



Gender and Legal Authority: An Examination of Early Juristic Opposition to Women's Ḥadīth Transmission

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Abstract

This article analyzes two cases of early juristic opposition to the legal authority of *ḥadīth* narrated by women. These cases appear as striking anomalies for two reasons: first, jurists broadly agreed that the gender of narrators in a chain of transmission was not a criterion in evaluating *ḥadīth*; and second, the cases involve female Companions of the Prophet whose value as transmitters came to be universally acknowledged by Muslim scholars of the classical period. In this article, I demonstrate that these incidents of gender-based disparagement are more useful because of what they reveal about the development of *ḥadīth* transmission (*riwāya*) and legal testimony (*shahāda*) as technical categories rather than for what they can tell us about normative gender discourse in early and classical Islam. I also contextualize the cases in terms of early methodological debates on the legal authority of isolated reports (*khabar al-wāḥid*, *akhbār al-aḥād*).

Keywords

women, *ḥadīth* transmission, *riwāya*, *shahāda*

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In the decades since Nikki Keddie called for serious historical work in Middle Eastern women's studies, scholars have risen to the challenge.¹ Publications on Middle Eastern and Muslim women have proliferated and followed a path similar to scholarship on American and European women. In each sphere, feminist inquiry provided the initial impetus with an explicit agenda of empowering women through historical knowledge.² And in each case, women's studies as a field has encountered marginalization and is deemed of minimal utility for more well-rooted disciplines that are not explicitly concerned with analyzing gender.³

The intersection of history and women's studies poses a special set of problems. The lenses of contemporary feminist discourse, when used to examine pre-modern texts that deal with women and gender, can lead to distorted understandings of the circumstances and societies that produced these texts. In this vein, Julie Meisami has expressed the concern that studies of women in the early and classical periods of Islamic history sometimes "obscure their purported subject behind the veils of their authors' own prejudices and preconceptions, and perpetuate stereotypes of Islam based on modern Western cultural assumptions." As an antidote, she suggests "opening our minds instead to the multiplicity of voices which inform medieval Islamic literatures and which speak of complex attitudes and situations."⁴

To address these issues in the Muslim context, we need approaches that go beyond extracting the normative implications of gender discourse. Texts that incorporate discussions of gender should be

¹ Nikki Keddie, "Problems in the Study of Middle Eastern Women," *International Journal of Middle East Studies* 10, no. 2 (May 1979): 225-40.

² An overview of developments in women's and gender history can be found in Margaret Strobel and Marjorie Bingham, "Theory and Practice of Women's History and Gender History in Global Perspective," in *Women's History in Global Perspective*, ed. Bonnie Smith, 9-47 (Chicago: University of Illinois Press, 2004).

³ For a statement of this point with respect to American and European women's studies, see Joan Scott, "Gender: A Useful Category for Historical Analysis," *American Historical Review* 91, no. 5 (1986): 1055. For broad ranging discussions of the state of women's studies see Joan Scott, ed., *Women's Studies on the Edge* (Durham: Duke University Press, 2008).

⁴ Julie Scott Meisami, "Writing Medieval Women: Representations and Misrepresentations," in *Writing and Representation in Medieval Islam*, ed. Julia Bray (New York: Routledge, 2006), 74.

analyzed in their proper contexts to illuminate broader issues in Muslim history, law, politics, and theology.⁵ In pursuing such studies, we run the risk of decentering women as we seek to understand how “concepts of power, though they may build on gender, are not always about gender itself.”⁶ Nonetheless, the benefits of such scholarship outweigh the risks. Rigorously contextual scholarship promises greater fidelity to the texts under scrutiny and results in more accurate historical reconstructions.

For early and classical Islam, *ḥadīth* transmission is an intriguing site for analyzing the broader historical contexts of texts that touch on gender. It is an arena that was recognized as gender-egalitarian (or at least gender-neutral), and as such, contrasts with other spheres of Muslim social, intellectual, or political activity where patriarchal norms routinely manifested themselves in gender discourse. When it came to *ḥadīth* transmission, women’s parity with men was more assiduously asserted.⁷ In this context, cases of early juristic opposition to women’s transmission pose interesting problems. How can we situate and historicize these reports? Exactly what was at stake in the legal sparring over reports attributed to women?

In this article, I focus on two cases of jurists diminishing the legal authority of *ḥadīth* which were narrated by women, and I situate them in the broader contexts of *ḥadīth* transmission history and discourse on the methodology of Islamic law (*uṣūl al-fiqh*). I demonstrate that controversies generated over the *ḥadīth* attributed to the female Companions Fāṭima bint Qays and Busra bint Ṣafwān are useful because they help to historicize the development of *ḥadīth* transmission (*riwāya*) and legal testimony (*shahāda*) as distinct

⁵ Several recent studies have advocated and successfully adapted this approach in early and classical Islam. These include Yossi Rapoport’s *Marriage, Money and Divorce in Medieval Islamic Society* (Cambridge: Cambridge University Press, 2005), and the following book chapters: Maribel Fierro, “Women as Prophets in Islam,” in *Writing the Feminine: Women in Arab Sources*, ed. Randi Deguilhem, 183-98 (London: I.B. Tauris, 2002); and Meisami, “Writing Medieval Women.”

⁶ Scott, “Gender,” 1069.

⁷ See, for example, al-Khaṭīb al-Baghdādī (d. 463/1070), *al-Kifāya fī ‘Ilm al-Riwāya* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1988), 94; and Muḥammad b. ‘Alī al-Shawkānī (d. 1250/1834), *Nayl al-Awṭār: Sharḥ Muntaqā’l-Akhhbār min Ahādīth Sayyid al-Akhyār*, 10 vols. (Cairo: Maktabat al-Qāhirah, 1978), 8:122.

categories. In the first two centuries of Islam, there was greater disagreement than there was in the classical period (ca. fourth/tenth-tenth/sixteenth centuries) about the differences between these two types of knowledge. Gender is among the issues used to evaluate legal testimony, so jurists at times extended this criterion to undermine their opponents' arguments (which drew on *ḥadīth* narrated by women). Such reasoning would appear illogical after the third/ninth century when the ambiguity was overtaken by a consensus that *ḥadīth* narrated by women could not be impugned on the basis of gender. Over time, the consensus has become so entrenched that it is tempting to dismiss indications of early juristic opposition as minor aberrations.

Contextualization of these cases, however, points to a shift in legal epistemology that occurred within the first two centuries of Islam: the value of women's transmission was decisively decoupled from that of their testimony as witnesses. The gendered criteria for establishing the validity of legal testimony draws on the following Qur'ānic verses:

You who believe, when you contract a debt for a stated term, put it down in writing; have a scribe write it down justly between you. No scribe should refuse to write; let him write as God has taught him, let the debtor dictate, and let him fear God, his Lord, and not diminish [the debt] at all. If the debtor is feeble-minded, weak, or unable to dictate, then let his guardian dictate justly. *Call in two men as witnesses, if two men are not there, then call one man and two women out of those you approve as witnesses, so that if one of the two women should forget, the other can remind her....* (2:282) (emphasis added)

Though this verse refers specifically to debt contracts and the legal sufficiency of witnesses in recording such transactions, the majority of Muslim jurists broadly extended its application. Based partly on juristic interpretations of this verse, the testimony of one woman alone was not accepted for most cases that were not related to women-specific issues.⁸

⁸ The major schools of law have established different criteria for how many women (and men) are required for the range of issues that require witness testimony (from witnessing the new moon marking the beginning of the Islamic months to criminal cases). For a

A more equitable rule prevailed for *riwāya*: the report of a single female narrator could not be discredited on the basis of gender. This development had little, if anything, to do with discussions about women's rights per se. Rather, gender was one of many factors implicated in the broader discourse about the methodology for deriving Islamic law. Nevertheless, the explicit separation of narration and testimony made it impossible for jurists to reject women's transmission on the basis of gender and was a boon for the incorporation of women's traditions into the legal corpus.⁹

Riwāya and *shahāda* are complex, technical legal categories, and the rules governing them are the product of substantive legal discussions.¹⁰ Gender-based distinctions between these categories produced

contemporary study that provides a summary of different legal positions, see Fathī 'Uthmān, *Shahādat al-Mar'a* (Cairo: Maktabat al-Nahḍa al-Miṣriyya, 2000). Discussions of this topic in classical legal texts may be found in Muḥammad b. Aḥmad al-Sarakhsī (d. 483/1090), *Kitāb al-Mabsūṭ*, 30 vols. in 15 (Egypt: Maṭba'at al-Sa'adah, 1906-13), 15:142-44; and 'Abd Allāh b. Aḥmad b. Qudāma al-Maqdisī (d. 620/1223), *al-Mughnī*, 9 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 1994), 9:106-57. Al-Sarakhsī justifies his view that a single woman's testimony is unacceptable for matters except those relating to private feminine affairs, such as nursing and birth by citing a tradition ascribed to Muḥammad that women are deficient in their intellects and in their religion. (This *ḥadīth* appears in the Sunnī canonical collection of Muḥammad b. Ismā'il al-Bukhārī (d. 256/870), *Ṣaḥīḥ*, 9 vols. in 4 (Beirut: Dār al-Qalam, 1987), 1:193, #293 in the "Book on Menstruation"). For a contemporary discussion of Qur'ānic verse 2:282 in terms of modern legal and feminist discourse, see Abdulaziz Sachedina, "Woman Half-the Man? Crisis of Male Epistemology in Islamic Jurisprudence," in *Intellectual Traditions in Islam*, ed. Farhad Daftary, 160-78 (New York: I.B. Tauris, 2000).

⁹ Leila Ahmed notes that the legacy of Muḥammad's Companions who consulted women for traditions about the Prophet set important precedents for later jurists who may otherwise have been inclined to disregard such reports. She also observes that if the laws of testimony were applied to women's reports, the latter would not have been able to be incorporated into juridical discourse. See *Women and Gender in Islam* (New Haven: Yale University Press, 1992), 73-74. For a classical detailed legal discussion of the differences between *riwāya* and *shahāda*, see Shihāb al-Dīn al-Qarāfī (d. 684/1285), *Kitāb al-Furūq*, 4 vols. (Cairo: Dār al-Islām, 2001) 1:74-91; for an outline of the positions by a contemporary scholar, see Muḥammad b. 'Abd al-Razzāq Aswad, *Shurūṭ al-Rāwī wa'l-Riwāya* (Damascus: Dār Tayba, 2007), 32-35.

¹⁰ A perusal of sections dealing with testimony in the *ḥadīth* collections and the compendia of *fiqh* conveys the elaborate considerations of Muslim scholars in deriving laws on these topics. Works cited earlier (in note #8) discuss the *fiqh* of *shahāda*. Sections on the etiquette of narrating *ḥadīth*, on what constitutes sound narration, and on qualifications of

the following paradox: in civil and criminal cases that pertain to individual interests, women's testimony is restricted; yet their narration of *ḥadīth* which establishes religious practice for entire communities is freely permitted. Mohammad Fadel explores how jurists wrestled with this inconsistency in his article "Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought."¹¹ Fadel's analysis focuses on post-Ayyubid (sixth/thirteenth and seventh/fourteenth century) texts, by which time the consensus regarding women's *ḥadīth* narration was already enshrined in the legal culture. When post-Ayyubid jurists contemplated the paradox, their task was to justify rather than eliminate it. I aim to historicize this development by exploring disagreements that predated the unanimous acceptance of *riwāya* and *shahāda* as discrete categories.

Riwāya, Shahāda, and the Binding Consensus

A survey of legal and *ḥadīth* literature from the fourth/tenth century onwards yields few clues that earlier jurists might have conflated the standards for *riwāya* and *shahāda*. Works of positive law (*fiqh*), for example, do not treat the issue of women's narration of *ḥadīth* reports. Rather, they confine themselves to discussions of the conditions for women's testimony (*shahādat al-nisā'*).¹² In works of legal methodology (*uṣūl al-fiqh*) as well, there is consensus that the two categories are distinct.¹³

Manuals on the science of *ḥadīth* transmission, on the other hand, preserve vestiges of a buried and largely forgotten discussion about

transmitters convey the complexities in the arena of *riwāya*. See, for example, the classic manual by al-Khaṭīb al-Baghdādī, *al-Kifāya* (sections on the etiquette of learning *ḥadīth*), 54-73.

¹¹ Mohammad Fadel, "Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought," *International Journal of Middle East Studies* 29, no. 2 (1997): 185-204.

¹² See, for example, the section on women's testimony in Ibn Qudāma, *al-Mughnī*, cited above (note #8).

¹³ Al-Shāfi'ī's *Risāla* is the earliest known legal work to articulate a difference between these categories. Muḥammad b. Idrīs al-Shāfi'ī (d. 204/820), *al-Risāla* (Beirut: Dār al-Nafāis, 1999), 161.

distinctions between *riwāya* and *shahāda*. Comparing the manuals of successive generations of *ḥadīth* scholars provides a useful diachronic view of the emergence of a consensus with respect to the distinctions between *riwāya* and *shahāda*. The fourth/tenth century *al-Muḥaddith al-Fāsil* of ‘Abd al-Raḥmān al-Rāmhurmuzī (d. 360/970) devotes a section to scholars who conflated standards for *ḥadīth* narration and testimony. Here he cites the following report on Muḥammad’s authority: “Do not accept religious knowledge (*‘ilm*, i.e. *ḥadīth*) except from those whose testimony you accept (*lā ta’khubhu’l-‘ilm illa ‘am-man tujizūna shahādatabu*).”¹⁴ This statement does not explicitly and automatically implicate the transmissions of women; after all, the testimony of a woman (albeit in most cases supported by one or more other witnesses) was considered valid. Rather, the effect of the Prophetic tradition was to blur the boundaries between *riwāya* and *shahāda* such that if a jurist wished to reject a *ḥadīth* on the basis that it was transmitted by only one woman, he could do so.¹⁵

Whereas al-Rāmhurmuzī cites the report and contemplates its connotations, a century later the scholar al-Khaṭīb al-Baghḍādī (d. 463/1070) cites a similar report and then critiques it as an inauthentic transmission.¹⁶ Further, al-Khaṭīb places this report in

¹⁴ ‘Abd al-Raḥmān al-Rāmhurmuzī, *Muḥaddith al-Fāsil bayna al-Rāwī wa’l-Wā‘i* (Beirut: Dār al-Fikr, 1971), 411. In other respects as well, al-Rāmhurmuzī’s manual attests to the conflation of *shahāda* and *riwāya*. See his section on “Those who used the terminology of testimony [for *ḥadīth* transmission],” 461-71.

¹⁵ Whereas some jurists showed skepticism towards such reports irrespective of the gender of the narrator, my point here is that with respect to women’s narration of reports, the conflation of *riwāya* and *shahāda* at times resulted in a bias against women’s narration that was articulated along gender lines. In a later section, I will discuss the skepticism of several early jurists to traditions narrated by only one or a few male and female transmitters (i.e. *khabar al-wāḥid*).

¹⁶ Al-Khaṭīb, *al-Kiṭāba*, 95-96. The *isnād* and wording of al-Khaṭīb’s first report (he cites several versions of the tradition) are slightly different from the one cited by al-Rāmhurmuzī. The first version that al-Khaṭīb cites is, “Do not write down knowledge [i.e. *ḥadīth*] except from those whose *shahāda* is accepted.” All versions of the report (including the one provided by al-Rāmhurmuzī) go through Ṣāliḥ b. Ḥassān. Al-Khaṭīb states that Ṣāliḥ was rejected by jurists because of his faulty memory. In the end of this section, al-Khaṭīb says that if the report is indeed true, its intent is not actually to set up similar standards for *riwāya* and *shahāda* but rather to allow for consensus (*ijmā‘*) to function in validating

a section explaining the separate criteria for *ḥadīth* transmitters and witnesses. Here al-Khaṭīb voices the view prevailing in his time that *ḥadīth* transmitters and witnesses had to fulfill only some of the same criteria, including “(the qualities of) being Muslim, legally mature, of sound mind, precise, honest, trustworthy, and just.” In other respects, the two were disparate. Thus, he states,

As for the ways in which they [witnesses and transmitters] differ, it is in terms of the prerequisites that a witness be free, not a parent or child or a relative [of the parties to the case], which would raise suspicion [of bias], and that he should not be a biased friend. [There are the additional requirements that] there be one man in some cases of testimony, and two men in some, and four men in other cases. *None of these are considered with regard to a person relaying a report because we accept the report of a slave and a woman and a friend and others [who may be unacceptable as witnesses].*¹⁷ (emphasis added)

In addition to these points, al-Khaṭīb makes several others that evince his interest in articulating and rationalizing the classical consensus that *shahāda* and *riwāya* are distinct.¹⁸

Historical documentary records that attest to women’s *ḥadīth* transmission from the earliest decades of Islam further complicate the picture. These include *ḥadīth* attributed to prominent wives of Muḥammad such as ‘Ā’isha bint Abī Bakr (d. 58/677) and Umm Salama (d. 59/678), as well as to more obscure women such as Umm Qays bint Miḥṣan, whose traditions occur in all the major Sunnī canonical collections.¹⁹ In view of this evidence, it seems

reports that may not meet exacting standards in terms of the number of narrators reporting the tradition.

¹⁷ Al-Khaṭīb, *al-Kifāya*, 94.

¹⁸ Al-Khaṭīb, *al-Kifāya*, 96-97. In his discussion on the qualities of those who can testify about the reliability of *ḥadīth* transmitters, for example, al-Khaṭīb takes pains to explain how those whose testimony is not acceptable (such as a single woman or a slave) may nonetheless serve as character witnesses for transmitters.

¹⁹ For biographical information about Umm Qays, see Muḥammad b. Sa’d (d. 230/845) *Kitāb al-Ṭabaqāt al-Kabīr*, 9 vols. (Leiden: Brill, 1904-18), 8:176, and Aḥmad b. ‘Alī b. Ḥajar al-‘Asqalānī (d. 852/1449), *Ṭahdhīb al-Ṭahdhīb*, 12 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 1994), 12:424. For a collection of her traditions which appear in the major Sunnī collections, see Bashshār Ma’rūf et al, eds., *Musnad al-Jāmi’*, 22 vols. (Beirut: Dār al-Jīl, 1993), 20:764-68.

defensible to assume that jurists always welcomed and incorporated women's narrations on par with men's. Yet, such extrapolations are unwarranted and obfuscate our understanding of a host of related issues in early Islam. For example, recent studies have noted the dramatic decline of numbers of female *ḥadīth* transmitters from the late second/eighth to the early fourth/tenth centuries.²⁰ Such historical patterns underscore the importance of differentiating between legal authority accorded to women's *ḥadīth* and the historical incidence of their participation. In this vein, reports about gender-based disparagement of women's traditions are indispensable to our understanding of early *ḥadīth* transmission and of the role of gender in legal epistemology.

The Rejection of Fāṭima bint Qays' Report

The best attested case of gender-based disparagement occurs with respect to the *ḥadīth* of the Companion Fāṭima bint Qays on Prophet Muḥammad's ruling about her divorce case.²¹

Sunnī *ḥadīth* collections record approximately fourteen *ḥadīth* on the authority of Fāṭima bint Qays. Twelve of these are about her divorce case from Abū 'Amr b. Ḥafṣ b. al-Mughīra, who irrevocably divorced her while he was away on a campaign.²² Accounts from biographical dictionaries and anecdotal evidence gleaned from *ḥadīth* paint a picture of Fāṭima as an assertive woman who was aware of

²⁰ I have examined this decline in greater detail in my dissertation, *Shifting Fortunes: Women and Ḥadīth Transmission in Islamic History* (PhD diss., Princeton University, 2005), Chapter 3. The lower rates of women's participation in this period have also been noted by Ruth Roded, *Women in Islamic Biographical Collections* (Boulder: Lynne Rienner Publishers, 1994), 66-67, and M.A. Nadwi, *Muḥaddithāt* (London: Interface, 2007), 246, 253.

²¹ Biographies of Fāṭima bint Qays may be found in Ibn Sa'd, *al-Ṭabaqāt*, 8:200-2, and in Ibn Ḥajar, *Tabdhīb*, 12:393-94.

²² For a biography of Abū 'Amr, see Ibn Hajar, *Tabdhīb*, 12:159-60. In addition to the twelve *ḥadīth* that relate to her divorce from Abū 'Amr, Fāṭima is credited with two *ḥadīth* on the topics of *zakāt* and *fitna*. The science of numbering *ḥadīth* is not an exact one. The number of traditions that are attributed to narrators depends on how any given compiler groups differing versions of the tradition. The modern compendium *al-Musnad al-Jāmi'* records fourteen traditions on Fāṭima's authority. See *al-Musnad al-Jāmi'*, 20:466-88.

the legal implications of the Prophet's *fatwā* in her case. As such, she is said to have presented her divorce case as valid precedent on several occasions in spite of vociferous opposition by a number of leading authorities in the early Muslim community.

The controversy over Fāṭima's *ḥadīth* is recorded in four canonical Sunnī *ḥadīth* collections: the *Ṣaḥīḥ* of Muslim (d. 261/875) and the *Sunans* of Abū Dāwūd (d. 275/889), al-Tirmidhī (d. 279/892), and al-Nasā'ī (d. 303/915). The non-canonical *Muṣannaf* of Ibn Abī Shayba (d. 235/849) also contains accounts of the dispute over the legal validity of Fāṭima's *ḥadīth*.

In the following section, I introduce the four main variants which record gender-based disparagement of Fāṭima's *ḥadīth*.²³ Three of them speak of 'Umar b. al-Khaṭṭāb's criticism of Fāṭima's *ḥadīth*. The fourth asserts gender-based rejection by Marwān b. al-Ḥakam (d. 65/685) when he was the governor of Medina.²⁴ The reports given here are abridged versions of more detailed narratives which I will present in due course in subsequent sections of this article.

1. Mughīra said: "[When] I mentioned the *ḥadīth* of Fāṭima bint Qays to Ibrāhīm [al-Nakha'ī], he said, "Umar [b. al-Khaṭṭāb] said that we will not abandon the Book of God and the *sunna* of His Prophet for the saying of a woman. We do not know if she accurately remembers (the situation)"²⁵
2. 'Umar said, "We do not give preference to the words of women in matters of religion. The thrice-divorced woman is entitled to lodging and maintenance."²⁶
3. Abū Ishāq reported, "I was sitting with al-Aswad b. Yazīd in the Great Mosque of Kufa. We were with al-Sha'bī, who related the *ḥadīth* of Fāṭima bint Qays that the Prophet did not award her lodging and maintenance (in

²³ There are additional variants of Fāṭima's account which I will discuss in later sections.

²⁴ Marwān b. al-Ḥakam was also the first Marwānid caliph (r. 64-65/684-85). He was twice appointed governor of Medina (from 41-48/661-68 and from 54-57/674-77).

²⁵ This version occurs in the following collections: Muslim, *Ṣaḥīḥ*, 18 vols. in 9 (Beirut: Dār al-Fikr, 1995), 10:85, #1480; Abū Dāwūd, *Sunan*, 4 vols. (Beirut: Maktabat al-ʿAṣriyya, n.d.) 2:288, #2291; al-Tirmidhī, *Sunan*, 8 vols. in 4 (Beirut: Dār al-Fikr, 1994), 2:397, #1183; and Ibn Abī Shayba, *Muṣannaf*, 7 vols. (Beirut: Dār al-Tāj, 1989), 4:136, #18659.

²⁶ Ibn Abī Shayba, *Muṣannaf*, 4:136, #18653.

her divorce case). Al-Aswad grabbed a handful of stones, pelted al-Sha‘bī, and declared, “Shame on you! Why do you pronounce such judgments? ‘Umar said [with respect to Fāṭima’s report], ‘If you bring me two witnesses to testify that they heard this report from the Prophet [I will accept it] and if not, we will not abandon the Qur’ān for the saying of a woman...’”²⁷

4. ‘Ubayd Allāh b. ‘Abd Allāh b. ‘Utba said that Marwān [b. al-Ḥakam] sent Qubayṣa b. Dhu‘ayb to ask Fāṭima [about her situation]. She told him her account [of her divorce from Abū ‘Amr b. Ḥafṣ b. al-Mughīra and the Prophet’s ruling in her case], and he reported this back to Marwān, who responded, “I have heard this *ḥadīth* only from a woman. We will adhere to the consensual practice of the people [instead of to this *ḥadīth*].”²⁸

These reports clearly indicate that in the earliest period of Islamic history, gender could indeed be a factor in assessing the legal validity of a *ḥadīth*. Examining this controversy over Fāṭima’s report clarifies the contexts in which gender played a role in early juristic discourse.

Before turning to this matter, however, it is important to address the issue of authenticity and dating of the traditions at hand. Due to concerns about the authenticity of the *ḥadīth*, scholarship on the earliest decades of Islam must often be content with very tentative statements about the historicity of the events being studied.²⁹ Fortuitously, my own study stands on firmer ground. The cluster

²⁷ Al-Nasā‘ī, *Sunan al-Kubrā*, 12 vols. (Beirut: Mu’assasat al-Risāla, 2001), 5:316. This report is similar in wording to one that occurs in the *Sunan* of Abū Dāwūd and the *Ṣaḥīḥ* of Muslim. The report in the *Sunan* and *Ṣaḥīḥ* collections also describes the scene in the mosque where al-Aswad pelts al-Sha‘bī for narrating the report and goes on to relate ‘Umar’s discarding the *ḥadīth* because a woman narrated it. The major difference in these reports is that in the wording of the version in al-Nasā‘ī, there is an explicit conflation of the standards for *riwāya* and *shahāda* in ‘Umar’s demand that two witnesses should be produced to confirm the accuracy of Fāṭima’s account.

²⁸ ‘Abd al-Razzāq al-Ṣan‘ānī (d. 211/827), *Muṣannaf*, 11 vols. (Beirut: Majlis al-‘Ilmī, 1972), 7:21, #12024.

²⁹ The literature on the issue of the authenticity of *ḥadīth* is vast. Some landmark works in this area are Ignaz Goldziher, *Muslim Studies*, ed. and trans. C. R. Barber and S. M. Stern (Chicago: Aldine, 1968), vol. 2; Joseph Schacht, *Origins of Muhammadan Jurisprudence* (New York: Oxford, 1950); Nabia Abbott, *Studies in Arabic Literary Papyri*, vol. 1, *Historical Texts* (Chicago: University of Chicago Press, 1957-72), and Muhammad Mustafa Azami, *Studies in Early Ḥadīth Literature* (Indianapolis: American Trust Publications, 1992). A work which brings together seminal articles from a variety of perspectives on the issue of authenticity is Harald Motkzi, ed. *Ḥadīth: Origins and Development* (Burlington, VT: Ashgate, 2004).

of Fāṭima's traditions that I focus on are among ones scrutinized and dated to the earliest decades of Islam in Harald Motzki's pioneering study *Origins of Islamic Jurisprudence*.³⁰ Building on Motzki's work allows us to examine Fāṭima's report and the related controversy as accurately reflecting juristic debates in the first century of Islam.

The Divorce of Fāṭima bint Qays

The controversy over Fāṭima's *ḥadīth* arose with respect to the question of lodging (*suknā*) and maintenance (*nafaqa*) for a divorced woman.

Islamic law deems that if the intent to divorce has been articulated three times, the divorce itself becomes irrevocable.³¹ The rights of an irrevocably divorced woman are defined differently from those of one who may still return to her husband. Drawing upon Qur'ānic prescriptions as well as the reported practice of Muḥammad, jurists mandated a waiting period (*'idda*) for divorced women during which

³⁰ Harald Motzki, *Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools*, trans. Marion Katz (Leiden: Brill, 2002), 157-67. Motzki not only dates the tradition as a genuine transmission from Fāṭima but also convincingly presents the case that it is likely to be an authentic ascription to the Prophet. Through his analysis, Motzki concludes that the tradition was in circulation when Marwān was governor of Medina. Although Motzki's findings are not universally accepted, my assessment is that his methodology, which employs close analysis of selected traditions from the *Muṣannaḥ* of 'Abd al-Razzāq al-Ṣan'ānī, is convincing and allows us to build on his research and conclusions to nuance our understanding of the earliest periods of Islamic history. G.R. Hawting has also examined Fāṭima's traditions in his article "The Role of Qur'ān and *Ḥadīth* in the Legal Controversy about the Rights of a Divorced Woman during her 'Waiting Period' (*'idda*)," *Bulletin of the School of Oriental and African Studies* 52, no. 3 (1989): 430-45. Hawting does not concern himself primarily with the dating and authenticity of Fāṭima's traditions, but rather with the insights that the controversy provides about the relative significance of Qur'ān, *ḥadīth*, and Companion reports in early legal methodology. For a more recent discussion of the *ḥadīth* of Fāṭima bint Qays see the article by Scott Lucas, "Divorce, *Ḥadīth*-Scholar Style: From al-Dārimī to al-Tirmidhī," *Journal of Islamic Studies* 19, no. 3 (2008): 333-37.

³¹ This triple pronouncement of divorce is not the only type of irrevocable divorce. Moreover, even this "triple divorce" is irrevocable only until the remarriage of the woman to a different person. If the second marriage is dissolved, the man and woman who had previously divorced "irrevocably" may then remarry. For an interesting discussion of this practice in the Mamluk period, see Rapoport, *Marriage, Money, and Divorce*, chapter 5.

they were not permitted to remarry, partly to ensure against paternity disputes if the divorced woman was pregnant. Among the rights over which jurists disagreed were those of the lodging and maintenance of a wife who was irrevocably divorced: was she obliged to stay in her marital home during her waiting period, and was her ex-husband obliged to provide for her?

According to Fāṭima's tradition, as narrated in its various versions, she presented her own experience as legal precedent on at least two occasions when the question of the rights of a divorced woman arose. When 'Umar b. al-Khaṭṭāb was confronted with the issue soon after the death of Muḥammad, we are told that Fāṭima asserted that the Prophet's *fatwā* in her case was a general ruling applicable to all irrevocably divorced women. According to her *ḥadīth*, the Prophet had denied that her husband owed her lodging and maintenance and advised her to move to the house of the blind Ibn Umm Maktūm, where she would be assured of her privacy and safety while she observed her waiting period.³² This precedent was troublesome for 'Umar as it contradicted the plain sense of the following Qur'ānic verse which speaks of the treatment of divorced women:

³² If we consider this issue through the lenses of contemporary divorce etiquette and practices, it appears that Fāṭima's precedent was hostile to women's interests since the Prophet actually denied her lodging and maintenance in her case. It is difficult to resolve the conundrum of the social contexts of Fāṭima's assertion and why she would assert this precedent and actually apply it to the case of her own niece who went through a divorce after the death of Muḥammad. Hawting offers a plausible explanation of the implications of Fāṭima's tradition as one which actually supported a woman's relative mobility and independence during her waiting period. In line with this interpretation, the opponents of Fāṭima's tradition would have been concerned with limiting the range of action of an irrevocably divorced woman and with "upholding sexual morality." If the divorcée were to receive lodging and maintenance from her former husband, she would have to remain within his sphere of influence, and he would theoretically be responsible for her. See Hawting, 440. This explanation is given further credence in light of a *fatwā* attributed to Ibn Mas'ūd, who was asked about a triply divorced woman who refused to remain in her marital home and wished to return to her own family. Ibn Mas'ūd ruled that she should be confined and forcibly made to stay in her marital home. See 'Abd al-Razzāq al-Ṣan'ānī, *Muṣannaf*, 7:26-27, #12040.

[Hence] let the women [who are undergoing a waiting period] live in the same manner as you live yourselves, in accordance with your means, and do not harass them with a view to making their lives miserable. And if they happen to be pregnant, spend freely on them until they deliver their burden; and if they nurse your offspring [after the divorce has become final] give them their [due] recompense.... (65:6)

The confusion over this verse centered on the different categories of divorced women, and on whether only irrevocably divorced women who were pregnant were entitled to maintenance and financial protection at the time of divorce. Fāṭima represented a case of an irrevocably and triply divorced woman who was not pregnant.

According to classical legal methodology, *ḥadīth*, because they relay practices of the Prophet, can provide interpretive frameworks for Qur'ānic verses.³³ Pre-classical legal discourse, however, was not always bound by this methodological principle. Thus 'Umar is said to have unequivocally rejected Fāṭima's *ḥadīth*, primarily on the grounds that it was the report of a woman, and women's authority in matters of religion was uncertain. In the third report cited above, 'Umar's rejection of Fāṭima's report invokes the Qur'ānic requirements for witnesses. Thus, he reportedly asked for two witnesses to certify Fāṭima's report.³⁴ 'Umar's reaction can be rationalized in light of the fact that in the earliest decades, *ḥadīth* transmitters such as Fāṭima could function much like expert witnesses in court. This functional overlap would have been plausible in the unregulated, largely *ad hoc* narration of *ḥadīth* which is likely to have prevailed in the decades after the death of Muḥammad.³⁵ In these contexts,

³³ Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 1991), 58-61.

³⁴ The words ascribed to 'Umar on this occasion echo the Qur'ānic verse (2:282) cited earlier on testimony and the number of witnesses required for financial transactions.

³⁵ While scholars of the history of early Islam have not reached a consensus about the nature of *ḥadīth* transmission in the first few decades, there is agreement that this period is likely to have been characterized by informal and primarily oral exchanges of information about Muḥammad. See for example, Subḥī al-Ṣāliḥ *'Ulūm al-Ḥadīth wa-Muṣṭalaḥu-hu* (Beirut: Dār al-'Ilm lil-Malāyīn, 1991), 14-62, and Fred Donner, *Narratives of Islamic Origins* (Princeton: Princeton University Press, 1998), 275-80. Also, in these early Islamic contexts, the distinctions adduced by Mohammad Fadel between "political" and "normative" discourse would have been blurred. According to Fadel, "political discourse" (i.e. testimony)

it is more understandable that ‘Umar would not construe *riwāya* and *shahāda* as disparate legal categories and would selectively apply gendered criteria to diminish Fāṭima’s *ḥadīth*—especially if he perceived that his own decision represented the only correct understanding of the Qur’ānic verses on lodging and maintenance.

Another rejection of Fāṭima’s tradition occurs in the fourth report cited above which describes Marwān’s reaction. In the more detailed narratives of this encounter, Fāṭima offered her own exegesis of the verse on *suknā* and *naḥaqa*—an interpretation which contradicted that of ‘Umar, Marwān, and those who followed their rulings on this matter. Further, Fāṭima implemented her interpretation and ordered her niece, whom ‘Abd Allāh b. ‘Amr had divorced irrevocably, to move to her [Fāṭima’s] home to observe her waiting period. Upon hearing this, Marwān ordered the niece to be returned to her former marital home and said of Fāṭima’s tradition, “I have only heard this *ḥadīth* from a woman; I prefer the [stronger, consensual] custom of people which binds the woman to her marital home.”³⁶ In response, Fāṭima is said to have retorted that the following Qur’ānic verse supported her stance:

[D]o not expel them [i.e. divorced women] from their homes; and neither shall they [be made to] leave unless they become openly guilty of immoral conduct. These then are the bounds set by God, and he who transgresses the bounds set by God does indeed sin against himself; [for although] thou knowest it not, after that God may well cause something new to come about. (65:1)

is “embodied in those statements which, if admitted, would lead to some immediate binding consequence, usually in favor of one party and against another.... Normative discourse (i.e. *riwāya*), on the other hand, if admitted, establishes a universal norm or fact, but only *potentially* affects tangible interests.” (Fadel, “Two Women, One Man,” 188). Fāṭima’s report, if accepted by ‘Umar, would result in binding consequences for the parties to the divorce case he was adjudicating.

³⁶ ‘Abd al-Razzāq al-Ṣan’ānī, *Muṣannaf*, 7:20-1, #12024. The words attributed to Marwān in this report are “*sa-na’ khudh bi’l-’iṣma allatī wajadnā al-nās ‘alayhā*.” Mālik b. Anas in his *Muwatta’* offers another variant of this report which I discuss in greater detail below. While Marwān’s rejection of Fāṭima’s report seems to echo ‘Umar’s view, their reasoning is different. Marwān gives preference to Medinan consensus while ‘Umar reasons that Fāṭima’s report does not accord with apparent meaning of the Qur’ānic verse (65:6) which grants lodging and maintenance to divorced women.

Fāṭima argued that the wording of the verse above limits the obligation of providing *nafaqa* and *suknā* only to cases of divorce that are not final in which it is possible that “something new [i.e. reconciliation]” will come about.³⁷ In spite of Fāṭima’s efforts, her tradition found few supporters and many detractors.

Interestingly, Fāṭima’s *ḥadīth* was rejected in sum or in part by various jurists across regional centers. Not all of the jurists, however, mention Fāṭima’s gender as the reason for rejecting her tradition. The traditions which do mention gender feature predominantly Kufan *isnāds*. The following Kufan authorities appear as transmitters of a report from ‘Umar that the *ḥadīth* of women are not to be preferred in matters of religion: al-Aswad b. Yazīd (d. 74/693), Ibrāhīm al-Nakha’ī (d. 96/714), Mughīra b. Miqsam (d. 136/753), al-A‘mash (d. 148/765), Sufyān al-Thawrī (d. 161/778), and Jarīr b. ‘Abd al-Ḥamīd (d. 188/803).³⁸ However, the traditions are not exclusively Kufan. Marwān’s report is transmitted through the Basran authority, Ma‘mar b. Rāshid (d. 153/770).³⁹ Additionally, there are two Ḥijāzī transmitters of the Marwān tradition, namely the Medinese Ibn Shihāb al-Zuhrī (d. 124/742) and the Meccan Ibn Jurayj (d. 150/767). The circulation of these traditions in Kufa, Basra, Mecca, and Medina suggests that until the mid-second/eighth century, some jurists deemed women’s narration of reports as a potential liability in assessing the legal authority of the report. We cannot infer from this that women were not transmitting *ḥadīth* or that jurists unilaterally prohibited women’s participation. Rather, we can be fairly certain that in heated controversies, such as the one about Fāṭima’s report, jurists could play the gender card to weaken the import of a tradition they found objectionable.

³⁷ For a further discussion of how verse 65:1 was interpreted by a number of early jurists, see Abū Ja‘far Muḥammad b. Jarīr al-Ṭabarī (d. 310/923), *Jāmi‘ al-Bayān ‘an Ta’wīl Āy al-Qur’ān*, 7 vols. (Beirut: Dār al-Shāmiyya, 1997), 7:334-37.

³⁸ The phrasing of ‘Umar’s tradition is as follows, *lā yukbayyar qawl al-mar’a fī dīn Allāh* (see Ibn Abī Shayba, 4:136, #18653). Biographies for the above authorities are in Ibn Ḥajar’s *Tahdhīb* as follows: Aswad b. Yazid, *Tahdhīb*, 1:310; Ibrāhīm al-Nakha’ī, *Tahdhīb*, 1:160-62; Mughīra b. Miqsam, *Tahdhīb*, 10:242-43; Sulaymān b. Mihrān al-A‘mash, *Tahdhīb*, 4:201-4; Sufyān al-Thawrī, *Tahdhīb*, 4:101-4; Jarīr b. ‘Abd al-Ḥamīd, *Tahdhīb*, 2:67-69.

³⁹ For his biography, see Ibn Ḥajar, *Tahdhīb*, 10:219-21.

To further understand the contexts of gender-based disparagement of Fāṭima's report, it is useful to consider the full spectrum of objections to this *ḥadīth*. Some jurists found different justifications to reject it. Mālik b. Anas (d. 179/796), for example, countered Fāṭima's *ḥadīth* with 'Ā'isha's denunciation that it was misleading.⁴⁰ While Mālik's account replicates many of the details found in Marwān's report cited above, it adds the objection of 'Ā'isha to the record.⁴¹ According to Mālik's version of the controversy, 'Ā'isha heard that Fāṭima's niece had been divorced and transferred from her marital home during her waiting period. She dispatched a message to the governor Marwān b. al-Ḥakam saying, "Fear God and return the woman to her home." When Marwān cited Fāṭima's tradition in support of his actions, 'Ā'isha rebuked him for even mentioning this report. 'Ā'isha does not criticize Fāṭima for misremembering, as 'Umar reportedly did. Rather, according to some reports, she cast doubts on Fāṭima's intention in asserting that the Prophet's ruling on her divorce was relevant as general precedent.⁴² For Mālik, 'Ā'isha's opinion of the applicability of the tradition commands higher authority since she was the wife of Muḥammad. In this case, her *fatwā* restricts the application of the Prophet's precedent as reported by Fāṭima.

'Ā'isha's role in this controversy raises another issue related to epistemic hierarchies of authority with respect to traditions attributed to women. Mālik chose the report of 'Ā'isha, a woman, to deny

⁴⁰ Mālik, *Muwatta'*, 2 vols. (Beirut: Dār al-Gharb al-Islāmī, 1996), 2:92. Mālik's preference for the opinion of 'Ā'isha, a better known Companion than Fāṭima, is in keeping with the legal methodology that has been attributed to him. See Yasin Dutton, *Origins of Islamic Law* (Surrey: Curzon, 1999) for an in-depth analysis of Mālik's methodology. Also, for a discussion of Mālik's preference for the judgment of well-known Companions, see Umar Faruq Abdallah, *Mālik's Concept of 'Amal in Light of Māliki Legal Theory* (PhD diss., University of Chicago, 1978), 192-95.

⁴¹ It is worth noting here that variants of Fāṭima's report are not irreconcilable in the different details they provide. As Motzki has suggested, it is plausible that Fāṭima mentioned different details as she related the story to different people. Additionally, those who related the reports from Fāṭima and jurists engaged in the debate over the rights of a divorced woman may have chosen to stress different aspects of the narrative which would also give rise to variants. For more detailed discussions of the variants, see Motzki, *Origins of Islamic Jurisprudence*, 157-67 and Hawting, "Role of Qur'ān and *Ḥadīth*," 436-40.

⁴² See, for example, the version in Ibn Abī Shayba, *Muṣannaf*, 4:136, #18653.

the validity of the report of Fāṭīma, another woman.⁴³ Yet, ‘Ā’isha, as the favored wife of Muḥammad and the daughter of Abū Bakr, is unlikely to have been subject to the gender biases that impacted other women’s traditions. It is difficult to conceive of ‘Umar denigrating ‘Ā’isha’s reports on the basis of her gender as he did with Fāṭīma. Indeed the existence of such a hierarchy is explicitly articulated by some jurists. The fourth/tenth century Mu‘tazilite scholar, Abū Qāsim al-Ka‘bī al-Balkhī (d. 319/931) cites a report that the Kufan jurist Mughīra b. Miqṣam (d. 136/753-4) asserted that “they [i.e. scholars] used to dislike narrating from women other than the wives of Muḥammad.”⁴⁴ The fifth/eleventh century jurist Ibn ‘Abd al-Barr (d. 463/1070) cites a similar report on the authority of Yaḥyā b. Dīnār (d. 122/739 or 145/762).⁴⁵ And al-Zarkashī (d. 794/1392) relates that the great Iraqī jurist Abū Ḥanīfa (d. 150/767) reportedly did not accept traditions of women other than ‘Ā’isha and Umm Salama in matters of religion.⁴⁶ While al-Zarkashī does not specify why this might be the case, we can surmise that during Abū Ḥanīfa’s time, the absence of a consensus about the standards for accepting women’s *ḥadīth* reporting may have created ambiguities about how such reporting could actually be incorporated into legal discourse. If this ascription to Abū Ḥanīfa is correct, we can extrapolate that his contemporary followers may also have eschewed traditions ascribed to women other than the two most esteemed wives of the Prophet.⁴⁷

⁴³ It is worth noting here that al-Bukhārī, in his *Ṣaḥīḥ*, does not include *ḥadīth* narrated by Fāṭīma herself about her divorce. Rather, he chooses to incorporate reports on the authority of ‘Ā’isha which denounce Fāṭīma’s report and negate its applicability. Al-Bukhārī, *Ṣaḥīḥ (Kitāb al-Idda)*, 7:111-12. See also, Lucas, *Divorce Hadīth-Scholar Style*, 336-37 for his discussion of al-Bukhārī’s inclusion of ‘Ā’isha’s judgment of Fāṭīma’s report.

⁴⁴ Abū al-Qāsim ‘Abd Allāh b. Aḥmad b. Maḥmūd al-Ka‘bī al-Balkhī, *Qabūl al-Akhhār wa-Ma‘rifat al-Rijāl*, 2 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 2000), 1:51. For a biography of Mughīra, see Ibn Ḥajar, *Tabdhīb*, 10:242-3.

⁴⁵ Ibn ‘Abd al-Barr, *Kitāb al-Istidhkār*, 30 vols. (Cairo: Dār al-Wā‘ī, 1993), 19:25.

⁴⁶ Al-Zarkashī, *Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh*, 4 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 2000), 3:371.

⁴⁷ See *EP* s.v. “Abū Ḥanīfa” for an overview of his life and his influence during his own lifetime. It is important to distinguish between Abū Ḥanīfa’s reported views on standards for women’s testimony in legal cases and his standards for accepting the *riwāya* of women. For example, according to Ibn Qayyim al-Jawziyya (d. 750/1350), Abū Ḥanīfa was among those who felt that the testimony of a single woman was acceptable for cases that involved

That some jurists subscribed to such epistemic hierarchies reinforces the point that the blurring of boundaries between *riwāya* and *shahāda* permitted arbitrary discrimination against women's narrations in early Islam. Women's narration as a whole would have been implicated in this unsettled climate. This explains why jurists such as Abū Ḥanīfa differentiated between the *ḥadīth* of 'Ā'isha and Umm Salama and those of other women. It was better to be as safe as possible and accept traditions only from the two women who were closest to Muḥammad. Much of the early community's knowledge of Prophet Muḥammad's more private practices such as ritual purity and conjugal relations was derived from 'Ā'isha and Umm Salama.⁴⁸ It is also worth noting the historical development in Ḥanafī thought as chronicled by al-Zarkashī. After citing the opinion attributed to Abū Ḥanīfa, he asserts that the Ḥanafīs of his own time reject this view about women's *riwāya*.

The issue of the value of a woman's *riwāya* is cast in sharper relief through a consideration of al-Shāfi'ī's discussion of *nafaqa* and *suknā* for irrevocably divorced women.⁴⁹ Al-Shāfi'ī's approach was distinct in that he was among the first of the Sunnī jurists to consistently give more weight to traditions attributed to Muḥammad rather than to the opinions and interpretations of Companions. Moreover, his methodology foreshadowed the development of the view that all Companions, male or female, are equally probative in their statements

issues to which only women were privy. Ibn Qayyim al-Jawziyya, *Turuq al-Hukmiyya fi al-Siyāsa al-Shar'iyya*, 2 vols. (Mecca: Dār al-'Ālam al-Fawā'id, 2007), 1:413. It should be noted that the reports of al-Zarkashī and Ibn Qayyim are not mutually exclusive. For a more recent discussion of how jurists had different standards for the legal sufficiency of women's testimony depending on the contexts of the case at hand, see Nadwi, *Muḥaddithāt*, 19-20.

⁴⁸ Interestingly, there is a tremendous disparity in the quantity of *ḥadīth* credited to 'Ā'isha and Umm Salama as compared to the other seven wives of Muḥammad. According to some compilers of traditions, 'Ā'isha has been known to narrate close to 2,400 traditions, and Umm Salama is credited with close to 370. Maymūna bint al-Ḥārith (d. 61/680) ranks a distant third with approximately 35 traditions. I have discussed the quantity and quality of *ḥadīth* attributed to the wives of Muḥammad in greater detail in my dissertation, *Shifting Fortunes*, 29-63.

⁴⁹ Al-Shāfi'ī, *al-Umm*, 9 vols. in 8 (Beirut: Dār al-Kutub al-'Ilmiyya, 1993), 5:156-7.

regarding the Prophet (i.e. *ta'dīl al-ṣaḥāba*).⁵⁰ In terms of *nafaqa* and *suknā*, al-Shāfi'ī, like 'Umar and those who relied on his tradition, rejected Fāṭima's *ḥadīth* as legal precedent. Yet, he did so in a manner that avoided gender-based disparagement of her tradition.

The idea that the Qur'ānic verse equating the testimony of one man to that of two women could not be applied to *ḥadīth* transmission is implicit in al-Shāfi'ī's discussion of Fāṭima's report. Al-Shāfi'ī took the position that an irrevocably divorced woman is owed lodging but not maintenance.⁵¹ When his interlocutor asked him how he could abandon the plain sense of Fāṭima's tradition (i.e. a Prophetic *ḥadīth*), he asserted that he had not done so. Al-Shāfi'ī's response shifts the legal logic away from issues of gender, memory, and legal epistemology which were the centerpiece of the argument for 'Umar and the jurists who followed him. Instead, he turns the focus to circumstantial evidence for interpreting the Prophet's *fatwā* as a ruling specific to Fāṭima. Namely, Fāṭima was reported

⁵⁰ Although al-Shāfi'ī may not have explicitly articulated the concept of *ta'dīl al-ṣaḥāba*, the doctrine may nonetheless be seen as a natural outgrowth of his methodology of ranking Prophetic *ḥadīth* above all other sources of law aside from the Qur'ān. As with many aspects of the earliest phases of Islamic history, it is difficult to date the introduction of the doctrine of *ta'dīl al-ṣaḥāba* with any precision. Eerik Dickinson maintains that Ibn Abi Ḥātim al-Rāzī (d. 327/938) was the first *ḥadīth* scholar to explicitly articulate the doctrine of *ta'dīl al-ṣaḥāba* in his *Taqdīmat al-Ma'rifa li-Kitāb al-Jarḥ wa'l-Ta'dīl*. Further, Ibn Abi Ḥātim implies that the Successors should also be evaluated on the same basis as the Companions (see Ibn Abi Ḥātim, *Taqdīma* (Hyderabad: Maṭba'at Majlis Dā'irat al-Ma'ārif al-'Uthmāniyya, 1952), 7-9; and Dickinson, *Development of Early Sunnite Ḥadīth Criticism* (Leiden: Brill, 2001) 120-26 for his analysis of the development of the doctrine of *ta'dīl*). G.H.A. Juynboll has dated the development of the doctrine of *ta'dīl al-ṣaḥāba* to the end of the third/ninth and beginning of the fourth/tenth centuries (see Juynboll, *Authenticity of Tradition Literature* [Leiden: Brill, 1969], chapters 5 and 6; and *Muslim Tradition* [New York: Cambridge, 190-206]). Most recently, Scott Lucas' study on the emergence of Sunnism in the third century, convincingly asserts that the doctrine of *ta'dīl al-ṣaḥābah* was arrived at gradually over the course of the third century. Lucas explores the role of scholars such as Ibn Sa'd and Ibn Ḥanbal as the prime architects of the doctrine of collective probity. Scott Lucas, *Constructive Critics, Ḥadīth Literature, and the Articulation of Sunnī Islam* (Leiden: Brill, 2004), 255-85.

⁵¹ Al-Shāfi'ī's position on lodging is based on his strict application of the Qur'ānic verse cited above which reads, "Do not expel them [i.e. divorced women] from their homes...." (Qur'ān, 65:1). Al-Shāfi'ī, *al-Umm*, 5:156-57.

to have been rude and harsh to her in-laws which occasioned the Prophet's command that she move out of her marital home.

The above analysis allows us to discern a range of approaches to a problematic tradition narrated by a woman. Some jurists, predominantly Kufan ones, did not hesitate to take the explicit position that in such cases, women's *ḥadīth*, even though they report the words of the Prophet, did not enjoy the same authority as the opinions of prominent male Companions and Successors. Mālik, the major representative of the Medinese school, refrained from rejecting *ḥadīth* on the basis of gender. Al-Shāfi'ī, who was also inclined to reject Fāṭima's tradition as a general ruling, was constrained by his methodological precept of accepting Prophetic traditions regardless of whether a man or a woman narrated them. Instead of denigrating Fāṭima's report on the basis of gender, he resorted to an alternative explanation, described above, to limit the normative authority of her tradition. As such, al-Shāfi'ī's logic reflects greater methodological consistency. Since there were cases in which derived laws depended on traditions narrated by women, it did not make sense to use gender as a criterion for weakening the legal validity of any tradition.

Post-Formative Logic and the New Consensus

The issue of *nafaqa* and *suknā* for irrevocably divorced women has lingered as a point of disagreement between the legal schools. As such, it produced discussions that clearly document the transition from the formative to the classical periods with respect to traditions narrated by women. 'Umar, with relative impunity, could set aside Fāṭima's report as the saying of a woman who might have forgotten the particulars of her own divorce case. Jurists of the post-formative period, however, articulated other justifications for rejecting her report.

In this vein, Ḥanafīs, the heirs to the pre-classical Kufan legacy, shifted their legal logic. Even as they continued to maintain their position that *suknā* and *nafaqa* were due to irrevocably divorced women who were not pregnant, they did not resort to rejecting Fāṭima's *ḥadīth* on the basis of gender. For example, the Ḥanafī jurist al-Sarakhsī (d. 483/1090), does cite 'Umar's gender-based

critique of the report's veracity.⁵² But he does not dwell on it. Instead, he allows that Fāṭima's tradition may be an accurate transmission of the Prophet's practice. In a strong echo of al-Shāfi'ī's methodology, he avoids interpreting this *ḥadīth* as a general precedent. He suggests that the Prophet issued a *fatwā* exclusive to Fāṭima because (a) she had behaved rudely towards her ex-husband's family, and the Prophet therefore arranged for her to stay in someone else's home, or (b) her ex-husband sent her some provisions via his brother but she rejected them as insufficient.⁵³

Yet another rejection of 'Umar's reasoning is found in the acclaimed Ḥanbalī work *al-Mughnī* of Ibn Qudāma (d. 620/1223), who asserts that the reports about 'Umar's reaction may not be accurate because consensus (*ijmā'*) has established that women's *riwāya* is probative.⁵⁴ Though Ibn Qudāma's reasoning is circular, it nonetheless is a valuable testament to a profound evolution in the legal culture which did not permit Ibn Qudāma even to contemplate that 'Umar might have rejected Fāṭima's *ḥadīth* on the basis of her gender.⁵⁵

The strongest indication that classical legal methodology could not countenance logic such as that attributed to 'Umar is found in another fifth/eleventh century legal compendium, *al-Muḥalla bi'l-Āthār* of Ibn Ḥazm (d. 456/1064), who offers an extensive treatment of the probative value of Fāṭima's tradition.⁵⁶ Ibn Ḥazm's refutation of those who would reject Fāṭima's report on the basis of gender is

⁵² Al-Sarakhsī, *al-Mabṣūṭ*, 5:201-2.

⁵³ Al-Sarakhsī, *al-Mabṣūṭ*, 5:201-2. The Qur'ānic verse (65:1) concerning *nafaqa* and *suknā* does permit men to evict women who have committed a clear sin (*fāḥisha mubayyina*) and Fāṭima's purported rudeness fell under that category for some jurists, including al-Shāfi'ī. See *al-Umm*, 5:157, and al-Ṭabarī, *Jāmi'*, 7:336 for this definition of *fāḥisha mubayyina*.

⁵⁴ Ibn Qudāma, *al-Mughnī*, 7:406.

⁵⁵ See also Aḥmad b. Muḥammad al-Ṭaḥāwī (d. 321/933), *Sharḥ Ma'āni al-Āthār*, 5 vols. in 4 (Beirut: 'Ālam al-Kutub, 1994) 3:67-73 for an intermediate point in the development of Ḥanafī justification for awarding *nafaqa* and *suknā* to an irrevocably divorced woman. Al-Ṭaḥāwī dwells more on the early Kufan rejection of Fāṭima's report on the basis of her gender than does al-Sarakhsī, but ultimately, he favors the argument proposed by al-Shāfi'ī that the *ḥadīth* itself accurately reflects Muḥammad's practice. The hidden reason for the Prophet's *fatwā* was Fāṭima's rudeness to her in-laws.

⁵⁶ 'Alī b. Aḥmad b. Ḥazm, *al-Muḥallā bi'l-Āthār*, 12 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 1988), 10:97-101.

instructive as to the development of the classical position on women's traditions, particularly those narrated by female Companions. Ibn Ḥazm unequivocally accepts Fāṭima's tradition as a general Prophetic command applicable to all irrevocably divorced women and refutes the traditions reported on the authority of 'Umar and Marwān. His reasons for doing so include denouncing the very idea that a report can be deemed invalid on the basis that a woman narrated it and rejecting some of the chains of transmission of the traditions.⁵⁷

After presenting versions of 'Umar's tradition wherein he refuses to accept Fāṭima's report, Ibn Ḥazm states the following grounds for rejecting 'Umar's view as illogical:⁵⁸

1. The Ḥanafīs, Mālikīs, and Shāfi'īs all rely on 'Umar's tradition [which disparages Fāṭima's *ḥadīth* on the basis of gender] as proof, even though they are the first to agree that *sunna* may be transmitted by women and men equally.
2. Why are the proponents of 'Umar's tradition not similarly ashamed to accept the testimony of a midwife [i.e. one woman] in matters of nursing, birth, the [concealed] blemishes of women (*'uyūb al-nisā'*),⁵⁹ and the testimony of a single woman, free or slave, with regard to sighting the new moon marking the beginning of Ramaḍān? Do they not view such matters as likewise part and parcel of religious practice?
3. The Khārijīs and Mu'tazilīs [groups whose views are rejected by the Sunnī majority] hold the detestable view that women's reports are not permitted in matters of religion.
4. The practice of the Prophet was attested in this case by Fāṭima, and not by 'Umar, who knew only of the general ruling concerning lodging for divorced women.
5. Fāṭima not only had Muḥammad's *fatwā*, but also a Qur'ānic verse to support her stance. Were 'Umar to have been reminded of this verse, he would

⁵⁷) As an example of a weak *isnād*, Ibn Ḥazm cites a chain in which Ibrāhīm al-Nakha'ī narrates from 'Umar with a *munqati'* (broken or interrupted) chain of transmission (see Ibn Ḥazm, 10:97).

⁵⁸) The points listed are a summary of Ibn Ḥazm's arguments presented in *al-Muḥallā*, 10:97-101.

⁵⁹) This refers to the widely accepted custom of consulting a midwife about a woman's physical beauty as well as her faults and deformities which may not be visible to potential suitors and their families.

have retracted his *fātawā*, just as he corrected himself on other occasions when provided with further evidence.

6. Even if ‘Umar faulted Fāṭima’s memory, he himself was susceptible to forgetfulness. For example, ‘Umar forgot that the ritual ablution may be performed with dust (i.e. *tayammum*) when water cannot be found. Since Muslims do not reject ‘Umar’s reports, the possibility of forgetfulness is not sufficient to prevent the acceptance of the report of any morally upright man or woman.

As a final defense of Fāṭima, Ibn Ḥazm points out that she had high status as an early emigrant to Medina, and that her reputation was unassailable. Thus, he employs the post-formative concept of the collective immunity of the Companions from errors in transmission (*ta’dīl al-ṣaḥāba*) to render her tradition valid legal proof and to nullify ‘Umar’s reported criticism of her transmission.

Ibn Ḥazm’s insistence on consistency in accepting the legal authority of *ḥadīth* narrated by women is invaluable as a confirmation of significant developments that occurred between the formative to the classical period. For example, the view that women’s reports are not permitted in matters of religion, a sentiment which had circulated among a number of respected early jurists, is labeled as a heterodox position by Ibn Ḥazm. Further, he asserts that Fāṭima and ‘Umar were equally susceptible to memory loss when it comes to remembering and relaying the Prophet’s precedent (i.e. *riwāya*). Though Ibn Ḥazm does not explicitly reference Qur’ān 2:282 here, his implication is that this verse cannot be applied to the contexts of *riwāya*. In this vein, his reasoning resembles the juristic discourse of the classical period examined by Mohammad Fadel. Fadel concludes that jurists who examined the many, and sometimes contradictory, rules of *riwāya* and *shahāda* ultimately attributed sociological rather than epistemological causes to discriminatory rules of evidence. As Fadel states,

In light of jurists’ desire to create internally coherent legal doctrine, the fact that no Sunni jurist suggested purchasing doctrinal coherence at the price of extending the discriminatory rules of testimony to the field of narration stands as strong circumstantial evidence that these medieval jurists realized that attributing a

general intellectual *inferiority* to women was, within the existing structure of Islamic law, an untenable position.⁶⁰

The evolution of legal thought on gender-based disparagement of traditions from the formative to the classical periods is well-documented due to the extensive discussions of the issue of *nafaqa* and *suknā* and the role of Fāṭima's *ḥadīth* in determining positions in that controversy. However, Fāṭima's case is not unique. The gender-based reasoning applied by 'Umar served as precedent in a later case wherein another deeply contested legal position drew legitimacy from a Prophetic tradition narrated by a woman.

Busra bint Ṣafwān and the Maintenance of Ritual Purity

Whereas Fāṭima asserted a troublesome precedent in the area of family law, the report of Busra bint Ṣafwān b. Nawfal b. Asad, another female Companion, irked jurists concerned with ritual purity.⁶¹

Busra bint Ṣafwān is known in the biographical literature for being among the women who pledged allegiance to the Prophet in the pact known as *bay'at al-nisā'*.⁶² There is some disagreement among the biographers as to whether she is the grandmother or great-grandmother of 'Abd al-Malik b. Marwān. She is also said to have been the maternal aunt of Sa'īd b. al-Musayyib and Marwān b. al-Ḥakam, the first Marwānid caliph. There is a consensus among her biographers that her genealogy and standing in the early Islamic community render her a sound source for *ḥadīth*. Busra's one *ḥadīth*, which has been incorporated in most of the canonical collections, obligates one who has touched his/her genitals to redo the ablution. In some versions of this *ḥadīth*, she resolves a dispute between

⁶⁰ Fadel, "Two Women, One Man," 194.

⁶¹ Her biography may be referenced in the following sources: Ibn Sa'd, *al-Ṭabaqāt*, 8:178-9; and Ibn Ḥajar, *Tahdhīb*, 12:354-55. Marion Katz discusses Busra's lineage in greater detail in *Body of Text* (Albany: State University of New York Press, 2002), 126-27.

⁶² The Qur'ānic verse 60:12 references a pledge of allegiance made by women to Muḥammad in which they professed their belief in Islam and vowed to uphold the moral codes prescribed by the Prophet.

Marwān b. al-Ḥakam and ‘Urwa b. al-Zubayr (d. 94/712)) over this issue.⁶³

Marwān and ‘Urwa were not alone in disagreeing on this topic; early Muslim sources record differences of opinion on this topic amongst a number of jurists. The Medinese believed that touching genitals does indeed necessitate repeating ablution. The Iraqis, on the other hand, offered several arguments for their view that genitals, like any other part of the body, are not impure in and of themselves. Therefore, touching them does not nullify one’s ablution.

The debate on this topic, which has its own implications for the Islamic law of ritual purity, is relevant to this study primarily in that it affirms the existence of gender-based disparagement well into the second/eighth century. Two prominent jurists, the Medinese Rabī‘a al-Ra‘y (d. 136/753) and the Iraqi Muḥammad b. al-Ḥasan al-Shaybānī (d. 189/804) use gender as a cause for weakening the authority of Busra’s tradition.

The opposition voiced by Rabī‘a and al-Shaybānī plays upon the ambiguities surrounding gendered criteria for *riwāya* and *shahāda* and thus echoes the debate over Fāṭima’s tradition. An explicit conflation of the standards of *riwāya* and *shahāda* occurs in Rabī‘a’s rejection of Busra’s tradition in the following terms: “By God, even if Busra testified (*shahīdat*) about this sandal [of mine], I would not accept her testimony [as legally valid]. Prayer is a pillar of religion, and ritual purity (*ṭahāra*) is a pillar of prayer. Was there no-one else from among the Companions who upheld this religion except Busra!?”⁶⁴

Al-Shaybānī’s more detailed discussion of this issue casts further light on the controversy. For al-Shaybānī, it was unacceptable that Busra’s tradition, albeit narrated on the authority of the Prophet, countered the reasoning of several Companions as well as the judgment

⁶³ Busra’s tradition on ablution appears in the following collections: Mālik, *Muwatta’*, 1:84-85; Ibn Ḥanbal, *Musnad*, 8 vols. (Beirut: Maktab al-Islāmī, 1993), 6:455; Abū Dāwūd, *Sunan*, 1:46; and al-Nasā’ī, *Sunan*, 1:100. Busra’s tradition and some of the controversies associated with it have been analyzed in greater detail by Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Oxford University Press, 1993), 60-61, 237-40, and by Katz, *Body of Text*, 123-35.

⁶⁴ Al-Ṭahāwī, 1:71.

of his teacher, the famed Abū Ḥanīfa. Al-Shaybānī begins his section entitled, “The Chapter on Touching the Genitals” with the statement that Abū Ḥanīfa believed that a man who is in a state of ritual purity and touches his genitals does not nullify his ablution.⁶⁵ He then cites the opposing Medinese position that a man who touches his genitals with the palm of his hand must repeat the ablution. For al-Shaybānī, the distinction between the palm and back of one’s hand is illogical. He states that the Medinese base their opinion on the *ḥadīth* of Busra bint Ṣafwān which states, “If one of you touches his genitals, let him repeat the ablution.”

In response to the tradition of Busra, al-Shaybānī cites a counter-tradition on the authority of the Prophet according to which, when asked about this point, he said, “Isn’t it just a part of your body?” thereby suggesting that ablution need not be repeated in such cases. Although al-Shaybānī does provide a statement from the Prophet to support his view, he does not name his source. According to classical Sunnī jurisprudence, a *ḥadīth* from an unnamed person is not considered strong legal proof and certainly does not stand up to an opposing tradition narrated by a known, named and reliable source.⁶⁶ Yet, this point was clearly not recognized in al-Shaybānī’s time and did not affect his approach to Busra’s *ḥadīth*.

In a further inversion of the classical order of the sources of Islamic law, al-Shaybānī’s strongest arguments for the Iraqi position are based on opinions (*ra’y*) of prominent Companions. For example, ‘Abd Allāh b. Mas‘ūd (d. 33/653), ‘Ammār b. Yāsir (d. 37/657), and ‘Alī b. Abī Ṭālib (d. 40/661) among others, did not believe that touching one’s genitals nullifies the ablution. Al-Shaybānī reports that Ibn Mas‘ūd would say, “If you think they’re dirty, cut them off.” ‘Alī b. Abī Ṭālib reportedly said, “I don’t care if I touch that or the edge of my nose.”⁶⁷

⁶⁵ Muḥammad b. al-Ḥasan al-Shaybānī, *Kitāb al-Ḥujja ‘alā Ahl al-Madīna* (Hyderabad: Lajnat al-Ma‘ārif al-Nu‘māniyya, 1965), 1:59.

⁶⁶ See, for example, Ibn al-Ṣalāḥ al-Shahrazūrī (d. 643/1245), *Muqaddimat Ibn al-Ṣalāḥ fī ‘Ulūm al-Ḥadīth* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1995), 48-60 for a discussion of *isnāds* in which the narrators are not named.

⁶⁷ Al-Shaybānī, *Kitāb al-Ḥujja*, 1:61.

After al-Shaybānī's citation of such Companion reports, we encounter the aspect of his argument most relevant to this study. Al-Shaybānī asks his Medinese opponents, "Where does Busra stand in relation to all of these [prominent] Companion authorities? Do you have this report [i.e. concerning the necessity of repeating ablution upon touching genitals] from anyone else besides her?"⁶⁸ When the Medinese offer the opinion of 'Abd Allāh b. 'Umar, another Companion, al-Shaybānī dismisses it as extremist. Ibn 'Umar, he retorts, was obsessive about minor and major ablutions (*wudū'* and *ghusl*), and would even splash water into his eyes when performing ablution. The Medinese themselves do not accept Ibn 'Umar's stance in this respect, so his stance on repeating the ablution should likewise be disregarded.

Al-Shaybānī concludes his discussion on the clash between the Companion reports and Busra's Prophetic tradition by asking rhetorically, "How can we ignore the reports and consensual opinion of all of these [Companions] on this, for a single *ḥadīth* of Busra bint Ṣafwān, a woman who is unsupported [in her narration] by a man, [and you do this] even though women are inclined to weakness in narrating *ḥadīth*." (emphasis added).⁶⁹ Al-Shaybānī then refers the Medinese to the report of Fāṭima bint Qays, discussed above, which was rejected by 'Umar because she was a woman. Similarly, he argues, the *ḥadīth* of Busra cannot be considered on an equal footing with Companion reports that contradict her statement. Throughout his criticism of the Medinese position, al-Shaybānī consistently fails to concede the point that Busra claimed her authority from the Prophet and that the Companion reports opposing her view were

⁶⁸ Al-Shaybānī, *Kitāb al-Ḥujja*, 1:60.

⁶⁹ Al-Shaybānī, *Kitāb al-Ḥujja*, 1:64. The Arabic text reads as follows: "*fa-kayfa natruk ḥadīth ḥā'ulā'i kullilā-hum wa-ijtimā'ahum 'alā hadhā 'alā ḥadīth Busra ibnat Ṣafwān imra' laysa ma'ahā rajul wa'l-nisā' ilā al-dā'f mā humna fī al-riwāya.*" The idiomatic use of the phrase "*ilā al-dā'f*" to connote weakness or a deficiency appears in a number of parallel texts. See, for example, Ibn Ḥajar al-'Asqalānī, *al-Iṣāba fī Tamyiz al-Ṣaḥāba*, 8 vols. (Cairo: Dār Nahḍat Miṣr, 1970-72), 8:291 in the entry for Umm Kulthūm bint 'Uqba; and Abū Bakr Aḥmad b. al-Ḥusayn b. 'Alī al-Bayhaqī (d. 458/1066), *Ma'rifat al-Sunan wa'l-Āthār*, 7 vols. (Beirut: Dār al-Kutub al-'Īlmiyya, 1991), 1:225. I am grateful to Michael Cook for these references.

not explicitly attributed to Muḥammad.⁷⁰ Rather, his trump card is that she is a woman whose narrative authority is weak and cannot compare to the authority of other Companions, all of whom are men.

Interestingly, as with *nafaqa* and *suknā*, juristic logic on the matter of ritual purity evolves to accommodate the consensus that *shahāda* and *riwāya* are distinct with respect to gendered criteria. While later sources do not offer an explicit repudiation of the reasoning offered by Rabī'a and al-Shaybānī (as was the case with Ibn Ḥazm's rejection of 'Umar's reasoning), there are other indicators of the evolving legal landscape. The fourth/tenth century Ḥanafī work *Sharḥ Ma'ānī al-Āthār* of al-Ṭaḥāwī (d. 321/932) exemplifies this change.⁷¹ Al-Ṭaḥāwī maintains al-Shaybānī's position that ablution need not be repeated, and he does cite the opinion of Rabī'a, mentioned earlier. Yet, his legal logic reveals a noteworthy shift in emphasis. In refuting the validity of Busra's tradition, his focus is more on the later narrators whom he criticizes as weak transmitters. He thus transfers the onus for this undesirable tradition away from Busra and her gender. Further, al-Ṭaḥāwī ultimately offers a counter-tradition of the same rank as Busra's, that is, a *ḥadīth* with an uninterrupted chain of transmitters back to Muḥammad (*mutṭaṣil, marfū' ḥadīth*). It has the same text as the one al-Shaybānī so cursorily offered. Yet, in accordance with the post-formative criteria for acceptable *ḥadīth* in sound legal arguments, all of the narrators in the *isnād* are named by al-Ṭaḥāwī, with the anonymous Companion from al-Shaybānī's *isnād* being identified as Ṭalq b. 'Alī (death date unknown).⁷² For al-Ṭaḥāwī, this *ḥadīth* neutralizes the force of Busra's tradition. In this way, his discussion conforms to classical Sunnī jurisprudence in its preference for Prophetic *ḥadīth* as second only to the Qur'ān

⁷⁰ This is in contrast to the classical theory of Islamic law wherein traditions that are directly attributed to Muḥammad (*marfū'*) are ranked higher and carry more authority than those which go back to a Companion (*mawqūf*) and are not explicitly traced back to Muḥammad. See, for example, Ibn al-Ṣalāḥ, *Muqaddima*, 15-58 for a classification of different types of reports and their relative rankings; see pp. 42-3 for a discussion of *marfū'* and *mawqūf*.

⁷¹ Al-Ṭaḥāwī, *Sharḥ*, 1:79.

⁷² Al-Ṭaḥāwī, *Sharḥ*, 1:79. For biographical information on Ṭalq b. 'Alī, see Ibn Ḥajar, *Tahdhīb*, 5:30.

in deriving Islamic law and in not applying overlapping gendered criteria for *riwāya* and *shahāda*.

Contextualizing Gender Discourse in the *Riwāya/Shahāda* Controversy

Some jurists of the formative period capitalized on existing perceptions of women's weakened status as legal witnesses to detract from their authority as *ḥadīth* transmitters. In spite of this rhetoric, the cases of Fāṭima and Busra cannot be viewed as a chapter in normative Muslim gender discourse. We cannot justifiably label al-Shaybānī as a misogynist; neither can we credit Ibn Ḥazm with women's empowerment.⁷³

The discussions analyzed here are side shows in early debates about legal methodology. One vital characteristic of these cases helps us place them squarely within this context. Fāṭima and Busra both narrated reports that were not corroborated through multiple chains of transmission leading back to Muḥammad. That is, no other Companions independently reported the information that they did. Such isolated reports, technically termed *khbar al-wāḥid* (pl. *akhbār al-aḥād*) fueled a major controversy in early Islam with respect to their actionability and the types of knowledge they produced for the Muslim community (certain knowledge vs. probable knowledge). Vociferous rejection of isolated reports as probative is attested on the part of a number of jurists and theological and sectarian groups, among them the early Mu'tazilīs and the early Shī'īs.⁷⁴ These schools or sects were influential in various urban centers across the early Muslim world, thus lending a trans-regional character to the debate over the *khbar al-wāḥid*.⁷⁵ In the third/ninth century, there

⁷³ Maribel Fierro, in analyzing Ibn Ḥazm's position that women could be prophets in Islam, concludes that the Ibn Ḥazm did not assert such a view out of concerns about gender-egalitarianism but rather in the interests of maintaining coherence and consistency in his articulation of the characteristics of prophecy. See Fierro, "Women as Prophets," 184-86.

⁷⁴ *EP*, s.v., "Khabar al-Wāḥid."

⁷⁵ For a Sunnī overview of the early, trans-regional debate over isolated reports, see al-Qāḍī Barhūn, *Khabar al-Wāḥid fī al-Tashrī' al-Islāmī wa-Ḥujjiyatuhu* (Casablanca: Maṭba'at al-Najāh al-Jadīdah, 1995), 282-97. See also Abdallah, *Mālik's Concept of 'Amal*, 170-95 and Appendix 1, "Abū Ḥanīfah's Restrictions on the Use of Isolated *Ḥadīth*," for a discussion

was emerging support for accepting such reports as legally valid. In the first and second century, however, the battle was far from won.⁷⁶ The fact that Mu'tazilis exercised pervasive influence throughout central areas of the Muslim world from the second/eighth century until the fifth/eleventh century meant that traditionalist scholars who favored the acceptance of *khavar al-wāḥid* had to wage a protracted battle in order to establish dominance in this arena. In this unsettled legal landscape, an isolated report that went against established practices or consensus was particularly susceptible to rejection.

In the absence of a clear distinction between *riwāya* and *shahāda* in the formative period, the narration of isolated reports by women presented additional issues. If a single woman's testimony was not accepted in legal proceedings, how could her narration of reports be accepted as the basis of knowledge that was binding on the entire Muslim community?⁷⁷ As evidenced by the juristic opinions presented above, there were a variety of responses to this question. Abū Ḥanīfa, for example, manifested his ambivalence through a general hesitance to accept women's reports other than those narrated by 'Ā'isha and Umm Salama. Others, such as al-Shaybānī, may have focused on gender only when the issue at hand was hotly contested, and his opponents' arguments were supported by the isolated report of a woman.

of Mālik and Abū Ḥanīfa's reluctance to accept isolated reports. Both of these early jurists did not accept isolated reports when they contradicted established practice among well-known Companions. In this study, Umar Faruq Abdallah compares Mālik's reluctance to accept isolated reports that contravened Medinan custom (*'amal*) to the Ḥanafī concept of *'umūm al-balwa*. With respect to the latter, the Ḥanafīs asserted that if an isolated report contradicts a known consensus on a matter of concern to the general public (i.e., *'umūm al-balwa*), it is not to be accepted. The traditions of Fāṭima and Busra discussed here would both fall under the category of such isolated reports that contravened public understanding.

⁷⁶ For an analysis of an early Ḥanafī discussion of *khavar al-wāḥid*, see Murteza Bedir, "An Early Response to Shāfi'i: 'Īsā b. Abān on the Prophetic Report," *Islamic Law and Society* 9, no. 3 (2002): 285-311.

⁷⁷ In the formative period, jurists could have extended the implications of the Qur'anic verse on witnessing (2:282) as the basis for all legally probative and/or binding statements which would include *ḥadīth* and legal testimony. For an interesting reflection on the relationship between the Qur'anic verse on witnesses (2:282) and *khavar al-wāḥid*, see Sachedina, "Woman Half the Man?" 170-74.

While the controversies examined here do not explicitly portray objections to women's narration as part and parcel of the *khābar al-wāḥid* debate, al-Shāfi'ī's discussion of the matter in his legal treatise *al-Risāla* provides an avenue for affirming such connections. His treatment of *khābar al-wāḥid* represents an early attempt to accommodate such reports more systematically.⁷⁸ Thus in a lengthy exchange with an imaginary interlocutor, he repeatedly insists on the legal validity of such reports. According to al-Shāfi'ī, an isolated report must meet the following minimal criteria to be considered valid in determining *sunna*. The report must be narrated by a minimum of one reliable narrator at each stage from the time of the Prophet onwards through a chronologically unbroken chain of transmission (it must thus be *marfū'* and *muttaṣil*). The narrators must all be of upright religious character, known for honesty in narrating *ḥadīth*, and cognizant of what they are transmitting. They should also have a basic linguistic competence so that they are aware of how the legal import of *ḥadīth* is affected by pronunciation or even small lexical alterations; thus, they must narrate traditions verbatim (*riwāya bi'l-lafẓ*) and not merely give the sense of the tradition (*riwāya bi'l-ma'nā*). Finally the narrators must not have been accused of deceit in reporting their sources (*tadlīs*).⁷⁹ If all the narrators fulfill these conditions, al-Shāfi'ī argues, the *ḥadīth* they transmit from Muḥammad are legally probative.

Although al-Shāfi'ī's discussion of isolated reports concerns those narrated by men as well as women, it is clear that he feels he must make a separate case for the legal value of such narrations by women. Al-Shāfi'ī accomplishes this by first differentiating between *shahāda* and *riwāya*. He points out that while *shahāda* and *riwāya* are similar in many respects, they differ in others. For instance, the stipulations

⁷⁸ Al-Shāfi'ī, *al-Risāla*, 196-203.

⁷⁹ Al-Shāfi'ī, *al-Risāla*, 197. The term *tadlīs* is used to convey a range of behavior which is misleading or blatantly deceitful when reporting one's chain of transmission. For example, a narrator may omit some of the less reliable or noteworthy names in his *isnād*, thereby giving the appearance of direct narration from a renowned scholar. Another type of *tadlīs* is providing misinformation about whether the transmission was oral or written. Al-Ḥākim al-Nisābūrī (d. 405/1014) provides a detailed exposition of six different types of *tadlīs* (see *Kitāb Ma'rifat 'Ulūm al-Ḥadīth* [Beirut: Dār al-Kutub al-'Ilmiyya, 1977], 103-12).

in terms of the gender and number of witnesses or narrators for information to be legally valid are different for *shahāda* and *riwāya*.⁸⁰ However, al-Shāfi‘ī has difficulty convincing his interlocutor, who persistently rejects the methodological basis for differentiating between the two.⁸¹ Al-Shāfi‘ī enumerates for him the ways in which various judicial cases differ from each other in terms of requirements for testimony. For example, different numbers of witnesses are required depending on whether the case involves adultery or property rights. The testimony of only one woman is accepted for matters specific to women, such as child-birth and menstruation. Similarly, *shahāda* and *riwāya* are differentiated according to their legal functions. *Riwāya* guarantees the transmission of the Prophet’s practice and therefore, a different set of criteria is used to judge its validity. *Shahāda*, as a source for adjudication, is governed by more temporal interests.⁸² Among them is a consideration of whether the witness, reliable though he may be, is personally inclined in favor of or against any of the parties in the case.

Al-Shāfi‘ī argues his case in a rational and orderly fashion, and he depicts the interlocutor as obtuse and utterly confounded by his attempts to distinguish between *shahāda* and *riwāya*. At one juncture, after an extensive treatment of these issues, his interlocutor asks, “So what’s your proof (*hujja*) for accepting a *khābar al-wāḥid* when you don’t allow such testimony [in court cases]?” Al-Shāfi‘ī curtly answers, “You’re asking me to review something that I thought I had covered already.”⁸³ If al-Shāfi‘ī’s interlocutor represents his real life opponents, it follows that he faced significant resistance to his attempts to impose systematic criteria governing the validity of isolated reports, especially if women were in the chains of transmission.

A second method used by al-Shāfi‘ī to convince his interlocutor of the validity of isolated reports is his presentation of cases showing

⁸⁰) Al-Shāfi‘ī, *al-Risāla*, 197-203.

⁸¹) Al-Shāfi‘ī, *al-Risāla*, 202.

⁸²) Fadel notes that post-Ayyubid jurists also made similar distinctions in defining the separate domains of *riwāya* and *shahāda*. See Fadel, “Two Women, One Man,” 192-94.

⁸³) Al-Shāfi‘ī, *al-Risāla*, 202.

that such reports were considered by other authorities as sufficient evidence for establishing correct practice. In this section as well, al-Shāfi‘ī recognizes that isolated reports narrated by women must be the subject of a separate defense due to the potential for confusion arising from the gendered criteria imposed by the Qur’ān.⁸⁴ Thus, al-Shāfi‘ī presents the example of a tradition narrated by al-Furay‘a, for whom Muḥammad had stipulated a waiting period after the death of her husband.⁸⁵ When Uthmān became caliph, he is said to have sought out al-Furay‘a for her tradition and adopted it as a precedent.⁸⁶ Al-Shāfi‘ī then concludes that if ‘Uthmān, in his capacity as a leader and scholar, could settle a dispute on the basis of a report narrated by a single woman, this is proof that isolated reports narrated by women are valid in determining *sunna*. In a second such example adduced by al-Shāfi‘ī, he reports that Zayd b. Thābit, a Companion widely respected for his legal discernment, abandoned his judgment concerning the ritual obligations of menstruating women

⁸⁴ Interestingly, al-Bukhārī, in his *Ṣaḥīḥ*, also devotes a separate sub-section to the topic of *khābar al-wāḥid* narrated by a woman. In the one report that he adduces, one of the Prophet’s wives informs the Companions that they were eating lizard meat (*lahm ḍabb*). Upon hearing this, Muḥammad allows the Companions to continue eating and comments that the meat is lawful but that he himself does not prefer it. Al-Bukhārī does not clearly signal his stance towards the *khābar al-wāḥid* of women nor does he provide additional *ḥadīth* that would allow us to deduce his views on this issue. Sachedina, in his article cited above, infers that this “*ḥadīth* indicates that a narrative related by a “single” woman, even if she happens to be one of the Prophet’s wives, cannot be permitted as evidence for a prohibitive legal ruling,” and that al-Bukhārī, therefore, was not in favor of accepting the *khābar al-wāḥid* narrated by a woman. Sachedina concludes this from the fact that Muḥammad allowed the Companions to continue eating the lizard meat even though his wife pointed out that it was lizard meat. However, an alternative interpretation may be more justified. The Companions and the Prophet accepted the veracity of the wife’s report (i.e., the *khābar al-wāḥid* of a woman) about the source of the meat. And in keeping with his role as legislator, Muḥammad made clear the ruling that the lizard’s meat was among the permissible foods. For the subsection in al-Bukhārī’s *Ṣaḥīḥ*, see *Kitāb Akhbār al-Aḥād*, 9:743; for Sachedina’s discussion, see “Woman Half the Man?” 172-73.

⁸⁵ al-Shāfi‘ī, *al-Risāla*, 226-7. For al-Furay‘a’s biography, see Ibn Ḥajar, *Tabḥih*, 12:395.

⁸⁶ That ‘Uthmān on this occasion adopted al-Furay‘a’s isolated report whereas his contemporaries ‘Umar and Marwān rejected that of Fāṭima further highlights the arbitrariness of criteria governing women’s *riwāya* in this formative phase.

during the Ḥajj on the basis of a *khābar al-wāḥid* narrated by a woman.⁸⁷

In presenting such precedents, al-Shāfi‘ī aims to highlight the inconsistencies of legal methodology, which sometimes allowed that a woman’s isolated *riwāya* is as probative as that of a man and at other times discriminated against her reports on the basis of gender. The successful efforts of al-Shāfi‘ī and other traditionalists who insisted on the value of authenticated Prophetic traditions, be they isolated or more widely attested reports, as sources of law second only to the Qur’ān had profound implications for Islamic legal methodology. By the classical period, one by-product of these efforts was an unambiguous distinction between *shahāda* and *riwāya* which in turn resulted in the consistent application of discrete criteria for female witnesses and female *ḥadīth* transmitters. Locating the objections to the reports of Fāṭima and Busra in terms of the *khābar al-wāḥid* controversy helps us identify the broader discourse as one about legal methodology and the demarcation of the boundaries of *riwāya* and *shahāda*. Concerns about women’s rights or empowerment are not central for early jurists who alternately repudiated or enabled women’s transmission according to their evolving methodological considerations.

The contours of the early debate on women’s *riwāya* affirm salient concerns that have been raised in contemporary scholarship with respect to early and classical representations of women in legal texts. Nikki Keddie, for example, called attention to the mistaken presumption that doctrinal and legal texts accurately portray realities on the ground for Muslim women.⁸⁸ Mohammad Fadel, analyzing the gender egalitarian implications of classical jurisprudence on women’s *ḥadīth* narration and testimony, is careful to note that legal interpretation should not be simplistically taken as a “reflection of social beliefs.”⁸⁹ In a similar vein, Julie Meisami’s detailed analysis of selected scholarship dealing with gender issues in early and classical Islam clearly reveals

⁸⁷ Al-Shāfi‘ī, *al-Risāla*, 226-27.

⁸⁸ Keddie, “Problems in the Study of Middle Eastern Women,” 227-28.

⁸⁹ Fadel, “Two Women, One Man,” 186.

the dangers of isolating texts from their contexts.⁹⁰ These observations highlight the dangers inherent in mistaken extrapolations from legal texts. We cannot automatically infer that the juristic positions examined here led to a broad ban on women's transmission. On the contrary, documentary historical records overwhelmingly indicate that women were transmitting *ḥadīth* in the first and second centuries even as jurists were debating their legal validity.

At the same time, it would be equally imprudent to assert that such opposition, especially when articulated by scholars of the stature of Abū Ḥanīfa and al-Shaybānī, had no bearing at all on the history of women as *ḥadīth* transmitters. As noted earlier, women's participation declined towards the end of the second/eighth century and was minimal in the third/ninth century. Although it is premature to assert a causal relationship between juristic opposition and this decline, it is not far-fetched to posit that the opposition was one of a number of factors that led to a change in women's levels of participation in the third/ninth century.⁹¹ Future research into the *khabar al-wāḥid* controversy and into individual jurists' use of such reports narrated by women is likely to further our understanding of this issue. Ideally, the present study, which focuses on the contexts in which the legal authority of women's reports was diminished, should be complemented with research that considers the contexts of positive appraisal of women's participation. Through such analyses, we can realize the potential of gender discourse to inform us about broader evolutions in Muslim intellectual, social, and legal history.

⁹⁰ For an articulation of her primary methodological concerns, see Meisami, "Writing Medieval Women," 47, 74-75.

⁹¹ In my dissertation, I examine other factors, such as high standards for *ḥadīth* transmitters that prevailed in this century and the exigencies of traveling to study *ḥadīth*, which may have made it difficult for women to compete equally with men. See *Shifting Fortunes*, Chapter 3.