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# A Tale of Two Kufans: Abū Yūsuf's *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā* and Schacht's Ancient Schools

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**Abstract**

In this article, I address the long-standing debate on the existence of regionally defined schools of law in Islam's formative period by focusing on the early Kufan tradition, with special attention to *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*, attributed to Abū Yūsuf (d. 182/798). By studying reports and legal opinions in the text, I argue that the legal thought of Kufan jurists in Abū Ḥanifa's generation was based on a general deference to regional, Kufan authorities and that this larger legal project may meaningfully be termed a school. I provide a model for legal method in these early schools, taking into account the contributions of supporters and detractors of the regional-school concept. I suggest that formative-period legal methods are also expressed in the classical Ḥanafī school, enabling us to view questions of *ijtihād*, *taqlīd* and *madhhab* formation in a new light.

**Keywords**

regional/ancient schools – Kufa – Ḥanafī school – *ra'y* – *ijtihād* – *taqlīd*

## Introduction

The Iraqi city of Kufa was arguably the greatest centre of Islamic legal thought for much of Islam's first century and a half. Indeed, Joseph Schacht posited that

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sophisticated legal thought first emerged from Kufa to then influence the rest of the Muslim world.[1] Schacht further posited that Kufan legal thought was strung together by a unifying doctrine through which it could be called a school, the Kufan school. In this regard, Schacht held that Kufa was not unlike the other great cities of early Islam, where legal activities were stamped with a regional identity. This identity was, in his words, "the 'living tradition of the school' as represented by the constant doctrine of its authoritative representatives."[2] Simply put, it represented deference to precedents set by earlier authorities in the region. These regionally defined 'ancient schools', as Schacht calls them, have been the subject of much debate, with some writers, most notably Wael Hallaq and Nimrod Hurvitz, suggesting that no such regional schools ever existed and that the label is meaningless and misleading.

The current essay studies the Kufan legal tradition through *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*, attributed to Abū Yūsuf Yaʿqūb b. Ibrāhīm al-Anṣārī (d. 182/798). The treatise presents cases of disagreement between two prominent Kufan authorities: Abū Ḥanīfa al-Nuʿmān b. Thābit (d. 150/767), the eponym of the Ḥanafī school, and Muḥammad b. ʿAbd al-Raḥmān b. Abī Laylā (d. 148/765), who served in the judiciary for over 20 years and arguably had a greater standing among Kufans than Abū Ḥanīfa.[3] Dedicated to Kufan disagreement, the text sheds light on what form of school identity, if any, was possessed by these Kufans.

In this essay, I argue that these regional schools are best understood by taking into account the contributions of both supporters and detractors of the concept. I suggest that the notion of a regional school is best seen as a helpful

1 Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1982), 28-9; idem, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 185-8, 220-2. The primacy of Kufa in the early formulation of Islamic law was suggested at the same time by Robert Brunschvig, "Polémiques médiévales autour du rite de Mālik," *al-Andalus*, 15 (1950): 377-45, at 378. Muḥammad Zāhid al-Kawtharī presents a spirited defence of Kufa as the leading centre of Islamic learning in the formative period in Muḥammad Zāhid al-Kawtharī, *Fiqh ahl al-ʿIrāq wa-ḥadīthuhum*, ed. ʿAbd al-Fattāḥ Abū Ghudda (Cairo: al-Maktaba al-Azhariyya li'l-Turāth, 1390/1970), 40-52.

2 Schacht, *Introduction*, 28-9.

3 Al-Dhahabī, *Siyar aʿlām al-nubalāʾ*, ed. Shuʿayb al-Arnaʾūṭ et al., 25 vols. (Beirut: Muʾassasat al-Risāla, 1985), 6:310-16. The most popular and active Kufan scholars of the period appear to have been Ibn Abī Laylā and ʿAbd Allāh b. Shubruma (d. 144/761-2): See Nurit Tsafrir, *The History of an Islamic School of Law: The Early Spread of Ḥanafism* (Cambridge, Massachusetts: Harvard University Press, 2004), 18, 22-25. The dates presented by Tsafrir from Wakīʿ b. al-Jarrāḥ's (d. 197/812) *Akhbār al-quḍāh* suggest that Ibn Abī Laylā served as *qāḍī* for 25 years: ibid., 22; Ibn Khallikān (d. 681/1282) puts it at 33 years: Ibn Khallikān, *Wafāyāt al-aʿyān*, ed. Iḥsān ʿAbbās, 7 vols. (Beirut: Dār Ṣādir, 1972), 4:179.

construct that can be applied to the scholarly activity of this period, but that the scholars of this period did not necessarily identify as members of this school. The essay shows the usefulness of this construct in two ways: First, it helps us create a simple model of jurisprudence in this period that enables us to better understand the legal thought of scholars such as Abū Ḥanīfa and Ibn Abī Laylā; second, it can help provide an alternative understanding of the passage of legal method from Islamic law's formative period to the classical period of the *madhhab*.

## The Regional School Debate

The jurist Muḥammad b. Idrīs al-Shāfiʿī (d. 204/820) signals a turning point in the Muslim legal tradition, and the era of the so-called regional schools can simply be called the pre-Shāfiʿī era. Joseph Schacht presents al-Shāfiʿī as the leading opponent of the earlier, regional legal tradition and as the founder of the first personal school of law.[4] Ahmed El Shamsy has argued that al-Shāfiʿī's legacy represented a "shift from community to canon", that is to say, a transfer of the locus of legal authority from the living tradition of the community to a sacred body of texts.[5] The centrality of al-Shāfiʿī's project to how texts, revelation and scholarship were thereafter conceived has led El Shamsy to call al-Shāfiʿī's project the 'canonisation' of Islamic law. This canonisation project led eventually to a common epistemological foundation for legal debates, a foundation that has greatly facilitated the study of Islamic legal thought in the post-Shāfiʿī period. The study of legal thought in the pre-Shāfiʿī period, however, is a different matter.

The most influential contribution to our understanding of pre-Shāfiʿī legal thought has been that of Joseph Schacht, who posited the existence of 'ancient schools' of law in the major centres of the Muslim world – Mecca, Medina, Kufa, Basra and Syria – hence, 'regional' or 'geographical' schools, although Schacht himself does not use either term.[6] These ancient schools, he tells us, represented the doctrine of the legal specialists of a region, the points of agreement among whom he called the 'living tradition' of these schools, upheld as the *sunna*, or normative practice, of the community.[7] This 'living' doctrine was

4 Schacht, *Introduction*, 58-60.

5 Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013), 3-10.

6 Schacht, *Origins*, 6-10.

7 Ibid., 58-81.

the main source of law followed by jurists of each region, and regions did not differ greatly with each other in this basic legal approach.[8] It was after the rise of Prophetic reports[9] and the challenge, first of the traditionists and then of al-Shāfiʿī, that these ancient schools were transformed into personal schools in which doctrine was ascribed to an individual jurist instead of to a local living tradition.[10] Writing at the same time as Schacht, Robert Brunschvig also noted the regional nature of the traditions followed in early legal thought.[11] Noel Coulson followed Schacht's basic theory in his own presentation of early Islamic law, although he mentions only the Kufan and Medinan schools, without using the word 'ancient' or any alternative term to describe these schools.[12] The existence of ancient or regional schools has also been upheld by George Makdisi,[13] Christopher Melchert[14] and Ahmed El Shamsy.[15]

Wael Hallaq, on the other hand, has categorically denied the existence of regional schools. He argues that there was no unified regional tradition to which legal doctrine was ascribed, but, rather, that legal doctrine was always ascribed to individual scholars, who would regularly disagree with other individual scholars from the same region. The word 'school', according to Hallaq, cannot be used to describe this state of affairs.[16] Nimrod Hurvitz has also denied the existence of regional schools, arguing, firstly, that regional boundaries are inconsistently applied – the fact that Kufa and Iraq are treated as synonymous at times and different at others shows they cannot be describing actual schools; secondly, that widespread intra-regional disagreement makes it hard to identify a regionally defined unifying factor; and, thirdly, that positing the existence of a regional school leads to the assumption of a 'transformation' into the later

8 Schacht, *Introduction,* 28-36. On the similarity of legal method between regions, see also idem, *Origins*, 7-8, 21, 98.

9 For Schacht's complete theory of the rise of Prophetic reports, see ibid., 138-89.

10 Schacht, *Introduction*, 57-66.

11 Brunschvig, "Polémiques," esp. 379-87.

12 Noel Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 36-52.

13 George Makdisi, "'*Ṭabaqāt*'-Biography: Law and Orthodoxy in Classical Islam," *Islamic Studies,* 32:4 (1993): 371-96, at 389-91.

14 Christopher Melchert, *The Formation of the Sunnī Schools of Law* (Leiden: Brill, 1997), 32-47; idem, "Basra and Kufa as the Earliest Centers of Islamic Legal Controversy," in *Islamic Cultures, Islamic Contexts: Essays in Honor of Professor Patricia Crone*, ed. Behnam Sadeghi et al. (Leiden: Brill, 2015), 173-94, at 173-5.

15 El Shamsy, *Canonization*, 42-3.

16 Wael Hallaq, "From Regional to Personal Schools of Law? A Reevaluation," *Islamic Law and Society*, 8:1 (2001): 1-26.

*madhhab*s in which law was identified with individual masters. In place of the regional school, Hurvitz focuses on scholarly circles that grew around individual jurists, which set the model for the later *madhhab*s that developed out of these scholarly circles. He thus denies that any actual 'transformation' took place.[17] Miklos Muranyi[18] and Umar Wymann-Landgraf have also called into question the existence of ancient schools, with the latter arguing, "[The] proof of internal dissent within the so-called 'regional schools' far outweighs evidence for any alleged unanimity."[19]

The field currently consists of those who accept Schacht's general description and those who support Hallaq's counterarguments. Neither camp denies that the legal thought of jurists in the pre-Shāfiʿī era was influenced by the doctrine of previous teachers from the same region. Rather, the question is to describe this relationship with previous doctrine and whether it can be seen as representing a school identity. There is yet to be a formulation of early legal thought that takes into account the contributions and concerns of each party. In what follows, I attempt to produce such a formulation.

In this debate, both parties invoke Abū Yūsuf's *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*. Schacht has used this text to show the development of legal thought in the Iraqi ancient school.[20] Hallaq, on the other hand, invokes it to show the absence of a regional school, as it shows the two Kufans to be "quite far apart on issues of law."[21] We will have occasion to return to a detailed engagement with the arguments presented for and against the existence of regional schools. But, first, we turn to Abū Yūsuf's treatise.

## Investigating the *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*

*Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā* is one of the earliest extant treatises of Islamic law.[22] The book contains 263 points of law on which Abū Ḥanīfa and

17 Nimrod Hurvitz, "Schools of Law and Historical Context: Re-examining the Formation of the Ḥanbalī Madhhab," *Islamic Law and Society*, 7:1 (2000): 37-64, esp. 39-46.

18 Miklos Muranyi, *Materialien zur mālikitischen Rechtsliteratur* (Wiesbaden: Harrassowitz, 1983), 50-7.

19 Umar F. Abd-Allah Wymann-Landgraf, *Mālik and Medina: Islamic Legal Reasoning in the Formative Period* (Leiden: Brill, 2013), 21.

20 Schacht quotes the work extensively from al-Shāfiʿī's *Ikhtilāf al-ʿirāqiyyayn* in the *Umm*, referring to it as Tr. 1.

21 Hallaq, "From Regional," 6-8.

22 Ahmed El Shamsy has argued for the authenticity of Abū Yūsuf's treatise based on its presence in the *Kitāb Ikhtilāf al-ʿirāqiyyayn* of al-Shāfiʿī's *Umm*: Ahmed El Shamsy,

Ibn Abī Laylā differed, divided into 35 chapters. Each chapter begins with *qāla Abū Yūsuf* ("Abū Yūsuf said") followed by a series of legal cases, usually presenting Abū Ḥanīfa's opinion first. In most cases, Abū Yūsuf identifies his own preferred opinion with the phrase *wa-bihi na'khudh* ("and we hold this [opinion]").[23] The text often mentions a basis for these opinions, which is sometimes a report (*khabar*) and sometimes a line of legal reasoning.

The text was edited by Abū al-Wafā' al-Afghānī (d. 1975), relying on a single manuscript concerning which he gives little information, and published in Hyderabad in 1357/1938-9.[24] The entirety of the text is also included in al-Shāfiʿī's *magnum opus*, the *Umm*, under the title *Kitāb Ikhtilāf al-ʿirāqiyyayn*.[25] In the *Umm*'s version, almost all of the cases are interrupted with *qāla al-Shāfiʿī* ("al-Shāfiʿī said") followed by al-Shāfiʿī's opinion regarding the case. The two versions are nearly identical, with only small changes in the version of the *Umm* to make it clear that the text was transmitted by al-Shāfiʿī. For example, *qāla Abū Yūsuf* becomes *qāla al-Shāfiʿī*, and *bihi na'khudh* ("and we hold this [opinion]") becomes *bihi ya'khudh* ("and he [Abū Yūsuf] holds this [opinion]"). Sections from the text are also found in Mehmet Boynukalın's recent complete edition of the *Aṣl* of Muḥammad al-Shaybānī (d. 189/805), a student of both Abū Ḥanīfa and Abū Yūsuf.[26]

It is our purpose to assess what the text might reveal of a regional Kufan method and approach to inherited legal tradition. This exercise will involve a brief review of the reports quoted in the text followed by an assessment of how Kufan precedent influenced the doctrine of these two jurists.

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"Al-Shāfiʿī's Written Corpus: A Source-Critical Study," *Journal of the American Oriental Society*, 132:2 (2012): 199-220, at 220. I have an article in progress in which I present a transmission history of the text and argue for the likelihood of its dating back to Abū Yūsuf.

23 The phrase "*wa-bihi na'khudh*" is not used in 24 cases, 15 of which explicitly mention *qāla Abū Yūsuf*, followed by his opinion, and 9 of which mention no opinion other than that of his two teachers.

24 Abū Yūsuf, *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*, ed. Abū al-Wafā' al-Afghānī (Hyderabad: Dā'irat al-Maʿārif al-Nuʿmāniyya, 1357/1938-9), 5.

25 Schacht, Hallaq and others transliterate the second word of the title in the plural form, *Ikhtilāf al-ʿiraqiyyīn*. I transliterate it here in the dual form, *ʿiraqiyyayn*, as stated by al-Nawawī and al-Fayyūmī in their respective *fiqh* dictionaries, since the debate is between two Iraqis: al-Nawawī, *Tahdhīb al-asmā' wa'l-lughāt*, 4 vols. (Cairo: Idārat al-Ṭibāʿa al-Munīriyya, 1344/1925-6; reprint, Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), 4:13; al-Fayyūmī, *al-Miṣbāḥ al-munīr fī gharīb al-Sharḥ al-kabīr li'l-imām al-Rāfiʿī*, 2 vols. (Cairo: al-Maṭbaʿa al-Bahiyya, 1302/1884), 2:33.

26 Ahmed El Shamsy, review of *al-Aṣl*, ed. by Mehmet Boynukalın, *Journal of Near Eastern Studies*, 75:1 (2016), 194-5, at 195.

### *A Review of Reports in the Text*

Reports (*akhbār*) in the text present the most obvious reference to regional identity. The text contains reports transmitted by both Abū Ḥanīfa and Ibn Abī Laylā, as well as reports that appear to have been independently transmitted by Abū Yūsuf and/or Muḥammad al-Shaybānī.[27] Of 148 reports, only 23 are from the Prophet, suggesting that in pre-Shāfiʿī legal discussions, statements of prominent Companions and Successors carried as much weight as Prophetic statements.[28] Although Schacht has cited the predominance of non-Prophetic reports in formative-period legal discourse as evidence for the later invention of Prophetic reports, El Shamsy proposes simply that Prophetic reports had yet to be seen as the primary source of law.[29] The importance given to legal authorities from previous generations is a mark of the communal approach to law of this period, reflecting a broader understanding of the word '*sunna*'.[30]

The vast majority of the non-Prophetic reports are from six people: Ibrāhīm al-Nakhaʿī (d. 96/714), 25 reports (more reports than the Prophet), ʿAlī b. Abī Ṭālib (d. 40/661), 17, ʿUmar b. al-Khaṭṭāb (d. 23/644), 15, ʿAbd Allāh b. Masʿūd (d. 32/652-3), 14, ʿAbd Allāh b. ʿAbbās (d. 68/687-8), 12, and Shurayḥ b. al-Ḥārith al-Kindī (d. 87/705-6?), 9. All but two of these men – ʿUmar and Ibn ʿAbbās – were Kufan residents. ʿUmar's status as a primary source of authority for Kufan jurists is not a surprise. His stature as a leading Companion, and as the caliph who presided over the initial Muslim territorial expansion, gave his legal pronouncements great weight in Muslim centres of learning. It is said that Ibn

27 I refer here to reports with a full chain of transmission that are sometimes found at the ends of sections in Abū Yūsuf's treatise: Abū Yūsuf, *Ikhtilāf*, 30-3, 38-40, 52, 89-90, 139-40, 144, 163, 178, 186. They appear to be additions from Abū Yūsuf to reports mentioned by his two teachers; alternatively these may be additions from Muḥammad al-Shaybānī. (Al-Shaybānī transmitted the text from Abū Yūsuf and is mentioned by name in the text four times: ibid., 9, 13, 58, 145. See also ibid., 5, for Abū al-Wafāʾ's comments on al-Shaybānī's role in the production of the text.) A number of these reports are found in al-Shaybānī's books, as Abū al-Wafāʾ points out in his footnotes.

28 Schacht, *Introduction*, 33-4; idem, *Origins*, 29. See also Motzki's study of Prophet and Companion reports conveyed by ʿAṭāʾ b. Abī Rabāḥ (d. 114/732 or 115/733): Harald Motzki, "The *Muṣannaf* of ʿAbd al-Razzāq al-Ṣanʿānī as a Source of Authentic *Aḥādīth* of the First Century A.H.," *Journal of Near Eastern Studies*, 50:1 (1991): 1-21, at 12-21.

29 El Shamsy, *Canonization*, 7-10. Wymann-Landgraf adds that Prophetic reports are few in relation to the legal statements that they were purportedly invented to uphold, that they are vaguely worded in relation to these legal statements, and that they were upheld to support varying juristic opinions; all of this makes it hard to view them as merely invented for the sake of supporting regional law: Wymann-Landgraf, *Mālik*, 22-8.

30 See Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 39-48, and Schacht, *Origins*, 58-81.

Masʿūd, the leading Kufan Companion, would abandon his own legal opinion if he heard that ʿUmar held one to the contrary.[31]

The presence of Ibn ʿAbbās, the most prominent Meccan authority, is anomalous in this otherwise Kufa-heavy list of authorities. He is mentioned sometimes as the main authority for Ibn Abī Laylā's opinion and sometimes for Abū Ḥanīfa's. The repeated mention of Ibn ʿAbbās suggests that this Meccan authority had a notable standing with at least two of the great Kufan jurists of this generation. Historical considerations may explain this. Abū Ḥanīfa reportedly performed the Hajj pilgrimage almost yearly,[32] and he spent six years in Mecca after escaping from the Kufan governor, Yazīd b. ʿUmar b. Hubayra (d. 132/750), in 130/747-8, remaining in Mecca until the ascension of the ʿAbbāsid Caliph al-Manṣūr (d. 158/775).[33] Abū Ḥanīfa reportedly held Ibn ʿAbbās' student ʿAṭāʾ b. Abī Rabāḥ in high regard, saying of him, "I have not seen anyone … more virtuous than ʿAṭāʾ."[34] As for Ibn Abī Laylā, although I have not found explicit mention of an extended stay of his in Mecca, it may be assumed that he performed the Hajj pilgrimage several times and that his father's rank as a respected traditionist[35] would have given him special access to the scholars of Mecca. We are told, for example, that ʿAṭāʾ, after asking Ibn Abī Laylā questions in the presence of the former's students, declared, "He is more learned than I."[36] The extent of Meccan influence on other Kufans in this era merits further investigation.[37]

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31 Aḥmad b. Ḥanbal, *al-ʿIlal wa-maʿrifat al-rijāl*, ed. Waṣī Allāh Muḥammad ʿAbbās, 3 vols. (Riyadh: Dār al-Khānī, 2001), 2:162.

32 Abū Ḥanīfa is said to have performed the Hajj 55 times: See al-Makkī, *Manāqib Abī Ḥanīfa*, 2 vols. (Beirut: Dār al-Kitāb al-ʿArabī, 1981), 1:231.

33 Ibid., 1:276.

34 Al-Tirmidhī, *Sunan al-Tirmidhī*, ed. Aḥmad Muḥammad Shākir, Muḥammad Fu'ād ʿAbd al-Bāqī and Ibrāhīm ʿAṭwa ʿIwaḍ, 5 vols. (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1975), 5:741.

35 Ibn Abī Laylā belonged to an established scholarly family. His father was a celebrated Successor and traditionist (al-Dhahabī, *Siyar*, 262-7); his nephew, ʿAbd Allāh b. ʿĪsā b. ʿAbd al-Raḥmān b. Abī Laylā (d. 130/747-8) was a renowned traditionist (al-Dhahabī, *Tārīkh al-Islām*, ed. ʿUmar ʿAbd al-Salām al-Tadmurī, 52 vols. [Beirut: Dār al-Kitāb al-ʿArabī, 1993], 8:152); and his grandfather, Abū Laylā (d. 37/657), was a Companion (Ibn ʿAbd al-Barr, *al-Istīʿāb fī maʿrifat al-aṣḥāb*, ed. ʿAlī Muḥammad al-Bajāwī, 4 vols. [Beirut: Dār al-Jīl, 1992], 4:1744).

36 Al-Dhahabī, *Siyar*, 6:314.

37 The fact that ʿAṭāʾ is the sixth most cited authority in the *Muṣannaf* of the Kufan traditionist Ibn Abī Shayba (d. 235/845) indicates that Meccan influence was not restricted to our two Kufans: See Scott Lucas, "Where are the Legal 'Ḥadīth?' A Study of the 'Muṣannaf' of Ibn Abī Shayba," *Islamic Law and Society*, 15:3 (2008): 283-314, at 293. Now, it is conceivable that the attributions to Ibn ʿAbbās in our text are ʿAbbāsid-era back-projections. (Motzki

No Basran authority is quoted regarding a legal ruling, although Basran narrators are prominent in the chains of transmission. The other legal authorities mentioned in the text include prominent Companions associated with Kufa, Mecca and Medina.[38] The only Companion not associated with Kufa or the Hijaz is Muʿāwiya (d. 60/680), quoted once. Only Kufans are quoted from generations after the Companions, with the exception of the Medinan/Damascene Umayyad Caliph ʿUmar b. ʿAbd al-ʿAzīz (d. 101/720), the Medinans ʿAlī b. ʿAbd Allāh b. ʿAbbās (d. 118/736-7) and Muḥammad al-Bāqir (d. 114/732-3), all of whom are quoted once, and the aforementioned ʿAṭāʾ, quoted five times.

The reports point to the importance of referencing local, Kufan opinions and reports in exchanges between Kufan jurists. Authorities from outside of the region who find mention in this intra-Kufan exchange were primarily from the generation of the Companions, to whom Muslims paid general deference, and, even then, primarily those associated with the Hijaz, perhaps because of links facilitated by the Hajj pilgrimage, along with the absence of a history of political tension as existed between Kufa and Damascus from the stand off between ʿAlī and Muʿāwiya.[39] Reports from non-Kufan authorities after the Companions make up less than six percent of the total reports, over half of which are the reports of the Meccan ʿAṭāʾ.

### *Investigating Kufan Doctrine*

The question of regional law, however it might be conceptualised, ultimately revolves around the relationship between jurists in a particular region and the opinions of their predecessors from the same region. To better understand this

has doubted the authenticity of reports attributed to Ibn ʿAbbās in *tafsīr* literature: Harald Motzki with Nicolet Boekhoff-van-der Voort and Sean Anthony, *Analysing Muslim Traditions: Studies in Legal, Exegetical and Maghāzī Ḥadīth* [Leiden: Brill, 2010], 297-8.) However, the prominence of ʿAṭāʾ as a quoted authority in Abū Yūsuf's treatise as well as the large measure of agreement with the opinions of ʿAṭāʾ (see below) does suggest a genuine connection with at least some circles in Mecca. Furthermore, we know that the theological doctrine of *irjāʾ* connected members of Ibn ʿAbbas' Meccan circle to Kufan Murjiʾīs: See Claude Gilliot, "Mujāhid's Exegesis: Origins, Paths of Transmission and Development of a Meccan Exegetical Tradition in its Human, Spiritual and Theological Environment," in *Tafsīr and Islamic Intellectual History: Exploring the Boundaries of a Genre*, ed. Andreas Görke and Johanna Pink (Oxford: Oxford University Press in association with the Institute of Ismaili Studies, 2014), 63-112, at 65-7.

38 These are Abū Bakr (d. 13/634), four reports, ʿUthmān b. ʿAffān (d. 35/656), two, Saʿd b. Abī Waqqāṣ (d. 55/ 674-5?), one, ʿĀʾisha (d. 58/678), two, ʿAbd Allāh b. al-Zubayr (d. 73/692), one, Zayd b. Thābit (d. 55/674-5?), two, ʿAbd Allāh b. ʿUmar (d. 73/692-3), three, al-Ḥasan b. ʿAlī (d. 50/670-1?), one, and ʿAbd Allāh b. Jaʿfar (d. 84/703-4), one.

39 On the political tension between Damascus and Kufa, see *EI²*, s.v. "Kufa" (Hicham Djaït).

relationship, I compared the legal issues discussed in Abū Yūsuf's book to legal issues discussed by previous generations of scholars, inside and outside of Kufa. To access the *fiqh* of earlier scholars, I limited myself to the two *Muṣannaf* works of ʿAbd al-Razzāq b. Hammām al-Ṣanʿānī (d. 211/827) and Abū Bakr ʿAbd Allāh b. Muḥammad b. Abī Shayba, in addition to reports mentioned in the text itself. These *Muṣannaf*s convey a large number of non-Prophetic legal reports, and both Harald Motzki and Gautier Juynboll have argued for the reliability of the ascription of reports in these *Muṣannaf*s to first-century figures.[40] Even if we were to concede the unreliability of these ascriptions, they still show what was conveyed by the sources from which our *Muṣannaf* authors drew,[41] representing what was regarded as legal tradition in the wider milieu of our two jurists. A further advantage of these two works is that they have no vested interest in supporting Abū Ḥanīfa's *fiqh* in any particular way. Ibn Abī Shayba, himself a Kufan, dedicated an entire chapter in his work to refuting Abū Ḥanīfa,[42] while the Yemeni ʿAbd al-Razzāq took primarily from Hijazi *shaykh*s, with his main source of Kufan narrations being Sufyān al-Thawrī (d. 161/777-8?),[43] to whom biographical works ascribe an ambivalent, if not negative, view of Abū Ḥanīfa.[44] My sources are limited, but by focusing on points of disagreement in Kufa whilst avoiding the *ḥadīth* compilations of Abū Ḥanīfa's students, I hope to arrive at an assessment of a possible Kufan identity that is more reliable and conservative than what can be concluded from the *Āthār* collections of Abū Ḥanīfa's circle, which present him predominantly as a loyal follower of the Kufan Ibrāhīm al-Nakhaʿī.[45]

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40 See Harald Motzki, *The Origins of Islamic Jurisprudence: Meccan Fiqh Before the Classical Schools* (Leiden: Brill, 2002); idem, "The *Muṣannaf* of ʿAbd al-Razzāq"; Gautier Juynboll, "Some Notes on Islam's First *Fuqahāʾ* Distilled from Early *Ḥadīṯ* Literature," *Arabica*, 39 (1992): 287-314, at 298-302.

41 On the sources of the *Muṣannaf* authors, see Scott Lucas, "Where are the legal 'Ḥadīth?'" 290-4, and Motzki, *Origins*, 58-62.

42 Ibn Abī Shayba, *al-Muṣannaf*, ed. Muḥammad ʿAwwāma, 26 vols. (Jeddah: Dār al-Qibla and Damascus: Muʾassasat ʿUlūm al-Qurʾān, 2006), 20:53-217.

43 Motzki, *Origins*, 63-4.

44 See, for example, al-Khaṭīb al-Baghdādī, *Tārīkh madīnat al-salām*, ed. Bashshār ʿAwwād Maʿrūf, 16 vols. (Beirut: Dār al-Gharb al-Islāmī, 2002), 15:471, 530, 543, 546, 548, 549.

45 Shāh Walī Allāh al-Dihlawī (d. 1176/1762) states, "Abū Ḥanīfa adhered to the opinions (*madhhab*) of Ibrāhīm and his peers more than [other jurists]….If you wish to know the truth of what we have said, summarise the statements of Ibrāhīm from the *K. al-Āthār* of Muḥammad [al-Shaybānī], the *Jāmiʿ* of ʿAbd al-Razzāq and the *Muṣannaf* of Abū Bakr b. Abī Shayba, then compare them to [Abū Ḥanīfa's] opinions; you will find him not leaving that pathway (*maḥajja*) except in a few places, and even in that few, he does not depart from the opinions of the jurists of Kufa": al-Dihlawī, *al-Inṣāf fī bayān asbāb al-ikhtilāf*, ed.

One hundred of the 263 legal cases in the work were easily identified in the aforementioned sources as cases addressed in juristic circles before Abū Ḥanīfa and Ibn Abī Laylā. Many of the remaining cases are far from novel and must also have been previously addressed. It is, therefore, no exaggeration to state that at least half of the cases discussed in Abū Yūsuf's treatise, and probably more, had been treated in previous generations. This is significant.

The high occurrence of cases addressed by earlier authorities points to the importance of negotiating previous juristic opinions in pre-Shāfiʿī *fiqh*. This observation is very much in line with what we know about early juristic circles, in which a generation of masters studied with a previous generation of masters, and, in each generation, the previous generations' insights were considered. This understanding of early law provides an interesting contrast between the efforts of these early jurists and the traditionists. Whereas traditionists had the difficult task of sifting through a conflicting corpus of *ḥadīth*s, the early jurists had the similarly difficult task of sifting through a conflicting corpus of juristic statements. Thus, when a jurist like Abū Yūsuf summarised the legal positions of an eminent teacher, he was showing this teacher's interventions in generationally ongoing debates. But what can be said of the manner in which the two Kufan jurists in Abū Yūsuf's text interacted with earlier juristic precedent?

In 87 of the 100 cases that were identified has having been previously addressed, the sources consulted record a precedent for each of Abū Ḥanīfa's and Ibn Abī Laylā's opinions. In total, these 87 cases can be seen to present 90 separate legal discussions, as one of these cases is composed of three independent issues and another is composed of two. In the vast majority of these cases, authorities from across regions are cited as precedents. The following table shows the regional distribution of precedents for the opinions of each of our two Kufans.[46] I mention the main regions which, according to our text, had a

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ʿAbd al-Fattāḥ Abū Ghudda (Beirut: Dār al-Nafāʾis, 1404/1983-4), 39. Contrary to Shāh Walī Allāh, Zafar Ishaq Ansari suggests that Abū Ḥanīfa disagrees frequently with the opinions ascribed to al-Nakhaʿī in the *Āthār* collections of al-Shaybānī and Abū Yūsuf, although he provides little documentation for this: Zafar Ishaq Ansari, "The Early Development of Islamic Fiqh in Kūfah With Special Reference to the Works of Abū Yūsuf and Shaybānī," (PhD diss., McGill University, 1966), 92. My own investigation, which avoids these *Āthār* collections and focuses on Kufan disagreement, complements Shāh Walī Allāh's insights, but also questions the degree of Abū Ḥanīfa's loyalty to al-Nakhaʿī compared with other Kufans of Abū Ḥanīfa's generation.

46 I have prepared an appendix in which I summarise these 87 cases and mention the jurists who upheld each opinion. This appendix may be requested from me. It can also be found in the Bodleian Library of the University of Oxford as Sohail Hanif, "Eighty-Seven Cases of

TABLE 1 *Regional precedents for the opinions of Abū Ḥanīfa and Ibn Abī Laylā*

| | Relative results | | | Absolute results | |
|---|---|---|---|---|---|
| | **No precedent for Abū Ḥanīfa** | **No precedent for Ibn Abī Laylā** | **No precedent for either** | **No precedent for Abū Ḥanīfa** | **No precedent for Ibn Abī Laylā** |
| Kufa | 7 | 19 | 1 | 8 | 20 |
| Basra | 33 | 10 | 20 | 53 | 30 |
| Mecca | 17 | 20 | 28 | 45 | 48 |
| Medina | 13 | 22 | 31 | 44 | 53 |

connection with the Kufan legal tradition: Kufa, Basra, Mecca and Medina. The first three columns present relative results: the number of cases in which Abū Ḥanīfa's opinion had no precedent in a particular region while Ibn Abī Laylā's did, the number of cases in which Ibn Abī Laylā's opinion had no precedent in that region while Abū Ḥanīfa's did, and the number of cases in which there was no precedent in that region for either opinion. The next two columns show absolute results, meaning the total number of cases in which there was no precedent from a particular region.[47]

Several inferences may be drawn from Table 1. Abū Ḥanīfa is closer to the Medinans than Ibn Abī Laylā, while Ibn Abī Laylā is closer to the Basrans. Their

Disagreement Between Abū Ḥanīfa (d. 150/767) and Ibn Abī Laylā (d. 148/765) with Their Precedents: An Appendix to Sohail Hanif, 'A Tale of Two Kufans: Abū Yūsuf's *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā* and Schacht's Ancient Schools'".

47 In a number of cases, I record the same authority as a precedent for each of Abū Ḥanīfa's and Ibn Abī Laylā's positions, either because conflicting opinions are attributed to these authorities, or because their statements could be held as a precedent for either opinion. I include the Kufan 'Abd Allāh b. Shubruma as a source of precedent, even though he is a contemporary of our two jurists, as he was the judge of Kufa before Ibn Abī Laylā; his judgments therefore represent a source of precedent which subsequent judges would have considered. For assigning regions to particular precedents, I consider only the regional affiliation of the authorities whose legal opinions are quoted, not the chain of transmission connecting to that authority. While it is true that studying the regional affiliation of narrators in a chain of transmission can help in dating a report (Behnam Sadeghi, "The Travelling Traditions Test: A Method for Dating Traditions," *Der Islam,* 85:1 [2009]: 203-42), the persuance of such nuances as may lie behind individual transmissions is not the objective of the current investigation, nor would it significantly alter the conclusions drawn here.

relationship with Meccan precedent is similar. For our purposes, the most significant result is the influence of Kufan precedent. There is only one legal case for which our sources do not record a Kufan precedent for either opinion. This is just 1% of the total cases investigated, compared with 22% for Basra, 31% for Mecca and 34% for Medina. The fact that our jurists debated cases discussed in their region more consistently than those discussed in any other region is evidence for a regional tradition. Within ongoing regional debates, Ibn Abī Laylā was more likely – according to this data set – to abandon Kufan opinions than Abū Ḥanīfa. While both jurists would have been aware of the opinions held by previous authorities in their own region, their knowledge of precedent from other regions is an open question. In other words, much of the agreement with authorities from other regions might be a coincidence and not a result of a conscious effort by our two jurists to follow them or to give importance to their teaching circles. However, three figures from other regions deserve special mention due to the frequency with which their positions align with those of our two jurists. These are the Meccan ʿAṭāʾ (Abū Ḥanīfa agreed with him 23 times and Ibn Abī Laylā 17), the Medinan al-Zuhrī (d. 124/742) (Abū Ḥanīfa agreed with him 20 times and Ibn Abī Laylā 10), and the Basran al-Ḥasan (d. 110/728) (Abū Ḥanīfa agreed with him 20 times and Ibn Abī Laylā 44). The frequency of their mention might suggest a particular interest in their doctrine, a possibility that merits further attention.

The data enable us to answer the following question: Were there 'schools' within Kufa? It might be expected that both Abū Ḥanīfa and Ibn Abī Laylā, as products of different Kufan teaching circles, would relate to previous precedent in distinctive ways. However, the data do not present significant patterns in this regard. Table 2 shows the number of cases in which Abū Ḥanīfa and Ibn Abī Laylā agreed with each major Kufan authority.

For the cases discussed in our text, Ibrāhīm al-Nakhaʿī is the most frequently quoted authority. While it is true that Abū Ḥanīfa agreed with him more often than Ibn Abī Laylā did, the difference is not large enough for us to state that Abū Ḥanīfa was consistently closer to al-Nakhaʿī's opinion, as he disregarded his opinion a significant number of times (41% of cases where al-Nakhaʿī was cited as precedent). What is interesting is the relationship of our jurists to their respective teachers. Al-Shaʿbī (d. 104/722-3?) was Ibn Abī Laylā's main teacher in *fiqh*,[48] yet Abū Ḥanīfa was as likely to agree with him as was Ibn Abī Laylā. The same can almost be said regarding Ibn Abī Laylā's other mentor, al-Ḥakam

48 Ibn Khallikān, *Wafāyāt al-aʿyān*, 4:179, mentions only al-Shaʿbī as Ibn Abī Laylā's *fiqh* mentor.

TABLE 2 *Kufan precedents for the opinions of Abū Ḥanīfa and Ibn Abī Laylā*

| | **Abū Ḥanīfa** | **Ibn Abī Laylā** |
|---|---|---|
| ʿAlī b. Abī Ṭālib | 17 | 21 |
| ʿAbd Allāh b. Masʿūd | 16 | 7 |
| Shurayḥ | 13 | 20 |
| Ibrāhīm al-Nakhaʿī | 48 | 34 |
| Al-Shaʿbī | 33 | 31 |
| Al-Ḥakam b. ʿUtayba | 13 | 17 |
| Ḥammād b. Abī Sulaymān | 19 | 6 |

b. ʿUtayba (d. 115/733-4).[49] Abū Ḥanīfa was closer to his own mentor, Ḥammād b. Abī Sulaymān (d. 120/737-8), although Table 2 does not show the several cases in which Ḥammād held an opinion that was not held by either of our two jurists. The data do not point to significant 'school' identities within Kufa, and previous authorities were as likely to be followed by these jurists as not.

It is clear that a Kufan jurist was not expected to follow a particular authority in all legal rulings, but, rather, to follow whichever opinion accorded with his own legal reasoning. This appears inconsistent with the practice of the Kufans in their legal training. According to Christopher Melchert, the *ahl al-ḥadīth* would travel to sit with as many *shaykh*s as possible and did not closely associate with a particular master for jurisprudential training, while the *ahl al-raʾy* had a single teacher or two with whom they were closely associated.[50] With some Kufans, this close association with a juristic master was practised almost fanatically. Consider, for example, that when Ibrāhīm al-Nakhaʿī died in 96/714, some Companions still lived in Kufa, but he did not relate *ḥadīth*s from any of them.[51] Nor did he narrate from ʿAbd Allāh b. ʿAbbās, who died when al-Nakhaʿī was 22 years of age, even though al-Nakhaʿī had been visiting the Hijaz since he was a young boy.[52] Instead, he closely associated with a small group of mentors from ʿAbd Allāh b. Masʿūd's circle, his main mentor being his

49 Both al-Shaʿbī and al-Ḥakam are mentioned together as Ibn Abī Laylā's *fiqh* mentors in Abū Isḥāq al-Shīrāzī, *Ṭabaqāt al-fuqahāʾ*, ed. Iḥsān ʿAbbās (Beirut: Dar al-Rāʾid al-ʿArabī, 1970), 84.

50 Melchert, *Formation*, 13-14.

51 Al-Dhahabī, *Siyar*, 4:520.

52 Ibid., 4:525.

uncle ʿAlqama b. Qays (d. *c.* 62/681-2).[53] No *fiqh* mentor other than al-Nakhaʿī is mentioned for Ḥammād b. Abī Sulaymān, and no *fiqh* mentor other than Ḥammād is mentioned for Abū Ḥanīfa. As for Abū Yusūf, when he started sitting with Abū Ḥanīfa, it was understood that this entailed leaving Ibn Abī Laylā's circle.[54] As mentioned above, Ibn Abī Laylā was associated with two teachers, the primary teacher being al-Shaʿbī.[55] This extreme loyalty to a limited group of masters closely resembles Hurvitz's description of early scholarly circles.[56] In these teaching circles the master apparently would recount the opinions of previous masters and explain his own chosen opinions. Thus, a student would learn the points of agreement and disagreement within this living, teaching tradition, along with the insights of his teacher.[57] However, as revealed by our investigation, this strict adherence to a particular master was not a strict allegiance to his opinion, but rather a recognition of his legal ability.

This understanding of early legal circles is further supported by Abū Yūsuf's own engagement with the disagreements of his two mentors. His primary allegiance was clearly to Abū Ḥanīfa, as he usually mentions Abū Ḥanīfa's opinions first and quotes more arguments and evidence from Abū Ḥanīfa than from Ibn Abī Laylā, but he does not always agree with Abū Ḥanīfa. He points to his preference for Abū Ḥanīfa's opinion – using the phrase *wa-bihi naʾkhudh* ("And we hold this [opinion]") – in 189 cases (72%) and Ibn Abī Laylā's in 49 (19%). He abstains from choosing an opinion in 12 cases, presumably because he saw merit in both opinions, and in 7 cases he is reported to have first held the opinion of one mentor and then reverted (*rajaʿa*) to the opinion of the other. He held an independent opinion in 5 cases, but 3 of these merely combined aspects of Abū Ḥanīfa's and Ibn Abī Laylā's opinions.[58] Abū Yūsuf's engagement in this text with his two mentors presents a micro-image of their work: They interacted with thousands of cases, not 263, from multiple masters,

53 Rabāḥ Abū al-Muthannā (d. ?) reportedly said, "If you see ʿAlqama, then there is no harm in not having seen ʿAbd Allāh [b. Masʿūd, as ʿAlqama] was the most similar to him in conduct and practice; and if you see Ibrāhīm al-Nakhaʿī, then there is harm in not having seen ʿAlqama, [as Ibrāhīm] was most similar to him in conduct and practice": al-Dhahabī, *Siyar*, 4:55.

54 The anecdote that explains Abū Yūsuf's leaving Ibn Abī Laylā's circle for Abū Ḥanīfa's is cited in al-Sarakhsī, *al-Mabsūṭ*, 30 vols. (Cairo: Maṭbaʿat al-Saʿāda, 1324/1906-7; reprint, Beirut: Dār al-Maʿrifa, 1993), 30:128-9.

55 As only al-Shaʿbī is mentioned in Ibn Khallikān, *Wafāyāt al-aʿyān*, 4:179.

56 Hurvitz, "Schools," 45.

57 Thus, the documenting of *khilāf*, or disagreement, is a primary interest in these scholarly circles: See Wymann-Landgraf, *Mālik*, 17-21.

58 Abū Yūsuf, *Ikhtilāf*, 60, 65, 92, 138-9, 170.

not two, to choose the most suitable opinions, or form their own opinions if needed. In this sense, Abū Yūsuf was closely following Abū Ḥanīfa's legal method by disagreeing with him: Had he consistently agreed with Abū Ḥanīfa, he would have abandoned Abū Ḥanīfa's approach to *fiqh*.

The aforementioned picture accords well with Hallaq's characterisation of early jurists as freely selecting between local opinions.[59] The question, then, is whether this loose adherence to individual doctrines constitutes a 'school'. We return now to the scholarly debate on the topic, hopefully better informed by the preceding investigation.

## Revisiting the Regional School Debate

Before discussing the notion of a regional 'school', it is important to revisit the *exact* point of scholarly disagreement. This exact point is Schacht's concept of 'living tradition'. For Schacht, it will be recalled, the 'living tradition' represents the points of agreement amongst the authorities of a region.[60] Allegiance to this local consensus was a core feature of the ancient school. Because these were points of consensus, he tells us, they were referenced anonymously. Hallaq and those who follow him have challenged this notion of living tradition, pointing to widespread regional disagreement as evidence for the absence of regional consensus.

The preceding investigation has focused on points of regional disagreement, not regional agreement. However, the presence of widely accepted points of doctrine in a particular region, or a widely followed practice, must have existed. Mālik makes frequent reference to Medinan practice – "Thus I found the people of our city [practising]"; "That is not practised in our city"; "That is the *sunna* and the matter concerning which there is none to disagree amongst the people of Medina"[61] – this is precisely an anonymous reference to living tradition. We regularly find such matters mentioned in biographical works, such as the Kufans and their drinking of *nabīdh* (an intoxicating date-beverage) and preference for ʿAlī,[62] or the Medinans and their method of

59 Hallaq, "From Regional," 10-11.

60 Schacht, *Introduction*, 29-31; idem, *Origins*, 98.

61 Saḥnūn b. Saʿīd, *al-Mudawwana al-kubrā*, 4 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1994), 1:251,333. On the meaning of Medinese praxis according to its advocates, see Wymann-Landgraf, *Mālik*, 219-69.

62 Sufyān al-Thawrī is said to have followed the *madhhab* of the people of Kufa (*ahl baladihi*) in drinking *nabīdh* (an intoxicating date-beverage) and expressing preference for ʿAlī over ʿUthmān: al-Dhahabī, *Siyar*, 7:241. The traditionist Wakīʿ b. al-Jarrāḥ also held both

*adhān* (call to prayer) and the precise measurement they give to the *ṣāʿ* (a volumetric measure often referred to in legal discussions).[63] In literature describing scholarly disagreements written after the period of these so-called regional schools, we continue to find written use of anonymous regional reference for cases of agreement in a town, as in the *Ikhtilāf al-fuqahāʾ* of Muḥammad b. Naṣr al-Marwazī (d. 294/907?), where opinions are frequently ascribed to the *Kūfiyyūn* or the *ahl al-Kūfa*, referring not only to Abū Ḥanīfa's circle, but also to his contemporaries, such as Sufyān al-Thawrī, and to earlier scholars such as al-Shaʿbī and Shurayḥ.[64] Furthermore, most of the reports narrated by Abū Ḥanīfa in the *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā* begin with *balaghanā*, "it has reached us"; such a non-ascribed, anonymous transmission, in which Abū Ḥanīfa simply states that a report is known, is the hallmark of a communal tradition.

But the presence of communal agreement does not rule out the existence of widespread disagreement. Schacht regularly speaks of internal disagreements and opposition groups.[65] (Such statements by Schacht are often ignored or dismissed as being inconsistent with other statements by him.)[66] Furthermore, although a living tradition might lend itself to anonymous ascription, it is not necessary for this to be the case. In this regard, Melchert has responded to Hallaq by saying, "No one before [Hallaq] said that a regional school, to exist, must be cited anonymously. Neither did anyone before him assert that the regional schools had clear, enforceable boundaries just like the later guild schools."[67] He adds, "It can easily be shown that Hallaq does not discredit any earlier scholar's

positions, and al-Dhahabī explicitly states that his preference for ʿAlī was due to his being Kufan: ibid., 9:150-1,154. These examples are revealing, as both Sufyān and Wakīʿ represent the traditionist movement, presented by Schacht as an opposition group to the jurists of the ancient schools, yet both camps shared points of common doctrine that were identified as 'Kufan'.

63 ʿIyāḍ al-Yaḥṣubī, *Tartīb al-madārik wa-taqrīb al-masālik*, ed. ʿAbd al-Qādir al-Ṣaḥrāwī et al., 8 vols. (Moḥammedia, Morocco: Maṭbaʿat Faḍāla, 1965-83), 2:124.

64 Muḥammad b. Naṣr al-Marwazī, *Ikhtilāf al-fuqahāʾ*, ed. Muḥammad Ṭāhir Ḥakīm (Riyadh: Aḍwāʾ al-Salaf, 2000), 98, 100, 112, 114 (Sufyān and the Kufans), 122, 126, 129, 133, 146, 236-7 (Sufyān and the Kufans), 253, 270 (Sufyān and *ʿāmmat ahl al-Kūfa*), 348-9 (Sufyān and *aṣḥāb al-raʾy* against Ibn Abī Laylā, Sharīk b. ʿAbd Allāh (d. 107/652) and a group of the *ahl al-Kūfa*), 435, 565 (Sufyān and *aṣḥāb al-raʾy* against Shurayḥ, al-Shaʿbī and other Kufans), 574 (Sufyān and the Kufans).

65 See Schacht, *Origins*, 7-8, 95-7, 283, and idem, *Introduction*, 33-4, in addition to his general description of the ancient schools as not representing a "strict uniformity of doctrine": ibid., 28.

66 Hurvitz, "Schools," 42.

67 Melchert, "Basra," 174.

description of regional schools."[68] To be fair, Schacht does emphasise the anonymous attribution of doctrine more than the sources before us demonstrate; and it is to this that much of Hallaq's response is directed.[69] In Hallaq's view, there was a very large amount of internal disagreement and when doctrine was referenced – at least in the sources available to us – it was to individuals, not to anonymous sources.[70] These are valid observations. Bringing together, then, the arguments of both sides, we can assert that the scope of living tradition, in the sense of local consensus, was significantly narrower than described by Schacht – at least as found in the texts before us – when compared with the scope of local disagreement. In the latter half of the second/eighth century, when our earliest authored works emerge, we find an effort to precisely identify the sources of opinions and a dismissal of vague references to local practice; this is what can be seen from Abū Yūsuf's refutation of al-Awzāʿī's (d. 157/773) reliance on Syrian practice and Muḥammad al-Shaybānī's refutation of Mālik's reliance on Medinan practice.[71] To this point, Schacht's theory stands, although modified by Hallaq's emphasis on the relatively small size of this 'living tradition'. Now to the terms 'ancient' and 'school'.

Schacht's use of the term 'ancient' to describe these schools was no doubt influenced by his larger project in *The Origins of Muhammadan Jurisprudence*, namely, accounting for the rise of Prophetic traditions. He argues that the earliest identifiable jurist whose doctrine can be reliably traced is Ḥammād b. Abī Sulaymān, that fictitious reports were attributed to Ibrāhīm al-Nakhaʿī to justify Kufan opinions and that these were then projected onto Companions, primarily Ibn Masʿūd and ʿAlī for the Kufans, and then finally onto the Prophet.[72] The term 'ancient' describes this state of affairs rather well: There was doctrine present in Kufa whose origin was unknown and for which sources were invented. Since Schacht penned his words, many contributions have been made to our knowledge of Prophetic, Companion and Successor reports. His assumptions about the rise of reports must be separated from his basic observations of early law. This is why the geographical descriptor 'regional' is better than the chronological descriptor 'ancient' when describing these schools. The

68 Ibid.

69 See, for example, Schacht, *Introduction*, 31.

70 In another publication, Hallaq acknowledges that 13% of legal opinions in Mālik's *Muwaṭṭaʾ* are anonymously referenced: Wael Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2004), 33.

71 Abū Yūsuf demands to see the sources of praxis, whether these are revelatory sources or opinions of previous jurists: See Wymann-Landgraf, *Mālik*, 200.

72 Schacht, *Introduction*, 31-4.

field has generally accepted the term 'regional school', showing at least an implicit commitment to separating these parts of Schacht's project. Once we do that, we see that the insights of Schacht, Hallaq and Hurvitz can be combined to form a complementary description of early juristic circles: Jurists sat in the circles of individual jurists, where they learned the doctrine of other individual jurists who were generally from their region; they then formulated their own doctrine, which largely drew from the doctrine of earlier jurists from the same region, with some points of local consensus being shared by teaching circles within the region.

Now for the term 'school'. In the course of his refutation of ancient schools, Hallaq quotes a dictionary definition of the word 'school'. An overlapping, but slightly expanded, definition can be found in the *Oxford English Dictionary*, where a school is

> a group of people who follow or are influenced by the teaching of a particular person, or who share similar principles, ideas, or methods. When modified by an adjective derived from a place name (as *Flemish*, *Venetian*, *British School*, etc.) sometimes referring to those who trained in that place; but chiefly understood to mean a local group united by a similar method or style.

The preceding investigation into the effect of Kufan precedent on two Kufan jurists shows the overriding influence, not of a particular person, but of a limited set of persons, namely, the jurists associated with Kufa. The jurisprudence of this limited set of masters directly informed the jurisprudence of subsequent Kufan jurists. There is no doubt that regular reference to a limited group of masters would result in particular methods and insights being shared by all who refer to this group. 'School', as defined above, applies directly to the phenomenon under study. We may therefore speak confidently of the existence of a Kufan school of law, whose distinguishing feature was the body of legal doctrine produced in the town, built upon the precedents of its renowned masters. From this point of view, we can affirm the Kufan school of law as a historical reality.

However, there are additional nuances to the term. When using 'school' to refer to shared methods, as we do here, boundaries are not always easy to draw. The distinction between one school and another may not be immediately obvious. It is quite conceivable that a member of such a school might be unaware of his own affiliation, as he might practice the craft without reflecting on those features of his method that set him apart from some practitioners and draw

him close to others. This is why, as suggested by the definition above, regional markers are common in identifying such schools, because a geographical region provides an easily defined external referent to replace the far more difficult delineation of shared method. This understanding raises the question of whether the jurists studied here consciously identified as belonging to schools, or whether it was later observers who applied the notion of a 'school' as a helpful construct to facilitate the study of early jurisprudence and juristic networks.

Considerable anecdotal evidence from the period in question suggests that groups of jurists and points of law were described as Iraqi, Medinan or as hailing from other regions. However, I maintain that more and better evidence is required before we can definitively state that jurists consciously saw themselves as belonging to schools, that is to say, that they saw themselves and their positions, along with those of regional interlocutors, as representing a single scholarly tradition associated with their region, contrasted by schools associated with other regions. Of course, Schacht's ancient schools persisted over several generations; if such a conscious regional identity is not found in a later generation, this does not mean that it did not exist in an earlier one, and *vice versa*. Be that as it may, in my view, not enough evidence has been presented to definitively support the assumption that formative-period jurists were consciously aware of belonging to regional schools as described here. For this reason, I will set the notion aside for further investigation. This leaves us with the assumption that the identification of a distinctly Kufan approach to law as a 'school' is a construct that later observers applied to this early legal tradition. Of what use might such a construct might be?

Hurvitz has argued that this construct is of limited use, as, at best, it only explains a limited set of local customs.[73] Hallaq, too, acknowledges that local customs and practices can be identified by a regional-school construct, but adds that later variations in the *madhhab* era should similarly be identified by regions.[74] With this latter point, Hallaq implies that identifying a 'Kufan school' is of as much use to us as identifying '13th-century Mamlūkid, Cairene Ḥanafism', for example: Clearly, there is no end to such divisions, and their general absence in studies of legal thought shows them not to be meaningful, like Schacht's ancient schools.

I disagree on three counts. First, the concept of a regional school does not refer only to regional variations in practice and custom, as both Hurvitz and Hallaq imply. Rather, the concept refers to a legal method. Following precedent was the fundamental legal approach of the formative, pre-Shāfiʿī period. This is

73 Hurvitz, "Schools," 44.

74 Hallaq, "From Regional," 18-19.

what Schacht refers to when he states that the ancient schools did not differ greatly with each other in their basic legal method. And like all shared intellectual projects, there is no doubt that scholars in different regions would develop their own methods, concerns, doctrines and principles. The concept of a 'Kufan school' gives us a framework within which we may investigate such regional developments. As shown by our investigation of Abū Yūsuf's work, regional precedent helps to explain many of Abū Ḥanīfa's legal cases, and he is, after all, a figure of great interest in the history of Islamic jurisprudence. For figures such as Abū Ḥanīfa and Mālik b. Anas, regional precedent might be the single most powerful factor to explain many otherwise difficult to explain legal opinions. Second, there is a large difference between regional law in the formative period and regional law in the *madhhab* period, as the latter was based on a body of written texts that were intended to inform communal practice and were not generally informed by it. A regionally defined construct cannot possibly help us understand these localised traditions if applied to the exclusion of the complex construct of the *madhhab* itself. In the formative period, however, a regionally defined construct can directly explain why particular opinions were adopted. Thus, a regional construct is most useful in the absence of a text-centred tradition and of limited use in its presence. (Although even in the latter case, were a researcher to study different forms of 13th century Ḥanafism, let's say, a regional construct would be necessary to distinguish between localised *madhhab* sub-traditions.) Third, such a construct helps to explain not only the legal methods of formative-period, pre-Shāfiʿī legal thought, but also the relationship between the early legal tradition and the *madhhab*s that grew out of this tradition, a point to which I will return.

Having defended the notion of regional schools as a meaningful construct that refers to an objective, historical reality and facilitates research into formative-period legal thought, I turn now to providing a model for legal method in these schools. Melchert has asserted that regional schools did not have the fixed boundaries of the later 'guild schools', meaning the *madhhab*s.[75] However, to meaningfully apply a school construct, we must be able to provide a methodological description for these schools. Schacht mentions that the ancient schools shared an overlapping legal method and that doctrinal disagreements were a result of differing living traditions.[76] I attempt to describe this overlapping legal method, drawing on Abū Yūsuf's text.

75 Melchert, "Basra," 174.

76 Schacht, *Origins*, 7.

## Legal Method in the Regional School

I present, here, an outline of the essential points of legal method that brought jurists together in a regional school and the essential points of legal method that led jurists within a regional school to stand apart. I will describe these points in as simple terms as possible for them to serve as points of consensus for all contributing parties to our knowledge of the legal thought of this period.

### *The Shared Legal Method of the Regional School*

In his treatment of regional schools, Hallaq cites Mālik's explanation of his use of terminology in the *Muwaṭṭa'*, which Hallaq then summarises with the following observation [emphasis is Hallaq's]:

> It is obvious that Mālik's juristic repertoire derives from the legal doctrines of individual jurists.…They are again the individual scholars operating in his region or town. And … if no opinion existed on a certain matter, Mālik would exercise his *ijtihād according to* the 'doctrine of someone' he had known and studied with.[77]

This description of an approach to *fiqh* based on local precedent is fully consistent with the preceding investigation into the Kufan legal tradition. Thus, we can suggest that the essential legal method that was shared among regional schools consisted of three core points:

1. Deferring to previous authorities – i.e., acknowledging their status as master jurists,
2. acquiring legal acumen by studying legal rulings transmitted from these masters, and
3. each jurist answering questions based on his own legal insight, which would often agree with the answer of a previous master.

The first point has been demonstrated above. The second point may be inferred from the practice of these formative-period jurists of choosing freely among previous opinions without strict allegiance to their mentors, as also demonstrated above. Only if the pool of previous opinions had been carefully considered could a particular opinion be preferred as the most suitable, as stated in the third point. These three points summarise the essence of early *fiqh* in all the regional schools. This is why Schacht stated that the ancient

77 Hallaq, "From Regional," 12-13.

schools did not differ much in method.[78] But his statement appears to have been misconstrued by Hallaq,[79] who understood it to mean that there was no difference in doctrine within a region and that this meant the absence of disagreement.[80]

Now, there is nothing in this simple summary that implies that a particular region is intrinsically special, or that a jurist *consciously* sought to extend the methods of his own region to the exclusion of others. Rather, it appears that jurists were integrated into the living, teaching tradition of their region by sitting with local masters who had sat with earlier masters of that region. Schacht states that a regional identity developed because of poor communication with other regions.[81] Perhaps a better explanation is simply that jurists were socialised into their regionally based teaching traditions. This did not prevent jurists benefitting from the legal insights of other regions, especially if they had been suitably exposed to other regional traditions, as suggested by Abū Ḥanīfa's extended stay in Mecca.

By contrast, Ahmed El Shamsy's explanation of the regional school gives the impression that these jurists were consciously bound by their region, as it served the purpose of *justifying* doctrine.[82] This would imply that jurists such as Abū Ḥanīfa claimed that their doctrine was superior *because* it best represented Kufan heritage, with interlocutors such as Ibn Abī Laylā responding with their *more authentic* presentation of Kufan heritage. It is hard to find sufficient evidence for such an understanding of the regional school outside of Mālik's explicitly upholding the superiority of his doctrine on the grounds that it represented pristine Medinan practice.[83]

78 Schacht, *Origins*, 7, 21-2, 87.

79 Noted also in El Shamsy, *Canonization*, 42.

80 Hallaq, "From Regional," 1-2,

81 Schacht, *Origins*, 7.

82 El Shamsy writes, "The early regional schools were regional in the sense that they were *justified* in explicitly regional terms: the legitimacy of each school's doctrine was based on the perception that it constituted a genuine representation of the normative tradition of a specific locality": *Canonization*, 42.

83 El Shamsy provides some evidence to uphold his view of the justificatory purpose served by the regional school: ibid., 47-8. However, he focuses on polemics between al-Shāfiʿī and the students of Abū Ḥanīfa, which, properly speaking, took place after the period of the regional schools. In these polemics, the 'region' of Kufa is not invoked by Abū Ḥanīfa's students, but rather the figure of early Companions and Successors who invariably are Kufan. Part of al-Shāfiʿī's response to this reliance on local authority is to show that Abū Hanīfa's circle diverged from the positions of notable Kufan Companions. He discusses this divergence in his *Ikhtilāf ʿAlī wa-Ibn Masʿūd*, in which he mirrors al-Shaybānī's critique of Mālik in his *al-Ḥujja ʿalā ahl al-Madīna*. Just as al-Shaybānī accuses Mālik of

One might be tempted to suggest that Medinans, unlike jurists elsewhere, *consciously* sought to limit themselves to the precedent of Medinan jurists on the grounds of Medina's sacred stature and its being the site of continued practice from the time of the Prophet, as suggested by Mālik himself and his reliance on Medinan praxis (*ʿamal ahl al-Madīna*). It is not the purpose of this essay to discuss Medinan praxis in detail. However, we may note that a doctrine of *ʿamal* is itself a form of construct, and that constructs of this nature are typically created if the notion in question is unclear or challenged: If Medinans were, in fact, content with following a clearly understood and easily accessible living tradition, there would appear no need to invoke such a doctrine to uphold it. It would simply be what everybody did.[84] Now, did Mālik invoke such a doctrine because of perceived challenges from outside of Medina or because Medinan jurists themselves disagreed with Mālik's conception of *ʿamal*? This is not an easy question to answer. There can be no doubt that disagreement existed in Medina and that there were different layers of Medinan praxis. We should not assume that Medinans, Mālik aside, regarded Medina and Medinan *fiqh* differently than Meccans, Kufans or Basrans regarded their respective *fiqh* traditions. Consider the case of Mālik's teacher Rabīʿa b. ʿAbd al-Raḥmān (d. 136/753-4). He was a Medinan who spent considerable time in Iraq and then returned to Medina equipped with rational methods that were associated with the Iraqis, for which reason he acquired the nickname Rabīʿat al-Raʾy ('Rabīʿa the rationalist').[85] The Medinan Rabīʿa drew on the Iraqi legal tradition and does not appear to have been bound to a 'sacredly-enshrined' tradition of Medina.

My three-point summary of legal method should be unobjectionable to contributers to the regional school debate. It summarises Schacht's basic insights into regional schools, allowing for a 'living tradition' upon which the

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contradicting his Medinan forebears, so al-Shāfiʿī accuses Abū Ḥanīfa of contradicting his Kufan forebears. None of this, however, shows that regions were invoked by jurists before al-Shāfiʿī in order to justify legal doctrine. Rather, these polemics reveal that the relation of Mālik's doctrine to that of his Medinan forebears resembles Abū Ḥanīfa's to that of his Kufan forebears: Each attempted to uphold his doctrine by tying it to local authorities, and, on occasion, each diverged from local authorities. This is exactly the point I am making above.

84 El Shamsy states, "[T]he paradox in Mālik's project becomes visible: if all that was required was to imitate the practice of Medina, what was the purpose of his project of codifying *ʿamal* into written form…?" ibid., 41. In addition, al-Shāfiʿī complains that Mālik claims consensus in Medina where there isn't one: Schacht, *Origins*, 69, 84, quoting *Ikhtilāf al-Shāfiʿī wa-Mālik*.

85 El Shamsy, *Canonization*, 28-31.

masters of a region agreed, but without positing widespread agreement or making regional identity a matter maintained for its own sake. Likewise, it incorporates Hallaq's basic concerns about Schacht's formulation by not relying on anonymous doctrine or forcing a conscious school identity upon these jurists. It also is consistent with Hurvitz's conception of scholarly circles, as precedent could only be studied if a jurist joined the teaching circle of a prominent scholar. By focusing on precedent, and not on a specifically defined geographical location, it also responds to Hurvitz's concern about the poorly defined geographical limits of these schools, e.g., Iraqi v. Kufan, and Hijazi v. Medinan.[86] These geographical limits, which were not sought for their own sake, are best seen as constructs to help us generalise and study the traditions that grew out of a particular set of juristic precedents, and thus we might apply the construct in a more specific manner by describing a Kufan school to contrast with a Basran, or we might seek a more general application of this construct and speak simply of Iraqis. The next question we must address is why there were so many disagreements within regions if jurists were generally relying on the same pool of previous authorities.

### *The Unique Doctrine of Each Jurist in the Regional School*

We have established that Abū Ḥanīfa and Ibn Abī Laylā agreed on (1) deferring to an overlapping pool of previous authorities and (2) choosing freely from previous opinions. The first point is what makes a regional school, and can explain the relatively small number of cases of disagreement recorded in Abū Yūsuf's treatise compared with the thousands of cases transmitted from Abū Ḥanīfa. The second point draws attention to each jurist's independent insights and skill.[87] I would like to suggest that these independent insights revolve around two key points:

1. Each jurist's conclusions on which points of law were directly established by God and His Messenger, and
2. each jurist's construction of a harmonious, coherent legal framework around these points of the law.

86 Hurvitz, "Schools," 42-3.

87 Schacht similarly notes of the ancient schools, "It was their common reliance on 'living tradition' and their free exercise of personal opinion … in other words their lack of strict rules … that led to wide divergences of doctrine": Schacht, *Origins*, 7. He uses this description to explain differences between regions, but it is clear that the free exercise of opinion is the reason for differences within regions as well.

Point 1 refers to juristic attempts to determine which Qur'anic interpretations and Prophetic reports are sound. I will return to this after explaining the second point, as it is the second that is at the heart of the approach to law known as *raʾy*, often rendered as 'legal rationalism'.

To this point, I have avoided the labels *ahl al-raʾy* and *aṣḥāb al-raʾy*.[88] This is because my focus has been on Abū Ḥanīfa's generation and the jurists of Kufa who preceded them. To the best of my knowledge, these generations of jurists did not describe themselves with these labels.[89] What we do know is that in early legal circles *raʾy* was a positive term for the application of the sound judgments of the intellect in formulating the law. Al-Shāfiʿī, who was vehemently opposed to what he perceived as the unrestricted use of the human rational faculty in framing God's law, strove to restrict this practice to a narrowly defined process of *qiyās* or legal analogy.[90] Earlier generations of jurists, however, applied a variety of rational insights in determining the law. This *raʾy* was not restricted to the Iraqis. [91] In fact, Wymann-Landgraf holds that Abū Ḥanīfa paid greater deference to Prophetic reports than did Mālik, who engaged in extensive use of *raʾy*.[92] However, *raʾy* is a broad term for the application of the intellect to determining the law. By the generation of Abū Ḥanīfa and Mālik, it is clear that different regions had developed different notions about what constitutes a sound application of *raʾy*.[93] The regional-

88 I have used the label *ahl al-raʾy* above to summarise Melchert's contrast of the *ahl al-raʾy*'s relation to their mentors with that of the *ahl al-ḥadīth*.

89 Our earliest recorded distinction between two groups clearly identified as *aṣḥāb al-raʾy* and *aṣḥāb al-ḥadīth* might be that of Ibn Qutāyba (d. 276/889?), *al-Maʿārif*, ed. Tharwat ʿUkāsha (Cairo: al-Hayʾa al-ʿĀmma liʾl-Kitāb, 1992), 494-500. See also Christopher Melchert, "Traditionist-Jurisprudents and the Framing of Islamic Law," *Islamic Law and Society,* 8:3 (2001): 383-406, at 385-8, and *EI²*, s.v. "Aṣḥāb al-Raʾy" (Joseph Schacht).

90 Schacht, *Origins*, 120-8.

91 Schacht presents a similar approach to traditions across regional schools: ibid., 8, 26, 33-5, 57. *Raʾy* remained a positive term in the early post-Shāfiʿī period, even outside of Ḥanafī circles: See Melchert, "Traditionist-Jurisprudents," 386-8. In fact, for Schacht, the term *aṣḥāb al-raʾy* simply means the jurists of the ancient schools, with the *aṣḥāb al-ḥadīth* representing an opposition movement to the ancient schools: *EI²*, s.v. "Ahl al-Ḥadīth" (Joseph Schacht).

92 Wymann-Landgraf, *Mālik*, 11, 141-82. See also *EIr*, s.v. "Abū Ḥanīfa" (U.F. ʿAbd-Allāh [Wymann-Landgraf]). Schacht also notes that Iraqis showed greater interest in Prophetic traditions than Medinans: *Origins*, 27.

93 El Shamsy, *Canonization*, 22-43. El Shamsy's summary of *raʾy* is useful, but presents Iraqi *raʾy* as the simple caricature described by its opponents. This suits his aim to provide a flowing narrative (ibid., 13), as his objective from this summary is only to present a back-

school construct provides a helpful framework for investigating such regional developments.[94]

In Abū Yūsuf's treatise, the lines of legal reasoning attributed to Abū Ḥanīfa point to the essential premise of *raʾy*-based jurisprudence, at least in Kufa, namely, that the law is inherently sensible. In other words, the law is not a haphazard collection of statements that are arrived at through the primary, revelatory sources; rather, the primary sources point to the larger legal system that the juristic community is devising, and this larger legal system makes sense to the human mind; its parts fit together to form a harmonious whole. Each individual jurist, therefore, strives to develop a system of rules that complement other established rules.

The arguments attributed to Abū Ḥanīfa in the *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā* manifest this striving for legal harmony as the central concern of our jurists. This striving for harmony does not appear to be uniquely Abū Ḥanīfa's concern, as dialectical exchanges[95] are built on premises shared by both parties, not on those held by only one party.[96] In other words, Abū Ḥanīfa could argue for the greater consistency of his chosen opinion with other established rules only if Ibn Abī Laylā also subscribed to the notion that the statement of law most consistent with established rules is superior.[97]

The following are some examples of this quest for consistency. It is important to note that consistency here is not a simple two-dimensional notion, according to which a single principle must always be applied, regardless of the specifics of the case. Rather, consistency requires a multi-dimensional effort, whereby jurists strive to achieve harmony and the production of a sensible legal output by taking into account a number of different factors. The main fac-

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drop to al-Shāfiʿī's project. The topic of Iraqi *raʾy*, itself, is in need of a study that draws from Iraqi evidence, not polemics against it.

94 For a study that contrasts approaches to analogical reasoning between Mālik and the circle of Abū Ḥanīfa, and ties these to regional differences, see Paul Gledhill, "The Development of Systematic Thought in Early Mālikī Jurisprudence, 8th-9th Centuries A.D." (PhD diss., University of Oxford, 2014).

95 I am not claiming that the text presents actual exchanges that took place between Abū Ḥanīfa and Ibn Abī Laylā; however, it is clear that in many cases Abū Ḥanīfa is responding to the opinions attributed to Ibn Abī Laylā, and these responses are presented as dialectical exchanges in this text.

96 See El Shamsy, *Canonization*, 22-8, for an overview of the use of dialectic in *raʾy* debates.

97 About Ibn Abī Laylā, Schacht observes, "Ibn Abī Lailā's technical reasoning is far from rudimentary; the striving for systematic consistency, the action of general trends and principles, pervade his whole doctrine, and there is a considerable amount of explicit legal reasoning": Schacht, *Origins,* 290. See also ibid., 294.

tors evident in Abū Yūsuf's text, meaning the main planes on which a jurist had to seek consistency and harmony, are three: theoretical, conventional and practical. [98] A jurist was called out by his interlocutors if he ignored an important consideration, or if he treated a case in an unjustifiably different manner than his treatment of a similar case.[99]

A case pertaining to *shufʿa*, the right to preempt a sale, illustrates the striving for consistency on the theoretical plane. Ibn Abī Laylā permitted preemption in a case in which the marriage payment (*mahr*) offered to a woman is a share in a specific property.[100] Abū Ḥanīfa did not permit preemption in this case, and is quoted by Abū Yūsuf as saying,

> How can that be, considering that this is not a sale that secures a right of preemption? It is but marriage. Have you considered (*a-raʾayta*): Had he divorced her before consummating the marriage, what would be the entitlement of the *shafiʿ* (the person who has the right to preempt)? And is [the entitlement] evaluated based on the value [of the property] or the marriage payment?[101]

With this argument, Abū Ḥanīfa presents his own higher principle by means of which he ensures a consistent approach to the topic, namely, that the right to preemption can be awarded only upon the sale of the property in question. This excludes marriage, which is not a sale. He then argues for the superiority of his higher principle by highlighting a case that would lead to inconsistency in Ibn Abī Laylā's doctrine; this is the case of divorce before intercourse, where a woman must return half of the marriage payment to the man. Now, in the case under consideration, the man would want half of his property back, but

98 Schacht offers a four-part division of Abū Ḥanīfa's legal reasoning in Abū Yūsuf's treatise: practice, islamicising, common sense and material decisions: Schacht, *Origins*, 294-5. He bases this division on (1) arguments attributed in the text to Abū Ḥanīfa, and (2) the nature of the legal cases themselves. My three-part division is based exclusively on arguments in the text.

99 In many of the book's cases, Abū Yūsuf does not quote Abū Ḥanīfa when offering a rational defence of the latter's opinions, opening the possibility that these are his own arguments to support Abū Ḥanīfa's positions and not Abū Ḥanīfa's arguments. In the examples that follow, all arguments are explicitly presented in the text as issuing from Abū Ḥanīfa.

100 In this case, the *shafiʿ* (a partner in the property or a neighbour to the property) would claim his right to *shufʿa* or preemption. If a judge affirms his right, he is awarded ownership of this share of property, and he pays the financial equivalent to the woman in question.

101 Abū Yūsuf, *Ikhtilāf,* 35.

the *shafīʿ* has paid the woman for her whole share. We end up with a confusing situation. Is the *shafīʿ* forced to return half of the property he acquired? If Ibn Abī Laylā answers in the affirmative, he would be forcing the *shafīʿ* to return a part of the property to the original owner from whom he took it, but this is inconsistent with other rulings pertaining to preemption. If he answers in the negative, then either the man receives nothing at all, which violates the established rule that upon divorce a man receives half of the marriage payment, or he must be paid the financial equivalent of half of the marriage payment. In the latter case, how is this equivalent to be calculated: Is it half of the property's value or half of the usual marriage payment (*mahr al-mithl*), two entirely different measures for calculating the amount due? And can Ibn Abī Laylā produce a rule that he can apply consistently to answer this question of calculation? In *raʾy* terms, Abū Ḥanīfa has claimed checkmate.

At times, Abū Ḥanīfa presents only the higher principle through which he views the case at hand. An example is the case of a man who swears not to have sexual intercourse with his wife in a particular room for four months; is she divorced after four months according to the rules of *īlāʾ*?[102] Ibn Abī Laylā affirms the divorce. Abū Ḥanīfa denies it, and is quoted as saying, "Do you not see (*a-lā tarā*) that he can approach her in a different room without having to expiate [for breaking] his oath? *Īlāʾ* only refers to oaths that prevent sexual intercourse for four months, [during which] he cannot approach her [sexually] without expiating [for breaking] his oath."[103] Here, Abū Ḥanīfa provides a higher principle for understanding all questions on *īlāʾ* and, implicitly, demands from his opponent to produce a more sensible principle. Arriving at such higher principles that govern a set of legal rules on a particular topic appears to be the central concern of these jurists, who then debated with each other in an effort to determine the higher principles that best reflect the coherence of established legal rules and produce further rulings consistent with these established rules.[104]

102 *Īlāʾ* refers to an oath sworn by a man to not have sexual relations with his wife. Once four months expire without his having sexual relations with her, she is automatically divorced according to some jurists. According to other jurists, after four months the man is ordered to return to her or divorce her.

103 Ibid., 198.

104 I use 'higher principle' for a higher-level legal rule that governs individual cases that are subsumed by this rule. This higher principle is referred to by Brannon Wheeler as a 'general principle' (Brannon Wheeler, *Applying the Canon in Islam: The Authorization and Maintenance of Interpretive Reasoning in Ḥanafī Scholarship* [New York: State University of New York Press, 1996], 121, 122, 198, 199), by Behnam Sadeghi as a 'legal principle' (Behnam Sadeghi, *The Logic of Law Making in Islam: Women and Prayer in the Legal Tradition*

An example of searching for consistency on the conventional plane – the plane that considers the conventions observed by people in their mutual dealings – is the case of a man who says to his wife, "I have no need for you (*lā ḥājata lī fīk*)," intending thereby to divorce her. Abū Ḥanīfa says the divorce does not count, and Ibn Abī Laylā says that it does. Abū Ḥanīfa argues, "How can this be divorce, when it is equivalent to 'I don't desire you,' 'I don't want you,' 'I am not infatuated with you,' and 'I don't love you?' Divorce is not enacted by any of these [utterances]."[105] In this case, Ibn Abī Laylā is accused of not reflecting on the conventional use of the phrase in question: Such phrases are not used for divorce; the man's intending divorce is therefore irrelevant.

Or consider the case of a man who appoints an agent (*wakīl*) to do something on his behalf (such as buying or selling); may the agent appoint another agent to complete the action in question? Ibn Abī Laylā says that he may if he becomes sick or plans to travel, whereas Abū Ḥanīfa says that he may not, arguing, "How can he appoint another agent when the principal is not pleased with anybody else's representation (*khuṣūma*, lit. argumentation); he is pleased only with his representation."[106] In this instance, Abū Ḥanīfa accuses Ibn Abī Laylā of ignoring the human dimension of the question: The principal would not want to be represented by just anybody, a point ignored by Ibn Abī Laylā's theoretical considerations.

Let me now give an example of seeking consistency on the practical plane. One judge receives a letter from another judge asking that a runaway slave-woman be handed over to the person who claims ownership of her. Abū Ḥanīfa states that the slave is not to be handed over, arguing, "Have you considered (*a-ra'ayta*): What if the slave-woman is beautiful, and the man in question is not trustworthy?"[107] This case illustrates practical considerations that must be taken into account when issuing a legal ruling. In this formative period, legal pronouncements that responded to specific practical needs and those that ad-

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[Cambridge: Cambridge University Press, 2013], 166-71), and by Zafar Ishaq Ansari as a 'general proposition' (Ansari, "The Early Development," 106). I avoid the term 'general', as this principle is usually tied to a very specific topic and is not a maxim for wider application, as the term 'general' might imply. The term 'legal' is accurate, but, for present purposes, I wish to emphasise the existence of a 'higher-order' legal rule that represents each jurist's essential insight into a topic, by means of which he explains his 'lower-order' legal pronouncements for specific cases. My observations about Kufan *ra'y* confirm those of Zafar Ansari, who describes the *fiqh* of Ibrāhīm al-Nakha'ī in terms of striving for consistency, coherence and the extraction of suitable higher legal principles: ibid.

105 Abū Yūsuf, *Ikhtilāf*, 206.

106 Ibid., 57.

107 Ibid., 72.

dressed theoretical scenarios were equal parts of a legal enterprise that was seeking to hone its principles to ensure consistent and coherent theorisation and application of the law.[108]

I have used the term 'higher principle' to refer to a higher-level rule governing a jurist's treatment of a particular topic. In later Ḥanafī works, such a higher principle is often termed an *aṣl* (pl. *uṣūl*).[109] Many such *uṣūl* of Abū Ḥanīfa are mentioned in the treatise. The perceived quality of the higher principles of a jurist were seen, in early legal circles, as the marker of his jurisprudential ability: Whoever was most thorough in constructing and considering these principles was deemed the greater jurist. Consider the case of Abū Ḥanīfa's student Zufar b. al-Hudhayl (d. 158/775): He reportedly overtook ʿUthmān al-Battī (d. *c.* 140/757-8) as the leading jurist of Basra by exposing inconsistencies in ʿUthmān's thought, as a result of which ʿUthmān's students left him to study with Zufar.[110] This difference in perceiving the higher principles of the law is the first reason why jurists from the same region would disagree with one another.

The other main reason for intra-regional disagreements relates to what were regarded as the fixed, unmovable points of the law. Jurists were tasked with creating a coherent set of legal rules around the points of law directly established by God and His Messenger. These legal points were not negotiable. No doubt, there was disagreement whether particular points of law were directly established by God and His Messenger. The obvious example of this is disagreement over the soundness of a Prophetic report. However, the understanding of what qualified as sound Prophetic tradition in regional schools is quite different from that popularised by traditionists.

Ibrāhīm al-Nakhaʿī is reported to have said, "When I narrate to you from a [particular] person from ʿAbd Allāh b. Masʿūd, then he is the [only] one I heard; but when I say, 'Abd Allāh said', [the narration] is from multiple sources, from

108 Hallaq has argued that much of early *fiqh* belongs properly to the domain of *fatwā*, meaning solutions for scenarios raised to jurists by questioners: Wael Hallaq, "From *Fatwā*s to *Furūʿ*: Growth and Change in Islamic Substantive Law," *Islamic Law and Society*, 1:1 (1994): 29-65, at 62-5.

109 The word *aṣl* is commonly used in Ḥanafī legal commentaries with the meaning provided here. See, for example, al-Sarakhsī, *al-Mabsūṭ*, 1:36, 38, 40, 53, 60, 94.

110 Muḥammad Zāhid al-Kawtharī, *Lamaḥāt al-naẓar fī sīrat al-imām Zufar* (Cairo: al-Maktaba al-Azhariyya, 1368/1949), 18. Ahmed El Shamsy presents a dialectical exchange between al-Shāfiʿī and Muḥammad al-Shaybānī in which the exchange is conducted specifically for arriving at a higher principle that produces the most consistent set of legal rulings: El Shamsy, *Canonization*, 23-4.

'Abd Allāh."[111] This report, whether or not it reflects al-Nakha'ī's actual words, highlights the role of community in transmitting reports. When a report is anonymously referenced, it often reflects the authority of the community; and when there is a lone attribution, it may reflect a break from this community. Thus, as noted, most of Abū Ḥanīfa's reports in Abū Yūsuf's treatise are formulated as *balaghanā* ("it reached us"), invoking the authority of communal transmission.[112] It was primarily through the living, teaching tradition and its juristic precedent that Prophetic teachings were identified as being sound, as opposed to a thorough investigation of chains of transmission in the manner of the traditionists.[113] As the pool of legal precedent was shared within regions, there would have been a degree of agreement over accepted Prophetic teaching, corresponding to Schacht's 'living tradition'. But there was also extensive disagreement among regional authorities, and individual jurists had to decide which opinions and transmissions constituted authentic *sunna*. This decision naturally led to differences in the higher principles perceived by jurists, who constructed their respective legal frameworks around different established points of law.

In the phrase "points of law … directly established by God and His Messenger" (see above), the word 'point' may be conceived literally. Just as an acclaimed painting may be reduced to points of differing hues that come together to form the final picture, so too the points of law provided by God and His Messenger serve the purpose of points on the legal canvas around which jurists must construct their picture of the law. The jurist whose picture best reflects these fixed points and presents a harmonious, well-considered image of the law around these points will have produced the most acclaimed final

111 Al-Dhahabī, *Siyar*, 4:527.

112 Interestingly, although the bulk of Abū Ḥanīfa's reports in Abū Yūsuf's treatise appear with the form *balaghanā*, we find that the bulk of Abū Ḥanīfa's reports in the *Āthār* collections of Abū Yūsuf and Muḥammad al-Shaybānī come with full chains of transmission. This observation might have implications for the dating of these texts, but it also raises an interesting possibility: Could it be that Abū Ḥanīfa had sessions devoted to jurisprudence and other sessions devoted to conveying reports, with his presenting reports differently in each session, as Mālik reportedly did in his sessions?

113 On Abū Hanīfa's commitment to Kufan praxis in evaluating solitary *ḥadīth*s, see Wymann-Landgraf, *Mālik*, 196. The Ḥanafī jurist Abū Bakr al-Jaṣṣāṣ (d. 370/981) declared, "The method of the *fuqahā'* in accepting reports is not the method of the *aṣḥāb al-ḥadīth*. We don't know of any *fuqahā'* who referred to them in accepting or rejecting reports, or who considered their principles in this": al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, ed. Sā'id Bakdāsh et al., 8 vols. (Beirut: Dār al-Bashā'ir al-Islāmiyya and Medina: Dār al-Sirāj, 2010), 4:244.

picture; he will be regarded as the greatest jurist. I say "established by God and His Messenger", and I avoid saying "found in sacred texts" or the like, to turn the discussion away from the type of textual hermeneutic project popularised by al-Shāfiʿī. As mentioned, Prophetic tradition was primarily accessed through the living, teaching tradition. The same holds for Qur'anic interpretation. If an earlier generation of jurists in a region held a particular interpretation of a Qur'anic verse, then that interpretation would have influenced the interpretation of later jurists from the region. In this regard, Ibrāhīm al-Nakhaʿī reportedly said, "Had I seen the Companions performing ablutions [by washing their hands] up to the wrists, I would have performed ablutions likewise, even though I recite [from the Qur'an], '[wash your arms] up to the elbows'; this is because they may not be accused of abandoning the *sunan*."[114] While we might not be sure that these are the actual words of al-Nakhaʿī, it stands to reason that this approach to the Qur'anic text through early precedent, ascribed to a leading regional authority, reflects an acknowledged method in the regional school.[115]

The preceding summary of formative-period legal methods accords with the critical work that has been produced on early jurisprudence. Although the simple model of legal method provided here does not do justice to the multifaceted considerations undertaken by individual jurists, I do hope that this model supports an understanding of the regional school that brings together the scholarly activity of a region and facilitates the study of regional developments, while also accounting for the individualistic flavour of legal thought in this period. There is, I believe, a further use of the regional-school construct, namely, how it relates to the *madhhab*s that were later formed.

114 Ibn Abī Zayd al-Qayrawānī, *Kitāb al-Jāmiʿ fī al-sunan wa'l-ādāb wa'l-maghāzī wa'l-tārīkh*, ed. Muḥammad Abū al-Ajfān and ʿUthmān al-Baṭṭīkh (Tunis: al-Maktaba al-ʿAtīqa and Beirut: Mu'assasat al-Risāla, 1983), 118.

115 While we can be sure that juristic precedent exerted an influence on Qur'anic interpretation in the regional schools, further work is required to show how formative-period jurists dealt with perceived conflict between the Qur'anic text and previous precedent. Ahmed El Shamsy presents Abū Ḥanīfa's student Muḥammad al-Shaybānī as al-Shāfiʿī's precursor in giving primary importance to the language of revelation as a means to directly access the Qur'anic text without the medium of precedent: El Shamsy, *The Canonization*, 82-3. Further work is needed to show how al-Shaybānī's use of the Qur'anic text in legal arguments reflects the insights of the teaching circle of Abū Ḥanīfa and other Kufan jurists.

## Legal Method After the Regional Schools

What is the exact relation between formative-period legal methods and those practised by jurists in the classical *madhhab*s? This is an important question, but a difficult one to answer precisely, as it requires a detailed investigation of legal methods in both periods. I have presented a simple model for the regional school as a guide for further investigating formative-period methods and arriving at a more sophisticated theory of early jurisprudence. In my view, this simple description may serve as a working model to guide us in speculating about the relation between both periods of activity. Accordingly, I would like to put forward a hypothesis for the relation between legal methods in the regional school of Kufa and the Ḥanafī school that emerged from it. The purpose of this hypothesis is to guide further research and to illustrate a further advantage of the regional-school construct.

My hypothesis is that there is clear similarity and, therefore, clear continuity between the legal methods pursued by jurists of both periods. This hypothesis is based on the simple model presented above for legal thought in the regional schools. According to this model, jurists such as Abū Ḥanīfa studied the law through a largely regionally-limited pool of legal precedents, the analysis of which helped them produce their own set of higher legal principles. These higher principles guided them in selecting the most suitable legal rulings from this precedent pool and in giving further legal rulings of their own. In the course of this legal training, it was through the living, teaching tradition of earlier jurists that subsequent jurists accessed the primary sources of the Qur'an and *sunna*. A similar range of activities was performed by jurists in the *madhhab* tradition.[116]

Consider legal commentaries from the early classical Ḥanafī school, such as al-Qudūrī's (d. 428/1037) *Sharḥ Mukhtaṣar al-Karkhī* or al-Sarakhsī's (d. 483/1090) *al-Mabsūṭ*. These jurists studied the rulings of a pool of earlier authorities to understand how each ruling reflects an understanding of consistency and harmony in the law; they analysed the textual evidence of the primary sources to determine how these sources support this precedent; and they presented legal decisions using the legal acumen acquired from this study of precedent. This range of activities is easily identified in these commentaries, which attempt to answer the question "Why?" for almost every ruling ascribed to Abū

116 When I speak of the *madhhab* tradition in this section, I mean the mature *madhhab*, called the 'classical school' by Christopher Melchert, who argues that the Ḥanafī classical school commences with the figure of Abū al-Ḥusayn al-Karkhī (d. 340/952): Melchert, *The Formation*, 125-9.

Ḥanīfa and his companions. When responding to this question, the jurists refer to higher principles, demonstrate consistency and take pains to explain why a ruling might not appear consistent with related rulings. They explore the Qur'an and Prophetic reports *through* the established legal rulings of the *madhhab*, demonstrating that Qur'anic passages and Prophetic reports are consistent with the school's legal rulings. It would appear that the main difference between the *fiqh* of the early Kufans and that of the Ḥanafī *madhhab* is that the latter limited the pool of legal precedent to Abū Ḥanīfa and his companions.

I am not suggesting that these Ḥanafī jurists were engaging in the exact same activity as Abū Ḥanīfa. After all, Abū Ḥanīfa took into consideration the opinions of teaching circles in Kufa and some opinions from other regions. In selecting freely between the insights of these juristic circles, he needed to construct his own set of higher principles, or, in other words, his own *picture* of the law. By contrast, Ḥanafī jurists limited themselves to the highly developed insights of one specific teaching circle, that of Abū Ḥanīfa, making it unnecessary for them to construct their own picture of the law and allowing to them to focus exclusively on the legal rulings and higher principles provided by this restricted precedent-pool.

We can therefore describe the legal activities of each period in similar terms. In the regional school, jurists agreed on three points and disagreed on two: They agreed on deferring to earlier scholarly authorities, studying the legal cases produced by those authorities and issuing legal opinions based on their own legal insights; they disagreed over the higher principles of the law that guided their production of legal rulings and over the precise points of law established by God and His Messenger. By contrast, Ḥanafī jurists, who followed a restricted precedent-pool, agreed on all five of these points. Thus, Ḥanafī jurists

1. deferred to the masters of Abū Ḥanīfa's circle,
2. acquired legal acumen by studying their rulings,
3. used this legal acumen to issue legal opinions,
4. strove to understand the higher principles reflected in these legal rulings, and
5. studied the Qur'an and Prophetic reports through the lens of these legal rulings.

According to my hypothesis, there is no major difference in legal method between the regional school and the *madhhab* that emerged from it, except in the degree and manner in which this method was pursued.

Previous studies support this depiction of Ḥanafī jurisprudence in the *madhhab* era. For example, Brannon Wheeler argues that the set of legal rulings transmitted from Abū Ḥanīfa's circle were canonised not for their own sake, but to preserve a form of reasoning that facilitated the understanding of these rulings. Ḥanafī jurists arrived at this form of reasoning by discovering what Wheeler calls the 'logic' underlying the legal rulings of Abū Ḥanīfa's circle. This logic was underpinned by 'general principles' – Wheeler's equivalent for my 'higher principles'. Students were trained to identify these general principles and to observe how they were applied by the jurists of Abū Ḥanīfa's circle. To facilitate this training in jurisprudential reasoning, legal cases were presented in key abridged works in a manner that naturally invited the reader to consider their underlying logic.[117] "[T]o be a Ḥanafī," Wheeler says, "is to follow Ḥanafī precedent as a guide for the sort of reasoning required to determine the practical significance of the revelation."[118]

The goal of this training in legal reasoning was not, according to Wheeler, merely to justify these legal cases. Rather, the underlying logic and general principles *were* the canonised legal system that informed how the law was to be applied in differing contexts. He notes:

> By stipulating a method rather than certain conclusions, Ḥanafī scholarship teaches future scholars the reasons why certain conclusions are authoritative. Precedents are not meant to be repeated but rather used as heuristic examples indicating how previous scholarship arrived at its conclusions, and what made those conclusions authoritative.…Future scholarship is authoritative not because it does not deviate from the conclusions of previous generations, but because it accepts and puts to its own uses what previous scholarship established as authoritative.[119]

In other words, this training prepared jurists to produce legal statements tailored to suit a particular context while reflecting the insights preserved by the legal cases that make up Ḥanafī precedent.

Wheeler shows that the texts of the revelation were understood through this study of the 'logic' underlying the legal cases of Abū Ḥanīfa's circle: "[T]o

117 Brannon Wheeler, *Applying*, 118ff. Norman Calder has also noted that legal cases in Ḥanafī *mukhtaṣar*s are presented in a way that invites reflection upon their underlying logic: Norman Calder, *Studies in Islamic Jurisprudence in the Classical Era* (Cambridge: Cambridge University Press, 2010), 57.

118 Wheeler, *Applying*, 186.

119 Ibid., 228.

understand the practical significance of the revelation, one must first understand the logical considerations behind the opinions of certain local authorities. Ḥanafī scholars must read backward [sic] from the logic of the corpus of Ḥanafī opinions to the text of the revelations."[120] Wheeler thus places the five points of the regional school presented above as the underlying activity of legal training in the classical Ḥanafī school.[121]

The hypothesis I am proposing suggests the need for reconceptualising the terms *ijtihād* and *taqlīd* with regards to the classical Ḥanafī school. Islamic legal theory tells us that the founders of the legal schools engaged in *ijtihād*, the process whereby a *mujtahid* independently establishes points of law through unmediated engagement with the primary, revelatory sources, while jurists operating within the framework of the *madhhab* engaged in *taqlīd*, the process whereby engagement with revelation is mediated by the points of law established by the *mujtahid*.[122] This clear distinction between the two forms of activity is the underlying narrative in classical works of *uṣūl al-fiqh*. According to my hypothesis, however, the distinction between the two activities – at least in the Ḥanafī case – is not easily described in such terms. This is because neither the Kufan school of Abū Ḥanīfa nor the Ḥanafī school of classical-era jurists was based on unmediated engagement with revelation. Both engaged with revelation through the mediation of prior juristic precedent. The difference between the two primarily concerns the breadth of precedent consulted and the consequent breadth of juristic activity required to negotiate this precedent.

This reconceptualisation of *ijtihād* and *taqlīd* opens the door for a reconceptualisation of the *madhhab*, an institution founded on the notion of *taqlīd*. The understanding of the *madhhab* provided here, with an emphasis on the continuity of formative-period legal methods, differs from current models of the *madhhab*, each of which emphasises a rupture or break from the formative

120 Ibid., 151.

121 I have undertaken a detailed study of legal theory and commentary in the early classical Ḥanafī school, with a special focus on the *Uṣūl* of al-Sarakhsī and the *Hidāya* of al-Marghīnānī (d. 593/1197). My conclusions regarding the legal project pursued by these classical Ḥanafī authors support Wheeler's findings. Furthermore, I show that these classical works assume an understanding of *sunna* and the role of the rational mind that closely mirrors the explanation presented above for the understanding of these in the Kufan regional school. This similarity strongly supports my hypothesis here regarding legal continuity. See Sohail Hanif, "A Theory of Early Classical Ḥanafism: Authority, Rationality and Tradition in the *Hidāyah* of Burhān al-Dīn ʿAlī ibn Abī Bakr al-Marghīnānī (d. 593/1197)," (PhD diss., University of Oxford, 2017).

122 See, for example, Schacht, *An Introduction*, 69-72, and Wael Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), 117-23.

period.[123] These models have been summarised by El Shamsy: "Schacht focuses on law and legal theory, Makdisi and Melchert on social structures, and Hallaq on doctrinal change within schools."[124] We can add to this El Shamsy's focus on the textual dimensions of the *madhhab* as a community that forms around interpreting a body of written texts that provide core *madhhab* doctrine.[125] My hypothesis, with its focus on the continuity of legal method, supports the narrative of the rise of the *madhhab* proposed by Hurvitz, whose main reason for rejecting Schacht's ancient schools was the implied rupture between this earlier approach to law and the later personal schools. For Hurvitz, the *madhhab*s grew organically out of the social dynamics of formative-period scholarly circles. The methodological continuity suggested here supports Hurvitz's understanding of organic development.

## Conclusion

In this essay, I have argued for the validity and usefulness of the regional-school construct for the study of the formative period of Islamic law. I argued that Hallaq's and Hurvitz's criticisms of Schacht's 'ancient schools' may help us to clarify and more precisely state what is meant by a regional school, showing that the essence of legal method in these formative-period schools was deference to precedents established by earlier authorities in those regions: Within these schools, jurists generally upheld positions previously adopted in their respective regions. The term 'regional school' refers to the overlap in legal doctrine and method that resulted from this precedent-based approach to the legal project. I also argued that jurists were in no way bound to local precedents, but rather felt free to draw on precedents from other regions. Be that as it may, a regionalism resulted naturally from their socialisation into their regional teaching traditions. The regional-school construct is essential to understanding the unique doctrines and methods that developed in these regionalised teaching traditions. This insight into early regionalism is supported by my analysis of Abū Yūsuf's *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*.

123 Mohammed Fadel also draws attention to continuity, although he stops short of fully articulating it: Mohammed Fadel, "'*Istiḥsān* is Nine-Tenths of the Law': The Puzzling Relationship of *Uṣūl* to *Furūʿ* in the Mālikī *Madhhab*," in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: Brill, 2001), 161-76, at 165.

124 El Shamsy, *Canonization*, 169.

125 Ibid., 169-93.

The reports in this text show the primacy of Kufan authorities in debates between Abū Ḥanīfa and Ibn Abī Laylā. Drawing on a sample of 87 legal cases, I showed the influence of Kufan precedent on these two jurists, who typically chose opinions adopted previously in Kufa. Both jurists deferred to the mastery of earlier jurists while freely choosing the opinion that was closest to their personal legal insights. The nature of this legal insight is highlighted by arguments in the *Ikhtilāf* that suggest that the fundamental interest of *raʾy*-based jurisprudence is the construction and application of higher legal principles that lead to the most coherent and consistent system of legal rulings.

Finally, I have suggested that a simple model of legal method in the regional schools allows us to compare this legal method to that of the classical *madhhab* and that such a comparison provides a new avenue for regarding legal method within the later *madhhab*. This comparison suggests that the methods, insights and epistemology of the Kufan school continued into the Ḥanafī *madhhab* that emerged from it.

The models and constructs that I have proposed here may serve as useful analytic tools that can be applied to the study of Islamic law. Willy-nilly, the formulation of such models and constructs causes a loss of nuance. These models and constructs will best be refined and improved if they are used to answer the kinds of questions discussed in this essay, in which I have focused on the regional school of Kufa and on the continuity of legal method between it and the classical Ḥanafī *madhhab*.[126] Because the Shāfiʿī and Ḥanbalī schools represent breaks from the regional schools, these models may have only limited benefit in studying the legal tradition of those schools. The relation between the regional school of Medina and the Mālikī school that emerged from it should be the subject of further investigation.

126 I have made no reference to Christopher Melchert, "How Ḥanafism Came to Originate in Kufa and Traditionalism in Medina," *Islamic Law and Society*, 6:3 (1999): 318-47, where Melchert argues that the Ḥanafī school was formed in Baghdad, not Kufa, because the subject of his article, the formation of the Ḥanafī school after Abū Ḥanīfa, has no direct bearing on the present discussion, namely, the relation between Abū Ḥanīfa and the juristic tradition that preceded him.