Abstract and Keywords

This article examines whether the Qur’an served as a source for the early jurists during the classical period; whether Hadith reports contain authentic information regarding Muhammad’s sayings and actions (and if they do not, when and how they became attributed to him); whether and how the regional legal traditions were transformed into legal schools centered around particular individuals; and how the nature of legal reasoning changed within this period. The article first revisits the debates regarding the role of the Qur’an and Hadith, respectively, in the formulation of Islamic law. It then reviews scholarship on the phases of Islamic law’s development, beginning with the emergence of geographically defined legal traditions and culminating in the formation of the legal schools and their distinctive theoretical principles and substantive doctrines. It concludes by suggesting directions for future research.

Keywords: Qur’an, Hadith, Muhammad, legal schools, legal reasoning, Islamic law, legal traditions

Much of the historiography of Islamic law in the period between the seventh and eleventh centuries is rooted in positions taken on one central question: is the traditional Muslim account of the genesis of Islamic law reliable? This traditional account, in a nutshell, says that Islamic law originated in the rules and instructions propounded by Muhammad, and that after the exodus to Medina and the establishment of a Muslim polity these rules grew into an extensive body of laws rooted in the Qur’an. After Muhammad’s death, his successors continued to implement the Qur’anic laws as well as others based on the Prophet’s precedent. In addition, they solved issues that were not explicitly covered by the former two sources by employing individual reasoning (ra’y). Some of Muhammad’s companions who were recognized for their legal acumen settled in the newly founded garrison towns, establishing regional traditions of legal learning in these locations. Between the second quarter of the second Islamic century and the middle of the third (roughly 740–860 CE), a handful of prominent jurists systematized earlier legal thought and laid the foundations for enduring legal schools with their own legal literatures. Within this traditional narrative, the aspects that have prompted extensive debate concern the following questions: whether the Qur’an actually served as a source for the early jurists; whether Hadith reports contain authentic information regarding Muhammad’s sayings and actions (and if they do not, when and how they became attributed to him); whether and how the regional legal traditions were transformed into legal schools centered around particular individuals; and how the nature of legal reasoning changed within this period.
This chapter is divided into six sections. The first two address debates regarding the role of the Qur’an and Hadith, respectively, in the formulation of Islamic law. The remaining four sections engage with scholarship on the phases of Islamic law’s development, beginning with the emergence of geographically defined legal traditions and culminating in the formation of the legal schools and their distinctive theoretical principles and substantive doctrines.

I. Law in the Qur’an

Classical works of Sunni legal theory (usul al-fiqh) take as axiomatic that the Qur’an is the foundation of Islamic law, complemented by the precedent, or Sunna, of the prophet Muhammad. Western scholars writing in the second half of the nineteenth and beginning of the twentieth centuries drew heavily on the narrative provided by these works for their understanding of legal developments in the first two centuries AH (roughly the seventh and eighth centuries CE). But shortly into the twentieth century, and in earnest after about 1950, scholars started questioning whether this narrative reliably represented the historical reality of the first two centuries of Islamic law.

Building on his nineteenth-century predecessors, Ignaz Goldziher (1850–1921) put forward a highly influential challenge to the classical narrative, and his critical engagement with the earliest legal sources set a benchmark for succeeding scholarship. His most cutting critique, elaborated in the next section, was of the authenticity of Hadith, the body of reports of the statements and deeds of the Prophet, his Companions, and other early figures whom later jurists regarded as legal authorities. Goldziher asserted that the Qur’an and Hadith (which over time came to serve as the textual substance of the prophetic Sunna) were accorded legal authority only at a secondary stage of Islamic legal formation. Since Goldziher, scholars who have cast doubt on the Qur’an’s legal content have approached the matter from two broad but complementary angles.

The first, and by far the more influential, is a historiographical approach that focuses, as Goldziher did, on the appearance of early scriptural texts and their reception by the first generations of Muslims. It asks whether those early generations took the Qur’an’s black-letter imperatives as a basis for legislation and, if so, when they began to do this. The most prominent proponent of this approach is Joseph Schacht (1902–1969). It is scarcely possible to overstate the influence of Schacht’s work on the modern study of Islamic law. Since the publication of his Origins of Muhammadan Jurisprudence (1950), Schacht has without question become the most frequently cited authority in western studies in the fields of legal origins and Islamic law, and his work has elicited paeans of acclaim as well as sweeping rebuttals. Despite its waning influence under the force of increasingly successful critiques, to a large extent Schacht’s conclusions still frame the debate for both his admirers and his detractors.

Did Schacht view the Qur’an as a source of early Islamic law? With respect to its content, Schacht saw the Qur’an as providing a moral take on legal matters. This perspective, likely influenced by Goldziher, is rooted in a vision of Near Eastern cultural continuity that informed Arabian custom both before and during Muhammad’s prophetic mission and is reflected in the language of the Qur’an. Where the Qur’an speaks of the Prophet’s judicial functions, therefore, it speaks of his role in settling disputes (hukm)—which Schacht saw as a continuation of the pre-Islamic Arabian custom of the wise arbiter (hakam)—and augments it with a new rudimentary notion of administering justice (qada’). For Schacht, the Prophet was only marginally elevated to the status of “lawgiver” by virtue of his political and military leadership at Medina. His primary role was to rectify society’s fallen standards, and the Qur’an implicitly registers this mission through its prescriptions and prohibitions regarding commercial dealings, family relations, and public conduct. The
Qur’an’s verses in favor of women and orphans and against usury, blood feuds, and lax sexual mores were therefore declarations of right and wrong, not instances of legislation.

Schacht argued that the Qur’an’s incorporation into Islamic law proper was a much later development. He complemented his impressions about the Qur’an’s language with a critical analysis of early Hadith collections and legal works, dating the beginning of a truly “Islamic” articulation of law about twenty years into the second/eighth century. Preceding it was what he called the customary (e.g. marriage and divorce) and administrative (e.g. fiscal and military) law of the Umayyad Caliphate (41–132/661–750). These doctrines he regarded as the starting point for what later developed into Islamic law: later jurists either affirmed doctrines they deemed theologically and rationally acceptable and clothed them in legitimizing scriptural authority or, alternatively, discarded unacceptable ones in favor of other doctrines which they equally clothed in the same scriptural authority.\(^5\) To Schacht, this scriptural clothing was woven of Hadith reports, which he, like Goldziher before him, considered almost entirely fabricated (for Schacht’s Hadith critique, see the next two sections). With regard to the Qur’an, what is important to note is that Schacht viewed Islamic law-making as essentially the invention of early Hadith masters who systematically islamized existing legal doctrines by fabricating reports that linked them to the authority of the Prophet and the early Muslim community. According to this narrative, Qur’anic injunctions became important only after the process of islamization began and were used to pad the new religious law at a decidedly secondary stage. Schacht thus dispatched the Qur’anic “element” of Islamic law in a precious few pages toward the end of his study, further emphasizing his view of the Qur’an’s marginal role in the formation of a functional legal system.\(^6\)

Schacht sharpened Goldziher’s skeptical view of the classical narrative by grounding it in a more thoroughgoing analysis of a broader range of Arabic primary texts, some of which had not been available to scholars before him. But not all were convinced by Schacht’s demotion of the Qur’an. An alternative but complementary approach is exemplified by the work of Noel Coulson (1928–1986). Coulson too characterized the Qur’an as essentially moral, but it was precisely because of its moral imperative that he argued that it must have provided the ethical seeds for later Islamic legal doctrine. On this view, Islamic law developed alongside Umayyad regulatory law.\(^7\) Still, Coulson seemed to view Islamic law—though not islamized law—as emerging when jurists “cloth[ed Qur’anic] norms of behavior with legal consequences.”\(^8\)

Shortly after Coulson, S. D. Goitein (1900–1985), best known for his magisterial studies on the Cairo geniza,\(^9\) disputed the notion that the Qur’an is bereft of legal material.\(^10\) He was unconvinced by the quantitative argument—namely, that because the Qur’an has no more than 500 verses of legal import (out of over 6,000), it cannot be considered to have significant legal weight.\(^11\) Goitein pointed out that verses with legal import are often long and detailed, and that in any case quantity does not outweigh substance and thus can tell us nothing of how the early community viewed the role of scripture in their lives. Paralleling the old Israelite conception and in keeping with Near Eastern tradition, Muhammad’s followers, Goitein argued, viewed law not as a contingent human institution but as an eternal and ontologically independent expression of truth accessible only through divinely conferred wisdom or revelation. Like Schacht, Goitein affirmed the Prophet’s status as wise arbiter (hakam), but unlike Schacht, he took this broadened scope of the Prophet’s office—from preacher to arbiter—as evidence that religious law existed as an instrument of social governance during the Prophet’s lifetime. Goitein identified a particular Qur’anic passage (5:42–51) as anointing the Prophet as arbiter and, using the chronology of the Qur’anic text proposed by earlier scholars, he pinpointed the “birth-hour” of Islamic law at around the year 5 AH (637 CE).\(^12\) But Goitein seemed unprepared to take on Schacht in so short an article, sidestepping the latter’s main contention that law lay outside of religion in the first century. Instead, he drew a distinction between (sacred) law and (formal) jurisprudence, which somewhat diluted his argument into a variation on Schacht’s thesis.
After a period of dormancy, studies on the origins of Islam and its law acquired fresh vigor beginning around 1980, and the doubts Schacht raised about the early sources were taken to new heights. Patricia Crone (1945–2015) stands out as promoting the most sweepingly skeptical position. Crone viewed the Qur’an as a confounding hodgepodge of statements whose disorganization and amorphous origins severely compromised its usefulness as a source of historical information. Later exegetical works, which she contended were heavily infiltrated by the tales of nameless storytellers, offer no help; and early jurists, she argued, chronically misunderstood the true import of legal verses. What she identified as severe discontinuities between the real meanings of the Qur’an and the provisions of Islamic law bolstered her conclusion, prevalent in much of her work, that the Qur’an coalesced into its canonical form at a period substantially later than that claimed in the traditional Muslim narrative. An authoritative Qur’anic canon was either non-existent in the Hejaz at an early period or, if it existed, was considered irrelevant for the purpose of deriving law.

In a separate study on the foreign borrowings in Islamic law, Crone took the Qur’an’s irrelevance for granted, and the Qur’an’s complete absence in this work stands out even more than the passing treatment it receives in Schacht’s Origins. Crone earned considerable praise from some scholars for her daring, while others attacked her for what they described as a polemical, high-handed tone and an inadequate, even arbitrary handling of the Qur’an and exegetical sources.

Since then, several studies that focus on specific areas of the legal corpus have in great measure disproved the sweeping claim that the Qur’an was absent in early Islamic law. David S. Powers’s 1986 study on inheritance law, while partially in agreement with Schacht, was reserved about marginalizing the Qur’an’s early importance, which would leave an unaccountable space of about a century before the Hadith masters got to work. Not long after, Harald Motzki and Yasin Dutton, each studying an early Hadith collection, noted that figures from the first/seventh century are observed routinely employing both direct and indirect references to the Qur’an as evidence for legal doctrine. Finally, in her study on Islamic purity law, Marion Holmes Katz made the sensible observation that the basic rules governing ritual washing for daily acts of worship are all articulated in the Qur’an, which makes it implausible that the Qur’an had no legal relevance for early Muslims whatever.

A more resounding recent critique, however, belongs to Wael B. Hallaq. Hallaq’s views on the subject appear to have undergone a slight evolution, or else perhaps a shift in emphasis. His 2005 synoptic study of legal origins described a view of the Qur’an as eminently concerned with carving out a unique Muslim moral identity that absorbed acceptable pre-Islamic customs while rejecting immoral pagan practices as well as correcting the errant ways of previous monotheistic communities (i.e. Jews and Christians). This “Islamic legal ethic”, his narrative suggested, grew organically after the Prophet’s death. But in a 2009 article, he re-centered the debate explicitly on the philosophical question of morality and the law. Drawing on the writings of modern moral and legal philosophers, Hallaq upbraided scholars for what he deemed their misguided habit of exporting a modern European dichotomy between the moral and legal spheres across time and space into seventh-century Arabia. To him, the Qur’an’s juxtaposition of “faith” (iman) and “practice” (‘amal) comports with the premodern conviction that the “moral” and the “legal” were identical concepts. Therefore, the Qur’an, by virtue of being a moral text, cannot but have been seen by its first recipients as an expression of law as well.

Other studies have sought to combine the respective historical values of the Qur’an and Hadith to see whether a coherent and continuous historical picture emerges. These studies use the Qur’anic reception as a springboard to explain what happened in the first century after the Prophet’s death. But because so much of this story is bound up in the reliability of Hadith reports, they tend to focus considerably on this source, to which we, too, now turn.
II. Law in the Hadith

As we have seen, historians reconstructing Islamic legal history in the first two Islamic centuries are faced with the challenge of doing so on the basis of limited and incomplete sources. The majority of legal material available to historians is contained in the vast corpus of Hadith reports (also referred to by many as “traditions”). Each Hadith report is composed of a narrated text (matn), which recounts an event from the prophetic age, appended to a chain of transmitters (isnad), which traces the text back to its putative source. Given that the earliest extant Hadith collection was compiled around the middle of the second/eighth century, historians of early Islam have applied the critical tools of modern historical inquiry, particularly source criticism, to evaluate the historicity of Hadith reports and to accurately date when specific reports first appeared and to which authorities they may be correctly ascribed.

Nineteenth-century scholars such as D. S. Margoliouth (1858–1940) drew heavily on the classical narrative for their understanding of the Hadith (just as they did for their understanding of the Qur’an), taking the canonical works as more or less reliable. On this account, during the first/seventh century, the Companions of the Prophet and their Successors derived Islamic law on the basis of (in hierarchical order) the Qur’an, the Sunna, and the consensus of the Companions. The second/eighth century saw the emergence of ra’y, the exercise of a jurist’s individual reasoning to resolve legal questions, which was later systematized as legal analogy (qiyas) and constituted the fourth source of law. Despite the relative emphasis placed on Hadith in Medina and ra’y in Iraq, by the middle of the second/eighth century the foundations of a coherent legal system were discernible and served as the basis for the later schools of law.

Goldziher’s source-critical approach and his rejection of this classical account, as already noted, altered the course of all subsequent research on the formation and early development of Islamic law. First in his study of the Zahiri school and later in his Muslim Studies, Goldziher posited the reverse trajectory: in the first/seventh century, Islamic legal doctrine was developed primarily from ra’y, and only later were Hadith reports fabricated to justify existing ra’y-based jurisprudence. Goldziher characterized the jurisprudence of the first/seventh century as underdeveloped and attributed the evolution of legal doctrine in the following century to the religious policies of the early Abbasids, who sought to ground religious and social life in prophetic precedents, which in turn gave rise to the mass forgery of Hadith reports. Goldziher adduced as evidence the fact that legal works preceded Hadith collections; the latter, he argued, did not appear until the third/ninth century. This claim turns on Goldziher’s own classification of second/eighth-century works —such as Ibn Jurayj’s (d. 150/767) collection and Malik b. Anas’s (d. 179/796) Muwatta—as legal manuals. He also categorized older collections (suhuf and kutub) as mere scripta, or rough notes of individual sayings intended for private use.

Schacht furthered Goldziher’s ideas by developing methods for dating Hadith reports, or at least establishing a terminus post quem for various categories of reports, and integrating his findings into a comprehensive master narrative of the development of Islamic law. In his Origins, Schacht maintained that legal traditions from the first/seventh century — those ascribed to the Prophet and the Companions— should be assumed fictitious unless proven otherwise, and that the reports of Successors are likewise largely inauthentic. Schacht proposed several methods for dating reports. One was based on an argument e silentio. He assumed that a legal report would have been adduced as evidence immediately after it came into circulation, and from there he concluded that reports that were not mentioned in a legal discussion to which they would have pertained did not yet exist at that historic moment. Schacht further proposed that a report’s initial circulation could be dated based on when it first appeared in legal or Hadith literature, or when the earliest common transmitter in the isnad— whom Schacht termed a “common link”— appeared in a chain.
Schacht related his dating of Hadith to his broader interest in the origins of Islamic law. In his studies of the earliest extant legal works, Schacht observed a generational frequency in the Hadith reports adduced by early Iraqi jurists. They ascribed more reports to Successors than to Companions and cited the former more frequently than the latter, and these in turn more frequently than reports that extended all the way back to the Prophet. Schacht also noted that the quantity of Hadith reports in circulation grew considerably between 150/767 and 250/864, and that the quantity of prophetic reports in particular expanded during the first half of the third/ninth century, which coincided with the period after the death of al-Shafi’i (d. 204/820). These observations led Schacht to posit the “backward growth of isnads”: legal doctrines were first ascribed to the Successors, then later to the Companions, and finally to the Prophet. In this schema, isnads were gradually improved through the steady projection of teachings back to earlier and higher authorities, culminating in the unbroken isnads found in the Hadith collections of the third/ninth centuries. For Schacht, the most complete isnads were forged most recently, and therefore, “the more perfect the isnad, the later the tradition.”

Schacht’s contemporaries generally received his work with approbation, and its significance has been so enduring in the field of Hadith studies that it has provided the starting point and the dominant paradigm for virtually every subsequent study in the field. While several scholars, such as Johann Fück (1894–1974), Fuat Sezgin, and Muhammad Mustafa Azami, have disputed Schacht’s methods and conclusions, among western scholars the most significant challenge to Schacht’s legacy has been posed by the so-called isnad-cum-matn method, most extensively developed by Harald Motzki.

Motzki criticized Schacht’s conclusions as circular, overly generalized, and arbitrary. He proposed an alternative and, in his view, more rigorous and robust way of judging the historicity of Hadith reports, one that accounts for both the isnad and the matn. First, all available narrations are compiled, diagrammed, and compared to identify any variant transmissions in both the isnad and the matn. Then, groups of matn variants and groups of isnad variants are compared to identify any correlations. By applying this method to Hadith collections from the first two centuries, including previously unexamined ones such as the Musannaf of ‘Abd al-Razzaq (d. 211/827), Motzki challenged Schacht’s categorical conclusions of fabrication and back projection. Against Goldziher’s and Schacht’s findings, Motzki argued that the growth of reports does not necessarily entail forgery and that common links should not be assumed to be forgers. Further, he asserted that the age and provenance of early Hadith reports can be determined through careful study and comparison of chains of transmission with the earliest collections available to us. His own study of the Musannaf led him to conclude that Islamic law began at the end of the first/seventh century and was the result of systematic collecting, not merely forging, of Hadith reports. Motzki’s results also called into question Schacht’s argument from silence. The complexity of the process of gathering and evaluating Hadith reports means that the absence of a particular report from the legal discussion of one scholar cannot be taken as evidence that it was not known to other scholars at the time.

Motzki’s novel research agenda has inaugurated a new era in the study of early Islam, and his method is now being employed by a new generation of scholars. While Motzki’s work has been misinterpreted as incorporating an a priori assumption of authenticity for Hadith reports, he has emphatically repudiated this claim, maintaining that he has intended only to judiciously retrace the transmission history of individual texts—which may very well contain forgeries—with a view to dating individual reports or groups of reports.

III. The Debate on Origins, First/Seventh Century
Having evaluated how scholars have engaged with the historical sources of Islamic law, we now turn to contending visions of its early development. The first century of Islam played a formative role in determining the course of the subsequent development of Islamic law. Already in the first three generations after the Prophet, foundational legal institutions were established and the characteristic features of Islamic law became discernible. Regrettably, the paucity of contemporaneous sources from this period also makes it the one about which the least is known with certainty. We have already described the traditional narrative of development elaborated in classical Sunni sources from the fourth/tenth century onward, to which many early European historians generally adhered. Some nineteenth-century scholars, however, postulated unacknowledged borrowings from other legal systems in the Near East. Abraham Geiger (1810–1874) wrote an influential study that argued for a strong Jewish influence on Islamic thought, particularly in the area of law. Alfred von Kremer (1828–1889) was one of the first to consider the influence of Roman law on the formation of Islamic legal doctrines and to hypothesize an indirect transfer through the medium of Jewish law. 

Goldziher not only saw Islamic law as primarily derived from the practical ra’y accommodations of first-century jurists but also considered it deeply indebted to Roman law.

As on so many other questions in Islamic legal history, Schacht furthered Goldziher’s theories concerning Islamic legal origins. According to Schacht, “during the greater part of the first century Islamic law, in the technical meaning of the term, did not yet exist.” Instead, he argued, apart perhaps from the narrow scope of worship and ritual law, early Muslims were generally indifferent to legal matters and largely retained the practice and institutions of the territories they conquered. During the first/seventh century, legal maxims and customs originating from Roman law, canon law of the Eastern Churches, Jewish law, and Sassanian law infiltrated Umayyad popular and administrative practices and appeared later in legal doctrines of the second/eight century. Schacht identified cultured non-Arab converts, whose education in Hellenistic rhetoric had comprised the study of Roman law at a rudimentary level, as the chief conduit of this transfer. On Schacht’s account, these borrowings, alongside the ra’y-based judgments of Umayyad judges and the remnants of pre-Islamic customary law, combined to form the “living tradition” of the ancient schools, which was subsequently islamized and buttressed with fabricated post-prophetic and then prophetic reports starting in the early second/eighth century.

In her study on foreign elements in Islamic law, Crone held to the basic outlines of Schacht’s paradigm, but she described his findings (as well as Goldziher’s) on extra-Islamic legal sources as far-fetched. She disputed his work on two specific fronts. First, she argued that since the early Islamic community took shape in the Roman Fertile Crescent, borrowings must have taken place through this geographical area, not through Iraq as Schacht had supposed. While she accepted borrowings from Jewish law as self-evident, Crone maintained that the principal source of classical and Umayyad institutions was neither Arab custom nor ancient Roman law but “Roman provincial law”, that is, Roman law that incorporated foreign elements and was applied in the provinces of the Roman Empire, especially in the east. Second, Crone argued that the list of supposed borrowings given by Goldziher and Schacht was unconvincing, going so far as to state that “not a single item of Goldziher’s and Schacht’s list of Roman elements in Islamic law has been proved, and several are demonstrably wrong.”

Paralleling her critique of earlier studies of foreign influences on Islamic law, Crone’s own findings have attracted both substantive and methodological criticism. Kevin Reinhart argued that Crone’s evidence in fact contradicts her conclusions. He contended that the eastern Mediterranean world of the first/seventh century, in which Islam emerged, was not a cultural vacuum, but a heterogeneous region with shared cultural institutions. It should, therefore, be no surprise if Muslims inherited some of these institutions. Accordingly, Reinhart interpreted Crone’s evidence as a
carefully documented history of the “creativity of an Islamic culture that felt free to borrow but also to discard and that both integrated itself into and distinguished itself from its predecessors.”\(^{50}\)

Hallaq criticized Crone for misreading legal texts; for leaving unanswered important questions, such as what exactly the sources of provincial law were and who was applying it; for not taking into account important findings in the fields of Roman and Byzantine studies; and, above all, for a deprecating assumption of Arabian cultural inferiority which, he argued, colored her interpretation of the evidence\(^{51}\) and prompted her to search for the true origins of legal norms, which she believed could not possibly have been an indigenous Arab development.\(^{52}\) In his own study on legal origins, Hallaq emphasized that the genuine sources of Islamic law are to be found in the Hejaz, not in cultural borrowings from the Fertile Crescent or elsewhere in the wake of the Muslim conquests. Much like Reinhart, Hallaq held that Islam emerged within an indigenous Arabian legal tradition, and to the extent that pre-Islamic Arabs absorbed Greco-Roman and Semitic laws and Near Eastern legal institutions, these could be unproblematically incorporated into Islamic law.\(^{53}\)

Motzki’s studies on early legal developments in Mecca, which used the method of Hadith analysis outlined above, concluded that Schacht’s date for the beginnings of a properly “Islamic” law was at least half to three-quarters of a century too late.\(^{54}\) Motzki identified reliable and precise examples of legal reasoning that drew on the Qur’an and prophetic Hadith reports as early as the second half of the first/seventh century.\(^{55}\) He also argued that during the Umayyad period, the rulings of judges and governors played “a very marginal role in the formation of the opinions of the early [jurists]”, at least in the issues of private law (e.g. marriage and divorce) with which Motzki’s study was concerned. El Shamsy has likewise argued for an early inauguration of a properly Islamic law, noting that the founding document of the Islamic polity in Medina shows that the early Muslims saw their community as religiously constituted, and that the laws of this community could therefore be legitimately considered Islamic.\(^{56}\) Consequently, Muslim jurists in the formative period did not enjoy the luxury of a tabula rasa in their law-making: they had to operate within the framework of an existing Islamic legal tradition that must have possessed considerable authority.

One possible way of shedding light on the transition from early, preliterary Islamic legal thought to the law as articulated in second/eighth-century legal literature is offered by the systematic study of the opinions of the earliest jurists, which were transmitted orally or in note form. Such a study was undertaken on a limited scale by Motzki,\(^{57}\) but a comprehensive survey has yet to be attempted, even though extensive lists of the early jurists are available in the works of Ibn Hazm (d. 456/1064) and Ibn al-Qayyim (d. 751/1350).\(^{58}\) Muhammad Rawas Qal’aji has compiled the legal opinions of many of these early jurists into individual volumes, ordering all of their known legal views alphabetically and carefully referencing the various Hadith collections in which their transmissions appear. Qal’aji’s more than a dozen volumes draw together the legal reports attributed to Companions such as ‘Umar b. al-Khattab, ‘Abdullah b. ‘Umar, ‘Ali b. Abi Talib, Ibn ‘Abbas, and ‘A’isha, as well as Successors such as Ibrahim al-Nakha’i and al-Layth b. Sa’d. These volumes could serve as a propitious beginning for a historical and analytical study on this topic.

### IV. Master Jurists and the Emergence of a Legal Literature, Second/Eighth Century

Many scholars mark the middle of the second/eighth century as the beginning of a formal Islamic law. The first surviving books on Islamic law proper—that is, works that were deliberately composed and disseminated—originate from around the middle of the second Islamic century. The emergence of a written discourse at this time is not limited
to Islamic law. Owing primarily to the adoption of paper and the advantages this medium offered over parchment and papyrus, the same shift can be observed across the landscape of Islamic learning.59 These surviving works do not appear to have been preceded by similar ones that were later lost; they seem in fact to have been the first. Schacht accordingly called the stretch of time roughly from 150 to 250 AH the “literary period.”60 Still, the works of this period represent a legal system that was still taking shape, and scholars studying these works have reached varying conclusions about the nature of early law and its sources of authority.

The new urban centers in the vast Islamic Empire were far enough apart to develop separate characters but close enough to maintain strong commercial and cultural exchange, which included religious knowledge. The main regions of learning in the second century were the Hejaz, represented by Medina, less so by Mecca; Iraq,61 represented by Kufa, the southern port city of Basra, and the emerging metropolis of Baghdad; and Syria, represented by Damascus. After the Abbasid revolution in 132/750, Damascus ceased to be the capital of the caliphate, and Syria’s importance faded. By contrast, over the course of the second/eighth century and in the beginning of the third/ninth, Egypt, with its center at Fustat (Old Cairo), grew in importance, and its influence eventually extended across the Muslim domains in North Africa and Iberia.

An important scholarly discussion on this period concerns the space in which early legal thinking took place. At what point did early jurists begin to view themselves as part of an increasingly defined juristic community, and what was the nature of juristic thought before that point? Schacht regarded the first half of the second/third century as the period of the “ancient” schools of Medina and Iraq.62 These schools, he suggested, were not homogeneous, but they were characterized by common patterns of legal thinking expressed in regional terms. The scholars of Medina determined normativity through reliance on the communal practice (‘amal) of the city’s leading jurists, while Iraqi scholarship was known for its rigorous application of ra’y as a way of generating legal decisions out of a set of well-attested normative principles. Toward the end of the second century, these regional styles of legal thinking were reworked into “personal” schools named after the influential masters who were thought to represent them best. Abu Hanifa (d. 150/767), whose disciples were the Hanafis, represented the Iraqi school; Malik (d. 179/796) and his disciples, the Malikis, represented the Medinan. Hallaq, however, vehemently contested this geographical partitioning of the early intellectual landscape, arguing that known legal disputes among jurists within each region clearly indicate that there was no such thing as uniform schools delimited by regional boundaries.63 Some scholars have supported Hallaq’s stance against Schacht’s notion of regional schools, while others have pointed out that Hallaq may have misread Schacht’s intended meaning for “regional” and “personal.”64 This disagreement extends to views on the schools’ subsequent development in the third/ninth century, discussed in the next section.

Another central debate on the second/eighth century relates to the question of who had the authority to formulate and apply the law. It has become something of a commonplace in legal scholarship, particularly on Sunnism,65 to describe Islamic law as a “jurist’s law”—that is, a law whose binding authority derives not from judicial rulings or government legislation but from the collective efforts of private jurists who issued opinions on legal questions. Because of the generally private nature of their occupation—in the sense that the government did not actively regulate it—early Muslim jurists possessed significant independent social and religious authority. This was based on their claim to represent the heirs and guardians of the normative practice of the sacred past, from the Prophet and his Companions down to their own time. This autonomous status, coupled with such regional variation as may have existed, created a legal diversity that could prove disruptive to the new Abbasid dynasty’s efforts to bring unity and centralized control to the sprawling empire.
That the new administration saw both decentralization and diversity in the law as a problem is brought out in Joseph Lowry’s study of a well-known letter written by the courtier Ibn al-Muqaffa’ (d. c. 139/756) to the caliph al-Mansur (r. 136–58/754–75). In this letter, Ibn al-Muqaffa’ advises the caliph to assume final discretion in selecting and promulgating legal doctrine out of what he saw as a hash of conflicting opinions from regional judges and jurists. Beyond its pragmatic plea to mitigate legal indeterminacy, Lowry argued, the letter contains an early typology of the religious law that prefigured later legal theory, which divided the law into spheres of interpretation: a non-interpretable sphere, which covered such fundamental obligations as prayer, and an interpretable one, which included nearly everything else. Ibn al-Muqaffa’ suggests placing legal interpretation within the caliphal domain, thereby linking obedience to sacred law with obedience to the caliph.

Examining the thought of this one courtier largely in the abstract, Lowry made no clear historical judgment about the political relationship of jurists and rulers. This was done much earlier in an influential but highly controversial book by Patricia Crone and Martin Hinds (1941–1988). Crone and Hinds argued that religious authority was initially invested in the caliph, who was seen as “God’s representative on earth” rather than as a temporal and non-inspired successor of Muhammad. This framework pitted the caliphate from the outset against the increasingly influential class of scholars (‘ulama’), which included jurists and theologians. The conflict swelled into the Abbasid period and culminated in the Qur’anic Inquisition (218–34/833–49), or Mihna, wherein the caliphs attempted to determine official theology against the scholars’ protestations. The scholars triumphed, successfully wresting legal and theological authority from the caliphs, and, in Crone and Hinds’s account, they proceeded to erase the past by systematically linking normative religion to the prophetic age. Unlike Schacht, Crone and Hinds held that caliphal law was seen ipso facto as religious law; like him, they argued that the victorious scholars rewrote history.

Crone and Hinds’s thesis is emblematic of a trend in Islamic legal historiography that depicts early tensions as a fierce, sometimes violent dialectic between two irreconcilable enemies, with one winner who proceeds to obliterate the legacy of the loser. Such zero-sum terms often exaggerate the conflict’s intensity and obscure the exchange of ideas between scholars and rulers. In rebuttal to Crone and Hinds, Muhammad Qasim Zaman has argued that the caliphs, particularly the Abbasids, sought to legitimize their rule not by sidelining religious scholars but by enlisting them in their centralizing project through patronage and other means. Whether this strategy is better called inclusion or cooptation, according to Zaman, is a trifling point. Similarly, El Shamsy has proposed that the major shift in the late Umayyad and early Abbasid period was from a communitarian vision of Islamic law, one based on regional practice that amalgamated caliphal and judicial decisions and scholarly opinions, to a regularized system of legal interpretation. This system produced an influential class of jurists to which rulers increasingly turned for legal opinions and on which, in turn, they exercised significant influence through judicial appointments and patronage of scholars.

What unifies all of the studies we have surveyed, despite their often radically different emphases and conclusions, is a quest to determine how legal thought evolved and spread, a process that took on new dimensions in the following century.

V. The Early Schools, Third/Ninth Century

In the third/ninth century, as well as in the decades leading up to it, we see the emergence and establishment of the four madhhab, the classical schools of Sunni Islamic law. Until the modern period, these four schools constituted the
preeminent formal institution through which Sunni legal doctrine in Muslim lands was interpreted and debated and legal cases involving Muslims adjudicated. And even though the secular nation-state has now long been the operative political order in most of the historical Muslim lands, the madhhab continues to guide many Muslims in ritual and civil matters (and increasingly commercial ones) and to serve as the framework for teaching Islamic law in many traditional colleges and schools. The label “classical” here denotes that in this period each school’s discursive repertoire (e.g. a legal vocabulary) and general institutional contours (e.g. a distinct body of legal opinion and methodology) more or less assumed the forms that would carry legal thought for the following millennium.

The traditional Muslim account of the emergence of the legal schools can be summarized as follows. In the first two centuries, the development of Islamic law was to a large extent driven by practical needs and expressed in legal responsa (fatawa, sg. fatwa) from jurists and judicial rulings (ahkam, sg. hukm) from judges and rulers. These legal authorities—many of them either students of the Companions or students of these students—drew first and foremost on the recent memory of the Prophet’s community in issuing their opinions and rulings. Jurists in the generations thereafter cultivated these opinions and rulings into a body of substantive doctrine, applying a set of largely implicit principles of legal interpretation (ijtihad) to address emergent issues. These jurists’ legal acumen and social standing attracted followings of disciples, creating master–disciple associations that were often numerous and not necessarily exclusive, with students typically attending the learning circles of more than one master. But these associations gradually contracted and formalized over the course of the third/ninth century (and to some extent the following century as well), until Sunni law came to be dominated by the four institutionalized schools, each named after its principal founder: Hanafi, Maliki, Shafi’i, and Hanbali. Of the early Sunni schools that did not survive, the most notable is the Zahiri school, named after the literalist scholar Dawud al-Zahiri (d. 270/884).

By the end of the third/ninth century, the Hanafi, Maliki, and Shafi’i schools were firmly established, with the Hanbali school soon to follow. Each had a body of law and a legal methodology, as well as an extensive literature produced by a robust community of dedicated students. In order to guarantee the (relative) predictability of judicial rulings, the ruling authorities patronized the legal schools and began to appoint judges on the explicit condition that they adhere to a specific school in their judgments. But how and when the schools changed from loose associations to formal institutions remain among the more vexing questions for historians of Islamic law today. Apart from the dearth of sources already mentioned, two aspects of the early schools make their history hard to pin down. First, religious law was not decreed by sovereign power, which precludes finding a reliable narrative in the historical chronicles alone. Second, the early networks of jurists were diffused across place and time, which means that a robust narrative must account for considerably more than fifty or a hundred years. Because school formation was fluid and gradual, scholars have attempted to impose order by highlighting a particular conceptual category of historical agents that they believe propelled the process. For the sake of simplicity, one could characterize the various approaches as focused on individuals, institutions, or ideas.

The first approach focuses on prominent figures and is represented by Schacht, who, as seen earlier, propounded a two-stage narrative. In the first stage, the early, “ancient” schools, expressed in terms of regional normative traditions, emerged in Iraq, Medina, Syria, and later on in Egypt. In the second stage, before and after the turn of the third/ninth century, these transitioned into “personal” schools defined by exclusive adherence to the doctrine of an eponymous imam. Schacht’s thesis gave prominent credit to al-Shafi’i, whose distinct synthesis of textual and rational interpretation enabled legal doctrine to be packaged, transported, and systematically applied without reliance on local tradition. Schacht’s narrative is largely based on al-Shafi’i’s writings and ends with his death in 204/820, but the implication is that he set the schools on their new trajectory. The novel legal theory formulated by al-Shafi’i became the
new way of articulating law, but it was al-Shafi‘i’s personal authority, and that of the other eponymous imams, that served as the new organizing principle for the legal schools.

The second approach emphasizes the importance of social and political institutions for the development and spread of the classical schools. George Makdisi (1920–2002), and after him his student Christopher Melchert, took up Schacht’s early periodization and extended the narrative into the third/ninth century (and beyond). Makdisi saw in this period the evolution of the personal schools into de facto guilds that featured a hierarchical structure of leadership and were dedicated to the education of students and the reproduction of knowledge, a mission that eventually came to be performed within the space of the law college (madrasa). Melchert considered the regularization of legal education to be the defining moment for a school’s birth. He proposed precise dates of formation—either in the late third/ninth century or in the early fourth/tenth—for each school based on the lives of particular teachers who established regular systems for transmitting legal doctrines.

Both Makdisi and Melchert accorded tremendous (in Melchert’s case, nearly exclusive) weight to biographical works in the construction of their narratives. This source preference generated a certain historiographical bias in favor of scholarly activity in Iraq in general and of Hadith scholarship in Baghdad in particular. Makdisi’s emphasis on Baghdad seems in great measure a function of his interest in the city’s Hadith-minded jurists and theologians (whom he termed “traditionalists” in opposition to the “rationalists”) and in the emergence of Hanbalism. He saw the Qur’anic Inquisition in Baghdad as the decisive showdown between the rationalists and the traditionalists in a conflict that had been put into motion by al-Shafi‘i and was brought to a conclusion by Ahmad b. Hanbal, whose unyielding stance on the textual primacy of the Qur’an and Hadith carried the day for the traditionalists. This is another example of the tendency, mentioned earlier, to depict intellectual conflicts in overtly martial terms. In the end, the victorious Hanbalis forced the hand of the rationalist jurists, who by the fourth/tenth century had largely begun to reframe their legal thought to square with the compulsions of Hadith reports. In more certain terms, Melchert saw this rapprochement between traditionalists and rationalists as the decisive moment in which the law acquired its classical framework.

Other scholars have linked the schools’ growth and spread to the relative levels of state patronage they enjoyed. Using later biographical dictionaries, Nurit Tsafir constructed chronological charts of judicial tenure in the various regions in the second/eighth and third/ninth centuries and correlated the spread of the Hanafi school with the increasing number of Hanafi jurists taking up posts in the empire’s expanding judiciary. Her work supported the general thesis that the Hanafi school flourished chiefly thanks to the backing of the Abbasid center. She conceded, however, that in so early a period school identities were still ill defined, and she coined the term “semi-Hanafi” to describe jurists of ambiguous affiliation.

The third approach to school formation shifts the emphasis from the personages of the imams and the formal institutions of learning and patronage to the idea of doctrinal authority. It has been articulated most extensively by Hallaq, who, as described earlier, contested Schacht’s progression from regional to personal schools. Rejecting the notion of regional schools altogether, Hallaq argued that the first schools of the second/eighth century were personal, marked by the dominance of individual master jurists and consisting of their positive legal opinions. In the third/ninth century these schools then acquired a “doctrinal” framework that defined the classical schools from then on. The doctrinal schools, Hallaq maintained, were composite systems, comprising the cumulative legal rulings of successive generations of jurists (e.g. Abu Hanifa and his two leading students, Abu Yusuf and al-Shaybani) as well as a clear methodology for addressing legal problems. Each of the schools was also defined by the loyalty of its adherents, who abandoned its doctrines on pain of rejection from the school. The eponymous imams, by this view, were not founders of
their schools but were accorded this status fictitiously by later jurists in order to provide the schools with an axis of authority.\textsuperscript{88} This authority was preserved by the widely accepted principle of legal conformism (taqlid), discussed further in the next section.

More recent studies, wary of the pitfalls of singling out historical causes, forgo the impulse to date and attempt instead to unpack the socio-political contexts and gradual intellectual processes that underpinned the formation of the classical schools. This scholarship revises the preceding theses by combining and complicating their categories. For example, Umar Faruq Abd-Allah studied the life and works of Malik, parsing his legal terminology and contending that his rulings embody an interpretive process that was far more systematic and sophisticated than the nebulous “living tradition” that Schacht and others had made it out to be. Though not concerned with the school’s formalization and spread beyond the second/eighth century, Abd-Allah maintained that a richer understanding of Malik’s thought could change how we understand the formation of the schools.\textsuperscript{89} El Shamsy returned to Schacht’s historical scheme of regional schools followed by personal ones but further theorized personal schools as communities of jurists centered on a discursive “paradigm” founded by the eponym. This paradigm allowed successive jurists, through the development of a secondary literature, to extend and even disagree with the founder’s opinions while remaining faithful to his methods of interpretation.\textsuperscript{90} Saud Al-Sarhan pursued a similar approach in an article-length study of the Hanbali school. By reviewing the legal responsa collected by eight of Ibn Hanbal’s students, Al-Sarhan offered examples of how these students tried to extract the imam’s legal-theoretical principles from his rulings.\textsuperscript{91}

Put together, the findings of these recent studies suggest that an integrated examination of the ideas expressed in early legal texts alongside the narratives in historical and biographical works produces more fruitful results than impressionistic interpretations of a limited and often arbitrary selection of sources. Such a holistic approach allows for a clearer understanding of how legal thought developed over the course of the third/ninth century, which facilitates a better understanding of the trajectory it took in the two centuries that followed.

VI. Legal Developments in the Fourth/Tenth and Fifth/Eleventh Centuries

This section addresses three of the most significant developments in the evolution of Islamic law in the fourth/tenth and fifth/eleventh centuries. The first is the putative closing of the gate of ijtihad; the second, the development of legal theory following al-Shafi’i; and the third, the emergence of a distinctive Shi’i jurisprudence.

A. Closing the Gate of Ijtihad

When Snouck Hurgronje first put forward the idea—adopted from indigenous Muslim historiography\textsuperscript{92}—that the exercise of ijtihad, or independent legal reasoning, had ceased around the turn of the third/ninth century, he could not have anticipated the controversy that would ensue.\textsuperscript{93} Indeed, few controversies in the field of Islamic legal history have gained as much traction as the debate concerning the “closing of the gate of ijtihad.” Schacht, who studied under Snouck Hurgronje, popularized his teacher’s view, and his authority lent the topic weight. In his clearest statement on the subject, Schacht wrote:
By the beginning of the fourth/tenth century ... the point had been reached when the scholars of all schools felt that all essential questions had been thoroughly discussed and finally settled, and a consensus gradually established itself to the effect that from that time onwards no one could be deemed to have the necessary qualifications for independent reasoning in religious law, and that all future activity would have to be confined to the explanation, application, and, at the most, interpretation of the doctrine as it had been laid down once and for all. This “closing of the gate of ijtihad”, as it was called, amounted to the demand for taklid ... which now came to mean the unquestioning acceptance of the doctrines of established schools and authorities.  

This thesis fit within Schacht’s broader account of the decline of intellectual sophistication in the later tradition. While Schacht acknowledged that the work of later jurists was “no less creative ... than that of their predecessors” and noted the ongoing dispute regarding ijtihad among them, the fact that he never elaborated on the character of their innovative contribution led his successors to view as conclusive his emphatic remarks about the stagnation of the later tradition.  

The thesis of the closure of the gate of ijtihad remained largely unchallenged for several decades, and its influence is evident in every major work written on Islamic law in the twentieth century. Hallaq reignited the debate and advanced the most sustained challenge to Schacht’s work in a series of articles written in the 1980s and 1990s. His essay “Was the Gate of Ijtihad Closed?” in many ways reset the course of inquiry on the topic. In it, he argued that the gates of ijtihad were never closed in either theory or practice. As evidence, Hallaq characterized the requirements for reaching the rank of mujtahid as relatively easy; typified ijtihad as indispensable for the derivation of rulings through legal theory; documented the exclusion from Sunnism of groups who opposed ijtihad; listed jurists who lived after the fourth/tenth century and were labeled mujtahids or practiced ijtihad; and traced the persistence of the controversy regarding ijtihad in classical works. In a follow-up article, Hallaq addressed the question of why the controversy concerning the existence of mujtahids existed when ijtihad never ceased. He located the answer beyond the confines of the law, in “the theological doctrine of the end of religion and the coming of the Day of Judgment.”  

Hallaq’s studies generated renewed interest in the question. Norman Calder steered a middle course between Schacht and Hallaq. He followed Schacht by upholding the Islamic legal tradition’s distinction between ijtihad as direct confrontation with revelation, which generally ceased after al-Shafi’i, and ijtihad as innovative responses to new cases and creative legal thinking within the constraints of taqlid, which was ongoing. He conceded Hallaq’s central thesis: that creative legal reasoning did not cease or even necessarily decline after the third/ninth century. Beyond this point, however, Calder thoroughly critiqued Hallaq’s study, particularly for failing to make systematic distinctions between various types of ijtihad and for not qualifying the depiction of ijtihad as a sustained phenomenon. Importantly, Calder differed on the role of legal theory. He saw this discipline only as an ex post facto justification of law, while Hallaq conceived of the process of ijtihad as it is described in works of legal theory, namely, as a “coherent system of principles through which a qualified jurist could extract rulings for novel cases.”  

Despite their sharply divergent accounts, Schacht’s and Hallaq’s theses share one major premise: they both typify ijtihad as creative legal thought while associating taqlid with blind imitation, lack of originality, and a qualitative decline in legal scholarship. Several scholars have challenged this negative depiction of taqlid and the concomitant depiction of ijtihad as the natural telos of Islamic law. They have argued that taqlid is in fact a more advanced stage of legal development with its own social logic as the mainstay of a mature legal system. Sherman Jackson maintained that taqlid was not motivated by “any real or perceived inability on the part of post-formative jurists to come up with novel interpretations.” Rather, he characterized post-formative taqlid as a dynamic institution whose primary function was
to appropriate the established authority of the earlier tradition and thereby to legitimize the interpretations of later jurists by virtue of their affiliation to the *mujtahid* imams.\textsuperscript{102} In a similar vein, Mohammad Fadel drew on the sociology of law and an analysis of legal process to highlight the crucial social logic of *taqlid*: not only was it essential to guaranteeing a stable and determinate legal system that ensured uniform rules, but it also limited the discretionary power of legal officials, especially those at the bottom of the legal hierarchy.\textsuperscript{103} Beyond the *taqlid–ijtihad* dichotomy, El Shamsy identified a discourse that theorized precedent as a “distinct locus of normativity” in discussions of the qibla (direction of prayer) in Shafi’i legal works.\textsuperscript{104} This justification of precedent enabled later jurists to bypass al-Shafi’i’s explicit prohibition of *taqlid* and to assign his legal views a privileged status as binding interpretations that were distinct from but consistently bolstered by revelatory evidence.

### B. Legal Theory After al-Shafi‘i

Conventional accounts of the history of legal theory see al-Shafi‘i’s *Risala* as the work that gave birth to the discipline and formed the basis of subsequent contributions. However, the development of legal theory in the century and a half that followed al-Shafi‘i’s death has been difficult to reconstruct. The second extant treatise dedicated to legal theory is *al-Fusul fi al-usul* by al-Jassas (d. 370/981). This work was closely followed by a proliferation of writings on legal theory in all four Sunni schools, as well as among the Mu’tazila and the Zahiris in North Africa, by such illustrious scholars as al-Baqillani (d. 403/1013), al-Dabbusi (d. 430/1039), Abu Ya’la b. al-Farra’ (d. 458/1065), al-Juwayni (d. 478/1085), Abu al-Husayn al-Basri (d. 436/1044), and Ibn Hazm (d. 456/1064).

The apparent gap in the extant record between al-Shafi‘i and al-Jassas led Hallaq to argue, against Schacht, that al-Shafi‘i’s centrality in the inauguration of legal theory has been greatly overstated and that his allegedly foundational work in fact had little resonance until Ibn Surayj (d. 306/918) and his students popularized it in the fourth/tenth century.\textsuperscript{105} By contrast, other scholars have argued that the formative influence of al-Shafi‘i on subsequent legal theory is evident in the significant body of fragmentary and indirect evidence available from the third/ninth and fourth/tenth centuries. In the past few decades, several studies have successfully demonstrated how intellectual history can be reconstructed in the absence of contemporaneous sources. They have shown that the period after al-Shafi‘i was a dynamic one: al-Shafi‘i’s ideas were continuously discussed and reworked in the form of abridgments, commentaries, and refutations, and a technical vocabulary was developed, debated, and refined.\textsuperscript{106} For example, Murteza Bedir has used al-Jassas’s work to establish the views and significance of ‘Isa b. Aban (d. 221/836), a much earlier jurist, and to trace his engagement with al-Shafi‘i’s ideas.\textsuperscript{107} Using a similar methodology, Devin Stewart has reconstructed a lost treatise on legal theory by Dawud al-Zahiri (d. 271/884) from the copious quotations of it in al-Qadi Nu’man’s (d. 363/974) *Ikhtilaf usul al-madhahib*.\textsuperscript{108} And El Shamsy has found al-Shafi‘i’s theoretical discussions reproduced and expanded by Ibn Surayj in the late third/ninth century and by Abu Bakr al-Khaffaf in the early fourth/tenth century.\textsuperscript{109}

When compared with al-Shafi‘i’s *Risala*, works of legal theory written after the second half of the fourth/tenth century exhibit certain literary features that reveal the discipline’s course of development in the intervening century and a half. First and foremost, mature legal theory demonstrates how thoroughly the Shafi‘i paradigm won out over contending approaches. There is considerable evidence that as early as the first half of the third/ninth century, scholars from other schools had already assimilated the central feature of the Shafi‘i paradigm—namely, the prioritization of textual evidence rooted in the canonized revelatory sources, especially the Hadith—and that they adopted some of al-Shafi‘i’s conceptual tools and hermeneutic techniques.\textsuperscript{110} David Vishanoff has carefully documented the debates surrounding legal hermeneutics in the period after al-Shafi‘i, showing that while Sunni theorists were initially torn between four different hermeneutical visions representing distinctive conceptual models of how language reveals the law (the
literalist Zahiri, the Basran Mu'tazili, the Ash'ari theological, and the law-oriented paradigms), in the fifth/eleventh century the law-oriented paradigm championed by Abu Ya'la b. al-Farra' triumphed, assisted by the resurgence of traditionalism and the rise of the legal schools.\textsuperscript{111}

A second feature of developed legal theory is its incorporation of the theological concerns of rationalist theology and the sharply deductive theoretical and dialectical methods it employed. This feature was first noted by Makdisi, who placed the development in its historical context and highlighted its departure from the legal theory articulated by al-Shafi'i, which contained a pronounced antirationalist dimension.\textsuperscript{112} In his study of legal theory after al-Shafi'i, El Shamsy showed that Shafi'is in the early fourth/tenth century were undeterred by their master's condemnation of rationalist theology. They embedded legal theory both substantively and methodologically within a rationalist ethical framework: reason and revelation were assigned complementary roles; the securing of human interest (\textit{maslaha}) was posited as the structuring principle of the law; and the formalistic method of dialectics (\textit{jadal}) formed the basis of analogical reasoning. With the advent of Ash'arism, however, law was extracted from the realm of theology, while a "dethelogized" variety of \textit{maslaha} was integrated into a firmly legal methodology of reasoning.\textsuperscript{113} The most detailed examination of a theological controversy developed in legal theory is Reinhart's comprehensive study of legality in the absence of revelation, a controversial problem that was debated vigorously in classical works of legal theory. Reinhart analyzed the underlying epistemological and moral issues that this debate indexes, including the limits of human intellect, the significance of revelation, and moral categorization and its relation to ontology.\textsuperscript{114}

\textbf{C. Emergence of a Distinct Shi'i Law}

Early Shi'i legal history remains an understudied field, as Shi'ism in general and early Shi'ism in particular have been seen primarily as subjects of theological and political, not legal, interest.\textsuperscript{115} Consequently, most accounts of early Twelver Shi'i (or Imami) law have adopted a theological periodization. This framework describes the period before the occultation (\textit{ghayba}) of the twelfth imam in 260/874 as one in which Shi'i law remained relatively underdeveloped, owing to the accessibility of the imam, who presided over the community as the exclusive source of infallible judgment. The sudden absence of the imam then necessitated the development of a more systematic approach to law. In the most comprehensive work to date on Shi'i (in particular, Imami) legal history written in a European language, Hossein Modarressi disputed this picture as overly simplistic, arguing that the earliest sources depict a dynamic and heterogeneous circle of followers, who were encouraged by the imams to exercise their individual reason and who expressed a variety of legal opinions even in the presence of the imams.\textsuperscript{116}

After the twelfth imam's occultation, the fourth/tenth and fifth/eleventh centuries represented a period of crucial intellectual ferment and doctrinal crystallization for the nascent Imami Shi'i community. The first Imami Hadith collections were compiled in the last decades of the third/ninth century and in the early fourth/tenth, and the first works of legal theory were written in the century that followed.\textsuperscript{117} Sunni Hadith collections and jurisprudence thus predate their Shi'i counterparts by more than a century, and the former exercised a significant formative influence on the latter, both in terms of structure and substantively in the incorporation of select elements of legal theory and positive law. This fact has shaped an important debate in the field of Shi'i legal studies, namely, how to characterize the historical interaction between the Sunni and Shi'i legal systems. In his terse treatment of Shi'i legal history, Schacht maintained that in the first three centuries, Shi'i law was closely identified with Sunni law, and that modifications introduced to "orthodox" legal doctrines were only "superficial" concessions necessitated by political exigencies or essential Shi'i doctrines.\textsuperscript{118} It was only after the occultation, Schacht argues, that Shi'i legal doctrine gradually distinguished itself as a separate legal system.\textsuperscript{119}
Several scholars after Schacht have likewise supported the thesis of extensive Shi‘i borrowing of legal thought from the Sunni schools. Devin Stewart’s study has been the most comprehensive to date. He examined structural features adopted by Shi‘i jurists from Sunni law, especially consensus, which he argued became the hallmark of orthodoxy in the fourth/tenth and fifth/eleventh centuries. Stewart created a typology of three responses to Sunni orthodoxy among Shi‘i jurists: first, outward conformity with the Sunni consensus and adherence to the Shafi‘i school among the four Sunni schools; second, adoption of a modified version of consensus and a parallel legal school for Twelver Shi‘is; and third, outright rejection of the Sunni legal system on the grounds that it violates fundamental Shi‘i principles. Stewart posited a trajectory that was diametrically opposed to that outlined by Schacht. On the level of legal theory, he contended, early Shi‘i law was originally quite different from Sunni law and only gradually came to conform to the more dominant Sunni legal system. Furthermore, although the dominant view continues to be that the institution of the Shi‘i madhhab and the development of Shi‘i legal theory were engendered by the urgent need to fill the vacuum in religious authority after the disappearance of the imam, Stewart has argued that a more decisive factor was the formation of the Sunni schools, which created a desire among Shi‘i legal scholars to be included within the wider community of jurists.

VII. Conclusion: Directions for Future Research

We conclude this survey of modern debates regarding the origins and early development of Islamic law by pointing to a few of the many promising avenues for further inquiry in this field.

There is still much room to improve our understanding of the origins of Islamic law by comparing the emerging Islamic norms with preexisting legal systems. However, such studies ought to be carried out holistically. Narrow and formalistic comparisons between legal systems are of limited use, since parallels between individual laws are often coincidental and cannot provide concrete evidence of a genetic relationship. A good example of a holistic study is Motzki’s examination of how pre-Islamic Arabian norms on the treatment of defaulting debtors were transformed into classical Islamic rules. Motzki’s legal-historical analysis is preceded and supported by painstaking authentication of the relevant source material, which brings us to a second area of fruitful future concern.

While the revisionist trend succeeded in pressing home the need for a more rigorous approach to the sources for early Islamic history, it impoverished the study of early Islamic law by dismissing the bulk of the available material on the subject—namely, Hadith and reports on the early generations of Muslims. The isnad-cum-matn analysis represents a methodological offensive to reclaim these sources and to use them critically for the study of early Islam, including Islamic law. But it is neither the only nor the most obvious way to bring out new sources. Another is to examine the enormous body of surviving early Islamic papyri, which remain largely unmined for insights into early Islamic law. As historical artifacts, papyri are not subject to the authenticity questions that afflict other types of sources. There are also important manuscripts from the early literary period of Islamic law that have not been edited or studied, including manuscripts held in well-known and accessible libraries. Moreover, even many key works that have been published remain curiously understudied. Such works include the foundational opus of the Hanafi school, al-Shaybani’s Kitab al-Asl, which was fully edited and published only in 2012. The problem of understudied sources is closely related to our final point, namely, how to study them to begin with.
The big questions that animate the field of early Islamic legal history have been debated since the nineteenth century, but this interest has not, by and large, been accompanied by the kind of foundational research that is necessary to provide a reliable basis for answering these larger questions. Until the end of the twentieth century, the dearth of such research could be traced to the small number of scholars working on Islamic law. The expansion of the field since then has created new opportunities, but the present academic ecosystem in the humanities does not reward the unglamorous and laborious spadework of reading manuscripts and compiling documents. Collaborative projects, such as the European Research Council project “Islamic Law Materialized”, led by Christian Müller, should be commended for the service they render to the field. The corpus of early Arabic legal documents assembled by this project is an important contribution toward the vertical integration of sources, from documents such as wills and contracts up through the most abstract discussions of theory. Such integration of sources can reveal the connections between private ritual observance, everyday contracts between individuals, adversarial encounters in court, debates among jurists on fine points of law, and theories of the relationship of law to reason and revelation. It is thus a precondition for writing a truly comprehensive history of Islamic law in the classical period.

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Schacht, Joseph. EOI\(^1\) s.v. “Taklid.”


Schacht, Joseph. EOI\(^2\), s.v. “Fikh.”

Schacht, Joseph. EOI\(^2\), s.v. “Malik b. Anas.”


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**Notes:**


(2) Goldziher, *Muslim Studies*.


Schacht, *Introduction*, 80. Though published about fifteen years after *Origins*, Schacht’s introductory book is a good entry into his scholarship. It provides a synopsis of major elements and themes in Islamic law (e.g. origins, theory and practice, modern iterations) and summaries of the substantive content areas of law (e.g. property, family, penal, procedural). It is informed by the same premises guiding Schacht’s more ambitious work.

(4) Schacht cites Q 4:65.


(6) Ibid., 224–227.

(7) Coulson, *History*, 34.

(8) Coulson, *Conflicts and Tensions*, 81–82.

(9) Goitein, *Mediterranean Society*.

(10) Ibid., “Birth-Hour.”

(11) Coulson, too, observed that this quantity is “not great by any standards”; see Coulson, *History*, 12.


(13) On Qur’anic exegesis and history, see Crone, *Meccan Trade*. On the Qur’an in law, see Crone, “Two Legal Problems.”

(14) Dating the Qur’anic text was never one of Schacht’s main concerns. Crone was part of a wave of skeptical scholarship in Qur’anic studies that included John Wansbrough, who argued in *Quranic Studies* (1977) and *Sectarian Milieu* (1978) that the Qur’an came to its final form in Syria (not the Hejaz) around 800 CE and therefore had nothing originally to do with the Prophet Muhammad. Crone expressed ambivalence about dating the Qur’an quite this late and disagreed with Wansbrough’s claim that it originated outside of Arabia. See Crone, “Two Legal Problems”, 16–19. On the skeptical school, see Donner, *Narratives*, 20–25 (overview), 35–40 (dating the Qur’anic text). Following the groundbreaking work of Behnam Sadeghi and Uwe Bergmann on dating early Qur’an manuscripts (see Sadeghi and Bergmann, “Codex”), Crone eventually came to affirm the view that the Qur’anic text does indeed originate in the seventh century (see Crone, *Qur’anic Pagans*, xiii).

(16) Crone, Roman, Provincial and Islamic Law, ch. 2.

(17) In praise of Crone’s Meccan Trade, see reviews by Wansbrough and by Paxton. For a thoroughgoing and particularly acid assessment of the same book, see review article by Serjeant, as well as Crone’s long and equally acid response.

(18) Powers, Studies.


(20) Katz, Body of Text, 33.


(22) Hallaq, “Groundwork.”

(23) See e.g. Maghen, Virtues; Lowry, “Reading the Qur’an”; Stodolsky, “New Model.”

(24) In particular the two Sahih collections of al-Bukhari (d. 256/870) and Muslim (d. 261/875). For the history and status of these and other “canonical” Hadith collections, see Brown, Canonization.

(25) See above, n. 1. D. S. Margoliouth also largely followed in the line of scholarship before Goldziher, but he asserted that initially the term sunna denoted the normative practice of the general community and only later acquired the restricted sense of prophetic precedent; see Margoliouth, Development, 65–98. Schacht cites Margoliouth and incorporates similar findings into his thesis; see Schacht, Origins, 58–81.

(26) These comprise the four “sources” (which is the literal translation of usul) commonly referred to in classical jurisprudence.

(27) Goldziher, Zahiris; Goldziher, Muslim Studies, 2:73.

(28) Goldziher, Muslim Studies, 2:182, 211.


(30) Ibid., 171–175.

(31) Schacht, “Revaluation”, 147.

(32) See e.g. separate reviews by Watt, Gibb, and Anderson.

(33) For a critical assessment, see review by Fück. For more extended criticism, see review by Sezgin; see also Sezgin, Bukhari’nin kaynakları. And for a more direct rebuttal, see Azami, Studies; Azami, Schacht’s Origins.

(34) Motzki, “Dating Traditions.”

(36) Motzki, Boekhoff-van der Voort, and Anthony, *Analysing Muslim Traditions*.

(37) Berg, “Competing Paradigms”, 260. For Motzki’s response to Berg, see Motzki, “Question of Authenticity.”


(39) Geiger, *Was hat Mohammed aufgenommen?*


(43) Ibid., 21.


(45) Ibid., 7–8.

(46) Ibid., 2–3; Crone and Cook, *Hagarism*.


(48) Ibid., 11.

(49) Reinhart, review of *Roman, Provincial, and Islamic Law*.

(50) Ibid., 216.

(51) Hallaq, “Use and Abuse.” Hallaq also presented a broader critique of Crone’s work in “Origins or Doctrine.”

(52) Hallaq, “Use and Abuse”, 80.


(55) Ibid., 131.

(56) El Shamsy, *Canonization*, 21. To what extent these laws match those in the legal literature of the second/eighth century onward is a separate question.

(57) Motzki, *Origins*.


(59) The importance of writing as a tool of knowledge transmission cannot be overstated. For a review of its growth and interaction with oral transmission, see Schoeler, *Genesis*, 1–15.

(61) “Iraq” here denotes the historical region of Iraq, which roughly coincides with but does not extend as far north as the modern state of Iraq.


(65) Because of the role of the infallible imam, legal authority was, at least in theory, less ambiguous for most branches of Shi’ism. For an overview of the bases of Shi’i law, see Modarressi, *Introduction*, 2–6.

(66) For the foundational statement of this view, see Schacht, *Introduction*, 5, 209.

(67) Lowry, “First Islamic Legal Theory”, 25–40. Lowry was careful to point out that later legal theory is likely not genetically related to the courtier’s typology despite their similarities.

(68) Crone and Hinds, *God’s Caliph*.

(69) Zaman, *Religion and Politics*. For a short version of one of his central arguments, see Zaman, “The Caliphs, the ‘Ulama’, and the Law.”


(71) “School”, like most translations, is not a perfect one, and scholars have rightly taken the time to explore the semantic shades of *madhhab*; see e.g. Hallaq, *Origins and Evolution*, 150–153.

(72) The following section discusses the emergence of a distinctly Shi’i law, whose history and theoretical underpinnings distinguish it qualitatively from Sunni law.

(73) See Hefner and Zaman, *Schooling Islam*, for a rich set of essays by leading experts on the various regions of the Muslim world.

(74) Both the endurance and the elasticity of the legal school as an institution is brought out in the essay collection by Bearman, Peters, and Vogel, *The Islamic School of Law*.

(75) Many jurists (*fuqaha’,* sg. *faqih*) were called upon to issue opinions in response to inquiries put to them either by private individuals or, in more formal settings, by judges. The responsum was known as a *fatwa*, the issuer a *mufti* (often translated as a jurisconsult for the role he historically played as an authority to a judge). Note, then, that the jurist did not necessarily serve formally as a *mufti*, nor did the functions of *fatwa* and *mufti* remain the same over time. For an excellent overview of the *mufti*’s developing roles, see Masud, Messick, and Powers, “Muftis, Fatwas, and Islamic Legal Interpretation.”

(76) For general information on these four figures, see their entries in the *Encyclopaedia of Islam*, 2nd edn, “Abu Hanifa al-Nu’man” (J. Schacht); “al-Shafti’i” (E. Chaumont); “Malik b. Anas” (J. Schacht); “Ahmad b. Hanbal” (H. Laoust).
For short but more informative biographies on al-Shafi‘i and Ibn Hanbal, see Ali, *Imam Shafi‘i*; Melchert, *Ahmad ibn Hanbal*.

(77) These are, of course, not rigidly defined categories, but notional centers of gravity for the respective scholars’ analysis.


(79) Subsequent debates regarding al-Shafi‘i’s importance and impact are discussed in section VI.

(80) Makdisi, *Rise of Colleges*.


(83) The bias may have been directly or indirectly influenced by a subtle but similar bias in Schacht’s work. According to Schacht, Medina shared Iraq’s ancient doctrine, but where cross-influences existed, they nearly always moved from Iraq to Medina. See Schacht, *Origins*, 220.

(84) He thus viewed it differently from Crone and Hinds, who, as seen earlier, interpreted the inquisition as a political struggle for religious authority.


(86) Melchert, “Traditionist-Jurisprudents.”

(87) Tsafrrir, *History of an Islamic School of Law*.


(90) El Shamsy, *Canonization*, ch. 7.

(91) Al-Sarhan, “Responsa of Ahmad Ibn Hanbal.”

(92) See e.g. El Shamsy, “Hashiya in Islamic Law.”

(93) Hurgronje, review of *Muhammedanisches Recht* by Sachau. The idea acquired particular salience in the context of the Orientalist view of the Islamic world’s historical decline.


(95) Schacht, *Introduction*, 73; Schacht, “Taklid.”


(97) Hallaq, “Was the Gate of Ijtihad Closed?”

(99) Calder, “Al-Nawawi’s Typology.”

(100) Ibid., 158; Hallaq, “Was the Gate of Ijtihad Closed?”, 5. Sadeghi largely agreed with Calder on this issue in The Logic of Law Making in Islam.

(101) Jackson, “Taqlid, Legal Scaffolding and the Scope of Legal Injunctions”, 172.

(102) Ibid., 169, 172.

(103) Fadel, “Social Logic of Taqlid.”

(104) El Shamsy, “Rethinking Taqlid.”

(105) Hallaq, “Was al-Shafi’i the Master Architect?”

(106) In addition to the references in the following notes, see El Shamsy and Zysow, “Al-Buwayti’s Abridgment”; El Shamsy, “Wisdom of God’s Law”; Stewart, “Al-Tabari’s al-Bayan”; Temel, “Missing Link.”

(107) Bedir, “Early Response to Shafi’i.”


(109) El Shamsy, “Bridging the Gap.”

(110) See e.g. Dutton, “Amal v Hadith”; Jackson, “Setting the Record Straight”; El Shamsy, Canonization, ch. 8.

(111) Vishanoff, Formation of Islamic Hermeneutics.

(112) Makdisi, “Juridical Theology of Shafi’i.”


(114) Reinhart, Before Revelation.


(117) However, Shi’i thinkers were clearly engaging with questions of legal theory already earlier; see Gleave, “Early Shiite Hermeneutics.”


(121) Stewart, Islamic Legal Orthodoxy.
(122) Ibid., 17.

(123) In the case of Isma‘ilism, however, these developments took place in the presence of the imam; see al-Qadi al-Nu‘man, *Disagreements of the Jurists*; Qutbuddin, “Fatimid Legal Exegesis of the Qur’an.”

(124) Stewart, *Islamic Legal Orthodoxy*.

(125) A study that illustrates the perils of the latter approach is Jokisch, *Islamic Imperial Law*; see esp. 627–650.

(126) Motzki et al., *Analysing Muslim Traditions*, ch. 3, esp. 194–204.

(127) Sijpesteijn, “Hadith Fragment on Papyrus”, is a relatively rare exception; but see also El Shamsy, “Debates on Prayer.”

(128) As but one example, a manuscript copy of Abu Ishaq al-Marwazi’s (d. 340/951) important work *al-Tawassut bayn al-Shafi‘i wa-l-Muzani* languishes unstudied in Yale’s Beinecke Library, misattributed to Ibn al-Qass in the catalog.


(130) See the project’s database at http://cald.irht.cnrs.fr/php/ilm.php.

Mariam Sheibani  
Near Eastern Languages and Civilizations, The University of Chicago  
Department of Near Eastern Languages and Civilizations, The University of Chicago  

Amir Toft  
Near Eastern Languages and Civilizations, The University of Chicago  
Department of Near Eastern Languages and Civilizations, The University of Chicago  

Ahmed El Shamsy  
Near Eastern Languages and Civilizations, University of Chicago  
Associate Professor, Department of Near Eastern Languages and Civilizations, The University of Chicago