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The Resurrection of Stoning as Punishment for *Zinā* in Islamic Criminal Laws:  
From *Zinā* Flogging in the Qur'ān to *Zinā* Stoning in the Islamic Legal Tradition

A dissertation submitted in partial satisfaction of the  
requirements for the degree Doctor of Philosophy  
in Islamic Studies

by

Syed Atif Rizwan

2018

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## ABSTRACT OF THE DISSERTATION

The Resurrection of Stoning as Punishment for *Zinā* in Islamic Criminal Laws:

From *Zinā* Flogging in the Qur'ān to *Zinā* Stoning in the Islamic Legal Tradition

by

Syed Atif Rizwan

Doctor of Philosophy in Islamic Studies

University of California, Los Angeles, 2018

Professor Khaled M. Abou El Fadl, Chair

This dissertation seeks to shed light on the beginnings of the process by which stoning became an Islamic punishment for certain forms of *zinā*. By analyzing the *isnāds* and *matns* of selected stoning reports, this project endeavors to shed light on the significance of various transmitters, the provenance and importance of certain motifs, and the role that the Prophet and others played in helping to incorporate *zinā* stoning into the Islamic legal tradition. This project also demonstrates that it is highly plausible a historical moment existed when *zinā* stoning was not applicable to Muslims.

This dissertation of Syed Atif Rizwan is approved.

Asma Sayeed

Michael David Cooperson

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University of California, Los Angeles

2018

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الحمد لله



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- Participant, 2008.
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# Introduction

It is unsurprising to find that when mainstream American media covers Islam, the *Sharīʿa* (Divine Law) gets conflated with capital punishments such as stoning for sexual improprieties. For instance, in talking about purported “Shariah tribunals in Texas,” the (in)famous Robert Spencer stated that “[T]here is no school of Islamic jurisprudence among either Sunnis or Shites [*sic*] that does not mandate stoning for adultery [or] amputation of the hand for theft.”<sup>1</sup> The implication in Spencer’s comment is that if circumstances permitted, Muslims would have adulterers stoned to death in the Lone Star State. In another article, entitled, “Push for hudud law raises tensions in Malaysia,” the CNN correspondent writes that Malaysia is considering the implementation of “the strict Islamic penal code known as the hudud law,” which includes “harsher hudud punishments...such as amputation of limbs and stoning.”<sup>2</sup> Because of reports like these, it seems that a connection between stoning and the Divine Law is inescapable.

In the present work, I too take up the matter of stoning in the Islamic legal tradition, albeit from a different standpoint.<sup>3</sup> Despite stoning’s absence from the Qur’ān, this capital sanction is employed to punish Muslim *zinā* (illicit sexual intercourse) offenders. How did this happen? The justification is based on Prophetic (*ḥadīth*) and non-Prophetic (*akhbār*) reports in which stoning was mandated as the proper punishment for certain types of *zinā*.<sup>4</sup> Accordingly,

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<sup>1</sup> *CBN News*, “Islamic Shariah Tribunal Begins Operating in Texas.”

<sup>2</sup> Azlee, “Push for hudud law raises tensions in Malaysia.”

<sup>3</sup> For the purpose of this dissertation, the Islamic legal tradition is represented by the legal environment immediately after the Prophet’s death up to the crystallization of legal doctrinal schools.

<sup>4</sup> In addition to report, I will also use narrative as a translation of *ḥadīth* and *khābar*. I will use *ḥadīth* to indicate both the singular and plural forms; according to Marshall Hodgson, translating *ḥadīth* as ‘tradition’ retains a certain level of imprecision and ignores the (non-Islamic) usage of the term. *Ḥadīth*, for Hodgson, are explicit statements

this dissertation seeks to understand the beginnings of the process by which stoning became the punishment for a distinct category of *zinā* in the Islamic legal tradition.<sup>5</sup> To do this, I will primarily analyze stoning *ḥadīth* and *akhbār* that were in circulation during Islamic late antiquity (up to 183).<sup>6</sup>

## The *Ḥudūd*

Understandably, secondary scholarship typically engages the matter of stoning when discussing the Islamic criminal legal category known as the *Ḥudūd*.<sup>7</sup> This is because *zinā* and stoning, respectively, are considered one of the *Ḥudūd* offenses and punishments. For instance, in her work on the treatment of sexual violation (rape) in Mālikī and Ḥanafī legal sources, Hina Azam notes the punishment as a representation of the nature of sanctions associated with *Ḥudūd* offenses.<sup>8</sup> Mohamed El Awa, among others, similarly first delineates the offenses within the

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and texts put into writing, see Hodgson, *The Venture of Islam*, 63-6.

<sup>5</sup> I deliberately adopt ‘beginnings’ instead of ‘origins’ based on Lena Salaymeh’s argument that the use of ‘origins’ has the tendency to essentialize Islamic laws and place them in a linear framework, see Salaymeh, *The Beginnings of Islamic Law*, 4, 21-4.

<sup>6</sup> I will use *hijrī* dates only unless noted otherwise; Islamic late antiquity is from the Prophetic period into the second century of Islam. After the Prophet’s demise, Islamic heterodoxy prevailed, which was in contrast to the eventual consolidation and success of orthodox Islamic doctrines, see Salaymeh, *The Beginnings of Islamic Law*, 7f, 136-9, and 147-61.

<sup>7</sup> Wael Hallaq writes that unlike in many modern legal systems (e.g. Anglo-American), Muslim jurists did not conceive of offenses as falling into one unifying category called “criminal law.” *Fiqh* works created separate categories that are equal, yet stand separate and apart from one another. These three categories are the *ḥudūd*, *qisās* and *ta’zīr*. Unless indicated otherwise, I employ the term criminal law based on the categorization identified by Hallaq, see Hallaq, *Sharī’a: Theory, Practice, Transformations*, 309; *Ḥudūd* (s. *ḥadd*) literally means bounds or limits. In the Islamic theological context, the term signifies the bounds of God (*ḥudūd Allah*). In the Islamic legal context, the term signifies a particular set of offenses with specifically associated punishments. For the purposes of the present discussion, I define *ḥudūd* offenses as: 1) illicit sexual intercourse (*zinā*), 2) wrongful accusation of illicit sexual intercourse (*qadhf*), 3) theft (*sariqa*), 4) consumption of alcohol (*shurb al-khamr*) and 5) highway robbery and banditry (*qat’ al-ṭarīq, ḥirāba*). It should be noted that these classifications vary over time and by legal doctrinal schools. For example, Ibn Ḥazm (d. 456) also includes apostasy (*ridda*) and disavowing a loan (*jaḥd al-’āriya*), see Ibn Ḥazm, *al-Muḥallā*, 2057.

<sup>8</sup> Hina Azam, *Sexual Violation in Islamic Law*, 11f.

*Ḥudūd*, and then identifies the punishments which correspond to each transgression.<sup>9</sup> These includes *zinā* and stoning. In short, when scholars engage the topic of Islamic criminal laws in general, and the *Ḥudūd* in particular, there is a high probability that stoning will be discussed.

## Secondary Literature Review

Some scholarship has explored stoning's function in non-*Ḥudūd* contexts as well. For example, in her recent monograph on Northern Nigeria's Islamic revolution, Sarah El Tantawi dedicates an entire chapter to a historical overview of stoning's place in Islam, and the ways in which the sanction's legitimacy in Islamic history (such as in *ḥadīth*) helped to justify its use in Nigeria.<sup>10</sup> Shoaib Ghias discusses how a religious court established by the deceased president of Pakistan, Zia ul-Haq (d. 1988 CE), vacated the stoning punishment based on "20<sup>th</sup>-century Islamic intellectual movements that questioned the basis of stoning in shari'a..."<sup>11</sup> In a review of Sunnī-Shī'ī debates about the compilation of the Qur'ān, Hossein Modarressi briefly surveys *akhbār* in which some (proto-Sunnī) Companions claimed that a stoning verse existed despite its exclusion from the 'Uthmānī Codex.<sup>12</sup> In their book on the history of the Qur'ān, Theodor Nöldeke and Friedrich Schwally argue that a stoning verse was likely invented to defend the capital punishment.<sup>13</sup> On the whole, stoning has motivated discussions about the different ways

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<sup>9</sup> El Awa, *Punishment in Islamic Law*, 15-20; Lippman et al., *Islamic Criminal Law and Procedure*, 38-42, 46; Weiss, *The Spirit of Islamic Law*, 184ff; 'Abd al-Ghanī al-Morsī, *Al-Ḥudūd al-Shara'īyya*, 79-81; Peteres, *Crime and Punishment in Islamic Law*, 60f.

<sup>10</sup> El Tantawi, *Shari'a on Trial*, 71-97.

<sup>11</sup> Ghias, "Defining Shari'a: The Politics of Islamic Judicial Review," 68-160.

<sup>12</sup> Modarressi, "Early Debates on the Integrity of the Qur'ān," 7-11.

<sup>13</sup> Nöldeke and Schwally, *Geschichte des Qorāns*, 248-252; I conduct an extensive assessment of this purported verse in Chapter Four.

in which it has been used for various legitimating objective(s).

Stoning has also drawn consistent attention in analyses of the Islamic jurisprudential tool of abrogation. The literature on this topic has sought to elucidate the different ways in which abrogation governed a reconciliation between the Prophetic *Sunna* and the Qur'ān. It has taken a special interest in the impact of abrogation on stoning and Qur'ānic verses which establish various punishments for sexual improprieties. For example, Joseph E. Lowry writes that al-Shāfi'ī utilized abrogation and postulated that Q24:2<sup>14</sup> nullified Q4:15f<sup>15</sup> for the treatment of certain forms of *zinā*.<sup>16</sup> Lowry then illustrates how al-Shāfi'ī used the Prophetic *Sunna* to argue for the abrogation of Q24:2, thereby legitimating the stoning punishment for Muslim *zinā* offenders.<sup>17</sup> Similar to Lowry, John Wansbrough,<sup>18</sup> Abdurrahman Habil,<sup>19</sup> Christopher Melchert,<sup>20</sup> and Roslan Abdul-Rahim<sup>21</sup> discuss the different ways in which abrogation has functioned in the Islamic legal tradition, with a specific reference to its use in the confirmation of stoning as an Islamic punishment.<sup>22</sup>

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<sup>14</sup> Q24:2: "Strike (flog) the *zānīyya* and the *zānī* one hundred times..."

<sup>15</sup> Q4:15f: "If any of your women commit a lewd act, call four witnesses from among you, then, if they testify to their guilt, keep the women at home until death comes to them or until God shows a way. If [the two of them] commit a lewd act, punish them both; if they repent and mend their ways, leave them alone..."

<sup>16</sup> Lowry, *Early Islamic Legal Theory*, 94.

<sup>17</sup> Ibid., 95; In Chapter One, I will provide a more in-depth review of the use of abrogation to explain the use of stoning as an Islamic punishment.

<sup>18</sup> Wansbrough, *Quranic Studies*, 70f and 193-6.

<sup>19</sup> Habil, "The Methodology of Abrogation and Its Bearing on Islamic Law and Qur'ānic Studies," 37 - 46.

<sup>20</sup> Melchert, "Qur'ānic Abrogation Across the Ninth Century," 81-8.

<sup>21</sup> Abdul-Rahim, "*Naskh al-Qur'an*," 229-245.

<sup>22</sup> Despite their respective works being on the Qur'ān, Wansbrough, Habil, Melchert, and Abdul-Rahim describe how abrogation was used with the Prophetic *Sunna* and the Qur'ān to establish particular legal rulings, which included the stoning punishment; see also El Tantawi, *Shari'a on Trial*, 92-4; Burton, *The Sources of Islamic Law*,

John Burton has written extensively about how the stoning punishment became a fulcrum for inter-religious polemics during the time of the Prophet.<sup>23</sup> He has argued that a *ḥadīth*, in which a Jewish group asked the Prophet to adjudicate their *zinā* case, was used by Muslims in the post-Prophetic period as exegetical information for verses Q5:41ff.<sup>24</sup> In these verses, the Qur’ān reprimands the Prophet’s Jewish contemporaries for disregarding their own laws. Moreover, the Qur’ān advises the Prophet to rule according to a people’s own scripture. According to the *ḥadīth*, when the Jewish group had the Prophet make a ruling in their *zinā* case, the Prophet ordered that the offenders be stoned per the Torah (presumably the Book of Deuteronomy). In a 1978 lecture, Burton opined that the Prophet’s instruction to stone the Jewish *zinā* offenders had no historical bearing.<sup>25</sup> For Burton, the stoning of the Jewish couple “[was] merely the dramatization of the Qur’ān’s frequent charge against the Jews of having concealed from the world the many verses of the Torah in which the coming of Muhammad had been foretold.”<sup>26</sup> In Chapter Two of this dissertation, I focus on *ḥadīth* recalling the Prophet’s involvement in the Jewish *zinā* case, and conduct an *isnād* and *matn* analysis not previously done by either John Burton or others.

Scott C. Lucas approaches the matter of stoning which diverges from the academic

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122-58; *idem.*, “The Meaning of ‘IHSAN’,” 47-75.

<sup>23</sup> Burton, *The Sources of Islamic Law*, 129-32; *idem.*, “The Origin of the Islamic Penalty for Adultery,” *idem.*, “The Meaning of ‘IHSAN’,” 56-8; *idem.*, “Law and Exegesis: The penalty for adultery in Islam,” 269-84; Hirschfeld, “Historical and Legendary Controversies Between Mohammed and the Rabbis,” 100-116; Adang, *Muslim Writers on Judaism and the Hebrew Bible*, 193 fn. 7 and 229; Nickel, *Narratives of Tampering in the Earliest Commentaries of the Qur’ān*, 129-6.

<sup>24</sup> Burton, *The Sources of Islamic Law*, 129-32; *idem.*, “Law and Exegesis: The penalty for adultery in Islam,” 274-82; Nickel, *Narratives of Tampering in the Earliest Commentaries of the Qur’ān*, 82-7 and 129-6.

<sup>25</sup> Burton, “The Origin of the Islamic Penalty for Adultery.”

<sup>26</sup> Burton, “Law and Exegesis: The penalty for adultery in Islam,” 269-84; *idem.*, “The Origin of the Islamic Penalty for Adultery.”

avenues surveyed thus far. By examining a handful of *ḥadīth* in which the Prophet ordered stoning, Lucas undertakes the task of deriving ethical dimensions from the Prophet's conduct.<sup>27</sup> Lucas' methodology utilizes variations of one particular stoning *ḥadīth* documented in al-Bayhaqī's (d. 458) *Sunan*.<sup>28</sup> Based on the different ways in which the Prophet is recorded to have made attempts to dissuade a *zinā* offender from confessing, Lucas asserts that the Prophet's conduct expresses a disinclination to stone guilty offenders.<sup>29</sup> Lucas further contends that a contrapuntal reading of stoning *ḥadīth* supports his conclusion.

Pavel Pavlovitch has sought to create an accurate chronology of when influential, stoning-related *ḥadīth* emerged. For Pavlovitch, this knowledge of temporal sequencing lays the groundwork to understanding how the punishment became part of the Islamic legal tradition. His research employs available methods (*isnād-cum-matn* analysis) for dating early Islamic materials to determine the provenance and circulation of particular stoning *ḥadīth*. Pavlovitch's articles are insightful and highly technical. His three pieces focus on *ḥadīth* about the stoning of a pregnant adulteress from the tribe of Juhayna,<sup>30</sup> reports about the stoning of a self-confessing adulterer,<sup>31</sup> and one particular narrative purportedly transmitted by the Companion 'Ubāda b. al-Ṣāmit (d. 34), respectively.<sup>32</sup> Yet Pavlovitch's articles primarily center on determining the earliest iterations (read: wording) of certain *ḥadīth*, and testing approaches for dating such reports. The ways in which his findings elucidate the beginnings of the stoning's acceptance into Islamic laws

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<sup>27</sup> Lucas, "Perhaps You Only Kissed Her," 399-415.

<sup>28</sup> *Ibid.*, 407-9.

<sup>29</sup> *Ibid.*, 411

<sup>30</sup> Pavlovitch, "The Stoning of a Pregnant Adulteress from Juhayna," 1-62.

<sup>31</sup> *idem.*, "Early Development of the Tradition of the Self-Confessed Adulterer in Islam," 371-410.

<sup>32</sup> *idem.*, "The 'Ubāda b. al-Ṣāmit Tradition at the Crossroads of Methodology," 137-235.



becomes a secondary matter. Nevertheless, Pavlovitch's works are examples of how stoning narratives have come into view for another form of analysis: to test extant approaches/methods for dating material from the first two centuries of Islam.

### **The Focus of this Dissertation**

This dissertation fills a gap in extant scholarship on stoning as punishment for certain forms of *zinā*. Specifically, its purpose is to offer a scenario that can help to shed light on the beginnings of the process by which stoning was incorporated into Islam. The principal sources for this project will be literature that contains information about the Prophet Muḥammad, his Companions, and other legal authorities who purportedly advocated for *zinā* stoning. Focusing on the directives of these individuals, especially those of the Prophet, is important: the capital sanction's legitimacy is largely based on the Prophetic *Sunna*. Moreover, investigating and evaluating the role of important figures in the chains of transmission of stoning reports is also significant to understand how the punishment became part of the Islamic legal tradition. To this end, my research will be organized in accordance with the following goals:

1) I will determine the provenance of material representing Islamic late antiquity (up to 183); both in content and form. I will do this by utilizing extant methods and by modifying these approaches as needed (I will explain my reasons in the next section).

The information I gather will be used to establish, with a reasonable degree of confidence, when a stoning report and its particular clauses may have been in circulation.

2) I will investigate *isnāds*<sup>33</sup> of stoning *ḥadīth* and *akhbār* by utilizing biographical dictionaries. I will use this biographical information to understand why particular

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<sup>33</sup> The *isnād* is the list of transmitters who are said to have successively handed a narrative down one person to the next.

transmitters are associated with the narratives they supposedly helped to circulate, and to ascertain the historicity of transmission between two sequential individuals.

3) I will analyze *matns*<sup>34</sup> and appraise why certain elements appear in particular variants and not in others. In doing so, I will also seek to assess the regional distribution of particular clauses and what this feature tells us about a *matn*'s significance and its connection to the broader narrative(s) about stoning.

4) I will shed light on the implication(s) of particular stoning *ḥadīth* and *akhbār*, and explain how they contributed to introducing, Islamizing, and stabilizing the stoning punishment into the Islamic legal tradition.

This project will not make attempts to establish the historical veracity of the Prophet's actual involvement in *zinā* matters. In other words, the focus is not to determine if the Prophet did in fact order *zinā* stoning.

Exploring the role of *ḥadīth* and *akhbār* in understanding Islamic late antiquity necessarily draws one into debates about the reliability of material from this time period, and the information it encompasses (form and content). Hence, the issue of source-criticism is of relevance for any scholar working on Islamic late antiquity. With this in mind, I will now provide an overview of the intractable controversies about whether these sources can be used for understanding particular topics of interest from early Islam. I will also highlight ways for incorporating this information for the present study on the beginnings of the process by which stoning became part of the Islamic legal tradition.

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<sup>34</sup> The text/content of a *ḥadīth* or *khabar*.

## Methods/Approaches

The degree to which written documents reflect actual events, places, or individuals belonging to Islamic late antiquity (up to 183) is disputed in Islamic Studies. One question that emerges is about the extent to which it is tenable to reconstruct the beginnings of Islam, and of the late antique Muslim community, on the backs of literary collections formally compiled at least 150 years after the *hijra*.<sup>35</sup> According to G.R. Hawting, given “the relatively late stabilization of the tradition in literary form...attempts to define what Islam was...when none of the Islamic texts available to us existed, must be fragmentary, speculative and impressionistic.”<sup>36</sup> Jonathan Berkey argues that by the time narrative (oral) history was written down, normative traditions were almost complete, therefore “the sources inevitably reflect later attitudes and interests as much as, if not more than, those of the earlier Muslims, and project those attitudes and interests *back* upon the people and events they describe.”<sup>37</sup> Consequently, in the words of R. Stephen Humphreys, “If our goal is to comprehend the way in which Muslims of the late 2<sup>nd</sup>/8<sup>th</sup> and 3<sup>rd</sup>/9<sup>th</sup> centuries understood the origins of their society, then we are very well off indeed. But if our aim is to find out ‘what really happened,’...then we are in trouble.”<sup>38</sup> Taken together, some scholars have argued that because written archives are not coterminous with Islamic late antiquity, their trustworthiness is highly questionable.

Fred M. Donner contests the notion that it is necessary to begin with the *a priori*

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<sup>35</sup> G.R. Hawting, *The Idea of Idolatry and the Emergence of Islam*, 3; Berkey, *The Formation of Islam*, 58; Donner defines literary sources as written sources other than contemporary documents, see Donner, *Narratives of Islamic Origins*, 2, fn. 1.

<sup>36</sup> Ibid., 13.

<sup>37</sup> Berkey, *The Formation of Islam*, 58. Emphasis mine.

<sup>38</sup> Humphreys, *Islamic History: A Framework for Inquiry*, 68; for a detailed inquiry on the issues of history and historiography, see *ibid.*, 69-98; also see Robinson, *Islamic Historiography*, 18-82.

assumption that the entirety of the Islamic tradition has been reshaped in accordance with later dogma.<sup>39</sup> He partly bases his argument on the fact that, from an early period (perhaps as early as 35 AH), several competing theological and political views were present - yet they all seem to agree on the central features of the traditional origins narratives.<sup>40</sup> Moreover, Donner argues that in the community of believers, there was no singular authority “who had the power to impose a uniform dogmatic view.”<sup>41</sup> In fact, skeptics who support the tradition-revision framework never “identify a group or people who are supposed to have [implemented] a uniform view on the entirety of the community.”<sup>42</sup> For Donner, then, “[t]he early Islamic community was not integrated in a tightly knit hierarchal structure, but consisted rather of a mosaic of small sub-communities and sub-sects.”<sup>43</sup> He argues that if opinions by certain individuals or groups no longer exist, it is unlikely because of deliberate effort to excise such attitudes from memory. Rather, their absence is more likely the result of them never having attained the same level of political or theological materiality as the viewpoints which ultimately survived. Therefore, while Muslims’ beliefs may have been modified some time during Islam’s first fifty years, traditional Islamic sources still contain “sufficient material to reconstruct at least the main issues debated by Believers in the early Islamic period, and the basic attitudes of the main parties to those debates.”<sup>44</sup> For Donner, the lack of contemporaneous material from Islamic late antiquity, or the possibility of source modifications, does not disqualify their use in a study of this time period.

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<sup>39</sup> Donner, *Narratives of Islamic Origins*, 26.

<sup>40</sup> Ibid., 26f.

<sup>41</sup> Ibid., 27.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid., 29.

Rather than extending Donner's approach, Lena Salaymeh has proposed a reshaping of the ways scholars ought to utilize Islamic sources. She argues for a "postfoundational methodology," in which an "understanding of historical objectivity rejects the positivist notion that particular methodologies generate Truth."<sup>45</sup> Instead, scholars should engage with methods "that generate historical truth."<sup>46</sup> In other words, the focus is not on establishing methods for generating and securing facts. This approach, however, is nevertheless grounded in rigorous historical-textual studies.<sup>47</sup> For Salaymeh, sources from Islamic late antiquity need to be read both critically and in conjunction with one another. As such, the postfoundational approach critically addresses the oft-legitimate concerns regarding Islamic late antiquity sources however, it does so without eliminating this entire body of literature.<sup>48</sup>

Much ink has been spilled on reliability issues with *ḥadīth* and *akhbār* and on potential ways of dating them. Accordingly, I will now briefly survey the approaches developed to appraise material from and about Islamic late antiquity. My purpose for doing so is threefold: 1) to explain the evolution of methods; 2) to identify their drawbacks; and 3) to provide my approach for utilizing literature sourced in Islamic late antiquity.

Methods for analyzing *ḥadīth* and *akhbār* have evolved over the last several decades.<sup>49</sup> Ignaz Goldziher furnished one of the first critical studies of *ḥadīth*. He argued that they were

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<sup>45</sup> Salaymeh, *The Beginnings of Islamic Law*, 16.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> For Salaymeh's complete argument, see *The Beginnings of Islamic Law*, chapter one.

<sup>49</sup> For an overview on the development of methods for dating *ḥadīth*, see Motzki, *The Origins of Islamic Jurisprudence*, 1-49; *idem.*, "Dating Muslim Traditions: A Survey," 204-53; Reinhart, "Review: Juynbolliana, Gradualism, the Big Bang, and Ḥadīth Study in the Twenty-First Century," 413-44; Pavlovitch, *The Formation of the Islamic Understanding of Kalāla in the Second Century AH (718-816 CE)*, 22-40; Brown, *Ḥadīth: Muhammad's Legacy in the Medieval and Modern World*, 197-239.

often fabricated, and that the information they contained was invented by later generations to substantiate their justifications of particular ideological, political, and religious positions.<sup>50</sup>

Goldziher's results were not sufficiently probative because of his methodology and its focus: they were about *ḥadīth* transmitters, not the *ḥadīth* themselves. Furthermore, he almost exclusively cited *ḥadīth* which most Muslim *ḥadīth* critics already considered unreliable.

Importantly, Goldziher drew broad conclusions about the entirety of the *ḥadīth* corpus based on a small number of cases. In the words of Harald Motzki, "he [moved] from the *possibility* that something could have happened to conclude that it actually did happen."<sup>51</sup>

Joseph Schacht echoed Goldziher's assertions, albeit with some modifications for dating purposes. To begin with, Schacht's theory about the development of the Islamic legal system was mainly undergirded by his study of al-Shāfi'ī's (d. 204) jurisprudential works.<sup>52</sup> Based on the conclusions he drew from his research, Schacht asserted that the Qur'ān, and/or material contemporaneous with it did not animate the development of *fiqh* (positive law). Rather, he thought that *ḥadīth* and *akhbār* were fabricated and put into circulation to justify legal - and by extension theological and political - rulings.

Schacht's method of dating a *ḥadīth* or a *khbar* was premised on the particular (legal) collection in which it first appeared.<sup>53</sup> For instance, suppose a *ḥadīth* with legal ramifications appears in the *Muwaṭṭa'* of Mālik (d. 179), where Mālik claims that he got it from al-Zuhrī (d. 124). However, the same report does not appear in the *Kitāb al-Āthār* of al-Shaybānī (d. 189),

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<sup>50</sup> Goldziher, *Muslim Studies*, 18-22 and 81-5.

<sup>51</sup> Motzki, "Dating Muslim Traditions," 209.

<sup>52</sup> See generally Schacht, *The Origins of Muhammad Jurisprudence*.

<sup>53</sup> Juynboll used the same approach in his book *Muslim Tradition*. He argued that because a specific *ḥadīth* does not appear in Hijāzī or Egyptian collections before 180s, then the *isnāds* prior to this time period were forged, see G.H.A. Juynboll, "The *man kadhaba* tradition and the prohibition of lamenting the dead," 96-133.

despite the fact that al-Shaybānī is known to have engaged with the same legal issue. According to Schacht, this *ḥadīth* could not have originated with al-Zuhrī, because this report of legal consequence should have appeared in al-Shaybānī's treatises. Therefore, for Schacht the provenance rests with Mālik, who falsely attributed it to al-Zuhrī. Schacht's conclusion is based on an *ex silentio* argument, which he himself acknowledges.<sup>54</sup> But he asserts that his appraisal is correct, and that his method is "safe" to use because, in the words of al-Shaybānī, "...the Medinese" cannot "produce a tradition in support of their doctrine...or they would have produced it [already]."<sup>55</sup> Schacht understands al-Shaybānī's accusation as evidence of legal authorities fabricating and discharging reports to support their particular legal positions.<sup>56</sup> But al-Shaybānī's claim is also an *ex silentio* conclusion, because he was not necessarily privy to the reasons why a Medinan legal authority did or did not cite a Prophetic or Companion report to justify a legal position. In the end, while Schacht's conclusions are questionable, their upshot is that they advance a level of confidence about dating texts to the (late) second Islamic century, which was not possible with Goldziher's method.

As is well-known, Schacht introduced the Common Link theory into Western scholarship.<sup>57</sup> He argued that it was the Common Link - the individual from whom *isnāds* spread out to other scholars/transmitters - who originated a report under investigation.<sup>58</sup> Moreover, according to Schacht the single-strand part of an *isnād*, meaning that portion which was earlier

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<sup>54</sup> Schacht, *The Origins of Muhammad Jurisprudence*, 140.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid., 140f.

<sup>57</sup> Ibid., 172ff; for a critique of the methods Schacht uses and the conclusions he draws from Common Link theory, see generally Alhomoudi, "On the Common-Link Theory."

<sup>58</sup> Schacht, *The Origins of Muhammad Jurisprudence*, 172.

than the Common Link, was forged, and the partial result of what he called “the backward growth of *isnāds*.”<sup>59</sup> Both the common link phenomenon and the backward growth of *isnāds* were matters which Muslim *ḥadīth* critics from the pre-modern period were aware of themselves. For instance, in biographical dictionaries about *ḥadīth* transmitters, certain individuals are identified as common links, *madār al-ḥadīth*. Al-Zuhrī was among those recognized as such.<sup>60</sup> Likewise, *ḥadīth* scholars already knew of the issue concerning the “back growth of *isnāds*.”<sup>61</sup> But setting aside these matters, Schacht’s research was evolutionary, for it helped sharpen an investigator’s eye when examining Islamic sources, especially for those scholars who did not access primary sources. But the disadvantage of Schacht’s framework was that it shifted the burden of proof from the accuser to the accused. Specifically, he stated, “Every legal tradition from the Prophet, *until the contrary is proved*, must be taken not as an authentic or essentially authentic, even if slightly obscured, statement valid for his time or the time of the Companions...”<sup>62</sup> This burden-shifting is questionable, because it is not the responsibility of a defendant to prove innocence, but rather the plaintiff’s obligation to establish guilt. Moreover, “To see the *muḥaddithūn* en masse as ‘forgers’ and members of a massive conspiracy requires a degree of credulousness on the part of academic scholars that would have matched the credulousness Schacht attributed to Muslims.”<sup>63</sup>

Gautier H. Juynboll has attempted to improve Schacht’s method of *isnād* analysis, but

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<sup>59</sup> Ibid., 161 and 171.

<sup>60</sup> Ibn ‘Asākir, *Tārīkh*, 59:416.

<sup>61</sup> Brown, “Critical Rigor vs. Juridical Pragmatism,” 1-41.

<sup>62</sup> Schacht, *Origins*, 149. Emphasis mine.

<sup>63</sup> Reinhart, “Review: Juynbolliana,” 417.



has evidently reinforced Schacht's main arguments.<sup>64</sup> In *Encyclopedia of Canonical Ḥadīth* and numerous other publications, Juynboll has demonstrated his method for dating *ḥadīth* and *akhbār* by focusing on the degree of transmission historicity.<sup>65</sup> For Juynboll, the higher the degree of transmissions, the greater the likelihood that a narrator was involved in circulating the report under investigation.<sup>66</sup> He creates a tripartite division of *isnāds* by identifying chains of transmissions as either single-strands, spiders, or bundles.<sup>67</sup> For Juynboll, single-strand *isnāds* cannot be used to authenticate the date or provenance of a report. This is because there are no other *isnāds* to corroborate their historicity.<sup>68</sup> According to him, the very nature of single-strand *isnāds* disqualifies their reliability because for one reason or another, they were more likely to have been fictitiously invented. Here, Juynboll insinuates that because *isnād* fabrication occurred at times (the degree to which is unknown), as evidence that it actually occurred all of the time. Similar to Schacht, Juynboll deems single-strand *isnāds* that emerged before the Common Link as ahistorical.<sup>69</sup>

For Juynboll, an *isnād* bundle can provide a higher degree of confidence about the earliest time a narrative may have been put into circulation by a particular individual. He

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<sup>64</sup> Michael Cook also investigates *isnāds* to determine the date and provenance of *ḥadīth*, see generally Cook, *Early Muslim Dogma*. Cook also discusses the potential of forgeries in *isnāds*. The hypotheticals he furnishes for how a forgery could have come about, are in fact based on corrections *ḥadīth* critics made themselves for particular *isnāds* (Cook's examples are based on *isnād* revisions made in 'ilal collections, see footnotes on 202-4).

<sup>65</sup> Juynboll, "Some *Isnād*-Analytical Methods Illustrated on the Basis of Several Women-Demeaning Sayings from *Ḥadīth* Literature," 343-84; *idem.*, "Nāfi", the *mawlā* of Ibn 'Umar, and his position in the Muslim *Ḥadīth* Literature," 207-44.

<sup>66</sup> *idem.*, *Encyclopedia of Canonical Ḥadīth*, xix.

<sup>67</sup> *Ibid.*, xvii.

<sup>68</sup> *Ibid.*, xix-xx.

<sup>69</sup> Juynboll, "Some *Isnād*-Analytical Methods," 381.

delineates how an *isnād* bundle develops: a key figure such as the Common Link (CL), narrates a report to *at least* two of his pupils (Partial Common Links [PCLs]). Each of these two pupils (PCLs) in turn narrates to *at least* two of their *own* pupils, and so forth. The higher the CL:PCL ratio, the more credible the position of the CL and the PCL in the bundle, respectively, and, the greater the plausibility that the CL or the PCL were historical individuals who participated in the transmission of a particular *ḥadīth* or *khābar* in question.<sup>70</sup>

Spiders appear to look like *isnād* bundles but, according to Juynboll, they are not. These aberrations of *isnād* bundles occur when a key figure - such as the CL - has several single-strand *isnāds* emanating from him.<sup>71</sup> Each *isnād* is untrustworthy in and of itself, because it is not part of a bundled *isnād* which can be used to evaluate the historical propensity of a transmission. In they are nothing but single-strand *isnāds*. Therefore, for Juynboll spiders are just as suspect as single-strands, and cannot be employed to determine (with a reasonable degree of confidence) a transmission's historicity.

Lastly, Juynboll claims that a (purported) practice of dives impacted both single-strand *isnāds* and spiders.<sup>72</sup> A dive occurs when a transmitter bypasses a key figure often associated with a *ḥadīth* or *khābar* (such as a CL) and (typically) cites someone earlier than the key figure. Through this process a new *isnād* is generated. Instead of citing the names that are part of a known chain of transmissions, a narrator may execute a dive by citing different individuals, especially at the Successor or Companion level(s).<sup>73</sup> According to Juynboll, such diving *isnāds*

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<sup>70</sup> Juynboll, *Encyclopedia of Canonical Ḥadīth*, xx.

<sup>71</sup> Ibid., xxii.

<sup>72</sup> Ibid., xxii-xxiii.

<sup>73</sup> Ibid., xxii-xxvi.

cannot be taken as authentic, because they were likely created for self-promoting reasons (such as establishing a unique chain of transmission to the Prophet).<sup>74</sup>

Juynboll's approach does help to establish a greater degree of confidence about the likelihood of a transmission being historical at each narrator level in an *isnād*, but his method does have some drawbacks. First, it hamstrings a researcher's ability to give any historical weight to a report's content that is earlier than the Common Link. This would by and large implicate a scholarly study of Islamic late antiquity, because the portion of the *isnād* that is earlier than the Common Link is typically a single-strand. Second, Juynboll's technique is weakened by his assumption that "at the time of the CL, *ḥadīth* did not already have fixed forms and were not consistently transmitted with *isnāds*, or, at least, *isnāds* going back to the Prophet."<sup>75</sup> If a culture prized a connection to the Prophet, then why would not those who lived before the Common Link also have a disposition towards furnishing *isnāds*? Third, the fact that a Common Link mentions only one source cannot exclude the possibility that he did in fact hear the report from this source. Moreover, the Common Link could have received a report from other informants but - for his own reasons - did not cite the additional authorities.<sup>76</sup> Fourth, Juynboll partly employs an *ex silentio* argument, which in fact throws into question his claims about single-strand and spider *isnāds*, and dives. I will address this matter below. But all in all, despite the need for some critical scrutiny of Juynboll's schemata, his method for dating is worth consideration for it improved on those methods which preceded him.

A technique which simultaneously utilizes *isnāds* and *matns* has advanced the field of

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<sup>74</sup> Ibid., xxii.

<sup>75</sup> Reinhart, "Review: Juynbolliana," 421f.

<sup>76</sup> Motzki, "Dating Muslim Traditions," 226f.

source-criticism. This method is called *isnād-cum-matn* analysis (ICMA), and has been refined by Motzki. He and others have and continue to use it to evaluate the provenance of *ḥadīth* and *akhbār*.<sup>77</sup> One of ICMA's assumptions is that a certain degree of correlation must exist between the *isnād* and *matn* variants of a particular report if it was imparted via a historical transmission process, and originated with a common source.<sup>78</sup> This correlation in turn allows for the use of *isnāds* to cross-check *matn* variants, and vice versa. For instance, it is possible to ascribe *matn* addendum and deletions to particular transmitters in the chain by comparing other *isnād* and *matn* iterations. For Motzki, it is highly unlikely that this interrelationship emerged from a “systematic forgery because the phenomenon of correlation is so wide-spread that almost every *muḥaddith* must have [otherwise] participated in forgery.”<sup>79</sup> *Isnād-cum-matn* analysis proceeds in five steps:<sup>80</sup>

- 1) identify and collect all the variants of a particular report;
- 2) create a diagram of the various *isnāds*;
- 3) compare the *matns* of variants;
- 4) group the *matn* variants and *isnāds* to check for the existence of correlations;
- 5) if correlations exist, then draw conclusions about the CL's (or PCL's) involvement in the dating, provenance, and circulation of the narrative.

Based on ICMA, an *isnād*'s historicity and/or provenance of a *matn* can be determined with a

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<sup>77</sup> For a list of others who have employed ICMA, see Pavlovitch, *The Formation of the Islamic Understanding of Kalāla in the Second Century AH (718-816 CE)*, 24f; Motzki, “Dating Muslim Traditions: A Survey,” fn. 178, 252.

<sup>78</sup> Motzki discusses ICMA in several of his works. For one source, see Motzki, “Dating Muslim Traditions,” 250.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid., 251.

higher degree of confidence when compared to earlier methods (as discussed above). In addition, the more variants researchers have at their disposal, the more confident they can be about their relevant conclusions. The benefit of ICMA is that it can also help to approximate the original wording generated by a Partial Common Link or Common Link. In sum, *isnād-cum-matn* analysis could achieve more accurate results than would independent *isnād* or *matn* examinations, such as those conducted by Schacht and Juynboll.

When it comes to *ḥadīth* and *akhbār* studies, Reinhart asserts, “the single-strand phenomenon by which nearly all *ḥadīth* are transmitted...seems to be inescapably significant.”<sup>81</sup> While I am unsure about what Reinhart has in mind when he writes ‘all’ or ‘single-strand,’ the matter of single-strand reports is worthy of additional consideration. While Schacht et al. dismissed single-strand narratives as containing little to no historical information, more recent studies on Islamic sources have worked out methods for estimating the historicity of single-strand *isnāds* and their corresponding *matns*. For instance, through an analysis of approximately 3,810 individual reports, Motzki demonstrates that the single-strand transmissions ‘Abd al-Razzāq (d. 211) records in his *al-Muṣannaf*, especially those from Ibn Jurayj (d. 150), Ma‘mar b. Rāshid (d. 153), and Sufyān al-Thawrī (d. 161), are in fact likely to have been historical.<sup>82</sup> Motzki further argues that there is a high probability of legitimate transmissions between ‘Abd al-Razzāq’s informants and *their* respective authorities about both Prophetic and non-Prophetic legal opinions, rulings, and judgements.<sup>83</sup> These conclusions allow Motzki to date reports and

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<sup>81</sup> Reinhart, “Review: Juynbolliana,” 440.

<sup>82</sup> Motzki, *The Origins of Islamic Jurisprudence*; *idem.*, “The *Muṣannaf* of ‘Abd al-Razzāq al-San‘ānī as a Source of Authentic Aḥādīth of the First Century A.H.,” 1-21.

<sup>83</sup> *idem.*, *The Origins of Islamic Jurisprudence*, Chapter 3.

their contents into the first quarter of the second century and in some cases, into the second half of the first century.<sup>84</sup>

In two separate works, Behnam Sadeghi has also demonstrated the efficacy of single-strand *ḥadīth* and *akhbār* for research into Islamic late antiquity. Based on considerations of style and vocabulary, Sadeghi makes evident “that the *Kitāb al-Āthār* of al-Shaybānī has a single redactor who heard and recorded al-Shaybānī’s lectures, except for the equivalent of a one-hour lesson amounting to six pages of the printed text...”<sup>85</sup> According to Sadeghi the different ways in which al-Shaybānī agreed or disagreed with the opinions of his teacher, Abū Ḥanīfa (d. 150), or the first century jurist Ibrāhīm al-Nakha‘ī (d. 96), indicates that al-Shaybānī did not project his own views backwards.<sup>86</sup> Hence, Sadeghi has illustrated that single-strand reports do hold historical information which was in circulation during Islamic late antiquity.

Sadeghi has also developed the Traveling Tradition Test to assert, with a reasonable degree of confidence, both the regional distribution and the dating of single-strand *isnāds* belonging to the first 150 years of Islam. By examining correlations between the *matns* and the cities represented by the transmitters in the *isnād*, Sadeghi argues that one can determine, with a legitimate degree of confidence, when a particular aspect of a report was put into circulation, by whom, and in which region.<sup>87</sup> It thus seems that the Traveling Tradition Test is yet another method which affirms the historical value of single-strand reports. In sum, Motzki’s and

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<sup>84</sup> It is worth noting that Motzki does not entirely dismiss the possibility that in some cases, the *matn* may have been transmitted in error.

<sup>85</sup> Sadeghi, “Appendix: The Authenticity of Early Ḥanafī Texts,” 177-99.

<sup>86</sup> Ibid., 192-4.

<sup>87</sup> Sadeghi, “The Traveling Test: A Method for Dating Traditions,” 203-242.

Sadeghi's respective approaches show that single-strand narratives have historicity and contain information that can be used to shed light on the latter part of the first century and the early part of the second century of Islam. Reinhart's words are a fitting summary about source-criticism debates: they are "no longer between the credulous and the radically skeptical[,] but between [the] formalists and the particularists; both agree that we may be able to ascertain that *ḥadīth* date from the end of the Islamic first century..."<sup>88</sup>

In this dissertation, I will consider *isnāds* - be they single-strands or part of bundles - as historical transmissions emanating from the earliest noted transmitter, unless outside evidence proves otherwise. I will recognize single-strand *isnāds* as historically viable because of the following:

- 1) A single-strand *isnād* may only exist because other chains of transmission were lost or went unrecorded.
- 2) single-strand *isnāds* may not have been recorded because transmitters were people with preferences; individuals had a penchant for whom they taught and to whom they listened. Therefore, a narrator may have preferred one teacher over another and recorded the *ḥadīth* or *khbar* accordingly. By disregarding other sources or rarely citing them, multiple-sourced historical transmission appears to be single-strand reports when they may not have been in the past.
- 3) single-strand *isnāds* may endure because *isnād* bundles emerged based on popular authoritative figures. As was usually the case, folks sought out narrators who were popular or highly respected for one reason or another.
- 4) An *isnād* may appear to be single-strand because *ḥadīth* and *akhbār* collectors

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<sup>88</sup> Reinhart, "Review: Juynbolliana," 429.

deliberately avoided using *isnāds* that encompassed transmitters with undesirable biographical profiles.

To be clear, my approach will not disregard critical investigations of *isnāds*. But my methods are not prejudiced by the fact that some *isnāds* are ahistorical. Rather, I will look to outside evidence to disprove the historicity of a transmission.

When it comes to material from the first two hundred years of Islam, Salaymeh provides an important framework for research. She writes, “since conventional source-criticism viewed primary sources as the only reliable historical sources, many scholars perceived documentary sources as ‘original’ sources.”<sup>89</sup> For her, documentary sources may be preferable, but they are not incumbent for historical inquiry.<sup>90</sup> Moreover, archival documents are not necessarily more reliable primary sources to consult, because they too can be marred with scribal errors, transmissions problems, and scribal agency.<sup>91</sup> As she notes, it is also problematic to lend primacy to documentary sources for studying Islamic late antiquity because very few of them are coterminous with this time period.

The approach to utilizing information from the first two hundred years of Islam cannot be wholly dismissed because writing was not the predominant system for preserving the past. Salaymeh has also argued that narrative-historical collections should be used in conjunction with documentary sources.<sup>92</sup> She defines a narrative-historical source as a “non-documentary, late antique Islamic historical source,” without consideration of that source being coterminous with

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<sup>89</sup> Salaymeh, *Beginnings of Islamic Law*, 24.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*, 31.

<sup>92</sup> *Ibid.*, 24.



the author or compiler being described. Some examples include biography (*sīra*), campaigns (*maghāzī*), compilations of *ḥadīth* and *akhbār* (*muṣannafāt* and *sunan*), exegesis (*tafsīr*), and canonical collections of *ḥadīth* and *akhbār*.<sup>93</sup> In many instances, they have overlapping genres; but in general, they are oral or aural in nature. During Islamic late antiquity, writing served as a supplement to these source materials, and the oral/aural medium was the primary system of teaching and learning.<sup>94</sup> Furthermore, narrative-historical material should not be deemed “later” because the information they contain was “transmitted contemporaneously as part of both a narrative-historical and a living tradition.”<sup>95</sup> And as it is known, some text material from Islamic late antiquity has been lost, yet to be discovered, and/or is embedded in sources from the period thereafter. Certainly there are inconsistencies, slippages, and contradictions in Islamic narrative-historical literature. But these features cannot lead to a logical conclusion that such sources are unreliable. Therefore, if oral/aural transmissions are accepted as legitimate ways of preserving and transferring knowledge, then narrative-historical sources from and about Islamic late antiquity can be used with more seriousness.

With this framework in mind, I now turn my attention to the use of *ḥadīth* and *akhbār* (and *tafsīr* to a limited extent) in this dissertation. Generally, what we know about the Prophet is the result of someone relaying information about him to someone else, based on an *isnād*. This raises the possibility of multiple authorship.<sup>96</sup> In other words, a narrative may not entirely reflect the subject’s exact saying(s) or action(s). But a report does offer a potentially informative

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<sup>93</sup> Ibid.

<sup>94</sup> Schoeler, *The Oral and the Written in Early Islam*, 41-7.

<sup>95</sup> Salaymeh, *Beginnings of Islamic Law*, 32.

<sup>96</sup> Abou El Fadl, *Speaking in God’s Name*, 88.

interpretation of this person's utterances or activities. The seeing, hearing, and (re)conveying of information by each successive individual within a chain of transmission is therefore based upon a constructive and selective exercise in communication. This process renders the issue of authenticity less probative, because what becomes important is understanding the role that a subject played in a particular report.<sup>97</sup> As Abou El Fadl remarks,

...other than the possibility of fabrication, there is also the issue of creative selection and recollection. Those who experienced the life of the Prophet, interacted, and talked to him, did not experience the Prophet in some ideal objective medium. The Companions and others experienced the Prophet in a subjective fashion, and this subjectivity influenced what they saw or heard, how they saw or heard it, and what they ultimately remembered and conveyed to others.<sup>98</sup>

Each individual's own interpretive contribution to a report yields just as much information about the historical context and the transmitter to whom it belongs, as it does about the intended subject. The personality of a transmitter functions like a watermark on the transmitted report. This, in turn, "forces us to understand the Prophetic [and non-Prophetic] reports not just as *Sunnah* [or authoritative precedent], but as a history as well."<sup>99</sup> Hence, the conclusions derived from analyses of *ḥadīth* and *akhbār* ought to be considered in light of the different ways in which narrators and their respective background could have played a role in the transmission(s) of report(s) under study.

My general approach to *ḥadīth*, *akhbār*, and *tafsīrs* will be that *a priori*, I consider their *isnāds* to be historically viable, and *matns* to be historically transmitted data, up to a Companion, unless outside evidence proves otherwise. I shall not aim to reconstruct the "original" wording of a particular narrative. Rather, in employing the aforementioned considerations my goal is three-

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<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

fold: 1) to determine with a reasonable degree of confidence the provenance of particular motifs, 2) to identify transmitters who helped to circulate specific themes, and to explain why these individuals are associated with the topoi under study, and 3) to evaluate the different ways in which motifs and narrators associated with certain stoning reports are important for understanding the beginnings of the process by which the punishment became part of the Islamic legal tradition.

### Sources for this dissertation

Because I am uninterested in reconstructing a report's "original" *matn*, I will not provide all the variants available in every available source. The *ḥadīth* and *akhbār* collections I investigate are:

- *Muwatṭāʾ* of Mālik b. Anas (d. 179)
- *Musnad* of al-Ṭayālīsī (d. 203)
- *al-Muṣannaf* of ʿAbd al-Razzāq (d. 211)
- *Musnad* of al-Ḥumaydī (d. 219)
- *al-Muṣannaf* of Ibn Abī Shayba (d. 235)
- *Musnad* of Ibn Ḥanbal (d. 241)
- *Ṣaḥīḥ* of al-Bukhārī (d. 256)
- *Ṣaḥīḥ* of Muslim (d. 261)
- *Sunan* of of Ibn Majah (d. 273)
- *Sunan* of Abū Dāwūd (d. 275)
- *Jāmiʿ al-Kubrā* of al-Tirmidhī (d. 279)
- *al-Sunna* of al-Mawarzī (d. 294)

- *Sunan al-Kubrā* of al-Nasā'ī (d. 303)
- *Musnad* of al-Mawṣalī (d. 307)
- *Sunan al-Kubrā* of al-Bayhaqī (d. 458)

I chose the six canonical *ḥadīth* works because of their significance in the study of *ḥadīth* and *akhbār*, and their authority among Muslims. I chose non-canonical sources because they include variants of stoning reports which did not make their way into the six canonical books. Of special interest are the *Muṣannaḥs* of 'Abd al-Razzāq and Ibn Abī Shayba, respectively, because they also record opinions of legal authorities from the late first and early second Islamic centuries. This time period was characterized with legal heterodoxies. Therefore, investigations into the *Muṣannaḥs* can provide nuanced insight into debates and varied legal positions about stoning during Islamic late antiquity. I included al-Bayhaqī's work because as Lucas remarks, "[he] closes the canon of original *ḥadīth* compilations."<sup>100</sup> The sources I have selected will provide a sufficiently diverse cross-section of narrative-historical material on stoning from Islamic late antiquity.

I will also examine *tafsīr* works to illustrate how the Prophet's involvement in *zinā* stoning cases was understood in relation to the Qur'ān. The exegetical collections will also help to shed light on how particular Qur'ānic terms were used to formulate legal elements which became central to *zinā* laws and stoning (I discuss this in Chapter One). The *tafsīr* sources are:

- *Tafsīr* of Mujāhid b. Jabr (d. 100)
- *Tafsīr* of al-Ḍaḥḥāk (d. 105)
- *Tafsīr* of Muqātil b. Sulaymān (d. 150)
- *Tafsīr* of al-Ṭabarī (d. 310)

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<sup>100</sup> Lucas, "“Perhaps You Only Kissed her?” 401.

After the advent of Islam, the technical meaning of *tafsīr* took about three centuries to develop, and the *tafsīr* tradition came to be associated with an understanding of the Qur’ān based on transmissions from the Prophet and his Companions.<sup>101</sup> However, since the birth of the exegetical tradition, *tafsīr* works have been influenced by the dynamic contexts in which they were produced.<sup>102</sup> Muslim exegetes did not freely write their respective works. For one, their interpretive authority was subject to challenges by other centers of interpretive power, which also claimed jurisdiction over the meaning of the Qur’an.<sup>103</sup> Second, *tafsīrs* are “genealogical literature insofar as [they are part of a] genre that has always been dependent on an ancient inherited corpus of material.”<sup>104</sup> Therefore, a relationship existed with the past that expressed itself in citations of authorities, and in the expansion and contraction of the number of meanings provided.<sup>105</sup> Lastly, accounting for past authorities did not preclude exegetes from infusing their own opinions about the meaning(s) of particular words or phrases. It is this “inherited material” combined with an exegete’s own opinions, which have together led me to examine *tafsīrs* for this project. These give us a window into additional ways in which historical Muslims conceived of the Prophet’s adjudication of *zinā* cases in which he ordered the stoning punishment.

An indispensable complement to *ḥadīth* and *akhbār* analysis is *rijāl* literature, by which I mean biographical dictionaries (*Kutub al-Rijāl*), works dealing with *isnād* or *matn* level defects

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<sup>101</sup> *Encyclopaedia of Islam*, 2<sup>nd</sup> ed., s.v. “Tafsīr”; for an informative summary on the historical development of *tafsīr* works, see Shah, *Tafsīr: Interpreting the Qur’ān*, 1-157.

<sup>102</sup> Saleh, “Preliminary Remarks on the Historiography of *Tafsīr*,” 18.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid; for more on the “genealogical” nature of Qur’ānic commentary, see Saleh, *The Formation of the Classical Tafsīr Tradition*, 14-23.

<sup>105</sup> *Encyclopaedia of Islam*, 2<sup>nd</sup> ed., s.v. “Tafsīr.”

(*Kutub al-‘Ilal*), and those engaging with virtues and vices of transmitters (*Jarḥ wa al-Ta‘dīl*, *Kutub al-Ḍu‘afā’*).<sup>106</sup> While the use of *rijāl* literature is necessary, it must be done so with some qualifications.<sup>107</sup> First, compilers of biographical dictionaries may have worked backwards, meaning that they first located reports and only then developed relationships between narrators that would make the lines of transmission appear to be historical. This would mean that their collections may not represent an independent source of information.<sup>108</sup> Second, for a host of reasons, authors of *rijāl* literature could be motivated to elevate the status of certain transmitters while dismissing the prestige of others. For instance, Lucas demonstrates how authors of certain works of *rijāl* classified and elevated transmitters associated with narratives which helped to stabilize Sunnī orthodoxy.<sup>109</sup> But as Abou El Fadl has noted, “branding a particular transmitter...as reliable or unreliable is helpful but not conclusive.”<sup>110</sup> A person’s life is complex and contextual, and it is impractical to judge the entirety of one’s existence based against a single evaluation metric such as trustworthiness.<sup>111</sup> Ultimately, if analyzed in light of these qualifications, *rijāl* literature has scholarly value.

## Chapter Overview

Chapter One provides a comprehensive overview of *ḥadīth* and *akhbar* involving *zinā*

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<sup>106</sup> For an overview of these genres, see Brown, *Ḥadīth: Muhammad’s Legacy in the Medieval and Modern World*, 66-89 and 95-100.

<sup>107</sup> For a summary of scholars who identify issues to keep in mind when using *rijāl* literature, see Pavlovitch, *The Formation of the Islamic Understanding of Kalāla in the Second Century AH (718-816 CE)*, 41.

<sup>108</sup> Ibid.

<sup>109</sup> See generally Lucas, *Constructive Critics*.

<sup>110</sup> Abou El Fadl, *Speaking in God’s Name*, 87.

<sup>111</sup> Ibid.

cases in which stoning was mandated as the appropriate form of punishment. I will also provide a summary of the different ways in which Muslim legal authorities utilized these stoning narratives to justify substantive *zinā* laws. Moreover, I will provide an analysis of the legal elements of *thayyib* and *iḥṣān* because these were used to clarify *zinā* stoning. By unearthing gaps, I suggest that Muslim legal authorities were reconstituting the meaning of *zinā* from the Qur’ān into the Islamic legal tradition. Lastly, I will survey debates and early opinions which reflect the different ways in which the Prophet’s involvement in stoning cases was conceived of by Muslims in the post-Prophetic period. These discussions will further my proposition that a historical moment likely existed when stoning was not considered to be Islamic.

In Chapter Two, I examine an incident in which a Jewish group supposedly asked the Prophet to adjudicate its *zinā* case. The *ḥadīth* conjectures that the Prophet’s Jewish contemporaries were hoping that he would order a punishment other than stoning. However, he mandated stoning in accordance with the Book of Deuteronomy of the Hebrew Bible. This narrative was purportedly circulated by several Companions. I will examine *isnāds* and *matns* of its numerous variants to shed light on the provenance and significance of specific motifs and of particular transmitters. Furthermore, I will examine *tafsīrs* so that I may consider how this report has fit into the exegetical landscape. It is my contention that this *ḥadīth* is important for shedding light on the beginnings of the process by which stoning became part of the Islamic legal tradition, because it forged a nexus between Prophetic authority and stoning.

In Chapter Three, I investigate a *ḥadīth* in which the Prophet purportedly ordered the stoning of a self-confessing female *zinā* offender. This narrative was supposedly transmitted by three Companions. Accordingly, I analyze different versions which fanned out from each of these individuals. I also study motifs embedded in various iterations of this *ḥadīth* to determine

their significance and the different ways in which they are relevant for *zinā* stoning. In this chapter, I argue that the self-confessing woman report helped to Islamize the stoning punishment on Prophetic authority.

In Chapter Four, I focus on *akhbār* about the second caliph ‘Umar b. al-Khaṭṭāb because not only is he recorded to have adjudicated several *zinā* cases, but to have also advocated for the stoning punishment on several occasions. After providing a sufficient number of reports which demonstrate ‘Umar’s penchant for using this capital sanction, I turn to a detailed *isnād* and *matn* analysis of a specific *khavar*. According to this narrative, ‘Umar allegedly gave a sermon in which he preached that stoning was an Islamic punishment and the *Sunna* of the Prophet. Moreover, in some versions of this report, ‘Umar recalls a stoning verse that ought to have been part of the Qur’ān but was inevitably left out from the standardized ‘Uthmānī Codex. I demonstrate in this chapter that a speech ‘Umar gave about the legitimacy of Abū Bakr’s caliphate intermixed with his known proclivity for stoning, and in turn resulted in narrative in which he purportedly sermonized about stoning’s applicability for certain types of Muslim *zinā* offenders.

To conclude, this dissertation seeks to understand the beginnings of the process by which stoning became an Islamic punishment for certain forms of *zinā*. By analyzing the *isnāds* and *matns* of selected stoning reports, this project endeavors to shed light on the significance of various transmitters, the provenance and importance of certain motifs, and the role that the Prophet and others played in helping to incorporate *zinā* stoning into the Islamic legal tradition. I will also demonstrate that it is highly plausible a historical moment existed during which time stoning was deemed inapplicable to Muslims.



## Chapter 1

### The Black Letter Law That Never Was

#### Introduction

The Qur'ānic punishments for *zinā*, illicit sexual intercourse, do not include stoning. Q4:15 states, “If any of your women commit *fāḥisha* (one meaning = *zinā*), call four witnesses from among you, then, if [the witnesses] testify to their guilt, keep the women at home until death comes to them or until God shows for them another way,” and Q24:2 states, “As for the *zānīyya* and the *zānī*, flog them 100 times....” Yet Muslim legal authorities deem certain types of *zinā* as capital offenses subject to the punishment of stoning. The question is: why? The answer resides with Prophetic and non-Prophetic reports in which Muḥammad and his Companions were remembered to have punished certain forms of *zinā* with stoning. However, such *ḥadīth* and *akhbār* created challenges for the early Muslim community. In the absence of particular facts about the offender, it was impossible to distinguish the type of *zinā* mentioned in the reports on stoning, and to reconcile the capital punishment with the Qur'ānic prescription of flogging. These difficulties likely contributed to Muslim legal authorities' development of particular legal rules to describe the form of *zinā*, and the conditions under which, the offense warranted a capital sanction. These legal debates indicate that a transition occurred in the post-Qur'ānic period. The Qur'ānic use of *zinā* was read in light of the concept of *zinā* in Islamic legal tradition, thus making stoning a legitimate form of punishment.

In this chapter I give an overview of *ḥadīth* and *akhbār* involving the punishment of stoning, and I complicate the broad consensus that emerged about the punishment's implementation upon Muslim *zinā* offenders. In the first section, I present *ḥadīth* and *akhbār* that

forbid *zinā*, and in some variants identify it as a capital offense. In the second section, I delineate Prophetic and non-Prophetic reports that convey stoning as a black letter law.<sup>112</sup> In the third section, I provide a number of narratives in which offenders are convicted of *zinā* and punished with death by stoning. At the end of these three sections, the reader will become familiar with several Prophetic and non-Prophetic reports in which the Prophet or a Companion called for stoning of *zinā* offenders.

The legal community had to distinguish the type of *zinā* that warranted the capital punishment. To determine when stoning was applicable, it utilized the legal elements of *thayyib* and *iḥṣān*.<sup>113</sup> These terms indicate a specific legal status of a Muslim. Therefore, once a Muslim becomes a *thayyib* or has *iḥṣān*, and commits *zinā*, they are subject to lapidation. However, the different ways in which *thayyib*, and *iḥṣān* were conceived of, formulated, and debated, expose inconsistencies. Such disparities undermine the general acceptance of particular forms of *zinā* as Islamic capital offenses, and of stoning being its corresponding Islamic punishment. Thus, in the fourth section I examine legal debates on the definitions of *thayyib* and *iḥṣān*, and consider the issues that result from how they were construed.

In the fifth section, I survey *zinā* laws and explicate some of the ways in which they harmonize with Prophetic and non-Prophetic reports. In this section, I also examine debates regarding the implementation of a single punishment of stoning for *zinā* offenders versus a dual punishment of flogging and stoning. This disagreement is of consequence because it signals juristic attempts to reconcile inconsistencies between Qur’ānic and non-Qur’ānic punishment(s)

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<sup>112</sup> Black letter law means basic standard elements or principles of law, which are generally known and free from doubt or dispute.

<sup>113</sup> I leaves these words untranslated because there is no single English word that reflect their meaning, respectively. This will be clearer in Section Four.

for *zinā*. I contend that such opposing views reflect attempts to naturalize what was an otherwise non-Islamic punishment into the Islamic legal tradition.

Despite the general acceptance of stoning as obligatory upon certain types of Muslim *zinā* offenders, the prevailing opinion did not eliminate questions about the punishment's place in the Islamic legal tradition. In other words, some Muslims themselves wondered about the capital sanction's applicability as Islamic. Therefore, in the sixth section, I review *akhbār* that complicate the dominant narrative in the Islamic legal tradition about stoning being the correct punishment for certain forms of *zinā*.

By the end of this chapter, the reader will be familiar with *ḥadīth* and *akhbār* that supported the treatment of certain forms of *zinā* as capital offenses and stoning as the corresponding punishment. The reader will also learn how stoning reports were employed to develop *zinā* laws. Additionally, there will be an awareness of how the legal elements of *thayyib* and *iḥṣān* were employed to clarify the forms of *zinā* necessitating death by stoning. It will be seen that stoning's foothold in the Islamic legal tradition is complicated due to the consequences of defining these legal elements, disagreements about the use of a single penalty versus a dual-penalty, and remarks about the applicability of stoning to Muslims. I will argue that the post-Prophetic community reinterpreted the Qur'ānic use of *zinā* to give the term at least two different meanings, which then allowed for the introduction and permissibility of stoning for certain forms of illicit sexual intercourse.<sup>114</sup>

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<sup>114</sup> I deliberately acknowledge the minimum of two meanings because Mālikīs considered rape to also be a form of *zinā*. For an insightful study on the Mālikī position, see generally Azam, *Sexual Violation in Islamic Law*.

## Section 1. General Prohibition of *Zinā*

In this section, I list Prophetic and non-Prophet reports in which *zinā* is prohibited and in some cases, deemed to be a capital offense. The first thing to note is that *zinā* itself remains undefined. I do not translate it to mean adultery, because as I demonstrate in this chapter, it is only through *ḥadīth*, *akhbār*, and the Islamic legal tradition that *zinā* comes to have differentiated meanings. In short, it would be misleading to define *zinā* in these reports as adultery. Without reading a particular definition of *zinā* into the reports, *any* sexual improprieties would be subject to capital offenses.

The first item is a *ḥadīth* on the authority of the Companion ‘Abd Allah b. Mas‘ūd (d. 32, Mecca, Medina, and Kūfa) that proscribes *zinā*. The report states:

(No. 1) ‘Abd Allah b. Mas‘ūd asked the Prophet: What is the greatest sin?

The Prophet answered: Associating idols with God and claiming they created you.

Then Ibn Mas‘ūd asked: And after that?

The Prophet answered: Killing your child because he consumes your property.

Then Ibn Mas‘ūd asked: And after that?

The Prophet answered: Committing *zinā* with your neighbor's wife.<sup>115</sup>

By virtue of her marital status, the neighbor's wife would be committing adultery. For her partner, however, the type of *zinā* remains unclear. If he is unmarried, his *zinā* is fornication, but if he is married, then it is adultery. Therefore, in this *ḥadīth* *zinā* bears two potential meanings. But only one thing is clear: *zinā* is prohibited.

The second and third items are reports involving the third caliph after the Prophet's

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<sup>115</sup> “*In tazniya bi ḥalīlati jārika.*” al-Ṭayālīsī, *Musnad*, 1:212:262; Ibn Ḥanbal, *Musnad* (1992 ed.), 7:200f:4,131 and 429:4,423; al-Bukhārī, *Ṣaḥīḥ*, 1626:4,207, 2236:5,655, 2497f:6,426; Muslim, *Ṣaḥīḥ*, 90:141; Abū Dāwūd, *Sunan*, 3:617f:2,310; al-Tirmidhī, *al-Jāmi‘*, 5:245f:3,182f; al-Nasā‘ī, *al-Sunan*, 3:425f:3,462f, 6:399:7,086, 10:9:10,920 and 204:11,305; al-Mawṣilī, *Musnad*, 9:64:5,130; al-Bayhaqī, *al-Sunan al-Kubrā*, 8:33:15,840f.

demise, ‘Uthmān b. ‘Affān (d. 35, Mecca and Medina). One version reads:

(No. 2) We were at the entrance of ‘Uthmān b. ‘Affān's house at the time he was surrounded by his enemies. We heard him yell something at someone while they were standing in the paved court of his residence. ‘Uthmān then left stricken (lit., he left changed in color, *kharaja mutaghayyir al-lawn*).

We asked him: Commander of the Faithful, what is wrong?

‘Uthmān replied: I always knew some people wanted to take my life, but now it is clear to me that those who are outside definitely want to!

We responded: May God protect you from them, Commander of the Faithful!

‘Uthmān then said to us: On what basis do they want to kill me? I remember the Messenger of God saying that the blood of a Muslim can be spilled only under three circumstances: When a man leaves Islam after becoming Muslim, or when he commits *zinā* after he has *iḥṣān*, or when he commits homicide! By God, I have never committed *zinā*, nor have I ever wished to change my religion, nor have I ever committed murder! So I do not understand how they could justify killing me.<sup>116</sup>

In another variant of the narrative, which does not mention the Prophet, ‘Uthmān remarks that stoning is the applicable punishment:

(No. 3) The blood of a Muslim can be spilled only under three circumstances: When a person commits *zinā* and has *iḥṣān*, they are to be stoned. When a person kills another person, they are to be executed. When a person leaves Islam after becoming Muslim, they are to be executed.<sup>117</sup>

As I noted in the Introduction of this chapter, and as I will further elaborate in Section Four,

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<sup>116</sup> al-Ṭayālīsī, *Musnad*, 1:71f:72 and 3:130; ‘Abd al-Razzāq (d. 211), *al-Muṣannaf*, 10:167:18,703; on the authority of the Companion ‘Abd Allah b. Mas‘ūd (d. 32), see al-Ḥumaydī, *Musnad*, 1:219:119; on the authority of ‘Ā’isha (d. 57), see Ibn Abī Shayba (d. 235), *al-Muṣannaf* (1989 ed.), 5:452:27,902; *ibid.*, 453:27,905; Ibn Ḥanbal, *Musnad* (1992 ed.), 1:491:437; Abū Dāwūd, *Sunan*, 6:408f:4,353 and 552f:4,502; al-Tirmidhī, *al-Jāmi‘*, 4:33:2,158; al-Nasā’ī, *al-Sunan*, 3:427:3,466; al-Bayhaqī, *al-Sunan al-Kubrā*, 8:34:15,843; in other variants, the term *thayyib* is employed to convey the legal status required for triggering the stoning punishment. For the use of *thayyib* in the *ḥadīth*, see al-Ṭayālīsī, *Musnad*, 1:232; on the authority of the Companion ‘Abd Allah b. Mas‘ūd (d. 32), see Ibn Abī Shayba (d. 235), *al-Muṣannaf* (1989 ed.), 5:452:27,901 and 321:36,492; Ibn Ḥanbal, *Musnad* (1992 ed.), 6:119f:3,621; al-Bukhārī, *Ṣaḥīḥ*, 2521:6,484; Muslim, *Ṣaḥīḥ*, 1302:25 and 1303:26; Ibn Mājah, *Sunan*, 847:2,534; Abū Dāwūd, *Sunan*, 6:408:4,352; al-Tirmidhī, *al-Jāmi‘*, 3:74f:1,402 and 114f:1,444; al-Nasā’ī, *al-Sunan*, 3:426:3,456; al-Mawṣilī, *Musnad*, 8:136:4,676 and 9:128:5,202; al-Bayhaqī, *al-Sunan al-Kubrā*, 8:35:15,844.

<sup>117</sup> ‘Abd al-Razzāq (d. 211), *al-Muṣannaf*, 10:167:18,702; Ibn Ḥanbal, *Musnad* (1992 ed.), 1:502:452; Ibn Mājah, *Sunan*, 847:2,533; al-Nasā’ī, *al-Sunan*, 3:438:3,497 and 440:3,506; al-Ṭabarī, *Jāmi‘ al-Bayān*, 10:261:11,843.

*iḥṣān* is a legal element used to identify which type of *zinā* warrants capital punishment; without *iḥṣān* there can be no stoning. In these reports, *iḥṣān* specifies the form of *zinā* subject to stoning. At any rate, the ‘Uthmān reports parallel the *ḥadīth* circulated by Ibn Mas‘ūd. All three narratives list three major offenses, of which *zinā* is one. The ‘Uthmān reports in particular construct *zinā* as a capital offense that is subject to the stoning punishment.

Irrespective of who may have put the aforementioned narratives into circulation, it is possible that of Ibn Mas‘ūd’s and ‘Uthmān’s reports were transmitted with a particular Qur’ānic verse in mind. Q25:68 reads:

...those who never invoke any other deity besides God, nor take a life, which God has made sacred, except in the pursuit of justice, nor commit *zinā* (*lā yaznūn*). Whoever does these things will face the penalties.

Indeed, the seventh century Ḥanbalī jurist Ibn Qudāma (d. 620) likely thought of the connection. When he wished to convey the gravity of a *zinā* offense, he referenced the *ḥadīth* on Ibn Mas‘ūd’s authority (no. 1) and this verse.<sup>118</sup>

So far I have provided three variants of a report that includes *zinā* among three of the greatest transgressions. It is worth noting that Q25:68 also includes *zinā* in the context of three major infractions. In two narratives, *zinā* is designated as a capital offense (nos. 1 and 2), and in one report (no. 3) it warrants stoning.

## **Section 2. Prophetic and non-Prophetic Reports Confirming Stoning as Punishment for *Zinā* Offenders: The Black Letter Law**

Another report, which I call the ‘Ubāda *ḥadīth*, is central to legal and exegetical discussions on stoning as punishment for certain types of *zinā*. This *ḥadīth* was purportedly transmitted by the Companion ‘Ubāda b. al-Ṣāmit (d. 34, Ḥimṣ, Medina, Palestine, and Syria).

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<sup>118</sup> Ibn Qudāma, *al-Mughnī*, 12:307.

He is recorded to have remarked:

The Prophet said: Listen to what I have to say. God has made a way for them (*lahunna*). A *thayyib* who has illicit sexual intercourse with a *thayyib* is to receive 100 lashes and stoning. A virgin (*bikr*) who has illicit sexual intercourse with a virgin is to receive 100 lashes and one year's banishment.<sup>119</sup>

This *ḥadīth* draws upon Prophetic authority for the justification of stoning. Importantly, part of the Prophet's comment mirrors a section of Q4:15, which states, "...keep women at home until death comes to them or until *God shows for them another way*." The 'Ubāda *ḥadīth* conveys that "the way" is a dual-penalty for particular forms of *zinā*: 100 lashes followed by stoning.

According to some reports, the second caliph 'Umar b. al-Khaṭṭāb (d. 23) claimed that stoning was in the Book of God, and mandatory for certain kinds of *zinā* offenders. The Companion 'Abd Allah b. 'Abbās (d. 68) is recorded to have said:

I heard 'Umar b. al-Khaṭṭāb say: Stoning is in the Book of God, and compulsory upon anyone who commits *zinā*, be it a man or a woman. The condition needed to stone someone is *iḥṣān*, witness testimony, pregnancy, or a confession.<sup>120</sup>

A more expanded version, also transmitted by Ibn 'Abbās, reads:

I heard 'Umar say: God sent Muḥammad with the Truth and the Book, including the stoning verse. The Prophet stoned and we stoned after him. I'm afraid a time will come when someone will say: 'By God, we do not find stoning in the Book of God.' Such people will be among those who will go astray and leave behind religious obligations sent by God. Indeed, stoning is required for someone who commits *zinā* when such a person has *iḥṣān*, and is proven guilty on the basis of testimony, pregnancy, or a confession.<sup>121</sup>

A third version of the report includes the purported stoning verse. The narrative reads:

'Umar said: I'm afraid that people will eventually say, 'We do not find stoning in

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<sup>119</sup> al-Ṭayālīsī, *Musnad*, 1:478:585; 'Abd al-Razzāq, *al-Muṣannaf*, 7:310:13,308 and 329:13,359f; Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:357:29,364; Ibn Ḥanbal, *Musnad* (1995 ed.), 12:369:15,853 and 15:384:22,565, 396:22,602, 400:22,614, 404:22,628, and 406:22,633; Muslim, *Ṣaḥīḥ*, 1,316:1,690; Ibn Mājah, *Sunan*, 852:2,550; Abū Dāwūd, *Sunan*, 6:466:4,415 and 468:4,417; al-Timidhī, *al-Jāmi'*, 3:104f:1,434; al-Marwazī, *al-Sunna*, 1:94:338 and 95:343-5; al-Nasā'ī, *al-Sunan*, 6:405:7,104-6; al-Bayhaqī, *al-Sunan al-Kubrā*, 8:365f:16,907.

<sup>120</sup> Mālik, *Muwatta'*, 1,201.

<sup>121</sup> 'Abd al-Razzāq, *al-Muṣannaf*, 7:315:13,329.

the Book of God.’ Such people will be among those who will go astray and leave behind religious obligations sent by God. Indeed, stoning is required for a man that is a *muḥṣan* and evidence such as pregnancy or a confession can convict him. I know I have read the stoning verse. It stated: ‘The *shaykh* and the *shaykha*, if they commit *zinā*, then stone them both.’ The Prophet stoned and we stoned after him.<sup>122</sup>

In Chapter Four, I analyze several *isnāds* and *matns* related to these reports, and the different ways in which such *akhbār* justified and stabilized lapidation as the correct punishment for a specific category of *zinā* offenders. Presently, the important point is that according to the narratives, ‘Umar believed that stoning was in the Book of God and recited the supposed verse, asserting that the Prophet ordered the punishment in *zinā* cases. Yet the verse in question does appear in the accepted recension of the Qur’ān.

In addition to ‘Umar, several other Companions are also recorded to have claimed that a stoning verse existed. For example, Kathīr b. al-Ṣalt (d. unknown, Ḥijāz and Kinda) purportedly said:

We used to write the *maṣāḥif* with Zayd b. Thābit and we came to a verse that we were supposed to record. Zayd b. Thābit commented: “I heard the Messenger of God say: ‘As for the *shaykh* and the *shaykha*, if they commit *zinā*, then stone them both as an exemplary punishment from God and God's Messenger.’”<sup>123</sup>

In a report about a scribe of the Prophet, Ubayy b. Ka‘b (d. 19, 22, 30, or 32, Medina), it states:

Ubayy said: Zirr b. Hubaysh, how many verses do you read in *Surat al-Aḥzāb*?

Zirr responded: Such-and-such number of verses.

Ubayy said: If that many verses, then at one time it was about the same length as *Surat al-Baqara*. If we could, then we would have read in *al-Aḥzāb*: “As for the *shaykh* and the *shaykha*, if they commit *zinā*, then stone them both as an exemplary punishment from God and God's Messenger.”<sup>124</sup>

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<sup>122</sup> Ibn Abī Shayba, *al-Muṣannaf* (1989 ed.), 9:354:29,354.

<sup>123</sup> al-Ṭayālīsī, *Musnad*, 1:503:610.

<sup>124</sup> al-Ṭayālīsī, *Musnad*, 1:436f:542; supposedly Ubayy b. Ka‘b held the opinion that *thayyib*s receive the dual penalty of flogging and stoning, see Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:357f:29,364f.



In the ‘Uthmānī Codex, *al-Aḥzāb* has 73 verses whereas *al-Baqara* contains 286. The implication of this report is that at one time, *al-Aḥzāb* was longer than 73 verses, perhaps similar in length to *al-Baqara*. But *al-Aḥzāb* was shortened, and one eliminated verse was about stoning. The reports from ‘Umar, Kathīr b. al-Ṣalt, and Ubayy b. Ka‘b indicate that Muslims of the Islamic late antiquity were attempting to draw upon Qur’ānic authority for applying the punishment to Muslims.

According to some reports, ‘Alī b. Abī Ṭālib (d. 40) supposedly based stoning on the Prophetic *Sunna* while arguing for flogging in accordance with the Qur’ān. The jurist ‘Āmir al-Sha‘bī (d. 102-9, Hamdān, Kūfa, and Syria) remarked:

‘Alī said regarding the *thayyib*: I flog them based on the Qur’ān and I stone them based on the (Prophetic) *Sunna*.

Al-Sha‘bī added: Ubayy b. Ka‘b said the same thing.<sup>125</sup>

According to Masrūq b. Ajda‘ (d. 63, Kufa, Medina, Hamdan):

Ubayy b. Ka‘b said: For the man who does not have *iḥṣān* and commits *zinā*, flog then banish him. For the man who does have *iḥṣān* and commits *zinā*, flog then stone him.<sup>126</sup>

In sum, the *ḥadīth* and *akhbār* provided in this section represent a black letter law claim for stoning as an Islamic punishment. These narratives were used by legal authorities to justify the capital punishment for a distinct category of sexual improprieties. But there are several other *ḥadīth* and *akhbār* that mention stoning as the correct punishment for Muslim *zinā* offenders. They are different than the preceding narratives because they involve specific cases, not black letter law statements. In the next section, I provide a number of these reports.

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<sup>125</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:328:13,356.

<sup>126</sup> al-Marwazī, *al-Sunna*, 1:99:359; in the version recorded by al-Bayhaqī on the authority of Masrūq, Ubayy b. Ka‘b states that the *thayyib* receives stoning (no mention of flogging), see al-Bayhaqī, *al-Sunan al-Kubrā*, 8:389:16,908.

### Section 3. *Ḥadīth* and *Akhbār* on Cases of *Zinā* and Stoning

In this section, I present several Prophetic and non-Prophetic reports in which offenders are convicted of *zinā* and punished with stoning. These *ḥadīth* and *akhbār* are important for two reasons: 1. They contain elements that legal authorities used to standardize laws for the prosecution, conviction, and punishment of *zinā* offenders; 2. They seemingly affirmed that stoning was a practice of the Prophet and Companions.

#### ***Ḥadīth* of cases in which the Prophet orders the stoning punishment**

According to several versions of a *ḥadīth*, the Prophet adjudicated a case involving a Jewish couple who committed *zinā*. In these narratives, the stoning punishment was ordered on the basis of the Hebrew Bible. In one variant, the Companion ‘Abd Allāh b. ‘Umar b. al-Khaṭṭāb (d. 73-4, Mecca and Medina) purportedly stated:

Some Jews came to the Prophet and told him about a case involving a Jewish man and a Jewish woman who had committed *zinā*.

The Prophet asked: Do you find anything about stoning in the Torah?

They responded: We humiliate and flog them.

Upon hearing that, ‘Abd Allāh b. Salām interjected: You lie! Stoning is in the Torah!

So they brought the Torah and opened it up. One of the Jews covered the stoning verse with his hand and read what was before and after it.

‘Abd Allāh b. Salām said to the reader: Lift your hand up!

The man did and they saw the stoning verse.

The Jewish group said: ‘Abd Allāh b. Salām told the truth, Muḥammad.

Thereafter, the Messenger of God gave the command, and the Jewish *zinā* offenders

were stoned.

‘Abd Allāh b. ‘Umar said: I saw the man leaning over to protect the woman from the stones.<sup>127</sup>

I examine this version and its other variants in Chapter Two, and argue for its centrality in the process by which stoning became part of the Islamic legal tradition. For present purposes, the salient point is that the report connects Prophetic authority to the punishment of stoning for *zinā* offenders (albeit Jewish ones).

According to what I call the “Worker-Son” *ḥadīth*, the Prophet orders a woman to be stoned in accordance with the Book of God. The *matn* does not include a reference to any religion. This ambiguity is consequential because it means that the woman may or may not have been Muslim. Therefore, a reader (or listener) must interpolate the offender’s religion to assert that the Prophet ordered stoning for a Muslim. The *ḥadīth* is circulated by the Companions Abū Hurayra (d. 57-9, Medina and Yemen) and Zayd b. Khālīd al-Juhanī (d. 78, Medina and possibly Kūfa). They comment:

Two men brought their dispute to the Messenger of God and one of them said: Messenger of God, make a judgement for us based on the Book of God (*aqḍi baynanā bi-kitāb Allāh*).

The other, who was the more knowledgeable of the two, said: Yes Messenger of God, make a ruling based on the Book of God, but first listen to what I have to say.

The Prophet responded: Speak.

The man said: My son was hired as a worker for this man, and he committed *zinā* with his wife. This man informed me that my son needs to be stoned. In order to save my son from the punishment, I offered a ransom in the form of 100 sheep and a female slave. But then I asked some People of Knowledge about the matter and they told me that my son is subject to 100 lashes and banishment for one year, and that the wife is subject to stoning.

Upon hearing the man’s comments, the Messenger of God said: By the One in whose hand is my soul, I will decide the matter between the two of you based on

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<sup>127</sup> Mālik, *Muwattaʿa*, 1,195.

the Book of God. As for your sheep and female slave, they are to be returned to you. Your son is to be flogged 100 times and banished for one year.

Then the Prophet ordered Unays al-Aslamī to go to the man's wife and stone her if she confessed to *zinā*. The wife confessed so she was stoned.<sup>128</sup>

Joseph Lowry has argued that the “Book of God” is a likely reference to the Heavenly Book (*umm al-kitāb*) or the Torah.<sup>129</sup> This is questionable because the phrase “The Book of God” was used as a general idiomatic reference to any divine law.<sup>130</sup> At any rate, Muslim legal authorities employed the “Worker-Son” *ḥadīth* to legitimate stoning for Muslim *zinā* offenders on the authority of the Prophet.

One of the most widely circulated and cited *ḥadīth* is about a self-confessing male offender. This narrative was transmitted in several forms. Hence, I separate them into three categories based on how the confessor is identified. In one group of reports he is simply known as ‘a man.’ One version of the narrative reads:

During the time of the Messenger of God, a man confessed four times to committing *zinā*, so the Messenger of God ordered that he be stoned, and he was stoned.<sup>131</sup>

Another variant is supposedly circulated by the Companion Abū Dharr [Jundub b. Junāda] (d. 32, Hijāz and Syria), who is recorded to have said:

We were traveling with the Messenger of God when a man came up to him and said: I am the one who committed *zinā*. The Prophet sent him away for a third and

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<sup>128</sup> Mālik, *Muwattaʿa*, 1,199f, 628/3040; *idem.* (narrated by al-Shaybānī), 221:695. There are slight variations between the two versions (for example, al-Shaybānī's version places the comment about the worker being a servant within the narration itself). Nevertheless, a high degree of similarity exists between the two *mutūn*, especially the third person narrative about Unays going to the wife and stoning her.

<sup>129</sup> Lowry, *Early Islamic Legal Theory*, 97 including f.n. 66.

<sup>130</sup> In the Qurʾān, the expression is used for ordinances in any scripture of God including the Qurʾān. For example, see Q2:79, Q2:101, and Q3:23.

<sup>131</sup> Mālik, *Muwattaʿa*, 1,198; ‘Abd al-Razzāq, *al-Muṣannaf*, 7:319:13,333f; Ibn Abī Shayba, *al-Muṣannaf* (1989 ed.), 9:353:29,352; Ibn Ḥanbal, *Musand* (1995 ed.), 9:328:9,807, 13:77:16,538, 94:16,575, 15:374:20,881, 16:20:21,446, 236:22,112, and 556:23,104; al-Bukhārī, *Ṣaḥīḥ*, 2,499:6,430 and 2,502:6,439; Muslim, *Ṣaḥīḥ*, 1,318:16 and 1,319:18; Abū Dāwūd, *Sunan*, 6:481:4,432; al-Nasāʾī, *al-Sunan*, 6:421:7,139, 423:7,144, and 433:7,162; al-Bayhaqī, *al-Sunan al-Kubrā*, 8:371:16,926, 392:16,990, and 398:17,003.

a fourth time.<sup>132</sup> After the fourth confession the man remained in place because the Prophet did not send him away. The Messenger of God gave the command and the man was stoned. The Messenger of God looked grieved, and once his grief subsided, he said to me:

O Abū Dharr, do you not see that God forgives the man who was just here and grants him a place in Heaven?<sup>133</sup>

Presumably both of these *ḥadīth* are about the same person. The offender confesses four time to *zinā*, after which the Prophet orders that he be stoned. We do not know the form of *zinā* that the man committed, only that he was subjected to the capital punishment.

In the second group of variants, the self-confessor is identified as ‘a man from the tribe of Aslam.’ These versions were also used by Muslim jurists to substantiate legal standards by which to prosecute and convict a *zinā* offender who could be subject to death by stoning. The *matn* reads:

A man from Aslam came to the Prophet and confessed to *zinā*. But the Prophet turned him away. The man returned and confessed to the Prophet again, and the Prophet turned him away for a second time. This happened until the man confessed four times, after which the Prophet asked him: Are you insane (*a bi-ka junūn*)?

The man responded: No.

Then the Prophet asked: Do you have *iḥṣān*?

The man responded: Yes.

Based on the responses, the Prophet ordered that he be stoned. The man was stoned in the *muṣallā*. When he felt the sharpness of the stones, he fled. But he was captured and stoned until he perished. The Prophet said something good and did not pray over him.<sup>134</sup>

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<sup>132</sup> The *matn* does not make reference to a second time.

<sup>133</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:353:29,352.; Ibn Ḥanbal, *Musnad* (1995 ed.), 16:20f:21,446.

<sup>134</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:320:13,337; for other variants, see Mālik, *Muwaṭṭa’*, 1196-8; ‘Abd al-Razzāq, *al-Muṣannaf*, 7:322:13,340 and 13,342; Ibn Ḥanbal, *Musnad* (1995 ed.), 11:456:14,399 and 16:453:22,773; al-Bukhārī, *Ṣaḥīḥ*, 2,498:6,429 and 2,500:6,434; Muslim, *Ṣaḥīḥ*, 1,320f:20f; Abū Dāwūd, *Sunan*, 6:477f:4,428 and 479f:4,429f; al-Tirmidhī, *al-Jāmi’*, 3:99f:1,429; al-Nasā’ī, *al-Sunan*, 6:415:7,127, 418:7,130, and 420-423:7,136-7,143; al-Bayhaqī, *al-Sunan al-Kubrā*, 8:380:16,955, 381f:16,957, 393f:16,991f, and 397:16,999

In addition to the four confessions, the legal elements of *iḥṣān* and competency are the focus of this *ḥadīth*. These conditions are significant in legal discussions on *zinā*, because they are required for a conviction.

In the third group of variants, the man is identified as Māʿiz b. Mālik al-Aslamī. In one version, the focus again is on the element of competency:

Māʿiz b. Mālik al-Aslamī came to Messenger of God and said: I have wronged myself because I have committed *zinā*. I wish for you to purify me.

The Prophet sent him away. The next day Māʿiz went to him again and said: Messenger of God, I have committed *zinā*.

The Prophet sent him away for a second time. The Prophet then sent for Māʿiz's people and asked: Do you know if Māʿiz is competent? Do you feel that he has any deficiencies?

They responded: We do not know anything bad about him. In fact, the only thing we do know is that when it comes to competence, he is the best among us.

Māʿiz came and confessed three times. Each time he confessed, the Prophet sent him away to his people. Three times the Prophet asked Māʿiz's people whether he was sane, and three times they informed him that there was nothing wrong with Māʿiz. When Māʿiz confessed for the fourth time in the presence of the Prophet, the Prophet had a hole dug up for Māʿiz, then ordered that he be stoned, and he was stoned.<sup>135</sup>

In a subgroup of variants about Māʿiz, the focus is on confirming that penetration did in fact occur. For example, in one report, the text reads:

When Māʿiz b. Mālik came to the Prophet, the Prophet said to him: Perhaps you kissed her, or winked at her, or maybe just stared at her?

Māʿiz responded: No, Messenger of God. I had sex with her.

Māʿiz did not speak metaphorically about what he did. On the basis of his response, the Prophet gave the order for Māʿiz to be stoned.<sup>136</sup>

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<sup>135</sup> al-Mawṣilī, *Musnad*, 10:352f:29,350.

<sup>136</sup> al-Bukhārī, *Ṣaḥīḥ* (1976 ed.), 2,502:6,438; Scott C. Lucas employs this *ḥadīth* and others to argue that the Prophet's conduct in cases involving a judgement for illicit sexual intercourse demonstrates his reluctance to apply the punishments, see generally Lucas, "Perhaps You Only Kissed Her?"

Mentioning the fact that Mā'iz did not speak metaphorically is not without purpose. Another report clarifies the deliberate comment:

Mā'iz went to the Prophet and said: Messenger of God, I have committed *zinā*.

The Prophet sent him away doing so repeatedly until Mā'iz confessed four times. Upon the fifth confession, the Prophet asked Mā'iz: Have you really committed *zinā*?

Mā'iz responded: Yes.

The Prophet then asked: Do you know what *zinā* is?

Mā'iz replied: Yes. I did something with her that is forbidden to me but permissible for a husband to do with his wife.

The Prophet then asked: So what do you want me to do?

Mā'iz replied: I wish for you to purify me.

The Messenger of God asked: Did you enter her like the way a needle enters into a kohl jar or a rod into something?

Mā'iz responded: Yes, Messenger of God.

On the basis of Mā'iz's answers, the Prophet ordered that Mā'iz be stoned, and he was stoned...<sup>137</sup>

As I discuss in Section Five, the parallel between sexual intercourse and a needle going into a kohl jar establishes legal precedent in *zinā* laws for both witness testimony and self-confessions. Witnesses or self-confessors must specify the manner in which the act of penetration occurred to satisfy one of the several legal elements necessary for conviction. Broadly, the case of the self-confessing male offender established stoning as the correct form of punishment for certain types of *zinā* on the authority of the Prophet.

While several reports circulated in which the self-confessor is identified as a man, in

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<sup>137</sup> al-Mawṣilī, *Musnad*, 10:524:6,140.

another collection of *ḥadīth*, the self-confessor is noted to be a woman. These reports are the focus of Chapter Three, but presently, I provide three versions. I categorize them by the way in which the woman is referenced. In one cluster, she is simply cast as ‘a woman:’

A pregnant woman came to the Messenger of God and informed him that she committed *zinā*.

The Messenger of God said to her: Go away until you give birth.

After she gave birth, she returned to the Prophet.

He said to her: Go away for as long as you are nursing him.

Once she weaned the child, she returned to the Prophet.

He said to her: Go and find someone to take care of him.

Once she entrusted someone with her child, she returned to the Prophet and he ordered that she be stoned, and she was stoned.<sup>138</sup>

In the second cluster, she is referenced as the Ghāmidīyya woman:

A Ghāmidīyya woman came to the Prophet and said: Messenger of God, I have committed *zinā* and I want you to purify me.

The Prophet sent her away and she came back the next day and said: Prophet of God, why are you sending me away? Perhaps you are doing the same with me as you did with Mā‘īz b. Mālik? By God, I am pregnant.

The Prophet responded: As for not implementing the punishment, it is because you are pregnant. Go and give birth.

After she gave birth, she returned to the Prophet with a swaddled baby boy and said: Look here, I have given birth.

The Prophet responded: Go and nurse him until he is weaned.

Once she weaned the baby, she returned to the Prophet with the boy, who had a small piece of bread in his hand, and said: Look here Prophet of God, I have weaned him and he is now eating solid food.

The Prophet placed the boy in the custody of Muslims and ordered that a chest-deep hole be dug up for her. Then he gave the order to the people and they stoned

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<sup>138</sup> Mālik, *Muwattaʿa*, 1,199.



her. Khālīd b. al-Walīd picked up a stone and threw it at her head and when her blood hit his face, he cursed her. The Prophet of God heard him and said: Stop Khālīd b. al-Walīd, by the One in whose hand is my soul, she offered a great repentance (*la qad tābat tawba*). If someone in debt made such an earnest repentance, then his debt would be forgiven.

Then the Prophet gave the order to the people and he and others prayed for her, after which she was buried.<sup>139</sup>

It is to be noted that the overlap between this Ghāmidīyya version and variants about Mā'iz points to the likelihood of cross-pollination between the *ḥadīth*. For example, in some narratives about the self-confessing man and woman, they both ask the Prophet to purify them in exactly the same manner.

In the third cluster about the female self-confessing offender, she is said to be from the tribe of Juhayna. The *matn* reads:

A woman from Juhayna, who was pregnant as a result of committing *zinā*, came to the Prophet. The Messenger of God ordered that her guardian take care of her and after she gives birth, to bring her back. This was done, and the Prophet ordered that she be tied using her clothes, and then stoned. She was stoned and the Prophet prayed over her.

‘Umar b. al-Khaṭṭāb said to the Prophet: Messenger of God, you prayed over her despite that fact she committed *zinā*?

The Prophet responded: Her repentance was such that it would have been sufficient for all people of Medina. Have you ever encountered anything more worthy than her sacrifice to God?<sup>140</sup>

Reports about the self-confessing woman also served as legal precedent for *zinā* laws.

Importantly, the narratives were used to affirm that the Prophet ordered stoning for Muslims who committed particular forms of illicit sexual intercourse.

In addition to the popular reports noted above, there are others that appear in only some

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<sup>139</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.) 9:361f:29,388.

<sup>140</sup> al-Ṭayālīsī, *Musnad*, 2:182:888.

of the *ḥadīth* and *akhbār* collections I examined. For example, the Companion al-Lajlāl [Abū al-‘Alā’ al-‘Āmirī] (d. unknown, Medina and Syria) is recorded to have said:

I was working in the market when a woman passed by with a young child. There was some hustle and bustle around her so I went to see what was going on. I reached the Prophet just as he was asking the woman: Who is this child’s father?

The woman remained silent. But then a young man opposite to her said: I am the father, Messenger of God.

He then stood next to her.

The Prophet asked the woman again: Who is this child’s father?

Again the young man responded: I am the father, Messenger of God.

Then the Messenger of God looked to some of the surrounding people and asked them about the young man and they responded: We do not know anything bad about him.

The Prophet then asked the young man: Are you a *muḥṣan*?

The young man responded: Yes.

The Prophet gave the order that he be stoned and he was stoned. For the stoning, we dug up a hole that was sufficiently deep. Then we threw stones at him until he perished. After he died, a man came by asking about him so we took him to the Prophet. We said: This man was asking about the young man we stoned.

The Messenger of God said: To God, he is better smelling than musk.

The inquirer turned out to be the young man's father, and we helped him wash the body, put it in a coffin, and buried him.

Someone in the *isnād* says: I do not know if al-Lajlāj said whether the Prophet prayed over him or not.<sup>141</sup>

The man in this report is identified as being a *muḥṣan*, meaning someone who has *iḥṣān*. This specific point is consequential because in the Islamic legal tradition, *iḥṣān* is a necessary requirement for clarifying the form of *zinā* subject to stoning. Therefore, according to this

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<sup>141</sup> Abū Dāwūd, *Sunan*, 6:483:4,435; Ibn Ḥanbal, *Musnad* (1992 ed.), 25:281f: 15,934; al-Nasā’ī, *al-Sunan*, 6:424f:7,146f and 435:7,165; al-Bayhaqī, *al-Sunan al-Kubrā*, 8:379f: 16,954.

narrative, someone who has *iḥṣān* and commits *zinā*, receives the punishment of stoning because the Prophet did the same.

In one *zinā* case, the Prophet seemingly applies a dual-penalty, the same punishment according to ‘Ubāda *ḥadīth* in which the Prophet makes a black letter law statement. According to the Companion Jābir b. ‘Abd Allāh (d. 78, Baghdād, Egypt, Medina, and Syria):

A man committed *zinā* with a woman, so the Prophet ordered that he be flogged. Then the Prophet was informed that the male offender was a *muḥṣan*, so the Prophet ordered that he be stoned.<sup>142</sup>

It is impossible to determine if the offender would have been flogged and stoned had the Prophet initially known about the offender’s status as a *muḥṣan*. Interestingly, Abū Dāwūd considered the *ḥadīth* to be *mawqūf* (a report attributable to a Companion, not the Prophet) and believed that it went only as far back as Jābir b. ‘Abd Allāh.<sup>143</sup> At any rate, it is yet another report in which the Prophet is recorded to have ordered stoning for a *zinā* offender who has *iḥṣān*.

### ***Akhbār* of cases in which Companions order the stoning punishment**

Several Companions are also recorded to have adjudicated cases involving illicit sexual intercourse in which they called upon the stoning punishment. For example, ‘Umar b. al-Khaṭṭāb is often noted to be someone who wished to implement stoning. In Mālik’s *Muwaṭṭa’*, one entry reads:

‘Umar b. al-Khaṭṭāb was brought a case involving a marriage contract (*nikāḥ*) that no one witnessed except a man and a woman. ‘Umar said: This *nikāḥ* was done in secret, something I do not permit it. If I could do something about it, then I would surely apply the punishment of stoning.<sup>144</sup>

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<sup>142</sup> Abū Dāwūd, *Sunan*, 6:485f:4,438; al-Bayhaqī, *al-Sunan al-Kubrā*, 8:378f:16,949f.

<sup>143</sup> Abū Dāwūd, *Sunan*, 6:485f:4,439f.

<sup>144</sup> Mālik, *Muwaṭṭa’*, 767f; for this *ḥadīth* and all subsequent ones relating to ‘Umar, I will provide additional references in Chapter 4.

In another case:

Khawla bint Ḥakīm came to ‘Umar b. al-Khaṭṭāb and said: Rabi‘ b. Umayyad had a sexual relationship with a midwife and impregnated her.

‘Umar b. al-Khaṭṭāb got up, grabbed his robe, and left angrily saying: This is *mut‘a*. If I could do something about it, then I would surely apply the punishment of stoning.<sup>145</sup>

In a case involving a confession:

A man came to ‘Umar b. al-Khaṭṭāb while he was in Syria and alleged that he found his wife with another man. ‘Umar sent Abū Wāqid to the man’s wife to inquire about the matter. When Abū Wāqid arrived at the man’s house, he found his wife with some women. He told her about what her husband said to ‘Umar b. al-Khaṭṭāb, and advised her not to corroborate it. In fact, to make the matter go away, he tried to make her say something that would be similar to what her husband accused her of, but not the same thing. She refused, and instead gave a confession. ‘Umar gave a ruling and she was stoned.<sup>146</sup>

According to another report:

A man was traveling with his wife's female slave and ended up having sex with her. His wife became jealous and mentioned the incident to ‘Umar b. al-Khaṭṭāb. ‘Umar asked the husband about the matter, who explained that his wife gifted the slave to him. ‘Umar responded: Then you better bring me proof of that or I am going to stone you.

The wife ended up admitting that she gifted the slave to her husband.<sup>147</sup>

The salient point of these reports is that ‘Umar was remembered to have wanted to, or did in fact, implement the stoning punishment for a range of sexual relations of which he did not approve.

‘Uthmān is also recorded to have presided over cases in which he imposed the stoning punishment for *zinā*. One report reads:

‘Uthmān b. ‘Affān was brought a woman who gave birth after six months, so he

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<sup>145</sup> Mālik, *Muwatta’a*, 778.

<sup>146</sup> Mālik, *Muwatta’a*, 1202.

<sup>147</sup> Ibid., 1,213f; similarly, ‘Umar is recorded to have said: If I were brought a man who had sex with his wife's slave, then I would surely stone him, see Ibn Abī Shayba, *al-Muṣannaḥ* (2008 ed.), 9:313:29,119.

ordered that she be stoned. ‘Alī b. Abī Ṭālib said to him: She is not subject to stoning. Indeed God says, “Pregnancy and care taking are for 30 months...<sup>148</sup>” and “Mothers may nurse their children for the entirety of two years, if they wish to complete the nursing period.<sup>149</sup>” Since pregnancy was only six months of the total allotted time, she is not subject to stoning.

‘Uthmān nevertheless sought her out and once he found her, had her stoned.<sup>150</sup>

This narrative appears to reflect debates about the extent to which pregnancy is sufficient for conviction. Importantly, the report also telescopes in the direction of stoning as an accepted Islamic practice. It is explicit that ‘Uthmān accepted stoning as part of Islam. It is also implied that ‘Alī accepted it as well, as he did not disapprove of the punishment itself, but rather when it could be implemented in the particular case. One thing is clearly conveyed from this *khavar*: stoning was accepted by prominent Muslim leaders.

As noted in the section on black letter law reports, ‘Alī claims to have flogged on the basis of the Qur’ān and stoned on the authority of the Prophet. In another report, his supposed remarks are combined with a detailed story about a self-confessing woman. The *matn* reads:

A pregnant woman from Hamdān was brought before ‘Alī. Her name was Shurāḥa, and she had committed *zinā*. ‘Alī remarked: Perhaps the man forcibly had sex with you.

She responded: No.

‘Alī then said: Perhaps the man had sex with you without you knowing it because you are a heavy sleeper.

She responded: No.

‘Alī then said: Perhaps your husband is one of our enemies and you are trying to protect him.

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<sup>148</sup> Q46:15.

<sup>149</sup> Q2:233.

<sup>150</sup> Mālik, *Muwaṭṭa’*, 1,204; ‘Abd al-Razzāq, *al-Muṣannaf*, 7:351:13,447; al-Bayhaqī, *Sunāl al-Kubrā*, 7:727f:15,551.

She responded: No.

‘Alī took the girl into custody until she gave birth. He then had the mother flogged 100 times on the fifth day, and stoned on *Jum‘a*. At the time of stoning, he instructed people to dig a hole for her near the market. The people then surrounded her and struck her with whips. ‘Alī said: This is not the same as stoning. If you do this, then some of you will kill one another because you will hit each other. Rather, make straight lines the way you do when performing communal prayers. Remember people, when the offender self-confesses, the first person to stone an offender is the Imām. If four witnesses testify against the offender, then the first people to stone are the witnesses, then the Imām, and then everyone else.

‘Alī hit Shurāḥa with a stone and made the *takbīr*. Then ‘Alī instructed the first row of people: Throw stones at her and move away.

He gave the same command to each successive line until she perished.<sup>151</sup>

As with other reports on stoning, this account reflects procedures that became legally relevant. For example, ‘Alī’s attempts to dissuade the offender from confessing became part of judicial procedure when someone confessed to *zinā*.<sup>152</sup> In sum, the *khavar* about ‘Alī harmonizes with the report about his black letter law statement, and signals the use of a dual-penalty, part of which is lapidation.

I have now presented several Prophetic and non-Prophetic reports involving cases of illicit sexual intercourse in which stoning is prescribed. Three themes dominate these narratives. *Zinā* is prohibited, certain forms are punishable by stoning, and offenders are stoned. In the next section, I turn to an analysis of *thayyib* and *iḥṣān*, the legal elements necessary for clarifying the form of *zinā* subject to the capital punishment.

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<sup>151</sup> ‘Abd al-Razzāq, *al-Muṣannaḥ*, 7:326f:13,350.

<sup>152</sup> For example, see al-Qudūrī, *Mukhtaṣar*, 198.

#### Section 4. *Thayyib* and *Iḥṣān*

In narratives about stoning, the term *thayyib* or *iḥṣān* helped clarify the type of *zinā* that warranted lapidation. In other words, when either of these words appear in a *matn*, we become aware of the type of *zinā* that mandates stoning. *Thayyib* is used only once in the Qur’ān (Q66:5). The term *iḥṣān* is never employed in the Qur’ān within the context of *zinā*. To establish the legal element of *iḥṣān*, Muslim legal authorities reformulated the Qur’ānic usage of *aḥṣana* and its verbal and nominal derivatives. In the proceeding subsections, I explain the respective meanings of these two elements and the resulting implications of their usage in stoning *ḥadīth*. I contend that by discharging *thayyib* or *iḥṣān* as legal stratagems, Muslim legal authorities seemingly overlooked certain inconsistencies which were left unresolved. When exposed, such points of disconnect intimate that Muslim jurists were attempting to justify a punishment that may have not always been part of the Islam. Hence, the use of *thayyib* or *iḥṣān* suggests that the Qur’ānic use of *zinā* was different than the legal use of *zinā*. Nevertheless, these two legal elements undergirded the conditions under which stoning became an operable punishment in the Islamic legal tradition.

##### *Thayyib*

In the Qur’ān, *thayyib* is used only once, and as a contrast to virgins. According to Q66:5: “... who turn to God in repentance and worship God, give to fasting, whether *thayyibāt* or *abkār* (virgins).” This verse makes it clear only that a *thayyib* is a non-virgin. Presumably, then, *thayyibs* can also be divorcés or widows from previously consummated marriages. What about men? *Lisān al-‘Arab* includes one definition of *thayyib* that excludes men, and another that

includes men who have had sexual intercourse.<sup>153</sup> Ultimately, for Muslim legal authorities men could also be *thayyibs*, and the status is on the basis of sexual relations. In short, a *thayyib* is a non-virgin and can be of several types, including men who are *not married*.

*Thayyib* was also understood to imply a particular level of agency on the part of an individual. For example, the Prophet is recorded to have said that a *thayyib* is a woman who has control over her own affairs.<sup>154</sup> In another *ḥadīth*, a *thayyib* complained to the Prophet that her father agreed to a marriage contract she did not want. The Prophet granted her the right to do as she wished in the matter.<sup>155</sup> The Meccan jurist ‘Aṭā’ b. Abī Rabāḥ (d. 115) opined that a father may only agree to a marriage contract on behalf of a virgin daughter, and not on behalf of a *thayyib* daughter.<sup>156</sup> In sum, the *thayyib* status indicates a higher level of agency that has devolved upon a person.

Besides implying agency, the term can also be used to denote a person of a mature age.<sup>157</sup> For example, Mālik (d. 179) noted that a *shaykh*, a person of venerable age, is synonymous with a *thayyib*.<sup>158</sup> Therefore, for Mālik and those who agree with him, *thayyib* can include persons who may be virgins, but are *thayyib* due to their age.

In the context of *zinā*, being a *thayyib* implies two important things. First, a *thayyib* is understood to have ascertained a higher level of responsibility. For some Muslim jurists, this

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<sup>153</sup> Ibn Manẓūr, *Lisān al-‘Arab*, 1:248.

<sup>154</sup> ‘Abd al-Razzāq, *al-Muṣannaf* 6:142:10,284, 143:10,286; al-Ḥumaydī, *Musnad* 1:452:527.

<sup>155</sup> ‘Abd al-Razzāq, *al-Muṣannaf* 6:145:10,305.

<sup>156</sup> ‘Abd al-Razzāq, *al-Muṣannaf* 6:144:10,294.

<sup>157</sup> Ibn Manẓūr, *Lisān al-‘Arab*, 1:248.

<sup>158</sup> Mālik, *Muwatta’*, 1204. Mālik’s opinion was within the purview of reports according to which a stoning verse existed. The purported verse stated that a *shaykh* and *shaykha* are to be stoned. Mālik said that a *thayyib* and *shaykh* are the same thing. For a more detailed examination of this verse, see Chapter Four.



capability became part of the manner by which to condemn a person who committed an offense. Specifically, in the case of *zinā* it means *thayyibs* are given a more severe punishment (stoning) than virgins (who are to be flogged). Second, because *thayyib* includes *any* person who is a non-virgin or a virgin *shaykh*, then an unmarried *thayyib* could theoretically be stoned. Thus, no longer are adulterers the only offenders. It is in this way that the use of the modern definition of adultery is not wholly analogous to *zinā* that is deemed a capital offense in the Islamic legal tradition.<sup>159</sup> In sum, Muslim legal authorities attempted to clarify the type of person and the form of *zinā*, that would be subject to stoning. But the implications of *thayyib* appear to have been far-reaching. This may be one reason why Muslim jurists incorporated the legal element of *iḥṣān*. It provided more flexibility in defining the legal status, and by extension the nature of *zinā*, which mandated stoning.

### ***Iḥṣān***

The verbal-noun *iḥṣān* comes from Form IV of *ḥaṣana*, *aḥṣana*, which means “to make safe.”<sup>160</sup> A *muḥṣan*, the passive particle, means someone who is protected. The Qur’ān does not employ *iḥṣān*, and below I discuss the significance of its absence from the scripture. But first, I provide some examples of the verb’s and passive participle’s usages in the Qur’ān.

The Qur’ānic use of *aḥṣana* can express chastity from *illicit* sexual intercourse or sexual intercourse in general, without a direct connection to marriage. For example, in Q66:12 it states “...and Mary, daughter of ‘Imrān. She guarded her chastity (*aḥṣanat farjahā*).”<sup>161</sup> Given what is

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<sup>159</sup> In its modern usage, adultery connotes voluntary sexual intercourse by a married person with someone other than their spouse.

<sup>160</sup> Ibn Manẓūr, *Lisān al-‘Arab*, 13:119.

<sup>161</sup> On reference to Mary, see also Q31:91.

traditionally understood about Mary, *aḥṣanat* here means abstaining completely from sexual relations. This connotation is different from the passive participle's usage of *aḥṣana* in Q24:4: "And those who accuse *al-muḥṣanāt* of sexual impropriety and do not produce four witnesses..." Here, unlike in the case of Mary, it does not seem that *al-muḥṣanāt* are only those who choose total abstinence. Rather, they could be women who can partake in sexual relations.

According to another verse, *al-muḥṣanāt* includes non-Muslim women. Q5:5 reads:

Today all good things have been made lawful for you. The food of the People of the Book is lawful for you as your food is lawful for them. So are *al-muḥṣanāt* from among the believing women and *al-muḥṣanāt* of the people who were given the Scripture before you...

*Al-muḥṣanāt* signifies women who have good public standing - protected from a sullied reputation - and who may or may not be virgins. Importantly, they can also be non-Muslims. The exegete al-Muqātil (d. 150) remarks that "*al-muḥṣanāt* from among the believing women" is a reference to chaste women with good public standing, and "*al-muḥṣanāt* of the people who were given the Scripture," means free Jewish and Christian women who are chaste with good public standing.<sup>162</sup> Therefore, for al-Muqātil *al-muḥṣanāt* represents *both* Muslim and non-Muslim women with good public standing. Implied in his exegetical comments is that *al-muḥṣanāt* could encompass virgins. In sum, the aforementioned Qur'ānic verses and al-Muqātil's remarks indicate that *al-muḥṣanāt* do not have to be married, be of a particular religion, or have sexual experience.

Additional definitions of *al-muḥṣanāt* can be understood from both pre-modern exegetical literature and modern translations of another verse. In Q4:22-24 it states:

Do not marry women that your fathers married - with the exception of what is in the past - this is indeed a shameful thing to do... You are forbidden to take as wives your mothers, daughters, sisters... stepdaughters who are in your care... (24) and *al-muḥṣanāt* from among the women other than your slaves...

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<sup>162</sup> al-Muqātil, *Tafsīr* 1:455.

In the verses previously examined, *al-muḥṣanāt* are women eligible to be married. But here, *al-muḥṣanāt* also represents a category of women with whom marriage is impermissible. It is also unclear from Q4:24 exactly on what basis *al-muḥṣanāt* are restricted from marriage. The contemporary Qur’ānic translator, Abdel Haleem, defines *al-muḥṣanāt* as “women already married.” This is one meaning provided by al-Ṭabarī (d. 310), and the definition with which he concurs.<sup>163</sup> The exegete Mujāhid (d. 100-4) cites a purported opinion of the Companion ‘Abd Allāh b. ‘Abbās (d. 68). Reportedly, Ibn ‘Abbās remarked that the term is a specific reference to married non-Muslim women who are prisoners of war.<sup>164</sup> Al-Ṭabarī (d. 310) concurs by noting reports containing opinions of individuals other than Ibn ‘Abbās.<sup>165</sup> Al-Muqātil (d. 150) writes that *al-muḥṣanāt* means any women with whom marriage is prohibited on the basis of a connection to either the father’s or mother’s side of the family.<sup>166</sup> While al-Ṭabarī does not repeat the patrilineal and matrilineal associations, he does provide a set of reports that affirm al-Muqātil’s opinion.<sup>167</sup> Clearly, various interpretations exist about *al-muḥṣanāt* in this verse. Consequently, there are two important points for consideration. First, slaves could be among *al-muḥṣanāt* since they are included in the Qur’ānic verse, and not specifically proscribed in exegetical commentaries. Second, *al-muḥṣanāt* includes a particular category of women who

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<sup>163</sup> al-Ṭabarī, *Jāmi* ‘ 8:155-8 and 161f; for al-Ṭabarī’s own opinion, see *ibid.*, 165.

<sup>164</sup> Mujāhid, *Tafsīr*, 271; for the same exegetical comment, see also Ibn Wahb (d. 197), *Tafsīr* 1:80:179; Ibn Abī Shayba provides a number of Prophetic and non-Prophetic reports indicating the same opinion, see Ibn Abī Shayba, *al-Muṣannaf* (1989 ed.) 3:537f:16,888-96.

<sup>165</sup> al-Ṭabarī, *Jāmi* ‘ 8:151-5; he provides a single report going to Ibn ‘Abbās according to which Ibn ‘Abbās said he did not know to who *al-muḥṣanāt* are, see al-Ṭabarī, *Jāmi* ‘ 8:165:9,013.

<sup>166</sup> al-Muqātil, *Tafsīr* 1:366.

<sup>167</sup> al-Ṭabarī, *Jāmi* ‘ 8:158-60.

may or may not already be married. In summary, according to Q4:24 *al-muḥṣanāt* expresses the notion of protection that may not necessarily be based on marriage, sexual experience, or the legal status of being a free person versus a slave.

An examination of the aforementioned verses about *aḥṣana* and *al-muḥṣanāt* suggests that the Qur’ānic usage primarily connotes a sense of protection or shielding from negative public standing. But it can also mean abstinence, such as in the case of Mary. In other circumstances, *al-muḥṣanāt* could be non-virgins or women who are unmarried. Importantly, for Q4:24, exegetes and present-day translators *read* into *al-muḥṣanāt* the notion of marriage. This interpretation is significant, because it conveys that marriage can make someone a *muḥṣana* (or a *muḥṣan* for that matter). In the Islamic legal tradition, Muslim legal authorities drew upon marriage, along with protection and licit sexual intercourse as reflected by *aḥṣana* and *al-muḥṣanāt*, to develop the legal element of *iḥṣān*. This understanding became central for distinguishing the type of *zinā* subject to stoning.

Extensive legal debates emerged about the possible ways in which a person could acquire *iḥṣān*.<sup>168</sup> This is to be expected. But in my view, these divergent opinions reveal that a transition occurred from the Qur’ānic use of *aḥṣana* and its passive participle *muḥṣan*, to the legal community’s use of *aḥṣana*’s verbal noun, *iḥṣān*. This development had the effect of changing the Qur’ānic meaning of *zinā* to a *fiqh* connotation of *zinā*.

I now examine some legal opinions to support my assertion. The Meccan jurist ‘Aṭā’ b. Abī Rabāḥ (d. 115) states:

*Iḥṣān* is when a man has sexual intercourse with a woman. Without it there is no *iḥṣān*, and there is no stoning until witnesses testify that they saw the male member

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<sup>168</sup> For an analysis on the legal discussions regarding *iḥṣān*, see generally Burton, “The Meaning of ‘IHSAN’.” Burton’s analysis is based on sources after 200 AH, by which time the concept of *iḥṣān* had already received considerable attention among Muslim jurists.

disappear into the female.<sup>169</sup>

For ‘Aṭā’, *iḥṣān* is a function of sexual intercourse, meaning that whenever a man or a woman has sex, they acquire *iḥṣān*. This means that irrespective of marital status, a person with *iḥṣān* could become subject to the capital punishment. This consequence is parallel to the one that emerges from the use of *thayyib*. And as noted above, the Qur’ānic use *al-muḥṣanāt* did not necessarily encompass sexual experience. Therefore, ‘Aṭā’s opinion diverges from the Qur’ān’s usage of *aḥṣana* and *al-muḥṣanāt*. Nevertheless, his view does clarify the type of *zinā* punishable by stoning. The Syrian jurist Ibn Shihāb al-Zuhrī (d. 124) comments:

If a man commits *zinā* and has *iḥṣān* but has not had sexual relations with his wife, he is to be flogged 100 times, not stoned.<sup>170</sup>

For al-Zuhrī, the connection between sexual intercourse and *iḥṣān* remains, and marriage alone does not serve as the legal element for implementing the capital punishment.<sup>171</sup> This means adultery in the modern sense can occur without the offender being stoned<sup>172</sup>; without consummating the marriage, the spouse can have sex outside of marriage and be subject to flogging only. In al-Zuhrī’s view, it is only after consummation has taken place within an active marriage does stoning become obligatory. The upshot of al-Zuhrī’s opinion is that it prevents the punishment’s applicability to someone who has *iḥṣān*, is married, and has illicit sexual intercourse without consummating a marriage. In sum, the legal opinions of ‘Aṭā’ and al-Zuhrī

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<sup>169</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:304:13,286.

<sup>170</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:304f:13,278.

<sup>171</sup> The same opinion is noted by the Companion Jābir b. ‘Abd Allāh who is recorded to have said: When a virgin man gets married and commits *zinā* before he consummates his marriage, he is flogged, not stoned. See ‘Abd al-Razzāq, *al-Muṣannaf*, 7:304:13,277.

<sup>172</sup> Al-Zuhrī reaffirms this position in another opinion: If a man marries a woman but then commits *zinā* before he consummates the marriage with her, then he is not considered to have *iḥṣān*. See ‘Abd al-Razzāq, *al-Muṣannaf*, 7:305:13,279.

are examples of particular ways in which the meaning of *iḥṣān* developed outside the Qur'ān's linguistic use of the verb *aḥṣana* and its passive participle. While gaps result from the two jurists' definitions, the legal positions reflect attempts to resolve the *zinā* subject to stoning.

Muslim legal authorities also deliberated about a Muslim's ability to have *iḥṣān* on the basis of marriage to a non-Muslim. 'Aṭā' opined that marriage to a woman belonging to the People of the Book could bring about *iḥṣān*.<sup>173</sup> The same opinion was held by al-Zuhrī.<sup>174</sup> However, Iraqi jurists al-Nakha'ī (d. 96) and al-Sha'bī (d. 102-9) commented that for the purpose of applying the stoning punishment, marriage to a Jewish or a Christian woman could not result in *iḥṣān* for a free Muslim man.<sup>175</sup> Their fellow Iraqi jurist al-Ḥasan al-Baṣrī (d. 110, Basra) disagreed, and remarked that marriage to a Jewish or a Christian woman could bring about *iḥṣān* for a Muslim.<sup>176</sup> It is unclear whether these jurists believed consummation must take place. Regardless, the divergent opinions indicate that even into the second century, *iḥṣān* continued to be a debated matter while retaining its centrality as a legal element for stoning.

Whether non-Muslims could have *iḥṣān* prior to converting to Islam, or retaining it after their conversion, was also discussed by Muslim legal authorities. This is unsurprising given that as noted above in Q5:5, women from previous Scriptures could be *al-muḥṣanāt*. The Iraqi jurist Qatāda b. Di'āma (d. 117-8) opined:

If a man has *iḥṣān* as a non-Muslim and then converts to Islam, he does not have *iḥṣān* until he has sexual relations as a Muslim.<sup>177</sup>

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<sup>173</sup> 'Abd al-Razzāq, *al-Muṣannaf*, 7:308:13,295 and 13,297; Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:349:29,336.

<sup>174</sup> 'Abd al-Razzāq, *al-Muṣannaf*, 7:308:13,296 and 13,298.

<sup>175</sup> 'Abd al-Razzāq, *al-Muṣannaf*, 7:308:13,300f; Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:348:29,328.

<sup>176</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:349:29,335.

<sup>177</sup> 'Abd al-Razzāq, *al-Muṣannaf*, 7:308f:13,302.

It is unclear from Qatāda's comment if, after conversion, sexual intercourse must take place within or outside of marriage. The implication of one versus the other is obvious. Al-Nakha'ī entirely dismissed the notion of *iḥṣān* for non-Muslims. For him, it can only be established after a person becomes a Muslim and has sexual intercourse.<sup>178</sup> In contrast, al-Zuhrī provides a more refined opinion:

If a non-Muslim gets married, consummates his marriage, converts to Islam, and commits *zinā*, then he is stoned on the basis of his *iḥṣān* and because he is originally from among the People of Book. If he is not from among the People of the Book, then he is not stoned.<sup>179</sup>

For al-Zuhrī, a non-Muslim must belong to the People of the Book; he cannot be just *any* non-Muslim. It seems that al-Baṣrī agreed, because he commented that *iḥṣān* of a Jew or a Christian prior to their conversion is the same as *iḥṣān* of a Muslim.<sup>180</sup> These varying legal opinions show that religion could play a role in determining *iḥṣān* for a person. Consequently, the definition restricts those who can be stoned when compared to individuals designated as *thayyibs*. But at the same time, this also means that those who are non-virgins prior to their conversion to Islam, and not from among the People of the Book, are not subject to capital punishment. This is striking given that the transgression is the same after the person becomes Muslim. The range of opinions about the *iḥṣān* for a particular category of non-Muslims before and after their conversion to Islam, again demonstrates that Muslim jurists were attempting to define a term outside its Qur'ānic usage.

The definition of *iḥṣān* continued to be debated beyond the Islamic late antiquity (after c.

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<sup>178</sup> 'Abd al-Razzāq, *al-Muṣannaf*, 7:308f:13,303.

<sup>179</sup> 'Abd al-Razzāq, *al-Muṣannaf*, 7:309:13,304; Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:340:29,270.

<sup>180</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:340:29,271.

187). For example, the Ḥanafī jurist al-Shaybānī (d. 189) commented that *iḥṣān* can only exist for those Muslims who are free, sound-minded, post-pubescent, and have licit sexual relations.<sup>181</sup> Al-Shāfi‘ī (d. 204) opined that a Muslim becomes a *muḥṣan* and is subject to stoning only after he consummates a marriage with a free Muslim, Christian, or Jewish woman.<sup>182</sup> This opinion appears to echo al-Zuhrī’s (d. 124) position. Al-Shāfi‘ī also remarked that Jews and Christians who have *iḥṣān* and commit *zinā* either before or after conversion to Islam are to be stoned.<sup>183</sup> With a focus on women, the Mālikī jurist Saḥnūn (d. 240) noted that according to Mālik (d. 179), a female Muslim who gets married without the permission of a guardian, and then consummates her marriage, does *not* acquire *iḥṣān*.<sup>184</sup> These opinions demonstrate that over time, *iḥṣān* became progressively interconnected with marriage. This interlink is in contrast to the Qur’ānic usages of *aḥṣana* or *muḥṣanāt*, which as previously noted, were not a function of marriage. Regardless, Muslim legal authorities employed *iḥṣān* in efforts to provide clarity to the forms of *zinā* that justified the use of the stoning punishment, and mitigate some of the issues that emerged with *thayyib*.

Discussions about slaves furthers the disparity between the Qur’ānic use of *aḥṣana*, its noun variants, and definitions of *iḥṣān*. I will first begin with the Qur’ānic use of *al-muḥṣanāt* in reference to slaves. It appears that a particular category of females slaves can be *al-muḥṣanāt*. We observed this in Q4:24, and according to Q24:33, “...do not force your slave-girls into prostitution, when they themselves wish to remain honorable (*in aradna taḥaṣṣunan*)....” For

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<sup>181</sup> al-Shaybānī, *Jāmi‘ al-Ṣaghīr*, 279.

<sup>182</sup> al-Shāfi‘ī, *al-Umm*, 7:391.

<sup>183</sup> al-Shāfi‘ī, *al-Umm*, 5:709. For al-Shāfi‘ī, a person cannot have *iḥṣān* at one time and lose it at another time, see *ibid*.

<sup>184</sup> Saḥnūn, *al-Mudawwana*, 2:203.



female slaves, the verbal-noun of Form V *taḥaṣṣana* connotes being protected or shielded from illicit sexual relationships. Al-Muqātil comments that the term means a refusal to commit grave offenses (*fawāḥish*)<sup>185</sup>, which includes *zinā*. The exegete Ibn Wahb (d. 197) provides a specific occasion for the verse's revelation. Supposedly an individual, upon getting drunk, would have sex with his two female slaves. One night he desired to do the same but was prevented from doing so, because the slaves had converted to Islam and wished to maintain their chastity (against illicit sexual relations).<sup>186</sup> Based on Q24:33, and al-Muqātil's and Ibn Wahb's glosses, the verbal noun appears to connote protection *for slaves* against illicit sexual relations. In short, slaves are included in the Qur'ān's use of *al-muḥṣanāt*.

Another verse corroborates that *al-muḥṣanāt* subsumes slaves in addition to free individuals. Q4:25 states, “*fa idhā uḥṣinna...*,” which is a reference to female slaves. According to al-Muqātil, *uḥṣinna* means female slaves who have converted to Islam.<sup>187</sup> This is the same position held by Ibn Wahb. Al-Ṭabarī remarks that there are two readings of Form IV of *aḥṣana* in Q4:25. If it is read as *aḥṣanna*, then for al-Ṭabarī the subject of the verse are those female slaves who have converted to Islam.<sup>188</sup> Al-Ṭabarī notes this is the opinion of the Companion ‘Abd Allāh b. Mas‘ūd (d. 32).<sup>189</sup> If *aḥṣana* is conjugated as *uḥṣinna*, then for al-Ṭabarī the subject of the verb are those female slaves who are married.<sup>190</sup> Al-Ṭabarī notes this is the opinion

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<sup>185</sup> al-Muqātil, *Tafsīr* 3:198.

<sup>186</sup> Ibn Wahb, *Tafsīr* 1:129:297.

<sup>187</sup> al-Muqātil, *Tafsīr* 1:367.

<sup>188</sup> al-Ṭabarī, *Jāmi* ‘ 8:195.

<sup>189</sup> al-Ṭabarī, *Jāmi* ‘ 8:199:9,088 and 200:9,090-2; according to other reports provided by al-Ṭabarī, other Iraqi and Hījāzī legal authorities held the same opinion, see *ibid.*, 200f:9,093-9,099.

<sup>190</sup> al-Ṭabarī, *Jāmi* ‘ 8:195.

of the Companion ‘Abd Allāh b. ‘Abbās (d. 68).<sup>191</sup> Ibn ‘Abbās’ opinion would be in contradistinction to Qur’ānic verses, because in several cases, *al-muḥṣanāt* was not used in connection with marriage. In short, divergent attitudes existed about the meaning of *aḥṣana* in relation to slaves. While the opinions do indicate that female slaves could be *al-muḥṣanāt*, the post-Prophetic community disagreed about how they could be categorized as such.

Even after the turn of the first century, Muslim authorities continued to debate about the ways in which *iḥṣān* could apply to slaves. According to ‘Aṭā’ (d. 115), marriage does not result in *iḥṣān* for a female slave.<sup>192</sup> He also said that a marriage between a male slave and a free woman does not bring about *iḥṣān*.<sup>193</sup> Similarly, al-Nakha‘ī (d. 96), al-Sha‘bī (d. 102-9), and al-Ḥasan al-Baṣrī (d. 110) opined that a relationship between a free man and a slave cannot lead to *iḥṣān* for either party.<sup>194</sup> Qatāda (d. 117-8) disagreed by commenting that a female slave could attain *iḥṣān* through a relationship with a free male.<sup>195</sup> Al-Nakha‘ī stated that in cases involving a relationship between a male slave and a free woman, the woman could not attain *iḥṣān*, whereas al-Ḥasan thought that she could.<sup>196</sup> A number of other legal opinions are recorded about the possible ways in which *iḥṣān* can result from a relationship between a free person and a slave, or

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<sup>191</sup> al-Ṭabarī, *Jāmi* ‘ 8, 201f:9,100-02.

<sup>192</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:306:13,283 and 307:13,289.

<sup>193</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:307:13,290.

<sup>194</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:306:13,284f; for al-Nakha‘ī’s view, see also Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:347:29,319; for al-Ḥasan’s opinion, see also Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:347:29,321; I deliberately use relationship because it should be noted that ‘Abd al-Razzāq lists the opinions of these jurists under the chapter heading, “Marriage to a female slave does not constitute *iḥṣān*.” ‘Abd al-Razzāq is presuming that such opinions are in relation to a marriage contract. He may be correct, but the reader should be aware of this point. Relationship could mean either marriage, sexual intercourse, or both.

<sup>195</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:306:13,286; al-Ṭabarī, *Jāmi* ‘ 8:202:9,106.

<sup>196</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:307:13,291f; al-Ṭabarī, *Jāmi* ‘ 8:202:9,105.

between two slaves.<sup>197</sup> In sum, the Qur’ān, exegetical commentaries and legal authorities conceived of slaves as *al-muḥṣanāt*. But the diversity of legal opinions about how a slave could acquire *iḥṣān* is material. It again demonstrates that despite the term’s centrality to *zinā* laws, Muslim legal authorities were not in agreement about its meaning. This suggests that a post-Qur’ānic legal element was used to explicate and justify a specific type of *zinā* for stoning.

If slaves could have *iḥṣān*, then according to the Islamic legal tradition, they should be subject to the capital punishment.<sup>198</sup> But stoning of slaves with *iḥṣān* is complicated by Q4:25’s dependent clause, according to which slaves who are *al-muḥṣanāt* are to receive half the punishment of free *al-muḥṣanāt*: “...*fa-in atayna bi-fāḥishatin fa-alayhinna niṣfu mā ‘alā al-muḥṣanātin min al-‘adhāb...*”<sup>199</sup> If death by stoning is on the basis of *iḥṣān*, which theoretically includes *al-muḥṣanāt* slaves, then then punishment for *al-muḥṣanāt* slave *zinā* offenders is irreconcilable with the Qur’ānic prescription. How can slaves receive half of a capital punishment? It turns out that Ibn Mas‘ūd (d. 32) is recorded to have commented, without any explanations, that slaves are mandated to receive 50 lashes - half the penalty of 100 lashes according to Q24:2 - when they commit *zinā*.<sup>200</sup> His remark ostensibly suggests that free *al-muḥṣanāt* are to receive 100 lashes, which intimates that *zinā* in the Qur’ān is the *zinā* in the Islamic legal tradition that became a capital offense. This legal position also indicates that

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<sup>197</sup> For example, ‘Abd al-Razzāq, *al-Muṣannaf*, 7:307-9:13,290-304; Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:346-8:29,317-27.

<sup>198</sup> For Burton’s analysis of how certain jurists conceived of *iḥṣān*’s applicability to slaves, see Burton, "The Meaning of 'IHSAN'," 50f, 54f, and 62-72.

<sup>199</sup> I intentionally provide the Arabic because translations and explanations of particular words are of consequence. For example, in the case of the English translation, Abdel Haleem’s translation reads: “If they (the female slaves) commit *adultery* when they are married, their punishment will be half that of free women.”

<sup>200</sup> For example, see al-Ṭabarī, *Jāmi‘*, 8:200:9,089 and 203:9,108; al-Shaybānī, *Kitāb al-Āthār*, 533:615.

stoning was not within his purview when he made the opinion. But if he was aware of the capital punishment and its applicability to Muslim *zinā* offenders, then his judgment complicates the Qur’ānic usage of *al-muḥṣanāt*. It means there existed a category of *al-muḥṣanāt* that stood separate and apart from any of the ones employed by the Qur’ān. This means that the group which was subject to stoning was conceived of *outside* the Text. Furthermore, Ibn Mas‘ūd’s legal position indicates that marriage, sexual intercourse, or both, have no relation to the acquisition of *iḥṣān* for slaves. But a number of Muslim legal authorities are recorded to have opined that marriage *is* necessary to apply the punishment of 50 lashes to slaves.<sup>201</sup> Perhaps because of these inconsistencies, the Companion ‘Abd Allāh b. ‘Umar (d. 73) is recorded to have said that *zinā* cases involving married slaves need to be raised to the executive authority.<sup>202</sup> Ultimately, irrespective of a slave’s *iḥṣān*, the 50-lash punishment was applied. This means that slave’s *iḥṣān* was somehow different than that of a free individual’s *iḥṣān*. In my view, the punishment for *al-muḥṣanāt* slaves per the Qur’ān creates another complication in the development of *iḥṣān*’s definition and its use for the justification of stoning as punishment.

For many Muslims, Ibn Mas‘ūd’s opinion retained precedent value. For example, al-Muqātil (d.150) and al-Ṭabarī (d. 310) noted that irrespective of a slave’s *iḥṣān*, they are to receive 50 lashes.<sup>203</sup> The jurist Qatāda (d. 117-8) held the same view.<sup>204</sup> ‘Alī b. Abī Ṭālib (d. 40), ‘Abd Allāh b. ‘Umar (d. 73), Anas b. Mālik (d. 93), Ḥammād b. Sulaym (d. 120, Kufa), and al-Zuhrī (d. 124) among others, agreed that slaves do not receive the capital punishment of

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<sup>201</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:273:28,864-7.

<sup>202</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:395:13,610.

<sup>203</sup> al-Muqātil, *Tafsīr* 1:367f; al-Ṭabarī, *Jāmi‘*, 8:203.

<sup>204</sup> al-Ṭabarī, *Jāmi‘*, 8:204:9,109.

stoning.<sup>205</sup> By the last quarter of the second century, the dominant view was that slaves who commit *zinā* are to receive 50 lashes. This was the opinion of al-Shaybānī (d. 189)<sup>206</sup> and al-Shāfi‘ī (d. 204).<sup>207</sup> Inevitably, the dependent clause of Q4:25 raised challenges for Muslim legal authorities. Its connection to *iḥṣān* and the acceptable punishment for slaves was mitigated with Ibn Mas‘ūd’s opinion.

I now have provided an overview of the different ways in which the terms *thayyib* and *iḥṣān* were conceived. The Qur’ān employed *thayyib* to signify non-virgins, which could possibly include divorcés and widows. According to the opinion of Mālik among others, a *thayyib* could also be a person of mature age, a *shaykh*. These meanings have unintended consequences for the purpose of clarifying the form of *zinā* subject to stoning. For example, non-virgin unmarried individuals, or virgins of mature age, could be executed for fornication despite the Islamic legal tradition’s designation of 100 lashes for this particular offense. As a way to mitigate such incidental outcomes, Muslim legal authorities likely began to use the legal element of *iḥṣān*. This was done through the reformulation of the Qur’ān’s use of *aḥṣana* and its derivatives. But some legal opinions about what constitutes *iḥṣān* is not only inconsistent with the Qur’ānic usage of *aḥṣana* or *al-muḥṣanāt*, but also has inadvertent results. This comes into sharp focus when considering the punishment for slaves who have *iḥṣān* and commit *zinā*. Per the Qur’ān, *al-muḥṣanāt* slaves are to receive half the lashes for the *zinā* offense if we are to presume 100 lashes for *al-muḥṣanāt* free Muslims. Indeed, several Muslim jurists agreed that slaves with *iḥṣān* are to receive 50 lashes. But for free individuals, the punishment became death

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<sup>205</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:312f.13,314-7; for other authorities who affirmatively prescribed 50 lashes for slaves, see Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:287:27,955-7.

<sup>206</sup> al-Shaybānī, *Kitāb al-Āthār*, 534.

<sup>207</sup> al-Shāfi‘ī, *al-Umm*, 6:551 and 7:392.

by stoning. Therefore, it seems that according to the Islamic legal tradition, the *iḥṣān* of a free person is different than the *iḥṣān* of a slave. But in the Qur’ān, *al-muḥṣanāt* included both free and slave women, meaning, they were one in the same.

According to the Islamic legal tradition, the Qur’ānic prescription of 100 lashes became applicable to virgins and fornicators. By drawing a parallel between slaves and virgins, it appears that agency was part of the calculus when determining who was subject to stoning. It seems certain Muslim jurists were expressing that once a person is a non-virgin, a particular level of moral responsibility devolves upon them. Supposedly, both slaves and virgins lack the same agency. Therefore, within the context of sexual mores, they should not be held to the same standards as non-virgins. Such legal maneuvering resulted in a differentiation of sanctions that could only be accomplished if *zinā* was conceived of as having multivalent meanings. This appears to have been an unlikely case in the Qur’ān, especially in consideration of its use of *al-muḥṣanāt*.

As with *thayyib*, another complication with *iḥṣān* emerges in relation to divorcés and widows. Specifically, some Muslim legal authorities from the Islamic late antiquity did not clearly articulate cases in which a person acquires *iḥṣān* and is then divorced or widowed.<sup>208</sup> In other words, it is unclear if a person can lose their *iḥṣān* status. As with *thayyib*, the inability lose one’s status means that someone who has *iḥṣān* and is a divorcé or a widow could be subject to the capital punishment for the act of fornication.

Treating certain varieties of *zinā* as capital offenses accommodated Prophetic and non-Prophetic reports in which stoning was used on Muslim *zinā* offenders. Multivalent definitions of *zinā* also made legal sense. The Muslim legal community attempted to qualify the type of *zinā* in

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<sup>208</sup> The exception is al-Zuhrī, who, as it will be recalled, opined that a person only has *iḥṣān* once they consummation takes place in an active marriage.

stoning reports on the basis of *thayyib* or *iḥṣān*. But affirming the punishment as a function of these terms leads to irregularities, which complicates stoning's place in the beginnings of the Islamic period. Nevertheless, the terms began to circulate in both Prophetic and non-Prophetic reports, and generally served their intended purposes.

## Section 5. Reports and Laws

In this section, I explain some of the ways in which Muslim jurists utilized Prophetic and non-Prophetic reports to create substantive *zinā* laws. Some reports were set aside or not cited frequently, while others become central for the legal communities. Through debate and negotiation, Muslim jurists created stability around what were otherwise conflicting, inconsistent, and unclear (yet consequential) reports about stoning *zinā* offenders.

Let us begin with the Qur'ānic four-witness requirement for a *zinā* conviction per Q24:4.<sup>209</sup> In several *ḥadīth* and *akhbār* about stoning, the offender self-confessed. If, for example, stoning was implemented on the basis of a single confession, then the threshold for conviction would have been lower than the Qur'ānic four-witness requirement. This would be materially consequential in light of the capital nature of the punishment. Moreover, in the Islamic legal tradition, confessions lack the same probative value as testimony; this has become especially true in criminal proceedings.<sup>210</sup> Therefore, *ḥadīth* and *akhbār* that specifically include fourfold confessions are important. Schacht argued that the four-witness legal stipulation is one of the oldest examples of Iraqi *qiyās* (analogy).<sup>211</sup> Specifically, legal authorities drew an analogy

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<sup>209</sup> The four-witness requirement could also be based on Q4:15, "...bring four witnesses against them from among you..."

<sup>210</sup> *Encyclopaedia of Islam*, 3rd ed., s.v. "Confession."

<sup>211</sup> Schacht, *Origins*, 106.

between the Qur’ānic four-witness requirement to the number of confessions required for conviction. Schacht’s identification of the connection between the Qur’ān and the offender’s fourfold confession is reasonable. It is highly probable that Muslim legal authorities established the analogy with the Qur’ānic stipulation. This is likely why the fourfold confession undergirds several narratives about stoning. For example, in the Ghāmidīyya *ḥadīth*, the self-confessing woman is sent away four times, with two of her confessions represented by her return to the Prophet after weaning the child and rearing him. ‘Alī provides four exculpatory clauses to Shurāḥa, and her denial of each represents a confession. In summary, *zinā* laws delineate a fourfold confession as one of the legal procedures required for conviction, and this precedent reflects the four-witness requirement of the Qur’ān.<sup>212</sup>

The Mā‘iz variants helped establish other legal elements that become part of Islamic laws on stoning. For example, confirming that penetration took place became a factual matter for conviction. The Prophet’s question, “Did you enter her like the way a needle enters into a kohl jar or a rod into something?” became the standard by which witnesses confirmed the occurrence of sexual intercourse.<sup>213</sup> The Prophet’s inquiry about Mā‘iz’s mental state became a precedent for establishing mental sanity prior to the conviction of a potential offender.<sup>214</sup> In short, specific elements in stoning reports helped to refine and legitimate substantive laws on *zinā*.

The employment of *ḥadīth* and *akhbār* to qualify legal rules was to be expected, but for such reports to become the basis for affirming the capital punishment required particular

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<sup>212</sup> For the legal rule, see for example the Ḥanafī jurist Abū Yūsuf, *Kitāb al-Kharāj*, 162f; for Mālik and Saḥnūn, see Saḥnūn, *al-Mudawwana*, 4:482.

<sup>213</sup> For example, see Saḥnūn, *al-Mudawwana*, 4:486; al-Shāfi‘ī, *al-Umm*, 7:391; Ibn Qudāma, *al-Mughnī*, 12:356.

<sup>214</sup> For example, see al-Sarakhsī, *al-Mubṣūṭ*, 9:39, 92, and 94; Ibn Qudāma, *al-Mughnī*, 12:309.



jurisprudential methodologies. This was necessary because Muslims had to integrate stoning reports on *zinā* with Qur’ānic punishments for *zinā*. Commenting on Q4:15, al-Muqātil begins by acknowledging that the verse prescribes house arrest until death, and he specifies that confinement is for *thayyib* women who commit *zinā*.<sup>215</sup> For him, the subordinate clause of Q4:15, “or until God shows a way,” was then abrogated by the 100 lash prescription of Q24:2.<sup>216</sup> Al-Muqātil then comments that Q24:2 became applicable to virgins who did not have *iḥṣān*, and the ‘Ubāda *ḥadīth* abrogated the Qur’ānic ruling(s) for virgins and non-virgins alike.<sup>217</sup> He opines that in accordance with the ‘Ubāda *ḥadīth*, virgins are to be flogged 100 times and banished for a year, while non-virgins who have *iḥṣān* are to be flogged 100 times and then stoned.<sup>218</sup> For al-Muqātil, a two-step abrogation takes place to make stoning an *Islamic* punishment. First, the Qur’ān by the Qur’ān, and then, the Qur’ān by the Prophetic *sunna*. This process resulted in stoning (or in al-Muqātil’s case, flogging and stoning) for particular types of *zinā* offenders. Using a different methodology, the third century ascetic al-Muḥāsibī (d. 243, Baghdād) first argued that according to ‘Umar, a verse existed that mandated stoning for *zinā* offenders. Al-Muḥāsibī then stipulated that while this purported verse is not part of the *muṣḥaf*, the fact that it was memorized indicates that it existed, and as a consequence, its enforcement power remains.<sup>219</sup> For him, removal from the codex did not constitute removal from the heart, and in a case of a divine ordinance, its application - a remarkable claim with consequences.<sup>220</sup>

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<sup>215</sup> For example, see al-Muqātil, *Tafsīr*, 1:371.

<sup>216</sup> al-Muqātil, *Tafsīr*, 1:371f.

<sup>217</sup> al-Muqātil, *Tafsīr*, 1:372.

<sup>218</sup> Al-Muqātil, *Tafsīr*, 1:372.

<sup>219</sup> al-Muḥāsibī, *Fahm al-Qur’ān*, 1:256, 398, and 455.

<sup>220</sup> al-Muḥāsibī, *Fahm al-Qur’ān*, 1:398; Mālik makes the same jurisprudential argument, see Dutton, *The Origins of*

There are other ways in which Muslim jurists employed *ḥadīth* and *akhbār* on stoning for *zinā* offenders with *iḥṣān*. Specifically, legal authorities utilized these narratives to dispute the two-tiered sanction conveyed in the ‘Ubāda *ḥadīth*. For example, while al-Shāfi‘ī (d. 201) does acknowledge the ‘Ubāda *ḥadīth* and that it conveys the use of the dual penalty of flogging and stoning,<sup>221</sup> he remarks that the flogging provision was abrogated for the *thayyib* (*al-jald mansūkh ‘an al-thayyib*)<sup>222</sup>. To support his position, he brings into service the Mā‘iz *ḥadīth* and ‘Umar’s assertion that stoning was in the Book of God.<sup>223</sup> Al-Shāfi‘ī argues for the single penalty by asserting that flogging is not mentioned in any of these reports. The Ḥanafī jurist al-Sarakhsī (d. 483) takes a different approach than al-Shāfi‘ī. Al-Sarakhsī argues that Q4:15 was abrogated by the Ubāda *ḥadīth*, which in turn was abrogated by Q24:2. He then employs the Mā‘iz and the Worker-Son *ḥadīth*, among others, to justify stoning only for the *muḥṣan*.<sup>224</sup> In fact, both he and al-Shāfi‘ī argue that in the Worker-Son *ḥadīth*, the Prophet commanded Unays to only stone the wife, not to flog *and* stone her, which substantiates the abrogation of the ‘Ubāda *ḥadīth*.<sup>225</sup> Indeed, the Ḥanbalī judge Abū Ya‘lā (d. 458) remarks that if the Prophet had intended both flogging and stoning, then he would have made it explicit to Unays.<sup>226</sup> But a later Ḥanbalī jurist, Ibn Qudāma (d. 620), opines that the proper punishment is both flogging and stoning.<sup>227</sup> He

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*Islamic Law*, 123f.

<sup>221</sup> al-Shāfi‘ī, *al-Umm*, 8:461.

<sup>222</sup> al-Shāfi‘ī, *al-Umm*, 7:336.

<sup>223</sup> al-Shāfi‘ī, *al-Umm*, 7:336.

<sup>224</sup> al-Sarakhsī, *al-Mubsūṭ*, 9:36f.

<sup>225</sup> al-Shāfi‘ī, *al-Umm*, 7:337.

<sup>226</sup> Abū Ya‘lā, *Masā’il al-Fiqhīyya*, 2:314.

<sup>227</sup> Ibn Qudāma, *al-Mughnī*, 12:308ff; the Ḥanbalī jurist al-Khiraqī (d. 334) provides both opinions but does not give his own position on the correct punishment, see al-Khiraqī, *Mukhtaṣir*, 190.

criticizes his predecessors by stating that the *ex silentio* argument - the Prophet did not specifically order lashes - is not sufficiently probative to eliminate the requirement of flogging.<sup>228</sup> Ibn Qudāma goes on to employ reports about ‘Alī to affirm the dual sanction.<sup>229</sup> He reasons that Q24:2 was a general command, the Prophetic *sunna* added specificity to the general command, and ‘Alī’s practice was proof of the dual penalty’s legitimacy.<sup>230</sup> In sum, Muslim authorities predominantly used abrogation to reconcile and systematize stoning reports with the Qur’ān to justify capital punishment for certain types of *zinā*. But as demonstrated, an outcome of the divergence between the Qur’ān and the Prophetic *sunna* led to disagreements about the application of a single versus a dual penalty.<sup>231</sup> Ultimately, the underlying presumption remained: stoning is acceptable.

It is of consequence that disputes about stoning versus flogging and stoning took on a regional characteristic. They make apparent that as legal discussions moved away from the Ḥijāz, there existed uncertainty about stoning as the proper punishment for certain types of Muslim *zinā* offenders. For example, despite the fact that the ‘Ubāda *ḥadīth* references the Ḥijāzī companion ‘Ubāda b. al-Ṣāmit, it initially received wide circulation in Iraq and then in the Ḥijāz.<sup>232</sup> Non-Prophetic reports supporting the dual penalty also show a strong regional affinity to Iraq. As noted earlier in this chapter, ‘Alī claimed to have flogged based on the Qur’ān and stoned based

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<sup>228</sup> Ibn Qudāma, *al-Mughnī*, 12:314.

<sup>229</sup> Ibn Qudāma, *al-Mughnī*, 12:309f.

<sup>230</sup> Ibn Qudāma, *al-Mughnī*, 12:310.

<sup>231</sup> For another example of a Muslim legal authority arguing for stoning only, see the Mālikī jurist Ibn Abī Zayd (d. 386), *al-Nawādir wa al-Ziyādāt*, 14:232.

<sup>232</sup> For an *isnād-cum-matn* analysis of this *ḥadīth*, see Pavlovitch, “The ‘Ubāda b. al-Ṣāmit Tradition at the Crossroads of Methodology,” 137-235.

on the Prophetic *sunna*. This report was circulated on the authority of the Iraqi al-Sha‘bī (d. 102-9, Hamdān, Kūfa, and Syria).<sup>233</sup> Another Iraqi Successor, Masrūq b. al-Ajda‘ (d. 62-3, Hamdān, Kūfa, and Medina), opines that *shaykhs* are to be flogged and stoned.<sup>234</sup> The regionalism of the dual penalty comes into sharper focus when compared to opinions circulating outside of Iraq. For instance, the Meccan jurist ‘Aṭā’ b. Abī Rabāḥ (d. 115) opined that a person with *iḥṣān* receives stoning only.<sup>235</sup> The same opinion held true for another Meccan jurist, ‘Amr b. Dīnār (d. 126).<sup>236</sup> While Mālik’s (d. 179, Medina) *Muwatta’a* does not contain any reports supporting the dual penalty, debates about the single versus dual penalty were sufficiently widespread that subsequent Mālikī jurists addressed the matter. For example, Saḥnūn (d. 240) asks his teacher Ibn Qāsim (d. 191) about Mālik’s position on the dual penalty:

What was Mālik’s opinion about combining the punishment of flogging (*al-ḥadd*) with stoning for *zinā* committed by a *thayyib*? Ibn Qāsim said: It is not permissible. The *thayyib* receives stoning only (*al-thayyib ḥaddahu al-rajm bi-ghayr jald*).<sup>237</sup>

Ibn Qāsim's response is his own opinion, but it may very well echo Mālik’s attitude. The Ḥanafī jurists Abū Yūsuf (d. 182) and al-Shaybānī (d. 189) prescribed stoning only.<sup>238</sup> And as I noted above, al-Shāfi‘ī was a proponent of the single penalty.<sup>239</sup> Interestingly, various pupils of Aḥmad

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<sup>233</sup> Ibn Shihāb al-Zuhrī comments that al-Sha‘bī was the best legal authority in Kufa, see al-Khaṭīb al-Baghdādī, *Tārīkh*, 14:144.

<sup>234</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:329:13,361; Ibn Abī Shayba, *al-Muṣannaf* (1989 ed.), 5:541:28,787; al-Nasā‘ī, *al-Sunan*, 6:407:7,111; Masrūq also remarks that those who commit bestiality should receive the dual penalty, see Ibn Abī Shayba, *al-Muṣannaf* (1989 ed.), 5:513:28,515.

<sup>235</sup> I base this on an *ex silentio* argument. In the opinions ‘Aṭā’ gives with regard to stoning, he does not mention flogging. See ‘Abd al-Razzāq, *al-Muṣannaf*, 7:304:13,276, 319:13,334, 324:13,345, and 337:13,393.

<sup>236</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:304:13,276 and 364:13,489f.

<sup>237</sup> Saḥnūn, *al-Mudawwana*, 4:504.

<sup>238</sup> Abū Yūsuf, *Kitāb al-Kharāj*, 162-4; al-Shaybānī, *Jāmi’ al-Ṣaghīr*, 279 and 286.

<sup>239</sup> In order to date al-Shāfi‘ī’s *Risāla*, Pavel Pavlovitch investigates the debates about the use of single versus dual penalty for *zinā*. He concludes that Norman Calder’s claim that the *Risāla* was composed towards the end of the

b. Ḥanbal (d. 241, Baghdād, Baṣra, Kūfa, Syria, and Yemen) attribute to him support for either the single penalty or the dual penalty. For example, his son Ṣāliḥ (d. 265) called for the *muḥṣan* to be stoned only.<sup>240</sup> But Ibn Ḥanbal's other son, ‘Abd Allāh (d. 290), claims that his father upheld the dual penalty for the *ṭhayyib*.<sup>241</sup> Inevitably, both sons extended their father's position that certain types of *zinā* offenders should be stoned. But their divergent positions intimate that uncertainty must have existed regarding the punishment of stoning as an Islamic practice. The contrasting approach between the Qur’ānic treatment of *zinā* on the one hand, and the purported Prophetic and non-Prophetic treatment of *zinā* on the other, led to regionally-bound jurisprudential maneuvering to advocate for the capital sanction on the basis of either a single or a dual penalty.

## Section 6. Other Disagreements and Implications

To judge from *ḥadīth*, *akhbār*, and legal manuals, support for stoning is overwhelming. But the wide circulation of stoning reports and the general legal acceptance of the punishment can be complicated. There are some accounts in which Muslims are recorded to have questioned the punishment's applicability to Muslim *zinā* offenders. These *akbār* also intimate that a historical moment existed when stoning was not considered to be Islamic.

In the *Akhbār al-Quḍāt* of Wakī‘ (d. 306), an entry suggests that while Muslims accepted the Prophet's order to stone, they believed he did so because of its applicability to non-Muslims.

Wakī‘'s text reads:

‘Abd al-Raḥmān b. Zayd b. Aslam conveyed the *tafsīr* of his father Zayd b. Aslam

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third century, and Christopher Melchert's assertion that it was produced in 300 AH, are not entirely correct. For Pavlovitch, some parts of the *Risāla* may have been redacted into the original text but al-Shāfi‘ī is the original author. See generally, Pavlovitch, "The Islamic penalty for adultery in the third century AH and al-Shāfi‘ī's *Risāla*."

<sup>240</sup> Abū al-Faḍl Ṣāliḥ, *Masā'il al-Imām Aḥmad b. Ḥanbal*, 3:119:1,469f

<sup>241</sup> ‘Abd Allāh, *Masā'il al-Imām Aḥmad*, 348f:1,284.

with regard to the Qur'ānic verse (Q5:47), “*And let the People of Gospel judge by what God has sent to them. And those who do not judge by what God has sent, they are the disobedient.*”

Zayd b. Aslam said: With this provision in the Qur'ān, the Prophet made a judgment in accordance with God's book. Therefore, whosoever disregards the rulings in God's Book certainly becomes an unbeliever.<sup>242</sup>

As I noted in Section Three, a *ḥadīth* circulated in which the Prophet adjudicated a case involving Jewish *zinā* offenders, and ordered stoning on the basis of the Torah. In their exegesis of Q5:41-7, *mufasssirs* generally employ this incident in their glosses.<sup>243</sup> Therefore, Zayd b. Aslam's opinion indicates that Muslims would have perceived the Prophet's order to stone as a Hebrew Bible prescription for Jews, not Muslims.

The conception of the Prophet's order to stone a Jewish couple as his application of a non-Islamic rule for non-Muslims, comes into sharper focus on the basis of another entry provided by Wakī'. It reads:

Thābit al-Thamālī said: I said to Abū Ja'far: The *Murj'a* debate us regarding the meaning of these verses (Q5:41-7). They claim that they are for the Children of Israel.

Abū Ja'far said: We are the best of brothers to the Children of Israel. If the sweetness of the Qur'an is for us and the bitterness is for them, then the bitter verses came down for them and then applied to us.<sup>244</sup>

Abū Ja'far's response corroborates that for some Muslims, the stoning punishment was understood to be a non-Islamic punishment for non-Muslims, although it inevitably came to apply to Muslims. In other words, these types of exegetical comments seemingly point to a historical moment when certain forms as *zinā* as warranting death by stoning, were not

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<sup>242</sup> Wakī', *Akhbār al-Quḍāt*, 1:44.

<sup>243</sup> In Chapter Two I analyze exegetical commentaries on Q5:41-7.

<sup>244</sup> Wakī', *Akhbār al-Quḍāt*, 1:44.

considered to be part of the Prophetic practice that was applicable for Muslims.

Yet another report indicates that Muslims questioned the applicability of the stoning punishment for Muslims. An entry in Ibn Ḥanbal's *Musnad* reads:

Abū Zubayr (d. 126, Mecca and Medina) asked Jābir b. 'Abd Allāh (d. 78, Baghdād, Medina, Egypt, and Syria): Did the Messenger of God stone?

Jābir replied: Yes. A man from Aslam, a man from the Jews, and a woman. I remember the Prophet saying: 'We will give a ruling for you today'.<sup>245</sup>

As noted in Section Three, 'Umar claimed that a day would come when people would deny stoning was in the Book of God. If by the time of the report's circulation (or possibly before it), stoning for certain types of *zinā* was widely accepted by and for Muslims, then it seems highly unlikely for 'Umar, or someone who claims to have heard 'Umar, to make such an allegation. His purported dismay suggests that disagreements existed about the treatment of certain forms of *zinā* as a capital offense in Islam. Perhaps 'Umar's report about people abandoning the stoning punishment would be applicable to Abū Zubayr. Regardless, Ibn Ḥanbal's report suggests that even by the first quarter of the second century, questions remained about stoning Muslim *zinā* offenders.

A narrative found both in canonical and non-canonical *ḥadīth* and *akhbār* collections further corroborates doubt about the applicability of stoning to Muslims. Abū Ishāq Sulaymān b. Abī Sulaymān al-Shaybānī (d. 129, 138/9, or 141, Kūfa) is recorded to have said:

I asked 'Abd Allah b. Abī Awfā (d. 86-7, Medīna and Kūfa): Did the Prophet stone?

Ibn Abī Awfā said: Yes.

I asked: Was it before or after Surat al-Nūr (Q24:2)?

He said: I do not know.<sup>246</sup>

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<sup>245</sup> Ibn Ḥanbal, *Musnad* (1992 ed.), 23:347:15,151.

<sup>246</sup> Ibn Abī Shayba, *al-Muṣannaf* (1989 ed.), 9:354:29,353; Ibn Ḥanbal, *Musnad* (1995 ed.), 14:391:19,027; al-

Abū Ishāq’s question makes sense if one considers that skepticism existed about stoning being applicable to certain types of Muslim *zinā* offenders. His inquiry is also logical on the basis that it was made in Iraq, the region with a preponderance of support for the dual-penalty, which I argued likely emerged due to uncertainty about how to reconcile Prophetic reports on stoning with Qur’ānic prescriptions. Ultimately, by the end of the first century, a historical memory of the Prophet’s order to stone Muslim *zinā* offenders endured. But Abū Ishāq’s question, and Ibn Abī Awfā’s answer, reflect continued suspicion about stoning as the established punishment in Islam.

## Conclusion

This chapter provided an overview of Prophetic and non-Prophetic reports in which certain forms of *zinā* are treated as capital offenses and punished with stoning. For example, the Prophet is recorded to have permitted the execution of Muslims under three conditions with one being *zinā*. According to the ‘Ubāda *ḥadīth*, the Prophet purportedly made a claim about the stoning punishment for *thayyibs* who commit *zinā*, which was in line with the Qur’ānic phrase “until God shows a way.” Companions such as ‘Umar b. al-Khaṭṭāb supposedly asserted that stoning was the proper punishment for certain types of *zinā*. In fact, according to one report, ‘Umar claimed that a stoning verse existed and that he used to read it. In addition to statements conveying a black letter law, the Prophet and Companions are also recorded to have ordered stoning in specific *zinā* cases. For example, the Prophet utilized the sanction in the Worker-Son, Mā‘iz b. Mālik al-Aslamī, and the self-confessing woman cases, among others. Similarly, ‘Alī is noted to have ordered the stoning of a woman named Shurāḥa. In short, several *ḥadīth* and

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Bukhārī, *Ṣaḥīḥ*, 2,498:6,428 and 2,509:6,449; Muslim, *Ṣaḥīḥ*, 1,328:1,702.



*akhbār* circulated that affirmed stoning as an Islamic punishment for certain forms of *zinā*.

I also provided an overview of the different ways in which Muslim jurists employed reports on stoning to substantiate various legal position(s) and to justify the capital punishment. For example, jurists referenced the Māʿiz *ḥadīth* to support a fourfold confession, the need to confirm the mental sanity of an offender, and the standard by which witness testimony had to confirm the occurrence of sexual intercourse.

I analyzed how several Muslim legal authorities defined and employed the legal elements of *thayyib* and *iḥṣān* to clarify the type of *zinā* that warranted lapidation. However, attempts to use *thayyib* and *iḥṣān* had unintended consequences. Furthermore, inconsistencies emerge when *iḥṣān* is compared and contrasted with the Qurʾānic use of *aḥṣana* and *al-muḥṣanāt*.

Disputes about the use of a single versus a dual-penalty, and reports questioning if, when, and the circumstances under which the Prophet may have given the order to stone, are also of consequence. The range and disparity of circumstances under which stoning can be applied intimate that it is highly plausible the punishment was not always part of the Islamic tradition, despite its eventual place in it.

In sum, a number of contingencies informed the treatment of certain forms of *zinā* as a capital offense and the use of the stoning punishment. The initial purported source for the sanction's authority was the Prophet Muḥammad. But how did he come to be associated with a prescription that finds legitimacy in the Hebrew Bible and not the Qurʾān? In the next chapter, I investigate in detail the incident in which the Prophet adjudicated a case involving Jewish *zinā* offenders. I analyze the *isnāds* and *matns* of this *ḥadīth*'s numerous variants, as well as the ways in which it intersected with exegetical commentaries. It is my contention that this narrative helped forge a nexus between the Prophet's authority and a divinely authorized mode of

punishment for certain forms of *zinā*.

## Chapter 2

### What Does the Torah Say? Stoning for Non-Muslim *Zinā* Offenders

#### Introduction

Gaps and disagreements resulting from the development of *zinā* laws on stoning are far-reaching. They reveal the different ways in which Muslim legal authorities were attempting to reconcile the *ḥadīth*-based capital punishment with the Qur’ānic-based corporal punishment. These efforts do not account for how, in the first place, the Prophet came to be associated with the sanction.

An incident, according to which the Prophet purportedly ordered the stoning of Jewish *zinā* offenders, served as an intervention within the Islamic legal tradition. This narrative introduced the punishment of stoning into the Islamic legal lexicon. As the Companion Abū Hurayra (d. 57-9) is recorded to have said, “The first person to be stoned by the Messenger of God was from among the Jews.”<sup>247</sup> To be clear, I am not arguing that Islam borrowed the practice of punishing certain types of *zinā* offenders from the Book of Deuteronomy. Rather, the treatment of certain forms of *zinā* as capital offenses reflected the complex ways in which Near Eastern communities punished illicit sexual intercourse and especially adultery. For Muslims of the Islamic late antiquity, knowledge of such cultural practices likely increased their receptivity of lapidation as an appropriate punishment for certain types of *zinā*. Ultimately, the Prophet’s order to stone a Jewish offender bound his authority to the particular capital sanction.

Accordingly, in this chapter I analyze *ḥadīth* and *tafsīr* corresponding to reports about the

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<sup>247</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:316-8:13,330; al-Ṭabarī, *Jāmi’*, 10:305f:11,924.

Prophet's involvement in the stoning of Jewish man and (possibly) a Jewish woman. I refer to these narratives as the Jewish *Ḥadīth*.<sup>248</sup> I first examine *isnāds* and *matns* of *ḥadīth* on the authority of five Companions. Each section focuses on a specific individual and the layout is as follows:

Section One: Jābir b. Samura (d. 74);  
Section Two: al-Barrā' b. 'Āzib (d. 71-2);  
Section Three: Jābir b. 'Abd Allāh (d. 78);  
Section Four: 'Abd Allāh b. 'Umar (d. 73-4);  
Section Five: Abū Hurayra (d. 57-9).

I defer biographical information on the Companions to the section that is dedicated to each. In addition to examining variants that were purportedly circulated by these five Companions, I also investigate *tafsīrs* that incorporate the Prophet's involvement in the Jewish *zinā* case. I examine primarily the works of two exegetes from the Islamic late antiquity, Mujāhid b. Jabr (d. 100-4) and Muqātil b. Sulaymān (d. 150), and the commentary of the well-known exegete al-Ṭabarī (d. 310). It is my contention that the Qur'ānic charge against the Prophet's Jewish contemporaries of attempting to change Hebrew Bible prescriptions informed the narrative about his adjudication of a case involving Jewish *zinā* offenders. The provenance of these narratives rests with individuals who were Jewish converts to Islam or had intimate knowledge about Jewish traditions.

Furthermore, the Prophet's order to stone was understood as the application of a non-Islamic punishment for non-Muslims. Nevertheless, the Jewish *Ḥadīth* helped forge a nexus between the Prophet's authority and the stoning punishment. This connection would become consequential for the use of stoning and for deeming certain forms of illicit sexual intercourse as capital offenses in the Islamic legal tradition.

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<sup>248</sup> The exact nature of the Jewish community during the time of the Prophet remains uncertain. My designation of the Jewish *Ḥadīth* is not intended to reflect the Jewish characteristics of those who identified as being Jewish. It is also not intended to suggest that the Jewish community also referenced their own narratives as *ḥadīth*.

### Section 1. *Ḥadīth* by the Companion Jābir b. Samura (d. 74, Kufa and Medina)

One version of the Jewish *Ḥadīth* was purportedly narrated by the Companion Jābir b. Samura b. Junāda al-Suwā'ī (d. 74, Kufa and Medina). In the sources I investigated, the successor Simāk b. Ḥarb (d. 123, Kufa) is the only person recorded to have narrated the *ḥadīth* from this Companion. Two individuals narrated from Simāk b. Ḥarb: Ḥammād b. Salama b. Dīnār (d. 167, and Wāsiṭ) and Sharīk b. 'Abd Allāh (d. 177-8, Baghdad, Bukhāra, Khurāsān, Kufa, Mecca, and Wāsiṭ). I first analyze *isnāds* and *matns* on Sharīk b. 'Abd Allāh's authority and then turn to reports transmitted by Ḥammād b. Salama. After investigating reports on the respective authority of these two individuals, I evaluate the role of their teacher, Simāk b. Ḥarb (d. 123, Kufa). I conclude this section by commenting on the likelihood of Simāk b. Ḥarb's and his teacher Jābir b. Samura's involvement in the circulation of the Jewish *Ḥadīth*.

Sharīk b. 'Abd Allāh b. al-Ḥārith al-Nakha'ī (d. 177-8, Baghdad, Bukhāra, Khurāsān, Kufa, Mecca, and Wāsiṭ) is the most commonly referenced individual to have circulated the *ḥadīth* on Simāk b. Ḥarb's authority. The *Muṣannaf* of Ibn Abī Shayba (d. 235) is one of the earliest collections in which the report appears on Sharīk's authority. The *isnād* and *matn* read:

Ibn Abī Shayba (d. 235, Kufa) - Sharīk [b. 'Abd Allāh b. al-Ḥārith al-Nakha'ī] (d. 177-8, Baghdad, Bukhāra, Khurāsān, Kufa, Mecca, and Wāsiṭ) - Simāk b. Ḥarb (d. 123, Kufa) - Jābir b. Samura (d. 74, Kufa and Medina):

The Prophet stoned a Jewish man and a Jewish woman.<sup>249</sup>

Ibn Abī Shayba's birth year of 159, Sharīk's death year of 177-8, and regional overlap make a transmission between these two individuals possible.

On the authority of several of Sharīk b. 'Abd Allāh's pupils, Ibn Ḥanbal (d. 241) provides

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<sup>249</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:405:29,614.

an identical report.<sup>250</sup> One *isnād* in the *Musnad* reads:

Ibn Ḥanbal (d. 241) - Aswad b. ‘Āmir [b. Shādhān] (d. 208, Baghdad and Syria) - Sharīk - Simāk b. Ḥarb - Jābir b. Samura.

Sharīk sojourned to Baghdad numerous times and transmitted *ḥadīth* there.<sup>251</sup> Transmissions between Ibn Ḥanbal’s informant, Ibn Shādhān, and Sharīk likely took place in Baghdad because Ibn Shādhān did not travel to any of the other cities that Sharīk is recorded to have visited.<sup>252</sup> In short, there is no reason to dismiss the *isnād* recorded by Ibn Ḥanbal, which raises the likelihood of Sharīk’s involvement in the circulation of the *ḥadīth*.

Ibn Ḥanbal includes an entry on the authority of another person to have visited Iraq, Abū Kāmil Muẓaffar b. Mudrik al-Khurāsānī (d. 207, Baghdad and Khurāsān).<sup>253</sup> The *matn* is the same as in the report mentioned above, and the *isnād* reads:

Ibn Ḥanbal - Abū Kāmil [(al-)Muẓaffar b. Mudrik al-Khurāsānī] (d. 207, Baghdad and Khurāsān) - Sharīk - Simāk b. Ḥarb - Jābir b. Samura.

Biographical entries indicate that many people, including Ibn Ḥanbal, held Abū Kāmil in high regard.<sup>254</sup> Ibn Ḥanbal stated that he spent a significant amount of time listening to *ḥadīth* from Abū Kāmil.<sup>255</sup> Regarding a teacher-student relationship between Abū Kāmil and Sharīk, it is recorded that when Sharīk came to the city in which Abū Kāmil was staying, no one was

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<sup>250</sup> Ibn Ḥanbal, *Musnad* (1995 ed.), 15:343:20,748 and 350:20,888.

<sup>251</sup> al-Khaṭīb al-Baghdādī, *Tārīkh*, 10:384.

<sup>252</sup> On Ibn Shādhān, see Ibn Ḥibbān, *al-Thiqāt*, 8:130; al-Khaṭīb al-Baghdādī, *Tārīkh*, 4:495 and 498; al-Dhahabī, *Siyar A‘lām*, 10:112-4.

<sup>253</sup> Ibn Ḥanbal, *Musnad* (1995 ed.), 15:377:20,892.

<sup>254</sup> For example, see al-Khaṭīb al-Baghdādī, *Tārīkh*, 15:157f and al-Mizzī, *Tahdhīb al-Kamāl*, 28:99.

<sup>255</sup> al-Dhahabī, *Siyar A‘lām*, 10:126.

permitted to ask Sharīk any questions except Abū Kāmil.<sup>256</sup> Such a comment is anecdotal, but it in combination with Abū Kāmil's birth year (c. 140) suggests that he and Sharīk enjoyed a trusting rapport. Therefore, the *isnād* Ibn Ḥanbal provides raises the degree of confidence with respect to a transmission by Sharīk.

Ibn Ḥanbal provides two additional entries on the authority of Khalaf b. Hishām (d. 229, Baghdad and Kufa), who is also a student of Sharīk. One *isnād* reads:

Ibn Ḥanbal - Khalaf [b. Hishām al-Bazzār] (d. 229, Baghdad and Kufa) - Sulaymān b. Muḥammad [b. Dāwūd] al-Mubārakī (d. 231, Baghdad, Mubārak, and Wāsiṭ) - Sharīk - Simāk b. Ḥarb - Jābir b. Samura.<sup>257</sup>

This *isnād* (and report) is also mentioned in Ibn Ḥanbal's second entry:

Ibn Ḥanbal - Khalaf b. Hishām [al-Bazzār] (d. 229, Baghdad and Kufa) - Sharīk - Jābir b. Samura:

The Prophet stoned a Jewish man and a Jewish woman. This *ḥadīth* and the *ḥadīth* of Khalaf from Sharīk does not contain Simāk in the *isnād*. Khalaf heard it, and God knows best, from Sulaymān b. Muḥammad al-Mubārakī from Sharīk, because Simāk is not recorded in Khalaf's written narration.<sup>258</sup>

Ibn Ḥanbal's son, 'Abd Allāh, comments that Khalaf's report directly from Sharīk directly is *maqtū'* (a broken chain of transmission), while from Sulaymān al-Mubārakī is *mawṣūl* (unbroken chain of transmission).<sup>259</sup> In my estimation, it is more likely that Khalaf (d. 229) received the *ḥadīth* from Sulaymān al-Mubārakī (d. 231), because Khalaf is recorded to have provided biographical information on Sulaymān al-Mubārakī.<sup>260</sup> This means the two were well-aquainted

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<sup>256</sup> al-Khaṭīb al-Baghdādī, *Tārīkh*, 15:157; al-Mizzī, *Tahdhīb al-Kamāl*, 28:100; al-Dhahabī, *Siyar A'ālām*, 10:125.

<sup>257</sup> Ibn Ḥanbal, *Musnad* (1995 ed.), 15:358:20,812.

<sup>258</sup> Ibn Ḥanbal, *Musnad* (1995 ed.), 15:358:20,811.

<sup>259</sup> al-Khaṭīb al-Baghdādī, *Tārīkh*, 9:270.

<sup>260</sup> For example, see al-Khaṭīb al-Baghdādī, *Tārīkh*, 10:386ff.

with one another. Moreover, it is specifically recorded that Khalaf would receive reports from Sulaymān on the basis of aural sessions.<sup>261</sup> Khalaf's and Sulaymān's regional overlap also helps to confirm that they crossed-paths. Therefore, Khalaf's two reports support Sharīk's involvement in the circulation of the *ḥadīth*.

Ibn Mājah also provides the identical *matn* others reported on Sharīk's authority. The *isnād* reads:

Ibn Mājah (d. 273) - Ismā'īl b. Mūsā [al-Farāzī] (d. 245, Kufa) - Sharīk - Simāk b. Ḥarb - Jābir b. Samura.<sup>262</sup>

Most biographical dictionaries list Sharīk as one of those from whom Ismā'īl b. Mūsā transmitted. Ibn Mūsā's supposed Shī'ī sympathies led some of his contemporaries to cast doubt on his integrity as a transmitter.<sup>263</sup> Others noted that he narrated *mursal ḥadīth* (*ḥadīth* circulated by a Successor without reference to a Companion).<sup>264</sup> But this pejorative evaluation does not impugn the possibility of Ibn Mūsā's reception of the *ḥadīth* from Sharīk. Furthermore, some did consider Ibn Mūsā to be a trustworthy *muḥaddith* (a *ḥadīth* transmitter). In my view, Ibn Mūsā's purported Shī'ī tendencies and penchant for circulating *mursal ḥadīth* do not undermine the possibility of a transmissions between him and Sharīk. Therefore, Ibn Mājah's report reaffirms Sharīk's involvement in the dissemination of the report.

Sharīk's involvement in the transmission of the Jewish *Ḥadīth* can also be corroborated by another of his students, Hannād b. al-Sirrī al-Tamīmī. The *isnād* provided by al-Tirmidhī (d. 279) reads:

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<sup>261</sup> al-Dhahabī, *Siyar A'lām*, 10:577.

<sup>262</sup> Ibn Mājah, *Sunan*, 854:2,557.

<sup>263</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 3:211f; al-Dhahabī, *Mizān*, 1:252; Ibn Ḥajar, *Tahdhīb*, 1:315.

<sup>264</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 2:196, al-Mizzī, *Tahdhīb al-Kamāl*, 3:210; al-Dhahabī, *Mizān*, 1:252.



Hannād [b. al-Sirrī b. Muṣ‘ab] (d. 243, Kufa) - Sharīk - Simāk b. Ḥarb - Jābir b. Samura.<sup>265</sup>

Not much is written about Hannād, but according to biographical dictionaries, he was one of the more respected *ḥadīth* transmitters in Kufa.<sup>266</sup> Al-Tirmidhī notes that the report is *ḥasan gharīb*.<sup>267</sup> In brief, a *ḥasan ḥadīth* is one that is reliable but whose narrator might be suspected of poor retention, and a *gharīb ḥadīth* is one that is reported by only one narrator at any level of its *isnād*.<sup>268</sup> Al-Tirmidhī's evaluation is accurate because Sharīk's informant, Simāk b. Ḥarb, is the only individual to have reported the *ḥadīth* from the Companion Jābir b. Samura. Al-Tirmidhī's assessment of the *ḥadīth* being *ḥasan* is also correct because as he notes, the *matn*'s information is approved by many people of knowledge.<sup>269</sup> These points of consideration, combined with Hannād's reported birth year of 150, Sharīk's death year of c. 178, and regional overlap, suggest that Sharīk narrated the *ḥadīth* to this student Hannād.

In addition to the aforementioned sources, the *Musnad* of al-Mawṣilī (d. 307) is the remaining *ḥadīth* collection in which I found the Jewish *Ḥadīth* passed down via a Sharīk – Ibn Ḥarb – Jābir b. Samura *isnād*. Al-Mawṣilī lists it twice, though one *isnād* clearly shows that he is simply recording that which was widely known. The respective *isnāds* and *matns* read:

al-Mawṣilī - Jābir b. Samura:

The Prophet stoned a Jewish man and a Jewish woman.<sup>270</sup>

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<sup>265</sup> al-Tirmidhī, *al-Jāmi‘*, 3:107:1,437.

<sup>266</sup> Ibn Abī Ḥātim, *al-Jarh wa al-Ta‘dīl*, 9:119; al-Mizzī, *Tahdhīb al-Kamāl*, 30:312; al-Dhahabī, *Siyar A‘lām*, 11:465f.

<sup>267</sup> Ibid.

<sup>268</sup> Kamali, *Textbook of Ḥadīth Studies*, 228.

<sup>269</sup> al-Tirmidhī, *al-Jāmi‘*, 3:107:1,437.

<sup>270</sup> al-Mawṣilī, *Musnad*, 13:448:7,451.

al-Mawṣilī - Ishāq [b. Ibrāhīm] b. Abī Isrāʾīl (d. 245, Baghdad, Basra, and Marw) - Sharīk - Simāk b. Ḥarb - Jābir b. Samura:

The Prophet stoned a Jewish man and a Jewish woman.<sup>271</sup>

Biographical dictionaries indicate that al-Mawṣilī did narrate from Ishāq b. Abī Isrāʾīl, and the latter receives considerable praise by his contemporaries.<sup>272</sup> He possessed books of *ḥadīth* from which he transmitted reports to others.<sup>273</sup> Given his birth year of 150, Sharīk's death year of c. 178, and travel patterns, it is reasonable to consider that Ishāq b. Abī Isrāʾīl encountered Sharīk and received the *ḥadīth*.

In sum, a full seven of Sharīk's pupils are noted to have transmitted the Jewish *Ḥadīth*, and *isnād* and *matn* analysis points to him in the circulation of a report according to which the Prophet stoned a Jewish man and a Jewish woman. Sharīk's background can corroborate the extent of his actual involvement in the transmission of the *ḥadīth*. Sharīk (d. 177-8, Baghdad, Bukhāra, Khurāsān, Kufa, Mecca, and Wāsiṭ) was a respected scholar and *muḥaddith*. He served as a judge in Wāsiṭ in 150, and thereafter in Kufa, where he died.<sup>274</sup> Supposedly, he became forgetful as he aged, and this may have led to errors in his narrations.<sup>275</sup> In fact, he is recorded to have said that because of his confusion, he felt uncomfortable sharing knowledge, including *ḥadīth*.<sup>276</sup> Perhaps this motivated him to begin writing down that which he knew.<sup>277</sup>

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<sup>271</sup> al-Mawṣilī, *Musnad*, 13:460:7,471.

<sup>272</sup> Part of the reason he received praise was because of his belief in the uncreatedness of the Qur'ān, see al-Khaṭīb al-Baghdādī, *Tārīkh*, 7:380-2; al-Mizzī, *Tahdhīb al-Kamāl*, 2:403; al-Dhahabī, *Tadhkirat al-Ḥuffāz*, 2:485.

<sup>273</sup> al-Khaṭīb al-Baghdādī, *Tārīkh*, 7:379.

<sup>274</sup> Ibn Ḥibbān, *al-Thiqāt*, 6:444.

<sup>275</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 4:366; Ibn Ḥibbān, *al-Thiqāt*, 6:444; al-Khaṭīb al-Baghdādī, *Tārīkh*, 10:391.

<sup>276</sup> al-Khaṭīb al-Baghdādī, *Tārīkh*, 10:385 and 392.

<sup>277</sup> Ibid.

Unsurprisingly, his reputation of having a faulty memory led some to reject his narrations.<sup>278</sup> Irrespective of his later cognitive shortcoming, an important point of note is that the material from his lectures in Wāsiṭ were accepted, and it is in this location that Ishāq b. Ibrāhīm b. Abī Isrā'īl received the *ḥadīth* from him.<sup>279</sup> Lastly, Sharīk was born in 95, and Simāk b. Ḥarb perished sometime in 123. This means as Ibn Ḥarb's pupil, Sharīk, was young and had a good memory. Therefore, it is highly likely that Sharīk (d. 177-8) received and correctly transmitted the *ḥadīth* from his teacher, despite his questionable mental acumen during the latter part of his life.

Having affirmed Sharīk's role on the basis of his students' narrations, I now turn my attention to Ḥammād b. Salama [b. Dīnār] (d. 167, Basra and Wāsiṭ), also a pupil of Simāk b. Ḥarb. Only the *Musnad* of al-Ṭayālīsī (d. 203-4, Basra and Mecca) contains the report with this *isnād*, which reads:

al-Ṭayālīsī - Ḥammād b. Salama [b. Dīnār] (d. 167, Basra) - Simāk b. Ḥarb - Jābir b. Samura:

The Prophet stoned a Jewish man and a Jewish woman.<sup>280</sup>

The rarity of the *ḥadīth* on Ḥammād b. Salama's authority is intriguing given that he was a prolific and respected *ḥadīth* transmitter.<sup>281</sup> Relative to Sharīk b. 'Abd Allāh (d. 177-8), most biographical entries portray Ḥammād b. Salama in an overwhelmingly positive light. That being said, he allegedly transmitted *munkar ḥadīth*, and elevated certain reports from the level of

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<sup>278</sup> Ibn Ḥajar, *Tahdhīb*, 3:161f.

<sup>279</sup> Ibn Ḥibbān, *al-Thiqāt*, 6:444; Ibn Ḥajar, *Tahdhīb*, 3:162.

<sup>280</sup> al-Ṭayālīsī, *Musnad*, 2:131:812.

<sup>281</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 9:282; Ibn Ma'in, *Tārīkh*, 4:312:4,547; al-Bukhārī, *Tārīkh*, 3:23; al-Mizzī, *Tahdhīb al-Kamāl*, 7:259ff.

Companions to that of the Prophet (*rafʿ*).<sup>282</sup> Suspicion about his narrations is also reflected in another report. Apparently, Shuʿba b. al-Ḥajjāj (d. 160, Basra and Wāsiṭ) was informed about a *ḥadīth* (unspecified) that Ibn Salama narrated on the authority of Simāk b. Ḥarb. Shuʿba questioned Ibn Salama’s transmission. He remarked that having attended countless sessions with Simāk in comparison to just three by Ibn Salama, he never heard Simāk narrate the *ḥadīth* that Ibn Salama referenced.<sup>283</sup> Of course, Ibn Salama strongly objected, so much that he ordered the person who told him about Shuʿba’s comment to be hit with a shoe.<sup>284</sup> Based on Ibn Salama’s biographical information, it is possible that he made an error with the *isnād*. However, it also remains viable that Ibn Salama circulated the report. Given the brevity of the *matn*, it would be unimpressive for him to acquire the *ḥadīth* from Simāk, to remember it, and to circulate it. Therefore, in my estimation Ibn Salama’s report is acceptable, albeit with caution.

Notwithstanding Ḥammād b. Salama’s potential for lapses, the report on his and Sharīk b. ʿAbd Allāh’s respective authorities do point to Simāk b. Ḥarb (d. 123, Kufa) as the source of the narrative. Ibn Ḥarb’s reputation does raise questions about his reception of the *ḥadīth* from his teacher. It is recorded that he sometimes made errors in his narrations, and this led to disagreements about that which he communicated.<sup>285</sup> In fact, his mistakes compelled some to consider him a weak *ḥadīth* transmitter.<sup>286</sup> Nevertheless, he could have heard the account from someone other than his teacher and narrated it accordingly. This is especially probable because

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<sup>282</sup> In particular from Ibn ʿAbbās to the Prophet, see Ibn ʿAdī, *Kāmil fī Duʿafāʾ*, 3:36.

<sup>283</sup> Ibn ʿAdī, *Kāmil fī Duʿafāʾ*, 3:36f.

<sup>284</sup> Ibid.

<sup>285</sup> al-Khaṭīb al-Baghdādī, *Tārīkh*, 10:298; al-Mizzī, *Tahdhīb al-Kamāl*, 12:119.

<sup>286</sup> al-Khaṭīb al-Baghdādī, *Tārīkh*, 10:299; al-Mizzī, *Tahdhīb al-Kamāl*, 12:120; al-Dhahabī, *Mizān*, 2:232.

the *matn* is quite short, which means it would not take much to remember and share it. In short, while *isnād* analysis demonstrates that we have a reasonable degree of confidence that Ibn Ḥarb transmitted the *ḥadīth*, the same determination cannot be made about his source.

We should not, however, discount the possibility that Ibn Ḥarb did receive the *ḥadīth* from his informant. Jābir b. Samura (d. 74, Kufa and Medina) was originally from Medina and traveled to Kufa, where he took up residence and eventually died.<sup>287</sup> This means that Jābir could have known about the report in Medina, and after his move to Kufa, transmitted it there. Ibn Ḥarb was Kufan, so the regional overlap makes communication between him and his teacher plausible. Therefore, it remains plausible that Jābir may have in fact been Ibn Ḥarb's source.

In this section, I have argued that Simāk b. Ḥarb (d. 123, Kufa) is one source to have circulated the *ḥadīth* according to which the Prophet ordered the stoning of a Jewish man and a Jewish woman. As I demonstrate throughout this chapter, the first quarter of the second century is the *terminus ante quem* for this historical memory. Whether or not Jābir b. Samura circulated the report, it linked the Prophet's authority and the stoning punishment. In addition to Jābir b. Samura's version, there are others containing details that are significant for this chapter and dissertation. Such reports shed light on the different ways in which a narrative was constructed about the Prophet's adjudication of a *zinā* case involving Jewish offenders, and the consequences it would have for permitting the stoning punishment in the Islamic legal tradition. Accordingly, in the next section, I examine a different version of the Jewish *Ḥadīth* supposedly disseminated by the Companion al-Barrā' b. 'Āzib b. al-Ḥārith (d. 71-2, Kufa and Medina).

## **Section 2. *Ḥadīth* by the Companion al-Barrā' b. 'Āzib b. al-Ḥārith (d. 71-2, Kufa and Medina)**

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<sup>287</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 6:206 and 8:146; al-Mizzī, *Tahdhīb al-Kamāl*, 4:439.

Versions of the Jewish *Ḥadīth* by the Companion al-Barrā' b. 'Āzib express the same central motif as the report on the authority of Jābir b. Samura: the Prophet ordered the stoning punishment for a Jewish *zinā* offender. However, the al-Barrā' b. 'Āzib variants contain many more details that I investigate in this section. With regard to the *ḥadīth*'s transmission, one Successor, 'Abd Allāh b. Murra (d. 99-100, Hamdān and Kufa), is recorded to have narrated from al-Barrā' b. 'Āzib. Ibn Murra is noted to have relayed the *ḥadīth* to his student al-A'mash (d. 147-8, Baghdad, Kufa, Mecca, and Wāsiṭ) only, who in turn disseminated the report to several other individuals. Accordingly, I first analyze *isnāds* and compare *matns* to determine the plausibility of al-A'mash's involvement. I then consider the likelihood of Ibn Murra's and his teacher al-Barrā' b. 'Āzib's roles in the transmission of the *ḥadīth*. Lastly, I shed light on how the report's motifs helped to construct a relationship between the Prophet's authority and the punishment of stoning.

The *Muṣannaf* of Ibn Abī Shayba includes the Jewish *Ḥadīth* leading back to the Companion al-Barrā' b. 'Āzib. The *isnād* and *matn* read:

Ibn Abī Shayba (d. 235) - Abū Mu'āwiya [Muḥammad b. Khāzim al-Ḍarīr] (d. 194-5, Baghdad, Basra, and Kufa) and Wakī' [al-Jarrāḥ] (d. 196, Baghdad, Fayd, and Kufa) - [Sulaymān b. Mihrān] al-A'mash (d. 147-8, Baghdad, Kufa, Mecca, and Wāsiṭ) - 'Abd Allāh b. Murra [al-Khārafi] (d. 99-100, Hamdān and Kufa) - al-Barrā' b. 'Āzib b. al-Ḥārith (d. 71-2, Kufa and Medina):

The Prophet stoned a Jewish man.<sup>288</sup>

This report's collective *isnād* obscures Ibn Abī Shayba's exact source. However, the *matn* is so short that uncertainty about who transmitted what has nominal probative value. In either case, al-A'mash is their informant. Variants in Ibn Ḥanbal's *Musnad* can help clarify the role of Ibn Abī

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<sup>288</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:406:29,617.

Shayba's teachers, Abū Mu'āwiya (d. 194-5) and Wakī' (d. 196). Ibn Ḥanbal provides two versions, one of which reads:

Ibn Ḥanbal - Wakī' [al-Jarrāḥ] (d. 196) - [Sulaymān b. Mihrān] al-A'mash (d. 147-8) - 'Abd Allāh b. Murra (d. 99-100) - al-Barrā' b. 'Āzib b. al-Ḥārith (d. 71-2, Kufa and Medina):

The Prophet stoned a Jewish man and said: O God, I bear witness to you that I am the first to resurrect an ordinance that they killed.<sup>289</sup>

Both Ibn Abī Shayba and Ibn Hanbal have Wakī' (d. 196) in their respective *isnāds*. This makes sense if we account for the fact that many in Iraq, including Ibn Abī Shayba and Ibn Ḥanbal, narrated from Wakī'.<sup>290</sup> Therefore, it is unsurprising to find that Ibn Abī Shayba and Ibn Ḥanbal record the Jewish *Ḥadīth* on the authority of Wakī', albeit, in different versions. The shared theme about the Prophet having a Jewish man stoned, indicates Wakī''s reception of the report from al-A'mash (d. 147-8). Given that Wakī' was born in 129, and his informant al-A'mash died between 147 and 148, it is entirely plausible that the two met. Indeed, Wakī' claims to have attended al-A'mash's auditions (*samā'*) for two years that started in 145.<sup>291</sup> Further evidence of a transmission between al-A'mash and Wakī' can be found in the *tafsīr* of al-Ṭabarī. He provides an *isnād* for the Jewish *Ḥadīth* from al-Barrā' b. 'Āzib containing Wakī' - al-A'mash.<sup>292</sup> A comparison of the *matns* and biographical information suggests that Wakī' was involved in the transmission of the Jewish *ḥadīth* on the authority of al-A'mash.

The provenance of the Prophet's comment in the *matn* of Ibn Ḥanbal - a remark which is

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<sup>289</sup> Ibn Ḥanbal, *Musnad* (1992 ed.), 30:610:18,663.

<sup>290</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 1:219-22; Ibn Ḥibbān, *al-Thiqāt*, 7:562; al-Khaṭīb al-Baghdādī, *Tārīkh*, 15:648.

<sup>291</sup> al-Bukhārī, *Tārīkh*, 8:179; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 1:220.

<sup>292</sup> al-Ṭabarī, *Jāmi'*, 10:304:11,922.

absent from Ibn Abī Shayba's version - must be accounted for. The discrepancy between the two *matns* on the authority of the same individual - Wakī' - forces one to grapple with some key questions. For instance, did Wakī' (d. 196) remember to include the Prophet's statement in his narration to Ibn Ḥanbal, but did not mention it to Ibn Abī Shayba? Or, did Wakī' narrate the same *ḥadīth* to both Ibn Abī Shayba and Ibn Ḥanbal, and Ibn Abī Shayba did not record it? On the basis of other variants, it is more plausible that Ibn Abī Shayba provided a summary report.

Abū Mu'āwiya Muḥammad b. Ḥazm (d. 194-5, Baghdad and Kufa) narrates the Jewish *Ḥadīth* with more details than those given on the authority of Wakī'. His report is important because he was a contemporary of Wakī' and a student of al-A'mash. Analysis of the *isnād* and *matn* circulated by Abū Mu'āwiya is valuable in establishing his involvement, and in determining the provenance of particular clauses. The report can also help shed light on that which Wakī' may have transmitted. An entry in the *Musnad* of Ibn Ḥanbal reads:

Ibn Ḥanbal - Abū Mu'āwiya (d. 194-5, Baghdad, Basra, and Kufa) - al-A'mash (d. 147-8) - 'Abd Allāh b. Murra (d. 99-100) - al-Barrā' b. 'Āzib b. al-Ḥārith (d. 71-2, Kufa and Medina):

A Jewish man, whose face had been blackened and who had been flogged, passed by the Messenger of God.<sup>293</sup> The Prophet summoned the man's people and asked: Is this the *ḥadd* for *zinā* in your Book?

They responded: Yes.

He<sup>294</sup> said: The Prophet then called for a man from among their learned and said: I implore you by God who sent the Torah to Mūsā, is this the *ḥadd* for *zinā* in your Book?

The man responded: I swear had you not invoked God I would have not told you that stoning is the *ḥadd* for *zinā* in our Book. The offense was common among our nobles, and if we would catch them, then we would let them go. But when it came to poor people, we would implement the *ḥadd*. Finally we said to one another: Let

<sup>293</sup> The Arabic used in the *matn* for blackening of the face is *muḥammam*. This practice is done with the use of charcoal, see Lane, *Arabic-English Lexicon* 2:635, under *ḥammamahu*.

<sup>294</sup> Unidentifiable. Presumably al-Barrā'.



us agree upon something. We apply the punishment equally to a noble person and a poor person. So we agreed to blacken the face and flog.<sup>295</sup>

The Messenger of God responded: By God! I am the first to resurrect the ordinance that they killed!

He<sup>296</sup> said that the Prophet gave the order and the offender was stoned. Then God revealed the following verse (Q5:41): “Messenger, do not be grieved by those who race to surpass one another in disbelief,” to “they say, ‘If you are given this ruling, accept it.’”

The Jewish group said: Go to Muḥammad. If he gives the ruling to blacken the face and to flog, then accept it. But if he says to stone, then be wary. In reference to this, God said (Q5:44): “those who do not judge according to what God has sent down are rejecting God's teachings.”

He<sup>297</sup> said regarding (Q5:45): “Those who do not judge according to what God has revealed are doing grave wrong,” and (Q5:47): “Those who do not judge according to what God has revealed are lawbreakers.”

He<sup>298</sup> said: These verses are regarding all those who cover up the truth.<sup>299</sup>

In his gloss of Q5:41, “Messenger, do not be grieved by those who race to surpass one another in disbelief - those say with their mouths, ‘We believe,’ but have no faith in their hearts...,” al-Ṭabarī provides two exegetical *ḥadīths*, each with a collective *isnād*, that ultimately trace back to al-A‘mash - ‘Abd Allāh b. Murra - al-Barrā’ b. ‘Āzib. This collective *isnād* includes al-A‘mash’s student, Abū Mu‘āwiya.<sup>300</sup> Furthermore, the *matn* provided by al-Ṭabarī in one report contains a high degree of similarity to the version provided by Ibn Ḥanbal on the authority of Abū

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<sup>295</sup> *Ḥammama* means to blacken [a face] with charcoal, see Lane, *Arabic-English Lexicon* 2:13, under *jabaha*.

<sup>296</sup> Unidentifiable. Presumably al-Barrā’.

<sup>297</sup> Unidentifiable.

<sup>298</sup> Unidentifiable.

<sup>299</sup> Ibn Ḥanbal, *Musnad* (1995 ed.), 14:199f:18,434.

<sup>300</sup> al-Ṭabarī, *Jāmi‘*, 10:304:11,922; al-Ṭabarī also includes ‘Ubayda b. Ḥumayd [al-Laythī] (d. 190, Baghdad and Kufa) as Hannād's informant. ‘Ubayda receives the *ḥadīth* from al-A‘mash, see *ibid.*

Mu‘āwiya. Al-Ṭabarī's second *ḥadīth* also contains Abū Mu‘āwiya in the *isnād*, although the *matn* is a truncated version of the variant cited by Ibn Ḥanbal.<sup>301</sup> Nevertheless, the overlap of the detailed *matns* provided by Ibn Ḥanbal and al-Ṭabarī point to Abū Mu‘āwiya as the source.

In his gloss of Q5:44, "...those who do not judge according to what God has sent down are rejecting [God's teachings]," al-Ṭabarī again provides the Jewish *Ḥadīth* purportedly transmitted by al-Barrā' b. ‘Āzib. The *isnād* reads (al)-Qāsim [b. al-Ḥasan b. Yazīd al-Hamdānī (d. 272, Hamdān) - al-Ḥusayn [Sunayd b. Dāwūd al-Miṣṣayṣī (d. 226, Baghdad and Miṣṣayṣa) - Abū Mu‘āwiya - al-A‘mash - ‘Abd Allāh b. Murra - al-Barrā' b. ‘Āzib.<sup>302</sup> According to biographical dictionaries, al-Ḥusayn had a suspect reputation as a *ḥadīth* transmitter.<sup>303</sup> Some of the *ḥadīth* he recited were only accepted if they could be corroborated by other narrators, or, if he had transmitted them in Baghdad.<sup>304</sup> The deliberate inclusion of al-Ḥusayn does not make sense in light of the fact that someone more reputable could have been employed. This is important because by al-Ṭabarī's time, standards for *ḥadīth* authentication were significantly more stringent. Therefore, given that the *matn* al-Ṭabarī provides on al-Ḥusayn's authority shares a high degree of similarity with the version he provides for Q5:41 and Ibn Ḥanbal's entry, it is highly plausible that al-Ḥusayn transmitted the *ḥadīth* on Abū Mu‘āwiya's authority.

Abū Mu‘āwiya's role can also be corroborated by a record in the *Ṣaḥīḥ* of Muslim, who provides a collective *isnād* for the Jewish *Ḥadīth*. Muslim's two informants are Ibn Abī Shayba

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<sup>301</sup> al-Ṭabarī, *Jāmi‘*, 10:316:11,939.

<sup>302</sup> al-Ṭabarī, *Jāmi‘*, 10:351:12,034; al-Ṭabarī provides an exegetical *ḥadīth* with Abū Mu‘āwiya in the *isnād*. It is a shortened version and its *matn* references the Jewish group's discussion about employing the same punishment for both nobles and commoners, see al-Ṭabarī, *Jāmi‘*, 10:352:12,036.

<sup>303</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 12:163f; al-Dhahabī, *Siyar A‘lām*, 10:627f.

<sup>304</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 12:163f.

and Yahyā b. ʿAḥyā b. Bukayr (d. 226, Egypt, Ḥijāz, Iraq, and Syria), and they reference Abū Muʿāwiya.<sup>305</sup> The *matn* is virtually identical to Ibn Ḥanbal's, which corroborates Abū Muʿāwiya's narration of the report. This also means that Muslim's detailed variant must be on the authority of Yahyā b. ʿAḥyā b. Bukayr, not Ibn Abī Shayba, because the latter's variant does not have the details as Ibn Ḥanbal's or Muslim's respective entries. Furthermore, Ibn Ḥanbal's and Muslim's variants demonstrate that Wakīʿ did transmit to Ibn Abī Shayba the Prophet's comment about resurrecting a bygone punishment. In sum, on the basis of *isnād* analysis and the high degree of similarity among the *matns* recorded on Abū Muʿāwiya's authority, Muslim's entry further raises the degree of confidence that Abū Muʿāwiya circulated the detailed variant.

In the *ḥadīth* collections I investigated, Ibn Mājah<sup>306</sup>, Abū Dāwūd,<sup>307</sup> al-Nasāʿī,<sup>308</sup> and al-Bayhaqī<sup>309</sup> all provide the Jewish *Ḥadīth* with *isnāds* leading back to Abū Muʿāwiya.<sup>310</sup> The *matn* provided by each *ḥadīth* collector shares a high degree of similarity with one another and with the version recorded by Ibn Ḥanbal and Muslim. Because Ibn Mājah, Abū Dāwūd, al-Nasāʿī, and al-Bayhaqī are later *ḥadīth* collectors, the striking parallels suggest that the report was transmitted on the basis of written copy, which had to have been generated on the authority of Abū Muʿāwiya.

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<sup>305</sup> Muslim, *Ṣaḥīḥ*, 1,327:1,700 (28).

<sup>306</sup> Ibn Mājah, *Sunan*, 855:2,558; he also provides a summary *matn* on Abū Muʿāwiya's authority, see *ibid.*, 780:2,327.

<sup>307</sup> Abū Dāwūd, *Sunan*, 6:497:4,448; Abū Dawūd also provides a second variant going back to al-Aʿmash without Abū Muʿāwiya. This variant appears to be a summary of the longer version, see *ibid.*, 496:4,447.

<sup>308</sup> al-Nasāʿī, *al-Sunan al-Kubrā*, 6:443:7,180 and 10:82:11,079.

<sup>309</sup> al-Bayhaqī, *al-Sunan al-Kubrā*, 8:373:16,930 and 430:17,118.

<sup>310</sup> Ibn Mājah, *Sunan*, 855:2,558; he also provides a summary *matn* on Abū Muʿāwiya's authority, see *ibid.*, 780:2,327.

Biographical information about Abū Mu‘āwiya raises the plausibility of his reception of the Jewish *Ḥadīth* from his teacher, al-A‘mash. According to biographical dictionaries, Abū Mu‘āwiya was a respected *ḥadīth* transmitter.<sup>311</sup> Importantly, he was considered an authoritative source for *ḥadīth* narrated by al-A‘mash.<sup>312</sup> In fact, Abū Mu‘āwiya claimed to have spent 20 years with al-A‘mash, during which time he memorized 1,600 *ḥadīth*, though he is said to have forgotten about 400 of them after falling ill.<sup>313</sup> Regardless of the exact number of *ḥadīth* he ultimately retained, Abū Mu‘āwiya’s comment functions to emphasize his close relationship with his teacher. Therefore, biographical information on Abū Mu‘āwiya supports his reception of the Jewish *Ḥadīth* from al-A‘mash. This in turn suggests that al-A‘mash also played a role in the narration of the *ḥadīth* as recorded on Abū Mu‘āwiya’s authority.

When compared to Abū Mu‘āwiya, al-A‘mash's (d. 147-8, Baghdad, Kufa, Mecca, and Wāsiṭ) reputation as a reliable *ḥadīth* transmitter is uneven. On the one hand, he was recognized for his knowledge of the Qur’ān, religious obligations (*farā’id*), and *ḥadīth*.<sup>314</sup> On the other hand, he was alleged to have practiced *tadlīs*<sup>315</sup> on the authority of weak narrators.<sup>316</sup> Furthermore, although Ibn Ḥanbal provides *ḥadīth* with al-A‘mash in their *isnāds* - of which the Jewish *Ḥadīth*

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<sup>311</sup> al-Khaṭīb al-Baghdādī, *Tārīkh*, 3:145; Ibn Ḥajar, *Tahdhīb*, 5:558.

<sup>312</sup> Ibn Abī Ḥatim, *al-Jarḥ wa al-Ta’dīl*, 7:247f; al-Khaṭīb al-Baghdādī, *Tārīkh*, 3:137-9; Ibn Ḥajar, *Tahdhīb*, 5:558.

<sup>313</sup> Ibn Ma‘īn, *Tārīkh*, 3:376:1,827; al-Khaṭīb al-Baghdādī, *Tārīkh*, 3:138 and 140.

<sup>314</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 8:461; al-Khaṭīb al-Baghdādī, *Tārīkh*, 10:5, 9-11, 13-15; al-Mizzī, *Tahdhīb al-Kamāl*, 12:85f.

<sup>315</sup> *Tadlīs* is when a person does not name the real source even though the *matn* is from such source. For example, A narrated a *ḥadīth* to his student B. C is also a student of A but did not attend the study session. C got the *ḥadīth* from B, but instead of citing B as his authority, C instead directly references A.

<sup>316</sup> al-Dhahabī, *Mizān*, 2:224.

is one example - he comments that a number of al-A‘mash's *ḥadīth* were *muḍṭarib*.<sup>317</sup> This means their contents were inconsistent with other *ḥadīth* on the same topic and none could be given preference. In my view, al-A‘mash’s biographical information does not weaken the probability of his involvement in the circulation of the Jewish *Ḥadīth*, because the contents do not conflict with other variants already reviewed and those that will be examined in subsequent sections. Therefore, unless proven otherwise, al-A‘mash can be said to have transmitted the Jewish *Ḥadīth*.

It is difficult to resolve if al-A‘mash’s source is ‘Abd Allāh b. Murra (d. 99-100, Hamdān and Kufa), or if the latter was himself involved in the transmission of the detailed variant. To the best of my knowledge, no person save al-A‘mash narrates the Jewish *Ḥadīth* from Ibn Murra. Consequently, we do not have any other variants on either Ibn Murra’s or al-Barrā’ b. ‘Āzib’s respective authorities for comparative *matn* analysis. But the inability to corroborate a transmission earlier than al-A‘mash is not the primary reason for the uncertainty of Ibn Murra’s role. Unfortunately, not much is written about Ibn Murra except that many Iraqis, including al-A‘mash, narrated from him, and that he was a respected *muḥaddith*.<sup>318</sup> Therefore, it may or may not be that al-A‘mash’s source is Ibn Murra, and by extension, al-Barrā’ b. ‘Āzib. What can be asserted with a high degree of confidence is that the Prophet’s involvement in the stoning of a Jewish person was known by middle of the second century, and al-A‘mash helped circulate the narrative with a considerable amount of details. These assertions are based on the above *isnād* and comparative *matn* analysis leading up to al-A‘mash.

Even if at this point Ibn Murra’s or Ibn ‘Āzib’s direct involvement is unclear, the detailed

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<sup>317</sup> al-Dhahabī, *Mizān*, 2:224; on *muḍṭarib ḥadīth*, see Kamali, *Textbook of Ḥadīth Studies*, 148f.

<sup>318</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 8:408; Ibn Ḥibbān, *al-Thiqāt*, 5:18; al-Mizzī, *Tahdhīb al-Kamāl*, 16:114.

*ḥadīth* on al-Barrā' b. 'Āzib's authority is telling of the ways in which the Prophet was remembered to have been involved in the stoning of Jewish man. The connection was based on a number of motifs that played to the Qur'ānic polemic towards the Prophet's Jewish contemporaries as noted in the verses attached to the aforementioned *matns*. Therefore, I now turn to an examination of the *matn* in order to shed light on the significance on the Jewish *Ḥadīth* in developing a relationship between the Prophet and the stoning punishment.

### ***Matn Analysis***

The detailed *ḥadīth* variant on al-A'mash's authority begins with the Prophet's observance of the punished offender. This motif connotes the way in which the Prophet encounters his fellows Jewish Medinans and answers the question: How does the Prophet become involved in a *zinā* case for the Jewish community? While being a bystander, the Prophet asks about the punishment for *zinā* offenders. Why would the Prophet, unsolicited, make the interrogation? I suggest that the Prophet's inquiry was meant to be rhetorical in nature, because it aimed to settle a disputed matter: the prophethood of Muḥammad. During the lifetime of the Prophet, demand to prove his prophethood was a recurring theme.<sup>319</sup> His knowledge about the correct punishment would convey that he was indeed a prophet of God, and for this reason, had knowledge of preceding revelations. The Prophet's query about blackening of the face and flogging being the *ḥadd* for Jewish *zinā* offenders telescoped the story in a specific direction. In particular, a Jewish man was bound to an oath, which forced him to admit that stoning was in the Hebrew Bible. When the Prophet claimed to be reimplementing the sanction, it demonstrated his knowledge about the Divine truth, something only a prophet would know. Therefore, the

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<sup>319</sup> On a summary of the ways in which interactions between the Prophet and Medinan Jews functioned to authenticate Muḥammad as a messenger of God, see for example Nickel, *Narratives of Tampering in the Earliest Commentaries of the Qur'ān*, 177-9; Adang, *Muslim Writers of Judaism*, 139-41.

Prophet's awareness of the correct form of punishment in the Torah functioned to legitimize his prophethood and by extension, God's prescriptions.

In the Jewish *Hadīth*, the element of changing the correct punishment parallels a number of Qur'ānic verses accusing the Prophet's Jewish contemporaries of misrepresenting God's commands as conveyed in the Torah.<sup>320</sup> The specific charge is referenced as *tahrīf*, which is the verbal noun of *ḥarrafa*, meaning to change or alter, or to tamper with a thing.<sup>321</sup> One Qur'ānic verse states, "Among the Jews are those who distort the word (*yuḥarrifūn al-kalim*) from its [proper] usage..."<sup>322</sup> In Q6:91, it states:

They have no grasp of God's true measure when they say, 'God has sent nothing down to a mere mortal.' Say, 'Who was it who sent down the Scripture, which Moses brought as light and a guide to people, which you made into separate sheets, showing some but hiding many?...

Likewise, Q2:59 alleges that the Jewish community "substituted a different word from the one they had been given," and Q3:187 denounces those who attempted to conceal the Scripture they had been given.<sup>323</sup> The Jewish *Hadīth* was undergirded by the framework of *tahrīf* because the Medinan Jews eventually admit that the correct punishment for *zinā* offenders was stoning. This was done in the presence of the Prophet, which helped establish his involvement in the application of the punishment.

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<sup>320</sup> For example, see Q2:75-9; Q5:13; Q5:41.

<sup>321</sup> For an overview of *tahrīf*, see *Encyclopaedia of Islam*, 2nd ed., s.v. "Tahrīf;" Nickel, *Narratives of Tampering*, 87, 109f, 129-36, and 190f; Adang, *Muslims Writers of Judaism*, 223-48; *Encyclopaedia of the Qur'ān*, s.v. "Revision and Alteration."

<sup>322</sup> Q4:46; on a detailed discussion of the possible different ways in which the term could have been understood by the Prophet and his audience, see generally Nickel, *Narratives of Tampering in the Earliest Commentaries of the Qur'ān*.

<sup>323</sup> Muslims were not the only group to lobby the charge of tampering with scriptures. The accusation was also employed Mandaens, Samaritans, Zoroastrians, and some church fathers, to name a few, see Adang, *Muslims Writers of Judaism*, 223, fn. 2; *Encyclopaedia of Islam*, 2nd ed., s.v. "Tahrīf."

The accusation of *tahrīf* was represented by the nature of the punishment the Jewish group applied to the offenders, which appears to have reflected practices of the Near Eastern-Mediterranean continuum.<sup>324</sup> For example, according to a document from the New Kingdom of ancient Egypt, adulterers were publicly shamed.<sup>325</sup> In a later Pharaonic period, the male adulterer received 1000 lashes and the female adulterer had her nose cut off.<sup>326</sup> In the ancient Greek city of Locri Epizephirii, the male adulterer was blinded whereas in Lepreum and Cumae he was tied to ropes, walked enchained along the streets for three days, and deprived of his civil rights.<sup>327</sup> In Cumae, a woman convicted of adultery had to stand on a particular stone in the market place for all to see.<sup>328</sup> She was subsequently mounted on a donkey, led around the city, made to stand on the stone for a second time, and forced to live her life bearing the name “donkey-rider.”<sup>329</sup> The *ḥadīth*’s account of the Jewish group’s use of blackening the face, parading around town, and flogging were different forms of public shaming and corporal punishment. These sanctions represented customary practices of the Near Eastern-Mediterranean continuum, therefore, their presence in the *ḥadīth* is unsurprising.

The inclusion of the term *ḥadd* was a later addition to the *matn*, because its appearance presumes that both Jews and Muslims understood the term in the same manner. This would mean

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<sup>324</sup> I define Near Eastern-Mediterranean continuum as the socio-historical complex that existed prior to and after the advent of Islam in the region of the Mediterranean to the Near East, which allowed for awareness, sharing, and adopting of cultural practices.

<sup>325</sup> Galpaz-Feller, “Private Lives and Public Censure,” 154.

<sup>326</sup> Eyre, “Crime and Adultery,” 96f.

<sup>327</sup> Cantarella, “Gender, Sexuality, and Law,” 244.

<sup>328</sup> Ibid., fn. 1 on p. 3.

<sup>329</sup> Ibid.



that the two religious communities understood *ḥadd* to mean punishment. But there is no evidence to support a common understanding. In fact, the Qur’ān’s fourteen uses of the term’s plural form, *ḥudūd*, signify limits, not punishment<sup>330</sup>. This Qur’ānic usage means the term was modified in the post-Prophetic period. Therefore, the Prophet’s reference to *ḥadd* within the *ḥadīth* reflects a meaning that developed after his demise. This suggests that it, along with the remainder of the question, was not uttered by him.

In the detailed version, appeals to a learned authority, as well as the Prophet’s use of an oath, are invoked to imbue the conversation about *zinā* with a sense of overwhelming gravity. Both rhetorically and legally, this aura of offense was then solicited to justify the stoning punishment. The Jewish learned individual functions to confirm that stoning is indeed the correct Torah prescription for *zinā* offenders. And the oath represents a particular value important for Muslims. In Islamic law, breaking of an oath necessitates an act of atonement or expiation (*kaffāra*).<sup>331</sup> This adds significance to the act of taking an oath, and conveys that a commitment is made to God, which in turn imposes certain obligations on the believer of this covenant.<sup>332</sup> Furthermore, an oath may be invoked to compel the oath-taker to follow through on an obligation, should they try to deny it.<sup>333</sup> These notions - *important to Muslims* - are expressed in the *matn* when the Jewish man admits that had it not been for the oath, he would have denied that stoning is in the Torah. The value that oaths may have for the Prophet’s Jewish contemporaries is

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<sup>330</sup> For example, see Q2:187, *tilka ḥudūd Allāh fa lā taqrabūhā*, “These are the limits of God, so do not go near them.”

<sup>331</sup> *Encyclopaedia of Islam* 3rd ed., s.v. “Expiation.”

<sup>332</sup> Mottahedeh, “Oaths and Public Vows in the Middle East,” 118.

<sup>333</sup> *Encyclopaedia of Islam* 2nd ed., s.v. “Bayyina,” the Qur’ān does not employ *bayyina*, proof, in a judicial context. But it does reference witness. For example, see Q2:282, Q4:7, Q5:106-8, and Q65:2.

not the focus. Rather, its use intends to reflect a Muslim value, and it along with the learned authority serve to direct the conversation towards the capital punishment.

At the end of the *ḥadīth*, drawing upon particular Qur’ānic verses serves to legitimize the entire narrative and the implied charge of *tahrīf*. They along with *tahrīf* clothe the *matn* and interconnect the various motifs in the *ḥadīth*. Furthermore, association with specific verses gives more weight to the purported authenticity of the account, which ultimately articulates a connection between Prophetic authority and stoning.

In this section, I analyzed the Jewish *Ḥadīth* by the Companion al-Barrā' b. ‘Āzib (d. 71-2). The *matn* utilized the framework of *tahrīf* on the part of the Jewish community to establish a relationship between the punishment of stoning and the Prophet’s authority. On the basis of *isnād* analysis, it can be stated with a high degree of confidence that the detailed report was in circulation by middle of the second century in Iraq on the authority of al-A‘mash (d. 147-8, Baghdad, Kufa, Mecca, and Wāsiṭ). As I noted above, limited biographical information on his teacher, ‘Abd Allāh b. Murra, makes it difficult establish what Ibn Murra may have circulated, if anything. Consequently, the same issue exists with the Companion Ibn ‘Āzib. Therefore, in order to determine that which have been transmitted earlier than the middle of the second century, and to understand other ways in which the motifs may have been constructed, I turn to a version of the Jewish *Ḥadīth* recorded to have been dispersed by the Companion Jābir b. ‘Abd Allāh (d. 78).

### **Section 3. *Ḥadīth* by the Companion Jābir b. ‘Abd Allāh (d. 78, Baghdad, Egypt, Medina, and Syria)**

According to some variants found in the the collections that I investigated, the Jewish *Ḥadīth* was supposedly circulated by the Companion Jābir b. ‘Abd Allāh (d. 78, Baghdad, Egypt, Medina, and Syria). The narrative is helpful in shedding light on the provenance and significance

of the motifs I previously examined. Importantly, this variant once again demonstrates how *tahrīf* was employed to create a relationship between the Prophet and stoning. Abū Zubayr Muḥammad b. Muslim b. Tadrus (d. 126, Mecca and Medina) and ‘Āmir b. Sharāḥīl al-Sha‘bī (d. 102-9, Hamdān, Kufa, and Syria) are the two Successors who narrate the report from Jābir b. ‘Abd Allāh. Hence, I first analyze *isnāds* and compare *matns* on the authority of Abū Zubayr, and then turn my attention to al-Sha‘bī.

### Reports on the authority of Abū Zubayr

This section is dedicated to assigning a reasonable degree of confidence to Abū Zubayr Muḥammad b. Muslim b. Tadrus’ (d. 126, Mecca and Medina) involvement in the circulation of the Jewish *Ḥadīth*. I also examine different versions of the *matns* transmitted on his authority to determine the significance of particular motifs embedded in his narration. In my estimation, it is highly plausible that Abū Zubayr did help circulate a report according to which the Prophet ordered the stoning of a Jewish man and possibly a Jewish woman.

‘Abd al-Razzāq’s *al-Muṣannaf* includes one report on the authority of Abū Zubayr through the latter’s pupil, ‘Abd al-Malik b. ‘Abd al-‘Azīz b. Jurayj (d. 150, Baghdad, Mecca, Yemen). The *isnād* and *matn* read:

‘Abd al-Razzāq (d. 211) - Ibn Jurayj (d. 150, Baghdad, Mecca, Yemen) - Abū Zubayr (d. 126, Mecca and Medina) - Jābir b. ‘Abd Allāh (d. 78, Baghdad, Medina, Egypt, and Syria):

The Prophet stoned a man from Aslam, a Jewish man, and a woman.<sup>334</sup>

This *matn* represents a statement of fact, meaning, it signifies that by the middle of second century, Muslims were aware of the Prophet’s involvement in the stoning of *zinā* offenders.

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<sup>334</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:319:13,333; Ibn Ḥanbal provides the same report on the authority of ‘Abd al-Razzāq, see Ibn Ḥanbal, *Musnad*, 22:342:14,447.

Evidence of the *matn*'s circulation on Ibn Jurayj's authority is also in two entries reported by Muslim. In one report, Muslim first notes the *isnād* containing Ibn Jurayj and then makes an important comment.<sup>335</sup> He states that uncertainty exists about the background of the woman. This remark is in relation to the other report Muslim provides with Ibn Jurayj in the *isnād*. This entry reads:

Hārūn b. 'Abd Allāh [b. Marwān] (d. 243, Baghdad) - Ḥajjāj b. Muḥammad (d. 206, Baghdad, Miṣṣīṣī, and Tirmidh) - Ibn Jurayj (d. 150) - Abū Zubayr - Jābir b. 'Abd Allāh:

The Prophet stoned a man from Aslam, a man from the Jews, and his female companion (*imra'atahu*).<sup>336</sup>

Here, on the authority of Hārūn b. 'Abd Allāh, the masculine pronoun *hu* is added to 'a woman,' thereby indicating that she is associated with the Jewish man. This is different from 'Abd al-Razzāq's version, which only states 'a woman.' The pronoun is significant because it clarifies the religious background of the woman. If her religion was unknown, then it could have been construed to mean that a non-Jewish woman was stoned on the authority of the Prophet. This is consequential because as I demonstrate in Chapter Three, *ḥadīth* circulated in which a woman is stoned on the authority of the Prophet, and she is *deliberately* cast as a Muslim. Presently, the important upshot of Muslim's and 'Abd al-Razzāq's respective entries is that they indicate Ibn Jurayj was involved in the circulation of the report.

Ibn Ḥanbal records an entry on the authority of 'Abd Allāh Ibn Lahī'a (d. 174, Egypt and Ḥaḍramawt), who is also a student of Abū Zubayr. The *isnād* and *matn* read:

Ibn Ḥanbal (d. 211) - Ḥasan [b. Mūsā] (d. 209-10, Baghdad, Ḥimṣ, Khurasān, Kufa, and Rayy) - ['Abd Allāh] Ibn Lahī'a (d. 174, Egypt and Ḥaḍramawt) - Abū Zubayr

<sup>335</sup> Ishāq b. Ibrāhīm (d. 238, Ḥijāz, Iraq, Marw, Nīsāpūr, and Syria) - Rawḥ b. 'Ubāda (d. 205 or 207, Baghdad and Basra) - Ibn Jurayj - Abū Zuybayr - Jābir b. 'Abd Allāh, see Muslim, *Ṣaḥīḥ*, 1,328:28 (1,701); al-Bayhaqī, *al-Sunan al-Kubrā*, 8:374:16,931; Abū Dāwūd also uses the same *isnād* and *matn*, see Abū Dāwūd, *Sunan*, 6:503:4,455.

<sup>336</sup> Muslim, *Ṣaḥīḥ*, 1,328:28 (1,701); al-Bayhaqī, *al-Sunan al-Kubrā*, 8:374:16,931.

- Jābir:

I (Abū Zubayr) asked Jābir: Did the Messenger of God stone?

Jābir replied: Yes. A man from Aslam, a man from the Jews, and a woman. The Prophet said, “We will give a ruling for you today.”<sup>337</sup>

Unlike in Ibn Jurayj’s versions, reference to the Prophet’s involvement in the stoning of individuals was triggered by an inquiry. The absence of Abū Zubayr’s question from Ibn Jurayj’s account suggests that the latter believed the inquiry was sufficiently important to include. But it is also possible that in Ibn Ḥanbal’s record, Ibn Lahī’a (d. 174), or someone below him in the *isnād*, inserted the question. To determine which scenario is more likely, I turn to Ibn Lahī’a’s biographical information. Indeed, some *ḥadīth* critics did not value anything narrated by Ibn Lahī’a.<sup>338</sup> And Ibn Ḥanbal noted that he only transmitted *ḥadīth* from Ibn Lahī’a if they could be corroborated by other (presumably more reliable) transmitters.<sup>339</sup> Ibn Ḥanbal’s opinion explains why we find the Jewish *Ḥadīth* in the *Musnad* with Ibn Lahī’a in the *isnād*. In contrast to allegations made against Ibn Lahī’a, others respected him and accepted his transmissions without qualifications.<sup>340</sup> Also, Ibn Lahī’a served as a judge in Egypt, which indicates that he was a respected public figure. Even if his judgeship cannot substantiate his transmission ability, his circulation of the Jewish *Ḥadīth* is unsurprising because the report addresses a legal matter.<sup>341</sup> In sum, Ibn Lahī’a’s account can be substantiated on the basis of ‘Abd al-Razzāq’s and Muslim’s entries, and to a certain extent, based on his biographical information. This intimates that Ibn

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<sup>337</sup> Ibn Ḥanbal, *Musnad* (1992 ed.), 23:347:15,151.

<sup>338</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 15:490f.

<sup>339</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 15:491 and 494; al-Dhahabī, *Siyar A‘lām*, 8:15f.

<sup>340</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 15:495; al-Dhahabī, *Siyar A‘lām*, 8:13.

<sup>341</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 15:488; al-Dhahabī, *Siyar A‘lām*, 8:11.

Lahī‘a received the *ḥadīth* from Abū Zubayr and transmitted it accordingly.

Based on *isnād* and comparative *matn* analysis, it is highly plausible that Ibn Jurayj and Ibn Lahī‘a narrated the Jewish *Ḥadīth*, and by extension, so did Abū Zubayr (d. 126, Mecca and Medina). This in turn suggests that Abū Zubayr received the report from Jābir b. ‘Abd Allāh.

Biographical commentary on Abū Zubayr does throw into question his reliability as a *ḥadīth* transmitter, but it does not invalidate his acquisition of the narrative from his teacher.

Specifically, some did not respect him as a narrator, and burned books that were written on his authority.<sup>342</sup> But what was actually destroyed is unknown, so his involvement in the circulation of the Jewish *Ḥadīth* cannot be wholly dismissed. Importantly, Abū Zubayr was known to have regularly spent time with Jābir b. ‘Abd Allāh, and thusly, considered to be a trustworthy narrator of Jābir’s reports.<sup>343</sup> This combined with the simplicity of the report makes it highly plausible that Abū Zubayr helped circulate the *ḥadīth* by Jābir b. ‘Abd Allāh. The extent to which Jābir b. ‘Abd Allāh may have been directly involved may be determined based on the report’s circulation by his other student, al-Sha‘bī (d. 102-9). It is to these variants that I turn to in the next.

### Reports on the authority of al-Sha‘bī

Variants provided by al-Sha‘bī (d. 102-9, Baghdad, Hamdān, Kufa, and Syria) have significantly more details than the version narrated by Abū Zubayr. Additionally, many of the themes in al-Sha‘bī’s version are the same as those found in the *matn* recorded from al-Barrā’ b. ‘Āzib. In this section, I first compare the *matn* transmitted by al-Sha‘bī with al-Barrā’ b. ‘Āzib’s

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<sup>342</sup> Ibn Abī Hātim, *al-Jarḥ wa al-Ta’dīl*, 8:75; al-Mizzī, *Tahdhīb al-Kamāl*, 26:407.

<sup>343</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 8:42; Ibn Abī Hātim, *al-Jarḥ wa al-Ta’dīl*, 8:76; Ibn Ḥibbān, *al-Thiqāt*, 5:352; Motzki specifically demonstrates the likely probability of historicity attributable to the Abū Zubayr - Jābir *isnād* and *matns*, see Motzki, *Origins of Jurisprudence*, 208-10.

version. I then examine the *isnāds* leading up al-Sha‘bī to determine the plausibility of his involvement, and by extension, that of Jābir b. ‘Allāh, in the circulation of the *ḥadīth*. Based on *isnād* and comparative *matn* analysis, it is highly likely that al-Sha‘bī transmitted the Jewish *Ḥadīth*, although, some elements were attached to the narrative after his death. Al-Sha‘bī’s account once again reverberates the allegation of *tahrīf* and establishes how the Prophet came to be associated with stoning and *zinā*.

There are three individuals recorded to have transmitted the Jewish *Ḥadīth* on al-Sha‘bī’s authority with one of them being Mujālid b. Sa‘īd al-Hamdānī (d. 144, Hamdān, Kufa, and Syria). The *isnād* and *matn*:

al-Ḥumaydī (d. 219, Mecca) - Sufyān [b. ‘Uyayna] (d. 198, Kufa, Medina, and Syria) - Mujālid b. Sa‘īd al-Hamdānī (d. 144, Hamdān, Kufa, and Syria) - [‘Āmir] al-Sha‘bī (d. 102-9, Baghdad, Hamdān, Kufa, and Syria) - Jābir b. ‘Abd Allāh (d. 78, Baghdad, Egypt, Medina, and Syria):

A man from Fadak committed *zinā* so its people<sup>344</sup> wrote to the Jews of Medina saying that they should ask Muḥammad about the matter. They instructed that if he commands them to flog, then they should accept his judgment. But if he commands them to stone him, then they should not.<sup>345</sup> Accordingly, the Jews of Medina asked the Prophet about the incident.

He<sup>346</sup> said: Send me the two most knowledgeable from among you.

The Jews of Medina came with a one-eyed man named Ibn Ṣūriyā and someone else.

The Prophet asked the two of them: Are you two the most knowledgeable?

They responded: Certainly our community believes it to be the case.

Then the Prophet asked them: Is there not a ruling by God in your Torah?

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<sup>344</sup> Presumably the Jews of Fadak.

<sup>345</sup> Burton calls this theme "a pro-Islamic propaganda," see Burton, "The Penalty for Adultery in Islam," 274. He correctly states that the comment is used in exegetical commentary.

<sup>346</sup> Presumably the Prophet.

They responded: Of course there is!

So the Prophet said: I implore you by the One who parted the sea for the People of Israel, Who shaded you with clouds, Who rescued you from the Pharaoh, Who sent favors and consolation onto the People of Israel, what do you find in the Torah regarding the matter of stoning?

Upon hearing that, one of the two learned men said to the other: I have never been implored in this way by anyone.

Then they both said to the Prophet: We find that constant looking is *zinā*, embracing is *zinā*, and kissing is *zinā*. And if four witnesses testify that they saw the male member appear and disappear into the female, just as a needle is inserted into a kohl bottle, then stoning is obligatory.

The Prophet responded: That is it!

Thereafter the Prophet gave the command and the offender was stoned. This incident occasioned verse (Q5:42): “If they come to you [Prophet] for judgement, you can either judge between them, or decline - if you decline, they will not harm you in any way, but if you do judge between them, judge justly.”<sup>347</sup>

A number of themes from al-Barrā’ b. ‘Āzib’s version (re)appear in the detailed version of the *ḥadīth* associated with Jābir b. ‘Abd Allāh. Note the following side-by-side comparison:

Jābir b. ‘Abd Allāh (d. 78, Baghdad, Egypt, Medina, and Syria)	al-Barrā’ b. ‘Āzib (d. 71-2, Medina and Kufa)
Jews of Fadak advise the Jews of Medina to ask the Prophet to adjudicate a <i>zinā</i> matter.	Prophet sees the offender who had been flogged and whose faced had been blackened. He makes an inquiry about the punishment.
Jews of Fadak instruct that if the Prophet orders flogging, then accept it. And if he orders stoning, then reject it.	Nobles are let go. Commoners are stoned. Agree to treat all the same by flogging and blackening the face.
Prophet summons <i>two</i> of the most knowledge men. They bring a one-eyed man named Ibn Šūriyā and a second learned person.	Prophet summons <i>one</i> of learned men. He remains unidentified.
Prophet implores the <i>two</i> learned men on	Prophet implores <i>one</i> person learned man

<sup>347</sup> al-Ḥumaydī, *Musnad*, 2:352f:1,331.



the basis of a long oath to tell him what they find in the Torah regarding the <i>stoning</i> punishment for <i>zinā</i> .	on the basis of a short oath to tell him what he finds in the Book (Torah) regarding the <i>ḥadd</i> for <i>zinā</i> .
The knowledgeable men respond by defining the legal elements necessary for stoning.	The knowledgeable man confirms stoning as the proper punishment.
Prophet (re)confirms the punishment.	Prophet claims to (re)implement the stoning punishment.
Exegetical connection to Q5:42.	Exegetical connection to Q5:41, 44, 45, and 47.

In Mujālid's account, the consultation between the Jews of Fadak and Medina establishes the occasion for the Prophet's involvement in the adjudication of a *zinā* case of a Jewish offender. The correspondence explicitly demonstrates the Jewish group's intentional disregard of the stoning punishment - the practice of *tahrīf*. Coincidentally, it also intimates that the Jews of Fadak's understanding of *zinā* was the same as the Qur'ānic use of the term, which calls for 100 lashes. This is because they advise the Jews of Medina to accept the Prophet's ruling if he orders them to flog the *zinā* offender.

In Mujālid's narration, learned authorities are once again utilized to expose the Jewish community's alteration of punishment for *zinā* offenders. The use of two individuals versus one (as in Ibn 'Āzib's case) is designed to increase the probative value of affirming the stoning punishment. In all variants on the authority of Mujālid, the name 'Abd Allāh b. Šūriya appears in the *matn*. The mention of Ibn Šūriyā is not coincidental. Šūr is located in present-day southern Lebanon, and according to Yaqūt (d. 626), it was conquered by 'Umar b. al-Khaṭṭāb and used for access to the Mediterranean Sea.<sup>348</sup> Importantly, it was a place where many scholars resided.<sup>349</sup>

<sup>348</sup> Yaqūt, *Mu'ajam al-Buldān*, 3:433.

<sup>349</sup> Ibid.

Şūr's significance can also be appreciated because the city is mentioned in the Hebrew Bible.<sup>350</sup>

In addition to the geographical and cultural importance of Şūr, Ibn Şūriyā himself appears in several reports in which the Prophet interacts with the Jewish community. It is recorded that Ibn Şūriyā was one of the leaders of Banū Tha‘laba, and one of the most learned of the Torah in the Ḥijāz.<sup>351</sup> In a reporting involving the Companion Abū Hurayra (d. 57-9, Mecca, Medina, and Yemen), an interaction between Ibn Şūriyā and the Prophet is recorded:

The Messenger of God went to House of Scholars and said: Tell me who is your most learned.

They answered by referencing ‘Abd Allāh b. Şūriyā. The Messenger of God remained with him and made him take an oath in accordance with Ibn Şūriyā's religion, which referenced the favors God bestowed upon the Jewish people, such as food and comfort, and shade from grief.

The Prophet asked Ibn Şūriyā: Do you know that I am a messenger of God?

Ibn Suriya responded: By God, yes. Indeed, the community knows what I know because your description and qualification are stated clearly in the Torah. But they envy you.

The Prophet asked: And what stops you from accepting Islam?

He responded: I would hate to go against my community, but it remains possible they may give allegiance to you and convert.

After that Ibn Şūriyā converted.<sup>352</sup>

According to a separate narrative, Ibn Şūriyā converted but then apostatized.<sup>353</sup> And other reports indicate that Ibn Şūriyā had a different, less positive attitude towards the Prophet.<sup>354</sup> But

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<sup>350</sup> The English translation uses the name Tyre, for example see 2 Samuel 5:11, 1 Kings 5:1, and 1 Chronicles 14:1.

<sup>351</sup> Mazuz, *Religious and Spiritual Life of the Jews of Medina*, 15.

<sup>352</sup> Ibn al-‘Asākir, *Tārīkh*, 3:417f.

<sup>353</sup> al-Ṭabarī, *Jāmi‘*, 10:304.

<sup>354</sup> Mazuz, *Religious and Spiritual Life of the Jews of Medina*, 15.

irrespective of Ibn Ṣūriyā's conversion to Islam or opinion about the Prophet, his appearance in Abū Hurayra's account is relevant for the study of the Jewish *Ḥadīth*. For one, reference to him appears to be purposeful in light of the motif of using an expert to confirm the Hebrew Bible's stoning prescription. Secondly, we find a parallel construction with Abū Hurayra's report about Ibn Ṣūriyā and Jābir b. 'Abd Allāh's narrative about stoning. Specifically, a Jewish scholar confirms Muḥammad's prophethood. The same maneuver is in the Jewish *Ḥadīth* to acknowledge the stoning punishment in accordance with the Torah (which ostensibly affirms Muḥammad's status as a prophet as well). Lastly, the use of Jewish scholars such as Ibn Ṣūriyā exposes the Jewish community's practice of *tahrīf* in relation to the punishment, just as his acknowledgement exposes their deliberately veiled belief of Muḥammad's status as a prophet. In sum, Abū Hurayra's narrative further illustrates why Ibn Ṣūriyā appears specifically in the Jewish *Ḥadīth*.

By the middle of second century, it is highly probable that the clauses defining *zinā* were in circulation and associated with the Jewish *Ḥadīth*. This time period can be corroborated on the basis of another variant narrated by al-Sha'bī's student, al-Mughīra b. Miqṣam (d. 136, Kufa).

The *isnad* and *matn* read:

Ibn Abī Shayba (d. 235, Kufa, Mecca, and Syria) - Hushaym [b. Bashīr] (d. 183, Baghdad, Basra, and Wāsiṭ) - al-Mughīra [b. Miqṣam] (d. 136, Kufa) - al-Sha'bī:

The Jews asked the Prophet: What constitutes the necessity of stoning?

The Prophet responded: When four witnesses testify that they saw the male member enter the female just as a needle is inserted into a kohl bottle. Then stoning is necessary.<sup>355</sup>

This report raises the degree of confidence that the *terminus ante quem* of the definition clauses

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<sup>355</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:367:29,406.

was the middle of the second century, because now we have two students of al-Sha‘bī narrating the same information.

But the inquiry by the Prophet in one variant, and by the Jewish group in another version, brings to light an important point of consideration. Specifically, why would either party ask the other about what constitutes *zinā*? It does not make sense because in all other Jewish *Ḥadīth* examined thus far, it is accepted that the transgression already occurred. In fact, the Jewish group’s desire to involve the Prophet is based on the very premise that *zinā* took place! Furthermore, while stoning is prescribed in the Hebrew Bible, there is no mention of a four-witness evidentiary standard for conviction. Therefore, the appearance of the *zinā* definition and four-witness clauses must be accepted as elements used to establish legal precedent for Islamic *zinā* laws.

The metaphor of a needle being inserted into a kohl bottle becomes legally consequential in Islamic laws, because it serves as one way of establishing the occurrence of sexual intercourse.<sup>356</sup> Al-Mughīra, the student of al-Sha‘bī, must have had a role in disseminating the clause as it appears in the Jewish *Ḥadīth*. This is because the Ḥanafī jurist Abū Yūsuf employs the report on al-Mughīra’s authority to explain the nature of testimony required from witnesses to confirm *zinā*.<sup>357</sup> Coupled with al-Mughīra’s own judicial and legal acumen, it is unsurprising to find that his focus is on something of legal consequence.<sup>358</sup> In sum, the clause, which comes to serve legal precedent for affirming sexual intercourse, was in circulation with the Jewish *Ḥadīth*

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<sup>356</sup> For example, see al-Shāfi‘ī, *al-Umm*, 7:391; (Mālikī) Saḥnūn, *al-Mudawwana*, 4:486; (Ḥanafī) al-Jaṣṣāṣ, *Ahkām al-Qur’ān*, 5:129; (Hanbalī) Ibn Qudāma, *al-Mughnī*, 12:364.

<sup>357</sup> Abū Yūsuf, *al-Kharāj*, 162; al-Bayhaqī records the jurist Ibrāhīm al-Nakha‘ī (d. 96, Kufa and Yemen) as al-Mughīra’s intermediary to al-Sha‘bī, see al-Bayhaqī, *Sunan al-Kubrā*, 8:402:16,014; no correction is made to al-Mughīra’s *isnād* in the *‘ilal* collections I investigated.

<sup>358</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta’dīl*, 1:153; al-Mizzī, *Tahdhīb al-Kamāl*, 28:399.

by the middle of the second century on the respective authorities of al-Mughīra (d. 136, Kufa) and Mujālid (d. 144).

Based on an examination of *isnāds* and *matns* associated with the Companions al-Barrā' b. 'Āzib and Jābir b. 'Abd Allāh, the middle of the second century is the *terminus ante quem* for framing the Jewish *Ḥadīth* as exegetical commentary on specific Qur'ānic verses. As noted in the previous section on al-Barrā' b. 'Āzib, al-A'mash (d. 147-8) circulated the *ḥadīth* with the exegetical clauses. During the same time period as al-A'mash, al-Sha'bī's student Mujālid (d. 144) attaches the specific verses to the incident. It seems that the particular Qur'ānic verses functioned to charge the Jewish community of *tahrīf*, and by extension, the Prophet's use of the stoning punishment.

It should not be overlooked that al-Sha'bī's student, al-Mughīra, narrated the *ḥadīth* without the Qur'ānic verses. The absence of the exegetical clauses from al-Mughīra's report throws into question al-Sha'bī as the source. A report in the *Musnad* of al-Mawṣilī can help shed light on the provenance of the exegetical motifs. The *isnād* and *matn* read:

al-Mawṣilī (d. 307, Baghdad, Basra, and Mawṣil) - Ishāq [b. (Ibrāhīm) b. Abī Isrā'īl] (d. 245, Baghdad, Marw, Rayy) - Sufyān [b. 'Uyayna] (d. 198, Kufa, Mecca, and Syria) - Mujālid (d. 144, Hamdān, Kufa, and Syria) - al-Sha'bī - Jābir:

[Regarding Q5:41 which reads], “If you are given this ruling, accept it, but if you are not, then beware!” Ibn Ṣūriyā is mentioned when the Prophet came to them and said to the two of them: By the One who sent the Torah to Moses, and the One who parted the sea, and the One who sent favors and consolation, are you the most knowledgeable?

The two of them responded: Certainly our community believes it to be the case.

He<sup>359</sup> said: Then one of them said: I cannot believe he has implored us in this way!

He<sup>360</sup> asked: Do you find that constant looking is *zinā*, embracing is *zinā*, and

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<sup>359</sup> Unidentifiable but presumably Jābir.

<sup>360</sup> Unidentifiable. Presumably the Prophet based on other variants

kissing is *zinā*? And if four witnesses testify that they saw the male member appear and disappear into the female, just as a needle is inserted into a kohl bottle, is stoning then obligatory?<sup>361</sup>

The *matn* appears to be a summary of the account in the *Musnad* of al-Ḥumaydī as first noted in this subsection, which also includes Ibn ‘Uyayna and Mujālid in the *isnād*. The exegetical clause in al-Mawṣalī’s entry mentions Q5:41, not Q5:42, which is in the variant provided by al-Ḥumaydī. It may be that Mujālid or his student, Sufyān b. ‘Uyayna (d. 198, Kufa, Medina, and Syria), included a different Qur’ānic verse at one time as opposed to another occasion. But the similarities between Mujālid’s narrations in the two *ḥadīth* collections point to him as the common source, which means that he likely received the exegetical clauses from al-Sha‘abī. Their absence from al-Mughīra’s *matn* can be explained by the fact that he was concerned with the legal aspect of the *ḥadīth*, not its exegetical relevance.

An examination of a variant on the authority by another of al-Sha‘bī’s student is helpful in clarifying his involvement in the circulation of the exegetical clauses. This version is in the *Musnad* of al-Ḥumaydī and reads:

al-Ḥumaydī (d. 219) - Sufyān [b. ‘Uyayna] (d. 198, Kufa, Mecca, and Syria) - Zakarīyyā [b. Abī Zā’ida] (d. 147 or 149, Ḥamdān and Kufa) - al-Sha‘bī - Jābir b. ‘Abd Allāh:

Jābir said regarding God's saying (Q5:41), “and the Jews who listen eagerly to lies,” is a reference to the Jews of Medina.

(Q5:41 cont.) “and to those,” is a reference to the Jews of Fadak.

(Q5:41 cont.) “who have not even met you, who distort the meaning of revealed words,” is a reference to the Jews of Fadak instructing: If the Prophet commands you to flog, then accept it. But if he does not, then be wary of the command to stone.<sup>362</sup>

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<sup>361</sup> al-Mawṣilī, *Musnad*, 4:103:2,136.

<sup>362</sup> al-Ḥumaydī, *Musnad*, 2:353:1,332.

Here, reference is made to Q5:41, not Q5:42. This is consistent with both of al-Ḥumaydī's entries on the authority of Ibn 'Uyayna, which indicates that he did receive the recorded *matns* from Mujālid and Zakarīyya. However, it may be the case that Zakarīyyā knew of the exegetical clauses on Mujālid's authority, but named al-Sha'bī. This is conceivable given that Zakarīyyā was known to practice *tadlīs* with *ḥadīth* from al-Sha'bī.<sup>363</sup> But even if Mujālid is Zakarīyyā's actual source, it does not negate al-Sha'bī as the common authority for the exegetical clauses. In short, despite possible errors in transmissions, the evidence does point to al-Sha'bī as the fount of the Jewish *Ḥadīth* with the exegetical clauses for his two students Mujālid and Zakarīyyā. This means that by the early second century, the narrative was interlinked to a Qur'ānic polemic of *tahrīf* aimed at the Prophet's Jewish contemporaries.

Al-Sha'bī as the source for the exegetical clauses is complicated by a report noted by Abū Dāwūd. This version includes Mujālid in the *isnād* but not Ibn 'Uyayna. The entry reads:

Abū Dāwūd (d. 275) - Yaḥyā b. Mūsā al-Balkhī (d. 240, Balk and Kufa) - Abū Usāma [Ḥammād b. Usāma] (d. 201, Kufa) - Mujālid (d. 144, Hamdān, Kufa, and Syria) - 'Āmir [al-Sha'bī] (d. 102-9, Baghdad, Hamdān, Kufa, and Syria) - Jābir b. 'Abd Allāh:

A Jewish group came with a man and a woman who committed *zinā*. He<sup>364</sup> commanded: Bring me the two most knowledgeable men from among you.

So they brought him Ibn Ṣūriyā and he<sup>365</sup> said: The Prophet implored the two of them by saying: "What is the command that you two find in the Torah regarding the punishment for these two?"

They responded: We find in the Torah that if four witnesses testify that they saw his member in her just as a needle is inserted into a kohl bottle, then they are stoned.

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<sup>363</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 9:361f; al-Dhahabī, *Siyar A'lām*, 6:203.

<sup>364</sup> Unidentifiable. Presumably the Prophet based on other variants.

<sup>365</sup> Unidentifiable. Likely Jābir.

He<sup>366</sup> asked: Then what prevents you from stoning them?

They responded: We no longer had the fortitude to implement the punishment of execution (*dhahaba sulṭānunā fa karahnā al-qatl*).

The Messenger of God called for the Jews and four witnesses came. They testified that they witnessed the man's member go into the woman just as a needle in a kohl bottle. Upon hearing that the Messenger of God gave the command for them to be stoned.<sup>367</sup>

First, the upshot of this report is that it corroborates al-Shaʿbī's involvement in the circulation of the Jewish *Ḥadīth*. This narrative overlaps with Mujālid's other variants, and contains the elements recorded on the authorities of al-Shaʿbī's other students. It is unlikely that Abū Usāma made an error in his transmission on Mujālid's authority, because Abū Usāma is noted to have only transmitted *ḥadīth* he wrote down.<sup>368</sup> Therefore, the absence of Q5:41 and Q5:42 from Abū Dāwūd's report intimates an addendum to the *matn* after al-Shaʿbī's death.

But the absence of the exegetical clauses from Abū Dāwūd's entry can actually be explained with a more plausible scenario. Specifically, it is highly plausible that Mujālid did not reference the Qurʾānic verses in his study session with Abū Usāma. Biographical entries on Mujālid indicate that his reputation as a trustworthy *ḥadīth* transmitter was questionable.<sup>369</sup> Some would not transmit anything from him. If others did, then it was with *ḥadīth* they heard from Mujālid when he was younger, because he was deficient in memory in late age. In fact, it is noted that *ḥadīth* transmitted by Abū Usāma on the authority of Mujālid are not necessarily reliable,

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<sup>366</sup> Unidentifiable. Presumably the Prophet based on other variants.

<sup>367</sup> Abū Dāwūd, *Sunan*, 6:501f:4,452; al-Bayhaqī, *al-Sunan al-Kubrā*, 8:402:16,013. The respective variants of al-Bayhaqī and Abū Dāwūd share a high degree of similarity.

<sup>368</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 7:223; al-Dhahabī, *Siyar Aʿlām*, 9:278.

<sup>369</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 27:221; al-Dhahabī, *Siyar Aʿlām*, 6:284.



because Abū Usāma studied with Mujālid after the latter began to lose his memory.<sup>370</sup> Therefore, it is highly likely that Mujālid's weak memory resulted in the absence of the Qur'ānic verses in the variant transmitted to Abū Usāma. But it is worth noting that biographical entries do mention that *ḥadīth* Mujālid transmitted from al-Sha'bī - Jābir were in fact reliable.<sup>371</sup> Therefore, Mujālid did likely receive the report from al-Sha'bī, but made errors in transmitting particular Qur'ānic verses, and in the case of Abū Usāma, did not mention any of them.<sup>372</sup>

By analyzing *isnāds* and *matns* on al-Sha'bī's authority, and by comparing his *matn* to the narrative circulated by al-Barrā b. 'Āzib, we are on stronger footing to assert that al-Mughīra (d. 136), Mujālid (d. 144), and Zakarīyyā (d. 147 or 149) transmitted the Jewish *Ḥadīth* from al-Sha'bī. Supposedly, 'Āmir al-Sha'bī (d. 102-9, Baghdad, Hamdān, Kufa, and Syria) did practice *tadlīs*, but *ḥadīth* critics seemed to have absolved him of the negative connotations that accompany this habit. Specifically, it is noted that al-Sha'bī's transmissions based on *tadlīs* were acceptable because they were done with reliable authorities.<sup>373</sup> Broadly, he was a respected *ḥadīth* transmitter and legal authority. The Syrian jurist Ibn Shihāb al-Zuhrī (d. 124, Medina and Syria) remarked that there existed four outstanding legal authorities, and al-Sha'bī was the best

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<sup>370</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 27:221f; al-Dhahabī, *Siyar A'lam*, 9:286.

<sup>371</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 27:223f.

<sup>372</sup> Two reports in the *Muṣannaf* of Ibn Abī Shayba corroborate both Mujālid's and al-Sha'bī's involvement in the circulation of the Jewish *Ḥadīth*. The *matn* reads:

The Prophet stoned a Jewish man and a Jewish woman.

The first *isnād* reads:

Ibn Abī Shayba (d. 235, Kufa, Mecca, and Syria) - 'Abd al-Rahīm b. Sulaymān (d. 187, Kufa, Marw, and Rayy) - Mujālid (d. 144) - [al-Sha'bī] (d. 102-9) - Jābir b. 'Abd Allāh (d. 78), see Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:406:29,616.

The second *isnād* reads:

Ibn Abī Shayba - Jarīr [b. 'Abd al-Ḥamīd] (d. 188, Kufa and Rayy) - Mujālid (d. 144) - [al-Sha'bī], see Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:406:29,618.

<sup>373</sup> Ibn Asākir, *Tārīkh*, 25:346; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 3:341; al-'Uqaylī, *al-Du'fā*, 2:35f:450.

in Kufa.<sup>374</sup> Al-Sha‘bī’s reputation as a legal authority probably informed ‘Umar b. ‘Abd al-‘Azīz’s (r. 99-101) decision to appoint him as judge in Kufa.<sup>375</sup> All in all, it can be said with a high degree of confidence that al-Sha‘bī circulated a report according to which the Prophet ordered the stoning of a Jewish couple. Moreover, because al-Sha‘bī was a legal expert, it is also conceivable that he would have transmitted the clauses about the definition of *zinā* and the four-witness requirement. Lastly, it is also reasonably plausible that he was aware of the connection between the Qur’ānic charge of *taḥrīf* and the Jewish group’s reason for employing a punishment other than stoning.<sup>376</sup>

The disparity in Abū Zubayr’s and al-Sha‘bī’s respective *matns* cannot dismiss the possibility of Jābir b. ‘Abd Allāh’s involvement in the circulation of the Jewish *Ḥadīth*. First, *isnād* and comparative *matn* analysis of reports on al-Sha‘bī’s authority generates a high degree of confidence that he transmitted the *ḥadīth*. This in turn necessitates a serious consideration of Jābir b. ‘Abd Allāh as al-Sha‘bī’s source. Second, Jābir’s detailed report contains many of the same motifs found in versions recorded by the Companion al-Barrā’ b. ‘Āzib. The fact that their accounts are similar in theme but not in exact wording suggests that two individuals could have transmitted the narrative from a common source. On the basis of investigations in subsequent sections, I demonstrate that this was likely to have been the case. Hence, it is highly probable that by the turn of the first century, variants of the Jewish *Ḥadīth* circulated in which the Qur’ānic charge of *taḥrīf* was used as the framework to establish the Prophet’s Jewish contemporaries abandonment of the stoning punishment, which resulted in the forging of a

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<sup>374</sup> al-Khaṭīb al-Baghdādī, *Tārīkh*, 14:144.

<sup>375</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 8:370f.

<sup>376</sup> Mujāhid b. Jabr (d. 100-4)’s exegetical commentary includes elements of the Jewish *Ḥadīth*, which supports the likelihood of the *ḥadīth*’s circulation by the early second century, see *infra* p. 176.

relationship between the Prophet's authority and stoning.

#### **Section 4. *Ḥadīth* by the Companion ‘Abd Allāh b. ‘Umar (d. 73-4, Medina)**

In addition to the aforementioned Companions, the Jewish *Ḥadīth* is also recorded to have been circulated by the Companion ‘Abd Allāh (d. 73-4, Medina), the son of the Caliph ‘Umar b. al-Khaṭṭāb. Ibn ‘Umar's two *mawlās*, Nāfi‘ (d. 116-7, or 119, Egypt and Medina) and ‘Abd Allāh b. Dīnār (d. 127, Medina), are noted to have transmitted the narrative from Ibn ‘Umar. Additionally, Zayd b. Aslam (d. 136 or 143, Medina), *mawlā* of ‘Umar b. al-Khaṭṭāb, is also recorded to have received the *ḥadīth* from Ibn ‘Umar. In this section, I first focus on variants on Nāfi‘'s authority, and thereafter on versions circulated by Ibn Dīnār and Ibn Aslam, respectively. Generally, some of the details we find in the al-Barrā' b. ‘Āzib and Jābir b. ‘Abd Allāh narratives are missing from Ibn ‘Umar's account. For example, there is no background story about why the Jewish group asks the Prophet to adjudicate their *zinā* case, nor any references to Qur'ānic verses. However, the core elements do remain intact, and the implicit Qur'ānic charge of *tahrīf* functions as the backbone of Ibn ‘Umar's report.

#### **Reports on the authority of Nāfi‘ *mawlā* Ibn ‘Umar (d. 116-7, or 119, Egypt and Medina)**

A number of *ḥadīth* collections provide the Jewish *Ḥadīth* on the authority of Nāfi‘ *mawlā* Ibn ‘Umar. In this and subsequent subsections, I examine *isnāds* and *matns* on the authority of his students, to establish a reasonable degree of confidence about their involvement in the circulation of the report, what they narrated, and the significance of particular clauses. I utilize my findings to affirm the likelihood of Nāfi‘'s participation in the transmission of the Jewish *Ḥadīth*. In my view, it is highly probable that Nāfi‘ disseminated the Jewish *Ḥadīth*

containing the notion of *tahrīf* on the part of the Jewish community, which doubtlessly created a relationship between the Prophet's authority and the stoning punishment.

**Mālik b. Anas (d. 179, Medina)**

Mālik b. Anas (d. 179, Medina) records the *ḥadīth* on the authority of his teacher, Nāfi', in the *Muwaṭṭa'*. The *isnād* and *matn* read:

Mālik - Nāfi' [*mawla* b. Ibn 'Umar] - 'Abd Allāh b. 'Umar:

A Jewish group came to the Messenger of God and told him about a case involving a man and woman from among them who committed *zinā*. The Messenger of God said: What do you find in the Torah regarding the matter of stoning?

They responded: We humiliate and flog them.

'Abd Allāh b. Salām interjected: You lie! Stoning is in the Torah!

So they brought the Torah and opened it up. Someone from the Jewish group put his hand on the stoning verse and read what was before and after it. 'Abd Allāh b. Salām said to the reader: Lift your hand up.

The man did and they saw the stoning verse. The Jewish group said: He was right, Muḥammad. It does contain the stoning verse.

So the Messenger of God gave the command and the two who committed *zinā* were stoned. 'Abd Allāh b. 'Umar said: I saw the man lean over to protect the woman from the stones.

Yaḥyā said: I heard Mālik saying: The man leaned over to protect the woman from the stones.<sup>377</sup>

To reiterate, the detailed background story found in the al-Barrā' b. 'Āzib and Jābir b. 'Abd Allāh variants, respectively, is not in this version. Nevertheless, the report conveys that the Jewish group sought out the Prophet's judgement for their *zinā* case, presumably with the hope of affirming a ruling that was different than the stoning punishment. It is possible that Mālik excised the story's background, because it did not have a bearing on the core message of the

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<sup>377</sup> Mālik, *Muwaṭṭa'* (narrated by Yaḥyā b. Yaḥyā), 1195.

narrative.

The Qur'ānic imputation of *tahrīf* upon the Prophet's Jewish contemporaries undergirds the entire *ḥadīth*. When the Prophet asks the Jewish group about the punishment, someone replies that they flog and humiliate *zinā* offenders. This response does not actually answer the Prophet's question, because he asks if they find stoning in the Torah. The Jewish group only explains what it does, not what the Torah states. The question and response functions to demonstrate *tahrīf* on the part of the Jewish community, which is then exposed by an individual named 'Abd Allāb b. Salām (d. 43, Medina and Syria), *and* on the authority of the Torah itself.

The man's attempt to protect his companion from the stones gives the appearance of a love story ending in tragedy. But this motif seems to touch upon a particular element of the *tahrīf* theme. We observed in one of Jābir b. 'Abd Allāh's variants that the Jewish group admits to not having the fortitude to implement the stoning punishment. Here in Ibn 'Umar's account, the *matn* seemingly conveys that the man was so deeply in love that he did not have the resolve to accept God's judgement. He was much more concerned with protecting the woman with whom he committed the offense. The male offender, in other words, was not oriented towards God's laws.

A specific reference to 'Abd Allāb b. Salām is not without significance. He was a prominent Jewish scholar and leader, and his Jewish tribesmen considered him to be the most knowledgeable about the Torah.<sup>378</sup> Ibn Salām claimed that after his conversion, the Prophet asked him to read the Qur'ān and the Torah on alternating nights.<sup>379</sup> This suggests that he would have a comparative awareness about the Qur'ān and the Hebrew Bible. Ibn Salām's reputation as

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<sup>378</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 5:380; Ibn 'Asākir, *Tārīkh*, 29:99-104 and 115; Watt, *Muḥammad in Medina*, 197; Mazuz, *Religious and Spiritual Life of the Jews of Medina*, 13f.

<sup>379</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 5:383; Ibn 'Asākir, *Tārīkh*, 29:132.

a scholar endured after his conversion to Islam. For example, biographical entries indicate that some considered him to be as knowledgeable as the well-known Companion ‘Abd Allāh b. Mas‘ūd (d. 32, Mecca, Medina, and Kufa).<sup>380</sup> Ibn Salām garners such significance that some exegetes considered him to be a person of reference in the Qur’ān. For example, the Qur’ān states:

Say, ‘Have you thought: what if the Qur’ān really is from God and you reject it? What if one of the Children of Israel testifies to its similarities [to earlier scripture] (*shahida shāhid min banī isrā‘īl ‘alā mithlihi*) and believes in it, and yet you are too proud to [do the same]? God certainly does not guide evildoers.’<sup>381</sup>

The exegete Mujāhid b. Jabr (d. 100-4) wrote that, “What if one of the Children of Israel testifies to its similarities,” is a designation for ‘Abd Allāh b. Salām.<sup>382</sup> In Ibn ‘Umar’s *ḥadīth*, Ibn Salām fulfills the motif representing an expert who can help substantiate the correct punishment. As it will be recalled, in al-Barrā’ b. ‘Āzib’s variant there was one learned scholar and in Jābir b. ‘Abd Allāh’s version there were two, one being Ibn Ṣūriyā, and they all attested to the stoning punishment. Therefore, not only does Ibn Salām function as an expert who exposes the practice of *ṭahrīf*, he also helps transition the narration towards affirming the correct punishment of stoning.

From an *isnād* standpoint, it is highly probable that Mālik recorded that which he heard from his teacher, Nāfi‘. Mālik’s version cited above is based on a redaction by Yaḥyā b. Yaḥyā (d. 226, Egypt, Ḥijāz, Iraq, Khurasān, Nīshapūr, and Syria). The report is also in the redaction of the

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<sup>380</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 2:304.

<sup>381</sup> Q46:10.

<sup>382</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 2:305; others also reference Ibn Salām with regard to this verse, see Ibn ‘Asākir, *Tārīkh*, 29:118, 130f. But some rejected the assertion that the verse is referencing Ibn Salām, see al-Mizzī, *Tahdhīb al-Kamāl*, 15:74.

*Muwaṭṭa'* on the authority of al-Shaybānī (d. 182, Kufa and Rayy).<sup>383</sup> There are negligible variations between the two versions. For example, in Yaḥyā's version it states *fa-waḍa 'a aḥaduhum yadahu 'alā āyat al-rajm*, whereas in al-Shaybānī's version it states *fa ja 'ala yadahu 'alā āyat al-rajm*. But overall, there exists a high degree of similarity between the two *matns*, which suggests Yaḥyā and al-Shaybānī shared a common source: Mālik.<sup>384</sup>

Al-Bukhārī (d. 256) twice lists the *ḥadīth* with Mālik in the *isnād*, which further corroborates Mālik's role in the circulation of the narrative. The first *isnād* reads: al-Bukhārī - 'Abd Allāh b. Yūsuf (d. 218, Egypt, Syria, and Tunis) - Mālik b. Anas - Nāfi' - Ibn 'Umar.<sup>385</sup> 'Abd Allāh b. Yūsuf was considered to be one of the best narrators of Mālik's *Muwaṭṭa'*.<sup>386</sup> Moreover, al-Bukhārī's entry on the authority of 'Abd Allāh b. Yūsuf is virtually identical to the variant on the authority of Yaḥyā b. Yaḥyā, which means a written copy was being used. This makes sense because 'Abd Allāh b. Yūsuf claims that Mālik supervised his reception of the *Muwaṭṭa'* by means of audition (*samā'*) and by means of listening and monitoring (*arḍ*).<sup>387</sup> With regard to a relationship between al-Bukhārī and Ibn Yūsuf, supposedly al-Bukhārī relied heavily

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<sup>383</sup> Mālik, *Muwaṭṭa'* (narrated by al-Shaybānī), 221.

<sup>384</sup> Motzki has argued that Yaḥyā's and al-Shaybānī's versions of the *Muwaṭṭa'* result from a common source that can be identified as Mālik, see Motzki, "Der Fiqh des Zuhri: die Quellenproblematik," 1 – 44; Schoeler also provides a brief explanation on why different versions of the *Muwaṭṭa'* exist, with the primary reason being that it was Mālik's students who gave the work its final form, though at times Mālik "did read or recited the text himself in the presence of his students," see Schoeler, *The Genesis of Literature in Islam*, 73.

<sup>385</sup> al-Bukhārī, *Ṣaḥīḥ*, 1,330:3,436.

<sup>386</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 16:335; al-Dhahabī, *Siyar A'lām*, 10:358.

<sup>387</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 16:336; Ibn Hajar, *Tahdhīb al-Tahdhīb*, 3:714f; *samā'* is aural or audited transmission, which means the reading of books out loud in the presence of the teacher. The teacher corrects and confirms based on memory or his own personal notes, see Schoeler, *Genesis of Literature in Islam*, 122f; Brown, *Hadith: Muhammad's Legacy*, 43; *samā'* is similar to *arḍ*, which is when a student reads texts and the teacher listens and monitors the recitation, see Schoeler, *Genesis of Literature in Islam*, 73.

on Ibn Yūsuf's confirmation for *ḥadīths* in the *Muwaṭṭa'*.<sup>388</sup> It is therefore highly likely that al-Bukhārī recorded that which ‘Abd Allāh b. Yūsuf received from Mālik, which affirms Mālik's participation in the dissemination of the *ḥadīth*.

The second account al-Bukhārī provides is on the authority of Ismā‘īl b. ‘Abd Allāh. The *isnād* reads:

al-Bukhārī - Ismā‘īl b. ‘Abd Allāh [b. ‘Abd Allāh b. Uways al-Iṣḥāḥānī (d. 216-7, Iṣḥāḥān) - Mālik - Nāfi‘ - Ibn ‘Umar.<sup>389</sup>

The *matn* of this *isnād* is identical to the version al-Bukhārī provides on the authority of Ibn Yūsuf. According to biographical, Ismā‘īl b. ‘Abd Allāh's did not have the most favorable reputation as a *ḥadīth* transmitter. For example, some thought that he was unintelligent, untruthful, and absent-minded.<sup>390</sup> With such a reputation, one has to wonder why al-Bukhārī references the *ḥadīth* on Ismā‘īl b. ‘Abd Allāh's authority. Al-Bukhārī's own comments partly addresses this query. He states that Ismā‘īl b. ‘Abd Allāh was associated with other reliable *ḥadīth* transmitters.<sup>391</sup> But importantly, Mālik was Ismā‘īl b. ‘Abd Allāh maternal uncle.<sup>392</sup> Therefore, despite a suspect reputation, it stands to reason that Ismā‘īl b. ‘Abd Allāh did likely receive the *ḥadīth* from Mālik and transmitted it to al-Bukhārī.

Mālik's involvement in the dissemination of the Jewish *Ḥadīth* can also be substantiated by entries recorded in other collections I investigated. To begin with, all *matns* share markedly

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<sup>388</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 16:336.

<sup>389</sup> al-Bukhārī, *Ṣaḥīḥ*, 2,510:6,450.

<sup>390</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 3:127-9; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 1:292.

<sup>391</sup> Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 1:293.

<sup>392</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 3:124.



high degrees of similarities among each other and with those found in the two *Muwaṭṭa*'s and al-Bukhārī's *Ṣaḥīḥ*. An examination of the *isnāds* raises the degree of confidence of a transmission by Mālik. Abū Dāwūd (d. 275) records the *ḥadīth* from 'Abd Allāh b. Maslama al-Qa'nabī (d. 221, Basra, Mecca, and Medina), who in turn reports it from Mālik.<sup>393</sup> 'Abd Allāh b. Maslama was a well-respected *ḥadīth* narrator and a transmitter of Mālik's *Muwaṭṭa*'.<sup>394</sup> Al-Nasā'ī (d. 303) reports the *ḥadīth* on the authority of Qutayba b. Sa'īd (d. 240, Baghdad, Egypt, Khurasān, Mecca, Medina, and Syria).<sup>395</sup> A number of *ḥadīth* collectors including Ibn Abī Shayba and Ibn Ḥanbal were known to acquire *ḥadīth* from him.<sup>396</sup> Qutayba is recorded to have been born in the year 150, which would give him a fair amount of time to meet Mālik. In fact, it is written that he heard (*samā* ' ) directly from Mālik.<sup>397</sup> In short, Abū Dāwūd's and al-Nasā'ī's entries point to Mālik's recording of the *ḥadīth* on the authority of Nāfi'.

In sum, it can be said with a high degree of confidence that Mālik helped circulate the Jewish *Ḥadīth*. His recorded variant contains key motifs found in versions from al-Barrā' b. 'Āzib and Jābir b. 'Abd Allāh. These include the use of an expert and the framework of *tahṛīf* for the establishment of stoning as the proper punishment for Jewish *zinā* offenders. Mālik's report points to Nāfi's involvement in the transmission, and this can be corroborated by the examination of other variants circulated on the latter's authority.

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<sup>393</sup> Abū Dāwūd, *Sunan*, 6:494f:4,446; al-Bayhaqī's *isnād* goes back to al-Qa'nabī as well, see al-Bayhaqī, *Sunan al-Kubrā*, 8:373:16,929.

<sup>394</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 5:181; al-Mizzī, *Tahdhīb al-Kamāl*, 16:139-41; al-Dhahabī, *Siyar A'lām*, 10:259-64.

<sup>395</sup> al-Nasā'ī, *al-Sunan al-Kubrā*, 6:483f:7,294.

<sup>396</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 7:150; Ibn Ḥibbān, *al-Thiqāt*, 9:20.

<sup>397</sup> al-Khaṭīb al-Baghdādī, *Tārīkh*, 14:481.

### Ayyūb b. Kaysān al-Sakhtiyānī (d. 131, Basra and Medina)

Ayyūb b. Kaysān al-Sakhtiyānī is another of Nāfi‘’s students who circulated the Jewish *Ḥadīth*. Analysis of these variants can not only substantiate al-Sakhtiyānī’s involvement, but also Mālik’s, and by extension, Nāfi‘’s roles, respectively. Three students of al-Sakhtiyānī are recorded to have transmitted the report. Therefore, I begin by examining *isnāds* and comparing *matns* leading up to al-Sakhtiyānī, because this investigation will help corroborate his participation.

The *Musnad* of Ibn Ḥanbal contains one account of the Jewish *Ḥadīth* on al-Sakhtiyānī’s authority. The *isnād* and *matn* read:

Ibn Ḥanbal - Ismā‘īl b. Ibrāhīm [b. ‘Ulayya]<sup>398</sup> (d. 193-4, Baghdad, Basra, and Kufa) - Ayyūb [al-Sakhtiyānī] (d. 131, Basra and Medina) - Nāfi‘ - ‘Abd Allāh b. ‘Umar:

A Jewish group came to the Prophet with a man and a woman from among them who had committed *zinā*. He<sup>399</sup> asked: What do you find in your Book?

They responded: We blacken their faces and humiliate them.

He<sup>400</sup> responded: You lie! Indeed stoning is in the Book. Bring the Torah and read it out loud if you are telling the truth.

So the Jewish group brought the Torah along with a one-eyed reciter named Ibn Ṣūriyā. He read the Torah up to a certain point and then put his hand to cover up something. It was said to him: Lift up your hand.

When he lifted his hand, the stoning verse came into view. Ibn Ṣūriyā or perhaps the Jewish group together said: Muḥammad, indeed it says stoning, but we have not been using it.

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<sup>398</sup> *Mawlā* Banī Asad b. Khuzayma.

<sup>399</sup> Presumably the Prophet.

<sup>400</sup> Unidentifiable.

The Messenger of God ordered the couple to be stoned and they were stoned. He<sup>401</sup> said: Indeed I saw him bend over and cover her with his hands when the stones began to hit her.<sup>402</sup>

I found the report on Ibn ‘Ulayya’s authority, the student of al-Sakhtiyānī, in two additional *ḥadīth* collections that I examined. The *isnāds* are as follows:

al-Bukhārī - Musaddad b. Musarhad (d. 228, Basra) - Ibn ‘Ulayya,<sup>403</sup>

al-Nasā‘ī - Ziyād b. Ayyūb Dalluwayh (d. 252, Baghdad) - Ibn ‘Ulayya,<sup>404</sup>

Note the similarities and differences between Ibn Ḥanbal’s, al-Bukhārī’s, and al-Nasā‘ī’s entries with Ibn ‘Ulayya in the *isnād*:

al-Sakhtiyānī (d. 131, Basra and Medina)	al-Sakhtiyānī (d. 131, Basra and Medina)	al-Sakhtiyānī (d. 131, Basra and Medina)
Ibn Ḥanbal - Ibn ‘Ulayya (d. 193-4, Baghdad)	al-Nasā‘ī - Ziyād b. Ayyūb - Ibn ‘Ulayya (d. 193-4, Baghdad)	al-Bukhārī - Musaddad - Ibn ‘Ulayya (d. 193-4, Baghdad)
What do you find in your Book?	What do you find in your Book?	What do you do with them?
Blacken faces and flog.	Blacken faces and flog.	Blacken faces and flog.
Interjection by an unidentifiable person who states the Jewish group is lying.	Interjection by an unidentifiable person who states the Jewish group is lying.	
Bring the Torah if you are honest folks	Bring the Torah if you are honest folks	Bring the Torah if you are honest folks
One-eyed man named <i>Ibn Ṣūriyā</i> reads the Torah.	One-eyed man reads the Torah.	One-eyed man reads the Torah.
The Jewish group confirms	The Jewish group confirms	The Jewish group confirms

<sup>401</sup> Unidentifiable.

<sup>402</sup> Ibn Ḥanbal, *Musnad* (1995 ed.), 4:284:4,498.

<sup>403</sup> al-Bukhārī, *Ṣaḥīḥ* (2009 ed.), 1,864:7,543.

<sup>404</sup> al-Nasā‘ī, *Sunan al-Kubrā*, 6:441:7,175.

stoning as the proper punishment but admits they have not been using it.	stoning as the proper punishment but admits they have not been using it.	stoning as the proper punishment but admits they have not been using it.
Unidentified person claims to have witnessed the stoning of the Jewish couple.	No reference to someone being present, but <i>kadhā</i> may be intended to signify the witness clause. <sup>405</sup>	Unidentified person claims to have witnessed the stoning of the Jewish couple.

One difference is that Musaddad's version does not include the interjection clause, according to which the Jewish group is accused of lying. This was likely due to transmission error because Ibn 'Ulayya's two other variants include it. Another difference is that Ibn Ḥanbal's version specifically names Ibn Ṣūriyā. This may have been an amendment by either Ibn 'Ulayya or Ibn Ḥanbal, because the name does not appear in Ibn 'Ulayya's other two narrations. Nevertheless, all three versions share perceptible degrees of similarities, which point to Ibn 'Ulayya as the source, and by extension, al-Sakhtiyānī.

Biographical information on Ibn 'Ulayya signals his involvement in the circulation of the Jewish *Ḥadīth* as well as its reception from his teacher, al-Sakhtiyānī. Ismā'īl b. 'Ulayya (d. 193-4, Baghdad) was one of the more-liked Basran *muḥaddiths* (a transmitter of reports).<sup>406</sup> Supposedly, he and Ibn Ḥanbal had such a favorable rapport that the latter said he went only as far as Ibn 'Ulayya to confirm the strength of *ḥadīth* circulating in Basra.<sup>407</sup> Ibn Ḥanbal's remark was metaphorical, but it does point to Ibn Ḥanbal being well-acquainted with Ibn 'Ulayya, which supports the transmission of the *ḥadīth* between the two. With regard to Ibn 'Ulayya's

<sup>405</sup> The editor of the text states that he could not read the manuscript and therefore, wrote *kadhā*, see al-Nasā'ī, *Sunan al-Kubrā*, 6:441:7, 175, fn. 1.

<sup>406</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 2:153f; al-Mizzī, *Tahdhīb al-Kamāl*, 3:28; he was not liked by all, see al-Dhahabī, *Siyar A'lām*, 9:112.

<sup>407</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 2:154; al-Mizzī, *Tahdhīb al-Kamāl*, 3:29.

relationship to al-Sakhtiyānī, biographical dictionaries confirm an association.<sup>408</sup> Additionally, Ibn ‘Ulayya’s birth year of 110 indicates that he was in his twenties, a reasonable age by which time he could have met and studied with al-Sakhtiyānī. In sum, *isnād* and comparative *matn* analysis in combination with Ibn ‘Ulayya’s biographical information, corroborates his reception and transmission of the Jewish *Ḥadīth*.

Having determined Ibn ‘Ulayya’s role, I shift focus to another of al-Sakhtiyānī’s students, Shu‘ba b. al-Ḥajjāj (d. 160, Basra and Wāsiṭ). Comparing Shu‘ba’s variant with Ibn ‘Ulayya’s iteration can help corroborate what al-Sakhtiyānī may have transmitted. It is in al-Nasā’ī’s *ḥadīth* collection that I found the Jewish *Ḥadīth* on Shu‘ba’s authority. The *isnād* and *matn* read:

al-Nasā’ī - from the book of Yaḥyā b. Ḥabīb b. ‘Arabī (d. 248, Basra) - Yazīd b. Zuray‘ (d. 182, Basra) - Shu‘ba b. al-Ḥajjāj (d. 160, Basra and Wāsiṭ) - al-Sakhtiyānī - Nāfi‘ - Ibn ‘Umar:

When they were brought to the Prophet, he asked: What do you find in your book?

They responded: We do not find stoning.

‘Abd Allāh b. Salām interjected: They are lying, stoning is in their Book.

It was said: Bring the Torah and open it up if you are truthful.

So they brought the Torah along with their readers and he put his hand over the stoning verse, and read what was before and after it.

‘Abd Allāh b. Salām said to him: Move your hand away!

When he did that the stoning verse was observable. So the Messenger of God gave the order and the two offenders were stoned.<sup>409</sup>

This variant does not contain some of the clauses found in both Mālik’s and al-Sakhtiyānī’s

<sup>408</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta’dīl*, 2:153; al-Mizzī, *Tahdhīb al-Kamāl*, 3:23f; al-Dhahabī, *Siyar A’lām*, 6:16.

<sup>409</sup> al-Nasā’ī, *al-Sunan al-Kubrā*, 6:441f: 7,176.

respective versions on the authority of Ibn ‘Ulayya (d. 193-4, Baghdad). A few reasons are possible:

- 1) al-Sakhtiyānī never transmitted the missing clauses, meaning they were added in Ibn ‘Ulayya’s account on the basis of Mālik’s version;
- 2) al-Sakhtiyānī did not communicate the same elements to all his students;
- 3) information was left out during the transmission below al-Sakhtiyānī in al-Nasā’ī’s *isnād*;
- 4) the *isnād* was forged.

In my estimation, number three is the most likely scenario because al-Nasā’ī’s entry retains the core motifs. Furthermore, by Shu‘ba’s time, the *ḥadīth* had sufficient circulation in Iraq, which I have demonstrated by the analysis of narratives circulated by al-Barrā’ b. ‘Āzib and Jābir b. ‘Abd Allāh. If desired, Shu‘ba or someone below him could have easily added the missing details. But this is not the case. Therefore, it is highly likely that certain material was lost during transmission after al-Sakhtiyānī.

*Isnād* analysis suggests that Shu‘ba obtained the *ḥadīth* from his teacher, al-Sakhtiyānī. To begin with, very little is written on al-Nasā’ī’s informant, Yaḥyā b. Ḥabīb (d. 248, Basra). Only later biographical dictionaries point to his reliability as a *ḥadīth* transmitter.<sup>410</sup> As noted in the *isnād*, al-Nasā’ī writes that he received the *ḥadīth* from Ibn Ḥabīb’s written notes. I could not find any information indicating that Ibn Ḥabīb did write a book, or even if someone had access to it. This however does not mean that it did not exist. Hence, I proceed without dismissing al-Nasā’ī’s assertion. Regarding Yazīd b. Zuray‘, Ibn Ḥabīb’s teacher, it is recorded that he was

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<sup>410</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 31:265; al-Dhahabī, *Siyar A‘lām*, 31:156f; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 7:24.

reliable and to have transmitted a number of *ḥadīth* that could be used for legal proofs.<sup>411</sup> In fact, it is also recorded that some preferred Yazīd b. Zuray‘’s narrated *ḥadīth* over Ibn ‘Ulayya’s.<sup>412</sup> Preference for Ibn Zuray‘’s transmissions over Ibn ‘Ulayya’s should mean we find more variants on the former’s authority. But evidence points to the opposite, which in my view indicates a historical transmission on the part of Ibn Zuray‘. His teacher, Shu‘ba b. al-Ḥajjāj (d. 160, Basra and Wāsiṭ) was an even more of a respected and well-known *muḥaddith*.<sup>413</sup> It thus seems as we move up the *isnād*, the reputation of each transmitter improves significantly. This suggests that the *isnād* may have been forged out of desire to establish a chain of transmission with reputable narrators. However, certain details are missing. If a late forgery did take place, then information should not have been missing in the *matn*. This makes it more probable that a historical transmission occurred. Therefore, *isnād* analysis indicates, with an acceptable degree of confidence, that Shu‘ba circulated the *ḥadīth*, which in advances al-Sakhtiyānī’s involvement.

A comparison of al-Sakhtiyānī’s narration with Mālik’s account can shed additional light on the provenance and significance of particular motifs. Note the following side-by-side comparison:

Ibn Ḥanbal - Ibn ‘Ulayya (d. 193-4, Baghdad) - al-Sakhtiyānī (d. 131, Basra and Medina)	Mālik (d. 179, Medina)
A Jewish group brings a man and a woman who have committed <i>zinā</i> and asks the Prophet to adjudicate the case.	A Jewish group brings a man and a woman who have committed <i>zinā</i> and asks the Prophet to adjudicate the case.
Prophet asks what do they find in their Book.	Prophet asks what do they find <i>in the Torah about stoning</i> .

<sup>411</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 9:290.

<sup>412</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta’dīl*, 9:264; al-Mizzī, *Tahdhīb al-Tahdhīb*, 32:127-9.

<sup>413</sup> For a detailed biographical commentary on Shu‘ba, see *Encyclopaedia of Islam* 2nd ed., s.v. “Shu‘ba b. al-Ḥajjāj.”

Humiliate and blacken the face.	Humiliate and <i>flog</i> .
Interjection by an unidentifiable person who states the Jewish group is lying.	Interjection by ‘ <i>Abd Allāh b. Salām</i> who states the Jewish group is lying.
The reading of the Torah to determine the existence of a stoning verse and attempts to cover it up by a one-eyed reciter named Ibn Ṣūriyā.	The reading of the Torah to determine the existence of a stoning verse and attempts to cover it up by <i>an unidentified person</i> .
On the basis of the comment, the Jewish group confirms stoning as the proper punishment <i>but admits it has not been using it</i> .	On the basis of <i>Ibn Salām’s</i> comment, the Jewish group confirms stoning as the proper punishment.
Unidentified person claims to have witnessed the stoning of the Jewish couple.	<i>Ibn ‘Umar</i> claims to have witnessed the stoning of the Jewish couple.

As noted previously, al-Sakhtiyānī’s variant reflects the main themes appearing in Mālik’s *matns*, though narrated with a combination of different literary style and referential points:

- 1) Flogging is not in al-Sakhtiyānī variant, nevertheless, the main point is conveyed: the Jewish group changed the punishment, which connotes *tahrīf*;
- 2) while a person interjects in al-Sakhtiyānī’s variant, the identity is unspecified. It may be that Ibn Salām’s name was erroneously omitted from al-Sakhtiyānī’s variant;
- 3) in al-Sakhtiyānī’s variant, we find the expert to be Ibn Ṣūriyā, the same figure circulated by other Iraqi transmitters associated with the *ḥadīth* by the Companions al-Barrā’ b. ‘Āzib and Jābir b. ‘Abd Allāh;
- 4) in al-Sakhtiyānī’s variant, an unidentified person witnesses the stoning. As in the case with Ibn Salām’s name, it was mistakenly excised in Iraq.

It is probable that amendments occurred in al-Sakhtiyānī’s variants upon their circulation in Iraq, such as the exclusive reference to Ibn Ṣūriyā. However, both al-Sakhtiyānī’s and Mālik’s narrations retain the same themes and have overlapping clauses, which indicate a common source: Nāfi’.



### **Mūsā b. ‘Uqba (d. 141, Medina)**

In addition to Mālik and al-Sakhtiyānī, Mūsā b. ‘Uqba is another individual noted to have transmitted the Jewish *Ḥadīth* on Nāfi‘’s authority. As with Nāfi‘’s other students, analysis of Ibn ‘Uqba’s variant can not only help determine his involvement, but also corroborate Mālik’s and al-Sakhtiyānī’s participation. Importantly, Ibn ‘Uqba’s report can also help establish Nāfi‘’s role in the circulation of the *ḥadīth*.

‘Abd al-Razzāq records the Jewish *Ḥadīth* with Mūsā b. ‘Uqba’s (d. 141, Medina) in the *isnād*. His entry reads:

‘Abd al-Razzāq - Ibn Jurayj (d. 150, Baghdad, Mecca, and Yemen) - Mūsā b. ‘Uqba (d. 135 or 141-2, Medina) - Nāfi‘ - Ibn ‘Umar.

A Jewish group came to the Prophet with a man and a woman from among them who committed *zinā*. The Prophet asked them: In what manner do you treat someone who commits *zinā*?

They responded: We hit them.

The Prophet then asked: And what do you find in the Torah?

They responded: We do not find anything.

‘Abd Allāh b. Salām interjected: You lie! Stoning is in the Torah. Bring it and read it if you are truthful.

So they brought the Torah. Then one of their learned scholars, who studies the Torah, put his hand over the stoning verse and began to read what was before and after his hand covered, and he did not read the stoning verse. ‘Abd Allāh b. Salām pulled the reader's hand away from the verse and said: What is this?!

When they saw it, they acknowledged that it was the stoning verse. Subsequently, the Messenger of God ordered that the offenders be stoned, and they were stoned where funeral prayers are held.

‘Abd Allāh said: I saw her companion protect her from the stones as they were hitting her.<sup>414</sup>

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<sup>414</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:318f:13,332.

Note the side-by-side comparison with the respective *matns* on the authority of Mālik and al-Sakhtiyānī:

Mūsā b. ‘Uqba (d. 135 or 141-2, Medina)	Ibn ‘Ulayya (d. 193-4, Baghdad) - al-Sakhtiyānī (d. 131, Basra and Medina)	Mālik (d. 179, Medina)
A Jewish group brings a man and a woman who have committed <i>zinā</i> and asks the Prophet to adjudicate the case.	A Jewish group brings a man and a woman who have committed <i>zinā</i> and asks the Prophet to adjudicate the case.	A Jewish group brings a man and a woman who have committed <i>zinā</i> and asks the Prophet to adjudicate the case.
Prophet asks in what manner do they punish someone who commits <i>zinā</i> . <i>Then the Prophet asks what do they find in the Torah.</i>	Prophet asks what do they find in their Book.	Prophet asks what do they find <i>in the Torah</i> about stoning.
Hit them / Do not find stoning.	Humiliate and blacken the face.	Humiliate and <i>flog</i> .
Interjection by ‘ <i>Abd Allāh b. Salām</i> who states the Jewish group is lying.	Interjection by an unidentifiable person who states the Jewish group is lying.	Interjection by ‘ <i>Abd Allāh b. Salām</i> who states the Jewish group is lying.
The reading of the Torah to determine the existence of a stoning verse and attempts to cover it up by <i>a learned scholar</i> .	The reading of the Torah to determine the existence of a stoning verse and attempts to cover it up by <i>a one-eyed reciter named Ibn Ṣūriyā</i> .	The reading of the Torah to determine the existence of a stoning verse and attempts to cover it up by <i>an unidentified person</i> .
On the basis of <i>Ibn Salām</i> ’s comment, the Jewish group confirms stoning as the proper punishment.	On the basis of a comment, <sup>415</sup> the Jewish group confirms stoning as the proper punishment <i>but admit they have not been using it</i> .	On the basis of <i>Ibn Salām</i> ’s comment, the Jewish group confirms stoning as the proper punishment.
‘ <i>Abd Allāh</i> claims to have witnessed the stoning of the Jewish couple.	Unidentified person claims to have witnessed the stoning of the Jewish	<i>Ibn ‘Umar</i> claims to have witnessed the stoning of the Jewish couple.

<sup>415</sup> As it will be recalled, Shu‘ba’s narration on the authority of al-Sakhtiyānī references Ibn Salām.

	couple.	
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- 1) The Prophet's initial question is the same in Ibn 'Uqba's and al-Sakhtiyānī's respective *matns*, but not Mālik's version. It is likely that in Mālik's iteration, the punishment of stoning was already in the mind of the transmitter. It seems odd that the Prophet, unsolicited, would ask about stoning. His inquiry is meant to be rhetorical, but it exposes the eagerness of the transmitter to focus on stoning as the way for conveying the *tahrīf* issue;
- 2) in Ibn 'Uqba's *matn*, the response to the Prophet's inquiry is "We hit them," not "blacken faces and flog" (al-Sakhtiyānī) or "humiliate and flog" (Mālik). Despite the difference, the clause retains the motif of *tahrīf*;
- 3) 'Abd Allāh b. Salām is specified in Ibn 'Uqba's variant. This is the same as in Mālik's account but not al-Sakhtiyānī's on the authority of Ibn 'Ulayya, in which the identity is unknown;
- 4) the theme of an expert is retained. In Ibn 'Uqba's narrative, we initially do not know who the learned person is but eventually, Ibn Salām's name comes to light. In variants circulating in Iraq, the expert is referenced as an one-eyed man, Ibn Ṣūriyā, or as an one-eyed man named Ibn Ṣūriyā. This now can be substantiated on the basis of Ibn 'Uqba's version because he is not recorded to have traveled to an Iraqi cities.
- 4) the witness clause identifies the person as 'Abd Allāh. Both Ibn Salām and Ibn 'Umar have the same given name. If we are to follow the *isnād*, then the reference is to Ibn 'Umar. In al-Sakhtiyānī's *matn*, the identity is unknown. The variances are likely to transmission mistakes;
- 5) in Ibn 'Uqba's version, a note is made about the location of the stoning. This is not mentioned in the other accounts, which suggests that Ibn 'Uqba or someone below him in the *isnād* helped circulate this element.

In reading versions provided by al-Nasā'ī<sup>416</sup> and al-Bayhaqī<sup>417</sup> with Ibn 'Uqba in the respective *isnāds*, it becomes clear that they share high degrees of similarities with the iteration in 'Abd al-Razzāq's *al-Muṣannaḡ*. Al-Bukhārī also records the *ḥadīth* with Ibn 'Uqba, and it too has a considerable amount of overlap with 'Abd al-Razzāq's version.<sup>418</sup> There is, however, one exception: the witness clause does not identify anyone by name. But aside from this variation, all three *matns* on Ibn 'Uqba's authority have a discernible amount of overlap, which points to Ibn 'Uqba as the common source, and by extension, Nāfi'.

Biographical information on Ibn 'Uqba raises suspicion about his reception of the Jewish *Ḥadīth* from Nāfi', but such doubt is not sufficient to dismiss a historical transmission. To begin with, it is worth noting that given Ibn 'Uqba's birth year of 55 and Ibn 'Umar's death year of circa 73, it makes it plausible that the two crossed paths, especially due to regional overlap. Thusly, one has to wonder why Ibn 'Uqba is not recorded to have directly received the Jewish *Ḥadīth* from Ibn 'Umar. One explanation may be that while Ibn 'Uqba knew Ibn 'Umar, the latter did not share the narrative with the former (a presumption based the transmission's historicity).<sup>419</sup> It is also possible that Ibn 'Umar did not widely share the Jewish *Ḥadīth* during his lifetime, so Ibn 'Uqba did not receive it from Ibn 'Umar. This second scenario is more plausible than the first, and I will revisit it in the next section. Moving on, some convey that Ibn 'Uqba was reliable for only a small number of *ḥadīth*<sup>420</sup>. Furthermore, distrust and weakness

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<sup>416</sup> al-Nasā'ī, *al-Sunan al-Kubrā*, 6:442:7,177.

<sup>417</sup> al-Bayhaqī, *Sunan al-Kubrā*, 8:429:17,117.

<sup>418</sup> al-Bukhārī, *Ṣaḥīḥ* (2002 ed), 1,118:4,556. Al-Bukhārī also provides a truncated version on the Ibn 'Uqba's authority, which states the Prophet stoned a Jewish man and a Jewish woman at the site where funeral services take place, see *ibid.*, 320:1,329 and 1,810:7,332.

<sup>419</sup> According to Ibn Sa'd, Ibn 'Uqba did narrate from Ibn 'Umar, see Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 4:149.

<sup>420</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 7:519

existed with *his transmissions from Nāfi'*.<sup>421</sup> These reasons create skepticism about Ibn 'Uqba's reception of the *ḥadīth* from Ibn 'Umar. They also explain why Ibn 'Uqba is not as frequently referenced as Mālik or al-Sakhtiyānī. However, other biographical remarks do swing the pendulum in favor of Ibn 'Uqba. For example, when it came to *maghāzī* reports, Ibn 'Uqba was considered to be a reliable source.<sup>422</sup> In fact, Mālik went so far as to directly instruct people to record *maghāzī* information from Ibn 'Uqba.<sup>423</sup> The respect he garnered within this genre likely had to do with different standards for authenticating *ḥadīth* and *maghāzī* reports. The upshot of divergent views on Ibn 'Uqba is that they represent later evaluation standards, which means Ibn 'Uqba could have received the *ḥadīth* from Nāfi'. Additionally, certain individuals, such as Ibn Ḥanbal, considered Ibn 'Uqba to be a reliable transmitter without any qualification.<sup>424</sup> Moreover, Ibn 'Uqba was born in 70, so by the time of Nāfi's death, he was around 46 years old, which means that he had ample time to meet his teacher. In sum, the totality of Ibn 'Uqba's biographical information, in combination with comparative *matn* analysis, leads to a high probability that he did in fact receive the Jewish *Ḥadīth* from his teacher, Nāfi'.

Thus far, I have examined three individuals who circulated the Jewish *Ḥadīth* on the authority of Nāfi' *mawla* Ibn 'Umar. They are al-Sakhtiyānī (d.131, Basra and Medina), Ibn 'Uqba (d. 141, Medina), and Mālik (d. 179, Medina). Broadly, reports circulated by Nāfi's three students maintain similar themes, which are also found in other variants of the Jewish *Ḥadīth*. For instance their respective transmissions include the use of an learned scholar to confirm

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<sup>421</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 29:120f; al-Dhahabī, *Siyar A'lām*, 6:117.

<sup>422</sup> al-Dhahabī, *Siyar A'lām*, 6:114.

<sup>423</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 29:118f; al-Dhahabī, *Siyar A'lām*, 6:115.

<sup>424</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 8:154.

stoning, and the *ḥadīth* is undergirded by the motif of *ṭahrīf*. These themes, among others, once again demonstrate how a nexus between the Prophet's authority and stoning as punishment for *zinā* was forged. Lastly, *isnād* and comparative *matn* analysis provides a high degree of confidence that Nāfi' did help circulate the Jewish *Ḥadīth* on the authority of Ibn 'Umar.

### Other Students of Nāfi'

In this subsection, I examine reports from other students of Nāfi'. These iterations are uncommon, but are nevertheless important for the present study. This is because they tip the scale in favor of Nāfi' as a historical source for the transmission of the Jewish *Ḥadīth*. Moreover, raising the degree of confidence of Nāfi''s involvement in the circulation of the narrative, allows us to seriously consider Ibn 'Umar's participation as well.

The first additional student of Nāfi' I analyze is Juwayriya b. Asmā' b. 'Ubayd (d. 173, Basra). I found a variant on his authority in the *Musnad* of al-Ṭayālīsī (d. 203-4, Basra and Mecca). The *isnād* and *matn* read:

al-Ṭayālīsī - Juwayriya (d. 173, Basra and Medina) - Nāfi' - Ibn 'Umar:

The Messenger of God was brought a Jewish man and a Jewish woman who had committed *zinā*. The Messenger of God asked: What do you find your Book?

The Jewish group replied: We do not find the punishment of stoning.

Ibn Salām interjected: They are lying. Stoning is in their Book.

He<sup>425</sup> said: They<sup>426</sup> summoned Ibn Ṣūriyā and he began to read the Book up until the stoning verse. He tried to cover it up by putting his hand over it, but Ibn Salām said to him: Lift up your hand!

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<sup>425</sup> It is unclear who *qāla* is referencing. Based on other variants, it is likely Ibn 'Umar.

<sup>426</sup> The dual form is used.

He did and the stoning verse was exposed. He<sup>427</sup> said: Muḥammad, stoning is in our Book.

The Messenger of God had them stoned at *al-Balāṭ*<sup>428</sup>. He<sup>429</sup> said: The Jewish man tried to protect her with his body.<sup>430</sup>

Juwayriya was considered to be a highly learned person, and when it came to transmission on the authority of Nāfi‘, was thought of as being on equal footing with Mālik.<sup>431</sup> Entries in *ʿIlal* works do indicate that at times confusion existed about Juwayriya in *isnāds* with a Nāfi‘ - Ibn ‘Umar link. For example, in one instance Juwayriya is recorded to have transmitted a *ḥadīth* from Nāfi‘, but in actuality it was from Mālik.<sup>432</sup> These issues throw into question the *isnād* with Juwayriya.

In comparing Juwayriya’s *matn* with others on Nāfi‘’s authority, it becomes evident that intermixing took place with that which Juwayriya circulated. Specifically, in Mālik’s and Ibn ‘Uqba’s versions, Ibn Salām was explicitly named whereas Ibn Ṣūriyā was not. In al-Sakhtiyānī’s version, Ibn Ṣūriyā was named whereas Ibn Salām was not. However, both Ibn Ṣūriyā and Ibn Salām appear in Juwayriya’s variant, which suggests an amendment was made to the *matn* by his time.

Another modification by Juwayriya’s time is suggested on the basis of the initial conversation between the Prophet and the Jewish group. As it will be recalled from Mālik’s

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<sup>427</sup> It is unclear who *qāla* is referencing. It may be Ibn Ṣūriyā or someone else from among the Jewish group.

<sup>428</sup> *Al-Balāṭ* was located in Medina and it was filled with stones. It was supposedly between the Prophet’s mosque and Medina’s market, see al-Ṭayālīsī, *Musnad*, 3:385, fn. 1.

<sup>429</sup> It is unclear who *qāla* is referencing.

<sup>430</sup> al-Ṭayālīsī, *Musnad*, 3:384f:1,967; al-Ṭayālīsī also includes a truncated version that goes back to the Companion Jābir b. Samura, see *ibid.*, 2:131:812. I will analyze the short variant below.

<sup>431</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 9:281; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta’dīl*, 2:531.

<sup>432</sup> al-Dāraqutnī, *ʿIlal*, 13:76:2,965.

account, the Prophet was the first to bring up stoning because he asked if the capital punishment was in the Torah. In Juwayriya's report, the Prophet asked the Jewish group about what they find in their Book without a reference to stoning. They responded by stating they did not find the punishment of stoning. Why would they bring up stoning when the Prophet never asked them about it? As in the case of Mālik, the punishment was within the purview of the transmitter who narrated the *matn*. This explains why blackening of the face or flogging was replaced with stoning, which again indicates that an intermingling of two versions of the report. This suggests that the provenance of the report is earlier than Juwayriya (d. 173). Therefore, based on a comparative analysis of Juwayriya's *matn*, it is highly probable that al-Ṭayālīsī received the *ḥadīth* from Juwayriya. The latter either made amendments or received the narrative as such based on other versions circulating in Iraq. In sum, Juwayriya's report does substantiate Nāfi' as the common source.

Ma'mar b. Rāshid (d. 153, Basra, Medina, and Yemen) is also recorded to have received the Jewish *Ḥadīth* from Nāfi'. The variant is in the *Muṣannaḥ* of 'Abd al-Razzāq and reads:

'Abd al-Razzāq - Ma'mar b. Rāshid (d. 153, Basra, Medina, and Yemen) - Nāfi' -

Ibn 'Umar:

I was witness to the incident when the Messenger of God was brought two Jews who committed *zinā*. He<sup>433</sup> sent for their readers and they came with the Torah. He asked him:<sup>434</sup> Do you not find stoning in your Book?

The Jewish group responded: No. We blacken their faces, mount them on a donkey with their backs to one another, and parade them around town (*yujabbahān wa yuḥammamān*).<sup>435</sup>

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<sup>433</sup> Unidentified but presumably the Prophet.

<sup>434</sup> The third person use of the verb and pronoun leaves open who the subjects may be. The questioner is likely the Prophet given that he is specifically identified in other variants.

<sup>435</sup> E.W. Lane, under *tajbīh*, the verbal noun of *jabbaha*, writes that in conjunction with *ḥammama*, is reference to the Jewish *Ḥadīth* in which the adulterers' faces are blackened with charcoal, then mounted on a donkey with the faces towards the tail, and paraded around town. Lane also comments that *jabbaha* means to lower one's head, as in



He said: So he said or it was said to him.<sup>436</sup> Read!

He did and placed his hand over the stoning verse and continued to read what was before and after it. ‘Abd Allāh b. Salām commanded: Move your hand away!

So the reader moved his hand away and there was the stoning verse. Thereafter the Messenger of God gave the command for the two offenders and they were stoned. Ibn ‘Umar said: Indeed I saw them being stoned and the man tried to protect her from the rocks.<sup>437</sup>

Ma‘mar’s variant retains several of the motifs embedded in *matns* circulated by other students of Nāfi‘. For example, we find the Jewish group claiming that they blacken the face. Importantly, it is the Ḥijāzī versions which specifically note ‘Abd Allāh b. Salām, and his name appears in Ma‘mar’s iteration.<sup>438</sup> However, other details found in Ma‘mar’s *matn* point to a unique transmission. Specifically, a reference is made to the way in which the offenders are humiliated: they are mounted on a donkey and paraded around town. This is an expansion upon the humiliation motif, and it conveys the change the Jewish group made in punishing their *zinā* offenders. Living in the first half of the second century, Ma‘mar was likely aware of the Jewish *Ḥadīth*’s circulation in both the Ḥijāz and Iraq. He may have inadvertently combined some elements that he heard from Nāfi‘ and other sources. Nevertheless, Ma‘mar’s version indicates that it is highly probable he heard much of the account from Nāfi‘.

‘Ubayd Allāh b. ‘Umar is the only individual that I found to have transmitted the Jewish *Ḥadīth* from Nāfi‘. The variant is in the *Ṣaḥīḥ* of Muslim (d. 261) and the *isnād* and *matn* read:

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lowering one’s head in shame, see Lane, *Arabic-English Lexicon*, 2:13, under *jabaha*.

<sup>436</sup> It is unclear from the text itself to who these third person verbs are referencing. It is likely Ibn ‘Umar and Ibn Salām, respectively.

<sup>437</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:318:13,331.

<sup>438</sup> Notwithstanding Juwayriya’s and Shu‘ba’s respective variants. But as I noted, these versions were likely influenced by other iterations already in circulation.

Muslim - al-Hakam b. Mūsā Abū Šāliḥ (d. 232, Baghdad and al-Qanṭara) - Shu‘ayb b. Ishāq (d. 189, Basra and Syria) - ‘Ubayd Allāh [b. ‘Umar b. Ḥafṣ] (d. after 140, possibly 143, Baghdad and Medina) - Nāfi‘ - Ibn ‘Umar:

The Messenger of God was brought a Jewish man and a Jewish woman who committed *zinā*. The Messenger of God departed to see a Jewish person.

The Prophet asked: What do you find in the Torah for someone who commits *zinā*?

They responded: We blacken their faces and parade them around town with their faces opposite to one another.

He<sup>439</sup> said: Bring the Torah if you are being truthful.

So they brought it and read it up to the point of the stoning verse. A young man who was reading the text put his hand over the stoning verse and read that which was before and after it. ‘Abd Allāh b. Salām, who was with the Messenger of God, said to the reader: Lift up your hand.

The reader did and the stoning verse came into view. The Messenger of God gave the ruling and the couple was stoned. ‘Abd Allāh b. ‘Umar said: I was one of those who stoned them and indeed I saw the man try to protect the woman from the stones with his body.<sup>440</sup>

‘Ubayd Allāh was the great grandson of ‘Umar b. al-Khaṭṭāb, so it is unsurprising to see his name in the *isnād* of a *ḥadīth* connected to his family. ‘Ubayd Allāh was born some time after 70, meaning he had at least 30 years to meet Nāfi‘. The version recorded by Muslim preserves several elements found in other variants on Nāfi‘’s authority. Therefore, ‘Ubayd Allāh’s iteration supports Nāfi‘’s involvement in the dissemination the Jewish *Ḥadīth*.

I have now provided an examination of several versions of the Jewish *Ḥadīth* on the

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<sup>439</sup> Unidentifiable. The editor of the text presumes it is the Prophet.

<sup>440</sup> Muslim, *Ṣaḥīḥ*, 1,326:1,699; Muslim also provides a summary of the *ḥadīth*, see *ibid.*, 1,326f:27; Ibn Abī Shayba and Ibn Mājah also provide a truncated version with ‘Ubayd Allāh in the *isnād*, see Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:405f:29,615; *ibid.*, 7:380:22,198; Ibn Mājah, *Sunan*, 854:2,556. Both collectors reference Ibn Numayr in the *isnād*. Both it and the *matn* read:

Ibn Abī Shayba - [‘Abd Allāh] b. Numayr (d. 199, Hamdān and Kufa) - ‘Ubayd Allāh b. ‘Umar [b. Ḥafṣ] (d. 147, Baghdad and Medina) - Nāfi‘ - Ibn ‘Umar:

The Messenger of God stoned two Jews and I was one of those who stoned them.

authority of Nāfi‘. I have investigated *isnāds* and *matns* emanating from a full six of Nāfi‘’s students: Ayyūb b. Kaysān al-Sakhtiyānī (d. 131, Basra and Medina), ‘Ubayd Allāh (d. after 140, possibly 143, Baghdad and Medina), Mūsā b. ‘Uqba (d. 141, Medina), Ma‘mar b. Rāshid (d. 153, Basra, Medina, and Yemen), Juwayriya (d. 173, Basra), and Mālīk (d. 179, Medina). Based on comparative *matn* analysis, it is highly likely that the Jewish *Ḥadīth* was in circulation by the middle of the second century. Combined with *isnād* analysis, a high degree of confidence has been established that Nāfi‘ transmitted the Jewish *Ḥadīth*. This means that we can shift the date of circulation of the report to the end of the first century. The time period can also be corroborated on the basis of those who transmitted the al-Barrā’ b. ‘Āzib (‘Abd Allāh b. Murra [d. 99-100]) and Jābir b. ‘Abd Allāh (al-Sha‘bī [d. 102-9]) variants.<sup>441</sup> In the next section, I provide biographical comments on Nāfi‘, and compare and contrast Ibn ‘Umar’s variants on Nāfi‘’s authority with the detailed variants associated with al-Barrā’ b. ‘Āzib and Jābir b. ‘Abd Allāh, respectively.

#### **Nāfi‘ *mawlā* Ibn ‘Umar (d. 116-7, or 119, Egypt and Medina)**

In the following chart, I note the *matns* on the authority of Nāfi‘’s six students. In the chart thereafter, I provide key details from *matns* that were supposedly circulated by the Companions al-Barrā’ b. ‘Āzib and Jābir b. ‘Abd Allāh.

al-Sakhtiyānī (d. 131, Basra and Medina)	‘Ubayd Allāh (d. after 140, possibly	Mūsā b. ‘Uqba (d. 141, Medina)	Ma‘mar b. Rāshid (d. 153, Basra, Medina, and Yemen)	Juwayriya (d. 173, Basra)	Mālīk (d. 179, Medina)
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<sup>441</sup> In Section 2, I noted that it was difficult to establish, with a high degree of confidence, Ibn Murra’s involvement in the circulation of the *ḥadīth* because of limited biographical information on him. Now having examined *matns* of three different Companions, it can be said with a reasonable degree of confidence that Ibn Murra’s student, al-A‘mash, received the *ḥadīth* from someone living in the early part of the second century, and this person could very well have been Ibn Murra.

	143, Baghdad and Medina)				
A Jewish group brings a man and a woman who have committed <i>zinā</i> and asks the Prophet to adjudicate the case.	A Jewish man and a Jewish woman who committed <i>zinā</i> were brought to the Prophet.	A Jewish group brings a man and a woman who have committed <i>zinā</i> and asks the Prophet to adjudicate the case.	A Jewish man and a Jewish woman who committed <i>zinā</i> were brought to the Prophet.	A Jewish man and a Jewish woman who committed <i>zinā</i> were brought to the Prophet.	A Jewish group brings a man and a woman who have committed <i>zinā</i> and asks the Prophet to adjudicate the case.
Prophet asks what do they find in their book.	Prophet asks what do they find in the Torah for someone who commits <i>zinā</i> .	Prophet asks in what manner do they treat someone who commits <i>zinā</i> . <i>They respond that they hit them.</i>	Prophet sends for two readers and asks them if they find stoning in the Torah and they say no.	Prophet asks what do they find in their book.	Prophet asks what do they find <i>in the Torah about stoning</i> .
Humiliate and blacken the face.	Blacken faces and parade them around town.	Do not find stoning.	Blacken faces with charcoal, mount the offender on a donkey, and parade them around town.	Do not find stoning.	Humiliate and <i>flog</i> .
Interjection by an unidentifiable person who states the Jewish group is lying.	Interjection by an unidentifiable person who calls for the Torah.	Interjection by ‘ <i>Abd Allāh b. Salām</i> ’ who states the Jewish group is lying.	Interjection by an unidentifiable person who instructs the reading of the Torah.	Interjection by ‘ <i>Abd Allāh b. Salām</i> ’ who states the Jewish group is lying.	Interjection by ‘ <i>Abd Allāh b. Salām</i> ’ who states the Jewish group is lying.
The reading of the Torah	The reading of the Torah	The reading of the Torah	The reading of the Torah	The reading of the Torah	The reading of the Torah

to determine the existence of a stoning verse and attempts to cover it up by a one-eyed reciter named Ibn Šūriyā.	to determine the existence of a stoning verse and attempts to cover it up by <i>an unidentified person</i> .	to determine the existence of a stoning verse and attempts to cover it up by <i>a learned scholar</i> .	to determine the existence of a stoning verse and attempts to cover it up by <i>an unidentified person</i> .	to determine the existence of a stoning verse and attempts to cover it up by Ibn Šūriyā.	to determine the existence of a stoning verse and attempts to cover it up by <i>an unidentified person</i> .
On the basis of the comment, the Jewish group confirms stoning as the proper punishment <i>but admit they have not been using it</i> .	On the basis of <i>Ibn Salām's</i> comment, hand is removed and stoning verse is revealed.	On the basis of <i>Ibn Salām's</i> comment, the Jewish group confirms stoning as the proper punishment.	On the basis of <i>Ibn Salām's</i> comment, hand is removed and stoning verse is revealed.	On the basis of <i>Ibn Salām's</i> comment, the Jewish group confirms stoning as the proper punishment.	On the basis of <i>Ibn Salām's</i> comment, the Jewish group confirms stoning as the proper punishment.
Unidentified person claims to have witnessed the stoning of the Jewish couple.	<i>Ibn 'Umar</i> claims to have witnessed the stoning of the Jewish couple.	<i>'Abd Allāh</i> claims to have witnessed the stoning of the Jewish couple.	<i>Ibn 'Umar</i> claims to have witnessed the stoning of the Jewish couple.	Unidentified person claims to have witnessed the stoning of the Jewish couple.	<i>Ibn 'Umar</i> claims to have witnessed the stoning of the Jewish couple.

The following chart notes the salient clauses from the Jābir b. 'Abd Allāh and al-Barrā' b. 'Āzib variants:

Jābir b. 'Abd Allāh (d. 78, Baghdad, Egypt, Medina, and Syria)	al-Barrā' b. 'Āzib (d. 71-2, Medina and Kufa)
Jews of Fadak advise the Jews of Medina to ask the Prophet to adjudicate a <i>zinā</i> matter.	Prophet sees the offender who was flogged and whose face was blackened. He makes an inquiry about the punishment.
Jews of Fadak instruct that if the Prophet	Nobles are let go. Commoners are stoned.

orders flogging, then accept it. And if orders stoning, then they should not.	Agree to treat all the same by flogging and blackening the face.
Prophet asks the Jews to call their two most knowledge men.	Prophet calls for one learned person.
Prophet implores them on the basis of an extensive oath to tell him what they find in the Torah regarding the punishment for <i>zinā</i> .	Prophet implore <i>one</i> learned person on the basis of a short oath to tell him what he finds in the Book (Torah) regarding the punishment for <i>zinā</i> .
On the basis of an oath, ‘Abd Allāh b. Šūriyā responds by defining what constitutes <i>zinā</i> and confirm stoning as the proper punishment.	On the basis of an oath, the learned person confirms stoning is the proper punishment.
Prophet (re)confirms the punishment.	Prophet claims to reimplement the stoning punishment.
Exegetical connection to Q5:41f.	Exegetical connection to Q5:41, 44, 45, and 47.
	In connection with Q5:41, the accusation against the Jewish group, who gave instructions to go to the Prophet and to accept his ruling if he says blacken face and flog, and to be wary if he says to stone.

When all of Nāfi‘’s variants are compared with the detailed versions that are recorded to have been circulated by al-Barrā’ b. ‘Āzib and Jābir b. ‘Abd Allāh, it is evident that several themes pass through all reports. The following is a comparative summary:

#### 1) Conveyance of *tahrīf*:

- a. In Nāfi‘’s account, a Jewish man and a Jewish woman who committed *zinā* are brought to the Prophet. He asks the Jewish group if they find stoning in the Torah, to which they respond in the negative. Instead, it attributes a different punishment for *zinā*, or denies the use of stoning completely.
- b. In Jābir’s variant, the Jews of Fadak instruct the Jews of Medina to ask the Prophet about adjudicating a *zinā* matter, and to accept his decision if he orders the punishment of

flogging.

c. In Ibn al-‘Āzib’s version, an offender who has been flogged and whose face has been blackened passes by the Prophet.

Ibn ‘Umar’s *matn* does not provide any reason(s) for why the Jewish group asked the Prophet to adjudicate their *zinā* case. This means that the background information noted in Jābir’s and Ibn al-‘Āzib’s respective variants was excised from Ibn ‘Umar’s version, or that it was added to the *matns* in which it appears. The backdrop is important because it demonstrates how the Prophet got involved in a *zinā* case concerning Jewish offenders. As I will demonstrate in the next two sections, these elaborations were likely in circulation on the basis of a common source.

Regardless, the notion of *tahṛīf* on the part of the Prophet’s Jewish contemporaries endures, which helps establish a nexus between his authority and the endorsement of stoning as punishment based on a purported divine prescription.

## 2) Style and content of initial question:

a. In the al-Sakhityānī, ‘Ubayd Allāh, Ibn ‘Uqba, and Juwayriya *matns*, the Prophet asks the Jewish group about what the Torah prescribes for someone who commits *zinā*. In the Ma‘mar and Mālik variants, the Prophet specifically asks about stoning. The Prophet’s unsolicited inquiry about the capital punishment probably emerged as part of the *matns* by the middle of the second century, because by this time several reports were in circulation about the Prophet’s order to stone Jewish *zinā* offenders. This dynamic was within the consciousness of those who transmitted the *ḥadīth* with the seemingly spontaneous question by the Prophet.

b. In Jābir’s and Ibn al-‘Āzib’s *matns*, the Prophet asks about what is found in the Torah.

In these variants, once knowledge about the stoning punishment comes to light, the Prophet

affirms it. It was important for the Prophet to be shown as endorsing the punishment. If the Prophet did not know the correct punishment from the Torah, then he could have been charged with being a false prophet. His accusers could have asserted that a real Prophet would have known the correct punishment. Therefore, by validating the divine directive, the *ḥadīth* conveys that he was a true prophet of God and as such, knew all of God's ordinances.

### 3) Imploring a truthful response:

a. In al-Sakhtiyānī's, Ibn 'Uqba's and 'Ubayd Allāh's *matns*, once the Jewish group responds to the Prophet's inquiry, a command clause is employed: Bring the Torah if you are truthful.<sup>442</sup> The wording is deliberate. Q3:93f reads:

Except for what Israel made unlawful for himself, all food was lawful to the Children of Israel before the Torah was revealed. Say, 'Bring the Torah and read out [the relevant passage] if you are telling the truth.

Therefore, the appearance of the command clause served to (re)emphasize the Qur'ānic instruction to challenge the claims that the Prophet's Jewish contemporaries were making.

b. In al-Barrā' b. 'Āzib's and Jābir b. 'Abd Allāh's respective variants, the Prophet uses an oath to secure a truthful response. The oath is a substitute for the Torah.

### 4) Use of authoritative source(s):

a. In the al-Sakhtiyānī, 'Ubayd Allāh, and Ma'mar *matns*, stoning is confirmed on the basis of an unidentified expert. He accuses the Jewish group of lying, and to corroborate the accusation and affirm the correct punishment, the Torah is used.

b. In the 'Ubayd Allāh version, and eventual reference is made to 'Abd Allāh b. Salām, the Jewish legal scholar who converts to Islam. He is the same person who appears in the

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<sup>442</sup> The same form is in the *matn* provided by Muslim based on his collective *isnād*.



*matns* of Ibn ‘Uqba, Juwayriya, and Mālik.

c. In al-Sakhtiyānī’s, Juwayriya’s, and the Companion Jābir b. ‘Abd Allāh’s narrations, the name Ibn Ṣūriyā is employed. It seems his name, as part of the *matn*, likely emerged in Iraq during the early part of the second century. This is because his name appears in *matns* transmitted predominantly by Iraqis.<sup>443</sup> Non-Iraqi versions do not contain Ibn Ṣūriyā’s name, but do note Ibn Salām’s presence.

All variants encompass the theme of an expert who is proficient in the Torah. Ultimately, this learned individual (in some variations two) represents an important point the *ḥadīth* is attempting to convey. By virtue of the Jewish scholar confirming the punishment of stoning, the Qur’ānic charge of *tahrīf* is certified.<sup>444</sup>

#### 5) Manner of ending:

a. In all versions of the *ḥadīth* on Ibn ‘Umar’s authority, the report ends with someone claiming to have witnessed the stoning of the couple.<sup>445</sup> This clause has a dramatizing function, because it evokes the image of two lovers dying for one another. This motif is also important because it conveys a sense of legitimacy of the incident’s occurrence. Per the Nāfi‘ chart above, Ibn ‘Umar is specified in variants narrated by Ma‘mar (d. 153), ‘Ubayd Allāh b. ‘Umar (d. 171), Mālik (d. 179), al-Ḥumaydī (d. 219), and Muslim (d. 261). But in other iterations, Ibn ‘Umar’s name is absent. It is also important to note that the clause is entirely missing from the Companions Ibn ‘Āzib and Jābir reports. What can

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<sup>443</sup> Ibn Ṣūriyā’s name does not appear in the *matn* circulated by al-Barrā’ b. ‘Āzib.

<sup>444</sup> Ibn Salām’s order to remove the hand, argues Burton, is to dramatize the Qur’ān’s charge against the Jews of concealing verses of the Torah, see Burton, "Origin of the Islamic Penalty for Stoning," 19.

<sup>445</sup> The Arabic term in the *matn* is the first-person singular of *ra’ā*, "to see." The term "witness" has a technical meaning in Islamic law and is represented by *shahada*, "to witness." I use "to see" and "to witness" interchangeably in the non-technical sense.

explain this difference? In the next section, I argue that it was in fact Ibn ‘Umar’s son, Sālim (d. 105-10), who helped circulate the witness clause.

b. In place of the witness clause, the al-Barrā’ b. ‘Āzib and Jābir b. ‘Abd Allāh variants conclude with interlinking the report with certain Qur’ānic verses, which charge the Jewish community with the practice of *tahrīf*. This suggests that it was in Iraq where the Jewish *Ḥadīth* came to be viewed as exegetical information. However, by the end of this chapter I will demonstrate that this narrative likely emerged in the Ḥijāz.

Now that an evaluation has been conducted to understand the provenance and significance of several themes in the Jewish *Ḥadīth*, I now shift focus to Nāfi‘ *mawlā* Ibn ‘Umar. Some present-day scholars question the historicity of *isnāds* that regularly include Nāfi‘, or they outright dismiss the existence of a historical Nāfi‘. For example, Schacht doubts “whether the historical Nāfi‘ is responsible for everything that is ascribed to him...”<sup>446</sup> Schacht’s comment is based on his general view regarding the development of Islamic jurisprudence.<sup>447</sup> He argues that because Islamic law proper emerged in the third century, “traditions pretending to express the doctrines of the Successors, in the second half of the first century A.H., are to a great extent fictitious.”<sup>448</sup> Juynboll amplifies Schacht’s skepticism by commenting that in Ibn Sa’d’s biographical data on Ibn ‘Umar, “Nāfi‘, although mentioned often, is talked about in such a manner that a reader may be left with the impression a historical person is not being described.”<sup>449</sup> In Juynboll’s view, the story of Nāfi‘ is more intimately tied to the story of Mālik,

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<sup>446</sup> Schacht, *Origins*, 177.

<sup>447</sup> For a insightful summary, see Motzki, *The Origins of Islamic Jurisprudence*, 26f.

<sup>448</sup> Schacht, *Origins*, 176.

<sup>449</sup> Juynboll, “Nāfi‘, the *malwā* of Ibn ‘Umar,” 218.

which means Mālik is the real source of reports that are attributed to Nāfi'.<sup>450</sup> For Juynboll, *isnād* analysis leads him to conclude that the Mālik - Nāfi' - Ibn 'Umar link "cannot be maintained as a historically feasible chain of transmission."<sup>451</sup> In short, for these scholars it is important to cast a sharper eye when examining *ḥadīth* and *akhbār* that rest on Nāfi''s authority.

Motzki, in a lengthy analysis, deconstructs many of Juynboll's arguments.<sup>452</sup> For instance, as previously mentioned, Juynboll believes that limited biographical information on Nāfi' leads him to reject the *mawlā* as a historical figure. Motzki states that this is an *ex silentio* argument.<sup>453</sup> Simply because there are not extensive details on Nāfi' cannot lead to a logical conclusion that he did not exist. Furthermore, Motzki notes that when compared to biographical entries on other *mawālī*, concise biographical entries on Nāfi' are hardly a divergent phenomenon.<sup>454</sup> Regarding a historical relationship between Mālik and Nāfi', Motzki writes that it was highly plausible. Mālik was born in 93, which means by Nāfi''s death, Mālik was in his twenties, thereby making transmissions, especially by audition, conceivable.<sup>455</sup> Based on an analysis of transmissions between Mālik and his two teachers, Nāfi' and Ibn Shihāb al-Zuhrī, Motzki opines that the unique patterns within the *matn* of each student-teacher dialectic demonstrates that communication between Mālik and his teachers did take place and are historical.<sup>456</sup> Lastly, by examining and comparing *isnāds* and *matns* from pre-canonical collections such as those found

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<sup>450</sup> Ibid., 238f.

<sup>451</sup> Ibid., 241.

<sup>452</sup> Motzki, *Analysing Muslim Traditions*, 61-89.

<sup>453</sup> Ibid., 66.

<sup>454</sup> Ibid.

<sup>455</sup> Ibid., 68f.

<sup>456</sup> Motzki, "Jurisprudence of Ibn Shihāb," 22-5.

in ‘Abd al-Razzāq’s *al-Muṣannaḡ*, Motzki demonstrates that Juynboll’s claim about Nāfi‘, are improbable. In sum, the evidence Motzki furnishes does tip the scale in favor of considering Nāfi‘ a historical figure. It is an evaluation with which I agree, and I will elaborate upon this further in the next section.

#### ‘Abd Allāh b. Dīnār (d. 127, Medina) - Ibn ‘Umar

As noted at the beginning of this section, ‘Abd Allāh b. Dīnār (d. 127, Medina) is the other *mawla* of Ibn ‘Umar to have transmitted the Jewish *Ḥadīth*. In the *ḥadīth* and *akhbār* collections I investigated, al-Bukhārī is the only one to have included the report Ibn Dīnār’s authority. In al-Bukhārī’s *Ṣaḥīḥ*, the *isnād* and *matn* read:

al-Bukhārī - Muḥammad b. ‘Uthmān [b. Karāma] (d. 254, 256, or 265, Baghdad, Kufa, or Rayy) - Khālīd b. Makhlad (d. 213, Kufa and Medina) - Sulaymān [b. Bilāl] (d. 177, Medina) - ‘Abd Allāh b. Dīnār (d. 127, Medina) - Ibn ‘Umar:

The Messenger of God was brought a Jewish man and a Jewish woman.

The Prophet said to the Jewish group: What do you find in your book?

They responded: Our learned scholars say to blacken their faces and to lower their heads in shame.

‘Abd Allāh b. Salām said: O Messenger of God, tell them to bring the Torah.

They did and someone from the Jewish group put his hand over the stoning verse and read that which was before and after it. Ibn Salām said to him: Lift up your hand.

He did and the stoning verse came into view. The Messenger of God gave the order and the Jewish couple was stoned. Ibn ‘Umar also said: They were stoned at *al-Balāt* and I saw the man trying to protect the woman.<sup>457</sup>

This *matn* contains several motifs found in the version(s) transmitted by Nāfi‘, which initially suggests that Ibn ‘Umar is indeed the source for both of his *mawla*s. However, *isnād* analysis

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<sup>457</sup> al-Bukhārī, *Ṣaḥīḥ* (1976 ed.), 2,499f:6,433.

indicates that there are reasons to be suspect of al-Bukhārī's record.

Skepticism arises based on biographical information on Khālīd b. Makhlad (d. 213, Kufa). Indeed, it is noted that he possessed numerous *ḥadīth* from Medinan men.<sup>458</sup> However, he narrated *munkar ḥadīth*, and those who transmitted from him did so out of necessity.<sup>459</sup> Furthermore, he circulated several reports from Mālik with erroneous *isnāds*.<sup>460</sup> This is important, because it creates the possibility that he could have had access to the Jewish *Ḥadīth* from Mālik. The probability must be seriously considered because of the overlap between Ibn Makhlad's and Mālik's respective *matns*. Additionally, given the time period in which Ibn Makhlad lived, it appears that his version interweaves certain elements that were already in circulation in other variants. Specifically, it is in Ma'mar's (d. 153, Basra, Medina, and Yemen) report that we find the motif of shame, and it is in Juwayriya's (d. 173, Basra and Medina) transmission that we read that the stoning occurred at *al-Balāt*. Both of these motifs are unique to Ma'mar's and Juwayriya's respective *matns*, and they both appear in Ibn Makhlad's report. Living in the latter part of the second century and the early part of the third century, Ibn Makhlad likely had access to the Jewish *Ḥadīth*, such as Ma'mar's and Juwayriya's respective iterations, and combined it with Mālik's variant. Therefore, while Ibn Makhlad does transmit *ḥadīth* with Ibn Bilāl - Ibn Dīnār - Ibn 'Umar *isnāds*, in my view, his sources for the Jewish *Ḥadīth* tracing back to Ibn Dīnār are doubtful.

#### **Zayd b. Aslam (d. 136, Medina) - Ibn 'Umar**

In addition to Ibn 'Umar's two *mawla's*, Zayd b. Aslam is also cited as someone to have

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<sup>458</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 8:530; al-Dhahabī, *Siyar A'lām*, 10:217.

<sup>459</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 8:530; al-Mizzī, *Tahdhīb al-Kamāl*, 8:165; al-Dhahabī, *Siyar A'lām*, 10:218; Ibn Hajar, *Tahdhīb al-Tahdhīb*, 3:293.

<sup>460</sup> al-Jurjānī, *al-Kāmil*, 3:463-6.

narrated the Jewish *Ḥadīth* on Ibn ‘Umar’s authority. The report can be found in Abū Dāwūd’s *Sunan* and the *isnād* and *matn* read:

Abū Dāwūd - Aḥmad b. Sa‘īd al-Hamdānī (d. 253, Hamdan and Egypt) - ‘Abd Allāh b. Wahb (d. 197, Egypt and Medina) - Hishām b. Sa‘īd (d. 160, Medina) - Zayd b. Aslam (d. 136, Medina) - Ibn ‘Umar:

A Jewish group came and called for the Messenger of God to a hill. Then they came to a Jewish center for scholars and said: Abū al-Qāsim, a man from among us committed *zinā* with a woman, so make a judgement.

They put down a cushion for the Messenger of God and he sat on it. Then the Prophet said: Bring me the Torah.

They did that. Then the Prophet took the cushion out from under him and placed the Torah on it and said: I trust you and the Messenger who was sent to you. Bring me your most learned.

So they brought him a young man. Then the story about stoning was mentioned in accordance with Mālik’s *ḥadīth* from Nāfi‘.<sup>461</sup>

Given that the particular details in this *matn* are not in any other versions on Nāfi‘’s authority, it is highly probable that the *matn* cannot be attributable to Ibn ‘Umar. Nevertheless, the broad theme of employing an authoritative expert found in other Jewish *Ḥadīth* is reflected in Ibn Aslam’s narrative. Specifically, in addition to both the Torah and a learned person being employed, the Prophet’s remark about trusting the messenger - Moses - also functions to establish a legitimate source. And likely to add a relatable parallel, the Prophet is called to a hill just as Moses was called to the mountain top by God.<sup>462</sup> In sum, this variant seems to provide a further elaboration to the background story about the Prophet’s involvement in a Jewish *zinā* case, and to convey the legitimizing effect of authoritative sources such as the Torah and Moses.

Similar to the Ibn Dīnār *isnād*, the historicity of the one furnished by Abū Dāwūd can

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<sup>461</sup> Abū Dāwūd, *Sunan*, 6:498:4,449.

<sup>462</sup> Exodus: 19:1-25.

also be called into question. Specifically, issues arise with Hishām b. Sa‘īd (d. 160, Medina). According to biographical dictionaries, while Ibn Ḥanbal had a favorable view of him, the *ḥadīth* critic Ibn Ma‘īn remarked that nothing should be narrated from him.<sup>463</sup> Importantly, none of the biographical and *‘ilal* collections I investigated record Zayd b. Aslam as a source from whom Hishām b. Sa‘īd narrated. While the *matn* contains a (re)formulation of the expert motif found in other Jewish *Ḥadīth* variants, it is improbable that Hishām received the narrative from Zayd b. Aslam.

Based on an investigation of the Jewish *Ḥadīth* *Ḥadīth* which was purportedly narrated by Ibn ‘Umar, it can be said with a high degree of confidence that Nāfi‘ disseminated the *ḥadīth*. This can also be substantiated on the basis of *isnād* and comparative *matn* examination with variants by the Companions al-Barrā’ b. ‘Āzib and Jābir b. ‘Abd Allāh, respectively. Modifications were made to Nāfi‘’s report as it circulated in different regions of the Islamic polity. Yet key motifs remained intact, with the most important one *tahrīf*, which ultimately interlinked the Prophet with the punishment for stoning.

## **Section 5. *Ḥadīth* by the Companion Abū Hurayra (d. 57-9, Mecca, Medina, and Yemen)**

A fairly lengthy version of the Jewish *Ḥadīth* supposedly circulated by the Companion Abū Hurayra (d. 57-9, Mecca, Medina, and Yemen) appears in only a few collections. However, the limited circulation of this *ḥadīth* does not diminish its significance. In fact, it is quite the opposite. Abū Hurayra’s variant actually sheds considerable light on the broader analysis of the narrative about the Prophet’s involvement in the stoning of a Jewish couple. Accordingly, in this section I analyze its *isnād* and *matn* to explicate this *ḥadīth* variant’s importance for the present

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<sup>463</sup> al-Mizzi, *Tahdhīb al-Kamāl*, 30:210; al-Dhahabī, *Mizān*, 4:299; Ibn Hajar, *Tahdhīb al-Tahdhīb*, 6:642.

chapter and the broader aim of this project.

The *ḥadīth* collections which contain the report are the *Muṣannaf* of ‘Abd al-Razzāq (d. 211), the *Musnad* of Ibn Ḥanbal (d. 241),<sup>464</sup> the *Sunan* of Abū Dāwūd (d. 275)<sup>465</sup>, and the *Sunan al-Kubrā* of al-Bayhaqī (d. 458), respectively.<sup>466</sup> The *isnād* and *matn* in the *Muṣannaf* read:

‘Abd al-Razzāq - Ma‘mar b. Rāshid (d. 153, Basra, Medina, and Yemen) - Ibn Shihāb al-Zuhrī (d. 124, Medina and Syria) - a man from [the tribe of Muzayna], and we were with Sa‘īd b. al-Musayyab (d. 92 or 94, Medina) - Abū Hurayra (d. 57-9).

The first person to be stoned by the Messenger of God was from among the Jews. A man from among them committed *zinā* with a woman. Their learned scholars consulted one another before bringing the matter to the Messenger of God. Some said to others: This prophet was sent with relief and we know that stoning is a religious obligation (*fard*) in the Torah.

Then others among them said: Let us go and ask the Prophet about the matter involving our people who committed *zinā* after having *iḥṣān*. Let us agree that if the Prophet gives us a non-stoning judgement, then we will accept the less severe punishment. We will then plea our case to God about forgoing the stoning punishment when we meet Him. We will say: ‘We accepted the ruling of the Prophet from among your prophets.’ But if the Prophet commands us to stone the offenders, then we will reject the ruling since we have already disobeyed that which God has written for us about stoning in the Torah.

So they went to the Messenger of God while he was sitting with his companions in the mosque. The Jewish group said: Abū Qāsim, how would you deal with a man and a woman who commit *zinā* after they have *iḥṣān*?

The Prophet and some of the Muslims sitting with him got up without responding, and left for the Jewish study center where the Torah is studied. The Messenger of God arrived at the door and said: Jewish people, I bear witness to you by God, Who sent the Torah to Moses, what do you find in the Torah regarding the matter involving someone who commits *zinā* after having *iḥṣān*?

The Jewish group replied: We blacken their faces and parade them around town by putting them on a donkey with their backs to one another.

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<sup>464</sup> Ibn Ḥanbal provides a truncated version with ‘Abd al-Razzāq as his informant. The variant states that Prophet stoned a Jewish man and a Jewish woman, see Ibn Ḥanbal, *Musnad* (1995 ed.), 7:461f:7,747.

<sup>465</sup> Abū Dāwūd, *Sunan*, 5:471f:3,624f and 6:498-501:4,450 and 501:4,451.

<sup>466</sup> al-Bayhaqī, *al-Sunan al-Kubrā*, 8:374f:16,933.



He<sup>467</sup> said: Their learned person, who happened to be a young man, remained quiet. When the Prophet saw him, he remained in place. Then the learned scholars remarked: Had you made us swear to God, then we would have admitted to the stoning punishment as found in the Torah.

The Messenger of God then said: When was the first time that you reduced the punishment from the one God decreed upon you?

The Jewish group responded: A man, who had familial ties to our King, committed *zinā*. So the King imprisoned him and excused him from getting stoned. Thereafter, a commoner committed *zinā* and the King wanted to stone him. The offender's people intervened and protested by saying: 'By God, we will not be stoned until you stone those from among yourselves!' So we reformed the punishment for everyone.<sup>468</sup>

The Prophet said: I will rule in accordance with the Torah.

With that comment, the Prophet gave the judgment and the offenders were stoned.

Al-Zuhrī commented: I was informed by Sālim from Ibn 'Umar who said: 'Indeed I saw the offenders when the Messenger of God ordered that they be stoned. When the stoning took place, I saw the man trying to protect her with his hands.'

He<sup>469</sup> said: It reached us that this incident occasioned the verse [Q5:44]: "We revealed the Torah with guidance and light, and the prophets, who submitted to God, judged according to it for the Jews."

The Prophet is from among such prophets.<sup>470</sup>

This narrative includes all of the motifs I have previously identified in other reports. Importantly, the accusation of *ṭahrīf*'s remains the broad arc. This motif once again expresses a mechanism by which to draw upon stoning and to justify it on the authority of a divine command. These two elements are then connected to the Prophet's authority by virtue of his involvement in the

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<sup>467</sup> Unclear of the reference.

<sup>468</sup> In his gloss of Q5:41 on the portion, "...they listen to one another...", al-Ṭabarī notes the same account on the authority of al-Suddī (d. 127, Hījāz and Kufa), see al-Ṭabarī, *Jāmi* ' , 10:310f:11,929.

<sup>469</sup> Unidentifiable.

<sup>470</sup> 'Abd al-Razzāq, *al-Muṣannaḡ*, 7:316-8:13,330; al-Ṭabarī, *Jāmi* ' , 10:305f:11,924. In al-Ṭabarī's *isnād* the man from Muzayna receives it from Ibn al-Musayyab.

adjudication of the case.

However, there are some differences in this variant that are worthy of attention. Abū Hurayra's account includes the Jewish group's discussion about their reason for seeking out the Prophet. Their rationality constitutes one line in the *matn*, but has a weighty implication. Some among the Jewish group stated that Muḥammad was sent with relief and stoning was an obligation in the Torah. What relief could this be? If we consider *zinā* in the *ḥadīth* to mean the *zinā* referenced in the Qur'ān, then relief implies 100 lashes per Q24:2, not capital punishment. It seems that in an attempt to telescope in the direction of *tahrīf*, the ramification of the stratagem was not within the purview of the narrator(s). This suggests that in the minds of those who initially circulated the narrative, the *zinā* noted in the *ḥadīth* had the same connotation as the *zinā* censured in the Qur'ān.<sup>471</sup>

In order to harmonize the *zinā* in the *ḥadīth* as that which requires stoning in the Islamic legal tradition, the term *iḥṣān* appears in the *matn*. As I discussed in Chapter One, *iḥṣān* came to be used as the legal term which specifies the forms of illicit sexual intercourse warranting the stoning punishment. There were legal debates - with consequences - about what exactly constituted *iḥṣān*, which I argued indicates that the term's conception was brought into discussions after the Prophet's demise. In Abū Hurayra's report, both the Jewish group and the Prophet talk about the punishment for someone who commits *zinā* and has *iḥṣān*. The inclusion of the term suggests conformity of meaning between the Prophet and his Jewish contemporaries, and this is highly improbable given that even among Muslim legal authorities disagreements existed about this legal element's definition. This implication should also not ignore the critical

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<sup>471</sup> In Section 3, the *ḥadīth* on Jābir b. 'Abd Allāh's authority includes a comment by the Jewish group, which states that they will accept the Prophet's ruling if he orders them to flog. Abū Hurayra's variant now makes obvious the appearance of the Jewish group's remark in Jābir's version.

fact that the employment of *iḥṣān* would contradict the Jewish group's assumption about the relief the Prophet could provide. It thus seems that the use of *iḥṣān* unintentionally creates slippage in the legal dynamics of the narrative. But its citation points to a later addition in the *matn* in order to mold the report into conformity with *zinā* laws in the Islamic legal tradition.

In Abū Hurayra's variant, the Prophet does not bind the Jewish scholars to an oath, but rather proclaims witness to God and Moses. Because the Jewish scholars were not bound by an oath, they advise the Prophet that they flog and humiliate their *zinā* offenders. But a young man *interjects*, and informs the Prophet that had he bound them to an oath, then they would have disclosed the stoning punishment. It does not make sense for this young man to acknowledge a counter-factual reality with detrimental ramifications for his brethren. After all, the whole point of the report is to show the Jewish group's apprehension towards implementing the capital punishment. This irregularity explains why the motif of oath binding is likely in the Ibn 'Āzib and some of Jābir's variants.<sup>472</sup> The oath's significance can also be corroborated by Ibn 'Umar's report on the authority of Zayd b. Aslam, which contains elements found in Abū Hurayra's narrative. In that report, the Prophet advises the Jewish scholars that he trusts the messenger who was sent to them. Therefore, Abū Hurayra's report in which a young man voluntarily discloses the correct punishment informed the (re)wording of the oath in the Ibn 'Āzib and Jābir variants.

The *isnād* of Abū Hurayra's report is as insightful and important as the *matn*. To begin, I have little reason to doubt Ma'mar's (d. 153, Basra, Medina, and Yemen) reception of the *matn* from Ibn Shihāb al-Zuhrī (d. 124, Medina and Syria). Ma'mar was born in 95 or 96, which

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<sup>472</sup> This can be further substantiated by a variant Abū Dāwūd provides on the authority of 'Ikrama (d. 160, Basra and Yamāma). 'Ikrama does not provide his source. The *matn* focuses on the manner by which the Prophet made Ibn Ṣūriyā take the oath, and it parallels the forms found in al-Barrā' and Jābir variants, see Abū Dāwūd, *Sunan*, 5:472:3,626.

means he had a reasonable amount of time to meet and spend with his teacher. Furthermore, Ma‘mar claims to have met al-Zuhrī when he visited Medina.<sup>473</sup> Ma‘mar was not only a jurist and an exegete, but he was also considered to be the best transmitter of al-Zuhrī’s transmissions.<sup>474</sup> All in all, Ma‘mar’s biographical information, especially about his association with al-Zuhrī, makes it highly plausible that Ma‘mar received the *ḥadīth* from his noted teacher.

Al-Zuhrī’s place in the *isnād* can be corroborated by an entry in the *Sunan* of Abū Dāwūd. In one variant, Abū Dāwūd’s informant is Muḥammad b. Yaḥyā b. Fāris (d. 258, Baghdad, Basra, Iṣfahān, Khurasān, and Nīshāpūr), who transmits the narrative from ‘Abd al-Razzāq, and whose *isnād* includes al-Zuhrī. The account is rather brief and states:

The Messenger of God said to the Jewish group: I implore you by God, the One who sent the Torah to Mūsā, what punishment do you find in the Torah for someone who commits *zinā*?

Abū Dāwūd states: And the *ḥadīth* continues about the stoning incident.<sup>475</sup>

Abū Dāwūd provides a much longer *matn* on the basis of two *isnāds*.<sup>476</sup> One *isnād* is the same as above, and the second reads:

Aḥmad b. Ṣāliḥ (d. 248, Egypt and Syria) - ‘Anbasa [b. Khālīd b Yazīd] (d. 198, Ayla) - Yūnus [b. Yazīd] (d. 60, Ayla and Egypt) - al-Zuhrī...<sup>477</sup>

Because Abū Dāwūd provides two *isnāds* for the detailed variant, it becomes more difficult to

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<sup>473</sup> al-Dhahabī, *Siyar A‘lām*, 7:6f.

<sup>474</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta’dīl*, 8:256; al-Mizzī, *Tahdhīb al-Kamāl*, 28:306f, 308; there was suspicion about his narration of another *ḥadīth* leading back to Abū Hurayra, see Ibn Abī Ḥātim, *al-‘Ilal*, 2:515f:555; Ma‘mar also claims to have narrated a *ḥadīth* from al-Zuhrī, though it was determined that his source was someone else, see *ibid.*, 4:267:1,413.

<sup>475</sup> Abū Dāwūd, *Sunan*, 5:471:3,624.

<sup>476</sup> Abū Dāwūd, *Sunan*, 6:498-501:4,450.

<sup>477</sup> Abū Dāwūd, *Sunan*, 6:498-501:4,450. He also adds the comment, “It was mentioned to me that a man from Muzayna, who was from among those that seek knowledge and retain it, narrated to Sa‘īd b. al-Musayyab.”

resolve who may have narrated particular information. However, the *matn* does share a high degree of similarity with the version in ‘Abd al-Razzāq’s *al-Muṣannaḡ*, which suggests Abū Dāwūd had access to the narrative by Muḥammad b. Yaḥyā b. Fāris on the authority of ‘Abd al-Razzāq. The differences between Abū Dāwūd’s and ‘Abd al-Razzāq’s variants are non-consequential, and in fact indicate a common source. A historical transmission is probable because according to biographical data, Muḥammad b. Yaḥyā b. Fāris is noted to have collected and written down al-Zuhrī’s transmissions in a *muṣannaḡ*.<sup>478</sup> Given the teacher-student relationship between ‘Abd al-Razzāq and Muḥammad b. Yaḥyā b. Fāris, it makes sense that the latter recorded the Jewish *Ḥadīth* on al-Zuhrī’s authority during an audition with ‘Abd al-Razzāq.

There is some suspicion with the second *isnād* Abū Dāwūd furnishes, which has al-Zuhrī’s student Yūnus b. Yazīd (d. 60, Ayla and Egypt). Indeed, he was considered to be one of al-Zuhrī’s best students.<sup>479</sup> But it was also alleged that he would make errors with al-Zuhrī’s transmissions.<sup>480</sup> Therefore, it is possible that Ibn Yazīd could have received the narrative from al-Zuhrī, but it is also feasible that he did not. The collective *isnād* obscures the source(s) of particular details. Nevertheless, Abū Dāwūd’s report does increase the likelihood of al-Zuhrī’s involvement in the circulation of the *ḥadīth*.

The likelihood of Muḥammad b. Muslim b. ‘Ubayd Allāh b. Shihāb al-Zuhrī’s (d. 124, Medina and Syria) involvement is high. He was a legal and *ḥadīth* authority.<sup>481</sup> For Mālik, there

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<sup>478</sup> al-Khaṭīb al-Baghdādī, *Tārīkh*, 4:656.

<sup>479</sup> Ibn Abī Ḥatim, *al-Jarḥ wa al-Ta’dīl*, 9:248; al-Mizzī, *Tahdhīb al-Kamāl*, 32:555f.

<sup>480</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 32:555; al-Dhahabī, *Sīyar A’lām*, 6:298.

<sup>481</sup> Ibn Sa’d, *al-Ṭabaqāt al-Kubrā*, 7:434 and 439; *Encyclopaedia of Islam*, 2<sup>nd</sup> ed., s.v. “al-Zuhrī”; al-Mizzī, *Tahdhīb al-Kamāl*, 26:431.

was no one better than al-Zuhrī for legal matters.<sup>482</sup> Al-Zuhrī was also known to have recorded, when others did not, legal rulings of Companions.<sup>483</sup> In Damascus, the Umayyad caliph ‘Abd al-Malik b. Marwān (d. 86, r. 65 – 86) was impressed with al-Zuhrī’s legal knowledge to such an extent that he allowed his children to be taught by al-Zuhrī.<sup>484</sup> After ‘Abd al-Malik’s death, al-Zuhrī remained in the service of subsequent Umayyad leaders and at one time served as a judge.<sup>485</sup>

It is worth noting that Michael Lecker interprets certain biographical entries as exposing al-Zuhrī of being “sloppy and irresponsible” in *ḥadīth* and *‘ilm* transmission.<sup>486</sup> For example, Lecker cites one entry on the authority of Ma‘mar, who states that an Umayyad prince sought al-Zuhrī’s approval for a notebook that contained al-Zuhrī’s legal opinions and (perhaps?) *ḥadīth*.<sup>487</sup> When presented with the notebook for review, al-Zuhrī commented, “Who else could have said them but me?”<sup>488</sup> Lecker argues that al-Zuhrī did not have any intention of checking the contents for accuracy, which demonstrates his “sloppy and irresponsible” behavior.<sup>489</sup>

While Lecker’s charge seems plausible, it does not cast doubt on al-Zuhrī’s dissemination

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<sup>482</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 26:434; Ibn Abī Ḥātim lists other who are known to have said the same thing as Mālik regarding al-Zuhrī’s legal acumen, see Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta’dīl*, 8:73f; al-Mizzī, *Tahdhīb al-Kamāl*, 26:436; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 6:50.

<sup>483</sup> Ibn Sa’d, *al-Ṭabaqāt al-Kubrā*, 7:434.

<sup>484</sup> Ibn Sa’d, *al-Ṭabaqāt al-Kubrā*, 7:432; Ibn ‘Asākir, *Tārīkh*, 55:297f; al-Mizzī, *Tahdhīb al-Kamāl*, 26:438.

<sup>485</sup> Ibid.; al-Mizzī, *Tahdhīb al-Kamāl*, 26:438 and al-Dhahabī, *Siyar A’lām*, 5:330 – 2 and 339; for additional information on his relationship with the Umayyad court, see Lecker, “Biographical Notes on Ibn Shihāb al-Zuhrī,” 21 – 41.

<sup>486</sup> Lecker, “Biographical Notes on Ibn Shihāb al-Zuhrī,” 29.

<sup>487</sup> Ibn Sa’d, *al-Ṭabaqāt al-Kubrā*, 7:435.

<sup>488</sup> Ibid.

<sup>489</sup> Lecker, “Biographical Notes on Ibn Shihāb al-Zuhrī,” 29f.

of the report. In his *Tahdhīb al-Kamāl*, al-Mizzī (d. 742) notes that al-Zuhrī was presented with a book that he did not authenticate. According to al-Mizzī's report, when asked if the book could be prescribed to him, al-Zuhrī responded in the affirmative.<sup>490</sup> While al-Zuhrī may not have always checked notebooks ascribed to him, it cannot lead to the conclusion that he *never* inspected them. Moreover, he could have provided oversight, but in those instances inspections were not sufficiently relevant to have been noted. Importantly, al-Zuhrī's review or lack thereof cannot impugn his role. Importantly, if someone did commit *isnād* forgery, then it would not make sense for this person to circulate an unidentifiable person in the chain of transmission because by such "forger's" time, standards of *ḥadīth* authentication would discourage such a practice. Therefore, it is highly probable that the *isnād* does represent a historical transmission, and al-Zuhrī's relationship with Maʿmar does suggest that he communicated the *ḥadīth* about the Prophet's involvement in the stoning of a Jewish couple.

Saʿīd b. al-Musayyab (d. 92 or 94, Medina)'s place in the *isnād* seems to be even more probable than al-Zuhrī's. Ibn al-Musayyab was known to be one of the earliest and most respected legal authorities in Medina after the Companion generation.<sup>491</sup> Supposedly, his legal acumen was so well regarded that the caliph ʿUmar b. ʿAbd al-ʿAzīz (r. 99-101) would not give judgements without Ibn al-Musayyab's consultation.<sup>492</sup> Of course this was likely to have been an exaggeration, but the conveyed principle is the more important point of consideration. Regarding al-Zuhrī's relationship with Ibn al-Musayyab, apparently it began when al-Zuhrī asked about a

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<sup>490</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 26:439f.

<sup>491</sup> Ibn Saʿd, *al-Ṭabaqāt al-Kubrā*, 2:325-7, and 7:121f; Ibn Abī Ḥatīm, *al-Jarḥ wa al-Taʿdīl*, 4:61; Ibn Ḥibbān, *al-Thiqāt*, 4:274.

<sup>492</sup> Ibn Saʿd, *al-Ṭabaqāt al-Kubrā*, 7:122.

legal matter and was told to seek out Ibn al-Musayyab. Al-Zuhrī did and was so impressed by Ibn al-Musayyab that he ended up spending seven (or ten) years with him.<sup>493</sup> Unless outside evidence can prove otherwise, al-Zuhrī reception of the *ḥadīth* from Ibn al-Musayyab is acceptable.

It is worth noting that a large portion of Ibn al-Musayyab's transmitted *ḥadīth* are from Abū Hurayra, and Ibn al-Musayyab was also considered to be Abū Hurayra's most reliable transmitter.<sup>494</sup> The connection between Ibn al-Musayyab and Abū Hurayra is further strengthened because Ibn al-Musayyab was Abū Hurayra's son-in-law.<sup>495</sup> Therefore, it is unsurprising to see Abū Hurayra as Ibn al-Musayyab's source. In short, based on the familial relationship and Ibn al-Musayyab's biographical information, it is highly probable that Ibn al-Musayyab came to know of the report from his father-in-law.

Abū Hurayra's (d. 57, 58, or 59) biographical information steers his involvement in the circulation of the Jewish *Ḥadīth* away from coincidence. To begin with, he was (and is) one of the most popular Companions. Despite knowing the Prophet for approximately four years, he is recorded to have narrated about 3,500 *ḥadīth*.<sup>496</sup> It is possible that some *muḥaddiths* erroneously referenced Abū Hurayra, which in turn would give the appearance of him as a fount of reports about the Prophet. But even during Abū Hurayra's lifetime, skepticism existed about the large number of narratives he attempted to circulate. This is likely why he is recorded to have made

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<sup>493</sup> Ibn Abī Ḥatim, *al-Jarḥ wa al-Ta'dīl*, 4:60; al-Mizzī, *Tahdhīb al-Kamāl*, 11:70.

<sup>494</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 7:121; al-Mizzī, *Tahdhīb al-Kamāl*, 11:74.

<sup>495</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 2:327.

<sup>496</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 5:232; possibly three years, see al-Dhahabī, *Siyar A'lām*, 2:589; *Encyclopaedia of Islam*, 2<sup>nd</sup> ed., s.v. "Abū Hurayra."



comments justifying the legitimacy of his reports. For example, Abū Hurayra stated that he went to the Prophet and lamented that he had difficulty remembering what the Prophet would say. According to Abū Hurayra, the Prophet cupped his hands as if they were filled with water and placed them inside Abū Hurayra's open robe, and then took them out. Then the Prophet instructed Abū Hurayra to close his robe and Abū Hurayra remarked that he never again forgot a *ḥadīth*.<sup>497</sup> Even after Abū Hurayra's demise, arguments persisted about his trustworthiness. It is recorded that in the court of the caliph Hārūn al-Rashīd (r. 170 – 93), a loud dispute emerged about the reliability of Abū Hurayra's transmissions.<sup>498</sup> It thus seems that while Abū Hurayra can be accepted as a Companion to have transmitted the Jewish *Ḥadīth*, the narrative's attribution to the Prophet is questionable.

For the present analysis, a report that the biographer al-Dhahabī (d. 748) provides about Abū Hurayra is of relevance. The entry reads that Ka'b b. al-Aḥbār (d. 32), a Yeminī Jewish convert to Islam, remarked, "When it comes to the Torah, I have never met anyone more knowledgeable than Abū Hurayra."<sup>499</sup> Ka'b b. al-Aḥbār's opinion is especially important in light of the fact that many of Abū Hurayra's transmissions correlate with Jewish folklore and mythology.<sup>500</sup> Therefore, Abū Hurayra's intimate knowledge of the Hebrew Bible and of Jewish traditions makes his involvement in the transmission of the Jewish *Ḥadīth* unsurprising.

It is also worth noting that Abū Hurayra narrated from 'Abd Allāh b. Salām, the

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<sup>497</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 5:234; al-Mizzī, *Tahdhīb al-Kamāl*, 34:378.

<sup>498</sup> al-Khaṭīb al-Baghdādī, *Tārīkh*, 13:28.

<sup>499</sup> al-Dhahabī, *Ṣiyar A'lām*, 2:600; on Ka'b b. al-Aḥbār, see *Encyclopaedia of Jews in the Islamic World*, s.v. "Ka'b b. al-Aḥbār."

<sup>500</sup> Abou El Fadl, *Speaking in God's Name*, 216.

individual who accuses the Jewish group of lying in Ibn ‘Umar’s variants.<sup>501</sup> And as it will be recalled, Ibn Salām was a legal authority and Jewish convert to Islam. It thus seems Ibn Salām and Abū Hurayra were kindred spirits given their familiarity with Mosaic traditions. In other words, two individuals from the first century, one a Jewish legal scholar who converted to Islam, the other who was well-acquainted with Jewish scriptures, folklore, and mythology, shared and disseminated narratives about the Prophet, including a report in which the Qur’ānic polemic of *tahrīf* was made against the Medinan Jewish groups using the stoning punishment as the example.

Up to this point, I have analyzed the named transmitters in the *isnād* leading up to and including the Companion Abū Hurayra. But analysis of one transmitter remains. He is the unidentified man from the tribe of Muzayna. Accordingly, I first comment on the significance of the tribe and particular individuals belonging to it. I then argue for the relevance of the Muzaynī in the *isnād*.

The Muzayna<sup>502</sup> were a tribe without influence in the pre-Islamic period<sup>503</sup>, but during and after the Prophet’s time, gained a meaningful level of prominence. The tribe traced its lineage back to Abrahām<sup>504</sup>, and were one of the first nomadic tribes west of Medina to establish a covenant with the Prophet upon his arrival to the city.<sup>505</sup> Muzayna quickly gained importance for the nascent Muslim community, and this was reflected in treaties, which designated Muzayna

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<sup>501</sup> Ibn ‘Asākir, *Tārīkh*, 29:97 and 101; al-Mizzī, *Tadhīb al-Kamāl*, 15:75.

<sup>502</sup> In biographical dictionaries, Muzayna and Muzani connote the same tribe.

<sup>503</sup> Watt, *Muḥammad in Medina*, 86.

<sup>504</sup> *Encyclopaedia Islamica*, s.v. “Bilāl b. Hārith.”

<sup>505</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 1:252; al-Sam‘ānī (d. 562), *al-Ansāb*, 12:227; *Encyclopaedia of Islam*, 2nd e.d., s.v. “Muzayna.”

as Emigrants despite them not leaving their home district.<sup>506</sup> Among the Muzaynīs from the Islamic late antiquity was al-Nu‘mān b. ‘Amr b. Muqarrin al-Muzanī (d. 21, Basra, Kufa, Mecca, and Medina). He carried the flag of the tribe during the conquest of Mecca in the eighth year of the *hijra*.<sup>507</sup> He also served as the leader of armies involved in the conquest of Iraq during the caliphate of ‘Umar.<sup>508</sup> In fact, the Caliph held him in such high regard that he supposedly wept when announcing to the public al-Nu‘mān's death.<sup>509</sup> Iyās b. Mu‘āwiya (d. 122, Basra, Medina(?),<sup>510</sup> and Wāsiṭ) is another Muzaynī public figure given his judgeship in Basra.<sup>511</sup> In addition to these specific individuals, a number of other Muzaynīs held leadership posts, including governorships, throughout Iraqī cities.<sup>512</sup> In summary, the Muzaynīs may have led a quiet life before the Prophet's arrival to Medina, but after their conversion to Islam acquired considerable prestige.

The relevance of the Muzaynī in the *isnād* may be established on the basis of ‘Abd Allāh b. Mughaffal al-Muzanī (d. 59-61, Basra and Medina). The Iraqī jurist al-Ḥasan al-Baṣrī (d. 110) is recorded to have said that Ibn Mughaffal was one of the ten legal authorities ‘Umar sent to

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<sup>506</sup> Watt, *Muḥammad in Medina*, 86; Ibn Sa‘d records the Prophet telling the men of Muzayna that they are considered to be part of the Emigrants (*antum al-muhājirūn*), see Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 1:252.

<sup>507</sup> al-Dhahabī, *Siyar A‘lām*, 1:404; Ibn Ḥajar, *al-Iṣāba*, 6:357.

<sup>508</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 5:146; Ibn Ḥajar, *al-Iṣāba*, 6:357.

<sup>509</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 29:461.

<sup>510</sup> According to al-Mizzī, Iyās b. Mu‘āwiya narrated *Ḥadīths* from Nāfi‘, see al-Mizzī, *Tahdhīb al-Kamāl*, 3:407f. To the best of my knowledge, Nāfi‘ did not travel to Basra or Wāsiṭ. Therefore, either Iyās b. Mu‘āwiya practiced *tadlīs* or traveled to Medina and met Nāfi‘ there. A third possibility is that they met during a *ḥajj*.

<sup>511</sup> al-Sam‘ānī, *al-Ansāb*, 12:230.

<sup>512</sup> al-Sam‘ānī, *al-Ansāb*, 12:228f.

Basra for the purpose of teaching *fiqh*.<sup>513</sup> Importantly, ‘Abd Allāh b. Mughaffal al-Muzanī would narrate *ḥadīth* from none other than ‘Abd Allāh b. Salām.<sup>514</sup> Given Ibn Mughaffal’s legal background, it would be unsurprising for him to be involved in discussions regarding the proper treatment for those who commit offenses, such as *zinā*. Furthermore, the polemic of *tahrīf* would be an instructive tool in regions with Jewish residents, let alone new Muslim converts. It is conceivable that through regional overlap and conversations with Ibn Salām (and possibly Abū Hurayra), Ibn Mughaffal came to know of the Prophet’s involvement in the stoning of a Jewish couple. Thusly, the man from Muzayna may be ‘Abd Allāh al-Muzanī.<sup>515</sup> Based on the aforementioned information about the tribe of Muzayna and some of its members, the appearance of a Muzaynī in the *isnād* was unlikely to have been in error.

If Abū Hurayra did help circulate the Jewish *Ḥadīth*, then Ibn ‘Umar’s involvement, especially as a witness to the stoning, has to be explained. Implicit in the previous sentence is my contention that Ibn ‘Umar was not party to the incident involving the Prophet’s adjudication of the Jewish *zinā* case. There are a number of reasons for this assertion. To begin with, Abū Hurayra could have narrated the Jewish *Ḥadīth* directly to Ibn ‘Umar, because the former is recorded to have transmitted reports to the latter. Second, Ibn ‘Umar’s involvement in the circulation of the *ḥadīth* is also plausible if the Muzaynīs are called back into the conversation. During the caliphate of ‘Umar, al-Nu‘mān al-Muzanī (d. 21), whose death made ‘Umar cry, oversaw much

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<sup>513</sup> al-Dhahabī, *Siyar A‘lām*, 2:484; Ibn Hajar, *al-Iṣāba*, 4:207.

<sup>514</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 19:124.

<sup>515</sup> The reference could be to his son Bakr b. ‘Abd Allāh (d. 106 or 108, Basra). The family relationship makes the sharing of *ḥadīth* and *akhbār* logical. Furthermore, Bakr b. ‘Abd Allāh was a *muḥaddith* and a jurist, which makes it more plausible that he would be interested in circulating a *ḥadīth* about the Prophet’s order to stone a *zinā* offender. For biographical information on Bakr b. ‘Abd Allāh, see al-Mizzī, *Tahdhīb al-Kamāl*, 4:218; al-Dhahabī, *Siyar A‘lām*, 4:536.

of the conquering of Iraq.<sup>516</sup> Not only is Ibn ‘Umar recorded to have fought in Iraq, but he is also noted to have served in al-Nu‘mān’s battalion during the conquest of Isfahān.<sup>517</sup> And as it will be recalled, ‘Abd Allāh b. Mughaffal was a Muzaynī, and therefore a tribesman of al-Nu‘mān, and possibly his brother.<sup>518</sup> It is logical to consider that the Jewish *Ḥadīth* was circulating within the tribe, and Ibn ‘Umar could have come to know of it through al-Nu‘mān. Ibn ‘Umar, therefore, had at least two possible sources from whom he could have heard about the incident: a Muzaynī and/or Abū Hurayra.

If indeed Ibn ‘Umar *heard* about the Prophet’s involvement in the stoning of a Jewish couple, then his name in the witness clause must be accounted.. I first direct attention to al-Zuhrī’s variant, which notes Sālim (d. 105-10, Medina), the son of ‘Abd Allāh b. ‘Umar. In my estimation, Sālim added his father’s claim, because al-Zuhrī remarks that it was *Sālim* who told him about Ibn ‘Umar’s witness statement. If indeed Sālim added Ibn ‘Umar’s name, then we have to resolve why it exists in some of Nāf’s variants (Ma‘mar’s, Mālik’s, and ‘Ubayd Allāh b. ‘Umar’s), but not in others (al-Sakhtiyānī’s or Juwayriya’s). There are three explanations for the discrepancy.

The first explication rests on simple transmission error. Both in al-Sakhtiyānī’s and Juwayriya’s respective narratives, mistakes led to the omission of Ibn ‘Umar’s name from the *matns*. Such missteps can be corroborated on the basis of a version of the Jewish *Ḥadīth* in the *Sunan* of al-Bayhaqī.<sup>519</sup> This entry is recorded to have been circulated by the Companion ‘Abd

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<sup>516</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 5:146; Ibn Ḥajar, *al-Iṣāba*, 6:357.

<sup>517</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 4:158; al-Mizzī, *Tahdhīb al-Kamāl*, 29:460.

<sup>518</sup> Biographical entries cannot confirm or deny a first-degree blood relationship between al-Nu‘mān and ‘Abd Allāh b. Mughaffal.

<sup>519</sup> al-Bayhaqī, *Sunan al-Kubrā*, 8:374:16,932.

Allāh b. al-Ḥarith b. Jaza' al-Zubaydī (d. 86, Egypt and Zubayd), who states that *he* was present at the stoning of the Jewish couple. Likely due to confusion about the correct 'Abd Allāh, Ibn al-Ḥarith's name was mentioned. Therefore, failure to properly account for the correct 'Abd Allāh led to the omission of Ibn 'Umar's name from some of Nāfi's variants.

Sālim's hand in specifically recounting his father's involvement can also be substantiated by a narrative that was apparently circulated by the Companion 'Abd Allāh b. 'Abbās (d. 68, Basra, Mecca, Medina, Syria, and Ṭā'if). The *isnād* and *matn* read:

Ibn Ḥanbal - Ya'qūb b. Ibrāhīm (d. 208, Baghdad and Medina) and Sa'īb b. Ibrāhīm (d. 201, Baghdad, Khurāsān, and Wāsiṭ) - Father - [Muḥammad] b. Ishāq (d. 150-9, Baghdad, Mecca, Medina, Kufa) - Muḥammad b. Ṭalḥa b. Yazīd b. Rukāna (d. 110, Jazīra and Mecca) - Ismā'īl b. Ibrāhīm al-Shaybānī (d. unknown, Jazīra and Mecca) - ['Abd Allāh] b. 'Abbās (d. 68, Basra, Mecca, Medina, Syria, and Ṭā'if):

The Messenger of God gave an order to stone a Jewish man and a Jewish woman at the door of his mosque. When the Jewish man began to get stoned, he tried to protect his companion until they both perished. This is what God has ordained for his messenger for their offense of *zinā*.<sup>520</sup>

Absent is Ibn 'Umar's name. But he is recorded to have said that he studied with Ibn 'Abbās.<sup>521</sup>

This makes it plausible that Ibn 'Umar communicated the clause to his son Sālim, who then inserted a specific reference to his father.

The third explanation for Ibn 'Umar's name in the witness clause has to do with the possibility that Nāfi' did not receive it *directly* from Ibn 'Umar. Nāfi's source was Ibn 'Umar's son, Sālim, who helped circulate the information about his father's audience to the stoning. First, Sālim is recorded to have received *ḥadīth* from Abū Hurayra<sup>522</sup>, and as I have already

<sup>520</sup> Ibn Ḥanbal, *Musnad* (1992 ed.), 4:196:2,368; al-Bayhaqī, *al-Sunan al-Kubrā*, 8:374:16,932.

<sup>521</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 7:319.

<sup>522</sup> Ibn Sa'd, *Ṭabaqāt al-Kubrā*, 7:199; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 4:184; Ibn 'Asākir, *Tārīkh*, 20:48.

demonstrated above, it is highly likely that Abū Hurayra was party to the dissemination of the Jewish *Ḥadīth*. Therefore, Sālim, along with Ibn al-Musayyab, received the transmission that was in circulation by Abū Hurayra and others, and narrated it accordingly. Second, certain biographical entries indicate Nāfi‘ did not begin transmitting *ḥadīth* until *after* Sālim's death, meaning Nāfi‘ did not narrate the *ḥadīth* during Ibn ‘Umar’s lifetime.<sup>523</sup> If Nāfi‘ did receive the *ḥadīth* from Sālim and did not commence his transmissions until both Ibn ‘Umar and Sālim perished, then it leaves open the possibility for Nāfi‘ to have narrated the *ḥadīth* without crediting Sālim. This is highly tenable in light of the fact al-Zuhrī remarked that it was Sālim who claimed his father was witness to the stoning. This explains why Ibn ‘Uqba, who lived during the lifetime of Ibn ‘Umar, narrated the Jewish *Ḥadīth* on Nāfi‘’s authority, not Ibn ‘Umar’s. Nāfi‘ received the Jewish *Ḥadīth* from Ibn ‘Umar’s son, Sālim, who added his father’s name to the witness clause. In brief, there are several pieces of evidence that point Sālim b. ‘Abd Allāh b. ‘Umar as the source for Ibn ‘Umar’s witness clause in the Jewish *Ḥadīth*.

The aim of this section has been to determine the potential historicity of the *isnād*, the significance of recorded transmitters, and the relevance of certain information embedded in the narrative supposedly circulated by Abū Hurayra. When his variant is compared to versions analyzed on the respective authorities of Ibn ‘Umar, al-Barrā’ b. ‘Āzib, Jābir b. ‘Abd Allāh, and Jābir b. Samura, we have sufficient evidence to place the circulation of the report in the first century. It does not seem to be a matter of happenstance that ‘Abd Allāh b. Salām, who was a Jewish convert to Islam and a legal scholar, and Abū Hurayra, who was familiar with Jewish traditions and folklore, are recorded to have been involved in the circulation of the Jewish *Ḥadīth*. The report fits into the Qur’ānic accusation of the Prophet’s Jewish contemporaries -

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<sup>523</sup> Ibn ‘Asākir, *Tārikh*, 20:56.

notably *tahrīf* – which was used to draw together in conversation the Prophet and the stoning punishment.

## Section 5. The Jewish *Ḥadīth* in *Tafsīrs*

We observed in previous sections that certain Qur’ānic verses were incorporated into *matn* variants of the Jewish *Ḥadīth*. Furthermore, I also drew attention to the fact that the theme of *tahrīf* - as noted in the Qur’ān - provided the framework for the Prophet’s involvement in the adjudication of a case involving Jewish *zinā* offenders. In this section, I analyze exegetical commentaries to understand the different ways in which the Jewish *Ḥadīth* was incorporated into Qur’ānic commentaries, and how exegetes understood the Prophet’s order to stone based on the Deuteronomic prescription. I will predominantly examine the *tafsīrs* of Mujāhid b. Jabr (d. 100-4), Muqātil b. Sulaymān (d. 150), and al-Ṭabarī (d. 310). Based on their respective commentaries, the Jewish *Ḥadīth* was employed to clothe the accusation of *tahrīf* against the Prophet’s Jewish contemporaries. Importantly, it seems that several Muslims understood the Prophet’s order to stone the Jewish offenders as an application of a non-Islamic punishment for non-Muslims.

Prior to analyzing the *tafsīrs*, I provide the relevant verses, which are 41-44 in Chapter Five, *al-Mā’ida*. They read:

(41) Messenger, do not be grieved by those who race to surpass one another in disbelief - those say with their mouths, 'We believe,' but have no faith in their hearts, and the Jews who listen eagerly to lies and to those who have not even met you, who distort the meanings of [revealed] words and say [to each other], 'If you are given this ruling, accept it, but if you are not, then beware! - if God intends some people to be misguided, you will be powerless against God on their behalf. They are the ones whose hearts God does not intend to cleanse - a disgrace for them in this world, and then a heavy punishment in the Hereafter - (42) they listen eagerly to lies and consume what is unlawful. If they come to you [Prophet] for judgement, you can either judge between them, or decline - if you decline, they will not harm



you in any way, but if you judge between them, judge justly: God loves the just - (43) but why do they come to you for judgement when they have the Torah with God's judgment, and even then still turn away? These are not believers. (44) We revealed the Torah with guidance and light, and the prophets, who had submitted to God, judged according to it for the Jews. So did the rabbis and the scholars in accordance with that part of God's Scripture which they were entrusted to preserve, and to which they were witnesses. So [rabbis and scholars] do not fear people, fear Me; do not barter away My messages for a small price; those who do not judge according to what God has sent down are rejecting [God's teachings].

One of the earliest available *tafsīrs* is that of Mujāhid b. Jabr (d. 100-4, Mecca).

Biographical data indicates that many respected him as an exegete and considered him to be a scholar of both law and *ḥadīth*.<sup>524</sup> However, others had concerns about this work, because he was known to gather information from the People of the Book for use with his commentary.<sup>525</sup> This criticism, however, likely reflected attitudes that emerged in later periods.<sup>526</sup> Historically, Muslims and especially those from the Islamic late antiquity, were indifferent to the use of materials sourced in Jewish, Christian, and other literary sources.<sup>527</sup> At any rate, Mujāhid's reputation as a *mufasssīr* is undeniable, and therefore relevant to the present study. With regard to his transmissions, Mujāhid had several students who narrated his *tafsīr*. However, it may be that only one of his pupils, al-Qāsim b. Abī Bazza (d. 114-5, Mecca), acquired Mujāhid's exegetical commentary through audition. This implies that Mujāhid's other students copied al-Qāsim's *tafsīr* collection without explicitly referencing al-Qāsim as the source.<sup>528</sup> Who directly heard from Mujāhid is noteworthy, because the extant *tafsīr* is in the recension of his student, 'Abd Allāh b.

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<sup>524</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 8:28; al-Dhahabī, *Sīyar A'ālām*, 4:453.

<sup>525</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 8:28; al-Dhahabī, *Mizān*, 3:439.

<sup>526</sup> Shah, *Tafsīr: Interpreting the Qur'ān*, 32.

<sup>527</sup> Shah, *Tafsīr: Interpreting the Qur'ān*, 31. For a brief but informative background on the use of such sources in *tafsīrs*, see *ibid.*, 31-5.

<sup>528</sup> Ibn Abī Ḥātim, *al-Thiqāt*, 7:331; Schoeler, *Genesis of Literature in Islam*, 45f.

Abī Najīḥ (d. 131, Mecca), not al-Qāsim. Biographical entries do indicate Ibn Abī Najīḥ heard at least some of the *tafsīr* directly from his teacher<sup>529</sup>. Therefore, we have evidence that in addition to al-Qāsim, other students of Mujāhid, such as Ibn Abī Najīḥ, did hear directly from Mujāhid. Unless evidence proves otherwise, I approach Mujāhid's *tafsīr* as one that he, himself, narrated.

According to Ibn Abī Najīḥ, Mujāhid commented that Q5:41-42 is a reference to the punishment of stoning for *zinā* in accordance with the Torah, and the Jewish group's refusal to implement it. Mujāhid opines:

With regard to: "...who distort the meanings of [revealed] words..." means stoning. Stoning is in the Torah. If someone from a lower social class committed *zinā*, then they would stone him. If a noble person did the same, then they would blacken his face and parade him around town. Then they sought legal counsel from the Prophet and he judged for them the stoning punishment. He asked the Jewish people about what they find in their Book and they tried to conceal it, save a one-eyed man. He said: They lie to you, Messenger of God. Stoning is in the Torah.<sup>530</sup>

Mujāhid does not provide sources for the information he employs in his gloss. But it is recorded that he narrated from the Companions Ibn 'Abbās, Ibn 'Umar, and Abū Hurayra, all on whose authority some variant of the Jewish *Ḥadīth* exists.<sup>531</sup> The likelihood of his relationship with Abū Hurayra is strengthened on the basis that Mujāhid's sister employed Abū Hurayra for a short time.<sup>532</sup> This is not without relevance in light of the variant on by Abū Hurayra. All of the elements found in Mujāhid's gloss are also in Abū Hurayra's version of the narrative. Mujāhid's

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<sup>529</sup> Abdullah, *The Qur'an and Normative Religious Pluralism*, 210f; Warqā' is recorded to have said that he read half of Mujāhid's *tafsīr* to Ibn Abī Najīḥ, and Ibn Abī Najīḥ read the other half back to him. Ibn Abī Najīḥ then commented that the *tafsīr* in his possession is one that he heard from Muḥammad b. 'Abd al-Wāḥid, see al-Khaṭīb al-Baghdādī, *Tārīkh*, 15:673.

<sup>530</sup> Mujāhid, *Tafsīr*, 308; al-Ṭabarī employs Mujāhid's gloss for the same verse, see al-Ṭabarī, *Jāmi'*, 10:325:11,970.

<sup>531</sup> al-Bukhārī, *Tārīkh*, *al-Kabīr*, 7:411f; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 8:319; al-Mizzī, *Tahdhīb al-Kamāl*, 27:230.

<sup>532</sup> Ibn Ḥajar, *al-Iṣāba*, 6:218.

*tafsīr* corroborates the Jewish *Ḥadīth*'s circulation by the beginning of the second century. It also represents an early connection of the report to particular Qur'ānic verses, and frames the intersection of the Prophet's authority with stoning on the basis of *tahrīf*. Importantly, his comments demonstrate that he understood the stoning punishment to be for Jews (however defined), not Muslims.

The *tafsīr* of Muqātil b. Sulaymān (d. 150, Baghdad, Basra, Marw, Mecca, and Syria) provides considerably more details on Q5:41-44 and is equally significant.<sup>533</sup> Muqatīl's *tafsīr* has been redacted by his pupil, al-Hudhayl b. Ḥabīb al-Dandānī (d. after 190, Baghdad).<sup>534</sup> In the same manner as Mujāhid, Muqātil does not provide *isnāds* for his exegetical *ḥadīth*, and for this and other reasons, biographers do not shed the most favorable light on him.<sup>535</sup> But as I have already noted, the standardization of *ḥadīth* authentication developed over time, so the lack of *isnāds* in Muqātil's *tafsīr* should not bear weight on his commentary.<sup>536</sup> Because Muqātil's exegetical remarks are extensive, I will only note the relevant portions.

Muqātil's *tafsīr* is highly-developed, and all of the motifs embedded in Mujāhid's commentary appear in Muqātil's gloss. Additionally, Muqātil's commentary has significant overlap with Abū Hurayra's report, which also points towards a first century circulation date of the *ḥadīth*. Furthermore, given the cities to which Muqātil traveled, it is not surprising to find - almost in their entirety - themes from the al-Barrā' b. 'Āzib and Jābir b. 'Abd Allāh respective

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<sup>533</sup> Muqātil, *Tafsīr*, 1:474-9.

<sup>534</sup> It is possible that al-Hudhayl added material originating from other exegetes, see Schoeler, *Genesis of Literature in Islam*, 73; on Muqātil being the author of the *tafsīr* attributed to him, see also Görke, "Remnants of an Old *Tafsīr* Ḥadīth?", 34.

<sup>535</sup> *Encyclopaedia of Islam*, 2nd ed., s.v. "Muqātil b. Sulaymān."

<sup>536</sup> Saleh, "Narratives of Tampering," 101f.

variants. Because of Muqātil's exceptionally meticulous gloss, it is probable that he had access to sources who helped to circulate Jewish *Ḥadīth* variants in the Ḥijāz and Iraq.

Perhaps the most consequential piece of information found in Muqātil's *tafsīr* is related to the Jewish group's motivation to seek out the Prophet's judgement. In reference to a portion of Q5:41, "...and the Jews who listen eagerly to lies and to those who have not even met you, who distort the meanings of revealed words," Muqātil writes:

The reference is to a Jewish man named Yahūdḥā and a woman named Busra from Khaybar, both from among the Jewish nobles. They committed *zinā* and they had *iḥṣān*. The Jews despised stoning them on the account of their nobility and social position, so the Jews of Khaybar said: We will go with these two to Muḥammad, because in his religion is the punishment is striking (*al-darb*), not stoning, so we will follow his judgment. If he orders you to strike them, then accept it.<sup>537</sup>

I noted in Jābir b. 'Abd Allāh's variant that the Jews of Fadak advised the Jews of Medina to accept the Prophet's ruling if he orders flogging. This makes clearer sense in light of al-Muqātil's commentary. I also remarked in Abū Hurayra's report that the Jewish group sought out the Prophet because of a supposed relief he may have been able to provide. I suggested that such relief was a likely reference to flogging, which ostensibly indicated that the Qur'ānic use of *zinā* meant the types of illicit sexual acts that came to be treated as capital offenses in the Islamic legal tradition. In Mujāhid's *tafsīr*, the relief is specified as striking and represented as the punishment in the Prophet's religion. This creates an interesting possibility: If in fact there is historicity to the Prophet's adjudication of a *zinā* case involving a Jewish couple, then the Jewish community sought out the Prophet's council because they were aware of the Qur'ān's prescription of flogging. This would still allow for the construction of the Jewish group's actions as an example of *tahṛīf*. They were not literally changing the divine words, but rather seeking a

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<sup>537</sup> Muqātil, *Tafsīr*, 1:475; for an analysis of Muqātil's gloss on Q5:41, see Nickel, *Narratives of Tampering in the Earliest Commentaries of the Qur'ān*, 82-9.

new formulation of them, which meant they were not following that which was originally prescribed to them. Setting aside the historical question, the same conjecture can be extended to the report's emergence in a later period. Moreover, even if *iḥṣān* was part of the calculus, *zinā* was understood to be a reference to the Qur'ānic use of the term. All of this advances the possibility of a historical moment when *zinā* was expressed to mean the same thing for the Jewish and Muslim communities, which would mean that the Islamic punishment for *zinā* was different than the Deuteronomic punishment for the same act.

Approximately one and a half centuries after Muqātil, al-Ṭabarī (d. 310, Basra, Egypt, Rayy, and Ṭabaristan) provides a number of exegetical *ḥadīth* to gloss Q5:41-4. In some cases, his commentary overlaps with Mujāhid's and Muqātil's respective remarks, but in other instances, it does not. For example, regarding Q5:41, "Messenger, do not be grieved by those who race to surpass one another in disbelief - those say with their mouths, 'We believe,' but have no faith in their hearts...", al-Ṭabarī writes that this verse is about the hypocrites such as Ibn Ṣūriyā and Abū Lubāba.<sup>538</sup> These names are the same as those referenced by Muqātil in his *tafsīr*.<sup>539</sup>

However, in the case of Q5:42, "If they come to you [Prophet] for judgement, you can either judge between them, or decline - if you decline, they will not harm you in any way, but if you judge between them, judge justly...", al-Ṭabarī's gloss does not clearly represent his position. On the one hand, he provides exegetical *ḥadīth* indicating the verse applies to the Jewish stoning incident.<sup>540</sup> But on the other hand, he furnishes narratives which suggest that the

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<sup>538</sup> al-Ṭabarī, *Jāmi'*, 10:308; for a summary of al-Ṭabarī's gloss of Q5:41, see Nickel, *Narratives of Tampering in the Earliest Commentaries of the Qur'ān*, 129-36.

<sup>539</sup> Muqātil, *Tafsīr*, 1:474-9.

<sup>540</sup> al-Ṭabarī, *Jāmi'*, 10:325f.

verse is about the adjudication of a homicide case among the Jews.<sup>541</sup> This disparity intimates that the Jewish *Ḥadīth* may have been deliberately joined with certain Qur’ānic verses and themes.

With regard to Q5:43, “...but why do they come to you for judgement when they have the Torah with God's judgment...,” al-Ṭabarī states that this portion of the verse is about the stoning punishment for those who have *iḥṣān* and commit *zinā*.<sup>542</sup> His position is reaffirmed based on his comments about verse Q5:44, “...So [rabbis and scholars] do not fear people, fear Me; do not barter away My message for a small price; those who do not judge according to what God has sent down are rejecting [God's teachings].” Al-Ṭabarī asserts that it is a reference to stoning for the *muḥṣan* and *muḥṣana* who commit *zinā*. Overall, al-Ṭabarī’s gloss of Q5:41-4 reflects his position that the general theme of the verses is about the Prophet’s adjudication of *zinā* case involving Jewish offenders, and the Prophet’s order to stone them was based on the Hebrew Bible.<sup>543</sup>

I have noted that the Prophet’s command to stone Jewish *zinā* offenders functioned to demonstrate his status as a prophet in the line of Abrahamic prophets. Muslims understood him to have the (ca)ability to implement laws of the People of the Book for the People of the Book. This is evidenced by the above analysis of Q5:41-44. To the list of the *tafsīr* works that substantiate this assessment, we can add Ibn Wahb (d. 197). Though he does not cite the Jewish *Ḥadīth*, he comments that Q5:42, “...if they come to you [Prophet] for judgement, you can either

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<sup>541</sup> al-Ṭabarī, *Jāmi* ‘, 10:326-8.

<sup>542</sup> al-Ṭabarī, *Jāmi* ‘, 10:336. He also employs a comment from the exegete al-Suddī (d. 127, Medina and Kufa), who states that the this portion of the verse is regarding the matter of stoning, see *ibid.*, 337:12,005.

<sup>543</sup> al-Ṭabarī, *Jāmi* ‘, 10:344f; he again notes that it is to stoning that Q5:45 is referencing, see *ibid.*, 359.

judge between them...,” is a reference to the issue of stoning.<sup>544</sup> And without a reference to the punishment of stoning, al-Ḍaḥḥāk (d. 105) comments that Q5:44 is about the People of the Book, meaning, they should be judged according to their own laws.<sup>545</sup> In his gloss of Q5:48, “...We have assigned a law and a path (*sharī‘a*) to each of you...” Muqātil writes that the *sharī‘a* for the Jews (*ahl al-tawra*) signifies stoning for the *muḥṣan* and *muḥṣana* who commit *zinā*, and that the *sharī‘a* for the Christians is called upon in accordance with the New Testament (*al-Injīl*).<sup>546</sup> Such remarks illustrate that the Prophet was understood to be among God’s prophets authorized to implement divine laws based on the scripture which was sent for a particular community.

The concept of adjudicating cases on the basis of a specific community’s own laws comes into sharper focus based on a survey of exegetical commentaries in Wakī‘’s (d. 306) *Akbār al-Quḍā’*. He provides an entry from the judge Ismā‘īl b. Ishāq (d. 282, Iraq), who remarks:

Regarding the *tafsīr* of Zayd b. Aslam (d. 136 or 143) [on Q5:47], “And let the People of Gospel judge by what God has sent to them. And those who do not judge by what God has sent, they are the disobedient.” He said: With this provision in the Qur’ān, the Prophet made a judgement in accordance with God’s book. And whosoever disregards the rulings in God’s Book, he certainly becomes an unbeliever.<sup>547</sup>

Earlier, I provided a variant of the Jewish *Ḥadīth* on the authority Zayd b. Aslam, who in turn narrated from Ibn ‘Umar. According to Wakī‘’s report, Zayd b. Aslam’s opinion corroborates that

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<sup>544</sup> Ibn Wahb, *Tafsīr*, 1:15:28.

<sup>545</sup> al-Ḍaḥḥāk, *Tafsīr*, 329:716.

<sup>546</sup> Muqātil, *Tafsīr*, 1:482. It should be noted that according to Muqātil, the Christian punishment for *zinā* is flogging without stoning.

<sup>547</sup> Ibn Ḥayyān, *Akhbār al-Quḍā’*, 1:44; Zayd b. Aslam is one of Mālik’s main informants. His sons, including ‘Abd al-Raḥmān who narrates his father’s comments, do not have favorable reputations as a *ḥadīth* transmitters. Pavlovitch argues that criticisms lobbied at Zayd’s sons may have been an attempt to disparage Zayd’s own reputation, albeit, not entirely with success, see Pavlovitch, *Formation of the Islamic Understanding of Kalāla*, 258-60.

the Prophet's order to stone was based on the Torah and therefore, not deemed an Islamic punishment. Stoning was accepted as a Hebrew Bible prescription for Jews, not Muslims. In other words, Zayd b. Aslam's remarks connote a specific attitude about the Prophet: he could, and did, make rulings in accordance with the previous scriptures for their respective communities, and the order to stone served as an example.<sup>548</sup>

Another entry in Wakī's *Akhbār* reveals how some Muslims came to perceive the application of the Hebrew Bible prescription upon Muslims. Wakī notes:

Thābit al-Thamālī said: I said to Abū Ja'far: The *Murj'a* debate us regarding the meaning of these verses (Q5:41-7). They claim that they are for the Children of Israel.

Abū Ja'far said: We are the best of brothers to the Children of Israel. If the sweetness of the Qur'an is for us and the bitterness is for them, then the bitter verses came down for them and then applied to us.<sup>549</sup>

Thābit al-Thamālī's comment about the *Murji'a* and Abū Ja'far's response indicate that for some Muslims, non-Qur'ānic prescriptions were meant for non-Muslims, but inevitably applied to Muslims. The Jewish *Ḥadīth* may have been part of the exegetical dialectic noted in Wakī's report.

In summary, I focused on exegetical commentaries and the ways in which they reflected an intersection between the Jewish *Ḥadīth* and particular Qur'ānic verses. According to the glosses reviewed in this section, the Prophet's involvement in the adjudication of a case for

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<sup>548</sup> Throughout his *tafsīr*, al-Ṭabarī provides alternative glosses for specific portions of verses Q5:41-8. However, he generally makes a connection with the Jewish *Ḥadīth*, for example see al-Ṭabarī, *Jāmi'*, 10:302:11,918. But for the use of different explanations, see for example on the authority of al-Suddī (d. 127, Ḥijāz and Kufa), Q5:41 is reference to the Banu Qurayza incident. On the authority of al-Sha'bī, it is a reference to a homicide committed by one Jewish person against another, see al-Ṭabarī, *Jāmi'*, 10:302:11,919; Burton also provides a summary of the various alternative glosses provided by al-Ṭabarī for Q5:42ff, see Burton, *Sources of Islamic Law*, 129-36; Burton also proposes that a story involving Jesus' potential order to stone an adulterer may have served as the literary model for Qur'ānic exegesis that specifies stoning, see Burton, "The Penalty for Adultery in Islam," 283.

<sup>549</sup> Wakī, *Akhbār al-Quḍā*, 1:44.



Jewish *zinā* offenders resulted from attempts by his Jewish contemporaries to change the divinely prescribed punishment of stoning. For Muslims of the Islamic late antiquity, the Prophet's order to stone was seen as him applying a non-Islamic punishment to non-Muslims. However, pursuant to Wakī's report, Abū Ja'far opined that whatever applied to the Jewish community was inevitably applied to Muslims. His comment, Abū Hurayra's *matn*, and exegetical commentaries suggest that a historical moment existed when the punishment of stoning was not perceived to be Islamic. Notwithstanding this reality, stoning and the Prophet were inevitably (and perpetually) bound by the Jewish *Ḥadīth*.

## Conclusion

In this chapter, I conducted extensive *isnād* and *matn* analysis of the Jewish *Ḥadīth*. I analyzed several variants to extract pertinent themes and to determine the likelihood of when particular elements may have been in circulation, where, for what purpose(s), and how they help to explain the Prophet's involvement in the stoning of a Jewish couple. My examination of *ḥadīth*, exegetical, and biographical sources indicates that by the end of the first century, it is highly probable that reports circulated about the the Prophet's adjudication of a *zinā* case involving Jewish offenders.

As I noted in the Introduction section of this chapter, it cannot be said better than Abū Hurayra, who remarked: "The first person to be stoned by the Messenger of God was from among the Jews." According to the *ḥadīth*, the Jewish group's motivation for seeking out the Prophet's judgement was based on their understanding that he was sent with relief. For them, such relief was understood to be the Qur'ānic prescription of flogging, and applicable to their *zinā* case. But the Qur'ānic charge of *ṭahrīf* helped draw into conversation the Prophet and

stoning as punishment for Jewish *zinā* offenders.

I dedicated separate sections to analyze variants of the Jewish *Ḥadīth* to have been circulated by five Companions. They are:

1. Jābir b. Samura (d. 74, Kufa and Medina),
2. al-Barrā' b. 'Āzib (d. 71-2, Kufa and Medina),
3. Jābir b. 'Abd Allāh (d. 78, Baghdad, Egypt, Medina, and Syria),
4. 'Abd Allāh b. 'Umar (d. 73-4, Medina),
5. Abū Hurayra (d. 57-9, Mecca, Medina, and Yemen)

Through analysis of versions associated with them, it seems that reports by the first four Companions encompass different parts of Abū Hurayra's narrative. In my estimation, Abū Hurayra, 'Abd Allāh b. Salām, and the Muzaynīs, initially helped circulate the report. The other Companions heard the *ḥadīth* and narrated some portion(s) of it. Allow me to draw a parallel to topology. From a host of evidence including the shape of the continents, we know that at one time a bigger land mass existed called Pangea. As a result of numerous factors, it broke into smaller pieces and is reflected by that which exists today. Location, climate, and other factors have changed the topography of the continents. In my estimation, the variant on Abū Hurayra's authority is like Pangea. It was shared with different Companions who in turn narrated different pieces of the report to their students, who in turn transmitted it to their students, and so forth. During this process, the *matns* experienced modifications based on the socio-historical contexts in which they circulated, similar to the ways in which continents were effected by climate differences. Inevitably, Abū Hurayra's variant did not "make the cut" for a number of *ḥadīth* collectors because of the unidentified Muzaynī in the *isnād*. Accordingly, it did not garner the same relevance as other versions. But Abū Hurayra's report is quite significant. For one, he and 'Abd Allāh b. Salām had intimate knowledge of Jewish laws and traditions. Second, his version provides an explanation about how at least five other Companions came to know about the

Prophet's involvement in the stoning of a Jewish couple.

Analysis of exegetical commentaries indicate that the Prophet's order to stone Jewish *zinā* offenders was his application of a Hebrew Bible prescription. In other words, his adjudication of the case was understood to be an application of a non-Islamic prescription to non-Muslims. Additionally, his involvement functioned to corroborate the Qur'ānic charge of *taḥrīf* against his Jewish contemporaries. Inevitably, the narrative had the effect of establishing a nexus between the Prophet's authority and the capital punishment of stoning.

After the Prophet's demise, narratives preserved in *sīra*, *tafsīr*, and *ḥadīth* literature, among other genres, would secure his paradigmatic legacy. The numerous reports circulating likely created an entropic state of affairs, and this can be substantiated on the basis of conflicting reports about the Prophetic *Sunna*. It would be unsurprising if a particular detail intermingled with, and became part of, a separate narrative. The potential for cross-pollination, Near Eastern customary practices, the ability to change *zinā*'s meaning, and the nexus between Prophetic authority and stoning in accordance with the Jewish *Ḥadīth*, could give rise to a discourse according to which the Prophet ordered stoning for someone other than a Jewish *zinā* offender. As it will be recalled, according to one version of the Jewish *Ḥadīth* on the account of Jābir b. 'Abd Allāh, the Prophet is recorded to have stoned a woman. In other versions, a deliberate effort was made to clarify that the woman was the Jewish man's companion. Though a small detail, the absence of a specific reference to a particular religion is consequential. It could be one mechanism by which stoning became part of the Islamic legal tradition. It is with this potentiality in mind that in the next chapter, I turn attention to a set of *ḥadīth* according to which a non-Jewish woman, who is eventually cast as a Muslim, is stoned on the order of the Prophet.

## Chapter 3

### The Self-Confessing Woman and the Islamization of the Stoning Punishment

#### Introduction

In Chapter Two, I argued that the Prophet's adjudication of a case involving Jewish *zinā* offenders served as the point of reference for the Qur'ān's charge of *tahrīf*. This narrative helped forge a nexus between Prophetic authority and stoning. I investigated exegetical commentaries on Q5:41-8, which indicate that the Prophet's order to stone the Jewish couple was understood as his application of a non-Islamic punishment for non-Muslims. This being the case, how did stoning officially become a part of the Islamic legal tradition? On what basis was the sanction justified as Islamic? In this chapter, I furnish a scenario for the way in which stoning became the *de facto* Islamic legal punishment for certain forms of *zinā*. Specifically, I argue that reports in which a woman *zinā* offender is stoned on the Prophet's authority played a central role in Islamizing lapidation.

According to what I call the self-confessing woman *ḥadīth*, the Prophet ordered a *Muslim* woman to be stoned after she admitted to *zinā*. In Chapter One, I presented three different variants describing this incident. In this chapter, I use biographical information to evaluate the *isnāds* associated with this narrative and the possible significance of the recorded transmitters. I also investigate the *matns* to determine the provenance of specific motifs, and the different ways in which they represent certain legal precedents for *zinā* laws. Lastly, I analyze how particular themes contributed to the justification of stoning as punishment for *zinā* in the Islamic legal tradition.

In Section One, I study versions of the *ḥadīth* in which the self-confessing woman either

remains unidentified or is noted to be from the tribe of Juhayna, respectively. I bundle these two groups of *ḥadīth* together because they are purportedly transmitted by the same Companion, ‘Imrān b. Ḥuṣayn (d. circa 52, Basra, Kufa, Medina, and Syria). In subsection one, I investigate the *isnāds* and *matns* of the reports in which the woman’s background information is unknown, and in subsection two, in which she is cited as being from the tribe of Juhayna. In both subsections, I provide biographical information up to and including the persons who are recorded to have narrated the *ḥadīth* from ‘Imrān b. Ḥuṣayn. These transmitters are Abū Qilāba (d. 104-7, Basra, Ḥimṣ, and Medina), Abū al-Muhājir (d. unknown, Basra) or Abū al-Muhallab (d. unknown, Iraq and Syria). I defer evaluation of ‘Imrān b. Ḥuṣayn to Section Four of this chapter. I take this approach with all Companions because their association with the reports makes considerably more sense after learning about their respective backgrounds. Ultimately, the self-confessing woman *ḥadīth* by ‘Imrān b. Ḥuṣayn substantiated particular *zinā* laws, and importantly, conveyed that the Prophet ordered the stoning of a Muslim *zinā* offender.

In Section Two, I examine *ḥadīth* in which the self-confessing woman is identified as being from the tribe of Ghāmid. These variants are recorded to have been circulated by the Companion Burayda b. al-Ḥuṣayb (d. 63, Basra, Khurasan, Marw, Mecca, Medina, and Syria). Burayda’s reports were circulated on the authority of his two sons, ‘Abd Allāh (d. 105 or 115, Basra, Kufa, Marw, and Syria) and Sulaymān (d. 105, Basra and Marw). I first examine the *isnāds* and *matns* on ‘Abd Allāh’s authority, and then those on Sulaymān’s, authority. These versions are exceptionally detailed, and I elucidate the relevance of particular tropes, including the ways in which Muslim legal authorities discharged them to affirm substantive *zinā* laws. Lastly, I argue that the Burayda variants were also important for the circulation of a report in which the Prophet was remembered to have ordered the stoning of a self-confessing Muslim

woman.

In Section Three, I investigate reports which were purportedly circulated by the Companion Abū Bakra Nufay‘ b. al-Ḥārith al-Thaqafī (d. 51-3 or 59, Basra and Syria). These variants are uncommon because the *isnād* does not conform to eventual standards by which *ḥadīth* were authenticated. Nevertheless, the circulation of the self-confessing woman *ḥadīth* affiliated with Abū Bakra is consequential. This is because he is associated with narratives that do not place women in the most favorable light. In this section, I argue it is highly probable that the self-confessing woman *ḥadīth* narrated by Abū Bakra began as a statement of fact, according to which there was no confession for *zinā*, but rather an observation that the Prophet ordered a woman to be stoned. Over time, however, the woman was re-characterized as a self-confessor for two reasons: 1) Confession expresses a desire for one to expiate their wrongful action(s), and 2) For a *zinā* conviction, the four-witness evidentiary burden is palpably burdensome, and the consequence of a failed conviction based on an accusation is severe (80 lashes).

In Section Four, I provide biographical information on the three Companions associated with the self-confessing woman *ḥadīth*, and reconcile their specific involvement in the circulation of the reports. In particular, I argue that the camaraderie they shared created opportunities for them to discuss the narrative among themselves. I also show how the parallel trajectories of their lives could have led to confusion and errors about who may have transmitted particular reports. In other words, the fellowship and comparability of their lives makes their roles unsurprising in the dissemination of the report. In sum, these three Companions helped to circulate the self-confessing *ḥadīth*, which Islamized stoning and made it the correct punishment for Muslims who committed particular types of *zinā*.

## Section 1.1. Reports by the Companion ‘Imrān b. Ḥuṣayn (d. before 53, possibly 52, Basra, Kufa, Medina, and Syria)

### The unidentified self-confessing woman

In this section, I analyze *isnāds* and compare *matns* of the *ḥadīth* variants in which an unidentified woman self-confesses to *zinā* in the Prophet’s presence. I will use the results from this investigation to determine - with a reasonable degree of confidence - the provenance of various motifs embedded in different versions of the *ḥadīth*. I will also determine the significance of these motifs, which includes the possible ways in which they helped to Islamize stoning. Abū Qilāba (d. 104-7, Basra and Ḥimṣ) is the common figure in the earlier part of the *isnād*. Therefore, I will first examine chains of transmissions leading up to Abū Qilāba through his pupil, Yaḥyā b. Abī Kathīr (d. 129, 132, Basra, Medina, Yemen). I will reserve my comments about Abū Qilāba to subsection two, in which I furnish information on the *ḥadīth* identifying the woman as belonging to the tribe of Juhayna. I do this because Abū Qilāba is also in the early part of the *isnād* associated with the Juhayna variants.

Al-Awzā‘ī (d. 157, Syria) is recorded to have transmitted the *ḥadīth* on the authority of Yaḥyā b. Abī Kathīr (d. 129, 132, Basra, Medina, Yemen), the student of Abū Qilāba. Therefore, my initial focus will be on what al-Awzā‘ī may have narrated to determine his role in the circulation of the *ḥadīth*. Abū Dāwūd, Ibn Mājah, and al-Nasā‘ī record *isnāds* citing al-Walīd b. Muslim (d. 194-5, Syria), a pupil of al-Awzā‘ī. If the entries from the aforementioned *ḥadīth* compilers show sufficient overlap, then we have a higher degree of confidence that al-Walīd b. Muslim narrated that which is recorded on his authority, and by extension, from al-Awzā‘ī. The respective *isnāds* and *matns* read:

al-Nasā‘ī (d. 303) - Muḥammad b. Khālīd al-Dimashqī (d. 247 or 249, Syria) - (al)-Walīd b. Muslim (d. 194-5, Syria) - al-Awzā‘ī (d. 157, Syria) - Yaḥyā b. Abī Kathīr

(d. 129, 132, Basra, Medina, Yemen) - Abū Qilāba (d. 104-7, Basra and Ḥimṣ) - Abū al-Muhājir (d. unknown, Basra) - ‘Imrān [b. Ḥuṣayn]:

A woman came to the Prophet and confessed to *zinā*. The Messenger of God adjudicated her case and she was bound up with her clothing, meaning tightly, and stoned. Then he participated in the *jināza* prayer for her.<sup>550</sup> Ayyūb<sup>551</sup> narrated the same thing.<sup>552</sup>

Abū Dāwūd (d. 275) writes that Muḥammad b. al-Wazīr al-Dimashqī (d. 250, Syria) told him from (al)-Walīd b. Muslim that al-Awzā‘ī said, “she was bound up with her clothing, meaning tightly.”<sup>553</sup>

Ibn Mājah (d. 273) - (al)-‘Abbās b. ‘Uthmān [b. Muḥammad] al-Dimashqī (d. 239, Syria) - (al)-Walīd b. Muslim (d. 194-5, Syria) - Abū ‘Amr [‘Abd al-Raḥmān b. ‘Amr al-Awzā‘ī] (d. 157, Syria) - Yaḥyā b. Abī Kathīr (d. 129, 132, Basra, Medina, Yemen) - Abū Qilāba (d. 104-7, Basra and Ḥimṣ) - Abū al-Muhājir (d. unknown, Basra) - ‘Imrān [b. Ḥuṣayn]:

A woman came to the Prophet and confessed to *zinā*. The Prophet adjudicated her case and she was bound up with her clothing and stoned. Then he participated in the *jināza* prayer for her.<sup>554</sup>

It is the last clause that Islamizes the stoning punishment, because the Prophet conducted the *jināza* prayer for her - a specific form of ceremony for Muslims. More broadly, the variants contain the following motifs:

- 1) a woman confesses to *zinā* in the presence of the Prophet;
- 2) the woman is bound up by her clothes;
- 3) she is stoned;

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<sup>550</sup> This may very well have been the *jināza* prayer, but the term is not employed. Rather, the verb *ṣallā* is used.

<sup>551</sup> Ayyūb al-Sakhtiyānī (d. 131, Basra and Medina).

<sup>552</sup> al-Nasā‘ī, *Sunan al-Kubrā*, 6:430:7,157.

<sup>553</sup> Abū Dāwūd, *Sunan*, 6:488:4,441.

<sup>554</sup> Ibn Mājah, *Sunan*, 853:2,555.



4) the Prophet participates in the *jināza* prayer for her.

The commonality among Abū Dāwūd's, Ibn Mājah's, and al-Nasā'ī's *matns* points to al-Walīd b. Muslim as someone who helped to circulate the *ḥadīth*. Biographical information on this individual seems to confirm this consideration.

According to biographers, al-Walīd b. Muslim was a manumitted slave who apparently perished during his return trip from the *Hajj*.<sup>555</sup> He was known to be a reliable *ḥadīth* transmitter, a learned person, and - importantly - the preferred authority for al-Awzā'ī's legal opinions and *ḥadīth*.<sup>556</sup> However, some did accuse him of taking *ḥadīth* narrated by Ibn Abī al-Safar, a known liar, and attributing them directly to al-Awzā'ī without mentioning Ibn Abī al-Safar.<sup>557</sup> This could cast doubt on al-Walīd b. Muslim's reliability. But this issue is related to reports that ought to have included Ibn Abī al-Safar in the *isnāds*, and no extant versions about the self-confessing woman *ḥadīth* ever draws in this individual into a chain of transmission. Hence, two conclusions can be delineated from the aforementioned *matn* analysis and biographical information. First, al-Walīd b. Muslim was likely involved in the circulation of the unidentified self-confessing woman *ḥadīth*, and did note al-Awzā'ī as his source. Second, at this point we have no reason to doubt that which al-Walīd b. Muslim attributed to his teacher.

Another variant provided by al-Nasā'ī is also helpful in establishing al-Walīd b. Muslim's and by extension, al-Awzā'ī's, roles in the transmission of the *ḥadīth*. This version is transmitted by al-Awzā'ī's student, Muḥammad al-Faryābī (d. 211-2, Kufa, Mecca, and Syria). If al-Faryābī's narrative contains information that al-Walīd b. Muslim's report includes, then such

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<sup>555</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 9:475; Ibn 'Asākir, *Tārīkh*, 63:281.

<sup>556</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 9:475; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 9:17 and 1:204f; Ibn 'Asākir, *Tārīkh*, 63:282.

<sup>557</sup> Ibn 'Asākir, *Tārīkh*, 63:291; al-Mizzī, *Tahdhīb al-Kamāl*, 31:96f; al-Dhahabī, *Siyar A'lām*, 9:216f.

consistencies can be said to have come from a common source. Hence, their reports can corroborate the other's person's involvement and al-Awzā'ī's as well. The *isnād* and *matn* in al-Nasā'ī's entry read:

al-Nasā'ī (d. 303) - Ishāq b. Maṣṣūr al-Marwazī (d. 251, Marw and Nīshāpūr) - Muḥammad b. Yūsuf [b. Wāqid b. 'Uthmān al-Faryābī] (d. 211-2, Kufa, Mecca, and Syria) - al-Awzā'ī (d. 157, Syria and Yemen) - Yaḥyā b. Abī Kathīr (d. 129, 132, Basra, Medina, Yemen) - Abū Qilāba (d. 104-7, Basra and Ḥims) - Abū al-Muhājir (d. unknown, Basra) - 'Imrān [b. Ḥuṣayn]:

A woman came to the Messenger of God and said: Messenger of God, I have committed a *ḥadd* so apply the *ḥadd* to me.

The Prophet called for her guardian and said to him: Go take care of this woman and bring her back to me after she has given birth.

After she gave birth the Messenger of God adjudicated her case. She was bound up with her clothes and the Prophet gave the order and she was stoned. Then he participated in the *jināza* for her.

'Umar then said: Messenger of God, you prayed for her despite the fact she committed *zinā*?

The Prophet responded: Her repentance was such that if it was spread over 70 people, it would be sufficient for all of them. Could you find anything better than her generosity with her soul to God?<sup>558</sup>

This version of the report has significantly more details than those transmitted on al-Walīd b.

Muslims's authority. Al-Faryābī's version includes these additional motifs:

- 1) *ḥadd* representing both an offense and a punishment;
- 2) the pregnancy contingency;
- 3) a conversation between the Prophet and 'Umar b. al-Khaṭṭāb.

These differences suggest that al-Awzā'ī may not be al-Faryābī's source for the entire report, because the clauses are not in *matns* circulated by al-Walīd b. Muslim. In other words, al-Faryābī

<sup>558</sup> al-Nasā'ī, *Sunan al-Kubrā*, 6:426f:7,150; al-Bayhaqī provides a variant that leads back to Ibn Abī Kathīr - Abū al-Muhallab ['Abd al-Rahmān b. Mu'āwiya] (d. unknown, region(s) unknown) - 'Imrān b. Ḥuṣayn. It shares a high degree of similarity with the version provided by al-Nasā'ī, see al-Bayhaqī, *Sunan al-Kubrā*, 8:392:16,989.

may have had more than one source: some information he received from al-Awzā'ī, and other details he acquired from someone else. I will defer discussions about al-Faryābī's likely informant(s). But importantly, the overlap of motifs found in al-Faryābī's and al-Walīd b. Muslim's respective *matns* indicate that these themes are attributable to al-Awzā'ī, because the two students are transmitting the same information. This raises the plausibility of al-Awzā'ī's involvement in the narration of the *ḥadīth* (some parts of it).

*Isnād* analysis indicates that al-Nasā'ī did likely receive the *ḥadīth* containing al-Faryābī, which further substantiates al-Awzā'ī's dissemination of the narrative. Al-Nasā'ī's informant, Ishāq b. Maṣṣūr al-Marwazī (d. 251, Marw and Nīshāpūr), has a favorable reputation as a *ḥadīth* transmitter.<sup>559</sup> Moreover, he is recorded to have narrated from al-Faryābī (d. 211-2, Kufa, Mecca, and Syria), the pupil of al-Awzā'ī. Al-Faryābī is noted to have been born in 120 and al-Awzā'ī is recorded to have died in 157, which means that there was a 40 year overlap in their lives. It thus seems that biographical information al-Nasā'ī's recorded transmitters, combined with comparative *matn* analysis of al-Faryābī's and al-Walīd b. Muslim's variants (the overlapping sections), points to al-Faryābī's reception of the *ḥadīth* from al-Awzā'ī, which in turn advances the likelihood of al-Awzā'ī's involvement.

Al-Awzā'ī's participation can also be verified based on an iteration of the *ḥadīth* on the authority of his fellow student, Hishām b. Abī 'Abd Allāh al-Dastawā'ī (d. 152-4, Basra).<sup>560</sup> Al-Bayhaqī (d. 458) records al-Dastawā'ī's narration with the following *isnād* and *matn*:

'Alī b. Aḥmad b. 'Abdān [al-Shirāzī] (d. 415, Baghdad and Nishapur) - Aḥmad b. 'Ubayd [b. Ismā'īl] al-Ṣaffār (d. 354, Baghdad and Basra) - Ibrāhīm b. 'Abd Allāh [b. Muslim] (d. 292, Baghdad, Basra, and Syria) - Muslim b. Ibrāhīm (d. 222, Basra) - Hishām b. Abī 'Abd Allāh al-Dastawā'ī (d. 152-4, Basra) - Ibn Abī Kathīr - Abū Qilāba - Abū al-Muhallab - 'Imrān b. Ḥusayn:

<sup>559</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 2:477; al-Dhahabī, *Siyar A'lām*, 12:259f.

<sup>560</sup> Also known as Hishām b. Sanbar.

A pregnant woman came to the Prophet and said she committed *zinā*.

The Prophet called for her guardian and said to him: Go take care of this woman and bring her back to me after she has given birth.

After she gave birth she was brought back to the Prophet. He ordered that she be bound up tightly with her clothes to be stoned, and she was stoned. Then he commanded the people to perform the *jināza* prayer for her and to bury her. ‘Umar b. al-Khaṭṭāb said: Messenger of God, you prayed for her despite the fact she committed *zinā*?

The Prophet responded: By the One in whose hand is my soul, her repentance was such that if it was spread over 70 people of Medina, it would be sufficient for all of them. Could you find anything better than her generosity with her soul?<sup>561</sup>

This variant contains the following motifs:

- 1) a woman confesses to *zinā* in the presence of the Prophet;
- 2) she is pregnant;
- 3) the Prophet stays the punishment and instructs her guardian to take care of her until she gives birth and then to bring her back;
- 4) when she is brought back, she is bound by her clothes and stoned on the Prophet's authority;
- 5) the Prophet participates in the *jināza* prayer for her;
- 6) the dialogue between the Prophet and ‘Umar takes place.

With the exception of the pregnancy and dialogue clauses, these elements are in the *matn* of al-Awzā‘ī’s student, al-Faryābī. When drawing in al-Walīd b. Muslim’s transmission, all three *matns* share the following themes:

- 1) a woman confesses to *zinā* in the presence of the Prophet;
- 2) the woman is bound up by her clothes;

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<sup>561</sup> al-Bayhaqī, *Sunan al-Kubrā*, 8:392:16,989; Abū ‘Awāna (d. 316) also provides a variant with al-Dastawā‘ī in the *isnād*. The *matn* shares a number of features that are recorded in al-Bayhaqī’s variant, see Abū ‘Awāna, *Musnad*, 4:133:6,288.

3) she is stoned;

4) the Prophet participates in the *jināza* prayer for her.

From these commonalities flows a higher degree of confidence that al-Awzā'ī was involved in the transmission of the four delineated clauses. This is because we now have two separate students of Yahyā b. Abī Kathīr - al-Awzā'ī and al-Dastawā'ī - narrating information found in both of their respective variants.

*Isnād* analysis helps to substantiate al-Dastawā'ī's participation in the dissimulation of the *ḥadīth*. In al-Bayhaqī's *isnād*, biographical information on Alī b. Aḥmad b. 'Abdān al-Shirāzī (d. 415, Baghdad and Nishapur)<sup>562</sup>, Aḥmad b. 'Ubayd b. Ismā'īl al-Ṣaffār (d. 354, Baghdad and Basra),<sup>563</sup> and Ibrāhīm b. 'Abd Allāh (d. 292, Baghdad, Basra, and Syria)<sup>564</sup> is scant.

Nevertheless, this does not mean *a priori* that a transmission by al-Dastawā'ī has to be dismissed. First, al-Dastawā'ī is recorded to have been a highly-respected *ḥadīth* narrator whose reports were employed for legal rulings.<sup>565</sup> Some claimed that once they heard a *ḥadīth* from al-Dastawā'ī, they did not look any further or investigate what he had narrated.<sup>566</sup> Second, al-Dastawā'ī was preferred over al-Awzā'ī for narrations from their mutual teacher, Ibn Abī Kathīr. This was because al-Dastawā'ī would recite from memory, whereas al-Awzā'ī employed written notes.<sup>567</sup> In fact, it is recorded that there was no better student of Yahyā b. Abī Kathīr than al-

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<sup>562</sup> al-Khaṭīb al-Baghdādī, *Tārīkh*, 13:232:6,108.

<sup>563</sup> al-Khaṭīb al-Baghdādī, *Tārīkh*, 5:433:2,271.

<sup>564</sup> al-Khaṭīb al-Baghdādī, *Tārīkh*, 7:36:3,104.

<sup>565</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 9:279.

<sup>566</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 9:59f; al-Mizzī, *Tahdhīb al-Kamāl*, 30:218f.

<sup>567</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 9:61; al-Mizzī, *Tahdhīb al-Kamāl*, 30:221.

Dastawā'ī.<sup>568</sup> Indeed, al-Dastawā'ī's reputation as Ibn Abī Kathīr's favorite pupil might suggest that al-Bayhaqī's *isnād* is fabricated. However, there is no evidence to prove such a forgery. Besides (and as discussed in the next subsection), other transmitters also disseminated the *ḥadīth* from al-Dastawā'ī. Therefore, it is highly plausible that al-Dastawā'ī was involved in the circulation of this *ḥadīth* during the first half of the second century. And to reiterate, the shared elements in the *matns* transmitted by al-Dastawā'ī (d. 152-4, Basra) and al-Awzā'ī (d. 157, Syria and Yemen) help to strengthen the reasonableness of their respective involvement in the circulation of the *ḥadīth*.<sup>569</sup>

The overlap between al-Awzā'ī's and al-Dastawā'ī's narrations indicate that Ibn Abī Kathīr (d. 129, 132, Basra, Medina, Yemen) helped to disseminate certain motifs embedded in the self-confessing woman *ḥadīth*. This suggests that the report was circulating by the first quarter of the second century. An entry in 'Abd al-Razzāq's *al-Muṣannaḡ* affirms this time period for the dissemination of particular elements. The *isnād* and *matn* of 'Abd al-Razzāq's entry read:

'Abd al-Razzāq (d. 211) - Ma'mar [b. Rāshid] (d. 153, Basra, Medina, and Yemen) **and** [Sufyān] al-Thawrī (d. 161, Basra, Kufa, and Ḥijāz) - Ayyūb [al-Sakhtiyānī] (d. 131, Basra and Medina) - Abū Qilāba ['Abd Allah b. Zayd] (d. 104-7, Basra and Ḥimṣ) - 'Imrān [b. Ḥuṣayn] (d. before 53, possibly 52, Basra, Kufa, and Medina):

A woman confessed to *zinā* in the presence of the Prophet, so he adjudicated her case. She was bound up with her clothing and stoned. Then he participated in the *jināza* prayer for her. 'Umar asked the Prophet: Messenger of God, you stoned her and then prayed for her?

The Prophet responded: Her repentance was such that if it was spread over 70 people of Medina, it would be sufficient for all of them. Could you find anything

<sup>568</sup> Ibn Abī Hātim, *al-Jarḥ wa al-Ta'dīl*, 9:60f; al-Mizzī, *Tahdhīb al-Kamāl*, 30:220f.

<sup>569</sup> 1) A woman self-confesses to *zinā* in the presence of the Prophet;  
2) the Prophet orders that she be bound by up by her clothes and stoned;  
3) she is stoned;  
4) the Prophet participates in the *jināza* prayer for her.

better than her generosity with her soul to God?<sup>570</sup>

‘Abd al-Razzāq provides a collective *isnād*, which makes it difficult to assess what may have been communicated by Ma‘mar (d. 153) as opposed to al-Thawrī (d. 161). Nevertheless, the *isnād* indicates that his informants had a common source: al-Sakhtiyānī (d. 131, Basra and Medina). Because two individuals - Ibn Abī Kathīr and al-Sakhtiyānī - are transmitting a report with overlapping themes, we are on stronger footing to pinpoint the *terminus ante quem* of the first quarter of the second century for the following clauses:

- 1) a woman confesses to *zinā* in the presence of the Prophet;
- 2) the woman is bound up by her clothes;
- 3) the Prophet order her to be stoned and she is stoned;
- 4) the Prophet participates in the *jināza* prayer for her.

The overlap of these elements in al-Sakhtiyānī’s report, with those narrated on the authority of Ibn Abī Kathīr (on the respective authorities of Al-Awzā‘ī and al-Dastawā‘ī), demonstrates with a high degree of confidence that both Ibn Abī Kathīr (d. 129 or 132) and al-Sakhtiyānī (d. 131) helped to disseminate the unidentified self-confessing woman *ḥadīth*.

While the provenance of some motifs can be determined with a high degree of confidence, difficulties remain about other clauses. For example, it is uncertain when, or by whom, the pregnancy trope began to circulate as part of the *matn*. This clause is not in al-Sakhtiyānī’s variant, but is in some of Ibn Abī Kathīr’s versions. It is unlikely that Ibn Abī Kathīr’s student, al-Awzā‘ī, made an error by not transmitting the pregnancy motif. This is because the clause is legally consequential to have been forgotten. In addition to the pregnancy description, the conversation between the Prophet and ‘Umar is absent from the majority of al-

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<sup>570</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:325:13,347

Awzā'ī's reports. It is plausible that its inclusion emerged in Iraq, because both al-Awzā'ī and his pupil al-Walīd b. Muslim, are not recorded to have traveled to Iraqi cities, and their narrations do not include the dialogue. Versions that do include the exchange between the Prophet and 'Umar are circulated by individuals known to have traveled to or resided in Iraq. The regional affiliation can help to explain why al-Awzā'ī's variant recorded by al-Nasā'ī does include the conversation between the Prophet and 'Umar. As noted above, al-Nasā'ī's *isnād* includes al-Faryābī, who traveled to Kufa. Al-Faryābī likely acquired one version of the *ḥadīth* from al-Awzā'ī, and combined it with another variant that he attained during his sojourn to Iraq. Nevertheless, the provenance of some motifs is unresolvable without investigating additional versions of the self-confessing woman *ḥadīth*. To help address this matter, to attain a higher degree of confidence about the circulation of particular themes, and to have a better understanding of their significance, I turn to variants in which the self-confessing woman is identified as being from the tribe of Juhayna.

## **Section 1.2. Reports by 'Imrān b. Ḥuṣayn (d. before 53, possibly 52, Basra, Kufa, Medina, and Syria)**

### **The self-confessing woman from Juhayna**

In the unidentified self-confessing woman variants, I identified four themes with a *terminus ante quem* by the first quarter of the second century. These are:

- 1) a woman confesses to *zinā* in the company of the Prophet;
- 2) she is bound by her clothes;
- 3) the Prophet orders her to be stoned and she is stoned;
- 4) the Prophet participates in the *jināza* prayer for her.

Based on *isnād* and comparative *matn* analysis, I argued that these motifs were in circulation on



the respective authorities of al-Sakhtiyānī (d. 131, Basra and Medina) and Yaḥyā b. Abī Kathīr (d. 129, 132, Basra, Medina, Yemen).

The versions in which the woman is noted to be from the tribe of Juhayna are also transmitted on the authority of Ibn Abī Kathīr. The obvious question is: How is it that some variants reference the tribe and others do not despite them being recorded on the same individual's authority? In what proceeds, I answer this inquiry through an examination of *isnāds* and *matns* of the Juhayna self-confessing woman *ḥadīth*. I determine who may have helped transmit specific motifs embedded in these Juhayna variants, which includes the designation of the specific tribe. I also comment on the significance of particular clauses, the ways in which they correlate to *zinā* laws, and how they also helped to Islamize the punishment of stoning on the Prophet's authority.

A group of Juhayna variants are recorded on the authority of Hishām al-Dastawā'ī (d. 152 or 154, Basra), a student of Ibn Abī Kathīr.<sup>571</sup> *Isnād* analysis can help determine al-Dastawā'ī's involvement with a reasonable degree of confidence, and can also shed light on Ibn Abī Kathīr's transmission of the *ḥadīth*. To this end, it is worth noting that to Ibn Abī Kathīr, al-Dastawā'ī is recorded to have circulated versions of the *ḥadīth* in which the woman is either unidentified, or described as belonging to Juhayna. These variants share numerous elements which begs questions about the provenance of dissimilar motifs. To resolve this and other matters previously discussed, I will begin with the examination of the *isnād* and *matn* recorded by al-Ṭayālīsī, which read:

Hishām [b. Abī 'Abd Allāh al-Dastawā'ī] (d. 152 or 154, Basra) - Yaḥyā b. Abī Kathīr (d. 129, 132, Basra, Medina, Yemen) - Abū Qilāba (d. 104-7, Basra and Ḥims) - Abū al-Muhallab ['Abd al-Raḥmān b. Mu'āwiya] (d. unknown, region(s) unknown) - 'Imrān [b. Ḥuşayn]:

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<sup>571</sup> As it will be recalled, he is also cited in one *isnād* of the *ḥadīth* in which the woman is unidentified.

A woman from Juhayna, who was pregnant because she committed *zinā*, came to the Prophet. The Messenger of God ordered her guardian to take care of her and to bring her back after she gives birth. The guardian proceeded accordingly. The Prophet ordered that she be bound up with her clothes and stoned, and she was stoned. Then the Prophet participated in the *jināza* prayer for her. Then ‘Umar said to the Prophet: Messenger of God, you prayed for her despite the fact she committed *zinā*?

The Prophet responded: Her repentance was such that if it was spread over the people of Medina, it would be sufficient for all of them. Could you find anything better than her generosity with her soul to God?<sup>572</sup>

This variant shares a high degree of similarity with the version al-Dastawā’ī transmits in which the woman is unidentified. But the provenance of the reference to the tribe of Juhayna remains unresolved. Nevertheless, the overlap points to him as someone who helped to transmit the *ḥadīth*.<sup>573</sup>

Pavel Pavlovitch has argued that because “al-Ṭayālīsī’s variant is not supported by any parallel *isnāds*...[which means that al-Ṭayālīsī] either copied his contemporary ‘Abd al-Razzāq or [the report] was inserted into the existing text of al-Ṭayālīsī’s *Musnad* by a later transmitter.”<sup>574</sup> In my view, while Pavlovitch's claim is tenable, it is nevertheless an *ex silentio* argument. The lack of parallel *isnāds* could have resulted from lost records, or the fact that other variants were never documented in the first place. Even if neither of these scenarios is true, the absence of additional *isnāds* does not *a priori* mean that a solitary *isnād* is forged. Without substantive evidence, it is speculative to presume that al-Ṭayālīsī did not receive the *ḥadīth* as recorded in his *Musnad*. Therefore, contrary to Pavlovitch’s argument, in my estimation the

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<sup>572</sup> al-Ṭayālīsī, *Musnad*, 2:182f:888.

<sup>573</sup> The unidentified self-confessing woman version indicates that she was buried and includes the exact number of Medinans (70). I do not believe these elements to be of consequence, but rather as elaborations of already existing ideas.

<sup>574</sup> Pavlovitch, "Stoning of a Pregnant woman from Juhayna," 16f.

overlap between the unidentified and Juhayna iterations suggests that al-Dastawā'ī transmitted the *ḥadīth* as recorded by al-Ṭayālīsī.<sup>575</sup>

Al-Dastawā'ī's involvement in the circulation of the Juhayna variant can also be substantiated on the basis of transmissions by his two students, Yaḥyā b. Sa'īd al-Qaṭṭān (d. 198, Basra and Baghdad), *mawlā* of Banū Tamīm,<sup>576</sup> and Abū 'Āmir ['Abd al-Malik b. 'Amr] (d. 204-5, Basra), *mawlā* of Banū Qays b. Tha'laba.<sup>577</sup> These versions are recorded by Ibn Ḥanbal. According to biographical dictionaries, Ibn Sa'īd al-Qaṭṭān was a highly praised *ḥadīth* narrator whose transmissions were employed for legal rulings.<sup>578</sup> The closeness of his relationship with al-Dastawā'ī can be inferred by a remark made by Ibn Sa'īd al-Qaṭṭān. He states that he never verified a *ḥadīth* he received from al-Dastawā'ī because of the latter's highly reliable reputation.<sup>579</sup> Similar to Ibn Sa'īd al-Qaṭṭān, Abū 'Āmir was also considered to be a trustworthy *muhaddith*,<sup>580</sup> and it is recorded that Ibn Ḥanbal sought out Abū 'Āmir for *ḥadīth* from among the Basrans.<sup>581</sup> Therefore, biographical information provides additional reason to consider transmissions between Ibn Sa'īd al-Qaṭṭān, Abū 'Āmir, and their teacher, al-Dastawā'ī.

The wording in Ibn Ḥanbal's two *matns* do not perfectly align with the other variants

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<sup>575</sup> Al-Bayhaqī provides the Juhayna variant on al-Ṭayālīsī's authority, whose *matn* is virtually identical to al-Ṭayālīsī's *Musnad*, see al-Bayhaqī, *Sunan al-Kubrā*, 8:379:16,951.

<sup>576</sup> In the 1995 edition (as opposed to the 1992), Yaḥyā b. Abī Kathīr is missing, see Ibn Ḥanbal, *Musnad* (1995 ed.), 15:72f:19,789. The editor of the 1992 edition remarks the same, meaning that he added Ibn Abī Kathīr back into the *isnād* that is recorded, see idem., *Musnad* (1992 ed.), 33:136f:19,903.

<sup>577</sup> Ibn Ḥanbal, *Musnad* (1995 ed.), 15:57f:19,811.

<sup>578</sup> Ibn Sa'īd, *al-Ṭabaqāt al-Kubrā*, 9:294; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 1:232-4 and *idem.*, 9:151; Ibn Ḥibbān, *al-Thiqāt*, 7:611; al-Khaṭīb al-Baghādī, *Tārīkh*, 16:206-10.

<sup>579</sup> Ibn Ma'in, *Tārīkh*, 4:209:3,992f.

<sup>580</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 18:367f; al-Dhahabī, *Siyar A'lām*, 9:471f; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 4:255f.

<sup>581</sup> Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 4:255.

recorded on al-Dastawā'ī's authority, but do retain the same information:

- 1) a woman from Juhayna came to the Prophet and confesses to *zinā*;
- 2) she is pregnant;
- 3) the Prophet stays the punishment and instructs her guardian to take care of her until she gives birth, and then to bring her back;
- 4) when she is brought back, she is bound by her clothes, and stoned on the Prophet's authority;
- 5) the Prophet participates in her *jināza* prayer;
- 6) the dialogue between the Prophet and 'Umar takes place.

It remains unclear if al-Dastawā'ī, and by extension his teacher Ibn Abī Kathīr, circulated the tribal reference, the pregnancy motif, or the conversation between the Prophet and 'Umar. As demonstrated previously, these elements are not in al-Awzā'ī's transmission of the unidentified offender, which is also on Ibn Abī Kathīr's authority. Nevertheless, the themes in al-Dastawā'ī's report - which also feature in the transmissions of Ibn Abī Kathīr's other students - makes it highly plausible that al-Dastawā'ī helped communicate the same elements. Therefore, in combination with biographical information, the parallels between the *matns* recorded by two of al-Dastawā'ī's (d. 152 or 154, Basra) students generate a high degree of confidence that he was involved in the transmission of the *ḥadīth*.

Muslim (d. 261), Abū Dāwūd (d. 275), and al-Nasā'ī (d. 303) also provide the Juhayna *ḥadīth* with al-Dastawā'ī in the *isnād*. In Muslim's chain of transmission, al-Dastawā'ī narrated the report to his son, Mu'ādh (d. 200, Basra and Yemen).<sup>582</sup> In Abū Dāwūd's entry, al-Dastawā'ī

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<sup>582</sup> Muslim, *Ṣaḥīḥ*, 1,324:24(1,696).

transmitted the *ḥadīth* to Muslim b. Ibrāhīm (d. 222, Basra).<sup>583</sup> In al-Nasā'ī's record, al-Dastawā'ī communicated the narrative to Khālīd b. al-Ḥārith (d. 186, Basra),<sup>584</sup> who, according to biographical dictionaries, was one of the more respected *ḥadīth* transmitters in Basra.<sup>585</sup> The respective *matns* provided by each of these three *ḥadīth* collectors share high degrees of similarities with one another and with other variants recorded on al-Dastawā'ī's authority. In my view, these entries further corroborate al-Dastawā'ī's (d. 152 or 154, Basra) involvement in the circulation of the self-confessing *ḥadīth*.<sup>586</sup> These reports by extension, raise the degree of confidence about Ibn Abī Kathīr's dissemination of the *ḥadīth*.

A Juhayna variant transmitted by Ibn Abī Kathīr's student Ma'mar b. Rāshid (d. 153, Basra, Medina, and Yemen) can also substantiate both al-Dastawā'ī's (d. 152 or 154) and Ibn Abī Kathīr's (d. 129 or 132) involvement in the dissemination of particular elements of the *ḥadīth*. The following is a report provided by 'Abd al-Razzāq in which the woman is identified as belonging to the tribe of Juhayna. The *isnād* and *matn* read:

'Abd al-Razzāq - Ma'mar [b. Rāshid] (d. 153, Basra, Medina, and Yemen) - Yaḥyā b. Abī Kathīr (d. 129, 132, Basra, Medina, Yemen) - Abū Qilāba (d. 104-7, Basra and Ḥims) - Abū al-Muhallab ['Abd al-Raḥmān b. Mu'āwiya] (d. unknown, region(s) unknown) - 'Imrān [b. Ḥuṣayn]:

A woman from Juhayna confessed to *zinā* in the presence of the Prophet and told him that she was pregnant. The Prophet called for her guardian and said: Go take care of her and let me know once she has given birth.

The guardian proceeded accordingly. The Prophet ordered that she be bound up

<sup>583</sup> Abū Dāwūd, *Sunan*, 6:487:4,440.

<sup>584</sup> al-Nasā'ī, *Sunan al-Kubrā*, 6:427:7,151.

<sup>585</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 3:325; al-Mizzī, *Tahdhīb al-Kamāl*, 8:37f; al-Dhahabī, *Siyar A'lām*, 9:127f.

<sup>586</sup> Pavlovitch argues al-Ṭayālīsī introduced al-Dastawā'ī "to this tradition [because he] sought to circulate a *ḥadīth* of his own modeled after that of 'Abd al-Razzāq," see Pavlovitch, "Stoning of a Pregnant woman from Juhayna," 24. In my view, Pavlovitch's claim does not sufficiently account for the variants recorded on the authority of al-Dastawā'ī's other students. Without evidence, Pavlovitch's conclusion suggests that a sizable conspiratorial effort was made by those who transmitted after al-Dastawā'ī and *ḥadīth* collectors, which is unlikely.

with her clothes and stoned, and she was stoned. Then he participated in the *jināza* prayer for her. ‘Umar asked: Messenger of God, you stoned her and you prayed for her?

The Prophet responded: Her repentance was such that if it was spread over 70 people of Medina, it would be sufficient for all of them. Could you find anything better than her generosity with her soul to God?<sup>587</sup>

We find that in this report:

- 1) a woman confesses to *zinā* in the company of the Prophet;
- 2) she is pregnant;
- 3) the Prophet stays the punishment and instructs her guardian to take care of her until she gives birth, and then to bring her back;
- 4) when she is brought back, she is bound by her clothes and stoned on the Prophet's authority;
- 5) the Prophet participates in her *jināza* prayer;
- 6) the dialogue between the Prophet and ‘Umar takes place.

All of these motifs are in al-Dastawā’ī’s transmissions about the unidentified and Juhayna self-confessing woman variants.<sup>588</sup> Hence, the overlap between al-Dastawā’ī’s and Ma‘mar’s *matns* indicates that the above identified elements were in circulation by the middle of the second century in Iraq, and on their respective authorities.<sup>589</sup> Moreover, the high degree of correlation between the *matns* points to Ibn Abī Kathīr’s involvement in the circulation of several motifs. As

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<sup>587</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:325f:13,348; on ‘Abd al-Razzāq’s authority, see also Ibn Ḥanbal, *Musnad* (1995 ed.), 15:57f:19,747; al-Tirmidhī, *Jāmi‘*, 3:105f:1,435; al-Nasā’ī, *Sunan al-Kubrā*, 6:430:7,156; the *matns* are virtually identical with the exception of the dialogue clause. It is not in al-Nasā’ī’s entry, which is not likely on his account because he provides another variant in which the dialogue exists. I note this variant on page 192.

<sup>588</sup> The obvious point being that reference to Juhayna is not in the unidentified self-confessing woman variant.

<sup>589</sup> Pavlovitch argues “‘Abd al-Razzāq’s undeniable contribution to the spread of the Juhayniyya tradition is neither an indication of its early provenance, nor a proof of its relation to Yaḥyā b. Abī Kathīr, [because the] *isnād* is based on a single line from [‘Abd al-Razzāq’s] master Ma‘mar...,” see Pavlovitch, “Stoning of a Pregnant woman from Juhayna,” 15. The single-line *isnād* cannot automatically dismiss Ibn Abī Kathīr as a source for the *ḥadīth*.

it will be recalled, al-Awzā'ī's narrations on Ibn Abī Kathīr's authority contained neither the pregnancy nor the dialogue clauses. Therefore, it can be said with a higher degree of confidence that the four elements found in al-Awzā'ī's, Ma'mar's (d. 153), and Dastawā'ī's (d. 152 or 154) respective variants, are attributable to Ibn Abī Kathīr. This suggests that these motifs were likely transmitted by Ibn Abī Kathīr, which means that they were in circulation by the first quarter of the second century.

In addition to Ma'mar and Dastawā'ī, another student of Ibn Abī Kathīr, Abān b. Yazīd al-'Aṭṭār (d. 160, Basra), is also recorded to have narrated the Juhayna variant. This increases the likelihood of Ibn Abī Kathīr as one source of the *ḥadīth* during the first quarter of the second century. This version is provided by Ibn Abī Shayba in his *al-Muṣannaf*. The *isnād* and *matn* read:

Ibn Abī Shayba (d. 235) - 'Affān b. Muslim [b. 'Abd Allāh] (d. 220, Baghdad and Basra) - Abān [b. Yazīd] al-'Aṭṭār (d. 160, Basra) - Yaḥyā b. Abī Kathīr (d. 129, 132, Basra, Medina, Yemen) - Abū Qilāba (d. 104-7, Basra and Ḥimṣ) - Abū al-Muhallab ['Abd al-Raḥmān b. Mu'āwiya] (d. unknown, region(s) unknown) - 'Imrān [b. Ḥuṣayn]:

A woman from Juhayna came to the Prophet and said: I have committed a *ḥadd*, so apply it to me.

This occurred while she was pregnant. The Prophet ordered that she be taken care of until she gives birth. Once she gave birth, her guardian brought her back to the Messenger of God. The Prophet ordered that she be bound up and stoned. After the stoning, the Prophet prayed for her.

'Umar said: Messenger of God, you prayed for her despite the fact she committed *zinā*?

The Prophet responded: Her repentance was such that if it was spread over 70 people of Medina, it would be sufficient for all of them. Could you find anything better than her generosity with her soul?<sup>590</sup>

<sup>590</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:362:29,389; Muslim includes an entry in which he writes Ibn Abī Shayba narrated this *ḥadīth*, but Muslim references the *matn* on the authority of Hishām al-Dastawā'ī, see Muslim, *Ṣaḥīḥ*, 1,324:24(1,696).

Ibn Ḥanbal also provides an entry on the authority of Abān b. Yazīd al-‘Aṭṭār (d. 160, Basra),<sup>591</sup> which is not surprising because the former held a highly favorable view of the latter.<sup>592</sup> The *matns* provided by Ibn Abī Shayba and Ibn Ḥanbal share a high degree of similarity with other variants transmitted on Ibn Abī Kathīr’s authority. Therefore, unless outside evidence can prove otherwise, Abān al-‘Aṭṭār’s narration further corroborates Ibn Abī Kathīr’s role in the circulation of particular elements of the *ḥadīth*.<sup>593</sup>

Between the unidentified and Juhayna self-confessing woman variants, I have provided an analysis of *isnāds* and a comparative examination of *matns* recorded on the authority of four of Ibn Abī Kathīr’s students. They are: Ma‘mar (d. 153), Dastawā’ī (d. 152 or 154), al-Awzā‘ī (d. 157), and Abān al-‘Aṭṭār (d. 160). I also compared their respective versions with the narrative circulated by Ayyūb al-Sakhtiyānī (d. 131, Basra and Medina), because he is from the same time period as Ibn Abī Kathīr, and the two are recorded to have shared the same source for the report. There are four themes that all versions contain:

- 1) a woman confesses to *zinā* in the company of the Prophet;
- 2) she is bound by her clothes;
- 3) the Prophet orders her to be stoned and she is stoned;
- 4) the Prophet participates in the *jināza* prayer for her.

On the basis of *isnād* and comparative *matn* analysis conducted thus far, it is highly plausible that these motifs were transmitted by Yahyā b. Abī Kathīr (d. 129, 132, Basra, Medina, Yemen).

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<sup>591</sup> Ibn Ḥanbal, *Musnad* (1995 ed.), 15:85f:19,839.

<sup>592</sup> Ibn Abī Hātim, *al-Jarḥ wa al-Ta’dīl*, 2:299; al-Mizzī, *Tahdhīb al-Kamāl*, 2:25; al-Dhahabī, *Siyar A’lām*, 7:432.

<sup>593</sup> Pavlovitch takes the opposite view. He again argues based on *ex silentio* that without additional *isnāds* on the authority of al-‘Aṭṭār, it cannot be claimed that he was involved in the circulation of the *ḥadīth*. For Pavlovitch, if anything it was Ibn Abī Shayba who put the *ḥadīth* into circulation, see Pavlovitch, “Stoning of a Pregnant woman from Juhayna,” 26.



Biographical information on Ibn Abī Kathīr further establishes his involvement in the narration of the *ḥadīth*. To begin with, he was a *mawlā* of Ṭayyī' (or Ṭā'ī), grew up in Basra, and eventually moved to Yamāma, where he died.<sup>594</sup> He was considered among the best of *ḥadīth* transmitters, and at times, either thought of as being on equal footing with, or better than the famous Ibn Shihāb al-Zuhrī (d. 124, Medina and Syria).<sup>595</sup> Al-Dastawā'ī believed that no one like Ibn Abī Kathīr had ever walked the earth.<sup>596</sup> Al-Dastawā'ī, al-Awzā'ī, and Abān - in that order - were considered to be Ibn Abī Kathīr's best pupils.<sup>597</sup> Al-Awzā'ī supposedly compiled a book on the basis of Ibn Abī Kathīr's written notes, possibly at the instruction of his teacher, because Ibn Abī Kathīr made Ma'mar write down his lectures.<sup>598</sup> Ibn Abī Kathīr is also noted to have occasionally narrated from texts.<sup>599</sup> This partly explains why a considerable amount of overlap exists in the *ḥadīth* variants transmitted by Ibn Abī Kathīr's students. Yet as noted above, reference to the tribe of Juḥayna, the pregnancy contingency, and the conversation clauses are missing from some of Ibn Abī Kathīr's narrations. Consequently, their provenance still needs to be explained. However, based on Ibn Abī Kathīr's biographical information and the overlap between the *matns* of his students, there is strong evidence that indicates Ibn Abī Kathīr was involved in the circulation of the self-confessing woman *ḥadīth*.

The unidentified woman variant on al-Sakhtiyānī's authority also contains the same four

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<sup>594</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 8:116; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 9:141.

<sup>595</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 9:141; al-Mizzī, *Tahdhīb al-Kamāl*, 31:508.

<sup>596</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 8:116; al-Bukhārī, *Tārīkh*, 8:301; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 9:141; al-Mizzī, *Tahdhīb al-Kamāl*, 31:507.

<sup>597</sup> Ibn Ma'īn, *Tārīkh*, 4:180:3,825 and 457:5,279.

<sup>598</sup> al-Dhahabī, *Siyar A'lām*, 6:29.

<sup>599</sup> Ibn Ma'īn, *Tārīkh*, 4:351:4,732; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 1:184; al-Dhahabī, *Siyar A'lām*, 6:30.

elements attributable to Ibn Abī Kathīr, which reaffirms the *terminus ante quem* in the first quarter of the second century. Al-Sakhtiyānī's variant does not have the pregnancy or conversation clauses, which in my view are sufficiently important to have been erroneously omitted. Therefore, it is likely that he and Ibn Abī Kathīr helped circulate the overlapping details contained in the *ḥadīth*, but without the inclusion of the pregnancy and dialogue elements.

The commonality among al-Sakhtiyānī's and Ibn Abī Kathīr's *matns* and *isnād* analysis suggests that they received the same information from their teacher, Abū Qilāba (d. 104-7, Basra and Ḥimṣ). Abū Qilāba 'Abd Allāh b. Zayd al-Jarmī was a well-known legal authority of his time. He was considered a *faqīh*, which is to be expected given that prior to his conversion to Islam, he held a judicial rank similar to that of a chief judge.<sup>600</sup> But it is also recorded that some did not consider him to be an intelligent person.<sup>601</sup> Such pejorative opinions were likely in the minority, because after his conversion to Islam, Abū Qilāba was asked to serve as judge in Basra. This offer indicates that he must have been respected for his legal acumen. According to biographical entries, he refused the appointment and instead fled to Yamāma, and then to Syria, where he died.<sup>602</sup> Abū Qilāba's legal background makes it unsurprising that was he involved in the transmission of a *ḥadīth* that addressed a specific legal matter: the appropriate punishment for certain types of *zinā* offenses.

Biographical information about Ibn Abī Kathīr, al-Sakhtiyānī, and their teacher Abū Qilāba advances the likelihood of a transmission between the three individuals. As noted previously, Ibn Abī Kathīr, like Abū Qilāba, moved from Basra to Yamāma (though for different

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<sup>600</sup> Al-Mizzī, *Tahdhīb al-Kamāl*, 14:545; al-Dhahabī, *Siyar A'lam*, 4:472.

<sup>601</sup> Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 3:486f.

<sup>602</sup> Ibn Sa'd, *al-Tabaqāt al-Kubrā*, 9:183; Ibn Ma'in, *Tārīkh*, 4:233-4, 076; Ibn 'Asākir, *Tārīkh*, 28:284 and 302f; al-Mizzī, *Tahdhīb al-Kamāl*, 14:546.

reasons), so he and Abū Qilāba could have met during their stays in either of the two cities. Al-Sakhtiyānī held Abū Qilāba in high regard, which is indicated by several favorable biographical entries about Abū Qilāba on al-Sakhtiyānī's authority.<sup>603</sup> Furthermore, Abū Qilāba stated in his will that al-Sakhtiyānī be given his books after his death.<sup>604</sup> The regional overlap and travel patterns of Ibn Abī Kathīr and Abū Qilāba, the close relationship between al-Sakhtiyānī and Abū Qilāba, and the overlapping clauses in the latter two's *matns*, attest to Abū Qilāba's dissemination of the self-confessing woman report.

Given the reasonableness of Abū Qilāba's involvement in the circulation of the self-confessing woman *ḥadīth*, we are on stronger footing to evaluate his reception of the narrative from his recorded teacher(s). In the variant circulated by al-Sakhtiyānī, Abū Qilāba directly references 'Imrān b. Ḥuṣayn (d. before 53, possibly 52, Basra, Kufa, and Medina). This is a stark contrast to all *isnāds* containing Ibn Abī Kathīr, in which intermediaries exist between Abū Qilāba and the Companion. How is this possible? It seems that while Abū Qilāba was a respected transmitter, at times inquiries were made about his sources.<sup>605</sup> This suggests that *ḥadīth* narrators may not have had wholesale confidence in his informants, or believed that he transmitted reports from unreliable individuals. Furthermore, some *ḥadīth* critics note that Abū Qilāba practiced *tadlīs*, which may explain the absence of a reference to either Abū al-Muhājir or Abū al-Muhallab, both of whom appear as teachers of Abū Qilāba in the *isnāds* on Ibn Abī Kathīr's authority. Indeed, for *ḥadīth* critics and their standards for authenticating transmissions, Abū Qilāba's authority as a *muḥaddith* should have been impugned. Yet certain biographers appear to

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<sup>603</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 9:182-4; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 5:58; al-Mizzī, *Tahdhīb al-Kamāl*, 14:546.

<sup>604</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 9:185; Ibn 'Asākir, *Tārīkh*, 28:284; al-Dhahabī, *Siyar A'lām*, 4:475.

<sup>605</sup> Ibn 'Asākir, *Tārīkh*, 28:297f.

deliberately prevent his practice of *tadlīs* from prejudicing his reputation as a transmitter. Some remarks in fact try to justify his employment of it, while others completely negate it. Considering this information, the absence of an intermediary in al-Sakhtiyānī's *isnād* may be explained by the following:

1. Abū Qilāba's (d. 104-7, Basra, Medina, and Ḥimṣ) death year and regions of travel make it possible that he heard the *ḥadīth* from someone other than 'Imrān b. Ḥuṣayn, but did not specify his direct source (his practice of *tadlīs*);
2. 'Imrān's name could have been used because of his association with other Companions who are also recorded to have circulated the self-confessing woman *ḥadīth*. This is a matter I take up in the section five of this chapter;
3. though a 50 year gap exists between their death dates, it is possible that 'Imrān b. Ḥuṣayn and Abū Qilāba could have met. It is recorded that Abū Qilāba was older than one of his students, Qatāda b. Di'āma.<sup>606</sup> Qatāda is recorded to have been born in 60. Hence, if Abū Qilāba was born before 'Imrān's death (c. 52), then it is possible that they met when Abū Qilāba was young;
4. because of possible uncertainty regarding an audience between Abū Qilāba and 'Imrān, intermediaries - either Abū al-Muhājir *or* Abū al-Muhallab - were deliberately employed in the Ibn Abī Kathīr variants.

In short, further examination into Abū al-Muhājir and Abū al-Muhallab is necessary to determine the extent of their involvement in the transmission of the report and as Abū Qilāba's source(s).

Only a modest amount of biographical information is available on both Abū al-Muhājir (d. unknown, Basra) and Abū al-Muhallab (d. unknown, Iraq and Syria). It is worth noting that

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<sup>606</sup> Ibn 'Asākir, *Tārīkh*, 28:295.

Abū al-Muhājir is recorded to have narrated only three *ḥadīth*, with one being about the self-confessing woman, and all reports with al-Awzā‘ī in the *isnād*.<sup>607</sup> The biographer Ibn Ma‘īn (d. 233) notes that for *ḥadīth* in which al-Awzā‘ī mentions Abū al-Mujājir, the correct authority is Abū al-Muhallab.<sup>608</sup> The biographer al-Mizzī (d. 742) writes that no person mentions al-Muhājir in the three *ḥadīth* associated with him on the authority of al-Awzā‘ī.<sup>609</sup> Such appraisals may reflect attempts to push the *isnād* towards Abū al-Muhallab. This makes sense in light of two considerations. First, the efforts resulted from the prevailing unfamiliarity with Abū al-Muhājir. Second, there may have been a penchant to quote Abū al-Muhallab because he was Abū Qilāba’s uncle.<sup>610</sup> In sum, investigation into biographical dictionaries encourages one to consider Abū al-Muhallab as Abū Qilāba’s source. But this may have been the intended goal. Because of the available biographical information on Abū al-Muhājir and Abū al-Muhallab, at this point their possible involvement, and by extension, that of the Companion ‘Imrān b. Ḥuṣayn, cannot be determined with a reasonable degree of confidence. But even if we set aside issues with Abū Qilāba’s source(s), it still remains highly probable that by the first decade of the second century, the self-confessing woman *ḥadīth* circulated with the Companion ‘Imrān b. Ḥuṣayn in the *isnād*.

### **The Significance of Motifs**

In this subsection, I examine various motifs within the *matns* and determine their significance for the establishment of stoning as the correct punishment for Muslim *zinā* offenders. I begin with a chart which accounts for the different versions of the report examined

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<sup>607</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 34:326.

<sup>608</sup> Ibn Ma‘īn, *Tārīkh*, 4:467:5,330.

<sup>609</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 34:326.

<sup>610</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 9:124; Ibn Abī Ḥātim, *al-Jarḥ wa Ta’dīl*, 6:260; Ibn Ḥibbān, *Thiqāt*, 5:110.

thus far.

Al-Sakhtiyānī (d. 131, Basra and Medina)	Yahyā b. Abī Kathīr (d. 129, 132, Basra, Medina, Yemen)	Yahyā b. Abī Kathīr (d. 129, 132, Basra, Medina, Yemen)	Yahyā b. Abī Kathīr (d. 129, 132, Basra, Medina, Yemen)	Yahyā b. Abī Kathīr (d. 129, 132, Basra, Medina, Yemen)	Yahyā b. Abī Kathīr (d. 129, 132, Basra, Medina, Yemen)
	al-‘Awzā‘ī (d. 157, Syria and Yemen)	al-Awzā‘ī > al-Faryābī (d. 212, Kufa, Mecca, and Syria)	Ma‘mar (d. 153, Basra, Medina, and Yemen)	Hishām al-Dastawāī (d. 152 or 154, Basra)	Abān [b. Yazīd] al-‘Aṭṭār (d. 160, Basra)
Unidentified	Unidentified	Unidentified	Juhayna	Juhayna	Juhayna
A woman confesses to <i>zinā</i> in the presence of the Prophet.	A woman from confesses to <i>zinā</i> in the presence of the Prophet.	A woman from Juhayna confesses to <i>zinā</i> in the presence of the Prophet.	A woman from Juhayna confesses to <i>zinā</i> in the presence of the Prophet.	A woman from Juhayna confesses to <i>zinā</i> in the presence of the Prophet.	A woman from Juhayna confesses to <i>zinā</i> in the presence of the Prophet.
		Prophet calls for her guardian and tells him to take care of her until she gives birth and then bring her back.	Prophet calls for her guardian and tells him to take care of her until she gives birth and then bring her back.	Prophet calls for her guardian and tells him to take care of her until she gives birth and then bring her back.	Prophet calls for her guardian and tells him to take care of her until she gives birth and then bring her back.
She was bound up with her clothing and stoned.	She was bound up with her clothing and stoned.	She was bound up with her clothing and stoned.	She was bound up with her clothing and stoned.	She was bound up with her clothing and stoned.	She was bound up with her clothing and stoned.
Prophet prays for her.	Prophet prays for her.	Prophet prays for her.	Prophet prays for her.	Prophet prays for her.	Prophet prays for her.
Conversation		Conversatio	Conversatio	Conversatio	Conversatio

between the Prophet and ‘Umar.		n between the Prophet and ‘Umar.	n between the Prophet and ‘Umar.	n between the Prophet and ‘Umar.	n between the Prophet and ‘Umar.
Repentance equal to that of 70 people of Medina.		Repentance equal to that of 70 people of Medina.	Repentance equal to that of 70 people of Medina.	Repentance equal to that of 70 people of Medina.	Repentance equal to that of 70 people of Medina.

The self-confession is important because it represents a legal process by which a person can be convicted of an offense without an accusatorial procedure. This is especially important because of several challenges that emerge with accusations of *zinā*. For example, confessions negate the burden of proof; the plaintiffs do not have to meet the evidentiary standards that accompany accusations.<sup>611</sup> Additionally, a confession conveys the idea that a sincere believer would desire the punishment to secure absolution.<sup>612</sup> This would intimate that the punishment signifies an expiatory remedy. The self-confession, therefore, served as a legal mechanism by which to justify the punishment while simultaneously linking it with religious forgiveness and rehabilitation (in the afterlife).

The intersection between self-confession and forgiveness is demonstrated by the fact that the Prophet described the punishment as a form of repentance to ‘Umar. This clause may be a reflection of early debates about the ways in which one ought to regard a person who has been convicted and punished for the *zinā*.<sup>613</sup> An entry in the *Muṣannaḥ* of ‘Abd al-Razzāq substantiates

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<sup>611</sup> Over time, the probative value of confessions changed (reduced) in the Islamic legal tradition. For the requisite elements for validity, probative value, scope, and general information on confessions, see *Encyclopaedia of Islam* 3rd ed., s.v. “Confession.”

<sup>612</sup> Talal Asad examines the different ways in which confessions interlinked with penance, religious discipline, and reintegration in early Christian communities, see Asad, *Genealogies of Religion*, 97-106 and 128-131. I believe his theoretical framework is helpful in understanding the possible function(s) of the self-confession noted in the *ḥadīth*.

<sup>613</sup> For one approach to the concept of repentance and expiation vis-a-vis punishment in the Qur’ān, *ḥadīth*, and *fiqh*, see generally Lange, “Sin, Expiation and Non-Rationality in Ḥanafī and Shāfi‘ī *fiqh*,” 143-75.

this:

‘Abd al-Razzāq - Ibn Jurayj (d. 150, Baghdad, Mecca, Yemen) - Muḥammad b. al-Munkadir (d. 130, Medina):

The Prophet had a woman stoned. Some Muslims proclaimed in the presence of the Prophet: This punishment was without any purpose.

The Prophet responded: Indeed this was expiation for her offense (*ḥādhihi kaffāra li-mā ‘amilat*), and your actions have yet to be accounted for.<sup>614</sup>

In this report, the term *kaffāra* (expiation) is used, but in other variants of this story which I previously examined, the term *tawba* (repentance) is utilized. Al-Nasā‘ī also provides a report with the same theme:

al-Nasā‘ī - Ya‘qūb b. Sufyān al-Fārisī (d. 277, Egypt, Fārs, Fasā, Nishapur, and Palestine) - Ibrāhīm b. al-Mundhir (d. 236, Medina) - al-Qāsim b. Rishdīn b. ‘Umayr (d. unknown, Medina) - Makhrama b. Bukayr (d. 159, Medina) - Bukayr b. ‘Abd Allāh (d. 122, Egypt and Medina) - al-Sharīd b. Suwayd (d. unknown, Ḥijāz and Ṭā‘if).<sup>615</sup>

A woman was stoned during the time of the Messenger of God. When we departed from her, I went to the Messenger of God and said: We stoned that sinner.

The Messenger of God replied: Stoning is expiation for what she did.

It is likely that controversy about the relationship between offenses, punishments, and expiation, spurred efforts to generate a theologically based exculpation for a person subjected to stoning for certain types of *zinā*.<sup>616</sup> Accordingly, these matters were reflected and resolved in the *ḥadīth* on the basis of a conversation between the Prophet and ‘Umar.

In addition to the self-confession motif, the woman declares that she committed a *ḥadd*

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<sup>614</sup> ‘Abd al-Razzāq adds that Ibrāhīm b. Abī Yahyā (d. 184, or 191, Medina) narrated the same comment from al-Munkadir, see ‘Abd al-Razzāq, *al-Muṣannaf*, 7:326:13,349; the same idea of expiation is connoted in two variants provided by al-Nasā‘ī, see al-Nasā‘ī, *Sunan al-Kubrā*, 6:460f:7,232f.

<sup>615</sup> al-Nasā‘ī, *Sunan al-Kubrā*, 6:460:7,232.

<sup>616</sup> As Asad notes, “The marks of sin are made on the soul *and* on the body,” Asad, *Genealogies of Religion*, 106.



and wished for the Prophet to apply the *ḥadd* to her. This term appears in two versions of the *ḥadīth*: once in an unidentified variant and the other in a Juḥayna iteration. As discussed in Chapter Two, the concept of *ḥadd* representing both offenses and punishments reflects a post-Qur’ānic legal development, since the term does not connote the same meanings in the Qur’ān. This points to *ḥadd*’s utilization after it had a clear legal definition, and after *zinā* became a part of the legal category designated as the *Ḥudūd*.<sup>617</sup> The term’s specific legal conception was unlikely to have existed during the lifetime of the Prophet. Therefore, the motif of “I have committed a *ḥadd*, so apply the *ḥadd* to me,” was a later modification to the *ḥadīth*.

Binding those who were punished for sexual offenses appears to have been a customary practice of certain pre-Islamic cultures. For example, in the ancient Greek cities of Lepreium and Cumae, the male offender was bound with ropes and walked around town for three days.<sup>618</sup> In the Hammurabi Code of ancient Mesopotamia, the adulterous wife and her lover are instructed to be bound and thrown into a river to drown.<sup>619</sup> Therefore, it seems that the clause according to which the self-confessing woman was bound up prior to being stoned reflected a historical complex in which the *ḥadīth* emerged.

In some accounts of the report, the self-confessing woman is pregnant, and the Prophet delays the implementation of the punishment until after she gives birth. Staying a capital punishment for a pregnant woman echoes a legal procedure familiar in the Near East of the Islamic late antiquity. According to the Justinian Code, “The punishment of a pregnant woman

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<sup>617</sup> A modification can also be substantiated on the basis of another variant in which the woman says, “I have committed an offense (*dhanb*),” see Abū ‘Awāna, *Musnad*, 4:133:6,288.

<sup>618</sup> Cantarella, “Gender, Sexuality, and Law,” 244.

<sup>619</sup> Driver and Miles, *The Babylonian Law*, 281; Roth, *Law Collections*, 106.

who has been condemned to death is deferred until she gives birth.”<sup>620</sup> To be clear, I am not suggesting that Muslims could not have, on their own accord, deliberated about the implementation of a punishment upon a pregnant woman. They certainly could have. The point I am conveying here is that staying a capital punishment for a pregnant woman would not have been a legal consideration exclusive to the Islamic legal tradition. This makes its appearance in the *ḥadīth* unsurprising.

As demonstrated in the chart above, al-Sakhtiyānī’s report on the authority of Abū Qilāba does not contain the pregnancy clause. But another reports suggests that he was aware of the pregnancy issue. A narrative he transmits on the authority of the Meccan jurist ‘Aṭā’ (d. 115) reads:

Ma‘mar [b. Rāshid] (d. 153, Basra, Medina, and Yemen) - Ayyūb [al-Sakhtiyānī] (d. 131, Basra and Medina) - ‘Aṭā’ b. Abī Rabāḥ (d. 115, Mecca):

A woman came to the Prophet and confessed to *zinā*, and the Prophet sent her away four times. On the fourth confession she asked him: Messenger of God, are you sending me away like you did Mā‘iz b. Mālik?

The Prophet said: Take care of her until she gives birth. [And?]<sup>621</sup> then he said: Nurse the child.

A man said: Let me take care of that.

Then the Prophet gave the command and she was stoned.<sup>622</sup>

Had al-Sakhtiyānī wished, he, or transmitters below him in the *isnād*, could have attached the pregnancy element to the Juhayna *matn*. However, they did not. Therefore, al-Sakhtiyānī’s report on the authority of Abū Qilāba illustrates two key points. The self-confessing woman *ḥadīth*

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<sup>620</sup> Mommsen et al, *The Digest of Justinian*, 845, 19:3.

<sup>621</sup> It is unclear if the second command was immediately after the first one, or if the woman first gave birth and returned, at which point the Prophet gave the second command.

<sup>622</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:324f:13,345.

associated with the Companion ‘Imrān b. Ḥuṣyan was likely to have been in circulation in Iraq by the early part of the second century, and there existed a historical moment when the pregnancy clause was not part of the narrative.

A post-Abū Qilāba (d. 104-7) attachment of the pregnancy element can also be deduced from the report on Ibn Abī Kathīr’s (d. 129 or 132) authority by his non-Iraqi transmitters. They were silent on the matter of pregnancy. As previously noted, Abū Qilāba settled in Ḥimṣ after fleeing to Yamāma from Basra. Like his uncle, Ibn Abī Kathīr moved from Basra to Yamāma, and sojourned to Medina. If Abū Qilāba or Ibn Abī Kathīr did narrate the pregnancy clause, then it would be logical to find it in Ibn Abī Kathīr’s non-Iraqi sources. But this is not the case. Abū Qilāba’s and Ibn Abī Kathīr’s travel patterns, as well as reports by non-Iraqi transmitters, suggest that the pregnancy element attached to the *ḥadīth* after Abū Qilāba and Ibn Abī Kathīr left Iraq.

Nevertheless, the staying of a punishment for a pregnant woman may have already been part of legal discussions in Iraq by the early second century despite this issue’s absence from early iterations of the self-confessing woman *ḥadīth*. An entry provided by ‘Abd al-Razzāq reads:

[Sufyān] al-Thawrī (d. 161, Basra, Kufa, and Ḥijāz) - Muḥammad b. Sālīm [al-Hamdānī] (d. unknown, Hamdān, Kufa, and Mecca) - [Āmir] al-Sha‘bī (d. 102-9, Baghdad, Hamdān, Kufa, and Syria):

The *hadd* is not applied to a pregnant woman until after she has given birth.<sup>623</sup>

In my view, the pregnancy clause is sufficiently relevant that it would not have been erroneously omitted by Abū Qilāba or Ibn Abī Kathīr had either of them narrated it in Iraq. But during the early part of the second century in Iraq, the application of a punishment upon a pregnant offender was already part of legal discussions. Consequently, the procedural treatment of this issue

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<sup>623</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:325:13,346.

eventually conjoined with the self-confessing woman *ḥadīth*.

Reference to the tribe of Juhayna is partially in relation to Abū Qilāba, and measurably due to the tribe's broader significance in the Islamic late antiquity. First, Abū Qilāba is recorded to have been a descendant of the Qaḍā'a, a large tribe to whom the Juhayna belonged.<sup>624</sup> Second, a number of Juhaynīs pledged allegiance to the Prophet upon his initial arrival to Medina.<sup>625</sup> Juhayna's importance is deepened with Zayd b. Khālīd al-Juhanī (d. 68 in Kufa or 78 in Medina), a Companion of the Prophet, who was at Ḥudaybiyya (6 AH).<sup>626</sup> It is also recorded that he served as a general for the tribe of Juhayna in the conquest of Mecca (9 AH).<sup>627</sup> After expansion to the east, the Juhaynīs were one of the first tribes to settle in Baghdad, and then in Basra and Kufa.<sup>628</sup> That the Juhaynīs converted to Islam and remained Muslim in the post-Prophetic period should not be overlooked. The tribal affiliation in the *ḥadīth* served to emphasize the Islamic background of the self-confessing woman. It will be recalled that in some variants, her religion is only known because the Prophet participates in her *jināza* prayer. In my view, association with Juhayna likely emerged to remove ambiguity about the matter. It should also be noted that al-Sakhtiyānī's (d. 131), al-Awzā'ī's (d. 157) and one of al-Dastawā'ī's (d. 152 or 154) respective variants do not mention Juhayna. But other transmissions from the same period do include it. Therefore, it is probable that tribal affiliation began to circulate as part of the *ḥadīth* sometime during the middle of the second century. The tribe's historical significance, settlement in Iraq,

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<sup>624</sup> Ibn 'Askākir, *Tārīkh*, 28:284; al-Mizzī, *Tahdhīb al Kamāl*, 14:542.

<sup>625</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 1:287.

<sup>626</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 3:562:2540; Ibn al-Athīr, *Usad al-Ghāba*, 429:1832; Ibn Ḥajar, *al-Iṣāba*, 2:499:2902.

<sup>627</sup> Ibn 'Abd al-Barr, *al-Isti'āb*, 2:549:845; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 3:547.

<sup>628</sup> Al-Sam'ānī, *al-Ansāb*, 3:439; Yāqūt, *Mu'jam al-Buldān*, 2:194.

Abū Qilāba's familial ties to it, and the way in which it functioned to cast the woman as Muslim, seemed to have informed its appearance in the self-confessing woman *ḥadīth*.

In sum: a critical concern undergirded the self-confessing woman *ḥadīth*, and it was dealt with through the logic of particular motifs. Specifically, and unlike in the case of the Jewish *Ḥadīth*, the religious affiliation of the self-confessing woman had to be made abundantly clear. This issue was resolved with the Prophet's participation in her *jināza* prayer, as this would have been done for Muslims. The Islamization of the *ḥadīth* also took place with an attachment to the tribe of Juḥayna, whose members converted to Islam and retained significance during and after the Prophet's lifetime. Therefore, two specific motifs helped to convey the self-confessing woman as a Muslim, which meant that the Prophet ordered stoning for a Muslim *zinā* offender.

One significant issue which remains unresolved is about the form of *zinā* presumably committed by the self-confessing woman. Without mentioning the status of *thayyib* or *iḥṣān* to demarcate the form of *zinā* mandating death by stoning, the *zinā* in this *ḥadīth* was presumed to be of a particular type. This suggests that when the self-confessing woman *ḥadīth* associated with 'Imrān b. Ḥuṣayn went into circulation, Muslims in the Islamic late antiquity had already begun to treat different categories of *zinā* in distinctive ways. One type of *zinā* was treated with 100 lashes and the another with stoning. But the sanction had to be Islamized, and this was done through particular themes that I have already discussed. Ultimately, 'Imrān b. Ḥuṣayn's report affirmed a connection between the Prophet's authority and stoning as an *Islamic* punishment. The interlink is substantial. Therefore, I do not believe Abū Qilāba or his unfamiliar informants were the first individuals to construct and transmit this connection. In order to determine the likely provenance of the Prophet's order to stone a woman, I now turn to an analysis of reports purportedly transmitted by two additional Companions.

## **Section 2. Reports by the Companion Burayda b. al-Ḥuṣayb (d. 63, Basra, Khurasan, Marw, Mecca, Medina, and Syria)**

In this section, I analyze *isnāds* and *matns* of the self-confessing woman *ḥadīth* purportedly circulated by the Companion Burayda b. al-Ḥuṣayb (d. 63, Basra, Khurasan, Marw, Mecca, Medina, and Syria). In the collections I investigated, his two sons - ‘Abd Allāh (d. 105 or 115, Basra, Kufa, Marw, and Syria) and Sulaymān (d. 105, Basra and Marw) - are recorded to have disseminated the report from their father. I first analyze the *isnāds* and then compare the *matns* of variants transmitted by ‘Abd Allāh. I then discuss the significance of the motifs found in the Burayda variants, and compare them to versions of the *ḥadīth* narrated from the Companion ‘Imrān b. al-Ḥuṣayn. Thereafter, I examine the version circulated on Sulaymān’s authority, and argue that this narrative developed well after his brother’s account went into circulation. Broadly, it is highly probable that the *detailed* Burayda variants emerged during the latter part of the second century. Both it and versions with less information nevertheless contain several motifs which came to undergird substantive *zinā* laws. And importantly, Burayda’s narrative furthered the process of Islamizing the stoning punishment for certain forms of *zinā* in the Islamic legal tradition.

### ***Isnāds* and *matns* on the authority of ‘Abd Allāh b. Burayda (d. 105 or 115, Basra, Kufa, Marw, and Syria)**

According to the *isnāds* of several Burayda variants, a person by the name of Bashīr b. al-Muhājir (d. unknown, Kufa) circulated the *ḥadīth* on the authority of ‘Abd Allāh b. Burayda. With one exception, the *matns* on al-Muhājir’s authority are virtually identical. This suggests that al-Muhājir may have been the common, and that the his variants were circulated on the basis of a written text. Accordingly, I first determine the likelihood of transmission on the part of al-

Muhājir's students, and then the plausibility of his role in the dissemination of this *ḥadīth*'s contents.

The *Muṣannaf* of Ibn Abī Shayba (d. 235) is the earliest collection in which I found the Burayda variant. The *isnād* and *matn* read:

Ibn Abī Shayba - 'Abd Allāh b. Numayr (199, Hamdan and Kufa) - Bashīr b. al-Muhājir - 'Abd Allāh b. Burayda - Burayda b. al-Ḥuṣayb:

A Ghāmidīyya woman came to the Prophet and said: Messenger of God, I have committed *zinā* and I want you to purify me.

The Prophet sent her away and she came back the next day and said: Prophet of God, why are you sending me away? Perhaps you are doing the same with me as you did with Mā'iz b. Mālik? By God, I am pregnant.

The Prophet responded: The reason for not implementing the punishment is because you are pregnant, so go away until you have given birth.

After she gave birth, she returned to the Prophet with a swaddled baby boy and said: Look, I have given birth.

The Prophet responded: Go and nurse him until he has weaned.

Once she weaned the baby, she returned to the Prophet with the boy, who had a small piece of bread in his hand. She said: Look, Prophet of God, I have weaned him and he now eats solid food.

The Prophet placed the boy in the custody of Muslims and ordered a chest-deep hole be dug up for her. Then he gave the order to the people and they stoned her. Khālīd b. al-Walīd picked up a stone and threw it at her head, and when some blood hit his face, he cursed at her. The Prophet of God heard him and said: Stop, Khālīd b. al-Walīd. By the One in whose hand is my soul, her repentance was such that if someone in debt made the same repentance, it would be forgiven.

Then he gave the order to the people, and he and others conducted the *jināza* prayer for her, after which she was buried.<sup>629</sup>

I begin with Ibn Abī Shayba's informant and Bashīr al-Muhājir's student, 'Abd Allāh b. Numayr (199, Hamdan and Kufa). Biographical entries throw favorable light on Ibn Numayr. He is

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<sup>629</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:361f:29,388.

reported to have been a legal authority, a trustworthy narrator of *ḥadīth*, and someone with whom several Iraqis studied (including Ibn Abī Shayba).<sup>630</sup> To the best of my knowledge, there is nothing that raises suspicion about Ibn Numayr's involvement in the circulation of Prophetic and non-Prophetic reports. Therefore, unless outside evidence can prove otherwise, I do not have any reason to dismiss the transmission of the Burayda variant by Ibn Numayr to Ibn Abī Shayba. I will however defer comments about what exactly may have been transmitted between the two individuals until an analysis of other variants.

Abū Nu‘aym (d. 212 or 218-9, Kufa) - another student of Bashīr al-Muhājir - is also noted to have transmitted the Burayda variant. Ibn Ḥanbal records the *ḥadīth* directly from Abū Nu‘aym.<sup>631</sup> This iteration is virtually identical to the narrative provided by Ibn Abī Shayba on authority of Ibn Numayr. There is however one exception. According to Abū Nu‘aym, the Prophet sends the woman away twice before she asks him if he is treating her in the same manner as Mā‘iz, whereas in Ibn Numayr's report, the Prophet sends her away once. But aside from this difference, the parallels between Ibn Numayr's and Abū Nu‘aym's respective *matns* indicate a common (written?) source, which could be al-Muhājir.

Al-Nasā'ī (d. 303) also provides the Burayda variant on the authority of Abū Nu‘aym, which in my estimation is additional evidence for considering Abū Nu‘aym, and by extension, his teacher, Bashīr al-Muhājir, as transmitters of the *ḥadīth* under investigation. The *isnād* in al-Nasā'ī's *Sunan* reads:

al-Nasā'ī - Aḥmad b. Yaḥyā [b. Zakarīyyā] al-Ṣūfī [he is] Kūfī (d. 264, Kufa) - Abū Nu‘aym [Faḍl b. Dukayn] (d. 212 or 218-9, Kufa) - Bashīr b. al-Muhājir - ‘Abd Allāh b. Burayda - Burayda b. al-Ḥuṣayb.<sup>632</sup>

<sup>630</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 8:516; Ibn Ḥibbān, *al-Thiqāt*, 7:60; al-Mizzī, *Tahdhīb al-Kamāl*, 16:228.

<sup>631</sup> Ibn Ḥanbal, *Musnad* (1995 ed.), 16:476f:22,845.

<sup>632</sup> al-Nasā'ī, *al-Sunan al-Kubrā*, 6:431:7,159.



Aḥmad b. Yaḥyā (d. 264, Kufa), *mawlā* of Thaqīf, receives positive marks in biographical dictionaries.<sup>633</sup> This entry has significant overlap with Ibn Abī Shayba's report, and for the most part, with Ibn Ḥanbal's entry as well. The high level of similarities intimates that Aḥmad b. Yaḥyā had access to a common source; perhaps written. But I did not find any comments that indicate he would copy *ḥadīth*, or that he authored any books himself. Silence about his use of written sources, however, is not sufficient evidence to dismiss his possible use of them. Ultimately, it is difficult to conclude about the nature of Aḥmad b. Yaḥyā's source: lecture versus a written copy of Abū Nu'aym's transmission. Whatever the case may have been, Abū Nu'aym cannot be dismissed as Ibn Yaḥyā's source. This is partly because of the overlap of Aḥmad b. Yaḥyā's *matn* with other versions examined thus far, and in some measure due to insufficient biographical information that could reasonably censure his place in the *isnād*.

Broad awareness of the *ḥadīth* is reflected in an entry provided by al-Bayhaqī (d. 458), which also traces back to Abū Nu'aym. The *matn* reads:

We were sitting with the Prophet and a woman from the tribe of Ghāmid came to him and said: I have committed *zinā* and I want you to purify me.

Al-Bayhaqī writes that his informant narrated the *ḥadīth* up to the point the woman says: By God I am pregnant.

The Prophet said to her: Go away until you have given birth.

Once she gave birth, she returned to the Prophet with a swaddled baby boy and said: Prophet of God, I have given birth.

The Prophet responded: Go away until he has weaned.

Once she weaned him, she returned to the Prophet with the boy, who had a small piece of bread in his hand and said: Prophet of God, I have weaned him.

The Prophet made a command regarding the boy and placed him in the custody of a man from among the Muslims. He then ordered a chest-deep hole be dug up for

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<sup>633</sup> Ibn Ḥibbān, *Thiqāt*, 8:40:12,152; al-Mizzī, *Tahdhīb al-Kamāl*, 1:518; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 1:85.

her and gave the order to the people to stone her. Then the remainder of the *ḥadīth* was told.<sup>634</sup>

Familiarity with the report is indicated by al-Bayhaqī's comments at the beginning and end of his entry. Moreover, after the opening remarks, the subsequent *matn* provided by al-Bayhaqī shares a high degree of similarity with other variants on the authority of Abū Nu'aym. This demonstrates that the transmitters between him and Abū Nu'aym were likely transmitting from a written text. The overlap among the *matns* provided by Ibn Ḥanbal, al-Nasā'ī, and al-Bayhaqī points to a common source: Abū Nu'aym. Therefore, al-Bayhaqī's entry seems to point in the direction of Abū Nu'aym, and the latter's role in the narration is strengthened in combination with *isnād* analysis conducted thus far.

Al-Bayhaqī also provides the Burayda variant on the authority of Khallād b. Yaḥyā (d. 213 or 217, Kufa and Mecca), who was another student of Bashīr al-Muhājir. The *isnād* and *matn* read:

al-Bayhaqī - [Abū 'Abd Allāh al-Ḥāfiẓ] Muḥammad b. 'Abd Allāh (d. 405, Iraq and Mecca) - Abū al-Naḍr al-Faqīh [Muḥammad b. Muḥammad al-Ṭūsī] (d. 344, Ṭūs) - Mu'ādh b. Najda (d. 282, Ḥarra) - Khallād b. Yaḥyā (d. 213 or 217, Kufa and Mecca) - Bashīr b. al-Muhājir - 'Abd Allāh b. Burayda - Burayda:

Burayda narrated the story of the Ghāmidīyya woman, her being stoned, and Khālīd b. al-Walīd's comment about her. He<sup>635</sup> said: The Prophet of God heard Khālīd curse her and said: Stop, Khālīd b. al-Walīd. Do not curse at her. By the One in whose hand is my soul, her repentance was such that if someone in debt made the same repentance, it would be forgiven.

Then the Prophet gave the command and he and the people conducted the *jināza* prayer for her, after which she was buried.<sup>636</sup>

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<sup>634</sup> al-Bayhaqī, *Sunan al-Kubrā*, 8:399:17,007.

<sup>635</sup> Unclear who but presumably Burayda.

<sup>636</sup> al-Bayhaqī, *Sunan al-Kubrā*, 8:379:16,953.

Similar to al-Bayhaqī's report on the authority of Abū Nu'aym, this entry summarily references the incident. But it highlights the exchange between the Prophet and Khālīd b. al-Walīd. Al-Bayhaqī records a third version, which is also on the authority of Khallād b. Yaḥyā. This version has the complete *matn* which is fundamentally the same as the one provided by Ibn Abī Shayba.<sup>637</sup> Therefore, on the basis of comparative *matn* analysis, there appears to be evidence that Khallād b. Yaḥyā's participated in the transmission of the *ḥadīth*.

Biographical information on Khallād b. Yaḥyā does not directly result in a reasonable degree of confidence about his involvement in the transmission of the narrative, but in combination with *matn* analysis and the socio-historical context in which he lived, it remains possible that he was involved. He grew up in Kufa and moved to Mecca, where he died.<sup>638</sup> His reputation as a *ḥadīth* transmitter is tempered, but importantly, his narrations are not outrightly dismissed.<sup>639</sup> Given Khallād b. Yaḥyā's reputation, if someone below him in the *isnād* wished to invent an otherwise non-existent link to al-Muhājir, then they could have with one of al-Muhājir's better known and respected pupils. In short, it seems probable that Khallād received the *ḥadīth* from Bashīr al-Muhājir and circulated it accordingly.

An entry by Abū Dāwūd can also help to corroborate Bashīr al-Muhājir's role in the dissemination of the *ḥadīth*. This is because the *isnād* includes another student of al-Muhājir, and the *matn* shares a high degree of similarity to the version noted by Ibn Abī Shayba. The chain of transmission provided by Abū Dāwūd is:

Ibrāhīm b. Mūsā al-Rāzī (d. 220 or 225, Rayy) - 'Isā b. Yūnus [b. Abī Ishāq] (d.

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<sup>637</sup> al-Bayhaqī, *Sunan al-Kubrā*, 8:385:16,966.

<sup>638</sup> al-Bukhārī, *Tārīkh*, *al-Kabīr*, 3:189:638; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 3:368; Ibn Ḥibbān, *al-Thiqāt*, 8:229:13,156.

<sup>639</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 3:368; al-Mizzī, *Tadhīb al-Kamāl*, 8:361; al-Dhahabī, *Siyar A'lām*, 10:165.

187 or 191, Baghdad, Hamdan, Kufa, and Syria) - Bashīr b. al-Muhājir.<sup>640</sup>

According to biographical dictionaries, Abū Dāwūd's informant, Ibrāhīm b. Mūsā al-Rāzī, only narrated from his written notes.<sup>641</sup> And regarding *ḥadīth* transmissions, he was considered to be more proficient and accurate than Ibn Abī Shayba.<sup>642</sup> These details result in higher confidence that he narrated that which he received from his teacher, 'Īsā b. Yūnus, who in turn, is noted to have been a reliable transmitter<sup>643</sup>. Interestingly, it is only in al-Mizzī's *Tahdhīb* that I found Bashīr al-Muhājir listed as someone from whom 'Īsā b. Yūnus narrates.<sup>644</sup> Aside from this record, there are no other biographical works I searched which reference al-Muhājir whatsoever in relation to 'Īsā b. Yūnus. Hence, it seems that the Burayda variant is the only report that establishes a relationship between 'Īsā b. Yūnus and al-Muhājir. At face value, this makes the historicity of the *isnād* questionable. However, it is also conceivable that biographers may not have been aware of all *isnāds* correlated with all *ḥadīth*, or all relationships between teachers and students, such as in this case. Much of the information available on 'Īsā b. Yūnus accounts for his time in Syria, away from his birth city of Kufa.<sup>645</sup> It may be that it was during his short time in Kufa that he heard the *ḥadīth* from Bashīr al-Muhājir, and this was not widely known. Therefore, a connection between 'Īsā b. Yūnus and al-Muhājir could have existed despite the

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<sup>640</sup> Abū Dāwūd, *Sunan*, 6:488:4,442.

<sup>641</sup> Ibn Abī Hātim, *al-Jarḥ wa al-Ta'dīl*, 2:137; al-Mizzī, *Tahdhīb al-Kamāl*, 2:220; al-Dhahabī, *Siyar A'lām*, 11:141.

<sup>642</sup> Ibn Abī Hātim, *al-Jarḥ wa al-Ta'dīl*, 2:137; al-Mizzī, *Tahdhīb al-Kamāl*, 2:220; al-Dhahabī, *Siyar A'lām*, 11:141.

<sup>643</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 9:494; Ibn Abī Hātim, *al-Jarḥ wa al-Ta'dīl*, 6:291f; al-Khaṭīb al-Baghādī, *Tārīkh*, 12:475-7; al-Mizzī, *Tahdhīb al-Kamāl*, 23:69.

<sup>644</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 23:63.

<sup>645</sup> Ibn Asākir, *Tārīkh*, 48:25-45.

inability to confidently affirm it.

I have now reviewed *isnāds* and compared *matns* emanating from several of Bashīr al-Muhājir's (d. unknown, Kufa) students. The individuals are:

ʿĪsā b. Yūnus (d. 187 or 191, Baghdad, Hamdan, Kufa, and Syria)

ʿAbd Allāh b. Numayr (199, Hamdan and Kufa)

Abū Nuʿaym (d. 212 or 218-9, Kufa)

Khallād b. Yaḥyā (d. 213 or 217, Kufa and Mecca)

A relationship between al-Muhājir and most of his students can be attested to with a high degree of confidence. Coupled with the consistency found across the various *matns* on his authority, it is likely that he helped to transmit the *ḥadīth*. This means that the *ḥadīth* was in circulation during the second century (a more precise time period is difficult to resolve because of al-Muhājir's unknown death date). Additional evidence can elucidate the extent of al-Muhājir's involvement in the transmission of the information attributed to him by his students. This data can also shed light on what he may have received from his teacher, ʿAbd Allāh b. Burayda.

While biographical information on Bashīr al-Muhājir is succinct, his reputation as a *ḥadīth* transmitter is incongruent. According to Ibn Saʿd, he was a *mawlā*, though one who lacked affiliation with any person or tribe.<sup>646</sup> It may be that he converted to Islam and received the *mawlā* designation on the basis of his conversion.<sup>647</sup> Some convey that he made errors when transmitting *ḥadīth*, that he only narrated *munkar* reports, or that his narratives did not have any legal value.<sup>648</sup> The unfavorable remarks hurled at al-Muhājir may have been tied to accusations

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<sup>646</sup> Ibn Saʿd, *al-Ṭabaqāt al-Kubrā*, 8:481.

<sup>647</sup> Ibn Ṣalāḥ notes that "The term [*mawlā*] is applied to some transmitters with the sense of [becoming a *mawlā*] 'by conversion to Islam,' see Ibn Ṣalāḥ, *al-Muqaddima*, 400.

<sup>648</sup> Ibn Ḥibbān, *al-Thiqāt*, 6:98:6,885; al-Mizzī, *Tahdhīb al-Kamāl*, 4:177; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 1:439f; certain jurists did employ the Ghāmidīyya *ḥadīth* in their discussions on *zinā* laws. However, they do not provide the authority from whom they received the tradition, so it is impossible to know such jurists' sources. For example, see Abū Yūsuf, *al-Kitāb al-Kharāj*, 162f; al-Jaṣṣāṣ, *Aḥkām al-Qurʾān*, 5:97.

of him being a *murji'a* who practiced *kalām*.<sup>649</sup> The totality of the pejorative comments raises suspicion about al-Muhājir's active role. But such criticisms may have been politically motivated. This makes sense in light of the fact that some biographical entries also praise him for being a reliable *ḥadīth* narrator.<sup>650</sup> Therefore, based on a combination of *matn* analysis and biographical material, it is reasonable to accept al-Muhājir's circulation of the Burayda *ḥadīth* as reflected by the *isnāds*.

Bashīr al-Muhājir's role in the propagation of the *ḥadīth* provokes consideration for his reception of the report from his noted source, 'Abd Allāh b. Burayda (105 or 115, Basra, Kufa, Marw, and Syria). 'Abd Allāh was born some time during the third year of 'Umar b. al-Khaṭṭāb's caliphate, which means it was in 15 AH.<sup>651</sup> It is recorded that he, along with his father, traveled to Damascus to give allegiance to Mu'āwiya (d. 60).<sup>652</sup> During the latter part of his life, he served as a judge in Marw. This is important because it advocates for his probable inclination towards substantive legal issues, which could include deliberations about the proper sanctions for *zinā* offenders.<sup>653</sup> For these reasons, a *ḥadīth* about the Prophet's order to stone a woman for *zinā* would be important to him. Therefore, it is sensible to find his involvement in a report that encapsulates an important legal concern.

In consideration of the 'Abd Allāh's biography and likely engagement with legal matters,

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<sup>649</sup> Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 1:440; al-'Uqaylī, *Kitāb al-Ḍu'afā'*, 1:144; for an overview of the *murji'a*, see generally *Encyclopaedia of Islam* 2nd ed., s.v. "Murḍījī'a," van Ess, *Theology and Society in the Second and Third Centuries of the Hijra*, 1:173-253.

<sup>650</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 4:177; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 1:439f.

<sup>651</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 9:220; Ibn 'Asākir, *Tārīkh*, 27:139; al-Mizzī, *Tahdhīb al-Kamāl*, 14:332.

<sup>652</sup> Ibn 'Asākir, *Tārīkh*, 27:126.

<sup>653</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 5:13; Ibn Ḥibbān, *al-Thiqāt*, 5:16; Ibn 'Asākir, *Tārīkh*, 27:133.

I now turn to resolve what he may have discussed. A report provided by Ibn Abī Shayba is helpful for this aim. He provides a shorter version of the *ḥadīth*, but with the same *isnād* he records for the detailed account. This *isnād* and *matn* read:

Ibn Abī Shayba - ‘Abd Allāh b. Numayr (199, Hamdan and Kufa) - Bashīr b. al-Muhājir (d. unknown, Kufa) - ‘Abd Allāh b. Burayda (105 or 115, Basra, Kufa, Marw, and Syria) - Burayda b. al-Ḥuṣayb al-Aslamī (d. 63, Basra, Khurasan, Marw, Mecca, Medina, and Syria):

A Ghāmidīyya woman came to the Prophet and confessed to *zinā* in his presence. He ordered a chest-deep hole be dug up for her. Then he gave the order to the people and they stoned her. Then he gave the order to the people and he and others conducted the *jināza* prayer for her, after which she was buried.<sup>654</sup>

It is doubtful that this account is meant to be a summary of the detailed version. If it was, then it would be logical to find reference to the omitted details, such as in the way al-Bayhaqī does in the report he furnishes. Moreover, the missing information is of sufficient legal importance for it to be ignored. The disparity between the truncated and the protracted versions can be explained by the fact the latter iteration emerged after ‘Abd Allāh’s teaching sessions with Bashīr al-Muhājir. In other words, it is more conceivable that Ibn Abī Shayba’s short version reflects what ‘Abd Allāh actually transmitted to Bashīr al-Muhājir.

Other narratives intimate that particular details intertwined with ‘Abd Allāh’s (d. 105 or 115) transmission soon after his death and resulted in the more detailed variant. For example, a report provided by Mālik in the *Muwatta’* reads:

Mālik - Ya‘qūb b. Zayd b. Ṭalḥa (d. ca. 136, Mecca and Medina) - Zayd b. Ṭalḥa (d. unknown) - ‘Abd Allah b. [‘Ubayd Allah] b. Abī Mulayka (d. 117-8, Mecca, Medina, and Ṭā’if):

A woman came to the Messenger of God and told him that she committed *zinā* and that she was pregnant. The Messenger of God said to her: Go away until you give birth.

When she gave birth, she came back to the Prophet and he said: Go away until you

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<sup>654</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:361:29,386.

are finished nursing him.

After she did that she came back and the Prophet said: Go away so you can take care of him.

She did that and then came back again, at which point the Prophet gave the command and she was stoned.<sup>655</sup>

And as I noted previously, a report provided by ‘Abd al-Razzāq states:

Ma‘mar [b. Rāshid] (d. 153, Basra, Medina, and Yemen) - Ayyūb [al-Sakhtiyānī] (d. 131, Basra and Medina) - ‘Aṭā’ b. Abī Rabāḥ (d. 115, Mecca):

A woman came to the Prophet and confessed to *zinā* and the Prophet sent her away four times. On the fourth confession she asked him: Messenger of God, are you sending me away as you did Mā‘iz b. Mālik?

The Prophet said: Take care of her until she gives birth.

[And?]<sup>656</sup> then he said: Nurse the child.

A man said: Let me take care of that.

Then the Prophet gave the command and she was stoned.<sup>657</sup>

These reports encapsulate several of the elements found in Burayda’s detailed *ḥadīth* about the self-confessing Ghāmidīyya woman. According to the *isnāds* recorded by Mālik and ‘Abd al-Razzāq, the narratives were in circulation by the beginning of the second century. It thus seems that shortly after ‘Abd Allāh’s death, additional elements were interwoven with his account, which ultimately became the detailed story supposedly discussed by his father.

A comparative analysis with Mā‘iz *ḥadīth* also points to Burayda’s detailed version emerging after ‘Abd Allāh’s death. It is worth noting that the Mā‘iz *ḥadīth*’s *isnād* includes ‘Abd

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<sup>655</sup> Mālik, *Muwattaʿa*’, 1,199:3039/627.

<sup>656</sup> It is unclear if the second command was immediately after the first one, or if the woman first gave birth and returned, at which point the Prophet gave the second command.

<sup>657</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:324f:13,345.



Allāh and his father, Burayda. An entry about the stoning of Māʿiz in Ibn Abī Shayba's

*Muṣannaf* reads:

Ibn Abī Shayba - ʿAbd Allāh b. Numayr (199, Hamdan and Kufa) - Bashīr b. al-Muhājir (d. unknown, Kufa) - ʿAbd Allāh b. Burayda (105 or 115, Basra, Kufa, Marw, and Syria) - Burayda b. al-Ḥuṣayb al-Aslamī (d. 63, Basra, Khurasan, Marw, Mecca, Medina, and Syria)

Māʿiz b. Mālīk al-Aslamī came to the Messenger of God and said: I have wronged myself by committing *zinā* and I want you to purify me.

The Prophet sent him away and he came back the next day and said: Messenger of God, I have committed *zinā*.

The Prophet sent him away for a second time and sent for his people. He asked them: Do you know if he is mentally stable? Is there anything strange about him?

Māʿiz's people responded: We do not know much about him except that his mental acumen is better than any of ours.

Māʿiz came to the Prophet for a third time so the Prophet again went to Māʿiz's people with him to inquire about his competency. They again informed the Prophet that there was nothing wrong with him. After the fourth confession, a hole was dug up for Māʿiz and the Prophet gave the order for him to be stoned, and he was stoned.<sup>658</sup>

The following is a side-by-side comparison of the Māʿiz and Ghāmidīyya *ḥadīth*:

Māʿiz	Ghāmidīyya Woman
Confesses to <i>zinā</i> and asks the Prophet to purify him.	Confesses to <i>zinā</i> and asks the Prophet to purify her.
Returns the next day for a second confession.	Returns the next day for a second confession.
Prophet sends him away and goes to his people to inquire about his mental sanity.	Prophet sends her away until she gives birth.
Returns for a third confession.	Returns with baby. <i>Implicit is third confession.</i>
Prophet goes with Māʿiz to his people and inquires about his competency.	Prophet sends her away until she weans the baby.

<sup>658</sup> Ibn Abī Shaybā, *al-Muṣannaf* (2008 ed.), 9:352f:29,350.

Returns for a fourth confession.	Returns after child is weaned off of nursing. <i>Implicit is fourth confession.</i>
Orders a hole to be dug up for him and then has him stoned.	Orders a chest-high hole to be dug for her and then has her stoned.

The overlap is not coincidental, and points to the two narratives emerging within the purview of one another. The commonality between the Māʿiz and Ghāmidiyya reports indicate that the detailed version of the Burayda variant came onto the scene some time after ʿAbd Allāh’s death.

An early provenance of the detailed Ghāmidiyya *ḥadīth* is also betrayed by a specific clause in its *matn*: the insinuation about the Prophet’s treatment of Māʿiz. Indeed, Muslim (d. 261) provides the self-confessing woman *ḥadīth* directly from Ibn Abī Shayba with a virtually identical *matn*.<sup>659</sup> This indicates that Muslim had access to a written text which he copied into his *Ṣaḥīḥ*. However, unlike Ibn Abī Shayba, Muslim first records a *ḥadīth* about Māʿiz b. Mālik, which is *also* on the authority of ʿAbd Allāh b. Burayda and going back to his father.<sup>660</sup> Given the identical transmitters, it is unsurprising that Muslim constructed the stories of the Ghāmidiyya woman and Māʿiz as a single narrative. His efforts also make sense in light of the fact the Ghāmidiyya self-confessor asks the Prophet if he is sending her away as he did Māʿiz.

Deliberate attempts to create a temporal sequence from Māʿiz to the Ghāmidiyya come into sharper focus based on a comment by al-Bayhaqī. He first notes Ibn Abī Shayba’s account of the Māʿiz narrative as recorded by Muslim, and then comments:

And we narrate the *ḥadīth* of ʿAbd Allāh b. Burayda, who narrated from his father, who spoke about the Prophet and the story of the Ghāmidiyya woman. The Prophet ordered that she be stoned. Then he prayed for her, after which she was buried. The story of the Ghāmidiyya woman is *after* the story of Māʿiz in accordance with her comment: Messenger of God, do not send me away. Perhaps you wish to send me

<sup>659</sup> Muslim, *Ṣaḥīḥ*, 1,323f:23.

<sup>660</sup> Muslim, *Ṣaḥīḥ*, 1,323f:23.

away as you did Mā‘iz, but by God I am pregnant.<sup>661</sup>

In short, al-Bayhaqī’s remark demonstrates that *ḥadīth* collectors combined the Mā‘iz and Ghāmidiyya stories. The purpose was to give the impression that the events occurred successively, which ostensibly clarified the logic for a connection to Mā‘iz in the Ghāmidiyya *matn*. One possible reason may have been to convey that it was Mā‘iz and the Ghāmidiyya woman who committed *zinā* with one another. This is why she was pregnant and the reason for delaying her punishment. But regardless of who impregnated her, the temporary moratorium would then afford a rationale for the unfolding of the narrative in the manner that it did. By corralling the Prophet’s treatment of Mā‘iz into the conversation, a later circulation of the detailed Burayda variant is thinly veiled.

### The Significance of Motifs

To determine the importance of specific motifs in the Ghāmidiyya *ḥadīth* on ‘Abd Allāh’s authority, I provide a chart which compares his *matn* with the detailed variant purportedly circulated by the Companion ‘Imrān b. Ḥuṣayn:

‘Imrān b. Ḥuṣayn	Burayda b. al-Ḥuṣayb
Juhayna woman confesses to <i>zinā</i> in the presence of the Prophet.	Ghāmidiyya woman confesses to <i>zinā</i> in the presence of the Prophet and asks to be purified.
	Prophet sends her away.
	The woman returns and confesses.
Says that she is pregnant.	Says that she is pregnant.
Prophet calls for her guardian and instructs him to take care of her until she gives birth.	Prophet tells her to go away until she gives birth.
	She returns and the Prophet tells her to go away until she weans the child.
	She returns and the Prophet places the boy

<sup>661</sup> al-Bayhaqī, *Sunan al-Kubrā*, 8:380f:16,956 (emphasis mine).

	in the custody of a Muslim man.
Bound up by her clothes.	Placed in a chest-high hole.
The Prophet orders her to be stoned.	The Prophet orders her to be stoned.
The Prophet prays for her.	
Conversation between the Prophet and ‘Umar.	Conversation between the Prophet and Khālid b. al-Walīd.
Repentance equal to the repentance of 70 Medinans.	Repentance equal to debt being forgiven.
	The Prophet prays for her and she is buried.

Without any elaborations, some variants on ‘Imrān b. Ḥuṣayn’s authority note both that the woman confessed, and that she was stoned on the Prophet’s authority. This would imply that a single confession, irrespective of the condition(s) under which it was submitted (such as duress), was satisfactory to implement the capital punishment. In the detailed ‘Imrān b. al-Ḥuṣayn version, a second confession was established based on the woman’s *presumably voluntary* return after the delivery of her child. Therefore, her case was decided on the basis of two confessions. While this would be higher than the single confession, it still constitutes a lower standard for conviction than the four-witness evidentiary burden required by the Qur’ān. In the Burayda variant, the initial two confessions, in combination with the staying of the punishment, and the order to return after weaning the child, increased the number of confessions to four. Therefore, the Ghāmidīyya *ḥadīth* resolved the inconsistency between the Juhayna variants and the Qur’ānic four-witness requirement by concerning itself with the Prophet’s delay to implement the punishment until certain events took place.

‘Abd Allāh’s narrative asserts that the woman was placed in a hole, and this detail most probably emerged in conversation with Mā‘īz variants. In a report provided by ‘Abd al-Razzāq: Ibn Jurayj (d. 150, Mecca) - ‘Aṭā’ b. Abī Rabāḥ (d. 114, Mecca):

A man went to the Messenger of God and said: I have committed *zinā*.

The Prophet sent him away. The man came back and said the same thing for a second time, and the Prophet sent him away again. Then the man came back and said the same thing for a third time, and the Prophet sent him away. Then the man came back and said it for a fourth time, after which the Prophet said: Stone him.

‘Aṭā’ said: The man became anxious and ran away. The Prophet was informed of this and they further added: He tried to flee, Messenger of God.

The Prophet responded: Why did you not leave him alone?...<sup>662</sup>

In other versions of the story, those who began to stone Mā‘iz chase him down once he flees, and after catching up to him, stone him to death. This portion of the account is omitted in the comment by ‘Aṭā’, but is important to understand why the Prophet makes the inquiry. In an version al-Nasā‘ī provides, the narrator specifically states they neither dug a hole for him *nor* tied him up, so when the stoning began, he attempted to flee.<sup>663</sup> And in another variant about Mā‘iz, Burayda is recorded to have said that a *chest-high* hole was dug up for Mā‘iz (*ju‘ila fīhā ilā ṣadr[i]hu*)<sup>664</sup> - the same comment made in reference to the Ghāmidīyya self-confessing woman. As noted in the ‘Imrān b. al-Ḥuṣayn section, the binding of the woman may have emerged in the context of a shared practice among pre-Islamic cultures. Because Mā‘iz is recorded to have attempted to escape, cross-pollination of *ḥadīth* resulted in amending the manner by which the woman was secured: from binding to being put in a hole.

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<sup>662</sup> ‘Abd al-Razzāq, *al-Muṣannaḥ*, 7:319:13,334; for examples of different versions in which Mā‘iz is recorded to have attempted to flee, see *ibid.*, 320:13,337, 322f:13,341; Abū Yūsuf, *Kitāb al-Āthār*, 157:719; Ibn Abī Shaybā, *al-Muṣannaḥ* (2008 ed.), 9:351:29,345 and 352:29,346; Ibn Ḥanbal, *Musnad* (1995 ed.), 10:194:11,532; al-Bukhārī, *Ṣaḥīḥ*, 2,499:6,430; Muslim, *Ṣaḥīḥ*, 1,318:16; al-Tirmidhī, *al-Jāmi‘*, 3:98:1,428; al-Nasā‘ī, *al-Sunan al-Kubrā*, 6432f:7,160; on the ways in which the Prophet’s statement of disapproval functioned to substantiate the legal maxim, “Suspend the *ḥudūd* in cases of doubt,” see Rabb, *Doubt in Islamic Law*, 31ff.

<sup>663</sup> al-Nasā‘ī, *al-Sunan al-Kubrā*, 6:432f:7,160.

<sup>664</sup> Ibn Ḥanbal, *Musnad* (1995 ed.), 16:474:22,838.

Reference to the tribe of Ghāmid seems to have been deliberate. It is recorded that after their conversion to Islam, the Prophet informed the Ghāmidīs about legal and non-legal Islamic prescriptions (*sharāʿiʿ al-Islām*).<sup>665</sup> This suggests that the tribe would have been involved in dealing with Islamic legal matters. One Ghāmidī, Muḥammad b. ʿAbd Allāh b. ʿAmmār (d. 242, Baghdad and Mawsil), was known for his religious knowledge as well as for his transmission of numerous *ḥadīth*.<sup>666</sup> Therefore, reference to the tribe conceivably emerged within the purview of reports addressing the matter of *zinā*, the Ghāmidīs reception of legal instructions from the Prophet, and its members' involvement in the circulation of Prophetic reports (Ibn ʿAmmār would likely have shared his *ḥadīth* knowledge with other members of his tribe).

Several issues arise from the report that the Prophet entrusted the custody of the child to a Muslim. For example, according to some legal opinions, in the event that a child is considered to have resulted from illicit sexual relations, the child's inheritance is given to the tribe of mother after the mother receives her portion.<sup>667</sup> In other words, a legal relationship is recognized between an individual and the tribe to which they belong. But in Burayda's detailed variant, the custody of the child is granted to a Muslim after the mother's death, *not* specifically to someone from the tribe of Ghāmid. This complicates the narrative for at least two reasons. First, it raises the possibility that the Ghāmid story might be very old, and only later was clothed with the Prophet's involvement. In other words, the woman's religion may have been something other than Islam. To be clear, I am only raising an issue that materializes because of child custody: I am not making an affirmative claim about the self-confessing woman's religious status could

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<sup>665</sup> Ibn Saʿd, *al-Ṭabaqāt al-Kubrā*, 1:298.

<sup>666</sup> al-Samʿānī, *al-Ansāb*, 10:11f.

<sup>667</sup> ʿAbd al-Razzāq, *al-Muṣannaf*, 7:123-6:12, 475-90.

have been. Second, legal opinions also indicate that in cases of paternity disputes, custody is granted to someone who has a legal right to sexual access to the mother but who may not clearly be the father.<sup>668</sup> If the self-confessing woman was married, then her husband should have received custody of the child. As a matter of fact (as noted in the chart above), in the Juhayna variant the Prophet ordered the woman's guardian - who may not have been her husband - to take care of her until she gave birth. Therefore, due to the Prophet's instructions about child custody procedures, unresolved legal issues surface which intimate amendments to the Ghāmidiyya narrative(s).

An issue that I highlighted with variants by 'Imrān b. al-Ḥuṣayn remains with the Ghāmidiyya reports: short of assumptions, the type of *zinā* is unclear. She could have been unmarried, a virgin, a non-virgin divorcé, a widow, or married but without *iḥṣān*. In fact, she could have been pregnant from licit sexual intercourse. Consequently, the circumstances and form(s) of *zinā* warranting the punishment must be read into the story. This is likely why in one Burayda variant, the Prophet is recorded to have asked the woman if she was a *thayyib*, as this would clarify her legal status and thereby the form of *zinā* she committed.<sup>669</sup>

The conversation between Khālīd b. al-Walīd (d. 121-2) and the Prophet in the Burayda variants parallels the dialogue between 'Umar and the Prophet in the 'Imrān b. al-Ḥuṣayn reports. The Prophet's censure of Ibn al-Wālīd (re)emphasizes a relationship between punishment and forgiveness. The persona of Khālīd b. al-Walīd may have been compelling because as "The Sword of God," he was known to have been an effective military leader used by

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<sup>668</sup> 'Abd al-Razzāq, *al-Muṣannaḡ*, 7:218:12,862 and 219:12,864.

<sup>669</sup> al-Bayhaqī, *Sunan al-Kubrā*, 8:394f:16,993 and 399:17,006.

Abū Bakr (r. 11-13) to conquer Iraq.<sup>670</sup> Thus, his reputation, and contribution towards spreading Islam in Iraq provides reasons for his name's appearance in the *ḥadīth*. The association of Ibn al-Walīd with the Burdaya's version may also be on the account of an incident involving 'Alī b. Abī Ṭālib. According to a report, the Prophet sent 'Alī to Ibn al-Walīd to collect the *khums*, a tax in addition to the *zakāt*. Once 'Alī took possession of it, Khālid b. al-Walīd bemoaned to Burayda that he did not approve of the share which 'Alī collected. Thereafter, Burayda reported Ibn al-Walīd's displeasure to the Prophet. The Prophet ameliorated Burayda's agitation by stressing that 'Alī had even more right to that which he received from the *khums*.<sup>671</sup> Given the predominance of Iraqi transmitters in the *isnāds* of the Ghāmidīyya *ḥadīth*, it is highly probable that the conversation between Ibn al-Walīd and the Prophet emerged because of Ibn al-Walīd's participation in the spread of Islam to Iraq and his association with Burayda

### ***Isnāds and matns on the authority of Sulaymān b. Burayda***

I now turn my attention to reports transmitted on the authority of 'Abd Allāh's brother, Sulaymān (d. 105, Basra and Marw). In the compilations I investigated, three *ḥadīth* collectors provide the Burayda variant with Sulaymān in the *isnād*: Muslim (d. 261), al-Nasā'ī (d. 303), and al-Bayhaqī (d. 458). An analysis of the *isnāds* and a comparison of *matns* transmitted by Sulaymān b. Burayda generates probative information about these variants and their place in the broader context of the Ghāmidīyya story. It is very much possible that Sulaymān's account was constructed as a response to the reputations of the transmitters in the *isnāds* of 'Abd Allāh's variant, as well as the result of a post-'Abd Allāh version.

The *matns* recorded by the three *ḥadīth* collectors share an inescapably high degree of

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<sup>670</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 8:188; al-Dhahabī, *Siyar A'lām*, 1:366; *Encyclopaedia of Islam* 2nd e.d., s.v. "Khālid b. al-Walīd."

<sup>671</sup> Ibn Athīr, *Usad al-Ghāba*, 108f.



similarity. The *isnād* and *matn* of Muslim's entry read:

Muslim - Muḥammad b. al-‘Alā' al-Hamdānī (d.) - Yaḥyā b. Ya‘lā b. al-Ḥārith al-Muḥārībī (d. 216, Kufa) - Ghaylān b. Jāmi‘ al-Muḥārībī (d. 132, Bukhāra and Kufa) - ‘Alqama b. Marthad (d. 120, Ḥaḍramawt and Kufa) - Sulaymān b. Burayda (d. 105, Basra and Marw) - Burayda b. al-Ḥuṣayb:

Then a woman from Ghāmid of the al-Azd came to the Prophet and said: Messenger of God, purify me.

The Prophet responded: If you go down this path, you will regret it! Go away and seek forgiveness from God and repent to Him!

She replied: Are you sending me away just as you did Mā‘iz?

The Prophet then asked: What is this?

The woman responded: I am pregnant as a result of *zinā*.

The Prophet asked her: Will you soon be delivering (*ānti*)?

She responded: Yes.

So the Prophet said to her: Go and give birth.

A man from the Anṣār took care of her until she gave birth. Once the child was born, he went to the Prophet and said: The Ghāmidīyya woman has given birth.

The Prophet said: We will not stone her. We will leave her small child with her because there is no one to nurse him.

Then a man from the Anṣār got up and said: I have someone who can nurse him, Prophet of God.

Upon hearing that the Prophet had her stoned.<sup>672</sup>

The *isnād* al-Nasā‘ī furnishes is:

al-Nasā‘ī - Ibrāhīm b. Ya‘qūb [b. Ishāq] al-Jawzajānī (d. 259, Egypt, Basra, Mecca, and Syria) - Yaḥyā b. Ya‘lā b. al-Ḥārith (d. 216, Kufa) - Ya‘lā b. al-Ḥārith (d. 168, Kufa) - Ghaylān b. Jāmi‘ - ‘Alqama b. Marthad - Sulaymān b. Burayda - Burayda b. al-Ḥuṣayb.<sup>673</sup>

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<sup>672</sup> Muslim, *Ṣaḥīḥ*, 1,321-3:22 (1,695).

<sup>673</sup> al-Nasā‘ī, *al-Sunan al-Kubrā*, 6:426:7,148

Al-Bayhaqī's *matn* consists of the same information found in reports provided by Muslim and al-Nasā'ī, respectively.<sup>674</sup> As in the case with the variants disseminated on the authority of 'Abd Allāh, the core elements remain intact in Sulaymān's account:

- 1) A Ghāmidiyya woman confesses to *zinā* in the presence of the Prophet and asks to be purified;
- 2) the Prophet attempts to dissuade her but she insists;
- 3) the Prophet stays the punishments until she gives birth;
- 4) the child's custody is given to someone other than someone from her tribe (or husband);
- 5) the woman is stoned.

Several tropes in Sulaymān's variant allude to his report emerging from 'Abd Allāh's narrative. The *matn* recorded on Sulaymān's authority incorporates cues which help transition seemingly disjointed clauses in 'Abd Allāh's versions. For example, in Sulaymān's rendition of the story, the woman admits that she is pregnant from *zinā*. As I noted in 'Abd Allāh's reports, it was unclear if her pregnancy resulted from illicit sexual intercourse. Sulaymān's narrative explains why the Prophet sends the woman away upon her first confession: she should keep it a secret and repent to God. No clear reason is provided in 'Abd Allāh's narrative. Next, in Sulaymān's description of the incident, the Prophet orders the staying of the punishment as a function of the pregnancy's length, not the pregnancy itself. This element likely materialized in

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<sup>674</sup> The *isnād* provided by al-Bayhaqī is: al-Bayhaqī - Abū 'Abd Allāh al-Ḥāfiẓ [Muḥammad b. 'Abd Allāh] (d. 405, Iraq and Mecca) and Abū Bakr Aḥmad b. al-Ḥasan al-Qāḍī (d. 421, Baghdad, Ḥijāz, Jurjān, and Nishapur) - Abū al-'Abbās Muḥammad b. Ya'qūb (d. 346, Egypt, Nishapur, and Syria) - Ja'far b. Muḥammad [b. Shākir] al-Ṣā'igh (d. 279, Baghdad) - Yahyā b. Ya'lā b. al-Ḥārith al-Muḥārabi - Ya'lā b. al-Ḥārith (d. 168, Kufa) - Ghaylān b. Jāmi' - 'Alqama b. Marthad - Sulaymān b. Burayda - Burayda, see al-Bayhaqī, *Sunan al-Kubrā*, 8:372f:16,928; al-Bayhaqī also provides the report from Yahyā b. Ya'lā, who narrates it from his father, to al-'Abbās b. Muḥammad [b. Ḥātim b. Wāqid] b. al-Dūrī (d. 271, Baghdad and al-Dūr), see al-Bayhaqī, *Sunan al-Kubrā*, 8:394f:16,993 and 399:17,006.

conversation with debates about abortion.<sup>675</sup> The inquiry about the pregnancy's term served to indicate a specific legal position in Islamic laws about the point at which a fetus is considered to have a soul. Depending on the duration of the pregnancy, the punishment would have to be stayed for any female offender. Lastly, in Sulaymān's version, the Prophet does not specifically instruct someone to take care of her. Rather, it is presumed. In sum, transition commentary appears in Sulaymān's variant, which smooths out a certain level of disconnect and provide clarity for particular actions noted in 'Abd Allāh's version. This crafting points to Sulaymān's narrative materializing after the *ḥadīth* that was spread on 'Abd Allāh's authority.

Sulaymān's and 'Abd Allāh's renditions also differ in their conclusions. In Sulaymān's *matn*, there is no mention of the Prophet's order to dig a chest-high hole for the woman, the conversation between Khālīd b. al-Walīd and the Prophet, the Prophet's order to pray for her, or of her being buried. If Sulaymān's variant emerged after 'Abd Allāh's, then these elements became moot, because the core message remains intact: the Prophet ordered the stoning of a Muslim woman and punishment served as expiation.<sup>676</sup>

From an *isnād* standpoint, biographical information about the transmitters provide additional reasons for accepting a late circulation of Sulaymān's variant. Yaḥyā b. Ya'īlā b. al-Ḥārith al-Muḥārībī (d. 216, Kufa) is the earliest common source, and while not much is written about him, he is considered to be a reliable *ḥadīth* transmitter.<sup>677</sup> Unlike the *isnād* provided by

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<sup>675</sup> For an overview on abortion in Islamic law, see generally *Encyclopaedia of Islam* 3rd. ed., s.v. "Abortion."

<sup>676</sup> Coincidentally, Sulaymān's report indicates that a supposed divinely-prescribed punishment can be suspended in its entirety at the discretion of an execute authority. Specifically, if the woman had no one to take care of the child, stoning would have been disallowed. Of course this raises interesting questions. For example, what would happen once the child grows up and is no longer under the care of his mother? Would the punishment be applied then? The notion of expiation would certainly be complicated.

<sup>677</sup> Ibn Ḥibbān, *al-Thiqāt*, 9:261:16,327; al-Mizzī, *Tadhīb al-Kamāl*, 32:48; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 7:127.

Muslim, both al-Nasā'ī and al-Bayhaqī note his father, Ya'ālā b. al-Ḥārith al-Muḥāribī (d. 168, Kufa), as the person from whom his son narrates the *ḥadīth*. This is more tenable on the basis of death dates alone. The gap between Ghaylān b. Jāmi' al-Muḥāribī (d. 132, Bukhāra and Kufa) and Yaḥyā b. Ya'ālā (d. 216) is 84 years, meaning Yaḥyā b. Ya'ālā would have had to been quite young - perhaps a toddler - when he could have met and received the *ḥadīth* from Ghaylān b. Jāmi'. Hence, it is more plausible that someone in Muslim's *isnād* made an error by excising Ya'ālā b. al-Ḥārith's name. Moving onto Ya'ālā b. al-Ḥārith al-Muḥāribī (d. 168, Kufa), he had a favorable reputation as a *ḥadīth* transmitter and many Kufans narrated from him.<sup>678</sup> This last point is of interest because as noted above, all of Bashīr al-Muḥājir's students resided or visited Kufa, and some are noted to have received *ḥadīth* from Ya'ālā b. al-Ḥārith (d. 168, Kufa). Yet not one of them draws upon him as a source for the Ghāmidīyya report. I concede that this is an *ex silentio* argument. However, the review of *matns* and *isnāds* associated with Burayda's two sons illustrates that Sulaymān's report emerged the *ḥadīth* on 'Abd Allāh's authority.

There are two additional explanations for why Sulaymān's *isnād* may have been constructed in error. First, the person whom Yaḥyā b. Ya'ālā b. al-Ḥārith and his father reference is Ghaylān b. Jāmi' al-Muḥāribī (d. 132, Bukhāra and Kufa), a Kufan judge.<sup>679</sup> The authority he garnered as a public figure and as a fellow al-Muḥāribī explains why he may have been referenced. Second, Ghaylān b. Jāmi''s informant, 'Alqama b. Marthad (d. 120, Kufa, Ḥaḍramawt, and Rayy), shares the same *nisba* as those below him in the *isnād*, and he was also

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<sup>678</sup> al-Bukhārī, *Tārīkh*, 8:418:3,350; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 9:304; Ibn Ḥibbān, *al-Thiqāt*, 7:653:11,916; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 7:224.

<sup>679</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 8:471; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 7:53; al-Mizzī, *Tahdhīb al-Kamāl*, 23:128; Ibn Ḥajar, *al-Iṣāba*, 23:128.

considered to be a respected *ḥadīth* transmitter.<sup>680</sup> Biographical entries specify that a number of legal authorities, including Abū Ḥanīfa (d. 150), narrated from ‘Alqama. Likewise, ‘Alqama’s informant, Sulaymān b. Burayda (d. 105, Basra and Marw), was not held in any less regard than others in the *isnād*. He was the identical twin brother of ‘Abd Allāh, served as a judge in Marw, and was considered to be a reliable *ḥadīth* transmitter.<sup>681</sup> Moreover, while ‘Abd Allāh was accepted as a *muḥaddith*, Sulaymān was thought of as being more trustworthy and proficient in *ḥadīth* transmission than his brother.<sup>682</sup> On the account of the aforementioned biographical information, throughout Sulaymān’s *isnād* the transmitters garnered more accolades, had stronger affinity with one another, and were more consistently recognized as public legal authorities than the individuals recorded in ‘Abd Allāh’s chains of transmission (save ‘Abd Allāh himself). These characteristics, along with comparative *matn* analysis, serve as evidence for the probable emergence of Sulaymān’s account of the Ghāmidīyya self-confessor after his brother’s version.

In summary, ‘Abd Allāh b. Burayda helped circulate a *ḥadīth* in which the Prophet ordered the stoning of a Muslim woman who self-confessed to *zinā*. His student Bashīr al-Muhājir in turn helped transmit this report in Iraq. After ‘Abd Allāh’s death, certain elements fused with his narrative, including an alignment of the number of self-confessions with the Qur’ānic four-witness standard. The influence of the Mā‘iz *ḥadīth* also generated several modifications, some of which also circulated on ‘Abd Allāh b. Burayda’s authority. The literary

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<sup>680</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta’dīl*, 6:406; al-Mizzī, *Tadhīb al-Kamāl*, 20:310; al-Dhahabī, *Siyar A’lām*, 5:206; Ibn Ḥajar, *Tahdhīb al-Thadhīb*, 4:560.

<sup>681</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta’dīl*, 4:102; al-Mizzī, *Tadhīb al-Kamāl*, 11:370 and 14:331; Ibn Ḥajar, *Tahdhīb al-Thadhīb*, 3:313 and 3:422.

<sup>682</sup> Ibn Sa’d, *al-Tabaqāt al-Kubrā*, 9:220; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta’dīl*, 4:102; al-Mizzī, *Tadhīb al-Kamāl*, 11:371; Ibn Ḥajar, *Tahdhīb al-Thadhīb*, 3:313.

style of Sulaymān b. Burayda's variant, and the highly favorable legal reputations of the report's transmitters, point to its circulation sometime after 'Abd Allāh's account of the story. But ultimately, the *ḥadīth* primary function - to legitimate stoning as an Islamic punishment on Prophetic authority - persevered. What remains to be explained is the Companion Burayda b. al-Ḥuṣayb's own role, if any, in the dissemination of the report. As in the case of 'Imrān b. Ḥuṣayn, I defer my comments about Burayda's involvement to section five of this chapter. Presently, I turn my attention to one other variant of the self-confessing woman *ḥadīth*, which was purportedly transmitted by the Companion Abū Bakra.

### **Section 3. Reports by the Companion Abū Bakra Nufay' b. al-Ḥārith al-Thaqafī (d. 51-3 or 59, Basra and Syria)**

Sometimes it is the obscure or the rarely-cited reports that are of consequence. This appears to be the case with the self-confessing woman *ḥadīth* reported by the Companion Abū Bakra Nufay' b. al-Ḥārith al-Thaqafī (d. 51-3 or 59, Basra and Syria), a manumitted slave from Ṭā'if. In this section, I analyze *isnāds* and *matns* to illustrate why his version of self-confessing *ḥadīth* is critical for understanding the beginnings of the process by which stoning became an Islamic punishment. I also compare and contrast the *matn* supposedly transmitted by him with those examined in the previous sections, to determine the likely provenance of the details embedded in his reports. In my estimation, Abū Bakra's narrative may have been one of the earliest to associate the use of stoning for Muslims on Prophetic authority.

According to the extant *isnāds* for Abū Bakra's variant, Zakarīyyā Abī 'Imrān (d. unknown, Basra) transmitted the *ḥadīth* to several others. In other words, he seems to be the common source from whom other *isnāds* fan out. To appraise his role in the dissemination of the report, I examine *isnāds* and compare *matns* narrated by his students. If evidence cannot dismiss

the historicity of the *isnāds*, and the *matns* associated with this students have sufficient overlap, then we will be on stronger footing to accept Zakarīyyā Abī ‘Imrān’s involvement in the circulation of this *ḥadīth*.

One pupil of Zakarīyyā Abī ‘Imrān is ‘Abd al-Ṣamad b. ‘Abd al-Wārith (d. 206-7, Basra), and his account is provided by Ibn Ḥanbal. The entry reads:

Ibn Ḥanbal - ‘Abd al-Ṣamad [b. ‘Abd al-Wārith] (d. 206-7, Basra) - Zakarīyyā b. Sulaym al-Minqarī [Abū ‘Imrān] (d. unknown, Basra) - a man who narrated it to ‘Amr b. ‘Uthmān (unknown), and I was present - ‘Abd al-Raḥmān b. Abī Bakra (d. 96 sometime after 80 or 90, Basra and Syria) - Abū Bakra [Nufay‘ b. al-Ḥārith al-Thaqafī] (d. 51-3 or 59, Basra, Syria, and Ṭā’if):

Abū Bakra saw the Messenger of God halted on his female mule when a group of people brought a pregnant woman to him. She said that she committed *zinā*, or an illicit sexual act (*baghat*), and she asked the Prophet to stone her. The Messenger of God replied: Conceal your offense with God.

She left and came back for a second time when the Prophet was on his mule, and said to the Prophet: Stone me, Prophet of God.

The Prophet replied: Conceal your offense with God.

She left and came back for a third confession while the Prophet was halted on his mule. But this time, she grabbed the mule's bridle and said: I implore you by God to stone me.

The Prophet responded: Go away until you have give birth.

She left and gave birth to a boy. Thereafter she returned to the Messenger of God.

The Prophet said to her: Go and finish your postpartum menses.

She left and came back to the Prophet and said she was finished. The Messenger of God sent for some women, and ordered them to have her cleaned up. They proceeded accordingly, returned, and testified to her cleanliness in the presence of the Messenger of God. Then the Prophet ordered that a chest-high hole be dug up for her. The Messenger of God and other Muslims approached her, and the Prophet picked up a stone the size of a chickpea and threw it at her. He moved away and said to his fellow Muslims: Hit her but avoid her face.

Once she perished, the Prophet ordered she be removed from the hole. Then he

participated in the *jināza* prayer for her and said: If her recompense was spread over the people of Ḥijāz, it would be sufficient for all of them.<sup>683</sup>

Al-Nasā'ī provides the *ḥadīth* on the authority of Muḥammad b. al-Muthannā (d. 252, Baghdad and Basra), who in turn narrates the report from 'Abd al-Ṣamad,<sup>684</sup> the informant of Ibn Ḥanbal. All of the elements in al-Nasā'ī's account are also in Ibn Ḥanbal's entry, which suggests that 'Abd al-Ṣamad's was involved in the dissemination of the *ḥadīth*. This in turn intimates that his teacher - Zakarīyyā Abī 'Imrān - could also have been involved in the circulation of the report.

Al-Nasā'ī provides another iteration of the *ḥadīth* which can help substantiate 'Abd al-Ṣamad's, and by extension, Zakarīyyā Abī 'Imrān's, transmission of the narrative. This version is on the authority of 'Abd Allāh b. al-Mubārak (d. 181, Basra, Kufa, Khurasan, Marw, Syria, and Yemen), who was also a student of Zakarīyyā Abī 'Imran. The *isnād* reads:

Muḥammad b. Ḥātim b. Nu'mān [al-Marwazī] (d. unknown, Egypt and Marw) - Ḥibbān b. Mūsā [al-Marwazī] (d. 233, Kushmayhan and Marw) - 'Abd Allāh [b. al-Mubārak] (d. 181, Basra, Kufa, Khurasan, Marw, Syria, and Yemen) - Zakarīyyā Abī 'Imrān - a *shaykh* - 'Amr b. 'Uthmān - Ibn Abī Bakra - Abū Bakra.<sup>685</sup>

With the exception of a few words, the *matn* shares a high degree of similarity with the version recorded on 'Abd al-Ṣamad's authority. The overlap conveys that 'Abd al-Ṣamad and Ibn al-Mubārak conceivably participated in the dissemination of the *ḥadīth*, and also signals a common source: Zakarīyyā Abī 'Imran.

I now turn to biographical information about the recorded transmitters to evaluate the reasonableness of the *isnād*. Biographical data on 'Abd Allāh b. al-Mubārak (d. 181, Basra, Kufa, Khurasan, Marw, Syria, and Yemen) and 'Abd al-Ṣamad (d. 206-7, Basra) increases the

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<sup>683</sup> Ibn Ḥanbal, *Musnad* (1995 ed.), 15:215f:20,315f.

<sup>684</sup> al-Nasā'ī, *Sunan al-Kubrā*, 6:439:7,171.

<sup>685</sup> al-Nasā'ī, *Sunan al-Kubrā*, 6:430f:7,158.



probability of their roles in the transmission of their reports. ‘Abd Allāh b. al-Mubārak was considered among the best of *ḥadīth* and legal authorities of his time.<sup>686</sup> He was in the habit of writing down *ḥadīth* that he received, and to narrate them from the written texts he compiled.<sup>687</sup> Similar to Ibn al-Mubārak, ‘Abd al-Ṣamad was a trustworthy *ḥadīth* narrator.<sup>688</sup> It is recorded ‘Abd al-Ṣamad expressed that he did write *ḥadīth* from certain teachers.<sup>689</sup> Both Ibn al-Mubārak’s and ‘Abd al-Ṣamad’s employment of written material explains the high degree of similarity between their detailed *matns*. In sum, comparative *matn* analysis, and Ibn al-Mubārak’s and ‘Abd al-Ṣamad’s biographical information, improves confidence about their efforts in circulating the self-confessing woman *ḥadīth* on the authority of Zakarīyya Abī ‘Imran.

Before determining Zakarīyya Abī ‘Imran potential involvement in the transmission of the *ḥadīth*, I now focus on the *matn* of the detailed variant. In my view, it is highly plausible that it spread while in conversation with other self-confessing woman and Mā‘iz *ḥadīth*. The intermingling alludes to modifications in Abū Bakra’s narrative. Note the following comparisons of the self-confessing *woman* variants:

‘Imrān b. al-Ḥuṣayn	Burayda b. al-Ḥuṣayb <sup>690</sup>	Abū Bakra
A woman confesses to <i>zinā</i> and states she is pregnant.	A woman confesses to <i>zinā</i> and asks the Prophet to purify her.	A woman confesses to <i>zinā</i> and asks the Prophet to stone her.
Prophet calls for her	Prophet sends her away.	Prophet sends her away

<sup>686</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta’dīl*, 1:262-81 and 5:179-81; Ibn Ḥibbān, *al-Thiqāt*, 7:8; al-Khaṭīb al-Baghādī, *Tārīkh*, 11:391-3 and 397-405; al-Mizzī, *Tahdhīb al-Kamāl*, 16:14-24.

<sup>687</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta’dīl*, 1:263 and 5:180; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 3:629.

<sup>688</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 18:102; al-Dhahabī, *Siyar A’lām*, 9:517; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 4:181.

<sup>689</sup> Ibn Ḥanbal, *Kitāb al-‘Ilal* (narrated by his son ‘Abd Allāh), 1:524f:1,229.

<sup>690</sup> On ‘Abd Allāh’s authority.

guardian and instructs him to take care of her until she gives birth and then to bring her back.		and instructs her to conceal her offense.
The guardian brings her back (equal to a second confession).	The woman returns for a second confession and tells the Prophet she is pregnant.	The woman returns for a second confession.
	Prophet instructs her to go away until she gives birth.	Prophet instructs her to go away and to conceal her offense.
	She returns (equal to a third confession) and the Prophet instructs her to go away until the child is weaned.	She returns (equal to a third confession) and implores the Prophet, who then instructs her to go away until she gives birth.
	She returns (equal to a fourth confession) and the Prophet places the boy in the custody of a Muslim.	She returns (equal to a fourth confession) and the Prophet instructs her to go away until she is finished with her postpartum menses.
Prophet orders her to be bound up by her clothes.	Prophet orders a chest-high hole to be dug up for her.	Prophet orders a chest-high hole to be dug up for her.
She is stoned.	She is stoned.	She is stoned.
The Prophet prays for her.		The Prophet prays for her.
Conversation with ‘Umar.	Conversation with Khālīd al-Walīd.	
Prophet states her repentance is equal to that of 70 people of Medina.	Prophet states her repentance is equal to financial debt being forgiven.	Prophet states her repentance is equal to that of the people of Ḥijāz.
	Prophet prays for her and she is buried.	

The thematic overlap between all three versions, especially between Abū Bakra’s and Burayda’s respective narratives, is undeniable. The resemblance corroborates amendments to Abū Bakra’s report, which indicates a later emergence of the detailed *ḥadīth* which he supposedly conveyed.

Reorganization of Abu Bakra’s detailed version can also be substantiated on the basis of

particular elements it shares with the Māʿiz *ḥadīth*. Specifically, in Abū Bakra’s narrative, the Prophet sends the woman away twice and instructs her to conceal her offense. In Mālik’s *Muwaṭṭa*, the *matn* for a Māʿiz report includes the same procedure. The entry reads:

Yahyā b. Saʿīd (d. 143-4, Anbar, Baghdad, and Medina) - Saʿīd b. al-Musayyab (d.

92 or 94, Medina):

A man from Aslam (Māʿiz) came to Abū Bakr al-Ṣiddīq and said to him: I am the offender of *zinā*.

Abū Bakr responded: Have you mentioned this to anyone?

The man from Aslam replied: No.

Abū Bakr said: Then go repent to God and conceal your offense with Him. Indeed God accepts repentance from his servants...<sup>691</sup>

According to the narrative, Māʿiz then confesses to ʿUmar b. al-Khaṭṭāb, who also counsels him to shelter his offense with God. And it should not be forgotten that in the Burayda variant on Sulaymān’s authority (a late emerging version), the Prophet advises the woman to conceal her offense with God. This particularity indicates that cross-pollination occurred among different *ḥadīth* about the Prophet’s order to stone *zinā* offenders.

The motif of dissuasion runs through several self-confessing woman and self-confessing man *ḥadīth*, which again implies a later appearance of Abū Bakra’s detailed variant. We have already observed that in Burayda’s and Abū Bakra’s comprehensive accounts, the Prophet advises the self-confessing woman to go away and/or to conceal her offense with God. This instruction parallels another Māʿiz variant in which the Prophet attempts to provide Māʿiz with exculpatory options. According to this version of the *ḥadīth*:

When Māʿiz b. Mālik confessed to *zinā* in the presence of the Prophet, the Messenger of God said: Perhaps you kissed her, or maybe you just touched her?

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<sup>691</sup> Mālik, *Muwaṭṭa*, 1,196f:624/3,036; ʿAbd al-Razzāq, *al-Muṣannaf*, 7:322:13,342; Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:354f:29,356.

Mā'iz replied. No.

The Prophet then asked: Did you have sex with her?

Mā'iz responded: Yes.

Thereafter the Prophet gave the order and Mā'iz was stoned.<sup>692</sup>

The Prophet's questions and Mā'iz's responses equal three confessions. In a likely effort to increase the confessions to four, a different iteration of the narrative went into circulation in which the Prophet provided yet another alternative to sexual intercourse. Specifically, in addition to kissing and touching, the Prophet asks Mā'iz, "Perhaps you just stared at her?"<sup>693</sup> In sum, the encouragement to conceal the offense with God, to go away until certain events take place (e.g. birth), or to admit to a lesser offense than *zinā*, was to dissuade a *zinā* offender from confessing. Invariably, these motifs increased the legal burden for conviction, albeit through different procedures, to harmonize with the Qur'ānic four-witness requirement.

In Abū Bakra's detailed *ḥadīth*, the Prophet delays the punishment until the woman finishes her postpartum menses. This aspect of the story appears to have circulated separately from the detailed version. According to a report provided by al-Nasā'ī, the *isnād* and *matn* read:

al-Nasā'ī - Hilāl b. al-'Alā' b. Hilāl (d. 280, al-Raqqā) - al-'Alā' b. Hilāl (d. 215, al-Raqqā) - Hushaym [b. Bashīr al-Qāsim] (d. 183, Basra, Baghdad, and Wāsiṭ) - a man - ['Abd Allah] b. Abī Najīḥ (d. 131-2, Mecca) - Mujāhid b. Jabr (d. 100-4, Mecca) - 'Abd Allah b. 'Abbās (d. 68, Basra, Mecca, Medina, Syria, and Tā'if):

A woman was brought to the Messenger of God who had committed a sexual transgression, so the Prophet applied the *ḥadd* to her. The Prophet said: Go away until your menses is finished.<sup>694</sup>

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<sup>692</sup> Ibn Ḥanbal, *Musnad* (1992 ed.), 4:32:2,219.

<sup>693</sup> Ibn Ḥanbal, *Musnad* (1992 ed.), 4:253:2,433; al-Bukhārī, *Ṣaḥīḥ* (1976 ed.), 2,502:6,438; Abū Dāwūd, *Sunan*, 6:477:4,427; al-Nasā'ī, *al-Sunan al-Kubrā*, 6:418f:7,131.

<sup>694</sup> al-Nasā'ī, *Sunan al-Kubrā*, 6:459:7,230.

Al-Nasā'ī's entry indicates that the Prophet's order to delay the implementation of the punishment due to postpartum menses was being discussed. This procedural element ties in with the notion of a punishment constituting one form of repentance, such as prayer, for which ritual purity is necessary.

Unlike in the cases of the 'Imrān b. al-Ḥuṣayn and the Buraya b. Ḥuṣayb comprehensive variants, the Abū Bakra detailed narrative does not incorporate a conversation between the Prophet and another key figure: 'Umar or Khālīd b al-Walīd. Their absence suggests that by the late second century, debates regarding the expiatory function of certain punishments, such as stoning, may have been resolved such that the Prophet's comment alone was acceptable. Combined with the primacy of Prophetic authority and practice, the employment of a conversation between the Prophet and 'Umar or al-Walīd was unnecessary.

Having argued for why Abū Bakra's variant examined above has a late circulation, I now turn attention to that which Abd Allāh b. al-Mubārak (d. 181), 'Abd al-Ṣamad (d. 206-7), and by extension, Zakarīyyā Abī 'Imrān may have transmitted. There exist other variants that are not as exhaustive but nevertheless disseminated on the authority of Zakarīyyā Abī 'Imrān. The *Muṣannaf* of Ibn Abī Shayba includes a much shorter version of the *ḥadīth*, and the *isnād* and *matn* read:

Ibn Abī Shayba - Wakī' [b. al-Jarrāḥ] (196-7, Fayd and Kufa) - Zakarīyyā [b. Sulaym al-Minqarī] Abī 'Imrān (d. unknown, Basra) - a *shaykh* - ['Abd al-Raḥmān] b. Abī Bakra (d. 96 or sometime after 80 or 90, Basra and Syria) - Abū Bakra [Nufay' b. al-Ḥārith al-Thaqafī] (d. 51-3 or 59, Basra, Syria, and Ṭā'if):

The Prophet had a stoned a woman before which a hole was dug up to her chest.<sup>695</sup>

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<sup>695</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:360f:29,378.

Ibn Ḥanbal also provides the same *matn* on the authority of Wakī'.<sup>696</sup>

Abū Dāwūd references the *ḥadīth* twice and is crucial for the present analysis. One *isnād* is on the authority of Ibn Abī Shayba's brother and also includes Wakī'. It reads: Abū Dāwūd - 'Uthmān b. Abī Shayba (d. 239, Kufa) - Wakī' - Zakarīyyā Abī 'Imrān - a *shaykh* - Ibn Abī Bakra - Abū Bakra.<sup>697</sup> The same one-line *matn* recorded by Ibn Abī Shayba and Ibn Ḥanbal is what Abū Dāwūd furnishes. But then Abū Dawūd proceeds to write:

He<sup>698</sup> added: The Prophet struck her with a stone the size of a chickpea and instructed: Stone her but avoid her face.

Once she perished, she was taken out of the hole and held the *jināza* prayer for her. He then commented about her repentance as he is recorded to have done so in the Burayda *ḥadīth*.<sup>699</sup>

If Zakarīyyā Abī 'Imrān circulated the detailed version, then one has to wonder why he would only note the manner in which the woman was struck. Why is there no reference whatsoever to information aside from that which Abū Dāwūd indicates? The absence of the details, which are found in other Abū Bakra variants, indicates that several elements emerged after Zakarīyyā Abī 'Imrān's demise. This means that his two students, 'Abd Allāh b. al-Mubārak (d. 181) and 'Abd al-Ṣamad (d. 206-7), did not receive the detailed version from their teacher. Nevertheless, the upshot is that their reports do point to Zakarīyyā Abī 'Imrān's circulation of the short report

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<sup>696</sup> Ibn Ḥanbal, *Musnad* (1995 ed.), 15:198:20,257; Ibn Ḥanbal also provides the same *matn* with a different *isnād*, though its authority remains Wakī', see Ibn Ḥanbal, *Musnad* (1995 ed.), 16:16f:21,437: Wakī' b. al-Jarrāḥ (d. 196-7, Fayd and Kufa) - Isrā'īl [b. Yūnus] (d. 160, Baghdad, Hamdan, and Kufa) - Jābir [b. Yazīd al-Hārith] (d. 127-8, Kufa) - Thābit b. Sa'd or Sa'id [al-Tā'i] (d. unknown, Syria) - Abū Dharr [Jundub b. 'Abd Allāh b. Junāda b. Sufyān] (d. 32, Mecca, Medina, al-Rabadha): The Prophet had a woman stoned before which a hole was dug up to her chest.

<sup>697</sup> Abū Dāwūd, *Sunan*, 6:490f:4,443.

<sup>698</sup> Unclear.

<sup>699</sup> Abū Dāwūd, *Sunan*, 6:491:4,444; al-Bayhaqī provides it on the authority of Abū Dāwūd, see al-Bayhaqī, *Sunan al-Kubrā*, 8:385:16,967.

about the Prophet's order to stone a woman.

It is unlikely Ibn Abī Shayba, his brother 'Uthmān, Wakī', or Zakarīyyā fabricated the *isnād*. Ibn Abī Shayba preferred short or elevated ('*ālī*') *isnāds*, because they have fewer links connecting a *ḥadīth* to the Prophet.<sup>700</sup> Having "a *shaykh*" in the chain of transmission would be counter to such a preference, because it adds another layer. Therefore, it would not be in Ibn Abī Shayba's interest to have an unidentified transmitter in his recorded *isnād*. If a placeholder was necessary to fill in a time gap between Zakarīyyā and Ibn Abī Bakra, then in lieu of an unidentifiable person, Ibn Abī Shayba, his brother 'Uthmān, or Wakī' could have employed a name from the cadre of known Iraqi transmitters. In fact, a concern for a "reliable" *isnād* is likely why the detailed variant provided by Ibn Ḥanbal, Abū Dāwūd, and al-Nasā'ī, contains the name 'Amr b. 'Uthmān alongside the *shaykh*. I have attempted to determine who this 'Amr b. 'Uthmān could be, but an investigation into biographical dictionaries has not borne any fruit. While there are entries on individuals named 'Amr b. 'Uthmān, none provide any information that is helpful in pinning down the specific person in the *isnād*. This makes 'Amr b. 'Uthmān's actual involvement in the transmission of the report questionable. However, it also affirms a historical *isnād* with a *shaykh*, because later *ḥadīth* narrators attempted to improve it with the name 'Amr b. 'Uthmān. In short, *isnād* analysis raises the degree of confidence about its historicity, which ostensibly suggests that Zakarīyyā Abī 'Imrān was involved in the transmission of the short version of the narrative.

Biographical information on Zakarīyyā Abī 'Imrān (d. unknown, Basra) is scarce, and it appears that he is only known within the scope of the self-confessing woman *ḥadīth*. Authors of biographical dictionaries note that Zakarīyyā Abī 'Imrān only transmitted reports from a man,

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<sup>700</sup> On '*ālī isnāds*', see for example Brown, *Ḥadīth*, 47.

who in turn narrated from ‘Abd al-Raḥmān b. Abī Bakra.<sup>701</sup> Despite the lack of information available on Zakarīyyā Abī ‘Imrān, he may very well have been a historical person who transmitted the report. My claim rests on what biographers are not saying about him. Biographical entries on Zakarīyyā Abī ‘Imrān do not convey any negative or neutral comments, tangentially or directly. In fact, he is not draped with a *majhūl* status.<sup>702</sup> Even if early biographers wanted to remain silent on the prospect of Zakarīyyā Abī ‘Imrān as a reliable *ḥadīth* transmitter, later biographers could have easily dismissed him. By the end of the third century, the process of *ḥadīth* authentication was sufficiently developed, and there existed numerous variants of the self-confessing woman report with acceptable (read: desired) *isnāds*. It would have been uncontroversial to reject Zakarīyyā Abī ‘Imrān, while preserving the components of the detailed variant, *or* attributing the entire report to someone prominent and respected. Therefore, unless proven otherwise, Zakarīyyā Abī ‘Imrān place in the *isnād* cannot be dismissed, and his reference to a *shaykh* only points to his inability to remember his exact source.

It is highly probable that the *shaykh*’s teacher, ‘Abd al-Raḥmān b. Abī Bakra (d. sometime after 80 or 90, possibly 96, Basra and Syria), was involved in the circulation of a report in which the Prophet ordered the stoning of a woman. To begin with, Ibn Abī Bakra was one of the more well-known sons of Abū Bakra. He was the first to be born in Basra in 14 AH, and he traveled to Damascus to give allegiance to Mu‘āwiya.<sup>703</sup> He served as governor in Sijistan, and at one time

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<sup>701</sup> Ibn Ḥibbān, *al-Thiqāt*, 8:252:13,286.; al-Mizzī, *Tahdhīb al-Kamāl*, 9:363; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 3:483; al-Mizzī includes the self-confessing woman *ḥadīth* under the entry on Ibn Abī Bakra. The *isnād* he provides is on the authority of Ibn Ḥanbal, see al-Mizzī, *Tahdhīb al-Kamāl*, 9:364.

<sup>702</sup> Unknown or obscure transmitter of a *ḥadīth*.

<sup>703</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 9:189; Ibn Ḥibbān, *al-Thiqāt*, 5:77:3,935; Ibn ‘Asākir, *Tārīkh*, 32:7, 8, 10, and 12; al-Mizzī, *Tahdhīb al-Kamāl*, 17:5; al-Dhahbī, *Siyar A‘lām*, 3:6 and 4:320.



oversaw the public treasury.<sup>704</sup> His position as an executive authority illustrates why he would be involved in the circulation of a *ḥadīth* with legal consequences. Furthermore, there is nothing in biographical dictionaries that raises skepticism about Ibn Abī Bakra's role in the transmission of the *ḥadīth* from his father. Hence, it is reasonable to accept that the short version of the report (as provided by Wakī' and 'Uthmān b. Abī Shayba) was disseminated with the help of 'Abd al-Raḥmān b. Abī Bakra near the end of the first century. To be clear, I am not claiming that the short version circulated earlier because it has less details. Rather, my assertion is based on *isnād* and comparative *matn* analysis that I have conducted up to this point.

One of the most interesting and consequential elements of the Abū Bakra detailed variant is regarding the manner in which the report begins. 'Imrān's version begins with the woman's self-confession to the Prophet. In Burayda's narrative, the woman confesses and asks the Prophet to purify her. But it in Abū Bakra's detailed report, the woman self-confesses and states upfront that she wants to be stoned. Her immediate reference to the punishment suggests that it was already within the purview of the narrator that the Prophet would employ the stoning punishment. Importantly, in Abū Bakra's short version, the *ḥadīth* begins with a statement of fact: the Prophet had a woman stoned. The Prophet's action is not based on any sort of legal justification. There is no indication that a self-confession took place, which is a legal procedure that exists in *all* other variants of the *ḥadīth*. Moreover, additional issues emerge with the proclamation of certainty: Was the woman stoned for *zinā*? If so, did she have *iḥṣān*? Was she a Muslim? None of these questions can be answered. It seems several presumptions are read into the short report, which means that the person who narrated it did so without fully realizing the extent of legal issues. This makes sense if the provenance of the *ḥadīth* is early and well before the formulation of

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<sup>704</sup> Ibn Ḥajar, *Tadhīb al-Tahdhīb*, 4:19.

procedural and substantive *zinā* laws. Over time, the brevity of the statement was expanded to include information that directs the case towards acceptance in the Islamic legal tradition. All in all, the short version circulated by Abū Bakra is important because it may have been the early iteration of a report in which the Prophet ordered the stoning punishment.

#### Section 4. Companions and Their Significance

In this section, I examine the three Companions associated with the self-confessing woman *ḥadīth*. I begin with Abū Bakra Nufay‘ b. al-Ḥārith al-Thaqafī’s (d. 51-3 or 59, Basra, Syria, and Ṭāʾif), because in my view, his *ḥadīth* is the most significant. As noted earlier, he was a slave from Ṭāʾif. At the age of 18, he converted to Islam and was manumitted by the Prophet. He eventually moved to Basra, where he died.<sup>705</sup> According to several reports, Abū Bakra was flogged, at the order of ‘Umar b. al-Khaṭṭāb, for being one of the witnesses whose collective testimonies could not turn an accusation of *zinā* into a conviction.<sup>706</sup> Per the Qur’ān, if a person accuses someone of *zinā*, and is punished because a conviction did not ensue, then such an individual is no longer in good public standing unless they repent.<sup>707</sup> Abū Bakra never demonstrated contrition. His reluctance ought to have sullied his reputation in biographical dictionaries. However, with the exception of a comment in Ibn Sa‘d’s *al-Ṭabaqāt al-Kubrā*, entries of early biographers appear to contain neutral descriptions of Abū Bakra.<sup>708</sup> Over time, a

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<sup>705</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 9:16.

<sup>706</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 9:16; Ibn ‘Abd al-Barr, *al-Istī‘āb*, 4:1,531 and 1,615; Ibn ‘Asākir, *Tārīkh*, 62:216; for an informative summary of the event, see Abou El Fadl, *Speaking in God’s Name*, 111f.

<sup>707</sup> Q25:5.

<sup>708</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 9:17; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta’dīl*, 8:489; Ibn Ḥibbān, *al-Thiqāt*, 3:411f.

number of biographical authors paint him in a positive light, as if to deliberately create an acclamatory persona that would have not existed otherwise for a person who was reprimanded for a major offense and who did not repent.<sup>709</sup> The flogging of Abū Bakra can be taken as damaging to his reputation, but importantly, it established a connection between him and a *zinā* case. Moreover, Abū Bakra is recorded to have made disparaging comments about women on more than one occasion.<sup>710</sup> And it should not be forgotten that the earliest report about the stoning of woman was a statement of fact: the Prophet had a woman stoned. Perhaps each biographical element on its own does not have probative value. However, collectively, and in light of Abū Bakra's reputation as one of legal specialists among the Companions,<sup>711</sup> his association with a report, or his active role in the dissemination of a narrative about the Prophet's involvement in the stoning of a woman, is not coincidental.

If indeed Abū Bakra had a role in the dissemination of a report about the stoning of a woman on the Prophet's order, then how were the Companions 'Imrān b. Ḥuṣayn and Burayda b. al-Ḥuṣayb involved? I begin with 'Imrān b. Ḥuṣayn (d. before 53, possibly 52, Baṣra, Kūfa, Medina, and Syria). He is recorded to have converted to Islam during the latter part of the Prophet's life, most likely during the year of Khaybar (7 AH).<sup>712</sup> He, his father, and his sister, fought in several battles alongside the Prophet, including the conquest of Mecca.<sup>713</sup> 'Umar sent

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<sup>709</sup> My comment is partly based on Abou El Fadl's assessment of the positive ways in which Abū Bakra is perceived by scholars of *ḥadīth*, see Abou El Fadl, *Speaking in God's Name*, 111; for biographical entries that speak favorably about Abū Bakra, see for example Ibn 'Abd al-Barr, *al-Istī'āb*, 4:1,531; Ibn 'Asākir, *Tārīkh*, 62:203, 205, 208, and 214f; al-Mizzī, *Tahdhīb al-Kamāl*, 30:6f; al-Dhahabī, *Siyar A'lām*, 3:5 and 8; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 6:578.

<sup>710</sup> Abou El Fadl, *Speaking in God's Name*, 111-3; Mernissi, *Woman and Islam*, 49-60; Aslam, "Early Community Politics and the Marginalization of Women in Islamic Intellectual History," 38.

<sup>711</sup> al-Dhahabī, *Siyar A'lām*, 3:6.

<sup>712</sup> Ibn 'Abd al-Barr, *al-Istī'āb*, 1208; al-Mizzī, *Tahdhīb al-Kamāl*, 22:320.

<sup>713</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 5:190 and 9:10; Ibn Ḥajar, *Tahdhīb al-Kamāl*, 5:116; al-Dhahabī, *Siyar A'lām*, 2:509.

‘Imrān to Basra to teach *fiqh*, where he resided until his death.<sup>714</sup> It is important to note that the lives of ‘Imrān b. Ḥuṣayn and Abū Bakra had marked resemblance. Both were considered legal authorities, both moved to Iraqi cities where they became teachers of *fiqh*, and both perished there. Biographers actually pair the two together as the best of the Prophet’s Companions in Basra.<sup>715</sup> Furthermore, ‘Imrān b. Ḥuṣayn is recorded to have attended the funeral prayers of Abū Bakra.<sup>716</sup> The overlap between their lives, and fellowship they enjoyed, advances two considerations about their involvement in the circulation of the self-confessing woman *ḥadīth*. First, both individuals discussed an incident about the Prophet’s involvement in the stoning of a woman and disseminated it accordingly. Or second, someone in the *isnād* below ‘Imrān b. Ḥuṣayn misremembered who circulated the account and erroneously attributed the *ḥadīth* to him. This could have happened because of the similar life trajectories of Abū Bakra and ‘Imrān. The second proposition is especially plausible because ‘Imrān b. Ḥuṣayn is recorded to have narrated approximately 800 *ḥadīth*<sup>717</sup> despite converting to Islam late in the Prophet’s life. In short, biographical information on ‘Imrān b. Ḥuṣayn and the different ways in which his life reflected Abū Bakra’s illustrate why he was possibly involved (directly or indirectly) in the circulation of the *ḥadīth*.

The Companion Burayda b. al-Ḥuṣayb’s (d. 63, Basra, Khurasan, Marw, Mecca, Medina, and Syria) role does not appear to be any more coincidental than ‘Imrān’s or Abū Bakra’s

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<sup>714</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 5:190 and 9:10; al-Khaṭīb al-Baghḍādī, 6:516; al-Mizzī, *Tahdhīb al-Kamāl*, 22:321; al-Dhahabī, *Siyar A‘lām*, 2:508.

<sup>715</sup> Ibn ‘Abd al-Barr, *al-Istī‘āb*, 4:1,531 and 1,615; Ibn ‘Asākir, *Tārīkh*, 62:214; al-Dhahabī, *Siyar A‘lām*, 3:5.

<sup>716</sup> Khayyāt, *Tārīkh*, 218.

<sup>717</sup> al-Dhahabī, *Siyar A‘lām*, 2:510f.

association with the *ḥadīth*. Burayda is recorded to have participated in many battles alongside the Prophet, including the conquest of Khaybar (7 AH).<sup>718</sup> With the rising conflicts during the caliphate of ‘Uthmān, Burayda moved to Basra with his children, and died either in Marw or Khurasan.<sup>719</sup> He also had a number of descendants who eventually took residence in Baghdad.<sup>720</sup> His time in Basra may explain reference to his name, or his possible involvement in the circulation of the self-confessing woman *ḥadīth*. When he arrived to the city, ‘Imrān b. Ḥuṣayn was already living there, and it is recorded that Burayda participated in auditions (*samā’*) led by ‘Imrān.<sup>721</sup> In fact, Burayda’s son, ‘Abd Allāh, narrated from ‘Imrān b. Ḥuṣayn as well. It thus stands to reason that Burayda, or his son ‘Abd Allāh, heard from ‘Imrān b. Ḥuṣayn about an incident involving the stoning of a woman on the Prophet’s authority, and circulated it accordingly. But it could also be the case that either Burayda and his sons, and Abū Bakra and his son discussed the story, or later narrators were confused about who transmitted the account. This is because as I noted in the previous two sections, Burayda and his sons traveled to Damascus to give allegiance to Mu‘āwiya. Both Abū Bakra and his son did the same. It is possible that the two Companions or their sons knew each other and shared the incident about the stoning of a woman on the Prophet’s authority, or that later transmitters misremembered who may have initially circulated the report due to the similarities of the lives of the Companions and their children. Inevitably, while Burayda’s direct involvement in the transmission of the report may be difficult to confirm, his affiliation with it does not lend itself to happenstance.

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<sup>718</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 4:228 and 9:8; Ibn ‘Asākir, *Tārīkh*, 71:379; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 1:406.

<sup>719</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 9:8; al-Mizzī, *Tahdhīb al-Kamāl*, 4:55.

<sup>720</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 4:228 and 9:8.

<sup>721</sup> Ibn ‘Asākir, *Tārīkh*, 27:139.

## Conclusion

In this chapter, I have examined several *ḥadīth* variants in which the Prophet ordered the stoning of a self-confessing woman. The reports were purportedly circulated by three Companions: ‘Imrān b. Ḥuṣayn (d. before 53, possibly 52, Baṣra, Kūfa, Medina, and Syria), Burayda b. al-Ḥuṣayb (d. 63, Basra, Khurasan, Marw, Mecca, Medina, and Syria), and Abū Bakra Nufay‘ b. al-Ḥārith al-Thaqafī (d. 51-3 or 59, Basra and Syria). *Isnād* analysis and biographical information illuminate why particular Companions are linked with specific *ḥadīth* variants. *Matn* examination illustrated the ways in which various motifs became important for the development of *zinā* laws. My investigation also helped to understand the provenance of different versions of the report, such as the late emergence of Burayda’s and Abū Bakra’s detailed variants. Important, I explicated how specific motifs embedded in the self-confessing woman *ḥadīth* affirmed stoning as an Islamic punishment for certain types of *zinā*.

In one version of Abū Bakra’s report, a statement of fact is expressed: the Prophet had a woman stoned. This remark is of consequence. It is only through the establishment of specific tropes that the woman figures to be Muslim. Indeed, some discussions involving the Prophet’s order to stone *zinā* offenders expressed uncertainty about the woman’s religion. As I demonstrated in Chapter 2, efforts were made to cast the woman as the Jewish man’s companion. This woman could have been Abū Bakra’s reference. This makes sense for three reasons: 1) He was a legal authority, 2) Because of this he needed to have a legal position about the correct forms of punishments for *zinā* offenders, and 3) His pejorative bias towards women. It seems that eventually the statement of fact was modified to a self-confession. This makes sense because complying with the four-witness requirement would have been significantly more difficult. After

all, Abū Bakra and his co-witnesses were flogged for not meeting it. For the reports to have probative value, they would have likely had to confirm that all procedures had been satisfied. Ultimately, the self-confessing *ḥadīth* contributed to the beginning of a process by which stoning became part of the Islamic legal tradition.

The Islamization of the punishment came about through particular elements of the self-confessing woman *ḥadīth*. For example, in certain versions of the report, the unidentified woman is noted to be from the tribe of Juhayna or Ghāmid, both of whose members were early converts to Islam. This would have the effect of marking the woman as Muslim. According to another recurring clause, the Prophet conducted the *jināza* prayer for her, which again served as an indication of her religion. In variants on the authority of Burayda, the child is placed in the custody of a *Muslim* man, which ostensibly conveys the religion of his mother, the self-confessor. In short, the Islamization of the stoning punishment occurred through the construction of particular motifs that aimed to establish the religion of the female offender.

A critical issue remains with the self-confessing woman *ḥadīth*: what type of *zinā* did she commit? As I have repeatedly noted, the legal status of *thayyib* and *iḥṣān* clarify the types of *zinā* subject to death by stoning. With the exception of one report, none of the variants about the self-confessing woman make reference to either of these legal elements. This means that at face value, her *zinā* remains ambiguous. But according to the reports, she received the capital punishment. It thus stands to reason Muslim legal authorities read into the *ḥadīth* that the self-confessing woman satisfied the legal elements necessary for implementing the stoning punishment. It is on the basis of the Islamic legal tradition that the *zinā* referenced in the *ḥadīth* was accepted as the form warranting the punishment of stoning. Despite the lack of clarity, the critical point inevitably remained: the Prophet's order to stone a self-confessing (presumably

Muslim) woman legitimized the punishment as Islamic.



## Chapter 4

### The Politics of ‘Umar b. al-Khaṭṭāb

#### Introduction

‘Umar b. al-Khaṭṭāb (r. 13-23), the second Rightly Guided Caliph, was an influential personality whose importance went beyond the religio-political office he occupied. He initiated or reformed several policies that left an imprint on the Muslim community of his time and thereafter. For example, he founded the institution of the *ḥisba*, the office of the marketplace inspector.<sup>722</sup> He appointed special judges whose roles were separate and distinct from those of provincial governors.<sup>723</sup> He also made the *iqṭa‘* (individual land ownership) system an official mechanism for conferring property rights on individuals.<sup>724</sup> ‘Umar came to not only represent moral and religious authority, but as Linda Lee Kern remarks, he was also “...Islām’s institutionalizing founding father, the so-called ‘Paul of Islām...’”<sup>725</sup>

Indeed, at different points in *akhbār*, ‘Umar is recorded to have alternatively agreed with and diverged from Prophetic practices. In other words, in some cases he was a stalwart defender of the Prophetic *Sunna*, and in other cases, he took positions that were in clear opposition of it.<sup>726</sup> Because of the range of issues that ‘Umar’s gaze penetrated, his authority was used to negotiate

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<sup>722</sup> Ismail al-Qudsy and Rahman, “Effective Governance in the Era of the Caliphate ‘Umar ibn al-Khattab,” 620; for an insightful analysis of the market inspector, *muhtasib*, see generally Stilt, *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt*.

<sup>723</sup> Ismail al-Qudsy and Rahman, “Effective Governance in the Era of the Caliphate ‘Umar ibn al-Khattab,” 620.

<sup>724</sup> Ibid.

<sup>725</sup> Kern, “The Riddle of ‘Umar ibn al-Khaṭṭāb in Bukhārī’s *Kitāb al-Jāmi‘ aṣ-Ṣaḥīḥ*,” 4.

<sup>726</sup> See generally, Kern, “The Riddle of ‘Umar ibn al-Khaṭṭāb in Bukhārī’s *Kitāb al-Jāmi‘ aṣ-Ṣaḥīḥ*.”

several contested legal matters. For instance, ‘Umar is summoned into legal debates about the validity of temporary marriage (*mut‘a*). Certain legal authorities believed this arrangement to be permissible on Qur’ānic and Prophetic authority. But others declared it to be prohibited on the authority of ‘Umar.<sup>727</sup> All in all, the expansive scope of the caliph’s opinions contributed to the shaping of Islamic laws,<sup>728</sup> which in some cases, had the effect of taking Islamic legal rulings in directions that may have been at odds with Prophetic practices.

The recorded convergence and divergence between the Prophet’s and ‘Umar’s respective *sunnas* brings us to the focus of this chapter. I shall investigate reports in which ‘Umar mandates stoning for certain forms of illicit sexual intercourse. According to these narratives, ‘Umar sermonized that the Prophet stoned *zinā* offenders, and therefore Muslims should continue the practice. In other words, ‘Umar’s assertion conveyed that he was following the Prophet’s example. But in light of the previous chapters and the general arguments I have made in this dissertation, ‘Umar’s contention may have been at odds with Muḥammad’s praxis for punishing *zinā*.

The layout of this chapter is as follows. In Section One, I furnish several *akhbār* according to which ‘Umar conveyed his displeasure about certain forms of sexual relations by calling upon the stoning punishment. In other words, his appeal to the capital sanction demonstrates that he did not necessarily consider it to be unlawful for Muslims. This is consequential and I discuss it further in Section One. In Sections Two and Three, I examine variants of a report in which ‘Umar purportedly sermonized that stoning for *zinā* was in the Book of God and the practice of his predecessors: Abū Bakr and the Prophet. I study the transmitters

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<sup>727</sup> Hakim, “Conflicting Images of Lawgivers: The Caliph and the Prophet *Sunnat ‘Umar* and *Sunnat Muḥammad*,” 163-77.

<sup>728</sup> See generally Abraham Hakim, “Context: ‘Umar b. al-Khaṭṭāb,” 205-20.

who helped circulate different versions of this *khavar*, and the significance of distinct motifs they disseminated. In Section Four, I focus on the *isnād* and *matn* of a report in which ‘Umar is recorded - from the pulpit - to have spoken about the unexpected caliphate of Abū Bakr (r. 11-13). I contend that this report helped to shape the narrative in which ‘Umar claimed, based on God’s Book and the Prophetic *Sunna*, that stoning is the correct form of punishment for certain forms of *zinā*. Unless most, if not all, reports are relegated as ahistorical which reflect ‘Umar’s propensity to stone, then ‘Umar represents an early acceptance of the punishment for Muslims after the Prophet’s death. It is my argument that it would take a highly influential temporal leader of the Muslim community, such as ‘Umar b. al-Khaṭṭāb, to help provide acceptance and stability of the capital punishment. He garnered and exerted influence over the Muslim community in ways that other localized authorities could not and did not.

### **Section 1. ‘Umar’s Propensity to Stone**

In this section, I provide several *akhbār* according to which ‘Umar favored the use of stoning to convey his disdain for certain types of sexual relationships. This implies that he effortlessly considered the punishment to be Islamically appropriate. Moreover, the narratives are compelling because they created an aura which bonded ‘Umar to stoning. And so, it is logical that the affiliation could have influenced the circulation of *akhbār* that record his black letter law statement about stoning as an Islamic punishment.

Some narratives record that ‘Umar longed for stoning to express his disapproval of the circumstance under which certain marriage contracts were executed. The following are two examples:

‘Umar b. al-Khaṭṭāb was brought a case involving a marriage contract that no one witnessed except a man and a woman. ‘Umar said: This union is not sufficiently

public and I do not approve of it. If I could do something about it, then I would stone them.<sup>729</sup>

Khawla bint Ḥakīm came to ‘Umar b. al-Khaṭṭāb and said: Rabi‘ b. Umayyad had sex with a midwife and impregnated her. ‘Umar b. al-Khaṭṭāb got up, grabbed his robe, and left angrily saying: This is *mut‘a*. If I could do something about it, then I would surely apply the punishment of stoning!<sup>730</sup>

These two reports demonstrate that ‘Umar was ready to implement stoning for *any* form of sexual intercourse he thought to be illicit, not just fornication or adultery. Importantly, there are other considerations worth noting from these *akhbār*. First, it may be the case that ‘Umar restrained himself because the circumstances did not allow for stoning. In other words, he did not have a legal basis upon which to justify and implement the punishment. Second, lapidation was not Islamic, but if it was - and the legal burdens for conviction had been satisfied - then ‘Umar would have administered it. Whatever the reason(s) may have been, the overarching point is that in both reports, if given the opportunity, ‘Umar was ready to use the capital punishment.

In another case, ‘Umar wanted to use stoning but waived it due to exculpatory reasons.

One variant of the *khābar* reads:

A man set out with his wife’s slave for travel and ended up having sex with her. His wife became jealous and brought the matter to ‘Umar’s attention. ‘Umar asked the husband about the wife’s claim, and the husband contended: She gifted her to me.

‘Umar threatened: Bring me proof or I am going to hit you with stones.

Thereafter, the wife confessed that she gifted the female slave to her husband.<sup>731</sup>

Likewise, in a different report, ‘Umar made a general proclamation: “If I am brought a man who

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<sup>729</sup> Mālik, *Muwattaʿa*’, 767:1,960; al-Bayhaqī, *al-Sunan al-Kubrā*, 7:204:13,726.

<sup>730</sup> Mālik, *Muwattaʿa*’, 778:1,994; ‘Abd al-Razzāq, *al-Muṣannaf*, 7:503:14,038; Ibn Abī Shayba, *al-Muṣannaf* (1989 ed.), 3:551:17,069 and 552:17,077; al-Bayhaqī, *al-Sunan al-Kubrā*, 7:336:14,172.

<sup>731</sup> Mālik, *Muwattaʿa*’, 1,213:3,071.

has sex with his wife's female slave, then I would stone him."<sup>732</sup> These reports convey that 'Umar disapproved of sex between a husband and his wife's slave - a legal matter which I presently forgo. But in sum, the four reports I delineated exhibit 'Umar's predisposition of resorting to stoning for Muslims if circumstances permitted.

In a different *khobar*, 'Umar permitted his representative to adjudicate a case which resulted in a conviction and subsequent implementation of the stoning punishment. The *matn* of this narrative reads:

A man came to 'Umar b. al-Khaṭṭāb - that when he was in al-Shām<sup>733</sup> - he found his wife with another man. 'Umar sent Abū Wāqid to the man's wife to ask about the matter. When Abū Wāqid arrived he found her with some women. He told her about what her husband said to 'Umar b. al-Khaṭṭāb, and advised her to not concur with the accusation. In order to make the matter go away, Abū Wāqid tried to make her agree to something similar to the charge, but not the same thing. She refused and instead gave a confession. 'Umar gave the ruling and she was stoned.<sup>734</sup>

In an alternative iteration of the report:

Abū Wāqid was with 'Umar b. al-Khaṭṭāb when a man came to him and said: My slave committed *zinā* with my wife and she confessed to me about it.

Abu Wāqid said: 'Umar sent me to his wife and before I left he said to me: 'Ask her about this matter.' So I went on my way and when I got there, I saw a young girl and I presumed she was the man's wife, because she was wearing a long gown that would have normally been worn the man's wife. She was sitting in the courtyard and I approached her and said: Your husband came to the Commander of the Faithful and told him that you committed *zinā* with his slave. He sent me to ask you about the matter. If you did not do it, then you are not blameworthy.

The girl remained silent for a while and finally Abū Wāqid said to himself: God, make her say what you want her to say.

Right then the wife spoke: By God I cannot combine *fāḥisha* with something untruthful. My husband told the truth.

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<sup>732</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:313:29,119; al-Bayhaqī, *al-Sunan al-Kubrā*, 8:420:17,083.

<sup>733</sup> It is unclear from the report if it was 'Umar or the man.

<sup>734</sup> Mālik, *Muwatta'*, 1,202:4,043.

Subsequently, ‘Umar made the ruling and she was stoned.<sup>735</sup>

This second account shares a marked affinity with the “Worker-Son” *ḥadīth* I referenced in Chapter One. According to that report, the Prophet instructed Unays to confirm the truthfulness of a husband’s accusation that his wife committed adultery. If she conceded to the charge, then she was to be stoned. In the narrative, the wife confessed and in accordance with the Prophet’s mandate, executed by means of stoning. At any rate, the *akhbār* involving Abū Wāqid again illustrate ‘Umar’s application of stoning for *zinā* (in this case, adultery).

In one set of reports, ‘Umar wanted to implement the stoning punishment, but was persuaded to have it either delayed or vacated. An entry in al-Mawṣilī’s *Musnad* reads:

‘Umar was brought a woman who had committed a sexual transgression, so he ordered that she be stoned. While on her way to the place where she would be stoned, she passed by ‘Alī. It just so happened that he knew her so he had her released. This was brought to ‘Umar’s attention, who then summoned ‘Alī. When he arrived, ‘Umar asked: Why did you let her go?

‘Alī responded: By God, Commander of the Faithful, you know very well that the Messenger of God said, “The pen is lifted for three types of people: those who are sleeping, those who have not reached puberty, and those who are ignorant or do not know what they do.” Indeed, among some group of people this girl is well-known for being mentally ill. Perhaps she was a test from God for the man who had sex with her, and he failed.<sup>736</sup>

According to a different *khabar* provided by Ibn Abī Shayba:

‘Umar wanted to stone a pregnant woman who had illicit sexual relations.<sup>737</sup> Mu‘ādh said to ‘Umar: If you stone her while she is pregnant, then you treat her unjustly. Do you not see that she is pregnant? What is the unborn child’s offense? Is your intention to kill two people based on the offense of one?

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<sup>735</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:349:13,441; al-Bayhaqī, *al-Sunan al-Kubrā*, 8:375:16,934 and 383:16,960.

<sup>736</sup> al-Mawṣalī, *Musnad*, 1:440f:328(578); Abū Dāwūd, *Sunan*, 6:452:4,399; al-Bayhaqī, *al-Sunan al-Kubrā*, 8:459:17,210; a similar story is reported by ‘Abd al-Razzāq. While some of the details are different, the core motifs remain intact, see ‘Abd al-Razzāq, *al-Muṣannaf*, 7:350f:13,444.

<sup>737</sup> Unclear if the pregnancy resulted from the illicit sexual act.

‘Umar let her go until she gave birth, and then had her stoned.<sup>738</sup>

As I noted in Chapter 3, not only was the staying of a corporal or capital punishment part of surrounding cultural practice in which Islam emerged, but it was also a procedure the Prophet followed in the self-confessing woman *zinā* case. Hence, a conflict emerges with ‘Umar’s initial decision to have the pregnant woman stoned. More discussions on the *isnād* and Islamic *zinā* laws are necessary to determine the probative value of this report, which is not within the scope of present section. But setting aside the legal issue(s) that emerge with the narrative, it and the variant involving ‘Alī once more exhibit ‘Umar as an advocate of the stoning punishment.

In juristic circles, ‘Umar’s use of lapidation served as precedent to affirm both stoning and its use as a single penalty of stoning against the dual penalty of flogging and stoning. For example, the jurist Ibrāhīm al-Nakha‘ī (d. 96) asserted, “Stoning is not applicable to someone who has been flogged. It has reached us that ‘Umar stoned and did not flog.”<sup>739</sup> Hence, not only did ‘Umar’s position legitimize stoning, but it also served to contest the use of a dual punishment.

In this section, I have delineated several *akhbār* according to which ‘Umar endorsed stoning. These reports are important, because they function to undoubtedly correlate lapidation with the caliph. Notably, in the aforementioned narratives, ‘Umar never appealed to either Prophetic or Qur’ānic authority. But ‘Umar’s association with stoning, and a socio-historical impetus to justify the capital punishment, likely informed the circulation of a *khbar* in which ‘Umar made a black letter law statement. Specifically, he sermonized that stoning for *zinā* offenders was mandated on the basis of the Qur’ān and the Prophet’s authority. Accordingly, in

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<sup>738</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:363:29,394; ‘Abd al-Razzāq, *al-Muṣannaf*, 7:354;13,454.

<sup>739</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:328:13,375.

the next three sections I analyze variants of this report and those who transmitted them, to illustrate the different ways in which ‘Umar’s proclamation emerged and was disseminated.

## **Section 2. Reports by the Companion ‘Abd Allāh b. ‘Abbās**

The Companion ‘Abd Allāh b. ‘Abbās (d. 68, Basra, Mecca, Medina, Syria, and Ṭā’if) and Successor Sa‘īd b. Al-Musayyab (d. 92/94, Medina) are recorded to have been the two individuals who heard ‘Umar b. al-Khaṭṭāb sermonize that stoning was in the Book of God and implemented by the Prophet for the *zinā* offense. In this section, I shall focus on *isnāds* and *matns* transmitted on the authority of Ibn ‘Abbās, to determine with a reasonable degree of confidence, his involvement in the circulation of the report. To do this, I first give attention to the Successors ‘Ubayd Allāh b. ‘Abd Allāh b. ‘Utba b. Maṣ‘ūd (d. 98, Medina), and then to Yūsuf b. Mihrān (d. unknown, Basra and Mecca), both of whom are recorded to have circulated the report on Ibn ‘Abbās’ authority. I begin with examining *isnāds* and *matns* leading up to Ibn Shihāb al-Zuhrī (d. 124, Medina and Syria), because he is the only student to have narrated the account on ‘Ubayd Allāh’s authority.

### **Subsection 1. Reports on the authority of Ibn Shihāb al-Zuhrī (d. 124, Medina and Syria)**

Comparative *matn* and *isnād* analysis can help determine what al-Zuhrī may have circulated as well as his participation in the spread of ‘Umar’s *khavar*. To this end, I begin with a report provided by Mālik on al-Zuhrī’s authority, which encompasses a short statement of ‘Umar’s attestation. The *isnād* and *matn* read:

Mālik - Ibn Shihāb al-Zuhrī (d. 124, Medina and Syria) – ‘Ubayd Allāh b. ‘Abd Allāh b. ‘Utba b. Maṣ‘ūd (d. 98, Medina) - ‘Abd Allāh b. ‘Abbās (d. 68, Basra, Mecca, Medina, Syria, and Ṭā’if):

I heard ‘Umar b. al-Khaṭṭāb say: Stoning was in the Book of God. It is mandated for anyone who has *iḥṣān* and commits *zinā*, and is convicted on the basis of



eyewitness testimony, pregnancy, or confession.<sup>740</sup>

This *matn* is constructed with the following two motifs:

- 1) ‘Umar claims that stoning was in the Book of God. As I noted in Chapter One, “Book of God” was an idiomatic expression associated with a prescription from any recognized Divine text. Therefore, ‘Umar’s imputation could have been to the Hebrew Bible or the Qur’ān. In either case, the motive was to ascribe divine legitimacy to the punishment;
- 2) The conditions are outlined under which stoning is mandated.

The second trope is especially important because its content reveals when it, or the entire narrative, may have emerged. In Chapter One, my investigation about *iḥṣān* revealed that its meaning developed in the post-Qur’ānic Islamic legal tradition, and as a reformulation of the Qur’ānic usages of *aḥṣana* and *al-muḥṣanāt*, respectively. Hence, ‘Umar’s endorsement of *iḥṣān* as a condition for stoning implies a provenance when a clearer definition of *iḥṣān*, and its connection to stoning and *zinā*, had been established. This was well after ‘Umar’s demise. In addition to *iḥṣān*, ‘Umar purportedly asserted that pregnancy could serve as proof for a *zinā* conviction. However, in the Islamic legal tradition disagreements have existed about it being used as a legal element for conviction. Specifically, only the Mālikīs permit it whereas other legal schools do not.<sup>741</sup> Setting aside this complication, the important takeaway from Mālik’s entry is that the second caliph is recorded to have justified stoning on the basis of a Divine text and to have delineated the conditions under which it was necessary.

Mālik is important for corroborating that which al-Zuhrī may have circulated. One

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<sup>740</sup> Mālik, *Muwattaʿa*’ (narrated by Yahyā) 1,201f:630/3,042.

<sup>741</sup> For example, see Saḥnūn, *al-Mudawwana*, 4:514; for an insightful analysis of the ways in which ‘Umar’s statement about pregnancy influenced Mālikī doctrine on rape, see Azam, *Sexual Violation in Islamic Law*, 204-9 and 216-9; on the impermissibility of pregnancy as evidence for conviction of *zinā*, see al-Shāfi‘ī, *al-Umm*, 8:110.

reason is that others recorded the *khavar* on Mālik's authority. Both al-Shāfi'ī (d. 204) and 'Abd Allāh al-Qa'nabī (d. 221, Basra and Medina) narrate the report from Mālik. Importantly, their *matns* are the same as the version recorded in the *Muwaṭṭa'*.<sup>742</sup> Furthermore, the Iraqi al-Shaybānī's (d. 189) redaction of the *Muwaṭṭa'* contains the same *matn* as Yaḥyā's rendition.<sup>743</sup> It thus appears to be the case that Mālik was involved in the transmission of the report on al-Zuhrī's authority. This in turn suggests that he may very well have received it from al-Zuhrī.

Another version of 'Umar's *khavar* is preserved in the *Muṣannaḥ* of 'Abd al-Razzāq (d. 211). This variant includes additions details which function as motifs to emphasize the punishment's legitimacy. The *isnād* and *matn* read:

Ma'mar b. Rāshid (d. 153, Basra, Medina, and Yemen) - al-Zuhrī - 'Ubayd Allāh b. 'Abd Allāh b. 'Utba b. Maṣ'ūd - 'Abd Allāh b. 'Abbās:

I heard 'Umar say: Indeed, God Almighty sent Muḥammad with the Truth and the Book. From among the things God sent was the stoning verse. The Messenger of God stoned and we stoned after him. I am afraid that after a long time has passed, someone will claim: "By God, we do not find stoning in God's Book." Such deniers will stray and leave behind their religious obligations that God sent. Indeed, stoning is mandated for the one who commits *zinā*, has *iḥṣān*, and is proven guilty based on testimony, pregnancy, or a confession.<sup>744</sup>

In this entry, the first clause from Mālik's report is modified to include the Prophet and the Truth. This amendment, among others, appear to emphasize the lawfulness of stoning under certain legal circumstances. The following is an explanation of the new tropes found in 'Abd al-Razzāq's record:

1) 'Umar declares that a stoning verse existed and that the Prophet stoned. This is a

<sup>742</sup> al-Bayhaqī, *Sunan al-Kubrā*, 8:369:16,919 and 411:16,053.

<sup>743</sup> Mālik, *Muwaṭṭa'* (narrated by al-Shaybānī), 220:692.

<sup>744</sup> 'Abd al-Razzāq, *al-Muṣannaḥ*, 7:315:13,329; al-Tirmidhī records the *khavar* on 'Abd al-Razzāq's authority. The *matn* is virtually identical to the one furnished by 'Abd al-Razzāq, which indicates that al-Tirmidhī's entry is based on a written source, see al-Tirmidhī, *Jāmi'*, 3:101f:1,432.

modification to the statement in Mālik's report, according to which 'Umar states that stoning was in the Book of God (as opposed to saying that God sent the stoning verse). In Ma'mar's variant, a parallel is constructed between adherence to religious obligations dictated by God and the *Sunna* of the Prophet. The seeming purpose is to doubly reinforce obligations that devolve upon Muslims, which includes the implementation of the stoning punishment for certain forms of *zinā*;

2) 'Umar asserts: "The Messenger of God stoned and we stoned after him." This conveys that the punishment was in fact implemented. From Mālik's entry, one could assume that the Prophet never stoned because there is no mention of him by 'Umar;

3) 'Umar fears that eventually Muslims will deny that a stoning verse existed. This accusation complicates the clause's provenance. His caliphate commenced two years after the Prophet's death and lasted ten years, yet it is unclear from the report when 'Umar purportedly made his statement. It would be odd if 'Umar lamented the abandonment of the sanction shortly after he came to power. Moreover, during his caliphate several Companions were alive, hence, it seems logical that some of them would have remembered the Prophet's involvement in the stoning of *zinā* offenders. This would have especially been the case in light of 'Umar's comment that Muslims stoned after the Prophet's demise. Therefore, one has to read into the *khābar* that 'Umar made his remark during the latter part of his reign. Or, whosoever circulated this element lived at a time well after the caliph's death when disagreements existed about the punishment's applicability to Muslims.

Ma'mar's narrative differs in meaningful ways from Mālik's variant, but the former's purpose is the same as the latter's: 'Umar believed that stoning was prescribed in the Book of God and part

of the Prophetic *Sunna*.

While variances exist in Mālik's and 'Abd al-Razzāq's reports, the overlapping clauses point to Ibn Shihāb al-Zuhrī (d. 124) as the common source of the narration. This being the case, how should the disparities between Mālik's and Ma'mar's respective versions be resolved? It bears to reason that Mālik paraphrased al-Zuhrī's comments and recorded them as such in his *Muwaṭṭa'*. Summarizing narratives was a known practice and (especially) supported by legal specialists.<sup>745</sup> They cared about the legal elements of a report. Therefore, the asymmetry between Mālik's and Ma'mar's variants is explainable on the basis of a succinct narration. The parallel themes point to al-Zuhrī's involvement.<sup>746</sup>

Ibn Ḥanbal furnishes 'Umar's *khbar* on the authority of 'Abd al-Raḥmān b. Maḥdī (d. 198, Basra), who in turn narrates from Mālik, but *not* directly from al-Zuhrī.<sup>747</sup> This variant shares a markedly high degree of similarity with 'Abd al-Razzāq's version from Ma'mar. The only notable difference in Ibn Ḥanbal's entry is that 'Umar purportedly said, "...we read it, were aware of it, and remembered it," after the clause about God sending the stoning verse. Two initial conclusions can be drawn from Ibn Ḥanbal's entry. First, Ibn Maḥdī's *matn* is partially attributable to a source other than Mālik. This is because while Ibn Maḥdī cites Mālik in the *isnād*, disparity exists between what Mālik notes in his *Muwaṭṭa'* and what Ibn Maḥdī claims to have received from Mālik. It is more probable that Ibn Maḥdī received one version of the report from Mālik and another iteration from a different teacher. Ibn Maḥdī then combined the two

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<sup>745</sup> On debates about paraphrasing reports, see Ibn al-Ṣalāḥ, *Muqaddima*, 213-7.

<sup>746</sup> The details encompassed in motif no. 3 from Ma'mar's narrative are absent from two iterations transmitted on Ma'mar's authority, see al-Humaydī, *Musnad*, 1:161:25 and Ibn Ḥanbal, *Musnad* (1992 ed.), 1:414:331. The excised information is likely attributable to Ma'mar's dissemination of a summarized version of the *khbar*.

<sup>747</sup> Ibn Ḥanbal, *Musnad* (1992 ed.), 1:378:276.

narratives to formulate the *khavar* recorded by Ibn Ḥanbal. This makes perfect sense given that by Ibn Mahdī's time, variants were already circulating in both Medina and Iraq as reflected by Ma'mar's (d. 153) version (and others as I demonstrate below). The second conclusion is that the overlap between the versions provided by Mālik, 'Abd al-Razzāq, and Ibn Ḥanbal suggests that Mālik, Ma'mar, and 'Abd al-Raḥmān b. Mahdī were responsible for the circulation of the report about 'Umar and stoning. This commonality - at a minimum - points to al-Zuhrī (d. 124) as someone who helped to transmit the same information.

A basic inspection of a report furnished by Muslim also advances al-Zuhrī's likely role as a common source. This is because it is by another of al-Zuhrī's pupils, and the *matn* overlaps with narrations by 'Abd al-Raḥmān b. Mahdī and Ma'mar (also students of al-Zuhrī). The *isnād* Muslim provides is:

Muslim - Ḥarmala b. Yaḥyā (d. 243-4, Egypt) **and** Abū al-Ṭāhir [Aḥmad b. 'Amr] (d. 250, Egypt) - 'Abd Allāh b. Wahb (d. 197, Egypt and Medina) - Yūnus b. Yazīd al-Aylī (d. 160, Egypt and Medina) - al-Zuhrī...<sup>748</sup>

The two particular differences in Muslim's *matn* when compared to Ma'mar's version are: 1) 'Umar is specifically recorded to have given a sermon, and 2) as in the case of Ibn Mahdī, Yūnus al-Aylī includes 'Umar's assertion that he read and memorized the stoning verse. In sum, we now have three of al-Zuhrī's students who are recorded to have transmitted the report about 'Umar's stoning sermon. If we consider Mālik's account a summary of al-Zuhrī's full report, then the overlapping themes in his, Ma'mar's, Ibn Mahdī's, and Yūnus al-Aylī's increase the potentiality of al-Zuhrī's involvement in the circulation of the *khavar*, and perhaps of the details found in the latter three's respective iterations.

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<sup>748</sup> Muslim, *Ṣaḥīḥ*, 1,317:15/1,691; al-Nasā'ī provides this version of the account with Ibn Wahb in the *isnād*, see al-Nasā'ī, *al-Sunan al-Kubrā*, 6:411f:7,120; al-Bayhaqī also provides this *khavar* with Ibn Wahb in the *isnād*, see al-Bayhaqī, *al-Sunan al-Kubrā*, 8:366:16,909. The respective *matns* share high degrees of similarities, which point to Ibn Wahb as the common source.

Muslim provides a collective *isnād*, which makes it difficult to resolve who exactly may have transmitted particular details to him. Ḥarmala b. Yaḥyā (d. 243-4, Egypt) was a recognized authority in Egypt, although some considered him to be a weak transmitter.<sup>749</sup> However, he was considered to be the most knowledgeable of Ibn Wahb's students, and was noted to have written down reports, which included a *muṣannaf* on the authority of Ibn Wahb.<sup>750</sup> These biographical remarks serve as evidence for Ibn Yaḥyā's likely reception of the *khbar* from his teacher. Shifting to Abū al-Ṭāhir (d. 250, Egypt), he receives all-around praise as a *muḥaddith* and as a legal authority.<sup>751</sup> He is also noted to have produced a commentary on Ibn Wahb's collection of reports.<sup>752</sup> Therefore, it is reasonably plausible that both Ḥarmala b. Yaḥyā and Abū al-Ṭāhir acquired the report from Ibn Wahb and shared it with Muslim. The *matns* noted on the authorities of Ibn Yaḥyā, Abū al-Ṭāhir, and Ibn Mahdī (Ibn Ḥanbal's source) are virtually identical. With the exception of two clauses, their versions are the same as the variant circulated by Ma'mar. Such mirroring in combination with biographical information on Ibn Yaḥyā and Abū al-Ṭāhir, indicate their reproduction of written text from a common source: 'Abd Allāh b. Wahb.

Shifting to an earlier part of Muslim's *isnād*, 'Abd Allāh b. Wahb's (d. 197, Egypt and Medina) and Yūnus b. Yazīd al-Aylī's (d. 160, Egypt and Medina) respective backgrounds suggest that they received 'Umar's *khbar* from al-Zuhrī. Born in 125, Ibn Wahb was known to make distinctions between reports he acquired exclusively by listening to transmitters, and those he reviewed with his teachers after writing them down; nevertheless, he used both sources to

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<sup>749</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 5:550f; al-Dhahabī, *Siyar A'lām*, 11:389.

<sup>750</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 5:550-2; al-Dhahabī, *Siyar A'lām*, 11:390.

<sup>751</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 1:417; al-Dhahabī, *Siyar A'lām*, 12:62.

<sup>752</sup> al-Dhahabī, *Siyar A'lām*, 12:62.

produce *muṣannafs*.<sup>753</sup> This information implies that he could have transmitted ‘Umar’s narrative based on a written source, because his report shares a high degree of similarity with the respective variants circulated by ‘Abd al-Raḥmān b. Maḥdī and to a slightly lesser extent, by Ma‘mar.

Biographical information on Ibn Wahb’s teacher, Yūnus b. Yazīd al-Aylī, raises doubt about his acquisition of the entire report from al-Zuhrī. Indeed, Yūnus al-Aylī was considered to be one of al-Zuhrī’s best students and placed on par with Mālik and Ma‘mar.<sup>754</sup> His relationship with al-Zuhrī is exemplified by a report which states that when al-Zuhrī would visit Ayla, he would stay with Yūnus al-Aylī, and when al-Zuhrī sojourned to Medina, he would be accompanied by Yūnus al-Aylī.<sup>755</sup> However, specific charges belie the reliability of Yūnus al-Aylī’s claim that he received the complete *ḵabar* from his teacher. For example, he was accused of making numerous errors with al-Zuhrī’s transmissions.<sup>756</sup> In fact, he compiled a (now lost) book of al-Zuhrī’s transmission from the jurist Sa‘īd b. al-Musayyab (d. 92/4, Medina) and in some cases, replaced al-Zuhrī’s name with his own.<sup>757</sup> He would also narrate *ḥadīth* that included al-Zuhrī’s *ra’y* (personal opinion) and attribute all their contents to Ibn al-Musayyab.<sup>758</sup> Moreover, according to one biographical entry Yūnus al-Aylī transmitted several *ḥadīth* that he

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<sup>753</sup> Ibn Ḥibbān, *al-Thiqāt*, 8:346; al-Mizzī, *Tahdhīb al-Kamāl*, 16:282f; al-Dhahabī, *Siyar A‘lām*, 9:226 and 233.

<sup>754</sup> Ibn Abī Ḥatim, *al-Jarḥ wa al-Ta’dīl*, 9:248; al-Mizzī, *Tahdhīb al-Kamāl*, 32:555f.

<sup>755</sup> Ibn Abī Ḥatim, *al-Jarḥ wa al-Ta’dīl*, 9:249; al-Mizzī, *Tahdhīb al-Kamāl*, 32:556; al-Dhahabī, *Siyar A‘lām*, 6:300.

<sup>756</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 32:555; al-Dhahabī, *Siyar A‘lām*, 6:298.

<sup>757</sup> Ibn Abī Ḥatim, *al-Jarḥ wa al-Ta’dīl*, 9:248; al-Mizzī, *Tahdhīb al-Kamāl*, 32:555; al-Dhahabī, *Siyar A‘lām*, 6:299; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 7:275.

<sup>758</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 32:555.

claimed to have collected from al-Zuhrī, but in fact obtained them from ‘Uqayl b. Khālīd (d. 144, Egypt, Medina, and Syria), who was also a student of al-Zuhrī.<sup>759</sup> In other words, he was known to practice *tadlīs* with reports disseminated by another of al-Zuhrī’s pupils. Because Yūnus al-Aylī is noted to have altered the names of his sources, which includes one of al-Zuhrī’s students, it is entirely plausible that he received the two clauses from someone other than his teacher. However, the most salient outcome of Yūnus al-Aylī’s report is that despite him potentially making amendments to al-Zuhrī’s narration, the high degree of overlap between his, Ma‘mar’s, and Ibn Mahdī’s variants point to al-Zuhrī as their common source.

It is worth investigating why modifications appear in Yūnus al-Aylī’s version of ‘Umar’s *khabar*. As noted above, Yūnus al-Aylī’s account conveys that ‘Umar made his claim while on the *minbar* of the Prophet, and remarked that “...we read it, were aware of it, and remembered it.” It seems that the sermon motif gives the impression that ‘Umar did not speak about the issue on an unexplainable occasion. It precisely answers the question: When did ‘Umar talk about lapidation as an Islamic punishment? The trope about him reading and remembering the verse functions as an elaboration to its divine legitimacy. But even if we can deduce a justification for the additional information, it still needs to be ascertained as to how they came to appear in Yūnus al-Aylī’s version.

It is important to know that the individuals who circulated these two clauses visited both Medina and Iraq. This means that either Yūnus al-Aylī, or his student Ibn Wahb, added these clauses upon hearing them in those regions to which they traveled. Indeed, Ibn Wahb is reported to have sojourned to Baghdad in search for knowledge.<sup>760</sup> And he is recorded to have exchanged

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<sup>759</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 32:555.

<sup>760</sup> al-Dhahabī, *Siyar A‘lām*, 9:225.



*ḥadīth* and *akhbār* with ‘Abd al-Raḥmān b. Maḥdī,<sup>761</sup> whose account has even more overlap with Yūnus al-Aylī’s version than with Ma‘mar’s narrative. In sum, the totality of Yūnus al-Aylī’s and Ibn Wahb’s biographical data, and the high degree of similarity between their report and others examined thus far, indicate that they received a few details from someone other than al-Zuhrī. Nevertheless, the report again supports al-Zuhrī’s involvement in the transmission of the *khābar*.

Abū Dāwūd furnishes an entry on the authority of another student of al-Zuhrī, and has an appreciable degree of similarity with variants examined thus far. The *isnād* Abū Dāwūd records is:

‘Abd Allāh b. Muḥammad al-Nufaylī (d. 234, Ḥarrān and Syria) - Hushaym [b. Bashīr al-Qāsim] (d. 183, Egypt and Iraq) - al-Zuhrī...<sup>762</sup>

This version differs from other variants I have already analyzed in the following manner:

- 1) ‘Umar is recorded to have given a sermon, but absent is specificity that it was from the Prophet’s *minbar*;
- 2) ‘Umar states, “...we read it and memorized it,” not “...we read it, were aware of it, and remembered it;”
- 3) In his closing remarks, ‘Umar asserts, “By God! If not for people saying: ‘‘Umar b. al-Khaṭṭāb added something to the Book of God,’ then I would have written it down.” This comment embellishes his assertion that, “we read it and memorized it.”

Perhaps a verse did exist but never became part of the standardized Qur’ān. But if a stoning directive was revealed, and the punishment was implemented during the time of the Prophet and

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<sup>761</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 16:279 and 281; al-Dhahabī, *Siyar A‘lām*, 9:224.

<sup>762</sup> Abū Dāwūd, *Sunan*, 6:469:4,418.

thereafter, then it seems logical that more than one person would have remembered it. Moreover, as I explained in Chapter 1, some Muslim legal authorities claimed that the Prophetic *Sunna* abrogated the 100-lash Qur’ānic ruling, not the Qur’ān by the Qur’ān. Hence, the verse’s supposed absence from the Qur’ān raises doubts about ‘Umar himself actually making a case for it being uttered at one time. I will have more to say about this point after examination of other variants. But presently, the important point to note is that the motif again functions to counter hesitations about stoning’s legitimacy for Muslims. And while questions remain about the provenance of these *matn* elements, Abū Dāwūd’s record once again points to al-Zuhrī as a common source for the dissemination of ‘Umar’s report.

An investigation into the *isnād* provided by Abū Dāwūd can explain why the *matn* may contain particular details not found in other variants on al-Zuhrī’s authority, and concurrently raise the degree of confidence about his involvement in the circulation of the report. First, it is unsurprising that Abū Dāwūd documents the *khbar* from ‘Abd Allāh b. Muḥammad al-Nufaylī (d. 234, Ḥarrān and Syria). Abū Dāwūd in particular thought highly of him, and generally, al-Nufaylī was considered to be a reliable transmitter and legal authority.<sup>763</sup> Al-Nufaylī’s teacher and al-Zuhrī’s student, Hushaym b. Bashīr al-Qāsim (d. 183, Egypt and Iraq), is written about extensively in biographical dictionaries, but with conflicting opinions. On the one hand, he was well-traveled and considered to be a reliable *ḥadīth* and *akhbār* transmitter.<sup>764</sup> But on the other, he was famous for practicing *tadlīs*, and the jurist Sufyān al-Thawrī (d.161) ordered people not to catalog anything Hushaym b. Bashīr uttered.<sup>765</sup> It is recorded that Ibn Bashīr never transcribed

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<sup>763</sup> Ibn ‘Asākir, *Tārīkh*, 32:350; al-Mizzī, *Tahdhīb al-Kamāl*, 16:90-2; al-Dhahabī, *Siyar A‘lām*, 10:636; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 3:650.

<sup>764</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 9:315 and 327; al-Mizzī, *Tahdhīb al-Kamāl*, 30:280.

<sup>765</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 9:315 and 327; al-Jurjānī, *al-Kāmil*, 8:452f and 456; al-Mizzī, *Tahdhīb al-Kamāl*,

*ḥadīth* and *akhbār* that he received during study sessions,<sup>766</sup> but it is also said that he did produce *muṣannaḥs*.<sup>767</sup> According to one biographical account, he may have written anywhere from 100 to 300 of al-Zuhrī's transmissions, but lost his written copy when a strong gust of wind blew it out and away from his arms.<sup>768</sup> Much to his dismay, he was able to memorize only nine of al-Zuhrī's reports after this incident.<sup>769</sup> It is also remarked that he used to narrate from a number of al-Zuhrī's students, and practiced *tadlīs* with reports that Ibn 'Uyayna had received from al-Zuhrī.<sup>770</sup> Furthermore, 'Abd al-Raḥmān b. Maḥdī, also a student of al-Zuhrī, enjoyed a highly favorable rapport with Hushaym b. Bashīr.<sup>771</sup> As I stated above, Abū Dāwūd's entry containing Hushaym b. Bashīr has considerable overlap with other variants, especially with 'Abd al-Raḥmān b. Maḥdī's and Yūnus b. Yazīd's variants.<sup>772</sup> Based on all of this information, Hushaym b. Bashīr's (d. 183, Egypt and Iraq) habit of acquiring reports from al-Zuhrī's students, practice of *tadlīs*, and the notable degree of similarity between the *matn* he transmits and others analyzed thus far, make it plausible that he acquired the detailed *ḥabār* from a written copy, whose source may have been someone other than al-Zuhrī. But even with questions about the provenance of his report, the *isnād* and *matn* again suggest al-Zuhrī as someone to have

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30:283.

<sup>766</sup> Ibn Sahl, *Tārīkh, al-Wāsiṭ*, 138.

<sup>767</sup> al-Dhahabī, *Siyar A'lām*, 8:289.

<sup>768</sup> al-Jurjānī, *al-Kāmil*, 8:452; al-Mizzī, *Tahdhīb al-Kamāl*, 30:277.

<sup>769</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 30:278.

<sup>770</sup> al-Jurjānī, *al-Kāmil*, 8:452.

<sup>771</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta'dīl*, 9:115; al-Jurjānī, *al-Kāmil*, 8:453; al-Mizzī, *Tahdhīb al-Kamāl*, 30:281f; al-Dhahabī, *Siyar A'lām*, 8:290.

<sup>772</sup> Hushaym b. Bashīr remarked that he traveled to Egypt to acquire *ḥadīth*, see Ibn Sahl, *Tārīkh al-Wāsiṭ*, 137.

circulated ‘Umar’s *khavar*.

Up to this point, I have examined reports from five of al-Zuhrī’s students to corroborate his role in the transmission of the ‘Umar’s stoning sermon, and to determine the exact nature of the information he may have transmitted. The students are:

Ma‘mar b. Rāshid (d. 153, Basra, Medina, and Yemen),  
Yūnus b. Yazīd al-Aylī (d. 160, Egypt and Medina),  
Mālik (d. 179, Medina),  
Hushaym b. Bashīr al-Qāsim (d. 183, Egypt and Iraq),  
‘Abd al-Raḥmān b. Mahdī (d. 198, Basra).

The shared elements in their respective narratives are:

- 1) The claim that stoning was in the Book of God;
- 2) The assertion that God sent Muḥammad with the Truth and the stoning verse;
- 3) ‘Umar’s insistence that, “The Messenger of God stoned and we stoned after him;”
- 4) Fear that after a long time has passed, people will deny that a stoning verse existed;
- 5) They will oppose it in the same manner they do not hold fast to their religious obligations;
- 6) The conditions mandating stoning: *iḥṣān* plus testimony, pregnancy, or a confession.

The provenance of the following tropes remains unclear:

- 7) ‘Umar gives a sermon, possibly from the Prophet’s *minbar*;
- 8) ‘Umar’s affirmation that, “...we read it, were aware of it, and memorized it;”
- 9) ‘Umar displeasure: “By God! If not for people saying: ‘Umar b. al-Khaṭṭāb added something to the Book of God,’ then I would have written it down.”

Based on *isnād* and comparative *matn* analysis, it is highly probable that al-Zuhrī narrated items one through six, which means they were in circulation by the first quarter of the second

century.<sup>773</sup>

In addition to the reports by the five students noted above, other variants incorporating al-Zuhrī further corroborate the likelihood of his involvement in the circulation of the *khavar*.

Specifically, al-Nasā'ī provides three entries from three different pupils of al-Zuhrī. According to one *isnād*, Bishr b. 'Umar (d. 209, Basra) transmitted the narrative on al-Zuhrī's authority,<sup>774</sup> and pursuant to another entry, it was 'Abd Allāh b. Abī Bakr [b. Ḥazm] (d. 130 or 135, Medina).<sup>775</sup>

The *matns* of these narratives are virtually identical to those transmitted by Ma'mar and 'Abd al-Raḥmān b. Maḥdī. In the third entry that al-Nasā'ī provides, the *khavar* is on the authority of 'Abd Allāh b. Wahb's (d. 197, Egypt and Medina).<sup>776</sup> Ibn Wahb states that he received this report from both Mālik and Yūnus b. Yazīd al-Aylī (d. 160, Egypt and Medina). The *matn* is almost indistinguishable from Yūnus al-Aylī's account in Muslim's *Ṣaḥīḥ* (noted above), which means Ibn Wahb had access to a written source. This makes sense in light of the earlier noted biographical comment that he used to acquire some reports through aural transmission. It thus seems that al-Nasā'ī's entries advance the prospect that items one through six of 'Umar's stoning sermon was in circulation by the first quarter of the second century in Medina and Iraq, with al-Zuhrī as the common source. I will defer additional comments about al-Zuhrī's role, and by extension those noted in the earlier part of the *isnād*, after I have discussed other versions of

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<sup>773</sup> Sufyān b. 'Uyayna is recorded to have narrated 'Umar's *khavar* once on the authority of Ma'mar, and twice on the authority of al-Zuhrī. Each variant has some of the items listed 1 - 6. Combined, they have all of them. In my view, transmission error led to the differences in the three *matns* disseminated by Ibn 'Uyayna. For his report from Ma'mar, see al-Humaydī, *Musnad*, 1:161:25; for Ibn 'Uyayna's variants on the direct authority of al-Zuhrī, see al-Bukhārī, *Ṣaḥīḥ* (1976 ed.), 90:6,441 and al-Mawṣilī, *Musnad*, 1:141:12 (151).

<sup>774</sup> al-Nasā'ī, *al-Sunan al-Kubrā*, 6:411:7,119.

<sup>775</sup> al-Nasā'ī, *al-Sunan al-Kubrā*, 6:412:7,121.

<sup>776</sup> al-Nasā'ī, *al-Sunan al-Kubrā*, 6:411f:7,120.

‘Umar’s stoning narrative.

Over the next two sections, I give attention to two additional variants of ‘Umar *khavar*. One group of reports is on the authority of Yūsuf b. Mihrān (d. unknown, Basra and Mecca), who was also a student of Ibn ‘Abbās. The other set of narratives are on the authority of ‘Umar’s purported associate, Sa‘īd b. al-Musayyab (d. 92 and 94, Medina). In the next section, I examine *isnāds* and *matns* emanating from Yūsuf b. Mihrān.

## **Subsection 2. Reports on the authority of Yūsuf b. Mihrān (d. unknown, Basra and Mecca)**

In this subsection, I examine reports circulated by Yūsuf b. Mihrān (d. unknown, Basra and Mecca), a noted student of Ibn ‘Abbās. Unsurprisingly, Ibn Mihrān’s account is not as popular as those circulated on the authority of the well-known *muḥaddith* and legalist al-Zuhrī. But the limited dissemination of Ibn Mihrān’s variant does not hamper its evaluation for the present analysis, especially because we have at our disposal al-Zuhrī’s report as a comparative marker. In short, Ibn Mihrān’s account of ‘Umar’s sermon on the authority of Ibn ‘Abbās is helpful for determining the provenance of certain motifs, their regions of circulation, and their implication(s).

In surveying the sources used for this dissertation, one pupil of Ibn Mihrān transmits the report on his authority: ‘Alī b. Zayd b. Jud‘ān (d. 129 or 131, Basra and Mecca). His account is in the *Musnad* of al-Ṭayālīsī (d. 204). The *isnād* and *matn* read:

al-Ṭayālīsī - Ḥammād b. Zayd (d. 197, Basra) - ‘Alī b. Zayd b. Jud‘ān (d. 129 or 131, Basra and Mecca) - Yūsuf b. Mihrān (d. unknown, Basra and Mecca):

Ibn ‘Abbās gave a sermon in Basra and said: Everyone, indeed ‘Umar b. al-Khaṭṭāb once said to us, ‘People, indeed stoning is a *ḥadd* from among the *ḥudūd*, so do not avoid it. It is in God’s Book and a practice of our messenger. The Messenger of God stoned, Abū Bakr stoned, and I stoned.’<sup>777</sup>

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<sup>777</sup> al-Ṭayālīsī, *Musnad*, 1:29f.25; Ibn Abī Shayba provides a very similar report:

Certain motifs in this account are also in al-Zuhrī's variants, however, not necessarily constructed in the same literary style. They are as follows:

- 1) It is Ibn 'Abbās who gives the sermon in Basra. In al-Zuhrī's variants, it is 'Umar himself.
- 2) The warning, "...so do not avoid it," parallels al-Zuhrī's *matns* according to which 'Umar says Muslims will stray and leave behind their religious obligations.
- 3) "It is in God's Book and a practice of our messenger" expresses the same intention as in al-Zuhrī's iteration when 'Umar asserts that God sent Muḥammad with the Truth and the stoning verse.
- 4) The profession, "The Messenger of God stoned, Abū Bakr stoned, and I stoned," is a specificity to some of al-Zuhrī's iterations in which 'Umar remarks, "The Messenger of God stoned, and we stoned after him."
- 5) The avowal, "...stoning is a *ḥadd* from among the *ḥudūd*," must have been a later amendment due to the implicit formal legal meanings (*ḥadd* = punishment). Nevertheless, it is an affirmation that seemingly operates in conversation with other versions, according to which 'Umar believed that Muslims would eventually deny the punishment.

All in all, Ibn Mihrān's report retains the same motifs found in al-Zuhrī's *khavar*. Importantly, the objectives of the proclamation themselves remain intact: stoning should be considered a lawful Islamic punishment.

Other versions which circulated on Ibn Mihrān's authority also share many of the

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"Stoning is a *ḥadd* from among the *ḥudūd* of God, so do not avoid it. The Messenger of God stoned, Abū Bakr stoned, and I stoned." In this entry, there is no reference to the punishment being in God's Book. This clause's absence is likely due to transmission error, because its appearance in a number of other variants, see Ibn Abī Shayba (2008 ed.), 9:355:29,358.

elements found in the above entry by al-Ṭayālīsī. ‘Abd al-Razzāq provides a version that he acquired from Ma‘mar, who as noted in the previous section, also transmitted the *khavar* on al-Zuhrī’s authority. The *isnād* and *matn* read:

Ma‘mar b. Rāshid (d. 153, Basra, Medina, and Yemen) - ‘Alī b. Zayd b. Jud‘ān (d. 129 or 131, Basra and Mecca) - Yūsuf b. Mihrān - Ibn ‘Abbās:

‘Umar b. al-Khaṭṭāb ordered the call for prayer and everyone gathered to pray. He then got up on the *minbar*, praised God, and said: People, do not avoid the stoning verse for it was sent in God’s Book. We read it but it was removed from the Qur’ān. Many things perished with Muḥammad, including the stoning verse. But indeed he stoned, as did Abū Bakr, and so did we after him. A day will come when people from among this *Umma* will lie about stoning, just as they will lie about the sun rising from the east, intercession, the watering trough, the *dajjāl*, torment in the grave, and the day when someone is removed from the fire after having been placed in it.<sup>778</sup>

This iteration of the report has some overlapping motifs with others variants analyzed thus far. But it also contains some information not found in other versions, which may be helpful in shedding additional light on the provenance of particular elements. Note the following:

- 1) In Ma‘mar’s version on Ibn Mihrān’s authority, ‘Umar is in place of Ibn ‘Abbās as the one who gives the sermon. But in Ibn Mihrān’s variant, it is Ibn ‘Abbās who gives the sermon. In al-Zuhrī’s variants, those who include the sermon motif sojourned to or resided in Iraq. However, Ma‘mar does not include it in the narration on al-Zuhrī’s authority.<sup>779</sup> Therefore, it is highly probable that the sermon motif gained popularity in Iraq and then spread out to others parts of the Islamic polity;
- 2) In Ma‘mar’s variant on Ibn Mihrān’s authority, ‘Umar claims that he read the stoning verse but it was removed from the Qur’ān. This eradication becomes an extension of the

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<sup>778</sup> ‘Abd al-Razzāq, *al-Muṣannaf*, 7:330:13,364.

<sup>779</sup> The exception is the report provided by al-Humaydī on the authority of the Iraqi, Ibn ‘Uyayna (d. 198). This does not alter my conclusion about the provenance of the motif of ‘Umar sermonizing.



Prophet's death: just as he died, so did other "things," including the stoning verse. This nostalgic eventuality is then emphasized with 'Umar's comment, "We read it but it was removed." These tropes appear in some variants on al-Zuhrī's authority when 'Umar says, "...we read it, were aware of it, and memorized it." Again, this clause is absent from Ma'mar's account that he received from al-Zuhrī. If Ma'mar had wished, he could have amended the *matn* to include it, but he did not. Hence, Ma'mar reported what Ibn Jud'ān transmitted from Ibn Mihrān. It thus seems that the clause, "...we read it, were aware of it, and memorized it," was added to al-Zuhrī's narration in Iraq during the first half of the second century.

3) According to Ma'mar's transmission tracing back to Ibn Mihrān, 'Umar bemoans about the day when Muslims will deny the punishment of stoning. This complaint is the same as in al-Zuhrī's variants, when 'Umar laments that eventually someone will deny that a stoning verse existed. Therefore, we are on stronger footing to state that this motif was in circulation by the first quarter of the second century.

In sum, the construction of the *khbar* on Ibn Mihrān's authority once again functions to underscore the use of stoning as punishment for certain forms of *zinā*. The embedded language draws upon the Qur'ān, the Prophet, and religio-ideological matters to declare something lawful that may not have been otherwise. On the basis of comparative *matn* analysis, it is plausible that 'Alī b. Zayd b. Jud'ān (d. 129 or 131, Basra and Mecca) and his teacher Yūsuf b. Mihrān (d. unknown, Basra and Mecca) participated in the circulation of 'Umar's *khbar* about stoning.

Al-Mawṣilī (d. 307) provides a variant with a high degree of similarity to the version narrated on Ma'mar's authority.<sup>780</sup> In place of Ma'mar as Ibn Jud'ān's pupil, Ḥammād b. Salama

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<sup>780</sup> al-Mawṣilī, *Musnad*, 1:136:7/146.

(d. 167, Basra), a respected transmitter of narratives.<sup>781</sup> The *matn* is not word-for-word the same, which suggests reception of the *khavar* from a common source, but not based on a written copy. The only noteworthy divergence between Ibn Salama's and Ma'mar's respective *matns* is that in the former's account, there is no clause about 'Umar saying that he and others used to read the verse. The absence of 'Umar's comment reaffirms that it was not Ibn Jud'ān, but someone else after him who helped to circulate it. This assertion can be considered with more seriousness because as noted above, the element is absent from al-Ṭayālīsī's entry, whose direct source is Ibn Jud'ān. Beyond this difference, al-Mawṣilī's entry appears to corroborate the participation of Ibn Jud'ān in the transmission of the *khavar*.

'Alī b. Zayd b. Jud'ān's (d. 129 or 131, Basra and Mecca) version of 'Umar's *khavar* contains several elements found in al-Zuhrī's (d. 124) variant. These are, specifically:

- 1) 'Umar's declaration of stoning to be God's ordinance;
- 2) a claim that stoning was in the Book of God;
- 3) an avowal that the Prophet stoned, Abū Bakr stoned, and the practice continued after the latter's death;
- 4) the fear of an eventuality when people will deny stoning as an Islamic mandate.

The commonality between Ibn Jud'ān's and al-Zuhrī's variants raises the potentiality of their participation in the circulation of this information. Biographical evaluation may be also be helpful in supporting a more favorable degree of confidence about the Ibn Jud'ān - Ibn Mihrān *isnād* and the transmission's historicity.

While some negative comments are made about 'Alī b. Zayd b. Jud'ān (d. 129 or 131, Basra and Mecca), all in all his biographical information does encourage the acceptability of his

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<sup>781</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 7:259 and 262-5; al-Dhahabī, *Siyar A'lām*, 7:444ff.

place in the *isnād* and the information he is recorded to have narrated. Indeed, some *ḥadīth* critics opined that Ibn Jud‘ān was a weak transmitter and that his transmission were meaningless.<sup>782</sup> These sentiments may have resulted from allegations of him being an extremist Shī‘ī.<sup>783</sup> In contrast, others thought highly of him, and considered him to be a legal authority.<sup>784</sup> This is important for the present analysis. It advances a probable cause for his involvement in the circulation of a report discharged to resolve a particular legal matter. Sufyān b. ‘Uyayna (d. 198) remarked that he compiled a book on the basis of Ibn Jud‘ān’s *ḥadīth* and *akhbār*.<sup>785</sup> Ibn ‘Uyayna received high praise from many scholars such as al-Shāfi‘ī (d. 204), Ibn Ma‘īn (d. 233), and Ibn Ḥanbal (d. 241),<sup>786</sup> with al-Dhahabī (d. 748) bestowing upon him the sobriquet “Shaykh al-Islam.”<sup>787</sup> It would be odd for an authority such as Ibn ‘Uyayna to openly acknowledge his reception and acceptance of reports from Ibn Jud‘ān if the latter was not well-regarded. In combination with *matn* analysis, biographical information, accolades by respected *ḥadīth* critics (who themselves were respected), improve the likelihood of Ibn Ju‘ān’s participation in the reception and dissemination of ‘Umar’s stoning *khabar*.

Not much is written about Yūsuf b. Mihrān (d. unknown, Basra and Mecca), but according to biographical entries, he was in the habit of writing down and reciting the *ḥadīth* and

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<sup>782</sup> Ibn Sa‘d, *al-Tabqāt al-Kubrā*, 9:251; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta‘dīl*, 6:186f; al-Mizzī, *Tahdhīb al-Kamāl*, 20:437-9; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 4:599.

<sup>783</sup> al-Jurjānī, *Kāmil*, 6:335; al-Mizzī, *Tahdhīb al-Kamāl*, 20:439; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 4:599; it would be worthwhile to understand what Shī‘ī extremism may have meant for these critics.

<sup>784</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 20:442f; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 4:599f.

<sup>785</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 20:441; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 4:600.

<sup>786</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 11:190; al-Dhahabī, *Siyar A‘lam*, 8:457.

<sup>787</sup> al-Dhahabī, *Siyar A‘lam*, 8:454.

*akbār* in his possession.<sup>788</sup> Importantly, he is recorded to have transmitted several reports from Ibn ‘Abbās. But the only documented person to have narrated from Ibn Mihrān is his pupil, ‘Alī b. Zayd b. Jud‘ān.<sup>789</sup> This raises questions about the likelihood of Ibn Mihrān reception of any *ḥadīth* or *akhbār* from Ibn ‘Abbās, because no other reports exist for corroboration. However, to burden the *isnād*’s historicity in this manner would be to impugn on *ex silentio* grounds. Simply because there are no extant records of Ibn Mihrān’s other students does not *a priori* mean he did not have any. Moreover, it is plausible that Ibn Mihrān was not a famed *muḥaddith*. As a result of his unpopularity, transmitters may not have sought out study sessions with him. Moreover, individuals may have also had a proclivity towards employ better-known narrators who taught the same information as Ibn Mihrān. These scenarios would mean that over time, his transmissions faded away from people’s mouths. Thus, there is insufficient evidence to affirmatively dismiss Ibn Mihrān’s role despite Ibn Jud‘ān being his only recorded pupil. To improve the degree of confidence about Yūsuf b. Mihrān’s dissemination of the report, and to advance the understanding of the *khābar*’s provenance, I now turn attention to variants on the authority of Sa‘īd b. Al-Musayyab (d. 92/94, Medina), because like Ibn ‘Abbās, he is also recorded to have heard ‘Umar’s remark about stoning.

### **Section 3. Reports on the authority of Sa‘īd b. Al-Musayyab (d. 92/94, Medina)**

Analysis of ‘Umar’s stoning *khābar* on Ibn al-Musayyab’s authority can provide clarity about the provenance of certain motifs and the extent to which particular transmitters

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<sup>788</sup> Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta’dīl*, 9:229; al-Mizzī, *Tahdhīb al-Kamāl*, 32:463; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 7:249.

<sup>789</sup> Ibn Ma‘īn, *Tārīkh*, 4:325:4,614; Ibn Abī Ḥātim, *al-Jarḥ wa al-Ta’dīl*, 9:229; al-Mizzī, *Tahdhīb al-Kamāl*, 32:463; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 7:249.

participated in their dissemination. The report also sheds light on the possible ways in which ‘Umar’s report was reconfigured over time and articulated with particular idiosyncrasies. In this section, I first evaluate *isnāds* and compare *matns* variants that went into circulation on the authority of Ibn al-Musayyab’s pupils, Yahyā b. Sa‘īd (d. 143-4, Anbār, Baghdad, and Medina) and Dāwūd b. Abī Hind (d. 139/140, Basra). I contend that due to transmission errors, Ibn al-Musayyab was incorrectly recorded to have directly narrated a report involving ‘Umar’s claim about stoning.

Mālik provides a highly detailed account which retains many of themes in al-Zuhrī’s and Ibn Jud‘ān’s respective versions. His *isnād* and *matn* read:

Mālik - Yahyā b. Sa‘īd (d. 143-4, Anbār, Baghdad, and Medina) - Sa‘īd b. Al-Musayyab (d. 92/94, Medina):

After leaving Minā, ‘Umar b. al-Khaṭṭāb made his camel kneel onto its belly. Then he took some earth and made a mound in the river bed. He then threw his cloak onto it, sat on it, and raised his hands to the sky and said: God, I am old and my community has become weak. My flock has expanded so take me to you, but not as someone who is lavish or forsaken.

‘Umar then went to Medina and gave a sermon. He said: People, the *Sunna* has been prescribed for you and religious obligations have been made compulsory for you. But you leave behind what is clear and stray to the right and to the left.

He then clapped and said: People, be wary of moving away from the stoning verse. And be wary of the person who says, “We do not find two *ḥadd*s in the Book of God.” Indeed the Messenger of God stoned and we stoned. By the One in whose hand is my soul, if not for people saying, “‘Umar b. al-Khaṭṭāb added to the Book of God,” I surely would have written down, “*Al-shakyh* and *al-shaykha*, stone them both.” I have surely read it.<sup>790</sup>

This narrative reformulates many of themes highlighted in previous sections. They are as follows:

1) As I noted in the section on al-Zuhrī’s variant, one motif expressed ‘Umar grief’s

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<sup>790</sup> Mālik, *Muwatta’* (narrated by Yahyā b. Yahyā), 1,203:631/3,044.

about an eventual time when Muslims would disregard the stoning punishment. I argued that in light of when ‘Umar’s caliphate began, this trope complicates the provenance of the narrative. In Ibn Sa‘īd’s account, the backstory throws into relief any concerns about the exact time period. ‘Umar is recorded to have said that he was old and his flock had expanded. These two indicators express that ‘Umar’s purported stoning sermon transpired during the latter part of his caliphate, which by implication means it was well after the Prophet’s time.

2) The sermon motif appears in Ibn Sa‘īd’s variant. This is noted in some versions by al-Zuhrī (Iraqi transmitters), and in all narratives by the Iraqi Ibn Jud‘ān;

3) The trope regarding ‘Umar’s caution to people about not straying from their religious obligations:

a. In Ibn Sa‘īd’s version, he dissuades Muslims from deviating to the right or left;

b. In al-Zuhrī’s narrative, he implores Muslims to not follow in the footsteps of those who abandon their religious obligations;

c. In Ibn Jud‘ān’s iteration, he predicts that people will lie about stoning as they do about other religious matters.

4) ‘Umar’s opening remark in the sermon invokes adherence to those obligations which have been dictated by God, and those made incumbent upon believers by the Prophet. He then draws a parallel with these two sources of duty with fidelity to stoning. This motif is in al-Zuhrī’s and Ibn Jud‘ān’s variants as well, namely, that stoning was in the Book of God and part of the Prophetic *Sunna*;

5) The motif about the existence of a stoning verse is amplified by ‘Umar statement that he would have added it to the Qur’ān if not for Muslims accusing him of doing something

theologically heretical;

6) Advancing the notion of two *ḥadds* is similar to Ibn Jud‘ān’s report, which also contains the term *ḥadd*. As I previously argued, this detail was a later amendment to the *khavar* once *ḥadd* had developed a technical legal meaning.

Absent from Ibn Sa‘īd’s variant are the conditions which mandate the stoning punishment. This again implies that their provenance is later than ‘Umar’s reign. Nevertheless, Ibn Sa‘īd’s (d. 143-4) version of ‘Umar’s stoning *khavar* retains and expresses themes found in versions transmitted on the respective authorities al-Zuhrī (d. 124) and Ibn Jud‘ān (d. 129 or 131). Therefore, comparative *matn* analysis reiterates that the overlapping clauses were in circulation by the first quarter of the second century.

Of importance is ‘Umar’s recitation of the stoning verse, which is a (re)expression of al-Zuhrī’s and Ibn Jud‘ān’s account in which ‘Umar says that he read it and memorized it. The structure of this *āyat* betrays an early provenance, especially one that is concurrent with ‘Umar. Let us imagine that at some point the stoning verse was considered to be part of the Qur’ān. If this was the case, then it would have been located next to other verses alluding to the punishment of stoning for *zinā* and the category of *shayhks*. Why? A comparative analysis of other verses about legal offenses and their punishments provides the answer. Specifically, in Q5:38 the Qur’ān reads, “*al-sāriq wa al-sāriqa*,” or “the male or female thief,” and in Q24:2 it states, “*al-zānīyya wa al-zānī*,” or “the female or male sexual offender.” Implicit in the active participles is the offense of theft or illicit sexual intercourse, respectively. *Al-shaykh* and *al-shaykha* - independently - fail to convey *any* sort of offense. Therefore, the stoning verse only makes sense within the context of surrounding verses, *or* in light of ‘Umar’s claim. In an attempt to assert the existence of an actual stoning verse, a central issue seems to have been disregarded. Moreover,

the stoning verse is complicated by the legal elements of *iḥṣān* and *thayyib*, which are paramount for stoning, but absent from *āyat al-rajm*. In sum, both *zinā* laws and comparative analysis with Qur’ānic verses expose gaps in the stoning verse as noted in above report.

It does not take an observer from the twenty-first century (CE) to recognize the stoning verse’s inherent problematic nature. The fact that *shaykha* does not signal an offense whatsoever, any *shaykh* or *shaykha* could be stoned for *any unspecified reason*. This particular shortcoming was likely realized soon after *āyat al-rajm* went into circulation. The slippage in the expression informed another (re)iteration of the verse, which reads, “As for *al-shaykh* and *al-shaykha*, **when they commit *zinā***, stone them both [emphasis mine].”<sup>791</sup> The initial oversight is thrown into sharp relief with the conditional clause.<sup>792</sup> The legalist and *muḥaddith* Sufyān b. ‘Uyayna (d.198, Kufa, Mecca, and Yemen) transmitted this modified stoning verse on al-Zuhri’s authority. It is highly probable that Yaḥyā b. Sa‘īd transmitted the verse to Mālik, as well as to others in Iraq (when Yaḥyā moved there), where Ibn ‘Uyayna came to know of it and helped disseminate the modified version.

Unsurprisingly, the existence of a stoning verse was also justified on the purported authority of other important figures. For example, the Successor Kathīr b. al-Ṣalt (d. unknown, Medina and Kinda) contended that one of the Prophet’s scribe, Zayd b. Thābit (d. 42-55), said that he heard the Prophet recite the stoning verse.<sup>793</sup> In another iteration of this report, Zayd remarked that after the stoning verse was revealed, ‘Umar asked the Prophet about writing it

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<sup>791</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:354:29,354; Ibn Mājah, *Sunan*, 853:2553; al-Nasā‘ī, *al-Sunan al-Kubrā*, 6:410f:7,118; al-Bayhaqī, *al-Sunan al-Kubrā*, 8:366f:16,910.

<sup>792</sup> Uncertainty remains about the type of *zinā* mandating death by stoning.

<sup>793</sup> al-Ṭayālīsī, *Musnad*, 503:615.



down, and the Prophet balked at the query.<sup>794</sup> If true, the Prophet's reaction would raise complications about the standardization of the Qur'ān, because the reports intimates that the Prophet's agreement and positive reaction were first needed to record God's word. In any case, this supposed account serves to explain why the stoning never made it into the 'Uthmānī Codex. In addition to Zayd b. Thābit, two other Companions are recorded to have spoken about the stoning verse. One is the Prophet's wife, 'Ā'isha (d. 57), who purportedly remarked that after the stoning verse was revealed and written down, it was left in her house underneath her bed. A small animal entered her residence and ate the material upon which it was written.<sup>795</sup> Here, the implication is that preservation on paper, as opposed to memory, was the only valid method for preserving the Qur'ān. The Companion Ubayy b. Ka'b (d. 19, 22, 30, or 32), who was also a scribe of the Prophet, asserted that *Surat al-Aḥzāb* was reduced in length, and one eliminated verse concerned stoning.<sup>796</sup> The ramifications of these reports are obvious for Muslims and the history they assert regarding the Prophet, his connection to the Qur'ān, and the process by which it was standardized. It is also worthwhile to consider that if Ubayy b. Ka'b, Zayd b. Thābit, and 'Ā'isha knew about a stoning verse, then their awareness complicates 'Umar's assertion that it was forgotten.

Having analyzed the *matn* and the importance of the motifs embedded in it, I now turn attention to *isnād* analysis and the transmission of 'Umar's stoning *khavar*. Mālik's entry, which I cited above, is in the redaction of the *Muwatta'* on Yaḥyā's authority. The same report exists in

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<sup>794</sup> Ibn Ḥanbal, *Musnad* (1992 ed.), 43:472f:21,596; al-Nasā'ī, *al-Sunan al-Kubrā*, 6:406:7,107 and 407:7,110; al-Bayhaqī, *al-Sunan al-Kubrā*, 9:367:16,912f.

<sup>795</sup> Ibn Ḥanbal, *Musnad* (1995 ed.), 18:188f:26,194.

<sup>796</sup> al-Ṭayālīsī, *Musnad*, 436f:542; 'Abd al-Razzāq, *al-Muṣannaf*, 3:365:5,990 and 7:329f:13,363.

the redaction of the *Muwaṭṭa'* transmitted by al-Shaybānī (d. 182, Kufa and Rayy).<sup>797</sup> There are slight variations between the two versions. But overall, there exists a high degree of similarity between the *matns*. This suggests that Mālik was Yaḥyā and al-Shaybānī's common source, and in turn raises the likelihood that Mālik himself acquired the report from Yaḥyā b. Sa'īd.

One may conclude with more confidence that Mālik received the *khābar* from his teacher, Yaḥyā b. Sa'īd (d. 143-4, Anbār, Baghdad, and Medina), when one understands how close the two men were. Their favorable rapport is noted in biographical dictionaries, and is demonstrated by some entries about Yaḥyā, because they are Mālik's opinions. According to Mālik, Yaḥyā claimed to only write down legal and religious knowledge acquired through audition.<sup>798</sup> And it is Mālik who states that Yaḥyā asked him to bring a compilation of *ḥadīth* to use prior to Yaḥyā's relocation to Iraq.<sup>799</sup> In short, biographical data increases the likelihood that Mālik received 'Umar's stoning *khābar* Yaḥyā.

Before investigating the probability of Ibn Sa'īd's reception of the narrative from Sa'īd b. al-Musayyab (d. 92/94, Medina), I first focus on Ibn al-Musayyab. According to Mālik's *isnād*, Sa'īd b. al-Musayyab directly heard 'Umar's sermon about the stoning punishment. In fact, given the background information communicated by Ibn al-Musayyab, one has to presume he sojourned with the caliph from Mecca to Medina. But it is questionable if Ibn al-Musayyab directly observed 'Umar on the pulpit as the *isnād* would have us believe. To begin with, Ibn al-Musayyab was a well-known legal authority; for example, Ibn Sa'd includes him under the heading, "Those who used to give *fatwas* in Medina after the Companions of the Prophet,

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<sup>797</sup> Mālik, *Muwaṭṭa'* (narrated by al-Shaybānī), 220:693.

<sup>798</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 31:352.

<sup>799</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 7:518.

Emigrants, and Others.”<sup>800</sup> He was considered to be one of the seven eminent jurists of Medina, which also included ‘Ubayd Allāh, the source for al-Zuhrī’s variants.

Uncertainty existed about Ibn al-Musayyab’s audience with the second Caliph. The association between Ibn al-Musayyab and ‘Umar may have been popular because Ibn al-Musayyab was proficient in ‘Umar’s rulings.<sup>801</sup> But according to different reports, he was born either before or after ‘Umar’s death.<sup>802</sup> If born after ‘Umar’s demise, then he could not have acquired ‘Umar’s legal opinions through direct contact. The *ḥadīth* critic Ibn Ma‘īn (d. 233) remarked he was not aware of any proof that Ibn al-Musayyab ever met ‘Umar.<sup>803</sup> In another biographical entry, when Ibn al-Musayyab was asked if he had ever spent time with ‘Umar, he replied in the negative, but acknowledged that he was born during ‘Umar’s caliphate.<sup>804</sup> Ibn al-Musayyab’s birth period during ‘Umar’s reign is corroborated by a biographical entry on Iyās b. Mu‘āwiya (d. 122, Basra and Wāsiṭ). It states that when Ibn al-Musayyab met Ibn Mu‘āwiya, the former asked the latter about his background. Ibn Mu‘āwiya replied that he was from the tribe of Muzayna, to which Ibn al-Musayyab answered that he remembered the death announcement ‘Umar made about the well-known Muzaynī, al-Nu‘mān.<sup>805</sup> It thus seems that because Ibn al-Musayyab was intimately aware of ‘Umar’s legal opinion, some folks presumed the two spent time together. But others questioned the potentiality of a student-teacher relationship.

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<sup>800</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 2:325.

<sup>801</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 7:121.

<sup>802</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 7:120; Ibn Ma‘īn, *Tārīkh*, 3:191:858; Ibn Ḥibbān, *al-Thiqāt*, 4:273.

<sup>803</sup> Ibn Ma‘īn, *Tārīkh*, 3:216:999.

<sup>804</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 11:74.

<sup>805</sup> Ibn Sa‘d, *al-Ṭabaqāt al-Kubrā*, 8:141; al-Dhahabī, *Siyar A‘lām*, 1:404.

Regardless, Ibn al-Musayyab's own comments suggest that he was born during 'Umar's caliphate and attended gatherings when the caliph gave speeches. This would imply that Ibn al-Musayyab could have observed 'Umar argue for the stoning punishment from the *minbar*. But an important consideration throws doubt onto this scenario. It is recorded that Ibn al-Musayyab knew Ibn 'Abbās well and thought that he was the most knowledgeable of all people.<sup>806</sup> Such a favorable opinion intimates that Ibn 'Abbās may have in fact been Ibn al-Musayyab's source.

Analysis of Ibn al-Musayyab's student, Yaḥyā b. Sa'īd (d. 143-4, Anbār, Baghdad, and Medina), exacerbates uncertainty about Ibn al-Musayyab's direct acquisition of 'Umar's stoning pronouncement. To begin with, Ibn Sa'īd was a respected *muḥaddith* and jurist of his time. Some considered him to be on par with - or even better - than al-Zuhri.<sup>807</sup> Ibn Sa'īd eventually served as a judge, although the exact location is disputed.<sup>808</sup> It is worth noting that Yaḥyā b. Sa'īd transmitted legal opinions from Sa'īd b. al-Musayyab on the matter of stoning.<sup>809</sup> This is important for two reasons. First, it conveys that Ibn al-Musayyab supported the application of the punishment for certain forms of *zinā*.<sup>810</sup> Second, Ibn Sa'īd was fully aware of his teacher's approval of the capital sanction. Hence, at a minimum both legal authorities were tied to one another on the basis of *zinā* stoning. But Yaḥyā b. Sa'īd's transmission practices raise skepticism

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<sup>806</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 2:318.

<sup>807</sup> Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 7:518; al-Mizzī, *Tahdhīb al-Kamāl*, 31:351; al-Dhahabī, *Siyar A'lām*, 5:472 and 474f, Ibn Hajar, *Tahdhīb al-Tahdhīb*, 7:49.

<sup>808</sup> It was in either Baghdad, Medina, or al-Hāshimiyya. For Medina, see Ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 7:518; al-Bukhārī, *Tārīkh*, 8:275:2,980; Ibn Abī Hātim, *al-Jarḥ wa al-Ta'dīl*, 9:148; for Baghdad and al-Hāshimiyya, see al-Khaṭīb al-Baghdādī, *Tārīkh*, 16:155-8; al-Mizzī, *Tahdhīb al-Kamāl*, 31:351.

<sup>809</sup> 'Abd al-Razzāq, *al-Muṣannaf*, 3:536:6,621 and 7:322:13,342 and 363:13,489.

<sup>810</sup> 'Abd al-Razzāq, *al-Muṣannaf*, 3:355:1,345 and 536:6,621, and 7:363:13,489; Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:347:29,324 and 349:29,334.

about his reported Ibn al-Musayyab - ‘Umar *isnād*. Specifically, Ibn Sa‘īd was noted to have narrated anywhere from 300 to 3,000 *ḥadīth* and *akhbār*.<sup>811</sup> The large number implies that errors could have emerged when citing particular *isnāds* and *matns*. The possibility of inaccuracies is heightened by his reputation for practicing *tadlīs*.<sup>812</sup> Moreover, he narrated from both al-Zuhrī and the seven jurists of Medina - which as previously noted - included Ibn al-Musayyab and ‘Ubayd Allāh.<sup>813</sup> This is important because it suggests that Ibn Sa‘īd could have received ‘Umar’s stoning *khābar* from either al-Zuhrī or ‘Ubayd Allāh, but made a mistake when citing the chain of transmission. Such a scenario is plausible because Ibn Sa‘īd is recorded to have erroneously included Ibn al-Musayyab in at least one *isnād* of a report.<sup>814</sup> And in another case, he directly named Ibn al-Musayyab when when he in fact acquired the report from al-Zuhrī.<sup>815</sup> It thus stands to reason that Mālik recorded the narrative from Ibn Sa‘īd. But consideration must be given to the possibility that Ibn Sa‘īd came in possession of ‘Umar’s stoning *khābar* from someone other than Ibn al-Musayyab or failed to recognize the latter’s correct source.

Ibn Abī Shayba (d. 235),<sup>816</sup> Ibn Ḥanbal (d. 241),<sup>817</sup> al-Tirmidhī (d. 279),<sup>818</sup> and al-Bayhaqī (d. 458)<sup>819</sup> also provide different versions of ‘Umar’s *khābar* on Sa‘īd b. al-Musayyab’s

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<sup>811</sup> al-Dhahabī, *Siyar A‘lām*, 5:475.

<sup>812</sup> Ibn Ḥajar, *Tahdhīb al-Kamāl*, 7:50.

<sup>813</sup> Ibn Ḥajar, *Tahdhīb al-Kamāl*, 7:48; al-Dhahabī, *Siyar A‘lām*, 5:470.

<sup>814</sup> al-‘Uqaylī, *Kitāb al-Ḍu‘afa*, 2:36f:461.

<sup>815</sup> Ibn Abī Ḥātim, *‘Ilal*, 3:83f:708.

<sup>816</sup> Ibn Abī Shayba, *al-Muṣannaf* (2008 ed.), 9:355:29,357.

<sup>817</sup> Ibn Ḥanbal, *al-Musnad* (1992 ed.), 1:362f:249 and 394:302.

<sup>818</sup> al-Tirmidhī, *al-Jāmi‘*, 3:101:1,431.

<sup>819</sup> al-Bayhaqī, *al-Sunan al-Kubrā*, 8:370:16,920 and 16,922.

authority. In these reports, Dāwūd b. Abī Hind (d. 139/140, Basra, Kufa, and Wāsiṭ) is cited in place of Yaḥyā b. Saʿīd as Ibn al-Musayyab's pupil. All of Ibn Abī Hind's variants retain some elements of Ibn Judʿān's and Yaḥyā b. Saʿīd's reports, although at times their precepts are expressed in different ways. Some considered Ibn Abī Hind to be a reliable *muḥaddīth*, which makes it plausible that he did help circulate ʿUmar's claim on his teacher's authority that stoning for certain forms of *zinā* is a religious obligation.<sup>820</sup> However, other biographical information suggests that Ibn Abī Hind may have modified the *isnād* recorded on his authority. This is because Ibn Abī Hind was known to make errors when transmitting from memory, and at times, to elevate *isnāds* (so as to create shorter transmission lines).<sup>821</sup> Important for the present analysis, Ibn Abī Hind is recorded to have elevated *isnāds* that specifically involved Ibn al-Musayyab.<sup>822</sup> Therefore, on the basis of comparative *matn* and *isnād* analysis, it is possible that Ibn Abī Hind received the *khbar* from Ibn al-Musayyab. However, he may have excised Ibn al-Musayyab's source from the narrative to create a shorter link to the second caliph.

To summarize, I have used this section to examine *akhbār* which emanated from two of Saʿīd b. al-Musayyab's students, Yaḥyā b. Saʿīd (d. 143-4, Anbār, Baghdad, and Medina) and Dāwūd b. Abī Hind (d. 139/140, Basra). It is entirely plausible that both of these individuals received ʿUmar's stoning *khbar* from Saʿīd b. al-Musayyab. I have also illustrated how Ibn al-Musayyab's report embodied the same motifs which I identified in variants circulated by ʿAlī b. Zayd b. Judʿān (d. 129 or 131, Basra and Mecca) and al-Zuhrī (d. 124, Medina and Syria). But I have submitted evidence that throws into question Ibn al-Musayyab's direct reception of ʿUmar's

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<sup>820</sup> Ibn Saʿd, *Tabqāt al-Kubrā*, 9:255; al-Mizzī, *Tahdhīb al-Kamāl*, 8:464f; he was also a respected legal authority, see al-Dhahabī, *Siyar Aʿlām*, 6:377 and Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 3:370.

<sup>821</sup> al-Mizzī, *Tahdhīb al-Kamāl*, 8:465; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 3:370.

<sup>822</sup> al-Dāraqutnī, *ʿIlal*, 2:155f:192 and 7:276-8:1,349.

sermon. It is more likely that his source was Ibn ‘Abbās, not ‘Umar, although we cannot dismiss the notion that someone after him in the *isnād* did not correctly account for their source(s), and instead erroneously made a straight line connection between Ibn al-Musayyab and ‘Umar. Regardless, we are on no stronger footing for understanding the provenance of ‘Umar’s speech about stoning. To uncover a possible explanation, in the next section I examine reports in which ‘Umar delivers a sermon to his fellow Muslims about the selection of Abū Bakr as caliph. In my view, this *khbar* bears considerable weight in determining the likely beginnings of ‘Umar’s proclamation about stoning.

#### **Section 4. The Politics of ‘Umar**

I will now bring together the investigations I have conducted in the previous two sections, and combine them with additional research both of *isnāds* and *matns* of a different report about ‘Umar. In this separate narrative, the caliph is recorded to have given a sermon about a political matter. Importantly, those who circulated this political speech include the same transmitters who helped disseminate ‘Umar’s public declaration about stoning. My findings will shed light on the role and function of individuals from the first and second century who helped to circulate ‘Umar’s decree about stoning. The collective analysis suggests that what began as a sermon about governance developed into ‘Umar’s black letter law statement about the punishment of stoning not by ‘Umar himself, but by someone who lived after his death.

First, let us recall the themes that were in circulation by the first quarter of the second century based on a comparative *matn* analysis of reports on the authorities of al-Zuhrī (d. 124, Medina and Syria), ‘Alī b. Zayd b. Jud‘ān (d. 129 or 131, Basra and Mecca), and Yahyā b. Sa‘īd (d. 143-4, Anbār, Baghdad, and Medina). The key motifs are:

- 1) ‘Umar claims that stoning was prescribed in the Book of God. The phrase “Book of God” is typically understood to signify the Qur’ān. This is based on ‘Umar’s remark that he would have included the stoning verse if not for Muslims accusing him of adding to God’s Book.
- 2) ‘Umar asserts both that the Prophet stoned, and that Muslims stoned after the Prophet’s death.
- 3) ‘Umar cautions people about an eventuality when people will deny or forget about stoning. This concern parallels his anguish that someday Muslims will neglect their other religious obligations.

These three themes are expressed differently in reports circulated by al-Zuhrī, Ibn Jud‘ān, and Ibn Sa‘īd, but nevertheless permeate all of them. Because of the overlap in these iterations, it may be asserted that the report was acquired from those who lived earlier than these three individuals, which would imply that ‘Umar’s stoning *khbar* was being discussed during the early part of the second century, or possibly by the latter part of the first century. I will further engage this matter below, when I investigate the Medinan jurist ‘Ubayd Allāh and the Companion Ibn ‘Abbās.

In order to understand how ‘Umar’s sermon about stoning emerged, I now shift my focus to another report in which ‘Umar supposedly addressed Muslims on a political matter. Specifically, ‘Umar is recorded to have given a speech about governance as opposed to the punishment of stoning. An entry in Ibn Abī Shayba’s *al-Muṣannaḥ* reads:

Muḥammad b. Ja‘far (d. 193-4, Basra) - Shu‘ba b. al-Ḥajjāj (d. 160, Basra and Wāsiṭ) - Sa‘d b. Ibrāhīm (d. 125 - 7, Basra and Medina) - ‘Ubayd Allāh - Ibn ‘Abbās - ‘Abd al-Raḥmān b. ‘Awf (d. 31-2, Medina and Syria):

‘Umar made the *ḥajj* and wanted to give a sermon. I told ‘Umar that the roughest of people (*ra‘ā‘ al-nās*) were with him, and that he is above them, so he should wait



until he arrives in Medina to give his sermon. Once we got there, I got close to the *minbar* and heard ‘Umar say: “I am aware that many people are saying, ‘Indeed, Abū Bakr’s caliphate was an unexpected event.’ My response to that is yes, it was an exception. But God protected it from being a disaster. Indeed, there is no caliphate without consultation.”<sup>823</sup>

In this report ‘Umar sermonizes from the Prophet’s *minbar* in Medina about a political matter, which had nothing to do with a punishment for *zinā*. However, as noted previously, ‘Umar purportedly spoke from the pulpit about stoning. And it should not be forgotten that the same two individuals appear in the earlier part of the political and stoning *akhbār*’s *isnāds*: ‘Ubayd Allāh and Ibn ‘Abbās. In my view, this narrative elucidates the avenue by which ‘Umar came to be remembered as having sermonized about stoning.

A much longer variant about ‘Umar’s political sermon is furnished by Ibn Abī Shayba.<sup>824</sup>

In this version, al-Zuhrī is the recorded pupil of ‘Ubayd Allāh. As in the case with ‘Umar’s stoning report on al-Zuhrī’s authority, the political narrative with al-Zuhrī - ‘Ubayd Allāh - Ibn ‘Abbās *isnād* is the most frequently cited chain of transmission. In Ibn Abī Shayba’s entry, Ibn ‘Abbās is recorded to have conveyed that he and Ibn ‘Awf were traveling with ‘Umar from Minā when news arrived to the caliph that people were speaking negatively about Abū Bakr’s caliphate. After hearing this and arriving in Medina, ‘Umar gave the sermon in which he acknowledged that the selection of Abū Bakr was unexpected, but the caliphate was nevertheless legitimate and protected by God. The back drop of ‘Umar traveling from Minā to Medina and then giving a sermon is exactly the same as in Ibn al-Musayyab’s report about ‘Umar’s stoning *khabar*. In that narrative, ‘Umar departs from Minā to Medina and from the *minbar* proclaims that stoning is mandated for Muslim *zinā* offenders. And as it will be recalled, both ‘Ubayd Allāh

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<sup>823</sup> Ibn Abī Shayba, *al-Muṣannaf* (1989 ed.), 7:431:27,042.

<sup>824</sup> Ibn Abī Shayba, *al-Muṣannaf* (1989 ed.), 7:431f:27,043.

and Ibn al-Musayyab lived during the same time period, and were considered to be two of the seven prominent Medinan jurists. Hence, Ibn Abī Shayba's report implies that 'Umar's stoning *khavar* may have been an offshoot of his political *khavar*, which was being discussed in Medina by the end of the first century.

It is in Ibn Abī Shayba's detailed account that 'Umar made a claim about stoning being in the Book of God. The placement of his comment is worth noting. After the *matn* conveys that 'Umar arrived in Medina and got up on the *minbar*, the narrative continues:

God allowed the Messenger of God to live amongst us, and God sent *wahy* for the purpose of clarifying things that are either permissible or forbidden. Then God took back the Messenger and whatever else God wanted, and left with us what God desired. These days we hold fast to some things but leave behind other matters. Among the things we used to read in the Qur'ān was, "Do not abandon your fathers, for it is an act of disbelief to do so." God also sent the stoning verse. The Prophet stoned and we stoned after his death. By the One in whose hand is the soul of Muḥammad, indeed I remember it, I memorized it, and I understood it! If not for people claiming that 'Umar wrote something in the *muṣḥaf* that does not belong in it, then I surely would have written it with my own hands! Stoning is necessary under three conditions: pregnancy as proof, a confession from the offender, or per God's order, the testimony of upright individuals.

At the end of the report - when 'Umar delineates the condition for a *zinā* conviction - there is no recognition of *iḥṣān*. But in Ibn Ḥanbal's<sup>825</sup> and al-Bukhārī's<sup>826</sup> variants on al-Zuhrī's authority, 'Umar is recorded to have uttered *iḥṣān* as a stipulation. Moreover, in al-Zuhrī's circulation of 'Umar's stoning *khavar*, *iḥṣān* was included as one of the conditions that mandated stoning. As I demonstrated in Chapter One, by al-Zuhrī's time *iḥṣān* was a necessary legal element for stoning despite legal debates about how a person could have it. Therefore, Ibn Abī Shayba's detailed version of 'Umar's political speech was likely an earlier iteration when *iḥṣān* had not fully

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<sup>825</sup> Ibn Ḥanbal, *Musnad* (1992 ed.), 1:449-54:391. 'Umar's comment about stoning is on p. 451.

<sup>826</sup> E.g., al-Dhahabī, *Siyar A 'lām*, 4:481f.

developed into a legal element for *zinā* laws and stoning.

The placement of ‘Umar’s stoning comments differs in some versions as opposed to other accounts, but nevertheless suggests an amendment to a unique and separate report. For example, in Ibn Ḥanbal’s entry, after ‘Umar speaks about the punishment, he immediately begins to talk about the unexpected caliphate of Abū Bakr. But in al-Nasā’ī’s versions, ‘Umar first argues for the legitimacy of Abū Bakr’s caliphate, and then abruptly shifts focus to the matter of stoning.<sup>827</sup> The haste with which two unrelated tropes converge intimate that a modification was made to ‘Umar’s political remarks with commentary about stoning. Dating the political theme earlier than the stoning motif is exemplified the report’s placement in Ibn Ḥanbal’s *Musnad*. It is listed under the heading “*Ḥadīth* of the Saqīfa.” This is the location where Abū Bakr’s caliphate was unexpectedly determined. In sum, while ‘Umar’s claim about stoning appears in his sermon about the legitimacy of his predecessor’s reign, the *akhbār* encapsulating ‘Umar’s political remarks seemingly provided the blueprint for ‘Umar’s exclusive sermon about stoning being an Islamic punishment.

Comparative *matn* analysis and a topical *isnād* examination of ‘Umar’s two reports suggest that ‘Umar’s sermon about politics intermixed with his appeal for stoning, and traversed the latter part of the first and the early part of the second centuries. Additional variants appear to point to the same initial conclusions. First, a short entry by Ibn Ḥanbal, which contains al-Zuhrī in the *isnād*, is important for the present analysis. The *matn* reads:

‘Umar b. al-Khaṭṭāb gave a sermon and he was heard saying: “By God people are saying: ‘What is with stoning? Flogging is in the Book of God!’ Well I say to that the Messenger of God stoned and we stoned after his death! If not for someone saying that ‘Umar added something to the Book of God that does not belong in it, then I would have kept it just as it was revealed.”<sup>828</sup>

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<sup>827</sup> al-Nasā’ī, *al-Sunan al-Kubrā*, 6;412f:7,122.

<sup>828</sup> Ibn Ḥanbal, *Musnad* (1992 ed.), 1:327:197.

While this version retains the broader themes found in other stoning *akhbār* on ‘Umar’s authority, it yet again reaffirms a noteworthy point. The query reflects skepticism about the applicability of stoning upon Muslims in light of the Qur’ānic provision. In other words, the rhetorical nature of the question and response reverberates the likelihood of debates regarding the use of capital punishment for Muslim *zinā* offenders.

This variant appears in another of Ibn Ḥanbal’s entries, which is on the authority of Sa‘īd b. Ibrāhīm (d. 125 - 7, Basra).<sup>829</sup> This is the same transmitter who helped to narrate the report which is exclusively about ‘Umar’s political commentary. Ibn Ibrāhīm’s *matn* begins in the same fashion as it does in the political narrative, but after ‘Umar’s arrival in Medina, the content switches to the above short version furnished by Ibn Ḥanbal on al-Zuhrī’s authority.<sup>830</sup> A similar scenario unfolds in an entry provided by al-Nasā‘ī.<sup>831</sup> On Ibn Ibrāhīm’s authority, ‘Umar is advised to deliver his sermon about the legitimacy of Abū Bakr’s selection once he reaches Medina. But upon his arrival, he talks about stoning, not Abū Bakr’s unexpected caliphate. Al-Nasā‘ī similarly provides a variant which combines Ibn Ibrāhīm’s report about ‘Umar’s exclusive political themes with ‘Umar’s stoning motifs.<sup>832</sup> In sum, these versions point to an intermixing of reports about ‘Umar’s sermon regarding politics and ‘Umar’s approval of stoning for *zinā*, and thus explain how ‘Umar’s black letter law statement most likely emerged.

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<sup>829</sup> Ibn Ḥanbal, *Musnad* (1992 ed.), 1:426f:352.

<sup>830</sup> In a variant provided by al-Nasā‘ī with Sa‘īd b. Ibrāhīm in the *isnād*, the *matn* only references ‘Umar comment that the Prophet stoned and they stoned after his death, see al-Nasā‘ī, *al-Sunan al-Kubrā*, 6:409:7,114.

<sup>831</sup> al-Nasā‘ī, *al-Sunan al-Kubrā*, 6:409:7,115.

<sup>832</sup> al-Nasā‘ī, *al-Sunan al-Kubrā*, 6:408:7,113 and 410:7,116.

Having demonstrated the ways in which ‘Umar’s edict on stoning developed within the purview of reports about his political sermon, I now turn my attention to particular individuals from the first and second century to determine the provenance of the stoning narrative. An obvious person of interest is ‘Abd al-Raḥmān b. ‘Awf (d. 31-2, Medina and Syria), since it is on his authority that Ibn ‘Abbās transmits ‘Umar’s remarks about Abū Bakr’s caliphate. Ibn ‘Awf is of no less stature than either ‘Umar or Ibn ‘Abbās. He was known to give legal opinions during the time of the Prophet and is one of the ten Companions guaranteed entry into paradise.<sup>833</sup> Ibn ‘Awf was also part of the committee established by ‘Umar to select a successor, and Ibn ‘Awf voted for ‘Uthmān.<sup>834</sup> It is meaningful to consider that for Ibn ‘Awf to have endorsed ‘Uthmān, he would have likely supported the caliphate of Abū Bakr. This would have the effect of dismissing those Muslims who claimed that the rightful heir to the Prophet was ‘Alī. In other words, it is unlikely to have been coincidental that Ibn ‘Awf is one of the individuals who recalled ‘Umar proclaiming the legitimacy of Abū Bakr’s reign. While keeping this point in mind, based on the number of variants with Ibn ‘Awf in the *isnād*, and his involvement in the politics of the early Muslim community, it is highly plausible that he participated in the circulation of a report in which ‘Umar sermonized about an important political issue.

‘Abd Allāh b. ‘Abbās’ (d. 68, Basra, Mecca, Medina, Syria, and Ṭā’if) affiliation with reports about ‘Umar is unsurprising. In the first place, he was the Prophet’s cousin, present at the Farewell Pilgrimage, and between 10 and 15 years old when the Prophet died.<sup>835</sup> It is recorded

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<sup>833</sup> Ibn Sa‘d, *al-Tabqāt al-Kubrā*, 2:294; Ibn Athīr, *Usud al-Ghāba*, 779; *Encyclopaedia of Islam* 3rd ed., s.v. “‘Abd al-Raḥmān b. ‘Awf.”

<sup>834</sup> Ibn Athīr, *Usud al-Ghāba*, 779.

<sup>835</sup> Ibn Sa‘d, *al-Tabqāt al-Kubrā*, 6:321; al-Bukhārī, *Tārīkh*, 5:3; al-Mizzī, *Tahdhīb al-Kamāl*, 15:161f.

that when Ibn ‘Abbās would be asked about a particular matter, his method of deducing the answer was to first consult the Qur’ān, then the Prophetic *Sunna*, then Abū Bakr’s practice, then ‘Umar’s opinions, and lastly, his own *ra’y* (personal opinion).<sup>836</sup> This procedure parallels the clause in ‘Umar’s stoning *khavar* where he proclaims that stoning was in the Book of God, and that the Prophet, Abū Bakr, and he stoned. Ibn ‘Abbās was known for his *ḥadīth* transmissions, legal acumen, and Qur’ānic exegesis.<sup>837</sup> It seems that his expertise in all of these matters contributed to his close relationship with ‘Umar. In fact, it is recorded that ‘Umar would seek Ibn ‘Abbās’ counsel for matters of consequence. One time, when ‘Umar was asked about the meaning of a particular verse, he said that he did not know anything different than ‘Ibn ‘Abbās.<sup>838</sup> During another conversation about the Qur’ān, elders were deliberating with ‘Umar about the meaning of particular verses. ‘Umar invited Ibn ‘Abbās to participate in the discussion, and consistently sided with the Ibn ‘Abbās’ opinions. The elders were surprised and questioned ‘Umar’s deference to the young man, but the teacher defended his pupil.<sup>839</sup> ‘Umar’s trust in the youthful Ibn ‘Abbās’ exegetical acumen further demonstrates the intimate bond they shared. In sum, Ibn ‘Abbās’ age suggests that he likely attended ‘Umar’s sermons, which would therefore include the one about politics. Importantly, their affinity towards one another indicates that Ibn ‘Abbās would have been intimately familiar with ‘Umar’s propensity to employ the stoning punishment.

Having evaluated Ibn ‘Awf’s and Ibn ‘Abbās’ relationship to ‘Umar, I now turn to

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<sup>836</sup> Ibn Sa‘d, *al-Tabqāt al-Kubrā*, 2:316.

<sup>837</sup> Ibn Sa‘d, *al-Tabqāt al-Kubrā*, 2:315ff and 6:335 (emphasis on Qur’ānic knowledge).

<sup>838</sup> Ibn Sa‘d, *al-Tabqāt al-Kubrā*, 6:329.

<sup>839</sup> Ibn Sa‘d, *al-Tabqāt al-Kubrā*, 6:327-9.

‘Ubayd Allāh b. ‘Abd Allāh b. ‘Utba b. Maṣ‘ūd’s (d. 98, Medina) and the significance of his connection with Ibn ‘Abbās. Ibn ‘Abbās considered ‘Ubayd Allāh to be his best and dearest student.<sup>840</sup> Their mutual respect is indicated by the fact that ‘Ubayd Allāh’s opinions are used in biographical commentaries on Ibn ‘Abbās.<sup>841</sup> It thus seems their bond makes it highly plausible that ‘Ubayd Allāh came to know of ‘Umar’s political sermon, and ‘Umar’s proclivity for *zinā* stoning, from Ibn ‘Abbās.

‘Ubayd Allāh was one of the most proficient legal authorities of his time, and as previously noted, considered to be one of the seven prominent jurists of Medina.<sup>842</sup> His worry about reports being incorrectly attributed to him resulted in his demand that no one transmit anything on his behalf that was not specifically received in his presence (of course this does not mean that such was always the case).<sup>843</sup> ‘Ubayd Allāh also had the reputation of being a talented poet, and combined with his legal acumen, considered a unique individual of his time.<sup>844</sup> All in all, his legal knowledge, close relationship with Ibn ‘Abbās, and his transmission of a report about ‘Umar’s political sermon, are reasons for why ‘Ubayd Allāh was likely involved in the circulation of ‘Umar’s stoning *khbar* that he received from Ibn ‘Abbās.

If it can be accepted with a reasonable degree of confidence that ‘Ubayd Allāh did participate in the circulation of ‘Umar’s two narratives, then we can shift focus to the likelihood of transmissions between he and Ibn Shihāb al-Zuhrī. It is recorded that al-Zuhrī narrated several

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<sup>840</sup> Ibn Sa‘d, *al-Tabqāt al-Kubrā*, 7:246; al-Mizzī, *Tahdhīb al-Kamāl*, 19:75; al-Dhahabī, *Siyar A‘lām*, 4:480.

<sup>841</sup> For example, see Ibn Sa‘d, *al-Tabqāt al-Kubrā*, 2:318.

<sup>842</sup> *Encyclopaedia of Islam*, 2nd ed., s.v. “Fuḳahā’ al-Madīna al-Sab‘a;” al-Mizzī, *Tahdhīb al-Kamāl*, 19:73.

<sup>843</sup> Ibn Abī Hātim, *al-Jarḥ wa al-Ta’dīl*, 5:320; al-Mizzī, *Tahdhīb al-Kamāl*, 19:76; al-Dhahabī, *Siyar A‘lām*, 4:480.

<sup>844</sup> Ibn Sa‘d, *al-Tabqāt al-Kubrā*, 7:246; al-Mizzī, *Tahdhīb al-Kamāl*, 19:75; al-Dhahabī, *Siyar A‘lām*, 4:480; Ibn Ḥajar, *Tahdhīb al-Tahdhīb*, 4:325.

*ḥadīth* and *akhbār* from ‘Ubayd Allāh. Additionally, al-Zuhrī’s opinions are employed for biographical information on ‘Ubayd Allāh, which suggests that a meaningful relationship must have existed between the two of them.<sup>845</sup> In short, there is no reason to dismiss al-Zuhrī’s reception of a report from ‘Ubayd Allāh in which ‘Umar prescribed the stoning punishment for certain forms of *zinā* or advocated for the legitimacy of Abū Bakr’s caliphate.

The above comparative *isnād* and *matn* examination of *akhbār* regarding ‘Umar’s political and stoning sermons reveals a clearer picture of the likely way in which an independent report about ‘Umar’s stoning proclamation emerged. We observed that ‘Ubayd Allāh and Ibn ‘Abbās helped to disseminate ‘Umar’s report on the legitimacy of Abū Bakr’s caliphate. On their respective authorities, this *khbar* was also circulated with ‘Umar advocating for the stoning punishment on the basis of the Qur’ān and the *Sunna*. As reviewed in Section One, ‘Umar is recorded to have favored the capital punishment in numerous circumstances. His confidant Ibn ‘Abbās had to have been aware of ‘Umar’s position on the applicability of the capital sanction for Muslims. This recognition, combined with Ibn ‘Abbās’ own legal interests and exegetical proficiency, makes it highly plausible that he would have discussed and transmitted information on the matter of *zinā* in general, and by drawing upon ‘Umar’s opinion in particular. Moreover, the close relationships between Ibn ‘Abbās and ‘Ubayd Allāh, and ‘Ubayd Allāh and al-Zuhrī, bound by their collective legal acumen, logically resulted in conversations about the correct forms of punishments for illicit sexual intercourse. In fact, al-Zuhrī circulates other *ḥadīth* about *zinā* on the authority of ‘Ubayd Allāh as well.<sup>846</sup> It thus seems that sometime during the latter

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<sup>845</sup> For example, see al-Dhahabī, *Siyar A ‘lām*, 4:481f.

<sup>846</sup> For example, al-Zuhrī narrates the “Worker-Son” *ḥadīth* on ‘Ubayd Allāh’s authority, see Mālik, *Muwaṭṭa’*, 1,199f:628/3,040; al-Zuhrī also narrates from ‘Ubayd Allāh the Prophet’s instruction on the punishment for a recidivist *zinā* offender that is a slave, see *ibid.*, 1,207:633/3,053.



part of the first century, ‘Umar’s sermon on the legitimacy of Abū Bakr’s caliphate became the archetype for ‘Umar’s assertion about the lawfulness of stoning. Ibn ‘Awf’s name was excised from the *isnād*, and only Ibn ‘Abbās’ name endured. For certain narrators, it is highly plausible that ‘Umar’s endorsement of stoning interpolated with his sermon about Abū Bakr’s caliphate.<sup>847</sup> This process contributed to a report in which ‘Umar is noted to have preached about stoning being in God’s Book and the practice of his predecessors.

## Conclusion

In this chapter, I argued that ‘Umar’s acceptance of stoning in a broad range of cases, and his sermon about the process by which his predecessor became caliph, resulted in a narrative in which ‘Umar claimed stoning to have been part of God’s Book and a Prophetic practice. Moreover, those closely connected with him or his associated, carried his belief into the Islamic late antiquity and beyond. In the end, ‘Umar’s impactful role upon the Muslim polity helped to stabilize the stoning punishment in the Islamic legal tradition.

In Section One, I presented *akhbār* in which ‘Umar desired to, or did implement, the stoning punishment in a variety of circumstances. Not only was he ready to implement the punishment in *zinā* cases, but he also called upon it to convey his strong dislike for certain types of practices, such as *mut‘a*. In historical sources, these reports also demonstrate the habitual association between ‘Umar and the punishment, which could help to telescope towards the normalization of the stoning punishment in the Islamic legal tradition.

A black letter law statement on ‘Umar’s authority would be even more effective in the process of affirming the capital sanction. In Sections Two and Three, I investigated the *isnāds*

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<sup>847</sup> According to *ḥadīth* critics, interpolation occurs when one *matn* intermixes with a separate report, and the differences in *isnāds* is not recorded due to transmission error(s), see Ibn al-Ṣalāḥ, *al-Muqaddima*, 95-8.

and *matns* of reports in which ‘Umar sermonizes that stoning was in the Book of God and the practice of the Prophet Muḥammad. In Section Two, I demonstrated with a high degree of confidence that the report was in circulation by the first quarter of the second century. This by extension, helped to situate the report into the late first century. In Section Three, I examined reports on the authority of Sa‘īd b. al-Musayyab, a purported student of ‘Umar. Certain biographers argued that Ibn al-Musayyab never had any contact with ‘Umar. But other individuals, including Ibn al-Musayyab himself, assert that he was witness to the caliph’s public speeches. And it should not be forgotten that Ibn al-Musayyab was known to be highly proficient in ‘Umar’s legal positions. With ‘Umar’s stoning narrative circulating in Medina, it is reasonably plausible that Ibn al-Musayyab or someone below him received the report from their fellow Medinans. It is even more conceivable that Ibn al-Musayyab’s student, Yaḥyā b. al-Sa‘īd, erroneously attributed the narrative from Ibn al-Musayyab to ‘Umar. Not only did *isnād* and comparative *matn* analysis indicate that Ibn al-Musayyab did not likely directly witness ‘Umar make the stoning sermon, but it also substantiates that ‘Umar’s stoning *khavar* was in circulation by the latter part of the first century in Medina.

In Section Four, I examined a report in which ‘Umar sermonizes about the acceptability of Abū Bakr’s caliphate. This *khavar* shares important themes and transmitters with ‘Umar stoning narrative. In this section, I gave particular attention to transmitters from the first century. I demonstrated how their close relationships with one another, and their respective penchant for legal considerations, likely contributed to the dissemination of ‘Umar’s black letter law proclamation. In other words, partly as a result of interpolation, elements from the political sermon intermixed with ‘Umar’s position on the acceptability of stoning as Islamic, and circulated accordingly.

While Prophetic authority was second only to the Qur'ān, for many Muslims 'Umar was a prominent figure whose precedents were materially authoritative. 'Umar's role in the implementation of a broad range of policies made him influential during his reign and thereafter. Given the rapid and wide acceptability of stoning as Islamic, it would take an individual with meaningful influence to help advocate a punishment for which objection may have existed. 'Umar b. al-Khaṭṭāb was able to fulfill this role.

## Conclusion

The objective of this dissertation has been to understand the beginnings of the process by which stoning became the punishment for certain forms of *zinā* in the Islamic legal tradition. This was done through: providing a comprehensive overview of *ḥadīth* and *akhbār* in which stoning was prescribed for particular types of *zinā*; analyzing the different ways in which Muslim jurists employed stoning reports to establish *zinā* stoning laws; investigating legal debates, negotiations, and the eventual incorporation of the legal element of *thayyib* and *iḥṣān*; determining the provenance, date, and regional circulation of three sets of reports – the Jewish *Ḥadīth*, the Self-Confessing Woman, and the ‘Umar stoning *khbar*; commenting on the significance of these narratives to illustrate the ways in which they represented and circulated an account regarding the Prophet’s involvement in the stoning of *zinā* offenders.

In this project, I did not strictly adhere to *isnād-cum-matn* analysis which Motzki has refined. I approached single-strand *isnāds* as historically viable unless external evidence proved otherwise. I employed a modified version of *isnād-cum-matn* analysis by approaching reports holistically across time and space, and by comparing popular *matns* with those that were uncommon. This methodology proved to be appropriate and effective. Specifically, single-strand *isnād* reports ended up being as equally important, if not more, than reports with several *isnāds*. For example, Abū Hurayra’s Jewish *Ḥadīth* variant – which included an unidentified person from the tribe of Muzayna – was likely one of the earliest, if not the earliest, version of the Jewish *Ḥadīth* to have gone into circulation. I drew an analogy between the Jewish *Ḥadīth* by Abū Hurayra to the pre-historical landmass Pangea. It is highly probable that a story about the Prophet’s adjudication of a Jewish *zinā* case broke off into pieces – like Pangea – and circulated

among different Companions and regions.

In Chapter One, I provided an extensive list of narratives in which the Prophet or one of his Companions was recorded to have endorsed, or ordered, the punishment of stoning in *zinā* cases. In some *ḥadīth*, the Prophet was said to have made a general statement prohibiting *zinā*, whereas in other narratives, he explicitly noted certain forms of it as capital offenses. In a handful of narratives, either the Prophet or one of his Companions make a black letter law statement about stoning being a punishment for certain types of *zinā* offenders. For instance, according to the ‘Ubāda b. al-Ṣāmit *ḥadīth*, the Prophet proclaimed that God had given him instructions on how to treat *zinā* offenders: the *ṭhayyib* is to be flogged and then stoned. In other *ḥadīth*, the scribes of the Prophet supposedly claimed that they were aware of a stoning verse which would have remained in the Qur’ān if not for one reason or another. The Prophet’s cousin and fourth caliph, ‘Alī, purportedly asserted that when it came to certain *zinā* offenders, he flogged them based on the Qur’ān and stoned them in accordance with the Prophetic *Sunna*. All in all, several reports advocating for the stoning punishment exist in *ḥadīth* and *akhbār* collections.

On top of reports in which authoritative figures asserted – as a black letter law statement – stoning for *zinā*, I furnished several narratives involving *zinā* cases. In these reports, the Prophet, or one of his Companions, ordered the stoning punishment for offenders of sexual improprieties. For example, in one account, a man named Mā‘iz b. Mālik al-Aslamī confessed to *zinā* in the Prophet’s presence. Based on four confessions the Prophet ordered that he be stoned. In another *khbar*, a Hamdānī woman named Shurāha confessed to *zinā* in the presence of ‘Alī, and the caliph had her flogged and then stoned. Three themes dominated these stoning narratives: *zinā* is prohibited; certain forms are punishable by stoning; and the Muslim offenders

were stoned based on the authority of the Prophet.

In addition to a review of stoning *ḥadīth* and *akhbār*, I also conducted an examination of the different ways in which Muslim legal authorities discussed specific legal elements and the way in which they could help determine if stoning was applicable in *zinā* convictions. For example, being a *ṭhayyib* appears to have been one of the earliest legal requirements for *zinā* stoning. But *ṭhayyib* connotes a non-virgin, which theoretically meant that an unmarried, non-virgin *zinā* offender could be stoned. Perhaps due to this issue, and in light of other considerations, Muslim legal authorities began to use *iḥṣān*. This term was developed based on the Qur'ān's use of *aḥṣana* and *al-muḥṣanāt*. But as it turned out, *iḥṣān* stood separate and apart from the Qur'ānic usage of *aḥṣana* and *al-muḥṣanāt*. In other words, in an attempt to further clarify the *zinā* subject to stoning on the basis of *iḥṣān*, inconsistencies emerged between *iḥṣān*'s legal meaning and the Qur'ān's linguistic use of *aḥṣana* and *al-muḥṣanāt*. Moreover, the punishment for slave *zinā* offenders brought this discrepancy into sharp focus. According to the Qur'ānic instruction, *al-muḥṣanāt* slaves are to receive half the punishment mandated for *al-muḥṣanāt* free individuals. But an individual cannot receive half of a capital sanction. This paradox, which ostensibly suggests that the concept of *iḥṣān* for *zinā* stoning materialized in the post-Qur'ānic period, was generally resolved in the Islamic legal tradition by applying 50 lashes to slave *zinā* offenders. All in all, the gaps which resulted from the designations of *ṭhayyib* and *iḥṣān* for *zinā* stoning laws advance the assertion that the Qur'ānic use of *zinā* must have been different than the Islamic legal tradition's connotation of it. Nevertheless, an overview of these legal requirements demonstrate the different ways in which Muslim legal authorities attempted to clarify the form of *zinā* that was subject to stoning.

I also corroborated a differentiation between Qur'ānic *zinā* and *Fiqh zinā* on the basis of

the use of a single as opposed to a dual penalty. In early legal discussions, the assigned punishment varied by region. In Iraq, the propensity was towards the dual penalty of flogging and stoning, whereas in the Ḥijāz it was for stoning only. I contended that due to the conflict between the Qur’ānic and *ḥadīth* prescriptions for *zinā*, a reconciliatory solution was promoted in locales away from the Ḥijāz: flog per the Qur’ān then stone per the *Sunna*.

Lastly in Chapter One, I surveyed reports which indicate that despite the wide acceptance of stoning as Islamic, some Muslims did wonder about its applicability upon Muslim *zinā* offenders. For example, when ‘Abd Allāh b. Abī Awfā (d. 86-7) was asked if the Prophet stoned before or after Q24:2, he answered: “I do not know.” Comments such as these intimate that there likely existed a historical moment when stoning was not deemed Islamic.

In Chapter Two I conducted an extensive analysis of a report that I called the Jewish *Ḥadīth*. According to this narrative, a Jewish group asked the Prophet to adjudicate a case involving Jewish offenders of *zinā*. They thought the Prophet would have mandated flogging for their *zinā* case. But he prescribed the Deuteronomic punishment of stoning. Both in *ḥadīth* and *tafsīr* literature, this episode was used to gloss the Qur’ānic charge of *tahrīf* against the Prophet’s Jewish contemporaries. Their *tahrīf* was a function of their purported desire to implement a punishment other than the supposed Hebrew Bible prescription of stoning.

I investigated and compared the *matns* of several variants of the Jewish *Ḥadīth*. These versions traced back to different Companions, so I examined their purported account of the incident. The five Companions to whom I dedicated separate sections were Jābir b. Samura (d. 74), al-Barrā’ b. ‘Āzib (d. 71-2), Jābir b. ‘Abd Allāh (d. 78), ‘Abd Allāh b. ‘Umar (d. 73-4), and Abū Hurayra (d. 57-9). By drawing upon *isnād* and *matn* investigation, it can be said with a high degree of confidence that the Jewish *Ḥadīth* was in circulation by the end of the first century.

Abū Hurayra's variant appeared to have been the initial account of the Prophet's adjudication of a case involving Jewish offenders of *zinā*. This partly rests on the basis that the *matns* disseminated by each of the other Companions share portions of Abū Hurayra's report.

I supplemented my *ḥadīth* studies with an examination of selected *tafsīr* collections. The Prophet's adjudication of Jewish *zinā* offenders was used as a gloss for Q5:41-44. The exegetes Mujāhid b. Jabr (d. 100-4), Muqātil b. Sulaymān (d. 150), Ibn Wahb (d. 197), and al-Ṭabarī (d. 310) understood the Jewish group's motivation to involve the Prophet as an attempt to change (*tahṛīf*) their own punishment of stoning with the Qur'ānic directive of flogging. This suggests that the *zinā* being referenced in the Jewish *Ḥadīth* connoted the same meaning as the *zinā* noted in the Qur'ān. Moreover, these exegetical commentaries indicate that for many Muslims, the Prophet was applying a non-Islamic punishment for non-Muslims. Lastly, it seems that Abū Hurayra's narrative undergirded the exegetical commentaries, and I established this based on a comparison of *tafsīrs* with *ḥadīth matns*. In the end, one paramount outcome of the Jewish *Ḥadīth* was that it forged a nexus between the Prophet's authority and stoning.

As discussed in the Introduction, the Prophet's sayings and actions were enshrined in both the minds and written works of his Companions and successive generations (albeit not in an entirely systematic fashion during the first century). One can imagine scenarios in which narratives about the Prophet circulated based on cross-pollination of various accounts. These reports could also be affected by the different ways in which a transmitter recalled and/or understood the Prophet's actions. In Chapter Three, I argued that according to one *ḥadīth* the Prophet was remembered to have adjudicated a *zinā* case involving a female offender whose religion may have been unknown. I contended that a separate report circulated in which this woman was deliberately cast as a Muslim, which functioned to convey that the Prophet ordered



the stoning punishment for a Muslim *zinā* offender.

One may consider this statement of purported fact – the Prophet had a woman stoned – either as a self-contained report, or as a narrative discussed with presumed knowledge about a woman confessing to *zinā*. As I illustrated in Chapter Three, the former was more likely to have been the case. This is because one of the Companions associated with this *ḥadīth* – Abū Bakra (d. c. 53) – was recorded to have circulated Prophetic reports which disparaged women. Moreover, he was himself was punished for being a witness to a *zinā* case that was not turned into a conviction. In my estimation, based on Abū Bakra’s biographical information and comparative *matn* analysis of several variants about the self-confessing woman, the connection between Abū Bakra and a report about the Prophet’s order to stone a woman, was unlikely to have been coincidental.

Thus, what started out as a statement – the Prophet had a woman stoned – evolved into complex *ḥadīth* variants which came to bear significant weight in the Islamic legal tradition. These narratives helped to propel the notion that the Prophet considered stoning to be Islamic because he ordered stoning for a Muslim *zinā* offender. As I illustrated, it took specific motifs to affirm the woman’s religion. These included her being from a particular Muslim tribe, and/or the Prophet’s participation in her *jināza* prayer. Furthermore, the statement of fact was reconstituted as a confession for at least one important reason. *Zinā* allegations are accompanied by the need to satisfy exceptionally high evidentiary standards. For the reports to have probative value, they would have likely had to confirm that all procedures had been satisfied. It thus comes as no surprise that Prophetic reports involving *zinā* cases consistently initiate with confessions, not accusations. In contrast, some *akhbār* in which Companions ordered the stoning punishment do include accusations. In short, without accounting for the legal procedural scrutiny that allegations

usher into deliberations, narratives in which the Prophet supposedly prosecuted a *zinā* offender based on a confession satisfied a different (read: lower) threshold for conviction and for the implementation of the punishment.

Through *isnād* and *matn* analysis of the confessing woman *ḥadīth*, I demonstrated that it is highly probable this report was in circulation by the end of the first century. In light of several legal considerations, this *ḥadīth* experienced important modifications, the most significant of which was raising the number of required confessions to four. This allowed the number of confessions to harmonize with the Qur’ān’s four-witness standard. More elaborate versions emerged because of other legal issues, as well as the likely concerns about the reliability of the transmitters who circulated particular variants of the reports. The *ḥadīth* on Sulaymān b. Burayda’s (d. 105) authority seems to have been of late provenance because it mitigated both the legal and transmitter burdens accompanying the reports circulated on the authority of his brother, ‘Abd Allāh (d. 105 or 115). Ultimately, the beginnings of the self-confessing woman *ḥadīth* were being discussed before the second century. Notably, the variants of this incident contributed to the Islamization of stoning for certain forms of *zinā*.

In Chapter Four, I focused on the persona of ‘Umar b. al-Khaṭṭāb (d. 23) and his support for the capital punishment. It is clear from *akhbār* about ‘Umar that he was associated with stoning, which suggests that he advocated for the capital sanction. Given his far reaching influence over the Muslim polity, his opinion was important for stabilizing the punishment in the Islamic legal tradition.

I investigated several variants of ‘Umar’s purported sermon in which he claimed that stoning was in the Book of God and the Prophetic *Sunna*. Al-Zuhrī (d. 124) was the individual most frequently credited with the dissemination this report. Through *isnād* analysis, I

demonstrated that a high degree of confidence exists about al-Zuhrī's reception of the narrative from 'Ubayd Allāh (d. 98). 'Ubayd Allāh, in turn, enjoyed a close relationship with Ibn 'Abbās, which is partly supported by the fact that 'Ubayd Allāh's opinions are used in biographical commentaries about this Companion. Similar to the intimate relationship between 'Ubayd Allāh and Ibn 'Abbās, the latter was also known to have had a favorable rapport with the second caliph. This is important because if 'Umar endorsed stoning – which appears to have been the case – then Ibn 'Abbās would have been aware of the caliph's position.

I also examined several less-common versions of 'Umar's report, one of which circulated on the authority of Yaḥyā b. Sa'īd (d. 143-4). Ibn Sa'īd claimed that he received 'Umar's stoning *khbar* from Sa'īd b. al-Musayyab (d. 92/94), and the construction of the report suggests that Ibn al-Musayyab transmitted the information from 'Umar. I contended that errors occurred in this *isnād*, and this chain of transmission likely emerged due to *tadlīs*. First, Ibn al-Musayyab and 'Ubayd Allāh were designated as two of the seven prominent jurists in Medina, which means they were likely in conversation with one another, or at least knew of the each's legal positions. Second, Ibn al-Musayyab knew Ibn 'Abbās, and could have heard the report from him. Third, Ibn Sa'īd not only exchanged *ḥadīth* and *akhbār* with al-Zuhrī, but in addition to Ibn al-Musayyab, also studied with the other six of the seven jurists of Medina (which includes 'Ubayd Allāh). Fourth, Ibn Sa'īd is recorded to have made mistakes in *isnāds* that involved al-Zuhrī or Ibn al-Musayyab. In summary, there appears to be sufficient evidence to raise suspicion about the source of the report emanating from Sa'īd b. al-Musayyab.

Part of my analysis in Chapter Four centered on a separate report in which 'Umar attempted to quell political contention about his predecessor's caliphate. Some of the key individuals who helped to circulate this report – Ibn 'Abbās (d. 68), 'Ubayd Allāh (d. 98), and al-

Zuhrī (d. 124) – are also recorded in the *isnād* of ‘Umar’s stoning *khavar*. Moreover, the literary composition of ‘Umar’s political *khavar* shares numerous parallels with those in his sermon about stoning. The overlap between their *isnāds* and the common features among the two *matns* indicate that interpolation took place. It seems that ‘Umar’s endorsement of the capital punishment was remembered in the same manner as his comments about the process by which Abū Bakr became caliph. In other words, ‘Umar’s sermon about stoning emerged out of his supposed political speech. By the end of the first century, ‘Umar’s stoning *khavar* was circulated separate and apart from his political commentary.

In summary, the beginnings of the process by which *zinā* stoning became part of the Islamic legal tradition may be explained by the following. The Qur’ānic charge of *tahrīf* was used to castigate the Prophet’s Jewish contemporaries for not following their own laws. This charge served as a framework for the circulation of the Jewish *Ḥadīth*. The Jewish group’s supposed resistance to employing the stoning punishment was perceived as their motivation for seeking out the Prophet’s counsel. But instead of flogging, the Prophet ordered stoning based on the Book of Deuteronomy. While the Prophet’s command was understood as his application of a non-Islamic punishment upon non-Muslims, the incident helped to forge a nexus between Prophetic authority and stoning. Due to several circumstances, a report also emerged in which the Prophet ordered the stoning of a woman. This woman was cast as Muslim. This *ḥadīth* helped to Islamize the capital sanction. The personality of ‘Umar helped to inculcate the punishment into the Islamic legal tradition. The motif of a sermon, which is an offshoot of a political issue, (re) painted the matter of stoning as a public concern.

Not coincidentally, the way in which ‘Umar’s purported sermon chastises Muslims parallels the way in which the Qur’ān reprimands the Prophet’s Jewish contemporaries for

disregarding their own Divine prescriptions. This mirroring suggests that disputes must have existed about stoning as an Islamic punishment. Given the broad acceptance of stoning in the Islamic legal tradition, it is likely such disagreements were sequestered with resistance.

Muslim legal authorities operated in an environment in which many Muslims accepted the capital sanction as Islamic. These legalists also inherited Prophetic narratives about stoning. They incorporated the punishment, and eventually the Prophetic reports, into Islamic laws. An exploration into early *zinā* laws reveals gaps, and these in turn indicate that Muslim jurists were attempting to account for something that they may have been uncertain about themselves. This skepticism is expressed by Ibn Abī Awfā's remark, "I do not know," when asked if the Prophet stoned before or after Q24:2. Partly based on the legal justification of the principle of proportionality – the punishment must fit the crime – Muslim jurists reformulated *zinā* to have at least two meanings. One definition was fornication, and the other was adultery. These connotations legally accommodated flogging for a lesser offense based on the Qur'ān, and stoning for a graver transgression based on the Prophetic *Sunna*.

While this dissertation has attempted to shed light on the beginnings of the process by which stoning was incorporated into the Islamic legal tradition, there remain areas for additional research. First, an investigation is needed into *Shurāt*, because this group rejected the stoning punishment.<sup>848</sup> Specifically, they argued that *ḥadīth* about the Prophet's supposed order to stone Muslims were not *mutawātir*. Of course this disagreement is based on the later standards by which *ḥadīth* gained probative value. Nevertheless, examining *Shurāt* texts it will be important for drawing a clearer picture about their refusal to stone Muslim *zinā* offenders.

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<sup>848</sup> I use *shurāt* in place of Khārijī (pl. *khawārij*) because the latter has a pejorative connotation. It has been a polemical tool deployed by those who situate the *shurāt* outside the purview of orthodox Islam. I thank Adam Gaiser for bringing this matter to my attention. For more information on the *shurāt*, see Gaiser, *Shurāt Legends, Ibādī Identities*.

In addition to the Sunnī legal tradition, the Shī‘ī legal heritage also accepted stoning as an Islamic punishment for certain forms of *zinā*. Hence, it will be important to explore Shī‘ī sources on *zinā*. It will be beneficial to determine which *ḥadīth* and *akhbār* Shī‘ī legal authorities relied upon to justify stoning as Islamic. It will be useful to understand the different ways in which the construction of these narratives helped to legitimize stoning as an Islamic punishment. An investigation into transmitters and (Shī‘ī) authorities can also shed light on the process by which the capital sanction was accepted into the Shī‘ī legal tradition. As a supplement to *ḥadīth* and *akhbār*, research into Shī‘ī legal manuals will also be vital, because it will complement the broader exploration of stoning in the broader Islamic legal tradition.

As I have noted throughout this dissertation, *iḥṣān* became a central legal element for conviction in *zinā* laws. I argued in Chapter One that the term developed in the post-Prophetic period based on the Qur’ān’s usage of *aḥṣana* and *al-muḥṣanāt*. In other words, during the revelatory period it did not exist in the same manner as in the Islamic legal tradition. Hence, it will be worthwhile to investigate if *iḥṣān* was used in any other contexts. If so, it can shed light on the possible ways in which it was understood by Muslims of Islamic late antiquity, and perhaps nuance its use in *zinā* laws.

The role of ‘Umar b. al-Khaṭṭāb cannot be underestimated. Thus, further investigation into his reign and influence on *zinā* laws would be worthwhile. There are several other reports about *zinā* which involve ‘Umar that I did not explore in Chapter Four, because they do not involve his order to stone. Some of these narratives are related to flogging; in others, however, he vacates *zinā* punishments for offenders due to exculpatory reasons. It would be profitable to investigate the provenance of these reports to determine, with a reasonable amount of confidence, if they are attributable to ‘Umar. If so, then we are on even better footing to argue

for his direct involvement in helping to stabilize the stoning punishment into the Islamic legal tradition.

It is worth exploring the extent to which ‘Umar was aware that stoning was a Hebrew Bible prescription, but was nevertheless motivated to using it for Muslims. This investigation can help to answer questions such as: In an attempt to assert a rightful claim to Abrahām’s legacy, did Muslims after the Prophetic period attempt to incorporate practices, such as stoning, to solidify their place in the patriarch’s tent? Was ‘Umar specifically prone to incorporating Jewish practices (however defined for seventh century Jewish Medinans) into Islam? According to a report in the *Musannaf* of ‘Abd al-Razzāq:

‘Abd Allāh b. Thābit narrated: ‘Umar b. al-Khaṭṭāb went to the Prophet and said, “Messenger of God! I passed by one of my Jewish brothers, and he wrote down for me a comprehensive part of the Torah. Let me review it with you.”

The Messenger of God’s face turned grim. ‘Abd Allāh said to ‘Umar: Has God suddenly made you lose your senses? Do you not understand why the Messenger of God is upset?

‘Umar then responded: I am content with God as God, with Islam as *dīn*, and with Muḥammad as messenger.

‘Abd Allāh said: Upon hearing that the Prophet’s worries subsided. Then the Prophet said: By the One in whose hand is my soul, if Moses appeared to you then you would follow him and leave me by the wayside. Indeed you would stray by doing this. You need to remember that you are the favored community and I am the favored messenger.<sup>849</sup>

If ‘Umar did have an inclination towards incorporating pre-Islamic Divine directives into Islam, then it seems reasonable that he may have been motivated to integrate stoning for Muslim *zinā* offenders. Hence, additional research on ‘Umar will help to nuance our understanding of the beginnings of the process by which stoning became part of the Islamic legal tradition.

In addition to ‘Umar’s stoning *khabar*, other narratives about stoning warrant further

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<sup>849</sup> ‘Abd al-Razzāq, *al-Musannaf*, 10:313f: 19,213.

study. This will assist in evaluating the different ways in which they helped to emphasize stoning as an appropriate *zinā* punishment. According to an entry in al-Bukhārī's *Ṣaḥīḥ*:

The Companion 'Amr b. Maymūn is recorded to have said: During the days of *Jāhiliyya*, I saw a group of monkeys gather around one of their members who had committed *zinā*. They began to stone her and I joined in the stoning.<sup>850</sup>

This report may represent efforts to employ a natural law strategy to justify stoning for *zinā* offenders. If monkeys stoned their *zinā* offenders, then surely people must do the same.

The punishment of stoning has been broadly accepted into Islamic laws. Several *ḥadīth* and *akhbār* exist in which stoning was mandated for certain types of Muslim *zinā* offenders. This requirement came to be reflected in the Islamic legal tradition. Despite stoning's absence from the standardized Qur'ān, the beginnings of its absorption into the Islamic legal tradition may very well rest on the authority of the Prophet's Companions.

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<sup>850</sup> al-Bukhārī, *Ṣaḥīḥ* (2002 ed.), 942:3,849.



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