HANIF, S. "The Questions of Abū Ḥanīfa" *Diyanet İlmî Dergi* 56 (2020): 1349-1404

Araştırma makalesi /
Resarch article

THE QUESTIONS OF ABŪ ḤANĪFA
EBÛ HANÎFE'NİN SORULARI

Geliş Tarihi: 16.09.2020 Kabul Tarihi: 17.12.2020

SOHAIL HANIF
DR.
CAMBRIDGE MUSLIM COLLEGE
sh@cambridgemuslimcollege.ac.uk

ÖZ

Bu makale, Ebû Hanîfe'nin (ö. 150/767) İslâm hukukunun gelişimine katkısını 'hukukî soru' veya 'mesele' çalışmasıyla değerlendirmektedir. İlk bölüm, Ebû Hanîfe'nin sorularının doğasını ve kabulünü göstermek için anekdot niteliğinde açıklamalar sunmaktadır. Ayrıca, Ebû Hanîfe'nin sorularının öğrencilerinin, özellikle Muhammed bin Hasan eş-Şeybânî'nin (ö. 189/805) yazıları aracılığıyla yayılmasını da incelemektedir. İkinci bölüm, abdest alırken mestlerin (deri çorapların) mesh edilmesi konusunu ele alan hukukî soruların gelişimine yönelik araştırmaları (1) İslâm'ın ilk iki buçuk yüzyılındaki hukuki soruların gelişimini, (2) hukuk okullarının en önemli ikinci ve üçüncü yüzyıl metinlerinde ele aldığı soruların niteliğini ve (3) hukuk okullarının klasik dönem hukuk derlemelerinde temel okul doktrinini oluşturan soruları değerlendirerek sunmaktadır. Makale, Ebû Hanîfe'nin sorularının, hukukun çeşitli konularını ele alan yapılandırılmış hukukî soruların geliştirilmesinde en açık nedensel etkiye sahip olduğu sonucuna varırken, rakip hukuk çevrelerinin sadece Ebû Hanîfe'nin sorularını taklit etmekle kalmayıp, daha ziyade kendi yasal proje anlayışlarını yansıtan sorular geliştirdiğini vurgulamaktadır.

Anahtar Kelimeler: Ebû Hanîfe, eş-Şeybânî, Mesele, el-Asl, el-Ümm.

ABSTRACT

This article assesses the contribution of Abū Ḥanīfa (d. 150/767) to the development of Islamic law through a study of the 'legal question', or masʾala. The first section presents anecdotal accounts to illustrate the nature and reception of Abū Ḥanīfa's questions. It also studies the spread of Abū Ḥanīfa's questions through the writings of his students, particularly Muḥammad ibn al-Ḥasan al-Shaybānī (d. 189/805). The second section presents investigations into the development of legal questions addressing the topic of wiping over khuffs (leather socks) in ritual ablutions, assessing (1) the development of legal questions in the first two-and-a-half centuries of Islam, (2) the nature of questions addressed by key second- and third-century texts of the legal schools, and (3) the questions that constituted core school doctrine in classical-era mukhtaṣars (legal digests) of the schools of law. The article concludes that Abū Ḥanīfa's questions had the clearest causative effect on the development of structured legal questions addressing the various topics of law, while highlighting that competing juristic circles did not merely mimic Abū Ḥanīfa's questions, but, rather, developed questions that reflected their own conceptions of the legal project.

Keywords: Abū Ḥanīfa, al-Shaybānī, Masʾala, al-Aṣl, al-Umm.

THE QUESTIONS OF ABŪ ḤANĪFA

SUMMARY

This article assesses the contribution of Abū Ḥanīfa (d. 150/767) to the development of Islamic law through a study of the 'legal question', or *masʾala*. The premise of the study is that the distinguishing feature of classical Islamic law is the exploration of topics of law through a series of questions that give a structural understanding of legal topics, covering necessary practical details and relevant connections with related topics. If a particular circle of jurists played the greatest role in the development of such structured legal questions, then that circle can be considered the founders of Islamic law; the current study assesses if these descriptions can be applied to the circle of Abū Ḥanīfa. The article contains two sections. The first section presents anecdotal information from biographical works to illustrate the nature and reception of Abū Ḥanīfa's questions. It also studies the spread of Abū Ḥanīfa's questions across the Muslim world through the writings of his students, particularly Muḥammad ibn al-Ḥasan al-Shaybānī (d. 189/805), arguing that the authoring of legal works that present topics through structured legal questions was a literary development spurred on by al-Shaybānī's writings, and that this development encouraged the formation of Personal Schools of law. The second section presents three investigations into the development of legal questions addressing the topic of wiping over *khuff*s (leather socks) in ritual ablutions. The first investigation presents the development of questions in the first two-and-a-half centuries of Islam, showing that most questions were developed by 'Third Level' jurists – those who flourished between 120AH and 240AH, with Abū Ḥanīfa typically being the earliest known contributor to Third Level questions. The second investigation compares

legal questions in key second- and third-century texts of the legal schools, showing that these texts each developed their own questions in a way that reflected the interests of each school, with particular reflections on the difference in focus between al-Shāfiʿī's *Umm* and al-Shaybānī's *Aṣl*. The third investigation offers a brief comparison between questions in classical-era *mukhtaṣar*s (legal digests) of the schools of law, showing that the main 'core' questions of these digests were developed by Third Level jurists, emphasising the foundational contributions of second- and third-century figures. The article concludes that Abū Ḥanīfa's questions had the greatest causative effect on the development of structured legal questions in juristic circles across the Muslim world and on the rise of Personal Schools of law, whereby juristic affiliation was to the teachings of leading Third Level jurists, and thus he can be considered the founder of Islamic law from this point of view. However, the article also shows that other juristic circles did not merely mimic Abū Ḥanīfa's questions, but, rather, they developed their own questions that conveyed their own interests and conceptions of the legal project. In this regard, the *Umm* of al-Shāfiʿī is highlighted as a particularly formidable and clear-minded response to the questions of Abū Ḥanīfa. The main contribution of this article is showing how the study of legal questions can give valuable insights into the rise of Islamic law, the contributions of formative-period and classical jurists and the dating of early legal works.

Acknowledgements:
I would like to thank Christopher Melchert and two anonymous reviewers for their very helpful comments on early versions of this essay.

EBÛ HANÎFE'NİN SORULARI

ÖZET

Bu makale Ebû Hanîfe'nin (ö. 150/767) İslâm hukukunun gelişimine katkısını 'hukukî soru' veya 'mesele' çalışmasıyla değerlendirmektedir. Çalışmanın öncülü, klasik İslâm hukukunun ayırt edici özelliğinin, gerekli pratik detayları ve ilgili konularla ilgili bağlantıları kapsayan, yasal konulara yapısal anlayış sağlayan bir dizi soru aracılığıyla hukuk konularının araştırılmasıdır. Bu tür yapılandırılmış hukukî soruların geliştirilmesinde en büyük rolü belirli bir hukukçu camiası oynadıysa, o zaman bu camia İslâm hukukunun kurucuları olarak kabul edilebilir. Mevcut çalışma bu tanımların Ebû Hanîfe'nin camiasına uygulanıp uygulanamayacağını değerlendirmektedir.
Makale iki bölüm içermektedir. İlk bölüm, Ebû Hanîfe'nin sorularının doğasını ve algılanmasını göstermek için biyografik çalışmalardan anekdot niteliğinde bilgiler sunmaktadır. Ayrıca, özellikle Muhammed bin Hasan eş-Şeybânî (ö. 189/805) olmak üzere öğrencilerinin kitapları aracılığıyla Ebû Hanîfe'nin sorularının Müslüman dünyasına yayılmasını, konuları yapılandırılmış hukukî sorular aracılığıyla sunan hukukî eserlerin yazılmasının, Şeybânî'nin kitaplarının teşvik ettiği edebi bir gelişme olduğunu ve bu gelişmenin Kişisel Hukuk Okullarının oluşumunu teşvik ettiğini savunarak incelemektedir. İkinci bölüm, abdest alınırken mestlerin (deri çorap) mesh edilmesi konusunu ele alan hukukî soruların gelişimine dair üç araştırma sunmaktadır. İlk araştırma, İslâm'ın ilk iki buçuk yüzyılındaki soruların gelişimini sunmakta ve çoğu sorunun "Üçüncü Seviye" hukukçular tarafından geliştirildiğini göstermektedir. Bu hukukçular Hicri 120 ve 240 yılları arasında yetişen ve Ebû Hanîfe'nin *üçüncü seviye* sorulara bilinen en eski katkıda bulunanlardan olduğu hukukçular grubudur. İkinci araştırma, hukuk okullarının önemli ikinci ve üçüncü yüzyıl metinlerindeki

hukukî soruları karşılaştırır ve bu metinlerin her birinin, her okulun çıkarlarını yansıtacak şekilde kendi sorularını geliştirdiğini Şafiî'nin el-Ümm ile Şeybânî'nin el-Asl adlı eserleri arasındaki odak farklılığı üzerine düşünceler sunarak incelemektedir. Üçüncü araştırma, hukuk okullarının klasik dönem hukuk derlemelerindeki sorular arasında kısa bir karşılaştırma sunmakta ve bu derlemelerin ana 'temel' sorularının Üçüncü Seviye hukukçular tarafından geliştirildiğini göstermekte ve ikinci ve üçüncü yüzyıldaki şahsiyetlerin temel katkılarını vurgulamaktadır. Makale, Ebû Hanîfe'nin sorularının, Müslüman dünyadaki hukuk çevrelerinde yapılandırılmış hukukî soruların gelişmesinde ve hukukî bağlantının önde gelen Üçüncü Seviye hukukçuların öğretilerine olduğu gibi Kişisel Hukuk Okullarının yükselişinde en büyük nedensel etkiye sahip olduğu sonucuna varmaktadır. Dolayısıyla bu açıdan Ebû Hanîfe'nin İslâm hukukunun kurucusu olarak kabul edilebileceğini savunmaktadır. Bununla birlikte, makale aynı zamanda diğer hukuk çevrelerinin sadece Ebû Hanîfe'nin sorularını taklit etmekle kalmayıp, hukuk projesine ilişkin kendi çıkarlarını ve fikirlerini aktaran sorularını geliştirdiklerini de göstermektedir. Bu bağlamda, Şafiî'nin el-Ümm adlı eseri, Ebû Hanîfe'nin sorularına özellikle çetin ve açık fikirli bir cevap olarak vurgulanmaktadır. Bu makalenin ana amacı, hukukî soruların incelenmesinin İslâm hukukunun yükselişi, biçimlendirici dönem ve klasik hukukçuların katkıları ve erken dönem hukuk eserlerinin tarihlenmesi hakkında nasıl değerli bilgiler verebileceğini göstermektir.

Teşekkür:
Christopher Melchert ve iki anonim hakeme, bu makalenin ilk sürümleri hakkındaki çok yararlı yorumları için teşekkür etmek istiyorum.

INTRODUCTION

"In *fiqh*, people are the dependents of Abū Ḥanīfa (d. 150/767)."[1] These words, attributed to al-Shāfiʿī (d. 204/820), reflect an understanding amongst Abū Ḥanīfa's followers, namely, that Abū Ḥanīfa and his circle of students can be considered the founders of *fiqh*, the discipline of Islamic law.[2] The current paper assesses the plausibility of such a claim. Of course, sophisticated disciplines such as Islamic law develop organically, with each generation building upon the work of the former, making it subjective to identify particular individuals as their founders. Different founders may be proposed depending on what is considered the most definitive feature of a discipline. The current essay considers the most definitive feature of Islamic law to be the legal question, or *masʾala*. It is through assessing Abū Ḥanīfa's contributions to the development of *masʾala*s that the centrality of his role in the development of Islamic law will be considered.

The word *masʾala* is a form of verbal noun (*maṣdar mīmī*) that translates literally as 'questioning'. Before considering the role of the *masʾala* in Islamic law, we can note that the term was widely applied across Islamic disciplines. The paired units of 'question' and 'answer' – *masʾala* and *jawāb* – provided the framework of presentation for disciplines ranging from philology

[1] Al-Dhahabī, *Siyar aʿlām al-nubalāʾ*, ed. Shuʿayb al-Arnāʾūṭ, 25 vols. (Beirut: Muʾassasat al-Risāla, 1985), 6:403.

[2] See, for example, Ibn ʿĀbidīn, *Radd al-muḥtār ʿalā al-Durr al-mukhtār*, 6 vols. (Beirut: Dār al-Fikr, 1992), 1:50, which contains the oft-quoted metaphor: Abū Ḥanīfa pounded the seed of *fiqh* to fine flour, Abū Yūsuf (d. 182/798) kneaded it, and Muḥammad al-Shaybānī (d. 189/805) baked it into bread; and all people are eating from this bread. Ibn ʿĀbidīn also quotes Ibn Ḥajar al-Haytamī (d. 974/1567) in stating that Abū Ḥanīfa was "the first to record *fiqh* and organise it into chapters and books as it is divided today."

and theology to medicine.[3] This form of presentation reflected the dialectical foundations of these disciplines, and continued into the classical period as the hallmark of the scholastic method.[4] In such contexts, the *masʾala* was often a 'problem' that required a carefully considered response.[5] The current essay does not seek to explore the role of the *masʿala* within a dialectical or scholastic framework, and does not address the specifically dialectical legal literature of *ʿilm al-khilāf*, or legal disputation.[6] Rather, it will refer to the most common usage of the term *masʾala* in legal texts authored to convey the law.

The most common usage of the term *masʾala* within Islamic legal works is for the identification of a legal case or issue. It is the label given to each unit of legal information. A chapter of *sunna* (highly recommended) acts in ritual ablutions, for example, can be said to contain eight *masʾala*s, if it lists eight different acts that are highly recommended to perform. Such a use of the term *masʾala* in works of Islamic law is ubiquitous. In such texts, the *masʾala* is not typically couched in a dialectical framework: the reader does not sense a question-answer exchange. Rather, the use of the label *masʾala* in such a context implies only that each unit of legal information is providing the answer to an implied question. For example, when a legal text tells us, "It is highly recommended to wash hands up to the wrists at the start of ritual ablutions," this can be seen as the answer to the implied question "Is it highly recommended to wash hands up to the wrists at the start of ritual ablutions?" The term *masʾala* highlights that *fiqh* works provide answers to implied questions. It is these implied questions that are the interest of the current investigation.

Classical works of *fiqh* provide legal information that answers structured questions about the topics that make up Islamic law. By structured, I mean that these legal questions are sufficiently sophisticated to address a range of necessary practical and theoretical considerations about legal topics and how they connect to related topics. For each of the

[3] *Encyclopaedia of Islam*, 2nd edition, s.v. "Masāʾil Wa-Adjwiba", by Hans Daiber.

[4] On the scholastic method in classical Islam, see George Makdisi, *The Rise of Colleges*, 105-40; idem, "Baghdad, Bologna, and Scholasticism," in *Centres of Learning: Learning and Location in Pre-Modern Europe and the Near East*, ed. Jan Willem Drijvers and Alasdair MacDonald (Leiden: Brill, 1995), 141-57; idem, *The Rise of Humanism in Classical Islam and the Christian West, With Special Reference to Scholasticism* (Edinburgh: Edinburgh University Press, 1990).

[5] 'Problem' is Shihadeh's translation of *masʾala* in Ayman Shihadeh, *Doubts on Avicenna: A Study and Edition of Sharaf al-Dīn al-Masʿūdī's Commentary on the* Ishārāt (Leiden: Brill, 2016), 52, 53.

[6] On dialectic in legal disputation and its role in the development of legal theory, see Walter Young, *The Dialectical Forge: Juridical Disputation the Evolution of Islamic Law* (Cham: Springer, 2017).

topics of ritual purity, for example, the details provided for each topic will address what one needs to perform a particular ritual, when one needs to do so, why one needs to do so, and related details that would give important practical guidelines for the implementation of each topic and to understand how it relates to other topics. This feature of addressing structured questions is the most observable feature of classical Islamic legal texts that separates them from the contributions of formative-period jurists, whose recorded doctrine only offers scattered answers to basic questions about topics.

We are therefore able to suggest that the rise of the discipline of Islamic law is tied to the provision of legal information that answers such structured legal questions. This understanding of the rise of the discipline leads to the following proposition: if a person or circle can be identified as commencing the movement to developing questions that provide a structural understanding of legal topics – the range of questions that were answered variably in classical works across the schools of law – then that person or circle can be seen as the founder/s of Islamic law.

The term *masʾala* will henceforth be translated as 'legal question' or simply 'question', to remind us that units of legal information present queries on the part of the juristic community. The focus of this essay, and its main contribution to the field of Islamic legal studies, is studying the development of Islamic law through the lens of the legal question. In so doing, it will offer frameworks for investigation that can be further developed and applied to study the rise of Islamic law. And it is through the lens of such an investigation that we will consider the centrality of the contributions of Abū Ḥanīfa and his circle of students.

This essay is divided into two sections. The first section presents anecdotal information from biographical sources to reveal what they show of the nature of Abū Ḥanīfa's legal questions and their reception by contemporaries. The purpose of this section is to highlight how biographical works present the relationship between Abū Ḥanīfa and the 'art' of asking legal questions. The second section presents a case study from a single topic – the topic of wiping over leather socks (*khuff*s) in ritual ablutions. The case study first tracks the rise of questions pertaining to the topic in the first two-and-a-half centuries of Islam; it then compares the presentation of legal questions pertaining to the topic in key second- and third-century works; finally it compares the relevant legal questions presented in key digests (*mukhtaṣar*s) of the classical legal schools. This is followed by a conclusion that ties together the main findings of this *masʾala*-based exploration of early Islamic law and proposes whether, in the light of both the case-study and biographical material presented in the paper, Abū Ḥanīfa could be considered the founder of Islamic law.

Section One: Anecdotal Evidence For The Impact Of Abū Ḥanīfa's Questions

It is undeniable that Iraq, and particularly the garrison town of Kufa, played a leading role in the development of Islamic legal thought.[7] It is also undeniable that some Iraqi jurists stood out for their approach to legal questions, and were thus subject to criticism from jurists elsewhere for the frequency and nature of legal questions they addressed.[8] Amongst Iraqi scholars, perhaps no scholar was more criticised for addressing such questions than Abū Ḥanīfa. It is important to note that such criticism addresses two intertwined matters. The first is criticism for entertaining too many questions. The second is criticism for showing an interest in hypothetical questions that served no practical purpose.[9] We can see how the two are interconnected. Entertaining too many questions will entail considering the hypothetical, as a jurist answering lots of questions will need a strong theoretical grasp of the law. This theoretical grasp was developed primarily through the medium of hypothetical questions. Abū Ḥanīfa is presented in the sources as emblematic of this 'liberal' approach to questioning.

The current section reveals what we can learn from biographical sources on the development of legal questions from the angle of Abū Ḥanīfa's contributions and the responses of his contemporaries. The anecdotes presented are representative of the relevant information provided in biographical sources. While it is hard to verify the details of individual biographical reports, what concerns us here are the general themes that are repeated throughout Abū Ḥanīfa's biography, themes that show how Abū Ḥanīfa was remembered in the generations after he passed.

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[7] Iraq was where Islamic law first developed according to Schacht and Brunschvig: See Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1982), 28-9; idem, *The Origins of Muhammadan Jurisprudence* (Oxford: At the Clarendon Press, 1950), 185-8, 220-2; Robert Brunschvig, "Polémiques médiévales autour du rite de Mālik," *al-Andalus*, 15 (1950): 377-45, at 378. More recent studies have highlighted the early contributions to the discipline in the Hejaz: see, for example, Harald Motzki, *The Origins of Islamic Jurisprudence: Meccan Fiqh Before the Classical Schools*, translated by Marion Katz (Leiden: Brill, 2002); Umar Abd-Allah Wymann-Landgraf, *Mālik and Medina: Islamic Legal Reasoning in the Formative Period* (Leiden: Brill, 2013); Yasin Dutton, *The Origins of Islamic Law: The Qur'an, the* Muwaṭṭāʾ *and Medinan* ʿAmal (Curzon Press, 1999).

[8] See, for example, the critiques of Iraqi rationalism in Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013), 22-32.

[9] For warnings against answering too many questions, particularly the hypothetical, from prominent Companions and Followers, see al-Dārimī, *Musnad al-Dārimī al-maʿrūf bi-Sunan al-Dārimī*, ed. Ḥusayn Salīm Asad al-Dārānī, 4 vols. (Riyadh: Dār al-Mughnī, 2000), 1:232-78.

Abū Ḥanīfa's Questions

Al-Ṣaymarī (d. 436/1045) quotes Ḥammād ibn Salama (d. 167/784) describing Abū Ḥanīfa's rise to prominence as follows:

After Ibrāhīm al-Nakhaʿī (d. 96/714), the *muftī* of Kufa and the one looked up to in matters of *fiqh* was Ḥammād ibn Abī Sulaymān (d. 120/737-8), and people found in him what they needed. When he died, they needed someone who would sit to [teach] them; his companions feared that his mention would die and knowledge would end… . So they asked Abū Ḥanīfa…; he sat to [teach] them and they attended [his circle]. After them, the likes of Abū Yūsuf (d. 182/798), Asad ibn ʿAmr (d. 188/803-4 or 190/805-6), al-Qāsim ibn Maʿn (d. 175/791-2), Zufar ibn al-Hudhayl (d. 158/775), al-Walīd (d. ?) and other men from Kufa attended [his circle]. Abū Ḥanīfa would impart deep understanding of religion (*yufaqqihuhum fī al-dīn*). He was exceedingly kind to them and keenly looked after them. Ibn Abī Laylā (d. 148/765), Ibn Shubruma (d. 144/761-2), Sharīk [ibn ʿAbd Allāh] (d. 177/783-4?), and Sufyān [al-Thawrī] (d. 161/777-8?) opposed him, and sought to besmirch him (*yaṭlubūna shaynahu*). Thus the matter remained until his status became firm, and rulers needed him and caliphs mentioned him.[10]

This quotation summarises recurring themes presented by Abū Ḥanīfa's biographers. His pedigree is highlighted by his occupying the teaching circle of his mentor, Ḥammād ibn Abī Sulaymān, presented here as the undisputed jurist of Kufa. The pedigree of Abū Ḥanīfa's students is similarly highlighted, by naming important attendees who would be considered the crème of Kufa in their generation. Finally, a common theme of jealousy arises in the second last sentence: the leading scholars of his own generation sought to oppose and besmirch him.

The circle's standing out for the breadth of legal questions it engaged is implied in a report attributed to Abū Ḥanīfa's student Dawūd al-Ṭāʾī (d. 165/781), who says, after mentioning the opposition of Abū Ḥanīfa's aforenamed contemporaries, that "[Abū Ḥanīfa's] circle was the greatest circle in the mosque and the most expansive in providing answers (*awsaʿuhum fī al-jawāb*)."[11] These answers were to questions: Abū Ḥanīfa's circle was the most expansive in exploring questions of the law.

A quotation from Shuʿba [ibn al-Ḥajjāj] (d. 160/776-7) shows that precise questioning was Abū Ḥanīfa's distinguishing mark while still a student under Ḥammād ibn Abī Sulaymān: "I heard Ḥammād ibn Abī Sulaymān say, 'Abū Ḥanīfa would sit with us with dignity, poise and scruples; then he took to detailed questioning (*ḥattā daqqaqa al-suʾāl*), and

[10] Al-Ṣaymarī, *Akhbār Abī Ḥanīfa wa-aṣḥābihi*, (Beirut: ʿĀlam al-Kutub, 1985), 21.
[11] Al-Ṣaymarī, *Akhbār*, 22.

I feared for him from that.'"[12] This fear, ascribed to Abū Ḥanīfa's teacher, was of how people would respond to Abū Ḥanīfa's opening previously unopened vistas in legal questions.

A recurring biographical theme is his employment of questions as the basis of his teaching pedagogy. According to a narration, Abū Yūsuf once pulled out of Abū Ḥanīfa's classes to start teaching in his own circle. Abū Ḥanīfa sent him a man to ask him a question:

[The man asked] "What do you say about a person who gave a garment to a bleacher to bleach it for a dirham; then a few days later he goes to him to retrieve the garment, but the bleacher denies it and says, 'You don't have anything with me'; then later, the owner of the garment returns to him, and he hands over the garment bleached; does he deserve a wage for that? Abū Yūsuf answered, "He deserves a wage." The man answered, "You erred." He considered for a moment, then answered, "He does not deserve a wage." The man answered, 'You erred.' Abū Yūsuf immediately stood and went to Abū Ḥanīfa. Abū Ḥanīfa remarked, "Nothing has brought you save the question of the bleacher." "Indeed," he answered. [Abū Ḥanīfa] said, "God be glorified! Who sits to give *fatwā*s to people and starts a circle to speak of God's religion, and this is his level; he cannot answer a question of hire contracts?!" "Oh Abū Ḥanīfa, teach me!" he said. [Abū Ḥanīfa] replied, "If he bleached it after usurping it, then he deserves no wage, because he only bleached it for himself; but if he bleached it before usurping it, then he deserves a wage, because he bleached it for its owner." He then said, "He should cry over himself who thinks that he no longer needs to learn."[13]

Zufar ibn al-Hudhayl, one of Abū Ḥanīfa's most outstanding students, relates that he only joined Abū Ḥanīfa's circle because of the latter's questions. He was from a traditionist circle whose members became stymied upon receiving a question (*masʾala*) that they could not answer. He went to Abū Ḥanīfa, who provided an answer, along with scriptural and rational evidence to support it. Abū Ḥanīfa then asked Zufar two further questions, each a permutation of the original question, asking Zufar to answer them. When Zufar felt at a loss to reply, Abū Ḥanīfa answered them, providing the rationale for his answers. Zufar then returned to his original circle with the three questions: the original question, and Abū Ḥanīfa's two questions. He remarked, "I became the head of the circle with [just] three questions!"[14] He subsequently joined Abū Ḥanīfa's circle, and became one of the ten senior students who would record Abū Ḥanīfa's legal doctrine.[15]

Seniority in Abū Ḥanīfa's circle was settled through displaying prowess

[12] Ibid., 23.
[13] Ibid., 29.
[14] Ibid., 112-3.
[15] Ibid.

in reasoning through questions. Abū Ḥanīfa was once seen sitting in between Abū Yūsuf and Zufar, who were both debating a question (*masʾala*):

Abū Yūsuf would not offer an opinion, except that Zufar would dismantle it; and Zufar would not offer an opinion except that Abū Yūsuf would dismantle it. [This continued] until the time of noon prayer. When the muezzin gave the call to prayer, Abū Ḥanīfa judged in the favour of Abū Yūsuf; he raised his hand and struck the thigh of Zufar and said, "Don't aspire to leadership of a town in which Abū Yūsuf is found."[16]

A further biographical theme is how he instructed his circle to demonstrate their learning to others through the medium of questions. Yūsuf ibn Khālid al-Samtī (d. 189/805) narrates that when the Medinan Rabīʿa ibn ʿAbd al-Raḥmān (d. 136/753-4) came to Iraq, he met with the judge Yaḥyā ibn Saʿīd (d. 143/760-1), who expressed surprise at the number of people following Abū Ḥanīfa. Upon hearing this, Abū Ḥanīfa sent a group of students to him, including Abū Yūsuf and Zufar, with the instructions, "Measure him out (*qāyisūhu*) and debate him (*nāẓirūhu*)." Abū Yūsuf 'measured him out' with questions:

[Abū Yūsuf] said to him, "What do you say about a slave owned by two people, one of whom manumits him?" He replied, "This manumission is not valid." "Why?" [Abū Yūsuf] asked. He replied, "Because this is harm (*ḍarar*) [to the other owner who has not manumitted the slave], and [the report] has come from the Prophet – God bless him and give him peace – '[There should be] no harm, nor reciprocating harm.'" [Abū Yūsuf] then asked, "What if the other [owner then] manumits him?" He replied, "The manumission is valid." [Abū Yūsuf] declared, "You have left your [first] position. If the first word [of manumission] did not have any effect, and no manumission occurred thereby, then the second [uttered the word of] manumission while he is still a slave." [Yaḥyā ibn Saʿīd] became silent.[17]

In a similar account, we are informed that the school of Abū Ḥanīfa spread in Basra because Zufar's questions revealed inconsistencies in the reasoning of ʿUthmān al-Battī (d. *c.* 140/757-8), the leading Basran jurist, leading to the members of al-Battī's circle abandoning him for Zufar.[18]

Abū Ḥanīfa is presented as a polarising figure, during his life and after his death. He reportedly told his student Yūsuf ibn Khālid al-Samtī, when the latter decided to move back to his hometown of Basra,

"You are going to a people who have not given the attention to *fiqh* that you have. If you mention me, they will insult me. Rather mention to them my opinions. When you mention them, and they show approval, you may

[16] Ibid., 102.

[17] Ibid., 40-1.

[18] Muḥammad Zāhid al-Kawtharī, *Lamaḥāt al-naẓar fī sīrat al-imām Zufar* (Cairo: al-Maktaba al-Azhariyya, 1368/1949), 18.

then mention me."[19]

In an incident narrated by ʿUthmān ibn Saʿd al-Baṣrī (d. 160/776-7), a group of students were gathered outside the door of the Basran traditionist Abū ʿĀṣim al-Nabīl (d. 212/828) when Abū Ḥanīfa's name came up. Voices became raised, some loving him excessively, others hating him excessively. Abū ʿĀṣim enquired what the clamour was about. When he was informed, he remarked, "He is, by God, as said [in the poem of] ʿAbd Allāh ibn Qays al-Ruqayyāt (d. *c.* 85/704): 'Envious, that they saw you granted by God that which the noble are granted.'"[20]

Another theme was that his detractors eventually benefitted from his teachings. The Kufan traditionist and student of Abū Ḥanīfa ʿAbd al-Ḥamīd al-Ḥimmānī (d. 202/817-8) said, when his son asked him why people were so critical of Abū Ḥanīfa,

"There was no one in Kufa except that he had a tribe (*ʿashīra*) to protect him, [but] he was a man from the clients (*mawālī*). However, after that – by God – none of them remained except that they came to him to draw from his learning, except Sharīk ibn ʿAbd Allāh, and deficiency was plain in him until he returned to God."[21]

The most named Kufan detractor of Abū Ḥanīfa in biographical accounts is the traditionist Sufyān al-Thawrī. As al-Thawrī will feature in the following case study, we will look briefly into possible links between al-Thawrī and Abū Ḥanīfa's questions. To be clear, there are reports of both praise and blame of Abū Ḥanīfa attributed to al-Thawrī. If both sets of reports are taken to represent actual statements from al-Thawrī, then it would appear that he was originally of a good opinion of Abū Ḥanīfa before settling into a negative view.

There are several reports suggesting al-Thawrī's interest in Abū Ḥanīfa's questions. ʿAbd al-Ḥamīd al-Ḥimmānī narrates that al-Thawrī would wrap up in a blanket as if sleeping in the mosque to listen carefully to Abū Ḥanīfa's questions (*yatasammaʿ masāʾilahu*). When he was discovered, he left and did not return.[22] Zāʾida ibn Qudāma (d. 161/777) narrates that he saw a book under al-Thawrī's head in which he had been looking. When he requested to see the book, he saw that it was Abū Ḥanīfa's *Kitāb al-Rahn* ('Book of Collaterals').[23] This is corroborated by a report from the traditionist Yazīd ibn Hārūn (d. 206/821), who was asked what he thought about looking at the books of Abū Ḥanīfa: he encouraged his listeners to do so, noting that

[19] Ibn Abī al-ʿAwwām, *Faḍāʾil Abī Ḥanīfa wa-akhbāruhu wa-manāqibuhu*, ed. Laṭīf al-Raḥmān al-Bahrāʾijī al-Qāsimī (Makkah: al-Maktaba al-Imdādiyya, 2010), 79.

[20] Ibn Abī al-ʿAwwām, *Faḍāʾil*, 78.

[21] Ibid., 79.

[22] Al-Ṣaymarī, *Akhbār*, 73.

[23] Ibid., 74.

al-Thawrī deftly managed to make a copy of the Book of Collaterals for himself (*iḥtāla al-Thawrī fī Kitāb al-Rahn ḥattā nasakhahu*).[24]

ʿAlī ibn Mus-hir (d. 189/804-5), one of Abū Ḥanīfa's closest students and also a respected traditionist, maintained a close relationship with al-Thawrī, and several reports make him a source for al-Thawrī's acquisition of Abū Ḥanīfa's questions. ʿAlī ibn Mus-hir was one of four main memorisers of *fiqh* from Abū Ḥanīfa's circle,[25] who would then share his knowledge with al-Thawrī. A narration makes his discussions with al-Thawrī an important source for the latter's book *al-Jāmiʿ*.[26] In another report, Abū Ḥanīfa reportedly rebukes him for teaching al-Thawrī with the words, "What is wrong with you (*wayḥaka*)? Why do you carry your knowledge to a man who will not acknowledge you for it (*lima taḥmil ʿilmaka ilā man lā yaḥmaduka ʿalayh*)?"[27]

The leading Syrian jurist ʿAbd al-Raḥmān al-Awzāʿī (d. 157/773) is also recorded as gaining a written record of Abū Ḥanīfa's questions. In a report attributed to the traditionist and student of Abū Ḥanīfa ʿAbd Allāh ibn al-Mubārak (d. 181/797 or 182/798), al-Awzāʿī said to him, "[There is] a man in Kufa, astray and leading others astray, who invites to his innovation." Ibn al-Mubārak left him for three days in which time he wrote a selection of Abū Ḥanīfa's questions (*akhrajtu min masāʾil Abī Ḥanīfa masāʾil*) along with their supporting arguments, writing at the start of every question, "Al-Nuʿmān said". When al-Awzāʿi read it, he asked, "Who is this al-Nuʿmān whose beautiful answers these are?" Ibn al-Mubārak replied, "This is Abū Ḥanīfa, whom you forbade [students to learn from]."[28]

Biographical information of an early and polarising figure such as Abū Ḥanīfa will be expected to contain inaccuracies, exaggerations and fabrications. Reports that contradict the aforementioned in some details may also be found. However, the recurring themes – such as the innovative nature of his questions, his manner of instruction and the mixed response generated by his teachings –reflect the general reception of his legacy. As for the indebtedness of his contemporaries, such as al-Thawrī, to his questions, while these individual reports cannot be easily verified, they can still help explain some of the features that will be shown in the following case study, namely, the universal addressing of new questions by jurists contemporary to and after Abū Ḥanīfa.

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[24] Ibid. Yūsuf ibn Khālid al-Samtī would accuse al-Thawrī of falsely claiming that the questions in Abū Ḥanīfa's *Kitāb al-Rahn* were his own, adding that al-Thawrī would be unable to explain the subtlety of the questions: Ibn Abī al-ʿAwwām, *Faḍāʾil*, 148.

[25] Al-Ṣaymarī, *Akhbār*, 74.

[26] Ibid.

[27] Ibid.

[28] Ibn ʿAsākir, *Tārīkh Dimashq*, ed. ʿAmr ibn Gharāma, 80 vols. (Beirut: Dār al-Fikr, 1995), 32:399.

Abū Ḥanīfa's Books and Their Role in Spreading His Questions

Abū Ḥanīfa's biographers mention that care was taken to record the deliberations of Abū Ḥanīfa's teaching circle. Asad ibn al-Furāt (d. 213/828) – on whom more below – placed the number of scribes in Abū Ḥanīfa's circle at 40[29]; others mentioned 10 who "wrote the books with Abū Ḥanīfa".[30] Those named include Abū Yūsuf, Zufar, Dāwūd al-Ṭāʾī, Asad ibn ʿAmr, Yūsuf ibn Khālid al-Samtī, and Yaḥyā ibn Zakariyyā ibn Abī Zāʾida (d. 183/799 or 184/800), the latter identified as the main scribe who wrote for the circle over the course of 30 years.[31] Abū Ḥanīfa reportedly instructed the scribes to not record the conclusions of the circle until his student ʿĀfiya ibn Yazīd al-Awdī (d. *c.* 160/777), a judge, was present and contributed.[32] The circle would reportedly debate questions for three days before inscribing them in the written record (*dīwān*).[33] We have also seen the aforementioned reports of al-Thawrī having a copy of Abū Ḥanīfa's *Kitab al-Rahn* (Book on Collaterals) and of ʿAbd Allāh ibn al-Mubārak having a copy of Abū Ḥanīfa's questions (*masāʾil*) from which he selected a sample to share with al-Awzāʿī. Abū Ḥanīfa's student al-Qāsim ibn Maʿn is known to have made reference to a book of Abū Ḥanīfa's on the *mukātab* (slave earning to purchase his freedom).[34] Furthermore, many sources make mention of "Abū Ḥanīfa's books" (*Kutub Abī Ḥanīfa*) being accessed across a wide geography from the second Islamic century down to the fifth century.[35] The question that arises is what was the nature of these

[29] Ibn Abī al-ʿAwwām, *Faḍāʾil*, 342.

[30] Al-Ṣaymarī, *Akhbār*, 113.

[31] Ibn Abī al-ʿAwwām, *Faḍāʾil*, 342.

[32] Al-Ṣaymarī, *Akhbār*, 156.

[33] Ibn Abī al-ʿAwwām, *Faḍāʾil*, 341.

[34] Ibn Abī al-Wafāʾ, *al-Jawāhir al-muḍiyya*, 2 vols. (Hyderabad: Majlis Dāʾirat al-Maʿārif al-Niẓāmiyya, n.d), 1:412.

[35] The following are some references to *Kutub Abī Ḥanīfa*, presented in chronological order.

- Al-Darāwardī (d. 186/802) states that Mālik ibn Anas would look in *Kutub Abī Ḥanīfa*: Ibn Abī al-ʿAwwām, *Faḍāʾil*, 235.
- ʿAbd Allāh ibn Ghānim (d. 190/806 or 196/812), a *qāḍī* from Ifrīqiyya, would teach *Kutub Abī Ḥanīfa* on Fridays: ʿIyād al-Yaḥṣubī, *Tartīb al-madārik wa-taqrīb al-masālik*, ed. ʿAbd al-Qādir al-Ṣaḥrāwī *et al*., 8 vols. (Moḥammedia, Morocco: Maṭbaʿat Faḍāla, 1981), 3:67.
- The leading traditionist Yaḥyā ibn Maʿīn accused Sulaymān ibn ʿAmr al-Nakhaʿī (d. 190/805-6) of forging hadiths to support the legal cases in *Kutub Abī Ḥanīfa*: al-Khaṭīb al-Baghdādī, *Tārīkh Baghdād*, ed. Bashshār ʿAwwād Maʿrūf, 16 vols. (Beirut: Dār al-Gharb al-Islāmī, 2002), 01:20.
- Al-Wāqidī (d. 702/823) inscribed *Kutub Abī Ḥanīfa* from Ḥātim ibn Ismāʿīl (d. 187/803): Ibn Abī al-ʿAwwām, *Faḍāʾil*, 189.
- Asad ibn al-Furāt of Ifrīqiyya focused in his latter days on teaching *Kutub Abī Ḥanīfa*, with most Kufans of the time hearing them from him: ʿIyād al-Yaḥṣubī, *Tartīb*, 3:300.

books and are they accessible?

The bibliographic record does not present any information on books of legal doctrine attributed to Abū Ḥanīfa. The earliest sources of his legal doctrine recorded in bibliographic works are the books of his students. The aforementioned records produced in Abū Ḥanīfa's circle must have functioned as notebooks that would have been circled amongst members of the circle.[36] The *Kutub Abī Ḥanīfa* that are mentioned in biographical sources must be assumed to be the books authored by his students that contained his doctrine, books that must have drawn on the writings he supervised in his teaching circle.

Of the aforementioned members of Abū Ḥanīfa's circle, Abū Yūsuf appears to have devoted the most attention to authoring written works, although the various titles attributed to him might be sections of his voluminous set of dictations (*Imlāʾ*/*Amālī*).[37] Of the other main circle members, we know of the following legal works: Zufar ibn al-Hudhayl, *al-*

- ʿAnbasa ibn Khārija (d. 210/825), a saintly jurist, one of whose miracles was the prediction that *Kutub Abī Ḥanīfa* would be effaced from Ifrīqiyya: ibid., 3:320.
- Muḥammad ibn ʿAbd Allāh ibn al-Muthannā ibn ʿAbd Allāh ibn Anas ibn Mālik al-Anṣārī (d. 512/830), the *qāḍī* of Basra and then of Baghdad in the era of Hārūn al-Rashīd, said, "I used to look in *Kutub Abī Ḥanīfa*": al-Mizzī, *Tahdhīb al-Kamāl fī asmāʾ al-rijāl*, ed. Bashshār ʿAwwād, 35 vols. (Beirut: Muʾassasat al-Risāla, 1980), 25:548, fn.4.
- The leading traditionist Abū Zurʿa al-Rāzī memorised *Kutub Abī Ḥanīfa* in 40 days, and would recite from them effortlessly (*kāna yusriduhā mithl al-māʾ*): al-Mizzī, *Tahdhīb al-Kamāl*, 19:98.
- Aḥmad ibn Ḥanbal (d. 241/855) was asked if he preferred the books of Mālik and al-Shāfiʿī or the *Kutub Abī Ḥanīfa wa-Abī Yūsuf*, to which he replied by preferring the former: *Mawsūʿat aqwāl al-Imām Aḥmad ibn Ḥanbal fī rijāl al-ḥadīth wa-ʿilalihi*, ed. Al-Sayyid Abū al-Muʿātī al-Nūri, Aḥmad ʿAbd al-Razzāq ʿĪd, and Maḥmūd Muḥammad Khalīl, 4 vols. (Cairo:ʿĀlam al-Kutub, 1997), 1:9.
- The leading traditionist Aḥmad ibn Ṣāliḥ (d. 248/862-3) reportedly said, "Whoever is compelled to give a legal consideration (*man ubtuliya bi-al-rāy*), then let him consult *Kutub Abī Ḥanīfa*: al-Mizzī, *Tahdhīb al-Kamāl*, 24:380, fn.1.
- Aḥmad ibn Ismāʿīl ibn Jibrīl (d. 333/944-5) – a Qurʾan reciter from Nishapur, heard the *Kutub Abī Ḥanīfa wa-Abī Yūsuf* from Aḥmad ibn Naṣr (d. ?), a student of Abū Sulaymān al-Jūzjānī (d. 200/815-6): Ibn Mākūlā, *al-Ikmāl fī rafʿ al-irtiyāb ʿan al-muʿtalif wa-al-mukhtalif fī al-asmāʾ wa-al-kunā wa-al-ansāb*, 7 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1990), 7:61.
- Muḥammad ibn Aḥmad al-ʿĀmirī (d. 415/1024-5), *qāḍī* of Merv, claimed he could dictate *Kutub Abī Ḥanīfa* by heart: al-Samʿānī, *al-Ansāb*, ed. ʿAbd al-Raḥmān ibn Yaḥyā al-Muʿallimī, 13 vols. (Hyderabad: Majlis Dāʾirat al-Maʿārif al-ʿUthmāniyya, 1962), 9:159-60.

[36] On the circulation of early notebooks, see Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press, 1993), 161-97.

[37] For a list of attributed titles, see al-Baghdādī, *Hadiyyat al-ʿārifīn*, 2 vols. (Istanbul: Wakālat al-Maʿārif al-Jalīla, 1951), 2:536.

Mujarrad;[38] Asad ibn ʿAmr, *al-Masāʾil*,[39] al-Ḥasan ibn Ziyad, *al-Maʾkhūdh bihi*,[40] *al-Mujarrad*;[41] Yaḥyā ibn Zakariyyā ibn Zāʾida, *al-Shurūṭ wa-al-sijillāt*.[42] However, the author who compiled most of the works described as *Kutub Abī Ḥanīfa* was none of these leading members of Abū Ḥanīfa's circle. In fact, he spent only a few years in this circle as a teenager, after which he completed his training under Abū Yūsuf. This man was not only the leading author of Abū Ḥanīfa's doctrine, but arguably the founder of the genre of Islamic legal writing. This man was Muḥammad ibn al-Ḥasan al-Shaybānī.[43]

It is through the books of al-Shaybānī that we can begin to track the spread of Abū Ḥanīfa's questions across the Muslim world, and, indeed, into the founding written works of the major schools of Islamic law. Al-Shāfiʿī, for example, only wrote extended works in Islamic law after spending two years in the tutelage of al-Shaybānī, after which he left with a camel's load of books from al-Shaybānī.[44] The school of Mālik ibn Anas (d. 179/795) also owes a great debt to the writings of al-Shaybānī. The detailed doctrine of Mālik was only committed to a structured legal work when Asad ibn al-Furāt, a student of al-Shaybānī from Ifrīqiyya, presented al-Shaybānī's books to Mālik's student ʿAbd al-Raḥmān ibn al-Qāsim (d. 191/806), asking him to respond to the questions in the books – which he referred to as *Kutub Abī Ḥanīfa* – with the doctrine of Mālik.[45] This text became the original *Mudawwana*, which went through a further editorial process when Saḥnūn ibn Saʿīd (d. 240/854) reviewed the work with Ibn al-Qāsim.[46] This primary reference of Mālikī *fiqh* is thus a direct engagement with Abū Ḥanīfa's questions.

The books of al-Shaybānī, perhaps surprisingly, generated great interest amongst traditionist circles as well. Of particular interest in these circles was his short work *al-Jāmiʿ al-ṣaghīr*, which was arguably the first *mukhtaṣar*

[38] Kātib Çelebī, *Kashf al-ẓunūn ʿan asāmī al-kutub wa-l-funūn*, ed. Şerefettin Yaltkaya and Kilisli Rifat Bilge, 2 vols. (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, n.d.; repr. Istanbul, 1941-1943), 2:1593.

[39] Ibid., 2:1667.

[40] Ibid., 2:1574.

[41] Referenced in Ḥanafī legal works. Some cases from the *Mujarrad* were added to al-Shaybānī's *al-Aṣl*: al-Shaybānī, *al-Aṣl*, ed. Mehmet Boynukalın, 21 vols. (Beirut: Dār Ibn Ḥazm, 2012), 2:202-3.

[42] Al-Baghdādī, *Hadiyyat al-ʿārifīn*, 2:513.

[43] For a detailed biography and argument for his central role in the development of Islamic law, see Muḥammad Zāhid al-Kawtharī, *Bulūgh al-amānī fī sīrat al-Imām Muḥammad ibn al-Ḥasan al-Shaybānī* (Cairo: al-Maktaba al-Azhariyya, 1998).

[44] Al-Dhahabī, *Siyar*, 9:135.

[45] ʿIyāḍ al-Yaḥṣubī, *Tartīb*, 3:296.

[46] Ibid., 2:298-9.

– concise digest of legal rules authored for instruction and commentary – in the history of Islamic law. *Al-Jāmiʿ al-ṣaghīr* was studied by a number of leading traditionists. Yaḥyā ibn Saʿīd al-Qaṭṭān (d. 198/813) and Yaḥyā ibn Maʿīn (d. 233/848) studied the text, the former with Abū Yūsuf,[47] the latter with al-Shaybānī.[48] The historian al-Wāqidī studied *al-Jāmiʿ al-ṣaghīr* with al-Shaybānī, and in return taught al-Shaybānī his *Kitāb al-maghāzī*.[49] Al-Shāfiʿī's (d. 204/820) student al-Ḥasan ibn Muḥammad al-Zaʿfarānī (d. 260/874) notes,

We would attend the gathering of Bishr al-Marīsī (d. 219/834-5 or 228/842-3) [Abū Yūsuf's student], but we were unable to debate with him. So we walked to Aḥmad ibn Ḥanbal and said to him, "Permit us to memorise Abū Ḥanīfa's *al-Jāmiʿ al-ṣaghīr* so we can delve with them when they delve." "Be patient," he replied.[50]

Though such reports present Aḥmad ibn Ḥanbal's suspicion of Abū Ḥanīfa's project, his early training took place under Abū Yūsuf in Baghdad;[51] and, once, when asked from whence he found such fine legal questions (*min ayna laka hādhihi al-masāʾil al-diqāq?*), he replied, "From the books of Muḥammad ibn al-Ḥasan [al-Shaybānī]."[52] Al-Ṭabarī (d. 310 /923), the founder of his own legal school, studied under al-Shaybānī's student Muḥammad ibn Muqātil al-Rāzī (d. 246/860-1), and would certainly have been familiar with his writings.[53] The leading traditionist Abū Zurʿa al-Rāzī (d. 264/878) committed to memory *Kutub Abī Ḥanīfa* – almost certainly meaning al-Shaybānī's writings.[54]

We can see, then, the direct impact of al-Shaybānī's writings on the foundational legal works of the well-known schools of law. While the doctrine contained in those works would reflect the doctrines of the various authors, the aforementioned reports suggest a general interest in addressing the questions raised in al-Shaybānī's books. We can note then that the genre of legal writing – a genre whose essential features are the organisation of

[47] Ibn ʿAbd al-Barr, *Jāmiʿ bayān al-ʿilm wa-faḍlihi*, ed. Abū al-Ashbāl al-Zuhayrī, 2 vols. (Riyadh: Dār Ibn al-Jawzī, 1994), 2:1082. After it was authored, Abū Yūsuf reportedly approved greatly of the work and kept it with him even when travelling: al-Laknawī, *al-Jāmiʿ al-ṣaghīr maʿa sharḥihi al-Nāfiʿ al-kabīr* (Karachi: Idārat al-Qur'ān, 1990), 32. This report of Yaḥyā al-Qaṭṭān shows he also taught it.

[48] Al-Khaṭīb al-Baghdādī, *Tārīkh*, 2:561.

[49] Al-Kawtharī, *Bulūgh al-amānī*, 61.

[50] Yāqūt al-Ḥamawī, *Muʿjam al-udabāʾ: irshād al-arīb ilā maʿrifat al-adīb*, ed. Iḥsān ʿAbbās, 7 vols. (Beirut: Dār al-Gharb al-Islāmī, 1993), 6:2405.

[51] Al-Dhahabī, *Siyar*, 8:536.

[52] Al-Dhahabī, *Tārīkh al-Islām*, ed. ʿUmar ʿAbd al-Salām al-Tadmurī, 52 vols. (Beirut: Dār al-Kitāb al-ʿArabī, 1993), 12:360.

[53] Al-Kawtharī, *Bulūgh al-amānī*, 9.

[54] Al-Mizzī, *Tahdhīb al-Kamāl*, 19:98.

legal doctrine under demarcated chapters, each containing legal cases that answer structured questions that pertain to each topic – appears to have only arisen out of the engagement of Muslim jurists with the writings of al-Shaybānī. No such works prior to al-Shaybānī can be identified, with the exception of structured legal chapters attributed to Abū Yūsuf. Abū Yūsuf's written works might have preceded al-Shaybānī's, but enjoyed none of his success. Before al-Shaybānī, Mālik's *Muwaṭṭaʾ* was a text that divided the topics of the law into chapters, but not one that presented the structured legal questions of al-Shaybānī's books.

Finally, we may note that al-Shaybānī is not remembered as a passive receptor of Abū Ḥanīfa's teachings. The 'art of the question' that Abū Ḥanīfa trained his students in was an art in which they competed after him, with al-Shaybānī remembered as perhaps the most outstanding in this art. For example, al-Ḥasan ibn Abī Mālik (d. 204/819-20), who would teach al-Shaybānī's books, remarked, "Abū Yūsuf would never analyse to such a fine degree (*lam yakun Abū Yūsuf yudaqqiq hādha al-tadqīq al-shadīd*)."[55] The father of al-Ḥasan ibn Abī Mālik rebuked Bishr ibn al-Walīd (d. 238/852), a leading transmitter of Abū Yūsuf's books who harboured enmity towards al-Shaybānī, with the following words:

"This is Muḥammad. His are these books that are in the hands of people in which are found his questions (*masāʾiluhu*) that he has originated and applied (*walladahā wa-ʿamilahā*). We would be satisfied with you if you could just pose for us the question of a single *masʾala*, God having excused you from having to answer it (*naḥnu narḍā minka an tatawallā lanā waḍʿ suʾāl masʾala wāḥida wa-qad aʿfāka Allāh ʿazza wa-jalla min jawābihā*)!"[56]

This most extreme rebuke implied that this leading transmitter of Abū Yūsuf's doctrine was unable to match al-Shaybānī's skill in constructing legal questions. And to emphasise that the focus of the rebuke was simply on the skill of asking questions and not of answering them, he separated the 'question' (*suʾāl*) of the *masʿala* from its 'reply' (*jawāb*).

Al-Shaybānī is also recorded as constructing his own questions and then presenting them to Abū Ḥanīfa's senior students for their consideration. He would reportedly visit the home of Abū Ḥanīfa's student Dāwūd al-Ṭāʾī to ask questions, by which time Dāwūd had abandoned legal circles for a life of devotion to worship. Al-Shaybānī records:

I would visit Dāwūd al-Ṭāʾī in his home and ask him a question. If it entered his heart that it was from among [the questions] I needed for the sake of my religious practice, he would answer me. And if it entered his heart that it was from among *these questions of ours* (*in waqaʿa fī qalbihi*

[55] Ibn Abī al-ʿAwwām, *Faḍāʾil*, 358.
[56] Ibid., 357.

annahā min masāʾilinā hādhihi), he would smile in my face and say, "We have matters that occupy us. We have matters that occupy us."[57]

Al-Shaybānī's books are thus repositories of Abū Ḥanīfa's teachings developed through the deliberations and further reflections of his students.

A final angle from which to appreciate the effect of Abū Ḥanīfa's questions is that the spread of his doctrine across the Muslim world coincided with a new development in legal affiliation. Schacht points out that before the rise of the schools of law (*madhhab*s), there was the rise of the Personal School, whereby communities of jurists affiliated themselves with the teachings of a prominent master-jurist, prior to which jurists only had vague regional affiliations. Schacht attributes this development primarily to al-Shāfiʿī's challenge to the regional traditions that preceded him.[58] It can be argued from the preceding presentation that the shift to Personal Schools started before al-Shāfiʿī. The circle of Abū Ḥanīfa offers the first instance of a group of jurists writing and teaching the doctrine of a master-jurist, identifying themselves as students of Abū Ḥanīfa.. The rise of Personal Schools can be seen as a direct response to the writings of al-Shaybānī, whereby juristic communities were compelled to produce similarly structured legal works serving the doctrine of a master-jurist. We will return to reflect on the rise of Personal Schools after the case study below.

Concluding Remarks

The anecdotal reports presented above are representative of the themes in Abū Ḥanīfa's biography, particularly as they pertain to his questions and the response of contemporaries, although it is admittedly hard to confirm the accuracy of individual reports. Our records of the spread of al-Shaybānī's books across the ranks of Muslim scholars and schools are easier to verify. However, by stepping back and viewing the overlapping themes in this large body of material, a clear picture does emerge. The key features of this picture are as follows.

First, Abū Ḥanīfa gave great importance to the 'art of the question'. It formed the basis of his teaching his students and of how the circle presented and defended its doctrine in debates with contemporaries. We can assume that legal questions played an important pedagogical role prior to Abū Ḥanīfa. But no figure before him is so associated with as exacting and detailed an approach to questioning as he is. Second, contemporaries were polarised by the approach taken by this circle to legal questions. Some respected the development and viewed the circle as producing important contributions to Islamic learning. Others viewed this development with

[57] Ibn Abī al-Wafāʾ, *al-Jawāhir*, 1:240.

[58] Schacht, *Introduction*, 57-68.

great suspicion. Those who had direct access to the production of this circle, meaning primarily the scholars of Kufa, accessed the legal doctrine of this circle, whether or not they approved of the circle's activities. Third, the authored books of Abū Ḥanīfa's doctrine, specifically those authored by al-Shaybānī, were the medium for spreading Abū Ḥanīfa's questions across the Muslim world. In response to the structured legal discussions of these books, competing schools authored works that presented similarly structured discussions based on their respective doctrines. It is the appearance of this new genre of writing: structured legal works that address structured questions of each chapter of the law, that heralds the rise of a new discipline of Islamic law. The man who inaugurated this literary development is al-Shaybānī. This literary development was only made possible by a prior development: the production of detailed legal questions to ensure thorough and consistent theorisation of the various topics of the law. The man who most developed these questions in his circle was Abū Ḥanīfa. If we propose that this structured approach to Islamic law was the mark of its inception, then the record of biographical and bibliographical sources points to the foundational role of Abū Ḥanīfa and his students in its development.

Section Two: Case Study – Wiping over *Khuff*s in Early Islamic Law

In this section, we will assess the generation of questions pertaining to the topic of wiping over *khuff*s – a leather foot covering – in lieu of washing feet in ritual ablutions. A small case study of this nature is not sufficient to prove or disprove whether Abū Ḥanīfa's circle founded a new discipline, and is best seen as an exploratory step into this area. However, it shows the utility of studying the development of Islamic law through the generation of legal questions and offers meaningful results. I will categorise below the development of questions on the topic of *khuff*-wiping and assess how these findings can help us understand the preceding discussion from biographical sources, and how the preceding discussion can help in assessing these findings. The topic of *khuff*-wiping was chosen for its representing an isolated topic of little influence on other chapters of the law, facilitating an encompassing view of the development of legal questions. Furthermore, it is a topic with few instructions from the Prophet, thus the legal community needed to develop a number of questions pertaining to the practical application of the topic, which in turn required a level of theorisation of a topic that is presented as non-rational in its essence. All of this makes for an helpful case-study in the context of the current essay.

This case study consists of three investigations. The first investigation assesses the development of questions in the first two centuries and a half, relying on reported positions of leading jurists in works of early juristic

disagreement. The second investigation compares the primary written works of each school from the second and third Islamic centuries to compare the presentation of legal questions in these texts. The third investigation studies central legal digests (*mukhtaṣar*s) of the classical schools, authored in the seventh and eighth Islamic centuries to give an idea of how early questions were developed in the classical schools.

First Investigation: The Development of Questions in the First Two Centuries

In this investigation, we study the doctrine attributed to legal authorities from the Companions down to the middle of the third Islamic century. The sources for this investigation are the *Muṣannaf*s of ʿAbd al-Razzāq (d. 211/827) and Ibn Abī Shayba (d. 235/845), and works dedicated to scholarly disagreement, particularly *al-Awsaṭ fī al-sunan wa-al-ijmāʿ wa-al-ikhtilāf* of Ibn al-Mundhir (d. 318/930-1), *Ikhtilāf al-ʿulamāʾ* of al-Ṭaḥāwī (d. 321/933) and *Ikhtilāf al-fuqahāʾ* of al-Marwazī (d. 279/892-3). The main reference cited is *al-Awsaṭ*, other texts are typically only cited where they add to or modify the presentation of Ibn al-Mundhir.

I will break down the questions and the jurists who produced these questions into three categories: First Level, Second Level and Third Level. First Level questions are those whose main cited authorities are Companions. These questions are either answered directly by Companions – whether by their citing Prophetic practice or offering their own opinions – or answered in reports from the following generation (the Followers) conveying Companion practice. Second Level questions are those whose main cited authorities are Followers, those who flourished in the second half of the first Islamic century or the first decades of the second century. Third Level questions are those whose main quoted authorities are jurists who flourished between 120AH and 240AH – 120AH marking the death of Abū Ḥanīfa's mentor Ḥammād, and 241AH marking the death of Aḥmad ibn Ḥanbal. Positions of jurists from lower levels might be stated for questions raised at a higher level; this is typically to show which earlier authorities they chose to follow in a higher-level debate. We will see a steep rise in questions as we enter the Third Level. Where a list of jurists is provided below, names are arranged in chronological order of death, starting with the earliest.

We can note that there are grey areas where these three levels meet. Some questions below are categorised as Second Level although there are Companions cited. These have been categorised as such because such questions are only addressed by a few Companions in the face of a large number of Followers, making it appear primarily a question that was developed among the Followers. The conclusions drawn from the analysis

will not differ greatly if these grey area cases are categorised differently. Further work in this area might benefit from introducing further levels for more precise categorisation. Similarly, all Companions were treated as First Level for the purpose of this initial categorisation, although a future categorisation with more levels would benefit from treating younger Companions as belonging to the generation of early Followers, not early Companions.

First Level Questions

There are three First Level questions that address the topic of *khuff*-wiping: (1) is it permissible; (2) how long may one continue wiping before having to wash the feet; (3) may one wipe over socks (*jawrabayn*)?

1. Is it permissible to wipe over *khuff*s?[59]

The permissibility of wiping over *khuff*s in lieu of washing feet was not accepted by everyone after the death of the Prophet. The most quoted objection to the practice is attributed to the Prophet's wife ʿĀʾisha (d. 58/678), who reportedly said, "I would rather cut my feet than wipe on *khuff*s!"[60] Another widely transmitted incident conveys a disagreement between Saʿd ibn Abī Waqqāṣ (d. 55/ 674-5?), who held the permissibility of wiping over *khuff*s in ritual ablutions, and ʿAbd Allāh ibn ʿUmar (d. 73/692-3), who did not. They raised the issue to ʿUmar ibn al-Khaṭṭāb (d. 23/644), who confirmed the permissibility of the practice.[61]

It is in opposing this earlier suspicion that many Companions are presented as practising it (marked below as 'practice') or narrating this practice from the Prophet (marked below as 'hadith') or explicitly stating its permissibility. Those quoted include ʿUmar ibn al-Khaṭṭāb,[62] Bilāl ibn Rabāḥ (d. 18/639?) (hadith),[63] Ḥudhayfa ibn al-Yamān (d. 36/656) (hadith),[64] Salmān al-Fārisī (d. 36/656-7),[65] ʿAmmār ibn Yāsir (d. 37/657) (practice),[66] ʿAlī ibn Abī Ṭālib (d. 40/661),[67] Abū Mūsā al-Ashʿarī (d.

[59] Ibn al-Mundhir, *al-Awsaṭ fī al-sunan wa-al-ijmāʿ wa-al-ikhtilāf*, ed. Ṣaghīr ibn Aḥmad ibn Muḥammad Ḥanīf, 6 vols. (Riyadh: Dār Ṭayba, 1985), 1:425-33.

[60] ʿAbd al-Razzāq, *al-Muṣannaf*, 11 vols. (Beirut: al-Maktab al-Islāmī, 1982), 1:221; Ibn Abī Shayba, *al-Muṣannaf*, ed. Muḥammad ʿAwwāma, 26 vols. (Beirut: Dār Qurṭuba, 2006), 2:268.

[61] ʿAbd al-Razzāq, *al-Muṣannaf*, 1:195-8, Ibn Abī Shayba, *al-Muṣannaf*, 2:254, 259, 265,

[62] Ibid., 2:239.

[63] Ibid., 2:238.

[64] ʿAbd al-Razzāq, *al-Muṣannaf*, 1:193; Ibn Abī Shayba, *al-Muṣannaf*, 2:236.

[65] Ibid., 2:246.

[66] ʿAbd al-Razzāq, *al-Muṣannaf*, 1:197.

[67] Ibid., 1:194; Ibn Abī Shayba, *al-Muṣannaf*, 2:256.

44/664-5),[68] al-Mughīra ibn Shuʿba (d. 50/670) (hadith),[69] Abū Ayyūb al-Anṣārī (d. 50/670-1 or 51/671-2),[70] ʿAmr ibn Umayya (hadith) (d. *c.* 50/670),[71] Jarīr [ibn ʿAbd Allāh al-Bajalī] (d. 51/671-2 or 54/673-4) (practice and hadith),[72] ʿAbd Allāh ibn ʿAbbās (d. 68/687-8),[73] Jābir ibn Samura (d. 76/695-6)[74] and Anas ibn Mālik (d. 93/711-2).[75] Second Level jurists are quoted occasionally in confirming the practice, typically by quoting the approval of Companions. Level Three jurists are not quoted as engaging this question.

2. What is the period for which one may continue wiping before having to remove *khuff*s and wash the feet?[76]

There are two main positions on this question, one fixes a time limit while the other does not. This question, like the previous, is answered both through narrating Prophetic reports and through the articulation of Companions, though the proportion of Companion statements is greater. Perhaps this difference – this question not being seen as widely grounded in Prophetic teachings as the previous question – explains why the topic remained one of disagreement across generations. Level Three jurists are quoted as taking one of the two sides on this debate.

The first position, that the time is limited to a day and night (24 hours) for residents and three days and nights (72 hours) for travellers is attributed to ʿUmar, ʿAbd Allāh ibn Masʿūd (d. 32/652-3), Ḥudhayfa ibn al-Yamān,[77] ʿAlī, Ibn ʿAbbās, Ibn ʿUmar,[78] Abū Zayd al-Anṣārī (d. *c.* 80/700), Shurayḥ ibn al-Ḥārith al-Kindī (d. 87/705-6?), Saʿīd ibn al-Musayyab (d. 93/712?),[79] ʿUmar ibn ʿAbd al-ʿAzīz (d. 101/720),[80] ʿAṭāʾ ibn Abī Rabāḥ (d. 114/732 or 115/733), Abū Ḥanīfa, al-Thawrī, al-Shāfiʿī (his final position), Isḥāq ibn Rāhawayh (d. 238/853), Aḥmad ibn Ḥanbal.

The position that there is no time limit is attributed to ʿUmar,[81]

[68] Ibid., 2:256.

[69] ʿAbd al-Razzāq, *al-Muṣannaf*, 1:191; Ibn Abī Shayba, *al-Muṣannaf*, 2:237, 238.

[70] ʿAbd al-Razzāq, *al-Muṣannaf*, 1:198, Ibn Abī Shayba, *al-Muṣannaf*, 2:236.

[71] ʿAbd al-Razzāq, *al-Muṣannaf*, 1:191.

[72] Ibid., 1:194-5; Ibn Abī Shayba, *al-Muṣannaf*, 2:237, 832, with Ibrāhīm al-Nakhaʿī pointing out that the companions of ʿAbd Allāh ibn Masʿūd valued Jarīr's report as he became Muslim after the revelation of *Sūrat al-Māʾida*, in which the instruction to wash the feet was revealed.

[73] ʿAbd al-Razzāq, *al-Muṣannaf*, 1:198; Ibn Abī Shayba, *al-Muṣannaf*, 2:256.

[74] ʿAbd al-Razzāq, *al-Muṣannaf*, 1:198.

[75] Ibn Abī Shayba, *al-Muṣannaf*, 2:260.

[76] Ibn al-Mundhir, *al-Awsaṭ*, 1:424-8.

[77] ʿAbd al-Razzāq, *al-Muṣannaf*, 1:207.

[78] Ibn Abī Shayba, *al-Muṣannaf*, 2:255.

[79] Ibid., 2:260.

[80] ʿAbd al-Razzāq, *al-Muṣannaf*, 1:206.

[81] Ibn Abī Shayba, *al-Muṣannaf*, 2:267.

Saʿd ibn Abī Waqqāṣ,[82] Ibn ʿUmar,[83] ʿUrwa ibn al-Zubayr (d. 93/711-2 or 94/712-3),[84] al-Ḥasan al-Baṣrī (d. 110/728),[85] Mālik ibn Anas, al-Layth ibn Saʿd (d. 175/791),[86] al-Shāfiʿī (earlier position).

3. May socks (*jawrabayn*) be wiped over in place of *khuff*s?[87]

Of the three First Level questions, this one has the least hadith evidence. Only one Companion, al-Mughīra ibn Shuʿba, quotes Prophetic practice. The rest of the reports quote Companion practice, while some present Companion's articulating their position. This remained a topic of disagreement, with Second and Third Level jurists quoted for taking one of the following positions:

- Yes, one may wipe over socks: Bilāl ibn Rabāḥ (d. 18/639?) (practice), ʿAmmār ibn Yāsir (practice), ʿAlī (practice), Abū Masʿūd (d. 42/662-3?) (practice), Saʿd ibn Abī Waqqāṣ,[88] Ibn ʿUmar, Anas ibn Mālik (practice), al-Barrāʾ ibn ʿĀzib (d. 71/690-1 or 72/691-2) (practice, socks with sandals), Sahl ibn Saʿd (d. 88/706-7 or 91/709-10)(practice), Abū Umāma (d. 100/718-9) (practice), Anas ibn Mālik,[89] Saʿīd ibn al-Musayyab, Saʿīd ibn Jubayr (d. 94/713 or 95/714), Ibrāhīm al-Nakhaʿī (d. 96/714), al-Ḍaḥḥāk (d. 105/723-4),[90] al-Ḥasan, ʿAṭāʾ, Nāfiʿ (d. 117/735-6),[91] al-Aʿmash (d. 158/775), Zufar, al-Thawrī, al-Ḥasan ibn Ṣāliḥ (d. 169/785-6), Ibn al-Mubārak, Abū Yūsuf & al-Shaybānī ("If they are thick and do not reveal [the skin] [*lā yashiffān*]"), Isḥāq, Aḥmad, Abū Thawr (d. 246/860) ("If he habitually walks in them").

- No, one may not wipe over socks: Mujāhid (d. *c.* 104/722-3), ʿAṭāʾ, Abū Ḥanīfa, al-Awzāʿī, Mālik, al-Shāfiʿī.

- Yes, one may wipe socks when wearing sandals: ʿUmar (practice),[92] ʿAlī (practice),[93] Abū Masʿūd al-Anṣārī (practice),[94] Ibn ʿUmar (practice),[95]

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[82] Ibid., 2:266.

[83] ʿAbd al-Razzāq, *al-Muṣannaf*, 1:208.

[84] Ibid.

[85] ʿAbd al-Razzāq, *al-Muṣannaf*, 1:208; Ibn Abī Shayba, *al-Muṣannaf*, 2:266.

[86] Al-Jaṣṣāṣ, *Mukhtaṣar Ikhtilāf al-ʿulamāʾ*, ed. ʿAbd Allāh Nadhīr Aḥmad, 5 vols. (Beirut: Dār al-Bashāʾir al-Islāmiyya, 2007), 1:137.

[87] Ibn al-Mundhir, *al-Awsaṭ*, 4:462-5.

[88] Ibid., 2:277.

[89] ʿAbd al-Razzāq, *al-Muṣannaf*, 1:200.

[90] Ibid., 2:276.

[91] Ibn Abī Shayba, *al-Muṣannaf*, 2:278.

[92] Ibid., 2:275.

[93] ʿAbd al-Razzāq, *al-Muṣannaf*, 1:199; Ibn Abī Shayba, *al-Muṣannaf*, 2:276.

[94] ʿAbd al-Razzāq, *al-Muṣannaf*, 1:199-200.

[95] Ibid., 1:199.

al-Barrāʾ ibn ʿĀzib (practice),[96] Saʿīd ibn Jubayr,[97] al-Nakhaʿī (practice),[98] al-Ḥasan ("al-Ḥasan did not approve of wiping on either of the two without the other").[99]

This third position appears a Level Two position, as no Level One authorities clearly articulate support of it; the practice of Level One jurists that is mentioned might not reflect their stipulating the presence of sandals for wiping over socks. This leads to a rare, related question of whether one may wipe on sandals without socks, a practice some observed of ʿAlī and Abū Aws (d. ?).[100]

Second Level Questions

There are five Second Level questions in the consulted sources.

1. Is it better to wash feet or wipe *khuff*s?[101]

- Wash: ʿUmar, Abū Ayyūb al-Anṣārī,[102] Ibn ʿUmar (each expressing personal preference, not a legal superiority).

- Wipe: al-Nakhaʿī,[103] al-Shaʿbī (d. 104/722-3?), al-Ḥakam ibn ʿUtayba (d. 115/733-4), Ibn Abī Laylā, Abū Ḥanīfa, Isḥāq, Aḥmad.

- A person is free to choose: Ibn al-Mundhir presents this position but cites no names.

This is not a First Level question. The Companions quoted express a personal preference for washing, and are explicit that they are not offering a legal preference. This is predominantly a Second Level question, attributed to three Second Level jurists in the consulted sources, all from Kufa, with Third Level jurists quoted as supporting one of these positions.

2. Does one wipe the bottom of the *khuff* as well as the top?[104]

- Yes: Saʿd ibn Abī Waqqāṣ (practice), Ibn ʿUmar, ʿUmar ibn ʿAbd al-ʿAzīz, Makḥūl (d. 112/730-1), al-Zuhrī (d. 124/742), Mālik, Ibn al-Mubārak, Isḥāq.

- No: ʿAlī,[105] Qays ibn Saʿd (d. *c*. 60/680), Anas ibn Mālik, ʿUrwa ibn al-Zubayr, al-Nakhaʿī, al-Ḥasan, al-Shaʿbī, ʿAṭāʾ, Abū Ḥanīfa, al-Awzāʿī, al-Thawrī, Aḥmad.

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96 Ibid., 1:200.

97 Ibn Abī Shayba, *al-Muṣannaf*, 2:278.

98 ʿAbd al-Razzāq, *al-Muṣannaf*, 1:199; Ibn Abī Shayba, *al-Muṣannaf*, 2:275.

99 Ibid., 2:278.

100 A statement in ʿAbd al-Razzāq, *al-Muṣannaf*, 1:194, and a description of practice in ʿAbd al-Razzāq, 201-2, and Ibn Abī Shayba, *al-Muṣannaf*, 2:278. Maʿmar suggests that ʿAlī's practice coincides with Prophetic practice: ʿAbd al-Razzāq, *al-Muṣannaf*, 1:201.

101 Ibn al-Mundhir, *al-Awsaṭ*, 1:439-40.

102 Ibn Abī Shayba, *al-Muṣannaf*, 2:235.

103 ʿAbd al-Razzāq, *al-Muṣannaf*, 1: 218; Ibn Abī Shayba, *al-Muṣannaf*, 2:262.

104 Ibn al-Mundhir, *al-Awsaṭ*, 1:451-4.

105 Ibn Abī Shayba, *al-Muṣannaf*, 2:256

Although the texts mention four Companions as holding these positions, only two offer a clear statement of a position on this question: ʿAlī's stating that the *sunna* is to wipe the top, contrary to what the mind would assume from the bottom having greater need to be cleaned, and Ibn ʿUmar's stated preference of wiping both sides. The practice of not wiping the bottom transmitted from Anas and Qays ibn Saʿd does not clarify whether this was a question that they had considered. Thus, it seems best characterised as a Second Level question, where a good number of Second Level jurists expressed their positions, and then Third Level jurists chose one of the two sides on the debate.

3. How does the wiping occur?[106]

- Drawing lines with the fingers: ʿUmar (practice), Qays ibn Saʿd (practice), al-Ḥasan, al-Thawrī (practice).
- From the top of the foot down to the toes: al-Shaʿbī,[107] al-Nakhaʿī (practice).[108]
- From the toes to the top of the feet: al-Zuhrī.[109]
- In either direction: al-Shaʿbī.[110]

Only Second Level jurists offered explicit answers to this question. Interestingly, no Third Level jurists are quoted as supporting any of these positions, showing this not to have been a central question to those documenting the positions of Third Level jurists.

4. How many times does one wipe?[111]

- Once: Ibn ʿAbbās, Ibn ʿUmar (practice), al-Nakhaʿī, al-Shaʿbī, al-Ḥasan, (practice).[112]
- Thrice: ʿAṭāʾ ("three times is more beloved to me").[113]

This question is Second Level, as the discussion of 'number' as a separate question from simply the act of wiping appears to first arise among Second Level jurists. ʿAṭāʾ's preference for three wipes appears a result of systematic reasoning, by bringing wiping into harmony with washing limbs, which occurs three times in ritual ablutions. This attempt at systematic reasoning did not generate support in subsequent generations.

5. What if a person removes the *khuff* after wiping on it?[114]

- He repeats ablutions: al-Nakhaʿī, al-Shaʿbī, Ibn Sīrīn (d. 110/729),

106 Ibn al-Mundhir, *al-Awsaṭ*, 1:455.
107 Ibn Abī Shayba, *al-Muṣannaf*, 2:267.
108 Ibid.
109 Ibid., 2:268.
110 ʿAbd al-Razzāq, *al-Muṣannaf*, 1:219.
111 Ibn al-Mundhir, *al-Awsaṭ*, 1:455.
112 Ibn Abī Shayba, *al-Muṣannaf*, 2:271.
113 ʿAbd al-Razzāq, *al-Muṣannaf*, 1:220.
114 Ibn al-Mundhir, *al-Awsaṭ*, 1:457-60.

Makḥūl, al-Ḥakam ibn ʿUtayba,[115] Ḥammād ibn Abī Sulaymān,[116] al-Zuhrī, Ibn Abī Laylā, al-Awzāʿī, al-Ḥasan ibn Ṣāliḥ, al-Shāfiʿī, Isḥāq, Aḥmad.[117]

- He only needs to wash his feet: al-Nakhaʿī, al-Shaʿbī,[118] ʿAṭāʾ, Abū Ḥanīfa, al-Thawrī, al-Shāfiʿī (as recorded in the *Mukhtaṣar*s of al-Muzanī and al-Buwayṭī), Abū Thawr, al-Muzanī (d. 264/878).

- He may pray without needing to perform ablutions or wash feet: Abū al-ʿĀliya (d. 90/709 or 93/711-2), al-Nakhaʿī, Ṭāwūs (d. 105/724 or 106/725),[119] al-Ḥasan, ʿAṭāʾ, Qatāda (d. 117/735-6), Ibn Abī Laylā,[120] Sulaymān ibn Ḥarb (d. 224/839).

- He must wash his feet immediately, else repeat ablutions: al-Layth ibn Saʿd, Mālik.

This is the only Second Level question where no Companion precedent has been quoted to support a position. This perhaps explains the spread of the debate on this question. A good number of Second Level jurists are named as supporting one of the four positions, as well as a good number of Third Level jurists. The best illustration of lack of precedent for this question is al-Nakhaʿī's three positions on this question, which are preserved as three contradictory positions of al-Nakhaʿī in each of the consulted sources.

Third Level

There are a total of 14 Third Level questions in the consulted sources. This generation of jurists produced the greatest number of questions on the topic. Abū Ḥanīfa is typically the earliest known jurist addressing these questions.

1. [For those scholars who restrict the wiping to a time limit,] does the time start from when one enters a state of ritual impurity (*ḥadath*), or from when one first wipes over *khuff*s after ritual impurity?[121]

- From the state of ritual impurity: Abū Ḥanīfa, al-Thawrī, al-Shāfiʿī.
- From the first wiping on the *khuff*s: Aḥmad.
- One only regards whether one has prayed five prayers while wiping on the *khuff*s; after the fifth prayer one may no longer wipe: al-Shaʿbī, Isḥāq, Sulaymān ibn Dāwūd [al-Hāshimī] (d. 219/834-5).

Al-Shaʿbī is the only Second Level jurist quoted for addressing this question.

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[115] Ibn Abī Shayba, 2:273.

[116] Ibid.

[117] Al-Marwazī, *Ikhtilāf al-fuqahāʾ*, ed. Muḥammad Ṭāhir Ḥakīm (Riyadh: Aḍwāʾ al-Salaf, 2000), 152-3.

[118] Ibn Abī Shayba, *al-Muṣannaf*, 2:272.

[119] Ibid., 2:274.

[120] Al-Marwazī, *Ikhtilāf*, 153.

[121] Ibn al-Mundhir, *al-Awsaṭ*, 1:442-4.

2. Someone wipes while resident and then travels, or vice versa, does the time limit change to correspond to his newest state?[122]

- Yes, the resident who travels has his wiping time extended from 24h to 72h and vice versa: Abū Ḥanīfa, al-Thawrī.

- The time changes for the traveller who becomes resident, but not for the resident who becomes a traveller: al-Shāfiʿī, Isḥāq, Aḥmad.

Abū Ḥanīfa is the earliest quoted authority addressing this question.

3. [For those who stipulate a time limit for wiping,] what must a person do when the time limit expires?[123]

- Remove *khuff*s and wash only the feet: al-Thawrī, Abū Ḥanīfa.

- Remove *khuff*s and perform complete ritual ablutions: those who say removing *khuff* requires full ritual ablutions.

- Remove *Khuff*s and pray: those who say that removing the *khuff* does not require ablutions or washing of feet.

This question is seen as an offshoot of the question of what one should do if one removes the *khuff* after wiping on it. Only Abū Ḥanīfa and al-Thawrī are quoted as having directly addressed this question.

4. If *khuff*s barely cover the ankles, may they be wiped over?[124]

- One may wipe as long as ankles are completely covered: al-Awzāʿī, Mālik [with some disagreement over his doctrine], Abū Yūsuf, al-Shāfiʿī, Aḥmad, Abū Thawr.

- The *khuff* must rise above the ankle by three fingers: A narration of Abū Thawr from al-Kūfīī, meaning Abū Ḥanīfa, whose attribution to Abū Ḥanīfa is rejected by Ibn al-Mundhir by noting that Abū Yūsuf's position is like al-Shafiʿī's.

This particular question appears one that was raised after Abū Ḥanīfa.

5. What if *khuff*s have holes in them?[125]

- One may not wipe if three toes are visible: Abū Ḥanīfa.

- One may not wipe if any part of the foot shows: Maʿmar ibn Rāshid (d. 153/770?), al-Shāfiʿī, Aḥmad.

- One may wipe if the hole is 'small', not if 'large': Mālik.

- *Khuff*s may be wiped over as long as one may walk in them: al-Thawrī,[126] Ibn al-Mubārak, Sufyān ibn ʿUyayna (d. 198/814), Isḥāq, Yazīd ibn Hārūn, Abū Thawr.

- One must wipe over the *khuff* and wash the visible part of the foot: al-Awzāʿī.

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[122] Ibid., 1:445-6.

[123] Ibid., 1:447.

[124] Ibid.

[125] Ibid., 1:448-50.

[126] In ʿAbd al-Razzāq, *Muṣannaf*, 1:194, he says, "as long as they stick to the foot."

Abū Ḥanīfa and Maʿmar are the earliest authorities addressing this question.

6. Must ablutions be complete before entering both feet into the *khuff*? The scenario presented to explain this question is of a person performing ablutions who enters his right foot into the *khuff* after washing the right foot, and then washes the left foot and enters it into the *khuff*. In this case the right foot entered the *khuff* before ritual ablutions were complete; may he wipe in such a case?[127]

- Yes, he may wipe; it is sufficient that the feet are washed before they enter the *khuff*, regardless of whether ritual ablutions are completed or not: Abū Ḥanīfa, Yaḥyā ibn Ādam (d. 203/818-9), al-Muzanī, Abū al-Thawr.
- No, he may not wipe: Mālik, al-Shāfiʿī, Isḥāq, Aḥmad.

Abū Ḥanīfa is the earliest recorded authority addressing this question.

7. May one wipe over something worn over the *khuff*?[128] (This might be another *khuff* or a protective covering worn over the *khuff*, known as a *jurmūq*.)

- Yes: al-Nakhaʿī (practice),[129] Abū Ḥanīfa, Mālik, al-Awzāʿī, al-Thawrī, al-Ḥasan ibn Ṣāliḥ, Aḥmad.
- No: al-Shāfiʿī.

Apart from a reported observation of al-Nakhaʿī's practice, Abū Ḥanīfa is the earliest authority addressing this topic as a legal question.

8. What is the minimum amount of the *khuff* that should be wiped?[130]

- The amount of three fingers: Abū Ḥanīfa ("according to the book of Ibn al-Ḥasan [al-Shaybānī]"), al-Awzāʿī.
- Most of the foot: Abū Ḥanīfa ("Ibn al-Muqātil from al-Ḥasan ibn Ziyād from [each of] Abū Ḥanīfa, Abū Yūsuf and Zufar").
- Any amount of the top of the *khuff* with any amount of the hand: al-Thawrī, al-Shāfiʿī, Abū Thawr.
- The placement of the entire hand: Isḥāq.

Abū Ḥanīfa is the earliest recorded authority addressing this question.

9. May one wipe with only one or two fingers?[131]

Yes: al-Shāfiʿī, al-Thawrī, Zufar.

No: Abū Ḥanīfa.

Abū Ḥanīfa's rejection of wiping with less than three fingers appears the cause for others considering the question and approving the practice.

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[127] Ibn al-Mundhir, *al-Awsaṭ*, 1:441.

[128] Ibid., 1:450-1.

[129] ʿAbd al-Razzāq, *Muṣannaf*, 1:200, 210; Ibn Abī Shayba, *Muṣannaf*, 2:281 (only report in Ibn Abī Shayba on the topic).

[130] Ibn al-Mundhir, *al-Awsaṭ*, 1:456-7.

[131] Al-Jaṣṣāṣ, *Mukhtaṣar*, 1:143.

10. Does rainwater or splashed water constitute wiping?[132]

- Yes: Abū Ḥanīfa, al-Thawrī, al-Ḥasan ibn Ṣāliḥ.
- No: Mālik, al-Shāfiʿī, Isḥāq, Aḥmad.

Abū Ḥanīfa is the earliest recorded authority addressing the question.

11. What if a person removes one *khuff* from his foot?[133]

- He must remove the other *khuff* and wash both feet: Abū Ḥanīfa, al-Awzāʿī, al-Thawrī (as transmitted by [ʿUbayd Allāh] al-Ashjaʿī [d. 182/798-9] and Abū Nuʿaym [al-Faḍl ibn Dukayn] [d. 218/833-4 or 219/834-5]),[134] Mālik, Ibn al-Mubārak, al-Shāfiʿī.
- He washes the exposed foot and wipes the covered foot: al-Zuhrī, al-Thawrī (as transmitted by [Muḥammad ibn Yūsuf] al-Firyābī [d. 212/827-8] and al-Muʿāfā [ibn ʿImrān] [d. 184/800?]),[135] Aḥmad,[136] Abū Thawr.

Al-Zuhrī is the only Second Level jurist quoted as addressing this question.

12. What if the foot moves up in the *khuff*, such that the foot, or part of it, moves out from the foot area of the khuff and rises to the shin of the *khuff*?[137]

- He must remove both *khuff*s and wash both feet: Abū Ḥanīfa, al-Thawrī.
- If there is a large amount that moves out of the foot area of the *khuff*, he must wash both feet: Mālik.
- He must repeat ablutions: Isḥāq, Aḥmad.
- His wiping remains valid as long as he does not lift the foot out of the shin area: al-Awzāʿī.
- It is better to repeat ablutions: al-Shāfiʿī.

Abū Ḥanīfa is the earliest recorded authority addressing this question.

13. What if one is wearing a *khuff*-covering (*jurmūq*) over the *khuff*s and then removes one of the *jurmūq*s?[138]

- He wipes over one *khuff* and one *jurmūq*: Abū Ḥanīfa, Abū Yūsuf, al-Shaybānī.
- Wipe over the *khuff* not the *jurmūq*: Zufar.

Al-Ṭaḥāwī presents this only as an internal Ḥanafī debate.

14. What is the distance that makes one a traveller with regard to the topic of wiping?[139]

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[132] Ibn al-Mundhir, *al-Awsaṭ*, 1:457.
[133] Ibid., 1:461-2.
[134] Al-Jaṣṣāṣ, *Mukhtaṣar*, 1:140.
[135] Ibid., 1:141.
[136] Al-Marwazī, *Ikhtilāf*, 154 records an argument that implies his support for this position.
[137] Ibn al-Mundhir, *al-Awsaṭ*, 1:460-1.
[138] Al-Jaṣṣāṣ, *Mukhtaṣar*, 1:142.
[139] Ibn al-Mundhir, *al-Awsaṭ*, 1:447.

- Normal travel distance: Abū Ḥanīfa
- Any travel distance: No names.

Ibn al-Mundhir presents arguments for considering any form of travel to cause the longer time period in *khuff*-wiping, but offers no names addressing this question other than Abū Ḥanīfa.

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This first investigation shows two clear patterns of interest. The first is that there is a steep rise in the number of questions among Third Level jurists. The second is that Abū Ḥanīfa is typically the earliest known contributor to Third Level questions. There is only one instance (question 4), in the sources consulted, of a Third Level question to which Abū Ḥanīfa did not contribute. In most cases, his contribution is the earliest known contribution to that question, which would suggest that he is the originator of that question. Occasionally, there is a Second Level precedent cited to support a Third Level question. In these cases, that Second Level authority might be considered the source of the question. Alternatively, that statement of practice of the Second Level authority is only interpreted as relevant through the lens of a Third Level question, so the Second Level authority might have been oblivious to the legal question which his practice or statements are upheld to support. It is also possible that these are instances of back projection by some Third Level jurists to support their views. However, back projection does not seem a widespread practice with Third Level questions, as contributors were aware that there was no precedent for these new questions, hence, the lack of earlier authorities cited as upholding most Third Level questions.

Interpreting these results through the biographical information in Section One, above, we may suggest that Abū Ḥanīfa's questions do indeed appear to be initiating a new level of questions to which legal authorities must respond. The broad period of contributors to the same questions is noteworthy. This Third Level of questions, whose earliest contributor is typically Abū Ḥanīfa, is addressed by authorities spanning 120 years. One would have thought, if the development of questions continued in a simple linear fashion, that there would be a significant number of new questions developed in the latter half of this 120-year period, but that is not the case. Third Level questions typically arose abruptly towards the beginning of this long period. This accords well with the contributions of Abū Ḥanīfa's circle highlighted in the first part of this study.

Of course, we must note that this study of questions is through the lens of third- and fourth-century works authored to document juristic disagreement. These texts do not provide every question asked or every contributor to these questions. But they do offer a sense of the most important questions at the dawn of Islamic law and the most important contributors. Despite the

necessary incompleteness of the data, the consulted sources are reliable in pointing out key developments in legal questions.

A final question is how representative this case-study is, considering that wiping on *khuff*s is a small topic of ritual purity. Of course, a wider net would need to be cast to assess the validity of the conclusions drawn from this first investigation. But we can comment that the new questions of Third Level jurists pertaining to the topic of *khuff*-wiping do not reflect changes in economic, social or political arrangements. Many addressed issues that First and Second Level jurists would have encountered – such as what to do when the time for wiping runs out – but are not recorded as addressing directly. Thus the results of the current investigation provide a meaningful insight into the development of legal questions.

Second Investigation: Comparing the Earliest Written Texts of the Legal Schools

This investigation compares the sections on *khuff*-wiping in key early texts of the four schools of law: al-Shaybānī's *al-Aṣl*,[140] al-Shāfiʿī's *al-Umm*,[141] Saḥnūn's *al-Mudawwana*,[142] and the narrations of the *Masāʾil* of Aḥmad ibn Ḥanbal.[143] We will note patterns in questions across the texts.

In comparing these texts, we can note that there appears no obvious master text that the others are imitating. There is overlap in questions, namely, the questions that preceded in the first investigation, above. But beyond this overlap, there are further questions that are not shared amongst these texts. We will attempt here to analyse this further layer of questions. In terms of total number of questions, the *Aṣl* of al-Shaybānī is the largest of these works, addressing 50 questions, compared with the *Umm*'s 34, the *Mudawwana*'s 16 and 19 unique questions between the four collections of the *Masāʾil al-Imām Aḥmad*.

The texts with the greatest similarity are the *Aṣl* and the *Mudawwana*,

[140] Al-Shaybānī, *al-Aṣl*, 1:70-84.

[141] Al-Shāfiʿī, *al-Umm*, ed. Rifʿat Fawzī ʿAbd al-Muṭṭalib, 11 vols. (Mansoura: Dār al-Wafāʾ, 2001), 2:69-78.

[142] Mālik b. Anas, *al-Mudawwana al-kubrā*, 4 vols. (Beirut: Dār al-Kutub al-ʻIlmiyya, 1994), 1:142-5.

[143] Abū Dāwūd al-Sijistānī, *Masāʾil al-Imām Aḥmad riwāyat Abī Dāwūd al-Sijistānī*, ed. Abū Muʿādh ʿĀṬriq ibn ʿAwḍ Allāh ibn Muḥammad (Cairo: Maktabat Ibn Taymiyya, 1999); Ṣāliḥ ibn Aḥmad ibn Ḥanbal, *Masāʾil al-Imām Aḥmad riwāyat ibnihi Abī al-Faḍl Ṣāliḥ*, ed. Faḍl al-Raḥmān Dīn Muḥammad, 2 vols. (Delhi: al-Dār al-ʿIlmiyya, 1988), 356, 464-5, 2:122-6; ʿAbd Allāh ibn Aḥmad ibn Ḥanbal, *Masāʾil al-Imām Aḥmad riwāyat ibnihi ʿAbd Allāh*, ed. Zuhayr al-Shāwīsh (Beirut: Al-Maktab al-Islāmī, 1981), 33-5; Isḥāq ibn Ibrāhīm ibn Hāniʾ, *Masāʾil al-Imām Aḥmad ibn Ḥanbal riwāyat Isḥāq ibn Ibrāhīm ibn Hāniʾ al-Naysābūrī*, ed. Zuhayr al-Shāwīsh (Beirut & Damascus: al-Maktab al-Islāmī, 1400/1979-80), 1:17-21.

which both share a question-and-answer style of presentation. One can sense an echo of the aforementioned story of Asad ibn al-Furāt asking Ibn al-Qāsim questions based on al-Shaybānī's books, due to observable parallels between questions in the two texts. The various *Masāʾil al-Imām Aḥmad* also present doctrine in a question-and-answer format, but, as with hadith collections, statements of Aḥmad are presented as individual narrations. Of the versions of the *Masāʾil*, the collections of Aḥmad's son ʿAbd Allāh (d. 290/903) and Isḥāq ibn Ibrāhīm ibn Hāniʾ (d. 275/888-9) present questions in an orderly fashion within a single section, while Aḥmad's son Ṣāliḥ (d. 266/880) offers a scattered and disorderly set of questions and Abū Dāwūd al-Sijistānī (d. 275/889) presents no questions on the *khuff*. The *Umm* is the only text to avoid a question-and-answer format in its presentation.

We must note the uncertainty regarding the attribution of second and third century legal works to their purported authors. Norman Calder argued that many of these works only acquired their final forms up to a century after their purported authors.[144] The texts he redates include the *Umm*, the *Aṣl*, the *Muwaṭṭāʾ* and the *Mudawwana*. A number of studies have pushed back against Calder's proposed datings, particularly with the *Muwaṭṭāʾ* and the *Umm*.[145] The *Aṣl* is still in need of a study that considers Calder's challenge. The current investigation will focus on what these texts reveal

[144] Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Oxford University Press, 1993).

[145] Of the texts that Calder re-dates, the *Muwaṭṭà* of Mālik (d. 179/795) has received the most sustained attention: see, for example, Yasin Dutton, "*ʿAmal* v. *Ḥadīth* in Islamic Law: The Case of *sadl al-yadayn* (Holding One's Hands by One's Sides) When Doing the Prayer," *Islamic Law and Society*, 3:1 (1996): 13-40, at 28-33; Miklos Muranyi, "Die frühe Rechtsliteratur zwischen Quellenanalyse und Fiktion," *Islamic Law and Society*, 4:2 (1997): 224-41; Harald Motzki, "The Prophet and the Cat: On Dating Malik's *Muwaṭṭà* and Legal Traditions," *Jerusalem Studies in Arabic and Islam*, 22 (1998): 18-83; Jonathan Brockopp, "Early Islamic Jurisprudence in Egypt: Two Scholars and Their Mukhtasars," *International Journal of Middle East Studies*, 30:2 (1998): 167-82; Wael Hallaq, "On Dating Malik's *Muwatta*," *UCLA Journal of Islamic and Near Eastern Law*, 1 (2001): 47-65; Behnam Sadeghi, "The Authenticity of Two 2nd/8th Century Ḥanafī Legal Texts: The *Kitāb al-āthār* and *al-Muwaṭṭà* of Muḥammad b. al-Ḥasan al-Shaybānī," *Islamic Law and Society*, 17 (2010): 291–319; this last article also contributes to a defense of the early Ḥanafī corpus. On dating al-Shāfiʿī's (d. 204/820) *Risāla*, see Joseph Lowry, "The Legal Hermeneutics of al-Shāfiʿī and Ibn Qutayba: A Reconsideration," *Islamic Law and Society*, 11:1 (2004): 1-41. On al-Shāfiʿī's *Umm*, see Ahmed El Shamsy, "Al-Shāfiʿī's Written Corpus: A Source-Critical Study," *Journal of the American Oriental Society*, 132:2 (2012): 199-220; Mohyddin Yahia, *Šāfiʿī et les deux sources de la loi islamique* (Turnhout, Belgium: Brepols, 2009). For a general critique, see John Burton, "Rewriting the Timetable of Early Islam," *Journal of the American Oriental Society*, 115:3 (1995): 453–62. See also Christopher Melchert's review of Calder's *Studies in Early Muslim Jurisprudence* in *Journal of Law and Religion* 15:1/2 (2000-2001): 363-67.

of the development of legal questions across the schools of law. We will see that the investigation offers insights that might help with relative dating of these texts, i.e. which texts were authored before others. We will also see how the investigation can help us speculate about the circles in which particular questions arose. I return to these issues of dating doctrine and texts below.

The following comparison anlayses the extra questions found in these texts beyond those attributed to Abū Ḥanīfa, al-Shāfiʿī, Mālik and Aḥmad in the preceding investigation. We may categorise these extra questions into three categories. The first are a further layer of questions to develop the Third Level questions presented above and are primarily practical in nature. The second are basic questions closer in nature to the Second Level questions presented above. The third are questions that address the implication of this topic for other topics of the law, and vice versa.

First Category: Development of Third Level Questions

The questions raised in this first category of questions across these texts are built on the answers these schools gave to the Third Level questions of the preceding investigation. For example, as al-Shāfiʿī rejected wiping over a *jurmūq* worn over a *khuff* (Third Level question 7, above), his further questions will therefore not address the peculiarities of wiping over the *jurmūq*. But his rejection raises its own set of questions to better understand the nature of the rejection. So there is expected variety across these texts about the questions addressed in this first category. Here are the relevant questions from each text, with answers in brackets.

Al-Aṣl

1. Does one need to re-wipe over a *jurmūq* if worn over a *khuff* that has been wiped? (No.)

2. May one wipe over a *jurmūq* if worn over a *khuff* one has wiped over? (No.)

3. May one wipe over a *jurmūq* with a leather sole? (Yes, as this is in the ‘meaning of a *khuff*.)

4. May one wipe over a *khuff* underneath which one wears socks (*jawrabayn*)? (Yes.)

5. May one wipe as part of the ritual bath (*ghusl*)? (No.)

Al-Umm

1. May one wipe over a *khuff* with holes if one is wearing a sock underneath? (No, because the sock is not a *khuff*, and were it not for the sock the skin would have shown.)

2. May one wipe over a *khuff* with a rip on its outer surface, though the inner surface is intact? (Yes.)

3. May one wipe over a *khuff* underneath which one is wearing a *khuff*

with holes? (Yes.) [This is an extension of his rejecting wiping over a *jurmūq* or a *khuff* over a *khuff*: If the inner *khuff* has holes, then it is not a *khuff* so there are no longer two *khuff*s in the scenario.]

4. May one wipe over something which matches the characteristics of a *khuff*? (Yes, followed by a description of materials and traits that makes something match the characteristics of a *khuff*.)

5. May one wipe over a *khuff* if something with the characteristics of a *khuff* is worn underneath it? (No.)

6. May one wipe if the part of the *khuff* which is above the foot is see-through (*yashiff*)? (Yes.)

7. Must one repeat wiping if one wipes on a *khuff* and then wears a *khuff* or *jurmūq* on top of it? (No.)

8. May one wipe as part of the ritual bath? (No.)

9. May one wipe over a ripped *khuff* which has been bandaged shut? (Yes, if the hole is not over the area of the foot foot.)

10. May one wipe over a ripped *khuff* which has been tied over the area of the foot? (Yes, if the bandage is not ripped.)

Al-Mudawwana

1. Do you wipe the bottom if it is muddy? (Yes.)

2. What if you only wipe the top or the bottom? (Invalid for Mālik, valid for Ibn al-Qāsim.)

3. May one wipe on a *khuff* that one has worn on top of a *khuff* that one has already wiped? (Yes.)

4. What should one do if one removes a *khuff* one has wiped, to reveal another *khuff* worn underneath? (Wipe the lower *khuff* immediately, else remove and wash feet.)

Masāʾil al-Imām Aḥmad

1. What if one is wipes on a *khuff* on top of another *khuff*, and then removes the upper *khuff*? (Remove all *khuffs* and repeat ablutions.)

These questions build on the Third Level points of doctrine from the previous investigation by addressing various practical considerations that arise from them. The driving interest in this essay was to investigate the extent to which the structured legal questions of Islamic law can be said to have arisen from the deliberations of Abū Ḥanīfa's circle. We can see in the current investigation that not all questions arose from a single circle. We may speculate on the origins of these questions as follows:

- The *Mudawwana* has two questions (1 and 2) about wiping the bottom of the *khuff*. These questions could only have arisen in a circle which held that the bottom should be wiped. It is hard to identify a particular circle as originating these questions.

- The *Umm* has two questions (9 and 10) about a hole in a *khuff* that has be tied shut. These questions arise in a circle which holds that all

holes prevent wiping over the *khuff*, a position attributed in the previous investigation to Maʿmar ibn Rāshid, al-Shāfiʿī and Aḥmad ibn Ḥanbal. We may speculate that al-Shāfiʿī is the originator of these two questions.

- The *Umm* has two questions (4 and 5) about something which has the 'characteristics of the *khuff*'. This is exactly the same First Level debate on wiping over the *jawrab* which the previously quoted texts recorded that al-Shāfiʿī did not permit. Here in the *Umm* he is allowing a non-*khuff* to be wiped over if it satisfies particular characteristics. Instead of using the word *jawrab*, al-Shāfiʿī presents here a theorising of the core characteristics of the *khuff*. The only earlier attempt to theorise the conditions for a non-*khuff* to be wiped over in the sources consulted is the position of Abū Yūsuf and al-Shaybānī that the *jawrab* may be wiped over if it is thick and non-transparent.[146] Based on the sources consulted, we can suggest that this attempt to theorise the non-*khuff* started with Abū Ḥanīfa's students. Al-Shāfiʿī appears to have developed this theorisation by adding a reflection on the utility of the *khuff* – namely, an amount of walking – not simply a particular thickness.

- The question most represented in this category is the wiping over the *jurmūq* or a *khuff* worn over a *khuff*. This seemingly small point occupied four questions in the *Aṣl*, three in the *Umm*, two in the *Mudawwana*, and one in the *Masāʾil* of Aḥmad. This is a Third Level question, supported by a reported observation of the practice of the Second Level Ibrāhīm al-Nakhaʿī. So this question of wide interest, if it originated first in a particular circle, then Abū Ḥanīfa's is the earliest circle known to address it as a question and to ask related questions to theorise the relationship between the two layers of *khuff*. After this initial analysis of two *khuff* layers that Abū Ḥanīfa's circle appear to have initiated, subsidiary questions were developed in other circles. The *Umm's* question 3, above, only arises in a circle that rejects two *khuff* layers; al-Shāfiʿī appears the originator of this question. Similarly, the variations on the two-*khuff*-layer questions in the *Mudawwana* and the *Masāʾil* reflect subsidiary questions to tease out the doctrines of Mālik and Aḥmad from related Third Level questions.

- Al-Shāfiʿī in the *Umm* is the only jurist to address a question about a *khuff* with a ripped outer layer and an intact inner layer (question 2). He appears to be the originator of this question.

- The need to remove the *khuff* if needing a ritual bath (*ghusl*) is recorded here as a Third Level development in the *Aṣl* (question 5) and the *Umm* (question 8). This is likely a Second Level question, as it is implicit in the early doctrine on wiping over *khuff*s, which pertains to ritual ablutions not the ritual bath. It is also explicit in the statements of those who did not believe in a fixed time-limit for *khuff*-wiping, as they often added that

[146] Ibn al-Mundhir, *al-Awsaṭ*, 1:463.

*khuff*s need to be removed only if needing a ritual bath.[147] However, the sources consulted in the first investigation, above, did not present this as a question directly addressed by jurists of any level, thus it is included here as a further question found in these texts. Perhaps by consulting a wider set of sources, we can identify it as clearly a Second or First Level question, as is almost certainly the case.

Second Category: Basic Questions

In this second category, questions address basic details that would be assumed and accepted by Level Three jurists. Some of these are Second Level questions, above, that were not seen as important enough by the authors consulted in the first investigation to warrant the engagement of Third Level jurists. The vast majority of these questions address points of agreement among jurists. The *Aṣl* has by far the most of such questions, with 14 questions in the *Aṣl* compared with two in the *Mudawwana*, three in the *Masāʾil al-Imām Aḥmad*, and none in the *Umm*.

Al-Aṣl

1. How many times to wipe? (Once.) [Second Level question 4, above.]

2. Which direction to wipe in? (Toes to shins, though the reverse is acceptable.) [Second Level question 3, above.]

3. Must one repeat prayers offered after the expiration of the time period for wiping if a person does not remove the *khuff* and wash the feet? (Yes.) [This is the obvious consequence of the expiration of the time-limit for wiping]

4. Are all forms of minor ritual impurity (*ḥadath*) the same in allowing wiping, and all forms of major ritual impurity (*janāba*) the same in not allowing wiping? (Yes.)

5. How many times can one wipe within the permitted time-limit? (As much as one likes.) [This is stating the obvious from the discussions on time-limits, i.e. that one can wipe as much as one needs within a time-limit.]

6. Are women and men the same in the rulings of wiping *khuffs*, wiping the head, performing ablutions and ritual bath? (Yes.) [The sources present no debate on this question, so this is just clarifying what was already agreed upon.]

7. Is an intention required for wiping? (No.)

8. What is the travel distance that makes one a traveller for the rules of *khuff*-wiping? (Three days and nights, same as the distance for rules of prayer.) [This again seems to state what is understood, that travel for prayer is the same as travel for the *khuff*.]

[147] See, for example, the statements of Saʿd ibn Abī Waqqāṣ and al-Ḥasan al-Baṣrī in Ibn Abī Shayba, *Muṣannaf*, 2:266.

9. Can one wear *khuff*s after performing a ritual bath? (Yes.) [Again, stating what is generally known, that one needs purity with water to wear a *khuff*, and the ritual bath is one of the two ways to achieve purity with water.]

10. Can someone who has wiped lead in prayer those who have washed their feet? (Yes.)

11. Can a person wear *khuff*s before using the toilet for the express intention of wiping the *khuff*? (Yes.) [A basic question with regards to the validity of such a practice. The remaining debate, unaddressed here, is whether such a practice is disliked.]

12. Can women wipe over gloves in ritual ablutions? (No.)

13. Is it correct to wash the *khuff*? (No, *khuff*s are wiped.)

14. May one wipe with the back of the hand? (Yes, but the inside of the hand is better.) [An extension of the Level Two question on the proper way of wiping.]

Al-Umm

No basic questions.

Al-Mudawwana

1. Are women and men the same in wiping the *khuff* and wiping the head? (Yes, except women do not need to open their braids.)

2. Can a person wear *khuff*s before using the toilet or sleeping for the express intention of wiping the *khuff*? (Yes, but Mālik dissapproved.)

Masāʾil al-Imām Aḥmad

1. May sandals be wiped? (No, unless wearing socks that may be wiped.) [This is First Level question 3, reiterating that it is the socks that are wiped, not the sandals.][148]

2. May one wipe with just the palms or fingers? (Yes.) [A development of Second Level question 3 on the manner of wiping.]

3. Must one wash the private parts (*istinjāʾ*) upon removing *khuff*s? (No.) [This was clearly understood by all who addressed the Second Level question on what one must do upon removing *khuff*s.]

This second category of questions is revealing. Only the *Aṣl* engaged heavily in basic questions which were assumed known by the authors of these other texts. Regarding the basic questions of the other three texts, we can note that the basic questions of the *Mudawwana* repeat two of the *Aṣl*'s basic questions – that of women also being able to wipe on *khuff*s and whether *khuff*s could be worn for the express purpose of wiping. The basic questions in the *Masāʾil* of Aḥmad reflect the traditionist *fiqh* that he represents. The first – whether one can wipe on sandals – is the only

[148] Although Ibn Hāniʾ's version records Aḥmad saying that ablutions must be repeated if a person removes sandals after having wiped on both socks and sandals: Isḥāq ibn Ibrāhīm ibn Hāniʾ, *Masāʾil*, 1:17.

consideration in these second/third century texts of the First and Second Level debate on this practice. This is a question that would be expected to be addressed in a circle given to the study of early narrations. The second – whether one may wipe with fingers or palms – is a question that is not framed as such in any of the sources consulted. It seems a traditionist question arising from the study of reports that describe the optimal way of wiping as being with the fingers leaving lines on the *khuff* (Second Level question 3, above). From this, a traditionist might ask if avoiding the fingers is a valid form of wiping. The third question seems to genuinely reflect the curiosity of Ibn Hāni', the narrator of the question, rather than a carefully considered legal question. The *Umm* has no basic questions regarding *khuff*-wiping. We will reflect more on this at the conclusion of this investigation.

Third Category: Cross-Chapter Questions

These are questions that reflect an interest in harmonising the law across various chapters. All cases here reach out to topics other than simply wiping *khuff*s in ritual purification, and therefore reflect a theorisation beyond the rules of *khuff* wiping. Some represent an advanced level of theorisation, others a basic level. We reflect on these trends below.

Al-Aṣl

1. May leftover water in the hands from washing other limbs in ritual ablutions be used for wiping *khuff*s? (Yes.)

2. May leftover water in the beard or hair be used for wiping *khuff*s? (No.)

3. What if a person removes the *khuff* after reciting the final *tashahhud*[149] but before exiting the prayer? (The prayer is invalid for Abū Ḥanīfa, valid for Abū Yūsuf and Muḥammad.) [This case is constructed to explore an internal debate amongst the Ḥanafī imams on exiting the prayer after the final *tashahhud*.]

4. What if the wiping time is completed after reciting the final *tashahhud* but before exiting the prayer? (The prayer is invalid for Abū Ḥanīfa, valid for Abū Yūsuf and Muḥammad.)

5. Can one wear *khuff*s after dry ablutions (*tayammum*) and then wipe over them with water? (No.)

6. Can one wear *khuff*s after ablutions in which one wipes over a splint (*jabīra*)? (Yes, wiping a splint is considered washing, unlike *tayammum*, above.)

[149] This is a recital in the sitting position that commences with *al-taḥiyyāt lillāh* ('greetings to God') and ends with the two testimonies of faith, hence the name '*tashahhud*' ('offering the testimonies of faith'). It is the last necessary element of prayer in the school of Abū Ḥanīfa.

7. If one performs ablutions with water and wipes one's *khuff*s, and then, due to the absence of water, performs *tayammum*, does one need to remove *khuff*s? (No.)

8. What if one performs ablutions and wipes over *khuff*s with *nabīdh* (a date-based alcoholic beverage with which Abū Ḥanīfa permitted ablutions) and then finds fresh water? (Must repeat ablutions and wiping.)

9. What if one performs ablutions while wiping a splint, then wears *khuffs* and wipes on them, then the limb under the splint is healed? (Remove *khuff*s and repeat ablutions.)

10. What if a woman with continual dysfunctional bleeding (*istiḥāḍa*) performs ablutions then wears *khuff*s and wipes? (She may only wipe during the prayer time, then must remove and wash her feet.)

Al-Umm

1. What are the details of the leather of the *khuff*? (It cannot be the hide of a dog or pig and must be without hair, or can be from a slaughtered animal which is lawful to eat, even if not tanned.)

2. Can one pray if one's *khuff*s are affected by physical filth (*najāsa*)? (No.)

3. What if the time for wiping elapses during prayer? (Prayer is nullified.)

4. What if a person in the prayer intends to stay resident in a town, after 24h of wiping has elapsed? (Prayer is nullified.)

5. What to do if one doubts whether one wiped while travelling or resident? (Assume a 24-hour limit.)

6. What to do if one doubts whether the time limit has expired or not? (Remove *khuff*s.)

7. What if one doubted whether one first wiped when resident or travelling, and then kept wiping for 72 hours? (Must repeat prayers, as offered with doubt over ritual purity.)

Al-Mudawwana

1. Can one wipe if *khuff*s worn after dry purification (*tayammum*)? (No, unless feet were washed before *tayammum*.)

2. Can a woman with dysfunctional bleeding wipe over *khuff*s? (Yes.)

Masāʾil al-Imām Aḥmad

1. May one wipe in the Abode of War (*dār al-ḥarb*)? (Yes, the same time limits apply.)

2. May one wipe over the turban? (Yes.)

3. What if one removes the turban after wiping? (Repeat ablutions.)

4. What if one removes the turban in prayer after wiping? (Repeat prayer and ablutions.)

5. What if the foot under the *khuff* is a bandaged flowing wound? (Wipe for each prayer.)

This third category of questions reveals most the nature and focus of each of these texts. We can reflect on the insights that fuel these questions and their possible points of origin, as follows:

- Only the *Aṣl* and the *Umm* address the invalidation of wiping within the prayer (questions 1 and 2 in the *Aṣl*; question 3 in the *Umm*). The *Aṣl*'s questions are more specific, exploring an internal debate on whether one need do anything further to exit the prayer after reciting the final *tashahhud*. The *Umm*'s case is there to negate such distinctions within the prayer, thus equating all moments of the prayer. We may speculate that the *Umm* is responding here to the questions of the *Aṣl*.

- The *Aṣl* is the only text to raise questions that reflect on the water used for wiping (questions 1 and 2). These two questions reflect an advanced level of theorisation about the nature of water used in ritual purification. It builds on the notion that water already used in ritual purification (*māʾ musta'mal*) may not be used a second time for ritual purification. Beyond this, it reveals a reflection on whether water left in the limbs has been 'used'; and then the contrast between water left over from washing and water left over from wiping. This question reveals a highly abstract reflection; we can label questions aiming for such levels of abstraction as theoretical questions, on which more below. This question likely arose in Abū Ḥanīfa's circle.

- The *Aṣl* raises questions about dry ablutions (*tayammum*) and wiping over the *khuff* (questions 5 and 7). The *Mudawwana* mimics these questions in question 1. These questions appear to have originated in Abū Ḥanīfa's circle.

- The *Aṣl* raises questions on wiping over splints and contrasts this with dry ablutions, on the one hand, and with *khuff* wiping, on the other. Dry ablutions do not involve washing with water, so they cannot permit *khuff*-wiping, as wiping requires washing the feet before wearing *khuff*s. Wiping the splint is presented as a replacement for washing, and thus wiping over it is not subject to the restricted rules of *khuff* wiping. This layering of questions, between the *tayammum*, splint and *khuff*, shows an advanced level of theorisation, and the use of questions to explore subtle legal distinctions, in a way that accords with the presentation of Abū Ḥanīfa's detailed questioning in the first part of this essay. We can label this also as a theoretical question. Interestingly, no other text built on this layering of questions to explore this distinction. The *Mudawwana* has only one question on *tayammum*, and the *Masāʾil* of Aḥmad discusses the bandage, but with a focus on whether a flowing wound under a *khuff* will affect the prayer. These two texts thus reflect a primarily practical interest in these questions. The *Umm* ignores these questions.

- Question 8 of the *Aṣl* addresses ablutions with *nabīdh*, a substance

with which Abū Ḥanīfa permitted ablutions in the absence of water. This substance was not accepted by the authors of these other texts, so the question was not carried across.

- Question 10 of the *Aṣl* addresses *khuff*-wiping for a woman with dysfunctional bleeding. This is an advanced reflection as the question considers (1) the constant negation of the woman's ablutions due to constant bleeding – for which the *Aṣl* elsewhere states that her state of ritual purity lasts only for the length of a single prayer time after which it must be renewed[150] – and (2) the nature of the permitted time-limit for wiping. The question constructs a clash between these two time-limits. The answer states that the time-limit for dysfunctional bleeding has a stronger effect than the time-limit for *khuff* wiping. This question is mirrored in the *Mudawwana*, but there it arises only to negate the consideration offered in the *Aṣl*. This is the third question in the *Aṣl* that can be labelled as theoretical. The question appears a production of Abū Ḥanīfa's circle.

- Only the *Umm* discusses the rules of leather tanning for purification. This is a topic addressed by the other texts, but not in connection to *khuff*s.[151] The *Umm*'s inclusion of the discussion here reflects an organisational insight, and an interest to tie the general topic of the purification of leather to the material used in *khuff*s.

- Question 3 of the *Umm* reflects on the force of intention to switch one's status of traveller to resident and the effect of this on *khuff* wiping. This again is more of an organisational insight – as all felt that the intention is what makes one a resident in a particular location – but it is explicit in linking the intention of residence to the topic of *khuff* wiping.

- Questions 3-5 of the *Umm* apply a principle of doubt in worship to the topic of *khuff* wiping. No one else addresses this. Again, this is a case of applying general rules established elsewhere to this topic of ritual worship.

- Questions 2-5 of the *Masāʾil* of Aḥmad address wiping over turbans. The practice of wiping over turbans was ascribed to some First Level and Second Level authorities. These reports mostly describe practice, not articulated positions. Third Level jurists mostly rejected the practice; but the topic remained of importance in traditionist circles.[152]

- Question 1 of the *Masāʾil* – whether there is a distinction between Muslim and Non-Muslim lands with regards to wiping on *khuff*s – has no parallel in any of the consulted sources. It appears a question that arose in traditionist circles, addressing a conceived distinction between travelling

[150] Al-Shaybānī, *al-Aṣl*, 1:51, 290.

[151] See, for example, al-Shaybānī, *al-Aṣl*, 1:177; Mālik, *al-Mudawwana*, 1:183; Ṣāliḥ ibn Aḥmad ibn Ḥanbal, *Masāʾil*, 1:300, 314; ʿAbd Allāh ibn Aḥmad ibn Ḥanbal, *Masāʾil*, 1:12.

[152] Ibn al-Mundhir, *al-Awsaṭ*, 466-72.

in Muslim and non-Muslim lands. This does not appear an obvious legal distinction. A larger sample might reveal more of such unique questions, which might help better situate traditionist legal questions.

This third category of cross-chapter questions reveals the difference between the legal traditions represented by these texts. The most sophisticated of these texts are clearly the *Aṣl* and the *Umm*. The *Mudawwana* offers only a simple engagement with two questions of the *Aṣl*: the *Aṣl* asks these questions as part of a larger legal-theoretical reflection, while the *Mudawwana* addresses the questions to not engage with these theoretical distinctions. The *Masāʾil* continue the scattered selection of statements with questions that reflect traditionist interests.

The *Umm* and the *Aṣl* are therefore the most complete of these works as presentations of legal thought, and they show an interest in distinct forms of legal questions. The *Umm*'s focus might be described as 'legal' versus the *Aṣl*'s focus which might be described as 'theoretical'. The *Umm* is most concerned with developing legal rules with a focus on Third Level questions. Thus, it has by far the most questions from the first category above, where Third Level questions were developed. It has no basic questions (the second category above). And its cross-chapter questions (the third category) apply established rules in other chapters to the current chapter. In these areas, the *Umm* appears to be originating many of its own questions, as the focus is on developing Third Level legal doctrine. The *Aṣl* on the other hand does not present such a clear focus. It offers much more basic questions for the purposes of thoroughness, and has less of an interest in developing Third Level questions. But it stands out from the other texts here in the nature of its cross-topic questions. It shows an attempt to theorise the nature of 'used water', dry and wet ablutions, wiping splints versus wiping *khuff*s, regular purity versus purity out of necessity (the woman with dysfunctional bleeding). These questions have been called 'theoretical' because they aim to engender abstract reflections on legal rules, not simply the application of rules to the topic of *khuff*-wiping. It is important to note that this interest in theoretical legal questions was not mirrored by the other texts.

We can return now to the challenge of dating these texts. As mentioned above, the *Aṣl* is still in need of a study that responds to Calder's challenge. The current investigation offers two angles through which we can argue that the *Aṣl* represents an earlier text than the *Umm*. The first is comparing the number of basic questions. The *Aṣl* has a large number of basic questions that address matters that would have been known and accepted among the juristic community. The *Umm* has no such questions. It can be argued that the *Umm* reflects a mature stage of authorship whereby the focus is on exploring areas of the law that are not already known to readers. This clarity on the areas of law that it focuses on explains the

larger amount of questions that develop Third Level doctrine in the *Umm*. The *Aṣl* can be seen to represent an earlier attempt to document structured questions, so it includes both the new as well as the plain and obvious. This argument alone is inconclusive, as the reverse may possibly be argued, that addressing more basic questions can reflect a later stage of authorship in which authors aimed for more thorough documentation of legal rules. However, the paucity of basic questions in all texts studied above should suggest that the *Aṣl* either came right at the end of all of these texts or right at the beginning. Further investigation and reflection on basic questions in second- and third-century legal works can develop this insight.

The second angle considers internal coherence in the chapters of the *Aṣl* and the *Umm*. The chapter of the *Umm* is far more coherent, with all questions in the chapter pertaining to the *khuff*. The *Aṣl* is the only book of all consulted that presents two questions with no apparent connection to the topic at all. The first is whether armies can be considered residents in enemy territory. This is a question from the rules of travel, with no explicit connection to *khuff*-wiping. The second is fascinating, as, although it has no connection with *khuff*-wiping, it offers a theoretical reflection on contrasting topics of ritual purity:

- What if one is on a journey and has only enough water to either wash away physical filth (*najāsa*) or perform ablutions, which to do? (Abū Ḥanīfa: wash away filth, and then perform ablutions; Ḥammād: perform ablutions and ignore the physical filth.)

These two unrelated cases reflect a lower level of organisation than the *Umm*, while developing this distinction of the *Aṣl*'s greater interest in abstract theoretical questions. The second angle is based on better organisation reflecting a later text, and less organisation reflecting an earlier text. While the data set presented here is too small for a conclusive argument on the question of dating these texts, the investigation shows how comparing legal questions can contribute to our understanding of the authorship of early legal texts.

Third Investigation: Questions in Classical Mukhtaṣars

This final investigation shows key developments in legal questions in the classical schools of law. A large survey would be required to assess the development across the various genres of texts that make up the classical Islamic legal corpus. The purpose here is not such a vast survey. Instead, the purpose is to assess whether and how texts authored to convey the core doctrines of each school developed questions beyond those of the Third Level texts studied above. For this purpose, we will look at the genre of the *mukhtaṣar*, or legal digest. These are classical texts authored to convey the most important legal cases of a school of law for the purposes of instruction

and commentary. The *mukhtaṣar*s studied were authored in the seventh and eighth centuries to reflect a mature stage in school development. This section presents questions found in these *mukhtaṣar*s that are not found in the foundational texts of their respective schools that were studied above. An analysis follows the presentation of questions.

Ḥanafī: al-Nasafī (d. 710), *Kanz al-daqāʾiq*[153]

1. What if there are multiple holes in the *khuff*s? (Holes are added on one *khuff*, not across *khuff*s.)

2. Must one remove *khuff*s if one fears loss of the foot from the cold? (No, one can keep wiping.)

3. A set of questions about a splint (*jabīra*) placed over a broken limb: Is there a time-limit for wiping over splints? (No.) Must the splint be placed after ablutions to be able to wipe on it? (No.) What if the splint extends beyond the wound? (One still wipes over the splint.) When may one no longer wipe? (When the wound is healed.)

Shāfiʿī: al-Nawawī (d. 676/), *Minhāj al-Ṭālibīn*[154]

1. May the *khuff* be a sown material that does not prevent water? (No.)

2. May one wipe only the bottom, heal or sides of the *khuff*? (No, one must wipe the top.)

Mālikī: Khalīl (d. 767/), *Mukhtaṣar Khalīl*[155]

1. Must one remove the spurs (*mihmāz*) from one's feet when wiping over *khuff*s? (No.)

2. May one wipe if one's purpose for journey is to pursue sin? (Yes.)

3. Is it disliked to wear *khuff*s only to wipe on them? (Yes.)

4. Is it disliked to wash the *khuff*s? (Yes.)

5. What if one struggles to remove one of the *khuff*s and the time for offering the prayer is getting tight? (A number of opinions on this.)

6. How often is it recommended to remove the *khuff*? (Every Friday.)

7. When wiping the left foot, does one place the left or right hand on top? (Two positions.)

8. What if the bottom is not wiped? (Repeat prayers in the time.)

Ḥanbalī: Ibn Qudāma (d. 620/1223-4), *ʿUmdat al-fiqh*[156]

1. What are the conditions of a turban that can be wiped? (It must have a tail, cover the entire head, except an amount that ordinarily shows.)

2. What are the conditions of a splint that can be wiped? (The splint

[153] Al-Nasafī, *Kanz al-daqāʾiq*, ed. Sāʾid Bakdāsh (Beirut: Dār al-Bashāʾir al-Islāmiyya, 2011), 146-8.

[154] Al-Nawawī, *Minhāj al-Ṭālibīn*, ed. ʿAwḍ Qāsim Aḥmad ʿAwḍ (Beirut: Dār al-Fikr, 2005), 13-5.

[155] Khalīl ibn Isḥāq al-Jundī, *Mukhtaṣar al-ʿAllāma Khalīl*, ed. Aḥmad Jād (Cairo: Dār al-Ḥadīth, 2005), 23-4.

[156] Ibn Qudāma al-Maqdisī, *ʿUmdat al-fiqh*, ed. Aḥmad Muḥammad ʿAzūz (Beirut: Al-Maktaba al-ʿAṣriyya, 2004), 16.

must not exceed the wound.)

3. Are men and women the same in all this? (Yes, except women cannot wipe turbans.)

We can note that Khalīl's *Mukhtaṣar* offers the most additional questions to the Third Level questions of Mālik and the questions of the *Mudawwana*. This might reflect a different focus of his *Mukhtaṣar* compared with the other *mukhtaṣar*s studied here. And it might reflect peculiarities pertaining to the transmission of Mālikī doctrine. Further exploration would be required to understand this difference of Khalīl's *Mukhtaṣar*.

If we regard the other three *mukhtaṣar*s, we see a recurring pattern. Their presentation of core school doctrine is largely contained within questions answered in their founding Third Level texts, with very few questions deemed of equal importance added from other sources. At this stage, we will assume that these further questions were formulated later, although a wider search might reveal that even these have an early genesis close to the generation of the founders. This pattern supports the other findings of the current study, namely, that it was among jurists of the Third Level that Islamic law – a discipline that answers structured legal questions that address each topic of the law – was born. The questions reached such a level of maturity among Third Level jurists that subsequent jurists added little by means of core questions to those addressed by Third Level jurists. Thus the rise of the discipline of Islamic law must be placed among Third Level jurists, with all activities before them being seen as preliminary developments before the establishment of the discipline, and all subsequent activities being seen as consolidatory, but not foundational.

The *Mukhtaṣar* of Khalīl, with its larger range of supplementary questions, reminds us that there was no doubt an expansion in questions that took place within the schools of law. This larger range of questions can be accessed through the wider genres of legal writing, including works identified as commentaries (*shurūḥ*) and collections of *fatāwā* (legal responsa). But what concerns us is what I have called 'core' doctrine of these legal schools, and the general pattern in these *mukhtaṣar*s places the core questions as primarily those addressed by Third Level jurists, with relatively less substantial contributions from the questions of later jurists.

It is also interesting to note how close these texts are to their foundational source texts studied above. For example, both the *Kanz* and the *Mukhtaṣar Khalīl* mention that wiping *khuff*s is permissible for both men and women – identified as a basic question originating from the *Aṣl*, above. This is a question that finds its way into Ibn Qudāma's *ʿUmda* as supplementary question 3, above, suggesting that perhaps Aḥmad or an early school authority also addressed this basic question that we first find in the *Aṣl*. Fascinatingly, the *Mukhtaṣar Khalīl* also mentions the permissibility of

wiping *khuff*s for women with dysfunctional bleeding. This is a question that was identified, above, as a question that originated in Abū Ḥanīfa's circle, but was mentioned in the *Mudawwana* to show that Mālik did not engage in the considerations given to this topic in Abū Ḥanīfa's circle. In accordance with the analysis above, commentators on the *Mukhtaṣar Khalīl* point out that this case is mentioned in the *Mukhtaṣar* primarily in response to Ḥanafī doctrine.[157]

A final noteworthy observation is the paucity of cross-school questions found in these *mukhtaṣar*s. Only the Ḥanbalī *mukhtaṣar* engaged in questions that, as far as the sources consulted above reveal, originated in the source texts of other schools. These are the Ḥanbalī addition of woman wiping on *khuff*s (question 3), and the Ḥanbalī discussion of the conditions for wiping on a splint (question 2, a topic explored earlier in Ḥanafī questions on the topic). The general absence of cross-school questions in these texts further confirms that the activities of Third Level jurists provided a sufficient treatment of legal questions to be considered 'core' doctrine in the respective classical schools.

Conclusion: Was Abū Ḥanīfa the Founder of Islamic Law?

Section One of this essay presented information from biographical sources to show that Abū Ḥanīfa is remembered as someone who introduced a new form of detailed legal questioning. This new approach to questions, which he made the cornerstone of his teaching, was met with a mixed response by contemporaries. Due to the written production of his students, particularly Muḥammad ibn al-Ḥasan al-Shaybānī, his questions eventually became objects of study across the Muslim world. Section Two presented a series of investigations to assess the generation of questions across schools of law pertaining to the topic of *khuff*-wiping. These investigations confirmed that the most significant period in the development of legal questions was the period from 120AH to 240AH, referred to in the study as the period of Third Level jurists. Abū Ḥanīfa was typically the earliest contributor to the range of questions produced by Third Level jurists.

We must return now to the beginning of this essay to answer the original question: was Abū Ḥanīfa the founder of Islamic law? In the light of the evidence presented in this essay, I answer cautiously in the affirmative. The answer is cautious to reflect the limited range of sources and legal questions consulted in the current study. No doubt a larger study would be required to answer this question conclusively. However, the current study has revealed insightful trends in the patterns of legal questions. It is

[157] Al-Ḥaṭṭāb, *Mawāhib al-Jalīl sharḥ Mukhtaṣar Khalīl*, 6 vols. (Beirut: Dār al-Fikr, 1992), 1:318.

these patterns, along with the summary of biographical information, that encourages an initial answer to the question of Abū Ḥanīfa's role in the development of Islamic law.

We are now in a position to offer a nuanced understanding both of the question and of the proposed answer in the light of the preceding investigation. The generation of questions regarding the wiping on *khuff*s, which was taken as a case study in this essay, revealed clearly that it was in the generation of Third Level jurists that Islamic law – the discipline that informed the legal production of the entire classical period – was founded. Third Level jurists produced and responded to questions that gave a complete structural and practical understanding of the topic. Such a range of questions were not produced before them, and those after them largely reproduced their questions adding a relatively small further layer of core questions. The time-period referred to as Third Level was identified as the period in which this full range of structural questions were proposed and answered. This time-period corresponded, approximately, to the period between 120AH and 240AH. The earliest contributors to these mature investigations were typically members of Abū Ḥanīfa's circle. This realisation already establishes an assumption of primacy to the deliberations of his circle.

It is, furthermore, clear that the members of his circle were conscious of the status of their circle as inaugurating a new development in Islamic legal thought. This is why they established the first Personal School of Islamic law, meaning that they were the first group of jurists in the Islamic world who chose to ascribe themselves and their works to the teachings and status of their teacher, not to themselves and not to their region. They also authored the first structured works of Islamic law, where topics were not just divided into chapters, but the topics within each chapter aimed to present a complete set of legal questions to give a structural understanding of legal topics, an unprecedented literary development. This new form of authorship, specifically the authorship of Muḥammad al-Shaybānī, generated great interest across legal circles in the Muslim world. To stand in the face of this awesome legal edifice presented by Abū Ḥanīfa's circle, jurists had to present a similarly thorough vision of the law. Jurists who attempted to present such a thorough vision needed to present answers to a complete set of questions pertaining to the various topics of law. No First or Second Level jurist addressed such an array of questions. Thus these new texts would be based on the authority of Third Level jurists who contributed to answering these new questions. This is the development that led to the rise of what Schacht has called Personal Schools of law. Schacht explains the rise of juristic circles who ascribed their learning to the auspices of an individual jurist as a natural development within what he called the

Ancient Schools of law, a development, he notes, that was encouraged by the challenge of al-Shāfiʿī to the Ancient schools.[158] However, the details presented in the first section of this essay, along with reflections from the case-study of the second section, indicate that the real catalyst for the rise of Personal Schools was the response to al-Shaybānī's authorship and the rise of a new level of legal questioning, which could only be attributed to individual Third Level jurists, as no previous jurists offered such thorough legal doctrine.

We therefore have two angles to argue for Abū Ḥanīfa's founding this discipline: (1) his being the earliest jurist from the Third Level of jurists who addressed complete structural questions about the topics of law, and (2) the rise of a new period in Islamic legal affiliation, that of the Personal Schools of law, as a movement started by his students that others needed to respond to with their own detailed set of legal questions and individual Third Level authorities to whom these questions and answers were ascribed.

However, we must now condition this affirmative response to the leading question of this essay in the light of the investigations of Section Two, particularly the second investigation, which compared second/third century founding texts of the legal schools. These texts each had their own flavours and were answering questions which clearly did not arise in a single teaching circle. So the claim certainly is not that Abū Ḥanīfa asked all the foundational questions of Islamic law which other scholars simply answered. Rather, each of these texts reflected their own understanding of the legal project.

The two most complete texts in the second investigation were the *Aṣl* of al-Shaybānī and the *Umm* of al-Shāfiʿī. It is in the contrast between these two works that the formidable scholarship of al-Shāfiʿī becomes clear. He showed great clarity regarding the set of legal questions he considered worth engaging. He gave little importance to basic questions that would have been known to his audience. And, importantly, he also gave little importance to the theoretical tendency of some of Abū Ḥanīfa's questions. Rather, his focus was on a particularly defined understanding of what constituted necessary practical questions that needed to be answered. Where he engaged a cross-chapter questions, it was to bring a rule established elsewhere to have a bearing on the topic at hand. This was unlike the theoretical questions of the *Aṣl* that reflect an abstract contemplation of the relation between various legal topics. This clear-minded response of al-Shāfiʿī to Abū Ḥanīfa's questions – we could say al-Shāfiʿī's focus on legal rules and Abū Ḥanīfa's tendency to address questions that explore abstract levels of legal theorisation – can be said to underscore much of the debates that erupted between followers of the two schools throughout much of their

[158] Schacht, *Introduction*, 57-68.

early history. The suggestion that the ideas that fuelled later debates were already present in these early texts is a testament to the surprising maturity of legal ideas that was achieved in the generation of Third Level jurists.

The various transmissions of the *Masāʾil al-Imām Aḥmad* also present a clear sense of a legal tradition forging its own identity and choosing its own questions in this new legal climate. First, the presentation is striking. Every question is presented as a lone narration, a response from the Imam to a questioner. This presentation style represents an initial resistance to the new legal authorship of the time. The *Masāʾil* are not books – unlike the *Aṣl* and the *Umm* – but sets of answers. In this, they mimic the hadith corpus and thus, in form, are true to the traditionist school from which they hail. Second, the questions themselves represent traditionist questions, meaning that legal doctrine indicated by hadiths and Companion reports will be questioned and developed, even where there is negligible contribution from Level Two and early Level Three jurists.

The Mālikī texts studied in the preceding investigations offer the least observable character in their response to these legal developments. The *Mudawwana*'s section on *khuff*-wiping offers a selective response to the questions of the *Aṣl*. Seldom is a question addressed that does not arise in the *Aṣl*. Theoretical questions are ignored, but no clear set of questions are proposed to replace these, unlike in al-Shāfiʿī's *Umm*. It is interesting to note that the Mālikī school did not thrive long in the Abbasid capital or to the east where main *madhhab* rivalries erupted. It is also noteworthy that relatively few Mālikī *mukhtaṣar*s were authored before the eighth-century compared with *mukhtaṣar* authorship in other schools. We saw how Khalīl's *Mukhtaṣar* stood out amongst the other *mukhtaṣar*s studied above by the number of supplementary questions addressed. There is need for further investigation into the early Mālikī corpus and the development of legal questions in this legal school.

We can see, then, that the response to the spread of Abū Ḥanīfa's teachings was far from a simple imitation. The challenge of Abū Ḥanīfa, primarily through the medium of al-Shaybānī's books, led to the maturation of theories and ideas already developing in various legal circles. But would they have matured as they did, would they have produced the texts that they did, would they have associated themselves with the doctrine of leading Third Level jurists were it not for the activity of Abū Ḥanīfa's circle? This is the key question on whose answer we may best speculate. But I argue that, given the data presented in this essay, Abū Ḥanīfa's questions had the clearest causative effect on each of these developments.

A main contention of this essay is the importance of the legal question, the *masʾala*, to our conception of the discipline of Islamic law. To conceive of an abstract reality, such as the nature of a discipline, we identify its core

defining feature. It is the search for the defining feature of Islamic law that has led to different conceptions and therefore different answers to the questions of its origin and rise. Some discussions of Islamic law appear to place clearly articulated legal theory as a core defining feature of the classical discipline of Islamic law. Thus questions such as, "Was al-Shāfiʿī the Master Architect of Islamic Jurisprudence" arise. Hallaq's response to this question is in the negative, as legal theory only reaches maturity in the two centuries after al-Shāfiʿī.[159] Yet, we can note that the texts of Islamic law flourished and were taught before such a clear rise of this discipline. A related debate, on whether *uṣūl al-fiqh* actually generated law, has resulted in the general recognition that legal theory did not produce the law, that the law was inherited by the legal schools without the application of legal theory, and that legal theory merely provided a means to maintain the integrity and soundness of this inherited law.[160]

There is an alternative defining feature of the discipline of Islamic law that influenced its earliest written texts and that remained its defining feature throughout the classical period. And this is the interest in presenting structured questions that address the various topics of the law and how these topics relate to each other. This development reached maturity in Abū Ḥanīfa's circle.

We may return back to the words attributed to al-Shāfiʿī: "In *fiqh*, people are the dependents of Abū Ḥanīfa." A dependent is nourished by his provider. But the dependent is not a copy of the provider. A dependent might overshadow and oppose the provider. But a dependent is undoubtedly influenced by the original provision. The questions of Abū Ḥanīfa were the provision he offered the Muslim legal community. His questions influenced the course of that community. Many great and opposing legal traditions

[159] Wael Hallaq, "Was al-Shāfiʿī the Master Architect of Islamic Jurisprudence?" *International Journal of Middle Eastern Studies*, 25.4 (1993): 587-605.

[160] Studies suggesting that the categories of *uṣūl al-fiqh* served not to produce law, but to justify already existent statements of law include Sherman Jackson, "Fiction and Formalism: Toward a Functional Analysis of *Uṣūl al-Fiqh*" in Bernard Weiss (ed.), *Studies in Islamic Legal Theory* (Leiden: Brill, 2002), 177-201; Mohammed Fadel, "'*Istiḥsān* is Nine-Tenths of the Law': The Puzzling Relationship of *Uṣūl* to *Furūʿ*" in Bernard Weiss (ed.), *Studies in Islamic Legal Theory* (Leiden: Brill, 2002), 161-76; Behnam Sadeghi, *The Logic of Law Making in Islam: Women and Prayer in the Legal Tradition* (Cambridge: Cambridge University Press, 2013), esp. 34-39. In recent decades, one of the few outspoken proponents of *uṣūl al-fiqh*'s ability to generate law is Wael Hallaq, in several of his publications, including, "Considerations on the Function and Character of Sunnī Legal Theory" *Journal of the American Oriental Society*, 104.4 (1984): 679-89, where he presents "discovering the law of God" as one of *uṣūl al-fiqh*'s primary functions. See also Robert Gleave's introduction to Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Law*, xii-xiii, for a brief survey of this debate.

grew out of that exchange. But even then, they grew in response to the questions of Abū Ḥanīfa.

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