

of operative terminology was central to the hermeneutic of *taqlid* and arose as a response to legal pluralism and rule indeterminacy. While the terminology of *zāhir al-riwāya*, a hierarchy of legal sources, and a defined procedure for rule-determination were absent or inconspicuous until the end of the 5th/10th century, the tendency to increase the level of rule-determinacy resulted in a significant narrowing of doctrinal/*ijtihādīc* possibilities and the need for more elaborate articulations of the standards and vocabulary of rule-determination.

The doctrine of *zāhir al-riwāya* came to prominence during the period of late-*tarjih* on the cusp of an explosion of *tarjih* activity in the 6th/12th century. During this same period, jurists articulated detailed procedures for rule-determination and provided basic juristic rankings. These developments would culminate in the first theorization of *zāhir al-riwāya* and a taxonomy of legal sources. Throughout the 6th/12th century, jurists continued to exercise a significant degree of discretion when determining legal rulings, but the developments during this period defined features of the Ḥanafī school that strengthened it as an authoritative entity. With more clearly defined doctrinal taxonomies and procedures for rule-determination, as well as the intense activity of *aṣḥāb al-tarjih*, jurists from the end of the 7th/13th century onwards regarded themselves as bound to an elaborate system of *taqlid*, or binding precedent, that would eventually produce a shift in the very meaning of the term *madhhab* and the role of its jurists.

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Canonization in Islamic Law: A Case Study based on Shāfi'i Literature

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Abstract

The present study analyzes processes of canonization in Islamic law, with a focus on the Shāfi'i *madhhab*. I argue that the formation of schools of law may be described as the emergence of distinct networks of intertextual references. This intertextuality – which is manifest *inter alia* in the choice of commentary and abridgement as key literary genres – transformed legal insight into a collective project centered on a common textual tradition. While these textual traditions were initially multivocal and indeterminate, specific doctrinal positions began to be prioritized in the 11th century. This resulted in the gradual standardization of school doctrine and, in the 14th century, in canonization, when certain texts came to be regarded as the authoritative articulation of the *madhhab*.

The impact of canonization on the development of law has been the object of considerable discussion in Islamic studies. Drawing on a systematic survey of Shāfi'i doctrine on commercial partnership as represented in commentaries and abridgements of the 9th to 19th centuries, I argue that canonization made a significant contribution to stabilizing legal doctrine, and thus to conferring an element of rigidity on Shāfi'i law. At the same time, I argue that this rigidity is specific to commentaries and abridgements, which in turn represent only one of many layers of Islamic legal discourse. The marked conservatism of these texts should be interpreted against the backdrop of the functional differentiation of different genres of legal literature: commentaries and abridgements served to preserve and transmit the inherited doctrinal essence of a school, while other genres helped contextualize this doctrinal tradition within an ever-changing environment of social practices.

Al-Shāfi'ī Against the Kufan School

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Abstract

One of the short works of al-Shāfi'ī (d. 204/820) is *Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd* ("the disagreements of 'Alī and 'Abd Allāh ibn Mas'ūd"). It comprises first quotations of the Companions 'Alī and Ibn Mas'ūd advocating rules that the Kufans reject, secondly counter-reports supporting the rules that al-Shāfi'ī advocates. It seems to be one of the earliest of al-Shāfi'ī's works. It argues mainly by authority against an undifferentiated Kufan school. It testifies to a time when regional schools were predominant and legal reasoning primitive, also when divisions within Kufa, especially between adherents of *ra'y* and hadith, were less important than they seemed later. Its argument tends to imply that al-Shāfi'ī'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-Shāfi'ī – Kufa – Medina – Islamic law – *Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd* – Islamic schools of law

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

1 Al-Shāfi'ī, *Ikhtilāf 'Alī wa-'Abd Allāh ibn Mas'ūd*, in *K. al-Umm*, ed. Rif'at Fawzī 'Abd al-Muṭṭalib, 11 vols. (Mansoura: Dār al-Wafā', 1422/2001; 2nd printing 1425/2004), 8:391–512.

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

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

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

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

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

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

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