

CHAPTER SEVEN

TERMS REFERRING TO THE PEOPLE OF KNOWLEDGE IN MEDINA

GENERAL OBSERVATIONS

I categorize forty-one of Mālik's terminological expressions in the *Muwatta'* as references to the people of knowledge in his city.¹ As indicated earlier, Mālik's criterion for assessing the integrity of Medinese praxis was based on its endorsement by Medinese scholars, who were the chief conduits of praxis in his eyes. Mālik did not blindly subscribe to Medinese praxis simply because it was the customary practice of the common people of Medina, which he piously presumed to have authoritative continuity. He distinguished between the practices of the Medinese people in general and Medinese praxis as specifically endorsed by and embodied in his teachers. As indicated earlier, when asked about certain ritual practices of the Medinese during the festive days following the pilgrimage, Mālik states, "I have seen the [common] people (*al-nās*) doing that," but he then observes that what the people do was not the praxis of his teachers, "those whom I met and whom I follow" (*al-ladhīna adraktuhum wa aqtadī bihim*).²

Most of Mālik's references to people of knowledge in the *Muwatta'* speak of the people of knowledge in Medina in general terms, giving the impression that Mālik uses these references as indicants of concurrence (*ijtimā'*). He will say, for example, that the people of knowledge of his city have always held to the validity of a certain precept. He states that the people of knowledge whom he encountered during his lifetime held to the validity of the precept in question. Other expressions are more general. Mālik will say, for example, "this is what I have heard transmitted from the people of knowledge" or simply, "this is what I have heard transmitted."

¹ *Muw.*, 1:13, 71, 105, 250, 268 (twice), 276, 280, 309, 335, 338, 364, 386; 2:456, 503, 506, 511, 514, 515, 517, 518, 520, 521, 522, 534, 541, 565, 568, 589, 590, 615, 653, 671, 673, 708, 788 (twice), 826, 844, 865, 879. See Abd-Allah, "Amal," Appendix 2, 780–81.

² *Mud.*, 1:157.

There are a few expressions which explicitly refer to the totality of persons whom Mālik regarded as “people of knowledge.” He states once that all whom he encountered hold to the validity of a certain precept. On another occasion, he has not heard the contrary from any of the people of knowledge. In another instance, he states that none of the people of learning doubts the precept in question. In yet another instance, he asks the rhetorical question of whether anyone could doubt the validity of the precept he is discussing.³

A few expressions Mālik uses in reference to the people of knowledge appear to designate limited groupings of the Medinese jurists. The most common of these expressions is “those people of knowledge whom I am pleased to accept” (*man arḍā min ahl al-‘ilm*). Similarly, he once uses the terse expression, “the group in our city” (*al-jamā‘a bi-baladinā*).⁴ Such designations of limited groupings do not appear to be indicants of Medinese local consensus but rather of Mālik’s personal preference for the opinions of certain Medinese jurists as opposed to others. This is, in fact, the explanation that Mālik himself is reported to have given for his usage of these terms in his statement on terminology mentioned earlier.⁵ The expression, “those people of knowledge whom I am pleased to accept” (*man arḍā min ahl al-‘ilm*), however, is not clear in this regard. Semantically, it references the jurists whom Mālik regarded as acceptable but could, in fact, mean the totality of the Medinese jurists, on the ground that Mālik was pleased to accept them all. At the same time, Mālik’s biography indicates that there were many upright people of knowledge in Medina whom he did not regard as worthy of transmitting legal opinions or constituting local consensus.⁶ In light of this, it is likely that Mālik’s preference as indicated in this expression excludes such Medinese people of learning.

Almost two-thirds of Mālik’s references to the people of knowledge occur in combination with other terms and expressions. The two terms that occur most frequent in conjunction with other terms are “and this is what I found the people of knowledge following” (*wa hādhā al-ladhī adraktu ‘alayhi ahl al-‘ilm bi-baladinā*) and “this is what I have heard transmitted from the people of knowledge” (*wa hādhā al-ladhī sami‘tu min ahl al-‘ilm*). There does not seem to be a particular pattern to the specific terms that Mālik uses in conjunction with his references to the

³ See *Muw.*, 2:541, 788, 521; 1:386.

⁴ *Muw.*, 2:615.

⁵ Abd-Allah, “‘Amal,” 538–45.

⁶ See Abd-Allah, “‘Amal,” 72–76.

Medinese people of knowledge. They occur in connection with a wide variety of terms such as S-XN (the *sunna* among us about which there is no dissent; *sunna al-lattī lā ikhtilāf fihā 'indanā*), MḍS (the *sunna* has long been established; *maḍat al-sunna*), SN (the *sunna* among us; *al-sunna 'indanā*), AMN (the agreed precept among us; *al-amr al-mujtama' 'alayhi 'indanā*), AMN-X (the agreed precept without dissent among us; *al-amr al-mujtama' 'alayhi 'indanā wa al-ladhī lā ikhtilāf fihī*), A-XN (the precept without dissent among us; *al-amr al-ladhī lā ikhtilāf fihī 'indanā*), and AN (the precept among us; *al-amr 'indanā*).

EXAMPLES

1. -zĀlb:⁷ *The Pilgrim's Chant* (Talbiya)

Mālik cites a *ḥadīth* indicating that the Prophet permitted his Companions when they were performing the pilgrimage with him and setting out from their encampment in Minā to 'Arafa [on the ninth day of pilgrimage] to say the proclamation of God's oneness (*al-tahlil*) or the proclamation of God's greatness (*al-takbūr*). Mālik cites a post-Prophetic report stating that 'Alī ibn Abī Ṭālib used to repeat the pilgrim's chant (*talbiya*)⁸ until the sun passed the meridian on the Day of 'Arafa. Mālik then states, "This is the precept (*amr*) which the people of knowledge in our city still continue to follow" (-zĀlb). He then cites post-Prophetic reports indicating that 'Ā'isha and 'Abd-Allāh ibn 'Umar would do the same.⁹

This precept occurs in the recensions of Yaḥyā, Abū Muṣ'ab, al-Qa'nabī, Suwayd, and al-Shaybānī. It is missing from the short Ibn Ziyād fragment. The term as cited above occurs in the transmissions of Yaḥyā, al-Qa'nabī, and Abū Muṣ'ab. Suwayd presents essentially the same legal content but does not give Mālik's term. Chapter titles and wording differ somewhat in the various recensions, although the legal content and purport is similar.

⁷ For a key to the symbols, see Abd-Allah, "*Amal*," Appendix 2, 766–68. I stands for the people of knowledge; b stands for "in our city;" the hyphen (-) shows negation; -z stands for "still continue to follow;" and Ā this precept. The term -zĀlb stands for "This is the precept that the people of knowledge in our city still continue to follow" (*wa dhātika al-amr al-ladhī lam yazal 'alayhi ahl al-'ilm bi-baladinā*).

⁸ The *talbiya* consists of the words, "Here I am, God, [responding to Your call]; here I am. Here I am; You have no partner; here I am. All praise and bounty are Yours and all dominion. You have no partner" (*Labbayk, Allāhumma, labbayk. Labbayka, lā sharīka laka, labbayk. Inna al-ḥamda wa al-ni'mata laka wa al-mulk. Lā sharīka lak.*)

⁹ *Muw.*, 1:337–38; *Muw.* (Dār al-Gharb), 1:454; *Muw.* (Abū Muṣ'ab), 1:431; *Muw.* (al-Qa'nabī), 378–79; *Muw.* (Suwayd), 391–93; *Muw.* (al-Shaybānī/al-Nadawī), 2:244; *Muw.* (*Riwayāt*), 2:426–27.

Al-Shaybānī also mentions this question. As is generally the rule with his recension of the *Muwattaʿa*, he comments on the chapter's content from the Ḥanafī Kufan point of view and deletes what is not relevant to his purpose, including Mālik's terminology.¹⁰

Ṣaḥnūn treats this precept briefly in the *Mudawwana* but cites no terms. He asks Ibn al-Qāsim when the pilgrim's chant should cease and is given an answer consistent with the *Muwattaʿa*' text above. Ibn al-Qāsim explains that he and Mālik's principal students asked him about the specific details of the matter (*waqafnāhū ʿalā dhālika*) on more than one occasion. Ṣaḥnūn presents a number of other details that are not mentioned in the *Muwattaʿa*' text and closes with Ibn al-Qāsim's observation that the entire issue regarding the pilgrim's chant is open-ended and unencumbered (*wāsiʿ*) and should not be treated with rigidity.¹¹

It is apparent from the context that Mālik's expression, -zĀlb (this is the precept which the people of knowledge in our city still continue to follow; *wa hādihā al-amr al-ladhī lam yazal ʿalayhi ahl al-ʿilm bi-baladinā*), indicates that he regarded the praxis in question to have unbroken continuity from the days of the Prophet and his Companions. It falls under the heading of transmissional praxis. Mālik's wording indicates that there was local consensus on its validity, although other textual evidence points to differences among the Medinese jurists about it, as will be shown.

Mālik uses his reference to Medinese praxis here as confirmatory commentary on the *ḥadīth* at the beginning of the chapter, which indicates that the Companions, when they made pilgrimage with the Prophet, would either repeat the pilgrim's chant (as did ʿAlī in the post-Prophetic report) or chant the declaration of God's greatness (*al-takbīr*) without any of them objecting to either practice.¹² Mālik cites several reports to support the precept. Unlike his presentation in the *sunna*-precepts, where he formulates the content and details of precepts separately from narrated texts, he cites his terminology here merely as a confirmation of the report he transmits. The precept is contained in the explicit wording of his reports, and the term is cited immediately after the first post-Prophetic report, indicating the continuity of Medinese praxis in conformity with the practice of ʿAlī. In contrast to the *sunna*-terms, Mālik does not add

¹⁰ *Muw.*, 1:337–38; *Muw.* (Dār al-Gharb), 1:454; *Muw.* (Abū Muṣʿab), 1:431; *Muw.* (al-Qaʿnabī), 378–79; *Muw.* (Suwayd), 391–93; *Muw.* (al-Shaybānī/al-Nadawī), 2:244; *Muw.* (*Riwayāt*), 2:426–27; Ibn ʿAbd al-Barr, *al-Tamhīd*, 8:127; *idem*, *al-Istidhkār*, 11:156.

¹¹ *Mud.*, 1:296–97; *Mud.* (2002), 2:304–05.

¹² *Muw.*, 337; *Muw.* (Dār al-Gharb), 1:454.

additional information to the precept going beyond what is specifically indicated in the reports themselves, other than the consideration that he regarded his post-Prophetic reports to reflect the norm of the people of knowledge in Medina.

Ibn ‘Abd al-Barr relates that Mālik’s opinion as reflected in the *Muwattaʿa*’ was the view of a large body of the first generations of Muslims as well as “most” of the people of Medina (*akthar ahl al-Madīna*).¹³ There were several opinions about exactly when and where the pilgrim’s chant should end. Among the most important of the dissenting views from Mālik’s perspective was that the chant should continue throughout the ninth day, the day of ‘Arafa, and until the stoning of the largest pillar of Satan on the following day. This view had the explicit support of another Prophetic *ḥadīth*. Most of the jurists—including Abū Ḥanīfa and Sufyān al-Thawrī of Kufa, Ibn Abī Laylā, al-Shāfi‘ī, Ibn Ḥanbal, and Ishāq ibn Rāhawayh—took this position along with the proponents of tradition (*ahl al-ḥadīth*).¹⁴ Later jurists like al-Shāfi‘ī and Aḥmad ibn Ḥanbal also took the Kufan position, which is supported by a strong *ḥadīth* transmitted in the collections of al-Bukhārī and Muslim.¹⁵

The details of how and when to perform the pilgrim’s chant is a matter of dissent going back to the first generation of Muslims and continuing through all later generations until the present. It is a matter in which the Companions, the Successors, and subsequent generations of jurists regarded the various dissenting opinions to be innocuous.¹⁶ All authoritative texts pertaining to this precept, both those in the *Muwattaʿa*’ and the *ḥadīths* supporting the Kufan position, are reports of observed actions.

¹³ Ibn ‘Abd al-Barr ascribes the practice to Abū Bakr, ‘Umar, ‘Uthmān, ‘Ā’isha, Umm Salama, Ibn al-Musayyab, Sulaymān ibn Yasār, Sa‘īd ibn Yazīd, and al-Zuhrī. Mālik’s text cites ‘Alī as well as ‘Ā’isha and Ibn ‘Umar. He notes that ‘Ā’isha and ‘Uthmān are reported to have held contrary opinions. ‘Alī, on the other hand, held consistently to the position that Mālik reports him as taking in the *Muwattaʿa*’ (Ibn ‘Abd al-Barr, *al-Istidhkār*, 11:158–59; idem, *al-Tamhīd*, 8:126, 130; Ibn Abī Shayba, *al-Muṣannaf*, 3:356–57).

¹⁴ Ibn ‘Abd al-Barr, *al-Istidhkār*, 11:160–61; idem, *al-Tamhīd*, 8:125–31; Ibn Abī Shayba, *al-Muṣannaf*, 3:356–57; al-Ṭahāwī, *Sharḥ*, 2:300–06. This dissenting view is also ascribed to the Companion Ibn Mas‘ūd—one of the primary Kufan authorities—Ibn ‘Abbās, ‘Aṭā’ ibn Abī Rabāḥ, Ṭawūs, Sa‘īd ibn Jubayr, and Ibrāhīm al-Nakha‘ī. Ibn ‘Umar was also on record as supporting this position.

¹⁵ The *ḥadīth* reports that the Prophet continued to make the pilgrim’s chant (*talbiya*) into the tenth day of pilgrimage until he had performed the rite of casting pebbles at the pillar of Satan (see al-Bājī, *al-Muntaqā*, 2: 216; al-Zurqānī, *Sharḥ*, 3: 56–57). Al-Bājī and al-Zurqānī also note that the praxis in question was a point of contention between the Medinese and the Kufan jurists Abū Ḥanīfa and Sufyān al-Thawrī.

¹⁶ Ibn ‘Abd al-Barr, *al-Istidhkār*, 11:158, 162; idem, *al-Tamhīd*, 8:123–25.

They narrate what the Prophet and his Companions did, not what they said about their actions or how they assessed them in legal terms. As mentioned earlier, such reports of observed behavior (*ḥikāyāt al-aḥwāl*), Prophetic and otherwise, are inherently ambiguous. According to Mālikī legal theorists, reported actions may be taken to indicate permissibility but are insufficient in themselves to prove obligation, recommendation, or normativeness. On the other hand, reports of contrary actions by prominent, knowledgeable Companions and jurists—such as the Companions mentioned in this precept—are sufficient evidence that a reported Prophetic action to which they are contrary is not obligatory.¹⁷

According to Mālikī, Ḥanafī, and Ḥanbalī legal theorists, post-Prophetic reports about prominent Companions may constitute sufficient indication of the Prophetic *sunna* on the presumption that those Companions knew the Prophetic *sunna* well and adhered to it closely.¹⁸ This seems to be how Mālik is using the post-Prophetic reports he cites in this example, although he does not make specific reference to the term *sunna*. As the *ḥadīth* indicates at the beginning of Mālik's discussion, the Companions of the Prophet repeated both the standard pilgrim's chant and the proclamation of God's greatness (*al-takbīr*) in his presence during the pilgrimage. Mālik's presumption in citing the post-Prophetic reports seems to be that the Prophet would have made it clear at some point to the three prominent Companions mentioned in this example that it was either obligatory for them or a desirable norm that they continue to make the pilgrim's chant until the tenth day of pilgrimage, if that had been his standard *sunna*. In this case, Mālik's reference to local praxis supported by the post-Prophetic reports of three prominent Companions distinguishes normative from non-normative Prophetic actions. On the presumption that Mālik was aware of the Prophet's action as reported in the *ḥadīth* supporting the Kufan position, his reference to local praxis indicates that the Prophet's action in that case was not intended to become the established norm.

2. -zĀlb: Regarding Circumambulation of the Ka'ba (Ṭawāf)

Mālik cites a *ḥadīth* indicating that the Prophet made the first three circuits around the Ka'ba during his circumambulation of it at a rapid pace (*raml*) beginning and returning to the corner with the Black Stone and doing

¹⁷ See Abd-Allah, "Amal," 188–95.

¹⁸ See Abd-Allah, "Amal," 161–70.

that for three circuits. Mālik cites the term -zĀib (this is the precept which the people of knowledge in our city continue to follow; *wa hādhā al-amr al-ladhī lam yazal ‘alayhi ahl al-‘ilm bi-baladinā*). He cites post-Prophetic reports in the remainder of the chapter, showing that ‘Abd-Allāh ibn ‘Umar and ‘Urwa ibn al-Zubayr performed circumambulation around the Ka‘ba in the same manner. He cites a post-Prophetic report that ‘Abd-Allāh ibn al-Zubayr put on the pilgrim’s garb (*ihrām*) at Tan‘im [on the sanctuary outskirts a few miles northeast of Mecca] and did the first circuits at a rapid pace. Mālik concludes with a post-Prophetic report to the effect that Ibn ‘Umar would omit certain rites of the circumambulation including the rapid pace of the first three circuits when initiating the rite of pilgrimage within the precincts of Mecca.¹⁹

This precept occurs in the recensions of Yaḥyā, Abū Muṣ‘ab, al-Qa‘nabī, Suwayd, and al-Shaybānī. It does not occur in the Ibn Ziyād fragment. The term is cited identically in three of them: Yaḥyā, Abū Muṣ‘ab, and al-Qa‘nabī, although their chapters differ somewhat in wording, content, and structure. Suwayd’s chapter structure and content differ somewhat from the others. As in the preceding example, he does not cite any terminology. Al-Shaybānī comments on the *ḥadīth*, affirming that Ḥanafī practice is in accordance with it. As is usually the case, he omits Mālik’s term.²⁰

Sahnūn gives little attention to this precept in the *Mudawwana*, although he relates details that are not in the *Muwatta’*.²¹ He seems to rely on the *Muwatta’* text, however, to provide all that is essential regarding this fairly straightforward religious practice.

This precept falls into the category of transmissional praxis. The term -zĀib (this is the precept which the people of knowledge in our city continue to follow; *wa hādhā al-amr al-ladhī lam yazal ‘alayhi ahl al-‘ilm bi-baladinā*) indicates that the praxis of the Medinese people of knowledge remained in direct continuity with the Prophet’s action as reported in the *ḥadīth* and the appended post-Prophetic reports. Mālik’s term also gives indication of local Medinese consensus. He cites evidence indicating that Medinese praxis in this case conforms with the transmitted account of the Prophet and the praxis of prominent Medinese people of knowledge after

¹⁹ *Muw.*, 1:364–65; *Muw.* (Dār al-Gharb), 1:489–90; cf. *Muw.* (Abū Muṣ‘ab), 1:489–90; *Muw.* (al-Qa‘nabī), 405–06; *Muw.* (Suwayd), 414–15; *Muw.* (al-Shaybānī/al-Nadawī), 2:344–45; *Muw.* (*Riwayāt*), 2:489–91.

²⁰ *Muw.*, 1:364–65; *Muw.* (Dār al-Gharb), 1:489–90; *Muw.* (Abū Muṣ‘ab), 1:489–90; *Muw.* (al-Qa‘nabī), 405–06; *Muw.* (Suwayd), 414–15; *Muw.* (al-Shaybānī/al-Nadawī), 2:344–45; *Muw.* (*Riwayāt*), 2:489–91; Ibn ‘Abd al-Barr, *al-Istidhkār*, 12:122–23.

²¹ *Mud.*, 1:318; *Mud.* (2002), 2:376.

him. Mālik's commentators note that the precept in question is in keeping with a command of the Prophet as indicated by Mālik's *ḥadīth*. Several *ḥadīths* report that when the Prophet and his Companions entered Mecca after the Armistice of al-Ḥudaybiyya, the Meccan idolaters taunted them at a distance and claimed that the fevers of Medina had so emaciated them that they lacked the strength to make the seven circumambulations around the Ka'ba. In response, the Prophet commanded his Companions to walk rapidly during the first three circuits around the Ka'ba to show the Meccans that he and his Companions were still strong and vigorous. Other *ḥadīths* indicate that the Prophet continued to perform the circumambulation around the Ka'ba in this manner even following the conquest of Mecca after the inhabitants of the city embraced Islam.²²

According to commentators, the precept had extensive agreement among all jurists. In the words of Ibn 'Abd al-Barr, there was consensus among the jurists that anyone who performed the first three circumambulations around the Ka'ba at a rapid pace (*raml*) when first entering Mecca in the rites of the lesser (*'umra*) or greater pilgrimages (*ḥajj*) had done what was appropriate (*faḡad fa'ala mā yanbaghī*). He contends that this was a matter upon which there was concurrence (AMN; *amr mujtama' 'alayhi*). He notes that the jurists only disagreed about whether the first three rapid circumambulations were a *sunna* that should always be done under the appropriate circumstances or whether the applicability of this act was limited to the Prophetic period because of the special circumstances that pertained after the Armistice of al-Ḥudaybiyya. In the latter case, those who desired to perform it were free to do so, and those who preferred not to do it were free to put it aside.²³

The caliph 'Umar, his son Ibn 'Umar, Ibn Mas'ūd, Mālik, Abū Ḥanīfa, al-Thawrī, al-Shāfi'ī, Ibn Ḥanbal, and Ibn Rāhawayh held that walking the first three circumambulations at a rapid pace was a continuous *sunna*, which ought always to be performed when beginning the rites of the lesser and greater pilgrimage.²⁴ Among those who held the contrary view that the rapid circumambulations were a historical vestige of conditions pertaining to the Armistice of al-Ḥudaybiyya were Ṭawūs, 'Aṭā', Mujāhid, al-Ḥasan al-Baṣrī, Sālim ibn 'Abd-Allāh, al-Qāsim ibn Muḥammad, and Sa'īd ibn Jubayr. The jurist most well-known for his adherence to this

²² Al-Bāji, *al-Muntaqā*, 2:284; al-Zurqānī, *Sharḥ*, 3:124–26.

²³ Ibn 'Abd al-Barr, *al-Istidhkār*, 12:125–26; al-Ṭahāwī, *Sharḥ*, 2:249–53.

²⁴ Ibn 'Abd al-Barr, *al-Istidhkār*, 12:127; idem, *al-Tamhīd*, 9:9, 12–14; Ibn Abī Shayba, *al-Muṣannaḡ*, 3:205.

opinion was Ibn ‘Abbās, although he reportedly held the contrary view also. The same is reported about the caliph ‘Umar.²⁵

Similarly to the preceding example but in contrast to some of the *sunna*-precepts, Mālik cites his term here in connection with a precept for which he provides ample texts. Once again, Mālik does not formulate the precept separately but cites his term immediately after the first report to indicate that the practice reported in it corresponds to the praxis of the people of Medina, which he holds to be in continuity with it. In contrast to the *sunna*-precepts, Mālik does not provide additional information to the texts that he cites other than indicating that the actions reported in the texts are normative and not repealed or exceptional.

The post-Prophetic report about Ibn ‘Umar, who performed the circumambulations somewhat differently when initiating the pilgrimage from Mecca, is cited at the close of Mālik’s discussion. It does not contradict the other reports but reflects the well-established precept that pilgrimage rites are performed somewhat differently for those who inhabit Mecca or take up temporary residence in that city. Some of these distinctions are mentioned in the Qur’an (2:196).²⁶

3. -zĀlb: Steeping Dates with Raisins

Mālik cites two *ḥadīths* at the beginning of this discussion, which report that the Prophet forbade (*nahā ‘an*) that fresh dates (*busr*) be steeped with pulpy dates (*ruṭab*) or that dried dates (*tamr*) be steeped with raisins. Mālik introduces his term after the second *ḥadīth* in which the Prophet forbade drinking such drinks. Mālik concludes by saying that steeping such fruits together is disliked (*yukrahu*) because of the Prophet’s order against it.²⁷

²⁵ Ibn ‘Abd al-Barr, *al-Istidhkār*, 12:127, 130–34, 138; idem, *al-Tamhīd*, 9:9–14; Ibn Abī Shayba, *al-Muṣannaḥ*, 3:339–40; al-Zurqānī, *Sharḥ*, 2: 124–26; al-Bājī, *al-Muntaqā*, 2: 284; cf. al-Ṭahāwī, *Sharḥ*, 2:249–53. Ibn ‘Abbās reportedly also held a third opinion according to which one should walk normally between the Yamānī corner of the Ka’ba (the one just before the Black Stone) and begin the quick pace at the Black Stone. Ibn ‘Umar may also have been of this opinion. This view is consistent with the second, however, since Quraysh would not have seen the Muslims during that part of the circumambulation, because the Ka’ba would have blocked their vision. The Muslims would only have come into their sight after coming to the Black Stone. The overwhelming majority of jurists, however, held that the rapid pace takes in the entire circumambulations beginning and ending at the Black Stone (Ibn ‘Abd al-Barr, *al-Istidhkār*, 12:133). Mālik seems to address this third dissenting position indirectly, since the *ḥadīth* he cites states specifically that the Prophet began and ended the first three rapid circumambulations at the Black Stone.

²⁶ Al-Bājī, *al-Muntaqā*, 2:286; al-Zurqānī, *Sharḥ*, 3:126.

²⁷ *Muw.*, 2:844; *Muw.* (Dār al-Gharb), 2:411–12; *Muw.* (Abū Muṣ‘ab), 2:47–48; *Muw.* (al-Shaybānī/al-Nadawī), 3:119–20; *Muw.* (*Riḥāyāt*), 4:175.

This precept occurs in the recensions of Yaḥyā, Abū Muṣ‘ab, and al-Shaybānī. It does not occur in al-Qa‘nabī, Suwayd, or the Ibn Ziyād fragment. Abū Muṣ‘ab has a different chapter title, however, and does not list the term. Al-Shaybānī gives no chapter title. He cites the pertinent *ḥadīths* but adds no comments and does not cite Mālik’s term. In this instance, Mālik’s term occurs only in the recension of Yaḥyā, which is confirmed in Ibn ‘Abd al-Barr’s *Istidhkār* and *Tamhīd*.²⁸

In the *Mudawwana*, Saḥnūn transmits the same precept with similar statements, and he cites no term in conjunction with it. Here, the *Mudawwana* overlaps with the *Muwatta’* but provides detailed information not available in the former. Saḥnūn asks Ibn al-Qāsim about steeping these types of fruits together. Ibn al-Qāsim reports that Mālik told him that they should not be steeped together but may be steeped separately. Mālik stated that he disliked (*lā uḥibb*) that they be steeped in a single container and drunk because of the Prophet’s prohibition. Saḥnūn pursues the issue further by asking about steeping grains such as wheat (*ḥinṭa*) and barley (*sha‘īr*), mixing honey with steeped fruits, leaving bread in steeped fruits, and the like. Ibn al-Qāsim clarifies again that Mālik disliked such types of mixed fruit steeping because of the Prophetic *ḥadīth*. Nevertheless, Ibn al-Qāsim explains, fruit juices and beverages made from mixed steeped fruits were permissible in Mālik’s view—even if they produced foam—as long as they did not intoxicate.²⁹

Like the preceding examples, this precept constitutes transmissional praxis. Mālik contends clearly that it originated with the command of the Prophet as documented in the two *ḥadīths*. Once again Mālik’s term -zĀlb (this is the precept which the people of knowledge in our city continue to follow; *wa ḥādhā al-amr al-ladhī lam yazal ‘alayhi ahl al-‘ilm bi-baladīnā*) is used in conjunction with texts. It provides little additional information beyond what those texts already provide, other than Mālik’s observation that the practice of steeping these substances together is disliked (*yukrahu*). Unlike the preceding examples in this chapter, the *ḥadīths* in this example are reports of statements and not actions.

The Prophetic prohibition of steeping various types of fruits together is transmitted in multiply-transmitted (*mutawātīr*) *ḥadīths* of established authenticity according to the criteria of the traditionists. All *ḥadīths*

²⁸ *Muw.* (Dār al-Gharb), 2:411–12; *Muw.* (Abū Muṣ‘ab), 2:47–48; *Muw.* (al-Shaybānī/al-Nadawī), 3:119–20; *Muw.* (*Riwayāt*), 4:175; Ibn ‘Abd al-Barr, *al-Istidhkār*, 24:289; *idem*, *al-Tamhīd*, 14:139.

²⁹ *Mud.*, 4:410–11; *Mud.* (2002), 11:101–05.

consistently uphold the overt meaning of the two *ḥadīths* Mālik transmits at the beginning of the chapter. There were no contrary *ḥadīths* permitting the steeping of mixed fruits. All jurists, including those who held dissenting opinions accepted these *ḥadīths* as authentic, although they disagreed in their legal purport and interpretation.³⁰

Ibn ‘Abd al-Barr contends that Mālik’s comments on the *ḥadīths* he transmits indicate that he regarded the Prophetic prohibition in this case not to be categorical but to be a matter of worship and choice (*nahya ‘ibāda wa ikhtiyār*). Al-Layth ibn Sa’d and Abū Ḥanīfa were the primary dissenting voices in Mālik’s time. Ibn ‘Abd al-Barr notes that neither of them held that the prohibition was categorical, and they agreed that harshness and inflexibility (*shidda*) were inappropriate in such matters. This was also Mālik’s opinion as indicated by the wording of his *Muwatṭa’* text and the transmissions of Saḥnūn in the *Mudawwana*.³¹ The Medinese held a similar view that the Prophet had given the command against steeping these

³⁰ Ibn ‘Abd al-Barr, *al-Tamhīd*, 14:135–39; cf. Ibn Abī Shayba, *al-Muṣannaf*, 5:91; ‘Abd al-Razzāq, *al-Muṣannaf*, 9:210–16.

³¹ Ibn ‘Abd al-Barr, *al-Istidhkār*, 24:290–93; idem, *al-Tamhīd*, 14:140. Al-Ḥasan al-Baṣrī, Qatāda, Sufyān al-Thawrī, al-Shaybānī, al-Shāfi‘ī, and most of the jurists in and outside Medina took positions similar to that of Mālik (Ibn Abī Shayba, *al-Muṣannaf*, 5:91–92; cf. ‘Abd al-Razzāq, *al-Muṣannaf*, 9:210–16). Ibrāhīm al-Nakha‘ī of Kufa dissented, and Ibn ‘Umar of Medina may also have taken a dissenting position, although Ibn ‘Abd al-Barr doubts the authenticity of reports ascribing this position to Ibn ‘Umar. Abū Yūsuf held different views but ultimately took the position of his teacher, Abū Ḥanīfa. Abū Ḥanīfa did not reject the *ḥadīths* as inauthentic but interpreted them as reflecting the difficult living conditions of Medina in the Prophet’s time (Ibn ‘Abd al-Barr, *al-Tamhīd*, 14:140). Abū Ḥanīfa’s position was based on the consideration that other agreed *ḥadīths* allow one to steep each of these fruits separately, a point that Mālik concurred with as Ibn al-Qāsim indicates in the *Mudawwana* (*Mud.*, 4:410–11; *Mud.* [2002], 11:101–05). Abū Ḥanīfa reasoned that it was not the steeping (*intibādh*) of the fruits together that was prohibited *per se* but producing intoxicating drinks by steeping them together. He held that it was permissible to steep these various combinations of dates and raisins together, provided that one took care not to leave them ferment long enough to become intoxicating (Ibn ‘Abd al-Barr, *al-Istidhkār*, 24:292–93; Ibn Rushd, *Bidāya*, 1:281; al-Zurqānī, *Sharḥ*, 5:126–27); cf. al-Ṭahāwī, *Sharḥ*, 4:8–17). Abū Ḥanīfa held that the Prophet made this declaration about steeping combinations of dates and raisins at a time when the Muslims of Medina were living under straitened circumstances; under such conditions, the practice of steeping these fruits together was extravagant and wasteful. Abū Ḥanīfa’s position on steeping these fruits together may relate also to his principle of rejecting the implications of solitary *ḥadīths* when they pertain to customary matters of general necessity (*‘umūm al-babwā*), which by their nature should be well known by virtue of established practice or multiply-transmitted *ḥadīths* (see Abd-Allah, “*Amal*,” 762–64). Al-Layth ibn Sa’d also held this position and saw no harm in steeping the fruits together and drinking the beverage. He understood the prohibition in the *ḥadīth* only constituted a general directive because of the fact that mixing the two fruits made them stronger and led them ferment faster (Ibn ‘Abd al-Barr, *al-Istidhkār*, 24:292–93).

fruits together because they fermented more rapidly than normal when mixed and turned imperceptibly into intoxicating beverages.³² According to this view, the Prophet's prohibition in this case embodied the Medinese legal principle of preclusion (*sadd al-dharā'i'*), a principle to which Abū Ḥanīfa did not subscribe. His interpretation of the *ḥadīth*, therefore, would appear consistent with his rejection of the principle of preclusion. From the Medinese point of view, which endorsed the principle of preclusion, there was no harm in the act of steeping these substances together in itself, but it was disliked because of being the means to something prohibited, namely the production of intoxicating drinks.

Al-Zurqānī affirms Mālik's position that the Prophet's command in this case did not indicate strict prohibition of steeping such fruits together but only that the practice was disliked. The fact that the Prophet's command against steeping such fruits together was not a categorical prohibition was, in al-Zurqānī's view, the point that Mālik intended to emphasize by declaring that the practice was disliked (*yukrahu*). Overt (*zāhir*) statements of law are conjectural (*ẓanni*) in Mālikī jurisprudence.³³ Mālik's reliance on a continuous transmissional praxis of the Medinese jurists to interpret the two *ḥadīths* in a manner contrary to their overt meaning (prohibition instead of dislike) is an illustration of his modifying the meaning of an overt text on the basis of praxis. As such, it is another example of how praxis—and not the text itself—provides the semantic background for what the text originally meant from a Medinese perspective.

Mālik's citation of the *ḥadīths* in this chapter and his comment on them that they indicate dislike by virtue of the Prophet's command is similar to his invocation of *sunna* to undercut and delimit analogies in the *sunna*-terms. What Mālik says at the end of the chapter is not redundant. It is an implicit rejection of Abū Ḥanīfa's adherence to general analogy based on the essential validity of steeping individual fruits in isolation as opposed to steeping them together. On the basis of that analogy, Abū Ḥanīfa discerns the *ḥadīths'* purpose as having nothing essentially to do with the manner of steeping but with the production of intoxicating alcohol. If brewing intoxicants is avoided, there is no harm in mixing these fruits. Mālik's disagreement is not stringent, as his use of the term "disliked" instead

³² Ibn Rushd, *Bidāya*, 1:281; al-Zurqānī, *Sharḥ*, 5:126–27; cf. Ibn 'Abd al-Barr, *al-Istidhkār*, 24:292–93; al-Taḥāwī, *Sharḥ*, 4:8–17.

³³ See Abd-Allah, "Amal," 146–47.

of “prohibited” indicates.³⁴ As with the *sunna*-terms, Mālik’s invocation of the Prophet’s authority in these *ḥadīths* delimits Abū Ḥanīfa’s use of analogical rationalism. It is as if Mālik were to say, were it not for these *ḥadīths* and Medinese praxis in accord with them, I too would have followed Abū Ḥanīfa’s analogy.

4. -zĀIN:³⁵ *The Waiting Period (‘Idda) of a Pregnant Woman Whose Husband Dies*

Mālik begins by citing a post-Prophetic report containing a *ḥadīth* reporting that the Companions ‘Abd-Allāh ibn ‘Abbās and Abū Hurayra disagreed concerning the waiting period (*‘idda*) required of a pregnant woman whose husband dies and how soon she should be allowed to remarry after the husband’s death. Ibn ‘Abbās held that she must wait either until she delivers the child or until four months and ten days (the standard mourning period of widows) have passed, adding that she is bound to follow whichever of the two periods is longer. Abū Hurayra contended, on the other hand, that

³⁴ Mālik’s use of the word “it is disliked” (*yukrahu*) (the verbal form of *makrūh*) is one of the early and not infrequent attestations of standard later legal terms in Mālik’s discourse with parallels in his student Ibn al-Qāsim. Mālik’s reference to dislike in this example reflects the conception behind later legal terminology for the five act classifications (*al-aḥkām al-taklīfiyya*): obligatory (*wājib*), recommended (*mandūb*), permissible (*mubāh*), disliked (*makrūh*), and forbidden (*ḥarām*). Mālik’s usage of dislike, however, may also reflect his caution in declaring matters forbidden without conclusive proof. The meaning of the word “disliked” (*makrūh*) was often stronger in the formative period than it became later. In the early period “disliked” was sometimes tantamount to “forbidden.” Al-Shāṭibī illustrates this point and asserts that the early jurists took care not to describe matters of law as prohibited (*ḥarām*) unless they had certain knowledge of categorical prohibition. He quotes Mālik, “It is not the custom of the people (*amr al-nās*) or the custom of our predecessors who have gone before us and whose examples we emulate and upon whom is the utter reliance (*mi’wāl*) of Islam that one say, ‘This is permissible (*ḥalāl*) and that is forbidden.’ Rather, it was [their custom] to say, ‘I dislike (*akrahu*) this, and I am of this opinion (*arā*) about that.’ As for saying ‘permissible’ and ‘forbidden’, it is a fabrication against God (*iftirā’ ‘alā Allāh*).... For the permissible is what God and His Messenger have declared permissible, and the forbidden is what they have declared to be forbidden” (al-Shāṭibī, *al-Muwāfaqāt*, 4:286–87).

Similarly, Ibn al-Qāsim says about a certain question in the *Mudawwana*, “In my opinion, it is not clearly forbidden (*al-ḥarām al-bayyin*)... but I dislike (*akrahu*) that it be put into practice” (*Mud.*, 3:122). Compare Ibn al-Qāsim’s statement about another matter, “I do not like it (*lā yu’jibunī*). It is not permissible, rather, it is forbidden” (*Mud.*, 2:379). In *Siyar al-Awzā’i*, Abū Yūsuf claims that this was also the position of the prominent early Kufan jurist Ibrāhīm al-Nakha’ī and his associates. When they issued legal opinions permitting certain things and forbidding others, they would say, “this is disliked” (*makrūh*) or “there is no harm in it” (*lā ba’s bihi*). They regarded it reprehensible to say of such matters that they were either permissible (*ḥalāl*) or forbidden (*ḥarām*) (Abū Yūsuf, *al-Radd*, 73).

³⁵ The term -zĀIN stands for, “this is the precept which the people of knowledge among us still continue to follow” (*wa ḥādḥā al-amr al-ladhī lam yazal ‘alayhi ahl al-‘ilm ‘indanā*).

she may remarry immediately after she delivers her child. In a narration of the Prophet's wife Umm Salama, she narrates that a certain woman, Subay'a al-Aslamiyya, delivered a child shortly after her husband's death. Two suitors, one younger and the other older, offered to marry her. Subay'a inclined toward the younger. Umm Salama states that the older man protested that Subay'a was not yet free to marry because she had not completed the four months and ten days of waiting. Umm Salama explains that Subay'a's relatives were abroad at the time and the older suitor was attempting to delay the marriage until they returned, hoping that he could use his influence upon them to convince Subay'a to marry him instead of the younger suitor. Subay'a brought the matter to the Prophet's attention, who told her that it was permissible for her to marry immediately.

Mālik cites another post-Prophetic report stating that 'Abd-Allāh ibn 'Umar and his father, 'Umar, upheld the legal implications of Umm Salama's account. 'Umar would say that a pregnant wife whose husband dies may remarry immediately after delivering her child, "even if her deceased husband is still lying on his deathbed and has not yet been buried."

Mālik concludes the chapter by citing two shorter versions of the *ḥadīth* about Subay'a, with which the chapter began. After the last of them, he cites the term -zĀIN (this is the precept which the people of knowledge among us still continue to follow; *wa hādhā al-amr al-ladhī lam yazal 'alayhi ahl al-'ilm 'indanā*).³⁶

This precept occurs in the recensions of Yaḥyā, Abū Muṣ'ab, and Suwayd. It is not in the present recensions of al-Qa'nabī or Ibn Ziyād. Abū Muṣ'ab omits the two concluding *ḥadīths* and presents Mālik's term more elaborately as A-XN (the precept without dissent among us; *al-amr al-ladhī lā ikhtilāf fīhi 'indanā*) followed by an expression essentially the same as Yaḥyā's term, "... and what I encountered the people of knowledge doing in our city (... *wa al-ladhī adraktu 'alayhī ahl al-'ilm bi-baladīnā*). He gives an additional statement related to the precept, which Yaḥyā does not have, about a woman whose husband dies while absent. She should begin the date of her waiting period from the time the husband died or repudiated her. If she had not known of his death until the period passed, she is not required to mourn him if the prescribed period of mourning has lapsed. Suwayd does not cite the term. He omits the post-Prophetic report of Ibn 'Umar but adds additional post-Prophetic reports that affirm the same point.³⁷

³⁶ *Muw.*, 2:589–90; *Muw.* (Dār al-Gharb), 2:104–06; *Muw.* (Abū Muṣ'ab), 1:654–56; *Muw.* (Suwayd), 292–94; *Muw.* (*Riwayāt*), 3:305–309.

³⁷ *Muw.*, 2:589–90; *Muw.* (Dār al-Gharb), 2:104–06; *Muw.* (Abū Muṣ'ab), 1:654–56; *Muw.* (Suwayd), 292–94; *Muw.* (*Riwayāt*), 3:305–309; Ibn 'Abd al-Barr, *al-Istidhkā*, 18:174.

Saḥnūn presents materials in the *Mudawwana* that are similar to Abū Muṣ‘ab’s opening remarks regarding a woman whose husband dies while absent from her. Saḥnūn does not give the precept in full as it occurs in the *Muwattaʿa*, nor does he give the account of Umm Salama or cite any Medinese terminology. Occasionally, the *Mudawwana* fails to treat basic material given in the *Muwattaʿa*, which is the case in this example. This is consistent with the *Mudawwana*’s role as a complementary text to the legal fundamentals given in the *Muwattaʿa*.³⁸

In Yaḥyā’s transmission, Mālik’s refers to the people of knowledge in this precept by the term -zĀIN (this is the precept which the people of knowledge among us still continue to follow; *wa hādhā al-amr al-ladhī lam yazal ‘alayhi ahl al-‘ilm ‘indanā*). The term affirms continuous Medinese juristic consensus on the matter. Abū Muṣ‘ab first cites the term A-XN (the precept without dissent among us; *al-amr al-ladhī lā ikhtilāf fihi ‘indanā*), which is an explicit affirmation of traditional juristic continuity, and follows it with a statement similar in meaning to Yaḥyā’s term. As in earlier examples, both terms are used to confirm the legal implications of the texts Mālik cites without adding legal material from non-textual sources. Mālik’s terms in both transmissions indicate that the overt legal inferences based on his received texts are valid as they stand. They have not been repealed. They do not require interpretation, and they have not been modified by other legal considerations. As in the preceding examples of Mālik’s references to the people of knowledge, praxis provides verification and endorsement of textual information. The post-Prophetic report of ‘Umar (that a wife may remarry immediately after delivery, even if her husband is on his deathbed) removes any ambiguities from the *ḥadīths* in question, which Mālik might conceivably have wanted to clarify.

This precept belongs to the category of transmissional praxis. It is based on a precedent that the Prophet set and is supported by the post-Prophetic statements of prominent Companions to show that it was not repealed and to convey its full legal purport. The precept is consonant with the Qur’ānic verse (Qur’ān, 4:65), which states that the waiting period for pregnant women who are divorced during their pregnancies continues until the time they deliver. As Ibn Ruṣhd notes, however, the

³⁸ *Mud.*, 2:75; *Mud.* (2002), 4:316–18.

verse pertains to repudiation (*talāq*), while this precept pertains to the spouse's decease.³⁹

There was widespread agreement and virtual unanimity among early jurists inside and outside of Medina on the validity of this precept.⁴⁰ Mālik reports in his presentation above, however, that Ibn 'Abbās held a contrary view. It is reported that Ibn 'Abbās later changed his opinion and adopted the majority view. Ibn 'Abd al-Barr held that reports about Ibn 'Abbās's changing his opinion are probably authentic, since his primary students are not known to have held to Ibn 'Abbās's earlier opinion.⁴¹

It is reported that 'Alī held the same position as Ibn 'Abbās. Ibn Rushd and others interpret the position of 'Alī and the initial position of Ibn 'Abbās as based on their combining the two pertinent verses of the Qur'ān, the first of which (Qur'ān, 2:234) pertains explicitly to women whose husbands die (although it makes no reference to pregnant women). It specifies a waiting period of four months and ten days. The second verse (Qur'ān, 4:65) is the one mentioned above about the waiting period for women who are repudiated during pregnancy. By taking the verses together, 'Alī and Ibn 'Abbās concluded that the waiting period for a pregnant woman whose husband dies should be whichever of the two periods is longer.⁴²

Like Mālik, most of the jurists held it valid for the wife of a deceased husband who delivers following his death to remarry immediately after delivery. This was also a point of contention. Al-Ḥasan al-Baṣrī, al-Sha'bī, Ibrāhīm al-Nakha'ī, and Abū Ḥanīfa's teacher Ḥammād held that the newly delivered wife of a deceased husband could not remarry until her post-partum bleeding had ceased. Other jurists held that post-partum bleeding was not an impediment to her remarriage, although she should not engage in conjugal relations after marriage until the bleeding has ceased.⁴³

Yaḥyā's expression "among us" (*'indanā*) in the term -zĀIN appears to be equivalent to the expression "in our city" in the term of Abū Muṣ'ab and in the previous terms -zĀIB ("this is the precept that the people of knowledge in our city still continue to follow" [*wa hādha/dhālika al-amr*

³⁹ Ibn Rushd, *Bidāya* (Istiḳāma), 2:95.

⁴⁰ Ibn 'Abd al-Barr, *al-Istidhkār*, 18:175, 178; Ibn Rushd, *Bidāya* (Istiḳāma), 2:95; al-Bājī, *al-Muntaqā*, 4:132–33; al-Zurqānī, *Sharḥ*, 4:142–46.

⁴¹ See Ibn 'Abd al-Barr, *al-Istidhkār*, 18:175–78; idem, *al-Tamhīd*, 11:311–12; Ibn Rushd, *Bidāya* (Istiḳāma), 2:95; al-Bājī, *al-Muntaqā*, 4:132–33; al-Zurqānī, *Sharḥ*, 4:142–46.

⁴² See Ibn 'Abd al-Barr, *al-Tamhīd*, 11:311–12; idem, *al-Istidhkār*, 18:175–78; Ibn Rushd, *Bidāya* (Istiḳāma), 2:95; al-Bājī, *al-Muntaqā*, 4:132–33; al-Zurqānī, *Sharḥ*, 4:142–46.

⁴³ Ibn 'Abd al-Barr, *al-Istidhkār*, 18:178.

al-ladhī lam yazal ‘alayhi ahl al-‘ilm bi-baladinā]) that we have examined. Explicit reference to “our city” instead of “among us” is the more common phrasing of these terms.

5. *Ādlb*:⁴⁴ *Joining the Friday Prayer Late*

Mālik reports that al-Zuhri held it to be the *sunna* that a person who comes late to the Friday prayer but is able to perform at least one prayer unit (*rak‘a*) with the *imām* has technically performed the Friday prayer. He need only make up one more prayer unit [to complete the two required] after the *imām* has finished praying. Mālik cites the term *Ādlb* and adds that the rationale underlying this precept is that the Prophet said that whoever makes at least one prayer unit [of a communal prayer with the *imām*] has partaken of that prayer.⁴⁵

This precept occurs in the recensions of Yaḥyā, Abū Muṣ‘ab, al-Qa‘nabī, and Suwayd. It is not in the Ibn Ziyād fragment. Each of the four recensions cites the same term, and their texts are similar.⁴⁶

In the *Mudawwana*, Saḥnūn cites *ḥadīths* and adds post-Prophetic reports from Ibn ‘Umar, al-Sha‘bī, ‘Alqama, and Ibrāhīm al-Nakha‘ī complementing the *Muwaṭṭa’* text and upholding Mālik’s ruling. Contrary to the four recensions of the *Muwaṭṭa’*, Saḥnūn cites no term from Mālik in conjunction with the precept.⁴⁷

As in the preceding examples, the precept falls under the rubric of transmissional praxis. Al-Zuhri’s opinion that Medinese praxis on this matter was the *sunna* means that he too regarded it to be transmissional praxis rooted in Prophetic teaching. But Mālik’s clarification that the rationale underlying the precept is in the *ḥadīth* that he mentions, which is about coming late to prayers and is not specific to the Friday prayer, indicates that justifying Medinese praxis in this matter required an element of legal interpretation, since there was no explicit textual evidence. The *sunna* in this case would have either been part of the original transmission of the praxis from the Medinese perspective or the result of later legal interpretation (*ijtihād*) based, perhaps, on the *ḥadīth* Mālik cites.

⁴⁴ The term *Ādlb* stands for, “This is what I found the people of knowledge in our city following” (*wa ‘alā dhālika/hādihā adraktu ahl al-‘ilm bi-baladinā*).

⁴⁵ *Muw.*, 1:105; *Muw.* (Dār al-Gharb), 1:161–62; *Muw.* (Abū Muṣ‘ab), 1:172; *Muw.* (al-Qa‘nabī), 209; *Muw.* (Suwayd), 127; *Muw.* (*Riwāyāt*), 1:447–48.

⁴⁶ *Muw.* (Dār al-Gharb), 1:161–62; *Muw.* (Abū Muṣ‘ab), 1:172; *Muw.* (al-Qa‘nabī), 209; *Muw.* (Suwayd), 127; *Muw.* (*Riwāyāt*), 1:447–48; Ibn ‘Abd al-Barr, *al-Istidhkar*, 5:64.

⁴⁷ *Mud.*, 1:137–38; *Mud.* (2002), 1:361–63.

According to Ibn ‘Abd al-Barr, Mālik based his position on the praxis of Medina—not on explicit textual proof—and the fact that juristic pronouncements (*fatwās*) in Medina had long been based on this opinion. Ibn ‘Abd al-Barr notes that the *ḥadīth* Mālik cites does not constitute explicit textual proof but is merely a general indicant of the *sunna*. It serves as valid proof for Mālik because he regarded the Friday prayer to be analogous to other communal prayers in terms of what constitutes joining it on time. Ibn ‘Abd al-Barr also believes that the manner in which Mālik presents his material in this chapter indicates his full awareness of the regional dissent of the early jurists on this issue.⁴⁸

The term *Ādlb* (this is what I found the people of knowledge in our city following; *wa ‘alā hādihā adraktu ahl al-‘ilm bi-baladinā*) gives no explicit indication of scholarly continuity going back to the institution of a Prophetic *sunna*. Within the confines of Mālik’s text, al-Zuhrī and no one earlier than he constitutes the authoritative frame of reference for this praxis belonging to the *sunna*. The term *Ādlb* does indicate, however, that the precept in question ultimately became part of local Medinese juristic consensus and that Mālik had received it as such.

The precept is of the nature of general necessity (*‘umūm al-balwā*).⁴⁹ Whenever Friday prayers are instituted, there will be people who come late, who miss all but the last prayer unit, and who need to know what is required of them to finish the prayer correctly. It is likely that the full precept as Mālik cites it and supports it by reference to the general *ḥadīth* went back to the initial institution of the Friday prayer in Medina during the Prophetic era. It is unlikely that clarification of this point waited until al-Zuhrī’s generation.

Mālik’s comment in support of al-Zuhrī constitutes the same supportive legal reasoning that Mālik uses to defend the validity of Medinese praxis elsewhere. Mālik’s textual reference to the *ḥadīth* serves to index the praxis as “transmissional.” It does not imply that the *ḥadīth* itself was the source of the praxis, of al-Zuhrī’s opinion, or the opinions of other Medinese jurists. Mālik simply indicates that the *ḥadīth* provides the rationale embodied in praxis. From the Medinese perspective, local juristic conviction on the matter would likely have been rooted in the existential reality of praxis and not directly attested in any textual ancillary (like Mālik’s *ḥadīth*). Other than al-Zuhrī’s statement, Mālik cites no

⁴⁸ Ibn ‘Abd al-Barr, *al-Istidhākār*, 5:65; ‘Abd al-Razzāq, *al-Muṣannaḥ*, 3:235–36.

⁴⁹ See Abd-Allah, “*Amal*,” 184–88.

explicit textual evidence that bears out the full scope of this precept. His usage of the term *Ādlb* adds nothing new from local praxis in addition to what al-Zuhrī states, although, as just indicated, Mālik's citation of the *ḥadīth* has the purpose of supporting the validity of al-Zuhrī's position.

This precept was a matter of dissent among the early jurists. The majority of them, including those outside Medina, held opinions similar to the Medinese. The opinion is attributed to Ibn 'Umar, Ibn Mas'ūd, Sa'īd ibn al-Musayyab, Ibrāhīm al-Nakha'ī, al-Zuhrī, al-Thawrī, Zufar ibn Hudhayl, al-Awzā'ī, al-Shaybānī, and al-Shāfi'ī. It was probably the opinion of al-Layth, although a contrary opinion is also attributed to him.⁵⁰

Abū Ḥanīfa and Abū Yūsuf did not exactly disagree with Mālik and the Medinese people of knowledge on this matter, but they went further, holding that as long as the latecomer joined the prayer before it has completely finished (that is, even after the "bowing" [*rukū'*] of the final prayer unit), he had still formally partaken of the prayer and need only pray the two prayer units missed in order to have fully performed the prayer. They based this on another general *ḥadīth*, "Pray [with the *imām*] what you have reached [on time], and make up what you have missed."⁵¹ For Mālik and the Medinese, to enter the prayer after the final bowing was too late, since the last prayer unit had been missed by failing to perform the bowing. Such a latecomer would have to pray four prayer units, the number customarily prayed for the noon (*ẓuhr*) prayer, which occurs at the same time of day.⁵²

⁵⁰ Ibn 'Abd al-Barr, *al-Istidhkār*, 5:65–66; 'Abd al-Razzāq, *al-Muṣannaḥ*, 3:234–36; al-Bājī, *al-Muntaqā*, 1:191; al-Zurqānī, *Sharḥ*, 1:323; cf. Ibn Rushd, *Bidāya*, 1:111.

⁵¹ Ibn 'Abd al-Barr, *al-Istidhkār*, 5:64, 66–67 and footnote and text 5:66; al-Bājī, *al-Muntaqā*, 1:191; al-Zurqānī, *Sharḥ*, 1:323; cf. Ibn Rushd, *Bidāya*, 1:111.

⁵² See al-Bājī, *al-Muntaqā*, 1:191; al-Zurqānī, *Sharḥ*, 1:323; cf. Ibn Rushd, *Bidāya*, 1:111. There was another dissenting opinion that if no oration (*khuṭba*) were given in the Friday prayer, four prayer units were to be prayed instead of two. This was a strong Meccan opinion. 'Umar, Makḥūl, Ibrāhīm, Ibn Sīrīn, al-Ḥasan al-Baṣrī, Ṭāwūs, and others held it ('Abd al-Razzāq, *al-Muṣannaḥ*, 3:171; Ibn Abī Shayba, *al-Muṣannaḥ*, 1:455–56, 460–61). This specific point of difference is not explicitly registered in Mālik's wording in the *Muwatṭa'*, but it may be understood, since there were early jurists who held that one who came late and missed the Friday oration had, in fact, missed the Friday prayer even if that person had prayed the entirety of the ritual prayer that follows the oration. The opinion that one must attend the Friday oration for the prayer to be valid is attributed to the Syrian Makḥūl, the Meccans Mujāhid and 'Aṭā' ibn Abī Rabāḥ, the Yemeni Ṭāwūs, and others. They required anyone who missed the Friday oration to perform four prayer units independently after the communal prayer (Ibn 'Abd al-Barr, *al-Istidhkār*, 5:65; 'Abd al-Razzāq, *al-Muṣannaḥ*, 3:235–36; al-Zurqānī, *Sharḥ*, 1:323; see also al-Bājī, *al-Muntaqā*, 1: 191; Ibn Rushd, *Bidāya*, 1:111).

6. *ĀdIb*:⁵³ *Husbands Who Cannot Support Their Wives*

Mālik states that Saʿīd ibn al-Musayyab held that a husband and wife should be separated if the husband is unable to support her. Mālik closes by citing the term *ĀdIB* (this is what I found the people of knowledge in our city following; *wa ʿalā dhālika/hādhā adraktu ahl al-ʿilm bi-baladinā*).⁵⁴

This precept occurs in the three recensions of Yaḥyā, Abū Muṣʿab, and Suwayd, and their texts are similar. The precept does not occur in the present texts of al-Qaʿnabī or Ibn Ziyād. Each of the recensions with the term cites it from Mālik with similar wording, although Abū Muṣʿab adds after it that Mālik said, “and my considered opinion is in accordance with this” (*wa ʿalā dhālika raʿyī*).⁵⁵

In the *Mudawwana*, Saḥnūn cites Saʿīd ibn al-Musayyab’s statement as given above and relates Mālik as saying, “all whom I met held this opinion (*kulla man adraktu yaqūlūna dhālika*) that if a husband fails to support his wife they will be separated.”⁵⁶ His text closely parallels the *Muwaṭṭaʿ*, and Mālik’s expression in the *Mudawwana* is synonymous to his *ĀdIb* in the *Muwaṭṭaʿ*, although it differs in wording.⁵⁷ Saḥnūn produces further textual evidence to substantiate the validity of the ruling. He transmits that Mālik’s teachers Yaḥyā ibn Saʿīd and Rabīʿa held to the precept’s validity.⁵⁸ He cites an interesting report that Ibn Musayyab emphatically regarded it as a *sunna*. When Abū Zinād questions him further on the behalf of ʿUmar ibn ʿAbd al-ʿAzīz about its being a *sunna*, Ibn al-Musayyab replies, “[Is it] a *sunna*? [Is it] a *sunna*? Yes, it is a *sunna*! (*Sunna? Sunna? Naʿam, sunna!*).”⁵⁹

⁵³ The term *ĀdIb* stands for, “This is what I found the people of knowledge in our city following” (*wa ʿalā dhālika/hādhā adraktu ahl al-ʿilm bi-baladinā*).

⁵⁴ *Muw.*, 2:589; *Muw.* (Dār al-Gharb), 2:104; *Muw.* (Abū Muṣʿab), 1:654; *Muw.* (Suwayd), 292; *Muw.* (*Riwāyāt*), 3:305.

⁵⁵ *Muw.* (Dār al-Gharb), 2:104; *Muw.* (Abū Muṣʿab), 1:654; *Muw.* (Suwayd), 292; *Muw.* (*Riwāyāt*), 3:305; Ibn ʿAbd al-Barr, *al-Istidhkār*, 18:166.

⁵⁶ In the 2002 edition of the *Mudawwana*, however, the expression is given as “those I encountered held this opinion” (*kāna man adraktu yaqūlūna dhālika*). See *Mud.* (2002), 4:31.

⁵⁷ *Mud.* 2:194; *Mud.* (2002), 4:30–32.

⁵⁸ *Mud.*, 2:194; *Mud.* (2002), 4:31.

⁵⁹ *Mud.*, 2:194; *Mud.* (2002), 4:31. *Mud.*, 2:192–94; *Mud.* (2002), 4:24–31. Ibn Abī Shayba and ʿAbd al-Razzāq transmit similar reports (Ibn Abī Shayba, *al-Muṣannaf*, 4:174; ʿAbd al-Razzāq, *al-Muṣannaf*, 7:96; Ibn ʿAbd al-Barr, *al-Istidhkār*, 18:166–67; al-Zurqānī, *Sharḥ*, 4:141). In keeping with its purpose, the *Mudawwana* adds relevant details of legal interpretation pertaining to the practical application of the precept, explaining, for example, conditions in which a wife—even one who is independently wealthy—may later demand

Explicit *ḥadīths* are lacking for this precept, and it is difficult to determine whether Mālik regarded this Ādlb as transmissional or old praxis. He gives no clear indication in the *Muwaṭṭaʿ* that it went back to the Prophet but cites this reference to the Medinese people of knowledge (Ādlb) as a footnote appended to the opinion of the Successor Saʿīd ibn al-Musayyab, who stood out as one of the precept's most forceful proponents. Mālik adds no additional commentary in the *Muwaṭṭaʿ* on the legal content of the matter. His term serves the purpose of indicating the degree of support and continuity that the precept had among the Medinese jurists. As noted below, however, ʿUmar ibn ʿAbd-ʿAzīz and al-Zuhrī are reported both to have equivocated on the precept, supporting it at times and dissenting from it at others. Presumably, Mālik regarded al-Zuhrī, who certainly counted among the most illustrious teachers he met, to have ultimately fallen in line with the preponderant Medinese view on the matter.

This precept constituted a point of dissent between the Medinese and the Kufan jurists Abū Ḥanīfa, Abū Yūsuf, al-Shaybānī, and Sufyān al-Thawrī. The dissenting jurists held that a husband's failure to support his wife was not sufficient grounds for separating them. It is reported, however, that Abū Ḥanīfa's teacher, Ḥammād ibn Abī Sulaymān, differed with the Kufans on this matter and held the same opinion as Ibn al-Musayyab.⁶⁰

None of the precept's supporters or dissenters argued from an explicit Qurʾānic verse or *ḥadīth*. Al-Ḥasan al-Baṣrī is said to have based his opinion on the general implications of the Qurʾānic verses (67:7 and 2:286), which indicate that husbands should support their wives according to their means and that God does not tax anyone beyond their capacity.⁶¹ According to Ibn Rushd, the Kufan position was based upon the premise of the inviolability of marriage, which, as a general principle, was a matter of scholarly consensus. They held that only such acts or inactions could legitimately dissolve marriage that are verified in the Qurʾān and *sunna* as terminating marriage bonds or are supported by consensus.⁶²

of her delinquent husband to repay her for personal expenses she incurred from her private wealth.

⁶⁰ ʿAbd al-Razzāq, *al-Muṣannaf*, 7:95–96; Ibn ʿAbd al-Barr, *al-Istidhkār*, 18:169–70; Ibn Abī Shayba, *al-Muṣannaf*, 4:174–75; al-Ṭaḥāwī, *Mukhtaṣar*, 2:366–67; cf. Ibn Rushd, *Bidāya* (Istiḳāma), 2:51–52; cf. al-Bāji, *al-Muntaqā*, 4:131. Al-Ḥasan al-Baṣrī, al-Shaʿbī, and ʿAṭāʾ also dissented from the Medinese position. Such dissent is attributed as well to ʿUmar ibn ʿAbd al-ʿAzīz and al-Zuhrī, although, as indicated earlier, the contrary is also said to have been their opinion.

⁶¹ Ibn ʿAbd al-Barr, *al-Istidhkār*, 18:169; cf. al-Ṭaḥāwī, *Mukhtaṣar*, 2:366–67.

⁶² Ibn Rushd, *Bidāya* (Istiḳāma), 2:51–52; cf. al-Bāji, *al-Muntaqā*, 4:131.

The Medinese held that the husband's obligation to support his wife was one of the fundamental duties of marriage and should be individually assessed on the basis of what was customarily acceptable given a husband's economic and social status. (Al-Bājī provides at length the customary definitions of family support based on the *Mudawwana*, *Mawwāziyya*, *Utbīyya*, and other early Mālikī sources.⁶³) The Medinese held further that marriage may be dissolved at the wife's request through returned dowry divorce (*khul'*). She may, however, retain her dowry gift whenever her husband brings about dissolution of the marriage through personal injury (*ḍarar*). A husband's failure to support his wife in a customarily acceptable fashion according to his economic and social station was regarded to be an instance of personal injury to the wife.⁶⁴

If one regards the precept to have been a Medinese *sunna* in the sense that it was deemed to have Prophetic authority, it would be another example of a precept of Medinese praxis for which there were few if any explicit textual references in later sources and regarding which there had been significant dissenting opinions among the jurists of the formative period. No explicit *ḥadīths* support the Medinese position or that of the dissenters.⁶⁵ Other early evidence relates that this precept was in keeping with the policy of 'Umar ibn al-Khaṭṭāb. During his caliphate, he wrote to his commanders directing them to inform soldiers who were absent from their wives and failed to support them that they either send their wives support or divorce them.⁶⁶ In light of the available evidence, 'Umar's policy appears to be the earliest record to the precept's application. It may have been a caliphal *sunna*. It is difficult to determine whether 'Umar's policy reflected his legal interpretation or his personal knowledge of the Prophet's *sunna*. Al-Ṭaḥāwī, who supports the dissenting Kufan position, notes Ibn al-Musayyab's insistence that the precept was a "*sunna*" but observes that he need not have meant it to be a Prophetic *sunna*.⁶⁷

Al-Bājī cites the Qur'ānic verse (Qur'ān 2:233), which requires a husband to support his wife in a customarily acceptable manner (*bi-l-ma'rūf*) as part of the background of the Medinese legal position on the obligation of reasonable wife support. Neither al-Bājī nor Ibn Rushd produces

⁶³ Al-Bājī, *al-Muntaqā*, 4:131.

⁶⁴ See al-Bājī, *al-Muntaqā*, 4:126–32, 60–69; *Muw.*, 2:564–65; Ibn Rushd, *Bidāya* (Istiḳāma), 2:51–52; al-Zurqānī, *Sharḥ*, 4:141.

⁶⁵ See Ibn 'Abd al-Barr, *al-Istidhkār*, 18:170.

⁶⁶ Ibn 'Abd al-Barr, *al-Istidhkār*, 18:167; 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:93–94; Ibn Abī Shayba, *al-Muṣannaḥ*, 4:175.

⁶⁷ Ibn 'Abd al-Barr, *al-Istidhkār*, 18:170.

further textual references. Rather they both present rational arguments predicated on the ultimate requirements and purposes of marriage as a legal institution.⁶⁸ In noting the Kūfan critique of the Medinese position, Ibn Rushd indicates that they too lacked explicit texts on the question but based their objections on general legal argumentation.⁶⁹

7. *Ādlb*.⁷⁰ *The Banishment of Fornicators*

Mālik cites a post-Prophetic report stating that the caliph Abū Bakr punished an unmarried man who admitted to fornicating with a slave girl and banished him to the town of Fadak (about two days journey north of Medina). Mālik follows it by a discussion of why one is required to accept later denials of confessed fornicators or adulterers. He states that it is the *Ādlb* (this is what I found the people of knowledge in our city following; *wa 'alā hādhā adraktu ahl al-'ilm bi-baladinā*) that slaves (*'abūd*) are not banished in cases of fornication.⁷¹

This precept occurs in the *Muwatta'* transmissions of Yaḥyā and Abū Muṣ'ab.⁷² It does not occur in the recensions of al-Qa'nabī, Suwayd, and Ibn Ziyād. The full term *Ādlb* (this is what I found the people of knowledge in our city following; *wa 'alā hādhā adraktu ahl al-'ilm bi-baladinā*) occurs only in one printed version of Yaḥyā's transmission.⁷³ In other versions, it occurs in a similar shortened form as "this is what I found the people of knowledge following." Although this omission of reference to "our city" (*wa 'alā hādhā adraktu ahl al-'ilm*) is unusual for Mālik, it is apparently accurate, since Ibn 'Abd al-Barr gives the same citation from Yaḥyā in the *Istidhkār*.⁷⁴ Abū Muṣ'ab uses the expression "the precept which I found the people of knowledge in our city following" (*al-amr al-ladhī adraktu 'alayhī ahl al-'ilm bi-baladinā*), which is close to the full term *Ādlb*. He cites the precept after this expression and appends to it

⁶⁸ Al-Bāji, *al-Muntaqā*, 4:126, 131; see Ibn Rushd, *Bidāya* (Istiqāma), 2:51–52; cf. Ibn 'Abd al-Barr, *al-Tamhīd*, 11.

⁶⁹ See Ibn Rushd, *Bidāya* (Istiqāma), 2:51–52; al-Bāji, *al-Muntaqā*, 4:126, 131.

⁷⁰ The term *Ādlb* stands for "this is what I found the people of knowledge in our city following" (*wa 'alā dhālika/hādhā adraktu ahl al-'ilm bi-baladinā*).

⁷¹ *Muw.*, 2:826; *Muw.* (Dār al-Gharb), 2:388; *Muw.* (Abū Muṣ'ab), 2:22–23, 26; *Muw.* (*Riwāyāt*), 4:135–36; *Muw.* (al-Shaybāni/al-Nadawī), 3:89–90.

⁷² *Muw.*, 2:826; *Muw.* (Dār al-Gharb), 2:388; *Muw.* (Abū Muṣ'ab), 2:22–23, 26; *Muw.* (*Riwāyāt*), 4:135–36; *Muw.* (al-Shaybāni/al-Nadawī), 3:89–90.

⁷³ *Muw.* (Dār al-Gharb), 2:388.

⁷⁴ *Muw.*, 2:826; Ibn 'Abd al-Barr, *al-Istidhkār*, 24:94. I believe the edition of Fu'ad 'Abd al-Bāqī is more accurate here, since it agrees with Ibn 'Abd al-Barr's *Istidhkār*. Usage of the full term *Ādlb* in the Dār al-Gharb edition is probably an oversight.

Mālik's observation, "and that is the best of what I have heard transmitted" (*wa dhālika aḥsan mā sami'tu*).⁷⁵ As is customary, al-Shaybānī's recension gives no citation of Mālik's term.⁷⁶ I failed to find discussion of this precept in the *Mudawwana*.⁷⁷

The majority of the early jurists agreed with this precept. They also concurred that banishment as an additional punishment for fornication applied exclusively to free men, not slaves or women. Some substituted imprisonment for banishment, although most held that the free male fornicator should be banished outside of his native town. Others contended that he should be imprisoned in the town to which he was banished.⁷⁸

There is conflicting evidence on this precept from the Prophet and Abū Bakr. According to a transmission in 'Abd al-Razzāq, the Prophet handed down a ruling that both fornicators witnessed in the act—male and female—be punished by lashing and then be both exiled for a year to different regions.⁷⁹ Ibn 'Umar, one of the leading Medinese authorities, had a slave girl of his, who was found guilty of fornication, banished to Fadak.⁸⁰ Ibrāhīm al-Nakha'ī of Kufa apparently concurred on the correctness of the report banishing both fornicators, since he held—in contrast to the later Kufans—that if both fornicators were banished, they should be banished to different villages.⁸¹

Abū Ḥanīfa dissented with the Medinese and his Kufan teachers by rejecting banishment in general as punishment for fornication, which he regarded as an invalid punishment of fornication under any circumstances for male or female, free or slave. Despite the existence of a formally authentic solitary *ḥadīth* stating that the Prophet banished a free

⁷⁵ *Muw.* (Abū Muṣ'ab), 2:22–23, 26.

⁷⁶ *Muw.* (al-Shaybānī/al-Nadawī), 3:89–90.

⁷⁷ *Mud.* 4:379–410; *Mud.* (2002), 11:5–101.

⁷⁸ Ibn 'Abd al-Barr, *al-Istidhkār*, 24:94.

⁷⁹ 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:313.

⁸⁰ 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:312.

⁸¹ 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:314–15. According to 'Abd al-Razzāq, Abū Ḥanīfa transmits from his teachers Ḥammād and Ibrāhīm al-Nakha'ī that Ibn Mas'ūd, one of the principal Kufan authorities, held that both fornicators be lashed and exiled for a year to different villages ('Abd al-Razzāq, *al-Muṣannaḥ*, 7:312). Similarly, in Mālik's time, al-Awzā'ī and al-Thawrī held the dissenting view that all fornicators should be banished—men and women, free and slave. In the generation after Mālik, al-Shāfi'ī took a similar position, although three different opinions are attributed to him. According to one of these opinions, he held that banishment applied to male and female alike for the period of a year. According to a second opinion, he restricted banishment to only half a year, an opinion with which al-Ṭabarī also concurred. According to a third opinion, al-Shāfi'ī had misgivings about the validity of banishing slaves (Ibn 'Abd al-Barr, *al-Istidhkār*, 24:95).

male fornicator from Medina for one year after having him flogged, Abū Ḥanīfa acknowledged the *ḥadīth* but did not apply it because of his position regarding solitary *ḥadīths* when they constitute the only evidence relating to Qurʾān-based punishments (*ḥudūd*). For all such punishments, Abū Ḥanīfa required conclusive extra-Qurānic evidence.⁸²

Al-Zurqānī states that some later Ḥanafīs claimed that the *ḥadīth* Mālik references in this question had been repealed. Such a claim on Abū Ḥanīfa's part would explain why Mālik cites the post-Prophetic report about Abū Bakr's enforcement of the precept instead of simply stating the solitary *ḥadīth*. Abū Bakr's decision was taken after the Prophet's death. Like standing praxis in general, Abū Bakr's practice during his caliphate indicates that, in his view, the *ḥadīth* had not been repealed. Al-Zurqānī produces citations from later compilations of *ḥadīth* to show not only that the Prophet enforced this precept but that Abū Bakr and ʿUmar both continued to enforce it after his death. Consequently, it was a standing *sunna* of the Prophet in their view.⁸³ ʿAbd al-Razzāq adds that ʿAlī also followed this policy.⁸⁴

The information that Ibn Rushd and al-Zurqānī provide also argues that the precept belonged to transmissional praxis. Again, the *Muwattaʿa* gives no clear indication of that fact, unless one argues that Mālik was citing the post-Prophetic report of Abū Bakr as an indicant of Prophetic *sunna*, which, as indicated before, is one of the fundamental uses of the post-Prophetic reports of the Companions in Mālik's legal reasoning.⁸⁵ Although Mālik gives no explicit textual indication of the origins of this precept in the *sunna* or later legal interpretation, his citation of the term *ʿAdīb* and variations of the term close to it in meaning clarify that the precept belonged to the local consensus of the Medinese juristic community.

In this example, Mālik provides additional information from Medinese praxis to clarify the meaning of the post-Prophetic report about Abū Bakr. The post-Prophetic report is a report of an action or, more specifically in this case, what later jurists called an "isolated ruling" (*qaḍīyyat ʿayn*).⁸⁶ Mālik provides the supplementary information that banishment does not apply to slaves. This addition is not explicit in the post-Prophetic

⁸² Ibn Rushd, *Bidāya*, 2:263; al-Zurqānī, *Sharḥ*, 5:96–98. For Abū Ḥanīfa's restrictions on solitary *ḥadīths*, see Abd-Allah, "Amal," 762–64.

⁸³ See Ibn ʿAbd al-Barr, *al-Istidhkār*, 24:94; Ibn Abī Shayba, *al-Muṣannaḥ*, 5:497, 501; Ibn Rushd, *Bidāya*, 2:263; al-Zurqānī, *Sharḥ*, 5:96–98.

⁸⁴ ʿAbd al-Razzāq, *al-Muṣannaḥ*, 7:314–15.

⁸⁵ See Abd-Allah, "Amal," 161–70.

⁸⁶ See Abd-Allah, "Amal," 188–95.

report, which mentions that the fornicator's sexual partner had been an unmarried slave girl virgin who became pregnant as a result. The text reports that the young man admitted his compliance but makes no mention of the slave girl. Mālik appears again to rely upon Medinese praxis to flesh out the meaning of the text, which, in its general ambiguity, could be applied to slaves as well as free. In terms of content provided, Mālik's use of terminology here differs in that he provides additional legal information, while in earlier examples he cites the term *ĀdIb* primarily as an indication of the status of the praxis involved as reflected in cited texts and provides no additional information in conjunction with it.

According to Ibn Rushd, Mālik's position was that banishment in cases of fornication was an exceptional additional punishment and pertained exclusively to free men, not to free women or to slaves of either gender. Banishment did not apply to free women or slaves because it was likely to lead to bigger problems. Mālik's reasoning in this case, according to Ibn Rushd, is an example of preclusion, which Ibn Rushd refers to in this case as "analogy based on the general good" (*al-qiyās al-maṣlaḥī*).⁸⁷

MĀLIK'S REFERENCES TO THE PEOPLE OF KNOWLEDGE IN SUMMARY

The references to the Medinese people of knowledge surveyed in this chapter have been restricted to those that occur in isolation and not in connection with the *sunna*- and *amr*-terms, with which they do often occur. Such references to the people of knowledge in Medina appear in some of the remaining examples of Mālik's terminology studied below.⁸⁸

The terms *-zĀIb* (this is the precept that the people of knowledge in our city still continue to follow; *wa dhālika al-amr al-ladhī lam yazal 'alayhi ahl al-'ilm bi-baladinā*), *ĀdIb* (this is what I found the people of knowledge in our city following; *wa 'alā dhālika/hādhā adraktu ahl al-'ilm bi-baladinā*), and their cognate terms studied in this chapter appear always to be indicators of local Medinese consensus. I found no evidence of dissenting opinions among the Medinese regarding the precepts for which Mālik uses these terms. The term *-zĀIb*, which I have cited in conjunction with *ḥadīths* and post-Prophetic reports, indicates the continuity of Medinese praxis and consensus on the precept in question. The term *ĀdIb* lacks the

⁸⁷ See Ibn Rushd, *Bidāya*, 2:263. For al-Shāfi'ī's legal presumption of universal applications of legal texts, see Abd-Allah, "Amal," 139–40.

⁸⁸ See Abd-Allah, "Amal," 616.

same semantic indication of continuity. It indicates simply that, at least in Mālik's time, local consensus had been reached on the matter. It is reasonable to assume that Mālik uses the term *Ādlb* in matters upon which there may not have been initial consensus among the Medinese jurists, but I have found no evidence to support that assumption. Furthermore, it is also conceivable that the terms *-zĀlb* and *Ādlb* do not stand for total local consensus, such as is explicitly indicated by the semantics of terms like *S-XN*, *A-XN*, and *AMN-X*, which negate the presence of any juristic differences on the local level. It is possible that the consensus indicated in *-zĀlb* and *Ādlb* is concurrence (*ijtimāʿ*), which, as I suggest, may also be what Mālik had in mind when he cited the expression *AMN*.⁸⁹

The precepts in each of the preceding references to the Medinese people of knowledge constitute points of dissent between the Medinese and non-Medinese jurists of the formative period. As in the case of the *sunna*-precepts examined earlier, roughly two-thirds of which contrasted with dissenting views of Abū Ḥanīfa,⁹⁰ most but again not all of the precepts just studied constituted points of difference with Abū Ḥanīfa, two of them involving both Abū Ḥanīfa and his fellow Kufan Sufyān al-Thawrī.⁹¹ Others of these examples, constituted issues of dissent with Ibn ʿAbbās and possibly ʿAlī ibn Abī Ṭālib,⁹² and, in another example, Ṭāwūs (with whom Mālik also disagreed on one of the earlier *sunna*-precepts),⁹³ Makhūl, and ʿAṭāʾ ibn Abī Rabāḥ.⁹⁴

The *-zĀlb* precepts seem to fall with the category of transmissional praxis. Three examples are supported by *ḥadīths*. Another occurs in association with a *ḥadīth*, which, however, does not present the content of the precept itself but pertains to the same question. It also is given in the context of post-Prophetic reports of prominent Companions whom Mālik regarded as repositories of the normative *sunna*.

The sources of the *Ādlb* precepts are not readily apparent, at least within the context of the materials presented in the *Muwattaʿa*. Al-Zuhri states that the first of the precepts is *sunna*, but the *ḥadīth* that Mālik cites to support al-Zuhri's position does not contain the legal precept explicitly. I found no explicit *ḥadīths* regarding dissolution of the marriage of a man

⁸⁹ See Abd-Allah, "Amal," 424–28.

⁹⁰ See Abd-Allah, "Amal," 556–57, 562, 565–66, 573.

⁹¹ See Abd-Allah, "Amal," 586–87, 592–93, 603, 606.

⁹² See Abd-Allah, "Amal," 590–91, 597–98.

⁹³ Abd-Allah, "Amal," 558.

⁹⁴ See Abd-Allah, "Amal," 601–02.

who fails to support his wife or the precept of exempting slaves from banishment when guilty of fornication. Again, however, Sa'īd ibn al-Musayyab is said to have regarded the first of these to be a *sunna*, while the practice regarding the banishment of fornicators is reported to have gone back to the Prophet's time.

If one regards the ĀdIb precepts analyzed in this chapter as instances of transmissional praxis, they provide further illustrations of well-established aspects of praxis that went back to the Prophetic era but for which there were few if any explicit texts. From the manner of Mālik's presentation of this material in the *Muwatta'* (especially the ĀdIb precepts), the primary information that he seems to want to communicate about them is that they are part of the local consensus of the Medinese people of knowledge. That issue, for Mālik, apparently takes precedence over specific textual indications of praxis origins.

Despite the lack of explicit support in early texts for many of the precepts of this chapter, the role of texts in them such as the post-Prophetic reports of Companions and prominent Medinese Successors is distinctively different from the preceding chapter on the *sunna*-terms. Most of the precepts in that chapter were unaccompanied by explicit legal texts. Even when Mālik provided supporting texts, he added essential information from the non-textual source of Medinese praxis that could not have been deduced from the texts themselves. In this chapter, on the other hand, Medinese praxis supported by the consensus of the Medinese people of knowledge is used primarily to support the validity of precepts as set forth in the texts that Mālik cites or reflected in the actions those texts report. In some cases, however, Mālik relies on Medinese praxis to validate the interpretation that he gives these texts, especially when the texts or interpretations are conjectural. Many of the texts cited in this chapter are reports of actions, which are inherently ambiguous, but Mālik's validation of them by reference to Medinese praxis and consensus removes their ambiguity.⁹⁵

Praxis is used to verify that the Medinese people of knowledge regarded certain actions of prominent Companions to constitute the desired norm.⁹⁶ Even the precept prohibiting the banishment of slaves may be said to be indicated by the text Mālik cites regarding a ruling Abū Bakr handed down regarding a man who fornicated with a slave girl (since the text indicates that the young man was banished and makes no mention of the slave girl).

⁹⁵ See Abd-Allah, "Amal," 188–95.

⁹⁶ See Abd-Allah, "Amal," 588–89.

Nevertheless, that precept is not at clear in the text which Mālik cites.⁹⁷ In the case of two quite explicit statements that Mālik transmits from the Prophet, he supports an interpretation of those texts that is contrary to their overt meaning by reference to the continuous praxis of the Medinese people of knowledge.⁹⁸

⁹⁷ See Abd-Allah, "*Amal*," 607–08.

⁹⁸ See Abd-Allah, "*Amal*," 592–596.