FROM REGIONAL TO PERSONAL SCHOOLS OF LAW?* A REEVALUATION

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Abstract

Western scholars have long regarded the legal history of the second/eighth century and the early part of the third/ninth as being dominated by the so-called geographical schools. Since scholars also hold that the later schools of law were personal in nature, it is widely assumed that a transformation took place from geographical schools to personal schools. In this article, I question these views, arguing (1) that geographical schools never existed; (2) that the later schools were not personal; and (3) that a transformation did in fact take place, albeit from individual juristic doctrines to doctrinal schools.

I

WITH THE PUBLICATION HALF A CENTURY AGO of his work on the origins of Islamic jurisprudence,[1] Joseph Schacht's writings quickly became paradigmatic and have largely remained unchallenged and unquestioned since. One of Schacht's major arguments in this work is that throughout the second/eighth century, legal scholarship in the Muslim world rallied around geographical centers, and jurists identified themselves in terms of regional affiliation. To the best of my knowledge, Schacht was the first to discover and articulate the notion of the "ancient schools."[2] In his view, the "real distinguishing feature between the 'ancient schools' of law is neither the personal allegiance to a master nor ... any essential difference of doctrine, but simply their geographic distribution."[3] If the absence of personal allegiance is presumably demonstrable, and if differences in doctrine are equally lacking, then legal doctrine must have shared a significant common denominator in a regional context. Furthermore, and to take the inference to its logical conclusion, doctrine was anonymous (for there was no personal

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1 Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: The Clarendon Press, 1950).

2 Ibid., 6 ff.; idem, *An Introduction to Islamic Law* (Oxford: The Clarendon Press, 1964), 28 ff.

3 Schacht, *Origins*, 7.

allegiance), homogeneous, and closely affiliated with a particular region.

Schacht's conviction regarding the geographical, non-personal character of the schools led him to posit a transformation in their evolution, for, after all, the later schools did eventually acquire a personal character. Accordingly, during the Abbasid period, "the ancient schools of law, which had the main reason for their separate existence in geography, transformed themselves into the later type of school, based on allegiance to an individual master."[4] Having posited this transformation, and having sanctioned an enigmatic causality by the conspicuous use of the passive "transformed themselves," Schacht proceeds to describe the end-result of the process:

> [T]he bulk of the ancient school of Kufa transformed itself into the school of the Ḥanafīs, and the ancient school of Medina into the school of the Mālikīs, and the ancient schools of Basra and of Mecca, respectively, became merged into them .... This transformation of the ancient schools into personal schools, which perpetuated not the living tradition of a city but the doctrine of a master and of his disciples, was completed about the middle of the third century of the hijra.[5]

If the transformation was completed by the middle of the third/ninth century, then it must have begun some time earlier. According to Schacht, "[s]oon after the time of Shāfiʿī (d. 204/820) the geographical character of the ancient schools of law disappeared more and more, and the personal allegiance to a master became preponderant."[6] "Any legal specialist, therefore, who became converted to Shāfiʿī's thesis became a personal follower of Shāfiʿī, and in this way Shāfiʿī became the founder of the first school of law on an exclusively personal basis."[7] This suggests that the Shāfiʿī and Ḥanbalī schools—as well as others which eventually disappeared—evolved *ab initio* as personal schools, while the Ḥanafī and Mālikī schools were initially geographical, and later *transformed themselves* into personal schools. From this we can infer that it was only after Shāfiʿī's time that certain regional groups of jurists were "converted" to the theses of Abū Ḥanīfa (d. 150/767) and Mālik (d. 179/795), and thereby "transformed themselves," respectively, into the personal Ḥanafī and Mālikī schools. If this is the case, however, then both Abū Ḥanīfa and Mālik did, after all, have personal "theses." For it was the conversion to these theses

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4 Schacht, *Introduction*, 57.
5 Ibid., 57-58.
6 Schacht, *Origins*, 10.
7 Schacht, *Introduction*, 58.

which, in Schacht's opinion, was the cause of the rise of the personal schools. Furthermore, if Abū Ḥanīfa and Mālik developed legal doctrines of their own, then why did the Ḥanafī and Mālikī jurists wait for over half a century, indeed in the former case an entire century, before deciding to adhere to the individual doctrines of these two masters? However, the more important question that arises from Schacht's writings on the issue is: How can one tally the conspicuous presence of Abū Ḥanīfa's and Mālik's individual "theses" with Schacht's contention that the ancient schools neither knew any allegiance to an individual master nor had among their ranks "any essential differences of doctrine"?

Schacht's theory has long been accepted by scholars writing on the early period of Islamic law.[8] Its tenaciousness is exemplified by what is thus far the most important study of school formation, that of Ch. Melchert. In this 1997 work, Melchert accepts the existence of regional schools, and in at least one full chapter, discusses the transformation "from regional to personal" schools.[9] He clearly acknowledges his debt to Schacht: "We owe our perception of the shift from regional to personal schools to Joseph Schacht, once again."[10] But unlike Schacht, Melchert is dissatisfied with merely positing a transformation. The phenomenon must be explained. He argues that this transformation was the result of the challenge posed to the early Ḥanafī jurists, who belonged to the rationalist camp (*ahl al-ra'y*), by scholars from traditionalist quarters. The latter, steadily on the rise, judged "reliance on oneself" to be a sign of "appalling arrogance."[11] Under traditionalist pressure, the early Kufan jurists resorted to Abū Ḥanīfa, for "[r]eliance on a late authority such as Abū Ḥanīfa seemed little better."[12] In other words, in order to match the formidable traditionalist challenge, represented in the practice of supporting legal opinions by reports that went back to Successors, Companions and the Prophet, the Kufan jurists invoked Abū Ḥanīfa's doctrine. "To learn and relate the opinions of Abū Ḥanīfa was not the same as learning and relating by

[8] The only exception to this statement is Nimrod Hurvitz ("Schools of Law and Historical Context: Re-Examining the Formation of the Ḥanbalī *Madhhab*," *Islamic Law and Society*, 7, 1 [2000]: 37-64, at 42-46), which appeared after the completion of the present study. Hurvitz argues, though incidentally and in general terms (pp. 42-46, 63), that the geographical schools are an artificial historiographical category that has less substance to it than is conventionally thought.

[9] Christopher Melchert, *The Formation of the Sunni Schools of Law: 9th-10th Centuries C.E.* (Leiden: Brill, 1997), 32-47.

[10] Ibid., 32.

[11] Ibid., 37-38.

[12] Ibid., 38.

much longer chains the opinions of Successors, Companions, and the Prophet himself; however, it was closer to the practice of the traditionalists than reliance on a vague regional school."[13]

Melchert's explanation is an attempt to solve a non-existing problem and in a less than satisfactory manner. First, Melchert commits the same mistake as Schacht when he posits an anonymous regional doctrine which he furthermore declares "vague" in nature. Yet at the same time he acknowledges the existence of individual doctrines in that regional context, as manifested in the *corpus juris* of Abū Ḥanīfa. The question that poses itself then is: How can a regional school be "vague" when one of its constitutive elements is the doctrine of an individual master? If such a doctrine became the authoritative reference of later Hanafīs, then it must have existed as a distinctly individual doctrine *ab initio*, i.e., since the first appearance of the so-called regional schools, whenever that may have been.[14] Second, if the Kufan school wished to meet the challenge of the traditionalists, then Abū Ḥanīfa could hardly have sufficed as the ultimate voice of authority. A later jurist, even of the third/ninth century, would have faced the challenge much more successfully had he articulated a Sunnaic basis for his own legal doctrine instead of resorting to an early second century figure known for his strong rationalist leanings. Shaybānī (d. 189/804), for one, would have been a better choice, since he used Successor, Companion and Prophetic reports on a larger scale than Abū Ḥanīfa did. The choice of Abū Ḥanīfa, therefore, would have been of little help to the rationalist cause, since reliance on his authority was a poor substitute for traditionalist reports sustained by composite chains of transmission extending backwards to far more formidable figures of authority. Abū Ḥanīfa could hardly have been seen as a rival to the Prophet or the Companions.

Melchert bases his explanation on the assumption that the regional schools did in fact exist,[15] and that a transformation from these to

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[13] Ibid, 38, 68 ff., 91. On page 91, Melchert speaks of the "vague" nature of "the teachings of all the jurisprudents of a region." The question that arises from such a statement, once more, is: Why would these teachings have been vague if they belonged to individual jurisprudents, as Melchert acknowledges? And even if we assume, for the sake of argument, that regional schools did exist, why, still, would their doctrines be vague?

[14] Schacht does not seem to have accounted for the rise of geographical, regional schools, thereby leaving undetermined the date when they would have begun their initial formation.

[15] In a recent article, Melchert reasserts the position he adopted in *The Formation*, and argues further that the "Ḥanafī doctrine was developed in Baghdad (and Basra), not Kufa, while the native Ḥanafī tradition in Kufa was negligible."

personal schools did take place. My concern here is to show that no such transformation occurred, because there were in fact no regional schools to begin with. Instead, I shall argue that the transformation which did take place was one of a completely different nature.[16]

For several years, I have grappled in vain with the "Schachtian" transformation, having taken as my starting point the uncritical acceptance of his thesis. This acceptance created an unnecessary problem which in turn affected my reconstruction of the later period of school formation, especially during the third/ninth and early fourth/tenth centuries. If this thesis were to be disproved, then a more convincing account of the rise of the schools can be proffered. At the very least, we should not have to account for a transformation that never occurred in the first place. Schacht's thesis, as we shall see, creates a detour in early Islamic legal history, a detour that is supported by neither common sense nor the evidence of the early sources.

II

We begin our enquiry by examining what the concept of "regional school" means or is supposed to mean. English language dictionaries commonly define "school" as an organized body of scholars and teachers associated for the pursuit and dissemination of knowledge, a general definition which applies to several types of school. A narrower definition is perhaps more relevant to our purpose: "Persons who hold a common doctrine or accept the same teachings or follow the same intellectual method." The first part of this definition corresponds to Schacht's notion of the geographical schools, since their distinguishing feature, according to him, was the absence of any essential difference of doctrine. In Melchert's view, this common doctrine was also vague, indistinct and anonymous. This commonality of positive legal substance implies, even entails, "acceptance of the same teachings," this being the second part of the dictionary definition. Likewise, once a common doctrine is wedded to a single fountain of pedagogical inspiration, then it is easy to see how a school might be defined as a group of persons following the same intellectual methods, again a feature strongly implied by Schacht. The question that we must now ask is: Did such schools really exist as geographical entities?

See his "How Ḥanafism came to originate in Kufa and Traditionalism in Medina," *Islamic Law and Society*, 6, 3 (1999): 318-47, at 347.

[16] See n. 77, below.

Schacht no doubt developed the notion of regional schools on account of the references made to them in the original sources, especially Shāfiʿī's works, of which he made extensive use. Thus, Shāfiʿī is known to have written a work entitled *Kitāb Ikhtilāf al-ʿIrāqiyyīn*.[17] The very title of this work appears to confirm Schacht's thesis of regional schools (although it simultaneously undermines his notion of the absence of doctrinal difference). Yet do such references, which are indeed plentiful, indicate the existence of an Iraqian school? A closer look at this treatise reveals that the juristic disagreement about which Shāfiʿī wrote was strictly limited to the doctrines of Abū Ḥanīfa and Ibn Abī Laylā (d. 148/765) who, admittedly, were Iraqian, but who also were quite far apart on issues of law. The treatise does not contain a single opinion attributed to anyone other than Abū Ḥanīfa or Ibn Abī Laylā. Furthermore, and as a rule, there is no opinion that I can judge, legally speaking, to be vague. Indeed, a recent edition of the work carries the more detailed and accurate title, *Kitāb mā Ikhtalafa fī-hi Abū Ḥanīfa wa-Ibn Abī Laylā*.[18] In his *Kitāb al-Shufʿa*, moreover, Shāfiʿī constantly refers to the Kufans, but the later Nawawī (d. 676/1277) explains that by this designation Shāfiʿī meant Abū Ḥanīfa, Ibn Abī Laylā and their respective disciples.[19] A student of Shāfiʿī would later transmit another of his master's works under the title *Ikhtilāf Mālik wa'l-Shāfiʿī*.[20] If Shāfiʿī was geographically immobile, and resided, say, in Medina, it would not be inconceivable that the work might have carried the title *Ikhtilāf Ahl al-Madīna*.

This is precisely the case of Shaybānī's *K. al-Ḥujja ʿalā Ahl al-Madīna* which, despite its title, makes no reference whatsoever to a geographical doctrine. Shaybānī knows only individual voices that are expressed either independently or as part of a collective doctrine presented as the locus of agreement. In a telling passage treating of the ritual cleansing of shoes, he distinguishes Medinese opinions: Mālik and a number of his followers hold a particular opinion on the matter, whereas two other groups hold two other, yet different, opinions; the last group mentioned by Shaybānī includes ʿAbd al-ʿAzīz b. Abī Ḥāzim Salama, who appears to have attracted a number of followers.[21]

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[17] Printed as part of vol. 7 of Shāfiʿī, *al-Umm*, ed. Muḥammad Maṭarjī, 9 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1413/1993), 161-250. See also Ibn al-Nadīm, *Fihrist* (Beirut: Dār al-Maʿrifa li'l-Ṭibāʿa wa'l-Nashr, 1398/1978), 295.

[18] *Jāmiʿ Bayān al-ʿIlm*, 161.

[19] Muḥyī al-Dīn Sharaf al-Dīn al-Nawawī, *Tahdhīb al-Asmāʾ wa'l-Lughāt*, 3 vols. (Cairo: Idārat al-Ṭibāʿa al-Munīriyya, 1927), I, 284.

[20] Ibid., 295.

[21] Muḥammad b. Ḥasan al-Shaybānī, *Kitāb al-Ḥujja ʿalā Ahl al-Madīna*, 4

Although "the opinion of *ahl al-Madīna*" is presented when a doctrine seems to have been subject to the agreement of the Medinese jurists, Shaybānī mentions specific names when disagreement occurs. Mālik is nearly always mentioned as the representative of the average body of Medinese opinion or as the leading voice of one of the groups in disagreement.[22] At times he is described by Shaybānī as *faqīh ahl al-Madīna*, the jurist of the Medinese.[23] The Medinese jurists, however, do not always hold local doctrines. Frequently, their authority is Abū Ḥanīfa himself.[24] But doctrinal indebtedness is reciprocal: in some cases, Shaybānī clearly favors certain Medinese doctrines over those of Abū Ḥanīfa, although his loyalty to the latter is consciously articulated.[25] In brief, Shaybānī's *K. al-Ḥujja*, like Shāfiʿī's *Ikhtilāf*, is permeated by individual, not geographical, opinion.

The contents of Shāfiʿī's *Ikhtilāf* and Shaybānī's *K. al-Ḥujja* call into question any notion of an anonymous, regional school structure. We also have Shāfiʿī's personal testimony to the rich variety of individual, personal doctrine in Kufa in particular and Iraq in general. In *Kitāb Jamāʿ al-ʿIlm*, he makes the following observation:

> In Kufa I saw a group of jurists leaning toward the doctrine of Ibn Abī Laylā and criticizing the doctrines of Abū Yūsuf [d. 182/798] and others. I also saw other groups leaning toward the latter's doctrine and criticizing that of the former. Those who disagree with Abū Yūsuf and others adopt the doctrine of Thawrī [d. 161/777]; still others adopt the doctrine of Ḥasan b. Ṣāliḥ [d. 168/784].[26]

It is clear that Kufa's legal community consisted of individual voices, each distinct from the other. These included Ibn Abī Laylā, Abū Ḥanīfa, Abū Yūsuf, Shaybānī, Zufar, al-Ḥasan b. Ziyād, Sufyān al-Thawrī, Ḥasan b. Ṣāliḥ and, in Shāfiʿī's list, a number of unnamed individuals, the latter apparently less influential than the former. Abū Ḥanīfa's differences with Ibn Abī Laylā were not only substantive but

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vols. (Haydarabad: Maṭbaʿat al-Maʿārif al-Sharqiyya, 1385/1965), I, 23.

[22] Ibid., I, 23, 190, 212, 234, 378 and passim.

[23] Ibid., I, 212 and passim.

[24] Ibid., I, 76, 83, 182, 239, 411, 420 and passim.

[25] See, e.g., ibid., I, 128, where Shaybānī states, with regard to prostration in prayer, that he favors the Medinese opinion over that of Abū Ḥanīfa although he continues to defend the latter's doctrine with "evincive proofs."; "*qawlu ahl al-Madīna ... aḥabbu ʿalayya min qawli Abī Ḥanīfa wa-in kuntu iḥtajajtu li-Abī Ḥanīfa bi-ḥujjatin thābita.*"

[26] Shāfiʿī, *Kitāb Jimāʿ al-ʿIlm*, printed in volume 7 of his *al-Umm*, ed. Muḥammad Maṭarjī (Beirut: Dār al-Kutub al-ʿIlmiyya, 1413/1993), 470. Ḥasan b. Ṣāliḥ was a Zaydī jurist.

also, as came to be recognized by later jurists, fundamentally methodological in nature. This is precisely why Ibn Abī Laylā was not considered by later Ḥanafīs to have been a member of their school despite the considerable methodological and substantive differences among the early Ḥanafī masters. Thawrī, who was a jurist in his own regard, was accepted by the legal tradition to have founded his own personal school. Sharaf al-Dīn al-Nawawī acknowledges him as one of the six school founders,[27] the others being Dāwūd Ibn Khalaf al-Ẓāhirī (d. 270/884) and the four Sunni Imams. Thawrī's doctrinal differences with the others were certainly and primarily methodological, which explains his distinctive contribution to the founding of an independent school.

Even Abū Ḥanīfa and his two famous students present, or should present, a problem for the legal historian, because it was only on rare occasions that the three agreed on any single opinion, and yet their triangulated doctrine came to constitute the foundation of the later Ḥanafī school. A cursory look at Ṭaḥāwī's (d. 321/933) *Mukhtaṣar* and Dabbūsī's (d. 430/1038) *Ta'sīs al-Naẓar* is sufficient to reveal the wide juristic differences between and among them.[28] Abū Yūsuf is never in total, or even substantial, agreement with Shaybānī. Nor are these two ever in total agreement with their supposed master. Dabbūsī was able to articulate the differences and classify them according to various categories: differences between Abū Ḥanīfa on the one side and his two students on the other; between Abū Ḥanīfa and Shaybānī on the one hand and Abū Yūsuf on the other; between Abū Ḥanīfa and Abū Yūsuf on the one side and Shaybānī on the other; and, of course, between Shaybānī and Abu Yūsuf.[29] These disagreements, which point to substantial variations of interpretation, are symptomatic of different methodological approaches which were certainly minimized by the later Ḥanafī tradition in the obvious interest of unity and school solidarity.

A comparison between Shāfi'ī and his so-called disciple, Muzanī (d. 264/877), on the one hand, and Abū Ḥanīfa and his two students on the other, shows evidence of serious methodological rifts among the latter. This comparison, although it comes from the Shāfi'ī jurist-scholar Imām al-Ḥaramayn al-Juwaynī (d. 478/1085), remains significant

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27 Nawawī, *Tahdhīb al-Asmā'*, I, 223.

28 Abū Ja'far Aḥmad b. Muḥammad al-Ṭaḥāwī, *Mukhtaṣar*, ed. Abū al-Wafā al-Afghānī (Cairo: Maṭba'at Dār al-Kitāb al-'Arabī, 1370/1950); Abū Zayd 'Ubayd Allāh b. 'Umar al-Dabbūsī, *Ta'sīs al-Naẓar* (Cairo: al-Maṭba'a al-Adabiyya, n.d.).

29 Dabbūsī, *Ta'sīs al-Naẓar*, 2-3.

for us, even if we take seriously the doctrinal and ideological bent of this jurist.[30] Muzanī is widely acknowledged to have diverged, methodologically and substantively, from Shāfiʿī's teachings. Yet, according to Juwaynī, Muzani did not differ methodologically from Shāfiʿī as much as Abū Yūsuf and Shaybānī differed, in the same respect, from Abū Ḥanīfa. In fact, Muzanī exhibited such a large degree of juristic independence that he was said to have had followers of his own. It was not without good reason that the distinguished jurist ʿAbd al-Raḥmān al-Rāfiʿī (d. 623/1226) once remarked of him that "the man has an independent school."[31]

That the three Ḥanafī masters differed significantly from each other should be obvious. The later Ḥanafīs, as we saw, recognized these differences, but reconciled them through a tri-partite doctrinal division. It became a common tenet in this school to acknowledge that each master was generally to be followed in a particular area of the law. Thus, generally speaking, Abū Ḥanīfa's doctrine was to be applied in matters of ritual, Abū Yūsuf's in matters of procedure and pecuniary transactions, and Shaybānī's in the sphere of personal status.[32] Furthermore, these three had their own circles of students and followers. Abū Ḥanīfa's case need hardly be documented, since we just spoke of his students.[33] Abū Yūsuf was widely viewed as having a large number of followers, as Schacht himself recognized.[34] What is most striking however is that Abū Ḥanīfa's students had their own followers for a considerable time after their deaths, a phenomenon that deserves further investigation, especially in light of the fact that by such a late period the schools had reached a significant degree of development. As late as the first half of the fourth/tenth century, there were still followers not of Abū Ḥanīfa, the supposed founder of the school, but

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30 Taqī al-Dīn Aḥmad Ibn Qāḍī Shuhba, *Ṭabaqāt al-Shāfiʿiyya*, ed. ʿAbd al-ʿAlīm Khān, 4 vols. (Haidarabad: Maṭbaʿat Majlis Dāʾirat al-Maʿārif al-ʿUthmāniyya, 1398/1978), I, 8.

31 Ibid., I, 8: "*fa'l-rajul ṣāḥib madhhab mustaqill.*"

32 See Muḥammad Ibn ʿĀbidīn, *Ḥāshiyat Radd al-Muḥtār ʿalā al-Durr al-Mukhtār: Sharḥ Tanwīr al-Abṣār*, 8 vols. (Beirut: Dār al-Fikr, 1979), I, 71. Ibn ʿĀbidīn writes on the authority of earlier jurists.

33 Abū Ḥanīfa had many other students, including the renowned Bakkār b. Qutayba, Hāshim b. Abī Bakr al-Bakrī, Ibrāhīm b. al-Jarrāḥ, Asad b. ʿAmr, and Ḥarmala al-Tamīmī. See Muḥammad b. Yūsuf al-Kindī, *Akhbār Quḍāt Miṣr*, ed. Rhuvon Guest (repr.; Cairo: al-Fārūq al-Ḥadītha li'l-Ṭibāʿa wa'l-Nashr, n.d. [1912 edition]), 412, 427; Aḥmad b. ʿAbd al-Raḥmān Ibn Burd, *Dhayl al-Wulāt*, printed with Kindī, *Akhbār*, 477; Wakiʿ Muḥammad b. Khalaf b. Ḥayyān, *Akhbār al-Quḍāt*, 3 vols. (Beirut: ʿĀlam al-Kutub, n.d.), III, 286, 288, and passim.

34 See Ṭaḥāwī, *Mukhtaṣar*, 260, 262, 264, 276, 278, and passim; Wakīʿ, *Akhbār al-Quḍāt*, III, 289 (two students); Schacht, *Origins*, 6.

rather of one or another of his students. For example, Abū Isḥāq Ismāʿīl al-Ṭabarī (d. 346/956) is reported to have been a student (*min aṣḥāb*) of Shaybānī.[35]

Such distinctly individual doctrines as we have enumerated pervaded the jurisprudence and law of Kufa, regarded by Schacht as the locus of a regional school. Not only does ample evidence exist of personal doctrines, but also not one of our sources, either of the early or the later period, even hints at the presence in this city of a collective, anonymous doctrine. This is because no such doctrine ever existed. On the contrary, and to put it tautologically, we do not have at our disposal a single legal opinion that can explicitly and unproblematically be attributed to a collective regional doctrine. The following pages should make this assertion even more evident.

Can we speak of Hijazi jurisprudence in the same terms? Or were there perhaps Meccan and Medinese regional schools, as Schacht claimed? Again, we call upon Shāfiʿī, whose account is revealing:

> In Mecca there were some who hardly differed from ʿAṭāʾ [b. Rabāḥ], and others who preferred a different opinion to his; then came Zanjī b. Khālid and gave legal opinions, and some preferred his doctrine, whereas others inclined towards the doctrine of Saʿīd b. Sālim, and the adherents of both exaggerated. In Medina jurists preferred Saʿīd b. Musayyib, then they abandoned some of his opinions; then in our own time Mālik came forward and many preferred him, whereas others attacked his opinions extravagantly. I saw Ibn Abī al-Zinād exaggerate his opposition to him, and Mughīra, Ibn Ḥāzim and Dārawardī follow some of his opinions, whereas others attacked them [for it].... Some Meccans even think of ʿAṭāʾ more highly than of the Successors.[36]

Note here the conspicuous presence of individual jurists who were the central legal figures. Laymen and less prominent jurists followed one or the other, or opted for some opinions of one jurist and other opinions of others. One could adhere to the doctrine of an individual jurist, but then freely abandon it in favor of another, if the latter proved, for some reason, more appealing. This passage also speaks of near-fanatic adherence to, and advocacy of, an individual doctrine. Saʿīd b. Sālim

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[35] Ismāʿīl Bāshā, *Hadiyyat al-ʿĀrifīn: Asmāʾ al-Muʾallifīn wa-Āthār al-Muṣannifīn*, 6 vols. (repr.; Baghdad: Maṭbaʿat al-Muthannā, 1951), V, 208. See also Muḥammad b. Ibrāhīm Ibn al-Mundhir al-Nīsābūrī, *al-Ishrāf ʿalā Madhāhib Ahl al-ʿIlm*, ed. ʿAbd Allāh al-Bārūdī, 3 vols. (Beirut: Dār al-Jinān, 1414/1993), I, 166; Fuat Sezgin, *Geschichte des arabischen Schrifttums* (Leiden: E.J. Brill, 1967), Band I , 433, no. 5 (for Hishām b. ʿUbayd Allāh al-Rāzī, d. 201/817); 434, no. 9 (for ʿĪsā b. Abān, d. 221/836); 436, no. 13 (for Muqātil al-Rāzī, d. 248/862).

[36] With minor modifications, I use here Schacht's translation of this passage. See *Origins*, 7. For the original text, see Shāfiʿī, *Kitāb Jimāʿ al-ʿIlm*, 469.

and Zanjī b. Khālid obviously had loyal followings, while 'Aṭā''s admirers seem to have been more dedicated to upholding his doctrine than any that the Successor-jurists had constructed or espoused. But allegiance remained ephemeral, more of a personal choice than a doctrinal commitment. Throughout, the background is one of individual, personal legal doctrine. No opinion is to be located in a non-personal, general or vague context. Each and every opinion is part of a highly individual doctrine.

But how does Shāfi'ī's description of Kufan jurisprudence tally with references to Medinese practice, such as those recorded in Mālik's *Muwaṭṭa'*? Could the collective Medinese practice have amounted to a regional school? Mālik often cites such formulae as "this is the rule (lit. matter) which we follow, on which there is no disagreement and on which I have known the legal scholars in our town to be in agreement";[37] "This is the ruling which the scholars continue to adopt in our locale";[38] and "[This ruling] is a *sunna* among us, and is subject to no disagreement."[39] Different combinations of parts of these statements also occur throughout. Some of these are at times conjoined with the notion of practice, e.g., "This ruling is subject to agreement ... and represents the practice in our town."[40]

These authority statements—and indeed all such statements in the *Muwaṭṭa'*—reflect a common theme, namely, agreement, although it is possible to distinguish several levels of authority embedded in the semantic structures of the variegated castings of these statements. The *Muwaṭṭa'*, in other words, is permeated by the notion of agreement, not disagreement. Mālik's text won the approval of Medinese jurists, who reportedly numbered about seventy.[41] They are said to have "agreed on it collectively" (*tawāṭa'ū 'alayhi*), which purportedly explains why the text came to be called *al-Muwaṭṭa'*. Whether or not we accept this explanation, the fact remains that the treatise is a remarkably accurate expression of Medinese juristic agreement, notwithstanding the fact that a substantial portion of the rules in it are based on Successor, Companion and Prophetic reports. In the substantial chapter on sales,

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37 Mālik b. Anas, *al-Muwaṭṭa'* (Beirut: Dār al-Jīl, 1414/1993), 456, 459, 461 and passim; " *al-amr al-mujtama' 'alayhi al-ladhī lā ikhtilāfa fī-hi wa'l-ladhī adraktu 'alayhi ahl al-'ilm 'indanā.*"

38 Ibid., 583 and passim; "*wa-hādhā al-amr al-ladhī lam yazal 'alayhi al-nās 'indanā.*"

39 Ibid., 244, 463 and passim; "*wa'l-sunna 'indanā al-latī lā ikhtilāfa fī-hā.*"

40 Ibid., 463 and passim; "*al-amr al-ladhī lā ikhtilāfa fī-hi ... bi-baladinā wa-kadhālika al-'amal.*"

41 See, for example, the editor's introduction to the text: *Muwaṭṭa'*, 7-8.

for instance, of the 219 cases, 101 are based on Successor, Companion and Prophetic reports, while 89 appear as Mālik's own opinions,[42] and 29 are determined by Medinese consensus and practice. Of all these, not a single case was deemed to have been subject to disagreement. A random survey of other chapters tends to confirm these proportions. Indeed, Mālik seems never to have been much interested in *khilāf* or disagreement.

The question persists: Could Mālik have been speaking of a regional school doctrine, namely, that of Medina? The answer to this question lies in one of Mālik's reported statements in which he explains the operative terminology that he used in the *Muwaṭṭa'*:

> Indeed, most of the contents of the book are not my own opinions but rather those which I received from many leading scholars. Their opinions were so numerous that I was overcome by them. But these are their opinions which they took from the Companions, and I, in turn, took the opinions from these leading scholars. They are a legacy which devolved from one age upon another, till these times of ours. When I say "My opinion," so it is. [When I say] "The matter subject to agreement," it means that that matter was subject to the consensus of scholars. When I say "The matter as we have it" (*al-amru ʿindanā*), it means the matter which constitutes the practice in our midst and region; which jurists apply; and with which both scholars and laymen are familiar. When I say "Some scholars held," then it is an opinion that some scholars espoused and to which I am inclined. If I have not heard an opinion from them, then I exercise my *ijtihād* according to the doctrine of someone I have met, so that [my *ijtihād*] does not swerve from the ways of the Medinese scholars.[43]

It is obvious that Mālik's juristic repertoire derives from the legal doctrines of individual jurists: most of the legal material in the book he admits to having received from individual legal scholars who had in turn received them from earlier generations of legal specialists, namely, the Successors and the Companions. There is no indication that these scholars culled their doctrine from anonymous legal practice. If an opinion was subject to consensus, Mālik is clear about the individual voices that constituted this consensus. They are again the individual scholars operating in his region or town. And yet, again, if no opinion

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[42] This number is to be taken with caution. Elsewhere, I have shown that not all opinions which appear in the name of Mālik are of his own formulation. See W. B. Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, forthcoming), chapter 2, section II.

[43] Shams al-Dīn Muḥammad Ibn Farḥūn (d. 799/1396), *al-Dībāj al-Mudhahhab fī Maʿrifat Aʿyān al-Madhhab* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1417/1996), 72-73.

existed on a certain matter, Mālik would exercise his *ijtihād according to* "the doctrine of someone" he had known or studied with. If a common, regional doctrine existed, then Mālik would have had no reason not to follow it or not to conduct his *ijtihād* in accordance with it. But there was none.

III

We must now account for references in the sources which appear to have led Schacht and others to accept the notion of geographical schools. It is reported, for example, that Abū al-ʿAlāʾ b. Abī Mūsā al-Ḍarīr (d. 330/941) was learned in "*madhhab al-ʿIrāqiyyīn*," "the way of the Iraqians," or "the Iraqians' school."[44] Similarly, ʿAlī al-Rāzī (fl. mid second/eighth c.) and Qutayba b. Ziyād (d. after 201/816) are said to have followed "*madhāhib ahl al-ʿIrāq*" (the doctrines of the people of Iraq), while the latter is also described as having been one of the leading Iraqian jurists.[45] Zakariyyā b. Yaḥyā al-Sājī (d. 220/835) studied with Muzanī and Rabīʿ (d. 270/883), both students of Shāfiʿī, but he is also reported to have studied under the Egyptians (*akhadha ʿan al-Muzanī wa'l-Rabīʿ wa-ʿan al-Miṣriyyīn*),[46] who were the proto-Mālikīs.

Note, first of all, that there is no direct reference to the region itself but rather to "the people of," or "the jurists of" Iraq, Medina or Egypt (the last of which, incidentally, Schacht did not regard as having constituted a regional school);[47] or, alternatively, the reference is to the Kufans, the Medinese or the Egyptians.[48] In other words, there are no labels such as *fiqh al-ʿIrāq*, *fiqh al-Madīna* or *fiqh Miṣr*. Nor, for that matter, do we find any usages such as *qawl al-Madīna*, or *qawl al-Kūfa*. Such references, had they been present in our sources, would support the existence of regional doctrine. However, the references

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[44] Zayn al-Dīn Qāsim Ibn Quṭlūbughā, *Tāj al-Tarājim fī Ṭabaqāt al-Ḥanafiyya* (Baghdad: Maktabat al-Muthannā, 1962), 88.

[45] Ibn al-Nadīm, *Fihrist*, 290-92, 295.

[46] Ibid., 300.

[47] Schacht, *Origins*, 9; "Egypt did not develop a school of its own, but fell under the influence of the other schools."

[48] Ibid., 281, 290, 291, 292, 293, 294, 300, and passim; al-Qāḍī al-Nuʿmān, *Ikhtilāf Uṣūl al-Madhāhib*, 173, 207; ʿAbd Allāh b. Yūsuf al-Azdī Ibn al-Faraḍī, *Tārīkh al-ʿUlamāʾ wa'l-Ruwāt li'l-ʿIlm bi'l-Andalus*, 2 vols. (Cairo: Maṭbaʿat al-Khānjī, 1954), I, 74; Kindī, *Akhbār*, 475; Abū ʿAbd Allāh Muḥammad b. Ḥārith b. Asad al-Khushanī, *Quḍāt Qurṭuba*, ed. ʿIzzat Ḥusayn (Baghdad: Maktabat al-Muthannā, 1952), 246, 247, 253, 254, 256.

point exclusively to individual authorities who happened to belong to a geographical locale. It is revealing, by contrast, that in some instances, the sources identify certain jurists as *faqīh al-ʿIrāq*, as was true of Muḥammad b. Shujāʿ al-Thaljī (d. 266/879), who was a student of al-Ḥasan b. Ziyād and whose loyalty to the doctrines of his teacher and of Abū Ḥanīf could not be doubted.[49] Again, the locus of doctrine here is personal, not regional, for the emphasis is placed exclusively on personal juristic achievement, not the locale in which the jurist happened to live. That he was the most accomplished jurist in the Iraqian community is a statement about Thaljī, not Iraq.

The jurists who employed geographical designations did not, of course, explain what they meant by them; hence our problem. But we can at times decipher their significance. Muḥammad b. ʿAbd Allāh b. ʿAbdūn (d. 299/911), for instance, is said to have been a leading scholar (*imām*) who was learned in *madhhab al-ʿIrāqiyyīn*, the Iraqian doctrine. [50] He is also described as someone who studied or followed Abū Ḥanīfa and who defended his doctrine by adducing proofs or arguments. Here, "learned in the Iraqian *madhhab*" does not mean that he subscribed to a common, anonymous, and geographical legal school or doctrine, but rather that he mastered the doctrines of the Iraqian scholars, although his loyalties to Abū Ḥanīfa could not be doubted. To study and master the doctrines of more than one scholar was and remained a normative practice which, in and of itself, does not indicate loyalty to all teachers. Loyalty was a matter of doctrine, not pedagogy. Bishr b. Walīd al-Kindī (d. 238/852) is described as having been Iraqian but his loyalties were to Abū Yūsuf, whom he followed (*min aṣḥāb Abī Yūsuf*).[51] Likewise, Hārūn b. ʿAbd Allāh al-Zuhrī (d. 232/846) is reported to have been "one of the jurists who followed the doctrine of the Medinese [and] one of the followers of Mālik b. Anas because of whom (or after whom) they [i.e., the Mālikīs] gained renown."[52] Kindī and Zuhrī were clearly affiliated with the Iraqian and Medinese jurists, respectively, but they were first and foremost the students of two particular masters to whom they were certainly loyal.

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[49] Abū al-Ḥasanāt al-Laknawī, *al-Fawāʾid al-Bahiyya fī Tarājim al-Ḥanafiyya* (Benares: Maktabat Nadwat al-Maʿārif, 1967), 171-72.

[50] Ibn Quṭlūbughā, *Tāj al-Tarājim*, 63; "*kāna imāman ʿāliman bi-madhhab al-ʿIrāqiyyīn yatafaqqah li-Abī Ḥanīfa wa-yaḥtajju la-hu.*"

[51] Muḥammad Ibn Abī al-Wafāʾ al-Qurashī, *al-Jawāhir al-Muḍīʾa fī Ṭabaqāt al-Ḥanafiyya*, 2 vols. (Haydarabad: Maṭbaʿat Majlis Dāʾirat al-Maʿārif, 1332/1913), I, 166.

[52] Wakīʿ, *Akhbār al-Quḍāt*, III, 274; "*kāna min al-fuqahāʾ ʿalā madhhab ahl al-Madīna min aṣḥāb Mālik b. Anas al-mashhūrīna bi-hi.*"

In these instances we are fortunate to have at our disposal the double layered information (1) that these two jurists belonged to a local group of scholars, and (2) that they adhered to the individual doctrine of a master. The absence of the second element in other accounts does not mean that it did not exist, nor does it mean that the first element signifies a common regional doctrine.

The terminology used by our sources must therefore be interpreted with considerable caution and tested against its own juristic background. As noted, Schacht argued that soon after Shāfiʿī, the geographical schools transformed themselves into personal schools, a transformation that "was completed about the middle of the third century of the hijra" [ca. 870 C.E.].[53] Accordingly, if the schools acquired the character of personal allegiance to an individual master after 250/864, then we should not encounter in sources written after this period any significant body of references to the so-called regional schools. But this is not the case. Aḥmad b. Ibrāhīm b. Farwa al-Lakhmī was a Cordoban jurist who flourished after the middle of the third century A.H., and yet he is described as having adopted some doctrines espoused by "the jurists of Iraq."[54] Similarly, ʿAbd al-Ḥamīd b. Khāzim is said to have been "one of the jurists who followed the 'people of Iraq'" but died in 292/904.[55] Abū Yaḥyā Maymūn died in 310/922, but he is given in the biographical sources as someone who followed the "*madhhab* of the Iraqians."[56] The renowned Abū Jaʿfar al-Ṭaḥāwī died as late as 322/933, yet he was commonly associated with *ahl al-ʿIrāq*.[57] The same is the case with the famous Ḥanafī Abū al-Ḥasan al-Karkhī, who died in 340/951.[58] It is even more remarkable that much later writers, such as the historian Ibn Kathīr (d. 774/1372), still used this terminology for fourth/tenth century jurists. Ibn Kathīr describes Muḥammad b. Aḥmad al-Simnānī, who died in 344/955, as having adopted the Iraqian *madhhab*.[59] If there indeed had been regional schools, then how could these jurists have continued to be members therein after they were transformed into personal schools? More importantly, how could they be described in such terms when all

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53 Schacht, *Introduction*, 57-58.

54 Ibn al-Faraḍi, *Tarīkh al-ʿUlamā'*, I, 33. Lakhmī died in 290/902.

55 Wakīʿ, *Akhbār*, III, 293.

56 Khushanī, *Quḍāt Qurṭuba*, 253.

57 Ibn al-Nadīm, *Fihrist*, 292; "*wa-kāna yatafaqqah ʿalā madhhab ahl al-ʿIrāq*." See also Laknawī, *Fawā'id*, 31-34, who states that Ṭaḥāwī studied under Shāfiʿī and Ḥanafī masters and was Kufian in doctrine.

58 Ibn al-Nadīm, *Fihrist*, 293.

59 Ibn Kathīr, *al-Bidāya wa'l-Nihāya*, XI, 243.

of them were known, beyond a shadow of doubt, to have been loyal to their respective personal schools?

These labels were convenient ways to refer to a particular school of jurists who had little in common other than their presence in an unchanging geographical locale.[60] Kufa, in particular, and Iraq, in general, were places in which a group of jurists flourished and spent the entirety of their professional lives. Even by the middle of the fourth/tenth century, Abū Ḥanīfa continued to be known as *al-Kūfī*, the Kufan, as amply attested in the writings of Ibn al-Qāṣṣ.[61] Abū Ḥanīfa, Ibn Abī Laylā, Abū Yūsuf, Shaybānī, Thawrī and a number of others developed their doctrines and built their careers in Iraq, which they never left for any extended period of time, at least not long enough to justify affiliating them with any other region. It was accurate as well as convenient to call them Iraqians, but the designation did not bear any connotation of uniformity of doctrine—and this much was clear to everyone. No one could speak of Ibn Abī Laylā's and Abū Ḥanīfa's doctrines interchangeably; nor could one speak of *any* two juristic doctrines in this manner.

When Abū Ḥanīfa, Thawrī and Ibn Abī Laylā were labeled as Iraqian, no one could mistake what this meant. And when a scholar

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[60] This assertion must not be seen to contradict the proposition that Islamic law, throughout its history, developed regional variations, as I shall briefly argue in due course. Regional variations, however, never constituted or amounted to a regional doctrine or a regional school. That Iraq's overall law and jurisprudence were different in certain respects from average Medinese, Egyptian or other doctrines is a proposition that, in and by itself, would not invite controversy. As I shall argue below, viewing these variations as distinct geographical schools would require us to assign the same designation, even more emphatically, to the later personal schools, since geographical variations within one and the same school were no less evident than in Schacht's so-called geographical, ancient schools.

[61] Aḥmad b. Abī Aḥmad al-Ṭabarī Ibn al-Qāṣṣ, *Adab al-Qāḍī*, ed. Ḥusayn al-Jabbūrī, 2 vols. (Ṭā'if: Maktabat al-Ṣiddīq, 1409/1989), I, 179, 189, 201, 213, 251, 253-54, 257, 313, 315, and passim. The typical usage herein is: "*qālahu al-Kūfī naṣṣan wa-qultuhu 'alā madhhab al-Shāfi'ī takhrījan*," or "*qālahu al-Shāfi'ī wa'l-Kūfī naṣṣan*." Ibn al-Mundhir also identifies Abū Ḥanīfa as the Kufan, although he, unlike the later Ibn al-Qāṣṣ, is inconsistent. At times, Abū Ḥanīfa appears under this nickname and at others as al-Nu'mān. But in no case does Ibn al-Mundhir refer to Kufan or any geographical doctrine. All his authorities are individual: Abū Ḥanīfa, Abū Yūsuf, Shaybānī, Mālik, Shāfi'ī, Abū 'Ubayd, Ibn Ḥanbal, Ibn Abī Laylā, Ibn Shubruma, Awzā'ī, Isḥāq Ibn Rāhawayh, Qatāda, Sa'id b. al-Musayyib, Ibn Abī Laylā, Sha'bī, Nakha'ī, 'Amr b. Dīnār and others. At times, however, he mentions *ahl al-ra'y*, an expression that appears to refer to the collective opinions of Abū Ḥanīfa and his disciples. When these are in disagreement, Ibn al-Mundhir distinguishes between and among them, citing the names of al-Kūfī (or al-Nu'mān), Ya'qūb (Abū Yūsuf) and Ibn al-Ḥasan (al-Shaybānī). See his *Ishrāf*, I, 103, 107, 108, 113, 122, 128, 142, 150, 164; II, 257, 261, 268; III, 117, 123, 175, 250, 255, 256, 258, 267 and passim.

spoke of "Iraqian doctrine," it was understood to be a doctrine held by a certain Iraqian jurist (more on this to follow). Shāfiʿī, however, was not so easy to classify. No one could refer to the Medinese, Iraqian or Egyptian doctrines and necessarily include Shāfiʿī's *corpus juris* in them. Shāfiʿī moved between these three centers and could not be associated with any one of them. He came to be called only by his personal name, since no geographical designation would have been either accurate or meaningful. Any attempt at such a designation would have been utterly confusing.

The case of the Damascene Awzāʿī (d. 157/773) is an even better case in point. From the very beginning, the sources never refer to a Syrian school, but only to Awzāʿī as an individual scholar who later had his own school. There was no point in referring to a Syrian or Damascene school because there was no one who equaled Awzāʿī in terms of juristic prominence. Moreover, like Shāfiʿī, Awzāʿī could not be associated with a particular geographical location since at a later stage of his career he moved to Beirut.[62] His own education and career as teacher tell of highly personalized experience: he studied under ʿAṭāʾ, Ibn Shihāb al-Zuhrī (d. 124/741), Qatāda (d. 117/735), and Muḥammad Ibn al-Munkadir (d. 130/747), and was the teacher of such figures as Thawrī, Mālik and Ibn al-Mubārak (d. 181/797).[63]

Awzāʿī's case lends considerable weight to the argument against Schacht's thesis of a later origin for the personal schools, because, from the middle of the second century, Awzāʿī was held to be a jurist on his own accord and his *personal madhhab* was already in evidence before Shāfiʿī became a mature scholar.[64] The point is that the mature Awzāʿī, during the second quarter of the second century (ca. 740-70 C.E.), and the Awzāʿiyya school—which flourished immediately thereafter in Syria, North Africa and Andalusia—[65] were understood to be personal in character and were never associated with a geographical locale.[66]

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62 Nawawī, *Tahdhīb*, I, 298.

63 Ibid.

64 For the character and spread of the Awzāʿiyya, see Gerhard Conrad, *Die Quḍāt Dimašq und der Madhab al-Auzāʿī: Materialen zur syrischen Rechtsgeschichte* (Beirut and Stuttgart: Franz Steiner Verlag, 1994).

65 Ismāʿīl b. ʿUmar Ibn Kathīr, *al-Bidāya wa'l-Nihāya*, 14 vols. (Beirut: Dar al-Kutub al-ʿIlmiyya, 1985-88), XI, 131; Nawawī, *Tahdhīb*, I, 298; Ibn al-Faraḍī, *Tārīkh al-ʿUlamāʾ*, I, 312.

66 It is instructive that when Shāfiʿī criticized the Medinese and the Iraqians as groups, he consistently singled out Awzāʿī as an individual. See Schacht, *Origins*, 10, 34, 48, 70 and passim. Schacht attempts to create of Awzāʿī's personal school a regional one, but acknowledges that Awzāʿī is its only representative. He is

In light of the later development of the so-called personal schools, any designation of the early juristic groupings as geographical is both historically inaccurate and highly contentious. For if we allow ourselves this liberty, then we must be consistent. Geographical attributions to the early schools not only continued, as we have already seen, but they continued even for much later juristic groupings. The Mālikī Aḥmad b. Sulaymān (d. 296/908) was identified as one of the "jurists of Qayrawān" (*min ahl Qayrawān*).[67] Khushanī described a host of jurists who flourished after the middle of the third/ninth century as having been North African (*'ulamā' Ifrīqiyyā*).[68] Aḥmad b. 'Abd al-Malik, who was known as Ibn al-Mukwī, died as late as 410/1019, yet reportedly was *min ahl al-Andalus*.[69] Similarly, Aḥmad b. Naṣr b. Ziyād (d. 316/928) was *min ahl Ifrīqiyya*.[70] The much later Mālikī biographer Ibn Farḥūn (d. 799/1396) labels a large group of jurists who flourished during the fifth/eleventh, sixth/twelfth and seventh/thirteenth centuries as "the jurists of Andalusia."[71] Among the later Ḥanafīs, Abū al-Layth al-Samarqandī (d. 383 or 393/993 or 1002) refers to a Balkhī school.[72] The seventh/thirteenth century Shāfi'ī Nawawī acknowledges Iraqian, Khurasanian, Marwazan and Ṭabarian versions of his school.[73] If the early Iraqian and Medinese schools were regional, in any sense of that word, then the later schools developed equally, if not more distinctively, a regional character for their doctrine. Andalusian Mālikism, Transoxanian Ḥanafism and Syrian Shāfi'ism are clear examples of this trend. They differed significantly from their counterparts in such regions as Iraq, the Hijaz and Egypt.[74] In sum, the regional character and doctrinal variations of the much later schools was no less in evidence than the geographical differences that existed during the second/eighth century between Iraq,

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impatient with Shaybānī (p. 9) who speaks of "'the Muslims without exception, all the Hijazis and Iraqians together', as if the Syrians did not count."

67 Ibn al-Faraḍī, *Tārīkh al-'Ulamā'*, I, 74.

68 Khushanī, *Quḍāt Qurṭuba*, 242 ff.

69 Ibn Farḥūn, *al-Dībāj al-Mudhahhab*, 100-01.

70 Ibid., 91.

71 Ibid., 101-15. See also 97 ff.

72 Abū al-Layth al-Samarqandī, *Fatāwā al-Nawāzil* (Haydarabad: Maṭba'at Shams al-Islām, 1355/1936), 4. For the distinctive doctrinal character of this "subschool," see Muḥammad Mahrūs al-Muddaris, *Mashāyikh Balkh min al-Ḥanafiyya wa-mā Infaradū bi-hi min al-Masā'il al-Fiqhiyya*, 2 vols. (Baghdad: al-Dār al-'Arabiyya li'l-Ṭibā'a, 1367/1977).

73 Nawawī, *Rawḍat al-Ṭālibīn*, II, 452, 544, 556; V, 613, 633, 640 and passim.

74 See, in this regard, W. B. Hallaq, "Model *Shurūṭ* Works and the Dialectic of Doctrine and Practice," *Islamic Law and Society*, 2, 2 (1995): 109-34, at 125 ff.

Medina, Syria and Egypt. Thus, if we are to refer to the regional character of the latter schools, we ought to take into serious consideration the regional character of the former. That we have not yet managed to build this understanding into our scholarly paradigm perhaps reflects the present state of knowledge.

Be that as it may, consistency does require that we assign the designation "regional schools," with even greater force, to the much later, so-called "personal schools." In doing so, Schacht's label of "geographical, ancient schools" ceases to have any particular significance.[75] For all schools, throughout the centuries, would generally develop a regional character, and this can hardly be denied. But one should not fall into the trap of assuming that "regional character" means distinct and systematic geographical-doctrinal differences. Rather, it means a doctrinal *variation* that arises due to situating a particular system of positive law in concrete social, economic and other contexts, all of which constitute the total sum of a region.[76]

IV

Our evidence has shown that it is false to speak of regional, geographical schools. They simply did not exist. The elimination of these schools from the historical map leaves us with a new problem, namely, if they did not exist, then what sort of transformation into the so-called personal schools took place? We of course cannot argue that a transformation of some kind did not occur, since the character of the schools during the second/eighth century and the early part of the third/ninth was in many ways different from their nature and constitution thereafter.[77]

Having established that the early schools were distinctively personal, not regional, we are now faced with the problem of transformation.

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[75] It is precisely this alleged distinctive geographical character of the second/eighth-century schools which makes Schacht's thesis problematic. Had Schacht posited a regional character for the later schools, his argument would have been sound, but then it would, as we have said, cease to have any significance. In fact, it would have amounted to stating the obvious.

[76] Recognizing and documenting in detail the regional character of the schools and, more importantly, of the sub-schools, is certainly an important item on our scholarly agenda.

[77] Having posited that the geographical schools did not exist, N. Hurvitz concludes that no transformation to personal schools took place. "I contend that the shift from geographical to personal *madhāhib* never took place." Hurvitz, "Schools of Law and Historical Context," 44.

If we assert that the character of the later schools was personal, as conventional wisdom teaches us, then no transformation can be posited. But since it is self-evident that a certain transformation did take place, we have no choice but to ask: What was the nature of the later schools? The answer is that they were not personal in the same sense as the second/eighth and third/ninth centuries schools were. In fact, they were not personal in any significant sense. In the remaining part of this essay we will attempt to provide a solution to this quandary.

Our evidence suggests that the early schools of the second/eighth century were personal in the sense that their followers, who were mostly judges, *muftīs* and the legally-minded, adhered to, or adopted, the doctrines of a particular leading jurist, such as Abū Ḥanīfa or Ibn Abī Laylā.[78] Although this appears to have been the general trend in adopting juristic doctrines, it was not at all unusual that a judge or a layman would adopt a combination of doctrines belonging to two or more leading jurists. Shāfiʿī, for instance, spoke of some Medinese who "preferred Saʿīd b. al-Musayyib, [but] then they abandoned some of his opinions"[79] in favor of those held by others. Mughīra, Ibn Ḥāzim and Dārawardī followed some, but not all, of Mālik's opinions.[80] ʿAbd Allāh b. Ṭāhir al-Ḥazmī, who presided as judge in Egypt from 169-74/785-90, applied in his court the doctrines of Ibn al-Qāsim (d. 191/806), Ibn Shihāb al-Zuhrī, Rabīʿa and a certain Sālim.[81] Serving also as a judge in Egypt between 184 and 185/800 and 801 was Isḥāq Ibn al-Furāt who is said to have "combined" (*yatakhayyar*) the doctrines of several jurists, foremost among them Mālik, whose disciple he was, and, interestingly enough, Abū Yūsuf.[82] It is also remarkable that Ibn al-Furāt was applauded for his masterly knowledge of juristic disagreement.[83]

Our early sources do not indicate what caused legal specialists to adopt or abandon certain doctrines espoused by the leading scholars. But it is safe to assume that the reasons had little to do with methodological or purely juristic considerations. Given the underdeveloped nature of the science of *uṣūl al-fiqh* at the time,[84] methodological

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[78] See, for instance, Kindī, *Akhbār*, 427-28, who speaks of the Egyptian *qāḍī* Ibrāhīm b. al-Jarrāḥ (presided between 205-11/820-26) as having adopted Abū Ḥanīfa's *madhhab*.

[79] Cited in Schacht, *Origins*, 7.

[80] Ibid.

[81] Kindī, *Akhbār al-Quḍāt*, 383.

[82] Ibid., 393.

[83] Ibid.

[84] This legal science remained rudimentary even at the end of Shāfiʿī's lifetime,

consciousness was still rudimentary, at least insofar as the lower rung of the legally-interested—the followers, so to speak—were concerned. Be that as it may, there was certainly nothing in the doctrines of these leading scholars, or in their image as authority figures, to bind their followers to them. In this respect, Schacht was right when he remarked that "personal allegiance to a master" was not a feature of these schools.[85] The followers were free to pick and choose the doctrines they liked; in fact, all evidence points in the direction of complete freedom in the adoption of legal opinions.

This freedom, which essentially amounted to the absence of binding doctrinal authority, was so remarkable that strong traces of it persisted throughout the century to follow. Elsewhere, and with regard to the period beginning with the third/ninth century, I have shown in some detail the pervasive presence of this liberty of movement between and among the otherwise established legal doctrines attributed to the leading Imams.[86] Here, it suffices to say that the early legal "schools"—and I use the term reluctantly—were entirely personal in nature. I say "reluctantly", because "school" does and must mean a common doctrine accepted by a group or association of scholars. In this sense, therefore, there were, strictly speaking, no schools during the second/eighth century. All that existed were individual jurists each of whom espoused a legal doctrine that had no binding authority over those who chose to adhere to, or apply, them.

Enter the later schools. During the second half of the third/ninth century and throughout the fourth/tenth, a new notion of legal authority was emerging. Elsewhere, I have shown that the rise of *taqlīd* as a normative *modus operandi* was symptomatic of the *madhhab*'s final coming to maturity.[87] *Taqlīd* was the external expression of the internal juridical dynamics that came to dominate and characterize the *madhhab* both as an established and authorized body of doctrine and as a delimited hermeneutical enterprise. One of the functions of *taqlīd* was the defense of the school as a methodological and interpretive entity, an entity that was constituted of identifiable theoretical and substantive principles.[88] But the *madhhab* was also defined by its substantive

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but was significantly elaborated by the end of the third/ninth century and the beginning of the fourth/tenth. See W. B. Hallaq, "Was al-Shafi'i the Master Architect of Islamic Jurisprudence?" *International Journal of Middle East Studies*, 25 (1993): 587-605.

85 Schacht, *Origins*, 7.

86 W.B. Hallaq, *Authority, Continuity and Change*, ch. 3, section I.

87 Ibid., chapters 4 and 5.

88 Ibid., chapter 4.

boundaries, namely, by a certain body of doctrine that clearly identified the outer limits of the school as a *collective* entity, beyond which the jurist ventured only at the risk of being considered to have abandoned his school. An essential part of the school's authority, therefore, was its consistency in identifying such a body of doctrine.

On the macro-level, this doctrine was formed of the totality of the founder's (or eponym's) opinions, substantive principles and legal methodology, whether these were genuinely his own or merely attributed to him.[89] Added to this were the doctrines of later jurists deemed to have formulated legal opinions in accordance with the founder's constructed[90] substantive and theoretical principles.[91] These opinions belonged to the inner limits of the school's boundaries. At this macro-level, there appears to have been no question whatsoever as to the doctrinal constitution and substantive make-up of Ḥanafism, Mālikism, or any other school for that matter. The later school was a highly consolidated and integral entity.

On the micro-level, however, the plurality of opinion was formidable, with each school possessing a vast corpus of opinions attributed to the so-called founder, his immediate followers and all later authorities. In other words, these opinions represented the total sum of doctrinal accretions beginning with the founder down to a given moment in the history of the school. Faced with this multiplicity of opinion, the *madhhab* jurists had to control this phenomenon in the interest, among other things, of consistency, determinacy and predictability. The juristic discourse in the hundreds of major works available to us is preoccupied with this problem: Which, of the competing opinions in a particular case, was sound, more sound or not sound at all? More importantly, which opinion was the most authoritative?

In addressing this problem, the *madhhab* jurists gradually developed an apparatus in order to determine the status of legal opinions, an

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89 For doctrinal attributions to the founding Imams, see ibid., chapter 2.

90 For a detailed analysis of the processes involved in the construction of the founders' or Imams' authority, see ibid., chapter 2.

91 In the Ḥanafī school, for example, three categories of doctrine were recognized, the first being *ẓāhir al-riwāya*, attributed to the three so-called founding masters and said to possess the highest authority since it was transmitted through a large number of channels by trustworthy and highly qualified jurists. The second was termed *al-nawādir*, a body of legal doctrine attributed to these masters but without the sanctioning authority of such qualified and numerous transmitters. But a good part of school doctrine was the third category, termed *wāqiʿāt* or *nawāzil*, which is the product of later juristic endeavor. See Ḥājjī Khalīfa, *Kashf al-Ẓunūn ʿan Asāmī al-Kutub wa'l-Funūn*, 2 vols. (Istanbul: Maṭbaʿat Wakālat al-Maʿārif al-Jalīla, 1941-43), II, 1281; Ibn ʿĀbidīn, *Ḥāshiya*, I, 69.

apparatus that was expressed in what I have elsewhere called *operative terminology*.[92] The most important of these operative terms were the *ṣaḥīḥ*, the *mashhūr*, and, interestingly enough, the *madhhab*.[93] These, among others, were highly conducive to narrowing down the scope of doctrinal indeterminacy, and ultimately, to pinning down the school's most authoritative opinion with regard to a particular case. However, the term "*madhhab*," in this context, has a particular significance for us, because it illustrates of the workings of the *ṣaḥīḥ* and the *mashhūr*.

The earliest use of the term *madhhab*, as we have seen, was intended merely to indicate the opinion or opinions of an individual jurist, such as in the pronouncement that the *madhhab* of so-and-so in a particular case is such-and-such.[94] After the third/ninth century the term gradually acquired a more technical sense. It was used to refer to the totality of doctrine adopted by the founder and by those who belonged to his *madhhab*, this *corpus* being considered cumulative and accretive.

There was also at least one other important sense of the term that deserves our attention here, namely, the individual opinion that is accepted as the most authoritative in the collective, cumulative doctrinal *corpus* of the school.[95] In order to distinguish it from the other meanings of the term *madhhab*, we will qualify it as the *madhhab*-opinion.

A distinctive feature of the *madhhab*-opinion was its status as the normative opinion in legal application and practice. It is precisely here that there was an organic connection between the *fatwā* and the *madhhab*-opinion—the *fatwā* being a reflection of litigation and the legal concerns of mundane social life.[96] The *madhhab*-opinion, as the authoritative doctrine of the school, was squarely defined by the practice of *iftā'*: what *muftīs* commonly determined to be the law was the *madhhab*-opinion. In his *Nihāyat al-Muḥtāj*, the Shāfi'ī Ramlī, who drew on several *fatwā* collections, declared that he limited his work solely to the doctrines that were widely accepted and applied in the

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92 Hallaq, *Authority*, chapter 5.

93 For a detailed analysis of these terms, see ibid.

94 For example, see Shāfi'ī, *Umm*, II, 102, 113, 136, 163, and passim.

95 Shams al-Dīn b. Shihāb al-Dīn al-Ramlī, *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj*, 8 vols. (Cairo: Muṣṭafā Bābī al-Ḥalabī, 1357/1938), I, 36-37; Qaffāl, *Ḥulyat al-'Ulamā'*, I, 90, 92, 94, 97, 136, 140, 156, 168, 187, 188, 306; VIII, 22, 44, 120, 162-63, 243, 306, and passim; Ḥaṭṭāb, *Mawāhib*, I, 24. See also Subkī, *Ṭabaqāt*, III, 202.

96 On this theme, see W. B. Hallaq, "From *Fatwās* to *Furū'*: Growth and Change in Islamic Substantive Law," *Islamic Law and Society*, 1, 1 (1994): 29-65, at 32-38.

school (*muqtaṣiran fī-hi ʿalā al-maʿmūl bi-hi fi'l-madhhab*).[97] In legal jargon, Ramlī argues, the term "*madhhab*-opinion" signifies nothing less than the school's doctrine as determined by means of *fatwā*, for the latter "is more important to the jurist than anything else."[98] Ḥaṭṭāb's commentary speaks eloquently of the connection between *fatwā* and the *madhhab*-opinion: the term "*al-madhhab*," he averred, was used by "the later jurists (*al-muta'akhkhirūn*) of *all the schools* to refer to the opinions issued in *fatwā*s." He also remarked, conversely, that any *fatwā* issued on the basis of something other than the *madhhab*-opinion is not taken into consideration (*lā yakun la-hā iʿtibār*).[99]

Now, it is important to realize that the authoritative doctrines of any school—be they the *ṣaḥīḥ*, *mashhūr* or the *madhhab*-opinion—were by no means confined to those propounded by the eponym, the so-called founding Imam, as is attested abundantly in our sources. In fact, the Imam was no more than a *primus inter pares* with regard to the authoritativeness of doctrine. Insofar as practical application of the law was concerned, his doctrine was no less important than those of his followers—immediate and remote—but at the same time it certainly was no more authoritative than the doctrines of those of his followers who came to be recognized as the pillars of the *madhhab*. For example, in the later Shāfiʿī school—as represented in the highly authoritative work of Nawawī—the doctrines of Muzanī, Ibn Surayj, Ibn al-Qāṣṣ, Iṣṭakhrī, Bughawī, Abū Ṭayyib al-Ṭabarī, Maḥāmilī, Abū Ḥāmid al-Isfarā'īnī, Māwardī, al-Qāḍī Ḥusayn, Rūyānī, Ibn Kajj, Ibrāhīm al-Marwarrūdhī, Abū Isḥāq al-Shīrāzī, Ghazālī, and Rāfiʿī, among many others, feature as prominently (if not more so) and as authoritatively as

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97 Ramlī, *Nihāyat al-Muḥtāj*, I, 9.

98 Ibid., I, 36-37.

99 Ḥaṭṭāb, *Mawāhib*, I, 24; VI, 91. The relationship between *fatwā* and *madhhab*-opinion is underscored by the terminology used to identify the process of authorizing and sanctioning legal opinions and doctrines. When a *fatwā* is declared to be in conformity with school doctrine, its status is indicated by expressions such as "this is the *madhhab*-opinion (*wa-ʿalayhi al-madhhab*), "this is the preponderant opinion (*al-rājiḥ fi'l-madhhab*), and "this is the view that is followed" (*al-ladhī ʿalayhi al-ʿamal*). On the other hand, the authorization of the *madhhab*-opinion is expressed by such formulas as "this is the opinion resorted to in *fatwā*s" (*wa-ʿalayhi al-fatwā*, *al-maftiyyu bi-hi*). See Ibn ʿĀbidīn, *Hāshiya*, I, 72; Ḥaṭṭāb, *Mawāhib*, I, 36. Khalīl's highly acclaimed *Mukhtaṣar* contains the authoritative opinions of the Mālikī school, and these, it turns out, were the opinions commonly issued in *fatwā*s. *Ḥaṭṭāb*, *Mawāhib*, I, 2; 'Alā' al-Dīn Muḥammad al-Ḥaṣkafī, *al-Durr al-Mukhtār*, 8 vols. (Beirut: Dār al-Fikr, 1979), I, 72-73; Muḥammad Ibn ʿĀbidīn, *Sharḥ al-Manẓūma al-Musammāt bi-ʿUqūd Rasm al-Muftī*, in Ibn ʿĀbidīn, *Majmūʿat Rasā'il*, 2 vols. (N.p., 1970), I, 10-52, at 38.

those of Shāfiʿī himself. In the chapter on the legality of aliments (*Kitāb al-Aṭʿima*),[100] for example, Nawawī invokes fifty-three authoritative opinions held by nineteen identifiable jurists, the other references being mostly to anonymous collectivities of "associates" (*al-aṣḥāb*) or "the majority" (*al-jumhūr*). Of the jurists identified, seven appear as espousing one opinion each. Būshanjī, Ṣaymarī and Marwarūdhī each hold two opinions, while Abū Ḥāmid al-Isfarāʾīnī, Abū al-Ṭayyib al-Ṭabarī and Ghazālī offer three each. Al-Qaffāl al-Shāshī and Māwardī each claims five, Rāfiʿī six, and Abū Isḥāq al-Shīrāzī eleven. It is neither surprising nor unusual that the relative weight of the great Shāfiʿī in such company amounts to no more than four opinions. Qaffāl, Māwardī, Rāfiʿī and, especially, Shīrāzī clearly achieve a more prominent status in the presentation of authoritative doctrine. In Nawawī's *Rawḍa*—which is as representative as any other major work in the school—Shāfiʿī is hardly a *primus inter pares*, although it is undeniable that, at least nominally, he is the unrivalled, absolute *mujtahid* of the Shāfiʿīs, the school founder, the arch-Imam.

The authoritative body of opinion which itself defined the *madhhab* doctrinally was certainly the work of the later jurists, not of the founding Imam. But this body of opinion had to rest on an interpretive methodology or on an identifiable and self-sufficient hermeneutical system which not only permitted the derivation of individual opinions but, more importantly, bestowed a particular legitimacy and, therefore, authority on them. I say *particular*, because each so-called founder proffered, or was assumed to proffer, his own unique methodology and absolute *ijtihādic* ingenuity.[101]

The *madhhab*, therefore, was mainly a body of legal doctrine existing alongside individual jurists who partook in the elaboration of that doctrine. It was the association of the two, brought about by a common, authoritative hermeneutic and a particular set of principles, that gave the *madhhab* its identity.[102] This constitution of the *madhhab* is therefore dramatically different from the much simpler relationship that existed between the leading jurists and their followers during the second/eighth century and a good part of the third/ninth.

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[100] Sharaf al-Dīn al-Nawawī, *Rawḍat al-Ṭālibīn*, ed. ʿĀdil ʿAbd al-Mawjūd and ʿAlī Muʿawwaḍ, 8 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), II, 537-58.

[101] See n. 90, above.

[102] The political, economic, social, educational and other identities and roles of the *madhhab* are historically and logically posterior to their legal identity. The doctrinal constitution was to give rise to, and define, them.

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There is no doubt then that the notion of regional schools is a fallacy: such networks as existed were neither regional nor had they the structure of schools. At the same time, there is little reason to identify the later schools as personal. That the later schools were eponymous in no way entails that their doctrines were dominated by the teachings of their respective founders. And if these schools were not personal and their earlier counterparts not regional, then there could not have been a transformation from regional to personal schools. The transformation, instead, was from individual juristic doctrines to doctrinal schools.[103] This conclusion not only eliminates the problem of how to explain the transformation from regional to personal schools, but also accords with the natural flow of Islamic legal history. Positing the existence of geographical schools creates an artificial diversion, even a fundamental disruption, in legal history during the first two centuries A.H. (seventh and eighth centuries C.E.) and violates the spirit of legal scholarship which began to bloom some time during the second half of the first century (ca. 670-720 C.E.) as a *highly individualistic venture* and one which rested on personal-*ijtihādic* effort. This is a fundamental point, for while developments in technical, methodological and substantive features of the law most certainly continued, the personal, individual *ijtihādic* character of the law never diminished or ceased to exist, until, that is, the demolition of the Sharī'a's infrastructures in the nineteenth and twentieth centuries. The *madhhab*, in its most developed doctrinal sense, would never have come into being were it not for the need to control this thoroughly individualistic character of Islamic law. It did finally manage to control the effects of doctrinal plurality in the interests of relative uniformity, consistency and predictability, but it did not, nor did it intend to, eliminate this plurality in any way, shape or form.[104] This individualistic character, generated by *ijtihādic* spirit, was and remained for long the soul of Islamic law.

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[103] In *Authority* (ch. 2), I attempt to account for the processes of authority-construction involved in raising some early jurists to the rank of school founders. The question of *why* they, not others, were the object of this construction is one that I will attempt to answer in a study in progress. See also the Preface to *Authority*.

[104] A detailed discussion of this theme may be found in Hallaq, *Authority*, chapters 3, 4 and, especially, 5.