

## Contesting Intoxication: Early Juristic Debates over the Lawfulness of Alcoholic Beverages\*

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### Abstract

This study examines legal debates over the lawfulness of alcoholic beverages between Mālikī/Shāfi'ī and Ḥanafī jurists. While there was an early consensus surrounding the prohibition of an intoxicating drink derived from grapes, disagreements persisted regarding intoxicants obtained from non-grape sources. The primary advocates for the prohibition of all intoxicants were Mālikī and Shāfi'ī jurists whose works were increasingly devoted to attacking their Ḥanafī counterparts. Mālikī critiques centered on arguments rooted in the Qur'ān, while Shāfi'ī critiques relied on traditions from the Prophet/Companions. The Ḥanafīs argued for a narrow prohibition limited to a single drink (i.e., *khamr*) and forbade other drinks only if consumed to the point of intoxication. Over time, the Ḥanafīs abandoned their original position and endorsed complete prohibition due, perhaps, to the growing moral stigma associated with intoxicants. They did so by “reinterpreting” the views of one of their founding figures, Muḥammad b. al-Ḥasan al-Shaybānī (d. 189/806).

### Keywords

*Khamr, Nabidh, Intoxicants, Alcohol, Abū Ḥanīfa, al-Shaybānī, Ḥanafism, Kūfa*

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\* A broader (in terms of the law schools covered) but less detailed (in terms of sources) version of this discussion can be found in Najam Haider, *Origins of the Shi'a* (Cambridge: Cambridge University Press, 2011), 138-62. For an expanded treatment of the four major Sunnī and two Shī'ī law schools, see *ibid.*, *The Birth of Sectarian Identity in 2<sup>nd</sup>/18<sup>th</sup> century Kūfa* (Princeton, 2007), 237-98. Thanks to David Powers and the anonymous reviewers for their helpful comments on an earlier draft of this article.

Dietary restrictions are among the most prominent and well known elements of Islamic ritual law. Muslims are instructed to consume meat that has been properly slaughtered and to refrain from (among other substances) pork and alcoholic beverages. In the early Muslim world, however, the prohibition of alcoholic drinks was not absolute as Ḥanafī scholars permitted the limited consumption of some intoxicating substances. The Ḥanafī position was condemned by the other Muslim law schools in a long-standing dispute that stretched into the 6<sup>th</sup>/12<sup>th</sup> century.

This article traces juristic discourse over the lawfulness of intoxicants between the Mālikīs and Shāfi'īs (on one side) and the Ḥanafīs (on the other).<sup>1</sup> The central disagreement between the schools focuses on whether the word *khamr* in Q 5:90-1<sup>2</sup> refers exclusively to wine produced from uncooked grape juice or whether it applies to intoxicants of all varieties. Although both sides cite traditions in support of their positions, the matter is complicated by slight differences in the wording of traditions that alter the meaning of proof texts in profound ways. The dispute also raises a host of ancillary issues from the production of vinegar and the lawfulness of certain drinking/storage vessels to the punishment for the consumption of illicit drinks. The opinions of jurists on these secondary matters are shaped by their stance in favor of either 'general' or 'narrow' prohibition.<sup>3</sup> For example, if beer is

<sup>1</sup> I do not examine the views of the Ḥanbalīs, Imāmīs/Twelvers, and Zaydis primarily because they do not address the issue of prohibition or engage the Ḥanafī position directly. All three of these schools take the unlawfulness of alcoholic drinks for granted and focus on ancillary issues. The Ḥanbalīs are particularly interested in issues related to punishment, while the Imāmīs/Twelvers and Zaydis concentrate on the use of alcoholic beverages for medicinal or cosmetic purposes. For a thorough discussion of these schools, see Haider, *Origins*, 153-62.

<sup>2</sup> For a brief survey of the textual evidence most pertinent to the debate over prohibition, see Appendix 1. Readers unfamiliar with the issue are urged to consult the appendix before proceeding as certain Qur'ānic verses (i.e., Q 16:67, Q 2:219, Q 4:43, Q 5:90-1) and traditions (i.e., the four central categories of traditions) are referenced throughout the article. The text of those Qur'ānic verses, ancillary to a discussion of intoxicants but nevertheless invoked in specific juristic arguments, is provided in the footnotes. I utilize a slightly modified version of Marmaduke Pickthall's translation of the Qur'ān.

<sup>3</sup> In the course of this article, the term "general prohibition" is used to refer to the view that all intoxicants are prohibited in any quantity, while "narrow prohibition" is used to refer to the view that restricts the ban to (a) intoxicants made from grapes/dates or (b)

considered a type of *khamr*, it automatically incurs legal restrictions (based on Q 5:90-1) that include a total ban on its use in cooked foods or in commercial transactions of any kind.

The controversy over intoxicants in the Muslim legal tradition has been documented in a number of previous studies.<sup>4</sup> The work of Ralph Hattox, in particular, stands out by virtue of its insightful summation of the arguments for and against general prohibition.<sup>5</sup> Although Hattox effectively outlines the parameters of the debate over alcoholic drinks, he assumes that the views of the Ḥanafis have remained static. This is understandable given his primary interest in the legal status of coffee. The analysis presented below expands the scope of Hattox's work by providing detailed analysis of the specific arguments put forward by individual Ḥanafī jurists. In the process, it reveals (a) a gradual shift in the Ḥanafī position towards general prohibition and (b) the means through which this shift was legitimized in Ḥanafī legal discourse. On a more general level, the dispute over intoxicants helps shed light on the mechanisms that facilitate change within individual Muslim law schools.

The first section of this article examines the legal reasoning of Mālikī and Shāfi'ī jurists who forbid the consumption of all alcoholic drinks in any quantity. These jurists devote considerable effort towards attacking the Ḥanafis for their advocacy of narrow prohibition. The second section turns to Ḥanafī arguments favoring the consumption of a number of alcoholic drinks as long as one does not reach a state of intoxication. In their legal works, Ḥanafī jurists (a) attempt to carve out a space for their position while (b) gradually moving towards an embrace of general prohibition. The article concludes by analyzing the pressures

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alcohol consumed to the point of intoxication. Proponents of the latter view often propose definitions for "intoxication."

<sup>4</sup> See, for example, *EP*, s.v. "Khamr" (Wensinck); *EP*, s.v. "Nabidh" (Wensinck); Ralph Hattox, *Coffee and Coffeehouses* (Seattle: University of Washington Press, 1985), 46-60; Christopher Melchert, *The Formation of the Sunni Schools of Law* (Leiden: Brill, 1997), 48-51; Kathryn Kueny, *The Rhetoric of Sobriety* (Albany: State University of New York Press, 2001). The topic of intoxicants is also covered in Behnam Sadeghi, *The Logic of Law-Making in Islam* (Cambridge: Cambridge University Press, 2012), 135-6. I am grateful to Behnam Sadeghi for allowing me to read parts of his book in advance of publication.

<sup>5</sup> Hattox, *Coffee*, 46-60.

that contributed to the evolution of the Ḥanafi position including (most prominently) the weight of moral expectations.

### A Typology of Drinks in the Pre-Modern Muslim World

Before turning to the debate over intoxicants, it is necessary to define the names of certain drinks and to comment on their production methods.<sup>6</sup>

For reasons that will become clear below, jurists were especially concerned with beverages derived from grapes and dates. The first of these was *khamr*, which jurists narrowly interpreted as wine made from the fermentation of raw grape juice. In the early period, the fact that there was no legal consensus as to whether the term could be applied to other intoxicating drinks became the focal point of disputes between the Mālikīs/Shāfi'īs and the Ḥanafīs. *Naqī'* (infusion), the second drink that attracted juristic attention, was produced by soaking dried fruit (most often dates and raisins) until the water acquired the flavor or sweetness of the fruit in question. The third and most problematic of the grape/date drinks was *nabīdh*, described in most traditions<sup>7</sup> as a type of *naqī'* in which the fruit is left soaking at the bottom of a vessel

<sup>6</sup> For a discussion of the ambiguity in the identity of drinks and the importance of production methods, see Hattox, *Coffee*, 50-2 and *EP*, s.v. "Khamr" (Wensinck). Bear in mind that the meaning of names given to specific drinks varied by region. The best example is *nabīdh*, which refers to different beverages depending on period and location. In the discussion that follows, I have tried to make sense of the chaos by organizing drinks in accordance with their most common definition in the legal sources. Although there are cases in which my use of a name does not align with that of a specific jurist, it is important, in my view, to maintain terminological consistency so that—at the very least—the reader can be certain of the identity of a given drink.

<sup>7</sup> See Mālik b. Anas, *al-Muwatta'*, ed. Muḥammad Fu'ād 'Abd al-Bāqī, 2 vols. (Cairo: Dār Iḥyā' al-Kutub al-'Arabiyya, 1951), 2:844, sec. 3, no. 8; al-Nasā'ī, *Kitāb al-sunan al-kubrā*, ed. Ḥasan 'Abd al-Mun'im Shalabi, 12 vols. (Beirut: Mu'assasat al-Risāla, 2001), 5:69, no. 5057 and 5:125, no. 5229; Muḥammad b. Ismā'il al-Bukhārī, *Jāmi' al-ṣaḥīḥ*, ed. Abū Suhayb al-Karmī (Riyadh: Bayt al-Afkār, 1998), 1102, no. 5602; Ibn Māja, *Sunan* (Karachi: n.p., 1952-3), 4:77, no. 3397; al-Bayhaqī, *al-Sunan al-kubrā*, ed. Muḥammad 'Abd al-Qādir 'Arā, 11 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 1994), 8:520, no. 17420, 8:521, no. 17421, and 8:527, no. 17436. Note that when citing traditions, I include (when applicable) the section (sec.) and number (no.) assigned to a given tradition in each work/edition.

rather than being removed after the transfer of flavor. Other traditions, however, expanded the sources of *nabīdh* from dried fruit to include fresh fruit (e.g., grapes)<sup>8</sup> and even cooked juice.<sup>9</sup> The jurists also discussed a large number of intoxicating substances prepared from sources other than grapes or dates, including barley/millet (*mizr*,<sup>10</sup> *ji'a*,<sup>11</sup> *fuqqā'*<sup>12</sup>), honey (*bit*<sup>13</sup>), wheat/millet (*ghubayrā'*<sup>14</sup>), quince (*mayba*<sup>15</sup>), and even milk (*rūba*<sup>16</sup>).<sup>17</sup>

As for production methods, the jurists were particularly concerned with the cooking of juices. This concern resulted from a realization that fermentation begins at the bottom of a drink, where pulp and bits of fruit gather in a composite known as “the dregs” (*akar, durdī*). Once the bottom layer makes its way to the top, the drink loses its sweetness and is said to have “intensified.” Cooking accelerates the natural process by prematurely pushing the problematic bottom layer to the top. Jurists dealt with this issue by advocating production standards that guarded

<sup>8</sup> See al-Kulaynī, *Uṣūl min al-Kāfi*, ed. 'Alī Akbar al-Ghaffārī, 8 vols. (Tehran: Dār al-Kutub al-Islāmiyya, 1983), 6:392, no. 3; Ibn Abī Shayba, *Muṣannaf*, ed. Sa'īd al-Lahḥām, 9 vols. (Beirut: Dār al-Fikr, 1989), 5:75, no. 23837 and 5:76, no. 23840.

<sup>9</sup> See al-Shaybānī, *al-Āḥḥār* (Karachi: Idārat al-Qur'ān, 1998), 1:184, no. 837.

<sup>10</sup> See Muslim b. al-Ḥajjāj, *Jāmi' al-ṣaḥīḥ*, ed. Muḥammad Fu'ād 'Abd al-Bāqī, 5 vols. (Cairo: Dār Iḥyā' al-Kutub al-'Arabiyya, 1955–6), 3:1586, sec. 7, no. 71 and 3:1587, sec. 7, no. 72; Abū Dā'ūd, *Sunan* (Beirut: Dār Ibn Ḥazm, 1998), 3:328, no. 3684; 'Abd al-Razzāq, *Muṣannaf fi'l-ḥadīth*, ed. Ayman Naṣr al-Dīn al-Azharī, 12 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 2000), 9:133, nos. 17312 and 17313.

<sup>11</sup> See Ibn Abī Shayba, *Muṣannaf*, 5:69, no. 23765; al-Bayhaqī, *Muṣannaf*, ed. Sa'īd al-Lahḥām, 9 vols. (Beirut: Dār al-Fikr, 1989), 8:508, no. 17370.

<sup>12</sup> The reference to the source of the drink is mentioned in Sharīf al-Murtaḍā, *al-Intiṣār* (Najaf: al-Miṭba'at al-Ḥaydariyya, 1971), 1:199; and in al-Ṭūsī, *Kitāb al-khilāf*, 6 vols. (Qum: Mu'assasat al-Nashr al-Islāmi, 1995), 5:489-90. See also Muḥammad Rawwās al-Qalahjī, *Mu'jam lughat al-fuqqahā'* (Karachi: Idārat al-Qur'ān, 1989), 317 where *fuqqā'* is defined as a drink made from barley that has acquired a froth.

<sup>13</sup> See Abū Dā'ūd, *Sunan*, 3:328, no. 3682b; al-Nasā'ī, *Sunan*, 5:77, nos. 5083 and 5084; al-Bukhārī, *al-Ṣaḥīḥ*, 1100, no. 5586.

<sup>14</sup> See al-Bayhaqī, *Sunan*, 8:508, no. 17368; Abū Dā'ūd, *Sunan*, 3:328, no. 3685; 'Abd al-Razzāq, *Muṣannaf*, 9:139, no. 17337.

<sup>15</sup> See al-Kulaynī, *al-Kāfi*, 6:427, no. 3.

<sup>16</sup> See Ibn Abī Shayba, *Muṣannaf*, 5:89, no. 23982.

<sup>17</sup> Mixtures were categorized separately due to their known tendency to ferment more quickly than pure juices. This is made explicit in a number of works, including Ibn Idrīs, *Kitāb al-Sarā'ir*, 3 vols. (Qum: Mu'assasat al-Nashr al-Islāmi, 1990), 3:129.

against the possibility of fermentation. Specifically, they focused on whether a drink had begun to boil and the percentage of its volume lost in the cooking process. The resulting classification of drinks included *bādhiq*,<sup>18</sup> which was produced by briefly cooking grape juice at low heat (so as to not cause boiling) and *ṭilā*,<sup>19</sup> which resulted from cooking grape juice until it had been reduced to one-third of its original volume.<sup>20</sup> On a more general level, all drinks—regardless of source—reduced to one-third of their original volume were called *muthallath*,<sup>21</sup> while those reduced to half were labeled *munaṣṣaf*.<sup>22</sup>

It is important to emphasize that this section is intended to guide the reader through the maze of names mentioned in the juristic literature; it is not meant as a systematic study of pre-modern drinks. A comprehensive survey of the topic would require a detailed comparison of drinks from a multitude of regions and cultures. This is because regions (or even cities) often utilized unique names for identical drinks or used identical names for very different drinks. The resulting confusion confounded even the earliest Muslim legal authorities. This is evident in a number of traditions in which questioners are asked by authority figures (including the Prophet) to explain the process by which an unfamiliar drink is prepared before ruling on its permissibility.<sup>23</sup> The analysis that follows assumes familiarity with the terminology of drinks and preparations discussed above and summarized in chart 1 below.

<sup>18</sup> See 'Abd al-Razzāq, *Muṣannaf*, 9:136, no. 17326; al-Bayhaqī, *Sunan*, 8:511, no. 17379.

<sup>19</sup> See al-Ḥurr al-ʿĀmilī, *Wasā'il al-shi'a*, 30 vols. (Qum: Mu'assasat Āl al-Bayt, 1990), 25:286, no. 31922; *EP*, s.v. "Khamr" (Wensinck).

<sup>20</sup> When a similar method (i.e., cooking until the volume is reduced by two-thirds) is applied to a date-based substance, the resulting drink is called *sakar*.

<sup>21</sup> See *EP*, s.v. "Khamr" (Wensinck); Muḥammad b. Aḥmad al-Sarakhsī, *Kitāb al-mabsūt*, ed. Muḥammad Rāḍī, 30 vols. (Cairo: Maṭba'at al-Sa'āda, 1906), 24:15.

<sup>22</sup> al-Sarakhsī, *Mabsūt*, 24:15; al-Marghinānī, *al-Hidāya*, ed. Muḥammad Tāmir and Ḥāfiẓ ʿĀshūr Ḥāfiẓ (Cairo: Dār al-Salām, 2000), 4:1530.

<sup>23</sup> One tradition (al-Ḥurr al-ʿĀmilī, *Wasā'il*, 25:352-3, no. 32107), for example, mentions a Yemenī drink called *ḥathā* whose source is unclear, whereas another tradition (al-Bayhaqī, *Sunan*, 8:506, no. 17361) depicts the Prophet asking a visiting delegation to describe the manner in which they prepare two drinks that he subsequently identifies as *bit'* and *mizr*.

Chart 1. A Summary of Alcoholic Drinks

<i>Drink</i>	<i>Source</i>	<i>Production Method</i>
<i>khamr</i>	Grapes	Alcoholic drink made directly from raw grape juice.
<i>naqī'</i>	Dried Fruit (mostly raisins/dates)	Fermenting a water mixture that has been infused with the flavor of dried fruit. This is primarily done with raisins or dates. The fruit is removed from the drinking vessel after the transfer of flavor.
<i>nabidh</i>	Dried Fruit (mostly dates)	Identical to <i>naqī'</i> , except that the fruit is left at the bottom of the vessel. Some traditions expand the definition of this drink to include fresh fruit or cooked fruit juice.
<i>mizr</i>	Barley/Millet	Unspecified.
<i>ji'a</i>	Barley/Millet	Unspecified.
<i>fuqqā'</i>	Barley/Millet	Unspecified. This is a drink of particular interest in Imāmi/Twelve sources.
<i>bit'</i>	Honey	Unspecified.
<i>ghubayrā'</i>	Wheat/Millet	Unspecified.
<i>mayba</i>	Quince	Unspecified.
<i>rūba</i>	Milk	Unspecified.
<i>bādhiq</i>	Grapes	Produced from grape juice that has been cooked at low heat (without boiling) for a brief but unspecified time.
<i>ṭilā'</i>	Grapes	Produced from grape juice that has been cooked at low heat (without boiling) until it has been reduced to 1/3 of its original volume.
<i>muthallath</i>	Unspecified	Produced from a drink (of any origin) reduced through low heat cooking to 1/3 of its original volume.
<i>munaṣṣaf</i>	Unspecified	Produced from a drink (of any origin) reduced through low heat cooking to 1/2 of its original volume.

## The Mālikīs and the Shāfi'īs

Mālikī and Shāfi'ī jurists unequivocally condemn the consumption of alcoholic drinks.<sup>24</sup> This view was strongly associated with Medina, the city where the founders of both the Mālikī and Shāfi'ī law schools were born and raised. Over the centuries, Mālikī and Shāfi'ī jurists increasingly focused on attacking the Ḥanafīs as opposed to proving the validity of their own positions. Their attacks, however, utilized quite different strategies, with the Mālikīs offering a Qur'ān-based critique and the Shāfi'īs inclining towards a tradition-based critique. As will become clear below, both approaches posed a considerable challenge to Ḥanafī jurists and ultimately helped push them towards an acceptance of general prohibition.

### A. *The Mālikīs*

Mālikī juristic discourse endorses general prohibition primarily on the basis of (a) a select number of traditions and (b) analogical reasoning applied to Q 5:90-1. Specifically, Mālikī jurists identify *khamr's* ability to cause enmity among Muslims and hinder remembrance of God as the *'illa* (operative cause) of the Qur'ānic prohibition and reinforce this argument with other types of evidence (e.g., etymology, traditions). As opposed to the Ḥanafīs who provide a complex typology of drinks based on source and preparation, the Mālikīs categorize drinks as either lawful (not intoxicating) or unlawful (intoxicating). Given the broad (and consistent) school consensus regarding prohibition, Mālikī discussions of intoxicants increasingly offer detailed point by point refutations of Ḥanafī arguments.

### *Mālik and Sahnūn*

The first Mālikī treatment of prohibition is ascribed to the eponymous founder of the school, Mālik b. Anas (d. 179/795). In his *Muwatta'*, Mālik cites three traditions that play a critical role in the school's advo-

<sup>24</sup> I have chosen to structure this article around individual law schools. This approach runs the risk of obscuring the dynamic interplay characteristic of juristic exchanges between Mālikī/Shāfi'ī and Ḥanafī jurists. I attempt to alleviate this potential problem by noting instances when jurists are addressing criticisms from other law schools. I feel that alternative organizational structures (i.e., temporal or issue-oriented) are more prone to confusion and repetition.



cacy of general prohibition.<sup>25</sup> The first notes that the Prophet responded to a question about *bit'* by stating that "any drink that intoxicates is prohibited."<sup>26</sup> According to the second, he rendered a similar judgment on *ghubayrā'*, asserting that "there is no good in it."<sup>27</sup> The importance of these traditions rests in their expansion of the scope of prohibition to include all intoxicating substances such as those produced from honey and grain.<sup>28</sup> The third tradition predicates 'Umar b. al-Khaṭṭāb's (d. 23/644) approval of *ṭilā'* on the condition that it not be alcoholic.<sup>29</sup> This tradition legitimizes a small category of *muthallath* drinks and, as will be seen below, directly counters a Ḥanafī claim that 'Umar consumed alcoholic *ṭilā'*.

Mālik's opinions are elaborated and further clarified in Saḥnūn 'Abd al-Salām b. Sa'īd al-Tanūkhī's (d. 240/855) *al-Mudawwana al-kubrā*. Saḥnūn ascribes to Mālik the belief that "every drink that intoxicates is *khamr*."<sup>30</sup> This ruling justifies imposing a penalty on individuals who drink even the smallest amount of any intoxicant. In addition to his repeated condemnation of all alcoholic drinks, Saḥnūn discourages the consumption of those that have an ambiguous status. While water-based drinks (*nabīdh* and *naqī'*) are lawful when fresh, they are reprehensible (*makrūh*) and thereby highly discouraged after just a day or two because of the mere possibility of fermentation.<sup>31</sup> Mixtures of substances that have the capacity to ferment (e.g., dates, grapes/raisins, grain, honey) are similarly prohibited because such drinks are known to ferment more quickly than single source drinks.<sup>32</sup> Saḥnūn acknowledges that consuming a juice- or water-based drink reduced to one-third

<sup>25</sup> There are no substantive differences on this issue in the various extant versions of Mālik's *Muwatta'*, including the text transmitted by Muḥammad al-Shaybānī.

<sup>26</sup> Mālik b. Anas, *Muwatta'*, 2:845, sec. 4, no. 9.

<sup>27</sup> *Ibid.*, 2:845, sec. 4, no. 10.

<sup>28</sup> As was explained in the first section above, *bit'* is derived from honey while *ghubayrā'* is produced from grain.

<sup>29</sup> Mālik b. Anas, *Muwatta'*, 2:847, sec. 5, no. 14.

<sup>30</sup> Saḥnūn, *al-Mudawwana al-kubrā*, ed. Ḥamdī al-Damirdāsh Muḥammad, 9 vols. (Beirut: al-Maktaba al-'Aṣriyya, 1999), 6:2459.

<sup>31</sup> *Ibid.*, 6:2459, 6:2460.

<sup>32</sup> Saḥnūn goes into exquisite detail regarding the laws of mixing, drawing a distinction between water, which does not have the capacity to ferment, and substances like honey, which have the innate ability to become intoxicants (*ibid.*, 6:2459-60).

of its original volume by cooking is permissible but repeats the condition that it must not be an intoxicant.<sup>33</sup> When pressed about drinks (both juice- and water-based) that fizz or bubble, he paraphrases Mālik as follows:

If it intoxicates, it is *khamr*, regardless of whether it is juice or any type of *nabīdh*. The prohibition is not due to their “bubbling” but rather to their intoxicating effects.<sup>34</sup>

In this manner, Saḥnūn dismisses the significance of any outward physical characteristic in determining the legality of a drink. The term applies broadly to every drink that has the capacity to intoxicate without regard for mitigating circumstances such as source, physical properties, or production method.

Mālik’s stance on intoxicants likely reflected local Medinan practice in the 2<sup>nd</sup>/8<sup>th</sup> century. In fact, as will be shown below, a number of jurists explicitly identified general prohibition with the Ḥijāz (in general) and Medina (in particular). Recent studies on the formulation of Mālikī law have argued that early Mālikī jurists utilized traditions only as supplemental evidence to reinforce views based on Medinan customary practice.<sup>35</sup> It is not surprising then that Mālik cites just three traditions, while Saḥnūn (a generation removed) offers only one, which simply clarifies a few ambiguities. Although these arguments were potential critiques of Ḥanafī claims, Mālik and Saḥnūn do not use them in a critical capacity and seem primarily interested in confirming the validity of the Mālikī/Medinan position.

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<sup>33</sup> As mentioned above, applying heat may cause the top and bottom of a drink to mix and accelerate fermentation. Once cooking has begun, it must continue until two-thirds of the original volume has evaporated, at which point the drink is (theoretically) no longer an intoxicant. Saḥnūn affirms the need to cook to this extent but adds that subsequent fermentation makes the drink unlawful. The early Ḥanafīs, on the other hand, felt that since the reduced substance was not raw grape juice, it could be fermented to produce a lawful intoxicating drink (*ibid.*, 6:2460-1).

<sup>34</sup> *Ibid.*, 6:2460.

<sup>35</sup> Yasin Dutton, *The Origins of Islamic Law* (Surrey: Curzon, 1999), 45 and 197-8, note 82; Ahmed El Shamsy, “From Tradition to Law” (PhD Dissertation: Harvard, 2009), 42-3; Najam Haider, “Mu’āwīya in the Ḥijāz,” in *Law and Tradition in Classical Islamic Thought*, ed. Michael Cook *et al.* (New York: Palgrave Macmillan, 2012), 37-54 and, particularly, 43.

*Ibn Abī Zayd*

Unlike Mālik and Saḥnūn, Ibn Abī Zayd (d. 386/996) directly confronts a number of Ḥanafī arguments in his *Kitāb al-nawādir wa'l-ziyādāt*.<sup>36</sup> He begins, however, by laying out the broad parameters of the Mālikī stance on intoxicants. After relating the basic narrative of Qur'ānic abrogation (Q 2:219, Q 4:43, and Q 5:90-1), Ibn Abī Zayd identifies intoxication rather than any physical quality (e.g., color, taste, or smell) as the *'illa* for the prohibition of *khamr*.<sup>37</sup> He claims that any drink that has the capacity to intoxicate is *khamr* and is therefore unlawful in all quantities.<sup>38</sup> Like Saḥnūn, Ibn Abī Zayd does not attach any importance to the cooking of juice- or water-based drinks outside of the fact that, once cooking has started, it must continue until the drink has been reduced to one-third of its original volume.<sup>39</sup> The key factor in determining the status of a drink is its intoxicating power. Thus, juice presses are forbidden because they accumulate residue known to ferment quickly,<sup>40</sup> while the dregs of most drinks are rejected because fermentation begins at the bottom of a drinking vessel.<sup>41</sup> As for evidence of fermentation, Ibn Abī Zayd rejects tests based on bubbling or fizzing because many non-intoxicating drinks exhibit these characteristics.<sup>42</sup> The only physical evidence for intoxication is the "intensification" of a drink, usually accompanied by a loss of sweetness.<sup>43</sup> Once again, the

<sup>36</sup> Ibn Abī Zayd, *Kitāb al-nawādir wa'l-ziyādāt*, ed. 'Abd al-Fattāḥ Muḥammad al-Ḥulw, 15 vols. (Beirut: Dār al-Gharb al-Islāmī, 1999), 14:282-95.

<sup>37</sup> Ibid., 14:283.

<sup>38</sup> Ibn Abī Zayd contends that the extension of prohibition from grapes to all other substances is strengthened by Q 16:67. Specifically, he interprets the verse as suggesting that a wine/intoxicant (*sakar*) may be derived from dates as well as grapes (ibid., 14:283).

<sup>39</sup> Ibid., 14:292.

<sup>40</sup> Ibid., 14:293.

<sup>41</sup> Ibid., 14:289.

<sup>42</sup> Ibid., 14:294.

<sup>43</sup> Ibid., 14:285. Ibn Abī Zayd supports these opinions with five proof texts: an 'all intoxicants' tradition (see Ibn Māja, *Sunan*, 4:74-5, nos. 3390 and 3391; al-Nasā'ī, *Sunan*, 5:78, no. 5087), a 'large/small' tradition (see al-Bayhaqī, *Sunan*, 8:514-5, nos. 17394 and 17395; al-Tirmidhī, *Sunan*, 3:442, no. 1865), a modified 'five sources' tradition on the authority of 'Umar, containing a specific and expansive definition of *khamr* (see 'Abd al-Razzāq, *Muṣannaf*, 9:144, no. 17361; al-Nasā'ī, *Sunan*, 5:73, no. 5068; al-Bukhārī, *al-Ṣaḥīḥ*, 1099, no. 5581; al-Bayhaqī, *Sunan*, 8:501, no. 17346), an account in which Abū Mūsā al-Ash'arī (d. 49/669) returns from Yemen and asks the Prophet about the

effect of a substance trumps all other characteristics in determining its lawfulness.

Having established the Mālikī position, Ibn Abī Zayd presents a direct refutation of the Ḥanafī view in favor of narrow prohibition. He classifies Ḥanafī arguments into two broad categories:<sup>44</sup>

1. Arguments that the cause of prohibition is not the drinking of intoxicants but rather the state of intoxication. The implication of this view is that only the last cup of an intoxicant—which directly results in intoxication—is prohibited.<sup>45</sup>
2. Arguments that draw an analogy between intoxicants and either medicine or food. Some intoxicants are permissible (and beneficial) in small amounts but lead to problems when consumed in large quantities.<sup>46</sup>

In response to the first category, Ibn Abī Zayd concedes—on the basis of Q 5:91—that the root cause for prohibition is intoxication that prevents a person from prayer and remembrance of God, while sowing the seeds of enmity between Muslims.<sup>47</sup> He disagrees, however, with the conclusion drawn by Ḥanafīs from this statement; namely that prohibition is limited to the last cup of an alcoholic drink that directly leads to intoxication. He offers three reasons for his rejection of this

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permissibility of *bit'* only to receive a stern reprimand (a variant of Ibn Abī Shayba, *Muṣannaf*, 5:66, no. 23738; al-Nasā'ī, *Sunan*, 5:80, no. 5094; Muslim b. al-Ḥajjāj, *al-Ṣaḥīḥ*, 3:1586, sec. 7, nos. 70a and 70b; al-Bayhaqī, *Sunan*, 8:506, no. 17362), and an account of the original prohibition narrated by Anas b. Mālik (d. 91 or 93/709 or 711) (a variant of al-Bukhārī, *al-Ṣaḥīḥ*, 1100, no. 5583; Muslim b. al-Ḥajjāj, *al-Ṣaḥīḥ*, 3:1571, sec. 1, no. 5).

<sup>44</sup> Ibn Abī Zayd's core argument consists of logical critiques. One of the reasons for this may be that the differences between the traditions invoked by the Ḥanafīs and those quoted by the other law schools made textual debate very difficult. While both sides offer a *similar* set of proof traditions, albeit with minor variations in wording, these slight modifications (e.g., use of the word *sukr* versus *muskir*) have profound legal consequences. The frustration over these differences is apparent in Ibn Abī Zayd's use of a tradition in which the Prophet predicts the rise of a group of Muslims who will try to make intoxicants lawful by changing their names. For examples, see Ibn Abī Shayba, *Muṣannaf*, 5:68, no. 23759 and 5:70, no. 23776; Ibn Māja, *Sunan*, 4:72, nos. 3384 and 3385; al-Bayhaqī, *Sunan*, 8:512, no. 17382.

<sup>45</sup> Ibn Abī Zayd, *al-Nawādir*, 14:285.

<sup>46</sup> *Ibid.*, 14:284, 286.

<sup>47</sup> *Ibid.*, 14:285.

Ḥanafī claim. First, he notes that intoxicants by their nature compel individuals to continue drinking until they reach a state of intoxication.<sup>48</sup> Thus, the nature of the substance in question demands a total prohibition. Second, he argues that the Ḥanafī prohibition of only “the last cup” is problematic because of its inherent ambiguity. How can the point of intoxication be determined with any degree of accuracy? If smell is used as the standard, then intoxication must be discarded altogether since there is no definite connection between smell and an individual being intoxicated. Any possible physical test is intrinsically arbitrary: results will differ from one individual to the next.<sup>49</sup> Third, he maintains that the impact of the last cup cannot be judged in a vacuum. Intoxication results from the cumulative effect of a series of cups, each of which plays an equal role in the final outcome. If the last cup is unlawful, then every prior cup must be equally unlawful.<sup>50</sup>

Ibn Abī Zayd prefaces his response to the second category of Ḥanafī arguments by agreeing that, although medicine causes harm in large quantities, it is permissible in small quantities. Attempts at drawing an analogy between medicine and intoxicants, however, are flawed for three reasons. First, whereas medicine is unwillingly taken to preserve life, intoxicants are consumed on whim with the express desire to—at the very least—approach a state of inebriation. In addition, the intoxicated individual does not derive any health benefit from his altered state; rather he is more likely to ignore his sickness altogether. This argument takes a noble substance (medicine) and slanders it by association with something impure (intoxicants).<sup>51</sup> Second, unlike medicine, it is difficult for an individual to stop drinking intoxicants since their primary effects include the impairment of judgment.<sup>52</sup> Third, the logical extension of the analogy demands that people who take medicine to the point of impairing their mental capacity be subject to the punishment for intoxication. This view is not held by any law school.<sup>53</sup>

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<sup>48</sup>) *Ibid.*

<sup>49</sup>) *Ibid.*, 14:287.

<sup>50</sup>) *Ibid.*, 14:286.

<sup>51</sup>) *Ibid.*, 14:284, 286.

<sup>52</sup>) *Ibid.*, 14:286.

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

Overall, Ibn Abī Zayd's discussion is divided into (a) an explanation of the Mālikī position and (b) a refutation of the Ḥanafī position. His explanatory section aligns with Saḥnūn in that he lends no credence to methods of production unless they have a direct bearing on the rate of fermentation and thereby threaten to pollute an otherwise lawful drink. This concern is also evident in his strict rulings on issues outside the scope of this study, including mixtures,<sup>54</sup> jars,<sup>55</sup> and dregs.<sup>56</sup> In his refutation of the Ḥanafī stance on intoxicants, Ibn Abī Zayd does not cite traditions but rather offers a series of logical critiques. He is particularly interested in preserving intoxication as the *'illa* of Q 5:90-1 by demonstrating the inconsistencies of potential alternatives. A similar strategy informs the writings of subsequent Mālikī jurists.

#### *Ibn Rushd al-Jadd and Ibn Rushd al-Ḥafid*

The Mālikī position remained fairly consistent throughout the first four centuries and found a full articulation in the *Muqaddamāt al-mumabhadāt* of Ibn Rushd al-Jadd (d. 520/1126)<sup>57</sup> and the *Bidāyat al-mujtahid* of his grandson, Ibn Rushd al-Ḥafid (d. 595/1198).<sup>58</sup> Ibn Rushd al-Jadd confirms a general consensus on the prohibition of *khamr* while acknowledging a difference of opinion as to whether the injunction is based on Qur'ānic proof (*nass*) or a non-Qur'ānic indicator (*dalīl*). He sides unequivocally with the former view, crafting a powerful argument for prohibition based on a juxtaposition of Q 5:90-1 with Q 6:145,<sup>59</sup> and Q 2:219 with Q 7:33.<sup>60</sup> Finally, he draws on etymo-

<sup>54</sup> Ibid., 14:288-9.

<sup>55</sup> Ibid., 14:290-1.

<sup>56</sup> Ibid., 14:289, 291.

<sup>57</sup> Ibn Rushd al-Jadd *al-Muqaddamāt*, ed. Muḥammad Ḥajji, 3 vols. (Beirut: Dār al-Gharb al-Islāmī, 1988), 1:439-43.

<sup>58</sup> Ibn Rushd al-Ḥafid, *Bidāyat al-mujtahid*, ed. Muḥammad 'Alī al-Sayyid Muḥammad, 2 vols. (?) (Qum: Mu'assasat al-Nashr al-Islāmī 1999-), 2:912-17, 919-21.

<sup>59</sup> Q 6:145—"Say: I find not in the message received by me by inspiration anything forbidden to be eaten by one who wishes to eat it, unless it be carrion, or blood poured forth, or the flesh of swine,—for it is a filthy abomination—or, what is impious, [meat] on which a name has been invoked, other than God's. But [even so], if a person is forced by necessity, without willful disobedience, nor transgressing due limits,—your Lord is Oft-forgiving, Most Merciful."

<sup>60</sup> Specifically, Ibn Rushd al-Jadd juxtaposes Q 5:90, where *khamr* is referred to as filth (*rijs*), with Q 6:145, where filth (*rijs*) is directly associated with forbidden foods such as

logical<sup>61</sup> and textual evidence<sup>62</sup> to extend the definition of *khamr* to every intoxicating beverage.<sup>63</sup>

While Ibn Rushd al-Jadd briefly criticizes the Ḥanafis for their selective use of textual evidence, he does not systematically engage their arguments. In order to find a discussion of this nature, we must turn to his grandson. Ibn Rushd al-Ḥafid frames the legal dispute in geographical terms, setting the Ḥijāzī (Mālikī) support for general prohibition against the 'Irāqī (Ḥanafī) advocacy of narrow prohibition.<sup>64</sup> The Ḥijāzīs declare all alcoholic drinks unlawful on the strength of Prophetic traditions,<sup>65</sup> etymology, and analogical reasoning in which the 'illa for

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blood, carrion, and pig. He then juxtaposes Q 2:219, where *khamr* is called a great sin (*ithm*), with Q 7:33 ("Say: My Lord forbids only indecencies, such of them as are apparent and such as are within, and sin and wrongful oppression, and that you associate with God that for which no warrant has been revealed, and that you tell concerning God that which you know not"), where sin (*ithm*) is explicitly forbidden (Ibn Rushd al-Jadd, *al-Muqaddamāt*, 1:440).

<sup>61</sup> Ibn Rushd al-Jadd states that "*khamr* is that which intoxicates and overwhelms (*khāmara*) the intellect" (ibid., 1:442). See also note 66.

<sup>62</sup> See Ibn Māja, *Sunan*, 4:74, no. 3390; al-Bayhaqī, *Sunan*, 8:509, no. 17374; Muslim b. al-Ḥajjāj, *al-Ṣaḥīḥ*, 3:1588, sec. 7, no. 75.

<sup>63</sup> Ibn Rushd al-Jadd articulates similar views in his *al-Bayān wa'l-tahsil*, a commentary on Muḥammad al-'Urbī al-Qurṭubī's *Uṭbiyya*. Both al-'Urbī and Ibn Rushd al-Jadd assume that all intoxicants are forbidden and limit their discussion to the lawfulness of dubious substances (vinegar, mixes, dregs) and punishments. Ibn Rushd al-Jadd notes that this opinion is opposed by "the school of 'Irāq," which allows the consumption of intoxicants but not intoxication. In this study, I examine the *Muqaddamāt* because it offers a more detailed explanation of the issue than does the *Bayān*. See Ibn Rushd al-Jadd, *al-Bayān*, ed. Muḥammad Ḥajjī, 20 vols. (Beirut: Dar al-Gharb al-Islāmī, 1984), 16:291-7 and especially 293.

<sup>64</sup> This view is ascribed to Ibrāhīm al-Nakha'ī (d. 96/714), Sufyān al-Thawrī (d. 161/778), Ibn Abī Layla (d. 83/702), Sharik b. 'Abd Allāh b. Abī Sharik (d. 177/793), and Abū Ḥanīfa (d. 150/767), along with most Kūfan and Baṣran jurists (Ibn Rushd al-Ḥafid, *Bidāyat*, 2:912). There is a disagreement, however, regarding Sufyān al-Thawrī. Most of the accounts he transmits on the issue support general prohibition, and Ibn Qudāma does not count him among Ḥanafī jurists who supported narrow prohibition (*al-Mughnī*, ed. 'Abd Allāh b. 'Abd al-Muḥsin al-Turkī and 'Abd al-Fattāḥ Muḥammad al-Ḥulw, 15 vols. [Cairo: Hajr, 1986], 12:495).

<sup>65</sup> In terms of textual evidence, the Ḥijāzīs cite a variant of Mālik b. Anas, *Muwaṭṭa'*, 2:845, sec. 4, no. 9, which states that all intoxicating substances are prohibited. Yaḥyā b. Ma'in b. 'Awn (d. 233/848) argues that this tradition is the strongest text on the issue. In addition, this group is noted for its circulation of a tradition (given here with a truncated *isnād* but clearly referring to Muslim b. al-Ḥajjāj, *al-Ṣaḥīḥ*, 3:1587-8, sec. 7, nos. 7:74a,

the prohibition of *khamr* in Q 5:90-1 is its intoxicating quality.<sup>66</sup> The 'Irāqīs, on the other hand, claim that non-grape/date based intoxicants are permissible so long as they are not consumed to excess, based on their interpretation of Q 16:67<sup>67</sup> and a number of traditions from the Prophet and his Companions.<sup>68</sup> They also offer "remembrance of God" as an alternative 'illa for the prohibition of *khamr*, arguing that intoxicating substances are permitted so long as an individual does not reach the point at which he forgets God.<sup>69</sup> The issue is intoxication rather than intoxicants.

After laying out both of these arguments, Ibn Rushd al-Ḥafīd concludes that the Ḥijāzīs have better textual evidence while the 'Irāqīs have a stronger *qiyās* claim. The Ḥijāzī/Mālikī view is deemed superior

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7:74b, and 7:75), which links all intoxicants directly with *khamr*. A third tradition (see al-Tirmidhī, *Sunan*, 3:442, no. 1865 but also identical to Ibn Māja, *Sunan*, 4:76, no. 3393) contains a Prophetic assertion that quantity is irrelevant if a drink is an intoxicant (Ibn Rushd al-Ḥafīd, *Bidāyat*, 2:913).

<sup>66</sup> Ibn Rushd al-Ḥafīd argues that it is common knowledge among lexicographers that the word *khamr* derives from the substance's ability to "obscure the intellect/reason." Thus, it follows that any substance that has a similar effect is *khamr*. This view is rejected by the people of Khurāsān (Ibn Rushd al-Ḥafīd, *Bidāyat*, 2:913-14). The Ḥijāzīs advance a second argument based on common usage. They assert that, while *nabidh* may not be linguistically identical to *khamr*, it carries the legal connotations of *khamr* in popular perception. This view is supported by a number of traditions, including a variant of Muslim b. al-Ḥajjāj, *al-Ṣaḥīḥ*, 3:1587, sec. 7, nos. 74a and 74b, the 'two plants' tradition, and a third tradition (a variant of al-Tirmidhī, *Sunan*, 3:448, no. 1873a; Ibn Abī Shayba, *Muṣannaf*, 5:69, no. 23775), in which the Prophet associates *khamr* with a variety of sources (Ibn Rushd al-Ḥafīd, *Bidāyat*, 2:914).

<sup>67</sup> The 'Irāqīs argue that God considers *sakar*—a Qur'ānic term they equate with a popular intoxicating drink—"good nourishment," indicating its lawfulness (Ibn Rushd al-Ḥafīd, *Bidāyat*, 2:914).

<sup>68</sup> The 'Irāqīs cite sections of a tradition (al-Bayhaqī, *Sunan*, 8:516, no. 17405) in which 'Abd Allāh b. 'Abbās distinguishes between *khamr* and other intoxicants. The Ḥijāzīs consider this tradition weak because of its multiple (and sometimes contradictory) versions. The 'Irāqīs then quote a second tradition (a close variant of al-Bayhaqī, *Sunan*, 8:517, no. 17408; al-Nasā'ī, *Sunan*, 5:105, no. 5167) in which the Prophet instructs his followers to drink from certain vessels "but do not get intoxicated." The third 'Irāqī tradition contains a strange variant of Abū Mūsā's trip to Yemen (al-Bayhaqī, *Sunan*, 8:506, no. 17361) that ends with the Prophet prohibiting all intoxicants. In the version offered here (al-Ṭahāwī, *Sharḥ*, 4:220-1), however, the Prophet instructs Abū Mūsā to "drink but do not become intoxicated" (Ibn Rushd al-Ḥafīd, *Bidāyat*, 2:914-5). See also note 43.

<sup>69</sup> Ibn Rushd al-Ḥafīd, *Bidāyat*, 2:915-6.



for two reasons. First, *clear* textual evidence always trumps analogy and—according to some scholars—even ambiguous texts are superior to analogical arguments.<sup>70</sup> Second, there is a general consensus—even among the Ḥanafis—regarding the absolute prohibition of *khamr* in both large and small amounts. If the valid *‘illa* for Q 5:90-1 is “remembrance of God,” then why is *khamr* banned in small amounts that have no visible effect on an individual? Ibn Rushd al-Ḥafid concludes that the ‘Irāqī position fails to hold up under careful scrutiny.<sup>71</sup>

### Summary

Mālikī jurists are concerned first and foremost with the prohibition of all intoxicants. They draw on Q 5:90-1 in combination with analogical, etymological, and tradition-based arguments to extend the scope of the word “*khamr*” to any drink with intoxicating power. In concrete terms, the Mālikīs identify ‘the ability to intoxicate’ as the *‘illa* of Q 5:90-1. On this basis, they generalize the definition of *khamr* to include all intoxicating drinks. As will become evident in the next section, the Shāfi‘is reverse this process by using textual evidence to establish a general prohibition, which they then connect to *khamr* through Q 5:90-1. According to the Mālikīs, the sole standard for determining the lawfulness of a drink is its potential to intoxicate, regardless of source (dates/raisins vs. grain/honey) or preparation (cooked vs. uncooked).

In addition to laying out the contours of their own position on intoxicants, Mālikī jurists devote significant space to critiquing the Ḥanafis. This tendency is only implicit among early jurists like Mālik and Saḥnūn but becomes central in the discussions of Ibn Abī Zayd and Ibn Rushd al-Ḥafid. The change in focus may result from the consistency of the Mālikī position throughout the period in question. There was no need to defend the school’s view as it was rarely challenged by the other law schools, which also held to general prohibition. The impact of the escalating Mālikī attacks on Ḥanafī jurists is discussed in greater detail below.

<sup>70</sup> Ibid., 2:916.

<sup>71</sup> Ibid.

## B. The Shāfi'īs

Shāfi'ī jurists argue that traditions offer sufficient proof for the validity of general prohibition. In their legal discussions, they interpret large numbers of traditions as clearly extending the scope of *khamr* to include all intoxicants. This textual argument is then used to identify intoxication as the 'illa of Q 5:90-1. Much of Shāfi'ī discourse on prohibition (similar to that of the Mālikīs) consists of attacks on the Ḥanafī position, with the two schools spearheading a Ḥijāzī critique of the 'Irāqī endorsement of narrow prohibition.

### Al-Shāfi'ī

In his *Kitāb al-umm*, Muḥammad b. Idrīs al-Shāfi'ī (d. 204/820), the eponym of the Shāfi'ī school, argues in favor of general prohibition.<sup>72</sup> As mentioned above, al-Shāfi'ī was raised in Medina, a city closely associated with general prohibition. It is not surprising, therefore, that he forwards an expansive definition of *khamr* identical to that of Mālik and supported by related (though more extensive) textual evidence. Al-Shāfi'ī assumes that the prohibition of *khamr* is self-evident and does not cite the standard Qur'ānic arguments centered on Q 5:90-1. Instead, he expands the definition of *khamr* through traditions that prohibit specific drinks with intoxicating power irrespective of source (*bit*<sup>73</sup>, *ghubayrā*<sup>74</sup>) or preparation (*bādhiq*<sup>75</sup>, *ṭilā*<sup>76</sup>).<sup>77</sup> The link between *khamr* and intoxicants is conclusively established by a tradition on the

<sup>72</sup> al-Shāfi'ī, *al-Umm*, ed. Maḥmūd Maṭarajī, 9 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 1993), 6:247-53.

<sup>73</sup> al-Shāfi'ī, *al-Umm*, 6:249. For the traditions, see also Mālik b. Anas, *Muwatta'*, 2:845, sec. 4, no. 9; al-Nasā'ī, *Sunan*, 5:77, no. 5082b, along with a variant of 'Abd al-Razzāq, *Muṣannaf*, 9:133, no. 17313.

<sup>74</sup> al-Shāfi'ī, *al-Umm*, 6:247. For the traditions, see Mālik b. Anas, *Muwatta'*, 2:845, sec. 4, no. 10.

<sup>75</sup> al-Shāfi'ī, *al-Umm*, 6:250-1. For the text of the tradition, see al-Nasā'ī, *Sunan*, 5:80, no. 5096. For a similar tradition with an identical *isnād*, see 'Abd al-Razzāq, *Muṣannaf*, 9:136, no. 17326; al-Bukhārī, *al-Ṣaḥīḥ*, 1102, no. 5598; and al-Nasā'ī, *Sunan*, 5:109, no. 5177.

<sup>76</sup> al-Shāfi'ī, *al-Umm*, 6:251. For the tradition, see al-Bayhaqī, *Sunan*, 8:522, no. 17425; Mālik b. Anas, *Muwatta'*, 2:847, sec. 5, no. 14.

<sup>77</sup> al-Shāfi'ī, *al-Umm*, 6:246. For the tradition, see al-Bayhaqī, *Sunan*, 8:509, no. 17371; Ibn Māja, *Sunan*, 4:73, no. 3386.

authority of 'Abd Allāh b. 'Abbās (d. 68/688).<sup>78</sup> Al-Shāfi'ī does not engage Ḥanafī arguments directly and (like Mālik) appears content with simply providing support for his own views. This contrasts sharply with subsequent Shāfi'ī jurists who are increasingly interested in refuting the Ḥanafī position in favor of narrow prohibition.

### *Al-Māwardī*

'Alī b. Muḥammad al-Māwardī's (d. 450/1058) *al-Ḥāwī al-kabīr* begins with a summary of the Shāfi'ī position that mirrors the argumentative style of the Mālikī works discussed in the previous section.<sup>79</sup> Al-Māwardī establishes the unlawful status of *khamr* through a detailed exegesis of six verses (Q 2:219, Q 4:43, Q 16:67, Q 5:90-1, and Q 7:33).<sup>80</sup> His argument focuses on the historical circumstances of revelation<sup>81</sup> and relies heavily on juxtaposition.<sup>82</sup> This is followed

<sup>78</sup> al-Shāfi'ī, *al-Umm*, 6:251. For the tradition, see al-Nasā'ī, *Sunan*, 5:113, no. 5189. By contrast, the Ḥanafīs rely on a tradition that depicts Ibn 'Abbās as favoring narrow prohibition. See al-Ṭaḥāwī, *Sharḥ ma'ānī al-āthār*, ed. Muḥammad Zuhri al-Najjār and Muḥammad Sayyid Jād al-Ḥaqq, 5 vols. (Beirut: 'Ālam al-Kurub, 1994), 4:214.

<sup>79</sup> al-Māwardī, *al-Ḥāwī al-kabīr*, ed. 'Ādil Aḥmad 'Abd al-Mawjūd and 'Alī Muḥammad Mu'awwad, 24 vols. (Beirut: Dār al-Fikr, 1994), 13:376-410. The *Ḥāwī*, a commentary on Ismā'il b. Yahyā al-Muzani's (d. 264/878) *Mukhtaṣar*, does not substantively diverge from the *Umm* regarding intoxicants. Al-Muzani does, however, supplement al-Shāfi'ī's text with the opinion that "every drink that intoxicates in large quantities is also unlawful in small quantities" (Ismā'il b. Yahyā al-Muzani, *Mukhtaṣar* published as vol. 9 of al-Shāfi'ī, *Mukhtaṣar kitāb al-'umm*, ed. Ḥusayn 'Abd al-Ḥamid Nil, 9 vols. [Beirut: Dār al-Arqam, 1993], 9:280).

<sup>80</sup> al-Māwardī, *al-Ḥāwī*, 13:376-85.

<sup>81</sup> *Ibid.*, 13:377-8.

<sup>82</sup> These arguments are virtually identical to those articulated by Ibn Rusḥd al-Jadd. See note 60 and al-Māwardī, *al-Ḥāwī*, 13:378. Al-Māwardī also addresses issues that tangentially bear on this study, such as Q 5:93 ("There shall be no sin [imputed] unto those who believe and do good works for what they may have eaten [in the past]. So be mindful of your duty [to God], and believe, and do good works; and again: be mindful of your duty, and believe; and once again: be mindful of your duty, and do right. God loves those who do good."), mistakenly interpreted by one Companion, Qudāma b. Maz'un (d. early 1<sup>st</sup>/mid 7<sup>th</sup> century), as allowing early Muslims to drink *khamr*. I do not discuss these verses, which lie outside the scope of the current article. The prohibition of *khamr* was upheld by such an overwhelming consensus that any disagreement was considered an act of *kufḥ* (al-Māwardī, *al-Ḥāwī*, 13:384-5). For more on the story of Qudāma b. Maz'un, see Ibn Qudāma, *al-Mughnī*, 12:494 and al-Ḥādī ilā 'l-Ḥaqq Yahyā b. al-Ḥusayn *Kitāb al-aḥkām*, ed. Abū al-Ḥasan 'Alī b. Aḥmad b. Abī Ḥarīsa, 2 vols. (Yemen[?]: n.p., 1990), 1:265-6.

by a series of traditions drawn primarily from al-Shāfi'ī's *Kitāb al-umm*.<sup>83</sup>

After laying out the framework of the Shāfi'ī view, al-Māwardī offers a cogent and detailed critique of the Ḥanafī position. He begins by drawing a distinction between 'Irāqī (associated with Ḥanafī) and Hijāzī (associated with Mālikī and Shāfi'ī) jurists. He notes that the 'Irāqīs limit the definition of *khamr* to alcoholic drinks derived from uncooked grape juice and allow for the consumption of intoxicants made from other sources.<sup>84</sup> The Hijāzīs, by contrast, maintain that any drink "that intoxicates in large amounts is unlawful in small amounts."<sup>85</sup> Al-Māwardī's refutation of the 'Irāqī position centers on: (a) the claim that *khamr* is specific to grapes and (b) the assertion that the word *muskir* in traditions narrated from the Prophet refers to "the last cup that intoxicates" rather than "intoxicants" as such. With respect to the first, al-Māwardī primarily cites traditions. Specifically, he quotes an account in which the Prophet utters the statement that "all intoxicants are *khamr* and all *khamr* is prohibited"<sup>86</sup> as well as a number of variants of the 'five sources' tradition.<sup>87</sup> He vigorously rejects claims that these traditions are fabrications<sup>88</sup> and offers (yet another) tradition in which the Prophet (conveniently) anticipates a time when people will try to justify *khamr* by changing its name.<sup>89</sup>

<sup>83</sup> al-Māwardī, *al-Ḥāwī*, 13:383-5. For the tradition, see Mālik b. Anas, *Muwatta'*, 2:845, sec. 4, no. 9; al-Tirmidhī, *Sunan*, 3:441, no. 1863; al-Nasā'ī, *Sunan*, 5:75, no. 5075.

<sup>84</sup> al-Māwardī, *al-Ḥāwī*, 13:387.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid., 13:391. For identical texts, see Ibn Māja, *Sunan*, 4:74, no. 3390; al-Bayhaqī, *Sunan*, 8:509, no. 17374; Muslim b. al-Ḥajjāj, *al-Ṣaḥīḥ*, 3:1588, no. 7:75. For the exact *isnād*, see al-Nasā'ī, *Sunan*, 5:74, no. 5072; Muslim b. al-Ḥajjāj, *al-Ṣaḥīḥ*, 3:1587, sec. 7, no. 74a.

<sup>87</sup> al-Māwardī, *al-Ḥāwī*, 13:395-6. One of these traditions cites the Prophet (see al-Nasā'ī, *Sunan*, 5:63, no. 5036), but most draw on the authority of important Companions such as 'Umar (see al-Bukhārī, *al-Ṣaḥīḥ*, 1099, no. 5581; al-Bayhaqī, *Sunan*, 8:501, no. 17346), and 'Abd Allāh b. 'Abbās (see al-Bukhārī, *al-Ṣaḥīḥ*, 1102, no. 5598; al-Bayhaqī, *Sunan*, 8:511, no. 17378; al-Nasā'ī, *Sunan*, 5:80, no. 5096).

<sup>88</sup> al-Māwardī, *al-Ḥāwī*, 13:391. For example, al-Māwardī quotes Yaḥyā b. Ma'īn's statement that the tradition "all intoxicants are *khamr*" was one of three lies attributed to the Prophet. Al-Māwardī notes that Ibn Ḥanbal accepted the veracity of this tradition and traces its narration through reliable transmitters.

<sup>89</sup> al-Māwardī, *al-Ḥāwī*, 13:392. For the tradition, see Abū Dā'ūd, *Sunan*, 3:329, no. 3688.

Al-Māwardī offers four logical counter-arguments to the interpretation of “*muskir*” as “the last cup.”<sup>90</sup> First, he asserts that *sukr* is a physical characteristic specific to a category of substances; it is not defined on the basis of quantity. Second, he points to the legal ambiguity inherent in gradation. Specifically, if both the first and last sip of that final intoxicating drink are prohibited, why should there be a difference between the first and last cup? The decision to frame the issue in terms of ‘cups’ is arbitrary. Third, al-Māwardī notes the disparity in tolerance from one person to the next, arguing that every amount of intoxicant has the capacity to intoxicate someone. Finally, he observes that intoxication results from a series of drinks rather than from a single drink in isolation. Al-Māwardī concludes that narrow prohibition is untenable given the non-Ḥanafī juristic consensus and the overwhelming mass of textual evidence in favor of general prohibition.<sup>91</sup>

While al-Māwardī’s criticism of the Ḥanafīs resembles that of Mālikī jurists, it is distinguished by its reliance on and engagement with traditions. Whereas Mālikī jurists focus primarily on arguments rooted in the *‘illa* of Q 5:90-1, al-Māwardī tries to establish a direct textual basis for general prohibition. He is also broadly representative of a progressive shift in Shāfi‘ī discourse from an internal (i.e., establishing the validity

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<sup>90</sup> For the arguments that follow, see al-Māwardī, *al-Ḥāwī*, 13:392-3. In addition to these logic-based arguments, al-Māwardī also quotes a series of traditions which ostensibly state that all intoxicants are prohibited in all amounts (see al-Dārimī, *Sunan*, ed. Ḥusayn Salim Asad Darānī, 4 vols. [Riyadh: Dār al-Mughnī, 2000], 3:1333, no. 2144; al-Nasā‘ī, *Sunan*, 5:81, no. 5098).

<sup>91</sup> In fairness to the Ḥanafīs, it should be noted that al-Māwardī does not engage their logic-based arguments. He is clearly aware of these arguments as he summarizes them among the ‘Irāqī proofs for narrow prohibition. Specifically, he ascribes the following three opinions to the Ḥanafīs: (a) Whereas *khamr* is rare in Medina because it must be imported from Syria, *nabidh* is common. This being the case, we would expect *nabidh* to be specified by name (in the Qur’ānic text) if it was forbidden. The fact that *khamr* is mentioned indicates a specific prohibition rather than a general one. (b) God routinely prohibits one item from a category while allowing benefit from another. Thus, we can see that cotton clothing is permitted for men while silk clothing is not; camel meat is lawful while pig meat is not. In the same manner, *nabidh* is permitted but *khamr* is not. (c) Objects exist on earth that give us a taste of heaven. They are not identical to their heavenly equivalents but are similar and serve to increase our desire for heaven. God has promised *khamr* in heaven and the object that approximates it in this world is *nabidh* (al-Māwardī, *al-Ḥāwī*, 13:391).

of the school's position) to an external (i.e., critiquing the Ḥanafī position) perspective.

### *Al-Baghawī and al-Rāfi'ī*

Later Shāfi'ī jurists increasingly emphasized traditions over Qur'ānic evidence in discussions primarily designed to undermine narrow prohibition. A representative example of this trend is Ḥusayn b. Mas'ūd al-Baghawī's (d. 516/1123) *Sharḥ al-sunna*.<sup>92</sup> The text begins with Q 5:90-1 but, instead of a detailed exegesis in the style of al-Māwardī, al-Baghawī assumes the reader's familiarity with the legal implications of the verse. Most of his discussion is concerned with crafting an adequate refutation of Ḥanafī arguments. First, he mentions that Q 16:67 was abrogated by Q 5:90, thereby undercutting an early Ḥanafī interpretation that used the verse as proof that God deemed some intoxicants (*sakar*) to be "good nourishment."<sup>93</sup> Second, he relates traditions<sup>94</sup> that generalize the definition of *khamr* to all intoxicants either through a direct statement (the 'all intoxicants' tradition)<sup>95</sup> or an indirect extension to sources other than grapes (the 'five sources' tradition<sup>96</sup> or the 'two plants' tradition<sup>97</sup>). With respect to the latter, he emphasizes that these texts do not designate the literal sources of *khamr*; rather they demonstrate that *khamr* is a general category of intoxicating drinks derived from a variety of sources. Third, he offers a version of the 'large/small' tradition,<sup>98</sup> which contradicts the claim that only "the last cup of an intoxicant that directly leads to intoxication" is unlawful. He also draws an analogy between the drinking of intoxicants and the dyeing of clothes in which every step of the process is equally important.<sup>99</sup>

<sup>92</sup> al-Baghawī, *Sharḥ al-sunna*, ed. Sa'īd Muḥammad al-Laḥḥām, 8 vols. (Beirut: Dār al-Fikr, 1994), 6:532-44.

<sup>93</sup> Ibid., 6:532.

<sup>94</sup> See Appendix 1 for an overview of the 'large/small,' 'two plants,' 'five sources,' and 'all intoxicants' categories of traditions.

<sup>95</sup> Ibid., 6:533-4. For the tradition, see al-Dārimī, *Sunan*, 3:1332, no. 2142; al-Bayhaqī, *Sunan*, 8:509, no. 17371; Muslim b. al-Ḥajjāj, *al-Ṣaḥīḥ*, 3:1586, sec.7, no. 70b.

<sup>96</sup> al-Baghawī, *Sharḥ*, 6:534. For the tradition, see al-Bukhārī, *al-Ṣaḥīḥ*, 1100, no. 5588.

<sup>97</sup> al-Baghawī, *Sharḥ*, 6:535. For the tradition, see Muslim b. al-Ḥajjāj, *al-Ṣaḥīḥ*, 3:1573, sec. 4, nos. 13 and 15.

<sup>98</sup> al-Baghawī, *Sharḥ*, 6:535. For the tradition, see al-Tirmidhī, *Sunan*, 3:442, no. 1865.

<sup>99</sup> al-Baghawī, *Sharḥ*, 6:535.

That al-Baghawī does not directly associate the Ḥanafīs with narrow prohibition may suggest that the issue was no longer as divisive as it had been a half century earlier. The dispute appears primarily as a historical curiosity in ‘Abd al-Karīm b. Muḥammad al-Rāfi‘ī’s (d. 623/1226) *al-‘Azīz*, a commentary on al-Ghazzālī’s (d. 505/1111) *al-Wajīz*.<sup>100</sup> Al-Rāfi‘ī starts by citing Q 5:90-1 as a proof text for the prohibition of *khamr*.<sup>101</sup> He asserts a general consensus on the issue and argues that breaking with this consensus is tantamount to an act of *kufr* (disbelief).<sup>102</sup> Turning to the textual evidence, al-Rāfi‘ī recounts traditions that extend the definition of *khamr* to all intoxicants<sup>103</sup> derived from any source<sup>104</sup> in any quantity.<sup>105</sup> Although he concedes the lack of a juristic consensus regarding this extension, he singles out Abū Ḥanīfa (as opposed to Ḥanafīs or ‘Irāqīs) as the primary advocate of narrow prohibition.<sup>106</sup> Al-Rāfi‘ī proceeds to describe the early Ḥanafī view that differentiated drinks on the basis of source (grape/date vs. everything else), preparation (cooked vs. uncooked, juice vs. water), and physical characteristics (bubbles vs. foam) but this is done from a historical perspective.<sup>107</sup> The disruption of juristic consensus by Abū Ḥanīfa enables al-Rāfi‘ī to assert that individuals (i.e., early Ḥanafīs and ‘Irāqīs) who upheld narrow prohibition did not commit acts of *kufr*.<sup>108</sup> The logical and textual arguments discussed in earlier Shāfi‘ī (Māwardī) and even Mālikī (Ibn Abī Zayd) texts are notably absent, indicating the issue’s transformation from a living juristic debate into a matter of settled law.

<sup>100</sup> al-Rāfi‘ī, *al-‘Azīz*, ed. ‘Ādil Aḥmad ‘Abd al-Mawjūd and ‘Alī Muḥammad Mu‘awwad, 14 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 1997), 11:273-6.

<sup>101</sup> *Ibid.*, 11:372. He juxtaposes Q 5:90-1 with Q 7:33 to arrive at prohibition in a manner similar to Ibn Rushd al-Ḥafid. See note 60.

<sup>102</sup> *Ibid.*, 11:274.

<sup>103</sup> *Ibid.*, 11:273. For the tradition, see Ibn Māja, *Sunan*, 4:74, no. 3390; al-Nasā‘ī, *Sunan*, 5:71, no. 5061; Muslim b. al-Ḥajjāj, *al-Ṣaḥīḥ*, 3:1588, sec. 7, no. 75.

<sup>104</sup> al-Rāfi‘ī, *al-‘Azīz*, 11:273. For the tradition, see al-Tirmidhī, *Sunan*, 3:442, no. 1865; Ibn Māja, *Sunan*, 4:76, no. 3393.

<sup>105</sup> al-Rāfi‘ī, *al-‘Azīz*, 11:274. For the tradition, see al-Bukhārī, *al-Ṣaḥīḥ*, 1100, no. 5588.

<sup>106</sup> al-Rāfi‘ī, *al-‘Azīz*, 11:275.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*, 11:274-5.

### Summary

The Shāfi'ī view in favor of general prohibition was articulated by the founder of the school and upheld by subsequent jurists. Although both the Shāfi'īs and the Mālikīs affirm general prohibition, they differ markedly in methodology. The Mālikīs establish intoxication as the *'illa* of Q 5:90-1, while the Shāfi'īs cite textual proofs that support an expansive definition of *khamr*. Instead of the broad application of the principle that "all intoxicants are prohibited" employed by Mālikī jurists, Shāfi'īs are concerned with finding individual texts to justify the extension of prohibition. Neither group presents a typology of drinks or discusses the cooking of juice; once general prohibition is established, these issues are no longer relevant. Mālikī and Shāfi'ī legal works are more concerned with establishing culpability and determining punishment (both outside the scope of this study) than with cooking juice or differentiating between *bādhiq* and *muthallath*.

While Shāfi'ī jurists often begin their discussions with a quick summary of their own school's position, they increasingly offer refutations of the Ḥanafīs. Unlike Mālikī jurists, Shāfi'īs focus on traditions rather than logical arguments pertaining to the scope of Q 5:90-1. Al-Shāfi'ī simply states his view, accompanied by a number of supporting traditions, likely channeling the practice of Medina. Al-Māwardī and al-Baghawī, by contrast, explicitly attack the Ḥanafī position with a series of textual and, to a lesser extent, logic-based arguments. By the time of al-Rāfi'ī, the question of prohibition appears more as a historical curiosity than a living debate.

### The Ḥanafīs

The Ḥanafī approach to prohibition differs in a number of important ways from that of the Mālikīs and the Shāfi'īs. First, on a substantive level, the early Ḥanafīs support narrow prohibition, insisting that the Qur'ānic injunction against *khamr* articulated in Q 5:90-1 is limited to fermented uncooked grape juice. They acknowledge that *khamr* is unlawful in all quantities but refuse to extend this absolute/strict prohibition to other intoxicants. Second, the Ḥanafī position evolves from narrow towards general prohibition in contrast to the relatively static positions of the Mālikīs and the Shāfi'īs. This evolution, discussed



below, seems to have been motivated by the persistent critiques of rival law schools and the moral stigma associated with the consumption of alcoholic drinks. The Ḥanafis responded to this pressure by (a) attempting to carve out a space for their position in the legal landscape while simultaneously (b) devising a means for altering that position to align with the other law schools.

### A. The Initial Ḥanafī Position

#### *Abū Ḥanīfa and Muḥammad al-Shaybānī*

Muḥammad b. al-Ḥasan al-Shaybānī's (d. 189/806) *Kitāb al-āthār*, a commentary on traditions related by Abū Ḥanīfa (d. 150/767), is typical of the early Ḥanafī view that limits prohibition to a narrowly defined *khamr*.<sup>109</sup> The discussion begins with traditions that permit intoxicating drinks such as intensified *nabīdh*, which have an observable "slowing" effect on people.<sup>110</sup> 'Umar is depicted as punishing a man for public drunkenness and then diluting the man's drink with water, taking a sip, and serving it to his close companions.<sup>111</sup> Any potential ambiguity is dispelled by a second tradition in which Ibrāhīm al-Nakha'ī (d. 96/715-6) asserts that the public has misinterpreted the Prophet's statement that drinks "that intoxicate in large quantities are forbidden in small quantities" (i.e., the 'large/small' tradition).<sup>112</sup> Ibrāhīm explains that the Prophet meant to forbid intoxication rather than intoxicants. Although al-Shaybānī preserves this opinion and ascribes it to Abū Ḥanīfa, he does not articulate his own view on the issue. Abū Ḥanīfa's position, on the other hand, is clear: any drink other than wine made from uncooked grape juice is lawful unless consumed to the point of intoxication.

While both Abū Ḥanīfa and al-Shaybānī uphold the lawfulness of intoxicating *nabīdh*, they part ways on the issue of cooked juice. Abū Ḥanīfa allows any drink (whether fermented or not) derived from juice that has been reduced by cooking to one-third of its original volume. Al-Shaybānī, on the other hand, prohibits fermented grape juice regard-

<sup>109</sup> al-Shaybānī, *al-Āthār*, 1:182-5.

<sup>110</sup> *Ibid.*, 1:182-3. For the tradition, see *ibid.*, 1:183, no. 832.

<sup>111</sup> *Ibid.*, 1:183, no. 835.

<sup>112</sup> *Ibid.*, 1:185, no. 843.

less of its preparation.<sup>113</sup> The basis for this disagreement lies in al-Shaybānī's strict association of *khamr* with grape juice to the exclusion of water-based drinks (e.g. *nabīdh* or *naqī'*). The issue that divides these two early jurists is not intoxication but rather the question of whether *khamr* is inextricably linked to all forms of grape juice.

Both Abū Ḥanīfa and al-Shaybānī are informed by their 'Irāqī context. This is not to say that the consumption of intoxicants was ubiquitous in the region. There is, for example, substantial evidence that the Shī'a of 'Irāq and at least one prominent Kūfan jurist (i.e., Sufyān al-Thawrī) advocated general prohibition.<sup>114</sup> It appears that narrow prohibition was primarily associated with one Kūfan community (the *ahl al-ra'y*) and, in particular, with the students of Abū Ḥanīfa.

The origin of the Ḥanafī position is unclear. Kathryn Kueny highlights the similarities between early Ḥanafī discussions of intoxicants and those of non-Muslim religious communities in the region.<sup>115</sup> Although it is certainly possible that the Ḥanafīs were influenced by their interactions with these communities, there is insufficient evidence to establish a causal relationship.<sup>116</sup> In Kūfa, Muslims may have come into contact with a range of intoxicants that were rare in the Ḥijāz and whose legal status was ambiguous.<sup>117</sup> Given this ambiguity, the Ḥanafīs may have adopted a position that was tenable in the 2<sup>nd</sup>/8<sup>th</sup> century before the emergence of a broad condemnation of intoxicants.<sup>118</sup> Alternatively, it may be merely a historical coincidence that the Ḥanafīs advocated narrow prohibition. Abū Ḥanīfa was known for his use of personal discretion in deriving legal rulings for novel cases. Overall, the scarcity of 2<sup>nd</sup>/8<sup>th</sup> century textual sources severely limits efforts at definitively identifying the source for the Ḥanafī position.

<sup>113</sup> *Ibid.*, 1:183. See also 1:184, nos. 836, 837, and 838.

<sup>114</sup> See note 64 and Haider, *Origins*, 163, note 162.

<sup>115</sup> Kueny, *Rhetoric*, 29-30 and 33-41.

<sup>116</sup> Zeev Maghen makes a strong argument for the influence of non-Muslim communities in the emergence of localized ritual practices in "Dead Tradition: Joseph Schacht and the Origins of Popular Practice," *Islamic Law and Society* 10 (2003), 276-347.

<sup>117</sup> A similar ambiguity informed the case of coffee. Hattox discusses the introduction of coffee to the Muslim world and the subsequent controversy regarding its legal status. See note 4 for full citation of Hattox's work.

<sup>118</sup> Some of the potential causes for the growth in general prohibition are discussed in the final section of this article.

*Al-Ṭahāwī*

In a brief discussion of intoxicants in his *Mukhtaṣar*, Aḥmad b. Muḥammad al-Ṭahāwī (d. 321/933) highlights the primary differences of opinion within the Ḥanafī school.<sup>119</sup> Juice-based drinks garner the greatest degree of school consensus, with *khamr* narrowly defined as uncooked grape juice that begins to bubble (naturally) and acquires froth.<sup>120</sup> While Abū Ḥanīfa and al-Shaybānī require the presence of both bubbles and froth, most Ḥanafīs side with Abū Yūsuf (d. 182/798), who considers bubbles sufficient evidence for fermentation.<sup>121</sup> Cooking has a significant bearing on the legal situation, especially if it results in the loss of two-thirds of the original volume of grape juice. In this case, the juice is said to have been transformed into an entirely new substance that can be fermented into a lawful intoxicating drink.<sup>122</sup> This opinion is explicitly ascribed to Abū Ḥanīfa and contrasted with that of Muḥammad al-Shaybānī.

Al-Ṭahāwī considers lawful any water-based drink (e.g. *nabīdh* and *naqī'*) produced from a source other than grapes/dates (e.g., honey, grain), regardless of its physical characteristics (e.g., bubbles, froth) or production methods (e.g., cooking).<sup>123</sup> When such drinks are made from grapes/dates, on the other hand, the legal situation is more problematic.<sup>124</sup> Abū Ḥanīfa is associated with the opinion that these substances are reprehensible (*makrūh*) and to be avoided once they have matured and begun to bubble.<sup>125</sup> Abū Yūsuf and al-Shaybānī agree with this ruling, but al-Shaybānī goes a step further and argues that "the consumption of [any drink] that intoxicates in large quantities should be avoided."<sup>126</sup> He does not, however, make these drinks unlawful, stating that "I am not forbidding such a drink."<sup>127</sup> In other words,

<sup>119</sup> al-Ṭahāwī, *Mukhtaṣar*, ed. Abū al-Wafā' al-Afghānī (Cairo: Dār al-Kitāb al-'Arabī, 1951), 1:277-81.

<sup>120</sup> *Ibid.*, 1:279.

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*, 1:281.

<sup>123</sup> *Ibid.*, 1:277.

<sup>124</sup> The reasons for the particularly problematic status of grape and date drinks for Ḥanafīs are discussed below.

<sup>125</sup> al-Ṭahāwī, *Mukhtaṣar*, 1:278.

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

al-Shaybānī is portrayed as advising against any and all intoxicants albeit without requiring complete prohibition. Al-Ṭaḥāwī characterizes al-Shaybānī's opinion as the dominant view of the Ḥanafī school.

Since the Ḥanafīs (at this point) still considered intoxicating *nabīdh* permissible (though discouraged), they limited punishment to those who drank it to the point of intoxication.<sup>128</sup> The definition of intoxication, therefore, was a central concern. According to al-Ṭaḥāwī, Abū Ḥanīfa and al-Shaybānī claimed that intoxication occurs when an individual cannot differentiate the ground from the sky and a man from a woman, while Abū Yūsuf lowered the bar to a simple slurring of speech.<sup>129</sup> He observes that the latter definition is upheld by a majority of Ḥanafīs. It should be noted that the full Qur'ānic punishment was sanctioned for the consumption of even the smallest amount of *khamr*. In cases dealing with water-based intoxicants like *nabīdh* and *naqī'*, however, punishment was only applied in cases of inebriation.

Since the *Mukhtaṣar* is a text intended for other Ḥanafīs, it is primarily concerned with establishing the parameters of the Ḥanafī position. In contrast to Mālikī or Shāfi'ī jurists, Ḥanafī jurists must contend with a great deal more complication in their discussions of intoxicants. There is no blanket prohibition and each alcoholic drink or method of production must therefore be dealt with individually. Of particular interest is al-Ṭaḥāwī's depiction of al-Shaybānī as disapproving of (though not prohibiting) all intoxicants.

In his *Sharḥ ma'ānī al-āthār*, al-Ṭaḥāwī presents a more comprehensive analysis in which he comments on sixty-four traditions utilized by Mālikī and Shāfi'ī critics of narrow prohibition.<sup>130</sup> His discussion of the definition of *khamr* centers on a version of the 'two plants' tradition<sup>131</sup> in which the Prophet states, "*khamr* is derived from two plants:

<sup>128</sup> Note that the Ḥanafīs did not allow the consumption of intoxicants for the express purpose of getting drunk. They maintained that lawful intoxicants may be consumed only with food and may not be used exclusively for leisure or entertainment.

<sup>129</sup> al-Ṭaḥāwī, *Mukhtaṣar*, 1:278.

<sup>130</sup> al-Ṭaḥāwī, *Sharḥ*, 4:211-22.

<sup>131</sup> For an overview of the different categories of traditions (i.e., the 'two plants' tradition), see Appendix 1.

the date-palm and the grapevine.”<sup>132</sup> In an obvious attempt to limit the scope of *khamr* to grapes—and in clear opposition to a straightforward understanding—al-Ṭahāwī offers a gloss on this tradition based on a series of Qur’ānic verses with the same linguistic structure. For example, he cites Q 6:130<sup>133</sup> in which God speaks of messengers sent from “*jinn* and humankind” and observes that God sent messengers only from among men, indicating that—despite the inclusion of both groups—the verse was intended to refer specifically to humanity. He applies the same logic to the ‘two plants’ tradition, arguing that it is perfectly reasonable to maintain that—despite mentioning both the date-palm and the grapevine—the Prophet intended to link only *khamr* to the former.<sup>134</sup>

In addition to this argument, al-Ṭahāwī highlights contradictions in the textual evidence in an effort to carve out a space for the Ḥanafī position. With respect to the ‘two plants’ tradition, he argues for the validity of both the inclusive (*khamr* is derived from both plants) and the exclusive (*khamr* is derived only from the grapevine) interpretations and asserts the impossibility of proving the superiority of one over the other.<sup>135</sup> He employs the same logic when faced with variants of the ‘five sources’ tradition<sup>136</sup> or the ‘all intoxicants’ tradition.<sup>137</sup> These accounts are invariably followed by counter-traditions in which the Prophet<sup>138</sup> and important Companions drink small quantities of

<sup>132</sup> See Muslim b. al-Ḥajjāj, *al-Ṣaḥīḥ*, 3:1573, sec. 4, no. 13; al-Nasā’ī, *Sunan*, 5:72, no. 5064; ‘Abd al-Razzāq, *Muṣannaf*, 9:145, no. 17365; Abū Dā’ūd, *Sunan*, 3:327, no. 3678.

<sup>133</sup> Q 6:130—“O assembly of jinn and humankind! Did there not come to you messengers from among you who recounted my signs and warned you of the meeting of this your Day? They will say, ‘We testify against ourselves.’ It was the life of this world that deceived them. And they will testify against themselves that they were disbelievers.”

<sup>134</sup> al-Ṭahāwī, *Sharḥ*, 4:212.

<sup>135</sup> *Ibid.*, 4:212.

<sup>136</sup> See al-Nasā’ī, *Sunan*, 5:73, no. 5068; Abū Dā’ūd, *Sunan*, 3:324, no. 3669; al-Bukhārī, *al-Ṣaḥīḥ*, 1099, no. 5581 and 1100, no. 5588; al-Bayhaqī, *Sunan*, 8:50, no. 17346.

<sup>137</sup> There are countless variations of this simple formula. See al-Hurr al-‘Āmilī, *Wasā’il*, 25:334, no. 32054; al-Bayhaqī, *Sunan*, 8:506, no. 17362; Ibn Abī Shayba, *Muṣannaf*, 5:66, no. 23741; Ibn Māja, *Sunan*, 4:74, no. 3389; Muslim b. al-Ḥajjāj, *al-Ṣaḥīḥ*, 3:1587, sec. 7, no. 73.

<sup>138</sup> See al-Bayhaqī, *Sunan*, 8:529, nos. 17444 and 17446; Ibn Abī Shayba, *Muṣannaf*, 5:78, no. 23867 and 5:81, no. 23889. Variants are found in al-Nasā’ī, *Sunan*, 5:114, no. 5193; Ibn Abī Shayba, *Muṣannaf*, 5:79, no. 23868.

intoxicants,<sup>139</sup> differentiate between *khamr* and other intoxicants,<sup>140</sup> and forbid intoxication rather than intoxicants.<sup>141</sup> Al-Ṭaḥāwī observes that the only way to resolve these contradictions is to interpret “*muskir*” as “the last cup that intoxicates” rather than “an intoxicant.”<sup>142</sup> At the very least, this argument demonstrates the legal viability of narrow prohibition based on copious (but often contradictory) source material.<sup>143</sup>

Al-Ṭaḥāwī concludes his discussion by affirming the basic elements of the Ḥanafī stance. Specifically, he asserts a juristic consensus linking fermented grape juice to *khamr* and confirms a strong Ḥanafī aversion to alcoholic *naqīʿ* and *nabīdh* that (nevertheless) restricts punishment to cases of intoxication.<sup>144</sup> While al-Ṭaḥāwī does not place any credence in the cooking of juices, he concedes that the standard Ḥanafī view (ascribed to Abū Ḥanīfa, Abū Yūsuf, and Muḥammad al-Shaybānī) assigns a special status to drinks reduced to one-third their original volume in the cooking process.<sup>145</sup> In his careful navigation of the textual evidence, al-Ṭaḥāwī does not directly attack the Mālikīs and Shāfiʿīs but rather places their views on a par with those of the Ḥanafīs. This is primarily a defensive maneuver.

<sup>139</sup> ʿUmar is cited more often than any other Companion in this regard. He drinks (a) intoxicants after diluting them with water (Ibn Abī Shayba, *Muṣannaf*, 5:79, no. 23877; Abū Dāʿūd, *Sunan*, 3:324, no. 3669) and (b) intensified *nabīdh* (al-Bayhaqī, *Sunan*, 8:519, no. 17416). Anas b. Mālik is also said to have indulged in intensified *nabīdh* (Ibn Abī Shayba, *Muṣannaf*, 5:91, no. 23998).

<sup>140</sup> See al-Ṭaḥāwī, *Sharḥ*, 4:214.

<sup>141</sup> *Ibid.*, 4:220.

<sup>142</sup> In other words, the tradition stating that “all intoxicants are prohibited” would now mean that all last cups “that intoxicate are forbidden.” Traditions that depict ʿUmar (and the Prophet) drinking diluted intoxicants and punishing drunkenness would then make more sense, since prohibition would be restricted to cases of intoxication. See al-Ṭaḥāwī, *Sharḥ*, 4:219.

<sup>143</sup> *Ibid.*, 4:212, 214.

<sup>144</sup> *Ibid.*, 4:215.

<sup>145</sup> *Ibid.*, 4:222. Recall that previous Ḥanafī jurists claimed that once raw grape juice was reduced by cooking to one-third of its original volume, it was no longer grape juice. This new substance could then be fermented to produce an intoxicating drink that was not *khamr*.

## B. The Ḥanafī Embrace of General Prohibition

### *Al-Sarakhsī*

Muḥammad b. Aḥmad al-Sarakhsī's (d. 483/1090-1) *Kitāb al-mabsūt* affirms the overall parameters of Ṭaḥāwī's formulation and supplements it with more detailed textual and logical arguments.<sup>146</sup> Al-Sarakhsī traces the initial prohibition of *khamr*—defined as an intoxicant produced from raw grape juice—to three Qur'ānic proof texts (Q 2:219, Q 4:43, and Q 5:90-1), a series of traditions from the Prophet, and the overall consensus of the community.<sup>147</sup> When the consensus breaks down over the exact meaning of *khamr*, al-Sarakhsī follows al-Ṭaḥāwī's model of confronting proofs for general prohibition with counter-traditions<sup>148</sup>

<sup>146</sup> I have chosen to discuss al-Sarakhsī's *Kitāb al-Mabsūt* over al-Qudūrī's *al-Mukhtaṣar* because of its remarkably detailed analysis of intoxicants. The legal positions of both works are identical. See al-Sarakhsī, *al-Mabsūt*, 24:2-39; al-Qudūrī, *Mukhtaṣar*, ed. Kāmil Muḥammad Muḥammad 'Uwayda (Beirut: Dār al-Kutub al-'Ilmiyya, 1997), 204.

<sup>147</sup> He acknowledges, however, that some early Mu'tazilīs claimed that small amounts of *khamr* were lawful (al-Sarakhsī, *al-Mabsūt*, 24:3).

<sup>148</sup> The traditions used in this capacity are virtually identical to those mentioned by al-Ṭaḥāwī and include the statement that "*khamr* is prohibited by specific designation along with intoxication from all drinks" (al-Ṭaḥāwī, *Sharḥ*, 4:214). For traditions against intoxication only, see Muslim b. al-Ḥajjāj, *al-Ṣaḥīḥ*, 3:1586, sec. 7, nos. 70b and 71; al-Bayhaqī, *Sunan*, 8:506, no. 17363 and 8:517, no. 17408; al-Nasā'ī, *Sunan*, 5:105, no. 5167. For traditions that depict the Prophet as drinking diluted intoxicants, see al-Nasā'ī, *Sunan*, 5:114, no. 5193; Ibn Abī Shayba, *Muṣannaf*, 5:78-9, nos. 23866, 23867, and 23868, and 5:81, no. 23889; al-Bayhaqī, *Sunan*, 8:527, nos. 17437 and 17436, and 8:529, nos. 17445 and 17446; Abū Dā'ūd, *Sunan*, 3:331, no. 3696. For traditions that depict 'Umar drinking diluted intoxicants, see Ibn Abī Shayba, *Muṣannaf*, 5:79-80, nos. 23877 and 23878; al-Bayhaqī, *Sunan*, 8:530, nos. 17448, 17449a, and 17449b; al-Nasā'ī, *Sunan*, 5:115, no. 5196; al-Shaybānī, *al-Āthār*, 1:183, no. 835. Other traditions routinely cited by Ḥanafīs state that the Prophet and 'Umar imposed punishments for intoxication as opposed to the consumption of intoxicants. For the Prophet, see al-Ṭūsī, *al-Istibṣār*, ed. 'Alī Akbar al-Ghaffārī, 4 vols. (Qum: Dār al-Ḥadīth, 2001), 4:293, sec. 21, no. 3. For 'Umar, see al-Shaybānī, *al-Āthār*, 1:183, no. 835. Traditions in favor of general prohibition include declarations that "all intoxicants are prohibited" (see al-Bayhaqī, *Sunan*, 8:506, no. 17362; Ibn Abī Shayba, *Muṣannaf*, 5:66, no. 23741; Ibn Māja, *Sunan*, 4:74, no. 3389; Muslim b. al-Ḥajjāj, *al-Ṣaḥīḥ*, 3:1587, sec. 7, no. 73) or statements from the Prophet and 'Umar explaining that *khamr* is produced from a variety of non-grape/date sources. For the Prophet, see Ibn Māja, *Sunan*, 4:69, no. 3379; Abū Dā'ūd, *Sunan*, 3:326, no. 3676; al-Tirmidhī, *Sunan*, ed. 'Abd al-Wahhāb 'Abd al-Laṭīf, 5 vols. (Medina: al-Maktaba al-Salafiyya, 1965-7), 3:447-8, nos. 1872 and 1873a; al-Bayhaqī, *Sunan*, 8:503, no. 17348;

that limit prohibition to intoxicants made from uncooked grape juice. At the same time, in the course of his defense of the Ḥanafī position, al-Sarakhsī moves closer to general prohibition and does so through a reinterpretation of the views of al-Shaybānī. In the discussion below, I will first outline al-Sarakhsī's typology of drinks and then summarize his response to outside critiques.

Al-Sarakhsī offers a thorough inventory of drinks in the Islamic world structured around distinctively Ḥanafī concerns. First, he discusses beverages produced from grapes and dates, linking the rules that govern both through the 'two plants' tradition.<sup>149</sup> Fermented uncooked grape juice is *khamr*, which is unlawful in all quantities and ritually impure.<sup>150</sup> Uncooked *nabīdh* and *naqī'* made from raisins or dried dates are permissible so long as they remain sweet and have not intensified.<sup>151</sup> Once intensified, there is a difference of opinion within the school, with al-Sarakhsī leaning towards prohibition but also conceding that such substances are not strictly *khamr*.<sup>152</sup> Turning to cooked substances, al-Sarakhsī affirms the dominant Ḥanafī opinion that, if grape and date juices are cooked until they are reduced to one-third of their original volume (*muthallath*), they remain lawful even if they subsequently ferment into an intoxicating drink.<sup>153</sup> Water-based drinks derived from raisins and dried dates need only be cooked at a low temperature for a brief (unspecified) period before they acquire the same unconditional lawfulness.<sup>154</sup> Intoxicants drawn from other sources (e.g., grain, honey) are also lawful because they are closer in stature to food than to drink. Al-Sarakhsī observes that there is no definitive textual basis for classi-

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Ibn Abī Shayba, *Muṣannaf*, 5:69, no. 23775. For 'Umar, see al-Nasā'ī, *Sunan*, 5:73, no. 5068; Abū Dā'ūd, *Sunan*, 3:324, no. 3669; al-Bukhārī, *al-Ṣaḥīḥ*, 1099, no. 5581 and 1100, no. 5588; al-Bayhaqī, *Sunan*, 8:501, no. 17346; Ibn Abī Shayba, *Muṣannaf*, 5:67, no. 23751; 'Abd al-Razzāq, *Muṣannaf*, 9:145, nos. 17362 and 17363; al-Tirmidhī, *Sunan*, 3:448, no. 1873b.

<sup>149</sup> al-Sarakhsī, *al-Mabsūṭ*, 24:4. For representative examples of the 'two plants' tradition, see Muslim b. al-Ḥajjāj, *al-Ṣaḥīḥ*, 3:1573, sec. 4, no. 13; Ibn Māja, *Sunan*, 4:69, no. 3378.

<sup>150</sup> al-Sarakhsī, *al-Mabsūṭ*, 24:3.

<sup>151</sup> *Ibid.*, 24:8.

<sup>152</sup> *Ibid.*, 24:6.

<sup>153</sup> *Ibid.*, 24:4.

<sup>154</sup> In the case of both water- and juice-based *muthallath*, three opinions are ascribed to al-Shaybānī, with the harshest favoring complete prohibition (*ibid.*, 24:6 and 19).



fyng these substances as *khamr*. Traditions that appear to link *khamr* to sources other than grapes or dates highlight a similarity in effect rather than an identical legal status.<sup>155</sup>

Al-Sarakhsī's defense of the Ḥanafī position is distinguished by his use of logical/etymological arguments that mirror al-Ṭahāwī's manipulation of textual contradiction. Specifically, he argues that *khamr*'s ability to intoxicate does not necessarily imply that all intoxicants are *khamr*. Sometimes a word specifically refers to a distinct type of object with a particular characteristic. The word piebald (*ablaq*), for example, specifically refers to a horse that is spotted black and white. It is directly linked to this color characteristic and cannot be used to describe a brown or gray horse. This does not mean, however, that the word can be applied to all black and white spotted objects. A piece of clothing that is spotted black and white would never be called piebald. In the same way, just because *khamr* is named for its ability to obscure (*yukhāmīr*) the intellect, it does not follow that all substances that obscure the intellect are *khamr*. Such a claim would require definitive textual proof.<sup>156</sup> He notes that neither a single philologist nor the Prophet—the most lucid and clear speaker of the Arabic language—ever connected the word *khamr* to substances other than those derived from raw grapes and dates. This would have been quite easy to do, and would have settled the matter once and for all.<sup>157</sup>

Al-Sarakhsī also attempts to differentiate *khamr* from other intoxicants by emphasizing its unique power to compel individuals to drink to excess. He argues that the desire to drink grows with every sip of *khamr* so that even the smallest quantity has the effect of fostering those qualities singled out in Q 5:91 as the reasons for prohibition (e.g., enmity and distracting one's mind from remembering God).<sup>158</sup> Milk and other lawful substances, on the other hand, do not compel individuals to drink larger and larger quantities. As for lawful intoxicants like *ṭilā'*, al-Sarakhsī contends that their coarseness and thickness functions as a natural barrier to intoxication since excess consumption

<sup>155</sup> Recall that the Ḥanafīs maintained that these intoxicants may not be consumed for frivolous reasons (*ibid.*, 24:17-8). See also note 128.

<sup>156</sup> *Ibid.*, 24:5.

<sup>157</sup> *Ibid.*, 24:15.

<sup>158</sup> *Ibid.*, 24:3.

causes headaches and discomfort. These drinks are primarily utilized to help individuals eat a particularly difficult type of camel meat.<sup>159</sup> Finally, he draws an analogy between non-*khamr* intoxicants and narcotic plants (e.g., *banj*) that are lawful in moderate quantities so long as they are not consumed to the point of intoxication.<sup>160</sup>

While al-Sarakhsī remains committed to narrow prohibition, there appear to be certain concessions to Mālikī and Shāfi'ī critiques pushing the Ḥanafī school towards a more restrictive view. This shift is most apparent with respect to fermented date/raisin *naqī'*, considered permissible by Abū Ḥanīfa and reprehensible (*makrūh*) by al-Ṭahāwī. Al-Sarakhsī asserts that all alcoholic date/grape drinks are unlawful regardless of their preparation and relates (without expressing his personal agreement) three opinions (apparently ascribed to al-Shaybānī) that unconditionally prohibit these drinks.<sup>161</sup> This is in stark contrast to al-Ṭahāwī's claim that al-Shaybānī discouraged these drinks but did not prohibit them!

#### *Al-Marghīnānī*

The shifting portrayal of al-Shaybānī also features prominently in 'Alī b. Abī Bakr al-Marghīnānī's (d. 593/1196-7) *al-Hidāya*, which affirms the opinions of Abū Ḥanīfa and Abū Yūsuf but aligns al-Shaybānī with the views of the other major Sunnī law schools. Al-Marghīnānī begins his discussion by defining *khamr* as fermented uncooked grape juice but acknowledges some dispute over whether bubbling and intensification in taste are sufficient grounds to establish fermentation (e.g., Abū Yūsuf and al-Shaybānī) or whether foam is also required (e.g., Abū Ḥanīfa).<sup>162</sup> He describes *khamr* as the only substance with the capacity to compel individuals to drink to excess and the only one expressly prohibited in the Qur'ān.<sup>163</sup> In response to arguments that generalize the meaning of *khamr* on the basis of the 'two plants' tradition and the 'all intoxicants' tradition, al-Marghīnānī offers a version of al-Sarakhsī's

<sup>159</sup> Ibid., 24:5, 17.

<sup>160</sup> Ibid., 24:9.

<sup>161</sup> Ibid., 24:15.

<sup>162</sup> al-Marghīnānī, *al-Hidāya*, 4:1528.

<sup>163</sup> Ibid.

'piebald' argument in which he rejects the claim that every intoxicating drink is *khamr*.<sup>164</sup>

The parallels between al-Marghīnānī and the other Ḥanafī jurists discussed in this study break down with respect to date/raisin-based *naqī'* and *nabīdh*. Although he affirms that drinks of this sort are lawful so long as they are fresh and uncooked, he declares them unlawful once they begin to bubble and intensify.<sup>165</sup> By comparison, al-Ṭaḥāwī only *suggests* that they should be avoided and al-Sarakhsī implies their problematic nature without taking a definitive stance on their consumption. Al-Marghīnānī, however, does not go so far as to label these drinks *khamr*, thereby significantly reducing their potential punitive consequences.<sup>166</sup> In other words, the drinks are unlawful but punishment is applied only if they are consumed to the point of intoxication.<sup>167</sup>

Al-Marghīnānī's modification of the Ḥanafī view is also noticeable in his discussion of intoxicants produced from substances other than grapes/dates and cooked drinks. While he acknowledges the opinion of Abū Ḥanīfa and Abū Yūsuf that drinks made from non-grape/date sources (e.g., honey, grain) are lawful<sup>168</sup> and not punishable even in cases of intoxication, he claims that al-Shaybānī declared these drinks unlawful and authorized punishment for intoxication.<sup>169</sup> Al-Marghīnānī also notes that intoxicating water-based date/grape drinks cooked at low temperatures for brief periods were judged permissible in moderate amounts (though discouraged) by Abū Ḥanīfa and Abū Yūsuf but were strictly forbidden by al-Shaybānī.<sup>170</sup> Finally, in the case of intoxicants produced from juices and infusions (*nabīdh* and *naqī'*) reduced to one-third of their original volume by cooking, al-Marghīnānī observes that whereas Abū Ḥanīfa and Abū Yūsuf allowed their consumption,

<sup>164</sup> Ibid., 4:1527.

<sup>165</sup> While al-Ṭaḥāwī suggested avoiding these drinks and al-Sarakhsī implied prohibition, al-Marghīnānī unambiguously deems them unlawful (ibid., 4:1530).

<sup>166</sup> The consumption of even a drop of *khamr* is grounds for severe punishment.

<sup>167</sup> al-Marghīnānī, *al-Hidāya*, 4:1530.

<sup>168</sup> Once again, the condition for lawfulness is that these drinks must be consumed for reasons other than pleasure. See note 128.

<sup>169</sup> al-Marghīnānī, *al-Hidāya*, 4:1531-2.

<sup>170</sup> Ibid., 4:1531.

al-Shaybānī favored strict prohibition.<sup>171</sup> He concludes by unambiguously declaring that al-Shaybānī considered “all intoxicants” prohibited.<sup>172</sup>

Al-Marghīnānī’s depiction of Muḥammad al-Shaybānī is representative of the progressive shift in Ḥanafī juristic discourse towards general prohibition. Even in the 6<sup>th</sup>/12<sup>th</sup> century, however, with the building blocks of a general prohibition in circulation, the view persisted that some intoxicants were permissible. Thus al-Marghīnānī, while not offering his opinion on intoxicants made from sources other than grapes/dates, did affirm the lawfulness of at least one intoxicating drink, namely *muthallath*.<sup>173</sup>

### C. The Final Steps

Beginning in the 6<sup>th</sup>/12<sup>th</sup> century, the Ḥanafīs quickly moved to prohibit all intoxicants, justifying this change with the claim that al-Shaybānī had always favored general prohibition. While ‘Abd al-Rashīd b. Abī Ḥanīfa al-Walwālījīya (d. 540/1145) permitted the consumption of alcoholic *muthallath*, he depicted al-Shaybānī as a staunch opponent of all intoxicants.<sup>174</sup> ‘Alā’ al-Dīn Abū Bakr b. Mas‘ūd al-Kāsānī (d. 587/1191) also allowed *muthallath* (so long as it is not consumed to the point of intoxication) and interpreted “*muskir*” as “the last cup that intoxicates.”<sup>175</sup> While I have not conducted a comprehensive survey of every Ḥanafī legal work, the first Ḥanafī jurist that I found who unequivocally advocated the complete prohibition of intoxicants was ‘Ubayd Allāh b. Mas‘ūd al-Maḥbūbī (747/1346), who wrote that “the ruling in our time agrees with Muḥammad’s [viz., al-Shaybānī’s] doctrine” that all intoxicants are prohibited.<sup>176</sup>

<sup>171</sup> Al-Marghīnānī does, however, acknowledge (in line with al-Sarakhsī) that al-Shaybānī may have held as many as three conflicting opinions (ibid., 4:1532-3).

<sup>172</sup> Ibid., 4:1531.

<sup>173</sup> Drawing on the view that *khamr* compels an individual to drink in excess, al-Marghīnānī observes that *muthallath* is coarse, offers little pleasure, and is more akin to food than drink (ibid, 4:1533).

<sup>174</sup> ‘Abd al-Rashīd b. Abī Ḥanīfa al-Walwālījīya *al-Fatāwā al-walwālījīya*, ed. Miqdād b. Mūsā al-Furaywī, 5 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 2003), 5:502-6.

<sup>175</sup> ‘Alā’ al-Dīn Abū Bakr b. Mas‘ūd al-Kāsānī, *Badā’i’ al-ṣanā’i’*, ed. Zakariyya ‘Alī Yūsuf, 10 vols. (Cairo: Zakariyya ‘Alī Yūsuf, 1968), 6:2944-6.

<sup>176</sup> ‘Ubayd Allāh b. Mas‘ūd al-Maḥbūbī, *Mukhtaṣar al-Wiqāyah*, 2 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 2005), 2:224-8.

#### D. Summary

The early Ḥanafī view in favor of narrow prohibition was supported by a literal reading of Q 5:90-1 coupled with traditions that appeared to condemn (and punish) actual intoxication rather than the consumption of intoxicants. While extending the prohibition of *khamr* to include date-based intoxicants (on the basis of the ‘two plants’ tradition), early Ḥanafī jurists rejected the vast corpus of traditions quoted by their opponents as either hopelessly contradictory or generally misinterpreted. In the former category, they included the ‘large/small’ tradition that contradicted traditions in which the Prophet and ‘Umar drank diluted intoxicants, concluding that punishment should be limited to cases of intoxication. In the latter category, they interpreted the ‘all intoxicants’ tradition as limiting prohibition to the last cup of a drink that directly results in intoxication. Al-Sarakhsī’s discussion suggested the development of additional arguments rooted in logic and etymology that persisted into the late 6<sup>th</sup>/12<sup>th</sup> century writings of al-Marghīnānī. By this time, however, the tide had turned and the Ḥanafīs were progressing towards an embrace of general prohibition.

#### **Deconstructing the Shift: Peer Pressure, Morality, and Founding Fathers**

As should be apparent from the preceding discussion, there was considerable disagreement among early jurists over the legal status of alcoholic drinks. The Mālikīs and the Shāfi‘īs channeled the Ḥijāzī practice of prohibiting all intoxicants in any quantity. The Mālikī position was primarily grounded in an analogical analysis of Q 5:90-1 that linked *khamr* to all intoxicants, while the Shāfi‘īs drew on a series of traditions that unambiguously supported a broad definition of *khamr*. That is not to say that the Mālikīs shunned traditions or that the Shāfi‘īs ignored analogy; they simply emphasized different aspects of the same evidence. By contrast, early Ḥanafī jurists based in Kūfa initially championed a view that limited prohibition to alcoholic drinks produced from grapes and dates. All other beverages were deemed permissible so long as they were not consumed to the point of intoxication. With this distinction in mind, the early Ḥanafīs considered the last cup that pushed a person over the edge of sobriety as uniquely problematic. Punishment was

limited to cases in which an individual drank *khamr* (in any quantity) or water-based grape/date intoxicants (*naqī'*, *nabīdh*) to the point of inebriation. There was no penalty for the consumption of other drinks such as beer (*mizr*) or mead (*bit'*).

The Ḥanafī position evolved over time, and the school eventually came to embrace general prohibition. What prompted this change? Part of the answer may lie in the gradually increasing pressure exerted on the Ḥanafīs by the Mālikīs and Shāfi'īs. Recall that the case for general prohibition was first articulated by Mālik and al-Shāfi'ī with later jurists largely summarizing the views of these early authorities. By the 4<sup>th</sup>/10<sup>th</sup> century, however, Mālikī and Shāfi'ī jurists dedicated most of their energies towards systematically refuting the Ḥanafīs through a combination of analogical, textual, and historical arguments. These refutations may have been motivated by a desire to mark boundaries between religious communities. Kueny, in particular, argues that rules against the consumption of intoxicants were designed to differentiate a Muslim communal identity from that of non-Muslims.<sup>177</sup> In such an environment, the Ḥanafīs likely encountered a growing demand to abandon narrow prohibition in favor of a general prohibition increasingly associated with the Muslim community as a whole.

Perceptions of morality may have also played a role in the change in the Ḥanafī position. Behnam Sadeghi argues that the issue of alcoholic drinks was not a typical juristic disagreement; rather, it had moral implications since other law schools connected the consumption of alcoholic drinks to depravity and loss of probity.<sup>178</sup> Sadeghi cites a number of issues with similar moral implications, such as temporary marriage (*mut'a*), money-changing, music, anal intercourse with women, and sorcery.<sup>179</sup> These were particularly charged issues often cited in polemics to discredit legal doctrines tied to individual cities.<sup>180</sup> It is worth

<sup>177</sup> Kueny argues that laws pertaining to wine were motivated, in part, by a desire to carve out a communal Muslim identity distinct from that of Jews and Christians. See Kueny, *Rhetoric*, 53-88, where she articulates this point through a number of textual case studies.

<sup>178</sup> Sadeghi, *Logic*, 135-6.

<sup>179</sup> *Ibid.*

<sup>180</sup> Sadeghi quotes the following tradition: "Pay no heed to Meccan doctrine when it comes to *mut'a* and money changing (*al-ṣarf*), nor to Medinese doctrine on music and anal intercourse with women, nor to Syrian doctrine on predestination and obedience (*al-jabr*

noting that many of these issues concerned actions identified with pre-Islamic Arab and non-Muslim communities.<sup>181</sup> In a similar vein, it may be that the drinking of intoxicants was a public action stigmatized by its association with non-Muslim communities (see above). The weight of such a stigma may have been the decisive factor in compelling the Ḥanafīs to abandon narrow prohibition.

The Ḥanafī shift to general prohibition, however, faced a significant obstacle. The consumption of intoxicants was directly authorized by Abū Ḥanīfa, and (as discussed earlier) many early Ḥanafī authorities accepted this view, differing only on minor points such as the definition of intoxication. The proclivity of Muslim jurists to adhere to the consensus views of their respective schools is well-known.<sup>182</sup> This tendency increased with the passage of time so that it became more difficult (though not impossible) for jurists to alter an established school position. Some legal issues may have been easier to abandon than others in light of changing political or social factors.<sup>183</sup> Narrow prohibition, however, was particularly problematic for the Ḥanafīs as it was distinctively and widely ascribed to their earliest authorities. It is likely that Ḥanafī jurists felt an obligation to defend the opinions of Abū Ḥanīfa, even if they personally adhered to general prohibition. Indeed, there is no evidence that Ḥanafī jurists were consuming intoxicants after the 3<sup>rd</sup>/9<sup>th</sup>

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*wa-al-tā'ā*), nor to Kūfan doctrine on *nabidh* and sorcery" (ibid., esp. note 28). See also Ibn 'Asākir, *Tārikh madinat Dimashq*, ed. 'Alī Shīrī, 80 vols. (Beirut: Dar al-Fikr, 1995-8), 1:361.

<sup>181</sup>) They differed fundamentally from disagreements between jurists over distinctively Muslim rituals like the placement of the hands in the daily prayer.

<sup>182</sup>) Wael Hallaq, "Was the Gate of *Ijtihād* Closed," *International Journal of Middle East Studies* 16 (1984), 3-41. In a later publication, Hallaq acknowledges that jurists sometimes broke with the views of their predecessors by deriving new laws that are then ascribed to the founders of their law school (*takhrīj*). The fact that such a stratagem is employed in these cases speaks to the general (though far from absolute) authoritative power of the school's founders. See Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 43-56 and Hallaq, *Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 157-63. See also Sadeghi, *Logic*, 9-10.

<sup>183</sup>) The legal discourse pertaining to Muslims residing in countries governed by non-Muslims, for example, developed in response to demographic and political changes. See, for example, Khaled Abou El Fadl, "Islamic Law and Muslim Minorities," *Islamic Law and Society*, 1 (1994), 141-87.

century. In other words, the debate over intoxicants may have been a purely scholarly one, with most Ḥanafis refraining from all intoxicants but, nevertheless, defending the views of their founders. Such a proposition is difficult to prove given the absence of sources detailing the dietary habits of the general population of the pre-modern Muslim world.

In order to affirm general prohibition, the Ḥanafis required a means for change that would minimize the appearance of capitulation and authenticate the school's new position on the basis of its earliest authorities. This was accomplished through a reinterpretation of the views of al-Shaybānī by later jurists who increasingly associated him with a restrictive view of intoxicants. Such a maneuver was not unprecedented. A number of scholars have noted the Ḥanafī tendency to project legal opinion onto earlier authorities.<sup>184</sup> When Ḥanafī jurists finally endorsed general prohibition unequivocally, they did not do so by acknowledging the critiques of their opponents but by “rediscovering” the views of one of their founding figures.

## Appendix 1—The Textual Landscape

While an array of Qur'ānic verses are cited in juristic debates over intoxicants, four hold a particular significance and recur with regular frequency in the legal literature. These verses are presented below, followed by a brief commentary on their importance. I utilize a modified version of Marmaduke Pickthall's translation of the Qur'ān.

- (a) *Q 16:67: And of the fruits of the date-palm, and grapes from which you derive strong drink (sakar) and good nourishment. Therein is a sign for people who have sense*"

This verse explicitly refers to *sakar* (as opposed to *khamr*), a drink whose intoxicating capacity is taken for granted and is cited as one of the miraculous signs of God's power. Mālikīs and Shāfī'īs interpret the verse as expanding the definition of *khamr* from grape- to date-based intoxicants, while Ḥanafīs utilize it to distinguish between permissible (*sakar*) and prohibited (*khamr*) alcoholic drinks.

<sup>184</sup> *EP*, s.v. “Abū Ḥanifa” (Yanagihashi); Joseph Schacht, “Sur le transmission de la doctrine dans les écoles juridiques de l'Islam,” *Annales de l'institut des études orientales* 10 (1952), 399-419, esp. 399-400. A similar, though different, method of molding the views of early Ḥanafī authorities is discussed in Hallaq, *Authority*, 43-56.



- (b) *Q 4:43: You who believe! Do not approach prayer when you are drunk, until you know that which you utter, nor when you are sexually polluted except when journeying upon the road until you have bathed. And if you be ill, or on a journey, or one of you comes from the privy, or you have touched women, and cannot find water, then go to high clean soil and rub your faces and your hands (with it). Lo! God is Pardoning, Forgiving.*

This verse provides a clear injunction against intoxication in one specific context. It is generally associated with an incident in which a number of inebriated Muslims mispronounced Qur'anic passages in the daily prayer.

- (c) *Q2:219: They question you about strong drink (khamr) and games of chance. Say: In both is great sin and some utility for men but the sin of them is greater than their usefulness. And they ask you what they ought to spend. Say: that which is superfluous. Thus God makes plain to you His signs so that you may reflect.*

The word *khamr* is cited here directly and described in ambiguous terms. Although it is made clear that the sin of the drink is greater than the benefit, there is an acknowledgement of the virtues of *khamr*.

- (d) *Q5:90-1: You who believe! Khamr and games of chance and idols and divining arrows are only an infamy of Satan's handiwork. Leave it aside so that you may succeed. Satan seeks only to cast enmity and hatred amongst you by means of khamr and games of chance, and to prevent you from remembrance of Allah and from prayer. Will you not desist?*

The final verse in the revelatory sequence, Q5:90-1 is broadly conceived by jurists as establishing an absolute prohibition of *khamr*. Even the Hanafis, who permitted the consumption of some intoxicants, forbade *khamr* and enforced punishments for drinking even a single drop.

While it is not unusual for jurists to mention all of these verses in their discussion of intoxicants, they rarely quote the exegetical literature on the circumstances of their revelation. I reference exegesis in the footnotes for cases where it is relevant to understanding a legal polemic. Hattox (*Coffee*, 46-9) discusses the revelatory context for each of these verses. Kueny (*Rhetoric*, 1-25) also comments on these Qur'anic verses but her analysis is distinguished by her dismissal of the entire legal tradition. Specifically, she rejects the established chronology and then claims that the Qur'an is ambiguous in its attitude towards wine. While her analysis is innovative, there is little support for Kueny's conclusion in the legal literature, even among Hanafi advocates of narrow prohibition.

In addition to Qur'anic evidence, jurists also cite traditions that preserve the opinions of the Prophet or other legal authorities on the subject of intoxicants and intoxication. As mentioned in the main body of the article, many of these texts are primarily concerned with clarifying the definition of *khamr*. Once a specific drink is

identified as *khamr*, Q 5:90-1 provides sufficient grounds for its prohibition. These traditions fall into four main categories:

- (a) *The 'large/small' tradition*  
Typical example: "Any substance that intoxicates in large quantities is forbidden in small quantities."
- (b) *The 'two plants' tradition*  
Typical example: "*Khamr* is derived from two plants, the date-palm and the grape-vine"
- (c) *The 'five sources' tradition*  
Typical example: 'Umar ascended the pulpit and said, "The prohibition of *khamr* was revealed encompassing five sources: grapes, dates, honey, wheat, and barley. *Khamr* is that which obscures the intellect."
- (d) *The 'all intoxicants' tradition*  
Typical example: "All intoxicants are prohibited."

These traditions are pervasive in Shāfi'i discussions that favor general prohibition. The first category opposes the Ḥanafī claim that intoxicating beverages (other than *khamr*) may be consumed in small quantities so long as an individual does not reach a state of intoxication. The last three categories are explicit attempts to expand the scope of *khamr* from a drink made of raw grape juice to any drink with the capacity to intoxicate. The Ḥanafīs did not deny these traditions but rather interpreted them in a manner that preserved the validity of their own views. Kueny (25-52) offers a literary commentary on these traditions that emphasizes their formulaic nature. As in the case of her analysis of the Qur'ānic evidence, this commentary offers some intriguing possibilities but suffers from its dismissal of the entirety of the Muslim legal tradition.

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