BRILL

ISLAMIC LAW AND SOCIETY (2021) 1-33

Islamic Law and Society
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Abū Yūsuf's *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā* and the Transmission of Knowledge in the Formative Period of the Ḥanafī School

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Abstract

In this essay, I address the longstanding debate on attributing legal texts to formative-period authors by focusing on the transmission of one early text: *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*, attributed to Abū Yūsuf (d. 182/798), and its reception by one early jurist: Abū Jaʿfar al-Ṭaḥāwī (d. 321/933). I argue that al-Ṭaḥāwī's written work attests to the existence of multiple independent transmissions of Abū Yūsuf's text and that these transmissions confirm the attribution of the text to Abū Yūsuf. I then reflect on the formative-period written materials consulted by al-Ṭaḥāwī and his contemporaries, arguing that their access to material from a period in which oral transmission was predominant gave them a unique standing in the eyes of classical-era jurists. Finally, I reflect on the role of digests (*mukhtaṣar*s), particularly those of al-Ṭaḥāwī and al-Qudūrī (d. 428/1037), in sealing the movement from orality in the formative period to fixed written texts in the classical period.

Keywords

Abū Yūsuf – al-Ṭaḥāwī – Ḥanafī School – *Mukhtaṣar* – oral/written – Norman Calder – Gregor Schoeler

1 Introduction

A lasting contribution of the late Norman Calder to the study of Islamic law is the critical study of the authorship of early legal texts. Writers on the formative

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period of Islamic law must contend with Calder's *Studies in Early Muslim Jurisprudence*, in which he casts doubt on the authorship of several key legal works and suggests that they did not take on a fixed literary form for up to a century after the deaths of their purported authors. Calder's argument has provoked a number of rebuttals that have pushed back his proposed dates by several decades, often to the purported authors of these texts.[1] However, the problems that he raised continue to shape the field of Islamic legal studies on the pre-classical era.[2]

The current essay contributes to our knowledge of the production and transmission of legal texts in the pre-classical era by studying an influential early treatise, the *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā* of Abū Yūsuf Yaʿqūb b. Ibrāhīm al-Anṣārī (d. 182/798). Although this treatise is not directly addressed by Calder, it features indirectly in several of his case studies. It was incorporated into al-Shaybānī's (d. 189/805) *Aṣl* and al-Shāfiʿī's (d. 204/820) *Umm*, both texts of interest to Calder. He also studied the *Kitāb al-Kharāj*, attributed to Abū Yūsuf, which he characterizes as "one of the most unified and controlled

1 Of the texts that Calder re-dates, the *Muwaṭṭaʾ* of Mālik (d. 179/795) has received the most sustained attention: see, for example, Yasin Dutton, "'*Amal* 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 *Muwaṭṭaʾ* and Legal Traditions," *Jerusalem Studies in Arabic and Islam*, 22 (1998): 18–83; Jonathan Brockopp, "Early Islamic Jurisprudence in Egypt: Two Scholars and Their *Mukhtaṣars*," *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-Muwaṭṭaʾ* 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 of Calder's book, 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.

2 See, for example, Andreas Görke, *Das Kitāb al-Amwāl des Abū ʿUbaid al-Qāsim b. Sallām: Entstehung und Überlieferung eines frühislamischen Rechtswerkes* (Princeton: Darwin Press, 2003), a meticulous study of an early text not analyzed by Calder, in which the author tests and critiques the latter's thesis. See also Joseph Lowry's review of Görke's book in *Journal of the American Oriental Society*, 126:1 (2006): 114–16, at 115–16, where he reminds readers that Calder's narrative pertaining to organic growth in legal texts must be taken into consideration when working with all early texts, and cannot simply be ignored by showing that it does not apply to some legal texts.

intellectual productions of early Islamic *fiqh*."[3] On the grounds of its coherence, Calder dates *Kitāb al-Kharāj* to almost a century after Abū Yūsuf.

My goal in this essay is not simply to ask whether or not Abū Yūsuf wrote *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*, but to use this text as a window onto the role of written material in the transmission of knowledge in early legal circles and to demonstrate how such early written material informed the formal written works of the classical era. Unlike Calder, my primary concern is not when these texts reached their canonical form, but rather (1) the original written form of these works, (2) how they were transmitted (3) whether or not we can access their original forms from extant sources and (4) how their content was assimilated into the teaching texts of the classical era. While it is difficult to provide a complete account of these areas of interest, the details and analysis I provide offer a helpful context for understanding the role of written material at the beginning of the classical era. I draw on what we know of early text production in Islamic scholarship, for which purpose the work of Gregor Schoeler is a valuable reference.

In his studies across a range of literary genres, Schoeler highlights that, in the pre-classical period, written culture was embedded in an oral culture of knowledge transmission. Texts were not written simply to be read. Thus, "the specificities of the transmission of Islamic scholarship in the first four centuries of Islam (ca. 600–1000) cannot be conceived of through the dichotomy oral/written"; rather, "[w]e are in fact in the presence of a unique phenomenon, one that requires careful characterization and equally careful analysis."[4] I will draw on Schoeler's insights to provide context for my arguments here.

Also relevant to the current study is the scholarship of Ahmed El Shamsy, who has argued for al-Shāfiʿī's authorship of the *Umm*. This is pertinent because Abū Yūsuf's treatise is incorporated into al-Shāfiʿī's *Umm* under the title *Kitāb Ikhtilāf al-ʿirāqiyyayn*.[5] El Shamsy bases his argument on (1) quotations of the *Umm* in texts from the middle of the third Islamic century – i.e. a good half century before Calder's dating of the *Umm*; (2) chapter lists in bibliographic sources; (3) the *Umm*'s presence in two abridgements attributed to al-Shāfiʿī's students; and (4) anecdotal information about the care with which al-Shāfiʿī's

3 Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Oxford University Press, 1993), 160.

4 Gregor Schoeler, *The Genesis of Literature in Islam: From the Aural to the Read*, transl. Shawkat Toorawa (Edinburgh: Edinburgh University Press, 2009), 8.

5 Schacht, Hallaq and others transliterate the second word of the title in the plural form, *Ikhtilāf al-ʿirāqiyyīn*. I transliterate it here in the dual form, *ʿirāqiyyayn*, as preferred by al-Nawawī and al-Fayyūmī, as the disagreements in this book are between two Iraqis, Abū Ḥanīfa and Ibn Abī Laylā: see al-Nawawī, *Tahdhīb al-asmāʾ wa-l-lughāt*, 4 vols. (Cairo: Idārat al-Ṭibāʿa al-Munīriyya, 1344/1925–6; repr. Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), 4:13; al-Fayyūmī, *al-Miṣbāḥ al-munīr fī gharīb al-Sharḥ al-kabīr li-l-Imām al-Rāfiʿī*, 2 vols. (Cairo: al-Maṭbaʿa al-Bahiyya, 1884), 2:33.

work was recorded and transmitted. While it is not possible to demonstrate that every word in the book is from al-Shāfiʿī, the evidence in favor of al-Shāfiʿī's authorship is strong. El Shamsy concludes that establishing the authenticity of the *Umm* "lends support" to the authenticity of other texts incorporated into the *Umm*, including Abū Yūsuf's *Ikhtilāf al-ʿirāqiyyayn*.[6] Although El Shamsy shows that this text was taught in al-Shafiʿī's circle, he cannot definitively ascribe it to its purported author. This is because al-Shāfiʿī never met Abū Yūsuf, although he studied with Abū Yūsuf's student, Muḥammad al-Shaybānī. Thus the question of Abū Yūsuf's authorship remains open.

My focus in this essay is on the Egyptian Ḥanafī jurist, Abū Jaʿfar al-Ṭaḥāwī (d. 321/933), who was a key figure in the transition from the formative to the classical periods of Ḥanafī scholarship. Accordingly, this article is divided into two sections: Section One treats the early transmission of Abū Yūsuf's text, focusing on al-Ṭaḥāwī's reception of the work; Section Two shows how texts such as Abū Yūsuf's were assimilated by authors such as al-Ṭaḥāwī into the teaching texts of the classical period. In the first section, I argue that al-Ṭaḥāwī worked with several transmissions of Abū Yūsuf's treatise and that these transmissions point to a source text from Abū Yūsuf on which they are based. The current investigation thus confirms that Abū Yūsuf's treatise is the earliest known work of Islamic law that presents structured legal cases and arguments. In the second section, I reflect on the culture of writing and knowledge transmission in the formative period of the Ḥanafī school, explaining how access to early written material gave special authority to authors such as al-Ṭaḥāwī. By comparing three early Ḥanafī digests (*mukhtaṣar*s) – those of al-Taḥāwī, al-Karkhī (d. 340/952) and al-Qudūrī (d. 428/1037) – I show how these texts reflect the gradual transition from a formative 'age of *riwāya*', i.e. oral and aural transmission of legal doctrine, to a classical period in which teaching texts brought together the assimilated doctrine of the previous age of *riwāya*. I show that, dating aside, some of Calder's key ideas regarding the transmission of legal texts offer a helpful context for understanding the assimilation of Abū Yūsuf's text in Ḥanafī literature.

2 The Transmission of Abū Yūsuf's Text

2.1 *Abū Yūsuf's Text and Its Print Publications*

Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā, attributed to Abū Yūsuf, was published in Hyderabad in 1357/1938–9, edited by Abū al-Wafā[7] al-Afghānī (d. 1975). In the

6 El Shamsy, "Al-Shāfiʿī's Written Corpus," 220.

7 I thank Christopher Melchert for pointing out that Abū al-Wafā typically wrote his name without the final *hamza*, that is, Wafā, not Wafāʾ.

introduction, Abū al-Wafā mentions that he searched far and wide for copies of the manuscript but managed to find only one copy in India, which served as the basis for his edition.[8] Unfortunately, he gives no details about the manuscript. The book is divided into thirty-five chapters, and it documents 263 points of legal disagreement between two of Abū Yūsuf's Kufan teachers, Abū Ḥanīfa al-Nuʿmān b. Thābit (d. 150/767), the eponym of the Ḥanafī school, and Muḥammad b. ʿAbd al-Raḥmān b. Abī Laylā (d. 148/765), who served in the judiciary for about twenty years and enjoyed a great reputation amongst Kufans, possibly greater than that of Abū Ḥanīfa.[9] Each chapter begins with *qāla Abū Yūsuf* ("Abū Yūsuf said"), followed by a series of legal cases, usually beginning with Abū Ḥanīfa's opinions. Most cases identify Abū Yūsuf's preferred opinion with the formula *wa-bihi naʾkhudh* ("And we adopt this [opinion]").[10] The text often mentions a basis for these opinions, sometimes a report (*khabar*) and sometimes a line of legal reasoning. In what follows, all references to the text are to Abū al-Wafā's edition.

The text also forms a part of al-Shāfiʿī's *magnum opus*, the *Umm*, where it is included under the title *Kitāb Ikhtilāf al-ʿirāqiyyayn*. Almost all of the legal cases are followed by *qāla al-Shāfiʿī* ("al-Shāfiʿī said"), after which al-Shāfiʿī's own opinion regarding a specific case is presented. The best edition of the *Umm* is that of Rifʿat Fawzī ʿAbd al-Muṭṭalib, which is based on six manuscript copies of the work. Joseph Schacht frequently refers to the *Ikhtilāf al-ʿirāqiyyayn* in his seminal *The Origins of Muhammadan Jurisprudence*, where he identifies it as Tr 1. *The Ikhtilāf al-ʿirāqiyyayn* has been translated into "unidiomatic" English by Walter Young.[11] The version of Abū Yūsuf's text found in the *Umm* is remarkably similar to the version published by Abū al-Wafā. The close resemblance between these two editions is addressed below.

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8 Abū Yūsuf, *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*, ed. Abū al-Wafā al-Afghānī (Hyderabad: Dāʾirat al-Maʿārif al-Nuʿmāniyya, 1357/1938–9), 5.

9 Al-Dhahabī, *Siyar aʿlām al-nubalāʾ*, ed. Shuʿayb al-Arnaʾūṭ *et al.*, 25 vols. (Beirut: Muʾassasat al-Risāla, 1985), 6:310–16. The most popular and active Kufan scholars of the period appear to have been Ibn Abī Laylā and ʿAbd Allāh b. Shubruma (d. 144/761–2): see Nurit Tsafrir, *The History of an Islamic School of Law: The Early Spread of Ḥanafism* (Cambridge, MA: Harvard University Press, 2004), 18, 22–25. Based on her study of Wakīʿ b. al-Jarrāḥ's (d. 197/812) *Akhbār al-quḍāh*, Tsafrir concludes that he served as *qāḍī* for about twenty years (ibid., 18, 22); Ibn Khallikān (d. 681/1282) states that his tenure as *qāḍī* lasted thirty-three years: Ibn Khallikān, *Wafāyāt al-aʿyān*, ed. Iḥsān ʿAbbās, 7 vols. (Beirut: Dār Ṣādir, 1972), 4:179.

10 The formula "*wa-bihi naʾkhudh*" is not used in twenty-four cases, fifteen of which explicitly mention *qāla Abū Yūsuf* followed by his opinion, while the rest mention no opinion at all other than that of the two Kufans.

11 Walter Young, "The Dialectical Forge, Part II: Proto-System Juridical Disputation in the *Kitāb Ikhtilāf al-ʿIrāqiyyīn*" (PhD diss, McGill University, 2012).

An abridged version of the text was published in al-Ḥākim al-Shahīd al-Marwazī's (d. 334/945) *Mukhtaṣar,* together with its commentary, al-Sarakhsī's (d. *c.* 483/1090) *al-Mabsūṭ*. Al-Sarakhshī states that the original composition (*taṣnīf*) was Abū Yūsuf's and that it was compiled (*ta'līf*) by Muḥammad al-Shaybānī, a distinction to which we will return below.[12] This abridged version has ninety-three cases of disagreement mentioned in exactly the same order as they appear in Abū al-Wafā's text, without any chapter breaks.

Mehmet Boynukalın's recent edition of Muḥammad al-Shaybānī's *Aṣl* contains two sections from the text, the chapters on items lent for use (*Kitāb al-ʿĀriya*) and deposits for safekeeping (*Kitāb al-Wadīʿa*).[13] The two sections are largely reproduced[14] in the *Aṣl* with near identical wording to that in Abū al-Wafā's edition. Al-Shaybānī's preferred opinions are added to the text: Abū Yūsuf's *wa-bihi naʾkhudh* is replaced by *wa-bihi yaʾkhudh Abū Yūsuf wa-Muḥammad*. In the introduction, the editor comments that the presence of these two sections of Abū Yūsuf's text in the *Aṣl* and its presence in al-Ḥākim al-Shahīd's abridgement of the *Aṣl* suggest that the complete text was originally part of the *Aṣl* but is missing from the manuscript copies that he has found.[15] Other than these, I know of no other published version of the work, and I have not found evidence of independent manuscript copies of Abū Yūsuf's work.

2.2 *The Ikhtilāf al-ʿulamāʾ of al-Ṭaḥāwī*

Abū Jaʿfar al-Ṭaḥāwī was a leading Egyptian Ḥanafī jurist whose teachers studied with the students of Abū Yūsuf and Muḥammad al-Shaybānī. He also had close links to the nascent Shāfiʿī school; his uncle al-Muzanī (d. 264/878) was one of al-Shāfiʿī's most important Egyptian disciples. His *Ikhtilāf al-ʿulamāʾ* documents the differences of opinion amongst key early jurists, primarily from the second Islamic century. The book is no longer extant except in an abridgement by the Ḥanafī scholar Abū Bakr al-Rāzī al-Jaṣṣāṣ (d. 370/980), published

12 Al-Sarakshī, *al-Mabsūṭ*, 30 vols. (Cairo, 1324–31/1906–13, repr. Beirut: Dār al-Kutub al-ʿIlmiyya, 1993), 30:129.

13 Muḥammad b. al-Ḥasan al-Shaybānī, *al-Aṣl*, ed. Mehmet Boynukalın, 12 vols. (Beirut: Dār Ibn Ḥazm, 2012), 8:448–49, 463–65. See also Ahmed El Shamsy, review of *al-Aṣl*, ed. Mehmet Boynukalın, *Journal of Near Eastern Studies*, 75:1 (2016): 194–5, at 195.

14 The *K. al-Wadīʿa* in the *Aṣl* omits one sub-discussion and two reports from the end of the chapter; cf. Abū Yūsuf, *Ikhtilāf*, 50–52.

15 Al-Shaybānī, *al-Aṣl*, *al-muqaddima*, 64–65.

as *Mukhtaṣar Ikhtilāf al-ʿulamāʾ*. In this book, al-Ṭaḥāwī cites *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā* but only to quote al-Shāfiʿī's comments on the treatise.[16] However, an analysis of several passages in *Ikhtilāf al-ʿulamāʾ* shows that al-Ṭaḥāwī relied on *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā* (henceforth '*Ikhtilāf*') as a main source for documenting the *fiqh* of Abū Ḥanīfa and Ibn Abī Laylā. He does not cite the book when presenting the doctrine of the two Iraqi jurists, but a careful reading confirms his reliance on it.

Al-Ṭaḥāwī often reproduces passages from the *Ikhtilāf*, adding to it the names of jurists whose positions he wishes to document. The frequency of his copying passages from the *Ikhtilāf* indicates that the treatise was a primary reference for al-Ṭaḥawī. Consider the underlined words in the following two examples:

Al-Ṭaḥawī, *Ikhtilāf al-ʿulamāʾ*	Abū Yūsuf, *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*
قال أصحابنا إذا أوصى لرجل بسكنى دار أو بخدمة عبد أو بغلة أرض أو بستان وذلك ثلثه أو أقل فهو جائز وهو قول مالك والثوري وعثمان البتي وسوار بن عبد الله وعبيد الله بن الحسن والليث والشافعي وقال ابن أبي ليلى لا يجوز ذلك والوقت وغير الوقت في ذلك سواء[18]	وإذا أوصى الرجل للرجل بسكنى دار أو بخدمة عبد أو بغلة بستان أو أرض وذلك ثلثه أو أقل فإن أبا حنيفة رضى الله عنه كان يقول ذلك جائز وبه نأخذ وكان ابن أبي ليلى يقول لا يجوز ذلك والوقت في ذلك وغير الوقت في قول ابن أبي ليلى سواء[17]

16 Al-Jaṣṣāṣ, *Mukhtaṣar Ikhtilāf al-ʿulamāʾ*, ed. ʿAbd Allāh Nadhīr Aḥmad, 5 vols. (Beirut: Dār al-Bashāʾir al-Islāmiyya, 2007), 2:332, 5:75.

17 Abū Yūsuf, *Ikhtilāf*, 81.

18 Al-Jaṣṣāṣ, *Mukhtaṣar*, 5:32.

Al-Ṭaḥāwī, *Ikhtilāf al-ʿulamāʾ*	Abū Yūsuf, *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*
قال أصحابنا والأوزاعي والشافعي إذا كفل عن رجل بمال فللطالب أن يأخذ أيهما شاء من المطلوب ومن الكفيل قال أبو يوسف: وقال ابن أبي ليلى ليس له أن يأخذ الذي عليه الأصل وحيث قبل منه الكفيل فقد أبرأه من المال إلا أن يتوى المال قبل الكفيل فيرجع على الذي عليه الأصل وإن كان كل واحد منهما كفيلا عن صاحبه كان له أن يأخذ أيهما شاء[19]	وإذا كان لرجل على رجل دين فكفل له به عنه رجل فإن أبا حنيفة رضي الله تعالى عنه كان يقول للطالب أن يأخذ أيهما شاء فإن كانت حوالة لم يكن له أن يأخذ الذي أحاله لانه قد أبرأه وبهذا نأخذ وكان ابن أبي ليلى يقول ليس له أن يأخذ الذي عليه الاصل فيهما جميعا لانه حيث قبل منه الكفيل فقد أبرأه من المال إلا أن يكون المال قد توى قبل الكفيل فيرجع به على الذي عليه الاصل، وإن كان كل واحد منهما كفيلا عن صاحبه كان له أن يأخذ أيهما شاء في قولهما جميعا[20]

These are just two examples among many.[21] The large number of similar passages between the two works shows that al-Ṭaḥāwī consulted a copy of the *Ikhtilāf* whose wording closely resembled that of the treatise as we have it

19 Ibid., 4:255.

20 Abū Yūsuf, *Ikhtilāf*, 54–5.

21 Several other cases are clearly taken from the *Ikhtilāf*. Some of these contain phrases – which might be long or short – quoted verbatim. Others paraphrase the wording and present the case as a disagreement between "our associates" (*aṣḥābunā*) and Ibn Abī Laylā, with names of other jurists occasionally added. Instances of the former – i.e. with long or short phrases quoted verbatim – taken from the first half of al-Ṭaḥāwī's book are: ["Ṭ" refers to al-Ṭaḥāwī's book, and "AY" refers to Abū Yūsuf's book] Ṭ, 1:282 (AY, 118); Ṭ, 1:323 (AY, 109); Ṭ, 1:366 (AY, 115–117); Ṭ, 1:427 (AY, 91–2); Ṭ, 1:453 (AY, 124–6); Ṭ, 2:13 (AY, 135); Ṭ, 2:26 (AY, 134); Ṭ, 2:262 (AY, 169); Ṭ: 2:346 (AY, 87); Ṭ 2:348 (AY, 212); Ṭ, 2:417 (AY, 191); Ṭ, 2:447 (AY, 202–3); Ṭ, 3:87 (AY, 27); Ṭ, 3:117 (AY, 20–1); Ṭ, 3:130 (AY, 18); Ṭ, 3:142 (AY, 15); Ṭ, 3:144 (AY, 11–12); Ṭ, 3:146 (AY, 25); Ṭ, 3:159 (AY, 25). Instances of the latter – with the wording paraphrased – are: Ṭ, 1:153 (AY, 121); Ṭ, 1:119 (AY, 201–2); Ṭ, 1:215 (AY, 111–114); Ṭ, 1:258 (AY, 110–1); Ṭ, 1:388 (AY, 118); Ṭ, 1:413 (AY, 127); Ṭ, 1:430 (AY, 128); Ṭ, 2:12 (AY, 131); Ṭ, 2:30 (AY, 133); Ṭ, 2:247 (AY, 176); Ṭ, 2:309–10 (AY, 172–4); Ṭ, 2:363–4 (AY, 181–3); Ṭ, 2:399 (AY, 195–6); Ṭ, 2:411 (AY, 193); Ṭ, 2:413 (AY, 190); Ṭ, 2:440 (AY, 215–6); Ṭ, 2:449,479

before us.[22] Considering that al-Ṭaḥāwī was a leading authority in determining the opinions of the Ḥanafī school founders, his reliance on this treatise to authoritatively state the opinions of Abū Ḥanīfa is noteworthy. I find it unlikely that he would have given such weight to the treatise only because students of al-Shāfiʿī said that they heard al-Shāfiʿī transmit these opinions from Muḥammad al-Shaybānī. Al-Ṭaḥāwī's fellow school members likely would not have accepted his introducing Ḥanafī doctrine known only in Shāfiʿī circles. His reliance on the *Ikhtilāf* to document Abū Ḥanīfa's positions thus appears to represent a confirmation of this text from al-Ṭaḥāwī's Ḥanafī sources.

There are signs of a further transmission of Abū Yūsuf's treatise by Bishr b. al-Walīd al-Kindī (d. 238/852), a close student of Abū Yūsuf's and one of the main transmitters of his books.[23] Al-Ṭaḥāwī mentions Bishr b. al-Walīd by name more than fifty times in his *Ikhtilāf al-ʿulamāʾ*, each time to convey a transmission from Abū Yūsuf; and, on occasion, he mentions the name of a book in which Bishr conveys this information, such as the *Imlāʾ*[24] and *Nawādir Abī Yūsuf*.[25] A careful reading of al-Ṭaḥāwī's quotations from Bishr reveals a striking resemblance to the *Ikhtilāf*. Consider the following three examples:

(AY, 203); Ṭ 2:452 (AY, 211); Ṭ, 2:482 (AY, 198); Ṭ, 3:26 (AY, 33); Ṭ, 3:51 (AY, 16); Ṭ, 3:53–4 (AY, 17); Ṭ, 3:57 (AY, 13); Ṭ, 3:72 (AY, 22–3); Ṭ, 3:95 (AY, 13–4). In some of these cases, the resemblance between the two books is striking, in others it is subtle. By considering the many examples of overlap between the two books, we can be sure that al-Ṭaḥāwī relied on this book, which we have before us. The examples given here are from the first half of al-Ṭaḥāwī's book. The second half of the book would likely have a similar number of overlapping passages.

22 The *Ikhtilāf* is not al-Ṭaḥāwī's only source for Ibn Abī Laylā's *fiqh*. In the *Ikhtilāf al-ʿulamāʾ*, al-Ṭaḥāwī mentions approximately half of the cases in Abū Yūsuf's book and adds a similar number of Ibn Abī Laylā's positions from other sources, including the narrations of al-Ḥasan b. Ṣāliḥ (d. 169/785–6) (al-Jaṣṣāṣ, *Mukhtaṣar*, 2:72) and Sufyān al-Thawrī (d. 161/778) (ibid., 3:82; 4:89, 153, 269). He appears to weigh his sources carefully when presenting Ibn Abī Laylā's *fiqh*. See, for example, ibid., 2:399, where he mentions a case from Abū Yūsuf's book (Abū Yūsuf, *Ikhtilāf*, 195–6) but mentions additional narrations of Ibn Abī Laylā's opinion alongside the one Abū Yūsuf narrates. In al-Jaṣṣāṣ, *Mukhtaṣar*, 2:449, al-Ṭaḥāwī mentions a case from Abū Yūsuf's book (Abū Yūsuf, *Ikhtilāf*, 203), but attributes a different opinion to Ibn Abī Laylā than the one mentioned by Abū Yūsuf.

23 Ibn Abī al-Wafāʾ, *al-Jawāhir al-muḍiyya*, 2 vols. (Hyderabad: Majlis Dāʾirat al-Maʿārif al Niẓāmiyya, n.d.), 1:166–67; Ibn al-Ḥinnāʾī, *Ṭabaqāt al-ḥanafiyya*, ed. Muḥyī Hilāl al-Sarḥān, 3 vols. (Baghdad: Maṭbaʿat Dīwān al-Waqf al-Sunnī, 2005), 1:235–43.

24 Al-Jaṣṣāṣ, *Mukhtaṣar*, 3:58.

25 Ibid., 5:78.

Al-Ṭaḥāwī's *Ikhtilāf al-ʿulamāʾ*	Abū Yūsuf's *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*
قال بشر عن أبي يوسف إذا تغيب المطلوب حتى حط بعض المال ثم ظهر بعد فالحط جائز في قول أبي حنيفة وقال ابن أبي ليلى له أن يرجع فيما حط عنه لأنه تغيب عنه قال أبو يوسف وبه نأخذ[27]	ولو أن رجلا كان له على رجل مال فتغيب عنه المطلوب حتى حط عنه بعض ذلك المال على أن يعطيه بعضه ثم ظهر له بعد فإن أبا حنيفة رضي الله تعالى عنه كان يقول ما حط عنه من ذلك المال فهو جائز . وكان ابن أبي ليلى يقول: له أن يرجع فيما حط عنه لأنه تغيب عنه وبه نأخذ[26]

26 Abū Yūsuf, *Ikhtilāf,* 19.

27 Al-Jaṣṣāṣ, *Mukhtaṣar,* 4:202.

Abū Yūsuf's *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*	Al-Ṭaḥāwī's *Ikhtilāf al-ʿulamāʾ*
وإذا باع الرجل نصيبا من داره ولم يسم ثلثا أو ربعا أو نحو ذلك أو كذا وكذا سهما فإن أبا حنيفة رحمه الله تعالى كان يقول لا يجوز البيع على هذا الوجه وقال أبو يوسف رحمه الله تعالى له الخيار إذا علم إن شاء أخذ وإن شاء ترك وكان ابن أبي ليلى رحمه الله تعالى يقول إذا كانت الدار بين اثنين أو ثلاثة أجزت بيع النصيب وإن لم يسم وإن كانت أسهما كثيرة لم يجز حتى يسمي[28]	ذكر بشر بن الوليد عن أبي يوسف عن أبي حنيفة أنه إذا باع نصيبا من دار غير مقسومة وغير مسمى من ثلث أو ربع وكذا سهما فالبيع لا يجوز على هذا الوجه وقال ابن أبي ليلى إذا كانت الدار بين اثنين أجزت بيع النصيب وإن لم يسم وإن كانت سهما كثيرة لم يجز حتى يسمي وقال أبو يوسف البيع جائز والمشتري بالخيار إذا علم إن شاء أخذ وإن شاء ترك[29]

The italicized text in the example above is similar in both books, but in a different position.

28 Abū Yūsuf, *Ikhtilāf,* 27–8.

29 Al-Jaṣṣāṣ, *Mukhtaṣar*, 3:71.

Abū Yūsuf's *Ikhtilāf Abī Ḥanīfa wa Ibn Abī Laylā*	Al-Ṭaḥāwī's *Ikhtilāf al-ʿulamāʾ*
وإذا قال الخصم للقاضي لا أقر ولا أنكر فإن أبا حنيفة رحمه الله كان يقول لا أجبره على ذلك ولكنه يدعو المدعى بشهوده (قال) وكان ابن أبي ليلى لا يدعه حتى يقر أو ينكر وكان أبو يوسف إذا سكت يقول له احلف مرارا فإن لم يحلف قضى عليه[30]	قال بشر بن الوليد عن أبي يوسف إذا قال الخصم للقاضي لا أقر ولا أنكر قال أبو حنيفة لا يجبره على ذلك ويسمع البينة عليه وهو قول الشافعي وقال ابن أبي ليلى لا أدعه حتى يقر أو ينكر[31]

These are three of several examples in al-Ṭaḥāwī's *Ikhtilāf al-ʿulamāʾ* which demonstrate that Bishr also narrated Abū Yūsuf's *Ikhtilāf*. Furthermore, Bishr's transmission from Abū Yūsuf is independent of Muḥammad al-Shaybānī's transmission as narrated by al-Shāfiʿī. We know this, firstly, because there are occasional differences between the two, which might explain why al-Ṭaḥāwī would occasionally choose to narrate the *Ikhtilāf* on the authority of Bishr. These differences are often clauses or conditions within legal cases or lines of legal reasoning. The differences are usually minor but might have been of interest to al-Ṭaḥāwī. Here are two examples:

30 Abū Yūsuf, *Ikhtilāf,* 160.

31 Al-Jaṣṣāṣ, *Mukhtaṣar,* 3:418.

Abū Yūsuf, *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*	Al-Ṭaḥāwī, *Ikhtilāf al-ʿulamāʾ*
قال أبو يوسف رحمه الله: سألت أبا حنيفة رضي الله عنه قال: لا بأس أن يخرج من تراب الحرم وحجارته إلى الحل. وبه نأخذ. قال: وسمعت ابن أبي ليلى يحدث عن عطاء بن أبي رباح عن ابن عباس وابن عمر رضي الله عنهم أنهما كرها أن يخرج من تراب الحرم وحجارته إلى الحل شيئًا. وحدثنا شيخ عن رزين مولى علي بن عبد الله بن عباس أن علي بن عبد الله كتب إليه أن يبعث إليه بقطعة من المروة يتخذها مصلى يسجد عليها[32]	روى بشر بن الوليد عن أبي يوسف عن أبي حنيفة لا بأس بأن يخرج تراب الحرم وحجارته إلى الحل وهو قول أبي يوسف، وروي عن ابن عباس وابن عمر كراهة ذلك وهو قول ابن أبي ليلى والشافعي، قال لما كان شجر الحرم منهيا عن قطعه واستعماله في الحرم لأجل حرمته ولم يكن ممنوعا من استعمال تراب الحرم وحجارته في الحرم علم أنه لا حرمة له فلا بأس بإخراجه وأيضا ما جف من شجر الحرم وسقط جاز الانتفاع به وإخراجه فكذلك الحجر والتراب يجوز إخراجه والانتفاع به[33]

The quotation from Abū Ḥanīfa is virtually identical in both passages as are the sources that Ibn Abī Laylā quotes for his own opinion. What distinguishes the two is the legal argument for Abū Ḥanīfa's position that al-Ṭaḥāwī mentions (italicized). He commences this explanation with "He said" (*qāla*) to make it clear that this is a continuation of Bishr's transmission, which he interrupts only to add the name of al-Shāfiʿī. Al-Shaybānī omits this legal argument in his transmission of the *Ikhtilāf*, and al-Ṭaḥāwī may therefore have preferred to quote Bishr in this instance. A further difference between these two passages is that al-Shaybānī's version ends with a report (italicized) from Razīn (d.?), the *mawlā* of ʿAlī b. ʿAbd Allāh b. ʿAbbās (d. 118/736–7). In this report, Razīn conveys from ʿAlī b. ʿAbd Allāh b. ʿAbbās a position that is contrary to

32 Abū Yūsuf, *Ikhtilāf*, 139.

33 Al-Jaṣṣāṣ, *Mukhtaṣar*, 2:130.

the position that Ibn Abī Laylā conveys from ʿAlī's father, ʿAbd Allāh b. ʿAbbās (d. 68/687–8), in order to negate Ibn Abī Laylā's evidence. This report is not found in Bishr's transmission, and it may have been added by al-Shaybānī.[34]

Abū Yūsuf, *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*	Al-Ṭaḥāwī, *Ikhtilāf al-ʿulamāʾ*
قال: وإذا أصيب الرجل وبه جراحة فاحتمل فلم يزل مريضًا حتى مات، فإن أبا حنيفة رضي الله عنه كان يقول: ديته على تلك القبيلة التي أصيب فيهم. قال محمد: وبه نأخذ. وكان ابن أبي ليلى يقول: ليس عليهم شيء[35]	قال أبو حنيفة والثوري إذا وجد الرجل في محلة وبه جراحة فاحتمل إلى بيته ولم يزل مريضا حتى مات فالدية والقسامة على أهل المحلة التي جرح فيها قال ابن أبي ليلى لا شيء فيه وروى بشر عن أبي يوسف مثل قول ابن أبي ليلى[36]

In this example, the two passages are very similar, and they almost certainly convey material from the same source text. However, there are some notable differences between the two. In one version, a man is found wounded in a neighborhood; in the other, a man is simply struck. In one version, blood-money is owed by the residents of the neighborhood; in the other, it is owed by the members of "the tribe". This is one of three instances in which al-Shaybānī's opinion is mentioned in the text that he transmits from Abū Yūsuf, and,

34 There are no narrations from Razīn, the *mawlā* of ʿAlī b. ʿAbd Allāh b. ʿAbbās, in the *Āthār* collections of Abū Yūsuf and Muḥammad al-Shaybānī. *Ḥadīth* scholars record only the renowned Sufyān b. ʿUyayna (d. 198/814) as a narrator from Razīn (al-Bukhārī, *al-Tārīkh al-kabīr*, 8 vols. [Hyderabad: Dāʾirat al-Maʿārif al-ʿUthmāniyya, n.d.], 3:325). Al-Azraqī (d. 250/864–5) mentions Ibn ʿUyayna as the narrator from Razīn in his chain of transmission for this report (al-Azraqī, *Akhbār Makka wa-mā jāʾa fīhā min al-āthār*, ed. Rushdī al-Ṣāliḥ M?l?j?s [Beirut: Dār al-Andalus, 2004], 2:151). It is likely, then, that Ibn ʿUyayna is the "*shaykh*" in the passage above ("*wa-ḥaddathanā shaykh ʿan Razīn*"). Ibn ʿUyayna is one of the *shaykh*s of al-Shaybānī in the latter's *Āthār*: Muḥammad al-Shaybānī, *Kitāb al-Āthār*, ed. Khālid al-ʿAwwād, 2 vols. (Damascus: Dār al-Nawādir, 2008), 1:191. He is not known to be a *shaykh* of Abū Yūsuf's and there are no narrations from him in Abū Yūsuf's *Āthār*: Abū Yūsuf, *Kitāb al-Āthār*, ed. Abū al-Wafā al-Afghānī (Hyderabad: Lajnat Iḥyāʾ al-Maʿārif al-Nuʿmāniyya, 1936). The current investigation suggests that al-Shaybānī is responsible for adding this report to the text.

35 Abū Yūsuf, *Ikhtilāf*, 145.

36 Al-Jaṣṣāṣ, *Mukhtaṣar*, 5:192.

interestingly, Abū Yūsuf's is not. Al-Ṭaḥāwī appears to have preferred Bishr's transmission because it conveys Abū Yūsuf's opinion. The *qāla Muḥammad* in al-Shaybānī's transmission is not a copyist's error for what should have been *qāla Abū Yūsuf*; this is because, as Bishr's transmission shows, Abū Yūsuf disagreed with the opinion chosen by al-Shaybānī.

The following example is also noteworthy.

Abū Yūsuf, *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*	Al-Ṭaḥāwī, *Ikhtilāf al-ʿulamāʾ*
قال ذكر ابن سماعة وبشر بن الوليد عن أبي يوسف أن البائع إذا ادّعى أنه باعه بشرط خيار الثلاث وادّعى بيعا باتا أن أبا حنيفة قال القول قول البائع لأنه لم يقر بخروجه من ملكه، وروى محمد عن أبي يوسف عن أبي حنيفة أنه أيهما ادّعى الخيار لم يصدق إلا ببينة ولم يذكر فيه خلافا وهو قول ابن أبي ليلى ومالك والثوري والشافعي يتحالفان وهذا كما اختلافهما في الثمن[38]	قال: وإذا اختلف البيعان فقال البائع: بعتك وأنا بالخيار، وقال المشتري: بعتني ولم يكن لك خيار، فإن أبا حنيفة رضي الله عنه كان يقول: القول قول البائع مع يمينه. وكان ابن أبي ليلى رحمه الله يقول: القول قول المشتري. وبه نأخذ[37]

As in the previous example, there are notable differences between the two texts (italicized). However, the overwhelming similarity between the two (underlined) shows that both passages convey material from the same source text. What is noteworthy here is that al-Ṭaḥāwī narrates this passage from two sources: Bishr b. al-Walīd and Muḥammad b. Samāʿa (d. 233/847–8), another student of Abū Yūsuf's. This suggests that Muḥammad b. Samāʿa also transmitted Abū Yūsuf's text and that al-Ṭaḥāwī had complete or partial access to his transmission.

Note further that Bishr's transmission has a number of cases not transmitted by al-Shaybānī. I have found three cases narrated by al-Ṭaḥāwī from Bishr

37 Abū Yūsuf, *Ikhtilāf*, 24.

38 Al-Jaṣṣāṣ, *Mukhtaṣar*, 3:57.

that follow the style of the *Ikhtilāf* – they mention a difference between Abū Ḥanīfa and Ibn Abī Laylā along with the preferred opinion of Abū Yūsuf – that cannot be found in al-Shaybānī's transmission.[39] One example is,

> Bishr b. al-Walīd narrates from Abū Yūsuf concerning an arm (*yad*) that is severed from the elbow: a full indemnity (*diya*) … [is due] according to the opinion (*qawl*) of Abū Ḥanīfa. Abū Yūsuf said half an indemnity [is due], and that is the opinion of Ibn Abī Laylā.[40]

The aforementioned similarities and differences[41] between the transmissions of Bishr and al-Shaybānī support the assertion that Bishr narrated the text directly from Abū Yūsuf and did not merely reproduce al-Shaybānī's book.

Our conclusion that Bishr did not take his version of the *Ikhtilāf* from al-Shaybānī is corroborated by the biographical literature, which reports that Bishr harbored ill feelings towards al-Shaybānī and his books. His ill feelings earned him the rebuke of his colleague al-Ḥasan b. Abī Mālik (d. 204/819–20), who reportedly censured him with the words, "Muḥammad has put together these books; why don't you put together a single legal case (*mas'ala wāḥida*)?"[42] We also know that the teaching circle in the main mosque of Baghdad was Bishr's, but when al-Shaybānī came to Baghdad, Bishr's students would go to al-Shaybānī, learn his legal cases (*masā'iluhu*), and then present them to Bishr and ask him about them. Bishr was so vexed by this that he eventually left the teaching circle.[43] Furthermore, we know that Bishr narrated a large amount of material directly from Abū Yūsuf, and that he was a main transmitter of

39 Ibid., 3:473; 5:119, 190. Ibid., 3:29, discusses how the *ḥudūd* lashings are applied to men and women. This passage seems another instance of Bishr's providing a legal case not transmitted by al-Shaybānī, though there is partial overlap with Abū Yūsuf, *Ikhtilāf*, 166. Al-Jaṣṣāṣ, *Mukhtaṣar*, 3:334, might be another example of Bishr narrating a legal case not found in al-Shaybānī's version.

40 Ibid., 5:119.

41 I have found only one instance of a contradiction between the two versions. It is in the case of a man who admits to owing money to another man from a sales contract but then claims that he never received the item of sale: Bishr states that Abū Yūsuf's preferred position coincides with Ibn Abī Laylā's (ibid., 4:219), while al-Shaybānī states that Abū Yūsuf's position coincides with Abū Ḥanīfa's (Abū Yūsuf, *Ikhtilāf*, 65).

42 Al-Ṣaymarī, *Akhbār Abī Ḥanīfa wa-aṣḥābihi*, 162. For a longer version of this incident, see Ibn Abī al-'Awwām, *Faḍā'il Abī Ḥanīfa wa-akhbāruhu wa-manāqibuhu*, ed. Laṭīf al-Raḥmān al-Bahrā'ijī al-Qāsimī (Makkah: al-Maktaba al-Imdādiyya, 2010), 357, and Ibn Abī al-Wafā', *al-Jawāhir al-muḍiyya*, 2:47.

43 Ibn Abī al-'Awwām, *Faḍā'il*, 357.

Abū Yūsuf's *Amālī* ("Dictations") and other works.[44] In fact, the material he transmitted from Abū Yūsuf was so extensive that the *ḥadīth* scholar Abū Yaʿlā al-Mawṣilī (d. 307/919) was criticized for failing to record *ḥadīth*s from the two *ḥadīth* masters, Sulaymān b. Ḥarb (d. 224/839) and Abū al-Walīd al-Ṭayālisī (d. 227/841–2), due to his preoccupation with hearing the books of Abū Yūsuf from Bishr.[45]

Al-Ṭaḥāwī presents material from Bishr in the form of individual *riwāya*s or narrations. It is possible that this implies that Bishr did not exercise much of an editorial hand over the *Ikhtilāf* and transmitted it along with a large amount of other material. Al-Ṭaḥāwī sometimes begins these transmissions with *rawā Bishr ʿan Abī Yūsuf* ("Bishr narrates from Abū Yūsuf"),[46] and he sometimes mentions a complete chain of transmission: "*ḥaddathanā Jaʿfar b. Aḥmad b. al-Walīd al-Aslamī qāla ḥaddathanā Bishr b. al-Walīd qāla samiʿtu Abā Yūsuf*…." He includes this chain of transmission in his *Sharḥ mushkil al-āthār* before a quotation from Bishr's transmission of the *Ikhtilāf*.[47] Al-Ṭaḥāwī also transmits, with a full chain of authorities, sections of Bishr's version of the *Ikhtilāf* in other works of his, one instance of which can be found in Ibn Abī al-ʿAwwām's (d. 418/1027) *Faḍā'il Abī Ḥanīfa*.[48]

Al-Shaybānī's version, by contrast, appears to be an organized presentation, neatly divided into chapters. The suggestion that Bishr transmitted from Abū Yūsuf a less organized version of the book that was treated as a large collection of narrations, and that al-Shaybānī exercised a greater editorial

44 Ibn Abī al-Wafā', *al-Jawāhir al-muḍiyya*, 1:166–67.

45 Al-Dhahabī, *Siyar aʿlām al-nubalā'*, 14:179. Al-Kawtharī (d. 1952) comments: "This is one of the proofs that the books of Abū Yūsuf were extremely plentiful, for otherwise hearing them would not have prevented Abū Yaʿlā from seeking a higher chain of transmission (*ʿuluww al-sanad*), especially considering the speed with which *ḥadīth* scholars convey *ḥadīth*s": al-Kawtharī, *Fiqh ahl al-ʿIrāq wa-ḥadīthuhum*, ed. ʿAbd al-Fattāḥ Abū Ghudda (Cairo: al-Maktaba al-Azhariyya li-l-Turāth, 1390/1970), 66.

46 Al-Jaṣṣāṣ, *Mukhtaṣar*, 5:192.

47 Al-Ṭaḥāwī, *Sharḥ mushkil al-āthār,* 16 vols. (Beirut: Mu'assasat al-Risāla, 1994), 8:176. In this instance, the quote from Bishr is also from the *Ikhtilāf*: see Abū Yūsuf, *Ikhtilāf,* 138–9. I have found full chains of transmission from al-Ṭaḥāwī to Bishr in three sources: *Sharḥ muskhil al-āthār*, *Sharḥ maʿānī al-āthār* and Ibn Abī al-ʿAwwām's *Faḍā'il Abī Ḥanīfa*. These chains of transmission connect al-Ṭaḥāwī to Bishr through three of al-Ṭaḥāwī's *shaykh*s: his *fiqh* mentor Ibn Abī ʿImrān (d. 280/893), his *fiqh* mentor Abū Khāzim (d. 292/905) and the aforementioned Jaʿfar b. Aḥmad b. al-Walīd al-Aslamī (d.?).

48 Ibn Abī al-ʿAwwām, *Faḍā'il*, 111, where al-Ṭaḥāwī is referred to as Aḥmad b. Muḥammad b. Salāma. The wording of the long quotation here is almost identical to Abū Yūsuf, *Ikhtilāf*, 224–5. I have not found this narration from Bishr in al-Ṭaḥāwī's *Ikhtilāf al-ʿulamā'*, *Sharḥ mushkil al-āthār,* or his *Sharḥ maʿānī al-āthār*. It is found in a highly condensed form in the *Ikhtilāf al-ʿulamā'* without mention of Bishr: al-Ṭaḥāwī, *Ikhtilāf al-ʿulamā'*, 302.

influence over the text's organization may explain the aforementioned observation of al-Sarakhsī that Abū Yūsuf was responsible for the book's composition (*taṣnīf*), while al-Shaybānī was responsible for the books compilation (*ta'līf*).[49] This observation may explain why Bishr narrates cases from the *Ikhtilāf* that are not found in al-Shaybānī's version, as the latter may have excluded these cases as part of his editorial organization. Indeed, it appears that the *Ikhtilāf* originally constituted a part of Abū Yūsuf's *Amālī*, of which Bishr was a known narrator, as it is not mentioned as a separate book attributed to Abū Yūsuf in bibliographical works.[50]

To summarize: al-Ṭaḥāwī had access to two, probably three, and perhaps four, transmissions of the *Ikhtilāf* from Abū Yūsuf. The two transmissions of which we are certain are (1) that of Bishr, which al-Ṭaḥāwī narrated by explicitly mentioning Bishr's name, and occasionally by providing a chain of transmission, and (2) that of al-Shāfiʿī from al-Shaybānī from Abū Yūsuf, which al-Ṭaḥāwī cites by name to convey the comments of al-Shāfiʿī on the treatise. As noted, al-Ṭaḥāwī's reliance on al-Shāfiʿī's transmission of the *Ikhtilāf* from al-Shaybānī to document Abū Ḥanīfa's opinions suggests a confirmation of this text from al-Ṭaḥāwī's Ḥanafī sources: he either received al-Shaybānī's text from a source other than al-Shāfiʿī, or contemporary Ḥanafīs understood that al-Shāfiʿī's transmission was sound. I consider this Ḥanafī confirmation of al-Shāfiʿī's text a third transmission of the *Ikhtilāf*. Finally, the fact that Muḥammad b. Samāʿa, another student of Abū Yūsuf, transmitted a case from this book suggests that at least a part of Ibn Samāʿa's transmission of the *Ikhtilāf* was in al-Ṭaḥāwī's possession as a fourth source for the *Ikhtilāf*. The multiplicity of narrations of this text with similar wording points to a shared written source. This shared source must have been the master text authored by Abū Yūsuf, the teacher of these students. We therefore have good reason to attribute the core text of the *Ikhtilāf* to Abū Yūsuf, himself.

2.3 *Comparing Abū al-Wafā's Text With That of the* Umm

The comparisons made above are based on Abū al-Wafā's edition of the *Ikhtilāf*. As the better attested version in extant manuscripts is the version in al-Shafiʿī's *Umm*, a comparison between the two is in order.

49 Al-Sarakhsī, *al-Mabsūṭ*, 30:129. The terms *taṣnīf* and *ta'līf* are typically used synonymously to signify authorship. It is likely that al-Sarakhsī, however, used these terms in two different senses, i.e. that Abū Yūsuf authored the text in an original form (composition), and that al-Shaybānī added a layer of editing and organization (compilation).

50 That the *Ikhtilāf* was a part of Abū Yūsuf's *Amālī* can be inferred from al-Jaṣṣāṣ, *Mukhtaṣar*, 4:219.

The main difference between the two versions is that the text in the *Umm* has been redacted to present it as a text narrated by al-Shāfiʿī: thus *qāla Abū Yūsuf* at the beginning of sections is replaced with *qāla al-Shāfiʿī*; the phrase *wa-bihi naʾkhudh* ("and we adopt this [opinion]"), in the first person, is replaced with *wa-bihi yaʾkhudh* ("and he adopts this [opinion]"), in the third person; and phrases that al-Shaybānī uses to narrate *ḥadīth*s from Abū Yūsuf, such as *akhbaranā* ("he informed us") or *ḥaddathanā* ("he told us"), are removed because al-Shāfiʿī never met Abū Yūsuf. Otherwise, the two texts are identical, word for word, until the end of the text. It seems extraordinary that two copies transmitted independently of a text from the formative period of Islamic scholarship should have such a high degree of similarity. It appears that one of these texts was based on the other.

The obvious conclusion would be that the *Umm*'s copy is the original on which Abū al-Wafā's text was based, as there are known manuscripts of the *Umm* and no known manuscripts of the *Ikhtilāf*, and, as noted, Abū al-Wafā gives no information about the lone manuscript of the *Ikhtilāf* that he discovered in India. However, a comparison of the texts suggests the opposite. In fact, the text in al-Shāfiʿī's *Umm* appears to have been copied from a text identical to Abū al-Wafā's by a careless scribe. Consider the following observations based on Rifʿat Fawzī ʿAbd al-Muṭallib's edition of the *Umm*:

– In numerous instances the scribe forgot to omit the phrase *ḥaddathanā* or *akhbaranā*, making it appear as if al-Shāfiʿī said that he heard a narrator whom he never met.[51]
– Although the phrase *bihi naʾkhudh* was changed to *bihi yaʾkhudh*, the rest of the references to the original speaker are left in the first person, resulting in an awkward text. For example, one case starts with the words *qāla al-Shāfiʿī* and then states, after mentioning Abū Yūsuf's opinion, "And what I remember from Abū Yūsuf is that he later said (*wa hifẓī ʿan Abī Yūsuf annahu qāla baʿd*) …." This statement could not have been made by al-Shāfiʿī, who never met Abū Yūsuf.[52]

51 For example, al-Shāfiʿī, *al-Umm*, 8:252, says "*akhbaranā al-Ḥasan b. ʿAmāra* [d. 153/770]," where *akhbaranā* should have been removed (this mistake occurs only in some of Rifʿat Fawzī's manuscripts, but these presumably are the more accurate transmissions as it is unlikely that multiple copyists added the same phrase to the text); ibid., 8:360, says "*ḥaddathanā Abū Yūsuf*," which is not possible as al-Shāfiʿī never met Abū Yūsuf, and this expression is in all manuscripts; ibid., 8:335, says, "*ḥaddathanā Abū Ḥanīfa*," in all manuscripts; ibid., 8:348, says, "*ḥaddathanā Abū Yūsuf*," in all manuscripts.

52 Ibid., 8:282.

– The three explicit references to Muḥammad al-Shaybānī as the narrator of the text are removed in al-Shāfiʿī's version. In one instance, instead of *qāla Muḥammad*, the text has, "Somebody added to the text and said (*fa-adkhala ʿalayhi baʿḍuhum fa-qāla*)…."[53] It is possible to imagine a scribe changing *qāla Muḥammad* into the latter phrase but hard to imagine the opposite.

One explanation for this set of anomalies may be inferred from a passage in Taqī al-Dīn al-Subkī's (d. 756/1355) *Fatāwā*, which includes a lengthy quotation from the chapter on sharecropping (*al-muzāraʿa*) in the *Umm*'s *K. Ikhtilāf al-ʿirāqiyyayn*. Here, the phrase *wa-bihi naʾkhudh* is left in the first person plural. This is the only quotation I have seen from the *Umm* that maintains the original first-person reference.[54] This suggests that some copies of the *Umm* contained Abū Yūsuf's book unchanged. It should be noted that Calder attaches great importance to al-Sirāj al-Bulqīnī's (d. 805/1403) organization (*tartīb*) of al-Shāfiʿī's *Umm*, suggesting that the *Umm* assumed its final form only in al-Bulqīnī's work in the eighth Islamic century (although he presents little evidence to support this statement).[55] What is interesting is that the above-mentioned al-Subkī was al-Bulqīnī's teacher. If the variant narrations of the *Umm* were settled in this generation, then al-Subkī may have had access to versions we have yet to find.

El Shamsy mentions that al-Shāfʿī's students would copy their notes directly from their teacher's books, sometimes before he dictated them, and then listen and correct as needed in the lesson.[56] It is conceivable that when students copied this particular text, some made the aforementioned changes to represent al-Shāfiʿī's teaching of the text, while others copied the text exactly as it was without these changes. If so, then al-Subkī's copy and Abū al-Wafā's manuscript were both based on an unaltered version of the *Ikhtilāf* found in some editions of the *Umm.* I concede that this is speculation, but it appears more likely than the possibility that Abū al-Wafā's manuscript is an independent transmission that coincidentally is identical to the *Umm* in every particular apart from the few changes mentioned above.

53 Ibid., 8:221; cf. Abū Yūsuf, *Ikhtilāf,* 13.

54 Al-Subkī, *Fatāwa al-Subkī*, 2 vols. (Cairo: Maktabat al-Qudsī, 1937), 1:417. I acknowledge that this change may be a copyist's error, i.e., *yaʾkhudh* was changed to *naʾkhudh*, but this occurs twice on the page.

55 Calder, *Studies*, 83.

56 Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013), 154–155.

3 The Transmission of Legal Doctrine and the Transition from the Formative to the Classical Ḥanafī Periods

Both Schoeler and Calder provide helpful descriptions of the role of writing in the transfer of knowledge in early Islam, suggesting that written notes served as personal aids to assist the teacher in delivering material orally in teaching circles. Calder notes that students would record the teacher's oral delivery, sometimes relying on the teacher's notes, to which they might add their additions. Then they would pass on their knowledge, and this process would continue. As notes travelled from teaching circle to teaching circle, they would accrue additions, and it would not always be clear who was the author of every addition. Calder refers to this phenomenon as "organic growth", and his re-dating of early legal texts is premised on markers of organic growth that he found in the legal texts he studied, primarily by identifying inconsistencies and breaks between segments.[57]

Schoeler offers a more detailed description of the range of written activity in the formative period. He employs the Greek terms *syngramma* – written compositions of systematic works intended for a reading public – and *hypomnēma* – written notes that serve as personal aids for oral delivery – to describe the writing culture of the formative period.[58] The latter term applies to the majority of early written material: the culture of learning in the formative period gave the greatest weight to aurally received knowledge. In this learning culture, if a person had not heard his notes, then his notes were not reliable. Importantly, Schoeler emphasizes that *hypomnēma* refers not only to note taking but also to informal personal notebooks (see above) and formally authored texts that were written so that they might be 'published' by oral delivery in teaching circles. He refers to this latter form of text as "literature of the school, for the

57 Calder presents his overview of early writing practices in the seventh chapter of his book: Calder, *Studies*, 161–197.

58 Schoeler, *The Genesis*, 8, 21. Aziz al-Azmeh has criticized Schoeler's use of these two terms: Aziz al-Azmeh, *The Arabs and Islam in Late Antiquity: A Critique of Approaches to Arabic Sources* (Berlin: Gerlach Press, 2014), 87–100. Azmeh argues that Schoeler imposed an artificial oral/written binary by presenting *hypomnēma* as personal notes and *syngramma* as published books. In fact, according to Azmeh, all written documents were aids to memory for the purposes of public delivery. He also finds these Greek terms unhelpful because *hypomnēma* refers to a wide range of written material. Be that as it may, I establish here that there was a wide range of formal written texts in the early period. I will note below that al-Ṭaḥāwī differentiated between his sources, presenting some as written notes from oral sessions, others as fixed texts of confirmed authorship, and yet others as fixed texts of unconfirmed authorship – evidence that supports Schoeler's basic distinction between the two terms.

school".[59] This category is absent from Calder's analysis, and his analysis of the written material of the formative period is thus underdeveloped.

Schoeler's "literature of the school, for the school" represents the ideal mode of knowledge transmission in Islam. Even with the rise of books as *syngramma*, a person's learning was usually verified only if he had *heard* books in a teaching circle.[60] Thus the "literature of the school, for the school" was not a minor development on the way to producing "canonized books" – Calder's term for fixed texts – rather, it represented the model *par excellence* of Muslim learning culture, arising out of the unique modes of oral transmission of poetry in pre-Islamic Arabia and of the Qur'an after the rise of Islam.[61] It is Schoeler's "literature of the school, for the school" that best describes the *Ikhtilāf*, although, as I will show, aspects of Calder's theory still help in understanding the passage of this text to later works.

We can state with a high degree of confidence that Abū Yūsuf wrote a text containing legal cases and arguments to represent the positions of his two teachers and to document his own preferences. He taught this text to his students, who passed it on. The complete text that we have today, represented only in Abū al-Wafā's edition and in the *K. Ikhtilāf al-ʿirāqiyyayn* published with al-Shāfiʿī's *Umm*, appears to be almost entirely Abū Yūsuf's work, but we know that it also includes additions, at least from Muḥammad al-Shaybānī, whose name appears sparingly in the text.[62] It is not clear whether the book was divided into thirty-five chapters by Abū Yūsuf or by al-Shaybānī. Nor is it clear if all the arguments and reports are from Abū Yūsuf, or if some are additions from al-Shaybānī (we found, above, one instance of a *ḥadīth* not contained in Bishr's narration that is found in al-Shaybānī's). The text also contains references to revised statements of Abū Yūsuf's positions: the original wording is maintained – with *wa-bihi naʾkhudh* marking Abū Yūsuf's preferred position – but then followed by indications of a later change in Abū Yūsuf's position – usually with the phrase *thumma rajaʿa* ("then he retracted").[63] These revisions of Abū Yūsuf's positions were clearly later additions to the text. Thus, while we may conclude with a high degree of certainty that the book is accurately attributed to Abū Yūsuf, there are additions that would take some effort to identify.

59 Schoeler, *The Genesis*, 76.

60 Ibid., esp. 69–81.

61 Ibid., 18–24, 30–37.

62 Muḥammad al-Shaybānī is mentioned four times in Abū al-Wafā's edition (Abū Yūsuf, *Ikhtilāf*, 9, 13, 58, 145).

63 Ibid., 34, 68, 87, 147, 151, 152, 158, 159, 170, 200.

Consider the two short sections of the *Ikhtilāf* published with Mehmet Boynukalın's edition of al-Shaybānī's *Aṣl*. These correspond perfectly to the relevant chapters of the copy we have, but they state al-Shaybānī's preferred position alongside Abū Yūsuf's. We find another instance, in these two short sections, of an editorial hand completing the evidence presented in the text. Consider the contrasted passages below:

Abū Yūsuf, *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā*	Muḥammad al-Shaybānī, *al-Aṣl*
قال أبو حنيفة: إذا أعار الرجل الرجل أرضًا يبني فيها ولم يوقت له وقتًا ثم بدا له أن يخرجه منها بعد ما بنى فإن أبا حنيفة كان يقول: إن شاء أخرجه، ويقال للذي بنى: انقض بناءك. وبه يأخذ أبو يوسف ومحمد. وكان ابن أبي ليلى يقول: الذي أعاره ضامن لقيمة البناء للمعير	قال أبو يوسف: وإذا أعار الرجل الرجل أرضًا يبني فيها ولم يوقت وقتًا ثم بدا له أن يخرجه منها بعد ما بنى، فإن أبا حنيفة رضي الله عنه كان يقول: نخرجه. ويقال للذي بنى: انقض بناءك. وبهذا نأخذ. وكان ابن أبي ليلى يقول: الذي أعاره ضامن لقيمة البنيان والبناء للمعير
المسعودي عن القاسم عن شريح أنه قال: أيما رجل أذن لرجل أن يبني في ملكه ثم أخرجه ضمن له البناء	وكذلك بلغنا عن شريح
فإن وقت له وقتًا فأخرجه قبل أن يبلغ ذلك الوقت فهو ضامن لقيمة البناء، وهو له في قولهم جميعًا.[65]	فإن وقت له وقتًا فأخرجه قبل أن يبلغ ذلك الوقت فهو ضامن لقيمة البناء في قولهما جميعًا[64]

64 Al-Shaybānī, *al-Aṣl*, 8:463–4.

65 Abū Yūsuf, *Ikhtilāf*, 104. This discussion is also transmitted by Bishr: see al-Jaṣṣāṣ, *Mukhtaṣar*, 4:187–8.

The italicized words indicate points of difference between the two passages. These differences are minor in an otherwise stable text.[66] But there is one noteworthy difference, underlined in both texts. The underlined sentence is a report adduced by Abū Yūsuf to support Ibn Abī Laylā's position. In Abū al-Wafā's edition, the text is, "And likewise it has reached us from Shurayḥ (*wa-kadhālika balaghanā ʿan Shurayḥ*)," a reference to Shurayḥ b. al-Ḥārith al-Kindī (d. 87/705–6?), a leading Kufan judge. In the version of the *Aṣl*, this statement is replaced with a chain of transmission: al-Masʿūdī [ʿAbd al-Raḥmān b. ʿAbd Allāh b. ʿUtba b. ʿAbd Allāh b. Masʿūd (d. 160/776–7)] > al-Qāsim [b. ʿAbd al-Rahman b. ʿAbd Allāh b. Masʿūd (d. 116/734–5)] > Shurayḥ, followed by the report in question.[67] This chain of transmission does not specify who 'heard' it from al-Masʿūdī. Adding chains of transmission and completing reports appears to have been a recurring practice of al-Shaybānī. The *Ikhtilāf* that we have before us contains several sections that end in reports with full chains of transmission. These section-ending reports appear to be segment breaks, as they do not follow the otherwise unified style of the book, where reports are presented without chains of transmission and are embedded within the argument for or against a legal position. Calder identified such breaks as markers of organic growth. These section-ending reports appear to have been added at a later stage, perhaps by al-Shaybānī.[68]

That the text was given a written form by Abū Yūsuf did not prevent al-Shaybānī from adding reports and his own positions. He likely had in his possession his personal notes of Abū Yūsuf's *Ikhtilāf* as well as his more refined version of the same text. Al-Shāfiʿī likely copied a version that more closely resembled Abū Yūsuf's original than the version found in the *Aṣl*. Would we really know the book at all were it not for al-Shāfiʿī's transmission of it?

66 The word *bunyān* ("building") is missing from the *Aṣl*, but this must be a copyist's mistake, as the current wording is nonsensical – "The one who lent it must pay the price of the building to the one who lent it" – as if the lender must pay himself. Al-Shaybānī also replaces *qāla Abū Yūsuf* with *qāla Abū Ḥanīfa*, but this is only a change in how he presents the doctrine, not a change to the text itself.

67 This report can be found, with the same chain of transmission but different wording, in Ibn Abī Shayba, *al-Muṣannaf*, ed. Muḥammad ʿAwwāma, 26 vols. (Jeddah and Damascus: Dār al-Qibla and Mu'assasat 'Ulūm al-Qur'ān, 2006), 11:460.

68 For the reports in question, see Abū Yūsuf, *Ikhtilāf*, 30–3, 38–40, 52, 89–90, 139–40, 144, 163, 178, 186. In his footnotes, Abū al-Wafā explains that most of these reports can be found in al-Shaybānī's *Āthār*. Of course, we cannot, at this stage, exclude the possibility that these reports were added by Abū Yūsuf. The identification of a seeming segment-break is not a decisive marker of a later addition.

My guess is that we, moderns, along with most jurists from Islamic law's post-formative era, would not have had access to a text closely resembling Abū Yūsuf's original were it not for al-Shāfiʿī's seemingly well-preserved copy. What we would had are the incomplete sections that were incorporated into the *Aṣl* – with reports and perhaps legal arguments that were added later – and the select summary of these that were incorporated into al-Ḥākim al-Shahīd's aforementioned *Mukhtaṣar*. Does this mean that we would have lost the book? The answer depends on what we mean by 'book'.

We likely would have lost access to a copy that closely resembled the text as written by Abū Yūsuf. But we would not have lost the content of the book that was incorporated into later texts. As noted, al-Ṭaḥāwī considered this text a primary source for accessing Abū Ḥanīfa's doctrine, but he never mentioned the text by name when citing Abū Ḥanīfa's doctrine. Al-Ṭaḥāwī saw his task as to sift through the texts and transmissions that had reached him and to pass on to his reader the transmissions he preferred. This phenomenon, the seamless assimilation of earlier recorded doctrine with later doctrine, is consistent with Calder's depiction of early writing culture, although his revisionist re-dating is unhelpful in describing the history of such texts.

Abū Yūsuf's text, it appears, was part of material that he dictated to his students, who copied the text.[69] They then transmitted the text to their students. As the text was transmitted to subsequent teaching circles, it may have accrued additions, and it would have been difficult to distinguish these additions from the original text. However, seasoned authors like al-Ṭaḥāwī were close to these events and had access to numerous transmissions, narrations and texts. If they compared these transmissions, they likely would have known what material had been added to these texts by earlier transmitters. Thus, the additions did not necessarily conceal what had been passed down. These markers of 'organic growth' were the result of a scholarly tradition in which greatest importance was given to oral instruction.

Classical-era authors highly valued figures from al-Ṭaḥāwī's generation because of their status as encyclopaedic transmitters who had access to and sifted through sources to which later generations had no direct access. It is noteworthy that, in the generations following the school's founders, al-Ṭaḥāwī was the author of the first notable digest of rules (*mukhtaṣar*) selected for instruction and commentary in the Ḥanafī school, a form of authorship in

69 Al-Ṭaḥāwī implies that this text was a part of his *Imlāʾ*: al-Jaṣṣāṣ, *Mukhtaṣar*, 4:219, where he quotes Bishr and then refers to other narrators of the same passage from the *Imlāʾ*. The quotation in question is from Abū Yūsuf's book: Abū Yūsuf, *Ikhtilāf*, 65.

which he was followed by al-Karkhī and al-Qudūrī.[70] A *mukhtaṣar* marks the consolidation of a school's oral and textual heritage, and the rise of commentaries on *mukhtaṣar*s is a true mark of entering a new stage in a school's development, a stage typically referred to as the classical era.[71] The movement from the *Mukhtaṣar* of al-Ṭaḥāwī to that of al-Qudūrī marks the transition from the formative period to the classical period of Ḥanafī scholarship.

3.1 *Early* Mukhtaṣars *as Summaries of the Formative Period's Oral Tradition*

The gradual movement from the formative period to the classical period is marked by the rise of standardized teaching texts, that is, works that were written to control the transmission of knowledge in teaching circles and ensure a unified representation of school doctrine. The *mukhtaṣar* genre marks this transition from the formative to the classical, a transition which, for the Ḥanafī school, can be traced through the *mukhtaṣar*s of al-Ṭaḥāwī, al-Karkhī and al-Qudūrī.[72]

This transition is reflected in the perception of the authority of these three *mukhtaṣar* authors by early classical commentators. One of the greatest commentaries of the early classical Ḥanafī school is the *Mabsūṭ* of al-Sarakhsī, who died fifty-five years after al-Qudūrī. His references to the three *mukhtaṣar* authors reflect an early reception of these authors by the classical school. Most striking is the special consideration he gives to the doctrine transmitted in the *Mukhtaṣar* of al-Ṭaḥāwī, whom he presents as an early narrator of Ḥanafī doctrine, not merely a recipient of it.[73] Al-Sarakhsī cites positions

70 I exclude from this list the aforementioned *Mukhtaṣar* of al-Ḥākim al-Shahīd al-Marwazī, which appears to be an abridgement of al-Shaybānī's works, not the author's own selection of rules from multiple sources. There is only one earlier Ḥanafī *mukhtaṣar* mentioned in bibliographic and biographical sources, the *Mukhtaṣar* of Abū ʿIṣma ʿIṣām b. Yūsuf al-Balkhī (d. 210/825–6) (Ibn Abī al-Wafāʾ, *al-Jawāhir al-muḍiyya*, 1:347), but I have not found any mention of commentaries on the work or any indication that it was used in instruction.

71 Christopher Melchert argues that the rise of commentary literature is a key feature of the classical school: Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* (Leiden: Brill, 1997), 60.

72 Melchert presents four candidates for inaugurating the classical phase of the Ḥanafī school, including al-Ṭaḥāwī and al-Karkhī, and he concludes that al-Karkhī is the most likely candidate: Melchert, *The Formation*, 116–136. Yaʾakov Meron credits al-Qudūrī as "open[ing]" the classical period of Ḥanafi law: Yaʾakov Meron, "The Development of Legal Thought in Hanafi Texts," *Studia Islamica*, 30 (1969): 73–118, at 78.

73 Sohail Hanif, "A Theory of Early Classical Ḥanafism: Authority, Rationality and Tradition in the *Hidāyah* of Burhān al-Dīn ʿAlī ibn Abī Bakr al-Marghīnānī (d. 593/1197)" (DPhil diss., University of Oxford, 2017), 121–124.

found in al-Ṭaḥāwī's *Mukhtaṣar* that do not have a clear basis in the school's textual tradition as al-Ṭaḥāwī's own "*riwāya*" (narration) from Abū Ḥanīfa and his students. Al-Sarakhsī gives these "*riwāya*s" of al-Ṭaḥāwī the same status as narrations from prominent early transmitters of Abū Ḥanīfa's doctrine, despite the fact that more than a century separated al-Ṭaḥāwī from Abū Ḥanīfa's circle.[74] This representation of al-Ṭaḥāwī arguably reflects the classical tradition's acknowledgement that he witnessed the age of oral transmission and had access to the vast amount of written material conveyed by this oral tradition; his positions were informed by sources to which later scholars had no access.

Our investigation corroborates this representation of al-Ṭaḥāwī's scholarship as one of *riwāya*, a term primarily used in oral transmission, with the focus in early Islam being on aural transmission. What was important was not a contrast between the oral and the written, but rather that knowledge was 'heard' by sitting in scholarly circles so it could be reliably conveyed.[75] We know that in these early circles, a great deal of writing took place. A glance at the sources of Ḥanafī doctrine in al-Ṭaḥāwī's *Ikhtilāf al-ʿulamā'* reveals the vast amount of written material that was circulating in this 'age of *riwāya*'. He had several versions of individual treatises, including multiple versions of Abū Yūsuf's text. He also had copies of some of these texts that specified the dates on which particular texts were heard. The dates were significant because authors might change their texts over time as they delivered them in teaching sessions. An example is Bishr's transmission of Abū Yūsuf's *Imlā'*. In the section on endowments in *Ikhtilāf al-ʿulamā'*, al-Ṭaḥāwī compares dated sessions in which Bishr recorded Abū Yūsuf's teachings of his *Imlā'*: in the month of Rajab, in the year 179/795, Abū Yūsuf taught them that endowments are valid only if permanent, but, in the year 180/796–7, he stated that it is permissible to establish a temporary endowment for one's children on the condition that ownership of the property returns to the father if his children predecease him.[76] Considering

74 The following are references to al-Sarakhsī's *Mabsūṭ*, where he presents al-Ṭaḥāwī as an equal to leading early transmitters of Ḥanafī doctrine, with corresponding references to al-Ṭaḥāwī's *Mukhtaṣar*: al-Sarakhsī, *al-Mabsūṭ*, 1:40 (*riwāya* of *al-Aṣl* v. *riwāya* of al-Ṭaḥāwī), cf. al-Ṭaḥāwī, *Mukhtaṣar al-Ṭaḥāwī*, ed. Abū al-Wafā al-Afghānī (Hyderabad: Lajnat Iḥyā' al-Maʿārif al-Nuʿmāniyya, 1950), 33; al-Sarakhsī, *al-Mabsūṭ*, 1:134 (al-Ḥasan b. Ziyād (d. 204/819–20) [Abū Ḥanīfa's student] v. al-Ṭaḥāwī), cf. al-Ṭaḥāwī, *Mukhtaṣar*, 34; al-Sarakhsī, *al-Mabsūṭ*, 2:35 (al-Muʿallā b. Manṣūr (d. 211/826–7) [al-Shaybānī's student] v. al-Ṭaḥāwī) cf. al-Ṭaḥāwī, *Mukhtaṣar*, 35.

75 Nimrod Hurvitz argues that early teaching circles served as the basis for the later schools of law: Nimrod Hurvitz, "Schools of Law and Historical Context: Re-examining the Formation of the Ḥanbalī *Madhhab*," *Islamic Law and Society*, 7:1 (2000): 37–64.

76 Al-Jaṣṣāṣ, *Mukhtaṣar*, 4:160.

that Bishr was only one of Abū Ḥanīfa's many students, we can imagine the large number of written notes, copied texts, and recorded auditions (*samāʿāt*) conveying Abū Ḥanīfa's doctrine that must have been in circulation within the scholarly community.

Based on my analysis of al-Ṭaḥāwī's interactions with this written material, let me propose a three-fold division of how he viewed his written sources. The first is written material he viewed primarily as repositories of oral transmission, not necessarily as fixed, published books. This is how he apparently viewed his collection of Bishr's books. As mentioned, he quotes passages from Bishr's transmission of the *Ikhtilāf* using "*rawā Bishr*",[77] "*dhakara Bishr*"[78] or by mentioning a complete chain of transmission – "*ḥaddathanā Jaʿfar b. Aḥmad b. al-Walīd al-Aslamī qāla ḥaddathanā Bishr b. al-Walīd qāla samiʿtu Abā Yūsuf*"[79] – to present passages from written material he had before him. The second are books that he treated as widely published fixed texts that he could cite by naming them, approximating to Schoeler's *syngramma*. This is how he cites the *Jāmiʿ al-ṣaghīr*, the *Ziyādāt* and the *Aṣl* of al-Shaybānī[80] and the *Umm*'s *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā* when he quotes al-Shāfiʿī's positions.[81] The third are books about which he had doubts regarding their attributions. Unlike the first two categories, he had not heard or received them through oral instruction, or, at the least, he doubted the oral transmission from the purported authors. This is the case of a book attributed to Zufar b. Hudhayl (d. 158/774–5), a leading student of Abū Ḥanīfa. When quoting a particular position from Zufar, he says, "It has been narrated from Zufar in a book attributed to him (*fī kitāb muḍāf ilayhi*) that is called his *Nawādir* (*mulaqqab bi-nawādirihi*)." His formulation manifests uncertainty about the attribution of the book to Zufar and about its name, though he has sufficient trust in the book's reception to quote it. Another book in this third category is the *Ikhtilāf Zufar wa-Abī Yūsuf*, a text whose author is not mentioned in bibliographic sources.[82] Al-Ṭaḥāwī cites this work twice, and both times he specifies the name of the narrator whose version he is quoting. Presumably, the book had not acquired a widely published, reliable form.[83]

77 See, for example, ibid., 2:438, 130, 279; 3:334, 473.

78 See, for example, ibid., 3:71; 4:188, 219.

79 Al-Ṭaḥāwī, *Sharḥ mushkil al-āthār,* 8:176.

80 Al-Jaṣṣāṣ, *Mukhtaṣar*, 1:262, 375, 395; 2:502; 3:11, 203, 220, 511; 4:321; 5:38, 55, 76, 82.

81 Ibid., 2:332, 5:75.

82 Kātib Çelebī, *Kashf al-ẓunūn ʿan asāmī al-kutub wa-l-funūn*, 2 vols. (Baghdad: Maktabat al-Muthannā, 1941), 1:1, where the book is called *Ikhtilāf Zufar wa-Yaʿqūb*.

83 See al-Jaṣṣāṣ, *Mukhtaṣar*, 1:263 ("Muḥammad b. Khālid narrates from his Ḥarrānī associates in *Ikhtilāf Zufar wa-Abī Yūsuf* …"), 4:124 ("'Amr b. Khālid mentions in the *Ikhtilāf Zufar wa-Abī Yūsuf*, which he narrates…").

Al-Sarakhsī attributes a further activity to al-Ṭaḥāwī, namely, that of *ikhtiyār*, or careful selection.[84] Al-Ṭaḥāwī was an authority who sifted through transmissions of school doctrine to select the most appropriate transmission. This activity can be discerned in al-Ṭaḥāwī's interactions with the *Ikhtilāf*. We have seen him shift from al-Shaybānī's version of the *Ikhtilāf* to Bishr's for details he prefers in the latter's version. In other instances, he corrects the doctrine attributed to Abū Ḥanīfa and Abū Yūsuf in the *Ikhtilāf* by referring to other sources, either by quoting a full chain of transmission from an alternative source,[85] or by stating that it is contrary to the well-known position.[86]

Al-Sarakhsī also uses the term *ikhtiyār* to describe the work of the second author of a Ḥanafī *mukhtaṣar*, Abū al-Ḥasan al-Karkhī, whose careful selections he presents as comparable to al-Ṭaḥāwī's.[87] However, al-Sarakhsī never identifies al-Karkhī as a source of independent *riwāya* from Abū Ḥanīfa's circle. This difference between the activities of al-Ṭaḥāwī and al-Karkhī, as represented by a prominent early classical commentator, reflects the gradual movement out of the formative period. Classical authors regarded al-Ṭaḥāwī as a fully engaged member of the school's formative period, the 'age of *riwāya*'. He had access to vast repositories of oral transmission from the school's founders and thus was considered an independent source of oral transmission for the classical school. Al-Karkhī, who lived a generation or two later, was a recipient of the oral tradition rather than a source of it. In this early stage of the formation of the classical Ḥanafī school, he, like other scholars of his generation, sifted through a large quantity of transmitted doctrine. As a leading scholar of his age, his *ikhtiyār*s were noteworthy.

Al-Sarakhsī makes no mention of al-Qudūrī in his commentary. This suggests that al-Qudūrī's text represented authoritative doctrine at the beginning of the classical period, not his personal *ikhtiyār*s. His *Mukhtasar* was the first of the classical period, and it seals the movement out of the formative period marked by al-Ṭaḥāwī.[88] Unlike al-Ṭaḥāwī's text, his does not focus exclusively on areas of disagreement between scholars,[89] but presents a positive set of

84 Al-Sarakhsī, *al-Mabsūṭ*, 2:29, 57; 6:176; 9:197; 23:176; 26:120.

85 Al-Jaṣṣāṣ, *Mukhtaṣar*, 3:57; cf. Abū Yūsuf, *Ikhtilāf*, 24.

86 Al-Jaṣṣāṣ, *Mukhtaṣar*, 4:202–3; cf. Abū Yūsuf, *Ikhtilāf*, 19.

87 See, for example, al-Sarakhsī, *al-Mabsūṭ*, 2:57; 3:152; 9:197; 10:9; 13:20; 26:74.

88 Hanif, "A Theory," Chapter Two. This periodization maps nicely onto Schoeler's argument that Islamic scholarship was uniquely an oral knowledge tradition until the year 1000 CE, after which we witness the rise of a more formal culture of writing (Schoeler, *The Genesis*, 8); al-Qudūrī dies 1037 CE.

89 Hanif, "A Theory," 116–21.

legal statements for the purpose of studying Ḥanafī doctrine. Thus, it became the basis for later Ḥanafī *mukhtaṣar*s.[90]

I have studied elsewhere the sources used by al-Qudūrī in the 104 legal cases of the *K. al-Ṭahāra* – the first 'book' of his *Mukhtaṣar* – relying primarily on al-Qudūrī's identification of these sources in his commentary on the *Mukhtaṣar* of al-Karkhī. Al-Qudūrī attributes his legal cases to a large number of sources from the formative period of the Ḥanafī school, giving seemingly equal weight of authority to each of these sources.[91] In addition to al-Shaybānī's aforementioned books – the *Aṣl*, the *Jāmiʿ al-ṣaghīr* and the *Ziyādāt*,

> [t]he rulings in the *K. al-Ṭahārah* of al-Qudūrī's *Mukhtaṣar* cannot be arrived at without narrations of al-Ḥasan ibn Ziyād al-Luʾluʾī from Abū Ḥanīfah; narrations from Abū Yūsuf by narrators including Muḥammad ibn Samāʿah (d. 233/847–8), Muʿallā ibn Manṣūr, Bishr ibn al-Walīd (d. 238/853) and ʿAlī ibn al-Jaʿd (d. 230/845); narrations from Muḥammad al-Shaybānī by narrators including Ibrāhīm ibn Rustum (d. 211/826); and books from Abū Ḥanīfah's companions including *al-Imlāʾ* and *al-Jawāmiʿ* of Abū Yūsuf, and *Kitāb al-Āthār* of al-Shaybānī.[92]

How did al-Qudūrī sift through such a large array of transmissions from Abū Ḥanīfa's circle? Considering that he is not credited with producing a unique synthesis of Ḥanafī doctrine, but only with stating this doctrine in the form of a digest, we must assume that he was summarizing the conclusions of an oral teaching tradition. The masters of Ḥanafī law passed on a 'memory' of this vast set of transmissions and taught their preferred positions, or *ikhtiyār*s. Al-Qudūrī's choices in the *Mukhtaṣar* carry great weight in the later school tradition precisely because he presents the conclusions of teaching circles at the close of the school's formative period.

Classical-era Ḥanafī jurists took these digests as the starting point to negotiate the Ḥanafī tradition. They no longer had access to the many written works of the formative period, but were aware of individual statements that had been transmitted from these works – for example, al-Ṭaḥāwī's narrations from Bishr's books. However, some formative period Ḥanafī texts remained objects of study in the classical era, namely, texts attributed to Muḥammad al-Shaybānī. I have argued that classical-era *mukhtaṣar* authors after al-Qudūrī

90 Ibid., 133–39; Norman Calder, *Islamic Jurisprudence in the Classical Era* (Cambridge: Cambridge University Press, 2010), 23–35.

91 Hanif, "A Theory", 127–31.

92 Ibid., 127.

attempted to combine the statements of al-Qudūrī's digest with the doctrine in al-Shaybānī's formative-era texts, and, in so doing, brought together the oral teachings of the late-formative period (al-Qudūrī's text) with the written material that had reached them from the formative period (al-Shaybānī's books).[93]

3.2 *The 'Living' Transmission of the Ikhtilāf*

The *Ikhtilāf* of Abū Yūsuf was a significant production from Islamic law's formative period. It experienced signs of what Calder would call 'growth', with the addition of reports and perhaps arguments, and with the introduction, it appears, of an organizing logic. Selected doctrine from the text was adopted and reproduced in later texts – e.g. al-Ṭaḥāwī's *Ikhtilāf al-ʿulamāʾ* and al-Ḥākim al-Shahīd's *Mukhtaṣar* – although the book was subsequently forgotten and lost within the Ḥanafī tradition. It is never mentioned as an object of study in the classical era. It was, to use Calder's term, a 'school text' – a text that experiences growth and assimilation.[94] However, the fact that it was a 'school text' is not a basis for denying original authorship.

As Schoeler has shown, the 'literature of the school, for the school' are real texts written by scholars to serve as a basis for aural transmission. Typically, the content of these texts survived only by their assimilation into later books, as was the case with Abū Yūsuf's *Ikhtilāf*, which influenced the Ḥanafī school tradition but was lost, in the form of a book, as it merged into the wider pool of school doctrine and teachings.

The preservation of the *Ikhtilāf* as a complete text appears almost an accident. A non-school member, someone not committed to the Ḥanafī school tradition conveyed this text for seemingly polemical purposes. The surviving text of Abū Yūsuf's work in al-Shāfiʿī's *Umm* provides a rare external snapshot, capturing a formative-period 'literature of the school, for the school' by an opposing school that had no interest in assimilating its content into its school literature. The text was thus preserved outside of its school tradition.

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93 Ibid., 133–39, 143–50. Late Ḥanafī sources suggest that Ḥanafī doctrine was based primarily on a few widely transmitted books authored by al-Shaybānī. Ḥanafīs use the term *ẓāhir al-riwāya* ("manifest in transmission") to refer to these books. However, these books were not more important than other sources for al-Ṭaḥāwī and al-Qudūrī, as their tradition was not based exclusively on written texts. The best study on the rise and development of the term *ẓāhir al-riwāya* in Ḥanafī law is Salman Younas, "Authority in the Classical Ḥanafī School: The Emergence & Evolution of *Ẓāhir al-Riwāya*," published in this volume of *Islamic Law and Society*. See also Talal Al-Azem, *Rule Formulation and Binding Precedent in the Madhhab-Law Tradition: Ibn Quṭlūbughā's Commentary on* The Compendium *of Qudūrī* (Leiden: Brill, 2017), 151–5.

94 Calder, *Studies*, 193.

The 'canonization' of a text – i.e. a text's reaching a fixed literary form – does not mean that it was more successful than uncanonized texts. To the contrary, an assimilated text was given no less importance in a school tradition. As we have seen, during the transition from the Ḥanafī formative period to the classical period, Ḥanafī authors did not give greater authority to the fixed texts of al-Shaybānī than to the assimilated texts of his colleagues. Assimilation was common for successful early texts, and Abū Yūsuf's *Ikhtilāf* was certainly a successful, influential text.

Assimilation is the process whereby a text feeds a 'living' intellectual tradition. Content from Abū Yūsuf's treatise lived on in circles committed to understanding its doctrine. As such, the text lives on in the teachings of those circles, down to our own time, wherever Ḥanafī doctrine remains a subject of legal conversations. The written word was a vessel for engaging in these conversations. Al-Shāfiʿī in his *Umm* has given us a rare glimpse of this vessel at an early stage of its transmission. As historians of Islam, we should be grateful for this cross-school engagement.

4 Conclusion

In this essay, I have argued that *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Laylā* was likely authored by Abū Yūsuf, making it the oldest known Islamic text that contains legal cases with justifications. My argument rests on two considerations. First, the presence of a complete copy of this text in al-Shāfiʿī's *Umm*, for which Ahmed El Shamsy has made a strong case for its early stability; and, second, the evidence of multiple narrations of the text from Abū Yūsuf that are quoted in the *Ikhtilāf al-ʿulamāʾ* of Abū Jaʿfar al-Ṭaḥāwī. By establishing that these narrations are not reproductions of each other, I demonstrate that they are the product of multiple transmissions from a source text, i.e. Abū Yūsuf's original.

Based on my analysis of the numerous transmissions of Abū Yūsuf's text and the nature of al-Ṭaḥāwī's interaction with his sources, I address knowledge transmission in the formative period of Islamic law, when texts were authored for aural transmission during teaching sessions, and many notes from these sessions were circulated. The massive transmission of doctrine in an oral environment during the formative period was assimilated in early teaching circles. The conclusions of these teaching circles were summarized in the main digests of leading school authors, key among whom in the Ḥanafī tradition were al-Ṭaḥāwī and al-Qudūrī. The latter's *Mukhtaṣar* marked the end of the 'age of *riwāya*' or oral transmission.

Norman Calder has offered helpful insights into orality, the fluidity of written works, and the slow emergence of fixed written texts. However, his characterization of the function of written texts in early Islam and their later authorship is incomplete. Calder's tools were too blunt to represent the formative-period tradition of Islamic law. Drawing on the work of Gregor Schoeler, I have attempted to highlight the fascinating combination of orality and writing and the dissemination of knowledge through teaching circles that was the mark of knowledge transmission in Islam's formative period. The insistence that knowledge is always 'heard' and that books function only as aids to knowledge transmission has captured the imagination of Muslim scholars ever since.

Acknowledgements

I would like to thank Shaykh Ḥamza al-Bakrī, who first encouraged me to study Abū Yūsuf's text, and Christopher Melchert, Ahmad Khan, David Powers and three anonymous reviewers for their helpful comments on earlier versions of this article.