

Abū Hanīfah: *The Quintessence of Islamic Law* (699-767 A.D.)

“Hypocrisy and arrogance in any deed annul its reward.”
—ABU HANIFA, *AL-FIQH AL-AKBAR*¹

An Islamic Legal Great

Al-Nu‘man bin Thabit (699-767 A.D.)—commonly known by the *kunyah*² Abu Hanifah—is considered the founder of one of the four schools or rites (s. *maddhab*, pl. *madhāhib*) of Islamic legal knowledge (*fiqh*) within the Sunni branch of Islam.³ That school is eponymously labeled the Hanafi or Hanifite school.⁴ The Hanafi school of *fiqh* soon became the official school of jurisprudence in the ‘Abbasid caliphate.⁵ It was also adopted as the legal standard by the expansive Ottoman and Moghul Empires, and so reached up through Asia Minor to the Balkans and was planted far beyond the Oxus River (the Amu Darya), into the heart of Asia. It remains the primary school for the Islamic nations that succeeded from those historical states, including Pakistan, Turkey, Albania, Central Asia, Afghanistan, China, India, and Iraq. Because of its wide acceptance, the Hanafi *maddhab* is the school of the majority of Sunni Muslims.⁶ Given his continuing and widespread influence on the Islamic religious law (*sharī‘a*), its positive law (*qānūn*), and on Islamic jurisprudence (*fiqh*) in general, Abu Hanifa is without question one of the Law’s Greats. His life’s work has affected billions of souls; surely that merits at least a nod from Westerners.

Al-Nu‘man bin Thābit: Life as Kufan Merchant

Around one hundred and thirty years after the birth of Muhammad and sixty-seven following his death, Abu Hanifa was born Al-Nu‘man bin Thabit in Kufa in modern day Iraq. Though there is some conflicting evidence about the lineage of his family, it is certain that it was not Arabic, but one of well-to-do Persian merchants.⁷ Following the Arabic conquest of the region, Abu Hanifa’s grandfather may have been enslaved to a member of the Banu Tamim. If he was, he was later freed and considered a client (s. *mawlā*, pl. *mawālī*) of that Arabic tribe under the clientage system (*wala’*) used by the Umayyad dynasty to engraft non-Arabs Muslims into the Arabic tribal society.⁸

The town of Kufa, situated on the banks of the Euphrates in central Iraq, was founded in 637 A.D., only five years after Muhammad’s death. Its founding occurred shortly after the Arab victory over the Sassanid Persians at the Battle of

Qadisiyyah and the Byzantine Empire at the Battle of Yarmouk, and shortly before the Islamic conquest of Jerusalem.⁹ Founded as a garrison town by Sa'd bin Abi Waqqas, a Companion of Muhammad,¹⁰ it was used as a base for the Arab armies in their battle against the Sassanid Persians. The town quickly burgeoned in population and importance and became a leading cultural, religious, and gubernatorial center. Some of the Companions of the Prophet Muhammad emigrated from Medina to Kufa further raising the city's prestige to a *dar al-'ilm*, or center of learning, in dignity at par with the cities of Medina, Mecca, and Basrah.¹¹ In 656 A.D. the town was chosen as the headquarters of the rival claimant to the caliphate, 'Ali bin Abu Talib, and so it remained until his death in 661.

Abu Hanifa's early life and education took place at Kufa, and—except for periodic pilgrimages (*hajj*) and scholarly visits to Mecca, Medina, and other centers of learning and pilgrimage, and a period of exile at Mecca—most of his life was spent in the city of his birth. He flourished in Kufa: first as a student, then a merchant, then as a student of *fiqh*, and finally a teacher (s. *faqīh*, pl. *fuqahā'*) and expert (*mujtahid* or *mufīṭ*) of Islamic jurisprudence. Kufa's importance naturally attracted numerous peoples with their panoply of religions and cultures, including a variety of Christian, Jewish, and Persian sects. Yet Abu Hanifa's father, Thabit (or Zawti), was Muslim, and under his paternal direction Abu Hanifa memorized the *Qur'ān*, learning the 'Āṣim recitation (s. *qirāh'a*, pl. *qirā'āt*).¹²

Abu Hanifa was not early marked for the law, as he came from a family of textile merchants specializing in *khazz*.¹³ He followed in the family's trade, quickly establishing a reputation for honesty and fairness.¹⁴ Many stories exist about his life as a merchant, but, like many hagiographical writings in any religious tradition, they have a fairytale-like aftertaste, stemming from a surfeit of devotion. Nevertheless, the stories are well worth relating, as they witness to the fact that even before studying law this great jurist had natural virtue, a kind heart, an honest disposition, and a generous personality. Many of the stories relate how, when a merchant, he refused to take advantage of persons with less knowledge of his trade, and shunned the temptation of obtaining excess profit in both buying and selling. He was to handle *fiqh* every bit as nobly as he handled *khazz*.

One story describes his treatment of a woman who appeared at his store to sell a silk garment. She asked only a hundred dirhams for it, but Abu Hanifa would not buy it at that price, and told her it was worth more. The woman increased the sales price in increments of a hundred dirhams, but each time Abu Hanifa insisted that the silk garment was worth more. When she reached four hundred dirhams, the woman thought Abu Hanifa was mocking her, but an independent merchant was summoned to appraise the garment, and he valued it for

five hundred dirhams.¹⁵ Thus Abu Hanifa refused the opportunity for an unjust profit, and settled for a fair trade.

In a similar vein, another story involves a woman desiring to buy a silk garment. When she asked, no doubt audaciously, to purchase a silk garment at cost, he offered her the ridiculously low sales price of four dirhams. The woman thought that Abu Hanifa was teasing her, but he explained to her that he had bought two of the garments, had sold one of them for the cost of both less four dirhams, so his basis in the remaining garment was only four dirhams.¹⁶

Finally, the story is told about the time he sent his partner, Hafs ibn ‘Abdu’r-Rahman, to sell some cloth at a distant market. He pointed out a defect in the cloth, and instructed him to disclose it to the buyer when he sold it, and so price the cloth accordingly. Hafs sold the cloth; however, he forgot to point out the defect, and, to add insult to injury, could not remember the identity of the purchaser. Faced with the predicament of holding unjust profit, Abu Hanifa decided to forego *both* basis and profit—the significant sum of thirty thousand dirhams—and donated the proceeds to the poor.¹⁷

Conversion to the Study of Law (Fiqh)

Abu Hanifa’s chance (or, better, providential) encounter with the *faqīh* ash-Sha‘bi while on his way to the market was to convert him from the mundane life of a merchant, to the deep and fulfilling life of a scholar and jurist. As the young merchant walked by, ash-Sha‘bi detected in Abu Hanifa a natural intelligence in addition to his natural virtue. “Do not be heedless,” ash-Sha‘bi admonished the young mercer, “You must look into knowledge and sit with the scholars.” The statement as it comes down to us appears bland and uninspiring; but whatever ash-Sha‘bi actually said pierced the heart of Abu Hanifa who, in what can only be characterized as a religious conversion, left the life of a merchant, and dedicated his life to the pursuit of knowledge.¹⁸

Abu Hanifa first dedicated himself to the study (*‘ulum*) of theology (*kalām*). After mastering theology, he concluded that the constant debates of *jabar*, *qadar*, *tashbīh*, *tanzīh*, *‘adl*, and *jaur*¹⁹ did not result in an increase in virtue or religious devotion (*dīn*), but rather inclined one to be “hard-hearted and thick-skinned,”²⁰ and tended toward a spirit of sectarianism. Some questions, moreover, simply had no answer and thus gave rise to endless, fruitless dispute. So, for example, he refused to debate the issue of predestination (*qadar*) because, as he put it using a wonderful image that John Calvin could have used, “It is a lock whose key is lost.”²¹ It was Abu Hanifa’s conclusion:

This intolerant sectarianism rent asunder the fabric of Muslim society,

deforming all its features—religion, morals, government, culture, civilization. In the midst of this all-pervading destruction there was only one constructive voice, that of Abu Hanifa, declaring aloud: “Of the people of the *Qiblah* there is none whom we consider an infidel.”²²

From the study of theology, which he mastered, he turned to the study of literature, grammar, and poetry, but thought—not unlike Plato—that it detracted from the religious life and the exercise of virtue (*dīn*). He then studied the forms of Quranic recitation (*qirā’āt*) and the *Aḥadīth* or Traditions, but found those disciplines incompatible with his temperament. When he recognized the link between virtue and law,²³ however, he took off his sandals, and sat cross-legged on the carpets of the mosque at Kufa, across, and later beside, the venerable teacher of *fiqh*, Hammad bin Abi Sulayman, where he devoted his life to the study of *fiqh* or Islamic jurisprudence:

I saw that [the study of *fiqh*] involved sitting with scholars, *fuqaha*, shaykhs [sheiks] and people of insight and taking on their character. I saw that it is only by knowing it that the obligations are properly performed and the *deen* [*dīn*] and worship established. Seeking this world and the Next World can only be done through it. If anyone desires to seek this world through it, he seeks a weighty matter and will be elevated by it. If someone wants to worship and divest himself, no one can say, “He worships without knowledge.” Rather it will be said, “This is *fiqh* and acting by knowledge.”²⁴

Islamic *fiqh* was in a state of development at that time, and in order to form an understanding of it, Abu Hanifa studied *fiqh* as taught by a variety of different masters who formed personal schools of *fiqh*. Liberally inclined and naturally curious, he pursued knowledge with great openness and lack of bias. He did not even shun the Shi‘ia and other heretical sects in his quest for understanding; rather, he explored the rich legal veins of metropolitan Kufa and beyond, finding truth wheresoever it could be found. “I was situated in a lode of knowledge and *fiqh*,” Abu Hanifa observed, so “I learned the *fiqh* of ‘Umar, the *fiqh* of ‘Ali, the *fiqh* of ‘Abdulla ibn Mas‘ud, and the *fiqh* of Ibn ‘Abbas.” But ultimately, he tells us, “I devoted myself to one of the *fuqaha*.”

The one *faqīh* to whom he bound himself was Hammad bin Abi Sulayman.²⁵ He studied under him for eighteen years, rejecting any desires to break away and form his own school, even after he was recognized as a *mujtahid*.²⁶ Following Hammad’s death in 120 A.H., Abu Hanifa—by then well into his forties—took his beloved master’s place.²⁷ Though a master of *fiqh*, Abu Hanifa never ceased to learn. “A scholar continues to seek knowledge,” he observed in a train of thought that is Socratic and therefore universal, because

“when he thinks that he knows, he is ignorant.”²⁸ He also never shunned learning other people’s perspectives—even though he may not have accepted them—as he felt that one could always learn by listening to and dialoguing with others. “The most knowledgeable of people,” Abu Hanifa wisely observed, “is the one with the most knowledge of people’s differences.”²⁹ He knew that heresy was not absolutely false, but rather involved an exaggeration of one truth often at the expense of another.

The emphasis that Abu Hanifa placed on knowledge was directly related to his notion of the right and the good. Explains the Egyptian scholar Muhammad Abu Zahra:

Abu Hanifa thought that righteous actions must be based on sound knowledge. In his view, a good person is not just someone who does good, but someone who can differentiate between good and evil, and who aims for good, out of knowledge, and avoids evil, understanding its evil. A just person is not someone who is just without understanding injustice; a just person must recognize injustice and its consequences and justice and its results, and act with justice because of the nobility and good consequences it entails.³⁰

The School (Maddhab) of Abu Hanifa

Background

During Abu Hanifa’s life, the Islamic world bubbled in ferment, ferment caused by the yeast of dispute in the areas of politics,³¹ religion, and, what may amount to almost the same thing in Islam, Islamic law.³² After the death of Muhammad, Islamic law found itself in a sort of imbalance, and it took several generations before scholars found a point of equilibrium. After Muhammad’s death, the overwhelming influence of Medina on doctrine and practice—whose authority was largely that of the Companions of the Prophet—waned as the Companions moved to other cities and died, and schools in other cities—Kufa, Basra, Baghdad, among others, began to claim equal worth to that of Medina.³³ Further, a great rift rose between two groups of scholars—the scholars of *tradition* and the scholars of *opinion*, though often scholars exhibited tendencies of both schools.³⁴

The first group of scholars were the traditionists (the *ahl-al-hadith* or *ahl-al-riwayah* as they were known),³⁵ and, in construing the Quran, they focused on the *ḥadīth* or reports on the sayings and deeds of Muhammad and his Companions. These scholars of hadith spent their energies in gathering up, memorizing, and ultimately transcribing the countless narrations and traditions about the Prophet

and his Companions. Unfortunately, they did not use any critical apparatus (*dirayat*) to sort out the authentic hadith from the spurious, and as a result far too often counterfeit traditions were mindlessly if piously accepted as authentic.³⁶ Further, the traditionists strictly, and largely uncritically, abided by hadith; where they thought they found a rule they would not depart from it. This presented a problem if the hadith was not authentic. Where the hadith had no rule on a matter, or where perhaps it had more than one rule or contradictory rules, the traditionists eschewed the application of non-literal thought or analogical reasoning (*qiyās*) to lead them out of their quandary.³⁷ Though performing a valuable service to the future of Islam in gathering up and preserving the traditions of the past, the benefits of this service were mixed with the propagation of inauthentic hadith and a vision of jurisprudence that promised a most stultifying and uncompromising law.³⁸

The second group of scholars (known as the *ahl-al-ra'y*) took a different tack. Though accused by their opponents, largely unfairly, of rejecting the teachings of Muhammad and the Companions, they in fact did not reject the *Qur'ān* and *ḥadīth*. Generally, the *ahl-al-ra'y* allowed themselves the liberty to assess a particular hadith critically to determine its authenticity and its level of authoritativeness. Additionally, when faced with a novel circumstance that required a judgment when there was no direct Quranic or hadithic guidance on the point, they allowed themselves the freedom to derive additional rules of law from the *Qur'ān* and the authentic *ḥadīth* based on a reasoned opinion or judgment (*ra'y*) which allowed the extrapolation from these sources of law.³⁹

The great divide between these two schools somewhat followed geography, as most of the adherents of *aḥadīth* were in the Hijaz (Northwestern Arabia) and Syria, and most of the adherents of *ra'y* were in Iraq.⁴⁰ By the time of the *Tābi'ū-t-Tābi'īn*,⁴¹ the dispute between these two schools of thought had intensified, and their advocates hurled virulent words at each other. Naturally, this debate threatened the unity of Islam.⁴² Commonly, the great Islamic jurist Abu 'Abd Allah ash-Shafi'i (767-819 A.D.) is given the credit for reconciling these two streams of *fiqh* to give rise to the "four-rooted" formulation of the so-called "classical" theory of Islamic law, the *Uṣūl al-fiqh*.⁴³ However, some Hanafites dissent to the honor being given to Shafi'i, who, after all, is the eponymous founder of a rival school, the Shafi'ite. The highly-regarded Indian Muslim Hanafi scholar Mawlana Shibli Nu'mani expresses the Hanafi view:

It is commonly thought that Shafi'i was the first to formulate these rules, which are now called *Usul-i-Fiqh* (the roots or principles of jurisprudence). This idea is correct only in so far as reduction of the rules to writing is concerned. Before Shafi'i set them forth regularly in writing the rules had been framed by Abu Hanifa, who had thus already laid the foundation of

the science of *Fiqh*.⁴⁴

Abu Hanīfa's Fiqh

It was during this battle between the *ahl-al-hadith* or *ahl-al-riwayah* and the *ahl-al-ra'y*, before Shafi'i effected his great reconciliation, that Abu Hanifa lived. As he attempted to synthesize the various strands of *fiqh* into a comprehensive system,⁴⁵ Abu Hanifa to a great extent anticipated Shafi'i's solution. In his systematization of *fiqh*, Abu Hanifa had to consider various factors: (i) he had to identify the source of the law; (ii) he had to develop rules to determine the authenticity of the source of law; (iii) he had to develop rules to handle discrepancies or perhaps even contradictions in the sources of law; (iv) he had to develop a disciplined system of reasoning (*qiyās*) to allow the application of these sources of law to novel or unanticipated circumstances; and, lastly (v) he had to develop a notion of equity in the event the legal reasoning (*qiyās*) proved impracticable or harsh. As he sought to develop this system in fidelity to the Islamic revelation, he steered clear between the Scylla of a fideistic devotion to *ḥadīth* and the Charybdis of a faithless *r'ay*.



The Formula

Abu Hanifa's formula was deceptively simple; though it may appear self-evident after the fact, its simplicity belies the three generations of Islamic scholars who struggled (*ijtihād*) with their Quranic and Mohammedan inheritance.⁴⁶ Under Abu Hanifi's formula, the source of law was found in three places: in the Quran and the Traditions of Muhammad or the *Sunnah*. An only slightly less dignified source to the Quran and *Sunnah* was the consensus (*ijmā'*) of the the *mujtahidūn*, who are considered scholars (*'ulamā*) that were experts in *fiqh*.⁴⁷ Analogical reasoning (*qiyās*) would be applied to extend the three sources of law (*Qur'ān, Sunnah, ijmā'*) to circumstances they did not address directly or to situations where the various injunctions had to be reconciled. Where the law reached by analogical reasoning (*qiyās*) was harsh or against the common good, it could be tempered by discretion (*istihsan*).⁴⁸ In a sense, *istihsan* may be said to be a sort of control on *qiyās*, an equitable doctrine or a mitigatory doctrine of expediency that softens or makes reasonable what might otherwise be the result of strict analogical thinking. It may be defined, perhaps not very enlighteningly, as Abu Zahra does, as the situation where the jurist "depart[s] from an established precedent in favor of another [weaker] ruling for a stronger reason which necessitates turning way from the [stronger] precedent."⁴⁹

Abu Hanifa summarized his *Usūl al-fiqh* thus:

I would take the book of God, and, if I could not find an injunction therein, then I would refer to the Sunna of the Prophet. If I failed to discover an injunction in either of the main texts, then I would go to the words and states, *aqwāl*, of the Prophet's companions. From these I would either take or leave evidence as I saw fit. I would not refer to anyone else. When I came to the *tabi'īn* such as Ibrāhim, Sha'bi, Ibn Sīrin, Atā' and Sa'īd b. al-Musayyab, I would exercise my own opinion as they would do, since they are only men like me.⁵⁰

As a last refuge to arriving at an answer to a legal problem—where *qiyās* applied to the sources yielded no rule or gave no guidance—Abu Hanifa would rely on custom (*'urf*).⁵¹

Application of Analogy (Qiyās)

In exercising his “own opinion” based on the *Qur'ān*, *Sunnah*, and consensus (*ijmā*), Abu Hanafi used a system of analogical thinking (*qiyās*). Though it is “[q]uite simply a tool used by lawyers to compare cases,” *qiyās* is “one of the most important methods developed by Islamic law to deal with new cases and issues, the details of which were not explicitly covered by the Qur'an, Sunna and *ijmā* [consensus].”⁵² In order to apply the process of *qiyās*, a number of elements (known as *shurūt*) must be met. In essence the application of *qiyās* requires: (i) the identification of a text which has an injunction known as the base (*asl*), (ii) a branch case which has no similar injunction (*far'*), and (iii) a common reasoning (*'illa*) between the two. Once the *'illa* between the *asl* and *far'* is found, the injunction applicable to the base can be extended to the branch case, subject only to the application of *istihsan*.⁵³

As an example of the application of *qiyās* is the issue confronting a Muslim who has before him a shot of whiskey or a glass of fermented date juice. The Quran prohibits the drinking of grape wine (*khamr*),⁵⁴ but does not mention alcoholic beverages derived from fermented date juice or barley or grains. If he approached a *faqīh* for a *fatwa*, the *faqīh* would have to apply *qiyās* to the Quranic prohibition to derive the answer as to whether or not the Quran also prohibits the drinking of the beverages before him (*far'*). The reason (*illa*) behind that Quranic injunction against drinking grape wine (the *asl*) is the causing of intoxication and its ill effects. Because intoxication and its ill effects will result in the ingestion of fermented date juice or beer, an analogy (*qiyās*) may appropriately be made, the same injunction applicable to grape wine (a prohibition) can be applied to fermented date juice or beer.⁵⁵

Abu Hanifa was often accused of applying reasoning at the expense of tradition, but this was an accusation he vehemently denied.⁵⁶ According to his method: “We only use analogy when there is a strong need for it. We look for evidence about the Question in the Book, the *Sunna* and the decisions of the Companions. If we do not find anything [there] then we use analogy since there is silence about the matter.”⁵⁷ For Abu Hanifa, the *Qur’ān* and the *Sunnah* are “inseparable as the basis of the *Shari‘a*” and the use of *qiyās* did not detract from them, but broadened them.⁵⁸

Handling Inauthentic Hadith

In identifying the sources of law and applying analogical reasoning (*qiyās*) Abu Hanifa confronted the problem of inauthentic hadith that was entwined with authentic hadith.

Bukhari and Muslim were not yet there to select sound Traditions from this tangled mass. Abu Hanifah’s preoccupation with *Fiqh* did not permit him to undertake this work, but he did the next best thing, which was to devise a system of criticizing narrations and lay down rules and regulations for it. His standard of criticism has been considered extremely rigorous, so that the *muhaddithin* have given him the title of *mushaddid fi al-riwayat* (i.e., stringent in narration)⁵⁹

The development of principles of criticism (known as *dirayat*) to be applied to the *aḥādīth* to sort out the authentic from the inauthentic and to therefore determine the level at which they bound the lawmaker, was considered to be one of Abu Hanifa’s “most valuable contribution[s],” and one of his “greatest achievements” in the area of *fiqh*.⁶⁰ There is, in theory, no essential difference between the *Qur’ān* and the *Sunnah* as they are both considered revelation. The only distinction is their mode of transmission, as the *Qur’ān* is considered written revelation (*wahi matlu*) and the *aḥādīth* which is evidentiary of the *Sunnah* is considered unwritten revelation (*wahi ghair matlu*). Because of the suspect nature of many *aḥādīth*, however, there is a significant difference between the *Qur’ān* and the *aḥādīth* with respect to proof. If a particular *ḥādīth* is definitely and unchallengeably authentic, it ranks equivalent with the *Qur’ān* as a source of law. Each *ḥādīth*, however, varies with respect of degree of proof, and this variation must be taken into account in deducing legal directions from them. The proof of the *aḥādīth* relates to two distinct issues. The first relates to the accuracy of their *transmission*,⁶¹ and second to their *use as a source of law*. It is in this latter area that Abu Hanifah was called upon to undertake it as a pioneer in the systematization of *fiqh*. From the point of view of proof as legal sources, he divided the *aḥādīth* into three grades: *mutawatir*, *mashhur*, and *ahad*.⁶² A rule of

law derived from a *mutawatri ḥadīth* he considered mandatory and fundamental; it could, in some cases, even abrogate an express command in the *Qur'ān*. A rule of law derived from a *mashhur ḥadīth* was not mandatory, but could be used to define, explain, or supplement a legal precept contained in the *Qur'ān*. An *ahad ḥadīth*—i.e., one considered neither *mutawatri* or *mashhur*—could not affect in any manner a clear Quranic injunction.⁶³

The Liberality of the Hanafi School

The Hanifite school is regarded as (relatively) liberal, so much so that the liberal nature of the school is practically proverbial in Islamic circles.⁶⁴ Of all other schools, the Hanifite seems to take the most liberal stance toward the “people of the Book” (*Ahl al-Kitāb*), that is Christians and Jews under the jurisdiction of an Islamic state. Yet that liberality is very relative, as it remained wed to the concept of dhimmitude, and the restrictions, social and civil, associated with that status.⁶⁵

Perhaps the relative liberality of the Hanafi school is best exemplified by a comparison of the level of strictness between the Hanafi *maddhab* and the other three Sunni orthodox schools on the issue of the punishment for theft (*sariqah*), which, under the *sharī'a* is the cutting of the right hand.⁶⁶ Though it may not appear liberal by our mores, the Hanifite position, given the limitations imposed by the Quranic texts, is consistently less rigorous than the competing Sunni schools. Contrary to the other Sunni schools, Abu Hanifa held that many thefts were *not* punishable through the Quranic injunction mandating the cutting of the right hand:

Hanifite School⁶⁷	Other Schools
Theft of an article less than an ashrafi ⁶⁸ of value	Theft of an article less than ¼ of an ashrafi of value
Theft committed jointly	Hanbal teaches each participant must pay with his hand
Theft by a minor	Malik holds a minor must pay with loss of hand
Theft of shroud not punishable by loss of hand	Other <i>imams</i> teach that it is
Theft of a spouse's or father's goods	Malik disagrees
Theft of the goods of a near relative	Other <i>imams</i> disagree
Theft by failure to return collateral	Other <i>imams</i> disagree

When thief obtains title to stolen goods through post-theft gift or purchase	Other <i>imams</i> disagree
Theft of perishable goods	Other <i>imams</i> disagree

Abu Hanifa's Codification

As a result of a distinction attributed to Abu Hanifa, the Hanafi body of law, that is its *fiqh*, is divided into two broad categories. The first category is the divine law of the *sharī'a*, and the second category involves law where the *sharī'a* is silent, where the human lawgiver and prudential judgment steps in (*qānūn*).⁶⁹ Some have stated that Abu Hanifa's "most valuable contribution" to *fiqh* was the distinction he made between the *sharī'a* and the *qānūn*.⁷⁰

In relation to the first category of rules the *faqih* is a commentator and expounder, and the qualifications he needs in that capacity are command of language, knowledge of texts, power of deduction, ability to rectify inconsistencies and skill in appraising arguments. In relation to the second category of rules his is a lawgiver and must possess gifts comparable with those of the world's famous lawgivers. These two capacities are quite distinct from each other. In Islam there have been many renowned exegetes and commentators upon the Qur'an and the *Hadith* who had no ability to frame laws. Similarly, there have been great lawmakers who had no talent for explaining texts of the *Shari'ah*. I know of no other man—whether *mutahid* or *imam*—in the whole of Islam's long history who combined in himself qualities of the two orders to the high degree that Abu Hanifa did.⁷¹

Abu Hanifa became convinced that a systematic, written treatment of *fiqh* was urgent, and though he was "endowed with an original mind and an extraordinary flair for law,"⁷² he also knew that a project of systematizing *fiqh* in written form was too large for one man to tackle. Accordingly, Abu Hanifa put together a group of forty of his best pupils. These brightest pupils, under the headship of their master, occupied themselves for thirty years in systematizing and compiling *fiqh* through a series of books (*katib*).⁷³ The compilation was massive, comprehensive, and by the time it was complete entailed hundreds of thousands of legal propositions (*masa'il*), perhaps even more than one million.⁷⁴ The compilation became central in the education of students of law:

The Imam's school, thanks to the compilation, became a veritable law college whose alumni were appointed in large numbers to judicial and administrative posts, in which they used it as their *vade mecum*.⁷⁵

Yet this massive compilation has been lost to the world, and though its

existence at one time is certain, its contents can only be indirectly derived through the later works of Abu Hanifa's students.

Although there can be no doubt that all the chapters of the *Fiqh* compilations were completed during Abu Hanifah's lifetime—there is undeniable proof of this in books of biography and history—yet, unfortunately, the compilation has been irretrievably lost and there is no copy of it in any library of the world.⁷⁶

Other than his role in the codifications which did not survive the destructive nature of that wastrel of historical documents—time, Abu Hanifa did not personally write any books on *fiqh*. Consequently, most of our knowledge of Abu Hanifa's legal doctrine comes down to us from the writings of his students, particularly Abu Yusuf and Muhammad ash-Shaybani. These pupils wrote down and organized their master's teaching on *fiqh* and recorded some of his *fatwas* or rulings, and these have survived.⁷⁷ A few works of Abu Hanifa on subjects other than *fiqh* survive. He is generally attributed with writing four theological works: *Al-Fiqh al-Akbar*, *The Scholar and the Student*, *Letter to 'Uthman ibn Muslim al-Batti*, and *Refutation of the Qadariyya*.⁷⁸

Nu'mani's assessment—though partisan as he is an unabashed Hanifite—is still probably accurate: “In the compilation and codification of *Fiqh* he occupies the same position as Aristotle does in logic and Euclid in geometry.”⁷⁹

The Hypo

One of the features of the Hanifite school, perhaps even representing an innovation, is its reliance on imagined cases for the explanation of doctrine, a process called “hypothetical *fiqh*.”⁸⁰ Dien explains:

Abu Hanīfa's methodology was reflected not only in his answering of actual cases but also in his inventing of hypothetical sample cases which he examined within the texts, deducing and applying the relevant reasoning that he found there. These hypothetical analogies of cases, *qiyās*, constituted a well-known tool that had been developed and utilized by Abu Hanīfa for legal deduction⁸¹

His justification for analyzing Islamic law through fictional circumstances was: “We prepare for affliction before it occurs. When it occurs, we will know what to do and how do get out of it.”⁸² As a result of this technique, he is said to have invented between 30,000 and 60,000 hypothetical situations.⁸³

Abu Hanifa and the Caliphs

As Abu Hanifa grew in knowledge, formed a following among the masses, and developed a reputation for erudition and fairness, he drew the notice of the caliphs. Unfortunately, Abu Hanifa's relationship with the caliphs who governed the growing Islamic state was ambivalent at best, and adversarial at worst. Abu Hanifa saw the world as governed by the *sharī'a*, and, where the *sharī'a* was silent, by *qānūn* which considered the custom and interests of the people. In so far as the caliphs of the Umayyad and 'Abbasid dynasties acted against this view of law, they lost the popular Imam's support. Abu Hanifa also had a strong disposition toward the 'Alawites.⁸⁴ Though he never participated actively in any rebellion against the caliphate, his support for that group put him, from the perspective of political philosophy, at odds with both the Umayyads and 'Abbasids.

The adverse relationship between caliph and *faqīh* or *mujtahid* such as that confronted by Abu Hanifa was not an uncommon event. As the caliphs' lives became more opulent and they ensconced themselves in luxurious palaces, they naturally distanced themselves from the common people. This separation between the caliphate and the masses also led to a rift between the caliphate and the jurists, as the jurists were normally close to the common folk. There was therefore a great resistance by the jurists to accept the caliphal appointments to the position of judge or *qāḍī*. Because the office of *qāḍī* presented a threat to the jurists' freedom of opinion, an appointment was seen as "an adversity, even a calamity," by those jurists who received news of their appointment. This was such a frequent attitude that it "became a topos," that is, a standard feature, "of biographical narrative" in the biographies written of the jurists.⁸⁵ And this is true of the biographies of Abu Hanifa.

According to the biographies of Abu Hanifa, both the Umayyad and 'Abbasid authorities tried to temper and control him. But Abu Hanifa had a scholarly bent of mind, and enjoyed the independence of the *faqīh* or *mufī*—a religious not political office.⁸⁶ He therefore shunned the blandishments of any official office such as *qāḍī* or judgeship that were offered him. The caliphs and their governors were not to look kindly on the rejection of their proffered gifts, and this was to cost Abu Hanifa his freedom, much suffering, and, ultimately, his life.

Abu Hanīfa Rejects the Office of Judge (Qāḍī)

After Abu Hanifa established a reputation for learning, he was offered various posts, including perhaps the office of *Mir Mushi*, Chief Treasurer, and *qāḍī* by the Umayyad caliph Marwān bin Muhammad. When the governor of the Iraq province Yzid bin 'Umar bin Hubayra offered him the post, Abu Hanifa

refused it:⁸⁷

If he wanted me to restore the doors of the Wasit Mosque for him I would not undertake to do it. What should I do when he wants me to write that a man should have his head cut off and seal the document? By Allah, I will never become involved in that!⁸⁸

The caliph took offense at Abu Hanifa's rejection, and he was severely flogged.⁸⁹ When he was finally released from his punishment, Abu Hanifa fled to Mecca around 130 A.H. (752 A.D.). There he remained for six years until the end of the Umayyad dynasty and the reign of the second 'Abbasid caliph, al-Mansur.⁹⁰

Abu Hanifa returned to Kufa during the caliphate of the second 'Abbasid caliph, al-Mansur. The change in dynasties in the caliphate, however, did not lead to any smoother a relationship between it and the independently-minded scholar. Though filled by a different dynasty, the caliphate was equally intent on enforcing its will against the ideas of the scholars and jurists. Once again, Abu Hanifa began to irritate the caliph al-Mansur by issuing *fatwas* that were adverse al-Mansur's personal and political desires.⁹¹ Through his teaching, Abu Hanifa compromised the loyalty of al-Mansur's followers, including his generals. He also challenged the decisions of the Kufan *qāḍī* Ibn Abi Layla where he believed they deviated from the *sharī'a*. Spurred by the complaints of the *qāḍī*, the governor ordered that Abu Hanifa cease and desist from issuing *fatwas*, and the scholar complied. Soon after, however, the governor had to lift his restriction, as he was in need of Abu Hanifa's legal acumen to address a legal problem that seemed insoluble.⁹² In an effort to curry his favor, al-Mansur then offered the famous and popular *faqīh* money, slave girls, and other blandishments that would have satisfied the desire of a lesser man. But Abu Hanifa maintained his integrity and independence, repeatedly rejected the proffered gifts, and thereby progressively incurred the wrath of the caliph.⁹³ In perhaps what was an effort at entrapment or another effort to buy the loyalty of this independent *faqīh*, al-Mansur offered Abu Hanifa the position of *qāḍī* for the city of Baghdad, a position which effectively would have made Abu Hanifa the Chief *Qāḍī* for the entire state.⁹⁴ Most men can be bought with the office of Chief Justice of the Supreme Court, but Abu Hanifa refused even that carrot under the pretense that he was not fit for the office:



“I am not fit for that.”

Al-Mansūr said to him, “You lie, you are fit.”

Abu Hanīfa retorted, “I have declared myself unfit [and if I am fit, as you say] how can it be lawful for you to appoint someone who is a liar as

qadi?”⁹⁵

The retort did not sit well with al-Mansur, and so somewhere around 146 A.H (768 A.D.) Abu Hanifa was punished by imprisonment and flogging. He died, as a result of the mistreatment in prison or perhaps poison, in Baghdad somewhere between 150 and 153 A.H.—the sources differ on whether it occurred in prison or shortly after his release.⁹⁶ He asked to be buried on land that was not misappropriated by Al-Mansur.⁹⁷ A mosque, dedicated to this great legal scholar’s memory and in which he is buried, is located in Baghdad. Toward the end of his days, al-Mansur regretted his treatment of the great Imam, and prayed, we may suppose earnestly, over his grave. He ordered, moreover, that his body be buried beside the grave of his erstwhile opponent, though it never was as the caliph—who by then had incurred the wrath of many enemies and political detractors—was buried in an unmarked grave to prevent the desecration of his body.⁹⁸

Conclusion: Quintessence of Islamic Law

Abu Hanifa was described by his contemporary, ‘Abdullah bin al-Mubarak, as the “quintessence of *fiqh*,”⁹⁹ and, in the “fullness of time,” this quintessential *mujtahid* was accorded the honorary epithet of *Imam-i-A‘zam*, the Great Imam,¹⁰⁰ by which moniker he is still known. He is considered the systematizer *par excellence* of *fiqh*, and the eponymous founder of the greatest and most widely recognized *maddhab* of Islamic law. He is still followed and venerated by the greater part of our Muslim brothers, a veneration that first drew attention to this great master of *fiqh*. Even one fully devoted to the Christian revelation, to the Church, and to the Western concept of Law (and law) they spawned, must appreciate—over the Christian and Islamic systems’ great divide—the common cause of Law, a cause personified (in an Islamic rendition) in Abu Hanifa. And the Christian or Westerner (and they are different) may marvel at and even honor, though he cannot assent to, the creative, intelligent, sincere, and devoted application of the *sharī‘a* by Abu Hanifa—a great Muslim, a great jurist, a great man.

¹ Abu Hanifa, *al-Fiqh al Akbar* (Hamid Algar, trans.) AL BAYAN (ca. 1980) at <http://ccat.sas.upenn.edu/~bvon/pages/fiqh.html>. The complex diacritical marks used to transliterate Arabic into English are not used in this paper unless a technical Arabic term is transliterated using italics. First, there are several methods of transliteration, and inconsistency in their use, which result in discrepancies (e.g. *Koran*, *Quran*, *Qur’an*, *Qur’ān*). Second, without special fonts, there are technical difficulties in applying some of them. Third, for a normal reader, their meaning and purpose is lost and their use therefore pedantic. Fourth, their consistent use requires a knowledge of Arabic which I don’t have—*Arabicum est, non legitur*.

² The *kunyah* is a teknonym, *i.e.*, the opposite of a patronym. In a patronym, the son is named after the

father (e.g., Fitzwilliam = Son of William, MacDonald = Son of Donald, Gonzalez = Son of Gonzalo). It was customary in the Arabic tribes to use a teknonym as an agnomen. Customarily, the father was named after the first-born son. So Abu Hanifa means Father (Abu) of Hanifa. Muhammad's *kunyah* was Abu al-Qasim. As an aside, although Muslims are encouraged to name themselves after Muhammad, there are restrictions on the use of Muhammad's *kunyah*, with some schools of *fiqh* (the Shafi'i and Zahiri) absolutely prohibiting its use. See http://www.islamtoday.net/english/showme2.cfm?cat_id=33&sub_cat_id=682. However, Abu Hanifa's *kunyah* is not a real teknonym but an honorary teknonym, as he never had a son named Hanifa (his only son was called Hammad). *Hanīf* is a word used in the *Qur'ān* to describe the person who follows a pure monotheism. Cyril Glassé, *The New Encyclopedia of Islam* (Walnut Creek: Alta Vista Press, 2002), 170 (s.v. "Hanīf"). The term Abu Hanifa, therefore, can be translated as "Son of Orthodoxy." Allamah Shibl Nu'mani, *Imam Abu Hanifa: Life and Work* (trans. M. Hadi Hussain) (Pakistan: Darul-Ishaat, 2000), at 1 (English Translation of *Sirat-i-Nu'man*), 7, 42.

³ The word *madhhab* is a verbal noun derived from the Arabic word for "to go," and it means "that which is followed." Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 150. Its meaning, however, is not univocal and the term developed over time. As used here, it means "a group of jurists and legists who are strictly loyal to a distinct, integral and, most importantly, collective legal doctrine attributed to an eponym, a master-jurist, so to speak, after whom the school is known to acquire particular, distinct characteristics." Hallaq, 152.

⁴ Abu Zahra, 122. The other schools of thought (*madhāhib*) in Sunni Islam are Shafi'i, Maliki and Hanbali. As a whole, they are more restrictive than the Hanifa school.

⁵ Abu Hanifa's student, Abu Yusuf, became the first Supreme Judge (*Qādi 'l Qudāh*) under the 'Abbasid caliphate of Harūn ar-Rashid, thus gaining official status for the Hanifite school. Nu'mani, 211. But see, Nu'mani, 148, who states that the 'Abbasid caliphate did not adopt the Hanifite *fiqh*.

⁶ Its wide acceptance is as a result of the political and financial support it received from the ruling elite of the 'Abbasid, Ottoman, and Moghul empires. See Hallaq, 169. But see Nu'mani, 148.

⁷ According to one of Abu Hanifa's grandsons, 'Umar bin Hammad, Abu Hanifa's father was Thabit bin Zawti al-Farisi, and his grandfather, Zawti, was a citizen of Kabul. 'Umar's brother, Isma'il, states that Abu Hanifa was an-Nu'man bin Thabit bin an-Nu'man bin al-Marzban, suggesting his grandfather was an-Nu'man. The author of the *al-Khayrat al-Hisan* resolves the problem by stating that the grandfather had both names. Abu Zahra, 123, 126. Yet the writer Nu'mani calls Abu Hanifa Nu'man bin Thabit bin Zutha bin Mah, and states that those are the "commonly accepted" and "correct" names, though the word "Mah" probably means chief or mayor, and so is an official designation and not an actual name. Nu'mani, 1.

⁸ 'Umar and Isma'il disagree on the point of whether their family was enslaved. Isma'il strongly denies it. The author of the *al-Khayrat al-Hisan* follows Isma'il. Abu Zahra, 123. The 'Abbasid revolution put an end to the *wala'* system. See discussion in Nu'mani, 1-3.

⁹ See Glassé, 516.

¹⁰ Nu'mani, 14.

¹¹ Nu'mani, 14.

¹² Abu Zahra, 127 & n. 2. At the death of Muhammad, there were seven different versions (s. *harf*, pl. *ahrūf*) of the *Qur'ān*, which appear tied to different Arabic dialects of the time (Quraysh, Hudhayl, Thaqīf, Hawāzin, Kinānah, Tamīm, and Yemen). During the time of the Companions (*Sahaba*) and the caliphate of 'Uthman, the *Quraysh harf* was made the official version, and all other *ahrūf* were banned. The *Quraysh harf*, however, was itself subject to different readings, or methods of recitation (*qirāh'a*, pl. *qirā'āt*). Each of the seven *qirā'āt* are named after the leader of a school of *Qur'ān* reciters who trace their method to the Prophet Muhammad through a chain of transmission (*riwaya*). The number of *qirā'āt* were eventually limited to seven (the so-called *Mutawatir*; there are some less regarded *qirā'āt*, called the *Mashur*). The *Mutawatir qirā'āt* are Nafi', Ibn Kathir, Abu 'Amr ibn al-'Ala, Ibn 'Amir, 'Asim, Hamza, and al-Kisa'i. For the most part, the differences in *qirā'āt* are not substantive, but relate to differences in stops, vowelings differences, and pronunciation. The two most prevalent readings are the *qirāh'a* of 'Asim and the *qirāh'a* of Nafi'.

¹³ *Khazz* is a cloth woven out of wool and silk.

¹⁴ Dien, 13; Muhammad Abu Zahra, *The Four Imams: Their Lives, Works and their Schools of Thought* (Aisha Bewley, trans.) (London: Dar Al Taqwa, Ltd. 2005), 118.

¹⁵ Abu Zahra, 135; Nu'mani, 47.

¹⁶ Abu Zahra, 135.

¹⁷ Abu Zahra, 136 (citing *History of Baghdad*, pt. 13, p. 58); see also Nu'mani, 47; http://en.wikipedia.org/wiki/Abu_Hanifa.

¹⁸ Abu Zahra, 128 (quoting al-Makki, *Virtues of Abu Hanifa*, pt. 1, p. 59). Mawil Izzi Dien, *Islamic Law: From Historical Foundations to Contemporary Practice* (Notre Dame: Notre Dame University Press, 2004), 13. Nu'mani, 9. Despite his devotion to the study of *fiqh*, Abu Hanīfa did continue to trade, but used his earnings to support the poorer of his students. Abu Zahra, 174-75.

¹⁹ The subject matters of compulsion, predestination, comparison of God to man, keeping God pure, divine justice, and divine tyranny, respectively. Nu'mani, 86.

²⁰ Abu Zahra, 131 (report of Yahya ibn Shayban).

²¹ Abu Zahra, 221. He also told a group of Qadarites who wanted to debate the issue. "Do you not know that someone who looks into *qadar* is like someone who looks into the rays of the sun: the more he looks, the more his confusion increases?"

²² Nu'mani, 94. The term *qiblah* is used as a synecdoche for Muslims. The *qiblah* is the direction the Muslims face when performing their ritual prayer (*salāh*). Originally the direction of Jerusalem, the *qiblah* was oriented to Mecca on the second year of Muhammad's *hijra*. The *qiblah* is indicated in mosques by the *mihṛāb*, a prayer niche or stone; outside the mosque it is indicated by architectural detail or, often, the direction of the crescent moon atop the dome or minaret. Glassé, 370 (s.v. "Qiblah")

²³ Sources tell of Abu Hanifa being approached by a woman who asked what the proper requirements were for obtaining a divorce, and he could not answer. Realizing that he could not answer even the easiest question on the issue of behavior, he decided to devote himself to *fiqh*. Nu'mani, 11; Abu Zahra, 131.

²⁴ Abu Zahra, 129-30. According to a report of Zafar ibn al-Hudhayl, one of Abu Hanifa's students, it was his inability to answer a simple question by a woman about what was *right*, that made him decide that the study of *kalām* was, from a practical or ethical perspective, vanity. *Id.* 131.

²⁵ Abu Hanafi's teacher, Hammad, had an impressive pedigree, which linked him directly to the Companions of the Prophet most notable for the knowledge of *fiqh*. Of the numerous Companions of Muhammad, four were particularly highly regarded in the area of law: the so-called righteous caliphs: 'Umar and 'Ali, 'Abd-Alla bin Mas'ud and 'Abd-Alla bin 'Abbas. 'Ali and Ibn Mas'ud lived in Kūfa, which raised the dignity of that city. One of these Companions, Ibn Mas'ud, taught Aswad and 'Alqamah, and Ibrahim Nakha'I, who learned from them, succeeded to their position. Ibrahim's leading student, and eventual successor, was Hammad, the teacher of Abu Hanifa. Nu'mani, 141-43.

²⁶ Nu'mani, 32. A *mujtahid* (pl. *mujtahidūn*) (literally "one who strives") is considered a person who has obtained the highest degree of learning and scholarship, and therefore one who, in the incipient era of Islamic law, could exercise *ijtihad* or independent judgment. See Cyril Glassé, *The New Encyclopedia of Islam* (Walnut Creek: Alta Vista Press, 2002) (s.v. "Mujtahid"); Thomas Patrick Hughes, *Dictionary of Islam* (Chicago: Kazi Publications, 1994) (s.v. "Mujtahid"); John L. Esposito, ed. *The Oxford Dictionary of Islam* (Oxford: Oxford University Press, 2003) (s.v. "Mujtahid").

²⁷ Abu Zahra, 132-33; 164, 167. Notably, Abu Hanafi named his only son after his teacher.

²⁸ Abu Zahra, 168.

²⁹ Abu Zahra, 170.

³⁰ Abu Zahra, 224.

³¹ Who would hold the reigns of secular and religious power after Muhammad's death was never fully resolved. The separation of the Shi'a from the majority Sunni arose in this period, and was largely political in origin, revolving around the issue of how the caliph should be selected. Abu Zahra, 191.

³² "Islamic law is the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself." Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1984), 1.

³³ Abu Zahra, 183.

³⁴ The treatment of the two schools of thought—the *ahl-al-hadith* and the *ahl-al-ra'y*—and their reconciliation into the four principle schools of Sunni Islam as a result of the efforts of Shafi'i and Abu Hanifa is based upon Nu'mani, 100-39; Hallaq, *passim*. N. J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 9-148.

³⁵ *Hadith* literally means "speech," "report," "narration," or "account." See Glassé (s.v. "Hadith").

³⁶ Nu'mani, 101. The term *dirayat* is almost synonymous with the term *ra'y*, but the former refers to the critical reasoning applied in authenticating and categorizing *ḥadīth*, and the latter relates to extrapolating

new principles of law from the existing, revealed sources of law. *Id.*, 101-02. The critical apparatus that was developed by the scholars of *ḥadīth* and *fiqh* over time to authenticate and categorize *ḥadīth* represents a truly impressive intellectual effort, equivalent in rigor and subtlety to Scholasticism or modern textual criticism. For a short description of this process, see Appendix A.

³⁷ As an interesting example of this tendency among the traditionists is the behavior of Ibn Hanbal (founder of the Hanbalite school). Purportedly, Ibn Hanbal never ate watermelon because there was no recorded instance in the *ḥadīth* of Muhammad eating watermelon. Glassé, 441 (s.v. “Sunnah”).

³⁸ The magnitude of the problem of inauthentic *ḥadīth* may be gleaned from the fact that when critical apparatus was applied by Muhammad bin Isma‘il al-Bukhari (d. 261/875) out of hundreds of thousands of prospective *aḥadīth* only 7,397 *aḥadīth* were considered authentic, and many of these were repetitious, and thus were further reduced to 2,761. Nu‘mani, 109.

³⁹ Abu Zahra, 184.

⁴⁰ Abu Zahra, 185, 187.

⁴¹ The first, second, and third generations (the so-called “first generations” or *salaf*) after Muhammad were, respectively, the *Sahābah* (Associates or Companions) the *Tābiūn* (Followers or Successors) and the *Tābi‘ū-t-Tābi‘īn* (Followers of the Followers or Successors of the Successors). See John L. Esposito, ed. *The Oxford Dictionary of Islam* (Oxford: Oxford University Press, 2003) (s.v. “Successors”); Cyril Glassé, *The New Encyclopedia of Islam* (Walnut Creek: Alta Vista Press, 2002) (s.v. “Companions” and “Tābiūn”).

⁴² Abu Zahra, 185.

⁴³ Abu Zahra, 185. *Usūl al-fiqh* means “roots of jurisprudence.” Coulson, 76.

⁴⁴ Nu‘mani, 156.

⁴⁵ Nu‘mani, 143. “Although the accepted rules of *Fiqh* had been collected by Abu Hanifa’s time, they existed for the most part in the shape of oral Traditions and had not been systematized into a regular discipline. There were no methods of reasoning, no rules for the derivation of orders, no grading of Traditions and no principles of analogical deduction. In short, *Fiqh* was still a congeries of uncoordinated dicta and rulings that had a long way to go before becoming a system.” It was Abu Hanifa who is generally given credit of the systematization of *Fiqh*.

⁴⁶ The term *ijtihād*, which is a term used to describe the process of arriving at a judicial declaration of law from the sources, is derived from the Arab verb *jahada* or struggle, the same root that informs the word *jihad*. The opposite of *ijtihād* is *taqlid* (“imitation”). Since the so-called “closing of the doors of *ijtihād*,” *ijtihād* has been restricted, and *taqlid* has become the rule.

⁴⁷ *Ijmā‘* had been called the “third foundation” of Islam. Literally, it means “collecting” or “assembling.” Hughes, 197 (s.v. “*Ijmā‘*”). Its authority is derived from the *ḥadīth* which has Muhammad stating that “my community will never agree on an error.” In the classical theory of Islamic jurisprudence, it is “the agreement of the qualified legal scholars in a given generation.” What is more, “such consensus of opinion is deemed infallible.” Coulson, 77. *Ijmā‘* represents the *moral* or majority consensus, as distinguished from absolute unanimity, of identified *mujtahidūn* (learned scholars), as in Islamic society dissenting opinions were frequent. In fact, the various opinions as to the identity of the *mujtahidūn* give rise to difference schools of sects. Some believe, including Abu Hanifa, that only the consensus of the *mujtahidūn* who were Companions can be considered as *Ijmā‘*. Others require more restrictively that the *mujtahidūn* be both Companions and descendants of Muhammad. Some accept the consensus of the *mujtahidūn* who resided in the Prophet’s city of Medina. Some scholars include the consensus of all the faithful. *Id.* Esposito, 133 (s.v. “*ijma*”); Glassé, 208-09 (s.v. “*Ijmā‘*”).

⁴⁸ Abu Zahra, 250-52. *Istihsān* means literally “seeking the good,” “aiming at the best.” As a legal principle, “[i]t is in effect, simply the expression of the idea that it is equity and justice as defined by God that must determine both the formulation and interpretation of laws.” Glassé, 231 (s.v. “*Istihsān*”).

⁴⁹ Abu Zahra, 252.

⁵⁰ Dien, 14 quoting Abu Zahra, Tarikh, p. 375; Abu Zahra, 189-90; 242; 248, 253.

⁵¹ Abu Zahra, 253.

⁵² Dien 51.

⁵³ These are discussed in some depth in Dien, 52 *ff.* See also <http://en.wikipedia.org/wiki/Qiyas>. The Shi‘a reject the use of *qiyās* in determining *sharī‘a*.

⁵⁴ *Qur‘an* 5.91 (90) “O ye who believe! wine . . . [is] only an abomination of Satan’s handwork . . .”

⁵⁵ Dien, 52.

⁵⁶ Dien, 13.

⁵⁷ Abu Zahra, 246 (quoting *al-Mizan* by ash-Sha‘rani).

⁵⁸ Abu Zahra, 244.

⁵⁹ Nu‘mani, 110. Bukari is a reference to al-Bukhari (short for Abu ‘Abdu ‘ilah Muhammad ibn Isma‘il ibn Ibrahim ibn al-Mughirah al-Ju‘fi al-Bukhari) (810-879 A.D., 194-256 A.H.). The term is also used eponymously to refer to his compilation of *ḥadīth*, the *Sahī al-Bukhārī*. A labor of sixteen years, al-Bukhari gleaned approximately 7,275 authentic traditions from 600,000 inauthentic traditions. Hughes, 44 (s.v. “al- Bukhārī”); Esposito, 46-47, 273 (s.v. “Bukhari” and “Sahī al-Bukhari”). Muslim (204-261 A.H.) is a reference to Abu ‘l-Husain Muslim ibn al-Hajjaj al-Qushairi, like al-Bukhari a scholar of *aḥadīth*, performed a similar compilation of *aḥadīth* known as the *Sahī Muslim*. Hughes, 423 (s.v. “Muslim”); Esposito, 217, 273 (s.v. “Muslim” and “Sahī Muslim”) The Sahīhu Muslim and Sahīhu al-Bukhari (known together as the Sahīhan or “two authentic”) are two of six compilations of *ḥadīth* (*Kutubu ‘s-Sittah* = “six correct”) generally considered canonical. *Id.*

⁶⁰ Nu‘mani, 105, 119, 127-28. “*Dirayat* (rational criticism) involves the judging of events described in Traditions with reference to the facts of human nature, the peculiarities of the time, the circumstances of the persons to whom the events are ascribed and the common laws of probability.” *Id.*, 120.

⁶¹ With respect to the application determine a rule of law through *qiyās*, the classification of the *aḥadīth* by traditionists into *ṣahīḥ* (sound or correct or reliable), *ḥasan* (beautiful or good), *da‘if* (weak), *mashur* (well-known), *‘aziz* (restrictedly disseminated), *gharib* (rare), *mawdu‘a* (fabricated), etc. was considered deficient. From the perspective of *fiqh*, this taxonomy failed to grade the *aḥadīth* as sources of legal injunctions. Nu‘mani, 127-28; Glassé, 160 (s.v. “Ḥadīth”).

⁶² Nu‘mani, 127-28.

⁶³ Nu‘mani, 128; Abu Zahra, 245. Although there is clearly no similarity between the subject matters, there is an analogy of thinking between Abu Hanifa’s solution to handling the *aḥadīth* and the *Qur‘ān* and our own parol evidence rule, which limits the use of extrinsic or oral evidence to supplement, explain, or in some cases modify a written agreement depending upon whether the written agreement is ambiguous or unambiguous.

⁶⁴ Nu‘mani, 170.

⁶⁵ Nu‘mani, 180 *ff.* The *dhimmi* are people considered “protected” by the Islamic state, and generally include monotheistic faiths such as Jews and Christians, who were granted a limited autonomy to govern themselves under their own law. In return for that concession, the *dhimmi* were required to pay a head tax (*jizyah*) and an exemption tax (*kharāj*). Esposito, 68 (s.v. “dhimmi”); Glassé, 117 (s.v. “Dhimmi”). Unquestionably, the *dhimmi* were considered second class citizens in an Islamic State. Though the institution of dhimmitude can be criticized under modern standards, we should recall that, historically, Christian states treated Muslims within their borders not much differently; in some respects, they were probably treated worse. Modernly, with the rise of Islamic extremism and Western secularism, the judgment is quite clearly the opposite: Muslims are treated much more fairly in the Western democracies than Westerners (or Christians or Jews) are treated in Muslims states.

⁶⁶ *Qur‘ān* 5:39 (42) (“And as for the man who steals and the woman who steals, cut of their hands in retribution of their offence as an exemplary punishment from Allah. And Allah is Mighty, Wise.”)

⁶⁷ Nu‘mani, 171-72.

⁶⁸ An *ashafri* was a gold coin.

⁶⁹ The word *qānūn* is derived from the Greek “canon,” a rule or measuring rod, and it is used to refer to a civil law, as distinguished from the *shari‘ah*, or divine law. Glassé, 368 (s.v. “qānūn”). The word *qānūn* was particularly used by the Ottoman empire; similar concepts in other Islamic countries use the terms *dustur* or *nizam*.

⁷⁰ Nu‘mani, 153 (distinction between “canonical” and “non-canonical”).

⁷¹ Nu‘mani, 152.

⁷² Nu‘mani, 144.

⁷³ Nu‘mani, 144-45.

⁷⁴ Nu‘mani, 147 (figures are between 600,000 to 1,290,000), 160.

⁷⁵ Nu‘mani, 146.

⁷⁶ Nu‘mani, 147.

⁷⁷ Abu Zahra, 228-29. Both Abu Yusuf (again a *kunya*, his real name is Ya‘qub bin Ibrahim bin Habib al-Ansari al-Kufi) and Abu ‘Abdullah (Muhammad bin al-Hasan ash-Shaybani) wrote texts called *Kitāb al-*

Athar. Abu Yusuf also wrote a book about Abu Hanifa's disagreement with Ibn Abi Layla, the 'Abbasid *qadi* of Kūfa. A significant source of Abu Hanifa's *fiqh* is Abu 'Abdullah's *Al-Mabsut* or *al-Asl*. Others who wrote books on Abu Hanifa's *fiqh* are Muhammad bin al-Hasan and Muhammad al-Harithi. *Id.* 229-36; *see also* Dien, 14.

⁷⁸ Abu Zahra, 215-16. Supported by internal evidence such as anachronisms, scholars dispute the authenticity of the attribution of authorship of these works.

⁷⁹ Nu'mani, 56; *see also id.* 141.

⁸⁰ Abu Zahra, 240-41.

⁸¹ Dien, 13.

⁸² Abu Zahra, 240.

⁸³ Abu Zahra, 240.

⁸⁴ Abu Zahra, 137-38; 211-14. The 'Alawites or '*Alawī* believed that Muhammad desired his successor to be his son-in-law 'Ali who was married to Fatima, the Prophet's daughter. The Umayyad dynasty came from the Umayya tribe. The 'Abbasid dynasty stemmed from Muhammad's uncle, 'Abbas. In the mind of Abu Hanifa, the 'Abbasid view was better than the Umayyad view because of its relationship to the family of the Prophet Muhammad, but inferior to the '*Alawī* position. As Abu Zahra puts it "Abu Hanifa had Shi'ite leanings, but they did not go beyond that. [He] did not have the kind of Shi'ite perspective which blinds a person to perceiving the virtues and ranks of the Companions as a whole." Abu Zahra, 212.

⁸⁵ Hallaq, 180.

⁸⁶ All appear to attest to his independent streak. Abu Zahra, 159; Nu'mani, 46.

⁸⁷ Nu'mani, 34.

⁸⁸ Abu Zahra, 139 (quoting al-Makki, *The Virtues of Abu Hanifa*).

⁸⁹ Dien (2004), 13; Abu Zahra, 138-40; Nu'mani, 35.

⁹⁰ Abu Zahra, 139-40. Abu Hanifa may have intermittently visited Kufa during the reign of the first 'Abbasid caliph, Abu'l-'Abbas as-Saffah. *Id.* 141.

⁹¹ In a famous instance, Abu Hanifa was asked to arbitrate between al-Mansur and his wife, and he ruled in favor of al-Mansur's wife. When she offered to give him gifts, he refused them. Abu Zahra, 142.

⁹² Nu'mani, 62-63.

⁹³ Abu Zahra, 142-153.

⁹⁴ Nu'mani, 37-38.

⁹⁵ Abu Zahra, 152-53 (quoting Ar-Rabi' ibn Yunus).

⁹⁶ Abu Zahra, 153-54; Nu'mani, 40.

⁹⁷ To which al-Mansur is to have said exasperatedly, "Who will save me from Abu Hanifa, both when he was alive and now when his is dead?" Abu Zahra, 154.

⁹⁸ Abu Zahra, 154-55.

⁹⁹ Quoted in Abu Zahra, 157.

¹⁰⁰ Nu'mani, 3. The term Imam means "leader," "model," "pattern" or "exemplar". Glassé, 213 (s.v. "Imam"); Hughes, 203 (s.v. "Imam").

(The texts are taken from Wasiyyat 'Abi Hanifa li-Abi Yusuf Bin Khalid al-Shamti ("Abu Hanifa's counsel on getting along with others, addressed to 'Abu Yusuf") (Shelf No. XVIII G 103, at the National Library of the Czech Republic, ca. 1870 A.D.,

Appendix A Science of Hadith

The Traditions or *Hadith(1)* of Muhammad are considered to be Divine Revelation, equivalent in dignity to the revelation contained in the *Qur'a'n*. The *Hadith* are records of what Muhammad did (*sunnatu 'l-fi'l*), what Muhammad prohibited (*sunnatu 'l-qaul*), and that done in Muhammad's presence which he did not criticize (thus implicitly approved) (*sunnatu 't-taqrīr*). Though Muslims differ on the issue, the *Hadith* may also contain records of Muhammad's Companions, and his Followers.

The distinction between the revelations contained in the *Qur'an* and that contained in the *Hadith* is not in terms of their Divine revelation. That is, there is no *material* difference between the revelation contained in the *Qur'an* and the revelation contained in the *Hadith*. The difference between the revelation in the *Qur'an* and the *Hadith* is *formal* only. Put another way, the difference is only in the form of their form of transmission—one written, the other oral.

The fact that the *Hadith* were transmitted orally for a number of years until subsequently written down by the scholars of *Hadith* raised problems as to their authenticity. Some *Hadith* were apocryphal—outright fabrications—and these obviously were not regarded as revelation. Those *Hadith* that were not fabricated, however, were considered “the uninspired record of inspired sayings,” and thus were an admixture of the human and divine. To winnow out the human from the divine, the scholars of *Hadith* turned their critical eye on the analysis of the form of transmission, which was uninspired and thus subject to human scrutiny.

A quick indication of the magnitude of the problem facing the scholars of *Hadith* may be gleaned by looking at the number of *Hadith*, and the number of persons who transmitted these. The *Hadith* numbered more than half a million, and the transmitters numbered as high 40,000. How were the scholars going to sort through this vast number to determine the authentic from inauthentic or unreliable *Hadith*? How were they to determine the “quantum of credit”¹⁰⁰ to which the *Hadith* was entitled?

The methodology ultimately adopted by the scholars of *Hadith* is impressive, pragmatic, and displays a marvelous grasp of human foible and fallibility. In assessing the reliability of a transmission, scholars focused on four factors: (1) the *character* of the person who handed down the tradition; (2) the *identity* of the person who was the original source of the tradition; (3) the *links* in the chain of narration; and (4) the *manner* of transmission of the tradition.

Character of Transmitter

The character of the transmitter of the tradition had great weight in assessing the reliability of it. With reference to that character of the transmitter, the scholars categorize three classes: (1) a *genuine* tradition (*Hadithu 's-Sahih*)—one handed down by a pious, reliable witness, one of great integrity; (2) a *mediocre* tradition (*Hadithu 'l-Hasan*)—one handed down by a person of less than unimpeachable integrity and piety; and (3) a *weak* tradition (*Hadithu 'z-Za'if*)—a tradition handed down by a person of questionable reliability.

Identity of the Original Relator

A *Hadith* could also be analyzed based upon its original source. Under this perspective, the *Hadith* could be placed into three categories: (1) if the source of the *Hadith* was Muhammad himself—his saying or his act—it was considered *Hadithu 'l-Marfū'* (an *exalted* tradition); (2) if the source was a Companion (*Ashāb*) of Muhammad, it was considered *Hadithu 'l-Mauqūf* (a *restricted* tradition); (3) if the source was a Follower (i.e., one who had talked to a Companion), it was considered *Hadithu 'l-Maqtū'* (an *intersected* tradition).

Links in the Chain

The chain of transmission (*isnād*) between the original relator and the one or more transmitters was another point of analysis of the *Hadith* scholars. The chain was either “connected” (*muttasil*) or “disconnected” (*munqati‘*). A *Hadith* with an unbroken chain was considered superior to one with a disconnected, or broken, chain of transmission.

Number of Independent/Identified Transmissions

The greater number of separate or identified transmissions of the same *Hadith*, the greater its reliability. The number of independent witnesses of the same event is an important factor in assessing the weight to be given to the *Hadith*. Accordingly, scholars measured the strength of a particular *Hadith* based on the number of independent transmissions of the same *Hadith*. Based on the number of separate transmissions, there were eight separate categories of *Hadith*: (1) *invented Hadith* (*Hadithu ‘l-Mauzū*), which is one whose untruth was palpable; (2) *unidentified Hadith* (*Riwāyah*), which was *Hadith* that did not identify its source, thus using the generic words, “it is related”; (3) a *Hadith generically attributed to Muhammad* (*Hadithu ‘l-Mursal—lit.*, a “tradition let loose”) by the words “the Apostle of God said” or words to that effect; (4) a *Hadith* arising out of one relator and a single source of transmission (*Khabaru ‘l-Wāhid*—a “single saying”); (5) a *Hadith* that was transmitted by only one line of narrators (*Hadithu ‘l-Gharīb* = “a poor tradition”); (6) a *Hadith* that was transmitted by only two lines of narrators (*Hadithu ‘l-‘Azīz* = “rare tradition”); (7) a *Hadith* transmitted by three lines of narrators (*Hadithu ‘l-Mashhūr* = a “well-known tradition”); (8) a *Hadith* transmitted by numerous narrators (*Hadithu ‘l-Mutawātir*, or one of undoubted authenticity and transmission).

Hadith was also analyzed from the perspective of the original narrator, assessing, through biographical evidence, the learning, memory, and piety of the narrator. They identified at least seven grades, spanning from the “leaders in *Hadith*,” who were persons known for their learning, their knowledge of the law, and a retentive memory to persons who had the notoriety for manufacturing false traditions.

Even *after* a *Hadith* was considered genuine, it was subjected to being graded as *mutawātur*, *mashhūr*, or *ahad*. *Hadith* considered *mutawātur* are those that have been, from the earliest times, unanimously considered authentic and genuine. The *Hadith* considered *mashhūr* are *Hadith* that at least some reputable scholars considered genuine and authentic. Those *Hadith* that are not *mutawātur* or *mashhūr* are considered *ahad* (*hadith* related by one person), and scholars are divided on the weight to be given the *ahad hadith* in the area of doctrine in law.

(1) *Hadith* (pl. *Ahadith*) (literally “speech” “report” or “narrative”) is singular in form; however, it is customary to use the term “Hadith” to mean Traditions in general, and a singular tradition.

(2) Hughes, 639 (s.v. “Tradition”).

(3) *Id.* (quoting Syed Ahmed Khan Bahadur, *Essay on Mohammedan Traditions*).