FROM TEXT TO LAW: ISLAMIC LEGAL THEORY AND THE PRACTICAL HERMENEUTICS OF ABŪ JAʿFAR AḤMAD AL-ṬAḤĀWĪ (D. 321/933)

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Dedication

For my parents, Aimée and Roger Brunelle

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ABSTRACT

FROM TEXT TO LAW: ISLAMIC LEGAL THEORY AND THE PRACTICAL HERMENEUTICS OF ABŪ JAʿFAR AḤMAD AL-ṬAḤĀWĪ (D. 321/933)

Carolyn Anne Brunelle

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Scholars of Islamic law point to the absence of any extant work of legal theory between the *Risāla* of al-Shāfiʿī and the *Fuṣūl* of al-Jaṣṣāṣ as a major barrier to reconstructing the history of Islamic legal thought. However, careful analysis of three major works of the Ḥanafī jurist al-Ṭaḥāwī, *Aḥkām al-Qurʾān*, *Sharḥ maʿānī al-āthār* and *Sharḥ mushkil al-āthār*, reveals the existence of myriad brief passages elaborating questions of legal theory scattered throughout their many volumes. This study reconstructs the legal thought of al-Ṭaḥāwī as a window onto legal theory in the late 3rd/9th and early 4th/10th centuries, a crucial period of transformation between late formative and post-formative Islamic law. It argues that al-Ṭaḥāwī's works are not direct precursors to the genre of *uṣūl al-fiqh*, but instead represent a different, previously unrecognized, type of intellectual and literary activity. This activity, here termed practical hermeneutics, is concerned with demonstrating in detail how individually coherent rules of law may be derived from the often messy texts of revelation. The integrated reading of al-Ṭaḥāwī's entire hermeneutical corpus uncovers several areas in which his legal thought departs quite notably from that of other jurists, suggesting that al-Ṭaḥāwī was neither as dependent on al-Shāfiʿī nor as closely related to mature *uṣūl al-fiqh* as has been suggested in previous

studies. Most crucially, al-Ṭaḥāwī's works unsettle accepted accounts of Islamic legal theory which assign varying levels of authority to a series of clearly distinguished legal sources—Qurʾān, Sunna, consensus, etc. This study demonstrates that, in contrast to both al-Shāfiʿī and later *uṣūlī*s, al-Ṭaḥāwī's legal thought blurs boundaries between these categories and instead rests upon an underlying binary concept of legal authority which draws a crucial distinction between knowledge that might permissibly be reached by inference, and knowledge that can only have come from revelation. The authority that al-Ṭaḥāwī grants any given source is therefore not a function of its formal characteristics, but rather the result of his own judgment about content and origins.

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Introduction

Background and Objectives

By the middle of the 4th/10th century, Muslim jurists who engaged in theorizing about the divine law were composing systematic texts of legal theory in the genre of *uṣūl al-fiqh* (lit., "the bases of law"). Works of the *uṣūl al-fiqh* genre identify the sources of the law, argue for a theory of textual interpretation permitting the law to be derived from its sources, and establish the theological, epistemological, linguistic and, at a later period, logical presuppositions on which those theories of interpretation and derivation rest.[1] The earliest extant *uṣūl* work, *al-Fuṣūl fī al-uṣūl* by the Ḥanafī al-Jaṣṣāṣ (d. 370/980-981), already displays the characteristic literary form and array of topics of the mature genre.[2] The maturity of *al-Fuṣūl* suggests that it represents the culmination of a process of development whose earlier stages are largely unknown, although some evidence for this development is available in the form of passages from early theory works preserved in later *uṣūl* texts. One possible approach to studying Islamic legal theory in the period

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[1] Discussions of formal Aristotelian logic do not begin to appear in works of *uṣūl* until the *Mustaṣfā* of al-Ghazālī (d. 505/1111). See Wael Hallaq, "Logic, Formal Arguments and the Formalization of Arguments in Sunnī Jurisprudence," *Arabica* 37, no. 3 (1990): 1-5.

[2] Earlier works entitled "*Uṣūl*" are either unrelated to legal theory or are interested in questions of theory without yet belonging to the genre of *uṣūl al-fiqh*. Although Norman Calder and Wael Hallaq have cited *Uṣūl al-Shāshī* as a work in the genre of *uṣūl al-fiqh* predating the *Fuṣūl* of al-Jaṣṣāṣ..Murteza Bedir has shown that it has been incorrectly attributed to two different 4th/10th-century jurists named al-Shāshī, and is in fact the work of the 7th/13th-century Niẓām al-Dīn al-Shāshī (Murteza Bedir, "The Problem of *Uṣūl al-Shāshī*," *Islamic Studies* 42, no. 3 (2003): 417; Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī* Uṣūl al-fiqh (Cambridge: Cambridge University Press, 1997), 33; *The Encyclopaedia of Islam,* New Edition, s.v. "Fiḳh," by Norman Calder).

before al-Jaṣṣāṣ is thus to attempt to reconstruct the earliest works of the *uṣūl* genre by identifying these surviving passages.[3]

Other studies of early Islamic legal theory focus instead on the activity of theorizing about the law, in whatever form that theorizing might take. Only a single work explicitly devoted to legal theory has been preserved from the formative period. That work, the well-studied *Risāla* of al-Shāfiʿī (d. 204/820), shares with the mature *uṣūl* tradition the goal of giving a complete account of the structure and derivation of the divine law, although its literary form and theological concerns are otherwise quite different from those of the *uṣūl* genre.[4] Other extant texts before al-Jaṣṣāṣ are not primarily motivated by or structured around questions of legal theory.[5] Nonetheless, many non-theory oriented works are important sources for the study of early Islamic legal theory, either because they employ hermeneutical techniques in ways that allow researchers to reconstruct the theory behind them, or because they contain occasional

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[3] Devin Stewart is a major advocate of this approach. To date, he has worked to reconstruct the *Wuṣūl ilā maʿrifat al-uṣūl* of Muḥammad ibn Dāwūd al-Ẓāhirī (d. 294/909) and the *Bayān ʿan uṣūl al-aḥkām* of Muḥammad ibn Jarīr al-Ṭabarī (d. 310/923) ("Muḥammad b. Dāʾūd al-Ẓāhirī's Manual of Jurisprudence, *al-Wuṣūl ilā maʿrifat al-uṣūl*," in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: Brill, 2002), 100-101; Stewart, "Muḥammad b. Jarīr al-Ṭabarī's *al-Bayān ʿan uṣūl al-aḥkām* and the Genre of *Uṣūl al-fiqh* in Ninth-Century Baghdad," in *ʿAbbāsid Studies*, ed. James Montgomery (Leeuven: Peeters, 2004), 321-349.

[4] Joseph Lowry has argued that al-Shāfiʿī cannot, in fact, be considered the founder of the *uṣūl al-fiqh* tradition as earlier scholars such as Joseph Schacht and John Burton have assumed. See Joseph Lowry, *Early Islamic Legal Theory: The* Risāla *of Muḥammad ibn Idrīs al-Shāfiʿī* (Leiden: Brill, 2007), 1, 360-361; Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 1; John Burton, *The Sources of Islamic Law* (Edinburgh: Edinburgh University Press, 1990), 12-15.

[5] By 'legal theory,' I intend to signal all questions regarding the origins, justification for and force of a body of laws as well as the institutions and interrelationships between the laws that make up a particular legal system.

explicit discussions of legal theory.[6] To date, a number of articles have analyzed aspects of the legal theory of early jurists based on their non-theory oriented writings.[7]

This study similarly employs the explicitly theoretical passages contained in non-theory oriented texts to shed light on legal theory during the late 3rd/9th and early 4th/10th centuries, a critical transitional period in the history of Islamic law during which *uṣūl al-fiqh* and the *madhhab*s (schools of legal thought) were both maturing. Specifically, I examine the legal thought of Abū Jaʿfar Aḥmad al-Ṭaḥāwī (d. 321/933), a major Egyptian Ḥanafī jurist, traditionist and theologian, many of whose works have been preserved and edited. Where this study departs from earlier studies of the type referred to above is in its depth and comprehensiveness. While most studies seeking to reconstruct

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[6] I employ the term 'non-theory oriented works' to point to texts whose literary form is not primarily structured around questions of legal theory, even though some (like the works of al-Ṭaḥāwī analyzed in this study) can be considered works of theory in the sense that they treat questions of legal sources or textual hermeneutics in the course of their arguments. I make the distinction between theory-oriented and non-theory oriented works in order to highlight the way in which historians of Islamic law have generally privileged theory-oriented works in their narratives of Islamic legal theory.

[7] Studies taking this approach to studying early Islamic legal theory include Zafar Ishaq Ansari, "Islamic Juristic Terminology before Šāfiʻī: A Semantic Analysis with Special Reference to Kūfa," *Arabica* 19, no. 3 (1972): 255-300; Murteza Bedir, "An Early Response to Shāfiʿī: ʿĪsā b. Abān on the Prophetic Report (*Khabar*)," *Islamic Law and Society* 9, no. 3 (2002): 285-311; Jonathan Brockopp, "Competing Theories of Authority in Early Mālikī Texts," in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: Brill, 2002), 3-22; Joseph Lowry, "Ibn Qutayba: The Earliest Witness to al-Shāfiʿī and His Legal Doctrines," in *ʿAbbāsid Studies: Occasional Papers of the School of ʿAbbāsid Studies*, ed. James Montgomery (Leeuven: Peeters, 2004), 303-319; Lowry, "The Legal Hermeneutics of al-Shāfiʿī and Ibn Qutayba: A Reconsideration," *Islamic Law and Society* 11, no. 1 (2004): 1-41; Lowry, "The Reception of al-Shāfiʿī's Concept of *Amr* and *Nahy* in the Thought of His Student al-Muzanī," in *Law and Education in Medieval Islam: Studies in Memory of George Makdisi*, ed. Joseph Lowry, Devin Stewart and Shawkat Toorawa (Cambridge: E.J.W. Gibb Memorial Trust, 2004), 128-149; Lowry, "The First Islamic Legal Theory: Ibn al-Muqaffaʿ on Interpretation, Authority, and the Structure of the Law," *Journal of the American Oriental Society* 128, no. 1 (2008): 25-40; Scott Lucas, "The Legal Principles of Muḥammad b. Ismāʿīl al-Bukhārī and Their Relationship to Classical Salafī Islam," *Islamic Law and Society* 13, no. 3 (2006): 289-324; Christopher Melchert, "Qurʾānic Abrogation across the Ninth Century: Shāfiʿī, Abū ʿUbayd, Muḥāsibī, and Ibn Qutaybah," in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: Brill, 2002), 75-98; Melchert, "Traditionist-Jurisprudents and the Framing of Islamic Law," *Islamic Law and Society* 8, no. 3 (2001): 383-406; Ya'akov Meron, "The Development of Legal Thought in Ḥanafī Texts," *Studia Islamica* 30 (1969): 73-118; Sahiron Syamsuddin, "Abū Ḥanīfah's Use of the Solitary Ḥadīth as a Source of Islamic Law," *Islamic Studies* 40, no. 2 (2001): 257-272.

early legal theory from non-theoretical texts inquire only into specific topics,[8] this study surveys and analyzes al-Ṭaḥāwī's legal theory as a whole as expressed across three major extant works,[9] *Aḥkām al-Qurʾān* (Legal Rulings of the Qurʾān), *Sharḥ maʿānī al-āthār* (An Elucidation of the Meaning of Reports) and *Sharḥ mushkil al-āthār* (An Elucidation of Problematic Reports), each of which contains numerous, if brief, discussions of theoretical topics.[10]

The conclusions that this approach produces differ substantially from those reached by earlier, preliminary analyses of al-Ṭaḥāwī's legal thought. Previous studies have generally relied on the very brief theoretical introductions to al-Ṭaḥāwī's works or on a necessarily limited selection of chapters within his many extant texts. While no independent article or book has yet been published on al-Ṭaḥāwī's legal theory, the most frequent arguments concerning him are that he brought a 'Shāfiʿī' attitude toward *ḥadīth* and legal hermeneutics to the Ḥanafī school, and that he was the jurist most responsible for the initial effort to justify Ḥanafī law through Prophetic *ḥadīth*s.[11] While strongly

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[8] Several of the articles cited above very usefully survey the entire known legal theory of particular jurists of the formative period; however, none are in-depth studies.

[9] I am mindful of the dangers of reconstructing a general theory from context-specific texts, and in consequence I have not attempted to impose any structure or draw any connections between different aspects of al-Ṭaḥāwī's legal thought except where he himself suggests such a structure or connection. Nonetheless, the great majority of al-Ṭaḥāwī's statements on questions of theory appear repeatedly across his works, suggesting that they constitute a separable body of thought, even if not a highly organized theory such as that described by al-Shāfiʿī in the *Risāla*.

[10] Al-Ṭaḥāwī, *Aḥkām al-Qurʾān al-karīm*, ed. Saʿd al-Dīn Ūnāl (Istanbul: Türkiye Diyanet Vakfı, İslâm Araştırmaları Merkezi, 1995-1998); al-Ṭaḥāwī, *Sharḥ maʿānī al-āthār*, ed. Muḥammad Sayyid Jād al-Ḥaqq, Muḥammad Zuhrī al-Najjār and Yūsuf ʿAbd al-Raḥmān al-Marʿashlī (Beirut: ʿĀlam al-Kutub, 1994); al-Ṭaḥāwī, *Sharḥ mushkil al-āthār*, ed. Shuʿayb al-Arnāʾūṭ (Beirut: Muʾassasat al-Risāla, 1994). While al-Ṭaḥāwī's other legal works, including *Mukhtaṣar Ikhtilāf al-ʿulamāʾ* (Disagreements of the Jurists), *al-Shurūṭ al-kabīr* (Comprehensive Contract Formulary), *al-Shurūṭ al-ṣaghīr* (Concise Contract Formulary), and *al-Mukhtaṣar fī al-fiqh* (Concise Manual of Positive Law), sometimes mention legal sources or hermeneutical techniques in the course of justifying a rule of positive law, no attempt is made to explain or elaborate upon them.

[11] Specific arguments made in earlier studies regarding al-Ṭaḥāwī's legal theory will be treated in the relevant chapters of this study. Studies making one or both of the arguments above include Norman Calder,

affirming al-Ṭaḥāwī's importance in fitting out Ḥanafī law with a basis in *ḥadīth*,[12] this study transforms our understanding of al-Ṭaḥāwī's legal theory—and, by extension, the legal field of the late 3rd/9th and early 4th/10th centuries—by moving beyond labeling the 'Shāfiʿī' and 'Ḥanafī' elements of al-Ṭaḥāwī's thought to argue that his theory of the structure of the law was distinct from those of both al-Shāfiʿī and the later Ḥanafī legal theorists, although it had important ties to both. That this work has not been done until now is doubtless due at least in part to the difficulty of locating isolated theoretical discussions scattered across many volumes. Nonetheless, a number of the most important features of al-Ṭaḥāwī's legal thought become visible only when far-flung passages of multiple works are put into dialogue with each other.

In particular, my analysis challenges a narrative of Islamic legal history which holds that the exclusive identification of Prophetic authority with Prophetic *ḥadīth*—one of the most important arguments in the *Risāla* of al-Shāfiʿī—was settled by the late 3rd/9th century. Instead, I argue, al-Ṭaḥāwī's continued appeal to a wide spectrum of legal sources that he understands to represent Prophetic authority suggests that we need a more complex model for thinking about the intricate relationship between Prophetic authority, Prophetic practice and Prophetic text. Further, while the mature *uṣūl* tradition would posit

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Studies in Early Muslim Jurisprudence (Oxford: Clarendon, 1993), 66; Melchert, "Traditionist-Jurisprudents," 397-398; Aisha Musa, *Ḥadīth as Scripture: Discussions on the Authority of Prophetic Traditions in Islam* (New York: Palgrave MacMillan, 2008), 70; David Vishanoff, *The Formation of Islamic Hermeneutics: How Sunni Legal Theorists Imagined a Revealed Law* (Ann Arbor: American Oriental Society, 2010), 214; Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013), 205; Behnam Sadeghi, *The Logic of Law Making in Islam: Women and Prayer in the Legal Tradition* (Cambridge: Cambridge University Press, 2013), 131n12. The primary exception to this trend is found in ʿAbd Allāh Nadhīr Aḥmad's *Abū Jaʿfar al-Ṭaḥāwī*, which seeks to portray al-Ṭaḥāwī as closely aligned with the Ḥanafī school by describing him as following Ḥanafī principles of legal theory almost exclusively (*Abū Jaʿfar al-Ṭaḥāwī: al-imām al-muḥaddith al-faqīh (239 H-321 H)* (Damascus: Dār al-Qalam, 1991), 179.

[12] In this study, I employ '*ḥadīth*' to signify both individual prophetic reports and the wider genre.

a hierarchy of legal authority based upon the literary form of legal sources—Qurʾānic verses, Prophetic *ḥadīth*s, juristic consensus and analogical reasoning as well as other, more minor sources—al-Ṭaḥāwī's understanding of legal authority rests instead upon an underlying binary division of all Prophetic and post-Prophetic statements of the law into those which individuals might permissibly have arrived at by employing legal reasoning, and those which can only have been the result of revelatory instruction. Where al-Ṭaḥāwī understands a certain post-Prophetic *ḥadīth* or instance of consensus to represent revelatory instruction, he holds its authority sufficient to challenge and often override that of established Prophetic *ḥadīth*s. Al-Ṭaḥāwī's vision of the structure of the law, then, transcends traditional hierarchies and categories of legal sources in order to assert a system of legal authority based not on form, but instead on judgments about content and origins.

What emerges from this study's work of reconstruction, then, is a portrait of a jurist whose legal thought differs in important ways from the *uṣūl al-fiqh* tradition that would mature perhaps within half a century of his death. That some of the more surprising features of al-Ṭaḥāwī's thought have been overlooked or smoothed away in studies seeking to place him within a historical trajectory of the development of legal thought is testament to the urgent and ongoing need for in-depth studies of the legal thought of individual jurists, a type of work that has become too rare in our field. Where monographs do exist, they investigate jurists of the post-formative period, with the exception of several studies on al-Shāfiʿī.[13] Existing studies also often draw primarily on

[13] Gérard Lecomte's study of Ibn Qutayba presents a comprehensive sketch of an ʿAbbāsid intellectual, including Ibn Qutayba's activities as a jurist, but does not go into great detail concerning his legal thought

a single major work rather than a jurist's larger output. While the overall goals of the study of Islamic legal theory are rightly to discern ideas and types of development that transcend any one jurist, we risk glossing over crucial debates and anomalies when we relegate the investigation of individual jurists to article-length studies. Where the sources permit them, in-depth studies are particularly needed for jurists of the formative period like al-Ṭaḥāwī, whose works contain a rich trove of statements on a wide variety of theoretical topics without yet being organized to allow researchers easy access to specific topics of interest. One outcome of this study, therefore, is to provide future researchers with a firmer foundation on which to build arguments about the development of Islamic legal thought from the late formative into the post-formative periods.

Practical Hermeneutics

This study does not seek to portray al-Ṭaḥāwī's works as precursors to the emerging genre of *uṣūl al-fiqh* or to suggest that al-Ṭaḥāwī's legal thought directly influenced later debates in *uṣūl al-fiqh* works. Although al-Ṭaḥāwī considered himself

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(*Ibn Qutayba (mort en 276/889): l'homme, son œuvre, ses idées* (Damascus: Institut Français de Damas, 1965), 215-273). Joseph Lowry's *Early Islamic Legal Theory* analyzes the legal thought of al-Shāfiʿī as expressed in his *Risāla*; Ahmed El Shamsy also incorporates other texts by al-Shāfiʿī in his *Canonization of Islamic Law*. For post-formative jurists, George Makdisi uses Ibn ʿAqīl (d. 513/1119) as a window onto 5th/11th-century Baghdad in *Ibn ʿAqīl et la résurgence de l'islam traditionaliste au XIe siècle, Ve siècle de l'Hégire* (Damascus: Institut Français de Damas, 1963). In his magisterial *Search for God's Law*, Bernard Weiss has given a detailed, synchronic exposition of the legal thought of Sayf al-Dīn al-Āmidī (d. 631/1233), based primarily upon al-Āmidī's *uṣūl* work, *al-Iḥkām fī uṣūl al-aḥkām* (Salt Lake City: University of Utah Press, 2010). Sherman Jackson analyzes certain aspects of the legal thought of al-Qarāfī (d. 684/1285) in his *Islamic Law and the State*, although he is primarily interested in the power relationship between jurists and the state as discussed in al-Qarāfī's *al-Iḥkām fī tamyīz al-fatāwā ʿan al-aḥkām* (Leiden: Brill, 1996). Muhammad Khalid Masud analyzes the *Muwāfaqāt* of al-Shāṭibī (d. 790/1388) with a particular focus on *maṣlaḥa* in *Shāṭibī's Philosophy of Islamic Law* (Islamabad: The Islamic Research Institute, 1995). For a much later period, Bernard Haykel has analyzed the legal thought of al-Shawkānī (d. 1250/1834) in the context of reform in 18th-century Yemen in his *Revival and Reform in Islam* (Cambridge: Cambridge University Press, 2003).

and was considered by his biographers to be a *mujtahid*, or jurist capable of independently deriving the law from its sources, he is not said to have written a work of *uṣūl al-fiqh*, nor is he reported to have been an *uṣūlī* (legal theorist).[14] The earliest Ḥanafī *uṣūl* works do not cite his positions on questions of theory, and later *uṣūl* works note him only as a rare Ḥanafī who rejected *istiḥsān* (juristic preference).[15]

Instead, al-Ṭaḥāwī's discussions of legal theory emerge as part of a very different kind of intellectual activity. Where the *uṣūlī*s probe complex and even hypothetical questions of theology, epistemology and linguistics in their quest to elaborate a comprehensive system of textual interpretation, al-Ṭaḥāwī's statements on legal theory appear only when required to support his interpretations of specific revealed texts, with the exception of the theory-driven introduction to *Aḥkām al-Qurʾān*. Rather than being organized by topics of legal theory, his works are structured with the objective of demonstrating concretely how scholars may interpret revealed texts, individually and in combination with other legal sources, in order to discover a single, coherent Divine Message and to produce individually coherent rules. I label this work of demonstration 'practical hermeneutics.'

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[14] Ibn Ḥajar al-ʿAsqalānī, *Lisān al-mīzān*, ed. Muḥammad ʿAbd al-Raḥmān al-Marʿashlī (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1995-1996), 1:420; ʿAlī ibn Amr Allāh Qinālīzādah, *Ṭabaqāt al-Ḥanafīya*, ed. Muḥyi Hilāl al-Sarḥān (Baghdad: Dīwān al-Waqf al-Sunnī, 2005), 2.25.

[15] In *al-Fuṣūl*, al-Jaṣṣāṣ mentions his own commentary on al-Ṭaḥāwī's *Mukhtaṣar*, but does not otherwise cite al-Ṭaḥāwī (*Uṣūl al-Jaṣṣāṣ al-musammā al-Fuṣūl fī al-uṣūl*, ed. Muḥammad Muḥammad Tāmir (Beirut: Dār al-Kutub al-ʿIlmīya, 2000), 1.23, 2.40). Ibn Ḥazm names al-Ṭaḥāwī as a Ḥanafī who rejected *istiḥsān* (juristic preference) in *al-Iḥkām fī uṣūl al-aḥkām* (ed. Muḥammad Aḥmad ʿAbd al-ʿAzīz (Cairo: Maktabat ʿĀṭif, 1978), 2.992), and al-Zarkashī transmits the same claim from Ibn Ḥazm (*al-Baḥr al-muḥīṭ fī uṣūl al-fiqh*, ed. ʿAbd al-Qādir ʿAbd Allāh al-ʿĀnī and ʿUmar Sulaymān al-Ashqar (Kuwait: Wizārat al-Awqāf wa-l-Shuʾūn al-Islāmīya, 1992), 6.88). On al-Ṭaḥāwī's attitude toward *istiḥsān*, see Chapter Four, "Hermeneutics," pp. 273-276.

After a brief introduction ranging from a single paragraph in *Sharḥ maʿānī al-āthār* to seven pages in *Aḥkām al-Qurʾān*, each chapter in al-Ṭaḥāwī's works of practical hermeneutics takes the same basic literary form: al-Ṭaḥāwī first adduces one or more revealed texts in apparent conflict or whose import is unclear, and then shows in detail how the uncertainty can be removed or the apparent contradiction resolved in order to arrive at God's intent, usually in the form of a rule of positive law. While the specific methods al-Ṭaḥāwī uses to reach his conclusions vary in frequency between different works, his overall catalog of techniques is notably stable. These include *isnād* and *matn* criticism; invoking consensus or the authority of the Companions and Successors; abrogation; hermeneutical principles such as the primacy of the unrestricted (*ʿāmm*) and apparent (*ẓāhir*) meanings; *ijtihād*; descriptions of the range of existing opinions and the subsequent discrediting of all but one; and limited appeals to communal practice (*ʿamal*). Occasionally, al-Ṭaḥāwī pauses to justify or explain his use of these or other techniques and principles; these explicit discussions of theory constitute the major material for this study. While each chapter generally employs only a small selection of these techniques, al-Ṭaḥāwī's arguments consistently move from text to meaning. The literary form of al-Ṭaḥāwī's hermeneutical works thus stands in clear contrast to both the theory-driven discussions of the *uṣūl al-fiqh* genre and to the earlier *Risāla* of al-Shāfiʿī, in which practical examples illustrate al-Shāfiʿī's theoretical claims, rather than the other way around.

In the legal sphere, al-Ṭaḥāwī's hermeneutical writing functions to affirm the relationship between texts of revelation and the rules of positive law by showing in detail

how specific rules may be derived from revealed texts. Al-Ṭaḥāwī's hermeneutics-driven approach is not limited to the field of law, however. While *Aḥkām al-Qurʾān* and *Sharḥ maʿānī al-āthār* are exclusively concerned with demonstrating the relationship between revelation and positive law, his third major hermeneutical text, *Sharḥ mushkil al-āthār*, demonstrates the interpretation and harmonization of both legal and non-legal *ḥadīth*s. Al-Ṭaḥāwī applies many of the same hermeneutical techniques to non-legal *ḥadīth*s that he uses in legal derivation. However, because this study is concerned with the legal theory underlying al-Ṭaḥāwī's arguments, I will from this point on be focusing on practical hermeneutics as a form of legal writing.

Although 'practical hermeneutics' is not a term in general use in the field of Islamic intellectual history, a small number of scholars in other fields have invoked this term in their descriptions of modern Christian interpretive practices. In "Practical Hermeneutics: Noticing in Bible Study Interaction," Esa Lehtinen frames practical hermeneutics as the way in which the interpretation of sacred texts is shaped by the daily, local context of the interpreters, such that they produce a "reading that is morally relevant to the participants."[16] In contrast, in *Practical Hermeneutics: A Revised Agenda for Ministry*, Charles Winquist is concerned with the interpretation of revelation as word-event rather than as text, but similarly emphasizes how interpretation is bound to the "situational presence of a new consciousness in the world of historical experience."[17] Both Lehtinen and Winquist, then, appeal to the phrase 'practical hermeneutics' to evoke

[16] Esa Lehtinen, "Practical Hermeneutics: Noticing in Bible Study Interaction," *Human Studies* 32, no. 4 (2009): 280-281.
[17] Charles Winquist, *Practical Hermeneutics: A Revised Agenda for Ministry* (Ann Arbor: McNaughton & Gunn, 1980), 17.

the way in which interpretation is inevitably (and, for them, usefully) responsive to the needs and contexts of interpreters. Further, they employ the term ‘practical’ in order to highlight a perceived divide between the theoretical discussions of hermeneutics among academics and the applied interpretive practices of believers and clergy in a pastoral context.

In contrast, al-Ṭaḥāwī’s theory of hermeneutics is firmly intentionalist— like the legal theorists of the mature *uṣūl* tradition, he holds that the goal of scriptural interpretation is to discover God’s intent as encoded in revealed texts. Although al-Ṭaḥāwī and other Muslim jurists recognize that the interpretive process may be impeded by questions surrounding source preservation and interaction or the sheer complexity of human language, they nonetheless view the meaning of revelation as unchanging and independent of the perspective of the interpreter.[18] The questions concerning the role of the interpreter in creating meaning that arose in discussions of hermeneutics among European philosophers and theologians beginning in the 18th century (and which shape the thought of Lehtinen and Winquist above) are thus entirely absent from medieval Muslim jurists’ approach to textual interpretation.[19] Nor, when I term al-Ṭaḥāwī’s hermeneutical writings ‘practical,’ do I mean to suggest an activity of laypeople as opposed to that of scholars. Al-Ṭaḥāwī’s works of practical hermeneutics were composed

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[18] On the intentionalism of the classical *uṣūl* tradition, see Bernard Weiss, *The Spirit of Islamic Law* (Athens, Georgia: University of Georgia Press, 1998), 52-65. In the modern period, some Muslim intellectuals have sought to develop a hermeneutic that is responsive to what they identify as the changing needs of interpreters in the modern world, drawing in particular on an expanded role for the legal theory concept of *maṣlaḥa* (public interest). For an overview of these efforts, see Wael Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 500-550.

[19] On the development of the field of hermeneutics in the 18th century and later, see *The Stanford Encyclopedia of Philosophy,* s.v. “Hermeneutics” by Bjørn Ramberg and Kristin Gjesdal, <http://plato.stanford.edu/archives/win2014/entries/hermeneutics/>.

by a scholar for a scholarly audience, and he, like other Muslim jurists, would deny that non-experts have any role in deriving the law from revelation.

Instead, by the phrase 'practical hermeneutics,' I propose to signal, first, al-Ṭaḥāwī's practical aim of producing individual rules of positive law from the canon of revealed sources and, second, the way in which al-Ṭaḥāwī's works serve as extended illustrations of his fundamental claim that a single, coherent Divine Message underlies the sometimes conflicting texts of revelation. Although al-Ṭaḥāwī never states this second claim directly, his project is implicit in the anxieties he expresses in the introductions to *Sharḥ maʿānī al-āthār* and *Sharḥ mushkil al-āthār* concerning those who see contradictions or absurdities in the corpus of Prophetic *ḥadīth*s.[20] Each chapter of his hermeneutical works then shows in detail how God's intent may be derived from one or more revealed texts by means of a correct application of hermeneutical procedures. Al-Ṭaḥāwī does not portray the interpretive process as simple or mechanical; nonetheless, across many hundreds of chapters, al-Ṭaḥāwī concretely demonstrates the derivation of meaning from text according to hermeneutical principles both implicit and explicit.

In one sense, al-Ṭaḥāwī's works of practical hermeneutics can be understood as a response to a specifically Ḥanafī crisis: as the authority of Prophetic *ḥadīth* grew over the 3rd/9th century, the Ḥanafīs came to be widely criticized as *ahl al-raʾy* (the partisans of mere opinion), with the implication that Ḥanafī positive law was insufficiently tethered to revelation.[21] In the late 3rd/9th century, al-Ṭaḥāwī's Ḥanafī predecessor, Muḥammad ibn Shujāʿ al-Thaljī (d. 266/880), is reported to have responded to these criticisms by

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[20] Al-Ṭaḥāwī, *Maʿānī*, 1.11; *Mushkil*, 1.6.

[21] On the *ahl al-raʾy* and *ahl al-ḥadīth*, see Chapter One, "Qurʾān and Sunna," pp. 56-60.

providing Abū Ḥanīfa's legal doctrine with a basis in *ḥadīth*, and to have composed a work entitled *Taṣḥīḥ al-āthār*.[22] However, with only the title of Ibn Shujāʿ's work surviving, the literary form of his arguments remains unknown. Later, when al-Ṭaḥāwī took up the task of tethering Ḥanafī *fiqh* to revelation, we know that he chose to do so by painstakingly demonstrating chapter by chapter how the correct interpretation of revealed texts produces established rules of Ḥanafī positive law.[23]

In a larger sense, al-Ṭaḥāwī's works of practical hermeneutics should be understood not only as a Ḥanafī phenomenon, but also as part of the broader evolution of Islamic law and Islamic legal writing from the formative into the post-formative periods. The earliest decades of the formative period of Islamic law, through most of the 2nd/8th century, were characterized by great diversity of doctrine, but have left little literary trace. The end of the 2nd/8th century and first half of the 3rd/9th century then witness a flowering of authoritative *fiqh* literature, including the appearance of major compendia associated with the jurists who would later come to be considered the eponymous founders of the mature *madhhab*s. Al-Ṭaḥāwī represents the late formative period of Islamic law, a period stretching from the establishment of *fiqh* handbooks until the maturation of the *madhhab*s and of *uṣūl al-fiqh* in the mid-4th/10th century. With the rules of positive law already set down, the jurists of the late formative period grappled with

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[22] Ibn al-Nadīm, *Kitāb al-fihrist*, ed. Ayman Fuʾād Sayyid (London: Muʾassasat al-Furqān lil-Turāth al-Islāmī, 2009), vol. 2, pt. 1.29; Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* (Leiden: Brill, 1997), 48-53.

[23] While the overall function of al-Ṭaḥāwī's works of practical hermeneutics may be to provide Ḥanafī *fiqh* with a basis in revelation, al-Ṭaḥāwī's legal reasoning is not exclusively instrumental. In the course of this study, we will see that al-Ṭaḥāwī's fidelity to a set of hermeneutical principles sometimes leads him to depart from established Ḥanafī legal positions, suggesting that legal theory plays both justificatory and productive roles in al-Ṭaḥāwī's thought. On instrumental and philosophical reasoning in al-Ṭaḥāwī's works, see Chapter Two, "Companion and Successor *Ḥadīth*s," pp. 125-129.

two major, closely-related challenges: 1) to explain the relationship of established laws to revelation, including the increasingly-revered corpus of Prophetic *ḥadīth*; and 2) to explain the great diversity of legal doctrine. The second challenge is reflected in the growth of *ikhtilāf al-fuqahāʾ* literature, a genre in which al-Ṭaḥāwī composed one of the earliest substantial works.

Practical hermeneutics, in contrast, can be understood as the response to the challenge of articulating the relationship of the doctrine found in the major compendia to the corpus of revealed texts. It is possible to identify a number of texts structured similarly to the hermeneutical works of al-Ṭaḥāwī, and I suggest that these may usefully be considered together under the umbrella of practical hermeneutics. For example, al-Ṭaḥāwī's *Aḥkām al-Qurʾān* forms part of a minor genre of *aḥkām al-Qurʾān* works expounding the rules of positive law that may be derived from Qurʾānic verses. In *Kashf al-ẓunūn*, Kâtip Çelebi (d. 1068/1657) states that al-Shāfiʿī was the first to compose a work of *aḥkām al-Qurʾān*.[24] Although al-Shāfiʿī's text is no longer extant, it is unsurprising that a figure so strongly associated with the effort to insist that all law be grounded in revelation should also be the first author in the *aḥkām al-Qurʾān* genre.

Kâtip Çelebi lists a total of four *aḥkām al-Qurʾān* works preceding that of al-Ṭaḥāwī: those of al-Shāfiʿī, Abū al-Ḥasan ʿAlī ibn Ḥajar al-Saʿdī (d. 244/ 858-859), the Qāḍī Abū Isḥāq Ismāʿīl ibn Isḥāq al-Azdī al-Baṣrī (d. 282/895-896) and Abū al-Ḥasan ʿAlī ibn Mūsā ibn Yazdād al-Qummī al-Ḥanafī (d. 305/917-918).[25] None of the four is extant. Ibn al-Nadīm also attributes an *aḥkām al-Qurʾān* work to the Baṣran traditionist-

[24] Kâtip Çelebi, *Kashf al-ẓunūn ʿan asāmī al-kutub wa-l-funūn*, ed. Muḥammad Sharaf al-Dīn Yāltkāyā (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, [1858]), 1.20.
[25] Kâtip Çelebi, *Kashf al-ẓunūn*, 1.20.

jurist Ḥafṣ al-Ḍarīr (d. 246/861).[26] The author of one *aḥkām* work, the Ḥanafī Abū al-Ḥasan ʿAlī ibn Mūsā al-Qummī, is reported by Ibn al-Nadīm to have composed both a work of *aḥkām al-Qurʾān* and a refutation of the aspects of al-Shāfiʿī's *Aḥkām al-Qurʾān* which contradicted the Iraqi jurists (*Kitāb naqḍ mā khālafa fīhi al-Shāfiʿī al-ʿIrāqiyīn fī Aḥkām al-Qurʾān*).[27] It therefore appears that al-Qummī, like al-Ṭaḥāwī, employed the *aḥkām al-Qurʾān* genre to defend Ḥanafī positive law and assert its origins in revelation.

Although *aḥkām al-Qurʾān* works are ostensibly concerned only with Qurʾānic law, the complex interaction of legal sources within Islamic hermeneutics means that these works must inevitably address other legal sources, especially Prophetic *ḥadīth*s. Indeed, very few chapters in al-Ṭaḥāwī's *Aḥkām al-Qurʾān* treat the Qurʾān only.[28] Rather, Qurʾānic verses serve as the starting point for hermeneutical discussions that often devote more space to addressing issues related to *ḥadīth* and other sources than to the Qurʾān itself. Although we cannot know the literary form of works in the *aḥkām* genre before al-Ṭaḥāwī, it is notable that the chapters of later surviving works are structured similarly to the chapters of al-Ṭaḥāwī's *Aḥkām al-Qurʾān*.[29] For example, the Ḥanafī al-Jaṣṣāṣ (d. 370/980-981) and the Shāfiʿī al-Kiyā al-Harāsī (d. 504/1110-1111) begin each chapter or subsection of a chapter of their extant *Aḥkām al-Qurʾān* works by citing a Qurʾānic verse and then describing the hermeneutical issues involved in deriving

[26] Ibn al-Nadīm, *Fihrist*, vol. 2, pt. 1.108.
[27] Ibn al-Nadīm, *Fihrist*, vol. 2, pt. 2.32. Although Ibn al-Nadīm clearly lists these as two separate works, it seems possible that they represent a single text.
[28] To give an approximation of the prevalence of *ḥadīth*s in *Aḥkām al-Qurʾān*, within the 21 chapters that comprise *Kitāb al-Ṣalāt*, only 3 chapters do not contain Prophetic *ḥadīth*s. Of those 3 chapters, 2 contain Companion *ḥadīth*s. Only 1 chapter contains no *ḥadīth*s at all.
[29] It appears, however, that al-Ṭaḥāwī was unusual in the overall structure of his *Aḥkām al-Qurʾān*; where he organizes the book according to the normal chapters of a work of *fiqh* and then addresses the Qurʾānic verses relevant to each topic, later authors of *Aḥkām al-Qurʾān* texts generally follow the *tafsīr* genre by organizing their works according to the chapter of the Qurʾān.

the associated rules of positive law.[30] Like al-Ṭaḥāwī, they acknowledge the conflicting interpretations of other jurists while still asserting the positive law of their own *madhhab*. The attention devoted in these works to hermeneutical issues that transcend the Qurʾān itself suggests that the common classification of *aḥkām al-Qurʾān* works as a subgenre of *tafsīr* (Qurʾānic exegesis) fails to capture the scope and purpose of *aḥkām al-Qurʾān* as an intellectual project.[31] By labeling the *aḥkām al-Qurʾān* genre as part of a broader category of practical hermeneutical writing, I hope to draw attention to the way in which these works may share more in common with works of *ḥadīth* hermeneutics than they do with most *tafsīr*.

Al-Ṭaḥāwī's other two works of practical hermeneutics, *Sharḥ mushkil al-āthār* and *Sharḥ maʿānī al-āthār*, belong to a second genre closely associated with the late formative period: *mukhtalif al-ḥadīth* (the harmonization of Prophetic reports). Once again, Kâtip Çelebi attributes the first work of this genre to al-Shāfiʿī.[32] In the introduction to his *Ikhtilāf al-ḥadīth*, al-Shāfiʿī emphasizes that the Qurʾān and Sunna function together to express the law.[33] Each chapter of al-Shāfiʿī's work then adduces one

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[30] Al-Jaṣṣāṣ, *Aḥkām al-Qurʾān*, ed. Muḥammad al-Ṣādiq Qamḥāwī (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1985); al-Kiyā al-Harāsī, *Aḥkām al-Qurʾān*, ed. Muḥammad Mūsā and ʿAzza ʿAbd ʿAṭīya (Beirut: Dār al-Kutub al-ʿIlmīya, 1985).

[31] Al-Ṭaḥāwī's *Aḥkām al-Qurʾān* is categorized as a work of *tafsīr* in Miṣbāḥ Allāh ʿAbd al-Bāqī, *al-Imām Abū Jaʿfar al-Ṭaḥāwī wa-atharuhu fī naqd al-ḥadīth* (Cairo: Dār al-Salām, 2010), 64 and ʿAbd al-Majīd Maḥmūd ʿAbd al-Majīd, *al-Imām al-Ṭaḥāwī muḥaddithan* (Cairo: Dār al-Muḥaddithīn, 2008), 139. Hussein Abdul-Raof describes *aḥkām al-Qurʾān* works in general as a variety of *tafsīr* in *Schools of Qurʾānic Exegesis: Genesis and Development* (New York: Routledge, 2010), 140. The *tafsīr* of al-Qurṭubī (d. 671/1273), entitled *al-Jāmiʿ li-aḥkām al-Qurʾān*, appears to be an intermediate case (ed. Aḥmad al-Burdūnī and Ibrāhīm Aṭfīsh (Cairo: Dār al-Kutub al-Miṣrīya, 1964)). Although it gives special attention to the rules of *fiqh* contained in the Qurʾān and draws upon other legal sources in doing so, it does not contain the complex hermeneutical arguments found in the works of al-Ṭaḥāwī and al-Jaṣṣāṣ, for example.

[32] Kâtip Çelebi, *Kashf al-ẓunūn*, 1.32.

[33] Al-Shāfiʿī, *Ikhtilāf al-ḥadīth*, vol. 10 of *Kitāb al-Umm*, ed. Rifʿat Fawzī ʿAbd al-Muṭṭalib (al-Manṣūra, Egypt: Dār al-Wafāʾ, 2005), 5-6. For a discussion of and translated excepts from al-Shāfiʿī's *Ikhtilāf al-*

or more *ḥadīth*s and resolves the attendant hermeneutical issues in order to derive a related law; the organization of the work seems to be influenced loosely by the chapter organization of *fiqh* works. In contrast, while the next known work in the genre, the *Taʾwīl mukhtalif al-ḥadīth* of Ibn Qutayba (d. 276/889), likewise begins each chapter by adducing one or more problematic *ḥadīth*s and then resolving the apparent difficulties, Ibn Qutayba devotes most of his chapters to theological, rather than legal, topics.[34] Kâtip Çelebi lists a third work of this title by the Shāfiʿī Zakarīya ibn Yaḥyā al-Sājī (d. 307/919-920), now lost.[35]

Although al-Ṭaḥāwī's *Sharḥ mushkil al-āthār* and *Sharḥ maʿānī al-āthār* do not employ a term linguistically related to '*ikhtilāf*' in their titles, they share the literary form and objectives of al-Shāfiʿī and Ibn Qutayba's earlier *mukhtalif al-ḥadīth* works. Like al-Shāfiʿī's *Ikhtilāf al-ḥadīth*, al-Ṭaḥāwī's *Sharḥ maʿānī al-āthār* is exclusively concerned with the derivation of law from revealed sources. Al-Ṭaḥāwī's work represents an advance over al-Shāfiʿī's earlier work in several respects, however; it is both a much more substantial work—four volumes compared to the hundred or so pages of al-Shāfiʿī's *Ikhtilāf*—and also more rigorously organized according to the topics of *fiqh*. In contrast, al-Ṭaḥāwī's *Sharḥ mushkil al-āthār* more closely resembles Ibn Qutayba's *Taʾwīl mukhtalif al-ḥadīth* in its apparent lack of an overall organizing principle and its attention

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ḥadīth, see Joseph Lowry, "al-Shāfiʿī (d. 204/820)," in *Islamic Legal Thought: A Compendium of Muslim Jurists*, ed. Oussama Arabi, David Powers and Susan Spectorsky (Leiden: Brill, 2013), 51-64.

[34] Lecomte analyzes the relationship between al-Shāfiʿī's *Ikhtilāf al-ḥadīth* and Ibn Qutayba's *Taʾwīl mukhtalif al-ḥadīth* in "Un exemple d'évolution de la controverse en Islam: de l'*Iḫtilāf al-Ḥadīṯ* d'al-Šāfiʿī au *Muḫtalif al-Ḥadīṯ* d'Ibn Qutayba," *Studia Islamica* 27 (1967): 5-40.

[35] Kâtip Çelebi, *Kashf al-ẓunūn*, 1.32.

to both legal and non-legal topics. Once again, al-Ṭaḥāwī's 15-volume work is considerably more substantial than Ibn Qutayba's single volume.

Traditionally, al-Ṭaḥāwī's *Aḥkām al-Qurʾān*, *Sharḥ mushkil al-āthār* and *Sharḥ maʿānī al-āthār* have been analyzed separately as belonging to either the *aḥkām al-Qurʾān* or the *mukhtalif al-ḥadīth* genres.[36] By applying the label of 'practical hermeneutics' to all three of al-Ṭaḥāwī's works, I hope to draw attention to the way in which, despite their surface differences, they all share a literary form that moves from revealed text to law (or, sometimes in *Sharḥ mushkil al-āthār*, to non-legal meanings derived from revelation). This shared literary form points to a common project underlying all three of al-Ṭaḥāwī's works, and indeed all the works of practical hermeneutics that I have described above: the assertion that the revealed texts of Qurʾān and Sunna form a single, coherent Divine Message from which a coherent Divine Law may be derived. Nor is the concept of practical hermeneutics limited to works traditionally ascribed to the genres of *aḥkām al-Qurʾān* or *mukhtalif al-ḥadīth*; the *Tahdhīb al-āthār* and *Tafsīr* of al-Ṭaḥāwī's contemporary al-Ṭabarī (d. 310/923) both devote considerable attention to determining the legal implications of the revealed texts he adduces, even though they are not exclusively works of practical hermeneutics as described above.

'Practical hermeneutics,' then, is a label that transcends traditional notions of generic boundaries by pointing to a larger intellectual project among jurists of the late

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[36] E.g., Saʿd al-Dīn Ūnāl, "Muqaddimat al-taḥqīq," Introduction to *Aḥkām al-Qurʾān*, by Abū Jaʿfar Aḥmad al-Ṭaḥāwī (Istanbul: Türkiye Diyanet Vakfı, İslâm Araştırmaları Merkezi, 1995-1998), 5-7; ʿAbd al-Majīd, *al-Imām al-Ṭaḥāwī muḥaddithan*, 297-321; ʿAbd al-Bāqī, *al-Imām Abū Jaʿfar al-Ṭaḥāwī wa-atharuhu fī naqd al-ḥadīth*, 333-334.

formative period of Islamic law. It cannot be coincidental that al-Shāfiʿī, who strongly argued for the basis of law in revelation, is identified as the author of the earliest works in both the *mukhtalif al-ḥadīth* and the *aḥkām al-Qurʾān* genres. His project was, in a sense, completed by al-Ṭaḥāwī, who made the same argument on behalf of the Ḥanafīs, who had until then been criticized as *ahl al-raʾy*, implying that their *fiqh* was not based in revelation. That is not to say that jurists after al-Ṭaḥāwī ceased to compose works of *mukhtalif al-ḥadīth* or *aḥkām al-Qurʾān*; genres, once established, often develop in ways that are not determined by the needs that originally inspired them. However, while a few Ḥanafīs before al-Ṭaḥāwī may have begun the project of grounding Ḥanafī *fiqh* in revelation as noted above, it is al-Ṭaḥāwī whose works were preserved and extensively commented upon by Ḥanafīs and others.[37] His lifetime therefore seems to represent a crucial moment in the process by which the basis of law in revelation—at least in theory, if not as an obvious characteristic of specific rules of positive law—ceased to be an issue dividing jurists of the emerging *madhhab*s, and became unquestioned doctrine.[38]

In fact, it seems likely that the more pressing task for jurists of the post-formative period would be to tether the principles of *uṣūl al-fiqh*, rather than the texts of revelation, to established rules of positive law. In his *Structural Interrelations of Theory and Practice in Islamic Law*, Ahmad Atif Ahmad identifies a genre of legal writing which he labels *takhrīj al-furūʿ ʿalā al-uṣūl*, or 'deriving the rules of positive law from the bases of the law.' Works of this genre, which appear first at the turn of the 5th/11th century but

[37] See below, p. 41.

[38] Hallaq labels this process the rationalist-traditionalist synthesis. He likewise locates it in the first half of the 4th/10th century, although he associates the full articulation of this synthesis with the Shāfiʿī Ibn Surayj (d. 306/918) (Hallaq, *History of Islamic Legal Theories*, 33).

become more common in the 6th/12th century, demonstrate how legal rules can be established on the basis of known principles of *uṣūl* in much the same way that works of practical hermeneutics demonstrate the derivation of law from text.[39] Both genres respond to the anxieties of their own periods by asserting a connection between bodies of texts and ideas that had come to be perceived as insufficiently connected.

The close analysis of the legal theory contained in the works of practical hermeneutics listed above and other, yet-to-be-identified works is beyond the scope of this study. However, it is reasonable to assume that, like al-Ṭaḥāwī's works, other surviving early texts that we may label 'practical hermeneutics' may also prove to be particularly rich sources for reconstructing legal theory in the late formative period. Where early *fiqh* or *khilāf* (juristic disagreement) works, for example, often provide no justification at all for the rules they expound or only a kind of shorthand explanation, the nature of practical hermeneutics is to demonstrate the relationship between text and rule. Within al-Ṭaḥāwī's own corpus, for example, one could learn from the *Mukhtaṣar* or *Ikhtilāf al-ʿulamāʾ* that he was familiar with concepts such as *ijmāʿ*, *qiyās*, *ʿāmm:khāṣṣ* and *istiḥsān*, but only the detailed legal derivations of his works of practical hermeneutics reveal the nuances of how he understood these concepts, and the ways in which his understandings differ sometimes quite dramatically from how they were understood by most theorists of the mature *uṣūl* tradition.

To some degree, the differences between the legal theories of al-Ṭaḥāwī and later jurists are attributable to the different periods in which they lived; al-Ṭaḥāwī's

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[39] Ahmad Atif Ahmad, *Structural Interrelations of Theory and Practice in Islamic Law: A Study of Six Works of Medieval Islamic Jurisprudence* (Leiden: Brill, 2006), 16.

hermeneutical works are particularly valuable to researchers because they represent rare survivals from the transitional period between late formative and post-formative Islamic law. However, in the course of this study, I will indicate a number of places where the differences between al-Ṭaḥāwī's theories and those of the *uṣūlī*s seem to be due not to the passage of time, but rather to the different imperatives of the genres of practical hermeneutics and *uṣūl al-fiqh*. While *uṣūlī*s sought elegance and consistency in their descriptions of the workings of the law, al-Ṭaḥāwī's legal theories require great flexibility in order to be useful tools for the practical business of interpreting revealed texts.

It is possible, therefore, that our current narrative of the history of Islamic legal theory is in need of revision. Instead of a single trajectory of development from the first theoretical statements of the early jurists to the canonization of *uṣūl al-fiqh* as a genre, we might instead trace two literary forms addressing questions of legal theory: one in close contact with the practical interpretation of texts, and another in which the elaboration of theory became an end in itself.[40] Much work remains to be done on the legal theory contained in works of practical hermeneutics before this possibility can be confirmed or refuted.[41] This study contributes to that work by offering the first full-length analysis of one jurist's legal theory as reflected in his practical works of legal interpretation.

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[40] Norman Calder terms this function of *uṣūl al-fiqh* "virtuoso patterning" (Calder, *Studies in Early Muslim Jurisprudence*, 199).
[41] A careful comparison of al-Shāfiʿī's legal theory in the theory-driven *Risāla* and in the works I have here labeled practical hermeneutics might be particularly instructive.

Approach and Structure

This study reconstructs al-Ṭaḥāwī's legal theory from the many scattered discussions of theoretical topics found in his works of practical hermeneutics, with occasional reference to his other extant legal texts. Wherever possible, I place al-Ṭaḥāwī's ideas in the context of other jurists of the formative and early classical periods. In particular, I compare al-Ṭaḥāwī's positions to those of al-Shāfiʿī as well as earlier and later Ḥanafīs in order to evaluate claims regarding his intellectual debt to jurists of those schools. Because of the difficulty of locating theoretical passages in works of practical hermeneutics and of understanding the relationship of those passages to a jurist's overall legal theory, my comparisons between al-Ṭaḥāwī and other jurists are of necessity primarily drawn from works of *uṣūl al-fiqh* rather than works that might be labeled practical hermeneutics. It is the difficulty of determining the details of a jurist's legal theory from the brief, isolated passages in works of practical hermeneutics that makes the present study vital. As mentioned above, much important work remains to be done identifying and analyzing hermeneutical texts before we will be in a position to characterize the relationship among texts of practical hermeneutics or that between practical hermeneutics and *uṣūl al-fiqh*. As a result, my suggestions regarding al-Ṭaḥāwī's place in a narrative of the development of Islamic legal thought of the late $3^{rd}/9^{th}$ and early $4^{th}/10^{th}$ centuries are necessarily tentative.

In my selection of topics I have been guided by the frequency and urgency with which al-Ṭaḥāwī returns to each issue of legal theory in the course of his works. Passages on legal theory in al-Ṭaḥāwī's works can be divided into two categories: discussions of

the authority and relative status of legal sources, and discussions of interpretive paradigms for understanding revealed texts. Because al-Ṭaḥāwī's discussions of legal sources are more complex and detailed than his discussions of hermeneutical techniques, I devote individual chapters to Qurʾān and Sunna (Chapter One), Companion and Successor *Ḥadīths* (Chapter Two), and Consensus and the Practice of the Community (Chapter Three).

Although al-Ṭaḥāwī does not set out an overarching theory of legal sources, I base my chapter order loosely on a list that appears repeatedly across his hermeneutical works: Qurʾān, Sunna and Consensus.[42] Al-Ṭaḥāwī adduces this list, always in the same order, whenever he wishes to assert that an interpretive move requires evidence to support it.[43] For instance, in *Sharḥ mushkil al-āthār* he refutes an interlocutor's argument on the grounds that no one may depart from a certain established opinion supported by most of the Companions without evidence from Qurʾān, Sunna or Consensus, while in *Sharḥ maʿānī al-āthār* he asserts that it is impermissible to choose between two possible interpretations of a certain *ḥadīth* without evidence from the Qurʾān, Sunna or Consensus.[44] This list thus in some sense stands in for the idea of authoritative legal sources.

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[42] Al-Ṭaḥāwī, *Maʿānī*, 1.416, 1.453, 3.10, 3.176, 4.98, 4.144; *Aḥkām*, 2.335; *Mushkil*, 8.294-295, 9.205-206, 9.209, 10.16, 10.108. The same list appears in al-Ṭaḥāwī's *ʿAqīda* in an article stating that Muslims must renounce anyone who does not believe in these three sources (*al-ʿAqīda al-Ṭaḥāwīya*, ed. ʿAbd Allāh Ḥajjāj (Cairo: Sharikat al-Salām al-ʿĀlamīya, 1980), 101).

[43] Al-Shāfiʿī employs similar lists of authorities in the same contexts (Joseph Lowry, "Does Shāfiʿī Have a Theory of "Four Sources" of Law?," in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: Brill, 2002), 35), although his lists are considerably less stable than al-Ṭaḥāwī's list of Qurʾān, Sunna and Consensus.

[44] Al-Ṭaḥāwī, *Mushkil*, 10:16-20; *Maʿānī*, 1.453f.

Occasionally, other elements appear in these lists. Although Companion opinions appear only twice in al-Ṭaḥāwī's list of authoritative sources,[45] they play a far larger role in al-Ṭaḥāwī's hermeneutical arguments in practice than these lists would seem to suggest. I therefore devote a chapter to exploring the role of the Companions and Successors in al-Ṭaḥāwī's legal thought. Communal practice (*ʿamal*) does not appear at all in al-Ṭaḥāwī's lists of sources and plays only a small role in his works; nonetheless, I include a discussion of it in my chapter on Consensus because of al-Ṭaḥāwī's unusual statements concerning it and its complicated relationship with his concept of Consensus. Finally, al-Ṭaḥāwī sometimes mentions *qiyās*, *naẓar* or *raʾy* along with other sources of legal authority;[46] however, several passages clarify that al-Ṭaḥāwī does not consider these to be legal sources in themselves, but rather a hermeneutical method to resort to in the absence of evidence from the authoritative sources of Qurʾān, Sunna and Consensus.[47] I therefore discuss rational methods of legal derivation in Chapter Four, "Hermeneutics."

The remainder of that chapter takes its structure from the only extended theory-driven discussion in all of al-Ṭaḥāwī's extant works, the introduction to *Aḥkām al-Qurʾān.* Within the seven pages of the introduction, al-Ṭaḥāwī establishes a hierarchical relationship between three sets of hermeneutical terms: *muḥkam:mutashābih* (unequivocal:equivocal), *ẓāhir:bāṭin* (apparent:non-apparent) and *ʿāmm:khāṣṣ* (unrestricted:restricted), and I have made an exploration of the relationship among these

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[45] Al-Ṭaḥāwī, *Aḥkām*, 1.475-6 (Companions only); *Maʿānī*, 1.11 (Companions and Successors). The opinions of the Companions are also discussed as a source of law in a passage of *al-Mukhtaṣar* in which al-Ṭaḥāwī describes the method and sources that judges should use to derive the law (*Mukhtaṣar al-Ṭaḥāwī*, ed. Abū al-Wafāʾ al-Afghānī (Hyderabad: Lajnat Iḥyāʾ al-Maʿārif al-Nuʿmānīya, 1951), 327).
[46] Al-Ṭaḥāwī, *Aḥkām*, 1.416, 1.475-6, 2.20; *Maʿānī*, 3.246.
[47] Al-Ṭaḥāwī, *Mushkil*, 10.108, 10.141-142, 13.40-41 and 15.230. The final example states that *qiyās* is used in cases where there is no evidence from Qurʾān or Sunna. All other examples mention Qurʾān, Sunna and Consensus.

the subject of the first half of that chapter.[48] In the remainder of this introductory chapter, I provide an overview of al-Ṭaḥāwī's life and works before addressing questions related to the authorship and composition of the three works used as the major sources of this study.

Life

Abū Jaʿfar Aḥmad ibn Muḥammad ibn Salāma al-Ṭaḥāwī was born in Ṭaḥā or the nearby village of Ṭaḥṭūṭ in Upper Egypt,[49] most probably in 239/853,[50] although some biographers give birth dates as early as 229/843.[51] His ancestors, members of the Ḥajr branch of the Azd tribe, were likely among the earliest Arab settlers in Egypt, almost all of whom came from South Arabian or Yemeni tribes, including Azd.[52] His grandfather Salāma was one of the army notables (*wujūh al-jund*) who responded to a missive from the anti-caliph Ibrāhīm ibn al-Mahdī calling the Egyptian *jund* to renounce the ʿAbbāsid caliph al-Maʾmūn (r. 198-218/813-833) and the Egyptian governor al-Sarī ibn al-Ḥakam (r. 200-201/816, 201-205/817-820) upon al-Maʾmūn's controversial naming of ʿAlī al-Riḍā (d. 203/818) as his heir in 202/817. After leading his troops in support of al-Sarī's

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[48] Al-Ṭaḥāwī, *Aḥkām*, 1.59-66.

[49] Al-Samʿānī lists al-Ṭaḥāwī among the notable residents of Ṭaḥā in *al-Ansāb*, ed. Muḥammad ʿAwāma (Beirut: Muḥammad Amīn Damaj, 1970), 8.217. Ibn Yūnus al-Ṣadafī reports that al-Ṭaḥāwī was not, in fact, from Ṭaḥā, but from the nearby village of Ṭaḥṭūṭ; he preferred not to be called al-Ṭaḥṭūṭī because of the *nisba*'s resemblance to an unpleasant word (*Tārīkh Ibn Yūnus al-Miṣrī*, ed. ʿAbd al-Fattāḥ Fatḥī (Beirut: Dār al-Kutub al-ʿIlmīya, 2000), 1.21). See also Yāqūt al-Ḥamawī, *Muʿjam al-buldān* (Beirut: Dār Ṣādir, 1995), 4.22.

[50] Ibn Yūnus, *Tārīkh*, 1.22; al-Samʿānī, *al-Ansāb*, 8.218; al-Ṣaymarī, *Akhbār Abī Ḥanīfa wa-aṣḥābihi* (Beirut: ʿĀlam al-Kutub, 1995), 168.

[51] Al-Laknawī gives al-Ṭaḥāwī's birth year as 229, 230 or 238 (*al-Fawāʾid al-bahīya fī tarājim al-Ḥanafīya*, ed. Aḥmad al-Zuʿbī (Beirut: Dār al-Arqām, 1998), 59, 62); al-Suyūṭī gives the year as 237 (*Ṭabaqāt al-ḥuffāẓ*, ed. ʿAlī Muḥammad ʿUmar (Cairo: Maktabat Wahba, 1973), 337).

[52] Hugh Kennedy, "Egypt as a Province in the Islamic Caliphate, 641-868," in *The Cambridge History of Egypt*, ed. Carl Petry (Cambridge: Cambridge University Press, 1998), 1.64.

rival in the complicated internal power struggles in Egypt at that time, Salāma and his son Ibrāhīm were eventually captured, brought to Fusṭāṭ and executed on al-Sarī's command in 204/819.[53]

Considerably less is known about al-Ṭaḥāwī's parents. In his entry for al-Ṭaḥāwī, Ibn Khallikān reports that al-Ṭaḥāwī's father died in 264/877-8.[54] Al-Ṭaḥāwī also transmitted *ḥadīth* from his father,[55] although the absence of any *ṭabaqāt* entries on Muḥammad suggests that he was not an important traditionist. A few passages of al-Ṭaḥāwī's own works indicate that his father was an expert on poetry. In *Sharḥ mushkil al-āthār*, al-Ṭaḥāwī adduces a variant of a poem on his father's authority, and in his transmission of al-Shāfiʿī's *al-Sunan*, he gives his father as the source for two additional lines of a poem transmitted by al-Shāfiʿī to al-Muzanī.[56] Modern studies of al-Ṭaḥāwī generally identify his mother as a sister of al-Muzanī, who was one of the most important students of al-Shāfiʿī.[57] However, the earliest biographies indicate only that al-Ṭaḥāwī was a student of al-Muzanī.[58] The first mention of a familial relationship between the two

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[53] Al-Kindī, *The Governors and Judges of Egypt: or, Kitāb el ʾumarāʾ (al-wulāh) wa Kitāb el quḍāh of El Kindī, Together with an Appendix Derived Mostly from Rafʿ al-iṣr by Ibn Ḥajar*, ed. Rhuvon Guest (Baghdad: Maktabat al-Muthannā, 1964), 168-171. On the struggle for political control of Egypt in the first decade of the 3rd/9th century, see Kennedy, "Egypt as a Province in the Islamic Caliphate," 81-82.
[54] Ibn Khallikān, *Wafayāt al-aʿyān*, ed. Iḥsān ʿAbbās (Beirut: Dār Ṣādir, 1977), 1.72.
[55] Ibn Abī al-Wafāʾ al-Qurashī, *al-Jawāhir al-muḍīya fī ṭabaqāt al-Ḥanafīya*, ed. Sayyida Mahr al-Nisāʾ (Hyderabad: Maṭbaʿat Majlis Dāʾirat al-Maʿārif al-ʿUthmānīya, 1988), 1.165.
[56] Al-Shāfiʿī, *al-Sunan al-maʾthūra*, ed. ʿAbd al-Muʿṭī Amīn Qalʿajī (Beirut: Dār al-Maʿrifa, 1986), 354; al-Ṭaḥāwī, *Mushkil*, 1.259-260.
[57] E.g., Nurit Tsafrir, "Abū Jaʿfar al-Ṭaḥāwī (d. 321/933)," in *Islamic Legal Thought: A Compendium of Muslim Jurists*, ed. Oussama Arabi, David Powers and Susan Spectorsky (Leiden: Brill, 2013), 123; *The Encyclopaedia of Islam,* New Edition, s.v. "al-Ṭaḥāwī" by Norman Calder; Melchert, *Formation of the Sunni Schools of Law*, 117. Some Arabic-language studies of al-Ṭaḥāwī extrapolate further and suggest that al-Ṭaḥāwī's mother was the sister of al-Muzanī whom al-Suyūṭī lists among the Shāfiʿī jurists (*fuqahāʾ*) of Egypt in *Ḥusn al-muḥāḍara fī akhbār Miṣr wa-l-Qāhira* (ed. Muḥammad ibn ʿAbd al-Faḍl Ibrāhīm (Cairo: Dār Iḥyāʾ al-Kutub al-ʿArabīya, 1967), 1.399), and speculate that she may therefore have been her son's first teacher (e.g., ʿAbd al-Majīd, *al-Imām al-Ṭaḥāwī muḥaddithan*, 75; Ūnāl, "Muqaddimat al-taḥqīq," 15; Aḥmad, *Abū Jaʿfar al-Ṭaḥāwī al-imām al-muḥaddith al-faqīh*, 73).
[58] Ibn Yūnus, *Tārīkh*, 1.21; al-Ṣaymarī, *Akhbār Abī Ḥanīfa*, 168.

jurists appears in the entry on al-Muzanī in al-Khalīlī's (d. 446/1054) *al-Irshād fī maʿrifat ʿulamāʾ al-ḥadīth*.[59] Two centuries later, Ibn Khallikān (d. 681/1282) again describes al-Ṭaḥāwī as the nephew of al-Muzanī, citing al-Khalīlī as his source.[60] From that time, their familial relationship becomes an important part of the biographical tradition.[61]

It is certainly possible that al-Ṭaḥāwī was the nephew of al-Muzanī and earlier biographers simply omitted to mention their relationship. However, it is perhaps more probable that the familial relationship between the two jurists was a detail added later to heighten the narrative drama of al-Ṭaḥāwī's decision to affiliate with the Ḥanafīs after his early study of Shāfiʿī doctrine under al-Muzanī. Biographers give various accounts of al-Ṭaḥāwī's transfer to Ḥanafism. Ibn Yūnus (d. 347/958) states only that al-Ṭaḥāwī began to study Ḥanafī doctrine when the Ḥanafī Aḥmad ibn Abī ʿImrān came to Egypt, and that al-Muzanī reproached al-Ṭaḥāwī in a dream for his abandonment of him.[62] Al-Ṣaymarī (d. 436/1044) reports that al-Ṭaḥāwī joined the Ḥanafīs in anger at an insult from al-Muzanī.[63] Al-Khalīlī, however, portrays al-Ṭaḥāwī's decision as an oblique act of deference to al-Muzanī, writing that al-Ṭaḥāwī frequently observed his uncle studying the books of Abū Ḥanīfa and was inspired to study them himself.[64] Later biographers would adduce and reframe these three basic narratives in various combinations in their attempts

[59] Al-Khalīlī, *al-Irshād fī maʿrifat ʿulamāʾ al-ḥadīth*, ed. Muḥammad Saʿīd ibn ʿUmar Idrīs (Riyadh: Maktabat al-Rushd, 1989), 1.431.
[60] Ibn Khallikān, *Wafayāt al-aʿyān*, 1.71.
[61] On the history of claims of a familial relationship between al-Muzanī and al-Ṭaḥāwī in the biographical tradition, see R. Kevin Jaques, "The Contestation and Resolution of Inter- and Intra-School Conflicts though Biography," in *Diversity and Pluralism in Islam: Historical and Contemporary Discourses amongst Muslims*, ed. Zulfikar Hijri (London: I.B. Tauris, 2010), 120, 130.
[62] Ibn Yūnus, *Tārīkh*, 1.21.
[63] Al-Ṣaymarī, *Akhbār Abī Ḥanīfa*, 168. While al-Ṣaymarī gives no context for al-Muzanī's insulting comment, some later biographers report that al-Muzanī denigrated al-Ṭaḥāwī's abilities when the latter had difficulty understanding a legal question (e.g., Ibn Ḥajar, *Lisān al-mīzān*, 1.417). That is, the man who became the head of the Ḥanafīs in Egypt was incapable of understanding a Shāfiʿī legal point.
[64] Al-Khalīlī, *al-Irshād*, 1.431.

to explain a shift in *madhhab* affiliation that was, from the viewpoint of the mature legal tradition, very much in need of explanation.[65]

It is less clear that al-Ṭaḥāwī's shift in affiliation was a noteworthy event by the standards of his own time. Although Monique Bernards and John Nawas have found that only about 5% of jurists who died before the year 250/864 are recorded by the biographical literature as having changed *madhhab*s, they also found that 54% of jurists of the same period are not reported to have belonged to any established Sunni *madhhab*.[66] Further, Nurit Tsafrir has demonstrated that later biographers sometimes claimed as members of their own *madhhab* jurists and traditionists who may have had only weak ties to the school.[67] The biographical literature suggests that al-Ṭaḥāwī's change of *madhhab* occurred less than a decade after the end of the period under consideration by Nawas and Bernards.[68] Given the wide variation in what it meant for an individual to be claimed as a member of a *madhhab* in the biographical tradition, Bernards and Nawas may be too quick in their conclusion that changing *madhhab*s has always been a "marginal and unique" practice.[69]

Al-Ṭaḥāwī lived during an important transitional period during which the *madhhab*s were developing into their mature form. Eyyup Said Kaya points to the

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[65] Jaques analyzes depictions of the relationship between al-Ṭaḥāwī and al-Muzanī in the biographical tradition in his article "The Contestation and Resolution of Inter- and Intra-School Conflicts through Biography." He argues convincingly that the evolving and competing narratives of al-Ṭaḥāwī's move to Ḥanafism reflect his biographers' need to define, first, the inter-*madhhab* relationship between the Ḥanafīs and Shāfiʿīs and, later, internal relationships within the Shāfiʿī *madhhab* ("Contestation and Resolution," 133).
[66] Monique Bernards and John Nawas, "The Geographic Distribution of Muslim Jurists during the First Four Centuries AH," *Islamic Law and Society* 10, no. 2 (2003): 171-2.
[67] Nurit Tsafrir, "Semi-Ḥanafīs and Ḥanafī Biographical Sources," *Studia Islamica* 84 (1996): 68.
[68] See p. 30 below.
[69] Bernards and Nawas, "Geographic Distribution," 171n5.

appearance of legal handbooks (*mukhtaṣar*s) and commentaries, the compilation of Prophetic traditions, the first works of legal theory, and the labeling of some jurists as heads of the Ḥanafī school, as evidence for the maturation of the Ḥanafī *madhhab* in the 4th/10th century.[70] Al-Ṭaḥāwī's career exemplifies many of these developments: he composed a *Mukhtaṣar* as well as commentaries on the works of his Ḥanafī predecessor al-Shaybānī;[71] gathered Prophetic *ḥadīth*s in his works of practical hermeneutics and perhaps in a *ḥadīth* compilation;[72] and was considered by later biographers to have been the head of the Ḥanafīs in Egypt for his time.[73] He is also reported to have written a work on the virtues of Abū Ḥanīfa,[74] another indication of the development of *madhhab* identity.

However, the Ḥanafī and Shāfiʿī *madhhab*s of al-Ṭaḥāwī's time in Egypt had not yet developed what Melchert terms their "guild" nature; that is, they did not yet constitute "a body of jurisprudents with a regular method of reproducing itself" and

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[70] Eyyup Said Kaya, "Continuity and Change in Islamic Law: The Concept of *Madhhab* and the Dimensions of Legal Disagreement in Ḥanafī Scholarship of the Tenth Century," in *The Islamic School of Law: Evolution, Devolution, and Progress*, ed. Peri Bearman, Rudolph Peters, and Frank Vogel (Cambridge: Harvard University Press, 2005), 26-27. He takes this list from Melchert, *Formation of the Sunni Schools of Law*, 116-117.
[71] Al-Ṭaḥāwī's commentaries on al-Shaybānī's *al-Jāmiʿ al-kabīr* and *al-Jāmiʿ al-ṣaghīr* are reported in Ibn Abī al-Wafāʾ, *al-Jawāhir al-muḍīya*, 1.166 and al-Laknawī, *al-Fawāʾid al-bahīya*, 60.
[72] Although *Sharḥ maʿānī al-āthār*, *Sharḥ mushkil al-āthār* and *Aḥkām al-Qurʾān* are not primarily *ḥadīth* compilations, al-Ṭaḥāwī devotes considerable space to gathering and evaluating the different *isnād*s for the traditions he adduces. On *Ṣaḥīḥ al-āthār*, a manuscript held by the Khuda Baksh library in Patna, India and attributed to al-Ṭaḥāwī, see p. 42.
[73] Al-Laknawī, *al-Fawāʾid al-bahīya*, 62; al-Ṣaymarī, *Akhbār Abī Ḥanīfa*, 168; al-Shīrāzī, *Ṭabaqāt al-fuqahāʾ*, ed. Iḥsān ʿAbbās (Beirut: Dār al-Rāʾid al-ʿArabī, 1970), 142; al-Suyūṭī, *Ṭabaqāt al-ḥuffāẓ*, 337; Ibn ʿAsākir, *Tārīkh Dimashq*, ed. ʿUmar ibn Gharāma al-ʿAmrawī (Beirut: Dār al-Fikr, 1995-2000), 5.369. It is difficult to know from these reports whether al-Ṭaḥāwī was acknowledged as the head of the Ḥanafīs by his contemporaries, or only recognized as such posthumously by biographers working with the mature *madhhab* tradition. The latter seems more likely, given the immature state of Ḥanafism in Egypt during al-Ṭaḥāwī's lifetime.
[74] Ibn Abī al-Wafāʾ, *al-Jawāhir al-muḍīya*, 1.167; al-Laknawī, *al-Fawāʾid al-bahīya*, 60.

"distinguish[ing] those qualified from those not qualified."[75] Al-Ṭaḥāwī's study under al-Muzanī and later under Ḥanafīs including Ibn Abī ʿImrān, Bakkār ibn Qutayba and others, was not undertaken as part of the transmission of a set canon, and his relationships with his Shāfiʿī and Ḥanafī teachers seem to have been personal rather than institutional. In this context, a student's decision to change *madhhab* affiliation is unlikely to have had the meaning that it would within the mature guild system. For al-Ṭaḥāwī, affiliation with a *madhhab* appears to have signified a personal loyalty to the doctrine of Abū Ḥanīfa, Abū Yūsuf and al-Shaybānī, albeit one that did not constrain him from expressing his opposition to their opinions in cases where his own legal reasoning led him to a different result.

Nor was al-Ṭaḥāwī, at the time of his affiliation with the Ḥanafīs, a major jurist whose change in loyalties would have represented a recanting of an established career and body of work. None of his own works are said to date from his time as a Shāfiʿī, although he did transmit al-Shāfiʿī's *al-Sunan al-maʾthūra* from al-Muzanī. If we accept accounts that al-Ṭaḥāwī's affiliation followed swiftly upon the arrival of Aḥmad ibn Abī ʿImrān in Egypt in 258/871-2, then al-Ṭaḥāwī was probably not yet twenty years old when he began to study with the Ḥanafīs.[76] At the very latest, al-Ṭaḥāwī's study with Ibn Abī ʿImrān predates his journey to Syria in 268-9/881-2, where he studied with the Ḥanafī judge Abū Khāzim (d. 292/904).[77] It is therefore difficult to agree with Tsafrir that

[75] Melchert, *Formation of the Sunni Schools of Law*, xvi. Other criteria that Melchert applies to determine the maturation of the *madhhab*s include the recognition of particular jurists as heads of the school in their time and the appearance of a commentary literature which served as a curriculum for transmitting the school's doctrine (xvi, 60).
[76] Ibn Yūnus, *Tārīkh*, 1.21.
[77] Ibn ʿAsākir, *Tārīkh Dimashq*, 5.367.

"al-Ṭaḥāwī's transfer to the Ḥanafī school must have shocked his contemporaries, particularly his family,"[78] although it certainly was shocking to later biographers.

It is probably only in hindsight, from the perspective of a mature *madhhab* tradition which viewed al-Ṭaḥāwī as having been the head of the Ḥanafīs in Egypt, that one young man's decision to study with the Ḥanafīs after having studied with the Shāfiʿīs appears particularly noteworthy. It may also be that the biographical tradition's enduring interest in al-Ṭaḥāwī's change of *madhhab* is due to the way in which these 'conversion' narratives dramatize al-Ṭaḥāwī's complex relationship with both *madhhab*s. Far from completely abandoning Shāfiʿī thought upon his move to Ḥanafism, al-Ṭaḥāwī justified Ḥanafī law using many of the elements of al-Shāfiʿī's traditionalism. An evaluation of al-Ṭaḥāwī's relationship with both Shāfiʿī and Ḥanafī thought is one of the major tasks of this study.

Although it is not possible to reconstruct al-Ṭaḥāwī's motivation in affiliating with the Ḥanafīs with any certainty from the biographical literature, we can draw some conclusions about the probable effects of his decision. While the majority of Egyptian Muslims of al-Ṭaḥāwī's time were Mālikīs and Shāfiʿīs, the *qāḍīs* appointed by the ʿAbbāsids were usually Ḥanafīs, and Egyptian Ḥanafism in general was closely associated with the central ʿAbbāsid government in Iraq.[79] When Aḥmad ibn Ṭūlūn (r. 254-70/868-84) established autonomous Ṭūlūnid rule in Egypt, he allowed the ʿAbbāsid-

[78] Tsafrir, "Abū Jaʿfar al-Ṭaḥāwī," 124.
[79] Nurit Tsafrir, *The History of an Islamic School of Law: The Early Spread of Ḥanafism* (Cambridge, Massachusetts: Islamic Legal Studies Program, Harvard Law School, 2004), 95-99.

appointed Ḥanafī judge Bakkār ibn Qutayba (d. 270/884) to remain in his post.[80] The next Ṭūlūnid *qāḍī* was likewise an Iraqi Ḥanafī, and the first Shāfiʿī *qāḍī* of Egypt, Abū Zurʿa, was not appointed until 284/897.[81]

In becoming a Ḥanafī, al-Ṭaḥāwī therefore aligned himself with the Egyptian judiciary, which was in turn closely aligned with the ʿAbbāsid governors of Egypt and, later, the Ṭūlūnids. His change in *madhhab* thus may have restored some of the access to power that his family had lost after his grandfather's execution and the caliph al-Muʿtaṣim's (r. 218-227/833-842) later abolishment of the *ʿaṭāʾ* (military salary) of the Egyptian *jund*, a move that put a final end to the already declining power of the *jund* families.[82] That al-Ṭaḥāwī may have had a political motive in becoming a Ḥanafī is suggested by his earliest biographer, Ibn Yūnus, who quotes al-Ṭaḥāwī as saying that, "when Aḥmad ibn Abī ʿImrān came to us as a *qāḍī* over Egypt, I became his disciple and adopted his doctrine."[83] In fact, Ibn Abī ʿImrān appears to have served briefly as a judge in Egypt only after the death of Bakkār ibn Qutayba in 270/884, more than a decade after Ibn Abī ʿImrān's probable arrival in Egypt, if he ever was in fact a judge at all.[84] By noting Ibn Abī ʿImrān's role as *qāḍī*, Ibn Yūnus draws a connection between the judiciary and al-Ṭaḥāwī's affiliation with the Ḥanafīs.

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[80] On Ṭūlūnid policy in appointing judges, see Mathieu Tillier, "The Qāḍīs of Fusṭāṭ—Miṣr under the Ṭūlūnids and the Ikhshīdids: The Judiciary and Egyptian Autonomy," *Journal of the American Oriental Society* 131, no. 2 (2011): 208-211.

[81] On Bakkār ibn Qutayba, his Ḥanafī successor Muḥammad ibn ʿAbda ibn Ḥarb, and the Shāfiʿī Abū Zurʿa, see al-Kindī, *The Governors and Judges of Egypt*, 505-518.

[82] Kennedy, "Egypt as a Province in the Islamic Caliphate," 84.

[83] Ibn Yūnus, *Tārīkh*, 1.21.

[84] For the timing of Ibn Abī ʿImrān's judgeship, see al-Dhahabī, *Siyar aʿlām al-nubalāʾ*, ed. Shuʿayb Arnāʿūṭ and Ḥusayn al-Asad (Beirut: Muʾassasat al-Risāla, 1981), 13.335. On his arrival in Egypt, see Melchert, *Formation of the Sunni Schools of Law*, 117-118.

The little we know of al-Ṭaḥāwī's subsequent career suggests that he succeeded in forging close ties with the Ḥanafī *qāḍīs* of Egypt and, through them, the Egyptian court. We have already observed that al-Ṭaḥāwī's first Ḥanafī teacher was Aḥmad ibn Abī ʿImrān, a Baghdādī Ḥanafī who came to Egypt in the company of a tax collector for the ʿAbbāsids and later may have served briefly as *qāḍī*.[85] In 268-9/881-2, al-Ṭaḥāwī traveled to Syria, where he studied with the Baghdādī Ḥanafī Abū Khāzim ʿAbd al-Ḥamīd ibn ʿAbd al-ʿAzīz (d. 292/904), who was then *qāḍī* of Damascus.[86] Another Ḥanafī *qāḍī* of Egypt, the Baṣran Bakkār ibn Qutayba (d. 270/883), also served as al-Ṭaḥāwī's teacher in *ḥadīth* and perhaps in *fiqh*.[87] In his professional life, al-Ṭaḥāwī served as *kātib* (secretary) for both Bakkār ibn Qutayba and for his successor, the Ḥanafī *qāḍī* Muḥammad ibn ʿAbda ibn Ḥarb (277 or 278/890 or 891-283/896). He was also the latter's deputy (*nāʾib*).[88]

In addition, various literary sources portray al-Ṭaḥāwī as closely connected with Aḥmad ibn Ṭūlūn: one anecdote shows al-Ṭaḥāwī convincing Ibn Ṭūlūn to restore to him the title on one of his grandfather's seized estates in Upper Egypt,[89] while another suggests that al-Ṭaḥāwī's journey to Damascus was undertaken at Ibn Ṭūlūn's behest in order to confirm a technical detail of a charitable trust (*waqf*) for a hospital.[90] Elsewhere,

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[85] Al-Khaṭīb al-Baghdādī, *Tārīkh Baghdād wa-dhuyūluhu*, ed. Muṣṭafā ʿAbd al-Qādir ʿAṭā (Beirut: Dār al-Kutub al-ʿIlmīya, 1996), 5.349.
[86] Ibn ʿAsākir, *Tārīkh Dimashq*, 5.367; al-Ṣaymarī, *Akhbār Abī Ḥanīfa*, 168; al-Kindī, *Governors and Judges of Egypt*, 505.
[87] Ibn Abī al-Wafāʾ, *al-Jawāhir al-muḍīya*, 1.165;
[88] Ibn Abī al-Wafāʾ, *al-Jawāhir al-muḍīya*, 1.165. al-Dhahabī, *Tadhkirat al-ḥuffāẓ*, ed. Zakarīyā ʿUmayrāt (Beirut: Dār al-Kutub al-ʿIlmīya, 1998), 3.22; Ibn Ḥajar, *Lisān al-mīzān*, 1.417.
[89] Abū Sālim Muḥammad ibn Ṭalḥa, *al-ʿIqd al-farīd lil-malik al-saʿīd* (Cairo: al-Maṭbaʿa al-Wahbīya, 1866), 57-8.
[90] Al-Mustaʿṣimī, *Majmūʿat ḥikam wa ādāb*, in *Thalāth rasāʾil* (Istanbul: Maṭbaʿat al-Jawāʾib, 1881), 74.

al-Ṭaḥāwī is described as part of Ibn Ṭūlūn's retinue (*min khāṣṣatihi*).[91] Al-Ṭaḥāwī's close ties to the Ṭūlūnids also caused him to be suspected of corruption: in the *Fihrist*, Ibn al-Nadīm reports al-Ṭaḥāwī composed a work at Ibn Ṭūlūn's behest justifying the latter's improper marriage to a slave girl.[92] Al-Ṭaḥāwī's ties to the judiciary also made him vulnerable to court politics. Ibn Zūlāq reports that when the *qāḍī* Muḥammad ibn ʿAbda hid in his home for ten years in order to avoid persecution from the new Ṭūlūnid ruler, Hārūn (r. 283/896-292/904), the governor instead pursued Ibn ʿAbda's associates, imprisoning al-Ṭaḥāwī for a time.[93]

After the restoration of ʿAbbāsid rule in Egypt in 292/905, al-Ṭaḥāwī appears to have retained his close ties to the judiciary, even as the *qāḍī*s sent from Baghdad began to represent a wider range of *madhhab*s. The Shāfiʿī *qāḍī* Abū ʿUbayd ʿAlī ibn al-Ḥusayn ibn Ḥarb (293/906-311/24) was so eager to appoint al-Ṭaḥāwī as a court witness (*shāhid*) that he took advantage of the absence of other court witnesses on the Hajj in 306/919 to make the appointment over their objections.[94] When the ʿAbbāsid ruler replaced Abū ʿUbayd as *qāḍī* with the Baghdādī ʿAbd Allāh ibn Ibrāhīm ibn Mukram, the latter wrote to al-Ṭaḥāwī and three other important Egyptians, asking them to select a deputy so that he would not need to come to Egypt himself.[95] Ibn Zūlāq reports anecdotes about the deference shown to al-Ṭaḥāwī by a number of *qāḍīs* including the Ḥanafī ʿAbd al-

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[91] Khayr al-Dīn al-Ziriklī, *al-Aʿlām qāmūs tarājum* (Beirut: 1969), 197. Ibn Ḥajar also transmits an anecdote from Ibn Zūlāq in which al-Ṭaḥāwī gains the attention of Khumārawayh (r. 270-282/884-896), the second Ṭūlūnid ruler, by adding a prayer for the ruler's strength and longevity to a document he was writing. As a result of this attention, al-Ṭaḥāwī claims, his colleagues became jealous of him (Ibn Ḥajar, *Lisān al-mīzān*, 1.420).
[92] Ibn al-Nadīm, *Fihrist*, vol. 2, pt. 1.31.
[93] Al-Kindī, *Governors and Judges of Egypt*, 517-518.
[94] Ibn Ḥajar, *Lisān al-mīzān*, 1.421. Ibn Ḥajar reports that al-Ṭaḥāwī's rivals objected to his being appointed court witness because it would add to his already considerable influence as a leading scholar.
[95] Al-Kindī, *Governors and Judges of Egypt*, 532.

Raḥmān ibn Isḥāq al-Jawharī (313/925-314/926), the Shāfiʿī ʿAbd Allāh ibn Aḥmad ibn Zabr (317/929), and the Mālikī Aḥmad ibn Ibrāhīm ibn Ḥammād (321/933-322/934).[96]

In addition to his activities as a jurist, al-Ṭaḥāwī was also an active traditionist who both collected *ḥadīth*s and practiced *isnād* criticism.[97] As the Ṭūlūnid court became a major cultural center in the second half of the 3rd/9th century, Egypt drew traditionists from across the Islamic world. As a result, al-Ṭaḥāwī was able to collect *ḥadīth*s from important traditionists without making the multiple study journeys typical of many of the *ahl al-ḥadīth*.[98] Al-Ṭaḥāwī was also unusual for a Ḥanafī of his time in that he consistently adduced the *ḥadīth*s he collected in support of his legal positions in works including *Aḥkām al-Qurʾān*, *Sharḥ maʿānī al-āthār* and *Sharḥ mushkil al-āthār*.[99] Indeed,

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[96] Ibn Ḥajar, *Lisān al-mīzān*, 1.422.

[97] Scholars including al-Bayhaqī (d. 458/1066) and Ibn Taymīya (d. 728/1328) would later question al-Ṭaḥāwī's skill and sincerity in *rijāl* criticism, suggesting that he was unscrupulous in accepting the *isnād*s of reports that supported his own opinions, while finding ways to reject any that disproved his legal conclusions (al-Bayhaqī, *Maʿrifat al-sunan wa-l-āthār*, ed. ʿAbd al-Muʿṭī Amīn Qalʿajī (Cairo: Dār al-Waʿī, 1991), 1.219; Ibn Taymīya, *Minhāj al-sunna al-nabawīya fī naqḍ kalām al-Shīʿa al-Qadarīya*, ed. Muḥammad Rashād Sālim (Riyadh: Jāmaʿa Muḥammad ibn Saʿūd, 1986), 8.195). The evaluation of these claims is beyond the scope of this study; recent Arabic-language studies of al-Ṭaḥāwī devote considerable energy to refuting all aspersions on al-Ṭaḥāwī's character or skill as a *ḥadīth* critic (e.g., ʿAbd al-Bāqī, *al-Imām Abū Jaʿfar al-Ṭaḥāwī wa-atharuhu fī naqd al-ḥadīth*, 90ff; Aḥmad, *Abū Jaʿfar al-Ṭaḥāwī al-imām al-muḥaddith al-faqīh*, 141ff; ʿAbd al-Majīd, *al-Imām al-Ṭaḥāwī muḥaddithan*, 193ff).

[98] Ibn Abī al-Wafāʾ, *al-Jawāhir al-muḍīya*, 1.165; al-Laknawī, *al-Fawāʾid al-bahīya*, 60. Al-Ṭaḥāwī did collect *ḥadīth*s in Jerusalem, Gaza, Ashkelon and Damascus during his sole period of travel outside of Egypt in 268-69/881-82 (Ibn Ḥajar, *Lisān al-mīzān*, 1.416), although the trip was not undertaken specifically for that purpose. Lists of traditionists from whom al-Ṭaḥāwī transmitted and who transmitted from him can be found in Ibn Ḥajar, *Lisān al-mīzān*, 1.416, 418; al-Dhahabī, *Tadhkirat al-ḥuffāẓ*, 3.21; al-Suyūṭī, *Ṭabaqāt al-ḥuffāẓ*, 337; Ibn al-Nuqṭa, *al-Taqyīd li-maʿrifat ruwāt al-sunan wa-l-masānīd*, ed. Kamāl Yūsuf al-Ḥūt (Beirut: Dār al-Kutub al-ʿIlmīya, 1998), 174-5; Ibn Qudāma al-Maqdisī, *Ṭabaqāt ʿulamāʾ al-ḥadīth*, ed. Akram Būshī (Beirut: Muʾassasat al-Risāla, 1989), 2.517; Ibn Abī al-Wafāʾ, *al-Jawāhir al-muḍīya*, 1.165-6; Ibn ʿAsākir, *Tārīkh Dimashq*, 5.367.

[99] In contrast, al-Ṭaḥāwī rarely adduces *ḥadīth*s or provides other explanations of his reasoning in his epitome of Ḥanafī *fiqh*, *al-Mukhtaṣar*. The stylistic contrast between *al-Mukhtaṣar* and al-Ṭaḥāwī's works of practical hermeneutics named above suggests that Ya'akov Meron drew too strong a conclusion when he pointed to al-Ṭaḥāwī's *Mukhtaṣar* as evidence that "Ḥanafī law in its Ancient period does not offer examples of highly developed legal thought similar to that apparent in contemporary Jewish law" ("The Development of Legal Thought in Ḥanafī Texts," 77). Although Meron is correct in observing that al-Ṭaḥāwī's *Mukhtaṣar* does not display the detailed legal reasoning characteristic of later Islamic legal handbooks, the briefest perusal of al-Ṭaḥāwī's works of practical hermeneutics demonstrates that the

al-Ṭaḥāwī's most significant and lasting contribution to Ḥanafism was to provide established Ḥanafī *fiqh* with a foundation in Prophetic *ḥadīth*.[100] The biographical tradition dramatizes al-Ṭaḥāwī's unusual joining of Ḥanafī *fiqh* and *ḥadīth* study in the form of an anecdote that Ibn Ḥajar transmits from Ibn Zūlāq (d. 387/997). After attending the study circle of the *qāḍī* Muḥammad ibn ʿAbda, a mysterious but important stranger asks al-Ṭaḥāwī and a Shāfiʿī jurist, Abū Saʿīd al-Fāryābī, to remain behind. When the stranger tests the two jurists by asking about an obscure *isnād*, al-Fāryābī is reduced to silence, while al-Ṭaḥāwī recites the *isnād* and accompanying *ḥadīth* flawlessly. In response, the mysterious stranger exclaims, "Don't you know what you have just said? …This evening I have seen you among the jurists (*fuqahāʾ*) acting in their sphere, and now I see you acting in the sphere of the traditionists (*ahl al-ḥadīth*). How few are those who combine the two!"[101]

Although later biographers would consider al-Ṭaḥāwī the head of the Egyptian Ḥanafīs of his day,[102] he had no important students in law, perhaps reflecting the weak roots of Ḥanafism in Egypt at the time. Very few jurists are reported to have studied under him, although biographers record a number of those who transmitted *ḥadīth* from

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absence of explanation is a characteristic of the *Mukhtaṣar* genre in al-Ṭaḥāwī's time, not a characteristic of his style of legal thought.

[100] I discuss this point in detail in Chapter One, "Qurʾān and Sunna." See also Melchert, "Traditionist-Jurisprudents," 397-398, for the roles of both al-Ṭaḥāwī and Ibn Shujāʿ al-Thaljī (d. 266/880) in this process.

[101] Ibn Ḥajar, *Lisān al-mīzān*, 1.419. For a shortened version of the same anecdote, see al-Dhahabī, *Tadhkirat al-ḥuffāẓ*, 3.22.

[102] Al-Laknawī, *al-Fawāʾid al-bahīya*, 62; al-Ṣaymarī, *Akhbār Abī Ḥanīfa*, 168; al-Shīrāzī, *Ṭabaqāt al-fuqahāʾ*, 142; al-Suyūṭī, *Ṭabaqāt al-ḥuffāẓ*, 337; Ibn ʿAsākir, *Tārīkh Dimashq*, 5.369. Given the incomplete institutionalization of Ḥanafism during al-Ṭaḥāwī's lifetime, it is likely only in retrospect, taking into account his stature and intellectual output, that he could be considered the head of the Egyptian Ḥanafīs.

him.[103] His few students in law include his own son, Abū al-Ḥasan ʿAlī ibn Aḥmad al-Ṭaḥāwī (fl. 350/961-2).[104] The only other jurists reported to be al-Ṭaḥāwī's students in law in Ibn Abī al-Wafāʾ's *al-Jawāhir al-muḍīya* are the *qāḍī* Muḥammad ibn Badr ibn ʿAbd al-ʿAzīz al-Ṣayrafī (d. 330/941), Abū Bakr Aḥmad ibn Muḥammad al-Damaghānī (n.d.) and Saʿīd ibn Muḥammad al-Bardaʿī (n.d.).[105] Al-Ṭaḥāwī's importance within the Ḥanafī *madhhab* instead derives from his works, a number of which attracted commentary traditions, discussed below. Al-Ṭaḥāwī died in Egypt in Dhū al-Qaʿda 321/933, most likely in his early eighties.[106] He is buried in a mausoleum in the Qarāfa cemetery of present-day Cairo.[107]

An Overview of al-Ṭaḥāwī's Works

The substantial body of extant works available to scholars studying al-Ṭaḥāwī distinguishes him from other late 3rd/9th and early 4th/10th-century jurists, as the briefest perusal of Sezgin's *Geschichte des arabischen Schrifttums* will confirm.[108] The most complete catalog of al-Ṭaḥāwī's works in the biographical tradition is found in *al-Jawāhir al-muḍīya* of Ibn Abī al-Wafāʾ (d. 775/1373), which is the source for titles listed

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103 See p. 35n98 above.

104 Ibn Ḥajar, *Lisān al-mīzān*, 1.418; Ibn Abī al-Wafāʾ, *al-Jawāhir al-muḍīya*, 1.166, 2.156.

105 Ibn Abī al-Wafāʾ, *al-Jawāhir al-muḍīya*, 2.320, 2.193, 1.401. The latter is reported to be one of the disciples (*aṣḥāb*) of al-Ṭaḥāwī; it is not entirely clear whether he studied law or only *ḥadīth* with him.

106 Ibn Yūnus, *Tārīkh*, 1.22; al-Samʿānī, *al-Ansāb*, 8.218; Ibn Kathīr, *al-Bidāya wa-l-nihāya*, ed. ʿAlī Muḥammad Muʿawwaḍ and ʿĀdil Aḥmad ʿAbd al-Mawjūd (Beirut: Dār al-Kutub al-ʿIlmīya, 2005), 11.187; al-Dhahabī, *Tadhkirat al-ḥuffāẓ*, 3.22. Ibn al-Nadīm disagrees, stating that al-Ṭaḥāwī died in 322/934 (*Fihrist*, vol. 2, pt. 1.31).

107 Ibn Khallikān, *Wafayāt al-aʿyān*, 1.71. Muḥammad Zāhid al-Kawtharī provides a description of and directions to al-Ṭaḥāwī's mausoleum according to modern geography (*al-Ḥāwī fī sīrat al-Imām al-Ṭaḥāwī* (Cairo: Al-Maktaba al-Azharīya lil-Turāth, 1995), 42).

108 Sezgin's entry on al-Ṭaḥāwī can be found in *Geschichte des arabischen Schrifttums* (Leiden: Brill, 1967-1994), 1.439-442; for other jurists of the late 3rd/9th and early 4th/10th centuries, see 1.433ff.

below except where otherwise indicated.[109] In the following pages I give a brief overview of all of the works attributed to al-Ṭaḥāwī, both lost and extant, in order to suggest the wide scope of his intellectual activity in the fields of theology, exegesis, history/biography, *ḥadīth* and law. The three works that are the subject of this study, however, transcend individual categories such as law, *ḥadīth* or exegesis. *Sharḥ maʿānī al-āthār* and *Sharḥ mushkil al-āthār* can be considered works on both law and *ḥadīth*, while *Aḥkām al-Qurʾān* has been described as a specialized form of exegesis. What unites all three works and distinguishes them from al-Ṭaḥāwī's other extant compositions is the kind of intellectual activity they represent—an activity that I have termed practical hermeneutics.

Theology

Al-Ṭaḥāwī's well-known *ʿAqīda* (Creed), along with that of his contemporary al-Ashʿarī (d. 324/935-6), represents one of the earliest statements of Sunni belief of undoubted authenticity.[110] The *ʿAqīda* remains the focus of an active commentary tradition today.[111] Two short theological treatises (or perhaps two versions of the same

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[109] Ibn Abī al-Wafāʾ, *al-Jawāhir al-muḍīya*, 1.165-7. The earliest substantial list of al-Ṭaḥāwī's works is found in Ibn al-Nadīm's *Fihrist*, vol. 2, pt. 1.31-2; it contains all of al-Ṭaḥāwī's authenticated works that are extant today, as well as some lost works. Ibn Abī al-Wafāʾ's list contains almost all of the works found in Ibn al-Nadīm and includes approximately ten additional titles. These appear to be minor works, except for *al-Tārīkh al-kabīr* and *al-Tafsīr*, both of which the biographical tradition suggests were major compendiums. I have not identified Ibn Abī al-Wafāʾ's source for these additional titles. Other extensive lists of al-Ṭaḥāwī's works can be found in al-Laknawī, *al-Fawāʾid al-bahīya*, 60 and Qinālīzādah, *Ṭabaqāt al-Ḥanafīya*, 2.26, but these appear to be derivative of Ibn Abī al-Wafāʾ.

[110] On both, see W. Montgomery Watt, *Islamic Creeds: A Selection* (Edinburgh: Edinburgh University Press, 1994), 41-56. Curiously, Ibn Abī al-Wafāʾ does not include the *ʿAqīda* in his list of al-Ṭaḥāwī's works; however, it is mentioned by Ibn al-Nadīm, *Fihrist*, vol. 2, pt. 1.32.

[111] The commentaries on the *ʿAqīda* are too numerous to list here; the most important of them is that of Ibn Abī al-ʿIzz al-Ḥanafī (d. 792/1390), *Sharḥ al-ʿAqīda al-Ṭaḥāwīya*, ed. ʿAbd Allāh ibn ʿAbd al-Muḥsin al-Turkī and Shuʿayb al-Arnāʾūṭ (Beirut: Muʾassasat al-Risāla, 1987). A number of medieval and modern

treatise) bound together and attributed to al-Ṭaḥāwī are held by the Princeton University Libraries, although they remain unauthenticated and are not reported in the biographical tradition.[112] Al-Ṭaḥāwī may also have written a heresiography entitled *Kitāb al-niḥal wa-aḥkāmihā wa-ṣifātihā wa-ajnāsihā* (Religious Sects: Their Laws, Characteristics and Types).[113]

Biography/History

Al-Ṭaḥāwī's major historical and biographical work, *al-Tārīkh al-kabīr* (The Comprehensive Chronicle), is no longer extant, but was a source (perhaps indirectly) for Ibn Abī al-Wafāʾ's *al-Jawāhir al-muḍīya*.[114] Also lost are al-Ṭaḥāwī's *Manāqib Abī Ḥanīfa* (Virtues of Abū Ḥanīfa) and his *Radd ʿalā Abī ʿUbayd fīmā akhṭaʾa fīhā* (A Refutation of Abū ʿUbayd's Errors), which is about the *Kitāb al-nasab* (Genealogy) of Abū ʿUbayd al-Qāsim ibn Sallām (d. ca. 224/838).[115]

Exegesis

Al-Ṭaḥāwī is reported to have written one thousand pages on the Qurʾān. That work may be identical to the unauthenticated manuscript entitled *Tafsīr al-Qurʾān*

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commentaries have been gathered in the three-volume *Jāmiʿ al-shurūḥ wa-l-taʿlīqāt al-ʿilmīya ʿalā al-ʿAqīda al-Ṭaḥāwīya* (Cairo: Dār Bidāya lil-Iʿlām wa-l-Nashr, 2010).

[112] Al-Ṭaḥāwī, "Hādhā kitāb al-Ṭaḥāwī fī uṣūl al-dīn," ms., Princeton, Arabic, Third Series, no. 288. Fol. 1a-6b., 1714; al-Ṭaḥāwī, "Kitāb al-Ṭaḥāwī li-uṣūl al-dīn," ms., Princeton, Arabic, Third Series, no. 288. Fol. 108a-125b., 1714.

[113] Al-Kawtharī mentions the work in *al-Ḥāwī fī sīrat al-Imām al-Ṭaḥāwī*, 38, without citing his source; I have not located any mention of it in the earlier biographical tradition.

[114] On borrowings from *al-Tārīkh al-kabīr* in Ibn Abī al-Wafāʾ, see Tsafrir, "Semi-Ḥanafīs and Ḥanafī Biographical Sources," 74.

[115] Al-Ṭaḥāwī nonetheless cites Abū ʿUbayd's *Kitāb al-nasab* in *Sharḥ mushkil al-āthār*; see below, p. 49n161.

(Exegesis of the Qurʾān) discovered at the *Jāmiʿ al-Shaykh* in Alexandria bearing al-Ṭaḥāwī's name and beginning with Q 8/*al-Anfāl*.[116] The partially extant *Aḥkām al-Qurʾān* (The Legal Rulings of the Qurʾān) has been described in other studies as a specialized form of Qurʾānic exegesis, because it systematically expounds the legal rulings that can be derived from each legal verse in conjunction with other sources of the law.[117] As I have argued above,[118] however, labeling al-Ṭaḥāwī's *Aḥkām al-Qurʾān* a work of *tafsīr* does not do justice to its hermeneutical ambitions, and I treat it in this study as a work of practical hermeneutics.

Ḥadīth

Three of al-Ṭaḥāwī's major works, *Sharḥ maʿānī al-āthār* (An Elucidation of the Meaning of Reports), *Sharḥ mushkil al-āthār* (An Elucidation of Problematic Reports) and *Aḥkām al-Qurʾān* (The Legal Rulings of the Qurʾān), all contain substantial discussion of the authority of Prophetic *ḥadīth* and varying degrees of discussion of the reliability of particular *ḥadīth*s and transmitters. The first two are fully extant and have been published in multiple editions;[119] the latter has been described above under

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[116] Institute of Arabic Manuscripts, *Fihris al-makhṭūṭāt al-muṣawwara*, ed. Fuʾād Sayyid (Cairo: Dār al-Riyāḍ, 1954-1963), 1.29-30.

[117] The first two of the original four volumes of this work are extant in unicum. Saʿd al-Dīn Ūnāl, the text's modern editor, notes that the final two volumes appear to have been lost or stolen from the library in the Amasya province of northeastern Turkey where the manuscript was found, based on the fact that the catalog numbers indicate four volumes (Ūnāl, "Muqaddimat al-taḥqīq," 11). Unlike a traditional exegesis, however, it is organized according to the chapters of a *fiqh* work, not the chapters of the Qurʾān. The first volume contains chapters on *ṣalāt* (prayer) to *iʿtikāf* (seclusion in a mosque), while the second volume begins with the *Ḥajj* (pilgrimage) and ends with *mukātaba* (contract of manumission). I have not found mention of a commentary tradition for *Aḥkām al-Qurʾān*, although the work is widely reported in the biographical tradition.

[118] See above, p. 16.

[119] *Sharḥ maʿānī al-āthār* was first published in two volumes in India in the late 19th century (Lucknow: Al-Maṭbaʿa al-Muṣṭafāʾī, 1882-1883). This study uses the indexed edition, al-Ṭaḥāwī, *Sharḥ maʿānī al-āthār*,

"Exegesis." *Sharḥ maʿānī al-āthār* and *Sharḥ mushkil al-āthār* were influential within the Ḥanafī tradition for their justification of Ḥanafī law on the basis of Prophetic *ḥadīth*.

Sharḥ maʿānī al-āthār in particular attracted a number of commentaries and abridgements. The Mamluk Sulṭān al-Muʾayyad (r. 815/1412-824/1421) created a chair dedicated to teaching *Sharḥ maʿānī al-āthār* upon building the Muʿayyadīya Mosque in Cairo.[120] The chair was given to the Ḥanafī Badr al-Dīn al-ʿAynī (d. 855/1451), who composed two commentaries on the book.[121] Other scholars who wrote commentaries on or abridgements of *Sharḥ maʿānī al-āthār* include Ibn Rushd al-Jadd (d. 520/1126) and al-Ṭaḥāwī's biographer, the Ḥanafī Ibn Abī al-Wafāʾ.[122] While *Sharḥ mushkil al-āthār* did not attract a similar commentary tradition, it was abridged by the Andalusian Mālikī jurist Abū al-Walīd al-Bājī (d. 474/1081) and then further abridged by Yūsuf ibn Mūsā ibn Muḥammad al-Malaṭī (d. 803/1400),[123] a Ḥanafī judge active in Cairo and one of the teachers of Badr al-Dīn al-ʿAynī. Another abridgement is attributed to Ibn Rushd al-Jadd.[124]

A very short treatise on *ḥadīth* terminology by al-Ṭaḥāwī, *al-Taswiya bayn ḥaddathanā wa akhbaranā* (The Equivalence of "He Transmitted [Directly] to Us" and

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ed. Muḥammad Sayyid Jad al-Ḥaqq, Muḥammad Zuhrī al-Najjār, and Yūsuf ʿAbd al-Raḥmān al-Marʿashlī, 5 vols. in 4 (Beirut: ʿĀlam al-Kutub, 1994). The earliest printed edition of *Sharḥ mushkil al-āthār* (Hyderabad: Maṭbaʿa Majlis Dāʾirat al-Maʿārif al-Niẓāmīya al-Kāʾina fī al-Hind, 1914-1915) contains about half of the work. The full text can be found in al-Ṭaḥāwī, *Sharḥ mushkil al-āthār*, ed. Shuʿayb al-Arnāʾūṭ, 16 vols. (Beirut: Muʾassasat al-Risāla, 1994), which is the edition used in this study..

[120] Al-Kawtharī, *al-Ḥāwī*, 33-34.

[121] Badr al-Dīn al-ʿAynī, *Maghānī al-akhyār fī sharḥ asāmī rijāl Maʿānī al-āthār*, ed. Muḥammad Ḥasan Muḥammad Ḥasan Ismāʿīl (Beirut: Dār al-Kutub al-ʿIlmīya, 2006); al-ʿAynī, *Nukhab al-afkār fī tanqīh mabānī al-akhbār fī Sharḥ maʿānī al-āthār*, ed. Abū Tamīm Yāsir b. Ibrāhīm (Beirut: Dār al-Nawādir, 2008).

[122] For a list of commentaries and abridgements of *Sharḥ maʿānī al-āthār*, see Ūnāl, "Muqaddimat al-taḥqīq," 43-44.

[123] Sezgin, *Geschichte*, 1.440. Yūsuf ibn Mūsā al-Ḥanafī's abridgement has been published as *al-Muʿtaṣar min al-Mukhtaṣar min Sharḥ mushkil al-āthār* (Beirut: ʿĀlam al-Kutub, 1976).

[124] Ūnāl, "Muqaddimat al-taḥqīq," 43.

"He Informed Us"), is also extant.[125] In it, al-Ṭaḥāwī argues against traditionists who hold that '*ḥaddathanā*' exclusively indicates a *ḥadīth* recited by the transmitter, while '*akhbaranā*' should be used for cases in which the recipient of a *ḥadīth* recites it to its original transmitter, who then confirms that the recitation was correct. Instead, he argues, the Qurʾān and Sunna use the verbs *akhbara* and *ḥaddatha* interchangeably, and so too may *ḥadīth* transmitters.

In *Sharḥ mushkil al-āthār*, al-Ṭaḥāwī also references another work on *ḥadīth* criticism, now lost, entitled *Naqḍ al-Mudallisīn lil-Karabīsī* (Refutation of the Book Entitled *Those Who Conceal Defects in the Transmission of Prophetic Reports* by al-Karabīsī).[126] We have also already had occasion above to note that al-Ṭaḥāwī is the transmitter of al-Shāfiʿī's *al-Sunan* through al-Muzanī. Finally, the Khuda Baksh Library in Patna, India holds a manuscript attributed to al-Ṭaḥāwī entitled *Ṣaḥīḥ al-āthār*;[127] however, no biographer attributes such a work to al-Ṭaḥāwī. To the best of my knowledge, no one has yet authenticated the manuscript or described its contents.

Law

A number of al-Ṭaḥāwī's major legal works are both extant and published. The three works that form the subject of this study, *Sharḥ maʿānī al-āthār*, *Sharḥ mushkil al-*

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[125] Al-Ṭaḥāwī, *al-Taswiya bayn ḥaddathanā wa akhbaranā,* in *Khams rasāʾil fī ʿulūm al-ḥadīth*, ed. ʿAbd al-Fattāḥ Abū Ghuddah (Beirut: Dār al-Bashāʾir al-Islamīya, 2002). This treatise does not appear in Ibn Abī al-Wafāʾ's catalog, but is mentioned by Ibn al-Nadīm (*Fihrist*, vol. 2, pt. 1.32).

[126] Al-Ṭaḥāwī, *Mushkil*, 6.382. In *Sharḥ mushkil al-āthār*, al-Ṭaḥāwī merely indicates that he wrote a book on al-Karabīsī; the longer title given above is taken from the biographical tradition. Al-Karabīsī (d. 245/859 or 248/862) was a traditionist and jurist initially associated with the Ḥanafīs who later became associated with the Shāfiʿīs. His book *al-Mudallisūn* is reported to criticize the traditionist and Qur'an reader al-Aʿmash (d. 148/765).

[127] Carl Brockelmann, *Geschichte der arabischen Litteratur* (Leiden: Brill, 1943), G I, 173; Khuda Bakhsh H.L. No. 548, Catalog No. 308. Law.

āthār and *Aḥkām al-Qurʾān*, treat law as well as *ḥadīth*. Al-Ṭaḥāwī's *al-Mukhtaṣar fī-l-fiqh* (Concise Manual of Legal Doctrine) represents the first Ḥanafī *mukhtaṣar*, and it attracted numerous commentaries from later Ḥanafīs including al-Jaṣṣāṣ (d. 370/980-981) and al-Sarakhsī (d. ca. 483/1090).[128] In *al-Mukhtaṣar*, al-Ṭaḥāwī sets out the rules of Ḥanafī positive law almost entirely without justification or explanation, although he does state his own opinion on many of the legal questions disagreed upon by earlier Ḥanafīs.[129] His lengthy *Ikhtilāf al-ʿulamāʾ* (Disagreements of the Jurists), extant only in an abridgement by al-Jaṣṣāṣ, records controversies among Sunni jurists of all schools and preserves important opinions of early jurists.[130] Although al-Jaṣṣāṣ's abridgement contains occasional justifications of legal positions by al-Ṭaḥāwī, it, too, primarily catalogs rules of positive law propounded by different jurists and schools. Because *al-Mukhtaṣar* and *Ikhtilāf al-ʿulamāʾ* are concerned with legal rules rather than how those rules were reached, they feature only rarely in this study.

Al-Ṭaḥāwī is also important as the author of an early Ḥanafī *Shurūṭ* (Contract Formulary) work. Jeanette Wakin has edited, analyzed and translated the chapters on sales of al-Ṭaḥāwī's partially extant *al-Shurūṭ al-kabīr* (Comprehensive Contract

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[128] A list of commentaries is found in Kâtip Çelebi, *Kashf al-ẓunūn*, 2.1627. Al-Jaṣṣāṣ's commentary has been published as *Sharḥ Mukhtaṣar al-Ṭaḥāwī fī al-fiqh al-Ḥanafī*, ed. ʿIṣmat Allāh ʿInāyat Allāh Muḥammad et al. (Beirut: Dār al-Bashāʾir al-Islāmīya, 2010). Kâtip Çelebi reports that al-Ṭaḥāwī composed both extended and concise versions of this work (*Kashf al-ẓunūn*, 2.1627); the one-volume extant work is the concise *Mukhtaṣar*.

[129] Al-Ṭaḥāwī's disinterest in resolving differences of opinion or establishing a hierarchy of authority among early Ḥanafī figures may be contrasted with the later *Mukhtaṣar* genre of the 7th/13th century, which Mohammad Fadel describes as working to classify systematically the authoritative opinions of the school ("The Social Logic of *Taqlīd* and the Rise of the *Mukhtaṣar*," *Islamic Law and Society* 3, no. 2 (1996): 215-219).

[130] Al-Jaṣṣāṣ, *Mukhtaṣar Ikhtilāf al-ʿulamāʾ*, ed. ʿAbd Allāh Nadhīr Aḥmad (Beirut: Dār al-Bashāʾir al-Islāmīya, 1995).

Formulary) in her *Function of Documents in Islamic Law*;[131] two additional fragments of the work have been edited by Schacht.[132] In contrast, *al-Shurūṭ al-ṣaghīr* (Concise Contract Formulary) is fully extant and has been published with footnotes incorporating the existing fragments of *al-Shurūṭ al-kabīr*.[133] The *Shurūṭ al-awsaṭ* (Medium Contract Formulary) mentioned by Ibn Abī al-Wafāʾ and others is now lost.

The biographical tradition also attributes many other legal works to al-Ṭaḥāwī that are no longer extant. His *Sharḥ al-Jāmiʿ al-kabīr* (Commentary on the Major Compendium) and *Sharḥ al-Jāmiʿ al-ṣaghīr* (Commentary on the Minor Compendium) refer to two of the major works of Muḥammad ibn al-Ḥasan al-Shaybānī (d. 189/805). Ibn al-Nadīm lists works entitled *al-Maḥādīr wa-l-sijjilāt* (Minutes of the Court and Records of the Qāḍī's Judgments), *al-Waṣāya* (Bequests) and *al-Farāʾiḍ* (Inheritance Shares) in his entry on al-Ṭaḥāwī. However, these are most likely identical to chapters with those titles found within al-Ṭaḥāwī's larger compendiums.[134] Ibn Abī al-Wafāʾ also reports that al-Ṭaḥāwī wrote "a book based upon the "Chapter on Coitus Interruptus as a Technique of Birth Control" (*kitāb aṣluhu kitāb al-ʿazl*). Other lost legal works include *al-Nawādir al-fiqhīya* (Legal Rarities), *Ḥukm arāḍī Makka* (The Legal Status of the Lands Surrounding Mecca), *Qasm al-fayʾ wa-l-ghanāʾim* (The Division of Spoils and Booty), *Ikhtilāf al-riwāyāt ʿalā madhhab al-Kufīyīn* (Divergent Legal Opinions of Kūfan

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[131] *The Function of Documents in Islamic Law*, ed. Jeanette Wakin (Albany: State University of New York Press, 1972).
[132] Al-Ṭaḥāwī, *Das Kitāb adkār al-ḥuqūq war-ruhūn aus dem al-Ǧāmiʿ al-kabīr fiš-šurūṭ des Abū Ǧaʿfar Aḥmad ibn Muḥammad aṭ-Ṭaḥāwī*, ed. Joseph Schacht (Heidelberg: C. Winter, 1927) and al-Ṭaḥāwī, *Das Kitāb aš-šufʿa aus dem al-Gāmiʿ al-kabīr fiš-šurut des Abū Ǧaʿfar Aḥmad ibn Muḥammad at-Ṭaḥāwī*, ed. Joseph Schacht (Heidelberg: C. Winter, 1930).
[133] Al-Ṭaḥāwī, *al-Shurūṭ al-ṣaghīr, mudhayyalan bi-mā ʿuthira ʿalayhā min al-Shurūṭ al-kabīr*, ed. Rawḥī Awzān (Baghdad: Dīwān al-Awqāf, 1974).
[134] The first three are chapters in *al-Shurūṭ al-ṣaghīr*; the latter two are found in *al-Mukhtaṣar*.

School), *al-Ashriba* ((Alcoholic) Beverages)[135] and *al-Radd ʿalā ʿĪsā ibn Abān* (Refutation of ʿĪsā ibn Abān).[136]

Lost Works of Undetermined Subject

Ibn Abī al-Wafāʾ reports that al-Ṭaḥāwī wrote a work called *al-Nawādir wa-l-ḥikāyāt* (Rarities and Recountings). In *al-Ḥāwī fī sīrat al-Imām al-Ṭaḥāwī*, al-Kawtharī mentions a work by al-Ṭaḥāwī on *rizzīya* (calamities) for which he gives no source.[137] Ismāʿīl Pāshā also attributes works entitled *al-Khiṭābāt* (Discourses) and *al-Mishkāt* (The Lamp) to al-Ṭaḥāwī, likewise giving no indication of the source for his citations.[138]

Authorship and Composition

In the course of this study I reconstruct al-Ṭaḥāwī's legal thought by bringing together passages from his three hermeneutical works. My approach rests upon the assumption that all of these texts can meaningfully be said to be the work of a single jurist, an assumption that Norman Calder has questioned by labeling *Sharḥ maʿānī al-āthār* and *Sharḥ mushkil al-āthār* as "school texts, accumulating over time, and subject

[135] Al-Kawtharī mentions *Kitāb al-ashriba* in *al-Ḥāwī*, 38, saying that it was one of al-Ṭaḥāwī's books brought to the Maghrib by Abū al-Qāsim Hishām al-Ruʿaynī. Al-Kawtharī appears to have concluded that al-Ruʿaynī brought al-Ṭaḥāwī's works to North Africa based on al-Ruʿaynī's status as transmitter of all three of al-Ṭaḥāwī's works listed in Ibn Khayr al-Ishbīlī's (d. 575/1179 or 80) *Fihrisa*, an important catalog of texts written in or transmitted to al-Andalus by the late 6th/12th century (*Fihrisat Ibn Khayr al-Ishbīlī*, ed. Muḥammad Fuʾād Manṣūr (Beirut: Dār al-Kutub al-ʿIlmīya, 1998), 168, 229). However, Arnāʾūṭ notes that the next transmitter in the *isnād* of *Sharḥ mushkil al-āthār*, Muḥammad ibn Yaḥyā ibn Aḥmad al-Tamīmī al-Qurṭubī (d. 416/1025), traveled to Egypt, where he met al-Ruʿaynī, so it may be the al-Ruʿaynī did not personally transmit these works to North Africa (Shuʿayb Arnāʿūṭ, "Muqaddimat al-taḥqīq," Introduction to *Sharḥ mushkil al-āthār* (Beirut: Muʾassasat al-Risāla, 2010), 18).

[136] ʿĪsā b. Abān (d. 189/804) was a proto-Ḥanafī. Apart from *Kitāb al-ashriba*, the works mentioned in this paragraph are all found in Ibn Abī al-Wafāʾ.

[137] Al-Kawtharī, *al-Ḥāwī*, 38.

[138] Ismāʿīl Pasha, *Hadīyat al-ʿārifīn asmāʾ al-muʾallifīn wa-āthār al-muṣannifīn* (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1951), 1.58.

perhaps to redactional supervision by Ṭaḥāwī."[139] That is, although Calder accepts that the works attributed to al-Ṭaḥāwī likely date from his lifetime, he does not view them as reflecting a single, unified authorial voice. My own more extensive analysis of al-Ṭaḥāwī's hermeneutical works does not support this conclusion. When Calder composed his *Studies in Islamic Jurisprudence*, al-Ṭaḥāwī's *Aḥkām al-Qurʾān* had yet to be discovered, and the only printed edition of *Sharḥ mushkil al-āthār* contained about half of the full text. My analysis of al-Ṭaḥāwī's hermeneutical writing is therefore based on a larger body of textual evidence than was available to Calder as well as a closer study of that material.

By tracing several important markers across the twenty-one total volumes of al-Ṭaḥāwī's extant hermeneutical works, I have found strong evidence that they represent a single authorial voice. The three works employ a consistent range of hermeneutical techniques and a stable technical vocabulary. The same phrases and sentences often reappear across works in association with particular theoretical topics. They also appeal to a consistent set of legal authorities: if a jurist is of sufficient importance to al-Ṭaḥāwī that he cites his legal opinions at least five times in the course of his works, then that jurist will almost certainly be mentioned in all three texts.[140] In addition, al-Ṭaḥāwī's positions on questions of legal theory are consistent across works with only one exception: *Sharḥ maʿānī al-āthār* appears in several places to permit the abrogation of

[139] Calder, *Studies in Early Muslim Jurisprudence*, 229.

[140] The major apparent exception to this rule is the absence from *Sharḥ maʿānī al-āthār* of any explicit mention of al-Shāfiʿī, who appears regularly in al-Ṭaḥāwī's other works. This absence is stylistic rather than substantive, however; although al-Ṭaḥāwī does not refer to al-Shāfiʿī by name, he cites al-Shāfiʿī's ideas anonymously. In general, *Sharḥ maʿānī al-āthār* contains fewer named references to jurists than al-Ṭaḥāwī's other hermeneutical works.

Prophetic *ḥadīth* by Companion consensus, while *Sharḥ mushkil al-āthār* vehemently denies the possibility.[141]

The observations above suggest that it is justifiable to reconstruct al-Ṭaḥāwī's legal theory by combining statements from these three works. Questions remain, however, concerning how these texts were composed and consumed. Many of the *muṣannafāt* (textual compilations) of 3rd/9th-century scholars cannot be considered true books; that is, they are not systematic works composed in writing and intended for written publication.[142] Al-Ṭaḥāwī's hermeneutical works bear many of the features associated with true books, however. They begin with introductions, however brief, describing the author's goals and approach. Although the introductions do not contain a list of each book's contents, al-Ṭaḥāwī often signals the transition between chapters in *Aḥkām al-Qurʾān* by announcing that a certain chapter has concluded.[143] In the introduction to each work, al-Ṭaḥāwī also refers to himself as composing a book (*kitāb*); the introduction to *Sharḥ maʿānī al-āthār* contains the conventional claim that he is writing at the request of an unnamed colleague.[144]

Each of al-Ṭaḥāwī's hermeneutical works also contains internal cross-references to discussions that have appeared in earlier chapters or will appear in later chapters. Such references are strongly associated with books and written composition, because they

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[141] I suggest a possible explanation of this discrepancy in Chapter Three, "Consensus and the Practice of the Community," pp. 197-207.
[142] On the development of books among Muslim scholars, see Gregor Schoeler, *The Genesis of Literature in Islam: From the Aural to the Read*, trans. Shawkat Toorawa (Edinburgh: Edinburgh University Press, 2009), 8, 62-3, 87-8.
[143] E.g., al-Ṭaḥāwī, *Aḥkām*, 1.66, 1.457. 1.485, 2.315. *Sharḥ maʿānī al-āthār* likewise contains statements signaling transitions, but it is not clear to me whether these are from al-Ṭaḥāwī or are the addition of the editor.
[144] Al-Ṭaḥāwī, *Maʿānī*, 1.11; *Aḥkām*, 1.65-66; *Mushkil*, 6, 9.

reveal that the author has a mental conception of his work as a sequential whole.[145] Examining a selection of internal references within *Aḥkām al-Qurʾān*, I had no difficulty in locating the passages referred to for extant parts of the work.[146] Perhaps more telling are the internal references within *Sharḥ mushkil al-āthār*, a text with no apparent overall structure, although chapters in close proximity with each other often treat similar issues.[147] To test the accuracy of these references, I examined Volume 7, in which I identified 11 mentions of earlier passages and 8 mentions of upcoming passages, for a total of 19 internal references.[148] Of these, I was able to identify 14 of the passages referred to, although one passage stated that a certain topic would be discussed in a future chapter, when in fact I located the discussion in an earlier chapter. [149] Although most references were to passages that were no more than 20 pages away, 4 references concerned passages in other volumes.[150] I was unable to identify the passages referred to in 5 references;[151] however, it is possible that the *ḥadīth*s mentioned appear as support for an argument without being clearly connected to the subject of the chapter, which would make them nearly impossible to locate in the absence of a word-searchable text. The frequency and overall accuracy of the internal references with *Sharḥ mushkil al-āthār*

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[145] Schoeler, *The Genesis of Literature in Islam*, 88.
[146] E.g., al-Ṭaḥāwī, *Aḥkām*, 1.398, 1.411, 1.424, 2.302.
[147] For example, Chapters 114-116 all deal with *ḥadīth*s mentioning the supernatural, while Chapters 710-714 treat the adultery of non-Muslims. I also have the impression that chapters in close proximity to each other often are linked by similar hermeneutical or linguistic issues, even when their subject matter is otherwise quite different. I would tentatively describe the structure of *Sharḥ mushkil al-āthār* as associational, although further study is needed to identify patterns of relationships between chapters.
[148] I selected Volume 7 because of its position midway through the fifteen-volume work, so that I could determine whether al-Ṭaḥāwī's internal references ever refer to distant volumes.
[149] I was able to identify the passages in question for the following internal references: 7.51, 7.81, 7.95, 7.98, 7.101, 7.230, 7.250, 7.273, 7.287, 7.297, 7.310, 7.388, 7.422 and 7.454. The reference on 7.287 is to a future passage, but I located the passage in question earlier in the work.
[150] Al-Ṭaḥāwī, *Mushkil*, 7.81 refers to 12.70; 7.250 refers to 5.97-98; 7.273 refers to 11.214; and 7.287 refers to 2.215-218.
[151] Al-Ṭaḥāwī, *Mushkil*, 7.38, 7.165, 7.400, 7.434, and 7.453.

suggests that, despite the apparent disorganization of the text, it was composed as a book, perhaps intended to be edited later.

Al-Ṭaḥāwī's hermeneutical works also show evidence of belonging to a fledging world of books making intertextual reference to each other. Although his works do not quote or reference other books on the same scale that would become common in later centuries, he refers to a number of works by title. In law, he cites titles from each of the three major *madhhab*s of his day as well as the *Kitāb al-amwāl* of the early jurist Abū ʿUbayd al-Qāsim ibn Sallām (d. 224/838).[152] The Ḥanafī works quoted are Abū Yūsuf's (d. 182/798) *Kitāb al-imlāʾ*[153] and al-Shaybānī's (d. 189/805) *al-Siyar al-kabīr*, *al-Ziyādāt* and *al-Nawādir*;[154] he also draws upon Mālik's (d. 179/795) *al-Muwaṭṭaʾ*,[155] the Mālikī Ibn ʿAbd al-Ḥakam's (d. 214/829) *al-Mukhtaṣar al-ṣaghīr*,[156] al-Shāfiʿī's *al-Waṣāyā*,[157] and al-Muzanī's (d. 264/868) *al-Mukhtaṣar*.[158] In the fields of biography and history, he cites *al-Maghāzī* by Ibn Isḥāq (d. 150/767),[159] *al-Siyar* by al-Wāqidī (d. 207/822),[160] *al-Nasab* by Abū ʿUbayd,[161] *al-Ṭabaqāt* by Ibn Saʿd (d. 230/845)[162] and *al-Tārīkh al-kabīr* by al-Bukhārī (d. 256/870).[163] In *ḥadīth*, linguistics, and Qurʾān, he refers

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[152] Al-Ṭaḥāwī, *Mushkil*, 5.231.
[153] Al-Ṭaḥāwī, *Maʿānī*, 2.11, 3.125, 3.210, 4.143.
[154] *Al-Siyar al-kabīr*: *Mushkil*, 2.49, 5.167; *Aḥkām*, 1.370. *Al-Ziyādāt*: *Mushkil*, 12.192. *Al-Nawādir*: *Mushkil*, 12.411.
[155] Al-Ṭaḥāwī, *Mushkil*, 1.146; *Aḥkām*, 2.279; 2.373.
[156] Al-Ṭaḥāwī, *Mushkil*, 1.90, 15.246; *Aḥkām*, 1.423, 1.447.
[157] Al-Ṭaḥāwī, *Mushkil*, 7.228.
[158] Al-Ṭaḥāwī, *Mushkil*, 11.447; *Aḥkām*, 2.279.
[159] Al-Ṭaḥāwī, *Mushkil*, 8.250, 11.309.
[160] Al-Ṭaḥāwī, *Mushkil*, 6.151. Al-Ṭaḥāwī also quotes an unnamed work by al-Wāqidī, most likely *al-Siyar*, at *Mushkil*, 5.441.
[161] Al-Ṭaḥāwī, *Mushkil*, 5.429, 12.199.
[162] Al-Ṭaḥāwī, *Mushkil*, 1.25, 1.244, 4.131, 10.172, 12.392. *Mushkil*, 9.70, also most likely refers to *al-Ṭabaqāt*, but does not name the work by title.
[163] Al-Ṭaḥāwī, *Mushkil*, 2.108, 2.109, 3.114. Al-Ṭaḥāwī does not mention the title of work from al-Bukhārī that he quotes in the following passages, but Arnāʾūṭ, the editor of *Sharḥ mushkil al-āthār*, has located the

to *Gharīb al-ḥadīth* and *al-Qirāʾāt* by Abū ʿUbayd,[164] an unnamed *Kitāb* on *ḥadīth* by Yaḥyā ibn Maʿīn (d. 233/847),[165] *Maʿānī al-Qurʾān* by al-Farrāʾ (d. 207/833),[166] and the *Iṣlāḥ al-manṭiq* by Ibn al-Sikkīt (d. 244/858).[167]

Most importantly, however, al-Ṭaḥāwī's hermeneutical works accurately cross-reference each other, confirming that that they should be considered books representing the corpus of a single jurist. In *Sharḥ mushkil al-āthār*, al-Ṭaḥāwī accurately refers the reader to discussions in his earlier works of *Aḥkām al-Qurʾān* and *Sharḥ maʿānī al-āthār*.[168] *Aḥkām al-Qurʾān* in turn makes reference to *Sharḥ maʿānī al-āthār*.[169] The latter contains no references to earlier or later works. These internal references suggest a composition order of (1) *Sharḥ maʿānī al-āthār*, (2) *Aḥkām al-Qurʾān* and, finally, (3) *Sharḥ mushkil al-āthār*. The biographical tradition likewise identifies *Sharḥ maʿānī al-āthār* as al-Ṭaḥāwī's first work and *Sharḥ mushkil al-āthār* as his last work;[170] however, this information may well have been extracted from these same internal references and so cannot necessarily be taken as independent confirmation.

While there is strong evidence for considering *Aḥkām al-Qurʾān*, *Sharḥ maʿānī al-āthār* and *Sharḥ mushkil al-āthār* to be the written compositions of al-Ṭaḥāwī, *Sharḥ*

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references within *al-Tārīkh al-kabīr*: *Mushkil*, 3.8, 4.390, 5.288, 6.156, 7.123, 8.37, 10.436, 10.437, 12.26, 15.342. Finally, al-Ṭaḥāwī quotes an unnamed work of al-Bukhārī in the following passages, but they cannot be clearly identified as part of *al-Tārīkh al-kabīr*: 4.390, 6.81, 9.70, 9.237, 12.328, 14.488.

[164] *Gharīb al-ḥadīth*: al-Ṭaḥāwī, *Mushkil*, 9.83. Al-Ṭaḥāwī also quotes *Gharīb al-ḥadīth* without referencing its title at *Mushkil*, 4.16, 15.409. *Al-Qirāʾāt*: *Mushkil*, 12.404.

[165] Al-Ṭaḥāwī, *Maʿānī*, 1.259.

[166] Al-Ṭaḥāwī, *Mushkil*, 12.12, 13.384, 14.96, 15.75.

[167] Al-Ṭaḥāwī, *Mushkil*, 12.193.

[168] The passage of *Sharḥ maʿānī al-āthār* referenced in *Mushkil*, 7.175 can be found in *Maʿānī*, 4.395-404; the reference to *Aḥkām al-Qurʾān* on the same page is unidentifiable because the chapter in question is no longer extant. The passage referenced in *Mushkil*, 9.413 can be found in *Maʿānī*, 1.261-266.

[169] The passage referenced in *Aḥkām*, 1.111 can be found in *Maʿānī*, 1.79-85; the passage mentioned in *Aḥkām*, 1.211 can be found in *Maʿānī*, 1.167-76.

[170] Ibn Abī al-Wafāʾ, *al-Jawāhir al-muḍīya*, 166.

mushkil al-āthār contains some evidence of subsequent oral transmission in the form of statements at the beginning of a number of chapters indicating that Abū al-Qāsim Hishām al-Ruʿaynī (d. 376/986) transmitted the ensuing material from al-Ṭaḥāwī.[171] Given the independence of individual chapters within these works, they also lend themselves to being taught orally. While the length and complexity of some individual chapters would seem to require written consumption, many other chapters are brief and suitable for oral publication. Further, it is possible that Calder is correct that some of the material for al-Ṭaḥāwī's works came from earlier texts, oral or written. However, any such earlier material has been brought so thoroughly under the control of al-Ṭaḥāwī's distinctive authorial voice that it is reasonable to consider all material in these works to be his.[172] In consequence, I treat al-Ṭaḥāwī's authorship of *Sharḥ maʿānī al-āthār*, *Aḥkām al-Qurʾān* and *Sharḥ mushkil al-āthār* as unproblematic in the chapters that follow.

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[171] E.g., al-Ṭaḥāwī, *Mushkil*, 7.63, 8.71, 9.126, 9.267, 12.218, 12.350, 12.473, 13.170, 13.297, 13.403. The title page of the manuscript on which Arnāʿūṭ's edition of *Sharḥ mushkil al-āthār* is based also contains the statement that it is the work of al-Ṭaḥāwī, transmitted by (*riwāya*) al-Ruʿaynī (Arnāʿūṭ, "Muqaddimat al-taḥqīq," 21).

[172] In addition, given that al-Ṭaḥāwī's hermeneutical works largely concern the status and interpretation of *ḥadīth*, to accept that these works were school texts accumulating over time would require a drastic reconsideration of the role of *ḥadīth* in the early Ḥanafī school, a proposition for which Calder provides no support. Likewise, as the first Egyptian-born Ḥanafī, al-Ṭaḥāwī worked in relative isolation from most Ḥanafīs of the time, and so it is not clear where such a 'school text' would have come from.

Chapter One: Qurʾān and Sunna

The mature *uṣūl al-fiqh* tradition understood Islamic law to be grounded in two textual sources, the Qurʾān and Sunna, both of which were revealed through the Prophet Muḥammad gradually over the course of about twenty years, from 610 CE until his death in 632 CE. While Muḥammad served as God's conduit for both kinds of revelation, legal theorists carefully distinguished between them. The Qurʾān was *waḥy matlū* (recited revelation), a miraculous text recording God's direct speech. The Sunna, in contrast, was *waḥy ghayr matlū* (non-recited revelation), a collection of reports about the statements and actions of Muḥammad that only over time came to be viewed as revelation. [173] Jurists distinguished between the Qurʾān and Sunna in other ways as well. While the Qurʾān was a single, well-defined text whose authenticity and accuracy were held to be epistemologically certain, the Sunna was an amorphous body of reports whose epistemological status individually and collectively was subject to debate.[174] In order to assure the status of the Sunna as revelation, jurists developed theories of the immunity of Muḥammad to disobedience against God and to many kinds of error.[175]

This chapter examines the Qurʾān and Sunna in al-Ṭaḥāwī's thought as expressed across his hermeneutical works of *Aḥkām al-Qurʾān*, *Sharḥ maʿānī al-āthār* and *Sharḥ mushkil al-āthār*. In addition to comparing his theories to those of the mature *uṣūl al-fiqh* tradition, I will consider his ideas against those of other early jurists, with special

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[173] Weiss, *Spirit of Islamic Law*, 45; Musa, *Ḥadīth as Scripture*, 5.
[174] Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (Atlanta: Lockwood, 2013), 7-8.
[175] Éric Chaumont, "La problématique classique de l'*Ijtihâd* et la question de l'*Ijtihâd* du prophète: *Ijtihâd*, *Waḫy* et *ʿIṣma*," *Studia Islamica* 75 (1992): 144-133; Weiss, *Search for God's Law*, 160.

emphasis on al-Shāfiʿī, whom one recent study has portrayed as the major source for al-Ṭaḥāwī's discussion of the Sunna.[176] After examining al-Ṭaḥāwī's arguments for the revelatory status of Qurʾān and Sunna, I will argue that, in contrast to both al-Shāfiʿī and the mature *uṣūl al-fiqh* tradition, al-Ṭaḥāwī did not draw an absolute ontological distinction between Qurʾān and Sunna.

I will then turn to issues affecting only the Sunna, including *ḥadīth* epistemology and terminology, to argue that al-Ṭaḥāwī also does not draw a strong distinction between Prophetic and post-Prophetic *ḥadīth*, a theme which will be further explored in the next chapter. Finally, I will look at al-Ṭaḥāwī's discussions of Muḥammad's *ijtihād* (legal reasoning) to show that, while al-Ṭaḥāwī and later jurists both use discussions of Muḥammad's infallibility to support the status of the Sunna as revelation, they do so in very different ways. While many later jurists would claim that Muḥammad is infallible even in his *ijtihād*, since God would not permit him to continue in an error, al-Ṭaḥāwī uses Muḥammad's *ijtihād* as a kind of safety valve to explain potentially embarrassing *ḥadīth*s which might cast doubt on the status of Muḥammad's words as revelation.

Qurʾān

Unsurprisingly, al-Ṭaḥāwī's extant legal works largely take for granted the Qurʾān as a source of law. Like the authors of later *uṣūl al-fiqh* texts, al-Ṭaḥāwī feels it unnecessary to argue in his legal works for the Qurʾān's status as revelation.[177] The only question related to the legal standing of the Qurʾān that al-Ṭaḥāwī addresses concerns the

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[176] El Shamsy, *Canonization of Islamic Law*, 205-207.
[177] Like other theologians, al-Ṭaḥāwī does address the status of the Qurʾān as God's speech in his creed (al-Ṭaḥāwī, *al-ʿAqīda*, 8).

persistence of the Qurʾān's legal provisions after Muḥammad's death. In response to Abū Yūsuf's (d. 182/798) claim that certain legal verses (here, the command in Q 4/al-Nisāʾ:102 to undertake the prayer of fear) are addressed specifically to Muḥammad and therefore cease to apply after his death, al-Ṭaḥāwī argues that the verse in question is an example of a text that has a specific (*khāṣṣ*) addressee without intending to exclude other addressees. [178] While there are indeed some (unspecified) legal verses which require Muḥammad's physical presence for their application, this verse is not one of them. Here, the caliphs may fill Muḥammad's role. There are also other verses in the Qurʾān which address some or all of Muḥammad's contemporaries which nonetheless extend to all legally competent Muslims in perpetuity. For example, Q 2/al-Baqara:185 states that "all of you" who witness the new month of Ramadan should fast, yet does not intend only those who were legally competent Muslims at the time of revelation.[179] The legal obligations (*farāʾiḍ*) in these verses are not abolished with the death of the Qurʾān's original audience; rather, all those acquiring the legal status of the original addressees become addressees as well.

It is important to note that al-Ṭaḥāwī is not arguing here for the general persistence of Qurʾānic obligations after the death of Muḥammad, a principle he takes for granted. Instead, he is considering a more limited subset of legal verses—those addressed specifically to Muḥammad or to a restricted set of his contemporaries—in order to

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[178] Al-Ṭaḥāwī, *Aḥkām*, 1.208-210.

[179] Other Qurʾānic legal verses with specific addressees that al-Ṭaḥāwī adduces in this passage are Q 60/al-Mumtaḥana:12 ("O prophet, when believing women come to you, offering allegiance to you on the basis that they will not associate anything with God"); Q 2/al-Baqara:183 ("O you who believe, fasting is prescribed for you"); Q 2/al-Baqara:196 ("Those of you who are sick or suffering from an injury to the head—there may be a redemption"); Q 4/al-Nisāʾ:101 ("When you travel in the land, it is no sin for you to curtail your prayer"); and Q 4/al-Nisāʾ:25 ("That is for those among you who fear sin").

determine which verses are temporally bound to his lifetime and which have more general application. The unusual length of al-Ṭaḥāwī's response, at six paragraphs, suggests that he found Abū Yūsuf's claim particularly threatening to his understanding of the Qurʾān as a stable and persistent source of law—in fact, the source that guarantees the authority of all other legal sources. In addition, the atypically large number of Qurʾānic examples adduced serves to preemptively protect other Qurʾānic verses from this kind of restrictive reading, which, if taken seriously, could disrupt such foundational legal matters as the Ramadan fast and the permission to shorten prayer while traveling. Despite the anxieties in this passage, however, al-Ṭaḥāwī generally considers the status of the Qurʾān as a source of law unproblematic, and I have located no other similar discussions in his extant works.

Sunna

Historical Development

The same cannot be said for the status of the Sunna as a source of law. While classical and modern Islamic legal theorists overwhelmingly recognize the Sunna as a second form of revelation on par with the Qurʾān, early Islamic legal thought was much more diverse in its understanding of the status accorded to Muḥammad's words and actions. This diversity reflects the fact that Islamic law emerged only gradually in the first two centuries of Islamic history as a result of the efforts of private individuals seeking to understand how God wished them to act in different situations. Over time, recognizable trends emerged in how these pious individuals approached legal problems,

and jurists collectively achieved a religious authority within Muslim societies—an authority that both guaranteed and stood apart from the authority of the state. Nonetheless, the legal field as a whole remained quite diverse until the maturation of the *madhhab*s (schools of legal thought) in the second half of the 4th/10th century.

One thing that appears to be true of all these proto-jurists is that they considered the Qurʾān, which had been canonized during the 1st/7th century, to be legally authoritative in a general sense, even if a small number of rules of positive law seem to have developed independently of the relevant Qurʾānic material.[180] However, the Qurʾān is not primarily a legal document, and it contains no guidance for many situations in which one might wish to know the law. To compensate for this paucity of legal guidance, pious individuals sought legal rulings for the young Muslim community through a variety of methods, including looking to *raʾy* (discretionary reasoning) and *sunna* (a pre-Islamic concept indicating the practice of the community or of important individuals within it).[181] Throughout most of the 1st/7th century, the term *sunna* did not refer primarily to the Prophet's example, as it would later come to do.[182] Instead, the term embraced both the exemplary actions of individuals and the customary behavior of the community as a whole.[183]

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[180] For a discussion of such problematic cases, see Patricia Crone, "Two Legal Problems Bearing on the Early History of the Qurʾān," *Jerusalem Studies in Arabic and Islam* 18 (1994): 1-37.
[181] Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 17. Cf. M.M. Bravmann, who holds that a *sunna* is always established by an individual before being adopted as the practice of the community (*The Spiritual Background of Early Islam: Studies in Ancient Arab Concepts* (Leiden: Brill, 1972), 148.
[182] Against Schacht, however, Bravmann argues that references to the Prophet's practice (*sunna*, *sīra*) appear from the earliest decades of Islam, even if they have not yet taken on the doctrinal character that they would later hold (*Spiritual Background of Early Islam*, 123-139).
[183] Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 46-47; John Burton, *An Introduction to the Ḥadīth* (Edinburgh: Edinburgh University Press, 1994),

It is at the end of the 1st/7th century and the beginning of the 2nd/8th century that Muḥammad's Sunna (*sunnat rasūl Allāh*) appears alongside and then eventually overtakes the more general concept of *sunna*. The interest in Muḥammad's Sunna indicates the growing importance attached to basing the law on specifically Islamic sources.[184] Concurrent with the rise of interest in Muḥammad's Sunna among legal specialists, another, partially overlapping group of pious individuals became particularly interested in the transmission and, eventually, the recording of *ḥadīth*s, which concretize Muḥammad's Sunna in the form of reports in the voices of those who witnessed his words and actions. The traditionists, or scholars interested in the collection and recording of *ḥadīth*s, produced several important early *ḥadīth* collections in the 2nd/8th century, including the *Muṣannaf* of Ibn Jurayj (d. 150/767), the *Jāmiʿ al-kabīr* and *al-Jāmiʿ al-ṣaghīr* of Sufyān al-Thawrī (d. 161/778) and, slightly later, the *Musnad* of al-Ṭayālisī (d. 204/819).[185] Although these collections do not exclusively contain Prophetic *ḥadīth*s, they indicate a growing interest in preserving the Sunna of Muḥammad as text.[186]

In the second half of the 2nd/8th century, jurists began to justify their legal doctrines with reference to Prophetic *ḥadīth*.[187] As this practice took hold, some jurists started to perceive the legal field as divided into two camps: the *ahl al-ḥadīth*, or those

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49; Knut Vikør, *Between God and the Sultan: A History of Islamic Law* (Oxford: Oxford University Press, 2005), 25; Schacht, *Origins of Islamic Law*, 2.

[184] Schacht discusses jurists' Islamization and systematization of existing legal material in his *Introduction to Islamic Law*, 200-202.

[185] Mohammad Hashim Kamali, *A Textbook of Ḥadīth Studies: Authenticity, Compilation, Classification and Criticism of Ḥadīth* (Markfield, UK: The Islamic Foundation, 2005), 29. On the appearance and textual history of early *ḥadīth* collections, see also Muhammad Zubayr Siddiqi, *Ḥadīth Literature: Its Origin, Development and Special Features* (Cambridge: Islamic Texts Society, 1993), 43-72.

[186] On the development of *ḥadīth* criticism among these scholars, see Eerik Dickinson, *The Development of Early Sunnite Hadith Criticism: The Taqdima of Ibn Abī Ḥātim al-Rāzī (240/854-327/938)* (Leiden: Brill, 2001), 5-10.

[187] Hallaq, *History of Islamic Legal Theories*, 18.

who relied on traditions to support their legal opinions, and the *ahl al-raʾy*, or those who held that they could use their considered opinion to answer legal questions. As the 2nd/8th and 3rd/9th centuries progressed, the term *ahl al-raʾy*, most associated with the proto-Ḥanafīs, acquired an increasingly negative connotation. The polemical language of *ahl al-ḥadīth*/*ahl al-raʾy*, however, obscures considerable diversity and complexity in how early jurists engaged with Prophetic reports. For example, the proto-Ḥanafī jurists, accused of being *ahl al-raʾy*, acknowledged the legal force of the Sunna just as the traditionists did. Where they differed from the traditionists was in their method of legal writing, which did not frequently cite *ḥadīth*, even while acknowledging their authority. The proto-Ḥanafīs also demanded a higher standard of evidence than the traditionalists for recognizing the authenticity of individual *ḥadīth*s, a requirement which radically reduced the number of *ḥadīth*s available to support a given legal argument.[188]

Neither were the *ahl al-ḥadīth* a monolithic group. Some scholars were motivated by their pious desire for closeness with the Prophet to devote their energies to preserving and transmitting *ḥadīth*, while others, whom Christopher Melchert has labeled "traditionist-jurisprudents" and who were often associated with the proto-Ḥanafī school, wrote about legal questions by adducing large numbers of *ḥadīth*, usually without offering further argument.[189] Instead, the form of argumentation relied upon by both traditionists and traditionist-jurisprudents concerned the authentification of *ḥadīth* by means of *rijāl* (transmitter) criticism, which inquired into the moral probity of each link

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[188] Melchert, "Traditionist-Jurisprudents," 390; Syamsuddin, "Abū Ḥanīfah's Use of the Solitary Ḥadīth," 272; Ahmad, *Structural Interrelations of Theory and Practice*, 102; Jonathan Brown, *The Canonization of al-Bukhārī and Muslim: The Formation and Function of the Sunnī Ḥadīth Canon* (Leiden: Brill, 2007), 49-50.

[189] Melchert, "Traditionist-Jurisprudents," 388.

in the chain of authorities who transmitted a *ḥadīth* from generation to generation. Even among traditionists, Prophetic *ḥadīth* was far from established as the exclusive extra-Qurʾānic source of the law; through much of the 3rd/9th century, traditionists cited mostly Companion and Successor *ḥadīth*s in their collections except when engaging polemically with the *ahl al-raʾy*.[190]

Other jurists combined elements of the two approaches, contributing to a process that over time would lead to the disappearance of the *ahl al-ḥadīth* and *ahl al-raʾy* as opposing groups in favor of a shared understanding of the role of Prophetic Sunna among jurists. The best known of these "compromisers" is, of course, al-Shāfiʿī (d. 204/820), who reasoned about the law and its structure, but who understood legal reasoning primarily as textual hermeneutics and thus, like traditionalists, accorded great importance to *ḥadīth*.[191] Unlike the traditionists, however, he does not engage in significant *isnād* criticism.[192] Among the proto-Ḥanafīs, ʿĪsā b. Abān (d. 221/836) exemplifies a growing interest in *ḥadīth*; he is the first proto-Ḥanafī to write systematically about *ḥadīth* epistemology, although he does not consistently incorporate *ḥadīth*s into his legal arguments.[193] Likewise, the Iraqi Ḥanafī Ibn Shujāʿ al-Thaljī (d. 266/880) is reported to have strengthened Abū Ḥanīfa's jurisprudence by means of *ḥadīth*, although he is also said to have had a higher allegiance to the doctrine of Abū Ḥanīfa than to Prophetic *ḥadīth*.[194]

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[190] Scott Lucas, "Principles of Traditionist Jurisprudence Reconsidered," *The Muslim World* 100, no. 1 (2010): 152. Al-Ṭaḥāwī's continued reliance on Companion and Successor *ḥadīth* is the subject of Chapter Two of this study.
[191] Melchert, "Traditionist-Jurisprudents," 393.
[192] Melchert, "Traditionist-Jurisprudents," 393.
[193] Brown, *Canonization of al-Bukhārī and Muslim*, 184; Bedir, "Early Response," 310.
[194] Ibn al-Nadīm, *Fihrist*, vol. 2, pt. 1.29; Melchert, *Formation of the Sunni Schools of Law*, 48-53.

The growth of a shared understanding of the role of Sunna is strongly evident in the works of al-Ṭaḥāwī. Although he still deems it necessary to argue explicitly for the authority of Prophetic *ḥadīth*, I have identified only one direct reference in his works to the divide between *ahl al-ḥadīth* and *ahl al-raʾy*. In the *Mukhtaṣar*, al-Ṭaḥāwī declares that a judgeship may be given "neither to a proponent of *raʾy* (*ṣāḥib al-raʾy*), who has no knowledge of Sunna and *ḥadīth*, nor to a proponent of *ḥadīth* (*ṣāḥib al-ḥadīth*), who has no knowledge of jurisprudence (*fiqh*)."[195] Further, it was al-Ṭaḥāwī who would engage systematically in the work of supporting Ḥanafī *fiqh* with reference to the Sunna. Unlike earlier Ḥanafīs, he provides full *isnād*s for the *ḥadīth*s he adduces and sometimes practices *isnād* criticism. Both are characteristics of traditionist jurisprudence.[196]

Al-Ṭaḥāwī's central role in the systematic justification of Ḥanafī positive law through Prophetic *ḥadīth* is widely acknowledged by those who have written on al-Ṭaḥāwī's legal thought, including Joseph Schacht, Norman Calder, Behnam Sadeghi and Ahmed El Shamsy.[197] What has received less attention is al-Ṭaḥāwī's thought regarding the Sunna and its relationship to the Qurʾān. A careful study of his statements on this topic reveals that al-Ṭaḥāwī was not, as is often stated or implied by those writing about his role justifying Ḥanafī law through *ḥadīth*, merely continuing a project begun by al-Shāfiʿī after his change of allegiance from Shāfiʿism to Ḥanafism. Instead, al-Ṭaḥāwī has a theory of the relationship between Qurʾān and Sunna that is distinct from both that of al-Shāfiʿī and later jurists.

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[195] Al-Ṭaḥāwī, *al-Mukhtaṣar*, 332.
[196] Melchert, "Traditionist-Jurisprudents," 398.
[197] Schacht, *Origins of Islamic Law*, 30; Calder, *Studies in Muslim Jurisprudence,* 66; Sadeghi, *Logic of Law Making in Islam*, 131n12; El Shamsy, *Canonization of Islamic Law*, 205.

The Authority of the Sunna

Al-Ṭaḥāwī argues for the authority of Prophetic Sunna in the introductions to two of his works, *Aḥkām al-Qurʾān* and *Sharḥ mushkil al-āthār*. The relevant passage in *Aḥkām al-Qurʾān* follows a discussion of the equivocal (*mutashābih*) verses of the Qurʾān.[198] *Mutashābih* verses, he tells us, are clarified either in another, unequivocal (*muḥkam*) Qurʾānic verse or by a rule expressed in the Prophet's Sunna. Having established that the Sunna can explain the Qurʾān, al-Ṭaḥāwī pauses to state his argument for the authority of the Prophetic word in general. He writes that "God has commanded us to accept what comes from His Messenger orally (*qawlan*), just as He has commanded us to accept from him His Book as a recitation (*qabūl kitābihi minhu qurʾānan*)."[199]

Al-Ṭaḥāwī adduces three kinds of evidence in support of this claim. First, he cites three Qurʾānic proof texts: (1) Q 59/al-Ḥashr:7 ("Whatever the messenger gives you, take it. Whatever he forbids you to have, leave it alone"); (2) Q 4/al-Nisāʾ:64 ("We did not send any messenger except that he might be obeyed by God's permission"); and (3) Q 14/Ibrāhīm:4 ("We never sent any messenger except using the language of his people, for him to make [the message] clear to them"). The only comment he offers on these verses is that they affirm our obligation to accept what God sends us through the Prophet [i.e., the Sunna], which is like our obligation to accept his recitation of the Qurʾān.[200] Beyond this commentary, we may note that the first two verses concern the command to obey

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[198] I discuss at length al-Ṭaḥāwī's concept of *muḥkam* and *mutashābih* in Chapter Four, "Hermeneutics," pp. 209-219.
[199] Al-Ṭaḥāwī, *Aḥkām*, 1.59.
[200] Al-Ṭaḥāwī, *Aḥkām*, 59-60. I use 'Sunna' in my discussion as a shorthand for al-Ṭaḥāwī's longer "what God brought to us on the tongue of the Prophet." For al-Ṭaḥāwī's use of the term 'Sunna,' see below pp. 91-93.

Muḥammad, while the third defines Muḥammad's role as clarifying God's message. Al-Ṭaḥāwī next supports the authority of *ḥadīth* with *ḥadīth* by citing several versions of a report in which the Prophet condemns those who, after receiving an order from him, continue to laze about, saying that they only follow the Qurʾān.[201] Finally, he argues that the confirmed historical occurrence of abrogation between the Qurʾān and Sunna demonstrates that the Sunna must be from God, because otherwise it could not have abrogated the Qurʾān.[202]

Al-Ṭaḥāwī's argument for the authority of the Sunna in the introduction to *Sharḥ mushkil al-āthār* is considerably less detailed. After stating that God sent Muḥammad as the seal of the prophets and the Qurʾān as the seal of the scriptures, al-Ṭaḥāwī observes that Muḥammad is different from other Muslims. They owe him special deference because he speaks revelation:

> God commanded the Believers not to raise their voices above that of the Prophet or to place themselves ahead of him. In Q 53/al-Najm:3-4 ("Nor does he speak out of caprice. This is simply a revelation that is being revealed"), He informed them that He had entrusted [Muḥammad with authority] in his speech.[203]

His next statement, again supported by a Qurʾānic proof text, concerns the obligation to obey Muḥammad:

> In Q 59/al-Ḥashr:7 ("Whatever the messenger gives you, take it. Whatever he forbids you to have, leave it alone"), He commanded them to accept what He sent them through the Prophet, and to refrain from what He prohibited through him.[204]

The last two proof texts contain warnings for those who fail to heed this obligation:

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[201] Al-Ṭaḥāwī, *Aḥkām*, 60-61.
[202] Al-Ṭaḥāwī, *Aḥkām*, 61-64. This argument is discussed in detail below.
[203] Al-Ṭaḥāwī, *Mushkil*, 1.5.
[204] Al-Ṭaḥāwī, *Mushkil*, 1.5.

> In Q 49/al-Ḥujurāt:2 ("Do not raise your voices above that of the prophet, and do not speak loudly to him, as you do to one another") He prohibited them from acting toward him as they act toward each other. He warned them "lest their works fail while they were unaware."[205]
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> In Q 24/al-Nūr:63 ("Let those who dissent from His command beware lest a trial or a painful punishment befall them"), He likewise warned those who disobey the Prophet's command.[206]

These verses conclude al-Ṭaḥāwī's argument for the authority of the Sunna in *Sharḥ mushkil al-āthār*. We may note that all of his evidence comes from Qurʾānic proof texts, and that only one of those proof texts (Q 59/al-Ḥashr:7) also appears in the introduction to *Aḥkām al-Qurʾān*. His argument in *Sharḥ mushkil al-āthār* is immediately followed by a description of the difficulty some jurists have in understanding *ḥadīth* correctly, which leads them to the dangerous delusion that *ḥadīth*s contradict one another. His purpose in writing this book is to clarify the meanings of difficult *ḥadīth*s for such people.[207] The authority of the Sunna and jurists' misapprehensions concerning the coherence of *ḥadīth* thus appear to be related issues for al-Ṭaḥāwī.[208]

On the basis of these outlines of al-Ṭaḥāwī's arguments for the authority of the Sunna, we may evaluate a comment by Ahmed El Shamsy that al-Ṭaḥāwī "adopted al-Shāfiʿī's justification for the systematic incorporation of Hadith into jurisprudence."[209] Three successive chapters of al-Shāfiʿī's *Risāla* argue for the authority of Prophetic

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[205] Al-Ṭaḥāwī, *Mushkil*, 1.5 This threat paraphrases the remainder of the verse just discussed.
[206] Al-Ṭaḥāwī, *Mushkil*, 1.5.
[207] Al-Ṭaḥāwī, *Mushkil*, 1.6.
[208] This same concern for how the appearance of contradiction among *ḥadīth*s might call their authority into question motivates a passage of *al-Risāla*, where al-Shāfiʿī's interlocutor suggests that contradictions among *ḥadīth*s weakens their standing a source of law (*al-Risāla*, vol. 1 of *Kitāb al-Umm*, ed. Rifʿat Fawzī ʿAbd al-Muṭṭalib (al-Manṣūra: Dār al-Wafāʾ, 2005), 90-91).
[209] El Shamsy, *Canonization of Islamic Law*, 205.

ḥadīth.[210] Lowry usefully summarizes their argument as follows: "Shāfiʿī first shows that the Qurʾān has required faith in God *and* faith in Muḥammad. He next argues that the Qurʾān refers to itself and the Sunna whenever it uses the pair *kitāb* and *ḥikma*, respectively. Finally, God, in the Qurʾān, has specifically required obedience to Muḥammad."[211]

Al-Shāfiʿī's first point concerns faith: Muslims are required to believe in God's Messenger as well as God Himself.[212] This argument does not appear in either of the passages from al-Ṭaḥāwī discussed above, although he does cite belief in Muḥammad as an obligation in his *ʿAqīda* (Creed).[213] It appears that, for al-Ṭaḥāwī, faith in Muḥammad is a theological principle, but not an argument for the authority of Prophetic *ḥadīth*. Al-Shāfiʿī's second argument equates the *ḥikma* (wisdom) mentioned in the Qurʾān with the Sunna,[214] a claim not found in any of al-Ṭaḥāwī's works. Al-Shāfiʿī's final point, that God commanded us to obey Muḥammad, is the only argument that the two jurists share in common. Even here, however, only one of the proof texts adduced by al-Shāfiʿī (Q 24/al-Nūr:63, "Let those who dissent from His command beware lest a trial or a painful punishment befall them"), is also adduced by al-Ṭaḥāwī.[215] Further, al-Ṭaḥāwī makes arguments not found in the *Risāla*: that the authority of the Sunna is supported by *ḥadīth* and that it is supported by the confirmed occurrence of abrogation between the Qurʾān

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[210] Al-Shāfiʿī, *al-* , 33-35.
[211] Lowry, *Early Islamic Legal Theory*, 174.
[212] Al-Shāfiʿī, *al-Risāla*, 33.
[213] Al-Ṭaḥāwī, *al-ʿAqīda*, 21.
[214] Al-Shāfiʿī, *al-Risāla*, 34-35. On al-Shāfiʿī's argument, see Joseph Lowry, "Early Islamic Exegesis as Legal Theory: How Qurʾānic Wisdom (*Ḥikma*) Became the Sunna of the Prophet," in *Jewish Biblical Interpretation and Cultural Exchange: Comparative Exegesis in Context*, ed. Natalie Dohrmann and David Stern (Philadelphia: University of Pennsylvania Press, 2008), 241-248.
[215] Al-Ṭaḥāwī, *Mushkil*, 1.5; Al-Shāfiʿī, *al-Risāla*, 37.

and Sunna. In light of these substantial differences, it is difficult to accept the claim that al-Ṭaḥāwī was employing al-Shāfiʿī's justifications.

A second claim concerning the relationship between the two jurists' arguments appears in Aisha Musa's *Ḥadīth as Scripture*, where she argues that "unlike the works of al-Shāfiʿī and Ibn Qutayba, al-Ṭaḥāwī's work is not a direct response to any outright denial or criticism of the *Ḥadīth* that he has encountered; rather it addresses what he sees in the *Ḥadīth* that others may perceive as problematic because of their lack of knowledge or understanding."[216] Later she writes that "his change from the defensive, adversarial tone that characterizes the works of al-Shāfiʿī and Ibn Qutayba is an indication of the relative success of the concept of the duality of revelation and the increasing confidence of its adherents."[217]

Musa is correct in observing that al-Ṭaḥāwī never accuses any individual or group of denying the legal force of the Sunna. She is surely also correct in noting the more widespread acceptance of the authority of the Sunna by the time of al-Ṭaḥāwī, which must be a factor contributing to his less adversarial language. However, Musa's analysis overstates al-Ṭaḥāwī's confidence in the general acceptance of the Sunna, because it fails to take into account his intended audience. While Ibn Qutayba might write a long diatribe against those who deny the Sunna,[218] al-Ṭaḥāwī could not, because he identified himself with the very proto-Ḥanafīs who were accused of not relying sufficiently on *ḥadīth* in their legal arguments. Al-Ṭaḥāwī's works are not polemical condemnations of a

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[216] Musa, *Ḥadīth as Scripture*, 70.
[217] Musa, *Ḥadīth as Scripture*, 70.
[218] Ibn Qutayba, *Taʾwīl mukhtalif al-ḥadīth*, ed. Riḍā Faraj al-Hamāmī (Ṣaydā, Lebanon: al-Maktaba al-ʿAṣrīya, 2003), 21-67.

villainized Other, but are rather intended to convince the jurists of his own proto-Ḥanafī school that all of their laws are justifiable by *ḥadīth* and that they should engage in the work of that justification.

That al-Ṭaḥāwī still perceived the Sunna to require justification is demonstrated by the introductions to *Aḥkām al-Qurʾān* and *Sharḥ mushkil al-āthār*. Very little of al-Ṭaḥāwī's writing consists of extended arguments; the fact that he dedicates much of two of the only overtly theoretical passages in his works to this argument suggests that he was not confident that the authority of the Sunna was self-evident. Further, in a number of passages within the body of his works, al-Ṭaḥāwī asserts that Prophetic *ḥadīth* may not be ignored in favor of *naẓar* (juristic speculation) or any other non-revelatory source of the law.[219] These assertions appear in response to discrete legal opinions of other jurists that are in conflict with *ḥadīth*. That al-Ṭaḥāwī does not label as *ḥadīth* deniers these jurists whose opinions conflict with *ḥadīth* must be a function of their mutual identification with the proto-Ḥanafī school.

Likewise, al-Ṭaḥāwī's sustained attention to "what he sees in the *ḥadīth* that others may perceive as problematic" is not separate from his need to justify the authority of the Sunna.[220] Rather, his underlying argument appears to be that some jurists have not been properly relying on *ḥadīth* because they do not fully understand them.[221] In both *Aḥkām al-Qurʾān* and *Sharḥ mushkil al-āthār*, after arguing for the authority of the

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[219] E.g., al-Ṭaḥāwī, *Mushkil*, 5.10, 7.275, 9.125, 10.303, 11.434, 12.21; *Aḥkām*, 1.300, 2.97, 2.100.
[220] Musa, *Ḥadīth as Scripture*, 69.
[221] Ibn Qutayba's *Taʾwīl mukhtalif al-ḥadīth* expresses this anxiety more strongly: in addition to the concern that Muslims who perceive contradictions in the *ḥadīth* will not rely on *ḥadīth* as they should, Ibn Qutayba fears that the apparent contradictions and initially problematic meanings will make Islam an object of ridicule (Ibn Qutayba, *Taʾwīl*, 13ff).

Sunna, al-Ṭaḥāwī devotes the remainder of the text to demonstrating that *ḥadīth*s do not conflict with each other and that they underlie the rules of Ḥanafī *fiqh*. In this sense, these works are extended arguments for the authority of the Sunna, and they betray an underlying anxiety that this authority is not universally acknowledged. Were it so, then al-Ṭaḥāwī would no more have needed to write three lengthy works demonstrating the coherence of the Sunna than he needed to demonstrate the authority and coherence of the Qurʾān. While Musa is doubtless correct about the overall movement toward universal acceptance of the Sunna as a source of law, al-Ṭaḥāwī's concerns about the authority of the Sunna are still surprisingly close to those of al-Shāfiʿī. Although al-Shāfiʿī and al-Ṭaḥāwī employ quite different sets of arguments to justify the authority of the Sunna and to deny that the appearance of contradiction among *ḥadīth*s casts that authority into doubt, notably little change has occurred in the central questions about the authority of the Sunna during the intervening two generations.

The Relationship between the Qurʾān and Sunna

Bayān

Al-Ṭaḥāwī thus takes the authority of the Qurʾān for granted while devoting two of the very rare theory-driven discussions within his surviving works of practical hermeneutics to the authority of Prophetic *ḥadīth*. To understand al-Ṭaḥāwī's concept of revelation, however, we must also consider how he perceives the Qurʾān and Sunna in relation to each other. Here, again, El Shamsy sees al-Ṭaḥāwī's "indebtedness" to al-Shāfiʿī, writing that the introduction to *Aḥkām al-Qurʾān* "mirrors closely al-Shāfiʿī's

discussion of the issue of *bayān* in the *Risāla*."[222] To evaluate this claim, we must first briefly discuss the concept of *bayān* (clearness; legislative statement) in the *Risāla*. Immediately following his introductory chapter, al-Shāfiʿī sets out four modes of *bayān*: (1) rules which appear in an explicit text (*naṣṣ*) of the Qurʾān; (2) rules which appear in the Qurʾān and are explained in the Sunna; (3) rules which appear only in the Sunna; and (4) rules which must be derived by *ijtihād*, because they do not appear in the Qurʾān or Sunna.[223] Lowry observes that al-Shāfiʿī employs the term *bayān* to "denote a mechanical or architectural feature of the divine law, specifically the finite number of ways that God uses the two revealed legal source texts—the Qurʾān and the Sunna—to express rules of law."[224] The key points here are that *bayān* refers to a "catalog" [225] of ways in which the law is expressed, and that this catalog is both finite and comprehensive. Elsewhere, Lowry has demonstrated that al-Shāfiʿī's theory of *bayān* is driven by his overriding concern with establishing that the Qurʾān and Sunna do not contradict one another, but rather function together to form a single, coherent expression of the law.[226]

Returning to the introduction of *Aḥkām al-Qurʾān*, we may summarize the relevant points of al-Ṭaḥāwī's argument as follows: God informed us in His Book (Q 3/Āl ʿImrān:7) that the Qurʾān contains both *muḥkam* (unequivocal) and *mutashābih* (equivocal) verses. The ruling contained in the equivocal verses should be sought first in

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[222] El Shamsy, *Canonization of Islamic Law*, 205.
[223] Al-Shāfiʿī, *al-Risāla*, 7-9. In a series of chapters in which al-Shāfiʿī offers examples of each type of *bayān*, he expands his list to five modes by distinguishing between two varieties of the earlier second mode (rules which appear in the Qurʾān and are explained in the Sunna). In the first, the Sunna echoes the rule already stated in the Qurʾān, while in the second the Sunna adds significant information to the Qurʾānic rule (al-Shāfiʿī, *al-Risāla*, 10-12).
[224] Lowry, *Early Islamic Legal Theory*, 24-25.
[225] Lowry, *Early Islamic Legal Theory*, 24.
[226] Joseph E. Lowry, "Some Preliminary Observations on al-Šāfiʿī and Later *Usul al-Fiqh*: The Case of the Term *Bayān*," *Arabica* 5, no. 5/6 (2008): 525-527.

the unequivocal verses, then in the rulings that God promulgated through the Prophet in order to illustrate what was ambiguous in the Book.[227] El Shamsy identifies the *muḥkam* verses as those in which the Qurʾān is sufficient to state a rule, while the *mutashābih* verses require the Qurʾān to be supplemented by the Sunna; both situations are encompassed by al-Shāfiʿī's theory of *bayān*.[228] El Shamsy's summary overlooks an important aspect of al-Ṭaḥāwī's argument, however, which is that the meaning of the equivocal verses must first be sought in the unequivocal verses of the Qurʾān, before it is then (*thumma*) sought in the Sunna. That is, al-Ṭaḥāwī is describing a methodology for determining the meaning of equivocal verses rather than setting out a catalog of the ways in which God expresses the law.

That al-Ṭaḥāwī's purpose in the introduction to *Aḥkām al-Qurʾān* is different than al-Shāfiʿī's purpose in the *Risāla* is confirmed by the fact that al-Ṭaḥāwī mentions no further modes for expressing legal rules in this passage. Indeed, nowhere in any of his extant works does al-Ṭaḥāwī set out a catalog of the ways in which Qurʾān and Sunna may combine to express the law. In this he resembles later legal theorists, who were not concerned with presenting a unified theory of the "law's architecture" as was al-Shāfiʿī.[229] All this is not to say that al-Ṭaḥāwī would not have recognized and approved of al-Shāfiʿī's modes of *bayān*; in the course of his works he discusses rules promulgated through Qurʾān alone, Qurʾān explained by Sunna, Sunna alone, and *ijtihād*. If he were to create a catalog of these modes, however, al-Ṭaḥāwī would need to add a possibility not discussed by al-Shāfiʿī: a rule which appears in the Sunna and is explained by the Qurʾān.

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[227] Al-Ṭaḥāwī, *Aḥkām*, 1.59.
[228] El Shamsy, *Canonization of Islamic Law*, 206.
[229] Lowry, *Early Islamic Legal Theory*, 58.

In a variety of situations al-Ṭaḥāwī observes that a certain *ḥadīth* cannot be interpreted or is otherwise not adequate to establish the law. In such cases, an indication must be sought from the Qurʾān, Sunna, or Consensus.[230] It is important to note that al-Ṭaḥāwī does not use terms from the root *b-y-n* while discussing the elucidation of the Sunna by the Qurʾān as he often does when referring to the clarification of the Qurʾān by the Sunna; nonetheless, his understanding of the relationship between Qurʾān and Sunna displays a symmetry missing from al-Shāfiʿī, who does not envision the Qurʾān supplementing the Sunna.[231]

While al-Ṭaḥāwī frequently uses words from the root *b-y-n* to discuss rules in the Qurʾān or rules expressed by the Qurʾān and supplemented by the Sunna, his understanding of *bayān* is distinct from that of al-Shāfiʿī. Al-Shāfiʿī employs *bayān* as a technical term referring to a '"statement' of the law."[232] Al-Ṭaḥāwī, in contrast, uses words from this root to signify a communicative process in which something is made clear, such as God making a ruling clear in the Qurʾān, or clarifying the Qurʾān by means of the Sunna. Al-Ṭaḥāwī's association of *bayān* with a language-based process of clarification is in accord with the later *uṣūl* tradition.[233] Al-Jaṣṣāṣ, for instance, describes several types of *bayān*, including the restriction of an unrestricted expression (*takhṣīṣ al-ʿumūm*), the transfer of meaning from the literal to the figurative (*ṣarf al-kalām ʿan al-ḥaqīqa ilā al-majāz*), the explanation of the intent of a statement that cannot provide a

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[230] E.g., al-Ṭaḥāwī, *Maʿānī*, 1.455, 3.10, 4.99.

[231] See below, pp. 72-76 on al-Ṭaḥāwī's theory of abrogation, which permits reciprocal abrogation between Qurʾān and Sunna.

[232] Lowry, *Early Islamic Legal Theory*, 24.

[233] On later jurists' understandings of *bayān*, see Lowry, "Some Preliminary Observations on al-Šāfiʿī and Later *Uṣūl al-Fiqh*," 509ff.

ruling on its own, or abrogation.[234] All of these are processes in which one text bears on another in order to bring out or clarify a meaning that was not available from the original text. Likewise, al-Ṭaḥāwī's most frequent use of a term from the root *b-y-n* is the statement that the Sunna clarifies the Qurʾān on a certain question.[235] In other cases, a Qurʾānic verse is clarified (*yubayyan*) by another Qurʾānic verse.[236]

Al-Ṭaḥāwī almost never uses the noun *bayān*, preferring instead the verb *bayyana* to refer to clarification as an action or process, in contrast to al-Shāfiʿī's more static characterization of *bayān* as the architecture of the law. Perhaps what is most notable about al-Ṭaḥāwī's departure from al-Shāfiʿī's conception of *bayān* is that al-Ṭaḥāwī, too, is overwhelmingly concerned in his works with demonstrating the consistency of Qurʾān and Sunna. We therefore might have expected him to employ *bayān* to support that argument, as does al-Shāfiʿī. However, it appears that, for al-Ṭaḥāwī, *bayān* has become firmly associated with communicative clarity, a concern that anticipates later jurists' conviction of the centrality of linguistic interpretation to *uṣūl al-fiqh*.[237] While al-Ṭaḥāwī still shares many of al-Shāfiʿī's concerns about the authority and status of *ḥadīth*, his arguments nonetheless draw on the tools and concepts of his own time.

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[234] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1.247.
[235] E.g., al-Ṭaḥāwī, *Aḥkām,* 1.74.
[236] E.g., al-Ṭaḥāwī, *Aḥkām*, 1.87.
[237] Chapter Four, "Hermeneutics" discusses evidence for a linguistic conception of *uṣūl al-fiqh* in al-Ṭaḥāwī's works at length. About half a century before al-Ṭaḥāwī, al-Jāḥiẓ (d. 255/868) also understood *bayān* in a primarily communicative sense (Lowry, "Some Preliminary Observations on al-Šāfiʿī and Later *Uṣūl al-Fiqh*," 510-514).

Abrogation between the Qurʾān and Sunna

Al-Ṭaḥāwī's theory of abrogation (*naskh*) provides further evidence for his understanding of the relationship between the Qurʾān and Sunna. None of his extant works contains a definition of abrogation, but we may piece one together from relevant discussions: abrogation is a process in which the revelation of a new rule[238] in the Qurʾān or Sunna lifts (*rafʿ*)[239] the obligation to apply an earlier rule[240] established in either of the two sources.[241] What concerns us here is the interaction of Qurʾān and Sunna within this theory. Like most authors of later *uṣūl al-fiqh* texts, al-Ṭaḥāwī holds that there are four possible modes of abrogation: (1) the Qurʾān abrogating the Qurʾān; (2) the Qurʾān abrogating the Sunna; (3) the Sunna abrogating the Qurʾān, and (4) the Sunna abrogating the Sunna.[242]

In contrast, al-Shāfiʿī famously held that only the Qurʾān could abrogate the Qurʾān and the Sunna abrogate the Sunna. He writes in the *Risāla* that "God stated to them [in the Qurʾān] that He only abrogates things in the Book by means of the Book, and that the Prophetic Practice does not abrogate the Book. It is instead subordinate to the

[238] Al-Ṭaḥāwī, *Mushkil*, 4.364-365, 12.518. Al-Ṭaḥāwī's assertion that God may abrogate rules (*aḥkām*) but not reports describing events that have happened or will happen (*akhbār*) is the established position among later theorists, although it was a subject of debate earlier in the 3rd/9th century. Jurists including Muḥāsibī presented arguments against the possibility of abrogating reports. Their discussions are motivated by the theological question of whether God may change his mind (Melchert, "Qurʾānic Abrogation," 88-89). Although the restriction of abrogation to legal matters was established by al-Ṭaḥāwī's time, his explicit assertion of the impossibility of abrogating reports preserves a memory of an older debate.

[239] Al-Ṭaḥāwī, *Mushkil*, 5.261. Al-Ṭaḥāwī's assertion that the earlier rule is lifted is at odds with al-Jaṣṣāṣ and many other later jurists who held that abrogation does not eliminate an earlier ruling, but only restricts its application to a specified time period (Al-Jaṣṣāṣ, *al-Fuṣūl*, 1.355; Weiss, *Search for God's Law*, 498).

[240] Al-Ṭaḥāwī, *Maʿānī*, 3.139.

[241] Al-Ṭaḥāwī, *Mushkil*, 1.221-222, 2.294-295; *Aḥkām*, 1.63.

[242] Al-Ṭaḥāwī, *Maʿānī,* 3.139; *Mushkil*, 1.221-222, 2.294-295; *Aḥkām*, 1.63. Al-Jaṣṣāṣ, *al-Fuṣūl*, 1.449.

Book."[243] Al-Shāfiʿī thus claims that his theory of abrogation is that of the Qurʾān itself. Lowry further argues that al-Shāfiʿī's theory of abrogation rests on his belief that the Qurʾān and Sunna are "ontologically distinct" as well as on anxieties that the Qurʾān would "overwhelm the Sunna in all cases of asserted conflict between the two" as a result of the Qurʾān's superior epistemological status.[244]

Al-Ṭaḥāwī, in contrast, employs his discussions of abrogation to assert the ontological similarity of Qurʾān and Sunna. In one passage he states that "it is our position that the Sunna can abrogate the Qurʾān, because each one of them is from God. He may abrogate what He wishes of them using what He wishes of them."[245] Here his emphasis is on the similarity of Qurʾān and Sunna in terms of their shared status as revelation. Likewise, in the introduction to *Aḥkām al-Qurʾān*, al-Ṭaḥāwī explicitly states that the Sunna is of the same 'form' as the Qurʾān. He writes:

> The legal rulings (*aḥkām*) preceding the revelation of a [certain] Qurʾānic verse in Islam [that is, legal rulings derived from the Sunna] were legally effective and were not invalidated (*yanquḍ*) by the revelation of a Qurʾānic verse conflicting with them. Instead, they were abrogated (*yansakh*) by it, *because they were of the same form* (*shakl*). Therefore, when something appears from the Prophet after the revelation of a Qurʾānic verse it likewise abrogates that verse in cases where they conflict.[246]

This statement may be contrasted with al-Shāfiʿī's argument that "the Sunna may only be abrogated by its like (*mithl*), and it has no like except the Sunna."[247] Although al-Shāfiʿī uses the term '*mithl*' while al-Ṭaḥāwī uses '*shakl*,' these statements reveal the quite

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[243] Al-Shāfiʿī, *al-Risāla*, 44. Translation from al-Shāfiʿī, *The Epistle on Legal Theory*, trans. Joseph Lowry (New York: New York University Press, 2013), 81.
[244] Lowry, *Early Islamic Legal Theory*, 90-91.
[245] Al-Ṭaḥāwī, *Mushkil*, 1.221.
[246] Al-Ṭaḥāwī, *Aḥkām*, 1.62. Emphasis mine.
[247] Al-Shāfiʿī, *al-Risāla*, 45. Translation mine.

different stances of al-Ṭaḥāwī and al-Shāfiʿī on the ontological relationship between Qurʾān and Sunna.

To support his argument that the Qurʾān may abrogate the Sunna and the Sunna the Qurʾān, al-Ṭaḥāwī appeals to historical evidence, giving examples of known laws which can only be justified by positing that the Qurʾān was abrogated by the Sunna. In both passages mentioned above al-Ṭaḥāwī discusses Q 4/al-Nisāʾ:15 ("Those of your women who commit indecency – call four of you as witnesses against them. If [the four] give their testimony, confine them in their houses until death takes them or God appoints a way for them"), arguing that 'the way' referred to in the verse was indicated in a Prophetic *ḥadīth*. The *ḥadīth* constituted an abrogation of the verse because it changed the prescribed punishment.[248]

Although al-Ṭaḥāwī does not say so directly, his second example of the Qurʾān being abrogated by the Sunna demonstrates that he held that *khabar al-wāḥid* (a report transmitted by fewer than the number required to achieve epistemological certainty) also had the power to abrogate the Qurʾān, a position which elevates the *khabar al-wāḥid* to the epistemological status of the Qurʾān and the *khabar al-mutawātir* (a report transmitted by sufficient numbers to assure its authenticity).[249] In an example commonly adduced by other jurists espousing this opinion, al-Ṭaḥāwī argues that Q 2/al-Baqara:180 ("Prescribed for you, when death comes to one of you, if he leaves goods, are bequests for parents and kinsmen according to what is recognized as proper, as a duty to those who

[248] Al-Ṭaḥāwī, *Aḥkām*, 1.62; *Mushkil*, 1.221-222. In contrast, al-Shāfiʿī's rejection of the abrogation of the Qurʾān by the Sunna causes him considerable difficulty in explaining the origin of the punishment for adultery (al-Shāfiʿī, *Risāla*, 107-110). Burton analyzes al-Shāfiʿī's explanation at length in *Sources of Islamic Law*, 136-157.

[249] Hallaq, *History of Islamic Legal Theories*, 73-74.

protect themselves") was abrogated by the Prophetic *ḥadīth* "There is no bequest in favor of a Qurʾānic heir."[250] For al-Ṭaḥāwī, the two examples he adduces constitute self-evident proof that abrogation of the Qurʾān by the Sunna has actually occurred, and therefore must be possible. After each, he cites the objections of an unnamed interlocutor, whom we may assume to be al-Shāfiʿī, claiming that in each case the verse in question was in fact abrogated by another Qurʾānic verse.[251] In both cases, al-Ṭaḥāwī responds by demonstrating how the Qurʾānic verse his interlocutor adduces is insufficient to explain the law as it stands, and therefore abrogation of the Qurʾān by the Sunna must have occurred.[252]

The self-evidence of the occurrence of Qurʾān-Sunna and Sunna-Qurʾān abrogation for al-Ṭaḥāwī is crucial for understanding the function of this passage within the introduction to *Aḥkām al-Qurʾān*. Al-Ṭaḥāwī's purpose is not to make an argument for the various possible modes of abrogation; he does not even mention the possibility of Qurʾān-Qurʾān or Sunna-Sunna abrogation here, aside from criticizing those who say that only the Qurʾān can abrogate the Qurʾān. Instead, he introduces the topic of Qurʾān-Sunna and Sunna-Qurʾān abrogation in order to provide evidence for his central argument that the Sunna is revelation and has legal force. After a two and a half page discussion of

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[250] Al-Ṭaḥāwī, *Aḥkām*, 1.63. Al-Ṭaḥāwī also cites historical evidence for the possibility of the Sunna being abrogated by the Qurʾān, although, given how little time he spends on the question, it is apparently much less controversial for him. The same was generally true for other jurists as well (see Hallaq, *History of Islamic Legal Theories*, 72-73). Al-Ṭaḥāwī's historical examples include the abrogation of the *ḥadīth* prohibiting inheritance between Muslims and non-Muslims by Q 33/al-Aḥzāb:6; the abrogation of the *ḥadīth* ordering Muslims to pray toward Jerusalem by Q 2/al-Baqara:144; and the abrogation of the *ḥadīth* saying that free Muslims may be sold to pay for their debts by the revelation of Q 2/al-Baqara:28. Although al-Ṭaḥāwī gives more examples of the Qurʾān abrogating the Sunna than the Sunna abrogating the Qurʾān, he merely cites them without pausing to argue them.

[251] On the close relationship between the discussions of abrogation in al-Ṭaḥāwī and al-Shāfiʿī, see El Shamsy, *Canonization of Islamic Law*, 207.

[252] Al-Ṭaḥāwī, *Aḥkām*, 1.62-63.

the necessity of obeying the Sunna, al-Ṭaḥāwī introduces the topic of abrogation by saying:

> God's Messenger, from whom we received the Qurʾān, informed us that we must accept what he says to us, what he commands, and what he prohibits, even if it is not a Qurʾānic verse, just as we must accept the Qurʾānic verses he recites to us. We also find things practiced as an obligation in Islam that are not mentioned in the Qurʾān…which God then abrogated by what He revealed in the Book.[253]

The argument that follows is that if the Qurʾān can abrogate the Sunna (and the Sunna the Qurʾān), that is because they are of the same form (*shakl*)—i.e., the Sunna is revelation.[254]

That al-Ṭaḥāwī's purpose in discussing abrogation is to assert the ontological equivalence of Qurʾān and Sunna is again reinforced at the end of this passage, when al-Ṭaḥāwī's interlocutor suggests that the meaning of Q 10/Yūnus:15 ("Say, 'It is not for me to change it of my own accord. I follow only what is revealed to me'") is that only something from God, that is, the Qurʾān, may change the Qurʾān. Al-Ṭaḥāwī responds, "And who told you that the rule which abrogated the Qurʾānic verses is not from God, or that the Sunna is not from God? Rather, they are both from Him, and He abrogates the Qurʾān with whichever of them He wishes, just as He abrogates the Sunna with whichever of them He wishes."[255] Al-Ṭaḥāwī's entire discussion of abrogation is thus an argument for the status of the Sunna: the Sunna must be obeyed because it is like the Qurʾān—it is of its *shakl*. We know that because the Qurʾān and Sunna can and do abrogate each other.

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[253] Al-Ṭaḥāwī, *Aḥkām*, 1.61.
[254] Al-Ṭaḥāwī, *Aḥkām*, 1.61-62.
[255] Al-Ṭaḥāwī, *Aḥkām*, 63-64.

Abrogation of the Qurʾān

Al-Ṭaḥāwī's theory of abrogation provides one further piece of evidence concerning the relationship between the Qurʾān and Sunna, related specifically to the abrogation of the Qurʾān. John Burton identifies three modes of Qurʾānic abrogation discussed in mature *uṣūl* texts:

1) The abrogation of both the verse and the ruling (*naskh al-ḥukm wa-l-tilāwa*)
2) The abrogation of the ruling but not the verse (*naskh al-ḥukm dūn al-tilāwa*)
3) The abrogation of the verse but not the ruling (*naskh al-tilāwa dūn al-ḥukm*)[256]

The most controversial of these is the third mode, the abrogation of the verse but not the ruling. Burton argues that this mode was only necessary for jurists like al-Shāfiʿī, who denied the possibility of the Sunna abrogating the Qurʾān, but who still needed to explain how certain rules (i.e., stoning for adultery) were justified.[257]

We may compare with Burton's model of Qurʾānic abrogation al-Ṭaḥāwī's discussion in a very unusual chapter of *Sharḥ mushkil al-āthār*. While most chapters in this book set out one or more contradictory or otherwise problematic *ḥadīth*s and then resolve the apparent difficulties, this chapter cites Q 2/al-Baqara:106 ("Whatever signs we annul or cause to be forgotten, We bring better or the like") and then proceeds to set out a typology of Qurʾānic abrogation with examples of each type. He states that there are two kinds of abrogation of the Qurʾān:

1) The abrogation of the practices in the abrogated verses while the verses remain part of the Qurʾān (*nusikha al-ʿamal bi-mā fī al-āy al-mansūkha, wa-in kānat al-āy al-mansūkha qurʾānan kamā hiya*)

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[256] Burton, *Sources of Islamic Law,* 41.
[257] Burton, *Sources of Islamic Law*, 162-163.

2) The removal of the verse from the Qurʾān (*ikhrājuhā min al-Qurʾān*)
    a. preserved in memory (*maḥfūẓa fī al-qulūb*)
        or
    b. not preserved in memory (*khārija min al-qulūb, ghayr maḥfūẓa*)[258]

Although al-Ṭaḥāwī does not use the language of the later *uṣūl* scholars, his first category is clearly equivalent to Burton's second mode (abrogation of the rule but not the verse), and Category 2b is equivalent to Burton's first mode (abrogation of both the rule and the verse).

Al-Ṭaḥāwī's Category 2a (abrogation of the verse but not the memory), however, is not quite the same as Burton's third mode (abrogation of the verse but not the rule). The importance of the third mode for the jurists who subscribe to it is the continuance of the ruling—they need to explain how a law that does not appear to be Qurʾānic actually is based on a Qurʾānic verse.[259] Al-Ṭaḥāwī would not disagree that the ruling remains in effect, as evidenced by his citation of the stoning verse and the verse concerning the number of breastfeedings necessary to establish a blood relationship as examples of this category of abrogation.[260] However, he never states that the ruling remains in effect, and

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[258] Al-Ṭaḥāwī, *Mushkil*, 5.270.

[259] Al-Ṭaḥāwī, in contrast, needs the category of 'abrogated from the Qurʾān but preserved in memory' not in order to justify why rules are the way they are, but to explain *ḥadīth*s which appear to suggest that material might be missing from the Qurʾān. In all of his examples, an important Companion suggests that a certain verse is in the Qurʾān when in fact it is not in the canonized text. Al-Ṭaḥāwī's solution is to say that the verse was indeed in the Qurʾān, but it was then abrogated. This category is thus a consequence of the seriousness with which al-Ṭaḥāwī approaches *ḥadīth*s. In this seriousness he is similar to Ibn Qutayba, who Burton argues accepted the *ḥadīth* about the earlier existence of a stoning verse in the Qurʾān not because he needed to justify the law (he, like al-Ṭaḥāwī, accepted that the Sunna may be abrogated by the Qurʾān), but because he was committed to *ḥadīth* (Burton, *Sources of Islamic Law*, 162). Hossein Modarressi suggests that Burton's third mode (abrogation of the verse but not the rule) was in fact developed for the purpose of explaining *ḥadīth*s that appear to question the completeness of the Qurʾānic corpus ("Early Debates on the Integrity of the Qurʾān: A Brief Survey," *Studia Islamica* 77 (1993): 24).

[260] Al-Ṭaḥāwī, *Mushkil*, 5.302, 5.311. Al-Shāfiʿī uses the same verses as examples of the third mode of Qurʾānic abrogation (Burton, *Sources of Islamic Law*, 156).

that is not the crucial point for him. Instead, he is concerned with the preservation of the verse in memory.

What al-Ṭaḥāwī means by 'preservation' is revealed in three chapters appearing shortly after his typology of abrogation. In each chapter he argues that, after a certain verse was abrogated from the Qurʾān, it became part of the Sunna.[261] At the end of the last of these chapters, he concludes that

> It is the same for everything which is reported as being part of the Qurʾān, but which we do not find in our physical Qurʾāns (*maṣāḥifunā*). All such verses were part of the Qurʾān, but were abrogated and removed from it, then returned to the Sunna and made part of it.[262]

This claim is important for what it says about al-Ṭaḥāwī's understanding of the relationship between Qurʾān and Sunna. Other jurists discussing the third mode content themselves with stating that the ruling remains while the verse is abrogated, without getting into the details of the form in which it remains.[263] Al-Taftazānī, for instance, still considers an abrogated verse part of the Qurʾān.[264] Al-Ṭaḥāwī asserts clearly and repeatedly that the verse is transformed into a Sunna, thus implying that the boundary between Qurʾān and Sunna is, at least in some cases, permeable.

The Permeability of the Boundary between Qurʾān and Sunna

In the section above we established that al-Ṭaḥāwī's understanding of the relationship between Qurʾān and Sunna is radically different from that of al-Shāfiʿī.

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[261] Al-Ṭaḥāwī, *Mushkil*, 5.304, 5.306, 5.313, 5.315, 5.319, 5.320.
[262] Al-Ṭaḥāwī, *Mushkil*, 5.320.
[263] Weiss, *Search for God's Law*, 515-518.
[264] Burton, *Sources of Islamic Law*, 161.

Where al-Shāfiʿī views the two as "ontologically distinct,"[265] al-Ṭaḥāwī argues that they are of the same form (*shakl*)[266] and that in certain cases Qurʾānic verses may be transformed into Sunna, apparently without needing to be revealed a second time.[267] In another passage Al-Ṭaḥāwī further blurs the boundaries between Qurʾān and Sunna by arguing that "What is in God's Book is what is textually stipulated (*manṣūṣ*) in it or what God's Messenger said." [268] This rather startling statement defines the Sunna as part of the Qurʾān. It appears in response to the Prophetic *ḥadīth* "Every condition (*sharṭ*) that is not in God's Book is invalid" as a way of accepting the *ḥadīth* while still preserving for Muslims the right to make contract stipulations not mentioned in the Qurʾān. Al-Ṭaḥāwī then goes on to explain why the Sunna may be considered part of the Kitāb: it is because the acceptance of the Sunna is mandated by the Kitāb in Q 59/al-Ḥashr:7 ("Whatever the messenger gives you, take it. Whatever he forbids you to have, leave it alone").

Almost the same argument appears as in al-Ṭaḥāwī's discussion of the Companion *ḥadīth* "there is no revelation but the Qurʾān." Al-Ṭaḥāwī argues that by the Qurʾān, Ibn ʿAbbās meant "the Qurʾān and what the Qurʾān commands that is accepted only because of Q 59/al-Ḥashr:7." Shortly afterward he states that the Sunna is included within the scope of the Qurʾān (*dākhilan fī al-Qurʾān*) because of that verse.[269] While al-Ṭaḥāwī generally makes a firm distinction between the Qurʾān and the Sunna, it is

[265] Lowry, *Early Islamic Legal Theory*, 90.
[266] Al-Ṭaḥāwī, *Aḥkām*, 1.62.
[267] Al-Ṭaḥāwī, *Mushkil*, 5.320.
[268] Al-Ṭaḥāwī, *Maʿānī*, 4.90.
[269] Al-Ṭaḥāwī, *Mushkil*, 14.468-471.

striking that he is willing to include one within the scope of the other for the purposes of making his argument in these two passages.[270]

The Epistemological Status of Qurʾān and Sunna

Al-Ṭaḥāwī's portrayal of the relationship between the Qurʾān and Sunna is unusual in one further sense. For most legal theorists, a major distinction between the two kinds of revelation is that the entirety of the Qurʾānic text is epistemologically certain while the authenticity of individual *ḥadīth*s is open to doubt.[271] For the most part, al-Ṭaḥāwī concurs, objecting to *ḥadīth*s suggesting that certain verses might be missing from the canonized Qurʾānic text. He argues that, if that were the case, it would be possible that something missing from the canonized Qurʾān would abrogate something currently within it, and the obligation to act would be lifted.[272] However, a number of chapters in *Sharḥ mushkil al-āthār* blur the distinction in epistemological status between the Qurʾān and Sunna. Some examples suggest insecurity in the bounds of the Qurʾānic corpus by recounting the Companions' confusion regarding what belongs within the Qurʾān, while others point to that same insecurity by describing the somewhat messy process of compiling the Qurʾān.[273]

Undoubtedly, the reason that al-Ṭaḥāwī adduces so many *ḥadīth*s suggesting insecurity in the text of the Qurʾān while other legal theorists do not is that *Sharḥ mushkil al-āthār* is primarily a work on problematic *ḥadīth*s, to which category the traditions in

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[270] In contrast, al-Āmidī's (d. 631/1233) definition of *al-Kitāb* explicitly defines the Sunna as outside of it (Weiss, *Search for God's Law*, 155).
[271] Zysow, *Economy of Certainty*, 8; Vikør, *Between God and the Sultan*, 32.
[272] E.g., al-Ṭaḥāwī, *Mushkil*, 5.313, 11.491.
[273] Al-Ṭaḥāwī, *Mushkil*, 1.113-117, 3.402, 3.403-412, 8.141-142.

question certainly belong. The effect is somewhat jarring in a work which also treats a great deal of legal theory, however—so much so that the modern editor of *Sharḥ mushkil al-āthār* felt moved to quote Aḥmad Shākir on the necessity of rejecting one of the *ḥadīth*s in question, because it casts doubt on our knowledge of the chapters of the Qurʾān, which knowledge is epistemologically certain (*qaṭʿī*) by means of multiple transmission (*tawātur*).[274]

Al-Ṭaḥāwī appears to have no such qualms about transmitting material that casts doubt on the text of the Qurʾān, as is evident from a discussion of the meaning of the verb '*istaʾnasa*' in Q 24/*al-Nūr*: 27 ("Do not enter houses other than your own until you have *tastaʾnisū*"). In explanation, al-Ṭaḥāwī adduces a tradition from Ibn ʿAbbās saying that the copyist of the Qurʾān made a mistake (*akhṭaʾat al-kātib*), and the verb should be '*tastaʾdhinū*' (to ask permission).[275] Al-Ṭaḥāwī concludes his chapter by citing several versions of this tradition, content to record without comment the suggestion that there is a mistake in the text of the Qurʾān as we know it.[276] While al-Ṭaḥāwī clearly did not adduce these *ḥadīth*s with the explicit intent to assert the epistemological equivalence of the Qurʾān and Sunna, their presence contributes to the impression that al-Ṭaḥāwī's theory of the sources of revelation does not depend on an ontological distinction between Qurʾān and Sunna.

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[274] Al-Ṭaḥāwī, *Mushkil*, 1.121n1.
[275] Al-Ṭaḥāwī, *Mushkil*, 4.249-251.
[276] Once again, al-Arnaʾūṭ, the modern editor of *Sharḥ mushkil al-āthār*, is not so sanguine. In this instance he cites a variety of premodern scholars, including Ibn Kathīr, al-Qurṭubī and Fakhr al-Dīn al-Rāzī who concur with him in rejecting the *ḥadīth* from Ibn ʿAbbās on grounds of the impossibility of Ibn ʿAbbās having suggested any mistake in the text of the Qurʾān (al-Ṭaḥāwī, *Mushkil*, 4.249n2).

The Hierarchy of Qurʾān and Sunna

Despite the occasional blurring of the boundaries between the two, we may ask whether al-Ṭaḥāwī viewed the Qurʾān and Sunna as forming a hierarchy. The mature *uṣūl al-fiqh* tradition, while fully embracing the Sunna as a form of revelation, nonetheless held that the Qurʾān is a higher source of law. This claim is made especially strongly by the mature Ḥanafī school.[277] For a much earlier period Lowry finds this same attitude implicit in al-Shāfiʿī's *Risāla*.[278] Like al-Shāfiʿī, al-Ṭaḥāwī is not generally explicit about the relative status of the Qurʾān and Sunna, although he, like al-Shāfiʿī, does consistently list the Qurʾān before Sunna in the thirty or so lists of legal sources scattered throughout his books, which suggests its primacy.[279] Few passages explicitly indicate the relationship between the two sources, however. In one, after discussing a *ḥadīth* on how to give witness, al-Ṭaḥāwī states that he will turn to "something higher (*mā huwa aʿlā*), which is what God said in His Book."[280] This example is inconclusive, because it is not clear whether al-Ṭaḥāwī is suggesting that the Qurʾān is a higher source than Sunna in general, or if that is merely true of their relative usefulness for settling the question at hand.

The only unambiguous statement of the superiority of the Qurʾān that I have been able to locate in al-Ṭaḥāwī's extant works appears in his discussion of a Companion report in which Ibn ʿAbbās states that "there is no revelation except for the Qurʾān (*lā waḥy illā al-Qurʾān*)."[281] This claim appears to be in serious contradiction with other *ḥadīth*s asserting that Muḥammad's Sunna is also revelation. We have already

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[277] Rumee Ahmed, *Narratives of Islamic Legal Theory* (Oxford: Oxford University Press, 2012), 17.
[278] Lowry, *Early Islamic Legal Theory*, 211.
[279] See above, "Introduction," p. 23.
[280] Al-Ṭaḥāwī, *Mushkil*, 12.293.
[281] Al-Ṭaḥāwī, *Mushkil*, 14.466.

encountered above one of the solutions which al-Ṭaḥāwī offers for this embarrassment: he argues that the Sunna is within the scope of the Qurʾān. Al-Ṭaḥāwī also offers a second explanation, however, appealing to a linguistic principle which appears many times in his works: statements in the form 'there is no X but Y' mean that other things than Y can also be X, but not the very highest form of X. In this case, Muḥammad's Sunna can also be revelation, but not the very highest form of revelation.[282] By invoking this principle al-Ṭaḥāwī has explained how Ibn ʿAbbās's statement does not preclude Sunna being revelation, but he has also conceded the inferiority of Sunna to the Qurʾān. While it may appear that it was only al-Ṭaḥāwī's consistent application of his linguistic principle that led him to this conclusion, it also seems clear that he need not have made this argument at all, since he had already resolved the difficulty by claiming the Sunna as within the scope of the Qurʾān. His willingness to apply his linguistic principle in this case suggests that al-Ṭaḥāwī does indeed at some level consider the Qurʾān a higher source of law, even if statements to that effect are extremely rare in his works.

It appears, then, that for al-Ṭaḥāwī the relationship between the Qurʾān and the Sunna was more complex than it was for either al-Shāfiʿī or for the later tradition. While the Qurʾān and Sunna on the whole constitute two separate and identifiable bodies of revelation and relate to each other hierarchically, they are nonetheless neither epistemologically nor ontologically completely separate from each other. In asking why al-Ṭaḥāwī's understanding of their relationship is so distinct from that of al-Shāfiʿī or the later tradition, we may observe that al-Ṭaḥāwī was writing with quite different goals and constraints than either al-Shāfiʿī or later theorists. In the case of later *uṣūl al-fiqh*,

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[282] Al-Ṭaḥāwī, *Mushkil*, 14.471.

theorists were writing at a remove from the actual texts of the Qurʾān and Sunna, and therefore may have been able to create neat, clearly defined categories with considerably more freedom than that afforded al-Ṭaḥāwī, whose theoretical discussions almost without exception arise in response to issues within the sources. His theories are not driven by theological concerns (although he is sensitive to these) or by a desire to create order, but rather by the need to make sense of texts. Although it is true that most of al-Shāfiʿī's *Risāla* is taken up with example problems, and that these examples do not always neatly illustrate his theories, it is nonetheless also the case that it is theory that controls the *Risāla*'s structure. Al-Ṭaḥāwī, in contrast, is engaged in practical hermeneutics, the messy business of deriving meaning from revelation. Neat, clearly differentiated categories may only have been possible for jurists who formulated their theories in conversation with, but nonetheless slightly removed from, the raw material of revelation.

Ḥadīth Epistemology

Beyond the question of the relative epistemological statuses of Qurʾān and Sunna, Muslim jurists devoted significant attention to the question of the epistemological certainty engendered by different types of *ḥadīth*. Considering the central role that evaluating the soundness of individual *ḥadīth*s plays in al-Ṭaḥāwī's arguments, it is noteworthy that this type of discussion is almost entirely absent from his extant works. In this sense his approach is akin to that of the *ḥadīth* scholars, who tend to be more interested in individual *ḥadīth* transmitters and less in epistemological questions related

to transmission than the *uṣūl* scholars.[283] From various passing mentions, we may glean that al-Ṭaḥāwī posited two grades of *ḥadīth* corresponding to the *uṣūl* scholars' *khabar mutawātir* (a report transmitted by a number so large as to engender epistemological certainty) and *khabar al-wāḥid* (a report transmitted by fewer than the number required to engender epistemological certainty). Unlike his Ḥanafī predecessor ʿĪsā b. Abān as well as later Ḥanafīs including al-Jaṣṣāṣ, al-Ṭaḥāwī does not appear to recognize a third, intermediate category, the *mashhūr* tradition (a report which began as a *khabar wāḥid* but then became widespread among the early generations of Muslims).[284] In at least some cases, he describes as *mutawātir* traditions that later Ḥanafīs would call *mashhūr*.[285]

Al-Ṭaḥāwī's terminology for discussing the two grades of *ḥadīth* is not entirely stable. He does employ *khabar al-wāḥid* and *al-āḥād* as technical terms,[286] although the rarity with which he does so is notable considering how frequently his arguments consist of preferring one *ḥadīth* over another due to a greater number of transmitters. More often, he simply states that someone was alone (*tafarrada bi-*, etc.) in transmitting a certain *ḥadīth*.[287] While '*tawātur*' and '*mutawātir*' appear more frequently than *khabar al-wāḥid*

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[283] Kamali, *Textbook of Ḥadīth Studies*, 169.
[284] On the Ḥanafī concept of the *mashhūr* tradition, see Zysow, *Economy of Certainty*, 17-22; Kamali, *Textbook of Ḥadīth Studies*, 123; Ahmed, *Narratives of Islamic Legal Theory*, 82-84; Brown, *Canonization of al-Bukhārī and Muslim*, 184-186. In one passage in *Sharḥ mushkil al-āthār*, al-Ṭaḥāwī does touch upon one of the central issues of the *mashhūr* tradition. He claims that a certain *ḥadīth* is sound despite its faulty chain of transmitters because scholars have accepted it and acted upon it. He then gives several other examples of *ḥadīth*s which scholars have accepted despite their weak chains of transmission (6.162-163). Although al-Ṭaḥāwī does point to a group of *ḥadīth*s, however, they do not appear to rise to the level of a third category, both because no effort is made to give a label to them, and because they are not discussed as being in any relation to his other categories of *ḥadīth*. Beyond this, their relationship to the Ḥanafī *mashhūr* category may be tenuous, as al-Ṭaḥāwī says only that the 'scholars' (*ahl al-ʿilm*) have accepted the *ḥadīth*, while the *mashhūr* tradition relies on the widespread acceptance of the earliest generations of Muslims.
[285] Khālid ibn Muḥammad Maḥmūd Sharmān, *al-Ṣināʿa al-ḥadīthīya fī kitāb Sharḥ maʿānī al-āthār li-Abī Jaʿfar Aḥmad ibn Muḥammad al-Ṭaḥāwī* (Riyadh: Maktabat al-Rushd, 2003), 154.
[286] *Khabar al-wāḥid:* al-Ṭaḥāwī, *Maʿānī*, 1.95, 1.449. *Al-āḥād*: al-Ṭaḥāwī, *Mushkil*, 1.350, 8.132.
[287] Al-Ṭaḥāwī, *Mushkil*, 4.70.

it is not clear if they are technical terms for al-Ṭaḥāwī. Like other 3rd/9th century scholars including al-Shāfiʿī, he uses words derived from the *w-t-r* root to indicate widespread transmission, but not obviously in the technical sense of later theorists.[288] Nowhere in his extant works does he explain what constitutes *mutawātir* transmission, although we do learn that he is in agreement with the later tradition that the transmission of a *ḥadīth* may still be considered *mutawātir* even if certain individuals in their chains of transmission are suspect.[289]

Concerning the level of certainty engendered by each grade of *ḥadīth* and the connection between a *ḥadīth*'s epistemological status and the requirement to act upon it, al-Ṭaḥāwī is oblique. In one passage he argues that a certain *ḥadīth* has been transmitted in a *mutawātir* fashion, and so it is obligatory (*wajiba*) to adopt the position outlined in it.[290] Although al-Ṭaḥāwī does not state explicitly here or elsewhere that *mutawātir* reports engender epistemological certainty, that seems to be the implication. Similarly, in another passage we learn that *naql al-jamāʿa* (group transmission) is exempt (*barīʾ*) from the possibility of omitting part of Muḥammad's message on a certain topic, unlike *naql al-āḥād*.[291] Again, the implication is that *mutawātir* transmission leads to certainty. Finally, in the most important passage concerning the distinction between the two grades of transmission, al-Ṭaḥāwī argues that transmission by consensus (*al-naql bi-l-ijmāʿ*) has legal force (*ḥujja*) such that anyone who disbelieves (*kafara*) in the smallest part of it is an infidel who may be killed unless he repents. This ruling does not apply, however, to

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[288] Brown, *Canonization of al-Bukhārī and Muslim*, 54; Zysow, *Economy of Certainty*, 8n3.
[289] Al-Ṭaḥāwī, *Aḥkām*, 1.248. Concerning the later tradition, see Kamali, *Textbook of Ḥadīth Studies*, 170; Ahmed, *Narratives of Islamic Legal Theory*, 79.
[290] Al-Ṭaḥāwī, *Aḥkām*, 1.338.
[291] Al-Ṭaḥāwī, *Mushkil*, 1.350.

those who disbelieve in something transmitted by *al-akhbār al-āḥād*, only to transmission by *al-jamāʿa*.[292] The attribution of unbelief to those who reject a *mutawātir* transmission is a feature of later *uṣūl* discussions.[293]

While many of al-Ṭaḥāwī's arguments rest on the acceptance or rejection of individual *akhbār āḥād*, he makes few general statements concerning the conditions under which they should be acted upon. In one chapter, he argues that a *khabar wāḥid* (although he does not use the term) from ʿAlī should be accepted, although he knows of no one else who accepts it, because the opinions is a sound one (*qawl ḥasan*) and putting the *ḥadīth* into practice revives a *sunna* of the Prophet.[294] This appears to be an argument in favor of acting upon *khabar al-wāḥid* even in the absence of epistemological certainty. His optimism concerning *khabar al-wāḥid* aligns with that of his later Ḥanafī colleague al-Sarakhsī, who argued for the presumption of trustworthiness on the part of traditions and transmitters; the Ḥanafī al-Dabūsī, on the other hand, was hesitant to act upon *khabar al-wāḥid* in the absence of firm evidence for fear of improperly attributing words to the Prophet.[295]

In other places al-Ṭaḥāwī refers obliquely to the controversies surrounding the *khabar al-wāḥid* by mentioning 'those who accept the legal force (*ḥujja*) of the *khabar al-wāḥid*.'[296] This may be a reference to the Shāfiʿīs, whom the later Ḥanafīs portrayed as elevating the *khabar al-wāḥid* almost to the level of the Qurʾān.[297] His point in these

[292] Al-Ṭaḥāwī, *Mushkil*, 8.132.
[293] Zysow, *Economy of Certainty*, 17.
[294] Al-Ṭaḥāwī, *Mushkil*, 2.190-191.
[295] Ahmed, *Narratives of Islamic Legal Theory*, 86-91.
[296] Al-Ṭaḥāwī, *Maʿānī*, 1.95, 1.449.
[297] Ahmed, *Narratives of Islamic Legal Theory*, 85.

passages is not to support or refute their position, however, but rather to make an argument concerning what that position commits them to regarding a certain legal question. One such passage contains the clearest evidence in al-Ṭaḥāwī's extent works that he understood *al-khabar al-mutawātir* and *khabar al-wāḥid* as opposing categories. While arguing that a certain *ḥadīth* from Ibn Masʿūd should be discarded, al-Ṭaḥāwī states that its transmission is such that it has legal force (*ḥujja*) neither for those who accept the *khabar al-wāḥid* nor for those who [only] act upon reports whose transmission is plural (*tawātara*).[298]

Ḥadīth Terminology

In addition to the epistemological terms *khabar al-āḥād* and *tawātur/mutawātir*, al-Ṭaḥāwī employs a range of terminology related to *ḥadīth* and *Sunna*. At the most general level, he opposes revelation in the form of the *Kitāb* (Book) to revelation through the words (*ʿalā lisān*) of Muḥammad. This pairing, found also in al-Shāfiʿī's exposition of his concept of *bayān* in the *Risāla*,[299] is used to introduce the discussion of non-Qurʾānic revelation in al-Ṭaḥāwī's introduction to *Aḥkām al-Qurʾān*.[300] The same pairing serves as a structuring device in many chapters of *Aḥkām al-Qurʾān*: after quoting a Qurʾānic verse, al-Ṭaḥāwī states that a certain part of the verse was not explained (*lam yubayyan*) in the *Kitāb*, but it was explained (*yubayyan*) in the words of the Prophet.[301] This transitional statement then allows him to enter into the main work of most chapters

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[298] Al-Ṭaḥāwī, *Maʿānī*, 1.95.
[299] Al-Shāfiʿī, *al-Risāla*, 7.
[300] Al-Ṭaḥāwī, *Aḥkām*, 1.59.
[301] E.g., al-Ṭaḥāwī, *Aḥkām*, 1.74, 1.87, 1.119.

of *Aḥkām al-Qurʾān*, which is in fact to discuss the Sunna, not the Qurʾān. Most of al-Ṭaḥāwī's language, however, does not so clearly distinguish between Prophetic and post-Prophetic material.

The word '*ḥadīth*,' for instance, invariably refers to a specific report consisting of an *isnād* (chain of authorities) and *matn* (stable verbal form of a report).[302] Similar to Abū Yūsuf in his *al-Radd ʿalā Siyar al-Awzāʿī*,[303] al-Ṭaḥāwī usually but not exclusively applies the term '*ḥadīth*' to Prophetic reports; at other times he cites a "*ḥadīth* of ʿAlī" or a "*ḥadīth* of Salmān."[304] This usage stands in contrast with that of later jurists, among whom '*ḥadīth*' would come to be exclusively associated with Prophetic reports.[305] Apparently synonymous with '*ḥadīth*' is the rarer '*khabar*.'[306] More than once al-Ṭaḥāwī successively labels the same Prophetic report "*ḥadīth*" and "*khabar*," demonstrating that he, like Ibn Qutayba, does not make a distinction between '*ḥadīth*' as religious reports and '*khabar*' as secular reports.[307] Like '*ḥadīth*,' '*khabar*' can refer to Companion as well as Prophetic reports.[308]

Where later jurists would come to use '*ḥadīth*' as a collective term for Prophetic reports, al-Ṭaḥāwī only employs '*ḥadīth*' to designate the specific report under discussion. Very rarely, he uses the plural '*aḥādīth*' to refer to multiple reports, but even

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[302] E.g., al-Ṭaḥāwī, *Aḥkām*, 1.72, 1.75, 1.84.
[303] Ansari, "Islamic Juristic Terminology," 2-4.
[304] Al-Ṭaḥāwī, *Aḥkām*, 1.116, 1.117-118.
[305] Ansari, "Islamic Juristic Terminology," 2; Kamali, *Textbook of Ḥadīth Studies*, 57.
[306] In contrast, the authors of the first Ḥanafī *uṣūl al-fiqh* works, al-Jaṣṣāṣ, al-Dabūsī, and al-Sarakhsī, tend to use the term *khabar* rather than *ḥadīth* (Murteza Bedir, "The Early Development of Ḥanafī *Uṣūl al-fiqh*" (PhD diss., University of Manchester, 1999), 126).
[307] E.g., al-Ṭaḥāwī, *Aḥkām*, 1.113, 1.124, 1.141; Lecomte, *Ibn Qutayba*, 261.
[308] Al-Ṭaḥāwī, *Aḥkām*, 1.191.

then he intends only a few specific reports.[309] To refer to a larger body of reports relevant to a legal topic or to the phenomenon of reports in general, he uses '*āthār*.'[310] This abstract usage of '*āthār*' to refer to the general phenomenon of reports appears as a structuring device in many chapters of *Sharḥ maʿānī al-āthār*. After weighing the *ḥadīth* evidence for different positions on a legal question and stating his conclusion, al-Ṭaḥāwī frequently states that "this is the ruling (*ḥukm*) on this topic according to the method (*ṭarīq*) of *āthār*." He almost invariably then goes on to discuss what the ruling on the same question would be according to *naẓar* (reasoned speculation).[311] While *āthār* sometimes refers to post-Prophetic reports,[312] it more often refers to Prophetic material. Al-Ṭaḥāwī's definition of '*āthār*' contrasts sharply with that of both al-Shāfiʿī and later jurists, for most of whom '*āthār*' refers to non-Prophetic reports. For al-Shāfiʿī, '*āthār*' were generally post-Companion reports which fell outside of the bounds of revelation.[313] For other jurists *āthār* was either a wider category including Prophetic and non-Prophetic reports or else a term restricted to Companion reports.[314] Al-Ṭaḥāwī's equation of *āthār* with *ḥadīth* is therefore unusual.

While '*ḥadīth*', '*khabar*' and '*āthār*' refer to verbal reports, al-Ṭaḥāwī employs '*sunna*' more generally to encompass the practices concretized in those reports.[315]

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[309] E.g., al-Ṭaḥāwī, *Aḥkām*, 1.75, 1.21.
[310] E.g., al-Ṭaḥāwī, *Aḥkām*, 1.77, 1.81, 1.85.
[311] E.g., al-Ṭaḥāwī, *Maʿānī*, 1.31, 1.33.
[312] E.g., al-Ṭaḥāwī, *Aḥkām*, 1.159, 1.185.
[313] Lowry, *Early Islamic Legal Theory*, 204; Schacht, *Origins of Islamic Law*, 16.
[314] Kamali, *Textbook of Ḥadīth Studies*, 60; Ansari, "Islamic Juristic Terminology," 2.
[315] This distinction is common among later jurists: "Ḥadīth as such is the verbal embodiment and vehicle of the *Sunna*" (Kamali, *Textbook of Ḥadīth Studies*, 57). Not discussed here is the use of *sunna* as an equivalent of *mandūb* (recommended), one of the categories of legal obligations (e.g., al-Ṭaḥāwī, *Aḥkām*, 1.243).

Frequently, the term appears as a pair with 'Qurʾān' or *'Kitāb*,'[316] and in one instance al-Ṭaḥāwī explicitly contrasts them by asserting that a *sunna* is something that was not revealed in the *Kitāb*.[317] In the overwhelming majority of cases al-Ṭaḥāwī implicitly or explicitly uses the term '*sunna*' to refer to the exemplary practice of the Prophet (*sunnat rasūl Allāh*).[318] Al-Ṭaḥāwī's habitual association of *sunna* with the Prophet represents a late stage in the evolution of this pre-Islamic term, which originally seems to have referred to the practice or traditions of the community or of individuals. While the Prophet's practice gained a special status early in Islamic history, it is not until the beginning of the 3rd/9th century that the association with Muḥammad became predominant.[319] The *Risāla* of al-Shāfiʿī, for example, strongly associates *sunna* with the Prophet and argues for its authority.[320]

Al-Ṭaḥāwī follows al-Shāfiʿī in his overwhelming association of *sunna* with Muḥammad, and yet he occasionally refers to the *sunna* of ʿUmar, the Companions, or the first four caliphs (*al-rāshidūn*).[321] Very rarely, he employs *sunna* without reference to a person to mean the legal practice concerning a certain thing, i.e., the *sunna* of the call to prayer (*adhān*).[322] One passage in *Sharḥ maʿānī al-āthār* captures this controversy: a group of jurists claims that the reference to *sunna* in a *ḥadīth* means that the *ḥadīth* must

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[316] E.g., al-Ṭaḥāwī, *Aḥkām*, 1.63, 1.65, 1.70, 1.90, 1.98.
[317] Al-Ṭaḥāwī, *Aḥkām*, 1.185-187.
[318] E.g., al-Ṭaḥāwī, *Aḥkām*, 1.147, 1.149, 1.176, 1.192.
[319] Hallaq, *Origins and Evolution of Islamic Law*, 46-49; Ansari, "Islamic Juristic Terminology," 267; Burton, *Introduction to the Ḥadīth*, 49.
[320] Lowry, *Early Islamic Legal Theory*, 166, 169.
[321] Al-Ṭaḥāwī, *Aḥkām*, 1.389; *Maʿānī*, 1.80, 1.142. The degree to which al-Ṭaḥāwī still diverges from the later tradition's exclusive association of the *sunna* with the Prophet can be judged by the fact that the modern editor of *Sharḥ maʿānī al-āthār* dedicates a lengthy footnote (in an edition containing very few and very terse notes) to expressing his discomfort with al-Ṭaḥāwī's assertion that *sunna* can come from the first four caliphs (*Maʿānī*, 1.80n.4).
[322] Al-Ṭaḥāwī, *Aḥkām*, 1.142; see also *Maʿānī*, 1.188.

be Prophetic, even though it does not appear to be, because *sunna* only comes from the Prophet. Their opponents, with whom al-Ṭaḥāwī implicitly agrees, argues that the term *sunna* can also indicate that person's opinion (*raʾy*) or something they took from someone after the time of the Prophet.[323] It is notable that, while al-Shāfiʿī argues for the exclusive association of *sunna* with the Prophet, al-Ṭaḥāwī argues that that need not always be the case.

The pattern that emerges from al-Ṭaḥāwī's use of all of these terms is that they usually, but not exclusively, refer to Prophetic reports. This pattern indicates the central importance of Prophetic material to al-Ṭaḥāwī's conception of the law and its sources. At the same time, however, al-Ṭaḥāwī does not feel the need to make the absolute distinction between Prophetic and post-Prophetic material that would be indicated by separate technical terms. His disinterest in doing so suggests that, as we will see in the following chapter, Prophetic and post-Prophetic materials do not fall into two epistemologically distinct categories for al-Ṭaḥāwī representing revelation and non-revelation.

The Status of Muḥammad's Words and Actions

While al-Ṭaḥāwī gives little attention to describing the varieties of *ḥadīth* and their respective levels of epistemological certainty, he is considerably more concerned with another issue related to the authoritativeness of *ḥadīth* as a source of law, and that is determining which kinds of reports about Muḥammad's words and actions establish legal obligations. Like al-Shāfiʿī as well as authors of mature *uṣūl al-fiqh* works, al-Ṭaḥāwī

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[323] Al-Ṭaḥāwī, *Maʿānī*, 1.258.

held that Muḥammad could not act against God's commands.[324] However, where both al-Shāfiʿī and later authors use the root ʿ-*ṣ-m* (*maʿṣūm*, ʿ*iṣma*) to indicate Muḥammad's infallibility, al-Ṭaḥāwī simply states that it is impossible (*muḥāl*) that Muḥammad do something that God had prohibited.[325] Al-Ṭaḥāwī's statement is categorical in a way that many other jurists' discussions of infallibility are not. He does not entertain the possibility of Muḥammad temporarily disobeying God, although already in his time many jurists held that the concept of Muḥammad's infallibility prevented only his persisting in error.[326] For all of these jurists, the claim of prophetic infallibility is fundamental to assuring the status of *ḥadīth* as a source of law; if Muḥammad could disobey God, then his actions would not be a reliable means of discovering the law.

Prophetic infallibility does not imply that all of Muḥammad's actions represent legal obligations, however. Al-Ṭaḥāwī, like later jurists, denies evidentiary value to anything Muḥammad did or said while asleep.[327] In *al-Fuṣūl*, al-Jaṣṣāṣ considers whether the presumptive approach to Muḥammad's actions should be to consider those actions obligatory, recommended or merely permitted. He concludes that they are merely

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[324] Al-Shāfiʿī, *al-Risāla*, 38; Ahmed, *Narratives of Islamic Legal Theory*, 74.
[325] Al-Ṭaḥāwī, *Mushkil*, 1.73. Elsewhere, al-Ṭaḥāwī also quotes Q 53/al-Najm:3-5 ("Nor does he speak out of caprice (*wahm*). This is simply a revelation (*waḥy*) that is being revealed, Taught to him by one great in power"), one of the primary verses used by later jurists to support claims of Prophetic infallibility. Al-Ṭaḥāwī adduces the verse as evidence for his claim that Prophetic *ḥadīth*s cannot contradict one another (*Mushkil*, 4.10). While not explicitly about Prophetic infallibility, this passage suggests that the idea of infallibility underlies al-Ṭaḥāwī's concept of the internal coherence of the corpus of *ḥadīth*.
[326] Shahab Ahmed, "Ibn Taymiyyah and the Satanic Verses," *Studia Islamica* 87 (1998): 90; Rumee Ahmed, "The Ethics of Prophetic Disobedience: Qurʾān 8:67 at the Crossroads of Islamic Sciences," *Journal of Religious Ethics* 39, no. 3 (2011): 441. For most jurists, the errors which Muḥammad might commit and then be corrected in were errors of *ijtihād*, or reasoned opinion, on matters not addressed in revelation. Much less common was the view held by Ibn Taymiyya that Muḥammad could err in transmitting revelation itself and later be corrected (Ahmed, "Ibn Taymiyyah," 78). Chaumont notes al-Shīrāzī's statement that Muḥammad may commit errors in his *ijtihād* like all humans, but will always then be corrected by subsequent revelation (Chaumont, "La problématique classique de l'Ijtihâd," 130-133).
[327] Al-Ṭaḥāwī, *Maʿānī*, 2.89; al-Sarakhsī, *al-Muḥarrar fī uṣūl al-fiqh*, ed. Abū ʿAbd al-Raḥmān ibn ʿUwayḍah (Beirut: Dār al-Kutub al-ʿIlmīya, 1996), 2.67.

permitted in the absence of an indication (*dalīl*) to the contrary.[328] Al-Ṭaḥāwī does not explicitly discuss any of these possibilities in his extant works. Nonetheless, we can surmise that he, like his fellow Ḥanafī al-Jaṣṣāṣ, held that Muḥammad's actions indicate the mere permissibility of performing that action in the absence of a further indication. At several points in *Sharḥ maʿānī al-āthār* he argues that his opponents have no evidence for holding that a certain *ḥadīth* entails obligation, since there is nothing in that *ḥadīth* that indicates (*yadull*) that Muḥammad's action is not simply showing his personal inclination or establishing a preferred, but not obligatory, course of action.[329]

Where al-Ṭaḥāwī diverges most from his Ḥanafī successors is in his discussion of Muḥammad's words and actions that are not inspired by God. Al-Ṭaḥāwī, al-Jaṣṣāṣ and al-Sarakhsī all affirm that Muḥammad could and did sometimes speak from *ijtihād al-raʾy* (the exertion of effort to come to a correct reasoned opinion) in situations where there was no revealed text to provide guidance.[330] Al-Ṭaḥāwī's motivations for making this claim differ significantly from those of al-Jaṣṣāṣ and al-Sarakhsī, however. The latter two jurists are interested in explaining, first, why Muḥammad sometimes consulted (*mushāwara*) with his Companions and took their advice when his status as a prophet might seem to preclude that[331] and, second, how it is that Muḥammad was permitted to use his reasoning to make statements concerning rules of positive law (*aḥkām*) that were

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[328] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.76-88. Al-Sarakhsī states that he agrees with al-Jaṣṣāṣ while expanding the range of possible options to include both *farḍ* and *wājib*, reflecting the distinction made between them in the Ḥanafī school by his time (*al-Muḥarrar*, 2.67).
[329] Eg., al-Ṭaḥāwī, *Maʿānī*, 1.30, 1.120, 1.178.
[330] Al-Ṭaḥāwī, *Maʿānī*, 4.270; al-Jaṣṣāṣ, *al-Fuṣūl*, 2.93-98; al-Sarakhsī, *al-Muḥarrar*, 2.70-71. For an overview of later legal theorists who accepted or rejected the possibility of Muḥammad's *ijtihād*, see Chaumont, "La problématique classique de l'Ijtihâd," 114-137.
[331] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.95-96; al-Sarakhsī, *al-Muḥarrar*, 2.73.

later changed by revelation.[332] The crucial point for both jurists is that, although Muḥammad may have employed *ijtihād*, his *ijtihād* was not really like that of other people, since God would not allow him to continue in an error. Given that his *ijtihād* must either be correct to begin with or would be corrected by God, it is in effect not *ijtihād* at all, but in fact something akin to revelation.[333] Thus, no one may act against Muḥammad's *ijtihād*.[334]

Al-Ṭaḥāwī's understanding of Muḥammad's *ijtihād* is largely the opposite. He writes that "God's messenger informed us that he is like the rest of humanity in what he says by way of reasoned speculation (*ẓann*). It is what he says from God that does not permit opposition."[335] In other words, Muḥammad's *ijtihād* is entirely unlike revelation and creates no legal obligations for other Muslims. The discussions of Muḥammad's *ijtihād* in al-Ṭaḥāwī's works fall into two related categories. In the first, al-Ṭaḥāwī appeals to Muḥammad's *ijtihād* in order to explain away a potentially embarrassing *ḥadīth*, such as a report in which Muḥammad expresses doubt about the benefit of pollinating date palms. When the Muslims heed him and cease to pollinate them, the dates do not grow properly. Confronted with this result, Muḥammad's response is that he is no farmer, and the Muslims should go ahead and pollinate their trees.[336] In his discussion of this *ḥadīth*, al-Ṭaḥāwī proposes that Muḥammad probably thought that non-human females do not require anything from the male in order to be fertile. In this he spoke from speculation (*ẓann*), in which he is equal to other humans. In this kind of

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[332] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.97; al-Sarakhsī, *al-Muḥarrar*, 2.71-72.
[333] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.98; al-Sarakhsī, *al-Muḥarrar*, 2.70-71, 74-75.
[334] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.98.
[335] Al-Ṭaḥāwī, *Maʿānī*, 4.270.
[336] Al-Ṭaḥāwī, *Mushkil*, 4.423-425.

statement people may disagree, and it will become clear who is knowledgeable and who is not. Here, the Prophet was not one of those who are knowledgeable, since he came from Mecca, a city with no date palms at that time.[337]

In another *ḥadīth* Muḥammad warns men not to have sexual intercourse with their pregnant wives (lit., to kill their children secretly) lest they be overtaken by the dead fetus while they are on horseback and be thrown from their horses.[338] A separate *ḥadīth* revokes the warning, saying that the Persians and Anatolians (*al-Rūm*) come to no harm from the practice, and therefore Muslims will not either.[339] Al-Ṭaḥāwī comments that Muḥammad stated the original prohibition on intercourse during pregnancy out of fear of the harm it could cause, but this was not a prohibition like that found in revelation or law. Rather, it was based on what was in Muḥammad's heart and was merely a warning.[340] Al-Ṭaḥāwī suspects that Muḥammad took his original view from what was commonly held among the Arabs, a claim he also makes in other cases where Muḥammad's statement or action is not meant to set a precedent.[341] Both of the above examples show Muḥammad giving orders unsupported by fact. Al-Ṭaḥāwī neutralizes these potentially embarrassing reports by appealing to Muḥammad's *ijtihād* and by portraying that *ijtihād* as radically opposed to revelation, and therefore non-threatening to the status of the *ḥadīth* as a source of law.

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[337] Al-Ṭaḥāwī, *Mushkil*, 4.426.
[338] Al-Ṭaḥāwī, *Maʿānī*, 3.46. Another version of the same discussion is found in *Mushkil*, 9.284-294. The wording of this *ḥadīth* is somewhat opaque: "*lā taqtal awlādakum sirran, fa-inna qatl al-ghayl yudriku al-fāris ʿalā ẓuhr farasihi, fa-yadʿatharu*." Avner Giladi reads '*ghayl*' as intercourse with a nursing, rather than pregnant, wife, but al-Ṭaḥāwī clearly states in his discussion that the women are pregnant (*Infants, Parents and Wet Nurses: Medieval Islamic Views on Breastfeeding and Their Social Implications* (Leiden: Brill, 1999), 31-32.
[339] Al-Ṭaḥāwī, *Maʿānī*, 3.47.
[340] Al-Ṭaḥāwī, *Maʿānī*, 3.47-48; *Mushkil*, 9.285.
[341] Al-Ṭaḥāwī, *Mushkil*, 9.285, 5.340-341.

Al-Ṭaḥāwī also appeals to Muḥammad's *ijtihād* as a technique to neutralize apparently contradictory *ḥadīth*s. When confronted with a *ḥadīth* in which Muḥammad gives the command not to take oaths (*qasam*), al-Ṭaḥāwī argues that this case is like the one in which Muḥammad ordered men not to have intercourse with their pregnant wives: he was speaking out of concern for his addressee, not establishing a legal standard. Other *ḥadīth*s establish the permissibility of taking oaths.[342] Similarly, concerning a *ḥadīth* which appears to set a legal obligation concerning what a man owes to his divorced wife during her waiting period (*ʿidda*), al-Ṭaḥāwī argues that Muḥammad was not making a legal ruling (*yaḥkum*) but rather giving a legal opinion (*futyā*). The ruling concerning divorced women comes from other, revelatory *ḥadīth.*[343]

While revelation does establish a correct answer in the above questions, al-Ṭaḥāwī does not suggest that God revealed new *ḥadīth*s in order to correct any erroneous *ijtihād* on the part of Muḥammad; in fact, al-Ṭaḥāwī never states that God must correct Muḥammad's errant opinions, indicating that he considers them ontologically distinct from revelation. Returning to the idea of prophetic infallibility, we might say that al-Ṭaḥāwī's categorical tone in stating that it is impossible for Muḥammad to disobey God or to be in error comes from his conviction that incorrect *ijtihād* is not error.[344] Humans, including Muḥammad, are tasked with undertaking *ijtihād* in the absence of revelation, but they are not tasked with arriving at the objectively correct answer.[345] In contrast, al-

[342] Al-Ṭaḥāwī, *Maʿānī*, 4.269-271.
[343] Al-Ṭaḥāwī, *Aḥkām*, 2.370. For a similar example see *Mushkil*, 13.145.
[344] Al-Ṭaḥāwī, *Mushkil*, 1.73.
[345] Al-Āmidī, likewise, held that every *mujtahid* is correct, and therefore Muḥammad, like other *mujtahid*s, cannot be said to be incorrect in his *ijtihād* (Chaumont, "La problématique classique de l'Ijtihâd," 129).

Jaṣṣāṣ and al-Sarakhsī have Muḥammad's *ijtihād* in mind when they state that the Prophet cannot continue in an error, but will instead be corrected by God.

The differences in these two positions suggest a significant difference in how these jurists view Muḥammad's prophethood. Al-Ṭaḥāwī understands Muḥammad as being both a prophet, who infallibly conveys God's speech and follows God's commands, and an ordinary human, who can make mistakes and speak contrary to fact just like anyone else. Al-Jaṣṣāṣ and al-Sarakhsī, in contrast, seek to erase the fallible, ordinary side of Muḥammad by arguing that his *ijtihād* amounts to a form of revelation. Changing perceptions of Muḥammad no doubt contribute to this disparity in views; the section on the revelatory status of Muḥammad's *ijtihād* is much more extensive and strongly stated in al-Sarakhsī (d. ca. 483/1090) than in al-Jaṣṣāṣ (d. 370/980-981).

It is also likely, however, that the difference is due in part to the different genres in which these jurists are writing. Al-Jaṣṣāṣ and al-Sarakhsī are composing manuals of legal theory. While they do adduce *ḥadīth*s in support of and as examples of their claims, the power of selection is in their own hands. In contrast, al-Ṭaḥāwī has set out in his works of practical hermeneutics to tackle a very large body of problematic *ḥadīth* in order to demonstrate that apparent conflicts among them are not real. His materials are not selected to support elegant theoretical discussions; rather, his theories are constantly forced to grapple with the raw material of revelation. It is questionable whether the elegant, comprehensive theories of Islamic law characteristic of the later legal theorists could have coexisted in the same texts with such a diverse body of material. There may be something necessary about the fact that legal theory was written in a genre of texts

separate from, though closely related to, the messy business of confronting the raw material of revelation.

Here, in order to accommodate certain problematic Prophetic *ḥadīth*s without calling the authority of all Prophetic *ḥadīth*s into question, al-Ṭaḥāwī has posited a fundamental distinction between *ḥadīth*s that result from revelatory instruction and those that represent the Prophet's personal inference. In asserting this instruction/inference divide, al-Ṭaḥāwī has effectively created a two-tiered system: Prophetic *ḥadīth*s which represent revelation are authoritative legal sources, while those which record the Prophet's own legal reasoning have no special authority. There is, then, no single degree of legal authority that can be assigned *a priori* to Prophetic *ḥadīth* as a category. Of course, legal theorists also recognized different degrees of authority in *ḥadīth* based upon epistemological certainty, as we have seen above. However, when legal theorists claim that a *khabar wāḥid* does not possess the same authority as a *khabar mutawātir*, they are concerned only with how the report was transmitted after Muḥammad's death; both singly and widely transmitted *ḥadīth*s originally represented the same kind of authority.[346]

In contrast, al-Ṭaḥāwī's typology of Prophetic *ḥadīth*s is based upon content. Some *ḥadīth*s, from the moment of their inception, cannot serve as the basis for deriving the law, because they merely preserve Muḥammad's own inference. In his discussion of Prophetic *ḥadīth*s, then, al-Ṭaḥāwī employs an instruction/inference binary as a kind of safety valve that allows him to downplay the authority of a certain set of problematic

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[346] We have seen above that later legal theorists' discussions of the Prophet's *ijtihād* are designed to assert the functional equivalence of Muḥammad's *ijtihād* to revelation.

*ḥadīth*s. In the following chapter, we will see that he draws upon the very same binary to augment the authority of certain Companion and Successor *ḥadīth*s such that they represent revelatory authority. Al-Ṭaḥāwī's repeated invocations of the instruction/inference divide in different contexts suggest that this binary is fundamental to al-Ṭaḥāwī's vision of the structure of the Divine Law.

Chapter Two: Companion and Successor Ḥadīths

Al-Ṭaḥāwī's hermeneutical works are overwhelmingly concerned with demonstrating the mechanics of how Prophetic *ḥadīth*s may be interpreted in light of other Prophetic *ḥadīth*s and the Qurʾān in order to reveal coherent rules of positive law.[347] Despite the centrality of Prophetic *ḥadīth* to al-Ṭaḥāwī's project, however, Companion and Successor *ḥadīth*s appear in the great majority of his arguments in *Aḥkām al-Qurʾān* and *Sharḥ maʿānī al-āthār*.[348] They play a lesser but still notable role in his third hermeneutical work, *Sharḥ mushkil al-āthār*.[349] In the course of these three texts, al-Ṭaḥāwī cites *ḥadīth*s from well over a hundred different Companions and Successors, many of whom feature habitually in his arguments.[350] In most chapters, Companion and

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[347] On this project, see p. 12 of this study.

[348] To give an approximation of their prevalence, within the 21 chapters that comprise *Kitāb al-Ṣalāt* in *Aḥkām al-Qurʾān*, 18 contain both Prophetic and Companion/Successor *ḥadīth*s, 2 contain only Companion *ḥadīth*s, and 1 contains no *ḥadīth*s of any variety. Within the 22 chapters of *Kitāb al-Nikāḥ* and *Kitāb al-Ṭalāq* in *Sharḥ maʿānī al-āthār*, in contrast, 16 contain both Prophetic and Companion/Successor *ḥadīth*s, while 4 chapters contain only Prophetic *ḥadīth*s.

[349] Appeals to authorities play a far smaller role in *Sharḥ mushkil al-āthār* than in al-Ṭaḥāwī's other hermeneutical works; most chapters reference no authorities at all, but rather offer al-Ṭaḥāwī's own harmonization of conflicting Prophetic *ḥadīth*s. In chapters that do mention authorities, the Companions and Successors play a major role, although a smaller one than in al-Ṭaḥāwī's other major works. Out of the approximately 50 chapters in the first 5 volumes of *Sharḥ mushkil al-āthār* that make reference to authorities, about half mention Companions and Successors, while a larger number include later jurists. Sometimes al-Ṭaḥāwī cites Companion and Successor *ḥadīths* when he appeals to them as authorities in *Sharḥ mushkil al-āthār*, while at other times he simply mentions their opinions without providing a formal *ḥadīth*. As a result, Companion and Successor *ḥadīth*s are much rarer in *Sharḥ mushkil al-āthār* than in al-Ṭaḥāwī's other works; a sampling shows that Chapters 25-45 of *Sharḥ mushkil al-āthār* (a total of 20 chapters) all include Prophetic *ḥadīths*, while only Chapter 35 also includes a Companion *ḥadīth*. Despite the relative paucity of Companion and Successor *ḥadīths* in *Sharḥ mushkil al-āthār*, al-Ṭaḥāwī employs the same arguments concerning their status as a legal source that he uses in his other hermeneutical works, and therefore *Sharḥ mushkil al-āthār* still serves as a major source for this chapter.

[350] Most are cited no more than a few times. A smaller number of Companions and Successors represent major legal authorities for al-Ṭaḥāwī and are cited repeatedly, sometimes several hundred times in the course of his hermeneutical works. The most frequently cited Companions are ʿUmar ibn al-Khaṭṭāb, Ibn Masʿūd, ʿAlī ibn Abī Ṭālib, Abū Hurayra, ʿĀʾisha, Ibn ʿAbbās, Ibn ʿUmar and Anas ibn Mālik; the most frequently appearing Successors are Saʿīd ibn al-Jubayr, Saʿīd ibn al-Musayyab, Ibrāhīm al-Nakhaʿī, Mujāhid, al-Ḥasan al-Baṣrī, ʿAṭāʾ ibn Abī Rabāḥ and Ibn Shihāb al-Zuhrī.

Successor *ḥadīth*s serve simply as evidence for those individuals' legal opinions on a similar level of authority to the opinions of later jurists. In other chapters, however, Companion and Successor *ḥadīth*s stand in for legally authoritative Prophetic *ḥadīth*s in a way that suggests that al-Ṭaḥāwī's willingness to blur boundaries between categories of legal sources extends beyond the revealed sources of Qurʾān and Sunna.

This chapter examines the nature of Companion and Successor authority and the function of Companion and Successor *ḥadīth*s in al-Ṭaḥāwī's hermeneutical works. It argues that al-Ṭaḥāwī almost always understands the special authority of the Companions and Successors to derive from their role in mimetically preserving knowledge of Prophetic practice. Crucially, this function points to his assumption of the failure of the corpus of Prophetic *ḥadīth*s to adequately capture Prophetic practice. In cases where al-Ṭaḥāwī does hold that the Companions or Successors are mimetically preserving Prophetic practice, he invokes the instruction/inference divide described in the previous chapter in order to claim revelatory authority for the *ḥadīth*s in question. In a very few places, al-Ṭaḥāwī's thought also preserves traces of an older conception of religious authority which places the Companions in competition with the Prophet. Al-Ṭaḥāwī's ambivalent approach to the Companions and his heavy reliance on post-Prophetic *ḥadīth*, after the time when established narratives of Islamic legal history report that juristic dependence on Companion reports had ceased,[351] suggests that existing accounts of the triumph of Prophetic *ḥadīth* in the later 3rd/9th century give too neat a picture of this

[351] Hallaq argues that it took more than fifty years after al-Shāfiʿī's death in 204/820 for Prophetic *ḥadīth* to be accepted exclusively over practice-based sunna (*Origins and Evolution of Islamic Law*, 109). Melchert similarly dates the exclusive reliance on Prophetic *ḥadīth* to about the third quarter of the 3rd/9th century ("Traditionist-Jurisprudents," 404). Vishanoff points to the late 3rd/9th century as the period when jurists ceased to rely on non-Prophetic *ḥadīth*s (*Formation of Islamic Hermeneutics*, 64-65).

period. This chapter adds complexity to our understanding of this pivotal time by suggesting the ways in which the question of the authority of post-Prophetic *ḥadīth*s was tied to changing conceptions of what it meant to preserve Prophetic practice.

Historical Background

By al-Ṭaḥāwī's lifetime, both jurists and traditionists had come to perceive a clear distinction between Prophetic and post-Prophetic *ḥadīth*s and to accord the former the status of revelation. As discussed in the previous chapter, during the 1st/7th and 2nd/8th centuries the *sunna* of Muḥammad was in competition with the *sunan* of other exemplary individuals and previous generations as a model for the Muslim community.[352] Although the *sunna* of the Companions, the first caliphs or the Muslims of a particular locale was generally understood to be an extension of the Prophet's practice, this early concept of *sunna* valorized the continuous yet evolving practice of the Muslim Community in a way that the later concept of Prophetic Sunna as an unchanging and mimetic textual record of Muḥammad's practice would not. The growth of the concept of Prophetic authority can be traced to the late 2nd/8th and early 3rd/9th centuries, when jurists began more systematically to justify their legal doctrines on the basis of Prophetic *ḥadīth*.[353] Nonetheless, jurists of that period still had relatively few Prophetic *ḥadīths* available to them and continued to rely heavily upon Companion and Successors *ḥadīth*s.[354] As a corollary to the rise in Prophetic authority, many opinions and statements which had

[352] Schacht, *Introduction to Islamic Law*, 17-18; Hallaq, *Origins and Evolution of Islamic Law*, 52ff.
[353] Hallaq, *History of Islamic Legal Theories*, 18; Schacht, *Introduction to Islamic Law*, 33-36.
[354] Scott Lucas, *Constructive Critics,* Ḥadīth *Literature, and the Articulation of Sunnī Islam: The Legacy of the Generation of Ibn Saʿd, Ibn Maʿīn, and Ibn Ḥanbal* (Leiden: Brill, 2004), 147.

previously been associated with the Companions, Successors and others began to be attributed to the Prophet in the form of Prophetic *ḥadīth*s,[355] thus preserving the authority of material which had not previously needed to be labeled Prophetic in order to be normative.

Although the growth of Prophetic authority and the appeal to Prophetic *ḥadīth* were related processes, it is important to distinguish between the Prophet as sole locus of authority and Prophetic *ḥadīth* as the form in which that authority was transmitted. A jurist might, for example, subscribe to a Prophetic model of authority while holding that the Prophet's words and actions are known not only through Prophetic *ḥadīth*s, but also through Companion or Successor *ḥadīth*s, consensus or the practice of the community. Indeed, it was deference to Prophetic authority without a concomitant exclusive devotion to Prophetic *ḥadīth*s that characterized what Hallaq labels the "practice-based *sunna*" of the jurists of the 1st/7th and 2nd/8th centuries. While these jurists looked to Companion practice as a source of law, Companion practice in turn preserved Prophetic practice.[356] Thus, the authority underlying "practice-based *sunna*" was ultimately understood to be Prophetic, even if, for them, Companion practice was an evolving extension of Prophetic practice rather than a stable record of it.[357] Even when jurists began to articulate more forcefully the idea of an exclusively Prophetic authority at the end of the 2nd/8th century, that authority was not necessarily embodied only in Prophetic *ḥadīth* form. As Schacht and Hallaq have noted, al-Shaybānī held that the Qurʾān and the Prophet were the sole

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[355] Hallaq, *Origins and Evolution of Islamic Law*, 70; Schacht, *Origins of Muhammadan Jurisprudence*, 138-189.
[356] Hallaq, *Origins and Evolution of Islamic Law*, 201.
[357] That is, the *sunna* of the Companions represents not only what the Prophet did, but also what he *would have done* in a novel situation (Hallaq, *Origins and Evolution of Islamic Law*, 70).

legal authorities, yet he employed a significant number of Companion *ḥadīth*s in his legal arguments.[358]

In the early 3rd/9th century, al-Shāfiʿī's theory of *bayān* for the first time asserted that Prophetic authority and Prophetic *ḥadīth* were necessarily linked. All law, he argued, was revealed by God to humans through Muḥammad in the form of recited revelation or in the speech and actions of the Prophet. Al-Shāfiʿī held that Qurʾān and Prophetic *ḥadīth* are the complete and exclusive sources through which later generations may come to know revelation and the law, although he did struggle to account for apparently extra-revelatory sources such as Companion reports and consensus within his account of the structure of the law.[359]

Reliance upon Companion and Successor reports did not immediately cease, however. Until the appearance of al-Bukhārī's (d. 256/870) *Ṣaḥīḥ* in the late 3rd/9th century, even traditionists freely mingled Companion and Successor reports with Prophetic material in their *ḥadīth* compilations.[360] While al-Bukhārī, too, included Companion and Successor reports in his *Ṣaḥīḥ*, for him their authority was clearly

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[358] Schacht, *Origins of Muhammadan Jurisprudence*, 29. See also Hallaq, *History of Islamic Legal Theories*, 18. Hallaq understands Companion reports to have played a smaller role in al-Shaybānī's arguments than does Schacht.

[359] Schacht, *Origins of Muhammadan Jurisprudence*, 16; Lowry, *Early Islamic Legal Theory*, 33, 203; El Shamsy, *Canonization of Islamic Law*, 70; Hallaq, *History of Islamic Legal Theories*, 18. Al-Shāfiʿī's early doctrine appears to have given authority to Companion *ḥadīth*s; however, his mature thought excludes non-Prophetic material from his theory of the structure of revelation, the *bayān*. Later Shāfiʿī jurists would experience similar difficulties in accounting for existing positive law without acknowledging the authoritativeness of Companion reports; Chaumont has shown that jurists circumvented this difficulty by assimilating Companion reports under theoretical discussions of *ijmāʿ* ("Le «dire d'un Compagnon unique» (*qawl al-wāḥid min l-ṣaḥāba*) entre la *sunna* et l'*iğmāʿ* dans les *uṣūl al-fiqh* šāfiʿites classiques," *Studia Islamica* 93 (2001): 62-66).

[360] Kamali, *Textbook of Ḥadīth Studies*, 34; Lucas, "Principles of Traditionist Jurisprudence Revisited," 147, 153; Melchert, "Traditionist-Jurisprudents," 401. For the proliferation of Prophetic *ḥadīth* and the reformulation of Companion reports as Prophetic reports in response to the growth in Prophetic authority, see Schacht, *Origins of Muhammadan Jurisprudence*, 150; Hallaq, *Origins and Evolution of Islamic Law*, 102-104.

distinguished from and secondary to that of the Prophet's Sunna. Hallaq and Melchert identify this same period, the second half of the 3rd/9th century, as the time when jurists abandoned Companion *ḥadīth*s in favor of exclusively citing Prophetic *ḥadīth*s.[361] Vishanoff largely agrees, although he characterizes the late 3rd/9th century as the time when jurists ceased to "rely heavily" on post-Prophetic reports, leaving open the possibility of some degree of reliance.[362]

Post-Prophetic Ḥadīths in al-Ṭaḥāwī's Works

Writing in the early 4th/10th century, al-Ṭaḥāwī understood Prophetic *ḥadīth* as revelation and a source of law equal to the Qurʾān. Despite his acceptance of the superior status of Prophetic *ḥadīth*, however, post-Prophetic *ḥadīth*s appear with great frequency in his works. He habitually cites Companion and Successor opinions along with those of later jurists as corroborating authority for his own position or as evidence of opposing positions.[363] While the later jurists are simply listed, he provides at least one *ḥadīth* with a full *isnād* for each Companion or Successor opinion he cites, meaning that the Companions and Successors occupy a physical space on the pages of his works far greater than that of later jurists, including the jurists of his own school.[364]

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[361] Hallaq, *Origins and Evolution of Islamic Law*, 109; Melchert, "Traditionist-Jurisprudents," 401-404. Melchert identifies two reasons that jurists may have distanced themselves from Companion *ḥadīth*s at that time. First, given that the superior authority of Prophetic *ḥadīth*s was already widely conceded, jurists would claim Prophetic origin for their *ḥadīth*s in polemical arguments against jurists of other locales in order to give their arguments greater authority. Second, the process of elevating the Prophet's Sunna to an authority equal to that of the Qurʾān necessitated the concession that Companion *ḥadīth* were not of similar authority ("Traditionist-Jurisprudents," 402-404).

[362] Vishanoff, *Formation of Islamic Hermeneutics*, 64-65.

[363] E.g., al-Ṭaḥāwī, *Maʿānī*, 1.26, 1.31-2, 1.34.

[364] E.g., al-Ṭaḥāwī, *Maʿānī*, 1.17-18.

Further, al-Ṭaḥāwī frames many chapters of his hermeneutical works as disagreements among Companions and Successors, citing them at the outset of the chapter as proponents of the various opinions he will evaluate.[365] Only after resolving the disagreement among the Companions and Successors in such chapters does he conclude by mentioning the later jurists who are in agreement with him. While there certainly are plenty of chapters in his hermeneutical works which frame debates as conflicts between legal schools, the presence of so many chapters in which the narrative drama is based upon the conflicts among Companions and Successors indicates their centrality to al-Ṭaḥāwī's vision of the field of juristic debate.

The preceding observations concern the juxtaposition of Companion or Successor *ḥadīth*s with the opinions of later jurists and the way in which the Companions and Successors often appear to physically crowd out later jurists within the pages of al-Ṭaḥāwī's hermeneutical works. The primary interest of this chapter, however, is the juxtaposition of Prophetic and post-Prophetic *ḥadīth*s in these same works. On the whole, the relative authority of Prophetic and post-Prophetic *ḥadīth*s appears to be a settled issue for al-Ṭaḥāwī, in keeping with the narrative presented above. Neither he nor his interlocutors suggest that individual Companions or Successors possess authority independent from or in competition with that of the Prophet, although, as we will see below, he is less categorical about the collective authority of the Companions.

Al-Ṭaḥāwī refers to the superior authority of Prophetic over post-Prophetic *ḥadīth*s in the course of a number of discussions of discrete legal issues. In one, an unnamed interlocutor argues that a report from Ibn ʿUmar provides the best practice for

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[365] E.g., al-Ṭaḥāwī, *Maʿānī*, 1.45, 1.48, 1.53; *Aḥkām*, 1.81, 1.96, 1.113.

supererogatory prayer. Al-Ṭaḥāwī responds that, first, his interlocutor has misinterpreted Ibn ʿUmar's report and, second, what has been transmitted from the Prophet is better (*awlā*) than the report from Ibn ʿUmar.[366] In several other passages detailing Companion disagreement on legal questions, al-Ṭaḥāwī adopts the Companion opinion that is in agreement with a Prophetic *ḥadīth*.[367] In two of these passages, he cites the conflicting Companion *ḥadīth*s before stating that "since they disagreed" (*lammā ikhtalafū*) he will look to what has been transmitted from the Prophet.[368] In another, he writes that "this is one of the things on which disagreement occurred among the Companions of God's Messenger. The best of what they said is that which is in agreement with what we have transmitted from the Prophet."[369] In a different example concerning disagreement among later jurists rather than among the Companions, al-Ṭaḥāwī concludes that the best opinion is that which is supported by what has been transmitted from the Prophet, and then what has been transmitted from the Companions.[370]

In all of these discussions al-Ṭaḥāwī asserts the authority of Prophetic *ḥadīth*s over post-Prophetic *ḥadīth*s in cases where they conflict. What is notable, however, is the degree to which these passages also emphasize the importance that al-Ṭaḥāwī grants Companion *ḥadīth*s. In the first example, al-Ṭaḥāwī could merely have stated that the Prophetic *ḥadīth* is more authoritative than the opinion of Ibn ʿUmar. Instead, he pauses to argue that his interlocutor has misinterpreted Ibn ʿUmar's *ḥadīth*, and it is in fact in agreement with his own opinion. In other examples, al-Ṭaḥāwī has Prophetic *ḥadīth*

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[366] Al-Ṭaḥāwī, *Maʿānī*, 1.477.
[367] Al-Ṭaḥāwī, *Aḥkām*, 1.108-109; *Mushkil*, 5.199-211, 10.213; *Maʿānī*, 1.383.
[368] Al-Ṭaḥāwī, *Aḥkām*, 1.109; *Mushkil*, 5.211.
[369] Al-Ṭaḥāwī, *Mushkil*, 10.213.
[370] Al-Ṭaḥāwī, *Mushkil*, 11.172.

available to settle an issue, yet he takes the time to adduce Companion opinions and only looks to the Prophetic example "since they disagreed." Although the final example asserts the priority of Prophetic *ḥadīth*, it also instructs jurists to look to Companion *ḥadīth*s to settle their disagreements.

Likewise, in a chapter of *Sharḥ mushkil al-āthār*, al-Ṭaḥāwī presents Companion *ḥadīth*s apparently in conflict with a Prophetic *ḥadīth*. Rather than simply dismissing the Companion *ḥadīth*s as inferior to the Prophetic *ḥadīth* and therefore irrelevant to determining the law, al-Ṭaḥāwī applies the harmonization techniques to them that he generally uses on apparently conflicting Prophetic *ḥadīth*s. His application of harmonization techniques to apparent conflicts between Companion and Prophetic *ḥadīth*s stands in stark contrast to the position of al-Shāfiʿī, who held that Companion *ḥadīth*s could not be harmonized with Prophetic *ḥadīth*s because the latter were revelation while the former were not.[371] Al-Ṭaḥāwī concludes the chapter by stating that, "Thanks be to God, what we have transmitted from the Companions of God's Messenger emerges as being in agreement with what we have transmitted from God's Messenger."[372] In this example and those previous, al-Ṭaḥāwī evinces a notable concern for Companion *ḥadīth*s and their agreement with Prophetic *ḥadīth*s even while assuming the superior authority of Prophetic material.

In a striking example of al-Ṭaḥāwī's deference to Companion *ḥadīth*s, he devotes a chapter of *Sharḥ mushkil al-āthār* to explaining Ibn ʿAbbās's statement that "there is no revelation except for the Qurʾān." As discussed in the previous chapter of this study, al-

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[371] El Shamsy, *Canonization of Islamic Law*, 80.
[372] Al-Ṭaḥāwī, *Mushkil*, 9.15.

Ṭaḥāwī harmonizes Ibn ʿAbbās's assertion with Prophetic *ḥadīth*s stating that the Prophet's Sunna is also revelation by arguing that the Sunna falls within the scope of the Qurʾān.[373] The fact that al-Ṭaḥāwī elected to dedicate a chapter to harmonizing Ibn ʿAbbās's statement with Prophetic *ḥadīth*, as well as the unusual argument he employs to do so, suggests that he does not understand Companion *ḥadīth*s as being so ontologically distinct from Prophetic *ḥadīth*s that they can simply be dismissed when they contradict established Prophetic *ḥadīth*s.[374] Further, by framing the chapter as one about Ibn ʿAbbās's *ḥadīth*, rather than the Prophetic *ḥadīth*s with which it is apparently in conflict, al-Ṭaḥāwī makes a Companion report his central concern.[375]

The Relative Status of the Companions and the Successors

We will see in this chapter that al-Ṭaḥāwī claims special authority for both Companion and Successor *ḥadīth*s, although Successors represent Prophetic authority much less frequently than do the Companions. In the authority he grants to Successor *ḥadīth*s, al-Ṭaḥāwī departs from the later tradition; while the earliest Ḥanafī *uṣūl* works contain chapters on aspects of the authority of the Companions, the Successors appear to hold no special status. Al-Ṭaḥāwī's elevation of Successor *ḥadīth*s does appear to have at least some elements in common with the thought of one of his contemporaries, the

[373] Al-Ṭaḥāwī, *Mushkil*, 14.466-471. For a discussion of this argument, see p. 80 of this study.
[374] It is worth considering whether al-Ṭaḥāwī grants Ibn ʿAbbās authority as a member of the *ahl al-bayt* rather than as a Companion; however, the large number of cases in which al-Ṭaḥāwī grants Prophetic status to *ḥadīth*s by Companions who are not *ahl al-bayt* suggests that it is Ibn ʿAbbās's status as Companion that is relevant here.
[375] A few other chapters of *Sharḥ mushkil al-āthār* are likewise framed as explaining Companion, rather than Prophetic *ḥadīth*. See, for example, *Mushkil*, 14.465.

traditionist Ibn Abī Ḥātim al-Rāzī (d. 327/939), however.[376] In his introduction to *Kitāb al-Jarḥ wa-l-taʿdīl* Ibn Abī Ḥātim argues for the probity of both the Companions and the Successors. As is the case with the Companions, he states, there is no distinction among the Successors, for they are all imams.[377] Although Ibn Abī Ḥātim was concerned with asserting the soundness of the corpus of Prophetic *ḥadīth*s while al-Ṭaḥāwī sought to expand the corpus of available *ḥadīth*s by labeling post-Prophetic *ḥadīth*s as Prophetic, both argued for the authority of the Successors in a way that was not continued by the later tradition.[378]

In addition to elevating the status of the Successors, al-Ṭaḥāwī and Ibn Abī Ḥātim are also alike in using the term *qudwa* (model, exemplar) exclusively in connection with the Companions. Ibn Abī Ḥātim writes that God "made [the Companions] signs (*aʿlām*) and an exemplar (*qudwa*) for us," a claim he does not make in his discussion of the Successors, despite his general elevation of their status as transmitters.[379] Al-Ṭaḥāwī, too, appears to restrict the status of *qudwa* to the Companions, although his usage is somewhat more ambiguous. In a chapter of *Sharḥ mushkil al-āthār* concerning Q 54/al-Qamar:1 ("The Hour has drawn near—the moon has been split"), al-Ṭaḥāwī criticizes

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[376] It is possible that Ibn Abī Ḥātim and al-Ṭaḥāwī met during Ibn Abī Ḥātim's journey to Egypt in 262/875 to collect *ḥadīth*. Although I have not located any reports connecting the two scholars directly, Ibn Abī Ḥātim was the first known biographer of al-Ṭaḥāwī's first teacher, al-Muzanī—indeed, R. Kevin Jaques describes Ibn Abī Ḥātim as a student of al-Muzanī ("The Contestation and Resolution of Inner and Inter-School Conflicts," 115). Both scholars also transmitted from Muḥammad ibn ʿAbd Allāh ibn al-Ḥakam (d. 799/882), the son of the famous jurist ʿAbd Allāh ibn al-Ḥakam (d. 772/829) (Dickinson, *Development of Early Sunnite Ḥadīth Criticism*, 23; al-Dhahabī, *Tadhkirat*, 3.21).

[377] Ibn Abī Ḥātim, *Kitāb al-jarḥ wa-l-taʿdīl*, ed. ʿAbd al-Raḥmān ibn Yaḥyā al-Yamānī (Hyderabad: Dāʾirat al-Maʿārif al-ʿUthmānīya, 1952-3), 1.7-9. Dickinson observes that Ibn Abī Ḥātim places the Successors "on the same plane as the Companions" (*Development of Early Sunnite Ḥadīth Criticism*, 122).

[378] On Ibn Abī Ḥātim's objectives in the *Kitāb al-jarḥ wa-l-taʿdīl*, see Nancy Khalek, "Medieval Biographical Literature and the Companions of Muḥammad," *Der Islam* 91, no. 2 (2014): 283, and Dickinson, *Development of Early Sunnite Ḥadīth Criticism*, esp. 41-42.

[379] Ibn Abī Ḥātim, *Kitāb al-jarḥ wa-l-taʿdīl*, 1.7.

those who claim that the moon will split on Judgment Day rather than relying on Companion *āthār* from ʿAlī, Ibn Masʿūd, Ḥudhayfa, Ibn ʿUmar, Ibn ʿAbbās and Anas establishing that it had already split during the lifetime of the Prophet. He writes that "we know of nothing else transmitted from other scholars on this matter. They are the exemplars (*qudwa*) and the authorities (*ḥujja*) whom only an ignoramus would oppose, and only a profligate would despise."[380] Here the term *qudwa* appears to be restricted to the Companions he has just listed, although in the next paragraph he condemns those who rely on their own *raʾy* over what has been transmitted from the Companions and their Successors without indicating why the Successors are now being mentioned along with the Companions.

A similar ambivalence concerning the relative status of the Companions and the Successors appears later in the same chapter, where al-Ṭaḥāwī writes that:

> We seek refuge in God from opposition to the Companions of God's Messenger and deviation from their doctrines (*madhāhib*). [Such deviation] is like holding oneself above (*al-istikbār ʿan*) God's Book. Whoever holds himself above God's Book and the doctrines of the Companions of God's Messenger and their Successors is deserving of God denying him understanding.[381]

Here, as above, al-Ṭaḥāwī first refers only to the Companions, but then apparently expands the scope of his claim to include the Successors. Thus, it appears that neither for Ibn Abī Ḥātim nor for al-Ṭaḥāwī does the claim that Successor transmission can fulfill the same functions as Companion transmission necessarily indicate that the two groups are precisely equivalent in status.

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[380] Al-Ṭaḥāwī, *Mushkil*, 2.182.

[381] Al-Ṭaḥāwī, *Mushkil*, 2.184. Al-Ṭaḥāwī then cites a report in which the exegete Sufyān ibn ʿUyayna (d. 198/814) explains that Q 7/al-Aʿraf:146 ("I shall turn away from My signs those who are unjustly haughty in the land") means 'I shall prevent them from understanding My Book,' thus claiming Qurʾānic support for the duty of following the Companions.

The passage translated above makes a strong claim for the authority of Companion—and to a lesser degree, Successor—doctrines. The Companions' status as *qudwa* in both al-Ṭaḥāwī and Ibn Abī Ḥātim might also appear to indicate that the Companions held a normative authority of their own. A close study of the relevant passages, however, indicates that the status of *qudwa* claimed by both scholars and the authority al-Ṭaḥāwī envisions for the Companions' doctrines is not any sort of independent authority, but rather derives directly from their status as witnesses to revelation. In both passages from the chapter on the splitting of the moon citing above, what al-Ṭaḥāwī criticizes is later scholars' rejection of Companion reports confirming a historical event—the splitting of the moon. Thus, when he speaks of their doctrines (*madhāhib*), he is not referring to their legal opinions, but rather to their recounting of events they witnessed, a recounting which serves as exegesis for the Qurʾān. Likewise, in the earlier passage the Companions are exemplars only in the sense that they preserve knowledge of the meaning of the Qurʾānic verse in question. Wheeler observes that Ibn Abī Ḥātim's understanding of the authority of the Companions' practice (and thus their role as *qudwa*) is also based on their status as witnesses to revelation and to the Prophet's practice.[382] Thus, the authority that both al-Ṭaḥāwī and Ibn Abī Ḥātim attribute to the Companions in labeling them *qudwa* is merely the faithful transmission of knowledge of Prophetic practice.

A hierarchy of the Companions and Successors is also indicated elsewhere in al-Ṭaḥāwī's thought. Below, we will see that al-Ṭaḥāwī claims Prophetic authority for far

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[382] Brannon Wheeler, *Applying the Canon in Islam: The Authorization and Maintenance of Interpretive Reasoning in Ḥanafī Scholarship* (Albany: State University of New York Press, 1996), 86.

more Companion *ḥadīth*s than Successor *ḥadīth*s and that the Successors appear in only one of the three lists of legal sources mentioning Companion opinions. Additionally, we will observe that he holds the mere fact of being a Companion sufficient to allay fears of that person's contravening Prophetic practice, while no such claims are made about the Successors. Instead, he points to the personal qualities of individual Successors to explain their authority. A hierarchy of Companion and Successor authority—at least in the area of Qurʾānic exegesis—is established in a chapter of *Sharḥ mushkil al-āthār* in which the Successor Mujāhid's exegesis of a Qurʾānic verse differs from that of the Companion Ibn Masʿūd. Al-Ṭaḥāwī argues that Ibn Masʿūd's exegesis receives precedence over Mujāhid's because of Ibn Masʿūd's position (*mawḍiʿ*) relative to the Prophet.[383] That is, Ibn Masʿūd witnessed revelation and is therefore better qualified to interpret it than Mujāhid.

That al-Ṭaḥāwī gave precedence to the Companions over the Successors may be understood as reflecting an ongoing process of defining the boundaries and nature of Companionship. This process is evident as early as the beginning of the 3rd/9th century with al-Wāqidī's (d. 207/822) definition of a Companion[384] and continues through the final crystallization of the doctrine of the collective probity of the Companions (*ʿadālat al-ṣaḥāba*) in the 5th/11th century.[385] Al-Ṭaḥāwī's *ʿAqīda* is one of the earliest statements of the theological requirement to revere all of the Companions,[386] and a number of chapters in *Sharḥ mushkil al-āthār* are concerned with working out the collective status

[383] Al-Ṭaḥāwī, *Mushkil*, 6.117.
[384] Lucas, *Constructive Critics*, 20.
[385] Amr Osman, "*ʿAdālat al-Ṣaḥāba*: The Construction of a Religious Doctrine," *Arabica* 60 (2013): 278; Khalek, "Medieval Biographical Literature," 272.
[386] Al-Ṭaḥāwī, *ʿAqīda*, 29-30; Osman, "*ʿAdālat al-Ṣaḥāba*," 282-283.

of the Companions by addressing *ḥadīth*s that appear to suggest that only some Companions possessed important virtues[387] or imply that Companions acted wrongly in a certain case.[388] Other chapters argue for the superiority of the Companions over all later Muslims while recognizing the possibility that some Companions may be superior to others in certain areas.[389]

Al-Ṭaḥāwī thus theorizes about the status of the Companions in a way that he does not do with the Successors, even though the Successors perform all the same functions in his legal arguments as the Companions. In this approach, al-Ṭaḥāwī appears to represent an intermediary stage between a time when the earliest generations of Muslims were vested with the authority to extend and develop Prophetic practice and the later concept of *ʿadālat al-ṣaḥaba*, which served primarily to guarantee the corpus of Prophetic *ḥadīth* by precluding criticism of any of its original transmitters.

The Prophetic Authority of Post-Prophetic Ḥadīths

Claims of Prophetic Status for Post-Prophetic Ḥadīths

Al-Ṭaḥāwī understood only the Prophet's Sunna as revelation and thus in theory made a firm distinction between the status of Prophetic and post-Prophetic *ḥadīth*s. However, as we saw in the previous chapter, al-Ṭaḥāwī does not distinguish between Prophetic and post-Prophetic reports in his terminology; *khabar*, *ḥadīth*, *āthār* and *sunna* are all used in reference to both Prophetic and post-Prophetic material, while many later

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[387] Al-Ṭaḥāwī, *Mushkil*, 2.12, 2.280-288, 3.260, 7.200, 9.178-198. Al-Ṭaḥāwī's argument in such chapters is linguistic; the statement that a certain person possessed a certain quality does not entail that others did not possess it as well.

[388] Al-Ṭaḥāwī, *Mushkil*, 5.381-382, 13.12.

[389] Al-Ṭaḥāwī, *Mushkil*, 6.265-6, 9.178-198, 13.207.

jurists would carefully distinguish between Prophetic *ḥadīth* and post-Prophetic *āthār* in their terminology.[390] Further, in approximately fifty passages in *Aḥkām al-Qurʾān* and *Sharḥ mushkil al-āthār*, al-Ṭaḥāwī blurs the boundaries between Prophetic and non-Prophetic material by claiming Prophetic status for a post-Prophetic *ḥadīth*.[391]

For example, no Prophetic *ḥadīth* indicates any limit to when it is permissible to perform the *ʿUmra* (minor pilgrimage). According to *qiyās*, al-Ṭaḥāwī writes, it should be permissible on any day of the year. However, he has discovered a statement from ʿĀʾisha that there are four days of the year when the ʿUmra may not be performed. Al-Ṭaḥāwī argues that:

> We know that [ʿĀʾisha] did not speak based upon her own legal reasoning (*raʾy*), but rather spoke what had been confirmed by the Prophet's instruction (*tawqīf*), because this kind of thing cannot be based upon legal reasoning. Therefore we hold that her statement on this is like a continuously attested Prophetic *ḥadīth* (*ḥadīth muttaṣil*).[392]

By deeming ʿĀʾisha's statement evidence of revelation, al-Ṭaḥāwī has in effect elevated a post-Prophetic *ḥadīth* to the status of a revealed text. Crucially, al-Ṭaḥāwī's argument in support of ʿĀʾisha's position depends on the instruction/inference binary we have already encountered in the previous chapter, although here that binary is expressed using the language of *raʾy* (legal reasoning) and *tawqīf* (Prophetic instruction). While a Companion or Successor's legal reasoning—most commonly termed *raʾy*, but also

[390] I have chosen to refer to Companion and Successor "*ḥadīth*s" rather than "reports" throughout this chapter in order to emphasize that al-Ṭaḥāwī does not draw a firm distinction in his theory or in his terminology between Prophetic and non-Prophetic transmissions.

[391] Notably, this argument appears only a few times in *Sharḥ maʿānī al-āthār*. Given that *Maʿānī* is reported to be al-Ṭaḥāwī's earliest work, it is possible that he developed this argument later in his legal career.

[392] Al-Ṭaḥāwī, *Aḥkām*, 2.226.

occasionally *istinbāṭ*, *istikhrāj* or *qiyās*[393]—can justifiably serve as the basis for some kinds of statements regarding the law, other types of legislative statements can only be based upon instruction from the Prophet (*tawqīf* or, occasionally, *akhdh*).[394] Precisely which types of statements require *tawqīf* is never explicitly and comprehensively stated, although I suggest some parameters later in this section, abstracted from passages in which al-Ṭaḥāwī employs this argument. In addition to this binary, al-Ṭaḥāwī's argument in this passage assumes a second major premise: that a Companion or Successor would never make a statement concerning the law for which they did not possess the necessary authority.[395] In effect, the *tawqīf*:*raʾy* binary transforms a pious optimism about the trustworthiness of the Companions and Successors into the basis for an inference

[393] Al-Ṭaḥāwī uses a variety of terms to refer to Companion and Successor legal reasoning as reflected in some post-Prophetic *ḥadīth*s. His most frequent claim is that a Companion could not have spoken from *raʾy* (opinion) (e.g., *Mushkil*, 3.188, 4.232, 4.384, 6.64), but he also often mentions the inadequacy of *istinbāṭ* (deduction/inference) or *istikhrāj* (deduction/inference) as the basis of a statement, singly or in combination with each other and with *raʾy* (e.g., *Mushkil*, 1.67, 2.284, 2.248, 6.331). On fewer occasions, he mentions *qiyās* (analogy) or *ḍarb al-amthāl* (arguing from a series of graded cases) as other procedures of insufficient authority to support a Companion's statement (*Aḥkām*, 1.191, 2.135, 2.153-154, 2.167). I will reserve discussion of the distinctions between these procedures for a later chapter. However, we may note here that the lack of any clear connection between the content of a chapter and the combination of these terms that appears there, suggests that he is listing them merely as examples of the kinds of procedures which cannot support a Companion's authority in a specific kind of statement. The mention of a particular procedure—*raʾy*, *istikhrāj*, *istinbāṭ*, *qiyās*, *ḍarb al-amthāl*—is therefore less important than the general assertion that a Companion did not have necessary authority to derive an opinion on his own, and therefore its origin must be Prophetic. As *raʾy* is the term most commonly opposed to *tawqīf* in al-Ṭaḥāwī's arguments, I use it in this chapter as a shorthand for all the terms listed here.

[394] In general, al-Ṭaḥāwī uses the word '*tawqīf*' to refer to the Prophetic origins of a Companion report (*Mushkil*, 1.67, 3.188, 4.248). *Tawqīf* is generally understood to mean instruction through revelation in the form of the Qurʾān and Sunna (e.g., Stewart, "Muḥammad b. Dāʾūd al-Ẓāhirī's Manual of Jurisprudence," 144; Lange, "Sins, Expiation and Non-Rationality in Ḥanafī and Shāfiʿī *fiqh*," in *Islamic Law in Theory* , ed. A. Kevin Reinhart and Robert Gleave (Leiden: Brill, 2014), 154). In most other passages asserting the authority of Companion reports, al-Ṭaḥāwī employs the term '*akhdh*' (reception) to indicate that the Companion in question must have taken a statement directly from the Prophet (e.g., *Mushkil*, 1.68, 2.284, 3.107). The fact that al-Ṭaḥāwī uses both of these terms successively to refer to a single Companion report from ʿAlī suggests that there is no significant difference between them (*Mushkil*, 1.67-168).

[395] Al-Ṭaḥāwī's arguments concerning the trustworthiness of the Companions and Successors are discussed later in this chapter, pp. 134-139.

concerning the origins of their legal doctrines. By appealing to this binary, al-Ṭaḥāwī is able to claim revelatory status for many apparently non-Prophetic statements of the law.

Al-Ṭaḥāwī similarly elevates post-Prophetic *ḥadīth*s to Prophetic status in many other passages of his hermeneutical works. In a chapter containing both Prophetic and Companion versions of an exegesis of a Qurʾānic verse, al-Ṭaḥāwī states that, even if not a single transmitter had elevated (*rafʿ*) a certain *ḥadīth* from Ibn ʿAbbās to the Prophet, we would know that Ibn ʿAbbās must have received this statement from the Prophet.[396] On another occasion, when faced with an ambiguous report in which it is not clear whether a certain phrase is quoting the speech of Abū Hurayra or the Prophet, al-Ṭaḥāwī concludes that, in either case, the speech is originally that of the Prophet. That is true even if Abū Hurayra did not receive it directly from the Prophet, but instead reported it indirectly from someone else who had received it from the Prophet.[397]

Once al-Ṭaḥāwī has claimed Prophetic status for a Companion *ḥadīth*, he holds that *ḥadīth* equal to other Prophetic *ḥadīth*s in every way. Concerning one report from the wives of the Prophet, al-Ṭaḥāwī says that he "includes it among the Prophetic *ḥadīth*s" (*adkhalnā hādhihi al-ḥadīth fī aḥādīth rasūl Allāh*").[398] In another place, he argues that a *ḥadīth* from ʿAlī falls under the ruling (*ḥukm*) of something transmitted from the Prophet.[399] After elevating Companion reports from ʿAlī and Abū Hurayra to Prophetic status, al-Ṭaḥāwī uses the term *mukāfiʾ* (equivalent) to describe their relationship to another relevant Prophetic *ḥadīth*, the same term he uses when two Prophetic *ḥadīth*s

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[396] Al-Ṭaḥāwī, *Mushkil*, 3.107.
[397] Al-Ṭaḥāwī, *Mushkil*, 6.64.
[398] Al-Ṭaḥāwī, *Mushkil*, 6.331.
[399] Al-Ṭaḥāwī, *Mushkil*, 11.378.

cannot be harmonized and therefore must both be discarded.[400] Finally, in a chapter where al-Ṭaḥāwī has claimed Prophetic status for a report from Abū Hurayra, he proceeds to harmonize that report with both the Qurʾān and Prophetic *ḥadīth*s on the grounds that they are equally authoritative sources.[401] In a strong sense, then, the reports in question are no longer truly Companion *ḥadīth*s at all, but have fully entered the realm of Prophetic revelation.

Only rarely does al-Ṭaḥāwī elevate a post-Companion *ḥadīth* to Prophetic status. One passage identified concerns the Successor Ṭāwūs, while another concerns the jurist al-Awzāʿī (d.158/774). In the chapter on the *ʿUmra* discussed above, shortly after claiming for ʿĀʾisha's report the status of a *ḥadīth muttaṣil*, al-Ṭaḥāwī cites a *ḥadīth* from Ṭāwūs. He writes that Ṭāwūs "must have had *tawqīf* from someone who came before him, because this is the kind of thing not taken from *raʾy*, *istikhrāj* or *istinbāṭ*."[402] That is, Ṭāwūs must have heard it from a Companion, who must have heard it from the Prophet. The other example concerns a Prophetic *ḥadīth* in which it is unclear whether a certain addition to the *ḥadīth* by al-Awzāʿī was intended to be part of the Prophet's speech or was al-Awzāʿī's own speech. Al-Ṭaḥāwī concludes that the question is unimportant, because someone as knowledgeable and virtuous as al-Awzāʿī would not inappropriately add his own interpretation to the *ḥadīth*, and what he said could not be based upon *raʾy*, *istikhrāj* or *istinbāṭ*.[403] Al-Ṭaḥāwī's arguments concerning these post-Companion reports thus follow the same pattern and use the same language as many of his arguments

[400] Al-Ṭaḥāwī, *Aḥkām*, 1.186.
[401] Al-Ṭaḥāwī, *Mushkil*, 4.232ff.
[402] Al-Ṭaḥāwī, *Aḥkām*, 2.227.
[403] Al-Ṭaḥāwī, *Mushkil*, 8.347.

concerning the Prophetic status of Companion *ḥadīth*s; however, his stronger claims discussed above, such as that a post-Prophetic *ḥadīth* should be counted among the Prophetic *ḥadīth*s, are limited to the Companions.

In many cases, al-Ṭaḥāwī's claims of authority for post-Prophetic *ḥadīth*s are in agreement with principles described by other jurists and traditionists. For instance, al-Ṭaḥāwī accepts a *ḥadīth* from Abū Mulayḥ concerning the amount of the damages (*diya*) for the killing of a viable fetus on the grounds that the *ḥadīth* mentions a specific sum for the damages, and such a sum can only be known through Prophetic instruction.[404] In their chapters on *taqlīd al-Ṣaḥābī*,[405] al-Jaṣṣāṣ and al-Sarakhsī similarly note that even those jurists who deny the precedence of a Companion report over *qiyās* accept the legal authority of a single Companion report on issues related to quantity. Like al-Ṭaḥāwī, they take the Ḥanafī principle that enumerated quantities and defined amounts cannot be the outcome of analogy and make that principle the basis for an inference about the provenance of a Companion *ḥadīth*. That is, because quantities cannot be known through *qiyās*, a Companion *ḥadīth* establishing such a rule must have been based upon Prophetic instruction (*tawqīf*).[406] Nyazee observes that the Ḥanafīs apply the same rule to time periods.[407] We have already seen al-Ṭaḥāwī claiming Prophetic status for ʿĀʾisha's *ḥadīth* about the time period during which Muslims may perform the ʿUmra, and al-Ṭaḥāwī states explicitly elsewhere that the defining of time periods (*tawqīt*) requires

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[404] Al-Ṭaḥāwī, *Mushkil*, 11.420.
[405] This principle is discussed below.
[406] Al-Sarakhsī, *al-Muḥarrar*, 2.85; al-Jaṣṣāṣ, *al-Fuṣūl*, 2.174-5. Al-Jaṣṣāṣ is quoting his Ḥanafī predecessor al-Karkhī (d. 340/951) in this passage. This argument appears to have a long history among the Ḥanafīs; al-Tilimsānī attributes it to Abū Ḥanīfa himself (Ahmad, *Structural Interrelations of Theory and Practice*, 134).
[407] Imran Ahsan Khan Nyazee, *Islamic Jurisprudence: Uṣūl al-fiqh* (Islamabad: International Institute of Islamic Thought, 2000), 254.

instruction (*tawqīf*) from the Prophet.[408] However, while later Ḥanafī jurists may accept the legal authority of such Companion *ḥadīth*s, they do not appear to reclassify Companion *ḥadīth*s as Prophetic or discuss the authority of post-Companion *ḥadīth*s in the manner of al-Ṭaḥāwī.

Nor does al-Ṭaḥāwī limit his use of this argument to cases involving numbers or time periods. In a few cases, he establishes principles concerning other kinds of legislative statements that require *tawqīf*. For instance, we learn that statements in the grammatical form of a threat and statements which particularize (*khāṣṣ*) the general (*ʿāmm*) must have been the result of Prophetic instruction.[409] In most cases, however, al-Ṭaḥāwī merely states that a certain legislative statement in a post-Prophetic *ḥadīth* could not be based upon legal reasoning without explaining what it is about the statement that precludes that possibility.[410] The rules that al-Ṭaḥāwī supports on the basis of this argument include, for example, the impermissibility of performing Congregational prayer on Fridays and the three days of ʿĪd al-Aḍḥā outside of a garrison town or Friday mosque (*jāmiʿ*);[411] the permissibility of wearing a garment embroidered in silk;[412] the

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[408] Al-Ṭaḥāwī, *Mushkil*, 12.429: "*Al-tawqīt lā yuʾkhadh illā bi-l-tawqīf*." See *Aḥkām*, 1.175 for another example of this argument applied to a Companion statement about the time period for a prayer. Because *Sharḥ mushkil al-āthār* does not exclusively concern legal topics, we also witness al-Ṭaḥāwī asserting that Companion statements concerning the exegesis of Qurʾānic verses must necessarily have come from the Prophet (*Mushkil*, 1.55, 1.68, 2.354, 3.107, 5.383, 6.115, 8.445, 10.89). In this assertion he is in agreement with the traditionists, who define as automatically *marfūʿ* (elevated to the Prophet) any Companion report on the interpretation of Qurʾānic verses or the circumstances in response to which they were revealed (Kamali, *Textbook of Ḥadīth Studies*, 156). While al-Ṭaḥāwī agrees that Companion reports containing Qurʾānic exegesis must have come from the Prophet, he does not join the traditionists in applying the label *marfūʿ* to them.

[409] Al-Ṭaḥāwī, *Mushkil*, 4.411-412, 5.181.

[410] Al-Sarakhsī also asserts Prophetic origins for Companion reports beyond those concerned with quantities. However, where al-Ṭaḥāwī makes this argument for rules that *could not* be based upon rational procedures, al-Sarakhsī argues that Companion reports stating rules which *conflict with qiyās* must have Prophetic origins (*al-Muḥarrar*, 2.85).

[411] Al-Ṭaḥāwī, *Mushkil*, 3.188; *Aḥkām*, 1.145.

impermissibility of slaves calling their masters '*rabbī*' (my lord);[413] the practice of calling out a greeting before asking permission to enter a house;[414] the permissibility of interceding for someone who has committed a *ḥadd* crime before the charge is brought to the ruler;[415] and the impermissibility of two people conferring secretly together while traveling with a third person.[416] Surveying other cases in which he employs this argument, we may surmise that al-Ṭaḥāwī also holds that Companion opinions establishing ritual practices must have originated with the Prophet, since a number of his examples involve prayer[417] and pilgrimage practices.[418]

On the whole, however, while it is possible to abstract from al-Ṭaḥāwī's discussions some limited set of principles concerning the kind of legislative statement that requires *tawqīf*, in practice, these principles cannot account for nearly all of al-Ṭaḥāwī's appeals to the idea of an underlying instance of *tawqīf.* Indeed, it appears that any legislative statement by a Companion that is not explicitly labeled an instance of *qiyās* may be subsumed under this argument and reclassified as Prophetic, a move which permits al-Ṭaḥāwī wide latitude in claiming divine origins for practices not recorded in the Qurʾān and Prophetic Sunna. The question arises, then, on what basis does al-Ṭaḥāwī identify particular Companion and Successor *ḥadīth*s as representing Prophetic authority, and to what end?

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412 Al-Ṭaḥāwī, *Mushkil*, 4.48.
413 Al-Ṭaḥāwī, *Mushkil*, 4.232.
414 Al-Ṭaḥāwī, *Mushkil*, 4.248.
415 Al-Ṭaḥāwī, *Mushkil*, 4.386.
416 Al-Ṭaḥāwī, *Mushkil*, 5.43.
417 E.g., al-Ṭaḥāwī, *Mushkil*, 11.374, 12.57; *Aḥkām*, 1.186.
418 E.g., al-Ṭaḥāwī, *Aḥkām*, 2.96, 2.135, 2.153-154, 2.167, 2.208, 2.226.

In many cases, al-Ṭaḥāwī asserts the Prophetic status of Companion *ḥadīth*s in order to justify established rules of Ḥanafī positive law that cannot be accounted for under the source rubric of Qurʾān, Sunna and consensus. Such cases reveal that al-Ṭaḥāwī's hermeneutical project is at least to some extent instrumental, serving the ultimate purpose of tethering Ḥanafī *fiqh* to revelation. For example, in a discussion defining the area of ʿArafat within which pilgrims must halt, al-Ṭaḥāwī first cites a Prophetic *ḥadīth* saying that all of ʿArafat is a halting place (*mawqif*). He next notes that scholars including Abū Ḥanīfa, Abū Yūsuf and Muḥammad ibn al-Ḥasan al-Shaybānī exclude a certain area from the permissible halting place for the pilgrimage, but that he has not found a continuously attested Prophetic *ḥadīth* giving that exception. He has, however, identified a Companion *hadith* from Ibn ʿAbbās, supported by other reports from ʿAbd Allāh ibn al-Zubayr and ʿUrwa, stating the exception. Because we know that they would not have spoken from *raʾy*, *istinbāṭ*, *maqāyīs*, or *ḍarb al-amthāl*, they must have taken this exception from the Prophet. Al-Ṭaḥāwī goes on to state that he later found a version of the *ḥadīth* from Ibn ʿAbbās which was elevated to the Prophet (*marfūʿ*);[419] however, even before discovering the Prophetic *ḥadīth* stating the exception, al-Ṭaḥāwī was willing to base his opinion on the authority of the presumed Prophetic origins of Companion *ḥadīth*s. Significantly, the authority that al-Ṭaḥāwī grants these Companion *ḥadīth*s outweighs the authority of the original Prophetic *ḥadīth* stating that all of ʿArafat is the halting place. The argument for the Prophetic status of Companion *ḥadīth* thus

[419] Al-Ṭaḥāwī, *Aḥkām*, 2.134-135. A very similar argument concerning the portion of Muzdalifa which may be used as a halting place for the Hajj can be found at *Aḥkām*, 2.165-168.

allows al-Ṭaḥāwī to claim a basis in revelation even for rules which conflict with Prophetic *ḥadīth*.

It would be a mistake, however, to assume that al-Ṭaḥāwī's elevation of Companion *ḥadīth*s to Prophetic status is merely a tool in the service of justifying Ḥanafī *fiqh*. While the majority of such arguments do serve to support an established rule of Ḥanafī positive law, at other times al-Ṭaḥāwī's deference to Companion *ḥadīth*s leads him to oppose established Ḥanafī positions, revealing a fundamental struggle in al-Ṭaḥāwī's works between instrumental and philosophical reasoning.[420] For instance, in a chapter concerning someone who had the opportunity to make up missed fast days from a previous Ramadan but failed to do so before the arrival of a new Ramadan, al-Ṭaḥāwī spends most of the chapter arguing in support of Abū Ḥanīfa, Abū Yūsuf and al-Shaybānī, who hold that nothing more is required of the person than that he or she should make up the missed fast days. In response to the claim of Mālik, al-Shāfiʿī, Ibn ʿAbbās and Abū Hurayra that the individual must also feed a poor person for every day of fasting missed, al-Ṭaḥāwī argues that nothing more than making up the missed obligation is required of someone who misses a prayer. By analogy, nothing more should be required of someone who misses a fast day. Further, the Qurʾān does not mention feeding the poor in its discussion of making up missed fast days. Al-Ṭaḥāwī counters several more arguments from an unnamed interlocutor representing the position of Mālik, al-Shāfiʿī, Ibn ʿAbbās and Abū Hurayra.[421]

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[420] In *al-Ṭaḥāwī wa manhajuhu fī-l-fiqh al-islāmī*, Saʿd Bashīr Sharaf has compiled a list of legal questions in *Sharḥ maʿānī al-āthār* on which al-Ṭaḥāwī disagrees with established Ḥanafī *fiqh* ((Amman: Dār al-Nafāʾis, 1998), 79-186). Twelve of the chapters in question he paraphrases at length (79-173).
[421] Al-Ṭaḥāwī, *Aḥkām*, 1.411-416.

To this point in the argument, al-Ṭaḥāwī appears to agree with the Ḥanafī position. At the very end of the discussion, however, al-Ṭaḥāwī states that he could not find support for the legislative content of the *ḥadīth*s from Ibn ʿAbbās and Abū Hurayra in the Qurʾān, the Sunna, or *qiyās*. They could not have spoken from *raʾy* or *istinbāṭ*, but only on the basis of *tawqīf* from the Prophet. No other Companion is known to disagree with them. Therefore, he will oppose Abū Ḥanīfa, Abū Yūsuf and al-Shaybānī and adopt the opinion of Ibn ʿAbbās and Abū Hurayra, even though analogy and the apparent meaning of the Qurʾān are in conflict with their position.[422] Although he does not say so directly, he is also now in agreement with Mālik and al-Shāfiʿī over the members of his own legal school.

We see here that al-Ṭaḥāwī's deference to Companion reports goes considerably deeper than a mere need to justify Ḥanafī positive law on the basis of revealed texts. Instead, he elevates the Companions' status such that any discrepancy between certain Companion *ḥadīth*s and the Qurʾān or Sunna indicates special knowledge on the part of the Companions. In effect, it is the apparent baselessness of the Companion reports which al-Ṭaḥāwī asserts as his justification for accepting them as Prophetic, a procedure which relies upon the underlying premise that it is impossible that the Companions would ever knowingly depart from correct legal practice or speak on matters for which they do not have the necessary authority, such as basic ritual matters. Thus, within the instruction/inference divide which makes up the *tawqīf*:*raʾy* binary, all that is necessary to confirm the presence of *tawqīf* is the absence of an undisputed instance of *raʾy*. That is, the affirmation of *tawqīf* is the result of a lack of evidence (or permission) for *raʾy*, rather

[422] Al-Ṭaḥāwī, *Aḥkām*, 1.416.

than any positive indication that *tawqīf* actually occurred. Nonetheless, in the example above, al-Ṭaḥāwī considers his inference of an original *tawqīf* strong enough to outweigh the apparent evidence of Qurʾān and Sunna as well as established Ḥanafī law.

Al-Ṭaḥāwī also sometimes defers to Companion *ḥadīth*s over Ḥanafī doctrine in cases where he does not argue that those Companion *ḥadīth*s have Prophetic status. For example, in a chapter of *Sharḥ mushkil al-āthār* concerning the requirements of *iḥrām* (a prolonged state of ritual purification for the Pilgrimage), al-Ṭaḥāwī proposes an interpretation of apparently contradictory Prophetic *ḥadīth*s such that they refer to different situations, and are thus in harmony with each other. He asserts that his harmonization is supported by *ḥadīth*s showing the Companions acting in accordance with his interpretation. He concludes the chapter by noting that his position opposes that of the Ḥanafīs and the Mālikīs.[423]

In another chapter of *Sharḥ mushkil al-āthār* on whether Q 5/al-Māʾida:106 ("[let there be] witnessing between you when death comes to one of you") was abrogated, al-Ṭaḥāwī adduces several Companion reports indicating that the verse was not abrogated and then writes that he knows of no Companion who opposed them. He likewise cites a large number of Successors who held that the verse was not abrogated, while conceding that at least one Successor, al-Ḥasan al-Baṣrī, held that it was abrogated. Although the later Ḥanafīs, Mālikīs and Shāfiʿīs held that the verse was indeed abrogated, al-Ṭaḥāwī argues that their argument does not provide certainty of the abrogation of what was in the Qurʾān and then was practiced by the Prophet and many of his Companions.[424] In each of

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[423] Al-Ṭaḥāwī, *Mushkil*, 14.142-143.
[424] Al-Ṭaḥāwī, *Mushkil*, 11.457-471.

the examples above, al-Ṭaḥāwī appeals to Companion *ḥadīth*s to support an argument against the jurists of his own legal school.

In light of these passages, we may evaluate Schacht's characterization of al-Ṭaḥāwī's use of Companion *ḥadīth*s as merely instrumental. In a discussion of Companion *ḥadīth*s in *The Origins of Muhammadan Jurisprudence*, Schacht comments that the early Iraqi jurists "usually chose seemingly arbitrarily one out of several contradictory traditions," depending on which best supported their school tradition. He continues, "This acceptance or rejection of traditions, according to whether they agree or disagree with the previously established doctrine of the school, was later developed into a fine art by Ṭaḥāwī whose efforts at harmonizing are overshadowed by his tendency to find contradictions, so that he can eliminate those traditions which do not agree with the doctrine of the Ḥanafī school, by assuming their repeal."[425]

It is quite true that in the majority of cases al-Ṭaḥāwī harmonizes Prophetic and Companion *ḥadīth*s or dismisses them as weak in ways that support established Ḥanafī doctrine. That is, his legal arguments throughout all of his works of practical hermeneutics are most often based on instrumental reasoning, meant to achieve a specific, predetermined end. However, the existence of passages like those cited above, as well as others we have encountered or will encounter in which al-Ṭaḥāwī departs from accepted Ḥanafī positions in order to follow Prophetic or Companion practice, suggests that Schacht's portrayal of al-Ṭaḥāwī is overly simplistic and perhaps overly cynical. Certainly, al-Ṭaḥāwī understood himself to participate in a Ḥanafī tradition—indicated by

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[425] Schacht, *Origins of Muhammadan Jurisprudence*, 30. It is unclear whether Schacht means to continue to discuss only Companion reports in this passage, or whether he is now including Prophetic reports as well. My comments above apply in either case.

his frequent reference to Abū Ḥanīfa, Abū Yūsuf and al-Shaybānī as *aṣḥābunā* (our colleagues)—which subscribed to a particular body of positive law, albeit a nebulous one. However, to dismiss al-Ṭaḥāwī's efforts at harmonization as the mere justification of Ḥanafī positive law is to ignore the way in which his works of practical hermeneutics embody a very real struggle to reconcile his commitment to a body of positive law with his apparently sincere ascription to relatively newly-developed ideas about the sources of the law and legal authority.[426] While al-Ṭaḥāwī is often able to martial his theories of legal sources and legal hermeneutics in ways that support Ḥanafī doctrine, he is not invariably successful. In cases where his commitment to Prophetic and Companion *ḥadīth*s are irreconcilable with Ḥanafī doctrine, he evinces a willingness to depart from that doctrine in a way not admitted by Schacht.[427] In addition to reflecting al-Ṭaḥāwī's commitment to *ḥadīth*, his departures from Ḥanafī doctrine in favor of Prophetic or Companion *ḥadīth* may also be a consequence of a more expansive understanding of what it means to belong to a *madhhab* than Schacht envisions. While Schacht portrays al-Ṭaḥāwī as callously dismissing revealed texts in order to protect Ḥanafī doctrine, al-Ṭaḥāwī does not appear to feel that his not infrequent departures from Ḥanafī doctrine make him any less Ḥanafī.

[426] The degree to which this struggle is characteristic of a wider genre of practical hermeneutics is a question in need of a future study.
[427] The same criticism may be leveled at Norman Calder's assertion that al-Ṭaḥāwī's arguments in *Sharḥ mushkil al-āthār* are "intended to demonstrate that the principles of Ḥanafī law can be established by reference to Prophetic hadith and, conversely, that, whatever the appearances to the contrary, there are no reliable Prophetic hadith that contradict Ḥanafī law" (*Studies in Early Muslim Jurisprudence*, 235). While al-Ṭaḥāwī's overall goal is indeed to demonstrate the compatibility of Ḥanafī law and Prophetic *ḥadīth*, Calder's statement overstates al-Ṭaḥāwī's commitment to the Ḥanafī *madhhab* at the cost of portraying his commitment to *ḥadīth* as merely instrumental or strategic.

Abrogation Known through Post-Prophetic Ḥadīths

In addition to claiming Prophetic status for certain post-Prophetic *ḥadīth*, al-Ṭaḥāwī also relies on post-Prophetic *ḥadīth* as the sole evidence for instances of abrogation not preserved in the corpus of Prophetic *ḥadīth*. His argument is that the existence of a post-Prophetic opinion in conflict with a Prophetic *ḥadīth* transmitted by the same individual is sound evidence that that individual knew of the *ḥadīth*'s abrogation. As was the case with the elevation of post-Prophetic *ḥadīth*s to Prophetic status, Companion *ḥadīth*s are the basis for his argument in the great majority of the approximately twenty passages in question. Nonetheless, this argument appears twice in connection with the Successor ʿUrwa ibn al-Zubayr and once concerning the Successor al-Shaʿbī.[428]

In one example, al-Ṭaḥāwī reports that Ibn ʿAbbās transmitted a Prophetic *ḥadīth* saying that a man who commits bestiality should be killed, as should the animal involved. However, Ibn ʿAbbās later stated that there is no *ḥadd* punishment for bestiality.[429] In response, al-Ṭaḥāwī writes that "Ibn ʿAbbās would not have said anything after the [time of the] Prophet that contradicted what he had received from the Prophet unless he had Prophetic instruction (*tawqīf*) that it was abrogated." Shortly afterward he affirms that this argument is sufficient (*kifāya*) and authoritative (*ḥujja*) for refuting the legal effectiveness of the original Prophetic *ḥadīth*.[430] In other passages al-Ṭaḥāwī claims the actions of ʿAlī[431] and Ibn ʿUmar[432] as evidence for the abrogation of aspects of ritual

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[428] Al-Ṭaḥāwī, *Mushkil*, 7.426, 11.486; *Maʿānī*, 4.100.
[429] Al-Ṭaḥāwī, *Mushkil*, 9.437-441.
[430] Al-Ṭaḥāwī, *Mushkil*, 9.442.
[431] Al-Ṭaḥāwī, *Mushkil*, 15.34.

prayer; the opinions of ʿĀʾisha and Ibn ʿAbbās as evidence for the abrogation of fasting on behalf of the deceased;[433] another report from Ibn ʿUmar as evidence for the abrogation of the permissibility of seclusion in a mosque (*iʿtikāf*) without an accompanying fast;[434] and the actions of Abū Ṭalḥa and Abū Ayyūb al-Anṣārī as evidence of the abrogation of the requirement to renew ablutions after eating.[435] From these examples we may observe that Companion actions and opinions provide al-Ṭaḥāwī's evidence for a number of major ritual practices.

Al-Ṭaḥāwī thus considers that the actions and opinions of individual Companions and Successors preserve a memory of instances of abrogation that are not reflected in the canon of Prophetic *ḥadīth*. The significance of their role in preserving knowledge of abrogation becomes apparent if we recall from the previous chapter al-Ṭaḥāwī's anxieties related to the loss of the text of the Qurʾān.[436] His primary argument against reports that verses are missing from the canonized text of the Qurʾān is that, if that were the case, it would be possible that the missing verses would abrogate verses preserved in the canonized text, and the requirement to perform certain duties would be lifted.[437] Despite his anxiety about losing abrogating texts, al-Ṭaḥāwī is willing to relegate to the Companions and Successors the function of preserving knowledge of the abrogation of the Sunna.[438]

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[432] Al-Ṭaḥāwī, *Mushkil*, 15.50.
[433] Al-Ṭaḥāwī, *Aḥkām*, 1.428-429.
[434] Al-Ṭaḥāwī, *Aḥkām*, 1.472.
[435] Al-Ṭaḥāwī, *Maʿānī*, 1.69.
[436] See p. 81.
[437] Al-Ṭaḥāwī, *Mushkil*, 5.313, 11.491.
[438] Interestingly, one of al-Ṭaḥāwī's arguments for a Companion preserving knowledge of an abrogating Prophetic *ḥadīth* appears in the very same chapter as the above argument against the possibility of missing abrogating texts in the Qurʾān (*Mushkil*, 11.486, 11.491).

Al-Ṭaḥāwī's acceptance that some instances of abrogation can be known only through post-Prophetic *ḥadīth*s amounts to an admission that the corpus of Prophetic *ḥadīth*s does not adequately convey Prophetic practice to later generations. It is for this reason that Saʿd Bashīr Asʿad Sharaf, the author of *Abū Jaʿfar al-Ṭaḥāwī wa manhajuhu fī al-fiqh al-Islāmī*, condemns al-Ṭaḥāwī's preference for a Companion action over a Prophetic *ḥadīth* narrated by the same Companion, despite Sharaf's generally positive stance toward al-Ṭaḥāwī. He argues that for a Companion to suppress an abrogating Prophetic *ḥadīth* would be a form of unbelief (*kufr*).[439] This view seems to be a distortion of al-Ṭaḥāwī's position, however; presumably al-Ṭaḥāwī would argue that the abrogating *ḥadīth* is not suppressed, but is instead adequately preserved in post-Prophetic *ḥadīth* form.

Explanations for Companion and Successor Authority

Al-Ṭaḥāwī's argument for abrogation based on post-Prophetic *ḥadīth* maps onto a larger debate among legal theorists about conflicts between a Companion's action and his or her transmission from the Prophet.[440] As in al-Ṭaḥāwī's discussion of abrogation, one question at stake in this debate is whether the Companions can be trusted invariably to follow the Prophet's practice. Al-Ṭaḥāwī, as we shall see below, holds that they can be. Equally importantly, the debate is one about whether Prophetic authority is adequately

[439] Sharaf, *Abū Jaʿfar al-Ṭaḥāwī*, 75.
[440] Although al-Ṭaḥāwī for the most part envisions the conflict between a Companion's transmission from the Prophet and his action as a question of abrogation, he does very rarely apply this argument to other ends discussed by later jurists. For example, in a chapter on whether women are permitted to wear wool extensions to their hair, al-Ṭaḥāwī argues that ʿĀʾisha's failure in a Companion *ḥadīth* to condemn a woman for wearing hair extensions, despite her transmission of the Prophetic *ḥadīth* apparently prohibiting it, indicates that she knew that the Prophet did not intend a prohibition (*Mushkil*, 3.163).

and exclusively conveyed by Prophetic *ḥadīth*s. Al-Shāfiʿī, who attempted fully to identify Prophetic authority with Prophetic *ḥadīth*, characteristically gives priority to the Prophetic *ḥadīth* transmitted by a Companion over that same Companion's action.[441] Later Mālikīs and Ḥanbalīs would do the same.[442]

Al-Ṭaḥāwī's position is largely in agreement with both earlier and later Ḥanafīs, however, including ʿĪsā ibn Abān and al-Jaṣṣāṣ.[443] The latter adds a caveat: the Prophetic *ḥadīth* must not be open to interpretation (*taʾwīl*). If it is, then the Companion action, representing his *taʾwīl*, has no special interpretive authority.[444] Although al-Ṭaḥāwī does not address this issue in his discussions of the conflict between a Companion's transmission and his action, he holds as a general principle that the person who transmits a *ḥadīth* is the most qualified to interpret it—that is, the transmitter of a *hadith* has a special insight into its meaning—and would therefore most likely disagree with al-Jaṣṣāṣ.[445] As we have seen, al-Ṭaḥāwī also departs from al-Jaṣṣāṣ by looking to Successor *ḥadīth*s for evidence of abrogation, a situation not envisioned in later *uṣūl al-fiqh* discussions.

Al-Jaṣṣāṣ's initial description of the cases in which a Companion's action takes precedence over a Prophetic *ḥadīth* contains no explanation of why it should do so. However, in a later discussion of a specific example of abrogation known by a Companion's action, he explains that it is inconceivable (*ghayr jāʾiz*) that Ibn ʿUmar

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[441] Schacht, *Origins of Muhammadan Jurisprudence*, 18.
[442] Sharaf, *Abū Jaʿfar al-Ṭaḥāwī*, 72.
[443] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.68ff. Cf. Kamali, who states that the Ḥanafīs considered that a Companion's failure to act upon a *ḥadīth* he transmitted indicated that the *ḥadīth* was unreliable (rather than abrogated) (*Textbook of Ḥadīth Studies*, 174).
[444] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.68.
[445] Al-Ṭaḥāwī, *Mushkil*, 13.304; *Maʿānī*, 4.100.

would contravene the *sunna* he had transmitted from the Prophet in a case where that particular *sunna* left no room for interpretation.[446] In contrast, al-Ṭaḥāwī is consistently concerned with explaining why a post-Prophetic *ḥadīth* can be trusted as evidence for the abrogation of a Prophetic *ḥadīth*. His explanations fall into several categories, some of which provide important insights into his understanding of the status of the Companions and Successors and the nature of probity (*ʿadl*). Because al-Ṭaḥāwī relies upon the same set of explanations for both abrogation known by post-Prophetic *ḥadīth* and the elevation of post-Prophetic *ḥadīth* to Prophetic status, I have included examples from both types of argument below. Rather than justifying a single function of Companion and Successor *ḥadīth*s, this range of arguments appears to constitute al-Ṭaḥāwī's general justification for his heavy reliance on post-Prophetic *ḥadīth*s in his hermeneutical works.

In the first type of explanation, al-Ṭaḥāwī attributes his confidence in the trustworthiness of a post-Prophetic *ḥadīth* to his knowledge of an individual transmitter's character: Ibn ʿUmar's virtue (*faḍl*), piety (*waraʿ*) and knowledge (*ʿilm*) would prevent him from particularizing (*takhṣīṣ*) what the Prophet had made general (*ʿāmm*) without Prophetic authority,[447] and individuals of ʿAlī's stature (*mithluhu*) do not speak on certain matters based merely on their own opinion.[448] Similarly, in al-Ṭaḥāwī's discussion of two of the four Successor *ḥadīth*s mentioned above and the single *ḥadīth* from a later jurist, we learn that it was those individuals' great knowledge or other personal qualities that would not permit them to act in a certain way without certainty of the abrogation of an

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[446] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.69.
[447] Al-Ṭaḥāwī, *Mushkil*, 5.181.
[448] Al-Ṭaḥāwī, *Aḥkām*, 1.145.

earlier rule.[449] This first category of explanation is thus restricted to the qualities of individuals and may apply to members of any group: Companions, Successors or later jurists.

Another category of explanation anticipates al-Jaṣṣāṣ's discussion by emphasizing the sheer inconceivability of an individual abandoning Prophetic practice or speaking without Prophetic authority, using phrases such as *muḥāl/istaḥāla* (it is impossible or inconceivable) or *lā yajūz* (it is inconceivable).[450] Unlike the previous category, the argument from inconceivability is exclusively connected with Companions. In most examples, al-Ṭaḥāwī simply states that it is inconceivable that a particular Companion would undertake a certain action or make a certain statement in the absence of Prophetic authority, thus leaving open the possibility that the impossibility stems from the personal qualities of that Companion.[451]

In two cases, however, al-Ṭaḥāwī reveals that it is the very fact of being a Companion that prevents individuals from abandoning Prophetic practice.[452] Given his

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[449] Al-Ṭaḥāwī, *Mushkil*, 7.426, 8.347, 11.486.

[450] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.68ff. In addition to establishing an otherwise unknown abrogation, al-Ṭaḥāwī employs the argument from inconceivability to discredit as unsound versions of Prophetic *ḥadīth*s transmitted by Companions in cases where those Companions are known to have acted contrary to those *ḥadīth*s. He argues that it is not possible that a certain Companion would abandon the *ḥadīth* he or she had transmitted, and therefore the *ḥadīth* must not be authentic (*Maʿānī*, 1.126; *Aḥkām*, 1.411).

[451] E.g., al-Ṭaḥāwī, *Maʿānī*, 1.126, 1.262, 1.289, 1.291, 2.215, 2.267-268; *Mushkil*, 5.181; *Aḥkām*, 2.153.

[452] As a corollary to the principle that it is inconceivable that a Companion would knowingly contravene Prophetic practice, al-Ṭaḥāwī must sometimes explain how particular Companions continued to profess doctrine that he considers to have been abrogated. His solution is to argue that it may be impossible for Companions to knowingly contravene Prophetic practice, but they may do so unknowingly in cases where knowledge of the abrogation of a practice did not reach them (e.g., *Mushkil*, 7.391, 14.121; *Maʿānī*, 1.248, 1.316, 3.147). In one passage we learn that we may determine which Companions—those claiming abrogation or those adhering to the earlier ruling—are correct by applying al-Ṭaḥāwī's frequently-cited principle that "someone who knows something take precedence over those who have failed to reach that knowledge," i.e., a Companion who claims abrogation is always believed (*Mushkil*, 14.121). Al-Ṭaḥāwī's assertions that knowledge of an abrogation failed to reach someone occur only in connection with Companions, indicating that a Companion contravening Prophetic practice is in need of explanation in a way that a later scholar's holding a view in conflict with Prophetic practice is not.

companionship (*ṣuḥba*) with the Prophet, al-Ṭaḥāwī writes, it is unimaginable that Salama ibn Ṣakhr would pronounce a *ẓihār* divorce in a certain way unless he knew an earlier ruling on the practice had been abrogated.[453] Likewise, concerning Companion *ḥadīth*s on turning a Greater Pilgrimage into a Lesser Pilgrimage (*faskh al-ḥajj bi-ʿumra*), al-Ṭaḥāwī argues that it is inconceivable that anyone who experienced companionship with the Prophet would make such a statement based merely on opinion.[454] Al-Ṭaḥāwī's argument from inconceivability forms an interesting parallel with the doctrine of the collective probity of the Companions (*taʿdīl al-Ṣaḥāba*), to which al-Ṭaḥāwī also subscribed.[455] While the doctrine of *taʿdīl al-Ṣaḥāba* functioned to preserve the maximum amount of Prophetic material that could be used to justify the law by refraining from discrediting the transmission of any Companion,[456] al-Ṭaḥāwī's argument from inconceivability functions effectively to expand the Prophetic corpus by granting Prophetic authority to any Companion material whose contradiction with Prophetic material cannot otherwise be explained.

Al-Ṭaḥāwī's third and final category of explanation for the authority of post-Prophetic *ḥadīth*s likewise centers on notions of probity and transmission. These explanations are characterized by a shifting constellation of statements and terms related to the ideas of *amn* (trustworthiness, reliability) and *ʿadl* (probity). Unlike the previous category, however, these statements do not concern only the Companions. The same

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[453] Al-Ṭaḥāwī, *Aḥkām*, 2.393-394.
[454] Al-Ṭaḥāwī, *Aḥkām*, 2.92.
[455] Although al-Ṭaḥāwī does not explicitly discuss *taʿdīl al-Ṣaḥāba*, his acceptance of the doctrine is indicated by his argument that Prophetic *ḥadīth*s transmitted from unnamed Companions are reliable (*Mushkil*, 6.317). The implication of this statement is that it is unnecessary to know the identity of a particular Companion transmitter, because all Companions are reliable transmitters.
[456] Lucas, *Constructive Critics*, 237-238.

language is used to describe the authority of Successor reports and, as we will discuss in the next chapter, the collective opinion of later jurists.[457] That being the case, the statements on the Companions analyzed below are best understood not as part of a conception of *taʿdīl al-Ṣaḥāba*, but rather as part of a wider theory of the relationship between probity, transmission and legal reasoning.

The explanations in this category are comprised of two basic building blocks appearing separately or in combination. The first, most frequently-appearing building block consists of the statement that someone is *maʾmūn* (trustworthy). Individual Companions are described as *maʾmūn* in their transmission from the Prophet[458] and in what they opine (*qāla*) that is in conflict with Prophetic *ḥadīth*.[459] Collectively, the Companions are described as "trusted in what they do (*faʿalū*), just as they are trusted in what they transmit,"[460] a formulation also used to describe later jurists as a group.[461] In these and other passages, al-Ṭaḥāwī describes Companions, Successors or later jurists as *maʾmūn* in some combination of transmission, legal opinion, action and knowledge of abrogation.[462] In many passages, statements concerning *amn* are immediately followed by the assertion that a loss of probity (*ʿadl*) entails the loss of reliability in transmission[463] or, in one case, the loss of reliability in transmission and legal opinions.[464]

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[457] While al-Ṭaḥāwī uses the language of *amn* and *ʿadl* to describe the Companions and Successors individually, it is only in the collective that later jurists can be so characterized.
[458] Al-Ṭaḥāwī, *Mushkil*, 6.176, 12.481.
[459] Al-Ṭaḥāwī, *Mushkil*, 9.485, 11.446-447.
[460] Al-Ṭaḥāwī, *Mushkil*, 7.345.
[461] Al-Ṭaḥāwī, *Mushkil*, 15.167.
[462] For other examples, see al-Ṭaḥāwī, *Mushkil*, 2.407, 3.178, 7.405, 12.288, 15.455; *Maʿānī*, 1.496.
[463] Al-Ṭaḥāwī, *Mushkil*, 3.163, 3.178, 6.176, 11.486, 15.455.
[464] Al-Ṭaḥāwī, *Maʿānī*, 1.23.

Two passages explicitly connect the threat of a loss of probity not only to a loss of someone's reliability as a transmitter of *ḥadīth*, but also to a loss of trust in his legal opinions. In one, al-Ṭaḥāwī says that, if al-Shaʿbī had given an opinion in conflict with a Prophetic *ḥadīth* he transmitted without knowing it to be abrogated, then his legal opinions (*raʾy*) would become suspect (*muttaham*). If his legal opinions were suspect, then his transmission of *ḥadīth* (*riwāya*) would also be suspect. Because his probity (*ʿadāla*) in transmission is confirmed, his probity in avoiding contravening those transmissions is also confirmed. If one supposes (*in wuhiba*) the voiding of one of these matters, one must suppose the voiding of the other as well.[465] That is to say, probity in transmitting *ḥadīth* and probity in acting in accordance with *ḥadīth* are inseparable; you cannot have one without the other. In the other passage, al-Ṭaḥāwī states that, if Abū Hurayra contravened what he had transmitted from the Prophet, then his probity would be voided such that neither his legal opinion (*qawl*) nor his transmission (*riwāya*) would be accepted.[466]

Probity (*ʿadl*, *ʿadāla*) for al-Ṭaḥāwī thus consists of three inseparable factors. The first is reliability in the transmission of *ḥadīth*, alternatively expressed as 'probity in transmission' (*al-ʿadāla fī al-riwāya*)[467] or more commonly simply as 'transmission' (*riwāya*).[468] The second factor is authority in legal opinions (*qawl, raʾy*), and the final factor, termed '*ʿadl*' or '*ʿadāla*,' is the uprightness that precludes abandonment of a Prophetic *ḥadīth* without just cause. In all of the passages about the conflict between a

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[465] Al-Ṭaḥāwī, *Maʿānī*, 4.100.
[466] Al-Ṭaḥāwī, *Maʿānī*, 1.23.
[467] Al-Ṭaḥāwī, *Maʿānī*, 4.100.
[468] E.g., al-Ṭaḥāwī, *Maʿānī*, 1.23.

Companion's opinion and his transmission from the Prophet, al-Ṭaḥāwī takes for granted that the Companions' transmission of *ḥadīth*—their *riwāya*—is beyond suspicion. It is in fact their *riwāya* which he uses as evidence that they would not have contravened a Prophetic *ḥadīth* unless they knew it to be abrogated. If they had done so, then their *riwāya* would be voided, and "God forbid that such should be the case." Because we are confident in the Companions' *riwāya*, al-Ṭaḥāwī insists that we may also have confidence in the *ʿadl*, the uprightness, which guarantees that *riwāya*. Likewise, we may have confidence in the Companion's legal opinions, because a lack of probity there would void their probity in *riwāya*, and we know that their probity in *riwāya* is unquestioned. For al-Ṭaḥāwī, then, the trustworthiness of the Companions as transmitters is assumed. Far from arguing to establish the principle of *taʿdīl al-Ṣaḥāba*, al-Ṭaḥāwī points to scholars' confidence in the Companions' and other figures' probity as transmitters to establish their probity in other matters. The precedence of a Companion or Successor action over their transmission from the Prophet is thus guaranteed by our knowledge of their probity as transmitters.

The Relative Authority of Post-Prophetic Ḥadīths and Later Jurists' Qiyās

While the superior authority of Prophetic over post-Prophetic *ḥadīth* was asserted as part of the elevation of Prophetic authority in the 2nd/8th and 3rd/9th centuries, some questions remained concerning the relative status of Companion or Successor *ḥadīths* and later jurists' legal opinions. In this section I assess the degree to which al-Ṭaḥāwī's understanding of their relative authority aligns with discussions among legal theorists.

The later *uṣūl* tradition would frame the issue primarily in terms of the competition between the *qiyās* (analogy) of later jurists and a Companion opinion in cases where no opposition from other Companions is reported and no relevant Prophetic *ḥadīth* is known.[469] According to the Shāfiʿīs and to the Ḥanafī al-Karkhī, jurists need not give preference to a Companion report over their own *qiyās*. Mālik and the majority of Ḥanafīs, in contrast, held that later jurists must adopt the Companion report, a process they labeled *taqlīd al-Ṣaḥābī* (following the precedent of a Companion).[470]

In their discussions of *taqlīd al-Ṣaḥābī*, both al-Jaṣṣāṣ and al-Sarakhsī concur with the argument of Abū Saʿīd al-Bardaʿī (d. 317/929-930), a Ḥanafī jurist active in Baghdad.[471] Abū Saʿīd asserts that the unopposed opinion of a Companion is a *ḥujja* (proof) because it might have been based on a revealed text that was otherwise lost. Something that might have been revealed (a Companion report) is superior to something which certainly was not revealed (the *qiyās* of a later jurist). Further, even if the Companion's opinion were not based on revelation, the *ijtihād* of a Companion is superior to the *ijtihād* of a later jurist, and therefore the Companion opinion must be adopted. The central issues for Abū Saʿīd, al-Jaṣṣāṣ and al-Sarakhsī are thus the possibility that a Companion report may preserve Prophetic material and the relative value of the *ijtihād* of the Companions and later jurists.

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[469] See Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2003), 313.

[470] Nyazee, *Islamic Jurisprudence*, 253-254; al-Sarakhsī, *al-Muḥarrar*, 2.82. Al-Shāfiʿī's early doctrine was that a Companion opinion is to be preferred to *qiyās*. Kamali attributes the preference for Companion *ḥadīth* to Abū Ḥanīfa himself (*Principles of Islamic Jurisprudence*, 320), although al-Jaṣṣāṣ states that he knows of no statement from Abū Ḥanīfa on this matter and instead traces the opinion to Abū Yūsuf (*al-Fuṣūl*, 2.172).

[471] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.172ff; al-Sarakhsī, *al-Muḥarrar*, 2.84.

Although al-Ṭaḥāwī was a close contemporary of Abū Saʿīd al-Bardaʿī, he does not replicate his fellow Ḥanafī's arguments for the superiority of the Companions' *qiyās* as the basis for the authority of their opinions. Instances in which he explicitly opposes opinions of the Companions and later jurists are rare. In one passage concerning the status of the marriage of a woman who converts to Islam while outside of Islamic lands, he demonstrates an awareness of the doctrine that Companion *ḥadīth*s may be preferred over later jurists' analogy by noting that Abū Ḥanīfa, Abū Yūsuf and Muḥammad follow (*qalladū*) a Companion *ḥadīth* from ʿUmar over *naẓar* (reasoned argument) in their opinion that irrevocable divorce does not take effect immediately upon her conversion.[472] Al-Ṭaḥāwī's own opinion is in agreement with *naẓar* as well as another Companion opinion, that of Ibn ʿAbbās.[473] However, the authority he claims for his position is neither that of *naẓar* nor of the opinion of Ibn ʿAbbās, but is instead Prophetic. Here, as in other passages we have encountered, al-Ṭaḥāwī argues that Ibn ʿAbbās's position in the Companion *ḥadīth* is in conflict with a Prophetic *ḥadīth* that Ibn ʿAbbās himself transmitted, thereby demonstrating that he knew the *ḥadīth* to be abrogated and his own position to be affirmed. Where al-Ṭaḥāwī's Ḥanafī predecessors argue this question on the basis of the inherent authority of a Companion opinion, al-Ṭaḥāwī claims as Prophetic the authority of the Companion *ḥadīth* he adduces.

A similar tendency is apparent in other passages relevant to the *uṣūl* debate over Companion reports and later jurists' reasoning. In a discussion of whether it is

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[472] Al-Ṭaḥāwī, *Maʿānī*, 3.258-259.

[473] Given that this case in fact involves two conflicting Companion opinions, it is not a perfect example of the later doctrine, which requires that the Companion opinion be unopposed in order to be authoritative. Presumably, the earlier Ḥanafīs either did not know the opinion from Ibn ʿAbbās, or were following an earlier version of the doctrine with less stringent criteria.

permissible to take back a gift, al-Ṭaḥāwī states that he knows of no reports contradicting those he adduces from Companions and Successors including ʿUmar, Shurayḥ and Ibrāhīm al-Nakhaʿī, each of whom serves as the authority for a different aspect of his argument. Therefore he will abandon *naẓar* and follow (*qallada*) their *āthār*. He admits that *naẓar* would lead to a different result than the one found in *āthār*, but "following (*ittibāʿ*) *āthār* and following the precedent of (*taqlīd*) the foremost scholars (*aʾimmat ahl al-ʿilm*) is better [than *naẓar*].[474]

The final example we will consider is one we have already encountered above concerning ʿĀʾisha's statement about when it is permissible to perform the ʿUmra (lesser pilgrimage). According to *qiyās*, al-Ṭaḥāwī writes, it should be permissible on every day of the year. However, he has discovered an *athr* from ʿĀʾisha which states that there are four days of the year when the ʿUmra may not be performed. The *ḥadīth* of ʿĀʾisha is the only statement he has found from the Companions on this issue. Concerning ʿĀʾisha's *ḥadīth*, he argues that:

> We know that she did not merely opine on her own (*raʾy*), but rather spoke what had been confirmed (*tawqīf*), because this kind of thing cannot be based upon *raʾy*. Therefore we hold that her statement on this is like *ḥadīth* with a continuous chain of transmitters reaching back to the Prophet (*ḥadīth muttaṣil*).[475]

In both of these examples, al-Ṭaḥāwī follows Abū Saʿīd al-Bardaʿī and later jurists in emphasizing that these reports were unopposed by other Companions and therefore authoritative. Al-Ṭaḥāwī departs from the later Ḥanafī tradition, however, in his willingness to grant the same precedence to Successor *ḥadīth*s as he does to Companion

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[474] Al-Ṭaḥāwī, *Maʿānī*, 4.84.
[475] Al-Ṭaḥāwī, *Aḥkām*, 2.226.

*ḥadīth*s.[476] Al-Ṭaḥāwī further diverges from Abū Saʿīd al-Bardaʿī and later Ḥanafīs in his understanding of why post-Prophetic *ḥadīth* take precedence over later jurists' *qiyās*. Where his fellow Ḥanafīs are concerned with the status of the Companions' *ijtihād* versus the *ijtihād* of later jurists,[477] al-Ṭaḥāwī does not portray the Companion or Successor reports as examples of their *ijtihād*, with the exception of a single report from Shurayḥ in a chapter on gifts.[478] This difference is emphasized by the language employed by each: Abū Saʿīd al-Bardaʿī frames the issue as one concerning the opinion (*qawl*) of a Companion,[479] while al-Ṭaḥāwī mentions following *āthār* or *ḥadīth*, thus connecting this issue to the general duty of obeying transmitted reports.[480] Further, he portrays the Companion *ḥadīth*s as faithful reflections of Prophetic practice, rather than as examples of the superiority of Companion legal reasoning.[481]

The Companions and Successors in al-Ṭaḥāwī's Lists of Legal Sources

Another place we might look for evidence of al-Ṭaḥāwī's understanding of the authority of Companion and Successor *ḥadīth*s in relation to the legal opinions of later

[476] Cf. al-Sarakhsī, *al-Muḥarrar*, 2.86. The chapter on gifts cited above includes a report from Ibrāhīm al-Nakhaʿī uncorroborated by any Companion, so it is not the case that the Successor reports are merely incidental and do not add anything to the authority of the Companions.
[477] It may be that later Ḥanafīs reinterpreted such Companion *ḥadīth*s as examples of Companion legal reasoning in order to give themselves greater flexibility in producing rules of law as well as to emphasize that all juristic reasoning is simultaneously authoritative and contestable.
[478] Al-Ṭaḥāwī, *Maʿānī*, 4.84. Here al-Ṭaḥāwī notes that part of Shurayḥ's statement is his "*raʾy*" and then states that he adopts Shurayḥ's opinion.
[479] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.172; al-Sarakhsī, *al-Muḥarrar*, 2.81.
[480] Al-Ṭaḥāwī, *Aḥkām*, 2.226; *Maʿānī*, 3.259, 4.84.
[481] This same tendency can also be observed in a passage which discusses a Companion opinion without opposing it to later jurists' legal reasoning. In one of the chapters elevating a Companion *ḥadīth* to Prophetic status, al-Ṭaḥāwī argues that it is immaterial whether the report is the speech of the Prophet, the speech of Ibn Masʿūd with the *tawqīf* of the Prophet, or even the *istikhrāj* (deduction/inference) of Ibn Masʿūd. Even in the last case, it is "as if he received it from the Prophet by way of *tawqīf*" (*Mushkil*, 9.485-486). Rather than arguing for the independent authority of a Companion's legal reasoning, he equates it with Prophetic authority.

jurists is in the lists of legal sources which appear across his hermeneutical works and *al-Mukhtaṣar* (The Concise Manual of Legal Doctrine).[482] Notably, the Companions or Successors are mentioned in only three of the approximately thirty lists found in these four works. Lists which do mention the Companions or Successors provide somewhat ambiguous evidence for the nature of the Companions' and Successors' authority. The first list, which appears in the two-paragraph introduction to *Sharḥ maʿānī al-āthār*, describes the sources that al-Ṭaḥāwī will use to establish which of scholars' proposed interpretations of apparently conflicting *ḥadīth*s is correct: the Qurʾān, Sunna, consensus, and widely transmitted opinions of the Companions or Successors (*tawātur min aqāwīl al-ṣaḥāba aw tābiʿīhim*).[483] We learn from this passage that widely-held opinions of the Companions and Successors may support an interpretation, but the passage provides no clear indication of whether these opinions preserve otherwise unknown Prophetic material—as is so often the function of Companion and Successor *ḥadīth*s in al-Ṭaḥāwī's works—or whether they represent those individuals' legal reasoning. The mention of widespread transmission (*tawātur*) also raises interesting questions about the individual or collective nature of Companion and Successor authority as well as the boundary between widespread transmission and consensus.

The Companions also appear in a list of sources in a chapter of *Aḥkām al-Qurʾān* on whether seclusion in a mosque (*iʿtikāf*) must be accompanied by fasting. Here al-Ṭaḥāwī argues against those who claim that fasting is not required by stating that evidence for their view is not found in the Book, the Prophet's Sunna, the doctrines

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[482] On these lists, see p. 23 of this study.
[483] Al-Ṭaḥāwī, *Maʿānī*, 1.11.

(*aqwāl*) of the Companions, speculative legal reasoning (*naẓar*) or analogy (*qiyās*).[484] In support of his own view, he adduces a Companion *ḥadīth* reporting the legal opinion of Ibn ʿUmar.[485] Earlier in the chapter, he had argued that Ibn ʿUmar's opinion can only have been based on knowledge from the Prophet.[486] From this equating of the *qawl* of Ibn ʿUmar with knowledge taken from the Prophet, we may conclude that what al-Ṭaḥāwī intends by the *aqwāl* of the Companions in the list of sources in this chapter is not the superior legal reasoning of the Companions, but rather their special knowledge of the Prophet's practice as preserved in Companion *ḥadīth*s.

In contrast, the final list of sources we will consider does portray Companion legal opinions as more authoritative than the legal reasoning of later jurists. In a significant passage in *al-Mukhtaṣar*, al-Ṭaḥāwī describes the methodology which judges should follow in determining a ruling:

> [A judge] should rule according to what is in the Book of God. If a matter should come before him that is not in the Book of God, then he should rule according to what has come down from God's Messenger. If he does not find it, then he should look to what has come to him from the Companions of God's Messenger and rule according to that. If they disagreed, then the best of their opinions (*aqāwīl*) should be selected. He may not oppose all of [the Companions] and contrive (*yabtadiʿ*) something from his personal reasoning (*raʾy*). If he does not find it in the Book of God, nor in what has come from God's Messenger, nor from any of the Companions of God's Messenger, then he should employ legal reasoning (*ijtahada raʾyahu*) in the matter and analogize from what has been transmitted from them…[487]

Al-Ṭaḥāwī's insistence that jurists must look to Companion reports before engaging in their own legal reasoning reveals that he does indeed give precedence to Companion

[484] Al-Ṭaḥāwī, *Aḥkām*, 1.475.
[485] Al-Ṭaḥāwī, *Aḥkām*, 1.476.
[486] Al-Ṭaḥāwī, *Aḥkām*, 1.472.
[487] Al-Ṭaḥāwī, *al-Mukhtaṣar*, 327.

legal opinions over those of later jurists, although it is not the way in which he generally frames the question of Companion authority.

The debate over the relative authority of Companion *ḥadīth*s and later jurists' *qiyās* may be understood as one manifestation of a wider debate over the nature of Companion authority. Al-Shāfiʿī favored later jurists' legal reasoning because he understood all revelatory authority to reside in the Qurʾān and Prophetic Sunna and sought fully to identify the Prophetic Sunna with the body of Prophetic *ḥadīth*. In contrast, both the Mālikī and Ḥanafī schools understood Prophetic authority to reside not only in Prophetic *ḥadīth* but also in the continuing practice of the Companions, which both preserved Prophetic practice and served as its natural extension, a topic I will discuss in the next chapter. Given their understanding of Prophetic practice as embodied in the Companions' applications of that practice to new situations, it is reasonable that the Mālikīs and many Ḥanafīs should prefer Companion reports based in Companion legal reasoning to later jurists' *qiyās*.

Al-Ṭaḥāwī, however, understood Companion practice and, indeed, the idea of practice in general, differently than the other Ḥanafīs we have discussed. For him, in almost all cases the Companion practice which is authoritative over later jurists' legal reasoning is an exact record of Prophetic practice. Like al-Shāfiʿī, al-Ṭaḥāwī emphasizes an exclusively Prophetic authority in most of his writing. However, unlike al-Shāfiʿī, he does not seek to identify Prophetic authority only with Prophetic *ḥadīth*. Instead, al-Ṭaḥāwī understands Prophetic practice to be preserved faithfully in a spectrum of forms ranging from the directly textual (Prophetic *ḥadīth*) to the progressively more ephemeral

(Companion and Successor *ḥadīth*, the practice of the jurists or the Community, and certain forms of consensus).[488] While Prophetic *ḥadīth*s by definition represent Prophetic authority, the other sources on this spectrum are only held to stand in for Prophetic authority in certain cases. Nonetheless, in those cases where al-Ṭaḥāwī does claim Prophetic authority for other sources, their epistemological status is equal to that of Prophetic *ḥadīth*s themselves—an equivalence that we have already observed in the ability of Companion *ḥadīth*s to indicate the abrogation of Prophetic *ḥadīth*s.[489]

The result of al-Ṭaḥāwī's elevation of some, but not all, Companion and Successor *ḥadīth*s to Prophetic status is a disjunction between the surface rhetoric of his lists of legal sources and the actual functioning of his hermeneutical arguments. While al-Ṭaḥāwī repeatedly appeals to the list 'Qurʾān, Sunna, consensus' as the prototypical sources required to justify interpretive moves,[490] the passages that I analyze in this chapter concerning Companion and Successor *ḥadīth*s reveal that al-Ṭaḥāwī's legal reasoning often rests instead upon a deeper distinction between what post-Prophetic figures must have known from the Prophet and what they could have worked out for themselves by inference—that is, the *tawqīf:raʾy* binary.

As a result, the Companion and Successor *ḥadīth*s that should be a marginal source of law according to al-Ṭaḥāwī's own rhetoric sometimes overpower in practice the sources of Qurʾān, Sunna and consensus that al-Ṭaḥāwī's explicit theorizing favors. In fact, it is the 'sometimes' nature of the Prophetic authority of Companion *ḥadīth*s that

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[488] The latter two sources are the topic of the next chapter.
[489] In the next chapter, we will see that al-Ṭaḥāwī similar attributes the ability to indicate abrogation of Prophetic *ḥadīth*s to certain kinds of consensus. See below, pp. 181-187.
[490] See p. 23n42.

reveals the fundamental gulf between the surface rhetoric of al-Ṭaḥāwī's conception of the structure of the law and its functioning in practice. Al-Ṭaḥāwī—and, indeed, later legal theorists—outwardly describe a hierarchy of sources of legal authority based on form: Prophetic *ḥadīth* represents a certain level of authority, while consensus represents another, lesser level of authority, as suggested by the fact that consensus always comes after Prophetic *ḥadīth* in al-Ṭaḥāwī's list of legal sources, etc.

However, in his actual legal arguments al-Ṭaḥāwī assigns authority to sources based not on their form, but rather on their function. Thus, Companion *ḥadīth*s have a certain authority when they represent *raʾy*, but a much higher level of authority when they represent *tawqīf*. There is, then, no single type of authority that can be assigned to post-Prophetic *ḥadīth*s in al-Ṭaḥāwī's works. Further, al-Ṭaḥāwī's binary view of what is generally thought of as a single 'source' of law is not limited to post-Prophetic *ḥadīth*s. Although the technical term '*tawqīf*' is almost exclusively associated with post-Prophetic *ḥadīth*, the instruction/inference binary that *tawqīf* evokes is latent in al-Ṭaḥāwī's discussion of other sources of legal authority. In the following chapter, we will see that al-Ṭaḥāwī holds that the authority of jurists' consensus is dependent on whether a particular case of consensus represents inference or instruction.[491] Like Companion *ḥadīth*s based upon *tawqīf*, instances of instruction-based consensus have the authority to abrogate Prophetic *ḥadīth*s. Indeed, as we have already seen in the previous chapter, the concept, if not the language, of the instruction/inference binary extends even to the authority of Prophetic *ḥadīth*s themselves; al-Ṭaḥāwī grants no special authority to

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[491] See pp. 181-187.

Prophetic *ḥadīth*s he deems to be based upon the Prophet's own inference.[492] Al-Ṭaḥāwī's vision of the structure of the law, then, is based upon a binary division between what may be known through inference and what must be known through instruction, a division that transcends traditional categories and hierarchies of legal sources.

Competing Conceptions of Religious Authority

This chapter has argued that al-Ṭaḥāwī understands Companion and Successor *ḥadīth*s to provide stronger evidence of Prophetic practice than Prophetic *ḥadīth*s themselves in some cases, and that the special authority of this subset of post-Prophetic *ḥadīth*s is grounded in the Companions and Successors' role as mimetic preservers of the Prophet's words and actions. That is, although the practices they transmit may not be preserved in the form of Prophetic *ḥadīth*, the Companions and Successors nonetheless are merely transmitting the Prophet's practice by means of their own practice in the *ḥadīth*s we have discussed, without adding anything to it or further developing it. Individual Companions and Successors do, of course, engage in legal reasoning to produce new rulings for novel situations, but in this area their authority is portrayed as being largely of the same type as that of other jurists; al-Ṭaḥāwī is in any case not greatly interested in the authority of the legal reasoning of individual Companions and Successors in relation to that of later jurists.

In several passages, however, al-Ṭaḥāwī's thought preserves lingering traces of an earlier conception of religious authority which holds that the earliest generations of Muslims represent a natural and evolving extension of the Prophet's authority that is

[492] See Chapter One, "Qurʾān and Sunna," pp. 93-100.

sometimes even in competition with Prophetic practice. This tendency is evident in al-Ṭaḥāwī's occasional use of the term *sunna* in connection with the Companions individually and collectively, as well as in reference to the first four caliphs.[493] His willingness to associate *sunna* with figures other than the Prophet is suggestive of what Hallaq labels the "practice-based *sunna*" of earlier centuries, in which post-Prophetic figures both preserved and extended Prophetic practice by applying Prophetic precepts to new situations.[494] The degree to which the association of the term *sunna* with post-Prophetic figures would become unacceptable in the later tradition may be judged by the lengthy footnote that the modern editor of *Sharḥ maʿānī al-āthār*, Muḥammad Zuhrī al-Najjār, dedicates to condemning al-Ṭaḥāwī's usage of it in connection with the first four caliphs.[495]

Despite his occasional mentions of the *sunna* of Companions, however, al-Ṭaḥāwī nowhere suggests that a post-Prophetic *sunna* is in conflict with a Prophetic *sunna*. Instead, the post-Prophetic *sunna*s he appeals to either give evidence of the Prophet's own *sunna*[496] or are dismissed as less authoritative than Prophetic practice. Indeed, in one passage al-Ṭaḥāwī agrees with those who argue against a *ḥadīth*'s claim that a certain practice is a *sunna* by stating that it is merely the *sunna* of ʿUmar, not that of the Prophet,

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[493] Al-Ṭaḥāwī, *Aḥkām*, 1.389; *Maʿānī*, 1.80-81, 1.142. On the concept of caliphal *sunna* and its later supplanting by Prophetic *sunna*, see Patricia Crone and Martin Hinds, *God's Caliph: Religious Authority in the First Centuries of Islam* (Cambridge: Cambridge University Press, 1986), 51-55, 80-96. While al-Ṭaḥāwī's overall commitment to Prophetic *sunna* is in accord with Crone and Hinds' identification of the Miḥna as the turning point for deemphasizing caliphal authority in favor of Prophetic (and scholarly) authority, al-Ṭaḥāwī's works still preserve traces of an earlier conception of the caliphate.
[494] Hallaq, *Origins and Evolution of Islamic Law*, 201.
[495] Al-Ṭaḥāwī, *Maʿānī*, 1.80n4.
[496] Al-Ṭaḥāwī, *Aḥkām*, 1.389; *Maʿānī*, 1.142.

and is therefore not authoritative in the face of conflicting evidence.[497] Thus, while al-Ṭaḥāwī, like the jurists of the 1st/7th and 2nd/8th centuries, occasionally uses the term *sunna* in association with non-Prophetic figures, he does not claim for these figures the kind of authority indicated by earlier jurists' references to non-Prophetic *sunna*. Instead, his works appear to represent a transitional phase in which the term *sunna* could still be used in connection with the Companions, but did not imply that their practice had a normative status of its own.

More strikingly, al-Ṭaḥāwī claims in several passages of *Sharḥ maʿānī al-āthār* that the consensus of the Companions has the power to abrogate Prophetic practice and to establish a new practice different from the Prophet's practice.[498] These passages, which I analyze in the following chapter, appear to portray the Companions not merely as mimetic preservers of the Prophet's practice, but as possessing an authority in legal reasoning that allows them to alter established Prophetic practices—an authority which goes beyond merely establishing what the Prophet might have done in a novel situation. That al-Ṭaḥāwī could make such a claim must be attributed at least in part to lingering ideas of normative authority vested in figures others than the Prophet. The passages arguing for abrogation by Companion consensus thus emerge as relatively isolated examples of an older conception of what it means to preserve Prophetic practice and serve as further evidence that al-Ṭaḥāwī's thought represents a transitional stage in the development of the idea of Prophetic authority during which the meaning of Prophetic practice was changing. Al-Ṭaḥāwī's ability to defend abrogation of Prophetic *ḥadīth* by

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[497] Al-Ṭaḥāwī, *Maʿānī*, 1.80-81.
[498] Al-Ṭaḥāwī, *Maʿānī*, 1.496, 3.56-57, 3.158.

Companion consensus as late as the early 4th/10th century suggests that the field of Islamic law is in need of a more complicated model of the evolving relationship between Prophetic text, Prophetic practice and Prophetic authority.

Chapter Three: Consensus and the Practice of the Community

The *uṣūl al-fiqh* doctrine of consensus (*ijmāʿ*) holds that the unanimous agreement of the jurists of an era on a legal question constitutes an infallible and binding proof for all future Muslims.[499] This definition portrays consensus first and foremost as a practical tool for generating law and confirming the permanence of legal doctrine. Indeed, consensus is often described in modern discussions as the "third source" of the law after the Qurʾān and Sunna.[500] However, the doctrine also served a number of theological and ideological ends for the legal theorists who elaborated the requirements of consensus in their works of *uṣūl al-fiqh*. By asserting the infallibility of the Muslim Community as a whole and then deeming both existing legal doctrine and the corpus of Prophetic texts to have been confirmed by that infallible community, theorists both affirmed the saved character of the Muslim Community and projected backwards an image of a united ur-Community that had never existed historically.[501]

At the same time, the doctrine of consensus guarantees the unity of the Community in ages to come by guarding against the possibility of dissent. The doctrine

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[499] Kamali, *Principles of Islamic Jurisprudence*, 230; Hallaq, *Origins and Evolution of Islamic Law*, 110-111.

[500] E.g., Ahmad, *Structural Interrelations of Theory and Practice*, 131; Hallaq, *Origins and Evolution of Islamic Law*, 129; Nyazee, *Islamic Jurisprudence*, 150.

[501] On the links between unanimity, infallibility and the saved character of the Muslim community, see Joseph Lowry, "Is There Something Postmodern about *Uṣūl al-Fiqh*? *Ijmāʿ*, Constraint, and Interpretive Communities," in *Islamic Law in Theory: Studies in Jurisprudence in Honor of Bernard Weiss*, ed. A. Kevin Reinhart and Robert Gleave (Leiden: Brill, 2014), 300. On the role of consensus in confirming Prophetic *ḥadīth*, see Weiss, *Search for God's Law*, 180-181. Although al-Shāfiʿī limits the role of consensus in generating doctrine, he does suggest in the *Risāla* that there is something like a consensus confirming *ḥadīth*s, both in his chapters on *ijmāʿ* and in his repeated use of the phrase *al-sunna al-mujtamʿa ʿalayhā* (al-Shāfiʿī, *Risāla*, 219-220, 276; Lowry, *Early Islamic Legal Theory*, 322-327).

of consensus thus serves the theological purpose of affirming the nature of the Muslim Community both historically and in the future. Ideologically, the doctrine of consensus also justifies the authority of the jurists, for it is they—not the caliphs, the members of the Prophet's family, or the Muslim Community as a whole—who speak in unison on behalf of the Community. The doctrine of consensus therefore supports a particular power relationship among jurists, Muslim rulers and the Muslim Community.[502]

These ideological and theological functions of consensus generated their own doctrinal imperatives that shaped and constrained jurists' discussions of consensus in works of *uṣūl al-fiqh*. In particular, the centrality of the concept of unanimity to the theological aspirations of consensus led to a situation in which consensus became difficult to achieve or prove in practice. To a large extent, the elaboration of a theory of consensus able to support a certain theological view of the Muslim Community and the role of jurists within it, led to a doctrine that existed in tension with consensus as a practical tool for discovering the law. This tension becomes clear when comparing appeals to consensus in the practical hermeneutics of al-Ṭaḥāwī with the theoretical discussions of the doctrine found in works of *uṣūl al-fiqh*.[503] Like the authors of *uṣūl* texts, al-Ṭaḥāwī understood consensus as an authoritative and binding source of law,[504] and yet he was largely unencumbered by many of the theological and ideological

[502] On the inextricable intertwining of law and politics and the consequent role of ideology in law, see *The Stanford Encyclopedia of Philosophy*, s.v. "Law and Ideology" by Christine Sypnowich, http://plato.stanford.edu/archives/win2014/entries/law-ideology/.
[503] The field is still in need of a systematic study comparing assertions of *ijmāʿ* in support of individual rules in *fiqh* works with the theoretical principles asserted in *uṣūl al-fiqh* texts. The present study suggests some of the tensions that are liable to be uncovered by such an investigation.
[504] Al-Ṭaḥāwī's reification of consensus is apparent in the way that the list "Qurʾān, Sunna, Consensus" regularly stands in for the idea of authoritative legal sources across his hermeneutical works (see "Introduction," p. 23).

concerns surrounding the doctrine which would cause legal theorists to restrict its practice. As a result, consensus becomes in al-Ṭaḥāwī's hands a powerful tool for advancing legal arguments and formulating new rules of law.

This chapter first reconstructs al-Ṭaḥāwī's theory of consensus and the circumstances under which it may be claimed, arguing that that it was the flexibility of al-Ṭaḥāwī's approach to consensus which made it so useful in his legal arguments. In the second half of the chapter, I examine three of the many functions that consensus fills in al-Ṭaḥāwī's works. In the first, which treats the resolution of juristic disagreements, I demonstrate how al-Ṭaḥāwī relies on a principle of inferred or implicit consensus to claim agreement on apparently disputed questions and thus advance his own positions. In the second, I explore the relationship between al-Ṭaḥāwī's understandings of consensus and *ʿamal* (practice) in the context of the abrogation of Prophetic *ḥadīth*s and conclude that both *ʿamal* and *ijmāʿ* in this context represent for al-Ṭaḥāwī an exclusively Prophetic, though non-textual, authority. Notably, al-Ṭaḥāwī asserts the Prophetic authority of juristic *ʿamal* and *ijmāʿ* by invoking the instruction/inference binary that we have already encountered in his discussions of the Prophet's *ijtihād* and of the authority of post-Prophetic *ḥadīth*s. Finally, I suggest the ways in which conceptions of religious authority were in flux during the late 3rd/9th and early 4th/10th centuries by analyzing a number of passages in which al-Ṭaḥāwī argues that Companion consensus may directly abrogate Prophetic practice.

Theory

Although al-Ṭaḥāwī frequently appeals to consensus in his legal arguments, his surviving works contain almost no theoretical discussion of the doctrine, and certainly none of the elaborate detail that serves in *uṣūl* works to anchor the theological and ideological implications of consensus. Abstract statements on consensus are considerably less frequent in al-Ṭaḥāwī's works than those on Sunna or *ijtihād* (legal reasoning), for example. Presumably, al-Ṭaḥāwī considered his use of consensus unproblematic and therefore not in need of discussion.[505] Nonetheless, we can infer much of his theory of consensus from references to particular instances of it as well as from the few theoretical statements on the doctrine preserved in *Sharḥ maʿānī al-āthār*, *Aḥkām al-Qurʾān*, and *Sharḥ mushkil al-āthār*.

Al-Ṭaḥāwī knows the verb '*ajmaʿa*' and the noun '*ijmāʿ*' as technical terms for consensus and employs them regularly; they appear about two hundred times in *Sharḥ maʿānī al-āthār* alone.[506] His rare statements on the theoretical basis of consensus consistently use the term *ijmāʿ*. However, like the jurists of earlier centuries, he also employs non-technical phrases to indicate consensus, including *ittafaqū* (they agreed)[507] and *lā yakhtalifūn* (they do not disagree).[508] Nowhere does al-Ṭaḥāwī suggest that these non-technical phrases indicate a different grade of consensus than that of *ijmāʿ*. Indeed,

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[505] The major exceptions to this generalization are the brief passages justifying his argument that jurists' consensus can indicate prior abrogation of a Prophetic *ḥadīth* in cases where no abrogating text is preserved, and other, lengthier passages in support of his claim that Companion consensus can abrogate Prophetic practice (both are discussed below). The attention he gives to justifying these claims suggests that he perceives them as the most controversial aspects of his theory of consensus.
[506] E.g., al-Ṭaḥāwī, *Maʿānī*, 1.11, 1.12, 1.18, 1.31, 1.33, 1.44, 1.45.
[507] E.g., al-Ṭaḥāwī, *Aḥkām*, 2.371; *Maʿānī*, 1.34.
[508] E.g., al-Ṭaḥāwī, *Aḥkām,* 1.152; *Maʿānī*, 1.33; *Mushkil*, 2.188. For earlier jurists' terminology for consensus, see Ansari, "Islamic Juristic Terminology," 28-33.

he sometimes uses both *ajmaʿū* and either *ittafaqū* or *bilā ikhilāf* to refer to the same instance of consensus.[509] It seems probable that al-Ṭaḥāwī's retention of some of the terminological diversity of an earlier period reflects his practical, almost casual approach to consensus, which is not particularly concerned with defining what does and does not constitute *ijmāʿ* in a technical sense.[510]

The Authority of Consensus

For al-Ṭaḥāwī, consensus is an independent source of law which can provide legal rulings for cases in which nothing relevant is found in the Qurʾān or Sunna. In this claim he agrees with most of the later *uṣūl al-fiqh* tradition, but differs from al-Shāfiʿī, who held that consensus is a tool for interpreting the Qurʾān and Sunna, but not an independent source of law.[511] Concerning the types of property on which alms must be paid, al-Ṭaḥāwī argues that a certain rule "is one of those for which we find no mention in the Book or the Sunna, but rather we found an indication of it in consensus alone."[512] His statement implies that there exists a whole class of rules known only through consensus. The basis for such rules is scholars' *raʾy* (legal opinion), upon which they eventually reach consensus. This process is suggested in a chapter in which al-Ṭaḥāwī

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[509] Al-Ṭaḥāwī, *Maʿānī*, 2.24; *Aḥkām*, 1.152.
[510] After analyzing a passage in which al-Ṭaḥāwī states that "there is no disagreement" regarding a doctrine for which Ibn al-Mundhir actively asserts agreement, Carolyn Baugh cautiously hypothesizes that "it could well be that [al-Ṭaḥāwī's] approach to consensus is considerably more pessimistic than that of his contemporary Ibn al-Mundhir" ("Compulsion in Minor Marriages" (PhD diss., University of Pennsylvania, 2011), 174). While it may be true that al-Ṭaḥāwī's claims to consensus were stated less forcefully than those of Ibn al-Mundhir in this particular case, a global reading of al-Ṭaḥāwī's works suggests that he is in fact highly optimistic about the possibility of consensus and makes regular claims of its occurrence.
[511] Lowry, *Early Islamic Legal Theory*, 319; Schacht, *Origins of Muhammadan Jurisprudence*, 91. El Shamsy emphasizes al-Shāfiʿī's conception of consensus as a tool for expressing "the normative memory of the community" (*Canonization of Islamic Law*, 61).
[512] Al-Ṭaḥāwī, *Mushkil*, 6.35.

details jurists' initial disagreement concerning what should be done with Muḥammad's rightful share of the spoils of war after his death. He describes jurists' later agreement by stating that "then they reached consensus on their opinion" (*thumma ajmaʿū raʾyahum*), indicating that their consensus was based upon *raʾy*.[513]

Al-Ṭaḥāwī's assertions of the authority of consensus anticipate the language that would later be used by the mature *uṣūl al-fiqh* tradition. In several passages he labels consensus a "*ḥujja*," or authoritative proof, a characterization which appears in the very first sentence of al-Jaṣṣāṣ's definition of consensus in *al-Fuṣūl*.[514] In one discussion al-Ṭaḥāwī labels a particular instance of consensus a *ḥujja qāṭiʿa*, or certain proof.[515] Later theorists would understand the term *qāṭʿ* to indicate epistemologically certain knowledge. For instance, al-Jaṣṣāṣ would hold that the achievement of consensus after disagreement produced epistemologically certain (*qāṭiʿ*) knowledge, and al-Sarakhsī defines consensus in general as producing *qaṭʿ*.[516] However, as we have already seen in our discussion of varieties of *ḥadīth*,[517] al-Ṭaḥāwī is not interested in defining degrees of certainty in the same way that later jurists would be, and I therefore have chosen here to translate "*ḥujja qāṭiʿa*" conservatively as 'certain proof.' In either case, al-Ṭaḥāwī's language regarding consensus is closely related to that of the later tradition.

Al-Ṭaḥāwī further holds that consensus has the power to elevate a ruling to the status of a revealed text. He states that the scholars' consensus upon considering a certain

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[513] Al-Ṭaḥāwī, *Maʿānī*, 3.235; the same passage is repeated verbatim at *Maʿānī*, 3.277. On al-Ṭaḥāwī's understanding of *raʾy*, see Chapter Four, "Hermeneutics," pp. 257-260.
[514] Al-Ṭaḥāwī, *Maʿānī*, 2.227, 3.309; al-Jaṣṣāṣ, *al-Fuṣūl*, 2.107.
[515] Al-Ṭaḥāwī, *Maʿānī*, 3.332. On the epistemological certainty of consensus as discussed by later jurists, see Wael Hallaq, "On the Authoritativeness of Sunni Consensus," *International Journal of Middle East Studies* 18, no. 4 (1986): 427.
[516] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.161; al-Sarakhsī, *al-Muḥarrar*, 1.221.
[517] See Chapter One, "Qurʾān and Sunna," pp. 85-89.

case an exception to a rule constitutes an authoritative proof (*ḥujja*), just as the Prophet's own exception to the rule would.[518] The equivalence of consensus to a text of revelation is confirmed in al-Ṭaḥāwī's observation that "opinion (*raʾy*) is employed in cases for which the rulings are not found to be textually stipulated (*manṣūṣ*) in the Book, the Sunna or in the consensus of the Community."[519] Al-Ṭaḥāwī here includes consensus within the definition of textual stipulation (*naṣṣ*), effectively making it a third source of law. Lists containing the same sequence—Book, Sunna, consensus—appear approximately twenty times across *Sharḥ maʿānī al-āthār*, *Aḥkām al-Qurʾān* and *Sharḥ mushkil al-āthār*.[520] The stability of these lists suggests that al-Ṭaḥāwī does indeed view consensus as a third source of law equivalent in status to the Qurʾān and Sunna.[521]

Although most later jurists would, like al-Ṭaḥāwī, acknowledge consensus as an independent source of law, they would not find it easy to establish its authority on the basis of other revealed texts, as no Qurʾānic verse or widely transmitted (*mutawātir*) Prophetic *ḥadīth* makes a clear statement on the issue. The earliest known attempt to justify consensus is that of al-Shaybānī, who claimed support from the unitary Prophetic *ḥadīth*, "Whatever the Muslims see as good is good (*ḥasan*) in the eyes of God, and whatever they see as bad is bad in the eyes of God."[522] Al-Ṭaḥāwī does not follow his Ḥanafī predecessor in his justification of consensus, however. The only justification he offers is a variation on a principle earlier stated by al-Shāfiʿī: that the Muslim

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[518] Al-Ṭaḥāwī, *Mushkil*, 6.34.
[519] Al-Ṭaḥāwī, *Mushkil*, 13.40. Rumee Ahmed likewise refers to the Qurʾān, Sunna and consensus as 'texts' (*nuṣūṣ*) in *Narratives of Islamic Legal Theory,* 113.
[520] E.g., al-Ṭaḥāwī, *Mushkil*, 9.210; *Aḥkām*, 2.371; *Maʿānī*, 1.416.
[521] In her discussion of al-Ṭaḥāwī's treatment of a particular instance of consensus in *Sharḥ maʿānī al-āthār* and *Ikhtilāf al-fuqahāʾ*, Carolyn Baugh also recognizes the equality of consensus to the Qurʾān and Sunna in al-Ṭaḥāwī's thought ("Compulsion in Minor Marriages," 178).
[522] Hallaq, *History of Islamic Legal Theories*, 20; Ansari, "Islamic Juristic Terminology," 32-33.

Community as a whole could not be in error. Significantly, neither al-Shāfiʿī nor al-Ṭaḥāwī provides this justification in the form of a Prophetic *ḥadīth* in Muḥammad's voice, although al-Shāfiʿī adduces other *ḥadīth*s in support of consensus, and al-Ṭaḥāwī consistently provides chains of authority for *ḥadīth*s.[523] Thus, al-Ṭaḥāwī's failure to provide an *isnād* for the statement that the Muslim community cannot agree upon an error, suggests that he did not understand the principle to have been spoken by the Prophet.

It is unlikely that al-Ṭaḥāwī took his justification of consensus from al-Shāfiʿī, however. In the *Risāla*, al-Shāfiʿī asserts that "the entirety of them (*ʿāmmatuhum*) will not agree (*tajtamiʿ*) upon an error (*khaṭaʾ*)."[524] Al-Ṭaḥāwī, in contrast, consistently states some variation on the idea that God would not unite Muslims upon an error (*Allāh lam yakun la-yajmaʿuhum ʿalā ḍalāl*).[525] Al-Shāfiʿī and al-Ṭaḥāwī thus differ concerning the subject of the sentence (the Community or God) and the term for 'error' (*khaṭaʾ* or *ḍalāl*(*a*)). While this principle may not have been canonized as a Prophetic *ḥadīth* by the time of al-Shāfiʿī,[526] during al-Ṭaḥāwī's lifetime it was recorded as a Prophetic *ḥadīth* with slight linguistic variations in the *Musnad* of Aḥmad ibn Ḥanbal (d. 241/855), the *Sunan* of al-Dārimī (d. 255/869), the *Sunan* of Ibn Mājah (d. 273/887), and the *Sunan* of al-Tirmidhī (d. 279/892); it was also cited by Ibn Qutayba in Prophetic *ḥadīth* form as a

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[523] On the debate concerning whether this *ḥadīth* was an "invention" to justify consensus, see Ahmad Hasan, "*Ijmāʿ* in the Early Schools," *Islamic Studies* 6, no. 4 (1977): 123-124.
[524] Al-Shāfiʿī, *al-Risāla*, 220.
[525] Al-Ṭaḥāwī, *Maʿānī*, 1.292. The three other passages read: "God does not cause them to agree upon an error" (*Allāh lā yajmaʿuhum ʿalā ḍalāla*) (*Mushkil*, 9.206); "God does not cause the Community of His Prophet to agree upon an error" (*Allāh lā yajmaʿ ummat nabīhi ʿalā ḍalāla*) (*Mushkil*, 15.159); and "God did not cause the Community of Muḥammad to agree upon an error" (*lam yakun Allāh yajmaʿ ummat Muḥammad ʿalā ḍalāl*) (*Mushkil*, 15.170).
[526] Schacht, *Origins of Muhammadan Jurisprudence*, 91.

justification for consensus.[527] Notably, Ibn Qutayba's *ḥadīth* is linguistically similar to that of al-Shāfiʿī, making the Muslims the subject of the sentence and employing the term '*khaṭa*ʾ' for 'error.' Al-Tirmidhī, al-Dārimī and Ibn Ḥanbal, in contrast, use the same linguistic markers as al-Ṭaḥāwī. That al-Ṭaḥāwī would cite as a principle a text which had already been canonized as a *ḥadīth* suggests that the process of canonization was gradual, and that both the abstract principle and the Prophetic *ḥadīth* were in general circulation at the time.

Al-Jaṣṣāṣ represents the culmination of the process in which the principle of communal infallibility was canonized in *ḥadīth* form and made a standard justification for consensus. In a chapter of *al-Fuṣūl* arguing for the Qurʾānic and Sunnaic roots of consensus, he provides the Prophetic *ḥadīth* in question with the wording it was to retain in most later *uṣūl al-fiqh* discussions and classical *ḥadīth* compilations: "My Community (*ummatī*) will not agree (*tajtamiʿ*) upon an error (*ḍalāl*)."[528] We see here that the typical form of the classical *ḥadīth* combines the linguistic markers in the al-Shāfiʿī/Ibn Qutayba tradition and the al-Tirmidhī/al-Ṭaḥāwī tradition. Al-Ṭaḥāwī's works thus represent a transitional stage in the justification of the authority of consensus on the basis of revelation. Within fifty years of his death, the primary *ḥadīth* that jurists cite to support consensus would have taken its characteristic linguistic form and be fully understood as Prophetic. In the early 4th/10th century, however, it was still possible to cite this *ḥadīth* as

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[527] A. J. Wensinck, *Concordance et Indices de la Tradition Musulmane* (Leiden: Brill, 1936-1988), 1.364, 1.367; Ibn Qutayba, *Taʾwīl Mukhtalif al-ḥadīth*, 25.

[528] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.113. On the classical form of the *ḥadīth*, see Kamali, *Principles of Islamic Jurisprudence*, 240. The earlier formulation given by al-Tirmidhī did not disappear; it can still be found in al-Sarakhsī (*al-Muḥarrar*, 1.225). However, most later theorists would cite the *ḥadīth* in the form given by al-Jaṣṣāṣ.

a non-Prophetic principle and to assert the authority of consensus without rooting that authority in a text of revelation.[529]

The Participants in Forming Consensus

In many cases, al-Ṭaḥāwī does not specify whose agreement is considered in establishing consensus: he frequently employs the anonymous "*ajmaʿū*" (they reached consensus)[530] or the passive "*ujmiʿa*" (consensus was reached).[531] In other cases, he refers to the consensus of the Companions,[532] the scholars (*ahl al-ʿilm*, *ʿulamāʾ, fuqahāʾ*),[533] the *ḥadīth* scholars (*ahl al-ḥadīth*),[534] the Muslims (*al-Muslimūn*),[535] the Community (*al-umma*),[536] everyone (*kull*)[537] or the people (*al-nās*).[538] Even when al-Ṭaḥāwī refers to 'the people,' 'the Community,' or 'the Muslims,' however, it appears that in the overwhelming majority of cases he intends only jurists, a phenomenon that is also characteristic of al-Shāfiʿī's discussions of consensus.[539]

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[529] Hallaq has expressed regret that there are no extant works from the 3rd/9th and early 4th/10th centuries justifying consensus on the basis of revelation ("On the Authoritativeness of Sunni Consensus," 433). However, al-Ṭaḥāwī's very disinterest in justifying consensus on the basis of revelation, viewed in comparison to the much greater attention he gives to justifying the authority of, for example, Sunna and *ijtihād*, is itself significant. The fact that al-Ṭaḥāwī does offer the non-Prophetic principle discussed above as justification in four places, but nowhere provides a basis in revelation for consensus, indicates that it was probably not one of the pressing issues that every scholar of the day need address.
[530] E.g., al-Ṭaḥāwī, *Mushkil*, 11.447.
[531] E.g., al-Ṭaḥāwī, *Maʿānī*, 1.443.
[532] E.g., al-Ṭaḥāwī, *Maʿānī*, 1.232, 3.234.
[533] E.g., al-Ṭaḥāwī, *Mushkil*, 6.34, 8.295, 10.17, 11.420.
[534] Al-Ṭaḥāwī, *Mushkil*, 5.381.
[535] E.g., al-Ṭaḥāwī, *Mushkil*, 2.114, 13.352.
[536] E.g., al-Ṭaḥāwī, *Mushkil*, 9.117, 9.206.
[537] E.g., al-Ṭaḥāwī, *Maʿānī*, 2.41.
[538] E.g., al-Ṭaḥāwī, *Mushkil*, 14.477.
[539] Lowry, *Early Islamic Legal Theory*, 353. Cf. Schacht, who considered that al-Shāfiʿī eventually developed a theory of the consensus of all Muslims, and Calder, who further developed and refined Schacht's position to propose a typology of consensus (Schacht, *Origins of Muhammadan Jurisprudence*, 88-94; Norman Calder, "*Ikhtilāf* and *Ijmāʿ* in Shāfiʿī's *Risāla*," *Studia Islamica* 58 (1983): 72-81).

That al-Ṭaḥāwī intends jurists when he mentions the groups listed above is suggested by the fact that in similar statements about consensus, he sometimes refers to jurists and sometimes to other groups. For example, in a chapter concerning the permissibility of riding seated upon the hide of a predatory animal, al-Ṭaḥāwī states that no one may exclude anything from the scope of what God has made general (*ʿāmm*) except on the basis of evidence from the Qurʾān, Sunna, or the consensus of the scholars (*ahl al-ʿilm*).[540] In another chapter in the same book concerning hunting during the pilgrimage, al-Ṭaḥāwī states the same principle, but specifies the consensus of the Community (*umma*), rather than that of scholars.[541] Likewise, in some chapters al-Ṭaḥāwī writes that the "consensus of the Muslims" has established a technical legal rule of the sort that he usually attributes to the consensus of the scholars.[542] In these and many similar cases we may safely conclude that al-Ṭaḥāwī envisions the consensus of the jurists only.

In a few, ambiguous cases, al-Ṭaḥāwī may in fact have in mind a consensus which includes all Muslims, in keeping with the Ḥanafī principle that all Muslims participate in the consensus on foundational matters like the obligation to perform the Ramadan fast and the pilgrimage.[543] Specifically, in several passages asserting that *ijtihād* is used in cases where nothing is found in the Qurʾān, Sunna or consensus, the consensus he

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[540] Al-Ṭaḥāwī, *Mushkil*, 8.295. Predatory animals are categorized as unclean in Islamic law; the question in this chapter is whether a tanned hide constitutes an exception to the general rule.
[541] Al-Ṭaḥāwī, *Mushkil*, 9.117.
[542] E.g., al-Ṭaḥāwī, *Mushkil*, 14.410, 14.458.
[543] For the later Ḥanafī position, see al-Jaṣṣāṣ, *al-Fuṣūl*, 2.127. Hallaq reports that this distinction was also characteristic of the earliest discussions of consensus (*History of Islamic Legal Theories*, 20).

mentions is that of the Community (*umma*).[544] It may be that he has in mind the basic obligations which have been established on the authority of the Muslim community as a whole. Similarly, when al-Ṭaḥāwī states that "the people" (*al-nās*) have reached consensus that the occasion of revelation for a certain Qurʾānic verse was a specific battle, he may be referring to a collective memory of the Community.[545]

In almost every case, al-Ṭaḥāwī portrays his claims of consensus as geographically universal, rather than restricted to the scholars of a particular locale.[546] When he mentions the *fuqahāʾ al-amṣār* (jurists of the garrison towns), he often takes care to specify that he includes the Ḥaramayn (Mecca and Medina), as well as the garrison towns in all other countries (*sāʾir al-buldān*).[547] Intriguingly, the single example that I was able to identify in which al-Ṭaḥāwī could be interpreted as favoring the consensus of the scholars of a certain region concerns the *ahl al-madīna* (people of Medina), a group for whom some jurists claimed special authority on the grounds that they preserved the continuous and authentic practice of Muslim Community from the time of the Prophet.[548] In a chapter concerning whether a matter that has already been decided by a judge or arbitrator (*ḥakam*) may then be referred to the ruler for a de novo ruling, al-Ṭaḥāwī describes the opposition between Abū Ḥanīfa and his disciples on the

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[544] Al-Ṭaḥāwī, *Mushkil*, 9.210, 10.108. The other passages about the permission for *ijtihād* in cases where nothing is found in the Qurʾān, Sunna or consensus simply refer to *ijmāʿ* without indicating who participates in the process of consensus.

[545] Al-Ṭaḥāwī, *Mushkil*, 14.477.

[546] For the regionalism of earlier views of consensus, see Hallaq, *History of Islamic Legal Theories*, 20; Hasan, "*Ijmāʿ* in the Early Schools," 129; Ansari, "Islamic Juristic Terminology," 31. While al-Ṭaḥāwī portrays his claims to consensus as common to scholars of all regions, it would be necessary to compare specific instances of consensus in al-Ṭaḥāwī to those cited by other Ḥanafī and non-Ḥanafī scholars in order to determine whether they perceived his examples of consensus to be as universal as he implies.

[547] Al-Ṭaḥāwī, *Mushkil*, 12.288. Other passages in which al-Ṭaḥāwī takes care to indicate that a consensus is common to the jurists of all the garrison towns include *Mushkil*, 10.15 and 15.159.

[548] The concept of consensus of *ʿamal* (practice) of the Medinese is discussed below.

one hand and Ibn Abī Laylā and the jurists (*fuqahāʾ*) of Medina on the other. He holds that the best opinion is that of Ibn Abī Laylā and the *ahl al-madīna* "because of their consensus." He concludes the chapter with an analogical argument refuting the opinion of the Ḥanafīs.[549]

While this passage might seem to suggest that al-Ṭaḥāwī privileges the consensus of the *ahl al-madīna* over the opinion of the Ḥanafīs, in the context of al-Ṭaḥāwī's thought as a whole, it seems considerably more likely that he is using the term 'consensus' to refer to the agreement between the *ahl al-madīna* and Ibn Abī Laylā, a Kūfan, rather than to the simple consensus of the Medinese. Given that no other passage in al-Ṭaḥāwī's extant works favors the consensus or legal opinions of the Medinese, this discussion is best understood in the context of al-Ṭaḥāwī's willingness to apply the term 'consensus' to an agreement that is not entirely unanimous, a topic I will discuss in more detail below.

The Boundaries of Consensus

Many of the questions that preoccupied legal theorists about the circumstances under which consensus may be said to have been reached are entirely absent from al-Ṭaḥāwī's extant works. Al-Jaṣṣāṣ devotes individual chapters to issues including the moral qualities required to participate in forming a consensus;[550] whether a consensus becomes effective immediately or only upon the death of the generation of scholars that

[549] Al-Ṭaḥāwī, *Mushkil*, 12.39-40.
[550] Al-Ṭaḥāwī, *Mushkil*, 2.132.

formed it;[551] whether a Successor who became a jurist during the time of the Companions must be counted as part of Companion consensus;[552] and whether it is possible for a later generation to reach consensus on a question on which the Companions held several known opinions.[553] None of these questions are raised in al-Ṭaḥāwī's extant works.

A crucial question debated during al-Ṭaḥāwī's time asks whether scholars must actively state their consent to a position, or whether a tacit consensus may be claimed based on an absence of explicit disagreement. The Ḥanafīs ʿĪsā ibn Abān and al-Karkhī rejected tacit consensus, as did al-Shāfiʿī.[554] Al-Jaṣṣāṣ and the later Ḥanafī tradition would largely accept it as necessary, given the difficulty of determining the active assent to a doctrine of every scholar alive during a certain time.[555] Al-Ṭaḥāwī claims a tacit consensus on several occasions by noting that a Companion indicated a ruling by speech or action in the presence of other Companions, and they did not object.[556]

In fact, al-Ṭaḥāwī appears to discuss tacit consensus exclusively in connection with the Companions, a type of tacit consensus which some later jurists would consider a special case because the Companions represented a fairly small community with better knowledge of each other's opinions than would be possible as the Muslim community grew in size and geographical extent.[557] Considerations such as the relative degrees of certainty inspired by active and tacit consensus are not addressed in his extant works.

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[551] Al-Ṭaḥāwī, *Mushkil*, 2.142.
[552] Al-Ṭaḥāwī, *Mushkil*, 2.156.
[553] Al-Ṭaḥāwī, *Mushkil*, 2.159. For a discussion of the requirements for consensus debated by later jurists, see Hallaq, *History of Islamic Legal Theories*, 78ff; Kamali, *Principles of Islamic Jurisprudence*, 229ff; Weiss, *Search for God's Law*, 174ff.
[554] Zysow, *Economy of Certainty*, 125-131; Hasan, "*Ijmāʿ* in the Early Schools," 128.
[555] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.140-141.
[556] E.g., al-Ṭaḥāwī, *Maʿānī*, 1.118, 2.32, 3.234.
[557] Zysow, *Economy of Certainty*, 128-130.

Although it seems probable that al-Ṭaḥāwī would accept the tacit consensus of post-Companion generations given his consistently optimistic approach to consensus, the absence of any explicit discussion of the matter relieves al-Ṭaḥāwī of having to justify specific claims of consensus in later generations on the basis of active or tacit assent.[558]

Al-Ṭaḥāwī's expansive definition of consensus is also apparent in passages which indicate that he agreed with the view that consensus need not be unanimous in order to be valid.[559] In a discussion of the Pilgrimage rites, he claims that "the Muslims have reached consensus" and that "they all participate in the consensus" (*innāhum jamīʿan mujmiʿīn*) while acknowledging in the very same paragraph the disagreement of Ibn ʿAbbās.[560] Shortly afterward, he acknowledges that some other scholars followed the opinion of Ibn ʿAbbās.[561] He thus applies the term *ijmāʿ* to a non-unanimous consensus, a phenomenon we also saw above when al-Ṭaḥāwī claimed the consensus of the Medinese and Ibn Abī Laylā against the Ḥanafī opinion. Similarly, he states elsewhere that "a group" (*jamāʿa*) of Companions reached consensus on a question.[562] He uses this restricted consensus as evidence in favor of his position.

On the other hand, al-Ṭaḥāwī does know the principle of unanimous consensus and employs it himself on at least one occasion. In a chapter in *Mukhtaṣar Ikhtilāf al-ʿulamāʾ* on whether a Muslim may be killed in recompense for the killing of an infidel,

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[558] One indication that al-Ṭaḥāwī accepted tacit consensus is his frequent observation that Abū Ḥanīfa, Abū Yūsuf and/or al-Shaybānī held a certain position, and that no disagreement is reported from the other(s) (E.g., *Mushkil*, 14.123). The implication is that they agreed and formed a sort of tacit consensus of the early Ḥanafī authorities.

[559] Al-Ṭaḥāwī's contemporary Ibn al-Mundhir (d. 318/930) similarly asserted the existence of *ijmāʿ* on questions for which he recorded dissent (Lowry, "Is There Something Postmodern about *Uṣūl al-Fiqh*?," 300).

[560] Al-Ṭaḥāwī, *Aḥkām*, 2.107.

[561] Al-Ṭaḥāwī, *Aḥkām*, 2.108.

[562] Al-Ṭaḥāwī, *Maʿānī*, 1.220.

al-Shāfiʿī says that there is "no disagreement" (*lā khilāf*) on a certain principle. Al-Ṭaḥāwī's response as reported by al-Jaṣṣāṣ is that what al-Shāfiʿī transmits is not consensus (*ijmāʿ*), because Abū Yūsuf disagreed.[563] While this polemical passage demonstrates al-Ṭaḥāwī's awareness of the argument that consensus must be unanimous, the claim is not typical of al-Ṭaḥāwī and appears nowhere else in his extant works that I was able to locate. In general, his acceptance of non-unanimous *ijmāʿ* permits him to claim consensus in the maximum number of cases.

The principle of majority consensus is most famously associated with al-Ṭabarī,[564] although al-Shāfiʿī's understanding of consensus also did not require unanimity.[565] Al-Jaṣṣāṣ accepted majority consensus, but the opinion died out among most later Ḥanafīs.[566] Given that the understanding of consensus among jurists of the first two centuries of Islamic history likewise did not rely upon unanimity,[567] it seems plausible that al-Ṭabarī and al-Ṭaḥāwī were not expressing an unusual view in accepting the consensus of the majority. Rather, al-Ṭabarī is remembered for a doctrine which was for a long time the most widespread, until the increasing emphasis on the communal unity implied by the doctrine of consensus made the concept of a non-unanimous consensus untenable.

In contrast, al-Ṭaḥāwī sharply diverges from the later *uṣūl al-fiqh* tradition in his willingness to accept that consensus may be abrogated. In general, the term *naskh*

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[563] Al-Jaṣṣāṣ, *Mukhtaṣar Ikhtilāf al-ʿulamāʾ*, 5.159. This passage also serves as further evidence that al-Ṭaḥāwī understood consensus to be indicated by phrases such as "*lā khilāf*" as well as by the term *ijmāʿ*.
[564] Muhammad Faruqi, "The Development of *Ijmāʿ*: The Practices of the *Khulafāʾ al-Rāshidūn* and the Views of the Classical *Fuqahāʾ*," *American Journal of Islamic Social Sciences* 9, no. 2 (1992): 183-184; Zysow, *Economy of Certainty*, 131-133.
[565] Lowry, *Early Islamic Legal Theory*, 319.
[566] Zysow, *Economy of Certainty*, 132-133.
[567] Hallaq, *History of Islamic Legal Theories*, 20; Hasan, "*Ijmāʿ* in the Early Schools," 137.

(abrogation) is reserved for the temporal and legislative supersession of a Qurʾānic verse or *ḥadīth*; ordinarily, later jurists would speak of a change in *ijmāʿ,* or a new *ijmāʿ*, rather than its abrogation. Indeed, among later jurists it was widely held that consensus could neither abrogate nor be abrogated, because abrogation was only possible during the lifetime of Muḥammad, and consensus was only effective after it.[568] Al-Ṭaḥāwī, however, twice entertains the possibility of the abrogation of a consensus, although he denies that abrogation actually occurred in either case. In the first example, the Ḥanafīs, Mālikīs and Shāfiʿīs[569] claim that Q 5/al-Māʾida:106 ("O you who believe, [let there be] witnessing between you when death comes to one of you") was abrogated by Q 65/al-Ṭalāq:2 ("Call as witnesses two just men"). Al-Ṭaḥāwī's response is that "it is not permissible (*lā yajūz*) to abrogate something upon whose certainty (*thubūt*) consensus has been reached unless there exists an authoritative proof (*ḥujja*) requiring that."[570] In other words, jurists have reached consensus on the effectiveness of the rule stated in Q 5/al-Māʾida:106. It is possible for such a consensus to be abrogated, but only in cases where there is a new, authoritative proof (*ḥujja*). In this case, he finds no such authoritative proof, and so he follows the consensus of the Companions and Successors over the opinion of most later jurists. Neither here nor elsewhere does al-Ṭaḥāwī specify what sort of authoritative proof could abrogate consensus, but the fact that he understands such abrogation to be possible places him at odds with the later tradition.

The second example is similar. It concerns a claim that Q 5/al-Māʾida:6 ("your feet up to the ankles") abrogated the earlier permission to wipe the feet that had been

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[568] Al-Sarakhsī, *al-Muḥarrar*, 2.52; Hallaq, "On the Authoritativeness of Sunni Consensus," 448.
[569] Al-Ṭaḥāwī refers to these groups as 'Abū Ḥanīfa and his disciples,' 'al-Shāfiʿī and his disciples,' etc.
[570] Al-Ṭaḥāwī, *Mushkil*, 11.469.

established by a Prophetic *ḥadīth*. Jurists who hold that the Qurʾān abrogated the earlier *ḥadīth* argue that this verse replaces washing the feet with wiping the feet. Al-Ṭaḥāwī responds that "the necessary course of action is that we adhere to that upon whose obligation consensus has been reached until its abrogation is known (*yuʿlam*)."[571] Once again, his argument is that there is consensus upon the effectiveness of the wiping rule as established in the Prophetic *ḥadīth*. Although that consensus may be abrogated, such abrogation has to be known through some other (unspecified) proof. Since no such proof is known, the permission to wipe the feet stands.

Although al-Ṭaḥāwī denies that abrogation has actually occurred in either case, he leaves open the possibility that consensus could be abrogated if an authoritative proof is found, or if it is "known." At the same time, he confirms the authority of consensus by requiring proof in order to set it aside. Al-Ṭaḥāwī's claim that consensus may be abrogated reflects a general approach which seeks to establish the occurrence of consensus in the maximum number of cases by refraining from setting up any unnecessary barriers to attaining it. Al-Ṭaḥāwī appears to feel confident in claiming the authority of consensus for cases in which later jurists would hesitate for fear of falling into inconsistencies or of undermining the theological claims that the doctrine of a unanimous and unalterable consensus supported.

Another passage demonstrates how al-Ṭaḥāwī gains flexibility in the application of consensus by avoiding a definitive statement concerning when it becomes binding. In a discussion of whether the relatives of the Prophet receive a share of the *khums* tax, al-

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[571] Al-Ṭaḥāwī, *Aḥkām*, 1.112.

Ṭaḥāwī states that Abū Bakr and ʿUmar did not distribute the *khums* to the Prophet's relatives after his death. He first writes:

> This confirms that this is the rule in our opinion. Since none of the other Companions of God's Messenger opposed them, it confirms that it was [the other Companions'] opinion as well. Since consensus has been confirmed (*thabata*) in this from Abū Bakr, ʿUmar and all the Companions of God's Messenger, the doctrine (*al-qawl bihi*) has been confirmed. It is obligatory to practice it and to abandon what opposes it.[572]

To this point in the passage al-Ṭaḥāwī has strongly affirmed the obligation to act upon the Companions' tacit consensus on this matter. He continues: "Then, when ʿAlī came to power, he similarly confirmed this ruling." He is now discussing a period after the consensus had already been established. After adducing a Companion report from ʿAlī, al-Ṭaḥāwī observes that "had his opinion been different, he would have restored [the matter] (*raddahu ilā*) to what he opined, given his knowledge, his piety and his virtue."[573] What is notable about this passage is that al-Ṭaḥāwī contemplates with equanimity the possibility that ʿAlī could oppose a consensus that had already been formed (*thabata*). What is more, had ʿAlī opposed the confirmed consensus of the Companions, his action would have been the praiseworthy result of his knowledge, his piety and his virtue. From this discussion, it appears that the prior consensus was not binding on ʿAlī, perhaps because of his role as an early caliph or the rough equivalence of his stature with that of Abū Bakr and ʿUmar. Nonetheless, in this passage al-Ṭaḥāwī both states that a consensus had already been formed (*thabata*) and that it might permissibly later have been challenged.

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[572] Al-Ṭaḥāwī, *Maʿānī*, 3.234.
[573] Al-Ṭaḥāwī, *Maʿānī*, 3.234.

Similar situations in which a Companion is reported to have opposed a consensus led other jurists to develop the doctrine of *inqirāḍ al-ʿaṣr*, which held that a consensus does not become effective until all of the jurists involved in forming it have passed away. Under this theory ʿAlī would be permitted to give a share of *khums* to the Prophet's relatives because the earlier consensus had not yet become binding. This doctrine, which was in effect a way of excusing an otherwise impermissible breach of consensus, was held by Ḥanbalīs, Shāfiʿīs, Muʿtazilīs and Ashʿarīs, and was already known in al-Ṭaḥāwī's time and attributed to Aḥmad ibn Ḥanbal.[574] This principle cannot be what al-Ṭaḥāwī was envisioning, however, because he states clearly that the consensus was confirmed by the actions of Abū Bakr, ʿUmar and the other Companions, and that it was obligatory to act upon it. Further, he is not excusing a breach of consensus by ʿAlī, but is instead portraying his potential opposition in a positive light. Nor is there any indication in al-Ṭaḥāwī's discussion that he considered the original consensus to be provisional, such that the objection of ʿAlī would have revealed that there was in fact no consensus. Notions of provisional instances of consensus, or discussions of the point where instances of consensus become irrevocable, are simply absent from al-Ṭaḥāwī's work.

Other jurists, including most Ḥanafīs, would deny the doctrine of *inqirāḍ al-ʿaṣr* and would hold that a consensus becomes binding in the moment that it occurs. They recognized that, by trying to solve the problem of the existence of reports of Companions acting in opposition to established consensus, the proponents of *inqirāḍ al-ʿaṣr* had created other problems. When new individuals were constantly joining the ranks of the jurists, what would it mean for a generation to pass away? The opponents of *inqirāḍ al-*

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[574] Zysow, *Economy of Certainty*, 138-141.

ʿaṣr would reject the idea that ʿAlī's piety could cause him to oppose a confirmed consensus. Confronted with a similar situation in which ʿUmar is said to have opposed a consensus established under Abū Bakr, al-Jaṣṣāṣ denies that there was any valid consensus in the first place, such that ʿUmar could have opposed it.[575]

The Ḥanafī denial of the doctrine of *inqirāḍ al-ʿaṣr*, however, also does not adequately account for the passage under discussion. Al-Ṭaḥāwī clearly states that a consensus had occurred under Abū Bakr and ʿUmar. By declining to recognize a conflict between his initial assertion that the consensus of Abū Bakr, ʿUmar and the other Companions is binding and his later assertion that ʿAlī could have acted upon his own *raʾy*, al-Ṭaḥāwī claims the authority of consensus while still permitting a kind of dynamism that the *uṣūl* tradition excluded by its insistence upon the binding nature of consensus and the impossibility of its abrogation. It may well be that al-Ṭaḥāwī often has in mind something less than a permanently binding, unanimous agreement when he claims consensus. Nonetheless, by using the term *ijmāʿ* both when making possibly casual claims of consensus and while asserting the status of consensus as a certain proof (*ḥujja qāṭiʿa*), al-Ṭaḥāwī elevates the status of all of his other claims of consensus.

One result of al-Ṭaḥāwī's comparative disinterest in many of the questions that later theorists considered integral to a discussion of consensus is that he is not burdened by a detailed set of requirements when making his own claims of consensus. While al-Ṭaḥāwī does address various theoretical issues related to consensus, he also makes claims of consensus without rigorous justification, sometimes in ways that later theorists would find unacceptable. Consensus is a powerful tool for al-Ṭaḥāwī because he is able to use

[575] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.143.

the language of *uṣūl al-fiqh* to claim *ijmāʿ* as a certain and authoritative proof, and yet he does not feel constrained to take positions on the entire "checklist" of questions that would characterize discussions of the doctrine in later *uṣūl al-fiqh* works.

In part, al-Ṭaḥāwī's approach must be understood as reflecting the historical development of the doctrine of consensus. As we have seen above, al-Ṭaḥāwī wrote before many aspects of the classical doctrine on consensus had crystallized. He also shares in a general Ḥanafī optimism concerning consensus, expressed in a tendency to "consistently [adopt] those positions that were felt to facilitate the application of the doctrine."[576] His approach to consensus also reflects the genre in which he worked, however. His goal as the author of works of practical hermeneutics was to establish and justify the law on discrete issues. In contrast, we may understand the complexity of later theorists' discussions of consensus as the product of their attempts to extrapolate a rigorous and coherent theory from the Qurʾānic verses and Prophetic *ḥadīth*s that had come to be understood as underpinning the authority of consensus as a source of law. As we have seen above, this theory of consensus was also employed to uphold ideological and theological claims. The overtly theoretical aspirations of the *uṣūl* genre thus generated their own imperatives of systematicity that are entirely absent from al-Ṭaḥāwī's practical approach to consensus.

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[576] Zysow, *Economy of Certainty*, 114. Zysow convincingly explains the Ḥanafī enthusiasm for consensus as a means of preserving school doctrine in the face of an increasing deference to Qurʾān and Prophetic Sunna by elevating analogy and isolated *ḥadīth*s to the status of revealed sources (*Economy of Certainty*, 114-115). In contrast, consensus plays a relatively minor role in the legal thought of al-Shāfiʿī, who sought to show how all law is contained in the Qurʾān and Prophetic Sunna (Lowry, *Early Islamic Legal Theory*, 319).

While jurists in al-Ṭaḥāwī's time and before did also develop doctrines like *inqirāḍ al-ʿaṣr*, it was only the *uṣūl al-fiqh* genre which sought to bring all aspects of consensus together into a single, coherent whole. The result of legal theorists' efforts to produce a coherent account of the doctrine was a definition of consensus of such specificity and rigor that theorists came to question whether consensus had ever actually occurred in practice.[577] Indeed, Bernard Weiss writes that, "on the whole, I think it is fair to say that the actual impact of consensus on the formulation of the law was seen by the classical jurists as rather minimal."[578] In contrast, al-Ṭaḥāwī understands consensus to be a routine occurrence and integral to the process of formulating the law, as we shall see below.

The disparate goals of practical hermeneutics and legal theory may then be identified as the reason for the gap which Kamali and others have noted between the theory and practice of consensus.[579] Ahmad Hasan has suggested that the existence of claims of non-unanimous consensus demonstrates that "either the classical definition of *Ijmāʿ* is defective, or *Ijmāʿ* is only a theoretical concept."[580] In response, we may suggest from our reading of al-Ṭaḥāwī and later works of theory that the classical definition of consensus in *uṣūl al-fiqh* works reflects one set of theological and ideological goals, while the operation of consensus in al-Ṭaḥāwī's works of practical hermeneutics reflects the imperatives of law creation in practice. The question of the relationship between the genres of legal theory and practical hermeneutics requires further study, however. In

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[577] Kamali, *Principles of Islamic Jurisprudence*, 229; Nyazee, *Islamic Jurisprudence*, 192.
[578] Weiss, *Spirit of Islamic Law*, 125.
[579] Kamali, *Principles of Islamic Jurisprudence*, 228-229.
[580] Hasan, "*Ijmāʿ* in the Early Schools," 121.

particular, it would be instructive to examine whether and how the use of consensus in works of practical hermeneutics changed in response to the maturation of the doctrine in *uṣūl al-fiqh* works. While the maturity of al-Jaṣṣāṣ's *Fuṣūl* certainly suggests that there were earlier works in the genre which have been lost, it is nonetheless fair to say that al-Ṭaḥāwī lived before the genre became canonized to the extent it would later. It seems possible that authors of works of practical hermeneutics a few centuries after al-Ṭaḥāwī would need to engage with *uṣūl al-fiqh* approaches to consensus to a degree that al-Ṭaḥāwī did not. A chronological survey of approaches to consensus in works of practical hermeneutics could thus provide us with important insights on the relationship between that genre and *uṣūl al-fiqh*.

Function

Consensus as a Tool for Resolving Disagreement

As stated above, consensus is not merely discussed as a theoretical possibility in al-Ṭaḥāwī's works, but instead plays a major, practical role in his legal arguments. Far from doubting the possibility of obtaining consensus in real-life situations, al-Ṭaḥāwī claims consensus as the basis for establishing the occasion of revelation for a Qurʾānic verse;[581] restricting an apparently general (*ʿāmm*) meaning to a specific (*khāṣṣ*) meaning;[582] affirming the authenticity of an apparently weak *ḥadīth*;[583] providing the explanation (*taʾwīl*) of the intent of a Qurʾānic verse or *ḥadīth*;[584] setting out a rule of

[581] E.g., al-Ṭaḥāwī, *Mushkil*, 14.477.
[582] E.g., al-Ṭaḥāwī, *Mushkil*, 8.295, 9.117; *Aḥkām*, 2.234.
[583] E.g., al-Ṭaḥāwī, *Maʿānī*, 1.314; *Mushkil*, 11.41.
[584] E.g., al-Ṭaḥāwī, *Maʿānī*, 3.369; *Mushkil*, 9.358; *Aḥkām*, 1.190.

positive law;[585] and many other kinds of claims. Often, consensus on one question becomes the basis for an analogy by which another rule is derived.[586]

The flexible quality of consensus in al-Ṭaḥāwī's thought is perhaps most apparent in his use of it as a technique for resolving reported disagreements (*ikhtilāf*) among jurists. The impression gained from *uṣūl al-fiqh* discussions of consensus, which are largely concerned with determining when and how consensus may be said to have been reached, is that jurists either have reached consensus on a certain question or they have not.[587] The existence of disagreement (*ikhtilāf*) on an issue would therefore seem to preclude any claim of consensus.[588] Al-Ṭaḥāwī, however, frequently appeals to an inferred consensus when identifying points of agreement within a larger debate.

For example, in a chapter concerning how many extra *takbīr*s (that declaration that 'God is great') should be said during prayers for the two major festival days, al-Ṭaḥāwī first sets out conflicting opinions from various Companions and Successors. One major faction holds that there should be nine *takbīr*s, while the other argues that it should be twelve; both claim support from *ḥadīth*s.[589] After listing the proponents of each opinion, al-Ṭaḥāwī signals the transition to the discussion portion of his chapter in his usual way. He writes, "Because they disagreed on *takbīr* for the two festival prayers, we wanted to examine it (*nanẓur fīhi*) in order to derive (*nastakhrij*) the correct opinion

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[585] E.g., al-Ṭaḥāwī, *Mushkil*, 2.114, 11.173, 11.414, 14.140, 14.458.
[586] E.g., al-Ṭaḥāwī, *Aḥkām*, 1.175, 1.434; *Mushkil*, 2.140-142.
[587] See Zysow, *Economy of Certainty*, 122.
[588] Many premodern theorists do recognize that consensus can encompass situations in which jurists have a known disagreement—there is consensus that the positions taken in that disagreement are the only permissible positions (see, e.g., Lowry, "Is There Something Postmodern about *Uṣūl al-Fiqh*?," 287). This consensus-upon-disagreement is a different process than the kind of consensus discussed in this section, however.
[589] Al-Ṭaḥāwī, *Maʿānī*, 4.343-350.

(*qawl ṣaḥīḥ*) from their various opinions."[590] After resolving a side issue, he returns to the question of the number of *takbīr*s in the two festival prayers. Although he has previously acknowledged that scholars disagree on the issue, he now claims that within their disagreement they have reached consensus that there are indeed additional *takbīr*s for the festival prayers in comparison with non-festival prayers. He further argues that the two groups have reached consensus on nine additional *takbīr*s, since that is a number on which all groups agree, i.e., nine *takbīr*s are included within the twelve *takbīr*s of the second group. He affirms that he will adopt the additional *takbīr*s that everyone agrees on and deny those on which there is disagreement.[591] Thus, although the stated opinions of the Companions and Successors express disagreement on this question, al-Ṭaḥāwī infers a consensus which serves as an authoritative proof and resolves the dispute.[592]

Likewise, in a chapter on shortening prayers while traveling al-Ṭaḥāwī first describes scholars' various opinions on how long someone must travel in order to qualify for the reduced obligation. He next infers that the proponents of all of these positions have reached consensus that the relevant Qurʾānic verse intends only a specific (*khāṣṣ*) kind of traveler, despite the apparently general (*ʿāmm*) meaning of the verse, since no jurist holds that all travelers may shorten their prayers. Within this consensus, some say that three days is the minimum length of travel which merits shortened prayers, while others name shorter travel times. Since they would all agree that someone traveling for

[590] Al-Ṭaḥāwī, *Maʿānī*, 4.350. Variations on this formula appear in a large proportion of chapters in *Sharḥ maʿānī al-āthār* and *Aḥkām al-Qurʾān*.
[591] Al-Ṭaḥāwī, *Maʿānī*, 4.350.
[592] Al-Shāfiʿī employs this same 'lowest common denominator' approach to consensus in the *Risāla* where he argues that despite their disagreements over the proper inheritance share for a grandfather, all parties have reached consensus (*mujmiʿūn*) that he should receive at least as big a share as a brother (*Risāla*, 274).

three days may shorten his or her prayer, that is what they have reached consensus upon.[593]

As in the previous example, al-Ṭaḥāwī first infers the existence of consensus on a larger scale—here, that the meaning of the Qurʾānic verse is *khāṣṣ*—and then identifies a point of commonality among the competing opinions. Al-Ṭaḥāwī similarly resolves disagreements by identifying an implicit consensus on questions such as the disagreement over the minimum amount a thief must steal before he is subject to the punishment of amputation, how many people may share in the sacrifice of a single animal during the Pilgrimage and the maximum time that may pass between the minor and major Pilgrimage such that one may still be considered to be doing *tamattuʿ* (a way of combining the minor and major Pilgrimages).[594] In all of these cases, al-Ṭaḥāwī validates one opinion over another by arguing that it represents a sort of 'lowest common denominator' of consensus.

In other chapters, al-Ṭaḥāwī resolves juristic disagreement not by claiming that a consensus already exists among apparently contradictory opinions, but by appealing to another issue on which scholars have already reached consensus for a solution to the current problem.[595] In a chapter on the legal effectiveness of sales concluded during the Friday prayer, a time when commerce is ostensibly prohibited, al-Ṭaḥāwī first describes the opposition between Abū Ḥanīfa, Abū Yūsuf, al-Shaybānī and al-Shāfiʿī, who validate

[593] Al-Ṭaḥāwī, *Aḥkām*, 1.189-191.
[594] Al-Ṭaḥāwī, *Maʿānī*, 3.167; *Mushkil*, 7.15; *Aḥkām*, 2.232-3.
[595] The process by which rulings reached by *raʾy* are elevated to epistemological certainty and are then used as the basis for further analogy is described in Hallaq, "On the Authoritativeness of Sunni Consensus," 427, and Hasan, "*Ijmāʿ* in the Early Schools," 126.

such a sale, and Mālik ibn Anas, who rejects it.[596] Al-Ṭaḥāwī then observes that "because they disagreed, we looked to what they had reached consensus upon that was of the same type as what they disagreed upon, in order that the disagreement be brought into alignment (*li-tuʿṭaf ʿalayhi*) with it."[597] He finds that scholars have reached consensus that sales made during other prayer periods when commerce is prohibited are still legally effective, and so therefore should the sale in question be. Here al-Ṭaḥāwī is relying on analogical reasoning to resolve the disagreement; however, his language is that of consensus, not analogy.

The principle at work here is stated most clearly in a chapter on prayer under circumstances in which worshippers fear for their safety (*ṣalāt al-khawf*). There, al-Ṭaḥāwī refutes the opinion (*raʾy*) of Yaḥyā ibn Saʿīd on how this prayer should be performed on the grounds that there is no parallel for his opinion in any other kind of prayer. His opinion is therefore without basis, because "knowledge (*ʿilm*) of [the resolution of] disagreements is sought from [questions] on which consensus has been reached."[598] Similarly, we learn in another chapter that "[the resolutions to] disputed issues are confirmed if they resemble issues on which consensus has been reached. If they do not resemble them, they are not confirmed except by means of the establishment

[596] The prohibition in question is found in Q 62/al-Jumʿa:9 ("O you who believe, when proclamation is made for prayer on the day of assembly, hasten to remembrance of God and leave [your] trading").
[597] Al-Ṭaḥāwī, *Aḥkām*, 1.152. Ūnāl's edition of *Aḥkām al-Qurʾān* incorrectly gives "*al-taʿaṭṭuf*" instead of "*li-tuʿṭaf*." This reading must be wrong, because it leaves the next phrase, "*mā ikhtalafū fīhi*," without any grammatical relationship to what precedes it.
[598] Al-Ṭaḥāwī, *Maʿānī*, 1.313. Shortly afterwards, al-Ṭaḥāwī establishes the correct practice for this kind of prayer by looking to scholarly consensus on a similar question. In his discussion he twice uses the same language about "bringing the question into alignment" (*ʿaṭafnā ʿalayhi*, *naʿṭifuhu ʿalayhi*) that appeared in the previous example (*Maʿānī*, 1.314).

of a limit in another revealed text (*tawqīt*) that serves an authoritative proof (*ḥujja*)."[599] Like the example above, both of these passages are discussing the use of a kind of *qiyās* to resolve juristic disagreements, but they do so using the language of consensus.

Above we have considered two ways in which al-Ṭaḥāwī employs consensus to resolve disagreements among jurists. What these passages highlight is the way in which al-Ṭaḥāwī appeals to consensus to advance his legal arguments, even in cases in which it might have seemed that no consensus could exist. Reading manuals of *uṣūl al-fiqh*, one gains the impression that theorists primarily envisioned consensus as an end point, the conclusion of a process. This impression is supported by the fact that the chapters on consensus in legal theory manuals are dedicated to defining the circumstances under which consensus may said to have been attained and to emphasizing the permanence of consensus once achieved. In contrast, for al-Ṭaḥāwī as a writer engaged in the work of practical hermeneutics, the establishment of consensus is rarely an ending or an end in itself, but instead only a stage in a larger argument. As we have seen, consensus in al-Ṭaḥāwī's works does not have the same universal, immutable qualities that are envisioned in the *uṣūl al-fiqh* tradition. As a result, it is a much more useful tool for demonstrating the relationship between text and law.

Consensus Indicating Abrogation

To this point, we have been discussing a kind of consensus that allows jurists to discover the law in cases where nothing relevant is found in the Qurʾān or Sunna—that is, consensus that 'fills in the gaps' of revelation. Some jurists also discussed another kind of

[599] Al-Ṭaḥāwī, *Maʿānī*, 2.267.

consensus, however, a consensus that had the potential to compete for authority with accepted Prophetic *ḥadīth*s. Discussions of this type of consensus are framed in legal theory works in terms of whether consensus may abrogate (*al-naskh bi-l-ijmāʿ*).[600] In al-Ṭaḥāwī's works, the issue of abrogation by the consensus of the jurists arises in seven chapters in *Sharḥ maʿānī al-āthār* and *Sharḥ mushkil al-āthār*.[601] We may assume that this topic is absent from *Aḥkām al-Qurʾān* because al-Ṭaḥāwī, like other jurists, never contemplates the possibility that consensus could abrogate the Qurʾān.[602]

Six of the seven passages in question concern cases in which al-Ṭaḥāwī is faced with conflicting Prophetic *ḥadīth*s containing no reference to the order in which they were revealed.[603] In each case, he argues that the consensus against following the practice detailed in one of the *ḥadīth*s indicates that that *ḥadīth* is abrogated. In the final passage, al-Ṭaḥāwī argues that scholars' consensus against practicing the rule contained in a *ḥadīth* indicates its abrogation, even though no other Prophetic *ḥadīth* on the topic is known.[604] In the first group of passages, consensus confirms one Prophetic *ḥadīth* even while overriding another; in this last passage, consensus functions to negate the authority of a Prophetic *ḥadīth* without appealing to any other Prophetic or Qurʾānic text.

Perhaps surprisingly, discussions of abrogation by consensus in later *uṣūl* works do not appear to be concerned with the distinction between cases in which consensus

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[600] Earlier in this chapter, I discussed the possibility that consensus may be abrogated—a possibility which al-Ṭaḥāwī affirms but the later tradition would reject.

[601] I am excluding from this count the chapters concerning abrogation by the consensus of the Companions; they will be discussed below. In some of the passages under discussion in this section, al-Ṭaḥāwī specifies the consensus of the Community or everyone (*kull*). As argued previously, these passages are in fact discussing scholars (e.g., *Maʿānī*, 1.291, 1.449, 3.78).

[602] In his discussion of abrogation by consensus, al-Jaṣṣāṣ does include the observation that the abrogation of Q 60/al-Mumtaḥana:11 by another Qurʾānic verse is known only through consensus (*al-Fuṣūl*, 1.417).

[603] Al-Ṭaḥāwī, *Maʿānī*, 1.291, 1.448-449, 3.78; *Mushkil*, 15.158-159, 15.167-170, 15.465.

[604] Al-Ṭaḥāwī, *Mushkil*, 12.288.

affirms one Prophetic *ḥadīth* over another as opposed to times when the consensus reached has no obvious basis in a revealed text. Instead, these discussions are focused almost entirely on whether consensus has the power to abrogate revealed texts at all. The nearly universal answer is that it does not. Al-Jaṣṣāṣ and al-Zarkashī report that the Ḥanafī ʿĪsā ibn Abān held that consensus may abrogate ("*al-ijmāʿ nāsikh*"),[605] and al-Sarakhsī refers to unnamed Ḥanafīs who held the same view. However, al-Jaṣṣāṣ and al-Sarakhsī themselves are categorical in their assertion that consensus may not abrogate, as is al-Zarkashī and the many other scholars he cites in *al-Baḥr al-muḥīṭ*.[606]

The major argument against abrogation by consensus adduced by al-Jaṣṣāṣ, al-Sarakhsī, al-Zarkashī and many of the scholars he discusses is that abrogation only occurred during the Prophet's lifetime and consensus only became operative after it, so therefore consensus may neither abrogate nor be abrogated; the two processes have no interaction with each other.[607] Al-Jaṣṣāṣ also argues that abrogation requires revelatory instruction (*tawqīf*),[608] which cannot be obtained after the death of the Prophet. Al-Sarakhsī, on the other hand, emphasizes that consensus is not based in revelation; he writes that "consensus consists of (*ʿibāra ʿan*) the confluence of opinions (*arāʾ*) on a topic, and we have shown that there is no place for mere opinion in knowing the time

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[605] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.417; the quotation is from al-Zarkashī, *al-Baḥr al-muḥīṭ*, 4.129.

[606] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.417; al-Sarakhsī, *al-Muḥarrar*, 2.52; al-Zarkashī, *al-Baḥr al-muḥīṭ*, 4.129-132. Al-Zarkashī also cites al-Khaṭīb al-Baghdādī as holding that consensus abrogates (*al-ijmāʿ nāsikh*), although he is careful to argue that in al-Khaṭīb al-Baghdādī's example, the abrogation is in fact inferred from the consensus, rather than caused by it (*al-Baḥr al-muḥīṭ*, 4.130). The title of the chapter of *al-Fiqīh wa-l-mutafaqqih* from which al-Zarkashī's example is drawn suggests that al-Khaṭīb al-Baghdādī himself understands the abrogation as an inference from consensus; the title states that, when the Community reaches consensus against something in a report, it is inferred (*istadalla*) that the report was abrogated (*al-Faqīh wa-l-mutafaqqih*, ed. ʿĀdil ibn Yūsuf al-ʿIzāzī (Dammām, Saudi Arabia: Dār Ibn al-Jawzī, 1996), 1.339). It is thus not clear that al-Zarkashī is correct in identifying al-Khaṭīb al-Baghdādī as one who holds that consensus itself may abrogate.

[607] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.417; al-Sarakhsī, *al-Muḥarrar*, 2.52; al-Zarkashī, *al-Baḥr al-muḥīṭ*, 4.128-129.

[608] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.417.

after which doing a thing becomes good or bad according to God," that is, there is no place for mere opinion in knowing when a text is abrogating or abrogated.[609]

While it was widely held that consensus could not itself abrogate a text of revelation, many jurists did accept that consensus may indicate (*yadull ʿalā/dalīl*) that abrogation had already occurred. In this case, consensus effectively preserves revelation that has not come down in the form of a Prophetic *ḥadīth*.[610] Al-Jaṣṣāṣ accepts this form of consensus. He writes that "we do not say that consensus causes (*awjaba*) abrogation." However, he affirms that "consensus indicates to us that [a *ḥadīth*] is abrogated by revelatory confirmation (*tawqīf*), even if the abrogating text (*lafẓ nāsikh*) has not been transmitted to us."[611] This function of consensus is accepted by a variety of non-Ḥanafī jurists as well, including Shāfiʿīs and Ḥanbalīs listed in *al-Baḥr al-muḥīṭ*, the Mālikī jurist al-Tilimsānī (d. 771/1369) and the Ẓāhirī Ibn Ḥazm (d. 456/1064).[612] Al-Sarakhsī rejects even this limited definition of abrogation by consensus.[613]

It is this consensus that merely indicates a previous abrogation that al-Ṭaḥāwī has in mind in the passages mentioned above. In none of them does he refer to consensus as itself abrogating (*nāsikh*). Instead, he writes that scholars reached consensus that a *ḥadīth*

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[609] Al-Sarakhsī, *al-Muḥarrar*, 2.52.
[610] Ahmad labels this type of *ijmāʿ* "text-recovering consensus" (*Structural Interrelations of Theory and Practice*, 131).
[611] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.417.
[612] Al-Zarkashī, *al-Baḥr al-muḥīṭ*, 4.129ff.; al-Tilimsānī, *Miftāḥ al-wuṣūl fī ʿilm al-uṣūl* (Cairo: Maktabat al-Kullīyāt al-Azharīya, 1983), 138; Ibn Ḥazm, *al-Iḥkām*, 4.631-632. For a discussion of al-Tilimsānī and other Mālikī jurists on abrogation by consensus, see Ahmad, *Structural Interrelations of Theory and Practice*, 105-106.
[613] Al-Sarakhsī, *al-Muḥarrar*, 2.52. Al-Shāfiʿī originally held that consensus may preserve a memory of an otherwise lost *ḥadīth*, but later asserted that no Prophetic *ḥadīth* could ever completely disappear from the Community (Calder, "Ikhtilāf," 75). While al-Ṭaḥāwī might well agree with al-Shāfiʿī that Prophetic material could never be entirely lost, he held that consensus adequately preserved that material.

was abrogated (*mansūkh*)[614] or that "we reason" (*ʿaqalnā*) from their consensus that the *ḥadīth* was abrogated, implying that the abrogation had occurred before their consensus upon it was reached.[615] In other cases, he uses derivations from the root d-l-l also used by later jurists to claim that consensus indicates (*yadull ʿalā, dalīl*) a *ḥadīth*'s abrogation.[616] That al-Ṭaḥāwī rejected the possibility that scholars' consensus could itself abrogate revealed texts is emphasized by the justifications he gives for his claims of consensus in four of the seven passages under discussion. In one he writes that:

> They would not reach consensus against what the Prophet did without confirmation (*thubūt*) of its abrogation. That is because they are trustworthy (*maʾmūnūn*) in what they do (*faʿalū*) just as they are trustworthy in what they transmit.[617]

In another passage, al-Ṭaḥāwī makes a very similar argument and then adds that:

> The opinions (*qawl*) and transmission (*riwāya*) of anyone who abandons what the Prophet said or ruled can no longer be accepted, and God forbid that such should be the case for [the jurists of the garrison towns].[618]

Al-Ṭaḥāwī's argument is that it is inconceivable that scholars would reach consensus inappropriately, and therefore their consensus against a *ḥadīth* must be based upon other revelatory authority. They cannot all abandon what the Prophet commanded, because their trustworthiness in following the Prophet is inextricably linked to their trustworthiness in transmitting the texts of revelation. Because it is unthinkable that scholars could be collectively untrustworthy as transmitters, it is impossible to suppose that they would collectively and knowingly contravene a Prophetic *ḥadīth* that was still in

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[614] Al-Ṭaḥāwī, *Maʿānī*, 3.78.
[615] Al-Ṭaḥāwī, *Mushkil*, 12.288, 15.167, 15.465.
[616] Al-Ṭaḥāwī, *Mushkil*, 15.170; *Maʿānī*, 1.291, 1.449.
[617] Al-Ṭaḥāwī, *Mushkil*, 15.167.
[618] Al-Ṭaḥāwī, *Mushkil*, 12.288.

effect. The categorical impossibility of scholars reaching consensus inappropriately is further emphasized in three other passages where al-Ṭaḥāwī justifies his claim of abrogation by saying that God would not cause His Community to agree upon an error, a statement of principle which we have already discussed above, and one which suggests a form of communal infallibility.[619] Indeed, three of the four assertions of this principle in al-Ṭaḥāwī's works occur in the context of justifying an abrogation known only through consensus, suggesting that al-Ṭaḥāwī feels that this is an area of his theory of consensus strongly in need of justification.

Although al-Ṭaḥāwī does not directly argue in these passages that consensus cannot itself abrogate, that is the unspoken premise underlying his argument that scholars must have had confirmation from revelation before reaching consensus. Comparing al-Ṭaḥāwī's discussions of abrogation by consensus with those of later legal theorists, we can see that he does not share in their widespread assertion that abrogation only occurred during the life of the Prophet and consensus only became operative after it. Indeed, we have already seen in a previous section that al-Ṭaḥāwī accepts that consensus may be abrogated by an (unspecified) authoritative proof, thus negating the firm boundary that other jurists erect between abrogation and consensus. Nor does he state his objections in terms of al-Sarakhsī's concern that consensus is based on a confluence of opinion, and therefore has no place abrogating a text of revelation. Instead, al-Ṭaḥāwī's primary concern with abrogation by consensus alone is that it means abandoning the Prophet's practice, a consideration not directly addressed by other theorists we have mentioned. Because he links scholars' trustworthiness as transmitters to their trustworthiness in

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[619] Al-Ṭaḥāwī, *Mushkil*, 15.158-159, 15.170; *Maʿānī*, 1.291.

following the Prophet's practice, the entire edifice of revelation and the law is dependent upon the upright conduct of those who transmit religious texts.

In claiming that some instances of consensus have a special authority to indicate the abrogation of Prophetic *ḥadīth*s, al-Ṭaḥāwī is applying the same instruction/inference distinction that we have encountered in previous chapters: in cases where consensus must represent a memory about revelatory instruction that has not otherwise been preserved, it has the special authority to indicate the abrogation of Prophetic *ḥadīths*. On the other hand, where consensus might permissibly be based upon scholars' collective legal reasoning, it cannot impinge upon the application of revealed texts. In contrast to his discussions of post-Prophetic *ḥadīth*, al-Ṭaḥāwī does not use the term '*tawqīf*' to describe the revelatory instruction that must underlie such instances of consensus, although he does employ the related term '*wuqūf*' in one passage.[620] Nevertheless, consensus represents a third legal source for which al-Ṭaḥāwī posits a two-tiered system of authority on the basis of what may be discovered by reasoning and what may only be known through revelation.

The Practice (ʿAmal/Istiʿmāl) of the Scholars and the Muslims

In the passages analyzed above, it is the consensus (*ijmāʿ*) of the scholars that indicates that a Prophetic *ḥadīth* has been abrogated. In a strikingly similar set of passages, however, al-Ṭaḥāwī claims that abrogation is indicated not by scholars' *ijmāʿ*, but by the fact that the rule scholars or Muslims actually put into practice

[620] Al-Ṭaḥāwī, *Mushkil*, 12.288. Interestingly, al-Jaṣṣāṣ employs the term *tawqīf* in his own argument that some instances of consensus represent a memory of abrogation (*al-Fuṣūl*, 2.417).

(ʿ*amila/istaʿmala*) is in conflict with the rule indicated by a Prophetic *ḥadīth*.[621] In such cases, that *ḥadīth* is known to have been abrogated by another Prophetic *ḥadīth*, even when the abrogating *ḥadīth* has not been preserved. For example, in a chapter on whether women may wear kohl during their ʿ*idda* (waiting period after a divorce or bereavement) in cases of medical necessity, al-Ṭaḥāwī cites a Prophetic *ḥadīth* prohibiting the custom. He then observes that:

> This *ḥadīth* has been transmitted from God's Messenger through multiple pathways (*mutawātir*) of the kind which scholars accept as sound (*wujūh ṣiḥāḥ*). Their abandonment (*tark*) of it after it had reached them and their putting into practice (*istiʿmāl*) something else is an indication of its abrogation. This is because they are trustworthy (*maʾmūn*) in regard to its abrogation just as they are trustworthy in regard to what they transmit. That being the case, they could only have abandoned something whose manner of transmission they approved because something caused them to abandon it in favor of what they held was better than it—that is, something that had abrogated it. If that were not the case, then their probity (ʿ*adl*) would be voided. In the voiding of their probity would be the voiding of their status as transmitters, and God forbid that such should be the true state of their affairs.[622]

If we compare this passage with al-Ṭaḥāwī's justification for consensus indicating abrogation in the passages above, we see that they contain the same argument: scholars must have known that the abandoned *ḥadīth* had been abrogated, because they are trustworthy. If they did abandon the rule expressed in a Prophetic practice without cause, they would no longer be trustworthy transmitters of revelation, an unthinkable occurrence.

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[621] The terms ʿ*amal* and *istiʿmāl* may be translated as 'practice' and 'putting into practice,' respectively. The term ʿ*amal* in particular is generally assumed in discussions of legal theory to refer to the continuous, living practice of the Muslim community, which is based upon but not limited to Prophetic practice. However, as we shall see below, al-Ṭaḥāwī has a very different concept in mind when he invokes ʿ*amal*, and he in fact uses the terms ʿ*amal* and *istiʿmāl* interchangeably in his arguments. I therefore discuss them together in this section.

[622] Al-Ṭaḥāwī, *Mushkil*, 3.178.

The major difference between this passage and passages discussed in the previous section is that earlier al-Ṭaḥāwī was speaking of consensus (*ijmāʿ*), whereas here he is interested in whether scholars put a rule expressed in a Prophetic *ḥadīth* into practice (*ʿamal/istiʿmāl*) or refrain from putting that rule into practice (*tark*). That is, for al-Ṭaḥāwī, 'practice' concerns the application or non-application of a certain rule. In most cases, what al-Ṭaḥāwī seems to be envisioning when he speaks of 'putting [the rule contained in] a Prophetic *ḥadīth* into practice' is, in fact, whether that rule is reflected in the positive law applied by jurists as legal practitioners. In a smaller number of cases, discussed below, al-Ṭaḥāwī employs the term *ʿamal* to refer to what Muslims actually do in their daily lives—that is, to lived practice rather than doctrine.

In other examples of al-Ṭaḥāwī's understanding of the link between *ʿamal* and abrogation, we learn that scholars are trustworthy (*maʾmūn*) in what they practice (*ʿamilū*), thus indicating a *ḥadīth*'s abrogation, or that they are trustworthy in their abandonment of one rule instituted by a *ḥadīth* and their practice (*ʿamal*) of another, again indicating abrogation.[623] Elsewhere, al-Ṭaḥāwī argues that, in cases where Prophetic *ḥadīth*s conflict, we should look to the practice (*ʿamal*) of the Muslims. The *ḥadīth* they follow is confirmed and abrogates the *ḥadīth* they abandoned.[624] That *ʿamal* is the application of Prophetic practice is emphasized in other chapters which invoke the *ʿamal* of the scholars or Muslims, usually in order to support a Prophetic *ḥadīth*. In one chapter, al-Ṭaḥāwī writes that Abū Bakr and ʿUmar practiced (*ʿamila*) this *ḥadīth* after the Prophet, and its practice (*ʿamal*) has continued uninterruptedly (*tawātara*) to this

[623] Al-Ṭaḥāwī, *Mushkil*, 15.454-455, 2.407.
[624] Al-Ṭaḥāwī, *Maʿānī*, 1.509.

day.[625] In another chapter, he criticizes those who would abandon Qurʾānic verses and widely attested Prophetic *ḥadīth*s which the Community has accepted and practiced (*ʿamilat*) to this day in favor of another *ḥadīth* which might be abrogated.[626] Similarly, in a chapter concerning how the imam should stand in relationship to those he leads in prayer for different numbers of worshippers, al-Ṭaḥāwī argues that the Prophet acted in a certain way, and that practice (*ʿamal*) proceeded in the same way after him.[627] *ʿAmal* thus represents for al-Ṭaḥāwī the application of a Prophetic practice as preserved either in a Prophetic *ḥadīth* or in communal memory.

With this definition in mind, we may compare al-Ṭaḥāwī's concept of *ʿamal* to those of the Medinese and early Iraqi jurists. The use of *ʿamal* as an indicator of the law is, of course, most famously associated with Mālik's reliance on the practice of the *ahl al-madīna*, or people of Medina.[628] Early Mālikī jurists claim authority for Medinese *ʿamal* on the basis that the local practice of the Medinese represents a continuous practice going back to the time of the Prophet and his Companions in Medina, the seat of government of the early caliphate. While some Companions settled in each garrison town, only in Medina was there a large number of Companions able authentically to preserve Prophetic practice. A major difference between al-Ṭaḥāwī's concept of *ʿamal* and that of the Medinese is thus that Medinese *ʿamal* is geographically limited to the inhabitants of a certain city, and it is their tie to this city itself which gives their *ʿamal* its

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[625] Al-Ṭaḥāwī, *Maʿānī*, 1.222.
[626] Al-Ṭaḥāwī, *Maʿānī*, 2.54.
[627] Al-Ṭaḥāwī, *Aḥkām*, 1.156.
[628] On Medinese *ʿamal*, see Umar Abd-Allah, *Mālik and Medina: Islamic Legal Reasoning in the Formative Period* (Leiden: Brill, 2013), 183-269, 359-435; Dutton, *Origins of Islamic Law*, 32-52; El Shamsy, *Canonization of Islamic Law*, 38-43; Hallaq, *Origins and Evolution of Islamic Law*, 105-106; Schacht, *Origins of Muhammadan Jurisprudence*, 22-27; Wheeler, *Applying the Canon*, 40-41; Noel Coulson, *History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 46-47.

authority. In contrast, al-Ṭaḥāwī portrays his claims to *ʿamal* as universal. None of his references to *ʿamal* concern a local tradition; rather, it is the very fact that the practice is common to all scholars or to all Muslims that gives it its authority.

While Medinese *ʿamal* claims continuity of practice from the time of Muḥammad, Prophetic practice is not its only component. As El Shamsy observes, *ʿamal* is "always bigger and always more" than Prophetic reports, and even than the reports and practices of the Companions and Successors.[629] In addition to these sources, Medinese *ʿamal* incorporates the legal opinions (*raʾy*) of later Medinese jurists.[630] Medinese *ʿamal* is thus continuous, but not static. In contrast, the *ʿamal* to which al-Ṭaḥāwī appeals in order to claim support for some *ḥadīth*s and the abrogation of others is a simple preservation of Prophetic practice, unaltered by the *raʾy* of later jurists and unconnected to the reports or opinions of the generations after Muḥammad.

Also, where Medinese *ʿamal* understands practice to be embodied by the people of Medina (*ahl al-madīna*) as interpreted by scholars,[631] al-Ṭaḥāwī distinguishes between the *ʿamal* of the scholars and the *ʿamal* of the Muslim Community as a whole. In some of the passages discussed earlier, al-Ṭaḥāwī explicitly refers to the practice of the scholars. It is they who are "trustworthy in their practice."[632] Here, the preservation of Prophetic practice forms part of the specialized knowledge of the scholars. A few passages, however, indicate a more generalized collective memory of Prophetic practice that is

[629] El Shamsy, *Canonization of Islamic Law*, 38.
[630] Yasin Dutton, *The Origins of Islamic Law: The Qurʾān, the Muwaṭṭaʾ and Medinan ʿAmal* (Surrey: Curzon, 1999), 35; Abd-Allah, *Mālik and Medina*, 194.
[631] On the role of scholars as guardians of Medinese practice, see Abd-Allah, *Mālik and Medina*, 238-242.
[632] E.g., al-Ṭaḥāwī, *Mushkil*, 2.407, 15.454. The discussion on *Mushkil*, 3.178 is also explicitly about the practice of the scholars.

common to all Muslims. In one such passage, al-Ṭaḥāwī is confronted with conflicting Prophetic *ḥadīth*s concerning whether Muslims should pray at the burial of a child. In response, he argues that when *ḥadīth*s conflict, we should look to the practice of the Muslims. We find that Muslims do pray at the burial of their children. The *ḥadīth*s permitting prayer thus abrogate those prohibiting it.[633] In this passage al-Ṭaḥāwī is discussing a widespread practice within the Muslim Community. Similarly, in arguing that a *ḥadīth* concerning a certain prayer ritual has been abrogated, al-Ṭaḥāwī separately appeals to what the scholars do (*ʿalā*) and to the practice (*ʿamal*) in the mosques.[634] Again, the practice intended here goes beyond that of the scholars.

Finally, Medinese jurists understood the practice of the *ahl al-madīna* to be in some senses separate from and in competition with Prophetic *ḥadīth*s. Ibn al-Qāsim (d. 191/806) wrote that when *ḥadīth*s are not supported by Medinese practice, they remain "neither discredited nor adopted in practice (*ghayr mukadhdhab bihi wa-lā maʿmūl bihi*).[635] In contrast, for al-Ṭaḥāwī *ḥadīth*s that are neither discredited nor abrogated cannot simply be set aside as Ibn al-Qāsim envisions; the function of *ʿamal* is to indicate that one *ḥadīth* has abrogated another or that the Muslim community or scholars retain a memory of a lost *ḥadīth* that abrogates another. That is, *ʿamal* always bears upon *ḥadīth* for al-Ṭaḥāwī and always preserves a memory of a lost Prophetic text. That is, within the instruction/inference binary underlying al-Ṭaḥāwī's understanding of the structure of the

[633] Al-Ṭaḥāwī, *Maʿānī*, 1.509.
[634] Al-Ṭaḥāwī, *Mushkil*, 14.123.
[635] Cited in Schacht, *Origins of Muhammadan Jurisprudence*, 63 and Hallaq, *Origins and Evolution of Islamic Law*, 105. See also Dutton, *Origins of Islamic Law*, 45.

law, ʿ*amal* and *istiʿmāl* exclusively represent Prophetic instruction; al-Ṭaḥāwī never appeals to an ʿ*amal* that reflects scholars' own inferences.

Although early Ḥanafīs including Abū Yūsuf and al-Shaybānī criticized Medinese ʿ*amal* as unreliable when not verified by authentic texts,[636] they, too, had a concept of communal practice, albeit one not based on the special claim to authority of a specific locale. Hallaq finds that the early Kūfan jurists almost never expressed the concept of practice using the term ʿ*amal*,[637] but the language of ʿ*amal* is well attested in extant fragments from al-Shaybānī's pupil, ʿĪsā ibn Abān.[638] As we have seen above, al-Ṭaḥāwī, too, uses the term ʿ*amal* as well as the related terms *istiʿmāl* and *tark* when discussing practice. Like the Medinese, the early Ḥanafīs weighed Prophetic *ḥadīth*s against local Community or scholarly practice and rejected some *ḥadīth*s that were not supported by continual practice.[639] El Shamsy explains this reliance on practice as a means to defend established Ḥanafī legal practice against the growing authority of Prophetic *ḥadīth* in the late 2nd/8th century.[640] When newly circulating *ḥadīth*s conflicted with established Ḥanafī doctrine, jurists could point to their absence from communal practice as evidence that they were *shādhdh*, or irregular.[641] The early Ḥanafī concept of communal practice, like

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[636] Abd-Allah, *Mālik and Medina*, 198-202; Wheeler, *Applying the Canon*, 36; Calder, *Studies in Early Muslim Jurisprudence*, 198-9.
[637] Hallaq, *Origins and Evolution of Islamic Law*, 106.
[638] ʿĪsā ibn Abān's discussions of ʿ*amal* can be found in al-Jaṣṣāṣ, *al-Fuṣūl*, 1.225-227, 1.418, 2.10, 2.43, 2.52. Indeed, all of the discussions of ʿ*amal* in the sense of communal practice in al-Jaṣṣāṣ's *al-Fuṣūl* appear to rely primarily on ʿĪsā ibn Abān.
[639] El Shamsy, *Canonization of Islamic Law*, 51; Hallaq, *Origins and Evolution of Islamic Law*, 106-107; Wheeler, *Appling the Canon*, 40-41.
[640] El Shamsy, *Canonization of Islamic Law*, 52-53.
[641] El Shamsy, *Canonization of Islamic Law*, 51; Abd-Allah, *Mālik and Medina*, 196.

Medinese ʿ*amal*, also incorporated some Companion practice, an aspect which appears to be absent from al-Ṭaḥāwī's discussions of ʿ*amal*.[642]

El Shamsy and Hallaq frame their discussions of the concept of communal practice among early Ḥanafī jurists as being a characteristic of the late 2nd/8th century,[643] a time when religious authority was not yet understood to be as exclusively textual in nature as it would be by later jurists. By looking to communal practice as an indicator of whether a *ḥadīth* should be acted upon, jurists essentially implied that the texts of revelation were not adequate in and of themselves to provide all necessary information concerning the law. Some information had failed to be captured in textual form, and existed only as a communal memory, preserved in communal practice. Further, the status of some revealed texts could only be known by looking outside the text, to practice. Dutton, too, understands the reliance on ʿ*amal* as an early stage of jurisprudence that was later replaced by a "*ḥadīth*-based, i.e. text-based, religion."[644] He identifies the early stages of the process of textualization with the early Ḥanafīs, progressing to al-Shāfiʿī's assertion of the exclusive authority of the Qurʾān and Sunna. The process was completed, he writes, in the works of Aḥmad ibn Ḥanbal (d. 241/855) and Dāwūd al-Ẓāhirī (d. 270/883).

What we learn from the works of al-Ṭaḥāwī is that the process of the 'textualization' of Islamic law was not as neat or as linear as the presentation above would suggest. Almost half a century after the death of Dāwūd al-Ẓāhirī, al-Ṭaḥāwī struggled with the question of whether authority resided in revealed texts themselves or

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[642] Hallaq, *Origins and Evolution of Islamic Law*, 106.
[643] El Shamsy, *Canonization of Islamic Law*, 52; Hallaq, *Origins and Evolution of Islamic Law*, 107.
[644] Dutton, *Origins of Islamic Law*, 4. See also Abd-Allah, *Mālik and Medina*, 197.

in the community's memory of their status and meaning. We have seen a number of examples in which al-Ṭaḥāwī argues that ʿ*amal* indicates that a certain *ḥadīth* must have been abrogated, even though neither the abrogating *ḥadīth* nor any textual evidence of the order in which they were revealed has been preserved.[645] At the same time, we saw in a previous chapter al-Ṭaḥāwī's insistence on the duty of following Prophetic *ḥadīth*s.[646] Further, in at least one passage, al-Ṭaḥāwī criticizes scholars for abandoning the practice of a sound Prophetic *ḥadīth*.[647] Nor was al-Ṭaḥāwī the last Ḥanafī to look to ʿ*amal* as an indicator of the law; al-Jaṣṣāṣ, citing ʿĪsā ibn Abān, likewise holds that ʿ*amal* can reveal which of two conflicting *ḥadīth*s is abrogated.[648]

From the passages in which al-Ṭaḥāwī supplants Prophetic authority by reference to communal practice, we may conclude that al-Ṭaḥāwī's understanding of religious authority is not exclusively textual. However, we must also note that the number of cases in which he appeals to the authority of communal practice across all his extant works is extremely small in comparison with his explicit assertions of textual authority and his appeals to such authority in his legal arguments. Further, where the Medinese and even the early Ḥanafīs sometimes let a contradiction between their doctrine and a Prophetic *ḥadīth* stand without attempting to justify the disparity, for al-Ṭaḥāwī any departure from Prophetic *ḥadīth*s requires justification. All of his discussions of communal practice are concerned with explaining why certain Prophetic *ḥadīth*s should or should not be put into action and with rooting that practice in Prophetic authority. We might therefore say that

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[645] E.g., al-Ṭaḥāwī, *Mushkil*, 2.407, 3.178, 14.123, 15.454-5.
[646] Al-Ṭaḥāwī, *Aḥkām*, 1.59; *Mushkil*, 1.5.
[647] Al-Ṭaḥāwī, *Mushkil*, 7.97.
[648] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1.226.

al-Ṭaḥāwī's understanding of legal authority is not exclusively textual—though it is largely so—but that it *is* exclusively Prophetic and Qurʾānic. *ʿAmal* for al-Ṭaḥāwī preserves Prophetic material in an unadulterated but non-textual form.

With this observation in mind, we may return to the striking similarity mentioned above between the passages in which al-Ṭaḥāwī argues that the abrogation of a *ḥadīth* is indicated by *ʿamal* and those in which he says that it is indicated by *ijmāʿ*. The relationship between the two processes is further complicated by the fact that, in two passages arguing that consensus indicates that a *ḥadīth* was abrogated, al-Ṭaḥāwī explains that that consensus is known from practice.[649] That is, practice indicates consensus, which in turn indicates abrogation. In other passages we have discussed, however, consensus is left out of this equation, and it is simply practice which indicates abrogation.

In the context of determining the abrogation of a *ḥadīth*, then, *ʿamal* and consensus are not clearly distinguished in al-Ṭaḥāwī's thought and appear interchangeable. Further, both consensus and *ʿamal* preserve Prophetic practice in non-textual form, where Prophetic *ḥadīth* preserves that practice in textual form. Lowry has observed that, "among Shāfiʿī's predecessors and colleagues, it would be fair to say that the dividing lines between the normative concepts of *sunna* (the general concept of tradition, sometimes stretching back to the Prophet), *ijmāʿ* (what people think), and even *ʿamal* (what people do), remained hazy."[650] It is equally fair to say that, in the context of knowing whether *ḥadīth*s have been abrogated, the dividing lines between *ijmāʿ* and

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[649] Al-Ṭaḥāwī, *Mushkil*, 15.158-159; *Maʿānī*, 3.78.
[650] Lowry, *Early Islamic Legal Theory*, 322.

ʿamal are still hazy for al-Ṭaḥāwī a century later. What has changed is that all three—*sunna, ijmāʿ* and *ʿamal*—are entirely Prophetic in origin.

The equation of *ijmāʿ* and *ʿamal* is restricted in al-Ṭaḥāwī's thought to the single function of determining the status of *ḥadīth*s. Consensus, however, is a much wider concept than *ʿamal* in his works, and, unlike *ʿamal*, is not always based on a memory of Prophetic practice. Instead, as we have seen above, consensus can be based upon *raʾy*, and therefore represent a variety of *qiyās*. That is, while *ʿamal* always takes its authority from an assumed instance of Prophetic instruction, *ijmāʿ* can represent either side of the instruction/inference binary. What is always true of the consensus of the jurists, however, is that it cannot challenge Prophetic practice, but only 'fill in the gaps' where that practice is unknown or provide further information about the status of a particular *ḥadīth*. Such restrictions, however, do not appear to apply to the consensus of the Companions.

Abrogation of Prophetic Ḥadīth by Companion Consensus

On the consensus of the Companions al-Ṭaḥāwī makes a number of highly idiosyncratic statements by the standards of the *uṣūl* tradition. In several passages in *Sharḥ maʿānī al-āthār*, he ascribes to the Companions the authority to abrogate by consensus what they know to have been the practice of the Prophet during his lifetime. The first passage in which al-Ṭaḥāwī makes this claim concerns a debate over how many times one should say *takbīr* ('God is great') during a funeral prayer. Al-Ṭaḥāwī reports that, after the Prophet's death, Muslims spoke four, five or seven *takbīr*s, and each group claimed Prophetic authority for their practice. In response, the caliph ʿUmar consulted

with other Companions, and they reached consensus that the funeral prayer should be brought into alignment with the prayers for the major feasts, each of which contained four *takbīr*s. Al-Ṭaḥāwī writes:

> ʿUmar thus restored the matter to four *takbīr*s upon consultation (*mushāwara*) with the Companions of God's Messenger. They were present when His Messenger did what was reported by Ḥudhayfa [i.e., five *takbīr*s] and Zayd ibn Arqam [i.e., four *takbīr*s], but they held that what they did (*faʿalū*) was better than what they had previously known the law to be (*ʿalimū*).
>
> [Their action] is an abrogation of what they knew, because they are trustworthy (*maʾmūnūn*) in what they do (*faʿalū*) just as they are trustworthy in what they transmit. This is like their consensus after [the death of] God's Messenger on the scope (*tawqīt*) of the *ḥadd* punishment for drinking wine, and on ending [permission for] the sale of slave women who bear children to their masters (*ummahāt al-awlād*). Their consensus is a conclusive proof (*ḥujja*), even if they did something different (*khilāfuhu*) during the era of the Prophet.
>
> Their consensus on the number of *takbīr*s at a funeral prayer after [the death of] God's Messenger likewise is a conclusive proof (*ḥujja*), even if they knew something different from him. What they did and reached consensus upon after God's Messenger abrogates (*nāsikh*) what God's Messenger did.[651]

Al-Ṭaḥāwī also adduces versions of this argument as evidence for the legal effectiveness of a triple statement of divorce and setting the *ḥadd* punishment for drinking wine at eighty lashes.[652] In each of these chapters, al-Ṭaḥāwī cites other instances of abrogation by Companion consensus, usually those listed above. In addition, he also mentions as examples two instances of abrogation by Companion consensus that are never discussed at length in *Sharḥ maʿānī al-āthār*: the withdrawal of permission to sell slave women who have borne children to their master[653] and ʿUmar's creation of the *dīwān*, the register establishing how income would be distributed to Muslims who

[651] Al-Ṭaḥāwī, *Maʿānī*, 1.496.
[652] Al-Ṭaḥāwī, *Maʿānī*, 3.56-57, 3.158.
[653] Al-Ṭaḥāwī, *Maʿānī*, 1.496, 3.56, 3.158.

participated in the conquests.[654] The fact that al-Ṭaḥāwī consistently cites additional examples of abrogation by Companion consensus suggests that he considered its actual occurrence to be self-evident as well as one of the best arguments for its permissibility.[655] As we saw in the previous chapter, a similar phenomenon occurs in al-Ṭaḥāwī's discussions of the permissibility of the Qurʾān abrogating the Sunna and *vice versa*, where his argument consists largely of listing examples of its known occurrence.

The authority granted to Companion consensus in these passages is much more powerful than the mere preservation of the knowledge of an earlier instance of abrogation.[656] Where al-Jaṣṣāṣ demurs with his statement that "we do not say that consensus causes abrogation,"[657] al-Ṭaḥāwī affirms clearly that "what [the Companions] did and reached consensus upon after God's Messenger abrogates (*nāsikh*) what God's Messenger did."[658] Their consensus is not a confirmation of an underlying Prophetic action, but rather privileges what the Companions do (*faʿala*) over what they know (*ʿalima*) from the Prophet. A comparison of the chapter on the funeral prayer cited above with the chapter on triple divorce can help us determine what al-Ṭaḥāwī means by his reference in the earlier chapter to what the Companions 'do' (*faʿalū*). He writes:

> ʿUmar addressed all the people, among them Companions of God's Messenger who knew what had preceded during the time of God's Messenger, and none of

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[654] Al-Ṭaḥāwī, *Maʿānī*, 3.56. These two events are later mentioned together as examples of times when ʿAlī disagreed with ʿUmar, who oversaw both the prohibition on selling *ummahāt al-awlād* and the establishment of the *dīwān* with shares assigned according to precedence in Islam (*Maʿānī*, 3.309). Once again, we see that al-Ṭaḥāwī's understanding of consensus does not require complete unanimity.

[655] There is a certain circularity in al-Ṭaḥāwī's argument that the best proof that abrogation by Companion consensus can happen is that it actually has happened, but al-Ṭaḥāwī does not address this tension.

[656] Pace Sharaf, who seeks to assert al-Ṭaḥāwī's innocence of what he considers grave error by arguing that al-Ṭaḥāwī always envisioned consensus being based upon a Prophetic text, and therefore it was in fact the Prophetic text, not the consensus, which abrogated (*Abū Jaʿfar al-Ṭaḥāwī*, 54-55).

[657] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1.417.

[658] Al-Ṭaḥāwī, *Maʿānī*, 1.496.

> them denied or refuted him. That is the greatest proof (*ḥujja*) of the abrogation of what had preceded.
>
> Just as the collective transmissions[659] of the Companions of God's Messenger constitute legal proof, so their consensus upon an opinion (*qawl*) constitutes legal proof. And just as their consensus upon transmission (*naql*) is exempt from errors and lapses (*barīʾ min al-wahm wa-l-zalal*), likewise their consensus upon a legal opinion (*raʾy*) is exempt from errors and lapses.
>
> We have seen matters that were a certain way (*ʿalā maʿānī*) during the era of God's Messenger, which his Companions made a different way (*jaʿalū ʿalā khilāf tilk al-maʿānī*) after him. This is because they saw (*raʾaw*) in it that which was hidden from those who came after them, and it was an abrogating proof (*ḥujja nāsikha*) over what preceded it.[660]

From this passage we learn that what al-Ṭaḥāwī means in the earlier passage by what the Companions 'do' is not related to any concept of the continuous practice of the Community (*ʿamal*). Indeed, al-Ṭaḥāwī's choice to employ '*faʿalū*' rather than '*ʿamilū*' appears deliberate, especially given how rhetorically elegant the contrast between '*ʿamilū*' (what the Companions practice) and '*ʿalimū*' (what the Companions know) would have been.

Instead, the 'doing' referenced in the earlier passage on funeral prayers is here glossed as the activity of propounding legal opinions (*qawl, raʾy*) and reaching consensus upon them. Upon reaching that consensus, the legal thinking of the Companions is as exempt from error as is their transmission of Prophetic *ḥadīth*. The concept of the Companions' legal reasoning also appears in the earlier passage, when the Companions reach consensus that the rule for the number of *takbīr*s should be brought into alignment with the number of *takbīr*s for the festival prayers. Analogy is the basis for the new rule.

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[659] Al-Najjār's edition of *Maʿānī* has '*faʿalū*' ('did') instead of '*naqalū'* ('transmitted') here, while mentioning in a footnote that a different manuscript has '*naqala*.' I have replaced '*faʿalū*' with *'naqalū*' because it makes more sense within the parallel structure of the passage.

[660] Al-Ṭaḥāwī, *Maʿānī*, 3.56.

In his discussions of abrogation by Companion consensus, then, al-Ṭaḥāwī subverts the instruction/inference binary that underlies his general conception of the structure of the law. Here, Companion inference is granted a higher authority than direct Prophetic instruction preserved in *ḥadīth* form.

The chapter on triple divorce further explains why this type of abrogation is associated with the Companions: they saw what was hidden from those who came after them. The term used for 'seeing' (*ra'aw*) connotes both observation and the act of propounding a legal opinion, and it appears that both of those meanings are intended here. The Companions observed the Prophet as later Muslims would not, and as a result their legal opinions (*raʾy*) are superior to those of later Muslims. In this sense, al-Ṭaḥāwī's understanding of the ability of Companion consensus to abrogate Prophetic practice is still connected, if tenuously, to the idea of Prophetic instruction. Here, preserving Prophetic practice can mean extrapolating from or even altering earlier rulings. The concept in this passage of what it means to preserve Prophetic practice is thus quite different from al-Ṭaḥāwī's usual argument that the Companions preserve Prophetic practice by transmitting it mimetically, even if not in the form of Prophetic *ḥadīth*. This form of consensus is not merely the preservation of Prophetic practice, but has the authority to exceed and replace that practice. These passages thus preserve an older concept of religious and Prophetic authority, one that al-Ṭaḥāwī has largely moved away from in most of his arguments.

Abrogation by consensus was widely rejected by jurists of all major schools, although ʿĪsā ibn Abān and other unspecified Ḥanafīs are reported to have accepted it.[661] In *al-Muḥarrar* al-Sarakhsī rejects abrogation by consensus but describes the arguments some Ḥanafīs make in favor of it. They consider that consensus leads to epistemologically certain knowledge (*ʿilm yaqīn*) like that contained in a text of revelation (*naṣṣ*), and therefore consensus may abrogate. They further argue that consensus is a stronger legal proof (*ḥujja*) than *al-khabar al-mashhūr*.[662] Since *al-khabar al-mashhūr* may abrogate, even more so can consensus abrogate.[663] In al-Sarakhsī's understanding, the Ḥanafī argument is based upon relative degrees of epistemological certainty. In contrast, none of al-Ṭaḥāwī's arguments for abrogation by consensus identify epistemological certainty as the basis for this doctrine. Nor have I been able to identify other references by earlier or later jurists to the special ability of the Companions' consensus to abrogate Prophetic practice.

Significantly, while al-Ṭaḥāwī describes all of the passages under discussion as examples of abrogation by the consensus of the Companions, he also intimates that they were all undertaken at the initiative of ʿUmar ibn Abī Khaṭṭāb, the second caliph. In the chapter on the funeral prayer, we learn in a *ḥadīth* that the disagreement over the number of *takbīr*s weighed upon ʿUmar, and so he wrote to the Companions asking them to reach consensus upon the matter. Their initial response was to ask ʿUmar to decide for them. He responded that he is only a man (*anā bashar mithlukum*) and therefore wished to

[661] Al-Sarakhsī, *al-Muḥarrar*, 2.52; al-Zarkashī, *al-Baḥr al-muḥīṭ*, 4.130.
[662] A category of *ḥadīth* specific to the Ḥanafīs whose certainty is between that of *al-khabar al-wāḥid* and *al-mutawātir*. Al-Ṭaḥāwī does not know this distinction.
[663] Al-Sarakhsī, *al-Muḥarrar*, 2.52.

consult together on the matter.[664] The chapter on triple divorce similarly reports a speech given by ʿUmar during his caliphate (lit. the time of ʿUmar, *zamān ʿUmar*) as the basis for the Companion consensus on the permissibility of a pronouncement of triple divorce, on the grounds that other Companions were present and did not refute him.[665] In the chapter on the punishment for drinking wine, al-Ṭaḥāwī reports that when ʿUmar came to power (*lammā kāna ʿUmar*), he consulted with the people in order to establish the punishment at eighty lashes.[666] Despite the fact that al-Ṭaḥāwī only mentions in passing the end of the selling of *ummahāt al-awlād* and the establishment of the *dīwān*, these events, too, are associated with ʿUmar.[667]

A survey of premodern and modern sources suggests that many of these events are generally understood to have been undertaken on ʿUmar's initiative and authority as a caliph. In the 740s, the Khārijite Abū Ḥamza listed the establishment of the *dīwān* and the punishment for drinking wine among ʿUmar's major accomplishments.[668] Modern scholars similarly credit to ʿUmar the establishment of the *dīwān*, the prohibition on selling *ummahāt al-awlād* and the permission for a triple pronouncement of divorce.[669] We might therefore posit that abrogation by Companion consensus functions in *Sharḥ maʿānī al-āthār*, at least de facto, to legitimize the legislative role of ʿUmar, although al-

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[664] Al-Ṭaḥāwī, *Maʿānī*, 1.496.
[665] Al-Ṭaḥāwī, *Maʿānī*, 3.56.
[666] Al-Ṭaḥāwī, *Maʿānī*, 3.158.
[667] Al-Ṭaḥāwī, *Maʿānī*, 3.309.
[668] Crone and Hinds, *God's Caliph*, 130.
[669] Hugh Kennedy, *The Prophet and the Age of the Caliphates: The Islamic Near East from the Sixth to the Eleventh Century* (New York: Longman, 1986), 57; Ṣubḥī Rajab Maḥmasānī, *Falsafat al-tashrīʿ fī al-Islam: The Philosophy of Jurisprudence in Islam*, trans. Farhat Ziadeh (Leiden: Brill, 1961), 112; *Encyclopaedia of Islam,* New Edition, s.v. "*talāḳ*" by Joseph Schacht; Faruqi, "The Development of *Ijmāʿ*," 176.

Ṭaḥāwī never explicitly theorizes about ʿUmar's special authority.[670] By al-Ṭaḥāwī's time, caliphs were no longer seen to possess sufficient legislative authority to promulgate law independently, much less law in conflict with the Prophet's practice. By portraying ʿUmar's initiatives as functioning within the framework of Companion consensus, al-Ṭaḥāwī transforms the problem from a historical memory of the independent legislative authority of an early caliph to the authority of the Companions in general.[671]

Al-Ṭaḥāwī's theory of abrogation by Companion consensus as detailed in *Sharḥ maʿānī al-athār* effectively grants a higher authority to collective Companion legal reasoning than to Prophetic *ḥadīth*s for the few questions on which he invokes this authority, even if the Companions' authority is rooted in their observation of the Prophet.

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[670] Ahmad Hasan has also recognized that "the personal opinions of the Companions, especially of ʿUmar, in many legal problems, were accepted later as *Ijmāʿ* of the Companions" ('*Ijmāʿ* in the Early Schools," 122). The conclusion he draws from this, however, is that consensus "begins with the personal judgment of individuals and culminates in the universal acceptance of a certain opinion by the Community in the long run. *Ijmāʿ* emerges by itself and is not imposed upon the *Ummah*" ("*Ijmāʿ* in the Early Schools," 122). Thus, rather than seeing reports of ʿUmar's legislation as threatening Prophetic authority , he portrays them as evidence of the natural process of reaching consensus and refrains from mentioning any conflict between it and Prophetic practice.

[671] In contrast, al-Ṭaḥāwī accounts for the prohibition on *mutʿa* (temporary marriage), another piece of legislation sometimes attributed to ʿUmar, by claiming that the consensus of the Companions is an indicator (*dalīl*) of its abrogation, the same argument we saw above in connection with the consensus of the jurists and Community. While some sources identify a sermon from ʿUmar during his caliphate as the origin of the prohibition (Shahla Haeri, "Power of Ambiguity: Cultural Improvisations on the Theme of Temporary Marriage," *Iranian Studies* 19, no. 2 (1986): 124; Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-kabīr, aw, Mafātīḥ al-ghayb*, ed. Ibrāhīm Shams al-Dīn and Aḥmad Shams al-Dīn (Beirut: Dār al-Kutub al-ʿIlmīya), 10.40-41), al-Ṭaḥāwī adduces Prophetic *ḥadīth*s both permitting and prohibiting *mutʿa*, and then argues that the Prophetic *ḥadīth*s themselves contain evidence that permission for *mutʿa* was abrogated (*Maʿānī*, 3.24-27). Only after establishing the abrogation does al-Ṭaḥāwī cite reports stating that ʿUmar was the source of the prohibition. He says that the tacit assent of the Companions shows their consensus, and that their consensus is an indication of its abrogation (*Maʿānī*, 3.27). Nowhere does he address the tension between his argument that the abrogation was indicated in the Prophetic *ḥadīth*s and the other reports stating that it was ʿUmar who prohibited *mutʿa*. We may assume that al-Ṭaḥāwī portrays Companion consensus as the indicator rather than the cause of abrogation in this case because he is relying on their consensus only as additional source of support for his basic argument, which is about Prophetic *ḥadīth*s. For Schacht's doubts concerning the authenticity of the tradition concerning ʿUmar's prohibition of *mutʿa*, see Schacht, *Origins of Muhammadan Jurisprudence*, 267.

In his later work of *Aḥkām al-Qurʾān*,[672] however, al-Ṭaḥāwī appears to have reversed his earlier position by affirming that it is "impossible that [the Muslims] would reach consensus in contradiction with what God's Messenger did on a matter that was not later particularized (*takhṣīṣ*) or abrogated."[673] While it is possible that he intended to exclude Companion consensus from that declaration, in his final work, *Sharḥ mushkil al-āthār*, al-Ṭaḥāwī states that the Companions "would not reach consensus in contradiction with what God's Messenger did unless they had confirmation that it had been abrogated and the matter had become as they asserted, because they are trustworthy in what they do, just as they are trustworthy in what they transmit."[674]

In this passage al-Ṭaḥāwī restricts the power of Companion consensus to merely affirming an earlier abrogation, in agreement with many other jurists. He has also effectively redefined what it means for the Companions to be "trustworthy in what they do" (*maʾmūnūn ʿalā mā faʿalū*). Where in *Sharḥ maʿānī al-āthār* the same phrase was used to argue for the authority of collective Companion legal reasoning over Prophetic practice, here al-Ṭaḥāwī employs it to assert that the Companions could never knowingly depart from Prophetic practice. That is, he once again confirms the superior authority of Prophetic instruction to inference. Although, given our imperfect knowledge of the history of al-Ṭaḥāwī's works as texts, it is impossible to state with certainty that he did in fact intend to retract his earlier arguments about abrogation by Companion consensus, it is certainly plausible that he might find such a position uncomfortable in an atmosphere

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[672] The order of composition of *Sharḥ maʿānī al-āthār*, *Aḥkām al-Qurʾān* and *Sharḥ mushkil al-āthār* is reported in the biographical tradition (e.g., Ibn Abī al-Wafāʾ, *al-Jawāhir al-muḍīya*, 166) and confirmed by internal textual evidence.
[673] Al-Ṭaḥāwī, *Aḥkām*, 2.86.
[674] Al-Ṭaḥāwī, *Mushkil*, 15.167.

which increasingly privileged Prophetic authority over all other forms of religious authority.

Within the context of al-Ṭaḥāwī's thought as a whole, the abrogation of Prophetic *ḥadīth*s by Companion consensus is best understood as the extreme end of a spectrum for preserving Prophetic practice that ranges from the purely textual to the more ephemeral. At the other end of that spectrum lies Prophetic *ḥadīth*, in which an obviously Prophetic practice is preserved in a purportedly stable textual form. Next on that spectrum appear Companion and Successor *ḥadīth*s, which al-Ṭaḥāwī understands in many cases to provide a textual record of Prophetic practice, albeit not in the Prophet's voice. With the next group of sources, juristic consensus and the practice (*ʿamal*) of the jurists and the Community, we move away from textual sources, although al-Ṭaḥāwī still understands these sources to derive their authority from the fact that they mimetically preserve Prophetic practice without adding anything to it.

Finally, abrogation by Companion consensus represents a non-textual source that only obliquely preserves Prophetic practice—while the authority of Companion consensus derives from the Companions' observation of the Prophet, this form of consensus grants them the power to override Prophetic practice known through Prophetic *ḥadīth*. The uncomfortable fit of abrogation by Companion consensus within a scale that otherwise envisions a purely Prophetic, if not always textual, authority, suggests the reason for al-Ṭaḥāwī's rejection of this form of consensus in his later two works. Although the passages in *Sharḥ maʿānī al-āthār* on abrogation by Companion consensus preserve an older concept of religious authority after the Prophet's death, on the whole,

al-Ṭaḥāwī is firmly committed to an exclusively Prophetic authority, in what whatever form that authority might be preserved.

Chapter Four: Hermeneutics

Within al-Ṭaḥāwī's extant works, the seven-page introduction to *Aḥkām al-Qurʾān* represents the only sustained, theory-driven discussion of how jurists may discover the meaning of the revealed texts of Qurʾān and Sunna in their work of determining the law. Although al-Ṭaḥāwī comments briefly on questions of hermeneutics whenever they arise in the course of analyzing discrete texts and legal issues, the introduction to *Aḥkām al-Qurʾān* is unique in suggesting how al-Ṭaḥāwī understands his most important hermeneutical principles to relate to each other. In the course of the introduction, al-Ṭaḥāwī establishes three key pairs of terms: *muḥkam:mutashābih* (unequivocal:equivocal), *ẓāhir:bāṭin* (apparent:non-apparent) and *ʿāmm:khāṣṣ* (unrestricted:restricted). Without explicitly describing a hierarchy among these terms, the structure of the introduction suggests that al-Ṭaḥāwī's discussion of the latter two pairs of terms serves as a set of tools for reading *mutashābih* (equivocal) texts. By locating the Qurʾānic dichotomy of *muḥkam* and *mutashābih* at the center of his theory of legal interpretation, al-Ṭaḥāwī implies that his hermeneutics is itself Qurʾānic and, therefore, authoritative.

In this chapter I take as my framework these three pairs of terms and analyze the role each plays within the introduction to *Aḥkām al-Qurʾān*. In addition, I look to the body chapters of *Aḥkām al-Qurʾān* as well as to al-Ṭaḥāwī's other hermeneutical works to determine more fully both how al-Ṭaḥāwī understands these concepts and the work they do within his legal arguments. In the remainder of the chapter, I turn to two

additional issues raised by these terms: first, hints of a formalist approach to language and law in al-Ṭaḥāwī's works and, second, al-Ṭaḥāwī's understanding of the role of *ijtihād* (legal reasoning) in determining the law.[675]

Previous analyses of al-Ṭaḥāwī's hermeneutics have offered descriptions of his hermeneutical approach to specific legal questions or his intellectual relationship with other jurists.[676] While these provide valuable insights into al-Ṭaḥāwī's thought, this chapter represents the first study to bring together al-Ṭaḥāwī's most important hermeneutical principles into a coherent structure. As such, I do not attempt to catalog every hermeneutical procedure employed in the course of al-Ṭaḥāwī's extant works. Nor am I concerned here with how al-Ṭaḥāwī combines different hermeneutical techniques within his arguments. Instead, this chapter demonstrates how al-Ṭaḥāwī draws a direct

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[675] The first topic, legal formalism, is raised in response to hints of a formalist understanding of *ʿāmm* and *khāṣṣ* in some passages of al-Ṭaḥāwī's works; the second, *ijtihād*, is important as one of the means al-Ṭaḥāwī suggests for approaching *mutashābih* texts.

[676] Both Vishanoff and El Shamsy are concerned with the relationship between al-Ṭaḥāwī and al-Shāfiʿī. In his *Formation of Islamic Hermeneutics*, Vishanoff observes briefly that al-Ṭaḥāwī "inclined toward the Shāfiʿī hermeneutic of ambiguity" and "employed al-Shāfiʿī's distinction between general and particular texts" (214). El Shamsy, too, emphasizes al-Ṭaḥāwī's "strikingly close intellectual relationship with Shāfiʿism" and al-Ṭaḥāwī's use of many of al-Shāfiʿī's hermeneutical terms and concepts (*Canonization of Islamic Law*, 205-207). I will have occasion to comment on both scholars' analyses below. Najam Haider analyzes al-Ṭaḥāwī's discussion of the *qunūt* prayer and the prohibition of intoxicants in *al-Mukhtaṣar* and *Sharḥ maʿānī al-āthār*, comparing al-Ṭaḥāwī's hermeneutical approach with that of earlier and later Ḥanafīs (*The Origins of the Shīʿa: Identity, Ritual and Sacred Space in Eighth-Century Kūfa* (Cambridge: Cambridge University Press, 2011), 96-100, 142-145). Calder favorably compares al-Ṭaḥāwī's discussion of the cancellation of *wuḍūʾ* in *Sharḥ mushkil al-āthār* to that of Ibn Qutayba in *Taʾwīl mukhtalif al-ḥadīth* and affirms that al-Ṭaḥāwī employs the hermeneutical concepts of *ʿāmm* and *khāṣṣ* in his arguments (*Studies in Early Muslim Jurisprudence*, 228-233). He also accuses al-Ṭaḥāwī of "arbitrary and irresponsible manipulation of Prophetic and Companion dicta," however, an accusation which Calder illustrates by analyzing al-Ṭaḥāwī's use of *isnād* criticism in his discussion of touching the penis (*mass al-dhakar*) in *Sharḥ maʿānī al-āthār* (*Studies in Early Muslim Jurisprudence*, 235-241). Schacht, too, portrays al-Ṭaḥāwī as unscrupulous in his acceptance or rejection of Prophetic *ḥadīth*s in the course of his legal arguments, depending on whether they support established Ḥanafī law (*Origins of Muhammadan Jurisprudence*, 30-31, 47-48). Sadeghi describes al-Ṭaḥāwī's hermeneutical approach to a variety of questions related to women's prayer in order to demonstrate how al-Ṭaḥāwī balanced his commitment to Prophetic *ḥadīth* with his commitment to established Ḥanafī law; he emphasizes the role the concepts of *ʿāmm* and *khāṣṣ* played in reconciling these commitments (*Logic of Law-Making*, 108-112, 130-137). Wheeler is interested not in how al-Ṭaḥāwī interprets revelation, but in how his arguments construct Ḥanafī authority (*Applying the Canon*, 100-109).

connection between how God communicates with humans and the approach jurists must take to correctly interpret His message.

Muḥkam and Mutashābih (Unequivocal and Equivocal Texts)

Al-Ṭaḥāwī begins the introduction to *Aḥkām al-Qurʾān* by establishing the division of the Qurʾān into *muḥkam* and *mutashābih* verses.[677] In *Sharḥ mushkil al-āthār*, he expands the scope of application of these terms to encompass Prophetic *ḥadīth*s as well.[678] Although the *muḥkam*:*mutashābih* dichotomy appears far less frequently in his arguments than *ʿāmm*:*khāṣṣ* and *ẓāhir*:*bāṭin*, the other pairs of terms treated in the introduction to *Aḥkām al-Qurʾān*, its centrality to al-Ṭaḥāwī's understanding of the nature of God's communication through revelation is suggested by its prominent placement here as well as further substantial discussion of the pair in two chapters of *Sharḥ mushkil al-āthār*.[679]

After a brief pious invocation, al-Ṭaḥāwī opens the introduction to *Aḥkām al-Qurʾān* by adducing Q 3/Āl ʿImrān:7:

> It is He who has sent down to you the Scripture, in which are the *muḥkamāt* which are the matrix of the Scripture, whilst there are others that are *mutashābihāt*. As for those in whose hearts is deviation, they follow the *mutashābihāt*. Only God knows their interpretation, and those who are well-grounded in knowledge.[680]

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[677] Al-Ṭaḥāwī, *Aḥkām*, 1.59.
[678] Al-Ṭaḥāwī, *Mushkil*, 2.221-2.
[679] Al-Ṭaḥāwī, *Mushkil*, 2.219-221, 6.334-337.
[680] Al-Ṭaḥāwī, *Aḥkām*, 1.59. Al-Ṭaḥāwī initially only adduces the opening of the verse, but he references it in its entirety both later in the passage and in the chapters of *Sharḥ mushkil al-āthār*, and so I quote it here in full. (Translation adapted from Jones, trans., *The Qurʾān* (Cambridge: Gibb Memorial Trust, 2007)).

Exegetes disputed the intent of *muḥkamāt* and *mutashābihāt* in this verse.[681] In his *Jāmiʿ al-bayān* al-Ṭabarī identified five meanings exegetes assigned to the pair, including that the terms indicate the abrogating and abrogated verses; the legal verses and the verses which merely resemble one another; verses permitting only one interpretation and those permitting multiple interpretations; stories about earlier prophets and communities given in clear detail and those repeated across chapters without detail; and verses which can be understood by scholars and those which cannot.[682]

In the mature *uṣūl al-fiqh* tradition, the terms *muḥkam* and *mutashābih* were severed from their Qurʾānic roots and made technical terms designating the clarity or obscurity of individual words within revealed texts. In particular, the Ḥanafīs employed them as the extreme ends of an eight-part scale in which *muḥkam* represents absolutely clear discourse permitting neither interpretation nor abrogation, and *mutashābih* represents unintelligible discourse from which God's intention cannot be determined.[683]

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[681] On the range of exegetical discussions of Q 3/Āl ʿImrān:7, see Sahiron Syamsuddin, "*Muḥkam* and *Mutashābih*: An Analytical Study of al-Ṭabarī's and al-Zamakhsharī's Interpretations of Q3:7," *Qurʾānic Studies* 1, no. 1 (1999): 63-79; Leah Kinberg, "*Muḥkamāt* and *Mutashābihāt* (Koran 3/7): Implication of a Koranic Pair of Terms in Medieval Exegesis," *Arabica* 35, no. 2 (1988): 143-172; Vishanoff, *Formation of Islamic Hermeneutics*, 17; Michel Lagarde, "De L'Ambiguïté (*mutašābih*) dans le Coran," *Quaderni di Studi Arabi* 3 (1985): 45-62.

[682] Al-Ṭabarī, *Tafsīr al-Ṭabarī: Jāmiʿ al-bayān ʿan taʾwīl al-Qurʾān*, ed. Maḥmūd Muḥammad Shākir (Cairo: Dār al-Maʿārif, 1969), 6.169-182. Al-Ṭabarī holds the last of these positions, that *muḥkam* verses can be understood by scholars, while *mutashābih* verses may not. In addition to the positions catalogued by al-Ṭabarī, al-Māturīdī (d. 333/934) preserves the following views: 1) that the *muḥkamāt* are Q 6/al-Anʿām:151-153 and Q 17/al-Isrāʾ:23 onwards, while the rest of the Qurʾān is *mutashābih*; 2) that the *muḥkamāt* are understood by everyone, while the *mutashābihāt* require study and inquiry; 3) that the *muḥkamāt* are verses whose intention may be understood while the *mutashābihāt* are a test of faith; 4) that the *muḥkamāt* are verses [whose meaning] is apparent to all Muslims, such that they do not disagree concerning them, while the *mutashābihāt* cause doubt and disagreement because of differences in language or because of a conflict between the apparent and inner meaning; and 5) that the *muḥkamāt* are verses that may be understood by the intellect while the *mutashābihāt* require revelation to be understood (al-Māturīdī, *Tafsīr al-Qurʾān al-ʿaẓīm, al-musammā Taʾwīlāt ahl al-Sunna*, ed. Fāṭima Yūsuf al-Khaymī (Beirut: Muʾassasat al-Risāla, 2004), 1.246-248).

[683] The eight-part scale designates language as *muḥkam* (unequivocal), *mufassar* (explained), *naṣṣ* (explicit), *ẓāhir* (apparent), *khafī* (hidden), *mushkil* (problematic), *mujmal* (concise) and *mutashābih*

This recontextualization of *muḥkam*:*mutashābih* appears already in al-Sarakhsī's *Muḥarrar*, in which the full eight-part scale is described in a chapter on "Terms for the Forms of Divine Address" (*asmāʾ ṣīghat al-khiṭāb*). Although al-Sarakhsī refers briefly to phrases from Q 3/Āl ʿImrān:7 within his discussion, his arguments are primarily etymological and hermeneutical rather than exegetical.[684]

Al-Ṭaḥāwī does not know *muḥkam* and *mutashābih* as part of a formal scale for describing the clarity of terms, but neither does he conform to any of the exegetical explanations of Q 3/Āl ʿImrān:7 offered by al-Ṭabarī or al-Māturīdī. In both the introduction to *Aḥkām al-Qurʾān* and the two chapters of *Sharḥ mushkil al-āthār*, al-Ṭaḥāwī's approach is initially exegetical, adducing Q 3/Āl ʿImrān:7 or a related Prophetic *ḥadīth* before glossing the obscure terms *muḥkam* and *mutashābih*.[685] However, in all three cases he then makes his exegesis the foundation for a theory of hermeneutics that draws a direct connection between the role of jurists, their methodology, and God's use of language in revelation.[686]

After citing Q 3/Āl ʿImrān:7 in the introduction to *Aḥkām al-Qurʾān*, al-Ṭaḥāwī continues:

> God informed us by means of [this verse] that in His Scripture there are unequivocal (*muḥkam*) verses, which He has made secure in terms of their

(unintelligible). The Shāfiʿīs employed a similar scale consisting of only four divisions: *ẓāhir*, *naṣṣ*, *mujmal* and *mutashābih*. See Sukrija Husejn Ramić, *Language and the Interpretation of Islamic Law* (Cambridge: Islamic Texts Society, 2003), 65-138; Zysow, *Economy of Certainty,* 53-56; Nyazee, *Islamic Jurisprudence*, 299-300; Kamali, *Principles of Islamic Jurisprudence*, 122-140.

[684] Al-Sarakhsī, *al-Muḥarrar*, 1.123-4, 126-7.

[685] Al-Ṭaḥāwī, *Aḥkām*, 1.59; *Mushkil*, 2.219-221, 6.334-337. Although most chapters of *Sharḥ mushkil al-āthār* resolve apparent conflicts between Prophetic *ḥadīth*s or between the Qurʾān and *ḥadīth*s, some chapters, including the two under discussion here, offer an exegesis of obscure or potentially problematic (*mushkil*) revealed texts.

[686] I have not identified any jurists preceding al-Ṭaḥāwī who incorporated *muḥkam* and *mutashābih* into a theory of hermeneutics, rather than treating it as an exegetical matter.

> interpretation (*taʾwīl*) and the reason (*ḥikma*) for their revelation. These are the foundation of the Scripture. [He also informed us] that there are equivocal (*mutashābih*) verses, and he criticized those who seek them out, saying "As for those in whose hearts is deviation, they follow the equivocal verses."
>
> [The reason for His criticism] is that the valuation (*ḥukm*) of the equivocal verses must be sought from the unequivocal verses which God made the foundation of His Scripture, and then from the rules which he promulgated through the speech of His Messenger in order to illustrate what He revealed in an equivocal manner in His Scripture.[687]

The crucial features of the *muḥkam*:*mutashābih* dichotomy as presented in *Aḥkām al-Qurʾān* are thus that the interpretation of *muḥkam* verses is certain and the reason for their revelation—that is, God's intent in revealing them—is known. In contrast, the valuation of *mutashābih* verses must be sought first in *muḥkam* verses of the Qurʾān and then from Prophetic *ḥadīth*. Interpretations of *mutashābih* verses that do not rest on these two foundations are baseless and therefore blameworthy. The role of jurists is thus to determine the valuation of *mutashābih* verses using the methodology outlined in this passage.[688]

Two chapters of *Sharḥ mushkil al-āthār* add further details concerning al-Ṭaḥāwī's concept of *muḥkam* and *mutashābih*. As noted above, al-Ṭaḥāwī argues in one that the dichotomy can be applied not only to Qurʾānic verses, but also to Prophetic *ḥadīth*s. After listing examples of both unequivocal and equivocal verses of the Qurʾān, al-Ṭaḥāwī writes:

> Among [the prescriptions of religious law that God has imposed] are those that were promulgated through the speech of the Prophet for this purpose. He made

[687] Al-Ṭaḥāwī, *Aḥkām*, 1.59.

[688] See also Chapter One, "Qurʾān and Sunna," pp. 67-71, where I argue against El Shamsy's claim that al-Ṭaḥāwī's discussion in this passage aligns with al-Shāfiʿī's notion of the *bayān*.

> some of what was conveyed through his speech *muḥkam* and laid bare in meaning (*makshūf al-maʿnā*).[689]

He lists examples of rules established through unequivocal Prophetic *ḥadīth*s, including the five prayers of the day and night and the manner in which travelers shorten them. In contrast, al-Ṭaḥāwī adduces quotations from *ḥadīth*s, rather than the rules derived from those *ḥadīth*s, when giving examples of equivocal Prophetic speech, presumably because the rules are disputed. He concludes the discussion by noting that scholars must seek the true meaning (*ḥaqāʾiq*) of equivocal Prophetic *ḥadīth*s, and that all equivocal texts, whether found in Qurʾān or Sunna, belong to a single category (*jins*), while all unequivocal texts belong to a separate category.[690]

Apart from the discussion in this chapter, al-Ṭaḥāwī never classifies a Prophetic *ḥadīth* as equivocal or unequivocal in any of his extant works. Nonetheless, this passage is significant for two reasons. First, al-Ṭaḥāwī's application of the *muḥkam*:*mutashābih* dichotomy to Prophetic *ḥadīth*s appears to be highly unusual among exegetical discussions of Q 3/Āl ʿImrān:7. While later theorists would employ the pair as abstract technical terms designating the clarity of revealed language in both the Qurʾān and Sunna, I have not been able to identify other exegetical discussions of Q 3/Āl ʿImrān:7 that explicitly expand the scope of *muḥkam* and *mutashābih* to encompass non-Qurʾānic revelation. We might tentatively suggest that al-Ṭaḥāwī represents a transitional stage between exegetical discussions focused on identifying the meaning of obscure words

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[689] Al-Ṭaḥāwī, *Mushkil*, 2.221.
[690] Al-Ṭaḥāwī, *Mushkil*, 2.221-222.

within the Qurʾān and a later effort to apply consistent analytical categories to language in all revealed texts.[691]

The second reason for the significance of al-Ṭaḥāwī's application of *muḥkam* and *mutashābih* to Prophetic *ḥadīth*s is related to his overall hermeneutical project. While al-Ṭaḥāwī does not have a system of technical terms for assessing the clarity of revealed texts, his discussion of *muḥkam* and *mutashābih*, and in particular his extension of the terms *muḥkam* and *mutashābih* to Prophetic *ḥadīth*, reveals that his goals in the introduction to *Aḥkām al-Qurʾān* and the chapters of *Sharḥ mushkil al-āthār* extend beyond the exegetical. Instead, he argues in these passages that revelation is fundamentally divided into two categories—the unequivocal and the equivocal—and that the mission and methodology of jurists rests upon this division. That is, Q 3/Āl ʿImrān:7 serves as the point of departure for al-Ṭaḥāwī's concept of the structure of revelation.

Sharḥ mushkil al-āthār clarifies how al-Ṭaḥāwī understands the relationship between the role of jurists and the division of revelation into the equivocal and the unequivocal. In one chapter, al-Ṭaḥāwī begins by citing Prophetic *ḥadīth*s concerning the occasion of revelation for Q 3/Āl ʿImrān:7. He then writes:

> God informed us that in His Scripture there are verses that are unequivocal in their interpretation (*taʾwīl*). *They are the verses whose interpretation is agreed upon and whose intention is intelligible* (*maʿqūl*). [He also informed us that] there are equivocal (*mutashābih*) verses whose interpretation is sought from the

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[691] Further evidence suggesting this transitional stage is found in the *Kitāb al-Radd ʿalā al-bidʿa* of al-Ṭaḥāwī's contemporary Abū Muṭīʿ al-Nasafī (d. 318/930). In the course of criticizing a group of extreme traditionists whom he calls the *ḥashwīya*, al-Nasafī asserts that the Muslim community holds that *ḥadīth*s may be either *muḥkam* or *mutashābih* (Marie Bernand, "Le *Kitāb al-radd ʿalā l-bidʿa* d'Abū Muṭīʿ Makḥūl al-Nasafī," *Annales Islamologiques* 16 (1980): 121). Although the context is not exegetical, al-Nasafī, like al-Ṭaḥāwī, applies the terms *muḥkam* and *mutashābih* to *ḥadīth*s themselves rather than to revealed language.

> unequivocal verses, which are the matrix of the Scripture. *[The equivocal verses] are those whose interpretation is disputed*.[692]

This passage is significant because it draws a direct line between the occurrence of scholarly agreement or disagreement and the degree to which God has made His intent manifest in a particular revealed text: unequivocal verses are those "whose interpretation is agreed upon and whose intention is intelligible," while equivocal verses are those "whose intention is disputed." In other words, scholarly disagreement is the result of God's rhetorical choices. This point is confirmed in another chapter of *Sharḥ mushkil al-āthār*, in which al-Ṭaḥāwī writes that "the unequivocal verses are those in which God revealed His meaning (*maʿnā*) to them… and the equivocal verses are those in which he did not reveal His intent (*murād*) to them."[693]

For al-Ṭaḥāwī, then, *muḥkam* and *mutashābih* designate the degree to which God as a speaker fully expresses His intent in a discrete text such that that intent can be understood without reference to other revealed texts. This claim bears some similarity to one of the exegetical explanations of *muḥkam* and *mutashābih* cited from al-Ṭabarī above: namely, that *muḥkam* verses permit only one interpretation while *mutashābih* verses permit multiple interpretations.[694] Proponents of this explanation include Abū Jaʿfar al-Iskāfī (d. 240/854), al-Ashʿarī (d. 324/935), al-Karkhī (d. 340/952) and al-Jaṣṣāṣ

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[692] Al-Ṭaḥāwī, *Mushkil*, 6.337.
[693] Al-Ṭaḥāwī, *Mushkil*, 2.221.
[694] Al-Ṭaḥāwī's understanding of *muḥkam* and *mutashābih* also bears some similarity to al-Ṭabarī's own position: that *muḥkam* verses can be understood by scholars while *mutashābih* verses cannot. However, al-Ṭabarī classifies as *muḥkam* both verses whose intent is immediately understood and those which can be understood through recourse to other texts. The category of *mutashābih* is limited to texts which cannot be understood at all.

(d. 370/982).[695] Both al-Ṭaḥāwī and the proponents of this explanation understand *muḥkam* and *mutashābih* to be related to clarity and ambiguity; however, while al-Ṭaḥāwī views ambiguity as a result of the speaker's rhetorical choices in expressing his intent, the scholars cited above view ambiguity as a purely lexical matter. In *Aḥkām al-Qurʾān*, al-Jaṣṣāṣ defines *muḥkam* as "an expression containing no homonymy," while a *mutashābih* verse may be interpreted in multiple ways.[696] In *al-Fuṣūl*, al-Jaṣṣāṣ's examples of *mutashābih* verses are limited to cases in which ambiguity concerning the voweling of a verse leads to uncertainty over its meaning.[697]

In contrast, al-Ṭaḥāwī's examples of *mutashābih* texts do not concern homonymy. Instead, they address cases in which God did not provide sufficient detail in a statement for scholars to adequately understand His intent without reference to other sources. His examples of equivocal verses include Q 5/al-Māʾida:38 ("The thief, male and female: cut off their hands"), Q 4/al-Nisāʾ:23 ("[It is also forbidden] that you should have two sisters together, except for cases that have happened in the past") and Q 4/al-Nisāʾ:24 ("[Also forbidden] are married women, except what your right hand possesses").[698] Although he does not explicitly state here or in other examples what makes these verses equivocal, these verses he cites all lack specific, detailed information that would permit the hearer to understand or act upon the verse without further instruction.[699]

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[695] Vishanoff, *Formation of Islamic Hermeneutics*, 17; al-Jaṣṣāṣ, *al-Fuṣūl*, 1.205-208; al-Jaṣṣāṣ, *Aḥkām al-Qurʾān*, 2.280.
[696] Al-Jaṣṣāṣ, *Aḥkām al-Qurʾān*, 2.280.
[697] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1.205-207.
[698] Al-Ṭaḥāwī, *Mushkil*, 2.221.
[699] Notably, the equivocality of Q 5/al-Māʾida:38 ("The thief, male and female: cut off their hands") is apparent only in hindsight, with knowledge of later *ḥadīth*s that constrained the meaning of 'thief' and 'hand' in this verse. That al-Ṭaḥāwī gives this verse as an example of a *mutashābih* text affirms that, for

While al-Ṭaḥāwī departs from other exegetes in his emphasis on God's intent in his definition of *muḥkam* and *mutashābih*, his assertion that the meaning of equivocal verses must be sought from unequivocal verses was shared by a number of later jurists, including al-Jaṣṣāṣ, al-Zamakhsharī, al-Ṭūsī, Ibn Kathīr and others.[700] Kinberg portrays al-Jaṣṣāṣ as a very early advocate of this procedure and notes that its other known proponents lived considerably later.[701] Although there is no evidence to suggest either that al-Jaṣṣāṣ took this concept from al-Ṭaḥāwī or that al-Ṭaḥāwī was the first to make this claim, we may at least conclude that the argument was known a half century before al-Jaṣṣāṣ.

The conflict between some scholars' definition of *mutashābih* as "unintelligible" and others' claim that the meaning of *mutashābih* verses may be understood from *muḥkam* verses rests on a disagreement about the best reading of an ambiguous section of Q 3/Āl ʿImrān:7. Depending on whether one reads a particular "*wa*" (and) as introducing a second subject to the previous sentence or beginning a new sentence, the verse can be understood either to mean that only God knows the interpretation of the *mutashābih* verses, or that only God and the scholars know their interpretation.[702] The second reading makes a powerful claim for the authority of scholars to interpret the texts of revelation,

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him, equivocality is a question of whether the speaker fully conveyed his intent and not whether a hearer could construe the statement as meaningful.

[700] Syamsuddin, "*Muḥkam* and *Mutashābih*," 69-70; Lagarde, "De l'Ambiguïté (*mutašābih*) dans le Coran," 52.

[701] Kinberg, "*Muḥkamāt* and *Mutashābihāt*," 161-162.

[702] The Arabic reads, "*mā yaʿlamu taʾwīlahu illā Allāh wa-l-rāsikhūn fī al-ʿilm yaqūluna amannā bihi.*" It may be translated in two ways: 1) "No one knows its interpretation but God. Those who are firm in knowledge say, "We believe in it"; or 2) "No one knows its interpretation but God and those firm in knowledge. They say, "We believe in it."

although neither al-Ṭaḥāwī nor al-Jaṣṣāṣ claimed that scholars would be able to interpret every equivocal verse.

Where al-Ṭaḥāwī departs from al-Jaṣṣāṣ's discussion is in his explicit linking of the discovery of the meaning of equivocal texts from unequivocal texts to the process of *ijtihād* (legal interpretation). In one of the chapters of *Sharḥ mushkil al-āthār* discussed above, al-Ṭaḥāwī is asked by an interlocutor if the existence of equivocal texts means that we cannot make judgments concerning those matters. Al-Ṭaḥāwī replies that we can, and that the proper way to do so is through *ijtihād al-raʾy* (legal reasoning), a process which may or may not lead to an objectively correct answer, but which is always praiseworthy when undertaken in the right way.[703] The division of revelation into *muḥkam* and *mutashābih* thus divides God's speech into the interpretable and that which is not in need of interpretation, and links this division to the juristic process of *ijtihād*.

Muḥkam and Mutashābih in al-Ṭaḥāwī's Hermeneutical Arguments

Given the importance of the *muḥkam*:*mutashābih* dichotomy in al-Ṭaḥāwī's understanding of the nature of God's revelation and the role of jurists in interpreting it, it is notable how rarely he appeals to these concepts in his hermeneutical arguments. Their application is most noteworthy in the opening paragraph of a number of chapters of *Aḥkām al-Qurʾān.* In one, he adduces a section of Q 5/al-Māʾida:6 ("wipe your faces and your hands with it (*minhu*)"). He then states that "wipe your faces" is unequivocal and self-explanatory (*qāʾim bi-nafsihi*); however, the phrase "and your hands with it" is

[703] Al-Ṭaḥāwī, *Mushkil*, 2.223-225.

equivocal and its intent is debated.[704] Here and in similar passages,[705] al-Ṭaḥāwī identifies different sections in a given verse as equivocal or unequivocal. More importantly, he explicitly connects the phenomenon of juristic disagreement to equivocal verses, confirming the relationship between *muḥkam* and *mutashābih* and the role of jurists outlined above.

Perhaps the paucity of appeals to the *muḥkam*:*mutashābih* dichotomy in al-Ṭaḥāwī's hermeneutical arguments is best explained by the observation that, in general, *muḥkam* and *mutashābih* do not constitute an interpretive technique for al-Ṭaḥāwī, but instead provide the conceptual framework for the fundamental division that underlies multiple layers of al-Ṭaḥāwī's legal thought, that is, the division between that which jurists may interpret and that for which God has already adequately conveyed His intent. In previous chapters, we have seen this dichotomy in the form of *tawqīf* and *raʾy*, ideas very closely aligned to *muḥkam* and *mutashābih*. I will return to the relationship between *muḥkam:mutashābih* and *tawqīf:raʾy* in the final section of this chapter.

Ẓāhir and Bāṭin (Apparent and Non-Apparent Meaning)

Al-Ṭaḥāwī concludes his discussion of *muḥkam* and *mutashābih* in the introduction to *Aḥkām al-Qurʾān* with a lengthy, four-page justification for his argument that the Sunna has the authority to explain the *mutashābih* verses of the Qurʾān. He points to the observed occurrence of abrogation between the Qurʾān and Sunna as evidence that the Qurʾān and Sunna are of the same type (*shakl*)—that is, they are ontologically

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[704] Al-Ṭaḥāwī, *Aḥkām*, 1.103.
[705] E.g., al-Ṭaḥāwī, *Aḥkām*, 1.102, 1.118.

equivalent.[706] This argument, in turn, provides the justification for his claim that jurists may seek the meaning of equivocal Qurʾānic verses in the Sunna.[707] Although the authority of the Sunna and the occurrence of abrogation between the Qurʾān and Sunna are crucial concepts within al-Ṭaḥāwī's hermeneutics, he does not introduce them as independent topics here, but only as evidence for his other claims. In analyzing the structure of al-Ṭaḥāwī's introduction to *Aḥkām al-Qurʾān*, we should therefore consider this lengthy passage on abrogation and the authority of the Sunna to form part of his discussion of *muḥkam* and *mutashābih*.[708]

After concluding his comments on abrogation, al-Ṭaḥāwī returns to the major work of the introduction of *Aḥkām al-Qurʾān*, which is to introduce a set of hermeneutical principles for jurists based on his theory of divine-human communication. The next pair of technical terms he addresses is *ẓāhir:bāṭin*, in most cases best translated in al-Ṭaḥāwī's works as apparent and non-apparent meaning.[709] Although he does not say

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[706] I analyze this passage as well as other evidence for al-Ṭaḥāwī's understanding of the Qurʾān and Sunna as ontologically equivalent in Chapter One, "Qurʾān and Sunna," pp. 73-85.
[707] Al-Ṭaḥāwī, *Aḥkām*, 1.59-64.
[708] It is evident that al-Ṭaḥāwī did not intend to introduce abrogation as an independent hermeneutical technique equivalent to his discussions of *muḥkam*:*mutashābih*, *ẓāhir*:*bāṭin* or *ʿāmm*:*khāṣṣ* from the fact that he provides no prescription for jurists concerning its use. While al-Ṭaḥāwī frames the other hermeneutical topics in the introduction to *Aḥkām al-Qurʾān* as guidelines for jurists, the passage on abrogation is focused exclusively on demonstrating that Islamic law as it stands cannot be explained without accepting that abrogation between Qurʾān and Sunna has actually occurred on many occasions, something which can only happen if the Qurʾān and Sunna are ontologically equivalent. That al-Ṭaḥāwī does not treat abrogation on par with *muḥkam*:*mutashābih*, *ẓāhir*:*bāṭin* and *ʿāmm*:*khāṣṣ* within the introduction to *Aḥkām al-Qurʾān* can be explained by the fact that his goal in discussing these three pairs of terms is to introduce the model of divine-human communication that is the subject of this chapter, and the technique of abrogation does not form part of that model.
[709] For an overview of how scholars studying Islamic law have translated *ẓāhir*, see Robert Gleave, *Islam and Literalism: Literal Meaning and Interpretation in Islamic Legal Theory* (Edinburgh: Edinburgh University Press, 2012), 55-60. I have selected 'apparent' and 'non-apparent' to capture al-Ṭaḥāwī's usage of *ẓāhir* and *bāṭin* for two reasons. First, the terms capture al-Ṭaḥāwī's orientation toward the perspective of the addressee in his discussions of *ẓāhir* and *bāṭin*; meanings are *ẓāhir* from the perspective of an individual, as we shall see below. Second, although there are cases in which al-Ṭaḥāwī considers the *bāṭin*

so explicitly, al-Ṭaḥāwī must understand the diversion from *ẓāhir* to *bāṭin* meaning as a feature of *mutashābih* texts, because *muḥkam* texts reveal their intent immediately and unequivocally. The final section of the introduction to *Aḥkām al-Qurʾān* likewise treats a topic that must fall under the category of *mutashābih* texts: unrestricted and restricted meanings of texts (*al-ʿāmm wa-l-khāṣṣ*). We can therefore describe the overall structure of the introduction to *Aḥkām al-Qurʾān* as establishing first the dichotomy between revelation in which God has clearly revealed His intent and that in which He has not and, second, stating two principles for jurists to observe when determining the meaning of texts in which God has not revealed His intent. Al-Ṭaḥāwī's overall purpose in the introduction, therefore, is not primarily to describe the structure of revelation, but instead to provide a set of instructions for jurists based on what we know about the nature of God's communication with us.

Al-Ṭaḥāwī opens his discussion of *ẓāhir* and *bāṭin* by affirming that the true meaning of texts may not be in alignment with their apparent meaning, while establishing jurists' duty nonetheless to act upon the apparent meaning of revelation:

> Within the Qurʾān is that which may be expressed such that its apparent meaning differs from its true meaning (*mā qad yakhruj ʿalā al-maʿnā alladhī yakūn ẓāhiran li-maʿnā, wa-yakūn bāṭinuhu maʿnā ākhar*). Our duty is to employ its apparent meaning, even if the true meaning could be something else, because we were addressed in order to receive clarification (*khūṭibnā li-yubayyan lanā*), and we were not addressed for any other purpose.[710]

Al-Ṭaḥāwī's first argument for the primacy of the apparent meaning rests on his understanding of the nature of God's revelation: God addresses us in order to provide

meaning the true or objectively correct meaning, more often he is critical of those who seek a *bāṭin* meaning for texts.

[710] Al-Ṭaḥāwī, *Aḥkām*, 1.64. In this particular passage 'true meaning' seems more apposite than 'non-apparent meaning.'

clarity (*bayān*).[711] While acknowledging that the true meaning of a text is not always the apparent meaning, al-Ṭaḥāwī argues that it is in God's nature to clarify His intent through revelation, and therefore jurists should act upon the assumption that apparent meaning is the true meaning. The hermeneutical principle of the primacy of the apparent meaning thus amounts to an optimism about God's likeliness to express His intent straightforwardly.[712]

In contrast, al-Ṭaḥāwī's second and lengthier argument concerns not the nature of revelation, but the evidence of the precedent of the Companions. He writes:

> [The apparent meaning takes precedence] even if some scholars have opposed us in this and held that the apparent meaning does not take precedence over the non-

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[711] El Shamsy views this passage as evidence that "the way in which al-Ṭaḥāwī conceptualizes revelation as a whole closely parallels al-Shāfiʿī's understanding of revelation as a communicative act taking place through the medium of human language" (*Canonization of Islamic Law*, 206). My reading of the introduction to *Aḥkām al-Qurʾān* broadly confirms this analysis: a jurist's job is to understand how God has expressed His intent in language and to apply the correct procedures in cases where He has not made His intent immediately clear. El Shamsy has a second purpose in discussing the introduction to *Aḥkām al-Qurʾān*, however, which is to emphasize al-Ṭaḥāwī's "indebtedness to al-Shāfiʿī" (205). By indebtedness, El Shamsy seems to mean not only a general similarity of views, but also relatively specific (though unattributed) borrowings from al-Shāfiʿī's *Risāla*. In Chapter One, "Qurʾān and Sunna," I questioned El Shamsy's characterization of al-Ṭaḥāwī's discussion of *muḥkam* and *mutashābih* as mirroring al-Shāfiʿī's theory of the *bayān*. El Shamsy likewise suggests a close parallel between al-Ṭaḥāwī's statement that "we were addressed in order to receive clarification" (*khūtibnā li-yubayyan lanā*) and the phrase "*bayān li-man khūṭiba bihi*" in al-Shāfiʿī's *Risāla* (206). Observing the striking similarities of language between these two passages, El Shamsy translates the phrase as "clarification for those addressed by it"; however, the phrase has quite a different meaning in context, where it refers to the definition of a *bayān*, or legislative statement. Al-Shāfiʿī writes that "the lowest common denominator among those convergent and yet divergent meanings is that *such a statement is directed to whoever is addressed by it* among those in whose language the Qurʾān was revealed" (I have taken this translation from Lowry, trans., *The Epistle on Legal Theory*, 15). Al-Shāfiʿī is not describing God's purpose in revelation, but rather establishing the addressees of God's legislative statements. Although El Shamsy is undoubtedly correct in emphasizing the close relationship between the thought of al-Shāfiʿī and al-Ṭaḥāwī, his eagerness to demonstrate direct borrowing has led him to disregard important differences in how and why the two jurists employ language and concepts that may initially seem quite similar. Because of the differences in how the two jurists employ similar concepts, as well as the absence of evidence for any direct textual borrowing, I am by no means convinced, as El Shamsy appears to be, that al-Ṭaḥāwī knew the text of the *Risāla*, although he clearly had great familiarity with al-Shāfiʿī's thought.

[712] Despite al-Ṭaḥāwī's insistence that the nature of revelation is to clarify, al-Ṭaḥāwī never explains why all Qurʾānic verses should not be *muḥkam*; that is, why God did not choose to reveal His intent immediately, relieving the need for jurists' interpretations.

> apparent meaning. We have reached our opinion on this matter because of evidence we observed indicating that and obligating its use.[713]

Al-Ṭaḥāwī cites the example of the revelation of Q 2/al-Baqara:187 ("Eat and drink until the white thread is distinct to you from the black thread at dawn"). Upon receiving this revelation, al-Ṭaḥāwī writes, a number of Companions began to examine white and black threads to determine when to resume the Ramadan fast each morning. When the Prophet heard of their actions, he clarified that the white and black threads refer to the darkness of night and the lightness of day. However, al-Ṭaḥāwī emphasizes, Muḥammad did not scold them for acting upon the apparent meaning.

> [The Companions'] acting upon [the apparent meaning] before receiving instruction (*tawqīf*) from God's Messenger about [the verse's] intent is an indication that [Muslims] are to act upon the Qurʾān according to its apparent meaning. [This is so] even if they have not been apprised of its true interpretation in the way that they have been apprised of the mere text. The affirmation [of their actions] entails the affirmation of acting upon the apparent meaning, and that it takes precedence over interpreting verses for their non-apparent meaning.[714]

Here al-Ṭaḥāwī portrays the Companions as the models upon whose actions jurists should base their hermeneutical principles. He further establishes that jurists may act upon the apparent meaning of a revealed text in the absence of instruction from the Prophet (*tawqīf*).[715] Although he does not say so in the introduction to *Aḥkām al-Qurʾān*, it is also *tawqīf* that is required in most cases in order to divert from the apparent meaning to the true meaning of a text. It is notable that in this example al-Ṭaḥāwī holds up the Companions as a model for emulation in a case in which their privileging of the *ẓāhir* meaning led them to an objectively incorrect understanding, albeit one promptly

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[713] Al-Ṭaḥāwī, *Aḥkām*, 1.64.
[714] Al-Ṭaḥāwī, *Aḥkām*, 1.64.
[715] For another example of the role of *tawqīf* in signaling that the apparent meaning is not the intended meaning, see *Aḥkām*, 1.106.

corrected by the Prophet. What al-Ṭaḥāwī offers in the introduction to *Aḥkām al-Qurʾān* is not a complete set of instructions to jurists on how to derive a correct understanding of the law from its sources, but rather an argument for how jurists should approach revealed texts given certain facts about God's habits in communicating with humans.

That al-Ṭaḥāwī is more interested in the assumptions jurists should make about God's speech than in guaranteeing correct answers is confirmed by his final argument for the primacy of the apparent meaning. Here again, al-Ṭaḥāwī looks to the example of the Companions, this time examining their responses to the revelation of the prohibition on wine (*khamr*). In contrast to the earlier example in which the *ẓāhir* meaning of the text was self-evident, here the Companions disagree on what the apparent meaning of the prohibition on wine might be. Al-Ṭaḥāwī identifies five different understandings of the prohibition among the Companions and reports that each faction acted upon their understanding by destroying the kinds of wine that they held to be included within the scope of the prohibition. Al-Ṭaḥāwī observes that:

> This indicates that they acted upon the verse according to their immediate understanding of its intent (*ʿalā mā waqaʿa fī qulūbihim annahu murāduhu*), based on what was apparent to them concerning its ruling (*ʿalā mā ẓahara lahum min ḥukmihā*). [It indicates] that they were not obligated to do anything more. Later, the Prophet did not scold them or say to them, "you should not have rushed to destroy your property until you knew what God had prohibited with no possibility of incorrect knowledge."[716]

In this passage al-Ṭaḥāwī claims support for the primacy of the *ẓāhir* both from the fact of the Companions' having acted upon what they held to be the apparent meaning and

[716] Al-Ṭaḥāwī, *Aḥkām*, 1.64-65.

from the Prophet's tacit acceptance of their actions.[717] Although al-Ṭaḥāwī's optimism concerning God's likeliness to express His intent would seem to conflict with the panoply of apparent meanings that Companions identified for the prohibition on wine, this tension remains unacknowledged.

Ẓāhir and Bāṭin in al-Ṭaḥāwī's Hermeneutical Arguments

We saw above that al-Ṭaḥāwī's discussion of *ẓāhir* and *bāṭin* in the introduction to *Aḥkām al-Qurʾān* focuses exclusively on jurists' duty to privilege the apparent meaning of revealed texts while avoiding any consideration of the circumstances warranting a departure to a non-apparent meaning. Within the body of al-Ṭaḥāwī's hermeneutical works, the claim that jurists may not depart from the *ẓāhir* to the *bāṭin* without evidence (*ḥujja, dalīl, tawqīf*) allows al-Ṭaḥāwī to portray his interlocutors' interpretation of revealed texts as straying from a foundational hermeneutical principle.[718] For example, in a chapter on whether neighbors receive the right of preemption (*shufʿa*) when a house is being sold, al-Ṭaḥāwī's interlocutors suggest that the word "neighbor" (*jār*) actually means "partner" in Prophetic *ḥadīth*s apparently permitting *shufʿa* for neighbors. Al-Ṭaḥāwī retorts:

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[717] In contrast, al-Shāfiʿī employs the same anecdote in the *Risāla* as evidence for the authority of the uncorroborated report (*khabar al-wāḥid*) (*al-Risāla*, 187-188). That is, al-Shāfiʿī frames this anecdote as bearing on questions of epistemological certainty in transmission, while al-Ṭaḥāwī understands it as a matter pertaining to the interpretation of meaning.

[718] Al-Shāfiʿī makes the same argument concerning the need for evidence to justify departing from a *ẓāhir* meaning, but he does not use the term *tawqīf* (e.g., al-Shāfiʿī, *Risāla*, 146, 156, 268). For discussions of al-Shāfiʿī's understanding of the evidence required to permit diverging from the apparent meaning, see Vishanoff, *Formation of Islamic Hermeneutics*, 44; Lowry, *Early Islamic Legal Theory*, 117, 247-248; Gleave, *Islam and Literalism*, 99-112.

> You claim that reports should be interpreted according to their apparent meaning, so how have you abandoned the apparent meaning, which is supported by evidence, and clung to something else with no evidence to support it?[719]

In other cases, the mere claim that a certain rule is supported by the apparent meaning of a Qurʾānic verse or Prophetic *ḥadīth* serves as sufficient evidence for al-Ṭaḥāwī's position.[720]

Frequently al-Ṭaḥāwī argues that evidence does exist to depart from the apparent meaning in cases where the *ẓāhir* of a revealed text is in conflict with another revealed text or a position to which al-Ṭaḥāwī is committed. For example, although some versions of a Prophetic *ḥadīth* apparently indicate that it is permissible to free a slave on someone's behalf as expiation (*kaffāra*), al-Ṭaḥāwī argues that Qurʾānic verses clarify that individuals must undertake their own *kaffāra*.[721] Although other revealed texts often serve as al-Ṭaḥāwī's evidence for a non-apparent reading, he also claims support for non-*ẓāhir* readings on the basis of consensus, the opinion of a Companion or the flexibility of the Arabic language.[722]

In his argument that jurists should rely on the apparent meaning of texts in the absence of evidence indicating otherwise, al-Ṭaḥāwī is in agreement both with earlier jurists of the formative period and with the mature *uṣūl* tradition, including the Ḥanafī

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[719] Al-Ṭaḥāwī, *Maʿānī*, 4.124. For other examples of al-Ṭaḥāwī refuting his interlocutors' positions on the grounds that they abandon the apparent meaning without evidence, see *Aḥkām*, 2.335; *Mushkil*, 14.115; *Maʿānī*, 3.17, 3.249.

[720] E.g., al-Ṭaḥāwī, *Mushkil*, 3.337, 7.205, 9.107-108, 9.319, 11.322; *Aḥkām*, 1.112, 1.124.

[721] Al-Ṭaḥāwī, *Mushkil*, 2.205-206. For other examples of the diversion of a *ẓāhir* reading on the basis of another revealed text, see *Mushkil*, 1.131-132, 1.348, 5.56-61, 5.111-113, 8.356-358, 12.160-162; *Aḥkām*, 1.147, 1.200.

[722] E.g., Al-Ṭaḥāwī, *Mushkil*, 2.113-115, 3.163, 3.320-322, 4.106-7, 13.9-10; 15.465; *Aḥkām*, 1.191. For al-Shāfiʿī's criticism of the idea that consensus can indicate a non-*ẓāhir* meaning, see El Shamsy, *Canonization of Islamic Law*, 59-60.

school.[723] Although several passages in al-Ṭaḥāwī's works, including the introduction to *Aḥkām al-Qurʾān*, suggest the existence of jurists who did not privilege the *ẓāhir*, theirs was never a widely-held position.[724] Within the mature Ḥanafī tradition, the term *ẓāhir* would also take on an additional meaning as part of the eight-part scale designating the clarity and ambiguity of terms, already discussed above.[725] Of the four terms indicating degrees of clarity, *ẓāhir* represents the weakest claim: a *ẓāhir* term has a meaning that is immediately grasped by the hearer, but is nonetheless subject to diversion from that meaning if other evidence so indicates.[726]

While this definition bears an obvious similarity to al-Ṭaḥāwī's claim that jurists must not depart from the *ẓāhir* without evidence, later legal theorists understand *ẓāhir* as a quality of clarity present in some, but not all, words. In contrast, al-Ṭaḥāwī frames *ẓāhir* as part of an interpretive practice—jurists should choose to privilege the *ẓāhir* meaning of a text because of what we know about the nature of God's communication with humans and because of the example of the Companions. For al-Ṭaḥāwī, all revealed texts can be

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[723] Al-Shāfiʿī's argument of this point is discussed on p. 225n718 above. Al-Ṭaḥāwī's contemporary al-Ashʿarī (d. 324/935) also asserted the requirement for evidence to justify any departure from the apparent meaning of a text (al-Ashʿarī, *al-Ibāna ʿan uṣūl al-diyāna*, ed. Fawqīya Ḥusayn Maḥmūd (Cairo: Dār al-Anṣār, 1977), 139). On the Ḥanafī preference for the *ẓāhir*, see Zysow, *Economy of Certainty*, 59.
[724] Al-Ṭaḥāwī, *Aḥkām*, 1.64; *Maʿānī*, 3.17, 4.124.
[725] See p. 210 above for a discussion of *muḥkam* and *mutashābih* within this scale.
[726] Kamali, *Principles of Islamic Jurisprudence*, 118-124; Nyazee, *Islamic Jurisprudence*, 299; Zysow, *Economy of Certainty*, 55-56; Weiss, *Search for God's Law*, 136; Vishanoff, *Formation of Islamic Hermeneutics*, 4, 194-5; Ramić, *Language and the Interpretation of Islamic Law*, 69-72; Mohamed M. Yunis Ali, *Medieval Islamic Pragmatics: Sunni Legal Theorists' Models of Textual Communication* (Richmond, Surrey: Curzon, 2000), 127-133. Al-Jaṣṣāṣ reports that already al-Karkhī distinguished between speech possessing an apparent meaning and ambiguous speech (*mujmal*) (*al-Fuṣūl*, 1.259-60). Al-Sarakhsī diverges from the mainstream Ḥanafī tradition by defining *ẓāhir* as "that whose intention is known immediately upon hearing, without contemplation; the meaning that rushes to the mind" (*al-Muḥarrar*, 1.122). Nowhere in his discussion of *ẓāhir* does al-Sarakhsī mention the possibility that the *ẓāhir* meaning might not be the true intent, or that the true intent might be revealed through other evidence. This omission disturbs the modern editor of *al-Muḥarrar* sufficiently that he has added a note explaining what al-Sarakhsī "meant" to say (*al-Muḥarrar*, 1.122n3).

read according to their *ẓāhir*, although not every text has a *bāṭin*. In his understanding of *ẓāhir* and *bāṭin*, al-Ṭaḥāwī shows no hints of moving toward later *uṣūl* theories, unlike some other areas of his hermeneutics addressed in this chapter.

ʿĀmm and Khāṣṣ (Unrestricted and Restricted Meaning)

In the final and shortest section of the introduction to *Aḥkām al-Qurʾān*, al-Ṭaḥāwī argues for the obligation to interpret Qurʾānic verses according to their broadest meaning (*ḥamluhā ʿalā ʿumūmihā*) and establishes the opposition between unrestricted (*ʿāmm*) and restricted (*khāṣṣ*) readings of texts. In mature legal theory, *ʿāmm* and *khāṣṣ* would be understood as properties inhering in words by virtue of their linguistic form. For instance, nouns prefaced by the definite article were held to be *ʿāmm*, that is, to designate all members of their class in the absence of other evidence restricting their application.[727] This linguistic understanding of *ʿāmm* and *khāṣṣ* is found already in al-Jaṣṣāṣ's *Fuṣūl*, which dedicates nearly one hundred pages to detailing the linguistic forms of *ʿāmm* and *khāṣṣ*, establishing the types of contextual evidence that may cause an apparently *ʿāmm* term to have a *khāṣṣ* meaning, and exploring various epistemological and theological questions related to reliance on *ʿāmm* and *khāṣṣ* in formulating the law.[728]

Al-Ṭaḥāwī does not share later theorists' understanding of the terms *ʿāmm* and *khāṣṣ* as linguistic features of words, however. Nor does his usage of the terms *ʿāmm* and

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[727] On the classical theorists' understanding of *ʿāmm* and *khāṣṣ*, see Zysow, *Economy of Certainty*, 76-92; Kamali, *Principles of Islamic Jurisprudence*, 40-55; Hallaq, *History of Islamic Legal Theories*, 45-47; Weiss, *Search for God's Law*, 382-449.

[728] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1.40-134. Zysow discusses many of the epistemological and theological issues raised by al-Jaṣṣāṣ and other jurists in connection with *ʿāmm* and *khāṣṣ* in his *Economy of Certainty*, 76-92. On the influence of Greek logic in mature legal theory discussions of *ʿāmm* and *khāṣṣ*, see Vishanoff, *Formation of Islamic Hermeneutics*, 29-31.

khāṣṣ resemble that of Abū Ḥanīfa and other early Ḥanafīs, who employed the term to designate the closeness of the match between a word and its intended referent.[729] Instead, al-Ṭaḥāwī's theory of *ʿāmm* and *khāṣṣ* most closely resembles that of al-Shāfiʿī and his student al-Muzanī. For them, all legal texts are originally unrestricted, and some are then shown to be restricted by virtue of another text indicating that the original, unrestricted meaning is not the intended one.[730] Vishanoff has noted the similarity between al-Shāfiʿī's and al-Ṭaḥāwī's use of *ʿāmm* and *khāṣṣ*, arguing that al-Ṭaḥāwī "employed al-Shāfiʿī's distinction between general and particular texts."[731]

While al-Shāfiʿī and al-Ṭaḥāwī both understand *ʿāmm* and *khāṣṣ* as terms designating how legal sources act upon each other, however, the concepts do subtly different work in al-Shāfiʿī's *Risāla* and in the introduction to al-Ṭaḥāwī's *Aḥkām al-Qurʾān*. In the *Risāla*, al-Shāfiʿī writes that it is "in the nature of God's language that it can be used to address people in a way that seems unrestricted with a readily apparent meaning that is in fact intended as unrestricted and in its apparent sense."[732] He goes on to list three more varieties of divine speech: language that seems unrestricted but combines restricted and unrestricted elements; language that seems unrestricted but is actually intended as restricted; and language whose actual meaning is shown by context

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[729] Vishanoff, *Formation of Islamic Hermeneutics*, 28.

[730] Lowry, *Early Islamic Legal Theory*, 78; Lowry, "Reception of al-Shāfiʿī's Concept of *Amr* and *Nahy* in the Thought of His Student al-Muzanī," 144; Vishanoff, *Formation of Islamic Hermeneutics*, 57-58.

[731] Vishanoff, *Formation of Islamic Hermeneutics*, 214. Calder, too, observes that "Ṭaḥāwī knew the *ʿāmm*:*khāṣṣ* distinction and used it in a fairly systematic manner." He continues, however, that "it is still difficult to imagine that he knew the *Risāla* of Shāfiʿī" (*Studies in Muslim Jurisprudence*, 229). While the close relationship between al-Shāfiʿī and al-Ṭaḥāwī's understanding of *ʿāmm* and *khāṣṣ* does not necessarily indicate that al-Ṭaḥāwī knew the text of the *Risāla*, Vishanoff 's observation that al-Ṭaḥāwī is far more closely aligned with al-Shāfiʿī than with early Ḥanafīs or later theorists is nonetheless very important.

[732] Al-Shāfiʿī, *Risāla*, 22. Translation from Lowry, trans., *Epistle on Legal Theory*, 43.

to be completely different from its apparent meaning. Al-Shāfiʿī's argument that all legal texts initially appear unrestricted is thus a linguistic claim based on the observable features of "the nature of God's language." That al-Shāfiʿī considers unrestrictedness a natural and obvious feature of divine language is confirmed in the following chapters, where he illustrates each type of divine speech listed above by citing relevant Qurʾānic verses. Although he explains the way in which restrictedness enters into some categories, he accepts as obvious that the apparent meaning of each verse is unrestricted.

In contrast, al-Ṭaḥāwī dedicates the two paragraphs on *ʿāmm* and *khāṣṣ* in the introduction to *Aḥkām al-Qurʾān* to arguing for the priority of unrestricted readings, not as a natural feature of the language, but instead as a hermeneutical claim about the role of the jurist in interpreting divine communication. He writes:

> The obligation to construe these verses according to their apparent meaning (*ẓāhir*) entails the obligation to construe them according to their broadest meaning (*ʿalā ʿumūmihā*). This is so even if some scholars have held that the unrestricted (*al-ʿāmm*) does not hold priority over the restricted (*al-khāṣṣ*) except by means of an indication from the Book, the Sunna or consensus. We do not say that, but instead hold that the unrestricted does have priority over the restricted.
>
> That is because some verses are intended as unrestricted and some as restricted, but they [i.e., the Companions] used to act upon the intention that was apparent to them concerning the unrestricted and the restricted before they had received instruction (*tawqīf*). Restricted meaning (*khuṣūṣ*) is not known (*yūqaf ʿalayhi*) by the apparent meaning of revelation (*ẓāhir al-tanzīl*), but is rather known by a secondary act of instruction (*tawqīf thānī*) from the Prophet or from another revealed verse indicating that.
>
> What we have said proves that the duty in this is to employ verses according to their unrestricted meaning. That is better than employing them according to their restricted meaning, until it is known that God intended something else.[733]

[733] Al-Ṭaḥāwī, *Aḥkām*, 1.65.

For al-Ṭaḥāwī, it is not immediately obvious that all legal texts are unrestricted in the absence of other evidence. He recognizes that texts may be read in a restricted or unrestricted manner independent of other texts, and he alludes to other jurists who give priority to a restricted reading. To support his argument that jurists should favor the unrestricted meaning, he makes three interconnected claims. First, the priority of the *ʿāmm* is entailed by the priority of the *ẓāhir*. Second, the Companions used to act upon the *ʿāmm* meaning before receiving instruction from the Prophet (*tawqīf*), implying that acting upon the *ʿāmm* does not require *tawqīf*. Third, restricted meaning can only be known through an act of *tawqīf*.

In claiming that *khāṣṣ* readings require *tawqīf* while *ʿāmm* readings do not, al-Ṭaḥāwī is not arguing that divine language naturally appears unrestricted. Instead, he is looking to the example of the Companions to determine the best hermeneutical approach to language that might be read as either *ʿāmm* or *khāṣṣ*. By using the example of the Companions' actions previous to receiving *tawqīf*, al-Ṭaḥāwī again emphasizes his concept of divine-human communication as an unfolding process in which God does not always choose to reveal His intent immediately. As we saw in the earlier discussions of *muḥkam*:*mutashābih* and *ẓāhir*:*bāṭin*, al-Ṭaḥāwī is primarily concerned in the introduction to *Aḥkām al-Qurʾān* with portraying jurists as the successors to the Companions, tasked with knowing how to act upon texts that do not always reveal their own intent.

Read in context, al-Ṭaḥāwī's claim that the priority of the *ẓāhir* entails the priority of the *ʿāmm* is also an argument about following the example of the Companions rather

than a claim about the nature of divine speech.[734] Immediately prior to his discussion of *ʿāmm* and *khāṣṣ*, al-Ṭaḥāwī gives the example of how a number of Companions reacted to the prohibition on grape wine (*khamr*) by destroying all varieties of wine before they had received instruction from the Prophet (*tawqīf*) concerning what was meant by *khamr*. Al-Ṭaḥāwī argues that the Prophet's failure to chastise them for acting upon what they perceived as the apparent meaning of the verse indicates that it is correct to act upon an apparent meaning, even though the true meaning (*bāṭin*) might be different.[735] He then immediately observes that the priority of the *ẓāhir* indicates the priority of the *ʿāmm*, apparently referring to the fact that many Companions perceived the prohibition on *khamr* as a broad prohibition on all wine; that is, they understood the *ẓāhir* meaning of *khamr* to be *ʿāmm*.[736] In both his discussion of *ẓāhir*:*bāṭin* and his discussion of *ʿāmm*:*khāṣṣ*, then, al-Ṭaḥāwī is concerned not with describing the natural features of language, but with establishing hermeneutical approaches based on following the example of the Companions.

ʿĀmm and Khāṣṣ in al-Ṭaḥāwī's Hermeneutical Arguments

We have seen above that al-Ṭaḥāwī's discussion of *ʿāmm* and *khāṣṣ* in the introduction to *Aḥkām al-Qurʾān* is first and foremost an argument for the duty to

[734] See Chapter Two, "Companion and Successor *Ḥadīth*," pp. 134-139 for a discussion of how al-Ṭaḥāwī establishes the obligation to follow the Companions on the grounds both of their proximity to the Prophet and their personal qualities.
[735] Al-Ṭaḥāwī, *Aḥkām*, 1.65.
[736] Although al-Ṭaḥāwī does not say so directly, there may be an element of pious caution in these Companions' interpretation of the prohibition on *khamr*—in the absence of a clear communication of divine intent, better to be safe by destroying all wine than to risk disobeying by construing the prohibition narrowly. For this reason, it is possible that a better translation for the beginning of the passage on *ʿāmm* and *khāṣṣ* would be "the obligation to construe verses according to their apparent meaning entails the obligation to construe them broadly (*ʿalā ʿumūmihā*)" (*Aḥkām*, 1.65).

construe revealed texts broadly in cases in which they do not unambiguously convey God's intent. The concept of restricted and unrestricted meaning likewise plays a major role within the body of al-Ṭaḥāwī's hermeneutical works, where terms from the roots ʿ-m-m and kh-ṣ-ṣ—including *ʿamma*, *ʿāmm*, *ʿumūm*, *khaṣṣa*, *khāṣṣ* and *khuṣūṣ*—appear hundreds of times. Although al-Ṭaḥāwī clearly uses *ʿāmm* and *khāṣṣ* as technical terms in the introduction to *Aḥkām al-Qurʾān*, his usage of them elsewhere is somewhat inconsistent. When discussing whether a rule applies to an entire class, al-Ṭaḥāwī sometimes replaces the terms *ʿāmm* and *khāṣṣ* with the pair *kull* (all) and *baʿḍ* (some). In other cases, he pairs the terms *ʿāmm:baʿḍ* and *kull:khāṣṣ* or shifts between terms within a single passage.[737] Despite this linguistic variability, al-Ṭaḥāwī consistently employs derivatives of the roots *ʿ-m-m* and *kh-ṣ-ṣ* within the body of his hermeneutical works when making abstract theoretical statements about restricted and unrestricted meanings, confirming that *ʿāmm* and *khāṣṣ* do represent technical terms for him.[738]

Appeals to *ʿāmm* and *khāṣṣ* take two major forms within the body of al-Ṭaḥāwī's hermeneutical works. In the first, al-Ṭaḥāwī reasserts the rule established in the introduction to *Aḥkām al-Qurʾān*: jurists should construe texts broadly in the absence of evidence indicating that their true meaning is restricted (*khāṣṣ*). This assertion appears in polemical contexts where al-Ṭaḥāwī disagrees with another jurist's restricted reading of a text, such as Mālik and al-Shaybānī's claim that a rule about leading congregational

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[737] E.g., al-Ṭaḥāwī, *Mushkil*, 5.105, 5.254, 12.156, 13.207; *Aḥkām*, 1.79.
[738] E.g., al-Ṭaḥāwī, *Mushkil*, 8.295, 14.331, 15.339.

prayer while sitting applies only to Muḥammad, or the claim that the hides of predatory animals represent an exception to the rule that all tanned hides are ritually pure.[739]

In these and other passages, al-Ṭaḥāwī goes beyond merely asserting that a text is *ʿāmm* where others have interpreted it as *khāṣṣ*; instead, he portrays his opponents as dangerously violating a foundational hermeneutical principle, and thus mistaking God's law. Concerning Mālik and al-Shaybānī's stance on seated prayer leaders, al-Ṭaḥāwī writes, "no one may restrict (*yakhuṣṣ*) anything from the Prophet except when it is required by an act of instruction (*tawqīf*) from the Prophet to the people."[740] Similarly, he writes concerning the hide of predatory animals that "no one may exclude anything from what God's Messenger has generalized (*ʿamma*) except in response to that which requires its exclusion: a Qurʾānic verse, a transmitted Sunna or the consensus of the scholars."[741] Al-Ṭaḥāwī thus portrays his opponents as departing from the hermeneutical model established in the introduction to *Aḥkām al-Qurʾān* and as setting themselves up as lawmakers in opposition to the intentions of God and His Prophet.

In the second and far more prevalent type of appeal to *ʿāmm* and *khāṣṣ*, al-Ṭaḥāwī claims that evidence does exist to support a restricted (*khāṣṣ*) reading of an apparently unrestricted (*ʿāmm*) text. Like al-Shāfiʿī, al-Ṭaḥāwī regularly argues that an apparently unrestricted legal rule established in the Qurʾān is in fact shown to be restricted by a Prophetic Sunna.[742] For example, al-Ṭaḥāwī notes that Q 62/Al-Jumʿa:9 ("O you who believe, when proclamation is made for prayer on the day of assembly, hasten to

[739] Al-Ṭaḥāwī, *Mushkil*, 14.331, 8.294-295. Al-Ṭaḥāwī does not name a specific jurist in connection with this second passage.
[740] Al-Ṭaḥāwī, *Mushkil*, 14.331.
[741] Al-Ṭaḥāwī, *Mushkil*, 8.295. Similar statements can be found in *Mushkil*, 10.136, 15.339.
[742] Lowry, *Early Islamic Legal Theory*, 85.

remembrance of God and leave [your] trading") is apparently unrestricted in its wording (*ẓāhir [al-khiṭāb] ʿalā al-ʿumūm*), such that all believers are included within the scope of the verse. However, a Prophetic Sunna clarified that women, slaves, travelers and certain other groups are not required to attend congregational prayer. Therefore, they are not among those addressed in the verse.[743]

For both al-Ṭaḥāwī and al-Shāfiʿī, the *ʿāmm:khāṣṣ* rubric serves as a crucial tool for harmonizing apparently contradictory revealed texts. In claiming that the true scope of reference of one text is revealed by means of another text, they affirm that both texts remain fully legally effective—God has merely chosen to make His intent clear through the interaction of two texts, rather than through a single act of revelation. It is in this sense that Vishanoff is correct in arguing that al-Ṭaḥāwī "employed al-Shāfiʿī's distinction between general and particular texts."[744] Vishanoff rightly places al-Ṭaḥāwī in a scholarly genealogy with al-Shāfiʿī in his treatment of *ʿāmm* and *khāṣṣ*, a genealogy to which we must add al-Ṭaḥāwī's teacher al-Muzanī.

In contrast, the classical Ḥanafī understanding of *ʿāmm* and *khāṣṣ* developed as part of a competing scholarly genealogy originating in the opposition of the proto-Ḥanafī ʿĪsā ibn Abān (d. 221/836) to al-Shāfiʿī's approach to *ʿāmm* and *khāṣṣ*. Where al-Shāfiʿī used the *ʿāmm:khāṣṣ* rubric to preserve the legal effectiveness of both texts in cases of apparent contradiction, Ibn Abān set stringent limits on particularization and instead often resorted to discarding Prophetic *ḥadīth*s in apparent conflict with other revealed texts. He

[743] Al-Ṭaḥāwī, *Aḥkām*, 1.147. For another example of an apparently unrestricted Qurʾānic verse which the Sunna revealed in fact to be restricted, see *Aḥkām*, 1.256, concerning the property on which alms must be paid.
[744] Vishanoff, *Formation of Islamic Hermeneutics*, 214.

was later followed by al-Karkhī (d. 340/952) and al-Jaṣṣāṣ (d. 370/981), although al-Jaṣṣāṣ modified the earlier Ḥanafīs' restrictions on particularization to such an extent that it functioned almost as flexibly as al-Shāfiʿī's model.[745] That al-Ṭaḥāwī followed al-Shāfiʿī in his liberal use of particularization as a harmonization tool, rather than the more restrictive approach of his Ḥanafī predecessor ʿĪsā Ibn Abān, is fully consistent with his role as the first major Ḥanafī *ḥadīth* harmonizer.

While Vishanoff is thus correct in identifying the crucial link between harmonization and the *ʿāmm:khāṣṣ* rubric for both al-Shāfiʿī and al-Ṭaḥāwī, the two jurists differ substantially in other aspects of their approach to *ʿāmm* and *khāṣṣ*. As discussed above, al-Shāfiʿī understands the presumptive unrestricted nature of revealed texts as a natural feature of Arabic, while al-Ṭaḥāwī portrays it as a hermeneutical principle known from the actions of the Companions. Further, al-Shāfiʿī's law-related examples of the *ʿāmm:khāṣṣ* rubric all concern the interaction of multiple texts, almost always a Prophetic Sunna that indicates a restricted meaning for an apparently unrestricted Qurʾānic verse.[746] For al-Shāfiʿī, particularization is one manifestation of the Sunna's role in explaining the Qurʾān.

In contrast, while al-Ṭaḥāwī often invokes the *ʿāmm*:*khāṣṣ* rubric to address Qurʾān-Sunna interactions, he equally envisions particularization between two Qurʾānic texts or two Prophetic *ḥadīth*s.[747] Here, as in all other areas of his hermeneutics, al-Ṭaḥāwī's theory of how revealed texts act upon each other is source-neutral: none of al-Ṭaḥāwī's harmonization techniques distinguish between the functions of Qurʾān and

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[745] Vishanoff, *Formation of Islamic Hermeneutics*, 65, 215-220.
[746] Lowry, *Early Islamic Legal Theory*, 79.
[747] Al-Ṭaḥāwī, *Aḥkām*, 1.65; *Mushkil*, 8.294-295.

Sunna, in keeping with his understanding of the Qurʾān and Sunna as nearly equal and not always entirely ontologically distinct sources.[748] Further, the range of hermeneutical procedures that al-Ṭaḥāwī invokes using the language of *ʿāmm* and *khāṣṣ* is much broader than that envisioned by al-Shāfiʿī, for whom law-related examples of *ʿāmm* and *khāṣṣ* exclusively relate to the interaction between two revealed texts. At different times, al-Ṭaḥāwī argues that an apparently unrestricted text may be known to be restricted through consensus, analogy or the practice of a Companion.[749]

Hints of a Formalist Understanding of ʿĀmm and Khāṣṣ

Among the most crucial developments marking the transition from the formative period of Islamic legal theory to the mature *uṣūl* tradition was a movement toward legal formalism, the claim that language fully encodes meaning.[750] Although the *uṣūl* tradition never committed itself to an exclusively formalist hermeneutic, even the earliest preserved *uṣūl* works from the second half of the 4th/10th century display a concern with establishing the meaning and legal force of certain particles and grammatical forms.[751] The identification of linguistic forms associated with general and particular meaning

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[748] See Chapter One, "Qurʾān and Sunna," pp. 73-85. Although I have not located any passages in which al-Ṭaḥāwī argues that a Qurʾānic verse particularized a Prophetic *ḥadīth*, his hermeneutics as a whole strongly suggests that he would accept it at least as a theoretical possibility.

[749] Al-Ṭaḥāwī, *Aḥkām*, 1.65, 1.78, 1.191, 1.294; *Mushkil*, 5.181, 8.295, 15.339.

[750] See Sherman Jackson, "Fiction and Formalism: Toward a Functional Analysis of *Uṣūl al-fiqh*," in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: Brill, 2002), 191-192 for the argument that mature *uṣūl al-fiqh* is characterized by "classical legal formalism."

[751] See Lowry, *Early Islamic Legal Theory*, 366; Weiss, *Spirit of Islamic Law*, 64; and Paul Powers, "Finding God and Humanity in Language: Islamic Legal Assessments as the Meeting Point of the Divine and Human," in *Islamic Law in Theory*, ed. A. Kevin Reinhart and Robert Gleave (Leiden: Brill, 2014), 207 on the recognition among legal theorists that the law could not always be discovered in practice simply through the words of revelation.

(*ṣiyagh al-ʿumūm wa-l-khuṣūṣ*) represents one of the major areas in which legal theorists sought to correlate meaning to grammatical form.

We have seen above that al-Ṭaḥāwī overwhelmingly portrays the presumption of unrestricted meaning as a hermeneutical principle based on Companion precedent, rather than as a linguistic feature of particular words. Three passages of *Sharḥ mushkil al-āthār*, however, discuss the scope of terms in ways that prefigure the mature *uṣūl* tradition's understanding of *ʿāmm* and *khāṣṣ*. In the first example, al-Ṭaḥāwī analyzes a Qurʾānic verse implying that apes and pigs are the descendants of Jews whom God transfigured into animals as a punishment for their disobedience. The verse is in apparent contradiction with a Prophetic *ḥadīth* stating that transfigured animals do not reproduce. Al-Ṭaḥāwī's unnamed interlocutor argues that the use of the definite (*maʿrifa*) in connection Q 5/al-Māʾida:60 ("He made of them apes (*al-qirada*) and pigs (*al-khanāzīr*)") indicates that the verse is talking about the apes and pigs known in his day—that is, the entire class of apes and pigs. If the verse were discussing a limited set of apes and pigs, it would have used the indefinite (*nakira*).[752]

Al-Ṭaḥāwī's response does not directly engage with his interlocutor's linguistic argument. Instead, he argues that the apparently conflicting texts can be harmonized by positing that God first created apes and pigs (*al-qirada wa-l-khanāzīr*) when He created other creatures, then later transfigured a disobedient Jewish community into apes and pigs (*al-qirada wa-l-khanāzīr*). As indicated by the Prophetic *ḥadīth*, the transfigured animals did not reproduce; the apes and pigs known in al-Ṭaḥāwī's day are the

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[752] Al-Ṭaḥāwī, *Mushkil*, 8.323.

descendants of non-transfigured animals.[753] Although al-Ṭaḥāwī does not comment on his opponent's assertion that the presence of the definite article indicates all apes and pigs, his own use of the definite article in referring both to the apes and pigs present in his own day and to the subset of transfigured animals suggests that he does not accept his interlocutor's identification of definite plural nouns with general reference.

The second example explains the obscure Prophetic *ḥadīth*, "The infidel eats into seven guts, while the believer eats into a single gut." Al-Ṭaḥāwī understands this *ḥadīth* as an observation about the behavior of a single individual, rather than a commentary on believers and infidels in general. He offers three arguments in support of his position. First, we know that some believers eat a great deal, while some infidels eat very little, and so this *ḥadīth* is not an accurate description of reality if construed to refer to all infidels and all believers.[754] Second, more extended versions of the *ḥadīth* clarify that the Prophet was speaking about a certain gluttonous infidel who began to eat more moderately after converting to Islam.[755]

As his final argument, al-Ṭaḥāwī observes that the expression used to refer to the believer and infidel is grammatically definite (*al-makhraj makhraj al-maʿrifa*), indicating that only a single individual was intended. In support he adduces Q 94/Al-Sharḥ:5 ("With the hardship there is ease") as an example of another verse in which a singular definite noun refers to a single instance of the noun.[756] He continues

> What we said above holds true for everything whose expression is definite, unless it contains some indication (*dalāla*) that the intended meaning is more than one

[753] Al-Ṭaḥāwī, *Mushkil*, 8.324.
[754] Al-Ṭaḥāwī, *Mushkil*, 5.248-254.
[755] Al-Ṭaḥāwī, *Mushkil*, 5.254-257.
[756] Al-Ṭaḥāwī, *Mushkil*, 5.257-258.

> individual. In that case it is diverted to that [intent], and its value (*ḥukm*) is that of the indefinite (*nakira*). An example of this is Q 103/al-ʿAṣr:1-3 ("By the afternoon, man (*al-insān*) is indeed in a state of loss – Though that will not be the case with those who believe and do good works"). It is known by this that the class (*al-jins*), not the individual (*al-insān al-wāḥid*), was intended.[757]

Al-Ṭaḥāwī argues here that, as a general rule, a singular definite noun should be understood as referring to a single individual. However, the presence of the relative pronoun "those" (*alladhīna*) within the same verse referring back to *al-insān* makes it clear that the intent here is the entire class of humans. At the same time, he intimates in his passing reference to the "value of the indefinite" (*ḥukm al-nakira*) that plural indefinite nouns refer generally to all members of their class.

This chapter thus contains two prescriptive interpretive rules based on the grammatical properties of nouns, while the previous example implied al-Ṭaḥāwī's rejection of another grammar-based interpretive rule suggested by his interlocutor. Although al-Ṭaḥāwī does not employ any terms derived from the roots ʿ-m-m or kh-ṣ-ṣ when stating these interpretive rules, his discussions of the relationship between the use of the definite article and the scope of reference of a noun clearly map onto mature *uṣūl* debates identifying the linguistic forms that indicate general and restricted meanings (*ṣiyagh al-ʿumūm wa-l-khuṣūṣ*).

In contrast, in the third and final example al-Ṭaḥāwī does employ a derivative of the root ʿ-m-m when discussing the relationship between the definite article and the scope of reference of a noun. In this passage al-Ṭaḥāwī rejects Saʿīd ibn al-Musayyab's claim that *hiba*, a form of marriage in which a woman offers herself to a man, was permissible only for the Prophet. As evidence, he examines the language of a Companion *ḥadīth* in

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[757] Al-Ṭaḥāwī, *Mushkil*, 5.258.

which ʿĀʾisha exclaims, "doesn't a woman feel ashamed to present herself to a man without a dowry?" Al-Ṭaḥāwī argues that

> [ʿĀʾisha] did not intend that man to be the Prophet, but rather included (*ʿammat bihi*) all men (*al-rijāl*). That is because her expression was grammatically indefinite (*kharaja min-hā makhraj al-nakira*), and the indefinite includes everyone in its scope (*al-nakira taʿammu al-nās jamīʿan*).[758]

Here al-Ṭaḥāwī reaffirms the prescriptive interpretive rule established in the previous example: indefinite nouns include all members of their class. He states this rule using the verb *ʿamma* (to include, comprise). This usage appears non-technical, in contrast to al-Ṭaḥāwī's fairly consistent use of *ʿāmm* and *khāṣṣ* as technical terms referring to the meaning, rather than the grammatical form, of a revealed text, as discussed in the previous section of this chapter.

Nonetheless, the appearance of these linguistic discussions in *Sharḥ mushkil al-āthār* represents a significant departure from al-Shāfiʿī and al-Ṭaḥāwī's teacher al-Muzanī, who did not employ technical terminology from the field of Arabic grammar in their discussions of hermeneutics. Further, these chapters may reveal an important stage in the transition between the formative understanding of *ʿāmm* and *khāṣṣ* as a hermeneutical procedure in which texts act upon each other, and the mature *uṣūl* conception of *ʿāmm* and *khāṣṣ* as linguistic properties of words. Given that al-Ṭaḥāwī introduces these grammar-based interpretive principles without using the technical terms *ʿāmm* and *khāṣṣ*, and further that his own conception of *ʿāmm* and *khāṣṣ* is not based on linguistic form, it seems plausible that the linguistic forms theorists label *ʿāmm* and *khāṣṣ* were in fact originally debated independently of the *ʿāmm*:*khāṣṣ* umbrella, and only later

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[758] Al-Ṭaḥāwī, *Mushkil*, 15.340-341.

subsumed under it. That is, al-Ṭaḥāwī may represent a period in which jurists were debating implications of linguistic form for determining meaning, but the rules they proposed were not yet firmly associated with the grammatical language of *ʿāmm* and *khāṣṣ*.

Further, in affirming the unrestrictedness of indefinite nouns, al-Ṭaḥāwī is in agreement with the later *uṣūl* tradition. However, he opposes later jurists both in his rejection of the claim that definite plural nouns refer to all members of their class and in his own assertion that definite singular nouns refer to a single individual.[759] The explanation for these discrepancies may lie in the diverging goals of al-Ṭaḥāwī and later theorists. For legal theorists, the assertion that many linguistic forms indicate generality in the absence of other evidence functions to maximize the legal effects of revealed texts. Further, *uṣūl* texts are more interested in showing that language has a systematic structure than in individual problems of legal interpretation. In contrast, al-Ṭaḥāwī's task in *Sharḥ mushkil al-āthār* is the harmonization of specific texts, which he often achieves by restricting the meaning of a problematic term to a single individual. For his purposes, it is not useful a priori to assign unrestricted meaning to the maximum number of classes of nouns, because his harmonization efforts require considerable interpretive flexibility.

Other Evidence for Legal Formalism: Amr and Nahy (Command and Prohibition)

Al-Ṭaḥāwī's argument for the priority of unrestricted meaning concludes his presentation of a hermeneutical framework for jurists in the introduction to *Aḥkām al-Qurʾān*. In what remains of this chapter, I will further address two issues raised by my

[759] Kamali, *Principles of Islamic Jurisprudence*, 146; Hallaq, *History of Islamic Legal Theories*, 45.

discussion above: 1) evidence for legal formalism in al-Ṭaḥāwī's thought beyond the examples considered already concerning the scope of nouns; and 2) the relationship between equivocal (*mutashābih*) texts, Prophetic *tawqīf* (instruction) and *ijtihād* (legal interpretation).

I observed above that a movement toward legal formalism was one of the most crucial developments marking the transition between formative and post-formative legal theory. Authors of mature *uṣūl* works dedicate considerable space to determining the relationship between different types of linguistic forms (*ṣiyagh*, sing. *ṣīgha*) and meaning. Above, we considered evidence for al-Ṭaḥāwī's early movement toward a linguistic understanding of *ʿāmm* and *khāṣṣ*, a major topic of formalist debate in later theory works. In addition, legal theorists devoted particular attention to the imperative as the sole or most characteristic grammatical form encoding the divine commands and prohibitions that constitute Islamic law. Because of the importance of command and prohibition in later *uṣūl* works, I examine al-Ṭaḥāwī's approach to this topic to determine the extent to which he is moving toward the formalist conception characteristic of later theorists.

Already in al-Jaṣṣāṣ's *Fuṣūl* we find an extended theoretical consideration of the imperative. There is a useful ambiguity for jurists in the Arabic terms related to command and prohibition; *amr* can mean both command and imperative, while *nahy* means both prohibition and negative imperative. Like later theorists, al-Jaṣṣāṣ addresses a variety of issues arising from the identification of God's commands with the imperative form, including the range of observed meanings of the imperative; its literal meaning; whether the term *amr* can properly be applied to an inferior speaking to a superior; whether a

command must be performed immediately or may be delayed; whether the commanded action must be performed repeatedly; what is required when a command suggests a choice of actions; whether a repeated command must be performed repeatedly; whether non-believers are legally responsible for performing commanded actions; and whether prohibited actions may still be legally effective.[760]

In contrast, while jurists of the formative period understood scriptural commands and prohibitions to be the foundation of the law, they were concerned with the meaning rather than the grammatical form of God's commands. In the *Risāla*, al-Shāfiʿī sets out a two-part theory of *nahy* that distinguishes between broad prohibitions which may have narrow exceptions indicated elsewhere in revelation, and more limited prohibitions establishing restrictions on otherwise permitted activities.[761] The discussion of *nahy* is framed as a problem specific to interpreting *ḥadīth*; Lowry argues that al-Shāfiʿī's major concern is harmonizing apparently conflicting divine commands.[762] His student al-Muzanī offers a considerably more complex categorization of both *amr* and *nahy* in his *Kitāb al-Amr wa-l-nahy*. In addition to arguing that commands and prohibitions may be

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[760] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1.280-348. For the full range of topics discussed under the heading of *amr* in mature *uṣūl* works, see Weiss, *Search for God's Law*, 322-381; Zysow, *Economy of Certainty*, 60-75; Kamali, *Principles of Islamic Jurisprudence*, 187-201; Hallaq, *History of Islamic Legal Theories*, 47-58; and Ahmad, *Structural Interrelations of Theory and Practice*, 108-114. Bedir ("Early Development of Ḥanafī *Uṣūl al-Fiqh*," 53-102) discusses at length the definition of *amr*, its legal consequences, and the question of repeated performance as addressed in the earliest Ḥanafī *uṣūl al-fiqh* works.

[761] Lowry, "Reception of al-Shāfiʿī's Concept of *Amr* and *Nahy* in the Thought of His Student al-Muzanī," 132-140; Lowry, *Early Islamic Legal Theory*, 134-142. Al-Shāfiʿī does not offer a theory of *amr*. Jackson concurs that al-Shāfiʿī is not formalist in his treatment of command, prohibition and other topics, and further makes the important argument that formalism devalues the linguistic insights of native Arabic speakers, a move at odds with al-Shāfiʿī's defense of the special interpretive powers of the Arabs at a time when Islam was losing its exclusively Arab character ("Fiction and Formalism," 186-190).

[762] Lowry, "Reception of al-Shāfiʿī's Concept of *Amr* and *Nahy* in the Thought of His Student al-Muzanī," 133.

restricted or unrestricted in both Qurʾān and Sunna, he also notes that commands may indicate mere permission, while prohibitions may signify discouragement.[763]

Although al-Ṭaḥāwī was the student of al-Muzanī before he affiliated himself with the Ḥanafīs, he neither addresses *amr* and *nahy* in the theoretical introductions to his extant works nor offers anything approaching the complex interaction of sources and hermeneutical rubrics envisioned by al-Muzanī. Where al-Ṭaḥāwī does offer brief theoretical statements about *amr* and *nahy* in the course of discussing discrete legal questions, his ideas anticipate the treatment of *amr* and *nahy* in mature legal theory much more than they resemble those of his predecessors al-Muzanī or al-Shāfiʿī. While I will argue that al-Ṭaḥāwī is not committed to a formalist understanding of *amr* and *nahy* in which meaning is determined by grammar, his discussion suggests that formalist ideas were in circulation in his time.

Perhaps the most important difference between al-Muzanī and al-Ṭaḥāwī is that al-Ṭaḥāwī explicitly identifies commands and prohibitions with the grammatical imperative. In two chapters of *Sharḥ mushkil al-āthār* and one chapter of *Aḥkām al-Qurʾān*, he argues that a dispute over the meaning of a Qurʾānic verse or a *ḥadīth* hinges on whether a certain verb is understood as a divine command or a simple declaration, a distinction which is known through the use of the jussive (*majzūm*) to indicate an imperative or the indicative (*marfūʿ*) to show predication.[764] The apparent meaning (*ẓāhir*) of a jussive verb, we learn, is a command, an argument al-Ṭaḥāwī supports by citing two Qurʾānic verses employing the imperative: Q 96/al-ʿAlaq:19 ("Do not obey

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[763] Lowry, "Reception of al-Shāfiʿī's Concept of *Amr* and *Nahy* in the Thought of His Student al-Muzanī," 140-146.

[764] Al-Ṭaḥāwī, *Mushkil*, 4.97-98, 4.161; *Aḥkām*, 1.118.

him (*lā tuṭiʿhu*), but prostrate yourself and draw near") and Q 76/al-Insāna:24 ("Do not obey (*lā tuṭiʿ*) any ungrateful one or any sinner among them").[765]

Interestingly, both verses in fact concern negative imperatives, or prohibitions, and yet al-Ṭaḥāwī labels them *amr*, a term generally translated as command. Likewise, the disputed *ḥadīth*s and Qurʾānic verse in the chapters under discussion also concern negative imperatives, which al-Ṭaḥāwī again labels *amr*. Al-Ṭaḥāwī's consistent use of the term *amr* to indicate imperatives and negative imperatives as well as commands and prohibitions in these passages suggests that he is using the term to designate the grammatical category of jussive verbs, rather than simply referring to the functions of commanding and prohibiting. That is, for al-Ṭaḥāwī, meaning has become linked to grammatical form.

However, while al-Ṭaḥāwī may conceive of divine commands and prohibitions in terms of their grammatical form, grammar does not provide sufficient information to determine meaning. Like al-Muzanī, al-Ṭaḥāwī recognizes that *amr* does not always indicate absolute obligation. In *Aḥkām al-Qurʾān*, al-Ṭaḥāwī presents a tripartite typology of *amr*, observing that God's commands may indicate obligation (*ījāb*), the recommendation and urging of pious acts (*al-nadb wa-l-ḥaḍḍ ʿalā al-khayr*) or the permissibility of something that had previously been prohibited (*ibāḥat mā qad kāna ḥaẓarahu qabla dhālika*). Each of the three possibilities is followed by two Qurʾānic proof texts illustrating the relevant use of the imperative.[766] In other chapters, al-Ṭaḥāwī

[765] Al-Ṭaḥāwī, *Mushkil*, 4.97.
[766] To illustrate the imperative meaning obligation, al-Ṭaḥāwī adduces Q 5/al-Māʾida:92 ("Obey (*aṭīʿū*) God and obey (*aṭīʿū*) the messenger") and Q 2:110 ("Perform prayer (*aqīmū al-ṣalāt*) and pay alms (*ātū al-zakāt*)"); for the imperative indicating the recommendation of pious acts, he adduces Q 24/al-Nūr:33

discusses an additional possible meaning of the imperative: the threat whose apparent meaning (*ẓāhir*) is a command (*amr*) and whose true meaning (*bāṭin*) is a prohibition (*nahy*).[767] Similarly, he analyzes Q 17/al-Isrāʾ:64 ("And startle with your voice any of them you can") by stating that "its linguistic form (*lafẓ*) is the form of a command, and its true meaning is a prohibition and a threat."[768] Al-Ṭaḥāwī's use of the term *lafẓ* (linguistic form) in this passage anticipates later theorists' emphasis on the *lafẓ* or *ṣīgha* (wording) of particular grammatical forms and provides further evidence that al-Ṭaḥāwī understands *amr* to be a grammatical, and not a purely semantic, phenomenon.[769]

Like al-Ṭaḥāwī, theorists of the mature *uṣūl* tradition would discuss a range of possible meanings of the imperative. In addition to the four possibilities envisioned by al-Ṭaḥāwī in his hermeneutical works, al-Jaṣṣāṣ argues that the imperative can express guidance (*irshād*) or a rebuke and assertion of powerlessness (*al-taqrīʿ wa-l-taʿjīz*).[770] Unlike al-Ṭaḥāwī, however, jurists of the mature *uṣūl* tradition were concerned with establishing a baseline meaning of *amr* in a way that would allow them confidently to

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("Such of those whom your right hands possess who seek the document, write it for them (*kātibūhum*) if you know some good in them") and Q 24/al-Nūr:32 ("Marry off (*ankiḥū*) the unmarried among you and the righteous among your male and female slaves"); for the imperative indicating permission for previously prohibited acts, he adduces Q 62/al-Jumʿa:10 ("And when the prayer is ended, disperse (*intashirū*) in the land and seek (*abtaghū*) some of God's bounty") and Q 5/al-Māʾida:2 ("When you leave the pilgrim state, then hunt (*aṣṭādū*)") (*Aḥkām*, 1.184-185).

[767] Al-Ṭaḥāwī, *Maʿānī*, 4.320; *Mushkil*, 11.218. Al-Ṭaḥāwī employs this formulation to explain Qurʾānic statements such as "do what you wish" (e.g., Q 41/Fuṣṣilat:40).

[768] Al-Ṭaḥāwī, *Mushkil*, 4.198. See also *Mushkil*, 13.71-72 on a *ḥadīth* whose apparent meaning is a command and whose true meaning is a rebuke.

[769] In many passages, it is difficult to tell whether al-Ṭaḥāwī uses *amr* to mean a command or an imperative. However, the fact that he very clearly links *amr* to jussive verbs in some passages indicates that it is reasonable to think that his discussion of *ṣīgha* concerns *amr* as an imperative, and not merely a command. Further, as argued above, his use of the term *amr* to refer to both imperatives and negative imperatives indicates that he has a grammatical function in mind.

[770] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1.280-281. The latter type explains God's use of the imperative to express the inimitability of the Qurʾān in Q 10/Yūnis:38 ("Then bring a *sūra* like it; and call on those you can apart from God, if you are truthful"). Al-Ṭaḥāwī also mentions *amr* as guidance (*irshād*) in the introduction to his contract formulary (al-Ṭaḥāwī, *Function of Documents in Islamic Law*, 1).

derive law from scripture. Al-Jaṣṣāṣ, citing al-Karkhī, argues that the literal meaning of *amr* is obligation, and other meanings are figurative (*majāz*). His argument is based on linguistic and rational considerations: every language must have a linguistic form (*ṣīgha*) originally coined for designating obligation, just as it must have forms to designate predication (*khabar*), interrogatives (*istikhbār*), and generality (*ʿumūm*).[771] His claim that the only literal meaning of *amr* is obligation would become the majority position of the Ḥanafī school. Other jurists argued that recommendation or permission was the primary meaning of *amr*, that *amr* had multiple primary meanings, or that it was not possible to know the primary meaning of *amr*, a position labeled *waqf* (hesitation).[772]

Like later theorists who held that it is not possible to know the primary meaning of *amr*, al-Ṭaḥāwī does not indicate a literal meaning for the imperative in his extant works. However, where jurists of the mature *uṣūl* tradition arrived at *waqf* as the result of theological, pragmatic or linguistic considerations that prevented them from assigning a primary meaning,[773] al-Ṭaḥāwī does not attempt to establish one. The question does not appear to be pressing for him in the way it would be for later jurists, suggesting that for al-Ṭaḥāwī, the association of the imperative with a command had not yet resulted in the formalist conviction that grammar should be fully determinative of meaning.

Al-Ṭaḥāwī does appear to be familiar with the concept of exclusively associating *amr* with obligation, however; in several passages he feels it necessary to state that *amr* can have meanings other than obligation. In these passages, as in those discussed above,

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[771] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1.281.
[772] Zysow, *Economy of Certainty*, 63-64.
[773] Zysow provides an excellent overview of the various paths by which different jurists and theologians arrived at the *waqf* position (*Economy of Certainty,* 60-74).

al-Ṭaḥāwī's evidence consists solely of Qurʾānic verses which he holds self-evidently use *amr* to express a meaning other than obligation.[774] However, it is not clear whether he is countering other jurists who were already arguing in his time that the primary meaning of *amr* is obligation, or whether he is merely addressing general perceptions about the use of *amr* that do not yet rise to the level of a clearly articulated legal formalism. In either case, it is clear that al-Ṭaḥāwī was not constrained by the formalist assumption that grammar should or could be fully determinative of meaning, an assumption that underlies discussions of the meaning of *amr* in mature *uṣūl* works, whether jurists were able to arrive at a primary meaning for the term or not.

Beyond considering the range of possible meanings of the grammatical *amr*, al-Ṭaḥāwī does not address any of the other issues concerning *amr* that were so pressing for later theorists.[775] The only related theoretical questions he treats concern the relationship between commands, legal responsibility and the consequences of actions: he argues that it is permitted to disobey God's command if obeying will lead to doing something prohibited, and that, while God's prohibitions are absolute, His commands are dependent on the capacity of legal actors to obey.[776] These questions concern theology rather than the derivation of law from language.[777]

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[774] E.g., al-Ṭaḥāwī, *Aḥkām*, 1.152-153, 1.181; *Mushkil*, 6.206.
[775] See p. 243 above for the topics covered in the chapter on *amr* in al-Jaṣṣāṣ's *al-Fuṣūl.*
[776] Al-Ṭaḥāwī, *Mushkil*, 2.25-26, 13.247. He also argues in *Aḥkām*, 2.53-54 that the revelation of a prohibition does not imply that the thing prohibited was previously permitted, but this is an argument about the nature of revelation, rather than about prohibitions themselves.
[777] Al-Ṭaḥāwī neither offers a typology of *nahy* nor explicitly states as a general principle that not all uses of the *nahy* mean absolute prohibition. He does, however, argue in a number of chapters that a particular *nahy* from the Prophet was not meant as a total prohibition. Examples include *ḥadīth*s disapproving of going to a mosque smelling of onions or garlic, having sexual intercourse with a pregnant woman, selling dogs, giving unequal gifts to one's children, or breeding donkeys with horses (*Maʿānī*, 3.271, 4.89, 4.238; *Mushkil*, 9.284-286, 12.77-83). These chapters bear some resemblance to al-Shāfiʿī's second category of

To some extent, al-Ṭaḥāwī's disinterest in establishing formalist rules for the legal effects of the imperative must be understood as a consequence of his orientation toward practical hermeneutics. Like al-Shāfiʿī, al-Ṭaḥāwī is primarily concerned with demonstrating that texts of revelation, including those containing commands and prohibitions, are not in conflict with each other. While formalist discussions of grammatical forms and particles in legal theory texts make a strong theological claim that God's will is knowable through the medium of language, such rules are likely to be less useful for a jurist engaged in removing apparent contradictions from texts, an enterprise where considerable interpretive flexibility is called for. The theory construction of the legal theorists has different requirements than practical exercises in interpretation, even if exercises such as those of al-Ṭaḥāwī reveal an underlying theory. It is thus important to note that in every case cited above in which al-Ṭaḥāwī discusses the possible meanings of the imperative, he does so not in order to establish a primary meaning, as would later jurists, but in order to claim interpretive flexibility. Al-Ṭaḥāwī argues that the imperative has more meanings than simply obligation, and so his interpretation of the text is not in fact constrained by grammar.

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nahy (narrow prohibitions on generally permissible activities) in that they tend to concern matters of etiquette. Al-Shāfiʿī views the contravention of such prohibitions as a lesser transgression than violating the first category of prohibition, but still a sin (see Lowry, *Early Islamic Legal Theory*, 136). In contrast, al-Ṭaḥāwī appears to categorize such prohibitions as forming part of the body of Prophetic statements that do not constitute revelation, a topic discussed in Chapter One, "Qurʾān and Sunna." Concerning the selling of dogs, he suggests that the Prophet's prohibition may not mean that this action is prohibited in the way that things are prohibited in the Sharīʿa (*ḥarām ka-l-ashyāʾ al-muḥrama bi-l-sharīʿa*), suggesting that not all of the Prophet's prohibitions fall within the scope of religious law (*Mushkil*, 12.77). In another chapter, he argues that the Prophet's *nahy* on giving unequal gifts to one's children was merely by way of advice (*mashwara*). Thus, al-Ṭaḥāwī appears to classify this form of *nahy* as falling outside the scope of revelation, where al-Shāfiʿī views it as fully within religious law.

Ijtihād (Legal Reasoning)

In the preceding sections we have been concerned with unrestricted and restricted meaning (*ʿāmm*:*khāṣṣ*) as well as apparent and non-apparent meaning (*ẓāhir*:*bāṭin*), two rubrics which the introduction to *Aḥkām al-Qurʾān* portrays as crucial for understanding equivocal (*mutashābih*) texts. As mentioned previously, however, a chapter of *Sharḥ mushkil al-āthār* also explicitly connects the interpretation of equivocal texts to a third hermeneutical procedure: *ijtihād al-raʾy* (legal reasoning). In this chapter, al-Ṭaḥāwī is asked by an unnamed interlocutor whether the existence of *mutashābih* texts prevents judges from ruling on the matters contained in them. Al-Ṭaḥāwī replies:

> Our answer is that it is incumbent upon judges to engage in legal reasoning (*ijtihād raʾyihim*) and then to rule based on the results of that reasoning, as God's Messenger commanded them.

In illustration of this command, al-Ṭaḥāwī adduces a Prophetic *ḥadīth* stating that judges receive two rewards if they reach the objectively correct answer (*ṣawāb*) through their *ijtihād*, but still receive one reward if they engage in legal reasoning but fail to reach the objectively correct answer. Al-Ṭaḥāwī continues:

> This indicates that judges have a duty to use legal reasoning in their rulings, and that legal reasoning might reach either an objectively correct answer (*ṣawāb*) or an objectively incorrect answer (*khaṭaʾ*). They are not charged (*yukallafū*) with reaching an objectively correct answer, but are rather charged with engaging in legal reasoning.[778]

The effect of this discussion is to draw a direct connection between the role of jurists and God's division of revelation into the equivocal and unequivocal. In addition, it limits the scope of a jurist's legal reasoning to a subset of revealed texts—those that are equivocal.

[778] Al-Ṭaḥāwī, *Mushkil*, 2.224.

Al-Ṭaḥāwī also addresses *ijtihād* in a number of other passages of *Sharḥ mushkil al-āthār* and *Sharḥ maʿānī al-āthār*, albeit without using the language of *muḥkam* and *mutashābih*. Instead, he frequently sets up a dichotomy between *ijtihād* and *tawqīf* (instruction). This term, which we have already encountered in Chapter Two, "Companion and Successor *Ḥadīth*s," is closely related to the *muḥkam*:*mutashābih* dichotomy. When God expresses His intention fully in a revealed text, it is *muḥkam*; all other revealed texts are *mutashābih*. *Mutashābih* texts may then be further subdivided into two categories: those in which God's intentions can only be known through a subsequent *tawqīf*, and those concerning which jurists may exercise their *ijtihād*. As we saw above, al-Ṭaḥāwī holds that an occurrence of *tawqīf* may be known or inferred from a variety of sources, including a Qurʾānic verse, a Prophetic *ḥadīth*, scholarly consensus, scholarly practice, or the opinion of a Companion or Successor on matters where *ijtihād* would be inappropriate.

Al-Ṭaḥāwī argues that *ijtihād* is permissible not only in cases where no *tawqīf* exists,[779] but also when an individual jurist is simply unaware of its existence, usually because he does not know of a certain Prophetic *ḥadīth*.[780] He emphasizes, however, that *tawqīf* is superior to *ijtihād*, and that the results of *ijtihād* must be abandoned if its practitioner subsequently learns of a relevant instance of *tawqīf*.[781] While *muḥkam* and *tawqīf* are closely related ideas, they are also distinct in an important way. As we saw in

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[779] Al-Ṭaḥāwī, *Maʿānī*, 3.237.

[780] Al-Ṭaḥāwī, *Mushkil*, 10.278, 8.266. *Mushkil* 13.58 describes the same situation without using the term *tawqīf*. See also *Mushkil*, 9.209 for the dichotomy between instruction (in this case using the active Form I verb, *waqafa ʿalā*) and *ijtihād*.

[781] Al-Ṭaḥāwī holds up the examples of Companions engaging in *ijtihād* before subsequently learning of a relevant *tawqīf* as evidence for the general permissibility of *ijtihād*, in keeping with his tendency to look to the Companions as the model for later jurists.

the first section of this chapter, al-Ṭaḥāwī understands *muḥkam* as a description of God's use of language, and whether or not that language conveys God's intent. In contrast, *tawqīf* refers merely to the act of instruction—that is, to the existence of revelation concerning a certain matter—without making any claims about language, signification, or intent. In addition, there is an important structural difference between *muḥkam* and *tawqīf*: *muḥkam* implies a single text, while *tawqīf* requires one text (or other form of revelational authority) to act upon another.

Despite these differences, al-Ṭaḥāwī's division of Qurʾānic verses and Prophetic *ḥadīth*s into *muḥkam* texts whose meaning God has made clear and *mutashābih* texts which must be interpreted through legal reasoning, is echoed by his two-tiered system of authority for Prophetic *ḥadīths*, post-Prophetic *ḥadīths*, and consensus based upon whether he holds them to represent revelatory instruction or juristic legal reasoning. Together, these two dichotomies form a binary structure of the law that cuts across traditional categories of legal sources. At its heart, al-Ṭaḥāwī's binary vision of the law is concerned with defining the role of jurists and delimiting the permissible scope of legal reasoning by claiming that some areas of the law and texts of revelation simply are not subject to juristic reasoning.

In all of his discussions of *ijtihād*, al-Ṭaḥāwī consistently emphasizes the same ideas that we have already encountered in the passage from *al-Mukhtaṣar* analyzed above concerning judges' use of *ijtihād*. There, he asserted both that there is an objectively correct answer to every legal question, and that jurists' *ijtihād* is praiseworthy regardless

of whether they reach that objectively correct answer.[782] Versions of this argument appear in every passage in which al-Ṭaḥāwī addresses *ijtihād*, suggesting that it represents an important polemical concern for him.[783] Indeed, this dispute gives rise to one of the very few occasions on which al-Ṭaḥāwī directly names an opponent on a question of legal theory. After stating his own theory of *ijtihād*, al-Ṭaḥāwī writes:

> Others have exceeded the proper bounds and claimed that anyone who possesses the tools of *ijtihād* and rules according to them will reach the truth that would have been stated by the Qurʾān, were there a revelation on this matter. The proponents of this argument are refuted by undeniable evidence. One of those who went too far in this was Ibrāhīm ibn Ismāʿīl ibn ʿUlayya.

Ibn ʿUlayya (d. 218/834) supports a strong version of juristic infallibilism—the idea that every mujtahid is correct (*kull mujtahid muṣīb*).[784] In Ibn ʿUlayya's view, this principle means that every jurist will reach the objectively correct answer. Conversely, advocates of the strongest versions of juristic fallibilism held that jurists are not rewarded for or justified in undertaking *ijtihād* when that *ijtihād* does not reach the objectively correct answer. In his more moderate claim that an objectively correct answer exists, but the

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[782] Questions concerning who is authorized to undertake *ijtihād* are almost entirely absent from al-Ṭaḥāwī's hermeneutical works; in two passages of *Sharḥ mushkil al-āthār*, he mentions that *ijtihād* is always praiseworthy when undertaken by those who possess its tools (*ālāt*) without further specifying the nature of those tools (*Mushkil*, 9.207, 13.40). In *Sharḥ maʿānī al-āthār* he asserts that "*ijtihād* is permissible to everyone" (*al-ijtihād lil-nās jamīʿan*), although he would presumably qualify this statement by limiting it to those possessing the tools mentioned above (*Maʿānī*, 3.237).

Likewise, al-Ṭaḥāwī does not know the division of jurists into the ranks of *mujtahid*s and *muqallid*s which function to maintain school authority in the later *madhhab* tradition and to project that authority back onto earlier centuries. For al-Ṭaḥāwī, anyone may perform *ijtihād* as long as he possesses the correct tools, and his understanding of himself as a follower of Abū Ḥanīfa does not entail that he may not oppose Abū Ḥanīfa and all other Ḥanafīs on questions where his *ijtihād* leads him to a different conclusion. Al-Ṭaḥāwī would not recognize himself in later Ḥanafī biographers' assignment of him to the third rank of *mujtahid*s, qualified to exercise *ijtihād* in questions not addressed by the Ḥanafī founders (e.g., Qinālīzādah, *Ṭabaqāt al-Ḥanafīya*, 1.148-149). Like the jurists of the 2nd/8th century, al-Ṭaḥāwī understands *taqlīd* as the imitation of the Companions only.

[783] Al-Ṭaḥāwī, *Mushkil*, 8.266, 8.273, 9.206, 9.210, 10.278, 13.40; *Maʿānī*, 3.237, 4.270.

[784] Al-Ṭaḥāwī, *Mushkil*, 13.40. Ibrāhīm ibn ʿUlayya was a Baṣran jurist and theologian who settled in Egypt, where his ideas were influential. On the debates between Ibn ʿUlayya and al-Shāfiʿī, see El Shamsy, *Canonization of Islamic Law*, 55-57.

jurist is not tasked with finding it, al-Ṭaḥāwī upholds a doctrine associated with both al-Shāfiʿī and early and later Ḥanafīs.[785]

Surveying the discussions of *ijtihād* that appear in many chapters across al-Ṭaḥāwī's hermeneutical works, we may observe that they fall into two categories. In one group of chapters, a Prophetic *ḥadīth* bearing some connection to the concept of legal reasoning leads al-Ṭaḥāwī to justify the practice of *ijtihād*. His discussion of *ijtihād* in response to the Prophetic *ḥadīth* about *muḥkam* and *mutashābih*, already discussed above, is one example of this type of chapter.[786] A similar discussion appears in response to a Prophetic *ḥadīth* stating that judges who judge based on ignorance will go to hell. An unnamed interlocutor suggests that this *ḥadīth* refutes the validity of *ijtihād*, but al-Ṭaḥāwī responds that humans are not charged with more than they can achieve (*lam yukallifnā mā lā nuṭīq*), and it is not possible for humans to be certain of achieving an objectively correct answer through *ijtihād*. Therefore, this *ḥadīth* does not threaten hellfire for judges who employ *ijtihād* appropriately but fail to reach the objectively correct answer.[787] In the course of refuting his interlocutor, al-Ṭaḥāwī once again reiterates the major points of his theory of *ijtihād* already encountered in the previous example.

In contrast, in the second type of chapter on *ijtihād* al-Ṭaḥāwī asserts its praiseworthiness in order to account for the actions of one or more Companions. Two such chapters concern occasions on which Companion committed violence in apparent direct violation of a Prophetic *ḥadīth*. Al-Ṭaḥāwī does not argue that no rule existed on

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[785] On fallibilism and infallibilism in *ijtihād*, see Zysow, *Economy of Certainty*, 258-272.
[786] Al-Ṭaḥāwī, *Mushkil*, 2.221-225.
[787] Al-Ṭaḥāwī*, Mushkil*, 9.209. For more examples of this type, see *Mushkil*, 9.199-206, 13.37-41.

the matter, but rather that the Companions understood themselves to be employing an appropriate form of *ijtihād*. Their actions should therefore be considered praiseworthy, even though they were in fact in error.[788] In the first such chapter, the Companion Usāma ibn Zayd kills an infidel combatant despite the man's profession of the *shahāda*, on the grounds that his last-minute conversion to Islam does not lift the punishment already due to him. The Prophet clarifies that Usāma was incorrect in his legal reasoning; however, al-Ṭaḥāwī notes, Usāma was permitted to use his *raʾy* on this matter, and therefore the Prophet did not blame him for the unjust killing.[789] In the second chapter, al-Ṭaḥāwī appeals to *ijtihād* in order to reconcile the intra-Muslim violence of the Battle of the Camel with a Prophetic *ḥadīth* stating that whenever one believer takes up arms against another, both will be condemned to Hell.[790] In a related example, al-Ṭaḥāwī argues that the actions of Abū Bakr and ʿUmar in a certain Companion *ḥadīth* should not be taken as binding upon later scholars, because they were merely employing *ijtihād*. In the absence of a confirmatory *tawqīf*, their *ijtihād* is no more binding than that of anyone else, and so al-Ṭaḥāwī feels himself justified in reaching a different conclusion.[791]

This second category of chapter on *ijtihād* represents a variation on al-Ṭaḥāwī's treatment of the Prophet's *ijtihād*, analyzed at length in Chapter One, "Qurʾān and Sunna."[792] His discussions of the *ijtihād* of both the Prophet and his Companions serve two functions within his works: first, to account for otherwise inexplicable behavior (readers will recall the Prophet's prohibition on pollinating date palms, a predictably ill-

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[788] Al-Ṭaḥāwī, *Mushkil*, 8.262-267.
[789] Al-Ṭaḥāwī, *Mushkil*, 8.262-267.
[790] Al-Ṭaḥāwī, *Mushkil*, 10.275-280.
[791] Al-Ṭaḥāwī, *Maʿānī*, 3.337.
[792] E.g., al-Ṭaḥāwī, *Maʿānī*, 4.270.

advised order which he later excused by observing that he is no farmer—al-Ṭaḥāwī explains this episode as an example of the Prophet's permissible but ultimately unsuccessful use of *ijtihād*);[793] and second, to deny that a certain action constitutes a legally binding example.[794] In the latter case, appeals to *ijtihād* effectively serve as a mechanism for harmonizing a Prophetic or Companion *ḥadīth* with another revealed source or with al-Ṭaḥāwī's own understanding of the law. Although al-Ṭaḥāwī does state more than once that *ijtihād* is employed in cases where nothing is found in the Qurʾān, Sunna or consensus,[795] it is notable that none of his examples of *ijtihād* are particularly concerned with filling legal gaps.[796] Instead, his appeals to *ijtihād* serve a primarily harmonizing function.

Raʾy, Istikhrāj and Istinbāṭ (Legal Reasoning; Derivation)

The remarks above all pertain to passages in which al-Ṭaḥāwī explicitly discusses *ijtihād* or *ijtihād al-raʾy*. I now turn to some of the more important terms and techniques which fall under the umbrella of al-Ṭaḥāwī's concept of *ijtihād*. *Raʾy*, *istikhrāj* and *istinbāṭ* are three of al-Ṭaḥāwī's most common terms for legal reasoning. In the discussion of post-Prophetic reports in Chapter Two, "Companion and Successor *Ḥadīth*s," we encountered many examples of an argument that al-Ṭaḥāwī relies upon to expand the corpus of texts for which he may claim Prophetic authority: a certain

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[793] Al-Ṭaḥāwī, *Mushkil*, 4.423-425.
[794] That al-Ṭaḥāwī considers it necessary to deny the binding authority of Companion *ijtihād* in the same way he denies the binding authority of Prophetic *ijtihād* is testament to the importance of the Companions within his hermeneutics.
[795] Al-Ṭaḥāwī, *Mushkil*, 9.210, 13.40; *Maʿānī*, 3.237.
[796] Modern overviews of *ijtihād* often portray the primary purpose of legal reasoning as filling in gaps in the law as new cases and circumstances arise; e.g., Vikør, *Between God and the Sultan*, 53; Hallaq, *History of Islamic Legal Theories*, 82; Kamali, *Principles of Islamic Jurisprudence*, 468.

apparently non-Prophetic statement—almost always from a Companion—must in fact have been made on the basis of the Prophet's *tawqīf* (instruction), because the statement is not of a type that may be supported by *raʾy*, *istikhrāj* or *istinbāṭ*. This argument contrasts instruction from the Prophet—a form of revelation—with human legal interpretation. Despite his use of multiple terms for legal reasoning, however, what concerns al-Ṭaḥāwī in this argument is not a precise technique represented by each term, but rather the general concept of legal reasoning. This point is confirmed by the fact that al-Ṭaḥāwī uses the three terms singly and in combination when making this argument, in ways that are unrelated to the legal issue at hand.[797]

To determine the kind of legal reasoning indicated by each of these terms, then, we must look to passages that show each functioning in context. *Raʾy* (legal reasoning, a legal opinion) is by far the most common of the three terms, appearing over 150 times in al-Ṭaḥāwī's hermeneutical works.[798] Al-Ṭaḥāwī uses the term to denote both the act and the end result of engaging in *ijtihād*.[799] Its distinguishing characteristic is that its results may be opposed by any jurist whose *ijtihād* leads him to a different conclusion.[800] Indeed, individual references to *raʾy* within al-Ṭaḥāwī's hermeneutical works most often serve the purpose of denying any binding authority to a report containing a legal rule by

[797] For different combinations of *raʾy*, *istikhrāj* and *istinbāṭ* in the context of this argument, see *Aḥkām*, 1.186, 1.191, 1.338-339, 1.416, 2.91, 2,135, 2,167, 2,208, 2.227; *Mushkil*, 1.55, 2.284, 3.71, 4.248, 5.426, 6.331, 7.233, 8.347, 9.485, 10.181, 11.374, 12.57, 13.222 and 15.407. Readers will notice that several of these lists contain additional terms related to legal reasoning, such as *qiyās* (analogy), *naẓar* (examination) or *ḍarb al-amthāl* (identifying another case as a model); however, these are quite rare in comparison to *raʾy*, *istikhrāj* and *istinbāṭ*.

[798] This number represents only the noun form, *raʾy*; just as common is the verb *raʾā* in the sense of 'holding a legal opinion.'

[799] For an example of *raʾy* meaning the process of reasoning, see *Mushkil*, 13.40; for an example of *raʾy* indicating the result of legal reasoning, see *Aḥkām*, 1.99.

[800] Al-Ṭaḥāwī, *Mushkil*, 4.411.

labeling it as merely one person's conclusion. For example, al-Ṭaḥāwī regularly follows Companion *ḥadīth*s with the observation that the rule stated therein is the Companion's *raʾy*.[801] This claim permits al-Ṭaḥāwī to harmonize reports containing contradictory rules by stating that one or both represent *raʾy*.

Although al-Ṭaḥāwī denies binding authority to earlier jurists' *raʾy*, these denials are not meant to suggest criticism of *raʾy* or its practitioners. During the 2nd/8th and 3rd/9th centuries, the term *raʾy* had acquired increasingly negatively connotations among the *ahl al-ḥadīth*, traditionists who accused the proponents of *raʾy* (*ahl al-raʾy*) of abandoning Prophetic traditions in favor of their own reasoning.[802] Although reliance on *raʾy* was primarily associated with the proto-Ḥanafī school, al-Ṭaḥāwī shared with the *ahl al-ḥadīth* a commitment to legal argument based on *ḥadīth*; he is widely acknowledged as having provided Ḥanafī positive law a basis in *ḥadīth*.[803] Despite his commitment to *ḥadīth*, however, al-Ṭaḥāwī does not share in the *ahl al-ḥadīth*'s attacks on *raʾy* as unregulated human reason. Instead, he fully identifies *raʾy* with *ijtihād*, an authorized and, indeed, commendable process in which legal reasoning is employed not in competition with revelation, but rather in service to it. Al-Ṭaḥāwī's rare criticisms of *raʾy*

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[801] Al-Ṭaḥāwī, *Maʿānī*, 1.153, 4.122.
[802] This accusation is somewhat misleading: like the *ahl al-ḥadīth*, the *ahl al-raʾy* did acknowledge the authority of Prophetic traditions, even if they did not consistently cite them in their legal arguments. However, the *ahl al-raʾy* also imposed high standards of authenticity on Prophetic reports which led them to reject traditions that the *ahl al-ḥadīth* considered valid, and therefore use legal reasoning in cases where the traditionists would not admit it. For a fuller discussion of *ahl al-ḥadīth* and *ahl al-ray*, see Chapter One, "Qurʾān and Sunna," pp. 56-60.
[803] Schacht, *Origins of Muhammadan Jurisprudence*, 30; Calder, *Studies in Muslim Jurisprudence,* 66; Sadeghi, *Logic of Law Making in Islam*, 131n12; El Shamsy, *Canonization of Islamic Law*, 205.

therefore attack jurists who rely on *raʾy* in situations where it is not authorized, rather than rejecting *raʾy* itself.[804]

In contrast to *raʾy*, the terms *istikhrāj* (extraction) and *istinbāṭ* (derivation) appear most frequently when al-Ṭaḥāwī is expressing a binary opposition between *tawqīf* and legal reasoning, as discussed above. Like *raʾy*, *istikhrāj* and *istinbāṭ* are closely related to *ijtihād*; they describe the process of a jurist deriving positive legal rules from revealed sources or from other known rules. In the introduction to *Sharḥ mushkil al-āthār*, for example, al-Ṭaḥāwī states that one of his objectives is to derive (*istakhraja*) rules of law from Prophetic *ḥadīth*.[805] When he approves of the results of someone's legal reasoning, al-Ṭaḥāwī sometimes praises it as a good (*ḥasan*, *laṭīf*) *istikhrāj* from a particular source.[806] Al-Ṭaḥāwī uses *istikhrāj* and *istinbāṭ* synonymously, sometimes switching between them when describing a single act of derivation.[807] Broadly speaking, al-Ṭaḥāwī employs the terms *istikhrāj* or *istinbāṭ* in cases where he explicitly discusses the text or rule upon which a process of legal reasoning is based; if he is merely conveying the result of legal reasoning, he prefers the term *raʾy*. *Istikhrāj* and *istinbāṭ* are thus not technical terms indicating a specific variety of legal reasoning, but are rather general labels for the process by which jurists derive the law from its sources in the absence of Prophetic *tawqīf*.

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[804] E.g., al-Ṭaḥāwī, *Mushkil*, 2.182.
[805] Al-Ṭaḥāwī, *Mushkil*, 1.6.
[806] Al-Ṭaḥāwī, *Mushkil*, 8.358, 9.415, 12.371, 14.99.
[807] E.g., al-Ṭaḥāwī, *Maʿānī*, 3.154. In *Mushkil*, 12.114 he uses them as synonyms.

Naẓar and Qiyās

While al-Ṭaḥāwī uses the terms *raʾy*, *istikhrāj* and *istinbāṭ* primarily in reference to others' acts of legal reasoning, he largely reserves *naẓar* and *qiyās* to label his own interpretive endeavors. *Naẓar*, which had served among early jurists as a general term for systematic reasoning, had already by the time of Ibn Qutayba come to be associated specifically with the systematic reasoning of the speculative theologians (*mutakallimūn*) and of the Muʿtazilīs in particular.[808] *Naẓar* in the sense of systematic reasoning was later adopted into the mature *uṣūl al-fiqh* tradition; al-Jaṣṣāṣ argues in *al-Fuṣūl* for the obligation to use *naẓar* to establish matters such as the unity of God and the existence of a wise creator (*ṣāniʿ ḥakīm*).[809] For al-Ṭaḥāwī, in contrast, *naẓar* is always directed toward deriving a legal rule or interpreting a revealed text on the basis of other texts and previously established rules.[810] Indeed, *naẓar* is distinguishable from *ijtihād* in al-Ṭaḥāwī's thought only by the context in which he employs each term: he appeals to *ijtihād* in all of his theoretical discussions establishing the permissibility of legal reasoning, but he labels his own acts of reasoning *naẓar*.[811]

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[808] Ibn Qutayba, *Taʾwīl*, 22ff. On the term *naẓar* among jurists of the formative period, see Schacht, *Origins of Islamic Jurisprudence*, 128-129; Hallaq, *History of Islamic Legal Theories*, 130-131. On *naẓar* within *kalām* (speculative theology), see *Encyclopaedia of Islam,* New Edition, s.v. "Naẓar" by Boer, Tj. de; Daiber.

[809] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.177-186.

[810] Al-Ṭaḥāwī provides neither a definition nor a theoretical discussion of *naẓar* in his extant works. My comments here are based on my analysis of the arguments to which he applies the term *naẓar*.

[811] Perhaps the relationship between al-Ṭaḥāwī's use of the term *naẓar* and that of al-Jaṣṣāṣ and other legal theorists is suggested by the connection between *naẓar* and *qiyās* in al-Jaṣṣāṣ's *Fuṣūl*. In addition to the kind of systematic reasoning that establishes knowledge of the existence of God, al-Jaṣṣāṣ says that *naẓar* is necessary for jurists to determine the *ʿilla* (motivating cause) shared by two cases in order to analogize from one to the other in *qiyās* (Nabil Sheheby, "*ʿIlla* and *Qiyās* in Early Islamic Legal Theory," *Journal of the American Oriental Society* 102, no. 1 (1982): 34). The work of determining the *ʿilla* is thus *naẓar*. As we will see below, *naẓar* and *qiyās* are largely synonymous for al-Ṭaḥāwī; it is possible that al-Ṭaḥāwī, too, understands *naẓar* specifically as the search for the motivating cause behind legal rulings and is applying the term to the whole process of legal reasoning.

Naẓar plays a major role in al-Ṭaḥāwī's hermeneutical works; in *Sharḥ maʿānī al-āthār*, almost every chapter contains a section in which al-Ṭaḥāwī supports his conclusions by appealing to *naẓar*. Within the chapters of *Sharḥ maʿānī al-āthār* and elsewhere in al-Ṭaḥāwī's works, *naẓar* has two major functions. First, it provides a resolution when al-Ṭaḥāwī is otherwise unable to resolve a conflict between revealed texts or between competing opinions on how a text should be interpreted.[812] Second, even when al-Ṭaḥāwī is able to resolve a conflict satisfactorily by other means, he routinely demonstrates that *naẓar* would have led him to reach the same conclusion.[813] That is not to say that al-Ṭaḥāwī claims that the results of legal reasoning are identical to revelation in every case; in a small number of chapters, he notes the conflict between the rule stated in a Prophetic *ḥadīth* and the results of legal reasoning, while affirming his own commitment to *ḥadīth*.[814] Nonetheless, the preponderance of chapters in which al-Ṭaḥāwī confirms a rule found in revelation by appealing to legal reasoning suggests that, overall, al-Ṭaḥāwī understands the law as a coherent, internally consistent system.

In most passages mentioning *naẓar*, al-Ṭaḥāwī simply makes an argument based on legal reasoning without labeling his techniques further.[815] In other passages, however,

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[812] E.g., al-Ṭaḥāwī, *Mushkil*, 4.412, 8.73, 10.108; *Maʿānī*, 1.113. In this type of chapter, al-Ṭaḥāwī often introduces his *naẓar* argument with some variation on the following formula: "since they disagreed on this matter and the reports differ, we resorted to *naẓar* in order to determine which is the correct opinion" (e.g., *Maʿānī*, 1.113).
[813] E.g., al-Ṭaḥāwī, *Mushkil*, 2.191, 10.59, 10.118, 10.427, 11.372-373, 12.531. In many chapters, al-Ṭaḥāwī signals the transition to *naẓar* by stating that "This is the ruling on this matter by means of *āthār*. As for *naẓar*…" (e.g., *Maʿānī*, 1.31).
[814] E.g., al-Ṭaḥāwī, *Mushkil*, 6.97, 10.15, 11.209; *Maʿānī*, 1.53. In most of these chapters al-Ṭaḥāwī refers specifically to the conflict between *ḥadīth* and *qiyās*; for the equivalence of *qiyās* and *naẓar*, see below.
[815] E.g., al-Ṭaḥāwī, *Mushkil*, 4.407, 7.162, 8.73, 10.108, 11.195.

he calls his reasoning *qiyās*.[816] Al-Ṭaḥāwī does not define *qiyās* in his extant works, and he makes only a few comments on its proper use: *qiyās* must be used when no evidence for a question is found in the Qurʾān, Sunna or consensus;[817] *qiyās* is obligatory for matters on which we do not have *tawqīf* (instruction);[818] punishments cannot be determined through *qiyās*, only through *tawqīf*;[819] linguistic knowledge is not subject to analogy.[820] These few theoretical statements place some limits on the use of *qiyās* and affirm that it is to be used in the situations in which al-Ṭaḥāwī also affirms the use of *raʾy* and *ijtihād*.

In the absence of any definition or classification of *qiyās*, however, we must look to its use in context in order to compare al-Ṭaḥāwī's understanding of *qiyās* to that of other jurists. For this purpose, al-Shāfiʿī's typology of *qiyās* serves as a useful starting point. In the *Risāla*, al-Shāfiʿī identifies three kinds of *qiyās*: causal analogy, the analogy of resemblance and the *a fortiori* argument.[821] My analysis of the arguments that al-Ṭaḥāwī labels *qiyās* shows that he concurs with al-Shāfiʿī in labeling all of the above arguments *qiyās*, and also adds a fourth type: the disjunctive syllogism. My analysis further shows that *naẓar* is functionally equivalent to *qiyās* for al-Ṭaḥāwī; every kind of argument that he labels *naẓar* is also sometimes called *qiyās*, and *vice versa*.

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[816] The term *qiyās* is often translated as 'analogy' (e.g., Kamali, *Principles of Islamic Jurisprudence*, 2). However, for many jurists, including al-Ṭaḥāwī, *qiyās* encompassed a number of non-analogical arguments, and only certain types of analogy constituted permissible *qiyās*. For that reason, I leave the term un-translated here. On the meaning of *qiyās*, see Wael Hallaq, "Non-Analogical Arguments in Sunni Juridical *Qiyās*," *Arabica* 36, no. 3 (1989): 286-289.
[817] Al-Ṭaḥāwī, *Mushkil*, 10.142; *Mushkil*, 15.230 mentions Qurʾān and Sunna only.
[818] Al-Ṭaḥāwī, *Mushkil*, 8.427.
[819] Al-Ṭaḥāwī, *Maʿānī*, 3.152. It is generally held among jurists that punishments, enumerations of quantities and basic ritual matters cannot be the basis of analogy.
[820] Al-Ṭaḥāwī, *Aḥkām*, 1.240.
[821] Al-Shāfiʿī, *Risāla*, 16, 238. On al-Shāfiʿī's discussion of *qiyās*, see Lowry, *Early Islamic Legal Theory*, 149-163; Schacht, *Origins of Muhammadan Jurisprudence*, 122-126; Hallaq, *History of Islamic Legal Theories*, 29.

In some passages, al-Ṭaḥāwī's appeals to *qiyās* and *naẓar* take the form of causal analogy (*qiyās al-maʿnā*, *qiyās al-ʿilla*), a type of argument in which jurists identify the reason (*maʿnā, ʿilla*) behind a legal injunction and then apply that injunction in a new case. For instance, jurists debate the case of a man who has entered into a state of *iḥrām* (ritual purification) while wearing a *qamīṣ*, a garment prohibited during *iḥrām*. Some jurists hold that he must cut off the *qamīṣ*, because removing the garment in the normal way means briefly covering the head, another action prohibited during *iḥrām*. By examining the known rules for a variety of situations involving covering the head during *iḥrām*, al-Ṭaḥāwī determines that the prohibition falls only on garments specifically worn on the head, such as a turban. Since the head is not 'wearing' (*lābis*) the *qamīṣ* during its removal, there is no prohibition.[822] In this example, al-Ṭaḥāwī explicitly identifies the cause of the prohibition—donning an item of clothing meant to be worn on the head—and determines that it does not apply to the new case. Therefore, the prohibition of one does not entail the prohibition of the other.

Al-Ṭaḥāwī makes the above argument without employing any of the technical terms—*aṣl* (the original case), *farʿ* (the new case), *ʿilla/maʿnā* (the cause of the ruling) or *ḥukm* (the ruling)—that mature legal theorists would rely upon to describe formally the structure of causal analogies. Most of al-Ṭaḥāwī's other appeals to causal analogy are similarly non-technical, although he uses the term *ḥukm* regularly, both in the context of *qiyās* and more generally. In a limited number of passages, al-Ṭaḥāwī does employ the terms *aṣl* and *ʿilla* in the context of *qiyās* although their usage seems still to be informal

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[822] Al-Ṭaḥāwī, *Maʿānī*, 2.138-139. Other examples of causal analogy in al-Ṭaḥāwī's hermeneutical works include *Maʿānī*, 1.26, 3.73; *Aḥkām*, 1.264.

and so they may not yet represent technical terms specific to *qiyās* in his usage.[823] More frequently, al-Ṭaḥāwī introduces *qiyās* using non-technical terms to suggest equivalence between two cases. These terms include *mithl* (the like of something), *ka/kamā* (like, as) and *istawā* (to be equivalent to).[824]

Further, in many, if not most examples of causal analogies, al-Ṭaḥāwī does not explicitly state the shared rationale that allows him to transfer a rule to the new case. For instance, al-Ṭaḥāwī analogizes concerning whether a Muslim must make the same recompense for causing bodily harm to a non-Muslim who has concluded a treaty with the Muslims, as he would to a Muslim. He observes that Muslims are forbidden to harm either the body or the property of such a person, but that harm to both was permitted to Muslims before the non-Muslim concluded his treaty. We know that a Muslim who steals the property of someone with such a treaty is subject to the *ḥadd* punishment for theft. Therefore, someone who causes bodily harm to such a person should also be subject to the same punishments as if they had harmed a Muslim.[825] From this passage, we may infer that the concluding of a treaty is the cause of being protected by the law in the same way that Muslims are protected, although al-Ṭaḥāwī never states that cause directly. Instead, here and in most of his analogical arguments, al-Ṭaḥāwī emphasizes the multiple legal effects common to two cases as a reason for bringing all of the rulings related to

[823] E.g., al-Ṭaḥāwī, *Maʿānī*, 1.254, 1.386, 1.428; *Mushkil*, 13.308, 13.355.
[824] E.g., al-Ṭaḥāwī, *Mushkil*, 2.140, 5.437, 8.205, 10.351, 10.352, 11.507, 15.358-359.
[825] Al-Ṭaḥāwī, *Mushkil*, 3.278.

them into alignment. That is, his analogical arguments rely on the identification of consistency of legal effects more than they emphasize the rationale of a specific ruling.[826]

In addition to causal analogy, al-Ṭaḥāwī also labels other types of argument *qiyās*. In this, al-Ṭaḥāwī is at odds with the mature legal theory tradition, in which causal analogy was the predominant form of *qiyās*.[827] More importantly, the mature Ḥanafī tradition would insist that causal analogy was the *only* valid form of *qiyās*; although Ḥanafī theorists accepted some of the other forms of argument that al-Ṭaḥāwī labeled *qiyās*, they classified them as linguistic or rational inferences (*istidlāl*).[828] In addition to causal analogy, al-Ṭaḥāwī relies on the analogy of resemblance (*qiyās al-shabah*), a type of argument identified and defended by al-Shāfiʿī and later disputed within the Shāfiʿī school.[829] As al-Shāfiʿī describes it, the analogy of resemblance consists of determining which of two known cases a new case more closely resembles in order to apply the ruling from the most relevant case to the new case.[830] Whereas causal analogy relates two cases in terms of the reason behind the ruling in each, the analogy of similarity is concerned with the likeness of the things to which the rule is applied.

In a clear example of the analogy of similarity, al-Ṭaḥāwī describes how the dispute between scholars concerning the amount and timing of *zakāt* (alms) due on *waraq*

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[826] Al-Ṭaḥāwī's appeals to consistency should not be confused with the doctrine of *ṭard/iṭṭirād* (consistency) propounded by some 4th/10th century jurists, including Abū Bakr al-Ṣayrafī (d. 330/941) and Ibn Surayj (d. 306/918), and vigorously rejected by most later Ḥanafīs (Zysow, *The Economy of Certainty*, 215-222). *Ṭard* is a formal method for identifying the cause of a legal ruling by determining that a certain cause is consistently present when a particular legal effect is produced. Al-Ṭaḥāwī, in contrast, is simply uninterested in explicitly identifying the effective cause in many of his analogies.

[827] Zysow, *Economy of Certainty*, 159.

[828] Zysow, *Economy of Certainty*, 192ff. On al-Jaṣṣāṣ's theory of *qiyās*, see Shehaby, "*ʿIlla* and *Qiyās* in Early Islamic Legal Theory," esp. 30ff.

[829] Zysow, *Economy of Certainty*, 194-195.

[830] Al-Shāfiʿī, *Risāla*, 16. For a discussion of al-Shāfiʿī's use of *qiyās al-shabah*, see Lowry, *Early Islamic Legal Theory*, 150-155, 157-158.

(coined silver, sheets of metal) hinges upon whether *waraq* is more similar (*ashbah*) to herds of animals or to agricultural produce. Proponents of analogizing *waraq* to agricultural produce point out that both produce and *waraq* are weighed in determining *zakāt*, while animals are counted. Their opponents retort that a minor or a mentally incompetent person is required to pay *zakāt* on agricultural produce from land they own, just as if they were a legally competent adult. However, such individuals are exempted from the normal alms requirement for both *waraq* and livestock. Therefore, *waraq* is more similar to livestock for the purposes of determining *zakāt*.[831]

Less frequently, al-Ṭaḥāwī's appeals to *qiyās* take the form *a fortiori* arguments.[832] Jurists as early as Abū Ḥanīfa argued that the prohibition of a small degree of something entails the prohibition of a larger degree of it, just as permission for a large degree of something entails permission for a smaller degree of it. In considering the *a fortiori* argument a form of *qiyās*,[833] however, al-Ṭaḥāwī stands apart from later Ḥanafīs, most of whom classified it as a language-based inference.[834] Al-Jaṣṣāṣ treats *a fortiori* arguments in his chapter on textual implications (*dalīl al-khiṭāb*), while al-Sarakhsī emphasizes that no rational inference is needed to understand this kind of meaning from a

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[831] Al-Ṭaḥāwī, *Aḥkām*, 1.267-268.
[832] As with the forms of argument treated above, al-Ṭaḥāwī's extant works include no formal discussion or classification of the *a fortiori* argument; it is recognizable in context from his consistent use of the terms *awlā* and *aḥrā* to indicate that what follows is even more suitable or more appropriate than what preceded.
[833] E.g., al-Ṭaḥāwī, *Mushkil*, 8.411; *Maʿānī*, 3.117.
[834] Schacht, *Origins of Muhammadan Jurisprudence*, 99, 110-111; Zysow, *Economy of Certainty*, 96-100; Hallaq, "Non-Analogical Arguments," 289-290.

text.[835] In contrast, al-Ṭaḥāwī is in agreement with both early Ḥanafīs and al-Shāfiʿī in treating *a fortiori* claims as a form of rational argument.[836]

In the course of his hermeneutical works, al-Ṭaḥāwī employs the *a fortiori* argument in both its *a minore ad maius* and *a maiore ad minus* forms. In one example of the former, al-Ṭaḥāwī argues that if clasping the hands in front of oneself is praiseworthy in supererogatory prayers as a posture of humility (*khushūʿ*), it is likewise praiseworthy during obligatory prayers, because humility is even more appropriate (*awlā*) there.[837] An example of the latter is found in al-Ṭaḥāwī's response to al-Shāfiʿī's claim that fasting during seclusion in a mosque (*iʿtikāf*) is optional. Al-Shāfiʿī argues that scholars' agreement that the *muʿtakif* (a person in a state of *iʿtikāf*) does not fast at night, and yet remains in *iʿtikāf*, indicates that fasting is not necessary to enter into *iʿtikāf*. Al-Ṭaḥāwī retorts that the *muʿtakif* may leave the mosque to relieve himself without canceling his *iʿtikāf*, although he may not enter into *iʿtikāf* while outside a mosque. If exiting the mosque does not cancel *iʿtikāf*, then even more so (*aḥrā*) should the arrival of night (and the concomitant end to fasting) not affect his *iʿtikāf*, because the first is an action taken by him while the second is not of his own volition. Therefore, the permissibility of certain events or actions during *iʿtikāf* cannot serve as evidence for what is required to enter into the state initially.[838]

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[835] Al-Jaṣṣāṣ, *al-Fuṣūl*, 1.153; al-Sarakhsī, *al-Muḥarrar*, 1.177-178.

[836] Al-Shāfiʿī in fact considers the *a fortiori* argument the strongest or clearest form of *qiyās* (*Risāla*, 238), a valuation which cannot be determined for al-Ṭaḥāwī on the basis of his extant works. For discussions of al-Shāfiʿī's use of *a fortiori* arguments, see Lowry, *Early Islamic Legal Theory*, 153-154, 158-163; Schacht, *Origins of Islamic Jurisprudence*, 124-125.

[837] Al-Ṭaḥāwī, *Aḥkām*, 1.189. For another example of the *argumentum a minore ad maius*, see *Mushkil*, 1.81.

[838] Al-Ṭaḥāwī, *Mushkil*, 10-351-352. For other examples of the *argumentum a maiore ad minus*, see *Mushkil*, 11.303; *Maʿānī*, 1.18.

Although the passages above do not fully conform to the *a fortiori* argument as described by legal theorists in that they do not involve different degrees of a single permitted or prohibited action, they are nonetheless closely related to classical descriptions of the *a fortiori* argument in that they concern the permissibility of actions. In other passages, however, al-Ṭaḥāwī employs the same language (*awlā*, *aḥrā*) to determine not the permissibility of actions but the applicability of a rule to a group.[839] For example, al-Ṭaḥāwī observes that a man who acknowledges having had sexual intercourse with his wife may still deny paternity of her child. Therefore, it is even more so the case (*aḥrā*) that a man who acknowledges having had sexual intercourse with his slave may deny paternity of his slave's child.[840] That is, the rule for husbands also applies to men owning concubines. In this passage, as in most *a fortiori* arguments of this type, al-Ṭaḥāwī does not state explicitly what it is about the new group that makes the rule even more appropriate than in its original application, although the connection between the two cases is generally simple to work out. In this case, for instance, al-Ṭaḥāwī's argument hinges on the relative statuses of wives and concubines. In contrast, al-Ṭaḥāwī states his reasoning explicitly when arguing that men may not cover their faces with their garments while in a state of *iḥrām* (ritual consecration). He observes that women are not permitted to cover their faces during *iḥrām*, even though women are permitted to cover more than men while in that state. Therefore, it is even more so that case that men may not cover their faces.[841] Here, al-Ṭaḥāwī reasons that, given what we know about

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[839] I have not identified any discussions of the *a fortiori* argument by legal theorists envisioning this possibility.
[840] Al-Ṭaḥāwī, *Maʿānī*, 3.117.
[841] Al-Ṭaḥāwī, *Mushkil*, 8.411.

women's wider latitude to cover themselves in *iḥrām*, a rule that prohibits a particular garment to women is even more appropriately applied to men.

To this point, the arguments that al-Ṭaḥāwī has labeled *qiyās* have followed the division proposed by al-Shāfiʿī in the *Risāla*. However, al-Ṭaḥāwī also employs a fourth form of argument under the heading of *qiyās*: the disjunctive syllogism. In one example, al-Ṭaḥāwī argues that, although Muḥammad, Abū Bakr and ʿUmar all shortened their prayers during the Hajj while halting at Minā, residents and imams of Mecca do not shorten their prayers, because their travel does not meet the length requirement for shortening prayer. *Qiyās* requires this conclusion, al-Ṭaḥāwī writes, because Muḥammad, Abū Bakr and ʿUmar can only have shortened their prayer for one of three reasons (*lā yakhlū min maʿnā min thalāthat maʿānin*): the length of their travel, their participation in the Hajj or the place they were in (i.e., Minā). There is no other possibility. He continues:

> We considered whether the shortening might be because of the place itself, but found that scholars agree that non-pilgrims do not shorten their prayers [at Minā], and so we knew that God's Messenger and his Companions cannot have shortened their prayer for that reason. Then we considered whether the shortening was due to the pilgrimage. However, we found that pilgrims from Minā do not shorten their prayers at Minā during the pilgrimage, and so we knew that they cannot have shortened their prayers because of the pilgrimage. Because those two reasons have been eliminated as the cause for their shortening their prayers and only one other reason—travel—remains, we know that they shortened their prayers because of the length of their travel.[842]

This argument follows the form of a disjunctive syllogism. First, al-Ṭaḥāwī establishes a list of possible causes for the Prophet's actions and claims exhaustiveness for it. Next, he excludes all but one possibility. Finally, he affirms that the remaining possibility must be

[842] Al-Ṭaḥāwī, *Mushkil*, 10.417-418.

true, without needing to provide any other evidence to support his claim. Arguments of this form appear regularly in al-Ṭaḥāwī's hermeneutic works.[843]

To date, little has been written on disjunctive syllogisms within Islamic legal thought before al-Ghazālī. Among later theorists, the disjunctive syllogism would come to be known as *al-sabr wa-l-taqsīm* ("probing and division"), and its validity as a method for determining the *ʿilla* (effective cause) of an analogy would be accepted by many jurists, although it was rejected except in a very limited form by almost all Ḥanafīs.[844] Hallaq suggests that this form of argument was assimilated into legal thought in the 4th/10th and 5th/11th centuries from Greek logic, although most jurists did not label it a form of *qiyās*.[845] Larry Miller, in contrast, associates the disjunctive syllogism and other techniques from the Greek logical tradition with 6th/12th-century jurists beginning with al-Ghazālī.[846]

It is unlikely, however, that the regular appearance of arguments in the form of the disjunctive syllogism in al-Ṭaḥāwī's hermeneutical works is evidence of an earlier incorporation of Greek logic into jurisprudence than has until now been assumed. Indeed, there are important differences between al-Ṭaḥāwī's use of the disjunctive syllogism and the way it in which it is discussed by later jurists. For example, Miller has analyzed a manuscript of the *Muqaddima* of Burhān al-Dīn al-Nasafī (d. 684/1286) in which the disjunctive syllogism is described in terms of the logical incompatibility of P and Q.[847] In

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843 E.g., al-Ṭaḥāwī, *Mushkil*, 2.75-77, 3.157, 10.59; *Aḥkām*, 1.180, 1.194.
844 Zysow, *Economy of Certainty*, 217.
845 Hallaq, "Logic, Formal Arguments, and the Formalization of Arguments," 316-317. I have found no other evidence of the influence of Greek logic in al-Ṭaḥāwī's works.
846 Larry Miller, "Islamic Disputation Theory: A Summary of the Development of Dialectic in Islam from the Tenth through Fourteenth Centuries" (PhD diss., Princeton University, 1984), 146-169.
847 Miller, "Islamic Disputation Theory," 156-157.

contrast, in the example concerning shortening prayers during the Hajj discussed above and in other passages employing disjunctive syllogisms, al-Ṭaḥāwī is not arguing based on the logical incompatibility of the premises, but rather on the fact that they are premises that the community has agreed upon. That is, there are three reasons that jurists have identified as possible explanations for why Muḥammad, Abū Bakr and ʿUmar shortened their prayers, and al-Ṭaḥāwī's argument rests on the assumption that one of those explanations must be correct. That assumption in turn appears closely connected to notions of a kind of consensus (*ijmāʿ*) that encompasses known juristic disagreements, and to the insistence of many jurists that, once established, such disagreements cannot be expanded to permit new opinions.[848] While the formal features of al-Ṭaḥāwī's arguments may thus closely resemble those of later scholars who embraced Greek logic, the assumptions underlying his arguments are quite different. Al-Ṭaḥāwī's use of the disjunctive argument is therefore probably best understood within the context of the pre-Aristotelian logic juristic dialectical movement identified by Walter Young and embracing jurists including al-Shāfiʿī.[849]

In total, then, al-Ṭaḥāwī employs four clearly identifiable types of argument under the heading of *qiyās*, only one of which would be recognized as *qiyās* by later members of his legal school. Rather than concluding that al-Ṭaḥāwī conceives of *qiyās* as consisting of four types of argument, however, it would be more accurate to say that he uses the term *qiyās* as a general label for the kind of rational argument that he believed God had licensed jurists to employ in determining the law. It is not apparent from al-

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[848] See, e.g., Lowry, "Is There Something Postmodern about *Uṣūl al-Fiqh*?," 287, 301ff.
[849] Walter Young, "The Dialectical Forge: Proto-System Juridical Disputation in the *Kitāb ikhtilāf al-ʿIrāqiyyin*" (PhD diss., McGill University, 2012), 46-50.

Ṭaḥāwī's extant works that he clearly differentiates between different types of arguments; indeed, it is frequently difficult to assign particular examples of his *qiyās* to one of the four categories mentioned above. Where both al-Shāfiʿī and later jurists are concerned with classifying and defining *qiyās*, al-Ṭaḥāwī's primary concern is the harmony between *qiyās* and legal rulings found in revealed texts.

Istiḥsān (Departure from Qiyās)

In *al-Iḥkām fī uṣūl al-aḥkām*, Ibn Ḥazm names al-Ṭaḥāwī as his only example of a Ḥanafī jurist who rejected *istiḥsān*, a hermeneutical procedure closely associated with the Ḥanafīs in which jurists depart from the results of their *qiyās* because they consider another position better (*istaḥsana*, lit., to deem good).[850] Ibn Ḥazm denounces *istiḥsān* as a practice devoid of any proof from revelation (*burhān*) and one that allows jurists to follow their own whims in rejecting any inconvenient or undesirable results of *qiyās*.[851] The critique of *istiḥsān* was first articulated by al-Shāfiʿī in *al-Risāla* and *Ibṭāl al-istiḥsān*.[852] Al-Shāfiʿī emphasizes that *qiyās* is a procedure based upon evidence from revelation; *istiḥsān*, in contrast, is simply an invention by the jurist without any basis in revelation. If jurists may depart from divinely-sanctioned *qiyās*, then they may as well devise their own legal rulings in cases where no text has been revealed.[853] For al-Shāfiʿī, then, *istiḥsān* represents a rejection of the authority of revelation. This understanding of

[850] Ibn Ḥazm, *Iḥkām*, 2.992. Although *istiḥsān* is most famously associated with the Ḥanafīs, it was also employed by jurists of other schools; on these, see Zysow, *Economy of Certainty*, 241.
[851] Ibn Ḥazm, *Iḥkām*, 2.993.
[852] On the content and textual problems of al-Shāfiʿī's *Ibṭāl al-istiḥsān*, see Joseph Lowry, "A Preliminary Study of al-Shāfiʿī's *Ibṭāl al-istiḥsān*: Appearance, Reality, and Legal Interpretation," in *ʿAbbāsid Studies IV: Occasional Papers of the School of ʿAbbāsid Studies*, ed. Monique Bernards (Cambridge: Gibb Memorial Trust, 2013), esp. 189-191.
[853] Al-Shāfiʿī, *al-Risāla*, 234-235, 9.

istiḥsān is in turn the consequence of al-Shāfiʿī's larger project of anchoring all law in revelation.[854] For the early Iraqi jurists among whom *istiḥsān* first become a technical term denoting departure from *qiyās* on the basis of some other important consideration,[855] however, it was not yet apparent that *qiyās* was binding to the exclusion of other kinds of authority.[856]

Like al-Shāfiʿī, al-Ṭaḥāwī is committed to the idea that all law must be derived from revelation and, further, that no true conflict can exist between sources of legal authority. It is therefore instructive to examine how he treats *istiḥsān*, a procedure condemned by al-Shāfiʿī but closely associated with al-Ṭaḥāwī's fellow Ḥanafī jurists.[857] In fact, none of al-Ṭaḥāwī's extant works contain any statement of principle in support or rejection of *istiḥsān*; if Ibn Ḥazm based his report on al-Ṭaḥāwī's own statement, then the work in which that statement appeared is presumably lost to us. It is also possible that Ibn Ḥazm (or his source) based his conclusions on the almost total absence of any mention of *istiḥsān* in al-Ṭaḥāwī's hermeneutical works. I have identified only a single passage in which al-Ṭaḥāwī uses the term *istiḥsān* in a technical sense. In a chapter of *Sharḥ mushkil al-āthār* on whether the *qārin* (a pilgrim combining the Hajj and ʿUmra) must perform

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[854] Schacht identifies al-Shāfiʿī's limitation of legal reasoning to methods authorized by revelation as "one of the important innovations by which his legal theory became utterly different from that of the ancient schools" (*Introduction to Islamic Law*, 46).
[855] Ansari, "Islamic Juristic Terminology," 292. Ahmad Hasan defines *istiḥsān* as a means "developed by the Ḥanafīs to remove the rigidity of law in certain situations," and goes on define those situations as the natural changes in human society over time ("The Principle of *Istiḥsān* in Islamic Jurisprudence," *Islamic Studies* 16, no. 4 (1977): 348). This understanding of *istiḥsān* as a sort of safety valve for accommodating the law to social change, however, represents a modern reinterpretation of the aims of early jurists, which were simply to accommodate competing sources of legal authority. For an overview and refutation of other modern scholars who have understood *istiḥsān* as way to accommodate social change, see John Makdisi, "Legal Logic and Equity in Islamic Law," *American Journal of Comparative Law* 33, no. 1 (1985): 66-85.
[856] Hallaq, *History of Islamic Legal Theories*, 107.
[857] Some other early jurists rejected *istiḥsān* for other reasons; for example, the Murjiʿī theologian Bishr al-Marīsī (d. 218/833) held the results of *qiyās* to be certain, and therefore discounted *istiḥsān*, which often constitutes a departure from *qiyās* (Zysow, *Economy of Certainty*, 241n490).

the required circumambulations of the Kaaba for each type of pilgrimage individually, al-Ṭaḥāwī writes that Abū Ḥanīfa, Abū Yūsuf and al-Shaybānī held that *qiyās* led to a certain conclusion, but they professed a different position on the basis of *istiḥsān*. Al-Ṭaḥāwī's response is telling:

> We do not agree with them; rather, we hold that *qiyās* obligates what they held to be *istiḥsān*.[858]

Al-Ṭaḥāwī here avoids either accepting or condemning *istiḥsān* by arguing instead that the position of his Ḥanafī predecessors is, in fact, supported by *qiyās*.

Mentions of *istiḥsān* appear considerably more frequently in al-Ṭaḥāwī's *Mukhtaṣar*, an epitome of Ḥanafī positive law.[859] The *Mukhtaṣar*, like al-Ṭaḥāwī's hermeneutical works, contains no statement of principle accepting or rejecting *istiḥsān*. A similar reticence is apparent here, however. When al-Ṭaḥāwī's Ḥanafī predecessors disagree on whether to follow the results of *qiyās* or to base their position on *istiḥsān*, al-Ṭaḥāwī habitually states his agreement with the position based on *qiyās*.[860] In cases where his Ḥanafī predecessors unanimously agree that the ruling should be based on *istiḥsān* rather than *qiyās*, he refrains from adding the affirmation "[I] adopt this position" (*wa-bihi naʾkhudh*), so common within the pages of the *Mukhtaṣar*.[861]

Al-Ṭaḥāwī's treatment (or absence of treatment) of *istiḥsān* both in *Sharḥ maʿānī al-āthār* and in his *Mukhtaṣar* suggests considerable discomfort with the procedure, but also an unwillingness to publicly oppose a technique so closely associated with the Ḥanafīs. Later Ḥanafīs, too, would become subject to pressure from the criticism of

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[858] Al-Ṭaḥāwī, *Maʿānī*, 2.206.
[859] The work contains approximately twenty-five mentions of *istiḥsān*.
[860] E.g., al-Ṭaḥāwī, *Mukhtaṣar*, 211, 253, 342, 372.
[861] E.g., al-Ṭaḥāwī, *Mukhtaṣar*, 210, 303.

istiḥsān when the principle that law must be based in revelation came to be widely accepted, including by the Ḥanafīs themselves.[862] In contrast to al-Ṭaḥāwī, Ḥanafī legal theorists of the mature *uṣūl al-fiqh* tradition would respond to criticism of *istiḥsān* not by silence but rather by reimagining *istiḥsān* to conform to mature *uṣūl* expectations about revelation as the basis for all law. Ḥanafīs including al-Jaṣṣāṣ and al-Sarakhsī would vehemently deny that *istiḥsān* is based on the jurist's whim; instead, they argued, it is a divinely-sanctioned method for determining the correct solution when the initial results of *qiyās* do not produce the objectively correct answer, or else for determining the correct way to proceed when a question can be approached through competing analogies.[863] Despite the differences between their approaches, both al-Ṭaḥāwī and later Ḥanafī jurists share the objective of accommodating their hermeneutics to changing conceptions of legal authority without directly criticizing the Ḥanafī tradition.

In this chapter I have examined a number of key hermeneutical topics discussed theoretically or put into practice in al-Ṭaḥāwī's works. The list of topics covered is far from exhaustive, however; much work remains to be done on subjects including al-Ṭaḥāwī's *isnād* and *matn* criticism, his analysis of figurative language, and his overall approach to *ḥadīth* harmonization, among others. In selecting the topics that I have, I have tried to suggest how al-Ṭaḥāwī draws connections between the different aspects of his hermeneutics such that every idea is bound to one fundamental, underlying binary: that between *muḥkam/mutashābih* and *tawqīf/ray*. In analyzing each topic, I have also

[862] Zysow notes that jurists of the Mālikī, Ḥanbalī and Shāfiʿī schools were also forced to explain statements concerning *istiḥsān* from earlier jurists of their schools, although they were not as closely associated with *istiḥsān* as were the Ḥanafīs (*Economy of Certainty*, 241).
[863] Al-Jaṣṣāṣ, *al-Fuṣūl*, 2.339-355; al-Sarakhsī, *al-Muḥarrar*, 2.148-153.

noted where al-Ṭaḥāwī's thought most closely resembles that of earlier jurists during the formative period, and where it anticipates the mature *uṣūl* tradition that would be firmly established within fifty years of his death. Writing at the very end of the formative period, al-Ṭaḥāwī is a transitional figure, and a close examination of how he defines hermeneutical concepts and employs them in context provides important information about how legal thought changed during this critical period. Notably, although al-Ṭaḥāwī anticipates the mature *uṣūl* tradition in important ways, we have seen in this chapter that al-Ṭaḥāwī's thought is more often closest to that of al-Shāfiʿī, even if not to the extent or in the same way that previous analyses have suggested.

Conclusion

When I embarked upon this study, I hoped to piece together the *uṣūl al-fiqh* work that the Egyptian Ḥanafī jurist, traditionist and theologian Abū Jaʿfar Aḥmad al-Ṭaḥāwī (d. 321/933) would have written, had he composed a work in that genre. During the year that I spent reading al-Ṭaḥāwī's extant *oeuvre*, I had been struck by the wide range of discussions on the interpretation and relative authority of legal sources in three of al-Ṭaḥāwī's major works, *Aḥkām al-Qurʾān*, *Sharḥ maʿānī al-āthār* and *Sharḥ mushkil al-āthār*. Although the discussions in question were scattered and brief, ranging from a sentence to a few paragraphs in most cases, they encompassed almost all of the major topics of a mature *uṣūl al-fiqh* work. By analyzing these passages and bringing them into dialogue with each other, it seemed, I could shed light on the development of *uṣūl al-fiqh* in the late 3rd/9th and early 4th/10th centuries, a crucial period of transformation from formative to post-formative Islamic law, but one that remains largely opaque to researchers due to the paucity of surviving sources.

It quickly became apparent, however, that what I was piecing together was not an *uṣūl* work. Instead, these passages in *Aḥkām al-Qurʾān*, *Sharḥ maʿānī al-āthār* and *Sharḥ mushkil al-āthār* represented a different kind of intellectual activity. Where works of the *uṣūl al-fiqh* genre are primarily interested in elaborating an elegant system by bringing principles of legal theory into relationship with each other, al-Ṭaḥāwī's three works are concerned with the relationship between individual revealed texts and specific theoretical principles. In all of al-Ṭaḥāwī's extant *oeuvre*, only the seven-page introduction to *Aḥkām*

al-Qurʾān makes any attempt to bring a coherent structure to a set of theoretical principles, and even there al-Ṭaḥāwī does not aim at a complete account of legal theory. That is not to say that al-Ṭaḥāwī's legal theory lacks coherence; he invokes the same concepts and principles repeatedly across his works, often using the same language, and these concepts and principles are not in conflict with each other. However, the drive to identify or elaborate an overarching, complete system characteristic of mature *uṣūl al-fiqh* works as well as the earlier *Risāla* of al-Shāfiʿī, is simply not a major feature of al-Ṭaḥāwī's interest in legal theory. Neither are al-Ṭaḥāwī's three works comparable to earlier or later works of *fiqh*, which cite principles of legal theory in the course of setting out the rules of positive law, but without explaining or justifying those principles.

Instead, al-Ṭaḥāwī's discussions of legal theory appear in the context of an intellectual project and form of writing that I have termed 'practical hermeneutics,' whose major theological concern is to affirm the essential coherence and comprehensibility of the Divine Message by demonstrating how God's intent may be derived from revealed sources. In the field of law, which is the exclusive topic of *Sharḥ maʿānī al-āthār* and *Aḥkām al-Qurʾān* and a major topic in *Sharḥ mushkil al-āthār*, practical hermeneutics additionally affirms that God's intent in fact *has* been derived from revelation by showing how established rules of positive law are grounded in revealed sources. In terms of their literary form, al-Ṭaḥāwī's texts of practical hermeneutics consist of a series of chapters in which he first adduces one or more revealed texts and then resolves the necessary interpretive issues in order to produce a statement of God's intent, usually in the form of a rule of positive law. Discussions of

legal theory appear where al-Ṭaḥāwī needs to justify particular, perhaps controversial, interpretive moves.

Al-Ṭaḥāwī was not unique in composing texts of practical hermeneutics. Surviving works by al-Shāfiʿī, Ibn Qutayba and al-Ṭabarī serve a similar function and take a similar literary form, and it is likely that other 3rd/9th-century *aḥkām al-Qurʾān* works, all of which are now lost, also belong to practical hermeneutics, as may other, yet-to-be-identified works. Indeed, the emergence of practical hermeneutics is best understood as a response to the particular challenges jurists faced in the late formative period of Islamic law. By the turn of the 3rd/9th century, the rules of *fiqh* had been articulated in the first major compendia, even if they were not yet stated as systematically as they would be in later centuries. Those compendia, along with the major late 2nd/8th- and early 3rd/9th-century jurists to whom they were attributed, would become associated with the emerging *madhhab*s a century later, around the lifetime of al-Ṭaḥāwī.

Also in the 3rd/9th century, the rising authority of Prophetic *ḥadīth* and the growing conviction, most famously associated with al-Shāfiʿī, that all law must be based in revealed texts, created an imperative to demonstrate that Islamic law *had* in fact been derived exclusively from revelation, even if those connections had not previously been explicitly articulated. When al-Ṭaḥāwī wrote his works of practical hermeneutics asserting the connection between Ḥanafī *fiqh* and revelation at the turn of the 4th/10th century, the Ḥanafīs were widely perceived as *ahl al-raʾy*, jurists whose positive law was based on mere opinion rather than revelation. Al-Ṭaḥāwī's works of practical hermeneutics thus in some sense represent the culmination of a project first clearly

articulated by al-Shāfiʿī. By tethering the *fiqh* of the first major Ḥanafī compendia to revelation, al-Ṭaḥāwī's works also pave the way for the consolidation of the *madhhab*s in the mid-4th/10th century.

The legal theory that emerges from al-Ṭaḥāwī's works of practical hermeneutics is closely related to, and yet distinct from, the legal theory of the *uṣūlī*s. While he addresses most of the major topics of *uṣūl al-fiqh* works—legal sources such as the Qurʾān, *ḥadīth* and consensus, and concepts including *ijtihād*, abrogation, *ʿāmm*:*khāṣṣ*, *ẓāhir*:*bāṭin* and others—his approach to most topics is less detailed and more flexible than that of the *uṣūlī*s. Where the *uṣūlī*s' theological pre-commitments and desire for comprehensiveness and elegance drive them to explore a range of subsidiary questions for most topics, al-Ṭaḥāwī only addresses concrete interpretive problems where led to by his sources, and then only explores topics in sufficient detail to produce a resolution of the interpretive difficulty at hand. Indeed, the flexibility of al-Ṭaḥāwī's legal theory appears to be required by the project of practical hermeneutics; the corpus of revealed sources that al-Ṭaḥāwī treats is messy and sometimes apparently conflicting. His theory, therefore, must in some sense be responsive to the sources in front of him.

On its surface, al-Ṭaḥāwī's legal theory assigns varying levels of authority to a series of clearly distinguished sources of the law in the same manner as the mature *uṣūl al-fiqh* tradition. Both his hermeneutical discussions and his repeated appeals to the list 'Qurʾān, Sunna, consensus' imply a hierarchy among three major sources of interpretive authority. In cases where no guidance is found in these three sources, al-Ṭaḥāwī tells us, we must look to *ijtihād* or *qiyās*. Although they do not generally appear in his lists of

legal sources, post-Prophetic *ḥadīth*s and *ʿamal* also constitute sources of law. For al-Ṭaḥāwī then, the relative authority of sources ostensibly depends on their formal characteristics. Degrees of legal authority are assigned to entire categories of sources. In this way, al-Ṭaḥāwī's rhetoric concerning the sources of the law anticipates that of the mature *uṣūl al-fiqh* tradition.

A closer examination of his hermeneutical arguments, however, reveals that al-Ṭaḥāwī attributes authority to individual textual and non-textual sources in ways that cannot be predicted based upon this hierarchy. Companion *ḥadīth*s and instances of consensus are frequently claimed to represent revelational authority sufficient to compete with that of an established Prophetic *ḥadīth*, while at other times a Prophetic *ḥadīth* is deemed merely to convey Muḥammad's personal opinion and is thereby stripped entirely of its authority as a binding legal source. Each of these interpretive moves rests upon an underlying binary concept of legal authority which draws a crucial distinction between knowledge that might permissibly be reached by inference, and knowledge that can only have come from revelation. Where a Companion states an opinion or jurists reach consensus on a rule that al-Ṭaḥāwī claims may not permissibly be based upon inference, he accepts implicitly that the rule must originally have been based upon revelational instruction, even if that instruction is not indicated in the source. This binary is often made explicit in al-Ṭaḥāwī's arguments about the status of post-Prophetic *ḥadīth*, where he appeals to the terms *tawqīf* (Prophetic instruction) and *raʾy* (inference). In other areas, such as the status of consensus and some Prophetic *ḥadīth*s, the same binary is latent in his arguments.

The authority that al-Ṭaḥāwī grants any given source, then, is not a function of its formal characteristics, but rather the result of a judgment about content and origins. In the body of this study I have noted places where al-Ṭaḥāwī offers rules concerning the types of legal rulings that require revelational instruction. However, the rules he enumerates are far from adequate to account for all the cases in which al-Ṭaḥāwī claims Prophetic authority for non-Prophetic legal sources. I have further argued that al-Ṭaḥāwī's elevation of non-Prophetic sources to Prophetic status appears to stem from a sincere deference to the special knowledge of the Companions and the Successors, as evidenced by his willingness to depart from Ḥanafī law in order to comply with Companion legislative statements. Nonetheless, in the absence of a comprehensive set of principles defining exactly which types of Companion legislative statements or juristic consensus require *tawqīf*, the declaration that any particular statement must be based on an original *tawqīf* is, at its core, arbitrary.

Al-Ṭaḥāwī's legal theory does not aspire to the same type of formalism as that aspired to by later *uṣūlī*s; as I have demonstrated, only hints of a linguistic formalism appear in his arguments. Nonetheless, the literary form of al-Ṭaḥāwī's works of hermeneutics, moving inexorably from text to law, is designed to imply that a known hierarchy of sources and a predictable set of hermeneutical principles allow jurists to derive the law from revelation. Yet, within his arguments, al-Ṭaḥāwī sometimes invokes the instruction/inference binary in ways that reveal that those hermeneutical principles are in fact malleable and dependent on his determination of whether a particular legislative statement represents instruction or inference.

Al-Ṭaḥāwī's works of practical hermeneutics thus represent crucial sources for conceptualizing the relationship between legal theory and positive law in the Islamic legal tradition. While works of *uṣūl al-fiqh* and *fiqh* largely separate legal theory and positive law into distinct genres, al-Ṭaḥāwī's works of practical hermeneutics represent a separate, hybrid genre that portrays legal theory in action, if not precisely the legal theory of the later *uṣūl* tradition. Taken at face value, his works show that the Ḥanafīs are not, in fact, *ahl al-raʾy*, and that their *fiqh* is grounded in revelation. The idea of 'portrayal' is, however, fundamental to al-Ṭaḥāwī's project. Although his works purport to show how law *was* derived from revelation, they are in fact *ex post facto* recreations of a process whose historicity cannot be proven by his works alone. There is thus an unresolved tension between the literary form of al-Ṭaḥāwī's works and their function in providing a retrospective justification of Ḥanafī *fiqh*.

The evidence that al-Ṭaḥāwī's works offer concerning the relationship between legal theory and positive law is, therefore, ambiguous. At multiple points in his works, al-Ṭaḥāwī adheres to his stated hermeneutical principles at the cost of failing to support an established rule of Ḥanafī *fiqh*. However, the flexibility of his legal theory in most cases allows him to claim support from his hermeneutics for Ḥanafī law. It is neither the case that his legal theory fully determines his positions on positive law, nor that his positive law is always advanced at the cost of his hermeneutical principles. In the end, perhaps texts of practical hermeneutics are best understood as a meeting point in which revealed text and law are brought together by means of a hermeneutic of sufficient flexibility to accommodate them both.

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