

# 1 SETTING THE RECORD STRAIGHT: IBN AL-LABBĀD'S REFUTATION OF AL-SHĀFI'Ī<sup>2</sup>

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## I INTRODUCTION

One of the more striking features of Mālikī biographical literature is the number of third–fourth/ninth–tenth century Mālikī jurists it credits with having authored works under the explicit title, *'al-Radd 'alā l-Shāfi'ī'*.<sup>3</sup> This is in addition to other pro-Mālik works gathered under the more bland designation, *Faḍā'il Mālik*, works whose content, despite this misleading title, may also turn out, as does the work under review, to be refutations of al-Shāfi'ī. Curiously, Western scholarship to date has largely ignored this early anti-Shāfi'ī corpus,<sup>4</sup> despite the obvious potential it holds for shedding light on a number of perduring

<sup>1</sup> Author's dedication: To Timothy Jackson.

<sup>2</sup> A shorter version of this paper was presented at the 207th annual meeting of the American Oriental Society in Miami, FL, March 21–24, 1997.

<sup>3</sup> See, e.g., Qādi 'Iyād, *Tartīb al-madārik wa taqrīb al-masālik li ma'rifat a'lām madhhab Mālik*, 4 vols (Rabāt: Wizārat al-Awqāf wa l-Shu'ūn al-Islāmīya, 1966): Muhammad b. Sahnūn (d. 256/869) *K. fi l-radd 'alā l-Shāfi'ī wa 'alā ahl al-'irāq*, 4: 207; Hammād b. Ishāq (d. 267/880) *K. al-Radd 'alā l-Shāfi'ī*, 4: 294; Muhammad b. 'Abd Allāh b. 'Abd al-Hakam (d. 268 or 69/881 or 82) *K. al-Radd 'alā l-Shāfi'ī fīmā khālafa fihī al-Kitāb wa l-sunna*, 4: 160; Ibn al-Mawwāz (d. 269 or 281/882 or 894) *'juz' takallama fihī 'alā l-Shāfi'ī wa 'alā ahl al-'irāq'*, 4: 169; Ibn Tālib (d. 275/888) *'lahu ta'tīf fi l-radd 'alā l-mukhālifin min al-kūfiyin wa 'alā l-Shāfi'ī'*, 4: 309; Abū 'Umar Yūsuf b. Yahyā al-Mughāmī (d. 288/900) *'lahu kutub hasana fihā l-radd 'alā l-Shāfi'ī'*, 4: 432; Yahyā b. 'Umar (d. 289/901) *K. al-Radd 'alā l-Shāfi'ī*, 4: 358; Ismā'il b. Ishāq (d. 309/921) *al-Radd 'alā l-Shāfi'ī fi mas'alat al-khums*, 4: 291. Also Ibn Farhūn, *al-Dibāj al-mudhhab fi ma'rifat a'yān 'ulamā' al-madhhab*, Beirut: Dār al-Kutub al-'Ilmīya, n.d.: 'Abd al-Malik b. al-'Ās b. Muhammad b. Bakr al-Sa'dī (d. 303/915) *K. al-Radd 'alā man ankara 'alā Mālik tark al-'amal bimā rawāb*, 157. And, al-Khusanī, *Tabaqāt 'ulamā' ifriqiya* (Algeria: 1333/1914): Ahmad b. Marwān b. Muhammad al-Mālikī al-Misrī (d. 290/902) *Fadā'il Mālik wa l-radd 'alā l-Shāfi'ī*, 35; Abū 'Uthmān Sa'id b. al-Haddād (d. 302/914) *al-Radd 'alā l-Shāfi'ī*, 150.

<sup>4</sup> The notable exception is M. Muranyi, *Beiträge zur Geschichte Der Hadīt und Rechtsgelehrsamkeit der Mālikīyya in Nordafrika bis zum 5 Jh. d. H.* (Wiesbaden: Otto Harrassowitz, 1997).

controversies. Norman Calder, for example, could attempt to revise the genealogical record of the entire canon of jurisprudential foundation-texts without considering any of these works.<sup>5</sup> Similarly, Wael Hallaq could manage the mildly gargantuan claim that al-Shāfi‘ī’s *al-Risāla* ‘did not elicit any refutation in the first century of its life’,<sup>6</sup> again, apparently undaunted by this assembly of third/ninth century works explicitly called, ‘*al-Radd ‘alā l-Shāfi‘ī*’.<sup>7</sup> The present paper is a step away from this trend, taking as its focal point an anti-al-Shāfi‘ī tract by a third–fourth/ninth–tenth century jurist from Qayrawān, Abū Bakr Muhammad b. Muhammad Ibn al-Labbād. This work, coming as it does from a Mālikī from one of the more obscure periods and geographical areas in the early history of Islamic jurisprudence, offers valuable insights into some of the directions taken by non-Shāfi‘īs outside Iraq during the first century or so after

<sup>5</sup> *Studies in Early Muslim Jurisprudence* (Oxford: Oxford University Press, 1993).

<sup>6</sup> ‘Was al-Shāfi‘ī the Master Architect of Islamic Jurisprudence?’, *International Journal of Middle East Studies*, 25 (1993), 591.

<sup>7</sup> Hallaq (ibid.) does mention the work by Muhammad b. ‘Abd Allāh b. ‘Abd al-Hakam but dismisses it as a possible refutation of *al-Risāla*, primarily on the basis of its title, *K. al-Radd ‘alā l-Shāfi‘ī fīmā khālafa fihī l-Kitāb wa l-sunna*: ‘Judging from the title, the work could be treating only some of Shāfi‘ī’s positive legal rulings that, Misrī [Ibn ‘Abd al-Hakam] apparently thought, found no justification in the Qur’ān and Sunna. Since both Misrī and Shāfi‘ī obviously agree on the fundamental role of the two primary sources of the law and since the controversy about the textual authoritativeness (*hujriya*) of methodological principles is of a decidedly later origin, we must take it that the treatise dealt with issues of *furū’*.’ Hallaq appears, however, to buy into al-Shāfi‘ī’s masterful conflation of *sunna* with *hadīth* and then to retroject this back to Ibn ‘Abd al-Hakam, whereby the latter’s ‘fundamental agreement’ with al-Shāfi‘ī on the two primary sources leaves no ground for disagreement over such things as the actual constitution of the *sunna*. But Ibn ‘Abd al-Hakam was a source for the anti-al-Shāfi‘ī treatise by Yahyā b. ‘Umar (see below, pp. 7, 15ff.) And there we find that, despite his fundamental agreement with al-Shāfi‘ī on the two primary sources, Yahyā takes al-Shāfi‘ī to task for conflating *sunna* with *hadīth*. Similarly, Yahyā’s disagreements with al-Shāfi‘ī over questions of *furū’* also entail disagreements with the latter on issues of *usūl*. Thus, even if we assume that Ibn ‘Abd al-Hakam’s treatise was primarily an attack on al-Shāfi‘ī’s *furū’*, it does not follow that he did not in the process attack al-Shāfi‘ī’s *usūl*. Indeed, *al-Risāla* is replete with *furū’* adduced for the purpose of explicating *usūl*, and it would seem almost inevitable that opponents of this work would attack these *furū’* for the purpose of getting at these *usūl*. For example, at one point al-Shāfi‘ī impugns Mālik’s claims of Madinan consensus, arguing that despite such claims he finds many scholars in Madina whose views go against this alleged consensus. He then goes on to discuss a number of *furū’* with the aim of showing that isolated reports are more probative than this would-be consensus. (See *al-Risāla*, ed. Ahmad Muhammad Shākir (Cairo: Dār al-Turāth, 1979), 533ff.) Now, it would seem reasonable to assume that a Mālikī polemicist who attacked al-Shāfi‘ī on these *furū’* would do so as part of an overall effort to refute the latter on this point of *usūl*, not, as Hallaq seems to think, for the exclusive purpose of attacking these *furū’ qua furū’*.

al-Shāfi'ī's death. In addition, it provides a vivid example of how the experiences of individual jurists can exert their impact on the activity of legal writing and education. Finally, this treatise guides us to a number of facts and considerations against which to check some of the speculations of the late Professor Calder regarding the provenance of certain early canonical works on Islamic law and jurisprudence.

I begin with a brief note on Ibn al-Labbād and a formal description of the text, along with a discussion of the author's sources and motives for writing this work. It is here, during the course of this latter discussion, that I re-examine Calder's thesis on the provenance of the Shāfi'ī canon. This is followed by an analysis of the content of the work, including a list of the main points of criticism levelled against al-Shāfi'ī, providing in each instance examples from the body of the text. I conclude with an inquiry into the extent to which Ibn al-Labbād's approach appears to reflect what some have alluded to as the perduring hegemony of 'Shāfi'ism'<sup>8</sup> as represented in the trend among Mālikī jurists to cede, intentionally or otherwise, the identification of *sunna* with *ḥadīth*, in contradistinction to what appears to be the hallmark of Mālik's approach in *al-Muwatta'* and *al-Mudawwana*.

## II IBN AL-LABBĀD

Though not well-known among modern scholars,<sup>9</sup> Ibn al-Labbād occupied a significant place in third-fourth/ninth-tenth century Qayrawānid Mālikism. Scholars like Qādī 'Iyād (d. 544/1149), Abū al-'Arab b. Tamīm (d. 333/944)<sup>10</sup> and Abū Bakr al-Mālikī (d. 438/1046),<sup>11</sup> rely upon him frequently for information about North African Mālikis. Born in 250/864, and dying in 333/944, Ibn al-Labbād lived through a series of Berber revolts prompted by the heavy-handed policies of the Aghlabids, the ousting of the latter by the Banū 'Ubayd Shī'īs, followed by the latter's humiliating anti-Mālikī policies effectuated through their Ḥanafī proxies, perhaps even witnessing the early rumblings of the anti-Shī'ī Ibādī revolts. He is reported to have spent his entire life in Qayrawān, not travelling in pursuit of religious knowledge, and not even managing a pilgrimage

<sup>8</sup> On my use of this term, see note 66, below.

<sup>9</sup> See, however, Muranyi, *Beitrage*, 189–94.

<sup>10</sup> See, e.g., his *Tabaqāt 'ulamā' ifrīqiya wa tūnis* (Tunis: Dār al-Tūnisīya li l-Nashr, 1968).

<sup>11</sup> See, e.g., his *Riyād al-nufūs fī tabaqāt 'ulamā' al-qayrawān wa ifrīqiya wa zubbādhīm wa nussākīhim wa sīyar min akhbārīhim wa fudalā'īhim wa awṣāfīhim*, 2 vols, ed Bashīr al-Bakkūsh (Beirut. Dār al-Gharb al-Islāmī, 1401/1981)

to Makka. This lack of travel was apparently compensated for, however, by his prodigious memory and his impressive collection of books.<sup>12</sup> He was a student of the famed Yahyā b. ‘Umar (d. 289/901)<sup>13</sup> and a teacher of the even more famous Ibn Abī Zayd al-Qayrawānī (d. 386/996), who praised him profusely upon his death.<sup>14</sup> He was no stranger to controversy, his difficulties with the Hanafī qādī, Ibn Abī al-Minhāl, even landing him in prison for a time, following which his right to issue fatwas was interdicted and he was forced to teach in secret.<sup>15</sup> On the personal side, he is said to have been virtuous but easily annoyed, especially during disputation. In *Riyāḍ al-nufūs*, Abū Bakr al-Mālikī gives what might pass as a partial explanation for this trait. There it is reported that Ibn al-Labbād’s wife used to nag and verbally abuse him so badly that even his students would urge him to divorce her, offering to pay the bride-price that would then be due (apparently in accordance with North African custom). Ibn al-Labbād’s response was that to do so would only transfer this crucible to some other Muslim. Moreover, his wife’s father had accepted his proposal when everyone else had turned him down; divorcing her would not be the way to pay his debt of gratitude.<sup>16</sup>

### III KITĀB AL-RADD ‘ALĀ L-SHĀFI‘Ī

The work under consideration is a manuscript edited and published in 1986 by ‘Abd al-Majid Ibn Hamdah under the title, *K. al-Radd ‘alā l-Shāfi‘ī*. The explicit colophon to the manuscript (provided by Ibn Hamdah) carries the title: *Kitāb fihī radd[u] Abī Bakr ibn Muḥammad ‘alā Muḥammad ibn Idrīs al-Shāfi‘ī fī munāqadati qawlihi wa fimā qāla bihi min al-tahdīd fī masā’il qālahā khālaḥa fihā al-Kitāb wa l-sunna* (‘A treatise containing Abū Bakr Muhammad’s refutation of Muhammad Ibn Idrīs al-Shāfi‘ī for the latter’s self-contradictoriness and his arbitrariness in setting legal limits in matters regarding which his doctrine violated the Book and the Sunna). There is no formal introduction to the work, not even a *ḥamdala* or salutations for the Prophet, clearly indicating that portions are missing from the beginning. The work closes with prayers and salutations upon the

<sup>12</sup> *Tartīb al-madārik wa taqrīb al-masālik ilā ma’rifat a’lām madhhab Mālik*, ed. Muhammad Sālim Hāshim (Beirut: Dār al-Kutub al-‘Ilmiyah, 1418/1998), 2, 21; *Dībāj*, 249.

<sup>13</sup> *Tartīb* (Beirut), 2, 21.

<sup>14</sup> *Ibid* 2, 25, *Dībāj*, 249.

<sup>15</sup> *Tartīb*, 2, 24

<sup>16</sup> *Riyāḍ al-nufūs*, 2, 285.

Prophet, but here too its anti-climactic ending suggests that something is missing. There are also a number of obvious lacunae in the body of the text. All in all, however, the basic thrust and all of the important details come through clearly, and with few exceptions the editor succeeds in producing a very readable text. Altogether, *Kitāb al-Radd* spans some 61 pages (including generous editorial footnotes) and treats some 36 questions or *masā'il* on which Ibn al-Labbād takes al-Shāfi'ī to task. These include the following:

- 1 The prayer of one who returns to consciousness.
- 2 Marital relationships pre-empted by wet-nursing.
- 3 *Witr* prayers.
- 4 Praying inside the *Ka'ba*
- 5 What a pilgrim can and cannot kill.
- 6 Soldiers despoiling a fallen enemy.
- 7 Dogs drinking from vessels.
- 8 Gifts of perpetual usus (*al-'umrā*).
- 9 Alms on dates and wheat.
- 10 Buyers' and sellers' option to rescind sales '*ma lam yatafarraqā*'.
- 11 Perfuming before entering a state of consecration for pilgrimage (*iḥrām*).
- 12 Combining prayers.
- 13 Wet-nursing pre-empting (marital) relationships.
- 14 Impermissibility of pilgrims covering their heads.
- 15 Impermissibility of male converts maintaining marital bonds with non-Muslim wives.
- 16 Confusing the names of narrators of *hadīth*.
- 17 The oath (*yamīn*) joined by the testimony of the lone witness.
- 18 A Qur'ānic verse as a bride-price.
- 19 Placing steel plates on the bodies of deceased persons.
- 20 *Jumu'a* prayer running into the time of *'aṣr* prayer.
- 21 Does touching female relatives nullify ablution?
- 22 Touching a child's phallus.
- 23 Is ablution required after touching a dead person?
- 24 Two men differing on the direction of prayer.
- 25 Two bodies of water, one ritually pure, the other impure.
- 26 A youth reaches puberty while in the act of prayer.
- 27 Repeating the prayer due to mistakes in reciting the Opening Chapter (*al-Fātiḥa*).
- 28 Requiring the recitation of the Opening Chapter in each unit of prayer.
- 29 Prayer in sheep-stables.
- 30 Purifying places of worship of urine.

- 31 Tanning renders all skins ritually pure except those of dogs and pigs.
- 32 Human hair is ritually pure.
- 33 Setting broken bones.
- 34 Eating the meat of animals slaughtered from the back of the neck.
- 35 The time of the call to prayer.
- 36 Prayer-leader and followers entering prayer with the intention to perform different prayers.

### *Sources and motives*

A number of observations emerge from a perusal of this list. First, it is clear that Ibn al-Labbād was not responding to what Schacht had identified as ‘. . . the main text . . . in which Shāfi‘ī puts forward his theory of traditions’, i.e., *Ikhtilāf Mālik wa l-Shāfi‘ī* (TR.III).<sup>17</sup> Of the eight questions of positive law dealt with directly in that work only one appears in this critique.<sup>18</sup> In fact, Ibn al-Labbād’s manner of proceeding reveals that he is only coincidentally concerned with al-Shāfi‘ī’s main thesis in *Ikhtilāf*, i.e., the formal autonomy of Prophetic *ḥadīth* vis-à-vis would-be practical confirmation by Companions or Successors. Where he does so at all, it is only in passing that Ibn al-Labbād attempts to defend Mālik’s tendency to set *sunna* off from *ḥadīth* based on what the Companions, Successors or the later community at Madina put into practice. His concern is rather to defend Mālik as a faithful follower of *ḥadīth*.

Second, neither does it appear that al-Shāfi‘ī’s *al-Risāla* is the main target of Ibn al-Labbād’s attack.<sup>19</sup> As I indicated above,<sup>20</sup> *al-Risāla*

<sup>17</sup> *Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 12. All of the treatises Schacht cites and relies upon come from volume seven of the Bulaq edition of *al-Umm*. Ibn al-Labbād refers, however, to other sections of *al-Umm* as, ‘Your work[s] in refutation of Mālik (*kitāb* (or *kutub*) *raddika ‘alā Mālik*)’, a reference to *al-Umm*, 3, 285 (*bāb al-‘umrā min kitāb ikhtilāf Mālik wa l-Shāfi‘ī radīya l-lāhu ‘anhumā*). See *Radd*, 57.

<sup>18</sup> This is the issue of combining prayers. Al-Shāfi‘ī also mentions the issue of dogs lapping from vessels, but this is done only in passing, not as a question in which he is directly interested. See *al-Umm*, 8 vols, ed Muhammad Zuhri al-Najjār (Cairo: Maktabat al-Kulliyāt al-Azhariya, 1391/1961), 7, 192.

<sup>19</sup> This should not be understood to constitute a contradiction of nor a retreat from my earlier criticism of the claim of Hallaq (see note 7 above). For my point there was not that Ibn al-Labbād (or any of the other Mālikī authors cited) took *al-Risāla* as their target, but rather that this could only be known *after one had read these works*. To ignore these works while making broad judgements on the basis of their titles rather than their contents cannot be acceptable scholarly practice. Both the work of Ibn al-Labbād and the fragment by Yahyā b. ‘Umar had been published at the time Hallaq made his claim. Neither was cited in his article.

<sup>20</sup> See n. 6 above.

contains a plethora of questions on *furū'* couched in a broader discussion of legal methodology or what later became known as *usūl al-fiqh*. The fact, therefore, that all of the questions for which Ibn al-Labbād takes al-Shāfi'ī to task are in the area of *furū'* does not alone rule out *al-Risāla* as a possible target. But even on questions of *furū'* that are common to *K. al-Radd* and *al-Risāla*, there is none of the kind of common detail that we find when these questions are cross-referenced in *al-Umm* or al-Muzanī's *al-Mukhtasar*. Similarly, where Ibn al-Labbād does touch upon questions of *usūl al-fiqh*, this is done indirectly and inevitably through the prism of positive law. For example, at one point he defends Mālik's position on the sworn oath joined by the testimony of the lone witness by pointing out that al-Shāfi'ī and everyone else accepts *nukūl* (a litigant's refusal to take a sworn oath) as a valid form of courtroom evidence, though none of the parties adduce any Qur'ānic verses or Prophetic reports in support of this.<sup>21</sup> The implication is, of course, that by accepting *nukūl* al-Shāfi'ī and everyone else must cede at least limited recognition to practice (e.g., Madīnan *'amal*), since, in the absence of any scriptural indicants, practice could be the only basis for this institution. On another occasion, Ibn al-Labbād reminds al-Shāfi'ī that a particular *ḥadīth* on which he relies in criticizing Mālik is *mursal*, 'the likes of which you do not hold to be reliable (*lā tuthbit anta mithlah*)'.<sup>22</sup> Clearly, however, in all these instances Ibn al-Labbād's aim is to point up al-Shāfi'ī's perceived contradictoriness and his adherence to a double standard, not to defend Madīnan *'amal* or *mursal* reports in and of themselves. In sum, Ibn al-Labbād's primary target is al-Shāfi'ī's writings on *furū'*, even if his criticisms in this regard inevitably entail criticisms of the latter's *uṣūl*.

Third, in mounting this attack on al-Shāfi'ī, Ibn al-Labbād draws on material from not one but from three different sources: al-Rabī's rescension of *al-Umm*, al-Muzanī's *al-Mukhtasar* and al-Bulqīnī's 'notes'. Al-Muzanī appears to be the most heavily relied upon. But there are also direct quotes not found in al-Muzanī but available either in al-Rabī's rescension or in al-Bulqīnī's 'notes'.<sup>23</sup> For example, in his treatment of the controversy over gifts of perpetual

<sup>21</sup> *Al-Radd*, 78–9.

<sup>22</sup> *Ibid.* 50. The text reads erroneously, *lā athbit anta mithlah*. See also *al-Radd*, 74: 'You simply related the view regarding the waiting period for a woman who embraces Islam before her husband on the authority of the Prophet, God's blessings and salutations be upon him, via a report the likes of which you do not hold to be reliable (*bi khabarin lā yathbit 'indaka mithlah*).'

<sup>23</sup> See *al-Radd*, 55–6; *al-Umm*, 3, 385 (for al-Shāfi'ī); *al-Umm*, 3, 120–21 (for al-Muzanī).

usus (*'umrā*), Ibn al-Labbād quotes a *ḥadīth* which al-Shāfi'ī claims that Mālik related but then violated, and he refers to al-Shāfi'ī's long and involved argument in defence of the latter's position, including the attempt to analogize donators who place invalid conditions on acts of *'umrā* to masters who stipulate to potential buyers of slaves that they free the latter.<sup>24</sup> None of this appears in al-Muzanī's section on *al-'umrā*; nor is it available in al-Bulqīnī's 'notes'.<sup>25</sup> In another place, Ibn al-Labbād says that al-Shāfi'ī held that water contained in a vessel from which dogs had drunk was more ritually impure than the vessel itself. No such statement by al-Shāfi'ī appears in al-Muzanī's *al-Mukhtaṣar*, nor in the main body of *al-Umm*. It does appear, however, in al-Bulqīnī's 'notes'.<sup>26</sup>

### *Calder's 'organic growth' thesis*

While Ibn al-Labbād clearly draws on all three of the above-mentioned sources, he makes no distinction between any of them. Rather, he cites material from all three via the phrase *'qāla l-Shāfi'ī*. This raises questions about the form in which these sources came down to him. It is clear from the list of the questions he treats that Ibn al-Labbād was not aiming at a systematic dissection of *al-Umm*, al-Muzanī's *al-Mukhtaṣar* or al-Bulqīnī's 'notes'. Indeed, the issues he singles out do not follow the sequence in which they appear in these works. Rather, Ibn al-Labbād darts back and forth, treating some of the same topics of *fiqh* in several different places. For example, prayer (*ṣalāh*) is spread out over several questions, including numbers 1, 3, 4, 12, 20, 24, 26, 27, 28, 29, 30, 35 and 36. Did Ibn al-Labbād have access to these works in anything like the neat compilations that have come down to us; or was his access limited to chapters and fragments circulated piecemeal over time? If he had access only to fragments, what does this say about the possibility that these works were still in the process of what Calder referred to as 'organic growth'? In other words, what do Ibn al-Labbād's access to and use of his Shāfi'ī sources say about the constitution and provenance of the early Shāfi'ī canon?

According to Calder, *al-Umm* was not the finished product of al-Shāfi'ī himself (d. 204/820), but of successive generations of redactors who reached the height of their art in the latter half of the

<sup>24</sup> *Al-Radd*, 56.

<sup>25</sup> See *al-Umm*, 3, 120–21 (margin).

<sup>26</sup> See *Ibid* 1, 17 (bottom of the page).

third/ninth century, possibly reaching into the fourth/tenth.<sup>27</sup> Much of the material it contains post-dates the death of its putative narrator, al-Rabī', who died in 270/883. In Calder's view, 'precisely that material in the *Umm* which is thought to be most representative of al-Shāfi'ī the jurist, namely the sophisticated exegetical argument based on explicitly adduced Prophetic *ḥadīth*, may be amongst the last layers of material to enter the text'.<sup>28</sup> As for al-Muzanī's *al-Mukhtasar*, it too, according to Calder, 'shows signs of organic growth'.<sup>29</sup> In his view, the *bulk* of material contained in this work must be attributed to the generations *after* al-Muzanī, who died in 264/877.<sup>30</sup>

While Ibn al-Labbād's work provides no concrete information regarding the formal constitution of his Shāfi'ī sources, *K. al-Radd* turns out to raise some rather serious difficulties for Calder's thesis. These, however, can be fully appreciated only in light of certain facts about the pedigree of Ibn al-Labbād's work. It is thus to a brief discussion of this topic that I shall now turn.

I begin with my conclusion that *K. al-Radd* was the product of a pedagogical tradition within a certain line of North African Mālikī scholars extending back to the first quarter of the third/ninth century and the career and activities of the Egyptian jurist, Muhammad b. 'Abd Allāh Ibn 'Abd al-Hakam (d. 268 or 69/881 or 82). Though Muḥammad Ibn 'Abd al-Hakam belonged to a prominent Mālikī family, his father, 'Abd Allāh, had become a personal friend of al-Shāfi'ī, even supporting the latter financially upon his arrival in Egypt. Seeing the name that al-Shāfi'ī had made for himself, 'Abd Allāh instructed his son to join al-Shāfi'ī's circle, anticipating that some of the latter's reputation and prestige would rub off on Muhammad. Muhammad complied and went on to become one of al-Shāfi'ī's leading disciples.<sup>31</sup> From this close relationship with al-Shāfi'ī, Muhammad developed the hope and expectation that he

<sup>27</sup> See N. Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press, 1993), 83.

<sup>28</sup> *Ibid.* 75.

<sup>29</sup> *Ibid.* 94.

<sup>30</sup> *Ibid.* 104. Al-Bulqīnī falls outside this discussion, since he died in 805/1402. While Calder is comfortable with the assumption that al-Bulqīnī added material from his own mind or from sources post-dating the classical period (*Studies*, 83), Ibn al-Labbād's citation of material from al-Bulqīnī suggests that we re-examine this issue and content ourselves in the interim with far less sweeping judgments about the provenance of al-Bulqīnī's 'notes'.

<sup>31</sup> For this and other information on the relationship between al-Shāfi'ī and the Ibn 'Abd al-Hakam family, see J. Brockopp, 'Early Islamic Jurisprudence in Egypt: Two Scholars and Their *Mukhtasars*', *IJMES* 30 (1998), 175–6

would succeed the latter as headmaster of his study-circle. But when al-Shāfi‘ī was consulted on his death-bed about who should succeed him as headmaster, he gave the nod to an older contemporary, Abū Ya‘qūb Yūsuf b. Yahyā al-Buwaytī, (d. 231/845). Muḥammad was deeply offended.<sup>32</sup> Not only was this a slight to his esteem as a scholar but also to the friendship that had existed between al-Shāfi‘ī and the Ibn ‘Abd al-Hakam family. Indeed, so firm had this friendship been that al-Shāfi‘ī is reported to have died in ‘Abd Allāh Ibn ‘Abd al-Hakam’s house and to have been buried in the family vault.<sup>33</sup>

On being passed over in favour of al-Buwaytī, Ibn ‘Abd al-Hakam is said to have returned to the school of his father.<sup>34</sup> It is during this period that we can assume he wrote a polemical work against al-Shāfi‘ī (now lost), the title of which Qādī ‘Iyād (and later Ibn Farhūn<sup>35</sup>) gives as ‘*K. al-Radd ‘alā l-Shāfi‘ī fīmā khālaḥa fīhī al-Kitāb wa l-sunna*.<sup>36</sup> It turns out, however, that this work formed the first link in a chain of such treatises leading up to that of Ibn al-Labbād. For, while neither Abū Bakr al-Mālikī, Qādī ‘Iyād nor Ibn Farhūn appear to be aware of it, Ibn ‘Abd al-Hakam was a teacher of Yahyā b. ‘Umar during the time the latter spent in Egypt. Yahyā b. ‘Umar, meanwhile, like Ibn ‘Abd al-Hakam, ended up writing a polemical tract against al-Shāfi‘ī, the title of which Qādī ‘Iyād (and later Ibn Farhūn<sup>37</sup>) gives as ‘*K. al-Radd ‘alā l-Shāfi‘ī*.<sup>38</sup> In 1985, fragments of this work by Yahyā were published by Muhammad Abū al-Ajfan under the title, ‘*al-Hujja fī l-radd ‘alā l-Shāfi‘ī*.<sup>39</sup> From these fragments we learn of Yahyā’s relationship with Ibn ‘Abd al-Hakam. In the very first section (actually, volume twelve of a whole) Yahyā writes: ‘Muḥammad b. ‘Abd Allāh Ibn ‘Abd al-Hakam related to me (*ḥaddathanī*) on the authority of (*‘an*) Muhammad b. Idrīs al-Shāfi‘ī that the latter said ...’<sup>40</sup> As Yahyā was born in 213/820, he never had a personal encounter with al-Shāfi‘ī (who died in 204/820). At several points in *K. al-Hujja*, however, he addresses al-Shāfi‘ī in the second person. This, of course,

<sup>32</sup> *Tartīb*, 4, 160.

<sup>33</sup> Brockopp, ‘Early Jurisprudence’, 175.

<sup>34</sup> *Tartīb*, 4, 160.

<sup>35</sup> *Dibāḥ*, 232.

<sup>36</sup> *Tartīb*, 4, 159–60.

<sup>37</sup> *Dibāḥ*, 352.

<sup>38</sup> *Tartīb*, 4, 358.

<sup>39</sup> Muhammad Abū l-Ajfan, ‘Yahyā b. ‘Umar min khilāl kitābihī *al-Hujja fī l-radd ‘alā l-īmām al-Shāfi‘ī*, *Majallat ma‘had al-makhtūtāt al-‘arabiya*, 29 (2) (Jul-Dec. 1985): 713–44.

<sup>40</sup> *Al-Hujja*, 734, where Abū l-Ajfan also notes that Yahyā sometimes draws his citations of al-Shāfi‘ī from al-Muzani.

could be no more than a rhetorical device commonly employed by polemicists in his day. It could also reflect, however, something of Yahyā's relationship with Muhammad Ibn 'Abd al-Hakam and the fact that he had been drawn psychologically into the latter's cause.

Now, as mentioned earlier, Yahyā b. 'Umar was a teacher of Ibn al-Labbād. In fact, the text of *K. al-Radd* suggests that he was possibly the latter's main teacher. Of the forty or so *hadīth* Ibn al-Labbād narrates directly in *K. al-Radd*, thirty-seven are on the authority of Yahyā (i.e., *haddathanī, Yahyā b. 'Umar*).<sup>41</sup> The picture that emerges from a careful comparison between the two works is that Ibn al-Labbād's *K. al-Radd* was a veritable 'honours thesis' written at the behest and under the supervision of Yahyā, with the aim of showing the extent to which he had mastered what he had learned from his teacher and could now fashion from this new and convincing arguments against al-Shāfi'ī. Again, however, Ibn al-Labbād is reported to have never travelled outside Qayrawān, where the chief Sunnī rivals of the Mālikīs were not the Shāfi'īs but rather the Hanafīs. It seems, in other words, that the germ of anti-Shāfi'ism was brought from outside Qayrawān, namely from Egypt by Yahyā b. 'Umar (and possibly others) who picked it up from Muḥammad b. 'Abd Allāh Ibn 'Abd al-Hakam and integrated it into the educational curriculum as an exercise through which to test upcoming hopefuls looking to prove themselves.<sup>42</sup>

A number of features in Ibn al-Labbād's treatise lend support to this interpretation. Mention has been made of the many narrations of *ḥadīth* on the direct authority of Yahyā. Ever eager to impress his teacher, however, Ibn al-Labbād intimates that he is narrating this material from memory, rather than from some written text.<sup>43</sup> Similarly, while he shows his partial reliance upon Yahyā by repeating a number of phrases verbatim from the latter's work, these are kept to a minimum. More particularly revealing, however, is Ibn al-Labbād's taking over from Yahyā the designation, '*tahdīd*', which Yahyā uses as something of a neologism, but which Ibn al-Labbād turns into a veritable technical term.<sup>44</sup> At the same time, of the five

<sup>41</sup> The majority of these appear between pages 75 and 107.

<sup>42</sup> There are, incidentally, two places at *K. al-Radd*, 79, where Muhammad b. 'Abd Allāh Ibn 'Abd al-Hakam is cited directly, once on the explicit authority of another teacher of Ibn al-Labbād, 'Abd Allāh b. Ahmad Ibn Tālib (d. 275/888), who also wrote a refutation of al-Shāfi'ī.

<sup>43</sup> *Al-Radd*, 91: 'I shall mention in this regard what I am able to recall (*and dhākīrun minhā mā hadaranī* ).

<sup>44</sup> See *al-Hujja*, 738–9, where Yahyā introduces this word as an apparent neologism. In both the title to Ibn al-Labbād's *K. al-Radd*, as well as in the body of the text, however, the word appears as a full-blown technical term.

issues listed by Abū al-Ajḡān as having been treated by Yaḡyā under this rubric, only one appears in Ibn al-Labbād's work.<sup>45</sup> In other words, it seems that Ibn al-Labbād wants to show his independence from Yaḡyā by demonstrating an ability to come up with arguments on this topic. Another possible reflection of Ibn al-Labbād's youth at the time he authored this work (which supports the notion that it was an 'honours thesis') is his defence of Mālik's position to the effect that the non-Muslim wife of a convert is rendered unlawful upon his conversion, unless she follows suit within days.<sup>46</sup> This appears to have been a position Ibn al-Labbād bought into while still a youth only to grow out of it later on. In his famous *al-Risāla*, his student, Ibn Abī Zayd al-Qayrawānī (d. 386/996), quite unceremoniously contradicts that position, upholding the couple's marriage, even if the wife should never convert.<sup>47</sup> Finally, there is the language of *K. al-Radd*. The irreverent tone Ibn al-Labbād often takes against al-Shāfi'ī bespeaks a certain cockiness born of youth. Similarly, the awkward and convoluted title on the manuscript's explicit colophon (quoted earlier) suggests a less than fully matured command of Arabic letters.<sup>48</sup>

In sum, *K. al-Radd* appears to have been the result of an early 'assignment' given to Ibn al-Labbād by his teacher, Yaḡyā b. 'Umar, who in doing so was simply continuing a tradition picked up from his teacher, Muhammad Ibn 'Abd al-Hakam, during his stay at the Mālikī capital in Egypt. What began as an act informed (if not determined) by Ibn 'Abd al-Hakam's personal experience with al-Shāfi'ī appears to have metamorphosed into an established pedagogical tradition. There is even evidence suggesting the possibility that this tradition did not end with Ibn al-Labbād. Ibn Farhūn reports that the latter's student, Ibn Abī Zayd, also authored a work whose title he gives as 'In Defence of Mālik's Jurisprudence' (*al-Dhabb 'an madhhab Mālik*).<sup>49</sup> It is conceivable that this work, like Ibn al-Labbād's '*Fadā'il Mālik*' (the title under which Ibn Farhūn apparently refers to *K. al-Radd*) was also, at least in part, a refutation of al-Shāfi'ī.

<sup>45</sup> This was the issue of despoiling fallen enemies on the battlefield. See *al-Hujja*, 734–5.

<sup>46</sup> *Al-Radd*, 73–5. This included Jewish and Christian (*kitābriya*) wives, not just pagan (*mushrik*) wives. See *al-Mudawwana al-kubrā*, 4 vols (Beirut, 1406/1986), 2, 211.

<sup>47</sup> See Sālih 'Abd al-Samī' al-Ābī, *al-Thamar al-dānī fī taqrīb al-ma'ānī sharh risālat Ibn Abī Zayd al-Qayrawānī* (Beirut: Dār al-Ma'rifa, n.d.), 458 (top section).

<sup>48</sup> This is perfectly good Arabic, grammatically speaking. My point, however, is that stylistically speaking it falls beneath what one would expect of a mature man of Arabic letters.

<sup>49</sup> *Dibāḡ*, 137.

We may now return to Calder's 'organic growth' thesis. The difficulty *K. al-Radd* raises for Calder's thesis is simply this: Ibn al-Labbād was either unaware of or unconcerned about any organic growth in the Shāfi'ī canon. The idea, however, that he was unconcerned is simply untenable. For, why go through all the trouble of marshalling all of his complicated arguments, when exposing the fraud of these redactors would have been enough to discredit them and al-Shāfi'ī? Moreover, why let these redactors off the hook for plagiarizing al-Shāfi'ī while pummelling the man himself so relentlessly? And why run the risk of alienating his audience by attacking such an esteemed authority as al-Shāfi'ī when he could attack the lesser figures with virtual impunity? In sum, Ibn al-Labbād had every incentive to expose any would-be redactors. If he did not expose them, this was almost certainly because he knew of no such activity on their part.

If, on the other hand, we assume that Ibn al-Labbād was ignorant of any redactive activity, this ignorance could only be due to one of two reasons: (1) either these redactors succeeded in concealing their activity from him; or (2) there simply was no redaction. Now, the first of these possibilities actually raises more problems than it solves. For it would imply that these redactors succeeded through three (perhaps four) generations of Mālikī polemicists, all of whom had every incentive to search out and expose any instances of suspected plagiarism, yet none of whom seem to know anything about it. Ibn al-Labbād learns nothing about it from Yahyā b. 'Umar, and Yahyā b. 'Umar learns nothing about it from Ibn 'Abd al-Hakam. But if Ibn al-Labbād, Yahyā b. 'Umar and Ibn 'Abd al-Hakam are all unaware of any 'organic growth' in the Shāfi'ī canon, wouldn't it make sense to accept the plain implications of this fact? Wouldn't it make sense to say that they did not know of any 'organic growth' because there simply was none?

It might be objected, however, given my speculations about Ibn al-Labbād's youth at the time he authored *K. al-Radd*, that I have missed the point, that my efforts in fact move in the wrong chronological direction. Assuming that *K. al-Radd* was written before the death of Yahyā b. 'Umar in 289/901, Calder's thesis might be seen as flying above my criticisms, since his point was precisely that the Shāfi'ī redactors reached the height of their activity in the latter part of the third/ninth century, possibly reaching into the fourth/tenth.<sup>50</sup> In other words, Ibn al-Labbād knew of no redaction not

<sup>50</sup> Calder actually spoke of the latter *half* of the third/ninth century, not the latter *part* (*Studies*, 83). Thus, taken literally, his thesis would appear to be already disproved.

because it never occurred, but because *it had not yet occurred* by the time he came to write *K. al-Radd*. This suggestion, however, is, again, problematic. For, according to Calder, the efforts of these redactors was to have produced ‘precisely that material ... which is thought to be most representative of al-Shāfi‘ī the jurist, namely the sophisticated exegetical argument based on explicitly adduced Prophetic *hadīth* ...’.<sup>51</sup> Yet, *K. al-Radd* indicates, with striking and undeniable clarity, that it was precisely this material, and nothing else, that formed the target of Ibn al-Labbād’s attack. If Ibn al-Labbād is believed to have authored this work before Yahyā b. ‘Umar’s death in 289/901, Calder must tell us where, at this early date, all of this full-blown Shāfi‘ī material (explicitly adduced Prophetic *hadīth* and all) came from.<sup>52</sup> If, on the other hand, we assume that he wrote it later in life (say, sometime during the first quarter of the fourth/tenth century), Calder should have to explain why Ibn al-Labbād appears to be so completely unaware of any Shāfi‘ī redactors and why, furthermore, in this particular case we should suddenly abandon a logic that has dominated Islamic legal studies ever since Schacht’s *Origins*.<sup>53</sup>

#### IV IBN AL-LABBĀD’S ATTACK

Ibn al-Labbād’s criticisms of al-Shāfi‘ī can be divided into five interrelated categories: (1) al-Shāfi‘ī’s contradictory legal reasoning; (2) his conflated reading of *hadīth* in the process of which he actually undermines their meaning; (3) his out and out violation or abandonment of *hadīth*; and (4) his arbitrariness in defining the outer limits (*tahdīd*) of permissible or impermissible acts; (5) his less than intimate relationship with Mālik, which would explain why he was not always accurate in relaying knowledge on Mālik’s authority. Underlying all of this is, again, the contention that it is Mālik who is actually more committed to the faithful application of *hadīth*. To this end, questions 3, 4, 5, 6, 7 and 14 open with variants of the rhetorical query: ‘Which of you is more committed to following the Prophetic

<sup>51</sup> *Studies*, 75.

<sup>52</sup> This would apply also to the work of Yahyā, and even that of Muhammad Ibn ‘Abd al-Hakam, given that Yahyā’s fragment clearly suggests that the latter related from al-Shāfi‘ī ‘sophisticated exegetical arguments based on explicitly adduced Prophetic *hadīth*’.

<sup>53</sup> i.e. the argument to the effect that if an early jurist appears unaware of a Prophetic *hadīth* (as evidenced by his failure to adduce it in support of his position), it proves that no such *hadīth* existed at the time of this jurist’s writing.

*hadīth* he relates; you or Mālik?' (*ayyukumā atba' li ḥamlihī hadītha rasūlil-lāh, ṣalla l-lāhu 'alayhi wa sallam, anta aw Mālik ibn Anas, radrya l-lāhu 'anhu ...*)<sup>54</sup> Questions 8, 9, 10, 11 and 12 begin with variants of the interrogative: 'Which of you holds the *hadīth* of the Prophet in the highest esteem and is too God-fearing to argue on the basis of things not contained therein, or to claim that the *hadīth* contains things which it does not, or to violate that which he finds explicitly stated in the *hadīth*?' (*ayyukumā ashaddu i'zāman li ḥadīth rasūlil-lāh, ṣalla l-lāhu 'alayhi wa ṣallama, wa tawarru'an 'an an yaḥtāja bimā laysa fihī aw yadda'ihī aw yukhālifu ma wajada mansūsan fih ...*)<sup>55</sup> This verbal pummelling sets the tone for the entire work, and Ibn al-Labbād is relentless in his campaign to show that Mālik is not only innocent of the charges made against him but in the end a much better jurist and a more devoted adherent to *hadīth* than his attacker.

### 1. Contradictory reasoning

Turning now to some concrete examples of Ibn al-Labbād's approach, I begin with the charge that al-Shāfi'ī engages in contradictory reasoning, as reflected in question #10, on the buyer and seller's option to rescind a sale. The issue here was the meaning and application of the *hadīth*, 'The buyer and seller retain the option of rescinding a sale *mā lam yatafarraqā*'. This *hadīth* was related by Mālik through Ibn 'Umar on the authority of the Prophet. Conflict arose, however, over the meaning of the phrase, '*mā lam yatafarraqā*'. According to al-Shāfi'ī, this phrase referred to physical separation from the place of sale, up until which time the option to rescind the sale remained intact. Part of his support for this interpretation was the fact that Ibn 'Umar, who narrated the *hadīth*, is reported to have adopted the practice of walking a few steps away from the place of sale as a gesture of finalizing the exchange. Mālik, meanwhile, according to Ibn al-Labbād, held this *hadīth* to be of indeterminable meaning, since *tafarraq* could apply to both physical separation as well as a parting of views, as it had been used, for example, in several places in the Qur'ān.<sup>56</sup> Meanwhile, Ibn 'Umar had related other *hadīths* in which the Prophet explicitly granted buyers ownership of the commodities they purchased along with the right to sell them immediately upon

<sup>54</sup> *Al-Radd*, 49, 50, 51, 52, 53, 57, 59, 71.

<sup>55</sup> *Ibid.* 55, 63, 65.

<sup>56</sup> For example, 3.105: '*wa lā takūnū ka l-ladhīna tafarraqu wa 'khtalafū min ba'di mā jā'ahumu l-bayyināt* .'

taking possession. This could not be, argued Ibn al-Labbād, if the option to rescind such sales remained in effect up until the time of physical separation, which could take days. And since the *ḥadīths* granting immediate ownership were both explicit and univocal (*mansūṣ*) in meaning, it made sense to interpret ‘*mā lam yatafarraqā*’, in light of these reports. Mālik, in other words, was more than justified in taking ‘*mā lam yatafarraqā*’ to refer not to physical separation but to mutual agreement (i.e. ‘as long as they do not *disagree*’ to rescind the sale) instead of imposing on the *ḥadīth*, as Ibn al-Labbād claims al-Shāfi‘ī had done, an interpretation that was not only conflated but in direct conflict with many other explicit rulings of the Prophet, such as the right to sell a product to a third party upon taking possession of it. As for Ibn ‘Umar’s custom of walking away a few steps, adduced in support of al-Shāfi‘ī’s interpretation, Ibn al-Labbād notes, first of all, that this was not a part of the *ḥadīth*. As such, there was no necessary connection between the two, and al-Shāfi‘ī was unjustified in taking it as a basis for claiming that physical separation was a part of the *ḥadīth*. Second, Ibn ‘Umar did not relate his action on the authority of the Prophet. It was thus disingenuous to imply that in going against this action Mālik had somehow violated his own narrations of Prophetic *ḥadīth*. Third, al-Shāfi‘ī did not relate the report about Ibn ‘Umar’s walking away on the authority of Mālik but rather on the authority of Sufyān b. ‘Uyayna. It was thus wrong, argued Ibn al-Labbād, to hold Mālik to the dictates of a report that might not have reached him or that he might have deemed unreliable. It was certainly unfair to use it as a pretext for claiming that Mālik had knowingly violated the *ḥadīth*.

Beneath this line of argument ran a rather interesting subtext. Ibn al-Labbād appears to be portraying al-Shāfi‘ī as a poor imitator of a method for which he himself had so fiercely attacked Mālik, e.g., in *Ikhtilāf Mālik wa l-Shāfi‘ī*, where al-Shāfi‘ī had chided Mālik for using reports from Companions to determine the authenticity or application of Prophetic reports. Against this practice al-Shāfi‘ī had insisted: ‘We content ourselves with what is related on the authority of the Prophet, and that is in no way diluted by whether or not those who came after him put this into practice; nor is it in any way strengthened by the fact that they put it into practice.’<sup>57</sup> Yet, here was al-Shāfi‘ī himself attempting to establish the correct application of a *ḥadīth* on the basis of an action of a Companion, a classic case, to hear Ibn al-Labbād tell it, of the pot calling the kettle metal. But

<sup>57</sup> *Al-Umm*, 7, 193 (ll. 19–20).

even this would not prove to be al-Shāfi'ī's most damaging contradiction. While he had used Ibn 'Umar's practice as a basis for interpreting this *ḥadīth*, Ibn al-Labbād cites several other *ḥadīths* that al-Shāfi'ī had related but in whose application even he would ignore Ibn 'Umar's action. For example, the Prophet is reported to have forbidden unequal exchanges of gold and silver, i.e., as constituting *ribā*. But no one—including al-Shāfi'ī—holds this prohibition to be contingent upon physical separation. The same applies to many other pre-Islamic transactions that had been forbidden by the Prophet, e.g., *bay' ḥabl al-ḥābila*, *bay' al-ḥusāh*, and so on. If Ibn 'Umar's action failed to function as a master-principle in whose light these reports were to be interpreted, Ibn al-Labbād would like to know where it acquired this proud pre-eminence in the case of '*mā lam yatafarrāqā*'.

## 2. Conflating the meanings of *Ḥadīth*

Turning to the charge that al-Shāfi'ī conflated his interpretation of *ḥadīth*, I cite as an example question #7, involving the controversy over dogs drinking from vessels (*wulūgh al-kalb fī l-inā*). Mālik had related the *ḥadīth*, 'If a dog drinks from the vessel of any of you, let him wash it seven times'. Al-Shāfi'ī related this *ḥadīth* on the authority of Mālik, along with several other versions from other sources, some of which added the stipulation that earth be used for the first or last cleansing.<sup>58</sup> Now, both Mālik and al-Shāfi'ī agreed that vessels from which dogs had drunk had to be washed. Al-Shāfi'ī added, however, that both the vessels and their contents were rendered ritually impure. This extrapolation drew heavy criticism from Ibn al-Labbād, who argued that while the Prophet ruled that vessels from which dogs had drunk had to be washed seven times, he never stated that either the vessels or their contents were ritually impure. This was simply al-Shāfi'ī's invention, according to Ibn al-Labbād, which he concocted on the basis of his own *ra'y* and then injected into the *ḥadīth*. That al-Shāfi'ī's position was defective could be easily proved by reference to the Qur'ān, where there are verses permitting the eating of game seized by hunting dogs. To make matters worse, Ibn al-Labbād cites al-Shāfi'ī's argument to the effect that neither the vessels nor their contents were rendered ritually impure if such contents exceeded two *qullas* in volume, since, according to al-Shāfi'ī, anything more than two *qullas* was not subject to ritual impurity.<sup>59</sup> On this view, he ends up, according

<sup>58</sup> Ibid. 1, 5.

<sup>59</sup> *Al-Umm*, 1, 4–5.

to Ibn al-Labbād, completely undermining the Prophet's rule. On the one hand, he holds vessels from which dogs have drunk but which contain *more* than two *qullas* not to require ritual washing, while the Prophet stated explicitly that *whenever* a dog laps from a vessel it is to be washed seven times. On the other hand, he holds the contents of vessels containing *less* than two *qullas* to be ritually impure, while the Prophet himself never designated them as such. At first blush, it might appear that Ibn al-Labbād is donning the Shāfi'ī-inspired robe of Zāhirism in order to slam the door to logical inference in al-Shāfi'ī's face. But this turns out not to be altogether true. Ibn al-Labbād is not saying that al-Shāfi'ī is wrong for attempting to understand the underlying implications of the Prophet's command but merely that the results of this attempt were flawed. For while it may be reasonable to assume a connection between the command to wash vessels and the status of their contents, the Prophet made it clear, according to Ibn al-Labbād, that dogs drinking from vessels constituted a *sui generis* category. As proof, he cites such instances as the bedouin who urinated in the mosque and the infant who relieved himself on the Prophet's lap. In neither case did the Prophet order a seven-fold washing. This, according to Ibn al-Labbād, clearly indicated that urine and other ritually impure substances constituted one category, while vessels from which dogs have lapped constitute another. The two issues, in other words, were simply unrelated, and al-Shāfi'ī was misguided in extending the logic of ritual impurity to vessels from which dogs had lapped and their contents.

Once again, however, Ibn al-Labbād's case would not end there. Al-Shāfi'ī had extended the ruling on dogs drinking from vessels to pigs who did so, arguing that 'if pigs were not worse than dogs, they were certainly no better than them'.<sup>60</sup> This, argued Ibn al-Labbād, was pure *ra'y*, for the validity of which al-Shāfi'ī had provided no textual proof. Similarly, regarding the use of earth for the first or last cleansing of vessels, al-Shāfi'ī held that if one was unable to find earth (*turāb*), one could use something that functions like earth, e.g., potash or the like. Yet, when it came to *tayammun*, al-Shāfi'ī flatly disallowed these things, insisting instead on the use of pure earth (*turāb*). All of this went to show, according to Ibn al-Labbād, just how inconsistent and arbitrary al-Shāfi'ī could be. In the end, none of this, he gloats, was based on information related on the authority of the Prophet.

<sup>60</sup> *Al-Umm*, 1, 5.

### 3. Ignoring *Ḥadīth*

Turning to the charge that al-Shāfi'ī ignored or abandoned Prophetic *ḥadīth*, there is the controversy over whether touching female relatives nullifies one's ablution. Here al-Shāfi'ī had taken the Qur'ānic verse, 'or you come into physical contact with women' (*aw lāmastumu l-nisā'*), as a basis for holding that the mere touching of any female, be she one's mother, sister or pre-teenage daughter, nullified one's ablution. Against this view, Ibn al-Labbād cites several well-known instances of the Prophet's touching his female relatives while in the act of prayer. There were the reports, for example, of his carrying his grand-daughter, Umāma, while praying in the mosque, and of his pinching 'Ā'isha as she lay sprawled in front of him in order for her to make room for him to prostrate. Upon citing these reports, Ibn al-Labbād makes the explicit claim that: 'These reports reached al-Shāfi'ī, and he himself even transmitted them. But then he abandoned them in favour of his own personal preference (*ra'y*).'<sup>61</sup> It should be stated perhaps in al-Shāfi'ī's defence that while al-Shāfi'ī almost certainly had access to the reports cited by Ibn al-Labbād, the charge that al-Shāfi'ī extended the rule on touching females to female children—which is a large part of what Ibn al-Labbād's argument turns on—cannot be substantiated on the basis of what we find in *al-Umm*, the *Mukhtaṣar* or al-Bulqīnī's 'notes'. This raises the question, of course, of whether Ibn al-Labbād had access to some *other* material or whether he was simply reading into al-Shāfi'ī notions out of which he could fashion straw men.

### 4. *Tahdīd*

We come now to the matter of what Ibn al-Labbād refers to as *tahdīd*. Here the issue was al-Shāfi'ī's alleged tendency to impose specific limits on matters that were actually much more open-ended. For example, question #22, on how one who does not know the Opening Chapter of the Qur'ān should pray: after citing several *ḥadīths* wherein the Prophet's instructions were simply to 'praise and extol God (*fa-l-yahmadi l-lāha wa l-yukabbir*),' al-Shāfi'ī insists that if such a person knows some part of the Qur'ān other than the Opening Chapter his prayer will not be valid unless he recites at least seven verses.<sup>62</sup> In biting irreverence,

<sup>61</sup> *Al-Radd*, 82

<sup>62</sup> *Al-Umm*, 1, 88. (No al-Muzanī).

Ibn al-Labbād objects:

Do you see anyone who will listen to this type of arbitrary limit-setting (*tahdīd*), for the propriety of which one must produce scriptural evidence? Or has he related this on the authority of any of the people of knowledge who came before him? Indeed, had anyone else said anything like this, or had they arbitrarily imposed limits in this fashion (*haddada hādihā l-tahdīd*), you (al-Shāfi‘ī) would have condemned him mercilessly. But it has become your habit to criticize others for doing that which you allow yourself. And this is due to a lack of fair-mindedness in disputation.<sup>63</sup>

This line of criticism is repeated on several issues: al-Shāfi‘ī’s relating the *ḥadīth* allowing prayer in sheep-stables but then stipulating that this applies ‘only to those stables where there is no urine or excrement’;<sup>64</sup> or his requiring that a full bucket of water be used for each instance wherein an individual or group urinates in a place where they intend to pray.<sup>65</sup> In all of these instances, Ibn al-Labbād insists not only that al-Shāfi‘ī acts arbitrarily by artificially circumscribing matters without scriptural support, but that he is guilty in this regard of applying a double-standard; for it is precisely this *tahdīd* that he so harshly criticizes when practiced by others.

### 5. *Al-Shāfi‘ī’s relationship with Mālik*

We come now finally to the matter of al-Shāfi‘ī’s relationship with Mālik. In question #16, Ibn al-Labbād catalogues a series of *ḥadīth* transmitters whose names al-Shāfi‘ī had erroneously related on the authority of Mālik. This was adduced in an attempt to counter al-Shāfi‘ī’s charge that Mālik had confused the names of a number of transmitters in reports he rendered. Ibn al-Labbād insists that the mistakes in question did not revert to Mālik but to some of Mālik’s disciples who transmitted these reports on his authority. Had al-Shāfi‘ī been as close a disciple of Mālik as other prominent Mālikīs, he too would have known where to place the blame. Al-Shāfi‘ī was not, in other words, a real follower of Mālik, certainly not the most familiar with the latter’s tradition. One is left with the sense that Ibn al-Labbād is intimating here that inasmuch as al-Shāfi‘ī had shown himself to be less than perfect in his knowledge of the various channels of reports related on the authority of Mālik, perhaps his transmissions of Mālik’s legal deductions were equally suspect. And where al-Shāfi‘ī claimed that Mālik ignored,

<sup>63</sup> *Al-Radd*, 90.

<sup>64</sup> *Ibid.* 90–1.

<sup>65</sup> *Ibid.* 94–5

undermined or misappropriated Prophetic *hadīth*, this perhaps should be taken with a grain of salt.

## V THE PERDURING HEGEMONY OF 'SHĀFI'ISM'?

Ibn al-Labbād's invective is forceful and in most instances convincing. One wonders, however, about the extent to which *K. al-Radd* reflects a case of the hunter getting captured by the game. For in his very attempt to raise Mālik above al-Shāfi'ī as a more faithful adherent to *hadīth*, Ibn al-Labbād ends up accepting to an appreciable extent al-Shāfi'ī's frame of reference and, in so doing, playing down the proto-Mālikī distinction between *sunna* and *hadīth*. In other words, *K. al-Radd* appears to proceed on the dictum that the best way to respond to 'Shāfi'ism'<sup>66</sup> is to defend Mālik by showing the extent to which his doctrine comports with the dictates of *hadīth*. Beneath this notion there rested, however, an even more significant concession, namely that Mālik could *only* be defended by showing the extent to which his doctrine comports with the dictates of *hadīth*. In the end, whatever successes might have been realized in the arena of anti-al-Shāfi'ī polemics, these would all come at the expense of having capitulated to classical Shāfi'ism.

Elsewhere I have alluded to the growing hegemony of 'Shāfi'ism' by virtue of which later Mālikī apologists tended to ignore or play

<sup>66</sup> By 'Shāfi'ism' I mean the tendency to conflate *sunna* with *hadīth*, as opposed to seeing any distinction between the two. To my mind, al-Shāfi'ī's real achievement was that he so masterfully and effectively welded these terms and concepts together that it became almost impossible to separate them subsequently. Thus, scholars now speak of *sunna* without the slightest indication that while al-Shāfi'ī identified this with *hadīth*, other scholars, particularly early Mālikīs, saw *sunna* and *hadīth* as potentially separate entities. This Shāfi'ī-centric view has often resulted in a misleading juxtaposition between *sunna* and non-*sunna*, as opposed to 'Prophetic *sunna* based solely on *hadīth*' and 'Prophetic *sunna* based on sources in addition to *hadīth*'. Some of the implications of this compression have been noted above in my discussion of Hallaq. Note also, however, J Brockopp, 'Early Jurisprudence', 177. 'al-Shāfi'ī's *Risāla* must be seen as an innovative document, which addressed a common concern for authority in the law, but whereas Ibn 'Abd al-Hakam wanted to solve the problem by reducing God's law to its most abstract formulations, al-Shāfi'ī wanted to solve it with increased dependence on Prophetic *sunna*'. It seems that R Brunschvig's suggestion almost half a century ago is no less valuable today than when first offered: 'Si l'on se délivrait de l'emprise d'al-Šāfi'ī, dont la synthèse géniale a faussé pour longtemps bien des perspectives, on arrêterait sans aucun doute son attention, comme y incitent les textes mālikites et l'on verrait peut-être les commencements du *fiqh* avec des yeux neufs.' 'Polémiques Médiévales Autour Du Rite De Mālik', *Andalus*, 15 (2) (1950): 413.

down such sources as Madinan practice ('*amal*) and explain Mālik's doctrine purely in terms of *ḥadīth*.<sup>67</sup> In a more direct fashion, Yasin Dutton has also drawn attention to this phenomenon, giving a well-documented example of it in the case of the Mālikī position on *sadl* (holding one's hands at one's sides during prayer).<sup>68</sup> Dutton's example actually goes beyond the issue of merely justifying Mālik's *fiqh* and shows the extent to which later Mālikī jurists were actually willing to abandon a Mālikī position that had been based on the early Mālikī concept of *sunna* in favour of *ḥadīth* that contradicted this position.<sup>69</sup> What we find in Ibn al-Labbād is thus perhaps the embryonic stages of a tendency whose dénouement is reflected in the activity of these later Mālikīs referred to by Dutton.

Ibn al-Labbād's participation in this tendency is perhaps most clearly revealed through a comparison between his line of argument and that of Yahyā b. 'Umar on the one issue common to *K. al-Radd* and Yahyā's *K. al-Ḥujja*. In this particular case we find that while Yahyā b. 'Umar is still in the habit of invoking the proto-Mālikī approach by looking outside the four corners of a *ḥadīth*-text for clues to assist him in determining its level of normativeness and the intended scope of its application, i.e., the extent to which it reflects or constitutes a *sunna*, Ibn al-Labbād all but ignores these considerations and argues strictly on the basis of the content of the *ḥadīth*.

In *K. al-Ḥujja*, Yahyā cites the position of al-Shāfi'ī to the effect that a Muslim soldier has a unilateral, independent right to despoil a fallen enemy in any face-to-face confrontation. Yahyā then asks if the Imām would be considered unjust if he refuses to allow this Muslim soldier to undertake such despoiling. His interlocutor answers in the affirmative, and Yahyā asks why. The interlocutor adduces a *ḥadīth* in which the Prophet is reported to have said on the Day of Hunayn, 'Whoever kills an enemy and has proof of this, may despoil the latter'.<sup>70</sup> This *ḥadīth*, insists his interlocutor, establishes the independent, unilateral right of a Muslim soldier to despoil a fallen enemy.

Yahyā's response clearly shows his commitment to the proto-Mālikī approach. I quote it in full.

<sup>67</sup> See my *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfi* (Leiden: E. J. Brill, 1996), 58, where I refer to this tendency in Ibn Rushd's *Bidāyat al-muṭtahid*.

<sup>68</sup> 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) (Feb. 1996): 13–40, esp. 27ff.

<sup>69</sup> *Ibid.* 16, n. 5.

<sup>70</sup> *Al-Ḥujja*, 735.

We respond: Were this an obligatory ruling intended to be of general application, the Prophet, God's blessings be upon him, would have said this on all of his campaigns, and this would have been handed down on his authority in the case of each of these campaigns. But it has not been related on his authority that he said this on all of his campaigns. Rather, he said this on some (or one) of his campaigns. Similarly, were the matter as you have stated it, it would have been incumbent upon his Companions after him to send instructions to this effect to all of the Muslim armies who conquered the various lands. But no such thing has been handed down on their authority. Indeed, the Prophet, God's blessing and salutations be upon him, made discretionary distributions of booty (*naffala*) on some of his campaigns but not on others. And for this reason, it has been related on the authority of his Companions that they made discretionary distributions of booty on some campaigns, but in most instances they did not. Thus the proper application of this principle (of despoiling a fallen enemy) is as Mālik has stated . . . , i.e., that it is up to the discretion of the Imām in accordance with what he deems to be in the interest of the Muslims. It is not, as you claim, a binding obligation on the Imām (to allow this) whether he wants to or not . . .<sup>71</sup>

Clearly, for Yahyā, there is a fundamental distinction between a statement or an action by the Prophet, on the one hand, and a Prophetic *sunna*, on the other. Even assuming, as he clearly does, that the *ḥadīth* in question is sound, this alone is not enough to establish it as a normative practice of general scope. Rather, this is determined by reference to how the contents of the *ḥadīth* were understood and acted upon by the Companions and then handed down on this understanding to posterity. Thus, Yahyā does not treat the *ḥadīth* as an isolated, independently authoritative source and then seek to prove that Mālik has adhered to it. Rather, he sets out to show that both the level and scope of the *ḥadīth*'s authority are dependent upon sources and considerations extraneous to the *ḥadīth*. Mālik, in turn, is correct, according to Yahyā, precisely because these other sources and considerations inform his conclusion.

This stands in sharp contrast with what we find in Ibn al-Labbād. For Ibn al-Labbād, there are no extraneous sources or considerations to be entertained, and the difference between Mālik and al-Shāfi'ī resides purely in Mālik's more faithful commitment to the *ḥadīth* in question, along with his superior understanding of its contents. On this criterion he begins his response with the rhetorical question:

Which of you is more faithful to what he relates on the authority of the Messenger of God, God's blessings and salutations be upon him; Mālik, may God be pleased with him, when he places the right to despoil a fallen enemy under the discretion of the Imām, being more faithful therein to the *ḥadīth*

<sup>71</sup> Ibid.

in his possession on the authority of the Messenger of God, God's blessings and salutations be upon him, or you, when you divided despoiling into two types, according to your own opinion (*ra'y*) . . . ?<sup>72</sup>

Ibn al-Labbād goes on in effect to cede to al-Shāfi'ī the identification of *ḥadīth* with *sunna*, following which concession there remains little more to discuss than that which falls within the four corners of the *ḥadīth*. This emerges clearly in that part of his response dealing with whether a Muslim soldier's right to despoil a fallen enemy is contingent upon receiving permission from the Imām:

You claim that the Prophet, God's blessings and salutations be upon him, ruled in favour of Muslim soldiers [despoiling a fallen enemy]. And you denounced the view of Mālik to the effect that this was up to the discretion of the former [*al-awwal*, i.e., the Prophet?]. But there are many indications in the *ḥadīth* itself (*wa fī l-ḥadīthi dalā'ilu kathīra*) to the effect that this is up to the discretion of the Imām, as Mālik held, may God be pleased with him.<sup>73</sup>

Clearly, for Ibn al-Labbād, the way to vindicate Mālik's position is to show that the latter's was the proper and superior interpretation of the *ḥadīth*. Beyond the *ḥadīth* itself, there are no other considerations to be insisted upon, suggested or even acknowledged. On the contrary, at least in this particular case, Ibn al-Labbād appears to be satisfied with his perceived success at turning the approach of al-Shāfi'ī against the latter. In so doing, however, he has clearly abandoned the 'primitive' proto-Mālikī approach of Yahyā b. 'Umar and his likes.

Having said this much, we should be careful not to overstate matters. There are at least four places in *K. al-Radd* where Ibn al-Labbād invokes the proto-Mālikī approach and looks to such sources as the practice of the Companions or 'the practice of the people down to our own day'.<sup>74</sup> In addition, there are instances, as

<sup>72</sup> *Al-Radd*, 52.

<sup>73</sup> *Ibid.* 53.

<sup>74</sup> *Ibid.* 66. 'Mālik, may God be pleased with him, relied on the action of Ibn 'Umar, i.e., that he would combine his prayers along with the Muslim commanders whenever the latter did so. And others besides Ibn 'Umar would join him in doing this at Madīna, the home of the Prophet, God's blessings and salutations be upon him, and the place of his migration and the migration of his Companions, may God be pleased with them. This constitutes in effect a consensus at Madīna. So he followed what he related on their authority, since he found this explicitly stated in the *ḥadīth* on their authority regarding the sunset and night prayers and he saw that their continuous practice (*al-'amal*) was consistent with this . . .' (*fa-dhababa mālik radiya l-lāhu 'anhu ilā fī 'lī 'bni 'umar annahu kāna idhā jam'a l-umarā'u jama'a ma'ahum wa ghayru 'bni 'umar ma'a 'bni 'umar yajma'u ma'ahum bi l-madinati wa hiya dār rasūli l-lāhi salla l-lāhu 'alayhi wa sallama wa mawdi'u hijratihi wa hijrati ashābihi radiya l-lāhu 'anhum yaqūmu maqāma l-ijmā'i bi l-madinati fa-ttaba'a mā rawāhu 'anhum idh wajadahu mansūsan fī l-ḥadīthi 'anhum fī l-maghrabi wa l-'ishā'i wa adraka l-'amala 'alayhi qā'imān . . .*)

even adherents to proto-Mālikism would themselves insist, where the absence of any extraneous considerations render *ḥadīth* in effect independent repositories of *sunna* (at least in the sense of their possessing binding authority).<sup>75</sup> Thus, not every instance where Ibn al-Labbād restricts himself to the content of *ḥadīth* is necessarily a capitulation to 'Shāfi'ism'. There are, however, instances, as the present comparison with Yahyā b. 'Umar clearly demonstrates, where Ibn al-Labbād could have invoked the proto-Mālikī approach but did not. What all this suggests, then, is that while Ibn al-Labbād was not completely disabused of the proto-Mālikī approach, he did see it to be something of a liability in anti-Shāfi'ī polemics. In this respect, *K. al-Radd* may represent an early manifestation of the aforementioned tendency among later Mālikīs—as they moved further away from the pull and prestige of early Madīnan practice, and as pressure from non-Mālikī opponents continued to mount,<sup>76</sup> especially following the efforts of such third/ninth century figures as al-Bukhārī, Muslim, Abū Dāwūd and others—to internalize the view that the best way to deal with the nemesis of 'Shāfi'ism' was in effect to become 'a Shāfi'ī'. In *K. al-Radd*, Ibn al-Labbād uses the term '*sunna*' some 37 times. In the majority of these instances the term is barely distinguishable from the term *ḥadīth*. And in at least

Ibid. 81: '... and he violated the *sunna* of the Messenger of God, God's blessings and salutations be upon him, and that which the people continue to practice down to our own day (*wa khālafa sunnata rasūli l-lāhi salla l-lāhu 'alayhi wa sallama wa mā lam yazal 'alayhi l-nāsu ilā yawminā hādihā*).

Ibid. 91: 'I shall mention of these [*ḥadīths*] what I am able to recall, God willing, along with what has been related in this regard on the authority of his Companions, the Successors and others in opposition to what you have stated (*wa anā dhākirun minhā mā hadaranī in shā' allāh ma'a mā jā' fi hādihā 'an ashābihī wa l-tābi'īna wa ghayrihim bi khilāfi mā qulta* ...).

Ibid. 100–01: 'The *sunna* of the Prophet, God's blessings and salutations be upon him, and his Companions would have been more appropriate for al-Shāfi'ī to follow (*fa sunnatu rasūli l-lāhi salla l-lāhu 'alayhi wa sallama wa ashābihī kānat awlā bi-l-Shāfi'ī an yattabi'ahā*).

<sup>75</sup> See, e.g., Qādī 'Iyād, *Tartīb*, 1, 52: 'As for situations where there is no [Madīnan] practice opposing an isolated report and no such practice supporting it, this whole controversy is rendered moot and one is obligated to proceed on the basis of the isolated report, be it a report from the people of Madīna or elsewhere, assuming that it is sound and is not contradicted by another report [from elsewhere] ...'

<sup>76</sup> In speaking of Madīnan consensus, for example, Qādī 'Iyād states frankly that, 'all of the leading figures of the schools of law, the speculative theologians, the traditionists and the proponents of rational judgement in law are unanimously united against us on this issue, declaring us to be in error and arguing against us with every available argument, to the point that some of them even go beyond the bounds of partisanship and defamation to casting aspersions on Madīna and enumerating its flaws ...' See *Tartīb*, 1, 47.

one instance there is a clear (as opposed to apparent) conflation of the two.<sup>77</sup> It is perhaps telling that while he uses the term *sunna* in the title of his work (on the explicit colophon to the manuscript), his main argument throughout the body of this text centres almost exclusively around Mālik's commitment to *ḥadīth*.

<sup>77</sup> *Al-Radd*, 72.