` for Arabic *‘ayn*, | for *hamzah*.

 TRADITIONIST-JURISPRUDENTS AND THE FRAMING OF ISLAMIC LAW[[1]](#footnote-1)\*

*Abstract*.

The traditionist-jurisprudents (*fuqahā| aṣḥāb al‑ḥadīth*) of the earlier ninth century C.E. proposed that Islamic law be inferred from hadith, reports of what the Prophet, his leading Companions, and the Followers had said or done, whithout significant resort to reason. Contradictions among hadith reports they either resolved by means of *isnād* comparison or simply let stand, refusing to define the law by their own preferences. Their adversaries the rationalistic jurisprudents (*aṣḥāb al‑ra|y*) also used hadith, but far less extensively and without extensive use of *isnād* comparison to sort out the sound from the unsound. In the later ninth century, rationalistic jurisprudents took up many of the forms formerly peculiar to the traditionist-jurisprudents, especially formal dependence on hadith and *isnād* comparison to sort the sound from the unsound. Traditionist-jurisprudents in turn accepted the need for separate expertise in legal reasoning besides hadith criticism. Although some developments took place independently of them, the history of Islamic law across the ninth century cannot be written without reference to the traditionist –jurisprudents and their strident advocacy of hadith.

At the level of theory, Joseph Schacht makes out two chief contenders in the eighth- and early-ninth-century struggle to frame Islamic law: on the one hand, *aṣḥāb al‑ra|y*, the rationalistic jurisprudents; on the other hand, *aṣḥāb al‑ḥadīth*, their adversaries the traditionists. Al‑Shāfi`ī, he says, tried to steer a middle course between them, accepting the traditionists’ stress on hadith but rejecting the crudeness of their legal thought.[[2]](#footnote-2) One might therefore expect subsequent historians of Islamic law to have paid equal attention to both parties. In fact, they have tended to ignore the traditionist-jurisprudents. For example, Norman Calder scrutinizes works of the nascent Mālikī, Shāfi`ī, and Ḥanafī traditions but ignores the early Ḥanbalī.[[3]](#footnote-3) [384]

 Are the traditionist-jurisprudents indeed irrelevant to the broad history of Islamic law across the ninth century? This seems impossible. We should recognize that the traditionist-jurisprudents were crucial to the rise of hadith as the primary material of Islamic law and of *isnād* criticism as the primary method of dealing with contradictory hadith. The attractiveness of a systematic work like the *Risāla* of Shāfi`ī is undeniable, and scholars are not to be blamed for spending time with it. Neither should we be surprised if the taste that relishes the *Risāla* should be repelled by an unsystematic work like *al‑`Ilal wa‑ma`rifat al‑rijāl* of Aḥmad ibn Ḥanbal. But scholars should not go from reading the *Risāla* and similar works because they are attractive to dismissing the *`Ilal* and the movement behind it as unimportant. It takes a little work for a modern Western academic to see, but enough ninth-century Muslims found something religiously attractive in the intellectually self-abnegating, unsystematic approach of *al‑`Ilal wa‑ma`rifat al‑rijāl* to give some decisive political advantages to the traditionist-jurisprudents behind it. Had the traditionist-jurisprudents lacked such support, Islamic law must have taken a very different form.

 The first object of this article is to show that there was a distinct party of traditionist-jurisprudents and to bring it back onto the stage. It proposes some indications of how to place a given juridical work of the ninth century on the spectrum running from extreme traditionalists at one end to rationalists at the other. Its conclusion is that by about the last quarter of the century, once the mainstream, rationalistic jurisprudents of the nascent Mālikī, Shāfi`ī, and Ḥanafī schools had taken up hadith as the basic material of jurisprudence and hadith criticism as the principal means of dealing with contradictions, the traditionist-jurisprudents could hardly help but adjust their practice in the opposite direction. From the later ninth century, we may observe them seeking to join the rationalistic mainstream either as necessary auxiliaries (pure traditionists) or as practicing jurisprudents fully capable of dialectic as needed. Ever since, it has been in the interest of Ḥanafīya and Ḥanābila alike to minimize differences between Ḥanafi and Ḥanbali practice in the ninth century; to make out that the Ḥanafīya had always relied on hadith and hadith criticism, that the Ḥanābila and their allies had always deliberately followed the procedures of *uṣūl al‑fiqh*. Scholars today may look directly at the evidence of the ninth century and see [385] how the later synthesis of rationalist and traditionalist methods was effected only gradually, in spite of serious resistance on both sides.

*The Two Parties*

It needs to be demonstrated that *aṣḥāb al‑ra|y*, the rationalistic jurisprudents, and *aṣḥāb al‑ḥadīth*, traditionist-jurisprudents, were indeed distinct parties. Certainly, contemporaries recognized distinct parties. Already in the eighth century (to disregard retrospective accounts), Ibn al‑Muqaffa` (d. 139/756 or later) observes that one party claims to follow the *sunna*, although he chides them for actually, on examination, tending to follow earlier *ra|y*.[[4]](#footnote-4) Implicitly, other jurisprudents did openly follow *ra|y*. In the earlier ninth century, Ibn Sa`d (d. 230/845) concludes notices for various men with the label *ṣāḥib ra|y*. A generation later, at mid-century, Ibn Qutayba (d. 276/889?) expressly names the leading parties *aṣḥāb al‑ra|y* and *aṣḥāb al‑ḥadīth*.[[5]](#footnote-5) In the later tenth century, Ibn al‑Nadīm (*fl*. 377/987-88) classifies jurisprudents as follows:

 1) the Mālikīyīn;

 2) Abū Ḥanīfa and his followers, the Iraqis or *aṣḥāb al‑ra|y*;

 3) al‑Shāfi`ī and his followers;

 4) Dāwūd al‑Ẓāhirī and his followers;

 5) Shi`i jurisprudents;

 6) traditionists (*aṣḥāb al‑ḥadīth*) and traditionist-jurisprudents (*fuqahā| al‑muḥaddithīn*);

 7) al‑Ṭabarī and his followers; and finally

 8) Khāriji jurisprudents (*shurāt*).[[6]](#footnote-6)

This is not the simple dichotomy sketched by Schacht (for an earlier period), but it clearly distinguishes hadith as jurisprudence (category six) from what these various others practiced (including, note, Ẓāhirism, whose identification with traditionalism is a mistake we should put behind us). In sum, the distinction between rationalistic jurisprudents and traditionist-jurisprudents is no mere modern projection on the past.

 Terminology still presents difficulties. A relatively trivial one is that the words “traditionist” and “traditionalist” are hard to keep straight. [386] As established by George Makdisi, “traditionist” indicates a *muḥaddith*, someone who studies and transmits hadith, whatever his theological inclination, whereas “traditionalist” indicates someone who systematically prefers to base his law and theology on textual sources as opposed to speculative reasoning.[[7]](#footnote-7) Writing before Makdisi, Schacht referred only to “traditionists,” and for the early period that concerned him, before 204/820, reputable traditionists almost invariably were traditionalists. In the later ninth century, however, there emerged outstanding traditionists whose orthodoxy traditionalists did not recognize; e.g., Bukhārī and Ṭabarī.[[8]](#footnote-8) The contrast between, say, Shāfi`ī’s passive use of hadith criticism (he was not a traditionist-jurisprudent) and Ṭabarī’s active practice of it (he helped synthesize the two approaches) is one of the occasions for this article. At any rate, however, I refer here to “traditionist-jurisprudents,” after Ibn al‑Nadīm, rather than “traditionalists.”

 More seriously, some have doubted whether we should speak of *aṣḥāb al‑ra|y*. Is this not to endorse a pejorative term coined by their adversaries? As Schacht says, “There never was a school of thought in religious law that called itself, or consented to be called, *aṣḥāb al‑ra|y*, and the distinction between *ahl al‑ḥadīth* and *aṣḥāb al‑ra|y* is to a great extent artificial.”[[9]](#footnote-9) Similarly, one might add, although there certainly was a school of thought that called itself *aṣḥāb al‑ḥadīth*, precisely who adhered to this school was in some doubt, for it was not a guild school with enforceable boundaries. Moreover, it was sometimes polemically useful to include persons who had earlier been excluded (more below on the example of Ibn Qutayba).

 We should remember, though, that *ra|y* originally had a positive connotation, as observed by Joseph Schacht: “*Ra|y* originally meant ‘sound opinion’, and was used of the element of human reasoning, whether strictly systematic [referring to *qiyās*] or more personal and arbitrary [referring to *istiḥsān*].”[[10]](#footnote-10) It may have acquired the negative [387] connotation of “(mere) opinion” because of traditionalist polemics against it. Till some time in the ninth century, actual jurisprudents by *ra|y* may well have accepted it as an honorable description of how they arrived at their doctrine. The continual introduction of arguments by *a‑lam tara*, *a-ra|ayta*, and the like (with qur|anic precedent, even), suggests a positive construction of *ra|y*. A certain example is the mystic al‑Ḥakīm al‑Tirmidhī (d. *ca*. 295/907-8?), who unashamedly states in his autobiography that in his youth, he studied *`ilm al‑āthār*, meaning hadith, and *`ilm al‑ra|y*, meaning jurisprudence.[[11]](#footnote-11) In political contexts, *ra|y* retains an entirely positive meaning. It is a considered judgement, not whimsy. For example, Ibn Ḥibbān (d. 354/965) mentions uprightness and sound opinion (*`afāf*, *ra|y*) as the defining qualities of a good vizier.[[12]](#footnote-12)

 Moreover, we continue to see the positive use of *ra|y* in the North African Māliki tradition. Al‑Khushanī (d. Cordoba, 371/981?) states of Mūsā ibn `Abd al‑Raḥmān (*fl*. later 3rd/9th cent.), “He was good at juridical problems and debating (*masā|il*, *takallum*) with regard to *ra|y* after the doctrine of Mālik and his *aṣḥāb*.”[[13]](#footnote-13) Ibn al‑Faraḍī (d. Cordoba, 403/1012) uses it often.[[14]](#footnote-14) Ibn Farḥūn (d. Medina, 799/1397) relates of Ibn al‑Qāsim that Mālik said, “I may think on a question for ten-odd years without there occurring to me a sound opinion (*ra|y*) concerning it.”[[15]](#footnote-15)

 Occasionally, *ra|y* even appears in a positive sense outside North Africa. Writing about 375/985, the geographer al‑Maqdisī (Muqaddasī), a Ḥanafi, uses it as a synonym for “legal reasoning,” something the Ḥanafīya and Shāfi`īya evidently share but not the Ḥanābila.[[16]](#footnote-16) Al‑[388]Ḥākim al‑Naysābūrī (d. Nishapur, 405/1014) says of the Shāfi`i Abū Bakr al‑Ṣibghī (d. 342/954) that his *`aql* and *ra|y* were proverbial.[[17]](#footnote-17) In somewhat the same way, “opinion” may often have a negative connotation with us (“That’s just your opinion”) but retains a positive one in some contexts (“Today, the Supreme Court issued its opinion . . . ”). Altogether, then, although we have a few self-descriptions from traditionist-jurisprudents as *aṣḥāb al‑ḥadīth* but none from rationalistic jurisprudents as *aṣḥāb al‑ra|y*, actual ninth-century use of *ra|y* suggests that they must have been slow to perceive it as a term of abuse. I have never noticed, either (against Schacht), that any early jurisprudent identified his doctrine with any of *al‑madhāhib al‑qadīma*, as I suppose one would translate Schacht’s “ancient schools.” We need feel little more compunction about identifying the rationalists as *aṣḥāb al‑ra|y* than about identifying the Society of Friends as “Quakers.”

*How Traditionist And Rationalistic Jurisprudents Used Hadith*

What distinguished the traditionist-jurisprudents is above all, of course, the way they used hadith. When ninth-century traditionist-jurisprudents wrote about the law, they simply assembled collections of hadith or, at least, quoted huge numbers of hadith reports. For example, the *Muṣannaf*s of `Abd al‑Razzāq (d. 211/827) and Ibn Abī Shayba (d. 235/849) simply announce juridical positions, then relate the hadith (mostly postprophetic) that support them. They often enough present contradictory reports in succession: first, say, those who advocated a woman’s leading other women in the ritual prayer, then those who rejected it.

 Some have inferred that these are not, then, books of jurisprudence but collections of hadith in the spirit of the familiar Six Books; that is, not presentations of rules but the raw material from which jurisprudents are expected to infer rules. But this is wrong on two counts. First, it projects backwards later orthodoxy, assuming a division of labor between traditionists and jurisprudents not endorsed by traditionist-jurisprudents of the early ninth century. Traditionist-jurisprudents did not distinguish between the study of hadith and the study of jurisprudence. Second, one should recall that such indeterminacy was a feature of legal handbooks even in the classical period, when we see [389] jurisprudents such as al‑Nawawī (d. 676/1271) frequently lay out contradictory positions without identifying any one as correct.[[18]](#footnote-18)

 Not every position in the *masā|il* collections of Aḥmad ibn Ḥanbal is followed by quotation of hadith, but hadith reports are produced whenever there is disagreement. An example chosen almost at random gives Aḥmad’s position concerning laughter during the ritual prayer:

It does not require repetition of the ritual ablution. The hadith report from Abū al‑`Āliya is weak. It is related from Abū Mūsā and Jābir that one repeats the prayer but not the ritual ablution. Al‑Sha`bī also took that position.[[19]](#footnote-19)

 As Susan Spectorsky has summarized Aḥmad’s practice,

 Ibn Ḥanbal readily answers questions on non-controversial matters, but whenever he knows of conflicting traditions or conflicting opinion, he refuses to risk allowing his own answer to become authoritative. In fact, he answers all questions in terms of traditional criticism. If he cannot answer a question satisfactorily within the framework of traditions, he prefers not to answer at all.[[20]](#footnote-20)

Hadith reports are not just authorities corroborating his opinions, they practically are his opinions. No Ḥanbali juridical work fails to quote hadith extensively until the *Mukhtaṣar* of al‑Khiraqī (d. 334/945-46).[[21]](#footnote-21)

 It would be going too far to assert that the ninth-century *aṣḥāb al‑ra|y*, by contrast, relied exclusively on rational speculation to determine the law. As far back as the sources will take us, on the contrary, it is plain that *aṣḥāb al‑ra|y* did use hadith, at least to corroborate the results of their speculation. As Schacht observed (following Shāfi`ī), they did not consistently prefer hadith from the Prophet to hadith from Companions[[22]](#footnote-22); however, the notion that hadith constituted superior evidence for one or another rule one easily finds in their controversial literature. In *Ikhtilāf Abī Ḥanīfa wa‑Ibn Abī Laylā*, for example, Abū Yūsuf normally just quotes the opinion of Abū Ḥanīfa, with which he agrees. This is the usual form of early rationalistic jurisprudence. [390] Sometimes, though, he will adduce in support of his position the practice or precept of either the Prophet or Companions.[[23]](#footnote-23) In *Kitāb al‑Ḥujja `alā ahl al‑Madīna* and his edition of the *Muwaṭṭa|*, Shaybānī cites hadith more extensively: practically every time he disagrees (purportedly with the Medinese in *al‑Ḥujja*, with Mālik in the *Muwaṭṭa|*), he offers a list of contrary hadith reports.

 Sometimes, Shaybānī suggests that one hadith report may be superior to another; for example, when the Medinese cite hadith reports from al‑Qāsim ibn Muḥammad, `Urwa ibn al‑Zubayr, Nāfi` ibn Jubayr ibn Muṭ`im, and Ibn Shihāb al‑Zuhrī, Shaybānī counters, “It is said to them, ‘Do you hold those to be more trustworthy or `Abd Allāh ibn `Umar and Jābir ibn `Abd Allāh?’ They said, ‘`Abd Allāh and Jābir, of course.’” Companions Ibn `Umar and Jābir are then quoted in favor of the Ḥanafi position.[[24]](#footnote-24)

 At the same time, there were significant differences between the use of hadith by early Ḥanafīya and by traditionist-jurisprudents. One is that the Ḥanafīya tended to use hadith only occasionally, in controversy with their opponents. In didactic works for internal, Ḥanafī consumption, hadith seldom appears. For example, there is practically no hadith in *al‑Jāmi` al‑kabīr* and *al‑Jāmi` al‑ṣaghīr*, the principal Ḥanafī teaching texts of the ninth and tenth centuries. There is more hadith in the work of al‑Khaṣṣāf (d. 261/874) on *waqf* than in the earlier work of Hilāl al‑Ra|y (d. 245/859-60); however, both works in fact elaborate the law of *waqf* by speculation, without much reference to hadith.[[25]](#footnote-25) Contemporary Mālikī practice is similar. For example, the *Mukhtaṣar* of Ibn `Abd al‑Ḥakam (d. 214/829), evidently a didactic work for internal, Māliki consumption, cites no hadith whatever, while the *Mudawwana* of Saḥnūn (d. 240/854) certainly cites hadith but apparently relies more often on the opinions of recent jurisprudents.[[26]](#footnote-26) [391]

 The *Muwaṭṭa|* of Mālik seems anomalous. About one *bāb* in four evidently lets hadith reports speak for themselves in the manner of traditionist-jurisprudents, yet we never see precisely the traditionalist form of argument, “The rule is X on account of hadith reports A and B, discounting C because . . . .” Moreover, roughly one *bāb* in five presents Mālik’s unsupported opinion, in the manner of rationalistic jurisprudents. Usually, a *bāb* comprises some mixture of hadith and opinion. One might read all these points as signs of primitiveness, the *Muwaṭṭa|* being published only at about the same time as there emerged a self-aware, assertive party of traditionist-jurisprudents. Abdel-Magid Turki has detected their influence in the increasing resort to hadith from the earliest to the latest extant recensions of the *Muwaṭṭa|* roughly across the last third of the eighth century.[[27]](#footnote-27) It would have been natural from such a basis for some later Mālikīya to stress the side of juristic acumen (*ra|y*), others to stress hadith. Yet the rules propounded often seem fairly independent of the hadith, so that one suspects extensive interpolation. Norman Calder’s explanation of the anomalous form, that the hadith was inserted almost a century after Mālik’s death, seems to be untenable; however, his critics have yet to come up with a fully satisfying alternative explanation.[[28]](#footnote-28) The latest extensive treatment of the *Muwaṭṭa|*, from Yasin Dutton, does argue strongly that the last word regularly goes not to hadith but to the practice of Medina.[[29]](#footnote-29)

 A second major difference between the rationalists’ use of hadith and the traditionist-jurisprudents’ is in the treatment of the *isnād* (pl. *asānīd*), the chain of its transmitters we expect to precede a hadith report. Five quotations of hadith reports by Abū Yūsuf have been mentioned already as evidence that he did use hadith.[[30]](#footnote-30) In three of these [392] instances, Abū Yūsuf offers no *isnād* at all; in each of the other two (88, 144), his proffered *isnād* is incomplete. The *Muwaṭṭa|* of Mālik offers relatively fewer hadith reports with incomplete *asānīd*, but there are still many, and differences among the recensions raise the possibility that some *asānīd* were completed posthumously.[[31]](#footnote-31) By contrast, traditionist-jurisprudents normally quoted hadith reports with full *asānīd*; for example, again, `Abd al‑Razzāq and Ibn Abī Shayba. (In the sample quoted earlier, Aḥmad admittedly quotes incomplete *asānīd*. This is the sort of lapse that justifies Schacht’s complaint that the distinction between *ahl al‑ḥadīth* and *aṣḥāb al‑ra|y* is to a great extent artificial. Be it noted, however, that the quotation comes from what reads almost like a transcription of Aḥmad’s conversation at the mosque. Like most of the *masā|il* collections from Aḥmad, it is much more casual than *Ikhtilāf Abī Ḥanīfa wa‑Ibn Abī Laylā* and the two *Jāmi`*s of Shaybānī. The most formal of the *masā|il* collections from Aḥmad is apparently the one from Abū Dāwūd, studied by Spectorsky. It regularly offers full *asānīd*.[[32]](#footnote-32) Note, also, that even in the sample quoted, Aḥmad relies on hadith criticism as Abū Yūsuf and Shaybānī do not.)

 Finally, although these early rationalist works may refute opposing hadith with better hadith, they do not actually practice hadith criticism after the fashion of the traditionist-jurisprudents. In the example just given, from *Kitāb al‑ḥujja `alā ahl al‑Madīna*, Shaybānī speaks of his two authorities as “more trustworthy” than those of the Medinese. “Trustworthy,” “veracious,” and so on are terms of *rijāl* criticism, and Iraqi traditionists seem to have used them regularly by the first half of the ninth century.[[33]](#footnote-33) However, this does not mean that Shaybānī has compared *asānīd* and found that his two authorities more regularly agreed with others in their transmission from particular authorities (the usual method of hadith criticism to determine whether someone was trustworthy).[[34]](#footnote-34) Rather, Shaybānī uses “more trustworthy” simply to [393] indicate that they are higher authorities; mainly, Companions who had met the Prophet as opposed to mere Followers born after the Prophet’s death.

*Meeting in the Middle*

It would be safest to posit that “rationalist” and “traditionist” approaches to jurisprudence were *ideal* *types*, to which the actual, nascent Ḥanafi and Ḥanbali traditions of the ninth century respectively approached. Certainly, we should expect to find a spectrum, with some jurisprudents lining up closer the middle than either extreme. Isḥāq ibn Rāhawayh (d. 238/853?) is probably an example of a traditionist-jurisprudent who tended toward the middle.[[35]](#footnote-35)

 Shāfi`ī is the best-known compromiser. By contrast to Abū Yūsuf and Shaybānī, Shāfi`ī does refer to traditionalist methods of sorting hadith. In the *Risāla*, for example, “more trustworthy” clearly indicates not, as for Shaybānī, an earlier authority, but rather someone whose reliability has been demonstrated by comparison of *asānīd*.[[36]](#footnote-36) In other words, the *Risāla* does use the terminology of hadith criticism in the same way the traditionist-jurisprudents do. But there is still a gap between Shāfi`ī’s practice and, say, Aḥmad’s. Going through a random sample of seventy pages from *Kitāb al‑Umm*, I found a fair number of hadith reports from the Prophet but only one instance of criticism, where Shāfi`ī oppugns the hadith report on which his adversary relies. Rather than telling us just what is wrong with the *isnād*, though, he states that “a number of qualified hadith scholars (*ahl al‑`ilm bi‑’l‑ḥadīth*)” were present when he heard the report and all said it was mistaken.[[37]](#footnote-37) In another work, Shāfi`ī even calls on *ahl al‑ḥadīth* to [394] distinguish those having *fiqh* (“discernment,” especially juridical acumen), hence to be counted in determining consensus.[[38]](#footnote-38) In short, Shāfi`ī calls on traditionists as outside experts rather than engaging directly, himself, in hadith criticism.

 The early Ḥanbalī tradition ignores much of Shāfi`ī’s putative teaching, such as the dispensability of hadith from Companions, confirming Calder’s suggestion that the *Risāla* as we know it comes from later than Shāfi`ī’s lifetime.[[39]](#footnote-39) (Wael Hallaq offers the alternative suggestion that Shāfi`ī’s *Risāla* was simply too far ahead of its time for anyone to heed it until a century later.[[40]](#footnote-40) Such precise anticipation of later theory seems unlikely to me, but it is hard to see what could disprove Hallaq’s thesis.) However, the Ḥanbalī tradition does recall of Shāfi`ī something like what the *Risāla* says about traditionists’ helping jurisprudents. For example, Shāfi`ī is said to have told Aḥmad, “Abū `Abd Allāh, if you find a hadith report of the Messenger of God . . . to be sound, inform us, and we will go back to it.”[[41]](#footnote-41) Aḥmad is said to have preferred Shāfi`ī’s Iraqi work because there he made sure his hadith was sound, whereas he did not check the hadith he used in the Egyptian work.[[42]](#footnote-42) Whatever the date of the *Risāla* as we know it (I myself incline toward the late 250s/early 870s), this characterization of the traditionists as helping the jurisprudents probably goes back all the way to Shāfi`ī’s teaching in the early ninth century.

 Besides flattering the traditionists that they were necessary assistants to the most perspicuous jurisprudents, the *Risāla* of Shāfi`ī shows why the traditionists needed to know jurisprudence themselves. Mālik is frequently quoted to the effect that one must know jurisprudence for one’s hadith transmission to be worthy of attention.[[43]](#footnote-43) This is the more [395] or less rationalist position, against which the traditionist-jurisprudents related the hadith report that many a man transmits knowledge to one more learnèd than he.[[44]](#footnote-44) Yasin Dutton proposes that Mālik’s concern was pious, mainly to distinguish between those worthy and unworthy of instruction in the law; between those to whom a particular piece of learning should be offered and whom not.[[45]](#footnote-45) Shāfi`ī makes the same requirement but expressly for a technical reason: the *Risāla* explains succinctly that a transmitter must know the juridical significance of any change in wording, lest he overlook it and transmit wrongly.[[46]](#footnote-46) In other words, transmission by paraphrase (*al‑riwāya bi‑’l‑ma`nā*), although plainly widespread, had to stop at changes that would entail unforeseen juridical consequences. Only expertise in jurisprudence would ensure that a transmitter made only harmless changes. Similarly, Ibn Mujāhid (d. 324/936) would insist that the Qur’an reciter know grammar, in order that he maintain the correct vowels.[[47]](#footnote-47) Sheer rote memorization was not enough.

 In nearly the opposite direction, mainly the fringe of the ḥanbali tradition, we may see the great hadith collector Abū Dāwūd al‑Sijistānī (d. 275/889) reaching out toward the rationalistic jurisprudents. A generation earlier, Aḥmad had denied that there was any division of labor between traditionists who knew hadith and jurisprudents who knew *fiqh*, so that the books of Mālik and Shāfi`ī were entirely dispensable.[[48]](#footnote-48) On the contrary, Abū Dāwūd proudly tells us that his *Sunan* documents their doctrine. “As for these juridical questions, mainly the questions of al‑Thawrī, Mālik, and al‑Shāfi`ī, these hadith [396] reports are their basis.”[[49]](#footnote-49) The point is not that Abū Dāwūd had gone through the books of al‑Thawrī, Mālik, and Shāfi`ī, and collected the hadith quoted there; rather, he had taken their juridical opinions and collected the hadith to back them up. This is just the division of labor between jurisprudents and traditionists called for in Shāfi`ī’s *Risāla*. Abū Dāwūd transmitted also from Shāfi`ī’s Egyptian disciple al‑Rabī` ibn Sulaymān, by the way.[[50]](#footnote-50) (In the next century, traditionists would extend the same treatment to the opinions of Abū Ḥanīfa. Of eight tenth-century collections called *Musnad Abī Ḥanīfa*, only one was by an identifiable Ḥanafī. Most of the rest evidently came from traditionists who took it as their duty to name the hadith that would support the opinions of a famous jurisprudent.[[51]](#footnote-51))

 Perhaps controversy was another mechanism by which traditionist-jurisprudents came to see the usefulness of a rationalistic jurisprudence distinct from hadith. Ninth-century traditionist-jurisprudents were usually hostile to formal debate. For example, the Ḥanbalī tradition is obviously proud of Aḥmad’s refusal to debate before the caliph al‑Mu`taṣim at the Inquisition.[[52]](#footnote-52) Well into the tenth century, the Ḥanbalī leader al‑Barbahārī (d. 329/941) declares in his creed,

 Stop at what is ambiguous in the Qur|ān and hadith. Explain nothing (*lā tufassir shay|an*). Do not look for any device with which to refute heretics, for you have been enjoined to silence before them. Do not give them power over you.[[53]](#footnote-53) [397]

But his contemporary Ibn Abī Ḥātim (d. 327/938) quotes stories whereby Aḥmad praises Shāfi`ī and his learning precisely because they allow him to refute rationalistic jurisprudents; for example, “Our napes, as *aṣḥāb al‑ḥadīth*, were in the hands of Abū Ḥanīfa and not to be wrested away until we saw Shāfi`ī.”[[54]](#footnote-54) If even so excellent a traditionist as Ibn Abī Ḥātim liked the way rationalist methods enabled traditionalists to win debates, the days of the old intransigence had to be numbered. Polemical works in the prevailing style of *kalām* soon did appear even in the Ḥanbalī tradition.[[55]](#footnote-55)

 Once the majority had adopted textual sources and hadith criticism, it was difficult for the traditionist-jurisprudents not to discontinue their offensive and seek to take their place among the more rationalistic jurisprudents. Hence, for example, the Ḥanābila allegedly attacked al‑Ṭabarī near the end of his life for dismissing Aḥmad ibn Ḥanbal as a traditionist, not a jurisprudent.[[56]](#footnote-56) Aḥmad’s actual practice suggests that (for him) one could not be one without also being the other. One supposes that he and his contemporaries would not have disputed Ṭabarī’s identifying Aḥmad as one but not the other; rather, they would have disputed his proposing to distinguish at all between mastery of hadith and mastery of jurisprudence. The old equation of jurisprudence with hadith, expecting hadith reports to speak for themselves, survived only as a rhetorical pose among the Ḥanābila; for example, with Ibn Qudāma (d. 620/1223), who continually reviews the positions of each rival school, then concludes “As for the Ḥanbalī position, hadith says . . . .”[[57]](#footnote-57)

 On the rationalist side, of course, there was a movement toward the middle in the form of fitting out traditional Ḥanafī positions with a basis in hadith. Ibn Shujā` al‑Thaljī (d. 266/880) seems to have been [398] the crucial figure in Iraq.[[58]](#footnote-58) The first Ḥanafī to expressly take up the traditionists’ methods of hadith criticism was apparently al‑Ṭaḥāwī (d. 321/933) in Egypt. “I have seen you in the evening with the jurisprudents (*fuqahā|*) in their place,” someone told him, “and I have seen you among the traditionists (*ahl al‑ḥadīth*) in theirs: how few are they who combine the two.”[[59]](#footnote-59) In *Bayān mushkil al‑ḥadīth*, Ṭaḥāwī harmonizes contradictory hadith reports in the manner of Shāfi`ī, without attempting hadith criticism himself, but in *Kitāb Ma`ānī al‑āthār*, by contrast, Ṭaḥāwī does presume to distinguish sound from unsound hadith reports. His *isnād* criticism might look capricious to a specialist in hadith, but it is by and large the method of the traditionist-jurisprudents of the earlier ninth century that Ṭaḥāwī had taken over.

 Ibn Ḥibbān (d. 354/965) gives us our earliest systematic description from a traditionist of how to sort hadith by comparing *asānīd*. He distinguishes clearly between the jurisprudent and the traditionist: the jurisprudent is someone who knows only *mutūn*, the traditionist someone who knows only *asānīd*. The former is not to be relied upon to relate an *isnād* by memory, only from his written notes, while the latter is not to be relied upon to relate a *matn* by memory, only from his written notes. Moreover, though, he requires five conditions of its transmitters for a hadith report to be considered sound: probity in religion, truthfulness in hadith, understanding (*`aql*) of the hadith he has transmitted, knowledge (*`ilm*) of what is ruled out by what he transmits, and avoidance of *tadlīs*.[[60]](#footnote-60) Understanding and knowledge of what one is transmitting (in spite of the famous hadith report by which many a man bore knowledge to one more discerning than he) amount to jurisprudence. As for Shāfi`ī earlier, they were necessary to establish the reliability of any addition. So here at last is a traditionist who himself admits that the traditionists need the jurisprudents.

*Where the Traditionist-Jurisprudents Were Not Important*

As systematic works like the *Risāla* of Shāfi`ī were not alone responsible for all development in the theory and practice of Islamic law, so it must be admitted that the traditionist-jurisprudents were also not [399] responsible for all development. These, I take it, are the most important transformations of mainstream jurisprudence in the leading centers over the course of the ninth century:

 1) Textual sources (Qur|an and hadith) eclipsed rational speculation as the formal basis of the law.

 2) Hadith reports from the Prophet eclipsed reports from Companions and later authorities (but reports from imams remained important for Shi`i jurisprudence);

 3) Experts sifted hadith reports primarily by comparison of their *asānīd*, secondarily by examination of *rijāl*, the personal qualities of their transmitters.

 4) Personal schools eclipsed regional, such that jurisprudents came to be identified primarily with one or another teacher of the past rather than one or another region.

 5) Texts stabilized and some became the literary bases of personal schools.

 6) Jurisprudence and hadith were professionalized, each becoming increasingly distinct from the other and each the province of specialists distinct from interested laymen.

Of the main features of Islamic jurisprudence as we know it from the eleventh century forwards, only *guild schools*, which certified jurisprudents, and perhaps the science of *uṣūl al‑fiqh* were yet to come, mainly in the first half of the tenth century.[[61]](#footnote-61)

 No one has proposed that traditionist-jurisprudents had much to do with the last two of these transformations, numbers 5 and 6: on the contrary, they unsuccessfully opposed them. Traditionist-jurisprudents looked for guidance to hadith, which is to say authoritative rulings from the Prophet and his Companions, not to the opinions of some recent jurisprudent. In principle, anyone should be able to add more and better hadith reports to an authoritative collection. This is just what we see in compilations such as the *Musnad* of Aḥmad ibn Ḥanbal, as many as a third of whose hadith reports, by some estimates, reflect improvements from `Abd Allāh ibn Aḥmad.[[62]](#footnote-62)

 Transformation 4 on the list has become controversial, as doubt has been cast on whether there ever existed regional schools before [400] personal. The conventional scholarly view has gone back to Joseph Schacht, who proposed that before Shāfi`ī, Muslim jurisprudents were grouped in the schools of Kufa and Medina with secondary schools in Damascus and Mecca.[[63]](#footnote-63) Thanks mainly to the literary activity of the disciples of Abū Ḥanīfa, Kufan jurisprudence survived after the mid-third century of the Hijra as Ḥanafī, while North African writers effected the survival of Medinese jurisprudence as Mālikī.[[64]](#footnote-64) George Makdisi has identified a third stage after the initial establishment of personal schools, mainly “guild schools,” which is to say institutions for certifying jurisprudents.[[65]](#footnote-65) These are the classical schools of Islamic law, familiar from the eleventh century and forward, which took recognizable form at the beginning of the tenth century. With guild schools, there can be no question whether one is, say, a Ḥanafi or a Shāfi`ī, whereas characterizations for the period before the guild schools are necessarily less certain.

 The latest and by far strongest critique of Schacht’s scheme has come from Wael Hallaq, who points out that eighth-century doctrine is seldom anonymous, that it is easy to find disagreement within regions, and that jurisprudents personally chose what doctrines to follow with remarkable freedom. There never were, then, regional schools, nor afterwards personal if that is taken to mean that one was bound by the imam’s personal opinions. However many common regional doctrines the sources may point to, they are not qualitatively different from such common doctrines as characterized regions in later centuries.[[66]](#footnote-66) I am inclined to think that Hallaq works too hard to refute propositions no one has ever made, such as the thorough anonymity of doctrine in the regional stage, while addressing too little of the evidence that eighth-century jurisprudents were characteristically divided along regional lines. Concerning the business of this article, however, I will now [401] retract an earlier argument of my own, mainly that the traditionist-jurisprudents provoked the rationalists to stress the antiquity of their own doctrines, as by assigning them to venerable jurisprudents such as Abū Ḥanīfa and Mālik instead of to local opinion and practice.[[67]](#footnote-67) It was not traditionist-jurisprudents who complained that the consensus of Medina was no fit basis of legal obligation, rather Shāfi`ī and later adherents of his school.[[68]](#footnote-68) In short, the traditionist-jurisprudents probably had little to do with the rise of “Ḥanafī” and “Mālikī” schools in the place of “Kufan” and “Medinese.”

 Another of these transformations, mainly number 2, has been attributed to the traditionist-jurisprudents by mistake. Schacht took Shāfi`ī at his word, that he spoke for the traditionists. If we examine actual works from traditionist-jurisprudents in the earlier ninth century (few so easily available to Schacht as to us), we can see that they did not heed Shāfi`ī’s case for relying only on hadith from the Prophet, never on conflicting hadith from the Companions and later authorities. For example, scarcely one in five items in the *Muṣannaf* of `Abd al‑Razzāq goes back to the Prophet, about one in four items in the *Muṣannaf* of Abū Bakr Ibn Abī Shayba. Collections of Aḥmad ibn Ḥanbal’s juridical opinions likewise point to an unembarrassed reliance on Companion hadith.[[69]](#footnote-69) As for systematically preferring hadith from the Prophet, the traditionist-jurisprudents amended their practice across the ninth century at about the same rate as others. An express statement of method from Aḥmad goes so far as to identify the authoritative *sunna* with hadith from the Prophet and the first four caliphs, a wider canon than what Shāfi`ī calls for in his polemics against the Mālikīya but implicitly excluding most Companion hadith.[[70]](#footnote-70)

 By contrast, transformation number 1 seems inconceivable without pressure from traditionist-jurisprudents. It was precisely their program to rely on textual sources (mainly Qur|an and hadith) to the exclusion [402] of rational speculation. Number 3 also can hardly be explained without pressure from traditionist-jurisprudents. It was they, not the rationalistic jurisprudents, who developed the methods of hadith criticism early in the ninth century that became standard for all jurisprudents by the end of it. (According to later tradition, of course, perspicuous hadith criticism was practiced well before the ninth century by famous jurisprudents such as Mālik; however, their methods are practically impossible to document.[[71]](#footnote-71))

*The Decline of Companion and Later Hadith*

The use of hadith reports from Companions and later authorities was not an issue dividing traditionist-jurisprudents from rationalistic. Schacht sometimes ranged Shāfi`ī with the traditionist-jurisprudents, since he argued against irresponsible speculation (*ra|y*, *istiḥsān*). In consequence, Shāfi`ī’s advocacy of hadith from the Prophet against hadith from Companions has sometimes seemed to express the opinion of traditionist-jurisprudents. But this is wrong. First, traditionist-jurisprudents of the earlier ninth century were willing to rely heavily on hadith from Companions. For example, again, the overwhelming majority of entries in the *Muṣannaf*s of `Abd al‑Razzāq and Abū Bakr Ibn Abī Shayba are not from the Prophet but from later authorities. Insofar as Shāfi`ī argued against hadith from Companions and Followers, he did not act as spokesman for the traditionist-jurisprudents of the earlier ninth century. Second, Shāfi`ī argued only occasionally for the superiority of hadith from the Prophet to hadith from other figures. In the *Risāla*, to the contrary, the equation of “hadith” with reports from the Prophet is everywhere assumed, never argued.[[72]](#footnote-72)

 Hadith was controversial, but the traditionist-jurisprudents were not prominent in either of the two controversies that led to the abandonment of hadith from Companions and later figures. To explain the rise of [403] prophetic hadith alone, Joseph Schacht pointed to one area of controversy, mainly between adherents of the different regional schools of the eighth century. Thus jurisprudents of Kufa, for example, would cite hadith from the Prophet to trump the hadith from the Companions cited by their Medinese opponents. An example whereby Shaybānī appeals to Companions against Followers has already come up. Shaybānī’s preference for hadith from Companions to hadith from Followers is roughly in line with opinion among traditionist-jurisprudents of the early ninth century. Aḥmad’s recognition of the Rightly Guided Caliphs as establishing the authoritative *sunna* has been noted already. We can hardly explain the rise of expressly prophetic hadith and the decline of hadith from Companions by pressure from traditionist-jurisprudents.

 A second controversy evidently pitted what John Burton has called *ahl al‑fiqh* (that is, jurisprudents as distinct from traditionists) against *ahl al‑Qur|ān*. These last were rationalists who proposed to throw out rules based on hadith whenever they contradicted the Qur|an.[[73]](#footnote-73) This controversy is harder to document than that among the regional schools inasmuch as nothing survives from the Qur|an-only side of the debate. However, the controversy may be inferred from such works as the *Risāla* of Shāfi`ī and *Ta|wūl mukhtalif al‑ḥadīth* of Ibn Qutayba. Burton identifies the chief polemical tendency of the *Risāla* precisely as the defense of prophetic hadith against the Qur’an.[[74]](#footnote-74) Where centrists of the earlier ninth century such as Abū `Ubayd (d. 224/838-39?) and al‑Muḥāsibī (d. 243/857-58) conceded that the Prophet’s word reflected a lower degree of inspiration than the Qur|an did, the *Risāla* of Shūfi`ī argues emphatically that the Prophet’s word and the Qur’an are equally inspired and equally to be obeyed.[[75]](#footnote-75) Similarly, Ibn Qutayba’s *Ta|wīl mukhtalif al‑ḥadith* again and again justifies hadith reports contradicted by the Qur|an, plainly to refute rationalists who would simply dismiss the hadith in question and go by the Qur’an alone. Like the *Risāla* of Shāfi`ī, it expressly asserts the equal inspiration of the Prophet’s word [404] and the Qur|an.[[76]](#footnote-76) It was necessary to elevate the Prophet’s authority this way in order to defend the authority of hadith-based rules against Qur|an-only rationalists. Of course, the same argument required that hadith from Companions be quietly discarded as a basis of the law, inasmuch as it was hard to argue that hadith from Companions was also equally inspired with the Qur|an.

 Contemporary traditionist-jurisprudents made similar adjustments at about the same rate (or fifty years later, if we accept the traditional dating of Shāfi`ī’s *Risāla* and other works). In the introduction to his *Sunan*, al‑Dārimi (d. 255/869) argues vigorously for the equal inspiration of Qur’an and prophetic *sunna*. He cites some of the same hadith as Shāfi`ī.[[77]](#footnote-77) The Six Books (earliest attributed to Bukhārī [d. 256/870], latest to Nasā|ī [d. 303/915?]) implicitly endorse the same exclusive dependence on hadith from the Prophet to support every rule.

 As traditionist-jurisprudents closed ranks with the moderate rationalists to resist the yet more dangerous Qur’an-only rationalists, they came to embrace adherents of rationalistic jurisprudence whom their forebears had regarded with more reserve. In one case, it is possible to date precisely a traditionalist’s embrace of at least some rationalistic jurisprudents. Ibn Qutayba’s lists of traditionist-jurisprudents and rationalistic jurisprudents, respectively, have been mentioned already.[[78]](#footnote-78) In the *Ma`ārif*, the first version of which of was finished before 252/866,[[79]](#footnote-79) Mālik, Awzā`ī, and Sufyān al‑Thawrī all appear among *aṣḥāb al‑ra|y*. Ibn Qutayba wrote *Ta|wīl mukhtalif al‑ḥadīth* a few years later, in the late 250s/early 870s,[[80]](#footnote-80) and there also he lists traditionist-jurisprudents and rationalistic jurisprudents. Now, however, Mālik, Awzā`ī, and [405] Sufyān al‑Thawrī have shifted columns, all appearing as exemplars of devotion to hadith (*aṣḥāb al‑ḥadīth*) alongside Aḥmad ibn Ḥanbal. Only Abū Ḥanīfa and his followers continue to be disparaged as adherents of contemptible *ra|y*.[[81]](#footnote-81) Ibn Qutayba’s change of opinion probably reflects more closely the changing views of his patron the shadow-caliph al‑Muwaffaq than the views of Baghdadi traditionist-jurisprudents in general.[[82]](#footnote-82) One could hardly ask for a clearer illustration of how the traditionist-jurisprudents and the rationalists, once sharply divided, came to meet in the middle.

*Conclusion*

My thesis has been that the traditionist-jurisprudents are crucial to the development of Islamic law in the ninth century. They proposed to infer the law as directly as possible from Qur|an and hadith, Companion or later hadith if prophetic was unavailable. If hadith reports appeared to contradict one another, they preferred to search out the correct solution by comparing *asānīd* to find the one report most reliably attested. They disliked excessive sophistication, clever argumentation, and speculation about cases that had not come up in real life. Their unremitting solemnity was religiously attractive, and over the course of the century, jurisprudents of virtually all parties conceded their insistence on a basis in hadith. Perhaps the Inquisition (218-37/833-52) was the turning point, for it showed decisively that winning abstruse theological arguments was not the way to establish one party as arbiter of Islamic orthodoxy.

 Over the rest of the century, the traditionist-jurisprudents were able to watch the adherents of Abū Ḥanīfa, Mālik, and others take up their [406] own reliance on hadith as opposed to local custom, rational speculation, and so on, and their methods of sorting reliable from unreliable hadith reports. However, they did not watch them entirely give up their old sophistication, clever argumentation, and speculation about cases that had not come up in real life. On the contrary, as they watched their erstwhile adversaries take up hadith, it seemed increasingly imperative that the traditionalists themselves become more sophisticated. It no longer sufficed for a man to know prodigious amounts of hadith. Whether announcing that their work was fully complementary with the work of previous experts in jurisprudence not necessarily experts in hadith or insisting that their imam had been a great expert in jurisprudence as well as hadith, they had clearly conceded something to the rationalists. They were probably predisposed toward concessions by their theological position in favor of the majority, *al‑jamā`a*, against splinter movements.

 The beginning of the fourth Islamic century (early 910s C.E.) was widely acknowledged in later tradition as a watershed, the dividing line between the ancients and the moderns, *al‑mutaqaddimīn* and *al-muta|akhkhirīn*. After this point, the old enmity between rationalists and traditionalists continued fierce at the level of theology but scarcely any longer at the level of jurisprudence. Islamic law would henceforth be compounded of elements from each side. The Muslims gained a system demonstrably based on revelation but penetrable at multiple levels, affording the widest scope for intellectual play.[[83]](#footnote-83) What they lost was the purity and power of simply letting hadith speak for itself; also, on the other side, a certain frankness about the importance of local tradition and personal speculation in the development of Islamic law.

1. \* This article was largely written at the Institute for Advanced Study, Princeton, New Jersey, on a grant from the National Endowment for the Humanities. [↑](#footnote-ref-1)
2. Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), esp. 36, 56-57. Shāfi`ī’s middle course is further developed by Christopher Melchert, “The Formation of the Sunni Schools of Law,” Ph.D. diss., Univ. of Pennsylvania, 1992, chap. 3, and Wael B. Hallaq, “Was al‑Shafi`i the Master Architect of Islamic Jurisprudence?” *International Journal of Middle East Studies*, xxv (1993), 587-605, and idem, *A History of Islamic Legal Theories* (Cambridge: Univ. Press, 1997), chap. 1, esp. 18-19, 30-35. [↑](#footnote-ref-2)
3. Norman Calder, *Studies in Early Muslim Jurisprudence* (New York: Clarendon Press, 1993). Calder has come in for harsh criticism, but none of the dozen or so reviews listed in *Index Islamicus* complains of his neglecting traditionist-jurisprudents. [↑](#footnote-ref-3)
4. Ibn al‑Muqaffa`, *Risālat al‑ṣaḥāba*, ed. Yūsuf Abū Ḥalqa, 2nd printing (Beirut: Maktabat al‑Bayān, 1960), 167. [↑](#footnote-ref-4)
5. Ibn Qutayba, *al‑Ma`ārif*, ed. Tharwat `Ukāsha (6th edn., Cairo: al‑Hay|a al‑`Āmma li’l‑Kitāb, 1992), 494-500. [↑](#footnote-ref-5)
6. Ibn al‑Nadīm, *Fihrist*, *maqāla* 6. [↑](#footnote-ref-6)
7. George Makdisi, “Ash`arî and the Ash`arites in Islamic Religious History,” *Studia Islamica*, no. 17 (1962), 37-80, at 49. [↑](#footnote-ref-7)
8. Traditionalists drove Bukhārī from Nishapur over the question of *lafẓ al‑Qur|ān*, for which see al‑Khaṭīb al‑Baghdādī, *Tārīkh Baghdād*, 14 vols. (Cairo: Maktabat al‑Khānjī, 1349/1931, repr. Cairo: Maktabat al‑Khānjī and Beirut: Dār al‑Fikr, n.d.), vol. 2, 30-32. The Ḥanābila blockaded Ṭabarī in his house, for which affair see Franz Rosenthal, *The History of al-Ṭabarī* 1: *General Introduction and From the Creation to the Flood*, Bibliotheca Persica and SUNY Ser. in Near Eastern Studies (Albany: State Univ. of New York Press, 1989), 69-78, with references. [↑](#footnote-ref-8)
9. *Encyclopaedia of Islam* (new edn.), s.v. “Aṣḥāb al‑ra|y,” by J. Schacht. [↑](#footnote-ref-9)
10. *Loc. cit.* [↑](#footnote-ref-10)
11. Al‑Ḥakīm al‑Tirmidhī, *The Beginning of the Affair of . . . al‑Ḥakīm al‑Tirmidhī*, in *The Concept of Sainthood in Early Islamic Mysticism: Two Works by al‑Ḥakīm al‑Tirmidhī*, trans. with notes by Bernd Radtke and John O’Kane, Curzon Sufi Series (Richmond: Curzon, 1996), 15-36, at 15. [↑](#footnote-ref-11)
12. Ibn Ḥibbān, *Rawḍat al‑`uqalā| wa‑nuzhat al‑fuḍalā|*, ed. Muḥammad Muḥyī al‑Dīn `Abd al‑Ḥamīd, et al. (Cairo: Maṭba`at al‑Sunna al‑Muḥammadīya, 1949), 268-69. [↑](#footnote-ref-12)
13. Al‑Khushanī, *Ṭabaqāt `ulamā| Ifrīqiya*, printed with Abū al‑`Arab, *Classes des savants de l’Ifriqiya*, ed. Mohammed ben Cheneb, Publications de la Facultée des lettres d’Alger, Bulletin de correspondance africaine 51 (Paris: Leroux, 1915), 159. [↑](#footnote-ref-13)
14. Ibn al‑Faraḍī, *Historia virorum doctorum Andalusiæ*, ed. Francisco Codera, Bibliotheca arabico-hispana 7, 8, 2 vols. (Madrid: La Guirnalda, 1890-92). In the first fifty pages, I notice half a dozen references to *ra|y*, usually *`alā madhhab Mālik*. [↑](#footnote-ref-14)
15. Ibn Farḥūn, *al‑Dībāj al‑mudhahhab fī ma`rifat a`yān `ulamā| al‑madhhab* (Cairo: `Abbās ibn `Abd al‑Salām ibn Shaqrūn, 1351), 23. [↑](#footnote-ref-15)
16. E.g., al‑Maqdisī, *Descriptio imperii moslemici*, ed. M. J. De Goeje, Bibliotheca geographorum Arabicorum, vol. 3, 2nd edn. (Leiden: E. J. Brill, 1906), 142, ll. 11-12, discussing Mesopotamia, where there is no *ra|y* save that of Abū Ḥanīfa and Shāfi`ī, although it also has Ḥanābila and a Shi`i presence. [↑](#footnote-ref-16)
17. Al‑Ḥākim al‑Naysābūrī, *apud* al‑Dhahabī, *Siyar a`lām al‑nubalā|*, 25 vols. (Beirut: Mu|assasat al‑Risāla, 1401-9/1981-88), vol. 15 (ed. Ibrāhīm al‑Zaybaq), 485-86. [↑](#footnote-ref-17)
18. Al‑Nawawī’s most detailed juridical work is the first half of *al‑Majmu|`*, ed. Zakarīyā| `Alī Yūsuf, 18 vols. (Cairo: Mat|ba`at al‑`Āṣima [1-7], Maṭba`at al‑Imām [8-18], 1966-). [↑](#footnote-ref-18)
19. Ṣāliḥ ibn Aḥmad, *Masā|il al‑imām Aḥmad ibn Ḥanbal*, ed. Ṭāriq ibn `Awaḍ Allāh ibn Muḥammad (Riyadh: Dār al‑Waṭan, 1420/1999), 264. [↑](#footnote-ref-19)
20. Susan Spectorsky, “Aḥmad ibn Ḥanbal’s *Fiqh*,” *Journal of the American Oriental Society*, cii (1982), 461-65, at 461. [↑](#footnote-ref-20)
21. Al‑Khiraqī, *Mukhtaṣar al‑Khiraqī*, ed. Muḥammad Zuhayr al‑Shāwīsh (Damascus: Mu|assasat Dār al‑Salām, 1378) = *Matn al‑Khiraqī*, ed. Abū Ḥudhayfa Ibrāhīm ibn Muḥammad, Silsilat Mutūn al‑Fiqh (Tanta: Dār al‑Ṣaḥāba li’l‑Turāth, 1413/1993). [↑](#footnote-ref-21)
22. Schacht, *Origins*, chap. 4. [↑](#footnote-ref-22)
23. Abū Yūsuf, *Ikhtilāf Abī Ḥanīfa wa‑Ibn Abī Laylā*, ed. Abū al‑Wafā| al‑Afghānī (Cairo: Maṭba`at al‑Wafā|, 1357), 84, 88, 144, 182, 218. [↑](#footnote-ref-23)
24. Shaybānī, *K. al‑Ḥujja `alā ahl al‑Madīna*, ed. Abū al‑Wafā| al‑Afghānī, et al., 4 vols., Silsilat al‑Maṭbū`āt 1 (Hyderabad: Maṭba`at al‑Ma`ārif al‑Sharqīya, 1385/1965), vol. 1, 116. [↑](#footnote-ref-24)
25. Peter Charles Hennigan, “The Birth of a Legal Institution: The Formation of the *waqf* in Third Century A.H. Ḥanafī Legal Discourse,” Ph.D. diss., Cornell Univ., 1999, esp. 39-42, 96-109. [↑](#footnote-ref-25)
26. For the *Mukhtaṣar* of Ibn `Abd al‑Ḥakam, see Jonathan E. Brockopp, “Early Islamic Jurisprudence in Egypt: Two Scholars and Their *Mukhtaṣar*s,” *International Journal of Middle East Studies*, xxx (1998), 167-82; now also *Early Mālikī Law: Ibn `Abd al‑Ḥakam and his Major Compendium of Jurisprudence*, Studies in Islamic Law and Society 14 (Brill: Leiden, 2000). For the style of argument in the *Mudawwana*, see Calder, *Studies*, chap. 1. [↑](#footnote-ref-26)
27. Abdel-Magid Turki, “Le *Muwaṭṭa|* de Mâlik, ouvrage de *fiqh*, entre le *ḥadīt* et le *ra|y*,” *Studia Islamica*, no. 86 (1997), 5-35. For the emergence of a self-aware party of traditionist-jurisprudents in about the last quarter of the eighth century, see provisionally Melchert, *Formation of the Sunni Schools of Law*, Islamic Law and Society 4 (Leiden: Brill, 1997), 1-8. [↑](#footnote-ref-27)
28. Calder, *Studies*, chap. 2, esp. 34-38; largely refuted by Miklos Muranyi, “Die frühe Rechtsliteratur zwischen Quellenanalyse und Fiktion,” *Islamic Law and Society*, iv (1997), 224-41, also Yasin Dutton, “*`Amal* v. *ḥadīth* in Islamic Law: The Case of *sadl al‑yadayn* (Holding One’s Hands by One’s Sides) When Doing the Prayer,” *Islamic Law and Society*, iii (1996), 13-40, esp. 28-33. Harald Motzki, “The Prophet and the Cat,” *Jerusalem Studies in Arabic and Islam*, no. 22 (1998), 18-83, shows that the particular hadith report in question was attributed to Mālik well before Calder allowed but does not generalize on the relation between hadith and legal doctrine in the *Muwaṭṭa|*. [↑](#footnote-ref-28)
29. Yasin Dutton, *The Origins of Islamic Law: The Qur|an, the* Muwaṭṭa| *and Madinan* `Amal, Culture and Civilization in the Middle East (Richmond, Surrey: Curzon, 1999). [↑](#footnote-ref-29)
30. See note 22. [↑](#footnote-ref-30)
31. Citing Zurqānī, Goldziher tells us the *Muwaṭṭa|* (in the recension of Yaḥyā ibn Yaḥyā) comprises 1,720 hadith reports, of which 600 with full *isnād*, 222 *mursal*, and 613 *mawqūf*: Ignaz Goldziher, *Muslim Studies*, ed. S. M. Stern, trans. C. R. Barber and S. M. Stern, 2 vols. (Chicago: Aldine Atherton, 1968-71), vol. 2, 202. [↑](#footnote-ref-31)
32. Abū Dāwūd, *K. Masā|il al‑imām Aḥmad*, ed. Muḥammad Bahja al‑Bayṭār (Cairo: Dār al‑Manār, 1353/1934; repr. Beirut: Muḥammad Amīn Damj, n.d.). Spectorsky examined the fuller MS in Damascus. [↑](#footnote-ref-32)
33. For *rijāl* criticism, the effort to sift out the reliable hadith by knowing the men, see G. H. A. Juynboll, *Muslim Tradition*, Cambridge Studies in Islamic Civilization (Cambridge: Univ. Press, 1983), chap. 5. [↑](#footnote-ref-33)
34. For the comparison of *asānīd* to sift out the reliable hadith, see esp. Eerik Nael Dickinson, “The Development of Early Muslim *ḥadīth* Criticism,” Ph.D. diss., Yale Univ., 1992, chap. 6. [↑](#footnote-ref-34)
35. See studies by Susan Spectorsky elsewhere in this issue of *Islamic Law and Society* and in Bernard Weiss, ed., *Islamic Legal Theory: The Alta Papers*, forthcoming; also her introduction to *Chapters on Marriage and Divorce* (Austin: Univ. of Texas Press, 1993), esp. 7. [↑](#footnote-ref-35)
36. See Shāfi`ī, *al‑Risāla*, ed. Aḥmad Muḥammad Shākir (Cairo: Mat|ba`at Muṣṭafā al‑Ḥalabī wa‑Awlādih, 1358/1940; repr. Beirut: n.p., n.d.), ¶ 1251. For Shāfi`ī and qualified hadith critics, see also the discussion in Joseph Lowry, “The Legal-Theoretical Content of the *Risāla* of Muḥammad b. Idrīs al‑Shāfi`ī,” Ph.D. diss., Univ. of Pennsylvania, 1999, esp. 378-81. [↑](#footnote-ref-36)
37. Shāfi`ī, *K. al‑Umm*, 7 vols. in 4 (Bulaq: al‑Maṭba`a al‑Kubrā al‑Amīrīya, 1321-25, repr. Cairo: Kitāb al‑Sha`b, 1388/1968), vol. 6, 160, concerning whether to kill or merely imprison the female apostate. There is a parallel in Shāfi`ī, *Ikhtilaf al-ḥadith*, *Umm*, vol. 7, 32, where *ahl al-ḥadith* sit in judgement of transmitters, identifying the reliable. [↑](#footnote-ref-37)
38. Shāfi`ī, *K. Jimā` al‑`ilm*, *Umm*, vol. 7, 256, last l. [↑](#footnote-ref-38)
39. Calder, *Studies*, chap. 9, esp. 242, provisionally suggesting the date A.H. 300. [↑](#footnote-ref-39)
40. Hallaq, *History*, 31-32, 34. [↑](#footnote-ref-40)
41. Ibn Abī Ya`lā, *Ṭabaqāt al‑Ḥanābila*, ed. Muḥammad Ḥāmid al‑Fiqī, 2 vols. (Cairo: Maṭba`at al‑Sunna al‑Muḥammadīya, 1371/1952), vol. 2, 51; similarly, vol. 1, 6 (two reports), 181, 252. [↑](#footnote-ref-41)
42. Abū Nu`aym, *Ḥilyat al‑awliyā|*, 10 vols. (Cairo: Mat|ba`at al‑Sa`āda and Maktabat al‑Khānjī, 1352-57/1932-38), vol. 9, 97. For the contrary Shāfi`ī tradition by which Aḥmad preferred the Egyptian books (for exactly the same reason, that Shāfi`ī more carefully checked the hadith in them), see Ibn Abī Ḥātim, *Ādāb al‑Shāfi`ī wa‑manāqibuh*, ed. `Abd al‑Ghanī `Abd al‑Khāliq and `Izzat `Aṭṭār (Cairo: Maktabat al‑Khānjī, 1953; repr. Aleppo: Maktabat al‑Turāth al‑Islāmī, 1954), 60; al‑Bayhaqī, *Manāqib al‑Shāfi`ī*, ed. Aḥmad Ṣaqr, 2 vols. (Cairo: Dār al‑Turāth, 1970-71), vol. 1, 263. [↑](#footnote-ref-42)
43. Dutton, *Origins*, 17-18, with references, to which add Aḥmad ibn Ḥanbal (et al.), *al‑`Ilal wa‑ma`rifat al‑rijāl* (Ẓāhirīya 40/1), in *al‑Jāmi` fī al‑`ilal wa‑ma`rifat al‑rijāl*, ed. Muḥammad Ḥusām Bayḍūn, 2 vols. (Beirut: Mu|assasat al‑Kutub al‑Thaqāfīya, 1410/1990), vol. 1, 15-68, at 44. [↑](#footnote-ref-43)
44. See Schacht, *Origins*, 54. For the classic hadith report, *rubba ḥāmili fiqhin laysa bi‑faqīh*, &c., see Abū Dāwūd, *al‑Sunan*, *k. al‑`ilm*, 15. [↑](#footnote-ref-44)
45. Dutton, *Origins*, 17-18. [↑](#footnote-ref-45)
46. Shāfi`ī, *Risāla*, ¶ 1001. The passage is directly quoted by Ibn Abī Ḥātim, *K. al‑Jarḥ wa‑al‑ta`dīl*, Introduction + 4 vols. in 8 (Hyder­abad: Jam`īyat Dā|irat al‑Ma`ā­rif al‑`Uthmānīya, 1360-71, repr. 9 vols., Beirut: Dār Iḥyā| al‑Turāth al‑`Arabī, n.d.), vol. 2, 29-30, indicating acceptance in the next century by experts in hadith. [↑](#footnote-ref-46)
47. Ibn Mujāhid, *K. al‑Sab`a fī al‑qirā|āt*, ed. Shawqī Ḍayf (Cairo: Dār al‑Ma`ārif, 1972), 45. [↑](#footnote-ref-47)
48. Ibn Abī Ya`lā, *Ṭabaqāt*, vol. 1, 207, vol. 2, 15; (against Mālik); Ibn Abī Ya`lā, *Ṭabaqāt*, vol. 1, 38, 57, 318 (against Shāfi`ī); see also Abū Dāwūd, *Masā|il*, 275 (against Mālik), and Ibn Hāni|, *Masā|il al‑imām Aḥmad ibn Ḥanbal*, ed. Zuhayr al‑Shāwīsh, 2 vols. (Beirut: al‑Maktab al‑Islāmī, 1400), 2:164 (for Shāfi`ī against Mālik). Quotations in favor of Mālik and Shāfi`ī are also to be found, mostly in books by Mālikīya and Shāfi`īya. Disparaging quotations seem more credible on the principle that what contradicts later orthodoxy is presumptively more reliable than what confirms it. [↑](#footnote-ref-48)
49. Abū Dāwūd, *Risāla . . . ilā ahl Makka*, in *Thalāth rasā|il fī `ilm muṣṭalaḥ al‑ḥadīth*, ed. `Abd al‑Fattāḥ Abū Ghuddah (Aleppo: Maktab al‑Maṭbū`āt al‑Islāmīya, 1417/1997), 27-54, at 46. [↑](#footnote-ref-49)
50. E.g., Abū Dāwūd, *Masā|il*, 268. [↑](#footnote-ref-50)
51. Six tenth-century *musnad*s used by Muḥammad ibn Maḥmūd al‑Khwārizmī, *Jāmi` masānīd al‑imām al‑a`ẓam*, 2 vols. (Hyderabad: Maṭba`at Dā|irat al‑Ma`ārif, 1332), two more listed by Fuat Sezgin, *Geschichte des arabischen Schrifttums*, 11 vols. to date (Leiden: E. J. Brill, 1967-), vol. 1, 415. The one collector who appears in the comprehensive Ḥanafī biographical dictionary of Ibn Abī al‑Wafā’, *al‑Jawāhir al‑mud|īya*, is al‑Ustādh al‑Subadhmūnī (d. 340/952), a leader of the Transoxanian Ḥanafīya. [↑](#footnote-ref-51)
52. The fact of his refusal comes out in both Ḥanbalī and Mu`tazili accounts, but naturally with different connotations. Ḥanbal ibn Isḥāq, *Dhikr miḥnat al‑imām Aḥmad ibn Ḥanbal*, ed. Muḥammad Naghash (Cairo: Dār Nashr al‑Thaqāfa, 1397/1977), 48-50, stresses the rationalists’ inability to come up with arguments from Qur|an and hadith, whereas Ibn al‑Murtaḍā, *Die Klassen der Mu`taziliten*, ed. Susanna Diwald-Wilzer, Bibliotheca Islamica, vol. 21 (Wiesbaden: Franz Steiner, 1961), 125, stresses Aḥmad’s admitted incompetence in *kalām*. [↑](#footnote-ref-52)
53. Al‑Barbahārī, *Sharḥ al‑sunna*, ed. Muḥammad ibn Sa`īd al‑Qaḥṭānī, 3rd printing (Cairo: Maktabat al‑Sunna, 1416/1996), 65; same text *apud* Ibn Abī Ya`lā, *Ṭabaqāt*, vol. 2, 18-43, at 39. [↑](#footnote-ref-53)
54. Ibn Abī Ḥātim, *Jarḥ*, vol. 7, 203 (preferring marginal *aqfiyatunā* to *aqḍiyatunā* of the text). Same *apud* Ibn Abī Ḥātim, *Ādāb al‑Shāfi`ī wa‑manāqibuh*, ed. `Abd al‑Ghanī `Abd al‑Khāliq and `Izzat `Aṭṭār (Cairo: Maktabat al‑Khānjī, 1953, repr. Aleppo: Maktabat al‑Turāth al‑Islāmī, 1954), 55. [↑](#footnote-ref-54)
55. Notably *K. al‑Radd `alā al‑zanādiqa wa‑al‑jahmīya*, available in various editions, of which the best may be Aḥmad ibn Ḥanbal (attrib.), *K. al‑Radd `alā al‑jahmīya wa‑al‑zanādiqa*, ed. `Abd al‑Raḥmān `Umayra (Riyadh: Dār al‑Liwā’, 1397/1977). I suggest it goes back to Ghulām al‑Khallāl (d. 363/974). Certainly, the *isnād* for the work becomes confused before him. [↑](#footnote-ref-55)
56. Yāqūt, *Irshād al‑arīb ilā ma`rifat al‑adīb*, ed. Iḥsān `Abbās, 7 vols. (Beirut: Dār al‑Gharb al‑Islāmī, 1993), vol. 6, 2450-51, s.n. Muḥammad ibn Jarīr al‑Ṭabarī. [↑](#footnote-ref-56)
57. Ibn Qudāma al‑Maqdisī, *al‑Mughnī*, ed. Ṭāhā Muḥammad al‑Zaynī, 10 vols. (Cairo: Maktabat al‑Qāhira, 1388-90); also ed. `Abd Allāh ibn `Abd al-Muḥsin al‑Turkī and `Abd al‑Fattāḥ Muḥammad al‑Ḥulw, 15 vols. (Cairo: Hajr, 1406/1986). [↑](#footnote-ref-57)
58. See Melchert, *Formation*, 51-3; *idem*, “How Ḥanafism Came to Originate in Kufa and Traditionalism in Medina,” *Islamic Law and Society*, vi (1999), 318-47, at 342-43. [↑](#footnote-ref-58)
59. Al‑Dhahabī, *Siyar* 15:30. *Cf.* Ibn Ḥajar, *Lisān* *al‑Mīzān*, 7 vols. (Hyderabad: Majlis Dā|irat al‑Ma`ārif, 1329-31), vol. 1, 279. [↑](#footnote-ref-59)
60. Ibn Ḥibbān, *Ṣaḥīḥ Ibn Ḥibbān bi‑tartīb Ibn Balbān*, ed. Shu`ayb al‑Arna|ūṭ, 18 vols., 3rd printing (Beirut: Mu|assasat al‑Risāla, 1414/1993), vol. 1, 151. [↑](#footnote-ref-60)
61. For the three-stage scheme of regional, personal, finally guild schools, see esp. George Makdisi, “*Ṭabaqāt*-Biography: Law and Orthodoxy in Classical Islam,” *Islamic Studies* (Islamabad), xxxii (1993), 371-96. For the emergence of classical *uṣūl al‑fiqh* only in the tenth century, see Hallaq, “Was al‑Shafi`i the Master Architect?” esp. 588-91. [↑](#footnote-ref-61)
62. See Melchert, *Formation*, 139. [↑](#footnote-ref-62)
63. Schacht, *Origins*, esp. chap. 2. [↑](#footnote-ref-63)
64. Joseph Schacht, “The Schools of Law and Later Developments of Jurisprudence,” *Law in the Middle East* 1: *Origin and Development of Islamic Law*, ed. Majid Khadduri and Herbert J. Liebesny (Washington, D.C.: Middle East Institute, 1955), 57-84, esp. 63. [↑](#footnote-ref-64)
65. Makdisi, “*Ṭabaqāt*-Biography.” [↑](#footnote-ref-65)
66. Wael B. Hallaq, “From Regional to Personal Schools of Law? A Reevaluation,” *Islamic Law and Society*, viii (2001), 1-26. Earlier denials that there was ever a regional stage include M. Mustafa al‑Azami, *On Schacht’s* Origins of Muhammadan Jurisprudence (Riyadh: King Saud University, 1985, repr. Oxford: Oxford Centre for Islamic Studies and Cambridge: Islamic Texts Society, 1996), chap. 4, and Nimrod Hurvitz, “Schools of Law and Historical Context: Re-examining the Formation of the Ḥanbalī *madhhab*,” *Islamic Law and Society*, vii (2000), 37-64, esp. 42-46, 63. [↑](#footnote-ref-66)
67. Melchert, *Formation*, chap. 2; cf. Hallaq, “Regional,” 2-5, similarly Eric Chaumont, review of *Formation*, *Bulletin critique des Annales islamologiques*, xvi (2000), 71-72. [↑](#footnote-ref-67)
68. See mainly Shāfi`ī, *K. Ikhtilāf Mālik wa‑al‑Shāfi`ī*, *Umm*, vol. 7, 177-249. Denial that Medina enjoyed any special privilege became a staple of *uṣūl al‑fiqh* in the Shāfi`ī tradition, for which see most conveniently Bernard G. Weiss, *The Search for God’s Law* (Salt Lake City: Univ. of Utah Press, 1992), 220-21. [↑](#footnote-ref-68)
69. In Abū Dāwūd, *Masā|il*, 277, he expressly identifies the binding *sunna* as that of the Prophet and the Rightly Guided caliphs, not of the Prophet alone, adding that he dislikes to disagree with any of the other Companions. [↑](#footnote-ref-69)
70. Abū Dāwūd, *Masā|il*, 277. Ibn Māja includes three prophetic hadith reports for the inclusion of the Rightly Guided Caliphs, *Sunan*, Introduction, 6, *bāb ittibā` sunnat al‑khulafā| al‑rāshidīn al‑mahdīyīn*. [↑](#footnote-ref-70)
71. “All the traditionists in the *Muwaṭṭa|* are trustworthy save one,” according to al‑Fasawī, *K. al‑Ma`rifa wa‑al‑tārīkh*, ed. Akram Ḍiyā’ al‑`Umarī, 3rd edn., 4 vols. (Medina: Maktabat al‑Dār, 1410/1989), vol. 1, 425; “Mālik would relate hadith reports only from the trustworthy”: so Sufyān ibn `Uyayna, *apud* al‑Qāḍī `Iyāḍ, *Tartīb al‑madārik*, ed. Aḥmad Bakīr Maḥmūd, 4 vols. in 2 + index (Beirut: Maktabat al‑Ḥayāt, 1967-), vol. 1, 130, 150, also *apud* Dutton, *Origins*, 17. Ibn Abī Ḥātim presents a small collection of Mālik’s comments on traditionists, *Jarḥ*, vol. 1, 19-25. [↑](#footnote-ref-71)
72. See Schacht, *Origins*, chaps. 3, 4, esp. 11-12, where Schacht develops Shāfi`ī’s advocacy of hadith from the Prophet on the basis not of the *Risāla* but of *K. Ikhtilāf Mālik wa‑al‑Shāfi`ī*. [↑](#footnote-ref-72)
73. John Burton, *The Sources of Islamic Law* (Edinburgh: Univ. Press, 1990), 22-23. Qur|an-only scripturalism has been documented most carefully by Michael Cook, “`Anan and Islam: The Origins of Karaite Scripturalism,” *Jerusalem Studies in Arabic and Islam*, no. 9 (1987), 161-82, esp. 165-74. The attitude is found among Khawārij as well as Mu`tazila and fellow travellers, but Khāriji ideas evidently seemed hardly worth refuting in the ninth century. [↑](#footnote-ref-73)
74. Burton, *Sources*, 11, 22-25. [↑](#footnote-ref-74)
75. Shāfi`ī, *Risāla*, ¶¶ 282-87, where such qur|anic phrases as *mā unzila ilayk* and *awḥaynā ilayka min amrinā* are applied to the prophetic *sunna*. I treat Abū `Ubayd and Muḥāsibī in “Qur|anic Abrogation Across the Ninth Century,” forthcoming in *Islamic Legal Theory: The Alta Papers*, ed. Bernard Weiss. [↑](#footnote-ref-75)
76. Ibn Qutayba, *Ta|wīl mukhtalif al‑ḥadīth*, ed. Muḥammad Zuhrī al‑Najjār (Cairo: Maktabat al‑Kullīyāt al‑Azharīya, 1386/1966), 166 (the *sunna* brought by Gabriel), 195 (likewise, and identified with *waḥy*) = *Le traité des divergences du ḥadīt d’Ibn Qutayba*, trans. Gérard Lecomte (Damascus: Institut Français de Damas, 1962), 184, 217. [↑](#footnote-ref-76)
77. “There will come a time when a man will recline on his couch (*arīka*), relating my words (*ḥadīth*), and will say, ‘Between us and you is the Book of God. Whatever we have found it to permit, we have considered it permissible. Whatever we have found it to forbid, we have considered forbidden.’ Is not what the Messenger of God has forbidden like what God has?” Dārimī, *Sunan*, Introduction, § 49 (48 according to Wensinck’s reckoning); Shāfi`ī, *Risāla*, ¶ 295; also *idem*, *Bayān farā|iḍ Allāh*, *K. al‑Umm*, vol. 7, 264, ll. 13-15, 265, ll. 5-8. Quoted from Ibn Māja and pointed out in the *Risāla* by Burton, *Sources*, 24-25; earlier still by Schacht, *Origins*, 46. [↑](#footnote-ref-77)
78. See note 4. [↑](#footnote-ref-78)
79. Gérard Lecomte, *Ibn Qutayba* (Damascus: Institut Français de Damas, 1965), 90. [↑](#footnote-ref-79)
80. Lecomte, *Ibn Qutayba*, 90. [↑](#footnote-ref-80)
81. Ibn Qutayba, *Mukhtalif*, ed. al‑Najjār, 17, 51-52 = *Traité*, 18-19, 56-57. [↑](#footnote-ref-81)
82. For Muwaffaq and his sponsorship of traditionalist Mālikism, see Christopher Melchert, “Religious Policies of the Caliphs From al‑Mutawakkil to al‑Muq­ta­dir,” *Islamic Law and Society*, iii (1996), 316-42, at 329-30, 334-40; *idem*, “How Ḥanafism,” 340-41. Modern scholarship often refers to Ibn Qutayba as an arch-traditionalist, but some of his known theological positions were certainly closer to the rationalist pole than contemporary traditionist-jurisprudents. See Ibn Qutayba, *al‑Ikhtilāf fī al‑lafẓ*, ed. Muḥammad Zāhid al‑Kawtharī (Cairo: Maktabat al‑Qudsī, 1349), 71 (the Qur|an increate but not one’s pronunciation of it); also Ibn Qutayba, *Mukhtalif*, ed. al‑Najjār, 80 = *Traité*, 90 (traditionists will collect twenty versions of a hadith report where two would suffice, similar to Dāwīd al‑Ẓāhirī’s complaint, indignantly quoted by Abī Ḥātim, *apud* Ibn Abī Ḥātim, *Jarḥ*, vol. 3, 410-11). Traditionalist unease with Ibn Qutayba is documented by Ibn Ḥajar, *Lisān*, vol. 3, 357-59, and Gérard Lecomte, *Ibn Qutayba* (Damascus: Institut Français de Damas, 1965), pt. 2, chap. 1. [↑](#footnote-ref-82)
83. See Norman Calder, “The Law,” *History of Islamic Philosophy*, ed. Seyyed Hossein Nasr and Oliver Leaman, Routledge His­t. of World Philosophies 1, 2 vols. (London: Routledge, 1996), 979-98. [↑](#footnote-ref-83)