

## Abū Ḥanīfah’s Use of the Solitary *Ḥadīth* as a Source of Islamic Law

SAHIRON SYAMSUDDIN

### Introduction

Abū Ḥanīfah (d. 150/767), “the founder and first codifier of the speculative school of law”,<sup>1</sup> was in some ways a controversial scholar. In his *Ta’rīkh Baghdād*, Aḥmad ibn ‘Alī al-Khaṭīb al-Baghdādī (d. 463/1070) cites many reports attributed to prominent members of the Ahl al-Ḥadīth group of scholars which inform us that Abū Ḥanīfah’s opinions relating to legal issues often contradicted the *naṣṣ* (textual statements) of the Qur’ān and the *Ḥadīth*,<sup>2</sup> the two primary sources of Islamic law.<sup>3</sup> One of the numerous reports is a statement attributed to ‘Abd Allāh ibn al-Mubārak (d. 181/797): “Whoever looks at Abū Ḥanīfah’s books sees that Abū Ḥanīfah permits what Allāh

<sup>1</sup> This description is Ignaz Goldziher’s, taken from his book *Introduction to Islamic Theology and Law*, tr., Andras and Ruth Hamori (Princeton: Princeton University Press, 1981), 49. See also Marshall G. S. Hodgson, *The Venture of Islam* (Chicago: The University of Chicago Press, 1974), 1: 327; and Aḥmad ibn Muḥammad ibn Khallikān, *Wafāyāt al-A’yān wa Anbā’ Abnā’ al-Zamān*, ed., Iḥsān ‘Abbās (Beirut: Dār Ṣādir, 1977), 5: 409. Ibn Khallikān also calls him *imām fi ’l-qiyās* (a leader in inferential reasoning).

<sup>2</sup> See Aḥmad ibn ‘Alī al-Khaṭīb al-Baghdādī, *Ta’rīkh Baghdād aw Madīnat al-Salām* (Baghdad: al-Maktabah al-‘Arabiyyah, 1931), 13: 394–423. In his book al-Khaṭīb al-Baghdādī quotes numerous reports attributed to Sufyān ibn ‘Uyaynah (d. 198/814), Mālik ibn Anas (d. 179/795), Ḥammād ibn Zayd (d. 179/796), ‘Abd al-Raḥmān ibn al-Mahdī (d. 198/814), ‘Amr ibn ‘Abd al-Raḥmān al-Awzā’ī (d. 157/773), Sufyān al-Thawrī (d. 161/778), Sulaymān ibn Ḥarb (d. 224/839), ‘Abd Allāh ibn al-Mubārak, Muḥammad ibn Idrīs al-Shāfi‘ī (d. 204/819), Aḥmad ibn Ḥanbal (d. 241/855), and many others.

<sup>3</sup> See Muḥammad ibn Idrīs al-Shāfi‘ī, *al-Risālah*, ed., Aḥmad Muḥammad Shākir (Cairo: Maṭba‘at Muṣṭafā al-Bābī al-Ḥalabī, 1940), 73; Muḥammad ibn Aḥmad ibn Abī Sahl al-Sarakhsī, *Uṣūl al-Sarakhsī*, ed., Abū’l-Wafā’ al-Afghānī (Cairo: Maṭabī’ Dār al-Kitāb al-‘Arabī, 1954), 1: 65; ‘Abd Allāh ibn ‘Abd al-Muhsin al-Turkī, *Uṣūl Madhbhab al-Imām Aḥmad: Dirāsah Uṣūliyyah Muqāranah* (Riyadh: Maktabat al-Riyād, 1977), 102; and Muḥammad Zāhid al-Kawtharī, *Fiqh Abl al-‘Irāq wa Ḥadīthubum*, ed., ‘Abd al-Fattāh Abū Ghuddah (Beirut: Maktab al-Maṭbū‘at al-Islāmiyyah, 1970), 18.

forbids, and forbids what He permits.”<sup>4</sup> Likewise, al-Ghazzālī\* (d. 505/111) says in his *al-Mankhūl* that Abū Ḥanīfah turned the *sharī‘ah* completely upside down, confounded its method, and changed its structure.<sup>5</sup>

These claims are largely based on the assumption that Abū Ḥanīfah relied on *ra’y* (personal judgment), i.e. *qiyās* (inferential reasoning) rather than on the *naṣṣ* of the Qur’ān and Prophetic traditions<sup>6</sup> in deriving legal rulings. This assumption has been adopted by many orientalists. Ignaz Goldziher (d. 1921), for example, says in his book *The Zāhirīs: Their Doctrine and Their History*: “Abū Ḥanīfa made the first attempt to codify Islamic jurisprudence on the basis of *qiyās*.”<sup>7</sup> The Ahl al-Ḥadīth’s criticism of Abū Ḥanīfah, whom they saw as a representative of the Ahl al-Ra’y, has been understood by many scholars, among them N.J. Coulson, as a crystallization of the conflict between the two groups. In this case, Coulson seems to support the traditional view that the former disregarded reason in forming legal decisions, and the latter the *naṣṣ*.<sup>8</sup>

On the other hand, Muḥammad ibn Maḥmūd al-Khawārizmī (d. 665/1267), in his *Jāmi‘ al-Masānīd*, rejects the above claim, saying that those responsible for it did not correctly understand the *fiqh* of Abū Ḥanīfah. In support of this notion, he offers several arguments in his work.<sup>9</sup> Furthermore, Ibn Ḥājar al-‘Asqalānī (d. 852/1449) did not consider Abū Ḥanīfah and his followers to belong to Ahl al-Ra’y or to have neglected the *naṣṣ* in favour of personal reasoning. He said:

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<sup>4</sup> Al-Khaṭīb al-Baghdādī, *Ta’rīkh Baghdād*, 13: 403.

\* There is some disagreement about the spelling of this name. While most scholars call him al-Ghazālī, a few scholars prefer to call him al-Ghazzālī. This latter is now very rare, nevertheless, in deference to the author’s preference, in this article the name has been spelled as al-Ghazzālī. –Ed.

<sup>5</sup> Abū Ḥāmid Muḥammad ibn Muḥammad al-Ghazzālī, *al-Mankhūl min Ta’līqāt al-Uṣūl*, ed., Muḥammad Ḥasan Haytū (Damascus: Dār al-Fikr, 1980), 500. See also Abū’l-Qāsim al-Mūsawī al-Khū’ī, *Mu‘jam Rijāl al-Ḥadīth wa Taḥṣīl Ṭabaqāt al-Ruwāt* (Qumm: Manshūrāt Madīnat al-‘Ilm, 1983), 19: 164. In his book, al-Khū’ī quotes another statement attributed to al-Ghazzālī saying: “Abū Ḥanīfah completed the roots of the *shar‘* (the canonical law of Islam) with a root by which he destroyed the *shar‘* of the Prophet Muḥammad (peace be on him). Whoever does this, regarding it as lawful, he is an infidel. Whoever does it, regarding it permissible, he is a sinner.” However, the present author have not been able to find this statement in al-Ghazzālī’s *al-Mankhūl*.

<sup>6</sup> See Muḥammad ibn Maḥmūd al-Khawārizmī, *Jāmi‘ al-Masānīd* (Beirut: Dār al-Kutub al-‘Ilmiyyah, n.d.), 1: 41–43; Al-Khū’ī, *Mu‘jam Rijāl al-Ḥadīth*, 19: 164; and al-Kawtharī, *Fiqh Ahl al-‘Irāq*, 21.

<sup>7</sup> Ignaz Goldziher, *The Zāhirīs: Their Doctrine and Their History*, trans. and ed., Wolfgang Behn (Leiden: E. J. Brill, 1971), 13.

<sup>8</sup> N. J. Coulson, *A History of Islamic Law* (Edinburgh: The University Press, 1964), 52.

<sup>9</sup> See al-Khawārizmī, *Jāmi‘ al-Masānīd*, 1: 41–53.

You have no choice but to understand from the statements of *al-ʿulamāʾ al-mutaʾakhhirīn* (the scholars of the later period), who say that Abū Ḥanīfah and his followers were Aṣḥāb al-Raʾy (party of reasoning), that the purpose of these statements was to reduce their stature; it does not mean that they gave priority to personal reasoning over the *sunnah* of the Prophet (peace be on him) and the opinions of his Companions, the reason being that they were innocent of that practice.<sup>10</sup>

It seems that Joseph Schacht (d. 1969) agreed with the above view, as is shown by his statement, "...The attitude of the Iraqians — including Abū Ḥanīfah — to traditions is essentially the same as that of the Medinese, but their theory is more developed."<sup>11</sup>

One can see from the above that scholars disagree on Abū Ḥanīfah's treatment of the *naṣṣ*, particularly the Prophetic traditions on which he based his legal opinions. This paper, therefore, will examine the issue by looking at the extent of Abū Ḥanīfah's reliance on *ḥadīth* reports, especially those that are considered *āḥād* (solitary),<sup>12</sup> and how he dealt with the contradiction between legal decisions based on solitary *āḥādīth* and those reached by *qiyās*.

<sup>10</sup> Al-Kawtharī, *Fiqh Abl al-ʿIrāq*, 21.

<sup>11</sup> Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: The Clarendon Press, 1959), 27.

<sup>12</sup> What is meant by *āḥād* in this paper is the *ḥadīth* reports which are not categorized under the term *al-mutawātir*. Scholars such as al-Khaṭīb al-Baghdādī and Zayn al-Dīn ʿAbd al-Raḥīm ibn al-Ḥusayn al-ʿIrāqī (d. 806/1404), define *al-mutawātir* as a Prophetic tradition (*ḥadīth*) which is reported by a sufficiently large number of transmitters to ensure, according to common experience (*al-ʿādah*), the impossibility of their having agreed at any given time to lie, the unlikelihood of any obscurity being introduced into the *ḥadīth*'s text, and the absence of any factors that would have motivated the transmitters to lie. The *mutawātir* reports yield immediate or necessary knowledge (*al-ʿilm al-darūrī*). It is, therefore, necessary that Muslims be guided in their lives by the *mutawātir* traditions. The *āḥādīth* which do not fulfil the above conditions are called *āḥād*. In terms of the quality, which depends on the *sanad* (chain of transmitters) and the *matn* (content of the report), the *āḥād* could be *ṣaḥīḥ* (sound), *ḥasan* (sufficient), or *ḍaʿīf* (weak). The *āḥād* traditions entail *ẓann* (probable knowledge). *Al-āḥād al-ṣaḥīḥ* and *al-ḥasan* can serve as sources in legal matters but not *al-ḍaʿīf*. More detailed information about these terms is available in many books of *uṣūl al-ḥadīth* and *uṣūl al-fiqh*. See al-Khaṭīb al-Baghdādī, *al-Kifāyah fi ʿilm al-Riwayah*, ed., Aḥmad ʿUmar Hāshim (Beirut: Dār al-Kitāb al-ʿArabī, 1986), 32; Muḥammad Jamāl al-Dīn al-Qāsimī, *Qawāʿid al-Taḥdīth min Funūn Muṣṭalah al-Ḥadīth*, ed., Muḥammad Bahjah al-Bīṭār (Beirut: Dār al-Nafāʿis, 1987), 151; Wael B. Hallaq, "On Inductive Corroboration, Probability and Certainty in Sunnī Legal Thought" in his *Law and Legal Theory in Classical and Medieval Islam* (Aldershot: Variorum, 1994), ch. IV: 3–31; Nicholas Aghnides, *Mohammedan Theories of Finance with an Introduction to Mohammedan Law and a Bibliography* (Lahore: The Premier Book House, 1961), 39–47.

Before presenting and analyzing this issue, however, it would be useful to present a brief account of Abū Ḥanīfah's life in relation to his learning of *Ḥadīth*.

### Abū Ḥanīfah and His Learning of *Ḥadīth*

Best known by his *kunyah*, Abū Ḥanīfah, the subject of our study originally bore the name al-Nu'mān ibn Thābit al-Kūfī. He was born in the year 80/699 under the Umayyad caliphate of 'Abd al-Malik ibn Marwān (d. 85/704), and died in the year 150/767.<sup>13</sup> It is said that he met with several of the Companions of the Prophet (peace be on him)<sup>14</sup>, among them Anas ibn Mālik (d. 93/712), 'Abd Allāh ibn Ḥārith ibn Juz' al-Zubaydī (d. 86/705), 'Abd Allāh ibn Abī Awfā (d. 87/706) and Wāthilah ibn al-Asqa' (d. 83/702), from whom he received several *ahādīth* directly.<sup>15</sup> On this basis, Muslim historians, like Muḥammad ibn Sa'd (d. 230/844) and al-Khaṭīb, considered him to have been one of the *Tābi'in* (Successors).<sup>16</sup> He also learned many *ahādīth* from several of

<sup>13</sup> Al-Khaṭīb al-Baghdādī, *Ta'rikh Baghdād*, 13: 330. Concerning the year when Abū Ḥanīfah was born, al-Khaṭīb says that Dāwūd ibn 'Ulayyah claimed this to be 61 A.H. However, this information, he insists, is suspect. See also Taqī al-Dīn ibn 'Abd al-Qādir al-Tamīmī, *al-Ṭabaqāt al-Saniyyah fi Tarājim al-Ḥanafiyyah*, ed., 'Abd al-Fattāḥ Muḥammad Abū Guddah (Cairo: Lajnat Iḥyā' al-Turāth al-Islāmī, 1970), 1: 88; al-Khawārizmī, *Jāmi' al-Masānīd*, 1: 21 and 78; Muḥammad ibn Yūsuf al-Ṣāliḥī, *Uqūd al-Jumān fi Manāqib al-Imām al-A'zam Abī Ḥanīfah al-Nu'mān* (Ḥaydarābād: Maṭba'at al-Ma'ārif al-Sharqiyyah, 1974), 42; and Jamāl al-Dīn Abū al-Ḥajjāj Yūsuf ibn 'Abd al-Raḥmān al-Mizzī, *Tabdhīb al-Kamāl fi Asmā' al-Rijāl*, ed., Bashshār 'Awwād Ma'rūf (Beirut: Mu'assasat al-Risālah, 1992), 29: 444. In this book, Yūsuf ibn 'Abd al-Raḥmān al-Mizzī (d. 742/1341) mentions that Yaḥyā ibn Ma'īn (d. 233/848) said that the year of Abū Ḥanīfah's death was 151/768, and that according to Makkī ibn Ibrāhīm (d. 215/830), it was 153/770.

<sup>14</sup> Muslim informants did not agree on the number of *Ṣaḥābah* whom Abū Ḥanīfah encountered. Some, like Aḥmad ibn 'Abd Allāh al-Aṣbahānī (d. 430/1038) said that they were three, viz. Anas ibn Mālik (whom he met in Kūfah when he was thirteen years old), 'Abd Allāh ibn al-Ḥārith (whom he met in Makkah when he was sixteen), and 'Abd Allāh ibn Abī Awfā. Some, like Ibn Khallikān (d. 681/1282), gave the number as four, that is, Anas ibn Mālik (in Kūfah), 'Abd Allāh ibn Abī Awfā (in Kūfah), Sahl ibn Sa'd al-Sā'idī (d. 91/710) (in Madīnah), and Abū Ṭufayl 'Āmir ibn Wāthilah (d. 100/718) (in Makkah). Some said six, namely Anas ibn Mālik, 'Abd Allāh ibn Unays (d. circa 94/713), 'Abd Allāh ibn al-Ḥārith, 'Abd Allāh ibn Abī Awfā, Wāthilah ibn al-Asqa', and 'Ā'ishah bint 'Ajrād. Some, like al-Khawārizmī, said seven, adding to these six the name of Jābir ibn 'Abd Allāh (d. 78/698). Some said eight, adding to the above-mentioned seven the name of Ma'qal ibn Yasār (d. 65/685). See Aḥmad ibn 'Abd Allāh al-Aṣbahānī, *Musnad Abī Ḥanīfah*, ed., Naẓar Muḥammad (Riyāḍ: Maktabat al-Kawthar, 1994), 24–25; Ibn Khallikān, *Wafayāt al-A'yān*, 5: 406; al-Khawārizmī, *Jāmi' al-Masānīd*, 1: 22–6 and 2: 345–348; al-Ṣāliḥī, *Uqūd al-Jumān*, 49–61.

<sup>15</sup> The *isnād* (chains of transmitters) of the *ahādīth*, according to traditionists, vary from *ṣaḥīḥ* (sound) to *ḍa'if* (weak), and even *ma'wḍū'* (fabricated). See al-Ṣāliḥī, *Uqūd al-Jumān*, 54–62.

<sup>16</sup> Al-Khaṭīb al-Baghdādī, *Ta'rikh Baghdād*, 13: 324.

the *Ṭabī'in* as well. Al-Mizzī, in his *Ṭabdhīb al-Kamāl*, lists in fact no less than seventy eight *rāwīs* (*ḥadīth* narrators), most of whom were settled in Kūfah.<sup>17</sup>

In order to expand his knowledge of *Ḥadīth*, Abū Ḥanīfah is reported to have travelled to other cities which were renowned as centres of *Ḥadīth*, especially Baṣrah, Makkah and Madīnah. There he studied *aḥādīth* under many prominent *muḥaddithīn* (traditionists). In Kūfah he was taught by Ḥammād ibn Abī Sulaymān (d. 120/738) from whom he also learned *Fiqh*, 'Āmir al-Sha'bī (d. 104/722), Salāmah ibn Kuhayl ibn al-Ḥaṣīn (d. 123/741) Abū Ishāq Sulaymān ibn Abī Sulaymān al-Shaybānī al-Kūfī (d. 120/738), Simāk ibn Ḥarb (d. 123/741), Muḥārib ibn Dithār (d. 116/734), 'Awn ibn 'Abd Allāh (d. 116/734), Hishām ibn 'Urwah (d. 146/763), and Sulaymān ibn Mihrān (d. 148/765). In Baṣrah, Abū Ḥanīfah also received education in *Ḥadīth* from Qatādah ibn Dī'āmah (d. 118/736), and from Shu'bah ibn al-Ḥajjāj (d. 160/776). In Makkah he learned *Ḥadīth* from 'Aṭā' ibn Abī Rabāḥ (d. 114/732), and 'Ikrimah ibn 'Abd Allāh al-Barbarī (d. 105/723). In Madīnah, he heard *aḥādīth* from Sulaymān Ibn Yasār (d. 107/725) and Sālim ibn 'Abd Allāh ibn 'Umar (d. 106/725).<sup>18</sup> The *aḥādīth* which Abū Ḥanīfah learned from his masters were passed on to his pupils whose names are listed by al-Mizzī in his *Ṭabdhīb al-Kamāl*. Among them were Ḥammād ibn Abī Ḥanīfah (d. 176/792), and Abū Yūsuf Ya'qūb ibn Ibrāhīm al-Qāḍī (d. 182/798), Muḥammad ibn al-Ḥasan al-Shaybānī (d. 189/805).<sup>19</sup> These three were responsible for compiling the *aḥādīth* narrated by Abū Ḥanīfah which are embodied in his *al-Musnad* or *Kitāb al-Āḥbār*.<sup>20</sup> The breadth of his knowledge of *Ḥadīth* was acknowledged

<sup>17</sup> See Al-Mizzī, *Ṭabdhīb al-Kamāl*, 29: 418–20; and Muḥammad ibn Muḥammad al-Dhahabī, *Ta'rikh al-Islām wa Wafayāt al-Mashāhīr wa al-Ālām*, ed., 'Umar 'Abd al-Salām Tadmurī (Beirut: Dār al-Kitāb al-'Arabī, 1988), 9: 306.

<sup>18</sup> Shibli Nu'mānī, *Imam Abu Hanifah: Life and Work*, tr., M. Hadi Hussain (New Delhi: Kitāb Bhavan, 1988), 18–26.

<sup>19</sup> See al-Mizzī, *Ṭabdhīb al-Kamāl*, 29: 420–22.

<sup>20</sup> There are fifteen collections of the *aḥādīth* transmitted by Abū Ḥanīfah, all of which al-Khawārizmī has incorporated in his *Jāmi' al-Masānīd*. They are the *Musnads* compiled by 'Abd Allāh ibn Muḥammad ibn Ya'qūb al-Ḥārithī (d. 340/951–52), Ṭalḥa ibn Muḥammad (d. 380/990), Muḥammad ibn al-Muzaffar ibn Mūsā (d. 386/996), Aḥmad ibn 'Abd Allāh al-Aṣbahānī (d. 430/1038), Abū Bakr Muḥammad ibn 'Abd al-Bāqī al-Anṣārī (d. 535/1140), 'Abd Allāh ibn 'Adī al-Jurjānī (d. 365/975–76), al-Ḥasan ibn Ziyād al-Lu'lu'ī (d. 204/819), 'Umar ibn al-Ḥasan al-Ashnānī (d. 339/951), Abū Bakr Aḥmad ibn Muḥammad ibn Khālīd al-Kalā'ī (d. 432/1041), Muḥammad ibn al-Ḥusayn al-Balkhī (d. 526/1132), Abū Yūsuf Ya'qūb ibn Ibrāhīm al-Qāḍī, Ḥammād ibn Abī Ḥanīfah, Muḥammad ibn al-Ḥasan al-Shaybānī, whose collection is called *al-Āḥbār*, and 'Abd Allāh ibn Muḥammad b. Abī al-'Awām al-Ṣaghādī (d. 290/903). See al-Khawārizmī, *Jāmi' al-Masānīd*, 1: 4–5; and al-Ṣāliḥī, *Uqūd al-Jumān*, 322–34. In his book, al-Ṣāliḥī adds to the above-mentioned collections two other *Musnads* done by Abū Bakr ibn al-Muqri' and Abū 'Alī al-Bakrī.

by his contemporaries. Abū Yūsuf, for instance, said that no one was more knowledgeable of the interpretation of the *aḥādīth* touching on *fiqh* (Islamic law) than Abū Ḥanīfah.<sup>21</sup> Above all, Abū Ḥanīfah was considered an expert in the knowledge of *al-jarḥ wa al-ta'dīl*, a branch of the *Ḥadīth* sciences, which assesses the characters of transmitters so as to decide whether or not a *ḥadīth* is authentic. It is reported that Abū Ḥanīfah considered, for example, Sufyān al-Thawrī as a reliable (*thiqab*) transmitter, Zayd ibn ‘Ayyāsh as a weak transmitter (*ḍa‘īf*), and Jābir al-Ju‘fī as a fabricator (*waddā‘*) of *aḥādīth*.<sup>22</sup> It follows that Abū Ḥanīfah’s knowledge of *Ḥadīth*, and the qualifications of the transmitters on which its acceptance depends, is beyond doubt. What is at issue, however, is to what extent and how Abū Ḥanīfah employed his knowledge of *Ḥadīth* in arriving at legal decisions.

### Abū Ḥanīfah’s Attitude towards Solitary Traditions

There are many reports in which Abū Ḥanīfah is said to have preferred his personal reasoning to the information contained in the Prophetic traditions when dealing with legal problems. One informant, Ḥammād ibn Salamah, said that Abū Ḥanīfah received *ḥadīth* reports, but then rejected them in favour of his own *ra’y*.<sup>23</sup> After all, the reports with which al-Khaṭīb provides us are full of instances of Abū Ḥanīfah apparently speaking in a light vein about the Prophetic traditions. Sufyān ibn ‘Uyaynah, for example, reported that when he told Abū Ḥanīfah of the Prophetic saying: “*Al-Bay‘ān bi al-Khiyār ma lam yatafarraqā*” (the seller and the buyer have the right to rescind a transaction as long as they have not separated), Abū Ḥanīfah allegedly rejected it, saying: “What if both (the seller and buyer) are on a ship? What if they are in a prison? And what if they are on a journey? How do they separate from each other then?”<sup>24</sup> Another example is the report of Yaḥyā ibn Ādam (d. 203/818) that when Abū Ḥanīfah’s attention was drawn to the *ḥadīth*: “*Al-wuḍū’ nisf al-īmān*” (ablution is half of faith), he replied: “So, why don’t you perform the ablution twice so as to perfect your faith?”<sup>25</sup> In al-Khaṭīb’s *Ta’rīkh* there are some other examples of Abū Ḥanīfah’s rejection of certain *aḥādīth*, on the basis of which Juynboll concludes in his *Muslim Tradition* that Abū Ḥanīfah

<sup>21</sup> Taqī al-Dīn al-Tamīmī, *al-Ṭabaqāt al-Saniyyah*, 1: 99.

<sup>22</sup> *Ibid.*, 1: 111.

<sup>23</sup> Al-Khaṭīb al-Baghdādī, *Ta’rīkh Baghdād*, 13: 390–91.

<sup>24</sup> *Ibid.*, 13: 389.

<sup>25</sup> *Ibid.*, 13: 388. [The whole point of this light vein is that Abū Ḥanīfah felt certain that these statements, which were attributed to the Prophet (peace be on him); but in point of fact they were not his statements. Ed.]

can be regarded as rarely having been influenced by *aḥādīth*.<sup>26</sup> He even goes so far as to say that in Abū Ḥanīfah's drafting of legal decisions, Prophetic traditions never held any importance.<sup>27</sup> To my mind, this assessment seems to be very tenuous, for scholars have not sufficiently examined why Abū Ḥanīfah did not use such *aḥādīth*. In fact, there is every reason to believe that he rejected the *aḥādīth* because, according to him, they lacked the required *shurūṭ al-qabūl* (criteria for acceptance of Prophetic traditions).

Abū Ḥanīfah's attitude towards *aḥādīth* can be seen from the statement ascribed to Sufyān al-Thawrī, who said:

I heard that he (Abū Ḥanīfah) said: 'I accept the Book of God (the Qur'ān). If I do not find anything in it, I accept the *Sunnah* of the Messenger. If I do not find anything in the *Sunnah*, I accept the opinion of his Companions; I will take of their opinions what I want, and leave what I want. I do not depart from their opinions and follow the opinions of others [i.e. non-Companions]. But when a matter has to do with by Ibrāhīm, al-Sha'bī, ibn Sīrīn, al-Ḥasan, 'Aṭā', Sa'īd ibn al-Musayyab and the like [i.e. Successors]: in such cases I will have recourse to *ijtihād*,<sup>28</sup> as they did'.<sup>29</sup>

We note from this statement that Abū Ḥanīfah regarded the *Sunnah* of the Prophet (peace be on him), which is available in the form of *ḥadīth* reports, as the second basis — after the Qur'ān — for making legal decisions. When there were no Qur'ānic verses or *ḥadīth* reports that had a bearing on the problem that Abū Ḥanīfah was facing, he referred to those opinions of the Companions that he considered to be true, whether they were formed on the basis of *ijmā'* (consensus) or consisted of personal opinions.<sup>30</sup> He had recourse to *ijtihād* only when he could not find any answers to a given legal problem in the above sources. The importance of the role of *aḥādīth* in Abū Ḥanīfah's

<sup>26</sup> G. H. A. Juynboll, *Muslim Tradition: Studies in the Chronology, Provenance, and Authorship of Early Ḥadīth* (Cambridge: Cambridge University Press, 1982), 122.

<sup>27</sup> *Ibid.*, 120.

<sup>28</sup> *Uṣūlīs* define *ijtihād* as the utmost effort of a jurist's mental capacity in search of Islamic legal rulings. See 'Alī ibn Abī 'Alī al-Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām* (Cairo: Dār al-Ḥadīth, n.d.), 4: 218; Ibrāhīm ibn 'Alī al-Shīrāzī, *al-Wuṣūl ilā Masā'il al-Uṣūl*, ed., 'Abd al-Majīd Turkī (al-Jazā'ir: al-Shirkah al-Waṭaniyyah, n.d.), 2: 433; 'Abd Allāh Darāz's commentary on Abū Ishāq al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah* (Beirut: Dār al-Kutub al-'Ilmiyyah, n.d.), 4: 64; and Wael B. Hallaq, "Was the Gate of Ijtihād Closed?" in his *Law and Legal Theory in Classical and Medieval Islam*, ch. V.

<sup>29</sup> See al-Mizzī, *Tabdhīb al-Kamāl*, 29: 443; al-Khaṭīb, *Ta'rīkh Baghdād*, 13: 368; al-Ṣāliḥī, *Uqūd al-Jumān*, 172.

<sup>30</sup> See 'Abd al-Ḥalīm al-Jundī, *Abū Ḥanīfah: Baṭal al-Ḥurriyyah wa al-Tasāmuh fī al-Islām* (Cairo: Dār Sa'd, 1945), 138.

eyes can also be gauged from the saying ascribed to him: “If there is a *ḥadīth* from the Prophet (peace be on him), I will not depart from it for something else, but will accept it; if there are opinions coming from his Companions, I will choose one of them; and if the reports come from *Tābi‘īn* (Successors), I will [place myself on the same pedestal and] vie with them”.<sup>31</sup>

However, it is recorded that Abū Ḥanīfah was very careful in employing *ḥadīth* reports. He used them as a legal source when he knew that they fulfilled the requirement of their acceptance. Abū Ghuddah in his edition of al-Kawtharī’s *Fiqh Abl al-‘Irāq* mentions that Kawtharī, in his *Ta’nīb al-Khaṭīb*, describes in detail Abū Ḥanīfah’s careful treatment of solitary *ḥadīth* reports. According to Kawtharī, Abū Ḥanīfah applied the following rules when dealing with them: (1) a solitary tradition, including a *mursal* tradition,<sup>32</sup> is accepted if it does not come into conflict with any stronger evidence (*dalīl*), such as the *‘amm* (universal) and *zābir* (clear) verses of the Qur’ān, *al-sunnah al-mashhūrah*, that is, well-known traditions,<sup>33</sup> *mawārid al-shar‘* (the main aims of Islamic legal rulings), and other *aḥād* which are considered to be more authentic (*aṣaḥḥ*);<sup>34</sup> (2) if the transmitter of the tradition concerned is considered reliable (*thiqah*); (3) if the transmitter does not reject the *riwāyah*

<sup>31</sup> Al-Ṣāliḥī, ‘*Uqūd al-Jumān*, 173.

<sup>32</sup> *Al-mursal* is defined as a tradition from the Prophet (peace be on him) in which the *sanad* (chain of transmitters) lacks the mention of the first transmitter (i.e. a *Ṣaḥābī*). For example, a *Tābi‘ī*, such as Sa‘īd ibn al-Musayyab (d. 94/713), transmitted a *ḥadīth* from the Prophet (peace be on him) without mentioning the name of the Companion from whom he had received it. Scholars do not agree on whether the *mursal* tradition is authoritative (*ḥujjah*), or not. See al-Khaṭīb al-Baghdādī, *al-Kifāyah fi ‘Ilm al-Riwāyah*, 423–35; Ḥusayn ibn ‘Abd Allāh al-Ṭībī, *al-Khulāṣah fi Uṣūl al-Ḥadīth*, ed., Ṣubḥī al-Sāmarrā‘ī (Baghdād: Iḥyā’ al-Turāth al-Islāmī, 1971), 65–6; Jalāl al-Dīn al-Suyūṭī, *Manzūmat ‘Ilm al-Atḥar*, published with Maḥfūz ibn ‘Abd Allāh al-Tirmisī’s *Manhaj Dhawī al-Nazar* (Beirut: Dār al-Fikr, 1981), 49–54; Ṣubḥī al-Ṣāliḥī, ‘*Ulūm al-Ḥadīth wa Muṣṭalaḥūh* (Beirut: Dār al-‘Ilm li al-Malāyīn, 1988), 166–8; and Khaldūn al-Aḥḍab, *Asbāb Ikhṭilāf al-Muḥaddithīn* (Jeddah: al-Dār al-Sa‘ūdiyyah, 1985), 203–70.

<sup>33</sup> This is, according to Ḥanafī *uṣūlis*, on the grounds that the *takḥṣīs* (specification of meaning) of the Qur’ānic verses and *al-sunnah al-mashhūrah* by means of *aḥād* is not allowed. Conversely, al-Shāfi‘ī considered it acceptable. See Muḥammad ibn Aḥmad al-Sarakhsī, *Uṣūl al-Sarakhsī*, 1: 364; Muḥammad ibn Idrīs al-Shāfi‘ī, *al-Risālah*, ed., Aḥmad Muḥammad Shākīr (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1940), 64.

<sup>34</sup> According to *muḥaddithūn* (traditionists), a *ḥadīth* is regarded as *ṣaḥīḥ* (sound) if it meets with four conditions, namely: (a) its *sanad* (chain of transmitters) is not disconnected from the beginning (the first transmitters, that is, a *Ṣaḥābī*) to the end; (b) all its transmitters are *thiqah* (trustworthy); (c) its *sanad* and *matn* (content) are not *shādhidh* (irregular, contradictory to the stronger evidence) and (d) its *sanad* and *matn* do not have any *‘illah* (defect). The authenticity of *aḥādīth* varies from one to another, depending on how perfectly a *ḥadīth* fulfils the above prerequisites. See al-Ṭībī, *al-Khulāṣah fi Uṣūl al-Ḥadīth*, 35–8; ‘Uthmān ibn ‘Abd al-Raḥmān ibn al-Ṣalāḥ, *Muqaddimat Ibn al-Ṣalāḥ*, printed with the text of ‘Abd al-Raḥīm ibn al-Ḥusayn al-‘Irāqī, *al-Taḥqīd wa al-Idāb: Sharḥ Muqaddimat Ibn al-Ṣalāḥ* (Beirut: Dār al-Fikr, 1981), 20–42.



that he reported, nor acts against its import, nor gives a *fatwā* (legal opinion) contrary to what he has reported. It must also be pointed out that in cases where there were several traditions concerning *ḥudūd* which were mutually in conflict, Abū Ḥanīfah preferred to follow the tradition which laid down a lighter punishment.<sup>35</sup> It was on these grounds that Abū Ḥanīfah rejected those traditions from the Prophet (peace be on him) which, in his opinion, did not meet these requirements.

In terms of the first requirement — that it should not be in conflict with a stronger evidence on the same subject — al-Sarakhsī explains that a *ḥadīth* which particularises a Qur'ānic verse should be considered to contradict that verse, and therefore cannot be regarded as authoritative.<sup>36</sup> This idea, he argues, is based on the following statement of the Prophet (peace be on him): “*Aḥādīth* will multiply among you after my death. Thus, if a *ḥadīth* is reported in my name, you must subject it to the Book of Allāh. Whichever report is compatible with the Book of Allāh, accept it and know that it is from me. Conversely, whatever report contradicts it, you must reject it and know that I am not responsible for it”.<sup>37</sup> Another reason, according to him, is that the Qur'ān is definitive (*qat'ī*, *mutayaqqan bil*), whether in terms of transmission or of content, whereas a solitary *ḥadīth* is only probable.<sup>38</sup> One example of a *ḥadīth* which Abū Ḥanīfah considered incompatible with the *zāhir* (clear) meaning of the Qur'ān is the one transmitted from Fāṭimah bint Qays. According to this tradition, Abū 'Amr divorced Fāṭimah three times. Khālīd ibn al-Walīd went to the Prophet (peace be on him) to ask whether or not Abū 'Amr was obligated to provide her *nafaqah* (maintenance). The Prophet (peace be on him) reportedly said: “She does not receive *nafaqah* or *suknā* (dwelling)”.<sup>39</sup> This solitary *ḥadīth* was rejected by Abū Ḥanīfah on grounds that it is opposed to the *zāhir* meaning of the Qur'ānic verse 65: 6: “House the (divorced) women where you live, according to your means”.<sup>40</sup> On this point,

<sup>35</sup> See al-Sarakhsī, *Uṣūl al-Sarakhsī*, 2: 3–7; al-Kawtharī, *Fiqh Aḥl al-'Irāq*, 36–38; al-Jundī, *Abū Ḥanīfah: Baṭal al-Ḥurrīyah wa al-Tasāmuh fi 'l-Islām*, 140.

<sup>36</sup> Al-Sarakhsī, *Uṣūl al-Sarakhsī*, 1: 364.

<sup>37</sup> *Ibid.*, 1: 365; al-Shāfi'ī, *al-Risālah*, 224; Ibn 'Abd al-Barr, *Jāmi' Bayān al-'Ilm wa Faḍlīh* (Cairo: Idārat al-Ṭibā'ah al-Muniriyyah, n.d.), 1: 191.

<sup>38</sup> *Ibid.*, 1: 365. See also 'Alā' al-Dīn 'Abd al-'Azīz ibn Aḥmad al-Bukhārī, *Kashf al-Asrār 'an Uṣūl Fakhr al-Islām al-Bazdawī*, ed., Muḥammad al-Mu'taṣim bi'llāh al-Baghdādī (Beirut: Dār al-Kitāb al-'Arabī, 1991), 3: 19–20; and Schacht, *The Origins*, 28.

<sup>39</sup> 'Abd al-Raḥmān ibn 'Amr al-Awzā'ī, *Sunan al-Awzā'ī*, compiled by Marwān Muḥammad al-Sha'ār (Beirut: Dār al-Nafā'is, 1993), 338. See also 'Abd Allāh ibn Muḥammad ibn Abī Shaybah, *al-Kitāb al-Muṣannaḥ fi al-Aḥādīth wa al-Athār* (Beirut: Dār al-Tāj, 1989), 4: 137.

<sup>40</sup> See al-Sarakhsī, *Uṣūl al-Sarakhsī*, 1: 365.

Abū Ḥanīfah's opinion differed from Shāfi'ī's.<sup>41</sup> Shāfi'ī points out in his *Risālah* that this tradition is not contradictory to the Qur'ān because a solitary *ḥadīth* can particularize the 'āmm meaning of a Qur'ānic verse, on the grounds that the 'umūm (generality) of a Qur'ānic verse does not yield *al-yaqīn* (certainty), but only *al-zann* (probability), just as a solitary *ḥadīth* does, and that the *takhṣīs* (particularization) of a text by no means constitutes a contradiction between the particularized and the particularizing, but rather it explains which is not clear. Shāfi'ī gives several examples of the Qur'ānic verses which had been particularized by solitary *aḥādīth*.<sup>42</sup>

Abū Ḥanīfah's rejection of a *ḥadīth* which does not meet the essential criteria laid down for its acceptance can also be noted in the issue of sharing *ghanīmah* (booty) with fallen comrades. According to Abū Ḥanīfah, a Muslim who is killed in a war is not qualified for a share of the *ghanīmah* (booty).<sup>43</sup> In taking this position, Abū Ḥanīfah disregarded a *ḥadīth* related on the authority of al-Awzā'ī, that the Prophet (peace be on him) had granted a portion of the *ghanīmah* to a Muslim who was killed at Khaybar.<sup>44</sup> Abū Ḥanīfah's reason for rejecting this *ḥadīth* was that there existed a much more authentic *ḥadīth* narrated by al-Zuhrī in which he had stated that the Prophet (peace be on him) had refused to give a share of the *ghanīmah* to 'Ubaydah ibn al-Ḥārith, who was killed in Ṣafrā' during the battle of Badr.<sup>45</sup>

On the reliability of the transmitters of solitary *aḥādīth*, which constitutes the second requirement of acceptance, the Ḥanafī jurists point out that in order to be considered *thiqah* (reliable; trustworthy), the transmitters are required to have, in addition to their adherence to Islām and being possessed of 'aql (intellect), the qualifications of 'adālah (piety) and *dabt* (comprehension) are also required. What is meant by 'adālah is consistency in religious observance, in particular by not committing any major sin (*kabīrah*) and by avoiding minor sins (*ṣaghā'ir*) as well as those acts that would cause him to lose his *murū'ah* (sense of honour).<sup>46</sup> *Dabt*, on the other hand, means someone's capacity of hearing, retaining in his mind and understanding a *riwāyah* (transmitted report).<sup>47</sup> Accordingly, Abū Ḥanīfah said: "No one should report

<sup>41</sup> Schacht, *The Origins*, 29.

<sup>42</sup> See al-Shāfi'ī, *al-Risālah*, 64–79; 'Abd al-'Azīz al-Bukhārī, *Kashf al-Asrār*, 3: 20; and al-Āmidī, *al-Iḥkām fi Uṣūl al-Aḥkām*, 2: 472–7.

<sup>43</sup> Abū Yūsuf Ya'qūb ibn Ibrāhīm al-Anṣārī, *al-Radd 'alā Siyar al-Awzā'ī*, ed., Abu'l-Wafā' al-Afghānī (Cairo: Iḥyā' al-Ma'ārif al-Nu'māniyyah, n.d.), 23.

<sup>44</sup> Al-Awzā'ī, *Sunan al-Awzā'ī*, 412.

<sup>45</sup> Abū Yūsuf, *al-Radd 'alā Siyar al-Awzā'ī*, 23–4.

<sup>46</sup> 'Abd al-'Azīz al-Bukhārī, *Kashf al-Asrār*, 2: 743. See also al-Khaṭīb al-Baghādī, *al-Kifāyah fi 'Ilm al-Riwāyah*, 102.

<sup>47</sup> 'Abd al-'Azīz al-Bukhārī, *Kashf al-Asrār*, 2: 735–6.

a *ḥadīth* unless one has retained it in his memory from the time that he had heard it until the time that he reports it”.<sup>48</sup> *‘Adālah* and *ḍabt* are required of all *ḥadīth* transmitters on the ground that every report has the attribute of either *ṣiḍq* (accuracy) or of *kidb* (inaccuracy) and the accuracy, which is essential to any *ḥadīth* report, in part depends on these qualities being present in its transmitters.<sup>49</sup>

Concerning the possible contradiction between what a *rāwī* (transmitter of a tradition) has reported and his *fatāwā* (legal opinions) or his actions, in their respective works on *uṣūl* (legal theory) al-Sarakhsī and al-Bazdawī explain that there are four kinds of this type of contradiction. First, there is the case where the transmitter denies the *riwāyah* altogether. Some *fuqahā*, like Abū Ḥanīfah and Abū Yūsuf, pointed out, on the one hand, that should this be the case, his *ḥadīth* report cannot be considered authoritative. On the other hand, Shāfi‘ī and Muḥammad ibn al-Ḥasan al-Shaybānī still considered it to be an authoritative legal source.<sup>50</sup> An example of such a report is the *ḥadīth* transmitted by Sulaymān ibn Mūsā on the authority of Muḥammad ibn Muslim Ibn Shihāb al-Zuhrī (d. 124/742), who received it from ‘Urwah, who heard it from ‘Ā’ishah, that the Prophet (peace be on him) said: “Whichever woman is married without permission from her *walī* (relative), her marriage is, invalid”.<sup>51</sup> It is recorded that when ‘Abd al-Malik b. ‘Abd al-‘Azīz Ibn Jurayj (d. 150/767) asked Zuhrī about the *ḥadīth*, the latter did not recognize it. Abū Ḥanīfah and Abū Yūsuf, therefore, did not take this *ḥadīth* into account. They chose another *ḥadīth* instead, one that validates the marriage of a woman without the permission of her *walī*. The *ḥadīth* says: “A widow is more entitled to herself than her *walī*; and a virgin’s permission ought to sought, and her silence amounts to her permission”.<sup>52</sup>

A second kind of contradiction consists in the transmitter’s acting or giving a *fatwā* in opposition to the *ḥadīth* that he transmitted. In cases where his action or *fatwā* is recorded as having taken place before he received the *ḥadīth* concerned, or if there is any doubt as to the sequence of events, then the

<sup>48</sup> Taqī al-Dīn ibn ‘Abd al-Qādir, *al-Ṭabaqāt al-Saniyyah*, 1: 112.

<sup>49</sup> ‘Abd al-‘Azīz al-Bukhārī, *Kashf al-Asrār*, 2: 728.

<sup>50</sup> See Al-Sarakhsī, *Uṣūl al-Sarakhsī*, 2: 3; and ‘Abd al-‘Azīz al-Bukhārī, *Kashf al-Asrār*, 3: 124–5.

<sup>51</sup> See Abū Dāwūd Sulaymān ibn al-Ash‘ath, *Sunan Abī Dāwūd*, ed., Muḥammad Muḥy al-Dīn ‘Abd al-Majīd (Beirut: al-Maktaba al-‘Aṣriyya, n.d.), 2: 229; and Aḥmad ibn Ḥanbal, *Musnad Aḥmad ibn Ḥanbal* (Beirut: Dār al-Fikr, n.d.), 6: 66.

<sup>52</sup> See ‘Abd al-‘Azīz al-Bukhārī, *Kashf al-Asrār*, 3: 129–31; Muslim ibn al-Ḥajjāj al-Nisābūrī, *Ṣaḥīḥ Muslim*, Kitāb al-Nikāḥ, Bāb Isti’dhān al-Thayyib fi al-Nikāḥ bi al-Nuṭq wa al-Bikr bi al-Sukūt; Abū Dāwūd Sulaymān ibn al-Ash‘ath, *Sunan Abī Dāwūd*, Kitāb al-Nikāḥ Bāb fi al-Thayyib; Abū ‘Īsā Muḥammad ibn ‘Īsā al-Tirmidhī, *Sunan al-Tirmidhī*, Abwāb al-Nikāḥ ‘an Rasūl Allāh, Bāb Mā jā’ fi Isti’mār al-Bikr wa al-Thayyib; and al-Khawārizmī, *Jāmi‘ al-Masānīd*, 2: 119.

*ḥadīth* is considered to be authoritative. But if the *fatwā* or action took place later, then the *ḥadīth* that he has reported is not accepted as a legal source. This is because the transmitter's ruling or action in contradiction to his own report indicates either that he is not reliable (*thiqah*), or that the *ḥadīth* was presumably abrogated (*mansūkh*) by some other *ḥadīth*. An example of such an abrogated *ḥadīth* is the report on the authority of Ibn 'Umar that the Prophet (peace be on him) would raise his hands before performing *rukū'* (bowing) and while getting up from *rukū'*. It is, however, recorded that Mujāhid said that in the course of the several years that he was associated with Ibn 'Umar, he never saw the latter raise his hands in prayer even once except in *takhīr* at the beginning of the prayer.<sup>53</sup>

The third kind occurs when the transmitter specifies a part of the possible meanings (*muḥtamalāt*) of the *ḥadīth* he reported. For example, Ibn 'Umar narrated that the Prophet (peace be on him) said: "The seller and buyer have the right to rescind a transaction as long as they have not separated". This *ḥadīth* has two possible meanings: (a) physical separation as Ibn 'Umar understood it; and (b) separation of their statements of offer and acceptance; that is offer from one party and acceptance from the other. Although Ibn 'Umar's understanding of the *ḥadīth* is not in itself authoritative, the *ḥadīth* is still regarded as sound. It is quite possible that Abū Ḥanīfah understood the *ḥadīth* as having the second meaning, so that when Yaḥyā ibn Ādam gave it the first meaning, Abū Ḥanīfah rejected his explanation. In other words, both recognized the authenticity of the *ḥadīth*, but they understood it differently.<sup>54</sup> On this point, one can say that Abū Ḥanīfah, in some cases, did not interpret the *ḥadīth* concerned in its literal sense, but went beyond it in order to make sense of it.<sup>55</sup> Finally, a fourth contradiction takes place when a transmitter refuses to act in accordance with the *ḥadīth* that he reported. Such a *ḥadīth*, therefore, cannot have a binding effect.<sup>56</sup>

Abū Ḥanīfah's strict criteria for the authenticity of solitary *aḥādīth*, as mentioned above, led to the rejection of many reports that are considered sound by Abū Ḥanīfah's contemporaries, such as the Syrian *muḥaddīth* al-Awzā'ī, and the 'Irāqī scholar, Ibn Abī Laylā (d. 148/765), and a majority of the Madinese lawyers. While the differences between Abū Ḥanīfah's legal rulings and those of al-Awzā'ī and Ibn Abī Laylā were compiled by Abū Yūsuf in his books *al-Radd 'alā Siyar al-Awzā'ī* and *Ikhtilāf Abī Ḥanīfah wa Ibn Abī Laylā* respectively, the differences between Abū Ḥanīfah and the Medinese

<sup>53</sup> Al-Sarakhsī, *Uṣūl al-Sarakhsī*, 2: 5–6; and 'Abd al-'Azīz al-Bukhārī, *Kashf al-Asrār*, 3: 132–4.

<sup>54</sup> Al-Sarakhsī, *Uṣūl al-Sarakhsī*, 2: 6–7; and 'Abd al-'Azīz al-Bukhārī, *Kashf al-Asrār*, 3: 135–37.

<sup>55</sup> Goldziher, *The Jahiri*, 18.

<sup>56</sup> Al-Sarakhsī, *Uṣūl al-Sarakhsī*, 2: 6–7; and 'Abd al-'Azīz al-Bukhārī, *Kashf al-Asrār*, 3: 135–137.

lawyers regarding legal matters were collected in al-Shayb ānī's work *Kitāb al-Ḥujjah 'alā Abl al-Madīnah*. It is quite likely that the criticism of Abū Ḥanīfah by his contemporaries stemmed, at least in part, from the differing views regarding the position of solitary *aḥādīth*. In our own opinion, the reason for Abū Ḥanīfah's rejection of many solitary *aḥādīth* was that he accorded greater importance to the stronger evidences of the Law such as the Qur' ān and the more authentic *aḥādīth*. What remains to be seen is whether or not Abū Ḥanīfah gave priority to *qiyās* over a solitary *ḥadīth*, when the two contradicted one another on a given point.

### Solitary Traditions versus *Qiyās*

The issue of contradiction between a solitary *ḥadīth* and *qiyās* has also been discussed by many jurists of the Sunnī schools of law. Different opinions on this point can be identified from the following accounts. Al-Ṭūfī (d. 716/1316), a Ḥanbalī jurist, in his *Sharḥ Mukhtaṣar al-Rawḍah*, and Abū Ishāq Ibrāhīm ibn 'Alī al-Shīrāzī (d. 476/1083), a Shāfi'ī jurist, in his *al-Wuṣūl ilā Masā'il al-Uṣūl*, points out that a solitary *ḥadīth* which has a sound *sanad* (chain of transmission) must be preferred to *qiyās*. This view, they argue, is based on a *ḥadīth* on the authority of Mu'ādh ibn Jabal, in which the sequence of Islamic legal sources is mentioned. In this *ḥadīth ijtihād* (which, includes *qiyās*) was listed below the *sunnah*. Other reasons for giving priority to *ḥadīth* over *qiyās* include the consensus of the Companions, and the consideration that *ḥadīth* represents the speech of a sinless person (*al-ma'ṣūm*), i.e., the Prophet.<sup>57</sup> On the contrary, Mālīk ibn Anas and his followers preferred *qiyās* to a solitary *ḥadīth* whenever these contradicted one another. This is not only because of the authoritativeness of *qiyās* as a legal source, but also because the *ittiṣāl al-sanad* (the uninterruptedness of the chain of transmitters) of the *ḥadīth* is not beyond doubt, given the probability that at least one transmitter of the *ḥadīth* may either have lied or made a mistake in reporting.<sup>58</sup>

Unlike the above scholars, the Ḥanafī jurists, such as Abū'l-Ḥasan 'Alī ibn Muḥammad al-Bazdawī (d. 482/1089) and al-Sarakhsī, have pointed out that whether or not a solitary *ḥadīth* is to be given priority over *qiyās* depends on the quality of the *ḥadīth* transmitters (*rāwīs*). These transmitters, according to them, are divided into two categories: the first, *al-ma'rūfūn*, who are comprised of *rāwīs* known not only for being *thiqah* (reliable, i.e., on account

<sup>57</sup> Sulaymān ibn 'Abd al-Qawī al-Ṭūfī, *Sharḥ Mukhtaṣar al-Rawḍah*, ed., 'Abd Allāh ibn 'Abd al-Muḥsin al-Turkī (Beirut: Mu'assasat al-Risālah, 1988), 2: 239–40; and al-Shīrāzī, *al-Wuṣūl*, 2: 103–4.

<sup>58</sup> Abd al-'Azīz al-Bukhārī, *Kashf al-Asrār*, 2: 699–700.

of their *‘adālah* and *ḍabt*), but also for their *fiqh* (the capacity to understand the subject-matter of the *ḥadīth*); and the second, of the *rāwīs* who are recognized to have only the *‘adālah* and *ḍabt*, but who lack *fiqh*. As for *al-majbūlūn*, they are the *rāwīs* who are unknown apart from the one or two *aḥādīth* that they might have reported. Some of the *majbūlūn* are regarded as trustworthy, and some as untrustworthy, while some are debatable in terms of their trustworthiness.<sup>59</sup>

There is no disagreement among the Ḥanafī jurists that the *aḥādīth* reported by the *ma‘rūfūn*, who are well-known for their *fiqh*, such as the rightly guided caliphs — Abū Bakr, ‘Umar ibn al-Khaṭṭāb, ‘Uthmān ibn ‘Affān and ‘Alī ibn Abī Ṭālib — must be given preference over *qiyās*. The reasons articulated for this are the same as those offered by the Ḥanbalī and Shāfi‘ī jurists, as mentioned earlier.<sup>60</sup> The Ḥanafī jurists, however, do not agree in regard to the *aḥādīth* reported by the *ma‘rūfūn* who, notwithstanding their piety, are not renowned for their comprehension of legal problems like Abū Hurayrah and Anas ibn Mālik. According to ‘Īsā ibn Abbān (d. 221/836), a Ḥanafī jurist, understanding (*fiqh*) of *ḥadīth* materials, in addition to *‘adālah* and *ḍabt*, is required of the *rāwīs* before giving preference to the *aḥādīth* they reported over *qiyās*. This is due to the fact that there were many *rāwīs* who were able to convey only the meaning of a statement, and were unable to report it verbatim. It is obvious that in so doing the *rāwīs*’ capability of understanding counted for a lot. Conversely, for Abu’l-Ḥasan al-Karkhī (d. 340/952), the capacity for understanding the contents of *aḥādīth* is not required on grounds that, in spite of *riwāyah bi al-ma‘nā*, the alterations made by the *rāwīs* who were trustworthy would not have affected the meaning of the *ḥadīth* in any way.<sup>61</sup> On this point, al-Bazdawī and al-Sarakhsī seemed to combine the two opinions, saying:

If the [solitary] *ḥadīth* reported by the *ma‘rūf* who lacked the capacity of understanding (*al-fiqh*), supports the *qiyās*, the *ḥadīth* must be accepted. And if the *ḥadīth* contradicts it, it should still be preferred except in the event of *ḍarūrah*, i.e., where there are no grounds for sound reasoning to support the *ḥadīth*.<sup>62</sup>

<sup>59</sup> See ‘Abd al-‘Azīz al-Bukhārī, *Kashf al-Asrār*, 2: 697; and al-Sarakhsī, *Uṣūl al-Sarakhsī*, 1: 338.

<sup>60</sup> See ‘Abd al-‘Azīz al-Bukhārī, *Kashf al-Asrār*, 2: 698–700; and al-Sarakhsī, *Uṣūl al-Sarakhsī*, 1: 339.

<sup>61</sup> See ‘Abd al-‘Azīz al-Bukhārī, *Kashf al-Asrār*, 2: 707.

<sup>62</sup> ‘Abd al-‘Azīz al-Bukhārī, *Kashf al-Asrār*, 2: 702. Cf. al-Sarakhsī, *Uṣūl al-Sarakhsī*, 1: 340–2.

Giving priority to the solitary *ḥadīth* over *qiyās* was actually the practice of the earlier jurists, such as Abū Ḥanīfah, Abū Yūsuf and Muḥammad ibn al-Ḥasan al-Shaybānī.<sup>63</sup> There are many examples of Abū Ḥanīfah's application of the above doctrine. He employed the solitary *aḥādīth* reported by Abū Hurayrah and Anas ibn Mālik in giving several legal rulings. One of these concerns the validity of fasting for someone who eats or drinks out of *nisyān* (forgetfulness). On this point, the implications of, *ḥadīth* and *qiyās*, seem to contradict one another. On grounds of *qiyās*, it can be argued that since any *'ibādah* (obedience to God) without the completion of its *rukn* (basic element) is invalid, this would also apply to anyone who eats out of forgetfulness while one is fasting.<sup>64</sup> On the other hand, the following statement of the Prophet (peace be on him) has been reported by Abū Hurayrah: "Whoever forgets, while fasting, and eats or drinks, he should complete his fasting. Indeed, [when he ate or drank out of forgetfulness] it is God who provided food or drink to him".<sup>65</sup> This led Abū Ḥanīfah to accept the validity of a fast which was apparently interrupted by forgetfulness.<sup>66</sup> In connection with this issue, Abū Ḥanīfah said: "If there were no such *ḥadīth*, I would have decided on the basis of *qiyās*".<sup>67</sup> It would be evident from this that although the *ḥadīth* that was reported by a non-*faqīh rāwī* contradicted the ruling arrived at by recourse to *qiyās*, the former was still preferable.

However, according to Bazdawī and Sarakhsī, the solitary *ḥadīth* reported by a non-*faqīh ma'rūf rāwī* would be given priority over *qiyās* only in case there is a measure of sound reasoning which backs up the *ḥadīth*, namely that there is another kind of *qiyās* which is in accordance with the *ḥadīth*.<sup>68</sup> But if there occurs what has been termed as *insidād bāb al-ra'y* that is, when the content cannot be sustained at all by human reason, then the decision reached by recourse to *qiyās* will be preferred. An example in this regard is afforded by the case of *al-taṣriyah* (leaving off milking an animal) mentioned in a *ḥadīth* that was transmitted by Abū Hurayrah. It tells us that the Prophet (peace be

<sup>63</sup> See 'Abd al-'Azīz al-Bukhārī, *Kashf al-Asrār*, 2: 704 and 708; al-Sarakhsī, *Uṣūl al-Sarakhsī*, 1: 342.

<sup>64</sup> See Abū Yūsuf, *Ikhtilāf Abī Ḥanīfah*, 135; Muḥammad ibn al-Ḥasan al-Shaybānī, *Kitāb al-Ḥujja 'alā Abl al-Madīnah*, ed., Maḥdī Ḥasan al-Kaylānī (Haydārabād: Maṭba'at al-Ma'ārif al-Sharqiyyah, 1965), 1: 391.

<sup>65</sup> Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, Kitāb al-Ṣiyām, Bāb Akl al-Nāsī wa Shurbuh.

<sup>66</sup> See also al-Shaybānī, *Kitāb al-Ḥujjah 'alā Abl al-Madīnah*, 1: 393–95. Al-Shaybānī also mentions other Companions, namely 'Alī ibn Abī Ṭālib and 'Alqamah ibn Qays, as the narrators of this *ḥadīth*.

<sup>67</sup> See al-Shaybānī, *Kitāb al-Ḥujjah 'alā Abl al-Madīnah*, 1: 392; and 'Abd al-'Azīz al-Bukhārī, *Kashf al-Asrār*, 2: 708.

<sup>68</sup> See 'Abd al-'Azīz al-Bukhārī, *Kashf al-Asrār*, 2: 702.

on him) said: “Avoid *al-taṣriyah* (leaving off milking) with respect to a camel or a sheep (in order that milk remains in their udders). Whoever buys such an animal after *al-taṣriyah* has the right to rescind the transaction after milking them. If he is satisfied, he keeps them; and if not, he may return them (to the owner), and make up for the milk with one *ṣāʿ* (a cubic measure) of dates”.<sup>69</sup> This *ḥadīth*, which allows the option to rescind a transaction and guarantees that the seller would receive in lieu of the milk that has been consumed by the buyer by returning to the seller one *ṣāʿ* of dates. According to Bazdawī and Sarakhsī, however, this *ḥadīth* is not authentic because it contradicts a sound *qiyās* that is derived from the Qurʾān (2: 194),<sup>70</sup> other *aḥādīth*, and an *ijmāʿ*, which order Muslims to guarantee things for an equal value; in this case one *ṣāʿ* of dates being insufficient.<sup>71</sup> On this point, Abū Ḥanīfah and his prominent pupils, Abū Yūsuf and Shaybānī, had a difference of opinion. The latter considered the above *ḥadīth* to be authentic, as can be seen from their employment of it when dealing with the problem of *khiyār*.<sup>72</sup>

Concerning the solitary *aḥādīth* reported by the Companions who were not well-known, such as Fāṭimah bint Qays, Wābiṣah ibn Maʿbad, Salmah ibn al-Muḥbiq and Maʿqal ibn Sinān, the Ḥanafī jurists are agreed that these are not accepted if they contradict sound *qiyās*, because their *ittiṣāl* (uninterrupted transmission) from the Prophet (peace be on him) is highly suspect. Examples abound of the rejection, by Ḥanafī jurists, of traditions in favour of sound *qiyās* by other Companions and their Successors. An example in this regard is the *ḥadīth* transmitted by Fāṭimah bint Qays (the complete report has been quoted above in the discussion of Abū Ḥanīfah’s attitude towards solitary *ḥadīth*), telling that the Prophet (peace be on him) had decided that she, who was divorced three times by her husband, was not entitled to *nafaqah* (maintenance). Her report was, however, rejected by ‘Umar ibn al-Khaṭṭāb, who considered it to be opposed to, what might be termed as a sound *qiyās* derived from the Qurʾān (65: 1 and 6). Accordingly, he said: “We do not abandon the Book of God and the *sunnah* of the Prophet (peace be on him) so

<sup>69</sup> Muḥammad ibn Ismāʿīl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Kitāb al-Buyūʿ, Bāb al-Nahy li al-Bāʿiʿ an lā yaḥfal al-Ibil wa al-Baqar wa al-Ghanam ...; Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, Kitāb al-Buyūʿ, Bāb Ḥukm Bayʿ al-Muṣarrāh; Abū Dāwūd Sulaymān ibn al-Ashʿath, *Sunan Abī Dāwūd*, Kitāb al-Buyūʿ, Bāb Man Ishtarā Muṣarrātan fa Karihahā.

<sup>70</sup> The verse says: “... So if you are oppressed, oppress those who oppress you to the same degree...”

<sup>71</sup> ‘Abd al-ʿAzīz al-Bukhārī, *Kaṣf al-Asrār*, 2: 704–5.

<sup>72</sup> See Abū Yūsuf, *Ikhtilāf Abī Ḥanīfah*, 16; and al-Khawārizmī, *Jāmiʿ al-Masānid*, 2: 25.



as to report a woman about whom we do not know whether she is truthful or a liar, and whether she remembers or forgets [what she hears or sees]".<sup>73</sup>

### Conclusion

The evidence available to us leads us to conclude that the impression about Abū Ḥanīfah paid scant attention to solitary *aḥādīth*, let alone *aḥādīth* as such, is not correct. The fact is that he employed only those *aḥādīth* which he considered to be in agreement with the stronger evidence of the Qur'ān and the other better authenticated *aḥādīth*. In other words, Abū Ḥanīfah's rejection of many solitary *aḥādīth* was on grounds that they did not meet the criteria for the acceptance of *aḥādīth* which he considered necessary in assessing their authenticity. Abū Ḥanīfah preferred those solitary *aḥādīth* which were reported by *rāwīs* known to have the religious and moral qualities expressed by the term '*adālah*' and the intellectual capacity called *ḍabt* to the decisions arrived at by recourse to *qiyās*. Another important point is that there was considerable disagreement among the jurists of the early centuries of Islam, even among the jurists of the same *madhhab*, as regards the ways of assessing the authenticity of *aḥādīth* as a source of legal doctrines.




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<sup>73</sup> See 'Abd al-'Azīz al-Bukhārī, *Kashf al-Asrār*, 2: 706–24; and al-Sarakhsī, *Uṣūl al-Sarakhsī*, 1: 342–45.