

The Authorization of Exegesis



Ḥanafī scholarship developed from debates among early Islamic groups concerning the legitimacy of the opinions of conflicting local authorities who lived at the end of the second century.¹ In the late fourth and fifth centuries, selected opinions of these authorities, associated with Madīnah and Kūfah among other locations, were used by the emerging classical schools of fiqh as the basis for the sharīʿah, the authoritative definition of practice. These selected opinions, however, were not only distinct but often in conflict with one another. The classical schools of fiqh that traced the authority of their definition of practice back to the revelation used these conflicting opinions to demonstrate that their definitions of practice were based on the prophet's interpretation of the revelation contained in the Qurʾān. To justify the equivalent authority of these conflicting opinions the classical schools adopted a text-based epistemology, associated with the theories of Muḥammad b. Idrīs al-Shāfiʿī [150–204], which provides that the later classical schools are equally authoritative even though they are based upon distinct and often conflicting local opinions.

The text-based epistemology that guarantees the equal authority of the classical schools is predicated on a twofold conception of the canon. This twofold conception of the canon defines the Qurʾān as the written source and the sunnah, being the practice of the prophet, as originally, the oral source for knowledge of the revelation.² By including the sunnah in the canon, classical fiqh scholarship provided both for the priority

of the sunnah in determining the revelation's significance and for the later use of reasoned interpretation in that determination. Similar to how the Ndembu use an established interpretation to provide an authoritative model for the interpretation of the basket of objects, the classical schools used the sunnah as a model for how to interpret the revelation contained in the Qur'ān. This conception of canon, at the root of classical fiqh scholarship's epistemology, is what authorizes the opinions of the local authorities and subsequent exegetical activities of the schools.

By giving the basic outlines of this conception, the following pages show how a text-based epistemology legitimates the later interpretive reasoning required to derive a definition of practice from the revelation. The canonization of the sunnah is significant for how it ties the conception of authority to the revelation and how it leads to the definition of the revelation in terms of texts and their interpretation. The text-based epistemology of the classical schools defines the sunnah in a fashion that allows later scholarship to make exegetical claims equivalent in authority but not identical in content to the revelation.

Section I uses the opinions of Mālik b. Anas [90–179] and Abū Yūsuf Ya'qūb b. Ibrāhīm [113–182] to illustrate how the local authorities of Madīnah and Kūfah in the second century justified their opinions and the sort of epistemologies on which they relied.³ This section shows that among these second century local authorities the concept and content of the "sunnah" was malleable because it was yet to be limited to a textual corpus. Section II introduces the notion of the canonized sunnah as a relatively fixed textual corpus. By defining the revelation as a text that requires interpretation as epitomized by prophetic practice contained in the textual corpus of the sunnah, the theories associated with al-Shāfi'ī shifted the guarantee of the local authorities' opinions away from the local definitions of traditional practice and toward a notion of authority based on the transmission and interpretation of texts. Section III indicates the implications this epistemology had for the development of the classical schools' equal authority. It shows how the scholarship

devoted to tracing the transmission of prophetic practice through successive generations of scholarship developed out of the idea of a canonized sunnah to authorize the classical schools by linking the opinions of select local authorities to the example of prophetic practice.

I

Sunnah as Local Practice

The classical notion of the sunnah as prophetic practice and its equation with the authority of the revelation contained in the Qurʾān was the result of a series of theoretical developments during the late second and early third centuries.⁴ Before this time, the concept of the “sunnah,” from which different local authorities claimed to derive their definitions of practice, referred to those actual practices supposed to be based upon the imitation of prophetic practices that often included practices later deduced from what was thought to be implicit in the prophetic model.⁵ That this traditional practice was prophetic practice was based on the claim that this generation, received it from the previous generation who in turn received it from the generation previous to them, who received it from the prophet himself. The actual content of this traditional practice, then, was determined by the agreement of current authorities upon the agreement of the previous generation’s authorities upon the agreement of the generation previous to that. The later logical differences separating the classical schools’ positions on the definition of practice were originally local differences. The opinions of the second century authorities on which the classical schools built their scholarship were themselves based upon different local traditions of practice. The sunnah was thus defined as that on which there was consensus [al-ʿaml al-mujtamaʿ alay-hi] as opposed to that which was considered to be an innovation [bidʿah].⁶

The content of this traditional practice, informed not only by prophetic precedent but also by the agreed upon practices of

later generations, took form at the end of the first and beginning of the second centuries.⁷ In the sphere of ritual, for example, the rudimentary cultic practices of the Umayyad period were influenced by local customs.⁸ Under the influence of local judges and governors, a more definitive traditional ritual practice was instituted.⁹ There is also evidence of political influence in fiscal, penal, and international practices as well as in the sphere of family practice, especially marriage and divorce.¹⁰ Moreover, this later, local influence is evident from the incorporation of foreign elements into the traditional practice of early Muslim societies.¹¹ This local character of the traditional practice is perhaps most obvious from the distance that separated the definitions of practice espoused by the different local authorities of the second century. The formation of a traditional practice on the basis of consensus in different locations led to the conception of differing definitions of what constituted the sunnah and authoritative practice.

This is exemplified in the conflict between the opinions of Mālik, Abū Ḥanīfah, and al-Shāfi'ī over what constitutes usurious practice in exchanges by dry measure or weight.

Mālik says: the practice according to us concerning items sold by dry measure or by weight which are not eaten or drunk, like safflower, date-stones, fodder-leaves, indigo dye, and like things is that there is no harm in taking from any of the things of these categories two for one, hand to hand. Two for one of the things from a single category are not taken at a later time [an exchange of one thing now for two things delivered at a later date]. If the two things are clearly of different categories then there is no harm in taking two for one at a later time. There is no harm in selling items from these categories which are already purchased but not yet received when the price is obtained from someone other than the original owner from whom they were purchased. Everything from all of these categories in which there is profit for people, if it is gravel and gypsum, one amount of them for two amounts of the same thing at a later time is usury. One amount for the same amount plus something extra at a later time is usury.¹²

[Abū Ḥanīfah says]: usury is forbidden for things of the same species sold by dry measure and by weight at an unequal rate of exchange. The principle is dry measure accompanied by species or weight accompanied by species. When a person sells an item by dry measure or weight for the item of the same species at an equal rate, the sale is permitted. If it is at an unequal rate, it is not permitted.¹³

al-Shāfi‘ī says: it is not permitted to exchange in advance [such an exchange being at an unequal rate] things eaten or drunk of the same type which are sold by dry measure or weight. If the species of the two things differ then it is permitted to exchange them at an unequal rate, hand to hand. This is analogous to gold which is not permitted to be exchanged in advance for silver and silver which is not permitted to be exchanged in advance for gold. For everything which is eaten and drunk, and gold and silver, there is no harm in selling one of them for another [species] of them at an unequal rate at a later time.¹⁴

Summarizing the traditional practice of Madīnah, Mālik holds that food and nonfood items that are of benefit to people cannot be exchanged at an unequal rate if they are of the same species. Abū Ḥanīfah, representing the customary practice of Kūfah, forbids the exchange of any items of the same species which are sold by weight or dry measure. The opinion of al-Shāfi‘ī, based on what he considered to be prophetic practice, is that items of food, gold, and silver cannot be exchanged at an unequal rate if they are of the same species. So, for example, cat litter sold by dry measure or weight could be exchanged for a larger amount of cat litter according to al-Shāfi‘ī and Mālik because it is not food nor is it of benefit to people, but Abū Ḥanīfah would not permit the exchange. Both Abū Ḥanīfah and Mālik would forbid the exchange of cement mix by dry measure or weight at an unequal amount, but al-Shāfi‘ī would permit it. Abū Ḥanīfah would allow the exchange of one pumpkin for two pumpkins as long as they were not sold by weight but neither Mālik nor al-Shāfi‘ī would. Thus, different local traditions resulted in markedly distinct definitions of practice.

These local differences in the conception of what constituted the sunnah or traditional practice caused local authorities to use different approaches in justifying their definitions of practice as more authoritative than others. Although in theory all of the local authorities refer to the precedent of prophetic practice, because the content of that practice consisted of local practice considered to be traditional, definitions of practice differed. Because this conflict of opinions about the definition of practice then calls into question the universal nature of the local tradition upon which the opinions are based, authorities in different locations emphasized different sorts of epistemologies. In an attempt to support the authority of their own local tradition, these authorities had to base the authority of their opinions upon the relative legitimacy of their local conception of the sunnah. That is, local authorities authorized their opinions by claiming them to be based on a sunnah upon which the conflicting opinions of other local authorities were not based. The conflicting opinions of other local authorities were not authoritative because they were not based on the right sunnah. In effect, no established interpretation was recognized by the different groups even though the groups agreed in theory that their authority was based on the "sunnah."¹⁵ Arguments for the authority of a particular opinion were thus cast in terms of what constituted the sunnah, which, in theory, all of the other authorities should follow in defining practice.

Madīnah

The late second and third century scholars associated with the fiqh "school" of Madīnah predicate the authority of their definition of practice upon the opinions of Mālik, which are supposed to represent the second century consensus concerning the traditional practice of Madīnah.¹⁶ Mālik's opinions and the support for them are collected in the *Muwatṭā'* extant in two major redactions.¹⁷ The basic format of the *Muwatṭā'* is that the text reports examples of practice and then gives Mālik's definition of a particular practice in the form of an interpretation or summary of the preceding examples. The authority of Mālik's

opinion is predicated upon the authority of the information, taken as a precedent, reported in the examples of practice to which Mālik's opinion refers. In most cases,¹⁸ Mālik's opinion refers to the practice of certain people associated with the early community in Madīnah, either as "companions" [ṣaḥābah] of the prophet or "followers" [tābi'ūn] of the companions. For example, in the discussion concerning the prey that pilgrims are permitted to eat when in the sacred area [ḥaram] around Makkah,¹⁹ Mālik's definition of practice refers to the practice of tābi'ūn and ṣaḥābah:

Mālik was asked what about meat of prey which is found on the road: can the sacralized person buy it? He said: as for that prey which is hunted in order to be offered to the pilgrim, I find it reprehensible and forbid it. As for that prey which a man has which is not intended for pilgrims but is found by a sacralized person who buys it, there is no harm in it.²⁰

One of the precedents to which Mālik is referring is that set by Abū Hurayrah when he permits a group of pilgrims to eat the meat of prey that they got from people who were not pilgrims. The report is given in two versions.

Yaḥyā³ reported to me, on the authority of Mālik, on the authority of Yaḥyā³ b. Sa'īd who heard Sa'īd b. al-Musayyib reporting on the authority of Abū Hurayrah: that he [Abū Hurayrah] was returning from Baḥrain, and when he reached Rabadhah he found a caravan of sacralized people from 'Irāq. They asked him about the meat of prey which they got from the people of Rabadhah. He commanded them to eat it. He [Abū Hurayrah] said: then I was doubtful about what I commanded them to do. So, when I returned to Madīnah I mentioned this to 'Umar b. al-Khaṭṭāb. 'Umar said: what did you command them to do? He [Abū Hurayrah] said: I commanded them to eat it. 'Umar b. al-Khaṭṭāb said: if you had commanded them otherwise I would have caused threats to be carried out on you.²¹

Yaḥyā³ reported to me, on the authority of Mālik, on the authority of Ibn Shihāb, on the authority of Sālim b.

‘Abdallāh who heard Abū Hurayrah reporting to ‘Abdallāh b. ‘Umar that he passed by a group of sacralized people in Rabadhah. They asked him to issue a decision [fatwah] concerning the meat of prey they had gotten from people who were not sacralized and were eating it. He issued a decision to eat it. He [Abū Hurayrah] said: then I returned to Madīnah, to ‘Umar b. al-Khaṭṭāb and I asked him about this. He said: what decision did you issue to them. He [Abū Hurayrah] said: I issued a decision to them to eat it. ‘Umar said: if you had issued to them any other decision, I would have hurt you.²²

Mālik’s opinion is based on his interpretation of this practice, in particular that the pilgrims were permitted to eat the meat of prey because the prey was not killed with the intention of feeding it to pilgrims. Also, notice that although the authority of this practice is linked to ‘Umar b. al-Khaṭṭāb, a prominent companion of the prophet, ‘Umar only affirms the legitimacy of Abū Hurayrah’s practice. By referring to the opinion of ‘Umar, however, the *Muwattā’*²³ is able to extend the authority of Abū Hurayrah’s practice back to a previous generation of Medinese practice.²³ This is similar to how the *Muwattā’* uses the opinion of the prophet to ratify the report of the practice of a companion.

Another of the precedents on which Mālik bases the authority of his opinion concerning pilgrims’ eating of prey is the report of some pilgrims who eat part of a wild ass killed by Abū Qatādah, who was not sacralized as a pilgrim at the time he killed the ass. There are two versions of this report also.

Yaḥyā²⁴ reported to me, on the authority of Mālik, on the authority of Abū al-Naḍr, the client of ‘Umar b. ‘Ubaydallāh al-Taymī, on the authority of Nāfi‘, the client of Abū Qatādah al-Anṣārī, on the authority of Abū Qatādah that he [Abū Qatādah] was once with the messenger of God. When they were at one of the roads to Makkah he fell behind along with his [the prophet’s] companions who were sacralized; but he [Abū Qatādah] was not sacralized. Then he saw a wild ass, so he mounted his horse and asked his companions to give him his whip. They refused. So, he asked them for his spear, but they refused. So, he took his spear, attacked the ass, and killed it. Some of the compan-

ions of the messenger of God ate from it, but some of them refused. When they caught up to the messenger of God they asked him about this. He said: this is food which God fed to you.²⁴

Yaḥyā³ reported to me, on the authority of Mālik, on the authority of Zayd b. Aslam, that ‘Aṭā³ b. Yasār told him that Abū Qatādah the same report as Abū al-Naḍr about the wild ass except that in the report of Zayd b. Aslam the messenger of God says: do you have any of its meat with you?²⁵

These two reports present an example of practice analogous to that given in the report of Abū Hurayrah. The permission for the pilgrims to eat the meat of prey that Abū Qatādah killed for himself supports Mālik’s opinion. As in the example of Abū Hurayrah, here the practice of Abū Qatādah is ratified by an earlier opinion, that of the prophet. Although the reports link the practice to an earlier generation of Medinese practice, the practice of the companions sets the precedent for Mālik’s opinion.²⁶ The role of the prophet in the reports is inconsequential without the rest of the story. In neither case are the prophet’s words, “this is food which God fed to you” and “do you have any of its meat with you,” unequivocal statements concerning the evaluation of the companions’ practice.

In some cases, the *Muwaṭṭā’*³ does cite reports of the prophet’s direct definition of practice as a precedent for the opinion of Mālik. For example, before giving Mālik’s opinion about which animals pilgrims are permitted to kill, the *Muwaṭṭā’*³ lists four precedents.

Yaḥyā³ reported to me, on the authority of Mālik, on the authority of Nāfi^c, on the authority of ‘Abdallāh b. ‘Umar that the messenger of God said: there are five animals, the killing of which is not held against a sacralized person: crow, kite, scorpion, mouse, and wild dog.²⁷

Yaḥyā³ reported to me, on the authority of Mālik, on the authority of ‘Abdallāh b. Dīnār, on the authority of ‘Abdallāh b. ‘Umar that the messenger of God said: there are five animals. If a sacralized person kills them there is nothing

held against him: scorpion, mouse, crow, kite, and wild dog.²⁸

Yaḥyā³ reported to me, on the authority of Mālik, on the authority of Hishām b. ʿUrwah, on the authority of his father that the messenger of God said: there are five vicious things which are killed in the sacred area: mouse, scorpion, crow, kite, and wild dog.²⁹

Yaḥyā³ reported to me, on the authority of Mālik, on the authority of Ibn Shihāb that ʿUmar b. al-Khaṭṭāb commanded the killing of snakes in the sacred area.³⁰

The first three reports are different versions of essentially the same statement of the prophet, and the third report is a statement of the companion ʿUmar b. al-Khaṭṭāb. Here, the precedent set by ʿUmar's statement does not necessarily coincide with the prophet's statement. The practice of killing snakes in the sacred area is prescribed in addition to the practice of killing the five animals indicated by the prophet. The definition of practice by ʿUmar, as presented here, is not a practice affirmed by a report of the prophet.³¹ Yet, it appears that ʿUmar's definition of practice is equivalent in authority with the definition of the prophet. It is evident from Mālik's opinion made on the basis of these precedents that his own elaboration of the definition of practice does not rely on reports of prophetic precedent. Rather, Mālik's definition of practice is derived from examples of practice from previous generations of Medinese, which include examples of prophetic practice.

The report of the prophet's definition of practice concerning the five animals is not simply repeated by Mālik as the last word on the definition of this particular practice. Mālik's opinion is an interpretation of the cited precedents.

Mālik said: concerning the wild dog which was ordered to be killed in the sacred area, all animals that wound, attack, or scare people, like the lion, tiger, cheetah [fihd], and wolf are considered as wild dogs. As for those predatory animals which do not attack people, like the hyena, fox, cat, and other predatory animals that resemble them, the

sacralized person does not kill them. If he kills them, then he pays a fine. As for harmful birds, the sacralized person does not kill them, except those the prophet specified: the crow and kite. If the sacralized person kills a predatory bird other than those two, then he pays a fine.³²

On the one hand, Mālik extends, by analogy, the prophet's mention of the wild dog to include other predatory animals not explicitly mentioned by the prophet. With his restriction on the killing of predatory animals that do not attack people, Mālik indicates that the killing of other predatory animals is allowed because they pose a possible danger to pilgrims. On the other hand, Mālik limits the killing of harmful birds to those specified by the prophet although it might seem that other carrion-eating or predatory birds could be killed by pilgrims. This example shows how, in the *Muwattā'*, Mālik's opinion does not prescribe the practice of earlier generations but interprets this practice as a precedent to authorize a later definition of practice. It also shows that despite the privileged position given to prophetic practice in the *Muwattā'*, the authority of reported prophetic practice is relative to practice of the later generations of companions and followers.³³ That is, even though or because of the fact that reported prophetic practice is likely to represent the oldest precedent for the definition of practice, it is to be interpreted in light of the continuous practice of later generations.

This same use of later practice to interpret or supplement earlier precedents is evinced in how the *Muwattā'* relates Mālik's opinion to statements from the Qur'ān. Although the citation of the Qur'ān as support for Mālik's definition of practice is rare, like reports of prophetic practice, it is apparently not treated as a privileged source of precedented practice.³⁴

Mālik said: God the blessed and exalted said: You who believe, do not kill prey while you are sacralized. If a person from among you kills game intentionally, then there is a penalty like that which was killed in terms of pasturing animals. Two just people from among you decide whether a sacrificial animal is brought to the Ka'bah, or an expiation of food for the poor, or the equivalent of that in fasting,

so that he might taste the consequences of what he did.
[sūrat al-mā'idah, 5:95]

Mālik said: those who hunt prey while not sacralized and then kill the prey while sacralized are in the same position as those who buy prey while sacralized and then kill it. God has forbidden the killing of it and a penalty is incumbent for it.

The matter according to us is that if a person gets prey while sacralized, a decision is made against him.

Yaḥyā' said: Mālik said: the best I have heard concerning he who kills prey is that a decision is made against him: that it is established what prey he gets, its price in food is determined, and he feeds each poor person a *mudd*, or he fasts a day for every *mudd*. The number of poor people is determined: if there are ten then he fasts for ten days. If there are twenty then he fasts for twenty days. The number of poor people is what he does even if there are more than sixty poor people.

Mālik said: I heard that a decision is made against a person who kills prey in the sacred area while he is not sacralized just like what is decided against a sacralized person who kills prey in the sacred area while he is sacralized.³⁵

The only opinion of Mālik here given on the authority of Yaḥyā', concerning the amount of food given to the poor and the length of the fasting, is a specification of the statement of penalty in the Qur'ān. Mālik supplies practical details absent from the Qur'ānic precedent. In the last opinion cited, Mālik goes beyond providing additional details to the Qur'ānic precedent. Mālik's opinion simply adds that the killing of prey in the sacred area by unsacralized people requires the same penalty required by the Qur'ān for killing by sacralized people.³⁶

More significant, however, is the first opinion cited by Mālik, in which he equates a sacralized person's buying prey with a sacralized person's killing prey that was hunted while the person was not sacralized. This opinion is an attempt to

harmonize the Qurʾānic precedent with the precedents of companions cited earlier. On the basis of the practice of al-Zubayr b. al-ʿAwwām, Mālik concludes that it is permitted for a sacralized person to eat prey that was hunted and killed by that person prior to becoming sacralized.

Yahyāʾ reported, on the authority of Mālik, on the authority of Hishām b. ʿUrwah, on the authority of his father that al-Zubayr b. al-ʿAwwām used to take as provisions dried gazelle meat while he was sacralized.³⁷

By emphasizing that the penalty assessed for killing wild animals is predicated on the killing being done while sacralized, Mālik's interpretation of the Qurʾānic precedent allows for the authority of the precedent set by the practice of the companion al-Zubayr b. al-ʿAwwām. Mālik's interpretation also reconciles the Qurʾānic precedent with the practice ascribed to Abū Hurayrah and affirmed by ʿUmar b. al-Khaṭṭāb of permitting pilgrims to eat the meat of prey others had hunted for themselves. The Qurʾānic statement is interpreted to mean that if a sacralized person purchased the meat of prey then that meat would have been hunted with the intention of having a sacralized person eat it, which Mālik contends is not permitted on the basis of companion and prophetic practice.³⁸ This example illustrates how the scholars associated with the late second and third century "school" of Madīnah consistently interpreted earlier textual precedents in light of later practice regarded as exemplifying a continuous tradition of Medinese practice that originates with the prophet.³⁹

The early Medinese tradition, represented by Mālik's opinions in the *Muwattāʾ*, privileges the authority of a continuing tradition of practice over textual reports of prophetic practice. Mālik is quoted by Muḥammad b. ʿAbd al-Bāqī al-Zurqānī [d. 1122] as saying that "not everything which occurs in a report of practice [ḥadīth] is to be taken literally."⁴⁰ This reflects the Medinese position that the text-reported prophetic practice is not to be taken as authoritative in and of itself but to be interpreted to support what is known of prophetic practice from later practices. The later practices of the companions and

followers are thought to be better indications of prophetic practice than textual reports of what the prophet said or did. This is because the prophet's companions, their followers, and their followers' followers are thought to know prophetic practice through experience rather than through textual transmission. Although the arrangement of the *Muwattā'* seems to privilege reports of prophetic practice, the ultimate authority of Mālik's conclusions demonstrate that the hierarchy of authority runs from local authority to followers to companions to prophet to Qur'ān (as shown in Figure 1.1). The later precedents are more authoritative than earlier ones because the earlier precedents are supported by textual reports alone whereas later precedents are supported by the fact that they represent the continuous practice of the community from prophetic times.

Hierarchy in <i>Muwattā'</i>	Hierarchy of Authority
Qur'ān	Mālik
Prophet	Followers
Companions	Companions
Followers	Prophet
Mālik	Qur'ān

Figure 1.1. How the early Medinese conception of authority reflects a hierarchy of authority that is the inverse of the order of the precedents listed in the *Muwattā'*?

This conception of authority is based on the consensus of later practices and ultimately on the authority of Mālik's interpretation of these practices as precedents. In the *Mudawwana al-kubrā* of 'Abd al-Salām b. Sa'īd Saḥnūn [d. 240], Ibn Qāsim [d. 191] explains the basis of authority according to the Medinese.

We [Medinese/Mālikīs] received this report [of prophetic practice], and if it had been supported by a practice passed down to those from whom we have taken it, which was taken by them from their predecessors, then we would fol-

low the report. But, this transmission is like those which are not accompanied by a practice. . . . These sorts of reports were not repeated and established, the traditional practice was different, the whole community including the companions themselves acted according to a different practice. Therefore, these reports are neither impugned nor adopted in practice, but our practice is based on other reports which are supported by practice. These latter reports were passed on from the companions to the followers and the followers of the followers without rejecting or impugning other transmissions. These other transmissions which were eliminated from practice are not followed nor considered authoritative. Only what is corroborated by practice is followed and considered authoritative.⁴¹

This passage epitomizes the view of the "sunnah" in second century Madīnah, equating it with the traditional practice of the earliest community in imitation of the prophet that was passed on to successive generations.⁴² It is evident from such explanations that the relative authority of earlier precedents is based on a suspicion of textual reports. The Medinese claim that their definition of practice is based on prophetic practice, but that transmitted through practice not through texts. As a necessary correlate to the Medinese claim is the assertion that consensus exists not only among the contemporary authorities of Madīnah but also within the opinions of the preceding generations.⁴³ Otherwise, the Medinese could not claim a majority tradition of continuous practice as the basis for knowing prophetic practice. Where disagreement does exist, however, the Medinese claim that the continuous local practice of Madīnah among a selected number of authorities is the most authoritative position. It is this view that, as late as the sixth century, allows al-Qāḍī 'Iyāḍ to claim the specific authority of the Mālikī school, because of its basis in the traditional, local practice of Madīnah.⁴⁴

Kūfah

The local authorities associated with the second century fiqh "school" of Kūfah recognized the existence of disagreement

within both contemporary traditional practice and among the practices of the previous generations. The “sunnah” or traditional practice of the Kūfan authorities was not identified with a local practice considered to represent a continuous tradition from the time of the prophet. Because of their geographical location and historical circumstances, the Medinese could base their authority on the claim of such a continuous tradition. To their own advantage, the Kūfans stressed the lack of consensus both among the practices of previous generations and within the reports of prophetic practice. On the one hand, this lack of consensus undermined the geographical authority of Madīnah by indicating that taking the location of practice as a guarantee of its authority is tantamount to equating actual, contemporary practice with prophetic practice. On the other hand, the recognition of conflicting precedents allowed the Kūfans to accommodate a variety of conflicting opinions among themselves. Unlike the classical Mālikī school which could base the authority of its scholarship on the opinions of Mālik, the classical Ḥanafī school is based on the conflicting opinions of several local authorities loosely associated with Kūfah. By emphasizing the divergences within the corpus of authoritative precedents, the Kūfans could maintain the equivalent authority of conflicting opinions. The Kūfans focused their epistemological claims on the expertise of different local authorities in determining which precedents were most authoritative or suitable for defining contemporary practice.

Thus, the definition of practice given by later, classical Ḥanafī fiqh scholarship consists more often than not of the conflicting positions taken by the second century Kūfan authorities Abū Ḥanīfah [80–150], Abū Yūsuf, Muḥammad al-Shaybānī [132–189], and to a lesser extent Zufar b. al-Hudhail b. Qays al-ʿAnbarī [110–158].

[Abū Ḥanīfah says]: the endowment [waqf] of immovable property is sound, but the endowment of movable property and property which changes over time is not permitted.

Abū Yūsuf says: when a person endows a landed estate with its cattle and its fieldworkers who are slaves, it is permitted.

Muḥammad [al-Shaybānī] says: the endowment of war horses and weapons [used for waging war] in the path of God is permitted.⁴⁵

Here, the general statement of Abū Ḥanīfah is contradicted by the exceptions stated by Abū Yūsuf and al-Shaybānī. Although later Ḥanafī scholarship argues that Abū Yūsuf considers the cattle and the enslaved fieldworkers as part of the immovable property of the estate,⁴⁶ the number and quality of both cattle and slaves changes over time in ways that a piece of land or a mosque would not. The opinion of al-Shaybānī, as is evident from another of his opinions that “all movable property the endowment of which is commonly practiced is permitted to be endowed,”⁴⁷ is based on accepting traditional or common practice as precedent. From this conflict of opinions, it is evident that the second century Kūfan authorities had different conceptions of what constituted the “sunnah” or traditional practice. Rather than reducing these different conceptions to a single opinion, the Kūfans allowed for different notions of “sunnah” to result in conflicting definitions of practice.

The authority of the different individual Kūfan opinions is justified in relation to what the particular authority in a given case chooses to represent as authoritative precedent. This is evident in the account, attributed to Abū Yūsuf, of the conflict of opinions between Abū Ḥanīfah and Muḥammad b. ‘Abd al-Raḥmān b. Abī Laylā [74–148].⁴⁸ In some cases, the conflict of opinions between Abū Ḥanīfah and Ibn Abī Laylā rests upon differing interpretations of a precedent on which both agree. For example, both agree that it is permitted for a sacralized person to kill prey of the sea.

[Abū Yūsuf] said: what about the case of a man who gets something equivalent to a fish from the prey of the sea? Abū Ḥanīfah used to say: there is nothing better from the prey of the sea than that which is like a fish. This we accept. Ibn Abī Laylā used to say: there is no harm in any of the prey of the sea.⁴⁹

Presumably, both opinions are based upon interpretations of the same verse from sūrat al-māʾidah [5:96], which states

“permitted for you is the prey of the sea.” Abū Yūsuf accepts the opinion of Abū Ḥanīfah, which restricts the application of the Qurʾānic precedent to “fish” alone, rejecting the broader conclusion of Ibn Abī Laylā. Later Ḥanafī scholarship sees in this disagreement the distinction between what properly constitutes prey of the sea: fish, sea birds, amphibians, crustaceans, water mammals?⁵⁰ In this context, Abū Yūsuf’s choice of Abū Ḥanīfah’s opinion over that of Ibn Abī Laylā is a matter of deciding that Abū Ḥanīfah’s opinion represents a better interpretation of the Qurʾānic precedent.

In another case, Abū Yūsuf rejects Abū Ḥanīfah’s opinion on the basis of how Abū Ḥanīfah interprets a precedent on which both he and Abū Yūsuf agree.

Abū Yūsuf said: I asked Abū Ḥanīfah about the grass of the sacred area. He said: it is reprehensible to graze something upon the grass of the sacred area or to cut it. Abū Yūsuf said: I asked Ibn Abī Laylā about this. He said: there is no harm in cutting the grass of the sacred area or in grazing upon it. Abū Yūsuf said: I asked al-Ḥajjāj b. Arṭāḥ who related to me that he asked ‘Aṭā’ b. Abī Rabāḥ who said: there is no harm in grazing but it is reprehensible to cut it. This we accept.⁵¹

The opinion of Ibn Abī Laylā is rejected out of hand. It is apparently based upon a precedent, that the injunction against killing prey in the sacred area does not also apply to noncultivated plants, with which neither Abū Yūsuf nor Abū Ḥanīfah agree. Although Abū Yūsuf rejects Abū Ḥanīfah’s opinion, he agrees with Abū Ḥanīfah on the principle that it is not permitted to cut the grass of the sacred area. Abū Yūsuf rejects Abū Ḥanīfah’s forbidding of grazing because it is concluded on the basis of an analogy that equates cutting and grazing. The opinion of ‘Aṭā’ b. Abī Rabāḥ [d. 114] is based on a distinction between cutting and grazing that Abū Yūsuf accepts for the sake of convenience [istiḥsān], being that it is not possible for pilgrims to keep their mounts from grazing on the grass.⁵²

In other cases, Abū Yūsuf accepts Abū Ḥanīfah’s opinion over that of Ibn Abī Laylā because Abū Ḥanīfah’s opinion is

based on a more authoritative precedent. The determination of relative authority in these cases is predicated on the assumption that Abū Ḥanīfah is a better judge of which precedents are to be taken as authoritative.

Abū Yūsuf said: I asked Abū Ḥanīfah and he said: there is no harm in removing dust and rocks from the sacred area. This we accept. Abū Yūsuf said: I heard Ibn Abī Laylā report, on the authority of ‘Aṭā’ b. Abī Rabāḥ, on the authority of Ibn ‘Abbās, on the authority of ‘Umar that it is reprehensible to remove dust and rocks from the sacred area. We received from Razīn, the client of ‘Alī b. ‘Abdallāh b. ‘Abbās that ‘Alī b. ‘Abdallāh wrote to him to send him a piece of *marwah* [type of white rock] which he took from the place where he prostrated himself to pray.⁵³

The support given for Ibn Abī Laylā’s opinion is parallel to the sort of support cited by the *Muwattā’* for Mālik’s opinions. It is evident from Abū Yūsuf’s rejection of Ibn Abī Laylā’s opinion that his criteria for evaluating the authority of opinions does not rely on evidence of a continuous tradition of practice. Abū Yūsuf’s citation of the highly unusual chain of transmission and the reference to the ambiguous practice of ‘Alī b. ‘Abdallāh [40–117] does not account for the justification of Abū Ḥanīfah’s opinion over that of Ibn Abī Laylā. There appears to be no mention of a Razīn in the later, standard reference works, and it is not at all clear from the practice of ‘Alī b. ‘Abdallāh described what relation it has to removing dust and rocks from the sacred area.⁵⁴ Rather, the report of ‘Alī b. ‘Abdallāh’s practice serves to reinforce the assumed authority of Abū Ḥanīfah’s position. It is not the report that is determinate of authority but the presumed reputation of Abū Ḥanīfah for basing his opinions on authoritative precedents that distinguishes one local authority’s opinion over that of another.

The assumed authority of Abū Ḥanīfah’s opinions over Ibn Abī Laylā’s transmission of a continuous tradition of practice is further evident from those cases where Abū Yūsuf rejects reports of precedented practice in favor of Abū Ḥanīfah’s opinion even when it is unsupported by any reported precedent.

Abū Yūsuf said: what about when a man shoots one of the pigeons from the sacred area? Abū Ḥanīfah said: incumbent upon him is its value. This we accept. Ibn Abī Laylā said: incumbent upon him is a sheep. I heard Ibn Abī Laylā, on the authority of ‘Aṭā’ b. Abī Rabāḥ [say] a sheep.⁵⁵

The distinction between giving the value of a pigeon and giving a sheep in this context is not a matter of interpretation, but a difference of principle. Although later classical sources regard ‘Aṭā b. Abī Rabāḥ as a trustworthy [thiqah] transmitter of prophetic practice from prominent companions, Abū Yūsuf here does not consider his report to establish an authoritative precedent on which Ibn Abī Laylā could base his opinion. The fact that Abū Yūsuf himself relies upon the precedents reported by ‘Aṭā’ b. Abī Rabāḥ at times indicates that the determination of authority among the Kūfans is not simply a matter of identifying reports of continuous traditional practice, but involves adjudicating among different versions of reported traditional practice. Abū Yūsuf accepts the practice of giving the value of a pigeon because Abū Ḥanīfah’s opinion is derived from a different and presumably a more authoritative precedent. By recognizing the existence of contradictions among reports of traditional practice, Abū Yūsuf is able to base the relative authority of Abū Ḥanīfah’s opinion upon the claim that his opinion represents a more authoritative tradition of practice.

In his *al-Radd ‘alā siyar al-Awzā’ī*, Abū Yūsuf critiques al-Awzā’ī for following a continuous tradition of “common practice” rather than a tradition of practice that agrees with the practice of the prophet, his companions, and later scholars.

One does not decide what is allowed and what is forbidden by reference to this, that one says ‘people continue to practice this.’ Much of what people continue to do is not allowed and should not be done even if I had explained a practice to you so that you knew it and you observed it in common practice because the prophet had already prohibited the practice. One only takes in this case [of common practice being against prophetic precedent] from the sunnah, on the authority of the prophet, and on the authority of the preceding generations of his companions, and scholars of fiqh.⁵⁶