The Ḥanafī School: A Study of Its Social & Legal Dimensions, 189/805-340/952

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A thesis submitted for the degree of DPhil in Oriental Studies

Trinity 2018

To my father and grandfather
May the mercy of God forever envelop you

Contents

Abstract

The 4th/10th century has been identified as the period wherein the legal school (*madhhab*) transformed into a doctrinal school epistemically and a guild socially. Unlike the personal school, the doctrinal school was a collective and authoritative entity possessing a distinct legal methodology and substantive boundaries that defined the outer limits of the school, while the legal school as a guild was a self-regulating professional association with a system of transmitting legal doctrine from identifiable teachers to students. How and when did the essential features of the classical school emerge? Is it accurate to characterize the entirety of the 3rd/9th century as a period of personal schools and/or 'individual legal doctrines'? What was the nature of school-consciousness during this period? How was it reflected in the legal discourse of early jurists and their social organization? The current study attempts to answer these questions through an analysis of the Ḥanafī school from the period following the death of Muḥammad ibn al-Ḥasan al-Shaybānī, i.e. 189/805, up to and including the first few decades of the 4th/10th century.

The study begins by documenting the spread of Ḥanafīsm beyond Kufa and the subsequent emergence of a distinct Ḥanafī legal community during the first half of the 3rd/9th century out of an earlier Ḥanafī circle. The most essential feature of this legal community was a collective axis of authority (i.e. the Ḥanafī masters) that transcended personal boundaries and individual doctrines to unite a group of jurists as members of a distinct legal tradition. The remainder of this thesis evidences the existence of this distinct Ḥanafī community, analyses its social and legal dimensions, and traces its evolution over the course of a century. The social dimensions of the school are examined in part one of the study, which first discusses how the Ḥanafī community of the 3rd/9th century was represented in both internal school sources and

external ones. Following this, the study diachronically analyses the legal education, networks, and activity of eight major Iraqi Ḥanafī jurists across the 3rd/9th century in order to document the transformation of the legal school into a guild. This study argues that this transformation was far more gradual than previously described, and features identified as hallmarks of the classical school, such as commentary literature, had begun to emerge by the middle of the 3rd/9th century.

The second part of this study focuses on the legal dimensions of the Ḥanafī school. It identifies a particular engagement with *fiqh* by 3rd/9th century jurists that is accurately characterized as uniquely 'Ḥanafī' on account if it being grounded in the authority, rulings, and methods of the Ḥanafī masters, which together constituted a shared paradigm of intellectual discourse that allowed their followers to come together as a distinct legal community. This study then analyses the various elements of this paradigm and the features of early Ḥanafī legal discourse, such as rule-enumeration, rule-justification, rule-augmentation (*takhrīj*), authorizing discourse (*tarjīḥ*), considered opinion (*ra'y*) and analogy (*qiyās*), juridical preference (*istiḥsān*), generalizing activity, and conceptions of authority with a view to mapping out their development and tracing the evolution of the early Ḥanafī community into a mature doctrinal school.

This study, therefore, presents a more nuanced, detailed, and gradual account of *madhhab* evolution during the 3rd/9th century, a vital transitionary period between the ancient and classical schools. It proposes a stage of *madhhab* development for the Ḥanafī school that broad chronologies have not fully captured, a middle stage between the school as a purely personal entity and its consolidation as a classical school, where Ḥanafīsm operated as a distinct community – legally and socially - that assumed many of the essential features of the classical school, and, towards the end of the 3rd/9th century, did function as a proper school.

Acknowledgments

This dissertation marks the culmination of a lengthy journey that has spanned several years. It was only made possible through the support I received from my family, teachers, friends, and colleagues.

Prior to graduate school, I spent half a decade in the Middle East studying Arabic and the Islamic sciences. The teachers I studied under instilled in me a deep admiration for the Islamic tradition and patiently instructed me in the tools needed to access and understand this tradition on a deeper level. These teachers include Shaykh Nuh Keller, Shaykh Faraz Rabbani, Dr. Salah Abu al-Hajj, Shaykh Ali Hani, Dr. Ashraf Muneeb, Dr. Ahmad Snobar, Dr. Hamza Bakri, and others. I must specifically thank Shaykh Faraz Rabbani. There is no expression of gratitude that could do justice to the amount of support he has provided me over the past decade. I will always remain in his debt. I must also thank Omar Matadar and the Qasid Arabic Institute. They supported me while I was a fledgling student of Arabic, then later as a teacher, and, finally, as a DPhil applicant.

I was fortunate enough to have had an excellent supervisor: Dr. Christopher Melchert. He is not only a scholar of the highest intellectual calibre, but someone who deeply cares about his students and their success. He graciously engaged my questions and arguments, providing valuable insights and direction, while giving me the freedom to discover my own ideas. The DPhil experience was made all the more enriching due to him. Two other individuals who assisted me greatly as a graduate student in Oxford were Dr. Talal Al-Azem and Dr. Sohail Hanif. The former was my master's supervisor and continued to support me during my DPhil. As for Sohail, he has been my closest colleague during this journey; from the time we sent our

graduate school applications up until the present moment. I have always considered him my senior and a role model in whose shadow I attempt to walk.

There are several others who assisted me in various ways during this time: Shaykh Omar Qureshi, Shaykh Jawad Qureshi, Wasim Shiliwala, Omar Anchassi, Theodore Roussis, and Shaykh Fahimul Anam and the Beacon Institute. I thank them and all of my friends and colleagues who made this journey more enjoyable with their company and conversation.

I am tremendously fortunate to have a loving family who continue to be a constant source of comfort: my mother, mama, Tariq *abū*, Sumya *khāla*, Usman, Rizwan, Safiya, Raqiya, Arslan, Uncle Farman, and Aunty Abida. My father lived to see me start my DPhil journey but did not see me complete it. I miss him dearly and ask God to reward him for all the love and support he always provided me. Zahra, my daughter, is the single greatest joy of my life. She spent many hours over the past few years watching her father slumped over a computer screen. In that time, I have seen her grow into a beautiful, inquisitive, and jolly girl. Finally, and most importantly, I thank my wife. There is nothing I can say that can fully convey the sheer amount of sacrifice she has made to make this journey possible. From our days in Amman, Jordan, she has been my side, supporting me in all of my endeavours, while raising a family and patiently dealing with the ups and downs that life often throws our way. This DPhil could not have been possible without her. I pray that God bless her, my daughter, and all of my family, friends, teachers, and colleagues.

Transliteration, Dates, & Abbreviations

The system of transliteration used in this thesis generally follows that of the Library of Congress. However, I do not distinguish between *alif mamdūda* and *alif maqṣūra* (e.g. *lā vs*. *ilā*). I also do not delineate the *tā' al-marbūṭa* except in an *iḍāfa*-construction and when the letter preceding the *tā' al-marbūṭa* is an *alif*. In both these cases it is represented with a 't' (e.g. *kitāba vs*. *zakāt* and *zakāt al-fiṭr*). Dates and centuries are given according to the Hijri calendar followed by the Common Era, separated by a forward slash (e.g. 340/952, the year al-Karkhī died, and 3rd/9th century). Sometimes the exact Hijri month of an event is not known, and so it may have occurred in one or another Common Era year. I use a hyphen in such cases to indicate the Common Era years in which the event may have taken place (e.g. 148/765-6, the death date of Ibn Abī Laylā).

I also use the following abbreviations: d. = died; fl. = flourished; n.d. = no date; pl. = plural; r. = reign/ruled (used for the tenure of judges as well).

Tables & Figures

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Introduction

I. Background

Nearly four decades ago, George Makdisi remarked that the phenomenon of the legal school (*madhhab*) seldom failed to arouse the interests and curiosities of scholars even though it consistently eluded their understanding.[1] Being a product of the arduous efforts of jurists extending over many centuries, it is not difficult to understand the many challenges that a scholar would confront investigating the origins and evolution of a multi-dimensional phenomenon. When Makdisi offered these comments, the theory, chronology, and conceptual categories of the legal school that had been proposed by Joseph Schacht had become paradigmatic. In the *Origins of Muhammadan Jurisprudence*, Schacht outlined a two-phased trajectory of evolution for the legal school: regional schools reliant upon normative local practice eventually transformed into schools as personal juristic entities. This shift from regional to personal schools occurred around the middle of the 3rd/9th century following the efforts of Muḥammad ibn Idrīs al-Shāfiʿī (d. 204/820) to systematize the law. Schacht asserted that it was in the discourse of al-Shāfiʿī that legal theory (*uṣūl al-fiqh*) and technical legal thought reached a culminating point, which paved the way for jurists to derive legal rules directly from the primary texts rather than through a reliance on local practice. The rise of the personal school and the development of a highly systematic method of legal reasoning effectively marked the end of the formative period of Islamic law, and all subsequent developments to the law related to minutiae and not its fundamental components.[2]

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[1] George Makdisi, "The Significance of the Sunni Schools of Law in Islamic Religious History," *International Journal of Middle East Studies* 10, no. 1 (February 1979): 1.

[2] Joseph Schacht, *Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 10, 269. Also see Joseph Schacht, "The Schools of Law and Later Developments of Jurisprudence," in *Law in the Middle East*, ed. Majid Khadduri & Herbert J. Liebesny (Washington, D.C.: The Middle East Institute, 1955), 63, 67.

More than fifty years later, the theories forwarded by Schacht continue to be influential in studies focusing on the early evolution of Islamic law. However, they have been subject to a number of significant challenges and modifications. Makdisi himself built upon Schacht's chronology of regional and personal schools by proposing their further transformation into guild schools. Whereas a regional school was defined by a specific geographical location, such as Kufa or Madina, and the personal school by association to an eponymous figure, such as the Ḥanafī school to Abū Ḥanīfa (d. 150/767) or the Mālikī school to Mālik ibn Anas (d. 179/795), the legal school as a guild was a self-regulating and self-replicating professional association organized city by city under local chiefs. The constitutive elements of the *madhhab*-as-guild were social structures of initiation, transmission, and authorization where the study of law under a teacher led a jurist to be authorized (*ijāza*) to forward opinions according to the legal doctrine of a school.[3] Christopher Melchert, a student of Makdisi, built on the chronology proposed by his teacher and concluded that the birth of the legal school proper should be dated to the beginning of the 4th/10th century. It was during this period and not any time prior that the legal school fulfilled the structure and function of a guild under such figures as Abū al-Ḥasan al-Karkhī (d. 340/952) of the Ḥanafī school and Abū al-ʿAbbās ibn Surayj (d. 306/918) of the Shāfiʿī school. These jurists marked a turning point in the history of their respective legal schools for it was under them that a regular system of transmitting legal doctrine, which included the writing of commentaries, from identifiable teachers to students clearly emerged.[4]

[3] George Makdisi, *The Rise of Colleges: The Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981).
[4] Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* (Leiden: Brill, 1997). Despite his dating of the legal school, Melchert does acknowledge the existence of school consciousness during the 3rd/9th century.

The focus that Makdisi and Melchert placed on analysing the social dimensions of the legal school stemmed in part from a limitation identified in the approach taken by Schacht: he was mainly interested in legal doctrine and so largely confined his analysis to legal texts. This limitation was coupled with the fact that Schacht did not treat the period after al-Shāfiʿī with the same degree of detail that he did the period leading up to him. While Melchert and others addressed the social dimensions of the legal school during this neglected post-Shāfiʿī period, others took on the task of analysing its legal dimensions. Among them, Wael Hallaq has been recognized as one of the most influential and forceful in challenging the Schachtian paradigm and calling into question several scholarly assumptions regarding the historical processes involved in the evolution of Islamic law. Hallaq rejected the notion of regional schools,[5] redefined the personal school,[6] challenged the characterization of al-Shāfiʿī as the architect of legal theory,[7] and argued that the gates of independent legal reasoning were never closed.[8] All this constituted part of his most significant contribution to the study of early Islamic law, namely tracing the rise of the legal school as a doctrinal entity.

Like Melchert, Hallaq identifies the 4th/10th century as the period wherein the legal school proper came into existence. His analysis, however, did not focus on the *madhhab*-as-guild but as a doctrinal entity emerging out of a period of 'individual juristic doctrines' in the form of informal scholarly circles of jurists and then personal schools.[9] In contrast to the personal school,

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[5] Wael Hallaq, "From Regional to Personal Schools of Law?" *Islamic Law and Society* 8, no. 1 (2001): 1-21.
[6] Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2004), 6.
[7] Wael Hallaq, "Was al-Shāfiʿī the Master Architect of Islamic Jurisprudence?" *International Journal of Middle East Studies* 25, no. 3 (November 1993): 587-605.
[8] Wael Hallaq, "Was the Gate of *Ijtihad* Closed?" *International Journal of Middle East Studies* 16, no. 1 (March 1984): 3-41.
[9] In his review of Melchert's work, Hallaq finds his thesis 'problematic' due to its confusing the causes underlying the rise of the legal school with its effects. Hallaq asserts that Melchert identified the regular transmission of doctrine from identifiable teachers to students as the cause behind the formation of the legal schools when in his view it should rightly be viewed as 'a result, a by-product, a manifestation'. As such, Hallaq states that Melchert's thesis does not provide a suitable explanation as to why the legal schools emerged. See Wael Hallaq, review of *The*

the legal school as a doctrinal entity possessed several features, which included (i) a cumulative body of positive law comprising the legal opinions of various jurists as opposed to a single jurist, (ii) a distinctive legal theory and principles that distinguished the school from other legal schools, (iii) substantive boundaries in the form of positive law and methodological principles that clearly identified the outer limits of the school as a collective entity, which in turn necessitated doctrinal loyalty, and (iv) an axis of authority that revolved around the figure of the *mujtahid* or the school eponym. While some of these features had begun to emerge in the 2nd/8th century, it was not until the middle of the 4th/10th century that others, such as legal theory, crystallized to a degree that allowed for the doctrinal school to be constructed as the last of the fundamental constitutive elements of Islamic law.

According to Hallaq, each of these features came together to form a complex structure of authority revolving around an eponym who was made an axis of authority around whom a cumulative positive law and an entire methodology was fashioned. Coupled with a drastic narrowing down of *ijtihād*ic possibilities from the 3rd/9th onwards, a gradual shift occurred from a legal discourse originally grounded in almost unfettered *ijtihād* to one anchored in *taqlīd* of an eponymous figure, and, more importantly, the substantive and methodological doctrine attributed to him. Hallaq provides a wealth of detail regarding how later jurists continued to replicate, discover, defend, refine, and elaborate the law in their capacity as jurist-consults (*muftī*) and author-jurists. However, they increasingly engaged in these activities with a view towards the established methodology of their school. It was precisely the combination of these elements that made a legal school a doctrinal entity: the loyal congregation of individual jurists around an

Formation of the Sunni Schools of Law, 9th-10th Centuries C.E. by Christopher Melchert, *International Journal of Middle East Studies* 31, no. 2 (May 1999): 278- 280.

identifiable and authoritative legal doctrine ascribed to an eponym credited with formulating it.[10] Absent this structure, the legal system could not have continued to exist nor evolve in the manner that it did.[11]

The studies of Schacht, Melchert, and Hallaq provide broad chronologies of the legal school that attempt to map out the main phases of its evolution. Though such chronologies are needed and often accurately capture the general progression of Islamic social and legal history, their wide-ranging scope carries the risk of generalizing specific conclusions and overlooking subtle shifts and developments that occurred during intervening periods. This is especially true when dealing with a phenomenon as complex and multi-faceted as the legal school during the 3rd/9th century, which was a vital transitionary period between the earlier ancient schools and the establishment of the classical schools. Consequently, our knowledge of developments during this period either remain of a generalized nature, such as the entirety of the 3rd/9th century being described as one wherein the legal school operated as a personal juristic entity, or speculative at best, such as the statement of Hallaq regarding the shift from pure casuistic modes of legal exposition to generalization that '*perhaps* [emphasis mine] some rudimentary beginnings were made by the fourth/tenth century' and 'it seems safe to *assume* [emphasis mine] that once the schools had taken form by the middle of the fourth/tenth century, generalization as a

[10] Hallaq's most illuminating contribution to this subject came in his work *Authority, Continuity, and Change* wherein he describes the processes involved in creating and constructing this structure of authority that revolved around an eponym. Viewed by later jurists as an absolute *mujtahid* possessing all-encompassing and wholly creative knowledge, the image of the eponym was constructed by disconnecting his legal activity from the contributions of past jurists, attributing to him legal doctrine derived by subsequent generations of jurists, and depicting his *ijtihād*ic activity as entailing a direct confrontation with the primary texts through a systematic, comprehensive, and complex methodology. Such an image of the absolute *mujtahid* was made possible not only due to the articulation of legal theory following the rationalist-traditionalist synthesis of the 3rd/9th century, but it was advanced by the emergence of a media of authority construction, which included both commentary literature and educational institutes. According to Hallaq, each of these appeared around the turn of the 4th/10th century. See Wael Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), ix-xiv, 85, 166-235. Also see Hallaq, *Origins*, 157-64.

[11] Hallaq, *Origins*, 1-8. 155-7.

hermeneutical activity became a viable pursuit.'[12] This is in addition to many aspects of the 3rd/9th century remaining entirely unknown, such as the careers of several important jurists, their texts, and the manner in which these inform our understanding of Islamic law in general and the legal school in specific. Without a more narrow and painstaking examination of the various facets of the formative period, our conclusions will not only remain general and speculative but the particular character of the legal school as a social and legal entity will not be properly understood in the broader context of the evolution of Islamic law.

Filling the gaps left by these general surveys, there has been an increasing trend towards a narrower analysis of the legal school in the formative period. This is seen in scholarly efforts at mapping out the histories of individual legal schools and micro-analysing specific figures and texts that shed light on its evolution. Ahmed El Shamsy in his study on the birth of classical Islamic law focuses primarily on the figure of al-Shāfiʿī and his immediate students. His analysis of the texts and discourse of the former led him to classify the project of al-Shāfiʿī as one of canonization where prophetic traditions (*ḥadīth*) were elevated to the status of a revealed source alongside the Qur'an. This gradually delegitimized the normativity of regional traditions, and jurists eventually engaged the law as 'a community of interpretation that defined itself in terms of shared hermeneutic stances vis à vis the canon of sacred sources.'[13] El Shamsy also observed that Shāfiʿī jurists during the 3rd/9th century encompassed a distinct group identity, a common literature, and a shared intellectual discourse meriting the appellation *madhhab*.[14] Of course, the figure of al-Shāfiʿī and his texts have been of interest to scholars for some time, but our understanding of Shāfiʿīsm has been greatly enhanced by the availability and analysis of texts

[12] Hallaq, *Authority*, 115, 118.
[13] Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013).
[14] Ibid., 169.

authored by his students, such as the *mukhtaṣar*s of Abū Yaʿqūb al-Buwayṭī (d. 231/846) and Ismāʿīl ibn Yaḥyā al-Muzanī (d. 264/877).[15] These secondary school texts reveal more clearly the processes involved in the transformation of the legal school during the 3rd/9th century.

Like the Shāfiʿī school, the Ḥanbalī school has also been the subject of dedicated studies. Nimrod Hurvitz analysed the personal, scholarly, and political life of Aḥmad ibn Ḥanbal (d. 241/855) in order to explain the formation of Ḥanbalīsm beyond considerations of legal codification. For Hurvitz, the evolution of the Ḥanbalī school from a circle to a legal school is best explained in 'the realm of the politics of theology', which is in contrast to both Melchert and Hallaq who defined the process of the school's formation in textual/doctrinal terms.[16] Meanwhile, Saud Al Sarhan provided a detailed survey of the various collectors of Aḥmad's legal rulings (*masā'il*) and addressed the formation of the Ḥanbalī school by investigating the contributions of prominent Ḥanbalī jurists after Aḥmad, such as al-Khallāl (d. 311/923) and Ibn Ḥāmid (d. 403/1012), and their role in articulating a Ḥanbalī legal doctrine.[17] One important

[15] Jonathan Brockopp studied the *mukhtaṣar* of al-Muzanī to shed light on the way law was taught and studied during the 3rd/9th century, the manner in which scholars interacted with one another, and the emergence of school consciousness. El Shamsy himself produced an article specifically looking at the *mukhtaṣar* of al-Buwayṭī and its contribution to the formation of the Shāfiʿī school. See Jonathan E. Brockopp, "Early Islamic Jurisprudence in Egypt: Two Scholars and Their *Mukhtaṣar*s," *International Journal of Middle East Studies* 30, no. 2 (May 1998): 167-182; Ahmed El Shamsy, "The First Shāfiʿī: The Traditionalist Legal Thought of Abū Yaʿqūb al-Buwayṭī (d. 231/846)," *Islamic Law and Society* 14, no. 3 (2007): 301-41.

[16] Nimrod Hurvitz, *The Formation of Ḥanbalism: Piety into Power*, Culture and Civilization in the Middle East (London: Routledge, 2002).

[17] Saud Al Sarhan, "The Responsa of Aḥmad ibn Ḥanbal and the Formation of Ḥanbalism," *Islamic Law and Society* 22, no. 1-2 (2015): 1-44. Al Sarhan identifies three phases in the school's evolution: the recording of Aḥmad's doctrine by his students in texts of *masā'il*; the assembling and evaluation of these texts by al-Khallāl; and the articulation of principles underlying the doctrine of Aḥmad by Ibn Ḥāmid. In this manner, he challenges some of the assertions forwarded by Hurvitz, such as the latter's claim that al-Khallāl was not particularly consequential to the emergence of the early Ḥanbalī school. The contributions of al-Khallāl were also discussed in Ziauddin Ahmad, "Abū Bakr al-Khallāl – The Compiler of the Teachings of Imām Aḥmad Ibn Ḥanbal," *Islamic Studies* 9, no. 3 (September 1970): 245-54. For another study looking at the *masā'il* of Aḥmad see Susan A. Spectorsky, *Chapters on marriage and divorce: responses of Ibn Ḥanbal and Ibn Rāhwayh* (Austin: University of Texas Press, 1993).

figure in this context was Abū al-Qāsim al-Khiraqī (d. 334/945-6) who authored the earliest *mukhtaṣar* in the Ḥanbalī school, which has been studied by both Hurvitz and Khalid Anas.[18]

The Mālikī school has perhaps received the most attention from among the various legal schools. Scholars have studied the texts and discourse of Mālik extensively.[19] The legal literature of the Mālikī school from the 3rd/9th century is also abundant relative to other legal schools, and a number of texts from the period have been published and analysed over the decades, which include the *Mukhtaṣar* of ʿAbd Allāh ibn ʿAbd al-Ḥakam (d. 214/829),[20] the *Kitāb al-Wāḍiḥa* of ʿAbd al-Malik ibn Ḥabīb (d. 238/853),[21] the *Mudawwana* of Saḥnūn ibn Saʿīd (d. 240/854-5),[22] and the *Radd* on al-Shāfiʿī of Ibn al-Labbād (d. 333/944).[23] The spread of the school to other regions, such as the Iberian Peninsula, has also been documented. Maribel

[18] Nimrod Hurvitz, "The *Mukhtaṣar* of al-Khiraqī and its Place in the Formation of Ḥanbalī Legal Doctrine," in *Law, Custom, and Statute in the Muslim World*, Studies in Islamic Law and Society 28, ed. Ron Shaham (Leiden: Brill, 2007), 1-16; Khalid Anas, "The *Mukhtaṣar* of al-Khiraqī: A Tenth-Century Work of Islamic Jurisprudence" (PhD diss., New York University, 1992).

[19] Miklos Muranyi, *Materialien zur mālikitischen Rechtsliteratur* (Wiesbaden: Harrassowitz, 1984); Abdel-Magid Turki, "Le Muwaṭṭa' de Mâlik, ouvrage de fiqh, entre le ḥadîth et le ra'y, ou Comment aborder l'étude du mâlikisme kairouanais au IV/Xe siècle," *Studia Islamica* 86 (1997): 5-35; 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); Yasin Dutton, *The Origins of Islamic Law: the Qur'an, the Muwaṭṭa' and Madinan ʿAmal* (Richmond: Curzon, 1999). Of these, it is Umar F. Abd-Allah who provides the most comprehensive analysis of Mālik's legal reasoning. Dutton limits his analysis to the role of the Qur'an in Mālik's legal reasoning without providing a thorough account of his legal methods as Abd-Allah does. Meanwhile, Muranyi's work primarily concerns itself with the transmission of Mālikī doctrine after the death of Mālik through a careful analysis of legal manuscripts produced in Egypt, the Maghrib, and Andalus.

[20] Jonathan Brockopp, *Early Mālikī law: Ibn ʿAbd al-Ḥakam and his major compendium of jurisprudence*, Studies in Islamic Law and Society 14 (Leiden: Brill, 2000).

[21] Beatrix Ossendorf-Conrad, *Das "K. al-Wāḍiḥa" des ʿAbd al-Malik b. Ḥabīb: Edition und Kommentar zu Ms. Qarawiyyīn 809/40 (Abwāb al-Ṭahāra)*, Beiruter Texte und Studien (Beirut: In Kommission bei Franz Steiner Verlag Stuttgart, 1994).

[22] Umar F. Abd-Allah, *Mālik and Medina*, 63-81 and Part II; Miklos Muranyi, *Die Rechtsbücher des Qairawāners Saḥnūn b. Saʿīd: Entstehungsgeschichte und Werküberlieferung* (Stuttgart: Kommissionsverlag F. Steiner, 1999). In this study, Muranyi examines two manuscript collections in order to describe the transmission of early Mālikī doctrine. His work provides a survey of Saḥnūn's extant texts, an outline of the transmission of *Mudawwana* and *Mukhtaliṭa* in the 3rd/9th and 4th/10th centuries in North Africa and Spain, and finally descriptions of commentaries authored on the texts of Saḥnūn during the 4th/10th and 5th/11th centuries.

[23] Sherman Jackson, "Setting the Record Straight: Ibn al-Labbād's Refutation of al-Shāfiʿī," *Journal of Islamic Studies* 11, no. 2 (2000): 121-46.

Fierro, for example, shows that it was only in the 4th/10th century when Mālik jurists became firmly established in the region.[24]

Finally, there is Amr Osman's study of the Ẓāhirī school where the author examines the beginnings of Ẓāhirīsm through an analysis of the life and doctrines of Dāwūd al-Ẓāhirī (d. 270/884), the spread of the school in subsequent centuries and the role of Ibn Ḥazm in its history, and a critical review of the school in light of the broader legal and theological currents within which it arose.[25]

II. The Early Ḥanafī School: Previous Studies

The Ḥanafī school and its development during the formative period has also been the subject of several studies. Both Schacht and Melchert discuss the school, its origins, and evolution. The former largely restricts himself to the legal thought and activity of the Ḥanafī masters, namely Abū Ḥanīfa, Abū Yūsuf (d. 182/798), and Muḥammad ibn al-Ḥasan al-Shaybānī (d. 189/805). In contrast, Melchert extends his analysis of the school up to the middle of the 4th/10th century. His primary concern, though, is not with the legal dimensions of the school buts its social evolution and emergence as a guild as detailed earlier. Despite being an expansive study, the information provided for the 3rd/9th century is meagre, and it does not sufficiently capture the various developments during the period or the contributions of those involved in them.

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[24] Maribel Fierro, "Proto-Malikis, Malikis and reformed Malikis in al-Andalus," in *The Islamic School of Law: Evolution, Devolution, and Progress*, ed. P. J. Bearman, Rudolph Peters, and Frank E. Vogel (Cambridge, Mass.: Islamic Legal Studies Program, Harvard Law School, 2005), 37-76.

[25] Amr Osman, *The Ẓāhirī Madhhab (3rd/9th-10th/16th century): A Textualist Theory of Islamic law*, Studies in Islamic Law and Society 38 (Leiden: Brill, 2014). There are several other studies looking at legal developments during the 3rd/9th century, such as Devin Stewart's reconstruction of early legal theory texts, Vishanoff's analysis of legal hermeneutics, and various articles authored by Melchert, Lowry, and others. See Devin Stewart, "Muḥammad ibn Dāwūd al-Ẓahirī's Manual of Jurisprudence: *al-Wuṣūl ilā maʿrifat al-uṣūl*," in *Studies in Islamic Legal Theory*, ed. Bernard G. Weiss (Leiden: Brill, 2002), 99-160; Devin Stewart, "Muḥammad b. Jarīr al-Tabarī's *al-Bayān ʿan uṣūl al-aḥkām* and the Genre of *Uṣūl al-Fiqh* in Ninth-Century Baghdad," in *Abbasid Studies: Orientalia Lovaniensia Analecta*, ed. James Montgomery (Leuven: Peeters, 2004), 321-49; David Vishanoff, *The Formation of Islamic Hermeneutics How Sunni Legal Theorists Imagined a Revealed Law* (New Haven, Conn.: American Oriental Society, 2011).

One study to exclusively examine the early Ḥanafī school comes from Nurit Tsafrir who traces the early spread of the school to various cities from the middle of the 2nd/9th century onwards with a focus on its non-legal spheres.[26] Being an analysis of the social dimensions of the Ḥanafī school, Tsafrir, as is the case with Melchert, relies mainly on historical and biographical literature for her conclusions. The legal dimensions of the school, and its legal texts, are neither consulted nor analysed in any meaningful way. On the other hand, Peter C. Hennigan in his study on the formation of endowment law (*waqf*) does examine two important 3rd/9th century Ḥanafī legal texts, namely those of Hilāl ibn Yaḥyā (d. 245/859) and Abū Bakr al-Khaṣṣāf (d. 261/874), with the aim of illuminating 'the nature of third-century legal culture, the role of treatises within that culture, the establishment of legal legitimacy, the development of the Islamic inheritance system, literary styles and conventions within early Islamic legal discourse, and the relationship between law and society as expressed through the law of *waqf*.'[27] Though Hennigan provides several useful insights regarding the classical institution of endowments, as well as the features of formative period legal discourse, his analysis of the latter is too brief, and he does not situate developments during this period within a broader chronological scheme of *madhhab* evolution, as is the case with Schacht, Hallaq, and Melchert.

Two more studies that deserve mention are Murteza Bedir's article on ʿĪsā b. Abān (d. 221/835-6)[28] and early Ḥanafī responses to al-Shāfiʿī and Carolyn Brunelle's recent dissertation on the legal theory and hermeneutics of Abū Jaʿfar al-Ṭaḥāwī (d. 321/933). Brunelle in specific does situate al-Ṭaḥāwī in the 'late formative period' and briefly mentions the manner in which

[26] Nurit Tsafrir, *The History of an Islamic School of Law: The Early Spread of Ḥanafīsm* (Cambridge, Mass: Islamic Legal Studies Program, Harvard Law School, 2004).
[27] Peter C. Hennigan, *The Birth of a Legal Institution: The Formation of the Waqf in Third Century A.H. Ḥanafī Legal Discourse* 18 (Leiden: Brill, 2004), xx.
[28] Murteza Bedir, "An Early Response to Shāfiʿī: ʿĪsā b. Abān on the Prophetic Report (*khabar*)," *Islamic Law and Society* 9, no. 3 (2002): 285-311.

his career exemplified many of the developments identified with the maturation of the legal school in the 4th/10th century.[29] Her main focus, however, is to survey al-Ṭaḥāwī's legal theory and thought across three of his major texts as opposed to providing a more general narrative of the *madhhab*.

III. Objectives & Structure

In light of the above, the objective of the current study is to fill a lacuna in our knowledge of early Islamic law by providing a detailed study of the Ḥanafī school from the period after the death of al-Shaybānī, i.e. 189/805, up to and including the first few decades of the 4th/10th century. I have chosen this particular stretch of time for three main reasons. Firstly, as the previous sections make clear, it is this period and no other wherein the legal school gradually transformed from a regional and/or personal school into a doctrinal entity epistemically and a guild socially. Some of the most significant developments in notions of authority, methods of expositing, defending, and deriving legal doctrine, systems for training and producing jurists, and understandings of social and legal identity, occurred during the 3rd/9th century. These developments played a critical role in consolidating the legal school as an authoritative and professional entity, and radically transformed the way in which law was subsequently taught, studied, understood, and practiced.

Despite its importance, and turning to the second reason, this particular stretch of time remains largely unexplored especially as it relates to the Ḥanafī school. Though the early Ḥanafī school has received its share of studies as detailed in the previous section, these studies have their limitations with some favouring an analysis of the social over the legal and others restricting their analysis of the legal to particular texts or figures that may not capture the breadth

[29] Carolyn Anne Brunelle, "From Text to Law: Islamic Legal Theory and the Practical Hermeneutics of Abū Ja 'far Aḥmad al-Taḥāwī (d. 321/933)" (PhD diss. University of Pennsylvania, 2016), 25-37.

of activity during this period. Indeed, we know very little about the legal discourse of major 3rd/9th century Ḥanafī jurists, the social organization of their legal activity, and the many stages involved in the transformation of the school from a personal entity into a doctrinal school and guild. Finally, being a study of the legal school, the third reason for choosing this time period is because one cannot really begin to meaningfully speak of a Ḥanafī school until after the time of the Ḥanafī masters for it was their collective authority that constituted the distinguishing feature of the school as a mature entity. Thus, this study takes at its starting point the date of passing of the last of them, namely al-Shaybānī.

The current study will address several important questions relating to the evolution of the Ḥanafī school: How and when did the features identified with the doctrinal and guild school emerge? Is it accurate to describe the Ḥanafī school as a personal juristic entity during the 3rd/9th century and characterize this period as mainly one permeated by individual legal doctrines? Can we meaningfully recognize a legal school prior to the 4th/10th century? What was the nature of school consciousness during this period? How does this inform our understanding of early Ḥanafīsm as a social and legal phenomenon? To address these, this study will utilize the chronology and definitions proposed by Hallaq and Melchert for the legal school. It will then present the evolution of the Ḥanafī school as a complex and gradual affair where several features identified with the classical school had begun to clearly emerge by the middle of the 3rd/9th century, which raises questions regarding the description of the Ḥanafī school during this period as a personal juristic entity. Forwarding an alternative description, this thesis draws attention to a phase of *madhhab* evolution that occupies a middle ground between the *madhhab* as a personal school and its more classical and consolidated form. This middle period is described as one wherein a distinct and identifiable Ḥanafī legal community emerged out of a prior Ḥanafī circle,

and it is visible in several ways: in early juristic conceptions of authority, social organization of legal activity, the legal discourse of jurists, and an engagement with *fiqh* through a uniquely Ḥanafī legal paradigm.

In undertaking the above, this thesis will be divided into two parts: the first part will examine the social dimensions of the Ḥanafī school with a particular focus on Iraq; the second, its legal dimensions, which will extend beyond the Iraqi Ḥanafī tradition. Beginning with the former, Chapter One will discuss the early spread of Ḥanafīsm beyond Kufa and the transmission of the Ḥanafī masters' legal doctrine to various regions in the Islamic world. It will then introduce a major thesis of this study, namely that it is more accurate to identify the first half of the 3rd/9th century as a period wherein a distinct and identifiable Ḥanafī legal community had emerged. In this context, a 'legal community' is not to be understood as synonymous to a 'school' in the sense of a doctrinal or guild-like entity. Rather, the phrase identifies a middle-stage between the personal school and the classical school where Ḥanafīsm began to assume many of the essential features of the classical school, which moved it beyond a personal stage (as defined by scholars), though it did not assume all the essential features of the classical school. The existence of this legal community and its social features will then be evidenced and illustrated through three main investigations: firstly, through an analysis of internal school sources that reveal the creation of a collective axis of authority centred around the Ḥanafī masters that transcended personal boundaries and individual-juristic doctrines to unite a group of jurists as members of a legal tradition; secondly, the recognition of this Ḥanafī legal community in external school sources; and finally, the legal education and activity of jurists during this period being Ḥanafī in its character.

The last of the aforementioned investigations is discussed over Chapter Two and Chapter Three. Therefore, it constitutes a significant portion of the first part of this thesis. In addressing it, the methodology utilized by Melchert in dating the guild school, namely determining when a regular process of transmitting doctrine between identifiable teachers and students was first established, will be adopted. However, this thesis will considerably expand on Melchert's study by presenting individual biographical sketches of major Iraqi jurists active during the 3rd/9th century. These sketches will aim to shed light on the social organization of legal activity during the period in question by mapping out the regional and cross-regional networks of individual jurists, which will include identifying their teachers, students, and relevant contemporary associations. Through a diachronic analysis of these biographical sketches, it will be argued that the transformation of the legal school into a guild was more gradual than previously described, and several developments viewed as hallmarks of the classical school were present during the second half of the 3rd/9th century. To complete the picture, these biographical sketches will include an overview of the main legal activity of jurists and the manner in which it displays a distinct Ḥanafī community in operation.

Part Two of this study will turn its attention to the legal dimensions of the Ḥanafī school. In keeping with the theme of a distinct Ḥanafī legal community emerging during the first half of the 3rd/9th century, Chapter Four will discuss the legal discourse of early Ḥanafī jurists and the paradigm they utilized, which may be accurately described as a 'Ḥanafī' paradigm due to its being fundamentally and explicitly grounded in the authority of the Ḥanafī masters. Indeed, Ḥanafīsm at its core was a particular engagement with *fiqh* grounded in the authority, rulings, and methods of the masters, which included a *ra'y*-based discourse, analogy (*qiyās*), and juridical preference (*istiḥsān*) as central modes of reasoning. This particular engagement took on

various forms: the simple enumeration of the masters' rulings, the defence of these rulings and the methods that underpinned them, the augmentation of the masters' doctrine, subjecting this doctrine to authorizing discourse, and generalizing activity. It was this particular engagement with the tradition of the masters, a preoccupation with interpreting and advancing their legal doctrine, and the paradigm that it was based on that set Ḥanafīsm apart as a distinct legal tradition. Those who partook in it became members of a legal community whose efforts were broadly congruent with one another and set the community apart as a distinct legal entity, which resulted in the increasing consolidation of the school's social identity.

Chapter Five will continue to describe the components of this paradigm and the features of early Ḥanafī legal discourse by focusing on two key themes: firstly, the implicit reliance early Ḥanafī jurists disclose on the masters in their texts and the manner in which these jurists utilized the principles and rulings set down by the masters to engage the law, which raises important questions regarding our understanding of early notions of doctrinal loyalty and the scope of school consciousness; secondly, a mode of legal reasoning commonly associated with the Ḥanafī school, namely *istiḥsān*, or juridical preference. Analysing the concept of *istiḥsān*, this thesis offers a corrective to its wide spread characterization as an appeal to the spirit of the law or a desire for laxity that lacked a basis in formal reasoning by showing that it was actually a highly technical mode of reasoning.

Chapter Six will constitute the final chapter of this thesis. It will address two more components of early *fiqh* engagement with the tradition of the Ḥanafī masters: authorizing discourse and generalizing activity. The first part will discuss the theme of authority in the legal school on two broad levels: firstly, authority in the context of the legal school as a cumulative and accretive tradition whose doctrine comprised both authoritative and less authoritative

opinions; secondly, authority as the lines demarcating a school as a legal entity from other schools. The former level will be discussed through an analysis of early *tarjīḥ* practice (rule-determination) and the manner in which it evolved over the course of the 3rd/9th century. I will argue that *tarjīḥ* during this period was different in its aim and function than in the classical period, though it was integral to the broader project of erecting a stable and consistent legal system. From the middle of the 3rd/9th century, *tarjīḥ* activity began to increasingly resemble its classical form and important concepts, such as the *mashhūr* opinion, receive their first attestation during this period. The concept of *mashhūr* would pave the way for the identification of an authoritative body of legal literature in the school. Complete loyalty to school doctrine, however, would not arise until the middle of the 4th/10th century.

The final part of this chapter will turn its attention to generalizing activity where jurists elaborated and studied the legal rulings of the masters as applications of predetermined principles, which was a more sophisticated approach to legal exposition than a simple enumerative method. After defining the features and function of generalizing activity in the classical school and its connection to authorizing discourse, this study will identify the middle of the 4th/10th century as the period wherein generalization as a mode of legal exposition became a regular feature of legal discourse. This will be done through an examination of the earliest extant Ḥanafī commentaries. The remainder of the chapter will investigate the existence (or non-existence) of generalization during the 3rd/9th century and trace its evolution, suggesting that it likely became a viable pursuit during the second half of this period.

Through these various lines of investigation, I hope to provide a better and more detailed understanding of the early Ḥanafī school and its evolution into a classical school.

Part One
The Social Dimensions of the Ḥanafī School

Chapter One

I. The Ḥanafī School Beyond Kufa

The conventional scholarly view has long identified a strong association between the Ḥanafī school and Kufa. Just as the Mālikī school arose out of a regional school in Madina, the Ḥanafī school is said to have evolved out of a regional school in Kufa. Certainly, Ḥanafī legal doctrine is indebted to the broader Kufan tradition, which is no surprise since Abū Ḥanīfa spent much of his life in the city and was influenced in his legal thought by its leading jurists, such as Ḥammād ibn Abī Sulaymān (d. 120/737-8) and Ibrāhīm al-Nakhaʿī (d. 96/714).[30] It was also in Kufa where the most prominent students of Abū Ḥanīfa received their legal training, such as Zufar ibn al-Hudhayl (d. 158/774-5), Asad ibn ʿAmr al-Bajalī (d. 190/805-6), and Abū Yūsuf (d. 182/798). Indeed, the historical literature describes a vibrant circle of students centred around Abū Ḥanīfa with some being viewed as strongly associated with his circle and others only nominally or questionably so.[31] In her study of the spread of the school, Nurit Tsafrir concludes that the Ḥanafīs were the sole surviving legal tradition in the city after having achieved dominance over other local circles, such as those of Sufyān al-Thawrī (d. 161/778) and al-Ḥasan ibn Ṣāliḥ (d. 167/783). In other words, Ḥanafīsm was not a phenomenon external to Kufa, and, therefore, its spread in the city was not comparable to its spread elsewhere, such as Baghdad, Basra, or Balkh.

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[30] The earliest legal texts of the school demonstrate this: in *al-Aṣl*, for example, Ibrāhīm and Ḥammād are cited 290 and 128 times respectively, which is more than virtually every other jurist. Similarly, in a sample of the first fifty traditions in *Kitāb al-Āthār* attributed to al-Shaybānī, Abū Ḥanīfa narrates traditions and opinions from Ḥammād -- Ibrāhīm or a chain containing one of them thirty-six times. See Muḥammad ibn al-Ḥasan al-Shaybānī, *al-Aṣl*, ed. Mehmet Boynūkālin, 13 vols. (Beirut: Dār Ibn Ḥazm, 2012), 12:222-3, 229-30; Muḥammad ibn al-Ḥasan al-Shaybānī, *Kitāb al-āthār*, ed. Khālid al-ʿAwwād (Beirut: Dār al-Nawādir, 2008), 43-83. For a discussion of the ascription of the latter to al-Shaybānī see Behnam Sadeghi, *The Logic of Law Making in Islam: Women and Prayer in the Legal Tradition* (Cambridge: Cambridge University Press, 2013), 177-200.

[31] Nurit Tsafrir differentiates between 'real Ḥanafīs' and 'semi-Ḥanafīs'. The former were individuals known to have had Ḥanafī teachers and Ḥanafī students, or to have authored Ḥanafī legal works and subscribed to Ḥanafī legal doctrine. In contrast, 'semi- Ḥanafīs' were those who had an entry in Ḥanafī biographical dictionaries but were otherwise recognized as traditionists or individuals hostile towards Ḥanafīsm in non-Ḥanafī sources. See Tsafrir, *History*, 2.

In these latter cities, among others, Ḥanafīsm was an incoming tradition that had to compete with other already established local traditions. Therefore, the phenomenon of Ḥanafīsm had its roots in Kufa from where it gradually branched out and established itself in other localities.

The way Tsafrir described the spread of Ḥanafīsm in Kufa has been challenged by Christopher Melchert who questioned both the characterization of the school as Kufan and whether it truly established itself in the city differently from the way it did in others.[32] Melchert argued that the earliest historical sources are oddly silent regarding a continuing Ḥanafī tradition in Kufa following Abū Ḥanīfa's move to Baghdad. Ibn Saʿd (d. 230/845) in his biographical dictionary, for example, identifies eight individuals with Abū Ḥanīfa but none are identified in the section on Kufa.[33] Similarly, Ibn Shujāʿ al-Thaljī (d. 266/880), a prominent Ḥanafī jurist from Baghdad, in his list of the major companions of Abū Ḥanīfa also identifies eight figures: Abū Yūsuf, Asad ibn ʿAmr, and ʿĀfiya ibn Yazīd (d. after 170/786) all served as judges in Baghdad,[34] Zufar settled in Basra and passed away there shortly after the death of Abū Ḥanīfa, ʿAlī ibn Mushir (d. 189/804-5) seems only tenuously linked to Abū Ḥanīfa,[35] which also seems

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[32] Christopher Melchert, "The Early Ḥanafiyya and Kufa," *Journal of Abbasid Studies* 1, no. 1 (June 2014): 26. Also see an earlier article by the same author "How Ḥanafīsm Came to Originate in Kufa and Traditionalism in Medina," *Islamic Law & Society* 6, no. 3 (January 1999): 318-47.

[33] Melchert, "The Early Ḥanafiyya," 26.

[34] The same can be stated about ʿAlī ibn Ẓibyān (d. 192/807) and ʿAlī ibn Ḥarmala al-Taymī (d. before 200/815) both of whom belonged to the circle of Abū Ḥanīfa and are said to have been among a dozen or so individuals the latter deemed as qualified for a judgeship. They served as judges in Baghdad under Hārūn al-Rashīd. See Muḥammad ibn Saʿd, *Ṭabaqāt al-kabīr*, ed. ʿAlī Muḥammad ʿUmar, 9 vols. (Cairo: Maktabat al-Khānjī, 2001), 8:525; Muḥammad ibn Khalaf al-Wakīʿ, *Akhbār al-quḍāt*, 3 vols. (Beirut: ʿĀlam al-Kutub, n.d.), 3:286-9; al-Ḥusayn ibn ʿAlī al-Ṣaymarī, *Akhbār Abī Ḥanīfa wa-aṣḥābihi*, ed. Abū al-Wafā' al-Afghānī (Beirut: ʿAlam al-Kutub, 1985), 158; Abū Bakr Aḥmad ibn ʿAlī al-Khaṭīb al-Baghdādī, *Tārīkh Madīnat al-Salām wa-akhbār muḥaddithīhā wa-dhikr quṭṭānihā al-ʿulamā' min ghayr ahlihā wa-wāridīhā*, ed. Bashshār ʿAwwād Maʿrūf, 17 vols. (Beirut: Dār al-Gharb al-Islāmī, 2001), 13:359, 403; ʿAbd al-Qādir ibn Muḥammad ibn Abī al-Wafā', *al-Jawāhir al-muḍīya fī ṭabaqāt al-ḥanafīya*, ed. ʿAbd al-Fattāḥ Muḥammad Ḥulw, 4 vols. (Cairo: Maṭbaʿat ʿĪsā al-Bābī al-Ḥalabī, 1978), 2:147, 551, 573; ʿAlī al-Qārī, *al-Athmār al-janīya fī asmā' al-ḥanafīya*, ed. ʿAbd al-Muḥsin ʿAbd Allāh Aḥmad, 2 vols. (Iraq: Diwān al-Waqf al-Sunnī, Markaz al-Buḥūth wa-al-Dirāsāt al-Islāmīya, 2009), 2:508, 512.

[35] ʿAlī ibn Mushir was said to have conveyed the works of Abū Ḥanīfa to Sufyān al-Thawrī. Originally from Kufa, he was granted a judgeship in Mosul (and/or Armenia according some sources) but later returned to his home city upon losing his eyesight. I have found one reference to him in al-Ṭaḥāwī's *al-Shurūṭ al-ṣaghīr* where he is seen asking Abū Ḥanīfa regarding the validity of a blind person's purchase. He then asks Sufyān the same question and finally remarks that he prefers the view of the latter. In another source, the *Mukhtaṣar Ikhtilāf al-ʿulamā'* of al-

to be the case for Yaḥyā ibn Abī Zā'ida (d. 183/799),[36] and Dawūd al-Ṭā'ī (d. 165/781-2) was a dedicated ascetic who had renounced legal study.[37] Of all the names mentioned by Ibn Shujāʿ, it is only al-Qāsim ibn Maʿn (d. 175/791-2) who Melchert states may plausibly be identified as a Ḥanafī active in Kufa where he served as a judge for the last five or six years of his life.[38]

Jaṣṣāṣ, Ibn Mushir reports sitting in the circle of Abū Ḥanīfa when Ibn al-Mubārak enters upon them. He then proceeds to describe a discussion they had on a legal issue and the opinion Abū Ḥanīfa expressed. This same report is found in the biographical work of Ibn Abī al-ʿAwwām where other instances of his presence in the study circle of Abū Ḥanīfa are also related. Ibn Mushir was also known to have transmitted *ḥadīth* from Abū Ḥanīfa. In light of this, Ibn Mushir should be considered at the very least one of Tsafrir's 'semi-Ḥanafīs'. However, Melchert seems correct in stating that it is improbable that Ibn Mushir should have been a significant exponent of Ḥanafī legal doctrine in Kufa. Aside from his strong connection to Sufyān al-Thawrī, he had no Ḥanafī students and is largely absent in the legal literature of the school. See Ibn Saʿd, *al-Ṭabaqāt*, 8:510; Yaḥyā ibn Maʿīn, *Yaḥyā ibn Maʿīn wa-kitābuhu al-tārīkh dirāsa wa-tartīb wa-taḥqīq*, ed. Aḥmad Muḥammad Nūr Sayf, 4 vols. (Mecca: Jāmiʿat al-Malik ʿAbd al-ʿAzīz, 1979), 4:44-5; Abū al-Qāsim ibn Abī al-ʿAwwām, *Faḍā'il Abī Ḥanīfa wa-akhbāruhu wa-manāqibuhu*, ed. Laṭīf al-Raḥmān al-Qāsimī (Mecca: al-Maktabat al-Imdādīya, 2010), 105, 109, 151; Aḥmad ibn ʿAlī al-Jaṣṣāṣ, *Mukhtaṣar Ikhtilāf al-ʿulamā'*, ed. ʿAbd Allāh Nadhīr Aḥmad, 4 vols. (Beirut: Dār al-Bashā'ir, 2007), 4:355; al-Wakīʿ, *al-Akhbār*, 3:219-20; al-Ṣaymarī, *al-Akhbār*, 158; Ibn Abī al-Wafā', *al-Jawāhir*, 2:613; Abū Jaʿfar al-Ṭaḥāwī, *al-Shurūṭ al-ṣaghīr mudhayyalan bi-mā ʿuthira ʿalayhi min al-Shurūṭ al-kabīr*, ed. Ruhī Ūzjān (Baghdad: al-Jumhūrīya al-ʿIrāqīya, Ri'āsat Dīwān al-Awqāf, 1974), 78, 82.

[36] Yaḥyā ibn Abī Zā'ida was a Kufan traditionist who briefly served as a judge in al-Madāyin where he passed away. Ḥanafī biographical works describe him as a leading student of Abū Ḥanīfa who transcribed his legal opinions. Non-Ḥanafī sources do not generally mention any connection between Ibn Abī Zā'ida and Abū Ḥanīfa although they do present him as a well-regarded traditionist and jurist who was the first to author books in Kufa. I have been unable to find anything in the legal literature to suggest that he contributed to the Ḥanafī school in any significant way. However, Ḥanafī biographical works do mention a few instances of his consulting Abū Ḥanīfa on certain legal issues and adopting his view. See Ibn Saʿd, *al-Ṭabaqāt*, 8:516; Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 344-6; al-Ṣaymarī, *al-Akhbār*, 156-7; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 16:172; Ibn Abī al-Wafā', *al-Jawāhir*, 3:585-6; al-Qārī, *al-Athmār*, 2:700.

[37] Ibn al-Ka's reports Ismāʿīl ibn Ḥammād adding two additional names in his list of the ten major companions of Abū Ḥanīfa: the brothers Ḥibbān (d. 171/787-8) and al-Mindal (or al-Mandal, d. 168/785). Both remained in Kufa until their deaths. However, they seem to have left no students and are virtually non-existent in the legal literature of the school. The historical sources are also silent regarding their connection to Abū Ḥanīfa with the exception of Ḥanafī biographical works that present them as transmitting information regarding the life of Abū Ḥanīfa. In other words, there is little evidence to suggest that they were important exponents of Ḥanafī legal doctrine in Kufa. See Ibn Saʿd, *al-Ṭabaqāt*, 8:502-3; Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 121, 130, 168; al-Ṣaymarī, *al-Akhbār*, 158-9; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 9:166, 15:331, 16:363; Ibn Abī al-Wafā', *al-Jawāhir*, 2:32-3, 3:501-3; al-Qārī, *al-Athmār*, 1:390, 2:664.

[38] Al-Qāsim ibn Maʿn appears three times in *al-Aṣl*. In one notable instance, the author of the text states after a legal ruling, 'This is the opinion of Zufar, al-Qāsim ibn Maʿn, and the generality of our companions.' Among 3rd/9th century scholars, those who explicitly associated him with the circle of Abū Ḥanīfa include Yaḥyā ibn Maʿīn (d. 233/848), al-Fasawī (d. 277/890), and Ibn Abī Khaythama (d. 279/892). Abū Zurʿa al-Rāzī (d. 264/878) in his *Tārīkh* relates a report about al-Qāsim attending the gatherings of Abū Ḥanīfa through Sufyān ibn ʿUyayna, while others relate his willingness to be identified as a *ghilmān* of Abū Ḥanīfa. Additionally, Ḥanafī jurists from the middle of the 3rd/9th century already recognized al-Qāsim as a prominent student of Abū Ḥanīfa as reported by al-Ṭaḥāwī from Aḥmad ibn Abī ʿImrān (d. 280/893). The latter referred to him as 'a leader in the science of Islamic law, one of the prominent companions of Abū Ḥanīfa from whom al-Shaybānī narrated.' These reports, among others, reasonably suggest that al-Qāsim was an important member of the Ḥanafī circle in Kufa. This conclusion is lent support by the number of instances al-Qāsim appears as a transmitter of *ḥadīth* from Abū Ḥanīfa, which are occasionally narrated from him by prominent Ḥanafī jurists, such as Ismāʿīl ibn Ḥammād. See al-Shaybānī, *al-Aṣl*,

Melchert also points to the fact that one of the earliest Ḥanafī biographical works, the *Akhbār Abī Ḥanīfa* of al-Ḥusayn ibn ʿAlī al-Ṣaymarī (d. 436/1045), glaringly omits Kufa when listing major jurists of the school following the immediate disciples of Abū Ḥanīfa up until the time of Abū al-Ḥasan al-Karkhī (d. 340/952).[39]

Of course, biographical literature may not always be the most ideal source for identifying the original or continued importance of a region to the spread and development of a school. Ibn Saʿd, for example, in his entry on Yūsuf ibn Khālid al-Samtī (d. 189/805) connects him to *ra'y* but not specifically to Abū Ḥanīfa despite his connections to the latter.[40] This is also the case for his entries on Zufar, Abū Muṭīʿ al-Balkhī (d. 197/812 or 199/814), and Nūḥ ibn Abī Maryam (d. 173/789), among others, all of whom were prominent students of Abū Ḥanīfa and transmitters of his legal doctrine.[41] Similarly, there is no mention of the Ḥanafī masters in the entry on Muʿallā

4:195; Ibn Maʿīn, *al-Tārīkh*, 2:483; Abū Bakr ibn Abī Khaythama, *Tārīkh Ibn Abī Khaythama*, ed. Ṣalāḥ Fatḥī Halal (Cairo: al-Fārūq al-Ḥadītha lil-Ṭibaʿa wa-al-Nashr, 2006), 950; Abū Zurʿa al-Rāzī ʿUbayd Allāh ibn ʿAbd al-Karīm, *Tārīkh Abī Zurʿa*, ed. Shukr Allāh al-Qujanī, 2 vols. (Damascus: Majmaʿ al-Lughāt al-ʿArabīya bi-Dimashq, 1980), 1:506; al-Wakīʿ, *al-Akhbār*, 3:175-82; Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 288; Ibn Abī al-Wafā', *al-Jawāhir*, 2:708-9; Muḥammad ibn Maḥmūd al-Khawārizmī, *Jāmiʿ masānīd al-imām al-aʿẓam wa-al-humām al-afkhām Abī Ḥanīfa al-Nuʿmān ibn Thābit al-Kūfī*, 2 vols. (Hyderabad: Maṭbaʿat Majlis Dā'irat al-Maʿārif al-ʿUthmānīya, 1914), 1:96, 125, 139, 160.

[39] Melchert, "The Early Ḥanafiyya and Kufa," 28-9.

[40] Melchert remarks how the earliest biographical literature makes no connection between al-Samtī and Abū Ḥanīfa and the link between the two figures is only affirmed in sources from the beginning of the 4th/10th century. Melchert also notes that al-Samtī is cited four times by al-Sarakhsī, which confirms that he contributed to the school although in a minor way. An earlier source to confirm this contribution and demonstrate that it was perhaps not as minor as Melchert suggests is al-Ṭaḥāwī's *al-Shurūṭ*. Here, al-Samtī appears ninety times (90x) with a strong link to the Basran Ḥanafī tradition. He is frequently cited alongside and in conversation with Hilāl al-Ra'y (d. 245/859) whom the historical sources identify as a student of al-Samtī. This is also seen in al-Ṭaḥāwī's *Ikhtilāf al-ʿulamā'* where the opinions of al-Samtī and his transmission of Abū Ḥanīfa's legal opinions are narrated through the solidly Basran Ḥanafī chain Ibn Abī ʿImrān – Bakr al-ʿAmmī – Hilāl – Yūsuf al-Samtī. Hilāl himself cites al-Samtī several times in his work on *awqāf*. Finally, the earliest biographical literature of the school relays information about the life of al-Samtī and his connection to Abū Ḥanīfa from jurists like Hilāl through the latter's leading Ḥanafī students in Basra, such as Bakkār ibn Qutayba (d. 270/883) and Abū Khāzim (d. 292/905). These reports present al-Samtī as part of Abū Ḥanīfa's circle along with Abū Yūsuf, Zufar, and others. All of this indicates that al-Samtī was likely an important early jurist of the school in Basra. See Hilāl ibn Yaḥyā, *Kitāb Aḥkām al-waqf* (Hyderabad: Maṭbaʿat Dā'irat al-Maʿārif al-ʿUthmānīya, 1355 A.H.), 7, 8, 35, 40, 66; al-Ṭaḥāwī, *al-Shurūṭ*, 7-10, 46-9, 54-6, 106; al-Jaṣṣāṣ, *al-Ikhtilāf*, 1:161, 163; Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 79, 347-9; Hennigan, *The Birth of a Legal Institution*, 47, 80; Nurit Tsafrir, "Abū Jaʿfar al-Ṭaḥāwī," in *Islamic Legal Thought: A Compendium of Muslim Jurists*, ed. David Powers, Susan Spectorsky and Oussama Arabi, Studies in Islamic Law and Society 36 (Leiden; Boston: Brill, 2013), 130.

[41] Ibn Saʿd, *al-Ṭabaqāt*, 9:375, 377.

ibn Manṣūr al-Rāzī (d. 211/826-7) despite his being a prolific transmitter of their opinions.[42] Abū Sulaymān al-Jūzajānī (d. after 200/815), a colleague of Muʿallā and the main transmitter of al-Shaybānī's legal works, does not receive an entry at all despite being resident in Baghdad.[43] Other sources, such as the works of Khalīfa ibn Khayyāṭ (d. 240/854), make little or no mention of legal schools or scholarly associations in their entries of individuals. Therefore, there is often an absence of information in the historical literature regarding scholarly associations that cannot be taken as a basis to affirm evidence of absence.

Nonetheless, the sources do generally confirm the argument that Kufa ceased to be a major centre of Ḥanafī legal activity shortly after the death of Abū Ḥanīfa. These sources also reveal that the notion of Ḥanafī dominance in the city is not as easily discernible as some have argued. Rather, several jurists identified as Ḥanafīs active in Kufa during the second half of the 2nd/8th century are not securely connected to the school, settled in other regions, and/or were not remembered as playing a prominent role in expositing or spreading the legal doctrine of the school. This is not to suggest that the tradition of Ḥanafīsm was entirely absent during this period in Kufa; it did maintain some presence as demonstrated by the appointment of Ḥanafī judges, such as al-Qāsim ibn Maʿn (r. 169-75/785-91), al-Ḥasan ibn Ziyād (d. 204/819-20; r. 194-98/809-13), and Ismāʿīl ibn Ḥammād (d. 212/827-8; r.? - 208/823).[44] However, this presence was

[42] Ibn Saʿd, *al-Ṭabaqāt*, 9:344; Muḥammad ibn Isḥāq ibn al-Nadīm, *al-Fihrist*, ed. Ayman Fu'ād Sayyid, 4 vols. (London: Mu'assasat al-Furqān lil-Turāth al-Islāmī, 2009), 2:20-1; al-Ṣaymarī, *al-Akhbār*, 161; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 15:246; Ibn Abī al-Wafā', *al-Jawāhir*, 3:492-3; al-Qārī, *al-Athmār*, 2:660-1.

[43] Abū Sulaymān was a student of Abū Yūsuf and al-Shaybānī. He was considered the major transmitter of the legal texts authored by al-Shaybānī that would later be recognized as the most authoritative corpus in the school, namely *ẓāhir al-riwāya*. In addition to this corpus, he also transmitted the texts of *nawādir* and *imlā'* from the masters. In the eastern centers of Ḥanafīsm, such as Balkh and Bukhara, the legal opinions of Abū Sulaymān were particularly valued as demonstrated in al-Samarqandī's *al-Nawāzil* where his views are regularly cited by leading jurists. See Ibn al-Nadīm, *al-Fihrist*, 2:27; al-Ṣaymarī, *al-Akhbār*, 161; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 15:26; Ibn Abī al-Wafā', *al-Jawāhir*, 3:518-19; Naṣr ibn Muḥammad al-Samarqandī, *al-Fatāwā min aqāwīl al-mashā'ikh fī al-aḥkām al-sharʿīya*, ed. Muḥammad Sālim Hāshim (Beirut: Dār al-Kutub al-ʿIlmīya, 2017), 12, 15, 64, 429, 469, 442, 531.

[44] Tsafrir, *History*, 30.

intermittent, non-consolidated, and failed to produce a lasting and dominant local tradition. Indeed, it is telling that many of those identified as the most important members of Abū Ḥanīfa's circle in Kufa left few or no students of their own that later sources remember, and those among them who did have identifiable students shown to be actual exponents of Ḥanafī legal doctrine (as opposed to, for example, mere transmitters of *ḥadīth*) were mainly active in cities other than Kufa, such as Basra and Baghdad.

To present one illustration of this, the following individuals are identified in the sources as students who either transmitted Ḥanafī legal doctrine from al-Ḥasan ibn Ziyād, a prominent jurist active in both Kufa and Baghdad, and/or were said to have studied jurisprudence under him:[45]

Ismāʿīl ibn Ḥammād	Baghdad	d. 212/827-8
Khalaf ibn Ayyūb	Balkh	d. 215/830-1
Muḥammad ibn Samāʿa	Baghdad	d. 233/847-8
Ibrāhīm ibn Yūsuf al-Balkhī	Balkh	d. 239/852
al-Ḥasan ibn Bishr	Nishapur	d. 244/858-9
Muḥammad ibn Muqātil al-Rāzī	Rayy	d. 246/860
Isḥāq ibn al-Buhlūl	Anbar	d. 252/866
Shuʿayb ibn Ayyūb	Wasit	d. 261/874
Muḥammad ibn Shujāʿ al-Thaljī	Baghdad	d. 266/880
Nuṣayr ibn Yaḥyā	Balkh	d. 268/881-2
Sulaymān ibn Shuʿayb al-Kaysānī	Egypt	d. 273/886
ʿUmar or ʿAmr ibn Muhayr	Basra	d. n.d.
ʿAlī ibn al-Ḥasan al-Rāzī	Baghdad	d. n.d.
Namir ibn Jidār	Kufa	d. n.d.

Table 1: Students of al-Ḥasan ibn Ziyād (d. 204/819-20)

[45] This list has largely been culled from a reading of major biographical dictionaries, such as *al-Jawāhir* of Ibn Abī al-Wafā' and al-Kafawī's *Katā'ib*, and also a select number of legal texts that tend to display doctrinal transmission between teachers and students, such as al-Samarqandī's *al-Nawāzil* and al-Nāṭifī's *al-Ajnās*. I have attempted to be careful in my listing of his students. Thus, an individual said to have 'taken *fiqh* from al-Ḥasan' (*tafaqqaha ʿalā*) or identified as 'one of his companions' (*min aṣḥābihi*) is plausibly reckoned as a student of his. This is opposed to someone who may have merely heard prophetic traditions from him but who is otherwise not known as a jurist or connected to Ḥanafīsm.

Only one Kufan appears on the list of al-Ḥasan's students: Namir ibn Jidār. Of note is the fact that there is virtually no trace of him in the historical literature.[46] Nor does he have an entry in Ḥanafī biographical works besides appearing in the chains of a few reports concerning the Ḥanafī masters and al-Ḥasan.[47] This contrasts with all the other names mentioned who are well-known jurists of the school. Namir appears as a student of al-Ḥasan in two sources: firstly, in reports narrated by al-Ṣaymarī where he is asked to compare the juristic acumen of al-Shaybānī and al-Ḥasan as he had met both figures to which he responds in favour of the latter's superiority, as well as reports where he is seen directly narrating historical material from al-Ḥasan and Abū Yūsuf;[48] secondly, in *al-Ajnās* of Abū al-ʿAbbās al-Nāṭifī (d. 446/1054) where Namir transmits the legal opinions of the Ḥanafī masters, which occasionally takes the form of direct transmission ('I heard al-Ḥasan'), in a work entitled *Masā'il Namir ibn Jidār*.[49] These references demonstrate that Namir was a Kufan associated with the students of Abū Ḥanīfa who transmitted legal doctrine from them. However, his absence in the historical literature and his appearing only a few times in a single, albeit important, legal text of the school, indicates no more than the *possibility* that a continuing Ḥanafī legal tradition endured in some minimal fashion in Kufa.[50]

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[46] I have found an entry on him in ʿAlī ibn Mākūlā, *al-Ikmāl fī rafʿ al-irtiyāb ʿan al-mu'talif wa-al-mukhtalif min al-asmā' wa-al-kunā wa-al-ansāb*, ed. ʿAbd al-Raḥmān al-Muʿallimī, 8 vols. (Hyderabad: Dā'irat al-Maʿārif al-ʿUthmānīya, 1962), 7:364. He is mentioned as a Kufan who narrated from Yaḥyā ibn Yaʿlā (d. n.d.) and from whom narrated Muḥammad ibn ʿUthmān ibn Abī Shayba (d. 297/910). Both of these figures were Kufan, as well. In the *Akhbār* of al-Ṣaymarī, Muḥammad ibn ʿAlī ibn ʿAffān (d. 277/890), a famous Kufan traditionist, also narrates from him. See al-Ṣaymarī, *al-Akhbār*, 17, 100.

[47] I have been unable to find an entry for him in the major Ḥanafī biographical works. However, the 20th century scholar, Muḥammad Zāhid al-Kawtharī, does identify him as a student of al-Ḥasan. See Muḥammad Zāhid al-Kawtharī, *al-Imtāʿ bi-sīrat al-imamayn al-Ḥasan ibn Ziyād wa-ṣāḥibihi Muḥammad ibn Shujāʿ* (Cairo: Maktabat al-Azharīya, n.d.), 19.

[48] Al-Ṣaymarī, *al-Akhbār*, 17, 100, 136. These reports make clear that Namir was actually present in the gatherings of these figures.

[49] Abū al-ʿAbbās al-Nāṭifī, *al-Ajnās*, ed. ʿAbd Allāh Saʿd and Karīm Fu'ād Muḥammad, 2 vols. (Riyadh: Dār al-Ma'thūr, 2016), 2:209, 241.

[50] The example of Namir is instructive in so far as it reveals how the available sources may have occasionally allowed individuals to slip through the net. Namir's links to the Ḥanafī school seem clear enough. The fact that he is

Whether there was a continuing Ḥanafī legal tradition in Kufa or not, what does seem clear is that it was not particularly significant in the long term to the evolution and spread of the school. In addition to what can been gleaned from the works of Ibn Saʿd, al-Ṣaymarī, and other historical works, Melchert tested the conclusions drawn from them by examining the legal literature to measure how important an individual was to the development of the school. In his survey of jurists up until the time of al-Karkhī cited at least twice by Abū Bakr al-Sarakhsī (d. 483/1090) in *al-Mabsūṭ*, Baghdad is 'well-represented throughout the time span', while Kufa is 'notably absent'.[51] A random sample examined by Melchert from *al-Binãya* of Badr al-Dīn al-ʿAynī (d. 855/1451) yielded the same conclusion. These findings of Melchert are mirrored in other early legal texts. Excluding the Ḥanafī masters, these are the jurists that appear in *Sharḥ al-Jāmiʿ al-kabīr* of al-Jaṣṣāṣ, which is the earliest extant commentary on a work of al-Shaybānī:[52]

Zufar ibn al-Hudhayl	Basra	d. 158/775
al-Ḥasan ibn Ziyād	Baghdad	d. 204/819-20
Abū Sulaymān al-Jūzajānī	Baghdad	d. after 200/815
Muḥammad ibn ʿAbd Allāh al-Anṣārī	Basra	d. 215/830
Bishr ibn Ghiyāth al-Marīsī	Baghdad	d. 219/834-5
ʿĪsā ibn Abān	Basra	d. 221/835-6
Ḥishām ibn ʿUbayd Allāh al-Rāzī	Rayy	d. 221/835
ʿAlī ibn al-Jaʿd	Baghdad	d. 230/845
Muḥammad ibn Samāʿa	Baghdad	d. 233/847-8
Bakr al-ʿAmmī	Basra	d. n.d.
Abū Bakr al-Khaṣṣāf	Baghdad	d. 261/874
ʿAlī ibn al-Ḥasan al-Rāzī	Baghdad	d. n.d.
Muḥammad ibn Shujāʿ al-Thaljī	Baghdad	d. 266/880
Abū ʿAlī al-Daqqāq al-Rāzī	Rayy?	d. n.d.
Abū Khāzim	Syria	d. 292/905
ʿAlī ibn Mūsā al-Qummī	Nishapur/Baghdad	d. 305/917-8

actually presented as a source for the legal opinions of early Ḥanafī jurists further affirms this link. It is impossible to conclude with any degree of certainty at this point whether he would be considered one of Tsafrir's semi-Ḥanafīs or real Ḥanafīs. Yet, he does strike one as an example of a Kufan who continued to spread Ḥanafī legal doctrine during the second half of the 2nd/8th century. This is not evidence for the existence of a robust Ḥanafī tradition in the area but accurately determining the nature of this legal tradition in the city would require a more thorough perusal of the sources.

[51] Christopher Melchert, "The Early Ḥanafiyya," 34-5.

[52] Aḥmad ibn ʿAlī al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr* (Cairo: Dār al-Kutub al-Miṣrīya, MS 746).

Abū Saʿīd al-Bardaʿī	Baghdad	d. 317/929-30
Abū Jaʿfar al-Ṭaḥāwī	Egypt	d. 321/933
Abū ʿAbd Allāh ibn Abī Mūsā al-Ḍarīr	Baghdad	d. 334/945
Abū ʿAmr al-Ṭabarī	Baghdad	d. 340/951-2
Abū al-Ḥasan al-Karkhī	Baghdad	d. 340/952

Table 2: Jurists Appearing in *Sharḥ al-Jāmiʿ al-kabīr*

Baghdad is well represented throughout all periods. Basra is well represented at the beginning through Zufar and then into the first half of the 3rd/9th century through al-Khaṣṣāf and others. Meanwhile, Kufa is entirely absent.

Another early work that supports these findings is *al-Nawāzil* of Abū al-Layth al-Samarqandī (d. 373/984), a text that specifically sought to gather the legal verdicts of prominent Ḥanafī jurists after the period of the Ḥanafī masters. The appendix provided by Abdur-Rahman Mangera in his critical edition of the text shows that jurists from Baghdad feature prominently from the latter half of the 2nd/9th century up until the 4th/10th century alongside those from Balkh, Bukhara, and Samarqand. Egypt is represented through al-Ṭaḥāwī, while Basran jurists also appear throughout the 3rd/9th century, such as Yūsuf al-Samtī, Shādhān ibn Ibrāhīm (d. n.d.), Hilāl, and al-Khaṣṣāf. Kufa is again almost entirely absent except for Dāwūd al-Ṭā'ī who is cited once for a legal opinion, and al-Wakīʿ ibn al-Jarrāḥ (d. 197/813) who appears a few times.[53]

In the region of Iraq then, it was Baghdad that emerged as the main centre of Ḥanafī legal activity in Iraq from the second half of the 2nd/8th century onwards followed by Basra. The rise of Baghdad can be credited to several factors. The city had become the capital of the Abbasid Caliphate under al-Manṣūr (d. 158/775; r. 136-58/754-75) in 146/763 a few years prior to the death of Abū Ḥanīfa. As the capital, the city quickly became the great centre of commerce and

[53] Mangera provides detailed biographical entries for those who appear in *al-Nawāzil* in Abdur-Rahman Mangera, "A Critical Edition of Abū al-Layth al-Samarqandī's *Nawāzil*" (PhD diss., SOAS, 2013). His edition covers six chapters beginning with the Book of Purification up to and including the Book of Marriage.

cultural activity in the Muslim world eclipsing the importance of surrounding cities, such as Kufa. The increasing political and cultural prominence of Baghdad attracted a generation of religious scholars including those considered the foremost students of Abū Ḥanīfa.[54] Abū Yūsuf was appointed judge in Baghdad sometime around 169-70/785-6 and soon became the first Chief Judge under Hārūn al-Rashīd (d. 193/809; r. 170-93/786-809). He continued in this role until his death in 182/798.[55] Muḥammad al-Shaybānī also settled in Baghdad where he undertook legal training and after a brief stint as judge in Raqqa returned to the city to resume teaching.[56] Similarly, al-Ḥasan ibn Ziyād spent a considerable amount of time in Baghdad as a judge and teacher. These three individuals, along with Zufar, were the most authoritative and oft-cited jurists in the Ḥanafī school from among those identified as students of Abū Ḥanīfa and all of them spent a considerable part of their scholarly careers in Baghdad.[57]

More important than Baghdad being a place where Ḥanafī jurists settled was their ability to establish study circles in the city that produced a generation of scholars who took up Ḥanafī legal doctrine and passed it onto their own students. An official position, such as a judgeship, certainly assisted in this task by attracting potential students and allowing one to spread the legal doctrine of a teacher by means of legal decisions. As a government appointment, a judgeship

[54] Wilferd Madelung, "The Westward Migration of Ḥanafī Scholars from Central Asia in the 11th to 13th Centuries," *Ankara Üniversitesi Ilâjouat Falültesi Dergisi* 43/2 (2002): 42. He remarks, 'As the seat of the Abbasid caliphate, Baghdad naturally beeame the prime centre of leaming of various legal and theological schools and attracted some of their most distinguished scholars. The school of Abū Ḥanifa, long favoured by the caliphs, developed there in rivalry with some of the other legal schools.'

[55] Ibn Saʿd, *al-Ṭabaqāt*, 9:332-3; al-Wakīʿ, *al-Akhbār*, 3:254-64, 282; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 16:359.

[56] Ibn Saʿd, *al-Ṭabaqāt*, 9:338; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 2:561.

[57] In later taxonomies, the authoritative opinion of the Ḥanafī school was viewed as being found in a corpus of legal works authored by al-Shaybānī referred to as *ẓāhir al-riwāya*. While the *ẓāhir al-riwāya* generally constituted the views of Abū Ḥanīfa, Abū Yūsuf, and/or al-Shaybānī, later jurists included the opinions of Zufar and al-Ḥasan ibn Ziyād as well. See Muḥammad Amīn ibn ʿĀbidīn, *Sharḥ uqūd rasm al-muftī*, ed. Ṣalāḥ Abū al-Ḥajj (Beirut: Dār al-Bashā'ir, 2015), 315-7.

also indicated political support that was oftentimes crucial to the prosperity of a legal tradition.[58] As demonstrated by Tsafrir, the Abbasids favoured Ḥanafī judicial appointments in all areas where such appointments would not stir local opposition.[59] Consequently, those seeking such official positions would have been motivated to join the Ḥanafī school. Yet, a judicial appointment on its own did not guarantee the establishment of a vital and continuing legal tradition in the absence of active study circles outside judicial settings. Despite the continued importance of Kufa as a centre of scholarship, Ḥanafī study circles in the city and judicial appointments seem to have been unsuccessful in creating a generation of local jurists who could advance the legal doctrine of Abū Ḥanīfa. For example, al-Shaybānī is said to have taught in the mosque of Kufa at the young age of twenty but major students of jurisprudence of his in the city are difficult to identify.[60] The same holds true for Abū Yūsuf and al-Ḥasan ibn Ziyād, both of whom undoubtedly trained and likely taught in Kufa for some period. In other words, prominent jurists identified with the circle of Abū Ḥanīfa who did contribute substantively to a continuing Ḥanafī legal tradition in Iraq did so not in Kufa but in other localities, such as Baghdad and Basra.[61]

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[58] Tsafrir, *History*, 40, 116-9. However, as she observes, political support could also have the opposite effect as seen in the inability of Ḥanafīsm to prosper in pro-Umayyad Syria due to its being seen as too closely aligned with the Abbasids.
[59] Ibid., 118.
[60] Al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 2:564.
[61] The spread and popularity of Ḥanafīsm in the eastern Islamicate lands was noted by Madelung who stated that 'all the people of Balkh were adherents of his [i.e. Abū Ḥanīfa's] doctrine' by the end of the 2nd/8th century. Similarly, Tukharistan and Transoxania were 'overwhelmingly Ḥanafite' by the 3rd/9th century. This was also the case in Isfahan where a significant Ḥanafī community existed by the beginning of the 3rd/9th century. Despite this, Madelung states, 'The seat of leadership and prestige of the school as a whole remained for centuries undisputed in Baghdad.' As for Kufa, while the fortunes of Ḥanafīsm may have diminished, the Shīʿa continued to be prominent and their tradition of jurisprudence is much more discernible in the city. See Wilferd Madelung, *Religious Trends in Early Islamic Iran* (Albany: State University of New York, 1988), 18, 26; Madelung, "Western Migration," 42; Najam Haider, *The Origins of the Shīʿa*: *Identity, Ritual, and Sacred Space in Eighth century Kufa* (Cambridge: Cambridge University Press, 2014), 3-24.

By the time the last of Abū Ḥanīfa's major students passed away, the decline of Kufa as a major centre of Ḥanafī legal activity seems evident and the subsequent development of the school occurred in cities like Baghdad, Basra, Egypt, and Balkh at the hands of such jurists as Abū Sulaymān al-Jūzajānī, ʿĪsā ibn Abān, Bishr ibn al-Walīd, Muḥammad ibn Shujāʿ al-Thaljī, Nuṣayr ibn Yaḥyā, Abū Khāzim, Abū Saʿīd al-Bardaʿī, and Abū Jaʿfar al-Ṭaḥāwī.

II. The Rise of a Ḥanafī Community

The previous section demonstrated the emergence of Baghdad and Basra as major centres of Ḥanafīsm in Iraq following the death of Abū Ḥanīfa and the consolidation of their position by the time the last of the Ḥanafī masters passed away. The period between the death of al-Shaybānī up until the emergence of the classical Ḥanafī school during the first half of the 4th/10th century was a critical one for it was during this interval that many of the constitutive elements of the legal school incrementally took shape. One important development described by scholars analysing this period was the rise of school consciousness and the transformation of the legal school into a personal juristic entity,[62] namely a collection of jurists who upheld and adopted the doctrine of a master jurist. The emergence of personal schools by the middle of the 3rd/9th century out of prior regional schools has remained a major thesis outlining the chronology of the legal school. However, it has been challenged by a number of scholars who have questioned the very notion of

[62] In his analysis of early *mukhtaṣar*s authored by Ibn ʿAbd al-Ḥakam (d. 214/829) and al-Muzanī (d. 264/877), Brockopp states that both texts indicate the first productions of a 'restricted school-consciousness' where earlier jurists are seen exerting a strong influence on subsequent generations of jurists but where these jurists are also willing to consider legal matters independently of these earlier authorities even at the expense of disagreeing with them. Hennigan reaches a similar conclusion in his study of the *waqf* texts of Hilāl and al-Khaṣṣāf stating that though they operated in an intellectual milieu where Abū Ḥanīfa, Abū Yūsuf, and al-Shaybānī were considered authorities, both jurists could only be defined as Ḥanafī in the general sense of being part of a group of jurists who interacted with each other and were later contextualized as members of the school. As I shall argue in the course of this study, I do not believe Hennigan's comments accurately reflect the scope and nature of Ḥanafī identity and school-consciousness during the period in question. See Brockopp, "Early Islamic Jurisprudence," 100; Hennigan, *The Birth of a Legal Institution*, 1-2.

regional schools and as a result the transformation of the *madhhab* from a regional to personal entity.

The most forceful critic of the Schachtian chronology has been Hallaq who stated that it was 'historically inaccurate' and 'false' to designate early juristic groupings as geographical or regional.[63] According to Hallaq, the early legal school was entirely personal in nature, though it was not strictly speaking a school at all during the 2nd/8th century but rather individual jurists espousing distinctive legal doctrines possessing no binding authority. The earliest stage of this development took the form of scholarly circles in which religious matters were debated, students trained, and juridical opinions issued.[64] These specialized legal circles sharpened legal doctrine and methodological awareness, which allowed jurists to develop and defend their individual conceptions of the law. Concurrently, it conferred on these jurists a privileged epistemic *cum* social authority and standing.[65] Groups of students, judges, and other jurists would eventually adopt the individual doctrines of a leading master leading the latter to be identified with his own *madhhab* in the sense of 'a personal school revolving around his personal doctrine', though this did not necessarily entail doctrinal loyalty on the part of his followers.[66] Indeed, Hallaq asserts that Abū Ḥanīfa and his closest students, namely Zufar, Abū Yūsuf, al-Shaybānī, and al-Ḥasan ibn Ziyād, all had personal *madhhab*s and independent followings 'for a considerable time after their deaths' until their respective doctrines were finally brought together under the doctrinal school during the 4th/10th century.[67] The transformation that occurred, therefore, was not from

[63] Hallaq, "From Regional to Personal Schools," 18-9.
[64] Hallaq, *Origins*, 153.
[65] Ibid., 77, 153-7, 165, 202. Also see Hallaq, *Authority*, 166-235.
[66] Hallaq, *Origins*, 154.
[67] Hallaq, "From Regional to Personal Schools," 9.

regional to personal schools but individual juristic doctrines in the form of informal scholarly circles and then personal schools to doctrinal schools.

Leaving aside for the moment the relative merits of these chronologies, their broad nature easily allows for overlooking complex social and legal transformations undergone by the legal school in general and the Ḥanafī school in particular during the late formative period. A closer examination of this period reveals that the personal school was a stage in the chronology of the legal school that was present during the 2nd/8th century as Hallaq had stated. However, unlike Hallaq's designation of a significant portion of the 3rd/9th century as a period of individual juristic doctrines, it is more accurate to describe the Ḥanafī school from the beginning of this century as taking on the features of a legal community that encompassed a distinct social identity and a unique legal discourse revolving around a *collective* axis of authority and a *cumulative* doctrine that jurists recognized, accepted, and based their legal discourse on. Both these social and legal dimensions complemented each other for it was operating within increasingly defined school boundaries that engendered a unique legal discourse, and it was this very legal discourse that sharpened these social boundaries rendering those working within them as members of a legal tradition distinct from others. Effectively, these developments took the legal school beyond a strictly personal stage – whether defined in Schachtian or Hallaqian terms - into a middle stage between the *madhhab* as a personal entity and between its maturation as a doctrinal and guild school.

Keeping the above in mind, the current section will analyse the first of these two dimensions, namely the distinct social identity of the early Ḥanafī community and what it reveals about the chronology of the legal school. Tsafrir has already recognized the existence of such a community from as early as the second half of the 2nd/8th century, though her primary concern is

with the spread of the school and not its formation.[68] Consequently, the principal evidence she relies upon are historical sources, such as biographical dictionaries, which are explored without an aim to address questions concerning the chronology of the legal school, the social organization of early Ḥanafī legal activity, or the characteristics of early Ḥanafī legal discourse.[69] Given the concern here is with the question of formation, this section will incorporate Tsafrir's sources but significantly expand on them by presenting three aspects illustrating and evidencing the emergence and consolidation of a distinct Ḥanafī community from the end of the 2nd/8th century: (i) the creation of a collective axis of authority that jurists recognized, converged around, and increasingly relied upon in an exclusive fashion, which constituted the fundamental basis for a distinct and identifiable Ḥanafī community that transcended personal juristic boundaries; (ii) the recognition of this community in both legal and historical external-school sources; (iii) the legal training, instruction, and activity of jurists being increasingly situated within the boundaries of this community and characteristically Ḥanafī in nature, which indicated a growing degree of school cohesion.

A. The Emergence of a Collective Axis of Authority

Among early Ḥanafī jurists, the most important were the students of Abū Yūsuf, al-Shaybānī, and al-Ḥasan. These jurists engaged in several activities, such as transmitting the legal doctrine of the eponyms, anchoring them in the primary texts, creating a basic methodological framework for interpreting these texts, and providing rulings for newly arising issues. It is perhaps accurate to state that the later Ḥanafī tradition remembered this generation of jurists primarily for engaging in the first of these activities, namely the task of transmitting and preserving legal

[68] Tsafrir, *History*, xi-xii.
[69] Ibid.

doctrine, which assisted in creating a legal heritage common to all Ḥanafī centres by connecting them back to the Ḥanafī masters.[70] Indeed, these jurists were successful in spreading the writings and opinions of Abū Ḥanīfa and his major companions from Iraq to regions as far as the Maghrib and Transoxiana. For example, the individual texts constituting al-Shaybānī's *al-Aṣl* were transmitted in whole or in part by the following individuals, among others:[71]

Transmitter	Region	Note
Abū Sulaymān al-Jūzajānī	Iraq	Most famous transmission of the text.[72]
Shuʿayb ibn Sulaymān (d. 204/819-20)	Egypt	Relied upon by al-Ṭaḥāwī who received it from Sulaymān ibn Shuʿayb - Shuʿayb ibn Sulaymān - al-Shaybānī. He explicitly identifies the text being received through this chain as *al-Aṣl*.[73]
Abū Ḥafṣ al-Kabīr (d. 217/832)	Transoxiana	The most famous transmitter of the text alongside Abū Sulaymān. His son

[70] In his historical periodisation of the Ḥanafī school, Talal Al-Azem identifies the 3rd/9th century as an era of formative transmission. See Talal Al-Azem, *Rule-Formulation and Binding Precedent in the Madhhab-Law Tradition: Ibn Quṭlūbughā's Commentary on The Compendium of Qudūrī*, Islamicate Intellectual History 2 (Leiden: Brill, 2016), 57-9.

[71] The use of the term 'text' is not to affirm that these works had reached a final and stable version during this period. Determining this is outside the scope of the current thesis. However, it is worth mentioning that a more thorough study of these early texts is required to ascertain the type and degree of redaction that some of them may have undergone. For example, Calder's analysis of *al-Aṣl* cannot possibly be used to affirm the middle of the 3rd/9th century as a *terminus ad quem* for the edition of *al-Aṣl* or any of al-Shaybānī's works. This is because *al-Aṣl* is comprised of several independently authored works. Some of them may reveal themselves to be organic texts that underwent a process of redaction, while others may demonstrate a stability that allows us to date them to an earlier period. Similarly, some texts ascribed to al-Shaybānī are distinct in their composition, style, and transmission from the texts of *al-Aṣl*, such *al-Jāmiʿ al-kabīr* and *al-Ziyādāt*, and so any generalization needs to be cautioned against. Additionally, Calder operated from certain assumptions that are not fully substantiated and have been increasingly questioned, such as those parts of a text relating to prophetic traditions necessarily being later than those parts merely enumerating legal rulings. Nor did Calder engage with the actual transmission history of these texts, a literary analysis of their style/vocabulary, or even the many references to these texts in early historical sources. Here, Schoeler's contributions deserve specific mention as they provide a much more nuanced picture of the relationship between writing, oral transmission, and text production from the middle of the 2nd/8th century. For more, see Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford, Clarendon, 1993), 39-53; Brockopp, *Early Mālikī Law*, 68; Sadeghi, *Logic of Law Making*, 177-200; Yasin Dutton, *Origins of Islamic Law*, 26-7; Harald Motzki, *The Origins of Islamic Jurisprudence: Meccan Fiqh Before the Classical Schools*, trans. Marion H. Katz, Islamic History and Civilization: Studies and Texts 41 (Leiden: Brill, 2002); Andreas Görke, *Die ältesten Berichte über das Leben Muḥammads: das Korpus 'Urwa ibn az-Zubair*, Studies in Late Antiquity and Early Islam 24 (Princeton, New Jersey: Darwin Press, 2008); Gregor Schoeler, *The Oral and Written in Early Islam*, trans. Uwe Vagelpohl, Routledge Studies in Middle Eastern Literature 13 (London: Routledge, 2006).

[72] Ibn al-Nadīm, *al-Fihrist*, 2:20; al-Ṣaymarī, *al-Akhbār*, 161. Also see the introductory study of Mehmet Boynūkālin in *al-Aṣl*, 1:95-104.

[73] Al-Ṭaḥāwī, *al-Shurūṭ*, 97, 1032.

		Muḥammad ibn Aḥmad (d. 264/878) transmitted it from him.[74]
Hishām ibn ʿUbayd Allāh	Rayy	One of the transmissions available to al-Jaṣṣāṣ. Quoted by Abū al-ʿAbbās al-Nāṭifī in *al-Ajnās*.[75]
Muḥammad ibn Samāʿa	Iraq	One of the transmissions available to and preferred by al-Jaṣṣāṣ.[76]
Asad ibn al-Furāt (d. 213/828)	Egypt/Maghrib	Al-Ṭaḥāwī mentions Asad's transmitting some of the books of *al-Aṣl*, such as *al-Muzāraʿa al-kabīr*.[77] An earlier source from the Maghrib, al-Haytham ibn Sulaymān al-Qaysī (d. around 275/888), mentions his transmitting *Kitāb al-Daʿwā*.[78]
Dawūd ibn Rashīd (d. 239/854)	Iraq	Extant manuscripts of *Kitāb al-ʿUshr* from *al-Aṣl* identify him as the transmitter.[79]

Table 3: Transmission of *al-Aṣl*

[74] It was Abū Ḥafṣ and Abū Sulaymān's transmission of *al-Aṣl* that later scholars came to exclusively rely upon, and nearly all current extant copies of the text seem to be versions they transmitted. In his lifetime, Abū Ḥafṣ was identified as the chief Ḥanafī jurist in Bukhara and came to be reverred as a saint in the city by its population. In *al-Nawāzil*, al-Samarqandī quotes him a few times for his legal opinions. See Ibn Abī al-Wafā', *al-Jawāhir*, 1:67; al-Qārī, *al-Athmār*, 1:319-20; Wilferd Madelung, "The Early Murji'a in Khurasān and Transoxania and the spread of Ḥanafīsm," *Der Islam* 59, no. 1 (1982): 39.

[75] Al-Ṣaymarī, *al-Akhbār*, 162; al-Nāṭifī, *al-Ajnās*, 1:98, 321, 2:50, 58, 257. As an example, al-Nāṭifī says, 'He said in *kitāb al-daʿwa* of *al-Aṣl*, "If they testify that this wheat was cultivated from the land of so-and-so, it belongs to the owner of the land" as per the version of Abū Sulaymān and Hishām. According to the version of Abū Ḥafṣ al-Kabīr al-Bukhārī, "the owner of the land may take it…"'

[76] Al-Ṣaymarī, *al-Akhbār*, 162.

[77] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 3:98, 4:49.

[78] Al-Haytham ibn Sulaymān al-Qaysī, *Adab al-qāḍī wa-al-qaḍā'*, ed. Farāḥat al-Dishrāwī (Tunis: al-Sharikat al-Tunisīya lil-Tawzīʿ, 1975), 95. The transmission of *al-Aṣl* to the Maghrib by Asad ibn al-Furāt has also been mentioneded by Tsafrir. She relied on an unpublished study by Miklos Muranyi who discovered a fragment of the text in Morocco with a chain Sulaymān ibn ʿImrān/Muʿammar ibn Manṣūr - Asad ibn al-Furāt – al-Shaybānī – Abū Yūsuf – Abū Ḥanīfa. Melchert cast doubt on this based on the chain of transmission not corresponding with what is known from the extant versions of the text. However, al-Ṭaḥāwī and al-Qaysī identifying Ibn al-Furāt as a transmitter of a legal text of al-Shaybānī that is commonly identified as part of *al-Aṣl* supports Muranyi's findings. Sulaymān ibn ʿImrān (d. 270/883), one of the transmitters of this text from Asad, was the teacher of al-Qaysī. See Tsafrir, *History*, 107; al-Qaysī, *Adab al-qāḍī*, 17-8, 28, 55.

[79] Al-Shaybānī, *al-Aṣl*, 1:95.

This was also the case with other texts ascribed to al-Shaybānī, such as *al-Jāmiʿ al-kabīr*, which was transmitted by Abū Sulaymān,[80] Abū Ḥafṣ,[81] Hishām,[82] and ʿAlī ibn Maʿbad (d. 218/833).[83] His defence of Abū Ḥanīfa against the Madinans entitled *al-Ḥujja ʿalā ahl al-Madīna* was transmitted by ʿĪsā ibn Abān,[84] partially critiqued by al-Shāfiʿī,[85] and cited by school jurists as early as al-Khaṣṣāf.[86] Similarly, the legal opinions dictated by Abū Yūsuf during sessions of *imlā'* circulated in several regions through his students,[87] such as Muʿallā,[88] Bishr ibn al-Walid,[89]

[80] Muḥammad ibn al-Ḥasan al-Shaybānī, *al-Jāmiʿ al-kabīr*, ed. Abū al-Wafā' al-Afghānī (Hyderabad: Maṭbaʿat Majlis Dā'irat al-Maʿārif al-ʿUthmānīya, 1356 A.H.), 5; Abū Bakr ʿAbd Allāh ibn ʿUmar, *Faḍā'il Balkh*, trans. into Persian by ʿAbd Allāh Muḥammad ibn Muḥammad Balkhī, ed. ʿAbd al-Ḥayy Ḥabibī (Tehran: Bonyād-I Farhang-I Iran, 1971), 211; Ibn Abī al-Wafā', *al-Jawāhir*, 2:215.

[81] Ibn ʿUmar, *Faḍā'il Balkh*, 211.

[82] Al-Ṣaymarī, *al-Akhbār*, 162; al-Nāṭifī, *al-Ajnās*, 2:19.

[83] ʿAlī ibn Maʿbad was a student of al-Shaybānī who settled in Egypt where he transmitted *al-Jāmiʿ al-kabīr*. This is the version that al-Ṭaḥāwī received from Muḥammad ibn al-ʿAbbās al-Rabīʿ (d. 272/885-6) and relied upon in his legal works. See al-Ṭaḥāwī, *al-Shurūṭ*, 63, 93, 94, 99, 126, 131, 288, 289, 837; Ibn Abī al-Wafā', *al-Jawāhir*, 3:614-6; Muḥammad ibn Aḥmad al-Dhahabī, *Siyar aʿlām al-nubalā'*, ed. Shuʿayb Arnā'ūṭ, 25 vols. (Beirut: Mu'assasat al-Risāla, 1985), 10:631-2.

[84] Muḥammad ibn al-Ḥasan al-Shaybānī, *al-Ḥujja ʿalā ahl al-Madīna*, ed. Mahdī Ḥasan al-Gaylānī, 4 vols. (Hyderabad: Lajnat Iḥyā' al-Maʿārif al-Nuʿmānīya, 1965-71), 1:3.

[85] Mainly in *al-Radd ʿalā Muḥammad ibn al-Ḥasan*, which is published as part of *al-Umm*. Schacht had already speculated that that the former was commenting on parts of *al-Ḥujja*. See Schacht, *Origins*, 338.

[86] Abū Bakr al-Khaṣṣāf, *Kitāb Aḥkām al-awqāf* (Cairo: Maṭbaʿat Diwān ʿUmūm al-Awqāf al-Miṣrīya, 1902), 72. Here, al-Khaṣṣāf mentions the opinion of al-Shaybānī and states, 'He presented evidence for this in his text of *Ḥujaj* against Mālik.'

[87] The term *imlā'* refers to the 'dictation' of a teacher to his students of the former's notes, texts, or even a single legal ruling. It was one of many methods of textual transmission during the formative period. In one exampe, al-Ṭaḥāwī relates from Ibn Abī ʿImrān from Bishr that Abū al-ʿAbbās al-Ṭūsī sent Abū Yūsuf a question regarding the interpretation of the term *ayyām al-maʿlūmāt* upon which 'Abū Yūsuf dictated to us the text of his answer to him'. Similarly, Abū Yūsuf is said to have been the first to author a text on *adab al-qāḍī*, which he did *imlā'* of to his students. See Abū Jaʿfar al-Ṭaḥāwī, *Aḥkām al-qur'ān*, ed. Saʿd al-Dīn Awnāl, 2 vols. (Istanbul: Markaz al-Buḥūth al-Islāmī, 1996), 2:203; Kātib Chalabī, *Kashf al-ẓunūn ʿan asāmī al-kutub wa-al-funūn*, ed. Muḥammad Sharaf al-Dīn Yāltaqāyā & Muʿallim Rifat, 2 vols. (Baghdad: Maktabat al-Muthannā, 1972), 1:46.

[88] Ibn al-Nadīm, *al-Fihrist*, 2:20; al-Ṣaymarī, *al-Akhbār*, 161.

[89] This is perhaps the most famous transmission of the *amālī*. It is cited in Ḥanafī legal works as early as al-Ṭaḥāwī whose chain of transmission is Jaʿfar ibn Aḥmad – Bishr – Abū Yūsuf. In *al-Ajnās*, al-Nāṭifī quotes Bishr's transmission of the *amālī* dozens of times in virtually every chapter. Here, they are presented in the form of individual texts, such as 'the *imlā'* of the Book of Sales transmitted by Bishr', 'the *imlā'* of the Book of Prayer transmitted by Bishr' and so forth. Early Ḥanafī sources also occasionally mention the date and year in which a legal opinion was transcribed and quote the text verbatim. See Ibn Saʿd, *al-Ṭabaqāt*, 9:359; al-Ṭaḥāwī, *al-Shurūṭ*, 197; al-Ṭaḥāwī, *Aḥkām al-qur'ān*, 1:315; Ibn al-Nadīm, *al-Fihrist*, 2:20; al-Nāṭifī, *al-Ajnās*, 1:74, 85, 108, 149, 317, 2:21, 61, 89; Kātib Chalabī, *Kashf al-ẓunūn*, 1:46.

Bishr al-Marīsī,[90] Shuʿayb al-Kaysānī,[91] Ibrāhīm ibn al-Jarrāḥ (d. 217/832),[92] Muḥammad ibn Saʿīd al-Qazwīnī (d. 216/831),[93] Ibrāhīm ibn Yūsuf al-Balkhī,[94] and others. These transmitters were collectively known as *aṣḥāb al-imlā'* and feature prominently in Ḥanafī legal works from last quarter of the 2nd/8th century.[95] Another important collection of texts known as *nawādir* were equally widespread by the students of Abū Yūsuf and al-Shaybānī.[96] Around the same time, the opinions of al-Ḥasan ibn Ziyād and the legal doctrine he transmitted from the Ḥanafī masters circulated in Iraq, Rayy, Nishapur, Balkh, and Egypt, while his legal work *al-Mujarrad* was transmitted by the chief Baghdadi jurist of his time, Ibn Shujāʿ al-Thaljī.[97] Considering the above and the many more sources in circulation during the period, it is fair to state that the legal doctrine of Abū Ḥanīfa and his companions had reached nearly every major scholarly centre in the Islamic world by the conclusion of the 2nd/8th century.[98]

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[90] Al-Nāṭifī, *al-Ajnās*, 1:59, 62, 351; 2:77.
[91] Al-Ṭaḥāwī, *al-Shurūṭ*, 162, 1032; Ibn Abī al-Wafā', *al-Jawāhir*, 2:253.
[92] Originally from Kufa, Ibrāhīm moved to Egypt where he was appointed judge in the year 205/820. See ʿAbd al-Raḥmān ibn ʿAbd al-Ḥakam, *Futūḥ Miṣr wa-akhbāruhā*, ed. C. C. Torrey (Leiden: Brill, 1920), 246; al-Ṣaymarī, *al-Akhbār*, 163; Ibn Abī al-Wafā', *al-Jawāhir*, 1:75-7.
[93] Muḥammad ibn Saʿīd took from number of scholars who were part of Abū Ḥanīfa's circle. He was settled in Qazwin. See al-Nāṭifī, *al-Ajnās*, 1:111; Jamāl al-Dīn al-Mizzī, *Tahdhīb al-kamāl fī asmā' al-rijāl*, ed. Bashshār ʿAwwād Maʿrūf, 35 vols. (Beirut: Mu'assasat al-Risāla, 1992), 25:271.
[94] Ibrāhīm ibn Yūsuf was one of the main transmitters of Abū Yūsuf's opinions in Balkh. Abū al-Layth al-Samarqandī cites him regularly in *al-Nawāzil* through the chain Muḥammad ibn al-Faḍl al-Bukhārī - Muḥammad ibn Jaʿfar – Ibrāhīm ibn Yūsuf – Abū Yūsuf. The biographical sources also describe him as particularly well-regarded in Ḥanafī circles. See al-Samarqandī, *al-Fatāwā*, 136, 184-5, 259-61, 369-70; Ibn ʿUmar, *Faḍā'il Balkh*, 214-7; Ibn Abī al-Wafā', *al-Jawāhir*, 1:119-21; al-Mizzī, *al-Tahdhīb*, 2:251-5; al-Dhahabī, *al-Siyar*, 11:62; al-Qārī, *al-Athmār*, 1:305-6.
[95] For examples of explicit reference to this group see Abū Jaʿfar al-Ṭaḥāwī, *Mukhtaṣar*, ed. Abū al-Wafā' al-Afghānī (Hyderabad: Lajnat Iḥyā' al-Maʿārif al-Nuʿmānīya, 1951), 20, 25, 26, 31, 35.
[96] Some of the famous *nawādir* texts include those of Abū Sulaymān, Muʿallā, Dawūd ibn Rashīd, Hishām al-Rāzī, Faḍl ibn Ghānim, Ibrāhīm ibn Rustum, and Muḥammad ibn Muqātil al-Rāzi.
[97] ʿAlī ibn ʿUmar al-Dārquṭnī, *al-Mu'talif wa-al-Mukhtalif*, ed. Muwaffaq ʿAbd Allāh, 4 vols. (Beirut: Dār al-Gharb al-Islāmī, 1986), 2:689; ʿUmar ibn ʿAlī al-Qazwīnī, *Mashyakhat al-imām Sirāj al-Dīn ʿUmar ibn ʿAlī Qazwīnī*, ed. ʿĀmir Ḥasan Ṣabrī (Beirut: Dār al-Bashā'ir al-Islāmīya, 2005), 292.
[98] The 3rd/9th century was described by Toorawa as being a period that saw the emergence of a 'writerly culture' that led to the expansion of manuscript markets and transformed learned life. Related to this development was the spread of libraries, which were studied by Touati who argued that the 3rd/9th-4th/10th centuries were crucial periods in the rise of book collection. See Shawkat Toorawa, *Ibn Abī Ṭāhir Ṭayfūr and Arabic Writerly Culture: A Ninth-Century Bookman in Baghdad* (New York: Routledge Curzon, 2005); Houari Touati, *L'armoire à Sagesse: Bibliothèques et Collections en Islam* (Paris: Aubier, 2003).

The collection and transmission of the texts and legal doctrine of the Ḥanafī masters was a fundamental component in the evolution of the Ḥanafī school. The spread of their legal doctrine allowed for distant scholarly centres to connect with each other in a manner that assisted in establishing a formal Ḥanafī community by anchoring them to a common axis of authority, an essential prerequisite for the formation of a school.[99] These legal sources provide important insight into the evolution of the legal school and suggest that the chronologies offered by Schacht and Hallaq are accurate in some regards and require re-evaluation in others. Though the Schachtian chronology described the legal school as transforming into a personal juristic entity by the middle of the 3rd/9th century, discerning a shift from a regional to personal school is not always clear in early Ḥanafī sources. The characterization of Ḥanafī jurists as members of a personal school in the sense the term has been defined by modern scholars, namely 'an allegiance to an individual master',[100] 'a collection of jurisprudents who upheld the teaching of one man',[101] or 'a group of students… who adopted the doctrine of a particular leading jurist',[102] seems to clearly describe the generation directly connected to Abū Ḥanīfa. The texts of al-Shaybānī conspicuously lack any sustained reference to a regional Kufan doctrine that he or his teachers consciously identified with. Only individual authorities are named in *al-Aṣl*, *al-Jāmiʿ al-kabīr*, and *al-Jāmiʿ al-ṣaghīr*. This is similarly reflected in sources gathering the opinions of Abū Yūsuf. In a hundred-page sample of the notes transcribed by Muʿallā during the lectures of Abū Yūsuf, there is little trace of a regional school. Abū Ḥanīfa is cited by Abū Yūsuf a total of forty-

[99] Joseph Schacht, "The Schools of Law and Later Jurisprudence," 67; Melchert, *Formation*, 32-47; Jonathan E. Brockopp, *Muhammad's Heirs: The Rise of Muslim Scholarly Communities, 622-950* (Cambridge: Cambridge University Press, 2017), 98-100.
[100] *Schacht*, *Introduction*, 57.
[101] Melchert, *Formation*, 32.
[102] Hallaq, *Origins*, 154.

three times (43x) and Ibn Abī Laylā three times (3x).[103] Though Schacht correctly points out the role literary activity of this type played in the emergence of personal schools, what is suggested by nearly all the earliest Ḥanafī literature is not the beginning stages of a transformation from regional to personal schools at the turn of the 3rd/9th century but an existing and well entrenched notion of allegiance to individual masters.

These early Ḥanafī texts partially assist in confirming the argument of Hallaq and others concerning regional schools.[104] However, these early sources also indicate that the phenomenon of individual legal doctrines only captures the social organization and legal activity of the scholarly population until a period much earlier than Hallaq suggested. In the case of the Ḥanafī school, the evidence demonstrates that a notion of collective authority mirroring what would become conventional in the classical period had begun to emerge by the end of the 2nd/8th century. Contrary to Hallaq's characterization of much of the 3rd/9th century as one of individual legal doctrines where the Ḥanafī masters continued to have independent followings even after

[103] The *Nawādir* of Muʿallā has been edited as a masters thesis. I see no reason to question its authenticity or early date. The text begins with a chain of transmission, 'Abū Bakr said, "I read to Yaḥyā ibn Abī Ṭālib who said, "Muʿallā said…"' and this is often repeated upon the commencement of a new chapter. The text itself is fairly stable in its presentation following a standard formula of 'Abū Yūsuf said' followed by his legal opinion and frequently that of Abū Ḥanīfa. However, there are instances that reflect the oral dictation of the text, such as when the students of Muʿallā mention questions being asked of the latter and his responses. See ʿAbd Allāh ibn ʿĀbid al-Ghāmidī, "Kitāb Nawādir Muʿallā ibn Manṣūr al-Rāzī min bāb mā yufsid al-mā' idhā waqaʿa fī bi'r aw-inā' ḥattā nihāyat al-kitāb" (M.A. diss., Jāmiʿat Umm al-Qurā, 2006); Muḥammad ibn Shadād al-Thaqafī, "Kitāb Nawādir Muʿallā ibn Manṣūr al-Rāzī min awwal kitāb bāb al-daʿwā ḥattā nihāyat baqīyat al-aymān wa-al-nudhūr" (M.A. diss., Jāmiʿat Umm al-Qurā, 2006). The hundred-page sample is from the first of these two dissertations.

[104] Muranyi, Hurvitz, and Umar F. Abd-Allah have questioned the existence of regional schools as well by calling attention to widespread intra-regional dissent. Echoing Hallaq, Hurvitz argues that the definition of the term 'regional' is ambiguous, and groups of masters and disciples existed throughout the 2nd/8th century, which renders problematic any notion of a transformation from regional to personal schools. Rather, it was out of scholarly circles formed around individual masters that the legal school emerged. This description of individual scholarly circles aligns with what I have described above. However, my comments should not be understood as a denial of the regional character of these early circles. As Sohail Hanif convincingly demonstrates, we can certainly speak of regional traditions that individual circles taught, debated, and upheld: 'The term regional school refers to the overlap in legal doctrine and method that resulted from this precedent-based approach to the legal project.' Muranyi, *Materialien*, 50-7; Umar F. Abd-Allah, *Mālik and Medina*, 21-2; Nimrod Hurvitz, "Schools Of Law And Historical Context: Re-Examining The Formation Of The Hanbalī Madhhab," *Islamic Law and Society* 7, no. 1 (2000): 42-6; 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.

'the schools had reached a significant degree of development',[105] this collective axis of authority united these apparently independent legal circles in a manner that paved the way for the rise of a distinct legal community.[106] Though Zufar, Abū Yūsuf, al-Shaybānī, and al-Ḥasan did have their own personal study circles and individual legal opinions, jurists associated with them recognized each as representatives of a broader legal tradition that constituted a distinct group. Unlike the schools of Mālik, al-Shāfiʿī, and later Aḥmad, Ḥanafī jurists from the beginning of the 3rd/9th century quickly recognized a collective group of masters who constituted the foundation of their legal community.

The recognition of a shared identity and collective legal doctrine is most vividly displayed in the texts transmitted and produced by the students of Abū Yūsuf and al-Shaybānī, as well as the legal opinions of jurists preserved in early school literature. The *Nawādir* of Muʿallā and *al-Amālī* transmitted by Shuʿayb al-Kaysānī are two of the earliest such sources and largely restrict themselves to presenting the legal doctrine of the Ḥanafī masters with minimal reference to others. The text of Muʿallā primarily relates the legal opinions of Abū Ḥanīfa and Abū Yūsuf received from the latter in his study circle, but there are several instances where Muʿallā interjects the views of al-Shaybānī and his transmission from Abū Ḥanīfa. Similarly, Shuʿayb al-Kaysānī was a student of al-Shaybānī and transmits the legal doctrine of all the Ḥanafī masters in *al-Amālī* in an exclusive fashion.[107] Indeed, the students of al-Shaybānī were particularly important to the establishment of this collective notion of authority given their teacher was a student of Abū Ḥanīfa, Zufar, and Abū Yūsuf, and made it a point to relate their legal doctrine

[105] Hallaq, "From Regional to Personal Schools," 9.
[106] Although earlier Kufan authorities do appear frequently in the text of *al-Aṣl,* the main concern is clearly with the legal doctrine of Abū Ḥanīfa and his companions. Figures such as Ibrāhīm al-Nakhaʿī are often cited in an evidentiary or precedent capacity, i.e. to bolster and support the positions of the masters.
[107] Muḥammad ibn al-Ḥasan al-Shaybānī, *Juz' min al-Amālī*, ed. Abū al-Wafā' al-Afghānī (Hyderabad: Maṭbaʿat Majlis Dā'irat al-Maʿārif al-ʿUthmānīya, 1360 A.H.).

alongside his own. Unlike Abū Yūsuf who was mainly concerned with advancing the doctrine of Abū Ḥanīfa, al-Shaybānī added another layer of Ḥanafī authorities in his teaching in the form of the opinions of Zufar and Abū Yūsuf. His students would then inherit not only his individual doctrine, but the collective doctrine that their teacher preserved, taught, and transmitted.

This was also true for jurists who did not strictly belong to the legal circle of al-Shaybānī. Shaddād ibn Ḥakīm al-Balkhī (d. 210/825) was primarily identified as a student of Zufar but is shown corresponding with al-Shaybānī on legal issues in addition to transmitting the legal doctrine of Abū Yūsuf and through the latter that of Abū Ḥanīfa.[108] He is reported to have said, 'If it were not for Abū Ḥanīfa and his companions, we would not know what legal opinions to choose.'[109] Similarly, al-Ḥasan ibn Abī Mālik (d. 204/819-20) consulted the legal texts of al-Shaybānī despite being exclusively affiliated with Abū Yūsuf from whom he transmitted the legal doctrine of Abū Ḥanīfa and Zufar.[110] Slightly later, Hilāl al-Ra'y, another student of Abū Yūsuf, cites all the Ḥanafī masters in an almost exclusive fashion in his extant legal texts and is also shown relying upon the texts of al-Shaybānī, such as *al-Jāmiʿ al-kabīr*.[111] These texts of al-Shaybānī were a major source for the legal doctrine of Abū Ḥanīfa and Abū Yūsuf and assisted in establishing the authority of al-Shaybānī among those jurists not directly associated with him, such as Ibn Abī Mālik and Hilāl.

Given the above, the initial sense that emerges when observing several Ḥanafī jurists who were active towards the turn of the 3rd/9th century is that they were acutely aware of a wider circle of jurists and a body of legal doctrine that represented a distinct legal tradition to which

[108] Ibn Saʿd, *al-Ṭabaqāt*, 9:379; al-Samarqandī, *al-Fatāwā*, 213; Ibn Abī al-Wafā', *al-Jawāhir*, 2:247-8; Ibn ʿUmar, *Faḍā'il Balkh*, 185-91.
[109] Al-Samarqandī, *al-Fatāwā*, 9.
[110] Al-Ṣaymarī, *al-Akhbār*, 162; Ibn Abī al-Wafā', *al-Jawāhir*, 2:90.
[111] Hilāl al-Ra'y, *Aḥkām al-waqf*, 59, 60, 67, 91, 94, 103, 112, 207-8, 222.

they belonged even if they themselves were only formally affiliated with the study circle of one or a few of these jurists. This point about personal affiliations is important to take note of given the potential to conflate a jurist's having his own circle of students with the assertion that up until the latter half of the 3rd/9th century 'all that existed were individual jurists who espoused a legal doctrine that had no binding authority over those who chose to adhere to, or apply, them.'[112] Though the final part of this comment by Hallaq concerning authority is accurate, his description of the legal school as 'entirely personal in nature' throughout much of the 3rd/9th century is too absolute and cannot be substantiated merely by reference to 'the students of Abū Yūsuf' or 'the students of al-Shaybānī' in the historical and legal literature. There is no contradiction between a jurist's being identified as a student of a specific master and that jurist also being viewed as belonging to a community whose identity and doctrine transcended individual student-teacher relationships. This applies to each of the names Hallaq cites to demonstrate that the masters had their own students and followers, such as ʿĪsā ibn Abān, Hishām, and Ibn Muqātil.[113]

That jurists gave consideration to the legal doctrine of multiple earlier jurists hardly seems exceptional but what is significant is that this doctrine was not in reference to a specific region (e.g. Madina or Kufa) and nor did it belong to a rival circle (e.g. Mālik or al-Thawrī) but to a limited and identifiable circle comprising Abū Ḥanīfa and his major companions. Though members of this circle did possess their own individual legal views, they were generally perceived as a collective representing a single tradition and not as rival or independent camps. Jurists not only adopted, transmitted, and explained this collective legal doctrine attributable to a

[112] Hallaq, "From Regional to Personal Schools," 21.
[113] Ibid., 10 f.n. 35. Each of these jurists are prominent in the legal literature as transmitters of the doctrine of all the Ḥanafī masters.

distinct group of Ḥanafī authorities, they increasingly did so in an exclusive manner as seen in the works of Muʿallā, Shūʿayb, Hilāl, and al-Khaṣṣāf. This early reliance on a collective legal doctrine in an increasingly exclusive fashion implies the existence of a specifically Ḥanafī school in so far as the legal discourse of these jurists suggested that this collective doctrine was all that one was required to know. But clearly this school was not personal in nature as the term is usually defined for authority resided in a collection of jurists possessing a unitary identity that brought together multiple individual voices to form the foundation of a distinct Ḥanafī community. Such a unitary identity was indicated by the late 2nd/8th century not only through regular citations of all the Ḥanafī masters in legal literature but also the usage of the phrase 'our companions' (*aṣḥābunā*). This was a common reference to the Ḥanafī masters as a group and the earliest secondary literature of the school displays several jurists using this phrase when addressing legal questions, such as:

> **1.0** Abū Sulaymān was asked regarding the depth of a body of water [in the context of filth affecting it]. He said, 'Our companions (*aṣḥābunā*) did not give any consideration to depth but only length.'[114]

The same terminology is seen in another exchange between two prominent Ḥanafī jurists from the first quarter of the 3rd/9th century:

> **1.1.** Nuṣayr said, 'I asked ʿĪsā ibn Abān regarding a roof with excrement on it over which rain water had passed and then it affected someone's clothing through a drain. He replied, "There is no harm in it as it is like flowing water." I said to him, "Do you recall anything from our companions (*aṣḥābinā*) on this issue?" He said, "Muḥammad ibn al-Ḥasan said regarding rain water that passed over excrement and settled in a particular place after which it affected someone's clothing who then entered a mosque and prayed that there was no harm in this."'[115]

In another example:

> **1.2.** Muḥammad ibn Muqātil was asked concerning a man upon whom the prescribed punishment was due, but he was weak of constitution and it was feared that he would die if struck. He said, 'I do not know of an opinion narrated from our companions (*aṣḥābinā*) on this. However, the approach to be taken here is that he should be given a real lashing. However, this lashing should

[114] Al-Samarqandī, *al-Fatāwā*, 12-3.
[115] Ibid., 18.

> be one that he is able to bear and in which there is no fear of loss of life similar to what was related regarding the person who committed adultery and it was commanded that a panicle with a hundred branches be taken and a single lash administered.'[116]

Finally, in an incident related by al-Ṭaḥāwī:

> **1.3.** I heard Ibn Abī ʿImrān say, 'I heard al-Faḍl ibn Ghānim, who was a judge in Egypt, ask Ibn Samāʿa, "What have you preserved from our companions regarding the length of time someone who is crucified is kept on the wooden beam?" Ibn Samāʿa responded, "There is no specific time limit for this. Rather, the matter returns to the practice of the people."'[117]

Towards the middle of the 3rd/9th century, the consolidation of a Ḥanafī community around a collective, identifiable, and distinct legal doctrine is clearly and consistently displayed. In his legal works, al-Khaṣṣāf routinely and exclusively cites the authority of the Ḥanafī masters both as individuals and as a group when presenting, explaining, and justifying a legal ruling.[118] He is even mindful in pointing out when their legal opinions are unknown to him on an issue as the following exchange illustrates:

> **1.4.** I said: If a man said, 'I designate my property - indicating all four boundaries - a charitable endowment to God and after a year from now designate it for the poor', will this property remain an endowment after the passing of a year?
> **1.4.1.** Abū Bakr said: No. I cannot recall anything on the authority of our companions (*aṣḥābinā*) concerning this matter but to me it is not permissible.[119]

This authority is also affirmed in his legal works through an interlocutor who is often presented as conscious of the opinions of the masters and occasionally engages in a dialectic with the author to test the consistency of a proposed answer with their legal doctrine. Take the following example:

> **1.5.** Abū Bakr said regarding a group of people who make a claim on the property possessed by another person stating that so-and-so designated it as an endowment (*waqf*) for us, while the one who possesses the land says that it belongs to him, that even if the people establish that so-and-so did in fact make an endowment of this property to them, they are not entitled to anything since

[116] Ibid., 499. Also see 339, 383, 459, 623, 634, 637.
[117] Aḥmad ibn Muḥammad al-Qudūrī, *al-Mawsūʿa al-fiqhīya al-muqārana al-musammā al-Tajrīd*, ed. ʿAlī Jumʿa and Muḥammad Aḥmad Sirāj, 12 vols. (Cairo: Dār al-Salām, 2004), 12:6064.
[118] Al-Khaṣṣāf, *al-Awqāf*, 50, 62, 66, 72, 76, 97, 133, 139, 140, 141, 149, 167, 171, 179, 194.
[119] Ibid., 287. For more examples, see 37, 124, 150, 328-30, 333-4, 342. This is also seen in his *Adab al-qāḍī*. See Aḥmad ibn ʿAlī al-Jaṣṣāṣ, *Sharḥ Adab al-qāḍī*, ed. Aḥmad Farīd al-Mazīdī (Beirut: Dār al-Kutub al-ʿIlmīya, 2013), 90, 147, 180, 229, 455, 462.

so-and-so cannot designate something he does not own as an endowment. The testimony of witnesses that so-and-so designated property as an endowment does not establish that so-and-so was its actual owner, and nor does it entitle the claimants to it.
1.5.1. I said: And if people said he designated it as an endowment for us and after us to the poor and on this day the property was in his possession and they establish proof for this?
1.5.2. He said: They are still not entitled to anything with this testimony because the property can be in his possession through a lease, loan, a pledge, unlawful seizure, or a limited partnership, and other forms of possession that resemble this. He is not entitled to designate it as an endowment if his possession is through one of these forms.
1.5.3. I said: Didn't our companions (*aṣḥābunā*) say that if a man establishes proof for property in his possession, or a house that his father owned until he passed away which has transferred to his possession, that it would be judged for whoever possesses it at the time and it will be made an inheritance for his heirs?
1.5.4. He said: Yes.
1.5.5. I said: Then why was the testimony of people that this house was in the possession of so-and-so on the day the endowment was designated not accepted?
1.5.6. He said: Because their testimony that this house was in the possession of so-and-so until he died is equivalent to their testimony that he died and left it as inheritance.[120]

Another early source to display this collective authority is Hilāl. Like al-Khaṣṣāf, he too cites the authority of the Ḥanafī masters both as individuals and as a collective through the phrase 'our companions'.[121] The usage of the latter term in all of these sources suggests that it was known and widespread among Ḥanafī jurists throughout the period in question as a reference to an authoritative group of jurists whom they recognized and relied upon for their legal discourse. Evidently, Hilāl and al-Khaṣṣāf, like Muʿallā and al-Kaysānī, were not merely collecting the doctrine of a single leading jurist. Despite variations in the frequency by which they cite individual authorities, those who are cited are a select and limited group easily identified as part of the Ḥanafī tradition: Abū Ḥanīfa, Abū Yūsuf, Zufar, al-Shaybānī, and Yūsuf al-Samtī. And once again, it was not merely the citation of these authoritative figures that was significant but the manner in which it was done, namely at the exclusion of those not identified with the legal tradition of Abū Ḥanīfa and his companions. It is for this reason that Melchert describes the works of Hilāl and al-Khaṣṣāf as implying the existence of a specifically Ḥanafī

[120] Al-Khaṣṣāf, *al-Awqāf*, 209. For more examples, see 29, 37, 194, 199, 337, 347.
[121] Hilāl al-Ra'y, *Aḥkām al-waqf*, 188, 190-91, 199, 214.

school 'both inasmuch as they collect the doctrine (*madhhab*) of one jurisprudent (and a few close to him) and inasmuch as they suggest that his doctrine (and theirs) is all one need to know.'[122] Clearly, the above description is of a school that had moved beyond the strict confines of a personal juristic entity as earlier defined by Hallaq to one that was modelled on a relationship between a distinct legal community and a collective authority possessing a cumulative legal doctrine. Notably, this conception of authority was not limited to Iraq but is visible in texts written by Ḥanafī jurists as far as Morocco, such al-Haytham ibn Sulaymān al-Qaysī (d. around 275/888) in his *Adab al-qāḍī wa-al-qaḍā'*.[123]

Book	**AH**	**AY**	**M**	**Z**	**H**	***aṣḥāb***	**Other** (mentioned at least 2x; not including *ḥadīth* chains)
Amālī al-Kaysānī (40 pages/half the book)	38	42	55	_ _ _	_ _ _	_ _ _	_ _ _
Nawādir Muʿallā (100 pages)	39	175	13	1	_ _ _	_ _ _	Ibn Abi Laylā (3)
Nawādir Hishām al-Rāzī (64 extant citations)	13	26	39	_ _ _	_ _ _	_ _ _	_ _ _
Hilāl - *Waqf* (100 pages)	45	13	8	1	1	2	Yūsuf al-Samtī (7) al-Battī (2)
al-Khaṣṣāf - *Waqf* (100 pages)	6	9	5	_ _ _	_ _ _	11	_ _ _
al-Qaysī – *Adab al-qāḍī* (50 pages)	41	45	30	4	_ _ _	_ _ _	Ibn Abi Laylā (8)
al-Ṭaḥāwī - *Mukhtaṣar* (50 pages)	78	86	73	2	2	1	*aṣḥāb al-imlā'* (14) Asad (2)

Table 4: Jurists Cited in Early Ḥanafī Texts
** *AH = Abū Ḥanīfa; AY = Abū Yūsuf; M = al-Shaybānī; Z = Zufar; H = al-Ḥasan*

An axis of authority was the most fundamental component in the emergence of a legal community possessing a distinct social identity for it served as a focal point that jurists could converge around and by which other members of the community could be identified. As a newly emerging phenomenon, the boundaries of this community remained fluid, but they were

[122] Melchert, *Formation*, 33.
[123] Al-Qaysī, *Adab al-qāḍī*.

nonetheless sufficiently present so as to allow for the recognition of a nascent school. Even during this early stage, there are examples where Ḥanafī jurists would call their colleagues to account for stepping outside the community's boundaries, a point that nuances the assertion that jurists possessed complete freedom in the adoption of legal opinions. The following insightful incident related by al-Ṭaḥāwī from Bakkār ibn Qutayba (d. 270/884) captures the pressure exerted on jurists to abide by a certain authoritative doctrine:

> **1.6.** Abū Bakr al-Khaṣṣāf said in his work on endowments: 'Abū Ḥanīfa said regarding a man who bequeaths one-third of his wealth to the children of Zayd while he has no surviving children of his own but only grandchildren that the one-third would go to the children of his sons and not his daughters. Muḥammad said that daughters also enter into this.' This is contrary to what Muḥammad stated in *al-Siyar* and *al-Aṣl*.
>
> I heard Abū Bakra Bakkār ibn Qutayba state, 'Ibn ʿĀ'isha, who is ʿUbayd Allāh ibn Muḥammad al-Taymī, would receive shares from an endowment bequeathed by one of the Hāshimites to his children and the mother of Ibn ʿĀ'isha was among them. So, he would take from the endowment through her until ʿĪsā ibn Abān stopped him because he did not view him as being entitled to it through his mother who was a child of the endower.'
>
> Bakkār continued, 'Our companions Hilāl and others criticized ʿĪsā that day viewing him as having departed from the opinion of his companions and adopting the opinion of their opponents. This was mentioned to ʿĪsā who responded, "I did not depart from the opinion of our companions. This is the opinion of Muḥammad." But we did not know this as the opinion of Muḥammad and nor did Hilāl know of it or those jurists who criticized ʿĪsā for his judgment.'
>
> I mentioned this [incident] to Abū Khāzim and he was aware of it. He said, ''Īsā was correct in ascribing this opinion to Muḥammad. It is in his work *al-Siyar al-kabīr* regarding a non-Muslim who is given a guarantee of safety for himself, his children, and grandchildren (*walad waladihi*) where the children of his daughter do not enter into the guarantee.' I checked *al-Siyar* and found it as Abū Khāzim had stated.[124]

The first point worth mentioning is that this incident related by al-Ṭaḥāwī from his teacher Bakkār who was a student of Hilāl presents both ʿĪsā and Hilāl as viewing one another not merely as personal associates of individual masters, namely al-Shaybānī and Abū Yūsuf respectively, but as members of a distinct legal community united by the authority of the Ḥanafī

[124] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 5:44-5; al-Ṣaymarī, *al-Akhbār*, 151-2. As an abridgment of al-Ṭaḥāwī's work, al-Jaṣṣāṣ provides a condensed version of this incident, while al-Ṣaymarī provides a more detailed one. I have relied upon the condensed version while adding relevant bits from al-Ṣaymarī.

masters.[125] Each jurist featured in this incident - al-Shaybānī, ʿĪsā, Hilāl, Bakkār, and Abū Khāzim – represented different generational layers of this legal community.

This incident additionally reveals the initial stages in the early Ḥanafī community's gradual evolution into a doctrinal entity. There is a clear sense that this community both identified fellow members and also recognized some semblance of an outer doctrinal boundary that warranted criticism of those members who strayed beyond it. This need not have been absolute but there were certainly contexts wherein jurists were made to feel communal pressure to conform. Another aspect of this shift towards a doctrinal school was the usage of the phrase 'our companions' by Bakkār, which is no longer a sole reference to the Ḥanafī masters but includes authorities from a subsequent generation of Ḥanafī jurists. The second half of the 3rd/9th century brought with it a fourth generation of Ḥanafī jurists, which meant that the Ḥanafī community was now composed of multiple layers of juristic authorities and regional groupings. A specific nomenclature would develop to capture the multiplication of school authorities *within* this community. For example, al-Ṭaḥāwī uses the phrase 'our companions' in reference to the Ḥanafī masters and varyingly for a group of jurists that included Yūsuf al-Samtī, ʿĪsā, Ibn Samāʿa, Hilāl, Abū Zayd al-Shurūṭī (d. around 200/815), al-Khaṣṣāf, Bakkār, Ibn Abī ʿImrān, and Abū Khāzim;[126] 'the early companions of Abū Ḥanīfa' and 'the people of knowledge from the early companions of Abū Ḥanīfa';[127] 'our Baghdadi companions';[128] 'our Basran companions' who are often contrasted with the Baghdadi ones;[129] 'the generality of our judge-

[125] Hilāl's relationship to ʿĪsā is also affirmed in reports where the former expresses his opinion that ʿĪsā was the most knowledgable judge appointed in Basra since the early days of Islam. See al-Ṣaymarī, *al-Akhbār*, 149-50.
[126] Al-Ṭaḥāwī, *al-Shurūṭ*, 67, 89, 96, 98, 105, 107 122, 124, 130, 139, 140-142, 150, 159, 163, 208. 228, 229, 242, 281, 317, 365, 411, 602.
[127] Ibid., 97, 338, .
[128] Ibid., 57, 99, 150, 259, 602.
[129] Ibid., 74, 269. 357, 361, 602. Schacht supposes that references to the 'people of Basra' or 'jurists of Basra' in the works of Hilāl also refers to a group of Ḥanafīs. See Melchert, *Formation*, 41 f.n. 30.

companions' applied to Ismāʿīl, ʿĪsā, Ibn Samāʿa, Bishr, Bakkār, Abū Khāzim, and others; and so forth.[130] Prior to al-Ṭaḥāwī, Ibn Abī ʿImrān refers to Ibn Shujāʿ and others as 'our later companions' (*muta'akhirī aṣḥābinā*), a phrase that would become common in the classical school.[131]

These developments were critical to the rise of the *madhhab* as a doctrinal entity, which was, among other things, characterized by an axis of authority and a cumulative and accretive body of doctrine constructed by generations of distinguished jurists.[132] The creation of this axis of authority and the earliest shift towards a cumulative doctrine did not come during the latter part of the 3rd/9th century but rather nearly half a century earlier with the students of jurists like al-Shaybānī. In other words, it was from the beginning of the 3rd/9th century that a transformation occurred from individual circles and individual legal doctrines to a more cumulative one that brought these individual circles together as a Ḥanafī community.

B. The Ḥanafī Community in External Sources

(i) The *Aṣḥāb Abī Ḥanīfa*

Around the same time the earliest Ḥanafī legal texts began exhibiting a collective notion of authority that became conventional in the classical school, specific phrases appeared in external non-Ḥanafī sources to describe a distinct community of Ḥanafī jurists. Already during the lifetime of Abū Yūsuf and al-Shaybānī, the circle of Abū Ḥanīfa was viewed as a homogeneous group as demonstrated in reports where jurists are described by their contemporaries in terms of their connection to Abū Ḥanīfa and his legal doctrine. Ibn Saʿd refers to Abū Yūsuf, al-Shaybānī, Zufar, ʿĀfiya ibn Yazīd (d. after 170/786), al-Naḍr ibn Muḥammad, and Asad ibn ʿAmr as

[130] Al-Ṭaḥāwī, *al-Shurūṭ*, 837, 928.
[131] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 3:394, 4:238.
[132] Hallaq, *Origins*, 152.

companions of Abū Ḥanīfa. Similarly, Ismāʿīl ibn al-Yasaʿ (d. after 167/784), the first Ḥanafī judge in Egypt, is described by the prominent traditionist, Saʿīd ibn Abī Maryam (d. 224/838-9), as one of their eminent judges 'except he adopted the opinions of Abū Ḥanīfa'.[133] Non-Ḥanafī legal literature also displays this as is seen in the works of al-Shāfiʿī, Abū ʿUbayd, and others who occasionally ascribe legal opinions to *abū ḥanīfa wa-aṣḥābuhu* and make reference to individuals who 'adopt the opinions of Abū Ḥanīfa'.[134] These phrases in external sources display the very earliest stage of the Ḥanafī community as a distinct circle and reveal jurists being identified with the teaching of an individual master rather than 'vaguely with the teaching of all jurisprudents of Kufa'. [135]

It was with the second generation of Ḥanafī jurists that these designations and phrases evolved from being a reference to the immediate circle of Abū Ḥanīfa to one that identified a legal community associated with multiple authorities that belonged to this original circle. ʿUthmān ibn Abī al-Rabīʿ (d. n.d.) was a part of a Basran delegation that appeared before al-Mahdī (d. 169/785; r. 158-69/775-85) and explained the reason Muḥammad ibn ʿAbd Allāh al-Anṣārī should not be appointed judge in the city: 'This is a man who follows the example of Abū Ḥanīfa and leans towards his *ra'y*.'[136] Al-Ansārī himself was a student of Zufar. Aḥmad ibn Ḥanbal (d. 241/855) described Muʿallā as being 'from the *aṣḥāb abī ḥanīfa*' although he was a

[133] Tsafrir, *History*, 66.
[134] Muḥammad ibn Idrīs al-Shāfiʿī, *Kitāb al-Umm*, ed. Rifʿat Fawzī ʿAbd al-Muṭṭalib, 11 vols (Manṣūra: Dār al-Wafā' lil-Ṭibāʿa wa-al-Nashr wa-al-Tawzīʿ, 2001), 7:251, 8:540, 613; Abū ʿUbayd al-Qāsim ibn Sallām, *Kitāb Gharīb al-ḥadīth*, ed. ʿAbd al-Salām Muḥammad Hārūn & Ḥusayn Muḥammad Sharaf, 5 vols. (Cairo: al-Hay'a al-ʿĀmma li-Shu'ūn al-Maṭābiʿ al-Amīrīya, 1994), 4:57, 271, 346; Aḥmad ibn Ḥanbal, *Masā'il al-Imām Aḥmad ibn Ḥanbal riwāyat ibnihi Abī al-Faḍl Ṣāliḥ*, ed. Ṭāriq ʿAwaḍ Allāh Muḥammad (Riyadh: Dār al-Waṭan lil-Nashr, 1999), 144, 261. When asked whether a person is 'rewarded for detesting the *aṣḥāb abī ḥanīfa*', Aḥmad responded emphatically in the affirmative. See ʿAbd Allāh ibn Aḥmad ibn Ḥanbal, *al-Sunna*, ed. Muḥammad al-Qaḥṭānī (Dammam: Dār ibn al-Qayyim, 1986), 180.
[135] Melchert, *Formation*, 48.
[136] Tsafrir, *History*, 34.

student of Abū Yūsuf and al-Shaybānī.[137] Similarly, Ibn ʿAbd al-Ḥakam (d. 257/871) described Hāshim ibn Abī Bakr al-Bakrī (d. 196/811) and Ibrāhīm ibn al-Jarrāḥ (d. 217/832) respectively as jurists who 'adopted (*yadhhab*) the *madhhab* of the *aṣḥāb abī ḥanīfa*' and 'the opinions of the *aṣḥāb abī ḥanīfa*'.[138] The description of Ibn ʿAbd al-Ḥakam is particularly interesting for his phrasing corresponds with the notion of collective authority seen earlier in the school's legal literature where the Ḥanafī community was shown having moved beyond a strictly personal stage.

Tsafrir mentions another decisive external indication for the existence of a legal community whose outlines were well defined as 'a struggle between that school and another one.'[139] She details such competition between clearly defined Ḥanafī and Mālikī schools in Qayrawan during the 3rd/9th century where a sense of affiliation to each school led their respective followers to produce works in defence of its legal doctrine.[140] Abū Yūsuf and al-Shaybānī had already penned defences in support of Abū Ḥanīfa against those who opposed him as seen in works like *al-Radd ʿalā Siyar al-Awzāʿī* and *al-Ḥujja ʿalā ahl al-Madīna*. The students of the Ḥanafī masters continued this task in response to increasing pressure from various groups, such as al-Shāfiʿī, *aṣḥāb al-ḥadīth*, the followers of Mālik, and others. In one revealing incident, al-Ma'mūn is said to have requested a group of Ḥanafī jurists, namely Ismāʿīl ibn Ḥammād, Bishr, Ibn Samāʿa, and Yaḥyā ibn Aktham (d. 242/857), to produce something that would 'establish proof for the opinions of your companions' in response to accusations that their doctrine contravened traditions.[141] This motivated ʿĪsā ibn Abān to author his famous *Kitāb al-*

[137] Aḥmad ibn Ḥanbal, *Masā'il riwāyat Abī al-Faḍl*, 97.
[138] Ibn ʿAbd al-Ḥakam, *Futūḥ Miṣr*, 245-6.
[139] Tsafrir, *History*, xii.
[140] Ibid., 109-10.
[141] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 370-1.

Ḥujaj, which he is said to have done in consultation with another Ḥanafī jurist, Sufyān ibn Saḥbān (d. n.d.), who himself authored a text entitled *Kitāb al-ʿIlal*.[142]

Slightly later, Ibn Muqātil undertook the task of defending Ḥanafī legal doctrine proclaiming that he had seen its foundations weakening in Iraq and would support it to the utmost of his ability.[143] Following him, Ibn Shujāʿ produced his *Kitāb Taṣḥīḥ al-āthār*, a text presumably dedicated to grounding Ḥanafī legal doctrine with a basis in the primary texts. Ibn al-Nadīm states outright that Ibn Shujāʿ was the major figure to detail, clarify, and defend the school's legal doctrine in a manner that rendered it acceptable to people.[144] His student, ʿAlī ibn Mūsā al-Qummī, would author a refutation of al-Shāfiʿī.[145] Each of these efforts assisted in sharpening the boundaries of the Ḥanafī school and defining the unique characteristics of its legal discourse, which will be examined in detail in the second part of this study.

(ii) The *Aṣḥāb al-Ra'y*

Pertinent to the emergence of a distinct Ḥanafī legal community in the context of increased competition between schools is the division between *aṣḥāb al-ra'y* and *aṣḥāb al-ḥadīth*. The label *aṣḥāb al-ra'y* or *ahl al-ra'y* was perhaps the most common way members of the nascent Ḥanafī community were identified in non-Ḥanafī sources during the 3rd/9th century and it was usually contrasted with *aṣḥāb al-ḥadīth*. These two groups have been viewed as representing the principal division between scholars during this period with *aṣḥāb al-ra'y* increasingly used as an umbrella term in reference to Abū Ḥanīfa, his companions, and their followers. This label is admittedly far more ambiguous than *aṣḥāb abī ḥanīfa* as neither it nor the label *aṣḥāb al-ḥadīth*

[142] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 371; Ibn al-Nadīm, *al-Fihrist*, 3:25.
[143] Abū Zurʿa al-Rāzī, *al-Duʿafā' wa-ajwibat Abī Zurʿa ʿalā su'ālāt al-Bardhaʿī*, ed. Saʿdī al-Hāshimī, 3 vols. (Madina: ʿImādat al-Baḥth al-ʿIlmī bi-al-Jāmiʿa al-Islāmīya, 1982), 1:36.
[144] Ibn al-Nadīm, *al-Fihrist*, 3:29.
[145] Ibid., 3:32.

necessarily referred to a coherent group of scholars with clear lines of demarcation. Due to the vague nature of its main reference point, namely the concept of *ra'y*, and differing/shifting conceptions regarding whom the label applied to, modern scholars attempting to disambiguate the label have faced significant difficulties especially when analysing its usage over an extended period of time.[146] Since the concern of this section relates to the 3rd/9th century, the current analysis of the label *aṣḥāb al-ra'y* will limit itself to its usage during this particular period.

The biographical dictionary of Ibn Saʿd is one of the earliest available texts from the 3rd/9th century to identify individuals as *ṣāḥib al-ra'y* and *ṣāḥib al-ḥadīth*. The author's usage of *ra'y* itself suggests that it possessed a positive quality especially when applied to earlier generations. Abū Bakr (d. 13/634), for example, was said to seek the advice of 'the people of *ra'y* and *fiqh*' from the Muhājirūn and Anṣār.[147] Ibn ʿAbbās (d. 68/687) was described as engaging in *ra'y* to address legal questions for which no answer was available in the Qur'an, *sunna*, or the practice of Abū Bakr and ʿUmar.[148] Similarly, Saʿīd ibn al-Musayyab (d. 94/712-3) was described as 'the most knowledgeable person regarding traditions and the most legally astute regarding its *ra'y*.'[149] Such a positive usage of the term *ra'y* was consistent with the word's original signification, namely sound and discretionary opinion, and reflects the generally favourable attitude traditionalists held towards earlier generations of Muslims.[150] Yet, when applied to scholars from a more contemporaneous period, such as the followers of Abū Ḥanīfa,

[146] Ahmad Hasan, "Early Modes of *Ijtihād*: *Ra'y*, *Qiyās*, and *Istiḥsān*," *Islamic Studies* 6, no. 1 (March 1967): 54-63; Schacht, *Origins*, 253-5; Joseph Schacht, "*Aṣḥāb al-Ra'y,*" *EI*2, 1:691; Melchert, *Formation*, 1-13; Hallaq, *Origins*, 74-5. For a detailed analysis of these sources and others see Amr Osman, *The Ẓāhirī Madhhab*, Ch. 3.
[147] Ibn Saʿd, *al-Ṭabaqāt,* 2:302.
[148] Ibid., 2:316.
[149] Ibid., 2:327. Another example is the comment of Abū Salama, 'I have seen no one more knowledgable of the prophetic *sunna*, or more legally astute in opinion (*ra'y*) when such opinion is required, or more knowledgeable regarding the reason a verse was revealed, or regarding an obligation, than ʿĀ'isha.' See Ibid., 2:312.
[150] Hasan, "Early Modes of *Ijtihād*," 48-52, 57-60; Melchert, "How Ḥanafīsm Came to Originate in Kufa," 329-30; Hallaq, *Origins*, 75.

engagement with *ra'y* was viewed in a more negative light by Ibn Saʿd. Abū Yūsuf was described as having been 'won over by *ra'y*' after becoming a student of Abū Ḥanīfa as a result of which he 'turned away from traditions'.[151] Al-Shaybānī initially heard and gathered traditions only to become 'overcome by *ra'y*' after joining the study circle of Abū Ḥanīfa.[152] Similarly, Zufar was initially connected with the study of traditions until he looked into *ra'y* after which he too became preoccupied with it.[153]

Ibn Saʿd does not always present his near contemporaries who engaged in *ra'y* in such negative terms. ʿUthmān al-Battī (d. 143/761) is described by him as someone who was 'trustworthy, possessed traditions, and a person of *ra'y* and *fiqh*.'[154] Similarly, Muʿallā is described as 'reliable, and a person of traditions, *ra'y*, and *fiqh*' although *aṣḥāb al-ḥadīth* would not transmit *ra'y* from him.[155] There is little doubt as to why this was the case: he was a student of Abū Yūsuf and al-Shaybānī. Clearly, there was something peculiar about the manner Ḥanafīs exercised *ra'y* (or at least how such an exercise was perceived) that rendered it objectionable in the eyes of Ibn Saʿd and others. An analysis of Ibn Saʿd's positive presentations of *ra'y* reveals exactly what the issue was, namely a belief that Ḥanafīs disregarded the primary texts of the Qur'an and *sunna* in favour of personal opinion. Ibn ʿAbbās engaged in *ra'y* only in the absence of such texts; ʿĀ'isha only when it was 'required'; Ibn al-Musayyab's *ra'y* was the *ra'y* of traditions themselves (not *ra'y* independent of them or undermining them); and al-Battī was a reliable transmitter of traditions and a person of *fiqh*. The descriptions of these figures reveal that identifying someone with *ra'y* could still denote a positive meaning if the exercise of *ra'y* was

[151] Ibn Saʿd, *al-Ṭabaqāt*, 9:332.
[152] Ibid., 9:338.
[153] Ibid., 8:509-10.
[154] Ibid., 9:256.
[155] Ibid., 9:344.

anchored to traditions and imbibed with the quality of *fiqh*.[156] This was not the case for Abū Ḥanīfa who Ibn Saʿd described simply as *ṣāḥib al-raʾy* with no mention of *fiqh* nor any substantive link to traditions except for being a weak transmitter. His followers, namely Zufar, Abū Yūsuf, and al-Shaybānī, were similarly presented as not simply proponents of *raʾy* but individuals who turned their back on traditions in favour of it.[157]

The division between *aṣḥāb al-raʾy* and *aṣḥāb al-ḥadīth* is also present in the texts of Abū ʿUbayd al-Qāsim ibn Sallām (d. 224/839), a contemporary of Ibn Saʿd. Though positively affiliated with prominent scholars of the *aṣḥāb al-ḥadīth*, such as Aḥmad and ʿAlī ibn al-Madīnī (d. 234/849), there is little indication that he held the proponents of *raʾy* in a strongly negative light, though he did aggressively refute them on occasion. On the whole, however, Abū ʿUbayd seems to have been an independent jurist who benefitted from a range of authorities and traditions that preceded him, such as Abū Ḥanīfa, Abū Yūsuf, al-Shaybānī, Mālik, Sufyān, al-Awzāʿī, the regional traditions of each of these figures (i.e. the *ahl al-ʿIrāq*, *Shām*, and *Ḥijāz*), the *aṣḥāb al-raʾy*/*ahl al-raʾy*, and *aṣḥāb al-ḥadīth*/*ahl al-athar*. In the case of *aṣḥāb al-raʾy*, it is difficult to pin down whom he viewed as part of this group given the absence of specific names identified with the label in his various texts, but some observations can be offered. In his work *al-Ṭahūr*, *aṣḥāb al-raʾy* primarily seem to be a subgroup of the people of Iraq and specifically Ḥanafī jurists. In relation to its Iraq-centredness, Abū ʿUbayd routinely cites '*aṣḥāb al-raʾy* from

[156] The increasingly negative connotation of *raʾy* from considered opinion to arbitrary opinion was said to coincide with the rising authority of prophetic traditions and also the evolution of technical legal thought where analogy became more strictly defined. See Schacht, *Origins*, 98-9; Hallaq, *Origins*, 113-4.
[157] Traditionists who had positive views of some of these Ḥanafī jurists reaffirm this point. Ibn Ḥibbān, for example, stated that Zufar was 'precise' (*mutqin*) in his transmission of traditions and 'the most frequent to return to the truth from among his companions when it became apparent to him.' See Muḥammad ibn Ḥibbān, *Kitāb al-Thiqāt*, 9 vols. (Hyderabad: Maṭbaʿat Majlis Dāʾirat al-Maʿārif al-ʿUthmānīya, 1973), 6:339.

the people of Iraq',[158] 'the people of Iraq from *aṣḥāb al-ra'y*',[159] 'this is the opinion of Sufyān and also the people of Iraq from *aṣḥāb al-ra'y*',[160] and 'this is the opinion of Sufyān and the *ahl al-ra'y* from the Kufans'.[161] No other region is identified with *ra'y* besides Iraq in general or Kufa in specific. Though Abū ʿUbayd mentions regional centres numerous times, he also identifies jurists based on a division that captured their particular approach to law and traditions: 'this is a matter on which people from the Hijaz, Iraq, those who opine by way of traditions (*man yaqūl bi-al-athar*), and the *aṣḥāb al-ra'y* settled on.'[162] That the latter label mainly referred to Abū Ḥanīfa and his followers is indicated in two ways: firstly, Abū Ḥanīfa and his followers are never cited by name in contrast to Sufyān, Mālik, al-Awzāʿī, Ibn Abī Laylā, and earlier figures like Ibrāhīm; secondly, most of the opinions ascribed to *aṣḥāb al-ra'y* align with those held by Ḥanafī jurists as in the following example:

> **1.7** Muḥammad informed us, 'Abū ʿUbayd said, "Hushaym informed us from Mughīra from Ibrāhīm that he disliked the left-over of a donkey, and a mule is a type of donkey." Abū ʿUbayd said, "Sufyān disliked it as well and this was also the opinion of all of the *ahl al-ra'y* who viewed it as disliked. They stated that if one was compelled to use it then he should perform ablution with it and then *tayammum*, i.e. combining both of them."'[163]

In this example, *aṣḥāb al-ra'y* are contrasted with Sufyān and later Mālik. The position ascribed to them in terms of both the dislikedness of a donkey/mule's leftover water and the combining of ablution/*tayammum* corresponds to the opinion of Ḥanafī jurists as mentioned in *al-Aṣl* and other early texts.[164] More telling than this is the manner in which Abū ʿUbayd presents the reasoning of *aṣḥāb al-ra'y* who held this view, which mirrors the very words of al-Shaybānī:

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[158] Abū ʿUbayd al-Qāsim ibn Sallām, *al-Ṭaḥūr*, ed. Mashhūr Ḥasan Salmān (Jeddah: Maktabat al-Ṣaḥāba, 1994), 226.
[159] Ibid., 234.
[160] Ibid., 263, 286.
[161] Ibid., 242, 245.
[162] Ibid., 362. In another section (391), he says, 'This is the opinion of scholars from the people of Hijaz, Iraq, *aṣḥāb al-athar*, and *aṣḥāb al-ra'y*.'
[163] Ibid., 289.
[164] Al-Shaybānī, *al-Aṣl*, 1:92, 107; Muḥammad ibn al-Ḥasan al-Shaybānī, *al-Jāmiʿ al-ṣaghīr maʿa sharḥihi al-Nāfiʿ al-kabīr* (Beirut: ʿĀlam al-Kutub, 1986), 74.

Abū ʿUbayd in *al-Ṭahūr*	al-Shaybānī in *al-Aṣl*
1.8. If the proponent of this view argues that *tayammum* is not prescribed here alongside ablution due to the impurity [of water] but rather out of adopting precaution (*al-akhdh bi-al-thiqa*), it is said to him that precaution here would entail not coming in the contact with such water unless he viewed it as pure.[165]	**1.9.** I said: What is your opinion concerning the leftover water of a mule or donkey? Is ablution to be performed with it or *tayammum*? **1.9.1.** He said: Ablution, then *tayammum* after it, and then one prays. **1.9.2.** I said: Why? **1.9.3.** He said: I adopt precaution here (*ākhudh bi-al-thiqa*).[166]

In another example:

Abū ʿUbayd in *al-Ṭahūr*	al-Shaybānī in *al-Jāmiʿ*
2.0. The people of Iraq from *aṣḥāb al-raʾy* differed on this [i.e. ablution with *nabīdh* in the absence of water]. They have three opinions on the issue: the first is that it is valid for one to perform ablution with it; the second is that one performs *tayammum* and does not perform ablution with it; the third is that one combines between performing ablution with it and between *tayammum*. All of this concerns *nabīdh* from dates. As for *nabīdh* from raisins, I do not know of anyone among them who permits ablution with it.[167]	**2.1.** If only date-*nabīdh* is available, he performs ablution with it and does not perform *tayammum*. Abū Yūsuf said he performs *tayammum* and not ablution. Muḥammad said he performs ablution then *tayammum*. And one does not perform ablution with any other drink besides date-*nabīdh*.[168]

Other opinions in the text ascribed to the *aṣḥāb al-raʾy* that align with the view of the Ḥanafī masters include order not being obligatory in ablution,[169] a body of water not being rendered impure if affected by filth when it is so large that water from one side does not reach the other,[170] and intention not being necessary in ablution.[171] This may not conclusively demonstrate that the

[165] Abū ʿUbayd, *al-Ṭaḥūr*, 291.
[166] Al-Shaybānī, *al-Aṣl*, 1:92-3.
[167] Abū ʿUbayd, *al-Ṭaḥūr*, 316.
[168] Al-Shaybānī, *al-Jāmiʿ al-ṣaghīr*, 74.
[169] Abū ʿUbayd, *al-Ṭaḥūr*, 354.
[170] Ibid., 234.
[171] Ibid., 203-4.

label exclusively applied to the Ḥanafīs but it does make a strong case that they were perhaps foremost in the mind of Abū ʿUbayd when he used it in this text.

As for other texts authored by Abū ʿUbayd, they do not add much more to what has preceded. In *Gharīb al-ḥadīth*, references to *aṣḥāb al-ra'y* diminish except the rare mention of 'those who opine by way of *ra'y*' and 'the opinion of those who follow traditions'.[172] Now the Ḥanafī masters are cited explicitly by name in several cases (more than Mālik and Sufyān) and regional centres continue to be extensively referenced.[173] Meanwhile, in *al-Nāsikh wa-al-mansūkh*, the label seems to be used exclusively in contexts where broad scholarly agreement is presented: 'As for the position of all the people of knowledge today from *ahl al-irāq*, *ḥijāz*, *shām*, *aṣḥāb al-āthār*, and *aṣḥāb al-ra'y*…';[174] 'All scholars agreed on this position from the *ahl al-ḥijāz*, *ʿirāq*, *shām*, and *miṣr*, and others from among them such as Mālik, Sufyān, al-Awzāʿī, al-Layth, and all the *ahl al-athar* and *ahl al-ra'y*';[175] 'And this is the conclusion reached by scholars from *ahl al-ḥijāz*, *ʿirāq*, *sham*, and from them Sufyān, al-Awzāʿī, Mālik, *ahl al-ra'y* and others';[176] "This is the opinion of al-Awzāʿī, Sufyān, Mālik… and likewise the opinion of all of the *ahl al-ra'y*'.[177] As was the case in *al-Ṭahūr*, no Ḥanafī jurist is cited explicitly by name in *al-Nāsikh*.

It seems then from all these sources that when the label *aṣḥāb* or *ahl al-ra'y* was used by Abū ʿUbayd, it referred to a specific subgroup of Iraqi jurists who had a distinctive manner of exercising *ra'y*, included Abū Ḥanīfa and his followers, and did not include the likes of Mālik,

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[172] Abū ʿUbayd, *Gharīb al-ḥadīth*, 5:148.
[173] These are the number of citations for some of these major figures and regions: Abū Ḥanīfa (11), Zufar (1), Abū Yūsuf (9), al-Shaybānī (15), Sufyān (2), Mālik (4), al-Awzāʿī (1), Ibn Abī Laylā (1), *ahl al-ḥijāz* (21), *ahl al-madīna* (10), *ahl makka* (6), *ahl al-ʿirāq* (25), *ahl al-kūfa* (6), *ahl al-baṣra* (3), *ahl al-shām* (13), *ahl miṣr* (5).
[174] Abū ʿUbayd al-Qāsim ibn Sallām, *al-Nāsikh wa-al-mansūkh fī al-qur'ān al-ʿazīz wa-mā fīhi min al-farā'iḍ wa-al-sunan*, ed. Muḥammad Ṣāliḥ (Riyadh: Maktabat al-Rushd, 1997), 82.
[175] Ibid., 234.
[176] Ibid., 173.
[177] Ibid., 97.

Sufyān, and al-Awzāʿī who always seem to be cited explicitly and independently or along with their regional affiliations. Importantly, these texts reveal that the division between the proponents of *raʾy* and *ḥadīth* was not the principal division with every jurist for many of them continued to identify scholars in a manner independent of either group.[178]

Towards the middle of the 3rd/9th century, the dividing lines between *aṣḥāb al-raʾy* and *aṣḥāb al-ḥadīth* became increasingly sharpened and more central for purposes of identification. Ibn Qutayba (d. 276/889) is perhaps the earliest source to provide a clear list of those who were from *aṣḥāb al-raʾy* and *aṣḥāb al-ḥadīth*. In his work *al-Maʿārif*, the former label is applied to nine figures many of whom were not directly identified with *raʾy* by Ibn Saʿd nor by Abū ʿUbayd: Abū Ḥanīfa, Zufar, Abū Yūsuf, al-Shaybānī, Ibn Abī Laylā (d. 148/765-6), Rabīʿa ibn ʿAbd al-Raḥmān (d. 136/753), Mālik, al-Awzāʿī (d. 157/773-4), and Sufyān.[179] However, in a later text by the same author only Abū Ḥanīfa and his followers continue to be expressly labelled as *aṣḥāb al-raʾy*. Melchert remarked that this change of opinion may have reflected the shifting views of al-Muwaffaq, the caliph and patron of Ibn Qutayba, rather than the views of Baghdadi traditionist-jurisprudents in general.[180] This is plausible though another explanation is that *raʾy* was used in one text in a general and more neutral sense, while in the other as a pejorative to identify a specific group of figures viewed as possessing a legal approach that was arbitrary and dismissive of traditions. Ibn Qutayba himself refers to *aṣḥāb al-raʾy* in *al-Maʿārif* more generally as *aṣḥāb al-raʾy wa-al-fatwā* and indicates several times that his inclusion of someone

[178] This is an important point to take into account when it comes to methodological considerations for determining the stage of evolution of the *madhhab*. One manner by which the *madhhab* as a regional entity was evidenced was by looking at sources that described jurists as regional groupings. Such a method proves less than satisfactory, however, in contexts where the manner of identifying jurists is varied and thus unclear. In the case of Abū ʿUbayd, regional identification is prominent but it is also coupled with identifying jurists as individuals and through their methodological approaches to law.
[179] ʿAbd Allāh ibn Muslim ibn Qutayba, *al-Maʿārif*, ed. Tharwat ʿUkāsha (Cairo: Dār al-Maʿārif, 1992), 494-500.
[180] Christopher Melchert, "Tradionist-Jurisprudents and the Framing of Islamic Law," *Islamic Law and Society* 8, no. 3 (2001): 405.

among *aṣḥāb al-ḥadīth* is based on 'traditions being predominant in him (*aghlab ʿalayhi al-ḥadīth*)'.[181] Thus, he remarks that ʿUbayd Allāh ibn Mūsā (d. 213/828-9) 'recited to ʿĪsā ibn ʿAmr and also ʿAlī ibn Ṣāliḥ ibn Ḥayy… He would recite the Qur'an in his mosque but traditions were predominant in him and so we have mentioned him among *aṣḥāb al-ḥadīth*.'[182] The same was said regarding al-ʿAlā' ibn ʿAbd al-Raḥmān (d. 138/755-6).[183]

This criterion of identification based on predominant activity is the main approach of Ibn Qutayba throughout his text. He listed among the Qur'an reciters individuals known for transmitting numerous traditions as they were 'more well-known for recitation'.[184] ʿĪsā ibn ʿAmr (d. 149/766) was identified as 'from the people of Qur'anic recitation' but listed among the poets since 'poetry was predominant in him'.[185] Abū ʿAbd al-Raḥmān al-Muqri` (d. 213/828) was listed among *aṣḥāb al-ḥadīth* and *ahl al-qirā'a* as he was 'well-known for both traditions and recitation'.[186] Given this criterion, the reason Mālik, al-Awzāʿī, and Sufyān were listed among *aṣḥāb al-ra'y wa-al-fatwā* was that their activity was viewed by Ibn Qutayba as primarily relating to the articulation of law and the issuing of legal verdicts. In other words, this label was not intended to deny the connection these scholars had with traditions but merely an affirmation that they were first and foremost jurists.

In contrast, in *Ta'wīl mukhtalaf al-ḥadīth* the now exclusive application of the label *aṣḥāb al-ra'y* to Abū Ḥanīfa and his followers occurs in a context where this label was used to define a group whose legal methodology was both inconsistent and circumscribed the clear

[181] Ibn Qutayba, *al-Maʿārif*, 462, 531.
[182] Ibid., 531.
[183] Ibid. He is described as an *imām* and *muḥaddith* in al-Dhahabī, *al-Siyar*, 6:186-7.
[184] Ibn Qutayba, *al-Maʿārif*, 531.
[185] Ibid.
[186] Ibid.

contents of the primary texts by subjecting them to, or rejecting them for, *ra'y* and analogy.[187] Indeed, the exercise of *ra'y* in positive law was not so severe a matter in itself according to Ibn Qutayba ('*fa-ammā al-ra'y fī al-furūʿ fa-akhaff amran*').[188] However, the primary texts fundamentally transcended the intellect and consequently were not subject to analogy ('*wa-in kāna makhārij uṣūl al-aḥkām…ʿalā khilāf al-qiyās wa-taqdīr al-ʿuqūl*'). In other words, whereas the operational assumption in the *ra'y* approach of Abū Ḥanīfa was the law's consistency, this was not accepted by *aṣḥāb al-ḥadīth*. Consequently, the *ra'y* approach did not admit the existence of individual exceptions to general rules, which manifested itself in a preference for analogical extensions of generally accepted rules over unit-reports (*khabar āḥād*) that contradicted these rules. It was precisely this legal approach that Ibn Qutayba and others deemed to entail a rejection of otherwise sound traditions.

In light of this, it becomes clear that *aṣḥāb al-ḥadīth* were no longer identified by Ibn Qutayba from the perspective of predominant activity (traditionist *vs* jurist) but a sound methodological approach to law that upheld the primary texts without subjecting them to, and rejecting them for, the standards of analogy and personal opinion:

> **2.2** As for *aṣḥāb al-ḥadīth*, they are those who… draw closer to God through their following of the *sunna* and seek out prophetic traditions and reports over land and sea, in the east and west… each one of them traversing long distances on foot in pursuit of a single tradition (*al-khabar al-wāḥid*)...they continue examining these reports and looking into them until they understand what is sound from them and unsound, what is abrogated from them and what abrogates, and recognize those among the jurists who oppose it for *ra'y*... then a legal ruling is issued in accordance with the words of the Prophet when prior to this it was done based on the position of so-and-so or so-and-so even if it opposed the Prophet.[189]

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[187] ʿAbd Allāh ibn Muslim ibn Qutayba, *Kitāb Ta'wīl mukhtalaf al-ḥadīth*, ed. Muḥammad Muḥyī al-Dīn al-Aṣfar (Beirut: al-Maktab al-Islāmī, 1999), 102-27.

[188] Ibid., 108.

[189] Ibn Qutayba, *al-Ta'wīl*, 127. In the section 'A refutation of *aṣḥāb al-ra'y*', Ibn Qutayba introduces them as people who 'differ among themselves and exercise analogy, then they discard analogy and employ *istiḥsān*, and opine something and issue rulings based on it only to later go back on it.' Ibn Qutayba then presents several examples of Abū Ḥanīfa relying on *ra'y* when going back on a view he had originally held and disregarding prophetic traditions in favour of such *ra'y* or the opinions of later jurists, such as al-Nakhaʿī. He emphasizes this opposition to the revelatory texts by the *aṣḥāb al-ra'y* by remarking, 'More severe than this is their going against the Book of God as if they have never read it.' See Ibid., 102-5, 107.

Understanding Ibn Qutayba in this manner is consistent with the observation that *ra'y* could occasionally connote a positive or neutral meaning and at other times a negative one. Indeed, the non-identification of Mālik, Sufyān, and others with *aṣḥāb al-ra'y* in some contexts simply meant that their exercise of analogy and juristic opinion was unlike that of the Ḥanafīs (or other Iraqis) who were perceived as having a very specific method of utilizing it. It was this specific exercise of *ra'y* that made earlier scholars, such as Abū ʿUbayd, identify *aṣḥāb al-ra'y* as one of several groups among Iraqi jurists specifically and the entire scholarly community more generally. This returned to the *aṣḥāb al-ra'y-aṣḥāb al-ḥadīth* dichotomy running on a spectrum of two extremes: a continuum between pure *ra'y* and pure tradition with different jurists exercising it in different ways and to differing degrees.[190] Ibn Qutayba does not seem to deny the exercise of *ra'y* by Mālik and others in his *Ta'wīl*. Though he criticizes *ra'y* and analogy extensively in this work, he also affirms varying attitudes towards their use among renowned early Iraqi scholars: 'The fiercest critic (*ashadduhum*) of *ra'y* and analogy from the people of Iraq was al-Shaʿbī while the most easy going of them (*ashaluhum*) concerning it was Mujāhid.'[191] Mujāhid (d. 104/722) was universally acclaimed by *aṣḥāb al-ḥadīth* and is reported to have stated, 'The best of worship is good *ra'y*.'[192] But the *ra'y* of Abū Ḥanīfa was far from being 'good' or even neutral according to Ibn Qutayba and this is partly what explains the shifting columns of individuals described with the label in his texts.

With *aṣḥāb al-ḥadīth* themselves, the label *aṣḥāb al-ra'y* took on an increasingly negative connotation as the 3rd/9th century progressed until it became an almost exclusive

[190] This was recognized by modern scholars as early as Goldziher. See Ignaz Goldziher, *The Ẓāhirīs*: *Their Doctrine and Their History*, trans. Wolfgang Behn (Leiden: Brill, 2008), 3.
[191] Ibn Qutayba, *al-Ta'wīl*, 109.
[192] Ibid., 110.

reference to the Ḥanafīs. Given what was perceived as a more centrist position between *ra'y* and *ḥadīth*, there was a degree of flexibility in terms of identifying figures like Mālik as closer to *aṣḥāb al-ḥadīth* without this being viewed as a radical shift or a denial of their engagement with *ra'y*. Clearly, leading authorities from *aṣḥāb al-ḥadīth* during this period found figures like Mālik and Sufyān more tolerable and acceptable than other proponents of a *ra'y*-based approach to law. For example, Aḥmad took issue with Mālik for his practice of *ra'y* as he did with virtually every other jurist who engaged in it. He is reported to have said, 'The *ra'y* of Mālik does not please me and nor the *ra'y* of anyone else.'[193] Yet, the *ra'y* of Mālik was still preferable to others. When Aḥmad was asked regarding 'Mālik and Sufyān differing in their *ra'y*', he responded, 'Mālik has a greater place with me', and when the same question was posed to him regarding Mālik and al-Awzāʿī, he replied, 'I prefer Mālik even though al-Awzāʿī is an authority (*imām*).'[194] Therefore, there was a clear acknowledgment even by those who deemed all forms of *ra'y* objectionable that not every exercise of *ra'y* was one and the same.

This recognition was also indicated by the students of Aḥmad. Ibn Hāni' (d. 275/888), for example, asked Aḥmad whether he 'preferred the books of Mālik and al-Shāfiʿī or Abū Ḥanīfa and Abū Yūsuf', to which the latter responded, 'Al-Shāfiʿī is preferable to me despite having authored a text… they [al-Shāfiʿī and Mālik] issued legal verdicts based on prophetic traditions while the other [Abū Ḥanīfa] did so based on opinion, and what a great difference there is between the two approaches.'[195] The simple act of grouping Mālik with al-Shāfiʿī in opposition to Abū Ḥanīfa and Abū Yūsuf reveals that Ibn Hāni' recognized the former as being unlike the

[193] Aḥmad ibn Ḥanbal, *Masā'il al-Imām Aḥmad ibn Ḥanbal riwāyat Abī Dāwūd Sulaymān ibn al-Ashʿath al-Sijistānī*, ed. Ṭāriq ʿAwaḍ Allāh (Cairo: Maktabat Ibn Taymīya, 1999), 367.
[194] Abū Zurʿa, *al-Tārīkh*, 1:439.
[195] Aḥmad ibn Ḥanbal, *Masā'il al-Imām Aḥmad ibn Ḥanbal riwāyat Isḥāq ibn Ibrāhīm ibn Hāni' al-Naysābūrī*, ed. Zuhayr Shāwīsh, 2 vols. (Beirut: al-Maktab al-Islāmī, 1980), 2:164.

latter in terms of his legal approach. In contrast to Mālik, Sufyān, and even al-Awzāʿī, the *ra'y* of Abū Ḥanīfa and his companions was never acceptable for it involved a direct repudiation of the primary texts. Al-Awzāʿī himself acknowledged this when he stated that all jurists practised *ra'y* but Abū Ḥanīfa stood out in one way: he would use it to negate the *sunna* and reject prophetic traditions that opposed his *ra'y*.[196] An early Mālikī from Spain, Ibn Ḥabīb (d. 238/853) affirmed this same sentiment when commenting on Mālik's interpretation of the 'incurable disease' in Iraq that ʿUmar was warned about: it was a reference to 'Abū Ḥanīfa and his companions' for 'they misguided people in two ways, namely *irjā'* and negating the *sunna* by way of *ra'y*.'[197]

The favourable position occupied by Mālik, Sufyān, and al-Awzāʿī with the *aṣḥāb al-ḥadīth* also returned to the important consideration previously indicated by Ibn Saʿd in his more positive presentations of *ra'y*, namely proficiency in prophetic traditions. Mālik, for example, possessed impeccable credentials as a traditionist, which *aṣḥāb al-ḥadīth* duly recognized. Aḥmad is said to have described Mālik as 'among the most reliable of people (*athbat al-nās*)',[198] 'a proof (*ḥujja*)',[199] and 'one of the leaders (*imām*) of the Muslims'.[200] Such praise was also extended to Sufyān and al-Awzāʿī. The former was described in glowing terms by Aḥmad as a 'proof" and 'one of the most knowledgeable people regarding traditions',[201] while al-Awzāʿī was said to be 'from the leaders of the Muslims (*a'imma*)' and was deemed an equal of Saʿīd ibn ʿAbd al-ʿAzīz (d. 176/792-3) who Aḥmad said possessed the soundest traditions from among the

[196] Ibn Qutayba, *al-Ta'wīl*, 103. For similar accusations from others, such as Mālik and Isḥāq see Ibn Qutayba, *al-Ta'wīl*, 105; ʿAbd Allāh ibn Aḥmad ibn Ḥanbal, *al-Sunna*, 188, 199, 204.
[197] ʿAbd al-Malik ibn Ḥabīb al-Sulamī, *Tafsīr gharīb al-Muwaṭṭa'*, ed. ʿAbd al-Raḥmān Sulaymān al-ʿUthaymīn, 2 vols. (Riyadh: Maktabat al-ʿAbīkān, 2001), 2:160-1.
[198] Aḥmad ibn Ḥanbal, *Min kalām al-Imām Abī ʿAbd Allāh Aḥmad ibn Ḥanbal fī ʿilal al-ḥadīth wa-maʿrifat al-rijāl*, ed. Ṣubḥī al-Badrī Sāmarrā'ī (Riyadh: Maktabat al-Maʿārif, 1989), 164.
[199] Ibid., 47.
[200] Ibid., 90.
[201] Aḥmad ibn Ḥanbal, *Su'ālāt Abī Dāwūd lil-Imām Aḥmad ibn Ḥanbal fī jarḥ al-ruwāt wa-taʿdīlihim*, ed. Ziyād Muḥammad Manṣūr (Madina: Maktabat al-Ulūm wa-al-Ḥikam, 1994), 309.

Syrians.[202] These positive views of Mālik, Sufyān, and al-Awzāʿī seemed fairly mainstream among opponents of *raʾy* and are found in the earliest texts of the *aṣḥāb al-ḥadīth*. However, it was not merely the legal approach of these individuals being more tolerable than that of the Ḥanafī masters that rendered them more acceptable but also their creedal declarations on such issues as God's attributes, the definition of faith (*īmān*), and the uncreatedness of the Quran, which aligned with what *aṣḥāb al-ḥadīth* deemed to be the orthodox Sunni creed. In contrast, Abū Ḥanīfa and his followers did not simply stand out for their excessive *raʾy*-centred legal discourse but also for their heterodox theological doctrine. Leading scholars of *aṣḥāb al-ḥadīth* invariably dedicated a section in their texts to Abū Ḥanīfa where figures like Mālik, Sufyān, and al-Awzāʿī were cited as fierce critics of his and his followers' approach to law, knowledge of traditions, and theological doctrine.[203]

Given this ambivalent yet more favourably inclined attitude towards Mālik, Sufyān, and those like them, it is not surprising that the sources increasingly applied the label *aṣḥāb al-raʾy* exclusively to Ḥanafīs especially as it took on a more pejorative quality with the rise of an increasingly energized *aṣḥāb al-ḥadīth* during and after the drastic events of the *miḥna*. This seems to reflect a general trend from the second half of the 3rd/9th century and was not in any way unique to Ibn Qutayba. One clear example of this is observed in the creedal statement of Ḥarb ibn Ismāʿīl al-Kirmānī (d. 280/893), a prominent student of Aḥmad and contemporary of Ibn Qutayba's, that represented (or so it was said) the doctrine of *aṣḥāb al-ḥadīth*. Here, *aṣḥāb al-raʾy* were listed as one of a dozen or so misguided groups and identified with Abū Ḥanīfa and his companions:

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[202] Abū Zurʿa, *al-Tārīkh*, 1:439; Aḥmad ibn Ḥanbal, *Kitāb al-ʿIlal wa-maʿrifat al-rijāl riwāyat ibnihi ʿAbd Allāh*, ed. Waṣī Allāh Muḥammad ʿAbbās, 4 vols. (Riyadh: Dār Khānī, 2006), 3:53.
[203] For reports from each of these figures against Abū Ḥanīfa see ʿAbd Allāh ibn Aḥmad ibn Ḥanbal, *al-Sunna*, 184-219.

> **2.3** The *aṣḥāb al-ra'y*: They are misguided innovators, enemies of the *sunna* and traditions, who view the religion as opinion, analogy, and juridical preference (*istiḥsān*). They oppose and negate traditions and repudiate the Prophet by taking Abū Ḥanīfa and those who advocated what he said as leaders, devoting themselves to their religion, and opining what they opined. What misguidance is clearer than the one who said this or held something similar to this? They leave the statements of the Prophet and his Companions to follow the opinion of Abū Ḥanīfa and his companions.[204]

Even in the answers Aḥmad provided there is a clear sense that *aṣḥāb al-ra'y* referred specifically to the Ḥanafī community especially when contrasted with *aṣḥāb al-ḥadīth* as the following answer related by ʿAbd Allāh ibn Aḥmad ibn Ḥanbal (d. 290/903) reveals:

> **2.4** I asked my father regarded a person who wishes to make an inquiry regarding a religious issue that he is faced with… while in the presence of individuals from *aṣḥāb al-ra'y* on the one hand and members of *aṣḥāb al-ḥadīth* on the other who do not possess the knowledge to distinguish a tradition with a weak chain from one with a strong chain, who should he ask? The *aṣḥāb al-ra'y* or *aṣḥāb al-ḥadīth* despite their lack of knowledge?
>
> He replied, 'Ask those of *aṣḥāb al-ḥadīth* and not *aṣḥāb al-ra'y*. A weak tradition is better than the opinion of Abū Ḥanīfa.'[205]

Another source from a slightly later period to employ this label as an exclusive reference to the Ḥanafī community is Muḥammad ibn Naṣr al-Marwazī (d. 294/906). In his work on juristic differences, virtually every major jurist cited is referred to by name (over twenty-five), while the Ḥanafī masters are consistently cited collectively as *aṣḥāb al-ra'y*. Occasionally, Abū Ḥanīfa is anonymously referred to as the '*shaykh* of *aṣḥāb al-ra'y*' or 'their elder/senior' (*kabīruhum*), while Abū Yūsuf and al-Shaybānī as 'his companions'.[206] Given the utilization of this term in this manner by Ibn Qutayba, Harb, and al-Marwazī, it becomes evident that from the middle of the 3rd/9th century, the label *aṣḥāb al-ra'y* become an almost exclusive reference to Ḥanafī jurists and their approach to the law. Nearly a century later, Ibn al-Nadīm (d. 385/995)

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[204] Ḥarb ibn Ismāʿīl al-Kirmānī, *Kitāb al-Sunna min masā'il Ḥarb ibn Ismāʿīl al-Ḥanẓalī al-Kirmānī*, ed. ʿĀdil ʿAbd Allāh Āl Ḥamdān (Beirut: Dār al-Lu'lu'a, 2014), 69.
[205] ʿAbd Allāh ibn Aḥmad ibn Ḥanbal, *al-Sunna*, 180-1.
[206] Muḥammad ibn Naṣr al-Marwazī, *Ikhtilāf al-fuqahā'*, ed. Muḥammad Ṭāhir Ḥakīm (Riyadh: Aḍwā' al-Salaf, 2000). This was also observed in Scott C. Lucas, *Constructive critics, Ḥadīth literature, and the articulation of Sunnī Islam: the legacy of the generation of Ibn Saʿd, Ibn Maʿīn, and Ibn Ḥanbal*, Islamic History and Civilization 51 (Leiden: Brill, 2004), 82 f.n. 75.

also identified *aṣḥāb al-ra'y* exclusively with the Ḥanafīs as did his contemporary, Abū ʿAbd Allāh al-Balkhī (d. 387/997-8).[207]

The sources analysed above reveal complex divides between jurists during the 3rd/9th century stemming from their regional/personal affiliations to their distinct approaches to law and traditions. The evidence suggests that the division between *aṣḥāb al-ra'y* and *aṣḥāb al-ḥadīth* became increasingly prominent as the century went on and that there was a shift in the usage of the former label from one that signified a broad meaning – sometimes positive and other times negative – to one that affirmed the existence of a distinct community of legal scholars connected to Abū Ḥanīfa and his companions. Importantly, this label did not merely refer to a social identity but also a particular legal discourse and approach to understanding and deriving legal doctrine. Indeed, the legal literature of the early Ḥanafī community not only displayed the emergence of a unique Ḥanafī social identity but also a shared paradigm and intellectual discourse that served as a foundation for the legal activity of its members. This paradigm served as an 'exemplar' that jurists could adopt allowing them to be socialized into a legal community whose activities were compatible and could build on each other.[208] Although much of the secondary literature from the first half of the 3rd/9th century is no longer extant, there is sufficient evidence to suggest that this process was underway from the beginning of this century. The recognition of an axis of authority along with the adoption of a distinct legal paradigm were among the main activities undertaken by Ḥanafī jurists during the 3rd/9th century. In the context of the creation of a social identity, this paradigm would be central in defining the Ḥanafī community as one that stood distinct from others.

[207] Ibn al-Nadīm, *al-Fihrist*, 3:15; Muḥammad ibn Aḥmad al-Khawārizmī, *Mafātiḥ al-ʿulūm*, ed. Ibrāhīm al-Abyārī (Beirut: Dār al-Kitāb al-ʿArabī, 1984), 48.
[208] El Shamsy, *Canonization*, 175-7.

III. Conclusion

This chapter analysed two aspects of the social dimensions of the Ḥanafī school during the 3rd/9th century. The first was a shift away from Kufa as a centre of Ḥanafī legal activity where the sources reveal virtually no trace of a continuing Ḥanafī tradition shortly after the death of Abū Ḥanīfa. In place of Kufa emerged several other cities that would be recognized as major centres of Ḥanafī legal activity. These included Baghdad and Basra in the region of Iraq, Egypt in the West, and Balkh and Bukhara in the East. Each of these cities saw vibrant Ḥanafī communities take root whose activity gradually transformed the school into its more familiar classical form as a guild and doctrinal entity.

The actual emergence of a Ḥanafī community from the end of the 2nd/8th century possessing a distinct social identity constituted the second aspect examined in this chapter. The existence of this community is evidenced in both internal and external sources. In contrast to descriptions of the *madhhab* during this period and a significant portion of the proceeding century as a personal juristic entity espousing individual legal doctrines, these sources make a strong case that it is more accurate to describe the Ḥanafī school as having transformed into a distinct scholarly community possessing a collective axis of authority that united various independent circles and occasioned increased school consciousness. The presence of school consciousness itself was indicated in many ways: through the extensive and sustained transmission of the Ḥanafī masters' doctrine by jurists; early secondary literature limiting itself to the presentation of such doctrine to the exclusion of others; the employment of terminology in internal-school sources, such as 'our companions', that identified an axis of authority around which the community gravitated; a certain degree of pressure exerted on community members when they were viewed as having departed from the doctrine of the masters; competition with

other legal communities and school polemics; and the identification of this distinct community by non-Ḥanafīs through such labels as *aṣḥāb abī ḥanīfa* and *aṣḥāb al-ra'y*. Consequently, the period in question was one wherein the *madhhab* began to operate on distinctly communal lines that transcended region-specific and personal circles and revolved around a newly emerging collective axis of authority that became conventional in the classical Ḥanafī school.

Chapter Two

The previous chapter discussed the emergence of a distinct Ḥanafī community from the beginning of the 3rd/9th century by analysing the creation of a collective axis of authority that transcended personal boundaries and united jurists from different legal circles in a manner occasioning the beginnings of school consciousness, and the recognition of this community in external school sources. This phenomenon also manifested itself in a third manner, namely the legal pedagogy and activity of scholars. Both increasingly exhibited a community-centredness to it where the training, teaching, and legal engagement of jurists exhibited a distinct Ḥanafī character.

This third aspect not only lends support to the argument that it is not accurate to characterize the *madhhab* during the first half of the 3rd/9th century as a personal juristic entity, it also raises questions regarding the assertion that there was no regular process of transmitting legal doctrine with identifiable teachers and students until the 4th/10th century.[209] Rather, an analysis of the legal activity and social organization of major Ḥanafī jurists during this period demonstrates four points: (i) the legal networks of several jurists during the 3rd/9th century were well-defined with identifiable teacher-student links, (ii) the apparent 'deficiencies' in some of these links were often reflective of a context wherein legal knowledge was acquired in a communal, networked, and transregional setting, (iii) the boundaries of these legal networks were increasingly confined to a single juristic tradition demonstrative of a more school-centred approach to legal education in contrast to a jurist's *ḥadīth* network, which reflected the growing professionalization of each field, and (iv) the legal activity of several of these jurists displayed a unique Ḥanafī tradition of engaging the law in terms of its content and focus.

[209] Melchert, *Formation*, 135-6.

The first two points address the thesis advanced by Makdisi and Melchert where the *madhhab* in its classical form is said to fulfil the structure and function of a guild as a self-regulating professional association. The main feature of the guild was the establishment of a regular system for transmitting legal doctrine with identifiable teachers and students. This theme of identifiable teachers and students permeates Melchert's work and leads him to examine the careers of leading jurists active during the 3rd/9th and 4th/10th centuries in an attempt to determine when the *madhhab* evolved into a guild. His conclusion is that the most likely figure to be identified as the first teacher of the Ḥanafī guild school is Abū al-Ḥasan al-Karkhī due to his being the first jurist to have students write commentaries on his legal works (a form of regular transmission), his teachers being clearly identified in the sources, and his having many more known students than any other Ḥanafī jurist prior to him. Examining the legal careers of jurists during the 3rd/9th century in more detail, the current chapter will nuance some of the findings of Melchert by showing that the Ḥanafī community in Baghdad had edged towards a more guild-like structure by the middle of this century with Ibn Shujāʿ al-Thaljī and his students.

In illustrating the careers of major jurists, the main focus will be on identifying their primary teacher and student links along with an overview of the dominant aspect of their legal activity. An ancillary concern will be on documenting secondary and contemporary links. Here, a 'primary link' will be defined as someone whom a jurist is said to have trained under (*tafaqqaha ʿalā*), acquired legal knowledge from, was a companion of (*ṣāḥib*), or is shown transmitting legal material from in a relatively sustained manner. In contrast, a secondary link will be defined as one that falls short of the aforementioned but where the sources still establish a legal association in other ways, such as through non-sustained legal transmission. Admittedly, distinguishing between a primary and secondary link is not a straightforward task. For example, what does the

transmission of traditions between a student and a jurist establish in terms of a legal association? In many ways, traditions are also a form of legal material especially when they are transmitted in order to support the legal doctrine of a school. Further, transmission of *ḥadīth* material may sometimes indicate the authority of the figure from whom one is transmitting. Yet, it is also true that *ḥadīth* transmitters often had broad and fluid networks where they narrated from those belonging to diverse groups and sects. Therefore, any primary legal association affirmed through such transmission must be based upon other supporting evidence, such as the content of these traditions, the *ḥadīth* network of the transmitter, and what the historical literature states about his legal school or community affiliation.

Regardless of any conclusion reached regarding the precise dating of the guild school, the current chapter will provide a better understanding of the social organization of legal activity during the all-important 3rd/9th century, which can be viewed as a middle stage between the *madhhab* as a personal entity and a mature doctrinal/guild school. Legal education during this stage was not characterized by jurists navigating multiple *independent* legal study circles distinct from each other in terms of a broader legal identity. Rather, the training, instruction, and activity of Ḥanafī jurists increasingly shared a common characteristic: it did not extend outside a specifically Ḥanafī setting.

I. From Ḥanafī Circle to Ḥanafī Community

The historical sources portray the circle of Abū Ḥanīfa as attended by numerous students. Though a large number of people took knowledge from Abū Ḥanīfa, those who were part of his core circle were relatively smaller in number. As previously discussed, several jurists who were part of the early Ḥanafī circle were either semi-Ḥanafīs associated with other legal traditions or they were not remembered as major contributors to the spread and evolution of the school. Those

among the core group of Abū Ḥanīfa's students who did transmit, apply, and teach Ḥanafī legal doctrine were only a handful of prominent figures who had settled in several major cities: Zufar and Yūsuf al-Samtī in Basra, Abū Yūsuf and al-Shaybānī in Baghdad and the latter in Raqqa as well, Asad ibn ʿAmr in Wasit, and Abū Muṭīʿ al-Balkhī in Balkh, among a few others.

The subsequent generation of jurists who trained at the hands of these figures constituted a far larger group and it was with them that a proper Ḥanafī community emerged. This is reflected in the diminishing ratio of semi-Ḥanafīs to real Ḥanafīs during the stated period. Iraq in particular saw a substantial increase in the number of Ḥanafīs especially in Baghdad and to a lesser extent in Basra. The most prominent jurists from these two centres were almost all students of Zufar, Abū Yūsuf, and/or al-Shaybānī. They would play an integral role in exporting the Ḥanafī school to other regions, such as Egypt and Morocco, as well as making Iraq a centre of Ḥanafīsm that attracted students from other regions, such as Rayy and Balkh. In other words, an entire community of Ḥanafī jurists emerged at the hands of a few members of an early Kufan Ḥanafī circle. This community was still far from being organized as a guild for authority remained decentralized and continued to lack some of the features of a 'regulated professional association' but the biographical sketches presented below will show that it did possess a distinct group identity as seen in the legal education and activity of jurists.

A. Abū Sulaymān al-Jūzajānī (Baghdad d. after 200/815)

Mūsā ibn Sulaymān al-Jūzajānī was considered one of the most important sources for the legal doctrine of the Ḥanafī masters. A student of both Abū Yūsuf and al-Shaybānī, he was considered a major transmitter of a collection of legal texts authored by the latter that would

be recognized as the most authoritative corpus in the Ḥanafī school.[210] In addition to this, Abū Sulaymān transmitted the legal doctrine of the masters in texts of *nawādir* and *imlā'*, which feature prominently in the legal literature of the school.[211] Besides Abū Yūsuf and al-Shaybānī, the sources identify ʿAbd Allāh ibn al-Mubārak (d. 181/797) as another jurist whose legal opinions Abū Sulaymān transmitted and through him those of Abū Ḥanīfa.[212] Despite narrating prophetic traditions from several figures, these three jurists seem to have been the main figures Abū Sulaymān acquired legal knowledge from with Abū Yūsuf and al-Shaybānī being his primary teachers.[213]

Ibn al-Nadīm and others mention that Abū Sulaymān settled in Baghdad where the legal texts of al-Shaybānī would be read to him.[214] There is scant biographical information regarding several individuals identified as transmitters of these texts but his students in law are reasonably well-documented and mainly include prominent Ḥanafī jurists, such as Muḥammad ibn al-Azhar al-Khurasānī (d. 251/865),[215] Nuṣayr ibn Yaḥyā,[216] Muḥammad ibn Salama al-Balkhī (d.

[210] Namely *al-Aṣl*, *al-Jāmiʿ al-kabīr*, *al-Jāmiʿ al-ṣaghīr*, *al-Siyar*, and *al-Ziyādāt*. See Ibn al-Nadīm, *al-Fihrist*, 2:27; al-Ṣaymarī, *al-Akhbār*, 161; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 15:26; Ibn Abī al-Wafā', *al-Jawāhir*, 3:518-9; al-Qārī, *al-Athmār*, 2:665.
[211] Al-Shaybānī, *al-Aṣl*, 2:205-11; al-Jaṣṣāṣ, *al-Ikhtilāf*, 1:262, 4:408, 457; al-Ṣaymarī, *al-Akhbār*, 161; al-Nāṭifī, *al-Ajnās*, 1:271, 281, 293, 339.
[212] For examples see al-Samarqandī, *al-Fatāwā*, 11; al-Jaṣṣāṣ, *al-Ikhtilāf*, 1:485.
[213] It is somewhat perplexing to describe Abū Sulaymān's chain of teachers as 'tellingly defective' as Melchert does due to the identification of both Abū Yūsuf and al-Shaybānī as his teachers for it was quite common for Ḥanafī jurists to attend the circles of both jurists as they were the preeminent authorities of the nascent Ḥanafī community. Learning from both figures was not only unexceptional but rather typical. See Melchert, *Formation*, 135.
[214] Ibn al-Nadīm, *al-Fihrist*, 2:27.
[215] He was considered one of the leading Ḥanafī jurists in Khurasan and is cited dozens of times by al-Samarqandī in *al-Nawāzil*. See al-Samarqandī, *al-Fatāwā*, 37, 208, 431; Ibn Abī al-Wafā', *al-Jawāhir*, 3:85.
[216] Al-Samarqandī, *al-Fatāwā*, 11-13, 418, 429, 442, 469, 531, 577, 587; Ibn Abī al-Wafā', *al-Jawāhir*, 3:546.

278/891),[217] Abū al-ʿAbbās al-Birtī (d. 280/894),[218] Aḥmad ibn Isḥāq al-Jūzajānī (d. n.d.),[219] Abū Rajā' Muḥammad ibn Aḥmad al-Jūzajānī (d. 285/898),[220] Abū ʿIṣma Saʿd ibn Muʿādh al-Marwazī (d. n.d.),[221] Ghassān ibn Muḥammad al-Marwazī (d. after 235/849),[222] and ʿAlī ibn Shahryār al-Istarābādhī (d. n.d.).[223] These students transmitted the legal texts and opinions of the masters through Abū Sulaymān, as well as his own legal opinions. The latter is particularly noticeable in Balkh where scholars took care to document the legal verdicts of leading Ḥanafī

[217] He was a leading Ḥanafī jurist from Balkh who was the teacher of Aḥmad ibn Abī ʿImrān, Abū Naṣr al-Balkhī (d. 305/918), and Abū Bakr al-Iskāf (d. 333 or 336/945 or 948). He is introduced in *al-Nawāzil* as an authority in the issuance of legal verdicts and is cited numerous times for his legal opinions. See al-Samarqandī, *al-Fatāwā*, 9, 18, 35, 41, 53, 79, 87, 89, 94, 128, 194, 517; Ibn Abī al-Wafā', *al-Jawāhir*, 3:162-3.

[218] Aḥmad ibn ʿĪsā al-Birtī was a prominent judge in Baghdad. The sources mention that he took *fiqh* from Abū Sulaymān and also transmitted the legal works of the masters through him. He was particularly well-regarded by traditionists despite being identified by them as belonging to the legal school of the people of Iraq. See al-Ṣaymarī, *al-Akhbār*, 164-5; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 6:219; Ibn Abī al-Wafā', *al-Jawāhir*, 1:232; al-Dhahabī, *al-Siyar*, 13:407-10.

[219] He was the teacher of Abū Manṣūr al-Māturīdī (d. 333/944) to whom he transmitted *al-ʿĀlim wa-al-mutaʿallim* from Abū Sulaymān – Abū Muṭīʿ and ʿIṣām ibn Yūsuf – Abū Muqātil Hafṣ ibn Salam – Abū Ḥanīfa. Another one of his students was Abū Naṣr al-ʿIyāḍī (d. around 276/890) who also instructed al-Māturīdī. Ibn Abī al-Wafā', *al-Jawāhir*, 1:144-5; al-Qārī, *al-Athmār*, 1:313.

[220] He was a judge in Nishapur. See Ibn Abī al-Wafā', *al-Jawāhir*, 3:82; al-Qārī, *al-Athmār*, 2:568.

[221] Abū ʿIṣma was one of the transmitters of *al-Aṣl* from Abū Sulaymān, and the extant texts of *Kitāb al-Taḥarrī* and *Kitāb al-Ḥajr* are narrated through the chain Abū ʿIṣma – Abū Sulaymān. Although there is not much known about him, he is referenced regularly in Ḥanafī legal literature both for his own opinions and those of other jurists, such as the Ḥanafī masters, Abū Sulaymān, and others. This indicates that he was an important figure in the school. See al-Shaybānī, *al-Aṣl*, 1:76, 78; Ibn Abī al-Wafā', *al-Jawāhir*, 2:66-7; Aḥmad ibn Muḥammad al-Qudūrī, *Sharḥ Mukhtaṣar al-Karkhī*, Fayḍ Allāh Effendī (Istanbul #804), ff. 32b; Maḥmūd ibn Aḥmad ibn Māza, *al-Muḥīṭ al-burhānī fī al-fiqh al-Nuʿmānī*, ed. Nuʿaym Ashraf Nūr Aḥmad, 25 vols. (Karachi: Idārat al-Qur'ān wa-al-ʿUlūm al-Islāmīya, 2004), 1:370, 390, 394; al-Qārī, *al-Athmār*, 1:434.

[222] He served as a judge in Kufa between 218-35/833-49 and was linked to Ibn Abī Duwād (d. 240/854) during the inquistion surrounding the controversy over the createdness of the Qur'an. Tsafrir considered him a semi-Ḥanafī, although it is more reasonable to identify him as a Ḥanafī. This is in light of his position on the createdness of the Quran and connections to several Ḥanafī jurists, such Abū Sulaymān, Bishr ibn Ghiyāth, and ʿĪsā ibn Abān. In *al-Nawāzil*, he appears consulting the latter two on legal matters and is also cited in later legal texts of the school albeit only a handful of times. Additionally, he was a prominent source for biographical information regarding Abū Ḥanīfa, which was narrated by his son al-Qāsim ibn Ghassān. Even by Tsafrir's standard, Ghassān could hardly be deemed a semi-Ḥanafī as he was fiercly rejected by traditionists despite having transmitted the *Muwaṭṭā'*. Aḥmad ibn Ḥanbal, for example, deemed him a *jahmī* and ʿUthmān ibn Abī Shayba cursed him for his part in the inquisition. See Ibn Ḥanbal, *al-ʿIlal*, 2:457; al-Samarqandī, *al-Fatāwā*, 117, 428, 591, 693; Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 46, 49, 54-5, 58, 65; al-Wakīʿ, *al-Akhbār*, 3:191-4; Ibn Abī al-Wafā', *al-Jawāhir*, 2:687.

[223] ʿAlī ibn Shahryār transmitted the legal texts of al-Shaybānī from Abū Sulaymān. The historical literature identifies him as among the *aṣḥāb al-ra'y*. See Ibn Abī al-Wafā', *al-Jawāhir*, 2:571-2; Ḥamza ibn Yūsuf al-Sahmī, *Tārīkh Jurjān*, 1st ed. (Hyderabad: Maṭbaʿat Majlis Dā'irat al-Maʿārif al-ʿUthmānīya, 1950), 488.

jurists following the period of the Ḥanafī masters. Take the following teacher-student chain of Balkhī jurists back to Abū Sulaymān:

> **2.5.** [Abū al-Layth al-Samarqandī said]: 'I heard Abū Jaʿfar al-Hinduwānī say, "I heard ʿAlī ibn Aḥmad say, "I heard Nuṣayr say, "I asked Abū Sulaymān regarding a body of water that was ten-by-ten arm spans. He said, "I heard ʿAbd Allāh ibn al-Mubārak say there was no harm performing ablution from it." Abū Sulaymān said, "Then I went to Iraq and asked Muḥammad ibn al-Ḥasan who replied that if it is ten-by-ten arm spans then there is no harm performing ablution from it." Nuṣayr said, "I asked Abū Sulaymān whether a person in a state of major ritual impurity can bathe in it? He said yes."'[224]

Another link between Ḥanafī jurists in Balkh and Abū Sulaymān came through the chain Abū Jaʿfar al-Hinduwānī - Abū Bakr al-Iskāf - Muḥammad ibn Salama – Abū Sulaymān.[225] Indeed, Abū Sulaymān was well-respected in the easterly Ḥanafī centres amongst his close contemporaries, such as ʿAbd Allāh ibn ʿUmar ibn al-Rimāḥ (d. 234/848), the *qāḍī* of Nishapur and then Balkh,[226] who would advise Ḥanafī jurists to consult him on legal issues.[227]

The legal network of Abū Sulaymān is almost exclusively Ḥanafī. His legal training occurred at the hands of teachers who were all prominent members of Abū Ḥanīfa's circles and all of his students are recognizable as jurists of the school. This network cut across regional lines and stretched from Baghdad to Balkh where Abū Sulaymān become one of the most important sources for the legal doctrine of the Ḥanafī masters. Yet, Abu Sulaymān's connections to the Ḥanafī community were not restricted to the immediate network of teachers and students outlined above. He was a close friend of Muʿallā ibn Manṣūr with both described in the historical literature as companions in the task of relating legal texts and opinions from Abū Yūsuf and al-

[224] Al-Samarqandī, *al-Fatāwā*, 11. For more examples, see 12, 15, 64, 208, 424, 431, 469. Also see the author's *Tanbīh al-ghāfilīn bi-aḥādīth sayyid al-anbiyā' wa-al-mursalīn*, ed. Yūsuf ʿAlī Badyawī (Beirut: Dār Ibn Kathīr, 2000), 499.
[225] Ibn Abī al-Wafā', *al-Jawāhir*, 3:192-3.
[226] Ibn ʿUmar, *Faḍā'il Balkh*, 162-5. His father, ʿUmar ibn al-Rimāḥ (d. 171/787), was also a judge in Balkh and a companion of Abū Ḥanīfa.
[227] Al-Samarqandī, *al-Fatāwā*, 64.

Shaybānī.[228] Similarly, he was acquainted with Bishr ibn al-Walīd and is shown commenting on the latter's transmission from the masters while answering legal questions.[229] Other prominent Baghdadi Ḥanafīs associated with Abū Sulaymān included Ismāʿīl ibn Ḥammād,[230] Ibn Shujāʿ al-Thaljī,[231] ʿAlī al-Rāzī,[232] and the sons of al-Shaybānī,[233] while in Balkh he was affiliated with Abū Muṭīʿ and ʿIṣām ibn Yūsuf (d. 215/830) from whom he is said to have related some legal material as well as theological texts ascribed to Abū Ḥanīfa.[234]

[228] Al-Ṣaymarī, *al-Akhbār*, 161; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 15:26, 246; Ibn Abī al-Wafā', *al-Jawāhir*, 3:492.
[229] Al-Samarqandī, *al-Fatāwā*, 21.
[230] Al-Samarqandī, *al-Fatāwā*, 173.
[231] Al-Kawtharī, *al-Imtāʿ*, 84.
[232] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 1:485; Ibn Abī al-Wafā', *al-Jawāhir*, 2:326.
[233] Al-Samarqandī, *al-Fatāwā*, 425.
[234] Abū Ḥanīfa al-Nuʿmān ibn Thābit, *al-ʿĀlim wa-al-mutaʿallim riwāyat Abī Maqātil ʿan Abī Ḥanīfa wa-yalīhi Risālat Abī Ḥanīfa ilā ʿUthmān al-Battī thumma al-Fiqh al-absaṭ riwāyat Abī Muṭīʿ ʿan Abī Ḥanīfa*, ed. Muḥammad Zāhid al-Kawtharī (Cairo: Maṭbaʿat al-Anwār, 1368 A.H.), 5; al-Samarqandī, *al-Fatāwā*, 467. Schacht has examined the chains of transmission of *al-ʿĀlim* and considered the earlier part of its chain as reliable. It is this part that affirms a link between Abū Sulaymān and Abū Muṭīʿ/ʿIṣām. See Joseph Schacht, "An Early Murjiʿite Treatise: The *Kitāb al-ʿĀlim wal-Mutaʿallim*," *Oriens* 17 (December 1964): 99-100; Ulrich Rudolph, *Al-Māturīdī and the Development of Sunnī Theology in Samarqand*, trans. Rodrigo Adem, Islamic History and Civilization: Studies and Texts 100 (Leiden: Brill, 2015), 44-6.

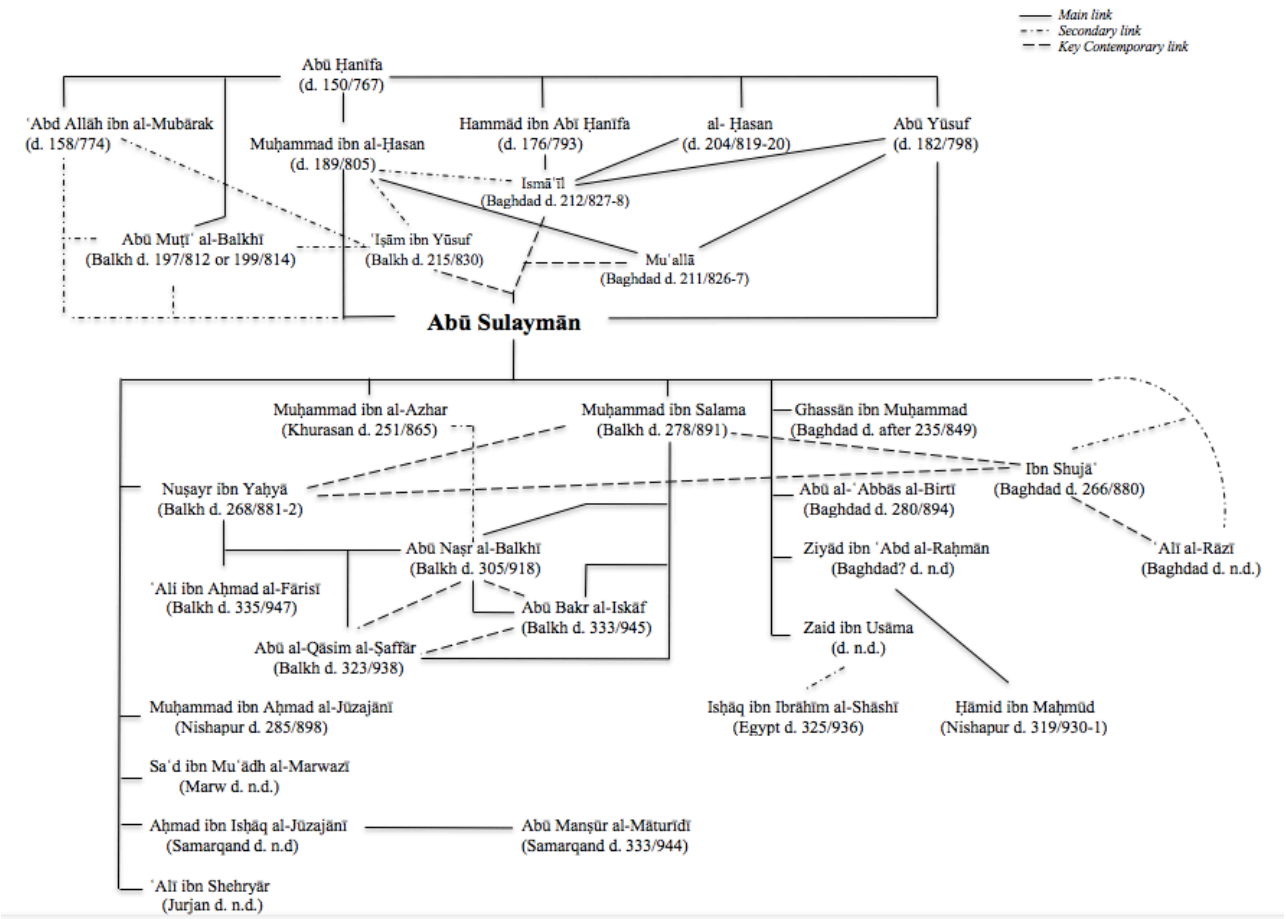

Figure 1: Ḥanafī Legal Network of Abū Sulaymān al-Jūzajānī (d. after 200/815)

Perhaps the main exception to this otherwise exclusive Ḥanafī legal network of teachers and students is Ibn al-Mubārak. Though identified with the circle of Abū Ḥanīfa, Ibn al-Mubārak was also affiliated with other legal circles in addition to being a respected traditionist. Clearly, he was not viewed in the same manner as Zufar, Abū Yūsuf, or al-Shaybānī in terms of an association to Abū Ḥanīfa. Yet, it is also true that he was unlike several jurists identified as students of Abū Ḥanīfa who upon closer examination seem only tenuously linked to him and the Ḥanafī school. In contrast, Ibn al-Mubārak is frequently presented in Ḥanafī legal texts both as a transmitter of Abū Ḥanīfa's legal doctrine and for his own views. In *Mukhtaṣar Ikhtilāf al-ʿulamā'*, he is cited in the context of a legal ruling a total of eighteen times (18x) with seven

instances (7x) being a transmission of Abū Ḥanīfa's opinion, ten (10x) of Sufyān, and once (1x) his own.[235] In a later encyclopaedic text, *al-Muḥīṭ al-burhānī* of Burhān al-Dīn ibn Māza (d. 616/1219), he transmits legal doctrine from Abū Ḥanīfa eight times (8x), once (1x) from Sufyān, and is cited nine times (9x) for his own opinion.[236] Especially for Ḥanafī jurists in Balkh, Ibn al-Mubārak not only served as a link to Abū Ḥanīfa but was a recognized scholar in his own right. Thus, in the earliest collection of Ḥanafī legal verdicts, namely *al-Nawāzil* of al-Samarqandī, Ibn al-Mubārak is cited approximately thirty-one times (31x) in the purification-marriage sections with the vast majority of cases being his own legal opinions.

It is noteworthy though that despite the relationship Ḥanafī jurists had with Ibn al-Mubārak, they were not identified as being amongst his *aṣḥāb* by the earliest biographical sources even though such an identification was extended to other individuals.[237] Rather, many of these jurists continued to be identified as members of the Ḥanafī community who happened to have acquired knowledge from Ibn al-Mubārak viewing him as scholar whose legal pedigree was traceable in part to Abū Ḥanīfa. In the case of Abū Sulaymān, his learning from Ibn al-Mubārak likely occurred at the beginning of his studies prior to his move to Baghdad as translation 2.5. indicates. In Baghdad itself, the historical and legal sources are consistent in recognizing his training as occurring exclusively at the hands of Abū Yūsuf and al-Shaybānī, and the most pronounced aspect of his legal activity as transmission of Ḥanafī legal doctrine. Indeed, it is reported that Aḥmad sent a request to Abū Sulaymān, 'If you leave transmitting the texts of Abū

[235] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 1:425, 485, 2:36, 398, 399, 3:104, 131, 174, 441, 4:271, 288, 350, 355, 477, 5:178, 206, 212.
[236] There are also numerous instances in *al-Nawāzil* where his legal verdicts are reproduced. See al-Samarqandī, *al-Fatāwā*, 11, 13, 16, 53, 105-6.
[237] Such as al-Naḍr ibn Muḥammad, Abū Sulaymān, and ʿIṣām ibn Yūsuf. All of them were affiliated with Ibn al-Mubārak but were mainly identified with Abū Ḥanīfa whereas figures such as Salama ibn Sulaymān (d. 196/811-2) and al-Ḥasan ibn al-Rabīʿ (d. 221/836) were clearly identified as among his own *aṣḥāb*. See Ibn Saʿd, *al-Ṭabaqāt*, 9:376, 381-3; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 16:521.

Ḥanīfa, we will come to you to hear the works of Ibn al-Mubārak.'[238] Abu Sulaymān declined this offer.

B. Muḥammad ibn Samāʿa (Baghdad d. 233/848)

Muḥammad ibn Samāʿa was a prominent Baghdadi jurist who served as judge in Madīnat al-Manṣūr (r. 192-208/807-23) and al-Karkh (r. 207-8/822-3) before retiring due to eyesight troubles. The biographical and legal literature identify his primary teachers in law as Abū Yūsuf and al-Shaybānī.[239] He is presented in the texts as a prolific transmitter of their legal doctrine, which included texts of *imlā'* and *nawādir* from both figures, as well as *al-Aṣl*, *al-Raqqayāt*, and *Kitāb al-Kasb* from al-Shaybānī.[240] Ibn Samāʿa also authored legal texts of his own, which included *al-Nawādir* and *Adab al-qāḍī*.[241] In addition to Abū Yūsuf and al-Shaybānī, he related traditions from al-Ḥasan ibn Ziyād and al-Layth ibn Saʿd (d. 175/791) although he was not particularly notable as a transmitter of *ḥadīth* as was the case with Abū Sulaymān.[242] Besides Abū Yūsuf and al-Shaybānī, there is no indication that he studied law under anyone else.

References to Ibn Samāʿa and his texts in the legal literature demonstrate a concern for the preservation and transmission of the opinions of the Ḥanafī masters. In *ʿUyūn al-masā'il* of al-Samarqandī, Ibn Samāʿa is cited approximately seventy-eight times (78x) with all but two instances being a transmission of the masters' legal doctrine.[243] Similarly, in *Mukhtaṣar Ikhtilāf*

[238] Abū al-Ḥusayn Muḥammad ibn Muḥammad ibn Abī Yaʿlā, *Ṭabaqāt al-Ḥanābila*, ed. Muḥammad Ḥāmid al-Fiqī, 2 vols. (Cairo: Maṭbaʿat al-Sunna al-Muḥammadīya, 1952), 1:402.
[239] Al-Wakīʿ, *al-Akhbār*, 3:282; al-Ṣaymarī, *al-Akhbār*, 161-2; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 3:298-300; Ibn Abī al-Wafā', *al-Jawāhir*, 3:168-70.
[240] Muḥammad ibn al-Ḥasan al-Shaybānī, *Kitāb al-Kasb*, ed. ʿAbd al-Fattāḥ Abū Ghudda (Beirut: Dār al-Bashā'ir al-Islāmīya, 1997), 65; al-Ṣaymarī, *al-Akhbār*, 162; al-Nāṭifī, *al-Ajnās*, 1:351; Kātib Chalabī, *Kashf al-ẓunūn*, 1:911.
[241] Ibn al-Nadīm, *al-Fihrist*, 3:26.
[242] For example, al-Mizzī lists only five individuals who related traditions from him with two of them being Abū Yūsuf and al-Shaybānī. See al-Mizzī, *al-Tahdhīb*, 25:317.
[243] Naṣr ibn Muḥammad al-Samarqandī, *ʿUyūn al-masā'il*, ed. Ṣalāḥ al-Dīn al-Nāhī (Baghdad: Maṭbaʿat al-Asʿad, 1386 A.H.).

al-ʿulamā', he appears seventy-two times (72x) as a transmitter of their opinions out of a total of seventy-four citations (74x). This trend is maintained in other texts both early and late. His *al-Nawādir*, which from dozens of extant citations seems to have been heavily transmission-focussed, apparently stretched hundreds of pages. Being an accomplished jurist and judge in his own right, the legal activity of Ibn Samāʿa did extend beyond mere transmission of earlier doctrine. His own opinions are preserved in the sources as are aspects of his judicial practice, though this is done rarely and there is no way to determine the role the legal doctrine of the Ḥanafī masters played in informing his views. Regardless, the volume of his transmission from the masters demonstrates the Ḥanafī character of his legal discourse and the importance he ascribed to their doctrine.

Ibn Samāʿa had several students from Baghdad, Basra, Egypt, and Balkh. In Baghdad, his students included his son Aḥmad (d. after 253/867), who would train under his father and like him serve as judge in Madīnat al-Manṣūr (r. 243-53/857-67).[244] Another jurist who studied with Ibn Samāʿa and transmitted legal texts from him was Yaḥyā ibn Muʿāfā (d. 283/896-7), a judge in Malatya and an adherent to the Ḥanafī school.[245] ʿAbd Allāh ibn Muḥammad al-Khalanjī (d. 253/867-8) was described as a student (*min aṣḥāb*) of Ibn Samāʿa and was appointed judge in al-Karkh (r. 228-37/842-51) upon the former's recommendation.[246] Perhaps his most well-known student was Ibn Abī ʿImrān who was recognized as one of the chief Ḥanafī jurists in Egypt following his move there from Baghdad. In Egypt, Ibn Abī ʿImrān transmitted *nawādir* material that he had received from Ibn Samāʿa, which al-Ṭaḥāwī frequently cites as a source for the opinions

[244] Al-Ṣaymarī, *al-Akhbār*, 165; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 6:142; Ibn Abī al-Wafā', *al-Jawāhir*, 1:269-70.
[245] Ibn Abī al-Wafā', *al-Jawāhir*, 3:604; Muḥammad ibn Aḥmad al-Dhahabī, *Tārīkh al-Islām wa-wafayāt al-mashāhīr al-aʿlām*, ed. Bashshār ʿAwwād Maʿrūf, 17 vols. (Beirut: Dār al-Gharb al-Islāmī, 2003), 7:1067.
[246] Al-Wakīʿ, *al-Akhbār*, 3:290; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 11:269. This was in addition to being judge of Hamadhan. He was also associated with Ibn Abī Duwād and among those who openly proclaimed the doctrine of a created Quran.

of the Ḥanafī masters.[247] The following examples illustrate this doctrinal transmission between Ibn Samāʿa and Ibn Abī ʿImrān:

> **2.6.** Regarding a Christian who prays alongside Muslims and whether he is deemed a Muslim on account of it. Abū Jaʿfar said, 'I heard Ibn Abī ʿImrān from Ibn Samāʿa from Muḥammad ibn al-Ḥasan - without the latter mentioning any difference of opinion between his companions - regarding a Christian who we witness observing the ritual prayer being deemed a Muslim if the prayer was performed in a mosque…'[248]

> **2.7.** Regarding the hearing of the *ādhān* by a person performing prayer. Abū Jaʿfar said, 'We have not found anything explicit from our companions on this. Ibn Abī ʿImrān related from Ibn Samāʿa from Abū Yūsuf regarding someone who gave the *ādhān* while in prayer up until *ashhadu an [muḥammad] rasūl allāh* without saying *ḥayya ʿalā al-ṣalāt* that his prayer would not be invalidated if he did this actually intending giving the *ādhān*.'[249]

Finally, Ibn Shujāʿ al-Thaljī and ʿAlī al-Rāzī also transmitted material from Ibn Samāʿa, though there is no evidence to suggest that they studied law under him in any sustained manner.[250]

The sphere of students connected to Ibn Samāʿa extended to Basra as well where members of the Ḥanafī community in the city, such as Bakr al-ʿAmmī (d. n.d.) and ʿAbd al-Raḥmān ibn Nā'il (d. after 255/869), counted him as one of their teachers.[251] In all likelihood, both of them studied with Ibn Samāʿa during their travels to Baghdad for there is no record of the latter having travelled to Basra. The Basran Ḥanafī community was reasonably prominent during the first half of the 3rd/9th century despite not being sizeable in number. Though there is little information regarding Bakr and ʿAbd al-Raḥmān, they seem to have been important members of the Ḥanafī community as demonstrated by their being students of Hilāl and teachers of Abū Khāzim. Bakr in

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[247] Aḥmad ibn Muḥammad al-Ṭaḥāwī, *Sharḥ mushkil al-āthār*, ed. Shuʿayb al-Arna'ūṭ, 16 vols. (Beirut: Mu'assasat al-Risāla, 1994), 12:411. Here, al-Ṭaḥāwī states having received Ibn Samāʿa's transmission of al-Shaybānī's *nawādir* from Ibn Abī ʿImrān in a *mudhākara* session where the text was read.
[248] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 1:320.
[249] Ibid., 1:193.
[250] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 291; al-Ṣaymarī, *al-Akhbār*, 111; Aḥmad ibn al-Ḥusayn al-Mu'ayyad billāh, *Sharḥ al-Tajrīd fī Fiqh al-Zaydīya*, ed. Sayyid Yūsuf Muḥammad, 4 vols. (Damascus: Maktabat ʿAnbar, 1985), 1:19, 21-2, 34, 254, 2:289.
[251] Details regarding their links to Ibn Samāʿa and doctrinal transmission are presented in the biographical sketch of Abu Khāzim.

particular related a fair amount of material from Ibn Samāʿa regarding the Ḥanafī masters,[252] while ʿAbd al-Raḥmān briefly served as chief judge (r. 255/868) later in his career.[253] Meanwhile, the leading Balkhī associated with Ibn Samāʿa was Nuṣayr ibn Yaḥyā who transmitted the text of *Risālat Abī Ḥanīfa ilā ʿUthmān al-Battī* from him to his own students, such as ʿAlī ibn Aḥmad al-Fārisī (335/947).[254] This connection between Nuṣayr and Ibn Samāʿa is also affirmed in the legal literature where the former is shown transmitting the opinions of the Ḥanafī masters from the latter.[255]

Like other Ḥanafī jurists during the period, Ibn Samāʿa was closely associated with several of his contemporaries. ʿĪsā ibn Abān was a close friend of his and first attended the study circle of al-Shaybānī at the insistence of Ibn Samāʿa, which led to his becoming a member of the early Ḥanafī community.[256] Muḥammad ibn Abī Rajā' (d. 207/822-3), a student of Abū Yūsuf, was a colleague of Ibn Samāʿa and granted a judgeship in al-Karkh (r. 198-207/813-22) following the latter's suggestion.[257] Both the appointment of Ibn Abī Rajā' and a-Khalanjī indicate that Ibn Samāʿa exercised a degree of influence over judicial appointments. This is further confirmed in the case of al-Ḥasan ibn Mūsā (d. 209/824) who was sent to Tabaristan as a judge at the prodding of Ibn Samāʿa who wished him removed from Baghdad due to his hostility to Ḥanafīs.[258] As such, along with transmitting Ḥanafī material, Ibn Samāʿa contributed to the spread of Ḥanafīsm on a

[252] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 327, 351, 354, 356.
[253] Al-Ṣaymarī, *al-Akhbār*, 159, 165; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 7:272, 12:338-44; Ibn Abī al-Wafā', *al-Jawāhir*, 2:366-8.
[254] Abū Ḥanīfa, *al-ʿĀlim wa-al-mutaʿallim*, 5-6. Here, al-Kawtharī relates the chains mentioned at the beginning of the manuscript of the *Risāla*.
[255] Al-Samarqandī, *al-Fatāwā*, 173, 282.
[256] Al-Ṣaymarī, *al-Akhbār*, 132; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 12:480; Ibn Abī al-Wafā', *al-Jawāhir*, 2:279.
[257] A report from al-Wakīʿ states that Ibn Samāʿa would correspond with Ibn Abī Rajā' while he was in Raqqa. The opinions Ibn Abī Rajā' related from the masters were incorporated by Ibn Samāʿa in *al-Nawādir* and are referred to as *masā'il Ibn Abī Rajā'*. See al-Wakīʿ, *al-Akhbār*, 3:289; al-Nāṭifī, *al-Ajnās*, 1:342.
[258] Yazīd ibn Muḥammad al-Azdī, *Tārīkh al-Mawṣil*, ed. ʿAlī Ḥabība (Cairo: al-Majlis al-Aʿlā lil-Shu'ūn al-Islāmīya Lajnat Iḥyā' al-Turāth al-Islāmī, 1967), 360-1.

political level by influencing the appointment of judges. Other Ḥanafī jurists who Ibn Samāʿa was associated with included Ismāʿīl ibn Ḥammād, Bishr ibn al-Walīd, and al-Faḍl ibn Ghānim (d. 227/841-2).

C. Bishr ibn al-Walīd al-Kindī (Baghdad d. 238/853)

Bishr ibn al-Walīd was a student of Abū Yūsuf who the sources identify as his primary and exclusive teacher in jurisprudence.[259] He did not learn from al-Shaybānī and was said to have borne some ill-will towards him likely due to the falling out the former had with Abū Yūsuf.[260] In relation to Abū Yūsuf, Bishr transmitted the legal texts he authored and dictated (i.e. *imlā'*) that gathered his legal doctrine and Abū Ḥanīfa's.[261] The historical literature mentions that Bishr also taught law, narrated traditions, and issued legal verdicts in Baghdad, in addition to serving as a judge in Madīnat al-Manṣūr from 210-13/825-8 and al-Karkh from 208-10/823-5.[262] He was prevented from his public teaching during the reign of al-Muʿtaṣim (d. 227/842; r. 218-7/833-42) due to his view on the uncreatedness of the Quran but was allowed to resume these activities when al-Mutawakkil (d. 247/861; r. 232-47/847-861) came to power.[263]

In both early and late Ḥanafī legal literature, the importance of Bishr as a source for the legal doctrine of the masters is evident. This is especially the case for his transmission of *imlā'*

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[259] Al-Ṣaymarī, *al-Akhbār*, 162; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 7:561-6; Ibn Abī al-Wafā', *al-Jawāhir*, 1:452-4; al-Dhahabī, *al-Siyar*, 10:673-5.

[260] A colleague and friend of Bishr, al-Ḥasan ibn Abī Mālik, who was also a student of Abū Yūsuf, would advise him against speaking ill of al-Shaybānī in recognition of his legal contributions. See al-Ṣaymarī, *al-Akhbār*, 162; Ibn Abī al-Wafā', *al-Jawāhir*, 1:452.

[261] These included the *Amālī* and *Jawāmiʿ*. See Ibn Saʿd, *al-Ṭabaqāt*, 9:359; Ibn al-Nadīm, *al-Fihrist*, 2:20; al-Dhahabī, *al-Siyar*, 10:674; Kātib Chalabī, *Kashf al-ẓunūn*, 1:609.

[262] Al-Wakīʿ, *al-Akhbār*, 3:272-3, 326; Tsafrir, *History*, 51-2.

[263] Ibn Saʿd, *al-Ṭabaqāt*, 9:359; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 7:565. Bishr was a *wāqifī* who refused to affirm the Quran as created or uncreated preferring rather to simply state that it was the 'speech of God' (*kalām allāh*). For more on the history of this controversy, see John A. Nawas, "The Miḥna of 218/833 Revisited: An Empirical Study," *Journal of American Oriental Society* 116, no. 4 (1996): 698-708; Christopher Melchert, "Religious Policies of the Caliphs from al-Mutawakkil to al-Muqtadir, A.H. 232-295/A.D. 847-908," *Islamic Law and Society* 3, no. 3 (1996): 316-42.

texts, which jurists from the 3rd/9th century onwards in different regional centres considered an important reference for the opinions of Abū Ḥanīfa and Abū Yūsuf. In Egypt, al-Ṭaḥāwī frequently cited Bishr for the legal opinions of both Ḥanafī masters, which he received from his own teacher, Ibn Abī ʿImrān (d. 280/893), and also from Jaʿfar ibn Aḥmad (d. n.d.). The following examples illustrate different aspects of this doctrinal transmission in al-Ṭaḥāwī's works:

> **2.8.** Bishr ibn al-Walīd narrated from Abū Yūsuf in his *imlā'* that occurred in Rajab of 179/795 that every endowment (*waqf*) that is designated in perpetuity is valid, and every endowment that ceases is invalid.[264]
>
> **2.9.** Regarding lifting the prescribed punishment for slander if pardoned [by the victim]: Our companions and al-Thawrī said that pardoning is not valid. Ibn Abī ʿImrān related from Bishr from Abū Yūsuf that the pardon would be valid.[265]
>
> **3.0.** Calling the apostate to repent: Our companions said that an apostate is not killed unless he is called to repent. Whoever kills him before this has committed a wrong although no liability is due upon him. Bishr mentioned from Abū Yūsuf regarding the heretic who manifests Islam that Abū Ḥanīfa said, 'I call him to repent like the apostate and if he accepts Islam I leave him but if he refuses I execute him.'[266]
>
> **3.1.** If the moon is sighted before midday, it is considered for the previous night and takes the ruling of that which is sighted during that night. If it is sighted after midday, it is for the coming night and takes the ruling of that which is sighted during it. Mālik ibn Yaḥyā informed us of who held this view stating that Abū Naṣr informed him from al-Ashjaʿī from Sufyān. Abū Yūsuf said the same as narrated to us by Jaʿfar ibn Aḥmad from Bishr from Abū Yūsuf.[267]

These examples capture the general character of Bishr's transmission: they overwhelmingly relayed the opinions of Abū Yūsuf and/or Abū Ḥanīfa. Each of the nearly eighty (80x) references to Bishr in *Mukhtaṣar Ikhtilāf al-ʿulamā'* involves direct transmission from Abū Yūsuf, and all but a few are either the latter's opinion or that of Abū Ḥanīfa. Occasionally, the actual date of dictation is provided as seen in the first of the aforementioned examples (2.8.). Other sources, such as *al-Ajnās* of Abū al-ʿAbbās al-Nāṭifī, also display these dates in addition to

[264] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 4:60.
[265] Ibid., 3:320.
[266] Ibid., 3:501.
[267] Al-Ṭaḥāwī, *Aḥkām al-qur'ān*, 1:447-8.

naming the specific books of the *imlā'* texts,[268] such as the book of fasting dictated in Shaʿbān of 169/786, the book of differences in testimony in 170/786-7, and sections of the book of prayer in 179/795-6.[269] The main conclusion that can be drawn from the legal and historical literature is that Bishr had a single identifiable teacher in the field of law whose legal doctrine he preserved and transmitted extensively along with that of Abū Ḥanīfa. His legal training, therefore, not only occurred in an exclusively Ḥanafī context but it cannot be characterized with the type defectiveness claimed for the chain of Abū Sulaymān.

In regard to his students, countless people were said to have studied law and heard traditions from Bishr.[270] In terms of legal training, Ibn Abī ʿImrān was again the most prominent of these students as affirmed in the biographical literature and further attested to in the examples cited previously from al-Ṭaḥāwī (2.9.).[271] As with Ibn Samāʿa, Ibn Abī ʿImrān transmitted the legal doctrine of the Ḥanafī masters collected and preserved by Bishr from Baghdad to Egypt. This was also undertaken by Jaʿfar ibn Aḥmad who transmitted his *imlā'* works to jurists in Egypt, such as al-Ṭaḥāwī (3.1.).[272] The sources also mention Abū al-ʿAbbās Ḥumayd al-Rāzī (d. n.d.) as a member of Bishr's study circle prior to the arrival of al-Shaybānī in Baghdad.[273] Aḥmad ibn Ṣalṭ (d. 302 or 308/914 or 921) was also said to have studied law under Bishr.[274]

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[268] There were thirty-six according to Ibn al-Nadīm. See Ibn al-Nadīm, *al-Fihrist*, 2:20.
[269] Al-Nāṭifī, *al-Ajnās*, 1:85, 356, 393.
[270] Al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 7:562.
[271] Al-Ṣaymarī, *al-Akhbār*, 165; Ibn Abī al-Wafā', *al-Jawāhir*, 1:337.
[272] See for examples al-Ṭaḥāwī, *Aḥkām al-qur'ān*, 1:339, 448, 2:123; Aḥmad ibn Muḥammad al-Ṭaḥāwī, *Sharḥ maʿānī al-āthār*, ed. Muḥammad Zuhrī Najjār and Muḥammad Sayyid Jād al-Ḥaqq, 5 vols. (Beirūt: ʿĀlam al-Kutub, 1994), 4:309; al-Ṭaḥāwī, *Sharḥ mushkil al-āthār*, 8:176, 11:467, 12:340.
[273] Ḥumayd was considered 'among the most senior companions' of al-Shaybānī and transmitted his *amālī*, which is cited in Ḥanafī legal literature. According to a report from him related by al-Ṭaḥāwī, he and others would attend the study circle of Bishr in Baghdad, which was held every Friday. Following the arrival of al-Shaybānī they would attend both circles until Bishr stopped hosting his. This was apparently due to Bishr's annoyance with Ḥumayd and others asking him about issues they had discussed with al-Shaybānī. See Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 357; Muḥammad ibn Aḥmad al-Dhahabī, *Manāqib Abī Ḥanīfa wa-ṣāḥibayhi*, ed. Abū al-Wafā' al-Afghānī & Muḥammad Zāhid al-Kawtharī (Hyderabad: Lajnat Iḥyā' al-Maʿārif al-Nuʿmānīya, 1987), 89.
[274] This claim seems somewhat dubious in light of both his death date and accusations that he was a liar in regard to figures he claimed to have met. However, his death date is around the same time as Abū Yaʿlā who was born in

Meanwhile, at least three prominent Balkhī jurists were associates of Bishr. Nuṣayr ibn Yaḥyā is shown consulting Bishr on several occasions in *al-Nawāzil*.[275] His close friend and colleague, Muḥammad ibn Salama, was another leading jurist from Balkh who spent part of his life training in Baghdad where he acquired legal knowledge from Bishr.[276] A third link between Bishr and jurists in Balkh was Muḥammad ibn al-Ḥasan al-Jūbiyārī (d. n.d.) who transmitted the legal doctrine of Abū Yūsuf from him.[277]

Nearly all of the individuals the sources remember as studying law under Bishr and/or transmitting legal doctrine from him are identifiable with the Ḥanafī school. Although several others acquired knowledge from him, they were mainly remembered as transmitters of prophetic traditions. In contrast to Abū Sulaymān and Ibn Samāʿa who do not really appear in major *ḥadīth* collections, Bishr was a prominent transmitter of traditions. Those who narrated from him included Ḥanafīs and an even higher number of non-Ḥanafīs including leading traditionists, such as Abū Yaʿlā, Mūsā ibn Hārūn (d. 294/907), and Abū al-Qāsim al-Baghawī (d. 317/929).[278] Yet, the legal network of Bishr and his legal activity was much more limited and defined as was the

210/826 and died in 307/911 and who certainly heard extensively from Bishr as seen in his *Musnad*. Ibn ʿAdī mentions attending a lecture of Aḥmad in 297/909 and estimated his age to be around seventy years old though all this demonstrates is that Aḥmad was an old man by the time. Even a margin of error of seven to ten years would place Aḥmad within a reasonable age to validate the claim that he studied with Bishr (if he was in fact eighty at the time, he would have been twenty-one when Bishr died; on the other hand, if he was significantly younger, this would certainly make the claim false). However, his apparent habit of making dubious claims remains an issue. Ibn Abī al-Wafā', *al-Jawāhir*, 1:113; Melchert, *Formation*, 55; Eerik Dickinson, "Aḥmad b. Ṣalṭ and His Biography of Abū Ḥanīfa," *Journal of American Oriental Society*, 16, no. 3 (July 1996): 410.

[275] Examples of this are provided below in the section on Nuṣayr.

[276] Al-Samarqandī, *al-Fatāwā*, 87, 94, 194.

[277] Al-Samarqandī, *al-Fatāwā*, 261, 659.

[278] Abū Yaʿlā in specific narrates from Bishr several times in his *Musnad*. This is a useful source for gaining some insight into Bishr's circle. Abū Yaʿlā usually transmits from him without comment but occassionally describes the manner in which the traditions being heard in his gathering were dictated. Particularly in relation to traditions Bishr heard from Abū Yūsuf, Abū Yaʿlā routinely mentions that 'someone read to Bishr, "Abū Yūsuf informed you…"' Further, Abū Yaʿlā was also known to have received the works of Abū Yūsuf from Bishr. Abu ʿAlī al-Ḥāfiẓ commented that if Abū Yaʿlā had not occupied himself with reading the books of Abū Yūsuf to Bishr, he would have been able to meet Sulaymān ibn Ḥarb and Abū al-Walīd al-Tayālisī in Basra. See Abū Yaʿlā Aḥmad ibn ʿAlī, *Musnad*, ed. Ḥusayn Salīm Asad, 13 vols. (Damascus: Dār al-Maʾmūn, 1988), 3:90, 4:218, 5:45, 48, 8:456, 9:196; al-Dhahabī, *al-Siyar*, 14:175.

case with other Ḥanafī jurists. This likely reflected the growing professionalization of each field during the 3rd/9th century where the study of law became distinct from the study of traditions, and where the study and instruction in the former became more school-restricted.

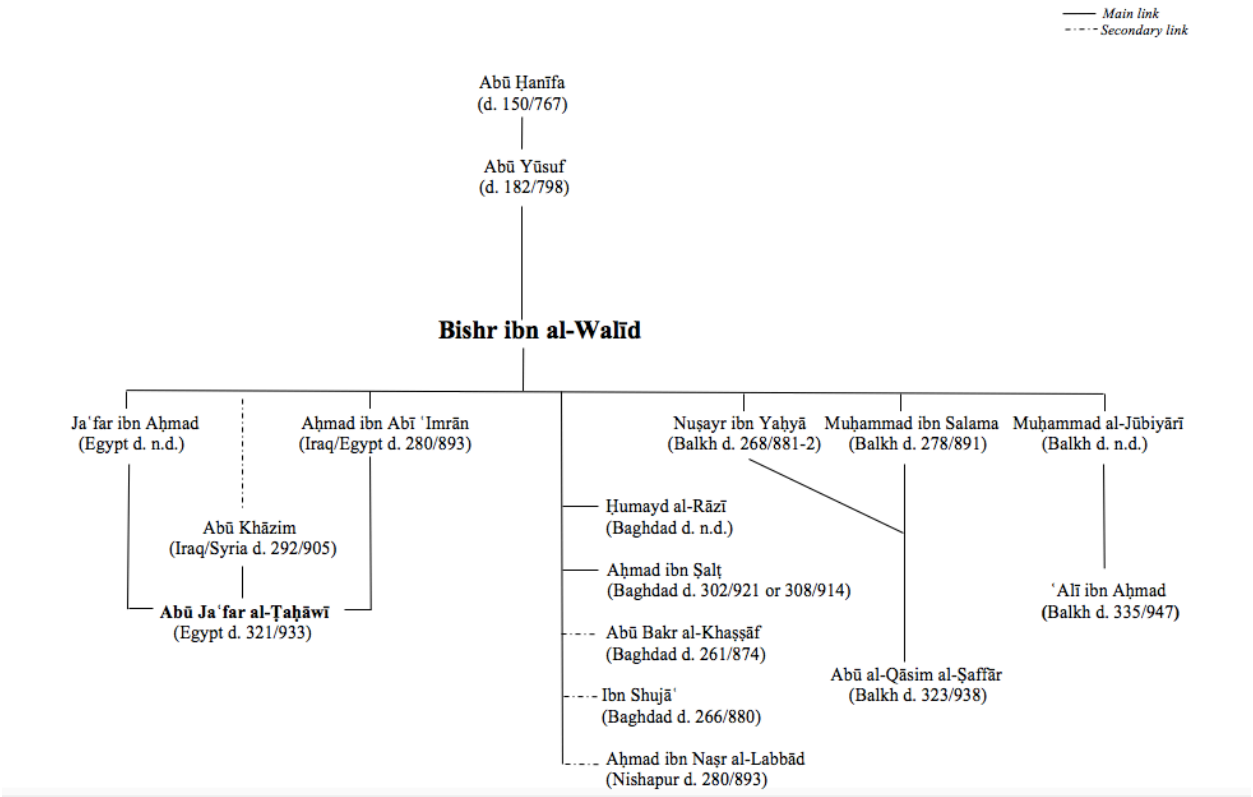

Figure 2: Ḥanafī Legal Network of Bishr ibn al-Walīd (d. 238/853)

Additionally, there were several other Ḥanafī figures who were not identified as students of Bishr nor among those who transmitted legal doctrine from him but who were nonetheless associated with him in other ways. Abū Sulaymān as a peer of Bishr was aware of his transmission from Abū Yūsuf and even references it in some of his answers to legal questions as mentioned earlier.[279] The teacher of Ibn Shujāʿ al-Thaljī, al-Ḥasan ibn Abī Mālik, was a close friend and colleague of Bishr and both of them were leading figures in the study circle of Abū

[279] Al-Samarqandī, *al-Fatāwā*, 21

Yūsuf.[280] Ibn Shujāʿ himself related biographical material from Bishr regarding the Ḥanafī masters.[281] Meanwhile, al-Khaṣṣāf narrated traditions and legal doctrine from Bishr in his legal texts,[282] as did ʿAlī ibn Jaʿd (d. 230/844), Aḥmad ibn Muḥammad ibn Samāʿa (d. after 253/867),[283] Ibrāhīm ibn Isḥāq al-Zuhrī,[284] Aḥmad ibn Naṣr al-Labbād (d. 280/893),[285] and others. Abū Khāzim is said to have remarked that he had not seen anyone as intelligent as ʿĪsā ibn Abān or Bishr indicating that he was acquainted with the latter, a point confirmed in his *al-Sijillāt*.[286] Bishr was also interrogated on the matter of the createdness of the Qur'an alongside other prominent Ḥanafī jurists, such as al-Faḍl ibn Ghānim, Sajjāda (d. 241/855) and Abū Ḥassān al-Ziyādī (d. 243/857).[287]

Therefore, Bishr was firmly situated within the Ḥanafī tradition in terms of his legal training, the legal doctrine he transmitted, and the jurists identified as studying law under him. Here, it is pertinent to point out that Bishr stands in contrast to Abū Sulaymān and Ibn Samāʿa in terms of his relationship and attitude towards al-Shaybānī. The latter two counted both Abū Yūsuf and al-Shaybānī among their teachers whereas Bishr was not only known to have not studied under al-Shaybānī but actually viewed him in a negative light. Although it is true that the circle of Abū Yūsuf had a more individual character to it, the attitude of Bishr seems to be an exceptional case. Indeed, several figures exclusively associated with Abū Yūsuf acknowledged al-Shaybānī as a leading authority and part of a broader legal community to which they all belonged. Thus, al-Ḥasan ibn Abī Mālik would advise Bishr against speaking ill of al-Shaybānī

[280] Al-Ṣaymarī, *al-Akhbār*, 162; Ibn Abī al-Wafā', *al-Jawāhir*, 1:452
[281] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 307.
[282] Al-Khaṣṣāf, *al-Awqāf*, 8, 10-11, 17, 152.
[283] Al-Khawārizmī, *al-Masānīd*, 1:81-2.
[284] Al-Ṣaymarī, *al-Akhbār*, 100.
[285] Ibn Abī al-Wafā', *al-Jawāhir*, 1:320-1. He was identified by al-Ḥākim al-Naysābūrī (d. 405/1014) as the head of the people of *ra'y* in his time.
[286] Al-Ṣaymarī, *al-Akhbār*, 149.
[287] Tsafrir, *History*, 46-8.

citing the contributions he made in the form of legal texts. According to Ibn Shujāʿ, Ibn Abī Mālik would have the texts of al-Shaybānī read to him and would remark, 'Abū Yūsuf was not so utterly meticulous.'[288] Hilāl al-Ra'y was also a student of Abū Yūsuf who did not study under al-Shaybānī but nonetheless cites the latter as an authority in his legal texts as detailed earlier. Therefore, the animosity that Bishr displayed towards al-Shaybānī was not a result of viewing him as external to the Ḥanafī tradition and nor was it indicative of individual allegiances and circles being the dominant organization of legal activity at the time among Ḥanafī jurists.

D. ʿĪsā ibn Abān (Basra d. 221/836)

Abū Mūsā ʿĪsā ibn Abān presents a different dimension to the evolution of the Ḥanafī school and its emergence as a distinct community. The biographical literature states that he initially pursued the study of prophetic traditions and viewed the Ḥanafīs as a group that opposed the textual sources. It was on the insistence of Ibn Samāʿa that ʿĪsā attended the study circle of al-Shaybānī and had his concerns addressed. According to the version transmitted by al-Ṣaymarī, ʿĪsā was so impressed by al-Shaybānī's legal acumen that he became a dedicated student of his.[289] His companionship with al-Shaybānī would last no more than eleven months as the latter soon left Baghdad for Raqqa after which their communication continued through written correspondence.[290] The sources do not identify any other teachers of ʿĪsā besides al-Shaybānī. The only other jurist whom ʿĪsā seems linked to in relation to legal transmission is Ismāʿīl ibn Ḥammād who is occasionally shown as one of his sources for the legal doctrine of the masters.[291]

[288] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 358.
[289] Al-Ṣaymarī, *al-Akhbār*, 132.
[290] Abū Khāzim reported six months as related by al-Ṣaymarī, *al-Akhbār*, 147. However, he also reports eleven months from his teacher ʿAbd al-Raḥmān ibn Nā'il as per Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 360.
[291] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 2:472, 4:200.

The limited time ʿĪsā spent in the company of al-Shaybānī did not diminish his position in the Ḥanafī community. Despite being from Baghdad, he was an important member of the Basran Ḥanafī circle having served as judge in the city for the last decade of his life (r. 211-20/826-35). One of the leading Basran Ḥanafī authorities at the time, Hilāl al-Ra'y, remarked that no judge had been appointed in Islam with greater legal acumen than ʿĪsā ibn Abān.[292] Similarly, Bakkār ibn Qutayba stated that Ismāʿīl ibn Ḥammād and ʿĪsā were two judges possessing no equals.[293] Bakkār was himself a student of ʿĪsā and transmitted his opinions and judicial practices to Egypt where he had settled in 246/860.[294] Other members of the Basran Ḥanafī community associated with ʿĪsā included Bakr al-ʿAmmī, ʿAbd al-Raḥmān ibn Nā'il, and Abū Khāzim. As such, ʿĪsā held an important status within the distinct and close-knit Basran Ḥanafī community that took shape at the turn of the 3rd/9th century. The previously discussed incident of ʿUbayd Allāh ibn Muḥammad al-Taymī and the judgement of ʿĪsā regarding his inheritance (1.6) is one case that evidences the existence of this community and how its members viewed each other in terms of a common legal affiliation.

A number of Ḥanafī jurists in Baghdad also acquired knowledge from ʿĪsā, although it is unclear in some cases whether they had a primary teacher-student relationship with him. Ibn Shujāʿ is said to have transmitted legal opinions from ʿĪsā that were later compiled as a text of *masā'il*.[295] Nuṣayr ibn Yaḥyā is presented in the legal literature seeking the opinion of ʿĪsā regarding specific legal cases.[296] Ghassān al-Marwazī, a student of Abū Sulaymān and Bishr al-Marīsī, is also shown consulting ʿĪsā in these sources.[297] Finally, the biographical literature identifies Shuʿayb ibn Ayyūb

[292] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 370.
[293] Ibid., 372.
[294] As shown in al-Ṭaḥāwī, *al-Shurūṭ*, 58, 222, 286, 308, 317, 411-12, 928.
[295] Kātib Chalabī, *Kashf al-ẓunūn*, 2:667. A text entitled *Masā'il* was said to have a chain of transmission Ibn Shujāʿ -- ʿĪsā -- al-Shaybānī. This seems to be the only evidence affirming a link between the two.
[296] Al-Samarqandī, *al-Fatāwā*, 18, 425, 470, 587, 627.
[297] Al-Samarqandī, *al-Fatāwā*, 117.

al-Ṣarīfīnī (d. 261/874), the Ḥanafī judge in Wasit, as another jurist who transmitted material from ʿĪsā.[298]

Judging from the above, the legal network of ʿĪsā had a uniquely Ḥanafī character to it. His main teacher was recognized as al-Shaybānī and there is nothing to suggest he received legal training under anyone else, and his students in law are all members of the Ḥanafī community. Of note is that the broader knowledge circle that the sources situate ʿĪsā within is more restrictive than that of Abū Sulaymān and Ibn Samāʿa. The latter two have already been shown as inconspicuous in the field of *ḥadīth* as opposed to Bishr who attracted both students of law and those pursuing traditions. Despite being presented as an avid student of traditions in his early career, ʿĪsā seemed to have no reputation in the field at all as indicated in the remark of al-Dhahabī that he knew of no traditionist accreditation or discrediting of him.[299] Nor does ʿĪsā feature in any of the major traditionist works. His engagement with knowledge seems to have been even more law-focused than that of his three contemporaries and, furthermore, quite distinct in its concern.

The key feature distinguishing ʿĪsā from his three contemporaries in terms of legal activity returned to the latter three being remembered in the school mainly as prolific transmitters of Ḥanafī legal doctrine. Although ʿĪsā appears in the legal texts fulfilling this function, the most enduring aspect of his legal activity was defending the legal doctrine of the Ḥanafī masters and explicating core principles underlying their thought. This becomes apparent when observing the texts authored by him. Ibn al-Nadīm ascribes the following titles to ʿĪsā: *Kitāb al-Ḥujaj*, *Kitāb Khabar al-wāḥid*, *Kitāb Ithbāt al-qiyās*, *Kitāb Ijtihād al-ra'y*, and *Kitāb al-Jāmiʿ*.[300] Three of these titles ostensibly

[298] Ibn Abī al-Wafā', *al-Jawāhir*, 2:252. Shuʿayb is more firmly identified as a student of al-Ḥasan ibn Ziyād.
[299] Muḥammad ibn Aḥmad al-Dhahabī, *Mīzān al-iʿtidāl fī naqd al-rijāl*, ed. ʿAlī Muḥammad Bijāwī, 4 vols (Beirut: Dār al-Maʿrifa, 1985), 3:310.
[300] In contrast, al-Jaṣṣāṣ cites the following texts of ʿĪsā: *al-Ḥujaj al-ṣaghīr*, *al-Ḥujaj al-kabīr*, *al-Radd ʿalā Bishr al-Marīsī wa-al-Shāfiʿī fī al-akhbār*, *Kitāb al-Mujmal wa-al-mufassar*.

reveal a concern for evidencing legal doctrine and/or the methods and sources underlying it. Even the one major text ʿĪsā is identified as transmitting from al-Shaybānī constituted a polemic defending Ḥanafī legal doctrine and grounding it in the textual sources, namely *al-Ḥujja ʿalā ahl al-Madīna*.

A text like *al-Ḥujja* makes it clear that the defence of Ḥanafī legal doctrine was not new as both al-Shaybānī and Abū Yūsuf forwarded refutations against those who challenged the opinions of Abū Ḥanīfa. However, some of their students took this to a more advanced level by articulating a clearer albeit still basic paradigm that governed the legal doctrine of not just a single master, Abū Ḥanīfa, but the Ḥanafī masters collectively. The increased pressure on this community of students to vindicate the conclusions and methods of their masters is evident in the reports describing the impetus behind ʿĪsā's authoring *Kitāb al-Ḥujaj*, which Abū Khāzim relates from two of the former's students, namely ʿAbd al-Raḥmān ibn Nā'il and Shuʿayb ibn Ayyūb al-Ṣarīfīnī. The version related by the former is more detailed in its specifics than the latter though they are fully consistent with one another. Below is the summarized version of al-Ṣarīfīnī:

> **3.2.** al-Ṭaḥāwī – Abū Khāzim - Shuʿayb ibn Ayyūb: 'When [Abū] ʿĪsā ibn Hārūn came to al-Ma'mūn with these traditions (*aḥādīth*) that he had brought out against our companions thinking they had opposed them, al-Ma'mūn said to Ismāʿīl ibn Ḥammād, Bishr, Yaḥyā ibn Aktham, and Ibn Samāʿa, "If you do not establish some proof for the opinions of your companions with traditions similar to these, I will prevent the issuance of legal verdicts according to these opinions and will gather people on the contrary viewpoint." ʿĪsā ibn Abān was not present with them [during this gathering] for he was younger in age. So, Ismāʿīl produced a text but all of it was vilification of the opponent. Yaḥyā tried but did not produce anything, and the same was the case with Bishr. Then ʿĪsā produced his text *[al-Ḥujaj] al-Ṣaghīr* and took it to al-Ma'mūn. When the latter read it, he stated:
>
> > They were envious of the young man when unable to match his works,
> > The people are his enemies and opponents,
> > Like the co-wives of a beautiful woman who remarked about her face,
> > out of envy and offence, "Indeed, it is ugly."'

> Abū Khāzim said, 'I heard Shūʿayb ibn Ayyūb al-Ṣarīfīnī say, "I said to ʿĪsā, "Did anyone assist you in this book of yours?" He replied, "No but I would write down an issue and then discourse on it with Sufyān ibn Sakhtyān."'"[301]

According to the more detailed version of ʿAbd al-Raḥmān, Abū ʿĪsā ibn Hārūn was a close associate of al-Ma'mūn (likely his half-brother) who had compiled notes from lessons given to him, al-Ma'mūn, and al-Amīn (r. 193-8/809-13; d. 198/813) by various scholars selected by their father, Hārūn al-Rashīd. Abū ʿĪsā pointed out to al-Ma'mūn that the positions taken by members of his intellectual circle – students of Abū Yūsuf and al-Shaybānī - contravened the traditions they had been taught, which meant that either the teachers selected by their father were in error or those who al-Ma'mūn had surrounded himself with were. It was on account of this that al-Ma'mūn requested a response be composed by jurists who were members of his court addressing the apparent inconsistencies between their legal doctrine and these traditions. Of all their efforts, it was the response proffered by ʿĪsā ibn Abān that found favour with al-Ma'mūn and which would in the future constitute the quasi-authoritative theory of prophetic traditions in the Ḥanafī school.[302]

The content of the theory ʿĪsā formulated will not be discussed in this thesis but just as the report about his judgment concerning the inheritance of al-Taymī provided some basic insight into the Basran Ḥanafī community, this incident reveals a community of familiar Baghdadi Ḥanafī jurists tasked with defending the opinions of their teachers. This defence of legal doctrine, which was necessitated by increasing competition between opposing traditions, was crucial in sharpening the outlines of a distinct and identifiable Ḥanafī community. Along with the creation of an axis of authority, sustained doctrinal transmission of the opinions of these authorities, increasingly school-confined legal networks, and the production of secondary

[301] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 370-1.
[302] Al-Ṣaymarī, *al-Akhbār*, 147-8.

literature, these polemics assisted in the articulation of a paradigm that made Ḥanafīsm stand out as a particular methodological approach to law distinct from other schools.

As with each of these activities, the defence of legal doctrine and the articulation of a school paradigm was the undertaking of a community of Ḥanafī jurists. Contrary to the description of scholarship during this period as individualistic, the historical and legal literature presents the contrary: jurists were not only highly indebted to their teachers whose opinions they actively sought and transmitted, they also collaborated and consulted with their colleagues and peers who belonged to the same legal community as them, one united by a common link to the early Ḥanafī masters. While this does not negate that some jurists may have been highly individualistic in their legal activity, each of the biographies presented above reveal a more dynamic and interconnected scholarly environment. This is the case with ʿĪsā whose defence of the school arose in collaboration with Sufyān ibn Saḥbān who himself authored a text by the name of *Kitāb al-ʿIlal*.

II. Authority Consolidated: The Middle-3rd/9th Century

Examining the second generation of Ḥanafī jurists in Iraq reveals an interesting phenomenon: the diffusion of authority. Throughout much of the first half of the 3rd/9th century, no single jurist can be pointed towards as the central authority in Baghdad or Basra. In Basra, Hilāl comes close to fulfilling the role of chief jurist, though the already modest Basran community diminishes greatly after his death and most of his students remain largely unknown. On the other hand, the Ḥanafī community in Baghdad was much larger comprising numerous jurists who were viewed by a subsequent generation as authoritative teachers and transmitters of an earlier Ḥanafī tradition. No single jurist stood out as the head of the Baghdadi Ḥanafī community during much of the first half of the 3rd/9th century. Consequently, those connected to this generation as students would

often be identified with several teachers. For example, Ibn Abī ʿImrān was described as having trained under 'Ibn Samāʿa, Bishr ibn al-Walīd, and the students of Abū Yūsuf and Muḥammad.'[303] Similarly, Abū Khāzim 'acquired knowledge from Hilāl al-Ra'y… and also from Bakr al-ʿAmmī and Maḥmūd al-Anṣārī, then he kept the company of ʿAbd al-Raḥmān ibn Nā'il and Ibn Shujāʿ.'[304] From one perspective, this seems unexceptional as it was quite common to study law under multiple authorities even in the classical period and especially so when jurists frequently travelled in pursuit of knowledge.

Towards the middle of the 3rd/9th century, the Ḥanafī community in Iraq transformed in two ways: firstly, the Basran Ḥanafī community began to dissipate such that it is difficult to identify any leading Ḥanafī jurist in the city during the second half of the century;[305] secondly, Baghdad further solidified its position as the main centre of Ḥanafīsm in Iraq and authority began to consolidate more strongly in particular individuals.[306] In Iraq, Ibn Shujāʿ seems to be the figure who came closest to being recognized as the chief Ḥanafī jurist of his time.[307] Though he had a few relatively prominent peers, such as ʿAlī al-Rāzī and al-Khaṣṣāf, none of them left a

[303] Al-Ṣaymarī, *al-Akhbār*, 165, al-Dhahabī, *al-Siyar*, 13:335.
[304] Al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 12:339.
[305] This has also been recognized by Tsafrir who points to the strengthening Mālikī and Shāfiʿī presence in the city. and, more importantly, the departure of Basran Ḥanafīs to other areas, such as Egypt and Baghdad. See *History*, 38.
[306] The consolidation and narrowing of authority is visible in other regions as well in and around this period. Though a fuller study is required to confirm the exact nature of these developments outside of Iraq, a prelimary analysis of Balkh reveals that it followed a pattern similar to Baghdad. The most prominent jurists from the first quarter of the 3rd/9th century included Khalaf ibn Ayyūb, Shaddād ibn al-Ḥakīm (d. 210/825), ʿIṣām ibn Yūsuf (d. 215/830), Ibrāhīm ibn Yūsuf (d. 239/852), and Ibn Rimāḥ, among others. In the subsequent generation, two chief jurists emerged in the city, namely Nuṣayr ibn Yaḥyā and Muḥammad ibn Salama. Both were close colleagues, attended classes together, traveled to Iraq for further study, and possessed a similar list of teachers and students. This development is also seen in other smaller centres where Ḥanafī communities took root. In Rayy, the historical sources do not provide much in the way of names of jurists active during the early part of the 3rd/9th century despite there likely being a strong Ḥanafī presence in the area. However, they do identify Muḥammad ibn Muqātil as 'the head of *ahl al-ra'y*' in the city. In Hamadhan, Muḥammad ibn al-Mughīra ibn al-Sinān (d. 284/897), a student of Hishām ibn ʿUbayd Allāh, was also identified as the head of the Ḥanafīs. See Tsarir, *History*, 73-4.
[307] His importance to the school has been recognized by Melchert and also Madelung. Melchert describes him as a 'leader in the transformation of Ḥanafī jurisprudence', while Madelung singles him out (though incorrectly as Abū Shujāʿ al-Thaljī) along with al-Khaṣṣāf as 'universally recognized' scholars of the school who learnt and taught in Baghdad during the 3rd/9th century. However, neither provide more than a few lines regarding Ibn Shujāʿ. See Melchert, *Formation*, 51; Madelung, "Western Migration," 42.

list of students quite like his. The historical sources provide very little information regarding the teachers and students of ʿAlī al-Rāzī, though several jurists associated with Ibn Shujāʿ, such as Ibn Abī ʿImrān, Abū Khāzim, and ʿAlī al-Qummī, were linked to him in a manner that evidences his being a respected authority.[308] Similarly, although al-Khaṣṣāf authored several texts, had a close relationship with al-Muhtadī (d. 256/870; r. 255-56/869-70), and influenced subsequent Ḥanafī legal discourse, the sources do not mention those he trained or how he was associated with the broader Ḥanafī community around him.[309]

In contrast, the legal network of Ibn Shujāʿ not only continues to operate within the boundaries of the Ḥanafī community but does so with an even more substantive list of identifiable teachers and students. Many of the major jurists in the region from the subsequent generation were students of Ibn Shujāʿ. His authority is further confirmed by the scope of his influence, which extended from Egypt to Nishapur to Balkh. In the city of Balkh, Ibn Shujāʿ shared a close relationship with his peer, Nuṣayr ibn Yaḥyā, who is seen regularly consulting the former on legal issues. This created a transregional link between the two central authorities of arguably the two most important Ḥanafī centres in the Muslim world. More importantly, the legal activity of Ibn Shujāʿ indicated a new stage in the evolution of the Ḥanafī school in terms of a more sustained effort to explain and defend school legal doctrine, as well as the ascription of the earliest commentary literature to him.

To shed further light on these developments, a biographical sketch of Ibn Shujāʿ and an overview of his legal activity are presented below. This is followed by a similar sketch for

[308] Ibn al-Nadīm, *al-Fihrist*, 2:27-8; al-Samarqandī, *al-Fatāwā*, 258; al-Ṣaymarī, *al-Akhbār*, 164; Ibn Abī al-Wafā', *al-Jawāhir*, 2:624-5. The recognition of his status as a jurist is also seen in Ibn Salama likening the knowledge of Khalaf ibn Ayyūb as being a mere fraction of that possessed by ʿAlī al-Rāzī but the former became much more prominent and accepted due to his piety. Ibn Salama himself avoided studying with ʿAlī al-Rāzī due to the abundance of vain and distractive amusements in his home.
[309] Ibn al-Nadīm, *al-Fihrist*, 2:28; al-Ṣaymarī, *al-Akhbār*, 164; Ibn Abī al-Wafā', *al-Jawāhir*, 1:230-1.

Nuṣayr who as a Balkhī trained in Baghdad and linked to Ibn Shujāʿ provides valuable information regarding Baghdad as a legal centre of education, the connections between leading jurists from different regions, and the social organization of legal activity of jurists who travelled extensively in pursuit of knowledge.

A. Muḥammad ibn Shujāʿ al-Thaljī (Baghdad d. 266/880)

Muḥammad ibn Shujāʿ al-Thaljī was considered the central Ḥanafī jurist of his time in Iraq. His main legal teachers are identified in all of the sources as al-Ḥasan ibn Ziyād and al-Ḥasan ibn Abī Malik. In the legal literature, he is shown as a prolific transmitter of both their legal opinions and through them the legal doctrine of Abū Ḥanīfa, Abū Yūsuf, and Zufar.[310] The historical and legal literature also reveal that he was connected to a broader community of Ḥanafī jurists, such as Muʿallā,[311] Ibn Samāʿa,[312] Ismāʿīl ibn Ḥammād,[313] ʿĪsā ibn Abān,[314] Bishr al-Marīsī,[315] Bishr ibn al-Walīd,[316] and ʿAlī ibn Ṣāliḥ.[317] Although he is presented as attending gatherings in the presence of some of the aforementioned figures, the sources rarely present him as transmitting legal doctrine from them but mainly biographical reports concerning the masters, prophetic

[310] Ibn al-Nadīm, *al-Fihrist*, 2:29-30; al-Ṣaymarī, *al-Akhbār*, 164; Ibn Abī al-Wafā', *al-Jawāhir*, 3:175; al-Qārī, *al-Athmār*, 2:593. For examples of his legal transmission from his teachers see al-Jaṣṣāṣ, *al-Ikhtilāf*, 2:242, 379, 3:79, 126, 293; al-Nāṭifī, *al-Ajnās*, 1:49, 278, 434, 443, 460; al-Qudūrī, *al-Tajrīd*, 1:132, 426, 2:623, 837, 5:2252, 2432. I have not found any significant and sustained transmission of legal doctrine by Ibn Shujāʿ from other than these two figures despite searching in numerous early and late legal texts. His connection to al-Shaybānī was largely through his legal texts, which Ibn Shujāʿ praised on a number of occassions. See Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 357, 361-2.

[311] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 352; al-Ṣaymarī, *al-Akhbār*, 66; al-Mu'ayyad billāh, *Sharḥ al-Tajrīd*, 1:22-3, 247, 253, 2:442.

[312] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 291; al-Ṣaymarī, *al-Akhbār*, 111; al-Mu'ayyad billāh, *Sharḥ al-Tajrīd*, 1:19, 21-2, 34, 254, 2:289.

[313] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 101. Here he relates what he heard in a gathering of Ismāʿīl.

[314] Kātib Chalabī, *Kashf al-ẓunūn*, 2:667. A text entitled *Masā'il Ibn Shujāʿ* was said to have a chain of transmission Ibn Shujāʿ - ʿĪsā – al-Shaybānī. In *al-Ajnās*, al-Nāṭifī cites the legal issues ʿĪsā gathered from al-Shaybānī through written correspondence when the latter was in Raqqa and quotes as his source the *Nawādir* of Ibn Shujāʿ. These may have constituted some of the *masā'il* related by Ibn Shujāʿ from ʿĪsā mentioned by Chalabī.

[315] Al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 3:315; al-Mizzī, *al-Tahdhīb*, 25:363.

[316] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 303, 307, 312.

[317] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 41, 303, 317-8. In some of these references, Ibn Shujāʿ is transmitting a legal opinion of Abū Yūsuf through ʿAlī.

traditions, or specific theological matters. In other words, the legal training of Ibn Shujāʿ occurred at the hands of al-Ḥasan ibn Ziyād and al-Ḥasan ibn Abī Malik as confirmed in both the biographical and legal literature.[318]

Like his teachers, the students of Ibn Shujāʿ in jurisprudence are also clearly identified in the historical and legal literature and include some of the most prominent Ḥanafī jurists of the late 3rd/9th century:

> Abū Khāzim ʿAbd al-Ḥamīd ibn ʿAbd al-ʿAzīz who was the teacher of al-Ṭaḥāwī, served as a judge in Damascus, Baghdad, and Kufa, and authored the earliest commentary on *al-Jāmiʿ al-kabīr*.[319]
>
> Aḥmad ibn Abī ʿImrān, a leading Ḥanafī jurist from Baghdad who settled in Egypt and taught al-Ṭaḥāwī.[320]
>
> al-Ḥusayn ibn ʿAbd Allāh (d. 292/904-5), a transmitter of legal works from Ibn Shujāʿ and senior Ḥanafī jurist in Khurasan.[321]
>
> ʿAbd Allāh ibn Salama (d. 298/911), a judge in Nishapur considered an authority in the law of inheritance and contracts.[322]
>
> ʿAlī ibn Mūsā al-Qummī (d. 305/917-8), the author of *Aḥkām al-qur'ān* who many considered the most knowledgeable Ḥanafī jurist of his time.[323]
>
> Abū Naṣr Muḥammad ibn Muḥammad ibn Sallām (d. 305/918), a leading jurist from Balkh and the teacher of Abū Bakr al-Iskāf (d. 333 or 336/945 or 948).[324]

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[318] Al-Kafawī mentions that he first studied under al-Ḥasan ibn Abī Malik and then al-Ḥasan ibn Ziyād. See Maḥmūd ibn Sulaymān al-Kafawī, *Katā'ib aʿlām al-akhyār min fuqahā' madhhab al-Nuʿmān al-mukhtār*, ed. Ṣafwat Kūsā, Murād Shimsak, Ḥasan Ūzar, Ḥudhayfa Jakar, Kūnash Ūzturk, 4 vols. (Istanbul: Maktabat al-Irhsād, 2017) 1:518. Of course, in keeping with the scholarly culture of his time, Ibn Shujāʿ did transmit knowledge from many non-Ḥanafī figures but this seems to have related to non-juristic topics. Thus, he related prophetic traditions from Ismāʿīl ibn ʿUlayya (d. 193/809), Wakīʿ ibn al-Jarrāḥ (d. 197/812), and Ḥammād ibn Usāma (d. 201/817), among others. He was known to have narrated reports concerning *maghāzī* from Muḥammad ibn ʿUmar al-Wāqidī (d. 207/822) and learnt the Quran in the recitation of ʿĀṣim from Yaḥyā ibn Ādam (d. 203/818). See al-Mizzī, *al-Tahdhīb*, 25:362; al-Dhahabī, *al-Siyar*, 12:379.

[319] Al-Ṣaymarī, *al-Akhbār*, 165; Ibn Abī al-Wafā', *al-Jawāhir*, 2:366-8.

[320] Al-Ṣaymarī, *al-Akhbār*, 165; Ibn Abī al-Wafā', *al-Jawāhir*, 1:337-8.

[321] Ibn Abī al-Wafā', *al-Jawāhir*, 2:112; al-Dhahabī, *Tārīkh al-Islām*, 6:939.

[322] Ibn Abī al-Wafā', *al-Jawāhir*, 2:310-11.

[323] Ibn al-Nadīm, *al-Fihrist*, 2:30; al-Ṣaymarī, *al-Akhbār*, 165; Ibn Abī al-Wafā', *al-Jawāhir*, 3:618-9; al-Dhahabī, *al-Siyar*, 14:236.

[324] Ibn ʿUmar, *Faḍā'il Balkh*, 273; al-Samarqandī, *al-Fatāwā*, 14-18, 30, 32, 52, 57-9, 278; Ibn Abī al-Wafā', *al-Jawāhir*, 4:92-3.

Abū Bakr ibn Yaʿqūb al-Ṭabarī (d. n.d.), the author of *Ikhtilāf al-fuqahā'* and among the *aṣḥāb* of Ibn Shujāʿ.[325]

Muḥammad ibn al-Yamān (d. n.d.), identified as a jurist who was among the *aṣḥāb* of Ibn Shujāʿ.[326]

Muḥammad ibn Ibrāhīm ibn Ḥubaysh (d. 338/949), a student of Ibn Shujāʿ and the main transmitter of *Musnad Abī Ḥanīfa* from him from al-Ḥasan ibn Ziyād, which was part of *al-Mujarrad*.[327]

The legal literature not only provides the names of these students but also displays the transmission of legal doctrine between them and their teacher. In Egypt, Ibn Abī ʿImrān related the opinions of Ibn Shujāʿ and through him the legal doctrine of the masters. Thus, al-Ṭaḥāwī is seen citing his teacher Ibn Abī ʿImrān a total of twelve times (12x) relating legal material from Ibn Shujāʿ: four instances (4x) the opinions of Abū Ḥanīfa, another four (4x) the opinions of Zufar, twice (2x) for Abū Yūsuf, and twice (2x) for his own opinion.

al-Ṭaḥāwī – Ibn Abī ʿImrān – Ibn Shujāʿ – Abū Bakr al-Khawārizmī – Abū Ḥanīfa	Mentioned once reporting the legal opinion of Abū Ḥanīfa.[328]
al-Ṭaḥāwī – Ibn Abī ʿImrān – Ibn Shujāʿ	Mentioned three times reporting the legal opinion of Abū Ḥanīfa.[329]
al-Ṭaḥāwī – Ibn Abī ʿImrān – Ibn Shujāʿ - Ibn Abī Malik – Abū Yūsuf	Mentioned twice reporting the legal opinion of Abū Yūsuf.[330]
al-Ṭaḥāwī – Ibn Abī ʿImrān – Ibn Shujāʿ - al-Ḥasan – Zufar	Mentioned four times reporting the legal opinion of Zufar.[331]
al-Ṭaḥāwī – Ibn Abī ʿImrān – Ibn Shujāʿ	Mentioned twice reporting the legal opinion of Ibn Shujāʿ.[332]

[325] Al-Nāṭifī, *al-Ajnās*, 1:428, 444, 451; Ibn Abī al-Wafā', *al-Jawāhir*, 4:30; Yaḥyā ibn al-Ḥusayn al-Hārūnī, *al-Ifāda fī tārīkh a'immat al-sāda*, 4th ed. (Yemen: Maktabat Ahl al-Bayt, 2014), 88-9; Kātib Chalabī, *Kashf al-ẓunūn*, 1:33. In *al-Ifāda*, he is identified as *ʿālim ahl al-ra'y wa-ḥāfiẓuhum*. His legal work *Ikhtilāf al-fuqahā'* is cited a number of times in *al-Ajnās*.
[326] Al-Mu'ayyad billāh, *Sharḥ al-Tajrīd*, 1:23, 25, 30, 32, 35; Ibn Abī al-Wafā', *al-Jawāhir*, 3:400; al-Qārī, *al-Athmār*, 1:311; al-Kafawī, *al-Katā'ib*, 1:555.
[327] Al-Dāraquṭnī, *al-Mu'talif*, 2:689; al-Qazwīnī, *al-Mashyakha*, 292.
[328] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 1:248.
[329] Ibid., 1:386, 3:147, 394.
[330] Ibid., 2:242, 3:79.
[331] Ibid., 2:379, 3:126, 293, 385.
[332] Ibid., 3:147, 394.

These chains reveal a clearly identifiable teacher-student link. Ibn Shujāʿ is generally seen transmitting from al-Ḥasan ibn Ziyād or Ibn Abī Mālik, and the student of Ibn Shujāʿ is always identified as Ibn Abī ʿImrān who transmits not only the legal doctrine of earlier Ḥanafī jurists through his teacher but also the opinions of his teacher himself. The link between Ibn Abī ʿImrān and Ibn Shujāʿ seemed to have been so well-known that al-Ṭaḥāwī on occasion simply assumes that the former took from the latter despite there being no explicit reference in this regard.[333] Echoing a type of authority a chief jurist would confer upon his student, Ibn Shujāʿ stated, 'I hold two arrows in my hand one of which I have placed in the east and the other in the west… and the one in the east is Ibn Abī ʿImrān.'[334] Indeed, even after his departure to Egypt, Ibn Abī ʿImrān continued to consult his teacher on legal issues through written correspondence.[335] In this manner, the relationship Ibn Abī ʿImrān had with Ibn Shujāʿ was more substantial than that which he had with some of his other teachers, such as Ibn Samāʿa and Bishr. Both of them had passed away by 238/853 at which time Ibn Abī ʿImrān would have been in his thirties. It would seem natural for him to attach himself to another senior figure and Ibn Shujāʿ was the obvious choice in light of there being no other authority of his calibre and influence during the middle of the 3rd/9th century.

[333] Ibid., 3:126.
[334] Ibn ʿUmar, *Faḍā'il Balkh*, 260.
[335] For an example of this, see the incident related by al-Ṭaḥāwī in al-Samarqandī, *al-Fatāwā*, 258. After deliberating and deciding on a case of divorce, Ibn Abī ʿImrān wrote to Ibn Shujāʿ and ʿAlī al-Rāzī to confirm his answer.

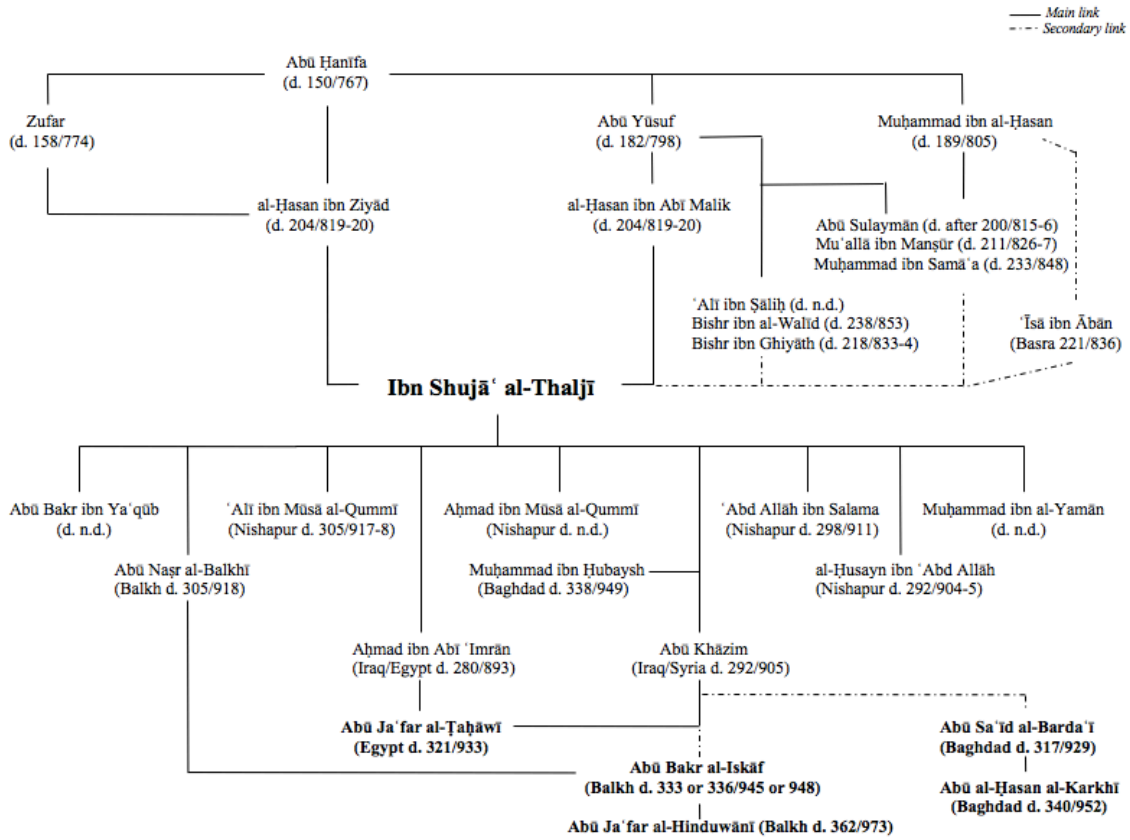

Figure 3: Ḥanafī Legal Network of Ibn Shujāʿ al-Thaljī (d. 266/880)

Such transmission of legal doctrine between Ibn Shujāʿ and his students is also found in other legal texts. Take the following example from Abū Naṣr al-Balkhī:

> **3.3.** Abū Naṣr was asked regarding a man who said, 'I made a vow that any woman I marry is divorced but I do not know if I was of the age of discernment.' Abū Naṣr said, 'I asked Ibn Shujāʿ al-Thaljī about this matter and he said that his vow would not be broken unless he had knowledge of making the vow and was discerning of it.'[336]

In addition to his network of teachers and students, Ibn Shujāʿ had several links with Ḥanafī jurists who were his peers, such as Aḥmad ibn Muḥammad ibn Samāʿa, ʿAlī al-Rāzī, Muḥammad ibn Salama, and Nuṣayr. The relationship between Nuṣayr and Ibn Shujāʿ was particularly significant as it constituted a major transregional link between the two chief Ḥanafī

[336] Al-Samarqandī, *al-Fatāwā*, 278. There are also instances where Abū Naṣr relates the opinions of the masters from Ibn Abī Mālik, which one can speculate he received from Ibn Shujāʿ.

jurists of Balkh and Baghdad respectively. As fellow students of al-Ḥasan ibn Ziyād, both jurists are shown in regular consultation with each other on legal matters as the following example illustrates:

> **3.4.** ʿAlī ibn Aḥmad relates that Nuṣayr wrote to Abū ʿAbd Allāh al-Thaljī, 'What is your position concerning a man who possesses property worth three-thousand *dirham*s but what is earned from this property is not sufficient to fulfil the needs of his family. Is it valid to give him *zakāt*?' He replied back, 'He is not to be given from *zakāt* since he is similar to someone who has possessions or precious stones the value of which exceeds two-hundred *dirham*s.'[337]

In another insightful example of correspondence:

> **3.5.** If man makes a vow that his wife will not exit the home except with his permission (*idhn*) and then he grants her permission, but it is done in a manner where she does not actually hear it then according to Abū Ḥanīfa and Muḥammad this is not considered granting permission. Zufar stated that it is. This is also the view of Abū Yūsuf. Nuṣayr stated, 'I wrote to Abū ʿAbd Allāh al-Thaljī regarding the view he preferred on this matter. He wrote back to me, "There is no difference of opinion on this issue as all of the masters considered it as granting permission. The difference of opinion is concerning someone who says, "Do not exit except upon my order (*amrī*)" because an order has to be heard for it to be considered an order whereas permission does not. Have you not seen that a man says, "I heard so-and-so grant you permission for such and such" even though so-and-so did not address that individual directly? However, he will not say, "I heard so-and-so order you" when so-and-so did not directly address him."'
>
> Nuṣayr said, 'Yet, Abū Sulaymān did mention a difference of opinion on the issue of granting permission.'[338]

Examples such as the above continue to show a reasonably interconnected community of Ḥanafī jurists who recognized each other as part of a common legal heritage, which united them in the preservation, teaching, defence, and elaboration of this heritage. The position of Ibn Shujāʿ in this community was particularly prominent as seen not only in the relationship he had with jurists of the subsequent generation, such as Ibn Abī ʿImrān, but also in the way he was viewed by his peers who were leading authorities in their own right, such as Nuṣayr.

The distinguished position of Ibn Shujāʿ is perhaps even more vividly illustrated in his legal activity. Like other Ḥanafī jurists during the 3rd/9th century, Ibn Shujāʿ transmitted the legal

[337] Al-Samarqandī, *al-Fatāwā*, 117.
[338] Al-Samarqandī, *al-Fatāwā*, 293. For more examples, see 228, 274, 469, 511.

doctrine of the masters, which included two texts ascribed to al-Ḥasan ibn Ziyād, namely *al-Mujarrad* and *al-Āthār*.[339] He was also the major transmitter of the opinions of Abū Ḥanīfa, Abū Yūsuf, and Zufar through al-Ḥasan ibn Abī Mālik. Indeed, there are dozens of citations of their opinions through the chain Ibn Shujāʿ - Ibn Abī Mālik in the legal literature. His connection to al-Shaybānī seems to have been largely through the legal texts of the latter, which by this period had become an indispensable source of legal doctrine for Ḥanafī jurists. Ibn Shujāʿ would repeatedly praise al-Shaybānī's *al-Jāmiʿ al-kabīr* as an unparalleled text and also authored a defence of *al-Jāmiʿ al-ṣaghīr* entitled *Kitāb al-Bayān* against certain criticisms raised by Yaḥyā ibn Aktham in his *Kitāb al-Tanbīh*.[340]

Yet, far more important than the transmission of legal doctrine were three additional aspects of his legal activity. The first was the augmentation of Ḥanafī legal doctrine resulting from the derivation of new opinions. The central role Ibn Shujāʿ played in addressing novel cases is demonstrated in al-Samarqandī's inclusion of him among a list of nine jurists whom he considered leading authorities in addressing unprecedented cases (*nawāzil*) that arose as a result of the 'changing states of people and their customs'.[341] Ibn Shujāʿ is the only Baghdadi to appear on this list, which confirms his enduring reputation in the easterly centres of Ḥanafīsm where his contributions were deemed important enough to warrant preservation. Indeed, a work entitled *Jawābāt masā'il ahl al-Balkh* ascribed to Ibn Shujāʿ is likely a compilation of answers he provided to questions sent from the city.[342]

[339] Al-Dāraquṭnī, *al-Mu'talif*, 2:689.
[340] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 357, 361-2. For *Kitāb al-Bayān* see ʿAlī ibn Muḥammad al-Bazdawī, *Sharḥ al-Jāmiʿ al-ṣaghīr* (Istanbul: Fayḍ Allāh Effendī, MS 753), ff. 2b.
[341] Al-Samarqandī, *al-Fatāwā*, 9. Ibn Shujāʿ appears a number of times in this text but far less than jurists from Balkh and its surrounding areas.
[342] Al-Nāṭifī, *al-Ajnās*, 1:453, 2:283.

A second aspect of the legal activity of Ibn Shujāʿ was the authoring of legal texts, which was in keeping with the general legal culture of the 3rd/9th century. The historical and legal sources ascribe the following titles to him: *Kitāb Taṣḥīḥ al-āthār*,[343] *Kitāb al-Nawādir*,[344] *Kitāb al-Muḍāraba*,[345] *Kitāb al-Kafārāt*,[346] *Kitāb al-Manāsik*,[347] *Kitāb al-Kharāj*,[348] *Kitāb al-Ḥikāyāt fī al-furūʿ*,[349] *Kitāb al-Ḥalāl wa-al-ḥarām*,[350] *Kitāb al-Sunan*,[351] *Kitāb al-Tanbīh*,[352] *Sharḥ Ikhtilāf Zufar wa-Yaʿqūb*,[353] and *Sharḥ* or *Tafsīr al-Mujarrad*.[354] Of these texts, two stand out as significant in the evolution of the Ḥanafī school, namely *Sharḥ Ikhtilāf Zufar* and *Sharḥ* or *Tafsīr al-Mujarrad*.[355] In general, scholars have considered the end of the 3rd/9th century as the period wherein the first commentary works appeared. According to Melchert, the writing of commentaries on earlier works was one of the essential features of the classical school.[356] Similarly, Hallaq states that the production of commentaries on earlier legal works was a

[343] Ibn Nadīm, *al-Fihrist*, 2:30.
[344] Ibid.
[345] Ibid.
[346] Al-Nāṭifī, *al-Ajnās*, 1:387; Kātib Chalabī, *Kashf al-ẓunūn*, 2:1453; Ismāʿīl Bāsha, *Hadīyat al-ʿārifīn asmāʾ al-muʾallifīn wa-āthār al-muṣannifīn*, 2 vols. (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, n.d.), 2:17.
[347] Al-Samarqandī, *al-Fatāwā*, 124; al-Ḥākim al-Naysābūrī, *Maʿrifat ʿulūm al-ḥadīth*, ed. Aḥmad Fāris (Beirut: Dār Ibn Ḥazm, 2003), 596; Ibn Abī al-Wafāʾ, *al-Jawāhir*, 3:174; Ismāʿīl Bāsha, *al-Hadīya*, 2:17.
[348] Al-Nāṭifī, *al-Ajnās*, 462, 65.
[349] Al-Nāṭifī, *al-Ajnās*, 1:423; Kātib Chalabī, *Kashf al-ẓunūn*, 2:1413.
[350] Kātib Chalabī, *Kashf al-ẓunūn*, 2:1413.
[351] Al-Qudūrī, *al-Tajrīd*, 1:183, 431; Kātib Chalabī, *Kashf al-ẓunūn*, 2:1007.
[352] Al-Bazdawī, *Sharḥ al-Jāmiʿ al-ṣaghīr*, ff. 2b.
[353] Aḥmad ibn ʿAlī al-Jaṣṣāṣ, *Aḥkām al-qurʾān*, ed. Muḥammad Ṣādiq al-Qamḥāwī, 5 vols. (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1985), 5:363; al-Nāṭifī, *al-Ajnās*, 132, 148, 156, 168, 224; Muḥammad ibn Aḥmad al-Sarakhsī, *Kitāb al-Mabsūṭ*, ed. Muḥammad Rāḍī, 30 vols. (Egypt: Maṭbaʿat al-Saʿāda, 1906), 4:91; Ibn Māza, *al-Muḥīṭ*, 1:290; Kātib Chalabī, *Kashf al-ẓunūn*, 2:1031.
[354] Al-Shaybānī, *al-Aṣl*, 2:202; al-Nāṭifī, *al-Ajnās*, 1:72, 99, 105-6, 112, 125, 137, 153, 192, 420; Ibn Māza, *al-Muḥīṭ*, 3:42-3; Kātib Chalabī, *Kashf al-ẓunūn*, 1:458. Chalabī mistakenly attributes it to Abū Shujāʿ.
[355] *Al-Mujarrad* belonged to al-Ḥasan ibn Ziyād and is cited extensively in Ḥanafī legal literature. The authorship of the work *Ikhtilāf Zufar wa-Yaʿqūb* is somewhat of a mystery. In *Kashf al-ẓunūn*, Kātib Chalabī simply ascribes it to a 'group of jurists'. However, a possible case can be made that this work is actually part of *al-Mujarrad* as some texts describe it as simply being a 'set of issues (*masāʾil*)'. It is also routinely referred to as *Ikhtilāf Zufar wa-Abī Yūsuf*, which al-Qudūrī and others identify as a part of *al-Mujarrad*. This would make sense as al-Ḥasan was a prominent transmitter of the opinions of both Zufar and Abū Yūsuf. Like al-*Mujarrad*, this text was cited by a number of early jurists, and al-Sarakhsī in particular references it numerous times in *al-Mabsūṭ*. See al-Jaṣṣāṣ, *al-Ikhtilāf*, 3:152; al-Samarqandī, *al-Fatāwā*, 228; al-Qudūrī, *al-Tajrīd*, 5:262; al-Sarakhsī, *al-Mabsūṭ*, 2:129, 3:66, 7:29, 9:34, 10:161, 12:81, 24:91; Kātib Chalabī, *Kashf al-ẓunūn*, 1:32.
[356] Melchert, *Formation*, 60.

manifestation of the activity of *taqlīd* that raised the earlier casuistic method of exposition to a higher plane by formulating discourse of a more general applicability.[357] According to both Melchert and Hallaq, the earliest commentaries were produced towards the end of the 3rd/9th century. Melchert identifies the commentaries of Abū Khāzim and al-Ṭaḥāwī on the works of al-Shaybānī as the earliest commentaries of the Ḥanafī school.[358] If the first commentaries on the legal works of earlier Ḥanafī jurists were in fact authored by Ibn Shujāʿ, this would move the identification of the first appearance of this genre nearly half a century earlier than previously thought.

It is difficult to determine the full nature of these commentary texts given they are no longer extant. However, several citations in later legal literature show them to exhibit the basic feature that all commentary literature share in terms of elaborating on an original text. Take the following extant passage from *Sharḥ al-Mujarrad* found in the printed editions of *al-Aṣl*:

> **3.6.** al-Ḥasan ibn Ziyād related from Abū Ḥanīfa that a fasting person who is suddenly overcome by vomit and a small or large amount exits from his mouth, or someone who induces vomit and it is less than a mouthful, will not have the fast nullified whether he is aware that he is fasting or forgetful of it. However, if he intentionally vomits a mouthful or more while aware of the fact that he is fasting, he will have to make-up his fast.
>
> Abū ʿAbd Allāh [Ibn Shujāʿ] said: 'Meaning, if he makes himself vomit, there is nothing upon him if he is forgetful of the fact that he is fasting. However, if it exits from his stomach to his throat and he swallows it while being able to expel it and he is aware that he is fasting, a make-up is necessary upon him. Al-Ḥasan ibn Abī Mālik reported from Abū Yūsuf from Abū Ḥanīfa that if someone is suddenly overcome by a mouthful or more of vomit or induces it and then it returns to his throat while he is aware of his fast then this nullifies the fast similar to a chickpea, which is the amount that nullifies fasting in the context of eating [s: what is already in one's mouth]. This is regardless of whether he intentionally swallowed it or was overcome in doing so. If what exits from his stomach to his mouth is less than a mouthful then what he swallows of it will not nullify his fast. He narrated this from Abū Yūsuf himself as well.'[359]

[357] Hallaq, *Authority*, 114-5.
[358] Melchert, *Formation*, 60-5.
[359] Al-Shaybānī, *al-Aṣl*, 2:202-3.

In another citation of the work, the text of *al-Mujarrad* is quoted in regard to a thief entering an individual's home who knows that he is unable to apprehend him. In this case, the latter is allowed to kill the thief without being subject to retribution or liable for blood money. After quoting this ruling, al-Nāṭifī states:

> **3.7.** In *Tafsīr al-Mujarrad* Ibn Shujāʿ said, 'I asked al-Ḥasan ibn Abī Mālik regarding this. He said, "This was during the time of Abū Ḥanīfa in Kufa when thieves who broke into homes would violently attack a person who was raising alarm against them and seeking help. For this reason, a dispensation was given to kill a thief who entered upon one. Abū Yūsuf said, "If it was such that a thief would run away if one raised an alarm and sought help, he is not to be killed."'[360]

Each of the dozen or more citations of this commentary in *al-Ajnās* of al-Nāṭifī follows the same pattern. Ibn Shujāʿ provides brief explanations and/or alternative opinions to those related by al-Ḥasan ibn Ziyād in *al-Mujarrad*. These alternative opinions are usually those that Ibn Shujāʿ received from his other main teacher, al-Ḥasan ibn Abī Mālik, and the explanations provided are brief and focused on clarifying the text.

Though it is not possible to determine with any degree of certainty whether these commentaries went beyond the basic features mentioned above, it is clear that the legal discourse of Ibn Shujāʿ did, which concerns the third aspect of his legal activity that distinguished him from his peers. He was described by Ibn al-Nadīm as the jurist who 'elaborated the *fiqh* of Abū Ḥanīfa, evidenced it (*iḥtajja la-hu*), expounded its reasoning (*aẓhara ʿilalahu*), strengthened it with a basis in traditions (*qawwāhu bi-al-ḥadīth*), and made it acceptable in the hearts of people (*ḥallāhu fī al-ṣudūr*).'[361] In other words, Ibn Shujāʿ embarked on the project of systematizing Ḥanafī legal doctrine to a degree that was likely greater than his predecessors. This is made more apparent when observing the appearance of his opinions and the citations of his texts in works of positive law, legal theory, and school polemics. Indeed, the contributions of Ibn Shujāʿ are to be

[360] Al-Nāṭifī, *al-Ajnās*, 1:420.
[361] Ibn al-Nadīm, *al-Fihrist*, 2:29.

found in a range of legal topics from the simple documentation and transmission of the masters' opinions to linguistic hermeneutics, positive principles of the school, legal verdicts for unprecedented cases, textual evidence, and so forth.

The legal network and activity of Ibn Shujāʿ presented above furnishes a strong case for identifying him as the central Ḥanafī jurist in Iraq during the middle of the 3rd/9th century. His training and instruction continue to exhibit an approach to legal education that was school-centred and situated within the boundaries of a distinct Ḥanafī community. The consolidation of authority in his figure is evidenced in his training of an entire generation of jurists, his reception in other regional centres, and his legal activity. Each of these aspects of his scholarly career affirm a more mature stage for the Ḥanafī community that saw it assume many of the features of a classical school, such as the regional consolidation of authority in a leading jurist, the emergence of commentary literature, and systematizing activity. Given all of this, it is no surprise that the historical literature described Ibn Shujāʿ as 'distinguished from his peers' and 'the major jurist of *ahl al-ra'y* in his time'.[362]

B. Nuṣayr ibn Yaḥyā (Balkh d. 268/881-2)

Nuṣayr was a prominent jurist from Balkh. Given his connections to Baghdad, it is worth analysing aspects of his career to better understand the position the city occupied as a centre of Ḥanafī learning and the social organization of legal activity of jurists who travelled to Iraq in pursuit of knowledge. The sources paint a detailed picture of Nuṣayr's legal network and reveal that he took from a number of Ḥanafī jurists. His initial studies as a young student took place in Balkh where he acquired knowledge from Abū Muṭīʿ al-Balkhī (d. 199/814), Shaddād ibn al-

[362] Ibn al-Nadīm, *al-Fihrist*, 2:29-30; al-Ṣaymarī, *al-Akhbār*, 164; Ibn Abī al-Wafā', *al-Jawāhir*, 3:175; al-Dhahabī, *al-Siyar*, 12:379.

Ḥakīm, and Khalaf ibn Ayyūb. Shaddād seems to have been his most prominent teacher in Balkh and the jurist under whom Nuṣayr received much of his early legal training. He is shown transmitting legal doctrine from him far more frequently than other Balkhī authorities. Nuṣayr then moved to Baghdad where his main teachers were al-Ḥasan ibn Ziyād and Abū Sulaymān. However, still relatively young when both figures passed away, Nuṣayr continued to acquire legal knowledge from leading Ḥanafī jurists, such as ʿĪsā ibn Abān, Ibn Samāʿa, and Bishr ibn al-Walīd. Another jurist who he consulted regularly on legal issues was Muḥammad ibn Muqātil al-Rāzī. The following citations capture the nature of his transmission from these jurists:

From al-Ḥasan ibn Ziyād

3.8. Nuṣayr said, 'I asked al-Ḥasan about performing ablution from a crevice in the ground in which water entered but did not exit or vice versa. He replied, "Do not perform ablution from it."'[363]

3.8.1. Nuṣayr was asked about a man who performed dry ablution (*tayammum*) but did not wipe his entire face. He said, 'I heard al-Ḥasan mention from Abū Ḥanīfa, Abū Yūsuf, and Zufar that they said, "If someone performs a dry ablution and wipes most of his face and arms then it is valid."'[364]

3.8.2. Nuṣayr said, 'I asked al-Ḥasan about a man who said, "By God! I will not speak to so and so for a day, I will not speak to so-and-so for a month, I will not speak to so-and-so for a year." He replied, "If he speaks to him the moment after saying this, he will have to expiate for three oaths. If he does so after a day passes, then two. If he does so after a month passes, then only one. If he does so after a year, then nothing is due upon him."'[365]

From Abū Sulaymān

3.9. Nuṣayr said, 'I asked Abū Sulaymān regarding a judge who is not morally upright who passes a sound judgment. He replied, "According to Abū Ḥanīfa, Abū Yūsuf, and Muḥammad, every judge whose testimony is not admissible, his court judgments are not either, and so all the judgments he passed are null and void." I then asked Bishr ibn al-Walīd about this and he replied, "I heard Abū Yūsuf state that if a judge is not morally upright then all of his judgments are void and this is also the view of Abū Ḥanīfa."'[366]

3.9.1 Nuṣayr said, 'I asked Abū Sulaymān regarding a mouse that fell into a well and then all the water in the well was removed, does the rope, bucket, and well need to be washed? He said, "There is no need to wash it. However, whatever is affected outside the well is to be washed."' Nuṣayr said, 'I asked al-Ḥasan about this. He said, "It is not necessary to wash the bucket and rope."'[367]

Transmitted *al-Siyar al-kabīr* from Abū Sulaymān – al-Shaybānī.[368]

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[363] Al-Samarqandī, *al-Fatāwā*, 26.
[364] Ibid., 45.
[365] Ibid., 282. For more examples, see 13, 17, 36, 71, 110, 115, 143, 192, 219, 425, 520, 529.
[366] Ibid., 424.
[367] Ibid., 15-16. For more examples, see 11-13, 418, 429, 442, 469, 531, 577, 587.
[368] Muḥammad ibn Aḥmad al-Sarakhsī, *Sharḥ Kitāb al-Siyar al-kabīr*, ed. Muḥammad Ḥasan al-Shāfiʿī, 4 vols. (Beirut: Dār al-Kutub al-ʿIlmīya, 1997), 1:3.

From Shaddād

4.0. Nuṣayr said, ‘I asked Shaddād about a follower seeing some urine on the clothes of the imam that is less than the extent of a *dirham* but the follower views any amount of urine as rendering the prayer invalid while the imam does not? He replied, “The follower should repeat the prayer.”’[369]

From Khalaf ibn Ayyūb

4.1. Nuṣayr said, ‘Khalaf ibn Ayyūb informed me from Muḥammad regarding a woman who has received the testimony of two people regarding a divorce [from her husband]. He said, “If her husband is missing then she can marry. If he is present, then she cannot but nor can she make herself available to her husband for intimacy.”’[370]

From Bishr ibn al-Walīd

4.2. Nuṣayr said, ‘I asked Bishr ibn al-Walīd whether a person who has books of knowledge equivalent to two-hundred *dirhams*, or a Quran of this amount, has to pay *zakāt*. He said, “As for books of knowledge, he does give *zakāt*, but for the Quran he does not.”’[371]

4.2.1 Nuṣayr said, ‘I heard Bishr relating from Abū Yūsuf that every oath that a man makes another take and the one swearing it is oppressed then his intention will be taken into consideration.’[372]

From ʿĪsā ibn Abān

4.3. Nuṣayr said, ‘I asked ʿĪsā ibn Abān regarding a roof with excrement on it over which rain water had passed and then it affected someone’s clothing through a drain. He replied, “There is no harm in it as it is like flowing water.” I said to him, “Do you recall anything from our companions (*aṣḥābinā*) on this issue?” He said, “Muḥammad ibn al-Ḥasan said regarding rain water that passed over excrement and then settled in a particular place after which it affected someone’s clothing who then entered a mosque and prayed that there was no harm in this.”’[373]

From Ibn Samāʿa

4.4. Nuṣayr related from Ibn Samāʿa from Abū Yūsuf regarding a slave who asked his master, ‘Do you permit me to get married?’ and the master responds, ‘You know best regarding this.’ Abū Yūsuf said, ‘This is not a granting of permission but if he said, “This is left to you” then it is.’ Nuṣayr said, ‘This is what I state.’[374]

- Transmitted *Risālat Abī Ḥanīfa ilā al-Battī* from Ibn Samāʿa – Abū Yūsuf - Abū Ḥanīfa.[375]

From Ibn Muqātil al-Rāzī

4.5. Nuṣayr said, ‘I asked Muḥammad ibn Muqātil regarding a man who struck an animal during a hunt and his companion took hold of it but did not have sufficient time to slaughter it. He said, “It can be eaten. This is the view of al-Ḥasan ibn Ziyād.”’[376]

- Transmitted *al-Fiqh al-akbar* from Ibn Muqātil - ʿIṣām ibn Yūsuf - Ḥammād - Abū Ḥanīfa.[377]

[369] Ibid., 90. For more examples, see 36, 82, 274, 294, 442, 460, 470, 501
[370] Ibid., 228. For more examples, see 129, 442.
[371] Ibid., 118.
[372] Ibid., 300. For more examples, see 140, 425, 626.
[373] Ibid., 18. For more examples, see 425, 470, 587, 627.
[374] Ibid., 173. Also see 282.
[375] Abū Ḥanīfa, *al-ʿĀlim wa-al-mutaʿallim*, 5-6.
[376] Al-Samarqandī, *al-Fatāwā*, 467. For more examples, see 36, 179, 436, 502, 518.
[377] Abū Ḥanīfa, *al-ʿĀlim wa-al-mutaʿallim*, 6-7.

Nuṣayr is an example of a jurist whose teachers from the two regional centres he was active in are documented in great detail. Of note is the fact that these details are not available in the biographical literature, which occasionally mention no more than a single line regarding him, if anything at all, but they are readily apparent in early legal texts of the school. These sources reveal that Nuṣayr had two or three primary teachers, but his legal activity extended beyond them and tapped into a broader community of Ḥanafī jurists.[378] Nuṣayr transmitted the legal texts and opinions of the eponyms through these jurists, related their answers to questions he posed, compared these answers, and indicated his own legal preferences. Being two layers removed from the earliest Ḥanafī circle, the legal activity of Nuṣayr reflects the continuing shift of the school towards a cumulative legal doctrine that incorporated the opinions of subsequent generations of jurists who were part of this distinct Ḥanafī community.

The list of Nuṣayr's students is admittedly shorter than his teachers. Nonetheless, it includes the most prominent Ḥanafī authorities in Balkh from the next generation, such as Abū Naṣr al-Balkhī, who was identified earlier as a student of Ibn Shujāʿ, Abū al-Qāsim al-Ṣaffār (d. 326/938), who was a central authority in Balkh and the teacher of Abū Jaʿfar al-Hinduwānī (d. 362/973),[379] and ʿAlī ibn Aḥmad al-Fārisī.[380] The importance of all three figures is demonstrated

[378] As with previous examples, the multitude of teachers Nuṣayr is identified with is not indicative of any confusion in the sources. Rather, he actually did acquire knowledge from all of these jurists to varying degrees as exhibited in the legal literature. This is not particularly surprising in light of his shifting regional contexts and his having studied with some teachers early in his career and others at a later date.

[379] Ibn Abī al-Wafā', *al-Jawāhir*, 1:201; al-Qārī, *al-Athmār*, 1:324. The legal training of al-Ṣaffār took place largely in the Balkh region under such figures as Nuṣayr and Muḥammad ibn Salama. References to him and his legal opinions are replete in Ḥanafī legal literature. In addition to al-Hinduwānī, Aḥmad ibn al-Ḥusayn al-Marwazī (d. 377/987), better known as Ibn al-Ṭabarī, was one of his students. Among the texts he authored were *Uṣūl al-tawḥīd* on theology and *al-Multaqāṭ fī al-fatāwā* and *Kitāb al-Mukhtalaf* in jurisprudence.

[380] There is surprisingly little information regarding ʿAlī ibn Aḥmad in Ḥanafī biographical dictionaries. Yet, he was undoubtedly an important jurist as al-Samarqandī singles him out in the introduction to *al-Nawāzil* as a school authority and indicates that he was someone who al-Hinduwānī acquired legal knowledge from. That al-Hinduwānī was his student is confirmed by al-Samʿānī. ʿAlī is shown transmitting from Nuṣayr on a number of occasions and is identified as a transmitter of *Risālat Abī Ḥanīfa ilā al-Battī* from Nuṣayr – Ibn Samāʿa – Abū Yūsuf - Abū Ḥanīfa. He was also known as a transmitter of traditions as al-Khalīlī has an entry on him in *al-Irshād* deeming him reliable and the last to transmit from Muḥammad ibn al-Fuḍayl al-Balkhī (d. 258/872). Abū Zurʿa al-Rāzī (d. 375/985)

in al-Samarqandī's listing them alongside six others in the introduction to *al-Nawāzil* as leading jurists who built on the tradition of the masters and addressed novel cases. In other words, many of the major Balkhī authorities of the later 3rd/9th century were students of Nuṣayr. Below are a few examples of legal transmission between Nuṣayr and his students that al-Samarqandī reproduces:

> **4.6** Abū Jaʿfar was asked about a person who found some lost property. How long should he publicly make it known [i.e. in order to find its owner]? He said, 'I heard ʿAlī ibn Aḥmad say, "I heard Nuṣayr say, "I heard al-Ḥasan ibn Ziyād say that Abū Ḥanīfa said that if it is worth around hundred *dirhams*, then he should publicize it for one year. If it is around ten, then for one month. If it is around three, then for a week. If it a single *dirham*, then for three days. If it is less than this, then for one day."'"[381]

In another example from ʿAlī ibn Aḥmad:

> **4.5** ʿAlī ibn Aḥmad said, 'I was present when a legal ruling was read to Nuṣayr regarding a man who swore an oath not to consume anything from the wealth of so-and-so and then this person passed away and the one who swore the oath inherited his wealth and consumed it then he would not have broken his oath as the wealth now belonged to the inheritors.'[382]

Abū Naṣr also frequently transmits from Nuṣayr and regularly compares his opinions with those of Muḥammad ibn Salama:

> **4.6** Abū Naṣr was asked about a well affected by filth whose water subsided into a cavern and then ascended again. He said, 'Nuṣayr said that the water is pure and is akin to having been removed. Muḥammad ibn Salama on the other hand stated that it remains filthy. The opinion of Nuṣayr is more facilitative for people (*awsaʿ*) whereas Muḥammad ibn Salama's is more reliable and precautionary (*awthaq wa-aḥwaṭ*).'[383]

Muḥammad ibn Salama was a colleague of Nuṣayr. The biography of the former resembles that of the latter in several ways. Ibn Salama was primarily a student of Abū Sulaymān

narrated from him in Balkh. See Ibn ʿUmar, *Faḍā'il Balkh*, 291-4; Khalīl ibn ʿAbd Allāh al-Qazwīnī, *al-Irshād fī maʿrifat ʿulamā' al-ḥadīth*, ed. Muḥammad Saʿīd ʿUmar Idrīs, 3 vols. (Riyadh: Maktabat al-Rushd, 1989), 3:942, 951; ʿAbd al-Karīm ibn Muḥammad al-Samʿānī, *al-Ansāb*, ed. ʿAbd al-Raḥmān Yaḥyā al-Muʿallimī, 13 vols. (Hyderabad: Maṭbaʿat Majlis Dā'irat al-Maʿārif al-ʿUthmānīya, 1962), 5:653.

[381] Al-Samarqandī, *al-Fatāwā*, 529.

[382] Ibid., 297. For more examples, see 172, 470, 570, 577.

[383] Ibid., 15. For more examples, see 61, 66, 172, 302, 568. Some of these cite a text that Abū Naṣr authored gathering the *masā'il* of Nuṣayr.

and Shaddād,[384] and also transmitted legal doctrine from Bishr,[385] Ibn Muqātil,[386] and others. In some sources, Ibn Salama and Nuṣayr are shown together studying the legal texts of al-Shaybānī and also discussing legal rulings.[387] Similarly, the students of Ibn Salama included both Abū Naṣr and Abū al-Qāsim al-Ṣaffār with the latter occasionally presenting and comparing the views of his two teachers when asked a question as was the case with Abū Naṣr.[388] Additionally, both jurists were linked to another contemporary, Ibn Shujāʿ, as detailed earlier in the case of Nuṣayr.

The biography of Nuṣayr is a vivid example of a jurist with a vast network of teachers, students, and peers that transcended regional boundaries. Despite the number of legal circles Nuṣayr frequented, his network was restricted to a recognizable Ḥanafī community. As was the case with other jurists, the teachers of Nuṣayr are identifiable as are his students. The transmission of legal doctrine between Nuṣayr, his teachers, students, and peers are also replete in the legal literature and reveal the increasing social consolidation of school identity. By the time his students were teaching, the legal opinions of Nuṣayr had found their place in the cumulative doctrine of the school. Indeed, the example cited above from Abū Naṣr (4.6) reflects the language that would become part of the *rasm al-muftī* tradition in the mature Ḥanafī school with its strong focus on *tarjīḥ* or exercising legal preference between the legal opinions of school authorities.

III. Conclusion

This chapter has analysed the legal networks of several important jurists from the end of the 2nd/9th century to the middle of the 3rd/9th century in an attempt to better understand the social

[384] Ibn Abī al-Wafā', *al-Jawāhir*, 3:162; al-Qārī, *al-Athmār*, 2:590-1.
[385] Al-Samarqandī, *al-Fatāwā*, 87, 94, 194.
[386] Al-Samarqandī, *al-Fatāwā*, 76.
[387] Al-Samarqandī, *al-Fatāwā*, 247, 517.
[388] For example see al-Samarqandī, *al-Fatāwā*, 57. Additionally, Ibn Salama counted among his students Ibn Abī ʿImrān and Abū Bakr al-Iskāf. His connection to the former is perfectly plausible in light of the fact that Ibn Salama traveled to Iraq as affirmed in Ibn Abī al-Wafā', *al-Jawāhir*, 3:163.

organization of legal activity at the time and shed light on the contributions of major Ḥanafī jurists who have received little attention in previous studies. Being a period in which Ḥanafīsm evolved from a limited circle revolving around the figure of Abū Ḥanīfa into a community that consolidated various legal circles under the authority of the Ḥanafī masters, the legal education of Ḥanafī jurists began to reflect the rise of this legal community in various ways. The legal training of jurists increasingly took place at the hands of authorities who were members of the Ḥanafī community. Similarly, the students of these jurists and their broader legal networks revealed a relatively tight-knit group of individuals whose associations transcended the particular circles and regions to which they belonged.

Equally indicative of this emerging communal identity, if not more so, was the legal activity jurists are shown engaged in, which included preserving the doctrine of the Ḥanafī masters, transmitting it to their students, defending this doctrine, identifying a basic methodological framework underpinning it, and writing commentaries on earlier texts. The defence of legal doctrine, as examples show, was undertaken by numerous jurists who were occasionally tasked with it as individuals recognized as representatives of a common tradition, as seen in the incident of al-Ma'mūn. These efforts, among others, assisted in creating a unique Ḥanafī legal paradigm that further sharpened the social identity of the community.

Further, these biographical sketches shed light on the gradual shifts the Ḥanafī school underwent in its social evolution into a professional guild. The earliest Ḥanafī community emerging from the circle of Abū Ḥanīfa was characterized by a plurality of authorities even within a specific region with no single figure standing out as chief jurist. This was not necessarily the case everywhere, but it was certainly so in major centres like Baghdad and Balkh. The middle of the 3rd/9th century, however, witnessed the increasing consolidation of legal

authority. In Baghdad, Ibn Shujāʿ al-Thaljī emerged as the central Ḥanafī jurist in the region possessing both identifiable teachers and students with the latter including some of the most important Ḥanafī jurists of the subsequent generation, such as Abū Khāzim and Ibn Abī ʿImrān. The status of Ibn Shujāʿ as the leading authority in the Iraqi Ḥanafī community is also evidenced in the deference shown to him by his contemporaries from other regions, such as Nuṣayr.

Finally, while these networks did not consistently resemble the professional guild associations of later periods, they do display identifiable teacher-student links that were characterized by sustained doctrinal transmission. Indeed, the apparent defectiveness in these links was not a defect at all but often an accurate reflection of the networked and communal nature of legal activity where regional centres usually possessed multiple Ḥanafī teachers and authorities, and where students travelled in pursuit of legal knowledge.

Chapter Three

The historical and legal literature leave little doubt that the middle of the 3rd/9th century saw legal authority in the Iraqi Ḥanafī community more consolidated than it had been during the early part of the century. Ibn Shujāʿ al-Thaljī emerged after a period of decentralized authority as the chief jurist in Baghdad with clearly identifiable teachers and students and a legal activity that marked a more advanced stage in the evolution of the school. The Ḥanafī community that had already assumed the features of a distinct and conspicuous legal group from the beginning of the 3rd/9th century began to sharpen its boundaries further during the second half of this century. Legal education continued as it had for the past two generations within uniquely Ḥanafī settings and so did the trend of centralized authority. After Ibn Shujāʿ, a relatively clear list of figures (not a line of succession necessarily) can be identified as the leading jurists in Baghdad: Abu Khāzim followed by Abū Saʿīd al-Bardaʿī and then al-Karkhī. The legal activity of each of these figures also maintained a school-centred discourse where the transmission, defence, and articulation of Ḥanafī legal doctrine continued to be advanced in a manner that spelt the end of the formative period and the beginnings of the classical period as evidenced in the sustained writing of commentary literature and the production of several *mukhtaṣar*s, both of which were hallmarks of the classical school.

I. The Baghdadi Authorities of the Second Half of the 3rd/9th Century

A. Abū Khāzim ʿAbd al-Ḥamīd ibn ʿAbd al-ʿAzīz (Basra/Baghdad d. 292/905)

Abū Khāzim was the most prominent Ḥanafī jurist of his generation who served as a judge in Baghdad, Damascus, and Kufa. Originally from Basra, his initial legal training occurred at the hands of local Ḥanafī jurists, such as Hilāl, Bakr ibn Muḥammad al-ʿAmmī (d. n.d.), Maḥmūd

al-Anṣārī (d. n.d.), and ʿAbd al-Raḥmān ibn Nā'il.[389] It was Bakr in particular who sources seem to identify as his main teacher in Basra. According to Melchert, both Maḥmūd al-Anṣārī and ʿAbd al-Raḥmān are 'virtually unknown',[390] while little more is known about Bakr than his studying under Ibn Samāʿa.[391] This seems true for the figure of Maḥmūd but the available sources present some additional information regarding Bakr and ʿAbd al-Raḥmān.

Bakr al-ʿAmmī can be confidently situated within the Basran Ḥanafī circle. Although references to him are infrequent, he appears as a transmitter of legal doctrine and biographical material from both Ibn Samāʿa and Hilāl with the former being identified as his primary teacher in the biographical literature. These reports are generally related from him by Abū Khāzim and Ibn Abī ʿImrān. Take the following example:

> **4.7** Abū Jaʿfar said, 'Ibn Abī ʿImrān related from Bakr al-ʿAmmī from Hilāl from Yūsuf al-Samtī from Abū Ḥanīfa that one performs what Ibn Masʿūd performed in the first cycle of prayer when making-up [the missed cycle of ʿĪd] since one is performing a make-up for the first cycle and not the second.'[392]

In another example:

> **4.8** Our companions said that if the nearest guardian of a minor is unavailable such that he cannot be reached, then the next closest guardian may marry her off. He [Abū Jaʿfar] said, 'Bakr al-ʿAmmī related from Ibn Samāʿa from Abū Yūsuf that being unavailable is like one being in Baghdad and the other in Rayy.'[393]

In a third example related by Abū Khāzim:

> **4.9** Abū Khāzim ʿAbd al-Ḥamīd ibn ʿAbd al-ʿAzīz informed me from Bakr ibn Muḥammad al-ʿAmmī that when Yaḥyā ibn Aktham came to Basra as the city's judge he would accept testimony in favour of an executor for a will that included multiple wills without him having brought forth the other disputants. Hilāl objected to this. Bakr said, 'When we arrived [in the city] soon afterwards we found the companions of Muḥammad ibn al-Ḥasan al-Shaybānī in agreement that the approach of Yaḥyā was the position of Muḥammad.'[394]

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[389] Al-Ṣaymarī, *al-Akhbār*, 165; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 12:338-44; Ibn Abī al-Wafā', *al-Jawāhir*, 2:366-8.
[390] Some sources have Abū Khāzim relating from an Aḥmad ibn Maḥmūd al-Anṣārī. See Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 374.
[391] Melchert, *Formation*, 123.
[392] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 1:376.
[393] Ibid., 2:254.
[394] Al-Ṭaḥāwī, *al-Shurūṭ*, 990.

Abū Khāzim also transmits a number of reports from Bakr regarding the history of the Ḥanafī school and the masters that affirm the latter's connection to Ibn Samāʿa, such as:

> **5.0** Abū Jaʿfar informed us that Abū Khāzim ʿAbd al-Ḥamīd ibn ʿAbd al-ʿAzīz informed him that he heard Bakr al-ʿAmmī state, 'I heard Ibn Samāʿa relate from Muḥammad ibn al-Ḥasan, "I was present while Abū Yūsuf and Zufar were discoursing with each other. Abū Yūsuf would get the better of Zufar with the abundance of narrations and historical reports he had from Abū Ḥanīfa. However, when it came to legal analogy, Zufar would get the better of him."'[395]

In addition to Hilāl and Ibn Samāʿa, Bakr was acquainted with other Ḥanafī jurists, such as ʿĪsā ibn Abān who was a close friend of Ibn Samāʿa and served as a judge in Basra. Abū Khāzim relates a statement from Bakr, 'Ibn Samāʿa and ʿĪsā only acquired beautiful prayer from Muḥammad ibn al-Ḥasan.'[396] In another report, Bakr is reported to have said, 'I have not seen anyone whom I wish to be more like than Ibn Samāʿa, and I have not seen two friends among the jurists with each as duty bound to his companion as he was to himself like Ibn Samāʿa and ʿĪsā were to each other.'[397] In light of his connections to Hilāl, Ibn Samāʿa, and ʿĪsā, Abū Khāzim being counted amongst his students, and a number of references to him in the biographical and legal literature - albeit admittedly very few in the latter -,[398] Bakr can be considered a somewhat important Ḥanafī in Basra.

Turning to ʿAbd al-Raḥmān ibn Nā'il, he was a Basran Ḥanafī appointed to a judgeship in Samarra following the removal of al-Ḥasan ibn Abī Shawārib (d. 261/875) in 255/869.[399] Like Bakr, ʿAbd al-Raḥmān was associated with Hilāl and Ibn Samāʿa. In regard to the former, al-Ṭaḥāwī relates the following from Abū Khāzim:

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[395] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 293-4. Also see 299, 302, 351, 354-6, 368-9, 373 (related by Bakr from Muḥammad ibn Mirdās).
[396] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 370; al-Ṣaymarī, *al-Akhbār*, 133.
[397] Ibid., 149.
[398] For additional references to him in the legal literature of the school see al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr*, ff. 3:83a (where Abū Khāzim asks him about a ruling in *al-Jāmiʿ al-kabīr*); al-Samarqandī, *al-Fatāwā*, 244 (Bakr's answer to a legal question); al-Nāṭifī, *al-Ajnās*, 2:108 (quoting Bakr from *Masā'il Abī Khāzim*).
[399] Al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 7:277; al-Dhahabī, *al-Siyar*, 12:537.

> **5.1** I heard ʿAbd al-Raḥmān ibn Nā'il say, 'I would ask Hilāl and Abū ʿĀṣim about the legal rulings of Muḥammad ibn al-Ḥasan in *al-Jāmiʿ al-kabīr* and Abū ʿĀṣim was more recollective of them. Both of them would sit together in the mosque of Basra next to the same pillar.'[400]

The relationship with Ibn Samāʿa is affirmed in both the biographical literature and some of the legal literature as the following legal ruling transmitted by al-Ṭaḥāwī demonstrates:

> **5.2** Sulaymān related to us from his father that Muḥammad ibn al-Ḥasan dictated to us an explanation of the legal ruling in question that since honey is considered by volume just as wheat is considered by weight and there is no *zakāt* due on the latter unless it is five *awsāq*, similarly there is none due on honey unless it is five *afrāq*. Abū Khāzim related to us that Bakr al-ʿAmmī and ʿAbd al-Raḥmān ibn Nā'il related from Ibn Samāʿa that Abū Yūsuf dictated to them the opinion we just mentioned.[401]

Finally, ʿAbd al-Raḥmān ibn Nā'il was also associated with ʿĪsā ibn Abān. In fact, his father, Nā'il ibn Najīḥ (d. early 3rd/9th century), was the uncle of ʿĪsā thereby making ʿAbd al-Raḥmān his cousin.[402] ʿAbd al-Raḥmān is shown in the historical literature providing biographical information regarding his cousin, such as Abū Khāzim relating from him that ʿĪsā accompanied al-Shaybānī for eleven months.[403] Thus, ʿAbd al-Raḥmān can be confidently identified with the Ḥanafī school as was Bakr al-ʿAmmī.

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[400] Al-Ṣaymarī, *al-Akhbār*, 159.
[401] Al-Ṭaḥāwī, *Aḥkām al-qur'ān*, 1:343. Also see Abū Khāzim relating the practice of ʿAbd al-Raḥmān ibn Nā'il as judge that corresponded with the opinion of Ibn Samāʿa in al-Ṭaḥāwī, *al-Shurūṭ*, 978, 981.
[402] ʿAbd Allāh ibn ʿAdī, *al-Kāmil fī duʿafā' al-rijāl*, ed. Māzin al-Sarsāwī, 10 vols. (Riyadh: Maktabat al-Rushd, 2012), 10:227-9; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 15:601-4; al-Mizzī, *al-Tahdhīb*, 29:307-9.
[403] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 360.

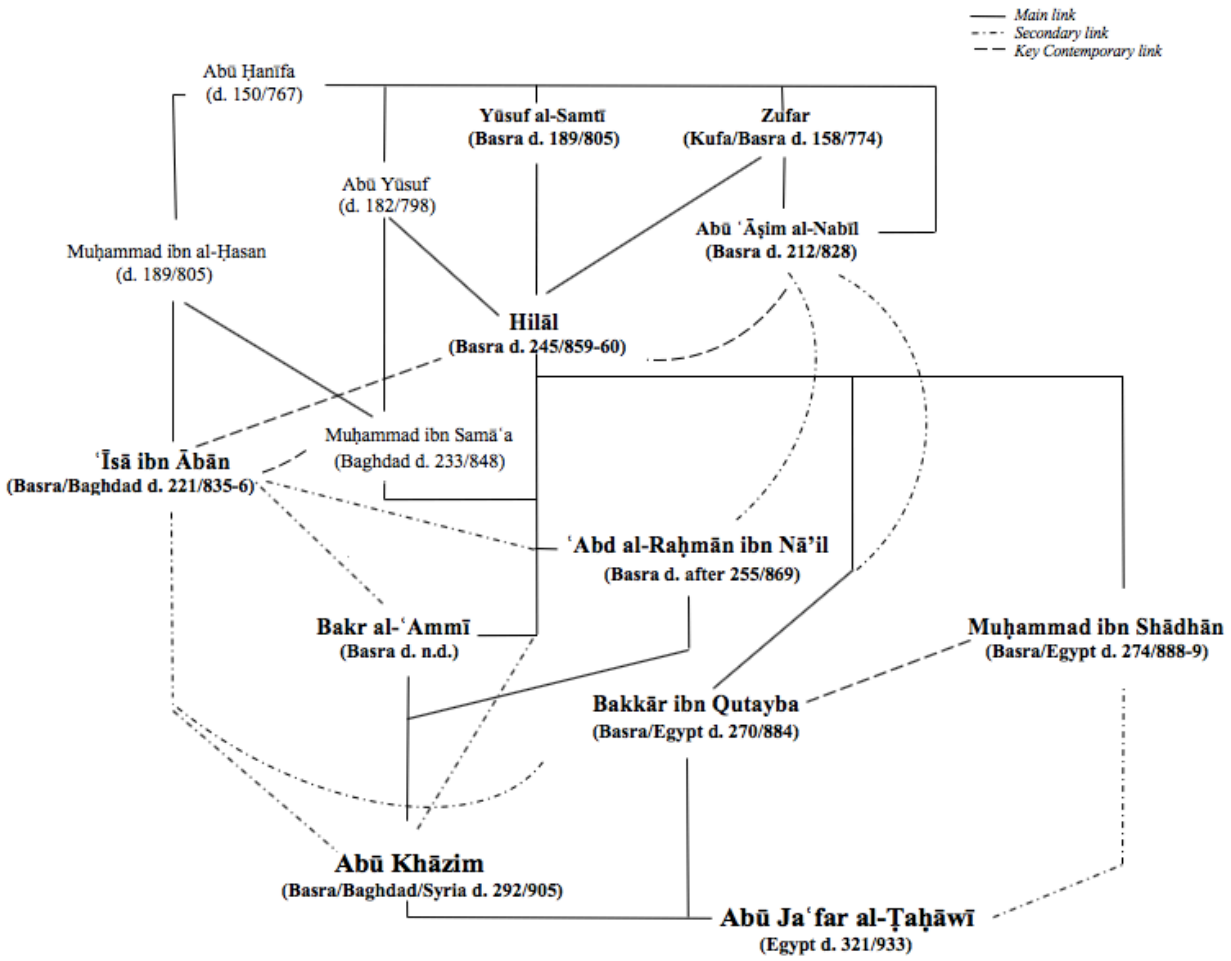

Figure 4: Abū Khāzim & The Early Ḥanafī Basran Community

In this way, Abū Khāzim was initially a part of a Basran community of Ḥanafī jurists that included Hilāl, Bakr al-ʿAmmī, ʿAbd al-Raḥmān ibn Nā'il, ʿĪsā ibn Abān, Bakkār ibn Qutayba, and others. This community, as previously taken, was not particularly sizeable and it largely disappeared during the second half of the 3rd/9th century. Bakkār and Abū Khāzim, the most famous jurists from the generation after Hilāl, both settled and passed away outside of Basra.

In addition to his legal training in Basra, Abū Khāzim also studied under Ḥanafī jurists in Baghdad with Ibn Shujāʿ being identified as his main teacher from the city.[404] Reflecting the

[404] Al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 12:339.

communal nature of scholarly activity, he was also affiliated with several other Ḥanafī figures, such as Bishr ibn al-Walīd,[405] Shuʿayb ibn Ayyūb al-Ṣarīfīnī,[406] and ʿAlī al-Rāzī.[407] Here, two points are worth reaffirming. First is the continuing links between Ḥanafī jurists across city and regional lines. Abū Khāzim was not the only Basran to have received legal training in Baghdad but this has already been seen in the examples of his teachers, namely Bakr al-ʿAmmī and ʿAbd al-Raḥmān ibn Nā'il who were associated with Ibn Samāʿa. Meanwhile, Bakkār, Muḥammad ibn Shādhān, and Ibn Abī ʿImrān were part of a group of jurists who brought the Ḥanafī legal tradition of Basra and Baghdad to Egypt. A second point is the way in which prominent jurists of a given generation tended to converge around a common group of teachers: the juristic network of Bakr al-ʿAmmī and ʿAbd al-Raḥmān ibn Nā'il revolved around Hilāl and Ibn Samāʿa, while that of Ibn Abī ʿImrān largely overlapped with Abū Khāzim's by including links to Bishr ibn al-Walīd,[408] Ibn Samāʿa,[409] Bakr al-ʿAmmī,[410] Ibn Shujāʿ,[411] and ʿAlī al-Rāzī.[412] A similar observation was made earlier regarding Nuṣayr and Ibn Salama.

As for the students of Abū Khāzim, the list is not particularly long, but it does include most of the illustrious jurists from the subsequent generation. Abū Jaʿfar al-Ṭaḥāwī is possibly the most famous of them being the chief Ḥanafī jurist in Egypt after Ibn Abī ʿImrān and widely renowned in major scholarly centres as a leading jurist and traditionist.[413] He studied with Abū

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[405] Al-Ṣaymarī, *al-Akhbār*, 149.
[406] Al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 10:337-9, 12:338; al-Mizzī, *al-Tahdhīb*, 12:505-7; Ibn Abī al-Wafā', *al-Jawāhir*, 2:252; al-Dhahabī, *al-Siyar*, 12:362. Shuʿayb was a judge in Wasit who was counted as a student of al-Ḥasan ibn Ziyād. Abū Khāzim relates from Shūʿayb a number of times in the historical literature.
[407] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 4:167. Here, they are shown discussing the opinion of al-Shaybānī on an issue.
[408] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 3:320; al-Ṣaymarī, *al-Akhbār*, 165; Ibn Abī al-Wafā', *al-Jawāhir*, 1:337.
[409] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 1:320, 2:190, 278, 5:217; al-Ṣaymarī, *al-Akhbār*, 165; Ibn Abī al-Wafā', *al-Jawāhir*, 1:337.
[410] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 1:376.
[411] See the section on the students of Ibn Shujāʿ for references.
[412] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 4:49; al-Samarqandī, *al-Fatāwā*, 258.
[413] Ibn Abī al-Wafā', *al-Jawāhir*, 1:271-7; al-Dhahabī, *al-Siyar*, 15:28-33. For a detailed biography of him see Muḥammad Zāhid al-Kawtharī, *al-Ḥāwī fī sīrat al-imām Abī Jaʿfar al-Ṭaḥāwī* (Cairo: Maktabat al-Azharīya lil-Turāth, 1999).

Khāzim during a trip to Damascus and transmits legal doctrine and traditions from him in his legal texts.[414] Another student of Abū Khāzim was Abū Ṭāḥir al-Dabbās (fl. early 4th/10th century) who was granted a judgeship in Syria and is credited with arranging and commenting upon *al-Jāmiʿ al-ṣaghīr*.[415] Abū ʿAbd Allāh ibn Abī Mūsā al-Ḍarīr was another Baghdadi Ḥanafī jurist who studied under Abū Khāzim.[416] He served as judge for the Eastern side of Baghdad under al-Muttaqī (d. 333/944; r. 329-333/940-4) and al-Mustakfī (d. 334/946; r. 333-4/944-6), and authored commentaries on the texts of al-Shaybānī.[417] Similarly, Abū Bakr al-Iskāf has been considered a possible student of Abū Khāzim.[418] He was one of the leading jurists of Balkh, the teacher of al-Hinduwānī, and author of a commentary on *al-Jāmiʿ al-kabīr*.[419] The sources also mention that Abū al-Ḥasan al-Karkhī attended the lectures of Abū Khāzim before moving to the circle of Abū Saʿīd al-Bardaʿī.[420]

Two further names can be added to the list of Abū Khāzim's possible students. The first is ʿAlī ibn Mūsā al-Qummī who is described attending the study circle of Abū Khāzim.[421] However, as he was a student of Ibn Shujāʿ, it may be more plausible to assume that he was a junior peer to Abū Khāzim who acquired some knowledge from him. A more interesting addition is that of Abū Saʿīd al-Bardaʿī who, being from al-Ṭaḥāwī's generation, would have viewed Abū Khāzim as a potential teacher. According to a report related by Abū al-Barakāt al-Nasafī (d.

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[414] Ibn al-Nadīm, *al-Fihrist*, 3:33; al-Ṣaymarī, *al-Akhbār*, 168; Ibn Abī al-Wafā', *al-Jawāhir*, 1:274; al-Dhahabī, *al-Siyar*, 15:29. For some of his doctrinal transmission, see al-Ṭaḥāwī, *al-Shurūṭ*, 67, 513, 928, 981, 990; al-Jaṣṣāṣ, *al-Ikhtilāf*, 1:318, 449, 3:44-5, 4:326.
[415] Ibn al-Nadīm, *al-Fihrist*, 3:33; al-Ṣaymarī, *al-Akhbār*, 168; Ibn Abī al-Wafā', *al-Jawāhir*, 3:323-4.
[416] This finds a hint of confirmation in al-Jaṣṣāṣ' *Sharḥ al-Jāmiʿ al-kabīr* where Ibn Abī Mūsā relates what he heard from 'one of his teachers (*shuyūkh*)' regarding the explanation of a legal ruling mentioned by al-Shaybānī. However, al-Jaṣṣāṣ is unsure whether he specifically cited his father or Abū Khāzim although this indicates that the latter was considered among Ibn Abī Mūsā's *shuyūkh*. See al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr*, ff. 1:136a.
[417] Al-Ṣaymarī, *al-Akhbār*, 169; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 3:705-8; Ibn Abī al-Wafā', *al-Jawāhir*, 3:295.
[418] Ibn Abī al-Wafā', *al-Jawāhir*, 4:15-6; Melchert, *Formation*, 123.
[419] Ibn ʿUmar, *Faḍā'il Balkh*, 126; Ibn Abī al-Wafā', *al-Jawāhir*, 3:76, 4:15-6; al-Qārī, *al-Athmār*, 2:565.
[420] Al-Ṣaymarī, *al-Akhbār*, 165.
[421] Al-Hārūnī, *al-Ifāda*, 89-90.

710/1310), al-Bardaʿī is quoted as stating that he travelled to Baghdad to seek advice from Abū Khāzim on a legal issue and remained with the latter for four years.[422] This issue became known in the legal literature as *al-mas'ala al-bardaʿīya*. Another source to affirm this teacher-student relationship was Qawwām al-Dīn al-Itqānī (d. 785/1383) who mentions this at the end of his handwritten copy of al-Jaṣṣāṣ' *Sharḥ Mukhtaṣar al-Ṭaḥāwī*.[423] Similarly, al-Jaṣṣāṣ indicates a relationship between the two when discussing their respective views on an issue relating to the consensus of the companions.[424]

Certainly, such a connection is plausible in light of references to al-Bardaʿī's debating Dāwūd al-Ẓāhirī (d. 270/884) after his arrival in Baghdad, which would make both Abū Khāzim and al-Bardaʿī resident in the same city at the same time. The sources already present al-Bardaʿī as a competent jurist when he entered Baghdad, although this does not negate his having studied with Abū Khāzim given the seniority of the latter just as Ibn Abī ʿImrān, Abū Khāzim, and others studied under Ibn Shujāʿ following their initial training with other jurists.[425]

[422] Abū al Barakāt ʿAbd Allāh ibn Aḥmad al-Nasafī, *al-Kāfī fī al-wāfī* (Istanbul: Köprülü MS 612), ff. 202a; al-Qārī, *al-Athmār*, 1:319.
[423] Al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 8:566-7.
[424] Aḥmad ibn ʿAlī al-Jaṣṣāṣ, *al-Fuṣūl fī al-uṣūl*, ed. ʿUjayl Jāsim Nashamī, 4 vols., 2nd ed. (Kuwait: Wizārat al-Awqāf, 1994), 3:91-2.
[425] Al-Ṣaymarī, *al-Akhbār*, 166; al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 5:160-1; Ibn Abī al-Wafā', *al-Jawāhir*, 1:163-6.

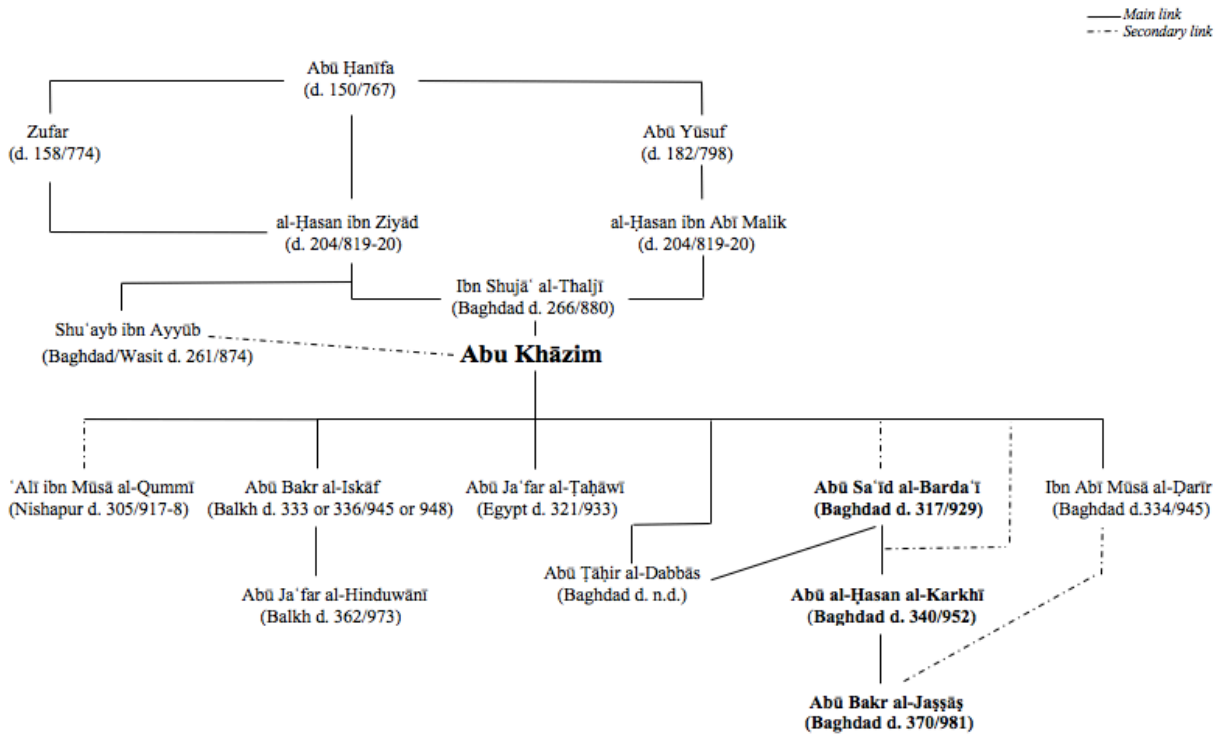

Figure 5: Baghdadi Network of Abū Khāzim (d. 292/905)

Turning briefly to the legal activity of Abū Khāzim, it maintained the trends set in motion by his predecessors by transmitting and explaining the legal doctrine of the masters, augmenting this doctrine with new views, and authoring legal texts, such as *Adab al-qāḍī* and *Kitāb al-Farā'iḍ*.[426] The legal activity of Abū Khāzim also marked a watershed in the history of the school in terms of the emergence of commentary literature as a regular genre of writing. Though Ibn Shujāʿ had authored a commentary on *al-Mujarrad* a generation earlier, it was Abū Khāzim who penned the first such work on a text of al-Shaybānī, namely *al-Jāmiʿ al-kabīr*.[427] This inaugurated a tradition of authoring commentaries on the texts of al-Shaybānī with each of Abū Khāzim's students engaged in this activity, such as al-Ṭaḥāwī and Ibn Abī Mūsā both of whom

[426] Ibn al-Nadīm, *al-Fihrist*, 2:33.
[427] Kātib Chalabī, *Kashf al-ẓunūn*, 1:569. Some of the features of this commentary text will be detailed in the second part of this thesis.

authored commentaries on *al-Jāmiʿ al-kabīr* and *al-Jāmiʿ al-ṣaghīr*,[428] ʿAlī al-Qummī and al-Iskāf on *al-Jāmiʿ al-kabīr*,[429] and al-Dabbās on *al-Jāmiʿ al-ṣaghīr*.[430] This not only assisted in cementing the status of al-Shaybānī's texts as authoritative sources in the school but likely made generalizing activity a more sustained activity that jurists engaged in and paved the way for a period of school-internal reasoning (*ijtihād fī al-madhhab*). Indeed, it was during this same period that the first school *mukhtaṣar*s were authored, namely those of al-Ṭaḥāwī and Abū Mūsā al-Ḍarīr (fl. late 3rd/9th century),[431] the father of Abū ʿAbd Allāh.

B. Abū Saʿīd Aḥmad ibn al-Ḥusayn al-Bardaʿī (Baghdad d. 317/929-30)

Abū Saʿīd al-Bardaʿī was the chief Ḥanafī jurist in Baghdad after Abū Khāzim. In comparison with the jurists discussed above, there is far less information regarding the juristic network of al-Bardaʿī. Given his position in the school, it is important to clarify what has been described as an otherwise puzzling biography particularly as it relates to his legal training. This training occurred primarily in Rayy as the biographical literature identifies his teachers as Mūsā ibn Naṣr al-Rāzī (d. 261/874-5), Abū ʿAlī al-Daqqāq al-Rāzī (d. n.d.), and ʿAlī ibn Mūsā ibn Naṣr (d. n.d.). ʿAlī

[428] Ibn al-Nadīm, *al-Fihrist*, 2:32; Ibn Abī al-Wafā', *al-Jawāhir*, 4:63; Kātib Chalabī, *Kashf al-ẓunūn*, 1:562-4, 70; Bāsha, *al-Hadīya*, 1:675, 2:37.

[429] Kātib Chalabī, *Kashf al-ẓunūn*, 1:569-70; Bāsha, *al-Hadīya*, 2:37.

[430] This is commonly presented as a *tartīb* of the text though al-Dabbās also added several comments to the original as well. In *al-Tajrīd*, al-Qudūrī cites it as *Sharḥ al-Jāmiʿ* of al-Dabbās. See al-Qudūrī, *al-Tajrīd*, 4:17; Kātib Chalabī, *Kashf al-ẓunūn*, 1:563.

[431] The *Mukhtaṣar* of Abū Mūsā has escaped the attention of modern-day scholars. This work is no longer extant according to my knowledge but is cited quite frequently in some later legal texts. Abū Mūsā himself was described as 'one of the foremost scholars of this [i.e. Ḥanafī] school' and the '*shaykh aṣḥāb al-ra'y*'. According to one scholar, the only native jurist West Baghdad (*karkh baghdād*) furnished was Abū Mūsā as Abū al-Ḥasan al-Karkhī was from the Western Side of Samarra (*karkh sāmarrā*). See al-Khaṭīb, *Tārīkh Madīnat al-Salām*, 3:705; Ibn Abī al-Wafā', *al-Jawāhir*, 2:684; Aḥmad ibn al-Ḥusayn al-Bayhaqī, *Manāqib al-Shāfiʿī*, ed. Aḥmad Ṣaqr, 2 vols. (Cairo: Dār al-Turāth, 1970), 1:176-7; Muḥammad ibn Aḥmad al-Maqdisī, *Kitāb Aḥsan al-taqāsīm fī maʿrifat al-aqālīm*, ed. M.J. de Goeje, 2nd ed. (Leiden: Brill, 1906), 123. For citations of the *Mukhtaṣar* see al-Nāṭifī, *al-Ajnās*, 1:164; ʿAlī ibn Muḥammad al-Simnānī, *Rawḍat al-quḍāt*, ed. Ṣalāḥ al-Dīn al-Nāhī, 2nd ed. (Beirut: Mu'assasat al-Risāla, 1984), 276, 619-20, 689, 695, 943, 1061, 1146.

ibn Mūsā is unknown in both the historical and legal literature, while there are differing degrees of information regarding Mūsā ibn Naṣr and Abū ʿAlī.

Abū Sahl Mūsā ibn Naṣr al-Rāzī was identified as a student of al-Shaybānī.[432] This relationship seems to be confirmed in *ḥadīth* literature, such as the *Musnad Abī Ḥanīfa* where Mūsā is seen narrating traditions from al-Shaybānī.[433] The biographical material on Mūsā also indicates the probable nature of this connection. He is identified as transmitting from Ṣabāḥ ibn Muḥārib (before 190/805-6),[434] ʿAffān ibn Sayyār (d. 181/797),[435] Jarīr ibn ʿAbd al-Ḥamīd (d. 188/804), and several others.[436] This situates him in a time period wherein he certainly could have studied under al-Shaybānī. Indeed, Mūsā was identified as being from the same layer of jurists as Ibn Muqātil in Ḥanafī biographical literature and even non-Ḥanafī sources routinely mention both figures narrating from the same individuals.[437] Perhaps the most prominent of these individuals was Abū Muṭīʿ al-Balkhī. In his entry on him, Ibn Ḥajar mentions that 'he held a high status in the eyes of the Ḥanafīs… Muḥammad ibn Muqātil and Mūsā ibn Naṣr narrated from him and both held him in great esteem.'[438]

Melchert stated that if Mūsā was a student of al-Shaybānī then this makes it doubtful that he should have lived to teach al-Bardaʿī.[439] However, the death date provided for Mūsā by al-Dhahabī, namely 261/874-5,[440] makes this teacher-student relationship more credible. This is

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[432] Al-Ṣaymarī, *al-Akhbār*, 164; Ibn Abī al-Wafā', *al-Jawāhir*, 3:521-2.
[433] Abū Nuʿaym Aḥmad ibn ʿAbd Allāh al-Iṣbahānī, *Musnad al-Imām Abī Ḥanīfa*, ed. Naẓr Muḥammad al-Fāryābī (Riyadh: Maktabat al-Kawthar, 1994) 1:85, 272.
[434] Al-Mizzī, *al-Tahdhīb*, 13:108; al-Dhahabī, *al-Tarīkh*, 4:865. He himself narrated from Abū Ḥanīfa.
[435] Al-Sahmī, *Tārīkh Jurjān*, 239-40; al-Mizzī, *al-Tahdhīb*, 20:159-60; al-Dhahabī, *al-Tarīkh*, 4:820. ʿAffān was a judge in Jurjan.
[436] Al-Mizzī, *al-Tahdhīb*, 4:540-51; al-Dhahabī, *al-Tarīkh*, 4:925.
[437] Such as Ṣabāḥ ibn Muḥārib, al-Faḍl ibn Dukayn, Abū ʿUmar al-Marrūdhī, and others.
[438] Aḥmad ibn Ḥajar al-ʿAsqalānī, *Lisān al-mīzān*, ed. ʿAbd al-Fattāḥ Abū Ghudda, 10 vols. (Beirut: Maktab al-Maṭbūʿāt al-Islamīya, 2002), 3:248. For an earlier source mentioning this see al-Khalīlī, *al-Irshād*, 3:925-6.
[439] Melchert considers it 'doubtful' that Mūsā should have lived to teach al-Bardaʿī. See Melchert, *Formation*, 124.
[440] The full name provided by al-Dhahabī is Mūsā ibn Naṣr ibn Dīnār Abū Sahl al-Rāzī. This is clearly referring to the Mūsā in question as he is identified from Rayy, has the same teknonym, and narrates from the same figures, such as Jarīr and Ibn Magrā'. The entry for Mūsā in *al-Jawāhir* and other Ḥanafī biographical works clearly aligns with

especially the case when noting that al-Bardaʿī had settled in Baghdad prior to 270/884 as an already accomplished jurist. Conversely, if Mūsā did pass away on the date mentioned then it is in fact his relationship with al-Shaybānī that would seem questionable. Yet, all the sources identify him as narrating traditions from individuals who lived during the same exact period as al-Shaybānī. This is in addition to al-Shaybānī having spent time in the city of Rayy. Indeed, Mūsā is said to have passed away only fifteen years after Ibn Muqātil, who was undoubtedly a student of al-Shaybānī.

Assuming the date of death provided by al-Dhahabī is correct, the most plausible explanation is that Mūsā did study under al-Shaybānī but only for a brief period of time in his youth after which he benefitted from other members of his circle. Thus, the sources reveal that he often transmitted from al-Shaybānī through one of his other senior students, such as Hishām ibn ʿUbayd Allāh al-Rāzī. In fact, most of the reports that Ibn Abī al-ʿAwwām relates regarding al-Shaybānī from Mūsā come through Hishām.[441] This is also seen in his legal transmission from al-Shaybānī as the following example from al-Ṭaḥāwī demonstrates:

> **5.3** These traditions narrated from the Prophet all concur that the greatest name of God is Allah. Something regarding this has also been narrated from Abū Ḥanīfa which we shall mention in this chapter. It is what Muḥammad ibn Aḥmad ibn al-ʿAbbās al-Rāzī authorized us with, having informed us that he heard it from Mūsā ibn Naṣr al-Rāzī and that Mūsā ibn Naṣr informed us from Hishām ibn ʿUbayd Allāh al-Rāzī who said, 'Muḥammad ibn al-Ḥasan informed us from Abū Ḥanīfa that he said, "The greatest name of God the exalted and majestic is Allah."' Muḥammad said, 'Have you not seen that the name *al-Raḥmān* is derived from *al-raḥma* and the name *al-Rabb* from *al-rubūbīya* while Allah is not derived from anything?' Hishām said, 'I do not know whether Muḥammad advanced this explanation from himself or as a statement from Abū Ḥanīfa.'[442]

In another example related by al-Ṭaḥāwī:

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this Mūsā ibn Naṣr whose death date is given as 261/874-5. See al-Dhahabī, *al-Tarīkh*, 6:440; Ibn Abī al-Wafā', *al-Jawāhir*, 3:521-2.

[441] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 363, 366-7. All these reports are related by Muḥammad ibn Aḥmad ibn al-ʿAbbās al-Rāzī who also transmitted legal doctrine from Mūsā as will be shown below.

[442] Al-Ṭaḥāwī, *Sharḥ mushkil al-āthār*, 1:162.

> **5.4** Some people said that if a person settles in a place and makes it his home, it is permitted to state that he is from among its people even if he was born elsewhere. Abū Yūsuf was among those who said this. Abū Ḥanīfa agreed with Abū Yūsuf according to what Muḥammad ibn Aḥmad ibn al-ʿAbbās al-Rāzī mentioned to us from Mūsā ibn Naṣr from Hishām ibn ʿUbayd Allāh al-Rāzī that Abū Yūsuf related this opinion to them from Abū Ḥanīfa.[443]

As with previous jurists, Mūsā is shown as part of the Ḥanafī community in Rayy and Khurasan, which included such figures as Abū Muṭīʿ, Hishām, Bashshār ibn Qīrāṭ (Nishapur d. before 200/815-6),[444] and Ibn Muqātil. Hishām in particular seems to have been an important jurist from whom Mūsā continued to learn from after al-Shaybānī.[445] The citations from al-Ṭaḥāwī also reveal that Mūsā was a teacher to Muḥammad ibn Aḥmad ibn al-ʿAbbās al-Rāzī who acted as a link between the Ḥanafī school in Rayy and more westerly centres like Egypt. Another Ḥanafī jurist connected to Mūsā was Abū ʿAmr Muḥammad ibn ʿAbd al-Waḥḥāb (d. 305/917-8) from Qazwin who narrated from Ismāʿīl ibn Tawba, Ibn Muqātil, and Mūsā. He was described as 'highly respected with the followers of Abū Ḥanīfa and someone who would issue *fatwā* according to their opinion.'[446] Mūsā, therefore, was not an unknown figure. Rather, he was known both as a jurist who was part of the Ḥanafī community in Rayy and as a transmitter of traditions.

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[443] Ibid., 14:339. For more examples of this connection between Mūsā to the masters through Hishām, see 5:155, 7:186.

[444] Bashshār related traditions from Abū Ḥanīfa and was identified as someone who 'studied jurisprudence according to the *raʾy* of Abū Ḥanīfa.' See al-Khalīlī, *al-Irshād*, 3:925.

[445] This is also true for Ibn Muqātil. Ibn Salama stated that Ibn Muqātil would frequent Hishām as a teacher despite being more legally astute then him. See al-Samarqandī, *al-Fatāwā*, 737.

[446] ʿAbd al-Karīm ibn Muḥammad al-Rāfiʿī al-Qazwīnī, *al-Tadwīn fī akhbār al-Qazwīn*, ed. ʿAzīz Allāh al-ʿAṭāridī, 4 vols. (Beirut: Dār al-Kutub al-ʿIlmīya, 1987), 1:466.

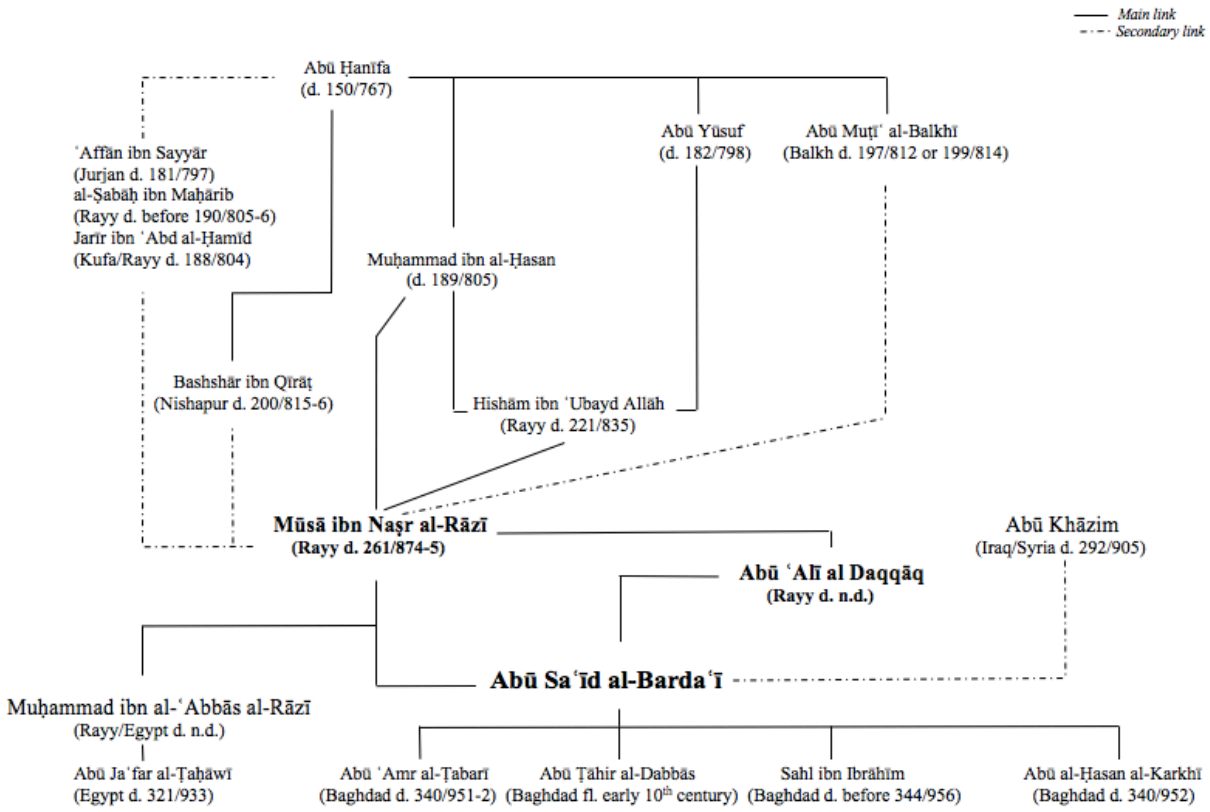

Figure 6: Ḥanafī Legal Network of Abū Saʿīd al-Bardaʿī (d. 317/929-30)

Turning to Abū ʿAlī al-Daqqāq al-Rāzī, the sources leave no doubt that he studied under Mūsā and taught al-Bardaʿī.[447] In some legal texts, al-Bardaʿī is shown transmitting legal doctrine from his teacher that addressed and clarified the opinions of the Ḥanafī masters, which al-Jaṣṣāṣ relates through the chain Abū ʿAmr al-Ṭabarī - al-Bardaʿī - Abū ʿAlī al-Daqqāq.[448] Similarly, Abū ʿAlī al-Daqqāq is shown transmitting directly from Mūsā in the legal texts he authored.[449] Despite a shortage of historical information regarding Mūsā and especially Abū ʿAlī al-Daqqāq, they appear in the legal literature several times through the citations of their legal opinions and texts, such as *al-Shufʿa* and *al-Makhārij* of the former and *Kitāb al-Ḥayḍ* and

[447] Al-Ṣaymarī, *al-Akhbār*, 165-6; Ibn Abī al-Wafā', *al-Jawāhir*, 1:164, 3:522, 4:69, 385.
[448] Al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr*, ff. 2:199a.
[449] Al-Nāṭifī, *al-Ajnās*, 1:41.

Ḍaḥāyā of the latter.[450] The legal opinions of Abū ʿAlī al-Daqqāq in particular were preserved and related by a range of Ḥanafī authors.[451] This shows that both jurists meaningfully contributed to the Ḥanafī school and its development. In addition to Mūsā ibn Naṣr and Abū ʿAlī al-Daqqāq, the link between al-Bardaʿī and Abū Khāzim is also an important one that has been discussed earlier.

As for the students of al-Bardaʿī, they included the foremost Baghdadi Ḥanafī authorities of the subsequent generation. Abū ʿAmr al-Ṭabarī (d. 340/951-2) was one of his students who actively taught at the mosque of al-Bardaʿī during the lifetime of al-Karkhī and produced commentaries on *al-Jāmiʿ al-kabīr* and *al-Jāmiʿ al-ṣaghīr*.[452] Similarly, Abū Ṭāhir al-Dabbās also studied under al-Bardaʿī in addition to having received legal training from Abū Khāzim.[453] Sahl ibn Ibrāhīm (d. before 344/956) may also be identified as a student of al-Bardaʿī in light of the fact that he assumed the position of main teacher of law at the mosque where al-Bardaʿī taught following the death of Abū ʿAmr.[454] Then there was Abū al-Ḥasan al-Karkhī whom all the sources recognize as the chief Ḥanafī jurist in Baghdad after al-Bardaʿī at whose hands countless number of jurists were trained.[455] He too trained at the mosque of al-Bardaʿī, which would become the main seat of Ḥanafī instruction during the 4th/10th century.[456]

It is clear from the preceding paragraphs that the legal training and instruction of al-Bardaʿī occurred in an exclusively Ḥanafī setting wherein his major teachers and students are clearly identifiable and shown to be members of this legal community. By the end of the 3rd/9th

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[450] Al-Nāṭifī, *al-Ajnās*, 1:34 (*al-ḥayḍ*), 41 (*al-ḥayḍ*), 434 (*al-makhārij*), 523 (*ḍaḥāyā*), 2:103 (*al-shufʿa*).
[451] Al-Samarqandī, *al-Fatāwā*, 30, 49; al-Nāṭifī, *al-Ajnās*, 1:41, 45, 55, 57, 165, 506; al-Sarakhsī, *al-Mabsūṭ*, 3:150, 162, 167, 194; Ibn Māza, *al-Muḥīṭ*, 1:394, 396-7, 2:114.
[452] Al-Ṣaymarī, *al-Akhbār*, 168-9; Ibn Abī al-Wafā', *al-Jawāhir*, 1:216, 4:71.
[453] Al-Ṣaymarī, *al-Akhbār*, 166, 168; Ibn Abī al-Wafā', *al-Jawāhir*, 3:323-4.
[454] Ibn Abī al-Wafā', *al-Jawāhir*, 2:238-39; Melchert, *Formation*, 124.
[455] For a list of his students see Melchert, *Formation*, 125-8. It was al-Karkhī whom Melchert inclines to consider the first teacher of the classical Ḥanafī school.
[456] Al-Ṣaymarī, *al-Akhbār*, 172.

century, a distinct Ḥanafī school that operated as a guild was more than likely present, and by al-Karkhī's time evidently so. However, jurists continued to benefit from a wider circle of authorities. This is the case with al-Jaṣṣāṣ who trained primarily under al-Karkhī but is nonetheless seen interacting with and relating legal doctrine from other prominent Baghdadi jurists, such as Ibn Abī Mūsā al-Ḍarīr and Abū ʿAmr al-Ṭabarī, in addition to having learnt from Abū Sahl al-Zujājī of Nishapur.

II. Conclusion & Reflections on the Guild School

This chapter continued the theme of the previous chapter by providing an analysis of the legal networks and activity of two chief Iraqi Ḥanafī jurists from the second half of the 3rd/9th century and the beginning of the 4th/10th century, namely Abū Khāzim and Abū Saʿīd al-Bardaʿī. Like their predecessors, both the aforementioned jurists operated as part of a Ḥanafī community in terms of the teachers under whom they trained, the students they produced, and the major preoccupation of their legal activity. The names of their teachers do not mirror the clean and straightforward list of al-Karkhī but any 'uncertainty' or 'deficiency' in their chains is either easily resolved or not a deficiency at all but merely reflective of receiving legal instruction in a more decentralized context from a community of jurists across various regions. Further, Abū Khāzim and al-Bardaʿī did not possess as many students as al-Karkhī but they did have identifiable students with many of them not only being the most prominent jurists of their generation but also individuals whose legal activity indicated a more mature Ḥanafī school.

The biographical sketches presented over the past two chapters furnish further evidence for the argument raised in Chapter One that the Ḥanafī school during the 3rd/9th century should be rightly viewed as operating as a distinct legal community with relatively clear boundaries demarcating it as a social and legal entity from other groups. These sketches also raise several

questions regarding the transformation of the Ḥanafī school into a guild. The guild school in terms of its structure and function was described by Melchert as a professional association with a regular system of transmitting legal doctrine from identifiable teachers and students. In terms of its structure, this system was organized city by city with a local chief under whom were several students. The preceding chapters have shown that many of these features began to appear around the middle of the 3rd/9th century with Ibn Shujāʿ al-Thaljī who was identified as the leading jurist within Baghdad, had identifiable students who transmitted legal doctrine from him and relied on his opinions, and who inaugurated features of regular transmission commonly associated with the classical school, such as commentary literature. After Ibn Shujāʿ came Abū Khāzim and then al-Bardaʿī. Both were described by al-Ṣaymarī as the chief Ḥanafī jurists in Baghdad before al-Karkhī.[457]

According to Melchert, a central component of a regular system of transmission, and consequently a classical legal school, was the *ijāza*, or authorization, granted by a recognized teacher to his students to issue legal opinions or teach law: 'there were no fully formed schools until there were clear means to distinguish those qualified from those not qualified, first to give authoritative opinions, then to teach jurisprudence.'[458] However, Melchert's identification of al-Karkhī as the first teacher of the classical Ḥanafī school is not based on clear or sustained references to any explicit practice of granting *ijāza*s on the latter's part.[459] His argument rests on four main points: firstly, Abū Isḥāq al-Shirāzī (d. 476/1083) describing al-Karkhī as the first Baghdadi chief of the Ḥanafī school; secondly, the students of al-Karkhī authoring commentaries on their teacher's *mukhtaṣar*; thirdly, the teachers of al-Karkhī in law being 'clearly identified'

[457] Al-Ṣaymarī, *al-Akhbār*, 166.
[458] Melchert, *Formation*, xvi.
[459] The sole example of such *ijāza* is Abū ʿAlī al-Shāshī (d. 344/955-6) whom al-Karkhī appointed to teach law. See Melchert, *Formation*, 128.

whereas several of the teachers of Abū Khāzim and al-Bardaʿī were 'unknown or implausibly early'; and, finally, al-Karkhī having many more students than any other Ḥanafī jurist before him.[460] Melchert asserts that up until this time 'prestige among the Ḥanafīyah of Baghdad evidently did not depend on one's having studied under a single prestigious teacher',[461] and, therefore, a jurist could be remembered as a legal authority independent of his training. In contrast, the authority of a jurist in the classical guild system rested on his being 'authorized to give juridical opinions or to teach by particular, recognized *shaykh*s.'[462] Indeed, the number of students identified as having trained under al-Karkhī implied a shift to a more formal system of authorizing jurists, and subsequent generations of Baghdadi Ḥanafīs generally had clearly identifiable teachers whose chains of learning connected back to him.

The case for naming al-Karkhī as the first teacher of a consolidated Ḥanafī guild school is strong but some of the arguments advanced by Melchert require qualification. The statement that prestige among the Ḥanafīs of Baghdad did not depend on one's teachers is not entirely accurate. Ibn Salama, for example, noted that the first question posed to a scholar was regarding who he had studied under, and if someone prestigious (*ustādh jalīl*) was named, the scholar himself would be held in esteem. Indeed, Ibn Salama remarked that the authority of Ibn Muqātil was diminished in the eyes of the Iraqis (*ahl al-ʿirāq*) because he chose Hishām ibn ʿUbayd Allāh as his main teacher. Though Hishām was a well-respected jurist, Ibn Muqātil was from the same generational layer as him. In other words, Hishām was only slightly more senior to him. Clearly, according to Ibn Salama, the Iraqis placed a high level of importance on whom one received

[460] Ibid., 125.
[461] Ibid., 128.
[462] Ibid., 133.

training under, and many of the major Ḥanafī jurists from the 3rd/9th century had identifiable teachers as documented in the previous chapters.

A more fundamental question connected to the rise of the *madhhab* returns to determining those features that are essential to identifying the existence of a mature legal school. Some system of transmitting legal doctrine is certainly a necessary component of any legal school. However, can a system of transmission, and consequently the notion of a 'school', exist without a clear structure of regional chieftaincy, line of succession, and explicit reference to *ijāza*? Indeed, the identification of the classical Ḥanbalī school with Abū Bakr al-Khallāl (d. 311/923) seems to provide an answer in the affirmative for Melchert states that al-Khallāl may 'justly be called the founder of the Ḥanbalī school' despite his having left 'no clear line of succession… and no list can be composed of those who learnt jurisprudence from him.'[463] Here, al-Khallāl's role in collecting the doctrine of Ahmad, authoring a biographical dictionary of those who related this doctrine, and teaching students (who cannot be identified though) were sufficient evidence in the eyes of Melchert to identify him as the founder of a classical Ḥanbalī school. This raises the question as to why the authoring of commentary literature, presence of clear lines of identifiable teachers and students, sustained doctrinal transmission and defence of Ḥanafī legal doctrine, and other developments seen during the 3rd/9th century, particularly its second half, are not sufficient to identify a functioning and mature legal school during this period. The same difficulty arises when observing the comments of Melchert that the way of al-Karkhī, which was that of the classical school, did not prevail in all the major centres, such as Transoxania and Khurasan, until a century later.[464] This is despite Ḥanafī jurists from these centres authoring several commentaries on the texts of al-Shaybānī, which Melcher states was

[463] Ibid., 137, 148.
[464] Ibid., 136.

the 'hallmark of the classical school',[465] and the establishment of several lines of identifiable teachers and students in places like Khurasan.[466]

Regardless of the conclusion made on this point, the preceding chapters have at the very least demonstrated that the evolution of the legal school from the time of the masters up until the 4th/10th century was far more gradual than previous studies have made out to be. The period of personal and individual doctrines did not extend well into the 3rd/9th century, and neither did this period completely lack the features identified with the classical school. The contributions of every generation from the time of the Ḥanafī masters moved the legal school ever so closer to its more classical form – from a circle of students centred around Abū Ḥanīfa to a legal community united by the collective authority of the Ḥanafī masters and finally a more mature classical school.

[465] Ibid., 66.
[466] Ibid., 135.

Part Two
The Legal Dimensions of the Ḥanafī School

Chapter Four

I. Introduction: The Legal Paradigm and Its Dimensions

The introduction of this thesis asserted that a major development during the 3rd/9th century was the emergence of a Ḥanafī community possessing a distinct social identity and a unique legal discourse that paved the way for the transformation of the school into a guild and doctrinal entity. The first part of this study looked at the social dimensions of this phenomenon by examining the creation of a collective axis of authority forming the basis of this community, the recognition of this distinct Ḥanafī community in external sources, and the manner in which this development was reflected in the legal training and activity of jurists. These aspects, among others, assisted in refining the chronology of the Ḥanafī school by nuancing current views surrounding the nature, period, and dating of the school as a personal juristic entity and a guild. The second part of this thesis will turn its focus to the legal dimensions of the school since the early Ḥanafī community was not only distinct in terms of its social identity but also in respect to the unique legal paradigm its jurists constructed and adopted. These two dimensions complemented each other for it was operating as part of a particular social group of jurists that engendered a unique legal discourse, and it was this very legal discourse that sharpened the social boundaries of this group rendering those working within its parameters as members of a single legal tradition. Understanding the gradual evolution of the legal school during the formative period and its chronology, therefore, requires an examination of both these dimensions.

In specific, the proceeding chapters will analyse the unique paradigm adopted, utilized, and advanced by Ḥanafī jurists, which acted as the shared basis for their legal discourse, and its evolution over the course of the 3rd/9th century. Here, a paradigm is best understood along the

lines defined by El Shamsy, namely as an 'exemplar' that established itself as such through its justifying 'certain problems as significant and specific tools and materials as appropriate to their investigation.'[467] Jurists articulated this paradigm, internalized it, and then utilized it to address outstanding issues, which inaugurated 'a cumulative process of knowledge construction' that revolved around, and arose from, the structure of this original paradigm. Through its adoption, scholars were able to join a community of jurists whose efforts were broadly congruent with one another and set the community apart as a distinct legal school. The basic elements of this paradigm were to be found in the legal discourse of the Ḥanafī masters, which was in wide circulation by the end of the 3rd/9th century and comprised the masters' legal conventions, opinions, and methods. This paradigm, however, was not fully articulated by the masters who had only set down a broad and incomplete framework of rulings and the sources and methods that underpinned them. The task of subsequent generations of jurists would be to articulate this framework in greater detail by interpreting, evaluating, refining, and extending its constitutive elements. Effectively, the legal doctrine the Ḥanafī masters left behind acted as the raw material that later jurists worked with to fashion a distinct, systematic, and comprehensive Ḥanafī paradigm.

The paradigm that school jurists adopted and advanced engaged the law both vertically and horizontally. The vertical dimension was concerned with the relationship between legal rulings and the primary sources of law in terms of the processes and mechanics involved in deriving the former from the latter. As such, it concerned itself with theorizing a method that purported to derive legal rulings exegetically from the revealed texts. In contrast, the horizontal dimension dealt mainly with the relationship of positive legal rulings to one another within an

[467] El Shamsy, *Canonization*, 176.

established juristic structure and how these rulings expressed and established general meanings and propositions governing specific issues, chapters, or topics. The vertical dimension, in other words, was primarily the purview of classical legal theory, while the horizontal dimension mainly related to the discursive tradition of *ra'y*, a body of legal rulings, and the meanings (*maʿānī*) and principles/norms (*qawāʿid*/*ḍābiṭ*) that underpinned them.[468] Each of these approaches to, and expressions of, the law matured during different periods. The *ra'y* model, a focus on legal meanings, and the articulation of positive legal principles are seen from the time of Abū Ḥanīfa himself though legal principles were not systematically expounded until much later, while legal theory came to fruition towards the end of the 3rd/9th century and the beginning of the 4th/10th century. Both the articulation of legal theory and a body of legal principles reflected the rise of a more generalized mode of exposition that augmented the authority of the Ḥanafī masters by ascribing to them a cohesive and comprehensive methodology that only someone with all-encompassing and wholly creative knowledge could have forged and then employed to derive a body of positive doctrine of a systematic character. It is perhaps not a surprise that the institution of *taqlīd* became more firmly rooted and absolute in the decades following the emergence of such generalizing activity.

It is important to note here that the distinction between the vertical and horizontal dimensions of the Ḥanafī legal paradigm should not be viewed in black and white terms for both emerged from, attempted to explain, and converged around a common source: the legal rulings formulated by the masters. Even in horizontally engaging the law, Ḥanafī jurists expounded the legal rulings of the masters with reference to the primary texts, analogy, juridical preference, and

[468] Calder terms these as the 'hermeneutic tradition' of legal reasoning and the 'discursive tradition' respectively. See Calder, *Studies*, 8. It should be noted here that the 'legal meaning' is broader than a 'legal principle' for it may refer to a principle (*qāʿida*), a restricted norm (*ḍābiṭ*), a ratio legis (*ʿilla*), the wisdom of a ruling (*ḥikma*), cause (*sabab*), etc.

other legal instruments that constituted the subject matter of legal theory. However, legal theory engaged the legal rulings of the masters and these juridical instruments with the aim of theorizing the law in terms of its sources and methods of derivation, and detailing the epistemological foundations underpinning the doctrine of the masters. Discussions surrounding linguistic hermeneutics, and a theory of prophetic traditions, consensus, and analogy were the main subject matter of the science. In contrast, texts of positive law, while appealing to the same rulings and legal sources/instruments, took little interest in theory-centred discussions of the type found in texts of legal theory.

Though legal theory was arguably the last of the constitutive elements of the legal school to fully emerge, this vertical-looking paradigm will not be examined in this study for it would require a far more detailed discussion than can be offered here. Attempts at documenting the emergence of early Ḥanafī legal theory are also complicated by the fact that the 3rd/9th century provides little in the way of material shedding light on the early development of this science with the period between ʿĪsā ibn Abān and al-Karkhī offering only scant and scattered information.[469] Perhaps more importantly, the horizontal dimension of the Ḥanafī legal paradigm reveals itself to be a comprehensive system for the derivation, justification, and testing of the law, and one that maintained a privileged position throughout the classical period for these functions especially in intra-school contexts.[470] Being grounded in the doctrine of the masters, this dimension of the

[469] The contributions of ʿĪsā ibn Abān have been preserved in later works. See Murteza Bedir, "An Early Response to Shāfiʿī: ʿĪsā b. Abān on the Prophetic Report (*khabar*)", *Islamic Law and Society* 9, no. 3 (2002): 285-311. As the title of this paper suggests, Bedir's analysis is largely limited to ʿĪsā's theory on prophetic traditions. Vishanoff discusses early Ḥanafī theories of linguistic hermeneutics focussing on such figures as ʿĪsā and Ibn Shujāʿ. There is relatively more material for non-Ḥanafī contributions to the science of legal theory as documented by Devin Stewart. See Vishanoff, *The Formation of Islamic Hermeneutics*, 213-4; Devin Stewart, "Muḥammad ibn Dāwūd al-Ẓahirī's Manual of Jurisprudence," 99-160; Devin Stewart, "Muḥammad b. Jarīr al-Tabarī's *al-Bayān ʿan uṣūl al-aḥkām*," 321-49.

[470] Ibn Nujaym went as far as to say that *qawāʿid al-fiqh* was the real *uṣūl al-fiqh*. These *qawāʿid* were mainly horizontally looking for they attempted to capture a meaning underpinning a set of legal rulings. See Wolfhart

Ḥanafī paradigm established several of the main features associated with a doctrinal school, such as a body of legal rulings and a set of principles that distinguished the school from others and identified its outer limits as a collective entity. Legal theory did complete the picture by defining a theory of the primary sources and by validating the claim that law was derived from these sources. It also played a critical role in consolidating notions of doctrinal loyalty by elevating the image and status of the masters. This was in addition to various other functions it served, such as providing a grammar whereby legal doctrine could be taught, developed, and defended in polemical exchanges.[471] It was mainly in these polemical contexts, particularly with other schools in the literature of *ʿilm al-khilāf*, that core aspects of legal theory, such as linguistic hermeneutics, most vividly appear.

Examining this dimension of the Ḥanafī school confirms several developments identified earlier when analysing the social dimensions of the school. This included the first half of the 3rd/9th century displaying the creation and consolidation of an axis of authority that saw the school evolve beyond a personal stage into a distinct legal community that assumed a more doctrinal character. However, authority did not merely relate to the figure of the Ḥanafī masters but constituted an entire legal paradigm grounded in their discourse that distinguished Ḥanafīs from others. This paradigm was *raʾy*-based and incorporated analogy (*qiyās*) and juridical preference (*istiḥsān*). But it was by virtue of its rootedness in the rulings and authority of the masters a Ḥanafī paradigm that was both collective and shared by members of a Ḥanafī legal community who adopted, refined, and continually advanced it as a mutual project. Indeed, the

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Heinrichs, "*Qawāʿid* as a Genre of Legal Literature," in *Studies in Islamic Legal Theory*, ed. Bernard G. Weiss, Studies in Islamic Law and Society 15 (Leiden: Brill, 2002), 368.

[471] Vishanoff, *The Formation of Islamic Hermeneutics*, 261-72. In these pages, Vishanoff provides a useful overview of the debates on the function of legal theory as rule-justification or rule-creation. He himself concludes that at least with the respect to legal hermeneutics it 'may function simultaneously as a constructive interpretive method and as a justification of preconceived views.'

distinguishing feature of the Ḥanafī school as a legal entity was a particular engagement with *fiqh* that centred around the doctrine of the masters and a paradigm that underpinned it.

II. The Horizontal Paradigm: A *Ra'y*-Based Discourse

Scholars studying early Islamic law have tended to pay more attention to legal theory than other methodological approaches to the law. Undoubtedly, the former was highly significant as a science recognized in the classical period as the mainstream of Islamic legal-theoretical thought that outlined the methods for deriving legal rulings from the primary sources. However, the term *uṣūl* classically signified a meaning that extended well beyond the confines of legal theory. It referred to the classical science, a category of the primary sources of the law, a single one of these sources, hermeneutical principles for the interpretation of these sources, a principle or restricted norm based on a generalization from a common set of legal rulings, or individual legal rulings themselves that served as a basis for other cases.[472] The *ra'y* model and positive legal principles aligned most closely with the latter two usages of the term, which related to the horizontal plane of the Ḥanafī legal paradigm identified earlier. Unlike the vertical plane of legal theory, the *ra'y* model and legal principles did not amount to a hermeneutic for deriving legal rulings from the primary sources. Though legal theory, *ra'y*, and legal principles within Ḥanafī legal discourse arose from, and engaged with, a common and established body of legal rulings, namely the rulings set down by the masters, the latter two were primarily concerned with the manner in which these rulings related to each other as part of a consistent and rational juristic structure. Indeed, when an early Ḥanafī jurist, ʿAlī al-Rāzī, criticized certain conclusions reached

[472] According to Heinrichs, the term *uṣūl* has four meanings: (a) an act that has already been determined and now serves as a 'model' for similar cases, (b) a legal principle that covers several individual cases, (c) a scriptural pronouncement that is considered decisive to the legal determination of a given act, and (d) a source of the law. See Heinrichs, "*Qawāʿid* as a Genre of Legal Literature," 368.

by al-Shaybānī on account of their 'contradicting his *uṣūl*',[473] he did not have in mind an exegetical hermeneutic employed by the latter but the failure of certain conclusions he reached to align with analogous legal rulings in his juristic structure.

As proponents of *ra'y*, a systematizing approach to law and search for consistency was characteristic of Ḥanafī legal discourse as demonstrated in the inherent tendency of *ra'y* as a discursive practice. Early Iraqi and Ḥanafī doctrine were said to resemble a structuralist 'system of differences' where the meaning of a sign arose through its relationship with other signs as opposed to an outside referent.[474] To understand a legal ruling meant exploring its implications by situating it within a web of agreed-upon propositions and similar/dissimilar rulings. The early Ḥanafī dialectic method of *ra'y* involved a progressive exchange that began with an agreed-upon proposition that was then extended through *ra'y* questions probing hypothetical cases in order to reveal the meanings underpinning the original legal concept and its boundaries.[475] This method of reasoning created a 'graded series of cases' and generated countless hypothetical rulings that augmented the juristic structure.[476] Given the operational assumption in the *ra'y* approach was the consistency of law, a legal ruling and its soundness was determined by how it paralleled (or did not parallel) other established legal rulings within the system, which related to the practice of analogy.[477] Essentially, every ruling in the juristic structure affirmed and expressed particular meanings, and rulings were understood on the basis of their underlying meanings. New issues would be examined with a view towards identifying the established legal meanings they most

[473] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 4:49.
[474] El Shamsy, *Canonization*, 71.
[475] Schacht, *Origins*, 105; El Shamsy, *Canonization*, 25; Baber Johansen, "Casuistry: Between Legal Concept and Social Praxis," *Islamic Law and Society* 2, no. 2 (1995): 135.
[476] Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon, 1964), 205; El Shamsy, *Canonization*, 24-5.
[477] Some expressions used to identify parallel cases were *shibhuhu*, *naẓīruhu*, *mithluhu, qiyāsuhu*, *bi-manzila* and so forth. Hilāl and al-Khaṣṣāf use several of these terms in their works, as do earlier scholars, such as the masters themselves.

closely aligned with. The following discussion from *al-Aṣl* captures some of the conventions and strategies in this method:

> **5.5 Commencing Prayer with *Tahlīl* or *Taḥmīd***
>
> **5.5.1.** I said: What is your opinion regarding a person who commences prayer with *tahlīl*, *taḥmīd*, or *tasbīḥ*? Is it considered entering into prayer?
> **5.5.2.** He said: Yes.
> **5.5.3.** I said: Why?
> **5.5.4.** He said: What do you say about someone who commences prayer by stating *allāhu ajall* or *allāhu aʿlam*? Is this considered entering into prayer?
> **5.5.5.** I said: Yes.
> **5.5.6.** He said: The two are the same. This is the position of Abū Ḥanīfa, Muḥammad, Ibrāhīm, and al-Ḥakam. As for Abū Yūsuf, he said that this would not be valid if he is someone who knows that the prayer is to be commenced with *takbīr* and is able to utter it.[478]

In this example, the legal ruling of commencing prayer with *tahlīl*, *taḥmīd*, or *tasbīḥ* is determined and justified by placing it in the context of the ruling assigned to other formulas deemed valid for prayer commencement. The wording of *tahlīl*, *taḥmīd*, and *tasbīḥ* was viewed as analogous to *allāhu ajall* and *allāhu aʿlam*, and since the latter was a valid commencement so was the former. In later legal texts, the legal meaning deduced from these legal rulings would be expressed in the form of a principle, 'One enters prayer through any utterance by which God is praised.'[479]

Below is another example from the same text that captures this approach in greater detail:

> **5.6 Nullifiers of Ablution**
>
> **5.6.1.** I said: What is your opinion regarding someone who performs ablution and then intentionally or unintentionally vomits?
> **5.6.1.1.** He said: If it is a mouthful or more than the ablution should be repeated. However, if the vomit is less than a mouthful than he does not have to renew his ablution.
> **5.6.1.2.** I said: What if he vomits mucus?
> **5.6.1.3.** He said: The ablution does not have to be repeated.
> **5.6.1.4.** I said: And saliva is similar?
> **5.6.1.5.** He said: Yes. This is the position of Abū Ḥanīfa and Muḥammad. Abū Yūsuf said that mucus was similar to food and drink and so if it is a mouthful the ablution must be repeated.

[478] Al-Shaybānī, *al-Aṣl*, 1:15-6.
[479] Al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 2:5; al-Sarakhsī, *al-Mabsūṭ*, 1:36.

5.6.1.6. I said: What if he vomits a mouthful that contains bile?
5.6.1.7. He said: He must repeat the ablution.

5.6.2. I said: What is your opinion regarding someone who has an abscess or a wound from which blood or pus exits and flows beyond the wound?
5.6.2.1. He said: He must repeat the ablution.
5.6.2.2. I said: And if it is a small amount that does not flow beyond the point of exit of the wound?
5.6.2.3. He said: Ablution is not necessary for him.

5.6.3. I said: Do you consider a person's ablution nullified who spits and sees yellowness in his saliva?
5.6.3.1. He said: No.
5.6.3.2. I said: And if the blood is preponderant?
5.6.3.3. He said: This will nullify his ablution.
5.6.3.4. I said: What if the blood and saliva are equal with neither preponderating?
5.6.3.5. He said: I prefer that he renew the ablution.

5.6.4. I said: Do you consider a nosebleed, passing wind, or laughing in prayer as nullifiers of ablution?
5.6.4.1. He said: Yes.

5.6.5. I said: Do you consider sleep as nullifying ablution?
5.6.5.1. He said: If it is done while one is standing, bowing, prostrating, or sitting then one's ablution is not nullified. However, if he sleeps lying down or while reclining then this will nullify his ablution. Abū Yūsuf said that if one sleeps intentionally during prostration then it invalidates his prayer, and if it overcomes him then it does not affect the prayer.
5.6.5.2. I said: And if he falls asleep reclining on one of his buttocks or one of his hips in the *tawarruk* position?
5.6.5.3. He said: This will nullify his ablution.

5.6.6. I said: What is your opinion regarding a man who has a wound that he pokes causing a small amount of blood to exit which he wipes away, and then it exits again after which he wipes it away once more before it can actually flow?
5.6.6.1. He said: If the blood exited in such a way that if what was wiped away were left alone it would have flown then he renews the ablution. If it were such that it would not have flown if left alone, this would not nullify his ablution.

5.6.7. I said: What is your opinion regarding ill speech, does it nullify ablution?
5.6.7.1. He said: No.
3.6.7.2. I said: Does consuming any food item, such as the meat of camels or cattle, milk, or anything else that has been subject to fire (i.e. cooking or heating), nullify ablution?
5.6.7.3. He said: There is nothing from food items that nullifies ablution. Ablution is only nullified by that which exits and not by that which enters. As for fire, it does not add anything but flavour. If this were considered as nullifying ablution, then someone who performs ablution with heated water would also nullify his ablution. Similarly, someone who applies oil or an anointment that was subjected to fire would have to repeat ablution. None of this nullifies ablution.
5.6.7.4. I said: What is your opinion concerning a man who smiles in prayer, does this nullify ablution?
5.6.7.5. He said: No.
5.6.7.6. I said: If he laughs?

5.6.7.7. He said: This nullifies the ablution and the person must repeat his ablution and prayer.
5.6.7.8. I said: Why?
5.6.7.9. He said: Due to a report that has come from the Prophet.[480]

The first part of this lengthy exposition begins with a discussion of acts that nullify ablution (5.6.1 to 5.6.1.7). The *ara'ayta* dialectic is used to introduce each of these nullifiers and then probe their specifics in order to define the outer boundaries of each concept. For example, when discussing blood as a nullifier of ablution, the dialectic is employed to reveal that flowing past the exit point of a wound is a condition for it to be deemed a nullifier as opposed to it merely exiting and appearing on the surface of the wound (5.6.2. to 5.6.2.3.). The concept of flow is further examined a little later in order to establish that flowing can be actual or effective with the latter being defined as blood possessing the power to move beyond the exit point of a wound if left unimpeded (5.6.6. to 5.6.6.1.). Similarly, in the case of vomiting, the boundaries of this nullifier were explored through the *ara'ayta* dialectic to reveal the minimum quantity required for nullification to be realized (5.6.1. to 5.6.1.1.), the content of vomit considered a nullifier (5.6.1.2. to 5.6.1.7.), and the question of intentional and unintentional vomiting (5.6.1.).

Chiefly, the entire discussion aims to reveal an underlying meaning that is common to all the nullifiers. This meaning is the exiting of a physical object from the body, a legal principle resembling a ratio-legis, which al-Shaybānī explicitly mentions when discussing actions that do not nullify ablution (5.6.4). In addition to this general meaning, the dialectic is also utilized to endorse secondary layers of meanings, such as 'flow' being a condition for nullification in the case of blood or a 'mouthful' in the case of vomit, which were restricted norms (*ḍāwābiṭ*). The non-nullifiers are presented only after discussing the actual nullifiers themselves in order to juxtapose the two categories so as to reveal that the meaning underlying the nullifiers are absent

[480] Al-Shaybānī, *al-Aṣl*, 1:43-6.

in the non-nullifiers. In other words, one set of cases is not analogous to the other. Yet, al-Shaybānī is conscious of an inconsistency, namely the ruling that laughing nullifies ablution as well (5.6.7.3). Unlike flowing blood and pus, vomiting a mouthful, and sleep in a reclining or lying down position, laughing does not involve the actual or effective exiting of a physical object from the body, which causes his interlocutor to question why it would take the same ruling as these other cases (5.6.7.8).[481] The response provided by al-Shaybānī is that this was due to a prophetic tradition on the matter (5.6.7.9). In other words, it was a case of juridical preference (*istiḥsān*) that entailed departing from what analogy (*qiyās*) entailed. Though analogical reasoning was the basis in a rationalist system concerned with maintaining a consistent body of legal rulings, *istiḥsān* was an important legal instrument in the paradigm of the masters that not only mitigated the potentially negative or unjust results of a strictly analogy-based system but also allowed for the accommodation of primary source texts that seemingly defied the conclusions of analogy as the example above demonstrates.

These examples exhibit some of the content, conventions, and argumentative strategies in the *ra'y*-based discourse of the Ḥanafī masters, a discourse that was both comprehensive in its coverage and preserved in written form by the time the last of the masters passed away.[482] This discourse would serve as a paradigm governing the efforts of later Ḥanafī jurists to define and advance the law. Though there are always challenges in accurately ascertaining the extent to

[481] Sleep may seem to go against this common meaning but the nullifier in its case was actually the passing of wind. Since this was impossible to determine while one was in a state of sleep (or unconciousness, insanity, etc.), the act of sleep itself was deemed a nullifier if performed in a manner where the likelihood of such a nullifier occuring was high, i.e. with the limbs loosened in a lying position.

[482] The collection and preservation of this system of rulings in written form is a development that cannot be understated as the shift from an oral culture to written texts assisted in transforming Islamic law from an aural normative tradition into a systematic legal science. It was the rise of written texts that permitted a generalizing discourse where jurists were increasingly able to systematically engage with large bodies of information, formulate concepts of a more abstract nature, and detect connections, consistencies, and inconsistencies in their conclusions and those reached by others. For this, see El Shamsy, *Canonization*, 34-5.

which this paradigm was adopted and utilized by jurists during the formative period, the available sources present the discourse of several early jurists as reflecting a specifically Ḥanafī milieu in terms of their literary conventions, legal reasoning, and argumentative techniques. The texts of Hilāl and al-Khaṣṣāf, for example, display an overarching concern for doctrinal consistency through the employment of the *ara'ayta* dialectic, the utilization of analogy and juridical preference, and related conventions and techniques that mirror the approach of al-Shaybānī in *al-Aṣl*.[483] Take the following example from al-Khaṣṣāf:

> **5.7.** I said: What is your opinion regarding a person who purchased some land or a house in a corrupt sale (*fāsid*), took possession of it, and then soundly designated it as an endowment?
> **5.7.1.** He said: The endowment is valid, and the buyer will be liable to pay the seller its market price and take back the sale-price.
> **5.7.2.** I said: What if he endows it before taking possession of it?
> **5.7.3.** He said: The endowment is invalid and not permitted. Don't you see that if a person purchased a slave, took possession of what he bought, and then freed him or her that the manumission is valid? However, if he freed him or her before taking possession then the manumission is invalid. An endowment is similar.
> **5.7.4.** I said: What is your opinion regarding a person who buys a house in a corrupt sale, takes possession of it, soundly designates it as an endowment, and pays the market price to the seller after which the pre-emptor of this house approaches, is he entitled to this house by way of pre-emption (*shufʿa*)?
> **5.7.5.** He said: Yes. The endowment will be nullified, and the pre-emptor will be able to take possession of it from the buyer for the market price paid by the latter. Don't you see that if a person purchased a home in a sound sale, endowed it in a sound manner, and then a pre-emptor sought it through the right of pre-emption that the latter is entitled to take it and the endowment will be nullified? If the pre-emptor is entitled to take possession of it in the context of a sound sale than he is more entitled to do so in the context of a corrupt sale.[484]

Here, al-Khaṣṣāf addresses a series of questions posed by his interlocutor to flesh out the legal rulings connected to the issue of endowing land that has been acquired in a corrupt sale. The first part establishes possession as an integral condition for the validity of endowing something acquired through a corrupt scale and the liability incurred by the buyer in this situation (5.7. to 5.7.3.). This distinction between the validity of an endowment post-possession and its invalidity

[483] Hennigan, *Birth of a Legal Institution*, 21-3.
[484] Al-Khaṣṣāf, *al-Awqāf*, 315.

pre-possession is justified by analogy to another legal ruling in the juristic structure available to al-Khaṣṣāf, which in this case is the issue of manumission. Just as the act of manumission is valid after possessing a slave acquired through a corrupt sale, the act of endowing a piece of land or a home would be as well (5.7.3.). After this, the interlocutor adds another component to this scenario to test the boundaries of this original legal ruling: what if another individual is potentially entitled to this land or home through the right of pre-emption and seeks to exercise his right (5.7.4.)? In this case, al-Khaṣṣāf states that the endowment will be nullified and explains it by way of an *a fortiori* argument (5.7.5.). Typical of *ra'y*-based discourse, al-Khaṣṣāf introduces legal rulings through a series of graded questions and answers that reveal general meanings underpinning the legal rulings, the limits of an original concept, and the manner in which various rulings relate to one another as part of an established juristic structure.

III. The 'Ḥanafī' Nature of this Early Paradigm

The clearest marker of a unique Ḥanafī legal paradigm were the authorities the community appealed to and relied upon in their discourse. This point has already been discussed when describing the axis of authority early Ḥanafī jurists united around as a distinct legal community during the first half of the 3rd/9th century. Only a select number of figures loom large in the earliest Ḥanafī texts as legal authorities with each of them being members of the circle of Abū Ḥanīfa. Abū Ḥanīfa, Abū Yūsuf, and al-Shaybānī appear most frequently followed by Zufar and then occasionally the likes of al-Ḥasan, Asad, and al-Samtī. This is seen in several early texts, such as *al-Jāmiʿ* of al-Shaybānī, *al-Amālī* of Shuʿayb al-Kaysānī, *al-Nawādir* of Muʿallā, and four of the earliest secondary texts of the school, namely those of Hilāl, al-Khaṣṣāf, al-Qaysī, and al-Ṭaḥāwī. Given their content and chronological coverage of the entire 3rd/9th century, the current section will focus mainly on the latter four texts, especially those of Hilāl and al-Khaṣṣāf.

Appeals to authority in these texts were usually expressed as statements attributed directly to an earlier jurist, such as 'Abū Yūsuf said' or 'according to al-Shaybānī'. The texts of Hilāl, al-Khaṣṣāf, al-Qaysī, and al-Ṭaḥāwī do not show a consistent concern for documenting and reproducing the views of past authorities besides the Ḥanafī masters who are cited both as individuals and as a collective. Perhaps more telling than this are the varying contexts in which these appeals to authority are made for they reveal the weight given to doctrine of the masters across the entire spectrum of the law. In specific, four contexts are worth noting in these early works: (i) when proffering a response to questions or enumerating legal rulings, (ii) when presenting the reasoning underlying these rulings through an expository voice, (iii) when challenged by an interlocutor, and (iv) when deriving legal rulings by means of *takhrīj*. Together, these contexts reveal the scope of the masters' authority and the manner in which their legal rulings became a paradigm for their followers.

A. Legal Answers & Rule Enumeration

The most obvious setting in which the authority of the masters was appealed to is during the presentation of legal answers and the enumeration of legal rulings. The former is seen in the texts of Hilāl and al-Khaṣṣāf where a *qāla*/*qultu* dialectic is employed as a literary technique for the presentation of law, a style that was common during the 2nd/8th and 3rd/9th century among *ra'y* practitioners as seen in the texts of al-Shaybānī. Here, a question is posed by an interlocutor and answered by the *qāla* figure. The former then proceeds to probe this conclusion in terms of its content, details, and legal parameters through a series of logical questions.[485] The following is an example of this discursive approach in the work of Hilāl:

[485] Calder, *Studies*, 10; Brockopp, "Early Islamic Jurisprudence in Egypt," 171; Hennigan, *Birth of a Legal Institution*, 21-3.

> **5.8.** I said: What is your opinion regarding a person who says, 'I designate my home as a charitable endowment to God in perpetuity on condition that it will be the residence of so-and-so as long he lives, and when he passes away, it will be the residence of so-and-so and then it will be for the poor and needy'?
> **5.8.1.** He said: This endowment is valid and permitted, and it will be in accordance with what was stipulated.
> **5.8.2.** I said: What is your opinion regarding repairs and upkeep of the house that are needed, who bears the responsibility for it?
> **5.8.3.** He said: It is the responsibility of the one with whom the endowment starts so long as he is alive.
> **5.8.4.** I said: Why do you state this?
> **5.8.5.** Do you not see that if one bequeaths the yield of a date palm tree, it is upon the beneficiary of this yield to water this date palm tree and the tract of land that it cannot subsist without? Similarly, in the case at hand, it is necessary for a person to repair that which the house cannot subsist without. This is similar to the first example. He is required to maintain its upkeep in a way that the house is not made to deteriorate from the state it was in when initially designated as an endowment. However, he is not required to improve it. This is the position of Abū Ḥanīfa regarding watering a date palm tree as per what we described, and our view regarding the endowment of a house is the same.[486]

As affirmed earlier, the adoption of this particular style of presenting law by later Ḥanafī jurists is one example of their continuing a tradition most thoroughly inaugurated by the Ḥanafī masters. It demonstrated that these jurists like their predecessors were concerned with a systematizing approach to law that sought the construction of a legal structure characterized as consistent. But what made this discursive practice uniquely Ḥanafī in its character was its being anchored in the rulings and authority of the masters. In most cases, Hilāl and al-Khaṣṣāf answer their interlocutor without citing a specific authority, but when they do name an authority in the context of providing a legal ruling, they overwhelmingly appeal to the Ḥanafī masters. In the first one-hundred pages of his *waqf* text, Hilāl cites Abū Ḥanīfa (45x), Abū Yūsuf (13x), al-Shaybānī (9x), al-Samtī (7x), Zufar (1x), al-Ḥasan ibn Ziyād (1x), Ibn Abī Laylā (1x), and al-Battī (2x) excluding the Prophet and his Companions. The only non-Ḥanafīs to make an appearance are Ibn Abī Laylā and al-Battī and references to both disappear almost entirely over the course of the text while the names of the masters continue to appear regularly. Meanwhile, in

[486] Hilāl al-Ra'y, *Aḥkām al-waqf*, 22.

a similar sample size, al-Khaṣṣāf cites Abū Ḥanīfa (6x), Abū Yūsuf (9x), and al-Shaybānī (5x), and even more frequently their collective authority (11x). This is also seen in his other texts, such as *Kitāb al-Nafaqāt* and *Adab al-qāḍī*. The following examples reveal these appeals to authority:

Hilāl in *Aḥkām al-waqf*

5.9. I said: What is your opinion regarding two witnesses who testify that a man designated his land as an endowment but without specifying its boundaries?
5.9.1. He said: The testimony is invalid.
5.9.2. I said: Why?
5.9.3. He said: They do not know what they have testified in regard to and nor does the judge know what he is rendering a judgment regarding. To us this is akin to something unknown (*majhūl*) and, therefore, similar to the case of a sale.
5.9.4. I said: What is your opinion if one of them specified its boundaries but not the other?
5.9.5. He said: The testimony is invalid and not permissible.
5.9.6. I said: Likewise, if three of its boundaries were specified?
5.9.7. He said: Such a testimony is valid according to Abū Ḥanīfa and Abū Yūsuf. As for Zufar, it is invalid.[487]

al-Khaṣṣāf in *Aḥkām al-awqāf*

6.0. I said: What do you say regarding someone who leaves Islam and converts to a religion belonging to the *dhimmī*, either a Christian, Jew, or Magian, and makes an endowment during his state of apostasy?
6.0.1. He said: The view of Abū Ḥanīfa is that if he is executed for his apostasy or passes away, then his endowment is invalid. As for Muḥammad, he deemed valid from this endowment what is generally allowed for those of the religion to which this person converted.[488]

al-Khaṣṣāf in *al-Nafaqāt*

6.1. I said: If the wife has a servant, is the husband compelled to provide for both her and a servant to serve her?
6.1.1. He said: Yes, and if she has several servants, Abū Ḥanīfa and Muḥammad said that it is not necessary upon him to provide for more than one. Abu Yūsuf said it is necessary to provide for two servants.[489]

[487] Ibid., 112. For more examples, see 7, 8, 35, 26, 43, 44, 46, 59, 66-7, 91, 94, 103, 106, 112, 123, 229, 329-31, 334.
[488] Al-Khaṣṣāf, *al-Awqāf*, 340. For more examples, see 56, 95, 109, 110-11, 113, 114, 155, 174, 176, 182, 194, 201, 333-4, 347, 352-3.
[489] Abū Bakr al-Khaṣṣāf, *Kitāb al-Nafaqāt*, ed. Abū al-Wafā' al-Afghānī (Beirut: Dār al-Kitāb al-ʿArabī, 1984), 34. This is also common in his *Adab al-qāḍī.* See al-Jaṣṣāṣ, *Sharḥ Adab al-qāḍī*, 51, 67-8, 76, 90, 105, 117-8, 122, 125, 130, 147.

The only other major authorities to appear in these texts are members of the earliest Muslim community, such as the Prophet or ʿUmar. They are almost always mentioned in an evidentiary capacity, i.e. in order to provide a justification for a legal ruling. In a few cases, Hilāl and al-Khaṣṣāf refer to the views of the 'jurists of Basra' (*fuqahā' ahl al-baṣra*), 'the people of Basra' (*ahl al-baṣra*), or the 'jurists' (*fuqahā'*).[490] Despite this, the Ḥanafī masters are clearly the central figures appealed to and relied upon in these texts.

Do other jurists from the time of Hilāl and al-Khaṣṣāf display a similar reliance on the Ḥanafī masters? The available data suggest an answer in the affirmative. In a sample of twenty-one answers provided by Abū Sulaymān in *al-Nawāzil*, half of them have him answering by providing the opinions of an earlier authority: all three masters (4x); the respective opinions of Abū Ḥanīfa and Zufar (1x); of Abū Ḥanīfa and Abū Yūsuf (1x); of Abū Yūsuf and al-Shaybānī (1x); of Ibn al-Mubārak and al-Shaybānī (1x); the opinion of Abū Yūsuf (1x); and the opinion of al-Shaybānī (2x). In the remaining instances, no particular authority is named. However, it is clear in several of these cases that the answer provided by Abū Sulaymān builds off or corresponds with an established ruling of one of the masters as the following example demonstrates:

> **6.2.** Nuṣayr said, 'I asked Abū Sulaymān regarding water whose surface area was a hundred arm-spans by two arm-spans? He said, "Ablution can be performed with it." I said, "What if a person urinates in it or performs ablution from it?" He said, "All sides of it within an area of ten-by-ten arm-spans will be filthy."'[491]

This ruling was subject to disagreement among Ḥanafī jurists, but the answer provided by Abū Sulaymān takes as its basis the delineation of a large body of water specified by al-Shaybānī, namely a surface area of ten by ten arm-spans, which Abū Sulaymān himself transmitted from al-

[490] Hilāl al-Ra'y, *Aḥkām al-waqf*, 2, 5, 8; al-Khaṣṣāf, *al-Awqāf*, 150.
[491] Al-Samarqandī, *al-Fatāwā*, 13.

Shaybānī. Taking note of this type of 'implicit' reliance on the masters is important in light of a substantial number of answers and rulings found in early texts not explicitly appealing to specific authorities. Though jurists throughout the 3rd/9th century and into the 4th/10th century spoke with independent voices and were relatively free to depart from the doctrine of the masters, determining the scope of influence of the masters and the degree of doctrinal loyalty jurists had towards their doctrine cannot ignore such implicit reliance. Like Abū Sulaymān, Ḥanafī jurists throughout the 3rd/9th century routinely appealed to the authority of the masters when providing legal answers.[492]

Turning to another text from a contemporary of al-Khaṣṣāf, a similar, if not greater, reliance on the authority of the Ḥanafī masters is visible. The *Adab al-qāḍī* of Abū al-Muhallab al-Haytham ibn Sulaymān al-Qaysī has not received much attention despite its being a rare Ḥanafī text from the Maghrib. Born in Tunis, al-Qaysī travelled to the city of Qayrawan where he met prominent Ḥanafī jurists, such as Sulaymān ibn ʿImrān (d. 270/883) who was a student of Asad ibn al-Furāt.[493] Later on, al-Qaysī travelled to Baghdad where he studied with Ibn Shujāʿ al-Thaljī. Unlike the texts of Hilāl and al-Khaṣṣāf, the *Adab al-qāḍī* of al-Qaysī does not follow a dialectic style of presentation but merely enumerates legal rulings under topical subheadings. The authorial voice of the author seems minimal in comparison to Hilāl and al-Khaṣṣāf, and the jurists most frequently cited based on a fifty-page sample are the Ḥanafī masters: Abū Ḥanīfa (41x), Abū Yūsuf (45x), al-Shaybānī (30x), and Zufar (4x). Meanwhile, the most prominent non-

[492] For some examples see al-Samarqandī, *al-Fatāwā*, 44, 339, 580, 586, 622-4, 633-4 (Ibn Muqātil); 45, 519, 607 (Nuṣayr); 50, 55, 360, 396, 528, 592, 651, 728, 733 (for Abū Naṣr); 58, 263, 336, 337, 371, 373, 586, 595, 652 (for al-Iskāf).
[493] Sulaymān transmitted *al-Aṣl* from Asad and would serve as judge in the city between 259-69/872-82. See Tsafrir, *History*, 107, 115.

Ḥanafī jurist who appears in the text is Ibn Abī Laylā (8x). The following passages capture the general style of his text:

> **6.3.** Abū al-Muhallab said: 'Abū Ḥanīfa said, "If two disputing parties who do not speak Arabic approach a judge who does not understand their language, it is necessary for a reliable, male Muslim to translate their speech for him, though I prefer two such translators. The translation of disbelievers and a slave is not accepted. If he accepts the translation of a female who is upright, free, and a Muslim, then there is allowance for this. But two men, or one man and two women, are preferable to me and more reliable."
>
> Abū Ḥanīfa treated this matter like a report and not a form of testimony. Don't you see that when it comes to reports the witness of a single person is accepted for the new moon, establishing foster relations, and attesting to a person's credibility? Translation is similar according to him if the translator is trustworthy…
>
> Muḥammad ibn al-Ḥasan said, "Translation by less than two males, or one man and two females, is not valid." According to him, this was similar to giving testimony, and so it cannot be carried out except by those whose testimony would be accepted.'[494]

In another example:

> **6.4.** Abū al-Muhallab said, 'If a slave is in the possession of a person and someone brings evidence that this slave was his for the past year, while the one who is in possession of him brings evidence that he was his slave for the past two years, Abū Ḥanīfa said that the slave belongs to the one who currently possesses him. Abū Yūsuf held the same view as Abū Ḥanīfa. Afterwards he stated, "He belongs to the claimant, and I do not accept the evidence of the person who is in possession of him." This is the narration of Asad from Abū Yūsuf.'[495]

In a third and final example:

> **6.5.** Abū al-Muhallab said: 'Abū Yūsuf said in his *imlā'* in the year 178/794-5… "If the time period specified by both parties in their testimonies is the same or if they did not mention a particular time period, then the evidence of the claimant is given preference. If one of the testimonies stipulates a time period and the other does not, then if the former belongs to the claimant judgment is given in his favour, and if it belongs to the one who has possession, then likewise I judge in favour of the claimant."
>
> This is their position according to the narration of Asad. Similarly, al-Ḥasan ibn Abī Mālik related from Abu Yūsuf from Abū Ḥanīfa that he said, "If the witnesses for the individual in whose possession the house is specify a time period and the witnesses of the claimant do not, the specification of a time period is given no consideration and judgment is rendered for the claimant." This is the well-known (*mashhūr*) view of Abū Ḥanīfa. Al-Ḥasan al-Lu'lu'ī related from Abū Ḥanīfa that judgment is given for the one who specifies a time period whether it is the claimant or the defendant.'[496]

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[494] Al-Qaysī, *Adab al-qāḍī*, 27-8.
[495] Ibid., 92.
[496] Ibid., 94.

Besides the occasional citation of traditions at the beginning of a few sections and brief expository material, the general style of al-Qaysī's text follows this enumerative style where the masters are left to present their own doctrine. In contrast to Hilāl and al-Khaṣṣāf, al-Qaysī cites his sources more consciously, such as the *Amālī* of Abū Yūsuf, *Kitāb Bishr ibn al-Walīd*, and *al-Aṣl*, as well as naming the transmitters relating opinions from the masters, such as al-Ḥasan ibn Ziyād, al-Ḥasan ibn Abī Mālik, Ibn Samāʿa, Muʿallā, and most uniquely and frequently, Asad ibn al-Furāt.

Following the period of al-Khaṣṣāf and al-Qaysī emerged a new genre of texts that appealed to the authority of the masters more systematically, namely the first Ḥanafī *mukhtaṣar*s. The most important *mukhtaṣar* was that of al-Ṭaḥāwī who declares his objective in the introduction to present the legal opinions of Abū Ḥanīfa, Abū Yūsuf, and al-Shaybānī. These are enumerated by al-Ṭaḥāwī as lists of individual rules carefully selected, summarized, and arranged under various books (*kutub*) and chapters (*abwāb*). Generally, al-Ṭaḥāwī simply mentions the actual ruling but in instances where the Ḥanafī masters held different opinions on an issue, the individual rulings are presented as authority statements, such as 'Abū Ḥanīfa said' or 'Abū Yūsuf said'. Sometimes, more than one legal opinion is ascribed to a single Ḥanafī master. Here, al-Ṭaḥāwī usually presents the various opinions and identifies their transmitters, as in the statement 'Muḥammad narrated such and such from Abū Ḥanīfa, while al-Ḥasan narrated from him that it was such and such.' This is quite common in the case of Abū Yūsuf where al-Ṭaḥāwī shows a consistent concern, firstly, to report what the *aṣḥāb al-imlā'* transmitted from him, and, secondly, to identify the old opinion (*qawl qadīm*) he held or the one he held towards the end of his life (*ākhir ʿumrihi*). In addition to this, al-Ṭaḥāwī also informs the reader when no difference of opinion exists between the Ḥanafī masters. Such agreement is expressed with the statement

'according to them all' (*fī qawlihim jamīʿan*) and by noting that 'Muḥammad did not narrate any difference of opinion on this issue' (*lam yaḥkī fīhi khilāfan*).

Sample from *Mukhtaṣar al-Ṭaḥāwī*

> **6.6.** When dawn appears, the time for Fajr prayer enters. Its time exits when the sun rises. When the sun reaches its zenith, the time for Ẓuhr enters. Abū Yūsuf related from Abū Ḥanīfa that its time does not exit until shadows reach two shadow lengths. Al-Ḥasan and others related from Abū Ḥanīfa that when a shadow reaches one shadow length then its time exits. This is the opinion of Abū Yūsuf and Muḥammad. Abū Jaʿfar said, 'This is what we adopt.' When Ẓuhr time exits, the time for ʿAṣr follows it, and when the latter exits, Maghrib time enters. According to Abū Ḥanīfa, its time ends with the disappearance of the whiteness that appears after the redness. Abū Jaʿfar said, 'This is what we adopt.' Abū Yūsuf and Muḥammad, it is with the disappearance of the redness that appears before the whiteness.[497]

The *mukhtaṣar* genre would come to function as an authoritative collection of a school's legal doctrine aimed at providing a basic pattern of norms, or a structural framework, of the law. Consequently, its emergence signalled an important development in the rise and consolidation of *taqlīd* as an expression of loyalty to the legal school. Given the succinct nature of such texts, *mukhtaṣar*s would serve both as teaching aides and the foundation for a more generalizing approach to legal activity in the form of commentary literature. In the case of *al-Mukhtaṣar* of al-Ṭaḥāwī, it was transmitted to Iraq and other centres of Islamic learning during the author's own lifetime, and the earliest commentary it received was written only decades after his death by Abū Bakr al-Jaṣṣāṣ.[498] By this period, the Ḥanafī school had clearly evolved into a doctrinal entity.

It is interesting to note that Ḥanafī jurists were relatively late in authoring *mukhtaṣar*s having been preceded by Abū Yaʿqūb al-Buwayṭī (d. 231/846), Ḥarmala ibn Yaḥyā (d. 243/858), and Ismāʿīl ibn Yaḥyā al-Muzanī (d. 264/877), all students of al-Shāfiʿī, and ʿAbd Allāh ibn ʿAbd al-Ḥakam (d. 214/829), a student of Mālik ibn Anas. In fact, Ḥanafī jurists authored commentaries before the emergence of the first school *mukhtaṣar*s as seen earlier in the biographies of Ibn Shujāʿ

[497] Al-Ṭaḥāwī, *Mukhtaṣar*, 22.
[498] Al-Jaṣṣāṣ also authored a commentary on the *mukhtaṣar* of al-Karkhī. See Ibn Abī al-Wafā', *al-Jawāhir*, 1:223.

and Abū Khāzim. One possible explanation for the late appearance of this genre in the Ḥanafī school may relate back to several of the texts left behind by the masters closely resembling a *mukhtaṣar* in their selective and succinct enumeration of legal rulings as is the case with *al-Jāmiʿ al-kabīr* and *al-Jāmiʿ al-ṣaghīr*. Despite their late emergence, the conclusion of the 3rd/9th century saw not one but three Ḥanafī *mukhtaṣar*s authored, namely by al-Ṭaḥāwī in Egypt, Abū Mūsā al-Ḍarīr in Iraq, and al-Ḥākim al-Shahīd (d. 334/945) in Marw. This was then followed by the *Mukhtaṣar* of al-Karkhī. These texts not only adopted a method of presenting law where legal rulings were enumerated systematically on the authority of the Ḥanafī masters, their treatment of these rulings display what would later be called *ijtihād fī al-madhhab*, or school-internal reasoning, through a set of distinguishable interpretative techniques, such as the endorsement of an opinion from among various other opinions attributed to the masters (*tarjīḥ*).[499] These techniques would assist in defining the limits of the school's doctrinal boundaries and its authoritative opinions, as well as ensure that the school was a consolidated and integral entity. As shall be seen, these techniques had their beginnings prior to the period of the *mukhtaṣar*s, though they are most clearly visible with their emergence.

B. Expositing Legal Doctrine

A second context wherein such explicit appeals to authority are made is during the employment of an expository voice. This is most noticeable in the texts of Hilāl and al-Khaṣṣāf who utilize this technique to explain answers and draw attention to subtle distinctions, evidences, and principles underlying a particular issue. Whereas the standard *qāla*/*qultu* dialectic in these texts generally limited itself to providing terse answers to questions posed by an interlocutor, the

[499] This is particularly true for the *mukhtaṣar*s of al-Ṭaḥāwī and al-Karkhī. As for al-Ḥākim, his text is actually a summary of the works of al-Shaybānī. Therefore, it represents a sub-category of the *mukhtaṣar* that did not engage as heavily in the task of negotiating between various sources of the school as other *mukhtaṣar*s did.

expository voice abandoned this dialectic interplay and introduced points of legal reasoning through a phrase familiarly employed by *ra'y* practitioners, 'do you not see' (*a-lā tarā*). Take the following example from Hilāl:

> **6.7.** I said: What is your opinion regarding a person who soundly designates land as an endowment for the poor and needy but does not mention its cultivation, what is the position concerning this with you?
> **6.7.1.** He said: It is necessary for the judge to first spend all the yields arising from this land towards its cultivation and restoration. Then he should divide any yields after this between the poor and needy.
> **6.7.2.** I said: Why do you state this when the endower did not stipulate that one should first use its yield towards its cultivation and this is what you are starting with?
> **6.7.3.** He said: This is because if it is not cultivated, the land will turn to ruin and this would be detrimental to the interests of the poor and needy and to providing for them completely. Do you not see that Abū Ḥanīfa stated that if a person made a bequest saying, 'If I die then my slave should be in the service of so-and-so' that the bequest is valid? His slave will serve so-and-so as bequeathed for as long as he lives, and the beneficiary is responsible for the slave's provision, food, clothing, and anything else to maintain him. Likewise, Abū Ḥanīfa said regarding a person who bequeaths the yield of a piece of land that its irrigation is upon the beneficiary who is using such yields if the land has a date grove.[500]

In his texts, al-Khaṣṣāf also regularly appeals to the masters while explaining a legal ruling:

> **6.8.** I said: What do you say regarding those who differed with each other from the people of the *qibla* and held the opinions of some of the people of vain desires?
> **6.8.1.** He said: Whoever embraces Islam, the ruling concerning his bequests and endowments is the same as that of all other Muslims. Don't you see it was related from Abū Yūsuf that he said, 'I permit the testimony of people of vain desires except the Khaṭṭabīya, a faction from the Rāfiḍa, for it is said that they support one another in their testimony and attest to each other's claims.' As for their bequests and endowments, then what is permitted for, and demanded of, all other Muslims in regard to both is permitted for, and demanded of, these people as well.[501]

In another example:

> **6.9.** I said: What is your opinion regarding a person who says, 'I designate this land of mine as a charitable endowment for God in perpetuity for my sons and after them the needy'?
> **6.9.1.** He said: The endowment is valid. If he has two sons, then the yield will be divided between the two of them. Likewise, if there are more than two, the yield will belong to all of them. However, if there is only one son, then he will be given half the yield and the remaining half for the needy.
> **6.9.2.** I said: Why do you say this?
> **6.9.3.** He said: Because the minimal number of individuals the term 'sons' (*banīn*) applies to is two. It is related from Abū Ḥanīfa that he stated regarding a person who bequeathed one-third of

[500] Hilāl al-Ra'y, *Aḥkām al-waqf*, 19-20. Also see 27, 39, 232, 242, 256-9, 261, 271, 283, 288.
[501] Al-Khaṣṣāf, *al-Awqāf*, 342.

> his wealth to the sons of so-and-so and this person only had one son that he would be given half of one-third, which is one-sixth of the wealth. The remaining half will be given to the inheritors of the bequeather. And the rulings of endowments are analogous to a bequest.[502]

In these expository contexts, appealing to the authority of the masters indicated another component in the paradigm of Ḥanafī jurists: the legal rulings and cases of the masters served to explain and justify the conclusions that jurists reached. The opinions of the masters, therefore, became the foundation upon which an ever-advancing juristic structure was erected and explained. Significantly, neither Hilāl nor al-Khaṣṣāf ever seem to appeal to any other legal authority when justifying their conclusions with the exception of the Prophet and his Companions.

Other sources from this period do not employ such a vivid expository voice as part of a sustained dialectic. This is mainly due to the type of sources that have survived from the period. The text of al-Qaysī, for example, does not display much interest in legal exposition and is stylistically very different from those of Hilāl and al-Khaṣṣāf. Instead of a dialectic aimed at scrutinizing and positioning cases within a wider juristic structure, al-Qaysī simply enumerates rulings as authority statements from the masters with only occasional and brief explanations. Meanwhile, the texts of al-Ṭaḥāwī that exposit the law in detail largely concern themselves with inter-school discussions in contrast to the more intra-school focus of Hilāl and al-Khaṣṣāf. Consequently, al-Ṭaḥāwī explains and justifies legal rulings with a view to the primary texts as opposed to the doctrine of a specific jurist.

Despite this, there are scattered references to Ḥanafī jurists' appealing to the masters in such expository contexts. The following from Abū Bakr al-Iskāf is one example of this from a contemporary of al-Ṭaḥāwī:

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[502] Ibid., 109. Also see 28, 58, 62, 66, 76, 111, 133, 324, 328-9, 461.

> **7.0.** Abū Bakr said, 'If a man bought a slave girl with the condition that he had the option to cancel the sale within three days and then he engaged in sexual relations with her, his option would not be invalidated. The same would be the case if the option was for the seller. Don't you see what our scholars stated regarding a person who purchased a slave girl but did not take possession of her and then married her off that he is not viewed as having taken effective possession of her due to this? This is because when the original seller sold her to the buyer, he made it permissible for the latter to engage in sexual relations with her, but this permissibility did not in itself render him in possession of her legally. Likewise, this would be the case if the seller permitted sexual relations for someone else [by marrying her off]."[503]

Given the relative regularity of this in the texts of Hilāl and al-Khaṣṣāf, it is safe to assume that this was a feature of Ḥanafī legal discourse at the time. The function of the masters' opinions as a source for explaining and justifying legal rulings also rendered it a source for deriving solutions for unprecedented cases, which further augmented their legal doctrine, as shall be detailed later.

C. Questions by Interlocutor & Doctrinal Conformity

The third context in which the authority of the masters is appealed to is during questions posed by an interlocutor. As described earlier, the appearance of an interlocutor was an important literary convention in the *ra'y* dialectic found in 3rd/9th century Ḥanafī texts. This dialectic involved a progressive exchange that created a graded series of cases, which served as a means to explore the implications of various legal rulings, define their limits, and test their soundness, all in an attempt to erect a stable and consistent juristic structure. The texts of Hilāl and al-Khaṣṣāf demonstrate a clear desire for such a system. However, both of them consciously attempt to show the manner in which the individual rulings they formulate align with the doctrine of the Ḥanafī masters, and one way this concern is exhibited is through an interlocutor who presses both jurists to compare their conclusions with such doctrine. This is particularly prominent in the texts of al-Khaṣṣāf as the following example illustrates:

[503] Al-Samarqandī, *al-Fatāwā*, 335. For another example, see 665.

7.1. I said: What is your opinion regarding a person who designates his land as a charitable endowment to God in perpetuity for his children, grandchildren, great-grandchildren, and their progeny without end… then after them to the poor, will the children of the daughters be included with the children of the males in the yields of this charitable endowment?
7.1.1. He said: Yes, the children of the daughters will be included in this even if lower down in the lineage and they will be equal to the children of the males.
7.1.2. I said: Has it not been related from Abū Ḥanīfa and Abū Yūsuf that the children of the daughters are not included with the children of the males in the yields of this charitable endowment. Rather, it will only be for the children of males?
7.1.3. He said: We have not found anyone transmitting this opinion from them. The only position related from Abū Ḥanīfa is his statement regarding a man who bequeathed one-third of his wealth to the children of Zayd ibn ʿAbd Allāh that if Zayd had male and female children on the day the bequeather died, one-third would be divided between the males and females according to their number. If Zayd only had one child, all of it would belong to him or her. However, if Zayd had no surviving children but only male and female grandchildren, one-third would go to the children of the males and not the females. I believe our companions made an analogy between endowments and bequests because generally what they stated regarding endowments was based on an analogy with what resembles it from bequests. Muḥammad said that the children of the females would be included in this charitable endowment and they will be equal to the children of the males in receiving its yields because the children of the females are regarded as the descendants of Zayd.[504]

In another example:

7.2. I said: What is your opinion regarding a non-Muslim who designates his home as a mosque for Muslims, builds it like a mosque, removes it from his ownership, and grants permission for people to pray in it?
7.2.1. He said: According to us, this is an act of worship by which a Muslim draws closer to God. As for non-Muslims, this is not an act of worship for them. Don't you see that if he made a bequest that his house be made a mosque after his death that this is not valid. Likewise, if a non-Muslim made a bequest that Hajj be made on his behalf with a thousand *dirhams*, this would be invalid because this is not an act through which a non-Muslim draws closer to God.
7.2.2. I said: What do you say regarding a non-Muslim who makes a bequest that his house be made into a mosque for a specific people?
7.2.3. He said: By virtue of *istiḥsān*, I permit this due to its being a bequest for a specific people.
7.2.4. I said: Isn't it the opinion of our companions that if a non-Muslim makes a bequest to have Hajj performed on his behalf, the bequest is invalid?
7.2.5. He said: Yes.
7.2.6. I said: So, if he made a bequest that this be given to a specific group of people who can perform Hajj with it?
7.2.7. He said: A bequest made to a specific group is valid and so it will be given to them. If they wish, they can perform Hajj with it, and if not, then not.[505]

In a final example, after a lengthy answer by al-Khaṣṣāf regarding the invalidity of a person making an endowment to his slaves, his interlocutor makes the following inquiry:

[504] Al-Khaṣṣāf, *al-Awqāf*, 28-9.
[505] Ibid., 336-7.

> **7.3.** I said: Didn't Muḥammad state that a person making an endowment for his *umm walad* and *mudabbar* is valid?
> **7.3.1.** He said: I think that the reasoning underlying the opinion of Muḥammad is that the freedom of the *umm walad* and *mudabbar* was occasioned during the endowers lifetime and they are granted freedom upon his death. Thus, he permitted designating an endowment for them. Otherwise, all of these types, namely the slave, *umm walad*, and *mudabbar*, are analogous. Either it is valid to make an endowment for all of them or it is invalid for all of them.[506]

Like the previous contexts wherein the masters were explicitly appealed to, the questions posed by al-Khaṣṣāf's interlocutor display an intra-communal discourse where Ḥanafī jurists felt a need to not only ground many of their answers and justifications in the doctrine of the masters but also address statements made by them that seemingly contradicted their conclusions. That there existed some expectation on the part of jurists associated with the nascent Ḥanafī school to uphold the doctrine of the masters has already been noted earlier in an incident with ʿĪsā ibn Abān and his decision to exclude ʿUbayd Allāh ibn Muḥammad al-Taymī from an endowment left by his maternal grandfather. This decision was objected to by several Basran Ḥanafīs, such as Hilāl, on grounds that it contravened the position of the masters who did include the children of female descendants in such endowments (1.6.). As al-Khaṣṣāf mentions in his discussion on the issue (7.2. to 7.2.3.), there are no reports he is aware of where Abū Ḥanīfa and Abū Yūsuf excluded grandchildren from daughters in an endowment designated for one's children and grandchildren, while a position related from al-Shaybānī also included them. Therefore, there seemed to have been agreement among the Ḥanafī masters that an endowment stipulated for 'one's children, grandchildren, and great grandchildren' (*waladihi wa-walad waladihi wa-awlād awlādihim*) did include grandchildren from daughters.[507] However, ʿĪsā insisted that his decision was consistent with the doctrine of al-Shaybānī. His justification appealed to an opinion of al-Shaybānī in *al-Siyar al-kabīr* where a guarantee of safety extended to a non-Muslim, his

[506] Ibid., 122-3. Also see 322.
[507] This issue is actually discussed by al-Shaybānī in *al-Ḥujja*, 3:56.

children, and grandchildren did not include his grandchildren from his daughters. Consequently, ʿĪsā argued that the same should apply in the law of endowments.

This example is among the clearest from the first half of the 3rd/9th century (besides Hilāl and al-Khaṣṣāf) displaying some degree of communal pressure towards doctrinal conformity. This need not be understood as indicative of complete doctrinal loyalty for jurists up until the middle of the 4th/10th century were more than willing to consider legal matters independent of earlier authoritative figures even at the expense of disagreeing with them. Nonetheless, the interlocutor in the texts of Hilāl and al-Khaṣṣāf is presented as someone intimately aware of the subtleties underpinning the rulings of the Ḥanafī masters. As such, the dialectic constructed between the *qāla*/*qultu* figure was reflective of an intra-school discourse where the creation of a consistent and logical juristic system had to account for the doctrine of the masters.

Besides these examples, there are once again scattered references from earlier and later periods attesting to this phenomenon. Abū Sulaymān is shown being asked by his students about specific opinions transmitted from the masters that contradict the answers he provided as in the following example:

> **7.4.** Nuṣayr said, 'I asked Abū Sulaymān regarding a person who purchased land stipulating all its rights as belonging to him. He replied, "The crops and fruits will not enter." I said to him, "Some people transmitted from Abū Yūsuf that he said they would enter." He said, "He said this out of anger due to something that had reached him from Muḥammad and it was an error on his part."'[508]

Nuṣayr is similarly shown asking his teachers, such as ʿĪsā and Bishr ibn al-Walīd, regarding the authorities for their answers.[509] There are several more examples of this towards the end of the 3rd/9th century in exchanges featuring al-Iskāf and others from his generation:

> **7.5.** Abū Bakr was asked regarding a person who prays *witr* but does not recite in the third cycle. He said, 'It should not be allowed by agreement.' It was said to him, 'Isn't *witr* akin to an

[508] Al-Samarqandī, *al-Fatāwā*, 356. For a similar example, see Ibid., 21.
[509] Ibid., 411, 587.

> obligatory prayer with Abū Ḥanīfa?' He said, 'Every ruling of the obligatory prayer does not apply to *witr*. Don't you see that if someone asked him how many prayers there were that he would reply that there were five?'[510]
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> **7.6.** Abū Bakr was asked regarding a person who leased an animal in order to carry ten *aqfiza* of barley but instead he carried fifteen *aqfiza* of wheat. He said, 'He is liable.' It was said to him, 'It was related that Abū Yūsuf stated, "If the weight of the wheat is more than ten *aqfiza* of barley, he is liable, and otherwise he is not."' He said, 'If so, then there are two narrations on the issue.'[511]

These examples suggest that the Ḥanafī legal community during the 3rd/9th century was concerned with how the opinions of its jurists aligned with the doctrine of the masters. By the middle of the 4th/10th century, it would be a regular feature of Ḥanafī legal discourse to point out when the opinions of a particular jurist conflicted with those of the masters as seen in the texts of al-Jaṣṣāṣ and al-Samarqandī.

D. Doctrinal Augmentation & Rule-Derivation (*takhrīj*)

Perhaps the most significant context in which such appeals to authority were made is during the presentation of a legal ruling that was based on an analogical extension of the masters' opinions and principles as opposed to a direct answer on their part for a particular case. This was a form of rule-derivation that was known in later periods as *takhrīj* and resulted in the augmentation of legal doctrine, which was integral to the maturation of the school as a doctrinal entity and one of the most important functions of any legal paradigm.[512] The methods jurists utilized to derive new legal rulings through *takhrīj* were varied but it largely involved implicit or explicit appeals to the principles and *corpus juris* of an earlier authority. Indeed, as mentioned earlier, the legal rulings of the masters were at their core expressions of particular meanings and principles. These rulings

[510] Ibid., 99.
[511] Ibid., 400.
[512] For more on the practice of *takhrīj*, see Hallaq, *Authority*, 43-56; Ahmad Atif Ahmad, *Structural Interrelations of Theory and Practice in Islamic Law: A Study of Six Works of Medieval Islamic Jurisprudence*, Studies in Islamic Law and Society 27 (Leiden: Brill, 2006).

could, therefore, serve as a source to which varying hermeneutical techniques could be applied to address novel cases.[513]

The most basic form of *takhrīj* involving an explicit appeal to authority was one that based a new ruling on a particular text and the opinion it conveyed. This was known among certain jurists as *al-takhrīj wa-al-naql*, and one manner it was expressed was through the phrase 'the *qiyās* of so-and-so's opinion'. This particular expression of *takhrīj* is attested to in the earliest sources of the Ḥanafī school and continued unabated into the classical period. The students of Abū Ḥanīfa are shown on a number of occasions remarking that they do not know the specific opinion of their teacher on an issue and proceed to analogize on one of his existing opinions to arrive at a conclusion. Take the following example from Abū Yūsuf:

> **7.7.** Muʿallā said, 'I asked Abū Yūsuf, "Did you transmit from Abū Ḥanīfa that a fasting person who suffers pain in his eye, or is sick, and fears this pain or sickness increasing, he may break the fast?" He replied, "No, but it is what analogy on his opinion entails (*qiyās qawlihi*)." I said to him, "Which opinion of his did you base this analogy on?" He said, "Abū Ḥanīfa stated regarding a person who suffered from an eye infection to whom it was said, "We will provide you medical treatment so remain lying down for seven days and do not pray during these days except in this position" that he should lie down and remedy his eyes."'[514]

Similarly, al-Shaybānī employs such analogy when unaware of an opinion from Abū Ḥanīfa:

> **7.8.** In *al-Nawādir* of Hishām: 'If one prays while his clothing is affected by more than a *dirham* of fermented *nabīdh* (beer), *munṣif* (an alcoholic beverage cooked till half of it evaporates), or *naqīʿ al-zabīb* (an alcoholic beverage from raisins soaked in water), then he must repeat his prayer according to the opinion of Abū Ḥanīfa. I asked Muḥammad, "If his clothing is affected by *faḍīkh* (*nabīdh* from dates prepared without any boiling/heating) more than the extent of a *dirham*?" He said, "I do not recall Abū Ḥanīfa's opinion on this specifically, but what is analogically entailed from his position is that the prayer would have to be repeated."'[515]

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[513] El Shamsy, *Canonization*, 179.
[514] Al-Ghāmidī, "*Kitāb Nawādir Muʿallā ibn Manṣūr*," 161; For more examples, see Ibid., 123, 132-3, 155, 210, 213, 304; al-Nāṭifī, *al-Ajnās*, 1:92.
[515] Al-Nāṭifī, *al-Ajnās*, 1:477.

These citations demonstrate that the students of Abū Ḥanīfa when asked about a legal issue not only felt the need to cite their teacher's opinions as previously detailed but also to mention when he did not express an opinion at all. In such cases, these students would occasionally deduce what he would have potentially stated by analogizing on his established legal opinions. Carefully analysing the authorities that jurists like Abū Yūsuf and al-Shaybānī appealed to when engaging in such analogical derivation reveals that they possessed subtly distinct conceptions of legal authority. For Abū Yūsuf, it was Abū Ḥanīfa who loomed large as the major jurist whose opinions were to be consistently transmitted and extended by way of *takhrīj*. Though Abū Yūsuf was affiliated with Ibn Abī Laylā, the frequency of doctrinal transmission between the two paled in comparison with what existed between Abū Yūsuf and Abū Ḥanīfa, and there is virtually no trace of Abū Yūsuf being engaged in the augmentation of Ibn Abī Laylā's legal doctrine.[516]

In contrast, the circle of authorities that al-Shaybānī appealed to from a similar generation of jurists was wider and mainly centred on Abū Ḥanīfa, Abū Yūsuf, and to a lesser extent Zufar. In *al-Amālī* transmitted by Shuʿayb al-Kaysānī, al-Shaybānī never fails to transmit the opinions of Abū Ḥanīfa and Abū Yūsuf alongside his own. These are a combination of the actual opinions these two authorities expressed, as well as al-Shaybānī's analogical extension of them. Thus, several sections in *al-Amālī* provide a lengthy enumeration of legal rulings and then conclude with, 'All of this is the position of Abū Ḥanīfa, Abū Yūsuf, and its analogical extension (*qiyāsihi*), and all of it is our position as well.'[517] Subtle variations of this statement demonstrate that al-Shaybānī was careful in the manner he presented these views. For example, in one section

[516] As seen in a text like *al-Nawādir* of Muʿallā. In the first two-hundred pages of the text, Abū Ḥanīfa appears dozens of times, while Ibn Abī Laylā does so only in a handful of instances.
[517] Al-Shaybānī, *al-Amālī*, 14, 50, 62, 66.

he states after enumerating a series of legal rulings, 'All of this is our position and Abū Yūsuf's, and it is what is analogically entailed by the opinion of Abū Ḥanīfa.'[518] Here, it is clear that none of the rulings al-Shaybānī mentioned were actually explicated by Abū Ḥanīfa himself.

The *Amālī* reveals little interest on the part of al-Shaybānī to augment the legal doctrine of anyone besides Abū Ḥanīfa and Abū Yūsuf. This is also seen to a great extent in *al-Aṣl* where the phrase *qiyās qawl Abī Ḥanīfa* appears three-hundred and fifty-six times (356x) over thirty-seven chapters, *qiyās qawl Abī Yūsuf* forty-eight times (48x) over nineteen chapters, and *qiyās qawl Abī Ḥanīfa wa-Abī Yūsuf* fourteen times (14x) over twelve chapters. To this can be added three more phrases that may presumably be accretions from the early 3rd/9th century: *qiyās qawl Abī Ḥanīfa wa-Abī Yūsuf wa-Muḥammad* appears seventy-seven times (77x) over thirteen chapters, *qiyās qawl Abī Ḥanīfa wa-Muḥammad* twenty-one times (21x) over fifteen chapters, and *qiyās qawl Abī Yūsuf wa-Muḥammad* forty-one times (41x) over fourteen chapters. In comparison, *qiyās qawl Ibn Masʿūd* appears once (1x), *qiyās qawl ʿAlī* ten times (10x) over two chapters, *qiyās qawl Ibrāhīm al-Nakhaʿī* twice (2x) over two chapters, and *qiyās qawl al-Shaʿbī* twenty-four times (24x) in a single sub-section concerning the inheritance of a hermaphrodite. Clearly, the authorities that al-Shaybānī centred his legal discourse around constituted an additional layer of jurists than those relied on by Abū Yūsuf, and the generation of Ḥanafī jurists that followed al-Shaybānī would rely on a paradigm of legal activity that added yet another layer of authority that would include al-Shaybānī himself.

	qiyās qawl Abī Ḥanīfa	*qiyās qawl Abī Yūsuf*	*qiyās qawl Abī Ḥanīfa wa-Abī Yūsuf*	*qiyās qawl Abī Ḥanīfa wa-Abī Yūsuf wa-Muḥammad*	*qiyās qawl Abī Ḥanīfa wa-Muḥammad*	*qiyās qawl Abī Yūsuf wa-Muḥammad*
Frequency	356	48	14	77	21	41

Table 5: *Takhrīj* on the basis of the Ḥanafī masters' doctrine in *al-Aṣl*

[518] Ibid., 24.

Alongside the apparently accretive material in the text of *al-Aṣl* that some have dated to the first half of the 3rd/9th century,[519] several other sources from this period display a similar method of rule-derivation and doctrinal augmentation.[520] The texts of Hilāl and al-Khaṣṣāf are once again important sources in this regard as both these authors engage in several forms of *takhrīj*, which include the previously mentioned '*qiyās* of so-and-so's opinion'. Take the following examples:

Hilāl in *Aḥkām al-waqf*

7.9. I said: What is your opinion regarding a person who makes his land an endowment and bequeaths it to two individuals after which he passes away, can one of them sell the yields of the land without the other?
7.9.1. He said: He cannot do this because the deceased did not give his consent to one of them at the exclusion of the other. This is our position. Each of them possessing this right is analogically entailed by Abū Yūsuf's opinion.
7.9.2. I said: What is your opinion regarding a person who makes his land an endowment and bequeaths it to two individuals after which one of them dies, can the other sell the yields of this land without the other?
7.9.3. He said: He cannot do this because the deceased did not give his consent to one of them at the exclusion of the other. This is our opinion and the opinion of Abū Ḥanīfa. Based on an analogical extension of Abū Yūsuf's opinion, either one of them may preside over this. Don't you see that Abū Yūsuf stated that if a person bequeaths something to two people, then each of them can administer what belongs to him, pay his debt, and execute his bequest? The same is the case with an endowment.[521]

al-Khaṣṣāf in *Aḥkām al-awqāf*

8.0. I said: What is your opinion if he said while in good health, 'I designate this land of mine as a charitable endowment to God for the poor and needy so long as the heavens and earth exist.'
8.0.1. He said: According to what is analogically entailed from his [i.e. Abū Ḥanīfa] opinion, this endowment would be invalid.[522]

al-Khaṣṣāf in *al-Nafaqāt*

8.1. If a slave girl is in the possession of someone and another person claims her as his own and presents two witnesses to support his claim, while the one who is currently in possession of her denies the claim, the judge will place her with an upright person until he examines the state of the witnesses. If she requests provision, the judge will impose it on the one who currently possesses

[519] Calder, *Studies*, 66; Melchert, *Formation*, 66.
[520] For examples of Muʿallā engaged in this activity, see al-Ghāmidī, "*Kitāb Nawādir Muʿallā ibn Manṣūr*," 246, 333.
[521] Hilāl al-Raʾy, *Aḥkām al-waqf*, 105-6. Also see 93-4, 103, 105-6, 123, 158, 184, 283-6.
[522] Al-Khaṣṣāf, *al-Awqāf*, 111. Also see 113, 150, 155, 196, 306.

> her. Then if he provides for her for a few months and the evidence proves sound such that the judge rules in favour of the claimant, he cannot claim back any of the provision he provided to her according to what is analogically entailed by Abū Ḥanīfa's opinion as opposed to Abū Yūsuf and Muḥammad.[523]

A variation of this form of *takhrīj* in the texts of Hilāl and al-Khaṣṣāf involves the actual citation of an opinion in full in an expository context and then identifying a new legal ruling as analogous to it as opposed to merely stating 'the *qiyās* of so-and-so's opinion'. Described earlier as fulfilling an explanatory and justificatory function, this expository voice often involved specifying the basis for a legal ruling. Ordinarily, the connection between a new ruling derived by means of *takhrīj* and the doctrine of the masters is only implicit as Hilāl and al-Khaṣṣāf do not always explicitly cite the opinion serving as the basis of an analogy. However, on several occasions they do and may even combine the phrase 'the *qiyās* of so-and-so's opinion' with the full citation of the opinion that constituted the basis of this analogy (7.9.3.). In one example, Hilāl addresses the case of an endowment designated for a person's children and whether it would include a child born to a slave-girl that a person possessed but kept hidden if the birth of the child occurred within six-months of the endowment's yield arising. He replies that though the child will have an established lineage, he or she will not receive a share of the current yield but only subsequent ones. Hilāl based this on a similar ruling the masters forwarded in the section on *mukātaba* regarding a case of inheritance. Hilāl cites this ruling in full and concludes by stating, 'This is the position of our companions regarding the *mukātab* and an endowment is analogical to it (*al-waqf qiyāsuhu*).'[524] In other instances, Hilāl will not use the phrase *qiyās* but cite a legal opinion of one of the masters and then state, 'An endowment is similar (*al-waqf ka-dhālika*).'[525]

[523] Al-Khaṣṣāf, *Kitāb al-Nafaqāt*, 100-1.
[524] Hilāl al-Ra'y, *Aḥkām al-waqf*, 44-5. Also see 114, 123.
[525] Ibid., 54, 69.

Other expressions used to signal such analogy were 'this resembles' (*yushbih*), 'it is the same as' (*bi-manzila*), and so forth.[526]

A third form of *takhrīj* that appealed explicitly to the masters involved legal reasoning on the basis of general principles. In the texts of Hilāl and al-Khaṣṣāf, this type of *takhrīj* is extremely significant as these general principles often perpetuated a series of new legal rulings. In the context of endowments, the general principle that assumed centre stage with Hilāl and al-Khaṣṣāf was that the rulings of endowments were analogous to the rulings of bequests. Al-Khaṣṣāf is explicit in identifying this principle as underpinning the approach of the masters themselves and their students: 'Our companions analogized many issues relating to endowments with bequests (*qāsa aṣḥābunā kathīran min masā'il al-wuqūf ʿalā al-waṣāyā*)',[527] and elsewhere, 'Most of what they [i.e. our companions] stated regarding endowments was by way of analogy to what resembled it from bequests (*ʿāmmat mā qālūhu fī al-wuqūf innamā huwa ʿalā qiyās al-waṣāyā wa-mā yashbihuhā*).'[528] In certain contexts, al-Khaṣṣāf's interlocutor noted that he followed their lead by remarking, 'I have seen you analogizing many of the rulings of endowments on bequests', to which al-Khaṣṣāf replied, 'I only analogize upon bequests those rulings from endowments that resemble it.'[529] Though not always the case, the law of bequests constituted the main analogical basis for explaining and justifying the rulings of endowments in the text of al-Khaṣṣāf.[530] While bequest rulings cited by al-Khaṣṣāf as a basis for analogy were not always explicitly ascribed to the masters, the author was effectively following their methods. This same approach is adopted by Hilāl who like al-Khaṣṣāf makes a systematic effort to explain

[526] Hilāl al-Ra'y, *Aḥkām al-waqf*, 118, 122; al-Khaṣṣāf, *al-Awqāf*, 62.
[527] Al-Khaṣṣāf, *al-Awqāf*, 301.
[528] Ibid., 29.
[529] Ibid., 40.
[530] Ibid., 29, 40, 44, 46, 54-5, 66. 95, 142, 233, 235, 258, 301, 323.

the law of endowments with a basis in the law of bequests as seen in his remarks, 'This is the position of our companions concerning bequests, and endowments are analogous to it (*hādhā qawl aṣḥābinā fī al-waṣīya wa-al-wuqūf ʿalā qiyāsihi*).'[531] Indeed, both texts are replete with legal rulings that are explained and justified through an analogy with bequests.

Hilāl and al-Khaṣṣāf were not the only Ḥanafī jurists active during the first half of the 3rd/9th century to practise *takhrīj* on the basis of the Ḥanafī masters' doctrine. In the classical period, scholars would identify a three-tiered taxonomy of legal doctrine in the school with the third level being known as *nawāzil*.[532] This corpus was made up of legal rulings deduced by later generations of jurists for issues where no transmitted opinion existed from the masters, and a majority of these cases were solved by means of *takhrīj*. Prominent names associated with this activity from the first half of the 3rd/9th century included Abū Sulaymān, Abū Ḥafṣ al-Bukhārī, ʿIṣām ibn Yūsuf, Ibn Samāʿa, Muḥammad ibn Muqātil, Nuṣayr, Muḥammad ibn Salama, and others. The following are examples of Ibn Muqātil and Ibn Shujāʿ engaging in this activity:

> **8.2.** Muḥammad ibn Muqātil said, 'If a person leased his home and then wished to invalidate the lease in order to sell his house, if he is poor and does not possess provision for himself or his dependents, then he may invalidate it according to what is analogically entailed by the opinion of our scholars (*qiyās qawl ʿulamā'inā*). This is because they said that if a person has an exorbitant debt, he may invalidate the lease.'[533]

> **8.3.** Ibn Shujāʿ said, 'If a man who is praying gazes at the private parts of a woman, his prayer should be invalidated according to what is analogically entailed by the opinion of Abū Ḥanīfa. Don't you see that this would render her mother, sister, and daughter impermissible for him?'[534]

Ḥanafī jurists from subsequent generations also continued to utilize the principles and *corpus juris* of the masters to augment their legal doctrine. Several extant citations of Abū Khāzim's *Sharḥ al-Jāmiʿ al-kabīr* have him explaining and clarifying the opinions of the

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[531] Hilāl al-Ra'y, *Aḥkām al-waqf*, 199. Also see 39-40, 44, 46, 54, 59, 69, 104, 291-3, 292, 294, 318, 328.
[532] Ibn ʿĀbidīn, *Sharḥ uqūd*, 315-23. The other two levels were *ẓāhir al-riwāya* and *nawādir*, which will be discussed in Chapter 6.
[533] Al-Samarqandī, *al-Fatāwā*, 383. For this ruling from the Ḥanafī masters, see al-Shaybānī, *al-Aṣl*, 10:574-5.
[534] Ibn Māza, *al-Muḥīṭ*, 2:168.

masters, their principles, and what analogy on these entails. For example, al-Shaybānī presents a legal ruling in *al-Jāmiʿ al-kabīr* regarding the sale of collateral. If the pledgor (*al-rāhin*) sells the collateral after the pledgee (*al-murtahin*) has taken possession of it, the sale will be deemed invalid unless approved by the latter. However, if the pledgee disapproves of this sale prior to an official judgment being made regarding its invalidity and then the pledgor sells it to another person after which the pledgee approves of this second transaction, the first sale will be considered invalid and the second valid. The money from this sale will be given to the pledgee to pay back the debt due to him, and any amount remaining will be given to the pledgor.[535] Abū Khāzim comments:

> **8.4.** This is the position of Muḥammad. As for the opinion of Abū Yūsuf, the pledgee has no right to the money from this sale after having granted permission for it unless he had stipulated that the price would be counted towards the collateral.[536]

He then introduces another ruling:

> **8.5.** If the pledgor hands over the collateral to the second buyer after which the pledgee approves of the sale, then what is analogically entailed by his opinion (*qiyās qawlihi* [i.e. Abū Yūsuf]) is that the second sale is invalid and the first is valid. This is because the pledgee has effectively nullified the collateral agreement through his act of granting permission while the collateral was in the possession of the pledgor.[537]

Similarly, al-Qaysī includes rulings in his text that are analogical extensions of the masters' opinions.[538] Baghdadi jurists such as Abū ʿAmr al-Ṭabarī and al-Karkhī also explain and identify opinions deduced by way of *takhrīj*.[539] Near contemporaries of al-Karkhī from Balkh issued legal verdicts concluded on the basis of *takhrīj* as well, such as Abū al-Qāsim al-Ṣaffār and Abū Bakr al-Iskāf, as seen in the following examples related by al-Samarqandī:

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[535] Al-Shaybānī, *al-Jāmiʿ al-kabīr*, 262.
[536] Al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr*, ff. 3:54ab.
[537] Ibid., 3:54b. For additional examples, see Ibid., 3:51a, 58a, 59b; al-Sarakhsī, *al-Mabsūṭ*, 1:181.
[538] Al-Qaysī, *Adab al-qāḍī*, 108, 110-11.
[539] Al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr*, ff. 2:190b, ; Abū Bakr ibn Masʿūd al-Kāsānī, *Badā'iʿ al-ṣanā'iʿ fī tartīb al-sharā'iʿ*, ed. ʿAlī Muḥammad Muʿawwaḍ and ʿĀdil Aḥmad ʿAbd al-Mawjūd, 10 vols. (Beirut: Dār al-Kutub al-ʿIlmīya, 1997), 3:564, 7:533, 10:561.

> **8.6.** Abū al-Qāsim was asked about someone who performed ablution with snow. He said, 'Based on what is analogically entailed by certain opinions related from Abū Yūsuf, it would be permitted for he deemed ablution valid if water was used like an anointment [i.e. by rubbing]. As per the narration of Muḥammad, it would not be valid to use it like an anointment if it does not actually flow.'[540]
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> **8.7.** Abū Bakr was asked about a person who bought a camel for grazing but did not take possession of it until an entire *zakāt* year had passed. He said, 'Based on what is analogically entailed by the opinion Abū Ḥanīfa, there is no *zakāt* due on it.'[541]

Therefore, the activity of *takhrīj* was practised throughout the 3rd/9th century and, as Hallaq observed, was an important element in the process of constructing the authority of the masters by attributing to them doctrines they never held.[542] Employed by jurists during the formative period before the maturation of the legal schools, it was common for this method of rule-derivation to occur within and outside the boundaries of a particular doctrine. The Shāfiʿī jurist, Abū al-ʿAbbās Aḥmad ibn al-Qāṣṣ (d. 335/946), for example, based his work *Adab al-qāḍī* and the dozens of cases of *takhrīj* therein on the doctrine of both al-Shāfiʿī and Abū Ḥanīfa.[543] His teacher, Ibn Surayj (d. 306/918), similarly drew on the doctrine of Abū Ḥanīfa and also al-Shaybānī.[544] Such cross-influences between different legal traditions were not uncommon prior to the emergence of legal schools as fully authoritative entities. However, this is not clearly visible in Ḥanafī secondary literature – not in the works of Hilāl, al-Khaṣṣāf, al-Qaysī, nor al-Ṭaḥāwī. The latter does include opinions of non-Ḥanafīs, such as Mālik and al-Shāfiʿī, that were derived by way of *takhrīj* in his texts on comparative law, though this was to be expected in such a legal genre. In all likelihood, al-Ṭaḥāwī was incorporating *takhrīj* opinions derived by the followers of Mālik and al-Shāfiʿī in these comparative law texts. He does not, for example,

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[540] Al-Samarqandī, *al-Fatāwā*, 37.
[541] Ibid., 112. Also see 285, 314, 335, 400, 522.
[542] Hallaq, *Authority*, 43. For a very brief look at its practice among Shāfiʿī jurists, see El Shamsy, *Canonization*, 179.
[543] Abū al-ʿAbbās Aḥmad ibn al-Qāṣṣ, *Adab al-qāḍī*, ed. Ḥusayn Khalaf al-Jubūrī (Maktabat al-Ṣiddīq, 1989), 1:68.
[544] In his biographical dictionary, Abū Isḥāq al-Shirāzī remarks that Ibn Surayj 'derived legal rulings on the basis of the books of al-Shaybānī.' See Abū Isḥāq Ibrāhīm ibn ʿAlī al-Shīrāzī, *Ṭabaqāt al-fuqahā'*, ed. Iḥsān ʿAbbās (Beirūt: Dār al-Rā'id al-ʿArabī, 1981), 109.

include any of these opinions in his major school-centred text, namely *al-Mukhtaṣar*, wherein he presents the doctrine of the masters exclusively and adheres to it in all but a handful cases. Likewise, Ḥanafī jurists whose legal verdicts are preserved from this period are not shown engaged in the practice of extending the doctrine of non-Ḥanafī authorities.

IV. Conclusion

In the first part of this thesis, it was argued that the beginning of the 3rd/9th century witnessed the emergence of a Ḥanafī legal community possessing a distinct social identity. This chapter has attempted to examine this phenomenon through another perspective, namely the legal paradigm that early Ḥanafī jurists utilized in their discourse. Just as the distinctive character of the early Ḥanafī community manifested itself socially in the legal networks, training, and instruction of its jurists, it also manifested itself in the form of a unique legal paradigm that jurists adopted to engage the law. This paradigm was not only *ra'y*-based with an overarching concern for erecting a stable and consistent juristic structure, it was also explicitly grounded in the authority of the Ḥanafī masters. Indeed, it was the juristic structure the masters erected and left behind that constituted the raw material of rulings, sources, and methods that subsequent generations of Ḥanafī jurists engaged with in their own discourse, interpreted, and advanced. The earliest secondary legal literature of the Ḥanafī school attests to this not only through the enumeration of the opinions of the masters but also in the utilization of these opinions to explain the law, justify particular conclusions, address new issues, and augment legal doctrine through the practice of *takhrīj*. It is on account of the legal discourse of 3rd/9th century jurists being grounded in the doctrine of the masters and the intra-communal discussions this generated, which in turn created

a community of jurists, that one can identify and speak of a unique Ḥanafī legal paradigm and a distinct Ḥanafī community from the first half of this century.

Chapter Five

Chapter Four discussed the *ra'y*-based discourse of the Ḥanafī masters and some of its features, such as analogy, a concern for structural consistency, and a focus on legal meanings, which constituted a paradigm for the discourse of subsequent generations of Ḥanafī jurists. The most apparent sign of the 'Ḥanafī' nature of this paradigm was its grounding in the authority of the masters. From the simple enumeration of rulings to rule-derivation, Ḥanafī jurists during the 3rd/9th century anchored their discourse in the doctrine and authority of the Ḥanafī masters. The current chapter will examine two more components of early legal discourse that affirm its specifically Ḥanafī character: firstly, the implicit reliance 3rd/9th century jurists had on the wider juristic structure of the masters and their underlying principles; secondly, a mode of legal reasoning that the Ḥanafī masters were famously associated with, namely *istiḥsān* or juridical preference.

I. Implicit Reliance on the Masters' Doctrine in Early Legal Texts

The previous chapter detailed several contexts in which Ḥanafī jurists explicitly appealed to the authorities of the masters. Equally important to examine are cases where there was an implicit reliance on their legal doctrine. Though such reliance is not easy to detect, and there is always the possibility of incorrectly reading too much into earlier texts and opinions, the scope of the masters' influence over later Ḥanafī jurists makes it reasonable to expect that the discourse of the latter was in many contexts indebted to the doctrine of the former even when this was not explicitly expressed. There are several examples where this assumption is supported by the evidence and jurists are shown implicitly relying on the rulings of the masters and working on the basis of their principles.

A. The Texts of Hilāl & al-Khaṣṣāf

Ḥanafī legal texts from the 3rd/9th century provide a significant amount of material disclosing implicit reliance on the doctrine of the masters. The *waqf* texts of Hilāl and al-Khaṣṣāf have already been noted as operating on the basis of principles that were identified as guiding the conclusions of the masters, such as the central principle that endowments are analogous to bequests. Though Hilāl and al-Khaṣṣāf advanced the discourse of their predecessors when it came to endowment law by sharpening definitions and categorizations,[545] they were clearly cognizant of the underlying methodology of the masters, their opinions, and the differences that existed between them. Both jurists routinely appeal to cases of bequest law when expositing the legal rulings of endowments thus effectively following the approach and paradigm of earlier authorities on the issue.[546] This is done so often that Hennigan remarked that the use of analogy in these texts is 'primarily to establish linkages between bequest law and *waqf* law.'[547] These contexts wherein the wider juristic structure is brought into conversation, such as the law of bequests, sales, manumission, charity, and oaths, are the subtlest at revealing an implicit reliance on the doctrine of the masters, and, consequently, the most difficult to detect. This is because their detection requires a thorough and careful reading of the rulings and arguments presented by Hilāl and al-Khaṣṣāf, the legal meanings and principles they were operating on the basis of, and

[545] Hennigan states that the overall tone of Hilāl possesses a more theoretical and didactic quality, while al-Khaṣṣāf is more pragmatic and prescriptive in his concern. However, both are ultimately concerned with sharpening legal categorizations. See Hennigan, *Birth of a Legal Institution*, 42-5.

[546] For examples, see Hilāl al-Ra'y, *Aḥkām al-waqf*, 19, 22, 24-5, 27, 29, 33-4, 69, 102, 104, 106, 225, 265, 292-3, 299, 318; al-Khaṣṣāf, *al-Awqāf*, 40, 54, 66, 68, 71-2, 74, 76, 95, 134, 139, 140-2, 154, 217, 233, 281. These include discussions of when bequest laws are applicable to a specific case of endowments and when they are not. As al-Khaṣṣāf mentions, only those rulings of the former that resemble the latter constitute a valid basis for analogy. Consequently, both authors occassionally state 'and this does not resemble bequests' (*lā yushbih al-waṣīya*) to preemptively address questions concerning any apparent inconsistencies between bequests and endowments. On other occassions, it is the interlocutor who points out a potential contradiction allowing Hilāl and al-Khaṣṣāf to then address the matter. This shows the centrality of bequest law to endowment law, and the concern to ensure an analogical consistency between the two.

[547] Hennigan, *Birth of a Legal Institution*, 34.

an awareness of the broader legal tradition that preceded them. Though a comprehensive analysis is not possible here, the proceeding paragraphs will present a few examples of such implicit reliance in the texts of Hilāl and al-Khaṣṣāf and the manner in which they operated on the basis of Ḥanafī masters' rulings and principles.

(i) *Chapter on Endowing Land Acquired in a Corrupt Sale*

The first example relates to a chapter that both Hilāl and al-Khaṣṣāf include in their respective texts, namely endowing land that was acquired in a corrupt transaction. Beginning with al-Khaṣṣāf, his chapter starts with the following exchange:

> **8.8.** I said: What is your opinion regarding a person who purchased some land or a house in a corrupt sale (*fāsid*), took possession of it, and then soundly designated it as an endowment?
> **8.8.1.** He said: The endowment is valid, and the buyer will be liable to pay the seller its market price (*qīmatahā*) and take back the sale-price (*al-thaman*).
> **8.8.2.** I said: What if he endows it before taking possession of it?
> **8.8.3.** He said: The endowment is invalid and not permitted. Don't you see that if a person purchased a slave, took possession of what he bought, and then freed him that the manumission is valid? However, if he freed him before taking possession, then the manumission is invalid. An endowment is similar.
> **8.8.4.** I said: What is your opinion regarding a person who buys a house in a corrupt sale, takes possession of it, soundly designates it as an endowment, and pays the market price to the seller after which the pre-emptor of this house approaches, is he entitled to this house by way of pre-emption (*shufʿa*)?
> **8.8.5.** He said: Yes. The endowment will be nullified, and the pre-emptor will be able to take possession of it from the buyer for the market price paid by the latter. Don't you see that if a person purchased a home in a sound sale, endowed it in a sound manner, and then a pre-emptor sought it through a right of pre-emption that the latter is entitled to take the home and the endowment will be nullified? If the pre-emptor is entitled to take possession of it in the context of a sound sale than he is more entitled to do so in the context of a corrupt sale.[548]

In this dialectic, the interlocutor inquires about the validity of endowing land or a house acquired in a corrupt sale both in a scenario wherein the item of sale was taken possession of by the buyer and prior to such possession (8.8. and 8.8.2.). In the case where the item was taken possession of by the buyer before its designation as an endowment, al-Khaṣṣāf states that the endowment

[548] Al-Khaṣṣāf, *al-Awqāf*, 315.

would be valid, and the buyer would be liable for the market price of the land (8.8.1.). However, if the item is designated as an endowment before being taken possession of by the buyer, the endowment will not be valid (8.8.3.). This is followed by an explanation that appeals to a parallel ruling in the law of manumission (8.8.5.): 'Don't you see that if a person bought a slave, took possession of what he bought, and then freed him that the manumission is valid? However, if he freed him before taking possession, then the manumission is invalid, and an endowment is similar.'

This discussion is effectively grounded in the doctrine of the Ḥanafī masters. The category of a corrupt sale distinct from an invalid sale was primarily the opinion of the Ḥanafīs from the time of the masters who stipulated that such a sale would be concluded upon the buyer taking possession of the item after which it would enter into his ownership. He would consequently be liable for its market price.[549] Thus, al-Khaṣṣāf is working with a law of sales and contracts that was largely unique to the masters, though he does not explicitly refer to them. Further, the reasoning that al-Khaṣṣāf advances to justify his answer is essentially an explanation presented by al-Shaybānī in *al-Aṣl*: 'Don't you see that if a person purchases a slave in a corrupt sale and frees him or her without taking possession, then the manumission is invalid?'[550] Elsewhere, al-Shaybānī states, 'If the buyer frees a slave girl after taking possession of her, then the manumission is valid. Likewise, if he sold her or made a gift of her or agreed to her manumission after his death (*tadbīr*)… this is his disposing of the item (*istihlāk minhu*) … and

[549] This is in contrast to a valid and sound sale where the offer and acceptance alone results in a transfer of ownership regardless of whether the buyer takes possession of the item. See al-Ṭaḥāwī, *Mukhtaṣar*, 85-6.
[550] Al-Shaybānī, *al-Aṣl*, 7:368.

he is liable for the market price.'[551] In an earlier discussion on endowing land acquired in a corrupt sale, al-Khaṣṣāf explicitly mentions this underlying meaning of *istihlāk*:

> **8.9.** I said: What is your opinion regarding a person who purchased land in a corrupt sale, took possession of it, soundly designated it as an endowment, and designated it eventually for the poor?
> **8.9.1.** He said: The endowment is valid. He owes the seller the market price because he disposed of it (*istahlakahā*) when he endowed it and so caused it to leave his ownership.[552]

The legal meanings that al-Khaṣṣāf operates on the basis of were, therefore, ones that guided the conclusions of the masters: (i) ownership in a corrupt sale is established when the sale item is taken possession of; (ii) disposing of an item in a corrupt sale after taking possession of it is akin to destroying it; (iii) the price due in a corrupt sale is the market price; (iv) disposing of an item acquired in a corrupt sale prior to taking possession of it is invalid/impermissible.

The discussion of Hilāl in his chapter on endowing land acquired in a corrupt sale is the same with only minor differences:

> **9.0.** I said: What is your opinion regarding a person who purchased land from someone in a corrupt sale and then designated it as an endowment for the poor and needy after taking possession of it?
> **9.0.1.** He said: The endowment is valid, and it will be for what it was designated for.
> **9.0.2.** I said: And if the seller approaches him and disputes it?
> **9.0.3.** He said: The seller is owed the market price of the land on the day it was taken possession.
> **9.0.4.** I said: Why do you say this?
> **9.0.5.** He said: Because the buyer has disposed of it (*atlafahu*) and no longer owns the item. Consequently, he will be liable for its market price [to the seller]. Don't you see that if he sold it or gifted it, then he would be liable for the market price? An endowment is similar.
> **9.0.6.** I said: What is your opinion regarding a person who purchased land from someone in a corrupt sale and then designated it as an endowment for the poor and needy prior to taking possession of it?
> **9.0.7.** He said: The endowment is invalid and not permitted. Don't you see that if he sold it prior to taking possession of it while having originally bought it in a corrupt sale that the second sale would be invalid? An endowment is similar.[553]

[551] Ibid., 2:444. The notion of *istihlāk* is prominent in this section as seen in 2:440-3 and throughout the texts of al-Shaybānī as seen in *al-Aṣl*, 2:517, 4:96, 5:115, 9:77; al-Shaybānī, *al-Jāmiʿ al-kabīr*, 257.
[552] Al-Khaṣṣāf, *al-Awqāf*, 35.
[553] Hilāl al-Ra'y, *Aḥkām al-waqf*, 158.

Like al-Khaṣṣāf, Hilāl is operating on the basis of a tripartite categorization of sales as sound, corrupt, and invalid that the masters formulated. The distinction between a corrupt sale in which the item of sale is taken possession of and one wherein it is not is maintained by the author (9.0. and 9.0.6.). So are the rulings of endowing the purchased item in each case in terms of validity and invalidity, and the price owed in the former scenario being the market value of the item (9.0.1. to 9.0.3. and 9.0.7.). Finally, the justification of Hilāl echoes the rulings of the masters as well. The notion that the market price is due as a result of *itlāf* parallels that of *istihlāk* as both refer to the buyer's disposing of the item after taking possession of it by selling it, gifting it, and so forth. Later in the section, Hilāl himself uses the expressions *mustahlak* and *istihlāk* multiple times, such as in his statement that 'manumission is disposal (*istihlāk*)'.[554] He also cites the case of a freed slave mentioned by al-Shaybānī and al-Khaṣṣāf a few pages later when asked: 'What is your opinion regarding a person who purchases land from another person in a corrupt sale, designates it as an endowment to the poor before taking possession of it, and then takes possession of it afterwards?' Hilāl responds that the endowment is invalid and when asked why this scenario does not resemble a valid sale, he responds, 'Don't you see that if a slave were purchased in a corrupt sale and freed [before being taken possession of] that the manumission is invalid but if this occurred in a valid sale it would be valid?'[555] It was the underlying notion of possession and disposal that the masters identified consistently as the reason that rendered the buyer liable for the market price in a corrupt sale. Hilāl, like al-Khaṣṣāf, utilizes it as a basis to formulate and justify the rulings of endowments.[556]

[554] Ibid., 161-2.
[555] Ibid., 165.
[556] This meaning appears in other sections of their texts as well as seen in Ibid., 91, 93-4, 97-8.

Continuing the dialectic, al-Khaṣṣāf builds on the initial ruling by introducing an additional factor. The scenario now concerns land purchased in a corrupt sale, stipulated as an endowment, and then later demanded by a pre-emptor:

> **9.1.** I said: What is your opinion regarding a person who buys a house in a corrupt sale, takes possession of it, soundly designates it as an endowment, and pays the market price to the seller after which the pre-emptor of this house approaches, is he entitled to this house by way of pre-emption?
> **9.1.1.** He said: Yes. The endowment will be nullified, and the pre-emptor will be able to take possession of it from the buyer for the market price paid by the latter. Don't you see that if a person purchased a home in a sound sale, endowed it in a sound manner, and then a pre-emptor sought it through the right of pre-emption that the latter is entitled to take the house and the endowment will be nullified? If the pre-emptor is entitled to take possession of it in the context of a sound sale, then he is more entitled to do so in the context of a corrupt sale.
>
> Our companions stated regarding a person who purchased a stretch of land in a corrupt sale, made it into a house, and then a pre-emptor of the land demanded it that the buyer will be told to remove the house and hand over the land to the pre-emptor for the market price the buyer paid to the original seller.[557]

Al-Khaṣṣāf concludes that the pre-emptor continues to possess the right to this land and forwards an *a fortiori* argument, namely that such a right is maintained in a sound sale and, therefore, a pre-emptor should possess it more so in a corrupt sale (9.1.1.). He then cites a related ruling from the masters that touches upon some of the details relating to the price owed by the pre-emptor to the original buyer of this land.[558] Hilāl on the other hand directly addresses the case of pre-emption of endowed land that was purchased in a sound sale. Like al-Khaṣṣāf, he states that the pre-emptor is entitled to this land but makes no explicit reference to the masters. However, it is reasonably clear that he is following their doctrine as seen in a comparison of Hilāl's justification and the rulings formulated by al-Shaybānī:

Hilāl	**al-Shaybānī**
9.2. I said: Why do you say this when the buyer has endowed it and is its owner?	**9.3.** If a person purchased a house and then built a mosque in it, the pre-emptor may take

[557] Al-Khaṣṣāf, *al-Awqāf*, 315.
[558] There is a section on preemption in cases of corrupt sales in al-Shaybānī, *al-Aṣl*, 9:267-8.

9.2.1. He said: This is because pre-emption is akin to entitlement. Don't you see our opinion that if a person purchased a house from another person, made it into a mosque, and then another individual acquired it by way of pre-emption that the pre-emptor would take possession of it and its status as a mosque is nullified? Similarly, if he endowed it and then a pre-emptor came, it would be as I have described.

Don't you see that if a person purchased a house from another person, sold it, and then a pre-emptor demanded it, the pre-emptor may invalidate this second sale and take the land through the first sale (*la-hu an yabṭul al-bayʿ al-thānī wa-ya'khudhhā bi-al-bayʿ al-awwal*)?

However, if a person purchased a house from another person in a corrupt sale, sold it, and then the original seller came forth while the land had been taken possession of, he cannot invalidate this [second] sale. This is different to pre-emption.[559]

it through his right of pre-emption. He may also invalidate the mosque.[560]

9.4. The sale of a coerced person in this case is similar to the sale of a buyer of a house that has a pre-emptor. Don't you see that if a person purchased a house that had a pre-emptor and took possession of it, it belongs to him and his ownership of it is sound. However, if he sells it and the new buyer takes possession of it, or if he gifts it and the one whom it is gifted to takes possession of it, the pre-emptor has the right to invalidate this sale and act of gifting and take possession of the house through the first sale (*kāna lil-shafīʿ an yanquḍ al-bayʿ al-thānī wa-al-hiba wa-ya'khudhhā bi-al-bayʿ al-awwal*).[561]

The legal meaning underpinning these cases is the principle, 'Pre-emption is akin to entitlement.' This applies not only to the case of a pre-emptor in the context of an endowment but also sales, gifting, and so forth, as the text of al-Shaybānī makes clear (9.4.).

Just prior to the above case of pre-emption in endowments, Hilāl briefly discusses another matter connected to corrupt sales that is worth looking at:

> **9.5.** I said: What is your opinion regarding a person who purchased land from someone in exchange for wine or swine, took possession of the land, and endowed it for Muslims?
> **9.5.1.** He said: The endowment is valid, and the buyer will be liable for the market price on the day he took possession of it.
> **9.5.2.** I said: What do you say if it was in exchange for carrion, blood, or a free man?
> **9.5.3.** He said: They are all the same [in terms of a ruling]. If he endowed it, it would be invalid. Don't you see that if he sold it, it would not be valid? An endowment is similar.[562]

[559] Hilāl al-Ra'y, *Aḥkām al-waqf*, 158-9.
[560] Al-Shaybānī, *al-Aṣl*, 9:231. Al-Khaṣṣāf presents this exact same case of a mosque in a later expository section of this chapter. See al-Khaṣṣāf, *al-Awqāf*, 316.
[561] Al-Shaybānī, *al-Aṣl*, 7:389.
[562] Hilāl al-Ra'y, *Aḥkām al-waqf*, 158.

Here, two scenarios are presented with both differing in regard to what is being offered in exchange for a piece of land. In the first scenario, the land is purchased with wine or swine, which would render the contract corrupt. Thus, endowing this land would be valid if done after the land has been taken possession of (9.5.1.). In contrast, the second scenario has carrion, blood, or a free person being exchanged for land. This contract would be invalid, and as a result endowing the land would be invalid as well regardless of possession (9.5.3.). Identical rulings are found in al-Khaṣṣāf though in a different chapter and without articulating the reasoning underlying the rulings.[563] Besides being grounded once again in the broader Ḥanafī doctrine of corrupt transactions, these rulings are found in *al-Aṣl* in the section on corrupt sales:

> **9.6.** If he purchases a slave girl in exchange for wine or swine, this is corrupt, but if he frees her, her manumission would be valid. Don't you see that I permit her sale in exchange for wine or swine from the *ahl al-dhimma* even without any disposal of the item or manumission?
>
> If he purchases her in exchange for carrion, blood, or something similar that does not possess any value, or a free man, and he takes possession of her and then frees her, the manumission will be invalid. This is because these are not items of wealth, and people do not transact with each other in these items, particularly Muslims.[564]

The connection between this legal ruling and the dialectic presented by Hilāl and al-Khaṣṣāf seems evident. Items bought in exchange for wine or swine, namely that which is of value amongst people in general, renders the contract corrupt though valid as per al-Shaybānī. If exchanged for carrion, blood, or a free person, namely anything not of value amongst people, it would be deemed invalid. In the former context, manumission would be valid after taking possession of the item, while in the latter context it would be invalid. This did not only apply to manumission but also other acts of disposal (*itlāf*/*istihlāk*), such as gifting, pre-emption, and

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[563] Al-Khaṣṣāf, *al-Awqāf*, 36.

[564] Al-Shaybānī, *al-Aṣl*, 2:445. For the same ruling in the section on manumission, see Ibid., 5:115. This is also found in *al-Jāmiʿ al-ṣaghīr*: 'A person purchased a slave in exchange for wine or swine, took possession of it, and then freed him or gifted him, this sale is valid and the person is liable for the market price.' See al-Shaybānī, *al-Jāmiʿ al-ṣaghīr*, 330-1.

marriage,[565] all of which were viewed as analogous to endowments. Clearly, Hilāl and al-Khaṣṣāf had in mind this broader juristic structure that the masters had erected even though they do not reference them directly when presenting many of these rulings.

Looking at a fourth legal ruling in the chapter reveals the same pattern. The text now turns to the issue of someone who buys a house and designates it as an endowment only to discover that it has a defect. Hilāl and al-Khaṣṣāf state that the endowment is valid, and the house cannot be returned. However, the buyer may receive compensation from the seller. Below is a side-by-side comparison of both discussions:

Hilāl	**al-Khaṣṣāf**
9.7.1. I said: What is your opinion regarding a person who buys a house from someone, takes possession of it, designates it as an endowment for the poor, and then discovers a defect in it?	**9.8.** I said: What is your opinion regarding a person who buys a house from someone, takes possession of it, validly designates it as an endowment to the poor, and then discovers a defect in it?
9.7.1.1. He said: The endowment is valid, and he cannot return it [i.e. the house]. He can, however, demand compensation for the defect.	**9.8.1.** He said: He can receive compensation for the defect.
9.7.1.2. I said: Why do you say this?	**9.8.2.** I said: Why is he able to demand compensation for the defect when you stated that his ownership has been lifted and transferred to the endowment and it is no longer owned by a specific individual?
9.7.1.3. He said: Because the buyer is no longer the owner. When his ownership is lifted, he can only demand compensation for the defect.	**9.8.3.** He said: Don't you see that if a person purchased a slave and freed him after which he is shown to be affected by a defect, he may demand compensation for it even though he no longer owns him, and he is no longer in the ownership of a specific individual (*lam yazal ilā milk al-mālik*)?
9.7.1.4. I said: Why do you say this?	**9.8.4.** I said: What is the status of the compensation he received for the house that he endowed?
9.7.1.5. He said: Because his ownership has been lifted.	**9.8.5.** He said: He can do with it whatever he wishes.
9.7.2. I said: What is your opinion regarding a buyer who sold it [i.e. a house] and then discovered a defect in it, why can he not demand compensation for the defect as explained in the earlier ruling where it was stated that when ownership of an item is lifted, he can demand compensation for the defect?	**9.8.6.** I said: Why don't you tell him to purchase with this compensation something he can include in the endowment?
9.7.2.1. He said: The two scenarios are different. This is because it is possible for the item to be given back to him and return into	

[565] Ibid., 3:420-1, 6:288, 9:268-7, 11:267.

his ownership, while this is invalid after someone has designated an item as an endowment. Don't you see our opinion regarding a non-Muslim who purchased *ʿushr* land from a Muslim, took possession of it, and then *kharāj* was imposed on it after which he discovered a defect in it that he cannot return the land though he may demand compensation? This is not an endowment and our companions said that one may demand compensation for the defect. An endowment is more suitable to be demanded compensation for than this.

9.7.3. I said: What is your opinion regarding someone purchasing land, designating it as an endowment for the poor, and then discovering a defect in it after which he received compensation for it, what should he do with this compensation?
9.7.3.1. He said: It is his and so he may use it as he wishes.
9.7.3.2. I said: Why do you say this?
9.7.3.3. He said: Because he did not designate the compensation as an endowment.[566]

9.8.6. He said: This is because the compensation received for the defect is not included as part of the endowment.[567]

Hilāl and al-Khaṣṣāf are guided by similar principles on this issue, namely that once the original buyer ceases to be the owner of the house or land, the only recourse he has if a pre-existing defect is discovered in the house or land is to receive compensation. However, it was not simply any type of ownership transfer that produced this ruling but one wherein the item could no longer be returned to the original seller. For Hilāl, this principle is affirmed in a ruling explicitly ascribed to the masters where land whose status changes from *ʿushr* to *kharāj* allows the buyer to demand compensation if a pre-existing defect is discovered (9.7.2.1.). This is because the imposition of *kharāj* on a piece of land is considered a defect in the land. Consequently, returning this land to the original seller would entail giving him land possessing a defect that existed when the original owner himself owned it plus a new defect that originated

[566] Hilāl al-Ra'y, *Aḥkām al-waqf*, 159.
[567] Al-Khaṣṣāf, *al-Awqāf*, 316.

after it had ceased being his and assumed *kharāj* status while in the ownership of the buyer. This new defect would prevent the return of the land, and so the option available to the original buyer is to receive compensation for the initial defect. Endowments would take the same ruling *a fortiori* because they assume a charitable status in perpetuity and are no longer owned by any specific person. In other words, they cannot be returned and converted back to a non-endowed state.[568]

The dialectic of al-Khaṣṣāf is in one sense more direct in its affirmation of this principle for he clearly articulates both the ceasing of ownership and the item ceasing to be in the 'ownership of a specific individual'. This meaning is actually indicated by Hilāl's interlocutor as well in 9.7.2., which can be illustrated as follows: in the scenario where Zayd purchased an item from Zaynab, subsequently sold it to John, and then a pre-existing defect was discovered in it from Zaynab's time, why can Zayd not demand compensation? The reason for this is that, though the ownership of Zayd is lifted as a result of this second sale, it is still permitted for the item to be returned to him, which is another way of expressing the idea that it continues to be owned by a specific individual (9.7.2.1.). Effectively, the initial sale between Zaynab and Zayd, and any rights associated with it, cease to exist once the item is transferred to a third party, namely John. Zaynab no longer has anything to do with the sale after Zayd sells the item to John for the two parties directly involved in the transaction are now Zayd and John. This is not so in the case of an endowment where no third party is involved. Thus, if Zayd purchased land from Zaynab and then endowed it, both Zayd and Zaynab still remain the parties to the original transaction and any rights associated with it. Though this meaning is indicated in the dialectic of Hilāl, he himself chooses to view the issue from a different analogical perspective, namely that if

[568] For this ruling and its explanation, see al-Shaybānī, *al-Aṣl*, 9:298; al-Sarakhsī, *al-Mabsūṭ*, 3:45, 14:170-1.

compensation can be received for a pre-existing defect in certain situations where the item continues to be owned by a specific individual who is not a third party,[569] it should follow that compensation can also be claimed in an endowment where the land is no longer in anyone's possession due to its being designated as charity in perpetuity.

In contrast, al-Khaṣṣāf cites a ruling analogous to the case of endowments, which is the scenario where a slave is purchased, freed by the original buyer, and then a defect is discovered in his or her person. Here, returning the slave is not possible due to his status as a free person which renders him no longer in the ownership of a specific third party. Consequently, compensation can be demanded by the original buyer (9.8.3.). Unlike Hilāl, however, al-Khaṣṣāf does not refer to the masters but his arguments echo their doctrine. Several of the earliest Ḥanafī texts have sections dedicated to the law of defects, such as *al-Aṣl* where the section runs just over twenty pages not counting related rulings in other chapters. In this text, the legal meaning governing the *kharāj*-land example cited by Hilāl is repeated several times: 'If a new defect arose in it preventing its return (*in ḥadatha bi-hā ʿayb ākhar… lam tastatiʿ raddahā*)' and 'He cannot return them due to what he has caused (*lam yakun la-hu an yaruddahumā li-mā aḥdatha fīhimā*).'[570] The justificatory ruling al-Khaṣṣāf mentioned is also mentioned by al-Shaybānī:

> **9.9.** If a person purchases a servant and enters into a *tadbīr* arrangement with her, or frees her, or if she gives birth to his child and becomes his *umm walad*, and then one discovers a defect in her that was concealed from him, he may take the difference in price. However, if he sold her or made a gift of her and she was taken possession of by the other party, and then a defect was discovered that had been concealed from him, he is not compensated with anything. This is because it has left his ownership and entered into the ownership of another (*qad kharajat min milkihi ilā milk ghayrihi*).[571]

[569] Illustrating the example Hilāl gives: John purchases *ʿushr* land from Zayd after which it assumes *kharāj* status. The original two parties remain the same as the item has not been sold to a third party. Nonetheless, it cannot be returned due to the changed status of the land, which in this case is viewed as a defect.
[570] Al-Shaybānī, *al-Aṣl*, 2:500-1.
[571] Ibid., 2:491. For another chapter where this ruling is repeated, see 9:66.

This ruling and the meaning underpinning it align with the reasoning advanced by al-Khaṣṣāf. Compensation cannot be demanded for a pre-existing defect if ownership is transferred to a third party (*milk ghayrihi*) due to the reason outlined earlier. This does not occur in an endowment as al-Khaṣṣāf points out, just as it does not happen when a slave is freed as both he and the masters point out, and so compensation can be demanded. Despite not referencing them explicitly, al-Khaṣṣāf reasons on the basis of principles and rulings articulated by the masters in their texts.

(ii) *Chapter on Endowing Land Containing Fruit*

Implicit reliance is also detectable in a second randomly selected chapter, namely the chapter on those items that would be included in a land endowment. Looking first at the discussion of al-Khaṣṣāf, he presents a single ruling in a prior chapter on the non-inclusion of fruit in land endowments by appealing to the law of sales: 'The endowment is not greater than a sale in this regard. Don't you see that if he sold land and it contained fruit that this fruit would belong to the seller? An endowment is similar.'[572] He then begins a chapter dedicated to elaborating the rulings on those items that are included in a land endowment and those that are not: fixed structures (*al-binā'*) and trees are; fruits, barley, wheat, herbs, myrtle, and basil are not; items connected to fixed structures are generally included unless they fall outside the specified boundaries of the endowment; items that remain in the land or on trees for more than a year are included, while those that are removable and harvested every year are not. He also addresses the effect of wordings discussed by the Ḥanafī masters. This is likely an attempt at setting up analogical parallels with existing cases and further subjecting them to the *ra'y* model:

[572] Al-Khaṣṣāf, *al-Awqāf*, 263.

al-Khaṣṣāf	al-Shaybānī
10.0. I said: If he designates a house as an endowment with its boundaries but does not say 'with all its rights' (*bi-jamīʿ ḥuqūqihā*) and nor 'everything small and large that is in it and from it' (*bi-kulli qalīl wa-kathīr huwa la-hā fīhā wa-minhā*)? **10.0.1.** He said: Everything that enters into a sale will enter into the endowment.[573]	**10.1.** If he mentioned in the sale that he sold it with everything small and large that is in it and from it (*bi-kulli qalīl aw-kathīr huwa fīhā aw-minhā*), fruit and crops will enter into this. **10.1.1.** If he said with everything small and large that is in it and from it from its rights (*bi-kulli qalīl aw-kathīr huwa fīhā aw-minhā min ḥuqūqihā*), fruit and crops would not enter into this.[574]

The same question is posed in regard to whether watering places and channels enter into an endowment of land when these expressions are not mentioned. The response of al-Khaṣṣāf is that they would still enter.[575] Throughout this entire chapter, al-Khaṣṣāf does not mention the masters once. Yet, the principles and cases he operates with parallel their doctrine. Thus, al-Shaybānī states that fixed structures present on land are always included in the sale of the land. This is the most fundamental ruling on the issue in the chapter on sales, and it is not surprising that al-Khaṣṣāf begins his chapter on endowments with it given the principle he articulates in 10.0.1. The non-inclusion of crops in such sales and the inclusion of a grove and trees are discussed by al-Shaybānī as well. He states that the latter 'are akin to a fixed structure (*bi-manzilat al-binā'*)', while the former are 'akin to fruits (*bi-manzilat al-thamar*)'.[576] The same reasoning is mentioned by al-Khaṣṣāf when justifying the inclusion of groves and trees immediately after establishing the ruling that fixed structures would enter into a land endowment: 'They are akin to a fixed structure and are therefore included in the endowment (*huwa mithl al-binā' wa-yadkhul dhālika fī al-waqf*).'[577] He continues striking an analogy with

[573] Ibid., 265.
[574] Al-Shaybānī, *al-Aṣl*, 10:166. These same wordings are discussed in Ibid., 9:251-3; al-Shaybānī, *al-Jāmiʿ al-ṣaghīr*, 356.
[575] Al-Khaṣṣāf, *al-Awqāf*, 265-7.
[576] Al-Shaybānī, *al-Aṣl*, 9:251.
[577] Al-Khaṣṣāf, *al-Awqāf*, 265.

fixed structures when including other items, such as a room (*al-dār*), bath (*al-ḥamām*), water mill (*raḥan mā'*), and fixed shelves (*rufūf*) by stating, 'It is part of the fixed structure (*hiya fī al-binā'*)' or 'Whatever is part of the fixed structure is included in the endowment (*mā kāna fī al-binā' min dhālika fa-huwa dākhil fī al-waqf*).'[578] The inclusion of a room, bath, and water mill is discussed by al-Shaybānī as well who reasons that 'they are part of the fixed structure (*li-annahā fī al-binā'*)'.[579] The ruling of a fixed structure in the law of sales, therefore, encapsulated the underlying meaning governing judgments on the type of items included in a land endowment. This meaning returned to whether an item was actually part of, and attached to, the land being sold.[580]

In his chapter on this topic, Hilāl is also shown working with the doctrine of the masters. He begins by answering a series of questions to establish the non-inclusion of fruits and existing yields in a land endowment. According to him, these will remain with the one establishing the endowment, and if he is no longer alive, then it will belong to his heirs. Hilāl then explains these rulings by referring to the law of sales, gifting, bequests, and collateral:

> **10.2.** I said: Why do you say this?
> **10.2.1.** He said: This is because the endower and bequeather no longer own the land (*qad zāla milkuhumā ʿan al-arḍ wa-lam yazal milkuhumā ʿan al-ghalla*), while their ownership over the existing yield remains for it does not follow the original item. Don't you see that if a person purchased land containing fruits or an existing yield from another individual that the fruit would belong to the seller and similarly the yield unless the buyer stipulated their inclusion? An endowment and bequest are similar. Similarly, if a person gifted land to another person and it contained fruit, the fruit would belong to the one gifting according to us and the gift would be invalidated. As for those who permitted jointly owned gifts, gifting the land is itself valid but it is not valid in relation to fruit and existing yields. As for us, we invalidate all of it.
>
> Our companions said regarding a person who takes land containing fruit as collateral from another that the fruit will be counted as collateral along with the original land. Thus, they differentiated (*faṣṣalū*) between gifts, collateral, and sales stating that if the landowner's ownership over the land ceases (*zāla milk rabb al-arḍ ʿanhā*), the yield will belong to him, and if

[578] Ibid., 266-7.
[579] Al-Shaybānī, *al-Aṣl*, 9:251.
[580] Further references to the doctrine of the masters can be found in Ibn Māza, *al-Muḥīṭ*, 9:274-91.

> it does not, then both [the land and yield] will be treated as one. This is why they deemed as collateral both the land and yield.[581]

Noteworthy in this exposition is the connection between the reasoning Hilāl mentions at the beginning of his answer and then his citation of the masters' views. Though the latter primarily concerns the law of collateral, it reveals a more fundamental principle that the masters were working with where sales, gifts, and related transactions took on one ruling as it related to the inclusion or non-inclusion of certain items, while collateral took on another. The difference between the two was that in sales and gifting, the ownership of an individual is lifted. Consequently, items like fruit and existing yields did not enter into the transaction. In collateral, the original ownership of the pledgee remained, and so fruit and yields were included as part of the collateral. This same meaning is echoed by Hilāl who says that fruit and existing yields do not enter into a land endowment or bequest because the 'endower and bequeather no longer own the land'. (10.2.1.)

Hilāl then proceeds to address the inclusion of other items. Like al-Khaṣṣāf, he states that fixed structures are included in land endowments as are trees and groves. Here, he affirms the basic analogy governing these rulings: 'Everything that enters into a sale will enter into an endowment', which is the same principle mentioned by al-Khaṣṣāf in 10.0.1. Hilāl then addresses a series of questions relating to particular wordings and their effect on what is included in a land endowment:

> **10.3.** I said: What is your opinion regarding a person who says, 'My land with all of its boundaries (*bi-ḥudūdihā kullihā*), all rights associated with it (*bi-jamīʿ ḥuqūqihā*), and what is in it and from it (*wa-mā fīhā wa-minhā*) is a charitable endowment for God in perpetuity' and it includes existing fruit, to whom will this fruit belong?
> **10.3.1.** He said: Analogy dictates that the fruit belongs to the endower because he said, 'What is in it and from it is a charitable endowment', and fruit is not something that is endowed. However, I prefer (*astaḥsinu*) to deem the yield for the poor and needy.[582]

[581] Hilāl al-Ra'y, *Aḥkām al-waqf*, 287.
[582] Ibid., 289.

He proceeds to clarify that this *istiḥsān*-based ruling is not intended to establish the yield as actually part of the endowment itself. Rather, the endower is told to give the yield in charity voluntarily without it being a legally enforceable judgment. The same ruling is applied to other similar wordings, such as 'with its boundaries, building, date groves, land, trees, and all of its structures, watering places, gorges, installations, and everything small and large that is in it and from it, and all rights attached to it relating to that which is in it and arises from it' (*bi-ḥudūdihā wa-banā'ihā wa-nakhlihā wa-arḍihā wa-shajarihā wa-sā'ir banā'ihā wa-mashāribihā wa-maghā'iḍihā wa-marāfiqihā wa-kull qalīl aw-kathīr huwa fīhā wa-minhā wa-kull ḥaqq huwa la-hā dākhil fīhā wa-kharaja minhā*).[583] Once more, these wordings mirror the contracts and rulings discussed by the masters as observed earlier in the case of al-Khaṣṣāf:

> **10.4.** In the name of God, Most Beneficent, Most Merciful. This is what so-and-so dedicated in charity and bore testimony to it upon himself sufficing in God as a witness. (*hādhā mā taṣaddaqa bi-hi fulān ibn fulān wa-ashhada bi-hi ʿalā nafsihi wa-kafā billāh shahīdan*)
>
> He dedicated his land in charity… with all its boundaries, land, buildings, paths, date groves, trees, and all its structures, watering places, water channels, rivers, streams, gorges, and installations, and everything small and large that is in it and from it from its rights, and all rights attached to it relating to what is included in it and arises from it (*taṣaddaqa bi-arḍihi… bi-ḥudūdihā kullihā wa-arḍihā wa-banā'ihā wa-ṭuruqihā wa-nakhlihā wa-shajarihā wa-jamīʿ banā'ihā wa-shirbihā wa-masīl mā'ihā wa-anhārihā wa-sawāqīhā wa-maghā'iḍihā wa-marāfiqihā wa-kull qalīl aw-kathīr huwa fīhā wa-minhā min ḥuqūqihā kullihā wa-kull ḥaqq huwa la-hā dākhil fīhā wa-kharaja minhā*).[584]

In the final portion of this chapter, Hilāl continues to discuss these wordings but turns his attention to items that do not attach themselves to the land itself, such as a razed structure. This would not enter into a land endowment just as the personal belongings of the endower that are present on the land do not enter into it or fruits that have been picked from the land. Here, Hilāl's interlocutor asks why the earlier *istiḥsān*-based ruling is not applied to these items, which makes the former hark back to the law of sales:

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[583] Ibid., 289.
[584] Al-Shaybānī, *al-Aṣl*, 12:73. Also see 12:67, 86.

> **10.5.** He said: […] Don't you see if a person sold land to another person stipulating what is small and large in it and from it (*bi-mā fīhā wa-minhā min qalīl wa-kathīr*) and it contains hanging fruit that this enters the sale for it is in it and from it? However, if someone purchased land from a person with what is in it and from it and it contains a razed structure, this does not enter into the sale for it is not from it once separated. Fruit is similar when it is removed.[585]

In other words, items separated from the land are never included in a sale or endowment. This is in contrast to items that are actually attached to the land but are not permanent or fixed, such as fruit on trees or crops, which may be included if the wording of the endowment indicates their inclusion.

Throughout this entire chapter, Hilāl is operating with the doctrine of the Ḥanafī masters. He begins his discussion appealing to their opinions on the law of sales, gifts, and collateral, which forms the basis for his initial answer and reasoning (10.2.1.). He then affirms the same ruling the masters do in relation to fixed structures, trees, and the like. Though he does not cite them explicitly, his identifying the law of sales as an analogical basis for these rulings along with his earlier reference to the masters reasonably reflects an awareness of their fundamental approach to these rulings and the principles underpinning them. He then addresses cases the masters discussed in their own texts, such as the effect of different wordings on what would be included in a land endowment. Here, he utilizes a mode of reasoning prominently associated with the Ḥanafī masters, namely *istiḥsān* (10.3.1.). Interestingly, the default position Hilāl identifies with these wordings corresponds to *al-Aṣl* (10.1. to 10.1.1.): when access to 'all its rights' is stipulated, analogy dictates that existing fruit and crops would not be included; if the stipulation is limited to only 'what is in it and from it' without mention of rights, fruits and crops do enter.[586] Most importantly, the general meaning permeating this entire section in the texts of al-

[585] Hilāl al-Ra'y, *Aḥkām al-waqf*, 290.
[586] For a detailed discussion on the opinions of the masters concerning this, see Ibn Māza, *al-Muḥīṭ*, 9: 281-2.

Shaybānī, Hilāl, and al-Khaṣṣāf is one relating to the permanence of items and the manner in which they attach themselves to the original land in the law of sales.

(iii) *Section on Defining the Poor*

The criteria for deeming someone legally poor (*faqīr*) was perhaps the most fundamental ruling in the texts of Hilāl and al-Khaṣṣāf. As a form of charitable giving, an endowment was primarily understood as directed towards the poor and needy. Therefore, the entire law of endowments rested on a clear delineation between the poor and rich. For Hilāl, the amount distinguishing these two categories of people was stipulated by Abū Ḥanīfa as two-hundred *dirham*s. This was also the position adopted by al-Khaṣṣāf, though his main discussion on the topic makes no reference to the masters. However, beyond this basic ruling was a more detailed discussion regarding the type of wealth that is to be considered when determining whether an individual possesses this minimal amount or not. What follows is a side-by-side presentation of Hilāl and al-Khaṣṣāf 's discussion on this issue:

Hilāl	**al-Khaṣṣāf**
10.6.1 I said: What is your opinion if he said, 'a charitable endowment for my closest poor kin' and he has family members who possess a residence (*sakan*) but nothing besides it, are they given from this charity? **10.6.1.1.** He said: Yes. Don't you see that *zakāt* is permitted for those who possess a home? An endowment is similar. **10.6.1.2.** I said: What is your opinion if he has a residence and a servant (*khādim*) but nothing else? **10.6.1.3.** He said: He is poor and will be included in the endowment. *Zakāt* is similar. **10.6.1.4.** I said: What is your opinion if he has a residence, servant, and clothing fulfilling his basic needs (*thiyāb kifāf*) and nothing more? **10.6.1.5.** He said: He is poor and included in the endowment.	**10.7.1** I said: Who is the poor person entitled to receive yields from this endowment? **10.7.1.1.** He said: One who does not possess twenty *dinar*s or two hundred *dirham*s is given from it. **10.7.1.2.** I said: Someone who possesses a servant and a residence (*khādim wa-maskan*), is it necessary to give him from the yields of this endowment? **10.7.1.3.** He said: Yes. **10.7.1.4.** I said: What if he has a servant, a residence, clothes that he wears and also ones that he spreads out on the floor [as bedding or furnishing], but nothing in addition to this? **10.7.1.5.** He said: He is given from the endowment. **10.7.1.6.** I said: And if alongside this he has additional clothing and furnishing exceeding his basic needs (*fāḍl ʿamma yaḥtāj ʿanhā*)

10.6.1.6. I said: He will likewise be given from *zakāt*?
10.6.1.7. He said: Yes.
10.6.1.8. I said: What is your opinion if in addition to all of this he also has household goods that he cannot do without (*mā lā ghinā bi-hi ʿanhu*)?
10.6.1.9. He said: This is a poor person and he will be given [from *zakāt* and the endowment].

10.6.2. I said: What is your opinion regarding those among them who have two-hundred *dirham*s?
10.6.2.1. He said: This is someone rich. He does not have a right to the endowment.
10.6.2.2. I said: *Zakāt* is similar?
10.6.2.3. He said: Yes.
10.6.2.4. I said: What is your opinion regarding someone who has household items beyond what is needed whose total value is two-hundred *dirham*s?
10.6.2.5. He said: According to us, such a person is not given from *zakāt* and nor from the endowment. This is the opinion of Abū Ḥanīfa and Abū Yūsuf concerning the rich person. Yūsuf [al-Samtī] said that the rich person is someone who possesses fifty *dirham*s or its equivalent.

10.6.3. I said: What is your opinion if he possesses two servants?
10.6.3.1. He said: Nothing is given to him from the endowment if their value is two hundred *dirham*s or more.
10.6.3.2. I said: What is your opinion if he possesses an additional residence that he does not need to live in (*maskan fāḍil lā yaḥtāj ilayhi yaskinuhu*)?
10.6.3.3. He said: Yes. He is similar.

[…]

10.6.4. I said: What is your opinion if he has plenty of wealth that is inaccessible to him (*māl kathīr ghā'ib*) or a debt owed to him by people that he is unable to retrieve?
10.6.4.1. He said: This person is given from *zakāt* and the endowment. The stranded traveller (*ibn al-sabīl*) whose wealth is inaccessible while he is in a city and unable to whose value is two-hundred *dirham*s or twenty *dinar*s?
10.7.1.7. He said: He is not given anything from the endowment. Similarly, it is not permitted for him to take anything from *zakāt*.

10.7.2. I said: If he has in addition to a servant and a residence a second residence that he leases out and receives rent from, but this does not fulfil his needs (*lā yaqūm bi-mu'unatihi*)?
10.7.2.1. He said: He is not given anything from the endowment.
10.7.2.2. I said: Is this is also the case if he has land that he cultivates for crops and the yield he grows is not sufficient for his needs?
10.7.2.3. He said: He is rich and so it is not necessary to give him anything from *zakāt* if the value of the house he is leasing or the land he is cultivating is two-hundred *dirham*s or more. However, if their value is less than this, he is entitled to the yield of this endowment for he is poor.
10.7.2.4. I said: What do you say if the value of the house is one-hundred *dirham*s and the land one-hundred *dirham*s and this is all in addition to his residence and servant, is it necessary for him to be given from the yield of the endowment?
10.7.2.5. He said: No. Such a person is rich due to what he possesses in addition to a residence, a servant, and clothing that he cannot do without (*lā ghinā la-hu ʿanhā*), which equal two-hundred *dirham*s. He is rich as a result of this and not poor.

10.7.3. I said: And if he possesses what we have mentioned but owes a debt of an equivalent value or more?
10.7.3.1. He said: He is poor, and it is necessary to give him an entitlement to the yield of this endowment.
10.7.3.2. I said: And if he is owed money by people that he is unable to retrieve or wealth in a different land that does not reach him?
10.7.3.3. He said: He is poor and can take from the endowment.

fund his travel is also the same. Such a person is poor, and so he is given *zakāt* and charity. If he is able to take a loan, this is better for him than taking charity. However, if he accepts *zakāt*, it fulfils the obligation of those giving it to him. An endowment is similar.
10.6.4.2. I said: What is your opinion regarding a young person who works and attains a basic livelihood but does not possess personal belongings or a home?
10.6.4.3. He said: He is given from the endowment… As for *zakāt,* I dislike giving it to him... and this is the position of Abū Ḥanīfa.

[…]

10.6.5. I said: What is your opinion if he possesses wealth but owes a similar amount?
10.6.5.1. He said: He is poor.
10.6.5.2. I said: And if he has wealth owed to him by someone who he can retrieve it from?
10.6.5.3. He said: He is rich.
10.6.5.4. I said: And if this rich person has no wealth and cannot retrieve what is owed to him?
10.6.5.5. He said: He is poor.[587]

10.7.4. I said: What if he is a person who works and earns an amount sufficient only for his provisions and those of his dependants?
10.7.4.1. He said: Yes, he may take from it.[588]

Both of these discussions contain essentially the same core rulings and principles. The basic criteria to judge whether a person was rich or poor was the amount of wealth an individual possessed. This was two-hundred *dirham*s as agreed upon by the masters, Hilāl, and al-Khaṣṣāf. However, this did not mean that anyone who possessed any type of wealth equivalent to this amount was deemed rich. Rather, it was two-hundred *dirham*s that was (a) accessible, (b) above and beyond one's basic needs, and (c) above and beyond one's debts. Thus, Hilāl and al-Khaṣṣāf both discount the residence of a person and basic household items when calculating whether someone possesses this minimal amount (10.6.1. to 10.6.1.9. and 10.7.1.2. to 10.7.1.4.). Similarly, if someone did possess this minimal amount beyond their basic needs, they could still

[587] Hilāl al-Ra'y, *Aḥkām al-waqf*, 60-1.
[588] Al-Khaṣṣāf, *al-Awqāf*, 46.

be counted as legally poor if they owed an equal amount in debt (10.6.4. to 10.6.4.2. and 10.7.3. to 10.7.3.1.).

Unlike al-Khaṣṣāf, Hilāl refers to the masters in his discussion when presenting specific rulings, which indicates that he did have their doctrine in mind when formulating these answers. Given the commonalities between the discussions of both authors, it is difficult to imagine that al-Khaṣṣāf was operating without the same doctrine in mind. Indeed, the rulings and principles of both jurists reflect the standard doctrine of the Ḥanafī masters in the chapter on *zakāt*, which, as seen in the discussions of both authors, constituted the analogical basis for determining who was poor in endowment law. Each of these questions on *zakāt*-eligibility relating to minimum amounts, basic needs, debts, accessibility of wealth, etc. were articulated in detail by the Ḥanafī masters. To present one ruling that parallels the texts of Hilāl and Khaṣṣāf from among many in *al-Aṣl*:

> **10.8.** I said: What is your opinion regarding a person giving someone *zakāt* while he possesses a house (*dār*) or a residence and a servant (*maskan wa-khādim*), does it fulfil his obligation according to Abū Ḥanīfa and Muḥammad?
> **10.8.1.** He said: Yes. It has reached us from Ibrāhīm that he said, 'Whoever possesses a house and servant may be given *zakāt*.'[589]

Similarly, the factor of debts in determining *zakāt*-eligibility is cited numerous times throughout these texts.[590] One example where these considerations are mentioned together in a single case is the following:

> **10.9.** I said: What is your opinion regarding a trader who possesses a thousand *dirham*s, owes a thousand as well, has a residence and servant that he did not intend as trade goods, and the value of his house is equivalent to ten-thousand *dirham*s or more, does he give *zakāt*?
> **10.9.1.** He said: No.[591]

[589] Al-Shaybānī, *al-Aṣl*, 2:125.
[590] Ibid., 2:65, 89, 95, 111.
[591] Ibid., 2:95.

A few sentences later, al-Shaybānī is asked about a person who possesses a 'residence and servant valued at ten-thousand *dirham*s, owes five thousand, and has a thousand, is it permitted for him to receive charity?' The answer is in the affirmative.[592] Earlier, he is asked about a person who 'is owed a thousand dirhams that he cannot recover' and he only has access to what is required for his 'basic needs'.[593] The answer is that he does not owe *zakāt*. These rulings are seen throughout the corpus of the masters,[594] and it seems reasonable to connect this doctrine of *zakāt* the masters laid out with the rulings Hilāl and al-Khaṣṣāf present in their texts, a doctrine that became an analogical basis for similar discussions in the law of endowments.

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This brief analysis of the texts of Hilāl and al-Khaṣṣāf reveals a Ḥanafī tradition where the rulings, principles, and methods of the masters became an important source for later jurists. Implicit reliance of the type described above is detectable throughout the 3rd/9th century in other sources as well, such as the legal verdicts of Ḥanafī jurists preserved in later texts. In the classical period, efforts were made to point out when these legal verdicts aligned with and built off the doctrine of the masters. For example, al-Samarqandī regularly presents the legal verdict of a jurist and states, 'this accords with the position of Abū Yūsuf and Muḥammad', 'this is an analogical extension of Abū Ḥanīfa's opinion', 'this is what our companions stated' and related expressions.[595]

Determining the extent of such reliance requires a far more comprehensive analysis than what has been offered above, and it is particularly difficult considering the methodological

[592] Ibid.
[593] Ibid., 2:90.
[594] Al-Shaybānī, *al-Aṣl*, 2:52-99, 206; al-Ghāmidī, "*Kitāb Nawādir Muʿallā ibn Manṣūr*," 168-81; al-Ṭaḥāwī, *Mukhtaṣar*, 47, 50-1; al-Samarqandī, *ʿUyūn al-masāʾil*, 41; Ibn Māza, *al-Muḥīṭ*, 3:228-34.
[595] Al-Samarqandī, *al-Fatāwā*, 34, 46, 52, 63, 113-4, 117, 263, 284, 287, 319, 329, 343, 381, 394, 397, 416, 471, 510, 543-4, 558, 581, 586, 598.

challenges underpinning the determination of an opinion as consciously reliant on the authority of the masters. Indeed, it may have been that many answers provided by jurists were concluded on the basis of their own independent *ijtihād* given the prominence of their own authorial voices in the sources. This is partly true given the period in question, but the discourse of these jurists must also be viewed in light of the collective evidence presented thus far where the masters are shown exerting wide-ranging influence over their followers in multiple areas of the law. Having left behind a comprehensive and preserved juristic structure, and accounting for the fact that jurists like Hilāl and al-Khaṣṣāf are seen primarily engaged in a discursive discourse as opposed to a hermeneutical one, it seems more likely than not that the juristic structure the masters left behind constituted the focal point of *ijtihād*ic activity for many of these later jurists. In terms of operating within a uniquely Ḥanafī paradigm, then, it was not so much about loyalty to the actual conclusions of the masters but working on the basis of their rulings and the methods and sources that underpinned them. Working on the basis of the aforementioned allowed jurists to engage with one another as members of a single legal community as seen in the texts of Hilāl and al-Khaṣṣāf where the discussions of the latter often incorporate and parallel those of the former in the topics addressed, as well as reasoning, methods, and sources.

This raises an important question, namely what does it mean to belong to a particular tradition and be loyal to it? How is this determined and what degree of school consciousness existed during the 3rd/9th century? It is insufficient to address these questions by merely looking at the authorities referenced by jurists in their legal texts and verdicts, or by identifying their explicit agreement or disagreement with one or more of these authorities. Given the collective notion of authority in the early community, Ḥanafī jurists possessed wide latitude in terms of the opinions they could adopt and still be considered *within* the doctrinal boundaries of the

community. Contexts wherein they did not explicitly reference earlier authorities could still be grounded implicitly in their legal paradigm, which was once again collective in nature. Disagreement with earlier authorities may have been based on different applications of the same paradigm, changing conditions, or an attempt to further advance it. These are some of the considerations future studies should account for when addressing this oft-debated question.

II. *Istiḥsān* (Juridical Preference)

Analogy or *qiyās* was the main inferential method in the *ra'y*-based paradigm of the Ḥanafī masters as detailed in the preceding sections. It constituted a fundamental technique in their discourse and that of their followers for the derivation, explanation, and testing of legal rulings. Indeed, the Ḥanafī community was recognized for their strict analogical practice especially from the end of the 2nd/8th century when the conflict between *aṣḥāb al-ra'y* and *aṣḥāb al-ḥadīth* began to intensify. Though the theory and technical components of analogy were expounded in great detail in later periods,[596] the available Ḥanafī texts from the first half of the 3rd/9th century generally do not display an explicit theoretical concern.[597] In the texts of Hilāl and al-Khaṣṣāf, analogy possesses a wider meaning than its more technical later definition and frequently encompasses a variety of methods, such as *argumentum a simile* and *argumentum a fortiori*.[598] The term *ʿilla*, for example, is used by al-Khaṣṣāf on a number of occasions but always to refer

[596] Most scholars dated this development to the 4th/10th and 5th/11th centuries though a distinction between the general practice of *ra'y* and a more technical understanding of *qiyās* is already seen in the texts of al-Shāfiʿī. See Schacht, *Origins*, 109-10; Ahmad Hasan, "Early Modes of *Ijtihād*," 64, 70; Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh* (Cambridge: Cambridge University Press, 1999), 2.
[597] Hasan, "Early Modes of *Ijtihād*," 64; Hennigan, *Birth of a Legal Institution*, 35-7; Wael Hallaq, "Considerations on the Function and Character of Sunnī Legal Theory," *Journal of the American Oriental Society* 104, no. 4 (October-December 1984): 681.
[598] Hallaq, *Legal Theories*, 20, 130-1. Zysow discusses later scholarly discussions on the *argumentum a fortiori* and the differing opinions over whether it was an inference derived from a natural understanding of language or whether it was a form of analogy in Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (Atlanta, Georgia: Lockwood Press, 2013), 96-100.

to the general meaning, rationale, or reasoning underlying a legal ruling as opposed to the formal component of analogy connecting an *aṣl* with a *far'*.[599]

Despite this apparent lack of theoretical concern, the utilization of analogy by these authors is highly principled for each shows a conscious and consistent concern to explain why certain analogies are struck and why other analogical options are not entertained.[600] Often what might at first glance seem to simply be an *argumentum a simile* is in actuality a far more sophisticated and logical argument. Hilāl's appeal to a ruling of sales or al-Khaṣṣāf's to a ruling of manumission when validating the endowment of land taken possession of in a corrupt sale is not an arbitrary appeal to a single case bearing some similarity with the issue in question. Rather, it was meant to invoke a more fundamental meaning relating to the effects of *itlāf*/*ihlāk* in a corrupt sale that is seen systematically applied throughout the *corpus juris* of these scholars.[601] The same is the case with the rulings concerning what is or is not included in a land endowment. Though often justified with a view towards specific rulings in the law of sales, these parallel cases appeal to a more fundamental meaning that is perpetuated across the existing juristic structure. In the words of Zysow, these types of analogies did not look to the actual *'illa* or cause but 'merely indicate its existence' and they presuppose 'the existence of functioning causes but make no direct reference to them.'[602] Therefore, while inferences labelled as *qiyās* may sometimes seem to be unsophisticated and arbitrary forms of reasoning that fall under the general umbrella of *ra'y*, a more careful analysis of several such cases often demonstrates the converse where *qiyās* was reasoning of a highly systematic nature. This sophisticated use of *qiyās* was

[599] Al-Khaṣṣāf, *al-Awqāf*, 21, 233, 257, 260, 301, 348.
[600] Hilāl al-Ra'y, *Aḥkām al-waqf*, 47, 50-1, 84, 87, 93, 290, 293; al-Khaṣṣāf, *al-Awqāf*, 37, 40, 66, 74, 87, 104, 194, 278.
[601] The observation of Hennigan that *qiyās* in their texts is 'merely *argumentum a simile*' based on 'the use the terms *bi-manzila* (equivalent), *mithal* and *mathal* (likeness)' must, therefore, be further nuanced in light of such reasoning often indicating more general principles. See Hennigan, *Birth of a Legal Institution*, 36-7.
[602] Zysow, *Economy*, 192.

widespread by the middle of the 3rd/9th century, having gradually emerged from a century long transformation where the quality of *ra'y* reasoning evolved into stricter, logical, and more systematic methods.[603]

Though often associated with analogy, the term *ra'y* actually encompassed a variety of inferential methods ranging from discretionary reasoning to arguments of a strictly logical nature.[604] The former has been commonly associated with juridical preference or *istiḥsān*, which was central to the legal thought of Iraqi jurists in general and the Ḥanafī masters in particular.[605] Indeed, *istiḥsān* was not only a central method of reasoning in the legal paradigm of Ḥanafī jurists, it was seen as distinguishing the Ḥanafī community and their approach to law from others. Thus, Ibn Qutayba described Abū Ḥanīfa and his followers, namely *aṣḥāb al-ra'y*, as those who 'employ *qiyās* and then set it aside for *istiḥsān*',[606] while Ḥarb ibn Ismāʿīl stated that they 'view the religion as *ra'y*, *qiyās*, and *istiḥsān*'.[607] The legal paradigm adopted and utilized by the early Ḥanafī community, therefore, incorporated a particular approach and attitude towards the use of *qiyās* and *istiḥsān*.

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[603] Hallaq, *Legal Theories*, 19.
[604] Hallaq, *Legal Theories*, 19-20; Bernard G. Weiss, *The Spirit of Islamic Law* (Athens: Georgia: University of Georgia Press, 1998), 86.
[605] Mālik and the Madinans were also known for their practice of *istiḥsān*. Hallaq asserts that the Mālikī tradition preferred the term *maṣlaḥa* to *istiḥsān*, and the scathing criticism of al-Shāfiʿī against the latter had dissuaded Mālikīs from this mode of reasoning. It was only after *istiḥsān* was reformulated by Ḥanafīs as a textually based departure from analogy did the Mālikīs once again accept it. Bernard Weiss also identifies *maṣlaḥa* in the Mālikī school as a technique 'similar to *istiḥsān*' and cites al-Shāṭibī as describing it as 'a distinctly Mālikī form of *istiḥsān*'. Meanwhile, Umar F. Abd-Allah goes further to clarify the position of *istiḥsān* within the early Mālikī school by arguing that though there was a shared legal vocabulary between them and the Ḥanafīs, Mālik's method of *istiḥsān* was 'fundamentally different from its counterpart in Abū Ḥanīfa's legal reasoning' by being 'systematically abstract and non-textual, based on the independent prerogative of the general good (*maṣlaḥa*).' See Hallaq, *Legal Theories*, 131-2; Weiss, *The Spirit of Islamic Law*, 87; Umar F. Abd-Allah, *Mālik and Medina*, 161-70.
[606] Ibn Qutayba, *al-Ta'wīl*, 102.
[607] Al-Kirmānī, *Kitāb al-Sunna min masā'il Ḥarb ibn Ismāʿīl*, 69.

Several definitions have been formulated for *istiḥsān* with each expressing it as being the adoption of a ruling recognized as a departure from analogy.[608] Among many modern scholars, *istiḥsān* has been viewed as closely resembling reasoning based on equity where rulings are formulated in view to the spirit of the law rather than strict formal reasoning.[609] However, as Zysow explains, *istiḥsān* was a technical term that applied to 'a solution seen in opposition to some analogy' and was neither a source of law nor merely a tendency toward leniency as seen in the fact that it was sometimes grounded in precaution (*iḥtiyāṭ*) and at other times entailed the same conclusions as *qiyās* itself.[610] Later texts of legal theory would classify *istiḥsān* on the basis of its underlying sources, namely the primary texts, consensus, need and necessity, or a competing analogy. In light of this, some texts tended towards defining *istiḥsān* more broadly as a category of evidence that necessitated a ruling contrary to some analogy.[611] Definitions and descriptions that limited *istiḥsān* to a form of common law or a means for ameliorating the unjust and negative effects of analogy were, therefore, only capturing one aspect of this mode of reasoning. In order to better understand *istiḥsān* in early Ḥanafī discourse, the proceeding sections will first analyse its use by the Ḥanafī masters and then by subsequent generations of jurists. It will be seen that the masters had a particular and distinct manner of using *istiḥsān* that

[608] Thus, al-Jaṣṣāṣ defined it as, 'Leaving analogy for that which is more preferable to it.' Abū Zayd al-Dabūsī stated that it was 'the term for a category of evidence that opposed apparent analogy (*qiyās jalī*)', while al-Bazdawī simply stated that it was 'one of two analogies.' See al-Jaṣṣāṣ, *al-Fuṣūl*, 4:231; Abū Zayd al-Dabūsī, *Taqwīm uṣūl al-fiqh wa-taḥdīd adillat al-shar*ʿ, ed. ʿAbd al-Raḥīm Yaʿqūb, 3 vols. (Riyadh: Maktabat al-Rushd, 2009), 404; ʿAlī ibn Muḥammad al-Bazdawī, *Uṣūl al-Bazdawī*, ed. Sā'id Bakdāsh (Beirut: Dār al-Bashā'ir, 2016), 611.
[609] Hasan, "Early Modes of *Ijtihād*," 74; Chafik Chehata, ""L'équite en tant que source du droit hanafite," *Studia Islamica* 25 (1966): 136.
[610] Zysow, *Economy*, 242. Early scholars who questioned or challenged associating *istiḥsān* with equity were Schacht and John Makdisi. The latter contended that it was based on the Qur'an and *sunna*, which is partially true as seen in the texts of al-Shaybānī. See Schacht, *Introduction*, 204; John Makdisi, "Legal Logic and Equity in Islamic Law," *The American Journal of Comparative Law* 33, no. 1 (January 1985): 63-92.
[611] Such as al-Dabūsī, *al-Taqwīm*, 407-8.

their followers adopted. This constituted an important feature of the Ḥanafī paradigm that set them apart from other legal communities.

A. *Istiḥsān* in the Discourse of the Ḥanafī Masters: A Brief Analysis

In their use of *istiḥsān*, the Ḥanafī masters are seen appealing to the sources mentioned above, i.e. the primary texts, consensus, need and necessity, and a competing analogy, when justifying their setting aside of *qiyās*. In *al-Aṣl*, for example, al-Shaybānī will state, 'I exercise *istiḥsān* in this due to what has come regarding it in traditions and the *sunna* (*astaḥsinu fī hādhā li-mā fīhi min al-athar wa-al-sunna*)' or 'I set aside analogy due to a tradition (*adʿu al-qiyās fīhi min qibal al-athar*).'[612] Among the more well known examples of such text-based *istiḥsān* are the rulings of laughing loudly in prayer nullifying ablution (5.6.7.7 to 5.6.7.9.), the permissibility of performing ablution with *nabīdh*, and the ruling that forgetfully eating or drinking do not nullify fasting. Each of these rulings involved departing from the conclusion entailed by the strict application of analogy due to the availability of specific texts that signalled a contrary ruling.

To expand on this with an example, the principle governing ablution was that it was necessary to perform it with water. Therefore, performing ablution with any non-water substance, such as rose water, milk, and juice, would be invalid according to analogy. Abū Ḥanīfa made an exception in the case of *nabīdh* due to specific reports that described the Prophet as having performed ablution with it in the absence of water. This ruling was termed *istiḥsān* for it was a departure from analogy. As an anomalous ruling, it was restricted to the specific provisions mentioned in the texts that established it, and it could not serve as an analogical basis for other cases. In other words, *nabīdh* could only be used in the absence of water and its

[612] Al-Shaybānī, *al-Aṣl*, 2:515, 6:559.

allowance could not be extended to other substances.[613] Umar F. Abd-Allah terms this type of *istiḥsān* as '*sunna*-based discretion' and states that it demonstrates 'the central role of textual referents in Kufan legal reasoning.'[614] Thus, the claim of Hallaq and others that Ḥanafīs only linked *istiḥsān* with the primary texts during the 3rd/9th century in order 'to remove the accusation of arbitrary reasoning' is repudiated by early sources that plainly attest to its textual basis.[615]

Elsewhere, al-Shaybānī grounds *istiḥsān* with a basis in customary practice. He occasionally states, 'I exercise *istiḥsān* in this and set aside analogy because it is the practice of the people (*astaḥsinu dhālika wa-adʿu al-qiyās fīhi li-annahu amr al-nās*)' or 'This accords with the speech of the people and so I set aside analogy (*wa-ʿalā hādhā maʿānī kalām al-nās ʿindanā wa-adʿu al-qiyās fīhi*).'[616] Precaution is also a basis for *istiḥsān* as seen in the reasoning of Abū Ḥanīfa related by al-Shaybānī, 'I exercise *istiḥsān* and take precaution (*astaḥsinu wa-ākhudh bi-al-thiqa*).'[617] Sometimes, al-Shaybānī will ground *istiḥsān* in multiple sources as in his statement, 'I adopt precaution here and exercise *istiḥsān* due to what has reached us from Shurayḥ and also due to the condition that people are upon today (*ākhudh fī hādhā bi-al-thiqa wa-astaḥsinu li-mā balaghanā ʿan Shurayḥ wa-lil-ḥāl allatī al-nās ʿalayhā al-yawm*).'[618]

Frequently, al-Shaybānī will present *istiḥsān* in the context of competing analogies where a case plausibly attaches itself to two different established precepts or underlying meanings. Usually, the case or meaning that seems more apparently applicable is termed *qiyās*, while that

[613] This touches upon an important debate over *istiḥsān*, its connection to *takhṣīṣ al-ʿilla*, and the view that these cases actually represent an outright arationality as opposed to specialization. For more on this, see Zysow, *Economy*, 243-54.
[614] Umar F. Abd-Allah, *Mālik and Medina*, 169 f.n. 281.
[615] Hallaq, *Origins*, 144-5.
[616] Al-Shaybānī, *al-Aṣl*, 2:332, 4:125.
[617] Ibid., 1:28.
[618] Ibid., 11:523.

which is more inconspicuous is termed *istiḥsān* though this is not always the case. Take the following example of a master who enters into a *mukātaba* contract with half of his slave:

> **11.1.** I said: What is your opinion regarding the *mukātab*-slave who purchases a slave from his master, is this permitted?
> **11.1.1.** He said: As per *istiḥsān*, it would be permitted because his buying and selling from another is permitted. As per *qiyās*, only half of it would be permitted.
> **11.1.2.** I said: Why?
> **11.1.3.** He said: Because half of him is a *mukātab* and the other half is still a slave.[619]

In this example, there is a clash between the act of *kitāba* permitting the slave engaging in trade with anyone other than himself, and between the fact that half of the *mukātab*-slave still belongs to the master as per their contract. The conclusion affirmed in view to the former meaning is deemed *istiḥsān* and in view to the latter as *qiyās*. This is clearly not merely *ad hoc* reasoning, or a form of reasoning based on equity, but a result arising from viewing the effects of *kitāba* from two distinct perspectives. In another example:

> **11.2.** I said: What is your opinion regarding a person who drank alcohol until he became intoxicated and his intellect impaired and then he apostatized while in this state, returned to sobriety afterwards, and remained on Islam, is his wife considered separated from him?
> **11.2.1.** He said: According to *qiyās*, yes. However, I set aside *qiyās* and exercise *istiḥsān* because when an intoxicated person has his intellect impaired, he is akin to an insane person (*majnūn*) in this case and so I do not separate her from him.[620]

Here, the ruling entailed by analogy is based on the masters' view that the utterances and actions of an intoxicated person are not legally different than that of a sober person when it comes to divorce, sales, and so forth. Thus, a divorce issued in a state of intoxication is considered effected. Based on this, apostasy should be viewed similarly as well. However, in the case of apostasy, the masters viewed an intoxicated person from another analogical perspective, namely along the lines of an insane person, and just as the apostasy of the insane is not deemed to have occurred, so is the case with someone who is intoxicated. This is because apostasy is a matter of

[619] Ibid., 6:264.
[620] Ibid., 7:511. For more examples, see 1:25, 160-1, 185, 267, 2:365, 558, 7:216.

belief, and both the insane person and the intellectually impaired inebriate are not considered possessing belief in what they are stating. The interlocutors careful framing of the question is intended to make this ruling more apparent by specifying the apostasy as occurring after a person's intellect is impaired and 'while in this state'.

Turning to one final example of this type of *istiḥsān*, the interlocutor of al-Shaybānī asks him regarding a person performing a four-cycled supererogatory prayer who fails to sit at the conclusion of the second cycle. The response of al-Shaybānī is that his prayer is valid though he would have to perform two additional prostrations if this action was omitted out of forgetfulness. His interlocutor then asks:

> **11.3.** I said: Why? Has he not invalidated the first two cycles by not sitting for them?
> **11.3.1.** He said: According to *qiyās*, he has invalidated them. However, I set aside *qiyās* and exercise *istiḥsān* by considering them similar to an obligatory prayer (*bi-manzilat al-farīḍa*). Don't you see that if a person performed the *Ẓuhr* prayer and did not sit for the second cycle but sat for the fourth cycle and recited the *tashahhud* that his prayer is complete and he must perform a forgetfulness prostration? This case is similar.[621]

Once more there are two competing analogies at play here. The more apparent one relates to conceptualizing every two cycles of a supererogatory prayer as an independent prayer in itself. From this perspective, a four-cycled prayer is in actuality a combination of two two-cycled prayers, and among the conditions for the validity of any prayer is the performance of a sitting for the final cycle of that prayer lasting the duration it takes to recite the *tashahhud*. Given every two cycles of a supererogatory prayer constitute a complete and independent prayer on their own, failing to sit for the second cycle, which is the final cycle, would mean omitting an obligatory action. This would render those two cycles invalid. In contrast, this was not the manner in which an obligatory prayer was conceptualized. The *Ẓuhr* prayer, for example, was four complete cycles where the final cycle of the prayer was the fourth cycle itself. Thus, failing

[621] Ibid., 1:160-1.

to sit for the second cycle would not affect the validity of *Ẓuhr* as it is not the final cycle. This was the second possible analogy.

In his answer, al-Shaybānī indicates that a four-cycled supererogatory prayer in which one did not sit for the second cycle would be invalid when viewed from the first analogical perspective mentioned above. This is termed *qiyās*. On the other hand, the prayer would not be invalid if viewed as analogous to an obligatory prayer. This is the position preferred by al-Shaybānī who identifies it as *istiḥsān*. Thus, *istiḥsān* in this context is a competing and less conspicuous analogical option that the scenario in question attaches itself to. Preferring this analogical option was not arbitrary but consistent with other rulings of the supererogatory prayer as jurists explain. For example, even though each two cycles constituted an independent prayer, a four-cycled supererogatory prayer could be performed with one opening invocation (*taḥrīma*), i.e. it did not have to be repeated when one stood up to continue a second set of cycles in the four-cycled supererogatory prayer. This was despite the ruling that the *taḥrīma* was obligatory for every prayer.[622]

These examples reveal a more nuanced usage of *istiḥsān* that challenges the claim of its having evolved from an unprincipled technique aimed primarily at attaining equitable results to its rehabilitation in later periods as a form of reasoning based on recognized sources. There is little doubt that this rehabilitation was actually a fairly accurate representation of the methods and sources guiding the masters' exercise of *istiḥsān*.[623] This is not to deny that the desire to ameliorate the negative effects of *qiyās* was a factor in the use of *istiḥsān* as acknowledged by later jurists. However, this desire was not the exclusive meaning of *istiḥsān*, and nor did it negate

[622] Al-Sarakhsī, *al-Mabsūṭ*, 1:183.
[623] Given the complete publication of *al-Aṣl*, there is a sufficient amount of material available for a detailed analysis of *istiḥsān*. I have only provided a basic and preliminary examination here in order better understand its use in later periods.

a more principled and formal basis governing its exercise. Importantly, the manner in which *istiḥsān* was conceived and applied by the masters was 'distinctly different' from others, such as Mālik.[624]

(b) *Istiḥsān* Among Later Ḥanafī Jurists

Given the intense debates surrounding *istiḥsān* in the post-Shāfiʿī period and its identification with Abū Ḥanīfa and his companions,[625] this mode of reasoning was a central and defining feature of the Ḥanafī school and its legal paradigm. Ḥanafī jurists throughout the 3rd/9th century utilized it in their legal texts and verdicts as seen in the works of Hilāl and al-Khaṣṣāf. Hennigan has unsurprisingly observed that the usage of *istiḥsān* is not entirely uniform in either text. The most common usage he identifies is an appeal to the spirit of the law, but there is also '*ad hoc* reasoning' and,[626] specifically in the case of Hilāl, *istiḥsān* as an option deemed as 'less preferred' or 'a last resort'.[627] Though Hennigan is correct in pointing out that Hilāl and al-Khaṣṣāf do not explicitly ground their own use of *istiḥsān* with a basis in the Qur'an and *sunna*, it is incorrect to suggest that *istiḥsān* itself was not grounded in these sources by jurists during this period. For one, the example of the Ḥanafī masters repudiates this claim quite decisively. Further, the primary texts cited as a basis for *istiḥsān* were very specific in the rulings they

[624] Umar F. Abd-Allah, *Mālik and Medina*, 161.
[625] The earliest and most well-known critic of *istiḥsān* was al-Shāfiʿī who authored a text entitled *Ibṭāl al-istiḥsān*. In this text, al-Shāfiʿī argues that *istiḥsān* is essentially arbitrary legislation arising out of personal preference without a basis in revelation or what he calls 'an earlier precedent (*mithāl sabaqa*)'. This is in contrast to *qiyās*, which is a procedure based on evidence from revelation whose proper application has a set of defined conditions. For more, see Muḥammad ibn Idrīs al-Shāfiʿī, *al-Risāla*, ed. Aḥmad Muḥammad Shākir (Cairo: Dār al-Dhakhā'ir, 1975), 503-8; al-Shāfiʿī, *al-Umm*, 9:67-84; Joseph Lowry, "A Preliminary Study of al-Shāfiʿī's *Ibṭāl al-Istiḥsān*: Appearance, Reality, and Legal Interpretation," in *Abbasid Studies IV: Occasional Papers of the School of Abbasid Studies*, ed. Monique Bernards (Cambridge: Gibb Memorial Trust, 2013).
[626] The example Hennigan provides from al-Khaṣṣāf for *ad-hoc* reasoning that lacks 'any reference to social or religious norms' is identifiable with the first and largely uncontroversial form of *istiḥsān* identified by al-Jaṣṣāṣ, which related to personal judgments exercised by a jurist regarding amounts, measures, and the like when there was no text specifying an exact amount. See Hennigan, *Birth of a Legal Institution*, 37; al-Jaṣṣāṣ, *al-Fuṣūl*, 4:231.
[627] Hennigan, *Birth of a Legal Institution*, 38-9.

established, and the number of texts concerning endowments in general were minimal to begin with. Finally, by the time of Hilāl and al-Khaṣṣāf, concepts such as equity were themselves justified with a view to the primary texts and the principles of Islamic law. Indeed, Hennigan himself states that despite the supposedly 'unprincipled' nature of their *istiḥsān*, it is likely that Hilāl and al-Khaṣṣāf as rationalist-inclined jurists viewed its use as 'appealing to a general common law and/or to meta-principles within *waqf* law and Islamic law.'[628] It would seem equally plausible to assume that both saw a basis for several of these principles and common laws in the primary texts themselves given the tradition they inherited.

Hennigan is also correct in identifying the desire for equitable outcomes as one consideration guiding the use of *istiḥsān* in the texts of Hilāl and al-Khaṣṣāf. However, the generalized nature of his assertion overlooks the formal legal reasoning that often accompanied *istiḥsān* in these texts. Indeed, a closer examination of Hilāl and al-Khaṣṣāf shows clear parallels with the Ḥanafī masters and their exercise of this mode of reasoning. For example, Hennigan presents a case where Hilāl discusses a person who establishes an endowment 'for my nearest kin relation who is poor and then for those next closest in relation who are poor (*fuqarā' qarābatī al-aqrab fa-al-aqrab*)'. The ruling dictated by *qiyās* is that the entire yield of this endowment be given to the nearest poor kin relation even if the remaining poor relatives receive nothing. Hilāl uses *istiḥsān* to argue that when an endowment is designated for the poor, it is better to not give more than two-hundred *dirham*s to the nearest kin-relation who is poor, which is the amount legally distinguishing a poor person from a rich person, until all other poor

[628] Ibid., 42.

relatives have been lifted out of poverty.[629] Hennigan presumes that Hilāl resorted to *istiḥsān* 'sensing that such a result would be unjust and/or inconsistent with the founder's intent'.[630]

However, the reasoning guiding Hilāl is clearly articulated by him and is firmly grounded with a basis in formal reasoning. The original ruling that this case is analogous to is one wherein a person designates an endowment for 'my relatives, the closest of them followed by the closest (*qarābatī al-aqrab fa-al-aqrab*)'.[631] Here, the yields will be given entirely to the closest relative even if this results in other relatives receiving nothing. When questioned by his interlocutor regarding the applicability of this ruling to the case where an endowment is designated for 'my nearest kin relation who is poor and then for those next closest in relation who are poor', Hilāl explains that 'analogy would dictate that the entire yield of the endowment be given to the closest poor relative and nothing be given to those remaining.'[632] He continues, 'However, when the endowment is designated for the poor, I prefer (*astaḥsinu*) that the closest of them not be given more than two-hundred *dirham*s until the remaining also receive a similar amount.'[633] He then mentions the difference between the two cases: in the first, the founder of the endowment 'did not mention rich or poor but only intended those who are closest to him', while in the second case 'when he mentioned the poor, he intended those who are both poor and closest to him and so when one is given two-hundred *dirham*s, then poverty has been lifted from him.'[634]

Hennigan is, therefore, correct in his speculation that the use of *istiḥsān* here may have something to do with the intent of the one making the endowment. But Hilāl did not base this judgment on a general sense he had nor on grounds of equity or common law. Rather, he is

[629] Hilāl al-Ra'y, *Aḥkām al-waqf*, 225-6.
[630] Hennigan, *Birth of a Legal Institution*, 38.
[631] Hilāl al-Ra'y, *Aḥkām al-waqf*, 225.
[632] Ibid.
[633] Ibid.
[634] Ibid.

engaged in a classic *istiḥsān* scenario already seen in the texts of al-Shaybānī where a case may attach itself in some manner to multiple existing cases or legal meanings. In the current example, the wording of the endowment parallels cases wherein the yields of the endowment are given entirely to the closest relative, yet it also has an added stipulation that the endowment be specifically given to the poor, a category of people possessing a particular legal definition. The ruling entailed in view to the former is deemed *qiyās* and in view to the latter as *istiḥsān*. Hilāl adopts the conclusion entailed by *istiḥsān* since the one endowing clearly stipulated that the endowment be given to not just any of his closest relatives but those who are poor among them. Given the legal definition of a poor person, anyone who has received the equivalent of two-hundred *dirham*s of the yield would no longer be defined as poor. Consequently, to continue giving such a person the entire yield in the presence of other close relatives who are poor would contravene the original stipulation.

This is a purely legal argument on the part of Hilāl based on the particular wording of the endowment and an established legal definition of who is considered poor. Indeed, Hilāl is largely consistent throughout his text in regard to the definition of a poor person and the amount he is to be given of charity, which further demonstrates that his use of *istiḥsān* in the case under discussion was a mode of formal reasoning that was grounded in an existing juristic structure. To present one example of the consistent application of the two-hundred *dirham* rule seen above, Hilāl's interlocutor inquires about someone who designates his land as an endowment 'for the poor and needy without naming anyone specifically and then some of his kin are in need of it and he intends to give them something from the endowment.' Hilāl responds:

> **11.4.** He said: They are given less than two-hundred *dirham*s from it.
> **11.4.1** I said: Why did you give it to them?
> **11.4.2.** He said: Because they are poor, and someone who is poor according to us is not given from *zakāt* or charity except an amount less than two-hundred *dirham*s. This is because

> whosoever possesses two-hundred *dirham*s is considered rich and charity is due upon him. This is the position of Abū Ḥanīfa as it relates to *zakāt* and Abū Yūsuf.[635]

Similarly, the observation Hennigan makes that one meaning *istiḥsān* takes on in the texts of Hilāl is 'as a last resort' also fails to account for the broader juristic structure Hilāl was working with. The example he presents for this relates to an endowment established for clients (*mawlā*). According to Hilāl, clients who are manumitted slaves (*mawālī ʿitāqa*) and their children are to receive the yields of the endowment prior to any clients under a contract of clientage (*mawālī al-muwālāt*). The latter will only receive the yields if the former do not exist 'by virtue of *istiḥsān*', which Hennigan interprets as meaning 'as a last resort'.[636] This seems to be a simplistic reading of the case at hand that conflates the *mawālī al-muwālāt* being the last in a potential line of recipients with *istiḥsān* in this context being a non-technical reference to a final option. Yet, when examined alongside similar rulings, a more formal meaning is discernible. Thus, after discussing the ruling of the *mawālī al-muwālāt*, Hilāl is asked about the clients of one's client (*mawālī al-mawālī*):

> **11.5.** I said: What is your opinion regarding a person who says, 'I designate my land as a charitable endowment for my *mawālī*' and he does not have any *mawālī ʿitāqa* and nor any of their children, but he does have *mawālī al-mawālī*?
> **11.5.1.** He said: The yields will be given to them.
> **11.5.2.** I said: Why do you say this when earlier you said the *mawālī al-mawālī* will receive nothing?
> **11.5.3.** He said: Don't you see that if a person said, 'I designate my land as a charitable endowment for my child (*waladī*)' and he has children and grandchildren (*walad walad*) that the yields belong specifically to his biological children and not his grandchildren? However, if the endower did not have any biological children on the day he established the endowment, the yields would belong to the grandchildren. The same applies to *mawālī*. Thus, if the endower has *mawālī ʿitāqa* on the day he establishes the endowment, then the yield is for them. If he only has other *mawālī*, then it will belong to them.
> **11.5.4.** I said: A bequest is similar?
> **11.5.5.** He said: Yes. An endowment and bequest are the same in this regard. This is the opinion of our companions concerning bequests according to what I have described, and endowments are analogous to it (*al-waqf qiyāsuhu*).[637]

[635] Ibid., 147-8. For other rulings based on this principle, see 61-3, 66, 82, 224-5.
[636] Hennigan, *Birth of a Legal Institution*, 39.
[637] Hilāl al-Ra'y, *Aḥkām al-waqf*, 190.

The scenario presented here by the interlocutor mirrors the case of the *mawālī al-muwālāt* where an endower establishes an endowment for his *mawālī* in a context wherein the *mawālī ʿitāqa* and their children do not exist. Instead of the *mawālī al-muwālāt*, the question now concerns the *mawālī al-mawālī* and whether they are entitled to the yield. Hilāl identifies an analogical basis for giving the yields to them in this situation, which is the ruling relating to an endowment established for one's child (11.5.3.). Just as an endowment designated 'for my child' is given to a person's grandchildren in the absence of direct biological children, one designated 'for my *mawālī*' is given to the *mawālī al-mawālī* when none of the endower's direct manumitted clients or their children exist. This ruling is further supported by a case discussed by the masters relating to a bequest made by an individual for his *mawālī* where the same conclusion holds (11.5.5.).[638] How do the *mawālī al-mawālī* parallel grandchildren? Their immediate clientage relates to someone other than the endower himself just like the immediate descent of grandchildren does. This meaning is actually articulated by Hilāl in an earlier discussion where his interlocutor asks about the difference between the children of *mawālī ʿitāqa* and the *mawālī al-mawālī* after being told that the latter are not given the yield of an endowment in the presence of the former: 'As for the children of the *mawālī ʿitāqa*, they have no other patron besides the endower himself… as for the *mawālī al-mawālī*, they do have a patron who is someone other than the endower.'[639]

Following this, Hilāl continues addressing the same scenario but this time in view towards the potential entitlement of another category of clients, namely the client of one's father (*mawālī al-ab*):

> **11.6.** I said: What is your opinion regarding a person who says, 'I designate my land as a charitable endowment for my *mawālī*' and he has none but his father who has passed away does and now their patronage is to him?
> **11.6.1.** He said: They will not receive anything from the yield.

[638] This is mentioned by al-Shaybānī in *al-Jāmi al-kabīr*. See al-Shaybānī, *al-Jāmiʿ al-kabīr*, 288.
[639] Hilāl al-Ra'y, *Aḥkām al-waqf*, 189.

> **11.6.2.** I said: Why did you initially say that the *mawālī al-mawālī* will not receive anything unless one has no other *mawālī* in which case the yields will go to them?
> **11.6.3.** They are different. The *mawālī al-mawālī* do not resemble the *mawālī al-ab* because the patronage (*walā'*) of the former returns to the one endowing and his tribe, while in the case of the *mawālī al-ab* it may be that the father is of a different tribe to his son and so the *mawālī* of the father would also be from a different tribe to the son. This is the position of our companions concerning the *mawālī al-ab*. As for us, we exercise *istiḥsān* to give them [i.e. the *mawālī al-ab*] the yield if the one endowing has no *mawālī* of his own based on an analogy with the *mawālī al-mawālī*.[640]

Here, an endowment established for one's *mawālī* will be given to the *mawālī* of one's father in the absence of other clients if the endower inherited the patronage of the latter after the death of his father. In contrast to his discussion on *mawālī al-mawālī*, Hilāl identifies this as a ruling based on *istiḥsān* as he did with the *mawālī al-muwālāt*. However, unlike the latter, the meaning of *istiḥsān* is clearly articulated and constitutes a form of *qiyās*. The *mawālī al-ab* differ from the *mawālī al-mawālī* in some regards as explained by Hilāl but the latter are still viewed as an analogical basis for giving the former access to the yields of an endowment. In this particular scenario, the reason for this seems apparent. The *mawālī al-mawālī* were given the yields despite not being direct clients of the endower himself, and so this ruling established the possibility of other categories of clients possessing an indirect patronage connection to the endower being deemed entitled to an endowment. The *mawālī al-ab* were an example of this for their clientage was in reality ascribed to the father and not the endower himself. This analogy is termed by Hilāl as *istiḥsān*, and it demonstrates that the usage of this term in these contexts did not simply carry the meaning of a last resort option but constituted a technical term for a conclusion arising on the basis of formal reasoning.[641] Indeed, the case of the *mawālī al-muwālāt* is similar for analogy

[640] Ibid., 190-1.
[641] For another case where Hilāl explicitly identifies *istiḥsān* as an actual form of *qiyās*, see Hilāl al-Ra'y, *Aḥkām al-waqf*, 306.

dictates that the yield not be given to them at all even in the absence of other clients but rather to the poor and needy as later texts point out.[642]

Hilāl's use of *istiḥsān* parallels that of the masters in other ways as well, such as when it is explicitly based on considerations of customary practice.[643] Take the following example:

> **11.7.** I said: What is your opinion regarding a person who states, 'I designate my land as a charitable endowment for the poor of *banū* so-and-so' and he names the tribe he dwells with?
> **11.7.1.** He said: Analogy dictates that the yield be given to the Arabs of the tribe excluding their clients and those dwelling amongst them. However, I prefer (*astaḥsinu*) to designate the yield for the residents of this tribe from the Arabs, clients, and dwellers, if they are poor. This is because the meaning of people in their speech and bequests accords with this (*maʿānī al-nās fī qawlihim wa-waṣāyāhum ʿalā dhālika*). Thus, we follow and choose the meanings of people and set aside analogy on this matter (*adʿu al-qiyās*).[644]

Sometimes, Hilāl will present several lines of reasoning underpinning the use *istiḥsān* as in the following example:

> **11.8.** I said: What is your opinion regarding a person who states, 'I designate my land as a charitable endowment for the poor and needy' and a portion of it is a river, path, watering place, or a bog?
> **11.8.1.** He said: According to us, analogy dictates that the endowment applies to that which encompasses specified boundaries as opposed to that which does not. However, I prefer (*astaḥsinu*) to designate any rights associated with it [i.e. the land] as an endowment similar to it. This is because if I did not, the land would go barren without a watering place, bog, or a path. Don't you see the opinion of our companions regarding a person who leases land from someone without mentioning its rights or its paths where they stated, 'We prefer (*nastaḥsinu*) to designate the path and watering place for him because this is the practice of the people'? An endowment is similar.[645]

In this example, the primary justification Hilāl advances for his use of *istiḥsān* is necessity-based where the continued usability of the land depends on the inclusion of rights that the original designation did not include. Following this, Hilāl presents a ruling of the masters for a similar case, which was itself *istiḥsān* based on customary practice. This ruling served as an analogical

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[642] Ibn Māza, *al-Muḥīṭ*, 9:84.
[643] Understanding the terms of an endowment based on the customary usage of people is a general principle in the texts of both Hilāl and al-Khaṣṣāf. See Hilāl al-Ra'y, *Aḥkām al-waqf*, 54, 59, 63, 91, 95; al-Khaṣṣāf, *al-Awqāf*, 45, 47.
[644] Hilāl al-Ra'y, *Aḥkām al-waqf*, 204. Also see 54.
[645] Ibid., 288.

basis for the inclusion of certain rights associated with land that would otherwise not be included by way of strict *qiyās*. In other words, an *istiḥsān*-based ruling became a source for extending and applying this technique to other cases. This is significant in light of statements that rulings established by way of *istiḥsān* are anomalous and cannot act as analogues. However, not all *istiḥsān* rulings were subject to this restriction. Rather, this principle applied mainly to rulings that were deemed arational and lacked a clear analogical basis, such as the permissibility of performing ablution with *nabīdh*.

This manner of utilizing *istiḥsān* is also seen in the texts of other jurists from the 3rd/9th century. Like Hilāl, al-Khaṣṣāf uses *istiḥsān* as a mode of formal reasoning as seen in the following example

> **11.9.** I said: If their relationship to the endower is soundly established, what is the ruling?
> **11.9.1.** He said: If people testify that they are relatives [of the endower], detail the relationship, and bear witness to their not knowing any other relatives of the endower except these, the yield will be divided among them based on their number.
> **11.9.2** I said: And if a people establish proof for their claim to being relatives and two witnesses testify on behalf of each of them that he or she is a relative of the endower, detail the relationship, but the judge neglects to ask the witnesses whether they are aware of any other relatives besides those who they have testified for?
> **11.9.3.** He said: They are made to recall their witnesses to testify again concerning this. However, if they are unable to bring forth those who initially testified for them and the matter is excessively delayed (*ṭāl al-amr fīhi*), I exercise *istiḥsān* in dividing the yield between them and specify one of them as a guarantor (*kafīl*) for that which I hand over to them. Our companions said regarding a person who established that so-and-so had passed away and he was his son and heir, but the witnesses who appeared on his behalf did not testify to not knowing any other heir besides him, that if the matter is excessively delayed there is no harm in the judge giving him the inheritance of the deceased and he is to take a guarantor on his behalf. The same is the case with relatives.[646]

The ruling entailed by *qiyās* in this case is that a testimony wherein the witnesses do not furnish evidence for the non-existence of other relatives prevents a judge from handing over the yields of an endowment to those whom it was designated for of one's relatives because there is a possibility that other entitled parties exist. The basis of this requirement is indicated in 11.9.1. In

[646] Al-Khaṣṣāf, *al-Awqāf*, 58. Also see 50, 62, 108, 154.

the case where a judge neglects to inquire about this, the witnesses would be required to reappear in front of him and testify to the existence or non-existence of such parties. However, if they are unable to appear and the case is prolonged, the judge will rule in favour of giving the yields to the current relatives and appoint a guarantor (11.9.3). This ruling is based on *istiḥsān* not simply in view of the interests of the known relatives but also on the formal legal basis that their relationship to the endower has in fact been established by court proceedings. It is only the existence of other entitled parties that remains unresolved, and their existence is a mere possibility that does not negate the entitlement of those whose relation to the endower is known and affirmed.[647]

Though al-Khaṣṣāf does not articulate the reasoning of the masters in such detail himself, the precise language and flow of the dialectic he constructs, as well as the explicit reference to the masters, indicates that he was aware of these arguments. Regardless of whether al-Khaṣṣāf cited their opinion with a view to its underlying reasoning or whether he saw their opinion in itself as constituting evidence, the use of *istiḥsān* still assumes a technical meaning where a jurist is confronted with a case that attaches itself to multiple competing analogies. Here it is either between the requirement for witnesses to testify that there are no other entitled parties versus the established status of certain individuals as relatives in the face of only the mere possibility of contenders, or it is between competing legal rulings in the *corpus juris* of the masters. Regardless of which it is, the justification and basis for *istiḥsān* in this example is clearly a parallel legal ruling.

In addition to Hilāl and al-Khaṣṣāf, the sources show a general acceptance of *istiḥsān* among 3rd/9th century Ḥanafī jurists. Several leading jurists across this period are shown

[647] Al-Sarakhsī, *al-Mabsūṭ*, 17:45-6.

explicitly relying on this mode of reasoning in their legal verdicts, such as Muḥammad ibn Muqātil, Nuṣayr ibn Yaḥyā, Muḥammad ibn Salama, Abū Naṣr, Abū Bakr al-Iskāf, and Abū al-Qāsim al-Ṣaffār, among others.[648] Indeed, during the beginning of the 4th/10th century, *istiḥsān* had become more clearly articulated as a technical concept as seen in the discourse of al-Karkhī and others.[649] The only two Ḥanafī jurists associated with a rejection of *istiḥsān* from this period are Bishr al-Marīsī and al-Ṭaḥāwī. Ibn Ḥazm is the sole source to name the latter as an opponent of this mode of reasoning, but Carolyn Brunelle concluded that 'none of al-Ṭaḥāwī's extant works contain any statement of principle in support or rejection of *istiḥsān*' and that these works 'suggest considerable discomfort with the procedure, but also an unwillingness to publicly oppose a technique so closely associated with the Ḥanafīs.'[650]

III. Conclusion

The current chapter continued to examine the legal discourse of Ḥanafī jurists during the 3rd/9th century and the paradigm they adopted. Chapter Four demonstrated that this paradigm is correctly characterized as 'Ḥanafī' on account of its explicit grounding in the doctrine of the masters. This chapter analysed this phenomenon from another perspective, namely contexts wherein jurists are shown implicitly guided by the opinions, principles, and methods of the Ḥanafī masters. The texts of Hilāl and al-Khaṣṣāf seem to clearly divulge this type of reliance where their conclusions and reasoning in several chapters parallel the doctrine of the masters and build off the broader juristic structure they had erected. This is also seen in the legal verdicts of

[648] Al-Samarqandī, *al-Fatāwā*, 141, 157, 324, 349, 379, 389, 623, 628, 636, 640, 645, 706.
[649] Al-Jaṣṣāṣ, *al-Fuṣūl*, 4:231. The definition al-Karkhī provided for *istiḥsān* was, 'Leaving a ruling for another ruling more preferable to it such that if the latter were not established as the rule the former would be.' Another name that can be added to the list of early Ḥanafī jurists who explained and defended *istiḥsān* is Abū Manṣūr al-Māturīdī (d. 333/944). See Abū Manṣūr al-Māturīdī, *Ta'wilāt al-qur'ān*, ed. Aḥmad Wānlī Awghlī, 18 vols. (Istanbul: Dār al-Mīzān, 2005), 16:221.
[650] Brunelle, "From Text to Law," 274-5.

other Ḥanafī jurists during the 3rd/9th century though an accurate determination of the extent of such reliance requires a more comprehensive study of the sources.

Another central component of the legal paradigm that 3rd/9th century Ḥanafī jurists worked with was *istiḥsān*. This was an important mode of legal reasoning in the discourse of the Ḥanafī masters, and it was almost universally accepted and adopted by their followers. Later jurists utilized this technique in a manner similar to the Ḥanafī masters with a focus on subtler and competing forms of evidence that were grounded in the primary sources, established cases and principles, custom, and/or need, and entailed a departure from some analogical alternative. It was not merely arbitrary reasoning or an expression of expediency 'without an underlying text or formal reasoning' as claimed by some.[651] Though mitigating negative effects occasionally guided the exercise of *istiḥsān*, the texts of the Ḥanafī masters and their followers, such as Hilāl and al-Khaṣṣāf, make it clear that it was often guided by considerations of formal legal reasoning.

[651] Indeed, the mere fact that al-Shaybānī viewed precaution that entailed a stricter ruling than what was entailed by *qiyās* as one meaning of *istiḥsān* undermines the claim that the latter simply aimed to 'remove the rigidity of law' as stated in Ahmad Hasan, "The Principle of *Istiḥsān* in Islamic Jurisprudence," *Islamic Studies* 16, no. 4 (1977): 348. Additionally, there are contexts where al-Shaybānī is said to have deemed the results of *istiḥsān* as abhorrent (*qabīḥ*), which challenges the idea that it was an appeal to the 'spirit of the law'. See Ibn Māza, *al-Muḥīṭ*, 10:235.

Chapter Six

The period between the death of al-Shaybānī up until the middle of the 4th/10th century witnessed the transformation of the Ḥanafī school into a doctrinal entity. Earlier, it was stated that Ḥanafīsm as a legal tradition was fundamentally an engagement with *fiqh* grounded in the authority of the Ḥanafī masters, their rulings, and a distinct school paradigm. The various forms of this engagement and aspects of this paradigm have been detailed over the preceding two chapters. They included engaging the opinions of the masters with a view towards rule enumeration, justification, and derivation, as well as adopting a *ra'y*-based discourse that incorporated *qiyās* and a particular form of *istiḥsān*. This chapter will discuss two additional elements of this engagement: authorizing discourse and generalizing activity.

On a macro-level, the doctrinal school was formed of the opinions of the masters, substantive principles, and the opinions of later school jurists. Each of these were closely related to one another for the opinions of the masters constituted the material from which the principles of the school were understood and derived, and the opinions of the masters and the principles these opinions expressed functioned as a source that later jurists utilized to formulate new rulings. Further, the doctrinal school was also a highly consolidated and authoritative entity defined by its substantive boundaries that established not only the outer most limits of the school but also its authoritative doctrine. While the former distinguished the school from others, the latter involved confronting the sheer plurality of opinion found within the school itself. Efforts to determine authoritative doctrine paved the way for a more generalizing discourse, namely the study and elaboration of the opinions of the masters as 'applications of predetermined principles… from which they had issued but which had not yet been explicitly articulated.'[652]

[652] Hallaq, *Authority*, 118-9.

This described a shift towards a more generalized mode of legal exposition that saw the school emerge as a highly developed system and further consolidated the regime of *taqlīd*.

The 3rd/9th century was the earliest stage to witness such authorizing discourse and generalizing activity. Both display additional dimensions of early Ḥanafī engagement with the opinions and cases of the masters, which characterized Ḥanafīsm as a distinct legal tradition or *madhhab*. The current chapter will examine some of the processes that went into the creation of an authoritative school doctrine and the early shift towards a more generalizing mode of discourse. Both of these developments lend themselves once more to demonstrating the existence of a uniquely Ḥanafī discourse during the 3rd/9th century that led to the increasing consolidation of the school as a distinct and integral legal entity.

I. The Ḥanafī School as an Authoritative Entity

Authority in the legal school can be understood from various perspectives, but there are two general levels that are relevant to this section and which have been described in the preceding paragraphs. The first relates to the lines demarcating a school as a legal entity from other schools. Here, the authority of the legal school meant that the legal activity of a jurist was confined to the substantive boundaries of the school to which he belonged. Venturing beyond these boundaries was only done at the risk of being viewed as having abandoned one's legal school. Questions surrounding doctrinal loyalty are concerned with this level of authority.

In contrast, a second level of authority related to the legal school as a cumulative and accretive tradition whose corpus was formulated of the opinions of multiple generations of jurists, which occasioned a staggering plurality of doctrine within the school itself that encompassed both authoritative and non-authoritative opinions. From the 3rd/9th century onwards, jurists attempted to limit this plurality of doctrine and the resulting indeterminacy of

law by ranking different opinions present in the *corpus juris* of their school in terms of authoritativeness and soundness. This process of authorization was undertaken in light of several competing considerations, such as the veracity of those transmitting a particular opinion, its acceptance by other authorities, or the consistency of an opinion with other established rulings within the juristic structure. Ultimately, jurists would develop a set of operative terms to express this authoritative doctrine.

The collective structure of authority in the early Ḥanafī community meant that 3rd/9th century jurists were almost immediately confronted with a plurality of legal opinions. Previous chapters have already demonstrated that the students of Abū Yūsuf and al-Shaybānī inherited a legal tradition from their teachers that comprised the opinions of multiple authorities, namely Abū Ḥanīfa, Zufar, and then those of their teachers themselves. Each succeeding generation brought with it an additional layer of jurists whose opinions were relayed by their students, studied and analysed, and incorporated as part of the school's legal corpus. Centuries later, these layers would be identified through a three-tiered taxonomy of legal doctrine. The first and most authoritative was *ẓāhir al-riwāya*, a term referring to the famous and well-known (*mashhūr*) legal opinions of Abū Ḥanīfa, Abū Yūsuf, and/or Muḥammad ibn al-Ḥasan al-Shaybānī transmitted in six books that the latter had authored.[653] This was followed by *al-nawādir*, which were legal opinions of the masters not transmitted through well-known chains of transmission. Consequently, they were viewed as less authoritative than *ẓāhir al-riwāya*.[654] Finally, there were

[653] These six books were *al-Aṣl*, *al-Jāmiʿ al-kabīr*, *al-Jāmiʿ al-ṣaghīr*, *al-Siyar al-kabīr*, *al-Siyar al-ṣaghīr*, and *al-Ziyādāt*. It should be noted, however, that not all jurists identified all six of these books as part of *ẓāhir al-riwāya*. Some opined that the number of texts constituting this corpus were three, while others said four or five. See Ibn ʿĀbidīn, *Sharḥ ʿuqūd*, 315-7; Lu'ay ʿAbd al-Ra'ūf al-Khalīlī, *Asbāb ʿudūl al-ḥanafīya ʿan al-futyā bi-ẓāhir al-riwāya* (Amman: Dār al-Fatḥ, 2016), 45-64.
[654] Ibn ʿĀbidīn, *Sharḥ ʿuqūd*, 318-22.

al-nawāzil, which referred to legal rulings derived by later generations of jurists for issues where no transmitted opinion existed from the masters.[655]

This taxonomy of legal opinions was a later development in the school. Such a hierarchical structure of authoritative doctrine is absent during the 3rd/9th century but the basic notions underpinning the concept of *ẓāhir al-riwāya* clearly began to take root from the middle of the century. In shedding further light on the creation of this authoritative doctrine, the first section of this chapter will discuss two interconnected dimensions of such doctrine: (i) early forms of *tarjīḥ* and operative terminology and (ii) authoritative legal literature.

A. Early *Tarjīḥ*, Operative Terminology, & Cumulative Doctrine

Hallaq in his discussion on the evolution of the legal school made the widely accepted observation that prior to its rise as a doctrinal entity, jurists were not bound to any particular doctrine. It was only in the post-doctrinal period that legal activity became increasingly confined to not just the doctrine of one's school but to its authoritative doctrine. For this, jurists had to undertake the task of ranking different opinions in order to identify and distinguish authoritative doctrine from the non-authoritative, which resulted in the development of specific terminology.[656] This practice was known as *tarjīḥ* or 'rule-determination', and it was conceptually linked to the procedure of *taṣḥīḥ* or 'rule-review'.[657] Texts of substantive law in the classical period are replete with declarations of opinions being sound, less sound, or unsound with the last being described through a variety of additional terms, such as *shādhdh* (aberrant), *ḍa ʿīf* (weak), *gharīb* (strange/unknown), and so forth.[658] Alongside the *ṣaḥīḥ* opinion stood

[655] Ibid., 322-33.
[656] Hallaq, *Authority*, 164.
[657] Ibid., 133-5.
[658] Ibid., 137.

another important operative term, namely the *mashhūr* or 'well-known' and 'famous' opinion. *Tashhīr* as a mode of authorization was not common to all schools, and it was often subject to *taṣḥīḥ* itself. In other words, the authority of a particular opinion derived not from its being deemed *mashhūr* but through its being determined as *ṣaḥīḥ* in relation to other opinions.[659] However, the determination of an opinion as *mashhūr* or *ṣaḥīḥ* was highly subjective, which created multiple presumed authoritative opinions. Consequently, jurists introduced even more operative terms, such as *rājiḥ* (preponderant), *ṣawāb* (correct), *muftā bi-hi* (*fatwa* position), and *mukhtār* (chosen opinion), among others, which aimed to reduce the plurality arising from such subjective practice.[660] These terms, along with the *mashhūr* and *ṣaḥīḥ*, constituted the backbone of the operative discourse of substantive law and possessed the single purpose of determining the authoritative opinion for a given case.[661]

According to Hallaq, the earliest practitioners of *tarjīḥ* and *taṣḥīḥ* were jurists operating as part of a doctrinal school, such as Muḥammad ibn Waraqa al-Bukhārī (d. 385/995), and more clearly scholars from the 5th/11th century, such as Abū al-Qāsim al-Fūrānī (d. 461/1068).[662] In his periodization of the Ḥanafī school, Talal Al-Azem indicates similarly when he characterizes the 5th/11th century as the period of early *tarjīḥ*, the 6th/12th century as late *tarjīḥ*, and then 650/1270 onwards as one of *taṣḥīḥ*.[663] The distinction between *tarjīḥ* and *taṣḥīḥ* struck by Al-Azem is explained as being in view to the activity of a specific jurist and the sub-processes involved in his task of weighing the multiple legal opinions transmitted from the masters. In this context, *tarjīḥ* refers to 'rule-formulation' where an opinion is chosen by a jurist as the ruling of the

[659] Ibid., 146.
[660] Ibid., 151-2.
[661] Ibid., 152-3. However, as Hallaq points out, some operative terms were of a non-technical quality, such as *ashbah* or *ajwad*, especially when compared with *ṣaḥīḥ* and *mashhūr*.
[662] Ibid., 164.
[663] Al-Azem, *Rule-Formulation*, 61-84.

school, while *taṣḥīḥ* is 'rule-review' where such earlier rule-formulations are confirmed, rejected, or emended. Al-Azem clarifies that when understood historically, *tarjīḥ*, or 'rule-determination', incorporated the totality of these processes, namely rule-formulation and rule-review, and reflects a stage of the legal school's development 'towards a regime of stable and predictable rules'. From this vantage point, *tarjīḥ* and *taṣḥīḥ* are synonymous and conceptually linked as Hallaq observed.[664]

Being a more advanced stage in legal history, modern scholars have not addressed in any significant manner the early origins and use of such operative terminology prior to the emergence of the legal school as a doctrinal entity and guild. Hallaq does briefly remark that early jurists distinguished between legal opinions, though they 'rarely' engaged in rule-determination or preference of the type described above. The two specific examples he mentions of such rare instances of *tarjīḥ* both come from al-Ṭaḥāwī and show him deeming an opinion of one master as 'better' (*ajwad*) than those held by the others.[665] Al-Azem on the other hand terms the 3rd/9th century a period of formative transmission and the 4th/10th century as one of classical consolidation where the legal school was transformed into a doctrinal entity epistemically and a guild socially.[666] This description accurately captures the capacity in which jurists from this century are often presented in later legal literature, such as Ibn Quṭlūbughā's *al-Taṣḥīḥ wa-al-tarjīḥ*, and the dominant aspect of their legal activity and discourse. Nonetheless, as has been argued throughout this thesis, formative-period jurists were engaged in myriad activities that may not always be immediately apparent in a single later text. The practice of *tarjīḥ* is one such activity and its early stages, forms, and methods will be analysed below.

[664] Ibid., 8-9, 144-7.
[665] Hallaq, *Authority*, 155.
[666] Al-Azem, *Rule-Formulation*, 57, 59.

(i) *From 189/805 to 250/865*

The first few decades following the death of al-Shaybānī are not ones commonly associated with the practice of intra-school *tarjīḥ* for the very existence of a legal school during this period is questioned. However, since it is still possible to speak of a distinct Ḥanafī legal community from the first half of the 3rd/9th century as argued in this study, the rudimentary beginnings of school-internal reasoning that included some form of *tarjīḥ* can also be recognized. This is especially so when such a practice is understood in its broader denotation as rule-determination in the interest of creating a regime of stable rulings. Such school-internal reasoning was not exclusive to Ḥanafīs as the earliest secondary legal texts of other schools already disclose the emergence of a similar discourse, such as the *mukhtaṣar*s of the Shāfiʿīs.[667] These non-Ḥanafī sources present jurists engaged in *tarjīḥ* where operative terms are routinely used to express legal preferences.

Early Ḥanafī jurists were aware that there were often multiple opinions related from the masters on a single issue. Due to this, they undertook the task of distinguishing between different opinions and transmissions. One common concern was identifying whether a legal opinion was the initial position (*al-qawl al-awwal*) held by the masters or a later one (*al-qawl al-ākhir*) that superseded the first. This was known as *rujūʿ* and virtually all of the earliest extant texts of the school show an interest in determining these earlier and later opinions. Given the frequency of such *rujūʿ*-determinations in the discourse of Abū Yūsuf and al-Shaybānī,[668] it is no surprise that their students also paid close attention to documenting such instances and noting when their teachers themselves altered their stance on a particular issue.[669] Though there was often an

[667] El Shamsy, *Canonization*, 177-8.
[668] Al-Shaybānī, *al-Aṣl*, 2:579, 3:526, 580, 4:510, 6:419, 555, 8:231, 10:188, 577, 12:6-7.
[669] Al-Ghāmidī, "*Kitāb Nawādir Muʿallā ibn Manṣūr*," 190 ('*thumma rajaʿa Muḥammad*'), 215 ('*qawluhu al-awwal*'), 317 ('*rajaʿa Abū Yūsuf*'), 336 ('*thumma rajaʿa Abū Yūsuf*'), 353 ('*thumma rajaʿa ʿanhu [Abū Ḥanīfa]*'), 383 ('*thumma rajaʿa Muḥammad*').

implied *tarjīḥ* in identifying an opinion as a later opinion, this was not necessarily the case for the phrase 'his initial position' and 'his final position' did not contain any explicit preference for the latter over the former, nor any preference for these opinions over those held by other authorities. In other words, *rujūʿ* was not always a determination of what the ruling on a given issue should be. Nonetheless, such determinations were still significant for they extended beyond the singular issue itself by signalling a potential shift in the principles of the jurist in question. In one telling example, after mentioning Abū Yūsuf altering his opinion on a particular issue, Asad ibn al-Furāt remarks, 'His going back on it is his going back on cases resembling it.'[670]

Another form of *tarjīḥ* or rule-determination seen during this period involved ascertaining, confirming, and/or correcting the opinions ascribed to, and formulated by, the masters. This took on several forms. The most basic form of this activity involved ascertaining a particular ruling as actually being the view of one of the masters or a mistaken ascription. Far more substantive than this was *tarjīḥ* in the meaning of rule-review where the opinions of the masters were critically analysed for their soundness in light of the broader juristic structure they had constructed. Among the jurists prominently associated with this latter activity was ʿĪsā ibn Abān who is shown in the sources regularly scrutinizing, correcting, and emending the opinions of the masters, which may be termed an early form of *taṣḥīḥ* as literal rule-review.[671] In one example where ʿĪsā offers a corrective, al-Shaybānī discusses the ruling of two individuals in a partnership who did not stipulate a general permission that would allow each to individually engage in buying and selling on credit or otherwise. If both lend out money in this context and one of them subsequently takes collateral from the debtor after which the collateral perishes in

[670] Al-Qaysī, *Adab al-qāḍī*, 96.
[671] The choice to translate *taṣḥīḥ* here as rule-review should not be understood as necessarily paralleling the particular sub-process Al-Azem associates the term with in later periods. This point will be clarified later on in the section.

his possession, he is considered to have relinquished his portion of the loan if the value of the collateral is equal to the loan amount. The other partner then has the option to receive the portion he is owed from the debtor or make his partner who took out the collateral liable for it.[672] ʿĪsā ibn Abān objects to this stating:

> **12.0.** It should be the case that a partner not be deemed liable for the portion of the other partner because Muḥammad said, 'If a person says to another, "Give me collateral for the loan of so-and-so that is owed by you, and if he allows it, then it is accepted, but if he does not, I am not liable", that if he gives something in collateral to him after which it perishes in his hands he will not be deemed liable."[673]

Another example of this is found in a discussion on the confession (*iqrār*) of a slave granted permission by his master to engage in trade (*ma'dhūn*). If such a slave admits to being liable for another person's wealth due to the perishing of an item he usurped from him (*ghaṣb*), or accepted as a deposit (*wadīʿa*), or received as a gratuitous loan (*ʿāriya*) during a period where he was not permitted to partake in trade, then there are two possibilities: either the financier (*rabb al-māl*) confirms this confession or he denies it. In the former scenario, the slave will be immediately liable for his act of usurpation, while his liability for an item he took as a deposit and the gratuitous loan is deferred until after he attains the status of a free man. As for the case where the financier denies this confession, the slave will be immediately liable for everything. This same ruling applies to a discerning child who is given permission to trade. However, this is challenged by ʿĪsā who states, 'This is correct (*ṣaḥīḥ*) according to what is analogically entailed by the opinion of Abū Ḥanīfa and Abū Yūsuf but an error (*khaṭa'*) according to the position of Muḥammad in view of what analogically follows from the case pertaining to the admission of a

[672] Al-Shaybānī, *al-Aṣl*, 3:221.
[673] Al-Nāṭifī, *al-Ajnās*, 2:47; al-Kāsānī, *al-Badā'iʿ*, 7:532.

non-Muslim who becomes Muslim.' He then reproduces this ruling of al-Shaybānī and the manner in which the non-liability of a child should follow from it.[674]

Legal texts refer to ʿĪsā several times for his critical review of the masters' legal opinions. In some instances, he will be seen remarking that 'this is the answer that is correct (*inna hādhā al-jawāb huwa al-ṣaḥīḥ*)', while in others 'this answer is incorrect and the correct position is… (*hādhā al-jawāb khaṭa' wa-al-ṣaḥīḥ an yuqāl*)' or 'it should be (*yanbaghī*) such and such.'[675] In one particularly noteworthy example, Abū Khāzim discusses an opinion in *al-Jāmiʿ al-kabīr* that conflicts with the ruling provided for the same case in *al-Aṣl*. After citing both rulings, he remarks, ''ʿĪsā ibn Abān said that what he stated in *al-Jāmiʿ* and *al-Imlā'* is correct (*huwa al-ṣaḥīḥ*).' He then concludes, 'This is also so according to me (*wa-ka-dhālika ʿindī*).'[676] The significance of this example lay not only in it involving a clear statement of preference between differing opinions found in the texts of the masters but also later juristic engagement with earlier *tarjīḥ* practices.

ʿĪsā was not the only jurist from this period that the sources present as critically reviewing the opinions of the masters. His colleague, ʿAlī ibn al-Ḥasan al-Rāzī, was identified in the biographical literature as 'someone knowledgeable of the positions of our companions, and one who criticized some of the legal opinions in *al-Jāmiʿ al-kabīr* and *al-Uṣūl*.'[677] This is confirmed in a report transmitted by al-Ṭaḥāwī from his teacher Ibn Abī ʿImrān:

> **12.1.** Ibn Abī ʿImrān said that he heard ʿAlī al-Rāzī say, 'The later books of Muḥammad… such as *al-Muzāraʿa [al-kabīr]* and *al-Muḍāraba*, contain certain legal opinions that he would go back on if he reviewed them because they go against his principles (*mukhālif li-uṣūlihi*).'[678]

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[674] Al-Shaybānī, *al-Aṣl*, 8:575; al-Sarakhsī, *al-Mabsūṭ*, 25:82.
[675] For these examples and more, see al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr*, ff. 3:83a, 252b; al-Sarakhsī, *al-Mabsūṭ*, 7:14, 11:162-3, 203, 14:13, 17:76, 181, 21:122, 22:92, 97, 115, 23:40, 28:11.
[676] Al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr*, ff. 3:102b.
[677] Al-Ṣaymarī, *al-Akhbār*, 164.
[678] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 4:49.

Fortunately, al-Jaṣṣāṣ preserves one example of this in his commentary on *al-Jāmiʿ al-kabīr*. Here, the ruling presented by al-Shaybānī relates to a woman who takes possession of a camel or cow as her dowry (*mahr*) after which the animal increases in size. If she is then divorced before the marriage is consummated, she will return half the market value of the animal. She will also have to pay *zakāt* on the animal. However, if the animal did not increase in size, she may return it and no *zakāt* would be due. ʿAlī al-Rāzī criticized this ruling and argued that an increase that remains attached to the original item (*muttaṣil*) should not prevent its return in this case. This is in contrast to an increase that is detachable and separate (*al-ziyāda al-munfaṣila*), such as the animal's giving birth. He then presents his justification:

> **12.2.** This is because they [i.e. the masters] differentiated between an attached increase and a detached one in the context of returning an item due to a defect (*li-annahum farraqū bayn al-ziyāda al-muttaṣila wa-bayna al-ziyāda al-munfaṣila fī al-radd bi-al-ʿayb*). Thus, they said that if a slave girl was sold in exchange for a male slave and both were taken possession of after which the slave girl increased in size and a defect was discovered in the male slave, one returns the male slave and takes back the slave girl along with the increase. In contrast, if she gave birth while in the possession of the buyer, the male slave is returned, and the seller takes the market value of the slave girl. In this way, they distinguished between an attached increase and a detached one, and so it should be the case that they make a distinction between them here as well according to what we have described (*fa-yanbaghī an yufarriqū baynahā fīmā waṣafnā*).[679]

These examples demonstrate a concern on the part of early jurists to create a legal system that was consistent and stable, and to this end even the individual legal opinions of the masters were subject to review and correction.[680] Earlier, it was shown that this concern also

[679] Al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr*, ff. 1:114ab; al-Shaybānī, *al-Jāmiʿ al-kabīr*, 17.
[680] Other jurists from this period who engaged in similar activity included Ibn Shujāʿ who corrects some of the opinions transmitted from Zufar on account of their being inconsistent with his broader doctrine. Similarly, Bakr al-ʿAmmī is quoted by Abū Khāzim for his review of the opinions of the masters. Abū ʿIṣma al-Marwazī, a student of Abū Sulaymān, is also seen in several instances critically analysing, correcting, and interpreting the views al-Shaybānī transmitted in his texts. See al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr*, ff. 3:83a; al-Sarakhsī, *al-Mabsūṭ*, 7:40, 12:98, 15:49.

characterized the discourse of Hilāl and al-Khaṣṣāf.[681] Indeed, the tradition of *ra'y* in general, and its stylistic *ara'ayta* dialectic in specific, divulged a concern for doctrinal consistency. However, neither Hilāl nor al-Khaṣṣāf employ operative terms regularly to indicate their preferences or to offer correctives and emendments to precedent rulings even in contexts where they relate multiple opinions from the masters. Both allow their dialectic to speak for itself though Hilāl usually makes his preferences known through the phrase 'this is our opinion' (*huwa qawlunā*). Meanwhile, al-Khaṣṣāf does on the rare occasion refer to specific opinions as 'correct (*ṣaḥīḥ*) according to',[682] 'preserved' (*maḥfūẓ*),[683] or 'best' (*aḥsan*). From these, it is only the last that parallels later *tarjīḥ* practices where a jurist is confronted with a plurality of opinions and selects one as the ruling to be adopted as law, though the term itself lacks an overtly technical character:

> **12.3.** Those among them who permitted endowments stated that an endowment in this case follows the law of bequests and so they said granddaughters do not enter into the endowment. It was also narrated from them that they do enter. Muḥammad ibn al-Ḥasan said that they enter, and he evidenced this in his *al-Ḥujaj ʿalā Mālik*. This is the best opinion according to us (*wa-hādhā ʿindanā aḥsan*).[684]

The employment of *ṣaḥīḥ*, *rujūʿ*, *aḥsan*, *huwa qawlunā*, *bi-hi nakhudh*, and related terms during this period represent the earliest expressions of *tarjīḥ* that would be precursor to a more developed system of authorization in the Ḥanafī school. During the first half of the 3rd/9th century, technical operative terms seem to have been limited, and rule-determination was significantly different in its form and function than it would be in the later periods. Though *tarjīḥ*

[681] Another name that can be mentioned here is al-Qaysī who is shown pointing out when a legal ruling presented by al-Shaybānī should be identified as the opinion of Abū Yūsuf or Abū Ḥanīfa based on the *madhhab* of each. Take his statement, 'This answer from Muḥammad is based on the *madhhab* of Abū Yūsuf according to me… as for the *madhhab* of Abū Ḥanīfa then… and the rulings Muḥammad has mentioned on this issue, its answer should follow this.' See al-Qaysī, *Adab al-qāḍī*, 49.
[682] Al-Khaṣṣāf, *al-Awqāf*, 197.
[683] Ibid., 353.
[684] Ibid., 72. For another early example of this, see 39.

in this early context did incorporate reviewing, interpreting, selecting, correcting, and modifying earlier legal opinions, this was not necessarily undertaken by jurists in order to determine what *the* ruling of the school should be as a point of binding doctrine given the legal school did not yet exist as a fully mature doctrinal entity. In other words, early forms of *tarjīḥ* preserved in extant legal literature seem heavily centred on the question of legal consistency and the individual preferences of jurists.

Given what has preceded, two observations can be offered in regard to early *tarjīḥ* practice: firstly, it functioned to ensure the integrity and consistency of a juristic structure that the masters had erected, and consequently the rulings in this structure were systematically subjected to critical review, deemed sound and sometimes adopted, or deemed unsound and rejected; secondly, this early *tarjīḥ* activity could be described as 'school'-centred in the sense that jurists were increasingly focused on reviewing the rulings of the masters. A particularly insightful incident supporting this second point and the existence of school-internal reasoning is seen in a conversation between Nuṣayr and Shaddād:

> **12.4.** Nuṣayr said, 'I asked Shaddād during his final illness that if we are confronted with a novel situation after you and we know the opinion of Abū Ḥanīfa and his companions, are we at liberty to base our practice and our legal verdicts on it (*a-yasaʿnā an naʿmal bi-hi wa-nuftī*)? He replied, "Yes." I said, "What if they differ with each other (*fa-in ikhtalafū*)?" He said, "If you are capable of exercising a preference, then choose from their opinions (*fa-akhtar min kalāmihim*). If you are not able to do so, choose the opinion of Abū Ḥanīfa for it will be safer for you."'[685]

This example reveals the early orientation developing among Ḥanafī jurists towards authority where they viewed their legal activity as extending out of an earlier Ḥanafī tradition comprised of several authoritative figures who were united through a connection to an eponymous figure, namely Abū Ḥanīfa. More importantly, this exchange represents an early

[685] Al-Samarqandī, *al-Fatāwā*, 728.

tarjīḥ directive where jurists were advised to mine the corpus of the Ḥanafī masters, and, if able, engage in *ijtihād* to determine which of their opinions were sound and appropriate for personal practice and legal verdicts. The hierarchy of authority presented in this dialogue reflects what would become codified in later *fatwā* practice where authoritative Ḥanafī legal doctrine was not simply confined to the views of Abū Ḥanīfa but where he still towered over others as the school eponym. Indeed, this image of Abū Ḥanīfa is not surprising. There are early reports that portray him as superior to those who came after him as seen in a report from Ibn Shujāʿ and Sawwār ibn ʿAbd Allāh al-Anbarī (d. 245/860) where Zufar is heard remarking, 'I have not opposed Abū Ḥanīfa in an opinion except that he too once expressed that opinion.'[686]

(ii) *From 250/864-5 to 340/952*

The practice of *tarjīḥ* and the move towards creating a more authoritative doctrine was advanced during the second half of the 3rd/9th century. Jurists continued to carry out the activities identified with the first half of this period, but the overall discourse was advanced in important ways. In the dozen or so extant citations of Abū Khāzim's commentary on *al-Jāmiʿ al-kabīr*, the author is engaged in explaining the legal reasoning underlying rulings, ascertaining the accuracy of certain opinions ascribed to the masters, identifying their earlier and final stances on a given issue, and deeming certain opinions sound and others as unsound. The practice of *tarjīḥ* and *taṣḥīḥ* in the commentary of Abū Khāzim assumes the same form seen in the discourse of ʿĪsā and ʿAlī al-Rāzī where opinions were reviewed in light of a broader juristic structure and subsequently accepted or rejected. Thus, Abū Khāzim will present a legal ruling from *al-Jāmiʿ al-kabīr* and comment, 'The answer to this issue is correct up until his statement… (*jawāb al-mas'ala ṣaḥīḥ*

[686] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 292. Ibn Abī ʿImrān is the one who relates this from Sawwār. He objected to this report and then went to Ibn Shujāʿ who confirmed it for him.

ilā qawlihi)' or 'The opinion Muḥammad mentioned is correct (*huwa ṣaḥīḥ*).'[687] Abū Khāzim is shown engaged in similar activities in other sources as well. In one example, he transmits the opinion of the masters and concludes by saying, 'This is the correct opinion (*qawl ṣaḥīḥ*).'[688]

Earlier contemporaries of Abū Khāzim are also cited in the legal literature for their partaking in these various forms of *tarjīḥ*. One example involving Ibn Abī ʿImrān concerns the issue of dividing grains and chaff in a share-cropping agreement. Bishr ibn al-Walīd transmitted from Abū Yūsuf that it is not permitted to stipulate the equal distribution of the chaff between the parties while assigning the wheat to the cultivator. Rather, both parties must agree that anything produced from the land will be divided in equal measure between them. The same opinion was related from al-Shaybānī in *al-Imlā'*. In *al-Muzāraʿa al-kabīr*, al-Shaybānī mentions a different ruling, namely that if the chaff is stipulated for the owner of the seeds, while the grain for both, it is valid, but if the chaff is stipulated for the individual who does not own the seeds, it is invalid. Ibn Abī ʿImrān is quoted by al-Ṭaḥāwī as stating:

> **12.5.** The correct opinion is what Muḥammad stated in *al-Imlā'* in which he agrees with Abū Yūsuf (*al-ṣaḥīḥ mā qālahu Muḥammad fī al-imlā' wa-wāfaqa fīhi Abā Yūsuf*).[689]

In another example from this period, al-Jaṣṣāṣ relates the conclusion offered by Abū ʿAlī al-Daqqāq al-Rāzī to a disputed issue the former introduces by saying, 'Our early teachers differed on the *taṣḥīḥ* of this issue (*ikhtalafa shuyūkhunā al-mutaqaddimūn fī taṣḥīḥ hādhihi al-mas'ala*).'[690] He then cites Abū Saʿīd al-Bardaʿī saying, 'Abū ʿAlī stated that the correct view (*ṣaḥīḥ*) is Muḥammad's opinion that he himself transmitted in the book [i.e. *al-Jāmiʿ*], and what

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[687] Al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr*, ff. 3:83a, 321b-2a. For additional examples where Abū Khāzim emended and corrected an opinion ascribed to the masters, see al-Sarakhsī, *al-Mabsūṭ*, 21:74, 24:82, 28:178; Qāḍīkhān al-Ḥasan ibn Manṣūr Al-Ūzjandī, *Sharḥ al-Ziyādāt*, ed. Qāsim Ashraf Nūr Aḥmad, 6 vols. (Karachi: Idārat al-Qur'ān wa-al-ʿUlūm al-Islāmīya, 2000), 2:394, 726-7, 764.
[688] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 4:326.
[689] Ibid., 4:26.
[690] Al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr*, ff. 2:103a. The jurists al-Jaṣṣāṣ mentions are ʿAlī al-Rāzī, al-Khaṣṣāf, and Abū Khāzim.

he transmitted from Abū Yūsuf is an error. The correct opinion of Abū Yūsuf is that he should give one-fifth of what is in his possession.' Al-Bardaʿī then mentions his own view, 'What Abū ʿAlī said is correct (*wa-al-ṣaḥīḥ mā qālahu Abū ʿAlī*),' and then presents his justification. Later, al-Jaṣṣāṣ mentions the opinion preferred by ʿAlī ibn Mūsā al-Qummī for this issue and his legal reasoning.[691] The operative term *ṣaḥīḥ*, therefore, continued to signify two main meanings: firstly, the correct or accurate opinion of the masters on a given case; secondly, the opinion adopted and preferred by a jurist from their collective doctrine as seen in 12.5.

How then did this period differ from the one preceding it? There are at least three important differences that may be pointed out. The first relates to the use of the term *ṣaḥīḥ*, which becomes more pronounced in its usage and clearer in expressing *tarjīḥ* of a particular opinion as the ruling to be adopted for a given case. This is particularly true towards the end of the 3rd/9th century. Though Hallaq characterizes the employment of operative terms to signal preference as rare during this period, the jurist he cites, namely al-Ṭaḥāwī, uses *ṣaḥīḥ* and its cognates, such as *aṣaḥḥ*, relatively frequently.[692] Take the following example from his text *al-Shurūṭ*:

> **12.6.** Abū Ḥanīfa said that whoever makes a bequest to a person for something specific after his death, such a person will be the executor for all of his monetary affairs and the rights that he assumed on behalf of others... Abū Yūsuf and Muḥammad disagreed with him on this. They said he is only the executor for that which was specifically stated in the bequest.
>
> Abū Jaʿfar said: 'The correct opinion (*al-ṣaḥīḥ*) according to us from these two is the opinion of Abū Yūsuf and Muḥammad.'[693]

[691] Ibid., ff. 2:104a.
[692] The statement of Hallaq is accurate when the frequency of employment of such operative terms by al-Ṭaḥāwī is compared to later periods.
[693] Al-Ṭaḥāwī, *al-Shurūṭ*, 232.

In another case, al-Ṭaḥāwī relates the opinion of Abū Yūsuf in *al-Amālī*. He follows this with an alternative opinion from al-Shaybānī and then states, 'This is more correct according to us in light of legal reasoning than what we have narrated from Abū Yūsuf (*hādhā aṣaḥḥ fī al-naẓar ʿindanā mimmā qad ḥakaynāhu ʿan Abī Yūsuf*).'[694] The same is seen in his *Mukhtaṣar*:

> **12.7.** This is the opinion of Abū Ḥanīfa that was narrated from him by Muḥammad from Abū Yūsuf. The *aṣḥāb al-imlā'* narrated from Abū Yūsuf from him that it would not invalidate his prayer. The first opinion is more correct from him (*wa-al-qawl al-awwal aṣaḥḥ ʿanhu*), and it is the opinion of Abū Yūsuf and Muḥammad, and what we adopt.[695]

Jurists active around the time of al-Ṭaḥāwī are also seen using this operative term, such as Abū Saʿīd al-Bardaʿī and al-Karkhī. The latter is cited by al-Jaṣṣāṣ and others several times in this capacity:

> **12.8.** Abū Bakr al-Jaṣṣāṣ said: 'Muḥammad said that used water is pure and a garment affected by it is not rendered filthy even if it is an excessive amount. Muḥammad related this from Abū Yūsuf from Abū Ḥanīfa.
>
> Al-Ḥasan ibn Ziyād related from Abū Ḥanīfa and Abū Yūsuf that used water is filthy, while Hishām related from Abū Yūsuf that it does not render a garment filthy unless it is an excessive amount.
>
> The correct view (*al-ṣaḥīḥ*) from among their opinions is that it is pure. This is what Abū al-Ḥasan al-Karkhī would say.'[696]

In another example, al-Ṭaḥāwī presents a ruling of Abū Ḥanīfa regarding an individual who accidentally injures or kills someone but does not have an *ʿāqila*. In this case, the blood-money will be taken from the wealth of the guilty party himself. Commenting on this, al-Jaṣṣāṣ states, 'Abū al-Ḥasan al-Karkhī said, "Their correct position (*al-ṣaḥīḥ min qawlihim*) is that the blood-money is taken from the public treasury."'[697] Other examples show al-Karkhī remarking,

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[694] Ibid., 161-2. For more examples, see 59, 64, 132, 140, 143, 151, 241, 261, 310, 411, 679, 806, 990. Also see al-Ṭaḥāwī, *Sharḥ maʿānī al-āthār*, 1:130, 318, 2:13, 3:30, 108, 4:388.
[695] Al-Ṭaḥāwī, *Mukhtaṣar*, 21.
[696] Al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 1:238.
[697] Ibid., 5:416.

‘The correct opinion of Abū Ḥanīfa is… and the correct opinion of Abū Yūsuf and Muḥammad is… (*al-ṣaḥīḥ min madhhab Abī Ḥanīfa wa-al-ṣaḥīḥ min madhhab Abī Yūsuf wa-Muḥammad*)’,[698] ‘This is the correct opinion (*hādhā huwa al-ṣaḥīḥ*)’,[699] ‘That is more correct based on their principles (*dhālika aṣaḥḥ ʿalā uṣulihim*)’,[700] and related expressions. Indicative of his recognition as a jurist engaged in such rule-determination, al-Karkhī is among the most frequently cited names in Ibn Quṭlūbughā’s *al-Taṣḥīḥ* from 3rd/9th and 4th/10th century jurists appearing twenty-four times, while al-Ṭaḥāwī appears twenty-one times.[701]

A second development related to the above is a general increase in operative terms and their usage to identify a preferred opinion. The term *aṣaḥḥ* has already been pointed out, but there were several others. Both Ibn Abī ʿImrān and Abū Naṣr use the term *ashbah* to indicate the soundness of an opinion in view to the doctrine of the masters.[702] This term is also utilized by al-Ṭaḥāwī to affirm his legal preferences.[703] Other operative terms used during this period by some of these jurists include *aḥsan*, *ajwad*, *awlā*, *awthaq*, *aḥwaṭ*, *aqyas*, *awjah*, *ḍaʿīf*, *munkar*, and most significantly *mashhūr*. The earliest identification of the *mashhūr* opinion is traceable to the middle of the 3rd/9th century as seen in its usage by al-Qaysī:

> **12.9.** This is their position according to the narration of Asad. Similarly, al-Ḥasan ibn Abī Mālik related from Abu Yūsuf from Abū Ḥanīfa that he said, ‘If the witnesses for the individual in whose possession the house is specify a time-period and the witnesses of the claimant do not, the specification of a time period is given no consideration and judgment is rendered for the claimant.’ This is the well-known (*mashhūr*) view of Abū Ḥanīfa. Al-Ḥasan al-Lu’lu’ī related from Abū Ḥanīfa that judgment is given for the one who specifies a time-period whether it is the claimant or the defendant.[704]

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[698] Ibid., 7:198.
[699] Ibid., 6:343.
[700] Al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr*, ff. 3:256b.
[701] Al-Azem, *Rule Formulation*, 228. Another name that can be mentioned from this generation is al-Ḥākim al-Shahīd whose *taṣḥīḥ* are related by al-Sarakhsī and others. See al-Sarakhsī, *al-Mabsūṭ*, 2:19, 3:84, 189, 4:47, 5:169, 178, 6:108, 13:145, 14:75, 15:51, 18:91, 17:131, 26:185, 28:67, 207, 213.
[702] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 2:167 (‘*ashbah bi-uṣūlihim*’); al-Samarqandī, *al-Fatāwā*, 18 (‘*ashbah bi-qawl aṣḥābinā*’).
[703] Al-Ṭaḥāwī, *Aḥkām al-qur’ān*, 1:246 (‘*ashbah wa-awlā*’), 1:271 (‘*ashbah bi-aqwālihim*’), 1:352 (‘*ashbah bi-al-qiyās*’). For more examples, see al-Ṭaḥāwī, *Sharḥ maʿānī al-āthār*, 1:426, 4:30, 279.
[704] Al-Qaysī, *Adab al-qāḍī*, 94.

Slightly later, Abū Khāzim is cited describing an opinion as *mashhūr*,[705] while Abū Naṣr refers to the opinions of the masters that have become 'well-known (*ishtaharat*) and manifest (*ẓaharat*)'.[706] Meanwhile, al-Ṭaḥāwī identifies the *mashhūr* with enough frequency that it is plausible to conclude that this concept was widely recognized by Ḥanafī jurists during his time. This is not only evidenced through the geographical spread of the term with al-Qaysī in Morocco, Abū Khāzim in Iraq/Syria, and Abū Naṣr in Balkh, but also by specific statements from al-Ṭaḥāwī where he associates the *mashhūr* with what is generally acknowledged by people: 'This is well-known among the people as the opinion of Abū Ḥanīfa, Abū Yūsuf, and Muḥammad (*hādhā al-mashhūr ʿinda al-nās min qawl Abī Ḥanīfa wa-Abī Yūsuf wa-Muḥammad*).'[707] His contemporary Abū al-Qāsim al-Ṣaffār also refers to the 'well-known opinion' (*al-riwāya al-mashhūra*) of the masters.[708] With al-Karkhī and al-Jaṣṣāṣ, the identification of the *mashhūr* becomes a regular feature of Ḥanafī legal discourse.[709] Concurrently, further operative terms emerged to designate opinions as disregarded and unsound, such as *shādhdh* (aberrant), *munkar* (rejected), and *ḍaʿīf* (weak), which are seen in the texts of al-Ṭaḥāwī, al-Karkhī, and al-Jaṣṣāṣ.[710]

A third and final development during this period is the application of *tarjīḥ* to a cumulative and accretive doctrine that went beyond the opinions of the masters to those formulated by later Ḥanafī jurists. In Chapter One, the second half of the 3rd/9th century was

[705] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 3:74.
[706] Al-Samarqandī, *al-Fatāwā*, 729.
[707] Al-Ṭaḥāwī, *Aḥkām al-qur'ān*, 2:203. For more examples from this text, see 1:364, 376, 2:199, 415. Other references to the *mashhūr* opinions of the masters by al-Ṭaḥāwī can be seen in al-Jaṣṣāṣ, *al-Ikhtilāf*, 1:324, 425-6, 3:113, 4:202-3, 5:69, 210; al-Ṭaḥāwī, *Sharḥ maʿānī al-āthār*, 1:491, 3:99, 103, 309, 4:19.
[708] Al-Samarqandī, *al-Fatāwā*, 177.
[709] Al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 1:493, 709, 2:40, 70, 445, 464, 474, 483, 561, 3:180, 366, 4:126, 145, 241, 304, 5:328, 6:184, 342, 350.
[710] Al-Ṭaḥāwī, *al-Shurūṭ*, 77; al-Jaṣṣāṣ, *al-Ikhtilāf*, 2:502, 4:243; al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 2:40, 3:363-4, 5:416.

described as a period that brought with it a third and fourth generation of Ḥanafī jurists, which meant that the Ḥanafī community was now composed of multiple layers of juristic authorities and regional groupings. A specific nomenclature soon developed to capture the multiplicity of school authorities within the community. Ibn Abī ʿImrān, for example, makes references to 'our later companions' (*muta'akhkhirī aṣḥābinā*), 'the people of legal reasoning from among our later companions' (*ahl al-naẓar min muta'akhkhirī aṣḥābinā*), and the positions they adopted. He includes among this group his own teacher, Ibn Shujāʿ al-Thaljī.[711] Similarly, al-Ṭaḥāwī has a variety of designations for different groups of jurists based on their region, occupation, and time period as detailed earlier. Abū Bakr al-Iskāf also cites the views of 'later jurists' (*muta'akhkhirūn*) in his answers.[712] These designations continued to be used throughout the 4th/10th century.

Given the augmentation of legal doctrine that occasioned a greater plurality of opinions, jurists from the latter part of the 3rd/9th century extended their activity of rule-determination and authorization to rulings formulated by subsequent generations of Ḥanafī jurists. Examples cited earlier have already demonstrated this added component of *tarjīḥ* activity, such as the case wherein Abū Saʿīd al-Bardaʿī deems the conclusion of Abū ʿAlī al-Daqqāq as correct in comparison with those of ʿAlī al-Rāzī, Abū Khāzim, and al-Khaṣṣāf. Jurists from Balkh also engaged in this practice, such as Abū Naṣr who routinely presents the opinions of local jurists from Transoxiana, such as Nuṣayr, Muḥammad ibn Salama, and Muḥammad ibn al-Azhar, when answering legal questions. Take the following example:

> **13.0.** Abū Naṣr was asked about a well affected by filth whose water sank into the earth and then returned. He said, 'Nuṣayr said that the water becomes pure and is akin to having been removed. Muḥammad ibn Salama said it remains filthy as it was before.'

[711] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 3:394, 4:238.
[712] Al-Samarqandī, *al-Fatāwā*, 109.

> Abū Naṣr said, 'The opinion of Nuṣayr is more accommodating for people (*awsaʿ*), while Muḥammad ibn Salama's is more reliable (*awthaq*) and precautionary (*aḥwaṭ*).'[713]

In another example, Abū Naṣr answers a question posed to him by citing the opinions of Muḥammad ibn Salama and Muḥammad ibn al-Azhar. He then concludes by stating, 'The opinion of Muḥammad ibn al-Azhar is more precautionary for people, while the opinion of Ibn Salama is more analogically correct (*aqyas*).'[714] Similarly, after relating an opinion from Muḥammad ibn Muqātil, Abū Naṣr is asked whether he is agreement with it or not to which he responds, 'This opinion is good (*ḥasan*).'[715] Abū al-Qāsim al-Ṣaffār also deems some of the opinions of Ibn Muqātil as correct (*al-ṣaḥīḥ*).[716] Perhaps a clearer example of such intra-school *tarjīḥ* is found in *al-Shurūṭ* of al-Ṭaḥāwī. Whereas his *Mukhtaṣar* is largely confined to the doctrine of the masters, this work on legal documents primarily taps into a wider Ḥanafī tradition that includes several later generations of jurists, such as Yūsuf al-Samtī, Abū Zayd, ʿĪsā ibn Abān, Hilāl, Abū Khāzim, Bakkār, Ibn Abī ʿImrān, and others. Here, al-Ṭaḥāwī makes his preferences known through a variety of operative terms, such as *ṣaḥīḥ*, *aṣaḥḥ*, *aḥabbu ilaynā*, *aḥsan ʿindanā*, *ajwad*, *awjah*, *al-mukhtār*, and related expressions.[717]

B. Authoritative Legal Literature in the Ḥanafī School

Authority in the classical Ḥanafī school did not simply reside in a scattering of opinions but in particular texts that gathered the doctrine of the masters. The taxonomy of legal literature that was constructed by later Ḥanafī jurists included a corpus of texts known as *ẓāhir al-riwāya*, which was viewed as imbibing the highest degree of authority due to its being widely transmitted

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[713] Ibid., 15.
[714] Ibid., 328.
[715] Ibid., 555.
[716] Ibid., .
[717] Al-Ṭaḥāwī, *al-Shurūṭ*, 132 (*ṣaḥīḥ*), 148 (*ḍaʿīf*), 636 ('*al-ṣawāb*'), 643 ('*mā kataba Abū Zayd aḥabbu ilaynā*'), 839 ('*aḥsan ʿindanā*'), 994 ('*alladhī katabahu ʿĪsā… awjah ʿindanā fī al-naẓar*'), 999 ('*madhhab Muḥammad awlā al-madhhabayn ʿindanā*').

from the masters themselves. Given a dearth of early sources, it is difficult to accurately determine the manner in which formative period jurists of the Ḥanafī school understood legal authority as it related to specific texts. Jurists from the 3rd/9th century are not shown using the term *ẓāhir al-riwāya* but a thorough reading of the historical and legal literature demonstrates that the texts of the masters, particularly al-Shaybānī, were important sources of legal doctrine for early jurists.

The transmission history of the legal texts authored by the masters is perhaps the clearest indication that early Ḥanafī jurists viewed these works as bearing some level of authority. As documented earlier, these legal texts began to be transmitted during the second half of the 2nd/8th century and continued throughout the 3rd/9th century. The most important texts of al-Shaybānī, such as *al-Aṣl*, *al-Jāmiʿ al-kabīr*, and *al-Jāmiʿ al-ṣaghīr*, were widely transmitted during this period from Iraq to Morocco, Bukhara, and several areas in between. The *amālī* and *nawādir* literature were also conveyed by the students of the masters to various centres of Islamic learning. But along with such transmission came the study of these texts. It has already been noted that figures such as al-Ḥasan ibn Abī Mālik, Hilāl, and Abū ʿĀṣim al-Nabīl would read and review the text of *al-Jāmiʿ al-kabīr*,[718] which was also consulted and praised by Ibn Shujāʿ al-Thaljī.[719] Nuṣayr is reported to have advised people to correctly transcribe these texts for they may not find any teacher besides them, and he is also shown studying them in the company of Muḥammad ibn Salama.[720] In his work on the law of endowments, al-Khaṣṣāf also references the texts of al-Shaybānī, such as *al-Ḥujja*, *Kitāb al-Waqf*, and *al-Jāmiʿ al-ṣaghīr*.[721] Finally, al-

[718] Al-Ṣaymarī, *al-Akhbār*, 159.
[719] Ibn Abī al-ʿAwwām, *al-Faḍā'il*, 357, 361-2
[720] Al-Samarqandī, *al-Fatāwā*, 109, 517.
[721] Al-Khaṣṣāf, *al-Awqāf*, 72 (for *al-Ḥujja*), 150 (for *Kitāb al-Waqf*), 297 (for *al-Jāmiʿ*).

Jaṣṣāṣ' commentary of *al-Jāmiʿ al-kabīr* reveals an early Ḥanafī community engaged in an analysis of the texts of the masters.[722]

The second half of the 3rd/9th century in specific saw the authority of these legal texts become more firmly established. This is demonstrated both in the development of the concept of *mashhūr* during this period and the appearance of early commentaries on the texts of al-Shaybānī. Regarding the latter, Melchert states that the writing of commentaries on earlier texts was an acknowledgment that some works had 'incomparably more weight than anything coming after.'[723] It does not seem a coincidence that the notion of *mashhūr*, which is precisely what underpinned the authority of al-Shaybānī's main texts in later periods, emerged at the same time these early commentaries were authored. Both *al-Jāmiʿ al-kabīr* and *al-Jāmiʿ al-ṣaghīr* then likely stood out as texts deemed more important and authoritative than others.

Although *al-Aṣl* was not subject to any early commentaries as *al-Jāmiʿ al-kabīr* and *al-Jāmiʿ al-ṣaghīr* were, its authority was affirmed in a number of other ways. It was arguably among the most widely transmitted of al-Shaybānī's texts as illustrated in Table 3. As the most comprehensive source for the doctrine of the masters, jurists were heavily reliant on it as seen in the earliest compendia of the school. Thus, al-Ḥākim al-Shahīd's *al-Kāfī* was primarily an abridgement of *al-Aṣl*, while the rulings in *al-Mukhtaṣar* of al-Ṭaḥāwī so closely parallel *al-Aṣl* in its content that al-Jaṣṣāṣ effectively views his commentary on the text as an explanation of the independent texts that constituted *al-Aṣl*.[724] In so far as these compendia were authored to

[722] Such as the statement related from Abū Khāzim regarding ʿĪsā's comments on *al-Imlā'* and *al-Jāmiʿ al-kabīr*.
[723] Melchert, *Formation*, 60.
[724] His introductory statesment reads as follows: 'This book comprises the general issues of disagreement (*ʿāmmat masā'il al-khilāf*) and a great number of legal rules (*kathrat al-furūʿ*) whose meanings (*maʿānī*), underlying reasoning (*ʿilal*), and manner of being based upon foundational principles (*kayfīyat banā'ihā ʿalā uṣūlihā*) when understood by the reader acquaint him with those aspects of *qiyās* and *ijtihād* that are immensely beneficial, and which when understood facilitate in understanding the legal rulings present in Muḥammad ibn al-Ḥasan al-Shaybānī's *kutub al-uṣūl*.' See al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 1:195-6.

present authoritative doctrine in a succinct, compressed, and sequential manner, their reliance on *al-Aṣl* is indicative of its authority as a source for such doctrine.

Perhaps the clearest indication of an authoritative distinction between early legal texts comes in the form of questions posed to Ḥanafī jurists regarding reliance on certain works for legal verdicts. In a highly insightful report, Abū Naṣr is shown being asked the following question:

> **13.1.** What do you say, may God have mercy upon you, concerning the following four legal works, the *Kitāb* of Ibrāhīm ibn Rustum, *Adab al-Qāḍī* of al-Khaṣṣāf, *al-Mujarrad*, and *al-Nawādir* of Hishām, is it permitted for us to give legal verdicts from them or not?
>
> He [Abū Naṣr] replied, 'Whatever is authentically transmitted from the masters is knowledge that is cherished, desired, and sufficient. However, in regard to legal verdicts, I do not view it permissible for an individual to issue one except on the basis of his own understanding. As for those legal rulings that have become well-known (*ishtaharat*), manifest (*ẓaharat*), and are related from our companions (*ḥukiyat ʿan aṣḥābinā*), I am hopeful there is allowance to rely upon them when addressing newly arising issues (*nawāzil*)."[725]

This quotation is significant for two reasons. Firstly, it shows the second half of the 3rd/9th century was a period wherein some concern was being directed towards determining textual authority. Three of the texts mentioned in this question, namely the legal works of Ibn Rustum, al-Ḥasan ibn Ziyād (*al-Mujarrad*), and Hishām, were identified in later taxonomies as being from *nawādir*, a corpus that was deemed less authoritative than *ẓāhir al-riwāya*. Secondly, this quotation refers to legal rulings that were well-known and manifest from the Ḥanafī masters. This notion of manifest (*ẓāhir*) and well-known (*mashhūr*) legal rulings was precisely what *ẓāhir al-riwāya* represented among Ḥanafī jurists in later periods. While the response of Abū Naṣr initially tends towards a more *ijtihādī* approach, it concludes by singling out these well-known and manifest legal rulings as meriting reliance when issuing legal verdicts for novel cases.

[725] Al-Samarqandī, *al-Fatāwā*, 729.

Therefore, the end of the 3rd/9th century saw the groundwork being laid for the emergence of an authoritative textual corpus. Half a century after the death of Abū Naṣr, the phrase *al-riwāyat al-ẓāhira* would receive its first attestation in the texts of Abū al-Layth al-Samarqandī.[726]

II. Generalizing Activity

The transformation of the legal school into an authoritative entity was intimately connected to the rise of a more generalized method of legal exposition. The emergence of generalizing discourse was yet another way in which early Ḥanafī jurists engaged the rulings of the masters and in the process augmented their authority. As described by Hallaq, this generalizing discourse raised the earlier enumerative method of exposition by elaborating and studying legal doctrine as applications of predetermined principles, while also re-enacting early *ijtihād*ic activity in order to instruct in the evidence and reasoning underlying the legal rulings of the school.[727] The evolution from an enumerative style of exposition whereby legal rulings were merely presented as a list of

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[726] Al-Samarqandī, *al-Fatāwā*, 343, 495, 571, 635. Even though the topic of legal authority has been a prominent subject of discussion within modern scholarship, there has been no substantial study done on the concept of *ẓāhir al-riwāya* in the Ḥanafī school and its historical development. Eyyup Kaya states that this particular classification existed during the 4th/10th century though it had not been definitively defined, while Brannon Wheeler asserts that the classification only originated towards the end of the 6th/12th century. Talal Al-Azem discusses the usage of the term *ẓāhir al-riwāya* in *al-Mabsūṭ* of al-Sarakhsī and later texts. He tentatively suggests that the term was in circulation by the last quarter of the 5th/11th century and possibly earlier. Al-Azem also noted that the quantity and manner in which the term was employed by al-Sarakhsī (over 323 times) indicates that it was familiar to his audience since he felt no need to define it despite using it hundreds of times in his legal text. I have found several references to *ẓāhir al-riwāya* and *al-riwāya al-ẓāhira* among 4th/10th century jurists. Abū al-Layth al-Samarqandī seems to be our earliest source for this term and he almost always utilizes the phrasing *al-riwāya al-ẓāhira*. Similarly, Abū ʿAbd Allāh al-Jurjānī (d. 398/1008) is cited by his student al-Nāṭifī as referring to *ẓāhir riwāyat al-Aṣl*, and the latter himself uses the phrase *ẓāhir riwāyat al-Kitāb* and *ẓāhir riwāyat al-ʿItāq*, both of which are presumably references to *al-Aṣl*. Similarly, Abū Zayd al-Dabūsī (d. 430/1038 or 432/1040) uses *ẓāhir al-riwāya*. So does al-Qudūrī (also a student of the previously mentioned al-Jurjānī) in his commentary on *Mukhtaṣar al-Karkhī* and in *al-Tajrīd*. This confirms that the term was in use during the 4th/10th century though its exact signification at the time requires further study. See Al-Azem, *Rule Formulation*, 151-6; Eyyup Kaya, "Continuity and Change in Islamic Law: The Concept of *Madhhab* and the Dimensions of Legal Disagreement in Hanafi Scholarship of the Tenth Century," in *The Islamic School of Law: Evolution, Devolution, and Progress*, ed. P. J. Bearman, Rudolph Peters, and Frank E. Vogel (Cambridge, Mass.: Islamic Legal Studies Program, Harvard Law School, 2005), 33–34; Brannon M. Wheeler, *Applying the Canon in Islam: The Authorization and Maintenance of Interpretive Reasoning in Ḥanafī Scholarship* (Albany: State University of New York Press, 1996), 276, n. 15; Abū Zayd al-Dabūsī, *Ta'sīs al-naẓar*, ed. Muṣṭafā Muḥammad al-Qabbānī (Cairo: Maktabat al-Kullīyāt al-Azharīya, 1992), 15; al-Nāṭifī, *al-Ajnās*, 1:75, 202; al-Qudūrī, *al-Tajrīd*, 7:443.

[727] Hallaq, *Authority,* 114.

individual cases to a more generalizing one was indicative of a more advanced and developed system. The former characterized the style of early legal texts in a pre-*taqlīd* era where the preoccupation was not with articulating universal principles from which numerous deductive possibilities arose but with particular rulings from which these universals could be inductively inferred. As for later texts, they almost universally exhibit a hierarchical structure wherein general definitions and principles are mentioned at the outset of the discussion.[728] Hallaq was unable to conclusively state when this transition from pure enumerative exposition to generalization occurred, though he assumed that it likely became a viable pursuit by the middle of the 4th/10th century when jurists finally recognized a body of authoritative legal rulings in the school. It was only following this that such doctrine could be studied and articulated in a more generalized manner.[729]

A. The First Half of the 3rd/9th Century

The transition that Hallaq describes and his characterization of early and late expository methods is generally accurate. Extant legal texts from the first half of the 3rd/9th century all display a primary preoccupation with presenting legal rulings without explicitly articulating the principles underlying them. This presentation was not always enumerative in its style but even the more detailed *ra'y* dialectic often sufficed with only indirect references to the underlying principles from which legal rulings had issued as seen in the common *ra'y* technique of explaining and justifying a ruling by appealing to similar cases (i.e. *argumentum a simile*). These cases were understood as expressing a specific meaning, or upholding a principle, that could be inferred from it and then

[728] Hallaq, *Authority,* 114; Calder, *Islamic Jurisprudence in the Classical Era* (Cambridge: Cambridge University Press, 2010), 61.
[729] Hallaq, *Authority,* 118-9.

applied to novel issues and questions.[730] Jurists during the 3rd/9th century were reasonably aware of the general meanings underpinning the body of legal rulings they were engaged with. The rulings they formulated, or those they utilized to justify their conclusions, were often akin to illustrations or applications of these meanings that were intended to convey their full implications and method of application. Examples of this in the texts of al-Shaybānī, Hilāl, and al-Khaṣṣāf have earlier been cited where their grouping of similar cases, dialectic construction and flow, consistent appeals to particular concepts in dispersed yet related contexts, and conscious addressing of distinctions and similarities between cases demonstrates their operating on the basis of more fundamental principles.

Hallaq's speculative dating of the transition from an enumerative expository method to generalization is also confirmed by the evidence, though it requires some nuancing. Previous sections have demonstrated that the 3rd/9th century was a period wherein jurists augmented the doctrine of the masters, explained and defended it, and subjected their opinions to closer scrutiny and review. In this context, the viability of generalizing activity did not necessarily rest on the recognition of an authoritative school doctrine. Rather, some rudimentary form of such activity was likely first manifested as part of determining the soundness of the individual opinions of the masters in light of their distinctive doctrines. It is for this reason that early *tarjīḥ* and *taṣḥīḥ* activity was heavily directed towards identifying and establishing a consistent and stable corpus of rulings for each master in their capacity as independent jurists. In other words, each master possessed his own set of principles, or *uṣūl*, a point recognized throughout the classical period as seen in texts

[730] These established cases that served as a model for other cases were also termed as *uṣūl*. See Heinrichs, "Qawāʿid as a Genre of Legal Literature," 368. The various meanings of the term *uṣūl* were described in Section 1 of Ch. Four of this thesis.

like Abū Zayd al-Dabūsī's *al-Ta'sīs*.[731] Indeed, a structure of authority that revolved around a collective group of masters who possessed distinct principles and methods was among the unique features of the Ḥanafī school, and Ḥanafīsm as a legal tradition was recognized as an engagement with the doctrine of this collective authority.

Jurists had, therefore, already begun gravitating towards some form of generalizing activity during the first half of the 3rd/9th century. Clearly, these jurists were basing at least some of their discourse off a set of principles that the masters had themselves explicitly articulated. In the *waqf* texts of Hilāl and al-Khaṣṣāf, the central principle that any valid endowment had to be designated in perpetuity was already related from Abū Yūsuf by Bishr ibn al-Walīd: 'Every endowment that does not cease to be in perpetuity is permitted. Every endowment that does cease is not permitted.'[732] The principle mentioned in these texts that 'endowment law is analogous to bequest law' also reflected generalization in so far as the authors articulated a principle implicit in the doctrine of the masters. The task of reviewing the opinions of the masters, utilizing them to address novel cases, and explaining/defending their doctrine entailed an increased focus on identifying the patterns and principles governing their doctrine. Due to this, early jurists, such as ʿAlī al-Rāzī, Hilāl, al-Khaṣṣāf, and al-Qaysī, could speak about the respective *uṣūl* of the masters and their broader *madhhab* when engaged in the aforementioned tasks.

However, this development should not be overstated. Though jurists did attempt to understand and engage the rulings of the masters with a view to the broader meanings and principles underpinning them, the legal texts from this period do not evidence a concern to

[731] Al-Dabūsī, *al-Ta'sīs*. This text is among the earliest from the *ʿilm al-khilāf* genre. The author dedicates five of his eight sections to discussions on competing opinions between the masters, such as a section on the difference between 'Abū Ḥanīfa… and his two companions' and another between 'Abū Ḥanīfa and Abū Yūsuf [on one side]… and Muḥammad [on the other]' and so on. Al-Dabūsī identifies the authoritative principle governing each chapter and then follows it with similar and parallel cases (*amthila*/*naẓā'ir*). For more, see Walter Edward Young, *The Dialectical Forge: Juridical Disputation and the Evolution of Islamic Law* (Switzerland: Springer, 2016), 73-8.
[732] Al-Jaṣṣāṣ, *al-Ikhtilāf*, 4:160.

systematically articulate these meanings or principles. A sufficient number of texts exist from the first half of the 3rd/9th century to conclude that a particularized mode of legal exposition was the norm where general principles were not consistently articulated. Even when principles were mentioned in these texts, they were largely mentioned in passing, that is, there was no hierarchical presentation where a principle was initially identified and then the rulings subsumed under it explained as was common in later legal literature. Therefore, the first half of the 3rd/9th century cannot be seen as a period wherein there was any sustained trend towards generalization for the basic features of generalizing discourse are absent.

B. The Second Half of the 3rd/9th Century & Beginning of the 4th/10th Century

The latter half of the 3rd/9th century presents a different picture, though a dearth of extant legal sources makes it difficult to determine the scope and quality of generalizing activity during the early part of this period. Towards the conclusion of this century, however, there are more frequent and clearer references to both the *uṣūl* themselves and efforts by jurists to formulate them. Looking at one example, al-Jaṣṣāṣ states while explaining the rulings in the chapter on menstruation from *al-Jāmiʿ al-kabīr*:

> **13.2.** Abū al-Ḥasan al-Karkhī reduced the chapter to certain proximate meanings (*maʿānī qarība*) that the rulings of the chapter followed. He and others from our teachers (*shuyukhinā*) related from Abū Saʿīd al-Bardaʿī principles for these cases (*uṣūl li-hādhihi al-masā'il*) which serve as an introduction and summary for the learner (*yajrī majrā al-tawṭi'a wa-al-taqrīb ʿalā al-mutaʿallim*).[733]

Later, the principle that al-Jaṣṣāṣ relates from al-Bardaʿī through his students is that 'a complete ablution is not nullified by the entry of the [prayer] time but is nullified by the flowing of blood' whereas 'a deficient ablution is nullified by the entry of the [prayer] time but not by the

[733] Al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr*, ff. 1:36a.

flowing of blood.'[734] The formulation of this principle by al-Bardaʿī involved, firstly, categorizing ablution into two types, and, secondly, identifying a core meaning that differentiated between these types as it related to the nullification of ablution in a manner that soundly encompassed the rulings presented by al-Shaybānī. Interestingly, al-Jaṣṣāṣ understands this generalizing activity as possessing a pedagogical function where positive legal principles facilitated the study and understanding of learners.

Another group of rulings for which al-Bardaʿī formulated a general principle is the issue that came to be known simply as the 'twelve rulings' (*masā'il ithnā ʿashar*). Each of these cases related to a unique scenario where a person's ablution was nullified in the final sitting of a prayer after having recited the *tashahhud* or having sat for a period of time in which it could be recited: a naked person who finds something to cover his minimal nakedness with, the end of the wiping period, a person in a state of purity from *tayammum* seeing water, the exiting of the time for Friday prayer, recalling a missed prayer if one has fewer than five prayers to make-up, the end of the menstruation period, an unlettered person learning a *sūra*, a person unable to bow and prostrate who regains the ability to perform these acts, a wound on a place subject to the rulings of purification that heals, an unlettered person being appointed prayer leader by an *imām* whose ablution is nullified, removal of a *khuff* in the prayer without excessive action, and the rising of the sun. In these specific scenarios, Abū Ḥanīfa stated that the prayer would be invalidated, while Abū Yūsuf and al-Shaybānī said that the prayer would be valid and complete. According to al-Bardaʿī, the position of Abū Ḥanīfa returned to the principle that it was obligatory to exit the prayer of one's own volition, a condition not stipulated by Abū Yūsuf and al-Shaybānī for the validity of prayer. In specific, this principle was expressed as, 'Anything unexpectedly occurring

[734] Ibid., ff. 1:42a.

to a praying person that makes him exit the prayer without his own action/volition invalidates the prayer.'[735] This principle subsumed under it all of the aforementioned twelve rulings.

Examining the discourse of al-Ṭaḥāwī, a contemporary of al-Bardaʿī, also reveals an advancement in methods of expositing and presenting legal doctrine. He refers to the *uṣūl* occasionally and explains legal rulings in light of them. Even in his *Mukhtaṣar*, al-Ṭaḥāwī is clearly aware of, and guided by, the reasoning and principles underlying the rulings he presents, as the following two examples illustrate:

Example: Penalty for Passing the Pilgrim-Stations (*mīqāt*)

> **13.3.** Whosoever passes the pilgrim-stations (*mīqāt*) without putting on the pilgrim-dress (*iḥrām*) while intending to perform Ḥajj and then returns to one of the pilgrim-stations before reaching ʿArafa is not required to pay a penalty according to the narration of Muḥammad from Abū Yūsuf from Abū Ḥanīfa. Muḥammad did not transmit any difference of opinion on this. The *aṣḥāb al-imlā'* narrated from Abū Yūsuf from Abū Ḥanīfa that if he returns to a pilgrim-station that is parallel to the pilgrim-station he initially passed, no penalty applies, but if the pilgrim-station he returns to is between the sacred precinct (*ḥaram*) and this initial pilgrim-station that he passed, the penalty still applies. Their principles (*aṣl*) accord with this second position.[736]

Example: Dispute over the *Mukātaba* Contract

> **13.4.** If an owner and his *mukātab* slave disagree on the terms of their contract, Abū Ḥanīfa said that they both swear an oath and the contract will be nullified. He went back on this position and said that the claim of the *mukātab* will be accepted with an oath concerning the price stipulated in the contract, as opposed to both parties being put to an oath. Abū Yūsuf and Muḥammad held the first of these opinions. This is what is correct according to their principles (*ṣaḥīḥ ʿalā uṣūlihim*).[737]

In both these examples, al-Ṭaḥāwī finds himself having to deal with different opinions within the school. The particular opinion that emerges as distinctly superior to all others is the one that is deemed to conform to the principles, or *uṣūl*, of the Ḥanafī masters.[738] However, as Hallaq

[735] Al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 1:437-9; al-Dabūsī, *al-Ta'sīs*, 11-14.
[736] Al-Ṭaḥāwī, *Mukhtaṣar*, 386.
[737] Ibid., 45.
[738] Hallaq also correctly observes that the desideratum of legal discourse in texts of positive law was the illustration and elucidation of general principles. Hallaq, *Authority*, 115.

observed in his brief analysis of the *Mukhtaṣar*, while there were appeals to general principles and attempts at grouping similar cases, which represented 'an advance over a more casuistic classification', the text still lacked the basic features of generalization, as well as rigour in its presentation of legal rulings.[739] Indeed, whereas the connection between principles and individual cases is readily apparent in later texts, they are not so clear in earlier ones like those of al-Ṭaḥāwī.[740] Illustrating this difference in expository methods between early and late texts, Hallaq compares *al-Mukhtaṣar* of al-Ṭaḥāwī with *al-Ikthiyār* of ʿAbd Allāh ibn Maḥmūd al-Mawṣilī (d. 682/1283) to demonstrate the transition from pure casuistry to generalization. Whereas al-Ṭaḥāwī merely presents individual rulings from which principles may be inductively inferred, al-Mawṣilī opens his exposition with definitions and general principles that are applicable to a range of cases by way of deduction. The discourse of the latter, therefore, represents a reversal of that adopted by the former.[741]

Hallaq's choice of texts to illustrate this transition, however, is problematic from a methodological perspective for each represents a distinct genre of positive law literature. The expository method that *mukhtaṣar*s adopted were not concerned with generalization but with the enumeration of authoritative doctrine that involved the selection, summary, and succinct organization of legal rulings. This is true for all periods as seen in a comparison between the *mukhtaṣar*s of al-Ṭaḥāwī, al-Karkhī, al-Qudūrī, and that of al-Mawṣilī himself. Thus, in his analysis of the *mukhtaṣar*s of al-Qudūrī and al-Mawṣilī, Calder notes that 'a casuistic tone dominates both texts', and there are contexts wherein the listing of cases 'shows no tendency towards the discovery or acknowledgment of generalizing principles' though it is still 'possible

[739] Ibid., 115-6.
[740] Ibid., 114.
[741] Ibid., 115-9.

to detect principles.'[742] This is despite later compendia being more refined, precise, and logically structured than earlier ones.[743] In other words, at least in terms of its fundamental method of exposition, the *Mukhtaṣar* of al-Ṭaḥāwī was no different than other texts from the same genre authored in later periods.

In contrast, *al-Ikthiyār* was a commentary text, or *sharḥ*, which was written with an aim and function entirely different from that of the *mukhtaṣar* genre. Calder analysed four Ḥanafī commentaries spread over a period of two-hundred years (5th/11th-7th/13th centuries) with a view to identifying and describing the conditions of the genre. He observed that these works were remarkably stable as to content: each demonstrated a concern to locate legal rules in a network of justificatory arguments; each extended the exploration of law to points of acknowledged intra or inter-*madhhab* dispute; each extended the legal rule beyond the provision of the text being commented upon, and related the legal rule to the broader structures and forms of the law; each dealt with a similar core of legal rules and forwarded similar justificatory arguments; each showed little interest in the generation of new legal rules; and each showed a concern for a generalizing approach to law and overall coherence.[744]

In light of Calder's analysis, the transition from what Hallaq terms 'pure casuistry' to generalization cannot be properly understood on the basis of comparing a *mukhtaṣar* with a *sharḥ*, and nor can the character of legal discourse during the end of the 3rd/9th century and the beginning of the 4th/10th century be determined except by examining texts from various genres from the period. Shedding further light on this requires going slightly beyond the period this thesis aims to study, but since it is important to understanding and contextualizing earlier

[742] Calder, *Islamic Jurisprudence*, 29.
[743] Ibid., 28.
[744] Ibid., 60.

developments, a brief analysis of one of the earliest extant Ḥanafī commentaries will be provided below, namely Abū Bakr al-Jaṣṣāṣ' *Sharḥ Mukhtaṣar al-Ṭaḥāwī*.

(i) The *Sharḥ Mukhtaṣar al-Ṭaḥāwī* of Abū Bakr al-Jaṣṣāṣ

In beginning this investigation, the expository method of al-Jaṣṣāṣ in the *Sharḥ* will be analysed in order to understand the aims, intentions, and function of this text. Fortunately, the author outlines this method in the introductory statement of the *Sharḥ*, and a full translation of it is presented below:

Introductory Statement of the *Sharḥ*

> **13.5.** This book comprises the general issues of disagreement (*ʿāmmat masā'il al-khilāf*) and a great number of legal rulings (*kathrat al-furūʿ*) whose meanings (*maʿānī*), underlying reasoning (*ʿilal*), and manner of being based upon foundational principles (*kayfīyat banā'ihā ʿalā uṣūlihā*) when understood by the reader acquaint him with those aspects of *qiyās* and *ijtihād* that are immensely beneficial, and which when understood facilitate in understanding the legal rulings present in Muḥammad ibn al-Ḥasan al-Shaybānī's *kutub al-uṣūl*. For I do not mention an issue from which other legal rulings branch out except that I draw attention to its evidence and reasoning, while also mentioning something concerning legal issues of a related nature (*naẓā'irihā*), in order that this work contain knowledge of both the principles and branches (*al-uṣūl wa-al-furūʿ*) of the law.[745]

In this statement, al-Jaṣṣāṣ identifies the objective of his work as one that centres on explaining the evidence, reasoning, meanings, and principles underlying the legal rulings presented by al-Ṭaḥāwī in his *Mukhtaṣar*, which allows the reader to better understand the exercise of *ijtihād* and the works of al-Shaybānī. Evident in this introductory statement is that al-Jaṣṣāṣ' interest is not directed towards the presentation of legal rulings but towards the *uṣūl* that govern them. This latter term appears twice in the introduction, and in the *Sharḥ* incorporates an array of meanings, such as a category of the primary sources of the law, a single one of these sources, theoretical principles based on the interpretation of these sources, a legal maxim or restricted norm,

[745] Al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 1:195-6.

or reasoning based on an analogical extension of an individual legal ruling. An analysis of the worship sections (purity-pilgrimage) from the *Sharḥ* demonstrates that the primary objective of al-Jaṣṣāṣ was to identify the *uṣūl* underlying the legal rulings of the school, explain these *uṣūl* and the method by which they establish the rulings being discussed, extend and relate the *uṣūl* to other rulings if required, and demonstrate the soundness and consistency of the school's legal doctrine.

In order to illustrate the basic features of the expository method outlined above, al-Jaṣṣāṣ' discussion on the ablution of one who falls asleep while standing or sitting is presented below:

Section: Sleep & Ablution

13.6. He said: Whoever sleeps while in the standing or sitting position does not have to renew his ablution.
13.6.1. Abū Bakr Aḥmad said: The normative principle of the school (*al-madhhab fīhi*) here is that whenever one sleeps in a position that is found in the prayer, his state of purity is not nullified. These are the positions of standing, bowing, prostrating, or sitting because all of these are found in the prayer.
13.6.2. The evidence (*dalīl*) for the soundness of this principle (*aṣl*) is what ʿAbd al-Bāqī al-Qāniʿ transmitted to us… from Baḥr al-Saqā' from Maymūn al-Khayyāṭ from Ḍabba from Abī ʿIyāḍ from Ḥudhayfa who said, 'I slept in the mosque while seated and the Prophet passed by me and placed his hands on my shoulders asking, "What is this?" So, I lifted my head and asked, "Prophet of God, is there ablution required for this?" He replied, "No, not unless you lie down."'

Muḥammad ibn Bakr transmitted to us… from Qatāda from Abī al-ʿĀliya from Ibn ʿAbbās who said, 'The Prophet prostrated, fell sleep, and snored, then he stood up and prayed without performing ablution. I said to him, "You prayed without performing ablution even though you fell asleep?" He replied, "Ablution is only required for one who sleeps lying down."' Other transmitters mentioned the addition, 'For when he sleeps lying down, his limbs loosen.'

13.6.3. If it is said: Shuʿba stated that Qatāda only heard four *ḥadīth* from Abū al-ʿĀliya and this is not one of them.
13.6.4. It is said to him: It is possible that he meant that he did not transmit from Qatāda with the express statement 'I heard (*samiʿtu*)' except in these four *ḥadīth*, and, whoever transmits from a trustworthy narrator, it is to be understood as being on the basis of having actually heard him. Despite this, there is no harm in the *ḥadīth* that is missing a link in its chain (*mursal*) according to us.

13.6.5. If it is said: There is a tradition from Ṣafwān ibn ʿAssāl, 'The Prophet commanded us not to remove our footwear (*khifāfinā*) for three days while on a journey except upon

entering a major state of ritual impurity (*janāba*), not upon going to the privy or sleeping.' Also, it has been transmitted from Abū Hurayra from the Prophet that he said, 'Whosoever enters into a state of sleep, it is obligatory upon him to perform ablution.'

13.6.6. It is said to him: This is to be understood on the basis of the *ḥadīth* of Ḥudhayfa and Ibn ʿAbbās previously mentioned since these traditions are more specific (*akhaṣṣ*) than the one mentioned. These conflicting traditions do not negate each other, but the two we have mentioned are more binding upon our opponents because that which is general is understood on the basis of the specific (*yabnī al-ʿāmm ʿalā al-khāṣṣ*).

This is similar to our agreeing upon excluding sleeping while sitting from the general purport of this *ḥadīth* [cited by the opponents] due to what has been transmitted concerning the Companions dozing off while waiting for the ʿIshā' prayer and then proceeding to pray without performing ablution. The same is the case with the sleep of someone who is sitting or bowing due to the *ḥadīth* we have mentioned.

13.6.7. If it said: We have specified it by way of consensus (*ijmāʿ*).

13.6.8. It is said to him: We have specified what has been described by the *sunna*, even though it can be argued that there is no consensus on what has been stated as it has been transmitted from Ḥasan al-Baṣrī and Saʿīd ibn al-Musayyab that whenever one sleeps, whether for a short or long duration, sitting or standing, he must renew his ablution. This position has also been transmitted from Shaʿbī. What further indicates the soundness of what we have mentioned is the agreement of the jurists of the various centres (*ittifāq fuqahā' al-amṣār*) that the sleep of one sitting does not nullify ablution. Sitting is one of the positions of the prayer and so we extend the ruling to all its positions by way of analogy (*qisnā ʿalayhi sā'ir aḥwāl al-ṣalāt*).

13.6.9. As for what has been transmitted from the Prophet, 'When the eyes sleep, the anus opens', it is understood on the basis of what we have mentioned concerning sleeping while lying down as per what is in the tradition of Ibn ʿAbbās, 'for when he sleeps lying down, his limbs loosen.' And we have discussed this issue extensively in *Masā'il al-khilāf*.[746]

In the above example, the legal ruling in the original text is introduced as a statement of al-Ṭaḥāwī. Following this, al-Jaṣṣāṣ identifies the principle (*aṣl*) underlying the legal ruling mentioned. It is important to note that the principle applies to more than the specifics of the actual ruling itself. The ruling in question discusses sleep while standing or sitting (13.6.); the principle extends this to include bowing and prostrating, as well (13.6.1.). This becomes relevant in the discussion of a later legal ruling where the *Mukhtaṣar* states, 'Whoever sleeps in other than the two positions that we have concluded as not requiring ablution, he is obligated to perform

[746] Al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 1:375-8.

ablution.'[747] The response of al-Jaṣṣāṣ is that the transmitted opinion of the Ḥanafī masters is that a person who falls asleep in a state of bowing or prostrating does not have to perform ablution. In other words, al-Jaṣṣāṣ took a set of legal opinions ascribed to the Ḥanafī masters and converted them into a general principle, which was then used to explain other legal rulings and check their soundness by observing whether they were consistent with this general principle. The function of a principle as a test for the soundness of a legal ruling is quite common in the *Sharḥ*, which corrects or confirms the *Mukhtaṣar* on numerous occasions due to its perceived departure from, or consistency with, what is entailed by the principle said to govern a particular chapter or legal issue.[748]

Following this, al-Jaṣṣāṣ presents the textual evidence for the mentioned principle (13.6.2.). These are two prophetic *ḥadīth* reproduced with their chains of transmission from al-Jaṣṣāṣ back to the Prophet. He then proceeds to discuss the specific manner in which the textual evidence establishes the principle identified at the beginning of the discussion, and it is here that the initially demonstrative approach turns into a dialectic that is presented in the literary form that was common in earlier texts as well: 'If it is said (*wa-in qīl*)/it is said to him (*qīl la-hu*).' This is the dominant literary convention in the *Sharḥ*, and, when presented, always follows al-Jaṣṣāṣ' initial expository remarks. Throughout the *Sharḥ*, al-Jaṣṣāṣ identifies potential arguments, restates them as opposing opinions, and provides a sequence of responses and counter-responses that predictably end with the Ḥanafī legal ruling being demonstrated as correct. In the current example, this is done through this dialectic by, firstly, defending the admissibility of the textual evidence to begin with (13.6.3. to 13.6.6.), secondly, through the application of legal theory in light of contradicting evidence (13.6.6.), and, finally, through an appeal to other primary sources (13.6.7. to 13.6.8.). In the course

[747] Ibid., 1:379.
[748] For examples, see Ibid., 1:506, 2:302, 342, 344, 506, 5:276.

of the discussion, a number of other important interpretative principles of the Ḥanafī school are brought to the forefront, such as the requirement to understand general texts in light of the specific, the ability of the *sunna* to specify the general purport of the Qur'ān, the default assumption regarding transmission from a trustworthy narrator, the acceptability of a *mursal* tradition, and the analogical extension of a legal ruling established by consensus.

The example analysed above captures the general features of al-Jaṣṣāṣ' expository method: there is generalization where individual rulings that have inductively given rise to such generalizations are in turn subsumed under them when they are reformulated as principles, as well as a re-enactment, defence, and improvement of earlier *ijtihād*ic activity; evidence is introduced from various sources and perspectives; the reasoning underlying the legal ruling is articulated by locating it in a network of demonstrative and dialectical arguments; and the discussion is extended beyond the provision of the original text to the established forms and structures of the law. These features of the *Sharḥ* correspond to what Calder identified in later commentary literature. The same discussion in *al-Mabsūṭ* of Abu Bakr al-Sarakhsī (d. 483/1090), for example, includes paragraphs 13.6.2., 13.6.5., 13.6.6., 13.6.7., 13.6.8., and 13.6.9. of the *Sharḥ*,[749] and, like al-Jaṣṣāṣ, later commentary authors show a concern for establishing dispute and dialectic.[750] As Calder stated, by placing legal rulings in a body of justificatory argument, jurists sought to assert for them a status approximating to that of a science: these legal rulings were not mere propositions, they were justified propositions.[751] Whereas the primary aim of a *mukhtaṣar* was to provide a basic pattern of norms, a structural framework of the law, the *sharḥ* attempted to demonstrate the truth of these norms by grounding them in argument: arguments of divine and prophetic authority, of reason and

[749] Al-Sarakhsī, *al-Mabsūṭ*, 1:78.
[750] Calder, *Islamic Jurisprudence*, 55, 60.
[751] Ibid., 47.

general coherence, and also of definitions and linguistic usage. The *Sharḥ* of al-Jaṣṣāṣ is perhaps the earliest example of such an attempt in the commentary literature of the Ḥanafī school.[752]

Generalization as a method of legal exposition was then clearly present during the first half of the 4th/10th century. In fact, the regularity by which al-Jaṣṣāṣ begins discussions with a generalizing principle that captures the meaning underlying a particular set of rulings is marked. In total, there are close to seventy-three (73x) such principles in the worship sections (purity-pilgrimage) of the *Sharḥ*. The following examples taken from the beginning of the book of purification illustrate some of them:

Examples of Generalizing Activity in the *Sharḥ Mukhtaṣar al-Ṭaḥāwī*

13.7. Abu Jaʿfar said: If filth affects water, the water is considered filthy regardless of whether it is a large amount of water or a small amount, and also regardless of whether the colour, taste, or smell of the filth manifests or not.
13.7.1. Abū Bakr said: The upshot (*taḥṣīl al-madhhab*) of the school on this issue is that anything that we are certain (*tayaqqannā*) contains some amount of filth, or we have reasonably surety concerning its containing filth, it is filthy, and one may not use it.[753]

13.8. Abu Jaʿfar said: Whenever water is used for ablution, or for the ritual-bath, or to cool off, it becomes used and one may not perform purification with it again.
13.8.1. Abū Bakr said: The statement that using water to cool off renders it used is something I do not know from our companions. The principle (*al-aṣl*) with Abū Yūsuf is that water is deemed used due to one of two meanings: fulfilling an obligation through it

[752] One final, abeit less central, feature of the *Sharḥ* was the definition of terms and concepts presented in the *Mukhtaṣar* and the categorization of the legal rulings it presented. The observation of Calder and Hallaq have already been mentioned regarding the manner in which later commentary literature almost universally exhibits a hierarchical structure wherein general definitions and principles are mentioned at the outset of the discussion. Calder observed some attempt at generalized and coherent thinking of this sort in *al-Mabsūṭ*, which was then improved upon by later authors, such as al-Kāsānī and al-Mawṣilī. These latter two works reflect this method of exposition at an impressively high level. This concern for structural organization and presentational coherence seems to be less evident in the *Sharḥ*. There is a fine example of structured thinking at the beginning of the book of divorce (*kitāb al-ṭalāq*) where al-Jaṣṣāṣ categorizes divorce into four types, mentions the two basic principles governing the section, and then evidences these principles. Similarly, the book of partnerships (*kitāb al-sharika*) begins with al-Jaṣṣāṣ mentioning the types of partnerships, their definition, and the principles and conditions underlying them. The book of debt transfers (*kitāb al-ḥawāla*) also begins with a principle and then the definition of the term. However, unlike the works of al-Kāsānī and al-Mawṣilī, this is not done systematically in the *Sharḥ,* which prefers rather to engage in piecemeal discussions of the individual rulings. It is within these piecemeal discussions that definitions and categorizations sometimes emerge. As such, in comparison to later commentary literature, the structure of the *Sharḥ* is still reflective of early developments, although it is clearly an advancement over formative-period literature of the school. See al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 3:221, 263, 5:361; Hallaq, *Authority*, 114; Calder, *Islamic Jurisprudence*, 54, 60-1.
[753] Al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 1:239

or performing purification with water intending thereby an act of worship.[754]

13.9. He said: Whatever exits from the front or rear orifices, or from the mouth if it is a mouthful, or from parts of the body other than aforementioned, the ablution is nullified. The exception to this is mucus.
13.9.1. Abū Bakr Aḥmad said: The basic principle (*al-aṣl*) of the school concerning this is that anything filthy that exits onto a part of the body that is subject to the ruling of purification [i.e. whether in ablution or the major-bath (*ghusl*)] nullifies ablution.[755]

In the above examples, al-Jaṣṣāṣ succinctly explains the legal rulings that al-Ṭaḥāwī presents by identifying them with legal principles of the school. This is not all. The principles are formulated as more refined expressions of the legal ruling. In the discussion concerning what nullifies ablution, for example, al-Ṭaḥāwī states that the exiting of anything from a part of the body lifts the state of purification (13.9.). This, as al-Jaṣṣāṣ explains, is based on a legal principle of the school, 'Anything filthy that exits onto a part of the body that is subject to the ruling of purification nullifies the ablution.' The manner in which this principle is formulated by al-Jaṣṣāṣ not only captures the specifics of the legal ruling under discussion, it also offsets the potentially incorrect implications that arise out of al-Ṭaḥāwī's manner of expression. The statement of al-Ṭaḥāwī 'from parts of the body' implies that if an individual scratched his eye and blood flew to its surface, ablution would be nullified, but the legal principle mentioned by al-Jaṣṣāṣ offsets this implication by conditioning the exiting that nullifies ablution as being to a 'part of the body that is subject to the ruling of purification'. The eye is not subject to the ruling of purification in the Ḥanafī school, and so the scratched eye scenario would not nullify ablution. However, a nose bleed would because the nose is obligatory to wash when performing the ritual-bath. This principle, which has its first attestation in the work of al-Jaṣṣāṣ, would be cited by subsequent jurists of the school.[756]

[754] Ibid., 1:229.
[755] Ibid., 1:221.
[756] For example, see al-Sarakhsī, *al-Mabsūṭ*, 1:76.

Examples of Generalizing Activity in *Sharḥ Adab al-Qāḍī*

14.0. *Chapter on the judge whose decree is valid and he whose decree is not*.

The basis of this chapter (*al-aṣl fī hādhā al-bāb*) is that the decree of a judge is valid for anything that he may validly testify to, and anything that he cannot validly testify to, his decree for it is not valid.[757]

14.1. *Chapter on a person claiming something in the possession of another that is land or goods*.

The basis of this chapter is that passing judgment on something unknown is invalid, and likewise testifying for it.[758]

14.2. *Chapter on returning an item due to a defect*.

The basis of this chapter is that a judicial proceeding for the return of an item is contingent upon a judicial proceeding for affirming the existence of a defect. Therefore, so long as a defect is not established, the buyer cannot bring litigation against the seller for the return of the item.[759]

This method of generalized exposition was not unique to just this text of al-Jaṣṣāṣ' but all of his commentaries including those on *al-Jāmiʿ al-kabīr* and *Adab al-qāḍī*. In both these texts al-Jaṣṣāṣ systematically begins sections and chapters by laying down the general principle governing it. His *Sharḥ al-Jāmiʿ al-kabīr*, for example, is replete with references to the comprehensive principle (*maʿnā al-jāmiʿ*), the principle of the chapter (*uṣūl al-bāb*), their principles (*uṣūlihim*), and related expressions.[760] The is also the case with *Sharḥ Adab al-qāḍī* as seen in the examples above (14.0. to 14.2.).

[757] Al-Jaṣṣāṣ, *Sharḥ Adab al-qāḍī*, 240.
[758] Ibid., 226.
[759] Ibid., 339.
[760] For examples, see al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr*, ff. 2:145a, 237b, 289a, 3:29b; al-Jaṣṣāṣ, *Sharḥ Adab al-qāḍī*, 146, 162, 199, 209-10, 213-4, 216, 233, 242-3, 256, 327.

(ii) The Influence of al-Karkhī

During the first half of the 4th/10th century, a generalized method of legal exposition seems to have been adopted and implemented in a systematic manner to the whole of the law as seen in the texts of al-Jaṣṣāṣ. Was this to be viewed as a sudden departure from previous expository methods? Clearly, this could not be the case. As with all developments, this was likely one stage in a longer and gradual process that would continue unabated for centuries. It is safe to assume that al-Jaṣṣāṣ incorporated and benefitted from an earlier tradition, advanced it, and also benefitted from a continuous teaching tradition that had sharpened and advanced the perceptions of those involved. In this case, there is sufficient evidence to conclude that al-Karkhī, the teacher of al-Jaṣṣāṣ, was a significant figure in the transition to a more generalizing discourse.

The only two extant legal texts of al-Karkhī are his *Mukhtaṣar* and *al-Uṣūl*. The latter has been analysed by Walter Young who describes many of the thirty-seven principles listed in it as belonging to the science of *ijtihād*, namely legal theory, which by the time of al-Karkhī had evolved into a full system.[761] Several principles, he notes, are specifically oriented towards step-by-step procedures for drawing inferences (*istidlāl*) and objection (*iʿtirāḍ*), which are part of what Young terms dialectical-procedural *uṣūl*.[762] These principles were an important aspect of generalizing activity, and al-Karkhī was a seminal figure in the development of a comprehensive Ḥanafī legal theory.[763] In addition to legal theory, al-Karkhī was also recognized for his

[761] Young, *The Dialectical Forge*, 80.
[762] Ibid.
[763] Al-Karkhī is the most cited authority in al-Jaṣṣāṣ' *al-Fuṣūl* appearing an estimated eighty-eight times (88x) in various discussions, such as the implications of the general term (*ʿāmm*), the literal (*ḥaqīqa*) and figurative (*majāz*) significations of a word, the definition of the univocal text (*naṣṣ*), the specification of the general (*takhṣīṣ*), the implications of adding something to the decisive purport of the Qur'an (*al-ziyāda*), the ruling established by grammatical exceptions (*istithnā'*), the signification of grammatical particles (*ḥurūf al-maʿānī*) and so forth.[763] The citations of al-Karkhī's opinions in the field of legal theory by al-Jaṣṣāṣ touch upon virtually every aspect of the science. See al-Jaṣṣāṣ, *al-Fuṣūl*, 1:46, 61, 68, 83, 10; Ḥusayn Khalaf al-Jubūrī, *al-Aqwāl al-uṣūlīya lil-imām Abī al-Ḥasan al-Karkhī* (Mecca: Maṭābiʿ al-Ṣafā, 1989).

articulation of positive legal principles. Here, the texts of al-Jaṣṣāṣ become an important source of information for the type of discourse al-Karkhī engaged in, and the latter is presented by his student as someone who elaborated the rulings of the Ḥanafī masters as general principles. Take the following example:

> **14.3.** Abu Jaʿfar said: Agency (*wakāla*) is not permitted when it comes to the prescribed punishments (*ḥudūd*) or retaliation (*qiṣāṣ*) except if it is to present evidence concerning them. However, the agent cannot present it without the one who had appointed him being present according to Abū Ḥanīfa and Muḥammad.
> **14.3.1.** Abū Bakr said: Abū al-Ḥasan formed a principle concerning those matters in which agency is permitted and those matters in which it is not permitted. If something is permitted to own and does not pertain to an individual right, agency is permitted in it. However, if it is not permitted to own and it does pertain to an individual right, agency is not permitted in it. Both the prescribed punishment and retaliation are not 'owned', and they pertain to a right.[764]

In another example, al-Shaybānī mentions the ruling of a guarantor (*kafīl*) who settles with a creditor for five-hundred *dirham*s when the original debt was a thousand *dirham*s. In this case, both the guarantor and the debtor that he represents are now exempt. However, if the guarantor settled with the creditor for this amount on the condition that he is freed from the responsibility to repay the loan if it is defaulted on, then only he will become exempt and the remaining amount can still be demanded by the creditor from the debtor. Commenting on this, al-Jaṣṣāṣ states:

> **14.4.** Abū al-Ḥasan al-Karkhī said that among their principles (*min aṣlihim*) is that exempting the guarantor is not a form of transferring ownership (*tamlīk*), while exempting the debtor is a form of transferring ownership that is akin to gifting (*hiba*).[765]

A third example that was cited earlier related to menstruation and the nullification of ablution (13.2.). Here, al-Jaṣṣāṣ stated, 'Abū al-Ḥasan al-Karkhī reduced the chapter to certain proximate meanings (*maʿānī qarība*) that the rulings of the chapter followed.' He later stated that

[764] Al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 3:274.
[765] Al-Jaṣṣāṣ, *Sharḥ al-Jāmiʿ al-kabīr*, ff. 3:291a.

according to al-Karkhī 'this chapter is premised on two meanings' (*al-bāb mabnī ʿalā maʿnayayn*). These meanings were then presented by al-Jaṣṣāṣ along with a detailed explanation and the evidence underlying them.

A fourth example relates to the 'twelve rulings' that al-Bardaʿī formulated a principle for. Adopting a different view to his teacher, al-Karkhī elaborated these legal rulings through the following principle: 'Anything that modifies the obligatory prayer, its presence at the conclusion of a prayer is like its presence at its commencement.' Thus, the sun rising while an individual is at the end of his prayer is treated like its having risen during the start of the prayer. Just as the prayer is not valid to commence in the former scenario, it is invalid in the latter. This not only applied to the remaining eleven rulings but other cases as well. For example, if a traveller who is obliged to shorten his obligatory prayers intends to become a resident, i.e. he decides to remain in the locality he is currently in for fifteen-days or more, just before concluding his prayer, he will be required to perform the prayer in full as a normal resident does. His intention at the end of the prayer is treated as if it was present at its commencement.[766]

In light of the above, a generalizing method of legal exposition in all likelihood paralleled the development of legal theory. By the middle of the 4th/10th century, legal theory had emerged as a complete science. The *Fuṣūl* of al-Jaṣṣāṣ did not represent the rudimentary beginnings of this science but constituted one of its earliest textual expressions as a fully articulated science. Prior to this, several important contributions had already been made to this science, and strong arguments have been provided both for the existence of a genre of legal theory during the latter

[766] Al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 1:439. Another jurist from among the peers of al-Karkhī who engaged in generalizing discourse was Abū Ṭāhir al-Dabbās. A student of Abū Khāzim and al-Bardaʿī, al-Dabbās is said to have reduced the legal doctrine of the Ḥanafī school to seventeen (17x) legal maxims. See Heinrichs, "Qawāʿid as a Genre of Legal Literature," 371.

half of the 3rd/9th century and the continuity between the framework of al-Shāfiʿī in *al-Risāla* and mature legal theory.[767]

Similarly, the commentaries of al-Jaṣṣāṣ do not reflect the rudimentary beginnings of generalization. Rather, they represent an established style and method of expositing legal doctrine that was common to the period. Therefore, the beginning of generalization is more plausibly dated to the second half of the 3rd/9th century and onwards. Indeed, this corresponds with two other developments associated with the viability of generalizing discourse: the rise of commentary literature and the recognition of authoritative doctrine. Both emerged during the second half of the 3rd/9th century. Together, each of these developments demonstrate the emergence of a more mature Ḥanafī school.

III. Doctrinal Loyalty

Having examined early juristic efforts towards constructing a more authoritative doctrine and the shift to a generalizing method of exposition, some brief comments are in order regarding notions

[767] Stewart, "Muḥammad ibn Dāwūd al-Ẓahirī's Manual of Jurisprudence," 99-158; Vishanoff, *The Formation of Islamic Hermeneutics*, 261. A decisive indication that the fundamental topic matters of legal theory, such as linguistic hermeneutics, analogy, and abrogation, had been articulated in detail by the end of the 3rd/9th century is the scope and quality of these discussions by subsequent generations of jurists active around the turn of the 4th/10th century. Thus, Ibn Surayj (d. 306/918), Abū Jaʿfar al-Ṭabarī (d. 310/923), and Abū Manṣūr al-Māturīdī (d. 333/944) are all seen directly addressing core issues of legal theory. In his *tafsīr*, al-Māturīdī incorporates discussions of such topics as *ʿumūm al-khiṭāb*, *khuṣūṣ al-khiṭāb*, *ʿumūm al-lafẓ*, *khuṣūṣ al-lafẓ*, *bayān*, *takhṣīṣ*, *amr* and *nahy*, *ẓāhir, muḥkam*, *dalālat al-lafẓ*, *ijtihād*, *ijmāʿ*, *qiyās*, *ʿilla*, *naskh*, *khabar āḥād*, *tawātur*, and so forth. These are introduced in a variety of contexts in order to both explain the Qur'an and the finer details of these concepts themselves. Thus, al-Māturīdī will cite a particular verse to evidence the permissibility of a delay in the clarification of a command (*jawāz ta'khīr al-bayān fī al-amr*). Under another verse, he will discuss the the soundness of an *ʿilla* and its relation to the concept of *ṭard*. Elsewhere, he touches upon the relationship between abrogation and the intellect, the permissibility of abrogation through *ijtihād*, the ruling of acting on an abrogated command, and so forth. These discussions, and more, are scattered throughout his *tafsīr*. Given the geographical location of al-Karkhī in Baghdad and al-Māturīdī in Samarqand, the nature and scope of their discourse, and the discourse of non-Ḥanafī scholars as well, it can be confidently stated that legal theory as a comprehensive science was part and parcel of juristic activity during this period, which would indicate that it was well articulated in the generation prior. See Devin Stewart, "Muḥammad b. Jarīr al-Ṭabarī's *al-Bayān ʿan Uṣūl al-Aḥkām*," 321-49; Nail Okuyucu, "Shāfiʿī *Uṣūl*-Thought in Late Third-Century AH: Edition, Translation, and Interpretation of Chapters on *Uṣūl al-Fiqh* in *al-Wadāʿiʿ* by Ibn Surayj (d. 306/918)," *Ilahiyat Studies* 7, no. 1 (2016): 87-132; al-Māturīdī, *Ta'wilāt al-qur'ān*, 1:53, 58, 237-8, 333-4, 2:30-1, 242-7, 4:136-7, 5:238, 316-7, 6:68, 174, 13:376-7, 14:63.

of doctrinal loyalty during the 3rd/9th century. It has already been noted that a certain degree of pressure to conform to the doctrine of the Ḥanafī masters did exist as early as the beginning of this century. Jurists were sometimes questioned by their colleagues for departing from this doctrine, or at least felt the need to explain any inconsistencies between their personal conclusions and such doctrine. This is discernible in early Ḥanafī sources, such as the texts of Hilāl and al-Khaṣṣāf where an interlocutor will often raise the issue of consistency with the masters' doctrine when an answer provided by Hilāl and al-Khaṣṣāf seemingly departs from their opinions. Evidence of the development of substantive Ḥanafī doctrinal boundaries is also seen in early *tarjīḥ* directives, such as the advice given to Nuṣayr by Shaddād (12.4.). Hagiographical material also shows the authoritative image of the Ḥanafī masters among their followers. Khalaf ibn Ayyūb is said to have remarked that it is necessary to follow an opinion that Abū Ḥanīfa, Abū Yūsuf, al-Shaybānī had settled upon.[768] Therefore, the restricted school-consciousness that has been observed for this period included, at least for the Ḥanafī school, some form of a communal check on the personal conclusions of member jurists, as well as an approach to legal discourse that took as its starting point the doctrine of the masters.

This pressure or desire to conform, however, was by no means complete, and, consequently, did not amount to a mechanism for guaranteeing doctrinal loyalty as would be the case in later periods when the regime of *taqlīd* took firmer hold. Though Ḥanafīs constituted a legal community distinct both as a social group and as a legal tradition from others, such as the Mālikīs or Shāfiʿīs, its notions and structures of authority were still evolving and consolidating during the 3rd/9th century. Indeed, the sources reveal that jurists from virtually every generation during this century were willing to depart from the doctrine of the masters. In *al-Nawāzil*, al-

[768] Al-Samarqandī, *al-Fatāwā*, 726.

Samarqandī points out several instances wherein a legal verdict from a later jurist 'goes against the opinion of our companions.' Some of the names associated with such departures include Shaddād,[769] Muḥammad ibn Muqātil,[770] Muḥammad ibn al-Aẓhar,[771] Abū Bakr al-Iskāf,[772] and Abū al-Qāsim al-Ṣaffār.[773] It is difficult to tell the extent and frequency of such departures though they seem to clearly be a minority from the totality of the respective opinions of these jurists. Ibn Muqātil, al-Iskāf, and al-Ṣaffār in specific are identified far more than others for going outside the doctrine of the masters. Interestingly, they are often conscious of this and occasionally answer questions by mentioning both the opinions of the masters and then their own. Take the following example from Ibn Muqātil:

> **14.5.** Muḥammad ibn Muqātil was asked regarding a sick person who makes a bequest. However, due to his weak state he is unable to speak, and so he nods with his head instead, which makes it known that he is still discerning and aware. He replied, 'According to me, his bequest is valid. It is not valid with our companions though.'[774]

Similarly, al-Ṭaḥāwī and al-Karkhī also held opinions contrary to those of the masters. This seems to have once again been a relatively infrequent occurrence. In *al-Mukhtaṣar*, for example, the former selects views that do not correspond to the opinion of one of the masters in only a handful of cases, while the vast majority of his preferences align with the opinions of one or more of the masters. Meanwhile, al-Karkhī is on the rare occasion cited as opposing the masters or adopting the opinion of the 'opponent'.[775] By the middle of the 4th/10th century, the practice of stepping outside the boundaries of the school seemed to have disappeared. Neither al-Jaṣṣāṣ nor al-Samarqandī ever seem to depart from the doctrine of the masters, and both

[769] Ibid., 568.
[770] Ibid., 68, 181, 383.
[771] Ibid., 627.
[772] Ibid., 46, 283, 500, 509, 623.
[773] Ibid., 83, 239.
[774] Ibid., 637. Also see 239, 383, 623.
[775] Al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 4:255, 5:16.

regularly point out when later jurists do. Not surprisingly, this strengthening of the regime of *taqlīd* coincided with the maturation of legal theory, the emergence of generalizing discourse, and a systematic concern for determining authoritative doctrine. Each of these was integral to the rise of the school as a full-fledged doctrinal entity for once authoritative doctrine began to be determined, it was more systematically elaborated by jurists as applications of established principles. The determination of authoritative doctrine and the articulation of principles would become the major preoccupation of the *muqallid*. Each of these activities was part of a process that involved further augmenting the authority of the masters.[776] The texts authored by jurists such as al-Jaṣṣāṣ shows a primary concern with these aspects of legal discourse.

[776] The various elements that went into this process were detailed by Wael Hallaq, and include, firstly, disconneting the eponymic figures from the contributions of previous generations of jurists, secondly, attributing to them legal doctrine derived by subsequent generations of jurists through a process known as *takhrīj*, and, lastly, depicting the *ijtihād*ic activity of the eponyms as being a direct confrontation of the textual sources through a systematic, comprehensive, and complex methodology. See Hallaq, *Authority,* 24-5.

Conclusion

What was the nature of the *madhhab* during the 3rd/9th century? This is the fundamental question the current study has attempted to address through an analysis of the Ḥanafī school. This study took as its starting point a simple premise: the rise of the *madhhab* was a complex phenomenon that spanned a lengthy period, and, as such, the *madhhab*s final coming to maturation was a very gradual process. There is no single point in time that one can definitively point to as the moment when the *madhhab* suddenly emerged as a doctrinal school or a guild. This does not mean that identifying a general chronology of *madhhab* evolution, such as its being regional, then personal, and, finally, a guild or doctrinal entity, is incorrect. Indeed, this is no different to the chronology we use for the seasons, which accurately identify shifting weather patterns and daylight hours throughout the year even though the beginning of winter may still resemble fall, while the end of spring may be closer to summer. These chronologies, when accurate and accepted, provide a general picture of the trajectory of an event or process, and, therefore, do not aim to fully convey the subtleties and complexities of intervening periods. In the current study, I have worked with the chronologies provided by Christopher Melchert and Wael Hallaq to detail the social and legal transformations that the Ḥanafī school underwent during such an intervening period.

The major conclusion presented in this study is the identification of the beginning of the 3rd/9th century as a period that witnessed the emergence of a Ḥanafī legal community that encompassed a distinct group identity and a shared intellectual discourse grounded in the collective authority of the Ḥanafī masters. In terms of the chronology of the legal school, this 'legal community' describes a stage in the evolution of the *madhhab* that saw the Ḥanafī school advance beyond being a strictly personal juristic entity, commonly defined as a collection of jurists who upheld the teaching of a master jurist. The stage of the legal school as a personal

entity, as defined above, applied to the Ḥanafī school for a limited period of time and accurately conveyed a shift away from school identification based on region (if the existence of the regional school is accepted). By the beginning of the 3rd/9th century, however, the structure of authority that had developed in the school was collective in nature and reflected what would be typical in the classical school. This collective authority brought together jurists from seemingly independent legal circles as part of a Ḥanafī legal community, and the 3rd/9th century was not simply a period of personal and individual legal doctrines as some have asserted. In the chronology of the Ḥanafī school, then, the personal school, as commonly defined, was a stage characterizing the *madhhab* for a period that mainly extended up to the conclusion of the 2nd/8th century, followed by a middle stage that spanned most of 3rd/9th century where the *madhhab* operated increasingly as a distinct legal community and gradually acquired most of the essential features of the classical school, and culminating with the *madhhab*s full maturation as a doctrinal entity and guild in the 4th/10th century.

What were the features of this Ḥanafī legal community during this period and how did it evolve over the course of a century? The current study addressed this through an analysis of the social and legal dimensions of the school. In examining the social dimensions, this study showed how the early spread of Ḥanafīsm outside of Kufa, and the preservation and transmission of the masters' legal texts and opinion to the major centres of the Islamic world by their students, constituted the basic elements allowing for the rise of a distinct Ḥanafī community, which was recognized by non-Ḥanafīs through such designations as *aṣḥāb abī ḥanīfa* and *aṣḥāb al-ra'y*. Analysing the legal careers of eight major jurists – mainly Iraqi – from the 3rd/9th century also revealed a social organization of legal activity that reflected the rise of this distinct Ḥanafī community: the legal networks of several major Ḥanafī jurists were well-defined with

identifiable teacher-student links; the boundaries of these networks were increasingly confined to a single juristic tradition demonstrative of a more community-centred approach to legal education; these networks were transregional and brought together Ḥanafī jurists from various regions; and, finally, these jurists collectively engaged in the transmission, defence, and advancement of the masters' doctrine. The careers of these jurists and their legal networks also demonstrated that the shift towards a guild school was gradual with authority in the major centre of Baghdad consolidating around the middle of the 3rd/9th century. Though a system of *ijāza* is not clearly discernible until al-Karkhī or slightly after him, the appearance of Ḥanafī commentary literature and compendia within the first two decades of the latter half of the 3rd/9th century, coupled with other developments described above, allows for the identification of a mature Ḥanafī legal school around this time period, which, if not yet a full-fledged classical school, was certainly on the cusp of being one.

This study also analysed the legal dimensions of the early Ḥanafī school and the discourse of its jurists. It identified a unique legal paradigm that Ḥanafī jurists from the first half of the 3rd/9th century adopted, utilized, and advanced, which set them apart as a distinct legal tradition. What made this paradigm uniquely Ḥanafī? Its engagement with *fiqh* was one centred on the authority, rulings, and methods of the Ḥanafī masters, which included a *ra'y*-based approach to law that incorporated analogy (*qiyās*) and juridical preference (*istiḥsān*) as central modes of reasoning. The rulings of the masters themselves became a source that members of the Ḥanafī community relied upon when enumerating legal rulings, justifying and testing their conclusions, and deriving rulings for new cases. This reliance was not only explicit in nature, but jurists also implicitly worked on the basis of the Ḥanafī masters' principles. During the first half of the 3rd/9th century, this engagement also involved some rudimentary forms of *tarjīḥ* activity

where jurists utilized operative terms to distinguish sound opinions of the masters from the unsound with a view to creating and maintaining a consistent legal system. This became particularly pronounced from the middle of the 3rd/9th century onwards with an increase in the frequency of technical operative terms, such as *mashhūr* and *ṣaḥīḥ*, which began to be applied to a more cumulative doctrine comprising the opinions of multiple layers of Ḥanafī jurists. This authorizing discourse corresponded with the rise of an authoritative school corpus and a shift to a more generalizing mode of legal exposition. The latter in particular was a significant development in the history of the school and saw the quality of legal exposition ascend to a higher level. This study demonstrated that generalization likely became a viable pursuit from the middle of the 3rd/9th century, is clearly discernible from the last quarter of said century, and had been systematically applied to the whole of the law by the middle of the 4th/10th century. It was around this time that *taqlīd* took firm hold.

The history and transformation of the early Ḥanafī community detailed in this study raises one final question: can we meaningfully speak of a *madhhab*, a *proper* school, during this intervening period? The personal school was merely a collection of jurists around a master, while the guild and doctrinal school were schools in their fully consolidated forms. I believe that from the middle of the 3rd/9th century, the question of the existence of a functioning Ḥanafī school is a valid one, and by the time of jurists like Ibn Abī ʿImrān and Abū Khāzim, it was presumably present. The Ḥanafī community at this time had begun to assume many of the features viewed as the hallmark of a functioning legal school: a clear structure and axis of authority; a distinct group identity; a shared intellectual discourse and paradigm of law; a cumulative doctrine; texts of commentary and compendia; authorizing and generalizing discourse. Thus, a strong argument can be made that this community did represent a proper, functioning school during this period.

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