

terion against which he judged, accepted, rejected, and interpreted ḥadīth, and that concept of sunnah was inseparably connected with Mālik's concept of ʿamal.

It may be surprising that, although Mālik was highly regarded among the muḥaddith's in general, Mālik, nevertheless, did not take a position toward ḥadīth such as some representatives of 'ahl al-ḥadīth', like ash-Shāfi^{cī}, would take of regarding isolated ḥadīth to be a valid, independent source of Islamic law, on the condition that they have been transmitted with sound 'isnād's. The following reports indicate, on the contrary, that it was toward the isolated ḥadīth that Mālik exercised great caution, especially those isolated ḥadīth that have irregular and unusual [shādhah] meanings and implications. Again, the misgivings and cautions of Mālik reflected in these reports are supported by his general legal theory.

As I mentioned earlier, it is reported that Mālik possessed numerous notebooks--even chests full of notebooks, the reports specify--containing the ḥadīth of az-Zuhrī. Mālik is reported to have said that there were many of these notebooks from which he had never transmitted a single ḥadīth and, furthermore, from which he did not intend to transmit a single ḥadīth as long as he lived.¹ It might appear that Mālik's reason for not transmitting these ḥadīth was because they were non-Madīnan. However that may

¹ʿIyāq, 1:148, 151.

be, it is reported that Mālik also had books of Madīnan ḥadīth that he never transmitted. One report has it that when they buried Mālik they found in his house, in addition to seven chests [ṣanādīq] of the ḥadīth of az-Zuhrī, chests containing books of the people of Madīnah from which Mālik had not transmitted anything over the long years that his students who found those books could remember.¹ It is reported further that when Mālik died they found great quantities of the ḥadīth of ^cAbd-Allāh ibn ^cUmar--the prominent and authoritative Madīnan Companion--among Mālik's books of which only two ḥadīth had been transmitted in the Muwaṭṭa'.²

It is reported that whenever Mālik was informed that a ḥadīth he had transmitted was not transmitted by others or that it was a ḥadīth that heretics ['ahl al-bid'ah] use as a proof for their views, Mālik would discard that ḥadīth. Ash-Shāfi'ī is reported to have said in connection with Mālik's standards with regard to ḥadīth that whenever Mālik had doubts about a ḥadīth, he would discard that ḥadīth completely.³ Mālik warned others against the use of irregular [shādhah] ḥadīth; it is reported that Sufyān ath-Thawrī, when asked about an irregular ḥadīth, would advise the one who asked him to leave such ḥadīth alone, and Sufyān would

¹Iyāq, 1:149. ²Ibid., 1:148.

³Ibid., 1:150; Ash-Shāṭibī, Al-Muwāfaqāt, 4:289.

inform him that Mālik had prohibited the use of such ḥadīth.¹ It is reported that a man once commented to Yaḥyā ibn Ma^cīn² that Mālik had knowledge of only few ḥadīth. Ibn Ma^cīn replied that Mālik seemed to have knowledge of few ḥadīth because of his high standards of discrimination [bi-kathrat tamyīzihī].³

According to another report, the comment was once made to Mālik that Sufyān ibn ^cUyainah⁴ possessed ḥadīth which Mālik did not. Mālik is said to have replied: "Shall I transmit to the people everything I have heard? In that case I would be a fool ['aḥmaq]."⁵ According to a variant transmission of the same report, Mālik's reply was, ". . . in that case I would only be desiring to lead them astray." Mālik then goes on to say: "[As it is] ḥadīth have already

¹cIyāḍ, 1:138.

²YAḤYĀ IBN MA^cĪN ibn ^cAwn al-Murrī (158-233/775-847) was a student of Sufyān ibn ^cUyainah, ^cAbd-Allāh ibn al-Mubārak (118-181/736-797)--the prolific writer and famous faqīh, historian, and ṣūfī--and others. Al-Bukhārī and Muslim were students of Ibn Ma^cīn. Ibn Ma^cīn was regarded as a highly trustworthy transmitter of ḥadīth. He also had extensive knowledge of the genealogies and biographies of the muḥaddith's and followed in the tradition of Shu^cbah, who eighty years earlier laid down the foundations for the biographical sciences of ḥadīth. Like his teacher Ibn al-Mubārak, Ibn Ma^cīn possessed an extensive library. Sezgin, 1:106-107, 95.

³cIyāḍ, 1:148.

⁴SUFYĀN IBN ^cUYAINAH ibn Maimūn al-Hilālī (107-196/725-811) was born in Kūfah but grew up in Makkah and became one of the most renowned Makkan muḥaddith's, fugahā', and Qur'ānic commentators. He was one of ash-Shāfi^ci's Makkan teachers. Sezgin, 1:96, 484.

⁵cIyāḍ, 1:149-150; ash-Shāṭibī, Al-Muwāfaqāt, 4:289.

come forth from me for each of which I would rather have been whipped than for them to have come forth from me, and I am among the most fearful of people of the whip."¹

'Abū Zahrah sums up Mālik's attitude toward ḥadīth aptly and indicates that there was a strong connection between it and Mālik's concept of maṣlahah. Mālik, he holds, would commit to memory the ḥadīth that he received from his teachers, and he would set down in writing whatever he committed to memory. However, he would examine carefully what he transmitted and transmit only those ḥadīth that met his standards of criticism and would be in the best interest [maṣlahah] of the people if divulged and widely circulated.² Similarly, Mālik is reported to have advised his student Ibn Wahb--who, as I pointed out earlier, is said to have collected the ḥadīth of Egypt and the Ḥijāz³--to beware of those types of ḥadīth and other types of transmitted learning which it is not proper [lā yastaqīm] to transmit.⁴ Ibn Wahb is reported to have said:

"If God had not saved me through Mālik and al-Laith⁵ I

¹cIyāḍ, 1:149-150; Ash-Shāṭibī, Al-Muwāfaqāt, 4:289.

²Abū Zahrah, p. 88. ³See above, pp. 74-75, n. 3.

⁴cIyāḍ, 1:151.

⁵Abū 'l-Ḥārith AL-LAITH IBN SA^{CD} al-Fahmī (94-175/713-791) was an Egyptian contemporary of Mālik and a very highly regarded muhaddith, faqīh, and historian. He was one of the most highly regarded fuqahā' of his generation. Like Mālik, he was a student of az-Zuhrī and others. Sezgin, 1:520.

would have gone astray." It was said to him, "How is that?" He replied: "I had become too involved with ḥadīth ['akthartu min al-ḥadīth] to the extent that I was becoming confused. I would set forth [what I had heard] before Mālik and al-Laith, and they would say: 'Take this one and discard that one.'¹

Mālik came to have considerable prestige and influence in Madīnah. Apparently, he used it to constrain the people of learning in Madīnah to observe standards in transmitting ḥadīth similar to his own. It is reported that until Mālik's death those who transmitted ḥadīth in Madīnah had to beware lest Mālik have them put in jail and require them to correct what they had transmitted before he would permit them to be set free.² It is reported that notable Madīnan scholars of Mālik's generation like Ibn Kinānah, Ibn 'Abī Ḥāzim, and ad-Darāwardī³ refrained from transmit-

¹^cIyāḍ and Ibn Farḥūn, p. 333, cited by 'Abū Zahrah, p. 233.

²^cIyāḍ, 1:166.

³^cUthmān ibn 'Isā IBN KINĀNAH (d. ca. 185/ca. 801) was a significant Madīnan faqīh and student of Mālik. Ibn Kinānah was close to Mālik and would always sit at his right side. He was regarded as one of Mālik's most exact and well-studied students. It is reported that Mālik would send Ibn Kinānah to debate with 'Abū Yūsuf on his behalf before the 'Abbāsīd caliph, when the caliph and 'Abū Yūsuf visited Madīnah on their way to pilgrimage. After Mālik's death Ibn Kinānah took Mālik's place in his circle of students but died six years after Mālik. Ibn 'Abd-al-Barr says that ra'y got the better of Ibn Kinānah [ghalaba 'alaihi 'r-ra'y] and that he was not noteworthy in ḥadīth. ^cIyāḍ, 1:292-293; Ibn 'Abd-al-Barr, p. 55.

^cAbd-al-'Azīz IBN 'ABĪ ḤĀZIM (d. 185/801) was a Madīnan faqīh of mawlā origin. Ibn Ma'īn regarded him as a trustworthy transmitter of ḥadīth. Ibn Ḥanbal held, however, that Ibn 'Abī Ḥāzim possessed books of ḥadīth that he had not received by way of formal transmission. Neverthe-

ting the ḥadīth of certain scholars during Mālik's lifetime out of deference [ḥaibah] to him.¹

Mālik as a Teacher
and Muftī

'Abū Zahrah concludes on the basis of his comparative biographical studies of the 'imām's of the major sunnī schools and the accounts of their students that, of all these 'imām's, none had students as numerous and from as diverse backgrounds as Mālik. Mālik attracted students from all parts of the Islamic empire; the majority of them came from the Ḥijāz, Egypt, North Africa, Morocco, and Andalusia, but many of Mālik's students came from Syria, Khurāsān, and Iraq as well. Furthermore, Mālik attracted students of all ages; he attracted those who were older than he, those who were the same age as he, and those who were younger. 'Abū Zahrah suggests that one of the main reasons why Mālik's school spread so far through the Islamic world so quickly was because of the large numbers and great diversity of his students.²

Mālik's method of teaching and the atmosphere of his circle of students differed from that of 'Abū Ḥanīfah, which

less, Ibn Ḥanbal regarded him as the best faqīh in Madīnah after Mālik. Ibn 'Abd-al-Barr, p. 55.

'Abd-al-'Azīz ibn Muḥammad AD-DARĀWARDĪ (d. 186/802) was a Madīnan muḥaddith who transmitted many ḥadīth but is said to have had a poor memory. He was a mawlā of Khurāsānian background; studied under Sufyān and Shu'bah; and was one of ash-Shāfi'ī's teachers. Ibn Ḥajar, 6:353-355; Ziriklī, 4:150.

¹ 'Iyāḍ, 1:166. ² 'Abū Zahrah, p. 229; cf. 'Iyāḍ, 1:143.

is said to have been characterized by free discussion and exchange of opinion, consultation [shūrā], and a considerable amount of speculative, hypothetical reasoning.¹ Mālik's circle, on the contrary, was dominated by his personality. The number of questions that one would be permitted to ask were limited, and hypothetical reasoning was strictly discouraged.

Many of those who sat in Mālik's circle held him in great awe [haibah], an awe so great that in some cases it made it impossible for some sitting in Mālik's circle to find the courage they needed to ask him questions. As for those who were not afraid to ask questions the social pressure of Mālik's students was apparently enough to guarantee that they observed whatever etiquette was deemed proper. One man reports that he attended Mālik's circle and asked him a question. When Mālik answered him, he replied with a counter argument; Mālik then replied with a counter argument of his own. Then some of Mālik's students indicated to the man that he should be silent, so he ceased to argue.² There is a report of another visitor who attended Mālik's circle and asked two questions, which Mālik answered, and then continued to ask a third, which Mālik refused to answer; when the man lost his patience with Mālik and responded to Mālik's advice that he be less persistent and more

¹See al-Kawtharī, pp. 55-56. ²cIyāq, 1:163.

modest by citing a spurious ḥadīth in his favor, several of Mālik's students stood up to the man, pulled his turban from his head, and choked him with it.¹

One of Mālik's students, Ziyād ibn Yūnus,² is reported to have said that he had never seen a man of learning [ʿālim], a man given to worship [ʿābid], a shrewd villain [shāṭir], or a governor [wālī] held in greater awe and deference [i.e. 'ahyab] than Mālik.³ Similarly, Saʿīd ibn 'Abī Maryam,⁴ ad-Darāwardī, and Ibn al-Mājishūn⁵ report that

¹Iyāq, 1:167. The man is reported to have been an Iraqi; the ḥadīth he cited to support the validity of his insistence before Mālik was: "'Idhā kathufa wajh ar-rajul, daqqa dīnuhū" [the rougher (i.e. the more bold and immodest) a man's face becomes, the finer will be his (understanding of) religion]. I assume the ḥadīth is spurious because I could find no reference to it in A. J. Wensinck, Concordance et indices de la tradition musulmane: les six livres, le musnad d'al-Darīmi, le muwaṭṭa' de Mālik, le musnad de Ahmad ibn Ḥanbal, 7 vols. (Leiden: E. J. Brill, 1937-1943).

²ZIYĀD IBN YŪNUS ibn Saʿīd al-Ḥaḍramī (d. 211/826) was an Alexandrian muhaddith and was regarded as a great seeker of knowledge. He was nicknamed "sūsāt al-ʿilm" [the woodworm (i.e. that bores through) knowledge]. Other muhaddith's regarded him as reputable and trustworthy. Ibn Ḥajar, 3:389.

³Iyāq, 1:166.

⁴SAʿĪD IBN al-Ḥakam 'ABĪ MARYAM (144-224/761-838) was an Egyptian mawlā and a highly regarded muhaddith and faqīh. Many regarded him as one of the most intelligent Egyptians of his generation. Ibn Ḥajar, 4:17-18.

⁵Abd-al-Malik ibn ʿAbd-al-ʿAzīz IBN AL-MĀJISHŪN (d. 212/827) was the son of one of the most prominent Madīnan fuqahā' of Mālik's generation, ʿAbd-al-ʿAzīz ibn al-Mājishūn (d. 164/780). Their family had come to Madīnah from Persia. ʿAbd-al-Malik was a student of Mālik and follower of his school, of which it is said that he had a most excellent understanding. Like his father before him, ʿAbd-

they had never felt in the presence of a caliph or governor the awe mingled with fear [haibah] that they felt for Mālik when in his presence.¹

Ibn Wahb, one of Mālik's main students, reports that when he first came from Egypt to Madīnah to see Mālik the delegation of Egyptians whom he was with designated Ibn Wahb to ask Mālik on their behalf about whether hermaphrodites should be regarded as male or female for purposes of law. When Ibn Wahb saw Mālik, however, he had such awe of him that he could not find the courage to ask the question nor could anyone else in the Egyptian delegation.²

Mālik's students are described as having sat so still in Mālik's presence that it was as if birds were perched

al-Mālik ibn al-Mājishūn was one of the main muftī's of Madīnah in his day. He was also one of the teachers of Saḥnūn. The muḥaddith's regarded him as a weak transmitter of ḥadīth. Ziriklī, 4:305; Ibn Ḥajar, 6:407-409.

¹Ḥiyāḍ, 1:166-167.

²Cited by 'Abū Zahrah, p. 100. It is a question which apparently no one ever found the courage to ask Mālik. In the Mudawwanah, when 'Asad ibn al-Furāt--who asks the questions--asks Ibn al-Qāsim--who provides most of the answers--about Mālik's opinion on hermaphrodites, Ibn al-Qāsim replies:

"I never heard anything from Mālik pertaining to [hermaphrodites], and we never dared to ask anything about them." ['Asad] asked: "Did you ever hear him say anything about what their portion of inheritance would be?" [Ibn al-Qāsim] replied: "No. But I personally prefer that one consider how [a hermaphrodite] urinates; if it urinates from the penis, it is a boy, and if it urinates from the urethra, it is a girl."

See Al-Mudawwanah, 2:187 (17).

upon their heads.¹ When Mālik, as was one of his habits, refused to answer a question or stated that he did not know the answer, few had the courage to ask him a second time. It is said that when Sufyān ath-Thawrī witnessed the great regard in which Mālik's students held him, he composed the following verses:

Ya'bā 'l-jawāba fa-lā yurāja^cu haibatan /
 fa-'s-sā'ilūna nawākisu 'l-'adhqāni:
 'Adabu 'l-waqāri wa 'cizzu sultāni 't-tuqā /
 fa-huwa 'l-muhību wa laisa dhā sultāni.

[He refuses to answer but, out of awe, is not asked again; / the beards of those who would ask are lowered in humility; / It is the deportment of reverence, the glory of the power [sultān] of righteousness; / he is one who inspires great awe yet possesses no power (sul-tān).] ²

Since many of those who had questions for Mālik found it difficult to ask the questions themselves, Mālik's scribe and reader, Ḥabīb,³ is reported to have acted frequently as an intermediary to whom they could bring their questions.⁴ Ibn Wahb reports the account of a man who came to Madīnah to ask Mālik a question but could not find the courage to

¹Iyāq, 1:154. ²Ibid., 1:167.

³ḤABĪB IBN Marzūq (or) Rizīn 'ABĪ ḤABĪB (d. 218/833) was Mālik's reader [qārī] and scribe [kātib]. He was a Madīnan and later settled in Egypt, where he died. He would read about two or two and a half pages before Mālik and his students each day. It is said that Ḥabīb would ask a fee of two pieces of gold [dīnār] for each complete presentation. Many muḥaddith's had a low estimation of Ḥabīb; 'Aḥmad ibn Ḥanbal and Yahyā ibn Ma^cīn are said to have regarded him as a weak [ḍa^cīf] transmitter if not a liar [kādhīb]. Ibid., 1:378-379; cf. 5:56.

⁴Ibid., 1:153-154.

ask it nor could he find anyone else who would ask the question on his behalf. The man is said to have spent ten days not knowing what to do. Finally, after complaining of his problem to the people of Madīnah, he was directed to bring the question to Mālik's scribe, who would ask the question for him.¹

Mālik was known for his reticence and regarded much talking to be a blemish. He did not permit debates and arguments in his presence, because he felt they led to vanity and removed the light of knowledge. Similarly, he is said to have felt that excessive talking detracted from knowledge and debased it.² He regarded much talking to be unmanly and to be characteristic of the weak-minded [laḍ-ḍu^cafā']. It is reported that Mālik remarked about a certain person: "What an excellent person he would be but for the fact that he speaks in a single day the words of an entire month."³

As indicated before, Mālik refused to answer many of the questions that were posed to him. It was very common that he replied to the questions that were asked him with the words, "lā 'adrī" [I do not know]. One report has it that Mālik was asked forty-eight questions one day to thirty-two of which he answered "lā 'adrī".⁴ Furthermore, Mālik instructed his students that they also should make it

¹Iyāḍ, 1:168. ²Ibid., 1:170. ³Ibid., 1:189.

⁴Ibid., 1:146.

a habit to reply with these words to all questions concerning which they had doubts.¹

Apparently Mālik preferred reticence and admission of lack of knowledge because, as he explained to Ibn Wahb, the Syrians would go back to Syria, the Iraqis to Iraq, the Egyptians to Egypt taking his opinions with them, while he might alter those opinions after more thought.² According to the reports in Mālik's biography, however, Mālik would continue to ponder the difficult questions that were asked him. Mālik is reported to have said that questions would be posed to him that would keep him from eating, drinking, and sleeping.³ Mālik is reported to have said: "There is a question which I have been reflecting on for more than ten years, but even until now I have not been able to arrive at an opinion [ra'y] on it."⁴

It is reported that a man of high social standing once came to Mālik to ask a question of him. Mālik responded to the question by saying, "I do not know." Thereupon the man lost his patience and said: "The question is trivial [khafīfah; light] and simple. I only wanted to inform the 'amīr [city governor] about it." It is said that Mālik be-

¹*Iyād*, 1:145-146. ²*Ibid.*, 1:146.

³Ash-Shāṭibī, *Al-Muwāfaqāt*, 4:286; cf. *Iyād*, 1:145-146.

⁴Ash-Shāṭibī, *Al-Muwāfaqāt*, 4:286.

came angry and answered:

A trivial and simple question! There is nothing that pertains to knowledge that is trivial. Have you never attended to what God has said, may He be exalted, [in the Qur'ān]: "Verily, We shall send down upon you a weighty [thaqīl] message."¹ All knowledge is heavy [thaqīl], especially that about which you will be asked on the Day of Resurrection.²

Mālik's reticence, his habit of acknowledging lack of knowledge on numerous questions, and his refusal to entertain hypothetical questions posed some problems for his students, who desired to learn Mālik's position on a variety of matters. It is reported that Mālik's students would seek to overcome this problem by the device of finding people who would bring before Mālik the questions his students wanted to be asked under the guise of their being actual problems.³

Mālik's Prestige in Madīnah

Mālik's prestige in Madīnah went beyond the circle of his students. It is reported that the governor ['amīr] of Madīnah, the qāḍī, and the muḥtasib [supervisor of the market place and keeper of public morals] kept individual representatives in Mālik's circle to inform them of his opinions.⁴ Similarly, it is reported that the fugahā' of Madīnah would meet with Mālik in special sessions.⁵ Although Mālik himself never presided as the qāḍī of Madīnah, it is

¹Qur'ān, 73:5. ²Iyāḍ, 1:147-148. ³Ibid., 1:151.

⁴Ibid., 1:87-88. ⁵Ibid., 1:157.

reported that the city's governor [wālī] occasionally called upon Mālīk to exercise the functions of a judge in his presence. It is reported, for example, that Mālīk would sit in the governor's presence, and those found guilty in criminal cases would be brought before them, while Mālīk would state what punishment should be meted out to each.¹

Mālīk's relationship with the governors of Madīnah, however, was not always cordial. According to the history of aṭ-Ṭabarī² Mālīk encouraged the people of Madīnah to support the rebellion of an-Nafs az-Zakīyah³ against the newly

¹Ḳiyāḍ, 1:184.

²Muḥammad ibn Jarīr AṬ-ṬABARĪ (ca. 224-310/ca. 839-923) was a great Muslim historian, Qur'ānic commentator, muḥaddith, and grammarian. He also had good knowledge of mathematics and medicine. In law, aṭ-Ṭabarī followed the school of ash-Shāfi'ī at first but then founded an independent school, called "al-Jarīriyah". Born in Āmul in Persia, he travelled widely, visiting and studying in Baṣrah, Kūfah, Baghdad, Syria, and Egypt; he studied for a time under 'Aḥmad ibn Ḥanbal. Aṭ-Ṭabarī was one of the most productive of all Muslim scholars. He compiled his works primarily from written sources, and they are among the most important primary sources for modern scholarship. See Sezgin, 1:323-325.

³Muḥammad ibn 'Abd-Allāh ibn al-Ḥasan ibn al-Ḥusain ibn 'Alī ibn 'Abī Ṭālib, called "AN-NAFS AZ-ZAKIYAH" [the pure soul] (93-145/712-762) was born and grew up in Madīnah. He was regarded as having had great knowledge and as having been very generous and brave. He refused to give the oath of allegiance [al-bai'ah] to the first 'Abbāsīd caliphs, as-Saffāh and al-Manṣūr; it is said that both of them had given an oath of allegiance to an-Nafs az-Zakīyah secretly during the last days of the 'Umayyad dynasty. An-Nafs az-Zakīyah led a rebellion against them with 250 men and took over Madīnah. The Madīnans then gave him an oath of allegiance as caliph. Thereafter Baṣrah, Makkah, and parts of Persia came under his control. Al-Manṣūr sent 4000 horse soldiers against an-Nafs az-Zakīyah, who was killed and whose forces were crushed in a fierce battle outside the gates of

established [°]Abbāsīd regime.¹ Other reports do not mention Mālik's having given explicit support to an-Nafs az-Zakīyah but indicate that the [°]Abbāsīds considered Mālik as having aided the cause of an-Nafs az-Zakīyah by continuing--despite directions to the contrary--to transmit a ḥadīth according to which the divorce of a man who is forced to divorce his wife is not valid. The analogical implication of the ḥadīth was that the oath of allegiance that the people of Madīnah had given to the [°]Abbāsīds under compulsion was also not valid. Hence, numerous Madīnans renounced their allegiance to the [°]Abbāsīds in favor of an-Nafs az-Zakīyah.²

As a result of [°]Abbāsīd disfavor, Mālik was publicly flogged, and his arms were stretched until his shoulders were dislocated. The punishment was carried out during the reign of al-Manṣūr under the direction of the then governor

Madīnah. It is said that an-Nafs az-Zakīyah was of pure Arab blood from the tribe of Quraish. He is described as having been dark brown and large and heavy-set; some likened his prowess on the battlefield to that of the Prophet's uncle Ḥamzah ibn [°]Abd-al-Muṭṭalib. Zirīklī, 7:90.

¹Cited by 'Abū Zahrah, pp. 75-76.

²Cited by 'Abū Zahrah, pp. 72-74. Historical accounts of Mālik's miḥnah [inquisition] give two additional reasons for it, both of which 'Abū Zahrah regards as unlikely. The first is that Mālik had insisted that temporary marriages [nikāḥ al-muṭ[°]caḥ] were prohibited, contrary to the opinion of Ibn [°]Abbās, the Companion of the Prophet and illustrious ancestor of the [°]Abbāsīds; *ibid.*, p. 72. The second is that Mālik preferred the third caliph, [°]Uthmān, to [°]Alī. 'Abū Zahrah regards this reason as unlikely because such a position would not have been likely to offend the [°]Abbāsīds, who were not descendants of [°]Alī. Had Mālik taken such a position, 'Abū Zahrah reasons, it would have been in the favor of the [°]Abbāsīds, since an-Nafs az-Zakīyah was a descendant of [°]Alī; *ibid.*, p. 74.

of Madīnah, Ja^cfar ibn Sulaimān. Assuming that Mālik's punishment was in some manner connected with the rebellion of an-Nafs az-Zakīyah, 'Abū Zahrah estimates that it probably took place during the early years of the reign of al-Manṣūr shortly after the death of an-Nafs az-Zakīyah in 145/762. Many reports state that Ja^cfar ibn Sulaimān carried out the punishment without al-Manṣūr's knowledge or consent. (It seems unlikely to me that Ja^cfar would, however, have undertaken to publicly punish and humiliate Mālik or any other prestigious Madīnan without the consent of the caliph.) However this may be, other reports have it that al-Manṣūr later apologized to Mālik and was reconciled with him.¹

Mālik's Work

The Muwaṭṭa' is by far the most important work that Mālik composed. According to al-Qāḍī ^cIyāḍ, however, Mālik composed eight other works as well; ^cIyāḍ states that some of these works were transmitted from Mālik by several people and with sound 'isnād's.²

Mālik is alleged to have written a risālah [letter or treatise] to Ibn Wahb on the question of predetermination and free will [al-qadar]. The work is said to have been

¹See 'Abū Zahrah, pp. 75-76.

²^cIyāḍ, 1:204-207; Sezgin makes no mention of any of these works or that they are still available, Sezgin, 1:457-464. Mālik's letter to al-Laith ibn Sa^cd, however, is still available, as indicated below.

transmitted by numerous people and to have been an excellent refutation of those who denied predetermination. A second work attributed to Mālik was a book on stars; it is said to have taught one how to compute the changing of the seasons, the passing of time, and the phases of the moon. ^cIyāq describes it as an excellent work, upon which many have relied.¹

It is reported that Mālik compiled a special work of ten sections [juz'] on judicial decisions ['aqḍiyah], which he drew up for a certain qāḍī. Similarly, Mālik is said to have composed a risālah dealing with fatwā's; ^cIyāq states that this risālah is well-known.² ^cIyāq also mentions Mālik's risālah to al-Laith ibn Sa^{cd} pertaining to Madīnan ḥamal, which is transmitted in ^cIyāq's work and elsewhere and is discussed in more detail later.³

Mālik is said to have composed an exegetical work on the unusual words of the Qur'ān [tafsīr gharīb al-Qur'ān]. ^cIyāq mentions another work attributed to Mālik entitled, "Kitāb as-Sirr" [the book of secret(s)]; he does not give it

¹^cIyāq, 1:204. ²Ibid., 1:205.

³Ibid., 1:207. ^cIyāq describes this risālah as "short" which would indicate apparently that the other risālah's were longer. It is to be found in *ibid.*, 1:64-65 and Muḥammad ibn 'Abī Bakr IBN QAYYIM al-Jawzīyah, 'Iḥlām al-Muwagqīḥīn Can Rabb al-Ḥalamīn, ed. ^cAbd-ar-Raḥmān al-Wakīl, 4 vols. (Egypt: Dar al-Kutub al-Ḥadīthah, 1969), 3:107-114.

For a discussion of this letter and al-Laith's response to it, see below, pp. 311-330.

much credence, however, and says that little has ever been said about it.¹ It is also said that Mālik wrote a treatise for the ʿAbbāsīd caliph Hārūn ar-Rashīd² on proper deportment [ādāb] and spiritual admonitions [mawāʿiẓ]. The work is said to have been transmitted in Andalusia by Ibn Ḥabīb³; however, ʿIyāḍ states that there is much doubt about its authenticity. Among other things, the work contains weak ḥadīth, the transmission of which--ʿIyāḍ points out--is contrary to Mālik's principles.⁴

Mālik's Muwaṭṭaʾ

Mālik's Muwaṭṭaʾ is one of the oldest and most valuable extant works on Islamic law.⁵ Furthermore, it was

¹ʿIyāḍ, 1:206-207.

²HĀRŪN AR-RASHĪD ibn Muḥammad [al-Mahdī] ibn al-Manṣūr (149-193/766-809) was the fifth and probably most famous ʿAbbāsīd caliph. He grew up in Baghdad and became caliph in 170/786, while still a young man. It is said that he had extensive knowledge of literature and poetry, fiqh, ḥadīth, and the history of the pre-Islamic Arabs. He was the patron of many ʿulamāʾ and poets. Zirīklī, 9:43-45.

³ʿAbd-al-Malik IBN ḤABĪB (174-238/790-852) was a great Mālikī faqīh and historian of Cordova in Andalusia. He made the pilgrimage to Makkah and spent some time thereafter studying in Madīnah and Egypt. It is said that he wrote over a thousand works on various topics. One of these works, his complete history of Andalusia, has come down to us and preserves some of the oldest records of Andalusian history. See Sezgin, 1:468, 362; Zirīklī, 4:302.

⁴ʿIyāḍ, 1:205.

⁵The works Majmūʿ al-Fiqh and Manāsik al-Ḥajj wa 'Aḥ-kāmuhū, attributed to Zaid ibn ʿAlī (79-122/698-740) are also very early works. There is doubt, however, about their

transmitted by a large number of Mālik's students, and there is little doubt about its authenticity.¹ The transmission of the Muwaṭṭa' that I have relied upon in this dissertation is that of one of Mālik's most reputable students and trans-

authenticity. Sezgin like E. Griffini, who first published the work in Milan in 1919, regards the works to be authentic. Bergsträsser and Strothmann, however, who wrote about the works in the 1920's, regard them as spurious. Madelung also doubts their authenticity but takes a more moderate stance than Bergsträsser and Strothmann. Whether or not Zaid ibn ʿAlī did actually compile these works, they go back, nevertheless, to at least the mid second/eighth century, which makes them still early sources. See Sezgin, 1:400, 552-560; Madelung, p. 54.

The manuscripts of two other early works deserve mention. There is the "Kitāb al-'Aṣl" of Sulaim ibn Qais al-Hilālī (d. before 95/714), who is said to have been a transmitter of ʿAlī ibn 'Abī Ṭālib. Ibn an-Nadīm regards his work as the oldest law book of the shīʿah. Goldziher, who knew of the work only through reports, regarded it to be spurious. As Sezgin suggests, however, judgment on the work's authenticity should be suspended until the manuscript of the work has been analyzed. See Sezgin, 1:400, 525-526.

There is also a manuscript in aḡ-Ẓāhirīyah Library in Damascus of "Kitāb al-Manāsik" of Qatādah ibn Diʿāmah (60-118/679-736), a famous Successor. The manuscript is a recension of Qatādah's student Saʿīd ibn 'Abī ʿArūbah (70-156/689-773), who was one of the most significant Baṣran muḥaddith's. See Ibid., 1:400, 31-32.

¹Ibn Taimīyah states that the number of those to whom Mālik transmitted the Muwaṭṭa' has been estimated at about 1700; he suggests that the actual figure would be higher because these estimates were made about three centuries after Mālik's death, when the records of some of his students would have been already lost. See Ibn Taimīyah, p. 33.

Because of the differences between the content of different recensions of the Muwaṭṭa', Goldziher concludes that Mālik authenticated his transmissions of the book in a rather careless manner. Schacht concludes on the same basis that not Mālik but his students edited the work. Sezgin regards these conclusions as inaccurate because of the numerous accounts that Mālik composed the work himself completely and supervised transmission of it. The variations in the recensions reflect, he believes, the regular editorial changes--especially deletions--that Mālik is reported

mitters, Yaḥyā ibn Yaḥyā al-Laithī.¹

Several reports state that Mālik undertook the compilation of the Muwaṭṭa' at the request of the 'Abbāsīd caliph al-Manṣūr, who desired to make it a standard law code for his empire. Al-Manṣūr is said to have desired Mālik to perform the task because of his high estimation of Mālik's knowledge and his conviction that the knowledge of the people of Madīnah took priority over that of Iraq and other regions.² Al-Manṣūr must not have felt bound, however, by his conviction that the knowledge of Madīnah was superior to that of Iraq, if the reports are true that he tried to constrain 'Abū Ḥanīfah to become one of his qāḍī's.³

to have made in the work over several decades. Sezgin, 1: 458-459.

¹YAḤYĀ IBN YAḤYĀ ibn Kathīr al-Laithī al-Maṣmūdī (d. ca. 235/ ca. 849) was a native of Cordova and was of Berber background. He travelled to Madīnah at the age of twenty-eight and received the Muwaṭṭa' from Mālik except for the chapters pertaining to i'tikāf [seclusion in the mosque during Ramaḍān], which he received from others. Yaḥyā also studied under Ibn Wahb, Ibn al-Qāsim, al-Laith ibn Sa'ād, Sufyān ibn 'Uyainah, and others. In some matters of law, he preferred the opinions of al-Laith to those of Mālik. His transmission of the Muwaṭṭa' is generally regarded as the best. Yaḥyā ibn Yaḥyā was regarded as highly intelligent and was called "Cāqil al-'Andalus" [the most intelligent man of Andalusia]. He was highly regarded as a faqīh and is said to have had excellent judgment in legal matters. His knowledge of ḥadīth, however, was not regarded as especially good. The ruler and common people came to rely exclusively upon his opinion in matters of law; many regarded him as the 'imām' of Andalusia in his day. See Ibn 'Abd-al-Barr, pp. 58-60; Ibn Ḥajar, 11:300-301.

²Ciyāḍ, 1:192. ³See Sezgin, 1:409.

Although al-Manṣūr is reported to have been thinking of constraining his subjects to follow Mālik's book, reports have it that Mālik counselled him against doing that. According to one report, Mālik based his counsel on the consideration of maṣlaḥah, stating that it would be too difficult [shadīd] to force the people of different regions to give up practices that they believed to be correct and which were supported by the ḥadīth and legal opinions that had reached them.¹ Mālik also indicates in these reports that he regards the divergent practices of the Islamic regions to have validity by virtue of the fact that there were similar divergences of practice among the Companions, from whom the peoples of these regions learned their practices.²

According to other reports ^cAbd-al-^cAzīz ibn al-Mājishūn³ was the first in Madīnah to compile a work of the nature of [calā maḥnā] Mālik's Muwaṭṭa'.⁴ Other reports

¹^cIyāḍ, 1:192. ²Ibid.

³^cAbd-al-^cAzīz ibn ^cAbd-Allāh IBN AL-MĀJISHŪN (d. 164/780) was a great Madīnan faqīh of Mālik's generation and the father of one of Mālik's most notable students, ^cAbd-al-Malik ibn al-Mājishūn, also a highly regarded Madīnan faqīh. Ibn al-Mājishūn was a mawlā; he came originally from Isfahan in Persia and settled in Madīnah. ^cAbd-al-^cAzīz was a highly regarded ḥāfiẓ of ḥadīth and was considered to be a trustworthy transmitter. He was also held to be highly intelligent and wrote several compilations [taṣānīf]. It is said that Ibn Wahb and others transmitted a compilation [muṣannaḥ] of his pertaining to statutes of law [al-'aḥkām]. Ibn al-Mājishūn was one of the fugahā' of Madīnah who gave fatwā's to the people. He died in Baghdad. Ziriklī, 4:305; Ibn Ḥajar, 6:343-344.

⁴^cAbd-al-Laṭīf, "Preface" to ash-Shaibānī's recension of the Muwaṭṭa', p. 13; cf. ^cIyāḍ, 1:195.

state that Ibn al-Mājishūn was the first in Madīnah to make a "Muwaṭṭa'"["'awwal man 'l-Muwaṭṭa'"]; Ibn al-Mājishūn's work, however, is said to have contained only discussions [kalām]--apparently of legal opinions and usages--and not any ḥadīth. The reports continue to say that when Mālik saw Ibn al-Mājishūn's work he commented, "What an excellent piece of work this is. But were it I who had done it, I would have begun by [citing] āthār. Then I would have clarified that ["thumma shaddadtū dhālika"] by adding the discussions [al-kalām]." The reports conclude by stating that Mālik then set his mind to composing the Muwaṭṭa', adding that during those days the ʿulamā' of Madīnah in general had taken up compiling "Muwaṭṭa's" [al-Muwaṭṭa'āt].¹

Although these accounts of the origin of the Muwaṭṭa' may be mutually exclusive, it is also possible to harmonize their contrariness. For example, al-Manṣūr's directive regarding the compilation of a book containing the legal knowledge of the people of Madīnah might have been directed toward the Madīnan ʿulamā' in general and not Mālik exclusively, although he might have expressed special interest in Mālik's undertaking the project. Or once al-Manṣūr's request that Mālik compile such a work became generally known, other Madīnan ʿulamā' might have been motivated to compile such works themselves in view of caliphal interest in the matter. Whatever the correct explanation of these accounts

¹ʿIyāḍ, 1:195.

may be, the general activity of the Madīnan Culamā' in Mālik's generation of compiling books of the nature of the Muwaṭṭa' appears to have been unprecedented. (Ibn al-Mā-jishūn is said to have been the first to have done it, and his compilation must have been relatively recent; otherwise one would expect Mālik to have had ample knowledge of it before a copy was brought to him and he became determined to compile a similar work.) Caliphal interest in the compilation of such a work would account well for such widespread and unprecedented activity in Madīnah.

It is reported that Mālik continued to revise the Muwaṭṭa' over a period of more than forty years after its first compilation. The initial compilation of the work must have been considerably larger than the final revisions, since it is reported that Mālik's habit was to delete materials from it at each revision.¹ It is reported that Mālik said to some of his students to whom he had transmitted the Muwaṭṭa': "A book which I have compiled over forty years and you have taken from me in forty days! How little it is that you understand of what is in it."²

Finally, I would like to discuss briefly the meaning of the title of Mālik's Muwaṭṭa'. As Azmi has pointed out, the Muwaṭṭa' is exceptional among the compilations of that period by virtue of its having been given a title. Most early compilations of ḥadīth, for example, were known merely

¹cIyāq, 1:121; cf. Sezgin, 1:458. ²cIyāq, 1:195.

by reference to the name of the compiler.¹ Thus, it is very much to be expected that Mālik intended to indicate something about the content, nature, or purpose of his work by the title he selected.

One report has it that Mālik presented his work to many [lit., "seventy"] of the fuqahā' of Madīnah and that they all concurred with him on its validity [wāṭa'anī 'alaihī]. Thus, the report concludes, Mālik named his work, "al-muwaṭṭa'", which comes from the same verbal root.² This report seems unlikely, however, because the noun and adjective forms of the verb "wāṭa'a", used in the above expression, would be "muwāṭa'ah" or "wiṭā'" or "muwāṭa'" but not "muwaṭṭa'", which is the noun of place or time of the second form verb of the same root.

The first form verb "waṭa'a" means primarily "to press or bear down upon something with hand or foot" and, hence, "to tread or trample upon." The second form of the verb, "waṭṭa'a", from which "muwaṭṭa'" comes, means "to prepare or make smooth, easy, and soft for travelling, walking, riding, or laying upon", i.e. as if by frequent treading, rid-

¹Azmi, pp. 298-299; cf. Jalāl-ad-Dīn 'Abd-ar-Raḥmān as-Suyūṭī, Tanwīr al-Ḥawālik: Sharḥ 'alā Muwaṭṭa' Mālik, 3 vols. in 1 (Egypt: Dar 'Iḥyā' al-Kutub al-'Arabiyah, n.d.), 1:7. Azmi notes that, although al-Bukhārī and Muslim borrow extensively from Mālik's Muwaṭṭa', they follow the traditional procedure of citing his name in the 'isnād' and not the title of his work; Azmi, pp. 298-299.

²As-Suyūṭī, 1:7.

ing, or laying upon, as the case may be. It may also mean "to tread or ride upon excessively much." The sense of "agreement" that the third form of the verb, "wāṭa'a", carries is said to be figurative, its concrete meaning being "to tread in the footsteps of another" and, hence, "to be in agreement with another".¹

I prefer to translate "al-muwaṭṭa'" as "the much-trodden path" with the implication that the path is smooth and easy to follow by virtue of its being well-trodden. As such "al-muwaṭṭa'" is, I believe, a figurative reference to the Ḥamal of Madīnah, which is generally reflected throughout the Muwaṭṭa' and is Mālik's primary source of reference for evaluating and interpreting the ḥadīth, āthār, and various legal opinions that the work contains.

Unlike the Mudawwanah, which in addition to examples of Madīnan Ḥamal contains a very considerable portion of Mālik's ijtihād [independent judgment in legal matters] in matters without precedent, the Muwaṭṭa' in terms of its content is essentially a source book of the accepted precedents and established principles of the Madīnan school of law. The Muwaṭṭa' contains examples of Mālik's ijtihād as well, but they are relatively few compared with the Mudawwanah.

¹Edward William Lane, An Arabic-English Lexicon: Derived from the Best and Most Copious Eastern Sources, 8 vols. (London: Williams and Norgate, 1863; reprint ed., Beirut: Librairie du Liban, 1968), 8:2948-2949, s.v. "wṭ'".

I believe that Mālik's choice of title reflects his purpose of making the Muwaṭṭa' essentially a source book of accepted precedents and established principles and precepts of the Madīnan school that are embodied in Madīnan ʿamal and should serve as the point of departure from which the mujtahid [one who does ijtihād] sets out to solve legal questions without precedent. Mālik sets forth the fundamental precepts of the Madīnan school in the Muwaṭṭa' quite articulately, and, according to my analysis of the terminology he uses in conjunction with these precepts, Mālik indicates the types of Madīnan ʿamal from which they come and whether or not there had been consensus upon that precept among the Madīnan ʿulamā'.¹ It might also be pointed out in connection with these observations about the Muwaṭṭa' and Mudawwanah that, as a source book, the Muwaṭṭa' is especially well-suited for the study of Mālik's concept and application of ʿamal, while the Mudawwanah is better-suited for the study of Mālik's ijtihād in matters without precedent and his application of principles like istiḥsān, sadd adh-dharā'ī, and al-maṣāliḥ al-mursalah.

It might also be noted that the metaphor in "muwaṭṭa'" of a path that is much-trodden and easy to follow is similar to the Qur'ānic metaphor of "aṣ-ṣirāṭ al-mustaqīm" [the

¹For discussions of Mālik's terminology and its connection with the precepts of the Muwaṭṭa' see below, pp. 516-760.

straight way that is broad and open], which the believers are supposed to follow.¹ It is also akin semantically to the meaning of the word "madhhab" [the course along which one proceeds], which later became a term for designating "school of law".

The metaphor of a muwaṭṭa', a much-trodden path that is easy to follow, is an apt description, I believe, of how Mālik conceived of ḥamal. It conveys the sense of a "habitual legal practice", for a muwaṭṭa' is walked upon regularly and as a matter of habit. It conveys the sense of "normativeness" and the sense of "simplicity and ease", all of which seem to be parts of Mālik's conception of ḥamal. Since a muwaṭṭa' is taken regularly, it is also well-known. In this sense, muwaṭṭa' is opposed to that which is irregular and uncommon [shādhah] and, hence, similar perhaps to the concept implied by the Ḥanafī usages, "as-sunnah al-maḥrūfah" [the well-known sunnah] and "as-sunnah al-maḥfūzah al-maḥrūfah" [the well-known sunnah, preserved (in practice)].²

¹Qur'ān, 1:6; 2:142, 213; 3:51, 101; 5:16; 6:39, 87, 126, 161; and passim.

²See 'ABŪ YŪSUF Yaḥyā ibn 'Ibrāhīm, Ar-Radd 'alā Siyar al-'Awzā'ī, ed. 'Abū 'l-Wafā' al-'Afghānī (Haidarabad: Lajnat 'Iḥyā' al-Maḥrūfah an-Nuḥmānīyah, 1357/1938), pp. 32, 49, 66-67; cf. pp. 24-25, 29-31, 63-64, 103-105, 134-135.

Al-Mudawwanah al-Kubrā

The Mudawwanah is one of the major sources of Mālik's legal opinions. As I indicated earlier, the Mudawwanah contains a much larger proportion of Mālik's independent legal judgments than the Muwaṭṭa', which is essentially a source book of the established precepts of the Madīnan school. One gets a much clearer picture in the Mudawwanah of Mālik as a mujtahid in unprecedented problems of great variety. No study of Mālik and his legal reasoning would be complete without a study of the Mudawwanah.

The story of the compilation of the Mudawwanah revolves around three men: ^cAbd-ar-Raḥmān ibn al-Qāsim, 'Asad ibn al-Furāt, and Saḥnūn.¹

¹For data on Ibn al-Qāsim see above, p. 42, n. 2.

'ASAD IBN AL-FURĀT ibn Sinān (142-213/759-828) came to Qairawān as a child from Ḥarrān, where he was born. He later returned eastward to study the Muwaṭṭa' with Mālik and to study under 'Abū Yūsuf and ash-Shaibānī in Iraq. 'Asad was a renowned faqīh, and the 'Aghlabid ruler Ziyādat-Allāh ibn 'Ibrāhīm appointed him qāḍī of Qairawān. 'Asad led the expedition of conquest to Sicily in 210/826 and died almost two years later during the siege of Syracuse. It is said that 'Asad chose to follow the Ḥanafī school in his rulings as qāḍī of Qairawān and that, for that reason, the Ḥanafī school spread for some time in North Africa, even reaching as far as the borders of Andalusia. See Sezgin, 1:467; 'Abū Zahrah, p. 237.

^cAbd-as-Salām ibn Sa^cīd ibn Ḥabīb at-Tanūkhī, called "SAḤNŪN" [joyous bird] (160-240/776-854) was a native of Qairawān; it is said that he was given his nickname, Saḥnūn [joyous bird], because of his great energy and vitality. He studied under Ibn al-Qāsim, Ibn Wahb, and numerous other prominent students of Mālik. There is some question as to whether or not he ever saw Mālik. He did study under several of Mālik's students in Makkah, Madīnah, and Syria during and after his journey to the pilgrimage. Saḥnūn returned to Qairawān in 191/806 and was appointed qāḍī there in 234/

The project of compiling the Mudawwanah began with 'Asad ibn al-Furāt, who brought with him from Iraq the idea of compiling a work that would set forth Mālīk's opinions on the various legal questions of the Iraqis.¹ 'Asad learned when he returned to Madīnah that Mālīk had already died. It is said that he first took his project to Ibn Wahb but found him unwilling to cooperate. 'Asad then turned to another student of Mālīk, 'Ashhab,² who was also a student and personal secretary of Ibn Wahb. He soon ceased to be interested in 'Ashhab, however, because 'Ashhab disagreed too frequently with Mālīk. Finally, 'Asad brought the project to Ibn al-Qāsim, whom he convinced to cooperate with him, despite Ibn al-Qāsim's initial unwillingness.³

'Abū Zahrah holds that the Ḥanafī school contributed greatly, albeit indirectly, to the growth of the Mālīkī school

849, It is said that Saḥnūn accepted the appointment on the condition that he not be required to receive a salary or any gifts. He held the position for several years, never receiving any salary. Saḥnūn is also said to have had more students than any other of Mālīk's followers; he was very influential in spreading the Mālīkī school through North Africa. See Sezgin, 1:468; 'Abū Zahrah, p. 239.

¹See Ibn Rushd [al-Jadd], 1:27-28; 'Abū Zahrah, pp. 236-237, 248; and Sezgin, 1:465.

²'ASHHAB ibn 'Abd-al-'Azīz al-Qaisī (145-204/762-819) was an Egyptian student of Mālīk and also a student of Ibn Wahb as well as his personal secretary. 'Ashhab was considered to be a trustworthy transmitter of ḥadīth and a highly competent faqīh. He died only days after the death of ash-Shāfi'ī. Sezgin, 1:466.

³See Ibn Rushd [al-Jadd], 1:27-28; 'Abū Zahrah, pp. 236-237, 248; and Sezgin, 1:465.

through 'Asad's project to compile the Mudawwanah after the pattern of the works he had studied under 'Abū Yūsuf and ash-Shaibānī. One of the benefits of the hypothetical reasoning that characterized the Ḥanafī school--'Abū Zahrah holds--was that it facilitated the precise and systematic solution of a wide variety of legal questions, which led to extensive elaboration of the law and made more articulate the precepts and principles to which the school subscribed. Similarly, through 'Asad's project to compile the Mudawwanah Mālikī fiqh was systematically elaborated and expanded for the first time. Mālik himself had opposed the use of hypothetical reasoning, which--'Abū Zahrah believes--had not hampered him, because of the great variety of legal problems that were brought to him in Madīnah, and had tended to keep Mālik's legal opinions very practical and tied fundamentally to considerations of maṣlaḥah.¹ In cooperating with 'Asad ibn al-Furāt in the compilation of the Mudawwanah, however, Ibn al-Qāsim applied himself to the hypothetical questions of the Iraqis. If he knew of Mālik's having answered one of 'Asad's questions, he cited Mālik's opinion. However, when Mālik was not known to have expressed an opinion on any of these questions, Ibn al-Qāsim attempted to answer the question himself on the basis of Mālik's reasoning in other matters.²

¹'Abū Zahrah, pp. 18-19; see also above, p. 60.

²'Abū Zahrah, pp. 438-439.

Ibn al-Qāsim responds to 'Asad's questions in the Mudawwanah in various ways, and it is always easy to distinguish between Ibn al-Qāsim's opinions and those of Mālik. If Ibn al-Qāsim is certain of Mālik's opinion in a matter, he will transmit it formally, saying something like, "I heard Mālik say this about it" or "Mālik said" When Ibn al-Qāsim does not remember having heard Mālik say anything on the matter but has heard reports of Mālik's opinion on it from others of his students, he will say something like, "I have heard nothing from Mālik on this, but it has reached my attention [balaghanī 'anhū] that he said this about it . . .". Occasionally, Ibn al-Qāsim is not sure of Mālik's opinion in a matter but recalls that Mālik seems to have said a certain thing. In such cases, Ibn al-Qāsim indicates his conjecture by using the words "'akhālu" [it seems to me], "'aẓunnu" [I conjecture], or "'aḥṣabu" [I think]; such instances, however, are relatively rare.¹

For many of the questions that 'Asad asks in the Mudawwanah, however, Ibn al-Qāsim has never heard an answer from Mālik nor from any of his students. In such cases, he often calls to mind an analogical problem for which Mālik has given an opinion, and Ibn al-Qāsim will answer 'Asad's question by drawing the analogy. For some questions, however, Ibn al-Qāsim is unable to find an analogy in Mālik's

¹See 'Abū Zahrah, p. 247; Ibn Rushd [al-Jadd], 1:27-28.

legal opinions; in such cases he does ijtihād on the basis of his understanding of Mālik's legal reasoning. He will refer to his conclusion, however, as his own opinion [ra'y]. Often he will say, for example, "I have heard nothing from Mālik pertaining to this, nor has anything on it that he said been brought to my attention; however, my opinion in the matter is . . .".¹ It should also be noted that there are many instances in the Mudawwanah when Ibn al-Qāsim sets forth Mālik's opinion in a matter but disagrees with it and also states his opinion to the contrary. Ibn al-Qāsim will often add his reasons for disagreeing with Mālik as well. Furthermore, he frequently indicates whether Mālik changed his opinion on matters, what his earlier opinion had been, and what opinion he held before he died.²

"Al-'Asadīyah"

This first compilation which 'Asad ibn al-Furāt put together in cooperation with Ibn al-Qāsim is referred to

¹See Ibn Rushd [al-Jadd], 1:27-28; 'Abū Zahrah, p. 247.

²For illustrations of Ibn al-Qāsim's distinguishing between Mālik's opinions and his own; stating that he does not recall Mālik's opinion in a given matter; indicating that one of Mālik's opinions is old while another is the opinion he held before he died; stating that Mālik's students would continue year after year to ask him certain questions to see if he had retracted them; and disagreeing with Mālik's opinions, see: Al-Mudawwanah, 1:20 (13), 57 (13), 69 (8), 69 (14), 100 (15), 192 (21), 251 (4), 256 (18), 264 (10), 272 (4), 272 (13), 284 (13), 289 (4), 294 (11); 2:189 (23), 197 (27), 391 (15); 3:86 (13); 4:92 (19), 94 (2), 116 (18).

as "Al-'Asadīyah" after 'Asad ibn al-Furāt. It is also referred to as "Al-Mukhtaliḥah" [that which is mixed or confused], because of its lack of systematic organization.¹ Although Ibn al-Qāsim answered 'Asad's questions in the "'Asadīyah" in the same manner in which he answers them in the Mudawwanah, Ibn al-Qāsim was apparently much less certain about many of Mālik's opinions that he transmits in the "'Asadīyah". It is said that one of the complaints that the people of North Africa brought against 'Asad's compilation was that "what you have brought us is "'akhālu", "'aḡunnu", and "'aḡsabu'." Furthermore, unlike the Mudawwanah, the "'Asadīyah" apparently contained legal opinions almost exclusively, without āthār and references to the established practices of the first generations, and this complaint was also brought against it.²

Saḡnūn's Mudawwanah

Al-Mudawwanah al-Kubrā [the major compilation] is Saḡnūn's revision of the "'Asadīyah". He met the criticisms mentioned above by verifying Mālik's opinions with Ibn al-Qāsim more exactly, and he added much additional information,

¹Sezgin, 1:467; 'Abū Zahrah, p. 237. Sezgin cites references to several manuscripts that contain substantial portions of the "'Asadīyah"; some of them, for example, are Mālikī commentaries on the "'Asadīyah" and the Mudawwanah jointly. Sezgin, 1:467.

²Ciyāḡ, cited by 'Abū Zahrah, pp. 247-248.

ḥadīth, āthār, legal opinions of Successors, citations from 'Abū 'z-Zinād ibn Dhakwān's work on the Seven Fuqahā', and so forth--which generally come toward the end of each chapter. Saḥnūn also organized 'Asad's work much more systematically, although portions of it remain unorganized after the manner of the "'Asadīyah".¹

After Saḥnūn had revised the "'Asadīyah" under Ibn al-Qāsim, Ibn al-Qāsim wrote to 'Asad ibn al-Furāt, requesting him to revise his compilation according to the alterations in Saḥnūn's revision. It is said that 'Asad became infuriated at the suggestion, while Ibn al-Qāsim in turn lost patience with 'Asad. In accordance with the wishes of Ibn al-Qāsim, however, it is said that the people ceased to attach authority to the "'Asadīyah" after that time and turned instead to the Mudawwanah of Saḥnūn.²

"Al-Mawwāzīyah"

The Mudawwanah is not the only early source of Mālik's legal opinions. There are other early source works as well, although they exist as yet in manuscripts and have not been published or carefully studied by modern scholars. One of these works is "Al-Mawwāzīyah" named after the early Alex-

¹Sezgin, 1:465; 'Abū Zahrah, pp. 248, 243.

²'Abū Zahrah, p. 248.

andrian Mālikī faqīh Ibn al-Mawwāz¹, the analysis of which might prove to be of immense value to the history of Mālikī legal theory.² Ciyāḍ describes the "Mawwāzīyah" as one of the most brilliant ['ajall] books that Mālikīs have ever compiled. He claims further that it is among the most authentic with regard to Mālik's legal opinions, that it contains the most extensive discussions ['absaṭuhū kalāman], and that it is the most comprehensive ['awḥabuhū]. It has also been said of "Al-Mawwāzīyah" that it takes precedence over other Mālikī source books ['ummahāt], because Ibn al-Mawwāz compiled the work in such a manner as to indicate systematically the connection between specific legal deductions [furūc] and the basic principles and established precepts of Mālikī fiqh ['uṣūlihim]. Other compilers in contrast to Ibn al-Mawwāz were primarily concerned with gathering various transmissions of Mālik's opinions.³

It is also reported that a section of the "Mawwāzīyah" is devoted to the refutation of ash-Shāfi'ī's criticisms of Mālik. Ibn al-Mawwāz's refutation is regarded by some Mā-

¹Muḥammad ibn 'Ibrāhīm ibn Ziyād IBN AL-MAWWĀZ (180-269 or 281/796-882 or 894) was an Alexandrian and a student of several of the renowned Egyptian Mālikīs of his age. He is regarded highly in the Mālikī school because of his efforts to systematize Mālikī fiqh; Sezgin, 1:474.

²An old parchment of several parts of the "Mawwāzīyah" has been preserved in the private collection of Muḥammad aṭ-Ṭāhir ibn 'Ashūr in Tunis; *ibid.*

³Ciyāḍ and Ibn Farḥūn, cited by 'Abū Zahrah, pp. 244-245.

likīs as the most excellent of its kind.¹ (It should be noted that several other early Mālikīs, including Saḥnūn, are reported to have written refutations of ash-Shāfi'ī.²)

¹ḌIyāḍ and Ibn Farḥūn, cited by 'Abū Zahrah, p. 245.

²See Preface, ḌIyāḍ, 1:27-28. In addition to Ibn al-Mawwāz and Saḥnūn, the following are said to have written refutations of ash-Shāfi'ī:

(1) IBN ḌABD-AL-ḤAKAM. This would be either ḌAbd-Allāh IBN ḌABD-AL-ḤAKAM (155-214/772-829)--who was born in Alexandria, studied the Muwatta' under Mālik, and developed a reputation in Egypt as a great faqīh (Sezgin, 1:467)--or his son Muḥammad ibn ḌAbd-Allāh IBN ḌABD-AL-ḤAKAM (182-268/799-882). It is most likely, I believe, that the reference is to Muḥammad ibn ḌAbd-al-Ḥakam because he studied under ash-Shāfi'ī in Egypt, followed his school for a time, and then turned against him and returned to the Mālikī school. Muḥammad ibn ḌAbd-al-Ḥakam was a great Egyptian authority on ḥadīth, Qur'ān, and fiqh (Sezgin, 1:474).

(2) Yaḥyā ibn ḌUmar AL-KINĀNĪ (213-289/828-902). He was a Cordovan and studied under Ibn Ḥabīb. He then traveled to Qairawān, where he studied under Saḥnūn. Thereafter he made his way to Egypt and the Ḥijāz, studying there under other prominent Mālikī fuqahā'. Al-Kinānī was regarded as very precocious. He became a rigorous scholar and critical thinker. After returning to Qairawān, where he settled, he became regarded as the greatest living authority there on the Muwatta' and Saḥnūn's Mudawwanah (Sezgin, 1:475).

(3) 'Abū 'Ishāq 'Ismā'īl ibn 'Ishāq AL-JAḤḌAMĪ (199-282/815-895). He was born in Baṣrah and became one of the great Mālikī fuqahā' of the Mālikī school of Baghdād. His writings are said to have pioneered the spread of Mālikī teachings. He was appointed qāḍī al-quḍāt in Baghdād and remained a qāḍī there until his death. He was also noted as a Qur'ānic exegete, muḥaddith, and historian. Al-Khaṭīb al-Baghdādī describes his works "Aḥkām al-Qur'ān", "Al-Qirā'āt", and "MaḌānī 'l-Qur'ān" as unmatched and irreplaceable. The philologists al-Mubarrad and 'Abū Bakr ibn al-'Anbārī were also students of his. Some of al-Jaḥḍamī's manuscripts are still available (Sezgin, 1:475-476; ḌIyāḍ, 1:27-28).

(4) 'ABŪ BAKR ḌAbd-Allāh ibn Muḥammad AL-MĀLIKĪ (d. after 453/1061). He was a noted historian and faqīh of Qairawān (Sezgin, 1:360; Ziriklī, 4:266).

(5) 'Abū ḌUthmān SaḌīd ibn Muḥammad AL-GHASSĀNĪ, called "IBN AL-ḤADDĀD" (219-302/834-915). He was one of the prominent Ḍulamā' of Qairawān and won great fame as a polemicist, especially against the Fāṭimid Ḍulamā'. He wrote numerous works. Ziriklī, 3:154; Sezgin, 1:601.

It should be noted, finally, that Ibn al-Mawwāz was regarded by later Mālikīs as having been very important in establishing and spreading the Mālikī school, as reflected by the saying: "Were it not for the two shaikh's, the two Muḥammads, and the two qāḍī's the Mālikī school would have passed away." The two shaikh's are explained as having been Ibn 'Abī Zaid of Qairawān and al-'Abharī of Baghdad.¹ The two Muḥammads were Muḥammad ibn Saḥnūn² and Muḥammad ibn al-Mawwāz. The two qāḍī's were the two famous Mālikī legal theorists of Baghdad: al-Qāḍī Ibn al-Qaṣṣār and al-Qāḍī 'Abd-al-Wahhāb.³

¹Abd-Allāh IBN 'ABĪ ZAID 'Abd-ar-Raḥmān (310-386/922-996) was born in Qairawān but came from Spanish background. He began at an early age to study under the prominent Mālikī scholars of Qairawān. He then travelled to the East for pilgrimage and furthered his studies there. Ibn 'Abī Zaid came to be regarded as one of the most learned Mālikīs of his age and was called "Mālik of the later generations". He is best known for his Risālah, which is a very clear and simple presentation of Mālikī fiqh for the common man and elementary students. See Sezgin, 1:478.

'Abū Bakr Muḥammad ibn 'Abd-Allāh AL-'ABHARĪ (287-375/900-985) lived in Baghdad and was one of the most important early representatives of the Mālikī school of Baghdad. He taught in Baghdad for about sixty years and is reported to have done much debating of Ḥanafīs and Shāfi'īs. Ibid., 1:472.

²MUḤAMMAD IBN SAḤNŪN 'Abd-as-Salām ibn Sa'īd (202-256/817-870) was born in Qairawān, where he studied under his father, Saḥnūn, and other prominent Mālikī scholars. Later he travelled to the East and furthered his study in Makkah and Madīnah. Muḥammad ibn Saḥnūn was even more highly regarded as a Mālikī scholar than his father. In addition to fiqh, he had extensive knowledge of history. Ibid., 1:472.

³Citation from al-Qarāfī, 1:17.

AL-QĀḌĪ 'Abū 'l-Ḥasan 'ALĪ ibn 'Umar IBN AL-QAṢṢĀR

"Al-Wāḍiḥah"

Another important early source book of Mālik's opinions is "Al-Wāḍiḥah", which was compiled by the famous Andalusian Mālikī faqīh Ibn Ḥabīb.¹ It was also highly regarded among Mālikīs, many of whom regarded it as taking second place only to the Mudawwanah. The Mālikīs of Andalusia are said to have relied primarily on the "Wāḍiḥah" and the "ʿUtbiyah", which I will discuss next. At least parts of the "Wāḍiḥah" are still available in manuscript.²

(d. 398/1008) was a student of al-'Abharī and later qāḍī of Baghdad. Ibn al-Qaṣṣār is regarded as one of the most significant scholars of the Mālikī school. He is especially important in that he was among the first of the Mālikī legal theorists. A manuscript still exists in Al-'Azhar of his treatise on legal theory, "Al-Muqaddimah fī 'Uṣūl al-Fiqh", and there are several manuscripts of his "ʿUyūn al-'Adillah fī Masā'il al-Khilāf baina Fuqahā' al-'Amsār", which is regarded as the best Mālikī work on the subject of the divergence of legal opinions among the schools. Sezgin, 1:481-482.

AL-QĀḌĪ 'Abū Muḥammad ʿAbd-al-Wahhāb ibn ʿAlī ibn Naṣr AL-BAGHDĀDĪ (362-422/973-1031) was born in Baghdad and later became qāḍī of various cities in Iraq. Later he travelled to Syria and then to Egypt, where he gained much renown. He died in Egypt. Al-Qāḍī ʿAbd-al-Wahhāb is another famous Mālikī legal theorist of the school of Baghdad. The following verses are attributed to him:

Baghdādu dārun li-'ahli 'l-māli ṭayyibatun /
 wa li-'l-mafālīsi dāru 'ḍ-ḍanki wa 'ḍ-ḍīqi:
 Ḥalaltu ḥairāna 'amshī fī 'aziqqatiḥā /
 ka'anniya muṣḥafun fī baiti zindīqi.

[Baghdad, for those who have wealth, is a comfortable place; / for the money-less, a place of exasperation and misery: / wandering through her alleyways, I remained confused and perplexed, / as if I were a Qur'ān in the house of an atheist.]

Ziriklī, 4:335.

¹For data on Ibn Ḥabīb see above, note 3, p. 97.

²See Sezgin, 1:362.

"Al-^Utbīyah"

A fourth early source book of Mālik's opinions is "Al-^Utbīyah", which took its name from its compiler, the Cordovan Mālikī faqīh al-^Utbī.¹ It is said to have been taken primarily from "Al-Wāḍiḥah", and the purpose of the work, as indicated by its full title--"Al-Mustakhrajah min al-'Asmi^Uah mim mā Laisa fī 'l-Mudawwanah" [extracts of narrations not contained in the Mudawwanah]--was to complement the Mudawwanah.² The "^Utbīyah" was relied upon heavily in parts of Andalusia and North Africa.

Many traditional Mālikī fuqahā' have doubted the authenticity and value of the "^Utbīyah". Muḥammad ibn ^UAbd-al-Ḥakam³, a contemporary of al-^Utbī, is reported to have said that he found most of the "^Utbīyah" to be "lies, opinions without any basis ["masā'il lā 'uṣūl lahā"]." Ibn Lubābah⁴, a famous Andalusian faqīh, is said to have

¹Muḥammad ibn 'Aḥmad AL-^UTBĪ (d. 255/869) was born and lived in Cordova. Later he travelled to the East, where he furthered his studies under many of the most prominent fuqahā' of that time. When he returned to Andalusia, he became one of its most influential Mālikī scholars. Sezgin, 1:472.

²Numerous manuscripts of "Al-^Utbīyah" are still available; see *ibid.*

³For data on Muḥammad ibn ^UAbd-al-Ḥakam see above, note two, p. 115, n. n. 2.

⁴Muḥammad ibn Yaḥyā ibn ^UUmar IBN LUBĀBAH (d. 330/942) was a famous Cordovan faqīh, qāḍī, and member of the judicial council [shūrā]. He was also known as "al-Bawjūn." Ibn Lubābah studied in Qairawān and later went to Egypt, where he died. One of his works, "Al-Muntakhabah", is re-

commented that the "ʿUtbiyah" contained many transmissions that had been rejected and many irregular opinions [al-masā'il ash-shāhdhah].¹

Other Source Books

"Al-Mawwāzīyah", "Al-Wāḍiḥah", and "Al-ʿUtbiyah" are the three primary sources of Mālik's legal opinions in addition to the Mudawwanah.² Some other early source works, however, deserve mention.

Manuscripts still exist of "Al-Mukhtaṣar al-Kabīr fī 'l-Fiqh" of ʿAbd-Allāh ibn ʿAbd-al-Ḥakam.³ Ibn ʿAbd-al-Ḥakam is said to have compiled two works, both of which were relied upon heavily by the Mālikīs of Baghdad. The first was a compilation of transmissions he had heard personally from Mālik and some of Mālik's most important students like Ibn al-Qāsim, Ibn Wahb, and 'Ashhab. The second work was a condensed version of this first.⁴ It would appear that the manuscript is of this second work.

garded to have been a most excellent work on fiqh; he also wrote a work on written legal contracts [watha'iq]. See Ziriklī, 8:4; Kaḥḥālah, 12:107-108.

¹ʿIyāḍ and Ibn Farḥūn, cited by 'Abū Zahrah, p. 240.

²See *ibid.*, p. 244.

³Sezgin, 1:467. For data on ʿAbd-Allāh ibn ʿAbd-al-Ḥakam, see above, note two, p. 115.

⁴'Abū Zahrah, p. 238.

Finally, it is reported that 'Ashhab also compiled a work containing Mālik's legal opinions, which is called "Mudawwanat 'Ashhab" or "Kutub 'Ashhab". 'Iyāq says of 'Ashhab's compilation that it was large and excellent, containing much knowledge. Reports also have it that Ibn al-Qāsim and 'Ashhab vied with each other regarding which of their compilations was superior.¹ Sezgin makes no mention of manuscripts of this compilation; however, a manuscript is still available of 'Ashhab's "Kitāb al-Ḥajj" in a recension of Saḥnūn, which may be a part of 'Ashhab's "Mudawwanah".²

¹'Iyāq, cited by 'Abū Zahrah, pp. 235-236.

²See Sezgin, 1:467.

CHAPTER III

SOME PRELIMINARY FUNDAMENTALS OF MĀLIKĪ LEGAL THEORY

Introduction

"Classical Islamic Legal Theory"

One occasionally encounters in the writings of modern Muslim and non-Muslim scholars on Islamic law references to a "classical" Islamic legal theory. This "classical" theory is generally understood to be the theory that Islamic law consists of four sources: the Qur'ān, the sunnah of the Prophet (as constituted by ḥadīth), 'ijmā', and qiyās [analogical reasoning]. Furthermore, the notion of such a "classical" legal theory implies that a theory of Islamic law emerged during the formative period which came to have general acceptance among sunnī Muslims.

No doubt, there is considerable common ground in the legal theories of the four major sunnī schools of law. It is also to be expected that there was a considerable exchange of ideas and theoretical formulations and terminologies between the legal theorists of each of these schools. Nevertheless, there have always been fundamental and distinctive differences between the legal theories of each of

these four sunnī schools, both before and after ash-Shāfi^{cī}.

The theory of Islamic law which limits the sources of law to the Qur'ān, the sunnah (as constituted by musnad ḥadīth [ḥadīth with complete 'isnād's]), 'ijmā^c, and qiyās is, properly speaking, Shāfi^{cī} legal theory.¹ It may be regarded as "a classical" theory of Islamic law but not as "the classical" theory. For ash-Shāfi^{cī}'s theory--even though that may have been what he desired--did not bring about a major compromise in the other schools that produced a unified sunnī legal theory, rather it effected the development of a new and independent sunnī school of law.

Ḥanafī legal theory, even after ash-Shāfi^{cī}, continued, for example, to accept mursal ḥadīth [ḥadīth with incomplete 'isnād's] as legitimate sources of law, although ash-Shāfi^{cī} had rejected them. Likewise it continued to regard the āthār and fatwā's of prominent Companions to be an important ancillary in establishing the content of the Prophetic sunnah. Ḥanafī legal theory, furthermore, continued to place numerous restrictions--some of which I have

¹See 'Abū Zahrah, Mālik, p. 451. For a good introductory treatment of ash-Shāfi^{cī}'s legal theory, based on his writings, his legal deductions, and the writings of prominent Shāfi^{cī} legal theorists, see idem, Ash-Shāfi^{cī}: Ḥayātuhū wa 'Asruhū, Arā'uhū wa Fiqhuhū (Egypt: Dār al-Fikr al-'Arabī, 1948), pp. 196-317.

According to one interpretation of ash-Shāfi^{cī}'s legal theory, he placed such exacting restrictions upon 'ijmā^c that the practical effect was to limit his sources of law to just the Qur'ān and musnad ḥadīth and analogical reasoning made on the basis of them; see Ahmad Hasan, The Early Development of Islamic Jurisprudence (Islamabad: Islamic Research Institute, 1970), p. 56.

set forth in appendix 1--on the acceptance of isolated ḥadīth, thereby rejecting as invalid ash-Shāfi^CI's very distinctive principle of making isolated ḥadīth with sound 'isnād's a valid, independent source of Islamic law. Like all other schools, Ḥanafī legal theory regarded the Qur'ān as a major source of law; nevertheless, Ḥanafī principles regarding the manner of interpreting the Qur'ān are quite distinctive in some regards; for example, it regards general [ḥāmm] statements to be definitive [qat'ī]. Although Ḥanafī theory makes extensive use of qiyās, the Ḥanafī concept of qiyās, nevertheless, differs from the Shāfi^CI concept; Ḥanafī qiyās, for example, is often based on established precepts of law and not specific legal texts. Ḥanafī theory continued to give a much more extensive role to local customs [al-ḥurf wa 'l-ḥādah] in the application of the law. Finally, Ḥanafī theory continued to rely heavily upon its conception of istiḥsān [a type of equity], despite ash-Shāfi^CI's arguments that istiḥsān was arbitrary.¹

Mālikī legal theory, like Ḥanafī theory, never accepted ash-Shāfi^CI's principle that isolated musnad ḥadīth with sound 'isnād's were a valid, independent source of law.

¹Each of these points is treated briefly as a matter of comparison in the appropriate parts of this chapter. However, for further references see 'Abū Zahrah, Mālik, p. 451, and for a good introductory treatment of Ḥanafī legal theory, based on the legal opinions of 'Abū Ḥanīfah and the theories of prominent Ḥanafī legal theorists, see idem, 'Abū Ḥanīfah: Ḥayātuhū wa Ḥāruhū, Arā'uhū wa Fiqhuhū (Egypt: Dar al-Fikr al-Ḥarabī, 1955), pp. 232-358.

Like Ḥanafī theory, Mālikī legal theory continued to place restrictions upon the use of isolated ḥadīth, although the restrictions themselves were not the same, especially the stipulation that isolated ḥadīth not be contrary to Madīnan ʿamal. Like Ḥanafī legal theory, it regarded mursal ḥadīth and the āthār and fatwā's of prominent Companions to be legitimate sources of law, although here too Mālikī legal theory had restrictions of its own. Furthermore, Mālikī legal theory continued to regard as valid its very distinctive non-textual source of law, the ʿamal of Madīnah, against which it interpreted and evaluated the textual sources. Mālik also made use of qiyās; however, the concept of qiyās in Mālikī legal theory is notably different than the Shāfiʿī concept. Like 'Abū Ḥanīfah, Mālik tends to make qiyās on the basis of established precepts of law and not specific legal texts in ḥadīth or other textual sources. Mālik occasionally rejects isolated ḥadīth on the basis of qiyās, and, furthermore, it appears that Mālik like later Mālikī legal theorists regarded it as valid to make qiyās on the basis of the deductions of earlier examples of qiyās, without going back to the original example.

Istiḥsān is also a very common part of Mālik's legal reasoning and a fundamental part of later Mālikī legal theory. As will be seen, however, the Mālikī concept of istiḥsān appears to differ significantly from the Ḥanafī. Mālik gave an extensive role to local customs in the application of

the law, an even more extensive role, perhaps, than 'Abū Ḥanīfah gave them. Finally, Mālik subscribes to the principles of sadd adh-dharā'i^c and al-maṣāliḥ al-mursalah, which distinguishes his legal reasoning notably from that of 'Abū Ḥanīfah and ash-Shāfi^cī, although--as I point out in the discussion on istiḥsān--'Abū Ḥanīfah's concept of istiḥsān aḍ-ḍarūrah [istiḥsān made on the basis of necessity] may be cognate to al-maṣāliḥ al-mursalah.¹

Ḥanbalī legal theory, which developed after ash-Shāfi^cī, is much like Shāfi^cī legal theory in its emphasis upon following the apparent [ẓāhir] meaning of the textual sources of Islamic law. Like Shāfi^cī legal theory, it accepts the isolated musnad ḥadīth with sound 'isnād' as a valid, independent source of law. However, Ḥanbalī legal theory goes beyond Shāfi^cī theory in regarding more textual sources of law to be valid than any other sunnī school. It accepts musnad and mursal ḥadīth, ḥadīth with sound 'isnād's and some ḥadīth with 'isnād's that are less than sound. Furthermore, Ḥanbalī legal theory accepts the āthār and fatwā's of the Companions as a valid source of law; however, to each of these textual sources, Ḥanbalī legal theory assigns var-

¹These points are discussed in the appropriate parts of this chapter and the chapter pertaining to Mālik's conception of ḥamal. For other references see 'Abū Zahrah, Mālik, p. 451. This work is one of the most useful and comprehensive modern studies on Mālik and his legal reasoning. 'Abū Zahrah bases his analyses on Mālik's legal opinions as set forth in the Muwatta' and Mudawwanah and on the writings of prominent Mālikī legal theorists; see *ibid.*, pp. 254-430.

ious stipulations and degrees of authority. Ḥanbalī legal theory also regards qiyās to be valid; however, because of the numerous textual sources that it accepts and because of its stipulation that qiyās not be resorted to except in the absence of an appropriate legal text, Ḥanbalī legal theory makes less use of qiyās than the other schools. Ḥanbalī legal theory also subscribes to a type of istiḥsān and to al-maṣāliḥ al-mursalah, although it does not conceive of them in exactly the same manner as the Ḥanafīs and Mālikīs. Finally, Ḥanbalī legal theory, like Mālikī, subscribes to sadd adh-dharā'i^c and is among the most rigorous of the four schools in its prohibition of legal fictions [ḥiyal]. It is also worthy of note that Ḥanbalī legal theory subscribes to some types of Madīnan ḥamal.¹

Thus, there are significant differences in the legal theories of each of the four major sunnī schools of law. It should be kept in mind, furthermore, that the differences to which I have alluded here briefly are only a few of the most elemental differences. For even when schools share a common source of law--such as the Qur'ān--they differ on numerous points regarding its interpretation and use, such

¹In addition to my discussion of these points in appropriate parts of this chapter, see ^cAbd-Allāh ibn ^cAbd-al-Muḥsin at-Turkī, 'Uṣūl Madhhab al-'Imām 'Aḥmad ibn Ḥanbal: Dirāsah 'Uṣūliyah Muqārinah (Cairo: Maṭba'at Jāmi'at ^cAin Shams, 1394/1974), pp. 573, 576, 123, 255, 274-275, 289, 395-396, 430, 461, 515, 558-561; and 'Abū Zahrah, Ibn Ḥanbal: Ḥayātuhū wa 'Asrūhū, Arā'uhū wa Fiqhuhū (Egypt: Dār al-Fikr al-^cArabī, n.d.), pp. 207-332.

as the questions of what constitutes a command and a prohibition; how abrogation [an-naskh] is established; whether or not general [‘amm] statements are conjectural [ẓannī] or definitive [gaṭ‘ī]; what other sources of law may be used to render general statements specific [mukhaṣṣaṣ]; and so forth.

I have indicated that there are sources of law and principles of legal reasoning that some of the sunni schools accept and others of them do not. Regarding those sources that they all accept, each school agrees, for example, on the definition of what the Qur’ān is. However, when we consider other sources of law and principles of legal reasoning--ḥadīth, āthār, ‘ijmā‘, qiyās, istiḥsān, and so forth--we find differences in definitions, not to mention differences regarding interpretation, application, and authoritativeness.

Hence, for the proper study of Islamic law, it is necessary not only to identify the sources of law and modes of legal reasoning to which each school subscribes but to make also a detailed and comprehensive assessment of the definition, the content, the modes of interpretation and application, and the degrees of authoritativeness that pertain to each of those elements of legal theory. To describe a school's legal theory only by stating what it regards the sources of law and basic principles of legal reasoning to be, without such detailed analysis, is something like describing a language only as consisting of verbs, nouns, pronouns, adjec-

tives, adverbs, prepositions, conjunctions, and interjections without showing what these elements of speech are and how they work with each other.

In view of these differences between schools and the consideration that there was no "classical" theory of Islamic law, I believe that the proper approach to the study of the formative period of Islamic law requires the detailed and exhaustive analysis of the objective data constituted by the legal opinions of the early fukahā' according to a methodology similar to the one I have attempted to follow in this dissertation. The body of such opinions is vast and immensely promising, if analyzed accurately and systematically. It can yield answers to the most fundamental questions pertaining not only to the emergence of the major schools but also to the development of early Islamic intellectual history in general. For Islamic law developed in the midst of that intellectual history and, in some regards, must have been at the very center of its development.

The history of the emergence of the major schools lends itself especially well to the methodological approach I have set forth in this dissertation. Each of these schools has an enormous volume of early legal opinions, and each has well-developed traditions of legal theory that attempt to explain them. But careful examination of the emergence of the major schools would surely give much insight into the legal reasoning of those early fukahā'--like al-Laith

ibn Sa^cd, al-'Awzā^cī, Sufyān ath-Thawrī, Ibn 'Abī Lailā,¹ aṭ-Ṭabarī, and so forth--many of whose legal opinions have been preserved but around whom no major schools or traditions of legal theory developed.² My objective in this dissertation has been to initiate such an analysis of the emergence of the Mālikī school.

Some General Observations about Mālikī Legal Theory

The intricacy of
Mālik's legal reasoning

Mālik based his legal reasoning on a wide variety of sources and principles of law: the ḥamal of Madīnah, musnad and mursal ḥadīth, istiḥsān, sadd adh-dharā'i^c, al-maṣāliḥ al-mursalah, and so forth. He appears to have subscribed to more sources and principles of law, in fact, than any of the fuqahā' of the other major schools, with the possible exception of 'Aḥmad ibn Ḥanbal,³ who, although

¹Muḥammad ibn 'Abd-ar-Raḥmān IBN 'ABĪ LAILĀ (74-148/693-765) was a Kūfan faqīh of considerable importance in the early period and presided as qāḍī for thirty-three years during the 'Umayyad and 'Abbāsīd periods. His opinions ceased to be regarded as authoritative, however, shortly after the passing away of his generation; Sezgin, 1:518.

²For data on these persons, see above: al-Laith (p.83, note 5), al-'Awzā^cī (p. 78 , note 1), ath-Thawrī (p.77 , note 1), and aṭ-Ṭabarī (p. 93 , note 2).

³'AḤMAD ibn Muḥammad IBN ḤANBAL (164-241/780-855) was born in Baghdād, where he began his study of the Arabic language and ḥadīth. Thereafter he began his extensive travels to centers of Islamic learning in that age, travelling even to the Yaman, where he studied under the famous Yamānī muhaddith 'Abd-ar-Razzāq ibn Hammām (126-211/744-827). He

he defined principles like istiḥsān and al-maṣāliḥ al-mur-salah differently than Mālik and put greater restrictions upon their use, drew upon a greater number of textual sources of law than the fuqahā' of any of the other major sunnī schools.¹

The variety of the sources and principles of law to which Mālik subscribes adds a considerable degree of intricacy to his legal reasoning in specific cases, especially in light of the consideration that Mālik often arrives at legal judgments by reasoning that draws on combinations of different sources and principles of law.² To cite an example of this which is not especially intricate, Mālik holds to the precept that Muslim men and women are permissible to each other in marriage, unless prohibited by certain well-established restrictions such as close ties of kinship. Furthermore, he holds that valid contracts of marriage carry

also studied under 'Abū Yūsuf and ash-Shāfi'ī, under whom he studied law and legal theory. His teacher Sufyān ibn 'Uyainah, however, seems to have had an especially great influence upon him. In addition to being the founder of the Ḥanbalī school of law, the fourth major sunnī school, 'Aḥmad ibn Ḥanbal was quite significant in the general intellectual history of the early period, especially regarding his opposition to mu'ctazilī and other types of speculative kalām [theology], the speculations of some early ṣūfī's like al-Muḥāsibī, and so forth; see Sezgin, 1:502-503 and van Ess, pp. 9-10.

¹Cf. at-Turkī, p. 576 and 'Abū Zahrah, Mālik, p. 451.

²'Abū Zahrah, Mālik, p. 320.

the extension of certain rights with them, such as mutual rights of the marriage partners to inherit set proportions of each other's estates. These precepts are derived from the various textual and non-textual sources of law to which Mālik subscribes. Nevertheless, should a man marry a woman who is otherwise permissible to him in marriage, while she is seriously ill, Mālik will qualify these general precepts in the light of his principle of sadd adh-dharā'i^c. Because of the special circumstances of this marriage, Mālik holds that there is sufficient cause to suspect that the man's motive in marriage has been to inherit a husband's sizeable portion of the ailing woman's estate. Hence, Mālik rules that the contract of marriage is valid and the ailing woman must receive her dowry in full. But should she die during the course of the illness during which she was married, her new husband will receive no share in the inheritance of her estate whatsoever.¹

Because of this potential intricacy in Mālik's legal reasoning that results from the number of sources and principles of law to which he subscribes and his manner of applying them in combination with each other, the researcher must exercise caution when attempting to elaborate what Mālik's reasoning was in given matters. From the limited standpoint of only some of these sources and principles or from the standpoint of non-Mālikī legal theory, for example,

¹Mudawwanah, 2:186 (5).

many of the conclusions that Mālik reaches would appear arbitrary or haphazard, especially examples that are not as forthright as the one I have just cited. Viewed from the standpoint of Mālik's overall legal reasoning, however, the same conclusions may appear quite consistent and predictable.

Hence, it is necessary that the researcher have a sufficiently good feeling for the overall legal reasoning that Mālik uses--and this would apply to the study of any faqīh--before attempting to analyze specific instances of the application of that reasoning. For that reason, I have attempted to present in this chapter a general overview of what I regard to be some of the most important fundamental principles of Mālik's legal thought.

Because of such potential intricacies in legal reasoning, it seems to me, furthermore, that the researcher must be especially cautious in drawing conclusions about the reasoning of any of the early fuqahā' and qādī's when, as is so often the case, their opinions and judgments are set forth with no clear indications or explanations of the reasoning behind them. Surely, it would be weak methodology to assume that these fuqahā' and qādī's arrived at decisions on an arbitrary ad hoc basis without any consistent, predictable reasoning merely because no explicit indication is given of such reasoning. That might prove to be no different than assuming that a physician has no consistent and predictable reasoning behind the various prescriptions he

gives his patients because his reasoning is not set forth on the prescriptions.

As in the case of Mālik, one must hypothesize an overall pattern of reasoning for such fuqahā' and qādī's, and one must also have a feeling for the special complexities that may pertain to any given case, before being able to evaluate specific judgments and opinions. Similarly, to return to the metaphor of a physician, one would have to understand a physician's overall theory of medicine and the potential complexities of a patient's case, before being able to conclude whether the physician's prescription was inconsistent with his theory of medicine or ill-advised for his patient. It is to be expected that some fuqahā' and qādī's of the early period, like other human beings, were guilty of arriving at opinions that were arbitrary and inconsistent with their other opinions. It is not possible, however, to discover such arbitrariness or inconsistency, I believe, until after having attempted to posit patterns of legal thought and the various possibilities of specific cases.

Furthermore, because of such potential intricacies in legal thought, these legal opinions of a faqīh or qādī that are set forth with some indication of the reasoning behind them are of special value to the researcher. Even they, however, may not be sufficient in themselves to construct the overall pattern of that faqīh or qādī's legal

reasoning. In those early legal works, for example, the general characteristic of which is not to present such explanations, it is possible that instances of explanation are not representative of the more fundamental principles of that person's reasoning. Rather it may be that, because the explained opinions are somewhat unusual or peripheral, the reasoning behind them was not held to be sufficiently obvious. Furthermore, in keeping with the laconic style of many of the early works of law, one must also bear in mind that the explanations given to specific opinions and judgments may be far from complete, setting forth perhaps only limited aspects of the faqīh or qāḍī's reasoning in the matter.

For reasons like these I believe that it is best to study the opinions of the major fukahā' of the early period in the light of the more comprehensive hypotheses of the legal theorists of their schools. From the results of such analyses it may be possible to construct suitable hypotheses to explain and evaluate the more uncommunicative opinions of those early fukahā' around whose opinions no schools of legal theory developed.

Finally, in light of the complexities of the data with which one is required to analyze the legal reasoning of the early fukahā', it is advisable, before methodologically sound and thorough studies of the data have been completed, that modern researchers adopt the posture that they do not

yet know what the reasoning behind the more uncommunicative data was. For to say that it was arbitrary and inconsistent or, for that matter, that it was carefully reasoned and consistent implies that that reasoning has been discovered and understood.

Mālik's manner of elaborating
the full scope of legal precepts

Another preliminary observation about Mālik's legal reasoning that pertains to the multiplicity of the sources and principles of law to which he subscribes--and especially the non-textual source of Madīnan ʿamal--is that Mālik takes care in the Muwaṭṭaʿ and Mudawwanah to elaborate the full scope of the legal precepts to which he subscribes. That is, he outlines important implications and specific restrictions and limitations that apply to those precepts but that can be arrived at only by considering them in the light of Mālik's multiple sources and principles of law.

For example, Mālik accepts an isolated ḥadīth that prohibits that date harvests be sold before the dates of that year's crop have appeared and begun to redden in the palm trees [i.e., after 'izhā']. Once the crop has begun to redden, however, the ḥadīth permits that the crop be sold in advance on the condition that it be harvested as fresh, ripe dates [busr and ruṭab] but not as dried dates [tamr].

Mālik elaborates upon what the precept is to which

this ḥadīth pertains and of which it is a reflection. His elaboration, however, is based primarily upon the non-textual source of ʿamal, which provides details and insights that are not in the text. The prohibition set forth in this ḥadīth, Mālik holds, was meant to pertain to those date oases that do not produce annual harvests predictably, such as those small or isolated oases that produce harvests some years but fail to produce during others. Once the year's crop of such oases has begun to redden in the palm trees it is permissible to make a contract to purchase the harvest as fresh ripe dates, because it is clear that the trees will produce that year and the time required to elapse between the reddening of the dates and harvesting them as fresh ripe dates is relatively short, generally about a week or a little longer. Thus, Mālik continues, there is little likelihood that the harvest will perish or be destroyed during that short period. (This type of reasoning is istiḥsān, although used in this case to interpret a ḥadīth.) However, because the period required to elapse between the reddening of the dates in their palm trees and their being harvested as dried dates [tamr] is considerably longer, the hazard--Mālik explains--is still too great that the date harvest perish or be destroyed between the time of its first reddening and its being harvested as dried dates.

This is the scope of the ḥadīth as far as Mālik is concerned; he now continues to elaborate the precept itself,

of which the ḥadīth is only a partial reflection. The prohibition in this ḥadīth, Mālik continues, does not pertain to those well-established and well-watered oases or agricultural lands that have predictable harvests each year, like the large and fertile oasis of Madīnah or the Nile valley. In such agricultural regions, he explains, it is permissible not only to sell the date crop as dried dates at the time of the first reddening of the dates in their palm trees but it is permissible, furthermore, to sell one's crops over a year in advance, which has been customary in Madīnah.¹

This type of elaboration, which is characteristic of Mālik, has several important implications. First of all, the researcher must articulate the full scope of each precept before analyzing specific instances of the application of that precept. In the Muwaṭṭa', Mālik sets forth the scope of many precepts, especially those in connection with which he cites his various terms. However, he does not do this always, nor does he do it always with the same degree of detail. In the Mudawwanah, however, one must sometimes read extensively and in various chapters to be able to collect enough of Mālik's statements and opinions to construct the full scope of the precepts to which he subscribes. The citations set forth in the preceding example, for instance, were in three different places, although relatively close to each other.

¹Mudawwanah, 3:119 (24), 121 (15), 122 (1).

Mālik's manner of elaborating the full scope of precepts by reference to non-textual sources of law and other principles of legal reasoning also has implications that pertain to his assessment of the nature of textual sources of law. It implies that some textual sources--like the isolated ḥadīth in the preceding example--are only partial reflections of more general precepts to which they pertain, even though there is nothing in the isolated text to indicate that. Such textual sources would be insufficient independent sources to indicate the full scope of the precepts they reflect. If one were to attempt to elaborate the precept contained in such textual sources only on the basis of the information contained in them, one would not be likely to arrive at the same conclusion as Mālik regarding the precept to which they pertained. Since Mālik regarded his elaboration of such precepts to be authentic, he would have surely held that attempts to elaborate the law only on the basis of textual sources was likely in some cases to lead to serious distortion of the original content of the law. Such an interpretation of Mālik's attitude toward textual sources, while in keeping with his overall legal reasoning, is also supported by the biographical accounts of the caution he exercised toward ḥadīth.¹

I believe it is also clear from Mālik's manner of elaborating precepts why he tended to perform qiyās on the

¹See above, pp. 76-85.

basis of precepts and not specific legal texts. When one extends the ruling contained in a precedent to an unprecedented matter, one has generalized the ruling of that precedent. One has assumed that that ruling was not intended to be applied only to that precedent and nothing more, for extension of legal rulings by analogy amounts to the generalization and universalization of those rulings. However, the generalization of the ruling contained in a precedent (or legal text) by analogical extension to unprecedented matters cannot be an accurate or authentic application of the precept behind the precedented ruling unless the precedent and the unprecedented matter are truly analogous. Furthermore, one cannot know that they are truly analogous until one has discerned the full scope of the precept behind the ruling contained in the precedent. One must know the full provisions and the specific limitations of that precept. Otherwise one cannot determine whether the ruling in the precedent reflects a general provision or prohibition or whether it reflects a specific limitation or permission. Without knowing the general provisions and specific limitations of the precept behind the ruling one cannot know why the ruling was applied in the precedent. Without such knowledge, one is unable to know whether or not similar unprecedented matters are truly analogous.

Therefore, to make qiyās on the basis of a legal text is to assume that the ruling in that text was meant

to be generalized and, furthermore, that the information provided in the textual sources is sufficient to establish the full scope of the precept that the rulings in those sources reflect. This is the assumption of ash-Shāfi'ī, who holds that legal texts will be assumed to be general until there is textual proof of their having been rendered specific, that legal texts will be held to be unabrogated until there is textual proof of their abrogation, and who holds, furthermore, that the textual sources of law that he regards to be valid provide a complete statement of the scope of the precepts of the law.¹ It should also be pointed out that ash-Shāfi'ī has rather elaborate methods of determining the full scope of precepts by careful analysis and cross-referencing of texts.

Nevertheless, Mālik's assumption about the legal implications of textual sources of law appears to be essentially the opposite of ash-Shāfi'ī's. Mālik's assumption, as reflected by the manner in which he elaborates the full scope of precepts by reference to non-textual sources of law and various principles of legal reasoning and by his tendency to make qiyās on the basis of these elaborated precepts instead of specific legal texts, indicates that Mālik tends to regard rulings in texts to be specific or of limited

¹See Sobhi Rajab Mahmassani, Falsafat al-Tashrī' fī al-Islām: The Philosophy of Jurisprudence in Islam, trans. Farhat Ziadeh (Leiden: E. J. Brill, 1961), p. 90.

application unless there is proof that they were intended to be general. Furthermore, Mālik would regard a text to be inapplicable (possibly abrogated) until there was proof that it was still applicable. Finally, since his major criterion for establishing proof in such cases is the non-textual source of Madīnan ḥamal, it may be inferred that Mālik, quite unlike ash-Shāfiʿī, would not have held that the valid textual sources of the law would be sufficient in all cases to establish the full scope of the precepts of the law. Rather, from Mālik's point of view, the full statement of the scope of the precepts of the law is provided by the combination of the textual and non-textual sources that he regarded to be valid.

To illustrate this further, Mālik cites a ḥadīth in the Muwatṭa' that contains only the information that the Prophet handed down a legal judgment on the basis of an oath and the testimony of a single witness. He supports the ḥadīth and indicates that it was not abrogated by citing two reports that indicate that prominent Successors, among them ʿUmar ibn ʿAbd-al-ʿAzīz and Sulaimān ibn Yasār, regarded it as valid to make legal judgments on such a basis. These reports, however, add no information about what exactly is meant by the expression "making judgments on the basis of an oath and a single testimony", nor do they indicate whether legal judgments made on such a basis apply to all types of cases--criminal, marital, etc.--or just some

types of cases to the exclusion of others.

On the basis of Madīnan ^camal, Mālik explains in detail what is meant in the ḥadīth, namely, that the plaintiff [ṣāhib al-ḥaqq] be required to take an oath affirming his allegation and then support his oath by the testimony of a single witness. (Ordinarily two witnesses would be required.) Mālik adds other details about what is to be done if the plaintiff refuses to take an oath. Then Mālik adds the very important limitation that the matter of ruling on the basis of the plaintiff's oath supported by a single testimony pertains exclusively to money matters [al-'amwāl] and never to criminal cases, matters of divorce and marriage, emancipation, theft, or libel.¹ In some of the most elaborate legal reasoning that Mālik sets forth in the Muwatta', he continues to try to remove any doubt about this matter's being restricted to money matters or about its being valid in the first place. Mālik has elaborated on the very ambiguous textual sources by reference to the non-textual source of ^camal and has indicated that the matter in question has a limited application and is not to be extended by analogy to any types of law other than that which pertains to money matters. This is a clear example of an instance where failure to elaborate the precept only partially reflected in textual sources by reference to non-textual sources might lead to serious distortion of the original precepts.

¹Muwatta', 2:721-722.

Another implication of Mālik's manner of elaborating the full scope of precepts is that it indicates, I believe, Mālik's intent to disclose the purpose of the law behind many of the precepts he elaborates. The first example is an illustration of this. Mālik makes it quite clear what the purpose of the law was in prohibiting the sale of the date harvests of certain types of oases in advance of the reddening of the dates in the palm trees. But one sees perhaps even clearer examples of this type of elaboration that reveals the purpose of the law in Mālik's application of the principles of sadd adh-dharā'i^c, istiḥsān, and al-maṣā-liḥ al-mursalāh.

The effect of Mālik's use of these principles of legal reasoning--as I hope to demonstrate in this chapter--is that they mark off the limitations of the wide provisions or prohibitions of general precepts of law. By doing this, these principles do not contradict or negate those general precepts, rather they clarify their full scope and indicate what the legal intent or the purpose of the law behind them must have been.

To give an illustration of this, Mālik holds to the precept that a woman must have the consent of her guardian for her marriage contract to be valid. Furthermore, Mālik holds that the father has especially strong rights as a guardian in determining whom his daughter shall marry, when she has never been married before, although Mālik refuses

to extend those same rights in full to other guardians in the absence of a father. For he holds that kinsmen other than the father are not as likely as he to have the girl's interest at heart.¹ Once, however, the case was brought before Mālik of a young girl, whose mother and father had been separated many years before. The girl had grown up in her mother's household, had now become very beautiful, and many excellent suitors of considerable wealth and prestige were seeking her hand in marriage. Her father, however--who was still technically her guardian--refused to let her marry anyone but a certain kinsman of his, who, according to the mother's description, had no wealth or particular merit. Mālik ruled that the father's rights as guardian had been superseded by his abuse of the office of the guardian, one of the chief purposes of which is to secure a marriage that is in his daughter's best interest. The general principle, Mālik states, is that "there is no legal validity to any action that brings harm to oneself or others" [lā ḡarar wa lā ḡirār]. Hence, the father is no longer to be regarded as the girl's guardian; the government [as-sultān] shall act as her guardian instead and see that she is married to one of the more worthy suitors.²

¹Mudawwanah, 2:5 (8). ²Ibid., 2:144.

The Sources of This Chapter

I draw heavily in the following discussions of fundamental principles of Mālikī legal theory on secondary sources. I cite illustrations of these theories from the Muwaṭṭa' and Mudawwanah on occasions. These citations, however, are only illustrative and are not regarded as conclusive. For exhaustive citations from primary sources would be disproportionately hard to achieve in a study of this scope.

The theories presented in this chapter are hypotheses in terms of which I will account for certain aspects of Mālik's reasoning in the discussions pertaining to ḥamal in the remainder of the dissertation. In some cases, the application of these hypotheses in those chapters on ḥamal will give them considerably more conclusiveness than they have in this chapter as actual parts of Mālik's manner of legal reasoning.

The terms that are used in this chapter--such as naṣṣ [a conclusive legal text], istiḥsān, qiyās, and so forth--are not of primary importance. In some cases they may be used differently in various schools, and often there is no indication that Mālik ever used them. I have employed these terms only as a convenient means to identify the concepts for which they stand, according to my definition of them in this chapter. As I have pointed out in my discussion of concepts and terms, it is the concepts which I regard to be of primary importance, while the terms

must necessarily be secondary.¹

Finally, I have presented in this chapter only those fundamentals of Mālikī legal theory that I have had recourse to in explaining examples of Mālik's use of ʿamal in the remainder of the dissertation. Hence, this chapter is only prefatory to the discussions of this dissertation and is hardly a complete statement of Mālikī legal theory. I hope, however, that it provides a sufficiently representative overview.

The Qur'ānic Text

The Classification of Legal Texts According to Their Ambiguity

Mālikī legal theorists apply the word "naṣṣ" [a manifest text] to legal texts that are completely unambiguous. Such texts set forth the precepts to which they pertain with absolute clarity and do not lend themselves to more than one interpretation.²

They apply the word "ẓāhir" [of apparent or obvious meaning] to legal texts that are not completely unambiguous but contain, nevertheless, a certain obvious meaning. But, since the obvious meaning of a ẓāhir text is not conclusive, that text lends itself to more than one interpretation.³

There is no disagreement among Mālikī legal theorists

¹See the discussion of concepts and terms above,

²Abū Zahrah, Mālik, p. 262. ³Ibid.

that such a distinction exists in Mālik's legal reasoning between what they call the zāhir text and the naṣṣ. They concur, furthermore, that Mālik regarded the naṣṣ to take priority over the zāhir text whenever the two contradict each other, since the degree of conjecture in the zāhir text is greater.¹

Regarding General
Statements in the Qur'ān

It is also a point of consensus among Mālikī legal theorists that general [^Cāmm] legal statements in the Qur-'ān and in other accepted textual sources of law are of the category of zāhir statements. Hence, according to Mālikī legal theory general legal statements are regarded to be conjectural [ẓannī] and not definitive [qaṭ'ī].² Hence, a general legal statement pertains to all the particulars

¹Abū Zahrah, Mālik, p. 262. According to 'Abū Zahrah, ash-Shāfi'ī makes no such distinction between his usages of the words "zāhir" and "naṣṣ" in his Risālah. 'Abū Zahrah contends further that such a distinction is not a part of ash-Shāfi'ī's legal theory; *ibid.* Perhaps the reason for this, if accurate, is that ash-Shāfi'ī regards zāhir texts to have the same authoritativeness as what the Mālikīs refer to as "naṣṣ".

²*Ibid.*, pp. 264-265; Muṣṭafā 'Aḥmad az-Zarqā, Al-Fiqh al-'Islāmī fī Thawbihī 'l-Jadīd: Al-Madkhal al-Fiqhī al-'Āmm, 3 vols. (Beirut: Dār al-Fikr, 1968), 1:137; and Muḥammad Ma^Crūf ad-Dawālībī, Al-Madkhal 'ilā 'l-Āmm 'Uṣūl al-Fiqh (Beirut: Maṭba'at Dār al-'Āmm li-'l-Malāyīn, 1385/1965), pp. 153-157.

Regarding the translations of "ẓannī" and "qaṭ'ī", Anderson renders them as "presumptively authoritative" and "wholly authoritative" respectively, which seems to convey well their meaning in Islamic legal theory; see Norman Anderson, Law Reform in the Muslim World (London: U. of London Press, 1976), p. 6.

that it implies only with a degree of conjecture, according to Mālikī legal theory; it is not a definitive universal statement.

The position of the Mālikī legal theorists regarding the authoritativeness of general statements in the Qur'ān is the opposite of Ḥanafī theory on the same question. According to Ḥanafī legal theory general statements in the Qur'ān and other legal texts of established authenticity are definitive; that is, they apply to all the particulars that they imply definitively and without conjecture.¹

Regarding Specific
Statements in the Qur'ān

The legal theorists of all the major sunnī schools agree, according to 'Abū Zahrah, that specific [khāṣṣ] statements--that is, statements that indicate specifically the persons to whom they apply--indicate definitively those persons to whom they apply. Specific statements in the Qur'ān and other textual sources of law of accepted validity are regarded to be definitive.²

From the standpoint of Mālikī legal theory, therefore,

¹Al-Kawtharī, p. 37, (He cites Ḥanafī works on legal theory that he believes have treated best the Ḥanafī conception of this question.); 'Abū Zahrah, Mālik, pp. 266-267. Cf. idem, 'Abū Ḥanīfah, pp. 245-268; az-Zarqā, 1:136-138; and ad-Dawalībī, pp. 153-160.

²'Abū Zahrah, Mālik, p. 268.

specific [khāṣṣ] statements take priority over general [cāmm] statements as long as the source of the specific statement itself is not open to conjecture.¹ This stipulation, however, does not apply to Ḥanafī legal theory. For, since Ḥanafī theory regards general statements in the Qur'ān and other legal texts of established authenticity to be definitive, it also regards general and specific statements to be equally authoritative.²

The consequence of this Ḥanafī position on the authoritativeness of general and specific statements of well-established authenticity is reflected in its distinctive concept of abrogation [naskh]. According to Ḥanafī legal theory, a general statement in the Qur'ān or other texts of unquestioned authenticity can only be rendered specific [mukhaṣṣa], when the legal text that indicates such specification [takhṣīṣ] is linked to it contextually or when there is some other indication that the two statements were revealed at the same time. For example, a legal statement in one verse may be general, but the following verse renders it specific. If, however, the general and specific statements are not linked together contextually or there is some other indication that they were revealed at different times, the last

¹Abū Zahrah, Mālik, p. 268.

²Ibid., pp. 268-269. For a more comprehensive discussion, see idem, 'Abū Ḥanīfah, pp. 245-268.

of them to have been revealed is regarded as having abrogated the earlier statement.¹

Furthermore, according to 'Abū Zahrah, Ḥanafī legal theory regards general statements to be definitive prior to their having been rendered specific but conjectural afterward. (The distinction here would appear to be between specific statements that are specific ab initio, which are regarded to be definitive, and those statements that are initially general but are then rendered specific, and, hence, are regarded to be conjectural. Perhaps, they are regarded to be conjectural because their initial generality has been demonstrated not to be conclusive.) Hence, according to the two early Ḥanafī legal theorists--^cĪsā ibn 'Abān and al-Karkhī²--once a general text has been rendered specific, 'Abū Ḥanīfah permits the full extent of its specification to be elaborated by means of qiyās, although he

¹'Abū Zahrah, Mālik, pp. 268-269.

²^cĪSĀ IBN 'ABĀN ibn Ṣadaqah (d. 221/836) was a student of ash-Shaibānī and a qāḍī of Baṣrah during the last eleven years of his life. Ibn an-Nadīm cites five works of his. As-Sarakhsī (d. 483/1090), one of the most highly regarded Ḥanafī legal theorists, cites numerous quotations from ^cĪsā ibn 'Abān in his famous 'Uṣūl'. See Sezgin, 1:434.

'Abū 'l-Ḥasan ^cUbaid-Allāh ibn al-Ḥusain AL-KARKHĪ (260-340/873-952) lived in Baghdād, where he learned Ḥanafī fiqh. He lived in poverty and was regarded as very pious. Later in his life he came to be regarded as the head of the Ḥanafī school. Manuscripts of his works on legal theory are still available. Al-Qudūrī (d. 428/1037), a notable Ḥanafī faqīh, regarded al-Karkhī's "Mukhtaṣar" to be among the most important works of the Ḥanafī school. "Al-Mukhtaṣar" also contains important information on the history of the Ḥanafī school. Sezgin, 1:444.

does not regard qiyās to be authoritative enough to render general texts specific independently.¹ Furthermore, although 'Abū Ḥanīfah does not regard isolated ḥadīth to be authoritative enough to abrogate independently general Qur'ānic statements or render them specific, once it has been established that a general statement in the Qur'ān is specific, 'Abū Ḥanīfah accepts isolated ḥadīth as a valid means of establishing the full scope of that specification.²

Regarding the Specification of General Statements

A further implication of the Mālikī and the Ḥanafī concepts regarding the authoritativeness of general statements in the Qur'ān and other legal texts of unquestioned authenticity is that, since Mālikī legal theory regards such statements to be conjectural, the number of ancillaries [qarā'in] that are regarded to be valid means of indicating specification [takhṣīṣ] are very numerous in Mālikī legal theory. In Ḥanafī legal theory, on the other hand, since general statements are regarded to be definitive, the number of ancillaries that can be used to indicate specification are relatively few, since only those ancillaries are regarded to be legitimate which are also definitive.³

Al-Qarāfī cites fifteen ancillaries according to which

¹'Abū Zahrah, Mālik, pp. 271-273. ²Ibid.

³Ibid., pp. 269-270.

general statements in the Qur'ān may be rendered specific in Mālikī legal theory.¹ It is said to be part of the Mālikī concept of maṣlaḥah that general statements in the Qur'ān or other well-established legal texts are rendered specific on the basis of the consideration of maṣlaḥah. In other words, general texts may only be applied in their generality as long as that application does not obliterate the maṣlaḥah for which it was intended. Az-Zarqā believes that the Mālikī position in this matter reflects the theoretical position of the Mālikī school that the legal intent behind the directives of Islamic law is to bring about maṣlaḥah in this life and the next. Thus, it is against the legal intent of the law to continue to apply general precepts to circumstances where their application annuls the benefits they were intended for. He continues to point out that, the more conjectural the precept in question, the more strictly the criterion of maṣlaḥah is adhered to.²

Muṣṭafā az-Zarqā's position that Mālikī legal theory permits the specification of general statements on the basis of maṣlaḥah is supported firmly by Mālik's legal reasoning. As will be seen in the discussion of Mālik's application of istiḥsān, sadd adh-dharā'i^c, and al-maṣāliḥ al-mursalah, the essential characteristic of Mālik's application of these

¹In his Tanqīḥ al-Fuṣūl, cited by 'Abū Zahrah, Mālik, p. 270.

²Az-Zarqā, 1:136.

principles is precisely that he puts limits on the application of general precepts under certain circumstances because to apply the general precept under those circumstances would annul the maṣlahah intended by the precept or create a mafsadah [evil] that was unintended.¹

It is important, however, to take note of the fact that even in Mālikī legal theory isolated ḥadīth are not sufficient independently to establish that a general statement in well-established legal texts is specific, even though Mālikīs regard general statements to be conjectural. In this regard Mālikī theory is somewhat like Ḥanafī, which also does not permit the Qur'ān to be rendered specific or abrogated by isolated ḥadīth independently. Furthermore, Mālikī legal theory differs on this point with Shāfi'ī legal theory, which, although it regards general statements to be conjectural, regards the isolated ḥadīth to be authoritative enough to render general meanings of the Qur'ān specific.²

Mālikī legal theory differs considerably from Ḥanafī theory regarding isolated ḥadīth and the specification of general legal texts, however, in that Mālikī legal theory regards isolated ḥadīth as authentic indications of specification whenever those ḥadīth are in conformity to Madīnan

¹See below, pp. 245-280; cf. above, pp. 143-144.

²Abū Zahrah, Mālik, 271, 288-289; cf. ad-Dawālībī, pp. 153-157.

ḥamal. In such cases, the indication of the isolated ḥadīth is regarded to be valid in Mālikī legal theory, even though the precept indicated by the ḥadīth may be contrary to analogy with other well-established precepts of law.¹ It is clear, however, that in such examples it is the non-textual source of Madīnan ḥamal which is authoritative, while the isolated ḥadīth is regarded to be valid only because it is an ancillary to ḥamal.

Finally, the numerous considerations in reference to which Mālik renders general texts specific is in keeping with what I have regarded to be a general implication of Mālik's legal reasoning that legal texts will be regarded as specific until their generality has been established, which seems to be supported by the manner in which Mālik elaborates upon the full scope of the precepts to which he subscribes.²

¹Abū Zahrah, Mālik, pp. 288-289, 271, 305.

²See above, pp. 135-144.

The SunnahMursal Ḥadīth¹

More than a third of the ḥadīth in the Muwaṭṭa' are mursal.² In accepting mursal ḥadīth as a valid source of law, Mālik is like Sa^cīd ibn al-Musayyab, ash-Sha^cbī,³ 'Ib-

¹A mursal ḥadīth is a ḥadīth that does not have a complete 'isnād'; it is opposed, therefore, to musnad ḥadīth, which have complete 'isnād's. Muḥaddith's and legal theorists define the mursal ḥadīth differently, however, as I illustrate below. In this dissertation I follow the definition of the legal theorists.

In the terminology of the muḥaddith's a mursal ḥadīth is one the 'isnād' of which does not mention the name of the Companion of the Prophet from whom the ḥadīth was originally transmitted. According to this definition, a mursal ḥadīth has an 'isnād' which cites the Prophet and then an older Successor, without mentioning the Companion from whom the older Successor heard the ḥadīth. There is disagreement about whether or not ḥadīth with 'isnād's like this that cite the Prophet and then a younger Successor are mursal, because the younger Successors received most of their ḥadīth from older Successors and very few from Companions. According to the terminology of the muḥaddith's, a ḥadīth with an 'isnād' that does not mention one or more transmitters other than a Companion is called "munqaṭi^c" [cut off]; see at-Turkī, p. 289 and Yūsuf IBN ^cABD-AL-BARR, At-Tamhīd limā fī 'l-Muwaṭṭa' min al-Ma^cānī wa 'l-'Asānīd, ed. Muṣṭafā ibn 'Aḥmad al-^cAlawī & Muḥammad ^cABD-al-Karīm al-Bakrī, 12 vols. (Rabat: al-Maṭba^cah al-Malakīyah, 1387/1967), 1:19-21.

In the terminology of legal theorists, however, the mursal ḥadīth is any ḥadīth with an incomplete 'isnād', whether it be a Companion, Successor, someone else, or numerous transmitters who are not mentioned; see at-Turkī, p. 289 and Muḥammad ibn ^cABD-ALLāh IBN TUMART, Kitāb 'A^cazz Mā Yuṭlab: Mushtamil ^calā Jamī^c Ta^cālīq al-'Imām Muḥammad ibn Tūmart mimma 'Amlāhu 'Amīr al-Mu'minin ^cABD-al-Mu'min ibn ^cALī raḥimahumā 'Llāh Ta^cālā (Algiers: Maṭba^cat Pierre Fontana, 1321/1904), p. 53.

²Al-Kawtharī, p. 34; cf. Sezgin, 1:458.

³^cAmīr ibn Sharāḥīl ASH-SHA^cBĪ (19-103/640-721) was born in Kūfah and became one of its most notable muḥaddith's and fukahā'. He also had extensive knowledge of the history

rāhīm an-Nakha^{Cī},¹ al-Ḥasan al-Baṣrī, 'Abū Ḥanīfah, Sufyān ath-Thawrī, al-'Awzā^{Cī}, and other prominent fugahā' of his generation and the generation before him who also regarded them as a valid source of law.² In fact, according to Ibn ^CAbd-al-Barr, aṭ-Ṭabarī held that there had been consensus among the Successors regarding the validity of using mursal ḥadīth and that none had rejected them absolutely until ash-Shāfi^{Cī} did so at the turn of the third/ninth century.³

of the Prophet's military campaigns and of pre-Islamic poetry, extensive amounts of which ash-Sha^{Cbī} transmitted. The 'Umayyad caliph ^CAbd-al-Malik sent ash-Sha^{Cbī} as a special ambassador to the ruler of Byzantium. Later ^CUmar ibn ^CAbd-al-^CAzīz made him a qāḍī; Sezgin, 1:277.

¹IBRĀHĪM ibn Yazīd ibn Qais AN-NAKHA^{CĪ} (50-96/670-715), a Kūfan Successor, was one of the most important fugahā' of the early period. He studied under older Successors and some Companions; Ḥammād ibn 'Abī Sulaimān (d. 120/738), who was 'Abū Ḥanīfah's most influential teacher, was one of 'Ibrāhīm's students. Sezgin, 1:403-404.

²See Ibn Tūmart, pp. 53-54; ^CUthmān ibn ^CUmar IBN AL-ḤĀJIB, Mukhtaṣar al-Muntahā 'l-'Uṣūlī (Cairo: Maṭba^Cat Kurdistān al-^CIlmiyah, 1326/[1908]), p. 89; 'Abū Zahrah, Mālik, pp. 294-295; and al-Kawtharī, pp. 32-33, 36 (note 1). Al-Kawtharī claims that mursal ḥadīth make up almost half of the body of transmitted ḥadīth that constitute the sunnah of the Prophet practiced by the early Muslims; hence, he holds that rejection of mursal ḥadīth as a valid source of law had far-reaching effects; *ibid.*

³Ibn ^CAbd-al-Barr, At-Tamhīd, 1:4; cf. al-Kawtharī, pp. 36 (note 1), 32-33, who also quotes Ibn ^CAbd-al-Barr, al-Bājī, aṭ-Ṭabarī, 'Abū Dāwūd, and Ibn Rajab. Al-Kawtharī holds that al-Bukhārī and Muslim must not have rejected mursal ḥadīth absolutely, since their works contain some (*ibid.*, pp. 34, 36 [note 1]). Although ash-Shāfi^{Cī} did regard the mursal ḥadīth which Mālik transmitted from Sa^Cīd ibn al-Musayyab to be acceptable, he was not consistent in his rejection of other mursal ḥadīth, according to al-Kawtharī, who claims that ash-Shāfi^{Cī}'s Musnad contains numerous mursal ḥadīth and that ash-Shāfi^{Cī} argues on the basis of mursal ḥadīth on certain questions; *ibid.*, 33-34.

Like musnad ḥadīth, mursal ḥadīth are not accepted without any stipulations being put upon them. Mālikī legal theorists stipulate that, for a mursal ḥadīth to be acceptable, the one who transmits it must--like Mālik--have been a highly worthy [thiqah] transmitter who only transmitted ḥadīth from those who likewise were very worthy. In the case of those transmitters who transmit from weak and strong transmitters alike and take the matter of transmitting from weak transmitters lightly, one cannot accept the mursal ḥadīth they transmit, rather one must require of them that they enumerate each transmitter by name through whom the ḥadīth has come down.¹ According to al-Kawtharī, these are the same stipulations that 'Abū Ḥanīfah made upon the acceptance of mursal ḥadīth, and these stipulations were generally subscribed to--al-Kawtharī continues--among the Companions and Successors who accepted mursal ḥadīth.² One report has it that the famous Baṣran muḥaddith 'Alī ibn al-Madīnī³ re-

¹Ibn 'Abd-al-Barr, At-Tamhīd, 1:17, 2, 6; see also Ibn al-Ḥāḥib, p. 89, Ibn Tūmart, pp. 53-54; 'Abū Zahrah, Mālik, p. 296; and al-Kawtharī, p. 32.

²Al-Kawtharī, p. 32.

³'Alī ibn 'Abd-Allāh ibn Ja'far IBN AL-MADĪNĪ (161-234/777-849) was a famous Baṣran muḥaddith and historian of the generation of ash-Shāfi'ī and 'Aḥmad ibn Ḥanbal; he was known as the ḥāfiẓ of ḥadīth of his generation. He was a copious writer and compiler of works. It is said that he compiled over two hundred compilations [muṣannaf's] of ḥadīth; he composed numerous other works as well on the biographical sciences of ḥadīth, Arab genealogy and tribes, and history. It is said that Ibn al-Madīnī's knowledge of the differences [ikhtilāf] in ḥadīth was superior to that of Ibn

garded Mālik's mursal ḥadīth to be valid by virtue of his having met this criterion; Ibn al-Madīnī is reported to have said:

If Mālik reports a ḥadīth on the authority of "a man of the people of Madīnah" and you do not know who it is, [the ḥadīth] is authoritative [nevertheless]; for [Mālik] used to select carefully [those from whom he transmitted][kāna yantaqī].¹

Ibn Tūmart² holds that the stipulation of worthiness in the transmitter of a mursal ḥadīth is as satisfactory as it would be in a musnad ḥadīth. For, Ibn Tūmart claims, if a transmitter is worthy, he will not transmit from those who are unworthy or about whom he knows nothing. If one cannot trust the transmitter of a mursal ḥadīth in such matters, neither can one trust the transmitter of a musnad ḥadīth to have reported faithfully and completely all from from whom he received the ḥadīth he transmits.³ This argu-

Ḥanbal. He also is said to have written a two volume work on the schools of law [madhāhib] of the muḥaddith's. Ziriklī, 5:118.

¹ḤIyāḍ, 1:141.

²Muḥammad ibn ʿAbd-Allāh IBN TŪMART (485-524/1092-1130) was a contemporary of al-Qāḍī ḤIyāḍ. He was a Moroccan Berber and the founder and an important spokesman of the political movement of the Muwaḥḥid's under ʿAbd-al-Mu'min ibn ʿAlī, which led to the foundation of the Mu'minid state. Ibn Tūmart grew up in his tribe, al-Maṣmūdah. Later he travelled to the East to make pilgrimage and study. He spent time in Iraq and then Makkah. Then he came to Egypt but was expelled. Ibn Tūmart was known as "al-Mahdī" and as "Mahdī 'l-Muwaḥḥidīn". Ziriklī, 7:104-105.

³Ibn Tūmart, pp. 53-54.

ment, though, does not take account of the fact that muḥaddith's often varied in their criteria by which they regarded others to be worthy. In the case of mursal ḥadīth one is required to rely upon the muḥaddith's judgment about those from whom he transmitted, whereas in the case of musnad ḥadīth one can evaluate the transmitters for oneself.

There is another consideration about the mursal ḥadīth, however, which needs further investigation. Ibn ʿAbd-al-Barr states three reasons why muḥaddith's transmitted ḥadīth as mursal: 1) because they had received that ḥadīth from a large group [jamāʿah] of various transmitters, which made it burdensome to enumerate all the channels of transmission; 2) because the muḥaddith forgot the transmitters, in which case it must be stipulated that he transmitted only from sound transmitters; and 3) because the muḥaddith in teaching the ḥadīth to his students found it unnecessarily distracting to give the 'isnād of every ḥadīth in full.¹

I believe the first of these reasons is especially important, because if it had been a common practice in the early period for muḥaddith's to transmit ḥadīth that they had received through numerous channels as mursal ḥadīth, their mursal ḥadīth would often be much more well-known than those transmitted with complete 'isnād's. A large number of the mursal ḥadīth of this nature might be of the category

¹Ibn ʿAbd-al-Barr, At-Tamhīd, 1:17.

of mutawātir ḥadīth or pertain to what 'Abū Yūsuf refers to as "as-sunnah al-ma^crūfah".¹ Al-Ḥasan al-Baṣrī is reported to have said that whenever he had heard a ḥadīth from four or more Companions of the Prophet, he would transmit it as a mursal ḥadīth. According to another report, al-Ḥasan al-Baṣrī stated that whenever he transmitted a ḥadīth from one Companion directly, he had only heard that ḥadīth from that Companion. However, when he transmitted a ḥadīth as mursal he had heard it from very many [lit., seventy] Companions.²

Finally, mursal and musnad ḥadīth are of equal authority according to most Mālikī legal theorists, and similar stipulations apply to both. The transmitters cited in their 'isnād's must be acceptable, and, although a mursal ḥadīth cannot be rejected in Mālikī legal theory on the basis of a contrary musnad ḥadīth, Mālikīs reject mursal and musnad ḥadīth alike, regardless of their transmitters, when they are contrary to well-known types of Madīnan ḥadīth. This, according to Ibn 'Abd-al-Barr, is the opinion of the majority of Mālikīs. There have been some, he points out, however, who have claimed that mursal ḥadīth were more authoritative than musnad ḥadīth. According to him, their reasoning was that when a muḥaddith sets forth all his transmitters in a musnad ḥadīth it is an indication that he is not

¹Cf. 'Abū Zahrah, Mālik, p. 296; see above, p. 106.

²Cited by 'Abū Zahrah, Mālik, p. 296.

completely sure of the worthiness of each of the transmitters cited and, hence, has passed on the matter of evaluating them to the recipient of the ḥadīth. In the case of the mursal ḥadīth, however, they argue that the transmitter has been certain about the worthiness of his transmitters and, hence, has not felt it necessary to name them.¹ Ibn ʿAbd-al-Barr disagrees with this reasoning. However, in light of the preceding speculation that transmitting ḥadīth as mursal in the early period might often have been an indication that those ḥadīth were well-known and had come down through numerous channels, one can conceive easily of how the theoretical position that mursal ḥadīth are more authoritative than musnad might have evolved originally.

The Āthār and Fatwā's of the Companions

One of the points of similarity between the Ḥanafī, Mālikī, and Ḥanbalī schools and of dissimilarity between them and the Shāfiʿī school is the attitudes they take regarding the utility and authoritativeness of the āthār and fatwā's of the Prophet's Companions.² Mālik's belief in the

¹Ibn ʿAbd-al-Barr, At-Tamhīd, 1:2-6.

²See 'Abū Zahrah, Mālik, pp. 312-315 and at-Turkī, pp. 395-396. According to 'Abū Zahrah's analysis of the Mālikī and Ḥanbalī schools, they regard the āthār and fatwā's to be more authoritative than any other sunni school of law. Both of them regard the āthār and fatwā's of the Companions to be a potential source of the Prophetic sunnah. Similarly, according to the early Ḥanafī legal theorist al-Karkhī, 'Abū Ḥanīfah relies heavily upon āthār and the

authoritativeness of the āthār and fatwā's of the Companions is illustrated, as 'Abū Zahrah observes, in Mālik's letter to al-Laith ibn Sa^cd. In it Mālik describes the prominent Companions, especially those who became caliphs after the Prophet's death, in the following terms:

Then there arose from among those who assumed authority after [the Prophet] those who of all the people of his community ['ummah] were the closest in following [the Prophet] on the basis of what had been revealed to them [through him]. Whenever they had knowledge of a matter, they put it into practice ['anfadhūhu], and when they did not have knowledge of a matter, they inquired [among themselves] concerning it. They would then follow that [opinion] of whatever they could find in the matter that was strongest ['aqwā] in terms of their ijtihād and the proximity of their era [to that of the Prophet]. If someone [among them] took issue with them and held another opinion that was even stronger, they would abandon their earlier position.¹

What is especially important in this citation, I believe, is

fatwā's of the Companions of the Prophet as a source of his sunnah. 'Abū Ḥanīfah, however, is said to have made the further stipulation that the āthār and fatwā's of the Companions are only a source of sunnah when the judgments they pertain to could not have been arrived at by means of qiyās. In such cases, 'Abū Ḥanīfah holds that the Companions must have derived their opinions directly from Prophetic authority. As for ash-Shāfi^cī, he adheres to the 'ijmā^c of the Companions, but if there is disagreement among them on a matter, he follows those of their opinions that are closest to the musnad ḥadīth he accepts. Since ash-Shāfi^cī does not regard the āthār and fatwā's of the Companions to be a valid independent source of sunnah, he will not follow them when they are contrary to acceptable musnad ḥadīth. See 'Abū Zahrah, Mālik, pp. 312-313.

¹lcIyād, 1:34, cited by 'Abū Zahrah, Mālik, pp. 122-123, 308-309.

Mālik's conviction that the prominent Companions followed the Prophet's sunnah very closely and that their ijtihād had special value because of their knowledge of what the Prophet had taught and their proximity to the Prophet's life. Mālik also emphasizes that the Companions would follow those legal arguments in their ijtihād that appeared to them to be strongest and most sound.

For reasons such as these, both Mālik and 'Aḥmad ibn Ḥanbal regard the āthār and fatwā's of the Companions in all types of matters to be potential sources of sunnah and to be similar in that regard to ḥadīth.¹ 'Abū Zahrah cites an illustration of Mālik's use of a fatwā of the caliph 'Umar ibn al-Khaṭṭāb to establish the content of the Prophetic sunnah contrary to a ḥadīth on the same matter. Mālik cites a report in the Muwaṭṭa' according to which the Companions Sa'ḍ ibn 'Abī Waqqāṣ² and aḍ-Ḍaḥḥāk ibn Qais³ discuss certain

¹'Abū Zahrah, Mālik, p. 315.

²SA'Ḍ IBN 'ABĪ WAQQĀṢ Mālik az-Zuhrī (23bh-55/603-675) was one of the most famous Companions of the Prophet. He took part in the major battles of the Prophet's life and played a central role in the conquest of Iraq. Sa'ḍ settled for a while in Kūfah, took part in the planning of the city, and was appointed its governor by 'Umar ibn al-Khaṭṭāb, who also considered Sa'ḍ ibn 'Abī Waqqāṣ a potential candidate for the caliphate after his death. Sa'ḍ continued to be governor of Kūfah for a time under 'Uthmān, who later removed him. Sa'ḍ returned to Madīnah toward the end of his life and died there. Ziriklī, 3:137-138.

³AD-ḌAḤḤĀK IBN QAIS ibn Khālīd al-Fihrī (5-65/626-684) was one of the most prominent members of the clan of Banū Fihr. He took part in the conquest of Damascus and settled there afterwards. Aḍ-Ḍaḥḥāk was a close associate of Mu'āwiyah ibn 'Abī Sufyān and was on his side during the

points relating to how the pilgrimage is supposed to be performed.¹ Aḍ-Ḍaḥḥāk states that anyone who performs the pilgrimage in a certain manner has no knowledge of what God has commanded. Sa^cd disagrees with him and replies: "What a bad thing it is you have said." Aḍ-Ḍaḥḥāk justifies himself by saying that ^cUmar ibn al-Khaṭṭāb had prohibited the pilgrimage to be done in the manner they are discussing, but Sa^cd replies to that that the Prophet himself performed pilgrimage once in that manner and that they performed it with him in that manner likewise.² In "Ikhtilāf Mālik" Mālik's proponent states that Mālik followed the position that aḍ-Ḍaḥḥāk took, on the grounds that ^cUmar ibn al-Khaṭṭāb had greater knowledge of the Prophet's sunnah than Sa^cd ibn 'Abī Waqqāṣ.³

confrontation of Ṣiffīn. Mu^cāwiyah appointed aḍ-Ḍaḥḥāk to be the governor of Kūfah in 53/672, which was during the last years of the life of the former Kūfan governor Sa^cd ibn 'Abī Waqqāṣ. After the death of Ziyād ibn 'Abīh, aḍ-Ḍaḥḥāk was appointed governor of Damascus. He led the funeral prayers for Mu^cāwiyah. When the 'Umayyad ruler Mu^cāwiyah ibn Yazīd stepped down from office, aḍ-Ḍaḥḥāk gave his support to ^cAbd-Allāh ibn az-Zubair and refused to give allegiance to Marwān. Aḍ-Ḍaḥḥāk died on the battlefield. See Ziriklī, 3:309 and Ibn Ḥajar, 4:448-450.

¹According to az-Zurqānī (1055-1122/1645-1710) this discussion took place in 44/665 during the first pilgrimage that Mu^cāwiyah made after his caliphate had been established. Mālik's report states explicitly that aḍ-Ḍaḥḥāk was performing the pilgrimage with Mu^cāwiyah; Muḥammad ibn ^cAbd-al-Bāqī AZ-ZURQĀNĪ, Sharḥ Muwaṭṭa' al-'Imām Mālik, ed. 'Ibrāhīm ^cAṭūwah ^cIwaḍ, 5 vols. (Egypt: Maktabat al-Ḥalabī, 1381/1961), 3:69.

²Muwaṭṭa', 1:344. ³Cited by 'Abū Zahrah, Mālik, p. 315.

In this matter Mālik--as 'Abū Zahrah observes--has followed the fatwā of ʿUmar ibn al-Khaṭṭāb as related by aḍ-Ḍaḥḥāk ibn Qais.¹ This fatwā of ʿUmar ibn al-Khaṭṭāb takes priority over the ḥadīth of Saʿd ibn 'Abī Waqqāṣ, indicating that, since Mālik regarded both ḥadīth and the āthār and fatwā's of the Companions to be sources of sunnah, Mālik does not necessarily give priority to a ḥadīth over an 'athar or fatwā of a Companion when they conflict with the ḥadīth.² Furthermore, since Saʿd's report is a ḥadīth about the Prophet, we also see in this example the distinction referred to earlier between ḥadīth and sunnah.³ For Mālik does not regard Saʿd's ḥadīth as constituting sunnah, whereas he regards ʿUmar's prohibition to be based on ʿUmar's greater knowledge of the Prophet's sunnah. It might also be pointed out that Saʿd's ḥadīth is a report of an action [ḥikāyat ḥāl], and such reports are regarded to be ambiguous in Mālikī legal theory.⁴ Az-Zurqānī⁵ explains that ʿUmar's prohibition was based on his understanding that when the

¹'Abū Zahrah, Mālik, p. 315. ²Ibid.

³See above, pp. 79-80.

⁴See below, pp. 188-194.

⁵Muḥammad ibn ʿAbd-al-Bāqī AZ-ZURQĀNĪ (1055-1122/1645-1710) was a famous pre-modern Egyptian Mālikī scholar and was regarded by some as the last great Egyptian muḥaddith. He was born and died in Cairo and was a graduate of al-'Azhar University. Ziriklī, 7:55.

Prophet performed the pilgrimage after the manner that Sa^cd has reported, it was only because of the special circumstances of that year and was not intended to be the pattern for all future years. Az-Zurqānī also believes that ^cUmar supported his interpretation of the Prophetic sunnah in this manner by reference to a pertinent Qur'ānic verse,¹ which appears to support his position. Az-Zurqānī holds, furthermore, that aḍ-Ḍaḥḥāk's statement that whoever performs the pilgrimage in the manner supported by Sa^cd is ignorant of "what God has commanded" [i.e., in the Qur'ān] is a reference to ^cUmar ibn al-Khaṭṭāb's interpretation of that verse.²

'Abū Zahrah cites other examples from "Ikhtilāf Mālik" that illustrate that Mālik regards the āthār and fatwā's of the Companions to be an authoritative source of the Prophetic sunnah; he adds the clarification, however, that it is the āthār and fatwā's of prominent Companions--like 'Abū Bakr,³ ^cUmar ibn al-Khaṭṭāb, and Zaid ibn Thābit⁴--that

¹Qur'ān, 2:196. ²Zurqānī, 3:69-70.

³'ABŪ BAKR ^cAbd-Allāh ibn 'Abī Qaḥāfah ^cUthmān ibn ^cĀmir at-Taimī, known as "AŞ-ŞİDDĪQ" [the exceedingly truthful one] (51 bh-13/573-634) was the first man to believe in the Prophet. He was one of the most prominent members of Quraish, was quite wealthy, and had great knowledge of the genealogy, history, and politics of the Arabs, by virtue of which the Arabs referred to him as "^cālim Quraish" [the learned one of Quraish]. He became the first caliph in the year of the Prophet's death, 11/632 and ruled two years and three and a half months until his death. Under 'Abū Bakr, the Islamic state was firmly established in Arabia, and Syria and much of Iraq were conquered. Ziriklī, 4:237-238.

⁴ZĀID IBN THĀBIT ibn aḍ-Ḍaḥḥāk al-'Anṣārī (11bh-45/

Mālik regards as authoritative, since these Companions spent long periods of time in intimate contact with the Prophet and, therefore, had excellent knowledge of the Prophet's sunnah.¹

It should be pointed out in this regard that many of the prominent older Companions who were in intimate contact with the Prophet for many years and sometimes decades transmitted relatively few ḥadīth compared to the number of ḥadīth transmitted by younger Companions. Only 92 ḥadīth, for example, are traced back to Zaid ibn Thābit, 142 to 'Abū Bakr, 146 to 'Uthmān, 537 to 'Umar, and 586 to 'Alī.² 5374 ḥadīth, on the other hand, are attributed to 'Abū Hurairah,³ who became a Muslim only about four years before

611-665) was born in Madīnah but grew up in Makkah, where he became a Muslim while still a young boy. He was orphaned at the age of six, when his father was killed, and made the hijrah to Madīnah at the age of eleven. Zaid ibn Thābit was very valuable to the Prophet and was highly regarded among the Companions for his intelligence. It is said that he learned to read Syriac at the Prophet's request in a very short time so that he could read official letters that came to the Prophet in that language; it is also reported that he learned to read the Torah in a short time also. Zaid could write and was one of the main scribes whom the Prophet used to record the Qur'ān. He played a central role in the compilation of the Qur'ān during the days of 'Abū Bakr and in the reproduction of that copy under 'Uthmān. He had extensive knowledge of Islamic law and served as a qāḍī in Madīnah and gave fatwā's. Ziriklī, 3:95-96; Sezgin, 1:401-402.

¹'Abū Zahrah, Mālik, pp. 317-318.

²Ziriklī, 3:95-96; 4:237-238; 4:371-372; 5:203-204; 5:107-108.

³'ABŪ HURAIRAH 'Abd-ar-Raḥmān ibn Ṣakhr (21bh-59/602-679) was brought up as an orphan and became a Muslim in the

the Prophet's death and hardly shared the same nearness and confidentiality with him as shared by 'Abū Bakr, °Umar, °Uthmān, °Alī, and other more prominent Companions.¹ Similarly, 2630 ḥadīth are attributed to the younger Companion °Abd-Allāh ibn °Umar, 2210 to the Prophet's young wife °Ā'ishah,² and 1660 to °Abd-Allāh ibn °Abbās,³ another younger Companion.⁴

In light of the relatively few ḥadīth transmitted from the older and more prominent Companions, the use of their āthār and fatwā's to establish the content of the Prophetic sunnah has special value. It enables the faqīh to have access to their knowledge which he would not have had to the

year 7/628. He took great interest in learning ḥadīth and stayed close to the Prophet for that purpose. °Umar later made 'Abū Hurairah governor of Bahrain for a time but removed him as not being competent to rule. 'Abū Hurairah returned to Madīnah, where he spent most of the remainder of his life teaching and where he died. He was governor of Madīnah for a short time prior to the establishment of 'Umayyad rule. Ziriklī, 4:80-81.

¹Ibid.; cf. Abbott, 2:66.

²°Ā'ISHAH bint 'Abī Bakr °Abd-Allāh ibn °Uthmān (9bh-58/613-678) was the daughter of 'Abū Bakr and became the Prophet's favorite wife. Like other wives of the Prophet, she is also referred to as "'Umm al-Mu'minīn" [mother of the believers]; the Prophet married her in the year 8/629. °Ā'ishah is regarded as the most knowledgeable of Muslim women; she had extensive knowledge of Islamic law and other religious knowledge. Ziriklī, 4:5.

³°ABD-ALLĀH IBN °ABBĀS ibn °Abd-al-Muṭṭalib (3bh-68/619-687) was one of the most important younger Companions and known for his extensive knowledge of Qur'ānic commentary, fiqh, and the poetry, genealogy, and history of the pre-Islamic Arabs. Ziriklī, 4:228-229.

⁴Ibid., 4:246, 5, 228-229; and Abbott, 2:66.

same extent if he had had to rely exclusively on the relatively few ḥadīth they transmitted.¹ Companions like the Prophet's lifelong friend 'Abū Bakr, for example, who remained one of the Prophet's chief confidants for the more than two decades of his Prophetic mission, who witnessed him institute the entirety of the law, and who were with him and often counselled him as he made decisions of the most fundamental importance, may be expected not only to have had more extensive knowledge of the content of the sunnah than younger, less prominent Companions but, more importantly, to have had also a better and more comprehensive understanding of the purpose behind it. Thus, ash-Shāṭibī claims that Mālik is regarded to be an 'imām in the sunnah by virtue of his close adherence to the fatwā's of the Prophet's Companions.²

Perhaps it should be clarified that, although Mālik regards the āthār of the Companions to be a source of the sunnah, he does not regard them always to be conclusively authoritative. It appears, rather, that he evaluates them in a manner similar to the way in which he evaluates ḥadīth. As in the case of ḥadīth, the ḥamal of Madīnah is one of the main criteria in terms of which Mālik interprets āthār.

¹Cf. 'Abū Zahrah, Mālik, p. 311-313.

²Ash-Shāṭibī, Al-Muwāfaqāt, cited by 'Abū Zahrah, ibid., pp. 311-312.

Regarding the legal
opinions of the Successors

According to 'Abū Zahrah, the legal method of 'Abū Ḥanīfah includes the study of the legal opinions of prominent Successors, although 'Abū Ḥanīfah does not feel bound to follow them when his ijtihād leads to conclusions contrary to theirs. 'Abū Zahrah holds that Mālik's position with regard to the authoritativeness of the legal opinions of the Successors is the same as 'Abū Ḥanīfah's.¹ Mālik does not regard the opinions of the Successors to be an independent source of the sunnah; the opinions of certain prominent Successors, however, like the Seven Fuqahā' of Madīnah, az-Zuhrī, Nāfi^c, and 'Umar ibn 'Abd-al-'Azīz, have especially high standing with Mālik, as is illustrated by his numerous citations of their opinions in the Muwaṭṭa'.² The fact that Mālik feels at liberty to disagree with the opinions of these Successors, however, is borne out by the numerous instances in the Muwaṭṭa' in which Mālik cites their opinions and disagrees with them.³

Isolated Ḥadīth

One of the major points of difference between 'Abū Ḥanīfah and Mālik, on the one hand, and ash-Shāfi^cī and 'Aḥmad ibn Ḥanbal, on the other, is the position they take on

¹'Abū Zahrah, Mālik, p. 320. ²Cf. ibid., p. 318.

³See, for example, pp. 731-760, below.

the authoritativeness of isolated ḥadīth as a valid, independent source of Islamic law. Whereas ash-Shāfi'ī and Ibn Ḥanbal regard them as authoritative,¹ neither 'Abū Ḥanīfah nor Mālik does, rather both of them regard isolated ḥadīth as probably the weakest and least authoritative of the sources and principles of law to which they subscribe. As will be seen in this discussion, both 'Abū Ḥanīfah and Mālik use isolated ḥadīth only when they are corroborated by other more firmly established and less conjectural sources of law to which they subscribe. Hence, for them, isolated ḥadīth can only be regarded as a dependent source of law or an ancillary to the other sources.

As 'Abū Zahrah points out, ash-Shāfi'ī states explicitly in "Ikhtilāf Mālik" that Mālik often rejects isolated ḥadīth and that Mālik accepts the āthār of the Companions as an indication of the sunnah, which are major contentions of ash-Shāfi'ī in that work against Mālik.² I have also indicated in my treatment of Mālik's biography the attitude that the biographical accounts of Mālik indicate that he had toward isolated and irregular ḥadīth.³

In some cases, no doubt, Mālik and other early fuqahā' who, like him, put great restrictions upon the use of iso-

¹See 'Abū Zahrah, Ash-Shāfi'ī, pp. 236-243, and at-Turkī, p. 263, 274-276.

²'Abū Zahrah, Mālik, pp. 315, 317-318; below, pp. 348-353.

³See above, pp. 76-85.

lated ḥadīth regarded irregular isolated ḥadīth that they rejected to have been fabricated. 'Abū Yūsuf, for example, refers to a statement of the Prophet, which he regards to be authentic:

Ḥadīth shall be divulged from me in great numbers. Whatever comes down to you from me and is in accordance with the Qur'ān is from me, but whatever comes down to you from me that contradicts [yukhālifu] the Qur'ān is not from me.¹

In a statement attributed to Mālik in the "ʿUtbīyah",² he is said to have regarded a certain ḥadīth to have been fabricated because of its irregularity.³

Nevertheless, there are numerous cases in which Mālik, 'Abū Yūsuf, and Ibn al-Qāsim clearly regard the isolated ḥadīth they reject to be defective for reasons other than having been fabricated. It is significant, for example, that the majority of the isolated ḥadīth in "Ikhtilāf Mālik" upon which ash-Shāfiʿī builds his arguments and which Mālik had rejected are ḥadīth which Mālik himself had transmitted in the Muwatṭa' with impeccable 'isnād's. Hence, it appears that it is because of the meanings and legal implications of these ḥadīth that Mālik regards them to be irregular and not because he questions their formal authenticity.

¹'Abū Yūsuf, pp. 24-25.

²As I have pointed out, some prominent early Mālikī fugahā' have denied the authenticity of much of the contents of the "ʿUtbīyah"; see above, pp. 118-119.

³Cited by ash-Shāṭibī, Al-Muwāfaqāt, 3:66-67.

Many of the expressions that Mālik and Ibn al-Qāsim use in speaking of the irregular, isolated ḥadīth they reject indicate that it is not necessarily their authenticity which they question. Mālik says, for example, "I do not know what the reality [ḥaqīqah] of this ḥadīth is."¹ Ibn al-Qāsim comments regarding an irregular ḥadīth, "We do not know what the proper explanation [tafsīr] of it is."² Mālik says, "This ḥadīth has come down to us, but so has that [namely, ʿamal] which indicates its weakness [ḍaʿf]."³ Or he says, "This ḥadīth has come down to us, but ʿamal is not in accordance with it."⁴ In the context of one of the most elaborate statements in the Mudawwanah about isolated, irregular ḥadīth, Ibn al-Qāsim explains that many such ḥadīth are "not regarded to have been fabricated but also not regarded to be suitable for being put into practice" ["fa-baqiya ghair mukadhdhab bihī wa lā ma^cmūl bihī"].⁵

It is reported that the famous Madīnan faqīh Ibn al-Mājishūn (the report does not specify which one) was asked why they transmitted ḥadīth and then did not follow them. He answered, "So that it be known that we have rejected them while having knowledge of them."⁶ Similarly, Mālik is reported to have said that there were people of knowledge among the Successors who would transmit ḥadīth or receive them from others but who would then say, "We are not ignorant of them,

¹Mudawwanah, 1:5 (8). ²Ibid., 2:151 (28).

³Ibid., 1:98 (19). ⁴Ibid., 1:164.

⁵Ibid., 2:151-152 (28). ⁶Iyāq, 1:66.

but the ʿamal has been firmly established [maḍā] contrary to them."¹ It is reported that Mālik's teacher Rabīʿah used to say regarding ʿamal and isolated ḥadīth, "One thousand [transmitting] from one thousand is preferable to me than one [transmitting] from one, for 'one [transmitting] from one' would tear [yantaziʿu] the sunnah right out of our hands."² Similarly, it is reported that the Madīnan qāḍī Muḥammad ibn 'Abī Bakr ibn Ḥazm--who was the son of the famous Madīnan faqīh, qāḍī, and governor 'Abū Bakr ibn Ḥazm³ and was qāḍī of Madīnah around 118/736--used to hand down rulings consistent with Madīnan ʿamal and contrary to some ḥadīth. His brother ʿAbd-Allāh, who was also one of Mālik's teachers,⁴ used to ask him why he had rejected a pertinent ḥadīth. Mālik reports that his brother would reply, "But what then of the ʿamal;" Mālik explains that he meant by this that upon which there was consensus in Madīnah.⁵

'Abū Yūsuf's Siyar al-'Awzāʿī contains numerous instances of advice to rely on the well-known sunnah and avoid irregular [shāhdh] ḥadīth. He says once, for example:

Make the Qur'ān and the well-known sunnah [as-sunnah al-maʿrūfah] your directing guide ['imaman qa'idan]. Follow that and judge on the basis of it [wa qis ʿalaihī] whatever presents itself to you that has not been clarified for you in the Qur'ān and the sunnah.⁶

¹Iyāḍ, 1:66. ²Ibid. ³See above, p. 57, note 1.

⁴See above, p. 57, note 4. ⁵Wakīʿ, 1:176.

⁶'Abū Yūsuf, p. 32.

And he says:

Beware of irregular [shādhdh] ḥadīth and take care to follow [wa CalaiKa bi] those ḥadīth which the community [al-jamaCah] is following, which the fuqahā' recognize [as valid] [yaCrifuhū], and which are in accordance with the Book and the sunnah. Judge [qis] matters on that basis. As for that which is contrary to the Qur'ān, it is not from the Prophet even if brought down by a transmission [riwāyah].¹

Although in this example 'Abū Yūsuf indicates that he regards certain types of irregular ḥadīth not to be from the Prophet at all, he also indicates at times in Siyar al-'AwzāCī that he does not question the authenticity of some irregular ḥadīth but regards them to be misleading because they pertain to unique examples of the Prophet's behavior or commands or, for some other reason, are not normative. He accepts one ḥadīth of al-'AwzāCī as authentic but regards al-'AwzāCī's conclusion to be very mistaken:

What the Messenger of God [ṣ] has said [in this ḥadīth] is just as he has said, and knowledge of what al-'AwzāCī has said pertaining to it has already reached us. But we regard it as irregular [shādhdh], and ḥadīth that are irregular are not to be followed.²

At several points in Siyar al-'AwzāCī, 'Abū Yūsuf stresses the great care that is required to draw proper conclusions from ḥadīth. Essentially, he repeats the following statement:

¹'Abū Yūsuf, pp. 30-31.

²Ibid., pp. 103-105; for similar examples of 'Abū Yūsuf's drawing attention to the special considerations behind irregular ḥadīth that make them unsuitable for further analogy, see *ibid.*, pp. 85-87, 63-64, 134-135, 107-110.

We have heard before what al-'Awzā^{cī} has told us about God's Messenger. But the ḥadīth of God's Messenger have [diverse] meanings [ma^cān], implications [wujūh], and interpretations, which only one whom God helps to that end can understand [yafham] and perceive [yubṣir].¹

Ibn Tūmart sets forth some of the considerations that can make isolated ḥadīth conjectural and irregular and, hence, unsuitable as the bases of legal reasoning until they are supported or clarified by reference to other sources of law such as, he points out, Madīnan ʿamal.² Isolated ḥadīth, he contends, are liable to additions, deletions, the loss of memory [on the part of the transmitter], errors and mistakes [al-khaṭa' wa 'l-ghalaṭ], oversights [al-ghaflah], lies [al-kadhib], the retraction [of one's opinion] [ar-rujū^c], contradiction [with other ḥadīth][at-ta^cāruḍ], and interpolation [at-tahrīf].³

Ash-Shāṭibī holds that authentic statements that have been isolated from their contexts are ambiguous by nature, whether they be isolated ḥadīth or something else. Ambiguous statements, however, are essentially of two types, he believes: 1) those that are ambiguous in essence [al-mutashābih al-ḥaqīqī] and 2) those that are only incidentally ambiguous [al-mutashābih al-'idāfī]. The ambiguity of the first type, he believes, can never be removed; an example that he gives of a statement of that type are the Arabic

¹Abū Yūsuf, p. 38; cf. *ibid.*, pp. 63-64, 107-110, 14-15.

²Ibn Tūmart, pp. 51-52. ³*Ibid.*, p. 48.

letters like "Alif, Lām, Mīm"¹ that come at the beginning of some chapters of the Qur'ān. But the ambiguity of the second type can be removed once the statement is placed in its proper context in terms of the facts or the definitive precepts and principles that pertain to it. Ash-Shāṭibī believes that most ambiguous statements in the textual sources of Islamic law are of this second type.²

Ambiguous statements are open to numerous interpretations, which are often mutually contradictory and contradict other sources and principles of law as well. Once placed in proper context, however, this ambiguity is removed, and the intended interpretation becomes clear. Hence, according to ash-Shāṭibī, it is the duty of the mujtahid first to find the proper context in which an ambiguous statement belongs before beginning to draw conclusions from it. The mujtahid must find the specification [mukhaṣṣiṣ] that removes the ambiguity of the general [ʿāmm] statement. He must discover the qualifier [muqayyid] that limits the unqualified [muṭlaq] statement. He must find the correct interpretation [al-mu'awwil] for the obvious [ẓāhir] statement. He must find the clarification [mubayyin] that elucidates the intended meaning of a clearly ambiguous [mujmal] statement, and, finally, the mujtahid must find the abrogation

¹Qur'ān, 2:1, 3:1, 29:1, 30:1, 31:1, 32:1.

²Ash-Shāṭibī, Al-Muwāfaqāt, 3:85-93.

[an-nāsikh] that pertains to the statement that was abrogated [mansūkh].¹

Conclusions must not, however, be drawn on the basis of an isolated statement until it has been clarified in this manner and its ambiguity has been removed. Ash-Shāṭibī holds that one of the most fundamental characteristics of the Islamic heresies, whether those of extreme literalists or extreme esoterics, has been that they base their arguments on ambiguous statements taken out of their proper contexts, in the state in which they lead to confusion and contradiction.² Like other Mālikīs, ash-Shāṭibī holds that one of the surest criteria against which to remove the ambiguity of isolated legal statements and to place them in their proper context is that of ʿamal:

. . . For whenever a mujtahid contemplates a legal statement pertaining to a matter, he is required to look into [baḥṭh] many things, without which it would be unsound to put the statement into practice. Consideration of the ʿamal [lit., 'aʿmāl] of the early generations [al-mutaqaddimīn] removes these ambiguities from the statement decisively. It renders distinct that which is abrogating from that which has been abrogated; it provides a clarification [mubayyin] for that which is ambiguous [mujmal], and so forth. Thus, it is an immense help in the process of doing ijtihād. It is for this reason that Mālik ibn 'Anas and those who hold to his opinion have relied upon it.³

¹Ash-Shāṭibī, Al-Muwāfaqāt, 3:98, 76.

²Ibid., 3:76, 352, 90-91. ³Ibid., 3:76.

Mālik's use of isolated ḥadīth by reference to other sources of law

The very notion of irregularity in isolated ḥadīth implies that those who regard them to be irregular have a criterion established by other sources and principles of law by which they determine what is regular (i.e., what is in conformity with that criterion) and what is irregular. 'Abū Yūsuf indicates in the citations I have just given that the Kūfan criterion was constituted by the Qur'ān, the well-known sunnah, and those ḥadīth that are recognized as valid by the fukahā'. Several of the citations I have just given indicate that Mālik and other prominent Madīnan fukahā' of his generation and before him looked to ʿamal as a criterion. Later Mālikī legal theorists hold that isolated ḥadīth can provide definitive knowledge once they are supported by other sources and principles of law.¹ In fact when an isolated ḥadīth is supported by ʿamal, as 'Abū Zahrah points out, Mālikīs no longer regard it to be isolated.²

The most explicit statement that I have found in the Muwaṭṭa' or Mudawwanah pertaining to Mālik's use of ʿamal as a criterion against which to evaluate isolated ḥadīth is the following statement by Ibn al-Qāsim. 'Asad ibn al-Furāt has been questioning him about an 'athar that reports

¹See al-Qarāfī, 1:33; Ibn al-Ḥāḥib, p. 72; Ibn Tūmart, pp. 51-52; 'Iyāḍ, 1:71; 'Abū Zahrah, Mālik, p. 303.

²'Abū Zahrah, Mālik, p. 305.