

Al-Shāfiʿī Against the Kufan School

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Abstract

One of the short works of al-Shāfiʿī (d. 204/820) is *Ikhtilāf ʿAlī wa-ʿAbd Allāh ibn Masʿūd* (“the disagreements of ʿAlī and ʿAbd Allāh ibn Masʿūd”). It comprises first quotations of the Companions ʿAlī and Ibn Masʿūd advocating rules that the Kufans reject, secondly counter-reports supporting the rules that al-Shāfiʿī advocates. It seems to be one of the earliest of al-Shāfiʿī’s works. It argues mainly by authority against an undifferentiated Kufan school. It testifies to a time when regional schools were predominant and legal reasoning primitive, also when divisions within Kufa, especially between adherents of *raʾy* and *hadith*, were less important than they seemed later. Its argument tends to imply that al-Shāfiʿī’s doctrine is better than the Kufans’ because it is eclectically based on the learning of all centers, suggesting that loyalty to a regional tradition was becoming an embarrassment.

Keywords

al-Shāfiʿī – Kufa – Medina – Islamic law – *Ikhtilāf ʿAlī wa-ʿAbd Allāh ibn Masʿūd* – Islamic schools of law

One of the short works appended to al-Shāfiʿī (d. 204/820), *Kitāb al-Umm*, is *Ikhtilāf ʿAlī wa-ʿAbd Allāh ibn Masʿūd* (“the disagreements of ʿAlī and ʿAbd Allāh ibn Masʿūd”).¹ Organized topically, it comprises quotations of the Companions ʿAlī and Ibn Masʿūd advocating rules that the Kufans reject, followed by counter-reports supporting the rules that al-Shāfiʿī advocates. By my count, it includes 148 items with *isnāds* from ʿAlī (46%), 80 from Ibn Masʿūd (24%),

1 Al-Shāfiʿī, *Ikhtilāf ʿAlī wa-ʿAbd Allāh ibn Masʿūd*, in *K. al-Umm*, ed. Rifʿat Fawzī ʿAbd al-Muṭṭalib, 11 vols. (Mansoura: Dār al-Wafāʾ, 1422/2001; 2nd printing 1425/2004), 8:391–512.

96 counter-reports with *isnāds* from others (30%).² 'Alī and Ibn Mas'ūd are the Companions most often quoted by Kufan jurists. Joseph Schacht thought that whereas Ibn Mas'ūd was usually adduced in support of the majority Kufan position, 'Alī would often be adduced in support of a minority position, although it also happened that 'Alī would endorse the majority position, Ibn Mas'ūd that of the opposition.³ If there was such a dynamic of minority and majority factions within the regional schools, it cannot surprise that al-Shāfi'ī should have found Kufans rejecting the reported positions of 'Alī and Ibn Mas'ūd, and those of 'Alī more frequently. Unfortunately, we have no literature purporting to represent a Kufan regional school (as perhaps we may say that the *Muwatta'* purports to represent a Medinese school, periodically justifying this or that rule by appeal to local consensus⁴). Therefore, we cannot say how emphatically Kufans defended their positions as what 'Alī and Ibn Mas'ūd had taught them. However, al-Shāfi'ī must have thought that dependence on 'Alī and Ibn Mas'ūd was a sufficiently well-advertised position for it to be worth his while to point out where the Kufans went against it, or, conversely, should have gone against it in favor of better opinions from elsewhere.

The evidence for the existence of regional schools at all is first continual references in the sources to the Basrans, the Kufans, the Medinese, and so on. As Schacht observed, al-Shāfi'ī identified certain local Followers (*tābi'ūn*) whom the jurists of each center characteristically cited as their leading authorities.⁵ The introduction to the *Mukhtaṣar* of Abū Muṣ'ab al-Zuhri (d. 242/857?) is entirely concerned with defending "the people of Medina," not Mālik (d. 179/795).⁶ As late as the end of the ninth century, al-Nasā'ī (d. 303/915?)

2 'Abd al-Muṭṭalib counts over 100 more items than I do, 346 in the whole work, but the discrepancy is due mainly to his including items without *isnād*.

3 Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 240–2.

4 Medinese practice (*'amal*) is stressed by Yasin Dutton, *The Origins of Islamic Law: The Qur'an, the Muwatta' and Madinan 'Amal*, Culture and Civilization in the Middle East (Richmond, Surrey: Curzon, 1999). Strictly speaking, however, the *Muwatta'* refers to agreement and disagreement more often than practice. Consider also the contemporary testimony of al-Shāfi'ī, *K. Ikhtilāf Mālik wa-l-Shāfi'ī*, where al-Rabī' apparently describes the *Muwatta'* as the book they were used to following "in which is *al-amr al-mujtama'* 'indanā and *al-amr 'indanā*," not mentioning *'amal ahl al-Madīna*. Al-Shāfi'ī's rebuttal stresses disagreement within Medina (in *Umm*, 8:771).

5 Schacht, *Origins*, 7–8; Shāfi'ī, *Umm*, 8:763. Recently stressed anew by Sohail Hanif, "A Tale of Two Kufans: Abū Yūsuf's *Ikhtilāf Abi Ḥanīfa wa-Ibn Abi Laylā* and Schacht's Ancient Schools," *Islamic Law and Society* 25 (2018), 173–211, esp. 188–92, defining the regional schools by their peculiar sets of authorities although not limiting these to Followers.

6 Abū Muṣ'ab al-Zuhri, *al-Mukhtaṣar*, ed. Nūr al-Dīn Shūbad, Nawādir al-turāth 32 (Rabat: al-Rābi'a al-Muḥammadiya lil-'Ulamā' and Markaz al-Dirāsāt wa-l-Abḥāth wa-l-ḥyā' al-Turāth, 1439/2018), 144–50.

would write a *Tasmiyat fuqahā' al-amṣār min aṣḥāb Rasūl Allāh wa-man ba'da-hum* classifying jurists and traditionists (scarcely distinguished by him) geographically.⁷ Al-Shāfi'ī and his followers appear there among the people of Mecca. Al-Shāfi'ī himself respects Mālik (d. 179/795) but occasionally complains that he fails to represent Medinese consensus as he says he does; that is, al-Shāfi'ī himself is still largely writing from a regional perspective.⁸ Further evidence for the existence of regional schools is the tendency of majorities in each center to form behind opposed rules, with some tendency for Basran and Medinese opinion to agree, also more weakly for Kufan and Meccan. This evidence has become much more accessible with the publication of the *Muṣannafs* of 'Abd al-Razzāq (Yemeni, d. 211/827) and Ibn Abī Shayba (Kufan, d. 235/849), not available to Schacht.⁹ The present article tends to confirm the perception of Schacht and, more recently, Ahmed El Shamsy that al-Shāfi'ī's polemics marked a transition from authoritative local tradition to authoritative hadith from the first generation, preferably the Prophet himself.¹⁰

The transmission of *Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd*

Like the rest of *al-Umm*, the *Ikhtilāf* is said to have been transmitted from al-Shāfi'ī by his disciple al-Rabī' ibn Sulaymān al-Murādī (d. 270/884).¹¹

7 In al-Nasā'ī, *Majmū'at rasā'il fi 'ulūm al-ḥadīth*, ed. Ṣubḥī al-Badrī al-Samarra'ī (Medina: Muḥammad 'Abd al-Muḥsin, 1389/1969), 7–10, and *Majmū'at rasā'il fi 'ulūm al-ḥadīth*, ed. Naṣr Abū 'Aṭāyā and Muṣṭafā Abū Sulaymān al-Nadwī (Beirut: Dār al-Kutub al-'Ilmiyyah, 1413/1993), 19–44.

8 "Shāfi'ī considers himself a member of the Medinese school, and references to the Medinese or Hijazis as 'our companions' and to Mālik as 'our master' or 'our and your master' occur over the whole range of his writings, from his early to his late period": Schacht, *Origins*, 9. For an argument that al-Shāfi'ī meant to promote a composite Hijazi school, equally loyal to Mecca and Medina, see Mohyiddin Yahia, *Ṣāfi'ī et les deux sources de la loi islamique*, Bibliothèque de l'École des hautes études, Sciences religieuses, 139 (Turnhout: Brepols, 2009), 491–3.

9 See Christopher Melchert, "Basra and Kufa as the Earliest Centers of Islamic Legal Controversy," in *Islamic Cultures, Islamic Contexts: Essays in Honor of Professor Patricia Crone*, ed. Behnam Sadeghi, &al., Islamic History and Civilization, Studies and Texts, 114 (Leiden: Brill, 2015), 173–94, with reviews of other major studies of regional disagreements by Yasin Dutton, Najam Haider, and Behnam Sadeghi.

10 Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (n.p.: Cambridge University Press, 2013).

11 So Shāfi'ī, *Umm*, 8:391, but cf. Yāqūt, *Irshād al-arīb ilā ma'rīfat al-adīb*, ed. Iḥsān 'Abbās, 7 vols. (Beirut: Dār al-Gharb al-Islāmī, 1993), 6:2412, where *Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd* is listed among the works not transmitted by al-Rabī' from al-Shāfi'ī.

Schacht identified it as one of the oldest of the short works, brought to Egypt from Iraq, along with *al-Radd 'alā Muḥammad ibn al-Ḥasan*, apparently a section of *al-Ḥujja 'alā ahl al-Madīna* by al-Shaybānī (d. 189/804–5) overlaid by counter-arguments from al-Shāfi'ī, and *Ikhtilāf al-ʿIrāqīyyayn*, apparently an assemblage by Abū Yūsuf (d. 182/798) of the positions of Abū Ḥanīfa (d. 150/767) and Ibn Abī Laylā (d. 148/765) on various questions with commentary by him, overlaid by more commentary from al-Shāfi'ī.¹²

Attributions to al-Shāfi'ī have become controversial. Schacht identified the longest of the short works, *Ikhtilāf al-ḥadīth*, as a posthumous assemblage. Then Norman Calder argued that the *Umm* was altogether pseudonymous, the product of gradual accumulation of material over the course of the third century H. His principal arguments for redating (which he proposed also for early works in the Mālikī and Ḥanafī traditions) were incoherence in detail, as between early and later segments of particular discussions, and systematic preference for Prophet hadith, which he thought must have prevailed only gradually.¹³ Stylistic inconsistency has been adduced against the direct attribution of the *Risāla* to al-Shāfi'ī by, among others, Jonathan E. Brockopp and Mohyiddin Yahia.¹⁴ However, they detect reworking nowhere near so extensive as what Calder alleged. Ahmed El Shamsy has made the strongest case for trusting attributions directly to al-Shāfi'ī. His evidence for promulgation of the *Umm* just as we know it, mainly quotations in other works, is much stronger for the second half of the third century H. than for the first. Whatever room his

12 Schacht, *Origins*, 330. Schacht and others call the last *Ikhtilāf al-ʿIrāqīyyīn*, but the dual seems more appropriate. For confirmatory citations of al-Nawawī and al-Fayyūmī, see Hanif, “A Tale of Two Kufans,” 178n. Al-Shāfi'ī presumably received the text through al-Shaybānī but does not say so, as likewise at the start of *al-Radd*, which begins with a direct quotation of Abū Ḥanīfa even though he could not have met Abū Ḥanīfa and must have received this work from al-Shaybānī (or at least as a written text by al-Shaybānī).

13 Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press, 1993), chap. 4. Wael Hallaq noticed independently that al-Shāfi'ī's advocacy of exclusive reliance on hadith from the Prophet seems to be far in advance of other jurists' practice in the ninth century CE, which he explained by proposing that the *Risāla* and *Umm* were too far ahead of their time to be heeded for most of the century. See Wael B. Hallaq, “Was al-Shāfi'ī the Master Architect of Islamic Jurisprudence?” *International Journal of Middle East Studies* 25 (1993), 587–605. (He was right about al-Shāfi'ī's advocacy of exclusive reliance on hadith from the Prophet, but his own reliance in practice on hadith from Companions to justify rules was more in line with that of contemporaries.)

14 Jonathan E. Brockopp, *Early Mālikī Law: Ibn 'Abd al-Ḥakam and his Major Compendium of Jurisprudence*, *Studies in Islamic Law and Society* 14 (Brill: Leiden, 2000), 73; Yahia, *Šāfi'ī et les deux sources*, 336–7.

case leaves for posthumous reworking, however, is likewise nowhere near so extensive as what Calder alleged.¹⁵

The organization of the *Ikhtilāf* is slightly confused. It proceeds from disagreements over ritual ablutions to the ritual prayer, fasting, the alms tax, marriage and divorce, and so on—more or less the usual sequence of law books. But then its last three books treat the alms tax, fasting, and the pilgrimage, seemingly out of place. It is as though some material was retrieved from different notes and attached at the end, perhaps by a later hand than al-Rabīʿs. There are also small variations in the form of *isnāds*: they usually begin with *akhbaranā l-Rabīʿ qāla akhbaranā l-Shāfiʿī*, but they sometimes begin rather with *qāla l-Shāfiʿī* or directly quoting al-Shāfiʿī's shaykh.

Some evident interpolations in the *Ikhtilāf* are expressly identified as coming from someone later than al-Shāfiʿī, presumably al-Rabīʿ. Following a report that 'Alī stoned a *lūṭī* (male homosexual), al-Shāfiʿī says, "We hold to this, stoning the *lūṭī* whether *muḥṣan* or not. This is the position of Ibn 'Abbās and Sa'īd ibn al-Musayyab, who says that the *sunna* is to stone the *lūṭī* whether *muḥṣan* or not" (471–2).¹⁶ *Muḥṣan* (lit. "safeguarded") refers to the status of a free Muslim who has been married to another free Muslim. Islamic law famously distinguishes between the *muḥṣan* adulterer, who is liable to be stoned, and the non-*muḥṣan*, who suffers only flogging and temporary banishment.¹⁷ After this statement from al-Shāfiʿī, someone else says, "Al-Shāfiʿī went back on this, saying 'He is not stoned unless he has become *muḥṣan*.'" Unfortunately, I have not discovered directly comparable statements in the *Umm* or the *Mukhtaṣars* of al-Buwayṭī (d. 231/846?) and al-Muzanī (d. 264/877?), which might confirm that al-Shāfiʿī wrote the *Ikhtilāf* before they were composed. Al-Māwardī (d. 450/1058), for example, says that al-Rabīʿ transmitted al-Shāfiʿī's change of opinion but does not say where, probably alluding to exactly this passage of the *Ikhtilāf*.¹⁸

15 Ahmed El Shamsy, "Al-Shāfiʿī's written corpus: a source-critical study," *Journal of the American Oriental Society* 132 (2012), 199–220; idem, *Canonization*.

16 Al-Shāfiʿī's report of 'Alī and Ibn 'Abbās' position is confirmed by 'Abd al-Razzāq, who, however, quotes Sa'īd ibn al-Musayyab as calling only for the *muḥṣan* to be stoned, implying that the non-*muḥṣan* is merely flogged: *al-Muṣannaf*, ed. Ḥabīb al-Raḥmān al-A'zamī, Min Manshūrāt al-Majlis al-ʿIlmī 39, 11 vols. (Beirut: Majlis Ilmi, 1390–2/1970–2), 7:363–4.

17 Q. 24:2 appears to decree only flogging as the punishment for adultery. Early jurists proposed various justifications for the stoning penalty, for which see now Pavel Pavlovitch, "The Islamic Penalty for Adultery in the Third Century AH and Al-Shāfiʿī's *Risāla*," *Bulletin of the School of Oriental and African Studies* 75 (2012), 473–97.

18 Al-Māwardī, *al-Ḥawī l-kabīr*, ed. 'Alī Muḥammad Mu'awwaḍ and 'Ādil Aḥmad 'Abd al-Mawjūd, 20 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1414/1994), 13:224. Al-Rabīʿ occasionally points out a change of opinion in the *Umm* as well; e.g., "Al-Shāfiʿī went back on this

Once, al-Shāfi'ī's opinion is introduced by "Al-Shāfi'ī goes by this," then a restatement of the Kufans' rule (concerning the refund of a nuptial gift), with which they all reportedly agree against 'Alī (424). After three hadith reports banning the temporary *mut'a* marriage, someone says, "Al-Shāfi'ī advocates this" (434). One gloss is explicitly attributed to al-Rabī': "Al-Shāfi'ī's saying 'the least [amount of time] in which a waiting period may expire' applies to one whose menstrual period is 35 days, since the minimum length of menstruation is a day and a night, the minimum length of time between periods fifteen days" (430).¹⁹

Al-Rabī' reports a contrary account of al-Shāfi'ī's opinion concerning atonement for an unfulfilled vow to perform the pilgrimage walking. According to al-Shāfi'ī by a Basran *isnād*, 'Alī allowed riding and an atoning sacrifice if one was unable to walk. The Kufans allow riding and an atoning sacrifice whether one is able or not. Al-Shāfi'ī says that he allows an atoning sacrifice only for someone unable to walk. But then al-Rabī' (expressly identified) says, "Al-Shāfi'ī [also] said other than this, mainly that he is to atone for his vow" (421).²⁰ 'Abd al-Razzāq relates a similar hadith report from 'Alī by a Kufan *isnād* according to which he called for riding with a sacrifice for one who was unable.²¹ However, Ibn Abī Shayba relates two versions of 'Alī's opinion, one by a Kufan *isnād*, with no condition of inability.²² Probably, then, the Kufans did not think they were going against 'Alī's opinion. Al-Rabī' comment suggests that al-Shāfi'ī himself changed his mind.

question, saying he must start the prayer over again if he suffers nosebleed" (Shāfi'ī, *Umm*, 2:66).

- 19 In the *Umm*, al-Shāfi'ī says that the shortest menstrual period known to him is a day but expressly allows that a divorced woman who swears that she has passed less than fifteen days between periods is to be believed if she was known to have such frequent periods before her divorce as well: Shāfi'ī, *Umm*, 6:533. Al-Muzanī reports that al-Shāfi'ī said, in one place, a day, in another, a day and a night, possibly alluding to exactly this difference between the *Ikhtilāf* and *Umm*: al-Muzanī, *al-Mukhtaṣar*, on margin of vols. 1–5 of al-Shāfi'ī, *al-Umm*, 7 vols. in 4 (Bulaq: al-Maṭba'a al-Kubrā l-Amīriyya, 1321–5), 5:5.
- 20 In the *Umm*, only al-Shāfi'ī's stern requirement that the vow be fulfilled is quoted, followed by a comment from al-Rabī' that this does not apply to someone who would be harmed, who should ride and owes no atonement: Shāfi'ī, *Umm*, 2:662.
- 21 'Abd al-Razzāq, *Muṣannaf*, 8:450.
- 22 Ibn Abī Shayba, *Muṣannaf*, ed. 'Abd al-Khālīq Khān al-Afghānī, 14 vols. (Hyderabad: al-Maṭba'a al-'Azīziyya, 1386/1966 [1] and Bombay, al-Dār al-Salafiyya, n.d.-1403/1983 [2–15]), 4/1:38. (Several editions published in the 2000s have superseded this one, but they offer cross-references to its volume and page numbers in the margins.)

In the main body of *Kitāb al-Umm* also there are occasional references to multiple versions of al-Shāfiʿī's opinion known to al-Rabīʿ.²³

On the whole, however, the *Ikhtilāf* is stylistically more uniform than other books of the *Umm*. Consistently, it introduces a quotation with *isnād* of ʿAlī or Ibn Masʿūd, then quotes the Kufans' rejection of it ("They dislike this and do not advocate it," "In their opinion this is speech that renders the ritual prayer defective," "They do not advocate this, saying one recites the Qurʾān only when praying by oneself," and so on), then quotes one or more counter-reports, usually with an *isnād*, confuting the Kufan position. Unlike the *Umm*, the *Ikhtilāf* never switches to dialogue (*qāla . . . qultu* or *qulnā . . .*), nor proposes hypothetical objections (*in qīla* or *in qāla qāʿil . . . qīla . . .*). Its rudimentary legal argumentation (more on this to come) seems consistent with its predating the rest of the *Umm* as we know it. Altogether, it seems safe to ascribe it to al-Shāfiʿī except for a few comments added in dictation and allowing for such minor alterations over time as were normal in the manuscript age.

Al-Shāfiʿī's Quotations

Since ʿAlī and Ibn Masʿūd are the Companions most often quoted in support of Kufan positions, al-Shāfiʿī necessarily relies mainly on Kufan traditionists for what they say. At the Follower level, the reports he relates of ʿAlī and Ibn Masʿūd are 11% Basran, 3% Meccan, almost all the rest Kufan. The shaykhs he directly cites most often in this book are, in ascending order, Abū Muʿāwiya (ʿAbbād ibn ʿAbbād, Basran, d. Baghdad, 179/795?), Ismāʿīl ibn ʿUlayya (Kufan, d. Baghdad, 193/809), ʿAbd al-Raḥman ibn Mahdī (Basran, d. 198/814), and Hushaym ibn Bashīr (Wasiti, d. Baghdad, 183/799). For the learning of Kufa, al-Shāfiʿī thus relied heavily on traditionists who collected hadith from more than one center. Such trans-regional movement became common in the Abbasid period as it had not been in the Umayyad.²⁴ G. H. A. Juynboll has remarked the particular

23 E.g., three pointed out by Christopher Melchert, "The Meaning of *qāla* 'l-Shāfiʿī in Ninth-Century Sources," *ʿAbbasid Studies: Occasional Papers of the School of Abbasid Studies, Cambridge, 6–10 July 2002*, ed. James E. Montgomery, *Orientalia Lovaniensia analecta* 135 (Leuven: Peeters en Departement Oosterse Studies, 2004), 277–301, at 295; three others pointed out by El Shamsy, *Canonization*, 156n. References to multiple versions and changed opinions, also places where al-Shāfiʿī sets out two positions without choosing between them, pervade the *Mukhtaṣar* of al-Muzanī.

24 For the larger pattern, see Scott C. Lucas, *Constructive Critics, ḥadīth Literature, and the Articulation of Sunnī Islam*, *Islamic History and Civilization, Studies and Texts*, 51 (Leiden: Brill, 2004), chap. 8.

importance of Wasiti traditionists in the later eighth century for hadith from Basra and Kufa.²⁵ Ismā'īl ibn 'Ulayya was originally Kufan, married a Basran and transmitted hadith mainly in Basra, finally took up supervision of the *maẓālim* court in Baghdad and died there.²⁶ 'Abd al-Raḥmān ibn Mahdī was born and died in Basra but evidently traveled, being remembered by Aḥmad ibn Ḥanbal for a sojourn in Baghdad, for his expertise in the hadith of the Kufan Sufyān al-Thawrī (d. 161/777?), and for inclining as to law toward Medinese *ra'y*.²⁷ Indeed, twenty-eight of thirty-one quotations of 'Alī and Ibn Mas'ūd through 'Abd al-Raḥmān ibn Mahdī are related by him from Sufyān. Hushaym, by contrast, quotes in turn twenty-three different shaykhs. Al-Shāfi'ī may well have taken dictation from all four in Baghdad.

A substantial number of hadith reports in the *Umm* are formally defective on account of anonymous links (not counting quotations of the Prophet without *isnād*, about a quarter of the total).²⁸ An example in *Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd* is his relation < Sufyān (ibn 'Uyayna) < someone < al-Sha'bī ('Āmir ibn Sharāḥīl, Kufan, d. 104/723–4?): when the remaining heirs are a grandfather, a mother, and a sister, the sister gets three shares, the mother one, and the grandfather two. Al-Shāfi'ī says the Kufans actually go by Zayd's position (i.e., that of the Companion Zayd ibn Thābit), making them nine: to the mother three shares (i.e., a third), the grandfather four, and the sister two (457). This counter-report is anomalous not only for the anonymous link but for not being traced back all the way to either 'Alī or Ibn Mas'ūd. There is a close parallel in the *Muṣannafs* of 'Abd al-Razzāq and Ibn Abī Shayba. 'Abd al-Razzāq reports < someone < al-Sha'bī, Ibn Abī Shayba < Sufyān < someone < al-Sha'bī, that he related the opinions of a series of Companions concerning this set of heirs.

'Alī said the sister gets half, the mother a third, and the grandfather a sixth. Ibn Mas'ūd said the sister gets half, the mother a sixth, and the grandfather a third. 'Uthmān said the mother gets a third, the sister a third, and the grandfather a third. Zayd said there are nine shares: to the mother three, to the grandfather two-thirds of what is left, and to the

25 G. H. A. Juynboll, "Shu'ba b. al-Ḥajjāj (d. 160/776) and His Position among the Traditionists of Basra," *Le Muséon* 111 (1998), 187–226, at 225–6.

26 See al-Mizzī, *Tahdhīb al-Kamāl fī asmā' al-rijāl*, ed. Bashshār 'Awwād Ma'rūf, 35 vols. (Beirut: Mu'assasat al-Risāla, 1402–13/1982–92), 3:23–34.

27 See Mizzi, *Tahdhīb*, 17:430–43.

28 Two studies that supply names from parallel reports in other collections are Abū Asmā' al-Miṣrī 'Aṭīyya ibn Ṣidqī 'Alī Sālim 'Awda, *Itizām al-diqqa fī taḥqīq qawl al-Shāfi'ī akhbārānā l-thiqa* (Mansoura: Maktabat Ibn 'Abbās, 2013), and Asmā' al-Bughā, *al-Ta'dīl 'alā l-ibhām 'inda l-imām al-Shāfi'ī*, *Silsilat al-rasā'il al-jāmi'iyya* 11 (Beirut: Dār al-Nawādir, 1435/2014). The latter work is more careful.

sister a third. Ibn ‘Abbās said the mother gets a third, the remainder going to the grandfather, nothing going to the sister.²⁹

‘Abd al-Razzāq and Ibn Abī Shayba also relate the same summary from Ibrāhīm al-Nakha‘ī (d. 96/714), reputedly al-Sha‘bī’s great rival in Kufa.³⁰ Ibn Abī Shayba’s version may be seen as confirmation of al-Shāfi‘ī’s: that Sufyān ibn ‘Uyayna indeed did not name his source for al-Sha‘bī’s summary. If so, the puzzle becomes ‘Abd al-Razzāq’s apparently hearing this from someone he does not name who heard it directly from al-Sha‘bī.³¹ It also remains a puzzle why al-Shāfi‘ī traces ‘Alī’s proposed division only to al-Sha‘bī, not ‘Alī (but this may be a scribal error).³²

Schacht draws heavily on the *Ikhtilāf* in his treatment of ‘Alī in the early development of Islamic law.

Most of the opinions advanced under the authority of ‘Alī remained unsuccessful, but some succeeded in gaining recognition Generally speaking, traditions from ‘Alī are as typical of unsuccessful opinions of the Iraqi opposition as those from Ibn Mas‘ūd are of the normal doctrine of the school of Kufa; this appears from the contents of *Tr. II*, compared with those of *Āthār A. Y.* and *Āthār Shaib.*

The “unsuccessful” ‘Alī traditions in *Tr. II* show often a rigorous and meticulous tendency, obviously inspired by religious and ethical considerations³³

Such a division of labor between Ibn Mas‘ūd and ‘Alī would account for al-Shāfi‘ī’s naming many more reports from ‘Alī than Ibn Mas‘ūd: he wants to pile up instances of Kufan disagreement with these two Companions, and

29 ‘Abd al-Razzāq, *Muṣannaf*, 10:269–70; Ibn Abī Shayba, *Muṣannaf*, 11:302–3.

30 ‘Abd al-Razzāq, *Muṣannaf*, 10:270; Ibn Abī Shayba, *Muṣannaf*, 11:303–4. An alternative version of Ibn Mas‘ūd’s position, according to which the grandfather and mother share equally, is related by Ibn Abī Shayba, *Muṣannaf*, 11:304.

31 It appears the same in the newer edition of *al-Muṣannaf*, Dīwān al-ḥadīth al-nabawī 22, 10 vols. (Cairo: Dār al-Ta’šīl, 1436/2010), 7:298.

32 There is another rejected report going back only to Ibrāhīm al-Nakha‘ī in *Umm*, 8:438. The same opinion is ascribed to Ibrāhīm by ‘Abd al-Razzāq, *Muṣannaf*, 7:8, but he is represented as relating it from ‘Umar and Ibn Mas‘ūd by Ibn Abī Shayba, *Muṣannaf*, 5:61. There is a third version, going back only to another Kufan Follower, al-Mustawrid ibn al-Aḥnaf, in *Umm*, 8:507.

33 Schacht, *Origins*, 240–1. “*Tr. II*” refers to *Treatise II*, his term for *Ikhtilāf ‘Alī wa-‘Abd Allāh ibn Mas‘ūd*. “*Āthār A. Y.*” and “*Āthār Shaib.*” refer to the *Āthār* of Abū Yūsuf and al-Shaybānī, respectively.

naturally this is easier with the Companion commonly cited for minority opinions.

However, it is difficult to generalize about the rigorism of 'Alī's opinions. Sometimes they do seem harsh or scrupulous. The examples of the restrictive version of a pronouncement about atoning for an unfulfilled vow and 'Alī's calling for all convicted homosexuals to be stoned have been mentioned already. 'Alī is said to have required the witnesses themselves to cut off a convicted thief's hand, apparently to discourage false testimony (465). Through Sufyān al-Thawrī it is said that 'Alī prescribed, for someone who confessed to ejaculating while dreaming about someone else's wife, that he be made to stand in the sun and his shadow beaten (468–9).

By contrast, others of 'Alī's preferences seem relatively lenient. Through a Basran *isnād*, he reportedly named just four chapters of the Qur'an requiring prostration at some point (Q. 32, 40, 53, and 96), which al-Shāfi'ī rejects, saying there are about twice this many (415).³⁴ By a Kufan *isnād* going through al-Sha'bī, he says, concerning the Christian whose wife converts to Islam, "He has a greater claim to her so long as he does not take her out of *dār al-hijra*" (423–4). Al-Shāfi'ī rejects this opinion, too, saying that no one goes by it. (Fairly widespread support for it is indicated by 'Abd al-Razzāq and Ibn Abī Shayba. The latter relates a similar pronouncement from 'Alī by a mostly Basran *isnād*, both of them similar pronouncements by Kufan *isnāds* from both al-Sha'bī and Ibrāhīm al-Nakha'ī. This was probably at one time the majority opinion in Kufa.³⁵)

Al-Shāfi'ī's Opponents

Al-Shāfi'ī complains continually about what opponents uphold or reject without ever naming them. I have been referring to them as the Kufans; that is, the regional school of his time. This is to disagree with Ahmed El Shamsy, who calls *Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd* "his own original attack on Ḥanafism" (as opposed to *al-Radd 'alā Muḥammad ibn al-Ḥasan*, an attack in the form of a commentary on an earlier Ḥanafī work).³⁶ El Shamsy makes no extended case

34 'Alī's position confirmed through Kufan *isnāds* by 'Abd al-Razzāq, *Muṣannaf*, 3:336, and Ibn Abī Shayba, *Muṣannaf*, 2:17.

35 'Abd al-Razzāq, *Muṣannaf*, 7:175; Ibn Abī Shayba, *Muṣannaf*, 5:91–2. For a survey of opinions on this problem, see Antonia Bosanquet, "The *kitābī* Wife's Conversion to Islam: An Unusual Interpretation by Ibn Qayyim al-Jawziyya," *Islamic Law and Society* 27 (2020), 185–213.

36 El Shamsy, *Canonization*, 47.

for identifying al-Shāfiʿī's opponents as specifically the Ḥanafīyya. However, after pointing out a case in which al-Shāfiʿī and his opponents agree contrary to the reported opinion of 'Alī, El Shamsy says, "Al-Shāfiʿī criticizes the Ḥanafīs' divergence from 'Alī's precedent: given that they provide no countervailing evidence to refute the report from 'Alī, he argues, 'if they consider it authentic then they are bound by it.'"³⁷

The passage in question (like the whole work) does not actually mention the Ḥanafīyya in particular. Actually, there are two passages in question, El Shamsy having read the beginning of one and the conclusion of the other (a regrettable mistake but not materially affecting his argument). The first question, expressly described by El Shamsy, is about whether a concubine who has given birth to her master's child (*umm al-walad*) is freed on his death. Ibn Abī Shayba confirms al-Shāfiʿī's version of the report from 'Alī that he decided, against 'Umar, that she is not automatically freed.³⁸ But Ibrāhīm al-Nakhaʿī, who usually represents the majority opinion of the Kufan regional school, said she is freed, according to al-Shaybānī,³⁹ or endorsed 'Umar's rule that she is freed, according to 'Abd al-Razzāq, Ibn Abī Shayba, Abū Yūsuf, and (in a second version) al-Shaybānī.⁴⁰ So al-Shāfiʿī seems to misrepresent the basis of the Kufans' preference for freedom; that is, they presumably thought they were following Companion opinion, not just *ra'y*. Be it observed also that the Ḥanafīyya are doubtfully the only Kufans who rejected 'Alī's opinion.

The second question, to which El Shamsy's quotation about being bound directly applies, concerns the sale of an animal with the condition that some part be returned to the seller after slaughter. Al-Shāfiʿī relates 'Alī's rejected opinion ("They say it is an invalid sale") through 'Abd al-Raḥmān ibn Maḥdī from Sufyān al-Thawrī. 'Abd al-Razzāq relates a similarly worded report directly from Sufyān al-Thawrī. 'Abd al-Razzāq's next item is another description of such a sale, followed by "Al-Thawrī said, 'We say the sale is invalid.'"⁴¹ Here and elsewhere, al-Shāfiʿī's attack on his opponents is not specific to the Ḥanafīyya

37 Ibid., 48, citing Shāfiʿī, *Umm*, 8:440.

38 Ibn Abī Shayba, *Muṣannaf*, 6:436, through al-Shaʿbī; 'Abd al-Razzāq relates the same by a Basran *isnād*, *Muṣannaf*, 7:291–2. Schacht suggests that the point of this story was precisely to discredit the rule that she remains enslaved, since it makes out that 'Alī was deliberately going against 'Umar's precedent (*Origins*, 265n.).

39 Al-Shaybānī, *al-Āthār*, ed. Khālid al-ʿAwwād, Waqfiyyat al-Muzaynī, 2 vols. (Kuwayt: Dār al-Nawādir, 1429/2008, repr. 1432/2011), 2:572.

40 'Abd al-Razzāq, *Muṣannaf*, 7:293; Ibn Abī Shayba, 6:438–9; Abū Yūsuf, *K. al-Āthār*, ed. Abū l-Wafā (Hyderabad: Lajnat Iḥyā' al-Maʿārif al-Nu'māniyya, 1355, repr. Beirut, Dār al-Kutub al-ʿIlmiyya, n.d.), 192, no. 872; Shaybānī, *Āthār*, 2:569.

41 'Abd al-Razzāq, *Muṣannaf*, 8:194–5; cf. *Muṣannaf* (Dār al-Ta'ṣīl), 6:516–17.

but evidently comprehends Sufyān al-Thawrī (among others) as well; that is, his attack is on the Kufans in general.

Although *Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd* is certainly not expressly a sustained attack on the Ḥanafīyya, there are some apparent allusions to Abū Ḥanīfa and a nascent school, which I shall here review. Concerning the question of which gestures of the ritual prayer sacralize and desacralize, al-Shāfi'ī says, "One is not sacralized for the prayer except by saying *Allāhu akbar*. Their master (*ṣāhibuhum*) says that one may be sacralized by other than saying *Allāhu akbar*, (mainly by saying) *subḥāna Llāh*." Then he adds, "His two fellows (*ṣāhibāhu*) have reverted to our position." This seems a clear allusion to Abū Ḥanīfa and his two chief disciples Abū Yūsuf and Muḥammad al-Shaybānī. Early Ḥanafī literature appears to be inconsistent on this point. In the *Āthār*, al-Shaybānī quotes Ibrāhīm al-Nakha'ī as saying, "Whoever does not say *Allāhu akbar* at the opening of the prayer is not in prayer." Al-Shaybānī comments, "We go by this" and apparently identifies it also as the position of Abū Ḥanīfa.⁴² In al-Shaybānī's recension of the *Muwatṭā'*, he endorses saying *Allāhu akbar* and clearly calls it also the position of Abū Ḥanīfa.⁴³ In *al-Aṣl*, the *tabkīr* (saying *Allāhu akbar*) is the only formula mentioned at the first description of the beginning of the prayer, but not long after Abū Ḥanīfa is quoted as allowing *tahlīl* (saying *lā ilāha illā Llāh*), *taḥmīd* (*al-ḥamdu lillāh*), and *tasbīḥ* (*subḥāna Llāh*). It is also alleged here that Ibrāhīm al-Nakha'ī allowed other expressions than *Allāhu akbar*, contrary to the *Āthār*.⁴⁴ No Ḥanafī source seen by me describes Abū Yūsuf and al-Shaybānī as once agreeing with him in favor of *subḥāna Llāh*, subsequently calling for *Allāhu akbar* alone.⁴⁵ But al-Shāfi'ī's report of their changing their opinions is not easily dismissed. Ḥanbalī literature includes many discrepant reports of Aḥmad's opinion, Shāfi'ī literature reports many differences between al-Shāfi'ī's former and latter positions (*al-qadīm* and *al-jadīd*, respectively), and al-Ṭaḥāwī (d. 321/933) often mentions discrepant accounts of Abū Ḥanīfa's and Abū Yūsuf's positions.⁴⁶ It

42 Shaybānī, *Āthār*, 1:101.

43 Mālik, *al-Muwatṭā'*, rec. al-Shaybānī, ed. 'Abd al-Wahhāb 'Abd al-Laṭīf (Cairo: Wizārat al-Awqāf, al-Majlis al-'Alā lil-Shu'ūn al-Islāmiyya, Lajnat Ihya' al-Turāth, 1962, repr. 1414/1994), 57 (*bāb iftitāḥ al-ṣalāt*).

44 Al-Shaybānī, *K. al-Aṣl*, ed. Mehmet Boynukalın, 13 vols. (Beirut: Dār Ibn Ḥazm, 1433/2012), 1:6, 15.

45 See for example the summary of Badr al-Dīn al-Aynī, *al-Bināya sharḥ al-Hidāya*, ed. Ayman Ṣāliḥ Sha'bān, 13 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 1420/1999), 1:173. Many Companions are quoted in favor of *subḥāna Llāh* and other praises in addition to *Allāhu akbar*, for which see Ibn Abī Shayba, *Muṣannaf*, 1:230–3.

46 E.g., al-Ṭaḥāwī, *al-Mukhtaṣar*, ed. Abū l-Wafā' al-Afghānī, Silsilat al-Maṭbū'āt 8 (Hyderabad: Lajnat Ihya' al-Ma'ārif al-Nu'māniyya, 1370), 20, 25 (Abū Yūsuf's *qadīm* position contrasted

seems more likely that the later Ḥanafī tradition tended to suppress discrepant reports than that Abū Ḥanīfa and the two shaykhs were singularly resistant to changing their opinions and to being quoted by conjecture.

Similarly, al-Shāfiʿī says that his opponents find fault with their master (*ṣāhibuhum*) as to whether a fatal assault with a large rock or a wooden club may be considered manslaughter, not murder (445). According to al-Shaybānī, *al-Āthār*, Abū Ḥanīfa held that fatal assault with a weapon was a matter for *qisās* (retaliation, potentially fatal to the perpetrator) but with anything else a matter for the kin group (that is, to pay the wergild for manslaughter). “We also go by this,” comments al-Shaybānī, “except for one characteristic: if he strikes him with something else than a weapon that takes the place of a weapon, it requires retaliation (*qawad*), this being Abū Yūsuf’s position and ours.”⁴⁷ This might be taken as the fault-finding al-Shāfiʿī refers to. However, the major Kufan authorities al-Shaʿbī, al-Ḥakam ibn ʿUṭayba (d. 113/731–2?), Ḥammād ibn Abī Sulaymān (d. 120/737–8?), and, most importantly, the usual exponent of the Kufan position, Ibrāhīm al-Nakhaʿī, are likewise quoted as requiring retaliation. Therefore, it seems likely that those who disagreed with Abū Ḥanīfa on this point included more than Abū Yūsuf and al-Shaybānī.⁴⁸

“Their master” is said to hold that a surviving grandfather excludes surviving brothers from inheriting, contrary to a report that ʿAlī would allot him only a sixth, whereas al-Shāfiʿī agrees with those Kufans who divide an estate between grandfather and brothers such that the grandfather gets no less than a third (453). “Abū Bakr’s view that the grandfather completely excludes all brothers and sisters of the deceased was endorsed by Abū Ḥanīfa and subsequently became the authoritative doctrine of the Ḥanafī school.”⁴⁹ This endorsement is surprisingly hard to document from earliest Ḥanafī sources. The *Aṣl* offers successive sections recounting in turn the schemes of Zayd ibn Thābit, ʿAlī, and Ibn Masʿūd in relation to the grandfather, confirming what al-Shāfiʿī says here about the first and second but not that Abū Ḥanīfa chose complete exclusion.⁵⁰ Al-Ṭahāwī does confirm that Abū Ḥanīfa held a grandfather to exclude brothers, in agreement with the caliph Abū Bakr, against Abū Yūsuf and al-Shaybānī.⁵¹ Al-Sarakshī (d. 483/1090–1?) confirms again that Abū

with what *aṣḥāb al-implāʾ* report); 23 (Abū Yūsuf and al-Luʿluʿī quote Abū Ḥanīfa differently); 31 (al-Shaybānī and *aṣḥāb al-implāʾ* quote Abū Yūsuf differently as to Abū Ḥanīfa’s position).

47 Shaybānī, *Āthār*, 1:497. References like this to Abū Yūsuf are found throughout the two *Jāmiʿ*s and the *Aṣl* but rarely in the *Āthār*.

48 ʿAbd al-Razzāq, *Muṣannaf*, 9:276, 280; Ibn Abī Shayba, *Muṣannaf*, 9:138–40.

49 Noel J. Coulson, *Succession in the Muslim Family* (Cambridge: Univ. Press, 1971), 80.

50 Shaybānī, *Aṣl*, 5:585–608.

51 Ṭahāwī, *Mukhtaṣar*, 147–8.

Ḥanīfa held a grandfather to exclude brothers, but lists the Kufans who disagreed with him as Sufyān al-Thawrī, Abū Yūsuf, and Muḥammad (al-Shaybānī), alongside al-Shāfi'ī and Mālik.⁵² Here as elsewhere, then, al-Shāfi'ī's Kufan opponents turn out to extend beyond the Ḥanafīyya.

Finally, Abū Ḥanīfa apparently comes up in relation to the question mentioned above of how to punish homosexual adultery, concerning which early Shāfi'ī and Ḥanafī literature both show some instability. As observed above, al-Shāfi'ī advocates stoning whether the culprit is *muḥṣan* or not. By contrast, he says,

Their master (*ṣāhibuhum*) says the *lūṭī* does not suffer the *ḥadd* penalty. If he engages in homosexual sex when in a sacral state, it does not violate his sacral status. He need not perform the major ritual ablution if he does not ejaculate. One of his followers (*ba'd aṣḥābiḥi*) disagrees with him on this, for he says the *lūṭī* is like an adulterer, to be stoned if he is *muḥṣan* and flogged if not *muḥṣan*. The *lūṭī* is in no worse condition than an adulterer (472).

Al-Jāmi' *al-ṣaghīr* confirms that Abū Ḥanīfa's opinion was at least close to what al-Shāfi'ī ascribes to "their master": "A man does the work of the people of Lot: he is chastised (*yu'azzaru*) and imprisoned. Abū Yūsuf and Muḥammad held that he suffers the *ḥadd*."⁵³ The classical Ḥanafī position is evidently that homosexual sex is not adultery (*zinā*), either because it does not threaten confusion of genealogy (*ikhtilāf al-nasab*) or because it does not meet the precise definition of adultery, namely genital sex between two persons for whom it would be permissible if properly related by marriage or ownership.⁵⁴ The

52 Al-Sarakhsī, *K. al-Mabsūṭ*, ed. Muḥammad Rāḍī al-Ḥanafī, 30 vols. in 13 (Cairo: Maṭba'at al-Sa'āda, 1324–31), 29:179–80.

53 Shaybānī, *al-Jāmi' al-ṣaghīr*, 157; similarly, Ṭahāwī, *Mukhtaṣar*, 263. *Ta'zīr* is the discretionary punishment imposed by a qadi.

54 So says al-Qudūrī, *al-Taḥrīd*, ed. Muḥammad Aḥmad Sarraj and 'Alī Jum'a Muḥammad, 12 vols. (Cairo: Dār al-Salām, 1425/2004), 11:591–15. Similarly, al-Sarakhsī argues that *liwāṭ* cannot be *zinā* because it has a different name and should not be punished more harshly because, although equally condemned as a *fāḥisha* (major instance of immorality), it is not equally an assault on the marriage bed in that it does not produce a child with no father: Sarakhsī, *Mabsūṭ*, 9:78–9. Neither al-Qudūrī nor al-Sarakhsī mentions that Abū Yūsuf and al-Shaybānī advocated the *ḥadd* for adultery. Al-'Aynī does, although upholding Abū Ḥanīfa's position as that of the school: Badr al-Dīn al-'Aynī, *Bināya*, 6:259, 308–11. For a survey of the different Sunni school positions, see Sara Omar, "From Semantics to Normative Law: Perceptions of *Liwāṭ* (Sodomy) and *Siḥāq* (Tribadism) in Islamic Jurisprudence (8th–15th Century CE)," *Islamic Law and Society* 19 (2012), 222–56, at 230–6.

identity of “one of his followers” remains obscure, since *al-Jāmi‘ al-ṣaghīr* indicates it might have been either Abū Yūsuf or al-Shaybānī. Al-Shaybānī’s disagreement is confirmed in the *Āthār*, which quotes with approval the opinion of Ibrāhīm al-Nakha‘ī: “The *lūṭī* has the status of an adulterer.” Al-Shaybānī comments, “This is our position (*qawl*). If he is *muḥṣan*, he is stoned; if he is not *muḥṣan*, he is flogged the *ḥadd*, 100 lashes.”⁵⁵

Al-Shāfi‘ī was aware of disagreements within Kufa, observing elsewhere that different Kufans preferred the positions of Abū Yūsuf, Ibn Abī Laylā, al-Thawrī, and al-Ḥasan ibn Ṣāliḥ.⁵⁶ However, the allusions to Abū Ḥanīfa and even less often to his most famous followers, reviewed above, are the only acknowledgement in *Ikhtilāf ‘Alī wa-‘Abd Allāh ibn Mas‘ūd* of any smaller unit than the usual anonymous third-person plural. They are reminiscent of the way al-Shaybānī refers to Mālik in *al-Ḥujja ‘alā ahl al-Madīna* as “their master” without ever implying that his polemic is actually against a Mālikī school. In *Ikhtilāf ‘Alī wa-‘Abd Allāh ibn Mas‘ūd*, al-Shāfi‘ī continually refers to “them” as a homogeneous bloc.

Al-Shāfi‘ī does not consistently call attention to disagreement between Abū Ḥanīfa and his followers. For example, by a Kufan *isnād* immediately through Sufyān (ibn ‘Uyayna), he quotes ‘Alī as calling for the dawn prayer as soon as the darkest part of the night is past, called *taghlīs*. “These two reports from ‘Alī,” he says, “show that he practiced *taghlīs* of the most extreme kind. They disagree with him and advocate waiting till the dawn is bright,” called *isfār* (397). In the *Umm*, al-Shāfi‘ī quotes the Prophet through Mālik calling for prayer at *ghalas* (the dark of the night).⁵⁷ ‘Abd al-Razzāq indicates that ‘Alī could be quoted through Sufyān al-Thawrī in favor of waiting for light.⁵⁸ Ibn Abī Shayba strongly suggests that this was the majority Kufan position, reporting among other things a pronouncement from Ibrāhīm al-Nakha‘ī that the Companions agreed on nothing so strongly as waiting for light.⁵⁹ According to

55 Shaybānī, *Āthār*, 2:532; confirmed by ‘Abd al-Razzāq, *Muṣannaf*, 7:363, and Ibn Abī Shayba, *Muṣannaf*, 9:528–9. However, ‘Abd al-Razzāq also reports an alternative quotation through Sufyān al-Thawrī in which Ibrāhīm says only, “He is flogged short of the *ḥadd*,” which implies that homosexual sex is not adultery, strictly speaking, but a matter for *ta‘zīr*. ‘Abd al-Razzāq, *Muṣannaf*, 7:363. Elsewhere, al-Shaybānī, on being asked about someone guilty of doing the work of the people of Lot with a woman or a boy, cites ‘Alī ibn Abī Ṭālib and Ibrāhīm al-Nakha‘ī as calling for the *ḥadd* but refrains from declaring his own opinion: Shaybānī, *Aṣl*, 7:189.

56 Shāfi‘ī, *Umm*, 9:27 (*Jimā‘ al-‘ilm*).

57 Shāfi‘ī, *Umm*, 2:165, in agreement with Mālik, *al-Muwatta‘a*, rec. Yahyā, *wuqūt al-ṣalāt* 1, *bāb wuqūt al-ṣalāt*, no. 4.

58 ‘Abd al-Razzāq, *Muṣannaf*, 1:569, through Sufyān al-Thawrī.

59 Ibn Abī Shayba, *Muṣannaf*, 1:321–2, Ibrāhīm at 1:322.

the Ḥanafī tradition, Abū Yūsuf said the dawn prayer is permissible anywhere in the second half of the night, in agreement with al-Shāfi'ī.⁶⁰ But al-Shāfi'ī does not point out this internal disagreement. (Possibly, Ḥanafī doctrine was still in flux across the ninth century. Al-Ṭaḥāwī reports no such disagreement between Abū Ḥanīfa and Abū Yūsuf, saying only that the best time for the dawn prayer somehow combines *taghlīs* and *isfār* and that Abū Yūsuf, *contra* Abū Ḥanīfa and al-Shaybānī, allowed the dawn *adhān* before the time of the dawn prayer.⁶¹)

Similarly, al-Shāfi'ī reports by three *isnāds*, the first all-Kufan, that 'Alī required a *mu'āl*, someone who has sworn not to have sex with his wife for four months or longer, to be “suspended” (*yūqafu*), meaning that after four months he is not automatically divorced but made to choose expressly between taking back his wife and divorcing her. He comments at the end, “They disagree with him, saying that he is not suspended: when four months have passed, she is separated from him” (426–7). As in the cases of an unfulfilled vow and praying well before dawn, there is disagreement over 'Alī's position.⁶² It is indeed the Ḥanafī rule that the wife is automatically divorced.⁶³ 'Abd al-Razzāq reports that Sufyān al-Thawrī required a separate pronouncement of divorce, against the Ḥanafī position, but al-Shāfi'ī makes nothing of it.⁶⁴

Al-Shāfi'ī often proves an unreliable witness to Kufan opinion. For example, he reports by a Basran/Kufan *isnād* that when a man came to Ibn Mas'ūd with a sealed purse he had found, which he had advertised without finding anyone who recognized it, Ibn Mas'ūd said, “Enjoy it.” Al-Shāfi'ī says, “We go by this but they go against it” (452). Indeed, early Ḥanafī literature quotes 'Alī as calling for giving away property as alms after no one has claimed it for a period.⁶⁵ Sufyān al-Thawrī is quoted as saying, “If you are afraid of its perishing, give it away as alms.”⁶⁶ However, al-Shaybānī also quotes Ibrāhīm al-Nakha'ī as saying, “Giving

60 Qudūrī, *Ṭajrid*, 1:404.

61 Ṭaḥāwī, *Mukhtaṣar*, 24–5.

62 By a Basran *isnād*, 'Abd al-Razzāq reports *contra* al-Shāfi'ī that 'Alī and Ibn Mas'ūd called for a single (implicitly revocable) automatic divorce at the end of four months: *Muṣannaf*, 6:455.

63 Shaybānī, *Āthār*, 2:476; idem, *Aṣl*, 5:25.

64 'Abd al-Razzāq, *Muṣannaf*, 6:446. A separate declaration of divorce is likewise required by Zayd ibn 'Alī (attrib.), *Corpus iuris di Zaid ibn 'Alī*, ed. Eugenio Griffini (Milan: Ulrico Hoepli, 1919), 216. On *ilā'*, see Schacht, *Origins*, 215; G. R. Hawting, “An Ascetic Vow and an Unseemly Oath?: *ilā'* and *ḡihār* in Muslim Law,” *Bulletin of the School of Oriental and African Studies* 57 (1994), 114–25; and Mathieu Tillier and Naïm Vanthieghem, “Un traité de droit mālīkite égyptien redécouvert: Aṣbaḡ ibn al-Faraḡ (m. 225/ 840) et le serment,” *Islamic Law and Society* 26 (2019), 329–73.

65 Abū Yūsuf, *Āthār*, 167–8, no. 768; Shaybānī, *Āthār*, 2:760–1.

66 'Abd al-Razzāq, *Muṣannaf*, 10:140.

it away as alms is preferable to me to consuming it. If you are needy and have consumed it, there is no harm in that.” Al-Shaybānī comments, “We go by this, it being the position of Abū Ḥanīfa.”⁶⁷ Ibrāhīm is also quoted through Sufyān al-Thawrī as saying, “There is no harm in the traveller’s enjoying a whip, a staff, or something else that he finds.”⁶⁸ Either the Kufans whose position al-Shāfi‘ī scorns are other than Abū Ḥanīfa, Sufyān al-Thawrī, and al-Shaybānī or he is misrepresenting what they say, inasmuch as they do allow one to enjoy something found.

Another example concerns the salutation at the end of the ritual prayer. Al-Shāfi‘ī relates by two *isnāds* that ‘Alī saluted to left and right *salāmun ‘alaykum, salāmun ‘alaykum*. Al-Shāfi‘ī comments, “They do not go by it, adding *wa-raḥmatu Llāhi wa-barakātuh*” (399–400). Al-Shāfi‘ī himself does not go by it, calling for *al-salāmu ‘alaykum* as the minimum, one particle less requiring repetition.⁶⁹ ‘Abd al-Razzāq and Ibn Abī Shayba both relate that ‘Alī said *al-salāmu ‘alaykum wa-raḥmatu Llāh* but not *salāmun ‘alaykum* without *alif-lām*.⁷⁰ (The argument here is not that their reports are more reliable than al-Shāfi‘ī’s, only that Kufan practice did not obviously go against ‘Alī’s.) ‘Abd al-Razzāq also mentions a report that Ibn Mas‘ūd saluted *al-salāmu ‘alaykum wa-raḥmatu Llāhi wa-barakātuh*, a precedent for the Kufan practice that al-Shāfi‘ī alleges.⁷¹ Abū Dāwūd relates by a Kufan *isnād* that the Prophet ended his prayer with *wa-raḥmatu Llāhi wa-barakātuh*.⁷² However, the Ḥanafīyya evidently called for only *al-salāmu ‘alaykum wa-raḥmatu Llāh*.⁷³ Al-Tirmidhī identifies this as the position of Sufyān al-Thawrī, too.⁷⁴ Again, the Kufans’ preference seems to have been exactly what al-Shāfi‘ī says they reject (unless the Kufans he has in mind here are other than the Ḥanafīyya and Sufyān al-Thawrī).

The Kufans often had different versions of what ‘Alī and Ibn Mas‘ūd stood for. Several examples have come up already, concerning the timing of the dawn prayer, an unfulfilled vow to make the pilgrimage on foot, the *ilā’* divorce for ‘Alī, and the wording of the final salutation. Another example concerns

67 Shaybānī, *Āthār*, 2:762.

68 ‘Abd al-Razzāq, *Muṣannaf*, 10:145.

69 Shāfi‘ī, *Umm*, 2:279; cf. al-Shāfi‘ī, *al-Risāla*, ed. Aḥmad Muḥammad Shākir (Cairo: Maṭba‘at Muṣṭafā l-Bābī al-Ḥalabī wa-Awladīh, 1358/1940; repr. Beirut: n.p., n.d.), ¶ 743, endorsing *wa-barakātuh* at the end.

70 ‘Abd al-Razzāq, *Muṣannaf*, 2:219–20; Ibn Abī Shayba, *Muṣannaf*, 1:299.

71 ‘Abd al-Razzāq, *Muṣannaf*, 2:219, by a mixed *isnād* but through a Kufan Follower; contradicted by a Kufan report that he ended with *raḥmat Allāh*, 2:218–19.

72 Abū Dāwūd, *al-Sunan*, *al-ṣalāt* 188, *bāb fi l-salām*, no. 997.

73 Ṭaḥāwī, *Mukhtaṣar*, 27; Badr al-Dīn al-‘Aynī, *Bināya*, 2:283.

74 Tirmidhī, *al-Jāmi‘*, *al-ṣalāt* 106, *bāb mā jā’a fi l-taslīm fi l-ṣalāt*, no. 295.

coitus interruptus: according to al-Shāfi'ī, Ibn Mas'ūd condemned it as *al-wa'd al-khafī*, meaning comparable to (if less violent than) the pre-Islamic custom of burying alive an unwanted child (430–1). 'Abd al-Razzāq relates something similar from both Ibn Mas'ūd and 'Alī, Ibn Abī Shayba from 'Alī.⁷⁵ However, 'Abd al-Razzāq also relates through both Sufyān al-Thawrī and Abū Ḥanīfa that Ibn Mas'ūd saw no harm in coitus interruptus.⁷⁶ Ibn Abī Shayba relates the opinion from Ibrāhīm al-Nakha'ī and Ibn Mas'ūd that it is permissible with a concubine but requires the permission of a free wife.⁷⁷ Al-Shaybānī bases his and Abū Ḥanīfa's acceptance expressly on Ibn Mas'ūd's saying that one may practice it or not as one wishes.⁷⁸ Thus, al-Shāfi'ī was right that the Kufans allowed coitus interruptus but doubtfully that they were doing so in deliberate defiance of Ibn Mas'ūd's opinion.

Al-Shāfi'ī's Counter Arguments

As related above, a little over two-thirds of *Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd* comprises pronouncements from 'Alī and Ibn Mas'ūd in favor of rules not followed by the Kufans, a little under a third counter arguments. Al-Shāfi'ī fairly often adduces Companion opinion in his favor. Against 'Alī, he remarks without an *isnād* that Ibn 'Umar held, along with Ibn Mas'ūd, that kissing requires renewal of ritual ablutions (394)⁷⁹ and that 'Umar gave the Friday *khuṭba* only after the zenith (406). As to whether the *mu'li's* wife is automatically separated from him after four months, al-Shāfi'ī adduces along with his three reports from 'Alī the reported opinions of 'Umar, Ibn 'Umar, 'Ā'isha, 'Uthmān, Zayd ibn Thābit, "and ten-odd Companions of the Messenger of God" (427). As for the geography of his counter-reports, a few have such mixed *isnāds* that it is doubtfully wise to identify them with any particular region. However, about

75 'Abd al-Razzāq, *Muṣannaf*, 7:147; Ibn Abī Shayba, *Muṣannaf*, 4/2:220.

76 'Abd al-Razzāq, *Muṣannaf*, 7:144.

77 Ibn Abī Shayba, *Muṣannaf*, 4/2:222; same opinion attributed to Sa'īd ibn Jubayr and endorsed by Shaybānī, *Āthār*, 1:416.

78 Shaybānī, *Āthār*, 1:416–17.

79 'Abd al-Razzāq provides two reports of Ibn 'Umar's opinion with *isnāds*, *Muṣannaf*, 1:132–3. Both 'Abd al-Razzāq (*Muṣannaf*, 1:133) and Ibn Abī Shayba (*Muṣannaf*, 1:45) relate that Ibrāhīm called for the minor ritual ablution after kissing with desire, al-Sha'bī simply after kissing. This is another question on which the later Ḥanafī school appears to have departed from the earlier Kufan consensus. Al-Shaybānī expressly rejects Ibrāhīm's distinction between kissing those whom one is forbidden to marry and those whom one is allowed to: Shaybānī, *Āthār*, 1:59–60. Abū Yūsuf quotes Ibn 'Umar, along with al-Ḥasan al-Baṣrī and Ibn 'Abbās, against requiring the minor ritual ablution: Abū Yūsuf, *Āthār*, 5, nos. 16–18.

two-fifths may be characterized as Medinese in their upper reaches (earlier in time), about a third as Kufan, an eighth as Meccan, fewer still Basran.

An exact count is difficult, but it seems that al-Shāfiʿī most often cites against the Kufans the Prophet together with one or more Companions, almost as often the Prophet by himself, then almost as often one or more Companions without the Prophet. He sometimes calls for following one Companion opinion instead of another because it agrees with the Prophet's precept or example. Concerning an opinion of 'Alī's rejected by the Kufans, he says, "We go by it because it agrees with the established *sunna* of the Messenger of God" (462). Concerning a rule supported by an opinion of Ibn Mas'ūd's, he says, "We encourage this and advocate it, since it agrees with what is related of the Prophet . . . , whereas they strongly discourage it" (499).

Only occasionally does al-Shāfiʿī touch on legal theory. Concerning whether penetration without ejaculation requires the major ritual ablution, al-Shāfiʿī quotes Ibn Mas'ūd as holding it does not, a position neither he nor the Kufans go by. He goes on to say, "This position [obtained] at the beginning of Islam, then was abrogated" (394–5). He seldom adduces analogy (*qiyās*). At one point, apropos of what nullifies a ritual prayer, he says, "If they affirm this narration [of 'Alī's opinion], then they must say about rumbling of the intestines (*rizz*) what they say about nosebleed, since I know of nobody else of the Prophet's Companions who contradicts him as to rumbling of the intestines" (397). But this objection is about following a hadith report more than logical consistency between different rules. Al-Shāfiʿī once observes that the Kufans themselves invoke *qiyās*, pretending to extend the law of inheritance shares (*farā'id*) by analogy from Zayd ibn Thābit's scheme when in the present instance they do something else (454).

Al-Shāfiʿī's strongest appeal to analogy has to do with a story by which, after 'Alī had ordered a convicted thief's hand cut off, the witnesses identified someone else as the thief. 'Alī fined them but added, "If I knew you had done this deliberately, I would cut off your [hands]." ⁸⁰ Al-Shāfiʿī says he agrees with this. The Kufans say of the false witnesses, "We will not cut off two hands for one." Al-Shāfiʿī says that his position is the better analogy (*ashbah bi-l-qiyās*), meaning the more consistent: "If it is permissible that two be killed for one, why should not two hands be cut off for one?" (465–6). (He uses *qiyās* here as a student of al-Shaybānī, not Mālik.⁸¹)

80 Al-Shāfiʿī's *isnād* is Kufan, going back to al-Sha'bī through Sufyān ibn 'Uyayna. 'Abd al-Razzāq quotes the same story by a wholly different *isnād*, *Muṣannaf*, 10:88.

81 On Paul Gledhill's showing that Mālik had no use for the concept, for which see Paul Gledhill, "The Development of Systematic Thought in Early Mālikī Jurisprudence, 8th–9th Centuries A.D.," D.Phil. diss'n, Oxford, 2014, chap. 1.

Often, habitual deference to common wisdom shows up in such expressions as “We do not know anyone who goes by this” (405), “Not we, not they, not anyone advocates this” (407), “Not we, not they, not anyone we have learned of advocates this” (423), “Likewise say the muftis without disagreement” (473). Implicitly, he is following the example of the Kufans, whom he also often quotes as saying such things; for example, that whereas the early Kufan Follower ‘Abd Allāh ibn Salima led the Friday prayer in the forenoon to avoid the severest heat, “They say nobody advocates this” (484–5), and that, whereas Ibn Mas‘ūd said, “The son of Adam’s bones were formed for prostration, so prostrate up to the elbows,” “They say, ‘We do not know anyone who advocates this’” (490). (Al-Shaybānī is more restrained than al-Shāfi’ī. In his *Muwatta’*, for example, he continually says, “We go by this, it being the position of Abū Ḥanīfa,” but often adds, “and the generality of our jurists,” “and the general,” or “and the generality of those before us.” In the main body of the *Umm*, al-Shāfi’ī only occasionally appeals to conventional opinion.⁸²)

There are a few hints of hadith criticism. Having related first through ‘Alī from the Prophet that he allowed supererogatory prayers in the morning and late afternoon, he relates through ‘Alī from the Prophet that he did not perform supererogatory prayers in the morning and afternoon. “This contradicts the first report,” al-Shāfi’ī comments, implying that one of them must be wrong (405).⁸³ After relating two reports by which ‘Alī said *Allāhu akbar* six times at the funeral prayer, al-Shāfi’ī says, “Neither we nor they go by this *takbīr*. The funeral *takbīr* according to us and them is four, which is well attested from the Prophet.” Then he relates another report by which ‘Alī did say *Allāhu akbar* at a funeral four times. “This contradicts the preceding two reports” (413).

Al-Shāfi’ī is notably reluctant to criticize any report directly, though. For example, after relating a report by which ‘Alī performed two sets of bowings when leading the Friday prayer, then instructed the people to pray two more (rather than praying all four with them himself), al-Shāfi’ī comments, “Even if this was his doctrine, no one of the respectable people advocates this (*laysa yaqūlu bi-hādhā aḥad min al-nās*)” (406–7). Contemporary Mu‘tazili critics looked at the mass of what seemed to them mutually contradictory and sometimes absurd hadith and advocated going by the Qur’an and consensus

82 E.g., of a pagan’s marriage to a woman who converts to Islam, “I do not know of anyone who disagrees that the one who holds back from converting, when the woman’s waiting period has expired before he has converted, the bond between them is severed”: Shāfi’ī, *Umm*, 6:122.

83 Sufyān al-Thawrī is in both *isnāds*, so it seems safe to consider them Kufan. Ibn Abī Shayba relates versions of both, *Muṣannaf*, 2:348–9, 353.

instead.⁸⁴ Contemporary Sunni hadith critics (although even more of the generation after) proposed to sort the more and less reliable reports by *isnād* comparison. Al-Shāfiʿī advocates hadith criticism by *isnād* comparison in the *Risāla*, but in *Ikhtilāf ʿAlī wa-ʿAbd Allāh ibn Masʿūd* he hints that consensus should decide which hadith to follow.

Conclusions

Schacht generalizes of al-Shāfiʿī,

Shāfiʿī's legal theory is much more logical and formally consistent than that of his predecessors whom he blames continually for what appears to him as a mass of inconsistencies. Explicit legal reasoning occupies a much more prominent place in Shāfiʿī's doctrine than in that of any of the earlier lawyers, even if we take differences of style and literary form into account.⁸⁵

His generalization does not apply to *Ikhtilāf ʿAlī wa-ʿAbd Allāh ibn Masʿūd*, which includes very little explicit legal reasoning. On examination, it may be the least impressive of al-Shāfiʿī's works, crudely confronting report with report, not attempting to demonstrate its superior authority (except inasmuch as the *sunna* of the Prophet trumps pronouncements of Companions), continually misrepresenting the Kufan position, and continually ignoring Kufan alternatives to the Kufan hadith he complains that they fail to follow.

The *Ikhtilāf* can yet be useful to us for illustrating the state of Islamic legal thought in its time; that is, at the turn of the ninth century CE. For one thing, the tradition of regional schools was still sufficiently vital that it made sense for al-Shāfiʿī to polemicize against the Kufans, not individuals whether named or not. This is to disagree with Wael Hallaq, who argues by *reductio ad absurdum* that there cannot have been regional schools in the eighth century because the term implies that "doctrine was anonymous (for there was no personal allegiance), homogeneous, and closely affiliated with a particular region."⁸⁶ This

84 See above all Josef van Ess, "L'Autorité de la tradition prophétique dans la théologie muʿtazilite," *La Notion d'autorité au Moyen Age*, organized by George Makdisi, Dominique Sourdel, and Janine Sourdel-Thomine (Paris: Presses Universitaires de France, 1982), 211–26.

85 Schacht, *Origins*, 315.

86 Wael B. Hallaq, "From Regional to Personal Schools of Law? A Reevaluation," *Islamic Law and Society* 8 (2001), 1–26, at 1–2.

insistence on anonymity and homogeneity means that Hallaq is mostly trying to knock down a straw man of his own invention, not Schacht's or anyone else's actual description of the eighth-century regional schools. Still, anonymity, homogeneity, and close affiliation with a particular region do usually characterize the Kufans as al-Shāfi'ī represents them in *Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd*.

I should also say precisely where my interpretation differs from Ahmed El Shamsy's. This has to do first with the connection of the emerging personal schools with the regional schools that preceded them. According to El Shamsy, "Ḥanafī thought . . . retained a regional specificity, rooted in the Kufan tradition, that precisely mirrored the Medina-centrism of Mālik."⁸⁷ It is certainly true that Ḥanafī positions tend to preserve earlier Kufan traditions, as Mālikī positions tend to preserve earlier Medinese.⁸⁸ In the late eighth century, however, al-Shaybānī is much more inclined than Mālik to adduce opinions from other centres. *Al-Ḥujja 'alā ahl al-Madīna* often and al-Shaybānī's edition of *al-Muwatta'* usually assert that Abū Ḥanīfa's views are supported by those of Followers and Companions not identified with Kufa, whereas Mālik almost never bothers with Followers and Companions not identified with Medina.⁸⁹ In short, El Shamsy's expression "precisely mirrored" goes too far.

Secondly, of course, El Shamsy characterizes *Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd* as a polemic specifically against the Ḥanafīyya, not Kufans more generally. There are three dozen passages in the *Umm* headed *al-khilāf fi* . . . ("disagreement concerning" some part of the law) that record debates (presumably idealized) between al-Shāfi'ī and *ba'd al-nās* ("a certain person"), evidently al-Shaybānī.⁹⁰ But whereas El Shamsy considers *Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd* to be in continuity with those passages, I would say only that it sometimes anticipates them. We are dealing with a transition period, out of the regional stage and into the personal, so in the nature of things sharp lines

⁸⁷ El Shamsy, *Canonization*, 47.

⁸⁸ "The bulk of the ancient school of Kufa transformed itself into the school of the Ḥanafīs, and the ancient school of Medina into the school of the Mālikīs": Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 57.

⁸⁹ See further Christopher Melchert, "*Kitāb al-Ḥujjah 'alā ahl al-Madīnah* and the Transition from Regional Schools to Personal," forthcoming in *Studia Islamica*.

⁹⁰ Al-Rabī' once comments, "When he says 'a certain person,' they are Easterners (*mashriqīyyīn*). When he says 'one of our fellows (*ba'd aṣḥābinā*)' or 'one of the people of our city (*ba'd ahl baladīnā*),' it is Mālik" (Shāfi'ī, *Umm*, 7:417). However, the sections set off as *al-khilāf fi* . . . regularly feature dialogue with an individual, not a group. The opponent occasionally refers expressly to Abū Yūsuf's position (*Umm* 5:111, 7:420), and once al-Shāfi'ī slips into referring to him as Muḥammad ibn al-Ḥasan (i.e., al-Shaybānī; *Umm* 4:252).

cannot be drawn.⁹¹ But we are also dealing with an early work in *Ikhtilāf ‘Alī wa-‘Abd Allāh ibn Mas‘ūd*, a late one in *al-Umm*. The former significantly differs from the latter in usually arguing against an unspecific multitude, not an individual, and in stressing a Kufan tradition.

Finally, El Shamsy asserts that “al-Shāfi‘ī perceived a *prima facie* obligation on the part of the Ḥanafīs to adhere to the Kufan Companions’ opinions.”⁹² It is a good idea that al-Shāfi‘ī thought of *Ikhtilāf ‘Alī wa-‘Abd Allāh ibn Mas‘ūd* as an inversion of *al-Ḥujja ‘alā ahl al-Madīna*. It may be the reason Schacht thought that al-Shāfi‘ī’s commentary on the *Ḥujja* was written just before the *Ikhtilāf*. (Additionally, as the *Ḥujja* is not particularly an attack on Mālik, so should the *Ikhtilāf* as its inverse not be a specific attack on Abū Ḥanīfa.) However, just as the *Ḥujja* complains that the Medinese do not follow their own tradition only when that tradition agrees with Abū Ḥanīfa’s position, so al-Shāfi‘ī continually agrees with the Kufans in rejecting the reported opinion of ‘Alī or Ibn Mas‘ūd. It is not a natural inference that he thought they should have stubbornly kept to their local tradition. I read El Shamsy’s characterization of al-Shāfi‘ī’s contribution to the development of Islamic law as a successful elaboration of Schacht’s characterization, but evidently consider that there is more distance between the earliest and latest surviving works.

As for illustrating the state of Islamic legal thought in its time, it is significant that the *Ikhtilāf* ignores divisions within Kufa, such as al-Sha‘bī against Ibrāhīm al-Nakha‘ī at the beginning of the eighth century and Sufyān al-Thawrī against Abū Ḥanīfa two generations later. Except insofar as this is simple carelessness on al-Shāfi‘ī’s part, inattention to these divisions confirms suspicions that they were largely worked up and projected backward as enmity between adherents of hadith and *ra’y* sharpened in the ninth century. (The principal evidence that these opposed pairs were back projections is the high incidence of agreement between them, of which multiple examples have been remarked above.) The *Ikhtilāf* also illustrates the primitive jurisprudence of the late eighth and early ninth centuries, relying heavily on unanimous contemporary opinion, considering many reports to outweigh few, and without yet any sophisticated discourse of hadith criticism. It may document the transition out of a regional stage toward a personal as occasional references to *ṣāhibukum* suggest

91 Joseph Schacht also asserts that “This transformation of the ancient schools, which perpetuated not the living tradition of a city but the doctrine of a master and of his disciples, was completed about the middle of the third century of the hijra (c. A.D. 865):” Schacht, *Introduction*, 58. El Shamsy is mainly concerned with the Shāfi‘ī school but he may consider this too late a date for the formation of a distinct Ḥanafī school.

92 El Shamsy, *Canonization*, 48.

that a recent jurisprudent is becoming their chief authority, no longer local Companions.

The strong theme of al-Shāfi'ī's argument is that jurists should follow precedents. Against the Kufans, he continually quotes a precedent, mainly the opinion of 'Alī or Ibn Mas'ūd, then complains that the Kufans reject it without offering anything better in its place. Often, he defends the rejected position by citing confirmatory hadith from the Prophet and other Companions. At these points, one might argue that he is defending hadith against *ra'y*, which has misled the Kufans. More often, however, he agrees with the Kufans in rejecting the reported opinion of 'Alī or Ibn Mas'ūd.

The chief polemical effect of *Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd* is not then to defend hadith against *ra'y* but to point out the futility of Kufan reliance on their own local tradition, which they so often feel compelled to abandon for superior positions endorsed by al-Shāfi'ī. (There is some sleight of hand here inasmuch as the regional schools were better characterized by appeal to a few authoritative Followers, not Companions.) The predominance of counter-reports from Medina suggests that al-Shāfi'ī prefers the Medinese tradition to the Kufan, as do other writings of his.⁹³ However, the predominance of counter-reports from the Prophet together with Companions, or the Prophet alone, anticipates al-Shāfi'ī's argument (not wholly new with him) that the Prophet's precept and example set the normative precedent (*sunna*) better than the precept and example of a Companion or any later authority. Al-Shāfi'ī's substantial reliance on Kufan counter-reports, not just Medinese, also suggests that his positions are better because eclectically based on the learning of all the regions. Although his polemic against the Kufans demonstrates the continued vitality of regional schools at the turn of the ninth century CE, it also demonstrates that their parochialism was becoming unfashionable with the rise of travel among regions and imperial encouragement of a uniform religious culture.

93 See n. 8.