

# Ibādī Law and Jurisprudence

**Ersilia Francesca**

*University of Naples "L'Orientale"*

## Introduction

The Ibādīs derived their name from ‘Abd Allāh b. Ibād, but the real founding father of the school was Abū ‘l-Sha‘thā’ Jābir b. Zayd (born on 18 or 21/639 or 641 and who died in about 100 of Hijra). The first lawyers of the movement were trained at his ḥalqa: Abū Nūḥ Ṣāliḥ al-Dahhān, Ḥayyān al-A‘raj, Ḍumām b. al-Sā‘ib, Ja‘far b. al-Sammāk, and Abū ‘Ubayda al-Tamīmī, who propagated the doctrine learnt from Jābir in secret meetings in which the members of the sect discussed questions of law and dogma. Jābir’s teaching was crucial in the formation of the Ibādī school.

The following works are among the primary sources for the early Ibādī jurisprudence:

1. The *Jawābāt Jābir Ibn Zayd*. This is a collection of letters written by Jābir to his friends and followers. In these letters, he gives his legal response to several questions. This collection is the oldest Ibādī legal document.
2. The manuscript called *Āthār al-Rabī‘ b. Ḥabīb*.
3. The *Futyā al-Rabī‘ b. Ḥabīb*.
4. The *Aqwāl Qatāda b. Di‘āma*. In particular, the traditions reported by ‘Amr b. Dīnār and ‘Amr b. Harim in parts V and VI of the manuscript.
5. The *Kitāb al-Ṣalāt*, narrated by Ḥabīb b. Abī Ḥabīb al-Jarmī from ‘Amr b. Harim from Jābir, included in the last part of the *Aqwāl*.
6. The *Kitāb al-Nikāḥ*, which is a collection of Jābir’s legal opinions on marriage. The collator of the work is unknown, but as it is included in the same manuscript as the *Kitāb Nikāḥ al-Shighār* by ‘Abd Allāh b. ‘Abd al-‘Azīz. It was presumably narrated by the latter.

The above mentioned works, with the exception of the *Jawābāt Jābir b. Zayd*, are part of a collection of Ibādī manuscripts known as *al-Diwān al-ma‘rūd ‘alā al-‘ulamā’ al-ibādīyya*, which is the principal source for information on Ibādī jurisprudence in the first centuries of Islam.<sup>1</sup> The traditions and legal responses of Jābir have been transmitted

<sup>1</sup> For a description of the manuscripts, see:

Ennamī, ‘A. Kh., “A Description of New Ibādī Manuscripts from North Africa,” *Journal of Semitic Studies* XV (1970), 63–87.

Ennamī, ‘A. Kh., *Studies in Ibādīsm*. 2 vols. Beirut (1392/1972–73), 94–97.

Ess, J. van, Untersuchungen zu einigen ibādītischen Handschriften. In: *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 126 (1976) 25–63. Ess, J. van, Nachträge: Wissenschaftliche Nachrichten. In:

to us through an Ibādī line (Ḍumām b. al-Sā'ib, Abū 'Ubayda, Abū Nūḥ Ṣāliḥ, Ḥayyān al-A'raj and others) and a Sunnī line (Qatāda, 'Amr b. Dīnār, 'Amr b. Harim) <sup>2</sup>.

The themes treated in the Ibādī manuscripts reflect the evolving legal debate during the first two centuries of Islam. This debate consisted of two opposing trends, which may be identified in the formative phase of Islamic law: on the one hand, the continuation of local legal traditions and on the other, the efforts of the first lawyers to find solutions which conform to Islam.

A deep analysis into the early Ibādī legal works show that the Ibādīs, from the start, had a distinct line from the Sunnī schools, with independent authorities and jurists. Further research, focusing on the Ibādī law in the first centuries of Islām, would contribute to the formulation of tentative solutions to the main problems posed by this formative period of the Islamic law.

The fact that Ibādī law underwent an evolution during the 1<sup>st</sup> and the 2<sup>nd</sup> century of Hijra is of great significance in proving the independence of the Ibādī school. I will now elaborate the different stages in this development:

## The Early Development of Ibādī Law

Jābir played the leading part in the foundation of the school. Ibādī jurists were in contact with the Sunnī community and they acknowledged the authority of Sunnī traditionists, such as Qatāda b. Di'āma, 'Amr b. Harim, 'Amr b. Dīnār, Tamīm b. Khuwayṣ and 'Umāra b. Ḥayyān. In this period, a number of features, diverging from the Sunnī law, emerged in the Ibādī law. For example, the rejection of *maṣḥ 'alā 'l-khuffayn* (wiping shoes instead of washing feet as part of *wuḍū'*), the property of a client (*mawla*) who has no relatives is to be inherited by his people and not by his patron, and impediment to marriage between an unmarried man and an unmarried woman who have committed fornication are all feature that differ between Ibādī and Sunnī law.

Some traditions transmitted by old Ibādī jurists support doctrines rejected in later legal works. Typical of this group of "unsuccessful" traditions are those assuming that exchanges of precious metals involve no usury unless there is a time lag in the

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*Zeitschrift der Deutschen Morgenländischen Gesellschaft* 127 (1977) part 1, 1–4. The manuscripts are from the *al-Maktaba al-Bārūniyya* (Jerba, Tunisia). I borrowed the copies from Dr. Werner Schwartz, to whom I am deeply indebted.

<sup>2</sup> The transmission line Qatāda - 'Amr b. Harim / 'Amr b. Dīnār - Jābir is attested by the Sunnī sources Abū Nu'aym, Aḥmad b. 'Abd Allāh al-Iṣfahānī: *Ḥilyat al-awliyā'*. 10 vols. al-Qāhira, 1352/1933; Dhahabī (al-), *Tadbkirat al-ḥuffāz fī naqd al-rijāl*. 2 vols. Ed. 'Abd al-Raḥmān b. Yaḥyā al-Yamānī. Hayderābād (1968); Ibn Ḥajar, Shihāb al-dīn Abū 'l-Faḍl Aḥmad b. 'Alī al-Asqalānī. *Tabdhīb al-tabdhīb*. Beirut (1968), I:38: VIII 68,113,351. Ibādī biographical sources ignore Qatāda, but cite 'Amr b. Harim and 'Amr b. Dīnār among those who had transmitted from Jābir. Shammākhī, Abū 'l-Abbās Aḥmad b. Sa'īd b. 'Abd al-Wāḥid (d. 928/1522). *Kitāb al-Siyar*, lit. Cairo (1301/1883), 121.

transaction (absolute equality in quantity is not demanded)<sup>3</sup> and those allowing the sale of *umm al-walad* and *mudabbar* slave.

During the imamate of Abū ‘Ubayda, who succeeded Jābir at helm of the Ibādī community, the progressive radicalisation of the Ibādī school became apparent through doctrines concerning the states of association (*walāya*) and dissociation (*barā’a*) within the community. The development of early Basran Ibādism into a conventional *madhhab* was associated with an increasing consciousness of being a group apart. Though the sources describe Abū ‘Ubayda as quietist, under his imamate the movement entered into an expansionist stage with revolts breaking out in several regions. Under his leadership, Ibādism took the form of an intellectual religious movement. All activities were carried out in secrecy (*kitmān*) establishing special meetings (*majālis*) in which the members were trained in the Ibādī doctrine. They took place at night and no young members were allowed to attend unless they were fully trusted. In order to carry out his activities in Basra, Abū ‘Ubayda broke away from the rulers. His policy in this respect was contrary to the policy of his predecessor Jābir. He wanted a pure Ibādī movement and firmly opposed any contact with non-Ibādī. This is evidenced by marriage between an Ibādī woman and a non-Ibādī man, although it was lawful, was disapproved.<sup>4</sup> The validity of prayer performed with a non-Ibādī *imām* was also discussed at length in the early Ibādī sources. Jābir was said to have performed the Friday prayer under the guidance of the Umayyad governor al-Ḥajjāj, but later scholars seem to have held that praying with a non-Ibādī *imām* was worthless and that the prayer should be offered again.<sup>5</sup> This dispute emerged in the correspondence between Abū Sufyān Maḥbūb b. al-Raḥīl and Hārūn b. al-Yamān, during the imamate of al-Muḥannā b. Jayfar (226–237/841–852), and gave rise to the question of the true *sunna* of the Basran movement.<sup>6</sup>

The *walāya/barā’a* dynamic meant that respect for religious obligations alone could be the basis to include (or exclude) individuals from the Ibādī community, thus assuring the growth of the movement in the right direction. There is a statement on *walāya* and *barā’a* in the *Futyā al-Rabī’ b. Ḥabīb* relating the opinion of ‘Abd Allāh b. ‘Abd al-‘Azīz and Abū ‘l-Mu’arrīj ‘Amr al-Sadūsī, two Ibādī authorities from the late 2<sup>nd</sup>/8<sup>th</sup> cent., concerning the status of the believer who wipes his shoes instead of washing his feet as part

<sup>3</sup> Francesca, E., Religious Observance and Market Law in Medieval Islam. The Controversial Application of the Prohibition of Usury According to Some Ibādī Sources. In: *La tradition manuscrite en Écriture arabe. Revue des Mondes Musulmans et de la Méditerranée* 99–100 (2002) 191–203.

<sup>4</sup> Related by Abū ‘l-Mu’arrīj in Abū Ghānim al-Khurāsānī (3<sup>rd</sup>/9<sup>th</sup>): *al-Mudawwana al-kubrā*. 2 vols. Masqaṭ (1404/1984), 12.

<sup>5</sup> *Āthār*, f. 16<sub>5-7</sub>; Ibn Ja’far, Abū Jābir Muḥammad al-Azkawī. *Kitāb al-jāmi’*. 3 vols. Ed. ‘Abd al-Mun’im ‘Āmir. Oman (1981) II: 395; Hārithī, Sālim b. Ḥumayd b. Sulaymān. *Al-Uqūd al-fidā’iyya fī uṣūl al-Ibādīyya*. Masqaṭ (1403/1983), 97; Kindī, Muḥammad b. Ibrāhīm. *Bayān al-Shar’*. 19 vols. Oman (1402/1982–1406/1986), XV: 6.

<sup>6</sup> Kāshif, S. Ismā’īl (ed.): *al-Siyar wa ‘l-jawābāt li-‘ulamā’ wa a’imma ‘Umān*. 2 vols. Oman (1410/1989), II: 307; Wilkinson, J.C., Ibādī Ḥadīth: an Essay on Normalization. In: *Der Islam* LXII (1985) 252.

of the *wudū*.<sup>7</sup> In his epistle, Sālim b. Dhakwān expounds the principles of *walāya* and *barā'a* with great detail, coherence and passion.<sup>8</sup> *Walāya* and *barā'a* are striking features also in the epistles by later authorities, such as Shabīb b. 'Aṭīyya al-'Umānī,<sup>9</sup> Wā'il b. Ayyūb,<sup>10</sup> Abū Sufyān.<sup>11</sup> From the 3<sup>rd</sup>/9<sup>th</sup> cent. onwards, starting with the *Kitāb al-jāmi'* of Ibn Ja'far, all Ibādī major works contain a book or lengthy chapter devoted to this subject, in which the authors summarized their arguments according to a more or less fixed scheme and using the same pool of motifs.<sup>12</sup>

## The “Rationalization” of the Ibādī School

After the 3<sup>rd</sup>/9<sup>th</sup> cent., Ibādī law entered into a new stage of development. The 5<sup>th</sup>/11<sup>th</sup> and 6<sup>th</sup>/12<sup>th</sup> centuries marked a new phase in the development of Ibādī law in Oman. This period saw a rebirth in the region of the imamate after its collapse at the end of the 3<sup>rd</sup>/9<sup>th</sup> cent. The Ibādī *fiqh* fully took on the form of a *madhhab*, with works of *uṣūl* and *furū'*. In these, the doctrine of the sect's authorities was expressed on the basis of a plan that reflected the structure and themes discussed in the treatises of the Sunnī school. The development achieved by Ibādī jurisprudence is clearly visible in the work of Muḥammad b. Sa'īd al-Kudamī (who lived between the end of the 4<sup>th</sup>/10<sup>th</sup> and the beginning of the 5<sup>th</sup>/11<sup>th</sup> centuries) entitled *al-Mu'tabar*, which was a critical edition of the *Kitāb al-jāmi'* by Ibn Ja'far (3<sup>rd</sup>/9<sup>th</sup> cent.). There, order is given to the chaotic discussion of the problems of the sources' hermeneutics (*uṣūl al-fiqh*) and the *'ibādāt* given in Ibn Ja'far's work. A few years after al-Kudamī's treatise, the *Kitāb al-jāmi'* by 'Abd Allāh b. Muḥammad b. Baraka al-Bahlawī (mid 5<sup>th</sup>/11<sup>th</sup> cent.) became a fundamental reference point for the works of Ibādī encyclopaedists at the end of the 5<sup>th</sup>/11<sup>th</sup> and the beginning of the 6<sup>th</sup>/12<sup>th</sup> centuries, in particular, the *Kitāb al-dīyā'* by Salama b. Muslim al-'Awtabī, the *Bayān al-sbar'* by Muḥammad b. Ibrāhīm al-Kindī (died 508/1115), the *Kitāb al-kifāya* (of which only a few fragments have survived) by Muḥammad b. Mūsā and the *Muṣannaḥ* by Abū Bakr Aḥmad b. Mūsā al-Kindī (died 557/1162).

The *Mukhtaṣar al-khiṣāl* by Abū Ishāq Ibrāhīm Ibn Qays al-Ḥaḍramī, the last Ibādī *imām* of Ḥaḍramawt, and the *Mukhtaṣar* by Abū 'l-Ḥasan 'Alī b. Muḥammad al-Bisiyānī

<sup>7</sup> Rabī'(al-), b. Habīb (d. circa 190H): *Futyā al-Rabī'b. Habīb*. MS *al-Bārūniyya, Fiqh Ibādī* (without number) Fol. 32–49. Copyist Ṣālīh al-Sidrīnī, 29 Shawwāl 1191/1<sup>0</sup> Dec. 1777.

<sup>8</sup> See the Arab edition and the English translation in Crone, P.- Zimmermann, F. W., *The Epistle of Sālim b. Dhakwān*. Oxford (2001), 40–145; see in particular pp. 106 ff., 114 ff., 122–131, 140ff.

<sup>9</sup> Ibādī authority who was active in Oman in the late 2<sup>nd</sup>/8<sup>th</sup> cent. He is credited with a *Sīra* in Kāshif, S. Ismā'il (ed.), *al-Siyar wa 'l-jawābāt li-'ulamā' wa a'imma 'Umān*. 2 vols. Oman (1410/1989), 346–382. See also Cook, M., *Early Muslim Dogma*. Cambridge (1981), 57.

<sup>10</sup> Kāshif, *al-Siyar*, II: 46–61.

<sup>11</sup> Kāshif, *al-Siyar*, II: 273–304 addressed to the people of Oman; II: 305–323 addressed to the people of Ḥaḍramawt.

<sup>12</sup> Kāshif, *al-Siyar*, I: 147–253. The rules on *walāya* and *barā'a* are summarized in *Studies in Ibādism*, 193–220.

(or al-Basīwī), pupil of Ibn Baraka, belong to the same period as the latter's *Kitāb al-jāmi'*.

In North Africa, after the definitive collapse of the Rustamid imamate following the victory of the Fatimidis in 358/868–69, the Ibādī community was forced to take refuge in the remote oases of the Algerian Mزاب, on the island of Jerba and in Jabal Nafūsa. There it managed to survive in secret (*kitmān*), led by a council of elders ('*azzāba*). After the political collapse of the movement and a period of stasis, there was a re-flowering of the jurisprudence, parallel to that found in Oman. In the first half of the 6<sup>th</sup>/12<sup>th</sup> cent., Yūsuf al-Warjīlānī completed his arrangement (*tartīb*) of a collection of *ḥadīth* attributed to al-Rabī' b. Ḥabīb, in which traditions of the Prophet and the Companions were handed down through the *imāms* of the school, known as *Musnad al-Rabī' b. Ḥabīb* or *al-Jāmi' al-ṣaḥīḥ*.

The *Musnad al-Rabī' b. Ḥabīb* is the most important Ibādī collection of *ḥadīth*, in the technical sense of the term. The original version of the book, composed by the third *imām* of the Ibādī community in Basra, al-Rabī' b. Ḥabīb (d. about the end of the 2<sup>nd</sup> cent.), is not in common use. The current version is the one rearranged by Abū Ya'qūb al-Warjīlānī (d. 570/1174), entitled *Tartīb al-Musnad* or *al-Jāmi' al-ṣaḥīḥ*. This *Tartīb* is divided into four books. The first two contain 742 traditions on legal and religious matters, arranged in the same manner as the Sunnī collections of *ḥadīth*. The material is almost the same as that reported by Sunnīs. Most of the traditions transmitted by al-Rabī' are reported in Sunnī collections by other Sunnī authorities with the same wording, or with slight differences. The *isnād* of the two first parts is as follows:

1. al-Rabī' b. Ḥabīb - Abū 'Ubayda - Jābir b. Zayd - a Companion - Prophet.
2. The Companions are mainly: Ibn 'Abbās, Abū Hurayra, Abū Sa'īd al-Khudrī, Anas b. Mālik, 'Ā'isha.

Part III (comprising *ḥadīth* 743–882) and IV (comprising *ḥadīth* 882–1005) of the *Tartīb* are additional traditions added by Abū Ya'qūb al-Warjīlānī. Part III is politically interesting as it includes Ibādī traditions on the imamate, *taqiyya* (dissimulation of the belief), and the attitude towards sinners. In part IV, there are traditions (nr. 883–901) deriving from the last *imām* of the Basran community, Abū Sufyān Maḥbūb b. al-Raḥīl (second half of the 2<sup>nd</sup> cent.), traditions (nr. 902–922) from the Rustamid *imām* al-Aflaḥ b. 'Abd al-Waḥḥāb from Abū Ghānim al-Khurāsānī, the author of the *Mudawwana*, and *maqāṭī'* of Jābir b. Zayd<sup>13</sup>.

For the Ibādī *madhhab* the *Musnad* fulfils two important functions: that of providing an independent Ibādī collection of *ḥadīth* without having to refer to other schools, and that of affirming the pupil-*imām* transmission line from the founder of the *madhhab* Jābir b. Zayd, via his successor Abū 'Ubayda, via the successor of the latter, al-Rabī'.

<sup>13</sup> *Maqāṭī'* are traditions in which the authority for the transmission between the Successor (*tābi'i*) and the Prophet is not mentioned.

There is no easy way to tell when the traditions preserved in the *Musnad* came into being, although the work received attention from eminent scholars, such as L. Massignon<sup>14</sup>, J. van Ess<sup>15</sup>, Mohamed Talbi<sup>16</sup>, J. C. Wilkinson<sup>17</sup>, and M. Cook<sup>18</sup>. The inconsistency in the texts and in the *isnāds* gives rise to the doubt that al-Warjlānī collected material from different stages of development of Ibādī law<sup>19</sup>.

I agree with Prof. Wilkinson's theory postulating that the *Musnad* was the fruit of the process of "rationalisation", which Ibādī law underwent with the aim of safeguarding the school from outside influences and placing it on the same level as its opponents. The *Musnad* had the important function of furnishing the Ibādī school with a collection of independent *ḥadīth*, which resemble in their transmission and contents the classical Sunnī collections to which the lawyers of the sect could return. However, this did not reflect the doctrine which the first Ibādī had discussed in Basra, preserved in the sources, such as the *Aqwāl Qatāda*, the *Āthār* and the *Futyā al-Rabī'*, which, as the Ibādīs themselves asserted, freed them from the task of preserving the ancient teachings of the school<sup>20</sup>.

## The Ibādī Law in the Western Studies

Studies on Ibādī law were first carried out during the European colonial period in Africa and the Middle East when French (A. Imbert, M. Morand, M. Mercier, E. Zeys) and German (E. Sachau) scholars began to examine some legal statutes in the Ibādī community in Algeria, East Africa and Zanzibar.<sup>21</sup> R. Basset's research, published in 1885,

<sup>14</sup> Massignon, L., Islamisme et religions de l'Arabie. In: *Revue des Études Islamiques* 5 (1938), 410.

<sup>15</sup> Ess, J., van Untersuchungen, 126: 36–38 and Ess, J. van: *Theologie und Gesellschaft im 2. und 3. Jabrundert der Hidschra*. 6 vols. Berlin-N.Y. (1991–1995), II: 134.

<sup>16</sup> Talbi, M., *Études d'Histoire Ifriqiyenne et de Civilisation Musulmane MÉdiÉvale*. Tunis (1982), 36f.

<sup>17</sup> Wilkinson, J.C., *Ibādī Ḥadīṭ*, 231 f.

<sup>18</sup> Cook, *Early Muslim Dogma*, 56.

<sup>19</sup> Francesca, E., La fabbricazione degli *isnād* nella scuola ibādīta: il *Musnad* di al-Rabī b. Ḥabīb. In: *Proceedings of U.E.A.I. 18th Congress* (Sept. 3–9, 1996). Leuven, (1998), 39–44, 55–56.

<sup>20</sup> Wilkinson, *Ibādī Ḥadīṭ*, 254.

<sup>21</sup> Imbert, A., Le droit abadhite chez les musulmans de Zanzibar et de l'Afrique orientale. In: *Revue Algérienne et Tunisienne de Législation et de Jurisprudence*. Algiers 19 (1903), 21–29, 61–71; Morand, M., *Études de droit musulman algÉrien*. Algiers (1910); Morand, M., *Avant-Projet de Code Présenté à la Commission de Codification du Droit Musulman AlgÉrien*. Algiers (1916); Mercier, M., *étude sur le waqf abadhite et ses applications au Mzab*. Algiers (1927); Zeys, E., *Législation mozabite, son origine, ses sources, son présent, son avenir*. Algiers (1886); Zeys, E., *Droit mozabite – le Nil. Du mariage et de sa dissolution*. Algiers (1891); Sachau, E., Mohammedanisches Erbrecht nach der Lehre der Ibaditischen Araber von Zanzibar und Ostafrika. In: *Sitzungsberichte der Königlich Preussischen Akademie der Wissenschaft zu Berlin 15. Feb. 1894*. Berlin (1894); Sachau, E., Il diritto ereditario musulmano secondo la dottrina degli Arabi ibaditi di Zanzibar e dell'Africa Orientale. Italian translation by I. Guidi. In: *Rivista Coloniale*, 1906.

reporting the existence of a number of treatises on Ibādī law in the Algerian Mzab libraries, generated interest in Ibādism in northern Africa.<sup>22</sup>

In the same year A. Motylinski published a translation of the catalogue of texts drawn up by the Ibādī historian, Abū 'l-Qāsim al-Barrādī, at the end of his *Kitāb al-Jawābir*.<sup>23</sup> These indicated the existence of legal treatises attributed to the school's authorities from the 2<sup>nd</sup>/8<sup>th</sup> and 3<sup>rd</sup>/9<sup>th</sup> centuries.<sup>24</sup>

In the Ibādī legal studies examined until now, the principal aim of the researchers seems to have been to make the legal texts of the religious minorities available to the colonial rulers of the territories in question. An academic reconstruction of Ibādī law was first attempted by Joseph Schacht in *The Origins of Muhammadan Jurisprudence*,<sup>25</sup> a fundamental text for the study of Islamic law that has stirred up some controversy since its publication. Schacht starts with the assumption that the Sunnī schools do not differ from the Khārījī and the Shiite, any more than the latter two differ from each other. He affirms that the ancient sects, during the first centuries of Islām, were in contact with the orthodox community and they merely adopted the Islamic law already developed in the schools of law. They introduced marginal modifications intended to adapt it to their own political lines and dogma. Furthermore, he is rather sceptical concerning the attribution of the origin of Khārījī doctrine in the Ṣufī and Ibādī tradition to two followers, respectively 'Imrān b. Ḥiṭṭān and Jābir b. Zayd. Their names appear among the transmitters of the traditions recognised by the Sunnīs. Consequently, their presence in the chain of transmitters is not in itself sufficient to establish the Khārījī origin of a doctrine.

Schacht's position on Khārījī law has been challenged by several scholars. In his study on Ibādī ritual purity, based on *Kitāb al-waḍ' fī 'l-furū'* by *shaykh* Abū Zakariyyā' Yaḥyā b. al-Khayr al-Jannāwunī, who lived in Jabal Nafūsa in the first half of the 6<sup>th</sup>/12<sup>th</sup> cent., Roberto Rubinacci contests the Schacht's assumption that the Khārījīs merely adopted the legal system of the orthodox schools.<sup>26</sup> Rubinacci, on the contrary, believes

<sup>22</sup> Basset, R., Les manuscrits arabes des bibliothèques des Zaouias de 'Ain Madhi et Temancin, de Ouar-gla et de 'Adjadja. In: *Bulletin de Correspondance Africaine* (Algiers) 3 (1885), 211–265, 465–492.

<sup>23</sup> Barrādī (al-), Abū 'l-Faḍl Abū 'l-Qāsim b. Ibrāhīm: *Kitāb al-Jawābir*, lit. Cairo (1302/1884–5). On al-Barrādī and his work Rubinacci, R., Il Kitāb al-Jawābir di al-Barrādī. In: *Annali dell'Istituto Universitario Orientale*, N.S. IV (1952) 95–110.

<sup>24</sup> Motylinski, A., Bibliographie du Mzab. Les livres de la secte abadite. In: *Bulletin de Correspondance Africaine* (Algiers) 4/3 (1885) 15–72 (no. 7, 8, 10, 12, 13, 15, 16). See also Smogorzewski, Z., Essai de bio-bibliographie Ibadite-Wahhabite, Avant-propos. In: *Rocznik Orientalistyczny* (Lwów) V (1927) publ. (1929), 45–57; Rubinacci, R., Notizia di alcuni manoscritti ibāditi esistenti presso l'Istituto Universitario Orientale di Napoli. In: *Annali dell'Istituto Universitario Orientale di Napoli*, N.S. 3 (1949), 431–438; Schacht, J., Bibliothèques et manuscrits abadites. In: *Revue Africaine* (Algiers) 100 (1956), 375–398; Ennamī, A Description of New Ibādī, 15: 63–87; van Ess Untersuchungen, 126: 25–63; van Ess, Nachträge, 127: 1–4.

<sup>25</sup> Schacht, J., *The Origins of Muhammadan Jurisprudence*. Oxford (1950), 260–61 (chap. 8: *Khārījī Law*).

<sup>26</sup> Rubinacci, R., La purità rituale secondo gli Ibāditi. In: *Annali dell'Istituto Universitario Orientale*, N.S. VI (1957), 1–41. See also Cilaro 1990a: 119–134.

that “the Khārijīs had a dominant role in developing the Law, as they were driven by a particularly strict ethical code that was inflamed by an intense, on occasion exaggerated, religiosity. Rather, it is not improbable – as was certainly the case for Mu’tazili dogma, originating in Basra in the first half of the 2<sup>nd</sup> cent. of Hijra – that in the case of law, too, it was the first declarations by the Khārijīs, the points they proposed for discussion, that spurred the formation of the Iraqī school”.<sup>27</sup> In the course of the 2<sup>nd</sup> cent. of Hijra, as the political and religious importance of the sect faded, the active participation of the Khārijīs in forming law slowly diminished. Yet, there was a development of Khārijī doctrine in parallel to the Sunnī doctrine, the same questions were discussed by both sides, as the Khārijīs were in contact with the orthodox community for a long period in the 2<sup>nd</sup> and 3<sup>rd</sup> centuries. Evidence for Rubinacci’s theory can be found in the fact that the Ibādīs had their own scholars in Basra at the time of the ancient schools of law, like Jābir b. Zayd, who died circa 100 H., and Abū ‘Ubayda al-Tamīmī, his pupil and successor, at the leadership of the Ibādī community. These scholars continued writing political and doctrinal works. Concerning the contacts with the orthodox legal schools, Rubinacci cites the case of al-Rabīr b. Ḥabīb (d. c. 170/796) who attended courses by Ibādī scholars in Basra, like Abū ‘Ubayda, and Sunnī scholars, like Qatāda b. Dī‘āma, Abū ‘Awāna, and Ḥammād b. Salāma. Rubinacci’s studies on the Ibādī *madhhab* demonstrated that, contrary to what Schacht averred, the Ibādīs took a detached line from the beginning.

Given that the early schools of law were driven by the deep spiritual requirements of Muslim law and the need to define ritual norms, and that in this context Ibādī behaviour is significant, he provides several examples of divergence between Ibādīs and Sunnīs on ablution. Other elements are shared with orthodoxy and they agree with one or another of the schools at varying moments. Rubinacci concludes that these are the result of original thought, rather than the passive acceptance of principles drawn up elsewhere. However, the decisive argument against the late derivation of the Ibādī legal system from the Sunnī system, according to Rubinacci, is the fact that had the Ibādīs adopted a system already defined by the schools of law at the end of the 2<sup>nd</sup> cent., they would have reproduced it along the lines of the Sunnī books of the time. This notion of Ibādīs reproducing a Sunnī system can be excluded given the specific structure of the *Kitāb al-waḍ‘*, where the chapter on the *tauhīd*, the summary of beliefs, precedes the *‘ibādāt*. The characteristic structure is reaffirmed during the work through the emphasis given to the spiritual content of the rite, in particular the prayers that accompany the single gestures, intended to exalt the concept of reward and divine punishment. The efforts in *Kitāb al-waḍ‘* to weave ethical elements into the law lead Rubinacci to conclude that they resemble a unitary conception of dogma, law and ethics, like that inspiring the first learned scholars of Islam. The *Kitāb al-waḍ‘* should be considered the codification of a long oral tradition, which can be traced back through the *silsilat al-dīn*, to Abū ‘l-Zājir Ismā‘īl b. Darrār

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<sup>27</sup> Rubinacci, *La purità*, 37.

al-Ghadāmsī, one of the five scholars who were trained in Basra at the school of the famous Abū ‘Ubayda al-Tamīmī, and then transferred to the Maghreb in the first half of the 2<sup>nd</sup> /8<sup>th</sup> cent.<sup>28</sup>

Rubinacci’s conclusions on ritual purity are confirmed by his research on the invitation to prayer, in use among the Ibādīs of western Africa, in which he points out similarities between Ibādī doctrine and the orthodox schools, as well as some divergences.<sup>29</sup>

Rubinacci’s theories can be further confirmed by my study of ritual charity, which show that the Ibādīs have an organic doctrine on *zakāt* to the extent that, given the points of agreement with the Sunnī schools of law, I would tend to support the hypothesis of a parallel development of doctrine rather than a derivation. Furthermore, there are significant points of divergence between the Ibādīs and the orthodox schools:

1. The *niṣāb* (minimum number) of oxen is fixed at 5 head, like camels, rather than the 30 prescribed by Sunnīs and Shiites.
2. The exchange of taxable goods with other equally taxable goods does not interrupt the legal year of possession if a minimum quantity (*aṣl*) of goods remains to the taxpayer, equal to 3 *dirham*, 3 *dīnār*, or 3 head of cattle. The same is true if during the year there is a loss taking the goods under the *niṣāb* and then a successive increase. There is no interruption to the legal year as long as the taxpayer possesses the minimum amount. These norms are similar to Ḥanafī teachings. However among the Ḥanafites, there is no reference to a minimum threshold below which the property and goods must not fall for the purposes of calculating the legal year.
3. The beneficiary of *zakāt* must be an Ibādī towards whom there is the dogma obligation of *walāya*. So whosoever gives charity to a non-Ibādī, hiding his true faith (*bi-’l-taqīyya*), must pay it again to the poor in the sect. Further, the Ibādī living in the *dār al-ḥarb* (territory of war) must give the *zakāt* to someone of the same faith living there, or, if there is no one, to an Ibādī *imām* who will distribute it to the poor in the community.<sup>30</sup>

Further doubts on Schacht’s historical reconstruction of law have been mooted by Noel J. Coulson in his *A History of Islamic Law*.<sup>31</sup> Concerning Schacht’s thesis on Khārijī and Shiite doctrine, Coulson contests the claim that they “do not differ from the doctrines of the orthodox or Sunnī schools of law more widely than these last differ from one another” (*Origins*, p. 260). According to Coulson, this could be said for Khārijī law, while Shiite law has characteristics that are in clear contrast with the Sunnī and Khārijī systems. Moreover, the Khārijīs too, despite disagreeing with the Sunnī schools on secondary issues and accepting, in general, the norms of one or the other school, have a legal

<sup>28</sup> Rubinacci, La purità, 40–41. See also Crupi La Rosa, G., I trasmettitori della dottrina ibādīta. In: *Annali dell’Istituto Universitario Orientale di Napoli*, N.S. 5 (1954), 123–139.

<sup>29</sup> Rubinacci, R., L’aḍān presso gli Ibādīti. In: *Folia Orientalia* 12 (1970), 279–290.

<sup>30</sup> Francesca, E., L’elemosina rituale secondo gli Ibādīti. In: *Studi Magrebini* 19 (1987), 12, 19, 24–26, 33–34.

<sup>31</sup> Coulson, Noel J., *A History of Islamic Law*. Edinburgh (1964).

system that is in line with their own spirit and character. They, like the Shiites, have a *corpus* of traditions that are quite distinct from the Sunnī one and that respond to their probative criteria. The most important criteria being the presence of the names of the authorities they recognise in the *isnāds* (the chains of transmitters).<sup>32</sup>

In 1971, ‘Amr Khalīfa Ennami (al-Nāmī) defended his Ph.D. thesis at Cambridge University entitled *Studies in Ibādīsm*,<sup>33</sup> which can be considered a milestone in research on Ibādī dogma and law. In the chapter on jurisprudence, he confutes Schacht’s theory on the late derivation of Ibādī law compared to the Sunnī schools by showing that the Ibādīs contributed to the process of the formation of Islamic law, developing their own legal system that in several ways differentiated from the Sunnī system.<sup>34</sup> Ennami’s study is based on his own research on Ibādī manuscripts, which led him to study works from the first centuries that scholars had not previously consulted. Therefore, Ennami could demonstrate that the Ibādīs began to draw up their own law treatises at the same time as the ancient schools of law. If credence can be given to the Ibādī historian Abū Zakariyyā’ al-Warjīlānī on the existence of the *Dīwān* (collection of works) of Jābir b. Zayd, Ibādīs were the first to put the traditions of the companions and followers of the Prophet into writing.

According to Ennami, the primary sources for the early Ibādī jurisprudence are preserved in the following works:

1. *al-Jāmi’ al-Ṣaḥīḥ* of al-Rabī’ b. Ḥabīb;
2. *al-Mudawwana* of Abū Ghānim Bishr b. Ghānim al-Khurāsānī;
3. *al-Dīwān al-Ma’rūd ‘alā ‘l-‘ulamā’ al-Ibādīyya*, which contains a number of works relating to Ibādī authorities as well as tradition from different authorities of Kufa, Basra and Medina;
4. *Riwāyāt Dumām*, composed by Abū Ṣufra ‘Abd al-Malik b. Ṣufra, around the beginning of the 3<sup>rd</sup> cent. of Hijra;
5. *Futūḥ al-Rabī’ b. Ḥabīb*, a collection of traditions by al-Rabī’ b. Ḥabīb and other Ibādī authorities from the 2<sup>nd</sup> cent. of Hijra;
6. *K. Nikāḥ al-shighār* of ‘Abd Allāh b. ‘Abd al-‘Azīz;
7. The books and the correspondence of the first two *imāms* of the Ibādī school, Jābir b. Zayd and Abū ‘Ubayda.

Ennami provides a detailed analysis of the structure and contents of these works, concentrating in particular on the contribution of the Ibādī authorities in the collection of traditions. The Ibādīs, he writes: “contributed to the field of *Ḥadīth* by preserving and recording their own collection of *Ḥadīth*. All early authorities, who founded the Ibādī

<sup>32</sup> Coulson, *A History*, 109.

<sup>33</sup> Ennami, *Studies in Ibādīsm*.

<sup>34</sup> Ennami, *Studies in Ibādīsm*, I: 136–200.

school, were eminent traditionists such as Jābir b. Zayd, Abū Nūḥ Ṣāliḥ b. Nūḥ al-Dahhān, and Ḥayyān b. al-A'raj [ . . . ].<sup>35</sup>

The Ibādīs, just as they had their own *tafsīr*, had their own collections of traditions. The most important of these being *al-Jāmi' al-Ṣaḥīḥ* or *Musnad al-Rabī' b. Ḥabīb*. Ennami concludes "Ibādī jurisprudence during its long history depended only on Ibādī material reported by Ibādī authorities. The other collections of traditions by Sunnīs were not used at any stage. In fact, the first Ibādī scholar of North Africa to mention Sunnī collections of *ḥadīth* in his works was Abū Ya'qūb al-Wārijlāni of the 6<sup>th</sup>/12<sup>th</sup> cent. Up to the time of al-Barrādī, Ibādīs discouraged the use of the Sunnī collections of *ḥadīth*. In his treatise, *al-Ḥaqā'iq*, al-Barrādī advised Ibādī students as far as possible not to read them. Thus the Ibādī legal system was derived from the material reported by Ibādī authorities only".<sup>36</sup>

Furthermore, Ennami maintains that the Ibādīs did not derive their legal system from that formed by the orthodox schools, but established it prior to the Sunnī system. When Jābir b. Zayd, the founder of the Ibādī school, died, Mālik b. Anas (m. 179 H.) was only three years old, and Abū Ḥanīfa about twelve. The similarities between the Sunnī and Ibādī legal systems can easily be explained by the fact that both referred to the same sources. The divergences come from a diverse interpretation of the Qur'an and the *sunna*. Given this premise, Ennami lists some points of divergence between Sunnīs and Ibādīs:

1. The Ibādīs unanimously rejected the *mash' alā 'l-kbuffayn*, wiping the shoes instead of washing the feet as part of the lesser ablution.
2. The Ibādīs held that in both first two *rak'as* and in the second two of the *zuhr* and *'aṣr* (midday and afternoon) prayers, only the *Fātiḥa*, the opening chapter of the Qur'an, is to be recited.
3. The Ibādīs rejected the *qunūt*, the imprecation against political enemies during the ritual prayers.
4. Shortening the prayer during a journey is considered by Ibādīs to be obligatory. The minimum distance for shortening of prayers is two *farsakh*, about six miles.
5. The Ibādīs held that the maximum ritual purity is necessary for fasting as it is for praying. Moreover, all grave sins cause the breaking of the fast.
6. The *niṣāb* (taxable limit) established by Ibādī law of *zakāt* for pasturing oxen is 5 head, as for pasturing camels, whilst Sunnī law applies on the oxen a taxable limit of 30 head, less than 30 being *zakāt*-free. The Ibādīs based their theory on two traditions containing the Prophet's and 'Umar b. al-Khaṭṭāb's instructions in this connection. The second point of divergence is concerned with the conduct of the person who receives the *zakāt*: it must be given only to an Ibādī in the state of association (*walāya*).
7. The recurrent impediment to marriage between a couple who has fornicated. This theory is ascribed to Jābir b. Zayd.

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<sup>35</sup> Ennami, *Studies in Ibādīsm*, I: 86.

<sup>36</sup> Ennami, *Studies in Ibādīsm*, I: 90

8. The lack of a hereditary title between the slave-owner and the freed slave when the latter had no legitimate heirs. This doctrine is also ascribed to Jābir. It is based on a tradition from ‘Abd Allāh b. ‘Umar, who refused to inherit from his manumitted slave who died without heirs. The later Ibādī jurisprudence would develop further Jābir’s doctrine, providing that the inheritance of a manumitted slave belongs to the people of his same stock (*jins*), if he does not leave any heirs. If one cannot prove that he belongs to a certain stock, his inheritance shall be given as alms.
9. The suspension of the fixed *ḥadd* punishment during state of secrecy (*kitmān*), with the exception of the death penalty apart from death by stoning.<sup>37</sup>
10. The Ibādīs decreed that the sum to be paid as compensation for inflicting bodily injuries that are not serious is fixed according to the length of the injury.
11. In the case of *qisās* (retaliation), if a man is to be killed in retaliation for a woman, the *walī* of the woman should pay back half of the blood money to the relatives of the man.<sup>38</sup>

As regards the question of the origin of Ibādī law, the middle ground between Schacht and Ennami was taken by J. C. Wilkinson. He does not agree with Ennami on Jābir b. Zayd’s contribution to the formation of the Ibādī legal system.<sup>39</sup> The role the sources give to Jābir in the formative phase of Ibādī law is the fruit of a process of “rationalization”, through which the successive generations of Ibādī lawyers have legalised some norms, attributing their genesis to him. According to Wilkinson, the role of Jābir has been exaggerated in some ways. In particular:

1. Stressing his relationship with Abū Bilāl Mirdās, leader of the moderate wing of Khārijīs in Basra. They both accepted the repentance (*tauba*) of ‘Ā’isha for her role in the fight against ‘Alī. Abū Bilāl also consulted Jābir before launching the rebellion in Arabia. When this exploded, however, Jābir was absent and the sources mention his position in deliberately vague terms.
2. Overstating the dangers encountered by Jābir at the time of the persecution of Ziyād Ibn Abīhi and al-Ḥajjāj against the Ibādīs. In truth, as Wilkinson notes, while during the governorate of al-Ḥajjāj, the real heads of the Ibādī movement, Abū ‘Ubayda Muslim and Ḍumām b. al-Sā’ib, were imprisoned in Basra, Jābir was exiled to Oman. This very circumstance appears rather dubious as, according to Abū ‘Ubayda, Jābir

<sup>37</sup> According to Ibādī theology, there are four different stages in the belief: the condition of secrecy (*kitmān*), when –because of unfavourable circumstances– the community lives in secrecy and without an *imām*; to this condition is opposed that of manifestation (*ẓubūr*), i.e., the proclamation of an imamate. Moreover, there is the stage of defence (*difā’*), when the people living in the state of secrecy invest an *imām* to defend them in their misfortune, and the stage of sacrifice (*shirā’*), when the believers decide to fight to the death.

<sup>38</sup> Ennami, *Studies in Ibādism*, I: 104–112.

<sup>39</sup> Wilkinson, J.C., *The Early Development of the Ibādī Movement in Basra*. In: Juynboll G.H.A. (ed.): *Studies in the First Century of Islamic Society*. Carbondale (1982), 133–136. See also Wilkinson, J.C., *Ibādī Theological Literature*. In: Young, M.G.L., Latham, R.B. Serjeant (eds.), *Religion, Learning and Science in the ‘Abbasid Period*. Cambridge (1990), 33–39.

would die in Basra in the same year as Anas b. Mālik, 93 H.,<sup>40</sup> that is to say, two years before the death of al-Ḥajjāj and the liberation of the Ibādī leaders. To overcome this anachronism, the sources progressively postponed the reported death of Jābir to year 96–97 or 100 of Hijra. The manipulation of Jābir's date of death is also linked to the emphasis placed by Ibādī sources on the role of Jābir as the teacher of Abū 'Ubayda, his successor as leader of the community. Abū 'Ubayda, according to Wilkinson, however, was only one of Jābir's younger pupils, while Ibādī historiography affirms that his principal teachers were Ḍumām b. al-Sā'ib, Ja'far b. al-Sammāk and Ṣuḥār al-'Abdī.<sup>41</sup>

In a later study on Ibādī *ḥadīth* entitled *Ibādī Ḥadīth: an Essay on Normalization*,<sup>42</sup> Wilkinson refers again to the theory on the process of “normalization” through an analysis of the development of Ibādī jurisprudence. He summarises the various phases in its development: “The Ibādī legerdemain of rationalizing the development of their school consisted of building up Jābir b. Zayd with his Meccan connections into the founding figure; of more or less suppressing the uncoordinated middle generation of Ḍumām and other «proto»-Ibādīs, who often had their own individual *majlis*; and of making the activist, Abū 'Ubayda, the direct successor to the unified community supposedly developed by Jābir. Al-Rabī', who was in fact a contemporary of Abū 'Ubayda, albeit perhaps a few years younger, is in turn made a «pupil» of Abū 'Ubayda, the master of the movement, and his own inheritance from their common teacher, Ḍumām (and others of the generation), played down. Al-Rabī' thus inherits (*ḥamal* or *rafa'* *al-'ilm*) and sets down the basics of his learning from Abū 'Ubayda, who in turn received it from the great scholar Jābir b. Zayd in the same way as the «Imamate» of the community passed along this same line”<sup>43</sup>.

According to Wilkinson, the *Musnad* by al-Rabī' b. Ḥabīb, which has remained in the edition (*tartīb*) by Abū Ya'qūb Yūsuf al-Warjlānī (d. 570/1174), is the fruit of this normalization through which Ibādīsm attempted to attain the level of development of the orthodox schools. In the first two sections, there are 742 *ḥadīth*, mostly to be found also in Sunnī collections, passed down through the chain of transmission Jābir – Abū 'Ubayda – al-Rabī' b. Ḥabīb, which seems like the result of a later manipulation.

As recent studies have demonstrated, Ibādīs took from the start an independent line from the Sunnī schools, with independent authorities and jurists. They have a rich

<sup>40</sup> Rabī'(al-), b. Ḥabīb: *al-Jāmi' al-Saḥīḥ (Musnad al-Rabī' b. Ḥabīb)*. Ed. 'Abd Allāh b. Ḥumayd al-Sālimī. Damascus (1963), 193.

<sup>41</sup> Shammākhī, *Kitāb al-Siyar*, 79,81.

<sup>42</sup> Wilkinson, *Ibādī Ḥadīth*, 62I: 231–259.

<sup>43</sup> Wilkinson, *Ibādī Ḥadīth*, 62I: 235. See also Wilkinson, J.C., *The imamate tradition of Oman*. Cambridge (1987), 177–199; Wilkinson, J.C., Ṣuḥār (Sohar) in the Early Islamic Period: the Written Evidence. In: Taddei M. (ed.), *South-Asian Archaeology, 1977*. Naples II (1979) 889–905. The early development of the Ibādī school is summarized in Wilkinson, J.C., *Ibādīsm. Origins and Early Development in Oman*. New York (2010), chapters 5 and 6, pp.122–210.

literary heritage stretching back to the formative period, which is of great potential importance. Further research focusing on the Ibādī law in the first centuries of Islam would contribute to offering tentative solutions to the main problems posed by the formative period of the Islamic law concerning the questions of transmission, authorship and content.

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