

Lecture 10

Hadith, law and popular tradition

Review

- **Aim of lectures**
- To examine some of the mechanisms by which the regions of the Islamic empire came to be constituted as a culture region
- Today shift from elite to popular forces

Islamic Law

At least 3 areas of study.

- Institutionally: the various schools of Islamic law, their inspirations and orientations as well as their core regional area of influence
- Technically: sources of legal authority – e.g., the Quran, the Sunna, consensus and analogy - and how contemporary and historical Islamic scholars negotiate these sources and make decisions about how to place their emphasis.
- Historically: an historical analysis of the rise of Islamic law as a defining characteristic of the Islamic religion and a discussion of its ongoing influence in almost all areas of Muslim life

Historical perspective

- Helps us understand the character and outlook of orthodox sunni Islam
- Illustrates the development of a particular conception of Islamic identity
- Rise of Islamic law must be understood as indicative of a long-standing struggle to define the ideal Islamic society

Lecture structure

1. Development of Islamic law
2. The rise of hadith scholarship
3. The impact of hadith on legal reasoning
4. Contribution to regional Islamic imagination

Development of Islamic law

Baghdad

- Baghdad court heavily influenced by Persian ideas of kingship
- Court served an idea of authority
- Focus on 'high' arts: dress, poetry, philosophy
- Emphasis on developing an elite aristocratic culture for notables to take back to provinces
- Questions of ideal Islamic society (umma) thought in terms of philosophy and theology

Mu'tazilites

- Approached question of Islamic ideal through philosophical debates
- Example: nature of free will
- Position: God is separate from humans
- Humans responsible for their actions
- Emphasis on personal responsibility
- If God is going to judge us for our deeds then it is us who are responsible for our deeds

Piety

- Strong belief in personal responsibility
- Pursued strict form of high moral purity
- While embraced by Abbasid court Mu'tazilite scholars ambivalent
- Abhorred indulgence and excess
- Sought to set example through individual action
- Being a good Muslim meant being pious

Problem with piety

1. Individualistic:

- Not creating a social doctrine
- Emphasis on the individual and the personal

2. High-minded

- Predicated on high philosophical ideas

3. Elitist:

- Demanded intense personal commitment
- Overly-virtuous

4. Privileged

- Many Mu'tazilites patronised by Abbasid court
- Did not need to worry about basic needs

Development of Islamic law

Provinces

Fiq (law)

- Tradition of developing Islamic solutions in situ
- Done by local judges and legal thinkers
- In response to immediate problems



Local character

- Not developed by high-minded scholars
- Private legal specialists (muftis) and provincial judges (qadis)
- Not 'professional'
- Learned men with reputation for wisdom

Hallaq

- Quran does not say much about law
- Often not specific on details of how to live 'good Islamic life'
- Muftis and qadis at coal-face of Islamic law
- Developing extensive body of judgements and precedents in cities and villages of empire
- Attempting to decipher various Islamic sources in relation to local issues in order to make appropriate judgements.

Mufti

- Independent legal specialist
- Merchants, shop-keepers, artisans
- Position attained by virtue of status, reputation and training
- Delivered fatwas: non-binding legal opinions
- Often used to settle a case or dispute
- Did not charge for opinions
- Not written down
- Did not sit in court
- Addressed problems brought individually or by community

Qadi

- Administrator of justice
- Did not devise or develop law or give legal opinions
- Role to facilitated justice
- Example: if fatwa needed to be solicited for a particular case or an investigation needed to take place, the Qadi would facilitate
- Qadi responsible for managing judicial process
- Often community leaders
- Responsible for making sure accusations made by one member of the community against another were facilitated without undue disruption to the one being investigated or to community as a whole

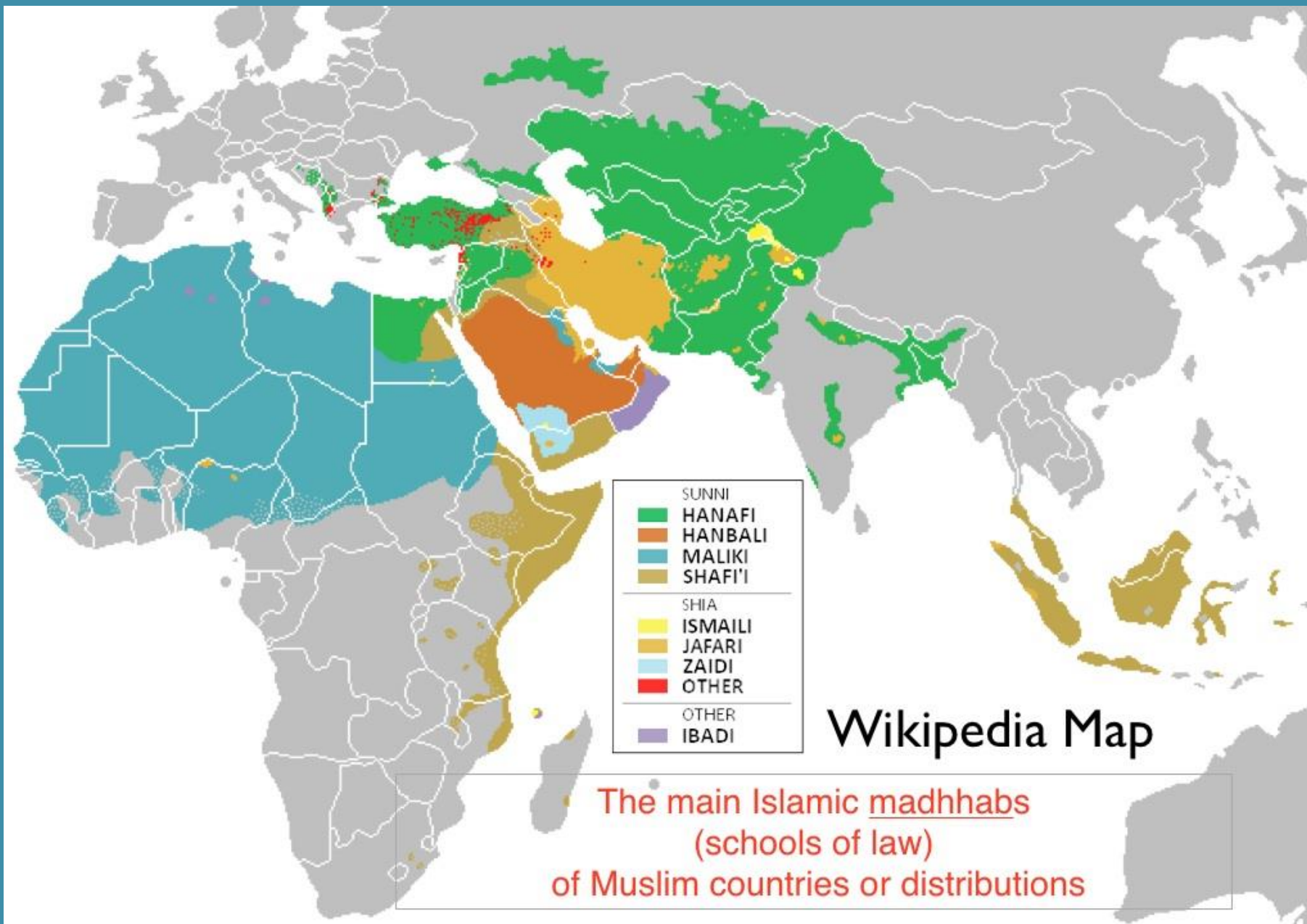
Legal scholars

Collected, wrote down and taught Islamic law

- Two ways
- Established learning circles
- A place fatwas and issues of Islamic law discussed with students and scholars
- Learning circles held in mosques
- Students would travel from mosque to mosque to learn about opinions and ideas of Muftis throughout empire
- Wrote down and collected opinions they reached or observed
- Some instituted novel methodologies for approaching and judging legal issues and questions

Schools of Jurisprudence

- Legal scholarship increasingly associated with particular 'schools'
- Schools increasingly institutionalised and associated with doctrine
- Most named after a singular master-jurist
- Four major schools: Hanafi, Maliki, Shafi'i, Hanbali,



Wikipedia Map

The main Islamic madhabs
(schools of law)
of Muslim countries or distributions

Ijtihad

- Legal questions decided through scholarship and interpretation
- Ijtihad: interpretative legal reasoning
- Most Islamic law derived from Ijtihad
- No single authority has monopoly over how to interpret the law
- Islamic law highly pluralistic and diverse
- Adaptive to local circumstances and situations

Rooted in epistemic authority

- Law defined through institutions of knowledge rather than institutions of state
- Anchored in interpretative tradition rather than political authority
- Authority of individual jurists, their students and manner of ijtihad they practiced
- Steeped in local traditions, opinions, methodologies and doctrines
- Not simply flexible, also anarchic

Hadith scholarship

- Begins in mid 8th century Medina
- Biographers of Muhammad begin collecting 'reports' of the prophets doings and sayings
- Hadith means 'news'
- Oral reports and stories circulating around Arabian peninsula and empire for a century
- Millions of sayings and stories attributed to Muhammad, his family and companions

Scholars of Medina

- Considered themselves caretakers of Islam
- Began process of verification
- Dominant mode of verification 'Isnad'
- A means of evaluating the chain of authority
- Hadith scholars developed a number of methods for verifying these chains
- Purpose: to authenticate the chain of transmission from source to transmitters

Isnad

- Brown's analogy of reporter
- Triangulation of sources
- Making sure different transmitters from different regions saying the same thing
- Number of compendiums developed that judge the credibility of various hadiths

Impact of hadith scholarship

Caliph had two problems:

1. No unifying coherent or consolidated form of legal authority
 - Empire had within it multiple axes of judicial opinion and administration
 - Not very efficient, reliable or consistent for arbitrating justice on imperial scale
2. Caliph had no religious authority to exert judicial control
 - Ma'mun attempted to use Mu'tazilite doctrine to establish authority over religious matters
 - Rejected by most religious scholars

Ahl al-hadith

- Literally ‘the people of hadith’
- Scholars who championed hadith as a source of Islamic knowledge
- Gained favour in court because had religious credentials to shape and unify Islamic law

Arguments of ahl al-hadith

- Human beings cannot understand mystery of God
- Reason and logic useless
- Must emulate those that were closest to God
Attempting to get as close as possible to what they viewed as original and unadulterated Islam
- If we want to understand the Quran correctly, we should not try to interpret it through reason but imitate ways of Muhammad

Islamic orthodoxy

- Established Orthodox school of Islamic theology
- Why orthodox?
- Orthodox means staying true to holy text
- Ahl al-hadith staying faithful to hadith
- Do not attempt to interpret the Quran
- Do not use human facilities
- Use sayings and doings of Muhammad *only* for guidance

Impact 1: theology

- Undermined dominance of Falsafa and Mutazilism
- Reason and logic could only go so far
- Humans could not use limited capacities to understand aims and desires of God
- Gave life to other theological schools where reason has less powerful role: Asharite

Impact 2: law

- Ascendency of law
- The question 'what does it mean to be a good Muslim' no longer answered in philosophical terms
- Increasingly answered in legalistic and prescriptive terms
- Theology and reason not rejected completely
- But question 'what constitutes the Islamic ideal' increasingly addressed through law and legal principals

Impact 3: politics

- Ahl al-hadith put in charge of religious matters
- Caliph's role comes understood in political terms
- Religious matters delegated to legal scholars
- Co-dependent relationship between religious and political authorities
- Empire comes to rely on learned scholars
- Consequence: Islamic thought focused on law and methods of legal reasoning
- Islamic law consolidated and canonised
- The interpretation of the Quran increasingly understood as the domain of legal specialists

Implications on Islamic identity

- Islamic identity always bound up with creating just society
- But precisely how to develop just society unclear
- Very few explicit directives in Quran
- Faith, principles, piety are personal issues
- But Muslims must be 'outfacing'
- Islamic law provides a way of promoting justice for the umma as a whole

Derrida: force of law

- Question of justice exceeds question of law
- Laws not always just
- Laws a potential tool for justice
- Must be vigilant about whether they promote justice

Law and identity

- Law provides clear set of practices
- Identity and practice intimately combined
- The act of 'doing' collectively has the capacity to foster identity regardless of how activity is understood
- Comparison: remembrance day, Christmas, national anthems, World cup
- Community built on outward gestures
- Reinforcing common vision of Islamic society

Implications today

- Events in 9th century had significant impact on development of Islam
- Islamic law remains a popular means of conceptualising religious fidelity
- Seems to outweigh knowledge, piety and faith

As recently as 1959, the rector of al-Azhar University, Shaykh Mahmud Shaltut, published a book entitled 'Islam, a faith and a law' (al-Islam, 'aqida wa-shari'a), and by far the greater part of its pages is devoted to an expose of the religious law of Islam, down to some technicalities, whereas the statement of the Islamic faith occupies less than one-tenth of the whole. It seems that in the eyes of this high Islamic dignitary the essential bond that unites the Muslims is not so much a common simple creed as a common way of life, a common ideal of society (Schacht, J. 1960)

see:www.fordham.edu/halsall/med/schacht.asp

Sardar

- Muslims too pre-occupied by law and sharia
- Gives too much power to ulama
- Promotes conformism and dogma
- Does not allow individual interpretation