

The Concept of ʿUmūm al-Balwā

"ʿUmūm al-balwā" [lit., general affliction or necessity] is a Ḥanafī legal term; it is especially useful, however, in analyzing Mālik's legal reasoning and especially his concept of ʿamal. Ibn Rushd, for example, regards Mālik's conception and application of Madīnan ʿamal to be cognate to 'Abū Ḥanīfah's concept of ʿumūm al-balwā in rejecting isolated ḥadīth, as I will discuss later.<sup>1</sup>

Things are said to be of the nature of ʿumūm al-balwā when they pertain to the members of society in general. They are matters of which people generally have definite need, that afflict people in general, and recur relatively frequently in peoples' lives. Hence, matters of the nature of ʿumūm al-balwā are so commonplace or general that they can be expected to be part of the knowledge or experience of the majority.<sup>2</sup>

According to 'Abū Ḥanīfah, valid legal precepts that pertain to matters of the nature of ʿumūm al-balwā must be parts of the well-known sunnah. Hence, when the only source of knowledge of precepts that pertain to ʿumūm al-balwā is that of isolated ḥadīth, 'Abū Ḥanīfah regards the validity of those precepts to be suspect. Such isolated ḥadīth may have

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<sup>1</sup>See below, pp. 481-484.

<sup>2</sup>Al-Kawtharī, p. 37, note 1; cf. Zakī-ad-Dīn Shaʿbān, 'Usūl al-Fiḥ al-Islāmī (Egypt: Maṭbaʿat Dār at-Ta'līf, 1964-65), pp. 63-65.

been fabricated, abrogated, or may be for some other reason erroneous. For example, 'Abū Ḥanīfah regards criminal penalties [al-ḥudūd] and required acts of atonement [kaffārāt] to be of the nature of Cumūm al-balwā. Hence, he does not regard those penalties and required acts of atonement to be valid that are supported only by isolated ḥadīth.<sup>1</sup> (For other stipulations that 'Abū Ḥanīfah puts upon isolated ḥadīth, see appendix 1.)

According to 'Abū Zahrah, there is consensus among Mālikī legal theorists that isolated ḥadīth will be rejected when they are the only means of establishing precepts that pertain to matters of the nature of Cumūm al-balwā, such as the requirements pertaining to the five required daily prayers, the payment of zakāh--a savings tax required annually on the savings and earnings of those whose combined wealth exceeds a certain minimum--the performance of pilgrimage, and the required fasting during the ninth lunar month of Ramaḍān. 'Abū Zahrah also believes that Mālik's characteristic of rejecting ḥadīth that were unusual or which no one

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<sup>1</sup>Al-Kawtharī, p. 37, note 1; and Zakī-ad-Dīn Sha<sup>c</sup>bān, pp. 63-65.

Al-Qarāfī cites a comical illustration of the concept of Cumūm al-balwā and its applicability to rejecting isolated ḥadīth. If the mu'adhdhin [the one who makes the 'adhān (call to prayer)] falls from the minaret while calling the 'adhān for the Friday community prayers, one would expect to hear several reports of the incident. If one heard of the incident, however, only from a few, isolated reporters, one would doubt the validity of their report. See al-Qarāfī, 1:113.

was said to transmit but he, even though they had sound 'is-nād's, is also similar to 'Abū Ḥanīfah's rejecting certain types of isolated ḥadīth that pertain to matters of ʿumūm al-balwā.<sup>1</sup>

The statement attributed to Mālik in the "ʿUtbiyah" which I referred to earlier<sup>2</sup> contains a fairly explicit articulation of application of what the Ḥanafīs call "ʿumūm al-balwā" in the rejection of irregular, isolated ḥadīth and elucidates Mālik's concept of ʿamal. The question is brought to Mālik about whether one should perform the so-called "sajdat ash-shukr" [prostration of gratitude] when something takes place which one likes. When Mālik states his position that one should not, the argument is brought forward that 'Abū Bakr, "according to what they say," performed the sajdat ash-shukr after his armies were given a vital victory. The questioner then asks Mālik if he has ever heard that. Mālik replies that he has not and that he regards it to be a lie which has been attributed to 'Abū Bakr falsely. He then adds:

It is a type of misguidance ["hādhā min aḍ-ḍalāl"] that one hear something and then say, "This is something regarding which we have heard nothing to the contrary."  
 . . . Many victories came to the Messenger of God (ﷺ) and to the Muslims after him. Did you ever hear about a single one of them prostrating himself?

When something like this comes down to you that has been part of the experience of the people and took place right in their midst ["mimmā kāna fī 'n-nās wa jarā ʿalā 'aidihim"] and yet you have heard nothing about it from

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<sup>1</sup>'Abū Zahrah, Mālik, p. 294.    <sup>2</sup>See above, p. 172, n. 2.

them, then let that be a sufficient indication for you ["fa-<sup>c</sup>calaika bi-dhālik"]. For if it had taken place it would have been mentioned, because it is part of the experience of the people [<sup>c</sup>amr an-nās] which took place among them. So have you heard that anyone prostrated himself? Well, then, that is the 'ijmā<sup>c</sup>.

When something comes down to you that you do not recognize, put it aside ["'idhā jā'aka 'l-'amr lā ta<sup>c</sup>-rifuhū, fa-da<sup>c</sup>hū"].<sup>1</sup>

Ash-Shāḥibī comments on this statement that it is an explicit indication that it is the general Camal of the many upon which one is to rely, whatever type it might be and to whatever it may pertain. No regard at all is to be paid, he continues, to the rarities and the unusual actions that have been handed down [qalā'il mā nuqila wa nawādir al-'af<sup>c</sup>āl] when this general and widespread Camal contradicts them.<sup>2</sup>

One should keep in mind, however, in assessing Mālik's application of the concept of Cumūm al-balwā with regard to isolated ḥadīth that Madīnan Camal plays a most important role for him in its application. For if an isolated ḥadīth is supported by Madīnan Camal, it ceases to be regarded as isolated.<sup>3</sup> Rather the combination of Madīnan Camal with an isolated ḥadīth, as I shall discuss later, makes for one of the most authoritative types of Madīnan Camal, namely, what some legal theorists call "al-<sup>c</sup>amal an-naqlī", which is regarded to be a definitive part of the Prophet's sunnah.<sup>4</sup>

<sup>1</sup>Cited by ash-Shāḥibī, Al-Muwāfaqāt, 3:66-67.

<sup>2</sup>Ibid., 3:67. <sup>3</sup>See 'Abū Zahrah, Mālik, p. 305.

<sup>4</sup>See below, pp. 410-415.

Mālik's reliance upon Madīnan ḥamal in his application of the concept of ḥumūm al-balwā distinguishes him somewhat from 'Abū Ḥanīfah. It remains to be seen, however, whether or not 'Abū Ḥanīfah too--as al-Kawtharī affirms--relied upon the ḥamal of Kūfah in evaluating ḥadīth and, if he did, to what extent.<sup>1</sup> But, even though there may not have been much conceptual difference between the methods of Mālik and 'Abū Ḥanīfah in this regard, they differed at least in that they relied upon the ḥamal of different cities, which leads to differences on some specifics. Mālik, for example, regards guardianship to be a fundamental part of the marriage contract, as witnessed by Ibn al-Qāsim's lengthy citation, and the ḥadīth in this matter are supported by Madīnan ḥamal.<sup>2</sup> 'Abū Ḥanīfah, however, does not regard guardianship to be a fundamental part of the marriage contract, because the stipulation of guardianship pertains to ḥumūm al-balwā and has only been transmitted in isolated ḥadīth.<sup>3</sup>

#### The Ambiguity of Isolated Actions and Specific Rulings

The following concept pertaining to the ambiguity of isolated reports (in ḥadīth and āthār) of actions people did or of judgments that were handed down in special cases

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<sup>1</sup>Al-Kawtharī, p. 35.   <sup>2</sup>See above, pp. 180-181.

<sup>3</sup>See Zakī-ad-Dīn Shaḥbān, p. 64.

is a useful preliminary to analysis of Mālik's Muwaṭṭa'. For many of the controversial judgments of Mālik in the Muwaṭṭa' pertain to ḥadīth and āthār that come under the category of reports of isolated actions or special legal judgments.

Ash-Shāṭibī treats this concept at several points in his Muwāfaqāt and mentions at one point that this concept has been discussed by the legal theorists ['ahl al-ṣūl] in general.<sup>1</sup> I have also found the concept in the works of some other Mālikī legal theorists, whom I shall mention in this discussion.

Ash-Shāṭibī refers to what I have called "isolated actions" as "ḥikāyāt al-'aḥwāl" [lit., the narrations of circumstances or situations], and he refers to specific legal decisions as "qaḍāyā 'l-'a'cyān" [judgments for special cases or persons]. Reports of this nature are always ambiguous in isolation and, hence, ash-Shāṭibī reasons, cannot be valid legal proofs until they have been corroborated by reference to other sources and principles of law. Because of the nature of the ambiguity of such reports, ash-Shāṭibī observes, it is possible that they only appear to be contradictory to the continuous ḥamal [al-ḥamal al-mustamirr], whereas they are not in fact.<sup>2</sup>

It should also be noted that ash-Shāṭibī holds that

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<sup>1</sup>Ash-Shāṭibī, Al-Muwāfaqāt, 3:58. See also *ibid.*, 1:118, 3:166, 4:58-59.

<sup>2</sup>*Ibid.*, 3:58.

the ambiguity that pertains to reports of actions and specific legal decisions applies as well to certain types of statements ['aqwāl] in ḥadīth and āthār. These are statements that are parts of discussions, conversations, or other types of situational dialogue of the Prophet or his Companions. Statements of this type, ash-Shāṭibī holds, are not legal statements ['aqwāl], properly speaking. Rather they should be classified under reports of deeds and actions ['af-cāl], and the ambiguity that pertains to isolated reports of actions pertains to them. Those statements are legal statements ['aqwāl], properly speaking, that define [tuCarrif] specific rulings or set down ordinances, precepts, commands, and prohibitions.<sup>1</sup> Furthermore, Drāz observes in his commentary upon the Muwāfaqāt that isolated types of Camal and the Camal of a limited number would be considered also to fall in this category of isolated actions and special judgments.<sup>2</sup>

Ibn Rushd refers to this concept on occasion in Bidāyat al-Mujtahid. For example, he alludes to it in his explanation of why Mālik does not regard it to be obligatory that one raise his hands and say "Allāhu 'akbar" [God is the greatest of all] more than once at the beginning of the required prayers, although Mālik cites ḥadīth in the Muwaṭṭa' that report that the Prophet was observed doing it

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<sup>1</sup>Ash-Shāṭibī, Al-Muwāfaqāt, 4:59.

<sup>2</sup>Drāz, *ibid.*, 3:58, note 1.

several times during the course of the prayer. Mālik, according to Ibn Rushd, does not regard such reports of actions to be sufficient to indicate that those actions are obligatory until they are supported by an explicit proof [dalīl wāḍiḥ] by way of an authentic legal statement or a general consensus ['ijmā'] to that effect.<sup>1</sup> Elsewhere, in discussing a matter of Islamic ritual that has only been reported in ḥadīth and āthār as an action performed by the Prophet and his Companions on different occasions, Ibn Rushd observes again that reports of actions are not sufficient to establish legal obligation [al-wujūb] until those actions are supported by more explicit proofs.<sup>2</sup>

Ibn al-Ḥājib<sup>3</sup> has this concept in mind when he states in his discussion of the legal implications of the deeds ['af'āl] of the Prophet that reports which relate actions the Prophet was seen doing are ambiguous legal arguments until the legal status of those actions has been clarified. He continues to observe that, until the legal status of those reported actions has been clarified, one cannot validly lay

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<sup>1</sup>Ibn Rushd, 1:79 (1).    <sup>2</sup>Ibid., 1:133 (7).

<sup>3</sup>Jamāl-ad-Dīn ʿUthmān ibn ʿUmar (570-646/1174-1249), known as "IBN AL-ḤĀJIB" [the chamberlain's son], was a notable Egyptian Mālikī faqīh and legal theorist of Kurdish background. He was born in Upper Egypt, grew up in Cairo, and lived in Damascus. He died in Alexandria. His father was a chamberlain, and, hence, his name. Ibn al-Ḥājib is noted for his work on legal theory, "Muntahā 's-Sūl", and for his abridgement of it. He had extensive knowledge of Arabic, wrote works on grammar and commentaries on the philological works of az-Zamakhsharī. Ziriklī, 4:374.



claim to be imitating the Prophet merely because one is imitating those actions. One must first determine under what circumstances those actions were done, what the degree of obligation or desirability behind them is, whether they were done regularly, and so forth.<sup>1</sup>

Although reports of actions are regarded as insufficient evidence in themselves to establish that others are legally bound to imitate that act, reports of contrary actions by the Prophet or Companions and Successors whom Mālik regards as authoritative are regarded to be a sufficient indication that, indeed, those actions are not obligatory. The assumption in such cases is that, if the act in question were obligatory, these authoritative persons would not have failed to have done it.<sup>2</sup> There are several instances in the Muwaṭṭa' in which Mālik appears to be using reports of contrary actions to indicate that the actions in question are not obligatory. For example, Mālik seems to be using this principle in the Muwaṭṭa' to demonstrate that it is not obligatory for a Muslim to renew wuḍū' [ritual ablutions] after having a nosebleed. In one short chapter entitled "Mā Jā'a

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<sup>1</sup>See Ibn al-Ḥāḥib, pp. 51-52.

<sup>2</sup>Cf. Sulaimān ibn Khalaf AL-BĀJĪ, Sharḥ Muwaṭṭa' 'Imām Dār al-Hijrah, Sayyidinā Mālik ibn 'Anas, 7 vols. (Egypt: Maṭba'at as-Sa'ādah, 1331/[1912]), 1:350-351.

fī 'r-Ru<sup>c</sup>āf" [that which has come down regarding nosebleeds], Mālik cites three āthār which report that <sup>c</sup>Abd-Allāh ibn <sup>c</sup>Umar, <sup>c</sup>Abd-Allāh ibn <sup>c</sup>Abbās, and the prominent Madīnan Successor Sa<sup>c</sup>īd ibn al-Musayyab were observed to have had nosebleeds while praying. They broke off the prayer, renewed wuḍū', returned, and completed the prayer. In the chapter that follows, entitled "Al-<sup>c</sup>Amal fī 'r-Ru<sup>c</sup>āf" [the <sup>c</sup>amal regarding nosebleeds], Mālik cites an 'āthar that reports that Sa<sup>c</sup>īd ibn al-Musayyab and the son of <sup>c</sup>Abd-Allāh ibn <sup>c</sup>Umar, Sālim ibn <sup>c</sup>Abd-Allāh, were observed to have had nosebleeds while praying and did not break off their prayers or renew their wuḍū'.<sup>1</sup> All of the āthār in these two chapters are reports of actions. Yet, while the reports of the actions being performed are not regarded in Mālikī legal theory to be a sufficient indication of obligation, the reports of contrary actions are regarded to be an indication that the actions are not obligatory. The conclusiveness of the contrary reports in this case is increased by the fact that they are supported by <sup>c</sup>amal.

Similarly, although some isolated ḥadīth have been transmitted relating that the Prophet prohibited drinking while standing, Mālik indicates that it is not obligatory that one sit down while drinking and that it is not reprehensible to drink while standing, by citing āthār which re-

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<sup>1</sup>Muwatta'. 1:38-39.

port that °Umar ibn al-Khaṭṭāb, °Uthmān ibn °Affān, °Alī ibn 'Abī Ṭālib, °Abd-Allāh ibn az-Zubair, and °Abd-Allāh ibn °Umar used to drink while standing. He cites another 'athar' which reports that neither °A'ishah, the wife of the Prophet, or Sa°d ibn 'Abī Waqqāṣ held that there was any harm in drinking while standing.<sup>1</sup>

Finally, Mālik appears to be applying this principle in a chapter, which I shall discuss in more detail later,<sup>2</sup> in which Mālik states that it is not obligatory that one prostrate oneself after reading certain verses of the Qur'ān, although āthār in the same chapter report that 'Abū Hurairah, °Umar ibn al-Khaṭṭāb, and °Abd-Allāh ibn °Umar were observed prostrating themselves after having read some of these verses. In the same chapter, Mālik cites an 'athar' that reports that °Umar ibn al-Khaṭṭāb once recited such a verse while speaking to the people from the minbar [pulpit] during the Friday congregational prayers. He descended from the minbar, prostrated himself, and the people prostrated themselves after him. The next Friday, according to the report, °Umar recited the same verse on the minbar, but, when the people prepared to prostrate themselves, he prohibited them from doing so, telling them that it was not obligatory. This 'athar' illustrates well the principle of Mālikī legal theory that reports of actions are not sufficient in themselves to establish legal

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<sup>1</sup>Muwatta', 2:925-926; see Zurqānī, 5:306-307.

<sup>2</sup>See below, pp. 629-631.

obligation, while reports of the contrary actions of authoritative persons are regarded to be a sufficient indication that those actions are not obligatory. In this case, <sup>c</sup>Umar ibn al-Khaṭṭāb has indicated himself that that is the conclusion which one is to draw from his contrary actions.<sup>1</sup>

### Preliminary Reflections on 'Ijmā<sup>c</sup>

Mālik uses a type of 'ijmā<sup>c</sup> frequently in his Muwaṭṭa', which he refers to variously as "al-'amr al-mujtama<sup>c</sup> <sup>c</sup>alaihi <sup>c</sup>indanā" [that matter upon which there is consensus among us], "al-'amr al-ladhī lā 'khtilāf fīhi <sup>c</sup>indanā" [that matter regarding which there is no difference of opinion among us], and so forth. This Madīnan type of 'ijmā<sup>c</sup>, which Mālik uses, is part of the Camal of Madīnah. Therefore, I will discuss it further in the chapter pertaining to the concept of Camal.<sup>2</sup> Nevertheless, it is worthwhile to consider briefly prior to that how the concept of 'ijmā<sup>c</sup> may have evolved historically and how fugahā' like Mālik may have conceived of it prior to ash-Shāfi<sup>cī</sup>.

Ash-Shāfi<sup>cī</sup> conceives of 'ijmā<sup>c</sup> as consensus on the validity of matters of Islamic law that is total and without exception. It is a consensus of the 'ummah, as it were, a consensus such that wherever in the Islamic realm one should

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<sup>1</sup>Muwaṭṭa', 1:205-207; cf. al-Bājī, 1:349-353; Ibn Rushd, 1:132 (13).

<sup>2</sup>See below, pp. 424-428, 691-730.