This, in fact, must be the case in order to guarantee the transmission of *ḥadīth* reports from Muḥammad. It is not surprising, then, to note that the books of *ḥadīth* were all compiled after the time of al-Shāfiʿī when the need for these sources was crucial.

Start Here =>

The development of the schools of law

The major schools of law which have survived down until today have their development in the time of al-Shāfiʿī and after. The process was not one of transforming the local practice into a school as such, but of championing the doctrine of a teacher and the tradition which that teaching represented. In Kufa the Ḥanafī school, including the star pupils al-Shaybānī (who attributed his writings to Abū Ḥanīfa and thus created the literary tradition which is the school of law, per se) and Abū Yūsuf, became paramount and drew into their system the city of Basra. Similarly, in Medina and followed by Egypt and Mecca, Mālik ibn Anas, the person associated with the book called *al-Muwaṭṭaʾ*, one of the first written compendiums of legal traditions,[13] became central at the Mālikī school, destined to find its major development in North Africa. The book ascribed to Mālik was an attempt to provide a very limited number of traditions concerning a given topic, and then to interpret them in the light of the prevailing legal system of Medina. This latter element is the controlling factor in the whole book, rather than the traditions themselves.[14]

Al-Shāfiʿī's school appears to have been based around him personally. He considered himself a member of the school of Medina, but he ended up not following the tradition of that area. His efforts were directed towards combining the pragmatic approach and position of Medina with the demands of the Traditionalists for adherence to the *sunna* of Muḥammad. Cairo proved to be the focal point of the development of his school, an area where al-Shāfiʿī spent the last part of his life. The school emerged by the ninth century as one of the three major groupings which continued their efforts in developing the *sharīʿa*, or law, of Islam and out of which eventually came the *uṣūl al-fiqh,* the principles of jurisprudence.

Principles of jurisprudence

The emergence of a fully enunciated theory of jurisprudence was not an instantaneous development of the law schools. The works of the earliest representatives of the law schools display a measure of disorder in their treatments of the law and rarely put forth the full

basis of the reasoning in individual cases. It was not until the eleventh century that matters became more precise, so that definition of terms and reformulation of earlier decisions took place in works such as that of al-Sarakhsī (d. 1096) in the Ḥanafī school. This was not a simple reiteration of, or commentary upon, the earlier works, but a creative reworking of the entire structure of the *fiqh* process. The underlying drive behind the literature was a theological one. The desire was to demonstrate the completeness of Islamic law. Since it must be possible to answer every legal question on the basis of the sources of law, these works are dedicated to demonstrating that this is so. In order to do that, cases with the most remote possibility of occurring in human interaction are dealt with, precisely to show that the law (or the skill of the jurist) was such as to cover every potentiality.[15]

According to the developed jurisprudential theory in Sunnī Islam, which has its ultimate basis in the work of al-Shāfiʿī, there are four sources from which law can be derived: the Qurʾān, the *sunna* of Muḥammad, consensus (*ijmāʿ*) of the community and/or the scholars, and analogy (*qiyās*). The first two provide the material basis upon which *qiyās* must operate. The vast majority of laws have, in fact, been fashioned by *qiyās* because the Qurʾān and the *sunna* provide a fairly limited selection of detailed legal provisions.

In general terms, an individual jurist first had to scour the works of previous jurists to find another case under consideration that was the same, or a case with similar facts. Should he not find one, he was faced with an unprecedented instance for which he would then use *qiyās*, using as his starting point legal information found in the Qurʾān, *sunna* or rendered absolute law by *ijmāʿ*.

Qiyās works on the basis of finding the *ʿilla,* the common basis between a documented case and a new situation; this process depends upon the powers of deduction of the jurist and the results of his work will depend upon *ijmāʿ*, "the consensus of opinion", in whether or not it supports his judgement. Should the decision find general support, it becomes an irrevocable law and thus may serve as the basis for further deductions by means of *qiyās*.

The operation of *ijmāʿ*, "consensus", was a major issue in the development of the principles of jurisprudence, one which jurists took pains to prove was in fact a legitimate process substantiated by the Qurʾān and the *sunna*; only in this way, it was argued, was it possible to distinguish between jurists who delegated to themselves the right to make laws (perhaps an accusation resulting from polemical discussions with Jews and Christians) and those who worked legitimately

within the Muslim framework. *Ijmāʿ* functions to confirm rulings. While, in theory, this could take place at the time of a given ruling, in practice it occurred in retrospect. If no dissenting voices were heard by the time of the following generation, then it could be taken that *ijmāʿ* had confirmed a ruling. *Ijmāʿ* is often seen to be the most crucial element of the whole legal structure, for it is through its action that all elements are confirmed, especially individual *ḥadīth* reports and even, one might say, the Qurʾān itself, which is only authoritative because all Muslims agree that it is so. This is emphasized by the fact that there is no centralized authority (in Sunnī Islam) by which such a matter can be established. Muslim theorists, however, did not view the process in this manner, since they still needed to confirm the validity of *ijmāʿ* as a concept by means of *ḥadīth* and Qurʾān. For them, the twin scriptural sources were authenticated by customary usage and their miraculous nature, rather than by consensus itself; thus no circular reasoning was involved.[16]

Relations between the schools of law

The Traditionalist school, which had demanded a complete rejection of personal reasoning, was not totally satisfied by al-Shāfiʿī's compromise in working out the relationship between the sources of law. Ibn Ḥanbal (d. 855), who was the eponym of the Ḥanbalī school, structured his thought on the principle of adherence to *ḥadīth* in preference to personal reasoning. He manifested this attitude in his compendium of traditions, the *Musnad*. The anecdote is related that Ibn Ḥanbal never ate a watermelon because he could not find a tradition which suggested that Muḥammad had done so or that he had approved of such.[17] Over the centuries, however, even this school, by the time it was accepted within the structures of Islamic juristic orthodoxy, came to the position of accepting the *uṣūl al-fiqh* as enunciated by the other schools, and thus embraced reasoning and consensus: watermelons were deemed acceptable.[18]

Another school emerged in the ninth century, known as the Ẓāhirī group, founded by Dāwūd ibn Khalaf (d. 884). Claiming allegiance to the *ẓāhir* or "literal" sense of both the Qurʾān and prophetic *ḥadīth,* the school rejected all aspects of systematic reasoning employed in the application of *qiyās*. This led to peculiar combinations of stances on the part of the school in contrast to the others, appearing liberal in some instances – because it followed the letter of the law and did not extend it into the many other areas deemed analogous by other schools – and being far more strict in others. Ibn Ḥazm (d. 1065)

remains the intellectual high point of this school which, in fact, lost much of its influence after his time.[19]

By the end of the tenth century, the four schools – Ḥanafiyya, Mālikiyya, Shāfiʿiyya and Ḥanābila – had solidified their position to the extent that no further schools of law emerged from that point on. This did not mean that no further legal judgements were to be made, but, rather, that the principles for which the schools stood and the legal stances which they had developed were to be the points within which all further discussions were to be conducted.[20]

The extent to which the schools disagree on points of law is of little concern to Muslims, for there is a tradition ascribed to Muḥammad (although it is not found in the canonical collections of *ḥadīth*) which addresses itself precisely to the situation: "Difference of opinion in the community is a token of divine mercy."[21] An attitude of mutual recognition among the schools has prevailed, such that orthodoxy in matters of law is defined only by acceptance of the roots of the law; this means that the Ẓāhirī school was excluded due to its rejection of *qiyās*. Where a difference of opinion exists between the schools, it is to be taken that each opinion is an equally probable expression of God's will. On a matter seemingly as basic as the food laws, differences may be noted in whether certain animals are declared to be permissible or disapproved:

> The followers of al-Shāfiʿī disagree concerning aquatic animals. Some claim that fish are permissible but that frogs are forbidden. Others say that if the animal is in the form of a fish or of an animal ritually slaughtered in good faith, then it is permissible to eat it if it comes from the sea without being ritually slaughtered; however, if it is in the form of something which is not permitted to be eaten in good faith, then one is forbidden to eat it. This is the judgement of Abū Thawr. Others say that everything from the sea is to be judged by the law of fish, except the frog which is forbidden because the prophet forbade killing it. This is the judgement of ʿAlī ibn Khayrān.
>
> Mālik and Rabīʿa declare all aquatic animals allowable, even the tortoise and the like. This is suggested by a report from Abū Bakr who said, "There is nothing in the sea besides animals which God would slaughter for you."
>
> Abū Ḥanīfa forbids everything which does not have the form of a fish among the aquatic animals. [22]

Thus, the Ḥanafī school allows aquatic animals to be eaten only if they have the form of a fish, while the Mālikī school considers all aquatic animals permissible. Both positions are considered equally valid and equally "orthodox" for all Muslims.

Stop Here =>

Law and morality

After considering a given legal case, a jurist is able to declare whether the resultant action itself is to be classified as falling within one aspect of a five-level categorization of acts (*al-aḥkām al-khamsa*): obligatory (*wājib*), recommended (*mandūb*), permissible (*mubāḥ*), disapproved (*makrūh*), or forbidden (*ḥarām*). Notably, in the light of the Quranic data as discussed in Chapter 2, *ḥalāl* did not become a preferred term of ethical behaviour, generally (but not always) being restricted to a quality of entities and not reflective of acts themselves. As legal theory evolved, everything was deemed to be *ḥalāl* which was not specifically prohibited (and in that sense was the opposite of *ḥarām*), but, in the ethical system as it developed, the word *mubāḥ* became most commonly used for permissible. The word *ḥalāl* gained a connotation of "permitted," especially as it applied to dietary restrictions and thus referred to whatever items may be eaten by Muslims such as ritually slaughtered food (and became a functional parallel to the way "kosher" is used in Jewish parlance).

Speaking in very broad terms, performance of obligatory actions will bring reward in the hereafter for the person concerned, while omission of the actions will bring punishment. Recommended actions bring reward but no punishment for their omission. Forbidden actions will bring punishment for being committed, but reward for being avoided, while disapproved actions bring reward for being avoided, but no punishment should they be performed. The vast majority of actions fall into the "permissible" category, the ramifications of which will not be felt in the hereafter. There are many subtleties in the application of these categories, but, in principle, they apply whether the concern is ritual, moral or legal; all activities are considered in the same way and all are under the rule of Islam. It is in the nature of this law, however, that even an act which is declared to be disapproved can still bring about a binding result. Marriages, for example, can be dissolved in a number of ways. According to the Ḥanafī jurist al-Marghinānī (d. 1197), the most laudable way of divorce is for "the husband to repudiate his wife within a single sentence during the time she is not menstruating," and then leave her alone for the next three