

Introduction to Hanbali Fiqh

Notes from Abu Zahra's 'The Four Imams: Their Lives, Works, and Their Schools of Thought'

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Overview of Imam Ahmad's Life

- I. Imam Ahmad did not write a book on fiqh
- II. In the beginning of his career, he refused anything to be recorded from him on the subject of fiqh. He didn't consider it proper.
 - A. He would even forbid transmitting books from other fuqaha
 - B. He would even forbid his students to write down his own fatwas and opinions
- III. Later in life his students convinced him and he allowed them to transmit his fatwas and opinions
- IV. He learned from Shafi' the method of how to derive laws from the Qur'an and Sunnah
- V. His Musnad

- A. Started to collect them at age 16 (180 AH)
 - 1. Beginning of his quest for knowledge
 - B. He didn't organize them based on chapter headings or anything
 - C. He continued to collect them until almost end of his life and then dictated them to his sons and elite students
 - 1. To his sons and people of his house, he had transmitted the whole collection but to his students only what they asked about
 - D. Ahmad died before being able to review or edit it
 - 1. His son Abdullah supplemented it and added to it what he had heard
 - E. His son Abdullah is Musnad's greatest transmitter
 - 1. He is also the main person to disseminate his father's knowledge among the people
 - 2. It is his son who put the Musnad in its current order
 - a) It's arranged based on the name of transmitters
- VI. Because he was mainly a hadith scholar and his fiqh heavily relies on hadiths, some scholars like Tabari and Ibn Qutaybah did not consider him a Faqih, however, when you look into his fatwas, it seems he was indeed a Faqih

Transmission of Ahmad's Fiqh

- I. Ahmad would not resort to opinion except in dire necessity
 - A. Same with analogy
- II. He would not give fatwas on cases until they had actually arisen
 - A. He didn't like hypothetical fiqh to derive new secondary rulings
- III. Because he did not allow his opinions to be recorded, there are a lot of contradictory rulings attributed to him
 - A. Some of his students used to do it secretly
- IV. He became very famous after the inquisition and people sought fatwas from him all the time about everything
- V. Transmitters of Ahmad's Fiqh
 - A. There were some who transmitted a lot from him while others transmitted little. The list below is of those who transmitted the most from him:
 - B. Salih ibn Ahmad ibn Hanbal
 - 1. Eldest son of Imam Ahmad
 - 2. Ascetic like his father
 - 3. Learned fiqh and hadiths from his father and other contemporaries
 - 4. Was more interested in fiqh than hadith so was a means of disseminating fiqh of his father
 - C. Abdullah ibn Ahmad ibn Hanbal
 - 1. He was more concerned with hadith than fiqh
 - 2. Learned from his father as well

- D. Ahmad ibn Muhammad ibn Hani' al-Athram
 1. He was interested in fiqh, deduction and legal disagreements
 2. Started studying with him when he was mature
 3. Related questions of fiqh from Ahmad as well as many hadiths
- E. Abdu'l Malik ibn Abdi'l Hamid Mahran al-Maymuni
 1. Khallal often relied on him for his transmission of Ahmad's fiqh
 2. Wrote down rulings of Ahmad
 - a) Because of his knowledge Ahmad was too shy to forbid him to record his rulings
 3. He kept company with Ahmad for more than 20 years
 4. He asked him a great deal of questions
 5. Ahmad honored him and behaved with him in a way he did not behave with others
 6. He had rulings from Ahmad in a collection of about twenty sections and two large sections taking up 100 pages
- F. Ahmad ibn Muhammad ibn al-Hajjaj al-Marwazi
 1. Closest of Ahmad's companions
 2. He washed Ahmad when he died
 3. He transmitted *Book of Scrupulousness* from him
 4. Ahmad trusted him a lot
 5. Related many rulings from Ahmad
- G. Harb ibn Isma'il al-Hanzali al-Kirmani
 1. He began as a Sufi
 2. Met Ahmad late in life
 3. He was friends with al-Marwazi
 4. He also transmitted a lot from Ahmad but did not hear directly all that he transmitted
- H. Ibrahim ibn Ishaq al-Harbi
 1. Imam in knowledge and a leader in zuhd
 2. Transmitted fiqh and hadiths of Ahmad
 3. He wrote many books as well
 4. Had knowledge of fiqh and insight into rulings and memory of hadiths
- VI. Ahmad ibn Muhammad Abu Bakr al-Khallal
 - A. Main person to collect all his fatwas from Ahmad's students
 1. Never met Ahmad himself
 - B. Considered the great compiler and transmitter of Hanbali fiqh
 - C. Kept company with al-Marwazi until the latter's death
 - D. Put all his energy into transmitting Ahmad's fiqh
 1. He travelled extensively to search for it
 - a) Sometimes traveling in remote parts of the world for it
 - E. After collecting, he taught them to his students at the Mahdi mosque in Baghdad
 1. From here the Hanbali school spread out
 2. He transmitted it as a legal collection in about twenty volumes

- a) It is the basis of all Hanbali fiqh
- F. Fuqaha agree that he compiled all the various legal rulings ascribed to Ahmad
- G. He also wrote books on other subjects
- H. He died in 311 AH

Description of Hanbali Fiqh

- I. Avoid hypothetical rulings to questions which have not happened or will most likely not happen
- II. Heavily reliant on hadiths, fatwas of companions (athaar), or reports from the salaf
 - A. Ahmad had extensive knowledge of such traditions on almost every issue
 - 1. This is why he only resorted to opinion when necessary
- III. Basic principle is all mu'amalaat are lawful unless there is evidence to state otherwise
 - A. This is why Hanbali school is most permissive regarding freedom of contract and the preconditions which can be stipulated in a contract
- IV. Ahmad would give fatwas on the basis of maslaha in absence of relevant texts because general good is the basic intention behind most legal judgements
 - A. But doesn't force it as much as Malik did
- V. Has principle of 'blocking the means' because school looks at the motives and ends
- VI. School judges actions and statements according to clear intentions and actual results

Sources of Hanbali Law

I. The Qur'an

- A. All agree on its foundation for law and the first source
- B. Ahmad puts the Qur'anic texts above Sunnah texts in clarification of rulings
 - 1. But he generally put Qur'an on same level as the Sunnah [in deriving law] because the latter clarifies and explains the former
 - a) But no scholar considers the Sunnah to have exactly the same status as the Qur'an
 - 2. Ahmad did not believe that there could be any conflict between the literal text of the Qur'an and the Sunnah because the latter made its evidence specific by clarifying and explaining
- C. Ibn Qayyim's division of Sunnah in relation to the Qur'an
 - 1. Those that agree with every aspect of the Qur'an [in meaning]
 - 2. Those that clarify and explain what the Qur'an means
 - 3. Those that provide a ruling of halal or haram over something which the Qur'an is silent about

- D. Hanbali madhab holds that the apparent text of the Qur'an can only be explained by the Sunna
 - 1. Ahmad may have adopted this from Shafi' while listening to him in Mecca because it is his position also

II. The Sunnah

- A. Second half of the first principle (deducing from the Qur'an)
- B. Whoever ignores fiqh from the Sunnah loses nine-tenths of Islamic fiqh or more
- C. Fuqaha divide hadiths into four categories
 - 1. Mutawatir
 - 2. Mashoor - those which the second or third generation accepted and which are famous among them, even if they are ahaad hadiths
 - 3. Ahaad - these do not constitute definite evidence. Have only one transmitter somewhere in the chain
 - a) Ahmad and Shafi' accepted these
 - b) Malikis and Hanafis rejected them if they disagreed with the Qur'an. Hanafis did this more often than the Malikis.
 - 4. Mursal
 - a) Two types
 - (1) Those hadiths whose isnad stops at a follower (tab'i) without mentioning the companion
 - (2) Any hadith in which the isnad does not connect directly and continuously to the Prophet
 - b) Malik and Abu Hanifa accepted them to the extent which they thought correct
 - (1) They considered them the same rank as Ahaad hadiths
 - c) Shafi' accepted them but imposed certain conditions on them
 - d) Ahmad considered them to be evidence but put them below the fatwas of the companions, placing them on par with weak hadiths. So he slightly disagreed with Shafi'
 - (1) He considered their fatwas part of the Sunnah
 - (2) When there was nothing else, he would accept mursal hadiths as he accepted weak hadiths because he preferred them over analogy and opinion, which he applied only as a last resort
- D. Ahmad did not make it a precondition for the acceptance of the Sunnah that it should agree with any set of precepts or be measured against them
 - 1. He did not reject any of it, because he would only report from reliable people of known integrity, except when there was a sunnah which conflicted with one which was stronger and more reliable than it
 - 2. He related from the God-fearing and accepted their hadiths even if they were not completely accurate but if he found someone more reliable, he took their version

3. He told his son that he preferred a weak hadith unless there is something definite to refute it
 - a) He placed them before analogy
- E. Ahmad would also avoid having to use his own opinion by accepting the fatwas of some earlier fuqaha who were known for following tradition rather than innovation, such as Malik, Shafi', Thawri, etc. who had great knowledge of traditions

III. Fatwas of the companions

- A. Ahmad collected a large collection of legal rulings from them from which he extrapolated rulings
- B. Those who gave most fatwas were: Umar, Ali, Ibn Mas'ud, Ibn Abbas, Zayd bin Thabit, and Aisha
- C. Others: Abu Bakr, Uthman, Mu'adh, Sa'd ibn Abi Waqas, Talha, Zubayr, Abdullah ibn 'Amr bin Al-'As, Salman Al-Farsi, Jabir, and Umm Salama
- D. He used their fatwas as a guiding light
- E. He gave their fatwas a higher status than weak hadiths and mursal hadiths
- F. Ahmad would not do ijthihad on issues on which the companions (even if only one) had given a fatwa
- G. Ahmad put them into two categories
 1. Those issues about which there was no known disagreement
 - a) He would accept it but didn't call it a consensus
 2. Those issues about which the companions disagreed
 - a) He would make a note of them and considered them all to be his own so that he would have two or three statements according to the various positions
 - b) According to Ibn Qayyim in such a situation Ahmad would choose from them the position which was closest to the Book and the Sunnah and wouldn't depart from their statements
 - (1) Some reports suggest that he would first prefer the position of the rightly guided caliphs
 - (a) Abu Bakr and Umar's position takes precedence over others
- H. Ibn Qayyim also makes the case that the companions heard and witnessed a lot more than they related, thus, their fatwas could be due to things they witnessed, understood, heard, etc. that we do not have access to

IV. Fatwas of the Tabi'un

- A. Reports differ on whether Ahmad accepted their fatwas or not
 1. It seems he would accept it if there was nothing from the texts, fatwas of companions, nor mursal hadiths if the fatwa among the tabi'un was not disputed

- a) He would also take fatwas of scholars of tradition like Malik, Thawri, Ibn 'Uyayna, al-Awza'i, etc. if there was nothing else because he disliked to give his own opinion

V. Consensus

- A. Ibn Qayyim did not consider it to be one of the principles of Hanbali fiqh
 - 1. He denied its existence outside of the companions
- B. Most likely Ahmad found this to be unlikely outside the well-known matters of the deen
- C. Ibn Qayyim: Ahmad would not allow it to be put before a sound hadith
- D. He would never say 'consensus' but would use words like 'I do not know of anyone who opposes it'
- E. It could be said that Ahmad divided it into two categories
 - 1. Consensus of the companions
 - a) Related to principle obligations of the deen and questions on which they reached a specific view on (Abu Bakr being the caliph, etc.)
 - 2. Well-known opinions no one is known to oppose
 - a) He graded this above analogy but less than sound hadith
 - b) This is the one that is commonly known as Ijma
 - (1) But he wouldn't refer to it as ijma

VI. Analogy (Qiyas)

- A. Connecting a matter without a text giving a ruling for it to another matter with a text which does give a ruling, on the basis that they both have the same cause
- B. Ahmad took a middle course between rejection and adopting it excessively
 - 1. But used it only in case of necessity
- C. Hanbalis accord it more weight than Ahmad himself did
- D. It is usually new events that necessitate it

VII. Istishaab (presumption of continuity)

- A. All four imams use it but differ on the amount
 - 1. Hanafis use it the least while Hanbalis the most
- B. Def: a matter remains as it is as long as nothing comes about to change it
 - 1. Or definite evidence to the contrary
- C. Types Hanbalis affirm
 - 1. Continuity of what a contract or the law affirms
 - a) Ex: a loan is presumed to continue unless there is evidence to the contrary, marriage is presumed to continue to exist unless there is evidence of divorce
 - 2. Presumption that a state of affairs does not exist unless there is definite evidence that it does
 - a) Ex: innocent until proven otherwise
 - 3. Continuity of original attributes

- a) Ex: pure water is presumed to remain pure unless the contrary is definitely established, a missing person is presumed to be alive unless proven otherwise
- 4. Presumption of the continuity of consensus about general rules and principles of the law

VIII. Masalih (Public Interest)

- A. It is used by the Hanbalis
 - 1. Some Hanbali scholars used it more than others
- B. Ibn Qayyim, however, did not include this as one of the principles that Ahmad used
- C. He used it in a general way
 - 1. Why wouldn't he since he followed the fatwas of the companions who would use it for the public good

IX. Principles of *adh-dhara'i'* (Blocking the Means)

- A. Ahmad considered it one of the principles of fatwa
- B. Def: whatever is forbidden then everything that leads to it is also forbidden; whatever is commanded then everything that leads to it is also commanded
- C. Does not consider personal intentions and objectives but aims for general benefits or the general removal of harm
 - 1. It examines simply the end