‘AMAL V HADÎTH IN ISLAMIC LAW
THE CASE OF SADL AL-YADAYN (HOLDING ONE’S HANDS BY ONE’S SIDES) WHEN DOING THE PRAYER

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Abstract
Most Muslims today understand the term sunna to refer to the sunna, or normative practice, of the Prophet as contained in the standard collections of Prophetic hadith. Because of the relatively late appearance of these collections, and the frequent anomalies between their contents and those of early fiqh sources, many Western scholars have concluded that the concept of the “sunna of the Prophet” is a secondary development that is not reflected in the earliest stages of Islamic law. The issue of sadl al-yadayn, where a substantial body of Sunni—and all non-Sunni—opinion holds to a judgment based on ‘amal ("practice") in overt rejection of numerous Prophetic hadiths, suggests that we have to reinstate the traditional picture of an early concept of the sunna of the Prophet, but as defined by ‘amal rather than hadith.

Introduction

In his origins, Schacht, following Margoliouth, put forward the idea that sunna as a principle of law meant originally the ideal or normative usage of the community and that only later, particularly as a result of the efforts of al-Shâfi‘i (d 204/820), did it acquire the restricted meaning of precedents set by the Prophet. Because of what Schacht considered to be a constant divergence between the “old” concept of sunna or “living tradition” of the individual schools of law, and the later concept of sunna as the “sunna of the Prophet” embodied exclusively in authentic hadiths, he concluded that these hadiths were, generally-speaking, later fabrications used as a device to give authority to the doctrines of the individual schools. For this reason he saw the concern for the sunna of the Prophet that is evident in the concern for Prophetic hadith as a later development within Islamic law.

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2 See Origins, 80

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On the Muslim side, all Sunnī Muslims—as their name implies—purport to derive their fiqh from the sunna or normative practice of the Prophet, after the primary source of the Qurʾān. However, there has never been agreement among them on how to define this sunna, for although the Hanafis, Shāfīʿis and Hanbalis effectively equate sunna with hadith, this has never been the position of the traditional Mālikis, for whom ʿamal, that is, the inherited practice of the people of Madīna, is seen as a more trustworthy source of sunna, and therefore higher than hadith. Thus it is that from the Mālikī point of view there are not only many hadiths which do not represent sunna, but also many aspects of sunna which are not recorded in hadith, which is to say not only that hadith may or may not record sunna but also that sunna may or may not be recorded by hadith. Since the Mālikī school (madhhab) represents the earliest and most conservative form of Islamic law, namely, that of Madīna in the first and second centuries AH, an understanding of this attitude of theirs to sunna, hadith and ʿamal in contrast to that of the later schools is crucial to an understanding of the nature and development of early Islamic law.

In this article I investigate one specific instance of ʿamal being preferred to hadith by Mālik and the Madinans, namely, the issue of sadl ʿa qabī, i.e. whether the hands should be held freely by one’s sides while doing the prayer, or whether they should be held in front of one with the right hand clasping the left, either above or below the navel. This is a particularly interesting example in that it shows a concerted body of later Sunnī opinion against the Mālikīs on this point, but agreement with them on the part of certain earlier Sunnī authorities and all the non-Sunnī sects. Within the Sunnī camp what we find is a basic disagreement on how to define sunna, with the simple claim of the Mālikīs being that the non-textual source of ʿamal is a better representative of sunna than the textual source of authentic hadith. The corollary of this claim is that, contrary to the views of both Schacht and al-Shāfīʿi and their followers among modern Western and traditional Muslim scholars respectively, there is a concept of the sunna of the Prophet that is accepted by (certain) traditional Muslim scholars that does not necessarily have anything to do with the collections of hadith that are later assumed to be the sole repositories of “the sunna”.

Furthermore, although this detail of sadl al-yadayn comes under the heading of the more private zone of acts of worship (ʿibādāt) rather than the more public one of interpersonal dealings (muʿāmalāt), it nevertheless illustrates a principle that applies throughout Islamic law.
Indeed, it is precisely about the juxtaposition of theory or, we might say, a theoretical approach (the interpretation of what was recorded as texts, or *hadith*) and practice (what was transmitted as action, or *'amal*), always an area of tension throughout the history of Islam. It helps us understand what *sunna* originally meant in the discourse of the Muslims and illustrates how an essential change in the theoretical definition of the word led to an essential change in the development and practical expression of the law.

The case of sadl al-yadayn

In his *Muwatta*’, Mālik (d 179/795) records the following two texts—understood to be Prophetic *hadiths*—in a chapter entitled “Putting One Hand Over the Other When Doing the Prayer”

Yahyā told me, from Mālik, that ‘Abd al-Karīm b Abī al-Mukhāriq al-‘Baṣrī said “Among the words of prophecy (*min kalām al-nubuwā*) are If you do not feel ashamed, do as you wish, putting the hands one over the other when doing the prayer, that is, putting the right over the left, and hurrying to break the fast and delaying the pre-dawn meal”

He also told me, from Mālik, from Abū Hāzīm b Dinār, that Sahl b Sa’d said “People used to be told that a man should put his right hand over his left arm when doing the prayer.” Abū Hāzīm added, “As far as I know, he traces that back [i.e. to the Prophet]”³

In the *Mudawwana*, on the other hand, Ibn al-Qāsim (d 191/806) relates that Mālik said, about putting the right hand over the left when doing the prayer “I do not know of this practice as far as obligatory prayers are concerned (*lā a’rīfū dhālika fī al-farīḍa*), but there is no harm in someone doing it in voluntary prayers (*nawāfīl*), if he has been standing for a long time, in order to make things easier for himself.” Saḥnūn, the transmitter of the *Mudawwana*, then records a *hadith* from Ibn Wāḥib, from Sufyān al-Thawrī, from “more than one (*ghayr wāḥid*)” of the Companions of the Prophet, that they had seen the Prophet doing the prayer having put his right hand over his left⁴

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³ Mālik b Anās, *Muwatta*’, transmission of Yahyā b Yahyā al-Laythī, (Cairo: Maṣba‘at Muṣṭafā al-Bābī al-Halabi, 1370/1951) [hereinafter *Muw*], vol. i, 133

⁴ *Al-Mudawwana al-kubrā*, opinions of Mālik, Ibn al-Qāsim and others, compiled by Saḥnūn (Cairo: Maṣba‘at al-Sa‘āda, 1323-24 [1905-06]) [hereinafter *Mud*], vol. i, 74; cf Ibn Rushd [al-Jadd], *al-Bayān wa’t-taḥṣīl*, ed. Muḥammad Ḥajīj (Beirut: Dār al-Gharb al-Islāmī, 1404-07/1984-87), vol. xviii, 71. There are four other views recorded from Mālik, namely: (i) the transmission of the Egyptian Ashāb (d 204/819) and the Madīna Ibn Nāfī’ (d 186/802) in the *Uṣūliyya*; that both *sadl* and *qabād* are equally acceptable in both obligatory and voluntary prayers.
If we look at the classical collections of fiqh, we find that most of the Mālikis go by the judgment in the Mudawwana, i.e. that sadh is preferable (although there are some Mālikis who do not hold this view), but that the other surviving Sunni madhhabs—the Hanafis, Shāfiʿis and Hanbalis—are agreed on qabd. The non-Sunnī madhhabs, however—the Ithnāʿ Ashari Shīʿa, the Zaydis, the Ismāʿīlis and the Ibadīs (Khawārij)—are all agreed, along with the majority of the Mālikis, on sadh.

It is this seeming discrepancy in the Sunni position and the implications behind it that are the subject of this essay.

(see Ibn Rushd, Bayân, vol i, 394-95, vol xviii, 71; Mud vol i, 74, n 1; Muhammad ʿAbd b al-Shaykh Ḥusayn, al-Qawālīf fi taʿāyūd sunnat al-sadh (Makkā: Matbaʿat al-Tarāqī al-Mājidiyya, 1329 [1911]), 23, quoting al-Bannānī’s Ḥāšiya); (ii) the transmission from the Iraqi followers of Mālik that qabd should not be done in either (see al-Bāji, al-Muntaqā, sharh al-Muwatta’ (Cairo: Maṭbaʿat al-Saʿāda, 1331 [1913]), vol i, 281; Muhammad ʿAbd, Qawl, 19, 21, quoting al-Abīs’s sharh on Muslim and Khalīl’s Tawdīḥ); (iii) a transmission specifically from the Basrans among the Iraqis that sadh is recommended for obligatory prayers and qabd for voluntary ones (see Muhammad ʿAbd, Qawl, 20-21, quoting al-Nawawī’s sharh on Muslim); (iv) the transmission of the Madīnīs Mutarrīf (d 214/829) and Ibn al-Mājishūn (d 212/827) in the “Wādīha,” as also of the Egyptian Ibn ʿAbd al-Hakam (d 214/829) and, according to al-Bāji, one of two transmissions from the Iraqis, that qabd is recommended in both (see Ibn Rushd, Bayān, vol i, 395, vol xviii, 72; Mud vol i, 74, n 1; al-Bāji, Muntaqā, vol i, 281; Muhammad ʿAbd, Qawl, 19, 23, quoting al-Zayn al-Ṭarāqī’s sharh on al-Tirmidhi and al-Bannānī’s Ḥāšiya) However, in cases of disagreement it is Ibn al-Qāsim’s transmission from Mālik, or more generally that of the Egyptians, that is usually given preference (see Ibrāhīm al-Zaylaʿī, Introduction to Masāʾil la yuʿdharu fiḥā bi-l-jahl, sharh al-ʿalāma al-ʿAmī ʿalā manṣūmat Bahram (2nd ed., Beirut: Dār al-Gharb al-Islāmi, 1406/1986), 10; Muhammad ʿAbd, Qawl, 26-27, 34; also below, n 85)

5 For the standard Mālikī position of later times, see, for example, Khalīl, Mukhṭasār Khāliṣ, ed Tāhir Ahmad al-Zāwī (Cairo: Dār Iḥyāʾ al-Kutub al-ʿArabiyah, n d), 29, where “ṣadd yadayth” is given as one of the recommended aspects of the prayer. Among Mālikī authorities preferring qabd, Ibn ʿAbd al-Barr (d 463/1071), al-Lakhmī (d 478/1085), Ibn Rushd [al-Jadd] (d 520/1126), Abū Bakr b al-ʿArabī (d 543/1148), al-Qāḍī ʿIyāḍ (d 544/1149), Ibn ʿAbd al-Salām (d 660/1262), al-Qarāfī (d 684/1285) and Ibn Juzayy (d 741/1340) are mentioned by Muhammad ʿAbd (Qawl, 23).


The hadith texts

Since the Sunnis, as we have noted, all purport to base their fiqh on "the sunna," understood to be the sunna of the Prophet, and since most of them consider this sunna to be recorded in the books of hadith, particularly the "Six Books" of al-Bukhārī, Muslim, Abū Dāwūd, al-Tirmidhī, al-Nasā'ī and Ibn Mājah, we shall first see what these books have to say about qabād and sadl, having already noted the two hadiths that Mālik records on the subject.

Al-Bukhārī (d 265/870)

In his Sahih, al-Bukhārī records one hadith on the subject, namely, the same that Mālik records from Sahl b Sa'd in the Muwatta' (Al-Bukhārī relates it from Mālik, via al-Qa'ānabi).\(^8\)

Muslim (d 261/875)

In his Sahih, Muslim records a hadith from Wā'il b Hujr who describes how, when he visited Madīna, he saw the Prophet doing the prayer with his right hand over his left.\(^9\)

Abū Dāwūd (d 275/888)

Abū Dāwūd, in his Sunan, records nine hadiths indicating qabād—three versions of the Wā'il hadith, a report from Ibn al-Zubayr\(^10\) to the effect that qabād is "part of the sunna", a hadith from Ibn Mas'ūd to the effect that the Prophet saw him praying with his left hand over his right and so took hold of his right hand and put it over his left instead, a report from 'Ali that it is sunna to put one hand over the other when doing the prayer, below the navel, another to the effect that 'Ali used to do the prayer with the right hand holding the left, but above the navel, one from Abū Hurayra to the effect that qabād should be below the navel, and a mursal hadith from Tāwūs that the Prophet used to pray with qabād. There is also a report from Sa'id b Jubayr that qabād should be

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above the navel and one from Abū Mijlaz that it should be below the navel.

Al-Tirmidhī (d. 279/892)
Al-Tirmidhī, in his al-Jāmi' al-ṣaḥīḥ (also known as al-Sunan) records a hadith from Hulb al-Tā'ī to the effect that the Prophet used to lead them in prayer and hold his left hand with his right. He also mentions that there are hadiths on the subject from Wā'īl b. Hujr, Ghūṭayf b. al-Hārith, Ibn 'Abbās, Ibn Mas'ūd and Sahl b. Sa'd.

Al-Nasā'ī (d. 303/915)
In his Sunan, al-Nasā'ī records three hadiths on qabd two versions of the Wā'īl hadith and a hadith from Ibn Mas'ūd similar to the one that Abū Dāwūd records.

Ibn Mājah (d. 273/886)
In his Sunan, Ibn Mājah records three hadiths on the subject the hadith from Hulb as in al-Tirmidhī, a version of the Wā'īl hadith, and a version of the Ibn Mas'ūd hadith similar to that recorded by Abū Dāwūd and al-Nasā'ī but using the verb "passed by" rather than "saw."

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11 See Abū Dāwūd, Sunan Abi Dāwūd, on the margin of al-Zurqānī, Shāh al-Muwaṭṭa' (Cairo: al-Maṭba'a al-Khayriyya, 1310/1893), vol. i, 201, 202, 210-11.
12 For the confusion surrounding this man's name, see Ibn 'Abb al-Barr, al-Iṣṭi'i'āb fi maṭrajat al-aṣḥāb (Hyderabad: Dā'īrati al-Ma'ārif, 1336 [1917]), vol. ii, 516; idem, Tamhid, vol. xx, 73. Al-Tirmidhī mentions only "Ghūṭayf b. al-Hārith." Ibn Abī Shayba gives "al-Hārith b. Ghūṭayf or Ghūṭayf b. al-Hārith" (see Ibn Abī Shayba, al-Muṣannaf [Hyderabad: al-Maṭba'a al-'Aziziyya, 1386/1966], vol. i, 390; also below, p. 22), as does al-Ṭabarānī (al-Mu'jam al-kabīr [2nd ed., Mawsil: Maṭba'at al-Zahrā' al-Haditha, 1984], vol. iii, 276; also below, p. 20). The Musnad of Ahmad b. Ḥanbal includes hadiths under the headings "Ghūḍayf b. al-Hārith" and "Ghūṭayf b. al-Hārith" and then gives the options "al-Hārith b. Ghūḍayf" and "al-Hārith b. Ghūṭayf" respectively in the actual isnāds (see Ahmad, al-Musnad [Cairo: al-Maṭba'a al-Maymaniyya, 1313 (1895)], vol. iv, 105, vol. v, 290; also below, p. 19), although Ibn 'Abb al-Barr quotes him as saying that the name is "al-Hārith b. Ghūṭayf" (see Ibn 'Abb al-Barr, Tamhid, vol. xx, 73). Al-Bayhaqi gives only "al-Hārith b. Ghūḍayf" (see al-Bayhaqi, al-Sunan al-kubi'ā (Hyderabad: Dā'īrati al-Ma'ārif, 1344 [1925-26]), vol. ii, 29, n. 1; also below, p. 21).
This is what we find in the Six Books referred to above. To these can be added the following.

Aḥmad ibn Hanbal (d 241/855)
In his Musnad, Aḥmad records hadiths on qabād similar to those mentioned above from ‘Ali ("part of the sunna is . . ."), Sahl b Saʿd, Wāʾil b Hujr (11 versions) and Hubl (6 versions) He also records three versions of one from Ghudayfī/Ghūṭayfī b al-Ḥārith or al-Ḥārith b Ghudayfī/Ghūṭayfī16 ("Whatever I forget, I will never forget that I saw the Messenger of Allah, may Allah bless him and grant him peace, doing the prayer having put his right hand over his left"), and one from Jābir similar to that from Ibn Masʿūd mentioned above to the effect that the Prophet once passed by someone who was praying with his left hand over his right and so put his right hand over his left instead.17

Al-Dārīmī (d 255/923)
In his Sunan (or Musnad), al-Dārīmī records a version of the hadith from Wāʾil b Hujr.18

Al-Bāżzār (d 292/905)
In his Zawāʿid, al-Bāżzār records a hadith from Shaddād b Shurahbil similar to that from "al-Ḥārith b Ghūṭayfī" recorded by Aḥmad ("Whatever I forget, I will never forget . . .etc")19

Ibn Khuzayma (d 311/924)
In his Sahih, Ibn Khuzayma records four versions of the Wāʾil hadith.20

Ibn Hibbān (d 354/965)
Ibn Hibbān records two hadiths on the subject in his Sahih a version of the Wāʾil hadith and a "three things" hadith from Ibn ʿAbbās.21 A "three things" hadith is one which, like the hadith that Mālik records . . .

16 For the uncertainty about this man’s name, see above, n 12.
17 See Aḥmad, Musnad, vol 1, 110 (‘Ali); vol iii, 381 (Jābir); vol iv, 105, 290 ("Ghudayfī etc."); 316-19 (Wāʾil); vol v, 226-27 (Hubl), 336 (Sahl).
from ‘Abd al-Karim b Abī al-Mukhāriq, lists three things—one of which is qabḍ—as being part of the practice of the prophets.)

Al-Ṭabarānī (d 360/971)
In his Kābīr (i.e al-Mu'jam al-kabīr), al-Ṭabarānī records similar hadiths to those recorded by Aḥmad from “al-Hārith b Ghuṭayf,” by al-Bazzār from Shaddād b Shurahbil, and by Ibn Hibbān from Ibn ‘Abbās (two versions) He also records versions of the “three things” hadith from Ya‘lā b Murra and Abū al-Dardā’, a hadith from ‘Uqba b Abī ‘Ā’isha to the effect that he saw the Companion ‘Abdallāh b Jābir al-Bayāḍi doing the prayer with qabḍ, and a hadith from Mu‘ādh to the effect that the Prophet “would let his hands rest by his sides (arsalāhumā) after saying the initial takbīr and then be silent for a while, and that sometimes (rubba mā) he would put one hand over the other.”22 According to al-Haythami, al-Ṭabarānī also records, in his Awwāf, the same hadith from Jābir that Aḥmad records.23

Al-Dāraqūṭnī (d 385/995)
Al-Dāraqūṭnī, in his Sunan, records fifteen hadiths on the subject of qabḍ two versions of the Wā’il hadith, the same hadiths from Ibn Mas‘ūd that Abū Dāwūd and al-Nasā‘ī record plus a third descriptive hadith from him to the effect that the Prophet would hold his left hand in his right while doing the prayer, a version of the Hūl hadith similar to one recorded by Aḥmad, two versions of the “part of the sunna” hadith recorded by Abū Dāwūd and Aḥmad from ‘Ali, as also a tafsīr hadith from him to the effect that the command wa-nhār in the Qur’ānic phrase fa-sallī li-rabbika wa-nhār (Q 108:2) refers to putting the right hand over the left in prayer, “three things” hadiths from ‘Ā’isha, Ibn ‘Abbās and Abū Hurayra, as well as a “part of the sunna” hadith from the latter, the “passed by” hadith from Jābir recorded by Aḥmad and al-Ṭabarānī, and a hadith of rather indeterminate meaning from Anas to the effect that when the Prophet stood for the prayer he would say

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22 See al-Ṭabarānī, Mu’jam, vol iii, 276 (“al-Hārith b Ghuṭayf”); vol viii, 272-73 (Shaddād); vol xi, 139 (Ibn ‘Abbās); vol xx, 63 (Mu‘ādh); vol xxii, 216-17 (Ya‘lā). For the hadith from Abū al-Dardā’, see al-Haythami, Majma‘ al-zawā’id (Cairo: Maktabat al-Quds, 1352 [1933-34]), vol ii, 105; al-Šuyūṭī, Tanwīr al-kawālik, on the margin of Muw., vol i, 133. For the hadith from ‘Uqba b Abī ‘Ā’isha, see al-Haythami, Majma‘, vol ii, 105; Ibn Hajar, al-Isāba fi tamiyz al-sahāba (Cairo: Maṭba‘at al-Sa‘āda and al-Maṭba‘a al-Shara‘fiyya, 1323-25 [1905-07]), vol iv, 45
23 See al-Haythami, Majma‘, vol ii, 105
“Like this and like this” on his right and his left (qāla hākadhā wa-hākadhā ‘an yamīnihi wa-‘an shīmālīhi) 24

Al-Bayhaqī (d 458/1066)
Among later works, special mention should be made of the Kitāb al-Sunan al-kubrā of al-Bayhaqī. This extensive compendium, which duplicates much of the material referred to above, contains a total of twenty-five reports from thirteen Companions on the subject of qabd, namely five versions of the hadīth from Wā’il, three versions of the descriptive and/or “part of the sunna” hadīths from ‘Ali and four of the tafsīr hadīths from him, tafsīr hadīths of the same ilk from Ibn ‘Abbās and Anas, “three things” hadīths from Ibn ‘Umar, Ibn ‘Abbās, Abū Hurayra and ‘Ā’isha, a “part of the sunna” hadīth from Abū Hurayra, standard versions of the hadīths from Sahl b Sa‘d, Ibn Mas‘ūd, Huib, al-Hārith b Ghudayf (sic), Shaddād b Shurāhbil and Ibn al-Zubayr, and also the reports on the subject from Sa‘d b Jubayr and Abū Mījāz referred to by Abū Dāwūd 25 In addition, al-Bayhaqī’s commentator, Ibn al-Turkmānī (d c 750/1349), quoting Ibn Hazm, mentions a “three things” hadīth from Anas 26

The above selection—and there are many other possible sources 27—represents the “classical” collections of hadīth. However, mention should also be made here of two important “pre-classical” collections, namely, the Muṣannaf works of ‘Abd al-Razzāq al-Ṣan‘ānī (d 211/827) and Ibn Abī Shayba (d 235/849)

‘Abd al-Razzāq
As far as I have been able to ascertain, ‘Abd al-Razzāq’s Muṣannaf contains no material on qabd, although there is a short section of Successor material on sadl 28 I am not sure of the reason for this hiatus, if hiatus it be

Ibn Abī Shayba
Ibn Abī Shayba records fifteen reports on the subject of qabd in his Muṣannaf: two versions of the Wā’il hadīth, three reports from ‘Ali (a

24 See al-Dārāqūṭī, Sunan (Beirut: ‘Ālam al-kutub, n.d.), vol 1, 283-87
25 See al-Bayhaqī, Sunan, vol ii, 26, 28-32
26 See Ibn al-Turkmānī, al-Jawhar al-naqī (on the margin of al-Bayhaqī’s Sunan), vol ii, 32
27 Ibn ‘Abd al-Barr’s Tamhīd (vol xx, 71-9), for instance—to mention but one source—duplicates much of the above material
tafsir hadith, a description hadith, and a “part of the sunna” hadith), the hadiths from al-Hārith b. Ghuṭayf (or Ghuṭayf b. al-Hārith), Hubl and Abū ‘l-Dardā mentioned above, a mursal hadith from al-Hasan [al-Baṣri] (“It is as if I am looking at the learned men of the Bani Isrā’il doing the prayer with their right hands over their left”), a mursal hadith from Abū ‘Uthmān [al-Nahdi] of the “passed by” type, similar to those from Jābir and Ibn Mas‘ūd mentioned above, and reports about the subject from the Successors Ibrāhim [al-Nakha’i], Abū Miṣlāz, Abū Ziyād the mawlā of the Āl Darrāj (“Whatever I forget, I will never forget”), referring to Abū Bakr), Mujāhid and Abū al-Jawzā’.

As in ‘Abd al-Razzāq’s Muṣannaf, there is a section on sadl (referred to as irsāl al-yadayn) with material from various Successors and, in this instance, one Companion.

What is immediately noteworthy from the above is the complete absence of any pre-sadl material in the “classical” collections but its presence in the form of (mainly) Successor hadith in the “pre-classical” collections of ‘Abd al-Razzāq and Ibn Abī Shayba (and of course the

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29 This particular hadith might lead to the consideration that there is an element of mukhālafat ahl al-kitāb in the question of sadl v qabāl, as, for instance, there is with the question of raʾf al-yadayn (see Maria Isabel Fierro, “La polémique à propos de raʾf al-yadayn fi l-salāt dans Al-Andalus,” Studia Islamica, vol v [1987], 69-70) However, apart from this single hadith, which indicates a seemingly positive attitude to the ahl al-kitāb, I have found nothing in either the traditional literature or in Western scholarship on the subject (e g Ignaz Goldziher, “Usages juifs d’après la littérature des musulmans,” Revue des Études Juives, vol xxviii [1894], 75-94; Arent Jan Wensing, Muhammad and the Jews of Medina, tr and ed Wolfgang Behn [Freiburg im Breisgau: Klaus Schwarz Verlag, 1975], 72-103 [a French translation of this section of the book, by G H Bouquet and G W Bouquet-Mirandolle, was published under the title L’influence juive sur les origines du culte musulman in Revue Africaine, vol xcvi (1954), 84-112; the original Dutch version of the book was first published as Mohammed en de Ioden te Medina in Leiden in 1908]; Georges Vajda, “Juiifs et musulmans selon le hadith,” Journal Asiatique, vol ccxxxix [1937], 57-127, esp 84) to suggest that this is the case in this issue.

30 The presence of Abū ‘Uthmān in the isnād of this particular version links it to the Ibn Masʿūd hadith related by Abū Dāwūd, Ibn Mājah, Ahmad and al-Dāraqūnī, but the third-person referent of Ibn Abī Shayba’s version (“[He] passed by a man”) rather than the first-person referent of the Ibn Masʿūd hadith (“[He] saw/passed by me”) links it rather to the Jābir hadith related by Ahmad, al-Ṭabarānī and al-Dāraqūnī (“[He] passed by a man”). A comparison between isnād and content as regards this and the other hadiths on the subject would make an interesting future study.


32 See Ibn Abī Shayba, Muṣannaf, vol i, 391-92; also below, p 27. For the identification of “Ibn al-Zubayr” as the Companion ‘Abdallāh b. al-Zubayr, see above, n 10.
fiqh text from Mālik in the Mudawwana, ‘Utbīyya, etc) We shall return to the significance of this point later

If we organise this material according to the Companions from whom it is transmitted (I am assuming for the purposes of the present discussion that the isnāds are an essentially accurate representation of the transmission process), we arrive at the following systematization (arranged roughly in order of their appearance above)

(i) the hadīth from Sahl b Sa‘d (“People used to be told etc”) recorded by Mālik, al-Bukhārī, Aḥmad and al-Bayhaqī, and referred to by al-Tirmidhī

(ii) the hadīth of Wā’il b Hujr (“I saw the Messenger of Allah etc”) recorded in various versions by Ibn Abī Shayba, Muslim, Abū ǖṣūl, al-Nasā’ī, Ibn Mājah, Aḥmad, al-Dārīmī, Ibn Khuzayma, Ibn Hibbān and al-Bayhaqī, and referred to by al-Tirmidhī

(iii) Ibn al-Zubayr’s “part of the sunna” hadīth recorded by Abū ǖṣūl and al-Bayhaqī

(iv) two hadīths from Ibn Mas‘ūd, i.e. the “passed by” type hadīth (“The Prophet saw me/passed by me etc”) recorded by Abū ǖṣūl, al-Nasā’ī, Ibn Mājah, al-Dāraquṭnī and al-Bayhaqī, and the descriptive hadīth recorded by al-Dāraquṭnī

(v) three hadīths from ‘Ali, i.e. the “part of the sunna” hadīth recorded by Ibn Abī Shayba, Abū ǖṣūl, Ahmad and al-Dāraquṭnī, the descriptive hadīth about him (“I saw ‘Ali/‘Ali used to etc”) recorded by Ibn Abī Shayba, Abū ǖṣūl and al-Bayhaqī, and the tafsīr hadīth recorded by Ibn Abī Shayba, al-Dāraquṭnī and, in various versions, al-Bayhaqī

(vi) three hadīths from Abū Hurayra, i.e. the “sunna” hadīth recorded by Abū ǖṣūl, al-Dāraquṭnī and al-Bayhaqī, the “three things” hadīth recorded by al-Dāraquṭnī and al-Bayhaqī, and, in addition to these two, a descriptive hadīth recorded from him by Ibn ‘Abd al-Barr to the effect that the Prophet would put his right hand over his left after saying the initial takbir in the funeral prayer (janāza) 33

(vii) the hadīth from Hulb (“I saw the Messenger of Allah /The Messenger of Allah used to etc”) recorded by Ibn Abī Shayba, al-Tirmidhī, Ibn Mājah, Aḥmad, al-Dāraquṭnī and al-Bayhaqī

(viii) the hadīth of al-Hārith b Ghuṭayf (or Ghuṭayf b al-Hārith, etc) (“Whatever I forget, I will never forget etc”) recorded by Ibn

33 See Ibn ‘Abd al-Barr, Tamhid, vol xx, 79
Abī Shayba, Abīmad, al-Ṭabarāni, al-Daraquṭnī and al-Bayhaqi, and referred to by al-Tirmidhi

(ix) the hadīth of Jābir ("The Messenger of Allah passed by a man etc") recorded by Abīmad, al-Ṭabarāni and al-Daraquṭnī

(x) the hadīth of Shaddād b Shurahbil ("Whatever I forget, I will never forget etc") recorded by al-Bazzār, al-Ṭabarāni and al-Bayhaqi

(xi) two hadīths recorded from Ibn ‘Abbās, i.e. the "three things" hadīth recorded by Ibn Hibbān, al-Ṭabarāni, al-Daraquṭnī and al-Bayhaqi, and the tafsīr hadīth recorded by al-Bayhaqi

(xii) the "three things" hadīth recorded from Ya‘lā b Murra by al-Ṭabarāni

(xiii) the "three things" hadīth recorded from Abū al-Dardā’ by Ibn Abī Shayba and al-Ṭabarānī

(xiv) the hadīth of Mu‘ādh recorded by al-Ṭabarānī

(xv) the "three things" hadīth recorded from ‘Ā‘isha by al-Daraquṭnī and al-Bayhaqi

(xvi) three hadīths from Anas, i.e. the tafsīr hadīth recorded by al-Bayhaqi, the "three things" hadīth recorded by al-Bayhaqi’s commentator, al-Turkmānī, and the indeterminate hadīth recorded from him by al-Daraquṭnī

(xvii) the "three things" hadīth recorded from Ibn ‘Umar by al-Bayhaqi

(xviii) the mursal hadīth (descriptive) from Tāwūs recorded by Abū Dāwūd

(xix) the mursal hadīth from al-Hasan ("It is as if I am looking at the learned men of the Bani Isrā’il etc") recorded by Ibn Abī Shayba

(xx) the mursal hadīth of the “passed by” type from Abū ‘Uthmān al-Nahdi recorded by Ibn Abī Shayba (This should probably come under either the “passed by” hadīth of Jābir or Ibn Mas‘ūd, see above, n 30)

(xx) the hadīth of ‘Uqba b Abī ‘Ā‘isha about ‘Abdallāh b Jābir al-Bayḍāi praying with qabad recorded by al-Ṭabarānī

(xxii) the descriptive report from Abū Ziyād about Abū Bakr ("Whatever I forget, I will never forget etc") recorded by Ibn Abī Shayba
[NOTE This material can also be organised according to theme If we do so, the following six categories emerge

(i) the description category ("I saw etc"), under which come the numerous transmissions from Wāʾil b Hujr, the hadīth of Hulb, one about ‘Ali, one from Ibn Masʿūd, the hadīth from Muʿādh, the "indeterminate" hadīth from Anas, the hadīth from Tawús and, as a sub-category, those hadīths which begin with the formula, "Whatever I forget, I will never forget etc," which include the hadīths from "al-Hārith b Ghuṭayfī" and Shaddād b Shuraḥbil and the Companion hadīths about 'Abdallāh b Jābir al-Bayḍāḥī (from 'Uqba b Abī 'Āʾisha) and Abū Bakr (from Abū Ziyād). Under this category also comes the funeral-prayer hadīth of Abū Hurayra and, perhaps, the mursal hadīth from al-Hasan ("It is as if I am looking at the learned men of the Bani Isrāʾīl etc")

(ii) the "passed by" category, under which come the hadīths of Jābir, one of two from Ibn Masʿūd, and the mursal hadīth from Abū ‘Uhmān al-Nahālī

(iii) the "part of the sunna" category, under which come the hadīths of this type recorded from ‘Ali, Abū Hurayra and Ibn al-Zubayr

(iv) the "three things" category, under which come the hadīths of 'Āʾisha, Ibn ‘Umar, Abū al-Dardā', Yaḥyā b Murra, one of three hadīths recorded from Abū Hurayra, one of three hadīths recorded from Anas, one of two hadīths recorded from Ibn ‘Abbās, and the hadīth recorded by Mālik from ‘Abd al-Karīm b Abī al-Mukhāriq

(v) the tafsīr category, under which come the hadīths of this type recorded from ‘Ali, Ibn ‘Abbās and Anas

(vi) the "people used to be told" category of the Sahl b Sa’d hadīth which has no obvious parallel in any of the other hadīths on the subject]

There are thus at least thirty distinct, albeit closely-related, hadīths (in the sense of reports from either the Companions or the Prophet) from or via nineteen Companions and three Successors that seem to indicate that it is desirable, if not obligatory, to do the prayer with qabūd 34

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34 This at least is the assumption of those such as al-Shawkānī (d. 1250/1832) and Muhammad al-Makki b ‘Azzūz al-Tūnisi (d. 1334/1916) who use this number to bolster their arguments for qabūd Al-Shawkānī (Nayl, vol ii, 201, 202) refers to "twenty hadīths from eighteen Companions" (he fails to include either Anas or Abū Bakr but includes Hudhayfa) and two Successors and uses the words mashrū‘iyya (part of the shari‘a) and wujūb (obligatory) to describe qabūd Muhammad al-Makki, in his Risāla, refers to "twenty hadīths from about eighteen Companions" and uses the word maṭlūbiyya (desirable, required) to describe qabūd
Nevertheless, the early Sunni fuqahā' were by no means agreed on the desirability of qabd when doing the prayer

The views of the fuqahā'

Speaking first of the four surviving Sunni madhhab, we have already noted that the Hanafis, Shāfi‘is and Hanbalis, as well as some of the Mālikis, take the view that the prayer should be done with qabd. According to Ibn ‘Abd al-Barr, this was also the view of several other major Sunni authorities, among whom he mentions Suṭyān al-Thawrī (d 161/778), al-Ḥasan b Ṣāliḥ (d 167/783-4), Ishāq [b Rāhawayh] (d 238/853), Abū Thawr (d 240/854), Abū ‘Ubayd (d 224/838), Dāwūd b Ḥālib (d 270/884) and al-Ṭabarī (d 310/923) All these people, he says, take this view because it is “a sunna that has been laid down (sunna masnūna),” by which he and they clearly mean that it is something about which there are formal reports from the Prophet which thus indicate his sunna and which thus cannot be gainsaid.

However, we have also noted that Mālik (according to Ibn al-Qāsim’s report from him in the Mudawwana and the ‘Utbiyya) and, following him, most of the Mālikis, take the view that qabd is disliked in obligatory prayers (rather, sadl is what is required), although qabd is acceptable in voluntary prayers if someone has been standing in the prayer for a long time and wants to make things easier for himself. Ibn ‘Abd al-Barr tells us that this was not only the view of Mālik but also that of his Egyptian contemporary al-Layth b Sa‘d (d 175/791) (This is significant because we know that al-Layth, despite his great respect for Mālik and Madinan fiqh, was not averse to delivering judgments against the Madinan position if he felt the reasoning behind them to be weak, as his letter to Mālik rejecting several Madinan judgments clearly shows.) Ibn ‘Abd al-Barr also tells us, quoting ‘Abd al-Razzāq, that this was the way Ibn Jurayj (d 150/767) used to

(see Muhammad ‘Ābid, Qawwāl, 1)


36 See Ibn ‘Abd al-Barr, Tamhid, vol xx, 74-75; also al-Shawkānī, Nayl, vol ii, 201 (quoting al-Nawawi); Muhammad ‘Ābid, Qawwāl, 19 (quoting al-‘Ayni’s commentary on al-Bukhārī and al-Zayn al-‘Irāqī’s commentary on al-Tirmidhi)

pray, and that both *sadd* and *qabd* were considered equally acceptable by al-Azwā'ī (d 154/774) and 'Ātā' [b. Abī Rabāh] (d 114/732). In 'Abd al-Razzāq's *Musannaf* we also find a report that Ibrāhīm [al-Nakha'ī] (d 96/715) used to pray with *sadd*, which is also recorded by Ibn Abī Shayba who, in his section on *sadd*, adds reports to the same effect from al-Hasan [al-Baṣrī] (d 110/728), ['Abdallāh] b. al-Zubayr (d 73/692), Ibn Sirīn (d 110/728), Sa'id b. al-Musayyab (d c. 94/713) and Sa'id b. Zubayr (d 95/714). Ibn Abī Shayba also includes a report from Ibrāhīm to the effect that there is no harm (*lā ba's*) in *qabd*; thus echoing the view of al-Azwā'ī and 'Ātā' mentioned above. He also includes a report from Mujāhid (d 104/722) which, although included by him in the section on *qabd*, is construed by Ibn 'Abd al-Barr to be an anti-*qabd* report.

We thus have two groups among the Sunnis those who say, following the outward interpretation of the various *hadīths* on the subject, that *qabd* is the preferable way, and those who, for some other reason, say it should be *sadd*. (For the moment the unanimous Shi'a/Khāwārij position on *sadd* need not concern us.)

The question we then have to ask is Why is it that this second group should prefer *sadd*? More particularly Why is it that Mālik, who himself includes two *hadīths* in his *Muwaṭṭa* ostensibly indicating *qabd*, should nevertheless—according to the dominant opinion related from him—prefer *sadd*?

The answer to this question lies in the definition of the word "*sunna*" and the extent to which *sunna* is or is not reflected by *hadīth*.

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40 For this identification, see above, n. 10.


Sunna or ḥadith?

For the average Muslim today, sunna is effectively what is recorded in the books of hadith that are assumed to contain all the reported sayings, acts and tacit approvals of the Prophet, otherwise known as his sunna. More specifically, it is what is recorded in the two Sahih collections of al-Bukhārī and Muslim, although extended to include also the other four of the Six Books and others like them, according to the awareness of the individual concerned.

Two things, however, should be noted about these compilations. Firstly, almost all of them date from the middle of the third century (Hijrī) or later. That is, the men who compiled them were working in or around the middle of the third century or later. The important exceptions to this rule are the collections of Mālik (d. 179/795), ‘Abd al-Razzāq (d. 211/827) and Ibn Abī Shayba (d. 235/849), who all lived and worked in the second part of the second or early part of the third century.

Secondly, if we compare these two types of hadith-material—the earlier and the later—we find one major difference. The earlier works contain considerable material from the Successors as well as from the Prophet and the Companions, whereas the later works consist almost entirely of “Prophet-only” material (with some allowance for the first four caliphs). In other words, what one could describe as a massive editing process has taken place, which we can date to somewhere in the first half of the third century. Before that date the choice of material is very wide, after that date it is almost exclusively Prophetic.

The date of the Muwatta’

At this point a short digression is necessary before continuing with our main theme. Calder has recently expressed doubt as to second century nature of what is normally considered to be Mālik’s Muwatta’, suggesting that it is a Cordoban production of the latter part of the third century. My own view is that the Muwatta’ is not only a product of Mālik in Madina before his death in 179 AH, but was also substantially in place before the year 150 AH, thus making it our earliest extant text of this nature. The evidence for this is fourfold.

Firstly, there exists a papyrus fragment of the text which Abbott dates by textual evidence—particularly the characteristics of the script, the absence of glosses, the unsystematic order of the hadiths and, most

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44 See Norman Calder, Studies in Early Muslim Jurisprudence (Oxford: Clarendon Press, 1993), 38, 146
significantly in her opinion, the consistent use of ‘an in the isnāds together with the absence of any initial transmission formula such as qāla, akhbarani, haddathani, etc—to Mālik’s own day in the second half of the second century AH 45

Secondly, we possess an early parchment fragment, dated 288 AH, of ‘Ali b Ziyād’s (d 183/799) transmission of the Muwatta’a, transmitted by a certain Hasan b Ahmad46 from Jabala b Hammād (d 299/911) from Sahnūn (d 240/854) from ‘Ali b Ziyād, who was Sahnūn’s main teacher 47 Ibn Ziyād, who is credited with being the first to introduce the Muwatta’a into Ifriqiyya,48 returned to Tunis in 150 AH, which year his transmission must therefore predate 49 At the very least we are told that he was teaching it to Sahnūn before the latter’s departure for Egypt at the beginning of the year 178 AH 50 We should also bear in mind that this is the same Sahnūn who was responsible for transmitting the Mudawwana from Ibn al-Qāsim, himself another transmitter of the Muwatta’a from Mālik (see below), which poses problems for Calder’s claim that the Mudawwana is the earlier of the two books if in fact they are both related by or from the same person—Ibn al-Qāsim—who died in 191/806

Thirdly, a comparison of Ibn Ziyād’s and the other transmissions currently available either wholly or partly in printed form, i.e., those of Yahyā b Yahyā al-Laythi (d 234/848), al-Shaybānī (d 189/805) and

45 See Nabiya Abbott, Studies in Arabic Literary Papyri (Chicago: University of Chicago Press, 1957-72), vol ii, 114, 121-28, esp 127, where she says: “Thus the paleography, the scribal practices, the text, the order of the traditions and the isnād terminology of the papyrus show a remarkable degree of conformity with the scholarly practices of Mālik and his contemporaries. On the strength of this internal evidence the papyrus folio can be safely assigned to Mālik’s own day.”


47 For this fragment, see Muw Ibn Ziyād; also Joseph Schacht. “On Some Manuscripts in Kairouan and Tunis,” Arabica, vol xiv (1967), 227-28. For Ibn Ziyād being Sahnūn’s main teacher, see Muw Ibn Ziyād, Introduction, 44-45


49 See Muhammad Al-Arooni Abdul-Qadir, “The Reception and Development of Mālikite Legal Doctrine in the Western World” (unpublished Ph D thesis, Edinburgh University, 1973), 14, also 11, citing Ibn ‘Āshūr’s A’tām al-fikr al-Islāmī, 25. This accords with Ibn Qutayba’s (d 276/889) suggestion that the Muwatta’ was completed in or around 148 AH (see Muhammad Yūsuf Gurāyā, “Historical Background of the Compilation of the Muwatta’a of Mālik b Anas,” Islamic Studies, vol 7 (1968), p 387, citing Ibn Qutayba’s al-Imāma wa‘l-siyāsah [Egypt, 1348 (1929), p 135]. Gurāyā himself [p 388] opts for 147 or 152 AH

50 See Muw Ibn Ziyād, Introduction, 44, 104.
al-Qa‘nabi (d 221/836),\textsuperscript{51} shows that all four are remarkably similar in their basic content and thus clearly represent one text. It is true that al-Shaybāni’s transmission shows certain marked differences from the other three, but these are in the nature of editorial changes necessitated by al-Shaybāni’s purpose in using Mālik’s hadīth in his teaching of Kufan fiqh. Thus, firstly, the order, chapter divisions and titles used for al-Shaybāni’s material are very different from those of the other versions that we know. Secondly, and more importantly, he consistently excludes Mālik’s own comments and references to Madinan ‘amal, as well as excluding other reports, especially from the Successors, but also, on occasions, hadīths from the Prophet. Instead, he includes his own references to the views of Abū Hanifa and the fuqahā’ of Kufa, often adding his own hadīths. Thus, for instance, the sections on “Tayammum” and “Reciting When Praying Behind an Imām” (to take random examples) in the transmissions of Yahyā and al-Qa‘nabi are almost identical,\textsuperscript{52} whereas al-Shaybāni, although retaining the Prophetic and Companion hadīths, excludes all the comments by Mālik, adds his own comments, and, in the case of the second section mentioned above, adds thirteen more hadīths from various authorities, including the Prophet.\textsuperscript{53} In his chapter on lī‘ān,\textsuperscript{54} al-Shaybāni relates only one short Prophetic hadīth from Mālik, to which he adds a comment that this is in accord with the Kufan position, whereas Yahyā’s transmission contains, in addition to the same short hadīth, another much longer one—about the sabab al-nuzūl (“occasion of revelation”) of the lī‘ān verses—which does not accord with the Kufan position, as well as a quotation by Mālik of the verses in question, and numerous reports from him concerning details arising from the same.\textsuperscript{55} Al-Shaybāni’s editing is even more evident when we consider Ibn Ziyād’s transmission, which, although perhaps some thirty years earlier than Yahyā’s, is nevertheless remarkably similar to it, although not quite as much as al-Qa‘nabi’s. The chapters in Ibn Ziyād’s transmission on

\textsuperscript{51} For the transmission of Yahyā, see above, n 3; for that of al-Shaybāni, see above, n 6. For the published fragment of al-Qa‘nabi’s transmission, see Muwattā’ al-Imām Mālik, riwāyat al-Qa‘nabi, ed ‘Abd al-Hafīz Maṣḥūr (Kuwait: al-Shūrūq, c 1392/1972) [hereinafter Muw Q].

\textsuperscript{52} See Muw vol i, 57-9, 80-82; Muw Q, 68-74, 136-40

\textsuperscript{53} See Muw Sh, 48-49, 59-63.

\textsuperscript{54} Lī‘ān, or “mutual invocation of curses,” is the procedure whereby a man who accuses his wife of adultery without sufficient witnesses may avoid the penalty for qadhf (accusations of illicit sexual intercourse), and she the penalty for adultery, by their both swearing that they are telling the truth on pain of bringing the curse of Allāh on themselves if they are lying (see Qur’an 24:6-9)

\textsuperscript{55} Muw Sh, 199; Muw vol ii, 23-25
“Game of the Sea” (ṣayd al-bahr) and “The ‘Aqīqa Sacrifice,” for instance (again, to take random examples), are very similar to those in Yahyā’s transmission, although Ibn Ziyād includes some extra comments from Mālik Al-Shaybānī, on the other hand, excludes most of the later, post-Companion material and again adds his own comments. The difference is obviously that whereas Yahyā, al-Qa‘nabī and Ibn Ziyād agreed with Mālik’s madhab and method, al-Shaybānī did not, but chose rather to include in his version only that material which he considered useful for his own teaching purposes, i.e. that which accorded with what was taught in Iraq. What concerns us here is that, despite whatever editing has taken place, it is still Mālik’s Muwatta’, rather than some other text, that has been edited. Indeed, this overall similarity between the different transmissions speaks highly for the authenticity of the text and its attribution to Mālik.

We might also mention here the evidence of the Umm of al-Shāfi‘ī (d. 204/820), another transmitter of the Muwatta’ from Mālik. In his sustained argument against Mālik and the Madinans, he quotes extensively from “Mālik’s book,” and his quotations reflect a text almost identical with that of Yahyā b Yahyā’s transmission, both in the wording and the order of the reports quoted.

We should also take into consideration that fragments of four, possibly five, other transmissions of the Muwatta’ also survive, namely, those of Ibn Bukayr (d. 226/840 or 231/845), Ibn al-Qāsim (d. 191/806), Abū Sa‘īd al-Hadathānī (d. 240/854), Abū Muṣ‘ab al-

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56 Muw vol 1, 325-6, 328-9; Muw Ibn Ziyād, 189-97; Muw Sh , 221, 225-26
57 For references, see n. 66 below
58 For this expression, see, for example, al-Shāfi‘ī, Umm, vol vii, 214, l 21
59 See the section entitled “Kitāb Ikhtilāf Mālik wa-l-Shāfi‘ī” in al-Shāfi‘ī, Umm, vol vii, 177-249
61 Fragments of Ibn al-Qāsim’s transmission exist in manuscript form in Tunis and Qayrawān (see Muw Ibn Ziyād, Introduction, 69; Schacht, “Manuscripts in Kairouan,” 228-30), while all the musnad hadiths from this transmission as collected by al-Qābisi in his Mulakkhhas (or Mulakkhas) have been published under the title Muwatta’ al-Imām Mālik ibn Anas, riwāyat Ibn al-Qāsim wa-talkhīṣ al-Qābisi, ed Muhammad b ‘Alawi b ‘Abbās al-Mālikī (2nd ed., Jeddah: Dār al-Shurūq, 1408/1988)
62 There is an incomplete, but substantial portion of the transmission of Abū Sa‘īd al-Hadathānī in the Zāhiriyya Library in Damascus (see Schacht, “Deux éditions,” 478ff)
Zuhri (d 242/856) and, possibly, Ibn Wahb (d 197/812). Since in the latter part of his life Ibn Ziyād was in Tunis, Yahyā in Cordoba, al-Shaybānī in various parts of Iraq, Syria and Khurāsān, al-Qa‘nabī in Basra (or perhaps Makka), Ibn Bukayar, Ibn al-Qāsim, Ibn Wahb and al-Shāfi‘ī—if we include these last two—in Egypt, Abū Sa‘īd in Iraq (al-Haditha), and Abū Muṣ‘ab in Madina, the only common link from which their transmissions could reasonably have derived is precisely that which is claimed in the sources to be the case, i.e. Mālik in Madina.

Fourthly, we have the secondary evidence of the biographical literature which tells us of numerous individuals transmitting the *Muwatta* directly from Mālik, and also of several commentaries being written on it before Calder’s proposed date of c 270 for the book’s emergence.

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63 Various portions of the transmission of Abū Muṣ‘ab al-Zuhri exist in manuscript form in Tunis (see *Muw* Q, 15), Qayrawān (see Schacht, “Manuscripts in Kairouan,” 242-44; idem, “On Abū Muṣ‘ab and his Muḥāḍarah,” *Andalus*, vol xxx [1965], 7), Damascus (see Fuat Sezgin, *Geschichte des arabischen Schriftums*, vol 1 [Leiden: E J Brill, 1967], 460) and Dublin (Chester Beatty MS 5498/3, entitled al-Muntaqā min al-Muwatta* [Sezgin, GAS, vol i, 464], which consists of hadiths from the *Muwatta* according to the transmission of Abū Muṣ‘ab)

64 The recently published fragment of Ibn Wahb’s “Muwatta” (see ‘Abdallah b Wahb, *al-Muwatta*. Kitāb al-muḥāḍara, ed Miklos Muranyi [Wiesbaden: Otto Harrassowitz, 1992]; also, for the original manuscript, Schacht, “On Some Manuscripts in Kairouan,” 230-31) represents a text which is far more than just another transmission of the *Muwatta*. As well as containing distintively “Muwattan” material—such as reports containing expressions relating to Madinan ‘amal (e.g. Arabic text, 47-48, fol 18r 15-21 [= *Muw* vol ii, 188])—it also contains extensive material now recorded specifically in either the Mudawwana (e.g. Arabic text, 49-50, fol 6r 24 - fol 7r 10 [= *Mud* vol iii, 4], fol 7r 15 - 7v 4 [= *Mud* vol iii, 4-5]; *et passim*) or the ‘Ubiyya (e.g. Arabic text, 15, fol 6r 22 - 6v 9 [= *Bayān*, vol xvi, 373]) Indeed, much of the material is closer textualy to the Mudawwana than to the Muwatta* (e.g. Arabic text, 25, fol 10r 7-10 [= *Mud* vol iii, 50; cf *Muw* vol ii, 208], and 5r, fol 19v 7-11 [= *Mud* vol xvi, 166; cf *Muw* vol ii, 188]) However, whatever we care to call Ibn Wahb’s book, it clearly confirms a second—rather than third-century origin for the basic material in the *Muwatta*, Mudawwana and ‘Ubiyya (Nor does it exclude the possibility that he also transmitted the *Muwatta* in a form more recognisably similar to that of the other transmissions that we know)

65 Al-Qa‘nabī settled in Basra and died either there or, according to some reports, in or on the way to Makka (see ‘Iyād, *Mādārik*, vol i, 397-99; Ibn Hajar, *Tahdhīb al-tahdīb* [Hyderabad: Dā‘īrat al-Ma‘arif, 1325-27 (1907-09)], vol vi, 31-33)

66 Muranyi, for instance, lists seventy-nine transmitters of the *Muwatta*’ from Mālik (see Miklos Muranyi, *Materialien zur Mālikitischen Rechtsliteratur* [Wiesbaden: Otto Harrassowitz, 1984], 127-30) A collation of these names with those given by al-Zurqānī (Shark, vol i, 6), ‘Iyād (Mād vol i, 203), al-Suyūṭī (Tawwīr, vol i, 8-9), ‘Abd al-Baqī (Mālik, *al-Muwatta*), ed Muhammad Fu‘ād ‘Abd al-Baqī (Cairo: Dā‘ī Iḥyā‘ al-Kutub al-‘Arabiyya, 1370/1951), 7) and al-Nayfar (Mād al-Ziyād, 80-82) results in a total of at least ninety-three named persons known to have transmitted the *Muwatta* from Mālik
‘AMAL V HADITH IN ISLAMIC LAW

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e.g. those of al-Akhfash (d before 250/864)\textsuperscript{67} and Ibn Muzayn (d 259/873)—this latter itself compiled from the commentaries of ‘Isa b Dinār (d 212/827), Yahyā b Yahyā al-Laythi (d 234/849), Muham-mad b ‘Īsā (d 221/836 or 222/837) and Aṣbah b al-Faraj (d 225/840)\textsuperscript{68}—not to mention those of Ibn Nāfi‘ (d 186/802), Ibn Wahb (d 197/812)—of which an early parchment fragment, dated 293 AH and transmitted by an unknown scribe from Yahyā b ‘Awn (d 298/910-11) from ‘Awn b Yūsuf (d 239/853) from Ibn Wahb, survives\textsuperscript{69}—and others \textsuperscript{70} These transmissions and commentaries would not of course have been possible had the text not existed \textsuperscript{71}

Given then that the earliest of three early works mentioned above is that of Mālik, we shall concentrate on Mālik’s view on this question of sadl versus qabdh as reflected in the seemingly contradictory reports transmitted from him in the Muwatta’ and the Mudawwana. We shall then consider the implications of this for a clearer understanding of the development in Islamic legal theory that led to the appearance of the Prophet-only hadith collections such as those of al-Bukhāri and Muslim and the effective “de-throning” of books such as the Muwatta’—which al-Šāfi‘i had once considered to be the most accurate book on the face of the earth after the Qur’ān\textsuperscript{72}—in their favor

\textit{Mālik and the Muwatta’}

Firstly, it should be noted that the Muwatta’ is not simply a book of hadith, even if that word is defined broadly to include reports from Companions and even Successors as well as from the Prophet. It is, rather, a book of ‘amal (“practice,” but not, as we shall see, simply “local practice”) or, to be more precise, a book of hadith put into the context of ‘amal. That is, the book is ostensibly a record of various types of hadith, but the key phrases in it are not so much those in the actual hadiths—which may be at variance with one another—as those

\textsuperscript{67} See ‘Iyāḍ, Madārik, vol 1, 200; Schacht, “Some Manuscripts in Kairouan,” 244-45; Sezgin, GAS, vol 1, 460
\textsuperscript{68} See ‘Iyāḍ, Madārik, vol 1, 200; Schacht, “Some Manuscripts in Kairouan,” 235-37; Sezgin, GAS, vol 1, 460
\textsuperscript{69} See ‘Abdallāh b Wahb, Kitāb al-muhāraba, 54
\textsuperscript{70} See ‘Iyāḍ, Madārik, vol 1, 200, 357 (Ibn Nāfi‘), 433 (Ibn Wahb)
\textsuperscript{71} For a more extensive critique of Calder’s thesis, the reader is referred to my review of his Studies in Early Muslim Iurisprudence in Journal of Islamic Studies, vol 5 (1994), 102-08
in which Mālik sums up a point by saying al-sunna ‘īndanā (“the sunna here”), or al-sunna allati ālā ikhtilāfā fihā ‘īndanā (“the sunna about which there is no dispute here”), or al-amr ‘īndanā (“the practice here”), or al-amr al-mujtama‘ ‘alayhi ‘īndanā (“the agreed practice here”), or al-amr alladhi ālā ikhtilāfā fihī ‘īndanā (“the practice about which there is no dispute here”), or some such phrase. In other words, there may be different, conflicting reports on a subject, but what should be done in any one case is what is, or was, done in Madīna.\

Secondly, it is important to recognise Mālik’s high reputation for excellence and accuracy in hadith-transmission, indeed in the transmission of knowledge in general. He was a past-master at the formal report and is praised as such by all the major scholars of hadith. Indeed, the isnād “Mālik-Nāfi‘-Ibn ‘Umar,” for instance, is considered by al-Bukhārī and others to be the “golden chain” of authority (silsilat al-dhahab). However, as is implicit in the first point, it is not the formal report that primarily concerns him but rather the fiqh, or correct understanding (to use the word in its original sense), of such reports.

73 It should be briefly noted here that ‘amal as used in this context is understood to derive from the time of the Prophet (the “sunna” element), along with an additional element of ijtihād, “independent judgment,” from later authorities (implied in the term “amr”). For a fuller discussion of the different terms used by Mālik to distinguish different categories of ‘amal, and the nature and authority of Madinān ‘amal in general, the reader is referred to my article, “Sunna, Hadith and Madinān ‘Amal,” Journal of Islamic Studies, vol. iv (1993), esp. 7-10, 13-14.

74 For praise of Mālik by later scholars it is sufficient to look at any of the entries on him in the main biographical works, e.g. Ibn Abī Hātim, Taqādim, 11-23, 30-31; Abū Nu‘aym, Ḥiyyat al-awliyā‘ (Cairo: Matba‘at al-Sa‘āda, 1351-57/1932-38), vol. ii, 316-32; al-Dhahabi, Tadhkīrat al-bu‘fass (Hyderabad: Dā‘irat al-Ma‘ārif, 1375-77/1955-58), vol. i, 189-92; Ibn Hajar, Taḥdīb, vol. x, 5-9. It is interesting to note that one modern scholar who has worked intensively on hadith confirms this judgment on Mālik, coming to the conclusion that hadiths narrated through Mālik are not only highly consistent but “outstanding in their uniformity” (see Ittikhar Zaman, “The Science of Riḍāl as a Method in the Study of Hadiths,” Journal of Islamic Studies, vol. v [1994], 3.11, 18).

Accuracy of transmission is only one requirement what is more important is an accurate understanding of the material

Mālik combined both these qualities. He was described by Ahmad b Hanbal as “an imām in hadith and fiqh,”76 while the famous hadith scholar Ibn Mahdi expressed the idea very clearly when he said “Al-Thawri is an imām in hadith but not an imām in sunna. Al-Awzā’i is an imām in sunna but not an imām in hadith. Mālik, however, is an imām in both.”77 Being an imām in both meant, firstly, that he knew the context in which to evaluate the normative value of hadiths, secondly, that he knew the opinions of his predecessors arising from, but not necessarily covered by, those hadiths, and thirdly, that he knew how to derive his own secondary judgments from this primary material. That is, he had an understanding (fiqh) of the din and its normative form (sunna). Without this understanding, hadiths, however authentic, could easily be a source of misguidance and error rather than a source of knowledge and enlightenment. Thus Ibn Wahb is recorded as saying, “Anyone who knows a hadith but does not have an imām in fiqh is astray (dāll), and if Allah had not saved us through Mālik and al-Layth we would have gone astray”,78 and Ibn ‘Umayn is recorded as saying, “Hadiths are a source of misguidance (madīla) except for the fiqh.”79

If, therefore, Mālik records a hadith and then gives a judgment seemingly to the contrary, we have to assume that there was a good reason for him doing so.

What could that reason be?

A very significant statement is recorded about Mālik on this point: ‘Īyāδ records that both Ibn al-Qāsim and Ibn Wahb said, “I saw that with Mālik ‘amal was stronger than hadith.”80 Now, what does this mean—about Mālik, the past-master at relating hadith, and the man

76 See ‘Īyāδ, Madārik, vol i, 132; al-Dhahabi, Siyarat, vol viii, 84
77 See Abū Nu’aym, Hilya, vol vi, 332; ‘Īyāδ, Madārik, vol i, 132; also Ignaz Goldziher, Muhammedanische Studien (Halle: Max Niemeyer, 1889-90), vol ii, 12
79 Ibn Abī Zayd, lāmi’, 118
80 ‘Īyāδ, Madārik, vol i, 66; Robert Brunschvig, “Polémiques médiévales autour du rite de Mālik,” Andalus, vol xv (1950), 418. For similar comments by Mālik, see Ibn Abī Zayd, lāmi’, 117; ‘Īyāδ, Madārik, vol i, 224; Muḥammad ‘Abid, Qawāl, 22 (quoting the Bayān of Ibn Rushd, the Madkhāl of Ibn al-Hājī and the lāmi’ of Abū Yūnus); also the report from Muḥammad b Abī Bakr in the citation from ‘Īyāδ in the following paragraph.
whose commitment and accuracy in the transmission of hadith are
second to none?

Let us consider two more reports about the subject 'Iyāḍ continues 81

Mālik said "There were people among the men of knowledge of the
Successors who would narrate certain hadiths and hear other hadiths
from others. They would say, ‘We are not ignorant of this, but the
'amal that has come down to us is different ’ 82

Mālik said “I once saw Muḥammad b ʿAbd Bakr b Hazm—who was
a gādi—being reproached by his brother ʿAbdallāh—who was an
honest man with an extensive knowledge of hadith—for giving a judg-
ment on a case when there was a hadith giving a different judgment
ʿAbdallāh said, ‘Hasn’t such-and-such a hadith come down about
this?’ Muhammad replied, ‘It has ’ ʿAbdallāh said, ‘Then why don’t
you give your judgment according to it?’ Muḥammad replied, ‘But what
is the position of the people with regard to it?’—i.e [what is] the agreed
'amal in Madina, by which he meant that the 'amal of Madina was
stronger than hadith” 83

Again, why should this be so? What does this mean?

It means, quite simply, that Mālik saw 'amal as a better indicator of
sunna than hadith. As Rabi‘a, one of Mālik’s main teachers, is re-
corded to have said, “One thousand from one thousand is preferable to
me than one from one. One from one would tear the sunna right out of
your hands” 84 “One thousand from one thousand” means a large
number of Successors taking from a large number of Companions, which
was only possible in Madina, and implies a transmission that
was primarily by practice ('amal) rather than by text (hadith) “One
from one,” on the other hand, was the situation in the rest of the
Muslim world where individual Successors took their knowledge from
individual Companions, and on a more overtly textual basis (“Textual”
here does not necessarily mean “documented in written form” so much

81 See 'Iyāḍ, Madārik, vol i, 66; Brunschvig, “Polemiques,” 418
82 This report is also transmitted in the 'Uṭbiyya (see Ibn Rushd, Bayān, vol
xvii, 604; also Schacht, “On Some Manuscripts in Morocco,” 29) and in Ibn Abī
Zayd’s Jāmi‘ (118)
83 For the same report, with slight variations, see Ibn Rushd, Bayān, vol xvii,
331; al-Ṭabarī, Tarīkh al-rusul wa-l-mulūk, ed Michiel Johannes de Goeje et al
(Leiden: E J Brill, 1879-1901), vol iii, 2505 (mentioned in Schacht’s Origins,
64); Waki‘, Akhbār al-qudāt, ed ‘Abd al-ʿAzīz Muṣṭafā Marāghī (Cairo: Matba‘at
al-Istiqāma, 1366/1947), vol i, 176; Ibn Abī Zayd, Jāmi‘, 118 For variants in the
Madārik report itself, see 'Iyāḍ, Madārik, ed Muḥammad Tāwīt al-Ṭanji et al (2nd
ed., Mohammed: Wizārat al-Awqāf wa-l-Shu‘ūn al-İslāmiyya, 1402-03/1982-83),
vol i, 45
84 See 'Iyāḍ, Madārik, vol i, 66; Brunschvig, “Polemiques,” 419
as “transmitted in a fixed, linguistic form,” such as is the case, for instance, with the “text” of the Qur’an ) Thus this ‘amal of the Madinans—this “one thousand from one thousand” knowledge of how the shari’a was put into practice—automatically had in their view a higher authority than most hadiths, since ‘amal had the status of being mutawātir, that is, transmitted by so many Companions that there could be no reasonable doubt about its authenticity, whereas most hadiths were not mutawātir but akhbār al-āhād, that is, reports only from individual authorities

It should, however, be emphasised that ‘amal and hadith are by no means mutually exclusive Rather, ‘amal may or may not be recorded by hadith, and hadith may or may not record ‘amal Where they overlap they are a strong confirmation of each other, but where there is a contradiction ‘amal is preferred to hadith by Mālik and the Madinans, even when the sources of these hadith are completely trustworthy

It is for this reason that sadl is preferred to qabḍ by Mālik and the Madinans, even though, as we have seen, there are numerous hadiths to the contrary in the major collections and nothing in them that overtly contradicts this position This way of standing for the prayer with one’s hands by one’s sides, as also the standard way of doing the adhān in Madina, or the way of reciting the Fātiha in the prayer without beginning with bi-smī l-lāhi ‘l-rahmān ‘l-rahim, or the size of the measures known as șā‘ and mudd, to name but a few other examples, were matters that were not initially recorded in the form of hadith but were nevertheless generally known amongst the people and understood to have originated as sunna in the time of the Prophet Other practices, although recorded in authentic hadiths and even transmitted, for example, in the Muwaṭṭa’, were not acted upon precisely because they did

85 For exceptions to this generalised statement about “Mālik and the Madinans,” see the opinions noted in n. 4 above, especially the view recorded from Mujarrid and Ibn al-Majshīn—two Madinan followers of Mālik—that the preferred way is qabḍ However, despite their being in Madina, it is never claimed that these two authorities had the best knowledge of Mālik’s opinions, which is considered rather to be the especial preserve of his Egyptian followers, particularly Ibn al-Qāsim (see above, n. 4) It is also evident from the argument for ‘amal outlined above that Mālik would not have preferred sadl unless it were the practice of at least a large number of the ‘ulamā’ of Medina at and before his time (of whom the famous Madinan Successor and faqīh Sa‘īd b al-Musayyab would have been one; see above, p. 27)

86 It may be noted here that the hadith recording the Madinan way of doing the adhān in Mud vol 1, 57, has a Makkān isnād, while the hadith about beginning the prayer without the basmala (Muw vol 1, 78; Mud vol 1, 67) has a Basran isnād In other words, there were no hadiths on these subjects in Madina because there was no need for them
not represent the *sunna* In other words, they were either exceptional instances, or earlier judgments that had later been changed, or otherwise minority opinions that held little weight and which, even though they derived from the Prophet, were nevertheless outweighed by other judgments also deriving from the Prophet This was why Ibn ‘Uuyayna could say that *hadiths* were a source of misguidance except for the *fuqahāʾ*, and Mālik that ‘*amal* was more reliable than *hadith* 87.

It is here that we can also see the significance of the Shi‘a/Khawārij agreement on *sadl* These groups split away from the main body of the Muslims at a very early date and on questions of belief and political authority rather than on details of *fiqh* Their agreement on *sadl* is thus strong confirmation of the “ancient,” indeed Prophetic, origin of this ‘*amal*, since there would have been no reason for them to invent such a detail The obvious inference is that they were merely continuing an already established practice

The implications of this are far-reaching Firstly, it means that, like the modern, revisionist school of Western scholarship represented by Schacht and his followers, we must seriously question the view of “*sunna* equals [Prophetic] *hadith*” that is taken by the average Muslim scholar today, and has been taken by most since somewhere in the middle of the third century AH However, unlike the revisionists, the above critique does not enable us to discard the vast majority of *hadith* as a belated attempt to give authority to what was originally local practice The *hadith* literature (albeit in a predominantly oral form) existed—Mālik’s *Muwaṭṭa*’ is ample testimony to that—but it was subservient to ‘*amal* What we see happening in the burgeoning of the *hadith* collections of the third century is a response to this redefinition of *sunna* within the ranks of the ‘*ulamāʾ* and the concomitant creation of a Prophetic-*hadith* imperative Once *fiqh* became based on Prophetic *hadith* rather than Prophetic *sunna*, it was a natural and necessary step to seek to collect everything one could by way of a *hadith* from the Prophet, even if perhaps a little “weak,”88 and at the same time discard, or disregard, the material from later, post-Prophetic authorities hence the highly “edited” nature of all the major third century collections of *hadith*

As for the ‘*amal*, or practice, of Madina being local, it was indeed local in that it originated, flourished and was first recorded in Madina.

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87 See above, pp 35-36
88 Ibn Ḥanbal, for example, is known for preferring a weak *hadith* to no *hadith* at all (see ‘Iyāḍ, *Madārik*, vol 1, 96)
rather than anywhere else, but that was because the *sunna* of the Prophet originated, flourished and was first recorded in Madina rather than anywhere else. No other city in the Muslim world ever claimed the same authority for its own *'amal* as did the Medinans (to the extent, that is, that any other city could be said to have had its own *'amal*).

Rather, there was Madina, the center of the Prophetic phenomenon, and there were individuals who went out from it. There was "one thousand from one thousand" in Madina, and there was "one from one" everywhere else. However, with the advent of the work of those such as al-Shāfī‘ī (d 204/820) who, in the face of wide disagreement on details among the *fuqahā‘* of his time, wanted to impose some sort of logical standard on the entire corpus of *fiqh*, the traditional, non-textual argument of *'amal* was subjected to the logical standards of textual, particularly *isnād*-, criticism. Thus *sunna*, which had once been contained in Madinan *'amal* (Mālik’s "*al-sunna 'indanā*" and "*al-sunna allati là ikhtilāfa fihā 'indanā*) became redefined as Prophetic *hadith*, and the anonymous, no-*isnād* nature of the authority underlying *'amal* was rejected in the face of the demands of the new scholarship for an authentic *isnād* in which every man had to be known and trustworthy.

"Who are these people," al-Shāfī‘ī effectively asks, "because of whose *'amal* these *hadiths* are not acted upon?"89 thus putting his own position and that of those like him very clearly. Indeed, one would agree with Schacht that it is al-Shāfī‘ī, with his insistence that only those rulings backed up by good textual credentials should be accepted as the basis of the *shari‘a*, who should be considered responsible for, or at least at the forefront of, the widespread acceptance of the idea that

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89 E.g. al-Shāfī‘ī, *Umn*, vol. vii, 214 (l 31): *fa-‘amal man ta‘nī tukhālīfu bihi sunnat rasūli-l-lāh* ("Whose *'amal* is it by whose authority you go against the *sunna* of the Messenger of Allah?"); ibid., vol vii, 217 (margin): *fa-qad d‘yānā an najida ‘inda aḥād ‘ilm ḥā‘ulā‘ī alladhih ‘amīli bi l-hadith thabata ‘indahu wa-‘idhā ta‘kūn al-‘amal bihi saqata ‘indahu fa-yā layta shī‘ī man ḥā‘ulā‘ī alladhīna lam a‘lamhum khuliqū thumma yuhṭajju bi-ta‘kīhim al-amāl wa-ghaflatithim* ("We have failed to find anyone who has the knowledge [i.e. presumably, of texts] of these people, such that if they have acted according to a *hadith*, he will consider it reliable, but if they have not acted according to it, he will reject it. If only I knew who these people were who I do not even know to have been born but whose lack of *'amal* and unawareness [i.e. presumably, ignorance of, or refusal to consider, a *hadith*] is used as an authoritative argument!") For the same attitude in the Iraqi scholar Abū Yusuf (d 182/798), see, for example, ibid., vol vii, 311 (l 28): *fa-man al-imām alladhi ‘amila bi-hādhā wa‘l-‘ilm alladhih akhada bihi hattā nanṣura a-huwa ahl li-an yuḥmala ‘anhu ma‘mūn ‘alā al-‘ilm aw là* ("Who then is the authority who acted in this way, and [what is] the knowledge [i.e. *hadith*] that he based it upon, so that we can judge whether he is a suitably qualified and trustworthy transmitter of knowledge or not?")
“sunna equals hadith,” although one would also agree with Schacht that the tendency seems to have begun in Iraq.  

What we thus see illustrated by the major third century collections of hadith in their almost total reliance on Prophetic material to the exclusion of any other, and what we see reflected in the rejection of sadl for qabid by the later Sunni madhhab (and several later Malikis) is the rejection of sunna as transmitted by ‘amal in favor of sunna as transmitted by hadith. In both cases this sunna was understood as being the sunna of the Prophet. What differed was the methodology by which such knowledge was arrived at, and thus the details of its practical expression, namely, the differences in the details of fiqh. The rejection of ‘amal in favor of hadith was the triumph of the methodology of “one from one” over that of “one thousand from one thousand” and, as the report from Rabi’a continues, “One from one would tear the sunna right out of your hands.” This suggests that if we want to arrive at a clearer picture of the original “sunna of the Prophet,” we would do better to look at Madinan ‘amal than at the classical collections of hadith.

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90 See Schacht, Origins, 58, 59, 77, 80, where the shift in definition of the word sunna evident from al-Shafi’i’s writings is most forcefully noted (This indeed I consider the strongest point in Schacht’s critique. What I disagree with is his understanding of what sunna meant before it became redefined as hadith.) For this shift happening via Iraq, see, for example, Zafar Ishaq Ansari, “The Early Development of Islamic Fiqh in Kufa” (unpublished Ph D thesis, McGill University, 1968), passim, esp. 14, 23-24, 176, 212, 234, 243, 250, 370, 377, 381; also Origins, 73, 77, 80, 223, where Schacht argues that Islamic jurisprudence—which one can see as the formalisation of ‘amal—began in Iraq. Note also the attitude expressed in Abū Yūsuf’s comment in n 89 above.