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# The Guilds of Law in Medieval Legal History: An Inquiry into the Origins of the Inns of Court

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# ARTICLES

## LEGAL HISTORY OF ISLAMIC LAW AND THE ENGLISH COMMON LAW: ORIGINS AND METAMORPHOSES

### THE GUILDS OF LAW IN MEDIEVAL LEGAL HISTORY: AN INQUIRY INTO THE ORIGINS OF THE INNS OF COURT\*

GEORGE MAKDISI\*\*

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#### I. INTRODUCTION

Medieval England presents the student of legal history with a number of interesting peculiarities. Among these are the common law and the schools where it was taught, the Inns of Court. English law was the only native law in medieval Europe, functioning distinctly from both civil and canon law. It was judge-made, and followed the case-law method peculiar to it, distinct from the codification system of civil and canon law. Its schools, the Inns of Court, were, in Christendom, the only law schools of their kind that came out of the Middle Ages into modern times. These and other features belonged to England alone among all the nations of Europe. Strangely enough, it shared these features only with Islam. The extant sources contain no direct evidence of a connection between the two systems. Yet the similarities between them were peculiar to them alone; of this there can be no doubt.

On the continent of medieval Europe, law was taught in universities.

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Indeed the very first university, Bologna, was one of legal studies. In our two strangely related legal cultures, however, the native legal systems were taught in inns attached to the places of worship. In London, the inns attached to churches, while in Baghdad, the inns attached to mosques. Both native systems depended on case-precedents, used jury-witnesses, and were characterized by a powerful and independent judiciary.

This paper will discuss two problems in the legal history of classical Islam and medieval England: one concerns the question of the existence of guilds in medieval Baghdad; the other concerns the origin of the Inns of Court in medieval London. I hope to show that the two problems are interconnected through a set of similar attributes, and that each presents elements susceptible of shedding light on the other. This effort may help to dispel the doubt as to the existence of Islamic guilds, while suggesting an answer to the problem of the origins of the Inns of Court. English legal historians have pointed out that the origins of their legal profession are "exceedingly obscure" and that, in the attempt to trace its development in England, "continental analogies afford no guidance."<sup>1</sup>

Let us then take first the problem of the Islamic guilds. The first to speak of guilds in classical Islam was Louis Massignon. He did so in an article published in 1920. It was the subject of a lecture at the Collège de France in his course on Islamic sociology. Massignon's thesis, elaborated in this and subsequent articles, gave rise to a long and sustained debate on both sides of the problem, a debate which has not subsided. The controversy revolves around the question whether there existed in Islam in classical times, that is, somewhere between the ninth and eleventh centuries, organizations referred to in English as "guilds". No one denies their existence in Islam as of the end of the Middle Ages; it is only in the previous period that their existence in Islam is either doubted, or denied altogether.

To begin with, I believe it would be wise to avoid placing excessive importance on the terms used to designate the kind of association referred to here as a "guild," whether these be the Arabic words *ḥirfa*, *tā'ifa*, *ṭarīqa*, *ṣinf*, or the European words, *confraternity*, *brotherhood*, *craft*, *métier*, *corporation*, *hanse*, *jurande*, or *guild*, *gild*. What does matter is the thing itself. Therefore, this paper will confine itself to defining, and then to listing the conditions which some recent writers have listed as necessary if one is to justify the existence of Islamic guilds in the classical period.

The *Oxford English Dictionary* gives the following definition of the term "guild": "A confraternity, brotherhood, or association formed for the mutual aid and protection of its members, or for the prosecution of some common purpose."<sup>2</sup> Webster's *Third New International Dictionary* defines

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<sup>1</sup> A. CARR-SAUNDERS & P. WILSON, *THE PROFESSIONS* 29 (1964).

<sup>2</sup> *THE OXFORD ENGLISH DICTIONARY* 493 (1970).

"guild" as "an association of men belonging to the same class, engaged in kindred pursuits, or having common interests or aims."<sup>3</sup> Encyclopedias follow much the same general terms in their definitions of the word "guild".<sup>4</sup>

Professor Claude Cahen listed the conditions required for a guild in his objections to the thesis of Louis Massignon. In his view, there were three essential points involved in the problem. The first concerned the period that should be studied; the other two with the form of organization: while Cahen made it clear that guilds undeniably existed in Islam at the end of the Middle Ages, it has yet to be proved whether Islamic guilds existed in the previous period.<sup>5</sup> As for the *professional form* of organization, Cahen questioned whether it was the profession that defined and constituted the framework of the guild or whether the organization was founded on some other basis. As for the *juridical form*, the question concerned whether the organization was of a corporate type, whether it was a spontaneous organization encompassing to a greater or lesser extent the lives of its members, or whether it was a product of the administrative apparatus of the State. In summary, Cahen inquired: "Did there exist in that age called classical in Islam private associations with a professional base and a professional role, or conversely, was the professional organization based on private, spontaneous associations?"<sup>6</sup>

Another writer, Gabriel Baer, defined the guild as a "professional organization," placing the emphasis first on the word *professional*, and then on the word *organization*. Addressing *economic guilds*, he said:

It would seem to us that one may be justified in speaking of the existence of guilds if all the people occupied in a *branch* of the urban economy within a *definite area* constitute a *unit* which fulfills at one and the same time various purposes, such as economically *restrictive practices*, fiscal, administrative or *social functions*. A further condition is the existence of a framework of *officers or functionaries* chosen from among the members of such a unit and headed by a *headman*.<sup>7</sup>

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<sup>3</sup> WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1009 (1981) [hereinafter cited as WEBSTER'S].

<sup>4</sup> The key words in these definitions are the nouns "association", "society", and "organization"; the adjectives "voluntary", "permanent", and "professional"; and the guilds' objectives, "mutual aid", "welfare", and "protection"; "common cause", "common aims", and "interests".

<sup>5</sup> Massignon believed that guilds existed as of the middle of the ninth century.

<sup>6</sup> Cahen, *Y a-t-il eu des corporations professionnelles dans le monde musulman classique?* in THE ISLAMIC CITY 52 (A. Hourani and S. Stern eds. 1969)[hereinafter cited as THE ISLAMIC CITY].

<sup>7</sup> G. Baer, *Guilds in Middle Eastern History*, in STUDIES IN THE ECONOMIC HISTORY OF THE MIDDLE EAST 12 (M. Cook ed. 1970) (emphasis added).

Other writers on the subject have given opinions which are either encompassed in those given by the two writers just mentioned, or are, in my estimation, inadmissible criteria for guilds, whether Islamic or European. An instance of the latter is the notion that guilds are necessarily fictitious legal persons. Islam recognizes legal personality for natural, physical persons alone, not for abstract entities. The statement of David Santillana notwithstanding, medieval Islam showed no signs of recognizing the *waqf*, or the public treasury, or the decedent's estate, or, for that matter, anything else, as a fictitious legal person.<sup>8</sup>

## II. GUILDS OF LAW IN ISLAM: THE MADHHABS

In order to deal with the essential conditions that Claude Cahen and Gabriel Baer laid down so well in their articles, I would like to take as an example of an Islamic guild the Islamic legal professions, called *madhhabs*, and their institutional organization of legal education, as of the second half of the ninth century. The first steps toward the professionalization of legal studies were taken after the Inquisition, *Mihna*, which ended at the midpoint of the ninth century. The Inquisition was the culmination of an on-going struggle between two movements: one, of philosophical theology, the other, of juridical theology. It was fought over a theological question: whether the Koran was the created or uncreated word of God? We need retain here only that the philosophically-oriented movement entered the Inquisition supported by the central power; which power fifteen years later, made an about-face and came out in support of the juridically-oriented movement. To put it in simple terms: law won out over philosophical speculation. In the century following the Inquisition, the available sources make possible the recognition of the first colleges where law was taught. In the eleventh century, legal professions reached the height of their development with yet a new set of colleges, and a clear-cut structure of scholastic personnel, with various grades and functions.

In order to understand the rise of the guilds of law in Islam, it will be necessary to treat briefly the origins of the Islamic legal profession. As pointed out by Joseph Schacht,<sup>9</sup> the ancient schools of law in Islam were designated geographically; as, for instance, the Iraqians or the Medinese. Such schools of law changed in designation from those indicating geographical distribution to those indicating allegiance to a person: the ancient schools designated geographically were succeeded by schools named after persons. The first personal schools of the four surviving schools of

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<sup>8</sup> Cf., D. SANTILLANA, I ISTITUZIONI DI DIRITTO MUSULMANO MALICHTA CON RIGUARDO ANCHE AL SISTEMA SCIAFITTA 170-71 (1925); THE ISLAMIC CITY, *supra* note 6, at 48-49; Nallino, *Corporazione*, in ENCICLOPEDIA ITALIANA.

<sup>9</sup> J. SCHACHT, THE ORIGINS OF MUHAMMADAN JURISPRUDENCE 7 (1953).

law were those of Shafi'i and Ibn Hanbal, in imitation of which the earlier Iraqi school became the school of Abu Hanifa. The earlier Medinese school became that of Malik. Many other schools had in the meantime come into existence only to disappear from the scene. The persons whose names were used to designate the four personal schools do not represent the founders: they are the eponyms of these schools, or rather, the "patron saints" of these professional guilds.

The professional guilds of lawyers set out to organize law, a juridical theology, in opposition to *kalam*, a philosophical theology. The logic of their religious position was clear: the Prophet's Islam is a system of law, of divine positive law, a nomocracy; its theology juridical, not philosophical. That in fact was the main thrust of Shafi'i's message, underlying his treatise, *ar-Risala*. To that message Ibn Hanbal and his followers adhered religiously and used it as a rallying call for all who opposed the imported foreign philosophy of the Greeks.

As a system of thought, law occupied a position between two extremes in the Islamic religious sciences. On the one hand, the philosophical theology called *kalam*, advocated the primacy of reason; the data of tradition were accepted in so far as they were corroborated by reason; on the other hand, extreme traditionalism, falling back on an exaggerated fideism, sought refuge in the Koran<sup>10</sup> and Sunna<sup>11</sup> of the Prophet, permitting no place for reason. Law took the middle road of the primacy of revelation, tempered with reason as its handmaid. Thus, on the one hand, law dismissed philosophical theology as foreign to Islam; on the other hand it outgrew its partnership with traditionalism, in its fideist form, as lacking in vitality. Between these two movements, which it considered extreme, the legal movement sought the middle road of moderate rationalism, opting for a progressive traditionalism. It shunned equally the rampant rationalism of the theological movement and the effete fideism of the *hadith* movement, and went its own way in search of its natural equilibrium in both reason and authority.

It is a mistake to view the rise of the law schools as due to the so-called "codification" of *hadith*.<sup>12</sup> It was the other way around: the legal profession, already in place, needed collections of *hadith* arranged specifically for its professional legal studies. The arrangement of these compilations according to chapters of the lawbooks is a clear departure from their

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<sup>10</sup> *Koran*—The book composed of writings accepted by Muslims as revelations made to Muhammad by Allah, through the Angel Gabriel, as the divinely authorized basis for the religious, social, civil, commercial, military, and legal regulations of the Islamic world. WEBSTER'S, *supra* note 3, at 1255.

<sup>11</sup> *Sunna*—The body of Islamic custom and practice based on Muhammad's words and deeds. *Id.* at 2292.

<sup>12</sup> *Hadith*—A narrative record of the sayings or customs of Muhammad and his companions. The collective body of traditions relating to Muhammad and his companions. *Id.* at 1018.

arrangement according to the chains of transmitters, *isnad*.<sup>13</sup> The science of *hadith* criticism, focusing on the *isnads* to determine authenticity, had developed the *musnad*-type of compilation.<sup>14</sup> The adjective *ṣaḥīḥ*<sup>15</sup> (pl. *ṣiḥāḥ*), meaning sound traditions, was applied to these books to emphasize the fact that the *hadiths* contained therein were as authentic as those contained in the usual *musnad* works, *despite* their radical rearrangement for the particular needs of legal science. The term did not mean that the six books contained the *only* authentic *hadiths* of Islam. If indeed they were the codification of the only authentic *hadiths* of Islam, there would have been no radical change in their arrangement; *musnad* collections would not have continued to be compiled *after* the six collections; and students of *hadith* would have had no reason to continue their extensive travels in order to collect sound *hadiths* from the mouths of authorized transmitters. Oral transmission, accompanied by the written licence (*ijāza*) to transmit, was the requirement for authoritative transmission. The methodologies of the two sciences, *hadith* and *fiqh* (positive law), differed radically from one another, and echoes of the hostility of some die-hard *hadith*-experts were still being heard well into the eleventh century when the lawyer Tamimi addressed these lines to his opponents:

Some mindless men have censured legal  
learning;  
But there's no harm to us from their  
disdaining.  
The morning sun that's shining does not mind  
The fact its light is not seen by the  
blind!<sup>16</sup>

When, in imitation of the Prophet and his companions, the legal professions made the transition from the geographical designation to that of allegiance to a venerated master-jurisconsult, it was not long before the *madhhabs*<sup>17</sup> reportedly proliferated into the hundreds. However, by the end of the third quarter of the eleventh century, their numbers in

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<sup>13</sup> *Isnad*—The first part of a *hadith* containing the chain of authorities attesting to the historical authenticity of a particular *hadith*. *Id.* at 1198.

*Matn*—The second part of a *hadith*, the text of the Prophet's words or the narrative of his deeds.

<sup>14</sup> *Musnad Collections*—Collections of *hadiths* arranged according to the chain of transmitters, or authorities.

<sup>15</sup> *Ṣaḥīḥ Collections*—Collections of *hadiths* arranged according to the chapters of law books.

<sup>16</sup> G. MAKDISI, *THE RISE OF COLLEGES: INSTITUTIONS OF LEARNING IN ISLAM AND THE WEST* 100 (1981).

<sup>17</sup> *Madhhab*—A "school" of Muslim jurisprudence. The legal profession; a guild of the legal profession. WEBSTER'S, *supra* note 3, at 1357.

*Madrasa*—A Muslim school or college.

Baghdad had diminished to the four that have survived in modern times. This diminution appears to have been due to the realization that proliferation tended to be divisive, inconducive to the development of a united front against the enemy, philosophical theology. The eleventh century is the period which witnessed the high point of the professionalization of the schools of law as guilds of law: (a) the apprentice being the undergraduate law student (*mubtadi'*—*mutafaqqih*), (b) the journeyman being the graduate (*ṣahib*—*faqih*), and (c) the master being the master-jurisconsult (*faqih*—*mufṭī*), accredited as such by the license to teach law and issue legal opinions (*ijāza bi't -tadrīs wa'l-iftā'*).

It is in speaking of the legal profession that it would be well at this point to turn our attention to the conditions laid down by Gabriel Baer as those necessary for the existence of a guild. His statement may be analyzed into six conditions which, *mutatis mutandis*, the Islamic legal profession fulfills as tidily as though Baer had conceived them with the *madhhab* in mind.

In his article, *Le corps des métiers et la cité musulmane*, Louis Massignon spoke of the Islamic city as originating essentially in a marketplace which consisted of four fixed points: the exchange, the *qaiṣāriya* where merchandise was stored, the thread-market, and the "university." By this term he meant the center of higher learning, called the *madrasa*. "It is the commerce of science (he said) set up between the students and masters, and it is moreover through competition that the student becomes a master."<sup>18</sup>

It is indeed the legal profession that professionalized teaching—the teaching of law: it was also the legal profession that developed the medieval scholastic method, the constituent elements of which were the *sic et non*, dialectic, and disputation. This teaching demanded long years of study and training, in Islam, as in the Christian West, in order to obtain the grade of mastership, i.e., the doctorate, with its authority to teach. In Islam, this license to teach was the *ijāzat at-tadrīs*, and in the Christian West, the *licentia docendi*. Through disputation, i.e., the defense of one's theses against opponents, the student eventually became a master. This is the profession Massignon spoke of as the commerce of science, as competition in the field of knowledge. It is after this Islamic experience that practically identical experiences took place in the legal university of Bologna, in the London Inns of Court, as well as in Paris, Oxford, and even Salerno.

There is no question in the minds of historians of medieval universities and colleges in the West that the university and college movements were guild movements. If, on the other hand, there has been some question about the Islamic colleges, the *madrasas*, as belonging also to guilds, it is because we misread the history of their genesis and development. The

<sup>18</sup> L. MASSIGNON, 1 OPERA MINORA 372 (Y. Moubarac ed. 1963).



following arguments have been advanced in order to show that the *madrassa* did *not* qualify as a guild.<sup>19</sup>

The first argument<sup>20</sup> is that in the eleventh century, teaching in Islam, which had been by individual, private masters, became state-endowed and public in the *madrassa*, an organized college with endowed chairs. The answer to this argument is that teaching in Islam, both before as well as after the advent of the *madrassa* was conducted by individual, private masters. This situation did not change with the *madrassa*. Neither the *madrassa* nor the mosque which preceded it were state-endowed and public; they were endowed by an individual founder in his capacity as a solvent Muslim individual. The law of *waqf* (charitable trust) provides for endowments by individuals, not by the State. The institutions of learning were exclusive, not public. They admitted only students who belonged to their own guild.

The second argument is that Islamic law prohibits *waqf* foundations for the benefit of a professional category (meaning guilds); such foundations, when instituted, may be for the benefit of the poor of that category—and even that was rare; indirectly through foundations for the benefit of a mosque, a *madrassa*, or a hospital, etc., a *waqf* may be established for the benefit of all those included in it professionally, but not for the benefit of the profession itself. The answer to this argument is that Islamic *waqf*-law did *not* prohibit foundations for the benefit of a category or of a segment of the Islamic community. It gave the founder complete freedom of choice in this regard. The only limitation upon his freedom was that there must be nothing in his deed of foundation which could be construed as inimical to the tenets of Islam. Instances are not lacking of *waqfs* established for the benefit not only of each of the four legal professions, but also for the benefit of the profession of transmitters of *hadith*, the profession as a whole.

The third argument states that not only the chief physician but also the instructors (i.e., the teaching staff of a *madrassa*) were appointed by the government and controlled by the governmental agent called the *muhtasib*.<sup>21</sup> The answer to this argument is that the central power did indeed appoint and control the chief of physicians, and through him, it controlled the other physicians whom he licensed. This control, however, had to do with the physicians' *practice* of medicine; it had nothing to do with their *teaching* of medicine. The central power had no control over the professors of law whose education, from start to finish, including their reception into the rank of mastership, was in the hands of the legal profession itself. Appointments to professorial chairs were made by the founder

<sup>19</sup> THE ISLAMIC CITY, *supra* note 6, at 48, 58 n. 20, 60 n. 27.

<sup>20</sup> These arguments have been treated at length in a previous paper, G. Makidsi, *La corporation à l'époque classique de l'Islam* (in the press).

<sup>21</sup> *Muhtasib*—Inspector of the markets and of the weights and measures.

of the *madrassa*, or the individual or groups of individuals delegated or given executive power to do so; but definitely not by the central power.

### III. THE INNS OF COURT

When an Islamist, familiar with the historical development of the legal profession in classical Islam, first reads the prolific and scholarly writings of English legal historians, he cannot fail to be struck by the parallels between the classical Islamic legal profession and its counterpart in medieval England. Let me state, at the outset, that although it is interesting to know whether these parallels are significant of any influence from one culture upon the other, yet it is of much greater import that the comparative study of these two developments, each unique in its own right when taken over the whole course of its history, is capable of shedding light on both developments, the result being an enhanced understanding of their histories.

We first became aware of the existence of a legal profession when we recognized its early schools, distinct from other institutions of learning. Let us first take the case of Islam, whose institutions of legal learning came at an early date. All learning in Islam, when it was not done in private homes, shops, or the outdoors, was pursued in the mosques. Law was taught in the mosques; but so also were Koranic studies, and the field of *hadith*, vehicle of the customs and practices of the Prophet; even grammar, and the literary arts, were taught in the mosques as ancillaries to the religious sciences. How then was one to distinguish between one mosque and another as specifically assigned for the pursuit of legal studies? The answer is, when the *inn* appeared adjacent to the mosque. Legal studies required long years of concentration, almost invariably in one location. It usually took four years to complete the basic undergraduate studies; after which, graduate studies required ten, and in some documented cases, as much as twenty or more years. *Hadith*, on the other hand, had to be acquired, often one by one, orally, from authoritative sources, dispersed throughout the world of Islam. This demanded constant travel for those who wished to become its authoritative transmitters. Authority for *hadiths* had to be acquired from the *hadith* masters wherever they might be. *Hadith* students travelled from town to town in search of the surviving living authorities. All religious studies, including law, made use of the methodology of that religious science. But law broke away from *hadith* in the second half of the ninth century, and began to follow its own methodology. Its former need for *hadith* was met by the new collections previously mentioned, the *sahih*-s, the "sound" collections. Rearranged according to the various fields of law, they served the particular needs of legal training, not those of the *hadith* sciences and *hadith* criticism.

The mosque-inn complex was founded for legal studies. Law students could not have lodgings in the mosques; hence the need for the adjacent

inn. One philanthropic founder, over a period of thirty years, is reported to have founded 3,000 such mosque-inn complexes. The adjacent inn served as lodging for the law students who came from out-of-town: it was their meeting place, their place of study, where generally all those functions and practices were carried out which could not be done in the mosque. The *madrassa* was a further development, combining the functions of both mosque and inn in a single grand foundation. The mosque-inn continued to be founded, especially in those cities where there were no *madrassas*; as, for instance, Jerusalem, other parts of Palestine, Spain, and Sicily.<sup>22</sup>

In London, in the period of King Stephen (reign: 1135-54) and that of his successor Henry II (reign: 1154-89), there were three famous schools, each of which was attached to a London church. Like the inns attached to the mosques, these were also inns attached to churches. One of these, located in Paternoster Row, was attached to the church of St. Paul; St. George's Inn was attached to St. Sepulchre's; and Thavies' Inn adjoined St. Andrew's. Notice that these law schools predate the three earliest colleges in Oxford: University College, Balliol, and Merton, all of which were founded just before and after the middle of the thirteenth century.

In his *Description of the City of London*, William Fitzstephen, a churchman and a lawyer who died in 1190, gives an account of the masters of law who met "in the Church with their 'scholars' [the medieval English term for undergraduates] and where they held disputations . . . . The principal meeting-place of the lawyers with their clients was in the parvis or porch, in some instances extending into the aisle of the church, to which their hostel was attached . . . ." <sup>23</sup>

A series of historical events<sup>24</sup> show how these schools were secularized by the end of the thirteenth century, then reorganized, and how the independent Inns of Court were established by the apprentices-at-law, and then attached to the Inns of Court, becoming subordinate to them. There were thus two sets of inns: (1) the original church-inns secularized by a succession of ordinances and prohibitions by king and pope; and (2) the Inns of Court, appearing sometime later, one of them apparently developing directly from one of the early inns. The former set became the Inns of Chancery subordinate to the latter set, the Inns of Court. What is certain is that all these inns were law schools.

There were, and still are, four Inns of Court. The Serjeants' Inns and the Inns of Chancery have ceased to exist. Of the four surviving Inns of Court, the early history of the Temples, according to certain traditions, is intimately connected with the history of the Knights Templars and the

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<sup>22</sup> For a detailed treatment of the development of the legal profession, see G. MAKDISI *supra* note 16.

<sup>23</sup> A. INGPEN, *MASTER WORSLEY'S BOOK ON THE HISTORY AND CONSTITUTION OF THE HONOURABLE SOCIETY OF THE MIDDLE TEMPLE* 11 (1910).

<sup>24</sup> *Id.* at 12-13.

Knights Hospitallers.<sup>25</sup> In the year 1128 or just before, the Knights Templars established in England the principal house of their Order. In 1184, or perhaps a little earlier, they moved to the Old Manor house south of Fleet Street. In 1308, their property was seized in England. Four years later, in 1312, their Order was suppressed by the Council of Vienne. Their property fell into the hands of King Edward II (reign: 1307-27), who granted it to the Earl of Pembroke, who in turn released all his rights to the Earl of Lancaster.

Addison, in his book *The Knights Templars*, cites a tradition according to which the lawyers "made composition with the Earl of Lancaster for a lodging in the Temple, and so came hither and have continued here ever since."<sup>26</sup> There is another tradition, cited by William Dugdale in his *Origines Juridiciales*<sup>27</sup> according to which the Knights Hospitallers, soon after Edward II granted them the Mansion of the Temple, "demised the same for the rent of xl. [= ten pounds] per annum unto divers professors of the Common Law that came from Thavyes Inne in holbourne."<sup>28</sup> Carr-Saunders, quoting Addison, further points out:

[T]he similarity of many of the rules, customs, and usages of the Order of Knights Templars with those observed in the Temples leading him to a conclusion that the domestics and retainers of the ancient brotherhood became connected with the legal society formed therein, and transferred their services to that learned society today.<sup>29</sup>

The earliest passage giving evidence of lawyers lodging in the Temple is that quoted by Dugdale from the Prologue of Chaucer.<sup>30</sup> In the latter's *Tale of the Maunciple*, the following verses refer to the Temple in connection with the law:

A gentle maunciple was ther of a temple . . .  
of maistress hadde he mo than threyes ten,  
That were of lawe expert and curious;  
Of which ther were a doseyn in that hous,  
Worthy to ben stiwardes of rente and lond  
Of any lord that is in Engelond.<sup>31</sup>

The Order of the Knights Templars, also known as the Poor Knights of Christ and the Temple of Solomon, was founded in the early period of the Kingdom of Jerusalem during the Crusades. The origin of these Knights

<sup>25</sup> *Id.* at 13.

<sup>26</sup> C. ADDISON, *THE KNIGHTS TEMPLAR* 348, cited in A. INGPEN, *supra* note 23, at 17.

<sup>27</sup> W. DUGDALE, *ORIGINES JURIDICIALES* 145, cited in, A. INGPEN, *supra* note 23, at 17.

<sup>28</sup> *Id.* The lands of the Templars were bestowed on the Knights Hospitallers by Statute 19 Edward II (reign: 1307-27), in the year 1326.

<sup>29</sup> See A. INGPEN, *supra* note 23, at 17 n.1.

<sup>30</sup> *Id.* at 18 n.2.

<sup>31</sup> Cited in C. BEDWELL, *BRIEF HISTORY OF THE MIDDLE TEMPLE* 6 (1909).

in Jerusalem dates from around the year 1120. Baldwin II, King of Jerusalem, gave them quarters in his palace next to the Aqsa Mosque and near the site of the Temple of Solomon. They were in the Levant until the last years of the thirteenth century, close to two centuries.

The order of the Hospitallers was also known as the Order of the Hospital of Saint John of Jerusalem. Founded in Jerusalem, its origin goes back to an eleventh century hospital situated near the Church of Saint John the Baptist. The hospital was founded by merchants from Amalfi, Italy to provide hospitalization for the pilgrims to the Holy Land. The Templars had provinces in Palestine, Antioch, and Tripoli (Syria), and nine in Europe.<sup>32</sup> The Hospitallers, with a history in Jerusalem earlier than that of the Templars, were also an international body composed of eight Langues (tongues) in Europe. Perhaps the most important points of contact between England and the Muslim world were, in the East, Jerusalem, and in the West, not as much Spain as Sicily; Jerusalem because of the international orders of the Templars and Hospitallers; and Sicily, because of the continuous interchange in administrative personnel between Norman England and Norman Sicily.<sup>33</sup>

The Islamic legal professions were already highly developed as professional guilds, with professional schools in Syria, Palestine, and Egypt at the time of the Crusades. It is not inconceivable that the Crusaders, the pilgrim travellers, and the travelling merchants and scholars, became aware of such a development, highly organized and ubiquitous. It is not inconceivable that the English among them, on coming in contact, in these countries, with a system of law based, like their own, on custom, distinct, like their own, from civil (Roman) law and canon law, gradually became aware of an affinity between the two "national" systems, unique in their difference from the other two international systems, based on codification.

The origin of the inn as an institution of learning in the Christian West is historically connected with London and Paris; the inns of these two cities are in turn connected historically with the Holy City of Jerusalem. This type of inn, born in Baghdad and the eastern Caliphate, had moved westward to other great cities, including Jerusalem and cities throughout Spain and Sicily. In these regions, they were attached to mosques as law schools. As already mentioned, London had three such inns attached to three of its principal churches as law schools. They dated from the reigns of Stephen and Henry II, that is, between 1135 and 1189. This period follows close upon the time the Templars of Jerusalem established in

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<sup>32</sup> Apulia and Sicily, Upper and Central Italy, Portugal, Castile and Leon, Aragon, Germany and Hungary, Greece, France and England.

<sup>33</sup> The eight Langues of the Hospitallers were in Provence, Auvergne, France, Italy, Castile-Portugal, Aragon, England, and Germany. On the interchange of administrative personnel between Norman England and Norman Sicily, see D. METLITZKI, *THE MATTER OF ARABY IN MEDIEVAL ENGLAND* 6-12 (1977).

London the principal House of their Order, in 1128. Dean Hastings Rashdall described the first inn of Paris, founded in 1180, by a certain Jocius de Londoniis, otherwise known as John of London. John founded his inn in Paris immediately upon his return from pilgrimage to Jerusalem. He founded it for 18 poor students; hence its later name, "college des dix-huit". The church-inns of London had long been established as law schools. Passing them over in silence, Rashdall looked to Paris as the home of colleges, no doubt because the colleges of Oxford did not appear upon the scene until over half a century later. It would, therefore, seem more in keeping with history to look to London as the "home of colleges" in the Christian West.

The first lodgings for students attending lectures at the universities, whether in Paris or Oxford, were of the *hospitium* type. These inns were later called "colleges" when they were *incorporated*. Such was the case with the earliest Oxford colleges. *Incorporation* began with Merton, with its second statutes dated 1274; it had been founded ten years before as a simple *unincorporated* charitable trust. It was only after the Merton model of 1274 that *hospitia* became *colleges* in the sense of *collegia*. But associations, such as *unincorporated* guilds, have a development that goes further back into history to at least the tenth century in Baghdad and other parts of Eastern Islam. The scholastic guild development may be divided, legally speaking, into two main categories: (1) the guild as an unchartered institution or an eleemosynary institution based on the *waqf* or charitable trust; and (2) a charitable-trust guild capped with the protective cover of incorporation. All guild associations, before they became *collegia* in the Roman and civil law sense of the term, were *unincorporated*: either unchartered, or eleemosynary institutions, established as charitable foundations; or they were not guilds at all, but simply hired halls where student lodgers paid rent to a landlord who was often himself a graduate student.

With this last type of student residence we are not concerned. What concerns us here is the scholastic guild, an association whose legal status is based either on a simple, *unincorporated* guild structure, or on the charitable trust structure *incorporated*. The first of these two categories was exemplified by the "mosque-inn" law schools and their successors, the *madrasa* law schools, in Islam, and, in the Christian West, in London, by the "church-inn" law schools and their successors, the Inns of Court. The second category is exemplified by the *collegium*-type colleges of the Merton model, dating from 1274.

It is well-known that the Inns of Court, throughout their history, were *unincorporated* guilds of law, and have remained to this day *unincorporated*. So were also, throughout their history, the guilds of law in Islam. But, in the case of Islam, this phenomenon is more easily explained. Islamic law, as noted previously, recognizes the physical person alone as a legal person. Its divine positive law is divided into two main categories: (1) relations between man and God (*ʿibādāt*); and (2) relations between

man and man (*muʿamalāt*). Fictitious legal persons have no place in Islamic law.

In the case of the Inns of Court and their forerunner, the phenomenon of *unincorporation* is consistently emphasized by legal historians; but I have nowhere read an explanation as to the reason *why* these guilds remained unincorporated, when all other colleges and universities in England, including London, became incorporated. This legal aspect of the Inns of Court, while highly anomalous in London, is just another parallel placing them in the same category with the *madrasa*, the college of law, and the same category as the *madhhab*, the legal profession. These are but two of a number of other parallels, which I shall now proceed to list under the three following headings.

#### *A. Parallels Regarding the Two Legal Systems*

In the Middle Ages, the development of the English common law showed certain similarities with that of Islamic law. Both legal systems were indigenous, national laws; both were based on custom; unlike civil (Roman) law and canon law, they were not codified laws; each in its own peculiar way was a judge-made law, following a case-law method, and the courts of each were characterized by a jury system of sworn witnesses, familiar with the facts of the case.

#### *B. Parallels Regarding the Legal Professions and their Law Schools*

The earliest known law schools of both legal professions were, respectively, mosque-inns and church-inns. Both legal professions were represented by many guilds which finally diminished in number to four. As guilds, they remained unchartered and unincorporated. Their schools, always unincorporated, were at first, for Islam, charitable trusts under religious control, but later, as *madrasas*, were brought under secular control; and for London, they were at first under church control and brought later under secular control. The guild tripartite ranking of legal practitioners characterized both school systems: master, graduates, and undergraduates. The masters of both systems had the monopoly of creating the doctors of the law chosen from among the graduates. The basis for this monopoly is clear in Islam, but not so clear in England; it may simply have been borrowed. The main objective of both school systems was the teaching and practice of their national law. Both nevertheless also taught the literary arts, and both produced literary men who did not practise law.

#### *C. Parallels Regarding the Method of Legal Education*

The scholastic method of disputation was developed by the Islamic legal profession in the ninth, tenth, and eleventh centuries, and later taught in its law schools, then in Bologna as of the twelfth century, was also the

method used in the Inns of Court of England. Both systems used the two methods of teaching developed early in Islam and later used in Bologna, Paris, Oxford and elsewhere; namely the lecture and the disputation, which in the Inns of Court were called "readings" and "moots".

The last parallel under this heading is worthy of note. It involves the strange use of the term "apprentice" in the medieval English legal system. Legal historians have puzzled over its meaning. Some see in the word a relic of the guild system, no doubt because of the tripartite ranking of master, journeyman, and apprentice. But this word was applied not only to the lowest rank of student; it was applied to legal specialists of much higher rank, and loosely, to all ranks. An explanation for it may be found, when it is compared with its Islamic parallel through its etymological origins in French and Latin. "Apprentice" derives from the Old French *aprentis*, from the verb *aprendre*, to learn. The French *aprendre* derives from the Latin *apprehendere*, meaning, "to lay hold of," or "to seize." In the contracted *apprend-*, the word survived in the Romance languages, in the figurative sense of "lay hold, or seize, with the mind, comprehend, learn," and later, "to teach, to learn" (cf. the French *aprendre* and the English *apprise*). The apprentice was therefore not only someone who learned, but also someone who taught, and thus the term could be applied to all levels of knowledge within the legal profession. But nowhere do we find in the Christian West an analogy for this term in the legal profession. The legal profession in Islam, however, provides an analogy with the term *mutafaqqih*, derived from *fiqh*, which means understanding, discernment, comprehension, used as of the ninth century to designate the science of law, in contradistinction to the science of *hadith*. In *hadith*, the primary concern was the preservation and transmission of *hadiths*. Understanding them was of secondary importance. The term *mutafaqqih* was applied technically to the undergraduate student of law, and the master-jurisconsult, in other words, it referred to legal specialists of all levels of knowledge,<sup>34</sup> as was the later term "apprentice" in the English legal profession. I believe it was Sir John Fortescue who once said that the lawyer remains forever a student of law, so too did Isafrā'ini say that when we finally finish our studies of law, we shall be dead.

It indeed seemed as though Islamic law appeared to recognize only the individual and the community, the *umma*; in between it seemed as though "there was no stable grouping regarded as legitimate and permanent."<sup>35</sup> Yet within the community the stable grouping of the *madhhab* remained legitimate and permanent from its inception to modern times.

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<sup>34</sup> T. AS-SUBKI, 2 FATAWA 56 (1356 H.) ("al-mutafaqqih qad yurādu bihi 'l-mubtadi . . . wa-qad yurādu bihi qullu man yata'ātā 'l-fiqh") *substantively translated* in G. MAKDISI *supra* note 16, at 173 ("The term *mutafaqqih* may be used in the sense of beginner [student of law, as well as] to designate anyone engaged in the field of law . . .").

<sup>35</sup> Hourani; *The Islamic City in the Light of Recent Research*, in *THE ISLAMIC CITY*, *supra* note 6, at 14.



Not only was the juridical *madhhab* legitimate, it was the legitimizing agency under whose umbrella all else became legitimate or was otherwise declared, by the consensus of the juriconsults, to be outside the pale of orthodoxy. *Madhhabs* were not corporations in the juristic sense of fictitious legal persons; they did not, like Western corporations, need to apply to the State to obtain charters legitimizing their autonomy. The *madhhabs* had autonomy because they were themselves the representatives of the *umma*-community; they remained free and autonomous and the central power had nothing to say about the matter. It was in fact more permanent and more legitimate than the central power itself.

Here, then, too, was a grouping which practised autonomy without the need of applying for it from the central power. In the West, this would be considered an anomalous situation. Indeed that is why the London Inns of Court have been so considered for sometime now. Among all the legal professions of the Continent, the Inns of Court stand alone professionally, akin alone to classical Islam's profession, its only base of kinship traceable to medieval times. For the Inns of Court have also thrived on autonomy as guilds without incorporation; they too have an undisputed monopoly of legal business, even after their medieval Muslim counterparts had long been forgotten. But were it not for these medieval Muslim counterparts, ubiquitous in Syria, Egypt, Palestine, and especially in Jerusalem, teeming with Templars and Hospitallers, these anomalous phenomena of English common law, having no visible source or main-spring, would still have their origins firmly embedded in the musty recesses of unrecorded history.