THE FIRST SHĀFIĪ:
THE TRADITIONALIST LEGAL THOUGHT OF
ABŪ YA'QŪB AL-BUWAYTĪ (D. 231/846)∗

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Abstract
Abū Ya’qūb al-Buwaytī, the first successor of Muḥammad b. Idrīs al-Shāfiī, made an important but hitherto unappreciated contribution to the formation of the Shāfiī school of law and the convergence of the rival legal approaches of the traditionalists (ahl al-hadīth) and the rationalists (ahl al-ra'y) over the course of the 3d/9th century. An analysis of the content and transmission history of al-Buwaytī’s recently discovered Mukhtār, the earliest work of secondary Shāfiī scholarship, demonstrates that (1) the particular interpretation of al-Shāfiī’s teaching developed and transmitted by al-Buwaytī was marked by a characteristically traditionalist emphasis on hadith; (2) al-Buwaytī’s Shāfiīmism was ultimately methodological in nature, rooted in al-Shaīfī’s legal hermeneutic and the central “hadith principle”; and (3) al-Buwaytī’s hadith-oriented approach found its most enthusiastic audience among the ahl al-hadīth, to whom it offered a way of engaging in juristic reasoning (ra’y) while maintaining the supremacy of hadith.

Introduction
It is to Max Weber that we owe the insight that much of what we view as essential to religions is due not to their founders, but rather

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to those who succeed them. These individuals face the challenge of turning the personal bonds of loyalty between the founder and his followers into adherence to an impersonal doctrine that can survive and prosper in the absence of the charismatic leader. The success or failure of this “routinization of charisma” depends on the ability of the successors to present the founder’s legacy in a form that embodies the authority of the founder while facilitating the adoption, perpetuation, and creative extension of his teaching.

This essay seeks to apply Weber’s insight to the study of the madhhīb fīqīya, the schools of law that dominated the theory and practice of Sunni Islamic law for over a millennium.¹ My case study is the Shāfī‘ī (Shāfī‘ite) school, whose origin has in recent decades become the subject of lively controversy. Joseph Schacht’s simple acceptance of the eponymous founder Muḥammad b. Idrīs al-Shāfī‘ī (d. 204/820) as the sole author of Shāfī‘i doctrine² has been assailed by a number of critical studies questioning al-Shāfī‘ī’s real contribution and significance.³ Norman Calder concluded that the foundational texts attributed to al-Shāfī‘ī, Kitāb al-Umm and the Rīsāla, are in fact the collective products of several generations of later Shāfī‘ī scholars. More recently, his conclusion has been modified by Christopher Melchert and Joseph Lowry, who have found that much of al-Shāfī‘ī’s teaching as presented in the Umm was already known to other scholars by the mid- to late ninth century.⁴ However, the lack of

¹ Jonathan E. Brockopp has argued for the usefulness of Weber’s schema for understanding the evolution of the legal schools in “Theorizing Charismatic Authority in Early Islamic Law,” Comparative Islamic Studies 1 (2005): 129-58.


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concordance in wording between the extant text of the Umm and the quotations of al-Shāfi‘ī in other sources examined by Melchert and Lowry suggests an extent of textual fluidity that has left the precise status of this material in doubt. This uncertainty regarding the early textual tradition is compounded by the apparent paucity of ninth-century works dealing with al-Shāfi‘ī’s Risāla, commonly acclaimed as the inaugural text of the discipline of legal hermeneutics (usūl al-fiqh). As a consequence, we know little about the development of Shāfi‘ī doctrine in the initial decades following al-Shāfi‘ī’s death.

Through a close study of the hitherto unexamined work of al-Shāfi‘ī’s first successor, Abū Ya‘qūb al-Buwaytī (d. 231/846), I hope to shed new light on the very first stages in the genesis of the Shāfi‘ī school. Al-Buwaytī’s Mukhtār, or Compendium, can with some confidence be dated to the first half of the 3d/9th century. Its content demonstrates that already al-Buwaytī actively engaged with al-Shāfi‘ī’s work in both positive law and legal hermeneutics. He organized and processed the material bequeathed by al-Shāfi‘ī, formulated ways of reconciling contradictions within the corpus of the master’s works, and promulgated his own interpretation of al-Shāfi‘ī’s core message. Crucially, al-Buwaytī also developed the necessary foundation of a school of law, namely a justification for legal conformism (taqlīd).


5 See Hallaq, “Was al-Shafi‘ī.” Given that the discipline of usūl al-fiqh is primarily concerned with the development and elaboration of rules for extracting positive law from the sacred sources, I prefer to translate usūl al-fiqh as “legal (or juristic) hermeneutics” as opposed to the more common “legal theory.” For a discussion of these terms, see Hans-Thomas Tillschneider, Die Entstehung der juristischen Hermeneutik (usūl al-fiqh) im frühen Islam (Würzburg: Ergon, 2006), 1-2.

6 A pithy later definition of taqlīd is “the acceptance of a position without evidence” (qubūl qā'il bi-lā hujja); Abū Hāmid al-Ghazālī, al-Mustaṣfā fi ‘ilm al-usūl, ed. Hamza b. Zuhayr Ḥāfaẓ, 4 vols. (Medina: published by the editor, 1413/1993 or 1994), 4:139. This is how al-Shāfi‘ī already appears to have understood the term, as demonstrated by the following rhetorical question in the Umm: “If you follow (taqāllūd) Umar b. al-Khattāb alone on issues regarding which you have no evidence (hujja) beyond following him (taqāldū), then how could you disagree with him when he is supported by the Qur’an, analogy (qiyās), common sense (ma‘qūl), and other Companions of the Prophet?” Muhammad b. Idrīs al-Shāfi‘ī, Kitāb al-Umm, ed. Riḍāt Fawār Ḥab al-Muṭṭalib, 11 vols. (Mansura: Dār al-Wafā’, 2001), 8:346. All references to the Umm in this essay are to this edition, unless otherwise stated. Regarding the authenticity of the Umm, see footnote 39.
i.e. a convincing theory of why the founder’s teaching presented a reliable and authoritative path to follow.

My aim is to reconstruct how al-Buwaytī received, interpreted, and transmitted his master’s teachings, and to trace his role both in the formation of the Shāfi‘ī school and in the broader evolution of Islamic legal thought. I advance three main arguments. (1) The particular interpretation of Shāfi‘ism developed by al-Buwaytī was characterized by a pronounced focus on hadith in a number of areas: as evidence in legal argumentation, as the paramount principle of legal hermeneutics, as a criterion for judging legal opinions, and as the overarching justification for taqlīd of al-Shāfi‘ī by his followers. (2) Al-Buwaytī’s Shāfi‘ism was ultimately methodological in nature, rooted in al-Shāfi‘ī’s legal hermeneutic through the central “hadith principle” rather than in al-Shāfi‘ī’s substantive positions on positive law (jurī‘). (3) Al-Buwaytī’s hadith-centered approach had a particular impact on the scholarship of the abī ḥadīth, or traditionalists, facilitating the latter’s acceptance of juristic reasoning (ra’y) and thus contributing to the eventual creation of a shared methodological basis in Sunni Islamic law.

The emergence of Shāfi‘ism between ḥadīth and ra’y

Yūsuf b. Yaḥyā Abū Ya’qūb al-Buwaytī, born in the upper Egyptian town of Buwayt probably no later than the early 170s/late 780s, was a Mālikī scholar who belonged to the Egyptian Arab aristocracy (sувāḥ). He studied in Egypt with Ibn Wahb (d. 197/812), one of Mālik’s most prominent students, and traveled to the Ḥeijaz, Greater Syria, and Iraq in order to further his education.  

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7 Al-Buwaytī’s birth date is unknown, but he is reported to have said of al-Muzanī, who was born in 174 or 175 between 790 and 792, that the latter was still a “weak youth” (ṣabī‘a da‘īf) when the two studied with al-Shāfi‘ī. See Abū Bakr Ahmad al-Bayhaqī, Manāṣib al-Shāfi‘ī, ed. Ahmad Ṣaqr, 2 vols. (Cairo: Dār al-Turāth, 1971), 2:347.

On his travels through the centers of Muslim learning, al-Buwaythī must have encountered the primary juristic-epistemological conflict of his time, namely the chasm between the traditionalists (ahl al-hadīth or ašhāb al-ḥadīth) and the rationalists (ahl al-ra'y or ašhāb al-ra'y). At one end of this conflict, the traditionalists posited simple adherence to authoritative sources (nuṣūs)—specifically the Qur’ān, prophetic hadiths, and reports from the Prophet’s Companions (ṣahāba) as well as the latter’s Successors (tābiʿūn)—as sufficient guidance for the conduct of a believer’s life, and scorned juristic reasoning as an imposition of human subjectivity upon God. At the other extreme, rationalist jurists rejected as too uncertain the so-called “single-transmitter reports” (akhbār al-āḥād) that constituted the bulk of the traditionists’ material, relying instead on extensive and complex legal reasoning, in which the analogical extension of known rules to new cases occupied a central position. The mutually attached stigmata of the opposing camps, which branded the traditionalists primitive and the rationalists impious, would thus have presented an aspiring scholar in the 3d/9th century with a personal dilemma. He could base his treatment of legal questions exclusively on transmitted reports and preserve a clear conscience, but be assured of crushing humiliation in any debate with the rationalists, some of whom appear to have made a sport out of taunting their traditionalist counterparts in this manner. Alternatively, he could adopt the sophisticated tool kit of the rationalist jurists, but be left with the nagging doubt that his reasoning might ascribe his own fallible opinions to God at the expense of possibly authentic hadiths.


9 Throughout this essay, I will use the term “hadiths” to refer to reports attributed to the Prophet as well as to his Companions and their Successors, distinguishing the first on occasion as “prophetic hadiths.”

Neither group was predominant within the scholarly community of 3d/9th-century Egypt, which had become a center of Mālikism: senior students of Mālik, such as Ibn Wahb, Ibn al-Qāsim (d. 191/806), Ashhab (d. 204/819 or 820), and ‘Abd Allāh b. ‘Abd al-Ḥākam (d. 214/829), had settled in Egypt, and the small community of Arabs established there after its conquest had adopted Mālik’s teaching. Egyptian Mālikī scholars did engage in speculative legal reasoning, as demonstrated by the collections of masā’il (hypothetical legal questions) by Ibn al-Qāsim and Ashhab. But they also utilized hadith more than Iraqi jurists did, since the Mālikīs’ concept of Medinan practice (‘anāl ahl al-Madīna) provided them with a way of overcoming the epistemological uncertainties of single-transmitter reports. The disadvantage of the Mālikīs’ reliance on this notion, however, was that it isolated them both from the latest methods of hadith (especially isnād) criticism developed by hadith scholars, and from the cutting-edge juristic concepts emanating from Iraq. In addition, Egyptian Mālikīs apparently had begun to feel marginalized in the judicial realm, as more and more Iraqi (proto-Ḥanafī) jurists were appointed as judges for Egypt by the caliph in Baghdad, especially during and after the reign of the imperial grand judge Abū Yūsuf (d. 182/798). 11

It was in this context, between 198 and 200/813 and 816, that another one of Mālik’s students came to settle in Egypt. With his noble lineage, impeccable scholarly credentials, and illustrious reputation, Muḥammad b. Idrīs al-Shāfi‘ī made an immediate impression on the Egyptian scholarly scene and attracted many students, primarily from the indigenous Mālikī elite. 12 He had studied not only in the Hejaz but also in Iraq, where he had read the works of the leading Ḥanafī scholar al-Shaybānī (d.189/804 or 805) and engaged him in debate. 13 This experience must have held a particular attraction for the Mālikīs, as what we have of the Mālikī writings of this


12 According to Zakariyā al-Sājī (d. 307/919 or 920), al-Shāfi‘ī’s arrival in Egypt was hailed as the coming of “a jurist from the Quraysh,” and many prominent Mālikīs rushed to visit him; see Ibn Ṭāhir b. Ṭāhir, al-Iṣna‘ī fi jādīd al-thāliitha al-a‘wma al-fasāḥā (Beirut: Dār al-Kutub al-‘Ilmiyya, 1980; reprint of Cairo: Maktabat al-Quds, 1350/1931), 77-8.

13 Ibn Abī Ḥātim, Addāb al-Shāfi‘ī, 201-3.
era suggests that the Mālikīs’ ability to defeat Ḥanafī arguments in debate must have been very limited.\(^{14}\) ‘Abd Allāh b. ‘Abd al-Ḥakam, a prominent student of Mālik and the main facilitator of al-Shāfī‘ī’s move to Egypt,\(^{15}\) was aware of this Mālikī vulnerability vis-à-vis Ḥanafī teaching. He sent his son Muḥammad (d. 268/882) to study with al-Shāfī‘ī in the hope that the latter’s methodology would prove a potent tool in defense of Mālik. Ibn ‘Abd al-Ḥakam instructed his son to “keep the company of this man, as he knows many different ways of deriving legal proofs; for if you were to frequent al-Shāfī‘ī’s lectures to notice that al-Shāfī‘ī held many positions that did not agree with those of Mālik. This in itself was not particularly unusual: the contemporary leader of the Mālikīs in Egypt, Ashhāb, himself diverged from Mālik’s positions on many—for some too many—points.\(^{17}\) In the heated and lively debates between al-Shāfī‘ī and his students, however, al-Shāfī‘ī developed much more than differing conclusions on individual points of law. As his “Disagreement with Mālik” (Iḥtīāf Mālik) shows, al-Shāfī‘ī put forward a critique of Mālik’s fundamental approach, especially the latter’s inconsistent use of the sources, which, he argued, revealed a lack of hierarchy and therefore led to arbitrary decisions. The Mālikī concept of ‘āmal had not yet acquired a sound theoretical basis, and the results of its application often appeared random, as


\(^{15}\) Brockopp, Early Mālikī Law, 27-8.


seemingly clear hadiths alternately were accepted and disregarded. It was this weakness in Mālikī teaching that al-Shāfi‘ī’s attacks on Mālik laid bare, causing some of his Mālikī students to question the very foundations of their master’s doctrine.

The solution offered by al-Shāfi‘ī to the Mālikīs’ dilemma consisted of an articulated legal hermeneutic that resolved these tensions. It incorporated the theoretical sophistication of the rationalists, particularly the Ḥanafīs, in the form of a conceptual repertoire of rational argumentation. But it subjected these tools to a hierarchy that clearly prioritized the sacred sources, including single-transmitter prophetic reports, while excluding the indeterminate category of ‘amal.19

The psychological effects of this synthesis can be detected in several reports of dreams that led scholars to embrace Shāfi‘ism. Abū Ja‘far al-Tirmidhī (d. 295/907), who became one of the main popularizers of Shāfi‘ī thought in the East, described his epiphany as follows:

I studied prophetic traditions for twenty-nine years; I studied Mālik’s masā’il and positions (qānal) and I had no good opinion of al-Shāfi‘ī. Then, while I was sitting in the Prophet’s mosque in Medina, slumber overcame me and I saw the Prophet in my dream. So I asked him: ‘O Prophet, should I study Abū Ḥanīfa’s opinions (ra‘y Abī Ḥanīfa)?’ He answered: ‘No.’ I asked: ‘Should I study Mālik’s opinions?’ He answered: ‘[Only] that which conforms to my example (sunnat).’ I asked him: ‘Should I study al-Shāfi‘ī’s opinions?’ He shook his head as if angry about what I had said and replied: ‘They are no mere opinions, they are refutations of those who contravene my example.’ Under the influence of this vision I left for Egypt to study al-Shāfi‘ī’s books.20

In the dream al-Tirmidhī asks for the Prophet’s advice on the choice of a teacher in law, demonstrating his interest in the subject. But the Prophet’s warning to avoid contravening his example reveals


19 That al-Shāfi‘ī promulgated such a hierarchy has been called into question by Joseph Lowry in “Does Shāfi‘ī have a Theory of ‘Four Sources’ of Law?” Lowry’s argument is based on an examination of the Risāla, which indeed is not concerned with the development of a hierarchy of sources. However, as I demonstrate below, al-Shāfi‘ī put forward an explicit hierarchy in the Umm, and this was picked up by his followers beginning with al-Buwaytī.

the unease that al-Tirmidhī felt regarding juristic reasoning (raʾy).\textsuperscript{21} Al-Shāfiʿī’s work, depicted as a type of raʾy that is not merely consistent with but embodies the Prophet’s Sunna, thus represents the resolution of the conflict that underlies the dream.

That the Mālikīs did feel at least to some degree bound to Mālik by ties of loyalty seems clear. Mālik’s followers composed compendia and defenses of his positions,\textsuperscript{22} and the most zealous among them, such as Fīṭān b. Abī Šāmḥ (d. 232/846 or 847), chastised al-Shāfiʿī both verbally and physically for criticizing Mālik. It is a sign of al-Shāfiʿī’s personal prestige that the governor punished Fīṭān for the insult.\textsuperscript{23} Al-Buwayṭī, too, must have faced the tension between the appeal of al-Shāfiʿī’s approach, on the one hand, and adherence to Mālik’s teaching, on the other. His own account of his “conversion,” as quoted by Ibn al-Ṣalāḥ, hints at the perceived difficulty of abandoning Mālik:

> Al-Shāfiʿī came to Egypt and began to voice much criticism of Mālik. I [first] blamed him for it, [then] remained in a state of confusion. I prayed much and asked God in the hope that he might show me the truth. Then I saw in my dream that the truth was with al-Shāfiʿī.\textsuperscript{24}

\textsuperscript{21} Throughout this essay, I translate the term raʾy as “juristic reasoning” in the active sense of engaging in raʾy. The products of this activity I call “opinions” (e.g. raʾy Abī Ḥanīfa, raʾy Mālik). Raʾy is thus a narrower concept than ijtihād, as the latter might also include, for example, a jurist’s efforts to authenticate hadiths, while raʾy denotes juristic reasoning outside the literal scope of the sacred sources.


\textsuperscript{23} al-Qaddī ʿIyād, Tarīkh al-madīrīh, 1:438.

\textsuperscript{24} Ibn al-Ṣalāḥ, Tabaqāt al-fugāḥā’, 2:682-3. Although this and several other important reports regarding al-Buwayṭī are found exclusively in Ibn al-Ṣalāḥ’s work, there is reason to believe in his trustworthiness as a transmitter of historical information. In the half-dozen instances that I have checked where he quotes works that are still extant, the quotations are accurate. The fact that much of his material is not replicated in other works is likely to be at least partly due to the fact that Ibn al-Ṣalāḥ traveled through the Eastern Islamic world only a few years before the Mongol invasion and the resultant destruction.
Al-Buwaythī became a very close student of al-Shāfi’ī. The master eventually referred requests for fatwas, even from the deputy governor (ṣāhib al-shurta) of Egypt, to al-Buwaythī, demonstrating how much he trusted his pupil’s judgment. When al-Shāfi’ī died, little more than four years after his arrival in Egypt, al-Buwaythī prevailed over another favored student, Muḥammad b. ‘Abd al-Ḥakam, in the dispute over al-Shāfi’ī’s succession. Al-Buwaythī took over his master’s teaching circle in the congregational mosque of Fustat and retained this position for twenty-seven years. Throughout this time, al-Buwaythī was considered a first-rank religious dignitary, with close links to the Egyptian Mālikī scholars who constituted the local elite. Thus when the Abbasid general ‘Abd Allāh b. Ṭāhir marched into Egypt in 211/826 to reassert Abbasid authority over the conflict-torn province, it was al-Buwaythī who presented the newly arrived general with a shortlist for the position of grand judge of Egypt. Several scholars on this list were Mālikīs, including ‘Abd Allāh b. ‘Abd al-Ḥakam and Ṭisā b. al-Munkadīr. At some point between 218 and 220/833 and 835, al-Buwaythī appears to have spent some time in Baghdad, where he visited ʿAbd al-Muqtadī b. al-Munkadīr (d. 241/855) in prison.

The Abbasid Inquisition (mihna al-Qurʼān) heralded a dramatic turning-point in the fates of Egyptian scholars in general and of al-Buwaythī in particular. In 226/840 the imperial grand judge ʿAbd al-Muqtaṣar al-Thaqafī (d. 240/854) charged a fervent Ḥanafī, Ibn Abī al-Layth al-Ḍuḍarī (d. 250/864 or 865), with the vigorous implementation of the Inquisition in Egypt, which hitherto had been spared the violence of the mihna in Iraq. Under the guise of enforcing the theological tenet of the createdness of the Qur’an, Ibn Abī al-Layth embarked upon an aggressive campaign to suppress and intimidate followers of Mālik and al-Shāfi’ī in order to promote Ḥanafism, which had at that time achieved no more than a marginal presence in Egypt. Mālikī and Shāfi’ī scholars were barred from teaching in the central mosque of Fustat, and many were openly humiliated.

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and beaten. While most scholars accepted the necessity of public adherence to the new doctrine in order to evade persecution, al-Buwayṭī defiantly refused to abandon his position and was sent in chains to Baghdad for further interrogation. There he died in prison in the year 231/846.

Al-Buwayṭī’s version of Shafi‘ism

For the quarter-century that al-Buwayṭī led al-Shafi‘ī’s teaching circle in the central mosque, his work and teaching represented the main vehicles for the propagation of al-Shafi‘ī’s thought. We know of numerous scholars who studied with al-Buwayṭī, including many who transmitted his writings to subsequent generations. In contrast, al-Shafi‘ī’s other disciples in Egypt—the most prominent of whom were Muḥammad b. ʿAbd al-Ḥakam, Ismā‘īl b. Yaḥyā al-Muẓanān (d. 264/877), al-Rābīʿ b. Sulaymān al-Murādī (d. 270/884), and ʿUṯmān b. ʿAbd al-ʿAlā (d. 264/877 or 878)—appear to have had very few students in the period spanning the deaths of al-Shafi‘ī and al-Buwayṭī. The lessons that al-Buwayṭī imparted to his students thus set the initial course for the emerging school.

What, then, did al-Buwayṭī teach his followers? The answer to this question holds the key to understanding the birth and survival of

30 Some reports suggest that al-Buwayṭī’s downfall was hastened by a conspiracy of fellow Shafi‘īs that included al-Muẓanān, Harmala, and al-Shafi‘ī’s son Abū ‘Uṯmān; see ‘Alī b. al-Ḥasan [Ibn ʿAsākir], Tārīkh madinat Dimashq, ed. Muḥyī al-Dīn al-Amrāwī, 70 vols. (Beirut: Dār al-Fikr, 1995-2001), 53:359-60.
31 The only source that claims al-Buwayṭī died in 232 rather than in 231 is Ibn ʿUṯmān; see Tārīkh Ibn ʿUṯmān, 1:514.
32 For details on al-Buwayṭī’s students, see the next section on “The impact of al-Buwayṭī’s Shafi‘ism.”
33 The only reports that I have been able to locate relate to two scholars who studied al-Shafi‘ī’s works with al-Rābīʿ b. Sulaymān al-Murādī: Abū Zurʿa al-Rāzī in the year 227/841 or 842, and an unknown scholar in 207/822 or 823. For the former, see Ibn ʿAsākir, Tārīkh madinat Dimashq, 51:369, and Ibn Ḥajar al-ʿAsqalānī, Tahdhib al-Tahdhib, [no named editor], 12 vols. (Beirut: Dār al-Fikr, 1981; reprint of Hyderabad: Matba‘at Mā‘ṣīs Dā‘ūrat al-Ma‘ārif al-Nizāmīya, 1907-1909), 3:213. For the latter, see al-Shafi‘ī, al-Umm, 3:269 (Kita‘ al-hajj).
the Shāfi‘ī school as a unified institution. This is because the form that al-Shāfi‘ī’s legacy would take was by no means determined by al-Shāfi‘ī himself. As countless reports by his followers show, al-Shāfi‘ī’s students considered him exemplary as an individual and a scholar: of noble lineage and exceptional piety, possessed of personal virtues such as chivalry, unmatched in the depth and range of his scholarship, and a brilliant debater. As a consequence, despite the relative brevity of his sojourns in Iraq and Egypt, he attracted a devoted following in both locations. This personal charisma, which eventually found expression in the hagiographic reports (manāqib) of the late 3d/9th and early 4th/10th centuries, bound al-Shāfi‘ī’s students to him as admiring disciples while he was still alive. The question at al-Shāfi‘ī’s death was whether his charisma would survive him: would his students go their separate ways, each carrying his own understanding of the master’s memory and legacy, or would they form a community of scholars united by their allegiance to al-Shāfi‘ī’s teaching—in other words, a school?

The second option has aptly been termed the “routinization of charisma” (die Veralltäglichung des Charisma) by Max Weber.\textsuperscript{34} The founder’s immediate successors play a crucial role in this process, as it is their task to enable the continuation of the founder’s charismatic authority by channeling it into either of the two other basic forms of authority identified by Weber, traditional or legal-rational. In the context of madhhab formation, traditionalization entails establishing the founder’s positions as authoritative in and of themselves, while rationalization requires their justification and application within a systematic framework that is portrayed as rooted in universal or objective truths. To achieve the latter, the founder’s charisma must be de-personalized and attached to the doctrine disseminated by his followers. This process (die Versachlichung des Charisma in Weber’s terminology) involves “a dissociation of charisma from a particular individual, making it an objective, transferable entity.”\textsuperscript{35} I believe that al-Buwaytī very effectively rationalized and de-personalized...


al-Shafi‘i’s charisma as a mujtahid by promulgating and transmitting to others a version of al-Shafi‘i’s teaching that was based on a convincing rationale for taqlid of al-Shafi‘i. This rationale rested on the primacy of hadith in both positive law and legal hermeneutics.

The main source for reconstructing al-Buwayti’s interpretation of al-Shafi‘i’s thought is al-Buwayti’s Mukhtasar, or Compendium. This text, extant only in manuscript form, has hitherto been almost entirely ignored in modern scholarship on the Shafi‘i school, with the apparently solitary exception of a 1977 Master’s thesis written at Cairo University. Nevertheless, references to the manuscripts can be found in a number of modern texts, and at least four complete manuscripts of the work are available; for a description of these and evidence of the work’s authenticity see the Appendix.

The Mukhtasar consists of summaries in the form of succinct paraphrases of most of the treatises and chapters included in the Umm and the Risala, introduced by the phrase “qala al-Shafi‘i.” In addition, the text is interspersed with several layers of brief comments by al-Buwayti, al-Rabii‘, Abû Ḥatim al-Rāzī (d. 277/890), and Abû Thawr.

36 Jamāl al-Layl ‘Abd al-‘Azīz, al-Buwayti wa-atharuhu fi al-fiqh (M.A. diss., Cairo University, Dār al-Ulūm, 1977). This is a basic introduction to al-Buwayti’s life and his Mukhtasar in which ‘Abd al-‘Azīz does not seek to analyse the role of al-Buwayti in the development of the Shafi‘i school. This shortcoming may be at least partly attributable to the fact that the author’s original supervisor, the famous legal scholar Muhammad Abû Zahra, who prompted the study, died when the project was still in its early stages. See ‘Abd al-‘Azīz, al-Buwayti wa-atharuhu, introduction.

37 Sezgin, GAS, 1:491; Özel, “Büveyti,” in İslam Ansiklopedisi, 6:500; editor’s introduction to al-Shafi‘i, al-Umm, 1:15.

38 References in this essay are to the following manuscript, unless otherwise stated: Muhtasar el-Büveyti (İstanbul: Süleymaniye, Murad Molla, MS 1189 [196 fols, 625/1228]).

39 My argument throughout this essay is based on the assumption that, pace Calder in Studies in Islamic Jurisprudence, the Umm and the Risala as they exist today in critical editions do indeed represent the work of al-Shafi‘i himself (as written down or copied by his direct students), and had achieved their textual content—if not their final arrangement—by the 260s/870s at the latest. This conclusion is based on the existence of hundreds of accurate quotations of the two texts in other works known to date from this period, as well as on other evidence such as chains of transmission. For a detailed defense of this view, see Ahmed El Shamsy, “A Textual History of al-Shafi‘i’s Kitāb al-Umm and Risālah” (paper presented at the 217th Meeting of the American Oriental Society, San Antonio, March 16-19, 2007), as well as my forthcoming Ph.D. dissertation, chap. 2.
(d. 240/854).40 These comments, prefaced by “qāla” and the names of their authors, offer additional evidence, mention alternative positions, provide clarifications and explanations, and occasionally express minor disagreements. The Mukhtasar could thus also be described as a “school text,” in that it reflects the collective efforts of a number of Shafi`i scholars to arrive at the correct interpretation of al-Shafi`i’s thought.41 It is illuminating to compare the style of the Mukhtasar with that of the Umm, in which al-Rabi` on numerous occasions claims to reproduce al-Shafi`i’s words verbatim and thus meticulously records the precise methods of transmission—distinguishing between, for example, passages he obtained by dictation, those he copied himself, passages he did not hear personally from al-Shafi`, and those he heard but did not record at the time. In the Mukhtasar, on the other hand, the markers of verbatim transmission (‘anba’anā/akhbaranā) are employed only in chains of hadith transmission; otherwise, the less specific “qāla” is used.42 A closer reading of the Mukhtasar will demonstrate the significance of this difference: unlike the Umm, the Mukhtasar is concerned with representing the positions not of al-Shafi`i the individual, but of Shafi`ism, an abstracted body of legal thought that is embedded in but not equivalent to the actual writings of al-Shafi`i.

The paraphrased material attributed to al-Shafi`i via “qāla al-Shafi`i” makes up the bulk of the text, around 90 per cent of the total length, and it is here that al-Buwayti’s particular interpretation of al-Shafi`i’s teaching becomes evident; as Hilary Kilpatrick put it, “the

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40 There is only one comment by Abū Thawr in the text, and it appears in only one of the manuscripts (İstanbul: Topkapı Sarayi, Ahmet III, MS 1078, fol. 51b).

41 Norman Calder first used this term in Studies with respect to the Umm.

42 One of the manuscripts includes six other instances of apparent verbatim attribution via ‘addathānā or akhbāranā, but given their context these seem to be mere copying errors. The style of the Mukhtasar lends support to Melchert’s conclusion that the phrase “qāla al-Shafi`i?” need not refer to a verbatim quotation but may also introduce e.g. a paraphrase; see Melchert, “The Meaning of Qāla ‘l-Shafi`i,” 297. The precise status of this material was the subject of some controversy among later Shafi`i scholars. See, for example, the different categorizations of al-Buwayti’s work by Muḥyī al-Dīn Abū Zakarīyā al-Nawawī in al-Majmū`, ed. Muḥammad Naṣīb al-Muṣṭafī, 23 vols. (Jeddah: Maktabat al-Irshād, 1992), 1:158, as verbatim quotations of al-Shafi`i; and by Abū ʿIshāq al-Shirāzī al-Firuzābādī in al-Muhadhdhab, [no named editor], 2 vols. (Beirut: Dār al-Fikr, n.d.), 2:312, as containing attributions to al-Shafi`i (takhrīj).
abridgement is almost always an interpretation of the original.” Al-Buwaytī’s selection of material to include, omit, or emphasize in his reworking of al-Shāfi’ī, as well as his occasional departures from his master’s precedent, reveal a distinct pattern, or bias, in the direction of accentuating the importance of hadith in al-Shāfi’ī’s legal thought. This focus on hadith—the hallmark of the traditionalist approach—lies at the core of the version of Shāfi‘ism that was propagated by al-Buwaytī and that formed the basis of the early Shāfi‘ī school. As I show below, al-Buwaytī relies on hadith as primary evidence for legal arguments and passes over much of al-Shāfi‘ī’s sophisticated reasoning; he adopts a version of al-Shāfi‘ī’s hierarchy of sources (and methodologies) that accords a relatively prominent position to the opinions of the Companions; he downplays analogy (qiyās) in theory and uses it relatively rarely in practice; and, by enshrining al-Shāfi‘ī’s “hadith principle” as the foundation of his version of Shāfi‘ism, he establishes hadith as the ultimate criterion according to which legal rulings are to be judged and, if necessary, modified.

The first feature that stands out in the Mukhtasar is al-Buwaytī’s overwhelming reliance on hadith to justify al-Shāfi‘ī’s positions. I have counted ninety instances in which al-Buwaytī presents evidence preceded by the standard phrase “and the proof for this is” (wa’il-ħujja fi dhālika). In eighteen of these instances the evidence consists of a verse from the Qur’an, three times al-Buwaytī invokes the consensus of the scholars (ijma‘), and ten times he employs analogical reasoning, i.e. various types of qiyās. Fifty-six times, i.e. in nearly two-thirds of the cases, he refers to a prophetic hadith, and in three further instances he appeals to a report from a Companion. Al-Buwaytī gives hadith more prominence than does al-Shāfi‘ī in the Umm, as demonstrated by a closer analysis of one section found in both texts, “Disagreement with Mālik.” While al-Shāfi‘ī refers to 128 hadith in

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44 Of course, analogical reasoning is not strictly speaking a source of law but rather a method for extending the sources to generate new rules.

45 Al-Buwaytī also uses other phrases to introduce legal proofs, such as “he gives as proof” (wa’il-ħujja fi dhālika). However, as there appears to be no meaningful variance in al-Buwaytī’s use of these phrases, I have chosen to focus on the specific formula wa’il-ħujja fi dhālika in order to generate a representative sample of al-Buwaytī’s arguments.
the space of 60,000 words, al-Buwaytî condenses the chapter into just over 4,000 words, around seven per cent of the original length, but retains nearly a third of the hadith (38 out of 128).

This selective abridgment of al-Shâfi’î’s arguments in order to boil them down to the core of hadith sacrifices much of the sophistication of the original work. An example of al-Shâfi’î’s critique of Mâlik will provide an illustration. Mâlik held the view that a pregnant woman who breaks her fast out of fear for her unborn child need only make up the missed days of fasting at a later date. He justified this position by drawing an analogy from the Qur’anic verse, “Those of you who are ill or traveling, (fast) a number of other days” (2:185).

Al-Shâfi’î, on the other hand, adhered to the opinion of Ibn ‘Umar, a Companion, that she additionally must give a specified amount of alms per missed day.46 In the Umm, al-Shâfi’î not only disagrees with Mâlik but also criticizes Mâlik’s overall legal hermeneutic, pointing out the inconsistencies in the latter’s methodology. On a different issue (that of the acceptability of performing the pilgrimage on someone else’s behalf), Mâlik had preferred an analogy based on a statement by Ibn ‘Umar over a valid prophetic hadith in order to follow Medinan practice. In the case of fasting, however, ‘amal required Mâlik to dismiss Ibn ‘Umar’s statement in favor of what al-Shâfi’î argues is a false analogy: the illness and hardship mentioned in the Qur’anic verse refer to fear for oneself, which al-Shâfi’î claims is different from a pregnant woman’s fear for her child. None of this complexity, however, is conveyed in al-Buwaytî’s Mukhtasar, which merely states al-Shâfi’î’s position (claiming that Mâlik agreed with it)47 and quotes his proof, namely the report by Ibn ‘Umar.48

46 Umm, 8:713-4 (Ikhtilâf Mâlik: Bâb al-şiyâm).
47 Mâlik’s position, as given in the various recensions of al-Muwatta’ (Bâb man âfara fi ramadân min ʾilla) by Yahyâ b. al-Laythi, al-Qa’nâbî, and al-Hadathânî and as quoted in the Umm [Ikhtilâf Mâlik], contradicts al-Shâfi’î’s position. However, both Ibn Wahb and Ibn al-Qâsim held the same view as al-Shâfi’î on this issue, and Ashhab also gave it partial support, arguing that giving alms was commendable though not obligatory. Al-Buwaytî’s claim may thus draw on the broader Egyptian Mâlikî tradition in order to minimize disagreement between Shâfi’î’s and Mâlikî’s. For Ibn al-Qâsim, see ‘Abd al-Salâm b. Sa’îd al-Tanûkhî [Sahnûn], al-Mudawwana al-kubrâ, [no named editor], 6 vols. (Beirut: Dâr Şâdîr, n.d.; reprint of Cairo: Matbâ’at al-Sa’âda, 1905 or 1906), 1:210; for Ibn Wahb and Ashhab, see Ibn Juzayy al-Kâlî, al-Qawsûn al-fiqhîya (Tunis: al-Dâr al-Arâbiyya li’l-Kitâb, 1982), 129 (Bâb fi lawâzim al-ʾifâr).
48 Mukhtasar, fol. 184b (al-Waqf ʿalâ Mâlik).
Al-Buwaytī thus divests al-Shāfī’ī’s argument of its intermediate stages of complex legal reasoning, stripping it down to what al-Buwaytī sees as its essence—the transmitted report. This format of simply quoting hadiths to establish a legal ruling is typical of the traditionalist style of answering legal questions,⁴⁹ and stands in marked contrast to the style of al-Muzanī’s Mukhtasar, which gives considerably more attention to the juristic reasoning behind individual legal positions.

In addition to preferring hadiths as evidence, al-Buwaytī also accords them more weight in cases of uncertainty. On a number of issues, al-Buwaytī formulates a firm legal judgment where al-Shāfī’ī had contented himself with an expression of mere preference. Al-Buwaytī qualifies such positions with the disclaimer “if the hadith is authentic” (in ṣaḥabat al-hadīth). He employs this device in cases where a firm judgment hinges on the acceptance of a prophetic tradition whose authenticity is uncertain. Thus, whereas al-Shāfī’ī considered it preferable to take a ritual bath after touching a corpse but did not declare it obligatory owing to a weak link in the isnād of the relevant hadith, al-Buwaytī shifts the emphasis by claiming, “whoever washes a corpse must take a ritual bath, if the hadith is authentic.”⁵⁰

Al-Buwaytī’s stress on hadith extends to his discussion of legal hermeneutics, and is most evident in the status he accords to the opinions of the Companions of the Prophet, particularly those that are “solitary” (qaṣal al-wāḥid min al-ṣahāba). As Éric Chaumont has shown, the status of such opinions was ambiguous for later Shāfī’ī scholars.⁵¹ Shāfī’īs in the 4th/10th and 5th/11th centuries generally distinguished between al-Shāfī’ī’s “old” (qadīm) and “new” (jadīd) positions on the issue.⁵² According to the “old” position, related in the now-lost Iraqi recension of the Risāla, the judgment of the Companions should be followed (taqlīd al-ṣahāba),⁵³ while the “new”

⁵⁰ Umm (Bāb mā jā’a fī ghul al-mayyīn): 2:592; Mukhtasar, fol. 40b (Bāb al-sunna fī al-janā’īd); emphasis mine.
⁵² For an early example of this distinction, see Ibn al-Qāṣṣ (d. 335/946 or 947), al-Talḥīḥ, ed. ‘Abd Ahmad ‘Abd al-Mawjūd and ‘Ali Mu’awwad (Mecca: Maktubat Nazzār Muṣṭafā al-Bāz, 1999), 74.
⁵³ See al-Bayhaqī, Mukālib al-Shāfī’ī, 1:442.
position, as found in the Egyptian version of the Risāla, ascribed
normativity to the actions and statements of the Prophet alone. However, other scholars, Shāfiʿis as well as non-Shāfiʿis, have pointed
out that in his Kitāb al-ʿUmm al-Shāfiʿī both follows the opinions of
individual Companions on specific points of the law and lays out
a hierarchy in which the solitary opinion of a Companion ranks
higher than analogy (qiyaṣ), thus contradicting his alleged “new”
position:

Law consists of numerous layers (al-ʿilm tabaqāt shattā). The first is
the Qurʾan and the Sunna, provided that the Sunna is accurately
transmitted. The second is consensus with regards to issues on which the
Qurʾan and the Sunna are silent. The third is what some Companions
of the Prophet have said if we know of no other Companions who
contradict them. The fourth is the opinions that were disputed among
the Companions. The fifth is analogy on one of the previous layers.
When the Qurʾan and the Sunna are present [i.e. applicable], no other [layer] is consulted; and law (al-ʿilm) is derived from the highest
[available layer].

The “classical” Shāfiʿī jurists from the 5th/11th century onwards
described by Chaumont preferred analogical reasoning over a single
Companion’s opinion, permitting the latter only to modify certain
weaker forms of analogy. This technique of selectively adopting one
of several possible positions within al-Shāfiʿī’s Egyptian corpus, known
as ikhtiyār, was also practiced by al-Buwaytī. Unlike the classical Shāfiʿī
works, however, the Mukhtasar places the Companions’ opinions
in a hierarchy of sources below prophetic hadith, but above legal
analogy. The Mukhtasar thus reads:

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54 Muḥammad b. Ḥadrāʾ al-Shāfiʿī, al-Risāla, ed. Aḥmad Muḥammad Shākir
(Cairo: Ḥida bi al-Halabi, 1940), 598 (also published as the first chapter of the
ʿUmm, 1:275).
55 See, for example, ʿAbd al-Rahmān b. al-Ḥasan al-Insawī, al-Tanḥīd fi takhrīj
al-faṣūl al-ḍaʾī al-ṣuṣūl, ed. Muhammad Ḥasan Hitū (Beirut: Muʿассasat al-Risāla,
1400/1979 or 1980), 501; and Ahmad b. ʿAbd al-Halīm b. Ṭaymiyyah, Majmūʿ
56 Al-Shāfiʿī and his students appear to have used frequently the word ‘ilm
to mean law (fiqh); see, for example, Ibn Ḥāmid, Ādāb al-Shāfiʿī, 231.
57 ʿUmm, 8:764 (Ikhṭilāf Mālik: Bāb qaṭ ʿal-ʿabd). This was considered
al-Shāfiʿī’s authoritative position on qaṣāṣ al-sahābi by the influential Shāfiʿī
traditionist al-Bayhaqī (d. 458/1066); see his Muṣaffat al-sunan wa l-āthār, ed.
ʿAbd al-Muʾṣīd Anān Qalʿajī, 15 vols. (Karachi: Jāmīʿat al-Dirāsāt al-Īslāmiyya
If the jurist exercises independent judgment regarding a new situation for which there is no unambiguous text from the Qur'an or the Sunna nor an opinion from [one or several of] the Companions of the Prophet, he ought not draw an analogy from a special case, but only from a general case.58

The high status assigned to the opinions of the Prophet’s Companions conforms to the position of prominent 3d/9th-century traditionalist scholars, as recently discussed by Scott Lucas in the context of al-Bukhārī’s legal hermeneutic.59

Another feature of the legal hermeneutic presented in the Mukhtar’s that is in accordance with al-Buwaytī’s overall traditionalist orientation is the relative neglect of analogical reasoning (qiyās), which the traditionalists disdained as a potential conduit of human subjectivity into the determination of sacred law. Although al-Buwaytī accepts the validity of qiyās as a method of last resort for deriving legal rulings, his discussion of it is very brief, covering only a few lines. He also limits the possible scope of qiyās further by arguing that it cannot be applied to exceptional alleviations (rūkhas).60 The pattern of selection in al-Buwaytī’s treatment of legal hermeneutics—emphasizing transmitted reports while downplaying analogy—thus mirrors that seen in his discussion of positive legal rulings, as outlined above.

I have argued thus far that al-Buwaytī interpreted al-Shāfi‘ī’s legacy from a distinctly traditionalist, hadith-oriented perspective. But how did he reconcile conforming (taqlīd) to the opinions (rā’y) of a fallible scholar with the distrust of rā’y in general that was so constitutive of the traditionalist ethos? An important account by Abū Bakr al-Athram (d. ca. 260/873), a companion of Aḥmad b. Ḥanbal, points to al-Buwaytī’s solution to this problem:

We were in al-Buwaytī’s study circle and he read to us that al-Shāfi‘ī held the view that ablution in the absence of water (tayammum) consists of beating [the palms of the hands on earth] twice.61 I told him:

60 Mukhtar, fol. 173b.
61 See the Mukhtar, fol. 7b (Bāb al-tayammum kayfa huwa).
“There is a reliable transmission by 'Ammār b. Yāsir that tayammum consists of only one beating.” So he erased “two beatings” from his notes and changed it to one on the basis of 'Ammār’s report. And then he said: “Al-Shāfi‘ī said: 'If you find reliable reports from the Prophet [that contradict my position], abandon my position and hold to the prophetic tradition, as that is my [true] position.””

Al-Buwaytī justifies his revision of al-Shāfi‘ī’s position by referring to al-Shāfi‘ī’s oft-repeated command to abandon his positions if they are found to conflict with sound hadiths. This “hadith principle,” most succinctly expressed in the statement, “If the hadith is correct it is my madhhab (or position)” (idhā yahḥa al-hadīth fa-huwa madhhabī), lies at the core of al-Buwaytī’s justification of tağlīk: following al-Shāfi‘ī’s teaching, in the final analysis, means following the Prophet and his Companions. The hadith principle functions as a guarantee of propriety, ensuring that juristic reasoning does not stray beyond the boundaries of the Sunna.

Al-Buwaytī’s overt manipulation of al-Shāfi‘ī’s statement shows that al-Buwaytī did not see himself simply as a faithful transmitter of al-Shāfi‘ī’s individual legal positions. Already al-Buwaytī’s inclusion of extensive material from al-Shāfi‘ī’s Risāla in his Mukhtasar indicates

62 Ibn al-Salāḥ, Ṭabaqāt al-fuqahā’, 2:681-2. Ibn al-Salāḥ quotes a written source here. The quoted passage does not appear in the published edition of al-Athram’s single extant work, Niṣāb al-hadīth wa-mansūkhum, ed. ‘Abd Allāh b. Hamad al-Manṣūr (Riyad: published by the editor, 1420/1999). It is, however, likely that this work is the source of the quotation, given that subject matter of the book is the reconciliation of contradictory hadiths; the current edition begins with kistūb al-salā and thus is probably missing what should be the first section, kistūb al-tahāra, which deals inter alia with tayammum. See the editor’s introduction, 12-3. The extant portion of the text reveals that al-Athram adopted significant features of al-Shāfi‘ī’s legal hermeneutic; I return to this point below. The significance of al-Athram’s report for al-Buwaytī’s understanding of Shāfi‘ism was also noted by ‘Abd al-‘Azīz in al-Buwaytī wa-arvanah, 117. On al-Athram, see al-Dhahabī, Siyār, 12:624, and al-Khaṭīb al-Baghdādī, Taḥrīr Muḥdṭaṭ al-Salām, 6:296.

63 For a sampling of different versions of this command, see al-Dhahabī, Siyār, 10:33-5. Within positive law, Sa‘īd Bāshānfār has found in al-Shāfi‘ī’s Umm fīty-two instances where al-Shāfi‘ī explicitly makes his legal judgments contingent on the reliability of the relevant hadith; see Sa‘īd b. ‘Abd al-Qādir Bāshānfār, al-Nāzar fi-mā ‘allata al-Shāfi‘ī al-qayn ‘alā sāḥbat al-kharāb (Beirut: Dār Ibn Hazm, 2003).

64 Al-Dhahabī, Siyār, 10:35. In spite of its popularity, I have found no information regarding the transmitter of this particular statement of the “hadith principle.” This suggests the possibility that it, too, may represent a later paraphrase of al-Shāfi‘ī’s own, less pithy formulations of the maxim.
that he considered legal hermeneutics an integral part of al-Shāfi‘ī’s thought. But it is the operationalization of the hadith principle—its actual use to overrule al-Shāfi‘ī’s judgment in al-Shāfi‘ī’s own name—that reveals the centrality of ṣūl al-fiqh for al-Buwayṭī. At its core, this discipline is concerned with the methodology of deriving positive law from the sacred texts, and the hadith principle, as employed by al-Buwayṭī, is clearly a methodological rule. By prioritizing the hadith principle over al-Shāfi‘ī’s individual opinions, al-Buwayṭī demonstrates that his primary allegiance is to al-Shāfi‘ī’s ṣūlū, not to his ʿiḥr. And by attributing the resulting new position directly to al-Shāfi‘ī, al-Buwayṭī proves that he does not view this maneuver as an exception to his master’s teaching, but rather as an essential exercise of it. Such a move, termed takhrīj by later scholars, necessarily requires an understanding of al-Shāfi‘ī’s teaching as a unified doctrine structured by a graspable internal logic. For al-Buwayṭī, this logic was constituted by the hadith principle. What al-Buwayṭī saw himself as following, then, was ultimately not al-Shāfi‘ī as an individual but Shāfi‘ism as a coherent, self-standing system of thought.

The nature of al-Buwayṭī’s adherence to his master’s teaching suggests a modification to Wael Hallaq’s theory regarding the transformation of the Sunni legal schools over the course of the 3d/9th century. Hallaq argues that until the emergence sometime in the late 3d/9th or early 4th/10th century of the properly “doctrinal” schools of law, defined by a growing body of authoritative material (methodological as well as substantive) that commanded absolute loyalty from the school’s members, the legal schools were essentially “personal,” loosely and unsystematically based on the opinions of individual, named jurists. As al-Shāfi‘ī’s first successor, al-Buwayṭī must necessarily represent the “personal” stage of the Shāfi‘i school in Hallaq’s schema. However, it is clear that al-Buwayṭī adopted not only al-Shāfi‘ī’s substantive positions but also his legal hermeneutic; indeed, through the hadith principle, he makes the former contingent on the latter. As seen above, the Mukhtar goes beyond merely summarizing al-Shāfi‘ī’s writings and develops an abstracted Shāfi‘i doctrine that is distinct from the legal corpus of its originator. The Shāfi‘ism of al-Buwayṭī is thus fundamentally “doctrinal,” in the sense of being rooted in a coherent hermeneutic doctrine. It is true that

65 Hallaq, “From Regional to Personal Schools,” 20-5.
al-Buwaytī, like his fellow disciples, occasionally departed from his master’s opinions, but these departures were guided by al-Buwaytī’s understanding of al-Shāfi‘ī’s overarching project. In the incident reported by al-Athram, al-Buwaytī accepted al-Athram’s hadith narration as reliable “bi-lā hujja.” This shows that in matters of taṣḥīḥ (the authentification of hadith reports) al-Buwaytī was prepared to practice taqlīd of those with superior expertise in the hadith sciences. If taṣḥīḥ is considered part of independent legal reasoning (ijtihād), then al-Buwaytī is implicitly endorsing what later scholars would call the divisibility of ijtihād (tajazzu’ al-ijtihād or tajzi‘at al-ijtihād), whereby a jurist who is a mujtahid with regards to some areas of the law could follow the judgment of other scholars in those areas in which he himself is not fully qualified. Al-Shāfi‘ī himself appears to have supported such a division of labor: several reports attest that he explicitly called on the expertise of better-qualified muḥaddithūn for questions of taṣḥīḥ.

What I hope to have demonstrated in this section is that al-Buwaytī successfully rationalized al-Shāfi‘ī’s legacy. This process had two facets: al-Buwaytī rendered his master’s legal positions transparent and open to critique through the hermeneutic methodology that al-Shāfi‘ī himself had developed, and he justified the objective truth of this hermeneutic by defining its essence in terms of hadith. Al-Buwaytī’s adaptation of Shāfi‘ism was conservative. He did not abandon al-Shāfi‘ī’s corpus of positive law in order to reconstruct it anew on the basis of his legal hermeneutic. Rather, he adopted al-Shāfi‘ī’s positions wholesale and used the hadith principle as a safety valve that ensured that in cases where al-Shāfi‘ī’s opinions conflicted with hadith, the superiority of hadith would be maintained. Here it is interesting to contrast al-Buwaytī’s Mukhtasar with its contemporary, the Mukhtasar composed by the Egyptian Mālikī scholar ʿAbd Allāh b. ʿAbd al-Ḥakam. Both seek to present concise and authoritative summaries of their respective masters’ works; but Ibn ʿAbd al-Ḥakam chooses the path of traditionalization, quoting Mālik’s positions as

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66 I owe the translation to Devin J. Stewart’s “Specialization in the Islamic Doctorate of Law” (paper presented at the 207th Meeting of the American Oriental Society, Miami, March 23-26, 1997).

67 Al-Ghazālī discusses both the status of taṣḥīḥ and tajazzu’ al-ijtihād in al-Mustaṣfī, 4:14-6.


69 For a detailed discussion of this work, see Brockopp, Early Mālikī Law.
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authoritative with little supporting evidence, while Al-Buwaytī always offers proofs (usually based on hadith, as seen above) for Al-Shafi'i’s positions.

The impact of Al-Buwaytī’s Shafi‘ism

In his article on “traditionist-jurisprudents and the framing of Islamic law,” Christopher Melchert documents the gradual convergence of the respective positions of ‘ahl al-hadith and ‘ahl al-rā‘y over the course of the 3d/9th century, a development that culminated in the adoption of juristic reasoning by the former and the acceptance of the indispensability of the hadith sciences by the latter. Already Joseph Schacht discussed what he believed to have been the central role played by Al-Shafi‘ī’s legal hermeneutic in the unification of Islamic law around a shared methodological core. I believe that an investigation of the impact of Al-Buwaytī’s work on traditionalist scholarship in the 3d/9th century can shed light on how the Shafi‘ī legal hermeneutic might have brought about this crucial rapprochement.

It is clear that Al-Buwaytī had a close affinity, both intellectual and personal, with the ‘ahl al-hadith, and that the latter held him in great esteem. Al-Buwaytī was deemed particularly trustworthy and righteous among the (generally dubious) jurists by such traditionalist luminaries as Ahmad b. Hanbal, Al-Humaydī, and Abu Dāwūd al-Sijistānī; this trust contrasts sharply with the guarded attitude

70 Brockopp terms this the “Great Shaykh theory” of authority in “Competing Theories,” 17-20.
71 Melchert, “Traditionist-Jurisprudents.”
72 Schacht, Origins.

See, for example, Ibn ‘Abd al-Barr, al-‘Isā‘ī, 76, for Ahmad’s reluctant and hence reasonably plausible endorsement of Al-Shafi‘ī and Al-Buwaytī; Al-Khaṭṭī al-Baghdādī, Tārīkh Ma‘rifat al-Salām, 16:441, for Al-Humaydī’s support of Al-Buwaytī; and Shams al-Dīn Abu ‘Abd Allāh al-Dhahabī, Tārīkh al-islām wa-wafayāt al-mashā‘ir wa‘l-dā‘im, ed. ‘Umar ‘Abd al-Salām Tadmūrī, 52 vols. (Beirut: Dār al-Kitāb al-‘Arabī, 1987/8), 14:355, for Abu Dāwūd’s preference for Al-Buwaytī among the Shafi‘īs. Ahmad is also reported to have praised Al-Buwaytī’s intelligence but not his knowledge of hadith; see Ibn al-Salāh, Tabaqāt al-fuqahā‘, 2:684. However, it was not Al-Buwaytī’s (mediocre) expertise as a muhaddith but rather his overall traditionalist orientation and theology that made him an attractive jurist to traditionalists like Ahmad.
of most traditionalists towards al-Buwayṭī’s peer al-Muzanī. Al-Buwayṭī’s character and convictions, particularly his uncompromising stance during the Inquisition in defense of the traditionalist creed, resonated strongly with the traditionalists. As seen in the first section of this essay, the ahl al-hadith faced growing pressure to match the sophisticated and versatile techniques of reasoning employed by their opponents, the ahl al-ra’y. It is consequently understandable that al-Buwayṭī’s teaching found an enthusiastic audience among traditionalist scholars, to whom it would have offered the possibility of engaging in ra’y under the tutelage of a respected scholar with impeccably traditionalist theology, while enjoying the reassurance provided by the “safety valve” of the hadith principle. All of al-Buwayṭī’s known students were traditionalists: Abū Īsāʾīl al-Tirmidhī (d. 280/893), Ibrāhīm al-Harbi (d. 285/898), ‘Uṯmān b. Sa‘īd al-Dārīmī (d. 280/894), al-Qāsim al-Simsār (d. unknown), Muḥammad b. ‘Abd Allāh b. Sa‘īd al-Jawhārī (d. unknown), Abū Sahl al-Bāḥilī (d. 250/864 or 865), Ibn Ukh Ghażāl (d. 264/877), and Zakariyā b. Yahyā al-Sājī (d. 307/919 or 920), as well as al-Rabī’ and Abū al-Walīd b. ʿAbd al-Jārūd al-Makkī (d. unknown), who—though fellow students of al-Shāfiʿī—also studied under al-Buwayṭī. Likewise, those scholars who studied al-Buwayṭī’s Mukhtasar under his students belonged or were close to the ahl al-hadith, including Abū

74 Ibn ‘Abd al-Barr suggests that al-Muzani’s reputation among traditionalists had been sullied by the suspicion that he subscribed genuinely to the doctrine of the createdness of the Qur’an; see Ibn ‘Abd al-Barr, al-Iṣāqā’, 110.


‘Īsā al-Tirmidhī (d. 279/892), Ibn Qutayba (d. 276/889), Abū al-Hasan Mūsā al-Quraynī (d. unknown),77 Abū Ja’far al-Taḥāwī (d. 321/933), Abū Ḥātim al-Rāzī (d. 277/890), Abū Bakr Muḥammad b. al-Mundhir (d. 318/930), and Abū al-‘Abbās al-Āṣām (d. 347/957). Al-Āṣām, whose *Musnad al-Shāfī‘ī* is one of the earliest compilations of the hadith quoted in al-Shāfī‘ī’s *Umm* and *Risāla,*78 claimed to have dreamed that his father told him: “Keep to the work of al-Buwaytī, since among al-Shāfī‘ī’s works it is the one with the least mistakes.”79

Figures such as Abū Ḥātim and Ibrāhīm al-Ḥarbī were later claimed by both the Shāfī‘ī and the Ḥanbalī schools,80 for they frequented the teaching circles of Shāfī‘ī as well as Ḥanbalī scholars. In a larger historical perspective, however, they should more accurately be described as traditionalists on their way to embracing juristic reasoning (*ra‘y*). It seems plausible to conclude that al-Shāfī‘ī’s work, and particularly al-Buwaytī’s interpretation of it, formed an important bridge in this development. Earlier *ahl al-hadīth* could hardly have engaged in *ra‘y* while remaining traditionalists of good standing;81 al-Buwaytī’s success in attracting for the first time large numbers of traditionalist scholars to the study of this field thus marks the acceptance of *ra‘y* as a legitimate component of *ahl al-hadīth* discourse. What al-Buwaytī offered to the traditionalists was a repertoire of conceptual tools to harmonize and order the corpus of sacred sources for the consistent derivation of legal rules. These


tools included abrogation and the distinction between general and specific, as well as a limited form of *qiyās*, which made it possible to extend the scope of the sources but which was embedded in a hierarchy that clearly subordinated it to the Qur'an and hadith.

The traditionalists’ acceptance of al-Buwaytī’s version of *ra’y* can be seen in Abū Ḥātim al-Rāzī’s redefinition of *ahl al-hadīth* as “abandoning him who composes books of *ra’y* without transmitted reports (*āthār*).” His statement acknowledges the existence of an acceptable kind of *ra’y* but emphasizes that it must be circumscribed by hadith, reflecting the influence of al-Buwaytī’s construal of the hadith principle as a safeguard against straying from the authentic example of the Prophet. Abū Ḥātim’s attitude contrasts starkly with Ahmad b. Ḥanbal’s blanket condemnation, just a few decades earlier, of *ahl al-ra’y* as “enemies of God . . . who abandon the reports of the Prophet, practice *ra’y*, and measure religion by their preferences (*istiḥsān*), reaching conclusions that contradict the Book and the Sunna.”

The impact of al-Buwaytī’s teaching on the traditionalists is further demonstrated by the fact that, in a break with previous *ahl al-hadīth* tradition, most of the traditionalist scholars who studied with al-Buwaytī or his students either authored books of law, taught the subject (for example by transmitting al-Buwaytī’s *Mukhtasar*), or included juristic discussions in their works on hadith; all of the students about whose scholarship we have sufficient information fall into at least one of these categories. Even some traditionalists who are not known to have studied under al-Buwaytī seem to have been influenced by him. Ibn Rāhawayh (d. 238/853), whom Melchert describes as “a traditionist-jurisprudent who tended toward the middle” of the *hadith-ra’y* divide, appears to have considered al-Buwaytī’s *Mukhtasar* so similar to his own work that when al-Buwaytī’s student Abū Ismā‘īl al-Tirmidhī arrived in Nishapur where Ibn Rāhawayh had settled, the latter is reported to have beseeched al-Tirmidhī not to teach the *Mukhtasar* in that city, presumably fearing that his students would desert him for al-Tirmidhī’s superior teaching.

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84 Melchert, “Traditionist-Jurisprudents,” 393.
In stark contrast to al-Buwayti’s popularity among the traditionalists, his work appears to have been almost entirely ignored by the ṭabīb-oriented Ḥanafīs of the 3d/9th century. A noteworthy exception is Abū Ja‘far al-Ṭahāwī (d. 321/933), a nephew of al-Muzanī, who studied al-Buwayti’s Mukhtasar with al-Rabī‘. Al-Ṭahāwī became a Ḥanafī, but his methodology in both law and theology retained a distinctively traditionalist character. By employing hadith and the associated traditionist protocols extensively in the service of Ḥanafī doctrine, al-Ṭahāwī’s work represents a significant milestone in the eventual convergence of the traditionalist Shāfi‘ī and rationalist Ḥanafī movements. It is surely no coincidence that the next Ḥanafī known to have engaged with al-Buwayti’s Mukhtasar is Abū Bakr al-Rāzī al-Jaṣṣāṣ (d. 370/981), an avid commentator on al-Ṭahāwī’s works and the author of the first still extant Ḥanafī work on legal hermeneutics (al-Fuṣūl fi al-usūl). Jaṣṣāṣ was the student of the abovementioned Shāfi‘ī scholar Abū al-‘Abbās al-Aṣamm and of other prominent Shāfi‘ī traditionists, and his work embodies the integration of hadith into Ḥanafī legal hermeneutics.

Given that, as Melchert notes, “students of Islamic law and theology have commonly regarded the hadith folk with annoyance, considering only their dogged rejection of sophisticated theorizing,” the popularity among the traditionalists of al-Shāfi‘ī’s legal hermeneutic as presented in al-Buwayti’s Mukhtasar is remarkable. As I argue above, from the very beginning traditionalists appear to have been attracted to al-Shāfi‘ī and his student al-Buwayti precisely because of the legal hermeneutic (i.e. the hadith principle) at the heart of the latter’s work. They continued to apply, discuss, and transmit this hermeneutic throughout the 3d/9th century, as indicated by the prominence of traditionalists in the transmission history of al-Buwayti’s Mukhtasar.

There is also other evidence of the engagement of traditionalist scholars with al-Shāfi‘ī’s legal hermeneutic. Muhammad b. Naṣr al-Marwazi’s (d. 294/906) Sunna is a partial commentary on the

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16 Al-Jaṣṣāṣ quotes al-Buwayti frequently in Aḥkām al-Qur‘ān, ed. Muhammad al-Ṣa‘īdī Qamhāwī, 5 vols. (Beirut: Dār Iḥyā‘ al-Turāth al-‘Arabī, 1405/1984 or 1985); see, for example, 1:229. He wrote an abridgment of al-Ṭahāwī’s Ikhtilāf al-‘ulamā‘ (published) and an extensive commentary on al-Ṭahāwī’s Mukhtasar (partly extant in manuscript).

Risāla that contains substantial quotations from the Risāla as well as a lengthy discussion of al-Shāfi‘ī’s theory of abrogation (naskh).88 Abū Bakr al-Athram and ‘Abd al-‘Azīz al-Kinānī (d. 235/849 or 850) both employed al-Shāfi‘ī’s hermeneutic concepts such as bayān (divine “expression” of a rule) and the general/specific (‘umm/khāṣṣ) dichotomy in their works.89 These sources offer further evidence that the Risāla did not remain virtually ignored for a century following its composition.90

Although regrettably little material is available on the work of most of al-Buwayṭī’s students, what we do have clearly indicates that at least some of al-Buwayṭī’s students as well as their own students adopted and operationalized the hadith principle in the same way that their teacher had done. I will give two examples. Ibn Abī al-Jārūd was singled out for recommendation by ‘Abd al-Rahmān b. Hanbal, who told ‘Abd Allāh b. Fazzāra al-Rāzī: “If you must study ra‘y, then study the ra‘y of al-Shāfi‘ī. I recommend al-Buwayṭī to you; hear it from him. And if you cannot reach him, then [go to] Abū al-Walīd b. Abī al-Jārūd.”91 In a work quoted by Ibn al-Salāh, Ibn Abī al-Jārūd justified his amendment of al-Shāfi‘ī’s position regarding the medical procedure of cupping by appealing explicitly to the hadith principle. The text of the Umm indicates that al-Shāfi‘ī had been aware of two contradictory hadiths regarding the question of whether cupping is compatible with fasting. In one part of the Umm,

89 For al-Athram, see his Nāṣīkh al-hadīth, 33, 42, 48, 52, 69, 74; for al-Kinānī, see al-Bayhaqī, Manāqib al-Shāfi‘ī, 2:328, where al-Bayhaqī quotes Dāwūd al-Zāhirī on al-Kinānī’s legal hermeneutic.
90 Another work from this period, al-Muzānī’s Kitāb al-amr wa‘l-nahy, is also clearly based on a section of the Risāla and not, as the title might suggest, on the similarly titled chapter in the Umm. Compare Robert Brunschwig, ed. and trans., “Le livre de l’ordre et de la défense” d’al-Muzānī,” Bulletin d’études orientales 11 (1945-46): 145-93; and al-Shāfi‘ī, Risāla, 343-55 (the editor, Ahmad Muhammad Shākir, has titled this section “Ṣifat nahy Allāh wa-nahy rasūlīn”). Finally, ‘Isā b. Abān (d. 221/836) composed a refutation of the Risāla; see Murteza Bēdīr, “An Early Response to Shāfi‘ī: ‘Isā b. Abān on the Prophetic Report [khābat],” Islamic Law and Society 9 (2002): 285-311. Together, these findings necessitate a re-evaluation of Wael Hallaq’s claim that “one of the most significant pieces of evidence pointing to the marginal importance of the Risāla is the complete absence of any contemporary commentary on, or abridgement of, the treatise.” See Hallaq, “Was al-Shāfi‘ī,” 590.
91 Ibn ‘Abd al-Barr, al-Intiṣār, 76.
he declined to give a definite judgment on the matter, explaining that he possessed no reliable isnād for either of the two hadiths and thus could not adjudicate between them; elsewhere in the Umm, he claimed that the hadith which indicates that cupping breaks the fast had been abrogated.92 Ibn Abī al-Jārūd, on the other hand, held the position that cupping breaks the fast of both patient and practitioner, with the following explanation: “Given the hadith, ‘the one who gives and the one who receives cupping have broken their fast,’ I say, ‘al-Shāfī‘ī said (fa-anā aqīlū qa‘la al-Shāfī‘ī) that the one who gives and the one who receives cupping have broken their fast.’”93 In the usage of Ibn Abī al-Jārūd as in that of his teacher al-Buwaytī, therefore, the phrase “qa‘la al-Shāfī‘ī” does not mark a verbatim quotation but rather refers to what the author considers to be the “real” Shāfī‘ī position as determined by an abstracted Shāfī‘ī doctrine. Interestingly, al-Muzanī’s Mukhtasar declares that “al-Shāfī‘ī said” that the hadith on cupping had been abrogated,94 adopting the version of al-Shāfī‘ī’s position that is given in the Umm’s Ikhtilāf al-hadīth. The discrepancy between the statements of Ibn Abī al-Jārūd and al-Muzanī regarding what al-Shāfī‘ī had “said” on the issue of cupping clearly does not reflect simple disagreement about the correct wording of this particular ruling, but rather stems from a difference in the two scholars’ respective conceptions of Shāfī‘ism as a doctrine.

Another student of al-Buwaytī, ‘Uthmān b. Sa‘īd al-Dārimī, studied hadith with Ahmad b. Hanbal and Ishaq b. Rāhawayh. Although better known for his refutation of Jahmī theology,95 al-Dārimī was also a Shāfī‘ī jurist and wrote at least one book on law, in which he

explicitly contradicts al-Shāfī'ī on the basis of hadith. Al-Shāfī'ī had developed a complex argument involving several steps of analogies, categorizations, and reconciliations of conflicting hadiths in order to justify his view that it is permissible to eat fox meat (thu'lab). Al-Dārimī, however, held fox meat to be prohibited, basing his position on a general hadith that prohibits consumption of the meat of predatory animals, as well as on a second hadith specifically forbidding fox meat. Even though al-Dārimī conceded that the chain of transmission for the second hadith was not strong, he nevertheless preferred it to al-Shāfī'ī's complex juristic reasoning.

Not all traditionalists or traditionists within the emerging Shāfī'ī school understood or applied al-Shāfī'ī's hadith principle in the same way. Although the principle became a source of pride and an advertising slogan for the Shāfī'ī school, most later Shāfī'ī traditionalists refrained from actually using it to overrule al-Shāfī'ī's opinions. Abū Bakr Ahmad al-Bayhaqī (d. 458/1066), who studied al-Buwayhī's Mukhtasar under Abū al-ʿAbbās al-Aṣʿāmī's student Abū Saʿīd al-Naysābūrī al-Ṣayrafi (d. 421/1030) and who quotes the Mukhtasar extensively in his writings, dedicates much of his work to refuting criticisms of al-Shāfī'ī's use of hadith. On each point he argues that al-Shāfī'ī's position is fully in accordance with hadith; I have found no instance in which he acknowledges a discrepancy and rectifies it through the hadith principle. In the case of al-Bayhaqī, as with the majority of later traditionalist Shāfī'īs, although hadith constituted the focus of their scholarship, as jurists they treated hadith as an element within a contextual, interconnected network of arguments. As such, it was subject to (among other things) abrogation.

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96 The book, Kitāb al-at'ima, appears to have been lost, but the relevant passage survives in al-Subkī's Tabaqāt al-shafiʿīya, 2:306.
97 Qum, 3:644-5 (Bāb al-dābah).
100 However, al-Nawawī includes al-Bayhaqī in a list of scholars who did apply the hadith principle; see al-Majmūʿ, 1:105.
and particularization (takhṣīṣ), not a unique trump card that could always override other, “lesser” types of evidence.

**Conclusion: al-Buwayṭi’s legacy**

Al-Buwayṭi’s *Mukhtaṣar* is the first work of secondary Shāfiʿī scholarship: a text that for the most part does not claim to reproduce al-Shāfiʿī’s exact words, but rather seeks to convey and elaborate on their meaning, i.e. Shāfiʿī (rather than al-Shāfiʿī’s) doctrine. Al-Buwayṭi’s motive may have been simply to produce an accessible summary of his master’s own lengthy work, but the process of abstraction involved in distilling the essential message of al-Shāfiʿī’s voluminous corpus necessarily entailed interpretation and the employment of strategies such as *ikhtiyār*. The introduction of subjective interpretation opened the way for the emergence of a distinct and self-reflective Shāfiʿī discourse, an “intra-madhhabic reasoning.”

[101] In contrast, no such discourse arose among al-Shāfiʿī’s Iraqi followers, none of whom authored a *mukhtaṣar*, until it was introduced through the importation of Egyptian Shāfiʿī doctrine and writings.) Shāfiʿī reasoning was based on engagement with the juristic tradition inaugurated by the founder and added to by his successors, and it incorporated methodological and interpretive debates, for which al-Shāfiʿī’s own explicit legal hermeneutic provided much of the vocabulary. The beginnings of this school discourse can be observed already in the dialogue of comments within the text of al-Buwayṭi’s *Mukhtaṣar*.

Al-Buwayṭi’s most dramatic innovation—the operationalization of the hadith principle—eventually became marginalized and was even frowned upon by some later Shāfiʿīs. Ibn al-Ṣalāḥ (d. 643/1245) criticized Ibn ʿAbd al-Jārūd for overruling al-Shāfiʿī’s position, stressing that only a full-fledged “absolute mujtahid” (mujtahid muṭlaq) possesses the competence to evaluate the legal implications of hadith, and implying that any apparent disregard of hadith by al-Shāfiʿī must

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have a valid reason.\textsuperscript{102} His reservations were echoed by al-Nawawî (d. 676/1277), who acclaimed al-Buwaytî’s transmission as superior to that of al-Muzanî but sounded a note of caution regarding the use of the hadith principle.\textsuperscript{103} Ibn al-Šalâh’s and al-Nawawî’s desire to safeguard the image of al-Shâfi‘î as an all-round perfect \textit{mujtahid} contrasts with al-Buwaytî’s willingness to acknowledge and follow the greater hadith expertise of other scholars, and it fits with Hallaq’s description of the way in which al-Shâfi‘î’s authority as a \textit{mujtahid} \textit{mulaq} was actively constructed by later Shâfi‘î jurists.\textsuperscript{104} Nonetheless, the hadith principle remained part of the Shâfi‘î tradition, and, according to al-Nawawî, was called upon by prominent Shâfi‘î jurists in each century of the classical period to justify departures from al-Shâfi‘î’s precedent. One could thus speak of two distinct understandings of \textit{taqlîd} within the Shâfi‘î school. One is grounded in a hierarchical model of the \textit{madhhab} as the creation of a comprehensively qualified founder-jurist, while the other, beginning with al-Buwaytî, is rooted in al-Shâfi‘î’s legal hermeneutic and does not assume the founder’s perfection in all areas of law.

The main impact of al-Buwaytî’s hadith-oriented interpretation of al-Shâfi‘î’s legal thought was on traditionalist scholarship, and it played an important role in facilitating the convergence of the approaches of \textit{ahl al-ḥadīth} and \textit{ahl al-ra‘y}. Some of the traditionalist scholars influenced by al-Buwaytî carried the Shâfi‘î synthesis into the emerging Ḥanbalî school, while others became Shâfi‘îs and inaugurated an enduring tradition of scholarship within the school—a “traditionalist strand” of Shâfi‘ism—that combined Shâfi‘î jurisprudence with first-rate expertise in hadith.\textsuperscript{105} The basis of this

\textsuperscript{102} Ibn al-Šalâh, \textit{Adab al-muftî}, 120-1. Ibn al-Šalâh also reports that Ibn Khuzayma, one of the towering figures of 3d/9th-century hadith scholarship, declared that he knew of no authentic hadith dealing with the permissible and the impermissible that al-Shâfi‘î had failed to include in his works.

\textsuperscript{103} al-Nawawî, \textit{al-Majmû‘}, 1:104-6.

\textsuperscript{104} Wael B. Hallaq, \textit{Authority, Continuity and Change in Islamic Law} (Cambridge: Cambridge University Press, 2001), ch. 2.

\textsuperscript{105} Representatives of this tradition include al-Bayhaqî, al-Dâraquqînî (both of whom are known to have studied al-Buwaytî’s \textit{Mukhtasar}), Ibn Khuzayma, and al-Nawawî. For a detailed study of this phenomenon see Jonathan A. C. Brown, \textit{The Canonization of Bukhârî and Muslim: The Formation and Function of the Sunni Hadith Canon} (Leiden: E. J. Brill, 2007), 135-44. I am grateful to the author for providing me with an advance copy of the manuscript.
tradition was laid by al-Buwaytī’s success in attracting traditionalists and traditionists to al-Shāfi’ī’s teaching.

Al-Buwaytī’s *Mukhtasar* played a decisive role in enabling the initial spread of Shāfi’ī’s teaching; the *Mukhtasar* reached a wide audience earlier than al-Shāfi’ī’s own works, and thus paved the way for the popularization of the latter. The first quotations of al-Shāfi’ī’s positions appear in the early to mid-3d/9th century in the work of Ibn Qutayba, followed by that of Abū ʿĪsā al-Tirmidhī;106 the fact that these passages turn out to originate in al-Buwaytī’s *Mukhtasar* clears up a mystery that puzzled Melchert and Lowry, namely that al-Tirmidhī’s and Ibn Qutayba’s purported quotations of al-Shāfi’ī nowhere match the actual text of al-Shāfi’ī’s extant works.107 In contrast, the earliest direct quotations of the *Umm* that can be definitively dated are found in the work of Muḥammad Abū Naṣr al-Marwazī, who died in 294/906.108 The most likely explanation for this apparent time lag is that the main centers of intellectual activity and literary production in the 3d/9th century were located outside Egypt, particularly in the East. The references to al-Shāfi’ī’s positions that we find from this period appear in the works of scholars who had either traveled through Egypt themselves or heard of al-Shāfi’ī’s teaching from those who had. The two most mobile groups of scholars at this time were imperial judges dispatched from Baghdad and traditionists (*muḥaddithūn*). The former were predominantly Ḥanafīs, or occasionally Mālikīs or adherents of the school of al-Awzāʾī, but never Shāfi’īs;109 it is unlikely that they would have been willing to dedicate the time necessary to read or listen to the *Umm*—a work that was written by a scholar with whom they disagreed and that, in the most recent modern edition,110 runs to nearly 6,500 pages. Similarly, for most traditionists law constituted at best a marginal interest that hardly would have justified spending an extended period

106 For details, see the Appendix under “Authenticity.”
109 The first Shāfi’ī to receive such an appointment was Abū Zur’ā al-Dimashqī in 284/897; see al-Kindī, *Kitāb usul Mīṣr*, 363.
of time in Egypt to study and copy a multi-volume legal work. They were, however, prepared to study al-Buwaytī’s Mukhtâsar, a concise text that condensed all of the principal chapters of Islamic law as well as a succinct exposition of legal hermeneutics onto roughly 200 handwritten pages, and that was the work of a traditionalist-oriented scholar who enjoyed the approval of authorities such as Ahmad b. Ḥanbal and al-Ḥumaydī. Al-Buwaytī thus succeeded, in a relatively short period of time, in imparting his version of Shāfi‘īism to a large number of students from locations as far-flung as al-Andalus in the West and Bukhara in the East.111

Once the Mukhtâsars of al-Buwaytī and his successor al-Muzanī had popularized al-Shāfi‘ī’s teaching, it must have been more likely for students and scholars to set out for Egypt to study al-Shāfi‘ī’s original, much more extensive work. In addition, the position of Shāfi‘īism in Egypt dramatically improved in the 260s/870s. Ahmad b. Ṭūlūn (d. 270/884), the semi-independent ruler of Egypt, appears to have elevated the Shāfi‘ī school to a privileged status, possibly due to the school’s relative independence from both the Ḥanafi-favoring imperial center and the overwhelmingly Mālikī indigenous Egyptian elite. Ibn Ṭūlūn urged members of his household to study al-Shāfi‘ī’s works with al-Rabī‘, and two of Ibn Ṭūlūn’s sons (Aḥmad and ’Adnān) as well as some of his freedmen (Kunayz and Lu’lu’ al-Rūmī) became Shāfi‘ī jurists.112 Ibn Ṭūlūn also supported al-Rabī‘ financially.113 Under such favorable conditions it is unsurprising that scholars from Egypt and abroad were ready to dedicate themselves to the study of the extensive Kūtb al-Umm. The transmissions of the Umm via al-Rabī‘ that we have today or are able to reconstruct date from this period.114

In the simplified model of al-Shāfi‘ī as the synthesizer of rationalism and traditionalism, al-Buwaytī clearly tended to the aḥl al-hadīth,

111 Muhammad al-Jawhari from al-Andalus and Abū Sahl al-Bāhili from Bukhara; see al-Mizzā, Tahdhīb al-Kamāl, 32:473.
114 Abū al-Ḥabīb al-Aṣamm (d. 347/957), according to his Musnad al-Shāfi‘ī, 2:2000, copied the text of the Umm in 266/880. Al-Ḥasan b. Ḥabīb al-Ḥasâ‘irī (d. 338/949 or 950) copied the Risāla in 265/878 or 879, and Ri‘āt Fawzi Ḥab al-Muṭṭalib makes a convincing case that al-Ḥasâ‘irī studied both the Risāla and the Umm together. See the Risāla (Ahmad Shākir edition), 601, and the editor’s introduction to the Umm (Abū al-Muṭṭalib edition), 1:24.
and his traditionalist reading of al-Shafi’i represented the first stage of the nascent Shafi’i school. However, the pendulum soon swung the other way under al-Buwaytī’s successor al-Muzanī, towards an emphasis on ra’y. There are at least three possible reasons why, in spite of its significance for the initial formation of the Shafi’i school and its discourse, al-Buwaytī’s Mukhtasar was soon eclipsed in popularity by al-Muzanī’s Mukhtasar. First, the focus on hadith and the relative paucity of juristic reasoning that had made al-Buwaytī’s work so appealing to the ahl al-hadith also made it unattractive to the increasingly sophisticated mainstream Shafi’i jurists. Second, many traditionalists who had been influenced by al-Buwaytī’s Shafi’ism became part of the emerging Hanbalī school, and thus had little interest in transmitting a distinctly Shafi’i text. And third, the disorderly structure of the Mukhtasar, in which discussion of a single topic is frequently spread over several parts of the text, would have made it a very cumbersome teaching tool. Accordingly, Ibn Bashkuwāl (d. 578/1183) quotes two Shafi’īs, Abū ‘Umar and ‘Uthmān b. Muḥammad al-‘Uthmānī, who claim that al-Buwaytī’s Mukhtasar is “not popular among our companions because it is not well written.”

Though marginalized, the work nonetheless maintained a presence in Shafi’i literature throughout the classical era. However, it was used primarily as a source for certain opinions of al-Shafi’ī that were not preserved in other sources. Al-Muzanī’s Mukhtasar, on the other hand, had its greatest strengths where al-Buwaytī’s work was weakest. Its structure is clear and coherent, and the ordering of its chapters is itself an achievement of juristic thought that not only supplied an enduring template for the composition of Shafi’i legal works but also was copied by members of other schools of law. The format of the work as well as


its content, which emphasized al-Shāfi‘ī’s juristic reasoning, made al-Muzani’s *Mukhtasar* the most widely read Shāfi‘ī teaching text for at least a century and a half. It was consequently al-Muzani’s interpretation of al-Shāfi‘ī that opened the way for exporting al-Shāfi‘ī’s ideas to the jurists of Iraq and Khurasan, which would then become the new centers of Shāfi‘ism.

**Appendix: Manuscripts of al-Buwayṭī’s Mukhtasar**

I have been able to locate four manuscripts of al-Buwayṭī’s *Mukhtasar*. One of these is housed at the Süleymaniye Library in Istanbul, two in the collections of the Topkapı Palace Library in Istanbul, and the last—which is not mentioned in Western reference works—at Dār al-Kutub al-Miṣrīya (the Egyptian National Library) in Cairo. 117 I have examined three of these manuscripts.

**Contents**

The text of the *Mukhtasar* is around 100,000 words long, approximately sixty percent of the length of al-Muzani’s *Mukhtasar*. It parallels *Kūḥ al-Umm* much more closely than does al-Muzani’s work; in many instances, it replicates passages from the *Umm* with only minor abridgement.

The chapter titles are roughly those of the *Umm*: in addition to the usual thematic chapters, there are several chapters that discuss disagreements with particular scholars and positions. Towards the end the text also includes two chapters, titled “Bāb fī al-Risāla” and “Bāb ši‘āt nahi al-nabī,” which are based directly on al-Shāfi‘ī’s *Risāla*. The first of these chapters essentially summarizes the *Risāla*’s sections on *ḥayān* and the dichotomy of knowledge, covering the following topics: the requirements for a *mujtahid*; the authoritative,
unambiguous text (nasī); the general (‘āmm) and the particular (khāṣṣ) and their possible manifestations; that which has been revealed as a unit (jumlatan) and exceptions to it; types of abrogation (naskhī); “the incomplete (message) that is understood in its context” (al-mukannā alladīhī yustadallu fi siyāqīhī); prudent direction and permissibility (al-irshād wa’l-ibāhā); types of obligation (fard); indeterminate statements (mutashābihā); redundant expressions (al-zyāda fi al-bayān); certain knowledge that is generally known and uncertain knowledge that requires investigation (ijtihād); and the impermissibility of drawing an analogy from an exception. The second chapter discusses the different kinds of prohibition uttered by the Prophet and their respective legal ramifications. Altogether, these two chapters condense the 50,000-word Risāla into approximately 2,500 words.

Variance

Among the manuscripts that I have examined, there is a small amount of variance between the Topkapı 1078 manuscript on the one hand and the identical Süleymaniye and Cairo manuscripts on the other. (The Cairo manuscript is a recent copy of the much older Süleymaniye manuscript, and I will consequently refer only to the latter in the following discussion.)

First, the ordering and division of the chapters differ to some extent, but this does not affect the overall integrity of the text. Second, the manuscripts exhibit minor instances of “streamlining” carried out by later generations of scholars. The comments by Abū Ḥātim al-Rāzī that are present in the Süleymaniye manuscript have, in the Topkapı 1078 version (which postdates the Süleymaniye text by nearly two and a half centuries), been either integrated into the material attributed to al-Shāfiʿī, with al-Rāzī’s name omitted, or excised entirely in the case of passages where al-Rāzī disagrees with al-Shāfiʿī. However, the amount of material thus transferred and the extent of distortion are minimal, as the phenomenon occurs only a few times in the text and does not result in significant changes in meaning.118 One passage that occurs in the Süleymaniye manuscript

118 In the most dramatic case that I have encountered, the new attribution to al-Shāfiʿī consists of three words, zāhir ‘alā al-mā, which have the effect of narrowing slightly the definition of an impurity that can be removed from a body of water. Compare the Süleymaniye ms, fol. 6b (or Cairo ms, p. 11), and the Topkapı 1078 ms, fol. 4a (Bīb āḥārat al-mā).
also has been retrospectively corrected in order to eliminate the contradiction between al-Shāfī‘ī’s known position on an issue and the view attributed to him in the Mukhtasar. The correction has been achieved by changing three letters into letters with similar shapes, resulting in a conspicuously awkward sentence.119 This is the only instance of such doctrinal streamlining that I have encountered and the intended corruption can be easily unmasked given that the Shāfī‘ī discourse preserved both of the contradictory positions attributed to al-Shāfī‘ī in this case.120

Authorship and transmission

The chain of transmission given in the Süleymaniye manuscript runs from al-Shāfī‘ī to al-Rabî’, Abū Ḥātim al-Rāzī, and finally Mūsā b. Hilāl (d. unknown); the Topkâpî 1078 manuscript (the only one that contains the comment by Abū Thawr) does not name transmitters.

The fact that al-Buwayhī’s name is omitted from the chain has caused some confusion for later Shāfī‘ī scholars. The Süleymaniye manuscript carries the title “al-Buwayhī’s Mukhtasar which was also transmitted by al-Rabî’ from al-Shāfī‘ī” (Mukhtasar al-Buwayhī rawâhu al-Rabî’ ‘an al-Shāfī‘ī aydan),121 and al-Bayhaqī sometimes refers to Mukhtasar al-Buwayhī wa’l-Rabî’. The Topkâpî 1078 manuscript often hedges its bets by using the phrase “qâla Abū Ya‘qûb [al-Buwayhī] wa-Abû Muḥammad [al-Rabî’]” in the text. The absence of al-Buwayhī from the chain could be explained by the claim of the Egyptian Mālikī judge Ibn Abī Maṭrā (d. 339/950 or 951) that al-Buwayhī had composed his work during the lifetime of al-Shāfī‘ī, thus enabling al-Rabî’ to receive a direct license to teach the work (ijāza) from al-Shāfī‘ī himself.122 Though this explanation may seem contrived,

119 Topkâpî 1078 ms, fol. 101a: wa-in bīna jāriya wa-ma’āhā wandal thumma ‘iddā al-bā‘ī anna al-wandal wandalaha lam ya’addaq wa-jilsa ‘abdah. Süleymaniye ms, fol. 89b (or Cairo ms, p. 183); wa-in bi’n jāriya wa-ma’āhā wandal thumma ‘iddā al-bā‘ī anna al-wandal wandalaha thumma yusadaq wa-jilsa ibnh.


121 This is also how the work is described by Yaqūt al-Ḥamawī, Irshād al-arbī ilâ mu’tafat al-adîb, ed. David Samuel Margoliouth, 7 vols. (Leiden: E. J. Brill, 1907-1927), 6:398.

122 Ibn al-Ṣalāḥ, Tabaqāt al-fuqahā’, 2:684. If the claim were true, al-Buwayhī’s
does have some support in precedent: we know of at least one other such instance in which al-Shāfi‘ī granted an ḥāza for a work written down by al-Za‘farānī, one of his Iraqi students, to al-Karābīsh, another student, presumably to avoid the necessity of re-reading the work. 125 Al-Karābīsh was then able to transmit the work—which he in reality copied from al-Za‘farānī—directly from the master.

Another possible explanation is that al-Rabī‘ did not apply the strict traditionist protocol to his transmission of al-Buwaytī’s work and simply omitted the latter’s name when teaching the work through dictation ( î mlā‘). In any case, it is unlikely that al-Rabī‘ could have been the author of the Mukhtasar. The work was also transmitted by other students of al-Buwaytī, at least Ibn Abī al-Jārūd and Abū Ismā‘īl al-Tirmidhī, and their recensions are quoted by other scholars (see below).

There are some parallel uncertainties over the provenance of the Umm. Al-Rabī‘’s contemporary Abū Yazīd al-Qaraṭīsī (d. 287/900) as well as Abū Bakr al-Ṣyraffī (d. 330/941) have argued that al-Rabī‘ made use of al-Buwaytī’s notes in compiling the Umm as they were superior to his own. 124 Given that al-Rabī‘ specifies having copied his material directly from al-Shāfi‘ī via dictation in only about a dozen instances, this is entirely possible; indeed, on at least one occasion al-Rabī‘ openly admits having borrowed al-Buwaytī’s notes for a passage that he himself had also heard but had not written down. 125 Other scholars, beginning with Abū Tālib al-Makkī (d. 386/996) and most recently Zakī Mubārak (d. 1952), have gone further and alleged that it was in fact al-Buwaytī, not al-Rabī‘, who assembled and arranged al-Shāfi‘ī’s writings into the form of the Umm. 126 The evidence regarding this charge remains inconclusive. The chapter order in the Mukhtasar is similar but not

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121 “Take al-Za‘farānī’s notes, I have granted you an ḥāza for them”; reported by Zakariyyā al-Sājī as cited in al-Subkī, Tabaqāt al-shāfi‘īya, 2:118.
122 See, for example, Umm, 2:252.
123 See, for example, Umm, 2:252.
identical to that in the *Umme*, and a few of the *Umme*’s chapters are not represented in the *Mukhtasar*.

**Authenticity**

All major lists of early Shāfi’ī works include al-Buwaytī’s *Mukhtasar*.\(^{127}\) Although no early manuscripts of the work appear to be extant (the oldest of those that I have located, the Süleymaniye manuscript, dates to 625/1228), there is ample evidence to support the conclusion that the present text does indeed go back to al-Buwaytī.

This evidence consists of verbatim quotations of the *Mukhtasar* in the works of scholars who were contemporaries or near-contemporaries of al-Buwaytī. Ibn Qutaybā’s (d. 276/889) *Gharīb al-hadīth* and *Taʾwīl mukhtalīf al-hadīth* as well as Abū ʿĪsā al-Tirmidhī’s *al-Sunan* contain numerous, occasionally extensive quotations of al-Shāfi’ī that match exactly the text found in al-Buwaytī’s *Mukhtasar*.\(^{128}\) It is noteworthy that al-Tirmidhī explicitly names his sources, among them al-Buwaytī via Abū Ḥasan al-Tirmidhī as well as al-Rabī’.\(^{129}\) If we accept Gérard Lecomte’s conclusion that Ibn Qutayba’s *Gharīb al-hadīth* was composed no later than the year 236/850,\(^{130}\) the excerpts it contains provide the earliest independent corroboration for al-Buwaytī’s *Mukhtasar* no more than five years after al-Buwaytī’s death. Al-Rabī’ also quotes the *Mukhtasar* on one occasion in the

\(^{127}\) also Melchert’s discussion of Mubārak’s work in “The Meaning of *Qīlaʾ l-Shāfi’ī*,” 298-301.

\(^{128}\) See, for example, the works of al-Bayhaqī, al-Nawawī, Ḥājjī Khalīfa, and Ibn al-Nadīm (who mentions a long and a short version of the *Mukhtasar*).


\(^{130}\) Quoted in Lowry, “Ibn Qutayba,” 305.
In addition, while the existing manuscripts are all based on al-Rābi’ī’s transmission of the text, we also have quotations from a second transmission—that of Ibn Abī al-Jārūd—in al-Bulqānī’s additions to the Umm. In al-Subkī’s Ṭabaqāt al-shāfi‘īya al-kubrā, and possibly in Abū Ḥātim’s comments in the Suleymaniye and Cairo manuscripts of the Mukhtasar. The abundance of these quotations and the absence of significant divergence between them and the text contained in the manuscripts do not represent conclusive evidence, but they do constitute a very strong prima facie argument for the authenticity of al-Buwayṭī’s Mukhtasar.

131 Compare Umm, 6:628 (al-Waqt alladhī takūnu lahu al-ra‘j‘a bi-qawlih) with Mukhtasar, fol. 86a (Bāb al-ra‘j‘a). This material probably originates in lectures given by al-Rābi’ī in the mid-260s/late 870s. See El Shamsy, “Textual History.”

132 Contained in the old Bulaq edition of the Umm (see footnote 94), 1:157 (Bāb al-masbūq). The quoted passage is not found in the extant manuscripts of the Mukhtasar.

133 Compare al-Subkī, Ṭabaqāt al-shāfi‘īya, 5:38, with Mukhtasar, fol. 42a (Bāb zakāt al-ghanam wa‘l-baqar).

134 See the Mukhtasar, fol. 39a (Bāb man sahā ‘an salām nāfīla aw fa‘īda). The quotation is attributed to “Ibn al-Walūd,” not Abū al-Walīd (Ibn Abī al-Jārūd), but this could be a copying error.