



What is a *Madhhab*? Exploring the Role of Islamic Schools of Law

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Introduction

Earlier this year, a debate between the grand imam of Al-Azhar, Sheikh Ahmed al-Tayyeb and Mohamed Othman al-Khosht, President of Cairo University went viral.¹ Khosht argued that Islam needs renewal by returning to the Qur'an and authentic Sunnah. He blamed tradition for preventing advancement in the modern Muslim world. He argued that Islamic tradition had become stagnant and that if Muḥammad b. Idrīs al-Shāfi'ī (d. 204/820) was alive today he would have also sought to renew Islamic law. Tayyeb responded with a passionate rebuttal and defense of Islamic tradition. He noted that even the idea of religious renewal is from the tradition itself, not from outside. He compared Khosht to someone who seeks to renovate his father's home but opts to buy a new one instead.² Khosht is not alone; many modern Muslims view the Islamic legal tradition as needing a complete overhaul. A consistent theme among several reformers of the 18th-20th centuries has been a call to bypass the *madhhabs* and approach the Qur'an and Sunnah anew. These reformers and intellectuals portray Islamic law to be inferior to Western law and this generates a lack of confidence in the Islamic legal tradition.

To the uninitiated, the topic of Islamic law may appear to be limited to scholarly circles, but in fact debates about the place of the *madhhabs* and their relationship to the Qur'an and Sunnah take place in mosques, online, and at dinner tables. The doctrines of *ijtihād* and *taqlīd* touch a particularly sensitive nerve in Muslim circles because they are tied to religious authority. Where one stands on the issue is often an indication of their larger approach toward scripture and Islamic legal tradition.

All Muslims seek to follow the Qur'an and Sunnah. But the larger question is how does this actually occur? Average Muslims understandably feel overwhelmed by

¹ I would like to thank Amir Aboguddah and Justin Parrott for feedback on an earlier version of this article. All mistakes are my own.

² See Sheikh al-Azhar replying to the President of Cairo University in the Azhar International Conference: <https://www.youtube.com/watch?v=GbiAwHYIOD4>.

the complexity of Islamic law and prefer an easier and straightforward explanation of Islam. In the age of instant gratification, modern sensibilities are often consumed with a flagrant sense of certainty where people want to Google the facts and quickly find answers for themselves. There is a yearning for a legal system that is spelled out in an incontestable manner, but law is naturally complex and this is why lawyers are usually hired to interpret the law.

In the modern context, or “post-truth” era, there is a tendency to bypass experts and seek answers oneself. The internet allows people to mimic intellectual accomplishments by indulging in an illusion of expertise supported by an unlimited number of facts.³ In the religious context, these facts or *dalīls* are often used by competing groups of Muslims to represent the “true” and “authentic” meaning of Islam. This often results in confusion and increased doubt concerning Islamic legal tradition.

The *madhhabs* are sometimes misunderstood to not be based on scripture. It is not uncommon for some Muslims to state that they don’t follow a *madhhab*, but rather follow the Qur’an and Sunnah. This approach to the Islamic legal schools is based on the incorrect assumption that they are simply the guesswork or opinions of a few jurists that are not based on evidence but based on the simple personal opinion of jurists. This misunderstanding creates a disconnect between the Muslim and *fiqh*. I will attempt to show that the *madhhabs* always base their legal opinions on scripture.

The main purpose of this article is to help the reader understand what the *madhhabs* are and their function in Islamic law. First, I will provide a brief overview of what the *madhhabs* are and how they emerged. Next, I will discuss the nature of the Qur’an and Sunnah and the need for legal expertise. Then I will shed light on why there might appear to be some tension between legal opinions of the *madhhabs* and the apparent meaning of scripture. Finally, I conclude by returning

³ Emad Hamdeh, “Shaykh Google as Ḥāfiẓ al-‘Aṣr: The Internet, Traditional ‘Ulamā’, and Self Learning,” *American Journal of Islam and Society* 37, nos. 1–2 (May 2020): 68.

to the idea of reform and Islamic law. This will hopefully provide the reader with an appreciation of the nature, complexity, and importance of the *madhhabs* and their relationship with the Qur'an and Sunnah.

What is a *madhhab*?

Since Islam does not have an ecclesiastic body that has the authority to declare the correct meaning of scripture, the interpretation of scripture largely became the collective role of scholars. Throughout Islamic history, the overwhelming majority of Muslim scholars followed what is called a *madhhab*. A *madhhab*, simply put, is a school of law. Although the term “school” is useful, it does not do full justice to the definition of a *madhhab*. Schools usually speak of people whereas a *madhhab* is primarily about a shared interpretational methodology. A *madhhab* linguistically means “a way” and therefore it is a method of interpreting scripture that binds a group or school of scholars together.

Furthermore, the *madhhabs* are not theological schools or sects. Nevertheless, in modern times, following a *madhhab* has sometimes become an identity marker. It has sometimes become a description people give themselves to express a particular method of practicing Islam that is in opposition to “non-traditional” Islamic movements. However, the *madhhabs* were never intended to be identity markers; rather they are methodologies of understanding and applying scripture.

It is important to stress that the *madhhabs* do not differ on the foundations of the religion such as God being One, the Qur'an being the book of God, and the Prophet Muhammad ﷺ being the Messenger of God. While most Muslims would agree that division concerning the foundational beliefs of Islam as well as some foundational legal aspects is objected to, the same is not said for secondary issues in law which allow for a plurality of opinions. There is a difference between division and difference of opinion. In the legal context, it is not division that is meant to take place, but differences of opinion. Division that results in partisanship and conflict is certainly condemned by the Qur'an and Sunnah.

In Sunni Islam, there are four main *madhhabs* named after the founder of each school: The Ḥanafī, Mālīkī, Shāfi‘ī, and Ḥanbalī schools of law. A common misconception is that following a *madhhab* means following the opinion of the eponym of a legal school. A *madhhab* is not the opinion of one person, but rather it is the following of the methodology laid down by the founder. The *madhhabs* are a continuation of scholarly discourse over many centuries, which in turn formed a scholarly tradition. Although the *madhhabs* are named after their founders, scholars of the *madhhab* may hold legal positions that contrast with those of the founder. In the Ḥanafī school one commonly finds the dominant opinion belonging to Ya‘qūb b. Ibrāhīm al-Anṣārī (d. 182/798), better known as Abū Yūsuf, and Muḥammad b. al-Ḥasan al-Shaybānī (d. 189/805). This was not limited to scholars who lived at the time of the founder of the legal school; later scholars also differed with the imam of their *madhhab*. For example, in the Shāfi‘ī *madhhab*, it is common to see Yaḥyá b. Sharaf al-Nawawī (d. 676/1277) and Abū Qāsim al-Rāfi‘ī (d. 623/1226), often referred to as the two shaykhs (*al-shaykhān*), differ with Imam al-Shāfi‘ī.⁴ All of the opinions within a particular *madhhab* remain part of that *madhhab* as long as they adhere to the methodology established by the founder of the school. However, not every single opinion found in a school can be said to represent the *madhhab*, but it is often the *mu‘tamad* (relied on or established) position that holds the most legal weight.

A brief overview of the *madhhabs* in Islamic history

It is important to provide a brief summary of the development of the *madhhabs* and the role they played in Islamic history.

Fiqh before the *madhhabs*

The emergence of the *madhhabs* was a gradual process. There is not a specific date on which the *madhhabs* were formed. No one woke up one morning and decided to

⁴ See Sālim al-Khaṭīb, *Ikhtiyārāt al-Imām al-Nawawī allatī tafarrada bihā min al-madhhab al-Shāfi‘ī* (Amman: Dār al-Nūr, 2012).

form a *madhhab*, but rather it was a natural development that took place from the time of the Companions.

The Meccan period was primarily, but not exclusively, focused on the foundations of faith; however, it still had some laws such as prayer and dietary restrictions. The Medinan period is when the majority of laws were revealed.⁵ In this period, the primary sources of law were the Qur'an and Sunnah. One might wonder where the other sources of law such as *ijmā'* (consensus) and *qiyās* (analogical deduction) come from. *Ijmā'* and *qiyās* are not sources of law per se, but tools used to extract rulings from the sources of law. These tools were not made up by scholars, but rather found in scripture.

Difference of opinion during the time of the Prophet ﷺ was limited because if the Companions differed they would refer to the Prophet ﷺ and he would resolve any differences. However, when the Companions were away from the Prophet ﷺ, they differed. Even during the Prophet's life, some Companions gave *fatwas* and some of the Companions were known for their expertise in Islamic law.

In the absence of the Prophet ﷺ, how did the Companions find solutions to questions that the Qur'an and Sunnah were silent about? The simple answer is that they performed *ijtihad*. *Ijtihad* is when a jurist reaches into his legal toolbox to find answers not spelled out in scripture. This box would include tools such as exhaustive knowledge of scripture, expertise in Arabic, the opinions of the Companions, analogical reasoning (*qiyās*), consensus (*ijmā'*), and subsidiary principles like juristic preference (*istiḥsān*) and public interest (*maṣlaḥah*).

Ijtihad in the time of the Prophet ﷺ took place in a limited capacity because the Prophet ﷺ was alive. His presence meant that scripture was still being revealed and oftentimes the Companions were given direct answers to their questions.

⁵ On this topic see Muḥammad b. Ḥasan al-Tha'labī, *al-Fikr al-sāmī fī tārikh fiqh al-islāmī* (Beirut: Dār al-Kutub al-'Ilmiyah lil Nashr wa-al-Tawzī', 2006).

However, when the Companions traveled, they encountered new issues that scripture did not address. For example, ‘Amr b. al-‘Āṣ was traveling and only had extremely cold water with no means of warming it to perform ablution. He therefore performed *ijtihād* and made *tayammum* instead. When he returned, the Prophet ﷺ confirmed that what he did was permitted.⁶

Fiqh after the Prophet ﷺ

After the Prophet ﷺ, direct revelation stopped and any religious declaration needed to be established based on the words of God or the Prophet ﷺ. Islamic law did not end with the Prophet’s death. Not all of the Companions and Successors (*tābi‘īn*) were jurists or involved in Islamic law, so naturally they looked to follow those who were. There were several Companions known for their expertise in Islamic law such as ‘Ā’ishah bint Abī Bakr, Ibn Mas‘ūd, Zayd b. Thābit, and Ibn ‘Abbās رضي الله عنهم. Each of these Companions had students who would write and follow their teachings in Islamic law.

After the Prophet ﷺ, Islam quickly spread to new lands such as the Levant, Egypt, and most of North Africa. These regions had diverse customs, cultures, and circumstances that were vastly different from the culture of Mecca and Medina in the time of the Prophet ﷺ. Some of the Companions moved to these regions and served as judges or governors in the quickly expanding Muslim empire. People naturally asked them questions about new issues that arose to which they exercised their best judgment in understanding the Qur’an and Sunnah. These new issues necessitated that the scholars among the Companions and their dedicated students use their expertise in the legal teachings of the Qur’an and Sunnah to perform *ijtihād* and understand how they applied in these new environments.

⁶ Muḥammad Abū Zahra (d. 1974), *Tarīkh al-madhāhib al-Islāmīyah fī al-siyāsah wa-al-‘aqā‘id wa-tarīkh al-madhāhib al-fiqhīyah* (Cairo: Dār al-Fikr al-‘Arabī, 1996), 227.

The legal results of divine law changed based on new circumstances.⁷ For instance, the Qur'an states that those whose hearts are inclined toward accepting Islam are eligible for *zakāh*: "Prescribed charity is only meant for the poor, the needy, those who administer them, those whose hearts need winning over, to free slaves and help those in debt, for God's cause, and for travelers in need. This is ordained by God; God is All-Knowing and Wise" (Qur'an 9:60).

The category of "those whose hearts need winning over" or *mu'allafati qulūbuhum*, refers to non-Muslims who are attracted to Islam or Muslims who may need charity to strengthen their faith. However, when 'Umar رضي الله عنه was caliph, he suspended this rule and argued that it only applied in circumstances when Muslims were few in number and there was a need to increase the population of Muslims. He reasoned that the verse no longer applied due to the change in circumstances. During his time, Islam quickly spread throughout the region and the numbers of Muslims increased to the extent that they no longer needed to spend money to increase the Muslim population.⁸

To the novice, this may appear to be an example of explicit indifference to God's law. However, when a law is not applied due to the absence of its effective cause (its *'illah*) it is not considered an act of disregarding the law, but rather an application of it. This is due to the fact that the law requires the ruling only be applied in the presence of its effective cause (*'illah*). A simple example is the prohibition of recreational marijuana. While marijuana is not mentioned in the Qur'an, one can look at the effective cause for the prohibition of intoxicants which is the diminishment of human rationality.

Scripture does not speak of every event or circumstance that may occur, whereas the number of circumstances people find themselves in are never-ending. The

⁷ On change in Islamic law, see Amir Aboguddah, "A Sober Second Thought: When and How Should Changes in Islamic Law Be Made?," *Yaqeen*, July 30, 2020, <https://yaqeeninstitute.org/amir-aboguddah/a-sober-second-thought-when-and-how-should-changes-in-islamic-law-be-made/>.

⁸ *Muṣannaf 'Abd al-Razzāq, bāb al-qaṭ' fī 'ām al-sanah*, no. 18371; *Muṣannaf Ibn Abī Shaybah, bāb fī al-rajul yasriq al-thamr wa-al-ṭa'ām*, no. 29179.

number of laws explicitly mentioned in the Qur'an and Sunnah are finite but they speak to a constantly changing and evolving set of circumstances. This necessitates that the application of the law must change in order to provide solutions in different contexts. As a result, the Companions and jurists did their best to understand new circumstances that were not spelled out in scripture. They exerted their best effort (*ijtihād*) to try to apply the broad maxims of the Qur'an and Sunnah to the new issues they encountered. However, most Muslims are not scholars and therefore do not know the historical, linguistic, contextual, and legal implications of scripture. In fact, most of the Prophet's Companions were not legal experts. Hence, whenever a new issue arose, we find that certain Companions such as 'Umar, 'Ā'ishah, 'Alī, Zayd b. Thābit, and 'Abd Allāh b. Mas'ūd were asked for guidance and clarification. The concept of following an expert (sometimes referred to as *taqlīd*) existed even among the Companions. The students of these Companions went on to become teachers and several methods of understanding scripture (*madhhabs*) emerged.

The Companions of the Prophet ﷺ and the early generations were not monolithic and did not share a single methodology. They had different understandings and interpretations of the Qur'an and Sunnah. Abū Sa'īd al-Khudrī رضي الله عنه reported that two men went out for travel when the time of prayer arrived and they did not have water with them. They performed dry ablution with clean earth and prayed, then they later found water. One of them repeated his ablution and prayer, while the other did not repeat them. They came to the Messenger of Allah ﷺ and mentioned that to him. The Prophet ﷺ said to the one who did not repeat his prayer, "You have followed the Sunnah correctly and you will be rewarded for your prayer," and the Prophet ﷺ said to the one who repeated his prayer, "You will have a double reward."⁹

These Companions had many students and this is how early *madhhabs* or "ways of understanding" developed. Although these different understandings may not have

⁹ *Sunan Abī Dawūd, kitāb al-ṭahārah, bāb fī al-mutayammim yaḥid al-mā' ba'da mā yuṣallī fī al-waqt*, no. 338.

been called *madhhabs*, the concept of following the understanding of a particular person existed during the time of the Companions.¹⁰ There was not a normative number of *madhhabs*, rather a plethora of scholars at the time developed *madhhabs* or methods of interpreting scripture. The generation after the Companions furthered Islamic legal theory and many *madhhabs* existed but did not survive because a teacher may not have had enough dedicated students to carry on his teachings or method. Today it is the four previously mentioned *madhhabs* that have survived and spread throughout the entire Muslim world.

The growth of the *madhhabs*

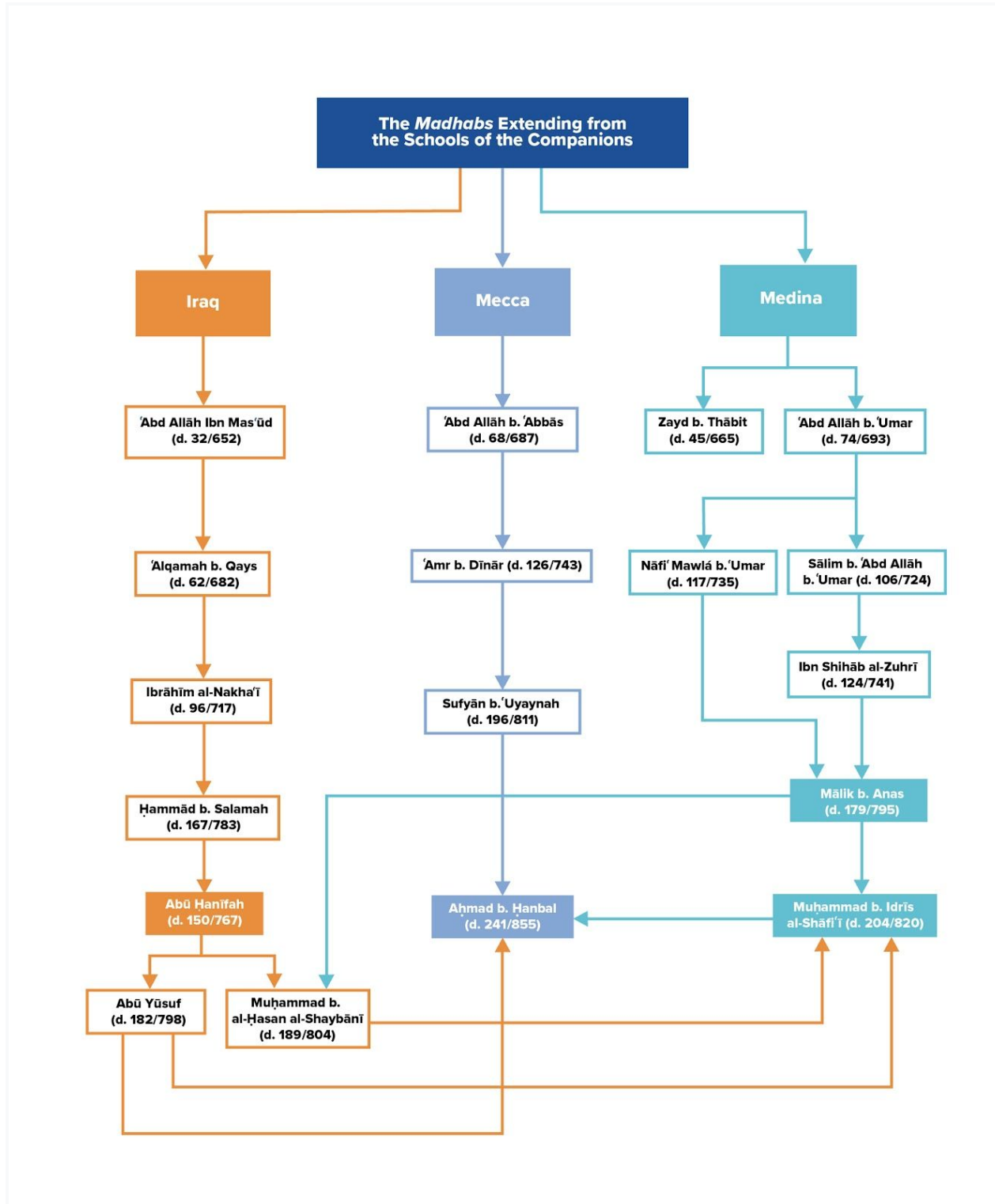
After the Prophet ﷺ, several Companions started teaching people what is prohibited and allowed. Ibn Mas‘ūd رضي الله عنه moved to Kufa and started teaching there. Naturally people started attending his classes and following his teachings. Ibn Mas‘ūd used to give *fatwas* and his students used to write his teachings. Zayd b. Thābit and Ibn ‘Umar had a similar group of followers in Medina. Ibn ‘Abbās had similar classes and dedicated students in Mecca. People naturally came to those most knowledgeable in Islamic law when they had a question. These Companions had dedicated students who continued to teach what they learned.¹¹

This chart below illustrates how the *madhhabs* grew as natural extensions of the teachings of the Companions. The chart is not all-encompassing or comprehensive because there were dozens of scholars who studied with each Companion and their Successors. However, it highlights some of the most prominent figures in these learning circles and how the *madhhabs* naturally branched from the teachings of the Companions. The chart also shows how these four schools were all influenced by each other. For example, Imam al-Shāfi‘ī studied with Imam Mālik. He also

¹⁰ See Muḥammad Ramaḍān al-Būṭī (d. 2013), *al-Salaḥīyah marḥalah zamanīyah mubārakah lā madhhab Islāmī* (Damascus: Dār al-Fikr, 1988).

¹¹ On the historical development of Islamic legislation, see Muḥammad al-Khuḍarī, *Tārīkh al-tashrī‘ al-Islāmī* (Beirut: Dār al-Ma‘rifā, 1997).

studied with Abū Ḥanīfah's main students. Imam Aḥmad also studied with al-Shāfi'ī, and al-Shaybānī studied with Imam Mālik.



It is important to highlight that these *madhhabs* were not simply one person offering his opinion and others writing it down. Rather, they involved a collective process of arriving at conclusions. For example, when examining an issue, Abū Ḥanīfah would present it to his students, who were scholars in their own rights, and they would collectively examine, debate, and revise it. His circle consisted of experts in language, hadith, judges, and jurists. This meant that any opinion went through rigorous “peer review” before being finalized as the opinion of the *madhhab*. The findings and legal opinions of these scholars were compiled in books and thousands of scholars continued to study, reexamine, and revise these opinions for centuries. In this sense, the *madhhabs* were a communal preservation of Islamic law.

The Qur’an was not compiled in the time of the Prophet ﷺ, but the Companions and Successors took gradual steps to further preserve it. Similarly, the science of hadith did not exist in the time of the Prophet ﷺ in its mature form. The Companions and Successors and those after them gradually developed the sciences of hadith and Islamic law in order to preserve the authenticity of hadith. The *madhhabs* constitute a science whose formative stages existed in the time of the Prophet ﷺ, but developed over time in order to preserve knowledge of what is lawful and prohibited. Similar to the science of the Qur’an and the science of hadith, the *madhhabs* gradually emerged based on the need and time of the Muslims. When the Prophet ﷺ was alive, there was no need for an advanced methodology for the study of scripture. If one had a question, they simply asked him ﷺ and received the correct interpretation. Or if one doubted the authenticity of a Prophetic saying, they could have just gone to confirm it with him.

When the Prophet ﷺ was no longer alive, there was a need to establish systematic methods of authenticating hadith and interpreting scripture. For example, if there are small populations of people living in a very large countryside, it would be absurd to have highly sophisticated traffic lights and signs throughout the area when people live so far from each other and use so few cars. However, as

time goes on and the population increases, the traffic system will also naturally develop accordingly.¹² Similarly, in the time of the Prophet ﷺ, there was no need for an official method of interpretation or legal school, science of hadith, or compilation of the Qur'an. These developed after the Prophet ﷺ as the needs of the community grew.

The Qur'an and Sunnah were best understood by the Companions of the Prophet ﷺ because they lived with him and witnessed the revelation of the Qur'an and growth of Islam. The *madhhabs* are an attempt to understand scripture in a similar manner to the Companions. Al-Shāfi'ī was the first scholar to write a book on the principles of Islamic law (*uṣūl al-fiqh*) in an attempt to provide a methodology of scriptural interpretation. Because al-Shāfi'ī was the first to write or explicitly lay out the methodology of scriptural interpretation does not mean that no such methodology existed. The Companions did not explicate their methodology, but this does not mean that they did not have one. In fact, al-Shāfi'ī extracted the principles of Islamic law based on his study of how the Companions interpreted scripture. In other words, al-Shāfi'ī wrote about *uṣūl al-fiqh* to provide a “blind man’s stick” to guide jurists who did not have the experience of the Companions or the expertise to extract their methodology.

The development of the *madhhabs* and the study of Islamic law were not simply academic or intellectual exercises. Once the *madhhabs* were formulated, they served practical legal purposes. One who became an expert in Islamic law usually found a government job as a lawyer, judge, administrator, or educator. Prior to the rise of secular states, the primary function of Islamic legal education was to prepare scholars for legal careers. Over time, Islamic law was officially replaced with secular or Western law. The notion that Muslim jurists were merely “religious” professionals is a new and modern concept. Additionally, a central theme of reform movements over the past several centuries has been a call to return

¹² On the development of the science of hadith, see Muhammad Mustafa al-Azami, *Manhaj al-naqd 'ind al-muḥaddithīn: Nash'atuhu wa tārikhuhu wa yalīhi kitāb al-tamyīz lil Imām Muslim Ibn al-Ḥajjāj al-Qushayrī al-Naysābūrī* (Saudi Arabia: Maktabat al-Kawthar, 1990).

to the Qur'an and Sunnah while bypassing tradition. This approach has further sidelined the *madhhab*s with the purported goal of rediscovering the “true” meaning of Islam.¹³

Do the Qur'an and Sunnah need interpreters?

Everything in today's world requires experts. Each field has a methodology established by the experts that is expected to be followed. Experts agree on the need for methodology in order to produce consistency in their field. Non-experts recognize the need for expertise; otherwise there would be chaos. Similarly, Islamic law needs interpreters just like all other legal systems. People sometimes pay legal fees and refer to lawyers for the simplest of legal items such as a speeding ticket. Law is often inaccessible to laypeople and they cannot understand its history or language. Even if they do, they often lack the skill to stand before a judge and frame a legal argument. On the surface, some legal issues may appear to be very simple, but they are usually much more complicated.

In the American context, the Constitution serves as a source of law. Later jurists attempt to understand what the founding fathers meant when writing the Constitution. The Constitution is not always as clear as it may appear, especially as times and circumstances change. The modern debate surrounding the second amendment is a prime example of how a source of law can often lead to stark differences. The second amendment states that “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” The intended scope of this statement has caused considerable disagreement among American jurists. The Constitution in this case is not the law, but a source of law. It requires that scholars try to understand what the founders meant, and whether this still applies to everyone and all weapons. In this case, trying to follow “only the Constitution” is not so simple because the Constitution lends itself to different interpretations. One must take many things

¹³ Hamdeh, “Shaykh Google,” 80–81.

outside of the Constitution into consideration. Is this amendment to be taken at face value regardless of intent, time, and place? Or was the underlying concern that inspired the second amendment a fear, that some argue no longer exists, of an abusive federal government? Should this change how the amendment is interpreted? Does the second amendment include the right to bear weapons that would be used by a militia today such as rockets and grenades?

In regards to Islamic law, is it a body of rules given by God ready-made? Or did God provide the sources of law (Qur'an and Sunnah) and then required Muslims to use these sources to construct law and determine its underlying rationale? If law is understood as a body of facts that are independent of the mind, then the interpreter simply finds or discovers these laws. However, if law is understood to be connected to historical and institutional context, then it allows for constructive engagement within the boundaries of the legal tradition.¹⁴

In the Islamic context, it is necessary to understand the difference between law and the sources of law. The Qur'an and Sunnah are the main sources from which Muslims extract legal rulings. They are part of what are called the sources or principles of jurisprudence (*uṣūl al-fiqh*). The laws in the Qur'an and Sunnah require a process of interpretation. Muslims are in agreement concerning the necessity of following the Qur'an and Sunnah, but Muslim jurists acknowledged that the Qur'an and the Sunnah always have an interpreter. That interpreter can be the individual or it could be a collective body of scholars (i.e., the *madhhabs*). The purpose of a *madhhab* is to provide scholars a methodology for understanding the sources of law. With the exception of a few issues for which there is consensus (*ijmā'*), Islamic law is one that requires scholars to put in effort (*ijtihād*) to extract the law. The Prophet ﷺ noted that a judge must strive and put in immense effort (*ijtihad*) to give a legal ruling and he will be rewarded double if he is correct and once if he is mistaken.¹⁵

¹⁴ Anver Emon, "To Most Likely Know the Law: Objectivity, Authority, and Interpretation in Islamic Law," *Hebraic Political Studies*, 2009, 419.

¹⁵ This famous hadith is found in the collections of both Bukhārī and Muslim. See for example, *Ṣaḥīḥ al-Bukhārī, kitāb al-i'tiṣām bi-al-kitāb wa-al-sunnah*, no. 6919.

Therefore, law is the result of juristic interpretation and stands at the end of the interpretive process, not the beginning. When one reads a text, there is always context and a method of interpretation that takes place. In the beginning of the process, every jurist seeks out certainty, but certainty is not always possible. Even when one does arrive at certainty, one must go through a process of using probable evidence to build a case for certainty.

Both the Qur'an and Sunnah make a distinction between scholars and non-scholars. The purpose of scholars, or *mujtahids* in the case of law, is to use the principles derived from scripture to study and analyze texts. The Qur'an's recognition of scholars is an acknowledgment that the Qur'an is not always definitive and requires study and analysis. Had everything been clear without any room for interpretation (*qat'ī*), then there would be no need for scholars and the Qur'an would not make a distinction between scholars and non-scholars.

Because texts do not speak for themselves, a process of interpretation is essential in understanding the intent and underlying rationale of scripture. Trying to understand the direct meaning of the Qur'an and Sunnah, or any text, without a process of interpretation is not possible. Every text that is read and every understanding obtained is achieved through the human agent of interpretation who is impacted by modern and historical scholarship and the current context. Concerning the *madhhabs*, they are a continuation and expansion of previous scholarship. This in turn forms what we can call a legal tradition.

Sherman Jackson explains that tradition is not the result of simply handing ideas down from one generation to the next, but “it is a process of evaluation, amplification, suppression, refinement, and assessing the polarity between would-be tradition and contemporary, indigenous innovations or nonindigenous ideas and practices.”¹⁶ The Syrian hadith scholar ‘Abd al-Fattāḥ Abū Ghuddah (d. 1997) said that what makes the *madhhabs* unparalleled is the fact that they have

¹⁶ Sherman Jackson, *Islam and the Problem of Black Suffering* (Oxford: Oxford University Press, 2009), 42.

been examined, reviewed, and refined thousands of times.¹⁷ In other words, the *madhhabs* are not the interpretation of one person, but they are an uninterrupted chain of scholarly analysis and commentary on legal issues. The *madhhabs* are not the *ijtihād* of only the four imams, but the *ijtihād* of almost the entire body of Islamic legal scholarship. That is why almost every scholar in Islamic history affiliated himself with a *madhhab*. If everyone were to become their own *mujtahid* and independently interpret the Qur'an and Sunnah anew, it would result in legal chaos and endless interpretations. Muslim jurists tried to curb this by placing high standards and requirements for one to become an independent *mujtahid* (*mujtahid muṭlaq*). Therefore, performing *taqlīd* of a *madhhab* became the norm.

Taqlīd is often translated as blind following or imitation. While that may be an accurate translation for the lexical meaning of the word, it does not represent its meaning and usage in the *madhhabs*. A more accurate translation would be “deference to precedent” because it better represents the utilization and capacity of *taqlīd* in Islamic law.¹⁸ *Taqlīd* is not a commitment to unthinking imitation, but it is rather a commitment to the continued development of law.¹⁹ It is ultimately what kept Islamic law “Islamic” in the face of a potentially unending stream of originality and innovativeness on the part of individual jurists.²⁰ *Taqlīd* is therefore necessary for the stability of the Islamic legal system. It does not negate or end *ijtihād*, but it ensures that it takes place within the framework of the *madhhab*. If one completely disregards the *madhhabs* and starts anew, then there are no preexisting rules or boundaries on their *ijtihād*.²¹

¹⁷ ‘Abd al-Fattāḥ Abū Ghudda (d. 1997), “Kuliah al Ilahya ابو غودة الفتاح,” K20z, YouTube video, lecture in Turkey, accessed December 20, 2019, <https://www.youtube.com/watch?v=dobft16fNe8>.

¹⁸ This translation is taken from Sherman Jackson’s “*Ijtihād* and *Taqlīd*: Between the Islamic Legal Tradition and Autonomous Western Reason,” in *Routledge Handbook of Islamic Law*, ed. Khaled Abou El Fadl, Ahmad Atif Ahmad, and Said Fares Hassan (New York: Routledge, 2019), 261.

¹⁹ Jackson, “*Ijtihād*,” 259.

²⁰ Jackson, “*Ijtihād*,” 265.

²¹ Mohammad Fadel, “The Social Logic of *Taqlīd* and the Rise of the *Mukhtaṣar*,” *Islamic Law and Society* 3, no. 2 (1996), 197.

Why didn't God just make everything clear in the Qur'an?

God delivered His message to mankind using the medium of language. What does one do when such language is purposefully ambiguous? Is it possible to be completely literalist in the absolute sense? If one reads the word “stop” on an empty piece of paper it can have endless meanings. However, when one sees the word “stop” on a stop sign, it provides some context and the reader can eliminate other possible meanings. Does everyone need to stop everything they are doing? Or is there a specific context and group of people the stop sign is addressing? We go through an interpretive process to determine that a stop sign is addressing drivers and perhaps pedestrians, but not someone who is mowing their lawn or drinking coffee. Taking the word “stop” and stripping it of all context can lead to many bizarre conclusions. The meaning of the word “stop” on a stop sign is something we all agree has one particular and absolute meaning (*qaṭ'ī*).

The Qur'an and Sunnah contain several examples of *qaṭ'ī* texts. For example, the Qur'an states that fornicators, both male and female, are to be lashed one hundred times. The number is clear, it is one hundred, not more or less. It is also clear that both of them are to be lashed one hundred, it is not only one of the fornicators. However, how does one determine who a fornicator is? Is it someone who only looks with lust or is it the complete act of fornication? This is not as clear from the verse and requires other scriptural and contextual evidence to determine it. Scholars have determined this punishable form of fornication to be the actual act of penetration. In the absence of clear texts, any understanding of such a text would then be conjectural (*ẓannī*), but nonetheless ample enough to be applied as law. Decisive knowledge (*qaṭ'ī*) is equated with certainty, to be unable to entertain any doubt concerning it (e.g., the meaning of a stop sign, or that lying is prohibited etc.). On the other hand, juristic opinion or *ẓann* means that it is probable, but not certain. In other words, knowledge is correlated with certainty and opinion is correlated with probability. The vast majority of legal issues in Islam are *ẓannī* and

not *qaṭʿī*, therefore allowing room for legal pluralism and flexibility. Conjecture, opinion, and probabilistic here do not mean a scholar's guess, personal likes or dislikes, but it refers to them using their expertise to exercise their absolute best effort to properly interpret scripture. Muḥammad ʿAwwāma notes that if a scholar is a *mujtahid* and recognized as such by other scholars, then following him is the layperson's method of following scripture because a scholar's opinion is not based on personal preferences, but a careful study of scripture.²² This does not mean that scholars are infallible, but it highlights that a scholar's expertise is primarily based on methodological considerations, not the interpretive result. Methodology matters in the determination of what constitutes a valid interpretation. What makes an opinion valid is the quality of the *ijtihād* that takes place to arrive at a legal conclusion. Accordingly, the question of whether an opinion is correct misses the point. Because most legal opinions are based on *ẓannī* texts, there is no way of determining their meanings with absolute certainty even if one believes that there is only one correct interpretation. The layperson is not completely absolved of responsibility in this process. They should have some premise on which they can distinguish between an actual researcher and an impostor. In this regard, the untrained must have a basis on which they can trust the *mujtahid*. This trust is based on a relationship in which the layperson understands that the *mujtahid* will act in the questioner's best interest. It is similar to how one follows their doctor, the medical opinion is not based on his personal guess, but on trust in the doctor's expert medical analysis.

God knows His words best. If God wished He could have revealed a book in which there was absolutely no ambiguity. The Qur'an explicates that parts of it are not clear:

²² Muḥammad ʿAwwāma, *Athar al-ḥadīth al-sharīf fī ikhtilāf al-ʿaʿiʿmma al-fuqahāʾ raḍī Allāhu ʿan-hum* (Beirut: Dār al-Bashāʾir al-Islāmiyya, 1997), 71–72.

It is He who has sent this Scripture down to you [Prophet]. Some of its verses are definite in meaning—these are the cornerstone of the scripture—and others are not entirely clear (Qur'an 3:7).

As previously noted, parts of the Qur'an are absolutely clear-cut or decisive (*qaṭ'ī*). These verses often consist of the core elements of faith. There is no doubt, or difference of opinion, about the fact that the Qur'an requires belief in only one God, a belief in all Messengers, a hereafter, prohibition of intoxication, adultery etc. These elements are often referred to as the foundations (*uṣūl*) of the religion. The Shāfi'ī scholar Abū al-Ma'ālī al-Juwaynī (d. 478/1085) explains that the foundational parts of religion are not open to interpretation because they comprise the core teachings of Islam in which differences of opinion are not allowed. Otherwise, Islam itself would not exist.²³ It is for this reason that the *fiqh* principle states that there is no room for *ijtihād* in the presence of a definitive text (*lā masāgh lil ijtiḥād fī mawrid al-naṣṣ*).²⁴

If all laws were self-evident, there would be no need for interpretation because there would be nothing to interpret.²⁵ The sources of law would need to be known with certainty. It is essential to know without a doubt that the Qur'an and Sunnah are authentic, but the legal conclusions drawn from them need not be more than probable, or more likely true than not. This is what is called preponderance of an opinion (*ghalabat al-ẓann* or *al-ẓann al-rājiḥ*) or, put simply, that which is most likely true.²⁶ The Andalusian scholar Abū Ishāq al-Shāṭibī (d. 790/1388) explains that rulings being based on probability is the norm in law.²⁷ To give a simple example, if you enter your home and see that your spouse's car is outside, their shoes are there, and there is noise in the house, you can come to the logical

²³ Abū al-Ma'ālī Al-Juwaynī (478/1085), *Kitāb al-ijtiḥād min kitāb al-talkhīṣ*, ed. 'Abd al-Ḥamīd Abū Zunayr (Damascus: Dār al-Qalam, 1987), 25.

²⁴ Aḥmad b. Muḥammad al-Zarqā' (d. 1936), *Sharḥ al-qawā'id al-fiqhiyya* (Beirut: Dār al-Qalam, 1989), 147–150. Also see Muṣṭafā Zarqā, *al-Madkhal al-fiqhī al-'ām* (Jeddah: Dār al-Bashīr, 1998).

²⁵ Bernard Weiss, "Interpretation in Islamic Law: The Theory of Ijtiḥād," *The American Journal of Comparative Law* 2, no. 26 (1978), 199–200.

²⁶ See Anver Emon, "To Most Likely Know."

²⁷ Abū Ishāq al-Shāṭibī (d. 790/1388), *al-I'tisām* (Bahrain: Maktabat al-Tawḥīd, 2000), 2:143. Also see Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 130.

conclusion that they are home. This conclusion is *ghalabat al-ẓann* in the sense that one uses evidence to come to a reasonable conclusion, but one that is still not certain beyond a shadow of a doubt because the family member has not been seen. In actuality a margin of error exists and there are other possibilities. A principle of Islamic jurisprudence states that “certainty is not removed by doubt” (*al-yaqīn lā yazūl bi-al-shakk*). In the context of subsidiary law, all scholars agreed on the permissibility of acting on probability (*ẓann*), without requiring certainty (*yaqīn*) if the latter cannot be achieved. In most cases, *yaqīn* cannot be achieved. When a jurist uses a *dalīl*, it indicates that a clear ruling (*ḥukm*) is not present. The ruling is missing and a *dalīl* points the jurist in the direction of the ruling. The jurist can be pointed in the right direction or make a mistake. When a jurist studies scripture, he studies the evidence (*dalīl*) to come to a conclusion. A *dalīl* is not proof, but it is evidence, indication, or pointing to a direction. Confusing evidence (a *dalīl*) with proof (*ḥujjah*) can often result in confusion. In law, evidence is used to build a case for proof. A lawyer may try to prove someone is guilty by compiling and examining evidence (witnesses, a glove at the crime scene, etc.). Oftentimes, one piece of evidence on its own is insufficient to establish a matter beyond doubt. When evidence is overwhelming, then the lawyer’s opinion is considered valid. The process of extracting laws from the Qur’an and Sunnah is not as simple as reading one piece of evidence (*dalīl*). Rather it requires that one take all evidence from the vast landscape of Qur’an and hadith into consideration. Similar to the immense effort of a farmer, a *mujtahid* literally means one who toils or puts forth immense effort to extract (*istikhrāj*) the crop (in this case the legal ruling).

As noted earlier, the Qur’an mentions that some of its verses are ambiguous. In other words, God intentionally did not clarify these verses. These *ẓannī* texts result in differences of opinion which are related to the branches or secondary elements (*furūʿ*) of Islam. The Qur’an is a book that is meant to be applied in different times and circumstances. *Ẓannī* texts allow legal flexibility that would otherwise not be possible had everything been spelled out in absolute detail with only one

interpretation. This flexibility is completely necessary if a text is to be applied in different times, places, and cultures.

Since the majority of scripture in legal matters are *ẓannī*, it means that God has deliberately employed words that can be interpreted in more than one way, even though He could have used other words that would make the significance of the text unequivocal (*qaṭʿī*). This illustrates that disagreement among scholars is not only inevitable but ordained by divine will. In other words, differences of opinion are an intentional and inherent part of Islamic law. Yet, these differences were not intended to cause division, but to help remove hardship. For instance, difference of opinion (*ikhtilāf*) can be utilized to accommodate different societal and individual needs.²⁸ Ultimately, the Qur'an's ambiguity in language is not an imperfection, but it rather enhances its value as a means of communication. The fact that it delivers multiple meanings in a single word or phrase allows Islamic law to adapt to different times and circumstances. However, as will be discussed later, there are boundaries to the validity of different interpretations.

Why don't the *madhhabs* just follow authentic hadith?

At first glance, this seems like an easy and simple solution. If everyone just follows authentic hadith, then there will be no difference of opinion. Even the founders of the *madhhabs* are noted to have said “If the hadith is authentic, it is my *madhhab*” (*idhā ṣaḥḥa al-ḥadīth fa-huwa madhhabī*). However, as we shall see from the case study below, no amount of insistence on following authentic hadith will remove differences of opinion. When one reads *fiqh* books one may even notice that they are often devoid of hadith. This can give the impression that the *madhhabs* were not concerned with hadith. However, these books were written by scholars for scholars, therefore they assume that the reader has studied the relevant hadith separately.

²⁸ On differences of opinion, see Nazir Khan, “Difference of Opinion: Where Do We Draw the Line?,” *Yaqeen*, December 10, 2019, updated June 22, 2020, <https://yaqeeninstitute.org/nazir-khan/difference-of-opinion-where-do-we-draw-the-line/>.

The statement of following an authentic hadith vs. the *madhhab* might imply that one should compare the opinions of scholars against authentic hadith. If one finds that the hadith is authentic, then it should take precedence over the *ijtihad* of the scholar. As with any statement, it is important to understand who it was directed to. Several modern and classical scholars have argued that this statement does not mean that every person who encounters an authentic hadith could declare that their understanding of the hadith is the *madhhab* of the founder of the school. Rather, these statements were directed toward other *mujtahids*. Imam al-Nawawī explains:

Al-Shāfi‘ī’s statement does not mean that anyone who encounters an authentic hadith could then say that this is the *madhhab* of al-Shāfi‘ī and act according to its superficial meaning. Instead, this statement is directed toward the one who has attained the level of *ijtihad* in the *madhhab* according to what was previously mentioned of the *mujtahid*’s attributes, or something close to it. The condition is that he be most certain that al-Shāfi‘ī, may God’s mercy be upon him, did not encounter that hadith or was unaware of its authenticity. This can only be determined after reviewing all of al-Shāfi‘ī’s books as well as the books of those who learned from him and so on. This condition is difficult and those who meet it are few. This condition was placed because al-Shāfi‘ī abandoned acting on the superficial meaning of many hadith which he saw and knew. However, the evidence he had led him to criticize it, or consider it abrogated, specific, or he interpreted it, etc.²⁹

The case of physical contact with the opposite gender

To further explain how and why scholars can differ and still be following the text, we will briefly examine the case of whether touching someone of the opposite

²⁹ Muḥyī al-Dīn al-Nawawī (d. 676/1277), *Kitāb al-majmū’ sharḥ al-muhadhdhab li’l-Shūrāzī* (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 2001), 105. Also see Muḥammad Ramaḍān al-Būṭī, *Al-lā madhhabiyya akhtar bid’a tuhaddid al-sharī’a al-Islāmiyya* (Damascus: Dār al-Farābī, 2005). In the case of al-Shāfi‘ī, this statement can also be him differentiating his methodology from that of Mālik who preferred the actions of the people of Medina over *āḥād* hadith.

gender invalidates one's ablution. The Qur'an mentions "contact with women" as one of the nullifiers of ablution: "If any of you is sick or on a journey, or has just relieved himself, or had contact with women."³⁰

The word used for contact with women is *lāmastum* which literally means to touch. The Shāfi'ī *madhhab* understands this to be physical contact, meaning that any skin-to-skin contact between a man and woman invalidates both of their ablution. However, the word *lāmastum* can also mean intercourse and this is the opinion of the Ḥanafīs. Therefore, *lāmastum* can have two meanings; physical touch or intercourse. The Shāfi'īs adhere to the literal meaning of *lāmastum* and in most cases one should not abandon the literal meaning in favor of a symbolic one without evidence. However, the Ḥanafīs depart from the literal meaning based on a hadith in which 'Ā'ishah, the wife of the Prophet ﷺ, said:

I used to stretch my legs towards the *qiblah* in front of the Prophet while he was praying; he touched me whenever he prostrated and I would move my legs, and when he stood up, I would stretch my legs again.³¹

It is important to note that the issue is not simply about finding authentic hadith. The differences on this issue stem from a verse in the Qur'an and an authentic hadith in *Ṣaḥīḥ al-Bukhārī*. Therefore, the Ḥanafīs use the hadith to interpret the verse. The Shāfi'īs interpret the hadith in light of the verse by noting that the Prophet ﷺ did not touch 'Ā'ishah's skin in this hadith, but her clothing. Other scholars understand the word *lāmastum* to refer to physical contact that is accompanied by lust. Meaning if there is no lust it does not nullify the ablution. (It is important to clarify that they do not say physical contact is permissible between non-*maḥrams*, but that it does not nullify the ablution.) So, both groups are using a *dalīl* and when one follows either of these schools, they are still following the Qur'an and Sunnah. There is no way of avoiding this difference of opinion because neither side can claim that their understanding of the verse and hadith are

³⁰ Qur'an 5:6.

³¹ *Ṣaḥīḥ al-Bukhārī*, *bāb mā yajūz min al-'amal fī al-ṣalāh*, no. 1209.

absolutely correct without the possibility of being mistaken. The verse and hadith have a degree of ambiguity so scholars must engage in a process of interpreting them to the best of their ability. Maintaining that one should abandon the *madhhabs* and just follow the Qur'an and Sunnah instead of these interpretations is an oversimplification of the Qur'an and Sunnah. One who chooses to not follow a *madhhab* will still have to engage in a process of interpretation when encountering these verses and hadith.

All legal opinions in the *madhhabs* are based on the Qur'an and Sunnah. There are cases in which each *madhhab* may have a few issues in which their interpretation may not be the most convincing or based on weak evidence. However, these are very few cases in light of the thousands of legal issues the *madhhabs* examine. Furthermore, the weakness of evidence does not necessitate that the opinion or scholarly conclusion is weak. What often happens is that the novice dismisses the opinion of a *madhhab* after encountering a general *fiqh* book that mentions a few pieces of evidence that summarizes a legal opinion. In many cases, there are tens or hundreds of pieces of evidence supporting a legal opinion.

Is every interpretation valid?

As previously noted, the *madhhabs* play an important role in restricting differences of opinion. Instead of millions of individual scholars interpreting scripture according to their own methodology, the *madhhabs* are a collective scholarly effort over centuries to understand texts that are not unambiguous. Most jurists believe the truth to be one and there is only one correct rule on particular actions. Therefore, when jurists disagree on an issue, they cannot all be right. However, because all of these opinions are based on *ẓannī* texts there is no way of knowing which opinion is unquestionably correct. At the same time, this does not mean that all interpretations are equally valid because if all interpretations are equal, then there is no purpose to having a legal system. The Qur'an and Sunnah have meanings that are to be discovered and are not simply vessels to which each person imposes their own interpretation. If that were the case the Qur'an would be empty

words without meaning and God would have spoken but intended nothing. After all, the purpose of speech is to convey the intention of the speaker. The fact that the legal teachings in scripture do not apply themselves, but must be applied by people engaging in an interpretive exercise, does not entail that the text of the law itself does not have meaning, but quite the opposite.

Although jurists recognized the validity of differences of opinion when there is no consensus (*ijmāʿ*) or a clear text, they simultaneously understood the dangers that extreme legal pluralism posed to scripture. Extreme legal pluralism can easily result in individuals manipulating the meaning of the Qur'an and Sunnah. Therefore, the *madhhabs* placed boundaries on what can be considered a valid opinion by making interpretive methodology, not the interpretive result, the primary factor in determining the validity of an opinion. What a jurist says is not authoritative because he says it, but because his authority rests on the validity of his methodology. The question is whether the jurist has properly or validly performed *ijtihad*. Put differently, it is the ability of the jurist to use proper tools and methodology that determines the validity of an opinion.

Reform and Islamic legal tradition

The *madhhabs* have at times been portrayed as outdated and irrelevant to the modern world. The topic of reform or change in Islamic law is beyond the scope of this paper, and has been treated elsewhere.³² However, it is important to shed some light on it before I conclude.

Does Islamic legal tradition need reform? If so, what does this reform look like and who gets to engage in it? Over the past century, there have been a plethora of calls to reform Islam from various individuals, movements, and governments. Although the term reform is used by Muslims, Islamophobes, governments, and the press,

³² Amir Aboguddah, "To What Extent Can Islamic Law Change?," *Yaqeen*, August 21, 2020, <https://yaqeeninstitute.org/amir-aboguddah/to-what-extent-can-islamic-law-change-behind-the-scenes>.

they all use it in a variety of ways. This results in confusion about what reform means and oftentimes those agendas of reform speak past each other. At times, the demand for reform is rooted in a desire to completely abandon the Islamic legal tradition. In a strict sense, the vast majority of Muslims would reject the idea that Islam has something inherently wrong with it and therefore needs to be changed. This rejection especially stands when the call for reform comes from those outside the faith or from governments.

There are often calls for Muslim Martin Luthers based on the idea that Islam is in need of a revolution or enlightenment similar to Christianity. At the core of these calls for reform is an abandonment of Islamic law. In the Western mind the idea of reforming religion is often influenced by the Protestant revolution and its breaking away from the Church. In this historical analogy, it is usually secular Muslims who want to adopt a Western understanding of religion who are painted as Protestants. Muslims who seek to adhere to Islamic laws and teachings that may not conform with Western cultural norms are therefore compared to the medieval Church. These Muslims are sometimes referred to as fundamentalists, another term that is rarely clearly defined. Fundamentalism is usually understood to denote a belief in the literal word of God. However, all Muslims believe that the Qur'an is the literal word of God, but this does not mean that they always interpret God's words literally. When the terms "literalists" or "fundamentalists" are used, they are often equated with political activism, extremism, terrorism, and anti-American sentiments. In fact, the term fundamentalism is full of Christian suppositions and Western stereotypes. Very few Muslim organizations and individuals fit this stereotype.³³

Nevertheless, Islamic law allows reforming the application of certain laws to adapt to different contexts. In the last several centuries, the world has witnessed tremendous and swift changes. Industrialization, colonization, and technological changes have made the world very different than it was in the past. With the rise of

³³ John Esposito, *The Islamic Threat: Myth or Reality?* (New York: Oxford University Press, 1999), 5–6.

technology and globalization, the world has changed drastically over the past hundred years in a way that humans have never witnessed before. Some Muslims and academics claim that the *madhhabs* became stagnant after their maturity. This is inaccurate for several reasons, but it is important to note that the world changed at a very slow rate before the modern period. The changes that took place from one century to another were minimal. However, we find that the world has been experiencing unprecedentedly drastic and swift changes over the last several centuries due to industrialization, technology, and globalization. For instance, the printing press, which was introduced in the Muslim world and used for Arabic books in the 1700s, had a tremendous impact on Islamic education and religious authority. Prior to the printing press, if a student wanted a copy of a book he would have had to borrow it and handwrite the copy, a process that would take months. For example, Abū Bakr Muḥammad b. Aḥmad (d. 489/1095), better known as Ibn al-Khāḍibah, copied *Ṣaḥīḥ Muslim* seven times in one year.³⁴ The process of handwriting a copy of a book is a form of learning in and of itself that is more impactful than simply reading a book. To build a library, the student would copy dozens of texts by hand. Compare this to the current information age where students have access to thousands of books in their physical or digital library.³⁵ Educational, economic, technological, and communication changes have dramatically changed the world we live in.

While Islamic law allows room for new opinions and the reexamination of older ones, there have also been calls to reform the principles of Islamic law (*uṣūl al-fiqh*). This is problematic because changing one principle of Islamic law has widespread repercussions. For example, a legal maxim states that a command necessitates obligation (*al-amr yaqtaḍī al-wujūb*); if this is reformed, then it will impact many obligations of Islam such as the daily prayers and fasting of Ramadan. Further, the already established legal principles are diverse and flexible enough that scholars can utilize them to provide solutions to new issues.

³⁴ Shams al-Dīn al-Dhahabī, *Tadhkirat al-Ḥufādh* (Dā'irat al-Ma'ārif al-Uthmāniyya, 1954), 4:1226.

³⁵ For more on this topic, see Hamdeh, "Shaykh Google."

In the context of new issues, there is sometimes a tension between the opinions of the *madhhabs* and the world we live in today. It may be the case that the circumstances we live in have changed drastically and a new opinion might be formed that goes against the *madhhabs*. There is a difference between proposing new solutions to meet practical needs in the modern world and completely reforming the *madhhabs*. To return to the example of the home used by Ṭayyib, he implied that if the home is missing a brick or is rusty in some places, there is no need to demolish it. It is nevertheless necessary to reconsider Islamic legal rulings in light of the changing times and circumstances to provide realistic and practical solutions for Muslims in the modern world. How is this to be done in a way that is loyal to legal precedent and practical at the same time? Are valid legal opinions limited to the four legal schools or is it possible that they extend beyond that? How can this be done in a way that protects people from the chaos of unregulated *fatwās*?

If the issue at hand is a modern one that was never addressed by the *madhhabs*, then contemporary jurists can formulate new opinions. A jurist may be able to draw from an opinion or circumstance of the past to deduce a ruling based on the *madhhab*, but this is not binding. If it has been previously addressed by the *madhhabs* and a new opinion must be formulated then, as noted by Muṣṭafā al-Zarqā' (d. 1999), collective *ijtihād* is the best option.³⁶ Collective *ijtihād* by a qualified body of scholars will serve to ensure a “reform” of a legal opinion is loyal to Islamic tradition while simultaneously using their expertise to provide the most practical legal opinions for their daily lives. Further, it will help curb the chaos that ensues from unregulated *fatwās* from often unqualified individuals. In this sense, Muslim jurists are open to reform of legal opinions provided they are done in a systematic and methodologically sound manner. What both jurists and many lay Muslims find problematic are calls to discard Islamic legal tradition and

³⁶ See Muṣṭafā Zarqā', *al-Ijtihād al-jamā'ī wa dawr al-fiqh fi ḥall al-mushkilāt* (n.p.: Jam'iyat al-Dirāsāt wa-al-Buḥūth al-Islāmiyyah), 49. Also see Hatem al-Haj, “Shari'ah in Today's World: Renewing Islamic Discourse,” *Yaqeen*, December 13, 2019, <https://yaqeeninstitute.org/hatem-al-haj/shariah-in-todays-world-renewing-islamic-discourse#ftnt31>.

start anew based on the idea that it is inherently problematic or inferior to other legal systems.

Conclusion

The Qur'an and Sunnah function as sources of law rather than law themselves. Because sources of law require interpretation, Muslim scholars since the time of the Companions developed a dynamic and sophisticated interpretational methodology known as *uṣūl al-fiqh*. Therefore, the *madhhabs* are not different Islamic sects, but they consist of scholars who abide by the interpretive methodology of the school. Because the nature of most texts is probabilistic (*zannī*), the methodologies established by each *madhhab* seek to produce what is most probably the correct interpretation but can never be known with absolute certainty. Additionally, having a shared interpretive methodology provides stability and predictability in order to prevent interpretative chaos or a free-for-all in interpreting texts. At the same time, the *madhhabs* allow flexibility and can adapt to change based on different times, locations, and circumstances.