

THE ORIGINS OF  
Muhammadan  
Jurisprudence

---

JOSEPH SCHACHT

OXFORD  
AT THE CLARENDON PRESS

## CHAPTER 2

### THE ANCIENT SCHOOLS OF LAW. SHĀFI'Ī'S ATTITUDE TO THEM

SHĀFI'Ī is known as the founder of one of the four surviving orthodox schools of law. It was not his intention to found such a school, and Muzanī, the author of the earliest handbook of the Shāfi'ite school, declares at the beginning of his work:<sup>1</sup> 'I made this book an extract from the doctrine of Shāfi'ī and from the implications of his opinions, for the benefit of those who may desire it, although Shāfi'ī forbade anyone to follow him or anyone else.' Shāfi'ī devotes a considerable part of his writings to discussions with and polemics against his opponents, but always with a view to making them acknowledge and follow the *sunna* of the Prophet, and he speaks repeatedly against the unquestioning acceptance of the opinion of men.<sup>2</sup>

The older schools of law to which Shāfi'ī is opposed, know a certain degree of personal allegiance to a master and his doctrine.<sup>3</sup> Amongst the Iraqians, we find Abū Yūsuf refer to Abū Ḥanifa as 'the prominent lawyer', and Shaibānī to 'the companions of Abū Ḥanifa'; Shāfi'ī refers to those 'who follow the doctrine of Abū Ḥanifa', or to his 'companions', and calls him 'their master'; but also Abū Yūsuf has followers of his own. The most outspoken passage is one in which an Iraqi opponent, presumably Shaibānī, acknowledges Shāfi'ī's doctrine as good, but Shāfi'ī retorts that, as far as he knew, neither the opponent had adopted it nor another of his ilk who lorded it over them, presumably Abū Ḥanifa.<sup>4</sup>

Some of the Medinese rely on Mālik for their knowledge of traditions, and consider Mālik's *Muwaffa'* as their authoritative

<sup>1</sup> *Mukhtaṣar*, i. 2.

<sup>2</sup> *Tr. III*, 71, 148 (p. 246); *Tr. IV*, 250; *Tr. VII*, 274; *Ikh.* 148 f. In the time of Shāfi'ī, the word *taqlīd*, though occasionally used of the adherence to the doctrine of a master, was not yet the technical term for it which it became later. Cf. below, p. 18, n. 5, 79 (on *Tr. III*, 65), 122 (on *Tr. IV*, 253), 131, 136, n. 4.

<sup>3</sup> Ash'arī, *Maqālāt*, ii. 479 f. opposes the adherents of the old schools (*ahl al-ijtihād*) who admit *taqlīd*, to some followers of Shāfi'ī (*ba'd ahl al-qiyās*) who do not admit it. Ibn Ḥazm deplored that the followers of Shāfi'ī accepted the principle of *taqlīd*, first introduced by the adherents of the old schools. See his *Ihkām*, ii, 120, and Goldziher, *Zāhirīten*, 212.

<sup>4</sup> *Ikh.* 122.

book 'which they prefer to all others and which they are accustomed to follow'; they are the 'followers' of Mālik and he is their 'master'; they regard his opinion as if it were the consensus, and there is no consensus for them besides Mālik in Medina. But they are only a fraction of the Medinese, just as the followers of Abū Ḥanifa are only part of the Iraqians.

The real distinguishing feature between the ancient schools of law is neither the personal allegiance to a master nor, as we shall see later, any essential difference of doctrine, but simply their geographical distribution. Shāfi'ī is explicit about it: 'Every capital of the Muslims is a seat of learning whose people follow the opinion of one of their countrymen in most of his teachings.'<sup>1</sup> Shāfi'ī goes on to mention the local authorities of the people of Mecca, Basra, Kufa, Syria; elsewhere, he refers to the Iraqians and Medinese, the Basrians and Kufians, the scholars of each place where knowledge of traditions is to be found, the people of the different countries, and he gives detailed lists of these local authorities.

One of these lists shows the variety of doctrines within the great geographical divisions: 'In Mecca there were some who hardly differed from 'Aṭā', and others who preferred a different opinion to his; then came Zanjī b. Khālid and gave legal opinions, and some preferred his doctrine, whereas others inclined towards the doctrine of Sa'id b. Sālīm, and the adherents of both exaggerated. In Medina people preferred Sa'id b. Musaiyib, then they abandoned some of his opinions, then in our own time Mālik came forward and many preferred him, whereas others attacked his opinions extravagantly. I saw Ibn Abil-Zinād exaggerate his opposition to him, and Mughīra, Ibn Ḥāzīm and Darāwardī follow some of his opinions, whereas others attacked them [for it]. In Kufa I saw people incline towards Ibn Abī Lailā and attack the doctrines of Abū Yūsuf, whereas others followed Abū Yūsuf and disagreed with Ibn Abī Lailā and with his divergences from Abū Yūsuf, and others again inclined towards the doctrine of Sufyān Thaurī and that of Ḥasan b. Şālih. I have also heard of other instances of this kind, similar to those which I have observed and described. Some Meccans even think of 'Aṭā' more highly than of the Successors, and some of their opponents place Ibrāhīm Nakha'ī

<sup>1</sup> *Tr. III*, 148 (p. 246).

[of Kufa] at the top. Perhaps all these adherents of different masters exaggerate.<sup>1</sup>

Shāfi'i insists on the fact that the reputation of all these authorities varies much, and that they hardly agree on a single point of law or a general principle. If Shāfi'i denies here the existence of reasoned agreement even between the several prominent scholars in each centre, he does not, on the other hand, imply the existence of any clear-cut, fundamental differences in legal theory between the local schools; it was exactly their common reliance on 'living tradition' and their free exercise of personal opinion, in other words, their lack of strict rules such as were elaborated only by Shāfi'i, that led to wide divergences in doctrine.

There was as yet no trace of the particular reputation of Medina as the 'true home of the *sunna*',<sup>2</sup> a reputation incompatible with Shāfi'i's terse statement: 'We follow this [tradition from the Prophet], and so do all scholars in all countries except Medina, and so do the great authorities',<sup>3</sup> and with his sustained polemics against the Medinese.

The three great geographical divisions that appear in the ancient texts are Iraq, Hijaz, and Syria. Within Iraq, there is a further division into Kufians and Basrians. Although occasional references to the Basrians are not lacking,<sup>4</sup> little is known about their doctrine in detail,<sup>5</sup> and our knowledge of the ancient Iraqians is mainly confined to the Kufians. In Hijaz there are also two centres, Medina and Mecca,<sup>6</sup> and again our infor-

<sup>1</sup> *Tr. IV*, 257.

<sup>2</sup> This reputation appears implicitly in the tradition in praise of the 'scholar of Medina' (first in Ibn Hanbal, see below, p. 174, s.v. Ibn 'Uyaina), and explicitly in Ibn Qutaiba, 332. The traditions in praise of Medina in *Muw.* iv. 59 f. and in *Muw. Shaib.* 376, are still silent on this particular claim. *Tr. III*, 148 (p. 242) is concerned with the Medinese 'living tradition' as opposed to traditions from the Prophet.

<sup>3</sup> *Tr. III*, 41. In *Tr. III*, 34, he invokes the legal opinion of 'all people outside Medina, those from Mecca, the East and Yemen' against the Medinese doctrine.

<sup>4</sup> See, e.g., *Tr. I*, 49 (see below, p. 219); *Tr. III*, 143, 148 (p. 243; a discussion with a Basrian); *Tr. VIII*, 11 (Shaibāni does not belong to the Basrians); *Tr. IX*, 22; *Ikh.* 36, 62, 181, 264; *Ris.* 43 (and *ed. Shākir*, p. 305), 62 (ancient authorities of Basra); Ibn Sa'd, vii. 158, l. 15. See also below, p. 229.

<sup>5</sup> Already Shāfi'i's Iraqi opponent in *Ikh.* 337 did not know the opinion of the muftis in Basra.

<sup>6</sup> See, e.g., *Tr. III*, 15 (cf. *Muw.* iii. 183), 26 (cf. Zurqāni, i. 263: presumably a Meccan opinion and tradition), 34, 53, 87 ('Aṭā' and his companions); *Ikh.* 338 (the same); *Ris.* 62 (ancient authorities of Mecca); *Umm*, vi. 185 (cf. *Tr. III*, 57). See also below, pp. 249 ff.

mation on Medina is incomparably more detailed. The Syrian school is mentioned rarely,<sup>1</sup> but we have some authentic documentation on its main representative Auzā'ī.

Egypt did not develop a school of law of its own, but fell under the influence of the other schools. There were followers of the Iraqi doctrine in Egypt, but most of the scholars there belonged to the Medinese school of which they formed a branch. Shāfi'ī refers to them in the writings of his later, Egyptian, period as 'Egyptians' or as 'some of the people of our country'.<sup>2</sup>

Shāfi'ī considers himself a member of the Medinese school, and references to the Medinese or Hijazis as 'our companions', and to Mālik as 'our master' or 'our and your master' occur over the whole range of his writings, from his early to his late period. Also his Iraqi opponents regard him as one of the Medinese, or a follower of Mālik, or one of the Hijazis in general. But Shāfi'ī does not identify himself with the particular adherents of Mālik within the school of Medina, although he is eager to defend Mālik against an undeserved attack. In other contexts, Shāfi'ī keeps his distance from the Medinese in general and denies responsibility for those of their opinions which he does not share.

No compromise was possible between Shāfi'ī and the Medinese, nor indeed any other ancient school of law, on their essential point of difference in legal theory, concerning the overriding authority of traditions from the Prophet, as opposed to the 'living tradition' of the school. When he comes to this subject Shāfi'ī attacks the Medinese with the strongest possible words. The whole of *Tr. III* is a sustained attack on the Medinese for their failure to follow the traditions from the Prophet which they relate themselves (and, failing that, their own traditions from Companions and Successors), and an effort to convert them to his own point of view. In this connexion Shāfi'ī even uses arguments which do less than justice to the Medinese.<sup>3</sup>

<sup>1</sup> *Tr. III*, 65 (cf. Ṭabarī, 81); *Tr. VIII*, 11; *Ris.* 62; *Āthār Shaib.* 37. Shaibānī (*Tr. VIII*, 1) speaks of 'the Muslims without exception, all Hijazis and Iraqians together', as if the Syrians did not count, and Abū Yūsuf (*Tr. IX*, 1) throws the Syrian Auzā'ī together with the Hijazis.

<sup>2</sup> *Tr. III*, 148 (p. 240); *Ikh.* 32 f., 91 f., 122, 132, 217 f., 289; *Umm*, vi. 185. In several of these contexts they are explicitly identified with the Medinese; *Ikh.* 34, Shāfi'ī calls them 'our companions', which is his usual reference to the Medinese, and p. 35, 'our Hijazi companions'.

<sup>3</sup> See below, p. 321.

Shāfi'ī attacks the Iraqians just as vigorously as he does the Medinese. Even where he has to agree with the Iraqians and to disagree with the Medinese, he is inclined to dissociate himself from the former and identify himself with the latter. Often he shows himself one-sided by sparing or excusing the Medinese and directing his full attack against the Iraqians. He shows the same sympathy for Auzā'ī as against the Iraqians. He attacks the Iraqians repeatedly with unjustified arguments and distorts their doctrine.<sup>1</sup> A strong personal prejudice against Shaibānī appears in several places, most clearly in *Tr. VIII*, 3, where Shāfi'ī calls Mālik 'a greater than he'.

Only in *Ikh.*, a treatise of late composition, we find several very polite references to the Iraqians; Shāfi'ī hopes that the argument which he is going to give will enable his Kufian interlocutor to convince all his companions who, after all, know the several doctrines and logical reasoning (p. 38); Shāfi'ī acknowledges that his interlocutor has shown himself objective throughout, and now, knowing where the truth lies, he has to draw the consequences (p. 53); Shāfi'ī refers to 'a prominent scholar belonging to those who disagree with us most persistently', that is, the Iraqians (p. 328).

Apart from his sentimental attachment to the Medinese, and notwithstanding his vigorous polemics, Shāfi'ī shows himself on the whole remarkably free from school bias. He started as a follower of the school of Medina. Having developed his legal theory and put the whole of the law on a new basis, he turned against his erstwhile companions and tried to convert them to his doctrine. Finally he also tried to convince the Iraqians, whom in his earlier period he had treated with scorn.

Soon after the time of Shāfi'ī the geographical character of the ancient schools of law disappeared more and more, and the personal allegiance to a master became preponderant.

<sup>1</sup> See below, pp. 321 ff..