

# INTRODUCTION TO ISLAMIC LAW

FEBRUARY 2009

By Nesrine Badawi

In collaboration with the Program on Humanitarian Policy and Conflict Research (HPCR) at Harvard University, HPCR International hosts a Professional Development Program aimed at enriching humanitarian debate and improving responses to conflict by offering opportunities for mid-career professionals to develop skills, deepen knowledge, and participate in informal expert networks. Occasionally, background papers produced by experts for the trainings are made available to a more general audience. Background papers are selected for wider distribution based on such factors as their contemporary relevance and potential to contribute to ongoing discussions. This paper was produced for a February 2009 Thematic Workshop on Islamic Law and Protection of Civilians that took place in Amman, Jordan. The views expressed herein are those of the author alone and do not necessarily reflect the views of HPCR or HPCR International.

**PROGRAM ON HUMANITARIAN POLICY AND CONFLICT RESEARCH  
HARVARD UNIVERSITY  
1033 Massachusetts Avenue, Fourth Floor, Cambridge, MA 02138 USA  
Ph: (617) 384-7407 Fax: (617) 384-5908  
contact@hpcr.org www.hpcr.org**

## Introduction to Islamic Law

### Contents

Introduction: The Early Muslim State .....	2
What is Islamic Law .....	2
Sharīa' .....	2
Fiqh.....	2
<i>Uṣūl al-Fiqh</i> .....	3
<i>Qur'an</i> .....	3
<i>Sunna</i> .....	4
<i>Ijmā'</i> (Consensus).....	4
'Urf (Custom) .....	5
<i>Ijtihad</i> .....	5
<i>Qiyas</i> (Analogy) .....	6
<i>Naskh</i> (Abrogation) .....	6
<i>Istihsān</i> (Juristic Preference) .....	7
<i>Istiṣhāb</i> .....	7
<i>Al-Maṣāliḥ al-Mursala</i> (Unregulated Benefits) and <i>Maqāṣid al-Shari'a</i> (Legal Aims) .....	8
Furū' al-Fiqh (Branches of the Law).....	8
Schools of Legal Thought .....	8
The <i>Hanafi</i> School.....	9
The <i>Mālikī</i> School .....	9
The <i>Shāfi'ī</i> School.....	9
The <i>Hanbalī</i> School.....	9

## Introduction: The Early Muslim State

Islam is one of the three Abrahamic monotheistic religions and one of the most widely followed religions in the world. The literal translation of the word Islam means surrender or submission,<sup>1</sup> in this case to God. Followers of the religion believe in prophet Muḥammad, whose message was received in the seventh century in the form of scripture, compiled the holy book Qur'an. After the prophet's death, there was debate over the mode of governance. Most of the leaders of the early Muslim community met in *Ṣaqifat Banī Sā'da* in Medina to settle the future of the Muslim nation. It was agreed that Abū Bakr would lead the Muslim community as the Caliph. Abū Bakr was succeeded by 'Umar who upheld earlier ordinances by Abū Bakr and 'promulgated a number of ordinances and regulations pertaining to state administration, family, crime and ritual.'<sup>2</sup> In addition to these instrumental steps, Umar insisted on adherence to the Qur'an, which '[a]t this early period...combined with the policies of the new order, represented the sole modification to the customary laws prevailing among the Peninsular Arabs.'<sup>3</sup>

## What is Islamic Law

### *Sharī'a*

Attempting to define Islamic law proves to be a daunting task. Because of the dynamic nature of the legal system and the absence of a unified code, but not the absence of authoritative texts, any definition of Islamic law is bound to over or under inclusion depending on the approach taken by the different schools of thought to this highly rich field. The term Islamic law as a translation of *al-Qanūn al-Islāmī* is to some extent alien to the Muslim legal tradition and is probably closest to the term *sharī'a* in Arabic. *sharī'a* literally means path and has been commonly used in reference to 'a prophetic religion in its totality, generating such phrases as *sharī'at Mūsā*, *sharī'at al-Masīh* (the law/religion of Moses or the Messiah), *sharī'at Madjūs* (the Zoroastrian religion) or *sharī'atu-nā* (meaning our religion and referring to any of the monotheist faiths).'<sup>4</sup> In the Islamic tradition, *sharī'a* encompasses the Muslim approach or path to a pious and Islamic compliant life, which includes but is not solely limited to legal matters.

### *Fiqh*

The term *fiqh* (or *fiḥh*) refers to juristic efforts aiming at coming up with rules that are compliant with *sharī'a*. After the death of the prophet, the early Muslim community was confronted with the issue of regulating life in accordance with Islamic law. While, as mentioned earlier, the Qur'an's centrality was evident from the beginning, the social, political and economic matters that the early Muslim nation faced required development of a legal system. The human process of development of such a legal system in which rules were extrapolated from the various different authorities and applied to the various hypothetical and real case scenarios is referred to as *fiqh*. But the term *fiqh*, which literally means understanding or knowledge, took some time to evolve into the earlier stated definition.

Initially, Muslims made a distinction between *‘ilm* and *fiqh*.<sup>5</sup> *‘Ilm* referred to the knowledge of the Qur’an and its interpretation and authoritative statements of the prophet and the early companions, whereas *fiqh* referred to ‘the independent exercise of the intelligence...in the absence or ignorance of a traditional ruling bearing on the case in question.’<sup>6</sup>

### ***Uṣūl al-Fiqh***

With later development of Islamic law, *fiqh* was divided to two main categories. The first category, *Uṣūl al-Fiqh* (trans. sources of the law), referred to jurisprudential theories addressing the hierarchy of the sources. Early Muslim scholarship did not develop a reasoning theory that applied to different legal questions and was more willing to shift from one reasoning mode to the other, but with the development of the field, theoretical frameworks were adopted with the objective of formulating general jurisprudential rules addressing the hierarchy of the sources in Islamic law. Not all schools of legal thought adopted the same hierarchy, nor did they all accept the same sources as authoritative. In the section addressing schools of thought, the various theories adopted by each school is briefly highlighted. The below section gives definitions of the most common sources of Islamic law.

### ***Qur’an***

The Qur’an is the holy book of Muslims. The vast majority of Muslims believe that the text of the Qur’an was transmitted literally to Muḥammed from God through the angel Gabriel. It is the most authoritative and sacred text in the Muslim tradition. The contemporary form of the Qur’an is the same across the Muslim world. ‘This, Muslims, believe, is due to the fact that the compilation and arrangement of the chapters was completed - under the divine instructions - by the Prophet himself.’<sup>7</sup> While historical scholarship attempting to trace the origin of the Qur’an confronts a very challenging and a complex task, some accounts claim that the text continued to exist in its fragmented form until shortly after the death of the prophet and that it was the third Caliph, ‘Uthmān ibn ‘Affān who commissioned the prophet’s scribe to supervise the compilation process.<sup>8</sup>

The Qur’an is not solely a legal text, but its verses also have religious, spiritual and ethical implications. The weight of legal analysis in the Qur’an has been the subject of debate among Islamic studies scholars. There is a general agreement that the number of legal verses in the Qur’an amount to around 500 verses, but there is disagreement over the qualitative significance of these 500 verses within the more than 6000 verses of Qur’an. Some argue that the legal aspects of the Qur’an are incidental considering the ratio between the legal and the non-legal versus.<sup>9</sup> On the other hand, opponents of this view state that if one were to consider the repetition of the non-legal verses and the length of the legal verses being twice or thrice the non-legal ones, we would find that the Quran contains no less legal material than does the Torah, which is commonly known as the law.<sup>10</sup>

## ***Sunna***

The other textual source in Islamic law is the *sunna* of the prophet. Linguistically, *sunna* is a value neutral term that is ‘defined as a way of acting, whether approved or disapproved, and is normally associated with the people of earlier generations, whose example has to be followed or shunned by later generations.’<sup>11</sup> Eventually, *sunna* ended up to connote the traditions relayed from the Prophet. There has been an extensive debate in the academic field over the initial authoritativeness of the Prophet’s acts and sayings as a legal source, with many scholars, like Schacht, arguing that the Prophet’s *sunna* acquired its legal nature during the time of the Umayyads,<sup>12</sup> and others arguing that the term was ‘applied by the Prophet as a legal term comprising what he said, did and agreed to.’<sup>13</sup> One of the prominent contemporary Islamic law scholars, Hallaq, argues that both narratives are rather simplistic. On one hand, the Qur’an itself, as detailed in classical juristic works, establishes the prophet’s legal authority. Moreover, ‘it would be difficult to argue that Muḥammad, the most influential person in the nascent Muslim community, was not regarded as a source of normative practice.’<sup>14</sup> On the other hand, there is early reference to the prophet’s biography as *sīra*, a term that does not connote the same authority and need for imitation.<sup>15</sup> Hallaq’s survey of Islamic legal history offers strong evidence that authoritativeness of *sunna* was established by the middle of the first century, when the candidates for the third caliph “were asked whether they were prepared to ‘work according to the *sunna* of the Prophet and the *sīra* of the two preceding caliphs.’”<sup>16</sup>

With the established authority of the prophet’s *sunna* and the need for a second authoritative source to address legal questions unanswered solely in the Qur’ān, there was an expansion in the body of *sunna* and the number of *quṣṣaṣ* (story-tellers) who ‘spread stories with ethico-legal content about the Prophet and his immediate followers.’<sup>17</sup> The season of Hajj (pilgrimage) played a significant role in the exchange of different traditions across the different regions of the Muslim nation.<sup>18</sup> But the expansion in *sunna* literature led to questions over authenticity of the traditions transmitted and accusations of fabrication of *sunna* among transmitters started.<sup>19</sup> Gradually, a new science, *isnād*, aiming at developing ‘criteria by which the sound – or what was thought to be sound – reports from the early paragons could be sifted from the massive body of spurious material’<sup>20</sup> gained prominence. In addition to exclusion of some traditions, approved ones were rated on the basis of strength of the transmission chain. It should be noted, however, that many scholars, predominantly western, raise questions over authenticity of the sanitised tradition.

## ***Ijmā’* (Consensus)**

*Ijmā’* ‘is in theory the unanimous agreement of the Umma [nation] on a regulation (*ḥukm*) imposed by God. Technically, it is the unanimous doctrine and opinion of the recognized religious authorities at any given time.’<sup>21</sup> Consensus had been in existence as an imperative in social consciousness before the advent of Islam, but it started to play a significant role in sanctioning the doctrines of geographical schools of thought, where each of the schools perceived consensus of its polity as an authoritative source.<sup>22</sup>

Like other sources of Islamic law, the definition of consensus proves to be rather complex. For example, Ibn Hazm argues that only consensus of the companions of the Prophet is recognizable as a legal source and that consensus reached after that era may not be considered authoritative. On the other hand, Mālikīs (followers of one of the four main schools of Sunni thought) argue that the legitimate consensus 'is limited to the common practice of Medina,<sup>23</sup> whereas the Ḥanafīs (followers of another main school) believe in universality of consensus.<sup>24</sup>

### ***‘Urf (Custom)***

As noted by Hallaq, in areas where Islam did not challenge pre-existing practices, the Prophet was often willing to acknowledge and apply pre-Islamic customs. The Prophet's position on these customs proves that there was no detachment from accepted *‘urf*. Whereas custom was not widely recognised as a formal source of law, it was informally relied upon. As mentioned earlier, the Malīkīs perceived customs of Medina as indicative of consensus in a society where un-Islamic acts would not have been tolerated or passed on from one generation to the other. ‘Abū Yūsuf (d. 182/798), an early leader of the Ḥanafī school, was inclined to recognise custom (*‘urf*) not as a formal source, but rather as part of the *sunna*, which in his view is based both on custom and on the practice of the Prophet.<sup>25</sup>

### ***Ijtihād***

Earlier sections were addressing sources not reliant on positive interaction with the sources on the side of the jurist. In engaging with the sources and developing unique legal positions, the jurist would be exercising *Ijtihād*. *Ijtihad* is literally translated as exerting oneself, but in Islamic law, it is generally understood as 'the exertion of mental energy in the search of a legal opinion to the extent that the faculties of the jurist become incapable of further effort.'<sup>26</sup>

Al-Khudārī states that the rules of *farḍ ‘ayn* and *farḍ kifāya* apply to *ijtihad*.<sup>27</sup> It is considered *farḍ ‘ayn* when the jurist personally encounters an incident and fears that God's will may not be upheld, but it is considered a *farḍ kifāya* when there is no such fear and other jurists are addressing the matter.<sup>28</sup> But in order for a jurist to exercise *ijtihad*, two conditions apply. Firstly, the jurist must prove to be just. Secondly, knowledge of the Qur'an, *sunna*, consensus and deductive techniques must be established.<sup>29</sup> The history of the exercise of *ijtihad* is again subject to extensive debate. Schacht's hypothesis that the gate of *ijtihad* was closed around the fourth *hijri* century (900 AD) gained prominence in western evidence,<sup>30</sup> but later research conducted by Hallaq offers a serious challenge to this hypothesis.<sup>31</sup>

*Ijtihad* is usually exercised when the Qur'an and Sunna do not stipulate a specific ruling (*ḥukm*) with regards to a particular legal question. It is then the duty of the jurist to use

mental faculties to address that legal question. *Ijtihād* is exercised using the below techniques:

### ***Qiyas* (Analogy)**

*Qiyās* managed to take prominence as the primary manner of exercising *ijtihād*. After the death of the prophet, it was understood that the era of revelation ceased and that Muslims no longer have access to the figure of the prophet to resort to when facing complex unprecedented issues. While the Qur'an contained a limited number of rulings, it indicated possible venues for deductive and inductive logic applicable to a wide range of matters uncovered by specific rulings. There are arguments that *qiyās* was applied shortly after the death of the prophet. However, technicalities of *qiyas* as one of the sources of law were later elaborated on by jurists. After undergoing a long process of accentuation, proper *qiyās* is condition on the below steps.

1. **New Case:** The jurist must establish that the case dealt with is a unique case for which a ruling can not be simply reached from the texts.
2. **'Asl:** A basic case governed by the text must be found as a basis for analogy.
3. **'Ila (Raison d'être):** The jurist is expected to exert effort to properly understand the logic or the *raison d'être* of the basic case and establish that this particular *'ila* applies to the new case.<sup>32</sup>

### ***Naskh* (Abrogation)**

The process of abrogation emerged as a need to reconcile the relationship between two textual sources that portray evident and fundamental contradictions in terms of legal outcome. It is defined as 'the legislator's [God's] dismissal of a ruling [*hukm*] proven by the existence of textual evidence.'<sup>33</sup> But abrogation is perceived as a serious task and a jurist must not resort to abrogation before 'attempt[ing] to reconcile the texts by harmonizing them so that both may be brought to bear in resolving it.'<sup>34</sup> *Naskh* arguably serves the logical objective of accommodation to different interests of the community, which may vary from time to the other.<sup>35</sup> It is commonly agreed that later texts abrogate earlier ones and not vice versa.

There is debate among jurists over how abrogation influences the relationship between Qur'an and Sunna. Some jurists, like al-Shāfi'ī, argue that neither Qur'an nor *sunna* are subject to abrogation by the other source. Accordingly, only Qur'anic verses may abrogate Qur'anic verses<sup>36</sup> and only *sunna* may abrogate *sunna*. Whereas rejection of abrogation of Qur'an by Sunna may seem more self evident because the Qur'an is a literal textual revelation from God and thus maintains a special status, the reluctance to have *sunna* abrogated by the Qur'an is more complex. Al-Shāfi'ī argues that if *sunna*

were abrogated by Qur'an, then a different *sunna* in accordance with the new Qur'anic verse would have had to come in place and in that case the specific abrogated *sunna* would be abrogated by the new act of the prophet, i.e *sunna*, and by the Qur'ān.<sup>37</sup>

But other jurists accepted that Qur'an and Sunna may abrogate each other on the basis that the prophet does not determine rulings according to his own preferences but on the basis of divine revelations, even if such revelations are expressed by the prophet in the form of ḥadīth.<sup>38</sup> The majority of jurists, however, seem to accept that 'an epistemologically superior text can abrogate an inferior one. Thus the Quran and the concurrent Sunna may abrogate'<sup>39</sup> other less authoritative sources.

### ***Istiḥsān (Juristic Preference)***

Juristic preference of one ruling over another was the subject of much controversy among jurists. Al-Shāfi'ī, for example, wrote a chapter in his treatise, al-Risāla, in refutation of this mode of legal reasoning, which he perceived as mere employment of personal preference. But other jurists 'agree that *istiḥsān* is nothing but a 'preferred form of legal argument based on *qiyās*, an argument in which a special piece of textual evidence gives rise to a conclusion different from what would have been reached by *qiyās*.'<sup>40</sup> Hallaq gives the following scenario as a typical example of *istiḥsān*.

If a person, for example, forgets what he is doing and eats while he is supposed to be fasting, *qiyās* dictates that his fasting would become void, for the crucial consideration in *qiyās* is that food has entered his body, whether intentionally or not. But *qiyās* in this case was abandoned on the basis of a Prophetic report which declares fasting valid if eating was the result of a mistake.<sup>41</sup>

### ***Istishāb***

*Istishāb* is 'the principle by which a given judicial situation that had existed previously was held to continue to exist as long as it could not be proved that it had ceased to exist or had been modified.'<sup>42</sup> It is not necessarily perceived as a tool of legal reasoning,<sup>43</sup> but understanding the concept is important considering its popular employment by jurists in specific cases. This principle allowed jurists to assume that a missing person is still alive despite disappearance, thus preventing the wife from remarrying and denying beneficiaries inheritance.<sup>44</sup> As a legal tool, it was particularly popular among the Mālikīs and the Shāfi'īs

### ***Al-Maṣāliḥ al-Mursala (Unregulated Benefits) and Maqāṣid al-Sharī'a (Legal Aims)***

This concept is related to public interest and welfare and it addresses the adoption of certain rulings on the basis of their positive effect on public interest. It is reported that Mālik issued legal opinions that did not seem to have any textual foundation, relying simply on these rulings' promotion of public interest, but his late followers denied these reports.<sup>45</sup> But as Hallaq notes, evolution of Muslim legal thought witnessed reluctance to adopt opinions on the basis of welfare without reliance on any legal source, but jurists considered public interest if it was 'suitable (munāsib) and relevant (mu'tabar) either to a universal principle of the law or to a specific and particular piece of textual evidence.'<sup>46</sup>

A related concept is Maqāṣid al-Sharī'a, which 'refers to the idea that God's law, the *Sharī'a* [q.v.], is a system which encompasses aims or purposes. If the system is correctly implemented, these aims will be achieved. From such a perspective, the *Sharī'a* is not merely a collection of inscrutable rulings.'<sup>47</sup> Although this system lends itself to consideration of public interest, it is different from the initial concept of *al-Maṣāliḥ al-Mursala*, because the legal aims are extrapolated from the sources and are thus reliant on texts in and of themselves.

### ***Furū' al-Fiqh (Branches of the Law)***

In contrast to *usūl al-fiqh* as a branch of legal study, works of *furū'* addressed the different legal subject matters and after the gradual development of *usūl* theories, implemented such theories to different legal questions facing the community. Works of *furū'* are older than works of *usūl*. It can be argued the *furū'* legal reasoning started right after the death of the prophet with the Muslim community's attempts to conduct their state of affairs in a manner that conforms to God's will. *Furū'* works are normally voluminous, addressing 'ibādāt, religious obligations and prohibitions (such as prayer and fasting), *mu'amālāt* (social life issues) which includes family law (example: regulation of marriage and divorce), inheritance, property and contracts obligations; and other areas such as criminal matters, transfer of power and governance, and legitimacy and regulation of warfare.<sup>48</sup>

### ***Schools of Legal Thought***

Schools of legal thought are referred to in Sunni legal thought as *madhāhib* (sing. *madhhab*). *Madhhab* 'means that which is followed and, more specifically, the opinion or idea that one chooses to adopt.'<sup>49</sup> Schacht argues that Muslim legal thought was initially differentiated by regional schools that eventually evolved into personal schools, but again, Hallaq challenges this hypothesis and argues that schools evolved from personal into doctrinal schools, where initially schools revolved around individual opinions, but later became more systematic.<sup>50</sup> Many legal schools, such as al-Zāhirī and al-Thawrī schools, have become extinct. The below section gives a brief of the four dominant legal schools.

### **The *Ḥanafī* School**

The *Ḥanafī* School is named after Abū Ḥanīfa (d.150AH/767). The school was an evolutionary extension of the ancient school of Kūfa and was centred around the figures of Abū Ḥanīfa and his two disciples, Abū Yūsuf and al-Shaybānī.<sup>51</sup> The school is famed for pioneering the camp of *ahl al-ra'y* (people of opinion). Because of its origination in Iraq, the school was favoured by the Abbasid caliphate and benefited from that position which allowed it spread into Khurasan, the Indian sub-continent and other areas.<sup>52</sup> The school enjoys more diversity than other Sunnī school and finding a unified position of the school is rather difficult,<sup>53</sup> but the founders of the school are famed for extensive use of *qiyās*, *istiḥsān* and incorporation of *urf*.<sup>54</sup>

### **The *Mālikī* School**

The *Mālikī* School is named after the renowned Medinese jurist Mālik (d.179AH/795AD). Mālik is often referred to as the author of the earliest surviving treatise on Islamic law, *al-Muwaṭṭā'*. The book is a compilation of *ḥadīth* in the areas of *'ibadāt* and *mu'amalāt* and is argued to represent the consensus of the people of Medina.<sup>55</sup> 'The tradition of the Prophet Muḥammad and that of the Companions constitute the *Sunna* according to Mālik, who excludes from it the tradition of 'Alī, which other schools incorporate.'<sup>56</sup> Mālik is also known to have employed *istiḥāb* and *maṣlaḥa* (pl. *maṣaliḥ*) as earlier mentioned.<sup>57</sup> In addition to Medina, the *Mālikī* School was particularly popular in North Africa and Andalusia (the Iberian Peninsula under Muslim rule).

### **The *Shāfi'ī* School**

Al-Shāfi'ī (d.204AH/820AD) was a student of both Mālik and al-Shaybānī (with more deference to Mālik). Many western and Muslim scholars credit al-Shāfi'ī with the task of singlehandedly developing the doctrine of *usūl al-fiqh*, the creation of a more coherent approach to legal reasoning as a discipline and ending the battle between *ahl al-ra'y* and *ahl-ḥadīth* through compromise and some triumph for *ahl al-ḥadīth*.<sup>58</sup> But, as mentioned earlier, Hallaq has brought to light compelling evidence to the contrary. Nevertheless, al-Shāfi'ī remains one of the most central figures in Islamic jurisprudence. Al-Shāfi'ī's thought focuses on the supremacy of the Qur'an and *sunna* and on the importance of textual foundation for legal reasoning. Al-Shāfi'ī himself emphasized *qiyās* relying on textual sources and strongly denounced *istiḥsān*.<sup>59</sup>

### **The *Ḥanbalī* School**

Ahmed ibn Ḥanbal is perceived as the fourth and the last of the four imams establishing mainstream schools of legal thought in Sunnī Islam. As with the other three schools, detailed research of the development of this school's theoretical framework shows how it

developed over time and how later scholars were equally significant in shaping it. Ibn Ḥanbal is famous for his ideological opposition to *Mu‘tazila* thought<sup>60</sup> and the notion of a created Qur’an, which ended up in his torture, imprisonment and eventual retreat from public life until the cessation of government support to *Mu‘tazila*.<sup>61</sup> Ḥanbalī thought is perceived to be one of the most traditionalist (laying strong emphasis on superiority of sacred traditions) Sunni schools of legal thought. It asserts superiority of Qur’an and Sunna followed by the opinions of the companions and employs *istiṣḥāb* extensively.<sup>62</sup>

<sup>1</sup> Gardet, L. "Islām." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 04 August 2008 [http://www.brillonline.nl/subscriber/entry?entry=islam\\_COM-0387](http://www.brillonline.nl/subscriber/entry?entry=islam_COM-0387).

<sup>2</sup> Hallaq, Wael, *The Origins and Evolution of Islamic Law*, Cambridge University Press, 2006, 2<sup>nd</sup> ed, p. 32.

<sup>3</sup> Hallaq, Wael, *Origins*, p. 32.

<sup>4</sup> Calder, N. "Sharīa." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 04 August 2008 [http://www.brillonline.nl/subscriber/entry?entry=islam\\_COM-1040](http://www.brillonline.nl/subscriber/entry?entry=islam_COM-1040).

<sup>5</sup> *‘Ilm* and *fiqh* are linguistically close to each other, with both referring to knowledge, but *‘ilm* does not entail positive engagement beyond actual awareness, whereas *fiqh* indicates some level of intellectual involvement.

<sup>6</sup> Goldziher, I. "Fiḫ." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 04 August 2008 [http://www.brillonline.nl/subscriber/entry?entry=islam\\_SIM-2364](http://www.brillonline.nl/subscriber/entry?entry=islam_SIM-2364).

<sup>7</sup> Ramadan, Said, *Islamic Law*, London: P.R. McMillan Limited, 1961, 1<sup>st</sup> ed, p. 31.

<sup>8</sup> Hallaq, Wael, *Origins*, p. 33.

<sup>9</sup> Hallaq, Wael, *A History of Islamic Legal Theories, An Introduction to Sunni Uṣūl al-Fiqh*, Cambridge University Press, 1997, 1<sup>st</sup> ed., p. 4.

<sup>10</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p.4.

<sup>11</sup> Juynboll, G.H.A. "Sunna." *Encyclopaedia of the Qur‘ān*. General Editor: Jane Dammen McAuliffe, Georgetown University, Washington DC. Brill, 2008. Brill Online. S.O.A.S (soas). 06 August 2008 [http://www.brillonline.nl/subscriber/entry?entry=q3\\_SIM-00408](http://www.brillonline.nl/subscriber/entry?entry=q3_SIM-00408).

<sup>12</sup> Hallaq, Wael, 'The Formation of Islamic Law', *The Formation of the Classical Islamic World*, vol. 27, Ashgate, 2004, p.xxiii.

<sup>13</sup> Ramadan, Said, *Islamic Law*, p. 33.

<sup>14</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p. 11.

<sup>15</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p. 10.

<sup>16</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p. 11-12.

<sup>17</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p. 13.

<sup>18</sup> Robson, J. "Ḥadīth." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 06 August 2008 [http://www.brillonline.nl/subscriber/entry?entry=islam\\_COM-0248](http://www.brillonline.nl/subscriber/entry?entry=islam_COM-0248).

<sup>19</sup> Al-Khudārī, Muḥammad, *Tārīkh al-Tashrī‘ al-Islāmī*, Cairo: Al-Maṭba‘a al-Tijārīya al-Kubra, 1970, 9<sup>th</sup> ed, p. 104.

<sup>20</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p. 14.

- <sup>21</sup> Bernand, M. "Idjīmā'." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 06 August 2008 [http://www.brillonline.nl/subscriber/entry?entry=islam\\_COM-0350](http://www.brillonline.nl/subscriber/entry?entry=islam_COM-0350).
- <sup>22</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p. 20. Further elaboration on the evolution of schools of thought and their position on consensus is later provided in the schools of legal thought section.
- <sup>23</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p. 20.
- <sup>24</sup> Bernand, M. "Idjīmā'." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 06 August 2008 [http://www.brillonline.nl/subscriber/entry?entry=islam\\_COM-0350](http://www.brillonline.nl/subscriber/entry?entry=islam_COM-0350).
- <sup>25</sup> Libson, G.; Stewart, F.H. "'Urf." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 06 August 2008 [http://www.brillonline.nl/subscriber/entry?entry=islam\\_COM-1298](http://www.brillonline.nl/subscriber/entry?entry=islam_COM-1298).
- <sup>26</sup> Hallaq, Wael B. 'Was the Gate of Ijtihad Closed', *International Journal of Middle East Studies*, Vol. 16, No. 1, (Mar., 1984), pp. 3-41, p. 3.
- <sup>27</sup> *Fard 'ayn* applies to situation where the individual is personally responsible for upholding the rule, whereas *fard kifaya* applies to situations where the collective group is responsible for the matter. If one or a few members of the group take it upon themselves to carry such a responsibility, then the rest of the group is not considered obligated to do so.
- <sup>28</sup> Al-Khudarī, Muḥammad, *Tarīkh Al-Tashrī'*, p. 442.
- <sup>29</sup> Al-Khudarī, Muḥammad, *Tarīkh Al-Tashrī'*, p. 442.
- <sup>30</sup> Schacht, J.; MacDonald, D.B.; Schacht, J. "Idjīhād." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 06 August 2008 [http://www.brillonline.nl/subscriber/entry?entry=islam\\_COM-0351](http://www.brillonline.nl/subscriber/entry?entry=islam_COM-0351).
- <sup>31</sup> Hallaq, Wael B. 'Was the Gate of Ijtihad Closed', p. 4.
- <sup>32</sup> Bernand, M.; Troupeau, G. "Kiyās." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 06 August 2008 [http://www.brillonline.nl/subscriber/entry?entry=islam\\_COM-0527](http://www.brillonline.nl/subscriber/entry?entry=islam_COM-0527).
- <sup>33</sup> Al-Khudarī, Muḥammad, *Uṣūl al-Fiqh*, Cairo: Matba'at al-Jamāliya, 1911, vol.1, p. 301.
- <sup>34</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p. 68.
- <sup>35</sup> Khudārī, *Uṣūl al-Fiqh*, p. 301
- <sup>36</sup> Al-Shāfi'ī, Muḥammad ibn Idrīs, *Al-Risāla*, ed. Aḥmed Moḥamed Shaker, Cairo: Maktabat wa Maṭb'at Mustapha al-Babī al-Ḥalabī, 1940, p. 106.
- <sup>37</sup> Al-Shāfi'ī, *Al-Risāla*, p. 110.
- <sup>38</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p. 73.
- <sup>39</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p. 71.
- <sup>40</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p. 108.
- <sup>41</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p. 108.
- <sup>42</sup> Linant de Bellefonds, Y. "Istiṣhāb." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 07 August 2008 [http://www.brillonline.nl/subscriber/entry?entry=islam\\_SIM-3692](http://www.brillonline.nl/subscriber/entry?entry=islam_SIM-3692).
- <sup>43</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p. 113.
- <sup>44</sup> Linant de Bellefonds, Y. "Istiṣhāb."
- <sup>45</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p. 112.
- <sup>46</sup> Hallaq, Wael, *A History of Islamic Legal Theories*, p. 112.
- <sup>47</sup> Gleave, R.M. "Maḳāṣid al- Sharī'a (a)." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 07 August 2008 <[http://www.brillonline.nl/subscriber/entry?entry=islam\\_SIM-8809](http://www.brillonline.nl/subscriber/entry?entry=islam_SIM-8809).
- <sup>48</sup> Goldziher, I. "Fikh." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 08 August 2008 [http://www.brillonline.nl/subscriber/entry?entry=islam\\_SIM-2364](http://www.brillonline.nl/subscriber/entry?entry=islam_SIM-2364).
- <sup>49</sup> Hallaq, Wael, *Origins*, p. 150.
- <sup>50</sup> Hallaq, Wael, "From Regional to Personal Schools of Law, a Re-evaluation", *Islamic Law Yearbook*, vol. 8, 2001, pp.1-26.

- 
- <sup>51</sup> Heffening, W. "Hanafiyya." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 08 August 2008 [http://www.brillonline.nl/subscriber/entry?entry=islam\\_SIM-2703](http://www.brillonline.nl/subscriber/entry?entry=islam_SIM-2703).
- <sup>52</sup> Heffening, "Hanfiyya", *Encyclopaedia of Islam*.
- <sup>53</sup> Heffening, "Hanfiyya", *Encyclopaedia of Islam*.
- <sup>54</sup> For more details on the Ḥanafī school, see Abū Zahra, Muḥammad, *Abū Ḥanīfa, Ḥayātuh wa 'Aṣruh, Arāu'h wa Fiqhuh*, Cairo: Dār al-Fikr al-'Arabī, 1947.
- <sup>55</sup> Cottart, N. "Mālikiyya." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 08 August 2008 [http://www.brillonline.nl/subscriber/entry?entry=islam\\_COM-0652](http://www.brillonline.nl/subscriber/entry?entry=islam_COM-0652).
- <sup>56</sup> Cottart, N. "Mālikiyya." *Encyclopaedia of Islam*.
- <sup>57</sup> See Abū Zahra, Muḥammad, *Malik, Ḥayātuh wa 'Aṣruh, Arāu'h wa Fiqhuh*, Cairo: Dār al-Fikr al-'Arabī, 1964.
- <sup>58</sup> Al-Shāfi'ī considered himself to be a member of the *ahl al-ḥadīth* camp.
- <sup>59</sup> For more details on Al-Shāfi'ī's thought, see Abū Zahra, Muḥammad, *Al-Shāfi'ī, Ḥayātuh wa 'Aṣruh, Ara'uh wa Fiqhuh*, Cairo: Dār al-Fikr al-'Arabī, 1948.
- <sup>60</sup> Mu'tazila is an extinct school of Muslim thought that was most powerful during the reign of the Abbasid caliph, Ma'mūn, who was himself a follower of their thought. This school is perceived as a rational school of thought heavily influenced by Greek philosophy. They argued that the Qur'an was a creation of God which practically meant it is not as sacred. Ma'mūn and his follower al-Mu'taṣsim forced most Muslim jurists, who generally did not believe in such hypothesis, to acknowledge it. That phase is referred to as the *mihna* (crisis).
- <sup>61</sup> Khudārī, Muḥammad, *Tārīkh al-Tashrī'*, p. 191.
- <sup>62</sup> Laoust, H. "Aḥmad b. Ḥanbal ." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 15 August 2008 [http://www.brillonline.nl/subscriber/entry?entry=islam\\_COM-0027](http://www.brillonline.nl/subscriber/entry?entry=islam_COM-0027).