

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 "ʿUtbiyah",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 "ʿUtbiyah"; 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 maʿmūl 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 [shādhah] ḥadīth and take care to follow [wa 'alaika bi] those ḥadīth which the community [al-jama'ah] is following, which the fuqahā' recognize [as valid] [ya'rifuhū], 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-'Awzā'ī 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-'Awzā'ī as authentic but regards al-'Awzā'ī'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-'Awzā'ī has said pertaining to it has already reached us. But we regard it as irregular [shādhah], and ḥadīth that are irregular are not to be followed.²

At several points in Siyar al-'Awzā'ī, '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 ḥamal.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.