later, the Hanafī school became the official school of law of the Ottoman Empire. 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. In Egypt, the Hanafī school is relevant as far as legal questions are concerned which do not relate to religious obligations.

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. 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.

The Mālikī doctrine contained the first attempts of a legal science moulded by hadīṣ, that were, later, extended by others, in particular ašŠāfī’ī. Thus, while the Hanaﬁs tried to find solutions for legal questions by means of individual decisions on the basis of their own reason and expert knowledge, the Mālikis wanted to put the law (fiqh) on transmitted foundations. 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-

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40 Khouy (supra note 30), 37, 48 et seq.
43 See Radtke (supra note 27), 54, 64; Khouy (supra note 30), 37, 49.
44 Dutton (supra note 14), 11; Khouy (supra note 30), 37, 49.
45 Dutton (supra note 14), 36, 38.
46 Nagel (supra note 23), 144.
47 Ibid., 248.
rect hadīt. However, they rightly complained that Mālik in many cases did not follow ahādīt from the Prophet or his Companions, even when the sources of transmission were regarded as absolutely trustworthy. Mālik and his successors held that the transmitted legal practice (amal) in Medina, in principle, had a higher reliability than abādīt. This had already been the opinion of Rabī' b. Abī darrāhmān (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 Successors took their knowledge from individual Companions. Thus, this directly-received knowledge of the Medinans of how the sharīʿa was put into practice automatically had higher authority […] than most abādīt, as we have seen, were not mutawātir. Hence, there are some expressions transmitted from Mālik saying, for example, that “This sort of widespread knowledge (bādhū l-khabar al-shā'ī) [in Medina] is more reliable (athbat) in our opinion than hadīt” 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.”

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 abādīt that are regarded as a primary source and, thus, have priority toward ‘amal. The Mālikīs developed a long catalogue of rules on how to manage conflicts between traditions and Medinan practice. 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-Šāfi‘ī and, roughly speaking, identified the Sunnah with the sum of authentic abādīt. According to Mālik, the Sunnah is formed by ‘amal which has itself its origins in the practice of the Prophet and sometimes even in pre-Islamic Medinan

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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 Murānji (supra note 20), 299, 313.
54 Cf. Dutton (supra note 14), 36 et seq., 41.
55 Cf. Coulson (supra note 30), 98 et seq.
customs acknowledged by the Prophet\textsuperscript{56}, whereas the common opinion holds that the practice in Medina is only a territorially limited or local \textit{iğmā̀} or consensus\textsuperscript{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 [\textit{uṣul al-fiqh}]”; it is a legal source \textit{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\textsuperscript{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 occurring 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’.\textsuperscript{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\textsuperscript{60}. Instead, Mālik applied the principle of \textit{istiṣlah}, which means that he considered the public interest (\textit{maslaha})\textsuperscript{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\textsuperscript{62}. It is probably an aspect or a “lesser degree […] of the […] principle of \textit{istiṣbān}”\textsuperscript{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\textsuperscript{64}. But

\textsuperscript{56} Cf. Dutton (supra note 14), 40.
\textsuperscript{57} Cf. Goldziher, Die Zāhiriten (supra note 4), 34; Schacht (supra note 16), 61.
\textsuperscript{58} Cf. Khoury (supra note 30), 37, 49.
\textsuperscript{59} See Dutton (supra note 14), 20.
\textsuperscript{60} Cf. Khoury (supra note 30), 37, 49.
\textsuperscript{61} Cf. Coulson (supra note 30), 91; Schacht (supra note 16), 61.
\textsuperscript{62} Schacht (supra note 16), 61.
\textsuperscript{63} Cf. Coulson (supra note 30), 91.
\textsuperscript{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.
only the Hanafis and the Malikis recognized istihsan or istiqlab being an additional, independent source of law which could be an alternative or rather a superior authority toward traditions and strict reasoning by analogy. At times, istihsan and istiqlab were even used to justify exceptions from Qur’anic rules.

A further, last aspect that should be mentioned has to do with the contents of Malik doctrine. Malik and his students tried to penetrate the legal structures with religious and ethical thoughts: “In many respects the Malikis system represents a moralistic approach to legal problems in contrast to a formalistic attitude adopted by the Hanafis; for while the Malikis place great emphasis upon the intention of a person as affecting the validity of his conduct, the Hanafis mainly confine their attention to the external conduct itself.” Therefore, the Malikis, 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.

In later centuries, some of Malik’s successors searched for a convergence toward the Shafi’i’s, at least with regard to terminology. However, the fundamental principles of Malik doctrine are still supported in our day. The Malik 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. 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.

V. The Shafi’i School

As already stressed, the Shafi’i school was founded by Muhammad ben Idris aš-Šāfi’i (died 204 H. or 820 C.E.) who is regarded as the original theorist of Islamic law. With his writings, aš-Šāfi’i more or less extensively influenced the doctrine

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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.
of all other schools. Aš-Šāfi‘ī was from the tribe of the Quraiš and a close relative of the Prophet. 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 ‘Ugaina (died 197 H. or 813 C.E.), Aš-Šāfi‘ī 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. Hence, Aš-Šāfi‘ī was well-versed both in the doctrine of the Hanafi school and in that of the Mālikī school. Aš-Šāfi‘ī started lecturing in Baghdad counting himself to the successors of Mālik. 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-Šāfi‘ī’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.

According to Aš-Šāfi‘ī, the abādīt of the Prophet were not a source of law inter alia but have the same rank and importance as the Qur’an, whereas all other sources of the law were subsidiary. Because of that strong pronunciation of traditions, Aš-Šāfi‘ī obtained a reputation as the “Vindex of Traditionalism.” Aš-Šāfi‘ī 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 hadīt of the Prophet. Similarly, non-Prophetical traditions should not be consulted to confirm a tradition of the Prophet, for “the hadīt of the Prophet satisfies itself.” Also for himself, Aš-Šāfi‘ī did not claim any authority to disregard comments of the Prophet. Characteristic is, insofar, Aš-Šāfi‘ī’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.”

Cf. Schacht, in: Khadduri/Liebesny (supra note 18), 57, 64 et seq.
77 Cf. Nagel (supra note 23), 144.
78 Ibid., 144, 203 et seq.; see about aš-Šāfi‘ī’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 Zāhiriten (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 Zāhiriten (supra note 4), 20, 23.
83 Nagel (supra note 23), 205.
84 Cited after Goldziher, Die Zāhiriten (supra note 4), 21.
However, aš-Šāfi‘ī 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”. He was also and above all a mediator between the Hanafi and the Mālikī school of law, which means between independent legal reasoning and traditionalism which orientated itself toward abā‘īdī. 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: “As we […] could have seen, aš-Šāfi‘ī’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 abā‘īdī]. 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. Only if that method did not lead to an appropriate solution, was the way open to use consensus (iǧmā‘) as the fourth source of law. Thereby, aš-Šāfi‘ī 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, iǧmā‘ represented the unanimous view of the whole Islamic community. However, aš-Šāfi‘ī’s successors did not stick to that opinion and returned to the conventional view.

With his doctrine of the usūl al-fiqh, the roots of the law, aš-Šāfi‘ī 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-Šāfi‘ī 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. 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 Shafi‘ī doctrine was not sufficiently taken into account by many of aš-Šāfi‘ī’s successors: “[T]he adherents of the Shafi‘ī system were not able to stick theoretically to the fine union which the school’s Imam had made for the two elements of the positive legal practice, from which one might think that they exclude

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85 Cited after ibid., 25.
86 Ibid., 26; K h o u r y (supra note 74), 673 et seq.; S c h o l z (supra note 20), Jura 2001, 525, 527.
87 G o l d z i h e r, Die Zâhiriten (supra note 4), 21.
88 Ibid., 25.
89 Cf. N a g e l (supra note 23), 175, 209, 275 et seq.; H a s a n (supra note 74), Islamic Studies 5 (1966), 239, 252.
90 Cf. S c h a c h t (supra note 75), 57, 64.
91 Cf. N a g e l (supra note 23), 212 et seq., 214.
each other. Only few maintained the awareness of the mediating role which was purported by the direction of aš-Šāfi‘ī 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 qādi’, I would let incarcerate both the one who is searching for badī‘ without considering the fiqh and the other who is committing the reverse one-sidedness.’ From the aura media on which they were put they jumped soon into extremism.

Remarkable is, finally, aš-Šāfi‘ī’s idea about the law as such, for it sustainably moulded the Islamic legal science in the following centuries. According to aš-Šāfi‘ī, the Islamic law is not derived from any human system of law but it is completely of divine origin. 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.

The Islamic law was a fixed canon of rules; its provisions were once and for all laid down by God. However, the shari‘a 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 shari‘a 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. 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 shari‘a, in which the everyday life must be inscribed or subordinate.

Aš-Šāfi‘ī’s doctrine spread very fast from Iraq to the East and became primarily established in Chorasan. Also the Hijaz and Yemen were, within a short period of time, dominated by aš-Šāfi‘ī’s adherents. In Egypt, where aš-Šāfi‘ī spent the last years of his life, his students and their own students nearly completely drove away the Mālikīs. Today, the Shafi‘i school of law is the second biggest school in Sunni Islam, after the Hanafīs. It has many adherents in Egypt and Jordan with regard to questions concerning the religious obligations of the Muslims. The Shafi‘i school is, furthermore, important in Syria, the Lebanon, and Iraq, in parts of the Hijaz 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...
the Sunnites in Iran and Yemen. In Indonesia, the Shafi‘i school is predominant in questions concerning religious obligations and contract law.\footnote{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.}

VI. The Hanbali School

The last school of law, the Hanbali school, is known as the school of the strict traditionalists.\footnote{Cf. Schacht (supra note 16), 63.} 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 ‘Ugāina from the Hīţaţ, Wakī‘ ibn al-Ğarrāh (died 197 H. or 812 C.E.) from Kufa, and ‘Abdarrahman ibn Mahdī (died 198 H. or 813 C.E.) from Basra, but he also visited the lectures of aš-Sā‘ī‘ī about fiqh and usūl al-fiqh in Baghdad. However, ibn Hanbal is not counted among the successors or students of aš-Sā‘ī‘ī.\footnote{Cf. Muranyi (supra note 20), 299, 320.}

According to the view of ibn Hanbal, the Qur’an in its wording, without any exegetical 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 ahādīt in his book “Musnad”\footnote{See about that book, e.g., Radtke (supra note 27), 54, 65.} but, thereby, did not apply a theoretically founded procedure to distinguish between trustworthy and faked or, at least, dubious ahādīt; 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, in so far, 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.\footnote{Cf. Khoury (supra note 30), 37, 51.}

Unlike Abū Hanifa, ibn Hanbal rejected human considerations in any form as a source of law.\footnote{Coulson (supra note 30), 71.} He held that referring to the own reason and not to Qur’an or Sunnah would enhance arbitrariness.\footnote{Khoury (supra note 30), 37, 51.} Even analogy, the fourth root of the Is-
Islamic law according to aš-Šāfiʿī, was suspect in the eyes of ibn Hanbal for it could be misused to introduce new aspects into the law which contradicted rules stipulated by the Qur’an or by the Prophet. Therefore, ibn Hanbal preferred a weak tradition to a strong analogy; 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 hadīth of a less important authority. Hence, the use of rational methods to find a judgment was more restricted in the Hanbali school than in the Shafiʿī school. The Hanbalis hoped that they, insofar, could anchor the fiqh more securely in the divine provisions than the Shafiʿīs had been able to do.

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. 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.

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 Hanbalis 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 shariʿa. According to the Hanbalis, the shariʿa is accessible in all of its parts. Thus, the independent search for a decision (al-iḥtiyāt) means for them just finding the right text, the relevant Qur’anic verse or hadīth, under which the prevailing facts can be subsumed.

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 Hanbaliyya became one of the orthodox schools of law. The Hanbali 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.
from all areas of Islamic legal science. Since the 3rd century H. or the 9th century C.E., the Hanbalis developed a complete doctrine. They adopted the classical legal theory based on *consensus* and treated the *qiyaṣ* as a recognized principle, but avoided putting it formally on the same level as that of the other *uṣūl al-fiqh*\(^\text{117}\). In the 8th century H. or 14th century C.E., the famous Islamic scholar Taqaddim ibn Taimiya (died 728 H. or 1327 C.E.) specified several aspects of the Hanbali doctrine. In particular, he rejected the excessive function of *consensus* and, at the same time, stressed the necessity of a qualified analogy\(^\text{118}\).

In the 13th century H. or 18th century C.E., the teachings of ibn Taimiya were picked up by the Wahhabī movement founded by Muhammad ibn ‘Abd al-wahhab and Emir ibn Sa‘ud, which took hold of the Arabian peninsula and proclaimed, there, the regime still ruling over Saudi Arabia\(^\text{119}\). Therefore, one might not wonder that the Hanbali school even today has great influence on the legal life in Saudi Arabia\(^\text{120}\). Although there had been some convergence in particular with the Shafi‘ī school, the Hanbaliyya remained a strict traditional, dogmatic school\(^\text{121}\). Its views are observed in several states of the Persian Gulf\(^\text{122}\) but also in Baghdad, Damascus, and in other parts of Syria, in Palestine and everywhere else where the Saudi Arabian influence is noticeable\(^\text{123}\).

### VII. Conclusion

The explanations have revealed that the Sunnī schools’ concepts of the *sharī‘a* 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\(^\text{124}\). 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

\(^{117}\) Cf. Schacht (*supra* note 16), 60, 63.


\(^{119}\) 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.


\(^{123}\) 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.
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.)\textsuperscript{125}. But since about the year 700 H. or 1300 C.E., only the Hanafī, the Mālikī, the Shafi‘ī and the Hanbalī school survived, and they remained, with their doctrine not having changed essentially, until our day\textsuperscript{126}. Despite their different views, the four schools are regarded as equally orthodox\textsuperscript{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\textsuperscript{128}, who functioned, not least, as judges and discussed difficult cases in common senates\textsuperscript{129}. Today, there is also an intensive scientific discourse and competition between the schools of law\textsuperscript{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\textsuperscript{131}. Furthermore, 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\textsuperscript{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 sharī‘a; 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\textsuperscript{133}.

\textsuperscript{125} Cf. Rādtke (supra note 27), 54, 65; Schacht (supra note 75), 57, 67 et seq.; Melchert (supra note 18), 178 et seqq.
\textsuperscript{126} Schacht (supra note 16), 65.
\textsuperscript{127} Goldberg, in: Houtsma/Wensinck/Heffening/Arndt/Lévi-Provençal (supra note 4), 106, 110 left column.
\textsuperscript{128} Nagel (supra note 23), 288.
\textsuperscript{129} Goldberg, in: Houtsma/Wensinck/Heffening/Arndt/Lévi-Provençal (supra note 4), 106, 110 left column.
\textsuperscript{130} Cf., e.g., Nagel (supra note 23), 165.
\textsuperscript{131} Ibid., 140.
\textsuperscript{132} Cf. already Goldberg, in: Houtsma/Wensinck/Heffening/Arndt/Lévi-Provençal (supra note 4), 106, 110 left column.
\textsuperscript{133} Nagel (supra note 23), 134; cf. also ibid., 286.