

Kitāb al-Ḥujjah ‘alā Ahl al-Madīnah and the Transition from Regional Schools to Personal

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Abstract

K. al-Ḥujjah ‘alā ahl al-Madīnah by Muḥammad ibn al-Ḥasan al-Shaybānī (d. 189/804–5) is a witness to the state of the regional school of Medina before it had been absorbed by (survived only in) the Mālikī personal school. Schacht asserts that each regional school had its characteristic authorities among the Followers, and the *Ḥujjah* confirms that, sometimes appealing to Kufan Followers against Medinese, sometimes complaining that the Medinese are not staying loyal to their own Medinese Followers. Sometimes also the *Ḥujjah* testifies to Mālik's pre-eminence among the Medinese of his time, sometimes by appealing to him as 'your *faqīh*', with whom the Medinese ought to agree but do not, but mainly as their pre-eminent traditionist. Schacht observed that Shaybānī adduced hadith more often than Abū Yūsuf, and the *Ḥujjah* often adduces hadith in its arguments against the Medinese. Most often, however, it adduces logical consistency against Medinese positions. Altogether, it suggests that personal schools evolved out of regional by accentuation of the personal element already present in the tradition of regional authorities. By adducing hadith from a wider range of authorities than the *Muwatṭa'*, it implicitly argues that Ḥanafī law is superior because it represents the jurisprudence of the whole Empire, not just one centre.

Keywords

Fiqh – Ḥanafī school – Law schools – Mālikī school – al-Shaybānī – Abū Yūsuf

Résumé

Le *K. al-Ḥujjah ‘alā ahl al-Madīnah* de Muḥammad ibn al-Ḥasan al-Shaybānī (m. 189/804-5) est un témoin de l'état de l'école régionale de Médine avant qu'elle ne soit absorbée par (n'a survécu que dans) l'école personnelle Mālikī. Schacht affirme que chaque école régionale avait ses autorités caractéristiques parmi les adeptes, et le *K. al-Ḥujjah* le confirme, en faisant appel tantôt aux adeptes de Kufan contre les Médinois tantôt en se plaignant que les Médinois ne restent pas fidèles à leurs propres adeptes médinois. Parfois aussi, le *K. al-Ḥujjah* témoigne de la prééminence de Mālik parmi les Médinois de son temps, parfois en faisant appel à lui comme "votre faqīh", avec lequel les Médinois devraient être d'accord mais ne le sont pas, en particulier comme leur traditionniste prééminent. Schacht a observé que Shaybānī validait plus souvent des hadiths qu'Abū Yūsuf, et que le *K. Ḥujjah* adoptait souvent des hadiths dans ses arguments contre les Médinois. Le plus souvent, cependant, il présente la cohérence logique contre les positions médinoises. Dans l'ensemble, il suggère que les écoles personnelles ont évolué à partir des écoles régionales en accentuant l'élément personnel déjà présent dans la tradition des autorités régionales. En présentant des hadiths provenant d'un plus large éventail d'autorités que le *Muwāṭṭa'*, il soutient implicitement que la loi hanafite est supérieure parce qu'elle représente la jurisprudence de tout l'Empire, et non d'un seul centre.

Mots-clés

Écoles de droit – *fiqh* – hanafisme – malikisme – al-Shaybānī – Abū Yūsuf

Al-Ḥujjah ‘alā ahl al-Madīnah, by the Baghdadi jurist Muḥammad ibn al-Ḥasan al-Shaybānī (d. 189/804-5), is a witness to the state of the regional school of Medina before it had been absorbed by (survived only in) the Mālikī personal school.¹ The concept of regional schools goes back especially to Joseph Schacht and Robert Brunschvig.² Closely following al-Shāfi‘ī, Schacht

- 1 See Christopher Melchert, 'Basra and Kufa as the earliest centers of Islamic legal controversy', *Islamic cultures, Islamic contexts: essays in honor of Professor Patricia Crone*, ed. Behnam Sadeghi, &al., Islamic history and civilization, studies and texts, 114 (Leiden: Brill, 2015), 173-94, with reviews of other major studies of regional disagreements by Dutton, Haider, and Sadeghi.
- 2 Joseph Schacht, *The origins of Muhammadan jurisprudence* (Oxford: Clarendon Press, 1950), and Robert Brunschvig, 'Polémiques médiévales autour du rite de Mālik', *al-Andalus* 15 (1950): 377-435. For the tripartite chronology of a regional stage, when jurists were primarily

asserts that each regional school had its characteristic authorities among the Followers (*tābi'ūn*).³ Al-Shāfi'ī (d. 204/820) writes that the principal authority for the people of Mecca is 'Aṭā' (d. 115/733-4?), for the people of Basra al-Ḥasan (d. 110/728) and Ibn Sīrīn (d. 110/729), for the people of Kufa al-Sha'bī (d. 104/723-4?) and Ibrāhīm (al-Nakha'i, d. 96/714).⁴ Mālik is quoted as saying that Sa'īd ibn al-Musayyab (d. 94/712-13?) and Sulaymān ibn Yasār (d. ca 100/718-19) were the principal authorities of Medina.⁵ Schools commonly had minority factions usually identified with different authorities; for example, the Kufan opposition commonly liked to cite 'Alī against Ibn Mas'ūd, although sometimes 'Alī would be cited in support of the majority position.⁶ Schacht also observes the transition toward personal schools, with Abū Ḥanīfah (d. 150/767) referred to as the pre-eminent Iraqi, Mālik (d. 179/795) as the pre-eminent Medinese.⁷ In being directed against the people of a region, not the followers of an individual jurist, the *Ḥujjah* seems to document the regional stage in the evolution of Islamic law. Its style of argument also documents the transition out of the regional stage and suggests why it was eclipsed by the personal.

The Attribution of Kitāb al-Ḥujjah

Al-Ḥujjah 'alā ahl al-Madīnah was unavailable to Schacht and Brunschvig except for the evident excerpt included in al-Shāfi'ī, *al-Umm* (on which more below). It is mentioned by Ibn al-Nadīm under the title *al-Radd 'alā ahl al-Madīnah*.⁸ Like al-Shaybānī's recension of the *Muwatta'*, the *Āthār*, and *al-Makhārīj fī al-ḥiyāl*, the *Ḥujjah* is excluded from *ẓāhir al-riwāyah* ('the

identified with one or another metropolis, a personal stage, when jurists were primarily identified by their loyalty to one predecessor such as Abū Ḥanīfah or al-Shāfi'ī, then finally a guild stage, when the schools served to form and certify qualified jurists, see George Makdisi, 'Tabaqāt-biography: law and orthodoxy in classical Islam', *Islamic studies* (Islamabad) 32 (1993): 371-96, esp. 389-92.

3 Schacht, *Origins*, 7-8.

4 Al-Shāfi'ī, *al-Umm*, 7 vols in 4 (Bulaq: al-Maṭba'ah al-Kubrā al-Amīriyah, 1321-5, repr. Cairo: Kitāb al-Sha'b, 1388/1968), 7:246 = ed. Rif'at Fawzi 'Abd al-Muṭṭalib, 11 vols (al-Manṣūra: Dār al-Wafā', 1422/2001), 8:763. (References to the latter edition henceforth in *italic*.) Cited by Schacht, *Origins*, 7.

5 Al-Bājī, *Sunan al-ṣāliḥīn wa-sanān al-'ābidīn*, ed. Ibrāhīm Bājīs 'Abd al-Majīd, 2 vols (Beirut: Dār Ibn Ḥazm, 1424/2003), 1:185.

6 Schacht, *Origins*, 240.

7 Schacht, *Origins*, 6-7.

8 Ibn al-Nadīm, *K. al-Fihrist*, ed. Ayman Fu'ād Sayyid, *Silsilat al-nuṣūṣ al-muḥaqqaqah*, 4 vols, 2nd edn (London: Mu'assasat al-Furqān lil-Turāth al-Islāmī, 1435/2014), 2/1:23.

manifest transmission'), the more authoritative of al-Shaybānī's works as identified by the later tradition.⁹ That tradition expressly points to uncertainty as to transmission from al-Shaybānī as a reason to accord them only secondary authority, as in a poem by the Ottoman jurist Ibn ‘Ābidīn (d. 1252/1836):

His too: the questions known as 'Rarities',
Transmitted in the books by unclear paths.¹⁰

However, its modern editor says that it was transmitted from al-Shaybānī by his disciple ‘Īsā ibn Abān (d. 221/836?), deputy chief qadi for Baghdad around 210/825-6, then qadi for Basra 211-20/826-35. His authority for this is Muḥammad Zāhid al-Kawtharī, not a primary source, but its transmission from ‘Īsā ibn Abān may be confirmed by an Indian manuscript.¹¹

Especially since Norman Calder raised doubts in the mid-1990s, the attribution of early legal works has been controversial; that is, the extent to which they are to be attributed to their putative authors as opposed to later redactors projecting back later ideas.¹² One important complementary advance was Gregor Schoeler's series of studies on early redactional processes.¹³ It may now be counted conventional wisdom that books from before the mid-ninth century CE presumptively have some of the nature of lecture notes as opposed to

9 Mālik, *al-Muwattaʿa*, recension of al-Shaybānī, ed. ‘Abd al-Wahhāb ‘Abd al-Laṭīf, 3rd printing (Cairo: Wizārat al-Awqāf, al-Majlis al-A’lā lil-Shu’ūn al-Islāmiyah, Lajnat Ihyā’ al-Turāth, 1407/1987); al-Shaybānī, *K. al-Āthār*, ed. Khālid al-‘Awwād, Waqfiyat al-Muzaynī, 2 vols (Kuwayt: Dār al-Nawādir, 1429/2008, repr. 1432/2011); al-Shaybānī, *Kitāb al-Maḥārīj fil-ḥiyāl*, ed. Joseph Schacht, Beiträge zur semitischen Philologie und Linguistik (Leipzig: J. C. Hinrichs'sche Buchhandlung, 1930), reprinted typeset as *K. al-Maḥārīj fi al-ḥiyāl* (Baghdad: Maktabat al-Muthannā, n.d.).

10 Translation by Norman Calder, 'The *ʿUqūd rasm al-muḥṭī* of Ibn ‘Ābidīn', *Bulletin of the School of Oriental and African Studies* 63 (2000): 215-28, at 200. I have benefited here from reading a history of the concept of *ẓāhir al-riwāyah* by Salman Younas, forthcoming.

11 Al-Shaybānī, *K. al-Ḥujjah ‘alā ahl al-Madīnah*, ed. Abū al-Wafā’ al-Afghānī, & al., *Silsilat al-Maṭbūʿāt* 12, 4 vols (Hyderabad: Maṭbaʿat al-Maʿārif al-Sharqiyah, 1385-90/1965-71, repr. Beirut: Ālam al-Kutub, 1403/1983), introd'n, 1:3; cf. Muḥammad Zāhid ibn al-Ḥasan al-Kawtharī, *Bulūgh al-amānī fi sirat al-imām Muḥammad ibn al-Ḥasan al-Shaybānī*, al-Rasā'il al-nādirah 8 (Cairo: Maktabat al-Khānjī wa-Maṭbaʿatuhā, 1355), 48, and Murteza Bedir, 'An early response to Shāfiʿī: ‘Īsā b. Abān on the prophetic report (*khbar*)', *Islamic Law and Society* 9 (2002): 285-311, at 290.

12 Norman Calder, *Studies in early Muslim jurisprudence* (Oxford: Clarendon Press, 1993).

13 See Gregor Schoeler, *The oral and the written in early Islam*, trans. Uwe Vagelpohl, ed. James E. Montgomery, Routledge studies in Middle Eastern literatures 13 (London: Routledge, 2006), and idem, *The genesis of literature in Islam: from the aural to the read*, trans. Shawkat M. Toorawa, The new Edinburgh Islamic surveys (Edinburgh: Univ. Press, 2009).

fixed texts set down exactly by their putative authors. But the extent of reworking is still controversial, and most studies, while acknowledging some reworking, have minimized pseudonymous attribution beyond paraphrase.¹⁴ Another complementary advance has been Wael Hallaq's exposition of *takhrīj*, the tradition's own recognition that many attributions to the eponyms of the schools of law are suppositional, thought to ensue from their known principles but not actually remembered from their teaching.¹⁵ To varying degrees, these suggest caution as to the attribution of *al-Ḥujjah* to al-Shaybānī.

Calder's specific dates for various works are harder to defend. He proposes that the works attributed to al-Shaybānī reached their present form somewhere around AH 250 (864-5 CE).¹⁶ It has been tentatively alleged that the *Ḥujjah* is the earliest of those works, the *Aṣl* the latest.¹⁷ In the first place, the *Ḥujjah* apparently argues against a regional school, an anachronism by the mid-ninth century CE. In the second place, it apparently adduces rational arguments more regularly than other polemical works, another sign of coming early. ('There are grounds for suspecting that the oldest layers of the *Ḥujjah* are older than the *Muwaṭṭa' Shaybānī*,' says Calder, 'but that editorial and redactional activity continued to a period after the *Muwaṭṭa' Shaybānī* had closed.'¹⁸) Paul Gledhill has observed before me that whereas the *Ḥujjah* is a polemical work, stressing refutation, al-Shaybānī's *Muwaṭṭa'* rather stresses agreement, mainly where the Ḥanafī position appears to receive support from hadith related by Mālik.¹⁹ This stress on agreement and hadith weakens Calder's chief argument for the priority of the *Muwaṭṭa'*, that it sometimes ignores Mālikī counter-arguments known from elsewhere.

14 E.g., Andreas Görke, *Das Kitāb al-amwāl des Abū 'Uбайд al-Qāsim b. Sallām: Entstehung und Überlieferung eines frühislamischen Rechtswerkes* (Princeton: Darwin, 2003), and Ahmed El Shamsy, 'Al-Shāfi'ī's written corpus: a source-critical study', *Journal of the American Oriental Society* 132 (2012): 199-220. The former seems to me significantly more careful as to what can be demonstrated, what only assumed.

15 Wael B. Hallaq, 'Takhrīj and the construction of juristic authority', *Studies in Islamic legal theory*, ed. Bernard G. Weiss, *Studies in Islamic law and society* 13 (Leiden: Brill, 2002), 317-35; also idem, *Authority, continuity, and change in Islamic law* (Cambridge: Univ. Press, 2001), esp. chaps 2-3.

16 Calder, *Studies*, 66.

17 See Christopher Melchert, 'The early history of Islamic law', *Method and theory in the study of Islamic origins*, ed. Herbert Berg, *Islamic history and civilization, studies and texts*, 49 (Leiden: Brill, 2003), 293-324, esp. 321-4.

18 Calder, *Studies*, 65.

19 Paul Gledhill, 'The development of systematic thought in early Mālikī jurisprudence, 8th-9th centuries A.D.', D.Phil. diss'n (Oxford, 2014), 192.

Behnam Sadeghi has argued that the *Āthār* and *Muwattaʿa* of al-Shaybānī were set down by two persons from al-Shaybānī's dictation, identifiable by the way they introduce items from him.²⁰ No such criterion seems applicable to the introduction of hadith related by al-Shaybānī in the *Ḥujjah*. In one passage, for example, successive hadith reports are introduced by the name of al-Shaybānī's source, 'Qays ibn al-Rabī', 'Sufyān al-Thawrī' three times, then 'Zam'ah ibn Šālih', his source's source according to the editor, then five of al-Shaybānī's sources introduced by *akhbaranā*, then the long introduction *wa-mimmā yuraddu bihi qawl Mālik ibn Anas wa-man qāla bi-qawlihi mā akhbaranā Sufyān al-Thawrī* ('the position of Mālik and those who uphold it is refuted by, among other things, what Sufyān al-Thawrī has informed us of'), then two more names without preamble, finally *akhbaranā* again.²¹ By Sadeghi's criterion, then, the *Ḥujjah* clearly seems to be a composite work.

To the contrary, however, the *Ḥujjah* is extremely systematic and consistent in the way it introduces first the position of Abū Ḥanīfah, then the position of the people of Medina (usually in opposition), then rational arguments, then supporting opinions from past authorities with full *isnād*. It is thus more stylistically uniform than most other works attributed to al-Shaybānī. It does not refer to Abū Yūsuf at all (or at most anonymously, for which see below) nor to al-Shaybānī in the third person except to introduce his argument. (The *Āthār* and al-Shaybānī's recension of the *Muwattaʿa* similarly report Abū Ḥanīfah's position but not Abū Yūsuf's.) Neither does it refer to other works where al-Shaybānī's opinions may be found. Contrast *al-Jāmiʿ al-ṣaghīr*, for example, which begins sections alternately by relating hadith and describing hypothetical cases, also refers to Abū Ḥanīfah, Abū Yūsuf, and Muḥammad (al-Shaybānī) in the third person and to al-Shaybānī's opinion as reported elsewhere, among other indications of a composite, posthumous work.²² Although al-Shaybānī

20 See Behnam Sadeghi, *The logic of law making in Islam*, Cambridge studies in Islamic civilization (Cambridge: Univ. Press, 2013), appendix.

21 Shaybānī, *Ḥujjah* 4:201-27.

22 Al-Shaybānī, *al-Jāmiʿ al-ṣaghīr*, in margin of Abū Yūsuf, *K. al-Kharāj* (Bulaq: al-Maṭbaʿah al-Mirīyah, 1306), referring to Abū Ḥanīfah, Abū Yūsuf, and Muḥammad in the third person *passim* and al-Shaybānī's opinion in *al-Sīyar al-kabīr* at 18, the *Amālī* at 22, *al-Nawādīr* at 24, 52, *al-Manāsik* (part of *al-Aṣl*?) at 27, 28, and *al-Ziyādāt* at 115, also to al-Ḥasan ibn Ziyād (al-Lu'lu'ī), *al-Mujarrad*, at 23 and Zufar at 95. See Muḥammad Buwaynūkālīn (Mehmet Boynukalın), 'Al-Jāmiʿ al-ṣaghīr lil-imām Muḥammad ibn al-Ḥasan al-Shaybānī: dirāsah tawthīqīyah taḥlīliyah naqdiyyah', *İslam araştırmaları dergisi* 20 (2008): 1-38, esp. 27. (Boynukalın has published his own edition of *al-Jāmiʿ al-ṣaghīr* [Beirut: Dār Ibn Ḥazm, 2011] but I have been unable to obtain a copy.) References to other books may also have worked their way into the text much later from marginal notes. This is presumably how the *Ḥujjah* came to refer to the *Muwattaʿa* in the recension of Yaḥyā ibn Yaḥyā (1:116).

lived in the period when texts were characteristically fluid, and there are evident traces of a redactor's work introducing quotations, still the attribution of the *Hujjah* to al-Shaybānī is at least as secure as for any other book.

Admittedly, my argument here implies that the books excluded by the later tradition from *ẓāhir al-rivāyah* are probably more fully al-Shaybānī's own work than those included. The *Amālī* seems to be intermediate: a professedly composite work, continually bringing up the position of Abū Yūsuf but sometimes comparing it with 'our position' in the first person, sometimes with Muḥammad's in the familiar third person.²³ *Al-Makhārīj fī al-ḥiyal* likewise seems to be intermediate: stylistically inconsistent, beginning with hadith (sometimes including contrary opinions), then series of hypothetical cases variously introduced by *qāla Abū Yūsuf*, *a-ra'ayta*, *wa-law*, and so on; yet never is Muḥammad referred to in the third person, his position lined up in comparison with Abū Ḥanīfah and Abū Yūsuf's.

Obviously, more work will be needed to make a decisive case. Unfortunately, the one work securely dated to some point in al-Shaybānī's life is the unfinished *Kitāb al-Kasb*, of which too little survives to support stylistic analysis.²⁴ One of the anonymous reviewers of this article suggested that al-Shaybānī at some point broke with Abū Yūsuf and thenceforth deliberately omitted his name from his works, which would imply that the *Hujjah*, *Āthār*, and *Muwaṭṭa'* are later works than the rest. To my mind, this explanation is conceivable but unlikely; plainly an a priori interpretation, doubtfully falsifiable, meant to safeguard the traditional preference for *ẓāhir al-rivāyah*. However, I have not seen a full case for it.

The *Hujjah* and Regional Schools

Al-Hujjah plentifully confirms Schacht's description of the regional schools, although mainly in its characterization of the Medinese. Sometimes, al-Shaybānī appeals to Kufan authorities against Medinese; for example, 'How quickly you go for the hadith report of Ibn Mas'ūd when it is in your favour and

23 Al-Shaybānī, *Juz' min al-amālī* (Hyderabad: Maṭba'at Dā'irat al-Ma'ārif al-'Uthmāniyah, 1360).

24 The *Kasb* survives only as embedded in a later commentary, for which see Muḥammad ibn Aḥmad al-Sarakhsī, *K. al-Mabsūṭ*, ed. Muḥammad Rādī al-Ḥanafī, 30 vols in 13 (Cairo: Maṭba'at al-Sa'ādah, 1324-31), 30:244-87. See also Michael Bonner, 'The *Kitāb al-Kasb* attributed to al-Shaybānī', *Journal of the American Oriental Society* 121 (2001): 410-27.

how slowly when it goes against you. We know the matter of ‘Abd Allāh ibn Mas‘ūd better than you.’²⁵ Regarding pious foundations, he says,

This is what the jurists and people of knowledge in our region (*bilād*) agree on.... In our view, *ḥubs* is permissible only so long as the last of it returns to the poor, the destitute, and the wayfarer, never to inheritance. This is permissible because it is alms like the alms of ‘Umar, ‘Alī, Ibn ‘Umar, and Zayd ibn Thābit.²⁶

The last word goes to four Companions, but note that al-Shaybānī first adduces regional agreement (presumptively Kufan, likely also Baghdadi; but how far the plural *bilād* implies other cities is hard to say, especially given the paucity of information we have about the doctrine of *ḥubs* in Basra).

Sometimes, al-Shaybānī complains that the Medinese are not staying loyal to their own proper authorities. For example, ‘Ibn ‘Umar is among the jurists of Medina and a pattern for them, so how can they leave his position and leave that of their earliest predecessors concerning what Mālik ibn Anas related ...?’²⁷ He refers once to ‘your *faqīh* Sa‘īd ibn al-Musayyab’, whose opinion as reported by ‘Aṭā’ al-Khurāsānī (cl., fl. Damascus, d. 135/752-3) they should suspect.²⁸ The *Ḥujjah* testifies to Mālik’s pre-eminence among the Medinese

25 Shaybānī, *Ḥujjah* 1:216, with reference to joining the row when the others have already started to pray: al-Shaybānī holds that the Kufan version of Ibn Mas‘ūd’s practice is more reliable than the Medinese, for which see Mālik, *Muwatta’a*, rec. Yaḥyá, *al-ṣalāḥ* 106, *mā yaq‘alu man jā’a wa-al-imām rākī’*, no 455.

26 Shaybānī, *Ḥujjah* 3:65. The problem is discussed in detail by Norbert Oberauer, ‘Early doctrines on *waqf* revisited: the evolution of Islamic endowment law in the 2nd Century AH’, *Islamic law and society* 20 (2013): 1-47, esp. 42-3.

27 Shaybānī, *Ḥujjah* 1:99, with reference to the *qunūt* in the dawn prayer, rejected by Abū Ḥanīfah. For Mālik’s acceptance in spite of the report he related from Ibn ‘Umar against it, see for example al-Bājī, *al-Muntaqá*, ed. Muḥammad ibn ‘Abbās ibn Shaqrūn, 7 vols in 4 (Cairo: Maṭba‘at al-Sa‘ādah, 1331-2; repr. n.p.: Dār al-Fikr al-‘Arabī, n.d.), 1:281-2.

28 Shaybānī, *Ḥujjah* 1:169, with reference to what constitutes travel requiring the prayer to be shortened. The hadith report in question is in Mālik, *Muwatta’a*, rec. Yaḥyá, *al-ṣalāḥ* 90, *ṣalāt al-musāfir idhā qjma’a mukthan*, no 402. With reference to marrying a slave woman along with a free, al-Shaybānī says, ‘How can they disagree with him when he is the most discerning of anyone among them in his time?’ (*Ḥujjah* 3:263). In the latter case, there is disagreement in the sources as to exactly what Sa‘īd’s position was, for which compare Mālik, *Muwatta’a*, rec. Yaḥyá, *al-nikāḥ* 12, *nikāḥ al-amah ‘alā al-ḥurrah*, no 1535, with Ibn Abī Shaybah, *K. al-Musannaf*, ed. ‘Abd al-Khālīq Khān al-Afghānī, 14 vols (Hyderabad: al-Maṭba‘ah al-‘Azīzyah, 1386/1966 [1] and Bombay: al-Dār al-Salafiyyah, n.d.-1403/1983 [2-15]), 4/2:148 = ed. Ḥamad ‘Abd Allāh al-Jum‘ah and Muḥammad Ibrāhīm al-Luḥaydān, 16 vols (Riyadh: Maktabat al-Rushd, 1425/2004), 6:35, the latter in support of Shaybānī’s version.

of his time, whom the Medinese ought to heed but sometimes do not. For example, al-Shaybānī cites in favour of Abū Ḥanīfah's position a hadith report related by 'your jurisprudent (*faqīh*) and master (*ṣāhib*) Mālik ibn Anas.'²⁹ Importantly, however, the appeal is almost always to a hadith report that Mālik has related, not to his express, reasoned opinion.

This style of argument is related to one of the mechanisms by which hadith reports were falsely ascribed, according to Schacht: 'A favourite device in the creation of counter-traditions consists of borrowing the name of the main authority for, or transmitter of, the opposite doctrine.'³⁰ Compare also *Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd*, apparently a collection from al-Shāfi'ī himself of Companion opinions related by the Kufans but not followed by them.³¹ Sometimes al-Shāfi'ī relates contrary hadith, usually from the Prophet, often from Basran authorities, to support his own opinions. He often remarks that neither he nor the Kufans follow 'Alī or Ibn Mas'ūd on some point. Occasionally, he instead remarks his agreement with 'Alī and Ibn Mas'ūd, contrary to his adversaries, and very occasionally remarks other Kufan authorities they do not follow.³² The argument is like that of al-Shaybānī, *al-Ḥujjah*, in arguing against an evident regional school. It may once refer to Abū Ḥanīfah as *ṣāhibuhum* (never expressly naming him as al-Shaybānī names Mālik), but a footnote reveals that a hadith report that al-Shāfi'ī introduces by 'they relate' is related by 'Abd al-Razzāq from Sufyān al-Thawrī and Isrā'īl ibn Yūnus, other Kufans usually not included among the followers of Abū Ḥanīfah.³³ It also resembles the *Ḥujjah* in taking pleasure at pointing out where a regional school does not follow its own reputedly highest authorities and in displaying command of hadith from all centres. A striking difference is that al-Shāfi'ī almost never appeals to analogy; that is, logical consistency with other parts of the law advocated by his adversaries. Also, more directly than al-Shaybānī in the *Ḥujjah*, al-Shāfi'ī tends to discredit appeal to his adversaries' favourite Companions, since so many reported positions of theirs are evidently rejected by everyone. This complements his theme of preferring to rely on hadith from the Prophet.

29 Shaybānī, *Ḥujjah* 2:256, with reference to whether cupping is permitted to pilgrims.

30 Schacht, *Origins*, 155.

31 Shāfi'ī, *Umm* 7:151-77 8:391-512.

32 E.g., in agreement with Ibn Mas'ūd, against them, that one should recite Q. 1 in a funeral prayer (Shāfi'ī, *Umm* 7:174 8:500); in agreement with them against Ibn Mas'ūd that Q. 113 and 114 are part of the Qur'an (7:175 8:503); in agreement with them against al-Sha'bī over the Akdarīyah problem, in which the constellation of heirs is hard to reconcile with the fractions allotted different survivors by the Qur'an (7:166 8:457).

33 Shāfi'ī, *Umm* 7:165 8:453, with reference to whether a grandfather excludes brothers from inheriting; Shāfi'ī, *Umm* 8:452, with reference to the ownership of a found purse.

Al-Shaybānī occasionally indicates division among the Medinese. Where Abū Ḥanīfah holds that the *witr* prayer comprises three sets of bowings, some Medinese say one is enough. Others, including Mālik, say three.³⁴ Elsewhere he says, ‘As for the sacrifice (*hady*) along with the pilgrimage, we know of no one who advocates it except for some of the people of Medina, among them Mālik ibn Anas.’³⁵ Implicitly, there is division of opinion in Medina, unanimity everywhere else. Some of the Medinese agree with Abū Ḥanīfah over restrictions on the use of a slave girl imposed by a seller, others do not.³⁶ With reference to wiping the *khuffayn* for the minor ritual ablution, al-Shaybānī says that the people of Medina disagree, Mālik siding with some of them, others with ‘Abd al-‘Azīz ibn Abī Ḥāzim Salamah (Medinese, d. 184/800-1?). Mālik also formerly took this position, then went back on it.³⁷

Al-Shaybānī also occasionally indicates disagreement among the Kufans. Abū Ḥanīfah agrees with the people of Medina that a man may not marry his slave with no more *ṣadāq* than her manumission. ‘Some of our *aṣḥāb* other than Abū Ḥanīfah hold a different position’, says al-Shaybānī. The dissenters cite the Prophet’s marriage with Ṣafīyah, which al-Shaybānī dismisses as a privilege peculiar to the Prophet.³⁸ With reference to the hadith report about Ṣafīyah, Ibn Ḥajar says, ‘Among the ancients who took this literally were Sa’īd ibn al-Musayyab, Ibrāhīm al-Nakha‘ī, Ṭāwūs, and al-Zuhrī; also, among the jurists of the chief centres, al-Thawrī, Abū Yūsuf, Aḥmad, and Ishāq.’³⁹ Ibn Ḥajar thus indicates one among al-Shaybānī’s *aṣḥāb* who disagreed with him, namely Abū Yūsuf. (How different this is from the way disagreements with Abū Yūsuf are brought up in *ẓāhir al-riwāyah*.⁴⁰) Conceivably, al-Shaybānī

34 Shaybānī, *Ḥujjah* 1:190.

35 Shaybānī, *Ḥujjah* 2:334-5.

36 Shaybānī, *Ḥujjah* 2:526.

37 Shaybānī, *Ḥujjah* 1:23-4. On ‘Abd al-‘Azīz ibn Abī Ḥāzim Salamah, see al-Dhahabī, *Siyar a’lām al-nubalā’*, ed. Shu’ayb al-Arna’ūt, &al., 25 vols (Beirut: Mu’assasat al-Risālah, 1401-9/1981-8), 8:363-4, with further references. Aḥmad ibn Ḥanbal considered him more knowledgeable of the law than anyone else in Medina except Mālik: Ibn Abī Ḥātim, *K. al-Jarḥ wa-al-ta’dīl*, 9 vols (Hyderabad: Jam’iyat Dā’irat al-Ma’ārif al-‘Uthmāniyah, 1360-71, repr. Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, n.d.), 5:382.

38 Shaybānī, *Ḥujjah* 3:421-6. By the way, al-Shaybānī’s account of what the Medinese say includes a phrase familiar from the *Muwatta’*: *al-amr ‘indanā alladhī lā ikhtilāf fihi qadīman wa-lā ḥadīthan*. See Bukhārī, *al-nikāḥ* 14, *man ja’ala ‘itq al-amah ṣadāqahā*, no 5086 (Basran *isnād*), with parallels.

39 Ibn Ḥajar, *Fatḥ al-bārī bi-sharḥ Ṣaḥīḥ al-Bukhārī*, ed. Shu’ayb al-Arna’ūt and ‘Ādil Murshid, &al., 24 vols (Damascus: al-Risālah al-‘Ālamīyah, 1434/2013), 15:255, *ad* no 5086.

40 Abū Yūsuf’s disagreement is remarked anonymously once more at Shaybānī, *Ḥujjah* 4:46, with reference to the division of household goods when a man has divorced his wife, then died during her waiting period, according to a note from the editor. It is one of seven

also numbered Sufyān al-Thawrī among ‘our *aṣḥāb*’, since he occasionally quotes hadith on his authority against the Medinese.⁴¹ Both Ibn Abī Shaybah and ‘Abd al-Razzāq quote Ibn ‘Umar and Ibn Mas‘ūd against the prophetic precedent, likewise calling into question the Medinese claim of local unanimity.⁴²

Occasionally, there is disagreement over Mālik’s position. For example, al-Shaybānī says,

Some of the people of Medina go by Abū Ḥanīfah’s position: whoever prays a prayer without reciting, let him repeat the prayer. Among them is Mālik ibn Anas and those who take his position (*man qāla bi-qawlih*). Some say nothing is wrong here; that his prayer is complete. They have related that < Mālik ibn Anas < Yaḥyá ibn Sa‘īd ... < ‘Umar ibn al-Khaṭṭāb....⁴³

No such hadith report appears in the *Muwatta’a* in the recension of either al-Shaybānī or Yaḥyá; however, al-Shāfi‘ī relates it from Mālik in *Ikhtilāf Mālik wa-al-Shāfi‘ī*.⁴⁴ We should be wary of inferring Mālik’s position straightforwardly from whatever hadith he related. And Māliki literature periodically reports disagreement as to Mālik’s position. For example, his influential Egyptian follower Ibn al-Qāsim (d. 191/806) related three different positions from Mālik concerning one who forgets to recite the Qur’an in a bowing.⁴⁵

Al-Shaybānī only occasionally departs explicitly from his opposition of Iraq to Medina. Concerning how to treat the corpse of someone who has died in a sacral state (making the pilgrimage), he unusually contrasts Abū Ḥanīfah’s opinion with that of ‘the people of the Hijaz’ as well as Mālik.⁴⁶ Concerning the inheritance of a woman whose husband has divorced her in her death illness,

positions said to be from authorities to be followed (*qawm yu’khdhu minhum* [4:48]), the extent of disagreement perhaps helping to justify al-Shaybānī’s preferring the position of the people of Medina in this case.

41 E.g., Shaybānī, *Hujjah* 1:337–40.

42 Ibn Abī Shaybah, Ibn Abī Shaybah, *al-Muṣannaf*, ed. ‘Abd al-Khāliq Khān al-Afghānī, 14 vols (Hyderabad: al-Maṭba‘ah al-‘Azīziyah, 1386/1966 and Bombay: al-Dār al-Salafiyyah, n.d.-1403/1983), 4/2:156 = ed. Ḥamad ‘Abd Allāh al-Jum‘ah and Muḥammad Ibrāhīm al-Luḥayḍān, 16 vols (Riyadh: Maktabat al-Rushd, 1425/2004), 6:47; ‘Abd al-Razzāq, *Muṣannaf* 7:272.

43 Shaybānī, *Hujjah* 1:234.

44 Shāfi‘ī, *Umm* 7:220 8:660–1. A parallel text through Ibn Numayr rather than Mālik is quoted by Ibn Abī Shaybah, *Muṣannaf*, ed. Afghānī, 1:396 = ed. Jum‘ah and Luḥayḍān, 3:335.

45 Ibn al-Jallāb, *al-Tafrīr*, ed. Ḥusayn ibn Sālim al-Dahmānī, 2 vols (Beirut: Dār al-Gharb al-Islāmī, 1408/1987), 1:247.

46 Shaybānī, *Hujjah* 1:352.

he reports agreement with Abū Ḥanīfah's position, that of the people of Iraq, from the people of Mecca.⁴⁷ Once that I have noticed he cites the opinion of the people of Basra, with which the Medinese agree.⁴⁸ Once he quotes the people of Medina as pointing out in turn two bowings at Minā as peculiar to the people of Mecca.⁴⁹ A Prophet hadith report supporting the neighbour's right to pre-emption is introduced with 'Among the *āthār* of the people of Iraq (is this of which) there informed us Muḥammad (al-Shaybānī) who said there informed us Abū Ḥanīfah on the authority of...'⁵⁰ Here, it seems to be the redactor who identifies the opposing sides as Iraq and Medina. Occasionally, al-Shaybānī presents only his own opinion on some topic, without notice of any opposing view; for example, that a pilgrim in the sacral state may look in a mirror so long as it is not to remove hair and that one should not combine the Prophet's name and *kunyah*.⁵¹

The *Hujjah* assumes that the bases of jurisprudence in Medina are the same as in Iraq: consistency from one part of the law to another and inference from the word and deed of Followers, Companions, and the Prophet, in ascending order of authority (more on both of these to come). Schacht, Yasin Dutton, and Umar Wymann-Landgraf have accustomed us to the idea that Medinese jurisprudence was heavily reliant on Medinese practice and local consensus, occasionally expressed as '*amal* but more often *al-amr al-mujtama'* '*alayhi 'indanā* and other such expressions.⁵² There are occasional references to the practice ('*amal*') of Medina; for example, with reference to combining Q. 1 with other chapters in the ritual prayer.⁵³ Al-Shaybānī never directly challenges it as a justification for one rule as opposed to another, but he will point out a lack of textual support; for example, with reference to distinguishing between the

47 Shaybānī, *Hujjah* 4:81-2.

48 Shaybānī, *Hujjah* 2:514, with reference to when one may return a slave for a refund.

49 Shaybānī, *Hujjah* 2:445.

50 Shaybānī, *Hujjah* 3:69. *Āthār* (sing. *athar*) refers to knowledge handed down, the wisdom of past time. The term was only centuries later restricted to post-prophetic hadith. For al-Shaybānī's usage, consider for example his question to the Medinese, *hal 'indakum athar 'an al-nabī ... aw 'an aḥad min aṣḥābih* (*Hujjah* 2:621-2)? Compare also, for example, the title of al-Ṭaḥāwī (d. 321/933), *Sharḥ mushkil al-āthār*, solely concerned with Prophet hadith.

51 Shaybānī, *Hujjah* 2:268-9, 3:1-6. Mālik himself is said to have combined the two in naming a son of his own: Ibn Sa'd, *K. al-Ṭabaqāt al-kubīr*, ed. 'Alī Muḥammad 'Umar, 11 vols (Cairo: Maktabat al-Khānjī, 1421/2001), 7:573.

52 Schacht, *Origins*; Yasin Dutton, *The origins of Islamic law* (Richmond, Surrey: Curzon, 1999); Umar F. Abd-Allah Wymann-Landgraf, *Mālik and Medina: Islamic legal reasoning in the formative period*, Islamic history and civilization, studies and texts, 101 (Leiden: Brill, 2013).

53 Shaybānī, *Hujjah* 1:107.

witr prayers of the traveller and settled person, al-Shaybānī reports that the Medinese refer to local practice, then himself retorts that here they have no *athar* to go by, just *ra'y*.⁵⁴

Mālik was early accused of misrepresenting the local tradition. In *Ikhtilāf Mālik wa-al-Shāfiʿī*, al-Rabīʿ describes ‘a book we incline to follow, in which it is mentioned that the people are agreed. In it is *al-amr al-mujtamaʿ ʿalayhi ʿindanā* and *al-amr ʿindanā*’, so apparently *al-Muwattaʿ*. Al-Shāfiʿī replies, ‘What you call *al-amr al-mujtamaʿ* is mostly subject to disagreement.’⁵⁵ From within Medina, ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī (d. 187/802-3?) is quoted as saying, ‘When Mālik says *ʿalayhi adraktu ahl baladinā* and *al-mujtamaʿ ʿalayhi ʿindanā*, he means Rabīʿah ibn Abī ʿAbd al-Raḥmān and Ibn Hurmuz’, referring to Mālik’s teachers Rabīʿat al-Ra’y (d. 136/753-4?) and ʿAbd Allāh ibn Yazīd (d. 148/765-6).⁵⁶ It is striking how little Mālik quotes some of the Seven Jurisprudents of Medina, in later retrospect the leading Followers of that centre. Here is one list of them from the later Māliki al-Qarāfi (d. 684/1285) with the number of appearances in the *Muwattaʿ* (recension of Yaḥyá):

Saʿīd ibn al-Musayyab 92;
 ʿUrwah ibn al-Zubayr 53;
 al-Qāsim ibn Muḥammad 38;
 Khārijah ibn Zayd ibn Thābit 1;
 ʿUbayd Allāh ibn ʿAbd Allāh ibn Masʿūd 0;
 Sulaymān ibn Yasār 29; and
 Abū Bakr ibn ʿAbd al-Raḥmān 1.⁵⁷

54 Shaybānī, *Hujjah* 1:193-4.

55 Shāfiʿī, *Umm* 7:348 8:771. Similarly, ‘Al-Rabīʿ said that al-Shāfiʿī asserted there was no one more given to disagreeing with the people of Medina than Mālik’: Abū al-Abbās al-Aṣamm, *Musnad al-imām*, ed. Rifʿat Fawzī ʿAbd al-Muṭṭalib, 3 vols (Beirut: Dār al-Bashāʾir al-Islāmiyah, 1426/2005), 2:1362.

56 Ibn Abī Khaythamah, *al-Tārīkh al-kabīr*, ed. Ṣalāḥ ibn Fathī Halal, 4 vols (Cairo: al-Fārūq al-Ḥadīthah, 1424/2004), 2:284.

57 Al-Qarāfi, *al-Dhakhīrah*, ed. Muḥammad al-Ḥajjī, Saʿīd Aʿrāb, and Muḥammad Būkhūzbah, 14 vols (Beirut: Dār al-Gharb al-Islāmī, 1994), 13:343; numbers based on the index to Mālik, *al-Muwattaʿ*, rec. Yaḥyá ibn Yaḥyá, ed. Bashshār ʿAwwād Maʿrūf, 2 vols (Beirut: Dār al-Gharb al-Islāmī, 1417/1997). Schacht discusses the idea of seven jurisprudents, almost certainly unknown to Mālik himself, at *Origins*, 243-4. In an addendum to a later printing, he guesses that a passage in the *Mudawwanah* of Ṣaḥnūn (d. 240/854) is the earliest appearance of a group of seven: *Origins*, 351. About the same time, Ibn Saʿd reports having asked his teacher al-Wāqidi about the seven from whom Abū al-Zinād (d. 130/748?) related hadith. Al-Wāqidi’s list is identical to al-Qarāfi’s of the Seven Jurisprudents of Medina and presumably also those covered in *K. al-Sabʿah* of Ibn Abī al-Zinād (d. 174/790-1?) scorned by Mālik: see Ibn Saʿd, *Ṭabaqāt* 7:509; Ibn al-Nadīm, *Fihrist* 2/1:85-6; and

If Mālik represents Medinese consensus less than the *Muwattaʿ* suggests, Medinese consensus is apparently unimportant to al-Shaybānī, perhaps because it had less salience in Iraq than Egypt, at least by his time. Rather, as Paul Gledhill has observed, he cites Mālik not as articulating Medinese consensus but as a transmitter of hadith, as such continually supporting the Ḥanafī position (likewise, systematically, in his recension of the *Muwattaʿ*).⁵⁸

Al-Shaybānī's Arguments from Reason

First and most often, al-Shaybānī adduces logical consistency against Medinese positions. He quotes Mālik ibn Anas as saying, 'I dislike to acquire eunuchs, since if we did not acquire them, they would not be castrated.' Then, says al-Shaybānī, he went back on that later, saying 'There is no harm in acquiring one eunuch. As for more than that, that is discouraged.' Al-Shaybānī objects that if every Muslim acquired one eunuch, that would be many more than there are eunuchs now, leading to the situation Mālik says he dislikes.⁵⁹ Concerning whether *zakāt al-fitr* applies to all runaway slaves, al-Shaybānī says, 'How can they distinguish between someone who has recently run away and someone who did long ago? There is no difference between these two. It is not appropriate to impose the alms tax on Muslims according to suppositions.'⁶⁰ Concerning whether it is permissible to trade wheat for flour, al-Shaybānī protests that the Medinese should apply the same rule as they do to olives and oil.⁶¹ Abū Ḥanīfah holds that a marriage contracted in jest is equally binding with one contracted in seriousness. The Medinese say it is null, to which al-Shaybānī says that they ought to likewise rule out divorce and manumission pronounced in jest.⁶²

Abū Ḥanīfah says there is no harm in the price of a hunting dog, nor in selling it. The people of Medina say there is no good in trading dogs, trained or not. Al-Shaybānī says,

If you say it is forbidden to sell a hunting dog, then a man who kills one owes nothing. They say that if someone kills it, they mulct him for its

al-Khaṭīb al-Baghdādī, *Tārīkh Madīnat al-Salām*, ed. Bashshār 'Awwād Ma'rūf, 17 vols (Beirut: Dār al-Gharb al-Islāmī, 1422/2001), 11:494.

58 Gledhill, 'Development', 192, 194.

59 Shaybānī, *Ḥujjah* 1:374-6.

60 Shaybānī, *Ḥujjah* 1:531.

61 Shaybānī, *Ḥujjah* 2:625.

62 Shaybānī, *Ḥujjah* 3:199-200.

value. If he kills it, they make it like the free person whom it is not permissible to sell.

Al-Shaybānī says this is different, since the free man is not owned whereas the dog is. Likewise, it is possible to give someone a trained dog but not to give someone a free man. And so on. It is notable that the discussion begins with arguments from both sides about the proper analogies. The discussion also turns to the basic principle (with dispute over exceptions) that only edible animals are suitable for trading. Then it proceeds to arguments over which hadith reports bear on the question.⁶³ Al-Bājī (d. 474/1081) summarizes the mature Mālikī position thus:

The Prophet's prohibition is to be interpreted as meaning the price of a dog that it is prohibited to acquire. As for dogs it is indifferent to acquire, dogs for flocks, agriculture, and hunting, there is disagreement over Mālik's position. Some of his disciples (*aṣḥāb*) interpret him as permitting its sale. Saḥnūn says it is permissible to perform the pilgrimage with its price. Ibn Kinānah upheld this, likewise Abū Ḥanīfah. But Ibn al-Qāsim related from him (Mālik) that he disliked selling it, which is the version (*riwāyah*) of the *Muwattaʿa*.⁶⁴

The *Muwattaʿa* is just one of several accounts of Mālik's position, here – in part, one guesses, because subsequent Mālikīyah could see the cogency of objections like al-Shaybānī's.

Hadith in the *Ḥujjah*

Schacht observes that al-Shaybānī adduced hadith more often than Abū Yūsuf, and the *Ḥujjah* often adduces hadith in its arguments against the Medinese. Sometimes, the *Ḥujjah* makes Abū Ḥanīfah himself a champion of hadith, as in quoting him as saying, 'If not for what has come down concerning this by way of *āthār*, I would call for making up (a day that one has forgotten to fast).'⁶⁵ With reference to wiping the *khuffayn*, again, al-Shaybānī at one point

63 Shaybānī, *Ḥujjah* 2:754-71.

64 Bājī, *Muntaqā* 5:28. Saḥnūn ibn Saʿīd (d. 240/854) was a major African jurispudent. ʿUthmān ibn ʿĪsā ibn Kinānah (d. 183/799-800?) was a Medinese jurispudent. Ibn al-Qāsim (Egyptian, d. 191/806-7) was the foremost transmitter of Mālik's positions for the Andalusian Mālikī school.

65 Shaybānī, *Ḥujjah* 1:392.

accuses the Medinese of overruling the hadith that they themselves have been relating.⁶⁶ Sometimes he specifically favours Companion against Follower hadith or Prophet against Companion. For example, concerning how to wipe the *khuffayn*, al-Shaybānī says,

This is the position of ‘Urwah ibn al-Zubayr, who was more discerning and knew relation and the *sunnah* better than Ibn Shihāb, so how could Mālik ibn Anas and others leave them when they are the ones who related it, going to the opinion of Ibn Shihāb in spite of what has come down concerning this by way of *āthār*?⁶⁷

‘Urwah ibn al-Zubayr (d. 94/712-13) was a Follower the same as Ibn Shihāb al-Zuhri (d. 124/742?) but related from earlier Companions. Concerning the number of days after travelling one begins to pray the normal number of bowings, al-Shaybānī relates hadith from Ibn ‘Umar and ‘Alī, then says, ‘Those have a better claim to our going by their position than Sa‘īd ibn al-Musayyab.’⁶⁸ Earlier positions are expressly held to be superior to later. For example, concerning Friday prayers outside mosques, he says

They are told, ‘How is it that this is possible in that time but not possible in this time? There has not come any but the first, or a group (*qawm*) more discerning than the first ones. There is no knowledge save the knowledge of the first ones.... There is no jurisprudence but their jurisprudence, they knowing best the command of the Messenger of God ... and being closer to him in their efforts than we are. If they thought that was ugly (*qabīḥ*), they would not have done it.’⁶⁹

Note, incidentally, *qabīḥ* for what is disapproved, a term one may have thought characteristically Mu‘tazili but shown here to have been common to legal thought of the late eighth century CE.

Transmitted knowledge is said to be superior even to alternative techniques particularly associated with the Ḥanafī school. With reference to whether laughing aloud requires repetition of a prayer or renewal of ritual purity as well, al-Shaybānī says, ‘If not for what has come by way of *āthār*, analogy would

66 Shaybānī, *Ḥujjah* 1:34. Of the previous 13 hadith reports, however, mostly from Companions, only the last two, from Mālik ibn Anas, have been from Medinese.

67 Shaybānī, *Ḥujjah* 1:38-9.

68 Shaybānī, *Ḥujjah* 1:172-3.

69 Shaybānī, *Ḥujjah* 1:190-1.

support the position of the people of Medina. However, there is no analogy in the face of an *athar*. One can be led only by *āthār*.⁷⁰ Similarly, concerning how to support oneself if about to fall over in the ritual prayer, he says, 'The *sunnah* and *āthār* concerning this are well known. There is no need for *naẓar* and *qiyās* beside them.'⁷¹ He even disparages *ra'y*, saying with reference to vicarious pilgrimages, 'The *āthār* concerning this are many. This is an agreed matter on which there is no difference of opinion among the jurists except for whoever bases his position on his opinion (*yaqūlu bi-ra'yihī*) and disregards *āthār* (lit. throws them behind his back).'⁷²

There are occasional hints of hadith criticism. For example, al-Shaybānī rhetorically asks the Medinese, 'Shall we leave the *sunnah* and well-known *āthār* in favour of the saying of a man (< Prophet) from whom no one relates anything else than one hadith report?'⁷³ The implicit principle is that a man whose narrations cannot be compared with others' cannot be trusted. However, al-Shaybānī almost never relates a hadith report with full *isnād* except in favour of his own position, which alone would induce him to engage in classic hadith criticism (that is, pointing out flaws in his opponents' evidence). For the most part, the *Ḥujjah* confirms that hadith criticism in the classic style began only after Mālik and al-Shaybānī, or at least that it was as yet the activity only of some on the fringe.⁷⁴

70 Shaybānī, *Ḥujjah* 1:204. Similarly, 'One resorts to analogy only so long as there is no *athar*', with reference to *ṭayammum* (1:44).

71 Shaybānī, *Ḥujjah* 1:316.

72 Shaybānī, *Ḥujjah* 2:236.

73 Shaybānī, *Ḥujjah* 1:225, with reference to neglecting some stage of the ritual prayer. The suspect Companion is 'Abd Allāh ibn Buḥaynah (d. 56/675-6?), on whom see Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 12 vols (Hyderabad: Majlis Dā'irat al-Ma'ārif al-Nizāmiyah, 1325-7, repr. Beirut: Dār Ṣādir, n.d.), 5:381-2, s.n. 'Abd Allāh ibn Mālik ibn al-Qishb. The hadith report in question appears in Mālik, *Muwatta'*, rec. Shaybānī, 64, no 139; Mālik, rec. Yaḥyá, *al-ṣalāh* 57, *man qāma ba'da itmām aw fi al-rak'atayn*, no 256.

74 Classical hadith criticism by comparison of *isnāds* is described by Eerik Dickinson, *The development of early Sunnite hadith criticism*, Islamic history and civilization, studies and texts, 38 (Leiden: Brill, 2001), chap. 6. The hadith critics quoted in the great collections of evaluations of the tenth century, such as Ibn Abī Ḥātim, *al-Jarḥ wa-al-ta'dīl*, and Ibn 'Adī al-Qaṭṭān, *al-Kāmil fi ḍu'afā' al-rijāl*, overwhelmingly flourished in the ninth century CE: Yaḥyá ibn Ma'in, Aḥmad ibn Ḥanbal, 'Abd al-Raḥmān ibn Mahdī, and so on. Al-Shāfi'ī prescribes something very close to classic hadith criticism in the *Risālah*, for which see Belal Abu-Alabbas, 'The principles of hadith criticism in the writings of al-Shāfi'ī and Muslim', *Islamic law and society* 24 (2017): 311-35. That al-Shāfi'ī so seldom practises classic *isnād* comparison in the *Umm* is evidence that it was a new technique he did not command, not yet a standard component of a jurist's training.

As for the provenance of hadith cited by al-Shaybānī, a convenient sample are those in the section on the wergild, thoroughly treated by Rif‘at Fawzī ‘Abd al-Muṭṭalib.⁷⁵ Of 45 hadith reports cited by al-Shaybānī against the Medinese, just three are in al-Shaybānī’s recension of the *Muwaṭṭa’*, eleven are in the *Āthār* of al-Shaybānī, nineteen are in the *Muṣannaḥ* of ‘Abd al-Razzāq. (Just four was ‘Abd al-Muṭṭalib unable to find in any standard hadith collection.) Here, he cites Hijazi hadith at least as often as Kufan. In the *Ḥujjah* as a whole (now excluding the section on the wergild), the Prophet is the final authority in 18 percent of hadith reports quoted with full *isnād*, thirty Companions in 47 percent, twenty-eight Followers in 35 percent. Followers (including four *mukhaḍrams*) can be classified regionally: Kufans turn out to be the final authority in 60 percent of them, which is to say that al-Shaybānī mainly argues against Medinese positions on the basis of Kufan, when it comes to Follower opinion, but with substantial representation of opinion from other centres, in descending order Medina, Mecca, Basra, then Syria far away in last place. The emphasis on Kufan knowledge is similar when it comes to al-Shaybānī’s immediate authorities (62 percent), with authorities from other centres in the same rank order.

For comparison, *Kitāb al-Kharāj*, whose attribution to Abū Yūsuf (d. 182/798?) is somewhat more doubtful than that of *al-Ḥujjah* to al-Shaybānī, cites Medinese and Kufan hadith about equally at the Follower level, followed by Meccan, then Basran. Abū Yūsuf’s immediate authorities are 63 percent Kufan, about the same as al-Shaybānī’s, then 19 percent Medinese, 10 percent Basran, just 3 percent Meccan.⁷⁶ As for al-Shaybānī’s recension of the *Muwaṭṭa’*, when al-Shaybānī inserts something not from Mālik, his immediate authority is Kufan 73 percent of the time, Medinese 12 percent of the time; at the Follower level, of those I have been able to identify, his insertions are 60 percent Kufan, 17 percent each Medinese and Meccan. In the *Muwaṭṭa’*, recension of Yaḥyá, 95 percent of Mālik’s identifiable authorities are Medinese, 98 percent of Follower opinions.⁷⁷ Thus, the *Ḥujjah* and other early Ḥanafī literature leans most heavily on the Kufan tradition but also substantially ranges beyond

75 Shāfi‘ī, *Umm* 7:277-303 9:85-169.

76 Abū Yūsuf, *K. al-Kharāj* (Cairo: al-Maṭba‘ah al-Salafiyyah, 1346). *Kitāb al-Kharāj* alternates between addressing a caliph in the second person and referring to Abū Yūsuf in the third person, making it stylistically much less uniform than *al-Ḥujjah*, more likely to be a composite work. Norman Calder provisionally attributed it in its extant form to Abū Bakr al-Khaṣṣāf (d. 261/874), writing for the caliph al-Muhtadī: *Studies*, chap. 6. Till now, so far as I know, no one has carried out a more thorough analysis to test his hypothesis.

77 The last figure based on one index in Mālik, *al-Muwaṭṭa’*, rec. Yaḥyá, ed. Ma‘rūf, 2:679-91.

it, whereas early Mālikī literature leans almost exclusively on the Medinese tradition.

Al-Shaybānī does not consistently cover the known evidence. For example, he cites in favour of Abū Ḥanīfah's position concerning the fear prayer a hadith report related by 'their *faqīh* Mālik ibn Anas' going back to the Companion Ibn 'Umar (d. 74/693-4?).⁷⁸ The same report appears also in al-Shaybānī's recension of the *Muwatta'*. After it, al-Shaybānī says, 'We go by this, it being the position of Abū Ḥanīfah. Mālik ibn Anas did not go by it' – a rare instance of express interest in Mālik's position in al-Shaybānī's *Muwatta'* (as opposed to hadith related by him).⁷⁹ In Yaḥyá ibn Yaḥyá's recension of the *Muwatta'*, the same hadith report appears but preceded by another from the Companion Sahl ibn Abī Ḥathmah (d. 41/661 or later). At the end of the section, Mālik says he goes by the first report.⁸⁰ The question now is whether al-Shaybānī knew of the report from Sahl. It is conceivable but seems unlikely that it was discovered by Mālik after doubts about his position had been raised (also that the comment 'Mālik ibn Anas did not go by it' is a later interpolation into the *Muwatta'*). Al-Shaybānī goes on to cite hadith reports related by Ibrāhīm al-Nakha'ī without ever acknowledging expressly the one from Sahl cited by Mālik. (He also adduces an analogy with other prayers.) Most likely, he was simply uninterested in reporting the basis of positions he disagreed with.

The *Hujjah* confirms that the Medinese had a reputation, or at least cultivated one, for deriving their rules from hadith, against Iraqis given to elaborating the law by *ra'y* (rational speculation).⁸¹ Mālik's *Muwatta'* includes the famous hadith report in which Sa'id ibn al-Musayyab rebukes Malik's teacher Rabī'at al-Ra'y for sounding like an Iraqi when he objects to making the compensation for destroying four of a woman's fingers less than for destroying three.⁸² (This is indirectly answered in the section of the *Hujjah* treating the wergild. There, al-Shaybānī favours hadith reports going back to 'Umar and

78 Shaybānī, *Hujjah* 1:343-4.

79 Mālik, *Muwatta'*, rec. Shaybānī, ed. 'Abd al-Wahhāb ibn 'Abd al-Laṭīf, 3rd edn (Cairo: Wizārat al-Awqāf, al-Majlis al-A'lā lil-Shu'ūn al-Islāmīyah, Lajnat Ihya' al-Turāth, 1407/1987), 98, no 290.

80 Mālik, *Muwatta'*, rec. Yaḥyá, *ṣalāh* 118, *ṣalāt al-khawf*, nos 504-5.

81 This somewhat contradicts Schacht's assertion, 'There was as yet no trace of the particular reputation of Medina as the "true home of the *sunna*" (Schacht, *Origins*, 8).

82 Mālik, *Muwatta'*, rec. Yaḥyá, *al-'uqul* 11, no 2507; also 'Abd al-Razzāq, *al-Muṣannaḥ*, ed. Ḥabīb al-Raḥmān al-A'zamī Min Manshūrāt al-Majlis al-ʿilmī 39, 11 vols (Beirut: Majlis ʿilmi, 1390-2/1970-2), 9:394-5.

‘Alī by which the woman’s compensation is uniformly half a man’s; that is, he opposes Companion hadith to Mālik’s Follower opinion.⁸³)

Schacht argued against the Medinese pretension of superior devotion to hadith: ‘The attitude of the Iraqians and of the Medinese to legal traditions is essentially the same.... Both the Iraqians and the Medinese neglect traditions from the Prophet in favour of systematic conclusions from general rules, or of opinions of the Companions.’⁸⁴ It is still accepted in some circles; for example, Ahmed El Shamsy’s recent book on the Shāfi‘ī school treats *ra’y* as an Iraqi invention opposed by the jurists of Medina (and al-Shāfi‘ī in Egypt).⁸⁵ Al-Shaybānī acknowledges the Medinese reputation for relying more on hadith, but rejects it as unwarranted: ‘We are amazed by him who says that the people of Medina advocate *āthār* when they relate them, then leave them for something else.’⁸⁶ He also occasionally prefers one Companion to another; for example, ‘This is the position of Abū Hurayrah. I do not know that the people of Medina have related it from anyone else. ‘Abd Allāh ibn Mas‘ūd’s position has a better claim to being followed than Abū Hurayrah’s.’⁸⁷

Occasionally, al-Shaybānī’s loyalty to hadith makes him disagree with Abū Ḥanīfah. Unlike Abū Ḥanīfah, al-Shaybānī thinks there is a formal *ṣalāh* within the rain prayer, for which position he cites three Prophet hadith reports through Sufyān al-Thawrī.⁸⁸ If Friday coincides with one of the three days of the pilgrimage, the normal procedure for the Friday noon prayer is not followed at Minā unless a caliph, governor of the Hijaz, or governor of Mecca is

83 Shāfi‘ī, *Umm* 7:283-4 9:102-4. For his part, al-Shāfi‘ī is clearly reluctant to agree with al-Shaybānī but acknowledges that uniform compensation is the rational position, difficult to overrule by a Follower’s opinion unsupported by any Prophet hadith. Al-Māwardī upholds al-Shāfi‘ī’s rule of the same compensation, half a man’s, for each of a woman’s fingers. However, he also acknowledges a Prophet hadith report not cited by al-Shāfi‘ī supporting the Māliki position that it depends on whether the total is more or less than a third of a man’s full *wergild*: *al-Ḥawī al-kabīr*, ed. Maḥmūd Maṭrajī, &al., 24 vols (Beirut: Dār al-Fikr, 1414/1994), 16:97-8.

84 Schacht, *Origins*, 21.

85 Ahmed El Shamsy, *The canonization of Islamic law* (n.p.: Cambridge Univ. Press, 2013), 22-3.

86 Shaybānī, *Ḥujjah* 1:68, with reference to whether polluting substances require renewal of ritual ablutions.

87 Shaybānī, *Ḥujjah* 1:199, with reference to how many times the imam says *Allāhu akbar* in the festival prayer. Similarly, ‘Alī is said to be more trustworthy when it comes to the hadith of the Messenger of God and more knowledgeable: *Ḥujjah* 2:717.

88 Shaybānī, *Ḥujjah* 1:332-40. There is disagreement within the Ḥanafi school as to whether Abū Yūsuf agreed with Abū Ḥanīfah or al-Shaybānī on this point, for which see Badr al-Dīn al-Aynī, *al-Bināyah*, ed. Ayman Ṣāliḥ Sha‘bān, 13 vols (Beirut: Dār al-Kutub al-‘Ilmiyah, 1420/1999), 3:255.

there to lead it, according to Abū Ḥanīfah, but never according to the people of Medina. Al-Shaybānī says that on this point he prefers the latter position, supported as it is by much transmitted evidence (*āthār*).⁸⁹

Al-Shāfiʿī's Commentary on a Section of the *Ḥujjah*

Kitāb al-Radd ʿalā Muḥammad ibn al-Ḥasan is one of the short works appended to the *Umm* of al-Shāfiʿī.⁹⁰ Like the rest of the *Umm*, we have it in the redaction of al-Rabīʿ ibn Sulaymān al-Murādī (d. 270/884). Schacht considered it the oldest of what al-Shāfiʿī brought with him to Egypt.⁹¹ It covers just one topic, the wergild (*diyyah*). The extant manuscripts of the *Ḥujjah* stop short of the wergild, but the text in the *Umm* is plainly that section of the *Ḥujjah* overlaid by comments from al-Shāfiʿī. It begins,

There informed us al-Rabīʿ ibn Sulaymān who said there informed us Muḥammad ibn Idrīs al-Shāfiʿī who said there said Abū Ḥanīfah (may God be pleased with him) concerning the wergild, 'Incumbent on the people of gold is 1,000 dinars, on the people of silver 10,000 dirhams of sevenweight.'⁹²

The name 'Muḥammad ibn al-Ḥasan' should be inserted between al-Shāfiʿī and Abū Ḥanīfah's, but otherwise this begins exactly like every section of the extant *Ḥujjah*. The section expressly attributed to al-Shāfiʿī begins with his asserting that a number of Hijazis related something to the contrary from ʿUmar, that the Hijazis all took the opposite position from al-Shaybānī's, finally a hadith report from the Prophet (although with a gapped *isnād*). But then it breaks into dialogue: 'I said to Muḥammad ibn al-Ḥasan, "Do you say that the wergild is 12,000 dirhams of sixweight?"'⁹³ Presumably, the following dialogue

89 Shaybānī, *Ḥujjah* 2:429-34.

90 Shāfiʿī, *Umm* 7:277-303 9:85-169. This is to confirm the guess of Abū al-Wafāʾ al-Afghānī, who excerpts *al-Radd ʿalā Muḥammad ibn al-Ḥasan* at Shaybānī, *Ḥujjah* 4:255-418, omitting al-Shāfiʿī's comments.

91 Schacht, *Origins*, 330.

92 Shāfiʿī, *Umm* 7:277 9:85. The Medinese position, which al-Shāfiʿī goes on to defend, is that the wergild is properly 1,000 dinars for the people of gold (i.e. in regions where gold currency prevails), 12,000 dirhams for the people of silver. Al-Muzanī identifies the latter as *qawluhu al-qadīm*; that is, al-Shāfiʿī's position in Iraq, before he came to Egypt, which seems to confirm that *al-Radd ʿalā Muḥammad ibn al-Ḥasan* belongs to *al-qadīm*: al-Muzanī, *al-Mukhtaṣar*, in margin of Shāfiʿī, *Umm* 5 (Bulaq): 129.

93 Shāfiʿī, *Umm* 7:277 9:89.

is somewhat idealized to give al-Shāfi‘ī the better of the argument; but if it is the vestige of an actual discussion in Baghdad, where al-Shāfi‘ī is said to have sat with al-Shaybānī, then we may guess that they happened to go over just this section of the *Ḥujjah*, not the whole. A little later, with reference to the wergild due for male and female fetuses, al-Shāfi‘ī says that al-Shaybānī and others who adhered to his doctrine (*yadhhabu madhhabahu*) spoke to him; what follows will be mainly what al-Shaybānī said.⁹⁴

It is a puzzle why the *Umm* includes only the section on the wergild. Mohyiddin Yahia supposes that al-Shāfi‘ī was happy to study under al-Shaybānī in Baghdad until he began to attack the Medinese, which he could not bear for long.⁹⁵ Compare *Ikhtilāf al-‘Irāqīyayn* and *Siyyar al-Awzā‘ī*, likewise apparently texts of the nascent Ḥanafī school overlaid by al-Shāfi‘ī’s comments and incorporated into *al-Umm*, presumably easier for him to collect in their whole because they did not involve criticism of the Medinese school and al-Shāfi‘ī’s master Mālik. The brevity of *al-Radd* also seems to confirm that al-Shāfi‘ī did not study long in Baghdad compared with his subsequent study in Mecca and Medina. However, al-Muzanī once reports taking some of al-Shāfi‘ī’s opinions from *Ikhtilāf Abī Ḥanīfah wa-Ahl al-Madīnah* in a section about hunting, a *Kitāb Ahl al-Madīnah wa-Abī Ḥanīfah* in a section about the law of sacrifices, hence possibly from a longer, inextant version of *al-Radd ‘alā Muḥammad ibn al-Ḥasan* (and from the missing part of the original *Ḥujjah*).⁹⁶

Conclusions

As for what the *Ḥujjah* tells us about the early Mālikī school, one should always be cautious about how polemical texts depict their rivals.⁹⁷ It plainly testifies to the pre-eminence of Mālik himself among the jurists of Medina in the last third of the eighth century CE. Seldom is any contemporary named. On the other hand, the *Ḥujjah* supports the perception that Mālik’s positions

94 Shāfi‘ī, *Umm* 7:283-9:106.

95 Mohyiddin Yahia, *Shāfi‘ī et les deux sources de la loi islamique*, Bibliothèque de l’École des hautes études, Sciences religieuses, 139 (Turnhout, Belgium: Brepols, 2009), 123.

96 Muzanī, *Mukhtaṣar*, in margin of Shāfi‘ī, *Umm* 5 (Bulaq): 205, 210. In an earlier section on inheritance said to be derived from *k. ikhtilāf Abī Ḥanīfah wa-ahl al-Madīnah*, al-Muzanī’s paraphrase does match *al-Radd ‘alā Muḥammad ibn al-Ḥasan*, for which cf. Muzanī, *Mukhtaṣar*, in margin of Shāfi‘ī, *Umm* 5 (Bulaq): 153-4, and Shāfi‘ī, *Umm* 7:298-9-9:154-6.

97 For examples of misrepresenting specific doctrines, see Joseph Schacht, ‘Sur la transmission de la doctrine dans les écoles juridiques de l’Islam’, *Annales de l’Institut des études orientales* (Algiers) 10 (1952): 399-419, and Sherman A. Jackson, ‘Setting the record straight: Ibn al-Labbād’s refutation of al-Shāfi‘ī’, *Journal of Islamic studies* 11 (2000): 121-46.

are not equivalent to those of a Medinese school of law, inasmuch as the *Hujjah* points to disagreement within Medina, only some of the Medinese agreeing with Mālik.⁹⁸ Later Māliki literature is uninterested in Mālik's disagreements with other Medinese jurists but it does bring up disagreements within the school as to Mālik's own position.

The *Hujjah* has been cited by Wael Hallaq to show that Schacht was wrong about regional schools: 'Mālik is nearly always mentioned as the representative of the average body of Medinese opinion or as the leading voice of one of the groups in disagreement.... Shaybānī's *K. al-Hujja*, like Shāfi'ī's *Ikhtilāf*, is permeated by individual, not geographical, opinion.'⁹⁹ This is an argument about definitions, though, Hallaq's own (not quoted from Schacht or anyone else) being that the opinions of a regional school are necessarily anonymous. At that, the *Hujjah* does meet Hallaq's criterion of regionalism inasmuch as it usually opposes the position of Abū Ḥanīfah to that of the people of Medina, which is to say an anonymous, geographical school. (*Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd* argues against an even more thoroughly anonymous Kufan school.) Also, it is seldom Mālik's opinion that interests al-Shaybānī, rather the hadith he relates that goes against the Medinese position. Even Sohail Hanif's compromise definition of a regional school as having a particular set of local authorities it prefers to cite is not confirmed, inasmuch as al-Shaybānī never tries to discredit Sa'īd ibn al-Musayyab, Sulaymān ibn Yasār, and other Medinese Followers – at least not directly.¹⁰⁰ It is later Māliki literature that 'is permeated by individual, not geographical, opinion.' Al-Shaybānī quotes Mālik as the outstanding representative of a Medinese school, whereas someone like al-Bājī (d. 474/1081) quotes predecessors like Ibn Ḥabīb and the qadī 'Abd al-Wahhāb as individual jurists of note, without qualification as representing Andalusian or Iraqi opinion.

In the nature of a polemic, the *Hujjah* tells us more about the nascent Ḥanafī school than the Māliki. As for why al-Shaybānī should have put together a polemic against the school of Medina, rivalry for caliphal patronage seems likely to have been important. At first, the 'Abbāsids recruited qadis especially from Medina. They turned to Kufans (or, by now, Baghdadis), especially Abū

98 Adherents of the Māliki school in Iraq are the subject of Ahmed Bekir, *Histoire de l'école malikite en Orient jusqu'à la fin du Moyen Âge* (n.p.: Université de Paris, Faculté des lettres et sciences humaines, n.d.), but I am aware of no systematic study of earlier Medinese rivals such as Ibn Abī al-Zinād and al-Darāwardī (the latter briefly remarked by Schacht, *Origins*, 174).

99 Wael B. Hallaq, 'From regional to personal schools of law? A reevaluation', *Islamic law and society* 8 (2001): 1-26, at 7.

100 Sohail Hanif, 'A tale of two Kufans: Abū Yūsuf's *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā* and Schacht's ancient schools', *Islamic law and society* 25 (2018): 173-211, esp. 188-92.

Ḥanīfah's circle, only a generation later.¹⁰¹ There are stories that the caliph Abū Ja'far al-Manṣūr (r. 136-58/754-75), sometimes rather his successor al-Mahdī (r. 158-69/775-85), proposed that Mālik draw up a code for him to enforce everywhere. Mālik declined, saying,

There have already reached people (different) positions; they have heard hadith and related versions; every group has taken up what first reached them.... To turn them away from what they have believed is difficult, so leave people as they are, with whatever the people of each centre have chosen for themselves.¹⁰²

The story seems likely speculative in origin ('quite fictitious', says Schacht¹⁰³). However, Ibn al-Muqaffa' (d. 142/759-60?), who thought that the people of Iraq exceeded other Muslims in knowledge of the law, chastity, and intelligence, did famously advise the caliph to choose and impose a single set of rules in place of the observable diversity from place to place and faction to faction.¹⁰⁴ The *Ḥujjah* endeavours to show its readers that Iraqi law (as represented by al-Shaybānī) is better than its chief rival the tradition of Medina, first because it is logically consistent, unlike Medinese law, secondly because it evidently comprehends the best teaching of all regions. This is surely the polemical effect of including so much hadith from elsewhere than Kufa, in sharp contrast to Mālik's *Muwatta'*, so seldom citing hadith from outside Medina.

This transregional appeal is combined with stress on the positions of Abū Ḥanīfah. Al-Shaybānī occasionally adduces the opinion of the Iraqis in general, but local consensus is considerably less prominent than in the *Muwatta'* of Mālik. Schacht proposed that the shift from regional schools to personal happened first with al-Shāfi'ī, whose followers, observing that he had failed to convert the Medinese to his way of thinking, were forced to choose loyalty to an individual, namely al-Shāfi'ī.¹⁰⁵ The *Ḥujjah* suggests that the shift was already well under way and that one reason for it was to avoid the embarrassment of parochialism.

101 Nurit Tsafrir, *The history of an Islamic school of law: the early spread of Hanafism*, Harvard ser. in Islamic law (Cambridge, Mass.: Islamic Legal Studies Program, Harvard Law School, 2004), 40; Mathieu Tillier, *Les cadis d'Iraq et l'état abbaside (132/750-334/945)* (Damascus: Presses de l'IFPO, 2009), 148-55.

102 Ibn Sa'd, *Ṭabaqāt* 7:573-4. See also, with further references, Dutton, *Origins*, 29-30, 192.

103 *ET*², s.v. 'Mālik b. Anas', by J. Schacht.

104 Ibn al-Muqaffa', *Risālat al-ṣaḥābah*, in *Āthār Ibn al-Muqaffa'* (Beirut: Dār al-Kutub al-'Ilmiyah, 1409/1989), 309-23, at 315-16.

105 Joseph Schacht, *An introduction to Islamic law* (Oxford: Clarendon Press, 1964), 58.