Introduction

When Muḥammad died in the year 632 of the Common Era, the community that he had established in Medina a mere ten years earlier seemed unlikely to survive, let alone grow into a world civilization. It is true that two years before his death Muḥammad and his followers had been able to seize control of his native Mecca and subsequently to extend their sphere of influence over the Hejaz and other parts of the Arabian peninsula. But an outside observer in, say, Constantinople would have had little reason to think that the new Muslim state would fare any better than the other short-lived tribal confederations in Arabia that had formed around charismatic leaders only to dissolve at their deaths, leaving few traces beyond ruins in the desert.

Within a century, however, this fledgling community in the backwaters of the ancient Near East had conquered much of the civilized world, bringing under its command an area that reached the Pyrenees in the west and the Indus River in the east. These military successes were made possible by the motivating and unifying force of the new religion, Islam, as well as by the ethnic and cultural cohesion of the Arab tribes that had come together under its banner. The shared values, norms, and traditions of the society in which the Muslims were rooted stood in sharp contrast to the political and religious fragmentation of the Near East of late antiquity.[1] But with the spectacular expansion of a tribal union into an empire that spanned three continents, the hitherto tightly knit community of Muslim

[1] See Richard Lim, "Christian Triumph and Controversy," in *Interpreting Late Antiquity: Essays on the Postclassical World*, ed. G. W. Bowersock, Peter Brown, and Oleg Grabar, 196–218 (Cambridge, MA: Belknap Press of Harvard University Press, 2001).

Arabs found itself scattered across an immense territory, surrounded and outnumbered by non-Muslim and non-Arab native populations. Many of these boasted long and rich histories and a level of cultural sophistication that considerably exceeded that of the conquerors. It would have been natural for the Arabs to become assimilated into the dominant cultures of their new environments, as had the Germanic tribes before them and as would the Mongols after them.

This is not, however, what happened. Instead, around the middle of the second Hijri (eighth Common Era) century, Muslim civilization entered a formative period of intellectual and religious transformations that established an enduring cultural foundation for subsequent Muslim societies.[2] This foundational age, which lasted about a century and a half, gave rise to a stable, distinctively Islamic cultural synthesis that was not defined by ethnicity. Rather, its twin bases were the religion of Islam and the language of Arabic, and upon these foundations grew a characteristic written culture whose myriad genres, incubated in this period of intellectual fermentation, elaborated the former by means of the latter. The formation of this written culture was accompanied by the emergence and consolidation of a class of specialist scholars, who dedicated themselves to the mapping of the world of ideas within the nascent classical disciplines. To claim that this period was formative is not to deny that Muslim civilization continued to evolve in significant ways after it; but what defines this period is the development of the basic cultural vocabulary of Islamic concepts, practices, and institutions. These came to constitute the conceptual building blocks that later Muslim societies then recombined and reinterpreted in historically and geographically specific ways.

Premodern Muslim historians and contemporary scholars alike have recognized that the period between the second/eighth and fourth/tenth centuries witnessed fundamental social and cultural changes with lasting repercussions for Muslim civilization.[3] Both groups identify as the focal point of these changes the discourse of Islamic law, which during this

[2] My focus is primarily, though not exclusively, on Sunnism. Although many of the developments discussed here also had a lasting effect on Twelver and Ismāʿīlī Shiʿism, the institution of the infallible imam shaped Shiʿi perceptions of revelation and religious authority in ways that significantly differentiate the Imāmī Shiʿi tradition from its Sunni counterpart.

[3] For a recent overview of Western studies that acknowledge the formative nature of this period, see Scott C. Lucas, *Constructive Critics, Ḥadīth Literature, and the Articulation of Sunnī Islam: The Legacy of the Generation of Ibn Saʿd, Ibn Maʿīn, and Ibn Ḥanbal* (Leiden: Brill, 2004), 1–21. For the Muslim perspective, see Shāh Walī Allāh al-Dihlawī, *al-Inṣāf fī bayān asbāb al-ikhtilāf*, ed. ʿAbd al-Fattāḥ Abū Ghudda (Beirut: Dār al-Nafāʾis, 1984).

formative age burgeoned into a vast and detailed literature. The reason for the centrality of law lies in its dominant role in defining Muslim identity and culture.

In its classical formulation, Sunni Islamic law is the product of the private efforts of Muslim scholars to capture the divine commands and prohibitions inherent in revelation and to articulate these in the form of detailed legal rulings covering all aspects of a believer's ritual and social life. The process of interpretation is structured by a repertoire of hermeneutic techniques, which are underpinned by theories not only of the sources of the divine law and their interconnections but also of the nature of language, interpretation, and communication. Classical legal theory thus represents the primary site for theorizing the relationship of the Muslim community to revelation and the sacred past, while the voluminous literature on positive law seeks to establish the parameters for ensuring the Islamic identity of individual and communal life in the here and now.

This framework, in its basic form, continued to characterize the discourse of Islamic law into the twentieth century, and it remains influential today. Its foundations, however, were laid in the second/eighth to fourth/tenth centuries, when its essential elements – the classical ideas regarding the sources of the law and their interpretation – first emerged. Yet in spite of its significance, we know very little about how, exactly, Islamic law came to acquire its classical form, and even less about why. This book is my attempt to answer these questions. It tells the story of the transformation of the Islamic normative discourse in the formative age and the consequent birth of the discipline of Islamic law as we have come to know it. By weaving intellectual, sociopolitical, and textual history into an integrated narrative, I draw out the interconnections between developments in different spheres that explain why the transformation happened at this particular juncture in Islamic history, and why the resulting legal system took the form that it did.

The key to this pivotal event, I argue, lies in a process of canonization that took place when the locus of religious authority was transferred from the lived practice of the Muslim community to a written, clearly demarcated canon of sacred sources consisting of the Quran and the body of Hadith (reports concerning Muḥammad's sayings and actions). Canonization does not here refer to the establishment of a definitive textual version of the Quran, which happened earlier, nor to the completion of the so-called canonical collections of Hadith, which took place later. Both of these important developments could be – and have been – described in

terms of canonization.[4] This book, however, examines a different kind of transformation, one that is best characterized as a discursive shift vis-à-vis an entire category of texts. Canonization, in the sense employed here, transcends the mere codification of sacred texts in fixed textual form and focuses instead on the relationship of the Muslim community to these texts as sources of religious norms.[5] This relationship, as noted earlier, was mediated by the discourse of Islamic law and by legal scholars, who saw themselves and were seen by others as the guardians of the community's normative tradition.

The effect of canonization on the relationship between Muslims and their sacred texts was profound. Previously, Quran and Hadith (the latter circulating as innumerable individual reports) had represented the "raw material" of religious values, material that was continuously being sifted through the filter of communal experience and scholarly appraisal in order to distill its prescriptive meaning for the community. Canonization anointed these texts as the fount of normativity itself. Scholars recognized a certain category of texts as the uniquely authoritative and hermeneutically self-sufficient statement of God's commandments for humankind. Through this recognition, the canonized sources – and no others – came to constitute the sovereign measuring stick against which the scholars would subsequently evaluate the practices of the community.

The primary societal trigger of this canonization, I demonstrate, was a crisis of identity and authority experienced by the Muslim community, the *umma*, that was caused by the enormous social, cultural, and political changes affecting the *umma* in the second/eighth century. This was not, of course, the first communal crisis to shake the *umma*: the civil wars that followed the murder of the caliph ʿUthmān in 37/656 had bitterly divided the community and prompted deep uncertainty regarding its foundations.

[4] See, in particular, A. Al-Azmeh, "The Muslim Canon from Late Antiquity to the Era of Modernism," in *Canonization and Decanonization*, ed. A. van der Kooij and K. van der Toorn, 191–228 (Leiden: Brill, 1998). Al-Azmeh notes (on p. 200) the potential fruitfulness of analyzing the canonization of these sources in relation to Islamic law, suggesting that such a study would constitute "an important vantage point from which one could conceptually review the matter of canonicity in its entirety."

[5] The concept of canonization in this sense has been employed by Jonathan A. C. Brown to explain the authoritative status of the two most prominent Hadith collections, and by Hans-Thomas Tillschneider to demonstrate the significance of legal hermeneutics in the canonization of the Quran and Hadith. See Jonathan A. C. Brown, *The Canonization of al-Bukhārī and Muslim: The Formation and Function of the Sunnī Ḥadīth Canon* (Leiden: Brill, 2007), and Hans-Thomas Tillschneider, *Die Entstehung der juristischen Hermeneutik (*uṣūl al-fiqh*) im frühen Islam* (Würzburg: Ergon, 2006). Brown's book contains a useful survey of the literature on canonization (chap. 2).

That crisis, too, had given rise to a radically novel hermeneutic project that sought to provide a solution to the uncertainty and instability created by communal discord. The Khārijīs' approach was starkly literalist: their insistence that only the superficially apparent reading of any Quranic passage was correct necessarily excluded the possibility of legitimate differences of opinion and thus led them to anathemize anyone who disagreed. But although the absolutist Khārijī model was still in circulation in the second and third/eighth and ninth centuries, it remained a marginal phenomenon and eventually died out entirely.[6]

The crisis of the second/eighth century was different in both its causes and its outcome. It was rooted in the changes that accompanied the rapid spread of Islam across much of the known world: the influx and rising prominence of new converts from diverse backgrounds, the emergence of new alliances and localized Muslim subcultures across the empire, and the consequent dissolution of the tribal ties and ethnic homogeneity that had sustained the initial wave of expansion. This social and cultural upheaval undermined confidence in the authenticity of the essentially mimetic normative tradition of the Muslim community, which was predicated on the perception of unbroken continuity with the prophetic age. The resulting anxieties and uncertainties prompted a search for new foundations of religious authority, a way of accessing the authentic message of divine revelation that was more secure than the avenue of communal practice, which seemed increasingly frail and ambiguous. Canonization offered a solution to this dilemma by enshrining revelation in a fixed category of textual sources – the canon – that could then be subjected to systematic analysis by a professionalized group of experts.

The impulse that initiated the process of canonization arose from the work of the jurist Muḥammad b. Idrīs al-Shāfiʿī (d. 204/820). It was al-Shāfiʿī who, having become disillusioned with what he saw as the arbitrariness and even dangerousness of the sacralization of communal tradition, developed the first explicit theorization of revelation as divine communication encapsulated in the textual form of the Quran and its auxiliary, prophetic Hadith. The formulation of this theory was the first step in the process of canonization: it provided a justification for the exclusive status of the sacred texts and for the barring of communal practice from the determination of Islamic law. The second step, then, was the acceptance of al-Shāfiʿī's novel theory by other Sunni Muslim scholars, an

[6] Michael Cook, "ʿAnan and Islam: The Origins of Karaite Scripturalism," *Jerusalem Studies in Arabic and Islam* 9 (1987): 161–82.

acceptance that was facilitated by the confluence of numerous historical developments discussed in this book.

This is not to claim that al-Shāfiʿī was necessarily the first or the sole source of this impulse. The following chapters show clearly that al-Shāfiʿī's ideas were developed in the context of and through engagement with various strands of legal thought in his age, and they formed part of broader cultural and societal trends. Al-Shāfiʿī's work drew together developments that also seem to have been taking place elsewhere – such as the emergence of legal-theoretical thought and epistemological analyses of the authenticity of Hadith – but that found their first systematic and enduring expression in the writings of al-Shāfiʿī.[7]

Al-Shāfiʿī's theory embodied a radical individualism. In sharp contrast to the old communitarian model, al-Shāfiʿī admitted neither communal tradition nor scholarly precedent into the process of interpreting the sacred canon, insisting on the direct and unmediated encounter between the interpreting jurist and the canonized sources. But the ensuing shift from community to canon was not the end of the story. Had it been, the resulting legal discourse would have been very different from the discourse that we actually inherited: a system in which each jurist was forced to redevelop the legal edifice from scratch could not have given rise to the sophisticated discourse and literature that came to characterize Islamic law. Instead, al-Shāfiʿī's canon-centered individualism was tempered by the reintegration of community into Islamic law through a new institution, the school of law (*madhhab*). Whereas the precanonization normative discourse had been embedded in a community of *tradition*, the novel institution of the legal school was first and foremost a community of *interpretation* that defined itself in terms of a shared hermeneutic stance vis-à-vis the canon of sacred sources.

Just as al-Shāfiʿī had set into motion the canonization that prompted the transformation of Islamic legal discourse, so it was al-Shāfiʿī's students who laid the basis for the classical practice of Islamic law within the new framework of interpretive communities. The students interrogated, interpreted, and extended al-Shāfiʿī's ideas; transmitted and popularized his writings; authored their own, secondary works; and established a model of critical adherence to the master's interpretive paradigm. This model

[7] Norman Calder has called into question the authenticity of al-Shāfiʿī's surviving works in *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon, 1993). I offer an extensive refutation of his argument in "Al-Shāfiʿī's Written Corpus: A Source-Critical Study," *Journal of the American Oriental Society* 132 (2012): 199–220, and will take the authenticity of these works for granted in this book.

eventually matured into the classical school of law, while the students' reinterpretations of al-Shāfiʿī's thought formed the bridges over which al-Shāfiʿī's canonization project spread to other schools and fields of scholarship at a remarkable speed. It is thus not an exaggeration to say that the formative history of the Shāfiʿī school is also the formative history of classical Sunni Islamic law.

Examining the transformation of Islamic law in this period through the lens of canonization allows us to make better sense of a phenomenon that has occupied a central place in the modern study of Islamic law. Beginning with Ignaz Goldziher,[8] a number of influential Western scholars have postulated that the corpus of Hadith is mostly the product of deliberate forgery in the second/eighth century. This theory has sought to explain the apparent fact that prior to this time, Muslim jurists disregarded Hadith that later on were widely accepted. In his seminal work on Islamic law, Joseph Schacht argued that the law of the early Muslim community was nothing more than a collection of bureaucratic rules adopted from Roman law. These were then subjected to post hoc islamization through the invention of Hadith that justified them as representing genuine prophetic practice. Al-Shāfiʿī's systematization of legal theory and his theorization of Quran and Hadith as the only real sources of the law were essentially aimed at covering up this process by legitimizing the resulting islamized legal edifice.[9] More recently, Patricia Crone and Martin Hinds have proposed an alternative explanation, which links the emergence of Hadith in Islamic law to a shift in religious authority from the caliphs to the community of scholars. As the victors in this power struggle, the scholars rewrote the history of the law to excise the role of their rivals and to attribute the rules of the law directly to the Prophet.[10] For Crone and Hinds as for Goldziher and Schacht, this post hoc rationalization of the law was carried out by means of large-scale forgery of Hadith reports.[11]

If one accepts the hypothesis that the thousands of Hadith that form the basis of classical Islamic law are the product of deliberate falsification, one can only dismiss wholesale the vast body of Islamic legal and

[8] Ignaz Goldziher, *Introduction to Islamic Theology and Law*, trans. Andras and Ruth Hamori (Princeton, NJ: Princeton University Press, 1981), 38–46.

[9] See, for example, Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon, 1950), 56.

[10] Patricia Crone and Martin Hinds, *God's Caliph: Religious Authority in the First Centuries of Islam* (Cambridge: Cambridge University Press, 1986).

[11] See also Patricia Crone, *Roman, Provincial, and Islamic Law: The Origins of the Islamic Patronate* (Cambridge: Cambridge University Press, 1987), 24.

historiographical literature that transmits, analyzes, and uses this material as if it were (at least potentially) genuine.[12] From such a perspective, the classical literature embodies a concerted effort to conceal the true nature and origin of "Islamic" law. Far from representing sources for secondary scholarship, therefore, these texts in fact constitute obstacles to earnest inquiry into the history of the law. This is a bold claim, implying as it does that Muslim scholarship is in some fundamental and unique way dishonest and must be decoded by "objective" outsiders.[13] The factual basis of the claim has been challenged by numerous critical studies, which have shown that indiscriminate rejection of the authenticity of the entire Hadith corpus is as misguided as its categorical acceptance.[14] And far from representing an exercise of "imaginative nerve," as Crone called it,[15] interpreting the initial marginality of Hadith in law as evidence of their nonexistence at that time displays a curious lack of imagination: it assumes that Hadith reports, if available, could be used only in the way that classical jurists used them, namely, as one of the primary canonical sources of the law. This approach thus reads an essentialized notion of Islamic law, developed on the basis of later literature, back into the early Islamic period and solves the resulting dissonance by postulating the wholesale invention of prophetic traditions.

Beyond being essentially unimaginative, factually dubious, and methodologically unpalatable, the conclusion that the discourse of Islamic law was born out of the forgery of Hadith is also quite unnecessary. The principle of Occam's razor encourages us to prefer the simplest theory that adequately explains the known facts. The hypothesis that untold hundreds of Muslim scholars over several centuries participated in a vast

[12] Medieval Muslim scholars were, of course, aware that not all Hadith were authentic, and the classical discipline of Hadith study was in large part devoted to the task of assessing the transmission history of individual reports and the reliability of their transmitters.

[13] "There is no way around the fact that we are secularisers: we are secularising history, because we separate the past we are studying from our own and other people's modern convictions; we do not allow the past to be rewritten as mere support of these modern convictions. That's a problem to all traditional believers, and perhaps Muslims more than most." Patricia Crone, "Islam and Religious Freedom" (keynote speech, 30th Deutscher Orientalistentag, Freiburg im Breisgau, Germany, Sept. 24, 2007; available online at http://orient.ruf.uni-freiburg.de/dotpub/crone.pdf).

[14] For a collection of important studies that challenge the a priori dismissal of Hadith and argue convincingly that at least some Hadith predate their putative "invention" in the second/eighth century, see Harald Motzki with Nicolet Boekhoff-Van der Voort and Sean W. Anthony, *Analysing Muslim Traditions: Studies in Legal, Exegetical and Maghāzī Ḥadīth* (Leiden: Brill, 2010).

[15] Crone, *Roman, Provincial, and Islamic Law*, 16.

and successful conspiracy to conceal the real origin and nature of legal discourse does not fare particularly well in this test. The explanation that I propose in this book is far more straightforward and, I believe, convincing: the reason for the "sudden" integration of Hadith into law from the second/eighth century onward lies not in their invention, but rather in their new significance and role – that is, their canonization. This explanation makes no claim as to the authenticity or otherwise of the body of Hadith reports; what matters here is how these reports were seen and used by Muslim scholars, not what their precise provenance in fact is.

Analyzing the history of the law within the wider context of Sunni cultural history not only enables us to identify the phenomenon of canonization and its consequences, including the elevation of Hadith to a position of prominence in legal theory and practice. More broadly, it reveals the deep connections between this development and other shifts that marked this formative period. An ideal conceptual framework for understanding these connections is provided by Aleida and Jan Assmann's theory of cultural memory and its transformation, an approach that links the evolution of cultural and religious discourses to the opportunities and constraints created by specific ways in which collective values are preserved and transmitted.[16] An important contribution of this approach is the observation that cultural upheaval and dislocation prompt societies to seek to safeguard cultural memory through the canonization of texts that possess high symbolic value as carriers of communal identity. The locus of collective memory, hitherto diffused in the realm of oral culture and ritual performance, thus shifts to written texts, whose form becomes fixed and whose content is invested with great authority. Enriching this insight with research done by Gregor Schoeler and Harald Motzki on writing and transmission in early Islam[17] and embedding it in a detailed narrative drawn from primary historical material, this book provides a contextualized account of the transformation of Islamic law from an aural normative tradition to a systematic legal science. As a social and

[16] See, for example, Aleida Assmann and Jan Assmann, eds., *Kanon und Zensur* (Munich: W. Fink, 1987); Jan Assmann, *Religion und kulturelles Gedächtnis* (Munich: C. H. Beck, 2000); and Jan Assmann, *Das kulturelle Gedächtnis: Schrift, Erinnerung und politische Identität in frühen Hochkulturen* (Munich: C. H. Beck, 1992).

[17] Gregor Schoeler, *The Oral and the Written in Early Islam*, ed. James Montgomery, trans. Uwe Vagelpohl (London: Routledge, 2006); Schoeler, *The Genesis of Literature in Islam: From the Aural to the Read*, trans. Shawkat M. Toorawa (Edinburgh: Edinburgh University Press, 2009); and Harald Motzki, *Die Anfänge der islamischen Jurisprudenz: Ihre Entwicklung in Mekka bis zur Mitte des 2./8. Jahrhunderts* (Stuttgart: Deutsche Morgenländische Gesellschaft and F. Steiner, 1991).

intellectual history, it examines early legal discourse as a site where ideas and practices both modify and are modified by social relations and communal identities.

The first part of the book lays out the intellectual milieu of the second/eighth century and shows how al-Shāfiʿī's engagement with other scholars inspired and shaped his revolutionary theory of revelation. To a significant extent, al-Shāfiʿī formulated his theory in response to the work of his teacher Mālik b. Anas (d. 179/796), which in turn reflected the challenge posed by new methods of legal reasoning developed in Iraq. Accordingly, Chapter 1 examines the reasons for and effect of Mālik's attempt to codify in written form the Islamic legal tradition as embodied in the communal tradition of the Prophet's city, Medina. It shows that this innovation laid the basis for the emergence of a legal literature of purposefully authored books, with profound consequences for the nature of legal discourse. Chapter 2 follows al-Shāfiʿī from Medina to Iraq, the intellectual center of the Muslim world in his time, and analyzes his encounters with leading scholars representing the major movements animating Islamic thought in the second/eighth century: dialectical jurisprudence (*raʾy*) and rationalist theology (*kalām*). These "Iraqi debates" had a formative impact on al-Shāfiʿī's thought. In particular, they shaped the development of his ideas about the respective roles of Hadith and communal consensus in jurisprudence and contributed to his gradual estrangement from his erstwhile teacher Mālik. Chapter 3 demonstrates how al-Shāfiʿī's critique of Mālik, expressed in the novel format of an authored work, gave rise to a distinctive and original legal hermeneutic. This was based on the decisive rejection of legal conformism (*taqlīd*) and the canonization of the sacred sources of Quran and Hadith as the uniquely normative basis of the law. Al-Shāfiʿī's project of canonization entailed a reconceptualization of divine revelation as a communicative act between God and humankind, in which the prophetic example, enshrined in Hadith, served the essential function of elucidating the meaning of the Quran.

In order to explain why al-Shāfiʿī's radical theory of the law was able to gain adherents and establish itself in scholarly discourse in spite of the challenge that it embodied to the doctrinal status quo among the dominant elites, the second part of the book reconstructs the sociopolitical history of Egypt from the second/eighth through the third/ninth century and situates it within the broader context of the intellectual and political shifts that were taking place in the Abbasid empire. Chapter 4 shows how the dramatic changes affecting Egyptian society in the second/eighth century created a receptive environment for al-Shāfiʿī's canonization project.