

T 26918

THE UNIVERSITY OF CHICAGO

DATE June 27 19 78

Umar Faruq Abd-Allāh

Author

April 11, 1948

Birth Date

Mālik's Concept of ^cAmal in the Light of Mālikī Legal Theory

Title of Dissertation

Near Eastern Languages and Civilizations Ph. D.

Department or School

September 1978

Degree

Convocation

Permission is herewith granted to the University of Chicago to make copies of the above title, at its discretion, upon the request of individuals or institutions and at their expense.

Umar Faruq Abd-Allāh

Signature of writer

Extensive Quotation or Further Reproduction of This Material by Persons or Agencies Other than the University of Chicago May Not Be Made without the Express Permission of the Writer.

9-12-78

Date filmed

Number of pages

NOTE:

THE UNIVERSITY OF CHICAGO

MĀLIK'S CONCEPT OF ḤAMAL IN THE LIGHT
OF MĀLIKĪ LEGAL THEORY

VOLUME ONE

A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE HUMANITIES
IN CANDIDACY FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

DEPARTMENT OF NEAR EASTERN LANGUAGES AND CIVILIZATIONS

BY

UMAR FĀRŪQ ABD-ALLĀH

CHICAGO, ILLINOIS

SEPTEMBER 1978

RAMADĀN 1398

PREFACE

Background to the Study

I began study related to the topic of this dissertation during my second year of graduate school when I started reading in ash-Shāfi'ī's "Kitāb Ikhtilāf Mālik wa 'sh-Shāfi'ī"¹ and Mālik's Muwaṭṭa'² under the supervision of Dr. Fazlur Rahman. I wrote research papers solely on the basis of what I found in these works without reference to commentaries on them or to works on Islamic legal theory. In my third year, however, I undertook a detailed study of Islamic legal theory. It appeared to me as a result that

¹Muḥammad ibn 'Idrīs ASH-SHĀFI'Ī, "Kitāb Ikhtilāf Mālik wa 'sh-Shāfi'ī," in Kitāb al-'Umm by Muḥammad ibn 'Idrīs ash-Shāfi'ī, ed. Muḥammad Zuhri an-Najjār, 8 vols. (Cairo: Maktabat al-Kulliyāt al-'Azharīyah, 1381/1961), 7:191-269.

Ash-Shāfi'ī (150-204/767-820) is the founder of the Shāfi'ī school of Islamic law, one of the four main sunnī [orthodox] schools of law. He studied under Mālik in his early years and followed the Mālikī school of law. Later he came to Baghdād, where he came to know well Muḥammad ibn al-Ḥasan ash-Shaibānī (132-189/749-805), the chief proponent in his generation of the Ḥanafī school of law. Thereafter, Ash-Shāfi'ī founded his own distinctive school. See Fuat Sezgin, Geschichte des arabischen Schrifttums, vol. 1: Qur'ānwissenschaften, Ḥadīth, Geschichte, Fiqh, Dogmatik, Mystik bis ca. 430 H; vol. 2: Poesie; vol. 3: Medizin, Pharmakologie, Zoologie, Tierheilkunde; vol. 4: Alchimie, Chemie, Botanik, Landwirtschaft; vol. 5: Mathematik; 5 vols. (Leiden: E. J. Brill, 1967), 1:484-485.

²Mālik ibn 'Anas, Al-Muwaṭṭa', ed. Muḥammad Fu'ād 'Abd-al-Bāqī (Cairo: Dār 'Iḥyā' at-Turāth al-'Arabī, n.d.). For Mālik's biographical data, see below, pp. 39-95.

many of the conclusions I had drawn on the basis of analyzing the legal texts of ash-Shāfi^{cī} and Mālik without sufficient background in legal theory had been erroneous and superficial interpretations of the data in those works.

I developed the desire to analyze the legal opinions of the early fuqahā' [Islamic jurists] in the light of the respective legal theories of their schools. I began preparation to that end by working with Dr. Fazlur Rahman in Ibn Rushd's Bidāyat al-Mujtahid,¹ because it was especially well-suited for that purpose. In this work, Ibn Rushd--himself an experienced faqīh [Islamic jurist] and qāḍī [judge]--analyzes the fundamental points of difference in

¹Muḥammad ibn 'Aḥmad IBN RUSHD [al-Ḥafīd], Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid (Egypt: Dār al-Kutub al-ʿArabīyah al-Kubrā, n.d.).

Ibn Rushd [al-Ḥafīd] (520-595/1126-1198)--known in Latin as Averroës--was one of the greatest scholars and thinkers of Muslim Andalusia. Although generally known for his Aristotelian philosophical works, Ibn Rushd was well-learned in medicine and other biological and physical sciences. He was a prolific writer and is reported to have written over fifty works.

Ibn Rushd came from a prominent Cordovan family of fuqahā'. His grandfather, Ibn Rushd [al-Jadd] (450-520/1058-1126) is to this day one of the most highly regarded Mālikī legal theorists. Ibn Rushd [al-Ḥafīd] shared in this family tradition of legal knowledge also. He was well-learned in the law and legal theory of the Mālikī, Ḥanafī, and Shāfi^{cī} schools. Like his grandfather and father before him, Ibn Rushd [al-Ḥafīd] was a qāḍī [judge], first in Seville then later in Cordova. Like his grandfather, he became the qāḍī al-jamā'ah [chief judge] of Cordova.

Ibn Rushd was especially interested in the reasons for the differences of opinion among the fuqahā'. He wrote at least two works on this topic: At-Taḥṣīl, which apparently has been lost, and Bidāyat al-Mujtahid.

See Khair-ad-Dīn az-Ziriklī, Al-'Aḥlām: Qāmūs Tarājim li-'Ashhar ar-Rijāl wa 'n-Nisā' min al-ʿArab wa 'l-Mustaʿri-

legal questions between the major fukahā' of the early period in terms of the legal theory of their respective schools.

Ibn Rushd's analysis of these different legal opinions indicated to me that there were patterns that recurred consistently and predictably in the differing conclusions of each of the major fukahā' whose opinions he treated. Hence, it appeared to me that there was a real connection between the legal reasoning of the early fukahā' and the legal theory of their schools, even though in some cases that legal theory had not been written down until generations after the death of the early fukahā'. Legal opinions of Mālik and 'Abū Ḥanīfah,¹ for example, which had appeared to me to be poorly reasoned or arbitrary before I had studied Islamic legal theory, appeared in the light of Ibn Rushd's theoretical analysis to be consistent in terms of Mālikī and Ḥanafī legal theory. In Bidāyat al-Mujtahid, I found the first cogent legal explanations of what Mālik, as a

bīn wa 'l-Mustashriqīn, 13 vols. (Beirut: n.p., 1389/1969), 6:212-213; ^cUmar Riḍā Kaḥḥālah, Mu^cjam al-Mu'allifīn: Tarājim Muṣannifī 'l-Kutub al-^cArabīyah, 15 vols. (Damascus: Maṭba^cat at-Taraqī, 1378/1959), 8:228.

¹'ABŪ ḤANĪFAH an-Nu^cmān ibn Thābit (ca. 80-150/ca. 699-767) is the central figure of the Kūfan or Ḥanafī school of law, which is named after him. He was of Persian background and studied under several Successors [tābi^cīn] in Kūfah and, possibly, under some of the Companions [ṣahābah] of the Prophet. He studied under ash-Sha^cbī (d. 104/722) and ^cAṭā' ibn 'Abī Rabāḥ (d. 114/732). His primary teacher, however, was Ḥammād ibn 'Abī Sulaimān (d. 120/737), who had an immense influence upon him. See Sezgin, 1:409-410.

faqīh, might have conceived ḥamāl [the established legal practice] to be and how he had applied it. It was on the basis of my studying Bidāyat al-Mujtahid that I decided to write my dissertation on Mālik's conception of ḥamāl.

I felt that Ibn Rushd's analysis of ḥamāl merited further treatment and closer examination in the Mālikī source works themselves and in the works of other Mālikī legal theorists. First of all, the question of what ḥamāl was conceived to be and how it was used is of fundamental importance to the history of the formative period of Islamic law and legal theory. Furthermore, it has considerable bearing on historical questions pertaining to the origin and transmission of ḥadīth [reports of sayings, deeds, and tacit approvals of the Prophet]. Finally, I felt such a study would provide greater knowledge of and insight into the Mālikī school of law, which--although one of the largest and historically most significant sunnī schools of law--has not received much attention among modern researchers.

After Bidāyat al-Mujtahid, I turned to Al-Muwāfaqāt and Al-Iḥṭisām of ash-Shāṭibī,¹ the great Andalusian, Mālikī

¹ Ibrāhīm ibn Mūsā ASH-SHĀṬIBĪ, Al-Muwāfaqāt fī 'Uṣūl ash-Sharīḥah, ed. Ḥabd-Allāh Drāz, 4 vols. in 2 (Egypt: Al-Maktabah at-Tijārīyah al-Kubrā, n.d.); idem, Al-Iḥṭisām, 3 vols. (Egypt: Maṭba'at al-Manār, 1331/1913).

Ash-Shāṭibī (d. 790/1388) was a Mālikī faqīh, muftī [one who gives legal opinions], and legal theorist of Granada. He was also highly regarded for his work as an Arabic philologist and grammarian, his extensive knowledge of ḥadīth, and his excellence as a Qur'ānic exegete. See Zirīklī,

legal theorist, and then to the works of al-Qarāfī¹ and al-Qāḍī 'Iyāḍ,² because these works contained the most detailed and penetrating treatments of Mālikī legal theory

1:71; and Kaḥḥālah, 1:118-119.

Ash-Shāṭibī is one of the most remarkable of all Islamic legal theorists. His work Al-Muwāfaqāt is a work of great originality and genius. It goes beyond traditional works on Islamic legal theory and, employing new methods of presentation, analyzes Islamic law as a whole in terms of its universal principles [kullīyāt] and ultimate purposes [maqāṣid]. It has been suggested to me that in writing Al-Muwāfaqāt, ash-Shāṭibī intended to initiate a new Islamic science of "maqāṣid ash-sharī'ah" [the ultimate purposes of Islamic law] that would go beyond the scope of traditional legal theory ['uṣūl al-fiqh].

¹ 'Aḥmad ibn 'Idrīs AL-QARĀFĪ, Adh-Dhakhīrah, ed. 'Abd-al-Wahhāb al-Laṭīf and 'Abd-as-Samī' Imam, 1 vol. ([Cairo]: al-Jāmi'ah al-'Azharīyah, Maṭba'at Kullīyat ash-Sharī'ah, 1381-/1961-).

Al-Qarāfī (626-684/1228-1285) was an Egyptian Mālikī faqīh and legal theorist of Moroccan Berber background. Like ash-Shāṭibī, he is one of the greatest and most original Islamic legal theorists. His Kitāb al-Furūq, for example, is a very valuable analysis of the fundamental precepts [al-qawā'id al-fiqhīyah] of Islamic law, their different scopes and purposes. See Ziriklī, 1:90; and Kaḥḥālah, 1:158-159.

Adh-Dhakhīrah, which unfortunately has not yet been fully published, is probably the most valuable compendium of Mālikī fiqh. The first volume contains a short but very meaningful treatment of legal theory. The remainder of the work pertains to specific questions of Mālikī fiqh. Al-Qarāfī compiled Adh-Dhakhīrah from over forty manuscripts of great Mālikī fuqahā' and legal theorists from Iraq, Andalusia, North Africa, Egypt, and Sicily. He gives the reasoning [al-'adillah] behind Mālikī opinions and compares them with the fiqh of the Companions, Successors, and early non-Madīnan fuqahā'. Al-Qarāfī uses Algebra to explain the laws of inheritance and astronomy to explain how to find the direction of the qiblah [direction of prayer]. See the Preface of Adh-Dhakhīrah.

² AL-QĀḌĪ 'IYĀḌ ibn Mūsā, Tartīb al-Madārik wa Taqrīb al-Masālik li-Ma'rifat 'Aclām Madhhab Mālik, ed. Dr. 'Aḥmad Bakīr Maḥmūd, 3 vols. (Beirut: Maktabat al-Ḥayāh, 1387/1967). (The early chapters of the first volume contain

I had found. There was a great advantage, I felt, in studying these works as a preliminary to analyzing Mālik's legal opinions. Ibn Rushd's Bidāyat al-Mujtahid had indicated the hypothesis to me that there was a real connection between later Mālikī theory and Mālik's original deductions. If nothing else, analyzing Mālik's legal opinions in the light of later Mālikī legal theory would check this hypothesis. It would give us a better idea of what degree of continuity, if any, there is between the method of Mālik's legal deductions and the speculations of later theorists. But in so far as Mālik's work itself was concerned, the speculations of later Mālikī legal theorists offered many valuable hypotheses in terms of which to analyze it. I have discussed the methodological problems of my approach in more detail in the Introduction. Briefly, however, I regard the hypothetical explanations of Mālikī theorists of Mālik's work to be as legitimate initially as any other hypotheses would be. Mālikī theorists advanced their theories to account for Mālik's reasoning. Thus, their hypotheses can be checked against the objective criterion of Mālik's legal opinions, which are the product of the reasoning that Mālikī theorists attempt to explain.

discussions of some aspects of Mālik's legal theory.)
Al-Qāḍī ^{ʿIyāḍ} (476 or 496-544/1083 or 1103-1149), a Moroccan of Andalusian background, was regarded as the greatest Mālikī faqīh and muḥaddith [one learned in ḥadīth] in his generation in Morocco. He was a qāḍī in Morocco and then for a time in Granada. He had extensive knowledge of Arabic, genealogy, and the history and poetry of the pre-Islamic Arabs. See Ziriklī, 5:282; and Kaḥḥālah, 8:16-17.

Acknowledgments

I would like first of all to acknowledge my gratitude to Dr. Fazlur Rahman, Dr. Wilferd Madelung, and Dr. Jaroslav Stetkevych for the excellent personal supervision, instruction, and training in working with Classical Arabic sources pertinent to my field of interest that they have given me during my graduate work at the University of Chicago. In general, furthermore, I have benefitted greatly from the overall excellence, openmindedness, and flexibility of the program of Islamic and Arabic studies in the Department of Near Eastern Languages and Civilizations, which enabled me throughout my second, third, and fourth years of graduate study at the University of Chicago to focus almost exclusively on course work and research in primary Arabic sources directly pertinent to my dissertation research.

I want to express my thanks especially to Dr. Fazlur Rahman Gunnaurī of Aligarh Muslim University and Dr. Mustafa Azmi of the College of Education in Riyadh, whom I met at the Seminar on Ḥadīth held in Chicago in July 1975 at the Illinois Institute of Technology under the sponsorship of the MSA [Muslim Students' Association of the United States and Canada]. I spent considerable time with both of them during the weeks they spent in Chicago that summer. I have benefitted especially greatly from advice of Dr. Fazlur Rahman Gunnaurī, particularly his recommendation

that I get a sound background in Islamic legal theory and study Ibn Rushd's Bidāyat al-Mujtahid and ash-Shāṭibī's Muwāfaqāt. Similarly, Dr. Azmi has continually given me encouragement and advice on my research. I am very thankful to him, furthermore, for the efforts he made to get me copies of the Masters theses of his students Nūr-Saif and ar-Rasīnī, which pertain to my dissertation topic and of which I have made much use.

I want to thank Dr. Prof. Hüseyin Atay of Ankara with whom I had many valuable discussions during his sabbatical leave at the University of Chicago in 1975-1976. We went over my research plans in detail. Dr. Atay gave me great encouragement in my research and, among other things, suggested to me that I study the works of al-Qarāfī.

I want to express my gratitude to Dr. Ismā'īl al Fārūqī of Temple University, who helped arrange for me to participate in the Conference of Islamic Jurisprudence held in Riyadh, October 24-November 2, 1976, and recommended me for the faculty appointment I received to teach Islamic studies in the Department of Religion at Temple University for 1977-1978. I benefitted greatly from the research and writing of the paper I prepared on Mālikī legal theory for the conference. It gave me a more exact definition of Mālik's concepts of istiḥsān [equity], sadd adh-dharā'i' [the invalidation of legal fictions], and al-maṣāliḥ al-mursalah

[suspending established precepts or establishing unprecedented precepts on the basis of the absolute needs of society],¹ which enabled me to understand better how Mālik's conception of ʿamal fit into the overall framework of his legal theory.

Fürthermore, it would be difficult for me to estimate how much I benefitted from attending that conference and having the opportunity to discuss my dissertation and other questions of Islamic law with the highly trained fukahā', professors, and scholars who attended it. I benefitted much from Shaikh Muḥammad al-Ḥabīb ibn al-Khōjah, muftī of Tunisia, who took out time from his schedule to discuss my dissertation with me privately. I am especially thankful to the Nigerian muftī Muḥammad al-Muntaqā al-Kishnāwī, from whose extensive knowledge of Mālikī and non-Mālikī legal works I benefitted greatly. He answered all my questions in detail, and it was he who indicated to me that Mālik's term "al-'amr ʿindanā" [that precept which we regard as correct] did not stand for the 'ijmā' [consensus] of Madīnah. In his opinion, this term was essentially Mālik's manner of indicating the preponderance [rujḥān] of his opinion that the precept to which it was applied was valid. Al-Kishnāwī also held that this term often, but not always, indicated the actual ʿamal of Madīnah.

¹For more detailed treatment of these concepts see below , pp. 245-279.

Others whom I would like to thank for their encouragement and advice regarding my research are Shaikh ʿAbd-al-ʿAzīz ʿUyūn-as-Sūd, chief muftī and head of the Qur'ān reciters of Syria, who took great interest in my dissertation and spoke to me about the great similarities between several fundamental points of Ḥanafī and Mālikī legal theory; Dr. Muṣṭafā 'Aḥmad az-Zarqā of the College of Islamic Law at the University of Jordan; and my very respected friend Shaikh Yūsuf al-Qaraḍāwī of the College of Education in Doha.

I want to thank my many brothers in Chicago who were always ready to help me financially and otherwise, especially Muhammad Badr, Shaikh Ahmad Zaki Hammād, Dr. Abd el-Raouf Oubaid, Irfan Ahmad, Atiqur Rahman, and Dr. Mazen Ulwan. I want to thank the MSA for its generous financial support during the year 1976-1977, and I want to thank my good friend Ibrahim Ahmad Aliyu Zaria of Abdullahi Bayero College in Kano for his efforts to assist me and his years of encouragement.

I want to thank my parents, Dr. and Mrs. D. E. Weinman, for the financial support and other help they have given me when needed. Finally, I want to thank my wife, Samīrah, and daughter, Īmān, for putting up with me during the years of my graduate study.

TABLE OF CONTENTS

PREFACE	ii
	Background to the Study	ii
	Acknowledgements	viii
Chapter		
I.	INTRODUCTION	1
	Scope and Purpose	1
	An intellectual history of Mālik	1
	Methodology	2
	Mālik's legal opinions: the objective criterion	4
	The subjective limitations of Mālikī legal theorists	6
	Was Mālik aware of any system in his legal reasoning?	11
	The distinction between concepts and terms	14
	Thesis Statement	21
PART ONE		
BACKGROUND: MĀLIK AND INTRODUCTORY MĀLIKĪ LEGAL THEORY		
II.	MĀLIK'S LIFE AND WORK	39
	Mālik's Life	39
	Mālik's teachers	46
	Mālik's Madīnah: a brief background	48
	Madīnah and the cultural centers of the outside world	59
	Mālik's main teachers	62
	Mālik's standards in selecting teachers	72
	Mālik's Attitude toward <u>Hadīth</u>	76
	Mālik as a Teacher and <u>Muftī</u>	85
	Mālik's prestige in Madīnah	92

Mālik's Work	95
Mālik's <u>Muwaṭṭa'</u>	97
<u>Al-Mudawwanah al-Kubrā</u>	107
"Al-'Asadīyah"	111
<u>Sahnūn's Mudawwanah</u>	112
"Al-Mawwāzīyah"	113
"Al-Wāḍiḥah"	117
"Al- ^c Utbiyah"	118
Other Source Books	119

III. SOME PRELIMINARY FUNDAMENTALS OF MĀLIKĪ LEGAL THEORY	121
Introduction	121
"Classical Islamic legal theory"	121
Some general observations about Mālikī legal theory	129
The intricacy of Mālik's legal reasoning	129
Mālik's manner of elaborating the full scope of legal precepts	135
The sources of this chapter	145
The Qur'ānic Text	146
The classification of legal texts according to their ambiguity	146
Regarding general statements in the Qur'ān	147
Regarding specific statements in the Qur'ān	148
Regarding the specification of general statements	151
The <u>Sunnah</u>	155
<u>Mursal ḥadīth</u>	155
The <u>athār</u> and <u>fatwā</u> 's of the Companions	161
Regarding the legal opinions of Successors	170
Isolated <u>ḥadīth</u>	170
Mālik's use of isolated <u>ḥadīth</u> by reference to other sources of law	179
The concept of <u>Cumūm al-balwā</u>	184
The ambiguity of isolated actions and specific rulings	188
Preliminary Reflections on ' <u>Limā</u> ^c	195
<u>Al-^cUrf wa 'l-^cAdah</u> : Local Customs and the Law	204
Analogical Reasoning: <u>Qiyās</u>	209
Introduction	209
A general analysis of analogical reasoning	212
Ash-Shāfi'ī's concept of <u>qiyās</u>	216

Mālik and 'Abū Ḥanīfah: reasoning on the basis of legal precepts	226
Some special characteristics of Mālik's concept of <u>qiyās</u>	234
The specification of Qur'ānic verses by <u>qiyās</u>	234
Rejection of isolated <u>ḥadīth</u> on the basis of <u>qiyās</u>	237
Performing <u>qiyās</u> on the basis of earlier instances of <u>qiyās</u>	241
<u>Istiḥsān</u>	245
Hanafī <u>istiḥsān</u>	254
Illustrations of Mālikī <u>istiḥsān</u>	258
<u>Sadd adh-Dharā'ī^c</u>	262
Illustrations of Mālik's application of <u>sadd adh-dharā'ī^c</u>	265
<u>Al-Maṣāliḥ al-Mursalah</u>	268
Illustrations of <u>al-maṣāliḥ al-mursalah</u>	273
The distinction between <u>al-maṣāliḥ al-mursalah</u> and <u>sadd adh-dharā'ī^c</u> and <u>istiḥsān</u>	275

PART TWO
MĀLIK'S CONCEPTION OF MADĪNAN CAMAL

IV. A SURVEY OF PERTINENT WRITINGS AND LITERATURE ON <u>CAMAL</u>	281
Modern Literature in Western Languages.	281
Theories on the original concept of <u>sunnah</u> and the practice of the early community.	285
Those who hold that there was no Prophetic <u>sunnah</u>	285
Those who hold that there was a Prophetic <u>sunnah</u>	288
Some general observations	292
Theories pertaining directly to Mālik and his legal method.	302
Theories on Mālik's terminology	308
Modern Literature in Arabic	309
Al-Laith ibn Sa ^c d and Early Polemical Writings	311
The letters of Mālik and al-Laith ibn Sa ^c d.	311
Mālik's letter.	314
Al-Laith's response	321
'Abū Yūsuf's critique of the <u>Camal</u> of the Ḥijāz.	331

Ash-Shaibānī's polemics against the Madīnans	337
Ash-Shāfi'ī's "Ikhtilāf Mālik"	341
Ash-Shāfi'ī on Madīnan 'ijmā' ^c	343
Ash-Shāfi'ī on isolated texts and reports of actions and rulings	348
Conclusions	353
A General Survey of Madīnan ^c Amal in Traditional Works on Legal Theory	356
Mālikī works	356
Hanafī works	358
Mu ^c tazilī works	359
Shāfi'ī works	360
Hanbalī works	363
Zāhirī works	367
Syllogistic logic and traditional argumentation	369
 V. THE CONCEPT OF MADĪNAN ^c AMAL	 379
The Importance of ^c Amal for Mālik	379
The Authority of Madīnan ^c Amal for Mālik	382
The authority of ^c amal as a unified legal code	388
The need for legal codification and Mālik's refusal of al-Manşūr	392
Mālik's Conceptualization of the Madīnan Community	394
Mālik's conception of the legacy of the Madīnan ^c ulamā'	403
The Different Categories of Madīnan ^c Amal	409
Classifications of later theorists	409
^c Amal derived from the <u>sunnah</u>	410
^c Amal derived from <u>ijtihād</u>	415
Mālik's terminology and the classifications of later theorists	419
The difference between Madīnan ^c amal and local customs	434
Theoretical Uses and Implications of Madīnan ^c Amal	436
^c Amal as normative standard	436
The obligations of the ^c ulamā' with regard to normative ^c amal	448
The historical concern of the ^c ulamā' about irregular opinions	453
The concept of ^c amal and the legal status of habitual vs. isolated acts	459

Reports of isolated acts and Mālik's concept of <u>karāhiyah</u>	465
The normativeness of <u>ᶜAmal</u> and Mālik's concept of <u>maṣlahah</u>	474
The Use of <u>ᶜAmal</u> in Conjunction with Legal Texts	481
<u>ᶜAmal</u> and <u>ᶜumūm al-balwā</u>	481
<u>ᶜAmal</u> in conjunction with supporting legal texts	484
<u>ᶜAmal</u> in conjunction with contrary legal texts	487
<u>ᶜAmal</u> indicates abrogation	488
<u>ᶜAmal</u> distinguishes between desired norms and exceptional behavior	490
<u>ᶜAmal naqlī</u> in the absence of <u>ḥadīth</u>	497
The possible effects of <u>ᶜAmal</u> on the transmission of <u>ḥadīth</u>	500
<u>Ḥadīth</u> in the absence of corresponding types of <u>ᶜAmal</u>	509

VOLUME TWO

PART THREE

ᶜAMAL IN THE MUWATTA': AN EXAMINATION
OF THE RELATIONSHIP BETWEEN ᶜAMAL AND
MĀLIK'S TERMINOLOGY IN THE MUWATTA'

VI. GENERAL COMMENTS ABOUT MĀLIK'S TERMINOLOGY	516
Introduction	516
Some of the difficulties in studying Mālik's terminology	517
Does Mālik actually have a systematic terminology?	523
General Observations about Mālik's Terms	529
The use of symbols	529
Why does Mālik use terms in the <u>Muwatta'</u> ?	530
What Mālik is reported to have said about his terms	538
A Few Words about Terms in the <u>Mudawwanah</u>	545
VII. THE <u>SUNNAH</u> TERMS	549
General Observations about the <u>Sunnah</u> Terms	549
Examples	552
1. S-XN: <u>zakāh</u> on gold and silver	552

2.	S-XN . . . : no <u>zakāh</u> on fruit, provender, and greens	555
3.	SthN-X: regarding bequests to one's heirs	557
4.	SN: SN \bar{X} -shk \bar{x} -X: the annulment of marriage by <u>li\bar{c}ān</u>	560
5.	S-XN: regarding <u>zakāh</u> on inheritance	564
6.	MqS: regarding a plaintiff with one supporting witness	571
	Conclusions	576
VIII.	TERMS REFERRING TO THE PEOPLE OF KNOWLEDGE IN MADĪNAH	583
	General Observations	583
	Examples	585
1.	-zĀIb: regarding the <u>talbiyah</u> in pilgrimage	585
2.	-zĀIb: regarding the performance of <u>ṭawāf</u>	589
3.	-zĀIb: regarding steeping dates and raisins	592
4.	-zĀIN: regarding the waiting period of a pregnant woman whose husband dies	596
5.	ḫdIb: regarding one who joins the Friday prayer late	599
6.	ḫdIb: regarding husbands who cannot support their wives	602
7.	ḫdIb: regarding the banishment of fornicators	606
	Conclusions	608
IX.	REFERENCES TO <u>CAMAL</u>	614
	General Observations	614
	Affirmative <u>CAmal</u> Terms	615
1.	AlNs: paying for animals to be delivered at a later date	615
2.	AlNs: the definition of what lands are suitable for <u>musāqāh</u>	618
3.	AlNs: regarding the contract of <u>mukātabah</u>	623
4.	The inheritance of heirs who perish in battles or calamities	626
	Negative <u>CAmal</u> Terms	629
1.	Al- \bar{x} : regarding <u>sujūd al-Qur'ān</u>	629
2.	Al- \bar{x} : 'Umar's letter to an army commander	632
3.	Al- \bar{x} : 'Ā'ishah on an abrogated Qur'ānic verse	636

4.	Transactions of buying and selling and <u>bai^c al-khiyār</u>	640
5.	ALN- <u>ī</u> : ^c Umar and the slaves who stole a camel.	649
^c Amal	Chapters	652
1.	Al ^x : how one wipes over the shoes in performing <u>mash</u>	652
2.	Al ^x : how one is supposed to sit while performing <u>ṣalāh</u>	656
3.	Al ^x : S-XN: <u>Camal</u> regarding <u>ḥīd</u> prayers	658
4.	Al ^x : how sacrificial camels are to be driven to pilgrimage	661
5.	Al ^x : washing the bodies of martyrs before their burial.	665
6.	Al ^x : sacrificing a sheep upon the birth of a child	668
7.	Al ^x : the size of the <u>diyāh</u> in gold and silver	673
	Conclusions	677
	The affirmative <u>Camal</u> terms	677
	The negative <u>Camal</u> terms	679
	The <u>Camal</u> chapters	685
X.	<u>'AMR</u> TERMS SUPPORTED BY LOCAL CONSENSUS	691
	General Observations	691
	Examples	693
	1. AMN: regarding the use of a Magian's hunting dogs	693
	2. AMN: a special provision for the testimony of youths	696
	3. AMN: regarding inheritance due an illegitimate son	700
	4. AMN: permission to alter bequests other than <u>tadbīr</u>	703
	5. AMN: bequests to set free one's share of a jointly owned slave	708
	6. <u>Qasāmāh</u>	713
	Conclusions	723
XI.	<u>AL-'AMR</u> ^c INDANĀ: AN	731
	General Observations	731
	AN and <u>Camal</u>	732
	AN's Pertaining to Social Matters	734
	1. AN: no fixed indemnity for penetrating wounds to the body	734
	2. AN: the indemnity for teeth that are knocked out	737

3. AN: regarding divorce and the pronouncement of <u>ilā'</u>	741
4. AN: advancing the <u>mukatab's</u> deadline and reducing the amount	743
5. AN: capital punishment in conspiracies to commit murder	744
AN's Pertaining to Ritual and Worship	746
1. AN: recitation during prayer when praying behind an ' <u>imām</u> '	746
2. AN: conjugal relations with wives who bleed continuously	749
3. AN: regarding voluntary prayers	751
4. AN: the number of <u>takbīrah's</u> in ^c <u>id</u> prayers	752
5. AN: <u>takbīr</u> after prayer during the days of <u>tashrīq</u>	754
Conclusions	756

Appendixes

I. 'ABŪ ḤANĪFAH'S RESTRICTIONS UPON THE ACCEPTANCE OF ISOLATED <u>HADĪTH</u>	761
II. SYMBOLS AND SPECIAL INDEXES FOR MALIK'S TERMINOLOGY IN THE <u>MUWATTA'</u>	765
Table 1: Key to Symbols	766
Table 2: the Distribution of Terms According to Chapters	769
Table 3: Index to <u>Sunnah</u> Terms	778
Table 4: Index of References to the People of Knowledge	780
Table 5: Index to A-XN's	782
Table 6: Index to AMN's	783
Table 7: Index to AN's	784
Table 8: Index to Terms with ^c <u>Amal</u> and <u>an-Nās</u>	786
Table 9: Index to ^c <u>Amal</u> Chapters	788
SELECTED BIBLIOGRAPHY.	789
Traditional Sources	790
Modern Sources	794

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ
هُوَ اللّٰهُ فِی السَّمٰوٰتِ وَ الْاَرْضِ

I begin with the praise of God, Whose greatness is not diminished by lack of recognition, Whose grandeur is not increased by praising. Peace be upon God's last Prophet, Muḥammad ibn ʿAbd-Allāh, abundant peace.

To the Granadan legal theorist,

AL-'IMĀM ASH-SHĀṬIBĪ,

and the memory of my great-grandfather,

Judge Charles L. Marmon.

CHAPTER I

INTRODUCTION

Scope and Purpose

An Intellectual History of Mālik

This dissertation is limited to the question of seeking to determine what Mālik conceived Madīnan ḥamal [established legal practice] to be and how he applied that conception to specific points of law. I am not concerned in this dissertation with the broader questions of Madīnan social, economic, cultural, and political history that pertain to what, in fact, Madīnan ḥamal was, whence it originated, and whether or not it had been kept intact during the generations before Mālik.

Therefore, this dissertation is an intellectual history of Mālik. It is concerned with studying ḥamal as an idea in Mālik's mind, not as a separate historical phenomenon. It is concerned only with how Mālik conceived of ḥamal and not with the broader question of whether or not he was ultimately mistaken in his conception.

In this dissertation, I will present some of the arguments of fugahā' of Mālik's time who disagreed with his conception of ḥamal, who questioned its authenticity,

held that its source could not be verified, and doubted that it had been kept intact during the generations prior to Mālik. In conjunction with these arguments I will limit myself to trying to establish why Mālik regarded Camal to be authentic, by what means he sought to verify its source, and how he sought to establish that it had been kept intact; for these questions are a fundamental part of Mālik's conception of Camal.

Methodology

No scholarly study can claim legitimately to be more conclusive than the degree of soundness of its methodology and the degree of accuracy and thoroughness with which that methodology has been applied. If any of these considerations is weak, the conclusions of the study can be no stronger. As al-Qarāfī has said:

Whenever in a proof there is a premise which is negative, particular, or conjectural, the conclusion will be likewise. For a conclusion follows the status of its most lowly premise, and no regard is given at all to whatever illustrious ones also happen to be in its company.¹

In the light of this I will set forth and defend in the following pages the methodology I have chosen to

¹Al-Qarāfī, 1:136. The Arabic text is:

«ومضى كما ن في الدليل مقدمة سالبة أو جزئية أو مظنونة كانت النتيجة كذلك، لأنها تتبع أخس المقدمات، ولا يلتفت إلى ما صحبها من أشرافها.»

follow in this dissertation of analyzing Mālik's legal opinions in the light of later Mālikī legal theory. The question of how accurately I have applied this methodology is a question for the reader's judgment. In so far as thoroughness is concerned, this study is by no means exhaustive. Mālik's legal opinions are of great number and variety, and those which I have selected, although hopefully representative, are only a few by comparison.

Furthermore, if my assessment of overall Mālikī legal theory is correct,¹ it is, perhaps, the most intricate system of legal theory of the four major sunnī schools by virtue of the several points of legal theory to which it subscribes that are not common to each of the other schools. The principle of sadd adh-dharā'i^c, for example, is a clearly established concept in Mālik's legal theory and is shared with the Ḥanbalī school to the exclusion of the Ḥanafī and Shāfi'ī. The numerous textual sources of law to which Mālik subscribes--for example, mursal ḥadīth [ḥadīth without full chains of transmitters] and āthār [the reports of statements, deeds, and tacit approvals of the Companions] in addition to the Qur'ān and musnad ḥadīth [ḥadīth with full chains of transmitters]--are recognized as valid by the Ḥanafī and Ḥanbalī schools, but not the Shāfi'ī, which rejects the first two. Finally, the man-

¹See Chapter Three on Mālik's legal theory for more complete discussion and documentation, see below, pp. 121-275.

ner in which Mālik interprets these textual sources by reference to his non-textual legal source of Madīnan ʿamal is something quite distinctive to Mālik, even though it is recognized as valid under certain conditions by some Ḥanbalī legal theorists.

This intricacy of the system of Mālik's legal reasoning makes analysis of his legal opinions more complicated, especially in view of the fact that Mālik sets forth his legal reasoning only rarely. Thus, it is not an easy matter to determine in every instance how Mālik reached his conclusions, and there is considerable room for inaccuracy and error.

Mālik's Legal Opinions: the Objective Criterion

The methodological problem of how to approach the topic of this dissertation is made difficult by the fact that Mālik wrote nothing on legal theory, and there are no Mālikī works on his legal theory that go back to his time. Whatever comments Mālik did make concerning his legal reasoning are few and, even if authentic, tell us little.

First of all, it should not be assumed that Mālik did not have a legal theory or a systematic pattern of reasoning just because he did not write one down. It is possible, of course, that he wrote no such work and no early works on his legal theory have come down to us sim-

ply because he had no theory. But, on the other hand, it is conceivable that Mālik did have a legal theory but, for whatever reasons, did not write it down or teach it to anyone who wrote it down for him. It is also conceivable that he followed a consistent and predictable pattern of legal reasoning without ever having articulated it in theoretical terms.

What has come down to us are Mālik's numerous legal opinions. Any conclusions about whether or not he had a legal theory or a consistent pattern of legal reasoning must be based on analysis of this data. It is the objective criterion in reference to which hypotheses about Mālik's legal thought must be addressed. Even if Mālik had written on legal theory or even if there were early Mālikī works on legal theory available, their information would have to be examined by reference to the data of Mālik's legal opinions to see whether or not his theory had been implemented in fact. However, since objective data cannot be analyzed without hypotheses, absence of early works on Mālik's legal reasoning creates a handicap for the modern researcher, who must find adequate hypotheses for analyzing the data. Nevertheless, it is the data itself that ultimately contains the answer, similar to the verse:

Tilka āthārunā tadullu Calainā/
Fa-'nḡurū ba^cdanā 'ilā 'l-āthāri

[These, the remnants we have left behind, tell you what we were,/ And so, when we are gone, consider the remnants we have left behind.]

The Subjective Limitations of
the Mālikī Legal Theorists

Objective data does not speak for itself. Facts only have meaning when interpreted in terms of hypotheses that account for them in the most consistent manner and with the greatest degree of predictability. My method in this dissertation has been to put together hypotheses with which to analyze the objective criterion of Mālik's legal opinions on the basis of the writings of later Mālikī legal theorists. What, then, of the subjective limitations of those theorists?

Ibn Rushd, al-Qāḍī ^ʿIyāḍ, al-Qarāfī, and ash-Shāṭibī, for example, were part of the Mālikī cultural heritage, and one would expect that they had an emotional attachment to that heritage. They were by profession qāḍī's and fuqahā' and legal theorists. One would imagine that they may have had personal interests in defending the Mālikī tradition against adversaries. How truly critical can they be expected to have been?

They were prominent and influential members of their societies. If in their time their societies had been faced with unprecedented social dilemmas, for example, might they not have been motivated to give Mālik's system of legal reasoning a different interpretation, if they felt traditional interpretations were too limited?

Furthermore, the Cordova, Granada, and Morocco of

Ibn Rushd, ash-Shāṭibī, and ʿIyāḍ and the Cairo of al-Qarāfī were hardly identical to Mālik's second/eighth century Madīnah. Despite whatever sincerity and integrity these theorists might have had, can they be expected to have had an accurate understanding of Mālik's thought in view of the much different sociological backgrounds in which they had been enculturated? And what of the influence upon them of their economic class?

What degree of continuity can there be expected to have been between Mālik's thought and their theoretical speculations centuries later? What was the degree of influence upon these later legal theorists of philosophical ideas foreign to Mālik? To what extent is their work original, or to what extent does it merely reflect school doctrine evolved over the years? Finally, to what degree might their conclusions simply be erroneous?

The conclusion to be drawn from these considerations, I believe, is that no accounts by later Mālikī legal theorists of Mālik's system of legal reasoning can be regarded as valid until they have been examined against the objective criterion of Mālik's legal opinions. But, if upon examination against this objective criterion, they can be shown to account for Mālik's legal reasoning with a substantial degree of consistency, comprehensiveness, and predictability, they must be regarded as valid interpretations of Mālik's legal reasoning, as would other hypoth-

eses that could account for his legal reasoning with the same degree of consistency, comprehensiveness, and predictability. Furthermore, it is only to be expected that few, if any, hypotheses of Mālik's legal reasoning--whether they are from Mālikī legal theorists or modern researchers--would be proven to be absolutely conclusive. Absolute conclusiveness in hypotheses is rare even in physical and biological sciences, and such conclusiveness is much more rarely the case in hypotheses of a historical nature.

Fortunately, the works of Mālikī legal theorists--and I believe this applies to works of Islamic legal theory in general--lend themselves well to empirical examination. These theorists, as a rule, do not set forth their theories as types of kashf [ṣūfī intuitionism]. Rather, their works claim to explain the legal reasoning of the major fuqahā' of their schools behind the specific legal conclusions those fuqahā' have drawn, and in keeping with this these works often contain numerous examples to support their theories.

It would be naive to approach the works of later Islamic legal theorists without taking into consideration their possible subjective limitations, such as I have referred to above. Nevertheless, the hypotheses contained in their works cannot be rejected justifiably only on the grounds of such possible limitations before they have been examined empirically. To deny their arguments any

relevance outrightly on the basis of their possible subjective limitations would be argumentum ad hominem. Arguments are proven neither valid or invalid by reference to the personal backgrounds of those who hold them. All hypotheses, regardless of whose they are, stand or fall on their own merits, in terms of how consistently, comprehensively, and predictably they explain the data on hand.

Thus, the hypotheses of later Mālikī legal theorists are to be judged by the standards used in modern research to judge any hypotheses. Subjective limitations apply potentially to all scholars. The modern scholar, for example, may be poorly prepared sociologically to interpret Mālik's legal opinions accurately in the context of second/eighth century Madīnah. Modern social, economic, political, and cultural life, in fact, is more foreign to that of Mālik's time than the life of the Cordova, Granada, Morocco, and Cairo of the Mālikī legal theorists I have mentioned. The modern researcher--Muslim or non-Muslim--has biases with which to contend. For both belief and disbelief constitute metaphysical--not empirical--positions and may greatly effect one's sense of cultural identification and one's attitude toward other cultures.

Certainly, the modern researcher is no less capable of making honest errors. And, although his critical sensibility may be well-developed, the modern scholar in some cases may be handicapped by certain philosophical assump-

tions that make it difficult for him to discern judiciously the great achievements of pre-modern civilizations. For example, the modern scholar may subscribe to the evolutionary assumption of primitivism, according to which he assumes a priori that peoples at an initial [primitive] stage of their cultural development must necessarily be less capable of great intellectual accomplishments than at a later [more advanced] stage, unless they are influenced by other peoples whose cultural heritages are older and more developed.

In conclusion, I have taken many hypotheses from Mālikī legal theorists, primarily because these hypotheses seemed to me to provide valuable new insights into Mālik's legal reasoning that merited further examination. However, I regard it as methodologically sound to elaborate upon or alter these hypotheses according to my analysis of the data of Mālik's legal opinions. Similarly, I regard it as equally sound to take hypotheses from other sources--for example, those of modern researchers--which I have done in several cases. Regardless of the sources of the hypotheses, their validity stands only by reference to the objective criterion of the legal opinions of Mālik to which they pertain.

Was Mālik Aware of Any System
in His Legal Reasoning?

Even if the theories of later Mālikī legal theorists explain Mālik's legal opinions well, can we be sure that Mālik himself was conscious of any system in his thought that such theories bring to light? It seems to me that we cannot be certain that Mālik was conscious of any system in his legal reasoning in the absence of explicit statements by Mālik to that effect. Similarly, we cannot be certain that Shakespeare was conscious of the elaborate, systematic patterns of meaning, symbolism, and psychological insight that modern literary critics extrapolate from his plays.

Verification of whether or not Mālik was conscious of any system in his legal reasoning would be important to the intellectual history of Islamic legal theory, if it could be demonstrated that Mālik communicated that consciousness to others who then transmitted it to others, until it was finally written down and elaborated further. In the absence of indication that Mālik actually communicated such a consciousness to others, the fact of whether or not Mālik himself had such a consciousness is not very relevant to intellectual history, since that fact would then pertain to the subjective, uncommunicated realm of Mālik's consciousness and would not be the proper object of objective scholarship.

Nevertheless, it is very relevant to the intellectual history of Islamic law and legal theory to determine whether there is system to Mālik's legal reasoning, beyond the consideration of whether or not Mālik was conscious of that system. This is because coherent, systematic intellectual systems do, in fact, exist and, perhaps, even come into existence in advance of the terminologies and analytical elaborations that explain those intellectual systems systematically.

The Arabic language--which is an intellectual system, expressing thoughts and emotions and communicating fact by various systematic grammatical and syntactical relationships--possessed its mathematical precision and its special genius for forming words and formulating meanings centuries before Sībawaih,¹ the brilliant, young philologist, elaborated a grammar, syntax, and terminology that brought its system into clarity. Arabic poetry with its sixteen masterful patterns of rhythm had existed centuries

¹Amr ibn ʿUthmān ibn Qanbar (148-180/765-796), known as "SĪBAWAĪH" [a Persian diminutive for "fragrance of apples"] was a mawlā [non-Arab Muslim] of Persian background. He was born in Shīrāz; then moved to Baṣrah, where he became a student of the great philologist al-Khalīl ibn ʿAḥmad (100-170/718-786). Sībawaih is said to have had a speech impediment. Nevertheless, he is described as having been refined and very handsome. He died a young man, barely thirty years old. His great philological work, called "Kitāb Sībawaih" [the book of Sībawaih] is still studied widely and regarded by many Arab philologists as a work the likes of which was never compiled either before or after Sībawaih. See Zirikli, 5:252; and Kaḥḥālah, 8:10.

before Sībawaih's teacher, al-Khalīl ibn 'Aḥmad,¹ elaborated those patterns analytically.

Similarly, the theorems of geometry were worked out hundreds of years before Euclid elaborated his axioms, although Euclid's axioms are logically prior to the theorems they infer.² Aristotle (384-322 BCE), the father of classical logic, indicates that Zeno of Elea--a great dialectician of the fifth century BCE--had utilized many of the types of argumentation that Aristotle analyzed and classified. He also reports that his teacher's teacher, Socrates (470-399 BCE), had applied the principle of inductive reasoning, which Aristotle was also to analyze. But neither Zeno or Socrates is known to have done the much different thing, which Aristotle did, of elaborating a terminology, classification, and analytical theory of logic.³

¹AL-KHALĪL IBN 'AḤMAD ibn 'Amr al-'Azdī (100-170/718-786) was one of the great Arabic philologists of the school of Baṣrah, where he lived and died as a poor and little-known man. He had extensive knowledge of Arabic poetry and is regarded as the founder of ʿilm al-ʿarūḍ [the science of Arabic poetic metrics]. It is reported that al-Khalīl was walking through the streets of Baṣrah wrapped in thought of how to put together a system of numbers that would make computation easier for the people when he was accidentally trampled underfoot by mounted horsemen. He died shortly thereafter. See Ziriklī, 2:363; and Kaḥ-ḥālah, 4:112-113.

²See Morris R. Cohen and Ernest Nagel, An Introduction to Logic and Scientific Method (New York: Harcourt, Brace & Co., 1939), p. 132.

³See The Encyclopedia of Philosophy, 1972 ed., s.v. "History of Logic."

The Distinction between
Concepts and Terms

There is an important corollary to the preceding discussion that is of fundamental importance to the methodology of intellectual history. It is the fundamental distinction between concepts and the terms that stand for them.

There is no necessary connection between the choice of a term and the intellectual concept which that term is chosen to stand for. One may name a concept anything. One may choose a name for it that reflects perceptively a part or the whole of the idea which that concept embodies. On the other hand, one may select a name for a concept arbitrarily, such that there is no connection at all between what that name means literally and what the concept means for which it stands. One may name a concept "Barbara" or "X," "Y," or "Z," after the manner of symbolic logic.

Thus, convention always plays a role in the constitution of terminologies. Words become the terms for specific concepts, regardless of what those words mean literally, because people have the convention of associating those words with specific concepts. The literal meaning of the word chosen as a term may make that word especially attractive, if, for example, that literal meaning seems to capture the essence of what the concept means. Nevertheless, the literal meaning of the chosen word is

not in itself sufficient cause to determine that the people should come to select that word instead of another or that they should continue over the years to identify that word with the same concept for which it was originally chosen.

Thus, there is always a potential for arbitrariness in the constitution of terminologies. Two schools can share identical concepts and one of them call that concept by a certain name, while the other school calls it by yet another name. And, likewise, one school may call a concept by a certain name, while another school shares that concept yet calls it by no name at all. Similarly, a school may call a concept by one name in one generation and by another name in later generations, or it may alter the content of the concept to which that name was originally applied.

One conclusion to be drawn from this is that concepts and ideas exist prior to the terms that are given them, just as babies are born before they are named. And, to complete the metaphor, the literal meaning of the name given a baby will not necessarily characterize it.

A further implication of this observation which has bearing on Islamic intellectual history and the history of ideas in general is that students of intellectual history must search out and define concepts primarily and terms that stand for those concepts secondarily.

It is only the concepts that actually possess meaning. Hence, it is the concepts that possess observable characteristics, by virtue of their internal coherence [i.e. meaning], which determines that they be applied in concrete instances with a measure of consistency and predictability. The purpose of definition is to isolate and clarify those characteristics. Thus, once a concept has been properly defined it may be observed at work, so to speak, among the objective data. Thus, concepts must be the first object of study in an intellectual history.

Terms, on the other hand, by virtue of their potential arbitrariness, are too elusive to be the object of historical study until the concepts to which they are applied have first been defined and isolated. Once this has been done the history of a term may be discovered by analyzing the concepts to which it is applied. It may then be determined whether or not there is a close connection between the literal meaning of the term and the meaning of the concept to which it is applied; whether the term is applied consistently or inconsistently; whether or not there has been a change in the content of the concept to which the term is applied; and so forth. Thus, terms must be studied with reference to the concepts for which they are used, whereas it is methodologically unsound to study concepts with reference only to the terms that are used for them.

Furthermore, it is essential to study concepts first instead of terms, because concepts may exist, as I have indicated, before there is a terminology to identify them. As I have indicated in the preceding discussion, it may be the inherent nature of the evolution of intellectual systems that coherent ideas and concepts come into existence prior to the terminologies, classifications, and systematic theories that explain them.

Thus, if we choose to study, for example, the concept of sunnah [the authoritative and normative example of the Prophet] in the formative period of Islamic law, we must draw the distinction carefully between the application of that concept in concrete instances of law and the use or absence of use of the word "sunnah" and various combinations of it. It must be kept in mind, furthermore, that there are limitations to the conclusions that can be drawn on the basis of etymological studies of the word "sunnah" in the context of such a study. For the meaning of the concept of sunnah cannot be established by studies of the word's etymological origins or its use in pre-Islamic poetry. Such studies of the etymology of the word would be of value, however, once the concept itself had been studied independently, because it could then be shown what the nature of the connection between the two was.

In my study of Mālik's legal reasoning in this dissertation I am primarily concerned with the study of con-

cepts and with terminology secondarily. I am not concerned, for example, with whether or not Mālik used terms like "qiyās" [analogical reasoning], "istiḥsān," "sadd adh-dharā'i^c," "al-maṣāliḥ al-mursalāh," "ẓannī" [conjectural], "qaṭ'ī" [definitive], and so forth, which are important parts of the terminologies of later Islamic legal theorists. I am concerned, rather, with defining the concepts these terms stand for and determining whether or not those concepts can be found to have been part of Mālik's system of legal reasoning. My study of Mālik's terminology in the Muwaṭṭa' is, therefore, essentially a study of the content and manner of presentation of the precepts to which those terms are applied. By this means I attempt to determine what is conceptually common among those precepts and, hence, what the terms mean and what they say about Mālik's concept of ḥamal.

It would be mistaken to conclude that the study of the history of terminologies is an insignificant part of intellectual history. On the contrary, the study of the historical development of terminologies and other aspects of theoretical analysis is of fundamental importance to intellectual history. Terms--as symbols--can make it easier for the human mind to indentify and work with concepts, whenever terminologies describe the conceptual systems to which they are applied accurately and comprehensively. And, inversely, terminologies and other types of theoret-

ical analysis that are foreign to or, for whatever reasons, imperfectly suited for describing the systems to which they are applied can impede the articulation of the full scope of those systems. (An example of this would be the strict application of the terms and syntactical rules of Latin grammar to English.) Thus, methodologically sound studies of the history of terminologies and other means of theoretical analysis can indicate the degree of consciousness of those who fashioned and used them. And such studies can indicate also how the development or adoption of inaccurate or otherwise unsuitable terminologies and analytical methods may have altered or impeded the perception of the intellectual systems to which they were applied.

I will present later my hypothesis that Aristotelian logic was an inadequate tool for analyzing certain parts of Mālikī and Ḥanafī legal theory, because of the heavy reliance in classical logic upon the universal syllogism, which is poorly-suited for examining propositions that pertain to the realm of probable inference. Several fundamental concepts in Mālikī and Ḥanafī legal theory, as I will show, pertain to the realm of probable inference. Hence, later Islamic legal theorists who were tied to the mode of syllogistic thinking and absolute deduction were unable to analyze and evaluate them properly.¹

In summation, the linguistic ability to identify ideas, concepts, emotions, and things by name is one of

¹See below, pp. 369-379.

the key properties of human intelligence. As it is stated in the Qur'ān: "wa ʿallama Ādama 'l-'asmā'a kullahā" [and (God) taught Ādam all the names (i.e. of things, emotions, concepts, and ideas)].¹ The degree of accuracy, consistency, and comprehensiveness with which man applies these names to the objects of the perceptual world determines whether they enhance or impede the quality of his perception. Thus, the study of the history of terminologies is important. It would be difficult to imagine, for example, the immense benefits to scholars of Islamic intellectual, social, cultural, and even economic and political history that would accrue from the compilation of a comprehensive Arabic dictionary on historical principles--like the Oxford English Dictionary--that would set forth in detail the historical development of the semantic range of Arabic terms and usages.

¹Qur'ān, 2:31. There are also other interpretations of the verse. Some hold, for example, that the referents of these "names" are animate things, such as mankind--i.e. Ādam's children--or animals. They hold this because the referents are referred to in subsequent verses as "hum", which means "them" but is used in Arabic syntax for animate objects of the masculine sex or for mixed groups of male and female. It might be argued, on the other hand, however, that the referents, although necessarily including animate objects, could include inanimate objects of perception as well. Under such circumstances the pronoun hum would still be most appropriate, because the group to which it refers is a mixed group containing animate objects of both sexes as well as inanimate things. Selection of the pronoun hum under such circumstances would be analogous to selection of it instead of hunna [they, them; feminine] for groups of mixed sexes.

Whoever or whatever the referents of the "names" may be, it is clear from the context of the verse that the key to Ādam's excellence, despite his having been created

Thesis Statement

This dissertation pertains to the early history of Islamic legal thought and the emergence of Islamic legal theory. It is essentially, as I have pointed out, an intellectual history of Mālik ibn 'Anas, concerned with his conception of the non-textual legal source of Madīnan ʿamal [established legal practice], which he regarded to be very authoritative and upon which he relied extensively. Mālik is of primary importance in the formative period of Islamic law; his legal thought, which reflected the legal tradition of Madīnah in the Ḥijāz, came to constitute the basis of the Mālikī school of law, one of the largest and historically most influential sunnī schools. In several aspects, however, Mālik's method of legal thought stands in sharp contrast to the legal reasoning of his much younger contemporary, ash-Shāfiʿī, who also has exercised immense influence upon the historical course of the development of Islamic law and who attacked Mālik's method of legal reasoning in his tract, "Ikhtilāf Mālik," to which considerable attention has been given in this dissertation.

In the first part of this dissertation I have attempted to give a comprehensive overview of Mālik's legal reasoning and the primary principles of law to which he subscribed--such as the concepts referred to in later legal terminology as istiḥ-

from the elements of the earth, is his faculty of being able to know these "names". When the angels see that he has this knowledge, which in this case exceeds their own, they acknowledge Adam's excellence by bowing before him.

sān [equity], sadd adh-dharā'i^c [the rejection of legal fictions], al-maṣāliḥ al-mursalāh [the pursuit of social and individual benefits and needs for which there are no explicit legal texts], and his method of performing qiyās [analogical reasoning] on the basis of well-established precepts of law instead of explicit legal texts. I have given illustrations of Mālik's application of these types of legal reasoning, and I believe that there is sufficient evidence to warrant the conclusion that Mālik followed a coherent and predictable system of legal reasoning, although he is not known to have written anything about his method of legal thought down or to have given special instruction in it to his students. In view of this consideration that there was apparently a system to Mālik's legal thought, I have attempted to place Mālik's conception of ḥamal within the context of his overall legal reasoning. I have indicated, for example, that Mālik's concept of ḥamal may in some respects be cognate to his conception of the ultimate purposes in society of the principles of istiḥsān, sadd adh-dharā'i^c, and al-maṣāliḥ al-mursalāh. For an important part of the Mālikī conception of Madīnan ḥamal was that it constituted a desired norm of social behavior in an Islamic society. Similarly, the function of the principles of istiḥsān, sadd adh-dharā'i^c, and al-maṣāliḥ al-mursalāh was to preserve such a normative balance and transmit it to future times and changing circumstances.

Most of the research I have done regarding Mālik's con-

cept of ḥamal has been based on the Muwaṭṭa'. I have also made much use of the Mudawwanah but to a lesser extent. The Muwaṭṭa' is very appropriate for study of Mālik's concept of ḥamal, since it is essentially an ḥamal source book, in which Mālik sets forth and elaborates the fundamental precepts of the Madīnan school of law as embodied in their ḥamal. The Mudawwanah also contains a considerable amount of information on Madīnan ḥamal, but it is to a much more considerable extent a record of Mālik's personal ijtihād done albeit with reference to the established ḥamal of Madīnah but pertaining to matters that were without clear precedent and, hence, for which there was no clear solution within Madīnan ḥamal. More extensive analysis of the Mudawwanah, therefore, would be required in a study of Mālik's personal ijtihād and his application of the principles of istiḥsān, sadd adh-dharā'i^c, al-maṣāliḥ al-mursalāh, and so forth. Since the Muwaṭṭa' is primarily concerned with established ḥamal, the role of Mālik's personal ijtihād in it is less than in the Mudawwanah.

In my study of the Muwaṭṭa', I have focused on analysis of the terminology which Mālik uses in it in his treatment of various ḥamal precepts. Mālik's terminology deserves special attention, because it constitutes one of the most explicit and extensive statements we have from Mālik regarding his conception of Madīnan ḥamal. Since many of the terms in Mālik's terminology are long and cumbersome, I have found it practical to devise a system of symbols for analyzing them. These symbols make the terms much easier to identify and work with.

Although Mālik's terms are a conspicuous part of the Muwaṭṭa', it must also be borne in mind that he cites no terms at all for the majority of the precepts set forth in the work. It appears to me that Mālik cites his terms generally in connection with precepts about which there had been significant differences of opinion among the fugahā' of his and the preceding generations. Differences of opinion regarding these amal precepts for which terms are used come most frequently from the Kūfans--such as 'Abū Ḥanīfah and Sufyān ath-Thawrī.¹ In a number of instances, however, they do not come from the Kūfans at all but, rather, from various prominent Syrian, Egyptian, Yamanī, and other fugahā'. Apparently it was the purpose of Mālik's terminology to clarify the status of Madīnan amal with regard to such controversial precepts.

I have reached the conclusion from my analysis of Mālik's terminology that the terms which he uses are not interchangeable and do not all stand for the same thing, as some modern scholars have suggested. At the same time, I do not believe that Mālik's terminology in the Muwaṭṭa' constituted a systematic terminology in the sense that each usage in it was assigned a limited terminological application which did not overlap with other terms in the system and to which that usage was consistently restricted. On the contrary, Mālik's terms appear to vacillate between their customary semantic

¹For data on ath-Thawrī, see below, p. 91, n. 1.

ranges in the Arabic idiom of Mālik's time and between assigned meanings which they tended to carry within the framework of his terminology. Hence, there is some overlapping between Mālik's terms. Nevertheless, the distinctive properties of his terms can be discerned by breaking them down into sets of what I have called "inclusive" and "exclusive" terms. Each of the terms includes properties common to the others; these are the areas in which they overlap and represent the "inclusive" aspect of Mālik's terminology. On the other hand, several of the terms exclude properties which are within the semantic scope of other terms which Mālik uses; this is what I refer to as the "exclusive" aspect of Mālik's terminology, and it is the "exclusive" aspects to which particular attention must be paid in order to determine the distinctive meanings of Mālik's terminology.

Apparently any term within Mālik's terminology can refer, for example, to ḥamā precepts which, according to Mālik's conception, would have originated in the sunnah of the Prophet. The sunnah terms of the Muwāḍḍa', however--that is, those terms which include the word "sunnah"--appear from my analysis to be restricted to precepts which originated in the Prophetic sunnah or were pre-Islamic Madīnan customs which had received the Prophet's approval. Thus, Mālik's sunnah terms "exclude" those types of ḥamā precepts in Madīnah which resulted from post-Prophetic ijtihād, for which other terms are used. Furthermore, Mālik's sunnah terms--interestingly enough--

have another distinctive property of being used in connection with amal precepts which are contrary to analogy with related precepts of Islamic law. Indeed, the disagreements which arose among the early fukahā' regarding these sunnah precepts had resulted from the fact that those who disagreed with them had not regarded the precepts in question to be anomalous and had extended the analogies of related precepts of law to include them. Although Mālik himself makes frequent use of analogical reasoning--as I have shown--he seems to be saying by citation of these sunnah terms in the Muwatta' that the amal precepts to which they pertain are "off limits" to analogy and that, despite their anomalous nature, they are legitimate parts of Islamic law by virtue of the fact that they had been instituted under the aegis of Prophetic legislative authority. Thus, the anomalous nature of the sunnah terms represents another of their "exclusive" properties; other terms, such as AMN [al-'amr al-mujtama' calaihi 'indana'; that precept upon which we have reached consensus], may include anomalous precepts but go beyond the exclusive aspect of the sunnah terms to include a large number of strictly analogous precepts.

In addition to including both anomalous and analogous precepts, the term AMN, which is the second most common term in the Muwatta', is also distinctive from the sunnah terms in that it includes precepts which resulted from post-Prophetic Madīnan ijtihād. AMN, therefore, can include the full semantic scope of the sunnah terms, while they in turn are excluded

from an extensive part of the much broader semantic range of AMN. I have shown isolated instances in the Muwaṭṭa' in which an emphatic sunnah term and the term AMN are used regarding the same precept. The sunnah terms in such instances, however, refer only to a limited part of such precepts, while the AMN refers to the precept in its entirety--i.e., both those aspects which originated in the sunnah and those which had been elaborated later through the ijtihād of Madīnan fuqahā'.

One of the most significant characteristics of Mālik's terminology, however, which I have been able to isolate, is the distinction it draws between those precepts of Madīnan ʿamal which were supported by the local consensus of the Madīnan fuqahā' and those which were not. It is apparent, therefore, that Madīnan ʿamal, generally speaking, and Madīnan local consensus were not the same thing, although they were regarded as such in the traditional and modern literature to which I have had access. According to my analysis, every instance of Madīnan local consensus was also part of Madīnan ʿamal, but not every part of Madīnan ʿamal was supported by Madīnan local consensus. In matters of law which came under the jurisdiction of the Madīnan judiciary or other types of executive authority in Madīnah, it was that executive authority itself which insured that such precepts would be incorporated into the general ʿamal of the Madīnans, despite the fact that some of the Madīnan fuqahā' might have subscribed to them, while other Madīnan fuqahā' had not. Nevertheless, there are also

numerous precepts of Madīnan Ḥamal which were not supported by local consensus and did not come under the scope of any type of Madīnan executive authority. When there were differences of opinion among the Madīnan fūqahā' regarding such precepts, they probably would have become part of the general and widespread Ḥamal of the people by virtue of such factors as the greater social prestige among the Madīnans of those Madīnan fūqahā' who subscribed to them and taught and practiced them in their daily lives. Nevertheless, I have found instances of Madīnan Ḥamal precepts regarding which there was apparently some variety even within the Ḥamal of Madīnah. I have referred to such types of Ḥamal as "mixed" Ḥamal, because of the variations regarding them which existed even in Madīnah.

The term AN [al-'amr Ḥindanā; that precept which we follow; regard to be correct, etc.], which is the most common term in the Muwatṭa', is one of the terms which Mālik uses when referring to Ḥamal precepts which were not supported by Madīnan local consensus but which were, nevertheless, part of the general Ḥamal of the people. Terms like AMN, S-XN [as-sunnah al-latī lā 'khtilāf fīhā Ḥindanā; that sunnah regarding which there are no differences of opinion among us], A-XN [al-'amr al-ladhī lā 'khtilāf fīhi Ḥindanā; that precept regarding which there are no differences of opinion among us], and AMN-X [al-'amr al-mujtamaḥ Ḥalāhi Ḥindanā wa 'l-ladhī lā 'khtilāf fīhi Ḥindanā; that precept regarding which we have reached consensus and regarding which there are no differences

of opinion among us], on the other hand, are terms which Mālik uses to indicate Madīnan local consensus. It appears, however, that Mālik may have had two types of consensus in mind. One of the distinctive properties of the wording of the terms S-XN, A-XN, and AMN-X, for example, is that they explicitly deny that there had been disagreements among the Madīnan constituents of consensus regarding the precepts to which they refer. The term AMN, on the other hand, while referring to Madīnan local consensus [ijtimā^c], makes no specific indication that there had been total agreement--i.e., complete absence of disagreement--regarding the precepts to which it refers. As I have shown, there is some evidence to support the hypothesis that AMN refers to a preponderant consensus of the Madīnan fukahā' but not necessarily to a total consensus of them, which is indicated by terms like A-XN, S-XN, and AMN-X.

Although Mālik's terminology in the Muwaṭṭa' did not receive much attention in the traditional or modern literature on Islamic law to which I had access, traditional Islamic legal theorists did attempt to classify various types of Madīnan ḥamal, which they broke down into two main categories. The first consisted of those types of ḥamal which they conceived of as having originated with the Prophet or having won his approval. This type of ḥamal was referred to as "ḥamal naqlī" [an ḥamal which transmitted, as it were, precepts of law from the Prophetic period]. The second category consisted of those types of ḥamal which resulted from the ijtihād of Madī-

nan fuqahā' in the post-Prophetic period. Some theorists divided this category of ḥamāl into two subdivisions: the first consisting of those types of ḥamāl which had resulted from the ijtihād of the Companions during the Madīnan caliphates, while the second consisted of types of ḥamāl that had resulted from ijtihād after the period of the Madīnan caliphate. The first of these subdivisions was referred to as "ḥamāl qadīm" [ancient ḥamāl]; the second was referred to as "ḥamāl muta'akhhir" [later ḥamāl]. These theorists also claim that Mālik regarded ḥamāl naqlī to be conclusively authoritative, while he held ḥamāl which had resulted from ijtihād to be much less authoritative, especially that subdivision which had resulted from the ijtihād of Madīnan fuqahā' in the period after the Madīnan caliphate.

The concept of ḥamāl naqlī is clear in the Muwatta'. Nevertheless, Mālik's terminology does not correspond exactly to these categories which later theorists established, and Mālik reflects concerns which these theorists have not taken into account--such as, for example, the concern for indicating whether or not a precept was supported by Madīnan local consensus. Furthermore, there are numerous instances in the Muwatta' of ḥamāl precepts which would have been of the category of what later theorists referred to as ḥamāl naqlī yet regarding which there had been important differences of opinion among the prominent Madīnan fuqahā'. The question naturally arises of how Mālik could have regarded such ḥamāl precepts

to be authoritative and conclusive regarding which even prominent Madīnan fukahā' had disagreed.

I have suggested that, in determining the relative authoritativeness of ʿamal precepts regarding which there had been differences of opinion within Madīnah, Mālik was not solely concerned with considerations of the ultimate authenticity of such precepts but also with the practical demand of any workable legal system to take a definite position regarding conjectural matters of law so that an established and well-known system of laws can be set forth for judges to execute and the people to live with. Therefore, in evaluating the authoritativeness of such precepts, Mālik may also have taken into consideration the principle of maṣlahah [concern for the needs and benefits of society], which plays such an important role in Mālik's legal thinking. For it is one of the most fundamental social needs that there be a sufficient degree of fixity in a society's laws, and it would be very detrimental to society if conjectural matters of law, for instance, were to remain in a constant state of flux.

It might also be pointed out with regard to the classifications of ʿamal in later legal theory, that Mālik often gives no clear indication in his terminology of the origin of Madīnan ʿamal precepts, while this concern for origin reflects the chief concern of later classifications. Often it is very difficult to distinguish on the basis of the information which Mālik gives in the Muwattaʿa' between those precepts

which resulted from ijtihād and those which were connected with the Prophetic sunnah. It is evident, furthermore, that Mālik was not concerned in his terminology with drawing a distinction between the ʿamal qadīm and ʿamal muta'akhkhir of later theorists.

Mālik's conception of the continuity of Madīnan ʿamal is connected with his view of the excellence of the Madīnan community and, especially, their prominent fukahā' from the time of the Prophet until his generation. Mālik emphasizes the fact that in the time of the Prophet the Madīnans were the direct recipients of his message and his specific injunctions; they witnessed the circumstances and conditions within which the message was first delivered. Hence, he believes that the knowledge of the Madīnans as a community was qualitatively superior to that of other communities, and he holds that the Madīnans had preserved the heritage of their forefathers well. Mālik often cites legal texts--ḥadīth and āthār--to indicate the continuity over the generations of various ʿamal precepts. Occasionally, he uses analogical and other types of legal reasoning--such as reasoning on the basis of maṣlahah--to defend the validity of Madīnan precepts. Nevertheless, the prominent Madīnan fukahā' constitute the chief reference by which Mālik establishes the content of ʿamal and vouches for its continuity over the generations. Mālik conceived of them not only as the "carriers" of ʿamal from one generation to another but also as the guardians of ʿamal

within their own generations. It appears, furthermore, that Mālik regarded it to be a moral duty of the ʿulamā' in general to see to the establishment and preservation of normative and properly balanced types of Islamic ʿamal in the communities in which they lived.

One of the primary uses which Mālik makes of the non-textual source of Madīnan ʿamal is to use it as the semantic context against which he interprets legal texts. Indeed, the Mālikī legal theorist ash-Shāḥibī regarded this to be one of the most important legal uses of ʿamal. Thus, ʿamal constitutes the frame of reference in terms of which Mālik interprets, sets aside, limits, or expands upon the textual sources of law to which he subscribes. Such use of ʿamal as the semantic context for textual sources of law constitutes the greatest point of difference between Mālik and those who, like ash-Shāfiʿī, rejected non-textual sources of Islamic law and restricted themselves to the semantic implications of the literal text. From Mālik's point of view, however, the sources of Islamic law, in order to be correctly interpreted, need to be studied in combination with the non-textual source of ʿamal. Indeed, for Mālik the non-textual source takes priority, since Mālik sets aside those legal implications of texts which are contrary to ʿamal.

It is important to bear in mind in this regard, as I point out, however, that Mālik and his student Ibn al-Qāsim do not generally question the authenticity of the legal texts

which they set aside because of their being contrary to ᶜamal. Ibn al-Qāsim emphasizes this point in the Mudawwanah, and, as I also point out, the ḥadīth upon which ash-Shāfi^ᶜī bases his contentions against the Mālikīs in "Ikhtilāf Mālik" are ḥadīth which Mālik himself has transmitted in the Muwaṭṭa' but which Mālik had interpreted much differently than ash-Shāfi^ᶜī by virtue of his having used ᶜamal as the semantic context of those ḥadīth.

By reference to Madīnah ᶜamal, for example, Mālik determines whether or not a text has been abrogated, his premise being that the ᶜamal of Madīnah reflects the latest practice which the Prophet had instructed his followers to adhere to. Hence, matters which had been abrogated during the course of the Prophet's life would have been taken out of practice and would not have been part of the ᶜamal of Madīnah. This use of ᶜamal as a reference by which to establish the fact of abrogation is cognate to the use of the āthār of the Companions in the Ḥanafī and Ḥanbalī schools for the same purpose--such āthār being essentially the textual record of the ᶜamal of the Companions in the post-Prophetic period.

When a legal text is contrary to ᶜamal yet there is no question of its having been abrogated, its legal implications are still regarded to be invalid according to Mālik and some Mālikī legal theorists. In such cases, ᶜamal is used to distinguish between texts which report normative actions or statements and those which report non-normative, unusual, or other-

wise exceptional matters, which should not be made normative by making their legal implications into ḥamāl. Similarly, ḥamāl is used within the Mālikī school to resolve other textual ambiguities, such as those which arise regarding the social capacity in which the Prophet made statements attributed to him: for example, his capacity as lawgiver, as a judge in a particular case, as the political head of state setting down policy for the immediate needs and objectives of the community, and so forth. Finally, as I point out, Mālik's reliance upon ḥamāl to set aside ḥadīth with contrary legal implications is cognate to 'Abū Ḥanīfah's rejection of isolated legal ḥadīth with unusual implications that pertain to matters of the nature of ḥumūm al-balwā [general necessity]. The use of ḥamāl to distinguish between the normative and the exceptional also appears to be parallel to the historical concern among the early fuqahā' to follow what was well-known and put aside that which was irregular [shādhah]. In this regard, Mālik's conception of ḥamāl would appear to be cognate to the early Ḥanafī concept of as-sunnah al-maḥrūfah [the well-known sunnah].

I have also noted in my study of ḥamāl that there were no legal texts either for or against some of the most fundamental precepts of Madīnan ḥamāl regarding which there are clear indications that they were of the category of ḥamāl naqlī, i.e., ḥamāl which went back to the period of the Prophet. Similarly, in many instances of ḥamāl naqlī for which Mālik cites texts, those texts do not convey but a limited scope of

the entire precept to which they pertain. In such cases, Mālik elaborates the full scope of the ḥamā precept by reference to the non-textual source of Madīnan ḥamā. The absence of supporting texts for such types of ḥamā lent support to the arguments of those like 'Abū Yūsuf, ash-Shaibānī, and ash-Shāfi'ī--who doubted the authenticity and continuity of the Madīnan tradition and insisted that the Madīnans produce supporting legal texts to verify the validity of the ḥamā precepts to which they subscribed. Nevertheless, the absence of legal texts either for or against such types of ḥamā also raises an important historical question about the possible effect of ḥamā on the transmission of ḥadīth. I have suggested the hypothesis that early muḥaddith's may, consciously or unconsciously, have relied upon ḥamā as a criterion by which they determined which information most required to be transmitted by means of ḥadīth and which did not. Many of those precepts which were fundamental and well-known parts of public ḥamā might have seemed sufficiently well-known and followed in practice that it seemed redundant and unnecessary to transmit ḥadīth and āthār about them. On the other hand, it would have been more important to transmit texts about those precepts which were less common and not so well-known.

Furthermore, ḥamā may often have effected considerably the wording of those early Islamic legal texts which were transmitted. For often the semantics of such texts imply general familiarity on the part of the listener with the ḥamā

about which they are speaking. Texts pertaining to well-known types of ḥamal such as the performance of prayer or of ritual ablutions, for example, sometimes appear cryptic and ambiguous in meaning to one who is not familiar with the general practice of how the Islamic rituals of prayer and ablutions are performed. On the other hand, such texts are quite clear to those who are acquainted with such practices. Thus, consciously or unconsciously, early Islamic ḥamal may have constituted the semantic context of the wording of early legal texts.

PART ONE

BACKGROUND:

MĀLIK AND INTRODUCTORY MĀLIKĪ

LEGAL THEORY

CHAPTER II

MĀLIK'S LIFE AND WORK

Mālik's Life

Mālik ibn 'Anas was born in Madīnah between 90/708 and 97/715 and died there in 179/795.¹ Thus, Mālik lived from between eighty to eighty-seven years. His life was almost evenly divided between the 'Umayyad and 'Abbāsīd periods. Mālik's entire upbringing and education were in Madīnah, and he did not follow the examples of many students of that period who travelled widely in search of knowledge. It is reported that Mālik never left Madīnah, in fact, except when performing the pilgrimage to Makkah. He learned from Madīnan scholars, lived according to the traditions of Madīnah, taught and elaborated the Madīnan school of law, and was regarded by his followers as the

¹Sezgin, 1:457; and Muḥammad 'Abū Zahrah, Mālik: Ḥayātuhū wa 'Aṣruhū, Arā'uhū wa Fiqhuhū (Cairo: Al-Maktabah al-Anglō al-Miṣriyah, [1963]), pp. 24, 48.

In addition to this beneficial work on Mālik and his legal thought, 'Abū Zahrah has written useful biographies of 'Abū Ḥanīfah, ash-Shāfi'ī, 'Aḥmad ibn Ḥanbal, and other prominent Muslim fuqahā'. He relies upon primary sources and includes chapters on the most important fuqahā' in the respective school and their works. He then discusses the legal theory of the school, which is one of the greater values 'Abū Zahrah's biographies offer. He takes the material for these chapters on legal theory from the most prominent legal theorists of the school but supports them by examples from original sources.

authoritative embodiment of that tradition. It seems symbolically fitting that Mālik is reported to have lived in the house of the Companion °Abd-Allāh ibn Mas°ūd¹ and to have occupied the place in the mosque of Madīnah for teaching and giving legal opinions where °Umar ibn al-Khaṭṭāb² had sat with his counsel of prominent Companions during the days of his caliphate.³

¹Abū °Abd-ar-Raḥmān °Abd-Allāh ibn Mas°ūd (d. 32/653) was one of the most prominent Companions and among the first Makkans to embrace Islam. He was very close to the Prophet and is said to have been permitted to visit the Prophet in his house whenever he pleased. After the Prophet's death, Ibn Mas°ūd went to Kūfah, where he was put in charge of the public treasury and was a central figure in the establishment of what became the Kūfan school of law. During the caliphate of °Uthmān, Ibn Mas°ūd returned to Madīnah, where he died at about sixty years of age. (It is reported that Ibn Mas°ūd was an exceedingly short man, barely taller when standing up than a normal man sitting down. He also had a great love for wearing scented oils, and it is said that his neighbors could tell when he had left his house by the fragrance.)

°Abd-Allāh ibn Mas°ūd is known for his extensive knowledge of Islam. Although regarded as a central figure in the origin of the Kūfan school of law, he is also an authoritative figure in the Madīnan school, although his role is much less central. See Ziriklī, 4:280.

²Abū Ḥafṣ °Umar ibn al-Khaṭṭāb (40 before hijrah-23/584-644) was one of the most prominent Companions and became the second caliph after the Prophet's death. He has become legendary among sunni Muslims for his wisdom, justice, and great ability as a leader. He instituted the Islamic calendar; founded the cities of Baṣrah and Kūfah; was the first to establish a Muslim public treasury; and he instituted a system of dīwān's [registries] according to Persian models.

He had been one of the notables of Quraish during the pre-Islamic period and had been one of their ambassadors. He is described as having been a strong and very tall man, thickly bearded, and partially bald. He had great knowledge of Islam and is regarded as a chief authority in the Madīnan school. See Ziriklī, 5:203-204.

³See 'Abū Zahrah, pp. 135, 17, 47; °Iyāq, 1:115.

Mālik's biographical sources do not give an elaborate picture of his childhood; they agree, however, that he began to study ḥadīth and other fields of Islamic learning pertinent to Islamic law at a very early age.¹ He progressed rapidly, selected his teachers carefully, and was regarded highly by his teachers. While still a young man, Mālik began to have his own circle of students and to give fatwā's [legal opinions]. One report has it that he began giving fatwā's at the age of seventeen.² Reports like this may well be exaggerated; it is clear, nevertheless, that most of Mālik's life was devoted to teaching the Madīnan school of law and giving fatwā's according to it. Since Mālik continued to teach and give fatwā's through his life, it is possible that he did it over a period of from sixty to seventy years.³

Mālik was of Yamanī Arab background on his father's side. His father's clan, Dhū 'Aṣḥaḥ, are said to have been kings of the Yaman at one time. Mālik was of mawālī [non-

¹See 'Abū Zahrah, pp. 16-17.

²^cIyāḍ and 'Ibrāhīm IBN FARḤUN, Ad-Dībāj al-Mudhahhab (full citations omitted) cited by 'Abū Zahrah, p. 42. 'Abū Zahrah doubts the accuracy of this report, on the basis that it is highly improbable--given the cultural attitudes of Madīnah--that Mālik could have had an independent circle until he had attained manhood.

^cIyāḍ cites several other reports that indicate that Mālik began to teach while a young man. One report has it that by the time Mālik was in his mid-twenties the people of Madīnah were generally following Mālik's opinions. Reports indicate that Mālik did not teach independently until he acquired recognition from Madīnan 'ulamā'; see ^cIyāḍ, 1:138.

³Cf. 'Abū Zahrah, p. 51.

Arab] background on his mother's side.¹

Mālik had strong sympathies for the mawālī and insisted that they be given equal rights in all legal matters with Arabs. Ibn al-Qāsim² reports that Mālik objected to the opinions of those who held that the mawālī Muslims should not be regarded as equal in marriage ['akfā'] to Arab women. He regarded that opinion as a serious violation in the strongest terms ['a^czama dhālika 'i^czāman sha-dīdan] and supported his position by citing the verse:

O mankind, We [i.e. God] have created you from a male and a female and have made you into nations and tribes that you come to know each other: the most noble of you before God is that of you who is most righteous. Verily, God is all-knowing and cognizant of each thing.³

¹Iyāq, 1:102-105.

²Abd-ar-Rahmān IBN AL-QĀSIM al-^cUtaqī (128 or 132-191/745 or 749-806) was Mālik's most important student and the primary source for the Mudawwanah. He was an Egyptian like his contemporary Ibn Wahb (125-197/742-812), another major student of Mālik. Ibn al-Qāsim did not have the extensive knowledge of ḥadīth, however, that Ibn Wahb had. Nevertheless, Ibn al-Qāsim was a highly regarded faqīh in his own right. He studied with Mālik more than twenty years until Mālik's death. He made it a special point to write down and memorize Mālik's legal opinions, and it is said that he possessed something like 300 volumes [jald] of these legal opinions [masā'il]. Thus, Mālikī's regard him as the most important and reliable transmitter of Mālik's legal opinions. He was also an important transmitter of the Muwaṭṭa' and is said to have been the first to bring it to Egypt. See Sezgin, 1:465 and 'Aḥmad ibn ^cALĪ IBN ḤAJAR al-^cAsqalānī, Kitāb Tahdhīb at-Tahdhīb, 12 vols. (Beirut: Dār Ṣādir, 1968), 6:252-253.

³Qur'ān, 49:13. Citation from Saḥnūn ibn Sa^cīd, Al-Mudawwanah al-Kubrā, 4 vols. (Cairo: Al-Maṭba^cah al-Khairīyah, 1324/ [1909]), 2:144 (29). This edition referred to henceforth as Mudawwanah.

Ibn al-Qāsim interprets Mālik's position on equality in marriage as implying that any Muslim of good religious character has the right to seek the hand of a Muslim woman [ṭhayyib] who is above him by virtue of noble descent [ḥasab] or social rank [sharaf]. If she is content with marrying him, the marriage shall be carried through even though her father or guardian [walī] refuse to sanction it. In that case, the matter of her marriage will be brought before the political authority [as-sulṭān], who shall see to it that her marriage is carried through despite the objections of her father or guardian.¹

After mentioning that all people [an-nās kulluhum] are equal--Arab and mawālī--Ibn al-Qāsim states that Mālik supported this by the statement of °Umar ibn al-Khaṭṭāb that, if he should live longer, he would see to it that the most lowly of people be given the status of the highest and most well-to-do [la-'in baqītu 'ilā qābil la-'ulḥiqanna 'asfal an-nās bi-'a^clāhum]. It was clear, Ibn al-Qāsim continues, that Mālik had an especially strong liking for another statement attributed to °Umar ibn al-Khaṭṭāb:

There is not a single Muslim but that he has a right to [part] of the wealth [of the public treasury] ['illā wa lahū fī hādhā 'l-māl ḥaqq], regardless of whether it be given him or denied him, even if he be a shepherd or shepherdess in °Adan.²

¹Mudawwanah, 2:144 (29). ²Ibid., 1:260 (12).

In so far as Mālik's appearance is concerned, his students--and among them ash-Shāfi^ci--describe him as having been very striking. (His appearance may have contributed to the awe that sometimes amounted to fear which many of those who saw him had for him.¹) He is described as having been tall and broad-chested. He was bald, had a wide forehead and a large, full beard and mustache--which, in imitating the example of ^cUmar ibn al-Khaṭṭāb, he never shaved off. Contrary to a common custom at that time, Mālik never dyed his beard even after it grew white. It is said that he had a well-shaped nose ['ashamm] and beautiful eyes. 'Abū Ḥanīfah would refer to him as "al-'azraq al-'ashqar" [the blue-eyed, blond-haired one]. It is said that Mālik's complexion was white.²

Mālik's habit was to wear the finest clothes; often he wore garments of dazzling white. He kept his house well-furnished for the comfort of his guests. Mālik used the most excellent quality of scented oils and musk. The ring on his finger when he died was an attractive silver ring with a black stone. Inscribed in it in two lines in a good Arabic script were the words: "ḥasbunā 'Llāhu wa ni^cma 'l-wakīl" [God is sufficient for us, and what an excellent One is He upon Whom to place one's trust].³ Mālik disliked

¹See below, pp. 86-90.

²*Iyāq*, 1:112-114. ³*Qur'ān*, 3:173.

very much for those to wear shabby garments who could afford to dress nicely. He felt it especially important that people of learning dress well, since that brought greater respect to what they taught. He used to say:

I do not like it that God should bestow His bounty on anyone and that the effect of that bounty not be seen upon him [i.e. in his manner of appearance], especially the people of knowledge.¹

^{1c}Iyāḍ, 1:112-114. It is likely, I believe, that Mālik's emphasis on fine appearance and attire for those who can afford it is directed against the spirituality of those extreme ascetics [zuhhād and nussāk] of his generation, many of whom frequented or lived in Madīnah, who made it a point of wearing patched wool garments [muragga^cāt] and who cared neither for their attire or appearance. 'Ibrāhīm ibn 'Adham of Khurāsān (d. ca. 174/790) was a prime representative of this type of spirituality. He belonged to Mālik's generation, and it is said that he came to Madīnah. Report has it that 'Ibrāhīm took pride in the number of lice in his coat. See Annemarie Schimmel, The Mystical Dimensions of Islam (Chapel Hill: U. of North Carolina Press, 1975), pp. 36-37.

It should also be noted, however, that there was a trend among early ṣūfī's toward estheticism and luxury as well. 'Abū Ḥafṣ al-Ḥaddād of Baghdād (d. 260/873), for example, represented this trend and emphasized the wearing of fine garments as well as the leading of a noble life. Al-Junaid (215-298/830-910)--possibly through the influence of al-Ḥaddād--dressed and lived well, and followed a middle course between the extremes of luxury and asceticism, which were prevalent among the ṣūfī's of his time. See Ali Hassan Abdel-Kader, The Life, Personality, and Writings of al-Junayd: A Study of a Third/Ninth Century Mystic with an Edition and Translation of His Writings, E.J.W. Gibb Memorial, New Series, no. 22 (London: Luzac & Co., 1962), pp. 30-31.

Al-Ḥasan al-Baṣrī (21-110/642-728)--an exemplar of Islamic piety in his day--apparently frowned upon the wearing of patched woolen, monk-like garments by ascetics and regarded it as a sign of hypocrisy. Similarly, al-Ḥārith al-Muḥāsibī (170-243/786-857)--the great ṣūfī of Baghdād--wore fine clothing himself and, like al-Ḥasan, seems to have regarded the wearing of the patched, woolen muragga^cāt as indicative of a subtle type of ostentation and pride. See Josef van Ess, Die Gedankenwelt des Ḥārith al-Muḥāsibī

Mālik's Teachers

Mālik's almost exclusive reliance upon Madīnan teachers is reflected by the fact that the 'isnād's of the Muwaṭṭa' come from Madīnan scholars, with the exception of twenty-three ḥadīth from six non-Madīnans. Mālik transmits eight ḥadīth from the highly regarded Makkan Successor 'Abū 'z-Zubair (d. 126 or 128/743 or 745).¹ He transmits another eight ḥadīth from the famous Baṣran student of al-Ḥasan al-Baṣrī,² Ḥumaid aṭ-Ṭawīl (68-142 or 143/687-759 or 760),

anhand von Übersetzungen aus seinem Schriften dargestellt und erläutert (Bonn: Selbstverlag des Orientalischen Seminars der Universität Bonn, 1961), p. 44.

¹'ABŪ 'Z-ZUBAIR Muḥammad ibn Muslim ibn Tadrus (d. 126 or 128/743 or 745) was a very significant Makkan Successor. He kept books of his ḥadīth and transmitted ḥadīth from numerous important Companions. Al-Laith ibn Sa'd (94-175/713-791) was also one of his students. Sezgin, 1:86-87; and Yūsuf IBN 'ABD-AL-BARR, Tajrīd at-Tamhīd limā fī 'l-Muwaṭṭa' min al-Ma'cānī wa 'l-'Asanīd: 'aw at-Taqaṣṣī li-Ḥadīth al-Muwaṭṭa' wa Shuyūkh al-'Imam Mālik (Cairo: Maktabat al-Qudsi, 1350/[1931]), pp. 155-157.

²AL-ḤASAN ibn Yasār AL-BAṢRĪ (21-110/642-728) was one of the most prominent of the Successors. The son of a Persian slave, al-Ḥasan was born and raised in Madīnah. He knew a great number of the Companions and later transmitted ḥadīth from them. He moved to Baṣrah, where he became widely known for his piety, knowledge, wisdom, and eloquence. Al-Ḥasan is very important in the formative period of Islamic kalām [theology] and mysticism. The two founders of Mu'ctazilah, Wāsil ibn 'Aṭā' (d. 131/748) and 'Amr ibn 'Ubaid (d. 144/761), had been among his circle of students but broke off because of theological differences. Madelung has shown that there is great similarity between the teachings of al-Ḥasan and the five basic doctrines of the Mu'ctazilah. Al-Ḥasan also had the courage to speak out against the succession to power of Mu'cāwiyah's son, Yazīd. See Sezgin, 1:591-592; and Wilferd Madelung, Der Imām al-Qāsim ibn 'Ibrāhīm und die Glaubenslehre der Zaiditen,

who was one of the most highly regarded Successors in Baṣrah.¹ Mālik transmits two ḥadīth from another Baṣran, 'Ayyūb as-Sakhtiyānī, who was among the most highly regarded fugahā' of that period.² He transmits three from the Khurāsānian, 'Aṭā' ibn 'Abd-Allāh (d. 163/780).³ Finally, Mālik transmits one ḥadīth from the Syrian 'Ibrāhīm ibn 'Abī 'Ublah (d. 151 or 152/768 or 769)⁴ and one ḥadīth from 'Abd-al-Karīm (d. 127/744)⁵ of Northwestern Mesopotamia.⁶

Studien zur Sprache, Geschichte, und Kultur des Islamischen Orients, Neue Folge, Band 1 (Berlin: Walter de Gruyter, 1965), pp. 7-18.

¹ḤUMAID AṬ-ṬAWĪL ibn 'Abī Ḥumaid al-Khuzā'ī was a Baṣran mawlā. In addition to al-Ḥasan al-Baṣrī, Ḥumaid is reported to have studied with numerous other older Successors. It is reported that Ḥumaid wrote down all of al-Ḥasan's books. Sezgin, 1:89; Ibn 'Abd-al-Barr, pp. 26-28.

²'Ayyūb ibn 'Abī Tamīmah Kaisān AS-SAKHTIYĀNĪ (66-131/685-748) was an ascetic and much devoted to worship [zāhid, nāsik]. He had extensive knowledge of ḥadīth. He died in Baṣrah of the plague; Ziriklī, 1:382; Ibn 'Abd-al-Barr, p. 24.

³'AṬĀ' ibn 'Abd-Allāh [or] Maisarah AL-KHURĀSĀNĪ was a mawlā probably of al-Muhallab ibn 'Abī Ṣufrah or the tribe of Hudhail. He came from Marv and was highly regarded as a muhaddith and Qur'ānic commentator. He lived mostly in Damascus; Sezgin, 1:33; Ibn 'Abd-al-Barr, pp. 114-115; and Ibn Ḥajar, 7:212-215.

⁴Ibn 'Abd-al-Barr, pp. 12-13.

⁵'Abū Sa'īd 'ABD-AL-KARĪM ibn Mālik AL-JAZĪRĪ was a mawlā probably of Marwān ibn al-Ḥakam. He lived and died in Ḥarrān and was highly regarded. He studied under Ibn 'Abī Lailā (74-148/693-765); Ibn 'Abd-al-Barr, p. 107.

⁶Cf. 'Abū Zahrah, p. 51.

The fact that Mālik transmitted these twenty-three ḥadīth from non-Madīnan scholars--albeit prominent non-Madīnans--is worthy of note. It indicates that Mālik did not limit himself exclusively to Madīnans and, thus, must have regarded qualified non-Madīnan teachers as acceptable. Nevertheless, twenty-three ḥadīth is a very small proportion of the entire number of ḥadīth Mālik transmits in the Muwaṭṭa', the remainder of which come from Mālik's Madīnan teachers. Before taking a look at Mālik's primary teachers, it is worth considering briefly whether or not Mālik's reliance upon Madīnan teachers would have been likely to limit his knowledge significantly of ḥadīth and other types of learning pertinent to Islamic law. Furthermore, it is important to consider whether or not Mālik's not having travelled to or lived in regions outside Madīnah--except for his performing the pilgrimage to Makkah--would have been likely to put serious sociological limits on his knowledge of and appreciation for the problems of Muslim peoples whose cultures differed from that of the Ḥijāz.

**Mālik's Madīnah:
a brief background**

During the first forty-one years of the Islamic era, Madīnah had been the religious and political center of the world of Islam. The Prophet had established his state there, and the governments of the first four caliphs had been in-

augurated there. The last of these, °Alī ibn °Abī Ṭālib,¹ made Kūfah the center of his political and military activities. Some historians doubt, though, that °Alī intended by that to shift his capital to Kūfah permanently and hold, instead, that his moving to Kūfah was a temporary tactic in his strategy against Mu°āwiyah.² When, after °Alī's

¹'Abū 'l-Ḥusain °ALĪ IBN °ABĪ ṬĀLIB ibn °Abd-al-Muṭṭalib (23bh-40/600-661) was one of the most prominent and historically most significant of the Companions. He was the Prophet's paternal cousin and, later, son-in-law. The Prophet, who was an orphan, had grown up as a young boy under the protection of °Abū Ṭālib, °Alī's father; the Prophet in turn--many years °Alī's senior--played a large role in °Alī's upbringing. When the Prophet received his call, °Alī was quick to believe in him and, hence, is regarded as the first youth to have become a Muslim. He was one of the Prophet's major supports during his life. °Alī is reported to have been persuaded to accept the caliphate after the assassination of the third caliph, °Uthmān (47bh-35/577-656). °Alī then put together a wide coalition of supporters from very diverse, if not contradictory, social and economic backgrounds and interests. With difficulty, he was able to keep that coalition together for a surprisingly long time, perhaps because of his clear, relevant, and decisive political positions and his charismatic personality. The coalition began to break up first upon °Alī's acceptance of arbitration with Mu°āwiyah at Ṣiffīn (37/657); the breakaways later planned and executed °Alī's assassination. It is noteworthy that the °Anṣār [Muslims native to Madīnah] supported °Alī unwaveringly until his death. Zirīk-ī, 5:107-108; and M. A. Shaban, Islamic History, A.D. 600-750: A New Interpretation (Cambridge: University Press, 1976), pp. 71-73.

²Shaban, p. 73.

MU°AWIYAH ibn °Abī Sufyān ibn Ṣakhr ibn Ḥarb ibn °Umayyah (20bh-60/603-680) was a Companion of the Prophet, having become a Muslim in 8/629 upon the capitulation of Makkah. The Prophet is reported to have used him as a scribe. °Umar ibn al-Khaṭṭāb during his caliphate made Mu°āwiyah the governor [wālī] of Jordan; then, having recognized Mu°āwiyah's great ability, appointed him governor of Damascus upon the death of its former governor, Mu°āwiyah's brother, Yazīd ibn °Abī Sufyān. °Uthmān, the third caliph, made Mu°āwiyah the

assassination, Mu^cāwiyah established himself as the head of the Islamic empire in Damascus in 41/661, the days of Madīnah's political hegemony had come to an end. ^cAbd-Allāh ibn az-Zubair's¹ revolt against 'Umayyad political rule in 64/683 sought, among other things, to restore the political supremacy of the Ḥijāz by making it again the seat of the caliphate.² When after his caliphate of nine years, Ibn

governor of all Syria. In the years ahead, Mu^cāwiyah was able to make Syria a strong and dependable power base for himself. During the stalemate between Mu^cāwiyah and ^cAlī that resulted after their confrontation at Ṣiffīn, Mu^cāwiyah continued to rule in Syria, while ^cAlī ruled in ^cIraq until his assassination. In 41/662, after ^cAlī's death, Mu^cāwiyah became the head of the Islamic empire and established thereby the 'Umayyad dynasty. Mu^cāwiyah was a very able statesman, and the Islamic empire was consolidated and expanded considerably under his leadership. He was known for his shrewdness, his eloquence, his patience, and his readiness to forgive and reconcile his enemies. Ziriklī, 8:172-173.

¹'Abū Bakr ^cABD-ALLĀH IBN AZ-ZUBAIR ibn al-^cAwwām (1-73/622-692) is reported to have been the first Muslim child born in Madīnah after the hijrah. He established his caliphate in 64/683 after the death of Mu^cāwiyah's son Yazīd. Although Madīnah came under Ibn az-Zubair's control, he made instead the sanctuary of Makkah, further to the south, his capital. Ibn az-Zubair's revolt posed a serious threat to the 'Umayyads. At the height of his power, Ibn az-Zubair held control over Egypt, the Yaman, Khurāsān, Iraq, and much of Syria, in addition to the Ḥijāz. His caliphate was finally crushed by al-Ḥajjāj ibn Yūsuf (40-95/660-714), the stern, energetic, and tenacious 'Umayyad lieutenant. Ziriklī, 4:218.

²See Syed Salman Nadvi, "^cAbd Allāh Ibn Al-Zubair and the Caliphate" (Ph.D. dissertation, University of Chicago, 1972), p. 105; Ḥasan 'Ibrāhīm Ḥasan, Tārīkh al-'Islām as-Siyāsī wa 'd-Dīnī wa 'th-Thaqāfī wa 'l-Ijtima'ī, 4 vols. (Cairo: Maktabat an-Nahḍah al-Miṣriyah, 1961), 1:287; and 'Aḥmad Shalabī, At-Tārīkh al-'Islāmī wa 'l-Ḥaḍārah al-'Islāmīyah: Dirāsah Taḥlīlīyah Shāmilah li-'t-Tārīkh al-'Islāmī wa 'l-Ḥaḍārah al-'Islāmīyah fī Jamī' al-^cUṣūr wa Jamī' al-'Anḥā', 6 vols. (Egypt's Maktabat an-Nahḍah al-Miṣriyah, 1966), 2:65-67.

az-Zubair was finally defeated, his defeat was the political defeat of the Ḥijāz. Never again in the classical period would its political supremacy be restored.¹ During Mālik's middle years, when the ʿAbbāsids came to power, less than a century after Muʿāwiyah had established himself in Damascus, the political center of the world of Islam shifted to Iraq in the northeast, where in the year 145/762, 'Abū Jaʿfar al-Manṣūr,² the second ʿAbbāsīd caliph, began the designing of his new and beautiful capital, Baghdad.

The shift of political power from Madīnah must, no doubt, have effected Madīnan economic and social life. Madīnah remained, nevertheless, a cultural center where poets and poetry flourished for sometime after Ibn az-Zubair.³ Even more significantly, Madīnah remained the chief center of Islamic learning well into Mālik's time. ʿUlamā' [people of religious learning] continued to congregate there, con-

¹Ḥasan, 1:416; and Shalabī, 2:65-67.

²ABŪ JAʿFAR ʿAbd-Allāh ibn Muḥammad ibn ʿAlī ibn al-ʿAbbās ibn al-Muṭṭalib, known as AL-MANṢŪR [the victorious] (95-158/714-775) was the second ʿAbbāsīd caliph, having taken power after the death of his brother, as-Saffāh (d. 136/753). Al-Manṣūr is the paternal ancestor of all the ʿAbbāsīd caliphs. His own rule lasted twenty-two years and, hence, covered a good part of Mālik's adult life. Al-Manṣūr is said to have been serious and contemplative by nature. He took great interest in diverse types of knowledge and had much love for the ʿulamā'. In addition to fiqh and Arabic literature, al-Manṣūr had an interest in the Greek and Persian sciences, philosophy and astronomy. Zirīklī, 4:259.

³Shalabī, 2:65-67; Ḥasan, 1:535-536. Affluence was widespread during the 'Umayyad period; Madīnah long remained an "aristocratic" center of Arabs of high social standing, many of whom lived as elegantly as princes. See Ḥasan, 1:414-415; 540.

siderably more free--one might expect--of governmental prying and political intrigue than they might have been, had Madīnah remained the center of empire. Students from all parts of the Islamic world continued to come to Madīnah to seek knowledge from its Culamā'.¹ Ibn Taimīyah² holds that no center of Islamic learning in the early period claimed to vie with Madīnah before the death of Uthmān³. It was

¹See Nabia Abbott, Studies in Arabic Literary Papyri, vol. 1: Historical Texts; vol. 2: Qur'anic Commentary and Tradition; vol. 3: Language and Literature; 3 vols., University of Chicago Oriental Institute Publications, vol. 76 (Chicago: University of Chicago Press, 1967), 2:24, 188; Fazlur Rahman, Islam (Garden City, N.Y.: Doubleday & Co., 1968), p. xviii, 99.

²Taqī-ad-Dīn 'Aḥmad ibn 'Abd-al-Ḥalīm IBN TAIMĪYAH (661-728/1263-1328) was one of the most significant Islamic thinkers and a copious writer. He was a Ḥanbalī from a family that had produced great Ḥanbalī Culamā'. The writings of Ibn Taimīyah have had considerable influence upon pre-modern and modern Islamic revivalists. Ibn Taimīyah lived primarily in Damascus, although he also spent years in Egypt--much of them in prison. He was outspoken and courageous and frequently imprisoned because of his unpopular fatwā's that condemned contemporary practices and superstitions. He died in prison in Damascus. Ziriklī, 1:140-141; Kaḥḥālah, 1:261-262.

³UTHMĀN ibn 'Affān ibn 'Abī 'l-'Aṣ ibn 'Umayyah (47 bh-35/577-656) was one of the most prominent Companions. He became the third caliph in 23/643 after the assassination of 'Umar ibn al-Khaṭṭāb. 'Uthmān was a wealthy and highly born member of Quraish but was among the first of the Makkans to embrace Islam. The policies he pursued--especially that of appointing (well-qualified) relatives to positions of political authority--led to hot controversies during the last six years of his twelve year caliphate, which finally culminated in his assassination. 'Uthmān probably made these changes in policy to establish greater centralization in an empire that had expanded rapidly, producing immense social and economic changes and potentially very dangerous conflicts of social and economic interests. See Martin Hinds, "The Murder of the Caliph 'Uthmān," IJMES 3(1972), pp. 450-469; Idem,

during the course of the political and sectarian divisions that arose in the years following ʿUthmān's assassination that there first appeared those who claimed that the ʿulamā' of Kūfah were comparable to those of Madīnah. Even then, Ibn Taimīyah continues, no city in the early period--other than Kūfah--felt it could be independent of Madīnah in matters of legal and religious knowledge.¹ Historical reports from the early ʿulamā' indicate that into the time of Mālik the greatness of a scholar from outside Madīnah was often measured in proportion to how much of his knowledge he had received from the ʿulamā' of Madīnah.² 'Abū Yūsuf³ had studied under great Madīnan ʿulamā' like Hishām ibn ʿUrwah ibn az-Zu-

"Kūfan Political Alignments and Their Background in the Mid-Seventh Century A.D.," IJMES 2(1971), pp. 346-367; Shaban, pp. 60-68; and Ziriklī, 4:371-372.

¹Taqī-ad-Dīn 'Aḥmad IBN TAIMĪYAH, Ṣiḥḥat 'Uṣūl Madhhab 'Ahl al-Madīnah, ed. Zakariyā 'Alī Yūsuf (Cairo: Maṭba'at al-'Imām, 1964), p. 30.

²See 'Aḥmad Muḥammad Nūr-Saif, "ʿAmal 'Ahl al-Madīnah baina Muṣṭalaḥāt Mālik wa 'Arā' al-'Uṣūliyyīn" (M.A. thesis, King 'Abd-al-'Azīz University, Mecca, Saudi Arabia, 1391-92/1971-72), p. 24.

³'ABŪ YŪSUF Ya'qūb ibn 'Ibrāhīm (113-182/731-798) was a Kūfan and one of the most important followers of 'Abū Ḥanīfah, under whom he studied as well as under the Kūfan faqīh Ibn 'Abī Lailā. 'Abū Yūsuf had been poor during the early years of his study, and 'Abū Ḥanīfah supported him and his entire family generously from his private wealth for a considerable time. Toward the end of his life, 'Abū Yūsuf was appointed a qāḍī of Baghdād. He kept that office until his death and was the first in Islamic history to have been called qāḍī al-quḍāt [chief judge]. Sezgin, 1:419.

bair,¹ who was one of Mālik's teachers also. Ash-Shaibānī²-- who among 'Abū Ḥanīfah's followers was perhaps the most influential in establishing the Ḥanafī school of law--studied under Mālik in Madīnah and transmitted a recension of Mālik's Muwaṭṭa'.³

Ibn Taimīyah points out that the early °Abbāsīd caliphs held the °ulamā' of Madīnah in high regard. Al-Manṣūr requested many of the most prominent Madīnan °ulamā'--among them several of Mālik's teachers--to come to Iraq to spread knowledge there. (I will discuss later in this chapter reports that al-Manṣūr requested Mālik to compile the Muwaṭṭa'

¹HISHĀM IBN °URWAH ibn az-Zubair ibn al-°Awwām (61-146/680-763) was one of Mālik's teachers and a very prominent Madīnan muḥaddith and faqīh. He is said to have known several Companions and transmitted ḥadīth from his father--the famous Madīnan faqīh °Urwah ibn az-Zubair (23?-94/643?-712)--his paternal uncle, °Abd-Allāh ibn az-Zubair, and az-Zuhrī (51-124/671-741), who was one of Mālik's most important teachers. Al-Manṣūr brought Hishām ibn °Urwah to Baghdād in 146/763, but Hishām died shortly thereafter. Sezgin, 1:88-89.

²MUḤAMMAD IBN AL-ḤASAN ibn Farqad ASH-SHAIBĀNĪ (132-189/749-805) began to study under 'Abū Ḥanīfah at the age of fourteen. He studied also under the famous Kūfan muḥaddith and faqīh Sufyān ath-Thawrī (ca. 96-161/ca. 714-778), the Syrian al-'Awzā°ī (ca. 88-157/ca. 707-774), and Mālik. His primary teacher, however, was 'Abū Yūsuf, who had a great influence upon him. Ash-Shaibānī was also very learned in Arabic philology and is one of the most important founders of the Ḥanafī school by virtue of his vast writings. Sezgin, 1:421.

³Muḥammad ibn al-Ḥasan ash-Shaibānī, transmitter, Muwaṭṭa' al-'Imām Mālik by Mālik ibn 'Anas, ed. °Abd-al-Wahhāb °Abd-al-Laṭīf (Cairo: al-Majlis al-'Aclā li-'sh-Shu'ūn al-'Islāmīyah, 1387/1967).

in order that he make it a legal standard in his empire.¹⁾ Ibn Taimīyah holds that Madīnah continued to have such prestige in matters of Islamic law and ḥadīth until after Mālik's death, when the newly founded Baghdad and the great centers of learning that were growing up in Khurāsān, Andalusia, and North Africa began to compete with it.²

It might also be pointed out that in addition to being an important center for the knowledge of ḥadīth and fiqh during this period, Madīnah was the center of an important school of Islamic historical writing. Kūfah and Baṣrah, during the same period, were centers for the transmission of Arab tribal traditions and the famous "Battle Days" literature ['Ayyām al-^CArab] of the pre-Islamic Arabs.³

Thus, Mālik's Madīnah would have been able to provide him with a rich milieu in which to receive his education in matters pertaining to Islamic law. Even so, az-Zuhrī⁴

¹See below, pp. 99-102, 392-394.

²Ibn Taimīyah, pp. 26, 32-33. ³See Nadvi, pp. 6-7.

⁴Abū Bakr Muḥammad ibn Muslim ibn ^CUḥaid-Allāh IBN SHIHĀB AZ-ZUHRĪ (ca. 54-124/ca. 674-742) was among the greatest scholars of his generation and was a central figure in the movement toward the close of the first/seventh century to compile ḥadīth. He was influential in spreading the use of 'isnād's and accurate manuscripts. He received his learning from many Companions and older Successors. In addition to being a great faqīh and muḥaddith, az-Zuhrī was also a noted historian and was well-versed in poetry. Although he used writing in the transmission of ḥadīth, az-Zuhrī was famed for his highly retentive, photographic memory. Sezgin, 1:280-284, 56-57; Abbott, 2:25-26, 30-35, 52-53; and Mohammad Mustafa Azmi, Studies in Early Ḥadīth Literature: with a Critical Edition of Some Early Texts (Beirut: al-Maktab al-'Islāmī, 1968), pp. 278-292.

as well as others of the prominent Culamā' of Madīnah had expert and extensive knowledge of the ḥadīth of centers of Islamic learning outside Madīnah. The great Madīnan Successor Sa^cīd ibn al-Musayyab,¹ who lived during the generation prior to Mālik's birth and was one of the main teachers of az-Zuhrī, is reported to have spent great effort in traveling from place to place in the search for knowledge of ḥadīth. According to Ibn Rushd [al-Jadd],² it was by virtue of these efforts that Sa^cīd ibn al-Musayyab came to be regarded as the most knowledgeable man of his generation and was called by some "sayyid at-tābi^cīn" [master of the Successors].³

¹ Abū Muḥammad SA^cĪD IBN AL MUSAYYAB al-Makhzūmī (ca. 14-94/ca. 635-713) was probably the most prominent and influential Madīnan faqīh prior to Mālik ibn 'Anas. He was widely regarded during his generation as the most learned of the Culamā'. He had such extensive knowledge of the legal opinions, rulings, and deeds of ^cUmar ibn al-Khaṭṭāb that he was called "rāwiyat ^cUmar" [^cUmar's transmitter]; it is said that even ^cUmar's learned son, ^cAbd-Allāh ibn ^cUmar (10bh-73/613-692), would sometimes come to Sa^cīd ibn al-Musayyab to learn information about his father. Sa^cīd was also a genealogist and historian in addition to being a faqīh and muḥaddith. He was one of the Seven Fuqahā' of Madīnah, about whom more will be said later. Sezgin, 1:276; and ^cAbd-Allāh ibn Ṣāliḥ ar-Rasīnī, "Fiḥ al-Fuqahā' as-Sab^cah wa 'Atharuhū fī Fiḥ al-'Imām Mālik" (M.A. thesis, King ^cAbd-al-^cAzīz University, Mecca, Saudi Arabia, 1391-92/1971-72), pp. 45-53.

² Abū 'l-Walīd Muḥammad ibn 'Aḥmad IBN RUSHD [al-Jadd] (the grandfather)] (450-520/1058-1126) was the grandfather of Ibn Rushd [al-Ḥafīd (the grandson)], the philosopher and the author of Bidāyat al-Mujtahid. Ibn Rushd [al-Jadd] died in the same year his grandson was born, and their names are identical. Ibn Rushd [al-Jadd] is a very highly regarded Mālikī legal theorist. He was the qādī 'l-jamā^cah [chief qādī] of Cordova. Ziriklī, 6:210.

³ Muḥammad ibn 'Aḥmad IBN RUSHD [al-Jadd], Al-Muqaddimāt al-Mumahhidāt li-Bayān mā 'qtadathū Rusūm al-Mudawwanah min al-'Aḥkām ash-Shar^ciyāt, 4 vols. (Cairo: al-Maṭba^cah al-Khairiyah, 1324/1906), 1:27.

Similarly, there was the prominent Madīnan faqīh, qāḍī, and onetime governor 'Abū Bakr ibn Ḥazm,¹ who had been commissioned by the 'Umayyad caliph 'Umar ibn 'Abd-al-'Azīz² to collect and compile the ḥadīth and sunnah of the Prophet for fear it would be lost with the passing away of the early ḥulamā'.³ 'Abū Bakr ibn Ḥazm's son, student, and transmitter, 'Abd-Allāh (56 or 60-130/675 or 679-747)--himself a notable muḥaddith and historian like his father--was one of Mālik's teachers.⁴

¹'ABŪ BAKR ibn Muḥammad ibn 'Amr IBN ḤAZM al-'Anṣārī (d. 120/737) was a great Madīnan faqīh, muḥaddith, and historian. He was first appointed qāḍī of Madīnah in 87/705 during the Madīnan governorship of 'Umar ibn 'Abd-al-'Azīz. He continued to preside as qāḍī during that governorship and the following of 'Uthmān ibn Ḥayyān al-Murrī. 'Abū Bakr was then appointed governor of Madīnah upon the ouster of al-Murrī. When 'Umar ibn 'Abd-al-'Azīz became caliph he commissioned 'Abū Bakr with the project mentioned above, but 'Umar did not live long enough to see the results. 'Abū Bakr ibn Ḥazm died in Madīnah around the age of eighty-four. Mālik would have been something like in his late twenties at that time. Sezgin, 1:56-57, 284; Abbott, 2:25-26; and WAKI^c Muḥammad ibn Khalaf aḍ-Ḍabbī, 'Akhbār al-Qudāt, ed. 'Abd-al-'Azīz Muṣṭafā al-Murāghī, 3 vols. (Cairo: al-Maktabah at-Tijārīyah al-Kubrā, 1366/1947), 1:133-148.

WAKI^c (d. 306/918) was a qāḍī of 'Ahwāz in Persia. He was a faqīh, historian, grammarian, and poet. He died in Baghdad. His history of judges, mentioned above, is an immensely valuable historical source. Sezgin, 1:376.

²'UMAR IBN 'ABD-AL-'AZĪZ ibn Marwān ibn al-Ḥakam (61-101/681-720) is sometimes called the "fifth rightly guided caliph", because of his great piety and justice. He was born and grew up in Madīnah. He later became its governor for some years. He became the 'Umayyad caliph in 99/718 but only briefly before his death two and a half years later. Zirīklī, 5: 209.

³Sezgin, 1:56-57; Abbott, 2:25-26.

⁴Sezgin, 1:284.

But the most knowledgeable of the prominent Madīnan 'Culamā' in the ḥadīth of the non-Madīnans is likely to have been Ibn Shihāb az-Zuhrī, one of Mālik's primary teachers. With 'Umayyad financial support, az-Zuhrī continued the project of 'Abū Bakr ibn Ḥazm for over twenty-five years after the death of 'Umar ibn 'Abd-al-'Azīz. According to Abbott, 'Umar had intended initially to collect and classify those ḥadīth that pertained to Islamic law. Under az-Zuhrī, however, the project expanded until it came to include the collection of all Prophetic ḥadīth in general. Az-Zuhrī's influence upon his contemporaries, furthermore, was so great that Abbott refers to the last years of the first/seventh century and the first decades of the second/eighth as the "age of Zuhrī". Because of az-Zuhrī's persistent use of writing in transmitting the ḥadīth he collected, his age became the age of manuscripts, and the methods of written transmission of ḥadīth, which according to Abbott, Sezgin, and Azmī had been used since the times of the Prophet, had clearly won out within decades of az-Zuhrī's death over purely oral methods of transmission.¹

¹Abbott, 2:25-26, 30-35, 52-53; Sezgin, 1:53-57, 60-61; Azmi, pp. 1-5, 28-106, 211, 231.

Sezgin holds that the names referred to in 'isnād's refer to the manuscripts that each of those muhaddith's named in the 'isnād possessed. (Azmi agrees with this; cf. Azmi, p. 299.) Sezgin has devised an interesting method of analyzing the content of 'isnād's so as to restore lost books. He has applied this method to the works of al-Bukhārī, Muslim, and aṭ-Ṭabarī. See Sezgin, 1:82-83, 115-116, 136, 323-325, 378-379.

Madīnah and the cultures of the outside world. It would be mistaken, therefore, to conceive of Mālik's Madīnah as a sleepy, far-away desert town, cut off from and unconcerned with the world beyond it. Madīnah had other attractions in addition to its Culamā'. It had about it the aura of Islam's earliest days, Islam's golden age as it were. It contained relics of the Prophet and his Companions. It was the site of his mosque, the place of his burial. Madīnah contained many of the houses and graves of the Companions as well. Such attractions would probably have been sufficient to keep Muslims, learned and unlearned, coming to Madīnah from all parts of the world of Islam. But in addition to these incentives, the Prophet had declared Madīnah a sacred city and sanctuary [ḥaram], like Makkah and Jerusalem, and had encouraged Muslims to exert themselves to visit it.¹ Finally, for many of those who came from the north, west, and east annually to perform the religious duty of pilgrimage to Makkah, Madīnah was directly on their route of travel. No doubt, many of those who came to Makkah by other routes would have visited Madīnah before or after their pilgrimage, as is the custom today.

Each year brought new visitors to Madīnah from all parts of the Muslim world. These visitors must have kept

¹For ḥadīth pertaining to Madīnah's special religious status and its blessings, see Muwaṭṭa', 2:885-890.

many Madīnans in touch with the outside world, its customs, peoples, languages, and problems. It is reported that when Mālik's fame had spread and the number of those visiting him became too great, Mālik would have his gate-keeper call out into the crowd beckoning first the people of the Ḥijāz to enter. Thereafter, he would call for the Syrians and, after their session, for the peoples of Iraq, North Africa, and so forth.¹ 'Abū Zahrah suggests that because Mālik was exposed constantly to the numerous legal problems of great diversity that his visitors brought him, it was not necessary for his school to elaborate its legal doctrine by hypothetical reasoning, as was the case in Kūfah. He holds, furthermore, that because Mālik's fiqh was being constantly elaborated with reference to concrete problems, it remained very practical, always taking into careful consideration the maṣlaḥah [personal or social benefit] behind its rulings.² It might also be pointed out that, by calling the peoples of separate regions to visit with him in private sessions, Mālik would have been able to develop an awareness of the special problems and characteristics of each region. It would also appear likely that Mālik would have come to know the legal opinions of the leading fuqahā' in those regions.³

¹ʿIyāḍ, cited by 'Abū Zahrah, p. 57 ²Ibid., pp. 18-19.

³There are reports that 'Abū Ḥanīfah met Mālik and discussed matters of law with him; they seem likely in view of reports that 'Abū Ḥanīfah performed the pilgrimage to Makkah fifty-five times. It is reported that 'Abū Yūsuf

There are examples of legal questions in the Mudawwanah that reflect the cosmopolitan diversity of some of the questions Mālik would be asked. A party states to him, for instance, that they must often travel through the ice, snow, rain, and cold of regions that provide them no shelter by night but churches. They want to know if it is permissible for them to stay in those churches under such conditions.¹ Mālik talks about Berber merchants who trade with the Spaniards [al-'Ashbāniyīn], Berber merchants who know how to write the Nubian script, and Sicilian merchants who trade with the Nubians.² It is reported that Mālik had written a certain response to the qāḍī of al-Qairawān in Tunisia on a complicated question of inheritance; apparently Mālik had been written about the question.³ The question is asked about the legitimacy of certain rulings made by the governor [wālī] of Alexandria and his qāḍī, whom he has asked to give a certain ruling. It is mentioned that

desired to debate Mālik before the ^CAbbāsīd caliph, but Mālik refused, stating that ^Culamā' are not gamecocks to be spurred on against each other. I have mentioned that ash-Shaibānī studied under Mālik. Reports have it that 'Abū Ḥanīfah's son Ḥammād came once to visit Mālik and had a private session with him. First Mālik let Ḥammād ask him whatever questions he wanted. Then Mālik began asking Ḥammād what positions 'Abū Ḥanīfah had taken on certain matters and what his reasoning [ḥujjah] had been. See Muḥammad Zāhid al-Kawtharī, Fiḥ 'Ahl al-^CIrāq wa Ḥadīthuhum, ed. ^CAbd-al-Fattāḥ 'Abū Ghuddah (Beirut: Maktabat al-Maṭbū'āt al-'Islāmīyah, 1390/1970), pp. 51-52; and ^CIyāḍ, 1:164.

¹Mudawwanah, 1:90 (11). ²*Ibid.*, 3:118 (25).

³*Ibid.*, 3:86 (18).

Mālik had stated his opinion about the governors of the seaports [wulāt al-miyāh] on other occasions as well as his opinion about the governor of al-Fuṣṭāṭ [Old Cairo].¹

Mālik is asked whether the inhabitants of coastal areas when in danger of attack by sea should perform the "prayer of fear" [ṣalāt al-khawf]--a special way of praying during times of immediate danger to avoid being taken by surprise while praying--in the shortened manner, as do those who are threatened by attack on land. Mālik replies that when there is danger of attack by sea the prayer is not shortened. They should pray the prayer fully, after the manner of the inhabitants of Alexandria, ^cAsqalān (in Palestine), and Tūnis.² Finally, Mālik is asked, in connection with mines that had been discovered in Northwest Africa ['arḍ al-maghrib], whether they could be inherited as private property. Mālik replies that they cannot be inherited privately and are the property of the state.³

Mālik's main teachers

Mālik spent anywhere from seven to sixteen years of his childhood and early youth under the special tutorship of ^cAbd-ar-Raḥmān ibn Hurmuz (d. 117/735), a reliable Mādīnan muḥaddith of Persian extraction who had extensive knowledge of ḥadīth--many of which he had learned from prom-

¹Mudawwanah, 4:77 (12). ²Ibid., 1:149 (21).

³Ibid., 3:216 (1).

inent Companions.¹ It is noteworthy that Ibn Hurmuz is reported to have been one of the teachers of Mālik's main teachers: az-Zuhrī, Yaḥyā ibn Saʿīd, Rabīʿat ar-Ra'y, and 'Abū 'z-Zinād ibn Dhakwān, all of whom transmit ḥadīth from him.² Mālik, however, did not transmit ḥadīth in Ibn Hur-

¹Abd-ar-Raḥmān IBN HURMUZ is also known as "al-'Aʿraj" [the lame]; it is reported that he died in Alexandria. One report has it that he died in 110/728, but Ibn Ḥajar regards it as spurious. Note that Mālik is not mentioned in Ibn Ḥajar's biographical account of Ibn Hurmuz; I believe this is because Mālik never transmits ḥadīth in Ibn Hurmuz's name and those who are mentioned in such biographical accounts are those who either transmitted ḥadīth from the person in question or from whom he transmitted. See Ibn Ḥajar, 6:290-291.

There was another Successor in Madīnah known as "Ibn Hurmuz", namely, Yazīd ibn Hurmuz, also known as "Yazīd al-Fārisī" [Yazīd the Persian]. He was a highly regarded muḥaddith and one of az-Zuhrī's teachers. I have ruled him out, however, as having been Mālik's Ibn Hurmuz, because it is reported that this Ibn Hurmuz was killed in 63/682 during the Battle of al-Ḥarrah outside Madīnah. (Ibn Hurmuz had been the leader of the mawālī contingent during the battle.) But another report has it that this Ibn Hurmuz died during the caliphate of ʿUmar ibn ʿAbd-al-ʿAzīz. Even if that were so, Mālik would have been only a boy of ten or less at Ibn Hurmuz's death. See Ibn Ḥajar, 11:369-370.

Regarding Mālik's study under Ibn Hurmuz, see ʿIyāḍ, 1:116 and Ibn Farḥūn, cited by 'Abū Zahrah, pp. 32-33, 107 notes 1 and 2.

²YAḤYĀ IBN SAʿĪD ibn Qais al-'Anṣārī (d. 143/760) was a prominent Madīnan Successor who transmitted ḥadīth from some of the Companions and from older Successors. He was one of Mālik's main teachers but was also the teacher of Sufyān ath-Thawrī, al-'Awzāʿī, and the famous and highly significant Baṣran muḥaddith Shuʿbah ibn al-Ḥajjāj (82-160/701-776). Az-Zuhrī and Rabīʿah also transmitted ḥadīth from him. According to Sufyān ath-Thawrī, the people of Madīnah held Yaḥyā ibn Saʿīd in even higher esteem than they held az-Zuhrī. Yaḥyā was the qāḍī of Madīnah during the caliphate of the 'Umayyad al-Walīd ibn ʿAbd-al-Malik (86-96/705-715); during the caliphate of the ʿAbbāsīd al-Manṣūr, Yaḥyā was appointed qāḍī of al-Hāshimīyah in Iraq. He died in Baṣrah. Sezgin, 1:407.

muz's name, which Ibn Hurmuz is reported to have required of Mālik under oath.¹

We do not know Ibn Hurmuz's date of birth. It is likely, however, that he was a generation older than his students az-Zuhrī, Rabī'ah, Yaḥyā ibn Sa'īd, and 'Abū 'z-Zinād, who were roughly of the same generation with each other and would probably have been in the neighborhood of from thirty to forty years Mālik's senior or more. It is likely that 'Abd-ar-Raḥmān ibn Hurmuz was advanced in age during the years when the youthful Mālik would come to him for tutorship. Perhaps, Ibn Hurmuz had given up formal teaching at that time and instructed Mālik directly and informally.² It may be for that reason that he did not want Mālik to transmit his materials formally. It is an inter-

RABĪ'AH ibn 'Abī 'Abd-ar-Raḥmān Farrūkh (d. 136/753) was born in Madīnah and was a highly regarded muḥaddith, transmitting from some Companions and from older Successors. He was known for his use of ra'y [personal reasoning] in legal matters and was called by the name, "Rabī'at ar-Ra'y" [Rabī'ah, who is given to using ra'y]. Mālik was a student of his, and Rabī'ah had his own circle of students around him in Madīnah during his lifetime. He died in Iraq. Sezgin, 1:406; see 'Iyād, 1:119-120.

'ABŪ 'Z-ZINAD 'Abd-Allāh IBN DHAKWĀN (65-131/684-748) was a Successor and prominent Madīnan faqīh; some of the culamā' of Madīnah regarded him more highly than Rabī'ah. 'Abū 'z-Zinād compiled a book of legal opinions of the Seven Fuqahā' of Madīnah, under whom he studied and about whom more will be said later. Sezgin, 1:405.

¹Abū Zahrah, p. 33.

²'Iyād, 1:158 cites a report according to which Mālik states explicitly that the formal method of transmitting ḥadīth in Madīnah ever since the time of Sa'īd ibn al-Musayyab and the Seven Fuqahā' and others of their generation had

esting coincidence that Mālik began his education with several years of private tutorship under one who had been an instructor a generation earlier of those Madīnans who would become Mālik's major teachers.

Ibn Hurmuz is reported to have had extensive knowledge of Arabic and the genealogy of the Arabs.¹ Of greater importance than this to Mālik's intellectual formation, however, is the fact that Ibn Hurmuz is reported as having been among the most knowledgeable of people in knowing how to refute "'ahl al-'ahwā' [the followers of sectarian heresies] and those matters about which the people differed."² The meaning of 'ahl al-'ahwā'' is unambiguous; as for the mean-

been that the muhaddith have a reader dictate from his books to the students while the muhaddith would listen to the dictation, correcting any mistakes the reader made from memory. (This method is called "Carq" or, less commonly, "qirā'ah" in the terminology of hadīth sciences; cf. Sezgin, 1:59.) Mālik continues to say that Ibn Hurmuz [italics mine], Rabī'ah, az-Zuhrī, and other Madīnans received and transmitted their knowledge exclusively by this method. In keeping with that tradition, Mālik refuses to dictate from his works directly, even if it be at the personal request of the ^cAbbāsīd caliph, who--in this instance--had asked him to do so in a private session.

Elsewhere, Mālik is reported as having referred to this method as "Carq" and as having said that he regards it as superior to "samā^c", the method whereby the muhaddith dictates to his students himself; ^cIyāq, 1:163; cf. Sezgin, 1:59. One of Mālik's students reports that he studied under Mālik for nineteen years; never during that time did he see Mālik dictate the Muwatta' to his students himself. Rather he always transmitted it by having someone dictate it to them, while Mālik listened on. ^cIyāq, 1:162.

¹Ibn Ḥajar, 6:290-291. ²^cIyāq, cited by 'Abū Zahrah, p. 34.

ing of "those matters concerning which the people differed", it too would refer to differences on theological matters. For, as Madelung has pointed out, references to "ikhtilāf" [differences of opinion] in the early period generally refer in such contexts to the theological differences of the heretical sects.¹ Thus, if this report about Ibn Hurmuz is accurate, Mālik would likely have had the opportunity to become familiar through the medium of Ibn Hurmuz's tutorship with the most important theological and sectarian debates of his age.

With the exception of Ibn Hurmuz and Nāfi^c,² the maw-lā of ^cAbd-Allāh ibn ^cUmar,³ Mālik's major teachers were the

¹Madelung, p. 241.

²Abū ^cAbd-Allāh NĀFI^c mawlā ^cAbd-Allāh ibn ^cUmar (d. 117/735) was an older Successor. He had extensive knowledge of fiqh and was regarded as among the most excellent of all muḥaddith's. It is related, for example, that Nāfi^c never made a single error, however small, in transmitting all that he transmitted. Hence, the 'isnād--Mālik from Nāfi^c from ^cAbd-Allāh ibn ^cUmar--is regarded as the "golden chain" of transmitters. Nāfi^c was a Persian child, born in Dailam. He was taken captive during the conquest of that region and became the slave of Ibn ^cUmar, who raised him in Madīnah from a small child and gave him his education personally. He later set Nāfi^c free. As a muḥaddith, Nāfi^c was known as a perfectionist who was harsh and demanding on his students, so much so in fact that many of them found it unpleasant to be around him. Mālik had a great liking for him, however. When Nāfi^c became blind toward the end of his life, it is said Mālik would fetch him at his house and bring him to the mosque to teach. During the caliphate of ^cUmar ibn ^cAbd-al-^cAzīz, Nāfi^c was sent to Egypt to teach the sunan [pl. of sunnah] to the people. See Ziriklī, 8:319.

³^cABD-ALLĀH IBN ^cUMAR ibn al-Khaṭṭāb (10bh-73/613-692), like his father, the second caliph, ^cUmar ibn al-Khaṭṭāb, was a Companion highly regarded for his intelligence,

younger Successors az-Zuhri, Rabī^cah, Yaḥyā ibn Sa^cīd, and 'Abū 'z-Zinād ibn Dhakwān, to whom I have referred already.¹ The lives of these younger Successors spanned roughly the period between 70/689 and 135/752, and they flourished toward the close of the first/seventh century and during the first three decades of the second/eighth. Although they had received some of their learning from Companions, these younger Successors had received most of it from older Successors.²

Ibn Hurmuz was one of these older Successors from whom they received their learning. More important than this, however, they had been students of the Seven Fuqahā'³ of

knowledge, and close adherence to Islam. It was said, however, that, although ^cUmar ibn al-Khaṭṭāb and his son ^cAbd-Allāh were comparable, the circumstances in which they lived differed considerably. For ^cUmar had lived at a time when there were those around him who were similar to him, while ^cAbd-Allāh ibn ^cUmar lived during the last of his life in a generation when there was no longer anyone living comparable to him. Ibn ^cUmar gave fatwā's in Madīnah, it is reported, for sixty years. After his father, he is probably the second most authoritative faqīh in the Muwaṭṭa'. He was blind during the last years of his life. Zirīklī, 4:246.

¹See ^cIyād, 1:119-120; 'Abū Zahrah, pp. 106-112; Nūr-Saif, pp. 16-22; and Sezgin, 1:457.

For data on these persons, see below, pp. 55, n. 4; 63-64, n. 2; 63, n. 2; 63-64, n. 2.

²Cf. Nūr-Saif, p. 16.

³The Seven Fuqahā' of Madīnah [al-fuqahā' as-sab-cah]--actually, their numbers varied between seven and twelve--comprised a counsel of older Successors in Madīnah for finding solutions to legal questions. Those most commonly cited as making up the Seven Fuqahā' are:

(1) Sa^cīd ibn al-Musayyab, see p. 56, n. 1, above.

(2) AL-QĀSIM IBN MUḤAMMAD ibn 'Abī Bakr (d. ca 106/

Madīnah, who were comprised of some of the most renowned and highly respected older Successors of the Islamic world, namely, Sa^cīd ibn al-Musayyab, al-Qāsim ibn Muḥammad, Sulaimān ibn Yasār, ^cUrwah ibn az-Zubair, and Khārijah ibn Zaid. Thus, Mālik was connected with the tradition of the Seven Fuqahā' through his major teachers. He refers to the ḥadīth, āthār, and legal opinions of Sa^cīd ibn al-Musayyab, al-Qāsim ibn Muḥammad, Sulaimān ibn Yasār, ^cUrwah, and Khārijah throughout the Muwatṭa'; undoubtedly, Mālik regarded them as a central part of the Madīnan legal tradition.

Mālik's teacher 'Abū 'z-Zinād ibn Dhakwān compiled a book of important legal opinions of the Seven Fuqahā' upon

ca. 724). He was the grandson of the first caliph, 'Abū Bakr, on his father's side and is said to have been the grandson of Yazdagird, the last Persian emperor, on his mother's side, since Muḥammad ibn 'Abī Bakr, his father, is reported to have taken Yazdagird's daughter as a wife. Al-Qāsim ibn Muḥammad was also a nephew of the Prophet's wife ^cĀ'ishah, daughter of 'Abū Bakr. Al-Qāsim was close to her and is reported to have received much of his learning from her. He was one of ^cUmar ibn ^cAbd-al-^cAzīz's teachers.

(3) ^cURWAH IBN AZ-ZUBAIR ibn al-^cAwwām (ca. 25-94/ca. 645-712). He was about thirty years younger than his brother ^cAbd-Allāh ibn az-Zubair; he was a great-nephew of the Prophet's wife Khadījah and a grandson of 'Abū Bakr on his mother's side, 'Asmā' bint 'Abī Bakr. He learned much from his aunt, ^cĀ'ishah.

(4) SULAIMAN IBN YASĀR (d. 100/718). He was a mawlā of the Prophet's wife Maimūnah and took much of his learning from ^cĀ'ishah. Sulaimān was highly regarded by virtue of the excellence of his mind and high quality of his learning.

(5) KHĀRIJAH IBN ZAID ibn Thābit (30-100/650-718). He was the son of the Companion Zaid ibn Thābit, one of the most knowledgeable and highly regarded of the Companions. ^cIyāḍ, 1:87, says Zaid was regarded as the most knowledgeable of them.

(6) ^cUBAID-ALLĀH IBN ^cABD-ALLĀH ibn ^cUtbah (d. 98/716).

(7) 'ABŪ BAKR IBN ^cABD-AR-RAḤMĀN ibn al-Ḥārith (d. 94/712).

See ar-Rasīnī, pp. 27-67; and Sezgin, 1:279,278.

¹Ar-Rasīnī, pp. 27-67, 100-102.

which they had reached consensus. Ibn an-Nadīm¹ mentions this work in his Fihrist [index of books]; the work has now been lost, but the Mudawwanah and various ḥadīth books contain numerous citations from it.²

Ar-Rasīnī has collected and analyzed citations in the Mudawwanah and other sources from Ibn Dhakwān's book on the Seven Fuqahā'. He concludes that Mālik agrees with their consensus over ninety percent of the time; he concludes, furthermore, that there must have been a strong continuity between the fiqh of the Seven Fuqahā' and that of Mālik, by virtue of the consistency with which he agrees with them.³

I agree with ar-Rasīnī's second conclusion but disagree with the first. It appears to me that ar-Rasīnī's analysis of the opinions of the Seven Fuqahā' and his comparisons between them and the opinions of Mālik are not always accurate. Oc-

¹Abū 'l-Faraj Muḥammad ibn 'Ishāq, known as "IBN AN-NADĪM" or "AN-NADĪM," (d. 380/990) was a Baghdadi book dealer [warrāq] during the fourth/tenth century. He was of considerable importance and social standing. Probably, both his father and he were court companions of the ^cAbbāsids, hence the name "an-nadīm" [court companion]. Ibn Ḥajar says he was a shīcī, which Dodge believes to be confirmed by the text of Ibn an-Nadīm's Fihrist. Ibn Ḥajar also regards him as having been a muḥtazilī. His index of books, al-Fihrist, is a bibliography of the available books Ibn an-Nadīm knew of and contains extensive discussions by Ibn an-Nadīm as well. It is an immensely valuable historical source. See The Fihrist of al-Nadīm: A Tenth Century Survey of Muslim Culture, ed. and trans. Bayard Dodge, 2 vols. (New York: Columbia University Press, 1970), 1:xv-xxiii.

²Ar-Rasīnī, pp. 100-102. ³Ibid., Preface.

asionally, he regards non-essential differences in wording and details to be differences of opinion.¹ There are instances when ar-Rasīnī cites statements from the Seven Fuqahā' in which they set forth a general rule of law; he then regards specific exceptions to or elaborations on that general rule to be differences of opinion.² I do not regard

¹For example, in the case of a man who has been found guilty of illicit sexual relations shortly after having gotten married, ar-Rasīnī, p. 186, holds that Mālik disagrees with the Seven Fuqahā' as to what shall be regarded as constituting proof that the man's marriage had been consummated prior to the act of illicit sex, such that he would be guilty of adultery and not fornication. The opinion of the Seven Fuqahā' is that "ad-dukhūl" [lit., "entering"] consummates the marriage. Mālik holds that "waṭ'" [intercourse] consummates the marriage. Ar-Rasīnī is mistaken in regarding this difference in vocabulary as a difference in opinion, since "ad-dukhūl" and "al-waṭ'" refer to the same thing.

²For example, ar-Rasīnī, p. 415, cites a report in which al-Qāsim ibn Muḥammad states the general rule of law that the testimony of youths is not permissible. Ar-Rasīnī concludes on this basis that al-Qāsim ibn Muḥammad would have disagreed with the point of law that Mālik sets forth in the Muwaṭṭa' as an AMN, namely, that the testimony of youths who have not attained puberty will be permissible in the case when they inflict wounds upon each other by fighting among themselves, if their testimony is properly recorded immediately after the fighting and before the boys have dispersed or been able to speak with any adults.

I believe that ar-Rasīnī has insufficient evidence to conclude that there is a difference of opinion here. For Mālik subscribes to the same general rule as al-Qāsim. He states immediately after this special precept that the testimony of youths is not permissible in any but this special case; Muwaṭṭa', 2:726. I believe Mālik's opinion, which he claims to be supported by the Madīnan fuqahā', is an example of al-maṣāliḥ al-mursalāh, one of the chief characteristics of which is to draw exceptions like these to general rules without regarding the general rules thereby to be invalid.

To further illustrate my point, if one person is quoted as saying that it is impermissible to run red lights, one cannot conclude on that basis that that person disagrees with the special provision that ambulances and other emergency

such examples to be well-established cases of differences of opinion between Mālik and the Seven Fuqahā', especially in light of the consideration that a chief feature of Mālik's application of the principles of istiḥsān, sadd ad-dharā'iḥ^c, and al-maṣāliḥ al-mursalah¹ is that of elaborating upon or drawing exceptions in special cases to general rules, which are regarded as valid nevertheless. Thus, my interpretation of the data in ar-Rasīnī's thesis would be that the degree of conformity between Mālik's opinions and those of the Seven Fuqahā' is higher than he has concluded.

Thus, Mālik had direct access through his major teachers to the Seven Fuqahā' and a central tradition of the Madīnan school of law; it appears on the basis of ar-Rasīnī's evidence, furthermore, that there was considerable continuity between the fiqh of the Seven Fuqahā' and that of Mālik. And, through his teacher az-Zuhrī, Mālik had access not only to the tradition of the Seven Fuqahā' but also to the ḥadīth of the non-Madīnans. Az-Zuhrī is reported to have compiled extensive volumes of these ḥadīth. (It is reported that az-Zuhrī collected so many books of ḥadīth and spent so much time with them, that his wife used to complain:

vehicles should be permitted to run red lights.

For other instances of possible inaccuracies of this nature, see ar-Rasīnī, pp. 153, 157, 159, 168, 183, 215, 218, 240, 266, 271, 316.

¹For definitions and illustrations of these concepts, see below, pp. 245-280.

"I swear by God that these books are harder for me to bear than three co-wives."¹) It is reported that Mālik possessed chests filled with extensive notebooks of the ḥadīth he had collected from az-Zuhrī. He refused to transmit most of these ḥadīth, however, which I will come back to later when discussing Mālik's attitude toward ḥadīth.²

Mālik's standards in selecting teachers

It is reported that Mālik took great pride in the fact that he had always been very selective in choosing his teachers. He held that he had only sat with the best and the most highly qualified; he also is reported to have said that he took his ḥadīth only from fūḡahā'. Furthermore, Mālik is reported to have said that he had always taken care to receive his learning only under conditions well-suited for learning. It was his habit, for example, never to receive instruction while standing in a crowd of other students.³

Ibn ^cAbd-al-Barr⁴ reports that Mālik taught that

¹'Aḥmad ibn Muḡammad IBN KHALLIKAN, Wafayāt al-'A^cyān (Cairo: n.p., 1310/1892), 1:451; and 'Ismā^cīl 'ABU 'L-FIDA', Al-Mukhtaṡar fī 'Akhbār al-Bashar, 4 vols. (Constantinople: n.p., 1286/1869), 1:204 cited by Azmi, p. 280.

^{2c}Iyāḡ, 1:148, 151. See below, pp.

^{3c}Iyāḡ, 1:123-125.

⁴'Abū ^cUmar Yūsuf ibn ^cAbd-Allāh IBN ^cABD-AL-BARR (368-463/978-1071) was one of the most renowned of the Andalusian Mālikī scholars. He was a Cordovan but travelled

there were four categories of people from whom one should not accept ḥadīth: (1) an incompetent [safīh]; (2) a proponent of a heresy or heretical innovation; (3) one who lies when speaking with other people, even though there be no suspicion that he lies when transmitting ḥadīth; and (4) a learned man [shaikh] who is known for his excellence and integrity and his being given to much worship, if he lacks awareness of [the content and nature] of what he receives and transmits ['idhā kāna lā ya^crifu mā yaḥmilu wa mā yuḥaddithu bihī].¹

It is clear from other reports that there were many transmitters of knowledge in Madīnah whom Mālik felt belonged to one of these four categories and from whom he never received or transmitted any knowledge. According to one report, Mālik said:

During my lifetime I have met a large number [jamā^cah] of the people of Madīnah from whom I never took a single piece of learning, even though they were people from whom knowledge was being taken. And they were of

widely. He was qāḍī of Lisbon for a time. Ibn ^cAbd-al-Barr was especially renowned for his extensive knowledge of ḥadīth; he was considered one of the most accomplished ḥafīẓ's [one who commits thousands of ḥadīth to memory along with their 'isnād's] and was called "ḥafīẓ al-maghrib" [the ḥafīẓ of the West]. He was also a great faqīh and did extensive research into the opinions of the fugahā' of different schools. He was also a historian and man of letters; Ziriklī, 9:316-317; Kaḥḥālah, 13:315-316.

¹Yūsuf IBN ^cABD-AL-BARR, Al-Intiqā' fī Faḍā'il ath-Thalāthah al-'A'imma al-Fugahā'; Malik wa 'sh-Shāfi^ci wa 'Abī Ḥanīfah raḍīya 'Llahu 'anhum wa Dhikr 'Uyūn min 'Akhbarihim wa 'Akhbar 'Aḥbābihim li-'t-Ta^crīf bi-Jalālat 'Aqdarihim (Cairo: Maktabat al-Qudsi, 1350/1931), p. 16.

different types. There were those among them who would lie when speaking to people, although they would not lie when speaking about matters of learning. There were those among them who were ignorant of [the content and nature] of what they possessed [kāna jāhīlan bi-mā 'cinda-hū]. And there were those among them who were accused of having unsound opinions [kāna yurmā bi-ra'y sū']. So I left them all alone.¹

According to another report, Mālik was asked why he did not transmit ḥadīth on the authority of the people of Iraq. He replied that he did not because of his observation that when they came to Madīnah they took ḥadīth from those who are not trustworthy [thiqah].²

Other reports have it that Mālik regarded many of those who transmitted ḥadīth in Madīnah to be of the fourth category, namely, the category of those pious learned men of integrity and high standing who are not aware of the content, nature, and--perhaps--source of what they receive and transmit. Ibn Wahb,³ who was one of Mālik's most important

¹cIyāq, 1:123; Ibn 'Abd-al-Barr, pp. 15-16.

²cIyāq, 1:150.

³cAbd-Allāh IBN WAHB ibn Muslim (125-197/742-812), one of the most significant of Mālik's students, is reported to have studied under Mālik for thirty-one years. He was very effective in spreading the Mālikī school in his native Egypt. It is said that Mālik would refer to him as "faqīh Miṣr" [the faqīh of Egypt]. Ibn Wahb had extensive knowledge of ḥadīth and āthār. It is reported that he collected all the ḥadīth of Egypt and the Ḥijāz. Ibn Wahb had many books, and Ibn al-Qāsim said of him that no one had compiled transmitted knowledge [dawwana 'l-cilm] as had Ibn Wahb. Ibn Wahb was also regarded as one of the most reliable sources from which to learn Mālik's most authentic legal opinions in matters concerning which there were contrary reports. Like numerous students of Mālik, Ibn Wahb transmitted the Muwaṭṭa'; his recension is said to contain more material than the others. Much of the material that Saḥnūn puts in the

students, reports that Mālik told him:

During my lifetime I have met in this city [of Madīnah] people whose prayers, if ever they were asked to pray for rain, would be answered and who had heard much by way of knowledge [^cilm] and ḥadīth. Yet I never transmitted a single ḥadīth from any of them. For they had come to be too much preoccupied with the fear [khawf] of God and asceticism [zuhd].

This business [sha'n], that is, [sic] ḥadīth and the giving of fatwā's, requires men characterized by fear of God [taqī], piety [wara^c], cautiousness [ṣiyānah], perfectionism ['itqān], knowledge, and understanding [fahm], in order that they perceive what is coming out of their heads and what the results of it will be tomorrow. But as for those who lack this perfectionism ['itqān] and awareness [ma^crifah], no benefit can be derived from them. They are not authoritative sources of knowledge [ḥujjah], and one should not take knowledge from them.¹

According to a similar report attributed to Ibn Wahb and three other prominent students of Mālik, Mālik used to say:

This knowledge [of ḥadīth, etc.] constitutes [our] religion; so consider carefully those from whom you take it.

During my lifetime I have met among these pillars (and he pointed to the [pillars of] the mosque [of the Prophet]) very many [lit., seventy] of those who say: "the Prophet of God said . . .," from whom I never took a single bit of learning, despite the fact that there were those among them who, if they had been put in charge of a treasury, would have been found to be completely trustworthy. Nevertheless, they were not worthy of this business [of transmitting knowledge].²

The standards that Mālik set for himself in selecting those from whom he received his learning obviously have bearing on Mālik's concept of who should constitute Madīnan 'ijmā^c. It is not likely that he would have regarded the opinions

Mudawwanah comes from Ibn Wahb. See Ibn Ḥajar, 6:71-74; Sezgin, 1:466.

¹l^cIyād, 1:123. ²Ibid.; and Ibn ^cAbd-al-Barr, p. 16.

of those Madīnan scholars and transmitters of knowledge to be worthy of consideration in questions of 'ijmā^c who--according to his description--were so deficient in perfectionism and awareness that they could not "perceive what is coming out of their heads and what the results of it will be tomorrow" and from whom "no benefit can be derived".

Mālik's Attitude
toward Ḥadīth

Mālik received from his teachers an extensive knowledge of ḥadīth, by virtue of which Mālik was highly regarded as a muḥaddith. Al-Bukhārī¹ and Muslim² held Mālik in high regard as reflected by the heavy reliance of their ḥadīth compilations on Mālik's Muwaṭṭa'.³ Later muḥaddith's conferred upon Mālik the honorary title of "amīr al-mu'mi-

¹Muḥammad ibn 'Ismā'īl AL-BUKHĀRĪ (194-256/810-876) was a famous muḥaddith from Bukhārā in Central Asia. His compilation of ḥadīth, Ṣaḥīḥ al-Bukhārī, is regarded among sunni Muslims as a completely authentic compilation. Sezgin, through his analysis of the 'isnād's of al-Bukhārī's work, has indicated that al-Bukhārī relied heavily upon written materials--such as the Muwaṭṭa'. In addition to fiqh and ḥadīth works, al-Bukhārī took materials from philological and historical works. See Sezgin, 1:115-116.

²MUSLIM ibn al-Ḥajjāj al-Qushairī (ca. 204-261/ca. 819-875) was a famous muḥaddith of Nīsāpūr and a student of al-Bukhārī. His compilation of ḥadīth, Ṣaḥīḥ Muslim, is regarded to be as highly authentic as al-Bukhārī's. Sezgin has shown that Muslim too relied heavily upon written materials. Many Muslims have regarded Ṣaḥīḥ Muslim to be better organized than al-Bukhārī's work. See *ibid*, 1:136.

³Abd-al-Bāqī's edition of the Muwaṭṭa' indicates after each ḥadīth whether or not it has been transmitted by the same 'isnād in al-Bukhārī and Muslim. Most of the ḥadīth in the Muwaṭṭa' are contained in one of these two works and generally in both.

nīn fī 'l-ḥadīth" [commander of the believers in ḥadīth], which is given to those muḥaddith's who had committed extensive amounts of ḥadīth to memory and understood their contents well, such that they were the intellectual and spiritual leaders ['a'clām wa 'a'immaḥ] of their generations. Later muḥaddith's also applied this title to Mālik's teacher 'Abū 'z-Zinād ibn Dhakwān, the Kūfan muḥaddith Sufyān ath-Thawrī,¹ the Baṣran Shu'bah ibn al-Ḥajjāj,² and al-Bukhārī.³ 'Abd-ar-Raḥmān ibn Maḥdī,⁴ a student of Mālik and a

¹SUFYAN ibn Sa'id ATH-THAWRĪ (ca. 96-161/ca. 714-778) was an outstanding Kūfan muḥaddith and is regarded as having been the first in Kūfah to organize the compilation of ḥadīth systematically according to subject matter. He was of 'ahl al-ḥadīth [the proponents of ḥadīth] and is said to have been good at mathematics. Sezgin, 1:518.

²SHU'BAH IBN AL-ḤAJJĀJ ibn al-Ward al-'Azdī (82-160/701-776) was born in Wāsiṭ but later went to Baṣrah, where he lived until his death. Like Sufyān ath-Thawrī in Kūfah, Shu'bah was among the first in Baṣrah to organize the compilation of ḥadīth systematically according to subject matter. Shu'bah is known especially, however, as having been the first to treat the biographical study of the lives of the muḥaddith's as an independent field of study; later it would develop into 'ilm ar-rijāl [the biographical sciences of ḥadīth]. Shu'bah was also known for his extensive knowledge of poetry. Ibid., 1:92.

³Muḥammad 'Ajjāj al-Khaṭīb, 'Uṣūl al-Ḥadīth: 'Ulūmuhū wa Muṣṭalahuhū (Beirut: Dār al-Fikr al-Ḥadīth, 1386/1967), pp. 446-447.

⁴'Abd-ar-Raḥmān IBN MAHDĪ ibn Ḥassān AL-LU'LU'Ī (135-198/752-814) was a great ḥāfiẓ of ḥadīth and was born and died in Baṣrah. He studied under Mālik, Shu'bah, Sufyān ath-Thawrī, and Sufyān ibn 'Uyainah (107-196/725-811), the renowned Makkan muḥaddith. Ibn Maḥdī dictated many systematically arranged compilations of ḥadīth [taṣānīf] while in Baghdad. The muḥaddith Yaḥyā ibn Ma'īn (158-233/775-847) says that Ibn Maḥdī followed some [sic] of the schools of 'ahl al-ḥadīth and that he inclined toward the ra'y of Ma-

very influential muḥaddith in his generation, is reported to have said that the 'imām's [religious leaders] in ḥadīth whose examples one ought to follow were four: (1) Sufyān ath-Thawrī in Kūfah, (2) Mālīk ibn 'Anas in the Ḥijāz, (3) al-'Awzā¹ in Syria, and (4) Ḥammād ibn Zaid² in Baṣrah.³

According to another report, Ibn Maḥdī held that Mālīk had committed more knowledge of ḥadīth to memory than any other in his generation [i.e. he was "'aḥfaḥ"]; he held that Mālīk did not err in ḥadīth and that there was none on

dīnah. Ash-Shāfi¹ held Ibn Maḥdī in especially high regard and is reported to have said of him that he did not know the likes of Ibn Maḥdī in the whole world. It is also noteworthy that ash-Shāfi¹ is reported to have compiled his Risālah at the personal request of 'Abd-ar-Raḥmān ibn Maḥdī. See Zirīklī, 4:115; Ibn Ḥajar, 6:279-281; Sezgin, 1:488.

¹Abd-ar-Raḥmān ibn 'Amr AL-'AWZĀ¹ (88-157/707-774) was one of the most prominent fugahā' of Mālīk's generation; he lived in Damascus and Beirut and studied from az-Zuhrī, 'Aṭā' ibn 'Abī Rabāḥ (27-114/647-732), the so-called "muftī of Makkah", and Qatādah (60-118/679-736)--the renowned faqīh, Qur'ānic commentator, genealogist, and scholar of the history and poetry of the pre-Islamic Arabs. Al-'Awzā¹ was among the first to compile books of sunan organized according to chapter. Many ḥulamā' regarded him more highly than Sufyān ath-Thawrī. Sezgin, 1:516.

²HAMMĀD IBN ZAID ibn Dirham (98-179/717-795), known as "al-'Azraq" [the blue-eyed], was a Baṣran mawlā whose background was from Sijistān in Persia. He had extensive knowledge of ḥadīth and was widely regarded as the "shaikh of Iraq" in his generation. The ḥadīth of Ḥammād ibn Zaid are transmitted in all the six major sunni compilations of ḥadīth. He was renowned for his memory, as were many of the muḥaddith's; he became blind. Zirīklī, 2:301.

³Ḥiyāḍ, 1:132.

the face of the earth more to be trusted in the matter of the ḥadīth of the Prophet than Mālīk. In another report, Ibn Mahdī states that he had never known anyone quite like Mālīk and Ḥammād ibn Zaid, for both of them--he believed--had exercised a caution with regard to transmitting ḥadīth that indicated that they anticipated only the reward of God in their teaching of ḥadīth [kānā yaḥtasibāni fī 'l-ḥadīth],¹ the implication being--I believe--that it was not their intent in teaching to win the acclaim of others. For, as will be seen in the case of Mālīk, he refused to transmit most of the ḥadīth he knew, because he regarded them as defective and misleading.

Finally, in a third statement attributed to Ibn Mahdī, he remarks that Sufyān ath-Thawrī was an 'imām in ḥadīth but not in the sunnah; al-'Awzā^cī was an 'imām in the sunnah but not in ḥadīth; as for Mālīk, however, Ibn Mahdī holds that he was an 'imām in both ḥadīth and sunnah.² In this report ḥadīth and sunnah are clearly conceived of as two quite different things. Reports pertaining to Mālīk's attitude toward ḥadīth and analysis of Mālīk's conception and application of the concept of Madīnan ^camal as well as Mālīk's legal theory in general affirm that Mālīk also conceived of ḥadīth and sunnah as distinct. Furthermore, Mālīk's knowledge of what he regarded as sunnah was the cri-

¹cIyāq, 1:132. ²Ibid.