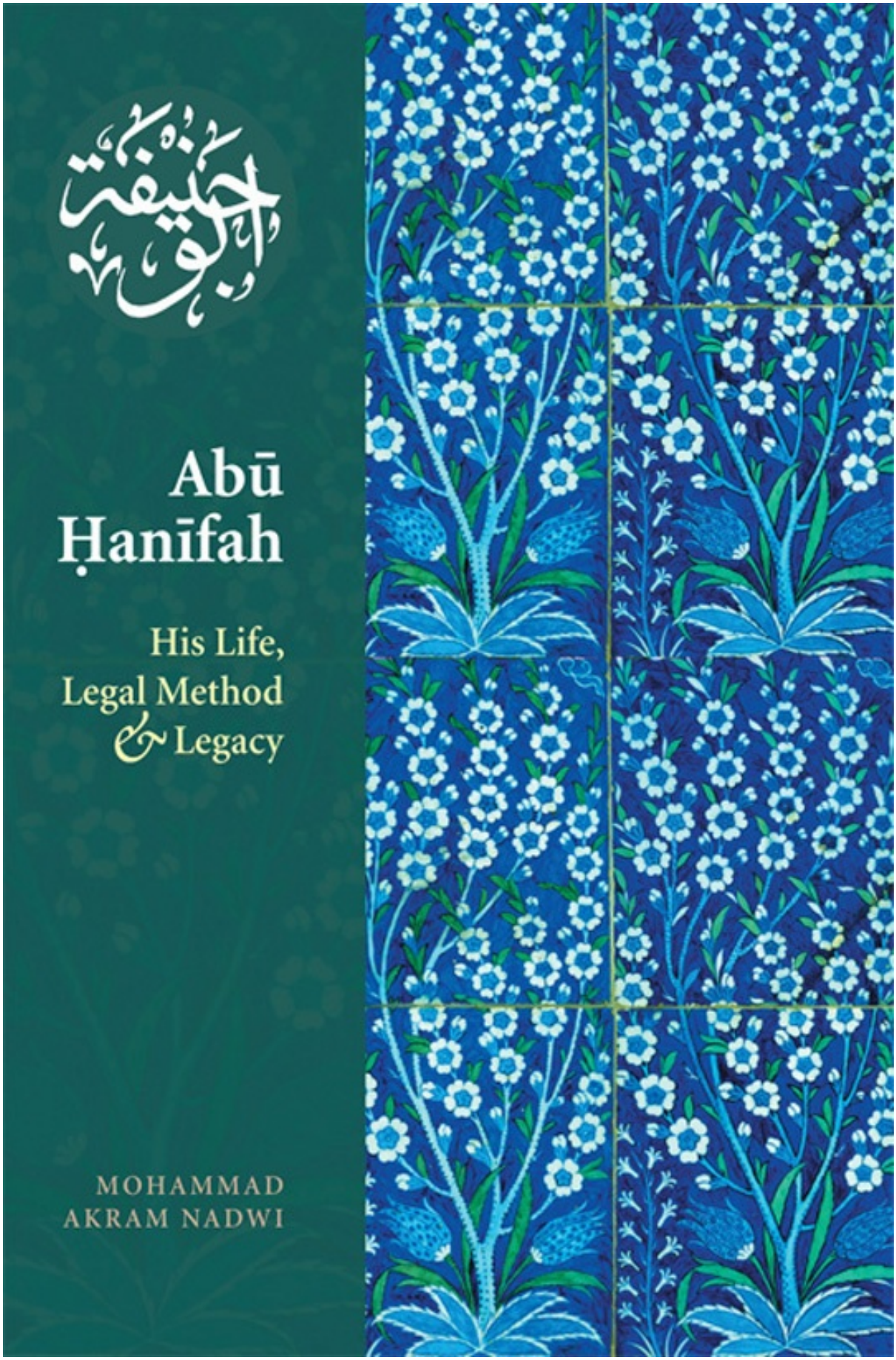
أبو حنيفة

Abū Ḥanīfah

His Life, Legal Method & Legacy

MOHAMMAD AKRAM NADWI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ABŪ ḤANĪFAH:

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by

Mohammad Akram Nadwi

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Preface

About Abū Ḥanīfah

Abū Ḥanīfah Nuʿmān ibn Thābit (d. 150 AH) is a towering figure in the early history of Islamic law. He was among the first to employ the recognized methods of legal reasoning in a consistent way, and to gather the legal dicta of his time into an organized corpus. The doctrine (*madhhab*) that developed in line with his style of reasoning became the most widely practised school of law in the Islamic world. This was due in part to its being favoured by the ruling dynasties of the most extensive, populous and enduring of the Muslim empires – the ʿAbbāsids, the Ottomans and the Mughals. But in part also it was due to the excellence of the students whom he inspired and trained to carry on his work.

Abū Ḥanīfah was a genius, supremely proficient alike in analysis of detail and reflection on general principles. He combined his passion for knowledge of the religion (and for organizing that knowledge) with an ability to nurture the same passion in others. He was both a researcher and a teacher, a theoretician and a practitioner of the law. Building on the achievement of his predecessors, he schooled his students in particular thoughts and a way of thinking them so that, over time, his doctrine came to be identified with his name rather than the name of his city (Kufah). However, he could not have commanded the authority that he did if he had not also been exemplary in self-discipline and piety and, as a man, warm as well as virtuous, as familiar to and loved by his neighbours as he was respected and admired by his fellow scholars.

What distinguishes Abū Ḥanīfah from other geniuses in Islamic history is that his achievement still touches the everyday life of ordinary Muslims. Their faith requires them to conduct their worship and general affairs in accordance with God’s will as framed by the Qurʾān and the Prophet’s teaching. But how, in practice, are they to know how to do that? It is through pioneers in Islamic law like Abū Ḥanīfah that Muslims feel able to answer that question in a way that, because it carries authority, commands voluntary obedience and general acceptance. The alternative to authority is mere assertion, which can command acceptance only so long as it is supported by force of power. Abū Ḥanīfah is famously one of the prominent warriors for the authority of the law set against the power of the state. He suffered imprisonment and whipping for refusing to serve in the new ʿAbbāsid administration, to lend his authority to the decisions of the caliph. Power got its hollow victory in that the caliph,

unable to break Abū Ḥanīfah's will, succeeded in having him poisoned.

In the event, jailing him only added to the popularity on account of which the recently established ʿAbbāsid imperial dynasty considered Abū Ḥanīfah a threat. People demanded to consult him even while he was in prison, and they were too many to be resisted. In later times, when the dynasty was secure and when learned Islamic scholars did accept positions within the state administration and so depended for their livelihoods upon the state, they still felt they had a duty to refuse to lend their authority to the will of the government if, by doing so, they would be contradicting or undermining the law. This dedication to the law, intermittently weakened by necessary and unnecessary compromises, is derived from the pattern of conduct established by Abū Ḥanīfah and other pioneers in the field. In epoch after epoch in the history of Islam, we find that it is the learned scholars of the law, even though few of them individually were of the same mettle as Abū Ḥanīfah, who managed, collectively, to preserve the Islamic character of the society in spite of the state, in spite of armed schisms and factions, betrayals and rebellions from within, and invasions from abroad. Not until the period of European colonization – which systematically weakened the network of relationships that the system of education in the Islamic world depended on, and as a result of which there was a rapid decline in opportunities for adequate training and subsequent employment – not until then, did scholars of the law lose their status and authority in society.

About this book

As Muslim peoples begin to waken from this dark period of their history, and wonder how to express their religion in the modern world, it is particularly important to reflect upon what the authority of the law means. In what does it consist? How can it be recognized? The sources tell us that, not long after his death, people in the Islamic world referred to Abū Ḥanīfah as '*al-imām al-aʿẓam*', meaning 'the greatest one worthy to be followed'. In this essay I try to understand how and why he came to deserve that title. It is especially important to do so at this time, for two reasons:

First, there are increasingly strident calls for reform of Islamic ways of life (coming from non-Muslims, which is to be expected, and also from Muslims themselves). Even if the call for reform is well-meant, often its rationale neither begins nor ends in the Qurʾān and Sunnah. Rather, the proposed reform is often concerned to 'face up to modern realities' and to adopt norms and values that have appealed to peoples who have no grounding in Islam at all or have rejected it. Accordingly, Qurʾān or Sunnah – even though both are presented by God as His special mercy for human beings – are considered as a nuisance, an obstacle, that somehow the reform must talk its way around. Without saying it out loud, proposed reforms of this kind must strongly wish that Qurʾān and Sunnah did not exist or did not have any hold on the hearts and minds of Muslims. By contrast, Abū Ḥanīfah and the other great imāms of the law got their intellectual energy and inventiveness from, and used it within, the boundaries of Qurʾān and Sunnah. Their consistent aim was to help Muslims fulfil their rights and duties to God and to each other, not to evade those rights and duties. For example, many of the tools of 'capitalism' as it is now called, which supported the great expansion of trade and commerce during the high period of Islamic history, were constructed by

jurists – Ḥanafīs prominent among them, notably in some works attributed to Muḥammad ibn al-Ḥasan al-Shaybānī – in the form of conscientiously designed contracts that enabled entrepreneurs to extend and exchange credit within the bounds set by God, to strive for profit and avoid usury and other financial and commercial crimes. How different the 'capitalism', and how different its outcomes, when the conscience informing it was neither inspired, nor restrained, by the moral and methodological boundaries of the Qurʾān and Sunnah! (The material is technical and demands a great deal of detailed discussion not suited to an introductory essay; however, the economic ethics of Ḥanafī *fiqh* is a subject that urgently needs to be presented to the general reading public, Muslims especially.)

Second, the proliferation of words and images through the modern means of communication has made it possible to circulate ideas and opinions of all kinds in great volume at great speed. That combination results in strong, but often short-lived, influence – that is, it results in changing immediate 'moods' and 'attitudes', not the structures and habits that underlie more stable and enduring behaviour. Insofar as Islamic law is connected to faith and religion, reflections upon it are properly suited to slow, textual scholarship, not to high-impact sound-bites and images that TV and Internet output demand. Also, Muslims should think carefully about the provenance of the ideas and opinions that are offered to them, not always anonymously, yet almost always from very far away: we can know what someone *says*, but we cannot know *how they live*. Put bluntly, a non-Muslim, just as well as a Muslim, could read up the texts on a standard ʿ*ālim*'s reading list, and if energetic and articulate enough, present (on the basis of their reading) moral advice and legal opinions that *appear* to be as 'Islamically argued' as the established ways: they may well be so argued; equally, they may not. In this essay, I have emphasized (just as traditional Islamic scholarship always has) the information we hold about who Abū Ḥanīfah studied with and where, and what kind of man he was, how he lived his life in relation with God and fellow human beings. In his own time, his peers and contemporaries were concerned, and for the best of reasons, just as we now should be, to find out about his background and his backers, to find out if his intellectual brilliance, his breadth of learning, his intelligence and personal charms were complemented by his piety and righteousness. I have tried here to present an account of his life, his legal method and his legacy, in a way that I hope will add up to an image, a memory, a sense of what kind of Muslim one should look to as a trustworthy source for understanding, adapting, amending the legal foundations of an Islamic way of life.

In the introductory first chapter, I explain the context and background of how the law was placed and expressed in the religion. In Chapter 2, I report the anecdotal material recorded in the sources about the life and character of Abū Ḥanīfah. I think it fair to say that much of that material (except when it is obviously polemical) is commemorative. However, it is not therefore unreliable or useless; on the contrary, it is highly relevant to understanding the qualities that are a necessary condition for the authority to pronounce on the law. Chapter 3 describes the establishment of the Kufan school, the methodology and characteristics of Abū Ḥanīfah's *fiqh*. Chapter 4 gives an account of some of his major works, and how his tradition was transmitted by his famous students. In Chapter 5, following a recapitulation of Abū Ḥanīfah's achievement, I give a brief survey of how his legacy evolved through the development

of the Ḥanafī school: this will be difficult for readers new to the subject, because it contains more information than discussion, but I hope it may be useful to those who want to know the principal figures and works of later Ḥanafī jurisprudence. I have added in a 'Postscript' some reflections on the relevance of Abū Ḥanīfah to the present time. Finally, in Chapter 6, I offer a critical account of some of the sources used in the preparation of this essay, followed by suggestions for further reading.

Acknowledgements

My debts to earlier studies of Abū Ḥanīfah, as well as being indicated in the text, are acknowledged in the chapter on 'Sources and Further reading'. I would like to thank colleagues, students and others who read through an ealier draft of this book or discussed its contents with me – I have benefited greatly from their criticisms and suggestions. Special thanks to my friend and colleague Jamil Qureshi, who also helped to improve the language and presentation. The faults and shortcomings that remain in the work are my responsibility alone.

Mohammad Akram Nadwi
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Introduction: background to the first development of the law

By the reign of Hārūn al-Rashīd (170–189), that is, within six generations of its beginning, the rule of Islam extended from the western coast of north Africa, through much of Central Asia, to the Indus, with established commercial relations going further, through the Russian landmass into Scandinavia, and by sea and land routes into China. This vast ʿAbbāsid dominion (Islamic Spain was not part of it) was economically and culturally vigorous, joining within its jurisdiction the peoples of the east and west, peoples of diverse cultural background and attainment, and of diverse ethnic, linguistic, religious and confessional identity. How could what had begun so locally in the Arabian peninsula emerge so soon and then endure so long as a distinctive civilization?

The question is at least partially answered in the fact that Hārūn al-Rashīd felt the need to create the legal–administrative post of Chief Judge to oversee the functioning of the laws throughout the whole realm. The post was made for Abū Yūsuf, one of the two most famous of Abū Ḥanīfah's many famous students. What identified the Islamic world as such, and gave coherence and staying-power to its social order, was its law. Abū Ḥanīfah's achievement can be expressed briefly as his success in drawing out, more systematically and consistently than anyone before him, what was universal in the injunctions of the Qurʾān and Sunnah. He achieved this without alteration of the known particular laws or subversion of the fundamental principles and temperament of Islam. Rather, as some admirers said, Muslims should pray for Abū Ḥanīfah precisely because the Sunnah, the way of the Prophet, was preserved through him.

The law as evolved in the generation of Abū Ḥanīfah did not enter into Islam from outside – as, in later times, Greek philosophy or various strands of Christian or Jewish or Indian mysticism entered it, then making themselves at home within the Islamic milieu, appropriating the idiom and rites native to that milieu. The law grew, from its anchorage in Qurʾān and Sunnah as understood by particular individuals, into a universality sufficient to make the Islamic milieu capable, on the one hand, of receiving and accepting on its terms already formed traditions like that of Greek philosophy or, on the other hand, of rejecting them outright as it rejected the prestigious, longenduring traditions of Roman law.

It is right to mention Abū Ḥanīfah as one of the pioneers of the law but he did not, obviously, initiate the process of its foundation. Rather, he realized and directed its potential. To understand what Abū Ḥanīfah contributed to the law, we need to understand how it was evolving up to his time. That is the aim of this chapter. I set out briefly the unique importance of its laws in the religion and social order of Islam; the emergence of scholars as a distinct class; how they accumulated and shared knowledge; how legal and moral authority centred on particular individuals in

particular places; how the law was applied and administered, and relations between the state and judges and jurists. Finally, I clarify the meaning of the paired terms ‘Qurʾān and Sunnah’, and the implications for expertise in the study of *ḥadīth*s and the derivation of laws.

THE IMPORTANCE OF THE LAW IN ISLAM

In the Muslim perspective, the one certain source of human knowledge about the will of God is His revelation of the Qurʾān. The Qurʾān affirms that other revelation preceded it, and that no other revelation with the authority of law will follow. From the first affirmation was derived the broadly inclusive, assimilative temperament of Islamic civilization in its great period – the behaviour of Muslims in general was not unbalanced by the superiority or inferiority of the other peoples and cultures they met. Those concerned with the evolution of the law had to busy themselves with defining a legal space within Islamic jurisdiction for non-Muslims living under Islamic rule (permanently, or temporarily as commercial or diplomatic travellers), and for local rules and customs (particularly in relation to contracts), which might or might not be conformable with Islamic law. But we will not be dealing directly with this issue. Our main concern here relates to the second affirmation – that no revelation with the authority of law will follow the Qurʾān. We do not need to dispute the truthfulness of reports of dreams and/or other experiences of communication from angels or prophets. We can allow that it may be so. Certainly, instances of such communication – as distinct from revelations to men designated as messengers and prophets to their people – are recorded in the Qurʾān (a famous one is familiar in the Christian tradition as the Annunciation). Nevertheless, it is an axiom of Islamic faith that no communications of this sort, true or otherwise, can have the authority of law. Given that, and given also that the Qurʾān plainly does not legislate for every situation, foreseeable or unforeseeable, how is the law to grow outside of the Qurʾān, and in doing so, what authority does it have?

One might suppose that the ending of divine revelation implied some new opening for human reason – that, at least on matters on which the Qurʾān was silent, the people could freely exercise their minds, individually or collectively, and legislate for themselves on the basis of their own ‘best judgement and experience’ at the time, implicitly allowing the same freedom to subsequent generations. But that is not what the early Muslims did. Had they embraced such freedom it would undoubtedly have led to eventual ‘reinterpretation’ of even those Qurʾānic verses whose legal meaning is clear, so as to alter that meaning and fit it to the ‘best judgement’ and ‘best moral taste’ of different times and places. The ending of divine revelation meant, in principle and practice, that no one henceforth could claim divine authority for any amendment or adaptation of the law; they had to argue their case on the basis of a known (and limited) body of texts and practice. On this basis, reason was exercised in public, its authority or persuasiveness accrued in public and it could be publicly challenged. For the overwhelming majority of Muslims, the source of authority was not ‘occult’, it could not be inherited from association with the Prophet or anyone else; it was acquired and transmitted only through the labour of learning and teaching, reflecting

and reasoning.

That said, it is worth emphasizing that this 'public reason' was fundamentally different from what the phrase means in the modern Western tradition. In the latter, reason enjoys more or less complete autonomy; it is constrained, if at all, by the will or mood at the time of the people for the regulation of whose affairs the law is being reasoned. As the will or mood of the people alters so do such fundamentals as who is legally a person and who is not, what is a crime and what is not. In the Islamic tradition on the other hand, while the process of reasoning is not different, reasoning is firmly rooted in the Qurʾān and Sunnah, and cannot cut itself off from those roots – it can only branch off from them.

Many Muslims were very impressed by Abū Ḥanīfah's reasoning, but not all: indeed, even his own students disagreed with him. This can only have been so if praise or blame, acceptance or rejection of his arguments, occurred against the background of some shared sense of what was Islamic and what was not. It is a matter of record that the first Muslims disagreed amongst themselves about a number of important matters – on the question of political leadership they disagreed to the extent of civil war. And yet, on the question of how the law was to evolve while retaining its anchorage in the revelation, a stable consensus emerged very early on. The reason for this (in contrast to the question of political leadership) is that the foundations for such consensus had been laid during the period of revelation itself. The revelation contained teaching on this question sufficient to meet the needs of Islamic society as it expanded, which it did with spectacular speed. What was this teaching?

First of all, no Muslim was in any doubt of the centrality of the law to Islam. The migration to Madinah was not just an escape from an aggressively hostile environment to a place of refuge where the Muslims would not be persecuted. That was the purpose of the earlier migration of some Muslims to Abyssinia. The migration to Madinah (Hijrah) was the beginning of a movement to build a social and political environment that expressed and enabled Islam as an ethos, a social order. The Islamic era is dated from the Hijrah in recognition of this fact. The contrast with Christianity is instructive: it found its civilizational space within the legal order and the Hellenic heritage of the Roman empire; it was obliged (providentially perhaps) to go through several centuries of compromise with that heritage, the two eventually achieving a reciprocal subversion or conversion. Islam defined its own civilizational space, before it drove into the wider space defined by Romans or Persians. In practical terms, this meant that religious and moral values had to find expression in concrete terms as norms of behaviour and as laws: for example, the value of sobriety is partly expressed in the prohibition of intoxicants; the value of chastity is partly expressed in dress codes; the value of charity is partly expressed in the alms-tax or *zakāh*; the values of fairness and justice in economic dealings are partly expressed in the efforts to encourage circulation (not concentration) of wealth by forbidding usury, monopoly, hoarding, sheer speculation, etc. How were people to know the right way to give practical expression to such values?

The Qurʾān states (*al-Māʾidah*, 5: 101) that the questions about what God wants of people will be answered while the Prophet is amongst them, that is, while the revelation is on-going. It also states that a certain kind of questioning is reprehensible. Questioning is reprehensible if its intent (conscious or not) is to evade the

responsibility to find out how to live in the way that God wills. Such questioning may seek sophistication of religious dogma, subtle (and usually difficult) ways to fine-tune the phrases that express what it is that one believes. Or it may seek elaboration of the detail of ritual obligations, making them more burdensome and also obscuring their purpose. An example of the latter is narrated at length in the second sūrah of the Qurʾān, the narrative concluding (2: 71) with the observation that the people, under the guise of trying to do it perfectly, had all but not done the thing they were commanded to do (*wa mā kādū yafʿalūn).*

During the period of revelation, people could put their questions to the Prophet himself. Sometimes, their questions were addressed directly in the Qurʾān, more often the particular situation they were living through, their attitudes and actions, were commented upon. More often still, the questions put to the Prophet were answered by him. The Qurʾān named him as the man of noble character (*al-Qalam*, 68: 4), whom the Muslims should seek to emulate, and as the judge (*al-Nisāʾ*, 4: 65) to whom they should submit disputes for arbitration; then, when their hearts fully accepted his arbitration with no reserve of doubt or resentment, it was a sign that that their faith in God was secure. Many of the close disciples (Companions) of the Prophet achieved this degree of secure faith, the acceptance that his way embodied the Qurʾān in the practical form most suited to it.

The Qurʾān was given to the Prophet by his *hearing* it; with it came the explicit command not to hasten his tongue in the utterance of it, nor to be anxious about remembering it: God promises to prepare his heart for it, to preserve it fully, and to guarantee its exposition (*al-Qiyāmah*, 75. 16–19). Hearing (unlike sight) involves a direct presence of the message in the listener's body, which prompts, in the first instance, an adjustment to that sound. After sufficient recurrence, combined with receptivity on the part of the hearer (willingness or need to pay attention), that adjustment grows into 'attunement'. The process may be understood by analogy with how children acquire language. After sufficient exposure to speech, a child's ear can process, and its vocal apparatus reproduce, sounds, tones and meanings of astounding complexity. Most children can, after three years or so, hear and use their mother tongue correctly. They can also distinguish failures in its rules, that is, they can distinguish right from wrong usage. It is this degree of 'attunement' that Muslims mean when they affirm that the dicta and deeds of the Prophet constitute the authoritative exposition of the Qurʾān – in the brilliant aphorism (attributed to his wife ʿĀʾishah), 'his character was the Qurʾān'.

Those who were close to the Prophet for all or most of the period of revelation became 'attuned' to the Qurʾān through their attentiveness to the Sunnah, their striving to follow the Prophet in his precepts and practice. Sometimes they asked him questions about what they should do, and how they should do it. Sometimes the Prophet on his own initiative expressed approval or disapproval of what he saw people doing. Many rulings were given in public, typically from the Prophet's pulpit in Madinah. But people also came to consult the Prophet in private, in small groups or individually. Those who heard from the Prophet would take note of what he said, either in memory or, in some cases, in writing to aid memory. Accordingly, when the corpus of the teachings of the Prophet came to be formally compiled, it emerged that some of his sayings (*ḥadīth*s) were transmitted in near-identical wording by many

from many, others were transmitted in variant wordings from different groups of Companions, and still others were reported on the authority of a single Companion.

Language users know, and know how to apply, the rules of their language; however, without specialized training they cannot transmit to others those rules as such, only the usages governed by those rules. The Prophet was favoured with knowledge and the power to convey that knowledge, the teachings of Islam, to people for whom Islam was not, as it were, their first language. He recognized in a small number of his Companions that they had imbibed from him, as well as knowledge of particular injunctions, a strong, inward sense of the general principles and temperament of Islam. He felt able to entrust them to act as judges and give Islamic rulings for the people on his behalf. The famous names among this group of Companions are: Abū Bakr al-Ṣiddīq, ʿUmar ibn al-Khaṭṭāb, ʿUthmān ibn ʿAffān, ʿAlī ibn Abī Ṭālib, ʿAbdullāh ibn Masʿūd, Muʿādh ibn Jabal, Ubayy ibn Kaʿb, Abū l-Dardāʾ, Zayd ibn Thābit, Abū Mūsā al-Ashʿarī, ʿAbd al-Raḥmān ibn ʿAwf, Ḥudhayfah ibn al-Yamān, ʿAmmār ibn Yāsir, Abū ʿUbaydah ibn al-Jarrāḥ, and ʿĀʾishah, the wife of the Prophet. Their legal dicta are quoted and preserved in compilations of *ḥadīth*; in particular, the judgements of the first four in that list (the first caliphs) were accorded practically the same status as the Sunnah of the Prophet himself. The qualities that the Prophet found and approved in these Muslims were qualities that later generations looked for in those whom they would call ‘imāms’, men worthy to be followed. Those qualities, built upon ‘attunement’ to the general principles and temperament of Islam, were consistent dedication in their personal bearing and conduct to wellbeing in their relations with God (piety) and people (righteousness). Furthermore, they combined piety and righteousness with the necessary intellectual competence to distinguish and pursue Islamic values within the realties of this world without becoming so distracted or distressed by its demands as to betray those values. The Prophet was confident in the ability of his close Companions to exercise conscience and reason on behalf of the law, and not for personal advantage or for the advantage of any group or interest with which they were associated. He promised them a reward hereafter for the effort to apply and extend the law in the situations they faced, and a double reward if their judgements proved right.

The significance of piety and righteousness among the qualifications for reasoning with the law should not be underestimated. In later centuries, when the compendia of biographical sketches of the Companions and their successors were compiled, their personal reputations remained the most prominent element. They are praised for the quality of their *islām*, that is, the quality of their self-transcendence expressed as surrender to the will of God, their obedience and love of Him and of His Messenger. In modern idiom, this quality translates as the capacity to balance short-term interests with long-term ones: they had to balance the need to resolve the immediate problems and disputes before them against the need to preserve the ethos of Islamic society for future generations. The *islām* of the Companions and their students, and those who followed them in their service of the law is the strong weight in Islamic history, counterbalancing the centrifugal tendencies (focused in the leaders of political or doctrinal or religious factions) which, in various degrees, tried to ‘re-invent’ Islam to suit the advantage (or simply the tastes or local habits) of their clan or tribe or sect. So long as service of the law remained disinterested (i.e. was bound by duty to Islam and

its primary sources) it was patient, even relatively comfortable, with diversity in interpretation and practice. That is why, even long after the different schools had been well-consolidated, and there was a tilt towards preserving and promoting the distinguished figures and books of a particular school or sect, Islamic law retained a good deal of its symbolic and practical power to hold the Muslims together in a shared cultural space.

AFTER THE DEATH OF THE PROPHET

After the death of the Prophet, the territories to which the law had to be extended expanded rapidly. During the rule of ʿUmar, Greater Syria, Iraq, the major provinces of the Persian empire, and Egypt came under Islamic rule. Large numbers (especially among the Arabic-speaking people of Iraq and Syria) embraced the faith and new cities were founded. Many of the Companions left Madinah and settled in other cities to teach, and to give rulings and judgements to order the people's affairs. The number of Companions referred to for the purpose of interpreting and applying the law reached 120 according to Ibn Ḥazm (d. 456). ʿUmar took particular care to appoint in every major city learned Companions who were competent to teach the Qurʾān and the Sunnah, and to uphold the law. The most eminent among those appointed by him were Abū l-Dardāʾ in Syria, and ʿAbdullāh ibn Masʿūd in Kufah. The Muslims of the different regions followed the Companion teachers of their cities in recitation of the Qurʾān, and the rites of worship, and also in the moral and legal ordering of their everyday transactions. Given the speed and the scale of expansion, it was inevitable that the Companions faced situations that elicited different responses from them. This was in part because they were acting in different localities, in part because their individual efforts of conscience and reason were, though equally dedicated, differently attuned to Qurʾān and Sunnah. Later generations explained the differences as resulting from the Companions' following different methods of interpreting the law.

Just as people had gathered around the Prophet to learn from him, so too people gathered around the Companions, and stayed with them – some for decades – as their students. This generation, known in the tradition as the *tābiʿūn* (the followers or Successors) learned from the Companions their stock of *ḥadīth*s, and their methods of applying that knowledge, i.e. their *fiqh*, their ways of understanding the *ḥadīth*s as law. The most widely famed among the Successors were the seven jurists of Madinah. They were: Saʿīd ibn al-Musayyab (d. 98), ʿUbaydullāh ibn ʿAbdillāh ibn ʿUtbah ibn Masʿūd (d. 98), ʿUrwah ibn al-Zubayr (d. 94), al-Qāsim ibn Muḥammad ibn Abī Bakr (d. 106), Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Ḥazm (d. 94), Sulaymān ibn Yasār (d. 120), Khārijah ibn Zayd ibn Thābit (d. 100). Besides them, there were other greatly respected scholars who attracted a very large body of students: ʿAlqamah (d. 62; Kufah), al-Aswad (d. 75; Kufah), Sālim ibn ʿAbdillāh ibn ʿUmar (d. 106; Madinah), Ibrāhīm al-Nakhaʿī (d. 96; Kufah), ʿAṭāʾ ibn Abī Rabāḥ (d. 114; Makkah), Ḥasan al-Baṣrī (d. 110; Basrah). During this period personal collections of *ḥadīth*s and *āthār* (reports of the judgements of the Companions) were increasingly set down in writing, and circulated. As students travelled between teachers, and mixed in different places, they exchanged this knowledge with each other. The more scholarly of them

began to take note of who had transmitted what from whom, and this academic apparatus supporting *ḥadīth*s and *āthār* became a part of the knowledge that was circulating ever more widely. Already among the students of the Successors, distinctions (if not yet specializations) were emerging, between those who knew and memorized and transmitted *ḥadīth*s, and those who derived the law from them – those who were good in *ḥadīth* and those who were good in *fiqh*. This was an inevitable process, given the increasing distance from direct knowledge of the Sunnah and the increased opportunities for reflection, critique and general professionalization of teaching that came about as the mode of learning shifted from mainly hearing texts to also seeing them.

With the students of the students of the Successors, we reach the generation of Abū Ḥanīfah. In this generation, leadership in the domain of *fiqh* in Kufah passed to Abū Ḥanīfah, in Greater Syria to al-Awzāʿī, in Madinah to Mālik ibn Anas, in Makkah to Ibn Jurayj, and in Egypt to Layth ibn Saʿd.

THE EMERGENCE OF ISLAMIC SCHOLARS

As the generation of Companions died out around the middle and later part of the first century AH, their students, and then theirs in turn, emerged as a distinct class within the community devoted to the preservation, transmission and understanding of the knowledge of the Companions. In Makkah, Madinah, Kufah, Basrah, Damascus, Egypt, Yemen and other centres of Islamic learning, the scholars (*ʿulamāʾ*) gathered, discussed and disseminated the materials used by themselves and subsequent generations of scholars to establish the developing corpus of Islamic law. In spite of civil wars and the emergence of schisms of both a religious and political nature, no one disputed the text of the Qurʾān or its authority. But, as explained above, for the practical effectiveness of the Qurʾān, preservation and transmission of the Sunnah was indispensable. The scholars who devoted their lives to that task became a focus of moral authority, distinct from, though not necessarily in opposition to, the power of the state, and its appointed governors and officers.

Travelling in search of knowledge is strongly urged in a number of the Prophet's sayings. Some of the Companions undertook long journeys either to learn a *ḥadīth*, or to refresh their memories of it. Abū Ayyūb, for instance, travelled from Madinah to Egypt just to refresh his memory of the wording of a *ḥadīth* that he – in the company of ʿUqbah ibn ʿĀmir – had learnt from the Prophet himself. Jābir ibn ʿAbdillāh travelled for a whole month to hear confirmation from ʿAbdullāh ibn Unays of a *ḥadīth* that he (Jābir) had already learnt through another person. Similarly, another Companion went from Madinah to Damascus just to hear from the lips of Abū l-Dardāʾ himself a *ḥadīth* that he had already received indirectly through an associate of Abū l-Dardāʾ. The pilgrimage to Makkah is a religious obligation for all Muslims: the stops on the journey to Makkah, as well as the pilgrimage itself, provided many opportunities for scholars to visit and meet one another and exchange knowledge.

The example of the Companions deeply impressed the Successors, who came to study with them. They too travelled extensively throughout the expanding Islamic world to gather knowledge of as many *ḥadīth*s as possible and returned home like bees

laden with honey to impart their precious store to crowds of other eager students. Makḥūl (d. 112) travelled through Egypt, Syria, Iraq and the Hijaz, and gathered all the *ḥadīth*s that he could from the Companions who still lived in those places. Al-Shaʿbī (d. 104) said, when asked how he had acquired knowledge of so many *ḥadīth*s: 'By hard, long travels, and great patience'. He used to say that if for the sake of only one word of wisdom anyone travelled from one end of Syria to the corner of Yemen, he should consider his journey to have been worthwhile. Such journeys became increasingly popular.

These travelling scholars were mostly poor. A few of them were independently wealthy – among these few were Abū Ḥanīfah, Layth ibn Saʿd, and ʿAbdullāh ibn al-Mubārak. The overwhelming majority depended on their families to support them by sending money. If they had difficulties in receiving money they would borrow, through their teachers, from some rich people and repay the loans when they could. They also supported themselves, as far as they could, by doing part time work, most typically copying. Many copyists' shops were owned and run by scholars. As the demand for books grew with the increasing prosperity in the cities of the Islamic world, so too did the number and size of the copying 'factories'. Some of them employed as many as two hundred copyists. A copyist in the second century after Hijrah earned one-tenth of a dirham for copying a single page; by the following century, the rate had increased to one-fifth of a dirham. It was first of all the demand for copies of the Qurʾān (and, later, of the *ḥadīth*s of the Prophet) that led to the crafts of writing and binding books becoming well established in all the major cities of the Islamic world. Both expensive and cheap materials for writing were readily available in the market. Parchment and papyrus, used in the earliest period, were gradually replaced by paper. Paper was initially imported, and then manufactured locally: production in Baghdad is recorded from the second century AH. From this time on, paper was available as a relatively cheap writing material, a factor favouring the emergence of the *warrāqūn* as a professional group.

In the earlier period, however, circumstances were not easy for students of the Qurʾān and Sunnah. There are anecdotes of difficult sacrifices and hard times endured: some had to sell off parts of their homes or lands and other possessions in order to sustain themselves in their quest for knowledge. Many endured privations in food and clothing. However, there was such respect in the society for this knowledge that many were willing to support the students in their efforts to acquire it. Abū Ḥanīfah financed many of his own students, Qāḍī Abū Yūsuf and his family for example, as well as other scholars of his time. So too did Layth ibn Saʿd and ʿAbdullāh ibn al-Mubārak.

The masjid (mosque) was, and indeed remains, central in the life of the Muslim community, and so it was in the masjids that most teachers held their classes, although a few did also teach in their homes. In the bigger city masjids many classes were held, with the teachers seated at different pillars of the building. It is a common expression in histories and biographical dictionaries that so-and-so sat at one of the pillars of such a masjid to teach. Students' moving from one pillar to another meant their moving from one class to another. Occasionally parks, or the open spaces outside governors' palaces, were used for the very large number of students (some reports say thousands) who gathered to hear the most famous and highly regarded teachers.

THE ROLE OF SCHOLARS AS JUDGES AND JURISCONSULTS

For answers to questions about what was right and lawful in Islam, the people referred to the known scholars of their time and locality, while in their disputes they would refer to the local judges (qāḍīs). The domain of responsa or fatwās was known as *iftāʾ*, and that of litigation as *qaḍāʾ*. These two domains overlapped smoothly for the most part. *Qaḍāʾ* was the more regulated of the two, because the governors would not appoint (and pay) someone as a judge unless his reputation for knowledge of the law and his piety were sufficient to make his decisions acceptable. The judges dispensed justice in public courts, and their verdicts were enforced by the police (*shurṭah*). Such verdicts were considered as binding. Even in those cases where there might be difference of opinion, once the judge had, for his reasons, given his verdict, all scholars agreed that it must be accepted. Governors faced many difficulties in getting the best-known and most pious scholars to serve as judges. Abū Ḥanīfah refused such a post more than once; his refusals caused him many problems, and eventually his life.

For complicated issues, the judges would consult other wellknown scholars, or call a meeting of jurists in the court or at their houses, and there debate the problem. In the early period almost all judges were established teachers with a large number of students calling on them. This teaching activity enabled their verdicts to pass quickly, via the students who recorded them, to other scholars and judges. In this way, there was both much lively discussion and prompt rectification of mistaken judgements.

Legal procedure for adversarial cases, rules of evidence, binding verdicts, and state enforcement, fell within the domain of *qaḍāʾ*. By contrast, the discussion and judgements of points of law within the domain of *iftāʾ* were and remained always non-binding. The muftīs (jurisconsults) generally held themselves aloof from the state, but not absolutely or universally. Some were persuaded to serve in the judicial administration, and the activity of giving fatwās acquired a public and official character. In Umayyad times (41–133) some muftīs served as consultants to qāḍīs and also issued fatwās at the request of provincial governors and sometimes at the request of the office of the caliphate in Damascus. Saʿīd ibn al-Musayyab, the great imām of Madinah, and later Ibn Shihāb al-Zuhrī, received many such requests. These great scholars, in several instances, criticized the political establishment quite forcefully, and did so without fear, despite being threatened with death. It is not surprising, in view of the increasing importance of *iftāʾ* as a source of religious legitimacy, that state governments sought to establish a measure of control over it. They mostly failed because those scholars who were qualified to give fatwās, understood very well the gravity of doing so, and feared having to answer for their judgements in the hereafter. Imām Mālik, for example, famously said: ‘I did not sit for giving fatwās until seventy people from among my teachers swore to me that I was qualified’ (al-Nawawī, *Adab al-muftī*, 32).

It is therefore broadly correct to say that the role of the muftī was independent of the state, and barely institutionalized at all. The scholars who served the people in this way in the early centuries of Islam operated privately and without ties to the political authorities. Even in later centuries, when senior scholars in some cities did accept salaried appointment to do this work, they did so because it was, at the time, in the greater interest of the society that they served the state than that they did not. The