

## ABU HANIFAH · the Rational Jurist

– from the keyboard of Ghurayb [October 20<sup>th</sup> 2010]

Nu‘mān ibn Thābit ibn Zūṭā (80–150 AH/ 699–767 CE) is best known by his honorific Abū Ḥanīfah, or as ‘the grand imam’ *al-imām al-a‘zam*. Among the most important persons in early Islamic social and intellectual history, he helped lay the foundation for rational methodology in legal practice. Abū Ḥanīfah’s most enduring contribution was his conceptualization of normative universal principles of law arrived at by rational methods and shaped by considerations of social utility and benefit.

Abū Ḥanīfah aroused controversy among Muslim jurists in his own day, especially from certain proponents of Hadith-based jurisprudence (*ahl al-hadith*) for his advocacy of rationalist procedures in deducing case law. Traditionalist jurists viewed the methods by which Abū Ḥanīfah employed *ijtihād al-ra’y* ‘independent reasoning exertion’—especially with regard to analogical reasoning (*qiyās*) and juristic preference (*istihsān*)—as undermining the legal validity of Prophetic traditions in Islamic law. Abū Ḥanīfah was an outspoken critic of errors he perceived among his contemporary judges and legal scholars; while his theological views were also a matter of controversy, leading his critics to label him a Murji’ite, although he himself disavowed this term.<sup>1</sup>

His father Thabit was said to be a merchant from Kabul probably of eastern Persian ancestry, whose father Zuta had become a Muslim client. But other reports assert that one of Abū Ḥanīfah’s forefathers was a provincial military warden for the Sassanian empire in Anbar (central Mesopotamia). Abū Ḥanīfah lived seventy lunar years: fifty-two years under the Umayyad caliphs – whose decline and fall he witnessed – and eighteen years under the first two ‘Abbasid caliphs al-Saffāḥ (d. 136/754) and al-Manṣūr (d. 158/775), whose revolution Abū Ḥanīfa initially supported but whose government he later opposed. He was a man of deep social conscience whose political sympathies and conspicuous opposition to ruling regimes of his day brought him into conflict first with the Umayyad and then the ‘Abbasid caliphs.

**Career.** Born in the thriving cosmopolitan intellectual center of Kufah in lower Iraq, at that time a major center of legal learning, Abū Ḥanīfah grew up during the era of the powerful Umayyad governor of Iraq al-Ḥajjāj b. Yūsuf (d. 95/714). He was an independently wealthy silk-cloth merchant (*khazzāz*) who owned a large building for its manufacture and employed a number of workers and artisans. He thus had extensive practical experience of business, commerce and finance which other jurists

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<sup>1</sup> “Murji’ite” had negative connotations because in earliest usage it was a stereotype for excessively lenient assessment of sin deemed not to impair one’s faith (*īmān*) as a Muslim. It may have been the Khārījites who first accused Abū Ḥanīfah of this; see M. Abū Zahrah, *Abū Ḥanīfah: ḥayātuhu wa ‘aṣruhu, āra’uhu wa fiqhuhu* (2<sup>nd</sup> ed. Cairo, 1385/1965) pp. 161–176.

may not have acquired; and was noted for liberally bestowing his wealth upon his students and indigent religious scholars. Abū Ḥanīfah lived in Kufah for most of his life, and travelled often to Mecca for pilgrimage, spending some years there as a political refugee during the final years of Umayyad rule and only returning to Kufah after the consolidation of 'Abbasid rule.

Abū Ḥanīfah began his ambitious intellectual career by applying himself to dialectical theology (*kalām*), quickly rising to prominence in this field and becoming highly regarded in Kūfa for his disputations against sectarians. He made more than twenty trips to Basra to engage in debate with the Khārijites. But Abū Ḥanīfah became disillusioned with disputational polemics and came to view it as of little value since it produced divisions and was contrary to the Sunnah of the Prophet and his Companions. Convinced of the superiority of legal knowledge, he devoted himself to the study of Islamic law, taking as his mentor the prominent Kufan *faqīh* Ḥammād ibn Abī Sulaymān (d. 120/737), himself student of the renowned Successor Ibrāhīm al-Nakha'ī (d. 96/715). He remained under Ḥammād's tutelage for eighteen years, assuming the leadership of Ḥammād's juridical circle upon his death. Abū Ḥanīfah also studied under a wide range of authorities both Sunni and Shi'ah, and advocates of *ra'y* as well as proponents of Hadith. They included the leading 'Alids Zayd b. 'Alī (d. 122/740), Muhammad al-Baqir (d. 114/732) and Ja'far al-Sadiq (d. 148/765) – all of whose legal views Abū Ḥanīfah deemed to be qualified *ijtihād* and thus subject to critical review.<sup>2</sup>

It was his moral and financial support for the anti-Umayyad revolt in ca. 120/738 mounted by the 'Alid contender for power Zayd b. 'Alī ibn al-Ḥusayn, including *fatwās* issued by Abū Ḥanīfah supporting Zayd's cause, which apparently led to his ill-treatment and severe whipping by the Umayyad governor of Kūfa and Basra Yazīd Ibn Hubayrah (d. 132/750). Abū Ḥanīfah sought political refuge in Mecca for over ten years after this stern public rebuke. The principle of '*enjoining right and forbidding wrong*' meant that one could not remain silent in the face of an oppressive ruler. More than twenty years later in 145/762–3 the famous Kufan jurist openly supported the combined uprisings of two leading Ḥasanid descendants of the Banū Hāshim, Muhammad and Ibrāhīm ibnay 'Abdullāh – who came close to defeating the 'Abbasid caliph al-Manṣūr. After their revolt was crushed, the caliph sought to co-opt him by appointing Abū Ḥanīfah to a high administrative position as judge in his newly built capital of Baghdad, but out of scrupulous integrity he repeatedly refused this mandated position – in effect rejecting al-Manṣūr's legitimacy and authority. Abū Ḥanīfah spent the final two years of his life imprisoned by al-Manṣūr in

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<sup>2</sup> See Abū Zahrah, *Abū Ḥanīfah* pp. 66–72. Madelung observed considerable similarity between Zaydī and Hanafī law; Wilferd Madelung, *Der Imām al-Qāsim ibn Ibrāhīm und die Glaubenslehre der Zaiditen* (Berlin, 1965) p. 54.

Baghdad; when he died six funeral prayers had to be conducted in succession because of the massive crowds.

**Qiyās.** Of all the Islamic law schools, the Hanafī school is pre-eminently the school of *qiyās* ‘analogical reasoning’, a rational method of generalization awarded greater authority as the foundation of their legal thought among Hanafites than in the other legal schools. ♦A fundamental principle underlying Ḥanafī legal theory is that of *ta’mīm al-adillah* (the fullest logical or rational generalization of established legal precepts), by which legal statements of the Qur’an and principal legal Hadith were given the broadest reasonable authority according to their general implications and treated as if each were a universal legal decree. ♦The second distinctive feature of Abū Ḥanīfah’s legal thought was his reliance upon the ‘hypothetical’ method, frowned upon by most of his contemporaries who felt that legal speculation should be restricted to actual problems as they occurred. Abū Ḥanīfah justified using this method by asserting it was a suitable means of preparing for calamities before being overwhelmed by them, in order that one would know how to extricate oneself from them once they appeared. This hypothetical method was well suited for Abū Ḥanīfah’s reliance on *qiyās*, enabling him and his students to group together a wide variety of legal questions in accordance with a single effective cause (*‘illah*) applicable to them all. This greatly facilitated the first systematic compilation of major legal compendia, which in turn provoked the compilation of similar legal collections in the other schools after the Hanafī pattern.

♦Abū Ḥanīfah’s method of using Hadith should be understood in terms of his system of *qiyās*, as well as special stipulations he employed when evaluating Hadith and which are illustrated in Hanafite legal theory. His method of *qiyās* involved making distinctions between the normative universal, and non-normative and exceptional, aspects of the law. He deemed it valid to make *qiyās* or to generalize only on the basis of what is normative. Therefore Abū Ḥanīfah identified for every fundamental aspect of law those Qur’an verses, Hadith, and teachings & practices of Companions, which best exemplify the relevant underlying precept— and employed them as principal ratio legis in solving unprecedented legal questions. The disputes between Abū Ḥanīfah and the advocates of Hadith revolved primarily around his rejection of those isolated Hadiths whose apparent legal implications contradicted Abū Ḥanīfah’s conception of the normative principles of the law.

♦Abū Ḥanīfah is also known for his reliance on *istiḥsān* ‘preferred exceptional ruling’. *Istiḥsān* forms a counterpart of *qiyās* with the aim of making reasonable modifications to inferential precepts when strict application of the general precept is no longer appropriate because of special circumstances. In the Malikite school *istiḥsān* was based primarily upon consideration of the principle of *maṣlahah* /individual and social benefit. Whereas Hanafite *istiḥsān* was more frequently employed by referring the solution of the problem in question to a less obvious *‘illah*

with a more favorable social benefit—reflecting the primacy of *qiyās* in the Ḥanafī school.<sup>3</sup>

Umar Abd-Allah observes concerning the stereotypical association of *ra'y* /personal reasoning with Abū Ḥanīfah's juridical method, and the conventional view that he minimized the value of Hadith for deriving legal rulings, that:

“...although the use of *ra'y* is an essential part of Ḥanafī legal theory, it was always combined with the systematic use of Hadith but in accord with special stipulations. Furthermore the use of *ra'y* is no more prominent in the Hanafite school than it was in the Malikite, which seems...to have given greater scope to its use than Abū Ḥanīfah. [The Hanafites later] rejected the Malikite principles of *sadd al-dharā'i'* (obstruction of legal fictions), and [their] concept of *istihsān al-darūrah* (preferred exceptional rulings based on absolute necessity) does not appear to be as broad as the Malikite principle of *al-maṣāliḥ al-mursalāh* (unprecedented rulings based on social need), which in many ways is the pinnacle of Malikite legal thought.”

(*Encyclopædia Iranica*, “Abū Ḥanīfah”)

**Legacy.** Abū Ḥanīfah's legal teaching was transmitted originally by two main pupils, Abū Yūsuf (d. 182/798) and Mohammad b. al-Ḥasan al-Shaybānī (d. 189/805), who both later served as official 'Abbasid *qādīs*, as well as by the judge of Balkh Abū Muṭī' al-Ḥakam b. Abdallāh (d. 183/799). Their legal compilations and writings include their own independent opinions alongside those of their teacher Abū Ḥanīfah, and comprised the primary documents of the Ḥanafī juridical school. Especially the writings of al-Shaybānī aided the theoretical development of legal thought, evidencing both a more rigorous and systematic application of judicial reasoning and a deeper concern with Hadith—features reflected in the later work of one of al-Shaybānī's last pupils al-Shāfi'ī.

Through the labors of Abū Ḥanīfah the maturation and flowering of the Kufan legal school was accomplished. The great Egyptian scholar Jalāl al-Dīn al-Suyūṭī long ago pointed out a most significant contribution made by Abū Ḥanīfah for the development of Islamic law.

“One of the outstanding achievements of Abū Ḥanīfah where he was unique: he was the first to record the science of the *sharī'ah* and to arrange it in chapters; afterwards Mālik b. Anas followed him in the arrangement of his *Muwatta'* – and no one preceded Abū Ḥanīfah in this!” [Tabyīḍ al-Ṣaḥīfah (Pakistan, 1418) p. 129]

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<sup>3</sup> See detailed overview by Abū Zahrah, *Abū Ḥanīfah*, pp. 234–434; also Saim Kayadibi: *Istihsan: The Doctrine of Juristic Preference in Islamic Law* (Kuala Lumpur: Islamic Book Trust, 2010) pp. 115–133 on the early and Hanafī views. / We rely upon Umar Abd-Allah's succinct treatment in his *Encyclopædia Iranica* article for English rendering of legal terminology.

The selection and arrangement of legal questions and topics under definite rubrics or section headings (*abwāb*) represents an original and important contribution credited to the great Kufan legal genius. This astute silk merchant, legal mentor to numerous pupils, and brilliant jurist–theorizer elevated the method of generalization which enabled his school to extrapolate from Qur’an and Hadith a set of general normative legal principles. His emphasis on *qiyās* gave to Hanafī thought its tendency towards systemization and theoretical elaboration, coupled with his intense concern for maintaining flexibility in legal applications by means of *istiḥsān* /preferred exceptional ruling. The triumph of rational methods informed by keen social sensitivity to human needs set a lofty tone for later Islamic legal practice and theory.

In the eastern provinces of Khurasan and in Central Asia a strong Hanafite presence took root by the late 2<sup>nd</sup>/8<sup>th</sup> century among the Turks. Ruling dynasties whose power base lay in the east such as the Samanids embraced Hanafī jurisprudence. By the 5<sup>th</sup>/11<sup>th</sup> century the Saljuq rulers also became champions of the Hanafī law school, coupled with the Māturidī theology formed in the Hanafite circles of Transoxiana. The eastern roots of the Ottoman ruling house account for its adherence to Hanafite jurisprudence, while today the Hanafī legal school represents the most numerous juristic *madhhab* in the Islamic world – from Eastern Europe through to India and China – adhered to by close to 30% of the world’s Muslims.

