



BRILL

## The *Ur-Muwatta'* and Its Recensions

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### Abstract

In this essay, I use the numerous extensive quotations from Mālik found in al-Shāfi'ī's *Kitāb al-Umm* to reconstruct what might be called al-Shāfi'ī's recension of Mālik's *Muwatta'* and to compare this recension with the surviving complete *Muwatta'* recensions of Abū Muṣ'ab al-Zuhrī, Ibn Bukayr, and Yaḥyā b. Yaḥyā al-Laythī. I present examples of the differences between the recensions, analyze one specific type of variant closely, and use my findings to suggest possible reasons for the various kinds of discrepancies. Through this analysis I both affirm Mālik's role as the *Muwatta'*'s author and situate the nature of his authorship in the context of teaching and transmission practices and the materiality of the book in the second/eighth century.

### Keywords

early Islamic law – textual transmission – Mālik b. Anas – al-Shāfi'ī – *Muwatta'*

The nature of authorship has been the subject of much debate in twentieth-century Western study of literature. "Assuming that we are dealing with an author, is everything he wrote and said, everything he left behind, to be included in his work?" asked Michel Foucault.<sup>1</sup> Does authorship always denote the actions of a single, autonomous individual who creates the text and exercises full control

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1 Michel Foucault, "What Is an Author?," in *The Art of Art History: A Critical Anthology*, ed. Donald Preziosi, 299–314 (New York: Oxford University Press, 1998), 302.

over it? Or is authorship an expression of broader currents of discourse that give rise to the text and re-actualize it through its reception?

The challenges of defining authorial agency are compounded in specific historical contexts and cultures of writing. In the early Islamic written tradition, the way in which important works such as Ibn Ishāq's (d. 150/767) *Sīra* and Mālik b. Anas's (d. 179/795) *Muwatta'* were composed and disseminated meant that the role of the nominal author or originator of the text was entwined with that of the text's subsequent transmitters. The author's original text (insofar as there was one)<sup>2</sup> would be copied by students, who would then check the accuracy of their copies against the author's copy in auditory sessions in which either the original or the copy was read aloud.<sup>3</sup> A student's copy, thus certified, became that student's recension, which was transmitted to subsequent students. The author, meanwhile, would continue to teach the text to further students of his own, making changes to the text and adding and subtracting material in the process.<sup>4</sup> Consequently, the students' recensions would naturally come to differ over time.

Whether the variance between the surviving recensions of such classical works reflects primarily authorial changes or subsequent edits, errors, and manipulations introduced by the many intervening transmitters is a contentious issue in modern scholarship. A skeptical view, going back to Ignaz Goldziher<sup>5</sup>

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- 2 Many books are likely to have begun as collections of lecture notes compiled by a scholar's students; important early works that arguably fall into this category include, for example, 'Urwa b. al-Zubayr's (d. ca. 94/712) *Kitāb al-Maghāzī* and Ma'mar b. Rāshid's (d. 153/770) *Kitāb al-Maghāzī*. For the former, see Gregor Schoeler, *The Genesis of Literature in Islam: From the Aural to the Read*, rev. ed., trans. Shawkat M. Toorawa (Edinburgh: Edinburgh University Press, 2009), 43–44; for the latter, see the translator's introduction to *The Expeditions: An Early Biography of Muhammad*, trans. Sean Anthony (New York: NYU Press, 2014).
  - 3 Schoeler, *Genesis of Literature in Islam*, 73. For accounts of Mālik's students studying his work with him, see al-Khaṭīb al-Baghḍādī, *al-Kifāya fī 'ilm al-rivāya*, ed. Abū 'Abd Allāh al-Sawraqī and Ibrāhīm Ḥamdī al-Madanī (Medina: al-Maktaba al-'Ilmiyya, 1980), 273, 276, 298, 308–9.
  - 4 Al-Qāḍī 'Iyāḍ al-Yaḥṣubī, *Tartīb al-madārik*, ed. 'Abd al-Qāḍir al-Ṣaḥrāwī, Ibn Tāwīt al-Ṭanjī, Muḥammad b. Sharīfa, et al., 8 vols. (Rabat: Wizārat al-Awqāf, 1983), 2:73; Gregor Schoeler, *The Oral and the Written in Early Islam*, ed. James Montgomery, trans. Uwe Vagelpohl (London: Routledge, 2006), 33–34.
  - 5 Ignaz Goldziher, *Muslim Studies*, trans. C. R. Barber and S. M. Stern (Chicago: Aldine, 1971), 2:204: "An unfavourable impression of the reliability of Islamic tradition in the second century is gained if one considers that the version in which various authorities hand down the *Muwatta'*, all directly, or indirectly, in the name of Mālik, differ from each other in their text and contents, as well as in plan and order, to such a degree that one might be tempted to think of them as mutually differing and by no means as identical writings."

and Joseph Schacht<sup>6</sup> and more recently articulated by Chase Robinson,<sup>7</sup> regards recensions of second-/eighth-century texts such as the *Muwattaʿ* to be “faithful only in the loosest sense to what an authority intended to say.” Robinson argues that “these ‘transmitters’ were not simply taking liberties with texts, they were *generating* the texts themselves.”<sup>8</sup> However, there have been few granular analyses of the relationship between the recensions of a particular work and a singular original text, despite the fact that classical writers already made efforts to compare recensions and evaluate their differences.<sup>9</sup> Such analyses cannot answer Foucault’s question about the nature of authorship in the abstract, but they can help us investigate the question of when, and at whose hands, a text reached its current form and to what extent the surviving recensions conform to the original author’s vision of the text. The answers to these questions have important ramifications for our confidence in the capacity of early Muslim scholarly practices to transmit information reliably and without distortions by later transmitters.

In this essay I focus on Mālik’s *Muwattaʿ*, a seminal work of early Islamic law, and examine several surviving recensions of it in order to assess their differences and try to discern behind them the shape and development of Mālik’s own version of the text. That Mālik and his students regarded the *Muwattaʿ* as a distinct book is indicated by Mālik’s giving the work its metaphorical title “The well-trodden path,” which is found in all recensions, and by the numerous explicit references to the book and reports about scholars who studied it with Mālik or with his students (many discussed below).<sup>10</sup> That Mālik himself possessed a written version of the text (even if, as I discuss in the final section of this essay, its form was not fully fixed) is likewise supported by the evidence presented here, including the high degree of verbatim correspondence between the different recensions. I draw on three complete recensions

6 Joseph Schacht, “Deux éditions inconnues du Muwatta,” in *Studi orientalistici in onore di G. Levi della Vida*, 2:477–92 (Rome: Istituto per l’Oriente, 1956), at 477: “C’est ne pas Mālik lui-même qui a composé, dans le sens modern du mot, son ouvrage, mais les disciples ont rédigé, chacun à sa façon, le ‘cours’ de leur maître.”

7 Chase Robinson, *Islamic Historiography* (Cambridge: Cambridge University Press, 2003).

8 *Ibid.*, 37–38.

9 See, e.g., ‘Alī b. ‘Umar al-Dāraquṭnī (d. 385/995), *Aḥādīth al-Muwattaʿ wa-ttifāq al-ruwāʿ ‘an Mālik wa-khtilāfihim wa-ziyādatihim wa-nuṣṣānihim* [sic], ed. Hishām al-Saʿīdanī (Sharjah: Maktabat Ahl al-Ḥadīth, n.d.), Aḥmad b. Ṭāhir al-Dānī (d. 532/1137 or 1138), *al-Imāʾ ilā aṭraf aḥādīth Kitāb al-Muwattaʿ*, ed. Riḍā Bū Shāma al-Jazāʾiri, 5 vols. (Riyadh: Maktabat al-Maʿārif, 2003). See also Muḥammad Muṣṭafā al-Aʿzamī’s editorial introduction to Mālik b. Anas, *Muwattaʿ al-Imām Mālik* [recension of Yaḥyā b. Yaḥyā al-Laythī], 8 vols. (Abu Dhabi: Muʿassasat Zāyid b. Sulṭān, 2004), 97–98.

10 See Schoeler, *Genesis of Literature in Islam*, 72–73, and the reports cited in this essay.

of the *Muwaṭṭa'*—those of Yahyā b. Yahyā al-Laythī (d. 234/848), Abū Muṣ'ab al-Zuhrī (d. 242/856), and Yahyā b. Bukayr (d. 231/845)<sup>11</sup>—and a fourth, incomplete recension that I partly reconstruct from extensive quotations of Mālik found in the *Kitāb al-Umm* of Muḥammad b. Idrīs al-Shāfi'ī (d. 204/820).<sup>12</sup> I also make occasional mention of the recensions of Ibn al-Qāsim (d. 191/806), 'Alī b. Ziyād al-Tūnisī (d. 183/799), 'Abd Allāh al-Qa'nabī (d. 221/833), and Suwayd b. Sa'īd al-Ḥadathānī (d. 240/854), of which only fragments survive, as well as Muḥammad b. al-Ḥasan al-Shaybānī's (d. 189/804 or 805) version of the *Muwaṭṭa'*, which is better described as a partial critical commentary.<sup>13</sup>

11 The recensions of Yahyā b. Yahyā, Abū Muṣ'ab, and Ibn Bukayr are the only complete recensions published to date. References to Yahyā's recension are to the Royal Moroccan Edition of the *Muwaṭṭa': Kitāb al-Muwaṭṭa' li-l-Imām Mālik b. Anas: Riwāyat Yahyā b. Yahyā al-Laythī*, ed. Muḥammad al-Rāwandī, Idrīs al-Ḍāwī, Muḥammad al-Idrīsī, et al., 2 vols. (Casablanca: Maṭba'at al-Najāh al-Jadīda, 1434/2013) [henceforth *Muwaṭṭa'* (RME)]. The paragraph numbers also apply to the new translation of the *Muwaṭṭa': Al-Muwaṭṭa' by Mālik b. Anas: The Recension of Yahyā b. Yahyā al-Laythī (d. 234/848)*, trans. Mohammad Fadel and Connell Monette (Cambridge, MA: Program in Islamic Law, Harvard Law School, 2019) [henceforth *Muwaṭṭa'* (Fadel and Monette)]. I cite two editions of Abū Muṣ'ab's recension, of which the latter is superior to but far less widely available than the former: *al-Muwaṭṭa' li-imām dār al-hijra Mālik b. Anas: Riwāyat Abī Muṣ'ab al-Zuhrī al-Madanī (150–242)*, ed. Maḥmūd Khalīl and Bashshār 'Awwād Ma'rūf, 2 vols. (Beirut: Mu'assasat al-Risāla, 1412/1991 or 1992) [henceforth *Muwaṭṭa'* (Abū Muṣ'ab, 1991)]; *Muwaṭṭa' li-l-Imām Mālik b. Anas, imām dār al-hijra: Bi-riwāyat Abī Muṣ'ab al-Zuhrī muqāranat<sup>an</sup> bi-riwāyat Yahyā b. Yahyā al-Laythī*, ed. Markaz al-Buḥūth wa-Taḥqīyyat al-Ma'lūmāt, 3 vols. (Cairo: Dār al-Ta'ṣīl, 2016) [henceforth *Muwaṭṭa'* (Abū Muṣ'ab, 2016)]. For Ibn Bukayr's recension, see *al-Muwaṭṭa' li-imām dār al-hijra Mālik b. Anas: Riwāyat Yahyā b. Bukayr*, ed. Bashshār 'Awwād Ma'rūf and Muḥammad 'Alī al-Azharī, 3 vols. (Beirut: Dār al-Gharb al-Islāmī, 2020). In this essay, references to each recension (after the full citation on first mention) take the form "*Muwaṭṭa'* (name of respective transmitter)," except where otherwise specified.

12 Al-Shāfi'ī's *riwāya* ("transmission/recension") of the *Muwaṭṭa'* was frequently referenced and cited by scholars after him, but it remains unclear whether al-Shāfi'ī produced a stand-alone recension of Mālik's *Muwaṭṭa'* in addition to the quotations in the *Umm*. See the editor's introduction to *Muwaṭṭa' al-Imām Mālik bi-riwāyat al-Imām al-Shāfi'ī*, ed. Muḥammad Bassām Ḥijāzī (Beirut: Dār al-Lubāb, 2019), 132–40. I am grateful to Abdurrahman Muhammad for sharing Ḥijāzī's work with me. I was unable to access two other recently published works that claim to collect al-Shāfi'ī's quotations from Mālik: *Muwaṭṭa' Imām Mālik: Riwāyat al-Shāfi'ī 'an Mālik*, ed. Muḥammad Lutfī al-Banjārī (Karachi: Majlis al-Da'wa wa-l-Taḥqīq al-Islāmī, 2016), and *Ḥadīth al-Imām Mālik b. Anas bi-riwāyat al-Imām al-Shāfi'ī*, ed. Rif'at Fawzī 'Abd al-Muṭṭalib (Beirut: Dār al-Muqtabas, 2015).

13 *Muwaṭṭa' al-Imām Mālik b. Anas: Riwāyat Ibn al-Qāsim*, ed. al-Sayyid Muḥammad b. 'Alawī al-Mālikī (Abu Dhabi: Manshūrāt al-Majma' al-Thaqāfī, 2004); *Muwaṭṭa' al-Imām Mālik bi-riwāyat Ibn Ziyād*, ed. Muḥammad al-Nayfar (Beirut: Dār al-Gharb al-Islāmī, 1980); *al-Muwaṭṭa' li-l-Imām Mālik b. Anas: Riwāyat 'Abd Allāh b. Maslama al-Qa'nabī*, ed. 'Abd

I use al-Shāfiʿī's reconstructed recension of the *Muwaṭṭaʿ* for two purposes. First, al-Shāfiʿī's explicit references to the work and to the multiple recensions of it extant in his time provide a window into how he, as a student of Mālik, perceived and related to the *Muwaṭṭaʿ*. In particular, they highlight the expectations and standards of authenticity that Mālik's contemporaries applied to the reproduction and transmission of the work. And second, al-Shāfiʿī's quotations function as my entry point for comparing the surviving recensions of the *Muwaṭṭaʿ* and gauging the extent of disagreement between them. The examples of similarity and difference discussed below allow me to classify the types of divergence that can be observed among the recensions and to offer possible explanations for them. By tracing the development of the *Muwaṭṭaʿ* recensions of Mālik's students, I hope to contribute to a better understanding of the *Muwaṭṭaʿ* as a whole and of the extent to which Mālik can be considered its author.

### Al-Shāfiʿī's Recension of the *Muwaṭṭaʿ*

At some point after settling in Egypt around 198/814, al-Shāfiʿī engaged in a debate with an unidentified Egyptian jurist who followed the doctrine of Mālik b. Anas; the record of the debate, titled *Ikhtilāf Mālik*, subsequently became part of al-Shāfiʿī's magnum opus, *al-Umm*.<sup>14</sup> In the course of the debate, the Mālikī responds to al-Shāfiʿī's charge that Mālik's positions do not reflect a singular legal tradition with the following rebuttal: "We have a book that we have

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al-Majīd Turkī (Beirut: Dār al-Gharb al-Islāmī, 1999); a possibly complete manuscript of al-Qaʿnabī's recension (MS Istanbul, Süleymaniye, Carullah 428) not used by Turkī and cited separately below; *Muwaṭṭaʿ al-Imām Mālik: Riwāyat Suwayd b. Saʿīd al-Ḥadathānī*, ed. ʿAbd al-Majīd Turkī (Beirut: Dār al-Gharb al-Islāmī, 1994); *Muwaṭṭaʿ al-Imām Mālik Abī ʿAbd Allāh b. Anas al-Aṣḥabī: Riwāyat Muḥammad b. al-Ḥasan al-Shaybānī*, ed. ʿAbd al-Wahhāb ʿAbd al-Laṭīf (Cairo: Lajnat Iḥyāʾ al-Turāth al-Islāmī, 1967). On al-Shaybānī's *Muwaṭṭaʿ*, which contains significant omissions, interventions, and insertions, see Sarah Bowen Savant, "A Tale of 3 'Versions'" (blog post), KITAB website, September 10, 2017, <http://kitab-project.org/2017/09/10/a-tale-of-3-versions/>, graphs 3 and 4; Goldziher, *Muslim Studies*, 2:206–9.

- 14 Muḥammad b. Idrīs al-Shāfiʿī, *al-Umm*, ed. Rifʿat Fawzī ʿAbd al-Muṭṭalib, 11 vols. (Mansura: Dār al-Wafāʾ, 2011), 8:524–778. On the nature and reliability of the texts included in the *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. Al-Shāfiʿī's interlocutor in *Ikhtilāf Mālik* may be his student al-Rabīʿ b. Sulaymān (d. 270/884) or, according to Abū Bakr al-Ṣayrafī (d. 330/941), Abū Yaʿqūb al-Buwayṭī (d. 231/846), another of al-Shāfiʿī's students; both were followers of Mālik before they adopted al-Shāfiʿī's doctrine. See Ibn al-Ṣalāh al-Shahrazūrī, *Ṭabaqāt al-fuqahāʾ al-shāfiʿiyya*, ed. Muḥyī al-Dīn ʿAlī Najīb, 2 vols. (Beirut:

come to follow. It contains what people agree upon, agreed-upon rules among us, and rules in our view" (*inna lanā kitāb<sup>an</sup> qad ṣirnā ilā ittibā'ihī wa-fihī dhikranna al-nās ijtama'ū fihī wa-fihī al-amr al-mujtama' 'alayhī 'indanā wa-fihī al-amr 'indanā*).<sup>15</sup> This is one of at least five explicit references to Mālik's "book" (*kitāb*) in the *Umm*.<sup>16</sup> Although al-Shāfi'ī's interlocutor does not explicitly identify the book in question as the *Muwaṭṭa'*, all the material that both debaters attribute to the book during the debate is in fact found in the surviving recensions of the *Muwaṭṭa'*, as are the distinctive terms that the Mālikī uses to denote varying levels of authority, "the agreed-upon rules among us" and "the rules in our view."<sup>17</sup>

By this time, al-Shāfi'ī was thoroughly familiar with the *Muwaṭṭa'*. He had studied with Mālik in Medina and quotes him in the *Umm* hundreds of times.<sup>18</sup> Ibn Abī Ḥātim al-Rāzī (d. 327/938), who studied with al-Shāfi'ī's students, reports that al-Shāfi'ī had memorized the *Muwaṭṭa'* before meeting Mālik for the first time.<sup>19</sup> Al-Shāfi'ī then approached Mālik and told him:

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Dār al-Bashā'ir al-Islāmiyya, 1992), 2:683. The text of *Ikhtilāf Mālik* gives the impression that the interlocutor was al-Rabī', but this may be due to al-Rabī's transmitting al-Buwayṭī's first-person report of the debate.

15 Al-Shāfi'ī, *al-Umm*, 8:771.

16 See also *ibid.*, 8:639, 640, 641, 772. At 8:640 (in *Ikhtilāf Mālik*), al-Shāfi'ī acknowledges a *ḥadīth* that his Mālikī opponent cites from Mālik's book (*rawaytum fī hādihā al-kitāb 'an al-nabī ḥadīth<sup>an</sup> ...*) but then notes that Mālik in fact disagreed with the *ḥadīth*'s implication. On this debate, see Ibn 'Abd al-Barr, *al-Tamhīd li-mā fī al-Muwaṭṭa' min al-ma'ānī wa-l-asānīd*, ed. Muṣṭafā al-'Alawī, Muḥammad al-Bakrī, Sa'īd A'rāb, Muḥammad al-Tā'ib, et al., 26 vols. (Rabat: Wizārat 'Umūm al-Awqāf wa-l-Shu'ūn al-Islāmiyya, 1967–92), 10:230–31. Al-Shāfi'ī's other three references to Mālik's book are quoted and discussed later in this essay.

17 On these terms, see *Muwaṭṭa'* (Fadel and Monette), 22, and Umar F. Abd-Allah Wymann-Landgraf, *Mālik and Medina: Islamic Legal Reasoning in the Formative Period* (Leiden: Brill, 2013), chs. 9 and 10. My quotations of the *Muwaṭṭa'* and my translations of Mālik's technical terms, including those mentioned here, follow Fadel and Monette's translation.

18 Al-Shāfi'ī, *al-Umm*, 11:223–25 (index); see also Harald Motzki, "Whither *Ḥadīth* Studies?," in Harald Motzki, Nicolet Boekhoff-van der Voort, and Sean W. Anthony, *Analysing Muslim Traditions: Studies in Legal, Exegetical and Maghāzī Ḥadīth* (Leiden: Brill, 2013), 93. Different authors count the number of reports that al-Shāfi'ī quotes from Mālik differently: Muḥammad Bassām Hījāzī counts 851, whereas Rif'at Fawzi 'Abd al-Muṭṭalib (according to Hījāzī, *Muwaṭṭa' al-Imām Mālik bi-rivāyat al-Imām al-Shāfi'ī*, 24) counts 864 and Muḥammad Luṭfi al-Banjārī (*ibid.*, 27) counts 709.

19 Unfortunately, we do not know anything about the circumstances of al-Shāfi'ī's first encounter with the *Muwaṭṭa'* beyond a report preserved by al-Bayhaqī, according to which al-Shāfi'ī told al-Rabī' that he had heard praise of Mālik while living in Mecca and borrowed the *Muwaṭṭa'* from someone in that city in order to memorize it. See Abū Bakr al-Bayhaqī, *Manāqib al-Shāfi'ī*, ed. al-Sayyid Aḥmad Saqr, 2 vols. (Cairo: Maktabat Dār al-Turāth, 1970), 1:102.

“I want to hear the *Muwattaʿ* from you.” [Mālik] said: “Find someone to recite (*yaqraʿu*) [it] to you.” I [al-Shāfiʿī] said: “No; you must hear my recitation (*qirāʿati*), and if it pleases you, I will then recite [to the end].” He said: “Find someone to recite [it] to you.” But I insisted until he said, “Recite.” And when he heard my recitation, he said, “Continue,” so I recited to him until I had finished it.<sup>20</sup>

The key information provided by this anecdote—namely, that al-Shāfiʿī memorized Mālik’s *Muwattaʿ* and then recited the text to Mālik to confirm its accuracy—is corroborated by al-Shāfiʿī’s references in the *Umm* to reading the text to Mālik<sup>21</sup> and by his use of the phrase *akhbaranā Mālik*, “Mālik told us,” to preface his quotations of the *Muwattaʿ*: according to al-Khaṭīb al-Baghdādī (d. 463/1071), al-Shāfiʿī instructed his student al-Rabīʿ b. Sulaymān al-Murādī (d. 270/884), who compiled the *Umm*, to use the phrase *akhbaranā* to mark passages received through *qirāʿa*, that is, reading the text aloud to the teacher.<sup>22</sup>

The extent and accuracy of al-Shāfiʿī’s quotations from the *Muwattaʿ* suggest that he possessed a written copy of the work. The twenty-eight sample quotations I checked (the fourteen examples discussed below as well as three similar cases cited in note 44 and eleven additional, randomly chosen quotations) are all found in each of the three extant complete recensions of the *Muwattaʿ*.<sup>23</sup> Further, on one occasion al-Shāfiʿī quotes a *ḥadīth* from Mālik and then says, “and in his book he follows this with another *ḥadīth* as if seeing [the latter] as an explanation for [the former *ḥadīth*]” (*thumma atbaʿahu fī kitābihi ḥadīth<sup>an</sup> ka-annahu yarā annahu tafsiṛuhu*); he goes on to quote, accurately and in the same order, three further reports presented by Mālik in the *Muwattaʿ* on this issue, thus reproducing the entirety of the *Muwattaʿ*’s chapter “The Judicial Ruling regarding Easements” (*al-qaḍāʿ fī al-mirfāq*).<sup>24</sup>

20 Ibn Abī Ḥatīm, *Ādāb al-Shāfiʿī wa-manāqibuhu*, ed. ʿAbd al-Ghanī ʿAbd al-Khāliq (Cairo: Maktabat al-Khānī, 1953), 27–28.

21 See, e.g., al-Shāfiʿī, *al-Umm*, 4:53–54 and 8:776, both quoted below.

22 By contrast, he told al-Rabīʿ to use the near-synonym *haddathanā* for passages heard from the teacher (*samāʿ*), a distinction that later became part of standard *ḥadīth* terminology. See al-Khaṭīb al-Baghdādī, *al-Kifāya*, 303.

23 In addition to the examples below, compare *Umm*, 2:5, 2:27, 2:588, 3:100, 4:24, 5:651, 6:217, 6:728, 7:290, 8:537, and 9:110, with, respectively, *Muwattaʿ*ʿ (RME/Fadel and Monette), nos. 47, 1410, 594, 756, 2732, 1857, 1644, 1784, 2337, 362, and 2389; *Muwattaʿ*ʿ (Abū Muṣʿab, 1991), nos. 53, 2179, 1004, 736, 2039, 1693, 1478, 1618, 226, 341, and 2284; *Muwattaʿ*ʿ (Abū Muṣʿab, 2016), 1:298, 2:451, 2:101, 1:502, 2:403, 2:276, 2:224, 2:257, 2:469, 1:379, and 2:483; *Muwattaʿ*ʿ (Ibn Bukayr), nos. 53, 1426, 887, 729, 2971, 2080, 1855, 2011, 2395, 337, and 2457.

24 Compare al-Shāfiʿī, *Umm*, 8:639–40, with *Muwattaʿ*ʿ (RME/Fadel and Monette), nos. 2177–80. The later Mālikī tradition treated this section of the *Umm* as a refutation of the corresponding chapter in the *Muwattaʿ*ʿ; see Ibn ʿAbd al-Barr, *al-Tamhīd*, 10:230–31.

However, in his *Risāla*, written in the last years of his life, al-Shāfi'ī notes, "Some of my books are now unavailable to me, so I have used what I believe to be correct, from memory."<sup>25</sup> This frank statement is supported by a report attributed to a scion of the influential 'Abd al-Ḥakam family, which hosted al-Shāfi'ī in Egypt. According to the report, al-Shāfi'ī was in dire straits when he arrived in Egypt; he borrowed money from the family and used its library to access Mālik's "books."<sup>26</sup> Since al-Shāfi'ī's surviving writings span at least a decade (some dating from his time in Baghdad in the 190s if not earlier, others from his Egyptian period in the early 200s),<sup>27</sup> it is plausible that the *Muwaṭṭa'* quotations reflect a mix of textual corroboration and memory. The latter scenario appears to be in evidence in the following comment, which al-Shāfi'ī appends to a report he quotes from the *Muwaṭṭa'* on the exchange of currency:

I recited [this passage] correctly to Mālik (*qara'tuhu 'alā Mālik ṣaḥīḥ<sup>an</sup>*), there is no doubt about that; but much time has passed since then, and I no longer remember it exactly, and I am unsure (*tāla 'alayya al-zamān wa-lam aḥfaz hifz<sup>an</sup> fa-shakaktu*) whether the word was "treasurer" [masculine] or "treasurer" [feminine]. Others transmit this from him as "treasurer" [masculine].<sup>28</sup>

Al-Shāfi'ī thus admits that his uncertainty about the precise wording of Mālik's text is the result of the long time that has passed since he recited the text to Mālik and his doubt in the accuracy of his memory. On another occasion, in his debate with the unnamed Mālikī scholar, al-Shāfi'ī refers to a statement from Mālik that is included in the *Muwaṭṭa'* as "what we remember and what you have [recorded] in your book" (*ḥafiznā nahnu wa [katabtum] antum fī kitābikum*).<sup>29</sup> In other words, al-Shāfi'ī is both drawing on his memory of the text and referring to the written version of it possessed by his interlocutor.

25 Muḥammad b. Idrīs al-Shāfi'ī, *al-Risāla*, ed. Aḥmad Shākir (Cairo: Maṭba'at Muṣṭafā al-Bābī al-Ḥalabī, 1940), para. 1084; Muhammad b. Idrīs al-Shāfi'ī, *The Epistle on Legal Theory*, trans. Joseph Lowry (New York: New York University Press, 2013), para. 517. Elsewhere, al-Shāfi'ī explicitly affirms the necessity of written documentation to support the forgetful human mind; see al-Shāfi'ī, *Risāla*, para. 1044.

26 Al-Qāḍī 'Iyāḍ, *Tartīb al-madārik*, 3:189. Later in this essay, I suggest that what are today called the constituent "books" of the *Muwaṭṭa'* were already known and circulated as such in the lifetimes of his students.

27 Muḥammad al-Rustāqī, *al-Qadīm wa-l-jadīd min aqwāl al-Imām al-Shāfi'ī* (Beirut: Dār Ibn Ḥazm, 2005).

28 Al-Shāfi'ī, *al-Umm*, 4:53–54.

29 *Ibid.*, 8:772. I thank Issam Eido for discussion of this passage.



The last sentence of the “treasurer” quotation is noteworthy because it shows that al-Shāfi‘ī was aware of and familiar with versions of the *Muwatta’a* transmitted by other scholars who had studied with Mālik (and who quote the word in the masculine form).<sup>30</sup> An awareness of other recensions, though less explicit, also seems to underpin another comment by al-Shāfi‘ī. Discussing the impermissibility of eating lizards, al-Shāfi‘ī relates a prophetic tradition from Mālik but then concedes: “I am not sure (*ashukku*) whether Mālik said that Ibn ‘Abbās transmitted from Khālīd b. al-Walīd or that both Ibn ‘Abbās and Khālīd b. al-Walīd transmitted that they entered the house of Maymūna with the Prophet.” In other words, he is uncertain whether, in Mālik’s report, Ibn ‘Abbās was part of the narrative involving the Prophet or whether he simply transmitted the story from Khālīd. This is a point on which the recensions of Mālik’s students disagree: the recensions of Ibn Bukayr<sup>31</sup> and Abū Mus‘ab<sup>32</sup> portray Ibn ‘Abbās as a participant, whereas Yaḥyā b. Yaḥyā al-Laythī’s recension,<sup>33</sup> the fragmentary recensions of Ibn al-Qāsim (d. 191/806)<sup>34</sup> and Abd Allāh al-Qa‘nabī (d. 221/833),<sup>35</sup> and the *Muwatta’a* of Muḥammad b. al-Ḥasan al-Shaybānī (d. 189/804 or 805),<sup>36</sup> present him as a transmitter. Al-Shāfi‘ī’s hesitation on this point may reflect the known disagreement among Mālik’s students.

The numerous reports quoted by al-Shāfi‘ī on Mālik’s authority might give the impression that what the former received from the latter was merely an amorphous body of traditions, like that included in the collection compiled by Ibn Shihāb al-Zuhrī (d. 124/742).<sup>37</sup> However, Mālik’s role in the *Muwatta’a*, as quoted by al-Shāfi‘ī, is not just that of a transmitter: he performs a clear authorial role in commenting on prophetic *ḥadīth* and later legal traditions, describing Medinan legal practice in distinctive terms, explicating the legal reasoning behind his positions, and organizing the material in accordance with his own vision of the law.<sup>38</sup> Although the bulk of al-Shāfi‘ī’s quotations from Mālik in the *Umm* consists of reports from earlier authorities, about two dozen of the

30 See the compilation of published recensions of the work: *al-Muwatta’a*, ed. Abū Usāma al-Hilālī, 4 vols. (Dubai: Majmū‘at al-Furqān al-Tijāriyya, 2003), 3:396.

31 *Muwatta’a* (Ibn Bukayr), no. 2981.

32 *Muwatta’a* (Abū Mus‘ab, 1991), no. 2037; *Muwatta’a* (Abū Mus‘ab, 2016), 2:402.

33 *Muwatta’a* (RME/Fadel and Monette), no. 2729.

34 *Muwatta’a* (Ibn al-Qāsim), no. 70.

35 Quoted in Abū Bakr al-Bayhaqī, *al-Sunan al-kubrā*, ed. ‘Abd al-Mu‘ṭī Amīn Qal‘ajī, 4 vols. (Karachi: Jāmi‘at al-Dirāsāt al-Islāmiyya, 1989), 4:62.

36 *Muwatta’a* (al-Shaybānī), no. 645.

37 Harald Motzki, “The Jurisprudence of Ibn Shihāb al-Zuhrī: A Source-Critical Study,” in *Analysing Muslim Traditions*, 1–46.

38 See also Fadel and Monette’s introduction to the *Muwatta’a*, 27–32.

quoted passages convey Mālik's own statements. It is in these quotations that Mālik as the author of a legal text and not simply a transmitter of earlier traditions is most visible, and they thus offer the greatest value for my analysis. I have chosen to highlight fourteen examples, prioritizing instances in which the nature of the differences is clear and which, collectively, demonstrate the range of variance among the recensions.

### Comparing the Recensions

The examples discussed below illustrate the spectrum of divergence between al-Shāfi'ī's recension of the *Muwaṭṭa'* and the other extant recensions. As noted, I focus here on the three complete extant recensions—those of Yaḥyā b. Yaḥyā al-Laythī, Abū Muṣ'ab al-Zuhrī and Ibn Bukayr. I begin with cases in which the degree of overlap is the greatest and progress to cases involving a greater degree of difference between the recensions in terms of word choice, the amount or type of information provided, or the position attributed to Mālik. Sometimes the differences allow us to plot the respective closeness or distance between al-Shāfi'ī's recension and the other recensions.

#### *Example 1*

On the topic of divorce, al-Shāfi'ī quotes Mālik as follows:

Marwān b. al-Ḥakam would rule (*kāna yaqḍī*) that in cases involving a man who swore an oath to abstain from sexual relations with his wife, if four months elapsed from the time of the oath, one repudiation took place. The husband, however, could retract [the repudiation] and reclaim her as his wife as long as she was still in her waiting period.<sup>39</sup> Mālik said, "Ibn Shihāb's opinion was in accordance with that."<sup>40</sup>

The entire passage is found in identical form in the recensions of Yaḥyā and Abū Muṣ'ab.<sup>41</sup> In the recensions of Ibn Bukayr and Suwayd b. Sa'īd al-Ḥadathānī (d. 240/854), the report is the same but the final comment, "Mālik said ..."

39 That is, the scripturally mandated period following the divorce during which the wife is ineligible to remarry had not yet ended.

40 Al-Shāfi'ī, *al-Umm*, 8:693.

41 *Muwaṭṭa'* (RME/Fadel and Monette), no. 1744; *Muwaṭṭa'* (Abū Muṣ'ab, 1991), no. 1581; *Muwaṭṭa'* (Abū Muṣ'ab, 2016), 2:249.

is attached to the report preceding this one, which conveys the same position but attributes it to Abū Bakr b. ‘Abd al-Raḥmān and Sa‘īd b. al-Musayyab.<sup>42</sup>

### Example 2

In a discussion of compensation for injuries inflicted on others, al-Shāfi‘ī states: “We recited to Mālik, ‘We know of no authorities (*a’imma*), in the past or recently, who held (*aftā*) that compensation is due in respect of any head wound that does not at least expose the bone.’”<sup>43</sup> In the recensions of Yaḥyā, Abū Muṣ‘ab, and Ibn Bukayr, the text is almost identical, save that it lacks the phrase “we know of” and uses the verb *qaḍā* (to rule) rather than *aftā* (to hold).<sup>44</sup> Several similar verbatim or near-verbatim sets of statements are preserved in the four recensions.<sup>45</sup>

### Example 3

In the chapter on gifts, al-Shāfi‘ī cites Mālik’s opinion that in a reciprocal exchange of gifts, the value of the second gift must match the value of the first gift on the day on which the recipient took possession of it.<sup>46</sup> Yaḥyā’s recension contains the same statement but uses a different word for “donor” (*ṣāhib* instead of *wāhib*).<sup>47</sup> Abū Muṣ‘ab agrees with al-Shāfi‘ī, as do Ibn Bukayr and al-Ḥadathānī.<sup>48</sup> In this example, the difference of a single word might be due to a recording mistake. The words *ṣāhib* and *wāhib* look and sound similar, so they could have been misread or misheard, depending on the mode of transmission.

### Example 4

Al-Shāfi‘ī quotes Mālik as follows: “The rule in our view, regarding a woman suffering from chronic bleeding, is in accord with the report of Hishām b. ‘Urwa.”<sup>49</sup> The other available recensions begin identically but then continue, “from his father. Of all the views that I have heard [regarding this issue], it

42 *Muwatta’a* (Ibn Bukayr), nos. 1971 and 1972; *Muwatta’a* (al-Ḥadathānī), no. 346.

43 Al-Shāfi‘ī, *al-Umm*, 8:776.

44 *Muwatta’a* (RME/Fadel and Monette), no. 2378; *Muwatta’a* (Abū Muṣ‘ab, 1991), no. 2270; *Muwatta’a* (Abū Muṣ‘ab, 2016), 2:481; *Muwatta’a* (Ibn Bukayr), no. 2446.

45 Compare, for example, al-Shāfi‘ī, *al-Umm*, 2:363, with *Muwatta’a* (RME/Fadel and Monette), nos. 399, 396, and 395; *Muwatta’a* (Abū Muṣ‘ab, 1991), nos. 384, 280, and 379; *Muwatta’a* (Abū Muṣ‘ab, 2016), 1:392, 391, and 390; and *Muwatta’a* (Ibn Bukayr), nos. 382, 376, and 375.

46 Al-Shāfi‘ī, *al-Umm*, 8:644.

47 *Muwatta’a* (RME/Fadel and Monette), no. 2199.

48 *Muwatta’a* (Abū Muṣ‘ab, 1991), no. 2948; *Muwatta’a* (Abū Muṣ‘ab, 2016), 3:214; *Muwatta’a* (Ibn Bukayr), no. 2708; *Muwatta’a* (al-Ḥadathānī), no. 294.

49 Al-Shāfi‘ī, *al-Umm*, 8:571.

is the one I prefer most.”<sup>50</sup> The fact that we do not possess an independent *Muwaṭṭa'* recension by al-Shāfi'i but rather must try to reconstruct it through his quotations means that we cannot know whether al-Shāfi'i's shorter text reflects deliberate abbreviation or a different version of the statement. This ambiguity is evident in the next example.

### Example 5

On the issue of killing animals during the pilgrimage, al-Shāfi'i cites Mālik as saying: “Those in the consecrated state may not kill harmful birds, except what was mentioned.”<sup>51</sup> Yaḥyā has a longer version: “The only kinds of harmful birds that those in the consecrated state may kill are those that the Prophet (pbuh) specifically mentioned: ravens and kites. If someone in the consecrated state kills any other kind of bird, he must offer compensation for it.”<sup>52</sup> The word order in the beginning of the statement differs in the two versions, and al-Shāfi'i's quotation lacks the end of Yaḥyā's. But the fact that the words of the former are all found in the latter and that the meaning is identical in both suggests that al-Shāfi'i may have abbreviated the passage intentionally. The recensions of Abū Muṣ'ab and Ibn Bukayr are identical: they contain the longer, more detailed version of the report, but they begin with the same word order as al-Shāfi'i's version and replace Yaḥyā's phrasing at the end with a synonymous expression.<sup>53</sup>

### Example 6

In all recensions, Mālik reports from his teacher Rabī'a b. Abī 'Abd al-Raḥmān that the governor of Medina, Abān b. 'Uthmān (in office 75–82/694–701), solved a dilemma pertaining to the manumission of slaves in a will by drawing lots. Al-Shāfi'i adds that Mālik said: “This is the best [solution] that I have heard.”<sup>54</sup> Yaḥyā's recension lacks this added statement,<sup>55</sup> whereas those of Abū Muṣ'ab,

50 *Muwaṭṭa'* (RME/Fadel and Monette), no. 165; *Muwaṭṭa'* (Ibn Bukayr), no. 179; *Muwaṭṭa'* (Abū Muṣ'ab, 1991), no. 176; *Muwaṭṭa'* (Abū Muṣ'ab, 2016), 1:329; *Muwaṭṭa'* (al-Ḥadathānī), no. 68; *Muwaṭṭa'* (al-Qa'nabī), 132. In the versions of Ibn Bukayr, Abū Muṣ'ab, al-Ḥadathānī, and al-Qa'nabī, the expression “regarding this issue” (*fī dhālika*) is missing.

51 Al-Shāfi'i, *al-Umm*, 8:583.

52 *Muwaṭṭa'* (RME/Fadel and Monette), no. 1033.

53 *Muwaṭṭa'* (Ibn Bukayr), no. 1223; *Muwaṭṭa'* (Abū Muṣ'ab, 1991), no. 1188; *Muwaṭṭa'* (Abū Muṣ'ab, 2016), 2:156. Ibn Bukayr's and Abū Muṣ'ab's recensions, as well as al-Shāfi'i's, have *lā yaqtulu(hu) al-muḥrim* as opposed to Yaḥyā's *al-muḥrim lā yaqtulu(hu)*; and they conclude with *fa-'alayhi jazā'u(hu)* rather than Yaḥyā's *fadāhu*.

54 Al-Shāfi'i, *al-Umm*, 9:283.

55 *Muwaṭṭa'* (RME/Fadel and Monette), no. 1499.

Ibn Bukayr, and al-Qa'nabī include it.<sup>56</sup> The effect of the additional sentence is to make Mālik's endorsement of Abān's decision explicit.

### Example 7

On the topic of fasting, al-Shāfi'ī quotes Mālik as follows:

According to Mālik, it reached him that 'Abd Allāh b. 'Umar was asked what a pregnant woman should do if the fast becomes extremely difficult for her and she fears for her fetus. He ['Abd Allāh] said, "She should suspend her fast, and for every day she misses, she feeds a poor person [...]." Mālik said, "The people of knowledge hold (*yarawna*) that despite that (*ma' dhālika*) she must make up [the days that she has missed], because God said, 'Whoever of you is ill or traveling, let him fast an equivalent number of other days' [Q 2:190]. They regard that condition as an illness, in combination with her fear for her child."<sup>57</sup>

In the recensions of Yaḥyā, Ibn Bukayr, Abū Muṣ'ab, and al-Ḥadathānī, the phrase "despite that" is missing.<sup>58</sup> The added phrase does not alter the meaning, but it does clarify the relationship between the report and Mālik's opinion by making it clear that he disagrees with the report on the basis of Q 2:190. The phrase "despite that" is present in the *Muwatta'* recension of al-Qa'nabī.<sup>59</sup>

### Example 8

In all the recensions, Mālik cites Nāfi's report that when 'Abd Allāh b. 'Umar finished the Ramaḍān fast and desired to perform the pilgrimage, he would not cut his hair or trim his beard until he had completed the pilgrimage. Al-Shāfi'ī states: "Mālik said: There is no restriction on a man cutting his hair before the pilgrimage (*laysa yaḍīq an ...*)."<sup>60</sup> In Yaḥyā's recension, by contrast, Mālik says: "This is not obligatory."<sup>61</sup> The recension of Abū Muṣ'ab reads: "Mālik said: This is not obligatory. The matter is unrestricted [lit. 'wide,' *al-amr wāsi*], God

56 *Muwatta'* (Abū Muṣ'ab, 1991), no. 2722; *Muwatta'* (Abū Muṣ'ab, 2016), 3:119; *Muwatta'* (Ibn Bukayr), no. 2149; *Muwatta'* (al-Ḥadathānī), no. 422.

57 Al-Shāfi'ī, *al-Umm*, 8:713.

58 *Muwatta'* (RME/Fadel and Monette), nos. 856 and 857; *Muwatta'* (Ibn Bukayr), no. 800; *Muwatta'* (Abū Muṣ'ab, 1991), no. 808; *Muwatta'* (Abū Muṣ'ab, 2016), 2:18; *Muwatta'* (al-Ḥadathānī), no. 467.

59 *Muwatta'* (al-Qa'nabī), no. 502.

60 Al-Shāfi'ī, *al-Umm*, 8:718.

61 *Muwatta'* (RME/Fadel and Monette), no. 1179.

willing.”<sup>62</sup> In Ibn Bukayr’s version, Mālik simply states: “This matter is unrestricted (*al-amr wāsi‘fī dhālika*), God willing.”<sup>63</sup> Mālik’s reported position is the same in each recension, but the wording of al-Shāfi‘ī’s version differs from that of Yaḥyā, while Abū Muṣ‘ab’s recension conveys the sense of both al-Shāfi‘ī’s and Yaḥyā’s versions, and Ibn Bukayr’s is a concise version of Abū Muṣ‘ab’s text.

### Example 9

Al-Shāfi‘ī quotes a prophetic tradition according to which Muḥammad forbade the sale of dogs. He then states: “Mālik said: Therefore the sale of either hunting dogs (*kilāb ḍawārī*) or non-hunting dogs (*ghayr ḍawārī*) is disliked (*kuriha*)”<sup>64</sup> (the verb is passive and “hunting dogs” is plural).<sup>65</sup> Yaḥyā’s version differs slightly: “Mālik said: I dislike (*akrahu*) that a seller should benefit from payment for a dog (*kalb*), whether it is a hunting dog (*kalb ḍārī*) or not. This is on account of what has been transmitted from the Messenger of God (pbuh) forbidding payment for a dog” (the verb is active and “hunting dog” is singular).<sup>66</sup> The second sentence was likely omitted on purpose by al-Shāfi‘ī, who had already cited the prophetic tradition in question. Again, Abū Muṣ‘ab’s version is clearly closer to that of al-Shāfi‘ī than to that of Yaḥyā: “Indeed, the sale of hunting dogs and other [dogs] is disliked on account of what has been transmitted from the Messenger of God (pbuh) forbidding payment for a dog” (passive verb and plural “hunting dogs”).<sup>67</sup> The recensions of Ibn Bukayr and al-Qa’nabī straddle the gap between the recensions of Yaḥyā, on the one hand, and of al-Shāfi‘ī and Abū Muṣ‘ab, on the other: both contain the active form “I dislike” and the plural “hunting dogs.”<sup>68</sup>

### Example 10

A case that demonstrates a greater degree of divergence between the recensions, though still no substantive disagreement, concerns a report according to which the caliph ‘Umar b. al-Khaṭṭāb decided not to enforce the punishment of amputation on a group of slaves who stole a camel, on the grounds that although the theft was a crime, the slaves had been driven to the act by hunger.

62 *Muwaṭṭa’* (Abū Muṣ‘ab, 1991), no. 1396; *Muwaṭṭa’* (Abū Muṣ‘ab, 2016), 2:205.

63 *Muwaṭṭa’* (Ibn Bukayr), no. 1303.

64 I have translated *kuriha* and *akrahu* as verbs instead of referring to the legal category of “reprehensible” in order to highlight the different ways in which the words are used in versions of this report.

65 Al-Shāfi‘ī, *al-Umm*, 4:23.

66 *Muwaṭṭa’* (RME/Fadel and Monette), no. 2039.

67 *Muwaṭṭa’* (Abū Muṣ‘ab, 1991), no. 2623; *Muwaṭṭa’* (Abū Muṣ‘ab, 2016), 3:88.

68 *Muwaṭṭa’* (Ibn Bukayr), no. 1754; al-Qa’nabī, MS Istanbul, Carullah 428, fol. 67a.

Instead, ‘Umar required the evidently miserly owner of the slaves to pay the camel’s owner double the value of the stolen camel, as specified by the camel’s owner. In al-Shāfi‘ī’s version, Mālik comments on the decision: “This is not in accordance with the practice (*laysa ‘alayhi al-‘amal*); their fine (*gharāma*) is not doubled and is not imposed on their [the slaves’] owner, since it is they [the slaves] themselves who are responsible. Also, one does not take into account the statement of the camel’s owner [about the value of the camel].”<sup>69</sup> In Yaḥyā’s version, Mālik begins in similar words: “Doubling the market value is not in accordance with the practice among us (*laysa ‘alā hādihā al-‘amal ‘indanā*).” But then, instead of listing the other ways in which he disagrees with the report, Mālik explains how the fine should be determined: “Rather, it has long been the rule of the people among us (*maḍā amr al-nās ‘indanā*) that he is liable for the animal’s fair market value on the day on which he seized it.”<sup>70</sup> The recensions of Abū Muṣ‘ab, Ibn Bukayr, and al-Ḥadathānī begin with a similar sentence—“The practice is not to charge double the value”—and then stop.<sup>71</sup> Interestingly, al-Shāfi‘ī introduces this case with “Mālik said in his book” (*qāla Mālik fī kitābihī*).

#### Example 11

On the right of first refusal (*shuf‘a*), al-Shāfi‘ī cites Mālik as follows: “There is no right of first refusal for a commonly owned road or the courtyard of a house, even if dividing it is feasible.”<sup>72</sup> The same sentence is found in Abū Muṣ‘ab’s and Ibn Bukayr’s recensions.<sup>73</sup> Yaḥyā’s version, by contrast, is longer: it treats the road and the courtyard separately and specifies the level of acceptance of the latter position. According to Yaḥyā, “Mālik said, ‘Nor is there a right of first refusal with respect to a commonly owned road, whether or not dividing it is feasible.’ Mālik said, ‘The rule in our view (*al-amr ‘indanā*) is that there is no right of first refusal in the courtyard of a home, whether or not dividing it is feasible.’”<sup>74</sup>

#### Example 12

Regarding abandoned children, al-Shāfi‘ī cites Mālik as saying: “The agreed-upon rule among us (*al-amr al-mujtama‘ ‘alayhi ‘indanā*) concerning an

69 Al-Shāfi‘ī, *al-Umm*, 8:640–41.

70 *Muwatta‘a*’ (RME/Fadel and Monette), no. 2184.

71 *Muwatta‘a*’ (Abū Muṣ‘ab, 1991), no. 2906; *Muwatta‘a*’ (Abū Muṣ‘ab, 2016), 3:198; *Muwatta‘a*’ (Ibn Bukayr), no. 2644; *Muwatta‘a*’ (al-Ḥadathānī), no. 282.

72 Al-Shāfi‘ī, *al-Umm*, 8:693.

73 *Muwatta‘a*’ (Abū Muṣ‘ab, 1991), no. 2391; *Muwatta‘a*’ (Abū Muṣ‘ab, 2016), 3:20; *Muwatta‘a*’ (Ibn Bukayr), no. 2389.

74 *Muwatta‘a*’ (RME/Fadel and Monette), nos. 2260 and 2261.

abandoned child is that he is a free person, and his patronage belongs to the Muslim community.”<sup>75</sup> In the recensions of Yaḥyā and Ibn Bukayr, by contrast, Mālik’s statement reads: “The rule in our view (*al-amr ‘indanā*) concerning an abandoned child is that he is a free person, and his patronage belongs to the Muslim community. They are his legal heirs, and they are financially responsible for any batteries he may commit.”<sup>76</sup> The second sentence is omitted in al-Shāfi‘ī’s quotation, probably for the sake of conciseness, given that it merely spells out the implications of the preceding sentence. However, the omission of the phrase “agreed-upon” (*al-mujtama‘ ‘alayhi*) at the beginning is significant, since it lowers the status of the opinion from one of universal acceptance among Medinan jurists to one that enjoys a lower degree of unanimity. The recensions of Abū Muṣ‘ab and al-Ḥadathānī parallel that of al-Shāfi‘ī.<sup>77</sup>

### Example 13

A difference that is very similar to the preceding one appears in the discussion of the number of mandatory prostrations in the Quran. According to al-Shāfi‘ī, Mālik said: “People agree (*ijtima‘a al-nās*) that there are eleven mandatory prostrations in the Quran, and none of them are in the last portion [of the Quran] (*al-mufaṣṣal*).”<sup>78</sup> Al-Qa‘nabī and Abū Muṣ‘ab agree with al-Shāfi‘ī, while Ibn Bukayr uses the slightly different but seemingly synonymous phrase “the agreed-upon rule among us” (*al-amr al-mujtama‘ ‘alayhi ‘indanā*).<sup>79</sup> Yaḥyā’s recension is the outlier: his version accords this position the less authoritative status of “the rule in our view” (*al-amr ‘indanā*).<sup>80</sup>

### Example 14

Al-Shāfi‘ī relates from Mālik that when ‘Abd Allāh b. ‘Umar performed the major ritual ablution (*ghusl*), he sprinkled water into his eyes. However, al-Shāfi‘ī comments: “Mālik said: Practice is not in accordance with it [i.e., the sprinkling of water into the eyes] (*laysa ‘alayhi al-‘amal*).”<sup>81</sup> In Yaḥyā’s recension we find only the report about Ibn ‘Umar, without Mālik’s statement, suggesting that

75 Al-Shāfi‘ī, *al-Umm*, 8:643.

76 *Muwaṭṭa’* (RME/Fadel and Monette), no. 2163; *Muwaṭṭa’* (Ibn Bukayr), nos. 2655 and 2656.

77 *Muwaṭṭa’* (Abū Muṣ‘ab, 1991), no. 3021; *Muwaṭṭa’* (Abū Muṣ‘ab, 2016), 3:243; *Muwaṭṭa’* (al-Ḥadathānī), no. 312.

78 Al-Shāfi‘ī, *al-Umm*, 8:549 and 772.

79 *Muwaṭṭa’* (Abū Muṣ‘ab, 1991), no. 265; *Muwaṭṭa’* (Abū Muṣ‘ab, 2016), 1:354; *Muwaṭṭa’* (al-Qa‘nabī), no. 141; *Muwaṭṭa’* (Ibn Bukayr), no. 261.

80 *Muwaṭṭa’* (RME/Fadel and Monette), no. 555.

81 Al-Shāfi‘ī, *al-Umm*, 8:696.



Mālik agreed with Ibn ‘Umar’s position.<sup>82</sup> In Abū Muṣ‘ab’s recension, however, we find: “Mālik was asked regarding Ibn ‘Umar’s sprinkling water into his eyes. He said: It is not obligatory (*laysa bi-wājib*).”<sup>83</sup> Ibn Bukayr’s recension contains a similar quotation from Mālik: “This is not incumbent on people (*laysa dhālika ‘alā al-nās*).”<sup>84</sup> Al-Shāfi‘ī’s recension is thus closer to those of Abū Muṣ‘ab and Ibn Bukayr than it is to that of Yaḥyā.

### *Differences in Chains of Transmission*

The preceding examples illustrate discrepancies in the statements and positions that the various recensions attribute to Mālik b. Anas. There are also discernible differences in the chains of transmission (*isnāds*) associated with the traditions quoted in the recensions. Classical scholars of *ḥadīth* generally regarded Yaḥyā b. Yaḥyā as an unreliable transmitter,<sup>85</sup> and the following three examples suggest that he was more likely to make mistakes than were al-Shāfi‘ī and the other transmitters of the *Muwatta’*.<sup>86</sup>

First, Yaḥyā transmits a *ḥadīth* whose discontinuous chain of transmission has Suhayl b. Abī Ṣāliḥ al-Sammān (d. between 138/755 or 756 and 156/773) transmitting directly from Abū Hurayra (d. 59/678)—an impossibility.<sup>87</sup> Al-Shāfi‘ī and Abū Muṣ‘ab, by contrast, transmit the same *ḥadīth* from Mālik with a chain of transmission according to which al-Sammān heard the tradition from his father, Dhakwān al-Sammān (d. ca. 101/719), who, in turn, heard it from Abū Hurayra.<sup>88</sup> The father’s lifespan, unlike al-Sammān’s, overlapped with that of Abū Hurayra.

Second, Yaḥyā’s chain of transmission for a *ḥadīth* on the sale of dogs reports that A heard it from B and C, whereas al-Shāfi‘ī, Abū Muṣ‘ab, and Ibn Bukayr, as well as Ibn al-Qāsim and al-Ḥadathānī, report that A transmitted the *ḥadīth* from B, and B transmitted it from C.<sup>89</sup> The Andalusian scholar Ibn ‘Abd al-Barr (d. 463/1071) declared that the latter version of the *isnād* was clearly

82 *Muwatta’* (RME/Fadel and Monette), no. 113.

83 *Muwatta’* (Abū Muṣ‘ab, 1991), no. 124; *Muwatta’* (Abū Muṣ‘ab, 2016), 1:315.

84 *Muwatta’* (Ibn Bukayr), no. 128.

85 Bashshār ‘Awwād Ma’rūf, *Taḥqīq al-nuṣūṣ bayn akḥṭā’ al-mu‘allifīn wa-iṣlāḥ al-rowāt wa-l-nussākh wa-l-muḥaqqiqīn* (Tunis: Dār al-Gharb al-Islāmī, 2009), 19–39.

86 I have taken these examples from *ibid*.

87 *Muwatta’* (RME/Fadel and Monette), no. 2160.

88 Al-Shāfi‘ī, *al-Umm*, 7:74; *Muwatta’* (Abū Muṣ‘ab, 1991), no. 2982; *Muwatta’* (Abū Muṣ‘ab, 2016), 3:227. Ibn Bukayr’s recension does not include this report.

89 *Muwatta’* (RME/Fadel and Monette), no. 2038; al-Shāfi‘ī, *al-Umm*, 4:23; *Muwatta’* (Abū Muṣ‘ab, 1991), no. 2622; *Muwatta’* (Abū Muṣ‘ab, 2016), 3:88; *Muwatta’* (Ibn Bukayr), no. 1753; *Muwatta’* (Ibn al-Qāsim), no. 57; *Muwatta’* (al-Ḥadathānī), no. 251.

and indisputably the correct one, calling Yahyā's version "a mistake of the hand and faulty copying" (*khata' al-yad wa-sū' al-naql*).<sup>90</sup>

Third, in the chain of transmission for a report concerning a blind prayer leader, Yahyā includes an otherwise unknown Maḥmūd b. Labīd. However, al-Shāfi'i, Abū Muṣ'ab, Ibn Bukayr, Ibn al-Qāsim, al-Ḥadathānī, and al-Qa'nabī all cite this *ḥadīth* through the well-known *ḥadīth* transmitter Maḥmūd b. al-Rabī' (d. 97–99/715–18). This suggests that Yahyā recorded the name erroneously.<sup>91</sup>

### Triangulating the Recensions

The fragmentary evidence provided by al-Shāfi'i's transmissions from Mālik demonstrates that al-Shāfi'i's recension of Mālik's *Muwaṭṭa'* is closer to the recensions of Abū Muṣ'ab and Ibn Bukayr than it is to the recension of Yahyā b. Yahyā. These findings suggest that the resemblance between the recensions of Abū Muṣ'ab and Ibn Bukayr is greater than that between either of these and Yahyā's recension.<sup>92</sup> In order to test this thesis, I have examined the recurring and, for Mālik, highly significant phrase *al-amr al-mujtama' 'alayhi 'indanā* ("the agreed-upon rule among us," henceforth AMN) across the three complete recensions.<sup>93</sup> The phrase appears seventy-three times in the three recensions, not counting duplicates. Thirty-one of these instances are found in all three recensions; that is, all three recensions contain the same rule accompanied by the AMN phrase.<sup>94</sup> In another thirty cases, the recensions

90 Quoted in Ma'rūf, *Tahqīq al-nuṣūṣ*, 39.

91 *Muwaṭṭa'* (RME/Fadel and Monette), no. 478; al-Shāfi'i, *al-Umm*, 2:322; *Muwaṭṭa'* (Abū Muṣ'ab, 1991), no. 572; *Muwaṭṭa'* (Abū Muṣ'ab, 2016), 1:443; *Muwaṭṭa'* (Ibn Bukayr), no. 563; *Muwaṭṭa'* (Ibn al-Qāsim), no. 8; *Muwaṭṭa'* (al-Ḥadathānī), no. 184; *Muwaṭṭa'* (al-Qa'nabī), no. 329.

92 On the relationships between the different recensions and the question of Mālik's authorship, see Jonathan Brockopp, *Early Mālikī Law: Ibn 'Abd al-Ḥakam and His Major Compendium of Jurisprudence* (Leiden: Brill, 2000), 75–77, and Yasin Dutton's review of Brockopp's book in *Journal of Islamic Studies* 13 (2002): 44–45.

93 Wymann-Landgraf, *Mālik in Medina*, 437; *Muwaṭṭa'* (Fadel and Monette), 22. For a comprehensive digital textual comparison between three versions of the *Muwaṭṭa'* (those of Yahyā b. Yahyā, Abū Muṣ'ab, and al-Shaybānī), see Savant, "Tale of 3 Versions." Particularly relevant to the present investigation is graph 1, which shows the general correspondence between the recensions of Abū Muṣ'ab and Yahyā. Such a graph cannot, however, represent the fine-grained differences investigated here.

94 In this and subsequent notes, "M" stands for the recension of Abū Muṣ'ab, "B" for that of Ibn Bukayr, "Y" for that of Yahyā, "Z" for that of Ibn Ziyād, "Ḥ" for that of al-Ḥadathānī, and "Q" for that of al-Qa'nabī (MS Carullah). The numbers refer to paragraphs, except in the case of Q, where they refer to folios. In the case of M, the paragraph numbers are for the 1991

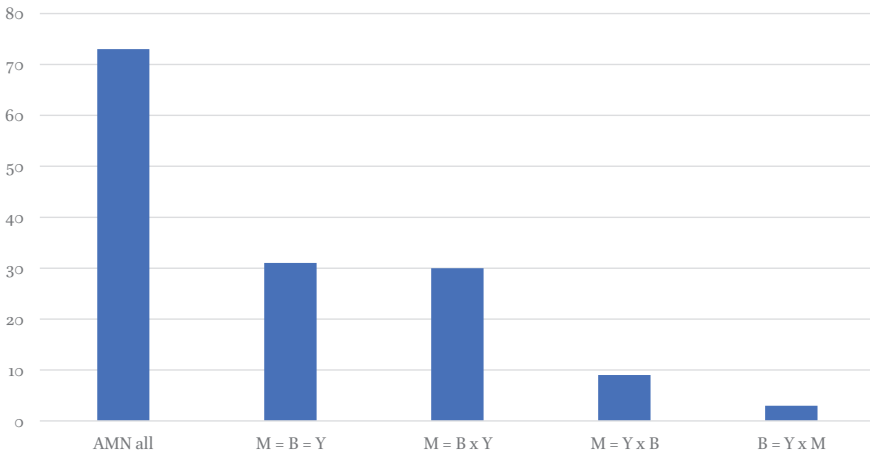
of Abū Muṣ‘ab and Ibn Bukayr agree, whereas that of Yaḥyā does not. In twenty of these thirty, Abū Muṣ‘ab and Ibn Bukayr use the AMN phrase while Yaḥyā either uses the similar but distinct phrase *al-amr ‘indanā* (“the rule in our view,” henceforth AN) or, in two cases, omits the report in question.<sup>95</sup> In the other ten cases the situation is reversed: Yaḥyā uses the AMN phrase and Abū Muṣ‘ab and Ibn Bukayr use AN (on one occasion Ibn Bukayr omits the report).<sup>96</sup> The remaining twelve occurrences of the AMN phrase consist of nine instances in which the recensions of Abū Muṣ‘ab and Yaḥyā agree but that of Ibn Bukayr does not<sup>97</sup> and three instances in which Ibn Bukayr and Yaḥyā agree while Abū Muṣ‘ab differs.<sup>98</sup>

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edition and the parenthetical numbers mark locations in the 2016 edition. A dash indicates that the entire report is absent from the recension. M 708 (1:492) = B 702 = Y 729; M 2159 (2:445) = B 1419 = Y 1400 [= Z 138]; M 3026 (3:247) = B 1560 = Y 1449; M 3028 (3:248) = B 1564 = Y 1451; M 1800 (2:312) = B 2580 = Y 2524; M 2241 (2:475) = B 2411 = Y 2353; M 2274 (2:481) = B 2442 = Y 2377; M 2336 (2:494) = B 2514 = Y 2443; M 2448 (3:38) = B 2349 = Y 2322; M 2478 (3:47) = B 1611 = Y 1926; M 2483 (3:48) = B 1616 = Y 1934; M 2484 (3:48) = B 1617 = Y 1931; M 2486 (3:49) = B 1619 = Y 1933; M 2513 (3:56) = B 1649 = Y 1960; M 2534 (3:65) = B 1669 = Y 1973; M 2566 (3:75) = B 1699 = Y 2001; M 2581 (3:79) = B 1716 = Y 2010; M 2605 (3:85) = B 1739 = Y 2026; M 2700 (3:112) = B 1830 = Y 2104; M 2783 (3:142) = B 2211 = Y 1624; M 2809 (3:152) = B 2236 = Y 1554; M 2812 (3:14) = B 2239 = Y 1557; M 2817 (3:157) = B 2243 = Y 1561; M 2849 (3:170) = B 2274 = Y 1587; M 2891 (3:191) = B 2630 = Y 2168; M 2948 = B 2708 = Y 2199 [= H 294]; M 2989 (3:231) = B 2736 = Y 2217; M 3035 (3:252) = B 1571 = Y 1461; M 3042 (3:255) = B 1577 = Y 1467; M 3060 (3:260) = B 1588 = Y 1479; M 2716 (3:118) = B 2145 = Y 2856 [= H 420].

- 95 M 754 (1:507) = B 754 x Y 183; M 3046 (3:256) = B 1581 x Y 1471; M 871 (2:40) = B 863 x Y 882; M 1628 (2:260) = B 2020 x Y 1492; M 1812 (2:315) = B 2592 x Y—; M 2156 (2:444) = B 1416 x Y 1801; M 2267 (2:480) = B 2438 x Y 2374; M 2270 (2:481) = B 2446 x Y 2378; M 2277 (2:481) = B 2441 x Y 3192; M 2303 (2:487) = B 2474 x Y 2407; M 2306 (2:487) = B 2477 x Y 2410; M 2663 (3:101) = B 1793 [= Q 68b] x Y 2071; M 2752 (3:129) = B 2177 [= H 434] x Y—; M 2834 (3:165) = B 2259 x Y 1576; M 2927 (3:205) = B 2689 [= Q 104b = H 287] x Y 2137; M 2966 (3:221) = B 2720 x Y 2147; M 3021 (3:243) = B 2656 x Y 2163; M 3030 (3:250) = B 1566 x Y 1455; M 3031 (3:251) = B 1567 x Y 1456; M 1798 (2:311) = B 2578 x Y 2529.
- 96 M 647 (1:467) = B 641 x Y 667; M 817 (2:20) = B 809 x Y 835; M 2485 (3:49) = B 1618 x Y 1932; M 2619 (3:87) = B 1750 x Y 2035; M 2630 (3:91) = B 1761 x Y 2044; M 2951 (3:215) = B 2710 x Y 2201; M 2755 (3:130) = B 2181 x Y 1532; M 2310 (2:488) = B 2398 x Y 2340; M 2242 (2:475) = B 2409 x Y 2349; M 2355 (3:7) = B 2320 x Y 2450.
- 97 M 710 (1:493) = Y 731 x B 704; M 2235 (2:473) = Y 3152 x B—; M 1491 (2:227) = Y 1660 x B 1872; M 2994 (3:233) = Y 2222 [= H 306] x B 2739; M 2800 (3:150) = Y 1546 x B 2227; M 2272 (2:481) = Y 3188 x B 2441; M 2290 (2:485) = Y 2394 x B 2462; M— x Y 2406 x B 2473; M 2345 (2:496) = Y 2421 x B 2490.
- 98 B 1585 = Y 1476 x M 3057 (3:259); B 2658 = Y 2234 x M 3023 (3:244); B 2503 = Y 2431 x M 2322 (2:491).

Table 1: Occurrences of the AMN phrase in three recensions of Mālik's *Muwaṭṭa'*



The evidence supports the thesis that the recensions of Ibn Bukayr and Abū Muṣ'ab are closer to each other than they are to Yaḥyā's recension. The relative proximity of the former two recensions and al-Shāfi'ī's recension to each other and the relative distance of these three from Yaḥyā's recension are not surprising when we consider the biography of Yaḥyā b. Yaḥyā, on the one hand, and those of al-Shāfi'ī and Abū Muṣ'ab (and, to an extent, Ibn Bukayr), on the other. Yaḥyā traveled to the East from al-Andalus in his late twenties. He is said to have studied the *Muwaṭṭa'* with Mālik in the final year of the latter's life but to have been unable to complete his studies before Mālik's death. Maribel Fierro has suggested, on the basis of inconsistencies in his biography, that he did not study directly with Mālik at all.<sup>99</sup> By contrast, al-Shāfi'ī and Abū Muṣ'ab, who were both from the Hejaz, were born three decades before Mālik's death and probably encountered Mālik and studied his *Muwaṭṭa'* much earlier than Yaḥyā did.<sup>100</sup> The Egyptian Ibn Bukayr was younger than al-Shāfi'ī and Abū Muṣ'ab but nonetheless reportedly studied the *Muwaṭṭa'* several times with Mālik himself.<sup>101</sup>

99 Maribel Fierro, "El alfaquí beréber Yaḥyā b. Yaḥyā al-Layṭī (m. 234/848), 'el inteligente de al-Andalus,'" in *Biografías y género biográfico en el occidente islámico*, ed. María Luisa Ávila Navarro, 269–344 (Madrid: Consejo Superior de Investigaciones Científicas, 1997), at 285–87.

100 Nadhīr Ḥamdān, *al-Muwaṭṭa'āt li-l-Imām Mālik* (Damascus Dār al-Qalam, n.d.), 86–90. The fact that Abū Muṣ'ab's recension is the most extensive one led classical Muslim scholars to speculate that he was "the last reliable transmitter" of the *Muwaṭṭa'*; see the introduction to *Muwaṭṭa'* (Abū Muṣ'ab, 2016), 1:168–70. Since Abū Muṣ'ab was a native of Medina and served as a judge there, he probably studied the *Muwaṭṭa'* early in his life but, given his continuing proximity to Mālik, may well have updated his copy over the years.

101 Editor's introduction to *Muwaṭṭa'* (al-Hilālī), 1:23.

The different recensions do not seem to have been considered equal by subsequent Mālikīs: there are indications that important later figures preferred the recensions of Ibn Bukayr and Abū Muṣ‘ab over that of Yaḥyā. Baqī b. Makhlad (d. ca. 273/886) reportedly was confronted by Yaḥyā’s descendants about his preference for the other two recensions.<sup>102</sup> Ibn ‘Abd al-Barr, as noted, criticized Yaḥyā’s recension for its “numerous errors and misspellings.”<sup>103</sup> Aḥmad b. Ḥanbal (d. 241/855), though not a Mālikī, declared al-Shāfi‘ī’s version, which, as we have seen, is close to those of Ibn Bukayr and Abū Muṣ‘ab, the most reliable of the dozen or so recensions of the *Muwatta’a* with which he was familiar.<sup>104</sup> The claim that Yaḥyā was a sloppy transmitter is supported by the textual study of the Iraqi historian and editor Bashshār ‘Awwād Ma‘rūf.<sup>105</sup> Why, then, did Yaḥyā’s recension achieve such prominence among classical Mālikī jurists and modern scholars of Islamic law alike? There are at least three possible reasons. First, Yaḥyā attracted a large following and was a member of an influential scholarly family that actively promoted his recension over several generations.<sup>106</sup> Second, he hailed from and returned to the West to teach Mālik’s work, and his version of the *Muwatta’a* came to be embraced as the “local” recension in the region that subsequently would become the heartland of the Mālikī school.<sup>107</sup> And third, Yaḥyā’s recension was published by 1863,<sup>108</sup> before most early works of Islamic law and much earlier than the recensions of Abū Muṣ‘ab and Ibn Bukayr, which were printed only in 1991/1992 and 2020, respectively.<sup>109</sup> For more than a century, therefore, Yaḥyā’s was by far the most

102 Quoted in the introduction to *Muwatta’a* (Ibn Bukayr), 1:27.

103 Ibn ‘Abd al-Barr, *al-Intiqā*, quoted in Ma‘rūf, *Tahqīq al-nuṣūṣ*, 11.

104 Abū Ya‘lā al-Khalīlī al-Qazwīnī, *al-Irshād fī ma‘rifat ‘ulamā’ al-ḥadīth* (Riyadh: Maktabat al-Rushd, 1409/1989), 231. It should be noted that Aḥmad studied with al-Shāfi‘ī before the latter’s move to Egypt, at a time when al-Shāfi‘ī is likely to have still been in possession of his written copy of the *Muwatta’a*.

105 Ma‘rūf, *Tahqīq al-nuṣūṣ*, 14–45.

106 Fierro, “El alfaquí beréber Yahyā b. Yahyā,” 278–79.

107 Editors’ introduction to the *Muwatta’a* (RME), 1:24–42; Ibn ‘Abd al-Barr, *Fatḥ al-mālik bi-tabwīb al-Tamhīd li-Ibn ‘Abd al-Barr ‘alā Muwatta’a al-Imām Mālik*, ed. Muṣṭafā Ṣumayda, 10 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 1998), 1:38.

108 *Al-Muwatta’a li-l-Imām Mālik b. Anas*, ed. Maḥmūd al-Sharīf, Sālim Abū Ḥājib, Muḥammad Bashīr al-Tawāṭi, and Aḥmad al-Wartānī, 2 vols. (Tunis: [al-Maṭba‘ al-Rasmī], 1280/[1863]); ed. Muṣṭafā ‘Izz al-Shāfi‘ī, 2 vols. in 1 (Cairo: Maṭba‘at al-Ḥajar, 1280/[1863]). The editors of the RME refer to the publication of a lithograph edition in Delhi as early as 1216/1801; *Muwatta’a* (RME), 1:20.

109 A version of the *Muwatta’a* that appears to be an abridgment of Ibn Bukayr’s recension written by Muḥammad Ibn Tūmart (d. 524/1130) was published in 1905; *Muwatta’a al-Imām al-Mahdī* (Algiers: Fontana, 1905). See ‘Abd al-Majīd al-Najjār, *al-Mahdī Ibn Tūmart* (Beirut: Dār al-Gharb al-Islāmī, 1983), 154–55, and Schacht, “Deux éditions inconnues,” 484–92.

accessible version of the *Muwaṭṭa'*, often referred to as the “vulgate” in secondary scholarship.<sup>110</sup>

### The Nature of the *Muwaṭṭa'* as a Book

The conclusion that Yaḥyā b. Yaḥyā al-Laythī was less careful a transmitter of Mālik's work than others should not, however, be taken to imply that the variations between the recensions can be reduced simply to more or less accurate transmission. Classical Muslim scholars were aware that Mālik did not write a single, definitive version of the *Muwaṭṭa'*; rather, they argued, he added and deleted reports and, presumably, his own comments while teaching the text over decades.<sup>111</sup> In Western scholarship, this open-endedness of the *Muwaṭṭa'* and many of its contemporary texts was noted in the 1990s by Norman Calder and Gregor Schoeler. Calder argued that these texts exhibited “organic growth,”<sup>112</sup> and that this growth was not limited to Mālik's lifetime but continued for a century after his death. For Calder, then, the *Muwaṭṭa'*'s lack of textual stability necessitated wholesale reevaluation of the work's authorship and authenticity.<sup>113</sup> His conclusions have been sharply challenged by subsequent analyses and evidence.<sup>114</sup> Schoeler, who was more concerned with the process of textual production, pointed out that Mālik never published a final, definitive version of the book. Instead, the *Muwaṭṭa'* was continuously “published” anew in Mālik's teaching circle as the master retaught and his students recopied the work.<sup>115</sup>

At present, with the availability of three complete recensions as well as several fragments and reconstructions of other recensions, these findings can be reexamined and deepened.<sup>116</sup> With the recent publication of Ibn Bukayr's

110 Goldziher, *Muslim Studies*, 2:205; Schoeler, *Genesis of Literature in Islam*, 78.

111 See al-A'zamī's introduction to Mālik, *Muwaṭṭa'*, 97–98.

112 Norman Calder, *Studies in Early Muslim Legal Texts* (Oxford: Clarendon, 1993), 63.

113 *Ibid.*, 38.

114 Calder was not familiar with the early *Muwaṭṭa'* fragment discovered by Nabia Abbott or with *Muwaṭṭa'* recensions other than that of Yaḥyā b. Yaḥyā. See Nabia Abbott, *Studies in Arabic Literary Papyri: Qur'anic Commentary and Tradition*, 2 vols. (Chicago: University of Chicago Press, 1967), 2:114–28. The evidence has accumulated since Calder; see, in particular, Miklos Muranyi, “Die frühe Rechtsliteratur zwischen Quellenanalyse und Fiktion,” *Islamic Law and Society* 4 (1997): 224–41; Wymann-Landgraf, *Mālik and Medina*, 52–57.

115 Schoeler, *Oral and Written*, 33–34.

116 As Aziz Al-Azmeh has noted, Schoeler's identification of different types of writing (in particular, his distinction between syngrammata and hypomnemata) is an important

recension, all three complete recensions are now available in critical editions. Although we cannot be sure of the extent to which the variations between the recensions are attributable to later transmitters, there are three reasons to think that the content of each (although not the ordering of the material; see below) can be attributed to the first transmitter from Mālik: (1) the relative uniformity of the text among manuscripts of a particular recension,<sup>117</sup> (2) the presence in some manuscripts of extensive notes recording variants in other recensions but not in other manuscripts of the same recension,<sup>118</sup> and (3) the fact that archaic elements of the work, such as its chapter ordering (see below), were never “modernized,” which indicates that later transmitters did not feel free to manipulate the text.<sup>119</sup>

The differences between the recensions can be grouped into five categories. First, the variants in Yaḥyā’s chains of transmission, discussed earlier, appear to be straightforward errors, likely caused by Yaḥyā’s lack of attention to and perhaps lack of familiarity with transmission protocols. Similarly, Yaḥyā’s replacement of *wāhib* with *ṣāhib* (example 3 above) may be a simple copying mistake.

Second, instances in which the recensions quote Mālik differently without affecting the meaning of his statement may also reflect copying mistakes, or—especially in cases of meaningless variants, such as “it is disliked” versus “I dislike”—they may be the result of paraphrasing by Mālik’s students. The latter explanation does not seem likely, however: why would students who reproduced reports about the Prophet and other early authorities with great accuracy not have done the same for the statements of their teacher? According to al-Qa’nabī, Mālik preferred the method of transmission that involved a student’s reading of the text aloud to Mālik and the latter’s checking of the recited

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contribution, but it leaves certain fundamental questions about text production and usage unanswered. See Al-Azmeh, *The Arabs and Islam in Late Antiquity: A Critique of Approaches to Arabic Sources* (Berlin: Gerlach Press, 2014), 87–90.

117 The variants recorded in the critical editions indicate that the differences between manuscripts of each recension were modest—except for the ordering of chapters, discussed below.

118 See the numerous such notes included in the footnotes of Yaḥyā b. Yaḥyā’s recension, *Muwāṭṭa’* (RME).

119 Several manuscripts of Yaḥyā’s recension feature chains of transmission through his son ‘Ubayd Allāh, and it seems unlikely (though possible) that ‘Ubayd Allāh would have tampered with his father’s text; *Muwāṭṭa’* (RME), 1:43–48. On Abū Muṣ’ab’s recension, see the 2016 editors’ introduction, 1:236–47. On Ibn Bukayr’s recension, see the editor’s introduction, 37–50.

text for accuracy, which presupposes the existence of a correct urtext.<sup>120</sup> More substantive are instances of interpolation, such as examples 5 and 10 or the examples identified by Jonathan Brockopp,<sup>121</sup> in which a statement by Mālik is longer in one recension than it is in another. In all of these cases, Yaḥyā's recension adds a word or a phrase to Mālik's statement. These additions may reflect explanatory comments interjected by Mālik while reading his text aloud (the way that presenters often add ad hoc explanations to their prepared scripts) or while listening to a student's recitation of it. Alternatively, the additions may have originated as explanatory notes that students, listening to their teacher expound on the text, added to their own copies and that, upon later recopying of these copies, were taken to be part of the text. A distinctive feature of Abū Mus'ab's recension is the insertion of entire statements by Mālik that are clearly not part of Mālik's own written text; these take the form "Mālik was asked about," followed by Mālik's reply.<sup>122</sup> In such cases, the student's role in adding extratextual explanatory material is evident, and no attempt has been made to mask the separate origin of this material.

The third form of variance concerns not only the verbal form of Mālik's statements but also the substance of his positions. My analysis of the variable use of the AMN and AN phrases is an example of this type of divergence: as the unnamed Egyptian scholar's statement that al-Shāfi'ī recorded in his *Umm* makes clear, these phrases carried distinct meanings for Mālik, and the significance of the gradations between them was recognized already by the generation of Mālik's students, as their use by al-Shāfi'ī's interlocutor in *Ikhtilāf Mālik* shows. The surviving manuscript witnesses of each recension show minimal variation in the use of the AMN and AN phrases across a given recension's manuscript tradition,<sup>123</sup> suggesting that the variants go back to Mālik's students. That Yaḥyā's recension differs from the other two complete recensions more than these two differ from one another suggests that Yaḥyā's carelessness as a transmitter may be the cause of many of these differences. This possibility is further supported by the fact that in the above analysis of the AMN/AN variants, the fragmentary recensions that contain the relevant passages overwhelmingly agree with Ibn Bukayr or Abū Muṣ'ab rather than with Yaḥyā. In some instances, including the 20% of the AMN/AN variants in which Yaḥyā's

120 Al-Khaṭīb al-Baghdādī, *al-Kifāya*, 276.

121 Brockopp, *Early Mālikī Law*, 75.

122 See example 14 above. For a summary of these additions, see *Muwaṭṭa'* (Abū Muṣ'ab, 2016), 1:203–4.

123 For examples of variation within the individual recensions, see the variants recorded in the footnotes on *Muwaṭṭa'* (RME), no. 2137; *Muwaṭṭa'* (Ibn Bukayr), nos. 1750 and 2155.



recension is not the outlier, the likely cause lies in faulty copying or a change of mind on Mālik's part; over the decades in which he taught his book, he may have obtained new material or adjusted his view on the prevalence of a position among Medinan scholars.

Changes made by Mālik are also the most reasonable explanation for the fourth type of divergence: the inclusion in some recensions of a greater number of reports, whether from the Prophet or other early authorities, than are found in other recensions. Already the classical Muslim literature described the recension of Abū Muṣ'ab al-Zuhri as the most extensive one, pointing out that it includes dozens of reports not found in Yaḥyā's recension, for example, even as it lacks some of Yaḥyā's.<sup>124</sup> It is likely that the fluctuation of the *Muwatta'*'s contents on the level of reports reflects ongoing addition and pruning by Mālik in a period in which there was as yet no recognized corpus of canonized reports contained in easily accessible books; instead, reports circulated in the predominantly aural world of person-to-person transmission and notebooks.<sup>125</sup> Mālik likely would have added new reports as he learned of them and omitted others that he had come to doubt.

The final and most obvious (though little discussed) form of variance between the recensions relates to the ordering of the material and its arrangement within books (*kutub*, sg. *kitāb*) and chapters (*abwāb*, sg. *bāb*). This type of variation appears also in the manuscript tradition, at least in the case of Ibn Bukayr and Yaḥyā b. Yaḥyā: the manuscripts of each recension differ among themselves in this respect far more conspicuously than they do with respect to the text itself.<sup>126</sup> Reading a recension of the *Muwatta'* after having become familiar with a different one is like trying to cook a meal in another person's kitchen: all of the elements are familiar, but they may not be where one expects them to be. Sarah Bowen Savant's visualization of the ordering of material in Yaḥyā's and Abū Muṣ'ab's published recensions demonstrates that although large chunks of text are found in identical locations in both, there are also substantial differences.<sup>127</sup> To illustrate these differences, consider the "Book of Judicial Rulings" (*Kitāb al-aqḍiya*). In Yaḥyā's recension, this book is

124 See al-A'zamī's introduction to Mālik, *Muwatta'*, 97–98. For a list of reports found in Yaḥyā's recension but not found in Abū Muṣ'ab's, and vice versa, see *Muwatta'* (Abū Muṣ'ab, 2016), 1:178–219.

125 Schoeler, *Genesis of Literature in Islam*, 47–50.

126 Ma'rūf, introduction to *Muwatta'* (Ibn Bukayr), 1:30–31. On Yaḥyā's recension, see al-A'zamī's introduction to Mālik, *Muwatta'*, 352–69. Unfortunately, the editors of the other recensions do not discuss the chapter ordering of the manuscripts they have used in their editions.

127 Savant, "Tale of 3 'Versions,'" graph 1.

located in the middle of the *Muwaṭṭa'*, immediately after the “Book of Sales.” In Abū Muṣ‘ab’s recension, the Book of Sales is followed by three sections relating to manumission and only then by the Book of Judicial Rulings. In Ibn Bukayr’s recension, the Book of Judicial Rulings is the penultimate book of the *Muwaṭṭa'*, coming right before the “Book of Miscellaneous Matters.” Further, within the Book of Judicial Rulings, the chapters are ordered differently in the different recensions. For example, the chapter on testimony (*Bāb al-shahādāt* in Yaḥyā and Abū Muṣ‘ab, *Bāb al-shahāda* in Ibn Bukayr) is variously the second chapter of the book (Yaḥyā), the twelfth (Ibn Bukayr), or the eighteenth (Abū Muṣ‘ab). The variation reaches to the sub-chapter level. The second chapter of the Book of Judicial Rulings (on rulings regarding claims) in Ibn Bukayr’s recension is the second chapter of the same book in Abū Muṣ‘ab’s recension, but the latter version is shorter, and material included in this chapter in Ibn Bukayr’s recension forms chapters 5 and 6 in Abū Muṣ‘ab’s recension (under the titles “The judicial ruling regarding affiliating a child to his father” and “The judicial ruling regarding the inheritance of affiliated children,” respectively). In Yaḥyā’s recension, meanwhile, there is no chapter on rulings regarding claims, but all of this material is included in chapters 21 and 22, which have the same titles as do chapters 5 and 6 of Abū Muṣ‘ab’s recension.

Given such organizational variation, Brockopp’s conclusion that Mālik exerted “no authorial control over the text” is understandable.<sup>128</sup> In my view, however, examination of the *Muwaṭṭa'* within the context of second-/eighth-century writing and book production enables us to make better sense of its constitution. For this purpose, it is worth revisiting the *Muwaṭṭa'* fragment (henceforth F) housed in the Austrian National Library, which Nabia Abbott dated to the second half of the second/eighth century—that is, Mālik’s lifetime or shortly after it.<sup>129</sup> The fragment consists of a single page of text, written on papyrus. The text begins with a report that describes hell (in the surviving recensions this report is found in the “Chapter on the Characteristics of Hell” in the Book of Miscellaneous Matters),<sup>130</sup> and it is followed by the chapter heading “On the Encouragement of Charity” (*fī targhīb al-ṣadaqa*).<sup>131</sup>

128 Brockopp, *Early Mālikī Law*, 77.

129 Abbott, *Studies in Arabic Literary Papyri*, 2:114–28. For images of the fragment, see <https://www.islamic-awareness.org/hadith/perf731> (accessed December 31, 2020).

130 *Muwaṭṭa'* (RME/Fadel and Monette), no. 82; *Muwaṭṭa'* (Ibn Bukayr), no. 81; *Muwaṭṭa'* (Abū Muṣ‘ab, 1991), no. 75; *Muwaṭṭa'* (Abū Muṣ‘ab, 2016), 1:304.

131 *Muwaṭṭa'* (RME/Fadel and Monette), no. 83; *Muwaṭṭa'* (Ibn Bukayr), no. 76; *Muwaṭṭa'* (Abū Muṣ‘ab, 1991), no. 76; *Muwaṭṭa'* (Abū Muṣ‘ab, 2016), 1:305.

The ordering of the chapters in the fragment corresponds to the recensions of Yaḥyā and Abū Muṣ‘ab, but not that of Ibn Bukayr. However, the ordering of material within the charity chapter is different in F, suggesting that it might represent a different recension.

This fragment tells us several important, if tentative, things about the production of the *Muwatta*’s text in the second half of the second/eighth century. First, it indicates that at least some chapter titles acquired their form early on: the fact that the chapter title on the fragment is identical to that in the surviving recensions suggests that it was an integral part of the text copied by Mālik’s students. Second, collation marks on the fragment point to a culture in which each copied section was carefully checked against the original text.<sup>132</sup> This impression is corroborated by the collation practices ascribed to Mālik’s circle in the later Muslim literature.<sup>133</sup> Finally, there is no evidence that the fragment, which consists of a single sheet of papyrus, was ever part of a bound codex.<sup>134</sup> This information could be crucial for explaining the differences in the ordering of the material in the *Muwatta*’s recensions. Schoeler has highlighted the changing nature of the text of the *Muwatta*’, which was effectively republished every time it was taught, but what about the physical manifestation of the text? The sole sheet of F contains about 150 words on each side; a 150,000-word *Muwatta*’ manuscript would thus have required approximately 500 sheets.<sup>135</sup> It should be noted that F is a clean text, written in a professional hand, with no marginal notes or additions. If Mālik’s working version had been a stack of loose pages, possibly written on a variety of writing materials, with material removed or crossed out, rearranged, and added on the margins of existing pages or on newly inserted pages, it would have been even longer and more difficult to copy. If we imagine Mālik’s students using this massive stack of pages as their *Vorlage* when writing their own copies of the work, trying keep track of Mālik’s edits while determining where to place the marginal additions or added pages into the main text,<sup>136</sup> is it any wonder that the results differ in terms of order?

If the “ur-*Muwatta*” taught by Mālik consisted of loose pages,<sup>137</sup> multiple students could copy parts of the book simultaneously, without each having to

132 Abbott, *Studies in Arabic Literary Papyri*, 2:114.

133 Al-Khaṭīb al-Baghḍādī, *al-Kifāya*, 273, 276, 298, 308–9, 323, 327, 332–33.

134 On the unsuitability of papyrus for making codices, see Jonathan Bloom, *Paper before Print: The History and Impact of Paper in the Islamic World* (New Haven, CT: Yale University Press, 2001), 24–27.

135 See Abbott, *Studies in Arabic Literary Papyri*, 2:114; Savant, “Tale of 3 ‘Versions.’”

136 This seems like a plausible explanation for the differences in example 1 above.

137 Bashshār ‘Awwād Ma‘rūf also came to this conclusion; see his introduction to *Muwatta*’ (Ibn Bukayr), 1:32.

wait until another student had finished copying the entire work. Of course, not all students wrote or obtained their copies directly on the basis of the ur-*Muwaṭṭa'*; al-Shāfi'i, for example, had already memorized the text by the time he met Mālik for the first time, according to Ibn Abī Ḥātim.<sup>138</sup> But even such students would have heard or consulted Mālik's copy of the *Muwaṭṭa'* at some point in order to update their texts to reflect the current version taught by Mālik. The thesis of an unbound ur-*Muwaṭṭa'* gains support from reports that Mālik told a new student to come to his study session with specific sections (*kutub*, lit. books) of the *Muwaṭṭa'*, namely, the books on two types of manumission (*al-mukātab* and *al-mudabbar*).<sup>139</sup> In addition, a report preserved by Ibn 'Asākir (d. 571/1176) indicates that the practice of preserving the *Muwaṭṭa'* as loose sheets continued after him: at least one of Ibn Bukayr's students is said to have taught the work from unbound leaves (*qarāṭīs*, sg. *qirṭās*) of text.<sup>140</sup>

Maintaining the order of a book written on loose sheets, especially double-sided ones, that were regularly being copied by students would have been a difficult task. A report about Mālik's teaching circle may hint at this difficulty. The Egyptian Ḥabīb b. Ruzayq (d. unknown) served as a scribe for Mālik, earning the epithet *kātib Mālik*. He would recite the *Muwaṭṭa'* to Mālik in the presence of his students, who, presumably, followed along in their own copies. Yaḥyā b. Ma'īn (158–233/774 or 775–848) claimed that Ḥabīb used to “mix up or skip (*yukhaṭrifu*) the pages” of the *Muwaṭṭa'* when reciting it.<sup>141</sup>

As the *Muwaṭṭa'* was transmitted over time, the thematic coherence of its various books was maintained, but the books were not stable in terms of their internal organization or their placement within the work as a whole. The custom of separating ritual law from other law domains is already visible in all of the recensions, each of which begins with ritual law, then treats contract law, and concludes with criminal law (and other topics). But the proper location of certain topics remains undetermined: to add to the example of judicial rulings discussed earlier, the “Book of Sacrificial Animals” (*Kitāb al-ḍaḥāyā*) is found

138 Ibn Abī Ḥātim, *Ādāb al-Shāfi'i*, 27–28.

139 Al-Qāḍī 'Iyād, *Tartīb al-madārik*, quoted in Ma'rūf, introduction to *Muwaṭṭa'* (Ibn Bukayr), 1:32.

140 Ibn 'Asākir, *Tārīkh madīnat Dimashq*, quoted in *ibid*.

141 Yaḥyā b. Ma'īn, *Su'ālāt Abī Ishāq Ibrāhīm b. al-Junayd li-l-Imām Yaḥyā b. Ma'īn*, ed. Abū 'Umar al-Azhārī (Cairo: al-Fārūq, 2007), 239. The meaning of *khaṭrafa* is unclear; it may denote either skipping pages or mixing them up. The fact that this unusual verb is repeated in later accounts about Ḥabīb suggests that later scholars, too, did not understand it enough to paraphrase it, possibly because the material aspects of book culture had evolved and the use of codices had rendered this type of problem obscure. I am grateful to Rana Mikati for her thoughts on this matter.

at the end of the section on ritual law in Ibn Bukayr's recension, after the "Book of Jihad" in Yaḥyā's (a point that would come to mark the boundary between ritual and other law in later Mālikism), and toward the end of the book, even after criminal law, in Abū Muṣ'ab's. Another indicator of the still-developing categorization of material and ordering of topics is the Book of Miscellaneous Matters (*Kitāb al-jāmi'*), which in al-Qa'nabī's recension is called "The Chapter of Additions" (*Bāb al-ziyādāt*)<sup>142</sup>—a residual chapter for traditions that did not fit into the other books and chapters.

### Conclusion

The nature of the variants that I have cataloged here indicates that the text of the *Muwatta'* as it was taught by Yaḥyā b. Yaḥyā in al-Andalus, al-Shāfi'ī in Iraq and Egypt, Ibn Bukayr in Egypt, and Abū Muṣ'ab in Medina was remarkably stable in content, clearly pointing to a shared written source that goes back to Mālik. Yet the differences between the recensions suggest that the variation is not due simply to the accumulation of errors in copies of a singular text. It is likely that some of the variants are the result of Mālik's own rewrites, while others are the result of the recording and citation practices (for better or worse) of his students. I have suggested that Mālik's ur-*Muwatta'* was a collection of unbound sheets that were then copied by his students, possibly also onto unbound sheets, thus causing the confusing variation in the ordering of the material between the different recensions. Robinson's and Brockopp's claim that this variation demonstrates a lack of control by Mālik over the content of the *Muwatta'* is certainly accurate, to an extent, from the perspective of today's expectations of a book as a singular authorial utterance, frozen in time and mechanically reproduced in identical copies. However, the *Muwatta'*'s openness to Mālik's cumulative interventions may also be seen as granting him a *larger* degree of control over his text than that typically enjoyed by moderns, who are chained to the contents of their books once they have been published.

Al-Shāfi'ī's treatment of the *Muwatta'* in the *Umm* shows clearly that he and his contemporaries conceived of the *Muwatta'* as a text composed by Mālik, one that not only conveyed material the latter had compiled but also expressed his legal opinions and that, consequently, had to be quoted accurately. The reports about students collating their copies of the text in Mālik's teaching circle, corroborated by a collation mark on a manuscript fragment of the *Muwatta'* from that period, further support this conclusion. The fact that the

<sup>142</sup> Al-Qa'nabī, MS Carullah, fol. 139a.

practical and material dimensions of book production and publication at the time gave rise to different recensions of the *Muwaṭṭa'* does not detract from its identity as a work authored by Mālik. The students and others who passed on his text are properly described as transmitters and editors, not coauthors, and their influence on the content of the *Muwaṭṭa'* appears to have been largely a function of their varying degrees of meticulousness and their individual judgments about the ordering of the material they encountered—including, in some cases, additional relevant (and signposted) statements from Mālik that were not part of the original text.

A final, useful perspective on the textual variance of the *Muwaṭṭa'* is provided by a comparison of its recensions with the multiple versions that exist of the corpus of al-Haytham b. 'Adī (d. 207/822), described and analyzed by Stefan Leder.<sup>143</sup> Although Ibn 'Adī was a full generation younger than Mālik, the versions of his material differ from one another far more than do the recensions of the *Muwaṭṭa'* from each other. The reason for the difference appears to lie in the differing ways in which these two corpora were used and transmitted. Whereas Ibn 'Adī's material survived only as individual reports that were integrated into the books of other authors, the *Muwaṭṭa'* was maintained as a single text that expressed the doctrine of a single author: Mālik b. Anas.

<sup>143</sup> Stefan Leder, *Das Korpus al-Haytham ibn 'Adī (st. 207/822): Herkunft, Überlieferung, Gestalt früher Texte der Aḥbār Literatur* (Frankfurt am Main: Klostermann, 1991), ch. 3; idem, "Authorship and Transmission in Unauthored Literature: The *Aḥbār* Attributed to al-Haytham ibn 'Adī," *Oriens* 31 (1988): 67–81.