

APPENDIX A

Determining the Position of the Hanafi School



THE LEGAL DISCUSSION REGARDING whether Isha is obligatory in the absence of its time has been somewhat glossed over in the main chapter. This is partly to avoid any confusion in the minds of lay readers about whether they are allowed to simply miss isha and witr entirely during the long months of summer, which is entirely unhelpful and should be avoided – in the author’s opinion – out of *sadd al-dhara’i*. It is also because the discussion is a complex and involved one that evolved over centuries within the Hanafi madhab and was contested on a number of different levels.

As such, from an academic perspective, the discussion provides a fascinating case study into the inner workings of the Hanafi madhab. Specifically, it deals with the inter-generational relationship between earlier and later scholars, and proffers an invaluable insight into the inter-penetration of ‘pure’ fiqh with a number of sciences more usually related to tradition, such as the disconnection and multiplicity of chains of narration, the disambiguation of similarly named scholars and the principles of giving precedence to one of several conflicting narrations. The looming facts of historical context – specifically the Mongol near-annihilation of the eastern Islamic world – also play a crucial role in the development of this ‘pure’ legal discussion.

How is the ‘Good’ Determined?

The purpose of this excursus is not to provide exhaustive detail on how the legal schools came about; that is a vast topic about which much has been written previously. Indeed, at the time of writing

this, the early development of the Hanafi madhab specifically is the subject of no fewer than three *current* PhD theses of which the author is aware. Nonetheless, in order to provide some context to the discussion that follows, perhaps an overview would be helpful.

Central to the venture of Islam are three concepts: the Divine Being, the human soul, and guidance: the way for the latter to attain unto the former. After acknowledging the Divine, man's approach is thereafter mediated by his works, which bring either proximity or distance from his Creator. It is made abundantly clear from the very beginning of the Divine address – Fatihah and the opening verses of Baqara – that man is in need of guidance on his journey to God, and that God has communicated this very guidance by means of revelation. Revelation encompasses what have historically been accepted by consensus of all Muslims as the primary sources of moral guidance: the Quran and the Sunna of the Prophet Muhammad ﷺ.

The fundamental role of revelation, therefore, is as an arbiter of direction: will the commission or omission of a particular human action bring about proximity or distance? The question of whether the intellect, unaided by revelation, is able to determine the eternal consequences of an action is one that has been debated back and forth throughout Muslim history. It is safe to say, however, that it is widely accepted by all parties that in terms of pure worship, sure guidance can only be attained through revelation. The intellect may well be able to deduce that deception, for example, distances one from the True (*al-Haq*), but it would be powerless to infer the specific form of the ritual prayer in the same manner.

The vast scope of human circumstances, and their responses to them, is effectively infinite; one might find oneself in – and reacting to – any imaginable situation at any given time. Could anyone have imagined – prior to the last hundred years – that we might one day face questions about how to pray in zero-gravity? The first generation of Muslims had the utterly unique experience of having their circumstances commented on – in real time – by God Almighty. The revelation descended by day and night upon the utterly trustworthy Messenger ﷺ in effective answer to their dilemmas and queries, sometimes before their very eyes. Any question about what was the right thing to do need only be referred to the Prophet ﷺ and an indubitably correct answer would be given.

The generations that immediately followed the Final Messenger ﷺ were faced with a challenge of truly daunting proportions; suddenly orphaned, left to their own devices to determine the right for themselves as best they could. Granted, they had a detailed map, but it was no longer possible to consult their sure guide along the way. The dismay of the companions is manifest in a number of narrations: the weeping woman that Abu Bakr and Umar encountered who said, *'I weep not for the Prophet ﷺ for he is with his Lord. I weep for us, for revelatory guidance has surceased'*, or a forlorn Anas declaring, *'when the Prophet ﷺ entered Madina, everything was illuminated, but when he passed away, everything became dark, and we knew not which way to turn.'*

When a situation arose, therefore, the greatest of these companions were looked to for guidance by proxy. Their solution was to determine if revelation had provided explicit guidance on this matter: was there anything in the Quran or from the Prophet ﷺ about it? If that were claimed to be the case, could it be verified that the Prophet ﷺ had in fact said that, or was it an error – or worse, a lie? If the former, were there any extenuating circumstances or exceptional conditions relating to it, or was it a general guidance? If there was nothing explicit from revelation, could anything be inferred from revelation that might illuminate the way forward? Hence we see in these earliest generations the first seeds of what would become unquestionably the two greatest intellectual bequests of Muslim civilisation relating specifically to religious guidance: the sciences of transmission verification (*riwaya*) and hermeneutics (*diraya*).

These solutions were taken forward by the great Imams of the early generations, initially by Abu Hanifa and his school. The plethora of verses, sunnas, hadiths and opinions were examined for evidence of an underlying pattern. On what basis was one hadith transmission preferred over another? How might one reconcile an apparent contradiction between a Quranic verse and a Prophetic hadith? On what basis did the companions issue different opinions about what was the 'right thing to do?' Some of these Imams became so famed for their almost preternatural ability to accomplish this – their genius, both intellectual and spiritual – that their names were revered throughout the Muslim world: the very presence of Malik

was sufficient to still the tongues and questions of even his closest companions.

The most successful of these intellectual endeavours emerged with a set of universal, logically coherent, textually faithful juristic principles by which – technically – revelation could be mined for the answer to *any* question or set of circumstances that might emerge. In the case of the Shafii school, the Imam himself explicated some of his own juristic principles in his master-work, *al-Risala*. For the Hanafis, the science of ‘hypothetical jurisprudence’ was inaugurated, and a vast body of nearly 100,000 legal rulings were determined – answers to scenarios posed, some real, many imaginary.

What is a Madhab?

It is at this point that the question of what a madhab actually is needs to be clarified. Is it primarily one or more charismatic individuals, held in such veneration by others that their word – literally – became law, as exemplified by Malik? Is it the codification of an internally consistent set of juristic and hermeneutical principles that may be applied to a particular question to determine an ethical outcome, as with Shafii’s *Risala*? Or is it a compilation of actual legal rulings, derived by such a process, that may be relied upon and upon which further derivation is possible, as exemplified by the Hanafis?

The short answer is that a madhab is a combination of all three in varying degrees: a set of universal juristic principles, with their accompanying legal rulings, set out and promulgated by colleges of highly competent, widely revered specialists, which have survived a rigorous process of internal and external critique to emerge stronger and practicable. A madhab, therefore, is effectively a centuries-long process of inter-generational co-operation in which each subsequent layer reaffirms and builds on the work of those that came before them.

The evolution of the scholarly tradition of Islam is – in this manner – rather unlike the evolution of modern science. The latter is typically characterised by periods of status quo, followed by a discovery that upturns everything humans thought they knew about the universe, replacing it with an entirely new – even more convincing – paradigm. Geo-centricity is replaced by heliocentricity; gravity by

space-time curvature; as humanity's ability to observe sharpens, our preconceptions are challenged. Not so with the *ulum al-din*: science looks forward to an imagined utopian future, religion gazes back at a paradise lost. Rather than a constant flight from the imperfection of ignorance towards a less-imperfect knowledge, the journey of religion commences with an instant of shining clarity, of utterly unsullied understanding: the perfect moment of revelation. Every day thereafter is a day further from that apex of truth: the ripples diminish and the echoes distort amidst the eddying currents and dark caverns of the human soul. The Prophet ﷺ himself said, '*there is no day save that it is worse than the one that preceded it*'. Spirituality bends toward entropy.

Perhaps it is not surprising, then, that the inaugurators of the legal traditions saw themselves primarily as preservers rather than pioneers. Malik viewed himself as the last guardian of the Islam of the Prophet's city – his role, to conserve the pure understanding of the earliest Muslims. Shafii was renowned as the last scholar to speak pure Prophetic Arabic, a task that had required seventeen years living with nomadic tribes and the memorization of two million lines of pre-Islamic poetry. Every great leap forward in the evolution of the religious sciences was in reality an attempt to recapture a clarity of understanding – an essential synthesis of mind, body and soul – that once lived and breathed, but had faded into cherished memory.

The Transmission of the Madhab

This romantic impulse takes on a practical import as the madhabs travel onwards. The great scholarly traditions of the legal schools were as concerned with the preservation, transmission and codification of earlier scholars' conclusions as they were about determining the answers to new situations. This is inherent in the word itself; tradition is from the Latin *traditio* – a handing down. There was virtually no need, except in rare circumstances, to cover ground already well-covered by previous scholars – Imams who, in any case, outstripped moderns in their clarity of understanding of the Prophetic way by virtue of their mere proximity to the first generation. Legal precedent – much as understood in modern times – was a powerful indicator of the 'good'. It was only in situations of

changing circumstance – or other such cases – that one might return to the previous rulings to modify, amend or annul them as required, and then too, only as prescribed by the law itself.

In any case, the multitude of rulings handed down was assumed to have already been subjected to a rigorous process of peer-review and critique in their own generation: such deference and veneration as was extended to great scholars of the past (now unable to defend themselves) was most certainly not proffered to contemporaries, whose views could be challenged and dismissed by means of incisive intellectual cut and thrust. Additionally, there was no cataclysmic paradigm subversion lurking around the corner: God was all-Knowing, His Prophet ﷺ, utterly trustworthy, His guidance, an absolute reflection of transcendent reality.

Given the acceptance⁴⁰⁶ of the conclusions of those who had come before, it became vitally important, as time went on, to ensure that the legal precedent handed down had been transmitted accurately. If one was going to rely on an opinion of Abu Hanifa, for example, it was only proper that one should determine that he had actually *given* it. Thus, from the very earliest days of the madhab, a process very similar to that of hadith verification was applied to the transmissions of legal opinion from the revered early scholars of the madhabs. If hadith authentication was a preservation of the words of revelation, the authentication of legal opinion was a preservation of the understandings of that revelation.

In the case of the Hanafi school – a vast geographical entity stretching from western China to the Mediterranean, and from the Caucasus mountains to the Hindu Kush – a hierarchical canon was determined:⁴⁰⁷ works traceable by multiple strong chains of scholarly transmission to authors of different levels of mastery. Greatest and most reliable of these were the *Zahir al-Riwaya*:⁴⁰⁸ the ‘Manifest

⁴⁰⁶ The question of precisely how critical – or otherwise – this acceptance was is beyond the scope of this overview, but is a subject that deserves significant further examination.

⁴⁰⁷ There are a number of approaches to grading the conclusions of the Hanafi school, the most accepted of which is the tri-fold division between *Zahir al-Riwaya*, *al-Nawadir* and *al-Waqi'at*. Ahmad al-Naqib in his modern magisterial survey of the Hanafi school lists an exhaustive 23-fold hierarchy (al-Madhab al-Hanafi 216).

⁴⁰⁸ The great fame of this collection should not disguise the fact that the term ‘*Zahir al-Riwaya*’ itself was a later appellation, and precisely which works constituted it was subject to a debate not settled for at least a couple of centuries after their composition. This was

Transmissions' of Shaybani, the great student of Abu Hanifa himself, who had recorded in painstaking detail the legal positions of the Imam and his major students.⁴⁰⁹ Thereafter came works either less strongly ascribed to paradigmatic figures, such as *Kitab al-Athar* of Shaybani, or well ascribed to later figures in the school, like the *Waqi'at* literature of 3-4th century mujtahids.

A similar process was later applied to the summary works of the school: certain summaries of Hanafi fiqh (*mutun*) were deemed reliable in terms of the fidelity of their transmission of the early school, whilst others less so. Additionally, certain commentaries or other compendia were considered appropriate to give fatwa from, whilst others were deemed inappropriate on a number of bases, including uncritical transmission of weak opinions, uncertainty about authorship, rarity of manuscript copies, departure from the transmitted positions on the basis of personal opinion, abstruseness or excessive brevity. There were other factors that related specifically to manuscripts of older works and the reliability of transmissions from them. Was the copy genuine? Who actually wrote it and – in the pre-print era – might a scribe have made an error of transcription?⁴¹⁰

This gradation did not merely apply to scholarly works, but to the scholars themselves. A number of hierarchies of ijthihad were proposed, debated and either accepted or rejected by scholars of different schools, largely in order to determine what type of ruling might be accepted from whom. Might the views of a fourth century Hanafi be preferred over the diametric opposite from the Imam himself? How might one measure the opinions of one scholar over another, given the extra-ordinarily high level of competence of both? Given the solemn weight of tradition and the faith placed – not unjustifiably – in the considered opinion of earlier scholars, the task of sifting through a thousand years of debate and discussion,

not dissimilar to the debates around the codification of the hadith mother-works in the form of the '*Sihah Sitta*'.

⁴⁰⁹ The six large works that comprise al-Zahir al-Riwaya – collectively about 80,000 legal rulings – were summarized by al-Hakim al-Shahid (d334H) in al-Kafi, which was in turn expansively commented upon by Sarakhsi (d478H) in al-Mabsut, perhaps the most important extant work of the madhab.

⁴¹⁰ For example, one of the discussions about the matter in question – the obligation of isha in the absence of its time – revolves around the omission or presence of a single word: *laysa* ('not') – present in some manuscripts but absent in others.

evidence and counter-evidence, was considerable and formed much of the preoccupation of later scholars. The gates of ijihad were never closed, but often there was too much work to be done before they could even be approached.

This introduction, though somewhat lengthy, merely skims the surface of some of the issues that needs must be considered when considering the adoption or otherwise of a ruling. As is no doubt clear, the statement 'the Hanafi madhab says...' is deceptively simple, and not as straightforward as it might first appear. In the discussion that follows, on determination of the legal position on performance of isha in the absence of its time, the importance of many of the factors mentioned above will become evident.

