Al-Shāfiʿī Against the Kufan School

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Abstract

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

Keywords

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

One of the short works appended to al-Shāfiʿī (d. 204/820), Kitāb al-Umm, is Ikhtilāf ʿAlī wa-ʿAbd Allāh ibn Masʿūd (“the disagreements of ʿAlī and ʿAbd Allāh ibn Masʿūd”). Organized topically, it comprises quotations of the Companions ʿAlī and Ibn Masʿūd advocating rules that the Kufans reject, followed by counter-reports supporting the rules that al-Shāfiʿī advocates. By my count, it includes 148 items with isnāds from ʿAlī (46%), 80 from Ibn Masʿūd (24%),
96 counter-reports with isnāds from others (30%).

Ali and Ibīn Masʿūd are the Companions most often quoted by Kufan jurisprudents. Joseph Schacht thought that whereas Ibīn Masʿūd was usually adduced in support of the majority Kufan position, ‘Ali would often be adduced in support of a minority position, although it also happened that ‘Ali would endorse the majority position, Ibīn Masʿūd that of the opposition. If there was such a dynamic of minority and majority factions within the regional schools, it cannot surprise that al-Shāfiʿī should have found Kufans rejecting the reported positions of ‘Ali and Ibīn Masʿūd, and those of ‘Ali more frequently. Unfortunately, we have no literature purporting to represent a Kufan regional school (as perhaps we may say that the Muwaṭṭa’ purports to represent a Medinese school, periodically justifying this or that rule by appeal to local consensus). Therefore, we cannot say how emphatically Kufans defended their positions as what ‘Ali and Ibīn Masʿūd had taught them. However, al-Shāfiʿī must have thought that dependence on ‘Ali and Ibīn Masʿūd was a sufficiently well-advertised position for it to be worth his while to point out where the Kufans went against it, or, conversely, should have gone against it in favor of better opinions from elsewhere.

The evidence for the existence of regional schools at all is first continual references in the sources to the Basrans, the Kufans, the Medinese, and so on. As Schacht observed, al-Shāfiʿī identified certain local Followers (tābiʿūn) whom the jurisprudents of each center characteristically cited as their leading authorities. The introduction to the Mukhtaṣar of Abū Muṣʿab al-Zuhrī (d. 242/857?) is entirely concerned with defending “the people of Medina,” not Mālik (d. 179/795?). As late as the end of the ninth century, al-Nasāʾī (d. 303/915?)

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


4 Medinese practice (ʿamal) is stressed by Yasin Dutton, *The Origins of Islamic Law: The Qurʾan, the Muwaṭṭa’ and Madinan* ‘Amal, Culture and Civilization in the Middle East (Richmond, Surrey: Curzon, 1999). Strictly speaking, however, the Muwaṭṭa’ refers to agreement and disagreement more often than practice. Consider also the contemporary testimony of al-Shāfiʿī, *K. Ikhtilāf Mālik wa-l-Shāfiʿī*, where al-Rabiʿ apparently describes the Muwaṭṭa as the book they were used to following “in which is al-amr al-mujtamaʿʿ indanā and al-amr ʿindanā,” not mentioning ʿamal ahl al-Madīna. Al-Shāfiʿīs rebuttal stresses disagreement within Medina (in *Umm*, 8:771).


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

### The transmission of *Ikhtilāf ʿAlī wa-ʿAbd Allāh ibn Masʿūd*

Like the rest of *al-Umm*, the *Ikhtilāf* is said to have been transmitted from al-Shāfīʿī by his disciple al-Rabīʿ ibn Sulaymān al-Murādī (d. 270/884).¹¹
Schacht identified it as one of the oldest of the short works, brought to Egypt from Iraq, along with *al-Radd 'alā Muḥammad ibn al-Ḥasan*, apparently a section of *al-Ḥujja 'alā ahl al-Madīna* by al-Shaybānī (d. 189/804–5) overlayed by counter-arguments from al-Shāfiʿī, and *Ikhtilāf al-ʿIrāqīyyayn*, apparently an assemblage by Abū Yūsuf (d. 182/798) of the positions of Abū Ḥanīfa (d. 150/767) and Ibn Abī Laylā (d. 148/765) on various questions with commentary by him, overlayed by more commentary from al-Shāfiʿī.12

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

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12 Schacht, *Origins*, 333. Schacht and others call the last *Ikhtilāf al-ʿIrāqiyyayn*, but the dual seems more appropriate. For confirmatory citations of al-Nawawī and al-Fayyūmī, see Hanif, “A Tale of Two Kufans,” 178n. Al-Shāfiʿī presumably received the text through al-Shaybānī but does not say so, as likewise at the start of *al-Radd*, which begins with a direct quotation of Abū Ḥanīfa even though he could not have met Abū Ḥanīfa and must have received this work from al-Shaybānī (or at least a written text by al-Shaybānī).

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

case leaves for posthumous reworking, however, is likewise nowhere near so extensive as what Calder alleged.\(^\text{15}\)

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

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


\(^\text{17}\) Q. 24:2 appears to decree only flogging as the punishment for adultery. Early jurisprudents proposed various justifications for the stoning penalty, for which see now Pavel Pavlovitch, “The Islamic Penalty for Adultery in the Third Century ah and Al-Shāfiʿī’s *Risāla*,” *Bulletin of the School of Oriental and African Studies* 75 (2012), 473–97.

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

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

19 In the Umm, al-Shāfiʿī says that the shortest menstrual period known to him is a day but expressly allows that a divorced woman who swears that she has passed less than fifteen days between periods is to be believed if she was known to have such frequent periods before her divorce as well: Shāfiʿī, Umm, 6:533. Al-Muzani reports that al-Shāfiʿī said, in one place, a day, in another, a day and a night, possibly alluding to exactly this difference between the Ikhtilāf and Umm: al-Muzani, al-Mukhtaṣar, on margin of vols. 1–5 of al-Shāfiʿī, al-Umm, 7 vols. in 4 (Bulaq: al-Maṭbaʿa al-Kubrā l-Amīriyya, 1321–5), 5:5.

20 In the Umm, only al-Shāfiʿī’s stern requirement that the vow be fulfilled is quoted, followed by a comment from al-Rabīʿ that this does not apply to someone who would be harmed, who should ride and owes no atonement: Shāfiʿī, Umm, 2:662.

21 ‘Abd al-Razzāq, Muṣannaf, 8:450.

In the main body of *Kitāb al-Umm* also there are occasional references to multiple versions of al-Shāfiʿī’s opinion known to al-Rabīʿ.23 On the whole, however, the *Ikhtilāf* is stylistically more uniform than other books of the *Umm*. Consistently, it introduces a quotation with *isnād* of ‘Ali or Ibn Masʿūd, then quotes the Kufans’ rejection of it (“They dislike this and do not advocate it,” “In their opinion this is speech that renders the ritual prayer defective,” “They do not advocate this, saying one recites the Qur’an only when praying by oneself,” and so on), then quotes one or more counter-reports, usually with an *isnād*, confuting the Kufan position. Unlike the *Umm*, the *Ikhtilāf* never switches to dialogue (qāla . . . qultu or qulnā . . .), nor proposes hypothetical objections (in qīla or in qāla qāʾil . . . qīla . . .). Its rudimentary legal argumentation (more on this to come) seems consistent with its predating the rest of the *Umm* as we know it. Altogether, it seems safe to ascribe it to al-Shāfiʿī except for a few comments added in dictation and allowing for such minor alterations over time as were normal in the manuscript age.

**Al-Shāfiʿī’s Quotations**

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


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

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

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

\(^{27}\) See Mizzī, Tahdhib, 17:43–43.
\(^{28}\) Two studies that supply names from parallel reports in other collections are Abū Asmāʿ al-Miṣrī ʿAṭiyya ibn ʿAbd Allāh ibn Ṣidqī ʿAlī Sālim ʿAwda, Ilīzām al-diṣqa fi taḥqiq qawl al-Shāfi‘ī akhbaranā l-thiqā (Mansoura: Maktabat Ibn ʿAbbās, 2013), and Asmāʿ al-Bughā, al-Taʿdīl ʿalā l-ibhām ʿinda l-imām al-Sha‘fī, Sīsilat al-rasāʾil al-jāmiʿiyya 11 (Beirut: Dār al-Nawādir, 1435/2014). The latter work is more careful.
sister a third. Ibn 'Abbās said the mother gets a third, the remainder going to the grandfather, nothing going to the sister.²⁹

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

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

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

The “unsuccessful” 'Alī traditions in *Tr. II* show often a rigorous and meticulous tendency, obviously inspired by religious and ethical considerations . . . .³³

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

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³² There is another rejected report going back only to Ibrāhīm al-Nakha'ī in *Umm*, 8:438. The same opinion is ascribed to Ibrāhīm by 'Abd al-Razzāq, *Muṣannaf*, 7:8, but he is represented as relating it from 'Umar and Ibn Mas'ūd by Ibn Abī Shayba, *Muṣannaf*, 5:61. There is a third version, going back only to another Kufan Follower, al-Mustawrid ibn al-Aḥnaf, in *Umm*, 8:537.
³³ Schacht, *Origins*, 240–1. “*Tr. II*” refers to *Treatise II*, his term for *Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd*. “Āthār A. Y.” and “Āthār Shaib.” refer to the *Āthār* of Abū Yusuf and al-Shaybānī, respectively.
naturally this is easier with the Companion commonly cited for minority opinions.

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

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

Al-Shāfiʿī’s Opponents

Al-Shāfiʿī complains continually about what opponents uphold or reject without even naming them. I have been referring to them as the Kufans; that is, the regional school of his time. This is to disagree with Ahmed El Shamsy, who calls Ikhtilāf ‘Alī wa-‘Abd Allāh ibn Masʿūd “his own original attack on Ḥanafism” (as opposed to al-Radd ʿalā Muḥammad ibn al-Ḥasan, an attack in the form of a commentary on an earlier Ḥanafi work). El Shamsy makes no extended case
for identifying al-Shāfiʿī’s opponents as specifically the Ḥanafiyya. However, after pointing out a case in which al-Shāfiʿī and his opponents agree contrary to the reported opinion of ‘Ali, El Shamsy says, “Al-Shāfiʿī criticizes the Ḥanafis’ divergence from ‘Alī’s precedent: given that they provide no countervailing evidence to refute the report from ‘Ali, he argues, ‘if they consider it authentic then they are bound by it.’”

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

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

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37 Ibid., 48, citing Shāfiʿī, Umm, 8:440.
38 Ibn Abī Shayba, Muṣannaf, 6:436, through al-Shaʿbī; ‘Abd al-Razzāq relates the same by a Basran isnād, Muṣannaf, 7:291–2. Schacht suggests that the point of this story was precisely to discredit the rule that she remains enslaved, since it makes out that ‘Ali was deliberately going against ‘Umar’s precedent (Origins, 265n.).
but evidently comprehends Sufyan al-Thawri (among others) as well; that is, his attack is on the Kufans in general.

Although *Ikhtilāf ʿAlī wa-ʿAbd Allāh ibn Masʿūd* is certainly not expressly a sustained attack on the Ḥanafīyya, there are some apparent allusions to Abū Ḥanifa and a nascent school, which I shall here review. Concerning the question of which gestures of the ritual prayer sacralize and desacralize, al-Shāfiʿī says, “One is not sacralized for the prayer except by saying *Allāhu akbar*.

Their master (*sāḥibuhum*) says that one may be sacralized by other than saying *Allāhu akbar*, (mainly by saying) *subḥāna Llāh*.” Then he adds, “His two fellows (*sāḥibāhu*) have reverted to our position.” This seems a clear allusion to Abū Ḥanifa and his two chief disciples Abū Yūsuf and Muhammad al-Shaybānī. Early Ḥanafī literature appears to be inconsistent on this point. In the *Āthār*, al-Shaybānī quotes Ibrāhīm al-Nakhaʿī as saying, “Whoever does not say *Allāhu akbar* at the opening of the prayer is not in prayer.” Al-Shaybānī comments, “We go by this” and apparently identifies it also as the position of Abū Ḥanifa.42 In al-Shaybānī’s recension of the *Muwaṭṭaʾ*, he endorses saying *Allāhu akbar* and clearly calls it also the position of Abū Ḥanifa.43 In *al-Aṣl*, the *takbīr* (saying *Allāhu akbar*) is the only formula mentioned at the first description of the beginning of the prayer, but not long after Abū Ḥanifa is quoted as allowing *tahlīl* (saying *lā ilāha illā Llāh*), *taḥmīd* (*al-ḥamdu lillāh*), and *tasbīḥ* (*subḥāna Llāh*). It is also alleged here that Ibrāhīm al-Nakhaʿī allowed other expressions than *Allāhu akbar*, contrary to the *Āthār*.44 No Ḥanafi source seen by me describes Abū Yūsuf and al-Shaybānī as once agreeing with him in favor of *subḥāna Llāh*, subsequently calling for *Allāhu akbar* alone.45 But al-Shāfiʿī’s report of their changing their opinions is not easily dismissed. Ḥanbalī literature includes many discrepant reports of Aḥmad’s opinion, Shāfiʿī literature reports many differences between al-Shāfiʿī’s former and latter positions (*al-qadīm* and *al-jadīd*, respectively), and al-Ṭaḥāwī (d. 321/933) often mentions discrepant accounts of Abū Ḥanifa’s and Abū Yūsuf’s positions.46 It

42 Shaybānī, *Āthār*, 1:301.

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

Similarly, al-Shāfiʿī says that his opponents find fault with their master (ṣāḥibuhum) as to whether a fatal assault with a large rock or a wooden club may be considered manslaughter, not murder (445). According to al-Shaybānī, al-Āthār, Abū Ḥanīfa held that fatal assault with a weapon was a matter for qisṣāṣ (retaliation, potentially fatal to the perpetrator) but with anything else a matter for the kin group (that is, to pay the wergild for manslaughter). “We also go by this,” comments al-Shaybānī, “except for one characteristic: if he strikes him with something else than a weapon that takes the place of a weapon, it requires retaliation (qawad), this being Abū Yūsuf’s position and ours.”

This might be taken as the fault-finding al-Shāfiʿī refers to. However, the major Kufan authorities al-Sha’bī, al-Ḥakam ibn ʿUtayba (d. 113/731–27), Ḥammād ibn Abī Sulaymān (d. 120/737–87), and, most importantly, the usual exponent of the Kufan position, Ibrāhīm al-Nakhaʿī, are likewise quoted as requiring retaliation. Therefore, it seems likely that those who disagreed with Abū Ḥanīfa on this point included more than Abū Yūsuf and al-Shaybānī.

“Our master” is said to hold that a surviving grandfather excludes surviving brothers from inheriting, contrary to a report that ʿAlī would allot him only a sixth, whereas al-Shāfiʿī agrees with those Kufans who divide an estate between grandfather and brothers such that the grandfather gets no less than a third (453). “Abū Bakr’s view that the grandfather completely excludes all brothers and sisters of the deceased was endorsed by Abū Ḥanīfa and subsequently became the authoritative doctrine of the Ḥanafī school.”

This endorsement is surprisingly hard to document from earliest Ḥanafī sources. The Aṣl offers successive sections recounting in turn the schemes of Zayd ibn Thābit, ʿAlī, and Ibn Masʿūd in relation to the grandfather, confirming what al-Shāfiʿī says here about the first and second but not that Abū Ḥanīfa chose complete exclusion. Al-Ṭaḥāwī does confirm that Abū Ḥanīfa held a grandfather to exclude brothers, in agreement with the caliph Abū Bakr, against Abū Yūsuf and al-Shaybānī. Al-Sarakshī (d. 483/1090–11) confirms again that Abū Ḥanīfa

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47 Shaybānī, Āthār, 1:497. References like this to Abū Yūsuf are found throughout the two Jāmiʿs and the Aṣl but rarely in the Āthār.
50 Shaybānī, Aṣl, 5:585–608.
51 Ṭaḥāwī, Mukhtaṣar, 147–8.
Hanifa held a grandfather to exclude brothers, but lists the Kufans who disagreed with him as Sufyan al-Thawri, Abu Yusuf, and Muhammad (al-Shaybani), alongside al-Shafi‘i and Malik. Here as elsewhere, then, al-Shafi‘is Kufan opponents turn out to extend beyond the Hanafiyya.

Finally, Abu Hanifa apparently comes up in relation to the question mentioned above of how to punish homosexual adultery, concerning which early Shafi‘i and Hanafi literature both show some instability. As observed above, al-Shafi‘is advocates stoning whether the culprit is muhsan or not. By contrast, he says,

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

Al-Jami‘ al-saghir confirms that Abu Hanifa's opinion was at least close to what al-Shafi‘i ascribes to “their master”: “A man does the work of the people of Lot: he is chastised (yu‘azzaru) and imprisoned. Abu Yusuf and Muhammad held that he suffers the hadd.” The classical Hanafi position is evidently that homosexual sex is not adultery (zinah), either because it does not threaten confusion of genealogy (ikhtilat al-nasab) or because it does not meet the precise definition of adultery, namely genital sex between two persons for whom it would be permissible if properly related by marriage or ownership. The

53 Shaybani, al-Jami‘ al-saghir, 157; similarly, Tahawi, Mukhtasar, 263. Ta’zir is the discretionary punishment imposed by a qadi.
54 So says al-Quduri, al-Tajrid, ed. Muhammad Ahmad Sarraj and ‘Ali Jum’a Muhammad, 12 vols. (Cairo: Dar al-Salam, 1425/2004), 11:501–15. Similarly, al-Sarakhsi argues that liwat cannot be zinah because it has a different name and should not be punished more harshly because, although equally condemned as a faishah (major instance of immorality), it is not equally an assault on the marriage bed in that it does not produce a child with no father: Sarakhsi, Mabsut, 978–9. Neither al-Quduri nor al-Sarakhsi mentions that Abu Yusuf and al-Shaybani advocated the hadd for adultery. Al-’Ayni does, although upholding Abu Hanifa’s position as that of the school: Badr al-Din al-’Ayni, Binaya, 6:259, 308–11. For a survey of the different Sunni school positions, see Sara Omar, “From Semantics to Normative Law: Perceptions of Liwat (Sodomy) and Sihaq (Tribadism) in Islamic Jurisprudence (8th-15th Century CE),” Islamic Law and Society 19 (2012), 222–56, at 230–6.
identity of “one of his followers” remains obscure, since al-Jāmiʿ al-ṣaghīr indicates it might have been either Abū Yūsuf or al-Shaybānī. Al-Shaybānī’s disagreement is confirmed in the Āthār, which quotes with approval the opinion of Ibrāhīm al-Nakhaʿī: “The lūṭī has the status of an adulterer.” Al-Shaybānī comments, “This is our position (qaʿl). If he is muḥṣan, he is stoned; if he is not muḥṣan, he is flogged the ḥadd, 100 lashes.”

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

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

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

56 Shāfiʿī, Umm, 9:27 (Jimāʿ al-ʿilm).

57 Shāfiʿī, Umm, 2:165, in agreement with Mālik, al-Muwatta’, rec. Yahyā, wuqūt al-ṣalāt 1, bāb wuqūt al-ṣalāt, no. 4.

58 ʿAbd al-Razzāq, Muṣannaf, 1:569, through Sufyān al-Thawrī.

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

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

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

60 Qudūrī, Tajrīd, 1:434.
61 Ṭaḥāwī, Mukhtaṣar, 24–5.
62 By a Basran isnād, ʿAbd al-Razzāq reports contra al-Shāfīʿī that ‘Alī and Ibn Masʿūd called for a single (implicitly revocable) automatic divorce at the end of four months: Muṣannaf, 6:455.
64 ʿAbd al-Razzāq, Muṣannaf, 10:430.
65 Abū Yūṣuf, Āthār, 167–8, no. 768; Shaybānī, Āthār, 2:760–1.
66 ʿAbd al-Razzāq, Muṣannaf, 10:430.

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

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

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

67 Shaybānī, Ṭathār, 2:762.
68 ‘Abd al-Razzāq, Muṣannaf, 1:345.
71 ‘Abd al-Razzāq, Muṣannaf, 2:219, by a mixed isnād but through a Kufan Follower; contradicted by a Kufan report that he ended with rahmat Allāh, 2:218–19.
73 Taḥāwī, Mukhtaṣar, 27; Badr al-Dīn al-ʿAynī, Bināya, 2:283.
coitus interruptus: according to al-Shāfīʿī, Ibn Masʿūd condemned it as al-waʿd al-kaḥfī, meaning comparable to (if less violent than) the pre-Islamic custom of burying alive an unwanted child (430–1). ʿAbd al-Razzāq relates something similar from both Ibn Masʿūd and ʿAlī, Ibn Abī Shayba from ʿAlī.75 However, ʿAbd al-Razzāq also relates through both Sufyān al-Thawrī and Abū Ḥanīfa that Ibn Masʿūd saw no harm in coitus interruptus.76 Ibn Abī Shayba relates the opinion from Ibrāhīm al-Nakhaʿī and Ibn Masʿūd that it is permissible with a concubine but requires the permission of a free wife.77 Al-Shaybānī bases his and Abū Ḥanīfa’s acceptance expressly on Ibn Masʿūd’s saying that one may practice it or not as one wishes.78 Thus, al-Shāfīʿī was right that the Kufans allowed coitus interruptus but doubtfully that they were doing so in deliberate defiance of Ibn Masʿūd’s opinion.

Al-Shāfīʿī’s Counter Arguments

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

75 ʿAbd al-Razzāq, Muṣannaf, 7:147; Ibn Abī Shayba, Muṣannaf, 4/2:223.
76 ʿAbd al-Razzāq, Muṣannaf, 7:144.
77 Ibn Abī Shayba, Muṣannaf, 4/2:222; same opinion attributed to Saʿīd ibn Jubayr and endorsed by Shaybānī, Ṭḥār, 1:416.
79 ʿAbd al-Razzāq provides two reports of Ibn ʿUmar’s opinion with isnāds, Muṣannaf, 1:132–3. Both ʿAbd al-Razzāq (Muṣannaf, 1:333) and Ibn Abī Shayba (Muṣannaf, 1:145) relate that Ibrāhīm called for the minor ritual ablution after kissing with desire, al-Shaʿbī simply after kissing. This is another question on which the later Ḥanafī school appears to have departed from the earlier Kufan consensus. Al-Shaybānī expressly rejects Ibrāhīm’s distinction between kissing those whom one is forbidden to marry and those whom one is allowed to: Shaybānī, Ṭḥār, 1:59–60. Abū Yūsuf quotes Ibn ʿUmar, along with al-Ḥasan al-Brāʾī and Ibn ʿAbbās, against requiring the minor ritual ablution: Abū Yūsuf, Ṭḥār, 5, nos. 16–18.
two-fifths may be characterized as Medinese in their upper reaches (earlier in time), about a third as Kufan, an eighth as Meccan, fewer still Basran.

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

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

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

80 Al-Shāfiʿī’s isnād is Kufan, going back to al-Shaʿbī through Sufyān ibn ‘Uyayna. ‘Abd al-Razzāq quotes the same story by a wholly different isnād, Muṣannaf, 10:88.
81 On Paul Gledhill’s showing that Mālik had no use for the concept, for which see Paul Gledhill, “The Development of Systematic Thought in Early Mālikī Jurisprudence, 8th-9th Centuries A.D.,” D.Phil. diss’n, Oxford, 2014, chap. 1.
Often, habitual deference to common wisdom shows up in such expressions as “We do not know anyone who goes by this” (405), “Not we, not they, not anyone advocates this” (407), “Not we, not they, not anyone we have learned of advocates this” (423), “Likewise say the muftis without disagreement” (473). Implicitly, he is following the example of the Kufans, whom he also often quotes as saying such things; for example, that whereas the early Kufan Follower ʿAbd Allāh ibn Salima led the Friday prayer in the forenoon to avoid the severest heat, “They say nobody advocates this” (484–5), and that, whereas Ibn Masʿūd said, “The son of Adam’s bones were formed for prostration, so prostrate up to the elbows,” “They say, ‘We do not know anyone who advocates this’” (490). (Al-Shaybānī is more restrained than al-Shāfiʿī. In his Muwaṭṭaʾ, for example, he continually says, “We go by this, it being the position of Abū Ḥanīfa,” but often adds, “and the generality of our jurisprudents,” “and the general,” or “and the generality of those before us.” In the main body of the Umm, al-Shāfiʿī only occasionally appeals to conventional opinion.82)

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

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

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

83 Sufyān al-Thawrī is in both isnāds, so it seems safe to consider them Kufan. Ibn Abī Shayba relates versions of both, Muṣannaf, 2:348–9, 353.
instead. Contemporary Sunni hadith critics (although even more of the generation after) proposed to sort the more and less reliable reports by isnād comparison. Al-Shāfiʿī advocates hadith criticism by isnād comparison in the Risāla, but in Ikhtilāf ʿAlī wa-ʿAbd Allāh ibn Masʿūd he hints that consensus should decide which hadith to follow.

Conclusions

Schacht generalizes of al-Shāfiʿī,

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

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

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

85 Schacht, Origins, 315.
insistence on anonymity and homogeneity means that Hallaq is mostly trying to knock down a straw man of his own invention, not Schacht’s or anyone else’s actual description of the eighth-century regional schools. Still, anonymity, homogeneity, and close affiliation with a particular region do usually characterize the Kufans as al-Shāfiʿī represents them in *Ikhtilāf ʿAlī wa-ʿAbd Allāh ibn Masʿūd*.

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

In short, El Shamsy’s expression “precisely mirrored” goes too far.

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

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87 El Shamsy, *Canonization*, 47.
89 See further Christopher Melchert, “Kitāb al-Ḥujjah ʿalā ahl al-Madīnah and the Transition from Regional Schools to Personal,” forthcoming in *Studia Islamica*.
90 Al-Rabiʿ once comments, “When he says ‘a certain person,’ they are Easterners (*mashriqīyīn*). When he says ‘one of our fellows (baʿḍ aṣḥābinā)’ or ‘one of the people of our city (baʿḍ ahl baladinā),’ it is Mālik” (Shāfiʿī, *Umm*, 7:417). However, the sections set off as *al-khilāf fī . . .* regularly feature dialogue with an individual, not a group. The opponent occasionally refers expressly to Abū Yūsuf’s position (*Umm* 5:111, 7:420), and once al-Shāfiʿī slips into referring to him as Muḥammad ibn al-Ḥasan (i.e., al-Shaybānī; *Umm* 4:252).
cannot be drawn. But we are also dealing with an early work in Ikhtilāf ‘Alī wa-ʿAbd Allāh ibn Masʿūd, a late one in al-Umm. The former significantly differs from the latter in usually arguing against an unspecific multitude, not an individual, and in stressing a Kufan tradition.

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

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

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

92 El Shamsy, Canonization, 48.
that a recent jurisprudent is becoming their chief authority, no longer local Companions.

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

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

93 See n. 8.