A Textual Analysis of the Use of *Sunna* in Malik's Legal Doctrine

Kusmana

THE sources of Malik's legal doctrine lie in texts, opinion and customary law.[1] The textual sources of his doctrine consist of the Qur'an[2] and the *sunna*, and it is on his use of the *sunna* that this paper will concentrate. One reason for this is that its importance to Malik's legal thought is clearly demonstrated in Schacht's *the Origins of Muhammadan Jurisprudence*, where references to the *Muwatta'* are exceeded only by those made to Shafi'i himself. Malik is thus recognized as having made a significant contribution to the formation of Islamic jurisprudence. His importance also lies in the fact that he was among the first to write down his doctrine. This paper will trace how and to what extent Malik refers to the *sunna*. It will scrutinize his methodology in applying the *sunna* in the elaboration of Islamic law, and evaluate its importance as a source for legal opinions. Before embarking on this study, however, we will define the term *sunna* and look at how it was perceived prior to and during Malik's lifetime.

The *Sunna*: Meaning, Concept, and Its Use in Early Islamic History

In the course of his prophetic career, Muhammad became a religious and political point of reference to his community which came to rely on his revelation of the Qur'an, his sayings and his behavior.[3] This modality is known in the Islamic tradition as *sunna*. The

term *sunna* conveys the meaning of a way, a rule, or conduct of life.[4] According to Goldziher, the term *sunna* was islamized[5] by early Muslims, who considered the sayings and actions of Muhammad as normative.[6] Schacht holds that the early concept of *sunna* was "the living tradition" of the ancient schools of law, or customary and "generally agreed practice" (*'amal, al-amr al-mujtama' 'alaih*).[7] Criticizing this position, Azami insists that the term was not confined to the living tradition, but was in "continuous use from the pre-Islamic era, meaning way, law, mode or conduct of life." In the time of Prophet it referred to the obligation to obey the Prophet Muhammad, and to take his life as one's model, as commanded by God.[8]

Fazlur Rahman discusses the word *sunna* not only on its own terms, but also in reference to the word *hadith*.[9] He sees the distinction as that between verbal and practical tradition. Both terms were "coeval and consubstantial" in the period shortly after Muhammad's death and conveyed the concept of a set of norms left by him to guide Muslims.[10] In other words, there was a natural and urgent need on the part of Muslims to have a model by which to regulate their lives; this they found in the Prophet and of course the Qur'an. Furthermore, Rahman concludes that the term *sunna* has three categories, "the *sunna* of the Prophet, the living tradition of the earliest generation, and the deduction from these." These categories resulted in the growth of a rich body of materials both in law and dogma.[11]

Basically, before an act, or a saying became a *sunna*, there was a process which involved many parties — such as Allah, the Prophet Muhammad, the Companions, the Successors, the Followers of the Successors — and factors —such as space and time. The process of establishing a *sunna* moves from the practical to the conceptual. In the time of Muhammad, whenever the Companions had a problem, they simply asked him directly — a very practical solution. After the death of the Prophet, they depended on him indirectly in that they drew upon each other's knowledge of what the Prophet had said, done or consented to when approached. The *sunna* thus evolved into a conceptual and institutional matter, especially as any information about the Prophet's guidance was gradually being codified.[12] Schacht elaborates on the process of constructing an individual *sunna* and reveals how Muslim scholars went about the task. According to him, a *sunna* occasionally refers to the Prophet, sometimes to Companions, and sometimes even to later authorities[13]. A *sunna* of the Prophet is occasinaly replaced by a tradition from a Companion, or sometimes ignored for a reason that

is unclear. They are repeatedly interpreted in the light of traditions from Companions, on the presumption that the Companions apprehended the *sunna* of the Prophet best.[14] Shafi'i mentions that "the Medinese refer to the traditions from the prophet and from others freely and even refuse them;" he calls them "selfprofessed followers of traditions."[15] In addition, Schacht states that "the Iraqians and Medinese neglect traditions from the Prophet in favor of systematic conclusion from general rules, or of opinions of the Companion."[16] The question is: are these developments reflected in Malik's legal doctrine? To determine whether this is so, I will examine Malik's views on *sunna* in general, and more particularly how these are expressed in one chapter of his *Muwatta'*, i.e. *Kitab al- Tahara* (The Book of Purification).

Malik's View on the Sunna

Malik ibn Anas[17] was an active participant in the scholarly debates that took place in the early period of Islamic history. His most famous work, *al-Muwatta'*,[18] and especially the version[19] of Yahya b. Yahya al Masmudi (d. 234 AH) is generally accounted to be one of the earliest Islamic juristic works and a faithful summary "Malik's latest views."[20] Besides the *Muwatta'*, Malik wrote other works, among them are a letter on predestination, a book on the stars and the moon, a letter on sacrifice, a book on ethics, and a letter on the consensus of the Medinese, written to Abu al-Layth, etc.[21]

Malik lived at a time when the explicit legislative legacy provided by the Qur'an and the Prophet Muhammad's *hadith* and *sunna* were beginning to prove insufficient to answer the more complex problems of life.[22] This situation arose due to the fact that, *first*, none of the Prophet 's *sunna* had been codified due to a fear of confusing these with the Qur'an, and, *second*, Muslims faced more complex problems which often were not covered by the Qur'an or an explicit *sunna.*[23] Muslim scholars of that day, engaged in scholarly debate, used to base their opinions on the Qur'an, the Prophet's sayings, the opinions of Companions and later authorities and customary laws, often in a rudimentary way. It was common for a scholar to use *hadiths* which had been transmitted directly from the Prophet, or a Companion or a Successor only.[24]

According to Malik, *hadith* or *sunna* plays significant role in Islamic teachings. He identifies Islam as *sunna* or *hadith,* saying "*Inna hadha al-'ilm din, ...*" (This knowledge [*hadith* or *sunna*] is religion [Islam]).[25] Abu Zahrah notes that Malik uses the *hadiths* or *sunna* that are sometimes complete in their transmission, sometimes from him or another Successor going back to the Prophet or at other

times one that reaches back only to the Companion.[26] He argues
that in Malik's time it was common to do so, and that Malik him-
self only quotes credible scholars. In addition, other scholars did
the same such as Abu Hanifah, Hasan al-Basri, Sufyan ibn Uyain-
ah.[27] Although he occasionally depends on a *hadith* with an incom-
plete transmission, Abu Zahrah observes, Malik is careful and ac-
countable in that he does not accept a *hadith* unless it is one in
common use.[28] Malik avoids quoting any *hadith* from four catego-
ries of persons: the ignorant, innovators, liars, and scholars who
do not know the transmitters of a given *hadith*.[29] The *Muwatta'*,
therefore, one of the earliest books of *fiqh* and *hadith* is recognized
by Muslim scholars as containing the soundest transmitters. For
example, Bukhari cites the chain found therein of Malik, from Abi
Jinad, al-A'raj, from Abi Hurairah as being among the best. Abu
Daud mentions that the best transmitters in the *Muwatta'* are: *first,*
Malik, from Nafi', from ibn 'Umar; *second,* Malik, from al-Juhri,
from Salim, from his father; and *third,* the same as that approved
by Bukhari.[30]

Actually, Malik's *usul al-fiqh* is not constructed in the same way
as that of his pupil, al-Shafi'i. Malik's writings, particularly the
Muwatta,' provide data which allow us to reconstruct Malik's legal
methodology. First, Malik referred to verses of the Qur'an, trying
to understand them through *hadiths* or *sunna,* and analyzed them
by rational methods, applying such tools as the consensus of the
Medinese, *qiyas* or analogy, *istihsan* (individual reasoning based on
public interest), *'urf* (customary law), etc. He chose not to exercise
mashalih al-mursala, unless three requirements were met: (1), the
advantage is in accordance with the principles of Islam, and no
certain indication is present; (2), it is in accordance with common
sense; and (3), is a workable solution.[31]

Basing herself on Goldziher, Schacht, and Nadia Abbot, Susan
A. Spectorsky sees Malik's procedure in using *hadith* as inconsis-
tent. Malik treats traditions under his authority creatively, seek-
ing to establish what is practical.[32] A case in point: Schacht finds
that Malik harmonizes an old-established tradition from the Ca-
liph Abu Bakr with historical traditions from the Prophet. Schacht
also finds that Malik uses legal and moral reasoning in interpret-
ing contradictory *hadiths*; sometimes he even "declares himself ig-
norant of what a particular tradition from the Prophet may mean,
in view of the practical difficulties of its application."[33] Sharabasi
argues that Malik's rejection of *hadith* was based on his carefulness
and his honesty. Malik was not ashamed to admit for instance when
he did not know a *hadith* or an answer.[34]

To obtain a clear picture of the number and kinds of *hadith* used, I provide tables below indicating the number of *hadith* used in the *Muwatta'*, both in the recension of Shaibani and the version of Zurqani (Table I), and the number *hadith* in *Kitab al-Tahara* (The Book of Purity) from the *Muwatta'* (Table 2).

Table 1[35]

	The Prophet	Companions	Successors	Other Authorities
Zarqani	822	613	285	-
Shaibani	429	628	112	10

Table 2
The Book of Purification

No	Theme	Total Number	The Prophet	Companions	Malik	Other Authorities
1	How to perform *wudu*[36]	8	2	2	3	1
2	The *wudu'* of a man who has been asleep before getting up to pray[37]	3	1	1	1	1
3	What is pure for *wudu'*[38]	4	2	1	-	1
4	Things which do not break *wudu*[39]	3	1	-	-	2
5	Discontinuing the performance of *wudu'* on account of eating cooked food[40]	9	3	4	1	1
6	On *wudu* in general[41]	10	8	1	-	1

Table 1 illustrates that Malik's use of *hadith* relies mainly on those related from the Prophet and Companions. The authority of the Successor is still however fairly important. Later authorities on the other hand are not significant. However, the number of *hadiths* from Companions and Successors combined is slightly more than the total number of *hadiths* from the Prophet (898 from Companions and Successors as opposed to 822 from the Prophet) in Zurqani's version, while they are nearly twice as many as the Proph-

et's (750 from Companions and Successors as opposed to 429 from the Prophet) in Shaibani's.

Table 2 can be seen from at least two angles. First, it may be looked at in terms of the procedure of the use of *hadith*. Of the six themes, only the first is introduced with a *hadith* on the authority of someone other than the Prophet. Once this is given, another is quoted from a Companion; then two of Prophet's are cited, then one from Malik, another from a different Companion, and then, finally, two more from Malik. The *hadiths* used in the remaining themes follow a hierarchical arrangement: the Prophet – Companions – Successors, except in the fourth theme, where the hierarchy moves from the Prophet to a Successor.

In terms of the variety in his use of the *hadith*, Malik's authority often seems to carry more weight than the Prophet's: in the first theme, for instance, Malik supplies 3 of 8 *hadiths* and the Prophet only 2; in the fourth theme, Malik cites himself in two of the three *hadiths* and the Prophet in the remaining one. The authority of the Companions in the fifth theme is adjudged to be slightly stronger (4 of 9) than the Prophet's (3 of 9).

Furthermore, the arrangement of transmitters within the *hadiths* themselves is hierarchical. For example, in the second *hadith* on the theme *How to perform Wudu'* , the transmitters are the Prophet, Abu Hurairah (a Companion), and later authorities, including Al-A'raj, Abu al-Zinad and Malik himself. Calder and Wheeler arrive at the same conclusion.[42] Calder notes that the Companions too are grouped with the four Caliphs always consecutively organized and always going before other and younger Companions. He finds some deviation from this principle, but it is generally reliable.[43]

Conclusion

From the discussion presented above, it seems that Malik's basic approach to *sunna* was to use it creatively. In employing *sunna* as a source of law, he followed a common sense way of thinking. He normally assigned the greatest weight to *hadith* derived from the Prophet, then relied on Companions, Successors, and later authorities. Some scholars, such as Schacht and Calder, see Malik's use of *sunna* as inconsistent due to the variety in the authorities on which he relied. However, some others such as Abu Zahrah and Sharabasi attribute these differences not to inconsistency, but to the objective conditions of his day, given that the *hadith* had not yet been established and the fact that the reliability of transmitters had not yet been fully verified.

End Notes

1. Ahmad al-Sharabasi points out that Malik's doctrine refers to textual sources (the Qur'an and the *sunna*), *ijma'*, and *'amal ahl al-Madina, qiyas, istihsan, 'urf, sad al-dhara'i*. He also argues that Malik imposes on *maslaha mursala* several conditions. See, his book *al-A'immah al-arba'ah:: Abu Hanifah, Malik ibn Anas, al-Shafi'i, Ahmad bin Hanbal*, (Beirut: Dar al-Hilal, 1964), p. 80-81. See also, Muhammad Abu Zahrah, *Malik: Hayatuhu, wa Asruhu – Arauhu wa Fiqhuhu*, 2nd edition (Qahirah: Maktabah al-Anzalu al-Misriah, 1952), p. 252-254.

2. The Qur'an is invariably considered the first source of Islamic Law. See, Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni usul al-fiqh*, (Cambridge: Cambridge University Press, 1997), p.7-8, or his "The Primacy of The Qur'an in Shatibi' Legal Theory," in *Islamic Studies Presented to Charles J. Adams*, ed. Wael B. Hallaq and Donald Little, (Leiden: E.J. Brill, 1991), p. 69-90.

3. Fazlur Rahman, *Islam*, 2nd ed. (Chicago: University of Chicago Press, 2nd Edition, 1979), p. 43

4. The term *sunna* has been traced and disputed by many scholars: see Joseph Schacht, *The Origins of Muhammadan Jurisprudence*, (Oxford: Oxford University Press, 1950), p. 58. Goldziher refers to it as sacred custom; See Ignaz Golziher, *Introduction to Islamic Theology and Law*, (Princenton, New Jersey: Princenton University Press, 1981), p. 37. Azami renders its as a way, course, rules, mode or manner of acting, or conduct of life; M.M. al-Azami, *On Schacht's Origins of Muhammadan Jurisprudence* (Riyadh: King Saud University, 1985), p. 29.

5. Shacht, *Origins* , p. 58

6. They followed and imitated Muhammad's deeds. See, Goldziher, *Introduction*, p. 3 and 37

7. Schacht, *Origins*, p. 58.

8. Azami, *On Schacht's Origins*, p. 31 In another place he states "… it has been noted earlier that the term *sunna* is used in different contexts, of them being an established religious practice instituted by the Prophet which is not compulsory (*wajib* or *fard*). For example, five daily prayers and the Friday prayers are *fard* (obligatory). These prayers were instituted by the Prophet, but the Prophet himself offered other prayers, either in solitude or in congregation. He prayed *Tahajjud* late at night, the 'Id prayer, twice a year, … All these prayers are called *sunna* –a fact known to every muslim child. In sense, the word means a practice established by the prophet that is not compulsory." Azami, *On Schacht's Origins*, p. 53.

9. The term *hadith* means "a story, a narration, a record." It is "a narrative, usually very short, purporting to give information about what the prophet said, did, or approved or, of similar information about his Companions, especially the senior Companions and more especially the first four Caliphs." Rahman, *Islam*, p. 53-54.

10. Ibid., p. 56.

11. Rahman explains that *ijma* 'is a bridge in the process of deduction relating the *sunna* of the Prophet with the living tradition. See his *Islam*, p. 57.

12. *Hadiths* and *sunna* were collected mostly in the second and third century of Hijra, and the most famous of these collections are known as *al-kutub al-*

sittah (the six books). These six collections are the formalization of Muhammad's practices and considered reliable among Muslim society, particularly Sunni Muslims. For the authoritative function of these collections, see, B. M. Wheeler, *Applying the Canon in Islam*, (New York: State University Press, 1996), p. 59.

13. If the material comes from the Prophet, it is called the *sunna* of the Prophet, from a Companion, it is called the *sunna* of Companions, and if it comes from a Successor or a Follower of Successor (later authorities), it is called a *fatwa* (advisory opinion).

14. Schacht, *The Origins*, p. 23

15. Ibid.

16. Schacht analyzes Shafi'i's *Kitab Ikhtilaf al-Hadith* and finds the above finding, Ibid.,   p. 21

17. Malik ibn Anas was born sometime between 90 and 97 AH (708 and 715 CE) in Medina, where he spent most of life and where he died in 179 AH. He was a distinguished Muslim jurist and founder of the Maliki school.

18. Calder explains that the *Muwatta'* is "composed of numerous discrete item, exhibiting two basic forms. First, there are *hadith-items*, characterized by *formal isnad*, introduced by the phrase *haddatha-ni Yahya 'an Malik* or simply *haddathani 'an Malik*. These isnad may end at the Prophet, or at a Companion, Successor, or ancient Jurist. Secondly, there are juristic dicta characterized by the introductory formula *qala malik* and not usually exhibiting a *haddatha-ni Yahya* element, nor any appeal to more distant authority. Occasionally, these dicta are contextualized, using the formula *su'ila Malik 'an ... wa-qala ...* There are some minor variations in the deployment of these formulae but the only serious deviation is found in some chapters in the *Kitab al-I'tikaf* where the hadith-items exhibit the alternative introductory formula *haddatha-ni Ziyad 'an Malik*." Norman Calder, *Studies in Early Muslim Jurisprudence*, (Oxford: Clarendon Press, 1993), p. 20-21.

19. There are many recensions of the *Muwatta'* still in existence. Muhammad Abu Fadl Ibrahim, the chief of the *lajnah ihya al-turath*, quotes al-Qadi 'Iyad saying that the recensions of the *Muwatta'* numbered in the area of twenty versions, including Malik's own version, Shaibani's, Ibn Wahab's, al-Qa'nabi's, etc., and that there are as many as ninety commentaries on the text, the famous one being those al-Zurqani and Jalal al-Din al-Suyuti. See 'Abd al-Wahhab 'Abd al-Latif, ed., *al-Muwatta`*, bi-riwayat Muhammad b. al-hasan al-Syaibani (Egypt: Muhammad Taufiq U'aidah, 1967), vol. I, p. 16-22.

20. Calder, *Studies*, p. 20.

21. Malik b. Anas, *al-Muwatta'*, riwayat Su'aid b. Sa'id al-Hadathani, vol. I (Bahrain: Idara al-Awqaf al-Sania, 1994), p. 22.

22. Susan A. Spectorsky, "Malik ibn Anas," in Mircea Eliade, ed., *The Encyclopedia of Religion*, vol. 9 (New York: Macmillan Publishing Company, 1987), p. 145.

23. Abu Zahrah, *Malik*, 224.

24. Ibid.

25. Sharabasi, *al-'Aimmah al-'Arba'a,* p. 80.
26. For example, Malik trasmits a *hadith* from Zaid ibn Salam about the punishment of *jina* (adultery). Another is a *hadith* about *yamin* and *shahid* which is reported from Malik, from Ja'far al-Sadiq. The Companions don't ever enter into the transmission, which goes directly from the Prophet to the Successors to the Prophet. See Abu Zahra, *Malik,* p. 295.
27. Abu Zahrah, *Malik,* p. 293-294.
28. The term *common use* here refers to credible scholars and the traditions on the Medinese as they are assumed, from time to time to have maintained the practice of the Prophet and the Companions.
29. Far from undermining his methodology, transmitters of the fourth category are never used by Malik unless they are confirmed by other credible scholars. Only then does he accept their evidence. See Abu Zahrah, *Malik,* p. 292.
30. Abu Zahrah, *Malik,* p. 284
31. Sharabasi, *al-'Aimmah al-Arba'ah,* p. 78-81.
32. Spectorsky, "Malik ibn Anas", p. 145.
33. Schacht, *Origins,* p. 22-23 or 313.
34. Sharabasi, *al'Aimmah al-'Arba'a,* p. 78.
35 Schacht, *The Origins,* p. 22.
36. *Hadith* no. 1 from 'Abdullah ibn Zayd; no. 2 and 3, from the Prophet; no. 4 from Malik; no.5 from 'Aisha; no. 6 from 'Umar ibn al-Khattab; and no. 7 and 8 from Malik.
37. *Hadith* no. 1 from the Prophet; no. 2 from 'Umar ibn al-Khattab; and no. 3 from Malik.
38. *Hadith* no. 1and 2 from the Prophet; no. 3 from 'Umar ibn al-Khattab; and no. 4 from 'Abdullah ibn 'Umar.
39. *Hadith* no. 1 from the Prophet; nos. 2 and 3 from Malik.
40. *Hadith* nos. 1, 2, and 8 from the Prophet; no. 3 from 'Umar ibn al-Khattab; no. 4 from 'Uthman; no. 5 from 'Ali ibn Abi Thalib; no. 6 from 'Abdullah ibn 'Umar; no. 7 from Abu Bakr al-Siddiq; and *hadith* no. 9 from Malik.
41. *Hadith* no. 1, 2, 3, 4, 5, 6, 9, and 10 from the Prophet; no. 7 from Abu Huraira and no. 8 from Said ibn al-Musayyib.
42. Calder, *Studies,* p. 21-22, and Wheeler, Applying the Canon, p. 23.
43. Calder, *Studies,* p. 30-34. In discussing *bab jami al-wudu',* he deviates in his discussion of the subject (from a cat to a dog).

Bibliography

Abu Zahrah, Muhammad. *Malik: Hayatuhu wa Asruhu – Ara'uhu wa Fiqhuh.* 2nd
    Edition Al-Qahirah: Maktabah al-Anjalu al-Misriyah, 1952.

Azami al-, M.M. *On Schacht's Origins of Muhammadan Jurisprudence.* Riyadh:
    King Saudi University, 1985.

Crone, Patricia. *Roman, Provincial and Islamic Law.* Cambridge: Cambridge Uni-
    versity Press, 1987.

Coulson, N.J. *A History of Islamic Law.* Edinburgh: Edinburgh University Press,
    1964.

_____. *Conflicts and Tensions in Islamic Jurisprudence.* Chicago: The University of
    Chicago Press, 1969.

Goldziher, Ignaz. *Introduction to Islamic Theology and Law.* Trans. Andras and
    Ruth Hamori. Princeton, New Jersey: Princeton University Press, 1981.

_____. *The Zahiris: Their Doctrine and Their History*, Leiden: E.J. Brill, 1971.

Hallaq, Wael B. *A History of Islamic Legal Theories: An Introduction to Sunni Usul
    al-Fiqh.* Cambridge: Cambridge University Press, 1997.

_____. "The Primacy of the Qur'an in Shatibi's Legal Theory." In *Islamic Studies
    Presented to Charles J. Adams*, ed. Wael B. Hallaq and Donald P. Little. p.
    69-90. Leiden: E.J. Brill, 1991.

Juynboll, G.H.A. *Studies on the Origins and Uses of Islamic Hadith.* Hampshire,
    Great Britain: VARIORUM, 1996.

Malik, b. Anas, *al-Muwatta'.* Trans. from the compilation of Yahya ibn Yahya
    al-Laythi, by Cambridge: Diwan Press, 1982.

_____. *Al-Muwatta'.* Transmission of Su'aid b. Sa'id al-Hadathani. Bahrain: Idara
    al-Awqaf al-Saniah, 1994.

Rahman, Fazlur. *Islam.* 2nd edition. Chicago: University of Chicago, 1979.

Shaybani, Muhammad b. Hasan. *Muwatta' Imam Malik.* Vol. I. al-Qahira: al-
    Majlis al-A'la li-al-Shu'un al-Islamiyah, 1967.

Sharabasi, Ahmad. *Al-A'immah al-Arba'ah: Abu Hanifah, Malik ibn Anas, al-Shafi'i,
    Ahmad ibn Hanbal.* Beirut: Dar al-Hilal, 1964.

Spectorsky, Susan A. "Malik ibn Anas." in Mircea Eliade, ed., *The Encyclopedia of
    Religion.* Vol. 9. New York: Macmillan, 1987, p. 145-146.

Zurqani, S. Muhammad. *Sharh al-Zurqani 'ala Muwatta' al-Imam Malik.* vol. I Beirut:
    Dar al-Fikr, n.d.

Wheeler, B.M. *Applying the Canon in Islam.* New York: State University of New
    York Press, 1996.

Kusmana is a junior lecturer at the Faculty of Ushuluddin, IAIN Sharif Hidayat-
ullah, Jakarta. He is now finishing his M.A. degree at the Institute of Islamic
Studies, McGill University, Montreal, Canada.