

ing the FBI or CIA, and of mosque invasions and deportations. The actions of the U.S. government have encouraged various media personalities to attack Islam and Muslims, leading in turn to several Constitutional debates about the First Amendment. As a result, immigrant Muslims are debating to what extent they can or should become "Americans."

SEE ALSO African American Religions, article on Muslim Movements; Malcolm X; Nation of Islam.

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AMINAH BEVERLY MCCLLOUD (2005)

ISLAMIC LAW

This entry consists of the following articles:

SHARĪ'AH
PERSONAL LAW

ISLAMIC LAW: SHARĪ'AH

Sharī'ah is an Arabic term used to designate Islamic law. It originally referred to a path trodden by camels to a water source, and the commonly used Arabic phrase *al-sharī'ah al-islāmīyah* may be translated as "the Islamic way." In the case of Islamic law, the way is one that leads the righteous believer to Paradise in the afterlife. The *sharī'ah* is not deemed a religious law by virtue of the subject matters it covers, for these range far beyond the sphere of religious concerns strictly speaking and extend to the mundane affairs of everyday life. Rather, its religious character is due to the Muslim belief that it derives from divinely inspired sources and represents God's plan for the proper ordering of all human activities. Although Muslims agree that they are bound by the *sharī'ah*, the interpretations of its requirements have differed historically according to sectarian and

school divisions and, in modern times, also according to differing views of how the *sharī'ah* applies in the changed circumstances of present-day societies.

The interpretations of the requirements of the *sharī'ah* are contained in the *fiqh*. In a general sense, *fiqh* means "knowledge" or "understanding," but it is also used in the more specific sense of Islamic jurisprudence. *Sharī'ah* and *fiqh* are often treated as synonymous terms designating the body of rules constituting Islamic law. However, *fiqh* can also refer to the science of interpreting the *sharī'ah*.

ORIGINS AND NATURE. The historical origin of the *sharī'ah* lies in the revelation that Muslims believe was given to the prophet Muḥammad by God through the vehicle of the archangel Gabriel in the last decades before the Prophet's death in 632 CE. This divine revelation was later recorded in a text known as the Qur'ān. Although only a small portion of the Qur'ān concerns strictly legal questions, it sets forth a number of general principles regarding how Muslims are to conduct themselves. The Qur'ān is replete with commands to believers to abide by God's limits, to obey God and his Prophet, and to judge according to what God has laid down. It contains many references to God's laws and commands. The prevailing view among Muslims is that the Qur'ān laid the underpinnings for a distinctively Islamic legal order and one that all Muslims are bound to follow as a token of their submission (*islām* in Arabic) to the will of God.

From this kernel the *sharī'ah* grew into a vast corpus of law. One of the great, challenging issues of Islamic intellectual history has been that of defining the relationship between the text of divine revelation and subsequent legal development, an effort that has entailed the working out of a theory of resources to provide an Islamic theoretical basis for resolving legal problems not explicitly addressed in the Qur'ān.

Sharī'ah rules were part of the positive law applied by the government of the early Muslim community, which was originally conceived as an entity where political and religious loyalties would be coterminous. At the same time, the *sharī'ah* was also understood as a system of moral guidance for the individual believer.

In the Islamic view, governments exist only to ensure that the *sharī'ah* is properly administered and enforced. Governments are subordinate to the *sharī'ah* and must execute its commands and prohibitions. In other words, what Islam envisages is a scheme of divine nomocracy, in which the law is the medium of social control—truly, a government of laws, not of men.

Should the government of a Muslim society fail in its obligation to uphold the *sharī'ah* as the positive law, or the judges of this world fail in their obligation to administer justice in accordance with the *sharī'ah*, the individual believer would still be held to the responsibility incumbent upon all Muslims to conform their behavior to the *sharī'ah*. On the

Day of Judgment each Muslim will be held to account for any personal failures to comply with the commands and prohibitions of the *sharī'ah*.

Classification of acts. The dual nature of the *sharī'ah* as positive law and deontology, serving the combined functions of law and of what in some other religious systems might be moral philosophy, is reflected in the fact that Muslim jurists distinguish between two fundamentally different ways of classifying human acts. One way is to assess the moral character of acts, an assessment that corresponds to the deontological quality of the *sharī'ah*. For this task there exists a fivefold scheme of classification, according to which an act may be mandatory, recommended, neutral (that is, entailing no moral consequences), blameworthy, or prohibited. Knowledge of this classification scheme enables pious Muslims to follow a meritorious course of conduct that will ensure their salvation on the Day of Judgment.

The second way of classifying acts reflects the fact that the *sharī'ah* is meant to be used as the positive law of Muslim societies. The fundamental distinction made by Muslim jurists in this connection is between acts that are legally binding and valid and those that are of no legal effect or invalid. They also distinguish between licit acts and illicit acts warranting the imposition of penalties or exposing the actor (and potentially persons in privity with the actor) to legal liability. The classifications in the two schemes are not correlated; from knowledge of how an act is to be evaluated from the ethical standpoint, one cannot draw any automatic conclusions about the legal validity or invalidity of an act or whether it is punishable or goes unpunished by worldly authorities. Likewise, one cannot safely make assumptions about how acts will be classified from an ethical standpoint based on whether they are legally valid or not or whether they entail penalties or legal liability.

The precise nature of the relationship between the *sharī'ah* and Islamic theology is not easy to delineate and has been the subject of disagreement among Muslim scholars of Islamic philosophy, theology, and law over the centuries. However, throughout the history of Islam there has been a tendency to emphasize the elaboration of exact standards for conduct rather than setting detailed standards for what Muslims should believe, and, by extension, to require adherence to the standards of orthopraxis rather than demanding orthodoxy of creed.

Principal divisions. The two principal divisions of the *sharī'ah* are based on the subject categories of legal rules. The first category is that of the *ʿibadāt*, or strictly religious obligations. These comprise the believer's duties vis-à-vis the deity. In this category one finds very extensive rules regarding precisely how to carry out the acts of worship and religious observances incumbent on the individual Muslim. The performance of daily prayers (*ṣalāt*), the pilgrimage to Mecca (*ḥājj*), the practice of fasting during the month of Ramaḍān (*ṣawm*), and the payment of the alms tax (*zakāt*) are all regulated by the rules of *ʿibadāt*. These, along with the profession of faith

(*shahādah*), constitute the so-called pillars of the faith in Islam. Ancillary rules such as those for identifying sources of ritual pollution and setting forth the requirements for the ablutions necessary to achieve a state of ritual purity, the techniques for correct preparation of a corpse for burial, and the selection of a prayer leader in a given congregation are likewise included in the *'ibadāt* category.

The Islamic concern for orthopraxis in religious matters clearly emerges from any examination of the very exacting scheme of *'ibadāt* rules. While some specific provisions of *'ibadāt* rules vary according to sectarian and school divisions, one finds considerable agreement on the fundamental features of the *sharī'ah* in this area. Within a given sect, the rules of *'ibadāt* have tended to remain relatively stable and uncontroversial over the centuries.

The other main category of *sharī'ah* rules is that of the *mu'āmalāt*, which regulate the conduct of interpersonal relations rather than the relationship of the believer to the deity. There is considerable diversity among the sects and schools regarding the *sharī'ah* rules in this category. In the early twenty-first century there is also significant controversy about the degree to which these rules, originally formulated by medieval jurists, need to be updated and reformed in the light of modern circumstances.

HISTORICAL DEVELOPMENT. The question of the historical development of the *sharī'ah* cannot be fairly discussed without acknowledging the deep and persistent cleavage between the views set forth in modern Western scholarship and the views of the majority of Muslim scholars. The positions that have been taken by Western scholars regarding the historical development of Islamic law challenge deeply held convictions of most Muslim scholars and are strongly reprehended by the latter. The nature of the differing views and their implications will be explained in what follows.

The relation of the Qur'ān to previous law. As already noted, the Qur'ān provided the original kernel of *sharī'ah* law. Most of the Qur'ānic verses dealing with legal questions were transmitted to the Prophet in the decade after the Hijrah, or flight from Mecca to Medina (622 CE).

An unresolved dispute in Islamic jurisprudence stems from the question of whether the rules set forth in the Qur'ān should be regarded as a break with the preexisting system of western Arabian customary law or whether the revelations came to modify and reform some aspects of that law while otherwise retaining it. Some Muslim scholars have concluded that the great unevenness in depth of coverage of different topics in Qur'ānic legislation should be taken to imply that the resulting gaps were intended to be filled by reference to those pre-Islamic customary laws that were not changed by the Qur'ān, while others see in it a fresh starting point for legal development.

The Sunnī-Shī'ī division. The death of the prophet Muḥammad in 632 CE marked the end of the period of Qur'ānic revelation to the Muslim community. Until the

Umayyad dynasty (661–750) came to power, the community was ruled by four leaders known as the Rāshidūn, or the “Rightly Guided [Caliphs].” The assumption of leadership by the Umayyads had great consequences for both sectarian and legal developments. Repudiating the Umayyads, the Shī'ī and Khārijī factions both broke away from the main body of Muslims, who came to be called Sunnīs, and their respective legal orientations thenceforth diverged. The Khārijīs (also known as the Ibadiyah) believed that the leadership of the Muslim community should be determined by elections and that Muslims had the right to rebel against an unqualified ruler. This Khārijī position has generally been regarded as heretical by other Muslims, and although small Khārijī communities have survived in remote areas of the Muslim world, Khārijī thought has been marginalized by the majority. The Shī'ī faction believed that the first three caliphs had usurped the rule of the community, which in their view should have passed to the fourth of the Rāshidūn, 'Alī ibn Abī Ṭālib (d. 661), a cousin and son-in-law of the Prophet. While Sunnī Muslims subsequently looked to the pronouncements and examples of all of the Rāshidūn for authority on how the community should be governed and for guidance on questions of Islamic law, the Shī'ah repudiated the authority of all but the caliph 'Alī.

Not only did the Shī'ah believe that the caliph 'Alī had been the rightful successor of the Prophet, but they also believed that leadership of the community rightfully still belonged to 'Alī's blood descendants after the civil war that resulted in his death and the establishment of a hereditary monarchy by the victorious Umayyads. Those of the caliph 'Alī's descendants who inherited his authority were known as *imāms*, and like him they were believed by the Shī'ah to share the same divine inspiration that had enabled the Prophet, while himself not divine, to make authoritative pronouncements on *sharī'ah* law. That is, their *imāms* were qualified to interpret the divine will for humankind and could thus serve as an ongoing link between God the Lawgiver and the community after the death of the Prophet. The Shī'ī community subsequently split into subjects over questions of who was entitled to succeed to the position of *imām*. The largest of the subjects, the Twelvers, believes that the last imam, who disappeared in 874, went into a state of occultation from which he is expected eventually to return, while the other subjects follow lines of *imāms* whose descent has continued into the modern era.

The earliest stage of *sharī'ah* law. For Sunnīs the possibility of divine revelation and the making of new Islamic law ceased with the death of the Prophet. Subsequent generations of Muslims who were concerned with how to establish a legal system on an Islamic basis were thus faced with a problem of scarce source material. Although there is little information on the development of legal thought in the generations immediately following the death of the Prophet, it does not appear that this problem was initially of great concern to the leaders of the community, who were preoccupied

with the challenges of meeting the military threats to the growing Islamic polity and administering its rapidly expanding territory. *Ad hoc* measures and a spirit of pragmatism appear to have characterized much of the decision making of the early political leaders, who also served as judges.

A view common in Western scholarship is that as the new empire absorbed its early conquests of Syria, Iraq, Egypt, and Iran, it was also exposed to influences from the local civilizations, which included the very highly developed legal cultures of Romano-Byzantine law, Jewish law, Sasanid law, and the law of the Eastern Christian churches. An assumption commonly made by Western scholars is that educated converts to Islam from these cultures perpetuated the legal traditions of the conquered civilizations, which, in a syncretic process, were assimilated into the nascent Islamic legal culture. According to this perspective, the ostensibly Islamic derivation of much of *sharī'ah* law is the product of later attempts to create Islamic pedigrees for legal principles actually borrowed from other legal traditions by linking them to Islamic sources. Most Muslim scholars absolutely reject this view and take the position that *sharī'ah* law owes no debt whatsoever to any non-Islamic tradition. In any event, it must be said that the historical and comparative legal research that would be needed to prove or disprove scientifically either of these two theses has never been undertaken, and the dispute about the relation of the *sharī'ah* to other legal traditions in the areas first conquered by the Islamic empire cannot be resolved at present.

Ancient law schools. The jurisprudence of the Sunnī branch of *sharī'ah* law had its beginnings in what are called the ancient schools of law. Within a century of the Prophet's death there were prominent law schools in various cities in Iraq, Syria, and the Hijāz. It appears that the scholars in these ancient schools felt free to resort to ratiocination to develop legal rules for new situations and that they may also have been influenced in their approach to legal questions by the judicial practice of the tribunals set up by the Umayyad rulers. While individual scholars did attain renown in this period, what was viewed as the normative legal standard was the consensus of the scholars in a given locality, or the *sunnah*—roughly, “custom”—of the school. Some attempts were made to establish Islamic derivations for such local custom, which might be ascribed to early authorities in the first generation of the Muslim community, including the Prophet himself.

The traditionist movement. Meanwhile, a second movement was under way, that of the traditionists, who began to make their influence felt in the course of the second century after the Prophet's death. The traditionists did not accept the authority of the *sunnah* of the ancient schools, nor did they accept the practice of the scholars of those ancient schools who relied on juristic opinion to resolve legal questions. Instead, the traditionists proposed that accounts relating the sayings and doings of the Prophet should be treated as legally binding statements of law. The traditionists collect-

ed traditions, known as *ḥadīth* (pl., *aḥadīth*), which purported to record the Prophet's sayings and his reactions to the different situations he had confronted.

Unlike the Qur'ān, the final version of which was written down in 653 and which most Muslims believe accurately represents God's speech, the authenticity of the *ḥadīth* literature was immediately challenged by Muslim scholars unsympathetic to the traditionists' thesis. The early traditionists tried to meet their opponents' criticisms by developing criteria for distinguishing sound *ḥadīth* from those that were not genuine, an effort that resulted in the development of an elaborate science of *ḥadīth* criticism. The dispute regarding the authenticity of the *ḥadīth* has persisted to the present and has meant that a substantial part of Islamic jurisprudence is and always has been a source of controversy among Muslims.

The genuineness of the *ḥadīth* literature is yet another point on which modern Western scholars tend to find themselves in disagreement with many of their Muslim counterparts. The prevailing view among Western scholars has been that most, if not all, of the *ḥadīth* are pious forgeries put into circulation by traditionists of the first and second Muslim centuries with a view to creating Islamic pedigrees for rules of law that had originally been the products of juristic reasoning or judicial practice, that were inherited from Arabian customary law, or that were borrowed from other legal cultures. Western scholarship has generally evaluated the traditional science of *ḥadīth* criticism as inadequate for differentiating historically accurate accounts from later fabrications. In the view of most Muslims, including those who have reservations about the genuineness of some of the *ḥadīth* and the adequacy of *ḥadīth* scholarship, these Western criticisms are excessively harsh. Wholesale dismissals of the *ḥadīth* literature as a product of later forgeries and of the traditional science of *ḥadīth* criticism as defective are rarely encountered in Muslim scholarship.

The beginnings of the classical law schools. Despite the initial resistance that it encountered, the traditionists' position steadily gained ground at the expense of the influence of the ancient schools of law in the second century after the death of the Prophet. The ancient schools did not disappear but adapted in differing degrees to the new trends in legal thought. It is in the second century AH (ninth century CE) that the foundations were laid for the development of what were subsequently to become the classical *sharī'ah* schools. Each school came to be referred to by the name of an eponymous founder, but it should be noted that the views of the scholars who gave their names to schools did not always prevail among their immediate disciples, much less among their later followers.

The oldest of the classical Sunnī schools is the Mālikī, which originated in Medina and was named after the prominent legal scholar and traditionist Mālik ibn Anas (d. 796). Respect for the *sunnah* of Medina as the place most closely associated with the mission of the Prophet and the first Mus-

lim community persisted in the legal thought of the Mālikī school.

The Ḥanafī school was meanwhile developing in the context of the legal community in Kufa in southern Iraq. Although the school was named after a prominent local jurist, Abū Ḥanīfah (d. 767), its followers actually often showed greater deference to the views of two of his disciples, Abū Yūsuf (d. 798) and al-Shaybānī (d. 805). The Ḥanafī school bore many traces of influences from the Iraqi environment in which it developed. Ḥanafī jurists attached great importance to systematic consistency in legal thought and the refinement of legal principles. They used juristic speculation to develop rules and characteristically resolved legal questions through formalistic approaches.

Muḥammad ibn Idrīs al-Shāfi'ī (d. 820), the founder of the school that bears his name, was associated with the city of Medina. He ranks prominently in the history of Islamic legal thought and promoted the eventual triumph of the traditionist thesis in classical Islamic legal thought. According to al-Shāfi'ī, the *sunnah* of the Prophet as embodied in the *ḥadīth* totally superseded the *sunnah* of the ancient schools as a normative legal standard. Al-Shāfi'ī thus elevated the *sunnah* of the Prophet to the status of a source of law co-equal with the Qur'ān. He articulated the view, which subsequently found widespread acceptance, that the *sunnah* of the Prophet explained the meaning of the Qur'ān.

Having established the Qur'ān and the much more extensive corpus of *ḥadīth* literature as the material sources of the *sharī'ah*, al-Shāfi'ī rejected the use of juristic opinion or speculative reasoning in formulating legal principles and insisted that jurists be restricted to the use of analogical reasoning (*Qiyās*), to extend principles in the sources to cover problems not explicitly addressed in the texts of the Qur'ān and *ḥadīth*. In his view, only by insisting that jurists limit themselves to such careful, piecemeal extensions of principles in the texts could one be sure that the jurists were not injecting undue subjective elements into their interpretations of *sharī'ah* requirements or distorting the rules set forth in the sources. Al-Shāfi'ī also refused to accord any weight to juristic consensus and held that the only binding consensus would be one among all members of the Muslim community. Despite his prestige, al-Shāfi'ī was unable to prevail on this last point even among members of his own school, who, like most Sunnī Muslims, came to believe that *ijmā'*, or the consensus of all the jurists in a given generation, could conclusively validate the correctness of a legal proposition and foreclose further debate. In general outlines, the jurisprudence developed by later members of the Shāfi'ī school has much in common with that of the Ḥanafī school.

The last of the classical Sunnī schools crystallized around Aḥmad ibn Ḥanbal (d. 855), a traditionist from Baghdad who traveled widely among different centers of learning. Subsequent members of the Ḥanbalī school have shared Ibn Ḥanbal's traditionist orientation and his concern for the consensus of the companions of the Prophet, but in-

dividual Ḥanbalī scholars have taken diverging opinions on questions of jurisprudence. The doctrines of the Ḥanbalī school, and particularly those of its more idiosyncratic members, are difficult to characterize, so that it is necessary to be wary of generalizations purporting to describe broad features of Ḥanbalī doctrine.

Other schools of law founded in the first centuries of Islam have not survived into the modern era. Perhaps the most influential of these was the Zāhirī school founded by Dāwūd ibn Khalaf (d. 884). It takes its name from the Arabic *zāhir*, meaning "that which is apparent" and referring to the insistence of this school that the *sharī'ah* required literal adherence to the words of the Qur'ān and the *sunnah*. In the Zāhirī school, human interpretations of their meanings were not binding.

The development of the legal doctrines of the early Shī'ī schools, aside from their shared doctrine regarding the *imāms'* title to succeed to the leadership of the community, seems to have begun somewhat later. It is important to note that while sectarian disputes in Islam often led to the development of bitter intellectual antagonisms and sometimes took on political dimensions, within the Sunnī sect legal scholars generally demonstrated great tolerance of and even respect for divergent opinions on the part of members of the four classical schools, all four of which were regarded as equally orthodox.

The Islamizing impetus in Islamic legal development that had been encouraged by the traditionist movement was also promoted by the official policies of the Abbasid dynasty, which justified its overthrow of the Umayyads in 750 on the basis of its greater claims to Islamic legitimacy and piety. The Abbasids manifested a desire that all persons in their domains, including the rulers, should follow the commands and prohibitions of the *sharī'ah*. They elevated the *sharī'ah* to the status of the official law to be applied in the courts by *qāḍīs*, or judges, who were required to be well versed in it. However, before many decades passed, it became abundantly clear that for the Abbasids, promoting the cause of the *sharī'ah* was entirely subordinate to the achievement of their dynastic political objectives. As a result, many jurists who were unwilling to readjust their idealistic views of the role that Islamic law should play in the governance of the Muslim community to the dictates of political expediency retreated from all contact with government and the administration of justice. It became common for great jurists to shun positions in courts and to retire to lives of scholarship and academic disputations. With this abjuring of political involvement, the basic elements in Sunnī law on the subject of how the Muslim community should be governed tended to remain fixed at the stage of elaborating models derived from the era of the Rāshidūn caliphs, despite the fact that the practical relevance of these models had been superseded by changed historical realities.

Uṣūl al-fiqh. With the development of the classical schools of Islamic law came the articulation of the principles

of *uṣūl al-fiqh*, the roots or sources of jurisprudence. Although the *uṣūl* are often called sources of the *sharī'ah*, only the Qur'ān and the *sunnah* are material sources. Ultimately, the study of *uṣūl al-fiqh* is concerned with establishing a science of proofs of the Islamic derivation of substantive legal principles, thus enabling the jurist to discern which legal rules are correct statements of *sharī'ah* principles. The rules shown by this science to be authentically Islamic are known as the *furū' al-fiqh*, the branches of jurisprudence. The study of *uṣūl* has been one of the major preoccupations of Muslim jurists over the centuries and continues to be so in the early twenty-first century. As the subsequent history of the development of the *sharī'ah* demonstrates, the influence of al-Shāfi'ī on the formulation of the classical Sunnī theory of *uṣūl al-fiqh*—a formulation that was basically complete by the ninth century—was considerable.

The first root of the *fiqh* is the Qur'ān. In the prevailing view, it is to be treated as the eternal and uncreated word of God, part of his essence. Although the Qur'anic revelation constitutes the starting point for the development of the *sharī'ah*, a relatively small portion of *sharī'ah* rules can be traced directly to the text of the Qur'ān. Aside from setting forth rules regarding acts of worship and the rituals that they entail, the Qur'ān includes extensive provisions on intestate succession, many on domestic relations and the status of women, a few criminal laws, and some rules of evidence and contracts.

Muslim jurists developed an elaborate methodology to interpret the Qur'ān, and, in fact, the legal significance of the Qur'ān cannot be properly understood without an appreciation of this methodology. Muslim jurists themselves have differed over the legal significance of many specific lines of the Qur'ān. Some differences in the legal principles derived from the Qur'ān relate to the sectarian divisions of Islam; perhaps the most striking example lies in the laws of intestate succession among the Sunnīs and the Twelver branch of the Shī'ah. From the same Qur'anic verses, which are more extensive on this subject than on any other legal topic, the two groups have derived markedly contrasting legal rules. In the Sunnī view, the Qur'ān meant to retain, with only limited modifications, the pre-Islamic Arabian scheme of agnatic succession, in which males inheriting through the male line got a major part of the estate. By contrast, the Twelver Shī'ī jurists held that, in designating inheritance shares for females and the children and parents of the deceased, the Qur'ān was implicitly repudiating the customary law of pre-Islamic Arabia and setting forth a completely different scheme of succession. As a result, Sunnī law favors inheritance by agnatic kinsmen, while that of the Twelvers favors the inheritance by the children and parents of the deceased, including females.

Al-Shāfi'ī succeeded in persuading subsequent jurists that the *sunnah* of the Prophet should be treated as the second root of Islamic jurisprudence and a source co-equal with the Qur'ān. It is generally accepted among Muslims not only

that the Prophet was a perfect human being and thus worthy of emulation, but also that he enjoyed divine inspiration and thus could make no error in matters of religion or *sharī'ah* law. As noted, challenges to the authenticity of the *ḥadīth* literature on which the understanding of the Prophet's *sunnah* rested generated a science of *ḥadīth* criticism to weed out unsound or dubious accounts. In addition, methodologies were worked out to reconcile seeming contradictions and inconsistencies in different *ḥadīth* and between *ḥadīth* and verses of the Qur'ān. As in the case of the Qur'ān, reading the *ḥadīth* literature without a grasp of how orthodox Islamic scholarship interprets the legal implications of the *ḥadīth* and the relevant jurisprudence can lead to erroneous conclusions.

Most Sunnī Muslims have taken the view that the *ḥadīth* assembled in certain classic collections, such as those of al-Bukhari and Muslim, which date from the latter part of the third century AH, should be regarded as genuine, while members of the other sects rely on their own *ḥadīth* collections, which include many *ḥadīth* accounts that conflict with those in other collections and support their respective sectarian legal positions. Challenges to the authenticity of the *ḥadīth*, which have repeatedly arisen in various forms over the history of Islam, have important implications for the *sharī'ah*. Since the *ḥadīth* literature is very extensive (classical collections contain more than four thousand reports) and covers a much wider range of topics than the legal verses in the Qur'ān, it has supplied the Islamic rationale for a major part of *sharī'ah* law, which would forfeit its Islamic legitimacy if the *ḥadīth* literature were discredited.

Qiyās, reasoning by analogy, is a method for expanding the rules in the Qur'ān and *sunnah* to cover problems not expressly addressed in the sources. Most Sunnīs accept *qiyās* as the third root of *fiqh*. *Qiyās* involves the application of a legal ruling from a case mentioned in the Qur'ān or *sunnah* to a subcase not mentioned in the text but sufficiently related to permit coverage by analogical extension. Even though many jurists insisted on the use of *qiyās* on the theory that extending the scope of principles in the Qur'ān and *sunnah* by analogical reasoning minimized the risk of distorting those principles, a number of Sunnī jurists remained critical of its limitations on the grounds of the subjective element it involved. The extension of rules through *qiyās* ultimately involves human judgment, since it is first necessary to identify the reason underlying the original rule set forth in the text. In practice, jurists have been far from unanimous in their identification of these underlying reasons, with the result that they have extended the rules of the Qur'ān and *sunnah* in different ways. The reliance on analogical reasoning meant that Sunnī jurists analyzed series of concrete instances of application of specific rules rather than trying to abstract general rules from the sources. As new issues arose and generated Islamic rules coined by the use of analogy, these rules were added to the earlier compilations without attempts to synthesize and codify the underlying legal principles.

Twelver Shī'ī jurists do not accept the Sunnī model of *qiyās*. Many of them use forms of juristic reasoning that are

not limited to drawing analogies in order to construe the meaning of the Qur'ān and *sunnah*. Known as the Uṣūliyah, Twelver Shī'ī jurists who believe that *sharī'ah* rules can be extended by human reason have historically been opposed by another faction of jurists, the Akhbariyah, who insist that rules generated by human reason cannot be binding statements of *sharī'ah* law and argue that the Qur'ān and the *sunnah* of the Prophet and the Shī'ī *imāms* alone provide trustworthy guidance.

Ijmā' refers to the retroactive ratification of the correctness of an interpretation of *sharī'ah* requirements. Most Sunnīs treat *ijmā'*, which is constituted by the consensus of all the jurists of one generation, as the fourth root of *fiqh*. According to the majority Sunnī position, once a legal principle has won such unanimous endorsement, it becomes definitively established and cannot be challenged by subsequent generations. Al-Shāfi'ī's different view of *ijmā'* has already been noted. Prominent Ḥanbalī scholars have been among those who have rejected the binding force of *ijmā'* as defined by the majority; they claim that only the consensus of the companions of the Prophet could bind later Muslims. Also among the critics of the Sunnī view of *ijmā'* are the Twelver Shī'ah, who have historically taken a variety of positions on the significance of *ijmā'* and how it is constituted.

This bare summary of the basic principles of *uṣūl al-fiqh* does not begin to do justice to the tremendously complex and subtle analysis that Islamic legal scholarship is capable of bringing to bear on questions of the Islamic derivation of legal rules. Problems of *uṣūl al-fiqh* have attracted the attention of many of the finest Muslim scholars over the centuries and are still capable of generating controversy and provoking important intellectual developments.

In addition to the fundamental rules of *uṣūl al-fiqh*, there are subsidiary law-finding principles that are used to interpret the requirements of *sharī'ah* law. These principles provide the jurist with guidelines for resolving questions of *sharī'ah* law where the usual sources offer no unequivocal answer or where the facts of the case mean that the application of an otherwise dispositive principle will produce an unsatisfactory result. Predictably, these subsidiary principles vary considerably according to school and sectarian affiliations, and even within one school individual jurists may display different views on their use. An example of such a subsidiary principle is *maṣlahah* (considerations of public welfare), which was particularly emphasized in Mālikī jurisprudence. By reference to the criterion of *maṣlahah*, Muslim jurists can adjust their interpretations of *sharī'ah* requirements to promote the well-being of society.

Jurists and the development of the *sharī'ah*. With the foundation of the classical schools of Islamic law and the formulation of the fundamental principles of *uṣūl al-fiqh*, the *sharī'ah* became a jurists' law, and exhaustive training in law and ancillary disciplines was essential for interpreting how the *sharī'ah* applied to a given problem. The jurist, or *faqīh*

(pl., *fuqahā'*), came to enjoy great prestige as a result of his monopoly of expertise regarding the sacred law. The prominence and power of the *fuqahā'* as a class in Muslim societies has in some instances led to the misperception that Islam envisages a theocratic system of government. In fact, it is the *sharī'ah* itself that is supposed to be the instrument of social control, and the *fuqahā'*, in theory powerless to alter the law, are no more than its faithful interpreters. For the most part, the *fuqahā'* have eschewed direct participation in the affairs of government and an overt role in political life.

The task of interpreting the requirements of the *sharī'ah* is termed *ijtihād*, and the person performing the interpretation is termed a *mujtahid*. The exercise of *ijtihād* by the early jurists defined the basic contours of the *sharī'ah* by the start of the tenth century CE. It has been widely believed that in Sunnī jurisprudence, the *fuqahā'* were deemed to be bound by the solutions to legal problems that had been reached by jurists of earlier generations on the grounds that the latter, being closer in time to the prophet Muḥammad, were less likely to fall into error than scholars of later generations. This bar to reexamination of previously decided questions of *sharī'ah* law has been termed "the closing of the door of *ijtihād*." Never recognized by Twelver Shī'ī law, deference to established tradition may have inhibited innovative thought and retarded legal reform in Sunnī circles, although not in the Ḥanbalī school, where many jurists denied that they could be bound by the *ijtihād* of their predecessors. However, the proposition that the doctrine of *taqlīd*, or obedience to established legal authority, immutably fixed *sharī'ah* doctrines at an early stage and had a stultifying impact on the evolution of *sharī'ah* law has been challenged. Whether and to what degree *taqlīd* actually inhibited jurists from adjusting legal doctrines to respond to the exigencies of their changing environment needs to be reevaluated.

Of course, even if Sunnī jurists did consider themselves bound in areas where there had been *ijtihād* by the jurists of the first centuries, they were left free to resolve questions that had not been definitively settled by their predecessors. In Muslim societies, important new problems of *sharī'ah* law were traditionally referred for resolution to a qualified *mujtahid*. In Sunnī environments this function was exercised by scholars who had attained the status of *muftī*, meaning that they were able to issue *fatwās*, or binding legal rulings, on such problems. A *muftī* might act in a private capacity, advising individuals who came to him with inquiries about how the *sharī'ah* applied to a problem, but jurists were appointed as official or governmental *muftīs* by rulers. *Fatwās* that were widely respected and collected for further use and study could be incorporated in *fiqh* works and could acquire considerable currency and authority.

In contrast to the important role played by *fatwās* in the development of *sharī'ah* rules, only rarely were decisions rendered by *qāḍīs* in actual cases treated as authoritative in the *fiqh* literature. Most of the *fuqahā'* did not recognize judicial precedent as binding, perhaps because in the wake of

the disenchantment with government after the first Abbasids many of the more eminent *fuqahā'* preferred to disassociate themselves from the court system and often declined to serve when offered judgeships. The one important exception in this regard occurred in Morocco, where *'amal*, or judicial practice, was considered authoritative.

THE MATURE CLASSICAL LAW SCHOOLS. From the tenth century until the disruptive impact of European imperialism made itself felt in India in the eighteenth century, and in the other parts of the Muslim world in the nineteenth century, there was no major discontinuity in the development of doctrines of the classical law schools. Instead, one could say that this period was devoted to refining and amplifying the early treatments of Islamic jurisprudence.

As the schools matured, their doctrines became more elaborate—often, as already noted, deviating from the views of their eponymous founders. Although the schools did not require that all members adhere to precisely the same doctrines, within each school there tended to be a core of doctrines that enjoyed widespread acceptance and that embodied a distinctive approach to the resolution of legal problems. The jurists of the different schools wrote treatises on *fiqh* that were evaluated and reevaluated by their peers and successors. Some works gained particular renown and respect and were widely circulated and studied. The same work would often be recopied with added commentaries and supercommentaries in the margins by subsequent scholars. As the *fiqh* literature expanded, it was typical for the jurists in a given locality to select one of the more highly regarded treatises from what was the dominant legal school as the authoritative statement of legal doctrine in their jurisdiction. They also prepared summaries of the classical statements of a school's doctrine, which were meant to be easier to use and understand than the scholarly originals. Even so, works of *fiqh* were intelligible only to learned specialists. Institutions of higher learning were set up to train students in *fiqh* and related fields, the first and most enduringly influential of which was al-Azhar in Cairo, founded in 972.

One of the ancillary subjects essential for aspiring *fuqahā'* to master was classical Arabic, the language of God's speech in the Qur'ān and the language of the *ḥadīth*. Arabic has continued to be the essential language for the study of the *sharī'ah*. No translated versions of the Qur'ān or the *ḥadīth* are adequate for use in scholarly investigations. All of the classical *fiqh* works are also in Arabic. Although some have become available in translations, these are of very uneven quality and must be used with great caution.

The schools spread far from their original settings. Adherence to one school or another, as well as sectarian allegiances, changed in accordance with the many political upheavals and vicissitudes suffered by the different parts of the Muslim world over the centuries, and the patterns of school and sect distribution varied significantly at different eras of Islamic history. One of the prerogatives of the Muslim ruler was to select the law of a sect or, more commonly, of a Sunnī

school that would become the official norm in his domains and would be applied by the courts. In some large cities, court staffs would include judges from different schools and sects, so that the law applicable in a given case could be selected to correspond to the affiliations of the parties.

It should be recalled that all of the four classical Sunnī schools are considered equally orthodox. Although concerns for doctrinal consistency and coherence mandated that a jurist follow the established doctrine of his school, it was not unusual for jurists to study the *fiqh* of other Sunnī schools or even to refer extensively to the opinions of other schools in treatises. This approach was less common, however, when *fiqh* principles of other sects were involved. The protracted polemics between the Sunnī and Twelver Shī'ī camps on the question of temporary marriage, which the former claim is prohibited and akin to prostitution and which the latter argue is clearly established in the Qur'ān and the *ḥadīth*, is an example of the hostile attitudes that were engendered by sectarian disputes about interpretations of the requirements of *sharī'ah* law. However, Sunnī jurists have been prepared to accord some deference to the *fiqh* of the Zaydī Shī'ah, since the Zaydiyyah are considered to be more moderate and closer to Sunnīs in their views than the other Shī'ī sects.

Geographical distribution of the schools. The long sponsorship of Ḥanafī law by the Ottoman sultans meant that the Ḥanafī school came to predominate in most of their former territories in the eastern Mediterranean. As the major Sunnī school of the Indian subcontinent as well, the Ḥanafī school is by far the largest school of law.

The adherents of the Mālikī school tend to be concentrated in the western portions of the Muslim world, particularly in North and West Africa, although one does find them in other parts of the Arab world, including the Hejaz and Kuwait. The distribution of members of the Shāfi'ī school tends to correspond to patterns of major trade routes, with Shāfi'ī communities mostly concentrated in coastal areas. One finds large numbers in East Africa, Ceylon, Malaysia, and Indonesia. The Ḥanbalī school has dwindled in size to such a point that its adherents are scarcely found outside central Saudi Arabia. The widely appreciated originality and intellectual distinction of some of its medieval *fuqahā'* has, however, allowed it to retain an influence entirely out of proportion to its numbers.

The Twelvers, by far the most numerous branch of the Shī'ah, claim the adherence of a majority of the people of Iran and, probably, Iraq, as well as sizable minorities in Pakistan, eastern Arabia, and Lebanon. Since 1501 Twelver Shiism has been the official religion of Iran, and it has come to be particularly identified with that country. As noted, a deep and important cleavage in Iranian Twelver Shī'ī legal thought has divided the Akhbārī and Uṣūlī subschools.

The followers of the Aga Khan belong to the Ismā'īlī branch of Shī'ī Islam. His ancestors once ruled an Ismā'īlī state, the powerful and intellectually influential Fatimid em-

pire (909–1171), from their capital in Cairo, but in the early twenty-first century the Ismā'īlīyah are everywhere in the minority and are widely scattered around the globe. Sizable communities remain in the Indian subcontinent and East Africa. The Zaydīyah are concentrated in the Yemen Arab Republic (North Yemen), which was ruled until the 1960s by a Zaydī *imām*.

A very small but intellectually significant group whose law cannot receive its due here is that of the Khārijīs or Ibādīyah, many of whom have managed to survive in the more remote parts of the Muslim world, such as the Berber areas of North Africa and in Oman.

Although a ruler is free to select the school of law that will apply on his territory, this selection binds only the formal legal system. In the absence of unusual external pressures mandating a change in allegiance, individual Muslims remain free to follow the school of their choice. Typically, Muslims consider themselves followers of the same school as their fathers, and even within the Sunnī sect, where all four schools are deemed equally orthodox, it is unusual for a Muslim to change school affiliation.

Comparisons of the rules of the classical *fiqh*. In detail the rules of the various Sunnī schools are often different enough to affect the outcome of a legal dispute. On the average legal question, the degree of doctrinal difference between a given Sunnī school and a Shī'ī school is often not much greater. Notwithstanding the different approaches that Sunnī and Shī'ī *fiqh* purport to have to the sources of law, aside from their differences regarding who should rule the Muslim community, one finds few major divergencies except on some points of religious ritual and worship, certain rules of marriage and divorce, and the laws of inheritance.

A comparison of the *mu' amalāt* rules of the medieval *fiqh* literature with rules in other medieval legal systems of the Middle East and Europe, whether secular or religious, reveals many broad similarities. The single most distinctive accomplishment of the medieval *fuqahā'* from the standpoint of comparative legal history lies in their very sophisticated and complex schemes of intestate succession.

Principal figures. The founders of the schools of Sunnī law and the imams of the Shī'ī sects, who enjoyed the same capacity as the prophet Muḥammad to make authoritative pronouncements regarding the requirements of the *sharī'ah*, would have to be ranked in the forefront of the principal figures in the history of Islamic law. Given the vast corpus of writings on the *sharī'ah*, it is impossible to present any summary treatment without risking unfair omissions of outstanding figures. The following list must therefore be understood to be only a selection of persons who are representative of some of the important aspects of the Islamic legal heritage and suggestive of its variety and richness.

An early jurist who is notable for a conception of the role of the *sharī'ah* different from that of his more orthodox contemporaries was Ibn al-Muqaffa' (d. 756). He unsuccessful-

fully urged the Abbasid caliph al-Manṣūr to end the confusion and disparities in the *sharī'ah* resulting from conflicting interpretations by the jurists of the early law schools by systematizing and codifying the *sharī'ah*. He argued that the *sharī'ah* should be enacted into uniform legislation that would apply throughout the caliph's domain; his failure to convince others of the correctness of his ideas meant that the *sharī'ah* continued to be viewed as a jurist's law independent from and untouchable by political authorities.

Before its extinction, the once-influential Zāhirī school enjoyed a flowering in Muslim Spain. The most famous and distinguished Zāhirī thinker was Ibn Ḥazm (d. 1065), a vigorous polemicist who made many enemies in the course of his harsh attacks on the doctrines of other law schools. He challenged the authenticity of much of the *ḥadīth* literature, rejected *qiyās* and the rules it produced, limited *ijmā'* to that of the companions of the Prophet, and insisted that, in the absence of explicit commands in the Qur'ān and *sunnah*, all conduct should be regarded as outside the concern of religious law.

One of the most eminent figures in Islamic intellectual history, al-Ghāzalī (d. 1111) examined the teachings of the *sharī'ah* in relation to his own theological and philosophical views. Although he is best known for his searching inquiry into the theological fundamentals of Islam, al-Ghāzalī also wrote a number of important books of Shafī'ī *fiqh*. In his greatest work, *Ihyā' 'ulūm al-dīn* (The revivification of religious sciences), al-Ghāzalī sought to achieve a synthesis of the teachings of Islam and to define the role of the *sharī'ah* in relation to other aspects of religion. His work may constitute the most accomplished statement of what passed for Sunnī orthodoxy in medieval Islam.

One of the most original medieval jurists was the Hanbalī Ibn Taymīyah (d. 1328), who had an influential disciple in Ibn Qayyim al-Jawziyah (d. 1350). Ibn Taymīyah strongly attacked the doctrine of *taqlid* that bound Muslims to the interpretations of the early jurists. He argued that qualified Muslim thinkers should be free to return to the Qur'ān, *sunnah*, and consensus of the companions of the Prophet and interpret them afresh. Muḥammad ibn 'Abd al-Wahhāb (d. 1792), the leader of the puritanical Wahhābī reform movement that won many followers in Arabia and elsewhere, invoked Ibn Taymīyah's ideas in his rejection of the authority of the classical law schools and his insistence on fresh *ijtihād*.

Theories about the need to identify and follow the fundamental policies underlying *sharī'ah* provisions and to interpret these provisions in a manner responsive to social needs were developed by the Mālikī jurist al-Shātībī (d. 1388). Ibn Nujaym (d. 1562) was a Ḥanafī jurist who extracted what he saw as the fundamental *sharī'ah* principles from the specific instances of applications of rules set forth in the *fiqh*. While not himself a jurist, the Mughal emperor Awrangzib 'Ālamgīr (d. 1707) made his mark on Islamic legal history by ordering the composition of the famous

Fatāwā 'Ālamgīrīyah, a thorough compilation of Ḥanafī *fiqh*.

Muḥammad 'Abduh (d. 1905) served as Grand Muftī of Egypt and in that capacity and in his writings on Islamic law proposed rationalist and liberal reformist interpretations of the *sharī'ah*. The influential Salafīyah movement inspired by 'Abduh and led by his disciple Rashīd Riḍā advocated a return to a purified version of the *sharī'ah* meant to be more authentic than the versions developed in the course of the centuries devoted to the study of medieval *fiqh*. An example of 'Abduh's approach may be seen in his famous argument that the *sharī'ah* prohibits polygamy. Dismissing traditional support for polygamy among the *fuqahā'*, 'Abduh returned to the Qur'ān and offered a novel reading of two critical verses, which he claimed were to be taken together, although they had previously been held to apply to different issues. *Surāh* 4:3 of the Qur'ān was traditionally interpreted to allow a man to wed up to four women at a time, with a moral injunction to marry only one if he could not treat additional wives justly. *Surāh* 4:129, which says it is not possible for a man to deal equally with his wives, was traditionally interpreted as offering reassurance to the polygamous husband that he was not sinning if he felt stronger attraction to and affection for one of his wives. Treating the injunction to deal equally with wives in the earlier verse as a legally binding precondition for a valid marriage, 'Abduh used the later verse as evidence that this precondition could not in practice be met, so that in the *sharī'ah*, no polygamous marriage could be valid. 'Abduh's practice of interpreting *sharī'ah* rules to serve the ends of enlightened social policies had far-reaching intellectual repercussions. His ideas encouraged many Middle Eastern Muslims in the first half of the twentieth century to accommodate liberal political, economic, and social reforms in their interpretations of Islamic law.

Among the principal figures of Twelver Shī'ī jurisprudence, Muḥammad ibn al-Ḥasan al-Ṭūsī (d. 1067) wrote a number of works that became treated as classic statements of principles of Shī'ī *fiqh*, as were the writings of Muḥaqqiq al-Ḥillī (d. 1277). An important representative of the Akhbarī faction of Twelver Shiism was Muḥammad Bāqir al-Majlisī (d. 1699), who, in addition to producing an encyclopedic statement of *fiqh*, also served as a judge and became the most powerful judicial figure under the Safavids. After the Safavids made Twelver Shiism the state religion of Iran, he, like many major Shī'ī jurists, attempted to define the proper political relationship between the Shī'ī clergy and the state. Al-Majlisī conceived of a powerful, independent political role for the clergy. A jurist of similar eminence, but representing very different tendencies in Twelver thought, was Murtaḍā Anṣārī (d. 1864). A member of the Uṣūlī school, which predominated in Iran in the nineteenth century, he wrote a major treatise on the Uṣūlī theory of sources. His writings promoted the view that each layperson was bound to follow the legal interpretations of the most learned of living jurists, the *marja'-i taqlīd*, whose *ijtihād* became abso-

lutely binding on his followers. He took the view that public law was not a true concern of the *sharī'ah* and stressed instead its ethical dimensions. The single most important Ismā'īlī jurist is Qāḍī al-Nu'mān (d. 974), who served as the highest judge in the Fatimid empire and also wrote a great treatise of Ismā'īlī law.

Principal subjects. Classical *fiqh* works have similar, although not always identical, subject divisions. They begin with a section on the very extensive *'ibadāt*, the obligations of the individual to God discussed above. The remaining subjects belong to the *mu'amalāt* category, including (in a representative, though not exhaustive, list) marriage, divorce, manumission of slaves, oaths, criminal penalties, relations between the Muslim community and non-Muslims, treasure troves, missing persons, partnership, religious trusts, sales, guarantee contracts, transfers of debts, rules for judges, evidence, legal claims, acknowledgments of legal obligations, gifts, hire, the purchase of freedom by slaves, the defense of compulsion, incapacity, usurpation and damage of property, preemptive purchases, partition, agency, contracts for cultivation of agricultural land, slaughter of animals (for food), animal sacrifice, hateful practices, cultivation of waste lands, prohibited drinks, hunting and racing competitions, pledge, personal injuries, blood money and fines, intestate succession, and wills.

Historically, the areas of *sharī'ah* law that were most developed in the classical *fiqh* corresponded to the areas where *qāḍī's* in the *sharī'ah* courts were best able to retain jurisdiction over disputes, while legal issues in other areas tended to be dealt with by secular tribunals with more flexible procedures and greater enforcement powers, such as the police tribunals. The *sharī'ah* rules of intestate succession and family law are the two most developed portions of the *sharī'ah*, and recourse to *sharī'ah* courts was very common for resolution of disputes on these subjects. The *sharī'ah* courts also had jurisdiction over pious endowments (*awqāf*; sg., *waqf*), which were very important legal institutions in traditional Islamic societies, allowing for the consolidation and protection of private property and often providing the financial basis for schools, hospitals, mosques, and other public institutions. *Waqfs* continued to serve such functions until the twentieth century, when they were generally abolished or significantly reformed. The *sharī'ah* law of contracts, and particularly of sales contracts, is also quite extensive. The difficulties of complying with some of the *sharī'ah* contract rules—such as the prohibition of interest—spawned an ancillary legal literature by some Ḥanafī and Shāfi'ī jurists on how to circumvent inconvenient rules by means of ingenious exploitation of legal technicalities (the so-called *hiyal*, or “legal tricks”).

THE SITUATION IN RECENT TIMES. The situation of the *sharī'ah* in recent times has two significant dimensions, corresponding to its dual nature as a positive law and a deontology.

Beginning in the nineteenth century, the *sharī'ah* was increasingly supplanted as a positive law in the legal systems

of Muslim countries by borrowed European law. Historically, substantive *sharī'ah* rules survived in the legal systems of modern Muslim countries in rough proportion to the importance traditionally accorded to the subject area involved, but even in those areas where the *sharī'ah* was able to maintain itself, it was nonetheless subjected to some reforms. In the twentieth century, *sharī'ah* reform became one of the major legal problems faced by Muslim societies and provoked protracted political and intellectual controversies. Despite popular and clerical support for retention of the *sharī'ah*, governments have generally moved as quickly as political constraints permit in the direction of westernization. In the 1970s the political influence of forces favoring the retention and/or renewal of the *sharī'ah* began to make itself felt, and a process of abrogating westernizing reforms and reinstating *sharī'ah* law began in Libya, Iran, Pakistan, Egypt, Sudan, and Kuwait. How far the process of Islamization will proceed and what the future role of the *sharī'ah* as a positive law will be are at present uncertain.

Also in the twentieth century, Muslim intellectuals concerned with questions of *fiqh* subjected the medieval versions of the *sharī'ah* to critical reexamination and brought new interpretive approaches to the *sharī'ah* sources. The variety in modern approaches to the *sharī'ah* is reminiscent of the situation prevailing in the first centuries after the death of the Prophet, before the doctrines of the classical schools coalesced. There are still many conservative thinkers who defend the validity of the medieval *fiqh*. Arrayed against them are many who support new interpretations of what the *sharī'ah* means. Adding to the fragmentation of legal doctrines is the fact that with the spread of educational opportunities and the increase in literacy, many Muslims who are educated but have not pursued a traditional course of study at a religious institution are contributing interpretations of the *sharī'ah*. In other words, laypersons who belong to the modern educated elite do not necessarily feel that they must defer to the specialized knowledge of the *fuqahā'* and are prepared to challenge the monopoly formerly enjoyed by the *fuqahā'* to make authoritative statements on *sharī'ah* law. As a result, it has become very difficult to make generalizations about contemporary *sharī'ah* doctrines.

The westernization of legal systems in the Muslim world. The westernization of the legal systems of Muslim countries began with the impact of European imperialism on Muslim societies in the eighteenth and nineteenth centuries. The legal systems of Muslim societies subjected to direct colonial rule underwent distinctive transformations in relation to the legal culture of the colonizing power. Thus, there developed in Muslim parts of India under British rule a peculiar blend of common law and elements of the *sharī'ah* that became known as Anglo-Muhammadan law. This unique, hybrid law was progressively reformed to eliminate what were regarded as the more archaic features of the *sharī'ah* elements, and it remained influential in the legal systems of India and Pakistan after they achieved independence in

1947. Algeria was part of France from 1830 until independence in 1962, and as a French colony, it also developed a hybrid legal system, known as *le droit musulman algérien*, which incorporated many French features.

Eager to strengthen their relatively backward and weak societies in the face of threatened European domination, most elites in the independent countries of the Muslim world tended to see the *sharī'ah* as an obstacle to the achievement of essential modernization. Governments first replaced those parts of the *sharī'ah* that were viewed as impeding economic transformation, such as *sharī'ah* commercial law, or those possessing features that seemed particularly archaic by modern standards, as in the cases of *sharī'ah* procedural and criminal law.

It was not always the substance of *sharī'ah* rules that troubled modernizers. Their arcane formulation and their diffuse mode of presentation in medieval *fiqh* treatises meant that only specialists with a mastery of medieval legal Arabic and an extensive traditional training could find answers to legal questions in a reasonably efficient manner. The cumbersome form of the *fiqh* works could be compared with the streamlined, systematized legal compendia to be found in nineteenth-century continental European codes. Growing impatience with the *fiqh* works encouraged a definite preference for codified law.

At the early stages of this legal reform process, one possibility for saving the *sharī'ah* from eclipse by Western law seemed to be that of vastly simplifying and systematizing its presentation. Attempts were made to codify the *sharī'ah* in the late nineteenth century, the most notable accomplishment being the promulgation of the Ottoman Majalla in 1877. Starting with some general principles of *sharī'ah* law taken from Ibn Nujaym, the Majalla presents a codification of the law of obligations derived from the views of various Hanafi jurists. The Majalla proved its utility, surviving for decades in former Ottoman territories well after they had obtained their independence from the empire. A later code, the Ottoman Family Rights Law of 1917, constituted an original attempt to codify *sharī'ah* law on that subject by reference to the doctrines of more than one Sunnī law school. This was the first important instance of the application of the technique of *takhayyur*, or picking and choosing the most apt principles from the doctrines of different schools and combining them in an arrangement that had no precedent in the classical *fiqh*. However, the preference for wholesale importation of Western law codes was ultimately so strong that there was soon little incentive to pursue projects for devising further codes on a *sharī'ah* basis.

Another factor mandating change from the old *sharī'ah*-based system of law was the international political setting. The rulers of Muslim states in the nineteenth and twentieth centuries were obliged to deal with a historical reality that was vastly different from what had been contemplated in early *sharī'ah* theory. The *sharī'ah* was originally conceived as a law whose application would be coextensive with

religious affiliation. The world was to be converted to Islam, and there would result one community of believers with a common political allegiance and a common obligation to follow the *sharī'ah*. This conception did not envisage the appearance of obstacles in the way of the realization of this ideal, such as the fragmentation of the Muslim community into separate and mutually hostile political units, the development of national identities and the rise of modern nationalism, the failure of large non-Muslim communities within the Muslim world to convert, and the need to deal with non-Muslim countries possessed of greater economic and military resources.

The continued existence of non-Muslim communities had necessitated one legal adaptation at an early stage of Islamic history, namely, the allowance of separate religious laws and courts for minority communities. Members of the minority religious communities on Muslim territory were permitted to follow their own religious laws in matters of personal status and in transactions between themselves while remaining subject to the *sharī'ah* in their interactions with outsiders or in their public activities. This practice was highly developed under the Ottoman Empire, where it was known as the *millet* system.

Under outside pressures, this system was further modified by a practice of according a special legal status to non-Muslims from the powerful European states: from the medieval period onward, certain states exacted from Muslim governments agreements, or "capitulations," according extraterritorial status to their nationals. Originally granted only by way of exception, capitulatory privileges were expanded apace with growing European influence. An example of the resulting system of extraterritoriality can be seen in the powerful Mixed Courts of Egypt, set up in 1875, expanded after the British occupation in 1882, and continuing until 1949. Originally established as alternatives to the "native courts" for cases involving foreigners, the Mixed Courts were able to extend their jurisdiction to a wide variety of cases, including those involving Egyptians, in instances where the courts detected some "foreign interest" in the outcome. One reason for the exaction of these concessions, the demands for which became increasingly onerous as Muslim power and wealth declined and that of the West grew, was the Western perception that the substantive provisions of the *sharī'ah* were "primitive" and "barbaric" by modern European legal standards, and that the justice meted out by the traditional courts was arbitrary. European powers also objected to the inferior legal status accorded to non-Muslims under the *sharī'ah* and exploited this as a pretext for political intervention. In attempts to forestall such intervention, the Ottoman sultan promulgated the *Haṭṭ-i Şerif* of Gülhane in 1839 and the *Haṭṭ-i Humâyûn* of 1856, officially establishing the principle that Ottoman citizens regardless of their religion should be equal in terms of their legal rights and obligations.

Retention of *sharī'ah* law as the law of the land in these political circumstances thus presented obstacles to setting up

a unified national legal system and entailed exposure to risks of compromising the sovereignty and national dignity of the Muslim states. The reluctance of governments to continue to make such sacrifices provided an impetus for law reform that would place legal systems in Muslim countries on a par with the emerging modern international standard.

The formation of modern nation-states in the Muslim world starting in the nineteenth century and the subsequent collapse of the Ottoman Empire in World War I prompted Muslims to reassess the relationship between the *sharī'ah* law and the new political entities into which the Muslim world had been divided. Although the claims of the Ottoman sultans to be the legitimate successors of the Prophet had been based on tenuous legal and historical arguments, some Sunnīs saw in the sultan-caliphs an embodiment of the original *sharī'ah* notion that religious allegiance—not nationality—should determine political loyalties. With the ouster of the last of the Ottoman sultan-caliphs in 1924, there ended any real chance in the Sunnī world of preserving an Islamic caliphate, a government under which all Muslims would share a common political and religious allegiance.

Iran's *ulamā* faced a momentous question at the turn of the twentieth century, when a growing movement favored the establishment of a democratic government, and the Constitutional Revolution of 1905–1909, led to the overthrow of the Qajar dynasty. To the *ulamā*, accepting this revolution meant acknowledging the legitimacy of a government based on the principle of popular sovereignty and the law-making authority of the people's representatives. Such changes were seen by some as a challenge to the theoretical primacy of the imamate and the exclusive prerogative of the *ulamā* to determine and declare the law. Other important jurists, such as Muḥammad Na'inī (d. 1936), however, took the position that, pending the return of the Hidden Imām from the state of occultation, it was impossible to have a government that truly accorded with *sharī'ah* ideals and that it was therefore permissible for Iran to adopt a constitutional form of government in the interim.

The acceptance of the idea in the Sunnī and Shī'ī camps that laws should be enacted on a national basis by representatives of the people did not by itself entail a reduction of the role of the *sharī'ah*. However, the attendant pressures for systematic uniformity meant that statutes enacted by the state inevitably replaced the old, decentralized system of jurists' law. Thus, the realization that laws would henceforth be made by national governments encouraged the acceptance of the idea that there should be neutral, secular laws that could apply to all persons on the national soil. The typical pattern in Muslim countries in the nineteenth century, and more particularly in the twentieth century, was to abandon the *sharī'ah* in favor of imported European law save in matters of personal status and religious trusts, and occasional token provisions in other fields such as the law of contracts.

The timing of the adoptions of Western law was related to the chronology and extent of various countries' exposure

to European imperialism. The Ottoman Empire was therefore the first Muslim state to adopt Western laws, followed shortly by the semiautonomous province of Egypt. The first French-based codes to be introduced in the Ottoman Empire were in the areas of commercial law (1850), penal law (1858), and commercial procedure (1861). The countries that remained most insulated from such influences—Afghanistan, the Yemen, and Saudi Arabia—were the last to undertake westernization of their legal systems. In most countries, legal westernization was largely completed by the 1950s. Alone among Muslim countries, Turkey, under the leadership of Kemal Atatürk after the collapse of the Ottoman Empire, abandoned the *sharī'ah* in favor of a completely secular legal system. At the opposite extreme, Saudi Arabia has retained the *sharī'ah*, or more specifically, Ḥanbalī *fiqh*, as the official norm, which has prevented the government from openly undertaking legislative activity, including the enactment of a constitution.

In contemporary Muslim countries the desire on the part of the governments for legal modernization combined with the need to show respect for the *sharī'ah* has resulted in various compromises. In the area of personal status, a number of reforms, by and large modest ones, have been enacted in Muslim countries with a view to improving the status of women in matters of marriage, divorce, support, and child custody. The boldest reforms in this area were enacted in the Tunisian Code of Personal Status of 1956, the Iranian Family Protection Law of 1967 (since abrogated by the revolutionary government), and the South Yemen Family Law of 1974. Only a few very cautious reforms of aspects of the *sharī'ah* law of intestate succession have been undertaken.

Even Muslim states with westernized legal systems generally enshrine Islam in the national constitution as the state religion and stipulate that the *sharī'ah* is a source of law or even the source of all laws. In some constitutions there are provisions stating that laws must accord with the *sharī'ah* or that they may be reviewed and nullified if they are found to violate the *sharī'ah*. In the past such provisions often had little more than symbolic significance, but as supporters of the *sharī'ah* gained political strength in the 1970s throughout the Islamic world, there was increasing pressure for reinstatement of *sharī'ah* rules and the abrogation of imported laws that conflict with *sharī'ah* principles. Thus, the *sharī'ah* is tending to be treated more and more as a fundamental law in the legal systems of Muslim countries.

Islamization campaigns. The circumstances in which the replacement and reform of the *sharī'ah* took place resulted in political tensions between the westernized elites and other, more traditional segments of Muslim societies. The masses remained attached to the idea of the supremacy of *sharī'ah* law, anticipating that its reinstatement would cure endemic political, economic, and social ills. The *fuqahā'* continued to study and defend the *sharī'ah* and were offended by their displacement by the new class of lawyers and judges trained in Western law; as traditional guardians of the

sharī'ah heritage, the *fuqahā'* also retained prestige and a popular following among the masses. Meanwhile the forces of what has come to be known as political Islam, in which Islam was converted to a populist political ideology, won support from disaffected urban dwellers for their proposals for Islamization.

The political potency of this combination was illustrated in the 1978–1979 Islamic Revolution, which was spearheaded by prominent Twelver Shī'ī *faqih*, Ayatollah Khomeini, who had as one of his goals the reinstatement of *sharī'ah* law. Khomeini had written prior to the revolution about the requirements for Islamic government and posited that the state should be ruled by the foremost *faqih* of the era. Although other Iranian *fuqahā'* disputed the correctness of Khomeini's views, his accession to power and the ability of allied *fuqahā'* to ensconce themselves in leading positions in the government meant that Iran was transformed into a theocracy. Western law was replaced by *sharī'ah* principles in many areas, sometimes with variations on the traditional *sharī'ah* rules that reflected the politics of the revolutionary situation. The unpopularity of theocratic rule jeopardizes the survival of this attempt to establish a new version of Islamic government.

Regimes in the Muslim world have responded to the demonstrated popularity of Islamization programs by enacting selected principles of *sharī'ah* law in statute form. Libya was the first country to undertake such initiatives in the 1970s, and its example was subsequently imitated in Pakistan and Sudan and to a lesser degree in some other countries. These measures did not mean that the governments were relinquishing control over the legal systems, which remained basically Western in character and structure. The major emphasis in such Islamizing legislation tended to be on reenactment of Qur'anic criminal laws and imposing restraints on women in the name of protecting morality. During the brief rule of the Taliban in Afghanistan (1996–2001), an Islamic emirate was established committed to implementing a particularly harsh version of Islamic law. It is premature to predict the long-term consequences of the turnabout in the fortunes of the *sharī'ah*, but it is clear that the position of imported Western laws in the legal systems of the Muslim world is not secure and that the *sharī'ah* retains considerable potency as a countermodel.

Contemporary reformulations of the *sharī'ah*. At the same time that there is mounting pressure for the reinstatement of the *sharī'ah*, there is growing diversity of opinion on what the requirements of the *sharī'ah* are and how they should be applied in modern circumstances. Previously settled issues of Islamic law are being reopened and reexamined.

While some contemporary Muslims, particularly those educated in traditional Islamic institutions of higher learning, consider medieval *fiqh* treatises authoritative, there is a marked and growing tendency to treat such works as secondary legal sources that are useful but not conclusive guides on questions of *sharī'ah* science and substantive rules. The old

hierarchies of sources and the established methodologies for interpreting them are also questioned by contemporary thinkers. Although the traditional techniques of legal reasoning from the sources are also rejected by many modern students of the *sharī'ah*, no consensus about what new methodology should replace the ones used by the traditional scholars is discernible.

Increasingly, Muslims turn directly to the Qur'ān and *sunnaḥ* for guidance. The tendency has also mounted to give precedence to the Qur'ān over the *sunnaḥ*—because of either a more critical appraisal of the reliability of the *ḥadīth* literature or a conviction that the Qur'ān was intended to serve as the primary source of *sharī'ah* principles. While it is rare for Muslims to reject the authenticity of the entire *ḥadīth* literature, it has become more common for them to evaluate negatively the traditional science of *ḥadīth* criticism. As a result, there has been a greater willingness to discard or discount the legal value of *ḥadīth* that are not demonstrably genuine.

A noteworthy development in contemporary Sunnī legal thought is that on questions of methodology and substance alike there is a tendency to disregard the former school divisions. When seeking enlightenment from past scholarship, modern Sunnīs commonly treat the views of all the classical Sunnī schools and also the extinct schools as deserving of consideration. Thus, the process of *takhayyur* exemplified in the Ottoman Family Rights Law of 1917 is now routinely utilized.

Many contemporary interpretations of the *sharī'ah* tend to reflect ideological visions of the social order that should result from the application of the *sharī'ah*. In these interpretations the *sharī'ah* does not function only as a criterion for the legal validity or permissibility and ethical character of human acts but as a blueprint for the perfect ordering of all social relations and the solution to the problems of achieving social harmony and justice. The latest ideologized versions of the *sharī'ah* reflect all the different ideological currents that are contending for the loyalties of peoples in the Muslim world from the most conservative to the most radical, so that this ideologization of Islamic legal thought has led to a polarization of opinions. Topics that have given rise to particularly important disagreements include remedies for maldistribution of wealth, the sanctity of private property, the nature of Islamic government, human rights, and the role of women. At the same time that new feminist interpretations of the sources are winning popularity, other theories calling for drastic curbs on women's rights are being put forward.

Because the latest ideological perspectives characteristic of contemporary Islamic thought have few counterparts in the traditional *fiqh* and do not correspond to any of the traditional school or sectarian divisions of the *sharī'ah*, they have created new divisions and alliances along ideological lines. The willingness on the part of Sunnī and Shī'ī Muslims to utilize the economic and political theories presented by

members of the other sect is growing. Thus, on the theoretical level, all the old doctrinal certainties are now challenged by modern attempts to understand the *sharī'ah* in relation to the great political, economic, and social questions confronting Muslim societies. It is premature to predict which of the many presently competing versions of the *sharī'ah* will ultimately find favor with the majority of Muslims, but it is clear that many Muslims believe that the answers to these questions must be sought by reference to the *sharī'ah*.

SEE ALSO Abū Ḥanīfah; Abū Yūsuf; Ḥadīth; Ḥanābilah; Ijmā'; Ijtihād; Madhhab; Mālik ibn Anas; Maṣlaḥah; Pilgrimage, article on Muslim Pilgrimage; Qāḍī; Qiyās; Qur'ān; Ṣalāt; Ṣawm; Shāfi'ī, al-; Shahādah; Sunnah; 'Ulamā'; Uṣūl al-Fiqh; Worship and Devotional Life, article on Muslim Worship; Zakāt.

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ISLAMIC LAW: PERSONAL LAW

The area of personal law is often considered to be the main bastion of Islamic law. One reason for this is that the Qur'ān

devotes greater attention to subjects such as marriage, divorce, and inheritance than it does to any other legal topic. In this sense the law of personal status represents an entrenched part of the religion, and Muslims have by and large regarded adherence to its principles as a criterion of the religious propriety of individuals and governments. It is, therefore, not surprising to find that the *sharī'ah* law of personal status has remained largely applicable in Muslim countries today in spite of recent reforms that have adapted many aspects of the classical law to suit the requirements of modern life. Reform of the *sharī'ah* law is a phenomenon of the twentieth century and, because of the continuing relevance of the law of personal status to the Muslim community, has been concentrated mainly in that area. Other portions of the *sharī'ah*, such as criminal law, taxation, and constitutional law, have either fallen into abeyance or remained relatively untouched by modern reformist legislation. Under the renewed influence of Islamic movements in the 1970s and 1980s, however, these other areas of the law have also begun to attract the attention of reformers as the effort is made to revive their significance.

In modern-day Islam, the Ḥanafī school commands a greater following than any other school of law. This survey is, therefore, based on *sharī'ah* law as developed within the framework of the Ḥanafī school. Wherever Ḥanafī law diverges from the law of the other three Sunnī schools (Shāfi'ī, Mālikī, and Ḥanbalī), their differences are outlined. References to Shī'ī law generally relate to the Twelver Shī'ī school, which is mainly adhered to in Iran and has the largest following of all the branches of Shī'ī Islam.

MARRIAGE. Like any other private contract, marriage under *sharī'ah* law is concluded by the mutual agreement, oral or written, of the parties or their representatives. The only formality required is the presence of two witnesses at the conclusion of the contract, and even this is not necessary under Shī'ī law. Formalities usually observed, such as ceremonies performed in the presence of a religious leader, are matters of customary practice and not a legal requirement.

The requirements of a marriage contract are basically the same in all *sharī'ah* schools. First, the parties or their representatives must be legally competent persons, and second, there must be no legal impediment to marriage. Sanity and majority are the basic requirements of the legal capacity to contract. Legal majority is established with physical puberty, which is attained upon proof of sexual maturity rather than at a specific age. Unless proven otherwise, a boy below the age of twelve and a girl below the age of nine are legally presumed to be minors. Similarly, both sexes are presumed to have attained majority with the completion of the fifteenth year. A boy or girl who has reached the minimum age of majority but is still below fifteen is permitted to marry provided he or she shows signs of puberty. A person who has attained majority (*bāligh*) and is of sound mind (*'āqil*) has rights and obligations, must fulfill religious duties, and incurs criminal responsibility. The minor (*saghīr*) and the insane (*majnūn*)