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George Makdisi

THE SIGNIFICANCE OF THE SUNNI SCHOOLS OF LAW IN ISLAMIC RELIGIOUS HISTORY

One of the more interesting phenomena in Islamic religious history is the development of the schools of law. This phenomenon has seldom failed to arouse our interest, though it has consistently eluded our understanding. The difficulty in grasping the significance of the schools of law is evidenced by vacillation in translating the term *madhhab*. This term was first translated as 'sect,' then as 'rite' or 'school.' But a Sunni *madhhab* could not be a sect, since the term 'sect' is applied to a dissenting religious body, one that is heretical in the eyes of other members within the same communion. That is not the case with the Sunni *madhhabs*, all of which are regarded equally as orthodox. Nor is the term 'rite' an adequate one, since it applies to a division of the Christian church as determined by liturgy; and, unlike a transfer from one rite to another in Christianity, a transfer requiring certain formalities, the transfer in Islam is made from one *madhhab* to another without any formalities whatsoever. The term 'school,' for lack of a better term, is the most acceptable; it is the one that offers the least difficulty. In using it we must keep in mind what the late Professor Schacht has said about the early schools: that the term 'ancient schools of law' implies neither any definite organization, nor a strict uniformity of doctrine within each school, nor any formal teaching, nor any official status, nor even the existence of a body of law in the Western meaning of the term.¹

The idea of a school of law implies a body of doctrine followed by the members of that school; but this idea does not accord with a system wherein jurisconsults are expected to arrive at legal opinions individually after reflecting upon the sources of the law to the best of their ability, that is, after practising *ijtihād*, personal reasoning, a very individual activity. The result of this *ijtihād* is the *fatwā*, or legal opinion. There was no such thing as a *fatwā* arrived at by a committee of jurisconsults, let alone by a whole school of them. Furthermore, Islam encourages the practice of *ijtihād*. A tradition going back to the Prophet makes it quite clear that a jurisconsult, in practising *ijtihād*, receives a reward in the world to come, even if he should be mistaken; and if right, he is doubly rewarded. The encouragement given him to practice *ijtihād* is such that he is rewarded regardless of the result.

AUTHOR'S NOTE: This paper was the presidential address delivered at the Annual Meeting of the Middle East Studies Association in New York on 10 November 1977.

¹ J. Schacht, *Esquisse d'une histoire du droit musulman* (Paris: Max Besson, 1953), p. 24; idem, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), p. 28.

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Ijtihād, being personal, naturally leads to disagreement. For one legal opinion will be confronted by another or others, by members of the same school or by those of other schools. This disagreement (*khilāf*) leads to disputation (*munāẓara*) the purpose of which is to defend the validity of one's own opinion, or thesis, and to convince the opponent of its validity, or reduce him to silence by destroying his thesis.

The process proceeded from personal legal opinion (*fatwā*), arrived at through personal reasoning (*ijtihād*), and from there to disagreement (*khilāf*), and eventually to consensus (*ijma'*), through the instrumentality of the disputation (*munāẓara*). This process is amply documented in the history of Muslim education. It is a process that cuts across the schools of law (*madhāhib*), involving individual jurisconsults of any and all Sunni schools. It worked this way at the very beginning, in the first Islamic century, when there were no recognizable schools of law; it worked this way in the following century when the schools emerged designated geographically; it continued to work this way when they became personal schools, and later still when the personal schools proliferated so that their number was said to have multiplied into the hundreds; and the process remained the same when the Sunni schools finally dwindled to four. In short, the process was the same before the advent of the schools of law as we know them, and it remained the same afterward throughout their development. The reason for this is that the process involved, not the schools as such, but rather the individual jurisconsult.

Indeed, the highest function of a jurisconsult was to issue legal opinions, *fatāwā*, and he did so according to his own lights, knowing all the while that his legal opinions had to confront other legal opinions of other jurisconsults. Within each school, as well as among all schools, personal legal opinions were pitted against one another, and the best-defended opinion survived. In the arena of controversy, one may therefore find a jurisconsult of one school upholding the thesis of a jurisconsult of another school against a third, of his own school. Had it been otherwise, the schools of law would not have been acceptable to one another, equally Sunni 'orthodox.'

Schacht quotes an interesting passage from Shāfi'ī to the effect that every Muslim capital has a body of legal knowledge and its jurisconsults follow the opinion of one among them in most of his teachings (*mā min bilādi 'l-muslimīna baladun illā wa-fihī 'ilmun qad šāra ahluhū ilā 'ttibā'i qauli rajulīn min ahlihī fī akthari aqwālih*).² This, of course, means that such a leading jurisconsult had gained the reputation of a *leader* whose opinions prevailed over all others in the arena of disputation. He had the reputation of successfully defending his thesis and demolishing that of his opponent. This passage from Shāfi'ī, in addition to bringing out the significance of geographical regions as far as schools of law were concerned – a point that Schacht wanted to make – also brings out the importance

² J. Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: The Clarendon Press, 1950), p. 7. For the Arabic text, see Shāfi'ī, *Kitāb al-Umm*, 7 vols. (Cairo: Būlāq Press, 1321–1325/1903–1907), VII, 246.

of the jurisconsult who has achieved leadership, or *riyāsa* – a point I wish to make here.

It is in fact this *riyāsa*,³ or leadership, which led to the proliferation of the personal schools of law. Some five hundred schools of law are said to have disappeared at or about the beginning of the third/ninth century.⁴ But even then the schools had not yet settled down to the number of four. We know that the first century of Islam produced individual jurisconsults; that the early part of the second century is the period during which the geographically designated schools appeared; and that beginning with the second half of the second century, geographical schools gave way to personal schools.

When we refer to the old sources for enlightenment regarding the personal schools of law, we come across two terms that are also applied to theological movements. The terms are *ahl al-ḥadīth*, traditionalists, and *ahl ar-ra'y*, rationalists, or *aṣḥāb al-ḥadīth* and *aṣḥāb ar-ra'y*. Besides the term *ahl ar-ra'y* for the rationalists, other terms are used, such as *ahl al-kalām*, *ahl an-naẓar*, and *ahl al-qiyās*.

The historical sources list the various personal schools of law under one or the other of these two terms: the partisans of *ḥadīth* or the partisans of *ra'y*. But the sources are not consistent. Ibn Qutaiba⁵ lists all the eponyms of the schools of law, except Aḥmad b. Ḥanbal, as belonging to the rationalist movement of *aṣḥāb ar-ra'y*; and when he deals with *aṣḥāb al-ḥadīth*, or traditionalists, he cites only individual tradition-experts. On the other hand, the tenth-century geographer al-Maqdisī considers the followers of Aḥmad b. Ḥanbal, along with those of Auzā'ī (d. 157/774), Ibn Mundhir (d. 236/850–861) and Iṣḥāq b. Rāhawaih (d. 238/852–853), as *aṣḥāb al-ḥadīth*, as though they did not belong to the schools of law (*madhāhib al-fiqh*), under which designation he cites the Ḥanafīs, Mālikīs, Shāfi'īs, and Zāhirīs.⁶ Elsewhere in the same work, al-Maqdisī cites the Shāfi'īs, in contrast with the Ḥanafīs, as *aṣḥāb al-ḥadīth*;⁷ and in yet another passage of the same author⁸ Shāfi'ī and Abū Ḥanīfa are considered as belonging to *ra'y* in opposition to Aḥmad b. Ḥanbal.

Shahrastānī classifies Mālik, Shāfi'ī, Aḥmad b. Ḥanbal, and Dāwūd b. Khalaf as *aṣḥāb al-ḥadīth*, and only the school of Abū Ḥanīfa as *aṣḥāb ar-ra'y*.⁹

³ On the concept of *riyāsa*, see the study by G. Makdisi in the forthcoming *Mélanges* in honor of G. C. Anawati and Louis Gardet (Louvain).

⁴ A. Mez, *The Renaissance of Islam* (London: Luzac, 1937), p. 212.

⁵ Ibn Qutaiba, *Kitāb al-ma'ārif*, ed. F. Wüstenfeld (Göttingen, 1850), pp. 248 f., cited in I. Goldziher, *Die Zāhiriten, ihr Lehrsystem und ihre Geschichte* (Leipzig: O. Schulze, 1884), p. 4 n. 1.

⁶ Al-Maqdisī, *Aḥsan at-taqāsīm fī ma'rifat al-aqālīm*, ed. M. J. de Goeje (Leiden: E. J. Brill, 1906), p. 37, lines 5, 7–8 (hereafter al-Maqdisī).

⁷ *Ibid.*, p. 38, lines 8–9.

⁸ *Ibid.*, p. 142, line 11.

⁹ Shahrastānī, *al-Milal wa 'n-nihal*, 5 vols. (on the margins of Ibn Ḥazm, *al-Fiṣal fī 'l-milal wa'l-ahwā' wa'n-nihal* [Cairo: al-Adabiya Press, 1317–1321/1899–1930]), II, 45, lines 25–30, and p. 46, lines 15–16.

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Ibn Khaldūn also has this classification, but places Dāwūd at the head of a separate third class.¹⁰

Ibn an-Nadīm¹¹ and al-Maḡdisī¹² classify the Ḥanbalīs, Auzā'īs, and Thaurīs as the most important schools of law of the traditionalists (*aṣḥāb al-ḥadīth*). At the beginning of the fourth/tenth century the schools of jurisprudence mentioned are the Shāfi'ī, Mālikī, Thaurī, Ḥanafī, and Dāwūdī, according to Subkī.¹³ At the end of that century, according to al-Maḡdisī,¹⁴ they are the Ḥanafī, Mālikī, Shāfi'ī, and Dāwūdī. The Ḥanbalīs are not cited as a school of law by these sources in the fourth/tenth century.

One thing is clear: the sources are confusing. Some of the confusion results from a misunderstanding of the term *aṣḥāb al-ḥadīth*. Those who belonged to this group were not necessarily experts on traditions; they were jurisconsults who belonged to the traditionalist movement, and who were opposed to rationalism. The term *aṣḥāb al-ḥadīth* was confusing not only to modern scholars; it had to be explained even to some of the Muslims themselves. For this reason, Sha'rānī, in speaking of *ahl al-ḥadīth*, took time to explain the meaning of the term as follows: 'by *ahl al-ḥadīth* is meant that which comprises the traditionalists [lit.: people of the Sunna] among the jurisconsults, even though they may not be tradition-experts' (*al-murādu bi-ahli 'l-ḥadīth mā yashmulu ahla 's-sunna minā l-fuqahā'*, *wa-in lam yakūnū ḥuffāẓan*).¹⁵

One of the problems occupying the minds of scholars in this field is the disappearance of the personal schools of law that had come into existence and the survival of only four. Relying on a passage in al-Maḡdisī's geography, scholars have explained the phenomenon as owing to the school's geographical location outside the mainstream of activity, away from the pilgrims' highways leading to Mecca. In the passage in question, al-Maḡdisī is answering an objection regarding the Koranic scholar Ibn 'Āmir (d. 118/736), whose variant readings of the Koran are considered among the seven variant readings. Al-Maḡdisī said that had Ibn 'Āmir been in the Ḥijāz or in 'Irāq he would not have been unknown, nor would his readings have been aberrant; but he was in Egypt, an outlying district, where he was visited by only the few who went there to see him, and who then transmitted his readings. Then al-Maḡdisī goes on to say: 'Do you not see al-Auzā'ī who was one of the leading jurisconsults, and whose school (*madhhab*), for this reason, did not survive? Now if these two learned men had been on the

¹⁰ Ibn Khaldūn, *al-Muqaddima* (Cairo, 1274/1857–1858), p. 218, line 1; in the translation of F. Rosenthal, *The Muqaddimah*, 3 vols. [New York: Bollingen Foundation, 1958], III, 5), cited in Goldziher, *Die Zāhiriten*, p. 5 n. 3.

¹¹ *Fihrist*, p. 225, cited in Mez, *Renaissance of Islam*, p. 209 n. 3.

¹² Al-Maḡdisī, p. 37.

¹³ Subkī, *Ṭabaqāt ash-shāfi'iya*, 6 vols. (Cairo: al-Ḥusaimīya Press, 1324–1906), II, 337.

¹⁴ Al-Maḡdisī, p. 37, line 5.

¹⁵ Ash-Sha'rānī, *Kitāb al-Mizān*, 2 vols. (Cairo: Qaṣṭallī, 1279/1862–1863), I, 63, cited in Goldziher, *Die Zāhiriten*, p. 3 n. 1. Sha'rānī was commenting here on a saying transmitted by Abū Bakr b. 'Aiyāsh (d. 193/808–809; see Ibn al-'Imād, *Shadharāt adh-dhahab*, 8 vols. [Cairo: Qudsi Press, 1350/1931–1932], I, 334, lines 5–9).

pilgrims' highway, their doctrines (*madhhab*) would have been transmitted by the pilgrims of East and West.'

This opinion of al-Maqdisī may well be true of these two learned men as well as of others. But it does not explain why such schools of law as that of Ibn Jarīr aṭ-Ṭabarī, which was founded in Baghdad like that of Ibn Ḥanbal, eventually disappeared, whereas the Ḥanbalī school survived. Moreover, there was nothing to stop a legal school from flourishing anywhere in Islam; for as far as its advocates were concerned, their freedom of movement was unrestricted; they could move about from city to city to propagate their teachings. A Muslim was a 'citizen' in any Muslim city, unlike his counterpart in the Latin West.

Another reason given is that certain schools survived because they were favored by the prince. This, if true, would have helped only in a certain locality, the region under the prince's government. But this reason is also inadequate. For one thing, princes were rarely in power for very long. More important, however, is the fact that the prince bestowed his favors where it did the most good *for the prince*. The doctors of the law, or the school of law, had first to be important enough to attract the prince's attention and to secure his favors in return for what the school could do *for him*.

To my mind, the key to understanding the phenomenon of the schools of law in Islam is to be found in the interplay of law and traditionalism. It is to be found in the struggle between traditionalism and rationalism, the turning-point of which struggle was the *miḥna*, or Inquisition. Moreover, it is to be found in Baghdad, cultural center of the Muslim world.

The development of the schools can be best understood when the facts regarding the development of prophetic traditions and legal studies are taken into consideration. In the history of this development there are two moments of great significance; they have to do with the last two schools of the four surviving schools of law: the school of Shāfi'ī and the school of Aḥmad b. Ḥanbal; Shāfi'ī, for his synthesis of reason and authority in the law; and Ibn Ḥanbal, for heroically surviving the Inquisition.

I need not dwell on Shāfi'ī's achievement which Schacht has dealt with so well. Through Shāfi'ī the traditionalist thesis was accepted over that of the ancient schools; that is, he replaced the 'living tradition' of a given city with the tradition of the Prophet.

But the big struggle between the rationalists and the traditionalists, and the decisive one, was yet to come, that between *ahl al-kalām*, the Mu'tazilīs, and *ahl al-ḥadīth*, the traditionalists. Note that these are the two antagonistic groups of Shāfi'ī's time. The rationalists had not lost their importance after Shāfi'ī. On the contrary, their forces were increasing in political strength. In fact, when Shāfi'ī died in 204/820, Mu'tazilism was just reaching the peak of its political power, in the caliphate of al-Ma'mūn. It was the period of the important movement of translation from the Greek of works on philosophy and science. It was also the period of the great Inquisition. The Inquisition, set afoot by the Mu'tazilīs,

established a reign of terror during the reigns of four caliphs: al-Ma'mūn, al-Mu'taṣim, al-Wāthiq, and al-Mutawakkil. It was not until the second year of al-Mutawakkil's caliphate that it was brought to a halt. From that time on, Mu'tazilism was finished as a political power. Traditionalism assumed its ascendancy over the rationalistic forces. The hero of the traditionalist movement was Aḥmad b. Ḥanbal who weathered the persecution by sheer patience and pertinacity. Against the passive resistance of this pious man, the Mu'tazilite movement exhausted its political strength; it would never again recover it.

The struggle between the two antagonistic forces becomes apparent when the schools of law change from the geographical designation to the personal one. For the change into personally designated schools of law is in itself indicative of a rallying call of the traditionalists to emulate the Prophet and his disciples (*aṣḥāb*). Just as the Prophet was the leader with followers, each school consisted of a leader (*imām*), with followers (*aṣḥāb*). The criterion of leadership was universal acceptance of the one with the greatest knowledge of Islamic law.

The proliferation of personal schools was accomplished in this manner. Many schools came into existence, each with its leader, but only four survived. The first three came into existence before the Inquisition. If the other numerous schools disappeared it was not because of lack of legal knowledge on the part of their leaders. To my mind, it was rather because of a natural movement on the part of the traditionalists to close their ranks in order to present a solid front against the perennial enemy, rationalism.

Contemporary with the development of the school of Ibn Ḥanbal, other personal schools came into existence, lasted for varying periods of time, then disappeared. Two prominent schools of this period, next to the Ḥanbalī School, were the Zāhirī and Jarīrī schools of law. Before the fifth/eleventh century was over, both had disappeared from Baghdad. But the Ḥanbalī school remained, surviving the attack of the leader of the Jarīrī school, the great historian Ibn Jarīr aṭ-Ṭabarī, who unsuccessfully impugned Aḥmad b. Ḥanbal's qualifications as a jurisconsult.

But legal knowledge was not at issue, however justified or unjustified the criticism of Ibn Jarīr might have been. The Ḥanbalī school came into existence *not* as the result of a legal stance taken by its leader, but rather as the result of a traditionalist theological stance taken against Mu'tazilite rationalism on the question of the created character of the Koran. Against the Mu'tazilis, Ibn Ḥanbal maintained that the Koran was the uncreated word of God; and this doctrine remained the strict traditionalist thesis of Islam. The creed promulgated under the name of the Caliphs al-Qādir and al-Qā'im in the first decades of the fifth/eleventh century includes the doctrine of the uncreated word of God. True to its origins, the school of Ibn Ḥanbal is a theological-juridical school, and the only one in Islam to survive in this dual character.

One conclusion is very clear in Islamic religious history. Islam is, first and foremost, a nomocracy. The highest expression of its genius is to be found in its law; and its law is the source of legitimacy for other expressions of its genius. The

traditionists themselves had to find expression in the schools of law; and the Ḥanbalī school is the ultimate expression of their triumph. In Islam, law, perennially a conservative force, is both the legitimizing agency and the agency of moderation, for it must rest on both authority and reason. Legitimacy was sought by various movements through association with one of the schools of law; as, for instance, the Muʿtazilīs who infiltrated the Ḥanafī school, and the Ashʿarīs, the Shāfiʿī school.¹⁶

As the agency of moderation, Islamic law held the line of the traditionalist development of its schools with that of the Ḥanbalīs, eventually rejecting the Zāhirī school which had gone to extremes in traditionalism by refusing to accept the principle of analogy.¹⁷ By the end of the third quarter of the fifth/eleventh century, this school had become extinct in Baghdad,¹⁸ which means that it had lost its effectiveness in that city long before that date. The significance of the emergence of the Zāhirī school lies in the fact that the movement of traditionalism had been growing ever more traditionalist. It is indicative of the traditionalist momentum gone berserk. Its demise is an indication of the effectiveness of the law as an agency of moderation. As for the Jarirī school, its demise may well have been due to its founder's attack against Aḥmad b. Ḥanbal, designating him as a tradition-expert (*muḥaddith*), not a jurisconsult (*faqīh*). This may well have roused the suspicions of the traditionalist jurisconsults that the Jarirī school was likely to develop in the direction of anti-*ḥadīth* rationalism.

Moderate traditionalism triumphed, finding its final expression, both in law and theology, in the founding of the Ḥanbalī school. When attrition had taken its toll of the schools that had burgeoned into existence, the Ḥanbalī school emerged as the seal of the schools of law.

The primacy of the law and the triumph of the traditionalist movement are amply attested to by the development of Islam's institutions of learning following the failure of the Inquisition. The *masjids*, which had developed as colleges for one or another of the Islamic sciences, now became more and more the private preserve of the jurisconsults. The titular professors were becoming more exclusively professors of law. The teaching of law became the chief object of the learning activity, the other subjects being offered as ancillaries. *Masjids* developed into *masjid-khān* complexes to accommodate students from out of town, from all parts of the far-flung Islamic lands. For, unlike the student of *ḥadīth* who traveled in order to learn traditions, with no set time limit on his stay in various places or with various teachers, the student of law had a curriculum to follow, and the basic course took him usually four years to finish. Hence the need for a place of lodging on a long-term basis and near the college where he had two long

¹⁶ See G. Makdisi, 'Ashʿarī and the Ashʿarites in Islamic Religious History,' *Studia Islamica*, Vol. XVII (1962).

¹⁷ On Zāhirism and *giyās*, see Goldziher, *Die Zāhiriten*; and R. Arnaldez, *Grammaire et théologie chez Ibn Ḥazm de Cordoue: Essai sur la structure et les conditions de la pensée musulmane* (Paris: J. Vrin, 1956).

¹⁸ G. Makdisi, *Ibn ʿAqīl et la résurgence de l' Islam traditionaliste au XI^e siècle* (Damascus: Publications de l'Institut Français de Damas, 1963), p. 280 and notes.

sessions each day, one in the morning and the other in the evening. The *ṣuḥba* period of his studies, that is, the years of his graduate studies, and his apprenticeship for the professorship of law took many more years, during which he worked as assistant to his professor. The *masjid-khān* complex then developed into the madrasa: the college of law par excellence.

By the time this institutional evolution had taken place from *masjid*, to *masjid-khān*, to *madrasa*, the rationalist movement of Mu'tazilism had gone underground. Ash'arism, a movement of more moderate rationalism, had taken its place. Both movements, in order to gain legitimacy, had infiltrated the schools of law whose ascendancy was now a fait accompli. Mu'tazilism infiltrated the Ḥanafī school, and Ash'arism, the Shāfi'ī school. But the schools of law remained overwhelmingly traditionalist, with the Ḥanbalī school acting as the spearhead of the traditionalist movement.

This infiltration contributed greatly to the development of the Ḥanafī and Shāfi'ī schools of law and to the swellings of their ranks with new members, for the madrasas acted as recruiting centers for the schools of law they represented. The flourishing of the madrasa in the fifth/eleventh century was concentrated in the Ḥanafī and Shāfi'ī schools of law. These madrasas, unlike the *masjid*-colleges, gave room and board to the students of law. The traditionalist reaction, once again, made itself felt in the following century, with the adoption of the madrasa by the Ḥanbalī school of law, and with the introduction of a new institution of learning, the *dār al-ḥadīth*, or college of traditions, serving once again to rally the forces of traditionalism in all four schools of law.

These institutions of learning were based on waqf, the charitable trust, a basic principle of which was that nothing could take place in a waqf institution which would be incompatible with the tenets of Islam. The teaching of rationalist theology, for instance, could not be carried on openly in such an institution. This principle guaranteed the traditionalist evolution of the institutions of learning.

The Ḥanbalī school of law represents a unique achievement of the traditionalist movement in Islam. It epitomizes the fusion of law and traditionalism more perfectly than in any of the other schools of law. For the core of the Islamic genius is expressed in both law and traditionalism; and Islam, at its core, is a traditionalist nomocracy. That is why the Ḥanbalī school, in spite of its perennially smaller membership, in spite of its perennially restricted geographical representation, survived nonetheless down through the centuries, and went on to influence modern movements in Islam.