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UNDERSTANDING THE JURISPRUDENTIAL THOUGHTS BEHIND THE LEGAL REASONING OF THE MALIKI AND HANAFI SCHOOLS

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ABSTRACT

It is common knowledge among students of Islamic Law that opinions coming from either Maliki Madhab or Hanafi Madhab are commonly termed 'opinion of the Hanafi School' and 'opinion of the Maliki School', which is not only in reference to the opinions of their founders but also by extension opinions of their students or scholars that subscribe to the ideology of the schools. However, it is not known to most how that particular opinion was reached. What influenced such opinion? Which methodologies were used in arriving at such opinion? And what are the underlying reasons behind these legal thoughts? An attempt has been made to answer these questions, by studying the lives of these two Imams, their academic sojourns, their methodologies; and by extension the factors that influences their thoughts and also the features of their respective madhab which is a clear reflection of their thoughts and methodologies.

Keywords: Madhab, Imam Maliki, Imam Abu Hanifah, Maliki school, Hanafi School, *Usul al-fiqh*.

INTRODUCTION

It is known to Muslims that there are four dominant schools of *fiqh* ascribed with different legal thoughts or opinions: the Hanafiyyah, Malikiyyah, Shafi'iyyah and Hanabilah schools of Islamic *fiqh*.¹ These schools are referred to as *madhhabs* in the classical shari'ah parlance.²

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¹ Hallaq, W.B, 'Origins and Evolution of Islamic Law' (London: Cambridge University Press 2005), p. 157.

² Ibid., p.150.

However, many students of Islamic law do not understand how those ascriptions occurred. Most just have the general notion that opinions coming from Imam Malik and adherents of his school are termed Maliki opinion and that opinions coming from Imam Abu Hanifah and adherents of his school are termed Hanafi opinion. Most do not understand the process employed by the Imams, the methodologies used in arriving at that opinion. With numerous *fatwas* (legal rulings) ascribed to Imam Malik and Imam Abu Hanifah and by extension their schools of thought, the need arises to try and understand how they make their *fatwas*, that is, how they arrive at each individual *fatwa*.³ This essentially requires examining and understanding their various methodologies and what makes each unique.

Primarily, this study seeks to make the readers understand the factors that influence the jurisprudential thoughts of Imam Malik and Abu Hanifah. It seeks to make the readers understand how and why a thought is ascribed to a particular school of thought giving an insight into the features of each school.

The focus of this paper is on the thoughts of Imam Malik and Abu Hanifah, the methodologies they employed in the extension and explanation of the two primary sources of Shari'ah; Qur'an and Sunnah, and how they made use of those methodologies in forming their rulings. There is no way, the methodologies of Imam Abu Hanifah and Imam Malik will be discussed without discussing their *madhab*, particularly the features of their *madhab*. Also focus was on the issue of *taqlid* and adhering to a single school of thought.

³ *Fatwa* is the legal opinion given by a juris consult concerning the *shari'ah* ruling on a particular case presented before him. *Fatwas* are not mere whimsical opinions but are formed after the juris consult has duly considered the principles and provisions of *shari'ah* as contained first in the agreed primary sources of *shari'ah* (*Dalil al-Kuliyyah*): Qur'an, Sunnah and Ijma'. However, where the matter is a new case for which previous ruling does not exist, the juris consults is allowed to make deductive ruling either from the provisions of the legislative textual authorities (*nuṣūṣ*). See al-Alwani, T.J, 'Source Methodology in Islamic Jurisprudence (*Usul al-Fiqh al-Islami*)' (London: IIIT 2003), pp.6-10.

DEVELOPMENT OF MADHABS AS ISLAMIC SCHOOLS OF LEGAL THEORY

In Islamic terminology, *madh-hab* refers to the choice to be exercised by a scholar in choosing from a number of juristic interpretations available from the revered *Faqih* (jurist), in deriving the rule of Allah from the primary texts of the Qur'an and Hadith.⁴ It is used to refer to the jurisprudential source from where the Muslim Scholars formed their opinions over a *Shari'ah* matter.⁵ Therefore, *Madhab* is often used colloquially to mean that which is followed or the opinion/idea that a Muslim chooses to adopt; hence, a particular opinion of a jurist.⁶ It is also used to represent the entire school of thought in Islamic jurisprudence.⁷

The term *Madhab* became prominent around the eighth century of Islamic era when it was used to mean a group of students, legists, judges and jurists who had adopted the doctrine of a particular leading jurist, such as Imams Abu Hanifah, Malik, Shafi'i, and Ahmad.⁸ Those who adopted or followed a jurist's doctrine were known as associates, that is, those who studied with or were scholarly companions of a jurist.⁹ Thus, all master-jurists were linked with a *Madhab*, which is a personal school revolving around both their circle and personal legal doctrines.¹⁰ First, the personal school comprised the substantive legal doctrine of a single leading jurist, and, at times, his doctrine as transmitted by one of his students.¹¹ The doctrinal school, on the other hand, possessed a cumulative doctrine of substantive law in which the legal opinions of the leading jurist, the assumed founder, were only the

⁴Keller N.H.M, 'What is a *Madhab*? And why is it necessary to one? follow' <<http://www.masud.co.uk/ISLAM/nuh/madhhab.html>>, accessed on 27 March 2021.

⁵ Ibid.

⁶ Hallaq, (n.1), p. 150.

⁷ Keller, (n. 4)

⁸ Hallaq, (n. 1) p. 154.

⁹ Ibid.

¹⁰ Hallaq, W.B, 'An Introduction to Islamic law', (London: Cambridge University Press 2009), p. 33.

¹¹ Hallaq, (n. 1), p. 152.

fiThe doctrinal school, on the other hand, possessed a cumulative doctrine of substantive law in which the legal opinions of the leading jurist, the assumed fo¹² In the Islamic legal system, for any rule of law to be accepted as valid, it must have been derived from the sources of Islamic law, which can be done by interpretation of the sources.¹³ Each school of law has its own method of interpretation which is largely as a result of its methodologies, which it employs in the interpretation of the sources and thereby has a large impact on the opinions reached by them.¹⁴ In other words, a *madhab* is defined by its substantive positive laws as well as the methodological principles demarcating the outer limits of the school as a unique school of Islamic jurisprudence.¹⁵ What distinguished a particular doctrinal school from another were largely its legal methodology and the substantive principles it adopted in deriving its own rulings.¹⁶

The founders of the schools arrive at various principles of interpretation related to the four acceptable sources of Islamic Law.¹⁷ In addition to this, they formulate principles to the additional sources that they accept and act upon.¹⁸ These principles are considered sources, so as to indicate whether a rule derived through them will be binding on others who are not *Mujtahid*.¹⁹ All these other sources are principles that represent different methodologies used by the jurists to derive the law from the primary sources.²⁰ These sources go a long way in leading each school to different opinions.

¹² Hallaq, (n. 10) p. 33.

¹³ Imran A.K.N., 'Theories of Islamic Law (The Methodology of Ijtihad)', (Pakistan: International Institute of Islamic Thought 2000) pp. 20-21.

¹⁴ Ibid. p. 20-21.

¹⁵ Hallaq, (n. 1) p. 157

¹⁶ Hallaq, (n. 10), p. 34.

¹⁷ These are the Qur'an, Hadith, Ijma and Qiyas. See Imran, (n. 10) p. 153-154.

¹⁸ The additional sources also known as secondary sources of Shari'ah include *Istihsan* (Principle of Discretion), *Istishab* (Presumption of Continuity), *Urf* (Customary Usage), *Qawl Sahabi* (legal opinion of the Companions) among others. See Imran, (n. 10), p. 155.

¹⁹ Imran, (n. 13) p. 156.

²⁰ Ibid.

DEVELOPMENT OF MADHAB IMAM MALIK

Imam Malik was one of the juris-consults who contributed to the development of *madhab* of Islamic jurisprudence. Thus, this part will discuss his *madhab*.

Biographical Background of Imam Malik

Imam Malik bn Anas Al-Asbahi was born in the year 93AH (712 AD) in Madinah.²¹ His grandfather, Abu Aamir, was a companion of the prophet²² and the first to embrace Islam in the family.²³ He was a scholar who taught his children Islamic knowledge and by extension influenced his young grandsons, especially Imam Malik.²⁴ Imam Malik died on 11th Rabi' al-Awwal, 179 A.H at the age of 86.²⁵

Imam Malik lived in Madinah and for which he had the best foundation in Islamic scholarship as Madinah was full of scholars.²⁶ Unlike other students of his time, Imam Malik studied in Madinah rather than travel widely in pursuit of knowledge.²⁷ Most of his teachers were first or second generation Muslims, some of whom had acquired direct knowledge from the companions of the prophet.²⁸ One of his teachers, Nafi, was a great scholar of Hadith, who learnt the science of Hadith from his master, Abdullah Ibn Umar.²⁹ Another of his teachers was Abu Radim from whom Imam Malik learnt Qur'anic studies.³⁰ Imam Malik was also a student of Ja'far al-Sadiq who was a great grandson of Imam Hussein, the grandson of the Prophet.

²¹Salahi A, 'Muslim Scholars: Imam Malik Bn Anas' <<http://www.mpac-ng.org/islam-links/205-muslim-scholars-imam-malik-ibn-anas.html>> accessed on 22 March 2017.

²² Islamic Wisdom 7's Blog, 'Biography of Imam Malik', p. 1<<https://islamicwisdom7.wordpress.com>>, accessed on 14th December, 2016.

²³ Ibid., p. 2.

²⁴ Salahi, (n. 21), p. 1.

²⁵ Doi A.I, 'Shari'ah: The Islamic law' (Malaysia: A.S. Noordeen 1404 A.H) p. 101.

²⁶ Ibid., p. 101.

²⁷ Islamic Wisdom 7's Blog, (n. 22), p. 1.

²⁸ Islamic Wisdom 7's Blog, Ibid. and Salahi, (n. 21), p. 2.

²⁹ Doi, (n. 25) p. 95.

³⁰ Ibid.

Imam Malik was reported to have benefited immensely from the scholarship of the Seven *Fuqaha* of Madinah³¹ (*Fuqaha'u al-Saba'a*³²) who were the largest contributors to the transmission of Hadith, *Fiqh* and making of Fatwas in Madinah during the 2nd century of Hijra.³³ The *Fiqh* of these Seven scholars was learned by Ibn Shihab Az-Zuhri, Rabi'a and all of their generations, from whom Imam Malik learned. Amongst his shaykhs were those for whom *Fiqh* and opinion were predominant and others for whom hadith was predominant.³⁴ He also studied with numerous other scholars amongst whom were; Muhammad bn Yahya al-Ansari (who was a *Tabi'i* and used to teach in *Masjid al-Nabawi*), Abu Hazim Salmah bn Dinar, Yahya bin Sa'id and Hisham bin Urwah.³⁵

His Methodology

It is reported that Imam Malik did not record the fundamental principles on which he based his school and on what basis he derived his judgements and to which he limited himself in the derivation of his rulings.³⁶ There are, however, indications as to the principles he might have used. Imam Malik, in the course of giving rulings, employed some methodologies which aided his law-making processes. He is famous for having the highest number of methodologies amongst the four dominant schools. Those methodologies are: The Qur'an, the Sunnah, Fatwas of the *Sahabah* and the *Tabi'un*, *Ijma* (Consensus), The Practice of the People of Madinah, *Qiyas* (Analogy), *Istihsan* (Discretion), *Istihshab* (Presumption of Continuity), *Al-Masalih al-Mursala* (Public Interest), *SaddAdh-Dhara'i* (Blocking the Means), *Adat* (Customs) and *Urf* (Customary Usage).

³¹ Ibrahim I, 'The Seven Fuqaha of Madina', <www.facebook.com/al-kitabu-was-sunnah-ala-manhajis-salaf>, accessed on 3 May, 2021.

³² They are: (i) Sa'id ibn al-Musayyab, (ii) Urwah ibn Zubayr, (iii) Abu Bakr ibn Abdur-Rahman, (iv) Al-Qassim ibn Muhammad ibn Abi Bakr, (v) Ubaydullah ibn Abdullah ibn Utbah ibn Mas'ud, (vi) Sulayman ibn Yasar and (vii) Kharijah ibn Zayd ibn Thabit.

³³ Ibrahim, (n. 31)

³⁴ Ibid.

³⁵ Doi, (n. 25) p. 96-97.

³⁶ Abu Zahra M., 'Fundamental Principles of Maliki Fiqh', p. 1. <<https://bewley.virtualave.net/usul.html>>, accessed on 3rd March 2021.

Al-Qur'an

Imam Malik places the Qur'an as the top source of evidence in all his rulings. No principle or ruling of shari'ah would earn validity unless it is ultimately rooted in the Quran.³⁷ Imam Malik upheld any Islamic text with only one interpretation and where it had more than one meaning; he took it as it was, as long as there is no evidence requiring a different interpretation.³⁸ He gave precedence to anything understood from the Qur'an over every other thing.³⁹ He rejected any hadith, even with a sound chain of transmission, once it was in conflict with any text of the Qur'an.⁴⁰ An example is the hadith he rejected where it was said that a son or daughter could offer pilgrimage on behalf of his or her parents, unless the parents asks them to do so. His basis for rejecting this hadith was the verse of the Qur'an which says "each man shall have the reward only of his labours and his labours shall certainly be scrutinised; and then he shall be justly requited for them."⁴¹

Sunnah

Imam Malik was a *muhaddith* (scholar of Hadith) of the first rank.⁴² He was highly respected by other scholars of hadith. Imam Bukhari and Abu Dawood regarded his *Isnad* to be the soundest.⁴³ He was reliable, just and accurate when it comes to transmission. He was excellent in selecting those from whom he transmitted.⁴⁴ He was strict about the preconditions of good character and accuracy in his transmitters. He was very serious when it came to hadith and while he was a student,

³⁷ Ash-Shatibi, *Al-Muwafaqat fi usul al-Shar'ah*, (Misr: Matba'at al Maktabah al-Tujariyah 1920) p.247; Abu Zahra M, 'The First Source: The Book of Allah', p. 1 <www.bewley.virtualave.net/usul1.html> accessed on 14th December, 2021.

³⁸ Salahi, (n. 21), p. 5.

³⁹ Abu Zahra, M., 'The Fundamental Principles of Imam' Malik's *Fiqh*, p. 2 [http://www.muwatta.com/ebooks/english/fundamental principles of maliki fiqh.p](http://www.muwatta.com/ebooks/english/fundamental_principles_of_maliki_fiqh.p) accessed on 24 September 2021.

⁴⁰ Ibid. p. 2.

⁴¹ Surah Najm verse 39-41

⁴² Salahi, (n. 21) p. 5.

⁴³ Abu Zahra (n. 37) p. 1.

⁴⁴ Abu Zahra M, 'The Second Source: Sunnah', p. 1 <<http://www.bewley.virtualave.net/usul2.net>>, accessed on 20th December 2021.

he would wear the best of attires and take on a serious mood when it comes to learning and teaching hadith.⁴⁵

For the Maliki School, the Sunnah makes clear what is general in the Qur'an.⁴⁶ There are some instances in which Maliki put the apparent texts of the Qur'an before the Sunnah and vice versa, depending on the underlying cause and circumstances of the matter or case.⁴⁷ With regards to transmission, he sometime rejected hadiths of reliable people, when he finds it contrary to the well-known judgements of Islam.⁴⁸ He used to accept *mursal* hadiths, that is, hadiths in which a *tabi'i* quotes the prophet directly and this is evident in his *Muwatta*.⁴⁹ He used to examine the texts of the traditions and weigh them. He took into consideration, the general principles of Islam which are derived from the texts and goals attested to by various judgements from the secondary rulings. If everything was in order, he accepted the tradition, if not he rejected it.⁵⁰

Fatwas of the companions

Imam Malik was known to have learnt the cases of the companions, their fatwas and their judgements, so it is only normal that they have a substantial influence on his methodologies. The Fatwas of the *Sahabah* and *Tabi'un* form a large part of Imam Malik's methodologies partly because of his teachers influence. He then further developed on them himself, bound himself to it and based all his rulings on them, especially when it comes to implementation of hadith.⁵¹ His *Muwatta*⁵²

⁴⁵ Salahi, (n. 21) p. 3.

⁴⁶ Abu Zahra, 'The Second Source: Sunnah' (n. 44) p. 2.

⁴⁷ Ibid., p. 2.

⁴⁸ Ibid., p. 2.

⁴⁹ For example, he reported in *Muwatta*' that "Yahya narrated from Malik, from Abdulrhman bn Harmala al-Aslami, through Sa'id bn Musayyab that Allah's messenger (PBUH) said "Between us and the hypocrites is the witness of the Isha (evening) and Fajr (early morning) prayers..." Ibn Musayyab was a *tabi'i* who couldn't have been able to narrate directly from Prophet. See *Muwatta*', Hadith 294 under the heading "What was mentioned concerning the Isha and Fajr prayers".

⁵⁰ Abu Zahra, 'The Second Source: Sunnah' (n. 44) p. 12-13.

⁵¹ Abu Zahra M, 'The Third Source: Fatwas of the Companions', p. 1
<http://bewley.viryalave.net/usul3.html> accessed on 20th December 2021.

contains fatwas of the companions alongside hadiths of the prophet. He accepted the fatwas of the companions to be part of the Sunnah.⁵³ Imam Malik accepts it as a source of *Fiqh* and as having authority and constituting one of the branches of Sunnah.⁵⁴

Imam Malik used to sometimes prefer the statement of the companions over some hadiths and this was one of the issues over which he and Imam Shafi'i disagreed.⁵⁵ His reason for this was that, in some cases, there were certain aspects of opinion, practice of the people of Madinah, statements of the people or the general basis of *Shari'ah* which made the statement preferable to an individual hadith.⁵⁶ What this means is that, he leaves the weaker for the stronger. Where there is a hadith with probably one transmitter or it has numerous transmitters but still weak, he would rather choose the fatwa of a companion over such hadith. He, however, did not consider the fatwas of the *tabi'un* to occupy the same position in the Sunnah as those of the companions, but he took into account some fatwas of some followers because of their knowledge of *Fiqh* or their exalted character.⁵⁷ Examples of those followers include Sa'id ibn al-Musayyab, ibn Shihab az-Zuhri, Nafi' and Umar ibn Abdul-Aziz amongst others. He accepted fatwas from them when its basis was a known Sunnah or was

⁵² The *Muwatta*, the foremost treatise of Imam Malik bn Anas is considered the earliest shari'ah legal treatise wherein hadith texts and rules of fiqh are combined. Before it, these matters were committed to memory by the *Sahāba* (companions) and those who follow them (the *al-tabi'in* and *taba' al-tabi'in*). See al-Kattani, Muhammad ibn Ja'far, *al-Risalah al-Mustatrafah* 7th ed. (Beirut: Dar al-Bashair al-Islamiyyah 2007) pp. 9 and 41; Swartz, Merlin, "Review of Al-Muwatta of Imam Malik translated by Aisha Bewley" (1991) 25 *Review of Middle East Studies*. 102–103.

⁵³ Abu Zahra, 'The Third Source' (n.51), p. 3.

⁵⁴ Ibid., p. 4.

⁵⁵ Kamali, M.H., *Shari'ah Law: An Introduction* (Oxford: One World Publications, 2008) p.75. See also al-Shafi'i, Muhammad bn Idris, *al-Risalah*, [ed. Muhammad Sayyid Kilani], 2nd Ed. (Cairo: Mustafa al-Halabi, 1983) p.140.

⁵⁶ Abu Zahra, 'The Third Source' (n.51) p. 6.

⁵⁷ Ibid., p. 6.

in accordance with the practice of the people of Madinah or with the position of majority of the scholars.⁵⁸

Ijma

Imam Malik considered *Ijma* as an authoritative source and referred to it as the generally agreed-on way of doing things. In his *Muwatta*, he said, "as for the agreed upon practice, it is something that the people of *fiqh* and knowledge agree upon without dispute. This is the agreement of the people of this community who contract agreements in any matter. By agreement, we mean agreement in word, action or belief."⁵⁹

According to al-Ghazali, a Maliki scholar, what constituted consensus to Imam Malik was that which was formulated by the *Fuqaha* of Madinah and no one else.⁶⁰ He supported his view with the evidence of *Muwatta*, and said further that, whenever Imam Malik used the agreement of the scholars as a source of evidence, he always said, "this is the generally agreed-on way of doing things with us."⁶¹ In essence, the established practice of the people of Madinah constitutes a valid *ijma*.⁶²

To Imam Malik, *ijma* can only be sanctioned by the jurists of Madinah and the number of jurists need not be necessarily great.⁶³ *Ijma* sanctioned by them can only be repealed by jurists who lived during that period.⁶⁴ While any *ijma* sanctioned by jurists of the later generation can be repealed by jurists of that same generation or

⁵⁸ Abu Zahrah, M., 'Fatwas of the Followers (Tabi'un)', p. 1 https://www.iium.edu.my/deed/lawbase/maliki_fiqh/index.html accessed on 24 September 2021.

⁵⁹ Abu Zahra M, 'The Fourth Source: Consensus (Ijma)', p. 1 <www.bewley.virtualave.net/usul5.html>, accessed on 14th December 2021.

⁶⁰ Al-Ghazali, *Al-Mustasfa min 'ilm al-usul*, Vol. 1, (Dubai: Dar al-Qalam, 1995) p. 187.

⁶¹ Ibid., p. 190.

⁶² Doi, (n. 25) p. 68.

⁶³ Doi, (n. 25) p. 67.

⁶⁴ Abu Zahra M, 'The Fourth Source' (n. 59) p. 6.

generation after them, because he considers their opinion of the same weight.⁶⁵

The practice of the people of Madinah

Imam Malik considered the practice of the people of Madinah as an authoritative source on which he based his fatwas. This is basically the generally agreed-on way of doing things mentioned earlier. In his letter to Layth ibn Sa'd, it was shown that he considered the practice of the people of Madinah as a legal source. He had said "...it is essential to follow the people of Madinah in which the Qur'an was revealed..."⁶⁶ The basis for this is the fact that the Qur'an and its *Fiqh* were revealed in Madinah and its people were the first who were made responsible for them. They implemented the Sunnah and the followers after them followed in their paths. Madinah inherited the knowledge of the Sunnah and the *Fiqh* of Islam in the time of the followers of the followers.⁶⁷

Imam Malik as earlier said sometimes favoured the practice of the people of Madinah over a single tradition⁶⁸ and in the words of his teacher Rabi'a, in whose steps he followed with the saying, "a thousand from a thousand is better than one from one."⁶⁹

Qiyas

Imam Malik resorts to analogy, which is the application of the ruling specified in a text on a specific matter to other matters, when they both have a common cause ('illa).⁷⁰ He used *Qiyas* when no direct precedent was available and made analogies based on judgements derived directly from texts in the Qur'an and the hadiths of the

⁶⁵ Doi, (n. 25) p. 67.

⁶⁶ Abu Zahra M, 'The Fifth Source: The Practice of the People of Madinah', p. 21 <<http://bewley.virtualave.net/usul6.html>>, accessed on 16th December, 2021.

⁶⁷ Ibid., p. 1.

⁶⁸ Abu Zahra, 'The Third Source' (n.51) p. 6.

⁶⁹ Salahi, (n. 21) p. 5.

⁷⁰ Ibid.

prophet.⁷¹ He also used the practice of the people of Madinah and the fatwas of the companions as a basis for analogy.⁷² The use of analogy by him is evident in his *Muwatta*, where he presented verses of the Qur'an and hadiths, which he considered to be relevant to the subject at hand and then after that, he gave secondary rulings, connecting similar things to each other.⁷³

Ibn Rushd, a Maliki scholar, stated that, analogy is not only based on established judgements from the Qur'an, Sunnah and consensus, but that it could also be based on secondary rulings established by deduction and what was similar to them in the sum of its attributes which gave it this judgement.⁷⁴ In the Maliki School, analogy is used but it is always subjected to the principle of bringing out the best interests of people and averting harm from them. Where their analogy is correct but would cause harm, they do away with it.⁷⁵

Al-Istihsan

Istihsan comes in when application of *Qiyas* will cause harm to the people. *Istihsan* is used for fatwas, not on the basis of it being a rule but rather on the basis of it being an exception to the rule, which if followed leads to harm.⁷⁶ The general principle then becomes a temporary principle.⁷⁷ Ash-Shatibi, a Maliki scholar said, where analogy without restriction would lead to distress and hardship in some instances, *Istihsan* comes in as an exception.⁷⁸ In the Maliki School, the

⁷¹ Abu Zahra M. M, 'The Sixth Source: Analogy (Qiyas)', p. 2 <<http://bewley.virtualave.net/usul7.html>>, accessed on 16 December, 2021.

⁷² Ibid., p. 2.

⁷³ Ibid., p. 2.

⁷⁴ Ibn Rushd, *Bida'yyah al-Mujtahid waNiha'yyah al-Muqtasid*, (Garnet Publishing, 1999), p. 443.

⁷⁵ Abu Zahrah, 'The Sixth Source' (n. 71) p. 6.

⁷⁶ Ibn al-Arabi, '*Ahkam al-Qur'an*', (Beirut: Dar al-Kutub al-Ilmiyya, N.D), Vol. II, p.57; Ash-Shatibi, *Al-Muwafaqat fi usul al-Shari'ah*, (ed. Diraz), vol. IV, (Misr: Matba'at al maktabah al-tujariyah 1920) p. 208 cited in Kamali, M. H., 'Principles of Islamic Jurisprudence' (Cambridge: The Islamic Text Society, 2003) pp.327-328.

⁷⁷ Abu Zahra, M, 'The Seventh Source: Istihsan (Discretion)', p. 1 <<http://bewley.virtualave.net/usul8.html>> accessed on 16th December, 2021.

⁷⁸ Ibn Qayyim, *I'laam al-Muwaqqi'een*, (Lebanon: Dar al-Kutub al-Ilmiyyah ND) p. 210.

scope of *Istihsan* is to prefer partial benefit over analogy, where there is analogy and its application would cause hardship, constriction or loss of benefit, then there is a relaxation in abandoning analogy for *Istihsan* and by doing so harm is avoided.⁷⁹

Istishab (Presumption of Continuity)

Ibn al Qayyim defined *Istishab* as being the continuation of what is established or the negation of what does not exist.⁸⁰ It is the judgement, negative or positive that continues until there is evidence of a change of state.⁸¹ It is not proved by positive evidence but by the existence of new evidence.⁸² According to Al Qarafi, it is the belief that the past or present matter must be assumed to remain as it is in the present or future.⁸³ Imam Malik accepted it because it is a proof that it is probable that an existing state will continue to exist until there is something to negate it. He accepted it as long as there was no evidence to contradict it. An example is a missing person; it is presumed he is alive until otherwise is proven or if 70 years passes.⁸⁴ Imam Malik considered presumption of innocence also as a form of *Istishab* until there is evidence which establishes the contrary. Another form is judicial precedence, the precedent stands until another changes or negates it.⁸⁵

Al-Maslahah Al Mursalah (Consideration of Public Interest)

Islamic *Fiqh* in its entirety is based on the best interest of the community. That which contains benefit is desired and that which both have a common cause.

⁷⁹ Auda, J., 'Maqasid al-Shariah as Philosophy of Islamic Law' (London: IIIT, 2008), pp.122-125; Laldin, M. A., 'Introduction to Shariah and Islamic Jurisprudence', 2nd ed., (Kuala Lumpur: CERT), pp.102-107.

⁸⁰ Al-Ghazali, (n. 60) p. 287.

⁸¹ Abu Zahra, 'The Seventh Source' (n. 77), p. 4.

⁸² Abu Zahra M, 'The Eight Source: Principle of Continuity (Istihsab)', <<http://bewley.virtualave.net/usul9.html>>, accessed on 16th December, 2016, p. 1

⁸³ Ibid., p. 6.

⁸⁴ Ibid., p. 1.

⁸⁵ Ibid., p. 2.

contains harm is prohibited.⁸⁶ Imam Malik recognised *al-maslahah* (welfare) as an independent principle of interpretation and state that the texts of the lawgiver only bring about what will benefit the people even if it is not specifically stated.⁸⁷ When benefit existed, he took it whether it had specific testimony from *Shari'ah* or not. When two benefits conflict, what is preferred in the Maliki School is the one which brings about the most necessary benefit and the one which averts the most harm.⁸⁸ When it clashed with probable texts, he preferred to adopt it and make the text specific or to weaken its *isnad* if it was general.⁸⁹ He usually paid attention to the intention of the law giver.⁹⁰

SaddAl-Dhara'i (Blocking the means)

It simply means blocking the means, that is, preventing the means to what is forbidden. The consequence of actions is examined and what they lead or might lead to is also examined.⁹¹ If it will be evil, it is forbidden.⁹² Prohibition of what leads to sin or evil is not only directed towards the intention of the person alone but also at the result, as well as the consequence towards general benefit or harm.⁹³

'Urf and 'Adat (Custom and Customary Usage)

Imam Malik considers it a legal principle in respect of matters about which there is no definitive text. He has deep respect for custom as can

⁸⁶ Abu Zahra M, 'The Ninth Source: Maslahah al Mursalah', p. 1 <<http://bewley.virtualave.net/usul10.html>>, accessed on 16th December 2021.

⁸⁷ Abdul Wahab Khallaf, *Masadir al-Tashri' al-Islami fi ma la Nass fih*, 6th Ed. (Kuwait: Dar al-Qalam, 1414AH), p.89.

⁸⁸ Abu Zahra, (n. 86) p. 8.

⁸⁹ Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period* (Leiden, The Netherlands: Brill 2013), p.176.

⁹⁰ Al-Qarafi, *AL-Dhakirah*, Vol. I (Cairo), p.142-143.

⁹¹ Dawah Institute of Nigeria, *Shari'ah Intelligence*, 3rd Ed. (Minna, Nigeria: Dawah Institute of Nigeria 2019) pp.101-102.

⁹² Abu Zahra M, 'The Tenth Source: Principle of Means', p. 1 <<http://bewley.virtualave.net/usul11.html>>, accessed on 16 December 2020.

⁹³ Kamali, M.H., *Principles of Islamic Jurisprudence* (Cambridge: The Islamic Text Society, 2003), p.401.

be seen in his use of public interest and general benefit.⁹⁴ As far as the Maliki school is concerned, custom makes the general specific and qualifies the unqualified.⁹⁵ Al-Qurtubi said customs are of 3 types; custom accepted by agreement of all the *fuqaha*, custom prohibited by an unequivocal text, custom in which there is no established prohibitions.⁹⁶ Many judgements of the Maliki School are based on customs because it coincides with public interest.⁹⁷ Customs necessarily entails people's familiarity with a matter and such judgements based on custom will receive general acceptance.⁹⁸

DEVELOPMENT OF THE MADHAB OF IMAM ABU HANIFAH

Imam Abu Hanifah is famously known as the founder of the Hanafi School, but in actual fact, the school was created by his teacher Hammad ibn Abi Sulayman and Abu Hanifah only took over after his death.⁹⁹ The school is the product of the *Fiqh* rules and regulation as taught by Abu Hanifah.¹⁰⁰ The school is known for quite a number of ideologies like the hypothetical *Fiqh*, their presumed liberality and so on, that are not readily accepted by the other schools.¹⁰¹

Biographical Background of Imam Abu Hanifah

Imam Abu Hanifah (which was his *kunya*¹⁰²) was born in Kufa, Iraq in 80 A.H as Al-Nu'man bin Thabit.¹⁰³ Abu Hanifah was brought up as a

⁹⁴ Abu Zahra M, 'The Eleventh Source: Adat and Urf', p. 1
<http://bewley.virtualave.net/usul12.html> accessed on 16 December 2020.

⁹⁵ Ibid., p. 1.

⁹⁶ Ibid., p. 1.

⁹⁷ Umar F. Abd-Allah Waymann-Langraf, (n. 85), pp. 137-138.

⁹⁸ Auda, J., (n. 75), p.202; Umar F. Abd-Allah, Islam and the Cultural Imperative, A Nawawi Foundation Paper, note 10, p.1.

⁹⁹ Inter Islam, 'The Four Great Imams: Imam Abu Hanifah (R.A)', p.1
<<http://www.inter-islam.org/Biographies/4imam.html>> accessed on 11 December 2020.

¹⁰⁰ Islamic Wisdom Blog, 'Biographies of Imam Abu Hanifa' p. 1
<<https://islamicwisdom7.wordpress.com>>, accessed on 12 December 2020.

¹⁰¹ Ibid., p. 1.

¹⁰² It was customary in the Arabic tribes for the father to be named after the first-born child. So Abu Hanifah means Father (Abu) of Hanifah. See Smirna Si, 'Abu

trader like his ancestors before he started showing interest in education.¹⁰⁴ He first flourished in Kufa as a merchant, then as a student and finally as a teacher.¹⁰⁵ Kufa being one of the two great Iraqi cities of the time was home to many different religions, sects and beliefs and of various ancient civilizations.¹⁰⁶ Abu Hanifah observed these diverse currents, his intellect was sharpened and he sifted through these differing views.¹⁰⁷ While still in his youth, he was known for debating and arguing with people from various sects.¹⁰⁸ His interest in education was aroused by Imam Sha'bi, who mistook him for a student and advised him to take up education.¹⁰⁹ This inspired Abu Hanifah and he started his studies properly.¹¹⁰ He started his education first with the study of theology.¹¹¹ Abu Hanifah experienced the full Islamic culture of his age. He memorised the Qur'an and learnt considerable number of hadith, grammar, literature and poetry.¹¹² Then he moved on to *Fiqh* at the age of 22 with Sheikh Hammad ibn Sulayman and he remained with him for 18 years (until his death). He learned *Fiqh* as taught by a variety of scholars who formed personal schools of *Fiqh*.¹¹³ As he was liberally inclined, he pursued knowledge with great openness and lack of bias.¹¹⁴ He was reported to have said "I learned the *Fiqh* of Umar, the *Fiqh* of Ali, the *Fiqh* of Abdullah ibn Mas'ud and the *Fiqh* of Ibn Abbas, but ultimately, I devoted myself to

The Sunnah was the second methodology on which he relied on for the formulation of his rulings. There are, however, some qualifications as to

Hanifah: The Quintessence of Islamic Law', ref. 1 at p. 11 https://www.academia.edu/36676877/Ab%C5%AB_Han%C4%ABfah_The_Quintessence_of_Islamic_Law?auto=download accessed 24 September 2021.

¹⁰³ Inter Islam, (n. 99) p.1.

¹⁰⁴ Doi, (n. 25) p. 88.

¹⁰⁵ Smirna, Si, (n. 102) p. 2.

¹⁰⁶ Ibid. p. 2.

¹⁰⁷ Ibid. p. 3.

¹⁰⁸ Abu Zahra M., Imam Abu Hanifah: His Life, Opinions and Fiqh (Maktabah Publications, Malaysia N.D) p. 8.

¹⁰⁹ Islam Awareness, 'Profile: Imam Abu Hanifah (Numan ibn Thabit)', <www.islamawareness.net/bgcoloredlight1>, accessed on 13 August, 2021.

¹¹⁰ Doi (n. 25) p. 89.

¹¹¹ Smirna, Si, (n. 102) p. 4.

¹¹² Ibid. p. 4.

¹¹³ Abu Zahra, (n. 108) p. 10.

¹¹⁴ Smirna Si, (n. 102) p.4.

one of the *Fuqaha* (Hammad bin Abi Sulayman)."¹¹⁵ He travelled far and wide in search of knowledge but mostly to Makkah, Madinah, Kufa and Basra, which were the centres of learning in those days.¹¹⁶ In Makkah, he learnt the science of hadith from Ata Ibn Rabah and Imam Ikrima,¹¹⁷ with the latter giving him a seal of approval, that is, an authorisation to exercise personal judgement and issue fatwas.¹¹⁸ He was known for learning from other peoples' perspectives, even though he may or may not accept it.¹¹⁹ He said: 'the most knowledgeable of people is the one with the most knowledge of people's differences.'¹²⁰ But in spite of this he did not impose his opinion on his many students. Sometimes, he used to discuss with them and ascertain the opinions of the important ones among them and debate with them as an equal, not as a superior. Sometimes he would conclude a discussion with an opinion and all would be silent to listen to him but some of them would keep their own opinions.¹²¹

His Methodology

For every Muslim, the Qur'an is always the first go to source and this was the same with Abu Hanifah. The Qur'an is then followed by the Sunnah of the prophet. *Ijma* comes in third followed by *Qiyas*. In applying *Qiyas*, he used two extra sources, which are *Istih'san* and *Urf*.¹²² The last is *Ra'y* (personal opinion).

¹¹⁵ Abu Bakr Ahmad, *Tarikh Baghdad*, Vol. XIII (Pakistan: Al-Hakawati 2008), 331.

¹¹⁶ Smirna Si, (n. 102) p.4.

¹¹⁷ Al-Makki, *Manaqib*, pt. I (Lucknow Publishing House N.D), p.59, Mizzi, *Tahdhib*, vol. XXIX. (al-Risalah al-'Alamiyyah N.D), pp.418-20.

¹¹⁸ Islamic Wisdom Blog, (n. 100) p. 3.

¹¹⁹ Ibid.

¹²⁰ Haytami, *Khayrat*, (Maktabat Madbuli 2000) p.227.

¹²¹ Smirna Si, (n. 102) p. 24 and Al-Makki, (n. 117) pt. II, p. 36.

¹²² Abu Zahra, (n. 108).

Al-Qur'an

Abu Hanifah considered the Qur'an to be the primary unquestionable source of Islamic law.¹²³ He used it to determine the accuracy of every other source.¹²⁴ There are Qur'anic provisions for every form of *Ijtihad*, *Ra'y* inclusive, even though it might not be explicitly stated. And to him, any source that contradicted the provisions of the Qur'an was considered inaccurate.¹²⁵ The part of the Qur'an with the highest binding force in the Hanafi School is the '*Amm*'.¹²⁶ '*Amm*' texts are those with a universal meaning which includes everything to which it is applicable.¹²⁷ The definition of '*Amm*' in the Hanafi School is an expression which includes everything encompassed by it, whether it is by the outward form of the words or the meaning.¹²⁸ Abu Hanifah views '*Amm*' texts as those which it is optional to act on but could sometimes be obligatory.¹²⁹ The Hanafis consider the '*Amm*' text to be absolute and unaffected by any probability.¹³⁰ They hold the '*Amm*' to be definitive in its evidence and can abrogate the *Khass*,¹³¹ whether it occurs in the Qur'an or the Sunnah.

Sunnah

The Sunnah was the second methodology on which he relied on for the formulation of his rulings. There are, however, some qualifications as to its usage.¹³² He stipulated that it was not sufficient that a hadith be accurate but it had to be widely known, if it was to be used as a

¹²³ Phillips B., 'The Evolution of Fiqh', (International Islamic Publishing House 2006), p. 90.

¹²⁴ Ibid., p. 90.

¹²⁵ Ibid., p. 90.

¹²⁶ Abu Zahra, (n. 36) p. 4.

¹²⁷ Ibid.

¹²⁸ Ibid. p.11.

¹²⁹ Abdul Aleem, 'Introduction to Usul Al-Fiqh According to Hanafi School' (Anv adapted on the *Usul As-Shashi* by As-Shashi, Imam Nidham Ad-din (United Kingdom, London) p.17.

¹³⁰ Abu Zahra, (n. 36) p. 12.

¹³¹ A specific text of the Qur'an.

¹³² Phillips, B., (n. 123) p. 91.

proof.¹³³ This condition was laid down in order to guard against false hadiths that crop up frequently. Despite contrary reports, Abu Hanifah never turned away from a hadith if its relation to the prophet was sound.¹³⁴ He often used the Sunnah to clarify parts of the Qur'an.¹³⁵ There have been allegations against Abu Hanifah that he preferred analogy over hadith, to which the Imam had debunked saying: By Allah, it is a lie about us if someone says that we advance analogy over a text. Is there any need for analogy when a text exists? We only use analogy when there is strong need for it. We look for evidence about the question in the Book, the Sunnah and the decisions of the Companions. If we do not find anything then we use analogy since there is silence about the matter.¹³⁶

Ijma (Consensus of Scholars)

Abu Hanifah considered *Ijma* as part of his principles. He accepts it on the basis of the hadith of the prophet, where the prophet was reported to have said that his people would never agree upon an error.¹³⁷ He also relied on the appointment of Abu Bakr as Khalifah as a classical instance of *Ijma*.¹³⁸ Abu Hanifah and his companions used to accept tacit consensus.¹³⁹ He was reportedly tenacious in following what the people in the land had agreed upon, but only on matters about which there was no textual authority.¹⁴⁰ Where there are two or more consensus in conflict, Imam Abu Hanifah always sided with one whose end result was likely to cause less harm or lead to a greater benefit.¹⁴¹

¹³³ Ibid. p. 91.

¹³⁴ Nadwi M.A, 'Abu Hanifah: His Life, Legal Method and Legacy' (Markfield: Kube Publishing Ltd, 2010) p. 59.

¹³⁵ Phillips, B. (n. 123) p. 91.

¹³⁶ Abd al-Wahhab al-Sha'rani, *Al-Mizan al-Kubra*, (Maktab al-Matbu'at al-Islamiyyah, 1862) p. 52.

¹³⁷ Sunan Ibn Majah, 2/232.

¹³⁸ Nadwi, M.A, (n. 134) p. 64.

¹³⁹ Abu Zahra (n. 108) p. 63.

¹⁴⁰ Al-Makki, pt. 1 (n. 117) p. 98; Abu Zahra (n. 108) p. 64.

¹⁴¹ Abdul Aleem, (n. 129) p. 128.

Qiyas (Analogy of Decisions)

Qiyas is a proposition by analogy which applies in cases where there were no literal rules in the Qur'an or Sunnah, to a given issue.¹⁴² Fudayl ibn Iyad said: 'If there was a sound hadith for the case, Abu Hanifah would follow it even if it was a saying or practice of the Companions or the Successors. Otherwise, he applied analogy and he was good in analogy'.¹⁴³ In applying *Qiyas*, Abu Hanifah used a process of analogical thinking called precise analogy.¹⁴⁴ He detested using *Qiyas* without it being subject to strict rules and reasoning.¹⁴⁵ He chose *Qiyas* when he had exhausted the resources of Qur'an and Sunnah known to him.¹⁴⁶

Istihsan

Abu Hanifah resorted to *istihsan* when there is a conflict between two analogies.¹⁴⁷ He considered adoption of *ijma* or a single tradition as part of the secondary parts of *istihsan*.¹⁴⁸ Sometimes it involved the preference of a hadith which is specific, over a general one or the preference of a more suitable law over the one deduced by *Qiyas*.¹⁴⁹ Abu Hanifah was particular about making rules that would not in any way harm the people and this forms part of the reason why he accepts *Istihsan*.¹⁵⁰ Before making any rules especially by way of *Qiyas*, he always made sure, that the end result of the application of such rule(s), is one that would not in any way affect the benefit or welfare of the people.¹⁵¹ Therefore safe to say, that *Istihsan* to Abu Hanifah has

¹⁴² Anas P.A., 'The Hanafi School: Origin, Development and Features', <www.academia.edu/3526941>, accessed on 18th August, 2017.

¹⁴³ Haytami, (n. 120) p.95.

¹⁴⁴ Abdul Aleem, (n. 129) p. 128; Nadwi, (n. 134) pp. 78-80.

¹⁴⁵ Smirna Si, (n. 102) p. 6.

¹⁴⁶ Ibid., p. 6.

¹⁴⁷ Bewley A., 'The Seventh Source, The Principle of Istihsan', <www.bewley.virtualave.net> accessed on 20 August, 2021.

¹⁴⁸ Smirna Si, (n. 102) p. 6.

¹⁴⁹ Phillips, B., (n. 123), p. 91.

¹⁵⁰ Ibid. p. 91.

¹⁵¹ Al-Shatibi, *al-I'tisam*, vol. 2, p.230 cited in Umar F. Abd-Allah Waymann-Langraf, Malik and Medina: Islamic Legal Reasoning in the Formative Period (Leiden, The Netherlands: Brill, 2013), p.163.

elements of *Maslahah al-Mursalah*, even if he did not totally accept it as a source.¹⁵²

'Urf (Custom)

Abu Hanifah made use of custom and considers it a legal principle in respect of matters about which there is no definitive text.¹⁵³ When there is no analogy or *Istihsan* on the question, Abu Hanifah looked to see what the behaviour of the people was.¹⁵⁴ The behaviour of the people is the normative custom among them.¹⁵⁵ He acted by the custom if there was no text in the Book, Sunnah or consensus, and there had been no application of analogy based on another ruling or *Istihsan* with all its methods.¹⁵⁶ For a custom to be held valid in the Hanafi School, it must be:¹⁵⁷ (i) The custom must be compatible with rulings of the Qur'an and Hadith; (ii) it must be commonly prevalent in the region and not merely in an isolated locality; (iii) the custom must be in practice for a long time.¹⁵⁸

Ra'y (Personal Opinion)

Abu Hanifah was reputed for his staunch adherence to *Ra'y* (personal opinion), not based on whims and caprices, but based on evidence, analogies or general principles of Shari'ah.¹⁵⁹ He would apply *Ra'y* where there were no rulings on such issue in the Qur'an or Sunnah, or

¹⁵² Mansoori M.T., 'Role of *Ra'y* and *Istihsan* in Hanafi Legal Theory', <http://pu.edu.pk/images/journal/szic/pdf_files/2%20Tahir%20Mansoori%20%20%5BROLE%20OF%20RAY%20&%20ISTIHSAN%20roman%20fin%20Dec12.pdf>, accessed on 24 August, 2021.

¹⁵³ Abu Zahra, (n. 36) p. 72.

¹⁵⁴ Ibid., p. 72.

¹⁵⁵ Phillips, B., (n. 123), p. 93.

¹⁵⁶ Abu Zahra (n. 108) p. 66.

¹⁵⁷ Nunis T., 'The legacy of Imam Abu Hanifa', www.amuslimconvertoncemore.blogspot.com, accessed on 20 August, 2021.

¹⁵⁸ Ummah, 'The Role of *Urf* in Shari'ah', <www.ummah.com>, accessed on 21 August, 2021.

¹⁵⁹ Phillips, B., (n. 123), p. 97.

when application of such a rule would lead to harm to the people.¹⁶⁰ He tries to apply his reasoning to deduce a more flexible rule, without contravening the rules of the Qur'an and Sunnah.¹⁶¹

UNDERSTANDING THE JURISPRUDENTIAL THOUGHTS OF THE MALIKI AND HANAFI SCHOOLS OF THOUGHT

This part will focus on the features of the Maliki and Hanafi *Madhabs* and what influenced the jurisprudential thoughts of the leading Imams respectively. Discussion on the features of their schools will show how the schools are distinct from each other.

Features of the Maliki *Madhab*

The Maliki school accepts almost all of the sources while other schools have only accepted some and rejected others. Imam Malik accepted both the revealed sources and those that were man-made, as a result of scholar's exercise of *Ijtihad*.¹⁶² With regard to the juristic field, Maliki jurisprudence is different from others because of absence of strictness, which leads to openness in comparison with other schools, that is, they compare their own formulated rules with that of other schools, and adopted it where necessary, as long as those rules have not yet been abrogated.¹⁶³ For example, the *Madhab* validated the ruling of the one who opposes the Maliki *Madhab* and prohibited invalidating such a view, even if such a view opposes the standard view in the Maliki *Madhab*. This protects them against factional and sectarian strife. Maliki *Fiqh* has a laid down rule, that whenever a statement from Maliki scholars is non-existent on a particular new occurrence, they should turn to Hanafi or Shafi'i *Fiqh*. Also, the school allows departure

¹⁶⁰ Waheed A., 'Imam Abu Hanifa: Life, Legacy, Methodology and Fiqh', <<https://www.slideshare.net/jkninstitute/session-4-a-abu-hanifah-life-legacy>>, accessed on 18 August 2021.

¹⁶¹ Phillips, B., (n. 123) p.97.

¹⁶² At-Tawil M., 'The Special Characteristics of the Maliki *Madhab*', p. 4 <<https://www.lamppostproductions.com/the-special-characteristics-of-the-maliki-madhab-shaykh-muhammad-al-tawil/>>

¹⁶³ Ibid., p. 5.

from the school and acting in accord with an opposing view in times of necessity and in cases when applying Maliki *fiqh* would be too difficult or for other justifiable reasons.

Another feature of the Maliki Madhab is its resilience. While proffering solutions to difficult cases or situations, the Malikis observe the principle of *Mura'at al-Khilaf*.¹⁶⁴ What this basically means is that the Maliki School possesses the ability to recover from or easily adapt to any difficulties that may arise during the course of their law making processes.¹⁶⁵ Another feature of the school is its balance and temperance in its judgements, stances and fundamentals that are removed from excessiveness and neglect, extremism and strictness, strangeness and irregularity, rigidity and complexity, rebelliousness and accusations of unbelief.¹⁶⁶ It allows acting on concessions and disallows accepting strange opinions and irregular judgements.¹⁶⁷ Another feature of the Maliki School is their aim-driven far-sightedness.¹⁶⁸ What this means is that they are considered one of the most profound legal schools in understanding the spirit of Islamic sacred law and its aims.¹⁶⁹ They are the most far sighted when it comes to reflection and consideration of their ends; and the most tenacious in observing its judgements and subtleties (when making judgements from texts and extracting legal rulings from them).¹⁷⁰

Another important feature of the school is that they are realistic. This means that they only give rulings and judgements on what is actually happening or has happened.¹⁷¹ They never give rulings or judgements on what is yet to occur.¹⁷² There is a report in which a man from Morocco approached Imam Malik and put a question him, to which the Imam had replied "I do not know. We have not been exposed to a

¹⁶⁴ The principle of observing the disagreement

¹⁶⁵ At-Tawil M., (n. 162) p. 8.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid., p. 10.

¹⁶⁸ Ibid. p. 8.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid. p. 10.

¹⁷¹ Ibid., p. 11.

¹⁷² Ibid. pg. 13.

problem like this in our hometown. Nor have we heard of any of our teachers speaking about it. If you come back tomorrow, I may have something for you". When the man came back the following day, he told him that he had reflected on it but could not arrive at an answer.¹⁷³

What influences the Thoughts of Imam Malik

Imam Malik was largely influenced by his numerous teachers. He merged some of their principles which were acceptable to him with his.¹⁷⁴ The teacher that influenced him the most was Rabi'ah ibn Abdurrahman, whose nickname was Rabi'ah *Ar-Ra'i* which means 'point of view'.¹⁷⁵ Rabi'ah was known to greatly exercise scholarly discretion than most scholars in Madinah at that time.¹⁷⁶ However the discretion he exercised and Imam Malik later exercised was not like those exercised in Iraq at that time as they exercised discretion in a much more limited way and only in reconciliation of texts.¹⁷⁷ Irrespective of this, the intellect and scholarly discretion was not in any way diminished in him.¹⁷⁸ He was trained in legal development by the *Fuqaha* of Madinah and those who had learned *Fiqh* from them. The opinions of the seven (7) *Fuqaha* of Madinah had a place in his consideration and assessment of sources. If he agreed with them, it was due to the fact that he had studied and compared those fundamental principles with one other. If he disagreed, then it was because it was in conflict with what was stronger than that principle and a more authentic statement.¹⁷⁹

Madinah during the life of Imam Malik was the realm of the *ahl-al-hadith*.¹⁸⁰ It was full of scholars. Therefore, Imam Malik was

¹⁷³ Salahi, A., (n. 21), p. 3.

¹⁷⁴ Salahi, A., (n. 21), p. 2.

¹⁷⁵ Ibid., p. 4.

¹⁷⁶ Ibid., p. 6.

¹⁷⁷ Ibid., p. 3.

¹⁷⁸ Ibid., p. 5.

¹⁷⁹ Abu Zahra, (n. 51) p. 3.

¹⁸⁰ Ibid., p. 3.

surrounded mostly by the *Tabi'un* and those influenced him greatly.¹⁸¹ They advocated for the understanding of faith by understanding the Qur'an and the Sunnah first. This was part of why Imam Malik does not readily look to reasoning and logic.¹⁸² He believed that the Sunnah has covered any issue that has happened or will ever happen, and since solutions has been proffered, there is really no need to exercise *Ijtihad* to proffer a new solution.¹⁸³ The way of thinking of the *ahl-al-hadith* was placing of the hadith on a very high pedestal and not giving chance for *Ra'y* to seep in.

Features of the Hanafi *Madhab*

The school puts more emphasis on *Qiyas* than hadith and deductions therefrom.¹⁸⁴ Another feature of the Hanafi School is its reliance on imagined cases for the explanation of doctrine, a process called "Hypothetical *Fiqh*".¹⁸⁵ These hypothetical analogies of cases, constituted a well-known tool that was developed and utilised by Abu Hanifah for legal deduction.¹⁸⁶ He usually posed a legal issue to his students and challenged them to come up with a ruling based on the Qur'an and Sunnah.¹⁸⁷ The students would first attempt to find the solution in the Qur'an and if it was not found or clearly stated, they turn to the Sunnah for a ruling or an explanation, as the case may be.¹⁸⁸ His justification for analysing Islamic law through fictional circumstances was preparation for an unforeseen event, so that they would not be caught unawares, should such an issue occur or ever arise.¹⁸⁹ As a result of this technique, he is said to have invented

¹⁸¹ Ibid., p. 4.

¹⁸² Ibid., p. 4.

¹⁸³ Ibid., p. 3.

¹⁸⁴ Ibid., p. 3.

¹⁸⁵ Smirna Si, (n. 98) p. 6.

¹⁸⁶ Firas A., 'The Life of Imam Abu Hanifah' p. 2 <<http://lostislamicichistory.com/the-life-of-imam-abu-hanifa/>>, accessed on 12 March 2021.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibn Hajwi, *Al Fikr As-Sami*, pt 2 (Matb'at Idarat al-Ma'arif, 1926), p. 107.

between thirty thousand (30,000) and sixty thousand (60,000) hypothetical situations.¹⁹⁰

Another feature is the presumed liberality of the school. Their liberality is best shown in three circumstances. They are renowned to take the most liberal stance towards the Christians and the Jews within an Islamic jurisdiction, that is, *ahlal-kitab* (people of the book).¹⁹¹ However, the implied liberality is very relative, as it is still in line with the concept of *dhimmi*, and the social and civil restrictions or benefits associated with that status.¹⁹² The second is on the issue of theft. Jurists unanimously agree that the punishment for theft is cutting off the right hand. In this instance, Abu Hanifah is less strict than the three other schools. He was of the view that cutting off the right hand is not always mandatory in some theft instances.¹⁹³ The Hanafi School is known for basing its laws on expediency and benefit, that is they have the quality of effecting the rules of *Shari'ah* for the purpose it was intended in a way that is not conventional.¹⁹⁴

What Influences the Thoughts of Abu Hanifah

The use of *ra'y* by the Hanafis has also been attributed to the fact that Abu Hanifah studied *Kalam*,¹⁹⁵ which sharpened his intellect and increased his power of reasoning.¹⁹⁶ Due to the fact that he always engaged in debates with different sects, especially the *Mu'tazillah*, who were known for following the principle of rationality, he had to do

¹⁹⁰Sunnah Muakada, 'The Fiqh of Abu Hanifah', <https://sunnahmuakada.wordpress.com/2013/01/31/the-fiqh-of-abu-hanifa/>, accessed on 21 January 2021.

¹⁹¹Smirna Si, (n. 98) p. 10.

¹⁹²Ibid., p. 10.

¹⁹³Smirna Si, (n. 102) p. 10.

¹⁹⁴Ibid., p. 10.

¹⁹⁵*Ilm al-kalam* means the study of discourse and sometimes it is called Islamic scholastic theology. It was born out of the need to defend and establish the tenets of Islam against doubters and detractors. It can be likened to oratory since *kalam* literally means speech.

¹⁹⁶Ali S.M., 'The Hanafi Madhab' <http://suzyashraf.tripod.com/html/ed.SyedMumtazAli.html> accessed on 21st August 2021.

same to be able to contend with them on a levelled ground.¹⁹⁷ This made him realise that every rule of *Shari'ah* was consonant with reason and he turned this realisation onto solving *Fiqh* problems.¹⁹⁸ This led him to study hadiths in a deep manner, seeking the causes of the judgements they contained by examining the indications of words, aims of phrases, circumstances and related qualities.¹⁹⁹ When he was satisfied about the underlying cause, he used analogy based on it or sometimes hypothesis.²⁰⁰

Abu Hanifah's teachers were from different ideological backgrounds and varying sects.²⁰¹ Not all were part of the main Sunni community and not all were part of the people of opinion. Some of them were hadith scholars and some taught the *Fiqh* of the Qur'an.²⁰² During his six years stay in Makkah, he studied with the *Tabi'un* there, who had learned from the *Sahabah*. Many of those he learned from in Iraq were from among the sects of the Shi'a with all their differences. Each had an effect on his thought, even if he did not follow their teachings or share their ideologies. He took in all those disparate elements and assimilated them to reach his own final opinion. Abu Hanifah utilised all these elements, taking the best from them, and then produced a new way of thinking and an upright opinion. Abu Hanifah moved away from these different studies and learned the fatwas of the Companions who were famous for their *Ijtihad*, excellent opinion and intelligence. Each of his shaykhs had a specific intellectual quality, which had various influences on the imam.

From his biography, it is apparent that Imam Abu Hanifah's jurisprudence was also influenced by the fact that he lived during the time of the *Tabi'un*. During those times, there were two categories of

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Inter Islam, 'Imam Abu Hanifa: Biography of one of the great Imams', p. 2 <<http://www.inter-islam.org/Biographies/4imam.html>>, accessed on 13th August 2021.

²⁰⁰ Ibid. p. 22.

²⁰¹ Smirna Si, (n. 102) p. 4.

²⁰² Ibid., p. 4.

scholars; the *ahl-al-hadith* and the *ahl-al-ray*.²⁰³ Kufa predominantly belonged to the *ahl-al-ray*, while Madinah was the realm of the *ahl-al-hadith*. The jurists of Kufa had been using *Ra'y* since the time of Abdullah ibn Masud. They made a point of discussing hypothetical cases, which enabled them to test principles and procedures beforehand. The work of Abu Hanifah encapsulated this Kufan tradition to its fullest.²⁰⁴

CONCLUSION

It could be baffling to beginner students of Shari'ah why there are always divisions of juristic opinions (*ikhtilaf*) among the scholars despite that all the scholars' aim at presenting the true position of shari'ah. This approach also confuses the undiscerning Muslims who then assume that they could express divergence on matters of the *deen* while citing the instances of difference of opinions among scholars without understanding the basis for their stances. The discussion in this work thus centers on unraveling the methodologies of Imams Malik and Abu Hanifah with a view to clarifying how they arrive at their respective jurisprudential positions. The distinctive methodologies of each school were found to have been influenced by three (3) factors: the environment they grew up and lived in, the influence of their teachers and their own personal intellect.

Despite the distinctive sources between the two, they still had to refer back to the Qur'an and Sunnah. They could not have developed methodologies or given fatwas which would have been directly or indirectly contrary to the provisions of the Qur'an, both explicit and implicit and the Sunnah. Those distinctive methodologies were essentially tools used by them to extend the rules of the Qur'an and Sunnah into a manner easily understood and would not cause harm to the people, either by interpretation directly or using their own reasoning to discover the true intention behind the rules. The end purpose of their methodologies was to protect the welfare of the people without bringing any innovation into the religion.

²⁰³ Ibid, p. 5.

²⁰⁴ Aleem A., (n. 129) p. 79.