THE TRUTH ABOUT CATS AND DOGS:  
THE HISTORICTY OF EARLY ISLAMIC LAW

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One day, some years after the Prophet had died, one his companions, Abū Qatāda came for a visit to his daughter-in-law Kabsha bt. Ka‘b. While he was there, the time for prayer arrived, and she put forward a bowl of water so that he could do his ablution for prayer. As he was preparing for this, a cat came ambling up, sniffing at the bowl, and Abū Qatāda tilted it so that the cat could drink from the water. Then, he cleaned himself and performed the prayer. Kabsha, the host, looked surprised at this and wondered how he could then use this water, but he replied, The Prophet said, such household animals do not pollute the water.

Fourteen hundred years later, this episode has become the focus of an intense debate among European Islamologists, who either claim or deny that it is the final proof that Islamic law is based on falsehood.

This debate is thus an example of how we historians construct a past, and the role of theory and certainty in what we can know. What I will do here, therefore, is to present some of the main themes of this recent debate, and what methods are being suggested to improve our reliance on the early sources.

It is thus a long time since the nineteenth-century historian Renan said that, of all founders of world religions, only Muhammad appears in the full light of history, with a complete and detailed biography told in stories of legal, historical and theological impact. The first revisionist attack on this ‘traditional’ Muslim historiography came from Ignaz Goldziher in the 1890s, followed up in much greater detail by Joseph Schacht in Origins of Muslim Jurisprudence in 1950. Their main insight was that many of the legal maxims contained in the hadith, the Traditions of the Prophet’s statements, discuss problems that could only have become problems long after the Prophet had died. Thus, these hadith could not have been said by the Prophet, but were created at a later date and accredited to him at a time when his authority had become paramount.

That such fabrication existed was not a new discovery, but what Goldziher and Schacht suggested that was that they could see this in every Prophetic hadith they studied; that is, that the complete body of hadith from the Prophet was ahistorical, the product of the second century after the hijra. Schacht also suggested that the authority had ‘grown backwards’, that is that those hadith that only referred to the opinion of a second- or third-generation Muslim were the oldest stories; they were later supplanted by stories put in the mouth of first-generation Companions of the Prophet, and finally stories referring to the Prophet himself were put into circulation to support particular viewpoints. Thus, the older the apparent event, the younger the real age of the story. Schacht gave a chronology where most hadith referring to the Prophet
must have come into circulation about 150 years after his death, that is around
year 750 of our era.

Goldziher and Schacht’s revisionist conclusions, while criticized for
obvious reason by many or most Muslim historians, have generally been
accepted by most Western historians of early Islam. For some it has in fact
become an axiom that all Muslim sources for early Islam is ahistorical, and since
there are virtually no early non-Muslim sources, we actually know nothing. If
we are to reconstruct a history, we must disregard what the sources claim about
their origin, and instead study the actual text of the sources, using textual
criticism such as known from Biblical studies. The most outrageous
conclusions from this came from John Wansborough, who by studying the
Quran concluded that it was not authored by one person, but the composite
result of an ongoing polemic with other groups, a polemic that could only have
taken place in Iraq in the ninth century.

Wansborough’s denial of the Quran’s history has not been widely
accepted. But his method of textual criticism has been used by others, with less
dramatic result, but still on the basis that ‘we disregard who is supposed to
have authored the book, and only look at what the text actually says’.

This approach was developed by Norman Calder, who in 1993 published
Studies in Early Muslim Jurisprudence, focusing on the early history of the Mālikī
school of law by comparing the two main works of that school, the Muwāṭṭa’,
and the Mudawwana.

The traditional account of these is that the Muwāṭṭa’, the primary work of
Mālikī law, is the work of Mālik b. Anas himself. It was compiled in writing by
a Spanish student, Yahyā b. Yahyā, but the title, its content of hadith and
composition is as Mālik designed it, thus it dates before his death in 795. The
second book, the Mudawwana, on the other hand, is a compilation of the views
of Mālik and comments by his students, made by a Tunisian judge called
Saḥnūn, and dates about half a century later; Saḥnūn died in 855.

But this cannot be so, Calder says. The order must be the other way.

The Mudawwana must be the older book and the Muwāṭṭa’ the younger,
and the Muwāṭṭa’ as we have it must thus have been put together almost a
century later than claimed, and thus does not represent the views of Mālik.

To demonstrate this, he uses the example of domestic animals and ritual
purity. The problem is that certain animals are impure and makes water impure
and useless for ritual ablutions.

- that can happen at a well when impure animals have drunk from it, or
at home, when an impure animal has come in contact with water or vessels
used for ritual ablation. The problem is which animals; and here there were
disagreements between different schools, in particular the Ḥanafīs in Iraq and
the Mālikis in Medina.

In the Mudawwana, this issue is discussed through examples, a horse and
the donkey are OK, a dog is OK, chicken are not OK, carrion eaters are not OK.
Partly these are given just ‘casuistically’, that is simply saying Yes and No to
each case - such as the horse and dog - without explaining why, and partly
depending on categories of animal, such as carrion eater. The many examples
are complex, and it appears from them that dogs represents a problem, because
although Mālik said it was OK, it does in fact fit into the categories that cause
impurity, being a potential carrion eater. The Ḥanafīs did not accept it. Thus,
the section appears to jump through many loops to support Mālik’s conclusion that the dog is OK. In the end, it is the statement by Mālik himself that is the authority for the dog; an authority the Hanafis of course did not accept.

The Muwaṭṭa’ treats the issue more briefly, and bases its conclusion on the hadith I started with. This does not mention the dog, only the cat which was considered less of a problem; but it contains the dictum of the Prophet that the cat does not cause impurity, because it is among the household animals - which of course the dogs also are, so both cats and dogs are OK, and on Prophetic authority.

Now, with this clear Propetic hadith, the issue is closed and there is no need for the belaboured discussions we find in the Mudawwana, Calder claims. If the author of the Mudawwana had known this hadith, he would certainly have included it in the discussion. As he didn’t include it, he could not have known about it. Therefore, the Muwaṭṭa’ is the more advanced and a later text than the supposedly younger Mudawwana, and Calder goes through other examples to show that most of the early law books from all schools actually date from 50-100 years later than assumed.

It would be fair to say that Calder’s book has been slammed from all sides after it came out.

Muslim and Mālikī authors cannot of course accept a view that undermines the authority of the Muwaṭṭa’, but some Western and in particular German historians have used the occasion to criticize not just Calder, but also the assumptions from Schacht that underlies Calder’s way of thinking.

One long review by Miklos Muranyi, a Hungarian historian working in Bonn, attacked Calder because he had based his analysis only on comparing the modern, printed versions of the two books, and ignored e.g. the extensive biographical material that tell of people who studied the Muwaṭṭa’ before Saḫnūn - if Calder is right, then all of this material must be conscious and consistent forgeries - and also the many and internally consistent manuscript fragments of the Muwaṭṭa’ from various locations that date from the mid-late ninth century. Partly this criticism does not hit the mark, because Calder does not deny that there was a Muwaṭṭa’ before Saḫnūn, only that it then had the shape we now know. He says that the Muwaṭṭa’ - as well as most or all such books - were not ‘authored’ by a single person, but grew ‘organically’ over the century as a result of debates between persons and schools, new material being added or revised to improve each group’s viewpoints against those of the opponents. Thus, then, the addition of the Prophetic hadith to counter the Hanafi views - until the book was ‘frozen’ around 860-870, when transmission was no longer partial or oral, but by copying the complete, written book. So, it fits the thesis that a’ Muwaṭṭa’ was being studied and copied already in the early years, it just wasn’t identical to what we have now.

The most detailed criticism came from another German speaker, Harald Motzki, who similarly criticized Calder for ignoring source material beyond the modern printed versions of the books. For one thing, the student Yahyā b. Yahyā was not the only one to compile Mālik’s Muwaṭṭa’ from him: many of Mālik’s students did so. Several of these other Muwaṭṭa’s still exist, some are even published. All of these contain the hadith of the cat. Now, these could of course be just copies of Yahyā’s ‘canonical’ version, only attributed to other
students; or these other versions had been amended to include the hadith from Yahyā’s riwāya. But if so, one would have expected them to be identical.

As it happens, I have access to three of these versions, Yahyā’s, one by Suwayd al-Haddathānī, and a musnad version by Ibn al-Qāsim, so for fun on the occasion of this paper I have compared those three.


The main story is the same in all three. But Yahyā’s is the most detailed both in text and isnād, and sums up in a dictum from Mālik that the others do not include. One of the others omits a word in the Prophetic injunction. Further,
Yaḥyā calls the second link in the isnād Ḥumayda bt. Abī ʿUbayda b. Farwa, while Ibn Qāsim, who organized his musnad according to this link, calls her Ḥumayda bt. ʿUbayd b. Rifāʿa, Saʿd also calls her Ḥumayda bt. ʿUbayd. So, if Yaḥyā or his editor introduced the hadith, and the others copied it from him, then either both the others made the same copying error or editorial change, or Yaḥyā’s version was further added to after it had become canonical.

This just as an illustration to show how this works; Motzki has done a wider comparison, but goes beyond this, and looks at Calder’s claim that since Saḥnūn did not include the cat hadith, it did not exist at his time. This allows him to bring in a discussion of Schacht’s criticism of hadith.

Both Goldziher and Schacht based their assumptions mostly on the contents of the hadith. They proposed a chronology of the development of law from simple to more complex, and then dated the hadith used to support various views accordingly.

The isnāds, the chains of transmitters for each hadith, they assumed to be fake; but Schacht studied these to try to establish when a hadith came into circulation, and found a striking pattern. Most hadith exist as we know in very many versions with only minor differences in wording, each with its own isnād. Normally an isnād contains five to seven names, links, from the Prophet down to the collector who wrote down the hadith some two centuries later. By putting all the different isnāds for one particular hadith together and comparing them, Schacht found a typical pattern: All variants named the same eyewitness to the Prophet’s action. All say that this eyewitness told the same student, and he or she to one single student. That is, in all the isnāds for each hadith the three or four first persons are identical. From there, however, the isnāds branch out, that fourth transmitter has supposedly told the story to perhaps five or ten students, each of whom passed it on to three or four etc, down to the collector. It thus looks like a bundle, or a tree, something like this.1

This, says Schacht and those who follow him, is patently impossible. In a situation where the Prophet is a or the primary authority for Muslim behaviour, are we to assume that only one eyewitness told of what the Prophet said or did, and that this one told only one follower, and that student told only one? If the story had been true, then at least on the second and certainly third level there would have survived many more transmitters. This pattern must mean that it is this fourth person, which Schacht called the Common Link (CL), who has put the *hadith* into circulation, and the earlier names were invented by him. The transmission from the CL down is true and historical, the earlier one is a fiction.

This analysis has been much refined by a Dutch scholar, Gautier Juynboll, whose diagram this is. He is stricter than Schacht, because on the same argumentation, he says that even the students of the CL must be assumed to have passed it on to several further students. When the pattern shows such a student with many students, he calls this a partial CL, or PCL. In a bundle like this, we can assume that only a chain that goes from a CL or a PCL to another PCL, that is where both the teller and the receiver show many students, can be certainly true. The others we cannot say are true, they may be invented by a later collector or transmitter - any link in the chain which has only a single line going in or out must be disregarded; just CL/PCL to PCL is true. In this paradigm, thus only these lines are certain and true. As we can see, there are typically a number of other lines going by individuals outside the common link. These are 'dives', he calls them, and were invented by later transmitters who for one or another reason wanted to have an authority independent of the CL.

Further, he notes, these CL-bundles are in fact only a minority of *hadith*. The large majority look like below, where *isnāds* typically do not have a CL, but only single-strand, that is unreliable, *isnāds*. These, he says roundly, are thus all fake; probably constructed by the *hadith* collectors themselves or possibly their immediate teachers — anything earlier would have produced a CL.²

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This, then, undermines any secure historical knowledge of the first century of Islam. At the time the CLs existed, fake and true memory could not have been properly distinguished, and the methods the collectors used to select the canon we have today cannot be trusted, so indeed we cannot be certain except of what the early second century thought Muhammads time looked like.

This view has been challenged by the German scholars Motzki and Gregor Schoeler. They have proposed a method that, although based on isnād criticism of this type, adds to it elements they claim provide much better certainty.

Briefly, they say, one must not only look at the isnād alone, or just at the text (matn) alone, but at the two together. An apparently evident thing, it has not been done — perhaps because it’s very time-consuming and tedious. You take a large number of variants of one hadith or other early story. First, one makes an analysis of the isnād as Juynboll has developed. Then one analyses the text, what words are used, how the story composed, what elements are left out etc. In this way, one can group some of the variants of the hadith into type bundles that share common textual characteristics. Then you compare these text bundles to the isnād bundles. If you can find that they overlap, that many hadith variants which in the text share a particular element all list the same early authority in their isnād, and those without this element share another early authority, then you can assume that these hadith were actually told by these early authorities, even if there is no common link structure to prove it.

The stronger the correlation between text bundle and isnād bundle, the more secure is this conclusion. If the isnāds had been faked, they would in fact have shown a CL structure, as the forger would have tried to strengthen his isnād with an existing authority, not weaken it with a less convincing single-strand. Thus, we can dispense with the skepticism concerning these variants. If on the other hand, a particular text version has an isnād that puts it in the ‘incorrect’ bundle, then it is most probably a mistake, conscious or otherwise.

Furthermore, but with less certainty, as text bundle A, coming from one transmitter, and B, coming from the other, also will have a certain common core story, this most probably came from a single source, which may or may not have been the person it is said they got it from. Even if the name is not historical, it should mean that the core element of the story belong to one generation earlier than these established transmitters. Using these methods, they say that although we can seldom trace a hadith all the way to the eyewitness, we can often take it to the first generation after.

Back then, to the hadith of the cat. By carrying out such a isnād-cum-matn analysis of this example which also appears in some early hadith collections, although neither in Bukhari nor Muslim, Motzki suggests that the story originally existed in two variants; one just telling the story of Abū Qatāda and how he let the cat drink, that is to say of the actions of a companion; the other adding the statement from the Prophet. According to this analysis, the story not only came through Mālik, but is much older; the first transmitters appear to be Kabsha, the I-person in the story, and her husband.

And, Motzki claims that contrary to Schacht’s presumption, the version that includes the Prophet’s statement was actually the older of the two. This does not prove that the Prophet actually made the statement, but it does mean
that the issue was discussed very early, only about one generation after the Prophet’s death.

Well, so far the counter-proposal by the German anti-revisionists.

To some extent the difference between the ‘revisionists’ and the ‘anti-revisionists’ appears to be that the first say that if we cannot know for certain that a source is true, we must consider it false, while the the second say that if we cannot say that a source is false, we must consider it true.

The kind of criticism suggested by the likes of Calder and Juynboll would in essence mean, the latter say, that lacking actual carbon-dated pieces of pergament, we must discard all early Muslim history; to which the most radical revisionists would probably reply, Exactly.

More to the point, however, it is clear that both chronologies are based on the historians’ theory and logic. Schacht established first what he thought was the history of the development of the Shari'a, and then largely considered each hadith as true or false depending on whether it fit this chronology. Calder’s argument is also largely based on logic, if A had existed, then B must have referred to it; since B does not refer to it, then A cannot have existed. This, which the critics call argumentation e silentio, from silence, is problematic when our access to sources is faulty; that we do not have a particular reference in our surviving texts does not mean that it cannot originally have been there; since so much is lost over the ages. And perhaps there are other reasons that B does not refer to A; e.g. that it is so commonly known that there is no need for it to be mentioned; or that he has another aim with his discussion. We cannot know, so we cannot use absence as proof.

But also anti-revisionists like Motzki are arguing to a large degree from logic. If such-and-such hadith transmitter had been a forger, he says, then he could not have included that variant which is faulty or contradictory to his other hadith; a forged hadith or isnād would have been logical and consistent. So inconsistency indicates a probable truth. This is also an argument based on assumptions that we cannot check, in a sense, it is also an argumentation from silence, the absence of consistency.

I also think it suffers from both sides using terms like ‘fake’ or ‘forgery’, assuming that there must have a conscious perversion of the truth. It is perhaps better to talk of constructed isnāds, which allows for other possible motivations, such as e.g. just stating what is seen as self-evident truths. Perhaps the collector felt that when certain conditions existed - conditions we cannot know today - then links could be added or editing be made, but if counter-indications existed, they should also in all honesty be added. If we take away the motive of conscious falsehood, then we cannot say that the re-constructor had the freedom to or wished to construct a consistent version.

On the other hand, positive correlations such as the isnād-cum-matn method provides does give us a much better basis for knowledge; unless the correlations themselves were conscious constructs, something that we can probably exclude. I don’t think it by itself proves that the name in the isnād is necessarily the originator, but it certainly does provide much greater confidence and historical depth to the establishment of those story variants that do correlate in this manner.
Part of the problem of dating when a ‘book’ was produced also depends on what one means by ‘book’; how literary works were formed and transmitted in the early period. One scholar I mentioned among the anti-revisionists, Gregor Schoeler, has proposed a development here which in broad lines seems to be accepted by all sides. According to him, while the early transmissions were mostly or all oral, the teachers would use written notes to support their memory. The students would then either write the words down directly in the session, or later while their memory was fresh. The first scholar who used such notes in a systematic fashion was probably al-Zuhri, Mālik’s main teacher; as transmissions from him seem to maintain much greater consistency over time than those from earlier teachers, so he probably kept his notes and taught from them throughout his career.

With Mālik, we probably see an effort to systematize his teachings, thus the title ‘Muwaṣṣa’ and the organization of ḥadīth into thematic chapters may actually have originated with him, so that he taught one chapter at a time, and the students could produce fairly similar notebooks from his teaching. However, none of these generations gave away the actual notebooks to their students, so there was no direct writing-to-writing copying; all transmission went through an oral stage. This, then, allows for the variations we find in the various student recensions of the Muwaṣṣa’, as well as for the form often found in them that ‘I - the student - asked Mālik about this, and he said, ...’. In this sense, the Muwaṣṣa’ both existed and did not exist in the time of Mālik.

After this generation, there is little doubt that the various recensions were edited and changed to a smaller or larger degree over the two or three following generations until a regular ‘writing-to-writing’ transmission, direct copying of written texts, became the norm and the text became frozen in the form we have in the modern editions. That may well have taken place more or less when Calder suggests, between 850 and 900; which is also the time when we start having commentaries written on them; and it seems that the actual legal ‘schools’ as fixed entities with leadership etc. first came into being.

The point of debate thus is not so much ‘did Mālik write the Muwaṣṣa’’, but ‘how much of Mālik is there in the Muwaṣṣa’’. And in particular; ‘what role did ḥadīth from the Prophet play’ in Mālik’s teaching and views’.

The chronology of the anti-revisionists indicate that much of the Prophetic ḥadīth in the Muwaṣṣa’ was actually transmitted by Mālik himself, and was not, as Calder would have it, latter editorial additions to promote the Mālikī viewpoints. However, we must again try not to impose anachronistic conclusions on this. That such ḥadīth actually existed and was reported, does not mean that it yet had the final authority over other viewpoints that it later got, and which the traditional Mālikī history says that Mālik accorded to it.

One interesting attempt to check this is by a study published last year by Jonathan Brockopp, who has studied a work of law by one of Mālik’s students, Ibn ‘Abd al-Ḥakam, which appears to be certainly datable in a fixed form to about 820. This work does contain some references to the Prophet, but no direct ḥadīth, and while the legal statements it makes agree with those ascribed to Mālik in the Muwaṣṣa’ - showing that Mālik’s utterences in the Muwaṣṣa’ actually does originate with him - Mālik as a person is not necessarily cited as the authority. In other words, it would from this study appear that there was a fairly consistent legal grouping in the Hijaz and Mecca putting forward views
we would call Mālikī, but Mālik’s absolute authority in that group was only fixed later, and the Muwaṭṭa’ was not yet the final word of that school. All of this process of cementing the unity of the Mālikī grouping around the figure of Mālik and raising him to the ultimate interpreter must have come later; perhaps from half to a century later, and probably being strengthened after that.

Similarly, while Mālik probably did transmit many of the Prophetic hadith where he is listed as a transmitter, these may not yet have had the probative finality of authority that they had later. So, even if the isnād-cum-matn analysis shows as the anti-revisionists claim that the ascription of the hadith itself to Mālik is true, this does not in itself mean that they were part of the book Muwaṭṭa’ as Mālik taught it. Although the hadith was transmitted by him; it could have had a different status where he and his immediate students did not consider that they necessarily would have to be cited in his compilation of legal dicta, his Muwaṭṭa’, but could have been added later during the editing process - perhaps even independently in each riwāya - as hadith authority became more important, because it was a hadith on the issue transmitted by Mālik. And for the same reason, Sahnūn could - even knowing that Mālik had transmitted the hadith about the cat and considered it relevant - not have imagined that he had to include or that it made the more complex argumentation irrelevant.

In order to settle this issue, a more thorough comparative study of the various existing recensions and manuscript fragments of the Muwaṭṭa’ would need to be done. And the isnād-cum-matn method of correlating bundles of versions could be an important way of proceeding, although we have to continue looking at particularly what kind of assumptions we build into this theory.

Students of popular culture will have recognized the title of this paper as that of a recent movie with Jeanane Garofalo; which was a modern rendering of the Cyrano de Bergerac story. I thought it was fitting not just for the animals mentioned, but also because like with Cyrano, we can see here not only that there is a confusion between the apparent and actual author of the text, but perhaps we can also see that in the end the difference does not matter all that much, and the apparent author can in its effect actually become the real author, no matter whether we can establish who really dreamed up the actual words of the text.

**Literature**


— ‘Early Islamic society as reflected in its use of isnads, in ibid. [Orig. Le Muséon, cvii, 1-2, 1994, 151-94].


