3 The legal schools

One of the most important features of the Shariʿa and indeed of Islam as a whole is the pervasive role of the doctrinal legal schools. In Sunni Islam, these schools were four: the HANAFI, MALIKI, SHAFIʿI and HANBALI, named after the four MASTER-JURISTS who were assumed to be their founders. (It is worthwhile noting that these schools are entirely different from, and share no characteristics with, the law schools in our universities nowadays.)

The Arabic word for the legal school is MADHHAB, a term that has several meanings, all of which are interconnected. Generally, the word means that which is followed and, more specifically, the opinion or idea that one chooses to adopt; hence, a particular opinion of a jurist. Historically, this meaning of the term is of early provenance, probably dating back to the end of the seventh century, but certainly to the middle of the eighth. By the early ninth century, its use had become common.

The term madhhab is associated with three other meanings that have emerged out of, and subsequent to, this basic usage, and which reflected the formation of schools. The first of these meanings is a principle defining the conceptual juristic boundaries of a set of cases. For example, an assumption of the Hanafis is that misappropriation, in order to obtain, must involve the unlawful removal of property from its original place, where it had been in the possession of the owner. The Hanbalis, on the other hand, define misappropriation as mere seizure of property, whether or not it is removed from its original place of ownership. Thus, taking possession of a rug by sitting on it (without removing it) is considered misappropriation by the Hanbalis, but not by the Hanafis. In terms of recovery of damages, this basic difference in definition contributed to generating significant differences between the two schools. Whereas the Hanbalis make the wrongdoer liable to the original owner for all growth of, and proceeds from, the misappropriated object, the Hanafis place severe restrictions on the ability of the owner to recover his accruing rights. The reasoning here is that the growth or proceeds of the misappropriated property were not yet in existence when the property was
“removed” from the hands of the rightful owner, and since they were not in existence, no liability on the part of the wrongdoer is deemed to arise. This example illustrates a central meaning of the term *madhhab* as a legal doctrine concerning a group of cases – in this instance cases pertaining to the recovery of damages – which are subsumed under a larger principle. And it is in this sense that it can be said that one school’s doctrine differs, sometimes significantly, from another’s.

The second meaning of *madhhab* is a jurist’s individual opinion when this enjoys the highest authority in the school, as distinct from the third associated sense of *madhhab* where it is used to refer to a group of jurists who are loyal to an integral and, most importantly, collective legal doctrine attributed to a master-jurist from whom the school is known to have acquired particular, distinctive characteristics. Thus, after the formation of the schools, jurists began to be characterized as Hanafi, Maliki, Shafi’i or Hanbali, as determined by their doctrinal (not personal) loyalty to one school or another. This doctrinal loyalty, it must be emphasized, is to a cumulative body of doctrine constructed by generations of leading jurists, which is to say, conversely, that loyalty is not extended to the individual doctrine of a single master-jurist. By the middle of the tenth century, or shortly thereafter, these meanings were all present, which is to say that by this time the legal schools had come into full maturity.

How and when did the concept of *madhhab* evolve from its basic meaning into its highly developed sense of a doctrinal school? As we have already seen, the early interest in law and legal studies evolved within the environment of the STUDY CIRCLES, where men learned in the Quran and the general principles of Islam began to discuss, among other things, various quasi-legal and often strictly legal issues. By about 730 AD, such learned men had already assumed the role of teachers whose circles often encompassed numerous students interested specifically in religious law. However, by that time, no obvious methodology of law and legal reasoning had yet evolved, so that one teacher’s lecture might not have been entirely distinguishable, methodologically and as an articulated body of principles, from another’s. Even the body of legal doctrine they taught was not yet complete, as can be attested from each teacher’s particular interests. Some taught rules of inheritance, while others emphasized the law of ritual, which was a fundamental part of the law. More importantly, we have little reason to believe that the legal topics covered later were all present at this early stage.

During the first half of the eighth century, with SUBSTANTIVE LAW having become more systematic, the jurists had begun to develop their own legal assumptions and methodology. Teaching and intense scholarly debates within study circles must have sharpened the methods by which
jurists were doing law, which in turn led them to defend their own, individual conceptions of the law. Each jurist, on adopting a particular method, gathered around him a certain following who learned their jurisprudence and method from him.

Yet, it was rare that a student or a young jurist would restrict himself to one circle or one teacher; indeed, it was not uncommon for young jurists to attend several circles in the same city. During the second half of the eighth century, aspiring jurists did not confine themselves to circles within one city, but traveled near and far in search of reputable teachers (one of the notable characteristics of learning in pre-modern Islam). Each prominent teacher attracted students who “took law” from him. A judge who had studied law under a teacher was likely to apply the teacher’s doctrine in his court, although, again, loyalty was not exclusive to a single doctrine. If he proved to be a sufficiently promising and qualified jurist, he might “sit” as a professor in his own turn, transmitting to his students the legal knowledge he gained from his teachers, but seldom without his own reconstruction of this knowledge. The legal doctrines that Abu Hanifa, Malik and Shafii, among many others, taught to their students were largely a transmission from their own teachers. None of these, however, despite the fact that they were held up as school founders, constructed his own doctrine in its entirety, as later Islamic history would have us believe. Rather, all of them were in fact as much indebted to their teachers as these latter were indebted to their own.

During the eighth century, therefore, the term madhhab meant a group of students, LEGISTS, judges and jurists who had adopted the doctrine of a particular leading jurist, such as Abu Hanifa – a phenomenon that I call here a “personal school.” Those who adopted or followed a jurist’s doctrine were known as associates, namely, those who studied with or were scholarly companions of a jurist. Most leading jurists had such associates, a term that also meant “followers.” Thus, all master-jurists were linked with a madhhab, namely, a personal school revolving around both his circle and personal legal doctrine.

Nonetheless, doctrinal loyalty was not yet in order. As we noted, it was not unusual for a legist to shift from one doctrine to another or simultaneously adopt a combination of doctrines belonging to two or more leading jurists. This became inconceivable once the doctrinal schools emerged.

Indeed, as it came to pass, the standard reference of the technical term “madhhab” was to the doctrinal school, which featured several characteristics lacking in its personal counterpart. First, the personal school comprised the substantive legal doctrine of a single leading jurist, and, at times, his doctrine as transmitted by one of his students. The doctrinal
school, on the other hand, possessed a cumulative doctrine of substantive law in which the legal opinions of the leading jurist, now the assumed “founder,” were only the first among equals; that is, equal to the rest of the opinions and doctrines held by various other jurists, also considered leaders within the school. In other words, the doctrinal school was a collective and authoritative entity, whereas the personal school remained limited to the individual doctrine of a single jurist.

The second characteristic was that the doctrinal school constituted as much a methodological entity as a substantive, doctrinal one. In other words, what distinguished a particular doctrinal school from another was largely its legal methodology and the substantive principles it adopted in dealing with its own law. Methodological awareness on this level had not yet developed in the personal schools, although it was on the increase from the middle of the eighth century.

Third, a doctrinal school was defined by its substantive boundaries, namely, by a certain body of law and methodological principles that clearly identified the outer limits of the school as a collective entity. The personal schools, on the other hand, had no such well-defined boundaries, and departure from these boundaries in favor of other legal doctrines and principles was a common practice.

The fourth characteristic, issuing from the third, was loyalty, for departure from legal doctrine and methodological principles amounted to abandoning the school, a major event in the life of a jurist. Doctrinal loyalty, in other words, was barely present in the personal schools, whereas in the later doctrinal schools it was a defining feature of both the school itself and the careers of its members.

How, then, did the doctrinal schools emerge? A central feature of the doctrinal school – yet a fifth characteristic distinguishing it from the personal school – was the creation of an axis of authority around which an entire methodology of law was constructed. This axis was the figure of the one who came to be known as the founder, the leading master-jurist, in whose name the cumulative, collective principles of the school were propounded. Of all the leaders of the personal schools – and they were many – only the four we mentioned above were raised to the level of “founder” of a doctrinal school. The rest did not advance to this stage, with the result that their personal schools did not long survive their deaths.

The so-called founder, the eponym of the school, thus became the axis of authority construction. As bearer of this authority, he was called the IMAM, and was characterized as an absolute master-jurist who was responsible for having created the school’s methodology on the basis of which its precepts and law were constructed. Furthermore, his doctrine laid claim to originality not only because it derived directly from the
revealed texts, but also, and equally importantly, because it was gleaned systematically from the texts by means of clearly identifiable interpretive principles. Its systematic character was seen as the product of a unified and cohesive methodology that only the founding imam could have forged; but a methodology itself inspired and dictated by revelation. To explain all of this epistemic competence, the imam was viewed as having been endowed with exceptional personal character and virtuosity. The embodiment of pure virtue, piety, modesty, mild asceticism and the best of ethical values, he represented the ultimate source of legal knowledge and moral authority.

What made a madhhab (as a doctrinal school) a madhhab is therefore this feature of authoritative doctrine whose ultimate fount is presumed to have been the absolute master-jurist, the founder, not the mere congregation of jurists under the name of a titular eponym. This congregation would have been meaningless without the centripetal effect of an authoritative, substantive and methodological doctrine constructed in the name of a founder.

Finally, we must ask the question: why did the doctrinal schools come into being in the first place? Wholly native to Islamic soil, the madhhab’s gestation was entirely occasioned by internal needs. We have noted that the embryonic formation of the schools started sometime during the last decades of the seventh century, taking the form of study circles in which pious scholars debated religious issues and taught interested students. The knowledge and production of legal doctrine began in these circles – nowhere else. Legal authority, therefore, became epistemic (i.e., knowledge-based) rather than political, social or even religious. That epistemic authority is the defining feature of Islamic law need not be doubted, although piety and morality played important supporting roles. A masterly knowledge of the law was the sole criterion in deciding where legal authority resided; and it resided with the scholars, not with the political rulers or any other source. This was as much true of the last decades of the seventh century as it was of the eighth century and thereafter. If a CALIPH actively participated in legal life, it was by virtue of his recognized personal knowledge of the law, not so much by virtue of his political office or military power. Thus, legal authority in Islam was personal and private; it was in the persons of the individual jurists (be they laymen or, on occasion, caliphs) that authority resided, and it was this competence in religious legal knowledge that was later to be known as ijtihad – a cornerstone of Islamic law.

Devolving as it did upon the individual jurists who were active in study circles, legal authority did not reside in the government or ruler, and this was a prime factor in the rise of the madhhab. Whereas law – as a legislated
system – was often “state”-based in other imperial and complex civilizations, in Islam the ruling powers had, until the dawn of modernity, almost nothing to do with the production and promulgation of legal knowledge or law. Therefore, in Islam, the need arose to anchor law in a system of authority that was not political, especially since the ruling political institutions were, as we shall see, deemed highly suspect. The study circles, which consisted of no more than groups of legal scholars and interested students, lacked the ability to produce a unified legal doctrine that would provide an axis of legal authority. For while every region possessed its own distinct, practice-based legal system, there was nevertheless a multiplicity of study circles in each, and within each circle scholars disagreed on a wide variety of opinions.

The personal schools afforded the first step toward providing an axis of legal authority, since the application (in courts and fatwas) and the teaching of a single, unified doctrine – that is, the doctrine of a leading jurist around whom a personal school had formed – permitted a measure of doctrinal unity. Yet, the large number of personal schools was only slightly more effective than the multiplicity of study circles, so an axis of authority was still needed. The personal schools, forming around all the major scholars, were doctrinally divergent and still very numerous, numbering perhaps as many as two dozen. Furthermore, the leader’s doctrine (which was little more than a body of legal opinions) was not always applied integrally, being subjected, as it were, to the discretion or even reformulation of the judge or jurisconsult applying it. Doctrinal and juristic loyalty was also still needed.

The eighth-century community of jurists not only formulated law but also administered it in the name of the ruling dynasty. In other words, this community was – juristically speaking – largely independent, having the competence to steer a course that would fulfill its mission as it saw fit. Yet, while maintaining juristic and largely judicial independence, this community did serve as the ruler’s link to the masses, aiding him in his bid for legitimacy. As long as the ruler benefited from this legitimizing agency, the legal community profited from financial support and an easily acquired independence.

Rallying around a single juristic doctrine was probably the only means for a personal school to gain loyal followers and thus attract political/financial support. Such support was not limited to direct financial favors bestowed by the ruling elite, but extended to prestigious judicial appointments that guaranteed not only handsome pay but also political and social influence. These considerations alone can explain the need to rally around outstanding figures whose legal authority as absolute mujtahid-imams or master-jurists had to be constructed in order to raise their personal
schools to doctrinal entities. This construction was a way to anchor law in a source of authority that constituted an alternative to the authority of the body-politic; or, to put it more accurately, it came to fill a gap left untouched by Muslim rulers. Thus, whereas in other cultures the ruling dynasty promulgated the law, enforced it and constituted the locus of legal authority (or legal power), in Islam it was the doctrinal legal school that produced law and afforded its axis of authority. In other words, legal authority resided in the collective, juristic doctrinal enterprise of the school, not in the ruler or in the doctrine of a single jurist.

The legal schools represent a fundamental feature of the Shariʿa. Once they were formed, and until they were dissipated by modern reform, no jurist could operate independently of them. Although lay persons were free to follow any of these schools for a particular transaction or way of conduct (e.g., rituals), each school tended to have influence in particular regions. The Hanafi school started in Iraq but quickly extended its influence eastward, to Iran (until about 1500), Central Asia and the Indian Sub-Continent. Later on, it was adopted as the school of choice of the Ottoman Empire. Today, traditionally Hanafi populations include those in Bangladesh, Pakistan, India, Central Asia, Iraq, Syria, Jordan, Palestine and Turkey.

The Maliki school started in the Hejaz but immediately spread to Egypt and, extensively, to Muslim Spain (until the fifteenth century) and North Africa, where it has continued to hold unrivaled sway until now. With the main exceptions of South Africa, Zanzibar and some parts of Egypt, the populations of the African continent have been traditionally of Maliki persuasion.

The Shafiʿi school began essentially in Egypt, but later spread to Syria (which gradually became mostly Hanafi after the sixteenth or seventeenth century), Lower Egypt, some parts of the Yemen, Malaysia and Indonesia. The Hanbali school, the smallest of the four, was strong in the city of Baghdad between the tenth and thirteenth centuries, but now has a wide following in Saudi Arabia.

While the Zaydi Shiʿi school is predominant in the Yemen, its Twelver (Jaʿfari) counterpart has been strong in Iran (after c. 1500), Bahrain, southern Iraq, southern Lebanon and Azerbaijan.