



Evolution in the Concept of Sunnah during the First Four Generations of Muslims in Relation to the Development of the Concept of an Authentic Ḥadīth as based on Recent Western Scholarship

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Abstract

The aim of this article is to trace the evolution in the meaning of the concept of Sunnah prior to its classical definition, which largely conflates it with the concept of an authentic (*ṣaḥīḥ*) Ḥadīth as defined by the classical Ḥadīth sciences. This article will first describe the semantic-contextual changes in the meaning of the term Sunnah during the period under examination and then present a chronological analysis of the development of the concept 'Sunnah' in relation to the development of the concept 'authentic Ḥadīth'. This article argues that during the first four generations of Muslims, the concept 'Sunnah' remained epistemologically independent of the concept 'authentic Ḥadīth' and that evaluation of Sunnah compliance with a certain practice or belief remained methodologically independent to that of the concept of an authentic Ḥadīth, as defined by classical *'ulūm al-ḥadīth* sciences.

Keywords

Sunnah; Ḥadīth; formative period of Islamic thought

1. Introduction

Throughout Islamic historical experience, the Sunnah, alongside the Qur'ān, has been considered to be one of the primary sources of Islamic

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¹ The word 'recent' in the title of this article refers primarily to works written by both Muslim and non-Muslim scholars in the twentieth and twenty-first centuries.

1 Law.² The need for Sunnah as a source of Islamic Law stems from the
 2 actual *nature* of the Qur'anic Revelation itself and the role played by the
 3 Prophet Muhammad in the "Prophetic-Revelatory event" to borrow
 4 Graham's phrase.³ By the term 'nature of the Qur'anic revelation' one
 5 means its *Deutungsbeduerftigkeit*, *i.e.*, its need for interpretation and, more
 6 specifically in the context of Islamic Law, its limited usefulness for the
 7 purposes of establishing a comprehensive and systematic socio-political
 8 and legal system.⁴ Traditionally it found its expression in the maxim:
 9 *al-qur'ān ahwaj ilā s-sunnah min al-sunnah ilā l-qur'ān* (*i.e.* the Qur'an is
 10 in need of Sunnah more than Sunnah is in need of the Qur'an).⁵

11 In order to fill the Qur'anic gap, the early Muslim community took
 12 recourse to the concept Sunnah, a pre-Qur'anic tribal custom signifying
 13 emulation-worthiness of a certain individual whose conduct becomes a
 14 norm for others to follow. This was based on the premise that Prophet
 15 Muhammad's embodiment of the Qur'anic Message, that took place in a
 16 variety of contexts over a period of more than 20 years during his Prophet-
 17 hood, is to be considered the most authoritative model for subsequent
 18 generations of Muslim to follow as well as its having normative value for
 19 the setting of legal antecedents and law explication purposes.⁶

20 ² Few Muslim groups, such as the nineteenth and twentieth century *Ahl al-Qur'ān*
 21 groups in the Sub-continent or contemporary Qur'an alone proponents, have rejected the
 22 concept of Sunnah as being normative because of their rejection of Ḥadīth. In their minds
 23 these two concepts, according to classical Islamic scholarship, were conceptually identical.
 24 Hence the rejection of the concept of Sunnah as a source of Islamic Law. See D. Brown,
 25 *Rethinking Tradition in Modern Islamic Thought* (Cambridge: Cambridge University Press,
 26 1996) 38-39.

27 ³ W.A. Graham, *Divine Word and Prophetic Word in Early Islam—Reconsideration of the*
 28 *Sources, with Special References to the Divine Saying or Ḥadīth Qudsi* (The Hague: Mouton,
 29 1977).

30 ⁴ This notion of comprehensibility of Islam (*shumulīyyat al-islām*) is based upon the
 31 classical Islamic doctrine according to which Islam as a worldview touches all dimensions
 32 of human existence at both the individual and social levels. For a brief and useful discussion
 33 of the issue of *shumulīyyat al-islām*, see, *e.g.*, Ramadan, *The Western Muslims and the Future*
 34 *of Western Islam* (Oxford: Oneworld, 2004) 33-37. On the limited usefulness of the Qur'an
 35 for the development of comprehensive legal doctrine, see, *e.g.*, W. Hallaq, *A History of*
 36 *Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997) 3-15.

37 ⁵ Abū Muhammad al-Barbahari, *Sharh al-Sunnah*, Khalid al-Raddadi, ed. (Beirut: Dār
 38 al-Sumay'i, 2000) 71.

39 ⁶ See Z.I. Ansari, "The Contribution of the Qur'an and the Prophet to the Development
 40 of the Islamic *Fiqh*", *Journal of Islamic Studies*, 3/2 (1992) 141-171.

Therefore, the concept Sunnah is overall very significant in Islamic thought and forms a basis for a large segment of Islamic law and theology. Moreover, as the author has argued elsewhere,⁷ differences in the evaluation of Sunnah compliance with certain practices and beliefs has been responsible for the emergence of conflicting views on a variety of issues pertaining to both the realms of Islamic jurisprudence and belief, while all claiming to be firmly rooted in the Qur'ān and Sunnah/Ḥadīth.

As described below, the classical concept of Sunnah has been defined in a way that renders it hermeneutically completely dependent upon the body of Ḥadīth literature. In this article, we refer to this definition of Sunnah as Ḥadīth-dependent Sunnah.

This article attempts to answer the following questions.

- Does the traditional definition of Sunnah that took root and established itself during the post-formative or classical period⁸ of Islamic thought⁹ reflect the way this term was understood during the pre-classical period?
- If not, as this article argues, how did this classical definition of Sunnah emerge and which mechanisms were responsible for its conflation with an authentic Ḥadīth as defined by the classical *'ulūm al-ḥadīth* sciences and when did they become apparent?

As such the aim of this article is to outline a chronological analysis of the development of the Sunnah concept and, in particular, how long it

⁷ A. Duderija, "Toward a Methodology of the Nature and the Concept of Sunnah", *Arab Law Quarterly*, 21/3 (2007) 269-280; cf., A. Duderija, "Paradigm Shift in Assessing/Evaluating the Value and Significance of Ḥadīth in Islamic Thought: From *'ulūm al-ḥadīth* to *uṣūl ul-fiqh*", *Arab Law Quarterly*, forthcoming. In the first quoted article I argue that the way the *nature and scope* of the concept of Sunnah is understood or defined is inextricably linked with the way *the nature, objectives and character* of Qur'ānic Revelation is conceptualised. Additionally, the article argues that apart from its *'amal* or practice-based component, Sunnah comprises *akhlaq*, *fiqh*, *'aqidah* and *'ibadah* elements which are epistemologically and methodologically independent of Ḥadīth but organically linked to a particular type of Qur'ānic hermeneutics.

⁸ The terms post-formative and classical will be used interchangeably throughout this article.

⁹ Here defined as post-fourth generation of Muslims or approximately the first 250 years of the Islamic calendar. For more on the definition of formative period of Islamic thought, see, M.W. Watt, *Formative Period of Islamic Thought*, Reprint, (Oxford: Oneworld, 2002) 1-4.

1 remained distinct from its classical definition. In order to do this, we trace
 2 how the meaning and definition of the Sunnah concept has evolved during
 3 the first four generations of Muslims and prior to its classical definition
 4 which confluences it with the concept of an authentic (*ṣaḥīḥ*) Ḥadīth as
 5 defined by the classical Ḥadīth sciences (*‘ulūm al-ḥadīth*). This article will
 6 first describe semantic-contextual changes in the meaning of the term
 7 Sunnah during the period under examination and then present a chrono-
 8 logical analysis of how the concept has evolved in relation to the develop-
 9 ment of an authentic Ḥadīth defined by the classical Ḥadīth sciences. This
 10 article argues that, during the first four generations of Muslims, the Sun-
 11 nah concept remained epistemologically independent of that for an
 12 authentic Ḥadīth and that evaluation of the Sunnah's compliance with a
 13 certain practice or belief remained methodologically independent to that
 14 of an authentic Ḥadīth.

15 2. The Classical Concept of the Definition of the Sunnah Concept

16 According to classical Islamic scholarship, as defined by the *muhadīthūn*,¹⁰
 17 the concept Sunnah in terms of its authenticity¹¹ is defined as comprising

18 ¹⁰ Experts on the transmission of Ḥadīth, their compiling, classification and authenticity.

19 ¹¹ A sound Ḥadīth and therefore Sunnah, in its 'post-Shāfi'i form (see our discussion in
 20 the main text below) consisted of a *matn* (text) and *isnād* (chain of transmitters), usually
 21 but not always going back to the Prophet. *Muhadīthūn* have formulated an impressively
 22 elaborate and complex hierarchy of Ḥadīth authenticity but *not* of their epistemological
 23 worth which was the task of the *fuqahā'* (*uṣūliyyūn*). The evaluation of the *soundness* of the
 24 Ḥadīth, a task of the *muhadīthūn*, is based upon the '*adalah*/uprightness of the narrators
 25 founded on certain criteria such as his/her memory and character *regardless* of their
 26 epistemological value. The epistemological study of Ḥadīth and Sunnah is primarily studied
 27 by the *fuqahā'* and the *uṣūliyyūn* or the Islamic jurists and legal theorists. This study of
 28 Ḥadīth/Sunnah is concerned with the number of individual chains of narrations (*isnād*)
 29 ranging from *ahad* to *mutawātir* Ḥadīth were a part of the larger concern of *fuqahā'* relating
 30 to legal methodology (*uṣūl al-fiqh*). The *mutawātir* Ḥadīth are those narrations, which have
 31 been transmitted by such a large number of people that, according to great majority of
 32 *fuqahā'* (they yield certain or immediate (*darurī*) knowledge. It must be noted, however,
 33 that there is no consensus on either the criteria pertaining to assessment of uprightness of
 34 narrators (*ilm al-rijal*), or on how many *isnāds* constitute and render a narration *mutawātir*.
 35 There are indeed very few *mutawātir* Ḥadīth, including those which (could) relate to law.
 36 *Ahad* Ḥadīth, on the other hand, are those narrations, which do not fulfill the *mutawātir*
 37 criteria and by default do not yield certain knowledge (*yaqīn*) as stipulated by the majority
 38 of Muslim jurists, but only *zann* or uncertainty and are thus legally not binding and cannot
 39 be considered as part of '*aqīdah* or Islamic creed. Therefore, the *fuqahā'* and *uṣūliyyūn*

numerous narratives documenting Prophet Muhammad's deeds (*fi'l*), utterances (*qawl*) and spoken approval¹² (*taqrīr*) as embodied in various Ḥadīth compendia considered 'authentic' according to the standards and criteria applied by classical Ḥadīth science criticism ('*ulūm al-ḥadīth*').¹³

The definition of the concept Sunnah has several implications, which here we will call Ḥadīth-dependent Sunnah. First, it assumes that the scope of Sunnah is epistemologically dependent upon and constrained by Ḥadīth, *i.e.* that it has the same epistemological value as that of each 'authentic' Ḥadīth and that the Ḥadīth is the sole depository and vehicle for Sunnahic perpetuation. Secondly, it assumes that Sunnah is methodologically dependent upon the Ḥadīth. Being methodologically dependent on the Ḥadīth implies that Sunnah compliance (or otherwise) with certain (legal or theological) practices or principles is and can only be determined by sifting through numerous narratives reportedly going back to the time of the Prophet Muhammad via an authentic chain of narrators (*isnād*). Thirdly, as a corollary to the second premise, coalescing and substituting the nature and scope of the concept Sunnah with that of Ḥadīth breaks the symbiotic and organic relationship between the concept of the Qur'ān and Sunnah as it existed during the first four Islamic generations,¹⁴ thus making the Qur'ān increasingly more hermeneutically dependent upon the Ḥadīth compendia. Fourthly, as a result of the above, the Sunnah's organic and symbiotic relationship with the Qur'ān, termed by Graham as the "Prophetic-Revelatory event", was severed and the Qur'ān's hermeneutical dependence upon Ḥadīth body of knowledge entrenched. Fifthly, the Sunnah's function and purpose, as will be demonstrated below, became increasingly positively legalistic.¹⁵

methodology of deriving Sunnah is different to that of the *muḥadīthūn*, and will become apparent in the main text below, closer to the way the concept of Sunnah was understood during the pre-classical period as they only accept the *mutawātir* Ḥadīth to constitute Sunnah. However the definitions of Sunnah are both the same.

¹² Some definitions also include Prophet's *ṣifāt*, that is, his features or physical appearance. M.M. Al-A'zamī, *Studies in Ḥadīth Methodology and Literature* (Kuala Lumpur: Islamic Book Trust, 2002) 6.

¹³ H.A.R. Gibb and J.H. Kramers, *The Concise Encyclopedia of Islam* (Leiden: Brill, 2001) 552-554. For an overview of '*ulūm al-ḥadīth*' sciences, see, *e.g.*, H.M. Kamali, *Ḥadīth Methodology—Authenticity, Compilation, Classification and Criticism of Ḥadīth* (Kuala Lumpur: Ilmiah Publishers, 2002).

¹⁴ As shall be demonstrated below.

¹⁵ Rather than being conceptualised primarily as ethico-religious or values-based.

1 Prior to addressing the questions raised above, a brief remark about the
 2 nature and scope of the concept Sunnah is in order. As we argued elsewhere,
 3 the pre-classical concept of Sunnah¹⁶ was based upon a hermeneutically
 4 symbiotic relationship with the Qur'ānic discourse as premised upon the
 5 principle of the Qur'ān's *deutungsbedeutungsfähigkeit*. The nature and scope of
 6 the concept Sunnah, furthermore, constituted four different elements:
 7 *sunnah akhlaqiyyah* (ethico-moral or values-based component also based
 8 on the objective nature of ethical values), *sunnah 'aqidiyyah* (theological or
 9 religious component), *sunnah fiqhbiyyah* (legal component which was a
 10 reason inclusive and a values-based component that recognised the objective
 11 nature of ethical values) and *sunnah 'amaliyyah/ibadiyyah* (practice-based
 12 component).¹⁷ For the purposes of this article, it is important to keep in
 13 mind that all these components of the Sunnah can be formulated, preserved
 14 and transmitted independent of any written documentation. Another
 15 important consideration to be kept in mind throughout this discussion is
 16 the fact that, during the entire period under investigation, the production,
 17 maintenance and perpetuation of knowledge, including nascent sciences
 18 such as jurisprudence, theology and Qur'ānic commentary, was oral rather
 19 than written.¹⁸ As such the concept Sunnah that was called upon and
 20 employed throughout this period, as demonstrated below, could and did
 21 exist independent of written Ḥadīth.

22 3. Evolution in the Nature and Scope of the Concepts Sunnah and 23 Ḥadīth

24 Section 3 presents how the concept Sunnah has evolved vis-à-vis the
 25 development of what constitutes an 'authentic' Ḥadīth from the time
 26 of the Prophet until the middle of the third century Hijrah when the
 27 Ḥadīth-based Sunnah gained wide acceptance among Muslim jurists and

28 ¹⁶ Duderija, "Methodology", *supra* note 7, pp. 269-280.

29 ¹⁷ Some evidence which confirms these assertions will be presented on pp. 8-9. For
 30 more, see Duderija, "Methodology", *supra* note 7. The '*amaliyyah*' component could also
 31 include the administrative and/or political aspects of Sunnah highlighted by Mathnee. *Sun-*
 32 *nah ahlaqiyyah* could also be inclusive of the political aspect of Sunnah as political discourse
 33 relies on principals and values. See M.S. Mathnee, *Critical Reading of Fazrul Rahman's*
 34 *Islamic Methodology in History*, M.A. Thesis, University of Cape Town, 2005.

35 ¹⁸ See A. Souaiaia, *The Function of Orality in Islamic Law and Practices—Verbalising*
 36 *Meaning*, (Londen: Edwin Meller Press, 2006).

theologians. The analysis first investigates semantico-contextual and thereafter epistemologico-methodological changes in the concept Sunnah. 1
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3.1. *Semantico-contextual Changes in Definition and Scope of the Sunnah* 3

Ansari has pointed out several difficulties one encounters when studying the terminology used during the early period of Islamic thought. One such problem is the “comparative lack of fixity in technical connotations of terms in use”¹⁹ which resulted in a gradual change in connotation over a period of time. An important aspect in these semantical changes in terminology is their increasing ‘technical’, or what the author would describe as legalistic,²⁰ connotations. Moreover, and importantly, these terms had a multiplicity of meanings even when employed by the *same* author in the *same* work.²¹ 4
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Another important principle for the purpose of this study that Ansari has identified with reference to the changes in meaning of certain words and concepts is the notion of a significant time gap between the usages of the conceptual and technical/legalistic aspects of terminology. Put differently, words prior to acquiring “standard technical phraseology” had other meanings and were used in other contexts.²² The above distinctions are of fundamental importance to this study from the point of view of understanding the validity of the classical definition of the concept Sunnah. 13
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We now will examine the semantico-contextual changes of the concept Sunnah. The term will be analysed by examining its etymological (pre-Qur’anic) meaning(s), Qur’anic meaning(s) and post-Qur’anic usage(s). 22
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¹⁹ Z.I. Ansari, “Islamic Juristic Terminology before Shāfi’ī: A Semantical Analysis with Special Reference to Kufa”, *Arabica*, xix (1972) 279. 25
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²⁰ In the sense of as they are being used in literature on Islamic jurisprudence (*fiqh*) and legal theory (*uṣūl ul-fiqh*). For the difference between *fiqh* and *uṣūl ul-fiqh*, see, e.g., H. Kamali, “Introduction”, in: *The Principles of Islamic Jurisprudence*, (Cambridge: Cambridge University Press, 1991). 27
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²¹ Ansari, *supra* note 19, p. 270. 31

²² This suggests that their definition was imprecise and ambiguous, probably because these terms as concepts were quite broad and abstract in nature and were associated with ethico-moral values rather than specified edified rules/laws or dogma. We shall explore this in subsequent parts of this article. 32
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1 3.1.1. *Etymological, Qur'anic and post-Qur'anic meanings of Sunnah*

2 Etymologically, the term Sunnah underwent several semantic changes.²³ It
 3 originated from the Arabic root S-N-N that probably referred to “flow and
 4 continuity of a thing with ease and smoothness”.²⁴ Over time, the term
 5 Sunnah was increasingly used in the context of human behaviour, and as
 6 “a way, course, rule, mode or manner of acting or conducting life of life”,
 7 thus becoming equivalent to the word *sira*. Thereafter it evolved to signify
 8 moral appropriateness and normativeness of a human worthy of being
 9 followed.²⁵ Ibn Manzur defines Sunnah as a “commendable straight-
 10 forward manner of conducting oneself (*al-sunnat al-tariqat al-mahmudat*
 11 *al-mustaqimah*).²⁶ By its very nature it implies normativeness, *i.e.* having a
 12 normative character.

13 With respect to the Qur'an, the Sunnah has been used on numerous
 14 occasions with regard to the immutable laws of the retribution of God
 15 (*sunnahāt allāh*) with respect to people who repeatedly transgressed these
 16 laws with disdain.²⁷ The phrase *sunnahāt al-awwalīn* refers to the ancient
 17 people or nations who, having brought upon themselves the wrath of God
 18 by rejecting and killing His Messengers, were doomed and turned to dust.²⁸
 19 Interestingly the term Sunnah of the Messenger of Allāh (*sunnahāt*
 20 *un-nabi*), a fundamental concept in post-Qur'anic Islamic thought, does
 21 not occur in the Qur'an. The Prophet is, however, praised in the Qur'an as
 22 “*uswah al-ḥasanah*” (a good/beautiful/excellent example) for Muslims.²⁹
 23 Ansari aptly remarks that this use of the term is consistent with the overall
 24 Qur'anic attitude towards all other Prophets.

25 ²³ In “Islamic Terminology” Ansari deals with them in more detail; see *supra* note 19,
 26 p. 270; *cf.*, I. Ahmed, *The Significance of Sunnah and Ḥadīth and their Early Documentation*,
 27 Edinburgh University, Ph.D. Thesis, 1974, pp. 6-11.

28 ²⁴ Ibn Faris, *Mu'jam Maqayis al-Luga* (1368 AH), Abd al-Salam (ed.), *Muhammad*
 29 *Harun*, 6 vol., Cairo, vol. III, p. 60 ff.

30 ²⁵ Ansari, *supra* note 19, pp. 260-261; *cf.*, Mathnee, *supra* note 17, pp. 10-11; *cf.*,
 31 M.Y. Guraya, *The Concept of Sunnah in the Muwaṭṭa of Mālik b. Anas*, McGill University,
 32 unpublished Ph.D. Thesis, 1969, Ch. 1. On the Qur'anic concept of Sunnah, see also
 33 R. Gwynne, “The Neglected Sunnah: *Sunnat Allāh* (The Sunnah of God)”, *American*
 34 *Journal of Islamic Social Sciences*, 10/4 (1993) 455-463.

35 ²⁶ Ibn Manzur, *Lisan al-'Arab*, 15 vol., Beirut, 1956, vol. 8, p. 226.

36 ²⁷ See, *e.g.*, Qur'an 40:85; 48:23; 33:38. For all the Qur'anic usages of Sunnah, see
 37 H.E. Kassis, *A Concordance of the Qur'an* (Berkeley, CA: University of California Press,
 38 1983) 1097. Other meanings given are institution, customary action, wont.

39 ²⁸ Qur'an 7:38; 40:18:55, etc.

40 ²⁹ Qur'an 60:4.

Considering the status and authority that the Prophet enjoyed by his followers, especially in the Medinian period, and the etymological background of the word Sunnah as just described, it would be only common-sense to maintain that the expression “Sunnah of the Prophet” would have been used in the early Muslim community in the sense of being Qur’ānically sanctioned model-behaviour of the Prophet.³⁰ Furthermore, there is sufficient evidence to suggest that the Prophet himself, the early caliphs such as ‘Umar (d. 23 AH), Uthman (d. 35 AH) and Ali (d. 40 AH), as well as the people at the time of early Umayyad caliphs (e.g., Abd al-Mālik, 65-86 AH), used this *sunnah al-nabi* (Prophet’s Sunnah) expression on numerous occasions.³¹

Apart from its usage in a phrase *sunnah al-nabi* in the first and especially second half of the first century Hijrah, the word Sunnah has been used in the following ways. Sunnah refers to the “right and just practice” of the Prophet,³² Sunnah of caliphs preceding Uthman (i.e., Abu Bakr and Umar);³³ Sunnah of believers;³⁴ Sunnah as a norm to be followed in jurisprudential sense;³⁵ and Sunnah as distinct from Ḥadīth.³⁶

Although still quite general and vague at the beginning of the second century, the term Sunnah, with the rise of sciences of jurisprudence (*uṣūl al-fiqh*), was being increasingly but not exclusively used in a legal sense.³⁷ Ansari gives us following Sunnah meanings from that period in time: obedience and loyalty of the people to the ruling government in accordance with the book (Qur’ān) and Sunnah;³⁸ emphasis on the Sunnah as something that can be traced back to the time of the Prophet and/or early caliphs (in contrast to just any practice adopted by the people);³⁹ Sunnah becoming a synonym of the expression Sunnah of the Prophet;⁴⁰

³⁰ Ahmed, *supra* note 23, pp. 32-43.

³¹ Ibn Ḥanbal, *Musnad*, vol. II, p. 124, as cited in Ansari, *supra* note 19, pp. 263-264.

³² Crone and Hinds, *God’s Caliph: Religious Authority in the First Centuries of Islam*, (Cambridge: Cambridge University Press, 1986) 71.

³³ Ansari, *supra* note 19, p. 264.

³⁴ *Ibid.*

³⁵ *Ibid.*, p. 268.

³⁶ I. Goldziher, *Muhammedanische Studien* (1889-1890), Halle, vol. II, p. 12.

³⁷ *I.e.*, principles and practices of the Prophet implying normativeness and was being restricted to the persona of the Prophet himself only.

³⁸ Ansari, *supra* note 19, p. 265.

³⁹ *Ibid.*, p. 266.

⁴⁰ *Ibid.*, p. 267.

1 Sunnah as practice based on *ijmā'*;⁴¹ Sunnah as a rule;⁴² Sunnah as extension
 2 of the Qur'ān;⁴³ Sunnah as well-established norms/practises (*'amal*)
 3 recognised by Muslims in general, which came through and were accepted
 4 by learned scholars (*fuqahā'*)⁴⁴ and the Sunnah as antonym for heretical
 5 innovation (*bid'ah*).⁴⁵ Juynboll offers several other contexts in which the
 6 term Sunnah was associated and used during the second century Hijrah,
 7 namely, as a politico-administrative term with a religious flavour,⁴⁶ Sunnah
 8 as a general righteous Islamic practice (*as-sunnah al-'adilah*; *jarat al-*
 9 *sunnah*),⁴⁷ Sunnah as a normative way of the early community as a whole.⁴⁸
 10 Abd Allah's extensive analysis of Mālik Ibn Anas' concept *'amal* leads him
 11 to conclude that he used the word Sunnah in a number of ways: that of
 12 Sunnah supported by the Medinian *ijmā'* (*sunna l-lā-ladhi lā ikhtilah fiha*
 13 *'indana*); Sunnah being put into practice (*madat al-sunna*); Sunnah of all
 14 Muslims (*sunnat al-muslimīn*); Sunnah known to the people of knowledge
 15 (*sunnah 'indana*); Sunnah of the Prophet (*sunnat al-nabi*) and simply
 16 Sunnah (*al-sunnah*).⁴⁹

17 In his book *On Schacht's Origins of Muhammadan Jurisprudence*, Al-
 18 Azami also gives textual evidence that the word Sunnah was used "in a
 19 variety of different contexts".⁵⁰

20 Dutton's studies of Mālik's *Muwatta'* lead him to conclude that accord-
 21 ing to Mālik the concept Sunnah was seen as:

22 ... a normative practice established by the Prophet, put into practice by Companions
 23 and inherited from them as *'amal* (in this sense the practice of Companions in Med-
 24 ina) by the Successors and their Successors up to the time of Mālik.⁵¹

25 ⁴¹ *Ibid.*, p. 269.

26 ⁴² *Ibid.*, p. 270.

27 ⁴³ *Ibid.*, p. 272.

28 ⁴⁴ *Ibid.*, p. 274.

29 ⁴⁵ Brown, *supra* note 2, p. 11.

30 ⁴⁶ G.H.A. Juynboll, "Some New Ideas on the Development of Sunnah as a Technical
 31 Term in Early Islam", in: G.H.A. Juynboll (ed.), *Studies on the Origins and Uses of Islamic*
 32 *Ḥadīth*, (Ashgate: Variorum, 1996) 103.

33 ⁴⁷ *Ibid.*, pp. 103-104.

34 ⁴⁸ *Ibid.*, p. 104.

35 ⁴⁹ Umar Faruq Abd-Allah, *Mālik's Concept of 'Amal in the Light of Mālikī Legal Theory*,
 36 Ph.D. Thesis, University of Chicago, 1978, vol. I, pp. 549-550; cf., Guraya, *supra* note 25.

37 ⁵⁰ Al-Azami, *On Schacht's Origins of Muhammadan Jurisprudence*, (Riyadh: King Saud
 38 University, 1985) 32.

39 ⁵¹ Y. Dutton, *The Origins of Islamic Law—The Qur'ān, the Muwatta' and Madinian*
 40 *'Amal*, (London: Routledge Curzon, 2002) 168.

A somewhat different and more nuanced understanding of the concept of Sunnah in Mālik's *Muwatta* that is still independent of Ḥadīth is argued by Guraya who defines it as a concept based on "recognized Islamic religious norms and accepted standards of conduct derived from the religious and ethical principles introduced by the Prophet".⁵² Importantly, Guraya also identifies Sunnah' constituents which shall be discussed subsequently.

Another definition of Sunnah that does not depend upon its written-based documentation is argued by Pakistani scholars Moiz Amjad and Ghamidi. They define Sunnah as: "a set of actions or practical rules (excluding beliefs) which Prophet initiated promoted and performed among *all* of his followers as a part of God's religion (*dīn*) and that have been perpetuated from one generation to another *practically*".⁵³

Ansari echoes these words by stating that at the time of the famous Syrian scholar Awza'i (d. 157 AH) "the ways of referring to Sunnah, [however] were not standardised".⁵⁴ Similarly Wheeler in his investigation of second-century jurists such as Ibrahim (d. 182 AH) and Anas (d. 179 AH) maintains that the "concept and content of Sunnah was malleable because it was not yet to be limited to a textual corpus".⁵⁵

It is worth noting the words by Al-Azami in the same section of the book dealing with the early concept of Sunnah, which serves here as a means of a brief summary of what was said above with regards to semantico-contextual changes in the Sunnah: "Not only was the word Sunnah originally not confined to the practices of the Prophet: its meaning also underwent changes".⁵⁶

From the above discussion it can be established that the concept Sunnah underwent a series of semantico-contextual changes during the formative period of Islamic thought. The question that arises is why did the concept Sunnah undergo such semantico-contextual changes and which processes led to the classical definition of Sunnah? In other words, what were the background forces and mechanisms behind these semantico-contextual changes?

⁵² Guraya, *supra* note 25, "Introduction".

⁵³ www.understanding-islam.org/sourcesofislam.

⁵⁴ Z.I. Ansari, "An Early Discussion on Islamic Jurisprudence: Some Notes on *Al-Radd 'alā Siyar al-Awza'i*", in: *Islamic Perspectives: Studies in Honour of Mawlana Sayyid Abdul A'la Mawdudi*, K. Ahmad and I.Z. Ansari (eds.) (UK: The Islamic Foundation, 1979).

⁵⁵ B.M. Wheeler, *Applying the Canon in Islam—The Authorization and Maintenance of Interpretive Reasoning in Hanafi Scholarship*, (Albany: State University of New York Press, 1996) 18.

⁵⁶ Al-Azami, *supra* note 50, p. 33.

1 3.2. *Epistemologico-methodological Changes in Definition and Scope of the*
 2 *Sunnah*

3 The questions raised above led us inevitably to the epistemologico-
 4 methodological aspects behind the transfer in meaning and connotation of
 5 the concept of Sunnah. This part of the article traces the development of
 6 the concept of Sunnah and how it was understood during the first four
 7 generations of Muslims.

8 In the context of the overall aims of this article than we are interested in,
 9 defining the scope of the body of knowledge used to determine what con-
 10 stituted Sunnah during the pre-classical period and juxtaposing it with the
 11 epistemological boundaries governing “authentic” Ḥadīth to determine
 12 whether there are any epistemological discrepancies or disparities between
 13 the two. We are also interested in bringing to light the methodological
 14 tools used in defining and determining the concept of Sunnah during the
 15 pre-classical era and contrast these tools with those implied by the classical
 16 definition of Sunnah. Additionally, this will give us an insight into the
 17 epistemological boundaries and methodological mechanisms which have
 18 been used when defining Sunnah.

19 Part of the analysis will focus on depicting the broad and general trends
 20 in the evolution in perceptions of legitimacy of the use of *ra’y* (personal
 21 judgment based on reason) when defining the concept of Sunnah⁵⁷ and of
 22 the moral epistemological boundaries of the same.⁵⁸ This will allow us to
 23 establish if there was a qualitative difference in epistemological assump-
 24 tions governing the concept of Sunnah during the pre-classical and classi-
 25 cal periods as the classical definition of Sunnah excludes the use of reason
 26 when determining the Sunnah compliance or otherwise of a certain act or
 27 practices if it is based upon an authentic Ḥadīth. In other words we shall
 28 try to ascertain to what extent and for how long Sunnah as a concept
 29 remained largely *epistemologically and methodologically independent* of
 30 ‘authentic Ḥadīth’. Chronology, as we shall see, plays a very important part
 31 in the way the relationship between Sunnah and “authentic Ḥadīth” is

32 ⁵⁷ Since Sunnah is organically linked and derives its legitimacy from the Qur’ān, this
 33 analysis also applies to the Qur’ān.

34 ⁵⁸ The same could be applied to Qur’ānic interpretation but is outside the scope of this
 35 study. For a very insightful treatment of this question, see G. Hourani, “Ethical Pre-
 36 suppositions of the Qur’ān”, *Muslim World*, 70 (Jan. 1980) 1-28, henceforth ‘Ethical’.

conceptualised because the usage of both⁵⁹ concepts, as we earlier demonstrated, evolved against a different semantico-contextual background. Firstly, we will investigate how the concept of Sunnah at the time of the Prophet was understood.

3.2.1. *Sunnah as Epistemologico-methodologically Independent of Ḥadīth—a chronological analysis*

3.2.1.1. Sunnah and at the Time of the Prophet

Professors Izutsu⁶⁰ and Hallaq⁶¹ claim that the emerging Qur'ānic *Weltanschauung* during the revelatory period was not completely divorced from its pre-Qur'ānic one. Although the Qur'ān is to be considered an independent ethico-religious and linguistic entity with its own worldview, it did not claim a complete epistemological break with pre-Qur'ānic Arabia.⁶² Over the revelatory period of some two decades, the Qur'ān rejected, modified, condoned and accepted the socio-cultural values and moral of Arabian tribal communionism of pre-Qur'ānic Arabia in accordance with the budding Qur'ānic ontological and ethico-religious value system. The foundation of this emerging Qur'ānic view of “reality” was, quite naturally, the Qur'ān as embodied by the Prophet himself.⁶³

The notion of Sunnah was, as we argued earlier, a well-known concept in pre-revelational Arabia understood as a normative action-behavioural⁶⁴ system set by an individual worthy of tribe's emulation, in the post-revelational period logically ascribed to the bearer of Revelation himself.⁶⁵ With the Prophet amongst their midst, the early Muslim community had a direct

⁵⁹ The author has presented an evolution of the concept of an authentic Ḥadīth in the article, A. Duderija, “The evolution in the concept of an authentic Ḥadīth in relation to the concept of Sunnah during the first four generation of Muslims”, unpublished article.

⁶⁰ T. Izutsu, *Ethico-Religious Concepts in the Qur'ān*, (Montreal: McGill University Press, 1966).

⁶¹ W. Hallaq, *The Origins and Evolution of Islamic Law*, (Cambridge: Cambridge University Press, 2005) 32-33.

⁶² Cf., M. Fletcher, “How Can We Understand Islamic Law Today?”, *Journal of Islam and Islamo-Christian Relations*, 17/2 (April 2006) 159-172.

⁶³ Cf., Ansari, *supra* note 6.

⁶⁴ In contrast to written as in the case of Ḥadīth. Henceforth, *The Origins and Evolution*.

⁶⁵ The phrase ‘Sunnah of the Prophet’ seems to have emerged immediately after his death. Hallaq, *supra* note 61, p. 47; cf., M.M. Bravmann, *The Spiritual Background of Early Islam: Studies in Ancient Arab Concepts*, (Leiden: Brill, 1972) 133, 168-174.

1 access to the living commentary of the Revelation, and through him a liv-
 2 ing link to the Divine. The Prophet's persona and character as a source of
 3 Revelation-based authority and normativeness for his contemporary adher-
 4 ents and believers in his Prophethood was a natural fact and a matter of
 5 common sense. With the Prophet alive in Makkah/Medina, the Muslim
 6 community was witnessing his activities daily and was subject to his
 7 instructions directly, that is without an intermediary. The community
 8 did not engage in systematically debating the questions of the nature
 9 and the scope of the Prophetic authority. When the need arose they could
 10 seek advice and consult him in matters needing personal or communal
 11 clarification.⁶⁶

12 Indeed, in the Qur'anic verses such as 59:7⁶⁷ and 4:64,⁶⁸ the Qur'an
 13 mentions the necessary intervention of and obedience to the Prophet in
 14 the affairs of the community.⁶⁹ These, however, were *not dogmatic* in nature,
 15 *i.e.*, did not pertain to the realm of beliefs.⁷⁰

16 The Qur'an, therefore, can be said to testify to that fact that the Prophet
 17 enjoyed extra-revelational authority based on "right and just practice",⁷¹
 18 but that this privilege was always exercised in conjunction with concepts of
 19 mutual consultation with community in a most balanced and delicate
 20 way.⁷² Additionally, Dutton further substantiates this point. Based on his
 21 study of Mālik's *Muwatta* he asserts that, "for Mālik the Prophet is clearly
 22 a source of extra-Qur'anic judgement but this 'extra- Qur'anic' element is

23 ⁶⁶ Cf., Ansari, *supra* note 6, pp. 156-171.

24 ⁶⁷ Q59:7, "So take what Apostle assigns to you and deny yourselves that which he
 25 withholds from you" (Y. Ali). "And whatever the messenger gives you take it, but whatever
 26 he forbiddeth, abstain (from it)" (M. Picthall).

27 ⁶⁸ Q4:64: "We have sent not an Apostle but to be obeyed in accordance with the Will
 28 of Allah" (Y. Ali); "We sent the Messenger save that he should be obeyed by Allah's leave"
 29 (M. Picthall).

30 ⁶⁹ It must be admitted that the verses mentioned, like many parts of the Qur'an, were
 31 situational/contextual in character and had specific occasions of revelation—first linked to
 32 the distribution of booty and second to a concrete internal problem within the Muslim
 33 Medinian community.

34 ⁷⁰ In these matters the Prophet's role was merely that of the Messenger, *i.e.*, the conveyer
 35 of Revelation.

36 ⁷¹ Additionally, the fact that *'amall* practice of the entire Medinian community was
 37 recognised as a source of law by certain schools of thoughts (the *Mālikī madhhab* in
 38 particular) is clear evidence that the Prophet's authority was not restricted to theological or
 39 faith matters stemming from the Qur'an.

40 ⁷² *Ibid.*, p. 186. Generally on this see Graham, *supra* note 3; also see, Ansari, *supra* note 6.

considered to be within the general principals outlined by the Qur'ān rather than a separate one.⁷³

Elaborating on this point of organic, directly interwoven Sunnah-Qur'ān dynamic at the time of the Prophet in Mālik's *Muwatta*, Dutton also remarks that:

Many of the fundamental obligations of the Qur'ān, such as doing the prayer, paying *zakāt* and going on hajj, could not have been put into practice unless there were some practical demonstrations of how to do so, and the obvious model for this of course was that of the one who first put these obligations in practice, *i.e.* the Prophet. The Qur'ān could not, therefore, be divorced from its initial context, *i.e.* the life of the Prophet, and, although its supremacy of the text remained beyond question, it was always seen in the light of its first practical expression, namely, the Sunnah of the Prophet.⁷⁴

Thus, due to the nature of Qur'ānic content it was in need of Sunnah, that is, in need of both *Deutungsbeduerflichkeit* and of a practical manifestation *in actu*. This organic link between the Message and the Messenger is captured best by often-repeated Qur'ānic phrase exhorting the believers to "Obey God *and* the Prophet".⁷⁵ This unity of "prophetic-revelatory event", to use Graham's phrase, has from the very beginning and throughout the first 150 years of the formative Islamic thought reflected the early Muslim understanding of the function, nature the scope and the relationship between the Qur'ān and Sunnah.⁷⁶ This interdependent, symbiotic relationship between the Qur'ān and Sunnah enjoyed wide-spread acceptable in early Islam. In this context Graham maintains that:

It appears [that] for the Companions and the early Followers of the Prophet, the divine activity manifested in the mission of Muhammad was a unitary reality in which the divine word, the prophetic guidance, and even the example and witness of all who participated in the sacred history of the Prophet's time, were all perceived as complementary, integral aspects of a single phenomenon.⁷⁷

Similarly, this hermeneutically intimate relationship is also noted by Sachedina who avers the following:

⁷³ Dutton, *supra* note 51, p. 164.

⁷⁴ *Ibid.*, p. 163.

⁷⁵ Q4:59; 4:64; 3:132; 3:32; and many others.

⁷⁶ Graham, *supra* note 3, p. 12.

⁷⁷ *Ibid.*, p. 15; *cf.* Ansari, *supra* note 6.

1 Explication of the divine intention of the revelation was among the functions that the
2 Qur'an assigned to the Prophet. The Prophet functioned as the projection of the divine
3 message embodied in the Qur'an. He was the living commentary of the Qur'an, inex-
4 tricately related to the revelatory text. Without the Prophet the Qur'an was incompre-
5 hensible, just as without the Qur'an, the Prophet was no prophet at all.⁷⁸

6 Similarly, in his investigation of an early Ḥanafī jurist, 'Isa b. Aban
7 (d. 221/836), Bedir asserts that at this time the hierarchy of the Qur'an
8 and Sunnah was not yet clear.⁷⁹ This unity of "prophetic-revelatory event",
9 to use Graham's phrase, has from the very beginning and throughout the
10 first 150 years of the formative Islamic thought reflected the early Muslim
11 understanding of the function, nature the scope and the relationship
12 between Qur'an and Sunnah.⁸⁰ This interdependent, symbiotic relation-
13 ship between Qur'an and Sunnah, therefore, enjoyed wide-spread accept-
14 ability in early Islam. It was expressed in a phrase *kitāb* (i.e. the Qur'an) *wa*
15 *sunna*.⁸¹ Thus, similar to the Qur'an the concept of Sunnah (but not *ṣaḥīḥ*
16 Ḥadīth as by product of 'ulūm al-ḥadīth sciences) can be seen as a type
17 of *wahy*.⁸²

18 Apart from this symbiotic Qur'āno-Sunnahic relationship stemming
19 from the very nature of the Qur'ānic revelation, another aspect of the
20 Qur'ānic revelation influenced the character of Sunnah as exemplified by
21 the Prophet. The predominantly ethico-religious character of the Qur'an
22 and the Qur'ānic legislative dimension as well as its overriding concern for
23 the moral conduct of humans⁸³ translated itself into Prophetic activity
24 which emphasised a person's moral responsibility and God consciousness
25 rather than law formulation.⁸⁴ This nature and the character of the Qur'ānic
26 revelation and its legislative element, embodied and continued by the

27 ⁷⁸ A. Sachedina, "Scriptural Reasoning in Islam", *Journal of Scriptural Reasoning*,
28 5/1 (April 2005).

29 ⁷⁹ M. Bedir, "An Early Response to Shāfi'ī: 'Isa b. Aban on the Prophetic Report
30 (Khabar)", *Islamic Law and Society*, 9/3 (2002) 285-311, p. 303.

31 ⁸⁰ Graham, *supra* note 3, p. 12.

32 ⁸¹ Shaykh Abdalqadir al-Murabit, *Root Islamic Education*, <http://bewley.virtualave.net/Root4.html>.

33 ⁸² A. 'Azim Sharafuddin, *Tarikh ut-tashrī' l-Islāmī*, Benghazi, 1973, p. 59.

34 ⁸³ In this context, Ansari's following remarks are quite pertinent: Qur'ānic legislation
35 differs from legal codes in form as well as in spirit and purpose. Its basic motivation is
36 religious and moral rather than 'legal' in a narrow sense of the term. Its aim is to lay down
37 certain standards of conduct that are intrinsically good and conducive to the good pleasure
38 of God. Ansari, *supra* note 6, p. 143.

39 ⁸⁴ Or more precisely legal norms were conceived more in ethico-religious terms.
40

Prophet, was geared towards certain underlying legislative norms which were based on certain purposes and objectives.⁸⁵ Schacht (rightly) observes this fact when describing the origins and development of Islamic Law by saying: “Had religious and ethical standards been comprehensively applied to all aspects of human behaviour, and had they been consistently followed in practice, there would have been no room and no need for a legal system in the narrow meaning of the term. This was in fact the original ideal of Muhammad.”⁸⁶ This claim will be investigated more closely in subsequent parts of this study.

As alluded to above, another phenomenon that needs to be taken into consideration in the context of evolution of the concept of Sunnah is that during the formative period of Islamic thought the *oral* nature of transmission and authentication of knowledge as well as *oral*-based interpretative strategies of the primary sources were considered more authentic and were more prevalent than written-based ones. In this context Souaiaia avers that:

In the practices of scholars and jurists closest to the time of the Prophet, there seems to be an overwhelming attraction to *isnād*-based *oral* reports and momentous lack of interest in the published literature, a phenomenon that can be documented for at least one-hundred years after the recording (*tadwīn*) era.⁸⁷

He also convincingly argues that the processes of formulation, preservation and transmission of religious and legal knowledge was “fully and exclusively oral”.⁸⁸ The above distinctions are of fundamental importance to this study from the point of view of understanding the evolution of the concept of an authentic Sunnah in relation to that of an ‘authentic’ Hadith.

An additional issue needing clarification is the evolution in the scope of and the function or the employment of the use of reason in the Qur’ān and Sunnah, especially in relation to the assumptions governing the nature of

⁸⁵ Ansari, *supra* note 6, pp. 144-146. This seemed to have given birth to jurisprudent and legal theory literature that emphasized the importance of the *maqasid* or purpose/objective-based approach to Islamic Law and its theory as evident in the writings of Al-Tusi, Shatibi and Ghazali to name a few. See Hallaq, *supra* note 4.

⁸⁶ J. Schacht, *Introduction to Islamic Law*, (Oxford: Clarendon Press, 1964) Introduction. Importantly, this purely Qur’ān-based religious ethics theory is yet to be developed by Muslim scholars. See next footnote.

⁸⁷ *Ibid.*, p. 131; *cf.*, Souaiaia, *supra* note 18.

⁸⁸ Souaiaia, *ibid.*, p. 94.

1 ethical value in the same. To date, the epistemologico-moral boundaries
 2 and character of the Qurʾān from the point of view of its own context, that
 3 is, divorced from its traditional scriptural interpretation itself, have not
 4 been comprehensively studied”.⁸⁹ Modern scholars of Muslim tradition
 5 such as Hourani, maintain that the Qurʾān cannot be said to completely
 6 disregard the value of *ʿaql* (inherent human reason) in forming ethical
 7 judgments, while Reinhart asserts that “[T]he Qurʾānic message time
 8 and again appeals to impartial knowledge that confirms the Qurʾānic
 9 summons”.⁹⁰ Moreover, Reinhart argues that *ʿaql*’s explicit Qurʾānic endorse-
 10 ment in recognising God’s existence, Unity and Grandeur are considered
 11 to favour its implicit usage in the realms of ethics and morality.⁹¹

12 In terms of epistemologico-methodological boundaries of the Sunnah at
 13 the time of the Prophet, Hourani states that in terms of ethical knowledge,
 14 the Qurʾān (and therefore Sunnah) considers revelation its major source
 15 but that “it is probable, but unproven, that natural reason is also capable
 16 of forming ethical judgements [independent of revelation]”.⁹² Further-
 17 more, argues Hourani, in terms of ethical epistemology boundaries the
 18 Qurʾānic nature of ethical value is generally objective, “the use of indepen-
 19 dent reason in ethical judgements is never ruled out explicitly in the
 20 Qurʾān, and there are some considerations that favour implicit assump-
 21 tions of its use”. It is further maintained that:

22 ... Qurʾān and Muhammad both display a common sense attitude and that we should
 23 not expect either of them to claim that for every ethical judgement he makes a man

24 ⁸⁹ Hourani, “Ethical Pre-Suppositions” is the most notable study on this question; see
 25 *supra* note 58. K. Reinhart’s study on boundaries of moral epistemology in Islamic thought
 26 focuses on assessments of human acts prior to Revelation and how they were used in
 27 development of Islamic jurisprudential terminology and law as espoused by authorities
 28 living in the second and subsequent centuries who themselves operated within a larger
 29 Qurʾāno-Sunnahic hermeneutic; see Reinhart, *Before Revelation—The Boundaries of Muslim*
 30 *Moral Thought*, (Albany: State University of New York Press, 1995) 3. Some of the implicit
 31 findings of this study are useful to us and will be used in this article. Izutsu’s works cited
 32 previously attempt to define Qurʾānic ethico-religious concepts from the point of view of
 33 historical semantics rather than their epistemological sources and as such are not directly
 34 our concern.

35 ⁹⁰ Reinhart, *supra* note 89, p. 178.

36 ⁹¹ *Ibid.*

37 ⁹² Hourani, *supra* note 58, p. 25.

must consult a book or a scholar, or work out an analogy when the book or scholar give no direct answer to the Problem.⁹³

Draz, in his exhaustive investigation of the moral world of the Qur'ān, echoes this view by concluding that, according to the Qur'ānic moral world, the human consciousness in prior to Revelation and that is capable of divorcing right from wrong without it.⁹⁴ The essential common-sensical attitude of the Qur'ān and its message are evident in its discourse of “nature, *'aql*, the cosmos, and their patterns—all [are] appealed to say that the message of the Qur'ān is reasonable”.⁹⁵ Thus, rationality and ethical objectivity certainly cannot be considered as alien to the overall spirit of Qur'ānico-Sunnahic teachings.

At the time of the Prophet then the concept of Sunnah was associated quite naturally with him, and, except from its *'ibadat* component, seemed to have been understood primarily as a general, ethico-religious and, in Medina, politico-administrative,⁹⁶ concept based upon righteous customary practice that partially reflected some of the pre-Qur'ānic customs and practices not contrary to Qur'ānic worldview.⁹⁷ The legislative component of Sunnah, which in no doubt existed, was in consonance with the nature of the Qur'ān as the “most trustworthy mirror of the Prophet's outlook and teaching”, also primarily conceived in religio-moral rather than positivistic terms.⁹⁸ These religious and moral teachings, in fact, functioned as a reference point for legal evaluation.⁹⁹

How the concept of Sunnah was understood in the subsequent two generation of Muslims is what we turn our attention to now.

3.2.2.2. Sunnah at the Time of Companions and Successors
Over the period of approximately one decade,¹⁰⁰ the Muslim community had ample opportunity to internalise and absorb the overall spirit, ethos

⁹³ *Ibid.*, p. 23.

⁹⁴ M.A. Draz, *The Moral World of the Qur'ān*, (I.B. Taurus, 2008).

⁹⁵ Reinhart, *supra* note 89, p. 23.

⁹⁶ Mathnee has argued that early concept of Sunnah is to be primarily thought of as a political concept. See Mathnee, *supra* note 17, Ch. 2.

⁹⁷ *Cf.*, Ansari, *supra* note 6.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*, pp. 144-146.

¹⁰⁰ Of course, some spent less and some more time with the Prophet living in their midst.

1 and the character of the Prophet based on the overall Qur'anic worldview.
 2 Juynboll refers to this notion of Sunnah as "practice based on the memory
 3 of the collective concept of Prophet's followers on whose basis the com-
 4 munity's cohesion rested".¹⁰¹

5 During this period of time Prophet's Companions¹⁰² observed his
 6 embodiment of the Qur'anic message and how it was applied in society in
 7 terms of his behaviour, word and deed. The Prophet's action-behavioural
 8 system was quite naturally described by the Muslim community as
 9 Sunnah¹⁰³ and carried a degree of normativeness whose anchoring point
 10 was the Qur'an. In cases of the performance of congregational prayers and
 11 ritual purification, for example, the Muslim community in Medina inter-
 12 nalised and embodied these practices by engaging in their daily perfor-
 13 mance with the Prophet. Therefore both Companions and the Medinian
 14 community became the collective embodiment and perpetrators of these
 15 aspects of the Prophet's Sunnah.¹⁰⁴ In this context Graham astutely observes:

16 Naturally enough, the living Sunnah ("way", "practice") of the charismatic Ummah
 17 (and the Medinian community in particular), which was rooted in the Sunnah of the
 18 prophet, became the active, practical standard of authoritative faith and practice.¹⁰⁵

19 The *practical and oral* perpetuation of Sunnah must have been very com-
 20 mon during the era of the Prophet. It is for these reasons that Mālik
 21 (d. 179 AH), as we already mentioned, considered that from the very
 22 inception of Muslim community in Medina to his time Sunnah and

23 ¹⁰¹ G.H.A. Junyboll, *Muslim Tradition—Studies in Chronology, Provenance and Authorship*
 24 *of Early Hadīth* (Cambridge: Cambridge University Press, 1983) 9.

25 ¹⁰² Traditionally a Companion is any person who was in a direct contact with the
 26 Prophet while he was alive.

27 ¹⁰³ Juynboll, *supra* note 46, pp. 98, 100; *cf.*, Bravmann, *supra* note 65, pp. 123-198; *cf.*,
 28 Guraya, *supra* note 25, pp. 33-34.

29 ¹⁰⁴ The view that the Companions were the best sources of Sunnah is related in the
 30 following report found in Al-Qayrawani (d. 356 AH); An-Nakhai'i (a Successor) said:
 31 "Even if I had seen Companions making *wudu'* up to the wrists, I would have performed
 32 *wudu'* like that although I recite it 'Up to the elbows.'" (*Surat al-Ma'idah*, Q7). That is
 33 because they cannot be suspected of abandoning Sunnahs. They were the masters (*arbāb*)
 34 of knowledge and the most eager of Allah's people to follow the Messenger of Allah, may
 35 Allah bless him and grant him peace." Ibn Abi Zayd al-Qayrawani, *A Medinian View—on*
 36 *the Sunnah, Courtesy, Wisdom, Battles and History*, (tr.) Abdassamad Clarke, (Londen: TaHa
 37 Publishers, 1999) 25-26.

38 ¹⁰⁵ Graham, *supra* note 3, p. 12.

Qur'an were inseparable both of which were interpreted and perpetuated against the 'amal/practice of the community rather than simply from the texts.¹⁰⁶

The first link in this 'amal and oral-based Sunnah were the caliphs who acted and expanded upon the Prophet's Sunnah after his death. As the political authority was transferred to them after the Prophet's demise, the caliphs, based on their impeccable status as witness bearers of the Qur'ano-Sunnahic ideals, became sources of Sunnah themselves.¹⁰⁷ As Hallaq remarks "these caliphs set a model of good behaviour [and did not] necessarily laid down specific rulings".¹⁰⁸ Indeed, "caliphal authority was not derivative of that of the Prophet but ran parallel to it".¹⁰⁹ Juynboll maintains that "it is generally accepted fact that the first four caliphs set their own standards [and that] they ruled the community in the spirit of the Prophet, thinking their own solutions to the problems rather than meticulously copying his actions".¹¹⁰ This is further substantiated by Souaiaia's assertion that the classical Islamic law recognised the personal informed opinion of the first four caliphs alongside those of renowned companions, in addition to the Qur'an and Sunnah, to be sources of law.¹¹¹ Mathnee goes even further by stating that the early concept of Sunnah was such that it was used in an arbitrary¹¹² fashion without reference to a particular authority and that it was susceptible to continuous change. He maintains further that the Sunnah could refer to a practice or a tradition or a

¹⁰⁶ Dutton, *supra* note 51, Chs. 8 and 9; Indeed this 'amal-based Sunnah was considered superior to Ḥadīth; *cf.*, Al-Qayrawani, *supra* note 104, p. 26; *cf.*, Guraya, *supra* note 25; Abd-Allah, *supra* note 49.

¹⁰⁷ Ansari, *supra* note 19, pp. 277-278; see also Crone and Hinds, *supra* note 32, p. 66; also Juynboll, *supra* note 46, pp. 101-104.

¹⁰⁸ Hallaq, *supra* note 4, p. 12.

¹⁰⁹ Hallaq, *supra* note 61, p. 43.

¹¹⁰ Juynboll, *supra* note 101, p. 15.

¹¹¹ Souaiaia, *supra* note 18, p. 245.

¹¹² I have presented a critique of the view of the arbitrary nature of Sunnah and early *fiqh* in "The role of Sunnah in early *Fiqh*" (article under review). In essence, my argument runs as follows: Decisions/legal rulings based on *sunnah akhkaqiyyah* and *sunnah fiqhiyyah* that are rooted in Sunnah's (and by extension the Qur'an's) ethico-moral and objective nature of values dimension such as justice, righteousness or fairness could be interpreted/seen as arbitrary since they do not follow a literal/textual precedent. However, if the Qur'an and Sunnah are conceptualised as embodying and facilitating these values in the first place, as in the case of Caliph 'Umar, then these decisions/legal rulings cannot be seen as arbitrary but rather being part of the actual normative Qur'ano-Sunnahic teachings.

1 combination of both and with multiple equivalent authorities.¹¹³ Guraya
 2 expresses a similar view by maintaining that in early Islam the concept of
 3 Sunnah was not ‘specifically determined’, that it changed over time”.¹¹⁴ In
 4 other words, we could talk about several types of Sunān (pl. of Sunnah) at
 5 this point in time, that of individuals other than the Prophet (mainly well-
 6 known Companions and early caliphs) and the collective conduct of indi-
 7 viduals upon which ‘amal-based Sunnah rested.¹¹⁵ In this context Juynboll
 8 asserts:

9 ... the associations of sunnas with persons other than the Prophet are so numerous and
 10 varied that that does not permit us to assume that the Prophet’s example overshad-
 11 owed or indeed eclipsed that of others, at least not during the first hundred and fifty
 12 years or so after his death.¹¹⁶

13 These different anchoring points and sources of Sunnah at this point in
 14 time, however, were considered as one coherent whole rather than being
 15 conceptually different in any significant way.

16 This rather methodologically amorphous, ethico-moral and values-based
 17 and adaptable¹¹⁷ definition of Sunnah/Sunān,¹¹⁸ conceptually organically

18 ¹¹³ Mathnee, *supra* note 17, p. 12.

19 ¹¹⁴ Guraya, *supra* note 25, “Introduction”.

20 ¹¹⁵ *cf.* Hallaq, *supra* note 61, p.102; *cf.*, S. Spektrovsky, “Sunnah in the Responses of
 21 Ishaq b. Rahwayh”, in: *Studies in Islamic Legal Theory*, B. Weiss, ed. (Leiden: Brill, 2002)
 22 pp. 51-70, in which the author asserts that Bin Rahwayah (d. 238 AH), a *faqih*, uses the
 23 concept of Sunnah in the following ways: Sunnah alone (it is uncertain if the final authority
 24 of Sunnah is based upon practice or tradition or combination of both); Sunnah of the
 25 Companions supported by authority of the Prophet and Sunnah of the Prophet established
 26 by a legal maxim.

27 ¹¹⁶ Juynboll, *supra* note 46, pp. 100-101.

28 ¹¹⁷ Mathnee describes this Sunnah as having “an incoherent structure and arbitrary
 29 nature”; see *supra* note 17, Ch. 2.

30 ¹¹⁸ Professor Rahman claims that in the early Muslim community, “Prophetic Sunnah
 31 was a general umbrella-concept rather than filled with an absolutely specific content flows
 32 directly, at a theoretical level, from the fact that Sunnah is a behavioural term: since no two
 33 cases, in practice, are ever exactly identical in their situational setting—moral, psychological
 34 and material—Sunnah must of necessity, allow for interpretation and adaptation.” He also
 35 uses phrases for Sunnah such as “a point in direction rather than exactly laid out series of
 36 rules” or “Sunnah as authoritative, normative precedent” to further consolidate the point
 37 of generality and unspcifsity of Sunnah as a concept. See F. Rahman, “The Living Sunna
 38 and *al-Sunnah wa l-Jama’ah*”, pp. 137-138 in *Ḥadīth and Sunnah—Ideals and Realities*
 39 *Selected Essays*, (Kuala Lumpur: Islamic Book Trust, 1996); *cf.*, Hallaq, *supra* note 61,
 40 p. 77.

linked to the Qur'an, the Practice of the Prophet, his Companions and embodied by the Medinian community remained essentially the same during the time of the first caliphs.¹¹⁹ For example this concept of Sunnah is also evident in its usage when the confrontation between 'Alī b. Abī Ṭālib and Mu'āwiya b. Abī Sufyān [*q.vv.*] at Ṣiffīn (37/657 [*q.v.*]) was resolved with an arbitration agreement on the basis of the *kitāb Allāh* and *al-sunnah al-'ādil al-dhjāmi'a ghayr al-mufarriqa* (*i.e.* the Book of God and the just Sunnah that unites rather than disperses).¹²⁰

Sunnah, as a concept, therefore, was not seen as a codified set of positive laws but rather as either a moral precedent that could be adapted to various contexts/circumstances or was identified with certain practices evident in the Muslim Medinian community. Hallaq also takes the view that, at this time, Sunān "were not legally binding narratives but subjective notions of justice put to various uses and discursive strategies".¹²¹

The early Muslim community during the first two to three decades after the Prophet's death was still a relatively small, self-contained one where the vast majority of the Companions lived.¹²² This meant that the prevalent conditions for diffusion of Sunān¹²³ without reliance on written documentation was relatively easy and quick to achieve, and remained the primary source of transmission of Sunān during the time of the Companions.¹²⁴ With the rapid expansion of the Muslim empire towards the end of the

¹¹⁹ That the ambiguity regarding what Sunnah *is* and who/what the sources of Sunnah are existed even during the second century and is clearly demonstrated in a well-known anecdote between Zuhri (51-24 AH) and Salih b. Kaisan when discussing what might and might not be considered Sunnah. It is reproduced below. Salih says: I met with Zuhri while we were both seeking knowledge. Thus we said, let us write down the Sunnah. We wrote down what was related from the Prophet. Then he [Zuhri] said: Let us write down what is related on the authority of Companions for *it is [also] Sunnah*. I told him that it is not Sunnah, therefore, we should not write it down. Zuhri wrote it down, and I did not write it. He attained success, while I met with failure; cited in Al-Azami, *supra* note 50, p. 84.

¹²⁰ G.H.A. Juynboll, D.W. Brown, "Sunnah", in: *Encyclopaedia of Islam*, 2nd edn., P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, and W.P. Heinrichs, eds. (Leiden: Brill, 2011); Brill Online, University of Melbourne, 19 May 2011: <http://www.brillonline.nl.ezp.lib.unimelb.edu.au/subscriber/entry?entry=islam_COM-1123>.

¹²¹ Hallaq, *supra* note 61, p. 47.

¹²² For a very detailed analysis of the Prophet's Companions after his death, their place of residence and political/tribal affiliations, see F. Jabali, *The Companions of the Prophet—A Study of Geographical Distribution and Political Alignments*, (Leiden: Brill, 2003).

¹²³ Sunān is plural rather than singular Sunnah due to above-mentioned reasons.

¹²⁴ It also should be kept in mind that throughout this period, 'amal-based Sunnah as well as values and ethico-religious-based Sunnah (derived from the Qur'an) that was

1 first half of the first century Hijrah and the accompanying changes in the
 2 socio-political climate made the problem of transmission and dissemination
 3 of non-written Sunān more difficult.¹²⁵

4 Companions, the sources and perpetrators of the Prophet's Sunnah as
 5 understood at that time-period, dispersed to various provinces of the ever-
 6 expanding Muslim Empire.¹²⁶ With the establishment of the Companions
 7 in these provinces, people who did not have the opportunity to see the
 8 Prophet first-hand or were born after the Prophet's death, termed Successors
 9 (*tab'īn*), were eager to find out from them what the Prophet did, how
 10 he behaved and acted. Companions, however, were facing increasingly
 11 new problems to which they had no specific Prophetic precedent due to
 12 the nature of the Sunnah as it was understood at that time. In such cases,
 13 Companions used their own judgment and reason in order to arrive at
 14 solutions, which were still considered as falling under the *general aegis*
 15 of the *Prophetic precedent*. Al-Azami also noted this by remarking that
 16 "[S]ometimes the norms drawn *analogically* from the practice or the say-
 17 ings of the Prophet were also called sunna".¹²⁷ This assertion is also sub-
 18 stantiated by the fact that Muslims at that time "regarded as authoritative
 19 not only the precepts and practices of the Prophet, but also those of his
 20 Companions".¹²⁸ In this context Hakim maintains that:

21 It is not unusual for companions of the Prophet to be credited with a Sunnah of their
 22 own. Thus, Abu Bakr, together with Umar, is credited to have Sunna... In other tradi-
 23 tions we find expressions such like '*sunnāt Abī Bakr al-rashidah al-mahdiyyah*' or
 24 '*sunnāt Abī Bakr aw 'Umar aw Uthman aw 'Alī*'. Moreover, the Islamic tradition
 25 frequently refers to *sunnāt 'Umar*.¹²⁹

26 prevalent at the time of the Prophet and the Companions was epistemologically independent
 27 of any potentially written-based documentation of it.

28 ¹²⁵ We will investigate these more closely in the part that deals with evolution of written-
 29 based Sunnah.

30 ¹²⁶ Reportedly, some 188 Companions migrated from Madina and Makkah, Iraq, Syria,
 31 Egypt and Khurasan: Hallaq, *supra* note 61, p. 72; see also Jabali, *supra* note 122,
 32 pp. 84-137.

33 ¹²⁷ Al-Azami, *supra* note 50, p. 36.

34 ¹²⁸ Ansari states: "The authority of the Companions was well-established circa 75 AH
 35 and the precepts and practices of the Prophet as well as the Companions continued to be
 36 characterised as Sunnah." Ansari, *supra* note 19, p. 280.

37 ¹²⁹ A. Hakim, "Conflicting Images of Lawgivers: The Caliph and the Prophet (*Sunnat*
 38 '*Umar wa Sunnat Muhammad*)", in: H. Berg (ed.), *Method and Theory in the Study of*
 39 *Islamic Origins*, (Leiden: Brill, 2003) 159-160.

That the Companions themselves made a distinction between Sunnah (in this instance in the form of the Medinian *'amal*) and Ḥadīth 'It has been transmitted that 'Umar ibn al-Khattab said on the minbar, "Through Allah's help, glory be to Him, I will cause to be severely straightened the circumstance of any man who transmits a Ḥadīth contrary to the *'amal* of Madinah" .¹³⁰

The above-described concept of Sunnah seems to have been transmitted to the Successors largely in a manner similar to that which the Companions themselves received it that is via practical means based on the overall spirit of the Prophet's life legacy. For example, in Medina, a Successor, Ibn Musayyib (d. 90 H) and his colleagues founded schools of jurisprudence based on the verdicts of 'Umar and Uthman,¹³¹ while, in Kufa, Nakha'i (d. 95 H), also a Successor, and his associates, based their opinions and knowledge of jurisprudence (*tafaqquh*) on legal opinions (*fatwā*, pl. *futāwā*) of an esteemed Companion Ibn Mas'ud (d. 94 H) and the fourth Caliph Alī (d. 40 H) largely independent of any written-based documentation of Prophetic actions or words.¹³² The nature of this Sunnah as espoused by these authorities was still very much in tune with that of the Prophet, as Nakhai, an Iraqī law specialist:

... did no more than give opinions on questions of ritual and perhaps kindred problems of directly religious importance, cases of conscience concerning alms tax, marriage, divorce and the like, but not on technical points of law. The same is true of Ibrahim's contemporaries in Medina.¹³³

The legal character of Sunnah manifesting itself in a body of literature on positive law was thus still not evident at this point in time. This led Schacht to conclude that what we could term a distinctively new Qur'āno-Sunnahic law anchored in the Prophetic dicta (Ḥadīth, corpus-based or not) was non-existent during the most of the first century Hijrah.¹³⁴ This assertion is echoed by Hallaq who maintains that "evidence from the early sources

¹³⁰ Shaykh Abdalqadir al-Murabit, *Root Islamic Education*, <http://bewley.virtualave.net/Root4.html>.

¹³¹ Well-known Companions and the second and third caliphs.

¹³² A.I. Islahi, *Juristic Differences*, (Lahore: Islamic Publication Ltd., 1986) 43-45.

¹³³ Schacht, *supra* note 86, p. 27.

¹³⁴ *Ibid.*, p. 19.

1 appears to support the view that the legal authority during the better part
2 of the first Islamic century was in no way exclusively Prophetic”.¹³⁵

3 The jurisprudential activity of Successors led to the formation of *regional*
4 centres of Sunnah based on their understanding of Sunnah that was trans-
5 mitted to them via the Companions. Thus, the regional Sunnah was ulti-
6 mately deriving its legitimacy and authority from the Companions rather
7 than from the Prophet.¹³⁶ This geographically based Sunnah was then dif-
8 fused throughout the region itself. It, in turn, served as a foundation on
9 which the practice of the people was based or was normatively assessed
10 against.¹³⁷

11 As such, the Sunnah-based practices of Muslim community as a whole
12 within a particular region *also* became embodiments of Sunnah as well as
13 sources and perpetuators of Sunnah for subsequent generations.

14 The use of the practice of Muslims/believers in Medina as additional
15 sources of Sunnah, argues Dutton, features prominently in Mālik’s *Muwattaʿa*
16 and is described as ‘*amal*’.¹³⁸ This ‘*amal*’ was based upon the Qurʾān, Sun-
17 nah dating from time of the Prophet and an element of *raʾy*¹³⁹ of later
18 authorities which merged into it.¹⁴⁰ Although what we just said pertains
19 primarily to Medina, similar processes in other major regional schools such
20 as Kufa, Basra, Syria and Egypt were taking place.¹⁴¹

21 For example, notion of practice as indicator of Sunnah is also evident in
22 Abū Yusuf’s writings who lived in Kufa. The practice-based Sunnah derives,

23 ¹³⁵ Hallaq, *supra* note 61, p. 43.

24 ¹³⁶ *I.e.*, Companions’ interpretation of Sunnah of the Prophet, see Schacht, *supra* note
25 86, pp. 32-33; also Hallaq, *supra* note 61, p. 102. This is further supported by Souaiaia’s
26 characterisation of Islamic law as being accretive in nature: see Souaiaia, *supra* note 18.

27 ¹³⁷ Dutton, *supra* note 51, p. 36.

28 ¹³⁸ *Ibid.*, pp. 37-41, 165.

29 ¹³⁹ Personal judgement/opinion—we shall investigate the changes in the meaning and
30 usage of this term shortly.

31 ¹⁴⁰ *Ibid.*, p. 35; *cf.*, Guraya, *supra* note 25, p. 34.

32 ¹⁴¹ “. . . companions have spread throughout the new lands of Islam taking with them the
33 knowledge of Qurʾān and Sunnah, and exercising their best judgement (*yajtahidūna bi*
34 *raʾyihim*) when they knew of no specific guidance on the matter. . . Furthermore the first
35 three caliphs had been concerned to avoid dispute among the Muslim troops and had sent
36 directives to them on even relatively unimportant matters in order to establish the *dīn* and
37 prevent dispute over the Book and Sunnah, but they never told anyone to go against the
38 practice of any of the companions, whether in Egypt, Syria or Iraq. . .”, Dutton, *supra*
39 note 51, p. 175; for regional differences in ‘Sunnah’ see also Al-Azami, *supra* note 50,
40 pp. 58-80; Guraya, *supra* note 25, pp. 54-78, on what he refers to as “Ancient view of
41 Sunnah and Ḥadīth”.

in his view, from “those norms which were recognised as such by the Muslims in general, were accepted by the *fuqahā'* and which had come down through reliable and learned people (*al-sunnah 'an rasul Allāh 'an al-salaf min ashabih wa min qawm fuqahā'*).¹⁴² Similarly, early Ibadism filtered Ḥadīth on the basis of *al-ḥaqq al-mā'ruf fī kitāb Allāh wa sunnāt nabiyihī wa athar al-salihīn*, i.e. *al-a'imma wa l-ulama*.¹⁴³ Although in the context of Iraq the notion of *Medinian 'amal*-based Sunnah did not exist, their concept of Sunnah was ultimately derived from the living practice of Companions who migrated from Medina to Iraq and was not expressed in Ḥadīth.¹⁴⁴

In Motzki's investigation of the development of early Islamic jurisprudence in Makkah it is argued that for a Successor Ata ibn Rabah's (d. 115 AH), one of the disciples of Ibn Abbas (d. 67 AH), the founder of the Mekkan law school:

... die Idee vom Vorbildcharacter der sunna des Propheten und ihrer moeglichen Funktion als Rechtsquelle in Ergaenzung zum Koran in sein Denken noch nicht Eingang gefunden hatte oder—falls das schon der Fall war—Ata noch nicht die Notwendigkeit verspürte, dies im Einzelnen zu belegen. Diese Annahme wird auch durch Atas Gebrauch des Wortes sunna gedeckt, das bei ihm den Brauch im Sinne der *anerkannten gesellschaftlichen Praxis* in Mekka bezeichnet.¹⁴⁵

Similarly, in Syria the notion of Sunnah as conceptualised by their region's main jurist, Awza'i, was understood in terms of an uninterrupted practice of Muslims beginning with the Prophet and maintained by the early caliphs and later scholars... without adducing of Ḥadīth.¹⁴⁶

Therefore, “each locale, from Syria to Iraq to the Hejaz, established its own legal practices on the basis of what was regarded as the Sunnah of the forefathers, be they Companions or the Prophet”.¹⁴⁷ Summarizing the

¹⁴² Al-Shāfi'i, *Kitāb al-'Umm*, Cairo, vol. vii, 1324 AH, p. 320; cf., Ansari, *supra* note 19, pp. 277-278, cf., Ansari, *supra* note 54, p. 157, and Z.I. Ansari, “The Significance of Shāfi'i Criticism of the Medinese School of Law”, *Islamic Studies*, 30/4 (1991) 497.

¹⁴³ J.C. Wilkinson, *Ibadism, Origins and Early Development in Oman*, (Oxford: Oxford University Press, 2010) 234, 413-415. The *athār*, notes Wilkinson, were “virtually opinion (*ra'y*)”, p. 415.

¹⁴⁴ Hallaq, *supra* note 61, pp. 106-107.

¹⁴⁵ H. Motzki, *Die Anfänge der islamischen Jurisprudenz*, (Deutsche Morgenlaendische Gesellschaft, Franz Steiner Verlag, 1991) 115, emphasis is mine.

¹⁴⁶ Hallaq, *supra* note 61, p. 107; Guraya, *Origins*, 30.

¹⁴⁷ *Ibid.*, p. 107.

1 nature and the scope and Sunnah's method of transmission at this point in
2 time, Wheeler asserts:

3 The authority of the sunnah as prophetic practice, as conceived by the local second
4 century authorities, was guaranteed by a continuous tradition of practice through
5 generations going back to the prophet. It was defined as an interpretation having an
6 authority that was conveyed by the link it represented with the prophetic past. Being
7 regarded as either common practice or logically consistent practice, the content of
8 sunnah was considered prophetic on account of its receipt from these previous gen-
9 erations or derivation on the basis of these generations' practice.¹⁴⁸

10 In terms of its epistemological value, this practice-based Sunnah was, like
11 the Qur'ān and unlike a majority of Ḥadīth, a *mutawātir*-based source of
12 knowledge.¹⁴⁹

13 Since Sunnah, in its narrowest edified sense, could only *literally* be
14 applied to those practices and behaviours that surfaced and were estab-
15 lished during the Prophet's lifetime, the scope of that body of Sunnah was
16 rather limited and was increasingly in need of interpretation and extrapo-
17 lation. This interpretative need of Sunnah, based on the same characteristic
18 of the Qur'ānic text itself, could be satisfied by identifying it¹⁵⁰ with certain
19 more *abstract principles* said to be in accordance with the *spirit* of the
20 Qur'ān and Sunnah,¹⁵¹ and which could be deemed relevant to a new case.
21 As well, its scope could be expanded by legitimising the use of personal
22 judgement based on reason (*ra'y*).¹⁵²

23 The former is termed 'applied reason or analogy' (*qiyās*) and the later
24 'pure reason' (*ra'y/ijtihad*). Decisions based on these thought processes

25 ¹⁴⁸ Wheeler, *supra* note 55, p. 43. On the meaning of *mutawātir* see below.

26 ¹⁴⁹ Dutton, *supra* note 51, p. 36. At this stage, the ethico-religious and values-based
27 aspects of Sunnah embedded in the Prophet's rational embodiment of the Qur'ānic
28 *Weltanschauung* started to receive less attention in the overall understanding of the concept
29 of Sunnah by Muslim scholars as Sunnah came to be increasingly identified with *'amal* or
30 practices extant in the communities. This distorted the nature and the scope of the concept
31 as it was understood by the Prophet and the first generation of Muslims. Instead what
32 I refer to as *sunnah akhlaqiyyah* component was increasingly derived from sprouting Ḥadīth
33 literature.

34 ¹⁵⁰ And therefore the concept of Shari'ah as well.

35 ¹⁵¹ This is exactly what Crone and Hinds suggest about how Sunnah was conceptualised
36 up until the Abbasid Caliphate of Al-Mahdi (158-169 AH/775-785 CE); see *supra*
37 note 32, pp. 66-96.

38 ¹⁵² Other sources included pre-Qur'ānic Arabian custom and laws and practices in newly
39 conquered lands; see Hallaq, *supra* note 4, pp. 3-15; Hallaq, *supra* note 61, p. 32.

would also become parts of Sunnah. Indeed, in this context, Guraya in his close analysis of the concept of Sunnah in early Islam maintains that speculative free thought was considered as genuine, valid and authoritative constituent of Sunnah.¹⁵³ This is exactly what happened when the first four caliphs introduced certain penalties, for example, in cases of alcohol prohibition and punishment that had neither a direct precedent in the Qurʾān or in the Sunnah.¹⁵⁴ These practices were, however, later considered as Sunnah for two reasons. Firstly, they were consistent with the concept of the *spirit* of Sunnah because of Sunnah's conceptualisation in abstract value-oriented terms. Secondly, and as a direct result of this understanding of Sunnah, the caliphs themselves as well as other Companions and *fuqahāʾ*, were considered sources as well as perpetuators of Sunnah.¹⁵⁵ In this context Abbott asserts that her investigation of early Arabic literary papyri has led her to conclude that:

[The] term sunnah [which] frequently alternates with the plural Sunān, is not limited to the example or conduct of Muhammad but applies also to at least the caliphs Abu Bakr and ʿUmar I and to a number of outstanding men who held high office under their three heads of state.

Indeed, the basis of Caliphal Law throughout the Umayyad period (up to 132 AH/750 CE) was based on the Qurʾān, Sunnah in a sense of general, good practice and *raʾy*, so that the Umayyad caliphs were “free to make and unmake Sunnah as they wished”.¹⁵⁶ Additionally, and importantly, “the concept of Sunnah was not in itself an obstacle to legal innovation”.¹⁵⁷

Raʾy as well as *qiyās* were essentially seen as legitimate, pragmatical tools in extrapolating law and had a positive connotation to them.¹⁵⁸ Ansari considers that the personal judgements of jurists “which were considerably influenced by subjective considerations . . . [and] accompanied by a broad understanding of the spirit and goals of Islam, played a fairly important

¹⁵³ Guraya, *supra* note 25, “Introduction”.

¹⁵⁴ *Ibid.*, p. 8.

¹⁵⁵ In other words, if a behaviour, norm or practice was considered to be just or righteous and was not directly linked to a Qurʾānic or Sunnahic precedent and justice/righteousness was equated with the spirit of Sunnah (and the Qurʾān) then that behaviour, norm or practice was considered to be a Sunnah.

¹⁵⁶ Crone and Hinds, *supra* note 32, p. 55. In this context, Juynboll asserts that “An Umayyad’s judgement is positively labelled a Sunna”; Juynboll, *supra* note 46, p. 103.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*, p. 15; Hallaq, *supra* note 61, p. 53; Guraya, *Origins*, pp. 115, 119.

1 part in the early Islamic legal thinking”.¹⁵⁹ Established juristic authorities
 2 such as Abdallah b. Abbas (d. 68 AH),¹⁶⁰ Hasan al-Basri (d. 110 AH) and
 3 S. ibn Musayib (d. 90 AH) were representatives of this method. This was
 4 only possible if both Qur’ān and Sunnah were conceptualised in such
 5 terms. Moreover, Schacht maintains that *ra’y* has been an integral part of
 6 regional Sunnah and an essential element of Islamic thought from its very
 7 inception.¹⁶¹ Hallaq, furthermore, asserts that the meaning of *ra’y* during
 8 the entire first century Hijrah and the portion of the next “was a major
 9 sources of legal reasoning and judicial rulings”¹⁶² and furthermore was
 10 “very close to and, in fact, could not be separated from Sunnah.”¹⁶³ Simi-
 11 larly, Guraya in his examination of Mālik’s concept of Sunnah identifies
 12 sound reason and independent considered opinion (*ra’y*) as being constitu-
 13 tive of Sunna.¹⁶⁴

14 This *ra’y*, in words of Rahman, produced an immense wealth of legal,
 15 religious and moral ideas during the first one and a half centuries approxi-
 16 mately... [and] the product of this activity became rather chaotic, *i.e.* the
 17 Sunnah of different regions—Hejaz, Iraq, Egypt—became divergent on
 18 almost every issue of detail”.¹⁶⁵ Not only were there differences in doctrines
 19 between various regions but also within them.¹⁶⁶

20 Juynboll summarises the methods of Sunnahic development during the
 21 first century Hijrah by saying that two distinct manners were evident: that
 22 is by resorting to individual judgement (common sense or *ra’y*) and by the
 23 quest for, and transmission of, a precedent.¹⁶⁷ In a similar tone Hallaq
 24 asserts that “as late as 90s AH and some decades after *qadis* (jurists) relied
 25 on three sources of authority in framing their rulings: Qur’ān, Sunān¹⁶⁸
 26 (including caliphal law) and discretionary opinion (*ra’y*)”.¹⁶⁹ Again, it is

27 ¹⁵⁹ Ansari, *supra* note 54, p. 153.

28 ¹⁶⁰ Motzki, *supra* note 145, p. 256.

29 ¹⁶¹ Schacht, *supra* note 86, p. 35.

30 ¹⁶² Hallaq, *supra* note 61, pp. 52-53.

31 ¹⁶³ *Ibid.*

32 ¹⁶⁴ Guraya, *Origins*, pp. 115, 119.

33 ¹⁶⁵ Rahman, *supra* note 118, p. 139; *cf.*, Wheeler, *supra* note 55, pp. 19-43.

34 ¹⁶⁶ Motzki, in the context of the beginnings of the development of Islamic jurisprudence
 35 in Makkah says: “Die Rechtsgelehrsamkeit in Mekka war trotz eines Konsenses in vielen
 36 Fragen nicht uniform”, *supra* note 145, p. 258.

37 ¹⁶⁷ Juynboll, *supra* note 46, p. 33; *cf.*, Ansari, *supra* note 142, pp. 495-496.

38 ¹⁶⁸ As understood in accordance with what was said above.

39 ¹⁶⁹ Hallaq, *supra* note 61, p. 44.

important to note that these sources of Sunnah were entirely independent of any form of written documentation (*i.e.* Ḥadīth).¹⁷⁰

Our discussion on the evolution of the concept of Sunnah leads us now to the next generation of Muslims, that of the Successors' Successors.

3.2.2.3. Sunnah at the Time of the Successors' Successors

With the end of the first and beginning of the second century, significant changes to the concept of Sunnah in the minds of the third generation of Muslims started to develop in terms of its source, mode of transmission, methodological and epistemological parameters (that is, its nature, sources and scope). In this context Juynboll asserts that:

... the approximate date of origin of the narrowing down of the concept of Sunnah, formerly comprising the Sunnah, or exemplary behaviour, of the Prophet as *well as* his most devoted followers, to the exemplary behaviour of Prophet *only*... [occurred] towards the end of the first century of the Hijrah and was conceived at the time of Caliph Umar ibn Abd al-Aziz (99-101).¹⁷¹

Hallaq dates this shift somewhat earlier by saying that the isolation of Prophetic Sunnah¹⁷² from other Sunān began to emerge by the late 60s AH.

The reasons for this process began in the second half of the first century. The continued territorial expansion of Muslims meant that ever more complex legal and governing processes and institutions had to be put in place within the enlarging boundaries of the area under the Muslim rule. The notion of the administrative and social practices being based on the Qur'ān and Sunnah were still operative and engrained in the minds of those Muslims who conquered new lands.

A general perception that the expanding Muslim empire would become organically detached from the Qur'ānic and Sunnahic teachings was becoming widespread. This realisation had already prompted some Muslims to collect and gather a bound (*mushaf*), official version of the Qur'ān, a task that was largely achieved during the reign of the third Caliph

¹⁷⁰ Dutton, *supra* note 51, p. 168.

¹⁷¹ Juynboll, *supra* note 101, p. 30. This period marks only the *beginning* of the concept of Sunnah of the Prophet as having its own content. Sunnah was a notional and abstract concept throughout the Caliph Umar's reign; see Crone and Hinds, *supra* note 32, pp. 73-80.

¹⁷² The nature of this Prophetic Sunnah, according to Hallaq, was practice-based, oral, fluid and mixed with non-Prophetic material; see *supra* note 61, p. 50.

1 Uthman (d. 35 AH).¹⁷³ Additionally, a change in political fortunes and the
 2 subsequent rise of the Abbasid dynasty (132 AH), that used the concept of
 3 custodians of the Prophet's Sunnah through his uncle's cousin Abbas to
 4 justify and legitimise their political power, created an ever greater impetus
 5 for a more systematic collection of, and searching for, Sunnah in *any* form.¹⁷⁴
 6 This, in turn, gave rise to a *ṭalab al-ʿilm* phenomenon¹⁷⁵ which gradually
 7 started to transform *behaviour-practice-based regional* Sunnah into *written-*
 8 *based* 'Sunnah'. Another factor that started to give shape to the later con-
 9 cepts of an 'authentic Ḥadīth' was the partisan tensions that emerged
 10 within the nascent Muslim community. These brought serious schisms
 11 based on conflicting claims to the successorship of the Prophet's political
 12 authority as well as certain theological controversies prevalent at the
 13 time.¹⁷⁶

14 These two *divergent*, powerful trends resulted firstly in practice-based
 15 Sunnah being increasingly clad in the mantle of written-based predomi-
 16 nantly purely Prophetic Sunnah, and secondly in the development of more
 17 stringent mechanisms in establishing the authenticity of written-based
 18 Sunnah, especially in terms of the mode of its transmission, *i.e.* *ʿulūm*
 19 *al-isnād*. The custom of reliance on regionally practice-based Sunnah was
 20 increasingly becoming challenged by a growing corpus of written-based

21 ¹⁷³ The traditional classical as well as Western accounts of the arrangement and collection
 22 of the Qurʾān have been challenged by the Islahi school of thought in Pakistan who are
 23 of the view, based on careful Qurʾānic analyses and that of traditional historiographies
 24 such as *Tabaqat* of Ibn Saʿad and *Tarikh* of Al-Tabari, that the Qurʾān has been arranged
 25 and collected by the Prophet before he died. See www.understanding-islam.org and
 26 www.studying-islam.org.

27 ¹⁷⁴ Abbott has identified a number of other specific factors which favoured the recording
 28 of Ḥadīth including the socio-economic ambitions of the non-Arabs attained by their
 29 involvement in religious sciences, the threat and fear of heresy and religious innovation
 30 (*bidaʿah*) creeping into the tradition, the firm establishment of family *isnād*, the expansion
 31 of journeys (*riḥlah*, *talab*) aimed for collection of reports and of the profession of the
 32 *warraq* (book seller/publisher, the increase in student population and the progressive
 33 lengthening of *isnād*. Nabia Abbott, *Studies in Arabic Literary Papyri, Quranic Commentary*
 34 *and Tradition*, Vol. 2, (Chicago: University of Chicago Press) 1967, p. 56.

35 ¹⁷⁵ Journeys undertaken by pious Muslims who wanted to preserve the Prophet's words
 36 and put them in writing. Also referred to as *riḥlah*. On the extent of these journeys and how
 37 they contributed to the development of the early Islamic written tradition, see Abbott,
 38 *ibid.*, pp. 40-57.

39 ¹⁷⁶ The same epistemologico-methodological changes can also be observed in the science
 40 of Qurʾānic commentary. For more on this, see J. van Ess, *Ḥadīth und Theologie*, Berlin,
 41 1975, p. 185.

Sunnah as the by-product of *ṭalab al-‘ilm*.¹⁷⁷ The objectives of this search for knowledge/‘ilm were such as to collect as much information about the Prophet as possible in all *spheres of his life*. No qualitative distinction between the Prophet’s role as a Messenger, judge, ethico-moral reformer, family man or statesman was made, and no careful consideration was given to the fact that this could conceptually change the nature and the scope of the concept of the Qur’ān and Sunnah and their interrelationship that existed during the first three generations.

The “epistemological promise”, to use Prof. El-Fadl’s phrase, of having access to the actual *words* of the Prophet himself in a documented form was much more attractive and “logical” than the regional concept of Sunnah. One could argue that it was considered superior to it for several reasons by many of those who accepted its epistemologico-methodological premises. Firstly, the oral and then written in nature of proliferating ‘Sunnah’ was more tangible than one based on a vague behaviourally practical or abstract values- or objective-based concept. Secondly, written-based Sunnah was more voluminous as it was collected across all regions of the Muslim empire rather than being limited to just one area. Thirdly, it was more specific and dealt with a broader subject matter than a practice-based Sunnah, which was often based on the spirit of the Qur’ān and Sunnah and was more difficult to verify. Fourthly, most of the reports were claimed to be going back to the Prophet, while the immediate source of practice-based Sunnah were the Successors and the practice of the community at the time. Fifthly, the practice of the regional community as a source of Sunnah was sometimes problematic because *not all* community practices were Sunnah-based so that scepticism about *all* of the community practices started slowly to creep in.¹⁷⁸ Lastly, rather than relying on the general practice of the entire community, many of whom were ignorant of the complexities pertaining to the value and preservation of this newly formed concept of written-dependent Sunnah, one was presented with a chain/*isnād* of several transmitters, many of whom were held in high esteem and were said to have had an unbroken ‘link’ to the Prophet himself and, as such, qualified as Sunnah’s custodians.

Despite this paradigm shift in the way Sunnah was becoming to be viewed, the broader view of Sunnah still existed throughout the second century. When we examine the period of founders of the personal schools

¹⁷⁷ Cf. Ansari, *supra* note 142, pp. 494-496.

¹⁷⁸ *Ibid.*, p. 496.

1 of thought¹⁷⁹ such as Mālik (d. 179), Auza'ī (d. 157), Abū Ḥanafa (d.150)
 2 and his disciples Abū Yusuf (d. 182) and Shaibanī (d. 189) we notice that
 3 a qualitative, conceptual distinction between Ḥadīth and Sunnah was still
 4 being made".¹⁸⁰ In Abū Ḥanafa's letter to Uthman al-Battī (d. 143) the
 5 usage of the word Sunnah only makes sense as a concept referring to "nor-
 6 mative way of the early community as a whole"¹⁸¹ (rather than that of the
 7 Prophet himself only in the form of Ḥadīth). According to Abd al-Rahman
 8 b. al-Mahdi (d. 198) who, when talking about three well-established
 9 authorities (*fuqahā*) of Muslim community at that time namely, Al-Thawrī
 10 (d. 161), Al-Auza'ī (d. 157) and Mālik ibn Anas (d. 179) characterises the
 11 second as *imam fi l-sunnah wa laysa bi-imam fi l-ḥadīth* (recognised author-
 12 ity on questions pertaining to Sunnah but not Ḥadīth) in contradistinc-
 13 tion to the first who was authority on Ḥadīth but not on Sunnah and the
 14 third as authority on both Sunnah and Ḥadīth (*imām fihima jami'ān*).¹⁸²
 15 Abū Yusuf, a disciple of Abū Ḥanafa was also known as a *ṣāhib ḥadīth wa*
 16 *ṣāhib Sunnah*¹⁸³ ("custodian or disposer", lit. owner/proprietor of Ḥadīth
 17 and Sunnah). Ahmed Hasan in his *The Early Development in Islamic Juris-*
 18 *prudence* notes a similar observation when he says:

19 ... it is not necessary that Sunnah be always deduced and known from a Ḥadīth. Early
 20 texts on law show that the term Sunnah was used in a sense of the established practice
 21 of the Muslims claiming to have come down from the time of the Prophet. That is why
 22 Sunnah sometimes contradicts Ḥadīth and sometimes Ḥadīth documents it.¹⁸⁴

23 Therefore, existence of Ḥadīth did not mean an *a priori* dispensing with
 24 the earlier concept of Sunnah. Moreover, as we shall subsequently argue,
 25 we can infer from Hasan's above-cited statement that the practice-based
 26 Sunnah was used as a criterion for distilling Sunnah *congruent* from Sun-
 27 nah *non-congruent* Ḥadīth.

28 ¹⁷⁹ This is the *second* stage in the development of *madhabib*; see C. Melchert, *The*
 29 *Formation of the Sunni Schools of Law in the 9th-10th Centuries CE* (Leiden: Brill, 1997).

30 ¹⁸⁰ Dutton, *supra* note 51, p. 168; We have already referred to Mālik's view of Ḥadīth-
 31 independent Sunnah as being "normative pattern of life established by the Prophet, put
 32 into practice by Companions, and then inherited as *'amal* by the Successors and the
 33 Successors of Successors down to his time". Cf., Ansari, *supra* note 54, pp. 152-157.

34 ¹⁸¹ Juynboll, *supra* note 46, p. 104.

35 ¹⁸² As cited in Shah Walli Allah, *Al-Musawwa min Aḥadīth al-Muwatṭa*, Makkah, 1351
 36 AH, p. 15.

37 ¹⁸³ As cited in Goldziher, *supra* note 36, vol. I, p. 15.

38 ¹⁸⁴ A. Hasan, *Early Development of Islamic Jurisprudence*, Islamabad, 1970, p. 87.

In the context of the definition of Sunnah during this time of personal schools of thought,¹⁸⁵ we need to remember that there now existed two significant and accepted modes of its transmission, namely practical and Ḥadīth-based. These two modes of transmission of Sunnah were based on two different epistemologico-methodological foundations. The reasons for this were the existing and acknowledged fabrications and contradictory elements becoming evident during the process of formulation of written-based Sunnah, and the possible contamination of practice-based Sunnah with the general practice of community. Therefore “the concern of all ancient [*i.e.* personal] schools of thought was thus to know what represented the genuine, normative Sunnah of the Prophet and his Companions”.¹⁸⁶ Both, according to this view, however, could embody Sunnah.

The Iraqis referred to the Sunnah which functioned as a “Sunnah filter” as *al-sunnah al-mahfūlah al-maʿrūfah*, the well-established Sunnah,¹⁸⁷ and it was this Sunnah that was accepted as normative by the consensus of the majority of ‘*ulama* referred to as *ijmāʿ*’.¹⁸⁸ Mālik ibn Anas referred to it as *sunnah ʿindana* or at times ‘*amal*’ and it acted as the final arbiter and ultimate proof of the Prophetic practice.¹⁸⁹ Some parts of this ‘*amal*’ was considered to be Sunnah whilst others were not. Guraya who investigated Mālik’s usage of the concept of Sunnah in his *Muwattaʿa* has determined the actual constituents of Sunnah according to Mālik as follows:

- (i) the religious and ethical principles introduced by the Prophet which, in due course of time, had acquired the status of recognised Islamic

¹⁸⁵ The regional schools of law, which represent the first stage of development of *madhāhib*, were followed by a second stage of development termed ‘personal schools of law’ because they were founded on the authority of an individual such as Abū Ḥanāfa, Mālik, Shāfiʿ and Ibn Ḥanbal, hence Ḥanafī, Mālikī, Shāfiʿī and Ḥanbalī *madhāhib*. The fact is that, in most cases, the founders of these schools of thought were actually the disciples of these authorities. For more, see Melchert, *supra* note 179.

¹⁸⁶ Dutton, *supra* note 51, p. 175; Umar Faruq Abd-Allah, *supra* note 49, pp. 761-764.

¹⁸⁷ Shāfiʿī, *Kitāb al-ʿUmm*, *op. cit.*, p. 314; *cf.*, Hallaq, *supra* note 61, p. 69.

¹⁸⁸ Faruq Abd-Allah, *supra* note 49; *cf.*, Ansari, *supra* note 54, pp. 155-157.

¹⁸⁹ *Ibid.*, p. 105; *cf.*, Guraya, *supra* note 25, pp. 177-183. Schacht refers to this *sunnah madiyya* as the “living practice of ancient schools of thought” and considers it to be the major sources of Islamic jurisprudence in the first one and a half centuries Hijrah. For an excellent overview of Schacht’s understanding of the living practice, see Z. Maghen, “Dead Tradition: Joseph Schacht and the Origins of ‘Popular Practice’”, *Islamic Law and Society*, 10/3 (2003) 276-347.

- 1 religious norms and the accepted standard of conduct [*al-qawā'id*
2 *al-kulliyah*]
3 (ii) sound reason and independent considered opinion (*ra'y*), and
4 (iii) legal and moral reasoning.¹⁹⁰

5 Dutton defines this Sunnah as “a generally agreed core of experience which
6 constituted the community’s knowledge of what it meant to live as a
7 Muslim”.¹⁹¹ ‘Abd Ar-Rahman ibn Mahdi (d. 198) is also reported to have
8 not only made a distinction between Sunnah and Ḥadīth but was an advo-
9 cate of the superiority of Sunnah based on the ‘*amal* of Medina over that
10 of Ḥadīth-based Sunnah asserting that “A preceding Sunnah from the
11 Sunnah of the people of Madinah is better than Ḥadīth”.¹⁹² Similarly, the
12 Ḥanafī Judge Isa b. Aban (d. 221 AH) argued that the early Muslim com-
13 munity had rejected *ahad ḥadīth* which contradicted the Qur’ān or estab-
14 lished Sunnah and used reason as the ultimate arbiter for judging the
15 veracity of a report and not the *isnād*.¹⁹³

16 The regional Sunnah we described above was, according to Rahman,
17 constantly re-defined and re-crystallised based as it was on two method-
18 ological tools: *ijtihād-qiyās* (personal opinion thought to be in accordance
19 with the broad, general concept of regional Sunnah termed *al-sunnah*
20 *al-mā rufā*) and *ijmā’* whose ultimate anchoring point was the Prophet.¹⁹⁴
21 The prevalence of this *fundamentally* same attitude to Sunnah at this time
22 period is demonstrated by the fact that the bulk of Al-Shaibani’s (d. 189)
23 *last* work entitled *Siyar al-Kābir* consists of his own *ijtihād*. This was based
24 on his scrutiny of works of earlier generations rather than any literal adher-
25 ence to Ḥadīth.¹⁹⁵

26 As far as the use of *ra'y* based on ‘*aql* during the second century AH is
27 concerned, a similar narrowing down of its legitimacy, scope and connota-
28 tion was starting to take place, but this process, just like in the case of

29 ¹⁹⁰ Guraya, *Origins*, pp. 115, 119.

30 ¹⁹¹ *Ibid.*

31 ¹⁹² Al-Qayrawani, *supra* note 104, p. 26.

32 ¹⁹³ Abū Bakar al-Jassas, *Uṣūl al-Jassas*, vol. 1, Muhammad Tahir, ed. (Beirut: Dār al-
33 Kutub al-‘Ilmiyyah, 2001) 504 ff, 2, pp. 3-6, 14.

34 ¹⁹⁴ Rahman, *supra* note 118, p. 140; *cf.*, Calder, *The Origins*, p. 55.

35 ¹⁹⁵ *Ibid.* Perhaps the only notable difference is that these authorities had to deal with
36 growing number of Ḥadīth and were under a growing influence of them as *potentially and*
37 *contingently (upon regional Sunnah-based criteria)* embodying Sunnah but not an *a priori*
38 acceptance.

Sunnah, was incomplete.¹⁹⁶ Reinhart argues that throughout the Abbasid era, which includes the period under question, the Islamic worldview:

... was complemented by religious ideology arguing that all human kind share[ed] a kind of moral common sense, the 'aql, which has always enabled humans to know the good from detestable. In this process of trying to account for this universal knowledge, scholars sought to locate acts, values in the act itself and the valuation of it in the 'aql... Muslim Revelation, consequently, was understood as a supplementary form of knowledge, one that confirmed 'aql...¹⁹⁷

As we previously mentioned, for example, numerous *fuqahā'*, who died during the second and the third decade of the second century, relied heavily on exercising personal opinions based on *reason*/*'aql* rather than being involved in Ḥadīth transmission.¹⁹⁸ This trend was evident also among many second or even third century authorities who belonged to the *Ahl al-Sunnah* (or were given the title of *ṣāhib sunnah*) but who were not necessarily associated with proficiency and accuracy of Ḥadīth transmission.¹⁹⁹

At the time of Ibn Al-Muqaffa (d. 140), the positive connotations of *ra'y* were still in operation although they had started to develop a negative connotation as well.²⁰⁰ As the Ḥadīth body of literature was gradually expanding, views not based on these now entirely *textual sources* of Sunnah increasingly started to denote 'arbitrary opinion' in the minds of those engaged in the process of written documentation of Sunnah.²⁰¹ This mixed trend of good and bad *ra'y* was still evident at the time of Abū Yusuf (d. 182) and Shaibani (d. 189). However, since Sunnah was increasingly associated with literal adherence to proliferating Ḥadīth, which were thematically diverse and quite comprehensive, in contrast to being interpreted against the background of 'amal-based Sunnah or *sunnah al-ma'rufah*, conceptually Sunnah's nature was becoming more edified and its scope was ever more narrowly defined.

¹⁹⁶ Rahman maintains, e.g., that Shaibani "has often recourse to *istihsān* (juristic preference) in opposition to earlier precedents and [that he] exercises absolute reasoning"; see *supra* note 118, p. 140.

¹⁹⁷ Reinhart, *supra* note 89, p. 178.

¹⁹⁸ Juynboll, *supra* note 101, pp. 36-37; cf., Crone and Hinds, *supra* note 32, p. 75.

¹⁹⁹ Juynboll, *supra* note 46, pp. 114-116.

²⁰⁰ Ansari, *supra* note 19, p. 289; *Ra'y* seems to have dominated jurist thought until the middle of the second century; Hallaq, *supra* note 61, pp. 75-76; see also Ansari, *supra* note 54, p. 159.

²⁰¹ *Ibid.*

1 The growing insistence on a literal following (*bi-lā kaifa*) of ‘authentic
 2 Ḥadīth’, as the *only* legitimate sources and *perpetuators* of Sunnah, its
 3 *superiority* as a tool of Qur’ānic *tafsīr* (exegesis) at the cost of non-written-
 4 based Sunnah, and reason-based opinion (*ra’y*) began to considerably
 5 narrow down the epistemologico-methodological playfield of both the
 6 Qur’ān and Sunnah and therefore the nature and the scope of the concept
 7 of Shari’ah. This methodological concept of *bi-lā kaifa* (literally ‘without
 8 asking how’) was based on the premise that whatever is written in the
 9 Qur’ān as well as in ‘authentic Ḥadīth’ is not allowed to be contextualised,
 10 interpreted in a metaphorical sense or based on certain non-textual
 11 epistemological and methodological tools such as notion of ethical
 12 objectivism, the use of reason or concept of the *spirit and rationale* (*qasd*)
 13 of the Qur’ān and Sunnah which were, as we saw earlier, the foundation of
 14 Qur’ānic and Sunnahic teachings as characterised by the Prophet’s
 15 embodiment of the Qur’ānic message put into practice and perpetuated by
 16 the first three generations of Muslims.

17 A significant impetus to this view of the epistemologico-methodological
 18 superiority of Ḥadīth-based Sunnah to that of *al-sunnah al-ma’rufah* was
 19 provided by Shāfi’ī who belonged to the fourth generation of Muslims.

20 3.2.2.4. Sunnah at the Time of Shāfi’ī and Beyond

21 In the previous part of our discussion we alluded generally to the forces
 22 which were contributing towards the growth of the written recordings of
 23 (reportedly) Prophet’s actions and words and the absorption of non-
 24 written-based Sunnah into them. We also saw that a broader and narrower
 25 version of Sunnah were co-existent with an increased tendency for ‘Ḥadīth-
 26 ification’ of regional Sunnah. We shall refer to these factors as mechanisms
 27 of *traditionalisation*. Calder describes this process as a transition from a
 28 discursive tradition to a hermeneutic tradition (purporting to derive the
 29 law exegetically from the Prophetic sources).²⁰² Ansari, similarly, talks in
 30 terms of the shift towards “an objectively justifiable juristic theory” at the
 31 time of Shāfi’ī.²⁰³ Therefore, those religious authorities that fully embraced
 32 and adhered to this narrower epistemologico- methodological definition of
 33 Sunnah (Sunnah equals ‘authentic Ḥadīth’) are conventionally referred to

34 ²⁰² Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press),
 35 1993, p. 8. He also suggests, in the same sentence, that this process “was a lengthy and
 36 complex one”.

37 ²⁰³ Ansari, *supra* note 142; O. Shafi’I, see *infra*.

as *traditionalists* (*Ahl al-Ḥadīth*) while others who remained faithful to the broader definition of Sunnah, which included an element of *ra'y*, were given the title of rationalists (*Ahl al-Ra'y*).²⁰⁴

The increasing epistemologico-methodological constraints on Sunnah emerged as a by-product of this traditionalisation towards the end and the beginning of the second century with the process of systematic collection and criticism of Ḥadīth.²⁰⁵ These efforts bore fruit in form of the collection of large quantities of purely written-based 'Sunnah' that were claimed to have originated from the very mouth of the Prophet. This 'Sunnah', although originally oral in nature was in due course completely written-based and came from every corner of the Muslim empire.²⁰⁶ Its authenticity was guaranteed by an increasingly 'healthier' *isnāds* as developed by *muhadīthiūn*.²⁰⁷ The champion of this definition of 'Sunnah' was the famous jurist Shāfi'ī (d. 204). Shāfi'ī's concept of Sunnah was:

Established by traditions going back to the Prophet, not by practice or consensus. [Apart] from a few traces of the idea of *al-sunnah al-ma'rufah* in his earlier writings, Shāfi'ī recognises the 'Sunnah of the Prophet' only in so far as it is expressed in traditions going back to him.²⁰⁸ This is the idea of Sunnah we find in the classical theory of Muhammadan laws, and Shāfi'ī must be considered as its originator there... Shāfi'ī restricts the meaning of Sunnah so much to the contents of traditions from the prophet, that he is inclined to identify both terms more or less completely.²⁰⁹

Thus, it was with Shāfi'ī, a member of the *fourth* generation of Muslims, that the methodologico-epistemological *beginnings* of the coalescing of Sunnah with Ḥadīth came into being *for the first time*. Up to this point in time, prevalent ethico-religious character of Sunnah being interpreted,

²⁰⁴ For more, see Melchert, *supra* note 179.

²⁰⁵ In Juynboll we read that the beginning of Ḥadīth standardisation in terms of *isnād* occurred during the last two to three decades of the first century Hijrah; see *supra* note 101, pp. 19-22.

²⁰⁶ In Muslim literature, this is referred to as *talab al-ḥadīth*, i.e. journeys made by individuals seeking and collecting the sayings of the Prophet; see, e.g., Goldziher, *supra* note 36, Ch. 6, pp. 164-181; also Juynboll, *supra* note 101, pp. 66-70.

²⁰⁷ I.e., those who were engaged in compilation, classification and criticism of Ḥadīth and its authenticity.

²⁰⁸ In opposition to those who stopped at the level of Companions—these were and still are acceptable in Ḥanafī *madhhab*; for more, see A. Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory*, Harvard University, Ph.D. Dissertation, 1984, pp. 61-67.

²⁰⁹ Schacht, *supra* note 86, p. 77.

1 crystallising and re-interpreted by the *fuqahā'* in the light of '*amal*' was
 2 becoming ever more legalistic and written in nature. The *fuqahā'* of the
 3 regional and personal schools of law (as we briefly outlined and shall deal
 4 with in more detail in the next part of the study on Ḥadīth-dependent
 5 Sunnah) developed their own hermeneutic of Sunnahic definition and
 6 interpretation based on their broader hermeneutic orientation which, in
 7 the eyes of *Ahl al-Ḥadīth*, suffered from numerous defects.²¹⁰ As such,
 8 Shāfi'ī often accused these *fuqahā'*, such as Abū Yusuf and Mālik, of
 9 ignoring or interpreting away the Ḥadīth in favour of their own school's
 10 doctrine or that of their own *ra'y*.²¹¹

11 A *fāqih* who belonged to a personal school of law was increasingly
 12 presented with a dilemma either of following the school's doctrine of
 13 Sunnahic hermeneutic or that of Shāfi'ī.²¹² A dilemma was made much
 14 more difficult if the *fāqih* had to judge a case that did not have a direct
 15 precedent in his school's doctrine but was found in an isolated²¹³ Ḥadīth
 16 going back to the Prophet pertaining to the matter at hand, or if these two
 17 legal tools were contradictory.

18 Rather than opting for acceptance of a 'raw' Ḥadīth unknown to
 19 previous authorities belonging to same school, the majority of *fuqahā'*
 20 belonging to a particular school of thought, especially those of lower status,
 21 were faithful and obedient (*muqallid*) to their school's hermeneutic.²¹⁴ In
 22 discussing this, Brown astutely observes that, with the exception of
 23 Ḥanbalism, the theoretical triumph of the Shāfi'ī's concept of Sunnah
 24 affected the personal schools of law only "peripherally". The allegiance to
 25 the school's doctrine of legal theory, he further maintains, was based on

26 ²¹⁰ See Calder, *Origins*, Ch. 9, on the development of hermeneutical skills in various
 27 schools of thought.

28 ²¹¹ See, e.g., Schacht, *supra* note 86, pp. 58-80.

29 ²¹² For a detailed discussion on this, see B. Sadeghi, *The Structure of Reasoning in Post-*
 30 *Formative Islamic Jurisprudence*, Ph.D. Thesis, Princetown University, 2006.

31 ²¹³ A report that was transmitted by one or only few individuals in contrast to *mutawātir*
 32 *ḥadīth* which was transmitted by a large number of narrators. See below for a more detailed
 33 definition of isolated (*abad*) and successive (*mutawātir*) Ḥadīths.

34 ²¹⁴ For example, schools of thought/law gained high prestige in society and were awarded
 35 a great deal of authority and reverence to their founding fathers; for an exhaustive analysis
 36 of this subject, see W. Hallaq, *Authority, Continuity and Change in Islamic Law*, (Cambridge:
 37 Cambridge University Press, 2001) *cf.*, Sadeghi, *The Structure of Reasoning in Post-Formative*
 38 *Islamic Jurisprudence*.

consensus²¹⁵ as the ultimate criterion in its decision-making processes and not on the Ḥadīth.²¹⁶ For example, Abū Yusuf, Shāfiʿī's older contemporary, is quoted as having said:

So make the Qurʾān and well-known Sunnah (*al-sunnah al-maʾrūfah*) your imam and guide. Follow and judge on that basis whatever matters come to you that have not been clarified for you in the Qurʾān and Sunnah . . .

adding:

So beware of irregular (*shadhdb*) Ḥadīth and go by those Ḥadīth, which are accepted by the community and recognised by, the *fuqahāʾ* [as valid] and which are in accordance with the Qurʾān and Sunnah. Judge matters on that basis”.²¹⁷

Thus this “sunnaic-concensual practice”, to use Hallaq’s terminology that was considered binding was seen as “determinative of Ḥadīth”.²¹⁸

As Brown writes, these personal schools of thought (*madhhab*)²¹⁹ “had given assent in theory to the importance of Ḥadīth whilst resisting its thorough application” creating a tension between Shāfiʿī’s definition of Sunnah and “the actual doctrine of the *madhhab*”.²²⁰ The consolidating *Ahl al-Ḥadīth* movement, however, increasingly questioned these practices as being un-Sunnahic, throwing the doors wide-open for the concept of *ihy al-sunnah*, revivification of and return to Prophetic Sunnah, by means of a literal adherence to ‘authentic Ḥadīth’ without any intermediaries.

Shāfiʿī’s methodological innovation did not only pertain to Sunnah but also to the entire evolving legal theory. To him is attributed the title of the

²¹⁵ This consensus should not be confused with the later definition of it in form of *ijmāʿ* but should be understood in terms of the agreed living practice constituting Sunnah. Cf. Hallaq, *supra* note 61, pp. 110-112.

²¹⁶ Brown, *supra* note 2, p. 20.

²¹⁷ Abū Yusuf, *Siyar al-Awzaʾi*, as cited in Yasin Dutton, *The Origins of Islamic Law - The Qurʾān, the Muwatta and Madinian Amal* (Routledge, Curzon), 2002, p. 175; cf., Ansari, *supra* note 142, p. 497.

²¹⁸ Hallaq, *supra* note 61, p. 110.

²¹⁹ For the sake of simplicity, *madhhab* is rendered here as schools of thought/law. For its various definitions and evolution, see Melchert, “Introduction”, *supra* note 179.

²²⁰ Brown, *supra* note 2, p. 20.

1 first scholar to develop a systematic model of law derivation, and in many
2 ways he was considered a father of Islamic jurisprudence.²²¹

3 The efforts of Shāfi'ī to systematise and develop a more coherent model
4 of legal theory by making Ḥadīth the only vehicle of perpetuation and sole
5 repository of Sunnah, supported by *Ahl al-Ḥadīth*, resulted in the further
6 consolidation²²² of existing personal schools of law such as the Mālikī,
7 Ḥanafī and later on development of Shāfi'ī and *Ahl al-Ḥadīth madhhabs*.

8 Shāfi'ī's hierarchical legal theory set up for purposes of defining the epis-
9 temological boundaries and methodological procedures for derivation of
10 positive law was, apart from the Qur'ān and Ḥadīth-based Sunnah,
11 founded on *ijmā'* and on *qiyas*.²²³ The increasingly hierarchical structure of
12 this entirely textual hermeneutic (the Qur'ān and Ḥadīth) meant, how-
13 ever, that non-textual sources (practice-based Sunnah/well-known Sun-
14 nah, abstract ethico-moral principles, *ijmā'* and analogy) were largely
15 displaced and constrained by them. In relation to this phenomenon
16 Wheeler asserts:

17 By defining the revelation as a text that requires interpretation as epitomized by
18 prophetic practice contained in the textual corpus of the Sunnah, the theories
19 associated with Shāfi'ī shifted the guarantee of the local authorities' opinions away
20 from the local definitions of traditional practice and toward a notion of authority
21 based on the transmission and interpretation of texts.²²⁴

22 Writing about this epistemologico-methodological shift, Rahman comments
23 that while in earlier times of the Companions the use of *ijtihād* slowly
24 crystallised in consensus, giving rise to *al-sunnah al-mā'rufah* (well-known
25 Sunnah), only to be again abolished and re-formulated in the light of new
26 circumstances, the epistemological value of *ijtihād* was reversed in the
27 post-Shāfi'ī period so that *ijtihād* was significantly constrained by the *ijmā'*

28 ²²¹ For a more detailed account of this, see Hallaq, *supra* note 4, pp. 21-29. For an
29 exhaustive study of Shāfi'ī's *uṣūl al-fiqh* approach, see J. Lowry, *The Development of Early*
30 *Islamic Jurisprudence* (Shāfi'ī's *Kitāb al-Umm*), (Leiden: Brill, 2007).

31 ²²² *I.e.*, Shāfi'ī's more systematic approach to law provided an impetus for the existent
32 schools of law to develop their own hermeneutic that was more coherent, hierarchical and
33 systematic in nature.

34 ²²³ For a critique of this view, see J. Lowry, "Does Shāfi'ī have a Theory of Four Sources
35 of Law", in: *Studies in Islamic Legal Theory*, B. Weiss, ed., pp. 23-50. For the critique of the
36 critique, see *ibid.*, pp. 389-391.

37 ²²⁴ Wheeler, *supra* note 55, p. 18.

principle.²²⁵ All this contributed to “the conviction becom[ing] absolute that law is justified only if it can be related hermeneutically to Prophetic example, and not if it is presented discursively as emanating from an ongoing juristic tradition.²²⁶ This, of course, is directly related to the fact that the epistemologico-methodologically broader concept of Sunnah prevailed and was considered superior to Ḥadīth during the formative period of Islamic thought.

The coalescing of concepts of Sunnah with “authentic Ḥadīth” in theory was, to a large extent, clearly evident but not fully complete at time of Shāfi‘ī.²²⁷ The person who is to be accredited with this is one of the main proponents of *Ahl al-Ḥadīth* Sunnahic hermeneutic, Ahmad ibn Ḥanbal (d. 241 AH).²²⁸ His approach to the concept of Sunnah is clearly demonstrated in his treatise *Tabagat al-Ḥanbalah*²²⁹ in which he states: “And the Sunnah with us are the *āthār*²³⁰ (narrations) of the Prophet” (*wa l-sunnatu ‘indana atharu rasulillah*). Moreover, in terms of epistemologico-methodological value and interpretational tool of Ḥadīth, Ḥanbal maintains that: “the Sunnah (*i.e. athār/ḥadīth*) explains and clarifies the Qur’ān (*wa l-sunnatu*²³¹ *tufassir al-qur’ān*)... there is no analogical reasoning in the Sunnah and the examples are not to be made for it” (*wa laisa fi l-sunnati qiyās, wa lā tudhrabu labā l-amthal*).

Nor is it [Sunnah] grasped and comprehended by the intellects or the desires (*wa lā tudraka bi-l-‘uquli wa lā l-ahwa’*).²³² Thus, Sunnah was epistemologically and methodologically self-identified with *ḥadīth/athār* and was considered as supreme commentary upon the already earlier discussed *deutungsbeduerfigkeit* of the Qur’ān.²³³

²²⁵ Rahman, *supra* note 118, pp. 145-146.

²²⁶ Calder, *Origins*, p. 19.

²²⁷ Making a distinction between the Shāfi‘ī and *Ahl al-Ḥadīth madhhab* speaks for itself regarding this fact.

²²⁸ Watt, *supra* note 9, p. 296; also see A. Ibn Ḥanbal, *Foundations of Sunnah*, (tr.) Amjad ibn Muhammad Rafiq, (Birmingham: Salafi Publications, 2003).

²²⁹ This treaty is found in or attributed to A. Ibn Ḥanbal, *The Foundations of the Sunnah*, A. ibn M. Rafiq (Eng. tr.) (Birmingham: Salafi Publications, 2003).

²³⁰ *Athār* is usually a synonym for Ḥadīth, going back to the timer of the Prophet but also to the Companions; see Ansari, *supra* note 19, p. 256.

²³¹ The word Sunnah is used here rather than Ḥadīth but given the previous statement it is to be understood in the sense of *athār/ḥadīth*.

²³² As cited in Ibn Ḥanbal, *The Sunnah*, pp. 11-12.

²³³ See the first page of this article.

1 Since the *Ahl al-Hadith* movement, unlike other schools of thought,
 2 considered both theological and jurisprudential sciences based on both
 3 Qur'anic and Sunnahic interpretation completely dependable on literal,
 4 Ḥadīth-based Sunnah devoid of input of reason, Hourani maintains that
 5 the inherently Qur'anic principles of ethical *objectivism* and *partial*
 6 *rationalism* were transformed into ethical *volunterism* (ethical concepts
 7 understood only in terms of God's will)²³⁴ and *traditionalism* (humans can
 8 never know what is morally right by independent reason, but only by
 9 revelation and derived sources),²³⁵ thereby changing the epistemologico-
 10 methodological character of both the Qur'ān and Sunnah.²³⁶ In this
 11 context, Reinhart asserts that "[At] this point in time Islam itself became
 12 the standard and the congruence of reason and religion, which once served
 13 to justify religion, now, at best, justified reason".²³⁷ Furthermore, the
 14 overriding principles of textual hermeneutic also meant "Revelation must
 15 categorically alter morality and epistemology..." and by inference "[B]efore
 16 or without Revelation there can be no moral knowledge".²³⁸

17 4. Conclusion

18 At the beginning of this article, two questions that guided its analyses were
 19 asked: namely whether the traditional definition of Sunnah that took root
 20 and established itself during the post-formative or classical period of
 21 Islamic thought reflect the way this term was understood during the pre-
 22 classical period. The answer, based on our above analyses is a clear 'no'. We
 23 have seen that over a period of some 250 years Sunnah was semantico-
 24 contextually and epistemologico-methodologically fluid. Secondly, this
 25 article has attempted to explain which mechanisms were responsible for its
 26 conflation with an authentic Ḥadīth as defined by the classical *'ulūm*
 27 *al-ḥadīth* sciences and when they became apparent. From the above
 28 chronological analyses of the concept of Sunnah we can conclude the

29 ²³⁴ God's will, however, is always subject to the interpretation of those who engage in
 30 deducing meaning from the text; El-Fadl, *Speaking*, pp. 115-132.

31 ²³⁵ There was a degree or variation on these issues between different as well as within
 32 schools of thought. For an exhaustive discussion on this issue, see Reinhart, *supra* note 89,
 33 pp. 11-37.

34 ²³⁶ Hourani, *supra* note 58, pp. 2-3.

35 ²³⁷ Reinhart, *supra* note 89, p. 178.

36 ²³⁸ *Ibid.*, p. 183.

following. At the time of the Prophet and the first three to four generations
 of Muslims, the Qur'ān and Sunnah, in terms of their nature and scope,
 were conceptually seen as one organic whole. In addition to the *'ibadah*
 dimension of Sunnah both of these sources of Islamic thought were
 primarily seen in ethico-religious and objective or values-based concepts
 and were reason inclusive. All these aspects of Sunnah could be formulated,
 preserved and transmitted orally. The concept of Sunnah was conceptually
 differentiated from that of Ḥadīth may it be in a form of *sunnah al-ma'rufah*
 or that of *sunnah madiyah*. With the process of what we have described as
 traditionalisation, this concept of the nature and the scope of the concept
 of Sunnah (and that of the Qur'ān) underwent important conceptual
 changes. Severance of the symbiotic link between the Qur'ān and Sunnah
 occurred, and, over time, its hermeneutical dependence on Ḥadīth-based
 literature was largely engendered, thus changing conceptually its nature
 and scope as it was understood during the first three generations of
 Muslims.²³⁹ Secondly, the nature and the scope of the concept of Sunnah
 was conceptually distorted and conflated with the concept of 'a post-Shāfi'i
 authentic Ḥadīth' which is how the contemporary Islamic majority
 mainstream thought continues to conceptualise it to this day.

²³⁹ For more on this see, Duderija, "Methodology", *supra* note 7.

