12

SUNNĪ LAW

Robert Gleave

The Muslim conception of God is of an all-knowing, all-powerful being, who, after creating the world and all that is in it, sent prophets and messengers to humankind. The prophets and messengers were given the responsibility of informing humankind of God's nature, and of demanding humankind's unconditional obedience to God. Obedience to God consists of submitting to his demands, and his demands are to be found in a set of rules and regulations which some (though not all) prophets and messengers have promulgated on God's command. In Muslim discourse, these rules and regulations are collectively known as the *sharīʿa*, and by obeying the *sharīʿa*, Muslims demonstrate their total submission to God, thereby gaining benefits in the next life.

This (rather simplified) account of God's relationship with humanity in classical Islamic theology has dominated Muslim discussions about the regulations they should follow in order to demonstrate their obedience to God. This conception, with perhaps minor variants and qualifications, is presupposed (and hence rarely stated explicitly) by the Muslim authors of a great corpus of legal literature collectively known by the Arabic term *fiqh*. Amongst the earliest extant sources from the incipient Muslim community are documents discussing legal questions (that is, the correct actions Muslims should perform). These texts, if authentic (and there is much debate about the dating of such documents), indicate that correct personal behavior and effective societal organization were topics of dispute and debate from the early period of Islamic history. Whether or not these early documents can be called works of *fiqh* is largely a matter of classification. Later works which are called *fiqh* are often much fuller, expanded accounts of God's law. What is significant is that the early Muslim community was intensely interested in legal questions ranging from the correct system of community organization to the most intimate details of human life. Obedience to God was presumed to be total, and hence there was no human activity, no situation for which God has not produced a ruling. Human beings are called to obey these rulings, and disobedience leads to punishment, in this life, or in the next.

The most pressing concern, once such a conception of law is accepted, is the manner in which the community comes to know the law which God has provided. When prophets are present, this would seem unproblematic. Since prophets are guided by God in micro, they can be asked about the law, and problems can be easily solved. Indeed, for most Muslim writers, there was no need for legal discussions during the Prophet Muḥammad's life. His judgment, as prophet and leader of the community,

was the law. Hence, Muslim conceptions of revelation are not limited to the Qur'ān (as is often thought), but for most Muslim theologians (both in the past and in the present), God's revelation (*waḥy*) is found in two forms: recited (or textual – *matlū*) and unrecited (*ghayr matlū*) (Burton 1977: 64–6). The former is a reference to the Qur'ān, and the latter to the words and actions of the Prophet (known in the classical period as *sunna*). When a prophet is absent, however, the process of discovering the law to which God demands obedience becomes more problematic. It is for this reason that Muslim jurists have developed a set of interpretive rules whereby the clues left by God and the Prophet (called "indicators," in Arabic *adilla*) might be assessed, understood and applied to the process of explicating the law of God. Naturally, the activities of assessment, interpretation and application are human activities, and the results of these efforts were, epistemologically speaking, of a lower rank than the knowledge gained directly from the Prophet (when he was alive) or (according to some) directly from the Qur'ān, if its meaning was seen as unequivocal.

The result of this conceptual framework was a theoretical schema in which legal knowledge is attained through the application of interpretive rules to source texts. These texts included the Qur'ān itself (which was not always unambiguous), but also the texts recording the words and actions of the Prophet (known as *ḥadīth*), the texts recording the words and actions of the Prophet's companions (which were seen as indicators of what the Prophet would have said if given the chance, or perhaps what he did say, but was, by accident of history, left unrecorded) and, on occasions, statements which the Muslim community (or the learned stratum thereof) had agreed to be true (known as *ijmāʿ*). Each legal scholar's assessment, interpretation and application was subjective and the result of the scholar's "best effort" (termed *ijtihād*) to reach an opinion about God's rule for a particular circumstance, or set of circumstances. This, at least, was the theory of how knowledge of God's law was accrued by the Muslim jurists (and through them, the Muslim community generally). This theory was described in great detail in works of *uṣūl al-fiqh* (the "principles" or "roots" of *fiqh*). Once a scholar had mastered the rules of assessment, interpretation and application, they might produce an extended work which describes the actions Muslims should (in that scholar's opinion) perform on particular occasions. This type of work, oftentimes called *furūʿ al-fiqh* (the "individual instances" or "branches" of *fiqh*, usually abbreviated to *fiqh*), intended to lay out the author's knowledge of the law in its entirety (which was, after all, only his own opinion). These *furūʿ* books were, inevitably, very long, extremely detailed, and at times involved tortuous and complicated reasoning, as the author attempted to use the limited sources at his disposal to describe God's rules for the whole of human existence. There is then an implicitly understood (and, on occasions, explicitly stated) distinction in Muslim legal scholarly literature between *sharīʿa* and *fiqh*. The former refers to the law which God wishes his human subjects to obey. The latter is best understood as human attempts to discover the *sharīʿa*. There was an instinctive humility in the classical Muslim jurist's intellectual endeavor. He was involved in trying to describe law in his *fiqh*, though the true nature of the *sharīʿa* could only be known to God. A classical jurist (and here they can be distinguished from some modern Muslim legal scholars) would probably be uncomfortable saying that the *sharīʿa* "decrees" a particular ruling. This, in part, explains the frequent use of the phrase *wa-Allāhu aʿlam* ("and God knows best") at the conclusion of legal argumentation in works of *fiqh*. The author is effectively saying

"this is my best guess, given the evidence available to me, but I do not condemn those who take a different view" (see Calder 2007).

Apart from works of *uṣūl* and *furūʿ*, other sources for the academic study of Islamic law include documents in which the scholar replies to an individual question concerning some element of the law. They have also survived in large number, and are called *fatwās*. These are much shorter than the *fiqh* works mentioned above. When a scholar gives a *fatwā*, he is acting as a *muftī* ("jurisconsult"); when he writes an extended work of *fiqh*, he is acting as a *faqīh* ("scholar jurist"). Finally, court records (*sijillāt*) and other legal documents have survived from the later classical period (most date from 1500 onwards). In these records, the decisions of a judge (*qāḍī*), who was normally trained in the academic legal sciences, are recorded. They are, then, the most important sources for how the religious law of the Muslims was applied to actual cases in particular periods. These types of literature – namely *uṣūl al-fiqh*, *fiqh* (or *furūʿ*), *fatwās* and *sijillāt* – constitute the most important sources for anyone wishing to describe the development of religious law amongst the Muslims. Other material related to the study of Sunnī law can be found in biographical dictionaries (where often the life of a judge or a scholar is described and his legal activity outlined) or historical chronicles (where important cases are sometimes recorded, or a ruler's promotion of, or deviation from "the *sharīʿa*" is described).

The above summary, describing how the Muslim community comes to know the rules God commands them to obey, dominated Muslim legal scholarship (whether by Sunnī, Shīʿī or Ibāḍī authors) during the so-called "classical" period (i.e., from *c.* 1000 to *c.* 1800). However, it took some time to develop and reach this expression. It was not fully formed at the inception of Islam in the seventh century, and was still developing at the outset of the eleventh century. The debate lasted until (and to an extent beyond) the point when Sunnī jurists, almost universally, accepted the "orthodoxy" of four schools. It is from this date that the classical period is normally dated, and which, it is often argued, occurred in the late tenth/early eleventh century. The remainder of this chapter will look at how the "classical" account of the legal enterprise came to dominate Sunnī Islam, how the four schools emerged as pre-eminent and how their rivals were eclipsed. This leads on to a discussion of how, once established, the four schools of Sunnī law became entrenched (institutionally and intellectually), providing the only real framework in which legal activity (be it scholarship, advising or judging specific cases) took place. The conclusion will show some of the developments in Sunnī law in the modern period (which, for convenience, one can date from around 1800), and how these have altered the conception of the *sharīʿa* and the nature of legal scholarship amongst Muslims.

The emergence of legal thought and juristic schools in Sunnī Islam

Apart from a limited number of verses in the Qurʾān, the earliest Muslim literature which dealt with legal issues are probably the *ḥadīths* – the accounts of the actions and words of the Prophet Muḥammad, his companions and other luminaries of early Islam. Since the Prophet was an obedient servant of God who implemented God's law perfectly, these reports of his sayings and actions became sources for understanding God's law. The reports are, then, indicators of the Prophet's *sunna* – his example for

the Muslims. Collections of these sayings first emerged in the early ninth century, in which are recorded the sayings of individuals from the mid-seventh century onwards, including the Prophet. Each saying is usually accompanied by a chain of transmission, known as an *isnād*. Each *isnād* is an attempt to demonstrate that the report is an accurate account of the events described, and consists of a list of names of transmitters who "heard" (*sami'a*) or "report" (*ḥaddatha*) from the next person in the list, all the way back to an eye witness to the events. The actual description of the event is called the *matn* ("text") and together the *matn* and the *isnād* are called a *ḥadīth* or a *khabar*. Muslim scholars knew early on that *isnād*s do not guarantee perfect accuracy, and developed a series of tests whereby an *isnād* (and hence the *ḥadīth* as a whole) can be seen as "sound" (*ṣaḥīḥ*) or otherwise. These included the evaluation of the characters of the transmitters (Were they trustworthy and honest?), as well as factual information about them (Did they live and work at the same time as the people they were supposed to have transmitted from?). Even when they declared a *ḥadīth* and its *isnād* "sound," later Muslim scholars recognized that this did not prove that the reports in the *matn* necessarily happened in exactly the way described. A single witness is not enough, they argued, to prove a case beyond doubt; similarly, a single *ḥadīth* does not mean one irresistibly trusts the *matn*. However, if one has a large number of *ḥadīth*s, all transmitted by different people, all saying the same thing, then one's trust of the *matn* grows. Eventually it becomes insuperable. It becomes, for Muslim jurists, inconceivable that so many people would be involved in a deception. This sort of "well-attested" report they called *mutawātir* ("frequently transmitted"). For later Muslim legal scholars, however, there are very few *ḥadīth*s which reach this level. The more *isnād*s attached to a report, the more likely it is to record the event accurately. Hence when later Muslim scholars used reports to prove a particular legal point, they built in caveats to their reasoning, always being sure to let the reader know that, for example, although a *ḥadīth* can be doubted, it is more likely to be true than false. The scholar takes that into account when describing the law he derives from the report. This is, once again, evidence of the humility built into the medieval system of Sunnī law – the jurists accepted that the sources themselves were not always certain, and therefore any laws derived from them were also going to be provisional.

Scholars outside of the Sunnī Muslim tradition also have their doubts about the *isnād* system as a means of ensuring authenticity (Berg 2000: 8–64). However, these doubts do not arise from any assessment of the transmitters' reliability. Rather, their criticisms emerge from an evaluation of the concept of *sunna*. In classical Muslim jurisprudence – that is, from around 1000 onwards – the idea of *sunna* is clearly marked as the example of the Prophet Muḥammad. However, earlier texts (such as the reports of the opinions of Prophetic companions and early Muslims) contain the word "*sunna*," but there it seems to indicate not specifically the Prophet's *sunna* but the tradition of legal practice in a particular location. This was most famously argued by Joseph Schacht (1950), a German scholar, who proposed the view that in these early texts *sunna* did not mean the example of the Prophet, but rather the "living tradition" of a particular locality. This *sunna* was sometimes made up of maxims which were used to justify legal opinions, or rules which are applied to particular legal cases. It was these maxims, the "living tradition," which was, Schacht argued, eventually put in the mouth of the Prophet. Crucial to this transfer from legal practice to Prophetic precedent was the work of Ibn Idrīs al-Shāfi'ī (d. 820). Al-Shāfi'ī argued in his various

works, but particularly in his *Risāla* (or "Treatise"), that all law must be justified either by the Qur'ān or by the *sunna* of the Prophet. Al-Shāfiʿī's argument was so persuasive that Muslims elsewhere, trying to preserve their local legal tradition, began to attribute popular legal maxims to the Prophet. Hence the *ḥadīth*s we have in the collections of the ninth and tenth centuries are, Schacht argued, "back-projections" of local practice appearing as Prophetic *sunna*. Their *isnād*s, Schacht maintained, "grew backwards" over time as the same maxim was attributed to earlier and earlier Muslim figures until eventually they were attributed to the Prophet himself. It is important to note that Schacht did not accuse the Muslims of simply fabricating the *isnād*s, but rather he argued that this was a natural development as local custom had to be reconciled with al-Shāfiʿī's new doctrine. This insight has dominated Western scholarship on early Islamic law – and has been subjected to criticism not only by Muslim scholars (such as al-Azmi 1985) but also non-Muslim scholars (most recently Motzki 2002).

All the historical evidence points towards the establishment of local schools of law both before al-Shāfiʿī's work, but with increased structure afterwards. These local schools were often based around particular great jurists who each (allegedly) proposed a distinct set of legal doctrines. So, for example, a school emerged around the great scholar ʿAbd al-Raḥmān al-Awzāʿī (d. 744) in Syria; a school in Kufa following the teachings of Abū Ḥanīfa Muḥammad al-Nuʿmān (d. 767); one in Medina was based around the Mālik ibn Anas (d. 796). Eventually al-Shāfiʿī's disciples began their own school, promoting his legal ideas. Similarly schools developed later around Aḥmad ibn Ḥanbal (d. 855), Dāwūd al-Iṣfahānī (d. 883), and Muḥammad ibn Jarīr al-Ṭabarī (d. 923). These scholars not only composed works (or had works attributed to them) but often promoted a particular legal methodology. This is perhaps best understood through an example.

Muslims should abstain from food, drink and sexual intercourse during the daylight hours throughout the month of Ramaḍān. For each day they fail to fast, they should pay a penance and fast an extra day after Ramaḍān. However, what if the Muslim temporarily forgets it is Ramaḍān and accidentally eats or drinks or has sexual intercourse? He did not intend to break the fast, but did so by mistake. Should he still pay a penance and fast an extra day? There does not seem to have been one rule from the Prophet – in some *ḥadīth*s he said the forgetful person should pay penance and perform extra fasts, and in others the Prophet says that he should not. Furthermore, the scholars differed over which of the *ḥadīth*s were more likely to be accurate, since they had different views on the reliability of the people who transmitted the reports (that is, the names in the *isnād*). The difference of opinion (*ikhtilāf*) was as follows: al-Shāfiʿī and al-Awzāʿī (and their followers) said that the forgetful Muslim has not broken his fast and need not pay penance or fast an extra day. They argued this on the basis of a report which they considered reliable in which the Prophet said, "Whoever is fasting and then forgets and eats and drinks, then his fasting is still complete and he need not fast an extra day." This, for them, was the end of the matter. The Prophet had spoken and the issue was settled. However, Abū Ḥanīfa (and his followers, the Ḥanafīs) did not think this was a reliable *ḥadīth*, so for the Ḥanafīs, it did not count as proof. However, they still agreed with al-Shāfiʿī and al-Awzāʿī that there should be no penance and no extra fast. The Ḥanafīs argued that strictly speaking there should be penance and extra fasting in these circumstances, just as there is if one forgets to pray

on a normal day. However, through his own legal reasoning, Abū Ḥanīfa came to the conclusion that fasting is not like prayer. Fasting requires you to continually remember that you are fasting. Prayer requires you only to remember that you should pray at particular times. Continually remembering something is harder than remembering something every now and again. One could dispute this, but Abū Ḥanīfa argued that it is obvious that continually doing something (like fasting) is always going to be harder than doing it intermittently (like prayer). Since it is harder work, the penalty for failing to do this should be less strict. For this reason, he argued that even though it would appear logical that forgetfully eating during Ramaḍān would break a fast, fasting was, in fact, different from other religious duties and the fast is not broken. A number of jurists were not convinced by this view. The followers of Mālik (the Mālikīs) said that it was obvious that forgetting the fast and accidentally eating something constitutes a breaking of the fast. However, Mālikīs did concede one point to the Ḥanafīs, namely that this was quite different from an intentional breaking of the fast. For the Mālikīs, intentionally eating something means both paying a penance and fasting extra days. Forgetfully eating something only needs one to fast the extra days. One does not perform a penance because one did not intend to break the fast – one just forgot.

From this example, one can see that different early jurists had not only different opinions, but different methods of proving their opinions. Al-Awzāʿī, al-Shāfiʿī and their followers, on this occasion, took the saying of the Prophet as authoritative (on other occasions they might have taken a different view). Mālik, Abū Ḥanīfa and their followers did not, presumably because they thought the report unreliable. (It is not easy to distinguish the opinions of the jurists from those of their followers because their followers were, in the main, responsible for recording their masters' opinions.) In any case, all the major jurists of the late eighth and early ninth centuries argued that legal reasoning, such as that used by Abū Ḥanīfa and Mālik in the above example, was acceptable in certain circumstances. Jurists could use it and come to their own opinion (in Arabic, *raʾy*) about a case.

Sometime in the ninth century, there emerged a rejection of the use of personal reasoning. Some scholars felt that both the true meaning of the Qurʾān and the reports of the Prophet were being cast aside without due care and attention by scholars being too eager to follow their own opinions and not the texts. Foremost amongst those who rejected *raʾy* was Aḥmad ibn Ḥanbal. He argued against the use of personal opinion in legal matters; he also argued against metaphorical interpretation of, for example, the verses in the Qurʾān which talk of God sitting on a throne and such like. This movement, sometimes called "the people of tradition" (*ahl al-ḥadīth*) took al-Shāfiʿī's argument to its logical conclusion. If the Qurʾān and the Prophetic *sunna* were the supreme legal authorities, then they had to be taken seriously. The personal opinion of one jurist or another was as nothing compared with the unassailable authority of the sources. Ibn Ḥanbal and his followers embarked on an attempt to defend the idea that the law should be based squarely on the Qurʾān and *sunna*, and the different opinions of the jurists (called *ikhtilāf* in Arabic) were damaging to the unity of the Muslim community and its obedience to God's will. A similar worry about *ikhtilāf* was expressed by Dāwūd al-Iṣfahānī, supposedly a pupil of al-Shāfiʿī. Dāwūd argued that the jurists of his time had erred by over-interpreting the texts of Qurʾān and *sunna*. So, for example, the Qurʾān said that those who are traveling can

shorten their prayer, but what sort of journey counts as "traveling"? How long must it be before one can shorten one's prayer? Al-Awzāʿī argued that a journey consists of one *marḥala* (which was around 24 miles). Al-Shāfiʿī, Mālik and Ibn Ḥanbal said you should be travelling two *marḥala*. Abū Ḥanīfa said it should be three *marḥala*. Dāwūd said that the Qur'ān does not say how long the journey has to be – it simply says "traveling" (Qur'ān 4:101, "when you go on a journey, there is no harm if you shorten your prayer"). Therefore, any travel – however short or long – qualifies as "a journey," and consequently the Muslim can shorten his or her prayer. For Dāwūd (and the Ẓāhirī school), the other jurists had indulged in over-interpretation by attempting to specify how long the journey must be. Crucially, they brought in ideas about "travelling" which have nothing to do with the meaning of the word. The followers of Dāwūd al-Iṣfahānī were supposedly only concerned with a verse's "literal" meaning (or, more specifically, its "apparent" meaning, in Arabic *ẓāhir*). They rejected any attempt to interpret the Qur'ān and *sunna* which might lead one away from what the sources actually said. For this reason, they are often called "the literalists" (in Arabic, *al-Ẓāhiriyya*).

The four schools of Sunnī law and their elaboration

Out of these various schools of law, with competing opinions and methods of legal reasoning, emerged an acceptance amongst the Sunnī jurists that there were four "orthodox" schools, and all others were to be rejected. How did this come about? Why four schools (and why these four and not others)? What implications did this have for the acceptance of *ikhtilāf*? These questions have been much debated in Western academic literature. Even the date as to when the four schools became pre-eminent is debated. Medieval Muslim accounts tend to portray the founders of the schools (Mālik ibn Anas, Abū Ḥanīfa, al-Shāfiʿī and Ibn Ḥanbal) as responsible for establishing the schools. Schacht considered the accounts unreliable, seeing them as an *ex post facto* justification for a school's existence. Following him, Christopher Melchert (1997) has argued that it was not the founder who was really responsible for the establishment of the "school" (*madhhab*) named after him. Instead, it was probably one of his pupils, or his pupils' pupils, who established the basic elements of a *madhhab*. The basic elements of a *madhhab*, he argued, are the establishment of a predominant teacher, an educational system whereby the teachings of the *madhhab* might be transmitted from generation to generation and the composition of summaries (called *mukhtaṣars*, along with commentaries, *taʿliqāt*). Melchert argues that all these criteria of a *madhhab* were in place in the early tenth century, and three of the *madhhabs* (Ḥanafīs, Shāfiʿīs and Ḥanbalīs) can be dated from then. Geographically, they can be located in Baghdad. The Mālikī school predominated in the Muslim West (North Africa and Spain), and the establishment of the Mālikī *madhhab* in the West can be dated to roughly the same time, perhaps a little earlier. Over the next century or so, other potential schools emerged, but failed to establish themselves. They failed, Melchert argues, because they never instituted the basic elements of a *madhhab*. They did not establish a system of knowledge transmission from one generation to the next, nor did they compose useable legal summaries to be used as subjects for later commentaries. Amongst the schools which did not survive were the Awzāʿī, Ẓāhirī and the Jarīrī *madhhabs*. The Awzāʿī school has already been mentioned, and was swallowed up in the general

traditionalist movement and the shift of the empire's political centre to Iraq and Baghdad. The Jarīrī school was based around the teachings of Muḥammad ibn Jarīr al-Ṭabarī, and whilst there were jurists who clearly continued to support his opinions, neither he nor his followers established a stable system for the transmission of legal knowledge. He was also vilified by the followers of Ibn Ḥanbal, and hence became unpopular. The Ẓāhirī School, supposedly founded by Dāwūd al-Iṣfahānī promoted the "literal" or "apparent" meaning of the legal source texts (the Qur'ān and *sunna*). Such a method was seen as too rigid to be practical by other scholars; perhaps this is the reason why the Ẓāhirīs following Dāwūd failed to get positions of patronage in Abbasid Baghdad, whilst jurists from the other schools did. The ability of a school based around an individual scholar to transform itself into a full-blown teaching institution was crucial in securing its long-term survival. Those schools which could effect this transformation survived. Those that could not, just disappeared. These are amongst the possible explanations for the failure of some schools to gain sufficient popularity to be included in the final four.

The acceptance that there were four schools of Sunnī law, and that no new schools could be established, happened gradually. Exactly when a consensus was reached is the matter of some debate amongst historians of Islamic law, but it is better to see it as a process rather than a single event (i.e., there was no meeting at which jurists agreed there were four schools and no others). It happened in tandem with the emergence of a theological orthodoxy – namely the increased popularity of the theological ideas of Abū 'l-Ḥasan al-Ash'arī (d. 935) and Muḥammad al-Māturīdī (d. 944) and the reduction in the popularity of Mu'tazilī doctrines. One can probably say that it was in the late eleventh century at the latest, that the vast majority of Sunnī jurists decided to affiliate themselves to one of the four schools (Makdisi 1981: 10–32). There were, of course, schools of jurisprudence emerging outside of Sunnī "orthodoxy" – including the Shī'ī schools of the Zaydīs and Ithnā 'Asharīs, and the Ibāḍiyya – in what is likely to have been a parallel process.

Concomitant with the establishment of a set number of schools was the writing of works of *uṣūl al-fiqh*. Within the purview of *uṣūl al-fiqh* was the selection and proof of the sources of the *sharī'a* – that is, an examination of which sources can act as the objects of exegesis in the first place. Once Muslim scholars started writing works of *uṣūl al-fiqh*, the sources of law were listed as four. The earliest surviving examples of full works of *uṣūl al-fiqh* are from the late tenth century, though it was clear that these theoretical issues had been discussed well before the earliest full text of *uṣūl al-fiqh* (*al-Fuṣūl* by Aḥmad al-Jaṣṣāṣ (d.981)) was written. The *Risāla*, supposedly authored by al-Shāfi'ī, has also survived, and is, of course, much earlier than al-Jaṣṣāṣ's *al-Fuṣūl*. However, the *Risāla* is much less developed than *al-Fuṣūl* and is, at best, a prototype work of *uṣūl al-fiqh*. Whilst we have no texts between the *Risāla* and *al-Fuṣūl*, it is clear that works of legal theory were being written, which may be lost now, but which established the genre for al-Jaṣṣāṣ's work. The *uṣūlīs* (as the authors of *uṣūl al-fiqh* became known) listed four sources of law:

1 *kitāb* (the "book" – meaning the Qur'ān)
2 *sunna* (the "example" – meaning the actions and deeds of the Prophet)
3 *ijmā'* (the "consensus" – meaning the consensus of the Muslim community, normally meaning the community of scholars)

4 *qiyās* (sometimes translated as "analogy," but in truth meaning any means of extending the message of the text to circumstances not mentioned in the text).

For each of these sources, the *uṣūlīs* supplied proofs of their role as a source. Establishing them as a source though does not necessarily establish what they might mean. Rather, the legal rulings within these sources are potentially part of the *sharīʿa*. The *uṣūlīs* argued that these four were the sources of law because, first, the Qurʾān is the revelation of God, and we know its contents because it has been transmitted perfectly by generations of Muslims. The example of the Prophet is a source because the Qurʾān established that the Prophet is a guide for the believers. The consensus of the Muslims is a source because the Prophet said that when his community agrees on something, then it is a rule ("My community shall not agree upon an error" and many other similar sayings). The community (in particular the scholars within the community) have agreed that if one can discover the reason why God or the Prophet made a ruling in one case, one can transfer that ruling to other cases, unmentioned by God or the Prophet. By following these sources, the individual jurist could reach a decision. Most importantly, he could identify within these sources "indicators" (*adilla*) from which the jurist can assess an action. In these works, jurists attempted to describe the method whereby a particular rule might be developed. So, for example, works of *uṣūl al-fiqh* discussed questions like "When God gives us a command in the Qurʾān, or through the Prophet Muḥammad, can we be certain that he is making the thing he is ordering obligatory?" It would seem obvious, at first blush, that an order to perform an action creates an obligation to perform that action in the recipient. Hence when God says, "O Believers! Uphold the prayer!," he has made prayer obligatory for the believers (i.e., the Muslims) to perform prayer and to persuade others to do so. However, there are a number of examples in the Qurʾān and elsewhere when God orders something, but it is not obligatory. For example, when God says, "Marry as many women that seem good to you" (Qurʾān 4:3), is he saying that everyone must marry (i.e., it is an obligation, and if one does not marry one is disobeying God), or is he merely giving us a recommendation to marry? Similarly, when God says, "when the pilgrimage is over, then go hunting" (Qurʾān 5:2) is he saying that when the pilgrimage is over everyone must go hunting (or even that it is recommended to go hunting), or is he saying that hunting, which was forbidden during the pilgrimage, is permitted once it is over? Is he in fact saying, "Once the pilgrimage is over, you are permitted to hunt"? This sort of question concerns the manner in which sources might be interpreted, and though one finds these theoretical questions discussed in other genres of literature (in some *ḥadīth*s, and in works of *fiqh* more generally), the genre of *uṣūl al-fiqh* became popular amongst jurists because it concentrated on these issues of exegetical theory.

Whether an action was permitted (*ḥalāl*) or forbidden (*ḥarām*) was central to the methodology found in works of *uṣūl al-fiqh*. Within the category of *ḥalāl*, a jurist could also decide whether the indicators pointed towards the action being reprehensible (*makrūh*, that is allowed, but discouraged), neutral (*mubāḥ*), recommended (*mustaḥabb*), and obligatory (*wājib*). For example, consider the four sources of law:

1 and 2 The Qurʾān and the *sunna* of the Prophet establish that the consumption of wine is forbidden (e.g., Qurʾān 5:90 "Wine and gambling (games of chance) and

sacrificing to stones and (divination) by arrows are a disgrace, the works of Satan").

3 The *ijmāʿ* (consensus of jurists) was that all the evidence points towards there being a reason for this prohibition (i.e., it is not simply a demand from God without a reason). The reason was, they all agreed, wine's intoxicating properties.

4 Therefore by *qiyās* (extension), if wine is intoxicating, all things with this property are also forbidden.

Each jurist when searching through the sources for a ruling on a particular issue would go through a reasoning process similar to the one just outlined. God, it was believed, required jurists to carry out this search to the best of their ability and with maximum effort. The process was called in Arabic *ijtihād* ("to try one's hardest") and the one who did it was called a *mujtahid*. Each *mujtahid* needs to be qualified in the religious sciences to search the sources and to interpret them correctly, and *mujtahid*s are very likely to disagree. For example, on the question of wine, some jurists (particularly some of those who followed Abū Ḥanīfa) argued that the rules concerning wine were designed to stop people getting drunk. Therefore, if someone could consume a substance and not be affected by it at all, then surely (they argued) consuming this substance was not forbidden. The classic case is that of date-wine (*nabīdh*, which is usually made to be much weaker than grape wine). Consuming intoxicating substances such as *nabīdh* until one was drunk may be forbidden, but consuming them without any intoxication (in small quantities and with low alcohol content) was surely permitted (though it might be discouraged). Nearly all other jurists disagreed, and maintained a total prohibition on the consumption of alcoholic substances. However, there remained both amongst and within the four schools a difference of opinion (*ikhtilāf*). Works of *uṣūl al-fiqh* generally explained this *ikhtilāf* by reference to the individual *ijtihād* of great *mujtahid*s which, because of the limited nature of the sources, was bound to lead to different opinions.

An examination of the works of *fiqh* of the various Sunnī schools shows that on nearly every area of law, the jurists differed. They all agree that one should pay alms (*zakāt*), but they differ on how much, to whom and for what it might be spent. They all agree that an adult woman must consent to any marriage arranged by her guardian, but they differed over how consent might be known to have been given. For every area of law, personal morality and religious ritual practice, the jurists differed amongst themselves. They were not embarrassed by this *ikhitlāf*, but instead they saw it as a "mercy" from God (indeed the Prophet Muḥammad is supposed to have made this point himself). The longer works of *fiqh* recorded the *ikhtilāf* on every issue, beginning with ritual purity (*ṭahāra*) running through the "pillars" (*arkān*, prayer, fasting, almsgiving, pilgrimage), and moving onto societal matters such as marriage and divorce, trade contracts, rental agreements, judicial organization, criminal law, tort law and state organization and warfare. *Fiqh* works, then, reflected the fact that the *sharīʿa* covers every possible area of human activity from the individual and ritual acts (known as *ʿibādāt*) to societal organization and relations (known as *muʿāmalāt*).

Scholars drew on these works of *fiqh* when asked for their opinion on individual matters (and they gave *fatwā*s in response to such questions). Judges drew on the *fiqh* (though they also used many other sources such as local custom) when they had to make decisions in the cases heard before them (described in court records or *sijjilāt*).

However, despite the *fiqh* being enormously important and influential in the operation of the law in Muslim society, any work of *fiqh* was always considered to be an individual scholar's opinion about the content of the *sharīʿa*. This scholar may be learned, and respected, but his opinion as to the content of the *sharīʿa* is not the same as God's law. There was always a difference between what scholars put forward as their best attempt at finding God's rule on any issue (*ijtihād*), and God's own opinion. God has given us indicators (in the texts) of his opinion, but interpreting them was a human activity.

Modern developments in Sunnī legal thought

The above account describes the overwhelming emphasis of the Sunnī Muslim juristic tradition from the eleventh to the late-eighteenth century. This is not to say that there were not advancements within this period or that the law remained static. Because of the approval of *ikhtilāf* and independent inquiry, there were always novel opinions emerging. There were scholars who presented novel re-workings of the law in this period, and there were certainly innovative applications of the law by judges in the many dynasties which ruled the Muslim world during this period. However, the basic structure of the intellectual investigation of the law – that is *fiqh* and *uṣūl al-fiqh* – remained remarkably stable. Some scholars, both Muslim and non-Muslim, have argued that this stability implied a lack of innovation, and that the Muslims were merely following (*taqlīd*) previous scholarship. This led to atrophy or ankylosis within the study of the law; some even said that after the tenth century the "gate of *ijtihād*" was closed. Certainly some later Muslim scholars were so much in awe of the great achievements of the early generations of jurists, in particular the founders of the Four Schools, that they did proudly proclaim themselves as mere "followers" (*muqallidūn*) of past legal authorities. Much of this so-called classical and post-classical legal scholarship was not geared towards discovering the *sharīʿa* through an examination of the sources. Rather later scholars aimed to discover (from the available sources) the *madhhab* founder's opinion of the *sharīʿa*. It was the founder's opinion that became important, because God's actual ruling (i.e., the *sharīʿa*) was seen as too difficult to attain. One would have to work through the sources to understand God's intended meaning, and that was beyond scholars so removed from the circumstances of revelation.

In the eighteenth and nineteenth centuries, movements appeared in the Muslim world which were unhappy with merely following established school traditions (*taqlīd*, see Vikor 2005: 222–54). Some of these movements can be seen as internal Muslim developments. For example, in Arabia, the scholar Muḥammad ibn ʿAbd al-Wahhāb (d. 1792, and the founder of the Wahhābī trend) argued that much of previous Muslim scholarship and practice – both legal and theological – had been infected by "un-Islamic" ideas, and scholars were slavishly following the ideas of their predecessors. What was needed, he argued, was a renewed emphasis on the sources of the law (the Qur'ān and the *sunna*) and the interpretation of the first generations after the Prophet.

Other movements are better viewed as Muslim reactions to Western colonialism (particularly Britain and France) and the ideas that they brought. For example, the Egyptian jurist Muḥammad ʿAbduh (d. 1905) spent time in Paris, and he developed

a distinctly modern approach to legal questions. He argued that Islamic law had to adapt in the light of reason. After returning to Egypt (and eventually becoming Grand Mufti of Egypt in 1899), he promoted novel re-interpretations of Islamic law in the light of Western science and rationality. For example, he allowed meat slaughtered by Christians and Jews to be eaten by Muslims whereas most schools previously had viewed this as at least reprehensible (*makrūh*), and perhaps even forbidden (*ḥarām*).

Scholars such as these, and the movements they inspired, have led in the last two centuries to a reduction in the importance of the school tradition (*madhhab*) across the Sunnī world. With this, there has been a concomitant increase in legal ideas which are not tied to a particular school, but aim to reform (*iṣlāḥ*) the law so that it fits in with the modern world. Islamic legal scholarship, for the foreseeable future, will not be restricted to the structures and ideas of the classical period and the Four Schools. Instead, novel and challenging questions are emerging which, in the opinion of most modern Muslim intellectuals, cannot be answered by loyalty to a school system that was formed over a thousand years ago.

References and further reading

Al-Azami, M. (1985) *On Schacht's Origins of Muhammadan Jurisprudence*, New York: Wiley; Riyadh: King Saud University.

Bearman, P., Peters, R. and Vogel, F. E., eds. (2006) *The Islamic School of Law: Evolution, Devolution, and Progress*, Cambridge, MA: Harvard University Press.

Berg, H. (2000) *The Development of Exegesis in Early Islam: The Debate over the Authenticity of Muslim Literature from the Formative Period*, Richmond: Curzon Press.

Burton, J. (1977) *The Collection of the Qur'ān*, Cambridge: Cambridge University Press.

Calder, N. (2004a) "*Sharī'a*," *Encyclopaedia of Islam Second Edition*, CD-Rom version, Leiden: Brill.

—— (2004b) "*Uṣūl al-fiḳh*," *Encyclopaedia of Islam Second Edition*, CD-Rom version, Leiden: Brill.

—— (2007) "Feqh," *Encyclopaedia Iranica*, online at http://www.iranica.com/newsite (accessed September 10, 2007)

Goldziher, I. (1971) *The Ẓāhirīs: their Doctrine and their History: a Contribution to the History of Islamic Theology*, Leiden: E. J. Brill.

Hallaq, W. (1997) *A History of Islamic Legal Theories: an Introduction to Sunnī uṣūl al-fiqh*, Cambridge: Cambridge University Press.

—— (2001) *Authority, Continuity and Change in Islamic Law*, Cambridge: Cambridge University Press.

Hurvitz, N. (2002) *The Formation of Ḥanbalism: Piety into Power*, London: RoutledgeCurzon.

Makdisi, G. (1981) *The Rise of the Colleges: Institutions of Learning in Islam and the West*, Edinburgh: Edinburgh University Press.

Masud, M. K., Messick, B. and Powers, D., eds. (1996) *Islamic Legal Interpretation: Muftis and their Fatwas*, Cambridge: Harvard University Press.

Masud, M. K., Peters, R. and Powers, D., eds. (2006) *Dispensing Justice in Islam: Qadis and their Judgements*, Leiden: Brill.

Melchert, C. (1997) *The Formation of the Sunnī Schools of Law, 9th–10th Centuries C.E.*, Leiden: Brill.

Motzki, H. (2002) *The Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools*, Leiden: Brill.

Schacht, J. (1950) *The Origins of Muhammadan Jurisprudence*, Oxford: Clarendon Press.

Vikor, K. (2005) *Between God and the Sultan: a History of Islamic Law*, London: Hurst.