Principles of Traditionist Jurisprudence Reconsidered

Scott Lucas

Until recently, hadith scholars, whom most modern academics call “traditionists,” have elicited tepid interest in Western studies of Islamic law. They typically appear as a foil to the rationalist “Companions of ra’y,” a small group of creative jurists who laid the foundations for what ultimately became the four enduring legal schools of Sunnism. While we must not overstate the role of traditionists in early Muslim jurisprudence, it is necessary for us to correct some of the assertions in circulation about them if we are to obtain a clearer understanding of early Islamic legal history.

This article, which builds upon a recent article titled, “Where are the Legal Hadith? A Study of the Musannaf of Ibn Abī Shayba,” identifies both the accurate insights and shortcomings of Joseph Schacht’s influential traditionist paradigm. It also adjusts subsequent corrections to this paradigm by comparing Schacht’s postulates with Ibn Abī Shayba’s (d. 235/849) actual practice in the legal sections of his Musannaf. This comparison is followed by an analysis of Ibn Abī Shayba’s sole polemical section of the Musannaf, Kita‘b al-radd ‘alā Abī Ḥanīfa, in which he behaves in a manner that resembles more closely Schacht’s “traditionist paradigm” than in 20 of his other legal books. This article concludes with a clarification of traditionist jurisprudence and a plea for scholars to consider the landmark texts of the hadith-scholar tradition in their examination of early Muslim legal history.

Joseph Schacht’s “Traditionist paradigm”

One of the more perplexing passages of Joseph Schacht’s Origins of Muhammadan Jurisprudence is Part III, chapter 6, titled, “The Traditionists.” In a mere five pages (pp. 253–7), Schacht sketches twelve qualities of traditionists, the word he uses to translate the Arabic expressions asbāb al-hadith, abl al-hadith, and abl al-āthār. The only traditionist whose work he cites is Ibn Qutayba, a philologist and adīb with limited connections to the “Companions of hadith.” He also remarks that the traditionist movement culminated in the 3rd century collections, an unmistakable allusion to the famous “six books” of the Sunni tradition which he oddly never cites in this chapter.
Who are these traditionists? Despite their presence in “all countries” (p. 253), Schacht is reticent about naming individuals. He identifies Ibn Hanbal as “purely traditionist” in the body of the chapter, along with an additional six men in a footnote. In this same footnote, he refers the inquisitive reader to the lists of traditionists found in Ibn Qutayba’s Ma‘ārif and Ibn al-Nadîm’s Fihrist. Finally, Schacht claims that Ibn Qutayba is “the one traditionist of whom texts of any length are easily available at present” (p. 257), a statement at odds with his identification of the easily accessible “classical collections of traditions of the 3rd century” that he mentions in the preceding paragraph and cites elsewhere in his own works.

Let us shed a little more light on the traditionists in Ibn Qutayba’s Ma‘ārif whom Schacht refrains from discussing. Ibn Qutayba names a total of 100 men in his chapter on ʿashbāb al-ḥadīth, although this number increases if we include some of the individuals, like Ibn Jurayj and Ibn Ishaq, whom he mentions in the preceding chapter, al-tābiʿūn wa-man ba’dahum, and al-Awzāʾi, Sufyān al-Thawrī, and Mālik, three widely-recognized ḥadīth experts among his nine ʿashbāb al-ra’y. Of the 100 men in the chapter on ʿashbāb al-ḥadīth, 42 are identified as clients (mawla), 10 are qadīs, 9 have sectarian affiliations, and 6 are graded as weak transmitters. Nearly all of them lived in Basra, Kufa or Baghdad, although a few settled elsewhere, such as Mecca, or, in the case of Ma’mar b. Rāshid, Yemen. Beyond this skeletal information, Ibn Qutayba is largely silent.

Ibn Qutayba’s list is, at best, a useful starting point for identifying the traditionists who lived from approximately 120–220/738–835. This critically important period witnessed the emergence of the first Arabic books in the Islamic tradition (after the Qur’an) and several individuals named in this chapter contributed to this development, such as Ḥammād b. Salama, Ma’mar b. Rāshid, Sa’īd b. Abī ‘Arūba, Wākī b. al-Jarrāḥ, Ibn al-Mubārāk, ‘Abd al-Razzāq al-Ṣanāḥi, along with the musnad compilers Abū Dāwūd al-Ṭayālīsī, ‘Abd Allāh al-Ḥumaydī, and Musaddad b. Musarhad. Over 30 of the men in this chapter were direct teachers of Ibn Abī Shayba, although it is significant to note that 4 of his 15 most frequently cited teachers are absent from al-Ma‘ārif. In short, Ibn Qutayba’s list furnishes us with a more manageable pool of traditionists than does a sprawling work like Ibn Sa’d’s Kitāb al-ṭabaqāt al-kabīr or Ibn Abī Ḥātim’s massive al-Jarb wa’l-ta‘dīl, but it is nearly impossible to learn anything about them from it and Ibn Qutayba simply overlooks many significant transmitters in the interest of brevity.

Despite the limited information at his disposal from the highly circumscribed collection of traditionist books he consulted, Joseph Schacht identified the following twelve features of traditionist practice and jurisprudence in the Origins (pp. 254–5):

1) Traditionists created and put into circulation prophetic traditions;
2) They decided which traditions had reliable authorities;
3) They did not consider mursal or munqatī traditions reliable;
4) They did accept “isolated” traditions;
5) They rejected some traditions “for reasons of their own;”
6) They engaged in superficial reasoning;
7) They hesitated to pass on unreliable traditions;
8) They avoided maintaining a collection of traditions;
9) They considered the interpretation of traditions to be limited;
10) They rejected the use of analogical reasoning;
11) They avoided making rulings without textual evidence;
12) They avoided making rulings without textual evidence.
7) They used Companion traditions as “auxiliary arguments;”
8) They put into circulation anti-rajy reports in the mouths of Successors;
9) They invented statements that Companions and other Muslims would revise their decisions upon learning that the Prophet had decided differently;
10) They began as part of the opposition to the ancient school of Medina, as opposed to the Iraqis, who merely challenged the ancient school by reports on the authority of ’Ali;
11) They made “consistent reference to the Prophet.”
12) They endeavored to “subordinate the legal subject-matter to moral considerations.”

Even though Schacht adduces slim evidence in support of these points, he is certainly correct in saying that traditionists engaged in evaluating reports (§2) and accepted what became known as abādī hadīth (§4). He is also probably correct with points §§5, 6, 8, 9, and 12. If we take Ibn Qutayba’s 100 traditionists as the men whom Schacht is describing, then I think we need more evidence to prove that they actually created (i.e., fabricated) traditions (§1), although they definitely put them into circulation through teaching circles and writings. Schacht is also correct that some traditionists did not consider mursal or munqati’ traditions to be totally reliable (§3), although it is significant that many hadīth scholars regularly employed them. In fact, no less of an authority than Abū Dāwūd al-Sijistānī (d. 275/889) defends their use on the basis of the practice of Sufyān al-Thawrī, Mālik, and al-Awzā’i in his Epistle to the Meccans.

Schacht’s three primary errors are his hypotheses that traditionists began in opposition to the ancient school of Medina (§10) and, more significantly, that they used Companion traditions as “auxiliary arguments” (§7) and made “consistent reference to the Prophet” (§11). I agree with Wael Hallaq that the ancient schools as adumbrated by Schacht never existed and that this renders §10 moot. Surprisingly, Hallaq appears to accept Schacht’s assertion that traditionists (or, in his words, traditionalists) based their jurisprudence squarely upon prophetic hadīths, although he muddies the water with his creation of the category of “proto-traditionalists,” who “had not yet come to the point at which they would insist upon exclusive reliance on Prophetic ḥadīth.”

Christopher Melchert corrected Schacht’s claim that hadīth scholars made “consistent reference to the Prophet,” since he observed that they cite Companion and Successor reports regularly, but he also remarked that traditionists were “proponents of entirely Scriptural authority” and would only rely upon “Companion or later ḥadīth if prophetic [ḥadīth] was unavailable,” which, we shall see, is only partially true. On the basis of the recently published analysis of three books (kutub) of the massive Musannaf of Abū Bakr Ḥādī al-Ṣaḥābi, it appears that traditionists of the late 2nd/8th and early 3rd/9th centuries had at their disposal relatively few prophetic hadīths on most legal topics and were united in their overwhelming reliance upon the legal opinions of Companions and Successors, but split over the authority of post-Successor jurists. Let us now turn to this critically important work that has only recently received a critical edition by Ḥamad al-Jum’a and Muḥammad al-Lahīdān (Riyadh: Maktabat al-Rushd, 2006).
The **Muṣannaf** and Jurisprudence of Ibn Abī Shayba

The **Muṣannaf** of Ibn Abī Shayba is an Andalusian book that records a Kufan perspective on a large corpus of transmitted Islamic knowledge in circulation around the year 200/815. A total of 22 of its 39 books are devoted to legal topics (Table 1). Abū Bakr Ibn Abī Shayba, whose birth al-Khaṭīb al-Baghdādī dates to 156/773, was the son of a qāḍī of Fārs province and the grandson of a qāḍī of Wāṣit. His hadīths are found in all of the “six Sunnī books,” with the exception of al-Tirmidhī’s Ḥāmi’, and a vast amount of his narrations can be found in the Ṣāḥīb of Muslim and Sunan of Ibn Mājah. In addition to his immense **Muṣannaf**, Ibn Abī Shayba composed a Qur’ānic commentary (tafsīr) and several other historical and theological books, portions of which are found in his **Muṣannaf**.

As has been shown in the recent study of Ibn Abī Shayba’s **Muṣannaf**, three-quarters of the narrations in the books on the alms tax, divorce, and ḥadd crimes in the **Muṣannaf** claim to report the opinions of just fourteen early Muslim authorities. A little more than half of these legal authorities lived in Mecca and Medina. Seven of them are of the Successor generation, and most of them lived from the mid-1st/7th century into the early 2nd/8th century. One in three reports in the **Muṣannaf** is the putative opinion of either al-Ḥasan al-Baṣrī (d. 110/728), Ibrāhīm al-Nakha’ī (d. 95/714), ‘Āmir al-Sha’bī

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**Table 1. Legal Books in the Muṣannaf of Ibn Abī Shayba**

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<tr>
<th>Kitāb</th>
<th>Book</th>
<th>Number of Chapters</th>
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<tr>
<td>1)</td>
<td>Ṣalāt</td>
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<td>4)</td>
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<td>5)</td>
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<td>7)</td>
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<td>8)</td>
<td>Janāʾiz</td>
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<td>9)</td>
<td>Siyar</td>
<td>Statecraft</td>
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<td>10)</td>
<td>Ḥudūd</td>
<td>Ḥadd Crimes</td>
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<td>11)</td>
<td>Zakāt</td>
<td>Alms Tax</td>
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<td>12)</td>
<td>Radd ‘alā Abī Ḥanifa</td>
<td>Refutation of Abu Hanifa</td>
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<td>13)</td>
<td>Siyām</td>
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<td>14)</td>
<td>Farāʾīd</td>
<td>Inheritance</td>
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<td>15)</td>
<td>Aymān, Nudhūr</td>
<td>Oaths, Pledges</td>
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<td>16)</td>
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<td>18)</td>
<td>Ṣayd</td>
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<td>20)</td>
<td>Ashriba</td>
<td>Beverages</td>
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<td>21)</td>
<td>‘Aqīqa</td>
<td>Offering for a newborn</td>
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<td>22)</td>
<td>Aqdiyya</td>
<td>Prophetic Verdicts</td>
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(d. between 103/721 and 110/728), or ʿAtā b. ʿAbī Rabīḥ (d. 114/732 or 115/733). The Companions ʿUmar and ʿAlī are cited 12% of the time, and each of them appears nearly twice as frequently as ʿAbd Allāh b. ʿUmar, Ibn Maʿṣūd, and Ibn ʿAbbās. Four additional Successors—al-Zuhrī (d. 124/742), Saʿīd b. al-Musayyab (d. 94/712-3),19 the caliph ʿUmar b. ʿAbd al-ʿAzīz (d. 101/720), and al-Ḥakam b. ʿUṭayba (d. 114/732 or 115/733–4) — round out the list of Ibn Abī Shayba’s top authorities and are cited in an additional 12% of the reports in these books.

The Prophet Muḥammad occupies an unexpected role in Ibn Abī Shayba’s jurisprudence. He is the third most frequently cited authority, even though he appears in only 8.7% of the legal narrations in the Musannaf. He is overwhelmingly the most significant authority in the “Book on Zakāt” and is the second most-frequently cited authority in the “Book on Ḥadd Crimes.”20 In the longer “Book on Divorce,” the Prophet is cited only 54 times among 1627 narrations (3.3%). This data suggests that prophetic hadīth played a more important role in the laws of worship than in the laws of transactions, a finding that is consistent with the proportionately larger books on prayer and pilgrimage in the canonical Sunni hadīth collections. In some fields, like divorce, his role is virtually nonexistent, a finding at sharp variance with Joseph Schacht’s paradigmatic traditionist, yet consistent with Harald Motzki’s empirical analysis of the Musannaf of ʿAbd al-Razzāq al-Ṣanʿānī (d. 211/826).21

Let us look at a few concrete examples of Ibn Abī Shayba’s jurisprudence.22 As will be made clear, Ibn Abī Shayba’s basic methodology is to assemble a number of prophetic, Companion, and Successor opinions on any topic without informing the reader which position to take. If all of the reports are in agreement, then one can safely assume that consensus exists on the topic and that he or she should adhere to it. In a large percentage of cases, the earliest authorities are not in agreement on a given issue and Ibn Abī Shayba does not indicate which opinion is superior. Rather, the reader is left to decide for him or herself which opinion to follow.

The following cases are two examples in which Ibn Abī Shayba indicates that the early authorities were unanimous in their views, since he does not list anyone holding contrary opinions:

1) Torture (imtībān) invalidates the confession of a crime for which corporal or capital punishment is applicable, according to: al-Shaʿbī, Abū Miḥlāz, ʿUmar b. ʿAbd al-ʿAzīz, al-Ḥakam b. ʿUṭayba,23 Shurayḥ,24 ʿUmar, al-Zuhrī, and Ibn ʿUmar.25

2) Female testimony is invalid in crimes for which corporal or capital punishment is applicable, according to: The Prophet,26 Ibrāhīm al-Nakhlī, al-Ḥakam b. ʿUṭayba, al-Shaʿbī, al-Ḥasan al-Ḥašṣ, al-Dāḥfāh b. Muzāḥim, Ḥammād b. Abī Sulaymān, ʿAbd al-Raḥmān b. Saʿīd b. Wahb, and al-Zuhrī.27

The following two cases are examples of Ibn Abī Shayba putting multiple contradictory legal positions in the same chapter:

1) What is to be done with a man whose breath reeks of wine?28
   A) Flog him, according to: ʿUmar and Ibn Maʿṣūd;
B) Flog him if he is an addict (mudmīn): Ibn al-Zubayr;
C) There is no hadd penalty: ‘Āthār and ‘Amr b. Dinār;
D) Refrain from flogging him if he claims the scent of his breath derives from fruit he ate: Ibn al-Zubayr.

2) What is the penalty for a female apostate? 29
A) Enslave her until she is executed: ‘Alī;
B) Imprison and force her to return to Islam, but do not kill her: Ibn ‘Abbās;
C) Do not kill her: ‘Āthār and Ibrāhīm al-Nakha’ī; 30
D) Do not kill her, but if she refuses to return to Islam, make her a slave for the Muslims: al-Hasan al-Baṣrī; 31
E) Do not kill her, but imprison her: al-Hasan al-Baṣrī; 32
F) Grant her the opportunity to repent, but if she refuses, kill her: al-Hasan al-Baṣrī, Ibrāhīm al-Nakha’ī; 33
G) If a slave girl apostatizes, sell her to someone who is not of her religion: ‘Umar b. ‘Abd al-‘Azīz;
H) She is to be killed: Ibrāhīm al-Nakha’ī. 35

More rarely, Ibn Abī Shayba provides separate chapters for contrary opinions, without indicating which one is preferable.

1) Those who say there is no Hadd penalty if someone says to a man, “Hey Lūṭ!” 36
2) Those who say there is a hadd penalty if someone says to a man, “Hey Lūṭ!” 38

These sample cases from the “Book on Hadd Crimes” in Ibn Abī Shayba’s Musannaf are typical of our compiler’s normal legal method. Most of the opinions he collects are from authorities of the Successor generation, followed by those of a range of Companions, and, on relatively rare occasions, the Prophet Muḥammad himself. Occasionally, these early authorities all agree on a position. In the majority of cases, however, Ibn Abī Shayba’s opinion is opaque, but the structure of the Musannaf suggests that he considers the opinions of a wide array of individuals worthy of consideration. The important point is that, pace Schacht, Successor and Companion opinions occupy center stage in the traditionist jurisprudence of Ibn Abī Shayba, while the Prophet is, at best, an auxiliary legal source, and frequently absent altogether.

A Special Case: Ibn Abī Shayba’s Refutation of Abū Ḥanīfa

There are only two legal books in the Musannaf which are based primarily upon prophetic hadīths. The first of these, “The Book on the Judgments of the Messenger of God” contains 81 prophetic hadīths on diverse legal topics. 40 Of greater interest to this article is Ibn Abī Shayba’s sole polemical book, “The Refutation of Abū Ḥanīfa,” which is subtitled, “These are Abū Ḥanīfa’s positions that contravene the reports which have
come to us from the Messenger of God.” One might assume on the basis of this subtitle that all of the 125 purported prophetic practices that Abū Ḥanīfa contradicts would appear in the form of prophetic hadiths, and, for the overwhelming majority of cases, the reader is not disappointed. However, Ibn Abī Shayba includes mursal hadiths alongside hadiths with uninterrupted isnāds in 21 cases (17%) and, even more surprisingly, he resorts to his familiar method of relating Companion and Successor reports alongside the prophetic hadiths in 49 cases (39%). Apparently, even in his polemical writing against the supreme practitioner of unfettered ra’y, Ibn Abī Shayba was not comfortable relying exclusively upon prophetic hadiths.

Let us examine more closely some cases in “The Refutation of Abū Ḥanīfā” in which Ibn Abī Shayba matches Schacht’s paradigm of a traditionist and refutes his adversary exclusively by means of prophetic hadiths:

1) Abū Ḥanīfa says that it is permissible to travel with the Qur’an in enemy (non-Muslim) territory; Ibn Abī Shayba (IAS) refutes this with a single prophetic hadith transmitted by Ibn ‘Umar.

2) Abū Ḥanīfa says that a never-married fornicator is not to be exiled; IAS refutes this with a prophetic hadith in support of exile transmitted by Abū Hurayra, Zayd b. Khālid, Shībī, and another one from ‘Ubāda b. al-Ṣāmit.

3) Abū Ḥanīfa says that the sale of unripe fruits is permissible; IAS responds with a barrage of prophetic hadiths prohibiting this practice from Ibn ‘Umar, Jābir [b. ‘Abd Allāh], Abū Hurayra, Abū Sa‘īd [al-Khudrī], Ibn ‘Abbās, Anas, and Abū Umāma.

4) Abū Ḥanīfa says that the funeral prayer is to be performed on behalf of the martyr; IAS replies with hadiths transmitted by Jābir and Anas which report that the Prophet did not prayṣalāt al-jana‘za for the martyrs at Uhud.

Here are three cases in which Companion (or Successor) reports are used as “auxiliary evidence” to prophetic hadiths, in accordance with Schacht’s traditionist paradigm:

1) Abū Ḥanīfa says that it is permissible to profit from the sale of dogs; IAS reports that the Prophet forbade this with hadiths from Abū Mas‘ūd, Abū Hurayra, Jābir, Abū Juḥayfa, and Ibn ‘Abbās, along with the Successor Ibn Sirīn’s personal opinion.

2) Abū Ḥanīfa and Abū Yusuf say that it is permissible to trade dried dates for moist ones; IAS refutes this with prophetic hadiths from Sa‘d and Ibn ‘Umar, along with the personal opinions of Ibn ‘Abbās and Sa‘īd b. al-Musayyab.

3) Abū Ḥanīfa says that the indigent mawālī (clients) of Banū Hāshim can receive alms (Sadaqa); IAS refutes this practice by means of prophetic hadiths from Abū Hurayra, Abū Rāfī‘, Abū Laylā, Rashīd b. Mālik, Salmān [al-Fārisī], and Anas, along with a report of ‘A‘isha’s personal opinion.

We also find cases in which Ibn Abī Shayba relies upon mursal hadiths and Companion or Successor reports due to what might be an absence of hadiths with sound isnāds on these topics:

1) Abū Ḥanīfa says that there is no retaliation if a master kills his slave; IAS refutes this with just a single mursal hadith from al-Ḥasan al- авг.© 2010 Hartford Seminary.

151
Abū Ḥanīfa says that one who vilifies (sabba) the Prophet is not to be killed; IAS refutes this with a mursal hadīth from al-Sha'bī and Ibn 'Umar's personal opinion.53

Abū Ḥanīfa says that it is permissible to pray between graves in a cemetery; IAS refutes this with a mursal hadīth from al-Hasan al-Baṣrī and the personal opinions of 'Umar, 'Abd Allah b. 'Amr b. al-Āṣ, Anas, the father of al-Ālā’ī with Khaythama ib. ‘Abd al-Rahmān b. Abī Sabr al-Hasan al-Urani and Ibrāhīm al-Nakha’ī.55

Finally, there are some cases in which Ibn Abī Shayba relies more heavily upon Companion and Successor reports than prophetic hadīths, despite the subtitle of this section of the Muṣannaf:

1) Abū Ḥanīfa says that a witness and an oath are not valid in court [as a substitution for two male witnesses]; IAS refutes this with a mursal hadīth from Muhammad al-Baqir, an uninterrupted prophetic hadīth from Ibn ‘Abbas, and the personal opinions of Sa’d, Shurayh, and ‘Abd Allāh b. ‘Utba.56

2) Abū Ḥanīfa allows the collection of zakaṭ on horses used for breeding; IAS refutes this with the Prophet’s statement, “There is no zakaṭ on horses,” transmitted by ‘Alī and Abū Hurayra, along with the opinions of ‘Umar, Ibn ‘Abbas, Ibn al-Musayyab, ‘Umar b. ‘Abd al-Azīz, and Makhul [al-Sha’mī].57

3) Abū Ḥanīfa says that the witr prayer cannot be a single unit of prayer (rakṣa); IAS refutes this with 3 versions of a prophetic hadīth transmitted by Ibn ‘Umar and the personal opinions of Mu‘āwiya, Ibn ‘Abbas, Sa’d, ‘Āṭa’, Ibn Mas‘ūd, Hudhayfa, Abū Bakr, Ibn Sirin, Mu‘ādh, al-Hasan al-Baṣrī, and al-Sha‘bī’s observation that the descendents of Sa’d and Ibn Mas‘ūd prayed a single rakṣa for the witr prayer.58

Even though Ibn Abī Shayba argues in a manner congruous with Schacht’s paradigmatic traditionist in his refutation of Abū Ḥanīfa’s ra’y, it is necessary that we keep the following points in mind. First, Ibn Abī Shayba traps himself into using prophetic hadīth from the outset due to his explicit claim that Abū Ḥanīfa’s opinions contravene prophetic practice. Second, Ibn Abī Shayba only musters 125 cases in which Abū Ḥanīfa actually differs from Muḥammad’s sunna. Third, 45 of these topics (36%) relate to ritual purity and prayer, and an additional 16 concern ritual matters, such as animal sacrifice, pilgrimage, and the alms tax. Fourth, Ibn Abī Shayba identifies a mere 2 divorce topics and 5 marriage topics in which Abū Ḥanīfa’s opinions purportedly contravene prophetic practice. Ḥadd crimes and retaliation also account for just 11 topics. Finally, as mentioned above, Ibn Abī Shayba frequently cites Companion and Successor reports in a supporting role and at times as decisive evidence to clinch an argument against his adversary. Ibn Abī Shayba’s heavy use of hadīths in the sole polemical book of his Muṣannaf is noteworthy, but it must not obscure the fact that this traditionist compiler relies primarily upon Successor and Companion reports in 20 legal books covering some 4500 topics.

Conclusions

The main goal of this article has been to reaffirm that traditionists relied primarily upon Successor and Companion reports in their non-polemical legal writings. Joseph
Schacht’s assertion that traditionists made “consistent reference to the Prophet” (§11) turns out to be largely incorrect, at least prior to the compilation of the “six books.” In fact, it is prophetic hadith that serve as auxiliary evidence to Companion and Successor reports in Ibn Abi Shayba’s *Muṣannaf*, which is the exact reverse of Schacht’s claim (§7) above. Schacht’s assertions only apply to Ibn Abi Shayba’s short polemical section against Abu Ḥanifa, and, even there, Ibn Abi Shayba relies upon “weak” mursal narrations on multiple occasions. It is only with the generation of al-Dārimi (d. 255/869) and al-Bukhārī (d. 256/870) that we see a shift to prophet-centered texts of jurisprudence, with the profound consequence that this new hermeneutics severely reduced the number of legal topics that the traditionists could address.59 Contrast, for example, Ibn Abi Shayba’s 283 chapters on divorce with the mere 50 chapters in the “Book on Divorce” in Abū Dāwūd’s *Sunan*. Even after this shift to prophet-centered jurisprudence, we still find numerous Companion and Successor opinions in al-Bukhārī’s *Ṣaḥīḥ* and al-Tirmidhī’s *Jāmiʿ*, along with Abū Dāwūd’s exhortation in his *Epistle to the Meccans* to study the *jāmiʿ* of Sufyān al-Thawrī and other works laden with Companion and Successor reports.

Joseph Schacht’s two primary errors in Part III, Chapter 6 of the *Origins* upon which I have dwelled in this article can be credited in large part to his near-exclusive reliance upon Ibn Qutayba and al-Shāfi‘ī for his understanding of traditionist jurisprudence. Joseph Lowry has pointed out that Schacht’s second key Qutaybian source, *Tāwil mukhtalif al-hadīth*, contains only 38 legal cases among its 109 topics.60 Why Schacht used this source instead of al-Bukhārī’s *Ṣaḥīḥ* or al-Tirmidhī’s *Jāmiʿ* is puzzling; how Norman Calder, four decades later, could ignore the recently-published *Muṣannafs* of ‘Abd al-Razzāq and Ibn Abi Shayba is inexplicable.61 While historians of early Muslim jurisprudence still have much to learn from well-mined early fiqh books, like the *Muwatta*’s of Mālik transmitted by Yahyā and al-Shāybānī, the *Mudawwana* of Sahnūn (attributed to Mālik), the *Unm* of al-Shafi‘i/al-Rābi‘, and al-Shaybānī’s corpus, it is imperative that we not restrict our gaze to the earliest madhhab texts. Rather, we must apply our critical faculties to the major works of the hadīth-scholar tradition: the *Muṣannafs* of ‘Abd al-Razzāq and Ibn Abi Shayba; the *Musnad* of al-Ṭayālisi, al-Ḥumaydī, Ibn Ḥanbal, and Abū Ya‘lā; the “six books”; and the non-canonical *sunan*-style books by al-Dārimi, Ibn al-Jarūd, Ibn Ḥibbān, al-Dāraquṭnī, al-Ḥākim al-Naysābūrī, and al-Bayhaqī. The peril of ignoring these books should by now be clear.

Endnotes

* An earlier version of this article was presented at the Joseph Schacht Revisited Workshop, hosted by the Islamic Legal Studies Program at the Harvard Law School on April 5, 2008. I am grateful to Ahmed El Shamsy and Peri Bearman for including me in this event.

1. This article will not address Shi‘i traditionists; three relatively recent studies on this topic are Robert Gleave, “Between Hadīth and Fiqh: The ‘canonical’ Imāmī collections of aḥbār,” *Islamic Law and Society*, 8:3 (2001): 352–82; Andrew J. Newman, *The Formative Period of Twelve Shi‘ism: hadīthbas*


6. Ibn Qutayba, *al-Mā‘ārif*, ed. Tharwat ’Uskhash (1960), 501–27. I think that Christopher Melchert has read unwarranted significance into the fact that Ibn Qutayba classifies al-Awzā’i, Mālik, and al-Thawrī as Companions of ra‘ī in *al-Mā‘ārif*, but Companions of ḥadīth in his later *Ṭā‘wil mukhtalaf al-ḥadīth*; see “Traditionist-Jurisprudents and the Framing of Islamic Law,” *Islamic Law and Society*, 8, no. 3 (2001): 383–406, at 404. It is not apparent to me why Ibn Qutayba could not have conceived of these three extraordinary individuals as belonging to both categories simultaneously, especially since there are far more personal opinions (ra‘ī) ascribed to al-Thawrī or Mālik in the early legal literature than, say Shu‘ayb or Ibn ‘Uyayna, but there are vastly more ḥadīths transmitted via al-Thawrī and Mālik in the major ḥadīth collections than via Abī Hanīfa or al-Shaybānī. Furthermore, Ibn Sa‘d (d. 230/845) recognized al-Awzā’i, Mālik, and Sufyān al-Thawrī as master ḥadīth scholars prior to Ibn Qutayba; for references, see Scott Lucas, *Constructive Critics, Ḥadīth Literature, and the Articulation of Sunni Islam* (Leiden: Brill, 2004), Appendix B.


8. These four men are ’Abd al-A‘lā b. Abī al-A‘lā, Jarīr b. ‘Abdal-Ḥamīd, Muhammad b. Bakr, and Abūl-Raḥīm b. Sulaymān; see “Where are the Legal Ḥadīth,” Table 1.

9. These are narrations in which there is a lacuna in the chain of transmitters.


14. Christopher Melchert, “Traditionist-jurisprudents and the Framing of Islamic Law,” 405. In other words, Melchert reaffirms Schacht’s principle (§7), above. Note that these principles hold true for some traditionists, like the compilers of the “six books” and later compilers of *Sunan* works, but it is not clear that they apply to the majority of traditionists during the 3rd/9th and 4th/10th centuries. They almost certainly do not apply to traditionists of the 2nd/8th century.

15. This paragraph is derived largely from Lucas, “Where are the Legal Ḥadīth?” 287–8.


17. Ibn al-Nadīm attributes eight works to Ibn Abī Shayba, including three that appear as chapters in the *Musannaf*; *Kitāb al-ṭabarīs li-l-Nadīm*, ed. Reza Tajaddod (Tehran, no date), 286. The most thorough discussion of his books is in the editors’ introduction of *al-Musannaf*, 1:72–98.
18. See, “Where are the Legal hadith?” 292 (Table 1).
20. See Lucas, “Where are the Legal hadith?” 293 (Table 2).
22. Several colleagues have questioned whether it is appropriate for me to speak of Ibn Abî Shayba’s “jurisprudence,” since his Musannaf can be read as merely a repository of transmitted reports rather than a work of legal scholarship. Despite his reluctance to delineate explicitly his methodology, Ibn Abî Shayba’s transparent concern for thousands of legal issues and embrace of the core Sunni principle of normative pluralism render appropriate the use of the term “jurisprudence” in our discussion of his work. I certainly do not claim to have decoded exhaustively his methodology, but I think we have uncovered some of his legal principles and positions.
23. This report merely states that al-Sha’bi and al-Ḥakam referred to inquisition (mihna) as an “innovation” (bid’ah), which implies that it is invalid. In an earlier report in this chapter, al-Sha’bi says explicitly lâ imtiḥân fi hadd.
24. The report literally has Shurayh saying, “fetters are compulsion (kurb), prison is compulsion, and threats are compulsion.”
26. This hadith lacks any transmitters between al-Zuhri and the Prophet.
27. Ibn Abî Shayba, al-Muṣannaf, 9:403–4 (lînâh fi’s bâb a’dat al-nisâ fi’s-budûd). Note that Ibn Abî Shayba does not include ‘Atâ’s opinion that female testimony is valid for hadd crimes.
30. ‘Ubayda b. Mu’āṭib transmits this opinion from Ibrâhîm.
31. Ash’âth b. Sawwâr transmits this opinion from al-Ḥasan.
32. Abû Hurra Waṣlî b. ‘Abd al-Rahmân transmits this opinion from al-Ḥasan.
33. Hishâm al-Dastawâ’î transmits this opinion from al-Ḥasan.
34. Abû Ma’shar Ziyâd b. Kulayb transmits this opinion from Ibrâhîm.
35. This is the opinion which Ḥammâd b. Abû Sulaymân transmits from Ibrâhîm.
37. Mânsûr b. Abû Tamîr transmits this opinion from Ibrâhîm.
39. Ḥammâd b. Abû Sulaymân transmits this opinion from Ibrâhîm.
42. The precise formula that Ibn Abî Shayba uses is: “It has been reported that Abû Hânîfâ said...”
47. His name is `Uqba b. `Amr al-Anṣārī.
49. This is the only topic in this book in which Abu ¯Y u¯suf appears alongside Abu¯ Hanıf a¯. However, according to al-Tahawı¯, Abu¯ Y u¯suf does not share Abu ¯Hanıf a¯’s position on this topic; al-Ṭahāwī, *Mukhtasar ikhtila¯f al-`ulama¯*, 3:37.
59. Certainly al-Shāfī¨ and Ibn Ḥanbal promoted prophet-centered jurisprudence, but from a textual perspective, the former’s *al-Umm* is replete with post-prophetic opinions, while the latter’s famous *Musnad* is not arranged in a manner conducive to jurists and was not even published until the century after his death.