THE ORIGINS OF Muhammadan Jurisprudence

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CHAPTER 4

THE REASONING OF INDIVIDUAL IRAQIANS

A. Ibn Abī Laylā

WE have seen that the technical legal problems which form the subject-matter of *Tr. I*, and on which Ibn Abī Laylā and Abū Ḥanīfa differ, are later than the real or fictitious opinions ascribed to Ibrāhīm Nakha'ī in *Āthār A. Y.* and *Āthār Shaib.*, and further that these last date mainly from the time of Ḥammād.[1] The discussion of the technical legal problems must have started therefore not much earlier than the time of Ibn Abī Laylā himself. On the other hand, the doctrine of Ibn Abī Laylā is as a rule more primitive, less highly developed, and represents an earlier stage than that of his contemporary Abū Ḥanīfa.[2] In other words: Ibn Abī Laylā is more conservative, and this is well in keeping with his having been a judge (a fact of which we shall also find direct traces in his decisions), whereas Abū Ḥanīfa, a speculative lawyer, was less hampered by the necessity of paying regard to the practice.

The doctrine of Ibn Abī Laylā, taken as a whole, shows a considerable amount of technical legal thought, but it is generally of a primitive kind, somewhat clumsy and untrained, and therefore shortsighted and often unfortunate in its results. His loose and imperfect method is not incompatible with formalism and the stubborn drawing of consequences. Nevertheless, Ibn Abī Laylā's technical reasoning is far from rudimentary; the striving for systematic consistency, the action of general trends and principles, pervade his whole doctrine, and there is a considerable amount of explicit legal reasoning.[3]

In a great number of cases, Ibn Abī Laylā's doctrine represents seemingly natural and practical common-sense, and rough-and-ready decisions. The following short remarks on a few chosen examples will serve to make this clear.

§ 13: A seemingly just and reasonable, but short-sighted solution (see above, p. 270 f.).

[1] Above, pp. 234 ff. [2] See above, pp. 270 ff.

[3] The references in this section are to *Tr. I*, unless the contrary is stated.

§ 31: A practical and 'homely' inference, combined with systematic reasoning.[1]

§ 32: An inconsistent decision, based on practical expediency.

§ 63: A decision based on a false analogy, not technically legal or logical, but practical and keeping account of the presumed intention of the party concerned.

§ 65: Ibn Abī Lailā does not see the implications of the problem and gives what must have seemed to him a practicable and materially just solution.[2]

§ 72: A practicable and seemingly natural decision (see above, p. 272).

§§ 92, 93, 94: Common-sense and practicable decisions, showing regard for the practice (see above, p. 273).

§§ 107, 110: A rough-and-ready solution, taking account of the old practice of identifying slaves and tax-payers by seals of lead attached to their necks,[3] and of the official correspondence between judges; Shāfi'ī's comment shows that this is the easiest way out of a practical difficulty, but it is against *qiyās*, legally irregular and beset with difficulties.[4]

§ 126: A practicable interim solution (see above, p. 274).

§ 190: A practical but inconsistent decision (see below, p. 295).

§ 227: Ibn Abī Lailā gives the reason for his decision; it is plausible on the face of it, but rather irrelevant.

§§ 236, 251: Makeshift method and rough-and-ready decision (see above, p. 236).

This practical, common-sense reasoning often takes material, and particularly Islamic-ethical, considerations into account.

§ 3: An inconsistent decision in favour of the liberty of a slave.

§ 17: A rough-and-ready decision in the interests of material justice.

§ 28: A decision based on material justice and on an ethical consideration (see above, p. 284).

§ 130: An inconsistent decision in favour of the orphan (see above, p. 217).

[1] The silence of the owner is treated by analogy with the silence of the virgin on her marriage. This argument, only adumbrated in *Tr. I*, is explicitly given by Sarakhsī, xxx. 140, on behalf of Ibn Abī Lailā; it is certainly authentic because Shāfi'ī refers to it.

[2] But the general theory of *tajhīl* which is attributed to Ibn Abī Lailā by Sarakhsī is spurious, as appears from a comparison of Sarakhsī, xi. 129 ff., with *Tr. I*, 67.

[3] See Becker, *Islamstudien*, i. 261.

[4] Sarakhsī, xi. 24 f., calls it 'a not very good *istiḥsān*', but states that it is in the public interest.

§§ 134, 139: Practical concessions in favour of the *mukātab* slave (see above, pp. 112, 281).

§§ 143, 235 f.: A decision based on material, non-juridical considerations.[1]

§ 150: A seemingly just and practicable decision, obviously inspired by material considerations (see above, p. 274).

Connected with these material considerations is Ibn Abī Lailā's regard for the actual practice.[2] The fact of his holding the office of judge would naturally reinforce this tendency. There are numerous traces of Ibn Abī Lailā's activity as a judge in his doctrine.[3]

We now come to a group of downright primitive features, both material and formal, in Ibn Abī Lailā's doctrine.

§§ 30, 37, 59: Traces of patriarchy in civil law.

§ 44: Ibn Abī Lailā shows himself crudely systematic, but clumsy and inconsistent (see above, p. 271).

§ 77: Primitive legal reasoning (see above, p. 273).

§ 127: A trace of patriarchy in family property rights (see above, p. 278).

§ 140: Ibn Abī Lailā gives a seemingly natural and straightforward solution, but does not see its legal difficulties which were later pointed out by Abū Ḥanīfa.

§ 189: The old Arab idea that husband and wife have no share in matters of talion; this idea was dropped from Abū Ḥanīfa onwards.

§ 245: A far-fetched specious interpretation of a statement.

The last case quoted is one example out of many of Ibn Abī Lailā's formalism. This rigid formalism is perhaps the most persistent single feature typical of his legal thought.[4]

[1] This is well pointed out by Sarakhsī, vi. 97.

[2] In common with the other Iraqians, Ibn Abī Lailā avoids the term *'amal* for practice (see above, p. 76). But the influence of the actual practice on his doctrine, to a much higher degree than in the case of Abū Ḥanīfa and his disciples, is unmistakable. See §§ 92–4 (above, p. 273), 107 and 110 (above, p. 291), 109 (above, p. 210), 111 (above, p. 211), 115 (above, p. 218), 167 (above, p. 284).

[3] See §§ 9, 49 (a change in his decision on an ancient controversial point under instructions from the 'Abbāsid Caliph Saffāḥ), 55 (above, p. 272), 82 (a change of doctrine under the needs of the administration of justice: above, p. 273), 113, 210, 211, 255 (*b*), 256 (Abū Yūsuf was present when Ibn Abī Lailā related his decision as a judge). It can further be reasonably presumed that Ibn Abī Lailā's doctrine was influenced by the needs of judicial practice in the cases of §§ 106 (above, p. 274), 116 (above, p. 187 f.), 202, 203, 207.

[4] See § 4 (complicated reckoning instead of valuation), 10, 25 (above, p. 271), 27 (ibid.), 50 (Ibn Abī Lailā attaches formal importance to a declaration and

Such are the foundations from which rises Ibn Abī Laylā's technical legal thought. The following examples will be sufficient to show its extent and quality.

§ 16: Ibn Abī Laylā anticipates Shāfi'ī.

§ 39: Ibn Abī Laylā bases his decision on a general rule of presumption;[1] Sarakhsī shows competently that Ibn Abī Laylā misapplies the rule, but Shāfi'ī in his better attested opinion agrees with Ibn Abī Laylā.

§ 47: Ibn Abī Laylā reasons on the theoretical construction of the right of pre-emption, but his solution is practical.

§ 75: Ibn Abī Laylā reasons against contracts concerning an unknown quantity; Shāfi'ī has nothing substantial to add to his argument.

§ 83: Ibn Abī Laylā sees the essential problem, and anticipates Shāfi'ī (see above, p. 273).

§§ 123, 125, 206: Ibn Abī Laylā's decisions on two widely differing groups of problems are based on the theory of the indivisibility of acknowledgements.

§ 129: *The doctrine of Ibn Abī Laylā is juridically better developed* than that of Abū Ḥanīfa; it is maintained with a systematic improvement by Shāfi'ī.

§ 133: Ibn Abī Laylā enounces a sound general principle as the basis of his decision.

§§ 134, 140: Ibn Abī Laylā knows the concept of being 'in abeyance', but expresses it clumsily (see above, p. 281, n. 1).

§ 148: A common-sense and juridically sound decision, endorsed by Shāfi'ī.[2]

§ 151: A close parallel which shows, in addition, an intelligent application of a general principle and a high degree of legal thought.

§ 152: Equally good.

§ 171 (*a*), 216: Analogical reasoning, without the term *qiyās* (see above, p. 110).

§ 243: If we are to believe Sarakhsī, xxx. 165 (and this seems indeed the only possible reason for Ibn Abī Laylā's decision), Ibn

becomes systematically inconsistent), 52 (above, p. 272), 67, 68 f. (very rigid and formal, simple but consistent legal thought), 90, 97, 106 (above, p. 274), 118 (Ibn Abī Laylā's formalistic respect for the *res iudicata* is, however, not peculiar to him; see *Umm*, vii. 34), 120, 141 f. (Ibn Abī Laylā pursues to its farthest consequences a formal principle which embodies crude and primitive reasoning; above, p. 274), 174 (formalistic concern with the intention), 179, 188, 193, 203, 298.

[1] Sarakhsī, xxx. 144, mentions Ibn Abī Laylā's argument explicitly; this is confirmed by Shāfi'ī's reference to it.

[2] Sarakhsī, xi. 150, says correctly that it takes account of the outward, obvious facts (*li-'tibār al-ẓāhir*).

Abī Lailā applied the principle that a condition which cannot be ascertained is to be treated as non-existent.

The degree of systematizing achieved by Ibn Abī Lailā can be estimated by the fact that cases of remarkable systematic consistency definitely outweigh those where the inconsistency is obvious.[1]

B. Abū Ḥanīfa

The examples with which I illustrated the development of legal reasoning in general[2] show the superiority of Abū Ḥanīfa's technical legal thought over that of Ibn Abī Lailā. With respect to Ibn Abī Lailā and the Iraqian legal reasoning which Ibn Abī Lailā represents, Abū Ḥanīfa seems to have played the role of a theoretical systematizer who achieved a considerable progress in technical legal thought. Not being a judge, Abū Ḥanīfa was less restricted than Ibn Abī Lailā by considerations of practice. At the same time, he was less firmly guided by the administration of justice, and whereas Ibn Abī Lailā's doctrine is often primitive but practical, Abū Ḥanīfa's, though more highly developed, is often tentative and unsatisfactory.

In Abū Ḥanīfa's doctrine, systematic consistency has become normal. The emphasis shifts from the material aspects of legal reasoning, such as regard for the practice, Islamicizing, common-sense decisions and other material considerations which were still prevalent in Ibn Abī Lailā's doctrine, to the technical and formal qualities of legal thought. Traces of primitive reasoning and systematic inconsistencies remain but they are relatively few in number. On the other hand, there is so much explicit legal thought embodied in Abū Ḥanīfa's doctrine, that we cannot be surprised to find that an appreciable part of it was found defective and was rejected by his companions.

Regard for the practice

Kharāj, 36: Abū Ḥanīfa makes out a good case for the administrative practice (see above, p. 202).

Tr. I, 27: Abū Ḥanīfa's doctrine is more appropriate than that of Ibn Abī Lailā for somewhat more highly developed conditions of commerce (see above, p. 271).

[1] See also *E.I.*[2], s.v. *Ibn Abī Laylā*.

[2] Above, pp. 270 ff.

Islamicizing

Muw. Shaib. 249: Abū Ḥanīfa distinguishes between the legal and the moral aspect.

Tr. I, 167: Abū Ḥanīfa applies a religious consideration, as against Ibn Abī Laila's recognition of the commercial practice (see above, p. 284 f.).

Tr. I, 246: Abū Ḥanīfa stands alone in introducing a religious scruple into a technically legal problem.

Common-sense decisions and material considerations

Tr. I, 7: Abū Ḥanīfa diverges from Ibn Abī Laila, obviously for practical reasons, but is not followed by Abū Yūsuf, Shaibānī (Sarakhsī, xiii. 50), and Shāfi'ī.

Tr. I, 48: A reasonable and defensible opinion (see above, p. 271).

Tr. I, 52: Abū Ḥanīfa shows more common sense and is more practical than Ibn Abī Laila (see above, p. 272).

Tr. I, 108: A very relevant material consideration, as opposed to Ibn Abī Laila's formalism (see above, p. 274).

Tr. I, 134: Abū Ḥanīfa diverges from strict consistency in favour of the *mukātab* slave, but less so than Ibn Abī Laila (see above, p. 280).

Tr. I, 178: An *istiḥsān*, directed against cruelty to animals (see above, p. 112).

Tr. IX, 2: An *istiḥsān*, based on common-sense (see ibid.).

Tr. IX, 19: A practical consideration, but inconclusive.

If we compare these examples with the far greater number of comparable cases which we could collect from a more restricted range of sources for Ibn Abī Laila,[1] the regression of the material element in Abū Ḥanīfa's legal reasoning becomes obvious. The following examples show the same with regard to primitive reasoning in Abū Ḥanīfa's doctrine.

Primitive reasoning

Tr. I, 72: Elementary legal reasoning (see above, p. 272).

Tr. I, 184: Primitive analogical reasoning, leading to a systematic inconsistency.

Tr. I, 187: Abū Ḥanīfa applies an old Arab tribal idea with rigid formalism, although in *Tr. I*, 189, he is the first to discard another old Arab idea (see above, p. 292).

Tr. I, 190: Here also Abū Ḥanīfa follows the same tribal idea out to its last consequences; compared with his doctrine, Ibn Abī Laila's decision is practically expedient but inconsistent.

[1] Above, pp. 290 ff.

Tr. I, 253: A loose and clumsy analogy, brilliantly refuted by Shāfi'ī.

Tr. IX, 3: Abū Ḥanīfa's argument reproduces a crude and primitive analogy which is obviously older than Abū Ḥanīfa himself (see above, p. 109).

More significant than these features which connect Abū Ḥanīfa's reasoning with the period of his predecessors, are those numerous cases which show Abū Ḥanīfa's legal thought not only more broadly based and more thoroughly applied than that of Auzā'ī and Ibn Abī Lailā, but technically more highly developed, more circumspect, and more refined.

Muw. Shaib. 331: in common with the other Iraqians, Abū Ḥanīfa forbids the re-sale of any object before taking possession,[1] but he is alone in exempting immovables; this distinction is legally sound, because of the exceptional character of the possession of immovables.

Tr. I, 13: Abū Ḥanīfa easily refutes Ibn Abī Lailā (above, p. 270 f.).

Tr. I, 25: Abū Ḥanīfa's analysis goes deeper than that of Ibn Abī Lailā (above, p. 271).

Tr. I, 28: Abū Ḥanīfa shows a higher degree of technical legal reasoning than Ibn Abī Lailā (above, p. 284).

Tr. I, 44: Abū Ḥanīfa refutes Ibn Abī Lailā by better systematic reasoning (above, p. 271).

Tr. I, 60 f.: Abū Ḥanīfa shows a high standard of technical legal thought (above, p. 272).

Tr. I, 65: Abū Ḥanīfa gives remarkably sharp-sighted legal reasoning: 'A man leaves a deposit with another; a third person comes forward and claims the deposit besides the [original] depositor; the depositary says: "I do not know which of you two has left this deposit", and refuses to take the oath [that it is not the deposit of either of them], and neither of them can produce evidence. Abū Ḥanīfa used to decide as follows: the depositary must return the deposit to them both, it is then their joint property, and he becomes responsible to them both for another, equal amount which is due to them in equal shares, for through his ignorance he has destroyed what was given in deposit. Consider [what would happen] if he said: "This man has left the deposit with me", and said afterwards: "I made a mistake, it was this other man"; he would then have to return the deposit to the man in whose favour he made the first acknowledgement, and would become responsible to the other for an

[1] See above, pp. 108, 200.

equal amount, because his [first] statement destroyed [what he later acknowledged to have received in deposit from the other]. The same applies to the first problem: it was the depositary who destroyed the deposit through his ignorance. We [Abū Yūsuf] follow this. Ibn Abī Laylā used to decide in the first case that the depositary is not responsible for anything and that the deposit . . . belongs to both claimants in equal shares.'

Tr. I, 77: The reasoning of Abū Ḥanīfa is more penetrating than that of Ibn Abī Laylā (above, p. 273).

Tr. I, 81: Abū Ḥanīfa introduces a sound distinction, maintained by Shāfi'ī.

Tr. I, 103: Abū Ḥanīfa, by systematic reasoning, subsumes a special case under a general decision; this, it is true, leads him into a different systematic inconsistency, as Shāfi'ī points out; Sarakhsī (xvi. 129 f.), however, gives a satisfactory and probably authentic answer to this objection and, everything considered, Abū Ḥanīfa's doctrine is more consistent than that of Shāfi'ī; it is followed by Shaibānī, but not by Abū Yūsuf and Zufar (Sarakhsī, loc. cit.).

Tr. I, 117: Abū Ḥanīfa introduces a relevant distinction.

Tr. I, 120: Abū Ḥanīfa's argument, short and to the point, shows a considerable advance on Ibn Abī Laylā.

Tr. I, 123: Abū Ḥanīfa introduces technical legal reasoning, articulate and consistent in itself, but incompatible with broader systematic consistency, as Shāfi'ī points out.

Tr. I, 126: Abū Ḥanīfa is more methodical than Ibn Abī Laylā (above, p. 274).

Tr. I, 139: Abū Ḥanīfa is more logical and consistent than Ibn Abī Laylā (above, p. 112).

Tr. I, 140: Abū Ḥanīfa shows a high degree of technical reasoning, is sharp-sighted and systematic, and anticipates Shāfi'ī's doctrine; the essential argument, was, it is true, attributed to Ibrāhīm Nakha'ī, but this can hardly be authentic.[1]

Tr. I, 141 f.: A sound decision, based on extensive systematic reasoning, much better than that of Ibn Abī Laylā (above, p. 274).

Tr. I, 188: Abū Ḥanīfa is more concerned than Ibn Abī Laylā with the legally relevant features of a problem.

Tr. I, 196: Abū Ḥanīfa applies shrewd technical reasoning. An early Iraqian *qiyās* demanded a two-fold confession of the culprit for the *ḥadd* punishment for theft to be applicable.[2] Some Iraqians, however, held that a single confession only was required, and Abū Ḥanīfa argued in favour of this opinion which he shared, that if a two-fold confession were necessary for the *ḥadd* to be applied, a

[1] See above, p. 235.

[2] See above, p. 107.

single confession of the theft would create a civil debt, and no *ḥadd* could be applied after incurring a civil debt even if a second confession was made. In a broader systematic sense, this argument is hardly consistent with Abū Ḥanīfa's doctrine in § 104 (below, p. 300).

Tr. I, 227: Abū Ḥanīfa gives good systematic reasoning, besides references to Companions and to Ibrāhim Nakha'ī.

Tr. I, 243: The doctrine of Abū Ḥanīfa is superior to that of Ibn Abī Lailā; his decision and argument anticipate the decision and argument of Shāfi'ī.

Tr. I, 245: Abū Ḥanīfa shows deeper legal understanding than Ibn Abī Lailā; he concentrates more on essentials, and his doctrine is recognized as better by Shāfi'ī.

Tr. IX, 20 and Ṭabarī, 34: Abū Ḥanīfa shows competent systematic reasoning; he distinguishes between a declaratory and a constitutive statement.

Tr. IX, 27 and 33, *Tr. I*, 201, Ṭabarī, 46: Abū Ḥanīfa considers the territorial limits of the applicability of religious penal law;[1] his doctrine is sound and systematically consistent, and the theory in question is presumably his own achievement. Connected with this theory is Abū Ḥanīfa's reasoning on the 'difference of territory' (*tabāyun al-dārain*) in *Tr. IX*, 16, a reasoning which also underlies his doctrine in § 1 and in § 35 f. (where only Abū Ḥanīfa succeeds in being systematically quite consistent).

Tr. IX, 34: Abū Ḥanīfa makes his technical legal reasoning supersede traditions from the Prophet (above, p. 287).

Tr. IX, 41: Abū Ḥanīfa adumbrates good systematic reasoning.

Tr. IX, 45 and Ṭabarī, 120: Abū Ḥanīfa gives good reasoning and makes a sound systematic distinction; at the same time, he takes Auzā'ī's practical consideration into account.

Tr. IX, 46: Good systematic reasoning is given by Abū Yūsuf on behalf of Abū Ḥanīfa.

Abū Ḥanīfa's legal thought was, however, not final, and his companions had occasion to diverge from him on numerous points of doctrine. We are not concerned here with such material divergencies between Abū Ḥanīfa and his companions as belong to the development of positive legal doctrine in the ancient Iraqian and in the early Ḥanafī school. The following examples are intended to illustrate some of the imperfections and limitations of Abū Ḥanīfa's legal thought in general, and in particular to show how and why his companions, starting

[1] See above, pp. 209, 286.

with Abū Yūsuf, came to reject some of the explicit legal thought of their master.

Tr. I, 7: See above, p. 295.

Tr. I, 12: Neither the Iraqians nor the Medinese (*Muw.* iii. 136) originally put a time-limit to the right of option which might be stipulated in favour of one or both of the parties in certain contracts (*khiyār al-sharṭ*). Only Abū Ḥanīfa introduced a time-limit of three days; he arrived at this by analogy with a tradition from the Prophet which gives a right of option of three days in the case of a certain kind of fraud in the sale of animals (the so-called *muṣarrāt*). But Abū Ḥanīfa, in common with the other Iraqians, rejected this tradition as far as the *muṣarrāt* itself was concerned.[1] Neither Abū Yūsuf nor Shaibānī (Sarakhsī, xiii. 41) followed Abū Ḥanīfa in his self-contradictory reasoning, and both ignored the time limit. Shāfi'ī adopted it, but this time consistently, because he also recognized the tradition with regard to the *muṣarrāt*.[2]

Tr. I, 36: Abū Ḥanīfa's doctrine is on the face of it stricter and less practically expedient than that of Ibn Abī Laylā, Abū Yūsuf and Shaibānī; it represents an unsuccessful effort at greater systematic stringency. If the argument which Sarakhsī, xiv. 150 f., gives for Abū Ḥanīfa's doctrine, and which comes down to a consideration of sentimental values, is authentic, it is not surprising that this opinion was discarded.

Tr. I, 43: Abū Ḥanīfa tries to arrive at greater strictness and, if we may believe Sarakhsī, xii. 140 ff., at greater formal consistency; but Abū Yūsuf in his later opinion, followed by Shaibānī (Sarakhsī, xii. 137), returns to Ibn Abī Laylā's doctrine which is in itself sound.

Tr. I, 51: Abū Ḥanīfa rejects the customary agricultural contract of *muzāra'a* for a systematic reason, but Abū Yūsuf does not follow him in this. In the parallel case of § 55, however, Abū Yūsuf maintains Abū Ḥanīfa's doctrine (above, p. 272).

Tr. I, 76: Abū Ḥanīfa gives formal and technical reasoning against Ibn Abī Laylā, but is not followed by Abū Yūsuf nor by Shaibānī (Sarakhsī, xx. 108 f.). Also in § 83, Abū Ḥanīfa applies rigidly formal reasoning; here he is followed by Abū Yūsuf (above, p. 273). In §§ 92–4, Abū Ḥanīfa takes again a strictly formal view; Abū Yūsuf agrees substantially (ibid.). In § 95 = 228, Abū Ḥanīfa's decision is rigidly formal and even hair-splitting, and Abū Yūsuf reverts to the doctrine of Ibn Abī Laylā (above, p. 274).

Tr. I, 89: Abū Ḥanīfa's earlier doctrine is an individual effort, shared by Zufar (Sarakhsī, v. 190), to achieve material justice, but

[1] *Tr. II*, 12 (*h*); *Ikh.* 332 ff.; Ṭaḥāwī, ii. 205.

[2] Cf. above, p. 123.

it becomes systematically inconsistent. Later, Abū Ḥanīfa returns to the general Iraqian doctrine.

Tr. I, 104: Abū Ḥanīfa introduces a refinement, basing himself on the wording of a tradition which is late;[1] but this becomes systematically inconsistent with his decision in § 196 (above, p. 298).

Tr. I, 107, 110: Abū Ḥanīfa took no account of the official correspondence between judges which always played an important part in practice; by this uncompromising attitude which was systematically consistent (so that Shāfi'ī called it *qiyās*), but which merely ignored the practical problem, Abū Ḥanīfa avoided the difficulties inherent in Ibn Abī Laylā's solution (above, p. 291). Abū Yūsuf, with more regard for judicial practice, returned to Ibn Abī Laylā's decision,[2] but Shaibānī followed Abū Ḥanīfa (Sarakhsī, xi. 24).

Tr. I, 114: Ibn Abī Laylā had made the good character of witnesses a matter of public interest, so that the judge had the right to inquire into it even if it was not contested. Abū Ḥanīfa made it a private interest of the parties concerned, but this doctrine was not successful because Abū Yūsuf, Shaibānī, and others (Sarakhsī, xvi. 88; xxx. 153) reverted to Ibn Abī Laylā.

Tr. I, 121: Abū Ḥanīfa introduced a rather far-fetched reasoning which was rejected by Abū Yūsuf and by Shaibānī (Sarakhsī, xxvii. 148).

Tr. I, 133: Abū Ḥanīfa's explicit reasoning is curiously short-sighted and pseudo-rational, so that Sarakhsī, vii. 103 f., has to make an artificial distinction in order to justify it systematically. Abū Yūsuf and Shaibānī (*Muw. Shaib.* 358) disagree. Abū Yūsuf elaborates systematically the principle underlying Ibn Abī Laylā's doctrine (above, p. 293) which he follows in the essentials.

Tr. I, 137: Abū Ḥanīfa is inconsistent because he has not yet fully grasped all the implications of the problem; only Abū Yūsuf does so.

Tr. I, 148: As compared with Ibn Abī Laylā, Abū Ḥanīfa is more formalistic and in fact superficial. Abū Yūsuf and Shaibānī follow Abū Ḥanīfa (Sarakhsī, xi. 150; *Comm. ed. Cairo*, p. 105, n. 3), but Shāfi'ī endorses Ibn Abī Laylā. Also in the closely parallel case of § 151, Abū Ḥanīfa gives a sweeping and formalistic interpretation, without much regard for the consequences, of a general principle which had already been recognized by Ibn Abī Laylā. In § 152, Abū Ḥanīfa shows again rigid formalism and pseudo-logical thought;

[1] See above, p. 106, n. 5.

[2] On further details of Abū Yūsuf's doctrine, see Sarakhsī xi. 2, 24 f. If this is authentic, as it probably is, Abū Yūsuf was even less consistent than Ibn Abī Laylā.

this brings him to a systematic inconsistency which is pointed out by Shāfi'ī. In § 170, Abū Ḥanīfa applies meticulously logical reasoning which is abandoned by Abū Yūsuf. The rigid formalism of § 177 seems to be older than Abū Ḥanīfa; for it is attributed to Ibrāhīm Nakha'ī. In § 233, Abū Ḥanīfa applies a general principle blindly, but is systematically less consistent than Ibn Abī Laylā.

Tr. I, 210: Abū Ḥanīfa's argument is irrelevant; this is shown by his own statement in § 211.

Tr. I, 246: See above, p. 295.

A rather highly developed but often somewhat ruthless and unbalanced reasoning, with little regard for the practice, such as we have found in numerous examples, is typical of Abū Ḥanīfa's legal thought.[1]

C. Abū Yūsuf

We saw in the preceding section[2] that the doctrine of Abū Yūsuf often represents a reaction against Abū Ḥanīfa's somewhat unrestrained reasoning and reverts to, or maintains, an earlier stage as exemplified by Ibn Abī Laylā. On the whole, however, Abū Yūsuf presupposes the doctrine of Abū Ḥanīfa whom he regards as his master, and the points on which Abū Yūsuf diverges from him are more relevant for appreciating Abū Yūsuf's own legal thought than those on which both are in agreement.

In the details of his doctrine, Abū Yūsuf is more dependent on traditions than his master, because there were more authoritative traditions in existence in his time.[3]

Tr. I, 51: Abū Yūsuf, deciding against Abū Ḥanīfa and reverting to Ibn Abī Laylā, finds that *qiyās*, that is to say the systematic parallel, and traditions agree.

Tr. I, 171 (*a*): Abū Yūsuf, whilst agreeing with Abū Ḥanīfa on principle, introduces a refinement of his own with explicit reference to a tradition; he is followed by Shaibānī (Sarakhsī, ii. 193).

Tr. I, 234: Abū Yūsuf, having first followed Ibn Abī Laylā, later adopted the doctrine of Abū Ḥanīfa, influenced by a tradition from the Prophet which Abū Yūsuf for the first time applied to the problem in question.

Tr. IX, 1: Abū Yūsuf draws unwarranted and unconvincing conclusions in favour of the common Iraqian doctrine from historical traditions which as often as not imply the contrary.

[1] See also *E.I.*[2], s.v. [2] Above, pp. 298 ff. [3] See above, pp. 139, 143.

Tr. IX, 6: Abū Yūsuf adduces traditions against Auzā'ī but does not follow them himself in all their implications, and Shāfi'ī blames him for this.

Tr. IX, 16 f.: Abū Yūsuf is bound by traditions more than Auzā'ī, though less than Shāfi'ī (above, p. 278), but he combines this with competent systematic reasoning.

Tr. IX, 34. On account of traditions which Abū Ḥanīfa had disregarded, Abū Yūsuf reverts to Auzā'ī's doctrine; he also refers to a tradition in order to excuse Abū Ḥanīfa's systematic doctrine (above, p. 287). In § 36, under the influence of historical traditions, Abū Yūsuf again falls back on the doctrine of Auzā'ī. In §§ 36 and 37, Abū Yūsuf mistakenly seeks to find a justification in traditions for the doctrine held by Abū Ḥanīfa on the basis of systematic reasoning.

Tr. IX, 38: Here, for once, Abū Yūsuf gives sound systematic reasoning which causes him to reject a tradition as irregular, applying a method which he himself set out in detail in § 5.

Kharāj, 36: Whilst himself diverging from Abū Ḥanīfa's doctrine, Abū Yūsuf defends him against the charge of disregarding traditions.

Kharāj, 126 f.: In this later parallel to the earlier passage *Tr. IX*, 22, Abū Yūsuf, though holding essentially the same doctrine, shows himself less systematic in his reasoning and more bound by traditions.

Compared with this increasing dependence on traditions, other kinds of material considerations are less prominent in Abū Yūsuf's doctrine. His legal reasoning is, generally speaking, of the same kind as that of his predecessors.

The new features which we can discern in Abū Yūsuf's legal thought are certain favourite processes of reasoning, and a habit of rather acrimonious polemics.

The *reductio ad absurdum* was used in discussions well before Abū Yūsuf, but Abū Yūsuf made it a favourite method of his.[1] It is connected with the reasoning from extreme and border-line cases, a kind of argument which had been extensively used by Abū Ḥanīfa before Abū Yūsuf adopted it.[2] An example typical of Abū Yūsuf occurs in *Tr. IX*, 33, where he tries to support Abū Ḥanīfa's excellent systematic reason with fictitious border-line cases which are not all happily chosen.

Another of Abū Yūsuf's favourite lines of attack against other opinions is to point out their inconsistency.[3] This presupposes a respectable standard of systematic reasoning on his part. He further

[1] e.g. *Tr. IX*, 2, 15, 21.
[2] See above, p. 105.
[3] e.g. *Tr. I*, 237; *Tr. IX*, 14, 16, 17, 25, 26, 27, 44, 45.

introduces strong words and vituperative expressions into the discussion with his opponents.[1]

In *Tr. IX*, 6, where Abū Yūsuf pours scorn on Auzā'ī, he is not well informed on the doctrine of his opponent, because Auzā'ī made a distinction which obviates Abū Yūsuf's objection, as appears from Ṭabarī, 57. Abū Yūsuf's attack against Auzā'ī in *Tr. IX*, 18, is equally pointless, because it appears from Ṭabarī, 97, that Auzā'ī's opinion[2] was essentially the same as that of Abū Ḥanīfa and that of Abū Yūsuf in his earlier period as represented by *Tr. IX*; it is possible, of course, that Abū Yūsuf picked out the weak point in Auzā'ī's doctrine, but then his criticism, instead of being ill-informed, would be one-sided. Comparing *Tr. IX*, 13, with Ṭabarī, 87 f., one sees indeed that Abū Yūsuf formulated Abū Ḥanīfa's opinions polemically against Auzā'ī by omitting an important distinction. In *Tr. IX*, 25, Abū Yūsuf tries artificially to establish a contradiction between Auzā'ī's doctrine and Auzā'ī's authority 'Umar b. 'Abdal'azīz.

We have discussed in the preceding section[3] a number of cases in which Abū Yūsuf diverged from Abū Ḥanīfa, where it could be said in the light of the general development of technical legal thought that Abū Ḥanīfa's reasoning was unbalanced and imperfect. Abū Yūsuf, however, was by no means consistent, as can be seen, for instance, from his uncertain reactions to Abū Ḥanīfa's rigid formalism;[4] all we can say is that, generally speaking, he mitigated it. On the other hand, there are a certain number of cases in which Abū Yūsuf, again within the framework of the development of legal thought, can be regarded as having abandoned, by diverging from Abū Ḥanīfa, the sounder or more highly developed doctrine.[5]

The differences between Abū Ḥanīfa and Abū Yūsuf consist to a great extent in slight modifications and adjustments, improvements and finishing touches which Abū Yūsuf applies to the doctrine of his master, often in order to achieve a greater systematic consistency.

Tr. I, 70: Abū Yūsuf follows Abū Ḥanīfa in theory, but in practice falls back on Ibn Abī Laylā's obvious and common-sense solution.

[1] *Tr. IX*, 1, 3 (*b*), 6, 7, 8, 9, 11, 12, 23.

[2] Apart from one detail where he endorsed the administrative practice; see above, p. 208.

[3] Above, pp. 298 ff.

[4] See above, p. 299, on *Tr. I*, 76 ff., and p. 300 f. on *Tr. I*, 148 ff.

[5] e.g. *Tr. I*, 25 (above, p. 271), 28 (above, p. 284), 60 f. (above, p. 272), 103 (above, p. 297), 126 (above, p. 274).

Tr. I, 80: Abū Yūsuf abandons a distinction made by Abū Ḥanīfa, and makes his doctrine consistent. A parallel case occurs in § 81: Abū Yūsuf abandons a distinction made by Abū Ḥanīfa, and applies one of the elements of his doctrine to the whole problem.

Tr. I, 94: See above, p. 273.

Tr. I, 99: In his earlier and in his later opinion, Abū Yūsuf gradually (but not completely) reduces Abū Ḥanīfa's inconsistency.

Tr. I, 135: If the additional details given in Sarakhsī, xxx. 157, are authentic, as they seem to be, Abū Yūsuf would be more consistent than Abū Ḥanīfa, and would obviate Shāfi'ī's objection against the doctrine of his master.

Tr. I, 137: See above, p. 300.

Tr. I, 171 (*a*): See above, p. 301.

Tr. I, 181: Abū Yūsuf holds an intermediate opinion between Ibn Abī Laila and Abū Ḥanīfa; Abū Yūsuf mentions that this opinion was also related from 'Aṭā', but this is presumably spurious (above, p. 250).

Tr. IX, 1: Abū Yūsuf introduces a distinction which he attributes to Abū Ḥanīfa, and gives sound arguments; in the result, he takes an intermediate position between Auzā'ī and Abū Ḥanīfa.

Tr. IX, 2: Abū Yūsuf seems to introduce a slight modification and distinction into Abū Ḥanīfa's general doctrine, and gives sound reasoning.

Tr. IX, 19: Abū Yūsuf gives technical legal reasoning in favour of the Iraqian doctrine; this is an advance on Abū Ḥanīfa's purely practical argument which is inconclusive.

Tr. IX, 27: See below, p. 305.

Tr. IX, 40: Abū Yūsuf is more consistent than Abū Ḥanīfa.

Tr. IX, 41: Abū Yūsuf elaborates Abū Ḥanīfa's short reasoning competently and systematically.

Tr. IX, 42: Abū Yūsuf gives the same decision as Abū Ḥanīfa, but shifts the emphasis of the problem, so as to achieve a systematic progress.

Kharāj, 11: Abū Yūsuf refutes Abū Ḥanīfa's crude analogical reasoning.

Kharāj, 108: Abū Yūsuf anticipates in essentials Shāfi'ī's relevant distinction, as against Abū Ḥanīfa.

So far we have met with a number of cases in which Abū Yūsuf shows sound and competent reasoning, and other examples could be added, such as *Tr. IX*, 50, where Abū Yūsuf argues well on a point which Shāfi'ī recognizes as controversial. These are, however, partly offset by cases where Abū Yūsuf's legal thought appears weak and superficial.

Tr. I, 60 f.: An inconsistency, see above, p. 272; other cases of inconsistency have been referred to before.

Tr. IX, 4: A weak systematic argument, easily refuted by Shāfi'ī.

Tr. IX, 13: Abū Yūsuf gives no real argument, and only assumes that 'this is too clear and obvious for any scholar to doubt it'.

Tr. IX, 20: Instead of standing by Abū Ḥanīfa's competent technical reasoning, Abū Yūsuf allows himself to be drawn into a discussion on interpretation where his own arguments are rather irrelevant.

Tr. IX, 26: Abū Yūsuf tries to refute Auzā'ī, but can do so only from his own premisses and not from those of his opponent.

Tr. IX, 27: Abū Yūsuf gives a good reply to Auzā'ī, and elaborates points of detail in Abū Ḥanīfa's reasoning, without, however, going to the root of Abū Ḥanīfa's systematic thought; the same applies to the parallel in *Kharāj*, 109, and Abū Yūsuf seems more interested than Abū Ḥanīfa in legal abstractions.

Tr. IX, 39: Abū Yūsuf gives a weak systematic reason, which is obviously beside the point, in favour of Abū Ḥanīfa's doctrine.

A remarkable feature of Abū Yūsuf's doctrine is the frequency with which he changed his opinions, not always for the better. The following are only a few typical examples.

Tr. I, 43: See above, p. 299.

Tr. I, 99: See above, p. 304.

Tr. I, 127: See above, p. 278 f.

Tr. I, 190: Abū Yūsuf followed at first the opinion of Abū Ḥanīfa, later that of Ibn Abī Laylā (above, p. 295).

Tr. I, 196: Abū Yūsuf shared at first the opinion of Ibn Abī Laylā, then adopted the result of Abū Ḥanīfa's shrewd technical reasoning (above, p. 297 f.).

Tr. I, 222: Abū Yūsuf at first held the same opinion as Ibn Abī Laylā; later he adopted a solution which, compared with that of Abū Ḥanīfa, appears as a rough-and-ready expedient.

Ikh. 121: Abū Yūsuf adopted an opinion of the Hijazis for two months, then abandoned it again.

Kharāj, 126 f.: See above, p. 302.

On another change of opinion by Abū Yūsuf see above, p. 183.

Sometimes the contemporary sources state directly, and in other cases it is probable, that Abū Yūsuf's experience as a judge caused him to change his opinion.[1] This is to his credit, as also is his occasional expression of doubt.[2] But his frequent

[1] *Tr. I*, 82 (above, p. 273), 84, 99, 112, 139 (above, p. 112), 150 (above, p. 274), 203. See also §§ 107 and 110 (above, p. 300).

[2] *Tr. I*, 170, 211.

changes of opinion show some uncertainty and immaturity in his legal thought. On the whole, Abū Yūsuf's legal thought is of a lower standard than that of Abū Ḥanīfa. It is also less original and, as we have seen, thoroughly dependent on that of his master. Abū Yūsuf represents the beginning of the process by which the ancient school of the Kufian Iraqians was replaced by that of the followers of Abū Ḥanīfa.[1]

D. Shaibānī

Shaibānī depends even more on traditions than does Abū Yūsuf. This shows itself not only in changes of doctrine under the influence of traditions, but in his habit of duplicating his systematic reasoning by arguments taken from traditions,[2] in his introducing Medinese traditions and some of the corresponding doctrines, through his edition of Mālik's *Muwaṭṭa'*, into the Iraqian and Ḥanafī school, and in the habitual formula 'We follow this' by which he almost invariably rounds off his references to traditions from the Prophet and from other authorities, even when he does not, in fact, follow them.

Muw. Shaib. 133 and *Āthār Shaib.* 23: We find here the same kind of clumsy, primitive, and unconvincing reasoning as in Mālik (*Muw.* i. 245 and *Tr. III*, 27); the Iraqians do not need this reasoning and have full traditional authority, to which Shāfi'ī refers pointedly, for their doctrine; Shaibānī presumably took the Medinese reasoning over from Mālik.

Muw. Shaib. 298: Shaibānī takes over a tradition from Mālik (*Muw.* iv. 21) and puts his own systematic reasoning beside it. Shāfi'ī (*Tr. III*, 74) adopts Shaibānī's reasoning and finds a justification for it in the very wording of Mālik's tradition; this was originally meant to express the Medinese doctrine, but Shāfi'ī succeeds in turning it into an argument in favour of his own.

Muw. Shaib. 326 (cf. *Tr. III*, 13): Shaibānī, differing from his Iraqian predecessors, adopts traditions and their interpretation from Mālik (*Muw.* iii. 102); he modifies the interpretation in order to achieve greater systematic consistency, although this goes against their outward meaning; but this doctrine did not prevail in the Ḥanafī school.

Muw. Shaib. 406: Shaibānī uses the parable of the labourers of the eleventh hour, in the form of a tradition from the Prophet, as a

[1] See above, p. 6. See also *E.I.*[2], s.v.

[2] He refers to traditions and analogy in pointed juxtaposition: see above, p. 27.

loose and secondary argument in favour of an old Iraqian doctrine (*Āthār A. Y.* 94; *Muw. Shaib.* 45).

Tr. VIII, 5, 21: Shaibānī first gives arguments from traditions, then adds systematic reasoning.

After Abū Yūsuf's reaction from Abū Ḥanīfa's reasoning, Shaibānī frequently returns to Abū Ḥanīfa's doctrine.[1] He also introduces technical improvements into the doctrine of his predecessors.

Āthār Shaib. 22: Shaibānī gives good systematic reasoning which represents a marked progress over the doctrine as expressed in a Kufian tradition which Abū Ḥanīfa relates with the *isnād* Ḥammād —Ibrāhīm Nakha'ī—Ibn Mas'ūd (also in *Āthār A. Y.* 607). In *Muw. Shaib.* 244 Shaibānī attributes this reasoning to Masrūq, one of the Companions of Ibn Mas'ūd; this is certainly not authentic.

Āthār Shaib. 61: Shaibānī adds reasoning of a more technically legal kind to that of the ancient Iraqians which was attributed to Ibrāhīm Nakha'ī (above, p. 237). In the rest of the section, on a parallel case, Shaibānī disagrees with the doctrine of Abū Ḥanīfa—Ḥammād—Ibrāhīm because of the same technically legal reasoning, and shows himself systematically consistent.

Siyar, i. 244: Shaibānī takes up and elaborates Abū Ḥanīfa's competent reasoning which Abū Yūsuf had neglected (*Tr. IX*, 20).

Siyar, ii. 176: Shaibānī refutes Abū Ḥanīfa's crude analogical reasoning with an argument which is better than the argument of Abū Yūsuf (*Tr. IX*, 3 (*a*)).

Siyar, ii. 260: Shaibānī's doctrine shows a shift of emphasis compared with that of Abū Yūsuf; it is also more conciliatory (*Tr. IX*, 2).

Tr. VIII, 15: Shaibānī adds a systematic argument in favour of the Kufian doctrine (above, p. 281).

On the problem of *Tr. I*, 28, Shaibānī improves on Abū Ḥanīfa and anticipates Shāfi'ī (above, p. 284).

Shaibānī used arbitrary personal opinion (*ra'y*) to the extent usual in the ancient schools of law, and in particular in order to eliminate traditions which he did not accept.[2] But most of the reasoning in Shaibānī that appears under the name of *ra'y*, is in fact *qiyās*, that is strict analogy or systematic reasoning. This systematic reasoning is the feature most typical of Shai-

[1] e.g. *Tr. I*, 103 (above, p. 297), 107 and 110 (above, p. 300), 126 (above, p. 274). On the other hand, on the problems of *Tr. I*, 32 and 133, Shaibānī follows the doctrine of Abū Yūsuf, as against the opinion of Abū Ḥanīfa (Sarakhsī xxx. 140 f. and vii. 103 f.).

[2] See above, pp. 105, 112.

bānī's technical legal thought, and the following examples are intended to show its extent and character.

Muw. Shaib. 202, 236: Shaibānī gives no argument, but his statement of doctrine is more consistent and competent than that of Shāfi'ī who argues, somewhat unfairly, from a false premiss (*Tr. III*, 35).

Muw. Shaib. 244: Shaibānī anticipates Shāfi'ī in achieving full systematic consistency (*Tr. III*, 53).[1]

Muw. Shaib. 330: Shaibānī shows himself more consistent than Mālik who is bound by the 'living tradition' (*Muw.* iii. 104), and anticipates Shāfi'ī who gives the explicit systematic argument (*Tr. III*, 102).

Muw. Shaib. 331: Shaibānī gives strict systematic reasoning, anticipating Shāfi'ī (*Tr. III*, 95); but Abū Ḥanīfa's doctrine had been legally sound (above, p. 296).

Muw. Shaib. 357: Shaibānī anticipates Shāfi'ī's reasoning, based on the strict interpretation of traditions, in all details (*Tr. III*, 58).

Siyar, i. 35 f.: Shaibānī to a great extent anticipates Shāfi'ī (*Tr. IX*, 29).

Tr. VIII, 4: Shaibānī gives impressive systematic reasoning against the Medinese: 'Abū Ḥanīfa says: "If a minor and a major kill together with *'amd* [that is, intentionally],[2] the major has to pay half the weregeld from his own property, and the minor, that is to say his *'āqila*,[3] the other half." The Medinese say: "The major is killed [in retaliation], and the minor has to pay half the weregeld." Shaibānī says: How can he be killed when he has an associate in blood-guilt who is not liable to retaliation? If a man kills himself with the help of another, does the other undergo retaliation? Those who hold that opinion must draw this consequence. If someone cuts off the hand of another and his own hand is cut off in retaliation, and then a third party cuts off his foot and he dies from both wounds, is this third party to be killed, having associated himself in blood-guilt with Allah's [penal] law? If someone is mauled by a wild beast, and another inflicts a wound upon him intentionally, and he dies in consequence of both injuries, is this other to be killed, having associated himself with an agent who is not liable to retaliation or to the payment of a fraction of the weregeld? A further consequence would be that if a major and a minor commit a theft together, the major would have his hand cut off

[1] Ṭaḥāwī, quoted in *Comm. Muw. Shaib.*, attributes this doctrine already to Abū Yūsuf in his later opinion.

[2] The intent, *'amd*, is a condition for retaliation taking place.

[3] See above, p. 207.

[as a *ḥadd* punishment] and the minor would go scot-free. Another consequence would be that if two men together steal 1,000 dirham in which one of them has a share, the latter would go scot-free and the other would be liable to *ḥadd* punishment. If a major and a minor hold a sword and together inflict a blow from which a man dies, is this blow partly intentional, involving retaliation, and partly *khaṭa'* [that is accidental],[1] and if so, what part of it is *'amd* and what *khaṭa'*? If two men lift a sword and, acting together, inflict on one of them intentionally a blow from which he dies, does this involve retaliation? There is no retaliation here if the blood-guilt is associated with another agent not liable to retaliation; the [taking of] life cannot be split up. If someone inflicts a *mūḍiḥa* wound accidentally and then inflicts another intentionally and the victim dies from these injuries, the consequence of that opinion would be that the *'āqila* has to pay half the weregeld for the accidental wound and [the culprit] is killed [by retaliation] for the intentional wounding, so that one man would become liable, [directly or through his *'āqila*,] for taking one life to a fine of half the weregeld and to the death penalty. A further consequence would be that if one has the right to retaliation for a *mūḍiḥa* wound and in carrying it out transgresses intentionally and the other dies in consequence of this, he will have to be killed for his transgression. 'Abbād b. 'Awwām—Hishām b. Ḥassān—Ḥasan Baṣrī: if several people, among them an idiot, kill a man intentionally, this is a case for weregeld. 'Abbād b. 'Awwām—'Umar b. 'Āmir—Ibrāhīm Nakha'ī: if an element of *khaṭa'* enters the *'amd*, it is a case for weregeld.' It is true that Shāfi'ī succeeds in disposing of most of Shaibānī's systematic arguments.

Tr. VIII, 6: Shaibānī gives a respectable amount of systematic reasoning which he calls *qiyās* and *ma'qūl*;[2] he tries, as Shāfi'ī was to do after him, to rationalize a traditional ruling which defies rationalizing, and gets involved in difficulties.

Tr. VIII, 8: Shaibānī gives good systematic argument, besides literal interpretation of traditions from the Prophet; he fully anticipates the reasoning of Shāfi'ī who agrees.

Tr. VIII, 11: Shaibānī gives excellent systematic reasoning, fully as good as that of Shāfi'ī; he continues Abū Yūsuf's somewhat acrimonious polemics against the Medinese and says: 'One ought to be consistent and not arbitrary, expecting people to agree with whatever one says.'

[1] *Khaṭa'*, originally 'error' or 'mistake', is used as the opposite of *'amd*. The minor cannot have a legally valid intent; therefore his voluntary act which at the beginning of the paragraph, in the words of Abū Ḥanīfa, has been loosely subsumed under *'amd*, is called here, more strictly, *khaṭa'*.

[2] Cf. above, p. 111.

Tr. VIII, 12: Shaibānī gives good systematic reasoning, though that of Shāfi'ī is more thorough; he reduces the Medinese doctrine *ad absurdum*.

Tr. VIII, 14: Shaibānī gives good systematic reasoning against the Medinese and uses an uncontroversial doctrine in order to decide a controversial point.

Tr. VIII, 16: Shaibānī gives consistent systematic reasoning.

Tr. VIII, 19: Shaibānī, by systematic reasoning, reduces the Medinese opinion *ad absurdum*, but some of the examples he adduces are surprisingly weak.

Tr. VIII, 20: Shaibānī's reasoning is inconclusive because his Medinese opponents do not share his doctrine on a parallel question which he adduces as an argument.

Tr. VIII, 21: Shāfi'ī gives systematic reasoning against the Medinese, starting from doctrines held in common.

Ikh. 186 ff., 191 ff.: Shaibānī's reasoning is much less stringent and systematic than that of Shāfi'ī, although the result is the same.

On the problem of *Tr. I*, 44, Sarakhsī reports a masterly argument of Shaibānī which is easily superior even to Shāfi'ī's reasoning (above, p. 271).

On the problem of *Tr. I*, 48, Shaibānī applies purely formal reasoning in which he is followed by Shāfi'ī; but this doctrine completely disregards the stability of real property (above, p. 271 f.).

Shaibānī's technical legal thought is by far superior to that of his predecessors in general and to that of Abū Yūsuf in particular; it is the most perfect of its kind that was to be achieved before Shāfi'ī. Shaibānī was the great systematizer of the Kufian Iraqian doctrine. He was also a prolific writer, and his voluminous works, which he put under the aegis of his master Abū Ḥanīfa,[1] became the rallying-point of the Ḥanafī school which emerged from the ancient Kufian Iraqian school.

[1] See above, p. 238.