REVIEW ESSAY

THE ISLAMIC SCHOOL OF LAW: EVOLUTION, DEVOLUTION AND PROGRESS.


Reviewed by Clark Lombardi*

Over the last fifteen years, research in Islamic legal studies has focused anew on legal institutions. Scholars have done important work on a number of institutions: institutions devoted to granting advisory opinions on questions of Islamic law,1 courts that apply Islamic law,2 and endowed institutions of legal education.3 One institution that has received increasing attention is the madhhab—the so-called “Islamic school of law.”4 The more scholarship one finds on this last institution, the more intriguing the institution becomes and the more questions beg to be answered. The book under review results from a conference that brought together some of the leading scholars of the madhhab. It addresses some of the questions raised by previous scholarship on the

---

* University of Washington School of Law, Seattle, Washington. 2006 Carnegie Scholar. The writing of this review was made possible, in part, by a grant from the Carnegie Corporation. The statements made and views expressed in this article are solely the responsibility of the author.

4. Just to give a few examples: Christopher Melchert and Wael Hallaq have written monographs exploring the background formation of the Sunni madhhab—focusing on the four that were to triumph over all others and survive up into the modern era. See Christopher Melchert, The Formation of the Sunni Schools of Law: 9th-10th Centuries C.E. (Brill 1997); Wael B. Hallaq, The Origins and Evolution of Islamic Law (Cambridge U. Press 2005). Following up some of the insights of their teacher, George Makdisi, Sherman Jackson and Devin Stewart have also published work that focuses attention on the workings of the Sunni madhhab and the roles that they played, as institutions, in shaping Islamic society. See Sherman Jackson, Islamic Law and the State: The Constitutional Jurisprudence of Shihâb al-Dîn al-Qarâfî (Brill 1997); Devin J. Stewart, Islamic Legal Orthodoxy: Twelve Shiite Responses to the Sunni Legal System (U. Utah 1997). A number of other scholars have also been fruitfully researching and writing on issues that shed light on the workings of the madhhab.
madhhab. In the process, it raises many new questions about the institution, about the survival of the madhhab in modern times and about the institutions that might take over the role that the madhhab traditionally played in Islamic society.

Those who follow contemporary scholarship in Islamic history and law will immediately recognize the debates to which these articles are contributing—often in important ways. As a series of thought-provoking, if sometimes abstruse, articles on the subject of the madhhab, it is hard to fault this book. The essays speak to issues of great concern to contemporary Islamicists. They are substantive and meticulously edited. The index and bibliography are excellent. The authors have included a very helpful glossary that will be appreciated by non-Arabic speakers. Potential readers should be warned, however, that the book’s merits will resonate most strongly with people who already have a strong grounding in Islamic history, Islamic institutions and, ideally, in current scholarship on the madhhab. It is unclear whether a reader not already familiar with recent literature on the madhhab will understand how these contributions help advance modern understanding of the madhhab and, thus, the entire institutional framework of Islamic law in the pre-modern era.

Some readers of this journal may have only passing familiarity with current scholarship on Islamic legal institutions. To help such readers understand the importance of the articles in this book, I will begin this review by explaining briefly what a madhhab is, why madhhabs were so important in the pre-modern Islamic world and what questions have recently perplexed scholars of the madhhab. With such an introduction, the importance of the book’s articles will, hopefully, be apparent.

* * *

The Arabic term madhhab is regularly used to refer to two different (albeit related) things. First, the term madhhab can refer to a common doctrine that is shared by a particular group of scholars. Second, the doctrine can be used to refer to a group of scholars who are united by their joint commitment to exploring and expanding upon that common doctrine.

By at least the twelfth century on, almost all Islamic jurists had chosen to align themselves with the doctrine (madhhab) of a famous legal scholar and his disciples. These later scholars organized themselves in transnational, guild-like structures (madhhabs) whose raison d’être was to struggle to fully understand an earlier scholar’s doctrine and to determine how the scholar would rule on issues in the
present day. These madhhab were also responsible for training a new generation of scholars to carry on this task of elaborating the law according to the doctrine/school of the founding scholar. With the assistance of these guild-like institutions, interpretive communities emerged, each devoted to interpreting the shari’a in a manner that was consistent with the doctrine of a great early scholar.

After years of competition in the Sunni world, four of these guild-like madhhabs triumphed and came to be considered the joint bearers of orthodox Islamic thought. Although these four groups disagreed on points of doctrine, their respective doctrines (madhhabs) were each recognized as “orthodox.” (As a formal matter, Shi’a jurists recognized only one madhhab, though there was apparently considerable pluralism within that single madhhab.) The formation of madhhabs, the madhabization of scholarly organization, and the ultimate triumph of four madhhabs as the arbiters of Sunni orthodoxy shaped the course of Muslim political, legal and social history. The four surviving Sunni madhhabs presided over a rich and pluralistic legal culture. These four groups elaborated different but equally “orthodox” views of law. The legitimacy of state law was understood to rest in some—constantly renegotiated—fashion on the ruler’s willingness to ensure that the laws that he imposed were consistent with the core rules and principles of an orthodox interpretation of Islamic law.

In the modern era, many Muslims have rebelled against the institution of the madhab, arguing that Muslims should not be constrained to follow one evolving tradition of Islamic law. Modern states have encouraged this trend, sometimes deliberately and sometimes incidentally, by pursuing policies that sapped the economic strength, social standing and political power of the madhab scholars.

Until quite recently, scholars of Islamic law in both the Muslim world and the non-Muslim West focused more on Islamic legal doctrine than they did on the institutions that developed it. Recently, however, scholars have begun to consider the ways in which institutional structure actually helped explain doctrinal development. The turn to the study of institutions focused scholarly attention anew on the evolution of the madhab and reminded scholars of how many questions remained unanswered or only partially answered: How and why did these fascinating and influential scholarly communities first develop? What was it about their philosophy or institutional structure that allowed the four surviving Sunni madhhabs to triumph over others and then to thrive for so many centuries? How did they negotiate dissent within the madhab and how did they negotiate the peculiar doctrine of mutual
orthodoxy? How did states engage with the pluralistic legal culture fostered by the madhhab and develop a body of state law that was widely accepted as legitimate? And what was the relationship between the institution of the Sunni madhhab and the Shi’ite scholarly institutions that were entrusted with the training and licensing of Shi’a jurists?

In English alone, a large number of excellent monographs and articles have focused recently on the subject of the madhhab. But they have only made clear how much we still need to learn about this institution. Bearman, Peters and Vogel’s book grows out of a conference that tries to fill in some of the open questions raised by these works.

The contributors to this volume are, for the most part, established experts in Islamic law and history. They are, however, scholars coming from different disciplines and focusing on Islamic courts in different locales and in different eras. Furthermore, they are interested in different aspects of the madhhab: some focus on doctrine, some on institutional mechanisms, some on relations with the state and so on.

Given the diversity of the articles and the way in which they are written, non-experts might have benefited from a prefatory essay that would summarize the state of the field of madhhab studies after the corrections in this collection—an introduction similar to the forty-five page introductory article found at the beginning of Muhammad Khalid Masud, Brinkley Messick and David Powers’ recent collection of articles on Islamic courts. Apparently accepting that this book will be read primarily by Islamicists, the editors of this book give the reader only a short introduction to the history of the madhhab, and a short preview of the articles and then let the reader move quickly to the articles themselves.

The first article by Bernard Weiss examines discussions of the madhhab in classical works of Islamic legal theory. Scholars who wrote

5. For a partial list of monographs, see supra n. 3. A more complete list of articles is included in the bibliography to this book.


7. It is easy to understand why the editors chose to do this. What time was not spent on writing an introductory article was clearly well used. As noted already, this is an extremely polished work. The editors obviously spent a great deal of time selecting and editing a particularly rich group of articles. As it is likely that most readers will be Islamicists, it seems a perfectly reasonable choice to present them in polished form without taking the time to give information that for most readers will be unnecessary. Precisely because the articles are so good and the book so polished, it would seem a shame if non-experts who are otherwise willing to engage with these articles find themselves unable to do so because they have too little context to make sense of them.
in the area of *usul al-fiqh* tend to focus on how scholars did (or should) perform *ijtihad* (the act of reasoning out an Islamic legal ruling from revealed texts). However, as Weiss shows, the texts often discuss the rules that bind the scholar who has renounced the practice of unmediated *ijtihad* and has placed himself in a posture of *taqlid* (which requires someone to reason out Islamic legal rulings *not* from a study of the revealed sources, but rather by a process of precedential reasoning from the rulings previously derived by scholars in one’s *madhhab*). Some modern Muslim and Western scholars have viewed the *madhhab* and its use of *taqlid* somewhat unsympathetically, painting them as constraining creativity rather than harnessing creativity in order to enable Islamic law actually to function effectively as a body of positive legal norms. Weiss, however, provides a sympathetic “insider’s” view of interpretation as it was performed by scholars associated with a *madhhab*.

Steven Judd’s article ruminates upon the careers and *oeuvres* of several scholars who lived before al-Shafi’i, Abu Hanifa, Malik b. Anas and Ahmad Ibn Hanbal (the scholars who are the eponym of the four surviving Sunni *madhhabs*). Judd asks whether some of these earlier scholars could be thought of as members of a single *madhhab* that was, like the four surviving Sunni *madhhabs*, popular among people in a number of different regions. This provocative idea challenges some of the traditional assumptions about the *madhhabs*. The article is well-argued and supported.

Eyyup Said Kaya’s contribution to this collection explores the evolution of thinking among scholars committed to perpetuating and expanding upon the doctrines of Abû Hanifa—that is to say, among scholars associated with the Hanafi *madhhab*. Kaya points out that, among these scholars, different groups disagreed about how to interpret the doctrine of the master and about when, if ever, to depart from it. He explores the reasons—ideological, theoretical or practical—that might have inspired these differences. The writing is lucid and provides welcome examples to illustrate the author’s points. In papers such as this, however, one feels the lack of contextualization, either in the endnotes or in a preface. The evolution of the Hanafi school is a subject that has recently received considerable attention, and one wishes that he had discussed how his work fits in (or problematizes) the work of other scholars, such as Brannon Wheeler. That said, it presents a number of important ideas in a very clearly written way.

---

The fourth, fifth and seventh contributions each deal with the evolution of the Maliki madhhab in Islamic Spain. For those who do not read Spanish, it is always welcome to find work in English by scholars such as the contributors to this volume—particularly when, as here, they are generous about summarizing other recent scholarship in Spanish and situating their findings in the context of these other works. We are particularly fortunate that these contributions focus on slightly different (though overlapping) periods of time and on different aspects of the Andalusian Malikism. Together, these articles provide the best available summary in English of what we now know about the evolution of Andalusia’s Islamic legal institutions and their fascinating contributions to Islamic legal thought.

Alfonso Carmona’s contribution to this book discusses the early evolution of a Maliki madhhab in Spain. Challenging some old assumptions, he notes that the earliest scholars in Spain cannot be characterized as Malikis. Rather, they followed and taught the doctrines of the Syrian scholar al-Awza’i—whose influence was discussed earlier by Judd. Gradually, Spanish scholars of Islamic law began to train in the Arabian peninsula, where they studied the doctrines associated with Malik b. Anas. These scholars, Carmona asserts, brought back contradictory versions of his “doctrine” leading to a period of great pluralism among self-styled followers of Malik. Eventually, Carmona argues, a more uniform interpretation of Maliki law came to be adopted as the starting point for future reasoning—a process which limited but did not eliminate the characteristic pluralism of Spanish Maliki thought. The process of identifying a core of Spanish Maliki doctrine was carried out in large part by scholars who felt compelled to come up with an interpretation of Islamic law that was consistent with the practice of the Prophet as reported in the hadiths and that could serve as the core of a coherent body of law to be applied in the courts of the rulers. Malikism would, during this period, become the official madhhab of Spanish Muslim rulers.

Maribel Fierro’s article picks up the story of Spanish Malikism at just the point where Carmona begins to wrap up his story. She is interested in the process by which a madhhab became an “official” madhhab, what made a ruler try to associate itself with a particular madhhab, and how a close relationship with the state might have affected a madhhab and its scholars. Hers is a clearly written, erudite and extraordinarily interesting article—particularly when read against other recent works exploring the interrelationship between madhhabs and the state—such as Sherman Jackson’s discussion in a recent
monograph of the Shafi‘i madhhab as the official madhhab in medieval Egypt and Rudolph Peters’ article in this volume on the Hanafi madhhab’s role as “official” madhhab of the Ottoman Empire. 9

Camilla Adang adds to her published work on the Spanish Zahiri madhhab. This intriguing madhhab has fascinated European historians of Islamic law since Goldzieher. It appeared suddenly, produced works of great sophistication, and then, equally rapidly, disappeared. Sadly, for readers first coming to learn of this madhhab, Adang did not summarize some of her other works. Here she focuses on a fairly narrow topic, which will probably interest primarily specialists in Zahirism or of Islamic thought in Spain. Still, her account of Zahiri scholars struggling to establish themselves in a state that had formally committed itself to the Maliki madhhab is interesting to read in light of Carmona and Fierro’s contributions.

Moving away from the fairly cohesive line of articles on Spain, the book provides a variety of articles discussing different aspects of madhhab in other parts of the world. Daphna Ephrat’s article discusses the relationship between the madhhab and madrasas in the medieval Middle East. Madrasas have a bad name today, when many people associate them with the institutions that proselytize for radical Islam. In the period that Ephrat focuses on, however, madrasas were the secondary schools and colleges of Islamic society—physical buildings associated with endowments from rulers and members of the elite in which successive generations of faculty were hired to teach students. Ephrat argues that the spread of madrasa helped to cement the supremacy of the four surviving Sunni madhhab and also to create a culture of mutual respect among the scholars of competing madhhab. It was thus crucial to the evolution of a culture in which four quite different visions of the shari‘a were considered mutually orthodox. This interesting piece helps us to think about the way in which changes in Islamic institutions may affect the Islamic legal world-view.

Daniella Talmon Heller moves our attention from eleventh-century Baghdad to thirteenth-century Syria, but also tries to understand the way in which the four surviving madhhab fit into a larger social and institutional picture. She focuses on the issues that divided members of different madhhab and created tensions within Islamic society. It is a somewhat sprawling work, evocative, but lacking a clear “take-away” message. One hopes that she will pursue some of her very intriguing findings in a longer work or in a series of works.

9. See Sherman Jackson, Islamic Law and the State, supra n. 4.
Robert Gleave has contributed the only work dealing with the concept of the *madhhab* among Shi’a Muslims. Devin Stewart has elsewhere argued that early Shi’i legal scholars structured their legal institutions in response to the rise of the Sunni *madhhabs* among their Sunni brethren. In an elegant essay, Gleave here demonstrates convincingly that late classical Shi’i scholars conceptualized themselves as members of a *madhhab* whose purpose and interpretive toolkit were similar to the methods and interpretive toolkits of the Sunni *madhhabs*. In the process, he gives readers a glimpse of the subtlety that one finds in Shi’i interpretive theory—a subject that is sadly understudied in the United States.

Moving back to the Sunni world, Rudolph Peters has contributed an important article that explores the relationship between the Hanafi *madhhab* and the law of the Ottoman state up through the nineteenth century. The article is extremely interesting to read against the backdrop of Kaya’s and Fierro’s contributions, each described above. Fierro explored some of the nuances of the relationship of the Maliki *madhhab* to the Andalusian state. As noted already, Fierro described how the institutionalization of the Maliki *madhhab* as the official *madhhab* of the state affected the state, how it affected the *madhhab* and how it affected the practice of Islamic scholarship among people who embraced *madhhabs* that, although they were “orthodox,” were not official. Peters engages in a similar exercise by analyzing the profound effects of the relationship between the Hanafi *madhhab* and the Ottoman state. The Ottoman empire reached its zenith centuries after Islam had been driven from Spain. The empire itself was highly bureaucratic and its rulers self-consciously saw themselves as administrators of a fair and impartial justice. Over time, both of these imperial characteristics became magnified. Although the rulers of the empire had a historical commitment to the Hanafi *madhhab*—relying on scholars of that *madhhab* for judges and for advice—they were apparently frustrated by the pluralism of Hanafi doctrine. Different scholars interpreted the schools’ doctrine in quite different ways. If the official law of the state was to remain a version of “Hanafi law,” scholars and rulers would have to find a way to distill, from the ruminations and competing visions of different Hanafi scholars, a single “official” version of Hanafi law. Peters traces the evolution of this official version and discusses briefly how the Ottomans responded to the challenge of trying to apply “Hanafi” law in areas where the majority of the population was not

10. *See generally* Stewart, *Islamic Legal Orthodoxy*, *supra* n. 4.
Hanafi.

The last three articles trace the troubled history of the Sunni madhhab in modern times. Today there is little evidence of the old institutional structures that nurtured communal identity of scholars as members of an “interpretive community”; and as a result, there is little commitment to exploring and elaborating upon one of the evolving bodies of Islamic law that were slowly developed from the ninth though the nineteenth centuries by jurists who counted themselves members of a particular madhhab and who felt a responsibility to be true to the inherited doctrines of their madhhab.

Brinkley Messick’s contribution builds on his widely respected scholarship on fatwas (juristic opinions on questions of Islamic law). He uses fatwas from the turn of the century to explore the ways in which the traditional patterns of madhhab practice were made obsolete by the changing nature of communication, the development of printing in the Islamic world and the need for specialized knowledge to understand the increasingly complex modern world.

Mark Cammack also explores the brave new world of modern Islam in which the classical madhhab have lost their institutional grounding and their grip on the imagination of the orthodox and are being replaced by new interpretive communities. Cammack explores the attempt by some modern Indonesian Islamic thinkers to develop what they consider a new “Indonesian madhhab.” Obviously this is not a madhhab in the classical sense. It is not a doctrine developed by a generation of scholars who accept the authority of a particular past scholar from Abbassid times. Indeed, the thinkers who tried to establish the new “madhhab” began with the assumption that one could not be bound by interpretations of secondary sources that were, inevitably, infected by the biases of a particular culture. Rather, one should go back to the original revealed sources of the religion, identify the rules that are laid down in the revealed texts, understand the range of different possible interpretations and adopt the one that is most consistent with the inherited legal culture of one’s nation. Through this process, they argued, one can create a new “national” doctrine that will evolve in the hands of the nation’s legal authorities. Depending on how one defines the term madhhab, this could be conceptualized as a form of national madhhab. And Cammack shows how, despite skepticism from more
traditional religious authorities, some Indonesians have tried to organize
groups of scholars who can develop such a body of law and how these
scholars have tried to characterize their work as steps in the formation of
a type of national madhhab.

The book finishes with an article by Ihsan Yalmiz, which explores
the relationship of the average Muslim today with the madhhab. The
article concludes that the trend towards skepticism about traditional
madhhab, already suggested by Messick and Cammack’s contributions,
is spreading among literate Muslims. According to Yalmiz, a huge
number of voices are speaking today on questions of Islamic law in a
way that either ignores traditional madhhab thinking or combines the
doctrines of different madhhab in a haphazard way that would have
been repugnant to classical jurists. The article concludes with the
thought that perhaps Islamic civil society groups might help bring order
to the chaos by establishing large groups of coherent interpretive
communities that might constitute new quasi-madhhab. But frankly, it
does not provide much reason to believe that this is actually occurring.
It is a depressing note on which to end.

*     *     *

In sum, this book is the record of a remarkable conference. Some
of its contributors have helped illuminate how the institution of the
madhhab, in its classical form, played a major role in establishing the
legal infrastructure of highly successful pre-modern Islamic societies. In
so doing, they have answered some questions and left us with many
more to answer. They show how in the pre-modern era, the institution
of the madhhab evolved with changes in society and provided Islamic
society with a variety of coherent legal doctrines that the state or
individuals could make use of in highly productive ways. Other
contributors, like Messick and Cammack, have looked at thinkers who
tried to develop a compelling modern vision of Islamic law and in the
process have created the possibility of new interpretive communities that
could conceivably play the role once played by the madhhab. One can
only hope that Yalmiz is wrong in suggesting that none of these
communities (or any other modern analogues of the madhhab) can
achieve a critical mass of followers among the Muslim polity. The
Islamic legal tradition is one of the world’s great intellectual
achievements, and it still has much to offer. But to do so, it will need to
establish effective institutional structures teaching coherent doctrines—
ideally across national boundaries. In short, it needs a successor to the
classical madhhab.